192

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Volume A

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 29, 1946
CERTIORARI GRANTED APRIL 22, 1946

VOLUME A
RECORD.

United States Circuit Court of Appeals
EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD

FILED AUGUST 5, 1938.

PLEADINGS.
PETITION TO REVIEW.
ANSWERS.

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[fol. 1] Petition of Donnelly Garment Company for Review of Order of the National Labor Relations Board.

(Filed in United States Circuit Court of Appeals on June 21, 1943.)

Before the United States Circuit Court of Appeals for the Eighth Circuit.

Donnelly Garment Company, a corporation, Petitioner,
No. 12,641 vs.
National Labor Relations Board, Respondent.

To the Honorable United States Circuit Court of Appeals for the Eighth Circuit:

Comes now Donnelly Garment Company, a corporation, and petitions this Court for a review of a certain order entered on June 9, 1943, by the National Labor Relations Board in a proceeding instituted by it against your petitioner in a cause entitled "In the Matter of Donnelly Garment Company and International Ladies' Garment Workers' Union and Donnelly Garment Workers' Union, Party to a Contract", numbered before the said National Labor Relations Board as Case No. C-1382.

Your petitioner, for convenience, will designate respondent National Labor Relations Board as the Board, the Donnelly Garment Workers' Union as DGWU, and the International Ladies' Garment Workers' Union as ILGWU.

In support of said petition your petitioner respectfully represents:

(a) The nature of the proceedings as to which this review is sought is as follows: The Board, upon charges

[fol. 2] dated August 9, 1938 and amended charges dated April 6, 1939 filed by the ILGWU, did, on April 27, 1939, issue its complaint against your petitioner, whereby your petitioner was charged with having engaged within the jurisdiction of the United States Court of Appeals for the Eighth Circuit in unfair labor practices within the meaning of Section 8 (1), (2) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449 U. S. Code, Title 29. Said complaint and the divers amendments thereto were duly answered by petitioner denying said allegations of the unfair labor practices aforesaid and affirmatively pleading legal objections to the Board's jurisdiction and to the proceedings herein and further pleading an unlawful conspiracy on the part of the ILGWU to force petitioner by fraud, violence and secondary boycott to compel its employees to join said union against their will in violation of the National Labor Relations Act, and further pleading that the Board and its agents and representatives aided and assisted the ILGWU in said unlawful conspiracy.

A hearing was had upon said complaint and the amendments thereto before a Trial Examiner designated by the Board, Mr. James C. Batten, which said hearings began on June 5, 1939, and continued until July 15, 1939.

The said trial examiner ruled that testimony of petitioner's employees as to how and why they formed and maintained the DGWU was immaterial and of no value and refused to permit petitioner to show by such evidence that it had not dominated or interfered with the rights of its employees to self-organization, or to show that the [fol. 3] ILGWU was engaged in said unlawful conspiracy, and refused to permit petitioner to submit other competent and material evidence.

Thereafter, the trial examiner filed his Intermediate Report and the Board, on March 6, 1940, made its Decision and Order in said proceedings, sustaining the rulings, findings and recommendations of the trial examiner, and finding that your petitioner had engaged in unfair labor practices in that it had dominated and interfered with its employees in their free choice of a labor union, and dis-

criminated against one May Fike by refusing to re-employ her.

Thereafter and on or about March 9, 1940, your petitioner filed in this Court its petition for a review of said order.

Thereafter and on November 6, 1941, this Court rendered its decision finding that your petitioner had been denied due process of law in said proceedings before the Board and its trial examiner because the said testimony of its employees so excluded and rejected as to how and why they formed and maintained the Donnelly Garment Workers' Union was competent and material. This Court remanded the case to the Board for further proceedings, including the taking of said testimony which had been erroneously excluded.

On April 21, 192, the Board entered an order vacating its decision and order of March 6, 1940, and set said matter for further hearing on July 6, 1942, before the same Trial Examiner, Mr. James C. Batten, who had prejudged the testimony of petitioner's employees as being immaterial and of no value.

On July 8, 1942, prior to the taking of any testimony in said further hearing, your petitioner filed objections to [fol. 4] the designation of said James C. Batten as trial examiner in said further hearing because of his bias and prejudice against respondent and his prejudgment of the issues and particularly of the evidence of its employees to be adduced at such further hearings, and asked the Board to designate another trial examiner. On July 28, 1942, the Board denied your petitioner's application for designation of another trial examiner and said further hearing was had before said trial examiner, commencing on August 3, 1942, and concluded on September 17, 1942, who limited petitioner's evidence to the testimony of eleven employees with regard to how and why they voluntarily and without domination formed the DGWU, and the testimony of Mrs. James A. Reed, president of the Company, to matters occurring prior to July 15, 1939. He refused to receive other competent and material evidence, which we shall hereafter set forth more particularly.

Thereafter the trial examiner filed his Intermediate Report to the Board, again finding that your petitioner had engaged in unfair labor practices by dominating and interfering with its employees in their free choice of a labor union. Thereafter the Board, on June 9, 1943, filed and entered its decision and order in said proceeding, affirming all the rulings of the trial examiner and adopting in toto his findings, conclusions and recommendations, with one minor exception. It expressly stated, with regard to the testimony of petitioner's employees as to how and why they voluntarily and without domination formed and maintained the DGWU, as follows: "We are moreover impelled to adhere to the opinion, derived from our experience in an administration of the Act, that conclusion-[fol. 5] ary evidence of this nature is immaterial to issues such as those presented in this case". Said decision and order are made a part hereof by reference and will be printed and filed herein in accordance with Rule 27 (1) of this Court as amended January 12, 1943. Said order is in words and figures as follows, to-wit:

"Order

"Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Donnelly Garment Company, Kansas City, Missouri, its officers, agents, successors, and assigns shall:

"1. Cease and desist from:

"(a) Dominating or interfering with the administration of Donnelly Garment Workers Union, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Donnelly Garment Workers Union or any other labor organization of its employees;

"(b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement, with Donnelly Garment Workers Union, and from giving effect to its check-off agreement with said organization;

"(c) Discouraging membership in International Ladies' Garment Workers Union, or any other labor organization of its employees, or encouraging membership in Donnelly Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

"(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce the employees in the exercise of the rights guaranteed in Section 7 of the Act.

"(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

[fol. 6] "(a) Withdraw all recognition from Donnelly Garment Workers Union, as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representative;

"(b) Reimburse all of its employees for all dues and assessments, if any, which it has deducted from their wages on behalf of Donnelly Garment Workers Union;

"(c) Post immediately in conspicuous places throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (e) hereof; (2) that the respondent will take the affirmative action set forth in

paragraphs 2 (a) and (b) hereof; and (3) that the respondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, and that the respondent will not in any manner discriminate against any employee because of membership or activity in said organization.

"(d) Notify the Regional Director for the Seventeenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

"And It Is Further Ordered that the complaint, insofar as it alleges that the respondent, by discriminating in regard to the hire and tenure of employment of May Fike, has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

"Signed at Washington, D. C., this 9 day of June 1943.

"Harry A. Millis,
Chairman,
"Gerard D. Reilly,
Member,
"John M. Houston,
Member,

(Seal) NATIONAL LABOR RELATIONS BOARD."

(b) The facts and statutes upon which the venue in this proceeding are based are as follows:

Your petitioner, Donnelly Garment Company, is a corporation organized and existing under the laws of the State [fol. 7] of Missouri, and was at all the times herein referred to transacting business in the State of Missouri and within the jurisdiction of the United States Circuit Court of Appeals for the Eighth Circuit.

The National Labor Relations Act approved July 5, 1935 being Public Act, No. 198-74th Congress (49 Stat. 449; U.S. Code, Title 29, sections 151-166), in Section 10 (f) provides that "Any person aggrieved by a final order of the Board *** may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or

transacts business *** by filing in such court a written petition praying that the order of the Board be modified or set aside."

The alleged unfair labor practices referred to in the complaint are alleged to have occurred within the territorial jurisdiction of this Court.

(c) The relief prayed by your petitioner herein is that this Court take jurisdiction of this cause; that the National Labor Relations Board be directed and required to transmit to this Court a complete certified transcript of the entire proceedings in this cause before said Board; that upon the filing thereof this Court review the evidence, findings of fact, conclusions of law and the decision and order of said board and enter a judgment or decree vacating and setting aside said decision and order of the said board; and that your petitioner have such other and further orders, decrees and relief in the premises as [ahll] be proper and just.

[fol. 8] (d) The points on which your petitioner intends to rely in support of [hits] its petition for review are as follows:

Your petitioner assigns as error each and all of the following matters, and each and all of the following rulings, actions and conduct of the Board and of the trial examiner in said proceedings, to-wit:

1.

Your petitioner has been denied a fair trial before an impartial tribunal.

Trial Examiner, James C. Batten, from the inception of the hearings showed bias and prejudice against petitioner and a fixed and unalterable view and opinion that testimony of petitioner's employees concerning how and why they formed and maintained the DGWU as their bargaining representative was utterly worthless and immaterial. This Honorable Court ruled that said testimony was material and remanded the case for further proceedings. The Board again designated James C. Batten as trial examiner to conduct said further hearing; although he had prejudged the evidence and repeatedly stated during the first hear-

ings his determined view that said evidence was of no value.

Petitioner filed with the Board its objections to the redesignation of the said James C. Batten as trial examiner and requested the designation of another trial examiner, which objections and motion (Board's Exhibit 1-CCCC) the Board overruled, said rulings being contained in Board's Exhibit 1-GGGGG. Your petitioner further protested to the said trial examiner, James C. Batten, against his proceeding as trial examiner, which said protests and [fol. 9] exceptions were designated Board's Exhibit 1-QQQQQ, which said protests and exceptions were disregarded and overruled by the trial examiner. The said James C. Batten as such trial examiner in such further hearings and in conformity with his fixed view and opinion as to the immateriality and worthlessness of said testimony of petitioner's employees disregarded said evidence and made the same ruling in his second Intermediate Report as he had previously made, and said bias and prejudice, and prejudgment of the issues were carried forward into the Board's Decision and Order by the Board's adopting the second Intermediate Report of James C. Batten and affirming all of his rulings and expressly stating (Decision and Order, P. 2) to-wit:

" . . . . We are, moreover, impelled to adhere to the opinion derived from our experience in the administration of the Act that conclusionary evidence of this nature is immaterial to issues such as those presented in this case";

although this Honorable Court had expressly held that said evidence was material. (123 F.2d 215) That by reason of the matters aforesaid your petitioner has been denied a fair and impartial trial herein, and has been deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

2.

Petitioner has been denied a fair trial herein by reason of the rulings and action of the trial examiner in striking from petitioner's answer and amendments thereto Part B thereof, and in excluding all proof thereon and concerning the unlawful conspiracy of the ILGWU to compel petitioner

to force its employees, against their will, to join the [fol 10] ILGWU, and in furtherance of said conspiracy, and of the participation by the Board and its representatives to accomplish said unlawful purpose, and by reason of the affirmance by the Board of said rulings and action of the trial examiner.

3.

Petitioner has been denied a fair trial herein by reason of the nonjudicial attitude and rulings of the trial examiner, James C. Batten, and his biased and unfair conduct throughout both the first and second hearings, and the adoption and approval thereof by the Board, to-wit:

(a) That during the first hearing of this matter said trial examiner, James C. Batten, became biased against petitioner and took a nonjudicial attitude toward petitioner's witnesses and evidence, and said bias, prejudice and nonjudicial attitude of this trial examiner continued in and throughout the second hearing held here[illegible] reason of which said trial examiner in both of said hearings refused to receive competent, material and proper evidence offered by your petitioner, and admitted improper, irrelevant and incompetent evidence offered by the Board and ILGWU, and made many unfair and improper rulings and findings against petitioner and intervener, throughout the course of both of said hearings, by reason of all of which your petitioner has been denied a fair trial herein and deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

(b) The exclusion by the trial examiner of testimony regarding violence of the ILGWU at other garment plants and of the testimony of employees as to the effect thereof upon them with reference to their attitude toward the [fol. 11] ILGWU and to the formation of the DGWU, was erroneous and denied to petitioner a fair trial herein.

(c) The exclusion by the trial examiner of evidence regarding the ILGWU's conspiracy to force petitioner to force the employees to join the ILGWU and of the participation of the Board and its agents and representatives therein, was erroneous and denied to petitioner a fair trial herein.

(d) The exclusion by the trial examiner of evidence of the terms of ILGWU contracts with other garment companies was erroneous and denied to petitioner a fair trial.

(e) The admission by the trial examiner of extended evidence concerning events prior to the enactment of the National Labor Relations Act and the basing of findings, conclusions and the Board's order thereon, was erroneous and denied to petitioner a fair trial herein.

(f) The numerous rulings of the trial examiner limiting petitioner in the introduction of material and competent evidence and in permitting the Board and ILGWU to introduce immaterial and incompetent evidence were erroneous and show the bias of the trial examiner and Board against petitioner and denied to petitioner a fair trial herein.

(g) The rulings of the trial examiner in the conduct of the second hearing in arbitrarily directing the order of proof and refusing to permit petitioner to proceed with its evidence in the order it desired, were erroneous and denied to petitioner a fair trial herein.

(h) The rulings of the trial examiner in the second hearing herein limiting the number of witnesses which petitioner and intervener were permitted to place on the stand, were erroneous and denied the petitioner a fair trial herein.

[fol. 12] (i) The rulings of the trial examiner in the second hearing herein, [confincing] the testimony of petitioner to the "offers of proof" which had been rejected by him at the previous hearing, and construing and limiting the scope of the evidence under said offers of proof, and refusing to receive other competent and material evidence which had been rejected by the trial examiner at the previous hearing were erroneous and denied to petitioner a fair trial herein.

(j) The rulings of the trial examiner erroneously interpreted the opinion of the Circuit Court of Appeals remanding this case for further hearing, and limiting the petitioner in the presentation of its evidence in accordance with said erroneous interpretations, were erroneous and denied to petitioner a fair trial herein.

(k) The rulings of the trial examiner refusing to permit petitioner to complete the examination of Wave Tobin and in striking out the testimony given by her while on the stand were erroneous and denied to petitioner a fair trial herein.

(l) The rulings of the trial examiner in the second hearing permitting the Board and ILGWU to introduce as "rebuttal" evidence, evidence that was not proper rebuttal evidence, and in limiting the denying to petitioner the right to present material and proper evidence in surrebuttal were erroneous and denied to petitioner a fair trial herein.

(m) The rulings of the trial examiner at the second hearing herein permitting the Board and ILGWU to introduce evidence upon various matters, and with reference to matters occurring during certain periods of time, and in refusing to permit petitioner or intervener to introduce [fol. 13] countervailing evidence as to said matters and with reference to said periods of time, were erroneous and denied to petitioner a fair trial herein.

(n) The rulings of the trial examiner herein refusing to permit petitioner to introduce competent, material and relevant evidence, and in requiring petitioner to submit "offers of proof" thereof, and in rejecting said offers of proof and each of same were erroneous and denied to petitioner a fair trial herein.

(o) The rulings and action of the trial examiner referred to above and in subsequent points herein, and the rulings and action of the Board in affirming and adopting same, show the bias and nonjudicial attitude of the trial examiner and of the Board toward petitioner and its evidence, and denied to petitioner a fair and impartial trial herein and deprived petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

4.

The Decision and Order of the Board is not supported by the evidence.

None of the findings or conclusions of the trial examiner and the Board essential to support the decision and order

of the Board are supported by any substantial evidence, or by any reasonable inferences therefrom, but all are contrary to the overwhelming evidence in the case and are based upon speculation, conjecture, and unwarranted inferences, and show the bias and prejudice of the trial examiner and Board against petitioner.

[fol. 14] (A) Said findings and conclusions with reference to the Loyalty League are not supported by the evidence and are erroneous.

1. The Loyalty League was not a "prior labor union" and the Donnelly Garment Workers' Union was not a successor or outgrowth thereof and the holding of the Newport News Shipbuilding case (308 U. S. 241) and similar cases is not applicable here.

2. The Loyalty League was not formed, dominated or used by petitioner and its alleged activities are not attributable to petitioner.

3. The Loyalty League did not do the things the Board and trial examiner finds it did.

(a) The issuance of Loyalty League Check to Mr. Tyler does not show domination of the DGWU by the Loyalty League when the circumstances are considered.

(b) The meetings of March 18th, March 30th and April 27th were not Loyalty League meetings.

(c) The Loyalty League did not participate in the Fern Sigler or Sylvia Hull incidents.

(d) The March 2nd statement was not inspired or circulated by the Loyalty League.

(e) Most of the other activities attributed by the trial examiner and Board to the Loyalty League were not activities of the League, but if such alleged activities occurred they were activities by the employees, as such, and not as members of the Nelly Don Loyalty League.

(B) Said findings and conclusions with reference to [fol. 15] "supervisory" employees and your petitioner's responsibility for the activities of such employees are not supported by the evidence and are erroneous.

1. The findings and conclusions that Rose Todd was a supervisory employee or that she represented the management or was held out by the management as its representative or that the employees regarded her as such or that your petitioner is responsible for her activities are not supported by the evidence.

2. The findings and conclusions that the instructors or thread girls were supervisory employees or that they represented the management or were held out as representing the management or that the employees regarded them as representing the management or that your petitioner was responsible for their activities are not supported by the evidence.

3. The findings and conclusions that Hobart Atherton, Florence Strickland, Lena Tyhurst, Martha Gray, Ortense Root, Heath Cowan, Marvin Price, Ted Scoles, Mary Bogart and Dewey Atchison were supervisory employees or represented the management or were held out as representing the management or were regarded by the employees as representing the management or that your petitioner was responsible for their activities are not supported by the evidence.

(C) The findings and conclusions that petitioner dominated or interfered with its employees in the free choice of a labor union or in the formation and administration of the DGWU by permitting the use of its facilities, such as bulletin boards, telephone system, messenger service, mimeograph, ditto and typewriting machines, files, desks and meeting space, are not supported by the evidence and are erroneous.

[fol. 16] (D) The findings and conclusions that petitioner dominated and interfered with the free choice of its employees of a labor union by or through the circulation of the "March 2nd statement" or the circumstances surrounding same are not supported by the evidence.

(E) The findings and conclusions that petitioner dominated and interfered with the free choice of the employees of a labor union or bargaining representatives through the March 18th meeting of employees or by the remarks

made by Mrs. Reed at said meeting are not supported by the evidence.

(F) The findings and conclusions that petitioner dominated the organization meeting of the DGWU on April 27, 1937 and thereby interfered with the free choice of its employees of a labor union or bargaining representatives are not supported by the evidence.

(G) The findings and conclusions that the prompt recognition of, and bargaining with, the DGWU by petitioner show domination of the DGWU or interference by petitioner with the free choice of its employees of a labor union or bargaining representatives, are not supported by the evidence.

(H) The findings and conclusions that the terms of the working agreements made between petitioner and the DGWU show domination of that union by petitioner or interference with its employees in their free choice of a labor union are not supported by the evidence.

1. Such findings and conclusions with reference to the "closed shop" provision in said contract are not supported by the evidence.

2. Such findings with reference to the method of determining piece work prices and that the appointment of [fol. 17] Rose Todd, Mrs. Nichols and Miss Spallito on the DGWU's committee for adjustment of piece work prices show domination of the DGWU by petitioner are not supported by the evidence.

(I) The findings and conclusions as to the instigation and approval of petitioner of the April 23d "demonstration" against Sylvia Hull and Fern Sigler and that petitioner thereby dominated, coerced or interfered with its employees in their free choice of a labor union are not supported by the evidence.

(J) The findings and conclusions as to domination, coercion and interference by petitioner with its employees in their free choice of a labor union, based on petitioner's alleged hostility towards the ILGWU, are not supported by the evidence.

(K) The findings and conclusions that the petitioner contributed to the support of the DGWU or participated or interfered in its administration are not supported by the evidence.

(L) The findings and conclusions that Sylvia Hull was laid off by petitioner because of her membership in and activity on behalf of the ILGWU and the findings and conclusions that petitioner discriminated in regard to the tenure of employment of Sylvia Hull and thereby discouraged membership in the ILGWU and interfered with its employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act are not supported by the evidence.

(M) The findings and conclusions that petitioner entered into a check-off agreement with the DGWU and that the deduction by petitioner from the wages of its employees of their dues to the DGWU constituted domination or inter- [fol. 18] ference by petitioner with the rights of its employees in the free choice of a labor union are not supported by the evidence.

(N) The numerous findings and conclusions of the trial examiner, adverse to petitioner, and adopted by the Board, hereinafter set forth in subsequent points, are not supported by the evidence but are built and based on conjecture, speculation, and false inferences not warranted by the evidence.

5.

The Board erred in the Decision and Order (in the second paragraph thereof) in finding that no prejudicial errors were committed in the rulings of the trial examiner, and erred in affirming the rulings of the trial examiner, for the reasons that said rulings were erroneous in law and contrary to the evidence, were prejudicial to petitioner, were due to the bias and prejudice of the trial examiner, and to his prejudgment of the evidence and issues against petitioner, and to his nonjudicial attitude in the conduct of the hearings, and for all the reasons and objections given and urged by petitioner at the time of the making of such rulings, and because same denied to petitioner a fair trial and deprived petitioner of its

liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

6.

The Board erred in its Decision and Order (in the third paragraph thereof) in adopting the findings, conclusions and recommendations made by the trial examiner in the Intermediate Report (excepting the conclusions of the trial examiner that petitioner has not discriminated in regard to the hire and tenure of employment of May Fike [fol. 19] and has not violated Section 8 (3) of the Act by refusing to reinstate Sylvia Hull, and excepting his recommendation that the complaint be dismissed insofar as the allegations that petitioner discriminated in regard to the hire and tenure of employment of May Fike), for the reasons that such findings and conclusions and each of same are not supported by the evidence or by any substantial evidence or by any reasonable inference therefrom, but are contrary to the evidence and to the law under the evidence and do not support any of the conclusions or orders of the Board and are insufficient therefor, and for the reason that same findings are biased, arbitrary, speculative and due to the prejudgment of the trial examiner and Board of the evidence and issues against petitioner, and not based upon a fair consideration and appraisal of all the evidence, and for the reason that said alleged acts do not tend to prove any of the charges against petitioner, are immaterial and irrelevant to any issue herein, and are not attributable to or binding upon petitioner, and deprived petitioner of a fair trial and of due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

7.

The Board erred in its Decision and Order (in the paragraph under the heading "A". The Remand; the evidence adduced pursuant thereto" pp. 1-2), in its findings and conclusions that the Board at the second hearing herein, in compliance with the Court's mandate, and pursuant to the respective offers of proof submitted by respondent (petitioner) and the DGWU at the original hearings, permitted the introduction of the testimony of re-

spondent's employees that they formed and joined the DGWU of their free will and that [there] were not influenced, interfered with or coerced by respondent (pe-
[fol. 20] titioner) in choosing that organization as their bargaining representative; and that the testimony received on said questio "does not overcome more positive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the DGWU which subjected that organization to the respondent's domination, and which removed from the employees' selection of the DGWU the complete freedom of choice which the Act contemplates"; and that such testimony is "totally unpersuasive that the employees voluntarily designated the DGWU", and in adhering to the opinion "that conclusionary evidence of this nature is immaterial to issues such as those presented in this case"; and that "the respondent dominated and interfered with the formation and administration of the DGWU and contributed support thereto, and that the respondent thereby interfered with the formation and administration of the DGWU and contributed support thereto, and that the respondent thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act", for the reason that said findings and conclusions and each of same are not supported by the evidence or the record herein and are the result of the prejudgment of the trial examiner and the Board of said issues and of the immateriality and worthlessness of the testimony of said employees as to whether they were dominated, coerced or interfered with by petitioner in their free choice of a labor union, and as to how and why they formed the DGWU, and for the reason that the trial examiner and Board failed to give any fair or genuine consideration to such testimony and because of the trial examiner's and Board's bias and prejudice against petitioner and against any evidence offered by petitioner.

[fol. 21] 8.

The Board erred in its order and each of the several paragraphs and provisions thereof numbered 1 (a), (b),

(c), (d), (e) and 2 (a), (b), (c), (d), for the reasons that same and each of same are not supported by the evidence or any reasonable inferences therefrom, are arbitrary and contrary to the law under the evidence, are the result of the prejudgment of the trial examiner and Board of the evidence and issues against petitioner, and to the failure of the trial examiner and Board to give any fair or genuine consideration to petitioner's evidence, and said order deprives petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

9.

The trial examiner erred in making the finding, statement and conclusion contained on Page 2 of the Intermediate Report that "full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties" at the hearing held beginning June 5 and ending July 15, 1939, and the Board erred in adopting said finding, statement and conclusion, for the reason that same is not supported by the record, but on the contrary the record shows that petitioner was repeatedly wrongfully denied opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing on the issues and that the intervener Donnelly Garment Workers' Union was likewise denied such rights and opportunity, whereby petitioner was denied a fair trial herein.

[fol. 22]

10.

The trial examiner erred in making the finding, statement and conclusion [caontained] on Page 8 of the Intermediate Report that "full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all of the parties" at the hearing held beginning July 6 and ending September 17, 1942, and the Board erred in adopting said finding, statement and conclusion, for the reason that same is not supported by the record, but on the contrary the record shows that petitioner was repeatedly wrongfully denied opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing on the issues

and that the intervener Donnelly Garment Workers' Union was likewise denied such rights and opportunity, whereby petitioner was denied a fair trial herein.

11.

The trial examiner erred in making the findings, statements and conclusions contained on Pages 9 and 10 of the Intermediate Report that "the undersigned accorded the respondent and the DGWU an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing and permitted Nell Quinlan Reed, the respondent's president, * * * to testify in the further hearing upon all the issues set forth in the pleadings", and the Board erred in adopting said findings, statements and conclusions, for the reason that said findings, statements and conclusions are not supported by the record, but on the contrary the record shows that the petitioner and the intervener Donnelly Garment Workers' Union were repeatedly wrongfully denied the opportunity and right to introduce competent and material evidence [fol. 23] rejected at the prior hearing, and that the trial examiner refused to permit Nell Quinlan Reed to testify at the hearing beginning July 6, 1942 and ending September 17, 1942, upon many of the issues set forth in the pleadings and in addition thereto, struck out, over the objection of respondent, a large part of the testimony of said witness after same had been given, whereby petitioner was denied a fair trial.

12.

The trial examiner erred in making the finding, statement and conclusion contained on Page 10 of the Intermediate Report that "International Ladies' Garment Workers' Union, affiliated with American Federation of Labor, is a labor organization admitting to membership the factory employees of the respondent", and the Board erred in adopting said finding, statement and conclusion, for the reason that same is not supported by the evidence or the record herein.

13.

The trial examiner erred in making the finding, statement and conclusion contained on Page 10 of the Intermediate Report, that the Donnelly Garment Workers'

Union "admits to membership all employees of the respondent", and the Board erred in adopting said finding, statement and conclusion, for the reason that same is not supported by the evidence or the record herein.

14.

The trial examiner erred in making the following findings, statements and conclusions contained in Part III, A, of the Intermediate Report under the heading "Respondent's responsibility for the activities of various employees", and the subheadings numbered 1, 2, 3 and 4, [fol. 24] appearing at pages 11 to 17 inclusive of the Intermediate Report, including the footnotes; and the Board erred in adopting said findings, statements and conclusions and each of same and in [basins] its Decision and Order thereon, to-wit:

"* * * It is also admitted by the respondent that prior to the advent of Lee Baty as production manager and factory superintendent the instructors had a part in determining lay-offs and discharges in their respective sections and also had disciplinary authority. Baty testified that after he became factory manager in June 1935, he took from the instructors and from all other supervisory employees the authority to hire, discharge, and discipline and vested all such authority in himself, so that he has been since that time the sole supervisory employee in the factory and personally observed the conduct, character of work, efficiency and general attitude of all employees.

"* * * In view of the number of employees, and the size of the factory, the undersigned finds that Baty's testimony in regard to the elimination of supervisors to be incredible.[17]

(Footnote 17) "The undersigned is unimpressed by the evidence adduced by the respondent to establish that all supervisory authority in June 1935 was vested in Baty. Appraising the respondent's evidence in the light of the contradictions and implausibilities found throughout, especially in the testimony of Mrs. Reed, Mrs. Reeves and Baty, the undersigned is fully persuaded of its untrustworthy character. The evidence is further weakened by the plain indications during examination of the instructors, thread girls and employees, assuming *arguendo*, that any change in the supervisory set up of the plant was made when Baty took charge, it was known only to Baty and the respondent's officials. Finally, it is most improbable that such a far reaching reorganization of a large factory would occur without some

notice to those affected and particularly to the employees who had for years, according to Mrs. Reed, been under **** 'more supervision and more executives than — I know. I have more than are usual in the plant of this kind . . . yes our supervisors. Now in my plant I have 40 operators, 40 machines under one supervisor with an assistant one in charge.

"It is plain from all the circumstances disclosed by the record that after June 1935, the instructors and the thread girls continued in their capacity as supervisors in charge of the operators who work in the various sewing sections [fol. 25] of the factory. * * * There is substantial evidence, however, that they do perform functions which make them part of the supervisory staff.

"The instructors, assisted by the thread girls[18] assume complete charge of and are fully responsible for their respective sections of the factory. Among the duties of the instructor is the assignment of bundles containing the materials and supplies upon which the operators work, and the transmission to the operators of the respondent's instructions for the performance of the sewing processes. Mrs. Reeves, who [proceeded] Baty as factory manager and is now in charge of respondent's merchandising department, stated in an affidavit dated October 30, 1937, and confirmed the same in her testimony that: 'competent instructors teach the operators the particular operations to be performed by them and constantly supervise the same.' (emphasis supplied) In addition to these duties the instructors perform other functions as the representative of the management. When work is slack in the section the instructors determine who shall take a day off and in what order the operators will be released from the section. Although Baty denied that the instructors are charged with the duty of disciplining and reporting upon the efficiency of the operators who work in their respective section, the evidence is convincing that they do so the same as before the advent of Baty as factory manager, in June, 1935. The instructor constitutes the link through which the operators learn the management's directions and the management learns whether a girl is a desirable employee, her capacity for work, her attitude toward work, and her performance of the work.

(Footnote 18) "The evidence clearly indicates that in the absence of the instructor, her duties are performed by the thread girl.

"The record clearly reveals that the instructors exercise supervisory, economic control over the operators in their sections. This is particularly true when as here the operators are paid upon a piece-rate basis. The instructors plan the work in each section, determining when the work comes into the section which operator shall work upon the more desirable bundles. They keep the operators busy and correct their mistakes. When repair work is necessary, the instructor decides whether the operator must rip the work out and do it over on her own time or receive pay for the work. Instructors report to the office weekly at a 'going over of the cards' on the operators work for the past week. During temporary slack periods the instructors designate those operators who can be spared or transferred to other sections.

[fol. 26] "Over and above the supervisory and economic control exercised by the instructors, they regard themselves as supervisors and are so regarded by the operators; they are paid twice a month, their names being carried on a time workers pay roll, while the operators are paid on a piece rate basis weekly; and they are responsible to Baty for the quality and quantity of work in their respective sections. Although a substantial number of employee-operators testified during the hearing, none of them stated that Baty personally gave them any instructions or directions or conferred with them about their work. The undersigned is convinced that there was no apparent change in the conduct of instructors or thread girls after June 1935. Furthermore, it is undisputed that the respondent has continued to hold out the instructors and thread girls to the employee-operators as supervisory employees and has given no notice of any kind to the operators that the instructors' authority had been reduced or in any way changed in June 1935.

"The respondent contended that there is no distinction between the duties of the instructor and the thread girl, one having charge of quality and the other quantity, and that none of them act in a supervisory capacity. Even if it be assumed arguendo that there is no appreciable distinction, the undersigned is of the opinion that instructors and thread girls have supervisory authority. Mrs. Reeves testified that the word instructor and floor (thread) girls

and the word supervisory 'means one and the same to me.' Rose Todd, hereinafter found to represent the management, testified that the respondent does not use the term 'supervisor' but that it does have an employee called an instructor in charge of 40 operators and a second girl that might be called an assistant instructor. It is clear from the record and the undersigned is convinced and so finds, that the instructors and thread girls actually and in all respects serve as foremen and assistant foremen of the sections of 40 operators.[19]

(Footnote 19) "The absence of any heirarchy of supervisors between the operators and Baty, with solely the instructors to transmit orders and report on work, renders the instructors more nearly approximate to foremen than any other commonly known class of supervisors. The descriptions of foremen in works on labor relations often point to the "teacher" aspect of his duties. ***

"It is plain from the foregoing, that the instructors and thread girls are supervisory employees, and exercise economic control over the operators, that prior to June 1935, the instructors and the thread girls were admittedly supervisory employees, that since that time the respondent has continued to hold them out to the operators as supervisory [fol. 27] employees, and that the respondent has given no notice of any kind to the operators that the instructors and thread girls have any less authority than formerly. Since the instructors and thread girls are charged with certain duties and economic control which are supervisory, and disciplinary in nature, their interests are closely related to those of the management and are often incompatible with those of the ordinary worker. On the basis of all the evidence, the undersigned finds that instructors and thread girls are supervisory employees and that they act as representatives of the management in the factory.[20]

(Footnote 20) "The instructors are as important as the lead men and group leaders held by the Supreme Court to be employees of such a kind that the Board may base employer liability for unfair labor practices upon the employer's failure to prevent their activities in behalf of a favored union. ***"

"2. Rose Todd.

"Todd was one of the most active and outstanding among the employees of the respondent in the affairs of the League and in the formation and administration of the DGWU. She was president of the League during the time

that it played so effective a part in resisting the organizational campaign of the ILGWU. * * * Her status in the factory and her relation to the management is in dispute.

"Todd, with an interruption of 2 years, has worked for the respondent for approximately 13 years. She was a nurse by profession and through acquaintance with Mrs. Reed as a nurse, secured a job at the respondent's factory in 1926. She worked for a short time as an operator and as a thread girl, during the early part of her employment. Also, prior to the interruption, Todd held various responsible positions with the respondent, including that of an instructor[21] and as an assistant to Dewey Atchison, production engineer, in making time studies, studying production methods and studying rates of piece-work wages. * * * When she returned to the employ of the respondent in 1933 Todd worked for several months as a thread girl. Until sometime in the spring of 1937 she helped in various sections of the factory * * *.

"From the record it is impossible to determine that Todd in 1937, 1938 and 1939 had any well defined duties. During this period she was not assigned to any particular department, being directly responsible to Baty, the factory manager. Todd was assigned a desk in the factory—first on the ninth floor and later on the seventh floor—charged with the responsibility of keeping the various [fol. 28] sections supplied with the necessary materials for maintaining operations and checking up on the delivery of various supplies that should be in the sections. In addition, if any of the sections were short of supplies which delayed the work Todd was notified and arranged for the proper supplies to be forwarded to the department. These duties required that Todd move throughout the various sections of the factory and contact instructors and thread girls. For a period of 1938 Todd again worked with Dewey Atchison on some special work. Baty testified that Todd received the same vacations as given to the instructors and that in August 1937, 'he couldn't let Todd go (on vacation) in August as she was indispensable'. The president of the First National Bank of Kansas City with which the company carried its account testified that he had known Todd for 10 or 12 years as 'a kind of all round man' for the company and that she had come into the bank for several years as respondent's representative.

"During the period from April 16 to 30, 1937, Todd was carried on the designing pay roll, from May 1 to 31, 1937, on the hand sewing pay roll, from June 1 to June 30, 1937, on the button and button hole pay roll and from July 1 to 15, 1937, on the receiving department pay roll, although she did not work in these sections during these pay periods. When the DGWU was organized she was receiving a salary of $130 a month and although the DGWU expressed to the respondent a desire to have her services part time, the respondent continued to pay her the $130 a month, in addition to which the DGWU paid her $65 per month.

"The undersigned, appraising Todd's entire employment record with the respondent, is persuaded and finds that her position in the factory was one of considerable responsibility, involving duties of a supervisory nature.

"Evidence on Todd's activities in the factory plainly points to the fact that she occupied a close and confidential relation to the management which was made known to the employees by respondent's conduct. On April 23, 1937, when anti-ILGWU demonstrations against Fern Sigler, a member of the ILGWU, took place in the factory, the disturbance was reported to Rose Todd. When Baty ordered Sigler from her section to the office he was accompanied by Todd. At the conference which followed, Todd dominated the same and took the lead in questioning Sigler about her union affiliation although both Baty and Mrs. Hyde, the employment manager, were present. A reading of the transcript of that conference shows that Todd opened the conference and talked to Sigler of the respondent's policy of operating an open shop as if she represented the respondent, for example: '**** We have had union people work here for years *** we don't care. We have [fol. 29] hired union people *** I talked to some of the girls yesterday afternoon and tried to get them to see that it is all right if you want to work and belong to the union. However, they feel so keenly about it, we don't think we can do anything about it. *** We are going to run an open shop as long as the majority feels that way.' Todd also said: 'My advice to you is, that if you feel that strongly about the union and have enough people to back you up, be in a union shop. I wouldn't any more think I could join the union than a man in the moon. I'd expect to

be put out on the street and left there.' Baty and Hyde acquiesced in all that Todd said and talked in the same vein. Todd also discoursed at length upon 'our' employment policy. After the demonstrations in Sigler's section and the conference in the office it was Todd who finally sent the employees back to work. Todd's status around the plant was such that the respondent's telephone operators announced meetings over the interdepartmental telephone when Rose Todd asked them to, and instructors took directions from Todd when she directed the form in which they were to turn in time slips for employees absent from work on DGWU business. In addition, Rose Todd's position as president of the League, in which all of the respondent's supervisory force including Mr. Keyes, sales manager, Mrs. Hyde, Mrs. Reeves and Dewey Atchison were members, and which came into existence to counteract the activities of the ILGWU, marked her in the eyes of the employees as a person in whom the management had confidence and whose views reflected those of the management. The respondent did nothing to discourage Todd's activities, although fully aware of them.

"Irrespective of Todd's supervisory status, the undersigned is of the view that the evidence, as a whole, clearly identifies her with the management in the minds of the employees. [22] The undersigned finds that Rose Todd occupied a close and confidential position with the respondent and further finds that in such position she was acting for and on behalf of the respondent.

"3. Hobart Atherton.

"**** He transmits orders to six employees who work with him in that department, shows them how to do the work when occasion demands, and [deeps] a record of the jobs performed. He also assists with repair work whenever needed. **** There is no evidence that any one else exercises any supervision or guidance over the work performed in the maintenance department, or that Baty, the factory superintendent, in any way directs these employees.

"The undersigned finds that Hobart Atherton is a supervisory employee of the respondent in charge of the main-
[fol. 30] tenance department of the plant. [23]

(Footnote 23) "Atherton's position corresponds to those of the "group leaders" whose supervisory status was an issue in *H. J. Heinz Co.* v. *N.L.R.B.* 311 U.S. 514, 518, 521.

"4. Other supervisory employees.

"The status of certain other employees who were active in the League or the DGWU and who occupy responsible positions with the respondent is in dispute. These persons are Florence Stickland, in charge of the pattern department; Lena Tyhurst, assistant factory manager and in charge of the inspection department; Martha Gray, in charge of the outlet store; Ortense Root, in charge of the sample department; Heath Cowan, in charge of the receiving department (piece goods); Marvin Price, in charge of building maintenance; Ted Scholes, in charge of the cutting department; and Mary Bogart, in charge of the dividing department. Some of these employees admittedly had supervisory authority before the appointment of Baty as factory manager. They are all, except Martha Gray, under the supervision of Baty and so far as the record indicates, their relationship to the management after Baty assumed charge was identical with their prior duties and responsibilities as far as the employees in the various departments were concerned. The employees in these departments were not aware of any curtailment in the authority of those in charge, after Baty was made factory manager.

"The undersigned finds that the above named persons are supervisory employees and as such were representatives of the management. [24]

(Footnote 24) "The respondent contends that in Baty resided the sole supervisory responsibility over the employees in each of these departments. See footnote 17 *supra*, for the undersigned's rejection of this untenable position."

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, do not show, or support a finding or conclusion, that the instructors, Rose Todd, Hobart Atherton or the various employees referred to in subparagraph 4, p. 17 or any of them, were supervisory employees of respondent or represented "The management" or were acting for or in behalf of the management with respect to the formation of the Donnelly Gar-

[fol. 31] ment Workers' Union or with respect to any of the matters referred to in said Part III, A, or that respondent held said employees, or any of them, out to its employees as representatives of the management or as acting for the management with respect to any of such matters, or that the employees regarded or had reason to regard said employees or any of them as representatives of the management or as acting on behalf of the management with respect to any of such matters, or occupied a close or confidential position with petitioner, or that said alleged supervisory employees exerted any pressure or coercion on the employees or interfered in any way with their free choice of labor affiliations or that petitioner's employees were coerced, influenced or interfered with by any of said alleged supervisory employees with respect to any of said matters; because said findings, statements and conclusions, and portions thereof, and each of same, are not supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against petitioner or support any of the trial examiner's conclusions or recommendations adverse to petitioner, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the trial examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inference or surmise, and not [fol. 32] based on any substantial, competent evidence; do not support a finding or conclusion that the petitioner was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the trial examiner against petitioner and his nonjudicial attitude toward the evidence; because the trial examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to petitioner; because petitioner is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to

be drawn therefrom and same are not binding on petitioner; and because petitioner has, for each and all of the foregoing reasons, been denied a fair trial and has been deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

15.

The trial examiner erred in his findings, statements and conclusions contained in Part III, B, of the Intermediate Report (pp. 17-20) under the heading "Events prior to the effective date of the Act" and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit:

"On both occasions the respondent's supervisory force attended the meetings (i.e. meetings of ILGWU at Musicians' Hall, March 15, 1934, and at Eagles Hall December 4, 1934) in a group, including Mrs. Reeves, then production manager, Mrs. Hyde, personnel manager, and many of the instructors. Rose Todd, whose relation to the management is discussed hereinbefore, attended the meeting at the Musicians Hall. Dewey Atchison, production engineer, attended the meeting at Eagles Hall.

[fol. 33] "During this period at least a dozen of the employees joined the ILGWU, several of whom became active, passing out notices of meetings and soliciting their fellow workers to join the organization. Many of the employees attending the meeting and others, irrespective of membership in the ILGWU, were called to the office where Mrs. Reeves questioned them about their interest in the union and warned them that joining would do them no good. Employees were variously told by Mrs. Reeves that they had been 'listening too much to somebody outside', that 'Donnelly's don't belong to the union and they never will' and she had thought they had better 'sense' than to join the ILGWU and that they had been 'misled' in doing so, and they ought to have 'a darn good spanking' for their own good. Mrs. Gray, in charge of respondent's outlet store, told employees it was a 'shame' that an employee had joined the ILGWU.

"Dewey Atchinson asked employees why they did not come to the management instead of 'going down to a bunch of foreigners', advised against getting 'messed up' with the union and warned they would be fired if they did. The instructors warned many of the employees that those who joined the ILGWU would be discharged and urged employees not to give their money 'to those foreigners'. One instructor, referred to the ILGWU members as 'scum'.

"A substantial number of the employees who joined the ILGWU were laid off or discharged shortly after joining. [25] *** Yarnell was discharged in July 1934 although she had worked for the respondent since December 1924. Within a few months all except one of the employees who attended the dinner were either laid off or discharged. As a result of these lay offs or discharges the ILGWU on December 6, 1934, filed a charge against the respondent under Section 7 (a) of the National Industrial Recovery Act, alleging that eight employees had been laid off because they joined the ILGWU: ****

"In the latter part of 1934 and the first part of 1935 all the other employees who were known to have joined the ILGWU were transferred from the main factory of the respondent to a temporary branch which was used by the respondent during the busy season. When the rush of work was over and the use of the temporary building discontinued the employees, most of whom had several years service, were laid off. Employees working in the main factory with less service were retained. ****

"As a result of this sequence of events the employees became hesitant to join the ILGWU and those who had joined denied their membership when questioned. Employees who had not joined were even careful not to talk [fol. 34] to those suspected of ILGWU membership for fear of some discrimination with respect to their jobs.

"In February 1935, Martha Gray, in charge of the respondent's outlet store, and Florence Strickland, in charge of the pattern department, formed an organization among the respondent's employees known as the "Nelly Don Loyalty League". The initial step in its organization was a meeting at the home of Gray, attended by approximately

50 employees representing the various sections of the factory. Within the next three days membership cards were circulated and were signed by substantially all the employees. Florence Strickland, in circulating the cards, stated 'that Mrs. Donnelly (Nell Quinlan Reed) would close her doors before she would have a union shop, and (employees) should sign these cards to keep — (their) jobs and keep (them) in work because she would close the doors.' A statement was circulated along with the membership cards stating that: ****

"Florence Strickland refused to allow Virginia Stroup, who was president of the ILGWU local, to sign a membership card because she belonged to 'another organization.' Similarly Lena Allison, an instructor, refused to allow Frances Reidel a card on the ground that she was an ILGWU member. Following the signing of the cards, on February 8, 1935, a mass meeting of all employees was held during working hours on the second floor of the building occupied by the respondent's plant, presided over by Martha Gray, who explained the meaning of the word 'loyalty'.

"Meetings were regularly held on the second floor of the building.[27] The meetings were announced by a notice to the instructors transmitted either by Mrs. Wherry, factory manager, or by the respondent's switchboard operator, calling each section and the instructors in each section notifying the employees to attend the meeting. Each of the sections in the plant had a representative elected by the employees in the section to represent them in the League. These representatives were chosen by passing a sheet of paper among the employees in each section while at their machines, on which nominations were made and then repassing the same sheet around in a similar manner so that each employee could [makr] his vote on the sheet. Virtually all the respondent's supervisors, including Mrs. Reeves, Mae Hyde, Dewey Atchison, Martha Gray, and Florence Strickland were members of the League. The League had songs of loyalty and sponsored the wearing of pins bearing the initial "L" as a demonstration of loyalty to Nell Quinlan Reed.

[fol. 35] "It is clear from the events cited above, that prior to the effective date of the Act, the respondent's supervisors expressed to employees the uncompromising hostility of the respondent toward all labor unions and particularly toward the ILGWU. Employees were made fully aware of their employer's attitude and those who applied for membership or joined the ILGWU did so with a great deal of hesitancy. During this period it was made plain to the employees by their supervisors that loyalty to the respondent meant the renunciation of the Union. Membership and influence in the League enabled the respondent to foster an organized employee resistance to outside unions. Membership of management representatives and supervisory employees, in the League, convinced the rank and file of the respondent's employees that the League was an organization approved by the respondent to which they must give their support, and that they must correspondingly refrain from joining or assisting the ILGWU which the League so consistently opposed.[28]

(Footnote 28) "Since the League was set up as a rival to the ILGWU, the League cannot be held out as a 'purely social organization', as contended by the respondent. ****

* * * * This contention (i. e. that evidence prior to passage of the National Labor Relations Act) fails to recognize that the League continued in existence after effective date of the Act. Furthermore, evidence of an employer's attitude and conduct with respect to labor unions for a reasonable period before the effective date of the Act has often been admitted for the purpose of evaluating the significance of events occurring after such date.[29]

"Since the League was inspired by the respondent and fully supported by its representatives from its inception, the undersigned is convinced that the respondent thereby forcibly impressed upon its employees its anti-union sentiments.

"Further, the League was dominated and controlled by the respondent, and prior to the effective date of the Act, the respondent used it to prevent its employees from joining the ILGWU or any other outside labor organization."[30]

for the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence; or by any findings supported by the evidence; are contrary to competent and material evidence [fol. 36] offered by petitioner and excluded by the trial examiner and contrary to the offers of proof made by petitioner and rejected by the trial examiner; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against petitioner or support any of the trial examiner's conclusions or recommendations adverse to petitioner, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the trial examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inference or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the petitioner was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the trial examiner against petitioner and his nonjudicial attitude toward the evidence; because the trial examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to petitioner; because petitioner is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on petitioner; and because petitioner has, for each and all of the foregoing reasons, been denied [fol. 37] a fair trial and deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

16.

The trial examiner erred in his findings, statements and conclusions contained in Part III, C of the Intermediate Report (pp. 21-25) under the heading "Events prior to April 27, 1937; interference, restraint, and coercion", and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions and each of same, to-wit:

"Following the lay off and discharge of the ILGWU members in late 1934 and early 1935, the organization of the League in 1935, and the inability of the ILGWU to carry to a successful conclusion the case under the NRA, due to the decision declaring the Act unconstitutional, labor relations at respondent's factory remained in a quiescent condition until March 1937. During this period the ILGWU abandoned temporarily its efforts to organize the factory. * * * In some instances, instructors brought new employees notices that they were eligible to membership, directed them to the desk of the League president and later brought them their League pins.

* * *

"* * * With six exceptions the instructors and thread girls did not sign when the petition went through their respective section, although they knew the petition was being circulated. * * * Two of these individuals, later signed for fear of losing their jobs, their names being later erased.

"* * * Thereafter, as the result of arrangements made between Mrs. Reed and a newspaper representative, a picture of the employees presenting the pledge was taken and appeared on the front page of the Kansas City Star, accompanied by the statement that Mrs. Reed was going to place the pledge in the cornerstone of the new building she was planning to erect.

"Mrs. Reed shortly thereafter expressed to her office manager, Marguerite Keyes, a wish that all employees, not [fol. 38] merely factory employees, would sign the petition. Keyes requested an employee in her department, Pauline Shartzer, to circulate the pledge of refusal to acknowledge any labor organization, among all the employees who had theretofore not signed. As a result,

everyone in the plant including the supervisory employees, watchmen, porters, maids and stenographers, indeed every employee except the three heretofore mentioned, signed the 'loyalty' pledge. The instructors and thread girls who signed when the petition first went through their section, signed again a second time on the same page with the other instructors and thread girls. The additional pledge was thereafter presented to Mrs. Reed.

"Under all the circumstances above related the undersigned finds that the respondent, by permitting Mary Sprofera and Inez Warren, and requesting Pauline Shartzer to circulate the pledges in the factory during working hours and by requesting that additional signatures be secured, gave approval and lent assistance and encouragement to the solicitation of its employees to pledge themselves not to join the ILGWU.[31] and thereby interfered with, restrained, and coerced them in the free choice of a collective bargaining agent.[32]

(Footnote 32) "It may be noted that the circulation of this pledge, coincidental with the renewed organizational activities of the ILGWU among the respondent's employees, bears striking similarity to the circulation of the League membership cards and anti-union statements by the respondent 2 years earlier, soon after the ILGWU had initiated its campaign among the employees. In each instance the pleas to the employees to be 'loyal' to the respondent and to resist outside interference, appeared at crucial junctures in the campaign of the ILGWU to organize the respondent's employees.

"* * *

"A meeting of all the respondent's employees took place during working hours[33] on the afternoon of March 18, 1937, on the second floor of the building housing the respondent's plant.[34] Employees were notified orally by their instructors that they were to attend the meeting, the instructors having been notified by either Mrs. Wherry or over the factory telephone system. Most all of the supervisory force were in attendance at the meeting, including Ella Mae Hyde, Martha Gray, and Elizabeth Reeves, the instructors and the thread girls. Rose Todd, with the assistance of Hobart Atherton, both of whom were officials of the League and supervisory employees, called the meeting and Todd presided. Chairs for the meeting were rented from the Kansas [fol. 39] City Rental Chair Company under the name of

the League. From these facts, the undersigned concludes, despite the denial of Rose Todd[35] that the meeting was sponsored by the League and its officials.

(Footnote 33) " **** Evaluating the evidence in its entirety, the undersigned is not persuaded by the testimony adduced by the respondent. A finding favorable to the respondent's position would necessitate the acceptance of testimony which is contrary to the weight of the evidence. The indefinite and routine testimony of respondent's witnesses with their lack of knowledge of details and the mutually corroborative testimony of Board's witnesses, supported by other evidence, that operators attended meetings in their uniforms, that employees went to the meetings in groups and that no definite time was given in the call for the meetings, although the hours of work were staggered and the operators were working overtime, convinces the undersigned that the meetings of March 18 and April 27, 1937, were held during working hours.

(Footnote 34) " ***** Employees had regularly attended Loyalty League meetings and company style shows held on these floors and did not know whether they were leased by the respondent.

"Rose Todd made a few opening remarks, after which Mrs. Reed was requested to come in and address the employees. Mrs. Reed brought with her the letter which the respondent had received from the ILGWU under date of March 9, 1937, requesting a conference. The letter was read to the employees. Mrs. Reed then made a talk in which she expressed her pleasure at receiving the 'loyalty' pledge which had been presented to her on March 2, told the employees that the respondent was an institution to be proud of, that it had taken care of its employees by keeping the factory in operation during the depression, and that she intended to continue to run the business. Then she spoke of threats of violence, that the ILGWU was alleged to have made against employees of the company, and promised protection against such violence. Finally she directed her remarks to the question of unionization of the factory. What she said at this point is a matter of dispute. The Board's witnesses testified that Mrs. Reed stated she would close her factory before she would permit it to be unionized and that she would not allow 'Dubinsky or any other sky to tell her how to run her business'. According to respondent's version, Mrs. Reed stated 'Neither Dubinsky or any other buttinsky is going to intimidate me or the company into forcing you to join the International (ILGWU) against your will'. The under-

[fol. 40] signed does not consider it necessary to resolve the precise conflict in this testimony since the undersigned's view, Mrs. Reed's own version of her speech at the March 18 meeting, and the events which took place there, constituted an unfair labor practice. The meeting was sponsored by the League, which is controlled by the respondent, and was attended by most of the respondent's supervisory employees. Through the presence of supervisors and the sponsorship of the League which had for its purpose the exclusion of outside union organization from the factory, the employees must inevitably have been aware of the anti-union character of the meeting and could not have been free to express their independent views. It may be true, as the respondent contends, that many of them feared the alleged threats of the ILGWU but instead of permitting the employees to decide for themselves what attitude they would adopt with regard to the ILGWU the respondent seized upon such fears as may have existed to build up and strengthen a militant employee opposition toward that labor organization. Mrs. Reed's remarks indicated that the ILGWU was the common enemy of both the respondent and its employees and promised the employees the respondent's protection and assistance against that organization. Mrs. Reed disparagingly labeled David Dubinsky, president of the ILGWU a "buttinsky" who was seeking to force the respondent's employees to join that Union. ***** against the background of the respondent's widely publicized hostility to the ILGWU and the past repeated reminders to the employees that 'loyalty' to the respondent demanded repudiation of outside union organizations, the undersigned is convinced that Mrs. Reed's remarks [36] made it plain that the respondent's attitude toward unionization had not changed and the membership of any of the employees in the ILGWU was not to be tolerated.

(Footnote 36) "***** The undersigned cannot agree, however, that the reference to the employees' rights rendered them wholly free with respect to joining unions. On the contrary, in view of the respondent's past hostility to labor organizations, the undersigned believes that the employees could not fail to be discouraged from joining the ILGWU or any other labor organization.

"The undersigned finds that by its sponsorship and domination of the March 18 meeting and by Mrs. Reed's

talk at said meeting the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

"****** A few minutes after 8 o'clock while she (Sylvia Hull) was working at her machine on the 8th floor of the [fol. 41] plant, two groups of employees—each consisting of 12 or 20 persons—successively gathered at her machine. They demanded to know what authority she had to represent them at the ILGWU convention. Some of the operators stood on top of nearby tables, others sang Loyalty League songs. They told Hull that they would not allow her to belong to the Union, and demanded that she surrender her League pin, which she refused unless they returned to her the cost of the pin. Shortly thereafter, the operators returned, gave Hull 35 cents and she surrendered the pin. Lena Allison, the instructor in charge of Hull's section, was present throughout the demonstrations, but did not order the girls back to work or take any action of any kind; Mary Bogart, in charge of the dividing section, was present and pointed Hull out to some of the demonstrators. **** Hyde thereupon took her down to the office on another floor. **** According to Hull's testimony, which is undenied, Hyde told her she would have to go home. Hull replied that she did not want to quit but would go home for the day. Hyde took her employee-identification badge and Hull left a telephone number through which she might be reached. [37]

"Later, during the same morning on which the above described incident occurred, Fern Sigler, an operator who had displayed on that day for the first time her ILGWU membership pin, was subjected to similar demonstrations. The employees surrounded Sigler's machine and sang songs, derided her, took her League pin from her and shouted 'get up and go home, we don't want you in here'. The demonstrations subsided when Baty, factory manager, accompanied by Rose Todd ordered Sigler from her machine to the office. As Sigler left the floor the operators shouted, 'we are not going to work as long as she remains here'. When Baty insisted on sending Sigler home she argued with him that she had a right to join the ILGWU and it was the employer's duty to control the employees.

Baty replied 'We don't go in for the Wagner Act, we are just running our business here not a law office.' Todd then stated 'We are going to run an open shop as long as the majority feels that way.' After the conference participated in by Baty, Hyde, Todd and Sigler, Sigler was sent home. Baty promised to talk to the operators and 'quiet them down' and to call her back when the unrest had subsided. Despite his promise Baty admitted at the hearing that he did nothing to allay antagonism toward the ILGWU in the plant. [38]

"The undersigned finds that the respondent approved of and encouraged the (Hull and Sigler) demonstrations and took advantage of them to reveal once more to the [fol. 42] employees its hostility to the ILGWU and its support of anti-ILGWU activities. Further the undersigned finds that by such acts the respondent interfered with, restrained, and coerced its employees of the rights guaranteed by Section 7 of the Act.

"The undersigned further finds that by using the League and its officers as hereinabove described for the purpose of impeding and preventing the organization of its employees by the ILGWU, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. [39]

(Footnote 39) "***** The respondent condoned, approved and encouraged these demonstrations and made no sincere effort to check the demonstrators. Neither did it in any way discipline the demonstrators who had disrupted the normal operation of the factory nor did it take any steps to make it possible for these employees to return to their work in the factory unmolested. No deductions were made in the wages of time workers who participated in these incidents. *****"

for all the reasons stated in the foregoing Point No. 15.

16-a.

The board erred in its decision and order, in making each and all of the findings and conclusions set forth in assignment of error No. 16 herein, for the reason that none of the alleged statements therein referred to, or remarks therein referred to, were coercive upon petitioner's employees but all were within the rights and privileges of free speech guaranteed by the First Amendment to the

Constitution of the United States and such findings and conclusions and the order and decision of the Board based thereon constitute an infringement upon the right of free speech guaranteed by said Amendment.

16-b.

The Board erred in basing its findings, conclusions, decision and order upon the statements or remarks appearing in the record and alleged to have been made by officers or employees of the Donnelly Garment Company, for the reason that if such remarks or statements were made, they were not coercive but were within the rights or privileges of free speech guaranteed by the First Amendment to the Constitution of the United States, and such findings, conclusions and decision that said alleged statements or utterances constitute a violation of the National Labor Relations Act, constitute an infringement upon the right of free speech guaranteed by said Amendment.

16-c.

That if the National Labor Relations Act be so construed as to make or hold any of the alleged statements or remarks by the officers or employees of the Donnelly Garment Company, including said alleged remarks by Mrs. Reed at the meeting of employees on March 18, 1937, a violation of the National Labor Relations Act (as it is construed by the Board in its order), such holding would be and is in contravention of the First Amendment to the Constitution of the United States guaranteeing the right of free speech and said Act is unconstitutional, and the Order and Decision of the Board herein are void.

17.

The trial examiner erred in his findings, statements and conclusions contained in Part III, D, of the Intermediate Report (pp. 26-28) under the heading "Domination and interference with the formation and administration of the DGWU and contribution of support; interference, restraint, and coercion", and to sub-heading "1. The formation of the DGWU", and particularly the following portions thereof, and the Board erred in adopting said

findings, statements and conclusions and of each of same, to-wit:

"Shortly after the March 18 meeting a committee, which had been appointed at the close of that meeting, consisting of Rose Todd, Loyalty League President, and the representative of the respondent, Hobart Atherton, an officer of the League and a supervisor, and Sally Ormsby, employed Tyler, an attorney. *****

"On April 27, 1937, a mass meeting of all respondent's employees was held during working hours, [40] on the second [fol. 43] floor of the building in which the respondent's plant was located. [41] Notice of the meeting was given to the employees through their respective instructors who had been notified by Mrs. Wherry, or over the factory telephone system. Instructors and thread girls attended the meeting along with the operators in their sections. Chairs for the meeting were rented in the name of and paid for by the Loyalty League.

"***** Her (Rose Todd's) opening remarks indicated that she regarded the meeting as a part of the series which preceded it for she stated she hoped, 'this meeting is going to be as enthusiastic as our last one was' and explained that she had called the meeting 'as chairman of the committee of employees.' [42] Todd stated that she had consulted two lawyers, Mr. Gossett and Mr. Tyler, whom she had known for years, and they advised forming a plant union. She explained that the Loyalty League, being a purely social organization, would not take care of the situation; that another organization was necessary to give them representation to definitely confer with the proper representatives of the respondent at times when they felt that it was necessary. She pointed out that a union would have to be formed if they were to successfully resist attempts of organization by an outside union. She then told the employees that the new organization would be called the 'Donnelly Garment Workers Union' and although she was distressed as they were at having to use the word 'union' it seemed to be necessary.

*****

(Footnote 43) "The bylaws indicate the purpose of the DGWU was in part the same as that of the Loyalty League which, in the words of Rose Todd, had become inadequate to give the employees the 'protection' they needed. *****

"The facts as related above, make it plain that the organizational meeting of the DGWU was planned, organized and under the complete control of respondent's representatives. Under all the circumstances the undersigned concludes and finds, that the concept of an independent union originated with respondent's supervisory employees and further, that the respondent through the activities of its supervisory employees gave approval, and lent assistance and encouragement to the DGWU.

(Footnote 44) ***** This same group (Todd, Atherton and Ormsby) had been appointed as a committee at a meeting sponsored by the Loyalty League on March 18 for the same purpose. The ledger sheets of the Kansas City chair rental company show the chairs were rented by the 'Nellie Don' [fol. 44] Loyalty League to be used on that date and cancelled check of the Loyalty League shows the League drew a check in favor of the chair rental company in payment therefor. The respondent's telephone operator called on the interdepartmental telephone system each department of the building and gave notice that Todd was calling a meeting of the employees on the second floor. ***** Though it is contended that the $500 retainer fee was in payment only for advice concerning a projected injunction suit against the ILGWU for the protection of the respondent's employees, the undersigned is convinced that the fee covered Tyler's services in connection with the organization of the DGWU, the proposed injunction suit having been rejected as a method of protection. *****

"From all the circumstances above related the undersigned finds that the meeting of April 27 was sponsored and financed by the Loyalty League through Todd, Atherton and Ormsby, and further that the League financed the employment of Tyler, paid him a retainer fee of $500 and that the fee covered the cost of his services in connection with the formation of the DGWU and the drafting of its bylaws."

for all the reasons stated in the foregoing Point No. 15.

18.

The trial examiner erred in his findings, statements and conclusions contained in Part III, D, thereof, under the subheading "2. Membership and participation by other supervisors in the DGWU" thereof, (pp. 29-30), and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit:

"In addition to Todd's and Atherton's membership and participation in the DGWU as representatives of the management, the instructors and thread girls all attended the

meeting of April 27 and signed cards for membership in the DGWU. Dewey Atchison, production engineer, joined but resigned July 14, 1937. The minutes of the meeting show that instructors and thread girls and others closely allied with the management regularly attended and participated in the meetings. ***

* * * * * *

(Footnote 45) "This payroll (1938) heading covers the executive force of the factory, including heads of departments such as factory manager, head of the retail store, personnel manager, and Mrs. Wherry who was variously described as factory manager and head of instructors.

[fol. 45] "The election in April, 1939, repeated in many respects the occurrences of the previous year. However, this time Rose Todd herself appointed the nominating committees without going through the formality of nominations and unanimous elections. Hilda Richmond, whose closeness to management is indicated by appearance of her name on the 'Buying Record's' payroll [46] was named by Todd as chairman of one of the committees and Harry Grogan whose name appeared on the payroll under "Instructors and Floor ladies' was a member of the other. These two nominating committees each brought in slates naming Todd chairman; Jack McConaughey treasurer, Marjorie Green, secretary, and Walter Higgins representative of mechanics. Again the election was by an open standing vote.

"Heath Cowan, in charge of the receiving department; Marvin Price, in charge of building maintenance; and Ortense Root, in charge of the sample department were members of the DGWU and, as shown by its minutes, attended meetings and participated in its affairs. Ted Scoles, in charge of the cutting department; Lena Tyhurst, in charge of the inspection department; and Mary Bogart, in charge of the dividing department were also members of the DGWU. At various times the question was raised by employees as to whether department heads and instructors should have the right to be members of the DGWU and attend and participate in its meetings. However, Todd's statement of the DGWU policy that all employees except the executives Mr. Keyes, Mrs. Keyes, Mr. Green, Mr. Baty and Mrs. Hyde were eligible remained in effect. Employees, nevertheless, at various times expressed the view

that the presence of such persons at meetings excluded them from speaking freely of their complaints. In a meeting of the DGWU Group Chairmen, Hobart Atherton when he stated, 'I think department heads, instructors and so forth, should have all the privileges of membership except that they shall not be allowed the right to vote,' realized the danger of participation by supervisory employees in the affairs of an organization devoted to the improvement of the employees economic relationship with the employer.

"Inasmuch as the respondent through its supervisory employees' membership and participation in the activities of the DGWU, continued its control and direction of that organization, the undersigned finds that respondent is responsible for their activities, and that they were acting for and in behalf of the respondent"

for all the reasons stated in the foregoing Point No. 15.

19.

The trial examiner erred in his findings, statements and conclusions contained in Part III, D, of the Intermediate [fol. 46] Report (pp. 30-32) under the heading "3. The contracts; closed shop, check off and piece work rates", and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions and each of same, to-wit:

" ***** Tyler prepared a contract which was accepted by the respondent without substantial change. Terms of the supplemental agreement were never submitted to the DGWU membership for approval before or after its execution, although it set the employees wages for a period of one year with a provision for an automatic extension. **** Todd explained that the ILGWU had announced that it was seeking a $16 weekly minimum in the garment industry, and she therefore thought it a good idea to improve a little on that minimum to defeat efforts of the ILGWU to organize the respondent's employees. The respondent acceded to this demand. *****

"In August or September 1937 the company agreed, at the request of the DGWU, to a check off of the monthly dues of the members. Employees signed a card prepared

and distributed by the respondent [areeing] to permit the dues to be checked off at the end of each month. Pursuant to this agreement the respondent submits to the DGWU a memorandum showing the number of employees on the payroll during the month and a check covering their dues. The DGWU issues no receipts, keeps no record of individual dues payments and has no means of knowing what individuals paid dues during any month. The General Chairman or Treasurer of the DGWU were unable to state at the hearing what proportion of each month an employee must work to entitle the DGWU to collect the dues from the respondent. The checks turned over for each month subsequent to July 1937 range from about $250 to $325. The amount deducted from each employee appears on the employees' respective check stub. Although the DGWU has never furnished the respondent with a list of its members, every employee of the respondent, upon the assumption that all employees under the closed shop are eligible to belong to the DGWU, except the salesmen whose dues the company's decline to check off, authorized the checking off of the dues.

" ••••• Nichols is a supervisory employee and Spallito her assistant, both of whom are employed by the respondent for the purpose of establishing for it the piece work prices paid the employees. Nichols was described, by Mrs. Hyde, as an 'executive' of the respondent, and admittedly has final authority in setting piece work prices in the first [fol. 47] instance, and of adjusting subsequent complaints of operators that the price set is too low. •••••

"Thus the same persons who set rates on behalf of the respondent in the first instance are also representatives of the DGWU for the purpose of protesting and negotiating in regard to those rates in behalf of the DGWU and the employees.

"The respondent's immediate recognition of the DGWU and its ready acquiescence to a closed shop and check off through the medium of an organization which allowed it to retain control of the piece work rates, when viewed in the light of respondent's persistent hostility to independently functioning unions clearly reveals its determination to prevent the employees from enjoying the rights conferred

upon them by the Act, by forcing them to become members of an impotent collective bargaining agency to which, by its closed shop and check off, it had given assurances of financial stability."

for all the reasons stated in the foregoing Point No. 15.

20.

The trial examiner erred in his findings, statements and conclusions contained in Part III, D, of the Intermediate Report (pp. 33-35) under the heading "4. Respondent's contribution of support to the DGWU", and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions and each of same, to-wit:

"In addition to the holding of the organizational meeting of the DGWU on respondent's time [48] the succeeding three or four membership meetings were likewise held during working hours. ***** Although the DGWU met on the property under lease by the respondent monthly from May 1937 on, it was not until November 1937 that the question of paying rental was raised. ***** It is plain that prior to November, 1937, rent free use of the respondent's premises was contemplated and that the retroactive payment of rent was an afterthought. Rose Todd the General Chairman, twice announced in meetings of the DGWU that such use of the respondent's facilities was entirely proper. Meetings of the Group Chairmen, who composed the executive committee of the DGWU, prior to May 1938, were held in the office of Beulah Spilsbury, in charge of the designing department and thereafter in the auditorium on the first floor. No fental was ever paid for the use of this property. [49]

[fol. 48] (Footnote 49) "The DGWU's treasury book shows only two payments to the respondent for use of space. Both of these were for meetings of the entire membership, as may be seen from the testimony of McConaughey concerning the first of these payments and the fact that the second payment was for 'for 13 meetings' one less than the number of general membership meetings as shown by the minutes of the DGWU to have taken place between the two payments.

"The general meetings of the DGWU and the meetings of the Group Chairmen were called through the respondent's facilities, either by the use of the respondent's inter-

departmental telephone system or by sending a so called I.D.M. to each department of the factory through the respondent's regular messenger service. Announcement of the meeting over the respondent's factory telephone system was accomplished by Todd notifying the telephone operator to call each department. [50] Each section has a telephone, and it is the duty of the instructor or thread girl to answer the phone and convey any message that might be given either to the employees generally if it was a general meeting or to the specific employee in question if it was a Group Chairmen meeting. The interdepartmental telephones were not available to the employees generally and could only be used for calls by supervisory employees pertaining to official business. An I.D.M. is the respondent's term for interdepartmental memoranda. When Todd wished to call a meeting of the employees generally, or of the Group Chairmen, she regularly prepared a notice on the company's I.D.M. paper which was sent to each section of the factory by the respondent's messenger service. Upon the arrival of the I.D.M. in any section, it was the duty of the instructor or thread girl to read the I.D.M. and pass it to the operators in the section.

"Miss Todd also utilized the I.D.M. system for collecting assessments and sending instructions pertaining to DGWU business to the members on the respondent's time. [51] The DGWU receives its mail at the factory through respondent's messengers and freely uses the factory bulletin board.

"Piece work operators who served as Group Chairmen or officers were paid by the respondent for the time lost at work while attending DGWU business, the time workers being allowed to take time from work with no deductions from their pay.

"Rose Todd was a full time employee of the respondent. While a request was made to Mrs. Reed immediately after the formation of the DGWU that it should pay part of her salary, she continued to receive a full salary of $130 a month from the respondent and in addition thereto received $65 from the DGWU.

[fol. 49] Despite receiving her full salary from the respondent, the nature of the work given her by the respondent to perform permitted her to devote as much time as she desired to the DGWU business without deduction from her pay. Thus she carried on the business of the DGWU, representing 1300 or more employees, during the respondent's normal working hours. Soon after formation of the DGWU at the respondent's Kansas City plant, Todd went to the respondent's temporary auxiliary plant at St. Joseph, Missouri, to organize the employees in that factory. She was absent from her employment about a half day without a salary deduction.

"At a meeting on May 11, 1937, Rose Todd announced that 'our (DGWU) work will be conducted' at a desk on the ninth floor of the plant and that she could be reached on union business at 'any time necessary'. Todd's desk was the DGWU's only office. Its records were kept there in a file belonging to the respondent and its business was regularly transacted by employees who went there for that purpose. The check off cards which were printed and distributed by the respondent were signed and turned in at this desk over a two weeks' period by employees who came there from all over the factory. Membership cards of those who were absent from the April 27, 1937 meeting, or of new members were signed and left at this desk. Grievances of members were reported to Todd during the working day and she attended to them during her hours of work. She collected money for the DGWU on the respondent's time and directed the DGWU representatives to do the same. When Todd left on her vacation in December 1937, she informed the Group Chairmen that a substitute, Miss Riddle, would be at the desk from 11 a. m. to 12:45 each day—much longer than the usual half hour's lunch hour—to transact DGWU business.

• • •

"It is apparent from the facts set forth above, and the undersigned finds, that the respondent has contributed a large measure of support to the DGWU."

for all the reasons stated in the foregoing Point No. 15.

21.

The trial examiner erred in his findings, statements and conclusions contained in and under the heading "Summary and conclusions" (pp. 35-37), and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions and each of same, to-wit:

[fol. 50] "From the foregoing facts, conclusions, and findings, it is clear that, notwithstanding the contention by the respondent and the DGWU that the DGWU's formation was the result of the employees' own choice of a collective bargaining representative, the respondent has not permitted the employees to freely exercise that right of self-organization free from employer influence and domination.

"Prior to the effective date of the act the respondent adopted a policy of opposition and hostility to labor organizations generally and to the ILGWU specifically. In furtherance of this policy, the management made it plain to the employees that 'loyalty' to the respondent was synonymous with the rejection of membership in any labor organization. To solidify its purpose, the respondent inspired and dominated the Loyalty League, which had for its primary purpose the frustration of the efforts of the ILGWU to organize the employees. In 1937, when the ILGWU announced a renewal of its efforts to organize the respondent's employees after the Act had been held constitutional, the respondent through the medium of its Loyalty League and supervisory employees formed the DGWU to prevent its employees from selecting any 'outside' labor organization as their representative. It was the League's officers and representatives of the management, Rose Todd and Hobart Atherton who hired the attorney who planned the DGWU and wrote its bylaws. It was the League which borrowed $1,000 at the bank on the security of its members, including Rose Todd and other supervisory employees, with which to pay a retainer fee of $500 to the attorney, a part of which retainer was for advice and services in connection with the formation of the DGWU. The meeting of April 27, 1937, at which the DGWU was formed was sponsored and financed by the

League. Rose Todd, at the time President of the League, directed and dominated the course of the meeting. The employees had heard nothing of the formation of a labor union prior to the meeting, but under the stimulus and pressure provided by the respondent they emerged from that gathering with a labor organization free from employer domination does not persuade employees to join its ranks so rapidly. Like the League, membership in the DGWU includes a large number of the respondent's supervisory employees whose presence inevitably prevents the organization from being free of the respondent's domination. Through Rose Todd, General Chairman of the DGWU, the respondent has retained complete control of that organization.

"The record conclusively shows that the respondent contributed substantial support to the DGWU. The organization has no office or headquarters of any kind apart from the respondent's factory. Respondent's facilities have been freely used in carrying on the business of the DGWU, and while the respondent contends it had no knowledge of the use of its various facilities, the practice has been so persistent and frequent that the undersigned is of the opinion that such a contention is impossible of belief and finds that the respondent had knowledge of these activities.

[fol. 51] "Rose Todd is allowed to take whatever time during working hours that is necessary for the handling of DGWU business without any deduction from her salary and makes a practice of taking up its business at any time during the day. Also Todd, as President of the League and General Chairman of the DGWU, was accorded almost complete freedom to roam through the factory engaging alternately in performing duties in connection with the factory's operation and handling matters relating first to the Loyalty League and then to the DGWU without interference or objection from the respondent. These facts demonstrate that the respondent has permitted and encouraged Todd to make use of the respondent's time in conducting the business of the DGWU. This necessarily conveys to the employees of the respondent its approval of the League and the DGWU. That the respondent lent

encouragement and assistance to the DGWU, becomes even more evident when its cooperative attitude toward the DGWU is compared with the hostility with which it met the efforts of the ILGWU to organize the employees.

"The completeness of the respondent's domination becomes more clear, as shown by the personnel of the DGWU committee for the adjustment of piece work rates. Two of the three of this committee are persons employed by the respondent to set piece work rates in the first instance and when one of these two, Lulu Nichols, is the respondent's authority on the finality of the rate, the result is that the respondent sits on both sides of the bargaining table and the aggrieved operators are left without any means of independent collective bargaining with regard to piece work rates, ordinarily a matter jealously guarded for the promotion of the employees.

"Negotiations between the respondent and the DGWU with respect to the provisions in the Articles of Agreement signed on May 27, 1937, were completed within a few hours, and signed on the same day it was submitted to the respondent. Despite Mrs. Reed's determined opposition to a closed shop, she made no protest when the DGWU made such a proposal. She stated: 'I understand that (a closed shop) is very essential to industrial peace'. The closed shop was granted and membership in a labor organization of the respondent's choice became obligatory upon the employees, buttressed with a check off of dues, to guarantee financial stability to the organization that the respondent initiated and thereafter controlled.

"On all the evidence, the undersigned finds the respondent dominated and interfered with the formation and administration of the DGWU and contributed support thereto and that the respondent thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

[fol. 52] "The DGWU is not and never has been the lawful representative of the respondent's employees for the purpose of collective bargaining in regard to the rates of pay, wages, hours of employment, and other conditions of employment. Under these circumstances, the undersigned finds that the contract, supplemental wage agreement, any

extension, renewal, modification or supplement thereof, and any superseding contract between the respondent and the DGWU are void and of no effect. Independent of this finding of the invalidity of the aoove mentionad contracts, the closed shop provision is invalid, having been made with a labor organization established, maintained, and assisted by unfair labor practices, therefore, the closed shop provision does not fall within the proviso of Section 8 (3) of the Act.

"The undersigned further finds that the respondent, by entering into a contract containing a closed shop provision with the DGWU, discriminated in regard to the hire and tenure and other terms of employment of its employees, thereby encouraging membership in the DGWU and discouraging membership in the ILGWU, and that it thereby interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed them in Section 7 of the Act.

"In addition, the undersigned concludes and finds that the respondent, by using the dominated Loyalty League to impede and prevent the employees from choice of labor organization, by permitting the circulation and requesting the employees to sign the pledge of March 2, 1937, and by the speech of Mrs. Reed at the March 18, 1937 meeting, has in these and other respects set forth above interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act."

for all the reasons stated in the foregoing Point No. 15.

22.

The trial examiner erred in his findings, statements and conclusions contained in Part III, E, of the Intermediate Report (pp. 37-39) under the heading "E. The alleged discharges" and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to wit:

"• • •

"The undersigned has previously described the anti-union demonstration by employees against Hull on the morning of April 23, 1937, which the undersigned found

was condoned and encouraged by the respondent. During the demonstration, Mrs. Hyde, respondent's employment manager removed Hull from her machine and told her [fol. 53] that she would have to go home. Hull replied that she did not want to quit but would go home for the day. Hyde took her employee identification card which was necessary for admission to the factory. When Hull asked how she would get back into the plant, Hyde told her that she would come down to the door and admit her. * * *

"* * * This contention was based on Hull's statement made when a number of the anti-union demonstrators demanded that she go home, and also from the fact that she did not seek to return. However, when Mrs. Hyde told her she would have to leave the plant, Hull refused to quit her employment but agreed to go home for the day. These facts plainly show that Hull did not voluntarily give up her position with the respondent and only acquiesced in a one day lay off under pressure from the respondent. Furthermore, from the fact that Hyde agreed to call her indicates that the respondent did not consider Hull's statement a resignation of her employment.

"The undersigned finds that Sylvia Hull did not voluntarily leave the employment of the respondent but that she was temporarily laid off by the respondent because of her membership in and activity on behalf of the ILGWU. The undersigned therefore finds that the respondent discriminated in the regard to her tenure of employment, thereby discouraging membership in the ILGWU and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. * * *

* * *

"Fike's testimony as to conversations with respondent's agents and an alleged discriminatory lay off, if credited, provides a foundation which would afford an inference that her relationship to Sigler and her union membership was in part at least a motivating reason for the refusal of the respondent to reemploy her after she left on a vacation which was unauthorized. * * *"

for all the reasons stated in the foregoing Point No. 15.

23.

The trial examiner erred in his findings, statements and conclusions contained in Part IV of the Intermediate Report (p. 39) under the heading "The effect of the unfair labor practices upon commerce", and the Board erred in adopting said findings, statements and conclusions, that respondent engaged in the activities set forth in Section III of the Intermediate Report, for the reason that same [fol. 54] are not supported by the evidence or by any reasonable inferences to be drawn therefrom, and for each and all the reasons heretofore set forth in the foregoing Point No. 15. Petitioner does not dispute that it was engaged in interstate commerce as set forth in the stipulation concerning said matter filed in this proceeding.

24.

The trial examiner erred in his findings, statements and conclusions contained in Part V of the Intermediate Report (pp. 39-40) under the heading "The remedy", and particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to wit:

"Since it has been found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

"The undersigned, having found that the respondent has dominated and interfered with the formation and administration of the DGWU and contributed support to it, in order to effectuate the policies of the Act and free the employees of the respondent from such domination and interference and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them by the Act, will recommend that the respondent withdraw all recognition from the DGWU as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely to disestablish it as such representative.[53]

"The undersigned, having also found that the respondent entered into an unlawful contract with the DGWU providing for a closed shop, and in addition, agreed to the deduction of DGWU dues from the employees' wages as an integral part of the respondent's campaign to deny the employees the rights guaranteed them in the Act, will recommend that the respondent cease and desist from giving effect to the contract of May 21, 1937, and to the supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification or supplement thereof, or any superseding contract or agreement which may now be in force. Nothing in this recom-
[fol. 55] mendation should be taken, however, to require the respondent to vary those wages, hours, and other substantive features of its relations with the employees themselves, if any, which the respondent established in the performance of such contracts as extended, renewed, modified, supplemented and superseded.[54] The undersigned will also recommend that the respondent cease and desist from giving effect to any check off agreement with the DGWU. The undersigned is of the opinion that, under the circumstances of this case, the respondent should be required to reimburse each employee for any amounts which the respondent has deducted from the wages of the employee for dues and assessments in the DGWU. The respondent concluded a closed shop contract with the DGWU, a dominated organization, thus compelling its employees to become and remain members of the illegal organization. The check off agreement, a device by which the respondent assured the financial stability of the dominated organization, could, as practiced, no more be avoided by the employees than could the compulsory membership requirement. The undersigned finds that the monies thus deducted from the wages of the employees constituted the price of retaining their jobs, a price coerced from them for respondent's purpose of supporting and maintaining the organization which respondent had dominated in order to thwart bona fide representation. The undersigned further finds that, as a result of the imposition of the illegal closed shop and check off requirements, the employees suffered a definite loss and deprivation of wages equal to the amounts exacted from them for illegal purposes. The undersigned also finds that in these circum-

stances, the propriety of a recommendation requiring reimbursement of dues is particularly applicable, if the unfair labor practices are to be fully remedied and the purposes and policies of the Act are to be completely effectuated by restoration of the status quo. Hence, the undersigned will recommend that respondent reimburse its former and present employees for the amounts deducted from their wages for dues and assessments in the DGWU.[55]

* * *

"The respondent's entire course of conduct, including its many and varied forms of interference, restraint, and coercion, its domination and support of the DGWU, and its discriminatory discharge of Sylvia Hull discloses a fixed purpose on the part of respondent to defeat self-organization and its objects. Because of the respondent's unlawful conduct in the past and its underlying purpose, the undersigned is convinced that there is a real danger of the respondent engaging in other related unfair labor practices proscribed by the Act in the future. The preventative purpose of the Act will be thwarted unless the undersigned's recommendation is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, and thereby to minimize strife which burdens and obstructs commerce, and [fol. 56] thus effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from in any manner infringing the rights guaranteed in Section 7 of the Act."

for all the reasons stated in the foregoing Point No. 15.

25.

The trial examiner erred in his findings, statements and conclusions contained in each of paragraphs numbered 2, 3, 4 and 5, under the heading "Conclusions of Law" (p. 41) of the Intermediate Report, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit:

"2. R-- dominating and interfering with the formation and administration of Donnelly Garment Workers Union

and contributing support to it, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

"3. By discriminating in regard to the hire and tenure and terms and conditions of employment of Sylvia Hull and other employees, thereby encouraging membership in the Donnelly Garment Workers Union and discouraging membership in the International Ladies' Garment Workers' Union, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (3) of the Act.

"4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

"5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act."

for each and all of the following reasons, to-wit:

1. Because the evidence does not show that the respondent has engaged in, or is engaging in, any of the unfair labor practices referred to in said paragraphs and each of same.

2. Because same are contrary to the evidence and contrary to the law under the evidence.

3. Because same are not supported or justified by the evidence or any inferences which may be properly drawn [fol. 57] therefrom, or by any findings of fact by the Trial Examiner which are supported by the evidence or any reasonable inferences to be drawn therefrom.

4. Because same are partisan, biased, arbitrary, conjectural and speculative, and are not based on all the evidence or upon a fair consideration of the evidence.

5. Because same are based on conjecture, surmise and improper inferences and on incompetent, irrelevant and immaterial evidence and upon findings of fact not supported by the evidence.

6. Because the findings of fact upon which same are based are not supported by the evidence; and because the findings of fact are insufficient in law and in fact to support or justify said conclusions, for all the reasons set forth in Point No. 15.

7. Because the evidence does not show that the petitioner has violated the provisions of the National Labor Relations Act therein referred to.

8. Because said conclusions and determinations deprive petitioner of its property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

9. Because said conclusions are based upon a hearing in which, and in the conduct of which, petitioner was denied a fair trial.

10. Petitioner assigns as error the said findings, statements and conclusions for all the reasons set forth in Point No. 15.

[fol. 58] 26.

The trial examiner erred in his findings, statements and conclusions contained in his Intermediate Report under the heading "Recommendations" (pp. 42-44) under subparagraphs 1 (a), (b), (c), (d) and (e), particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit:

"Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Donnelly Garment Company (Kansas City, Missouri) and its officers, agents, successors and assigns, shall:

"1. Cease and desist from:

"(a) Dominating or interfering with the formation and administration of Donnelly Garment Workers Union or the formation or administration of any other labor organization of its employees, or from contributing support to the Donnelly Garment Workers Union or any other labor organization of its employees;

"(b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement which may now be in force with the Donnelly Garment Workers Union and from giving effect to its check off agreement with the Donnelly Garment Workers Union;

"(c) Discouraging membership in International Ladies' Garment Workers' Union or any other labor organization of its employees, or encouraging membership in Donnelly Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

"(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act;

"(e) In any other manner interfering with, restraining or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act."

[fol. 59] for each and all of the following reasons, to-wit:

1. Because said recommendations are not supported or justified by the evidence or any reasonable inference therefrom.

2. Because said recommendations are not supported or justified by the findings of fact or conclusions or any reasonable inferences therefrom made by the trial examiner.

3. Because said recommendations are contrary to the evidence and to the law under the evidence.

4. Because said recommendations are based upon the findings of fact and conclusions of the trial examiner in

said Intermediate Report, which findings of fact and conclusions are in turn not supported or justified by the evidence or any reasonable inference therefrom.

5. Because under the law and the evidence petitioner should not be required or ordered to cease and desist from doing the acts and things enumerated in said recommendations of the trial examiner.

6. Because said recommendations or any order based upon same would deprive petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

7. Because said recommendations are not based on a fair consideration of all the evidence, but are partisan, biased and arbitrary, and are based on conjecture and speculation, inference and surmise, not supported by any substantial competent evidence.

8. Because said recommendations are made in utter disregard of the evidence and of the obligation of the trial examiner to consider and weigh all the evidence.

[fol. 60] 9. Because the evidence does not show that the petitioner has violated any of the provisions of the National Labor Relations Act.

10. Because there is an absence of evidence in the record to justify said recommendations or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said recommendations.

11. Because said recommendations and each of same are based upon a hearing in which, and in the conduct of which, petitioner has been denied a fair trial.

12. Because said recommendations and each of same are based on incompetent, immaterial and irrelevant evidence.

13. Because said recommendations and each of same are contrary to and thwart the purposes and provisions of the National Labor Relations Act.

14. Because said recommendations and each of same are not conducive to effectuate the purposes and provisions

of the National Labor Relations Act and are beyond the power of the Board to impose or require under the facts here existing.

15. For all the reasons stated in the foregoing Point No. 15.

16. Because the evidence does not show that the respondent is doing or has done any of the acts or things set forth in said recommendations and for said reason petitioner cannot desist and cease from doing same, and said assumption by the trial examiner is erroneous and not supported by the evidence.

27.

The trial examiner erred in his findings, statements and conclusions contained in his Intermediate Report under the [fol. 61] heading "Recommendations" (pp. 42-44) under subparagraph 2, particularly the following portions thereof, and the Board erred in adopting said findings, statements and conclusions, and each of same, to-wit:

"2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

"(a) Withdraw all recognition from Donnelly Garment Workers Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representatives;

"(b) Reimburse its former and present employees for all dues and assessments, if any, which it has deducted from their wages on behalf of the Donnelly Garment Workers Union;

"(c) Post immediately in conspicuous places on every floor throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a), (b), (c), (d), and (e) hereof; (2) that it will take the affirmative action set forth in paragraph 2 (a) and (b)

hereof; and (3) that the respondent's employees are free to become or remain members of the International Ladies' Garment Workers' Union and that the respondent will not in any manner discriminate against any employee because of membership or activity in such organization.

"Notify the Executive Secretary of the Board in writing within ten (10) days of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

* * * * * * *

"It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Executive Secretary in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

* * * * * * *"

[fol. 62] for each and all of the following reasons, to-wit:

1. Because said recommendations are not supported or justified by the evidence or any reasonable inference therefrom.

2. Because said recommendations are not supported or justified by the findings of fact or conclusions or any reasonable inferences therefrom made by the trial examiner.

3. Because said recommendations are contrary to the evidence and to the law under the evidence.

4. Because said recommendations are based upon the findings of fact and conclusions of the trial examiner in said Intermediate Report, which findings of fact and conclusions are in turn not supported or justified by the evidence or any reasonable inferences therefrom.

5. Because under the law and the evidence petitioner should not be required or ordered to do any of the acts and things enumerated in said recommendations of the trial examiner.

6. Because said recommendations or any order based upon same would deprive petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

7. Because said recommendations are not based on a fair consideration of all the evidence, but are partisan, biased and arbitrary, and are based on conjecture and speculation, inference and surmise, not supported by any substantial competent evidence.

8. Because said recommendations are made in utter disregard of the evidence and of the obligations of the trial examiner to consider and weigh all the evidence.

[fol. 63] 9. Because the evidence does not show that the petitioner has violated any of the provisions of the National Labor Relations Act.

10. Because there is an absence of evidence in the record to justify said recommendations or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said recommendations.

11. Because said recommendations and each of same are based upon incompetent, irrelevant and immaterial evidence.

12. Because said recommendations and each of same are contrary to and thwart the purposes and provisions of the National Labor Relations Act.

13. Because said recommendations and each of same are based upon a hearing in which, and in the conduct of which, petitioner has been denied a fair trial.

14. Because said recommendations and each of same are not conducive to effectuating the purposes and provisions [of the purposes and provisions] of the National Labor Relations Act and are beyond the power of the Board to impose or require under the facts here existing.

15. For all the reasons stated in the foregoing point No. 15.

28.

By omitting certain sentences and paragraphs in the foregoing quotations from the Intermediate Report, peti-

tioner does not admit or intend to admit that the statements, findings or conclusions contained in said excepted sentences or paragraphs are true or are supported or justified by the evidence, or that any adverse inferences [fol. 64] or implications that may be drawn therefrom are supported or justified by the evidence. The trial examiner, in preparing the Intermediate Report, has so intermingled statements that are supported by the evidence with statements that are not supported by the evidence that it is impossible to separate the true from the false even in single sentences, and the findings and statements in the Intermediate Report often set forth clauses, sentences, or portions of the evidence which, standing alone, are strictly true, but do not fully or fairly state the whole evidence or the true purport thereof, and the inferences that might be drawn from the portions stated are not and would not be justified by the whole evidence if same had been fairly stated by the trial examiner. For these reasons, petitioner excepts to and assigns as error any and all inferences adverse to petitioner which are or may be drawn from such partial or unfair statements of the evidence.

29.

Petitioner assigns as error the Board's denial of petitioner's application (Board's Exhibit 1-EEEEE) for a continuance of said further hearing and excepts to each and all the rulings and action of the Board contained and set forth in its order, Exhibit 1-GGGGG, denying said continuance for and upon each and all the reasons and grounds set forth in said application for continuance; and for like reasons excepts to the action of the trial examiner in proceeding with said further hearing in denial of the application.

[fol. 65] 30.

Petitioner has been denied a fair trial and due process of law herein in this, to-wit: that petitioner in Part B of its Answer alleged, among other things, that during all the times mentioned in the Amended Complaint, the ILGWU, Wave Tobin, manager of its Kansas City Joint Board, and others, had been and were engaged in an unlawful conspiracy to injure and destroy petitioner's business and to

force petitioner, in violation of the National Labor Relations Act, to compel its employees against their will to join the ILGWU, and that in furtherance of said conspiracy said ILGWU, its officers and agents, published false and libelous reports about petitioner and the working conditions in its plant and inaugurated and threatened secondary boycotts against petitioner's customers and threatened to cause gangs of lawless persons to assault petitioner's employees and perpetrate the same unlawful acts of violence and intimidation, including stripping of women naked in the public streets, assaulting them with knives, razor blades and other deadly weapons, which they perpetrated or caused to be perpetrated against employees of other garment manufacturers in Kansas City, Mo., St. Louis, Mo., Memphis, Tenn., and Dallas, Texas; that the ILGWU, on or about March 15, 1937 began an attack of fraud and violence upon the Missouri Garment Company, Gordon Brothers Manufacturing Company and Gernes Garment Company, all of Kansas City, Mo., for the purpose of compelling those companies to force their employees to join the ILGWU; that at said time, the ILGWU did not represent a single employee of the Gernes Garment Company, and a very small minority in the other two of said companies; that agents of the ILGWU an- [fol. 66] nounced that the acts of violence perpetrated against the employees of said companies would be perpetrated against the employees of petitioner's company and would be commenced against petitioner's employees after the above mentioned companies had been forced to capitulate and yield to the demands of the ILGWU for a closed shop, and thereby compel their employees to join the ILGWU; that petitioner further alleged in said Part B of its Answer herein that the Board filed the complaint herein and maintained this proceeding with knowledge of said unlawful conspiracy and activities of the ILGWU and assisted the ILGWU in said unlawful conspiracy, to force petitioner to compel its employees to join the ILGWU, in violation of the National Labor Relations Act.

That the trial examiner struck out erroneously Part B of Petitioner's Answer (R. 6100) and refused to permit

petitioner to adduce evidence in support thereof and rejected petitioner's offer of proof thereon; refused to permit petitioner to show, among other things, the ruthless, violent and unlawful methods used by the ILGWU in their various strikes at St. Louis, Mo., Memphis, Tenn., Dallas, Texas, and in the strike conducted by the ILGWU in Kansas City, Mo. against the Gernes, Gordon and Missouri Garment plants in March and April, 1937 (just prior to the organization of the DGWU), and the threats to use the same or worse tactics against the Donnelly employees, or to show the effect which said methods and threats of the ILGWU had upon the petitioner's employees with reference to the formation of the DGWU and their selection of bargaining representatives.

That said evidence was highly material and relevant upon the chief issue herein, as to whether petitioner coerced its employees into forming the DGWU or whether they [fol. 67] formed that union of their own free will and because they did not want to be represented by a union employing the unlawful tactics used by the ILGWU; that said evidence was material and relevant upon the credibility of the Board's witnesses who were affiliated with the ILGWU. That said evidence was material and relevant upon the question of whether the charges filed by the ILGWU herein were bona fide or an unlawful effort of the ILGWU to coerce petitioner to require its employees to join that union against their will and hence upon the question of whether the Board should institute or continue this proceeding for the purpose of benefiting the ILGWU and removing from its path the DGWU, its only competing union among the Donnelly employees, by ordering the disestablishment of the DGWU and specifically prohibiting petitioner from interfering with the organizational activities of the ILGWU (although accompanied by fraud and violence of the most despicable character), or whether the Board should dismiss the complaint herein. That said evidence was material and relevant upon the interpretation to be given by the Board not only of the acts and testimony of the Board's witnesses who were affiliated with the ILGWU, but also of the acts and testimony of petitioner's employees and their good faith in testifying to the reasons for preferring an association of their own

(the DGWU) instead of the ILGWU. That the refusal of the trial examiner and Board to receive and consider said evidence was also material and relevant upon the question of the finality to be given to the Board's findings of fact made in the absence of such evidence.

That by reason of the matters aforesaid and the refusal of the trial examiner and Board to receive such testimony, [fol. 68] the petitioner has been denied a fair trial herein and deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

31.

The spirit and letter of the Order of this Court remanding the case to the Board for the purpose of taking further testimony held to be material, has been nullified by the trial examiner's and Board's continued refusal to regard as material the testimony of petitioner's employees as to how and why they came to form the DGWU, as exemplified in the Board's statement in its Decision and Order (p. 2) that:

"**** We are moreover impelled to adhere to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature is immaterial to issues such as those presented in this case."

That by reason of the fixed and unalterable view of the Trial Examiner and Board as to the immateriality of said evidence, it is apparent that they gave no real or genuine consideration to said evidence; because of which petitioner has been denied the benefit of said evidence and the Board's order should be set aside and for naught held.

32.

That the spirit and letter of this Court's order remanding the case to the Board for the taking of further testimony has also been nullified by the trial examiner's rulings (affirmed by the Board) erroneously interpreting the Court's remand and restricting the additional testimony to be taken to employee witnesses, and in restricting the testimony of such employee witnesses to the trial examiner's

[fol. 69] erroneous construction of the scope of evidence covered by petitioner's offers of proof which had been rejected at the previous hearing, and in refusing to permit petitioner to adduce testimony as to the activities and threats of the ILGWU and "other material evidence" bearing on the issues of whether petitioner dominated, coerced or interfered with its employees in their free choice of a labor union, by reason of which petitioner has been denied the benefit of the order of remand, and the Board's order should be set aside and for naught held.

33.

The Board erred by its Order dated June 10, 1943, denying petitioner's Motion for Correction of the Transcript.

[fol. 70]

34.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth on Page 228 of the transcript of the record that he was "not bound by the rules of evidence and why be bound by any technical proceedings of the Court", and to his comment on Page 229, to-wit, "We will proceed on the basis I have just explained". (R. I. 18.)

35.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling objection to testimony regarding the Donnelly Loyalty League and admitting testimony concerning same, which ruling and action is set forth in the following excerpt from the transcript of the record, Pages 272, 273: (R. I. 34.)

"Q. Are you still a member of the Loyalty League?
A. Yes, sir."

Mr. Tyler: Just a moment, Mr. Examiner. I object to any testimony or questions in regard to the Donnelly Loyalty League, for the reason it is purely a social organization that has no connection whatever with the matters involved in this case or with the Donnelly Garment Workers' Union.

Trial Examiner Batten: Of course, Mr. Tyler, they allege it is a labor organization, and I presume the only way I could determine that is to get some facts that will enable me to do it. So, I will overrule the objection."

36.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) admitting in evidence Board's Exhibit 2 over the objection of petitioner and intervener, which rulings and action are set forth in the transcript of the record at pages 305, 306, (R. I.-42-43) as follows:

[fol. 71] "Mr. Leary: Board offers its Exhibit 2.

"Mr. Ingraham: I object for the reason that there has been no showing that the Donnelly Company Athletic Club —what is the name of this? The N. D. A. A. represents the company in any shape, way, shape or form, and nothing that it publishes in any way is binding upon the respondent. • • •

"Trial Examiner Batten: Well, you are offering it in its entirety?

"Mr. Leary: I am, Mr. Examiner; yes, sir.

"Mr. Tyler: The intervener desires to object to it on the ground that nothing done or said by the Athletic Association would be binding on the Donnelly Garment Workers' Union or any of their members; also, that it is incompetent, irrelevant and immaterial.

"Trial Examiner Batter: Well, of course, at this stage in the proceeding, it is pretty difficult for me to determine what, if anything, has any relevancy. So I will receive it subject to the connection with later testimony. In other words, the first day this hearing starts, I certainly can't tell what relevancy anything has.

(The document heretofore marked as 'Board's Exhibit No. 2' was received in evidence.)"

37.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming

same) set forth on Page 360 (R. I.-58) of the transcript of the record as follows:

"Q. Your memory is a complete blank on this matter of a stenographer and how she was obtained and who she was and so forth?

"Mr. Tyler: Well, I object to that as repetition and argument with his witness. She said she doesn't remember. I object to this method of cross-examination and browbeating of this witness.

"Trial Examiner Batten: Now, Mr. Tyler, there is no browbeating or even indication of it thus far, not even a semblance of it thus far. I think Mr. Leary has been very gentlemanly, and that is what I expect all counsel to be in this hearing. Now, I am here for some purpose and if it got to the point in this hearing where anybody attempts to browbeat a witness, I will see that they are amply protected.

[fol. 72] "Mr. Tyler: I submit that repeating the question with emphasis after she once answered it amounts to improper cross-examination, and it is not proper at this time.

"Trial Examiner Batten: You may answer."

38.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) striking the answer of witness Rose Todd as set forth in the transcript of the record at Pages 428, 429, 430, (R. I.-77-78) as follows:

"Q. Well, did you know on April 22d that Fern Sigler was in the union?

"A. Mr. Leary, I am not clear on the date of that.

"Q. Well, that would be the day before this meeting.

"A. In the evening; possibly that night.

"Q. April 22d?

"A. It was either the 22d or the 23d. I don't know which it was. Whatever date that you say will have to stand, because I couldn't remember the date. It was the first time that I knew anything about Sylvia Hull. I didn't know anything about Fern Sigler until this morning.

So, what,—in that conversation there, I don't think I am referring to Fern at the time. It was just a general discussion of different people, about their feeling toward peop[illegible] that belonged to the International Union. As you will remember, that feeling was created by the disturbance that was going on around town, and particularly up at 26th and Grand.

"Mr. Leary: I move, Mr. Examiner, that be stricken as not responsive.

"Mr. Leary: Let the whole answer be stricken.

"Trial Examiner Batten: The entire answer may be stricken, * * *."

39.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling objection of petitioner and intervener to the cross-examination by Mr. Langsdale, attorney for the International Ladies' Garment Workers' Union, of witnesses in this proceeding, which objections and ruling are set forth at pages 514, 515 (R. I.-106), of the transcript of the record as follows:

[fol. 73] "Mr. Lane: Mr. Examiner, prior to Mr. Langsdale's cross-examination, I renew my objection as to his right to cross-examine this witness on the ground that he is taking the position adversary to that of the Board, which he, being counsel for the International Ladies' Garment Workers' Union, which is the claimant in this case.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: The objections are overruled.

"Mr. Langsdale: Shall I proceed?

"Trial Examiner Batten: Yes, sir."

40.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) concerning the witness Rose Todd and her testimony appearing on Pages 557 to 559 of the transcript of the record for the reason that same show the bias and prej-

udice of the Trial Examiner against the petitioner, and show his failure and refusal to consider testimony favorable to petitioner and show that petitioner was denied a fair and impartial hearing herein by the trial examiner and for the reason that the trial examiner was thereby attempting to intimidate and confuse the witness and inject into the record a highly prejudicial conclusion and statement concerning the said witness for the purpose of misleading the Labor Board and any Court that might review the evidence, and for the reason that said bias and prejudice of the trial examiner were and are highly prejudicial to petitioner in that same were carried forward into, and permeate, the findings of fact, conclusions and recommendations of the trial examiner which comments and action of the trial examiner are set forth in the following excerpts from the record (pp. 557, 558, 559), (R. I. 124, 125, 126) to wit:

[fol. 74] "Q. Did you discuss any one of the points that you recall?

"A. I surely did. I think I probably discussed—I think I probably should say, then, that I particularly discussed with her these piecework guarantees. Now, there were operators there, and they may have said something too. No doubt they did.

"Q. Now, Miss Todd, 'may'—of course, 'may' anything. I don't want what may have happened or what might have happened. If you don't know anything about this meeting, just tell me you don't remember anything about it, and we will let it go.

"A. I just told you, Mr. Batten, that I could never forget that meeting the longest day I live.

"Mr. Ingraham: If your Honor please, I want to except to your remarks. This witness hasn't said she knows nothing about this meeting. She said they discussed every single point.

"Trial Examiner Batten: I said as to specific things that transpired at the meeting. Now, when she says she discussed everything, Mr. Ingraham, surely you don't think that means anything from the standpoint of evidence, do you?

"Mr. Ingraham: I certainly think when she says they discussed every point, that that is about as far as anybody can go. You mean that she is to tell some conversation?

"Trial Examiner Batten: No, but I think that a person who attended one of these bargaining meetings, if that is all she can tell about it, I think she has a very, very faint recollection of what happened, not sufficient to accept in any way, in any form, as evidence of anything.

"Mr. Ingraham: I except to Your Honor's remarks.

"Trial Examiner Batten: You may except, but I am saying that I don't think it amounts to anything.

"Mr. Tyler: The intervener wishes to except, also, and calls your Honor's attention to the fact that this meeting occurred more than two years ago, attended by many people, that the results of it were principalized (crystallized) in written form, which is the summary of the witness' memory of what was done; that there is no provision or presumption that she doesn't remember conversations connected with it, any further than that, that her evidence is, you say, worthless.

If the court will recall, she has testified that these demands were submitted as demands of the union.

[fol. 75] "Trial Examiner Batten: Well, of course, my only position about this witness is this: that either she has an extremely poor memory or else she doesn't want to remember some of these things. Now, you may take exceptions to that, because that is clearly, Mr. Tyler, my impression thus far of this witness' testimony, and I think, as the Examiner in this hearing, I have a perfect right to express such an opinion, and instead of expressing it in my report, I express it now so you may take the necessary exceptions to it.

"Mr. Ingraham: Respondent excepts to the remark.

"Mr. Tyler: The intervener excepts.

"Mr. Ingraham: As highly prejudicial.

"Trial Examiner Batten: Well, if it is incorrect, I think it is, Mr. Ingraham.

"Mr. Ingraham: I think it is incorrect.

"Mr. Stottle: Mr. Examiner, I doubt if anyone present could state what question Mr. Leary last asked, and that occurred less than an hour ago."

41.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) appearing on Pages 640, 641 of the transcript of the record (R. I. 140), overruling petitioner's objections to the witness being permitted to interpret a written contract and permitting the witness to give her interpretation of said contract, which said objections and rulings are disclosed by the following excerpts from the record, to wit:

"Q. Let us take in this same person with the $18 guarantee, who worked during certain weeks only 20 hours, but who during those 20 hours of work earned only $9, or rather $8.50, on a piecework basis. What would be the person's pay check for that week?

A. I am not very good at mathematics.

"Mr. Stottle: The respondent doesn't object to the witness telling what she can about that, but we do object to a witness trying to interpret a written contract, which is here in evidence, and * * * allow those interpretations of a written contract to be deemed as binding on the respondent. We don't believe that is proper.

[fol. 76] "Trial Examiner Batten: Well, don't you think, Mr. Stottle, a person who is a party to the contract has a right to give their idea of how it should be interpreted; whether it is binding, I am not passing on that, but surely the person who signed it ought to be in a position to say what they think about it.

"Mr. Leary: I will withdraw the question, if Mr. Stottle will point that portion out in the contract to me.

"Mr. Stottle: I say, there is a written contract that provides, that all of that is provided about the guarantee.

"Mr. Leary: Will you point that particular part out to me now?

"Trial Examiner Batten: The witness may answer the question. I have said she is qualified as a party to this contract to give her idea of what it is."

42.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) permitting the International Ladies' Garment Workers' Union to cross-examine the Board's witnesses and other witnesses over the objection of the petitioner and the intervener appearing on Page 650 through Page 654 of the transcript of the record (R. I. 141, 142), which objections and rulings are disclosed by the following excerpt from the transcript, to wit:

"Mr. Lane: Now, if the Examiner pleases, before Mr. Langsdale begins any examination of this witness, I desire to object to counsel for the International Ladies' Garment Workers' Union being permitted to interrogate this witness or to cross examine this witness, for the reason that counsel for that organization, the claimant in this case, having during the entire progress of this hearing sat across the counsel table from the attorneys for the Board, have continuously and constantly consulted with the attorneys for the Board, have been in numerous conferences with them, have passed notes back and forth across the counsel table, have participated in directing the course of the examination made by the Board's counsel of this witness; to permit counsel for the International Ladies' Garment Workers' Union, which has shown itself to be so identified with the Board in this case, it being the complaining party, as to have a unity of interest and to be essentially the same as the Board in this case, for purposes of prosecuting this case. To permit counsel to interrogate this witness at this time would permit a double [fol. 77] cross-examination by the same parties of this witness. This witness has, over our objection, been subjected to what we consider cross-examination for pretty nearly three days, and to now permit counsel for the International Ladies' Garment Workers' Union to take over examination at this point, and further cross-examine, or to cross-examine this witness at all, would be unfair to this witness, would be illegal examination, and--

"Trial Examiner Batten (interrupting): Now, just a moment. Whenever you say a thing is illegal, I want you to tell me why. I mean, I can't accept that.

"Mr. Lane: On the ground that it is so far a departure from the rules of procedure and progress which obtain in courts of law, and which should obtain in administrative tribunals as to be a negation of the rules of fair play, as to deprive the intervener in this case of due process.

"Mr. Stottle: Respondent makes the same objection.

* * *

"Trial Examiner Batten: I think it is very clear the rules permit a party to call witnesses, examine them, cross-examine them, and take part in the proceedings.

Mr. Langsdale, you may proceed."

43.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting Mr. Langsdale, as counsel for the International Union, to read into the record and interrogate the witness concerning a purported affidavit of Mrs. Reed given in another proceeding, over the objection of the Intervener and the Petitioner as disclosed by the transcript of the record, pages 674 through 680 (R. I. 149, 150), and from the following excerpts therefrom, to wit:

"Q. Let me ask you if you have read or heard read the affidavit filed in that suit, signed by Nell Quinlan Reed, dated November 5, 1937, in which she stated, 'In the first place, a group of employees—

"Mr. Lane (interrupting): Just a moment. I am objecting, of course, to his reading the affidavit made in that trial as not being proper cross-examination of this witness and an improper way of trying to get that into this record:

"Q. (Mr. Langsdale) Have you heard this part of Mrs. Reed's affidavit read:—

[fol. 78] "Mr. Lane (interrupting): Just a minute. The witness' testimony, as I understand it, is she has not read or heard read any portion of that affidavit.

"Trial Examiner Batten: Mr. Lane, there is no objection to asking her if she has? You don't mean this has anything to do with the evidence, because an attorney

reads it in here? I suppose if you got up and read this whole case in here, line by line, then when you got through you asked the witness if she had ever heard it read before —It doesn't mean anything when the attorney reads it.

"Mr. Lane: I object to it.

"Trial Examiner Batten: You may proceed:

"Q. (Mr. Langsdale) Let me ask you if you heard read in that lawsuit this part of Mrs. Reed's affidavit: 'In the first place, a group of employees on or about March 18, 1937, came to my office and told me that all of the employees were going to meet and discuss ways and means to protect themselves against any assaults or acts of violence on the part of the International Ladies' Garment Workers' Union.'

"A. I did not know that.

"Mr. Ingraham: Well, if your Honor please, Mr. Langsdale asked this witness if she had read or heard read, rather, Mrs. Reed's affidavit, and then he proceeded to read from that affidavit, and he is still referring to some record and I think the inference is that he is still reading from an affidavit of Mrs. Reed, which would be confusing to the witness, when, in fact, he is not reading from Mrs. Reed's affidavit."

44.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's objection on Page 696 (697) of the transcript of the record to the examination by Mr. Langsdale of the witness upon matters gone into in chief by the Board's counsel and as to why the witness said certain things in the Exhibit referred to in the objection and to the Examiner's permitting the International Union to proceed as a separate and independent party in this proceeding, which rulings and action appear in the following excerpts from the transcript of the record, Pages 696 (697), 698, 700, 703 (R. I. 154, 155):

[fol. 79] "Mr. Stottle: Mr. Examiner, respondent objects to this whole line of testimony on this exhibit for the reason that Mr. Leary went through the same exhibit and

asked the same questions, and it is repetition, for one thing; and, for another thing, the transcript speaks for itself. As to why she said a certain thing or didn't say it is immaterial to any issue in the case. I believe the examiner in his own statements made some such remark as that when this was gone into before.

"Trial Examiner Batten: I presume you are referring to this entire line of questioning, are you not?

"Mr. Stottle: As to this exhibit, yes.

"Trial Examiner Batter: I am going to sustain the objection unless you take the position that you are an entirely independent and separate party to this action, Mr. Langsdale. If you are, then I will permit you to proceed as an entirely separate and independent party.

"Mr. Langsdale: I have taken that position, and I take it now.

"Mr. Stottle: Mr. Examiner, we object to his being accorded the right to take that position.

"Trial Examiner Batten: I am not according it. The rules so provide. The International Ladies' Garment Workers' Union is mentioned in this complaint. And if that is Mr. Langsdale's position, he may proceed as a separate and independent party and assume the responsibility for the conduct of his case independent of the Board's Attorneys.

"Mr. Ingraham: If the Examiner please, if Mr. Langsdale is representing a separate part he should also apprise all other parties of the position he takes, and all other parties should have pleadings setting forth his position.

"Trial Examiner Batten: I am not going to complicate this question I have raised by the matter of pleadings. I will permit you to raise it when I get my point settled.

"Mr. Lane: We do not agree with your Honor's position. Our position is, if the Examiner please, this witness is produced by the Board, and that the I. L. G. W. U., by rule 5, is made a party to the proceeding, the complaint being filed in the name of the Board, and that in attempting to cross-examine this witness Mr. Langsdale is in effect attempting to cross-examine his own witness.

"There is not anything in rule 25 which gives the Board or Mr. Langsdale the right to cross-examine his own witness."

[fol. 80] 45.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) in permitting counsel for the International Union to examine and cross-examine the witness, Rose Todd, concerning matters already gone into in chief by the Board's counsel which repetition and examination appears in the transcript beginning at Page 730 and extending through Page 742 (R.I. 155-160a), over the repeated objections of the petitioner and the interwener appearing on said pages.

46.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth in the following excerpt from the transcript of the record, Pages 743, 744 (R.I. 160a, 160b), to-wit:

"Q. Now, despite the fact that you said on the 23rd day of April that 'we're going to run an open shop', you presided at a meeting four days later where the Donnelly Garment Workers' Union was formed.

"Mr. Lane: Mr. Examiner, I object to that for the reason the question omits certain important additions made in the statement as shown by the transcript. The full statement attributed to Miss Todd being 'We're going to run an open shop as long as the majority feels that way. The majority is going to rule, as always'.

"Mr. Langsdale: Well, now I object to his incorporating anything in my question. I have a right to take such parts of the statement as I desire to examine her about and not use her self-serving —

"Trial Examiner Batten (interrupting): Read the question, please.

"(Whereupon, the question was read by the reporter).

"Trial Examiner Batten: You may answer."

47.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objection of petitioner to the question as set [fol. 81] forth in the following excerpt from the transcript of the record, Page 750, to-wit:

"Q. If you should have some person who had had years of experience in negotiating contracts with garment companies similar to yours who should go to work for the Donnelly Garment Company and you should want them to represent you, even though they had only been there a week —

"Mr. Stottle (interrupting): Respondent objects to the questions as being wholly argumentative and speculative as to what might happen in the future and what might happen.

"Trial Examiner Batten: If you will permit him to finish the question, Mr. Stottle.

"Mr. Stottle: I did wait a while.

"Q. (By Mr. Langsdale) — would you think you should be limited in your right to employ that person or anyone else to represent you?

"Mr. Stottle: Now, Mr. Examiner, we renew the objection.

"Trial Examiner Batten: You may answer."

48.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting counsel for the International Union to examine the witness concerning her interpretation of a written contract over the objection of the petitioner and the intervener and requiring the witness to testify to said matters, as shown by excerpts from the transcript of the record, Pages 754, 759, 760, 761, 762 (R.I. 160f, 160g, 160h).

"Mr. Stottle: Mr. Examiner, the contract speaks for itself, whatever it may say, and we object to asking the witness to interpret something that is perfectly plain in

whatever it says. If it wasn't plain I don't believe this witness would have the right to interpret a written contract.

* * * * *

"Q. (By Mr. Langsdale) Miss Todd, paragraph 11 of the working agreement entered into on May 27, 1937, is as follows:

'The employer agrees that the individual who may be chosen as general chairman of the union shall be entitled to spend the necessary time on the affairs of the union and to continue her employment with the company at the proportionate rate of pay hitherto received by the company in the time thereafter given to the company.'

"Will you tell me why you as a member of this contracting committee submitted to paragraph 11, placing a limita-
[fol. 82] tion upon the activities of the representatives of that union as paragraph 11 does limit them?

"Trial Examiner Batten: You mean as it does or if it does?

"Mr. Langsdale: As it does.

"Mr. Patten: Mr. Examiner, intervener objects to the question, adopting for that purpose the objection heretofore made by Mr. Stottle, and sustained, and the objection made by Mr. Lane; and further —

* * * * *

"Mr. Patten: * * * We further object because the question assumes, as other questions have assumed, that this committee submitted to it. There is no evidence whatever that they submitted to anything. For that reason we ask that the question be excluded.

"Trial Examiner Batten: Objection sustained.

"Mr. Langsdale: The union makes an offer to prove that this witness, if permitted to answer the question, would testify she intentionally desired to limit the activities of the representatives of the union for the purpose of crippling that representation and, in addition to that, the

further motive was developed by propaganda indulged in by the management of this company against union representation and the necessity therefor.

* * * * *

"Trial Examiner Batten: Of course, if this witness will answer as you have just said, I will permit you to ask the question, because you have said if she is permitted to testify she would testify in a certain way. On the basis of that you certainly can proceed.

"Mr. Patten: If the Examiner please, I suggest that Mr. Langsdale agree to be bound by the witness' answer. Otherwise his offer is improper.

* * * * *

"Q. (By Mr. Langsdale) Now, then, will you say why you did submit to the limitation of paragraph 11 upon the activities of the representatives of the Donnelly Garment Workers' Union?

* * * * *

"A. There are no limitations on the committee of the Donnelly Garment Workers' Union.

They all take an active interest. They all have time at noon or after work, the same as I have, and you will find continuously through these minutes where they have done a lot of work and taken an active interest in it. I couldn't dominate those people if I wanted to.

"Mr. Langsdale: I move that the answer be stricken out as not responsive.

The question was, why did she submit to paragraph 11, [fol. 83] which puts a limitation upon the activities of the members?

"Mr. Stottle: Mr. Examiner, respondent objects in that the offer of proof is not being made, and asks that it be stricken.

"Trial Examiner Batten: It may stand."

49.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same)

in overruling petitioner's objection and permitting the witness Rose Todd to testify to her interpretation of written by-laws and contract as disclosed by the following excerpts from the transcript of the record, Pages 774, 775 (R.I. 164, 165), to-wit:

"Q. But under your by-laws, in your contract, [on] one can continue to work for the Donnelly Garment Company who joins the International Ladies' Garment Workers' Union; is that correct?

"Mr. Stottle: Just a moment. Mr. Examiner, we object to this question for the reason, as we have several times, this just involves an interpretation of the by-laws and contract. If this witness gave an answer, your Honor wouldn't feel bound by it, if you thought the contract meant something else, and what is the materiality of having her answer something that wouldn't bind you and bind Mr. Langsdale and not bind the respondent. It possibly might be binding on the intervener, I don't know that it would be, within a written contract made by the intervener.

"Mr. Langsdale: The question is provoked by the long answer of this witness that anyone could join an organization anyone wanted to with the Donnelly Garment Company, and of course, this is very plainly written that cannot be done.

"Trial Examiner Batten: I think it isn't so much a question of interpretation of the contract. It is a question of this witness on the basis of her volunteering a statement that anybody can join anything they please.

"Q. (By Trial Examiner Batten): Now, the question, Miss Todd, is this, or at least, my question: How can a person join any union they please under the restrictions in these contracts?"

[fol. 84] 50.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) as disclosed by the following excerpts from the transcript of the record, pages 784, 785, 786, 787 (R.I. 167, 168, 169), to-wit:

"Q. But who passed upon who belonged to that classification, group 1 operators, performing their work efficiently?

"A. Who passed on this, at this time?

"Q. Yes, under this contract.

"Mr. Stottle: If the Examiner please, respondent objects to the question as to who passed upon it. There is nothing to indicate the question has ever arisen as to whether the operator was efficient or otherwise.

"Trial Examiner Batten: Of course Miss Todd is reading this. Apparently someone has to pass on it if the question arises. I think the witness should testify who. The statement is there, as Mr. Langsdale has read it — I haven't read it.

It seems to me that this witness should state that. That apparently is the [sume] and substance of the paragraph.

"Mr. Stottle: How could the witness state who passed on something if it never has been passed upon?

"Q. (By Trial Examiner Batten) Miss Todd, in those classifications, where it states 'who efficiently performs . . . . .' who would determine that efficient performance?

"Mr. Stottle: Mr. Examiner, I think we should make our objection to your own question, also —

"Trial Examiner Batten (interrupting): You are perfectly free to.

"Mr. Stottle: — for the reason that you are asking the witness to interpret a provision of the contract which does not say who is to, and you are asking her to say who is to do something that is not provided for.

"Trial Examiner Batten: That is why I cannot possibly determine it myself by reading the contract, it does not say who it is.

"Mr. Stottle: There are lots of things that contract has not mentioned; that is one of them. If it isn't stated in the contract it is not a part of the contract.

"Trial Examiner Batten: As far as the Examiner is concerned I would like to know what this witness, who was

a party to the contract, representing this organization, says as to who performs efficiently.

[fol. 85] "Q. (By Trial Examiner Batten) Who determines that?

"Trial Examiner Batten: Your objection is overruled. I didn't say so, but by the following question I asked I supposed it was understood.

"Mr. Stottle: Mr. Examiner, may respondent have a continuing objection to this kind of questioning as asks for an interpretation of provisions of the contract?

"Trial Examiner Batten: I prefer that you not have it, because I don't know that I am going to make the same ruling on all of the questions that may be asked. I would prefer that you make your objections, Mr. Stottle, as the questions are asked; that is, on this matter."

51.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence subject to further identification of ILGWU Exhibit 2 over the objection of the petitioner, as disclosed by the excerpts from the transcript of the record, pages 821, 822 (R. I, 181, 182), to-wit:

"Mr. Stottle: Mr. Examiner, respondent objects to the introduction of this exhibit at this time because there hasn't been any identification that would show that it has any materiality on the case.

"Mr. Langsdale: Well, now, there are two objections in one. You object to it once because it isn't identified and another because it isn't material.

"Mr. Stottle: Yes. I am making both of them, neither identified properly or material if it were identified properly.

"Mr. Langsdale: Well, I think it has been sufficiently identified and certainly it is material.

"Trial Examiner Batten: Well, I don't see; I will receive it subject to further identification. I don't think

this witness' statement, Mr. Langsdale, is sufficient to receive it without qualification. ******

"I said I would receive it subject to further identification."

52.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in excluding competent and material evidence offered by petitioner through the witness Rose Todd concerning the threats of the International Ladies' Garment Workers' [fol. 86] Union against the Petitioner's employees and the violence of the strikes and other activities of the I. L. G. W. U. at other garment factories for the purpose of showing the effect of said activities upon the petitioner's employees as being a motivating cause for the formation of the Donnelly Garment Workers' Union, and as disproving the allegations in the amended complaint that petitioner dominated said Donnelly Garment Workers' Union or caused its formation.

In connection with the foregoing exception, petitioner also assigns as error the rulings and action of the Trial Examiner in the following excerpts from the transcript of the record, Page 839 (R. I. 190), to-wit:

"Q. (By Mr. Stottle) Miss Todd, you had read in the paper what was going on at the other garment company plants, had you not?

"A. The papers were full of it, and I could see what was going on at Twenty-Sixth and Grand as I came to and from work.

"Mr. Langsdale: I object to that as not material, and if it is material we want to be permitted to show that when A. A. Ahner hired strikebreakers it was to prevent most of the violence she claims she saw.

"Trial Examiner Batten: We are not going to try out the newspaper in this case and have all of those articles brought in, and then have the reporters brought in and prove that it is true or not true. If there were threats and violence, bring the people in here that were threatened, and the people violence was done to, and let them testify.

"I will sustain the objection as far as that part of it goes. We are not going to try out all of those matters."

53.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the petitioner to show the provisions contained in working agreements between the International Union and other garment manufacturing companies in Kansas City, Missouri, as tending to show the bona fides of the negotiations between petitioner and intervener as to the bargaining contracts between petitioner and intervener, and as tending to refute testimony offered by the Board [fol. 87] and the International Union that said contracts between petitioner and intervener were not bona fide and did not show genuine bargaining.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner as shown by the following excerpts from the transcript of the record, pages 857, 858, 862, 864, 865, 866 (R. I, 201-206 incl.), to-wit:

"Q. (By Mr. Stottle) Miss Todd, do you know what the minimum wage provision is in the Gernes, Gordon, and other contracts—**** in this city with the International Ladies' Garment Workers' Union?

"Mr. Leary: Let the record show my objection, Mr. Examiner.

"Trial Examiner Batten: What is your objection?

"Mr. Leary: On the ground it is incompetent, irrelevant and immaterial.

"Mr. Langsdale: The union wants to further object upon the ground it is immaterial and doesn't bear upon any of the issues before the Examiner unless we want to go into all of those contracts and show where they started from, how they built them up, and even go into some of them as early as 1933 to show that they were then getting $3 and $4 a week, and the union came along and built them up to their present contract. That hasn't any bearing upon whether or not this is a company dominated union or any of the charges in the complaint.

"Mr. Ingraham: If your Honor please, Mr. Langsdale asked this witness in regard to the terms and conditions of the contract which she negotiated with the company, and his questions were directed at showing that the contract was not a good contract for the employees. Now, I think we have a right to come in and show that it is a far better contract for the employees than any contract that the International has entered into with any other garment company in this part of the county. It is competent for that purpose.

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"The point has been raised that Miss Todd and other members of the committee didn't really negotiate.

"Here is a company that has been paying good wages, here is a company that treats its employees fairly, here is a company that does not try to beat down the wages. These employees come in and say they want to bargain collectively and want to enter into a written contract.

"The company enters into a written contract, and in doing that, because it doesn't get into a fight with the employees, and because it doesn't haggle, and because they do arrive at a fair kind of a contract and the employees have better wages than are contained in any of these other contracts, I think that is very conclusive evidence that this union is properly representing the employees.

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[fol. 88] "Mr. Ingraham: I certainly think, Your Honor, that since Mr. Langsdale has gone into the question of the negotiations, and he said, 'Now, do you think this was good for your people? Do you think that provision was good for the members of your union?' I think in view of that examination of this witness we are certainly entitled to show just what contract was obtained, and of course it will show that the company gave up a great deal. The company signed a contract—

"Trial Examiner Batten (interrupting): Mr. Ingraham, you may go ahead on the basis you are now taking just as fully as you desire. In fact, I want you to show the

negotiations, the bargaining, and the process that was gone through in arriving at it. You may go into that as fully as you care to, but I am not going to go into this matter from the standpoint of comparison with other companies here or any other place.

"Mr. Lane: It has been asserted here by Mr. Langsdale from time to time that he expects to offer evidence to establish that the intervener union is merely a sham union, that it is not in fact and under the law a representative of the employees. Now, in that connection the intervener asserts that the establishment of the results that were obtained in the contract which was entered into is an important point to be considered in determining the bona fideness of the intervener union, and in connection with determining the results that were obtained by that contract the prices and the minimum wages guaranteed by other garment concerns, the same industry, in the same community, is a point to be taken into consideration, so that a comparison of those figures will at least tend to show one of the results obtained by this contract.

"Trial Examiner Batten: I presume it would be well now to settle this quesetion so that everyone will know, as I have done once or twice already, what my position is.

"I want you to be prepared for it, although the evidence is not submitted. I can tell you now, Mr. Lane, I do not propose to go into that matter. The only reason I tell you that is this, that you may be making your preparation and preparing an offer of proof: I want to advise the attorneys now that I am not going to try this case by comparison with other plants in this town or in other towns. It is not material to the issues in this case.

54.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining the motion of the Board's attorney and striking answers of the witness Rose Todd as shown by the following excerpt from the transcript of the record, pages 872, 873 (R. I. 208-209), to-wit:

[fol. 89] "Q. Miss Todd, it is alleged in the complaint that the company caused a violent demonstration against Fern Sigler and others as a means of causing the employees either to join the Donnelly Garment Workers' Union or to refrain from joining the International Union. I hand you here a paper which is marked Respondent's Exhibit No. 1, and will ask you if that is one of the notices in the newspapers that you have referred to that caused the incident at the plant that you testified about?

(Thereupon, the newspaper clipping above referred to was marked 'Respondent's Exhibit No. 1' for identification.)

"Mr. Langsdale: I object to that as an improper question. She is merely handed the document and asked to identify it, and he tacks onto that question, 'Was it something that caused the incident about Fern Sigler at the plant'.

"Q. (By Trial Examiner Batten) Have you seen that before, or read it?

"A. Yes.

"Q. At the time it was in the paper, is that it?

"A. Yes, sir. That is very definitely what caused that disturbance that morning.

"Mr. Leary: What was that?

"The Witness: That article in the paper, Sylvia saying she was going to represent the employees—

"Mr. Leary: I move that the witness' statement be stricken out. I asked the reporter what the witness' answer was.

(Thereupon the last answer was read by the reporter)

"Mr. Leary: I move that it be stricken as not responsive.

"The Witness: [Wy], yes, it is, Mr. Leary, isn't it?

"Mr. Leary: I said I move that the last statement of the witness be stricken as not responsive.

"Trial Examiner Batten: It will be stricken."

And in refusing to admit petitioner's Exhibit No. 1 for the purpose of showing that the matters recited in said exhibit were the cause of the alleged demonstration against Fern Sigler on April 23, 1937 which ruling and action appear on Pages 873 through 878 of the transcript of the record.

55.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the witness Rose Todd to answer the following question appearing on Page 874 of the transcript of the record (R. I. 210), to-wit:

[fol. 90] "Q. And is that, the printing of that article in the paper and the seeing of it by the employees, is that what caused the demonstration against Fern Sigler on the morning of April 23d?"

and in refusing to permit the witness Rose Todd to testify that the matters in the paper referred to in said question, to wit, petitioner's Exhibit No. 1, was the cause of the demonstration against Fern Sigler on April 23, 1937.

56.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) sustaining the objection of the International Ladies' Garment Workers' Union to a portion of the answer of the witness Rose Todd set forth on Page 887 of the transcript of the record, as shown by the following excerpts from the transcript of the record, Pages 886, 887, 888 (R. I. 212, 213), to wit:

"Q. Miss Todd, there has been some question raised here as to whether there was real bargaining between your union and the company with regard to your union contracts. I will ask you to state if there were any provisions in the contracts that were favorable to the company, did you feel that they were more than offset by the provisions which you obtained favorable to the union?

"A. Yes we felt like that is a good contract. We have certain things that we had to give—

"Mr. Langsdale (interrupting): I object to this part of the answer as voluntary and not responsive. Her answer to the question was 'Yes'.

"Trial Examiner Batten: I will sustain the objection."

57.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) excluding evidence of the witness Rose Todd concerning violence and activities at other garment plants in Kansas City, which rulings are set forth in the following excerpts from the transcript of the record, Pages 908, 909 (R. I. 219, 220), to wit:

[fol. 91] "Q. (By Mr. Tyler) Had you or had you not seen notices in the papers of physical violence at the Gernes plant?

"Mr. Langsdale: I object to that as immaterial and not proving any issue in this case, as to what occurred at the Gernes plant.

"Mr. Tyler: I submit what is endeavored to be shown here is whether these people of their own volition desired to form their own labor union, and in so doing they are entitled to give reasons for taking that action. If the actions are probable they are persuasive; if they are not probable they are not persuasive. But they are entitled to give such reasons as they say they had to stay out of the International and join the Donnelly Garment Workers' Union, and if they did understand violence was being exerted by the International, that might well be a reason —whether it was true or not, if they so understood, that might well be a reason for their choice, and they are entitled to show good faith for their choice by citing their reasons.

"Mr. Langsdale: That speech might be proper at some other stage of the proceedings.

"Trial Examiner Batten: We will forget about speeches. I will sustain the objection. As I said yesterday, I am not going into all of these rumors. If you have any evidence of anyone who was threatened personally, they may come up and testify to it personally and I will receive that testi-

mony, but I am not in this hearing going into all of the rumors that fly around during an organizational campaign of unions.

"Mr. Tyler: It is not the truth of the violence I am establishing. It is merely the reason these people had for staying out of the International and forming their own union.

"Trial Examiner Batten: I don't think it is material for the purpose for which you have offered it."

58.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in excluding similar evidence which rulings and action are set forth in the transcript of the record at Pages 910, 911, 913 (R. I. 220, 221, 222), to wit:

"Q. Did you see any of the banners or signs the pickets carried? A. Yes, Sir.

"Q. Do you remember what they said on them?

"Trial Examiner Batten: Just a moment, Mr. Tyler, I do not intend to receive any of that, either, unless it is something which was unlawful or illegal. If these pickets picketed this plant in the way in which they are permitted to under the law and there was nothing unlawful about it which amounted to actual coercion, I do not intend to go into all of those matters.

[fol. 92] "Mr. Tyler: I expect to show, if the Court please, that these signs contained untruthful statements, and that that had some effect on the choice these people made.

"Trial Examiner Batten: I would suggest you embody that all in an offer of proof.

"Mr. Tyler: I submit to your Honor that in showing what their real choice of labor unions was they have a right to refer to any conduct, lawful or unlawful, of the International to show why they didn't want to join it. That is the vital crux. If the International had a habit of wearing red neckties and they didn't like red neckties and they didn't want to join the union for that reason, I submit

they have a right to give their reasons for preferring their own union.

Trial Examiner Batten: As I say, I do not propose to go into it with this witness, and if that is your theory on this particular matter you may submit it as an offer of proof.

"Mr. Stottle: Mr. Examiner, you have stated every party has an exception without asking for it?

"Trial Examiner Batten: That is right.

"Mr. Stottle: In order that it might be clear, would the respondent be granted an exception to a question asked by the intervener when it is overruled?

"Trial Examiner Batten: All parties receive exceptions to all adverse rulings.

"Mr. Stottle: You might not deem it adverse to us.

"Trial Examiner Batten: I am not going to pass on that. If the parties deem it adverse you may have the exception. In other words, I do not intend to go through the record and determine whether it is adverse to certain parties or not.

"Mr. Stottle: I am not objecting to the intervener—I asked if I would have an exception to the Examiner's ruling, even though the ruling was made to a question asked by the Intervener.

"Trial Examiner Batten: I would say yes.

"Mr. Langsdale: Even if he does not make an objection?

"Trial Examiner Batten: Yes, if it is adverse."

59.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to receive evidence concerning the violence and activities of the International Union at other garment factories in Kansas City and the effect thereof upon the em- [fol. 93] ployees of petitioner and in refusing to accept the offer of proof made thereon by the intervener at Pages 913, 914, 916 of the transcript of the record (R. I. 223, 224), as follows, to wit:

"Mr. Tyler: I wish to make an offer of proof.

"Intervener offers to prove by this witness that for months before the organization of the Donnelly Garment Workers' Union the employees had seen numerous accounts of violence by the International against employees of other garment plants in Kansas City and had, many of them, seen such violence with their own eyes, and had, many of them if not all, heard reports of such violence, that they were in a state of almost hysteria from constantly overheard statements that the same tactics were to be applied to the employees of the Donnelly Garment Company, and that this was a reason which affected them in their choice as to forming their own union or joining the International or staying out of all unions.

"Mr. Leary: I object to the offer of proof, Mr. Examiner.

"Trial Examiner Batten: The offer is denied."

60.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) appearing on Pages 956, 957 of the transcript of the record (R. I. 238g, 238h), with reference to the minutes of the Donnelly Garment Workers' Union because such comments show the bias and prejudice of the Trial Examiner and his intention to disregard the minutes as evidence in this proceeding, in so far as same are favorable to petitioner.

61.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in striking the answers of the witness Rose Todd as shown by the following excerpts from the transcript of the record, Pages 966, 967 (R. I. 238i, 238j), as follows, to wit:

"Q. (By Trial Examiner Batten): Now, what was the situation before the contract?

"A. The situation before had been that the employer had the right to increase or reduce his working force, but [fol. 94] this contract gives the union also the right to

interfere if he feels so—if we feel that someone is being allowed to go unnecessarily.

"Q. You mean because of the union activity?

"A. Well, no, not necessarily that. We certainly would do that if they were being let go because of union activity, but if they were being let go and we felt it was not right, the union still has the right to go to the employer and see if these people couldn't be retained.

"Mr. Langsdale: Now, I object to that answer and ask that it be stricken out as an explanation for paragraph 14, because there isn't anything in paragraph 14 upon which to base that statement or conclusion, not anything. That says, 'The employer shall have the right to discharge.'

"Trial Examiner Batten: I was just getting ready to ask another question or two, but in view of your motion I will have it stricken. I was going into that some more. You may proceed."

62.

Petitioner assigns as error the rulings and action of the trial examiner and his comments (and the Board's action in affirming same) upon the testimony of the witness Rose Todd as shown by the following excerpts from the transcript of the record at Page 970 (R. I. 238k), to wit:

"* * * * * This Group 1 operators gives these operators a much higher guarantee than they had ever been guaranteed before. [Forth] per cent of them receiving—

"Mr. Langsdale (interrupting): Now, I object to that answer as a conclusion upon the part of the witness. The evidence ought to be as to what the increase [it].

"Mr. Tyler: I think it is desirable that she should give the figures as she knows them, but I think that if she can say as a fact that the figures are higher, she is entitled to state that, even if she can't give the figures.

"Trial Examiner Batten: I don't think it means a thing in the way she answered, much higher. If she doesn't know, let's get somebody here that does. I mean, there is no use trying to have a witness answer questions that they can't answer. Now, surely there is somebody in the organization or with the respondent who could very definitely state, Mr. Tyler."

[fol. 95] 63.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) excluding and refusing to hear or consider evidence comparing the wages and other working conditions provided for in the contract between the petitioner and Donnelly Garment Workers' Union in comparison with like wages and conditions existing under contracts between the International Ladies' Garment Workers' Union and other garment manufacturing companies in and about Kansas City, Missouri.

In connection with the foregoing exception, petitioner assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at Pages 981, 982, 983 (R. I, 238r, 239), to-wit:

"Q. Miss Todd, did you hear the testimony of Velma Dowdy in the injunction suit tried before Judge Miller?

A. Yes, sir.

Q. Have you had occasion to use the figures she testified that she paid to the International Ladies' Garment Workers' Union as a member of that union for a period of a year—* * * the figures she testified she paid to the International Ladies' Garment Workers' Union as a member of that union with the figures which the members of the Donnelly Garment Workers' Union paid to their union, each for a period of one year?

"Now, don't answer yet.

Mr. Langsdale: I object to that as immaterial. It doesn't tend to prove or disprove any issues in this case. It involves a lot of collateral issues which will greatly prolong this hearing, as we should be entitled to show what we do with that money and why we need it.

Trial Examiner Batten: I now rule it is absolutely immaterial and irrelevant to this hearing. I do not intend to have a comparison between the International Ladies' Garment Workers' Union and the Donnelly Garment

Workers' Union. The International Ladies' Garment Workers' Union is not on trial here, neither is the Donnelly Garment Workers' Union. It is the respondent who is here answering to charges of unfair labor practices. That is the thing we are going to try. If you have any further testimony of any kind pertaining to this matter you can present it in the form of an offer of proof, but I do not intend to receive it."

[fol. 96] 64.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) refusing to hear or consider evidence concerning the application of the Donnelly Garment Workers' Union that the Labor Board hold an election by petitioner's employees as to the bargaining agency or union which they desired to represent them.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth in the following excerpts from the transcript of the record at Pages 1000, 1001 (R. I. 242, 243), to-wit:

"Q. Did the Donnelly Garment Workers' Union ever petition the National Labor Relations Board to hold an election of employees? A. Yes, sir.

"Mr. Leary: I object to that, Mr. Examiner, and move the answer be stricken. I think if there is any petition they might have filed, it would be the best evidence.

"Trial Examiner Batten: Well, of course, I think that it is immaterial whether they have or haven't, so far as this hearing is concerned. . . .

"Trial Examiner Batten: Mr. Tyler, I don't see it has anything to do with this hearing at all. Any matter connected with the petition or anything with relation to it.

"Mr. Tyler: Then, I wish to make an offer of proof.

"Trial Examiner Batten: You may make an offer of proof.

"Mr. Tyler: I offer to prove by this witness that the Donnelly Garment Workers' Union has filed two petitions

with the National Labor Relations Board for an election of the employees as to bargaining representatives and labor unions, both recently, before the beginning of this hearing; that the reason they did not file any such petition earlier was because they had a contract with their employer and were operating satisfactorily under it through representatives of their own choosing, and they felt that their situation was satisfactory and that if any outsider disputed the claim that they were being represented by representatives of their own choice, it was, devolved upon such outsider to ask for such an election to change the status quo. Also, that the union on several occasions authorized their attor- [fol. 97] ney to agree to submit to an election of the employees and abide by the result, and that that was done in the record and the three-judge court hearing and again during the hearing before Judge Miller."

65.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) striking portion of the answer of the witness Rose Todd as set forth in the following excerpts from the transcript of the record at page 1018 (R. I. 248), to-wit:

"Q. Have any requests been made by the union from the company for permission to use those bulletin boards?

"A. No, sir. Anybody uses them, and we have just used them.

"Mr. Leary: I move to strike all except the first two words of her answer as not responsive.

"Trial Examiner Batten: It may be stricken."

66.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) upon testimony of the witness Rose Todd as shown by the following excerpts from the transcript of the record, Pages 1018, 1019, (R. I. 248a), to-wit:

"Q. (By Mr. Tyler): Now, at the time you received what I believe you have testified to as the only raise you have had from the company, is it or is it not a fact that a

large number of employees received raises at the same time? A. It is a fact.

"Mr. Langsdale: I object to this constant leading of this witness, his own witness, his own client, and I suggest that the payroll is the best evidence of that. How does this woman know what was on everybody's envelope or everybody's check?

"Q. (By Mr. Tyler) She has not testified to everybody's envelope or everybody's check.

"Trial Examiner Batten: Mr. Langsdale, I think your objection goes to the weight that may be given this testimony. If that remains as it now stands, without any cooperation, or anything of the kind, certainly the Examiner nor the Board could give a great deal of weight to it."

[fol. 98] 67.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) striking a portion of the answer of the witness Rose Todd as set forth in the following excerpt from the transcript of the record, Page 1037, to-wit:

"Q. Had you prior to March 18, 1937, ever been required to show an identification card in order to gain admittance to the plant?

A. No sir, I don't recall any need for one before that.

"Mr. Langsdale: I ask that the latter part of the answer be striken out as not responsive, and voluntary.

"Trial Examiner Batten: It may be stricken."

68.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting evidence and exhibits concerning the Nelly Don Country Club, which testimony and exhibits are set forth and referred to on Pages 1158 to 1167 of the transcript of the record (R. I. 289, 290, 291), for the reason that same are wholly immaterial to any of the issues herein.

In connection with the foregoing assignment, petitioner also assigns as error the rulings, action and comments of

the trial examiner (and the Board's action in affirming same) in admitting the testimony and refusing to sustain petitioner's and intervener's objections, as set forth in the following excerpts from the transcript of the record at Pages 1158, 1159, 1160, 1161, 1163, to-wit:

"Q. Is there another association, I mean different from any of those that have up to now been mentioned, to which you pay $2 a year dues?

"Mr. Stottle: Mr. Examiner, respondent objects to getting into still additional organizations, if there are any. Certainly the respondent has a right to provide a country club for its employees if they want to, and let them pay so much a month. There is no showing that it is done for the Donnelly Garment Workers' Union.

[fol. 99] "Trial Examiner Batten: I don't suppose there is any argument that the respondent could furnish the employees a country club for nothing if they wanted to.

"Mr. Stottle: And of course it would not be material to these issues.

"Trial Examiner Batten: I can't determine whether it is material or not until I find out about this matter of these rentals Mr. Langsdale is inquiring about.

"Mr. Langsdale: Read the question, please.

(Thereupon the last question was read by the reporter)

"A. I haven't mentioned all of the ones there are.

"Q. (By Mr. Langsdale) To whom do you pay this $2 a year?

"A. I think that card says 'Nelly Don Country Club'.

"Q. I hand you this card which has been marked International Ladies' Garment Workers' Union's Exhibit No. 3 and ask you to state what it is—not what is on it, but what it is.

"A. It is a membership card of the club out there.

(Thereupon the card above referred to was marked 'International Ladies' Garment Workers' Union's Exhibit No. 3).

"Mr. Langsdale: I offer Exhibit No. 3.

"Mr. Stottle: Respondent objects on the ground that it is wholly immaterial to any of the issues in this case.

"Trial Examiner Batten: Thus far I don't see that it has any bearing.

"Mr. Langsdale: I want to ask some questions about it.

"Trial Examiner Batten: You may proceed.

"Mr. Lane: Intervener objects to International's Exhibit No. 3 for the reason that it is not material—it is not within any of the pleadings in this case, and for the reason that it opens up ramifications that are wholly outside of any proper inquiry in this investigation.

"Trial Examiner Batten: You may proceed until I can determine. And if when he completes this matter, Mr. Lane, if it is not connected up with the issues in any way you may make a motion to have it stricken and it will be stricken.

"Q. Well, has the membership, the club membership, anything to do with whether or not members of the Loyalty League have the privilege of going to the club house to a Loyalty League party?

"Mr. Stottle: Respondent objects to that as being speculative as to whether there was a Loyalty League party or what Loyalty League party, wholly immaterial or any issues. It has been testified heretofore that the employees of the Donnelly Garment Company, a great many of them, belong to the Loyalty League, that a great many of them belong to the Donnelly Garment Workers' Union, that a great many of them belong to this club business, a great many of them belong to the Athletic Association. [fol. 100] If anything is done down there that involves employees, there is bound to be certain overlapping."

69.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting counsel for the International Union to prove his offer of proof by the witness Rose Todd and in doing so to ask the questions to which the Examiner had sus-

tained objections, and in failing and refusing to strike said offer of proof when it appeared that the International Union was unable to prove such offer by the witness, as appears from the transcript of the record, Pages 1189 to 1193.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) referred to in the foregoing assignment as same further appear in the following excerpts from the transcript of the record, Pages 1189, 1192, 1193 (R.I. 292b), to-wit:

"Mr. Langsdale: All right, I offer to prove that, and also offer to prove that she examined all of this data during working hours, and that sometimes it amounted to 1,300 different employees or thereabouts, and that it took, many, many hours of the company's time to make the examination. That is the offer of proof I make.

"Trial Examiner Batten: Well, I will permit you to prove that by this witness.

"Mr. Stottle: Mr. Examiner, the respondent, if Mr. Langsdale is finished with that offer of proof, moves that the latter part be stricken from the record as not made in good faith, because he hasn't asked the witness to go ahead and state that she spent hundreds of hours, or whatever this offer of proof was, on this matter.

"Mr. Langsdale: Well, I —

"Mr. Stottle (interrupting): It was just — it is not fair to have it appear in the record that he made an offer of proof by this witness —

"Trial Examiner Batten: Well, Mr. Stottle, I think — I think that Mr. Langsdale's offer of proof, and the questioning of the witness subsequent thereto speaks for itself."

[fol. 101] 70.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's objection and receiving evidence

as shown by the following excerpts from the transcript of the record, pages 1196, 1197 (R.I. 292c, 292d), to-wit:

"Q. I note that in January, 1938, Fred Brown got another raise, from $97 to $108.54 every two weeks. Do you know whether or not that is a fact?

"A. No, Mr. Langsdale, I don't.

"Mr. Stottle: Mr. Examiner, respondent objects to this evidence as being immaterial, what different employees, of which there are 1,200 or 1,300 down there—what raises in pay they received. The answers have all been in the negative and there is probably no evidence on it as yet, but it seems to me it is immaterial.

"Trial Examiner Batten. Mr. Stottle, in the first place, I don't suppose she knows about these matters. And, in the second place, I cannot tell now whether it is material or whether it isn't. If Mr. Langsdale has the records and that is what they show —

"Mr. Langsdale (interrupting): We will bring them in, but I think I have a right to inquire whether or not the president of the union knew about these matters.

"Trial Examiner Batten: I am not telling you to discontinue.

71.

Petitioner assigns as error to the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth on Page 1199 of the transcript of the record, to-wit:

"Q. Do you know whether or not Mr. McConaughey's change from the mechanical department to the bookkeeping department was because he was a member of your board of chairmen?

"Mr. Lane: I object to that as calling for a conclusion of the witness.

"Trial Examiner Batten: Well, I presume the president of the organization, Mr. Lane, ought to know or not know. As far as she knows, she may state whether that was the reason."

[fol. 102] 72.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness Rose Todd to testify to her interpretation of the written contract between petitioner and the Donnelly Garment Workers' Union over the objection of the petitioner, which objection and the ruling of the Examiner thereon is set forth in the following excerpts from the transcript of the record, Pages 1203, 1204, to-wit:

"Q. Now, are those percentages invariable? Are they fixed or do they vary?

"Mr. Stottle: Mr. Examiner, I make the objection that the written contract provides concerning that, and it is binding, and that this is asking the witness to interpret the contract.

"Trial Examiner Batten (interrupting): Well, if it is applied to this question, I have no objection. I would over rule the objection."

73.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's motion to strike answer of the witness May Fike, which answer, motion and ruling are set forth in the following excerpts from the transcript of the record, Pages 1256, 1257, to-wit:

"Q. Who would tell you to lay off when your vacation was coming?

"A. Well, I don't remember how we knew our vacation was coming. I suppose our instructor would tell us when it came time for our vacation or when our vacation time was up.

"Mr. Ingraham: I move that the answer be stricken. She 'supposes' that that was done.

"Trial Examiner Batten: I will permit it to stand. I have permitted a lot of others to stand that were apparently supposing or thinking. It may stand for whatever value it has."

[fol. 103] 74.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving in evidence over the objection of the petitioner and intervener Board's Exhibit No. 14, purporting to be the pledge signed for the Loyalty League which objection and the rulings of the trial examiner thereon appear in the following excerpts from the transcript of the record, Pages 1267, 1268 (R.I. 304a), to-wit:

"Mr. Lane: I object to exhibit No. 14 for the reason that it has not been properly identified. There has been no showing as to where it originated, how it originated, or who was responsible for getting it up, and for that reason it could be in no way binding here on anybody.

"Trial Examiner Batten: It will be received.

"Mr. Ingraham: Respondent makes the same objection, and the further objection that it is immaterial to any issue in this case."

"Trial Examiner Batten: It is received."

75.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objections of the petitioner to testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Page 1269 (R.I. 305), to-wit:

"Q. Do you know whether or not she said anything at the time?

"A. She said we should sign and pass that to the next girl, if I remember right.

"Mr. Ingraham: Mr. Examiner, I move the answer be stricken out as not binding on respondent, what the instructor said.

"Trial Examiner Batten: Objection overruled. By overruling the objection I am not saying it is binding, but I am overruling the objection.

"Mr. Stottle: We further object because it is not identified as to what instructor said that.

"Trial Examiner Batten: She may proceed."

[fol. 104]

76.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling the objections of petitioner and intervener and receiving testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Pages 1269, 1270, 1271 (R.I. 305, 306, 307).

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing to sustain the objections to the testimony above referred to and the continuing objection of the petitioner and intervener to said line of testimony, and further excepts to the action of the trial examiner (and the Board's action in affirming same) in permitting said witness to [coninue] to testify to said matters.

77.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth in the following excerpt from the transcript of the record, pages 1288, 1289 (R.I. 311, 312), to-wit:

"Q. Now, Mrs. Fike, do you know whether or not the instructor can see any papers that pass down the table which the girls read and sign?

"A. There is never no papers come into that section that she don't know about it before the girls get them, and —.

"Mr. Lane: I move to strike the answer as not responsive.

"Trial Examiner Batten: Let her finish.

"Mr. Lane: I thought she had finished.

"Trial Examiner Batten: She was saying something else there.

"Q. (By Trial Examiner Batten): What were you saying?

"A. She is notified of what comes into that section before the girls get it. Sometimes she personally brings it to us. At that time it was started up at the other end of the machine.

"Q. (By Mr. Leary): Can she see —

"Mr Lane. (Interrupting): Just a moment. If the witness has now finished her answer, I move that it be stricken [fol. 105] for the reason that it is not responsive.

"Trial Examiner Batten: It may stand.

"Mr. Ingraham: Respondent makes the same objection. because

"Trial Examiner Batten: Objection overruled.

"Mr. Lane: I object to it further for the reason that it calls for a conclusion on the part of the witness.

"Trial Examiner Batten: Objection overruled."

78.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's and intervener's motions to strike testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Pages 1292, 1293 (R.I. 314, 315), to-wit:

"Q. What, if anything, did Fern Sigler say to you about the union button?

"Mr. Ingraham: I object to that as hearsay.

"Trial Examiner Batten: You may answer.

"A. She told me that she had on her pin that morning and that she was going to wear it into the shop, and I told her she had better not or she would lose her job.

"She said, well, she was going to wear it anyway. And I said, 'Well, I will lose mine too'. And she said, well, she didn't think I would—I don't remember her exact words, but something to that effect.

"She told me to go on up and not stay with her at all, so I went upstairs. Her locker wasn't in the same place mine was. That is the last I talked to her until the evening of the 23rd.

"Mr. Ingraham: I move that the answer be stricken out — I object to the part of the answer that relates to what Fern Sigler said; and I move that the balance of the answer be stricken out as self-serving.

"Mr. Lane: Intervener makes the same objection and the same motion to strike.

"Trial Examiner Batten: Objection overruled— ••••• and the motion to strike is denied."

[fol. 106] 79.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) admitting the evidence of the witness May Fike and refusing to strike same upon motions of petitioner and intervener concerning remarks alleged to have been made by a group of employees to Fern Sigler on April 23, 1937, for the reason that the witness was unable to state who made the alleged remarks, which objections, motions and rulings appear on Pages 1296, 1297, 1298, 1299, of the transcript of the record (R. I. 316, 317).

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the Trial examiner (and the Board's action in affirming same) set forth in the following excerpts from the transcript of the record, Pages 1305, 1306, 1307 (R. I. 320, 321), to wit:

"Q. Now, can you identify any of the individuals that you heard say any of those things, Mrs. Fike?

"A. Well, of course, they were all hollering. I couldn't describe now which ones did say which.

"Trial Examiner Batten: That is all.

"Mr. Lane: Intervener renews the motion to strike this testimony for the reason that the persons alleged to have made such remarks have not been identified.

"Trial Examiner Batten: The motion is denied.

"Mr. Ingraham: Respondent makes the same motion.

"Trial Examiner Batten: The motion is denied.

"Q. Have you told the examiner all of the things that you heard said to Fern Sigler by this crowd of girls?

"A. They told her she couldn't belong to the International Union and work in their shop.

"Mr. Lane: Intervener makes the same objection that has been heretofore made.

"Trial Examiner Batten: Objection overruled.

"Mr. Lane: In order not to burden the record, may I have a continuing objection?

"Trial Examiner Batten: You mean as to this incident of April 23?

"Mr. Lane: Yes, sir.

[fol. 107] "Mr. Ingraham: Respondent moves to strike the answer out for the reason that it calls for hearsay testimony; and for the further reason that anything the employees said is not binding on the respondent.

"Trial Examiner Batten: Motion denied.

"Mr. Ingraham: And, Your Honor, may I have a continuing objection to this incident?

"Trial Examiner Batten: Yes, to this incident."

80.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth in the following excerpt from the transcript of the record, Page 1309 (R. I. 322), to wit:

"Q. Do you know whether or not the instructors made any effort to stop the second or third demonstration?

"A. No, sir, they didn't.

"Mr. Lane: I move to strike that out as a conclusion. She may state what she observed but not the conclusion that they made no effort.

"Trial Examiner Batten: It may stand as it is."

81.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth in the following excerpts from the transcript of the record, Pages 1310, 1311, 1312 (R. I. 323, 324), to wit:

"Q. Did you hear any threats made to Fern Sigler?

"A. The last bunch that came in there threatened to throw her out of the window. They said they didn't want her in there, and kept hollering at her to go home, that she couldn't work with them and belong to that union—to our union—the International Ladies' Garment Workers' Union, and kept suggesting they throw her out of the window.

"Mr. Ingraham: I move that the answer be stricken out for the reason that it calls for hearsay testimony, not binding on the respondent; and for the further reason, the witness has not identified a single individual in this third group, and has not identified anyone as making the remarks she has just stated.

[fol. 108] "Trial Examiner Batten: I will deny it as to the second reason. As to the third reason, the matter of identification, Mr. Leary, I think you should further identify this group.

* * *

"Trial Examiner Batten: The third objection, Mr. Ingraham, is overruled."

82.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to strike the answer of the witness May Fike and denying the motion of petitioner therefor as set forth in the following excerpts from the transcript of the record, Pages 1312, 1313 (R. I. 324), to wit:

"Q. (By Trial Examiner Batten) Can you identify any of the people in the third group who said any particular thing, Mrs. Fike?

"A. Well, Ethel Carpenter and Mary Sprofera told her they didn't want her in there. I am not sure about who

said 'throw her out the window'. I think that was Mary Sprofera, but I am not sure about it.

"Mr. Shepard: I ask that her answer about throwing the girl out the window be stricken out for the reason that she is not sure who said it.

"Trial Examiner Batten: Motion denied."

83.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness May Fike to testify to the conversations and incident relating to Fern Sigler on April 23, 1937 and in overruling petitioner's and intervener's various objections thereto, including the continuing objections to said testimony, some of which objections and rulings appear on pages 1319, 1320 of the transcript of the record (R. I. 326, 327), as follows, to wit:

"Mr. Ingraham (interrupting): Now, just a minute. Your Honor, is my objection standing that it is hearsay and not binding?

"Trial Examiner Batten: Well, I understood both Mr. Lane and Mr. Ingraham had a continuing objection to the incident of April 23, 1937.

"Mr. Ingraham: That is all—this, yes.

[fol. 109] "Trial Examiner Batten: I mean, concerning all of this incident.

"Mr. Shepard: If your Honor please, I object to all of this as being absolutely irrelevant and immaterial, doesn't tend to prove anything in the case as to what these other operators have told her what they would do if Fern Sigler were her sister.

"Trial Examiner Batten: Well, you may proceed. I think we should have the whole story about these instances, irrespective of who said it."

84.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objections and motions of the petitioner and

intervener as set forth in the following excerpt from the transcript of the record, Page 1339 (R. I. 328d), to wit:

"Q. Did you consider that second floor company property?

"A. Yes, sir.

"Mr. Lane: That is objected to as calling for a conclusion on the part of the witness.

"Trial Examiner Batten: Well, I think, Mr. Leary, it certainly calls for a conclusion. If you want to let it stand, however, as it is, I will overrule the objection.

"Mr. Ingraham: Respondent moves that all statements as to what Pearl Atchison said be stricken out as not binding on respondent.

"Trial Examiner Batten: Denied. I think the objection goes primarily to the weight that can be given such testimony."

85.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness May Fike to read the minutes of the Donnelly Garment Workers' Union meeting of April 27, 1937, prior to the examination of said witness by counsel for the International Ladies' Workers' Union, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1341, 1342, 1343, 1344, 1345 (R. I. 328e, 328f, 328g), to wit:

[fol. 110] "Q. Now, I show you, Mrs. Fike, what have been identified as Board's Exhibits Nos. 8-1 to 8-11 inclusive, which purport to be notes on a meeting held April 27, 1937, and ask you to read those notes or minutes and, at the conclusion of your reading them will you state to the Examiner whether the things related in those minutes actually happened, to the best of your recollection?

"Mr. Ingraham: Now, Your Honor, I submit that is highly improper procedure for an examination. He can ask this witness what took place at this meeting, or what she heard, but to hand her minutes and have her read the

minutes and refresh her memory or put some ideas into her head, and then have her answer the question Yes or No about the minutes I say is improper.

"Mr. Shepard: Further, Your Honor, there has been no showing that the witness' memory needs to be refreshed. She says she attended that meeting. She should be questioned from her memory of that meeting.

"Mr. Lane: Intervener desires to object on the ground it is an illegal and improper method of examination.

"Trial Examiner Batten: Well, now, as I stated, if Mr. Leary wants to proceed this way, you may go ahead and read it and answer the question.

"Mr. Leary: Now, I will withdraw the question.

"Q. (By Mr. Leary) Who presided at that meeting, Mrs. Fike?

"A. Rose Todd.

"Mr. Tyler: I would like to ask if the witness has finished reading the minutes.

"The Witness: I haven't finished looking through them.

"Mr. Tyler (interrupting): I think the record ought to show—

* * *

"Mr. Tyler: I objected, that the record will show that Mr. Leary has handed the witness what purports to be, and I presume is, copies of the minutes of the first meeting, and asked her to read it, and then tell him whether that expresses what happened, and then, after waiting long enough for her to almost read all of them, he then withdraws the question and presents another question as to what happened. Now, that destroys the possibility of ruling on whether it is a proper method of examination to ask her to read the minutes first, and then ask her what happened.

"Trial Examiner Batten: Well, Mr. Tyler, I have already ruled that as far as the Examiner is concerned, Mr. Leary's question was proper. I said it was not improper and I overruled the objection and permitted him to proceed in that manner if he wanted to, and he chose to withdraw the question, which he has a perfect right to do."

[fol. 111] 86.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objections of the petitioner and the intervener to Mr. Langsdale, as counsel for the International Union, being permitted to cross-examine the Board's witness, May Fike, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1359, 1360 (R. I. 331), to-wit:

"Trial Examiner Batten: Go ahead, Mr. Langsdale.

"Mr. Lane: Before Mr. Langsdale begins his examination, I desire to renew the objection I made at the time he began his examination of Miss Todd. I don't want to burden the record by being compelled to make that objection with respect to every witness' examination, but I do renew it here so the record is clear that I am not waiving that objection.

"Trial Examiner Batten: Just what was that objection?

"Mr. Lane: I objected to his examination of Miss Todd for the reason that his position as counsel for the International is one in unity with interest of that of the Board, and in view of that fact, he should not be permitted to have a separate examination of the witness the Board produces, separate from that of the Board itself.

"Trial Examiner Batten: Supposing that you be allowed a continuing objection.

"Mr. Lane: I would like the record to show that that objection will continue throughout the trial as to the witnesses the Board produces.

"Trial Examiner Batten: On that matter—and I will make the same ruling.

"Mr. Shepard: Your Honor, may the record show that the respondent makes the same objection and requests the same objection throughout the trial?

"Trial Examiner Batten: You may have the same objection and the same ruling, and a continuing objection."

[fol. 112] 87.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) in sustaining the objection of Mr. Langsdale to the witness May Fike testifying concerning the activities around the Missouri, Gernes and Gordon Garment Companies, and a discussion thereof around the Donnelly plant around April, 1937, as set forth in the following excerpts from the transcript of the record. Pages 1416, 1417, 1418, 1419, 1420, 1422, 1424, 1425 (R. I. 334q to 334v, incl.), to-wit:

"Q. And wasn't it common talk around the Donnelly plant that there was a great deal of commotion out there around those Missouri, Gernes and Gordon plants?

"Mr. Langsdale: I object to that as immaterial; wouldn't tend to prove or disprove any issue in this case, and opens up a new avenue for testimony. I think the Examiner has ruled that line out up to now.

"Mr. Lane: The purpose of my making this offer, or asking this question and similar questions, is to refute the charge that has been made here by counsel for the International and Board that this union we represent is a sham union, and my purpose is to show that atmosphere that surrounded the employees at that time, and their reaction and attitude, as having some bearing upon why they took the action they did take on the part of the union.

"Trial Examiner Batten: Mr. Lane, I will make the same ruling that I did once before. That is this: if there were any actual threats or actual violence at this plant, that in any way can be chargeable to the respondent, I certainly want to receive it.

"Now I am not going into this organizational campaign that took in the city of Kansas City. Now, I am not going all over that again, and if you want to, you may make as complete an offer of proof on that, and, after all, that may be probably the best way to present that whole problem of this campaign that was going on by the

Union here in Kansas City, but I can say now that I am not going to receive it in this hearing.

* * * * *

"Trial Examiner Batten: As I remember it. Well, now, I am going to take that position very definitely with respect to the intervener on this entire campaign that went on here in Kansas City, and I think we can just as well determine now that you shall prepare a complete offer of proof on it, because I don't intend to receive it.

[fol. 113] "Mr. Tyler: May I understand the Examiner's ruling? Do I understand that you decline to permit us to show that the employees of the plant, as one of their reasons for choosing their own union, were affected by both fear of the campaign carried on by the International Ladies' Garment Workers' Union at nearby shops, threats that it should be able to be applied to the Donnelly employees, and dislike of those methods, you decline to let us show those things as establishing one of the reasons [by] these employees decided to, of their own free will, form their own union? Is that correct?

"Trial Examiner Batten: Mr. Tyler, not quite that broad. I said that if any threats were made against these Donnelly employees, or any violence there, I even question how material that may be, but I will receive that, but on the other, on your whole idea there that that was one of the reasons for the organization of the Donnelly Garment Workers' Union, and a valid reason, I want an offer of proof submitted on it.

"Mr. Langsdale: I want to understand the Examiner's ruling on this particular matter. I have understood up to now you have permitted both respondent and the intervener to show threats made to any of the employees but not to go into disturbances that may have occurred at Gerne's or Gordon's or anything of that sort.

"Trial Examiner Batten: That is correct. I want to eliminate everything by this offer of proof except direct threats and direct violence. I think I asked Miss Todd on several occasions, 'Did anybody threaten you? Did anybody ever commit any violence as far as you were con-

cerned?' I will receive that in this hearing; I don't want that in the form of an offer of proof.

"Mr. Lane: I want to make this further observation with respect to the question I asked:

"I desire to show the attitude or state of mind of the employees, whether that attitude was created by rumor or by ideas of terrorism, which may or may not be true, nevertheless, it is the state of mind which I want to show; and to show further that that state of mind actuated to cause them to want to form their own union, and that would go to the bona fideness of their union and would be a good reason for the formation of their union whether founded upon fact or not.

"Trial Examiner Batten: I agree with you, Mr. Lane. And, even if founded upon information which was absolutely false, if it is relevant to these issues—I mean, the truth or falsity of these things is not in issue.

"Mr. Lane: That was the purpose of my question, to show that fact.

"Trial Examiner Batten: And that matter, of course, will be included in this offer of proof."

[fol. 114] 88.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting evidence of the witness Slotkin over the objections of the petitioner as shown by the following excerpts from the transcript of the record, Pages 1437, 1438, 1439 (R. I. 334W, 334X), to-wit:

"Q. Now, I wonder, Mr. Slotkin, if you would turn to your books and state for the record the date, and the number of chairs delivered since 1935.

* * * * *

"Mr. Stottle: Mr. Examiner, the respondent objects to this upon the ground that it is immaterial as the way the question reads. Certainly, the company has a right to order chairs, and I don't see that it would have any ten

dency to prove or disprove any issue in this case, unless it is identified as certain times and places that would give it some relevancy.

"Trial Examiner Batten: Well, of course, I presume after we get the record of deliveries we can determine whether or not it has any relevancy or whether it has anything to do with this hearing. I will overrule the objection. You may state.

* * * * *

"Q. (By Trial Examiner Batten, interrupting) You mean, those are the original [sheets], or those are copies?

"A. No, these are the original sheets from my ledger, as far back as I could go.

"Mr. Stottle: Mr. Examiner, we object on the ground those are not the books of original entries, but his original entries have been transferred to these sheets, and, further on the ground that the entries there have not been shown to have been made by this particular witness.

* * * * *

"Q. (interrupting) Pardon me, Mr. Slotkin. Can you tell who ordered those chairs?

"A. I can't tell you that at all. I have no invoices going back to this particular year. The only record I have is from 1938, August, until now, when I had a regular system installed by an auditor.

"Mr. Stottle: Now, Mr. Examiner, the respondent objects further on the ground there is no showing as to who ordered the chairs that he is purporting to testify about.

"Trial Examiner Batten: Well, he can read into the record what this ledger sheet shows. Now, if there are any further questions, Mr. Foster, I would suggest that you wait until he has read into the record just what this ledger sheet shows."

[fol. 115] 89.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming

same) in admitting the testimony of the witness Slotkin concerning chairs furnished by that company and in permitting said witness to testify concerning the account books and records of that company relative to chairs furnished and in admitting said accounts, ledger sheets and records as exhibits in this proceeding over the repeated objections of the petitioner and intervener for the reason that said evidence is and was incompetent, irrelevant and immaterial to the issues herein, and because there was no showing as to what person or company ordered the chairs referred to in said testimony or paid for same, and because the records and entries testified from were not the original entries and there was not sufficient identification to show the authenticity of such entries or by whom same were made, and because said testimony and said entries and records did not constitute the best evidence, and because it affirmatively appeared that the witness did not know what person, union or company was chargeable with ordering the chairs referred to, and because it appeared from said witness' testimony that the entries concerning chairs ordered by the Donnelly Garment Workers' Union and chairs ordered by the Donnelly Garment Company and chairs if any ordered by the Donnelly Loyalty League and by the Nelly Don Athletic Association and any other chairs furnished to the address of petitioner in the Corrigan Building were all entered under the same general account and no proper or sufficient designation made therein to show which of said organizations ordered or paid for the chairs referred to, for each and all of which reasons said testimony is not binding upon the petitioner and is prejudicial to petitioner and does not support the findings, conclusions or recommendations of the trial examiner and [fol. 116] does not constitute proper or competent evidence upon which the trial examiner or the Board should base findings or conclusions or any order against petitioner.

In connection with the foregoing assignment, petitioner assigns as error the findings, conclusions and recommendations of the trial examiner (and the Board's action in affirming same) contained in the Intermediate Report for the reason that same are based in part upon the incompetent and indefinite evidence of the witness Slotkin.

90.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting the evidence of the witness Slotkin over the repeated and continued objections of the petitioner which objections were directed to the whole line of testimony of said witness and which objections and rulings of the trial examiner are set forth in the following excerpts from the transcript of the record, Pages 1444, 1449, 1450, 1458, 1459, 1460, 1475, 1476, 1478, 1479, 1480, to-wit:

"Mr. Stottle: Mr. Examiner, may it be understood our objection continues to all of this testimony, on the same ground, the witness did not make the entries, doesn't know who ordered the chairs—

"Trial Examiner Batten: You may have a continuing objection Mr. Stottle. (R. I. 337).

• • • • •

"Q. I wonder if you would read whatever information is on those deposit slips pertaining to the Donnelly Garment Company or the Donnelly Garment Workers' Union?

"A. All the way through?

"Mr. Stottle: Do I understand, Mr. Examiner, our objection continues as to this testimony, also?

"Trial Examiner Batten: Yes, it may. (R. I. 339)

• • • • •

[fol. 117] "Mr. Foster: I want to find out, if I can, who paid for these invoices for the use of these chairs; if there is anything on those deposit slips tending to show that, I want it read into the record.

"Mr. Stottle: Well, we add to our objection that this would not be the best evidence of whether the Donnelly Garment Company or the Donnelly Garment Workers' Union paid for them, as to what they might have written on the deposit slips.

"Trial Examiner Batten: Well, of course, I can't tell until I see what he is going to read, Mr. Stottle. (R. I. 340). • • •

"Mr. Patten: I want to make a further objection and ask a qualifying question, that is, a preliminary question.

"Q. (By Mr. Patten) Mr. Slotkin, did you prepare the deposit slips yourself?

"A. Well, a few of them when the girl happened not to be at work or on vacation.

"Q. Is the person present who prepared the deposit slips? A. No, sir.

"Q. Is she still in the employ of your company?

"A. Well, part of these were prepared before she ever came to work at our company.

"Mr. Patten: Now, the intervener, Donnelly Garment Workers' Union, objects to the reading or introduction of these deposit slips for the reason that they are not the best evidence. Mr. Slotkin did not prepare them himself, and what somebody, some absent person unknown to this intervener may have put on there is not binding on this intervener.

"Trial Examiner Batten: The objection is overruled. (R. I. 340), (P. 1451.)

• • •

"Trial Examiner Batten: Mr. Langsdale.

Cross-Examination.

"Q. (By Mr. Langsdale) Mr. Slotkin, I hand you these pages which have been marked 'I. L. G. W. U. Exhibits 4, 5, 6 and 7' and ask you to state just what they are.

"A. They are the ledger sheets taken from the accounts receivable ledger.

• • •

"Mr. Langsdale: We offer Exhibits 4, 5, 6, and 7 in evidence.

"Mr. Stottle: Respondent objects on the ground that they are not the best evidence, and that the witness personally didn't make the entries; that there is no showing that any persons authorized by the Donnelly Garment Company ordered any particular item on the list; that it is

not binding on the respondent and constitutes hearsay, and is wholly immaterial to the issues.

[fol. 118] "Mr. Langsdale: Of course, they are taken from the regular records used and maintained in the business of this witness, and are material for whatever they prove.

"Trial Examiner Batten: Mr. Patten.

"Mr. Patten: Intervener objects for the reason that how the Chair Rental Company may have kept the books is a matter wholly beyond the control of the Donnelly Garment Workers' Union, or the respondent, for that matter. There is no showing here, either the respondent or the intervening union directed these accounts to be mixed up and [kep] on one ledger sheet.

"Trial Examiner Batten: The objections are overruled. They will be received. (R. I. 344.)

* * *

"Q. Let me have those deposit slips you testified from (The deposit slips referred to were handed by the witness to Mr. Langsdale).

"A. Those are the ones I testified to.

"Mr. Langsdale: Will you mark these as exhibits, please?

"Trial Examiner Batten: I would suggest that you mark those exhibits No. 8, 8-A, B, C, and so forth.

(Thereupon the deposit slips above referred to were marked 'I. L. G. W. U. Exhibits Nos. 8-A to 8-GG, inclusive')

* * *

"Mr. Langsdale: I offer International Ladies' Garment Workers' Union Exhibits Nos. 8-A to 8-GG, inclusive.

"Mr. Stottle: The respondent objects to the introduction of these exhibits for all the reasons that we have heretofore urged, including the fact that they are not the best evidence; that there is no showing by this witness—

"Trial Examiner Batten (interrupting): Now, just a minute, on that point. What would be the best evidence?

"Mr. Stottle: The best evidence I would say, or some of the best evidence, would be an invoice that had been sent to these different persons and the payment of this. This is just a deposit slip in the bank.

"Trial Examiner Batten: You mean the payment—you mean the check it was paid with?

"Mr. Stottle: Well, an invoice that it had been paid with. This is not even the check. It is just a notation on a bank slip.

"Trial Examiner Batten: That is true, but I assume that what we are trying to do here is get a complete record. I presume we will have to take it in part.

[fol. 119] "Mr. Stottle: Well, that is one of the objections, that it is not the best evidence and hasn't any sufficient relation to this to have any probative effect or tend to prove or disprove any of the issues in this case. Furthermore, we object that the items on here were not made by this particular witness, and not shown to have been made by any person that would bind the respondent or the intervener, even bind this company; that it constitutes hearsay testimony and is so mixed up with other records and so mixed up between the parties here, charges to one and payment by another, that it is wholly impossible to be separated.

"Trial Examiner Batten: That doesn't indicate that on these slips, does it?

"Mr. Stottle: But the testimony taken together with these slips indicates that.

• • •

"Mr. Stottle: Mr. Examiner, we wish to add, also, that it is not made from—it doesn't constitute the original entry made in this company. It is about 3 or 4 degrees off from that. The original records, entries, would be the best evidence.

"Trial Examiner Batten: If there is no further objection, they will be received.

"Mr. Patten: Intervener makes the same objection as the respondent.

"Trial Examiner Batten: They will be received." (R. I. 347, 348.)

91.

In connection with the foregoing assignment of the petitioner, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling the motion of the petitioner to strike the evidence of the witness Slotkin, which motion and ruling are set forth in the transcript of the record, Pages 1483, 1484, (R. I. 348), as follows, to-wit:

"Mr. Langsdale: I think that is all.

"Trial Examiner Batten: Mr. Stottle.

"Mr. Stottle: Mr. Examiner, Respondent now renews its motion to strike out all of the evidence of this witness, including the exhibits introduced while he has been on the stand, for the reason that there hasn't been any showing that would make them probative evidence in this case. The items are all lumped together under one account, when the witness has stated that some of them might have been for other accounts. The deposit slips are all lumped together and there is nothing here that would enable the Examiner [fol. 120] to give any credence to the statements because they are so mixed up and were kept in such a way that they don't show the true facts, and for the further objection that we have already made, it is not the best evidence, and not the original record entries, and not binding on the respondent.

"Trial Examiner Batten: The motion to strike is denied:

92.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's motion to strike I. L. G. W. U. Exhibits 4, 5, 6, and 7, which motion and rulings are set forth in the following excerpts from the transcript of the record, Pages 1489, 1490, 1491, (R. I. 350, 351), to-wit:

"Q. Isn't it a fact that these ledger sheets, ILGWU Exhibits Nos. 4, 5, 6, and 7, were made up from those invoices or from other records of your Company?

"A. They were supposed to have been made up from the invoices.

"Q. (By Trial Examiner Batten) When you have a person call in for some chairs you immediately write out an order, is that it? A. Yes, sir.

"Q. Is that written out in triplicate, duplicate, or—

"A. In triplicate.

"Q. Then it is from that record that the entries are made on this sheet, is that right? A. That is right.

"Q. Then, you do have an invoice down there for each one of these items?

"A. I don't know, for all of them. You see, our records were destroyed, a lot of them, when I came to work there. After a year I managed to get myself lined up so I could install a regular system.

"Q. You mean, up to a year ago you had no regular invoice records?

"A. Nothing I could go to like I can now.

"Q. Have you anything—

[fol. 121] "A. I might have some old invoices, a few of them, pertaining to those ledger sheets, and I might not.

"Q. What records were destroyed?

"A. The invoices, you see, they are all mixed up.

"Q. You say you destroyed the invoice records?

"A. They were destroyed. I didn't destroy them myself.

"Q. Someone representing your company destroyed them?

"A. Yes.

"Q. In other words, then, you do not have the invoices or the carbons for these invoices running back over a year ago?

"A. No, sir.

"Mr. Stottle: Mr. Examiner, respondent now renews its objection to strike I. L. G. W. U. exhibits Nos. 4, 5, 6, and 7 for the reason that they are not the original entries, but are made up from some other records which were not the original entries.

"Trial Examiner Batten: I think I denied the same motion awhile ago.

"Mr. Stottle: I understand, Mr. Examiner, but this fact has been brought out since then.

"Trial Examiner Batten: You certainly wouldn't expect him to produce invoices that had been destroyed, would you?

"Mr. Stottle: No. But he says these are not the original entries.

"Trial Examiner Batten: Well, that would go to the weight to be given to these.

"Mr. Stottle: May I explain the point is, those original entries might have had Donnelly Garment Workers' Union on the invoice. If we had those it would show who was the person who ordered them.

"Trial Examiner Barren: But, Mr. Stottle, they are destroyed. If the record is destroyed it is impossible to get it."

93.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness Slotkin to testify concerning Board's Exhibits Nos. 16-A to 16-E inclusive and in admitting said Exhibits 16-A to 16-E in evidence over the objectons of the petitioner, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1508, 1512, 1513, 1514, to-wit:

[fol. 122] "Redirect Examination.

"Q. (By Mr. Foster): Mr. Slotkin, I hand you what has been marked for the purpose of identification as Board's exhibits Nos. 16-A to E, inclusive, and ask you what these are.

"A They are invoices made out to the Donnelly Garment Company.

(Thereupon the invoices referred to above were marked 'Board's Exhibits Nos. 16-A to 16-E, inclusive.)

"Q. Are they carbon copies of invoices that were sent to the Donnelly Garment Company or the Donnelly Garment Workers' Union?

"A. They are supposed to be. They are carbon copies.
"Q. What do you mean by 'They are supposed to be'? Are they or are they not?

"Mr. Stottle: Mr. Examiner, respondent objects to this as not proper redirect examination. It should have been gone into in chief.

"Trial Examiner Batten: You may proceed.

• • • • •

"Mr. Foster: Then, the Board will offer in evidence at this time what has been marked for identification Board's exhibits Nos. 16-A to 16-E, inclusive.

• • • • •

"Mr. Stottle: Well, Mr. Examiner, the respondent objects to the introduction of Exhibits 16-A to 16-E, for the reason that they are [testifed] to be carbon copies of Intervener's Exhibits 11 and others, whereas, an examination of Intervener's Exhibit 11 shows that they are written in ink and that this is not a carbon copy of it.

• • • • •

"Mr. Stottle: Well, the objection is that it is purportedly testified that these are carbon copies of intervener's Exhibits and an inspection of it will show they are not carbon copies at all of this, because the handwriting is entirely different. This is in ink and it doesn't show through on the same working that is on the alleged carbon copy at all, and for the further reason they haven't been identified in such a way as to make them admissible, or to show they are original records.

"Mr. Tyler: The intervener objects on the ground the witness ought to be allowed to examine the original rather than what is alleged to be a carbon copy before he is asked to testify whether they are carbon copies or not.

Trial Examiner Batten: Well, the witness has already testified these are carbon copies, which he has taken out of his office, and if there are any discrepancies I presume this would be the place to explain them, if there is any explaining to do. They will be received."

[fol. 123] 94.

Petitioners assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain petitioner's motion to strike answer of the witness Mrs. Greenhaw as set forth in the following excerpt from the transcript of the record, Page 1596, to-wit:

"Q. Did Miss Alexander have an assistant?

"A. Yes.

"Q. Who was that?

"A. Miss Elizabeth Nobles, who, I think, would be called her assistant.

"Mr. Ingraham: I move the answer be stricken out, as the witness says she thinks Miss Nobles would be an assistant.

"Trial Examiner Batten: Well, I presume on cross-examination Mr. Ingraham, you may go into that and see whether there is any basis for the statement. I hardly think at this stage that I would strike out or sustain an objection when the witness says she has an opinion, because I think we have had quite a few of them thus far.

"You may proceed, Mr. Leary."

95.

Petitioner assigns as error the fulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 17 over the objection of the petitioner which objection and ruling are set forth in the following excerpts from the transcript of the record, Pages 1598, 1599, 1600, to-wit:

"Q. I show you what has been marked for identification as Board's Exhibit No. 17 and ask you to state briefly what that document is.

"A. It was a record of the amount of letters written by the department that day, and who dictated them, and who wrote them. A few were written by the girls themselves;

that is, form letters or letters that were of a similar nature; some of the girls, of course, would transpose those themselves.

• • • • •

"Mr. Leary: The Board offers its exhibit No. 17.

• • • • •

[fol. 124] "Mr. Ingraham: Respondent objects to the introduction of Board's Exhibit No. 17 for the reason that it is immaterial and irrelevant to any issue in this case. And, respondent moves that the witness' testimony be stricken out for the same reason.

"Mr. Lane: Intervener makes the same objection and motion.

"Trial Examiner Batten: Mr. Leary, what have you to say?

"Mr. Leary: I believe there has been testimony regarding the membership of Miss Alexander and Miss Nobles in the Donnelly Garment Workers' Union, Mr. Examiner, and I believe this goes to show these persons were of a supervisory nature. There is no better proof in the world than to have this daily check-off; it is somewhat like an efficiency system the company uses to check up on the work done by even the stenographs in the office daily, all handled by the persons Alexander and Nobles.

"Trial Examiner Batten: It will be received."

96.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence and refusing to strike answer of the witness Mrs. Greenhaw as set forth in the following excerpt from the transcript of the record, Page 1603 (R.I. 354b), to-wit:

"Q. Now, with reference to this meeting where Mrs. Reed talked to the employees, I ask you to state in what manner you were advised that the meeting would be held?

"A. I think we were informed by the [heard] of our department.

Mr. Ingraham: I move the answer be stricken out as speculative.

"Trial Examiner Batten: It may stand."

97.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 18 also referred to as Board's Exhibits 18-A to 18-J inclusive, over the objections of the petitioner and intervener, which objections [fol. 125] and rulings are set forth in the following excerpts from the transcript of the record, Pages 1610, 1611, 1613 (R.I. 354e, 354f, 354g), to-wit:

"Q. I show you what has been marked as Board's Exhibit 18, Mr. Greenhaw, and ask you to state briefly what that is.

"A. This is a copy of the minutes of the meeting of the Donnelly Garment Workers' Union on May 25, 1937.

* * * * *

"(Thereupon, the documents above referred to were marked as 'Board's Exhibits Nos. 18-A to 18-J, inclusive' for identification.)

* * * * *

"Mr. Leary: The Board offers its Exhibits 18-A to 18-J.

* * * * *

"Mr. Ingraham: I object to the introduction of Board's exhibit 18 for the reason that it purports to be a copy of some minutes, and the original would be the best evidence.

"Mr. Langsdale: Of course, they have produced what they say is the original, and these minutes that we have had photostated I told the Examiner we proposed to show they 'doctored' those minutes, and now we have what she says is a carbon copy of the minutes she turned over to Marjorie Green, and Margorie Green produces what she says is the original.

"Mr. Lane: Intervener objects to it on the ground that it is not identified.

"Mr. Leary: In what particular?

"Mr. Lane: It purports to be some copy of an original instrument which is supposed to be in existence.

"Trial Examiner Batten: It will be received."

98.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence and refusing to strike upon motions of the petitioner answers of the witness Mrs. Greenhaw as set forth in the following excerpts from the transcript of the record, Pages 1615, 1616, (R.I. 354h), to-wit:

"Q. Do you know what Mr. Marvin Price's work was?
"A. Yes.
"Q. Will you please state what it was?
"A. I think he was called custodian, and I believe he was in charge of the ordering of materials of all sorts for that building.

"Mr. Ingraham: I move that the answer be stricken out [fol. 126] as a conclusion of the witness.

"Trial Examiner Batten: It may stand.

"Q. (By Mr. Leary): And when you say 'materials for the building' do you distinguish in your answer from other materials that are ordered in the operation of the business?
"A. Yes. He had no connection with the ordering of piece goods and that sort of thing.

"Mr. Ingraham: I move that the answer be stricken out as a conclusion of the witness.

"Trial Examiner Batten: It may stand."

99.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting testimony of the witness Mrs. Greenhaw and in overruling the objections and motions to strike of the petitioner and intervener thereto as set forth in the following excerpts from the transcript of the record, Pages 1619, 1620, to-wit:

"Q. (By Mr. Leary): During the months of March and April and May, 1937, Mrs. Greenhaw, did you note anything unusual in the conduct of Miss Rose Todd while she was on the tenth floor?

"Mr. Lane: That is objected to as calling for a conclusion.

"Trial Examiner Batten: You may answer.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: Overruled.

* * * * *

"Trial Examiner Batten (interrupting): Well, now, you can just say 'yes' or 'no' to that question, whether you did.

"A. Yes.

"Q. (By Mr. Leary): What was it that you noticed, Mrs. Greenhaw?

"Mr. Ingraham: I make the same objection.

"Trial Examiner Batten: Same ruling.

"Mr. Lane: Intervener makes the same objection.

"A. I noticed that she was more than usually active in contact with the executives of the company.

"Mr. Lane: I move to strike the answer out as a mere conclusion of the witness.

"Trial Examiner Batten: It may stand.

"Mr. Ingraham: [Sam] objection. Respondent makes the same objection — the same motion to strike.

"Trial Examiner Batten: Motion denied."

[fol. 127] 100.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) admitting in evidence testimony of the witness Mrs. Greenhaw as set forth in the following excerpts from the transcript of the record, Pages 1622, 1623, 1624, to wit:

"Q. (By Mr. Leary) Did this occasion when you saw the representative group of employees with Miss Todd to the tenth floor occur after the meeting when the Donnelly Garment Workers' was formed—Donnelly Garment Workers' Union was formed?

"Mr. Patten: Just a moment, please. I don't believe she has testified she saw a group of employees with Miss Todd. The question assumes she has so testified.

"Mr. Leary: I submit her testimony was that it was a representative group from the employees all over the plant.

"Q. (By Trial Examiner Batten) Was Miss Todd with this group?

"A. I couldn't testify as to that, but I remember the occasion because it was rather unusual for people from the factory to be brought up on the tenth floor.

"Q. Now, do you remember about when this was?

"A. I remember, because a meeting took place the same day.

"Q. Well, what meeting?

"A. I am assuming it was the meeting—

"Q. (Interrupting) Well, tell me what occurred at the meeting that you say occurred this same day.

"A. There was, a committee was announced, who would represent the employees as—I don't remember how they were designated, but they were to be union representatives among the employees.

"Q. (By Mr. Leary) Was it before that meeting, Mrs. Greenhaw, that you saw this group of employees up on the tenth floor?

"A. Yes.

"Q. In Mrs. Reed's office?

"A. Yes.

"Mr. Lane: I move to strike it out for the reason that the time is not fixed.

"Trial Examiner Batten: It may stand."

101.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming

same) in admitting in evidence testimony of the witness [fol. 128] Mrs. Greenhaw over the objections of the petitioner and intervenor, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1624, 1625, to wit:

"Q. Did you have occasion to talk with Mr. Green some time in March or April, 1937?

"A. Yes.

"Q. Do you remember any particular conversation that you had with him?

"A. We had a short discussion of the strike that was being held at Gordon's at that time.

"Q. And what, if anything, was said by Mr. Green—

"Mr. Ingraham (interrupting): I object. It calls for hearsay—

"Mr. Leary (interrupting): Wait until I finish my question, please.

"Q. (By Mr. Leary) What, if anything, was said by Mr. Green at that time with regard to the strike at Gordon's?

"Mr. Ingraham: I object. It calls for hearsay testimony.

"Trial Examiner Batten: Well, I will overrule the objection as to hearsay, but the thing I am concerned about, I don't want to get into all these other strikes. Now, she may answer the question and then I will determine whether or not it may be stricken.

"Mr. Lane: Intervener makes the same objection, that it is hearsay.

"Trial Examiner Batten: Same ruling."

102.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence and permitting the witness Mrs. Greenhaw to answer question over petitioner's objections as set forth in the following excerpt from the transcript of the record, Page 1641, to wit:

"Q. When you first went to work for the Donnelly Company you stated that you were in the returns department. Who was your superior in that department?

"Mr. Ingraham: I object to that as repetition.

"Mr. Langsdale: She hasn't stated that.

"Mr. Ingraham: It calls for a conclusion of the witness.

"Trial Examiner Batten: I didn't make any note of it—You may answer. I don't think she mentioned anybody."

[fol. 129] 103.

Petitioner assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) announcing his purpose and refusal to permit testimony of petitioner's employees to the effect that they selected the Donnelly Garment Workers Union of their own free will or to tell the circumstances under which they signed petition marked I. L. G. W. U. Exhibits Nos. 11-A to 11-MM inclusive, and in refusing to admit said exhibits in evidence, and in stating and announcing that the Trial Examiner would not allow petitioner's employees to take the stand and testify that they were dominated and that they did form the Donnelly Garment Workers' Union of their own free will, over the objections of the petitioner and intervener, and in overruling petitioner's motion to strike from the complaint and dismiss the charge that the Donnelly Garment Workers' Union is a dominated union, which rulings, comments, objections and motions are set forth in the following excerpts from the transcript of the record, Pages 1651, 1652, 1653, 1654, 1655 and 1656 (R. I. 355, 356, 357, 358), to wit:

"Q. (By Mr. Langsdale) Mrs. Greenhaw, I show you a document which has been marked I. L. G. W. U. exhibit No. 11-A to No. 11-MM, inclusive, and call your attention to the first page and ask you if you ever saw that document before.

"A. Yes, I have seen it.

"Q. That is a document that purports to have been signed on the 8th day of July, 1937.

I call your attention to that page of the document which has been marked I. L. G. W. U. exhibit No. 11-H and ask you if you find a photostat of your signature on there.

"A. Yes, I do.

• • •

"Q. This document reads—

"Trial Examiner Batten (Interrupting) Now, are you going to offer it?

"Mr. Langsdale: Yes, I am. Is there any objection?

"Mr. Ingraham: No.

"Trial Examiner Batten: Just a minute. I may have. Is that an affidavit signed by all of the Donnelly Garment Company employees that they want the Donnelly Garment Workers' Union?

"Mr. Langsdale: You can read it better than I can tell you. (Handing I. L. G. W. U. exhibit No. 11-A to 11-MM, inclusive, to Trial Examiner Batten.)

[fol. 130] "Trial Examiner Batten: I certainly will not receive it.

"Mr. Langsdale: On what ground do you object to it?

"Trial Examiner Batten: I won't receive it, at least if it is offered for any purpose to show that these people have selected this union, that it is their free selection, or anything of that kind. I positively won't receive it for that purpose.

• • •

"Mr. Langsdale: I am offering it for the purpose of showing under what circumstances this witness was induced to sign this document, which states that 'Each of us formed our own union and selected our own representatives'.

"Trial Examiner Batten: I won't receive it for that purpose, because I am not going to have 1,200 employees come up here and tell me the circumstances under which they signed this petition; and it wouldn't mean anything if they did.

"Mr. Langsdale: Then, are you going to permit them to cross-examine her with reference to her signature on there?

"Trial Examiner Batten: I certainly am not.

"Mr. Langsdale: I have no object in offering it except—

"Trial Examiner Batten: (interrupting): Well, Mr. Langsdale my position on this situation is just this—and I have had it come up in about six cases where I have been presented [wither] with a petition or with membership cards of a large number of employees in a plant, stating that they joined of their own free will, and so forth. Now, I don't consider that testimony, if it were given, of any value when they are put up here on the stand and testify under oath, with the respondent, and in some cases, the foreman and the superintendent present. It might result in coercion, and it might not.

"There is only one way to determine this question of majority, and that is by an election, which is not involved in this hearing. I am not going to have a parade of witnesses here on this stand testifying, and for that reason I will not accept it.

"Now, I am making that as a very definite statement now, so that all of you, if you have any offer to make on this particular matter, may prepare your offer and I will receive it at any time before the close of the hearing, but I want it thoroughly understood that I am not going into this matter.

"Mr. Ingraham: Well, your Honor, do I understand that you are not going to allow witnesses to take the stand and testify that they were not dominated and that they did form this union of their own free will?

"Trial Examiner Batten: That is exactly what I mean.

"Mr. Ingraham: Of course, respondent excepts to the ruling.

[fol. 131] "Trial Examiner Batten: Well, I assume that the intervener will, too.

Mr. Langsdale: You have nothing to except to.

"Mr. Lane: Yes, we do. We assume we have an exception.

"Trial Examiner Batten: Well, I want to make it very clear at this time to everybody, while I am not attempting to rule on the matter the point, as I said once before, if you want to bring some witnesses up here and offer it, I want you to do it. In other words, I don't want the respondent's attorney, or the intervener's attorney, to fail to do something that you think you should do to protect your record, but I do think I ought to tell you just exactly what my position is.

"I am not going to receive it, and—

"Mr. Stottle (interrupting): Mr. Examiner, don't you think you should make a ruling now striking out the charge that it is a dominated union, if you are not going to permit us—

"Trial Examiner Batten (interrupting): Do you want to make that motion?

"Mr. Ingraham: Yes.

"Mr. Langsdale: It appears to me this is my offer; not yours.

"Trial Examiner Batten: I say, does Mr. Stottle want to make that motion now? If so, he may do so.

"Mr. Stottle: Well, in view of the Examiner's statemen. as to his position on the matter, the respondent does move that the charge in the complaint that the union is a dominated union should be dismissed.

"Trial Examiner Batten: Motion denied."

104.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness Mrs. Greenhaw to answer questions and admitting in evidence the testimony of said witness over the objections of the [ptitioner] and intervener as set forth in the following excerpts from the transcript of the record, Pages 1661, 1662, and 1664 (R. I. 360, 361), to wit:

[fol. 132] "Now, Mrs. Greenhaw, let me ask you with reference to the meeting of April 27, 1937, which was the meeting at which the Donnelly Garment Workers' Union was formed, if you heard Miss Todd say anything at that meeting about the—officers of the Loyalty League meeting the night before and deciding the only thing to be done was to form this union?

"Mr. Ingraham: I move the question be—I object to the question for the reason that it is leading and suggestive and an improper way to examine this witness. He can ask the witness what Miss Todd said, but I don't think it is proper for him to read from what purports to be some statement, and then ask if she heard that.

"Mr. Langsdale: It seems to me it—

"Mr. Patten (interrupting): The intervener makes the same objection.

"Mr. Langsdale: The Examiner has many times said the attorney is responsible for the form in which he asks his questions.

"Trial Examiner Batten: Well, I still say that is true, and, of course, if the attorney wants to ask a question such as this, why, of course, it will have to be weighed. If it has any value, it will receive it, and if it hasn't of course, it won't.

"Mr. Langsdale: I am willing to take that chance.

"Trial Examiner Batten: I think under my ruling that is your privilege.

* * *

"Mr. Lane: Mr. Examiner, the intervener further objects for the reason that that question was asked by counsel for the International Ladies' Garment Workers' Union by reference to some statement which, for his previous statement, was made by this witness in the presence of some stenographer, outside of the presence of anybody representing the Donnelly Garment Workers' Union. The statement itself is hearsay and in no sense binding upon the intervener, and for that reason is an improper document to be used to refresh this witness' memory. The

question itself calls for hearsay and cannot be binding on the intervener.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: You may proceed.

"Mr. Langsdale: Read the question, please.

(Thereupon the last question was read by the reporter)

"A. She did make such a statement."

[fol. 133] 105.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in permitting the witness Mrs. Greenhaw to answer questions, and admitting in evidence her testimony in response thereto, over the objections of the petitioner and intervener, as set forth in the following excerpts from the transcript of the record, Pages 1665, 1666 (R. I. 362), to-wit:

"Q. (By Mr. Langsdale) Mrs. Greenhaw, referring to the meeting of March 18, you identified that meeting as the one at which the letter from the International Ladies' Garment Workers' Union was read, and at which meeting Mrs. Nelly Don Reed spoke. I will ask you if at that meeting Mrs. Reed stated that she would close her shop before she would permit it to be unionized.

"Mr. Ingraham: I object to the question for the same reason that I have objected to the previous question that Mr. Langsdale asked when he was reading from this document that he has in his hand.

"Mr. Lane: Intervener makes the same objection.

"Trial Examiner Batten: I will overrule the objection.

"A. Mrs. Reed did state she would close her factory before she would permit it to be unionized.

"Q. (By Mr. Langsdale) Did Mrs. Reed state at that meeting that she would make plans to protect the employees from the union?

"Mr. Ingraham: [Sam] objection.

"Trial Examiner Batten: Objection overruled.

"A. I don't remember the exact words, but it was definitely stated that the employees would be protected against the union, the union's activities."

106.

Petitioner assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, Pages 1673, 1674 (R. I. 366, 367), to-wit:

[fol. 134] "Q. Do you recall at that time the International was conducting a strike at the Gernes, Gordon, and Missouri Garment Companies?

"Trial Examiner Batten: Now, is this just for the purpose of establishing a time?

"Mr. Ingraham: I think, in view of this witness' testimony as to what was said by Mrs. Reed at this March 18th meeting, that we have the right to show what was going on.

"Trial Examiner Batten: Well, I don't propose to go into it, Mr. Ingraham. I have said before that on that matter, in the first place, supposing that Mrs. Reed did say that, supposing that Mrs. Reed got up and said other things about it, I still can't see, as I asked you this morning, why you should be permitted to show it, whether it is true or untrue. The thing is, did Mrs. Reed get up in this meeting and make certain statements. Are the statements she made—are they of such a nature that they intimidate, coerce or restrain the employee. It isn't a question of whether they are true or not. They may be true and they may still have the same effect. I still can't see by your explanation this morning how it can be material. The only thing is, what did Mrs. Reed say at this meeting.

"Mr. Ingraham: Well, your Honor, it is our theory that we are entitled to show what the situation was, and the purpose, or one of the purposes of the March 18th meeting, and that Mrs. Reed did make a speech, and the reason she had for making the speech."

107.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) and the bias and prejudice of the Trial examiner against petitioner indicated thereby, as set forth in the following excerpts from the transcript of the record, Pages 1681, 1682, (R. I. 370, 371), to-wit:

"Q. Now, who are some of the department heads that were engaging in coercion?

"A. Of course, that is a hard thing to answer.

"Q. Well, you are testifying now. Just give the names, please Mrs. Greenhaw, of these people that were engaging in coercion.

"A. Because it was a general feeling—

"Q. (interrupting) I am not—just answer—

"Trial Examiner Batten (interrupting): Just a minute. Let her finish.

"Mr. Ingraham: I object to it as not responsive.

[fol. 135] "Trial Examiner Batten: Don't stop her. Let her say what she wanted to. We have had witnesses here before and, certainly, no one stopped them yet when they wanted to explain an answer, or talk.

"Mr. Ingraham: If your Honor please, I don't object if she will answer and then explain.

"Trial Examiner Batten: Well, let her answer. We can't tell, Mr. Ingraham, until she gets through.

"Q. (By Trial Examiner Batten) What were you saying?

"A. Well, I have worked in a number of other places, you know, and then when I went to work there there was a very different atmosphere and a different attitude among the employees and toward them, and there was a feeling that they were held very closely in line at all times by the officials of the company, and I am sure that for years the company had been building up that sort of thing.

"Mr. Ingraham: Now, I move the answer be stricken out. It is not responsive.

"Mr. Lane: The intervener moves it be stricken out as stating a conclusion, not founded upon any fact testified to by the witness.

"Trial Examiner Batten: It may stand."

108.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving and admitting in evidence and into the record the document referred to as Examiner's Exhibit No. 1, and the Examiner's comments upon same, and in permitting the witness Mrs. Greenhaw to testify from and refresh her memory from said document and admitting such testimony herein, which rulings, action and comments are set forth in the following excerpts from the transcript of the record, Pages 1713, 1714, 1715, 1716, 1717, 1718, 1719, (R. 11 378e, 378f), to-wit:

"Q. (By Mr. Langsdale) Let me ask you, in the statement you gave to Mr. Walsh you stated:

'Either on the day or the day before the suggestion was first made that there should be a company union organized I saw a group of seven or eight employees going into Mrs. Reed's office.' Is that right? A. Yes.

[fol. 136]. "Mr. Lane; Now, Mr. Examiner, may I have a continuing objection to all questions asked by counsel for the International with respect to the statement he holds in his hand, and questions where he reads from the statement, on the grounds I have heretofore stated?

"Trial Examiner Batten: Yes, you may have a continuing objection.

"of course, I want that marked as an exhibit. It has always been my practice, whenever an attorney examines a witness from a memorandum or statement they have previously made, to ask to have that made a part of the record.

* * *

"Mr. Langsdale: I have only a copy here, Mr. Examiner, shall I identify it and offer it?

"Trial Examiner Batten: I think you had better have it marked as Trial Examiner's exhibit No. 1, and it will be received only in so far as you have asked these questions from it. In other words, I am not receiving the entire thing.

* * *

"Mr. Lane: Intervener objects to the document for the reason that it is not identified, and for the reason that it has been stated by counsel to be a mere copy, when there is apparently an original in existence; and for the further reason it is inadmissible for any purpose, the intervener not having been present when any statements contained therein were made; and for the further reason that they are self-serving and hearsay. Intervener objects to its being received for any purpose.

"Trial Examiner Batten: It is received for whatever it purports to be.

"Mr. Lane: Intervener further objects on the ground that it is highly prejudicial and improper to permit a memorandum of that kind to be used to refresh the recollection of a witness who has testified she has no independent recollection of the matter. I say it is prejudicially erroneous to permit it to be used for that purpose.

* * *

"Trial Examiner Batten: Objection overruled.

* * *

"Mr. Stottle: Mr. Examiner, the respondent objects to the Examiner's exhibit No. 1 for the reason that it is not taken under oath, not testified to under oath, that the witness who is purported to have signed it is here on the stand now, and her own testimony should be the testimony of this witness, and not any statement that she may have prepared at some prior time. It is not even signed by the witness, and is—purports to be a carbon copy of some statement which she may have signed.

* * *

[fol. 137] "Mr. Stottle: We also object that it is just immaterial and improper for any purpose whatsoever.

* * *

"Q. (By Trial Examiner Batten) Mrs. Greenhaw, will you look this over and tell me whether or not that it a statement that you made, and if so, when?

"A. Yes, this is a statement I made.

"Mr. Langsdale: Read it through, will you, Mrs. Greenhaw, so you can testify from all of it.

"Mr. Lane: * * * I object to the Examiner's question for the reason that this document is not the best evidence, and whether this witness can, by reading it, refresh her recollection or not, could not supply the defect; it does not cure the defect that this is not the best evidence.

"Trial Examiner Batten: The objection is overruled. I am merely trying to get into the record whatever it is. I don't know what it is, but whatever it is, she apparently testified from it, and as such, she is entitled to, whether it is an affidavit or a memorandum or whatever it is, and I merely want it in the record so that it will show what it was that refreshed her memory.

"Mr. Stottle: The respondent adds to its objection that it would be prejudicial to have it in the record, the whole document, which—only a portion of it is purportedly received, because whoever reads the record to ascertain those portions must necessarily read the whole document.

"Trial Examiner Batten: Mr. Stottle, do you mean by that that it has always been a practice to cut part of something out which is introduced for a certain purpose, and that you never introduce the whole of anything?

"Mr. Stottle: No, I don't mean that. I just say that it would be necessary for anyone, in reviewing the record, yourself, or anyone else, to read this whole document in order to read the portions that you are admitting, and that it would be prejudicial to the respondent to have a document in there which is not the testimony of this witness.

"Trial Examiner Batten: Well, the objection is overruled."

In connection with the foregoing assignment, petitioner also assigns as error (and the Board's action in affirming same) the receipt of the document referred to as Trial Examiner's Exhibit No. 1 and to the testimony received concerning same and based upon same from the witness Mrs. Greenhaw, for the reason that same wrongfully and erroneously injected into the mind of the trial examiner prejudice against petitioner, which prejudice and bias later manifested itself in the trial examiner's finds, con-
[fol. 138] clusions and recommendations in the Intermediate Report.

109.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) in refusing to strike answers of the witness Mrs. Greenhaw and in overruling petitioner's and intervener's objections to the questions propounded to said witness, as set forth in the following excerpts from the transcript of the record, Pages 1729, 1730, to wit:

"Q. (By Mr. Langsdale) Did any incident occur while you were there in which Mr. or Mrs. Keyes was engaged that in your opinion was coercion?

"A. There were so many incidents that I can hardly recall them.

"Q. Can you recall any one?

"A. There was hardly a day—

"Mr. Shepard (interrupting): Your Honor, I ask that these answers be stricken.

"Mr. Leary: Why?

"Trial Examiner Batten: I will not strike them.

"Mr. Stottle: They are so general, your Honor—

"Trial Examiner Batten: But, Mr. Stottle, if you will just look back toward the beginning of this hearing you will find plenty of answers that are general. I am not going to start now—

"Mr. Lane (Interrupting): Intervener objects on the ground that it is not responsive to the question, and it is not a statement of any facts.

"Trial Examiner Batten: Mr. Lane, do you mean an attorney who is not asking a question can object on the ground that it is not responsive? Are you, the attorney who does not ask the question, going to object that it is not responsive?

"Mr. Lane: I think if the witness gives an answer to Mr. Langsdale's question that I think is not responsive, I have a right to object, and I do object.

"Trial Examiner Batten: Objection overruled.

"Mr. Stottle: Respondent objects on the ground that it calls for a conclusion. There was no definition of the word 'coercion', and the answer she made was that it was of a general nature and did not state the facts, which you stated she should do.

"Trial Examiner Batten. Objection overruled."

[fol. 139] 110.

Petitioner assigns as error the rulings, action and comment of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, Pages 1733, 1734, to wit:

"Q. (By Mr. Langsdale) Did you ever hear Mr. Keyes talk to the employees about loyalty to the company?

"A. Yes.

"Mr. Lane: That is objected to as leading.

"Trial Examiner Batten: Now, Mr. Lane, you know my ruling on leading question; I have made it so many times. You may have a continuing objection to leading questions.

"Mr. Lane: The Board, of course, will not know what I consider leading questions unless I make my objection.

"Trial Examiner Batten: Of course, I thought it would save all of these interruptions.

"Mr. Lane: Mr. Examiner, I would be very glad not to make that objection at all if there were any way of making it known what I regard as leading questions, but unless I make my objection I don't see how the Board or anybody else can tell what I regard as leading questions.

"Mr. Langsdale. The Board is supposed to have some intelligence.

"Trial Examiner Batten: I presume the persons who have to pass on this will know what weight should be given a question, irrespective of whether you think it is leading or not. If the Examiner and the Board feel it is the attorney who is doing the testifying, no weight will be given to it."

111.

In connection with the foregoing assignment, petitioner also assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) throughout the hearing in permitting counsel for the Board and International Ladies' Garment Workers' Union to ask leading questions and place the answers desired in the mouth of the witness, and stating and announcing that testimony in response to such questions would not be given weight, and thereafter in the findings of fact, conclusions and recommendations the trial examiner based same upon the testimony so elicited.

[fol. 140]

112.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's objection as set forth in the following excerpt from the transcript of the record, Page 1742, to wit:

"'Q. Prior to 1933 was there any minimum wage scale at the Donnelly Plant?'

"Mr. Stottle: Respondent objects to that question as being immaterial and relating to a time so remote as not to have any bearing on this issue here.

"Trial Examiner Batten: As to the remoteness, the objection is overruled."

113.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence testimony concerning the Loyalty League and in overruling objections of the petitioner and

intervener thereto, and in overruling continuing objections of petitioner and intervener to all testimony concerning the Loyalty League and permitting the witnesses to continue to testify thereto, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1769, 1770; 1771 (R. H. 378l, 378m), to wit:

"Q. Showing you your bank statement for the month of March, 1937, is it not a fact that a deposit of $1,000 was made on March 30, 1937?

"A. That is right.

"Mr. Stottle: Just a moment. Mr. Examiner, respondent objects to this question, and all questions relating to the Loyalty League, on the ground that it is immaterial. We understand the allegation in the complaint that there is a connection, but there has been no testimony indicating that the Loyalty League has anything to do with the Donnelly Garment Workers' Union. It is merely a social organization, and the Donnelly Garment Workers' Union is a separate organization.

"We think it is encumbering the record to go into these activities of the Loyalty League.

"We haven't objected a great deal to this, but we think the matter should be presented to the Examiner, and that we should have a continuing objection to any testimony regarding the Loyalty League.

[fol. 141] "Trial Examiner Batten: Well, you may have a continuing objection. As I recall it, you have, on about three occasions objected to it at the beginning of the hearing, and I at this time will make the same ruling I have in the past. I will overrule the objection, but you may have a continuing objection.

"Mr. Stottle: And also on the ground it is not binding on the respondent, anything this witness may say, as well as being immaterial to the issues.

"Trial Examiner Batten: That may be incorporated.

"Mr. Patten: Intervener makes the same objection, and adds to it the testimony as to what may have happened in the Loyalty League prior to the organization of the Union is immaterial and irrelevant.

"Trial Examiner Batten: Overruled. You desire a continuing objection, Mr. Patten?

"Mr. Patten: I do."

114.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence throughout the hearing over the objections and continuing objections allowed to petitioner and intervener of testimony of the various witnesses concerning the Loyalty League and in failing and refusing to exclude said testimony and in taking said testimony into consideration in the findings of fact, conclusions and recommendations of the trial examiner and in refusing to strike same from the record, for the reason that the evidence shows that the Loyalty League, as such, had no part in the formation or administration of the Donnelly Garment Workers' Union and did not assist it in any way, and for the further reason that the evidence shows that the petitioner did not participate in the formation or administration of the Loyalty League and did not act through it in any way, and for the further reason that the evidence affirmatively shows that the Loyalty League's activities were purely of a social character and that all evidence concerning the Loyalty League is immaterial to any of the [fol. 142] issues involved in this proceeding and should not have been taken into consideration by the Trial Examiner in making his findings of fact, conclusions or recommendations set forth in the Intermediate Report.

115.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 19 and in overruling petitioner's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 1773, 1774 (R.II. 378n, 378o), to-wit:

"Q. I show you, Miss Hartman, what has been marked for identification as Board's Exhibit 19, and ask you to state whether or not that is the note taken from the official

records of the Nelly Don Loyalty League that you just referred to in your testimony.

"A. That is right.

"Mr. Leary: Board offers its Exhibit 19.

"Mr. Stottle: Respondent objects to the exhibit for the grounds already stated, that it is immaterial to the issues here, and also that it is not binding on the respondent in any way.

"Trial Examiner Batten: Well, I assume that your continuing objection applies to the note as well.

"Mr. Stottle: Well, I thought it might, I wasn't sure that it would.

"Mr. Patten: The intervener desires its continuing objection to apply to the note.

"Trial Examiner Batten: It will be received, subject to those objections."

116.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibits Nos. 21-A to 21-O inclusive, and in overruling petitioner's and intervener's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 1793 (R.II. 378w), and 1842 (R.II. 384), to-wit:

"Mr. Langsdale: We offer these checks which have been identified as Board's exhibits Nos. 21-A to 21-O, inclusive.

"Mr. Stottle: Respondent makes its continuing objection to these exhibits.

"Trial Examiner Batten: You may have a continuing objection.

[fol. 143] "Mr. Lane: We make our general objection.

"Trial Examiner Batten: That is, the same continuing objection you have made?

"Mr. Lane: Yes.

"Trial Examiner Batten: I will reserve decision on the offer.

• • • • •

"Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis, and Board's Exhibit 25, in which I reserved a decision, will be received on the same basis, subject to the same objections.

117.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 25 and in overruling the objections of the petitioner thereto as set forth in the following excerpts from the transcript of the record, Pages 1800, 1801, 1802 and 1842 (R.II. 378aa, 384), to-wit:

"Q. Now, I hand you this, what has been marked as Board's Exhibit 25, and ask you to state what it is, if you know.

"A. That is a statement from the First National Bank, the balance of our loan plus the interest.

• • • • •

"Mr. Langsdale: The Board offers its Exhibit 25.

"Mr. Stottle: Respondent makes the same continuing objection to this exhibit.

• • • • •

"Trial Examiner Batten: On Board's Exhibit 25, I will reserve my decision.

• • • • •

"Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis, and Board's Exhibit 25, in which I reserved a decision, will be received on the same basis, subject to the same objections."

118.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 26 and in

overruling petitioner's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 1807, 1808 (R.II. 378dd), to-wit:

[fol. 144] "Q. I show you what has been marked for identification Board's exhibit No. 26 and ask you to state briefly what that is.

"A. A list of the dates of meetings, the first one beginning May 11, 1937 and ending with April 5, 1938.

* * * * *

"Mr. Leary: The Board offers its exhibit No. 26.

"Mr. Stottle: Respondent objects that it is immaterial and does not seem to throw any light upon the issues in this case.

"Mr. Patten: Intervener has no objection.

"Trial Examiner Batten: It will be received."

119.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in rejecting and refusing to receive in evidence petitioner's Exhibit No. 2, and in sustaining the objections of the Board and I. L. G. W. U. thereto, and further assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) relative to the exclusion of said exhibit and similar testimony as set forth in the following excerpts from the transcript of the record, Pages 1828, 1829, 1830 (R.II. 378hh, 379), to-wit:

"Cross-Examination.

"Q. (By Mr. Ingraham): Mrs. Tobin, you are familiar with the contracts the International has made with garment companies located in Kansas City?

"A. I am.

"Q. I will hand you respondent's exhibit No. 2 and ask you if these are photostatic copies of contracts which the International has with other garment manufacturers in Kansas City.

"A. There are two contracts here, one for the Liberty, and one for the Mayfair, which were the contracts nego-

tiated in 1937, but have since been renewed with changes. The others are the contracts that are in force now.

"Q. What are the names of the other companies?

"A. Missouri, Gernes, and Gordon.

"Mr. Ingraham: Respondent offers in evidence exhibit No. 2.

"Mr. Leary: Now, I object to that, Mr. Examiner, as being entirely incompetent, immaterial, and irrelevant. It has no bearing on the issues in this matter that we are trying now.

[fol. 145] "Mr. Ingraham: Mr. Examiner, counsel for the Board and counsel for the International have called the Examiner's attention to various provisions in the Donnelly Garment contract with the Donnelly Garment Workers' Union. I want to show that similar provisions are in the contracts that the International makes with other garment manufacturers.

"Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the exhibit for the reason that the only purpose of offering the contract with the Donnelly Garment Workers' Union and the Donnelly Garment Company and the only purpose of calling attention to any provisions thereof was upon the question of whether or not there was bargaining as provided by the Wagner Act. The provisions of these contracts are in no way material. The comparison between these and the Donnelly Garment Company are in no way material. The only question is, were the contracts made with the Donnelly Garment Workers' Union and the Donnelly Garment Company the result of collective bargaining by a free and independent union, as provided by the Wagner Act and the National Labor Relations Act?

"Trial Examiner Batten: Mr. Leary, do you agree with Mr. Langsdale that the only purpose of the Donnelly contracts and the questions with respect to them was for the purpose of showing what negotiations were conducted, and that is all?

"Mr. Leary: That is it, yes.

"Trial Examiner Batten: Of course, if that testimony is limited, as you say it is, I will reject the offer of these contracts, because any comparison of the contracts would be unnecessary."

120.

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the witness Wave Tobin to testify in response to question asked by counsel for petitioner and in sustaining the objection of the I.L.G.W.U. thereto, as set forth in the following excerpts from the transcript of the record, Page 1831 (R.II. 379, 380), to-wit:

"Q. (By Mr. Ingraham): I will ask you if that contract did not contain the provision that 'Present prices for piece workers shall remain intact and shall be based on a basis that not less than 75 per cent of the workers in the different departments of the shop shall be able to earn not less than $15 per week per capita.'?

"Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the question for all of the reasons heretofore stated as objections to the offer of the [fol. 146] contract itself.

"Trial Examiner Batten: Sustained."

121.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence the stipulation set forth on pages 1838 and 1835 of the transcript of the record with reference to the [to the] portions of the building at 1828-30 Walnut Street which was leased or occupied by petitioner and in overruling petitioner's and intervener's objections thereto, for the reason that while the parties stipulated as to what the facts were, the petitioner and intervener objected to said facts being admitted in evidence because same were immaterial to any of the issues herein, which said objections and ruling of the trial examiner are set forth in the following excerpts from the transcript of the record, Page 1836 (R.II. 381), to-wit:

"Mr. Tyler: It is agreeable to me, of course, subject to the objection that it is incompetent, immaterial and irrelevant.

"Mr. Stottle: Mr. Examiner, respondent also objects that it is immaterial. We are stipulating as to the facts.

"Trial Examiner Batten: When asking you about the stipulation I am not asking you to forego any objection. All you are agreeing to is the facts; whether or not they are relevant is an entirely different matter.

"We will proceed."

122.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 20 and in overruling petitioner's and intervener's objectons thereto as set forth in the following excerpts from the transcript of the record, Pages 1841, 1842 (R.II. 384), to-wit:

"Mr. Leary: Mr. Examiner, we have had prepared from the bank statements which were used during the testimony of Miss Hartman in regard to the Nelly Don Loyalty League this morning, the exhibit for which Board's Exhibit No. 20 was reserved. I now offer that exhibit.

• • • • •

[fol. 147] "Mr. Stottle: Mr. Examiner, that is subject to our continuing objection as to materiality as to the Loyalty League matter.

"Trial Examiner Batten: It will be received subject to the objections of the respondent and the intervener, both that is, your continuing objections."

123.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 27 and in overruling petitioner's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1843, 1844, 1845, to wit:

"Mr. Leary: * * * Now, I offer, Mr. Examiner, what has been identified as Board's Exhibit No. 27, a newspaper clipping from the Kansas City Times under date of May 11, 1937. Is it not a fact, Mr. Ingraham, that you agree that the reporter who took this statement, if called to testify, would testify that the statements that were attributed to Senator Reed were made to that reporter by Senator Reed?

"Mr. Ingraham: That is correct. I am not admitting that Senator Reed made the statements, but just that the reporter would so testify.

"Mr. Tyler: The intervener admits that the reporter would so testify, and objects that nothing that Senator Reed said could in any way be binding on the intervener.

"Mr. Ingraham: Respondent makes the same objection.

* * *

"Trial Examiner Batten: Well, it will be received on the basis of the allegations that you have in your complaint. As to what bearing it has on the issues, I think would be a matter for the Examiner to determine."

124.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving in evidence Board's Exhibit No. 29-A and 29-B and in overruling petitioner's and intervener's objections thereto as set forth in the following excerpts from the transcript of record, Pages 1845, 1846, to wit:

[fol. 148] "Mr. Leary: Mr. Examiner, I offer for the record what has been marked for identification as Board's Exhibit 29-A and 29-B, which is a computation of the salaries received by certain individuals who are officers of the Donnelly Garment Workers' Union, such computations of these persons' salaries being from January 15th, 1937 to and including December 31, 1938.

* * *

"Mr. Stottle: Yes. Respondent wants to object to the materiality of this, assuming that it is correct.

"Mr. Tyler: Intervener makes the same objection. It has no tendency to prove or disprove any issues in this case.

"Trial Examiner Batten: It will be received."

125.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibits 23 and 24-A, 24-B and 24-C and in overruling petitioner's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1856, 1857 (R. II. 387), to wit:

"Mr. Leary: Board offers Exhibits 23 and 24-A, 24-B, 24-C.

"Trial Examiner Batten: Board's Exhibits 23 and 24 were those accounts; 23 was the special fund account of the Donnelly Loyalty League and 24 was the general fund account.

"Mr. Stottle: Respondent makes its continuing objection to any of these exhibits that refer to the Loyalty League matters, and also, we haven't as yet had an opportunity to check the correctness of the figures.

"Trial Examiner Batten: Well, of course, I might say this: that any exhibits which are received, of course, are received subject to correction if there are figures or dates that are found to be incorrect.

"Mr. Stottle: Then, our continuing objection was as to the materiality of that Loyalty League evidence.

"Mr. Tyler: Intervener renews its objection to any evidence in connection with the Loyalty League on the ground that it is purely a social organization, having no connection with the Donnelly Garment Workers' Union, and that any of its actions would not in any way be binding on the intervener, and that it is immaterial and irrelevant to any issue in this case.

"Trial Examiner Batten: Well, they will be received."

[fol. 149] 126.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 22 over the objections of the petitioner and intervener as set forth in the following excerpts from the transcript of the record, Page 1858 (R. II. 387, 388), to wit:

"Mr. Leary: Board offers what purports to be Miss Hartman's memoranda of the Loyalty League and special account maintained at the First National Bank, identified as Board's Exhibit 22. I will have this photostated, and ask permission to insert the photostat.

"Trial Examiner Batten: It will be received subject to the same objections by respondent and intervener as to Board's Exhibits 23 and 24."

127.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to exclude Board's Exhibit No. 30 and in failing and refusing to sustain petitioner's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1858 and 1859 (R. II. 388), and in later accepting the N. R. A. testimony contained in said Board's Exhibit 30 and permitting the Board to offer evidence under said offer of proof (Transcript of Record, Page 2552; R. II. 598a):

"Mr. Leary: Yes, I have several matters. I have the offer of proof that I desire to make at this time, in connection with certain sub-sections of paragraph 11.

"Trial Examiner Batten: That will be marked Board's Exhibit 30.

* * *

"Mr. Ingraham: Well, the respondent objects to the exhibit 30 for the reason it is immaterial and irrelevant to any issue in this case, and refers to matters that occurred prior to the passage of the Wagner Act.

"Mr. Tyler: Intervener makes the same objection.

"Trial Examiner Batten: I will reserve the decision on it."

[fol. 150] 128.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence testimony taken in the so-called N. R. A.-Judge Miller cases, and assigns separately and severally as error the admission in evidence of each and every part of such testimony offered by the Board or by the I. L. G. W. U., and assigns in particular to the admission in evidence of N. R. A.-Judge Miller case Exhibit No. 1-A to 1-BBBB, and to the Examiner's ruling and action in overruling the several objections to said testimony and the several motions to strike said testimony made by the petitioner and intervener (and contained in N. R. A.-Judge Miller case, Exhibit N. 2-A, 2-B and 2-C), as set forth in the following excerpts from the transcript of the record, Pages 1861, 1862 (R. H. 389), to wit:

"Trial Examiner Batten: In accordance with the stipulation, which is marked Board's exhibit N. 1-DDDD, the Board has served upon all of the parties certain testimony taken from the N. R. A. proceeding and the so-called Judge Miller case.

* * *

"The first exhibit, N. R. A.-Judge Miller case exhibit No. 1-A to BBBB is certain testimony which is offered by the Board from the N. R. A. proceedings and it consists of 80 pages.

"N. R. A.-Judge Miller case exhibit No. 2-A, B, and C are the objections and motions of the respondent and intervener to strike the N. R. A. testimony offered by the Board. That is exhibit No. 1-A to BBBB, containing 80 pages, and the following ruling is made, endorsed on exhibit 2-A, B, and C, on sheet 2-C:—

* * *

"Trial Examiner Batten: * * * The objection is overruled and the motion to strike is denied, and the acceptance

of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections."

129.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's and intervener's objections and [fol. 151] motions to strike the testimony contained in N. R. A.-Judge Miller case Exhibit No. 1-A to 1-BBBB and to the following limitation included in said ruling; to wit: "* * * and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections (subjects)", which ruling is set forth on Pages 1861-2 of the record (R. II. 389), and further assigns as error the failure and refusal of the trial examiner to clarify said ruling and designate what parts of said testimony were being received and what parts were being excluded by the above quoted ruling over the objections of petitioner, which objections and rulings are set forth in the following excerpts from the transcript of the Record, Pages 1862, 1863 (R. II. 390), to wit:

"Mr. Ingraham: I don't understand what you are ruling out and what you are leaving in.

"Trial Examiner Batten: I think if you take this and read it, Mr. Ingraham, you will understand just what I am receiving.

* * *

"If there is any question about it after you go over it, I will be very glad to clarify it."

In connection with the foregoing assignment, petitioner calls attention to the fact that the trial examiner later refused to clarify the above quoted ruling and overruled petitioner's motion therefor.

130.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving in evidence N. R. A.-Judge Miller case Exhibit 5-A to 5-GG inclusive, and in overruling petitioner's and intervener's objections thereto and motions to strike same (as contained in N. R. A.-Judge Miller case Exhibit 6-A, 6-B and 6-C), as set forth in the following excerpts from [fol. 152] the transcript of the record, Page 1864 (R. II. 390a), to wit:

"Trial Examiner Batten: * * * N. R. A.—Judge Miller Case exhibit No. 5-A to 5-GG is certain testimony offered by the Board from the Judge Miller case, consisting of 33 pages.

"Exhibit No. 6-A, B, and C, the objections and motions to strike, of the respondent and intervener.

"Exhibit No. 5-A to 5-GG, the objection to such testimony is overruled, and the motion to strike is denied; and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain subjects."

131.

In connection with the foregoing assignment, petitioner also assigns as error the limitation contained in the ruling and action of the trial examiner (and the Board's action in affirming same) that "the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain subjects", for the reason that said ruling and limitation renders it vague and indefinite what portions of the testimony referred to the Examiner intended to and did receive or exclude and what portions of said testimony the Examiner considered in arriving at his findings of fact, conclusions and recommendations, and petitioner makes this assignment to each and every ruling of the trial examiner to which said above quoted limitation was appended.

132.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence N. R. A.—Judge Miller case Exhibit 9-A to 9-CC inclusive, and in overruling the objections of the petitioner and intervener thereto, and in denying the motions to strike said testimony of the petitioner and intervener, and further assigns as error the limitations contained in said ruling, and set forth in the following excerpts from the transcript of the record, [fol. 153] Page 1865, (R. II. 390a, 390b), to-wit:

"Trial Examiner Batten: • • • 9-A to 9-CC is certain testimony from the Judge Miller case, offered by the Board, being the testimony of Sylvia Hull.

"In the case of Exhibit 9-A to 9-CC, the respondent has indicated on the exhibit objections to certain questions through the entire testimony of 29 pages. The intervener objects to all of the testimony.

"The rulings of the Trial Examiner are indicated on the various pages where the individual objections of the respondent appear, and as to the intervener's objection, the objection is overruled and the motion to strike is denied and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects. The objections being marked 10-A, consisting of one sheet, and the rulings entered thereon."

133.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving in evidence N. R. A.—Judge Miller case Exhibits 13-A to 13-R inclusive, and in overruling the objections of the petitioner thereto (contained in Exhibit 14), and further excepts to the limitation included in said ruling, as set forth in the following excerpt from the transcript of the record, Page 1866, (R. II. 390b), to-wit:

"Trial Examiner Batten: • • • NRA-Judge Miller Case Exhibits 13-A to 13-R, consisting of 18 pages, is certain testimony from the Judge Miller case offered by the Board.

"Exhibit 14 is the objections by the respondent to 13-A to 13-R, and the following ruling:

"Objection is overruled and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, and, further, it is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects."

134.

Petitioner assigns as error the ruling of the trial examiner (and the Board's action in affirming same) sustaining the Board's motion of June 21 to amend the complaint; which ruling is set forth on page 1870 of the transcript of the record, (R. II. 390d).

[fol. 154]

135.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) set forth on page 1870 of the transcript of the record (R. II. 390d) permitting the Board to present the witness referred to in Board's exhibit No. 30.

136.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain or rule upon petitioner's motion to dismiss the Complaint in its entirety (Board's Exhibit 1-FFFF) submitted at the close of the Board's case (Page 1872), and in failing and refusing to sustain or rule upon the oral demurrer or motion to dismiss of the intervener made at the close of the Board's case (Page 1873), and further assigns to the ruling and action of the trial examiner in requiring petitioner to proceed with its case prior to a ruling upon its said motion to dismiss, as set forth in the following excerpts from the transcript of the record, Pages 1872, 1873, 1889, 1890, 1891, (R. II. 390d, 390e, 390f), to-wit:

"Mr. Stottle: Mr. Examiner, respondent desires to file its motion to dismiss the complaint in its entirety.

"Trial Examiner Batten: That will be marked Board's exhibit No. 1-FFFF.

"Mr. Stottle: The grounds of the motion, Mr. Examiner, are that there has been no substantial evidence in the record to support any of the charges. In some instances there has been some evidence but it has been of a conjectural and speculative nature that would not be sufficient to constitute a case against the respondent.

"Mr. Tyler: If the court please, the intervener wishes at this point to demur to the evidence of the Board and the International Ladies' Garment Workers' Union and move to dismiss the complaint on the grounds that the evidence [intodnced], if taken as true, would not be sufficient upon which to base any finding which would affect the rights of the intervener; it would be insufficient to base an order on just establishing the Donnelly Garment Workers' Union as bargaining representatives; it would be insufficient to base an order upon which would in any way cancel or affect the contract which the Donnelly Garment Work-[fol. 155] ers' Union have with their employers, or their contract rights; it would be insufficient in any way to use as a basis for any decree, order, or judgment affecting the rights and interests of the intervener.

* * * * *

"Mr. Stottle: * * * of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

"Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in.

* * * * *

"Mr. Tyler: Yes. If the Court please, I wish to amplify the motion of the intervener heretofore made to dismiss by adding as a basis for that motion that no evidentiary basis for any finding that the union was organized by the company or is company dominated has been laid, and that therefore no finding could be made, because no evidence has been submitted as a basis;

"That no basis has been laid for any finding that the company coerced or intimidated or influenced any employee in joining the Donnelly Garment Workers' Union;

"And that no basis has been laid for any possible finding that the company contributed, directly or indirectly financial aid or other aid to the Donnelly Garment Workers' Union;

"No basis has been laid that the union is not a bona fide labor union, with all of the rights guaranteed such union under the Wagner Act:

"And that no basis has been laid for any finding that the union is not a free will choice of the majority of the employees and is not entitled to representation of all of the employees in collective bargaining.

"Trial Examiner Batten: Those additional reasons, I presume you call them, Mr. Tyler—* * * will be considered in connection with the disposition of the motion."

137.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing to sustain or rule upon petitioner's motion to dismiss each of the separate paragraphs of the Complaint which motion was marked Board's Exhibit 1-GGGG and was made and filed at the close of the Board's case (Page 1874) (and argued at Pages 1874 to 1889 inclusive), and further assigns the ruling and action of the trial examiner in requiring petitioner to proceed with its case and evidence prior to a ruling upon said motion, as set forth in the following excerpts from the transcript of the record, Pages 1874, 1889, (R. II. 390e, 390f), to wit:

[fol. 156] "Mr. Stottle: Mr. Examiner, we have another motion to dismiss that goes to each of the paragraphs separately.

"Trial Examiner Batten: The first is a general motion, and this is a specific motion.

"Mr. Stottle: To practically all of the paragraphs, yes, but not every one of them. We will submit it at this time if you will give me a number.

"Trial Examiner Batten: That will be Board's exhibit No. 1-GGGG.

* * * * *

"Mr. Stottle: * * * Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

"Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in."

133.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to strike from the record all the evidence upon each and all of the various paragraphs of the Complaint and in failing and refusing to sustain petitioner's motions therefor, contained and set forth at the bottom of petitioner's motion to dismiss, and in requiring petitioner to proceed with its case and evidence prior to a ruling upon said motion to [stike], as set forth in the following [exceprts] from the transcript of the record, Page 1889, to-wit:

"Mr. Stottle: Then, at the bottom of our motion we have moved that the Examiner strike from the record all evidence upon the various paragraphs which the Examiner does dismiss.

* * * * *

"Mr. Stottle: The motion goes to striking all evidence on the other paragraphs that you may dismiss, as well as (s).

"Trial Examiner Batten: I will reserve decision on that.

* * * * *

"Mr. Stottle: * * * * Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know —

"Trial Examiner Batten: I will tell you now, and I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in."

In connection with the foregoing assignment, petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in later

failing and refusing to sustain petitioner's said motion to [fol. 157] strike all the evidence introduced under each and all of the paragraphs of the Complaint and in permitting said evidence to remain in the record, and further assigns as error the action of the trial examiner in taking said evidence into consideration in his findings of fact, conclusions and recommendations set forth in the Intermediate Report.

139.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to clarify his rulings upon the N.R.A.-Judge Miller case testimony and in denying petitioner's request for such clarification, as set forth in the following excerpts from the transcript of the record, Pages 1891, 1892, to-wit:

"Trial Examiner Batten: **** Mr. Stottle, you have something further?

"Mr. Stottle: This has reference, Mr. Examiner, to your ruling made this morning on the N.R.A. and Judge Miller case testimony submitted by the Board.

"In substance the ruling was the same on all of them, and reads: ' . . . the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings. It is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects.'

"Of course, we are somewhat in a dilemma to understand just what we are required to meet there.

"Trial Examiner Batten: I would say, Mr. Stottle, if there is the least doubt in your mind, you submit your evidence and then I will tell you whether it is material or not.

"Mr. Stottle: You mentioned that there are certain subjects you do not want to go into. If you could just tell us what subjects you mean —

"Trial Examiner Batten: I think the record is clear on that. If it is not, I will clear it up as we go along."

[fol. 158] 140.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in limiting and excluding evidence offered by the petitioner as set forth on Pages 1903 and 1904 of the transcript of the record, and further assigns as error the ruling and comment of the trial examiner therein set forth to the effect that the testimony in N.R.A.-Judge Miller case exhibits Nos. 1 to 16 with reference to the discharge of certain employees (except Tubbesing, Fry and Brooks) should be stricken, and in thereafter considering said testimony so stated to be stricken, and basing his findings of fact, conclusions and recommendations thereon, for the reason that said rulings and action of the Trial Examiner were highly misleading, unfair and prejudicial to petitioner, and in preventing petitioner from putting in evidence concerning the matters stated by the trial examiner to be stricken by the said witness then on the stand, to-wit, Mrs. Elizabeth Reeves, and by other witnesses which petitioner might have called if said misleading ruling had not been made, as set forth in the following excerpts from the transcript of the record, Pages 1903, 1904 (R.II. 396, 397), to-wit:

"Q. I will ask you, Mrs. Reeves, if among the 300 employees that were laid off there was Ellen Fry, Tillie Shirlie, Pauline Lutz, Mamie Tubbesing, Thelma Owen, Glynn Brooks, Nora McKee, Olive Thompson —

"Trial Examiner Batten (Interrupting): Now, are we interested in that entire list?

"Mr. Ingraham: Your Honor, the next question I intend to ask Mrs. Reeves is whether or not over half of these people were called back to work.

"Trial Examiner Batten: Oh, well, then, I thought perhaps, you —

"Mr. Langsdale: If he is permitted to ask that we certainly want to disprove it on rebuttal.

"Trial Examiner Batten: You go ahead and make your objections and I will pass upon the objections when they are made.

[fol. 159] "Mr. Ingraham: That is just what I don't understand. I understood Mr. Langsdale and the Board have offered evidence regarding these people, and their offers have been received.

"Mr. Leary: Not regarding all of the persons you have named, I suggest you read Board's exhibit No. 30 and note that it includes only three names.

"Mr. Ingraham: But you submitted evidence on more than those three people, and the evidence has been received, as I understand it. You submitted evidence on about ten of them.

"Trial Examiner Batten: You mean in some of those other exhibits this morning?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Of course if there is other evidence there with respect to their discharge it should be stricken out, shouldn't it, Mr. Leary?

"Mr. Leary: If it is limited strictly so their discharge, yes, but as to discriminatory remarks, and so forth, made to these persons, I don't think it should be stricken.

"Trial Examiner Batten: I will say now, if there is any such testimony, Mr. Ingraham, in the exhibit, it certainly wasn't my intention that any of that testimony should remain in there with respect to the discharge of these people except those three, and in the N.R.A.-Judge Miller case exhibits Nos, 1 to 16 if there is any testimony of that nature it may be stricken, with respect to the discharge of all of the persons except — what were those three, Mr. Leary?

"Mr. Leary: Tubbesing, Fry, and Brooks."

141.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to admit in evidence petitioner's exhibit No. 6 for the purposes for which same was offered by petitioner and in limiting its admission in evidence, as set forth in

the following excerpts from the transcript of the record, Pages 1907, 1908, 1909, 1910, 1911 (R.II. 398, 399, 400, 401), to-wit:

"Q. (By Mr. Ingraham): Mrs. Reeves, I hand you respondent's Exhibit 6, which is a newspaper article appearing in the Kansas City Star, February 26, 1937, setting out statements by Meyer Purlstein and Wave Tobin, and ask you if you have read that article.

"A. I did.

"Mr. Ingraham: The respondent offers in evidence Exhibit 6.

* * * * *

[fol. 160] "Trial Examiner Batten: For what purpose?

"Mr. Ingraham: For the purpose of showing the situation at this time, and I will offer other articles up until April 23d, when Sylvia Hull and May Fike had their difficulty at the plant.

* * * * *

"Trial Examiner Batten: Well, I might say that I don't like trying these Labor Board cases in the newspapers.

"Mr. Ingraham: Well, Mr. Leary offered a long article of Senator Reed's, and it set out the background and the history, and I am showing our side of this background. Now I am asking this witness—

* * * * *

"Trial Examiner Batten: Well, is this all contained in the Judge Miller testimony?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Well, then, I will say you had better submit it as a transcript from that.

"Mr. Ingraham: Well, I will prove as to the truth of this statement from the Judge Miller testimony, but I would like to examine this witness in regard to whether or not she read this and what occurred. As far as the facts being true, I will prove that by the Judge Miller evidence.

* * * * *

"Mr. Ingraham: I am setting it up for the purpose of showing the situation.

"Trial Examiner Batten: The general situation?

"Mr. Ingraham: At that time.

"Trial Examiner Batten: You mean, background?

"Mr. Ingraham: That is right.

"Mr. Tyler: If the court please, the intervener will also wish to use it on the ground that we are trying motives here, and inner intent, and you can't adequately try a question of that kind without showing the situation, to show what things would affect their intent, or their actual motive. There is no other way to get at motive and intent without showing the surrounding circumstances and things that would influence it.

"Trial Examiner Batten: Do you expect me to be able to determine people's inner feelings?

"Mr. Tyler: I think Your Honor is going to have to determine what the motive was, and you have got to base it on surrounding influence that would—

"Trial Examiner Batten (Interrupting): I am perfectly willing that you should have a reasonable amount of background, as the Board had in the NRA proceeding. They showed it almost entirely by transcript of that [fol. 161] testimony. Now, if this means calling a large number of witnesses for that purpose, I don't want to have the background, as I have said so many times in this case, become the picture.

"Mr. Ingraham: I don't think it will result in that.

"Trial Examiner Batten: Well, if you want to offer it on that basis, I will receive it on that basis, that you offer it for, Mr. Ingraham, but not for the purpose which Mr. Tyler stated that he expects to use it for."

142.

Petitioner assigns as error the rulings, action and comment of the trial examiner (and the Board's action in affirming same) concerning petitioner's exhibit No. 7, and

the failure and refusal of the trial examiner to give consideration to said exhibit, and his comments that said exhibit "doesn't prove anything", as set forth in the following excerpts from the transcript of the record, Page 1917 (R. II. 404), to-wit:

"Trial Examiner Batten: On the basis I received the other one, and this one, it doesn't open up anything, because I am not receiving it to show the truth or the untruth of any statements in the article, merely as an article from the newspaper for whatever it is worth.

"Mr. Langsdale: If it is worth anything, it is worth rebutting.

"Trial Examiner Batten: I say, there is nothing to rebut if it doesn't prove anything. If it doesn't prove the truth or the untruth of any statement contained in it, I don't think it opens up anything.

"Mr. Leary: For all of your reasons, I don't think it should be admitted, Mr. Examiner.

"Trial Examiner Batten: Well, I am admitting it, Mr. Leary, as I told Mr. Ingraham, and he is offering it for the purpose of showing the background of what was occurring about that time, and on that basis I will receive it."

143.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to admit in evidence petitioner's exhibits 8-A and 8-B for the purpose for which same were [fol. 162] offered by petitioner and stated by counsel for intervener, and in refusing to consider same for such purposes or upon such issues, and in limiting the purposes for which same were admitted, as set forth in the following excerpts from the transcript of the record, Pages 1918, 1919, 1920, to-wit:

"Mr. Ingraham: Well, then, respondent offers Exhibits 8-A and 8-B.

* * * * *

"Mr. Langsdale: Now, I assume that this letter is admitted that it will be admitted as one of the newspaper articles, not as a matter in controversy that we have a right to prove was true, or they would have a right to prove was false, unless the matters are within the issues as have been defined by this complaint and by the Examiner? This letter goes into a great many matters that are not before the Examiner here, and if they are going to try to offer—set up an automaton and knock him down, we want to be permitted to prop him up again.

"Mr. Ingraham: Well, if Your Honor please, the Board and Mr. Langsdale have offered evidence that Mrs. Reed read this letter to a meeting, and they have brought the letter into issue.

"Mr. Langsdale: We didn't read the contents.

* * * * *

"Trial Examiner Batten: Well, of course, I don't propose to try the truth or the untruth of any of the statements in the letter.

"Mr. Langsdale: That is all I want to know.

"Trial Examiner Batten: I think I said at one stage in this case that, granting that everything that was said in the answer were true, it still wouldn't answer the charge of an unfair labor practice. In other words, everything that is said might be true, and still there would be an unfair labor practice. I will receive it on the same basis that I received the others, and for the additional reason that it is the letter referred to in the meeting of March 18, 1937, which has been testified to here, I think by two or three different people.

* * * * *

"Mr. Tyler: Well, I ask your Honor to receive it also on the ground that it would throw some light on the question of whether these employees were dominated by their employer and forced to form a labor union, or whether this letter and the effect it had on them was not a cause of their forming a labor union.

"Trial Examiner Batten: Well, I will reserve my decision on that, Mr. Tyler, because I assume that you will want to go over a good many of these and make an offer all together.

[fol. 163] Wouldn't you prefer to do that, without waiving any of your rights?"

144.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting evidence referred to as the "N. R. A. Testimony" offered by the Board and I. L. G. W. U. at various times and in various forms during the hearing, and over the continuing objections of the petitioner and intervener, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1978, 1979 (R. II. 423, 424), to-wit:

"Mr. Stottle: Mr. Examiner, respondent, of course, objects to this N. R. A. testimony as being immaterial because it related to matters long before the organization of the Donnelly Garment Workers' Union and before the passage of the National Labor Relations Act, and we would object to these questions on the same basis that we have to the N. R. A. testimony.

"Trial Examiner Batten: Mr. Stottle, I don't know whether the record is clear or that it is understood, but, as I recall, you made a continuing objection to all testimony that refers to a time prior to the passage of the Wagner Act. And, if I am not mistaken, Mr. Tyler, you joined in that objection.

"Mr. Tyler: I intended to.

"Trial Examiner Batten: I think the record is quite clear.

"Mr. Stottle: May it be understood, if it isn't clear our objection is made?

"Trial Examiner Batten: If it isn't clear, it is understood that you have an objection; and Mr. Tyler, also."

Petitioner assigns as error the rulings, comments and action of the trial examiner (and the Board's action in affirming same) in refusing to permit petitioner or intervenor to introduce evidence relating to a comparison of the contracts between petitioner and intervener union with contracts made between the I. L. G. W. U. and other garment manufacturing companies in Kansas City and [fol. 164] vicinity, and in refusing to permit testimony as to the terms and conditions contained in such contracts between the I. L. G. W. U. and other garment companies in Kansas City and vicinity, which rulings and comments are set forth in the following excerpts from the transcript of the record, Pages 2033, 2034, 2035 (R. II. 435, 436), to-wit:

"A *** Then the vacation schedule came up, and while I individually, of course, learning this from Mrs. Reed when I came out here nearly seven years ago, believed in vacations, inasmuch as this clause is the only kind that I know of in the needle work industry contract, I wasn't sure that the company should bind itself to give vacations with pay, which prior to that time had been optional and in the discretion of the management.

"Trial Examiner Batten: Now, just a moment, Mr. Keyes. Mr. Keyes, volunteering that statement there, I thought that we had the understanding that—I mean, I advised you, rather—I don't know as you all agree with me—that I didn't want to get into a comparison of this contract with other contracts, and I limited the Board's testimony the other day, when I asked them the direct question, if all the questions which they asked applied only to how the contract was negotiated.

"Now this, of course, brings up—Mr. Keyes volunteering this statement that no needle contract has such a phrase any place, you are beginning to compare the contracts.

"The important thing with this contract, and with this union, is not what is in this contract. The important

thing is, did the union, in good faith, and the respondent, sit down and negotiate a contract?

"Now, a union can negotiate any terms they see fit in a contract. So, the only question here is did Mr. Tyler and the committee representing the Donnelly Garment Workers' Union negotiate in good faith, did the respondent negotiate in good faith? And, having arrived at an agreement, they put it in writing and signed it. Therefore, Mr. Keyes' statement about this particular paragraph in comparing it with some other contract, I don't consider that it should be accepted, in accordance with my prior ruling. Therefore, I won't receive it.

"Mr. Tyler: Your Honor has in mind that the intervener asserts that comparison with other contracts is valid and admissible evidence to show the genuine negotiation of this contract and the genuineness of the desires of the employees to negotiate in this matter, and have their own union, and we except to your ruling that comparisons are not proper.

"Trial Examiner Batten: Yes, I understand your position, Mr. Tyler, and I only say in answer to that, this: that the Donnelly Garment Workers' Union or the International Ladies' Garment Workers' Union or any other union can negotiate any contract they want. I mean, they could go out here and negotiate a contract for less [fol. 165] wages, less salaries, no vacations, and abominable conditions, if the union wanted to do it. So I say that I am not concerned about comparison of these contracts. I am concerned about, did they actually negotiate, and agree on these things, and when they agreed, sign the contracts; and, of course, as I understand it, that is the matter, Mr. Tyler, which you except to?

"Mr. Tyler: Yes.

"Mr. Ingraham: Respondent excepts."

146.

Petitioner assigns as error the rulings and actions of the trial examiner (and the Board's action in affirming same) in sustaining objections to the testimony offered by petitioner, as set forth in the following excerpts from the

transcript of the record, Pages 2071, 2072 (R. II. 445), to-wit:

"Q. Did Fern Sigler leave after that conversation?

"A. She left. I think it was some 30 minutes, or something like that, after she got to the office.

"Q. State whether or not she then performed services for the International Ladies' Garment Workers' Union?

"Mr. Langsdale: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Ingraham) Do you know whether or not she called on the customers of the Donnelly Garment Company in Kansas City?

"Mr. Langsdale: I object to that as immaterial. This is not an 8 (3) case.

"Trial Examiner Batten: Sustained."

147.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in denying to petitioner the right to examine witness with respect to Sylvia Hull's being in Atlantic City, and the Examiner's comments that said testimony was not material, and his action in striking same from the record, as set forth in the following excerpts of the record, Pages 2073, 2074 (R. II. 446), to-wit:

[fol. 166] "Q. Did you later learn that Sylvia Hull was in Atlantic City attending the International Ladies' Garment Workers' Union convention?

"A. I did.

"Q. Was there a newspaper article in the papers regarding that?

"A. There was.

"Q. (By Trial Examiner Batten) You mean, she was there at the time these calls were made?

"A. No. She was there after the calls were made trying to locate her.

"Trial Examiner Batten: Then, I don't see what that has to do with it. I don't think it has anything to do with it if it was after these calls were made.

"Mr. Ingraham: If Your Honor please, I want to show that we not only called but later learned she was in Atlantic City, and therefore there wouldn't have been any use to call, if she was there.

"Trial Examiner Batten: I don't think that is material at all. The testimony about her being in Atlantic City, if it was after your attempts to call, may be stricken out."

148.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to admit in evidence Petitioner's Exhibit No. 10 for all purposes as offered by petitioner and in limiting its admission in evidence, and in ruling and stating that the Examiner would receive same "for just what they are worth as newspaper articles and that is all", as set forth in the following excerpts from the transcript of the record, Pages 2076, 2077, 2078 (R. II. 448, 449), to wit:

"Q. I hand you respondent's exhibit No. 10 and ask you to state what publication that is.

"A. It is 'Justice', published by the International Ladies' Garment Workers' Union.

"Mr. Ingraham: I offer in evidence respondent's exhibit No. 10, the report of Sylvia Hull's speech.

"Trial Examiner Batten: What date is that?

"Mr. Langsdale: June 1, 1937.

"Trial Examiner Batten: Mr. Ingraham, what is the purpose of this, if you are to disclose it? Is it to show the situation as it existed? It is not to prove the truth or untruth of anything in there, is it?

"Mr. Ingraham: Yes, indeed. This is the official paper of the International.

"Trial Examiner Batten: I certainly won't receive it to prove anything, an article in a newspaper.

[fol. 167] "Mr. Ingraham: Even though it is published by the International?

"Trial Examiner Batten: I don't care whom it is published by.

"Mr. Ingraham: Wouldn't that be considered as an admission?

"Trial Examiner Batten: I don't believe in trying any of these hearings on newspapers, trade papers, or anything of that kind. If you want to offer it on the same basis you offered the other newspaper articles, I will receive it on that basis.

"Mr. Ingraham: I offer it, of course, for all purposes.

"Trial Examiner Batten: I am saying I will not receive it for all purposes. But if you want to offer it on the same basis as exhibits Nos. 6 and 7, although it restricts your general offer, I will receive it on that basis, on the basis of respondent's exhibits Nos. 6 and 7, and [they] you may have your exception.

"Mr. Ingraham: I am still offering it for all purposes; and you are not allowing it to be received for all purposes?

"Trial Examiner Batten: That is correct. But my question still is, do you want me to receive it on the same basis I did receive exhibits Nos. 6 and 7, having refused to receive it for general purposes?

"Mr. Ingraham: Yes.

"Mr. Stottle: Mr. Examiner, may it not also be received to show that she said these things, even though the things she did say were not true?

"Trial Examiner Batten: Mr. Stottle, I assume this article is in the same class as the other two, it speaks for itself.

"Mr. Stottle: You let Senator Reed's statement in to show that he said certain things, didn't you?

"Trial Examiner Batten: It was stated, in connection with that, that if the reporter were here he would testify Senator Reed said those things. I will receive it on that basis, although that is not Mr. Ingraham's offer. I am not going to receive these newspaper articles as proving or disproving anything that is said in them. I will receive them for just what they are worth as newspaper articles, and that is all."

149.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the witness Baty to answer the question, "Did you do all you could to stop the demonstration", referring to the alleged demonstration at the Donnelly [fol. 168] plant on April 23, 1937, as set forth in the following excerpts from the transcript of the record, Page 2153 (R. II. 483, 484), to wit:

"Q. (By Mr. Ingraham) Was any other official of the company there at the time?

"A. There was not.

"Q. Did you do all you could to stop the demonstration?

"Mr. Langsdale: Now, just a moment. I still think that this answer should be based upon the question as to whether or not he knows. The fact that no other executive was there at the time doesn't show that it wasn't planned the night before or the night before that.

"Trial Examiner Batten: It may stand for whatever value it has. What was the last question?

(Whereupon, the last question was read by the reporter).

"Trial Examiner Batten: That certainly is repetition. You went into quite some detail yesterday about what he did when he went up on the floor with these different girls, and sent the others back, and so forth. Of course, if you want him to just categorically deny everything that is in the complaint, just read it to him and then I have no objection to him denying it, Mr. Ingraham."

150.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in receiving testimony concerning I. L. G. W. U. exhibit No. 17 over the objections of the petitioner as shown on Pages 2306 to 2310, inclusive, of the transcript of the record, and in considering said evidence in arriving at his findings of fact, conclusions and recommendations contained in the Intermediate Report.

151.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence Board's Exhibit No. 30 and in overruling petitioner's and intervener's objections thereto and their motions to reject said offer of proof and the N. R. A. testimony in said offer, and in permitting witness to testify under said offer of proof, as set forth in the following excerpts from the transcript of the record, [fol. 169] Pages 2367, 2368 and 2552 (R. II. 598a), to wit:

"Mr. Stottle: Mr. Examiner, the Board has filed an exhibit, Marked 30, which is an offer of proof concerning Ellen Fry, Glynn Brooks, and Mamie Tubbesing. The respondent has prepared an objection and motion to reject that offer of proof, which we now wish to present to you. "I might say that this objection was made in the name of the respo dent only but that this morning Mr. Tyler, representing the intervener, has added a clause at the bottom stating that he joins in the objection and motion, and that appears upon the paper which we are presenting.

"Trial Examiner Batten: This will be marked Board's exhibit No. 1-HHHH. I will take the original with me.

"Mr. Tyler: I wish to state I have gone over this paper and considered it, and wish to join in it, as indicated by the signature at the bottom.

"Trial Examiner Batten: It will be taken under advisement.

* * *

"Trial Examiner Batten: Now, on the matter of the Board's Exhibit L-IIII, which is the objection and motion of the respondent and the intervener to the Board's offer, which is marked 'Board's Exhibit 30', the objections are overruled and the motion to strike is denied, which means, Mr. Leary, that the NRA testimony which was in the offer will be accepted, and you will have one witness ready for presentation of her testimony, strictly limited to the point in your offer."

152.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit petitioner to call and examine witnesses concerning the circulation and signing of the petition of March 2, 1937, and in limiting the number of witnesses which might be called to testify concerning same and in requiring petitioner to make an offer of proof thereon as to other witnesses, as set forth in the following excerpts from the transcript of the record, Pages 2457, 2458 (R. II. 552), to wit:

"Q. Did you sign the petition that was circulated March 2d?

"A. I did.

"Q. Did any officer of the company ask you to sign that petition?

"A. No.

[fol. 170] "Trial Examiner Batten: Well, now, Mr. Ingraham, do I understand that you intend to call a large number of individual employees?

"Mr. Ingraham: Yes, your Honor.

"Trial Examiner Batten: To testify?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Well, now, of course, I don't propose to have a large number called to testify to this point. You may call a reasonable number, and use your own judgment as to what is reasonable.

"Mr. Ingraham: All right, your Honor.

"Trial Examiner Batten: And make an offer of proof on the entire balance, if you want to, but I am not going to listen to all of them, but you use your own judgment as to what you think is a reasonable number, and at that time I think we can probably determine what will be done."

153.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining objection to the following question asked by

petitioner of the witness Atherton, as shown in the following excerpt from the transcript of the record, Page 2463 (R. II. 553), to wit:

"Q. Mr. Atherton, did you witness any violence at the Missouri, Gernes, or Gordon plants during the month of March, 1937?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained."

154.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining the Board's objection to question asked by petitioner of the witness Atherton, as set forth in the following excerpts from the transcript of the record, Pages 2466, 2467 (R. II. 555), to wit:

"Mr. Langsdale: Is that the March 18th meeting?

"Mr. Ingraham: March 18th.

"Q. (By Mr. Ingraham) Did the employees take any action at that meeting?

"A. They did not.

"Q. Did the violence at the Missouri, Gernes and Gordon plants increase from that date on?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained."

[fol. 171] 155.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) in sustaining objections of the Board and I.L.G.W.U. to question asked of the witness Atherton by counsel for the intervener on Page 2500 of the record, and in refusing the offer of proof made by counsel for the intervener on Page 2501 of the record, concerning the disturbances at the Missouri, Gordon and Gernes factories prior to March 18, 1937, and to the question asked of said witness by counsel for intervener on Page 2501 of the record as to the state of mind of employees of the Donnelly Garment Company in regard to said conditions at the

Missouri, Gordon and Gernes plants, and the comments of the trial examiner concerning said matters, and the ruling and action of the trial examiner in making the same ruling upon petitioner's objection to said ruling and to petitioner's offer of proof on said matters; as set forth in the following excerpts from the transcript of the record, Pages 2500, 2501, 2502, 2503, 2504, 2505, 2506 (R.II. 574, 575, 576, 577), to-wit:

"Q. (By Mr. Tyler): Mr. Atherton, was the subject of disturbances at the Missouri, Gordon and Gernes plants before March 18, 1937, a subject of common discussion among the employees at the Donnelly Garment plant?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Tyler): What was the state of mind of the employees of the Donnelly Garment Company in regard to conditions at the Missouri, Gordon and Gernes plants before March 18, 1937?

"Mr. Leary: I object to that as being without a foundation, that this witness knows what the state of mind of the employees at the plant was; and immaterial, also.

"Trial Examiner Batten: Well, I will sustain it on the ground it is immaterial.

"Mr. Tyler: I offer to prove by this witness that the subject of the violence at the Missouri, Gordon and Gernes plants before March 18, 1937, was one of almost continual conversation by the employees of the Donnelly Garment Company plant, and the Donnelly Garment Sales Company, and that the condition of the employees' minds at that plant was one almost bordering on hysteria and continued to increase in intensity as the strikes went on at the Gordon, Gernes and Missouri plants, and that that was one of the main causes of their employing attorneys, and later on was one of the impelling reasons for them to [fol. 172] organize their own labor union.

"Mr. Leary: I will object to the offer on the same grounds.

"Trial Examiner Batten: The offer is refused.

"Mr. Langsdale: The International Ladies Garment Workers' Union objects to the offer upon the ground that it includes, a part of it, to permit this witness to pass upon the mental attitude of other employees, and he has shown no knowledge, laid no foundation to show that he is capable of passing on the mental attitude of those employees.

"Mr. Tyler: The record shows that this witness was employed at the plant; that his duties caused him to circulate about the plant, and I submit that any employee in such circumstances is competent to tell what the subjects of discussion were which were uppermost, and what the general attitude of employees was.

"Trial Examiner Batten: Well, of course, I assume — I don't know — I wasn't here, but I assume that probably there was so much talk in the plant that it even interfered with production. In fact, I have never seen a case yet where two unions, or one union, is conducting an intensive organizational campaign that it doesn't affect production in the plant. I mean, it just goes without saying that it is a part of it. You can't separate it, so I don't suppose there is any argument but what in this plant and all the rest of the plants, if it was all material to this hearing, the production was reduced.

"Now, my point on this is this: that if the respondent, or any of its officers formed this union or assisted in forming it, or after it was formed they sponsored it or in any way assisted it, even if you were to prove that all the 1,350 employees in here were ready to shoot the next International Ladies' Garment Workers' Union member which they met, it still wouldn't detract one ounce from the fact that the respondent had either formed, sponsored or dominated the union, and even though you were to definitely prove that and permit it on the record, if the Board hasn't proved that this union was either formed, sponsored or is now dominated by this company, the respondent is not guilty of an unfair labor [practive], irrespective of what the employees do, because they can do whatever they please, I mean, within reasonable limits, and I thought I ought to make that statement just in explanation of my ruling.

"Mr. Tyler: If the Examiner please, I intend to make no point as to reduction of production by these difficulties.

I do say that there is no more important fact, and no fact approaching in importance the fact of that caused the employees of this company to form their own union. The Board is claiming that it was domination or fear or bribery, or some such influence by the employer.

"I submit that the employees asserting that they formed the plant of their own free will, will, in establishing that fact, have the right to refer to the causes which influenced them in making that choice, and undertake to show by this witness that one of the causes was not the employer domi- [fol. 173] nation, but was fear and dislike of what the International was doing in its campaign to organize garment workers in Kansas City.

"I take it I have an exception to your Honor's ruling without —

"Trial Examiner Batten (interrupting): Well, of course, you have an automatic exception.

"Mr. Stottle: And, Mr. Examiner, you will recall that Mr. Ingraham asked similar questions as to violence down at the Gordon and Gernes plant, and whether it increased, and your Honor sustained the objection to those questions. Our position also is that that would show a motive or a reason for the formation of this union, and would tend to show that it was not company domination.

"Trial Examiner Batten: Well, you may have an objection and I will make the same ruling, Mr. Stottle.

"Mr. Stottle: Mr. Ingraham didn't make an offer of proof. When he comes back, I will ask him if he desires to enter it, or let the question go.

"Trial Examiner Batten: Let him decide when he comes back, and I will determine it, and I would make the same ruling, and I would say the same to the respondent. It isn't a question of whether these people had a motive to organize the union. The only question is, did the respondent have anything to do with it, and if they didn't they can have any motive they please.

* * * * *

"Mr. Shepard: Respondent makes the same offer of proof, and takes exception to your ruling."

156.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit testimony offered by intervener concerning the visit of employees of petitioner to Chief Higgins of the police force or to call and examine witnesses with reference thereto, as set forth in the following excerpts from the transcript of the record, Pages 2523, 2524 (R.II. 585, 586), to-wit:

"Q. Was there any particular incident that you know of that brought about the visit of the employees to Chief Higgins of the police force?

"A. Yes; the rumored threats that we would be next on the list. . .

"Trial Examiner Batten: Now, just a moment. I think that is covered entirely by the offer of proof that I have asked for, Mr. Tyler.

"Mr. Tyler: Very well.

[fol. 174] "Trial Examiner Batten: I mean, in those paragraphs which Mr. Langsdale has asked to have stricken, as I recall it, those matters are covered.

"Mr. Tyler: Your Honor rules this witness cannot testify as to the visit of the employees to Chief Higgins and what it was for?

"Trial Examiner Batten: I have merely said, when I receive those offers of proof, which includes this matter, I will then determine how much, if any, of what we will take testimony upon."

157.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling petitioner's objection to questions asked the witness Atherton by Mr. Langsdale, as set forth in the following excerpts from the transcript of the record, Pages 2572, 2573, to-wit:

"Q. (By Mr. Langsdale): I will ask you if you heard Mrs. Reed make this statement [this] is contained in the affidavit on page 861:

"'In the first place, a group of employees on or about March 18, 1937, came to my office and told me that all of the employees were going to meet to discuss ways and means to protect themselves'.

"And then skipping —

"Mr. Ingraham (interrupting): I object to Mr. Langsdale skipping. If he is going to read from this affidavit, he ought to read it so it is connected up.

"Mr. Langsdale: I am merely asking this witness if he heard this statement read.

"Trial Examiner Batten: Well, I think that thus far in the hearing, there have been many instances where a witness has been asked whether they heard a certain thing, and certainly, they haven't read the entire affidavit or the entire testimony, either.

"Q. (By Mr. Langsdale): Skipping down to the last sentence of that paragraph, taking it up with that sentence, in which she says:

"' *** I went to the meeting and told them that the Company's attorneys would consider what legal steps might be advisable in the event the union carried out its threats.'

"Did you hear Mrs. Reed make that statement?".

[fol. 175] 158.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain petitioner's objection to question asked the witness Atherton, as set forth in the following excerpts from the transcript of the record, Pages 2573, 2574, to-wit:

"Q. Now, you have been here in the court room waiting to testify how long, Mr. Atherton?

"Mr. Ingraham: I object to that. It is immaterial to any issue in this case. He has a perfect right to be in the court room.

• • • • •

"Trial Examiner Batten: You may proceed, and I will determine whether it has anything to do with it."

159.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) refusing to permit petitioner to produce further witnesses or testimony concerning the March 18 meeting and forcing petitioner to make offers of proof as to other witnesses concerning same, as set forth in the following excerpts from the transcript of the record, Page 2607 (R.II. 610d, 611), to-wit:

"Trial Examiner Batten: Mr. Stottle, I will permit this witness to testify, but I certainly don't intend to listen to any more witnesses of what occurred at the March 18th meeting, because thus far in the record, there is apparently no dispute. I mean, there is no use of going on with an unlimited number of witnesses telling about a meeting. So if there is any further witness to be offered on the March 18th meeting, it will have to be in the form of an offer of proof.

"Mr. Stottle: Mr. Examiner, of course, the respondent's position is that if that matter is controverted, we are entitled to show by any number of witnesses as to what did happen.

"Trial Examiner Batten: Well, —

[fol. 176] "Mr. Stottle (Interrupting) And we are willing to make an offer of proof as to this Witness, or succeeding witnesses.

"Trial Examiner Batten: I say, you may proceed with this witness, but I am telling you now that if you had in mind offering any further witnesses about this March 18th meeting, I don't propose to go into it.

"Mr. Stottle: Well, in view of your Honor's ruling, we will make offers of proof as to other witnesses."

160.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) sustaining objections to questions asked the witness Nellie

Stites and the comments, ruling and action of the trial examiner refusing to permit petitioner to introduce testimony that the Donnelly Garment Workers' Union and its executive committee represent the free choice of petitioner's employees as their bargaining agency concerning wages, hours and working conditions in the Donnelly plant and requiring petitioner to submit offers of proof concerning said matter, as set forth in the following excerpts from the transcript of the record, Pages 2610, 2611, 2612 (R. II. 612, 613, 614), to wit:

"Q. Does that union, the Donnelly Garment Workers' Union and its bargaining committee represent your free choice in that matter?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Mr. Stottle: What was the ruling, Mr. Examiner?

"Trial Examiner Batten: Sustained.

"Mr. Stottle: Well, Mr. Examiner, we are charged with preventing the employees from exercising their free will in the choice of bargaining representatives. That is one of these three complaints or charges in the the complaint, and we submit that one of the best ways of finding out whether a person did a thing of their own free will is to ask that person whether they did, and it is our purpose to ask this witness, and as many other witnesses—

[fol. 177] "Trial Examiner Batten: (Interrupting): Well, I don't think that is any indication, to put these witnesses up on the stand in a hearing of this kind, in a "C" case, in front of all the other employees and representatives of the company, and ask them, 'Is this your free choice?'. I mean it may possibly have some remote bearing, but I don't think it has sufficient that we should spend the time necessary to listen to 1300 employees get on the witness stand and testify to that point.

"Now, if that is your idea, you may make an offer of testimony with respect to these 1305 employees, or whatever it is, but certainly, we are not going to determine that in this hearing on that basis, at least.

"Mr. Tyler: Could I ask you if the Examiner holds that there is any presumption that these people are being dominated by somebody in the court room in this matter, or any presumption that they would commit perjury?

"Trial Examiner Batten: I didn't even intimate such a thing.

"Mr. Tyler: I understood you to say that their testimony as to what they wish, would be either of no value or extremely little value.

"Trial Examiner Batten: I didn't say any such thing, I don't think.

"Mr. Tyler: I misunderstood you, then.

"Trial Examiner Batten: The record will state what I said in my remarks.

"Mr. Stottle: Well, Mr. Examiner, don't you think we should have the testimony of this witness with the persons that you have referred to excluded from the court room?

"Trial Examiner Batten: No, I don't think it is of any value in the issues in this case, to parade these people on the stand. Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter."

161.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) sustaining objection to question asked the witness Mrs. Stites, and refusing to permit petitioner to introduce evidence concerning strikes and disturbances caused by the I. L. G. W. U. at the Gordon, Gernes and [fol. 178] other garment factories in Kansas City and the effect thereof upon the employees of petitioner and requiring petitioner to make offers of proof concerning said matters, as set forth in the following excerpts from the transcript of the record, Pages 2612, 2613 (R. II. 614), to wit:

"Trial Examiner Batten: But you have had Mr. Patten or Mr. Lane, or someone, representing you every day of this hearing, have you not?

"Mr. Tyler: Yes.

"Mr. Stottle: But, Mr. Examiner, I have never discussed with Mr. McConaughey one word as to what his negotiations were—

"Trial Examiner Batten: I want the record to show that while the witnesses have not been here all of the time, the attorneys have been."

178.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining the objection of the Board to questions and answers of the witness Jack McConaughey, as set forth in the following excerpts from the transcript of the record, Page 2838 (R. II. 700), to wit:

"Q. Were you familiar with the principal subjects of discussion among the employees of the two companies during the months of March and April, 1937?

"A. Yes Sir.

"Q. What were the principal subjects of discussion?

"A. Strikes at the Gernes plant, and what we might be able to do to protect ourselves from the apparent danger that was due us in a short while.

"Q. Did you hear of any threats that the same proceedings would be taken as to employees of the Donnelly companies as were being taken against employees at the Gernes, Gordon and Missouri plants?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Objection sustained."

179.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit evidence concerning strikes and violence at other garment plants in Kansas City and the effect thereof upon petitioner's employees [fol. 191] and in striking the answer of the witness Jack

other witnesses have testified to, I don't think it is necessary.

"Mr. Stottle: Respondent desires to show in an offer of proof that the witness is excluded from testifying, for the reason you have indicated, that is an important matter; and, for the reasons Mr. Tyler has stated.

"Trial Examiner Batten: I think it is an exceedingly important matter. I agree with you on that.

"Mr. Stottle: What is the ruling on the objection to this witness being excluded from testifying on it?

"Trial Examiner Batten: I will reserve my decision.

"Mr. Tyler: For the present the ruling is, this witness is not allowed to go into the negotiations of May 27, 1937?

"Trial Examiner Batten: Excepting in so far as he testifies to matters that have not yet been covered.

"Q. (By Mr. Tyler): Do you know, Mr. McConaughey, as to what matters have been described in this hearing as being covered by the negotiations of May 27?

"A. I wasn't present at the time of the testimony of any other witnesses in this courtroom on that subject, so I don't know exactly what has been covered.

"Q. Has anybody told you fully, in detail, as to what has been covered by the other witnesses?

"A. No, sir.

"Q. Were you present at any negotiations of June 21 or June 22, 1937?

"Mr. Stottle: Just a moment. Mr. Examiner, in view of the witness' last two responses, respondent renews its objection to his being excluded from testifying, because it is apparent that no one could determine now whether he has any new matters or not.

"Trial Examiner Batten: Mr. Stottle, you have been present every day of this hearing, haven't you?

[fol. 190] "Mr. Stottle: Yes.

"Trial Examiner Batten: And you, Mr. Tyler?

"Mr. Tyler: I have been absent a day or two.

testify to new matters, and the Examiner's refusal to permit the offering and questions of witnesses upon said matter to determine whether such witnesses can testify as to matters not theretofore covered by other witnesses, and in overruling petitioner's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 2833, 2834, 2835, 2836, 2837 (R.II. 697, 698, 699), to-wit:

"Q. (By Mr. Tyler): I hand you Board's exhibit No. 6, being the articles of agreement between the Donnelly Garment Workers' Union and the Donnelly Garment Company and the Donnelly Garment Sales Company, and ask you what matters were discussed in those negotiations between the union and the companies on May 26, 1937.

"Trial Examiner Batten: Mr. Tyler, I want to make the same ruling on this that I just made on the other. There have two members of this executive committee testify in detail about this, and either two or three of the respondent's witnesses. So, unless you are going to cover matters that have not thus far been covered, I don't want to go into it with this witness. Now, if there is anything else, anything new, I want you to cover it with this witness, but Miss Todd and Mr. Atherton, both of whom were at this meeting testified quite extensively about these negotiations—and Mr. Baty, and I believe Mrs. Reeves. So, unless there is something new, I think it is cumulative.

* * * * *

"Mr. Stottle: Mr. Examiner, respondent would say in that connection, that your statement that unless some new matters were to be gone into—it could hardly be determined what the witness would testify to unless he is permitted to answer the questions and state what did occur.

[fol. 189] "Trial Examiner Batten: Mr. Stottle, I presume Mr. Tyler has interviewed this witness as to his testimony, and gone over it thoroughly, as every attorney should before examining his witness, so that he should be able to judge that. I can't. I am simply saying, if there is anything this witness can testify to about these negotiations that will add to the information in this record, certainly the Examiner wants it and the Board wants it. If it is simply a matter of repeating what at least four

"She said, 'Glynn, we have a lot of old girls out we would have to place before we place you'.

"I said, 'Well, I would like to work if there is any chance for me to'.

"She said, 'If you do we will not recognize your union. You will have to join ours'.

"I said that was all right, I didn't expect her to.

"Mr. Ingraham: I move that the answer be stricken out. It goes beyond the allegations of the complaint.

"Trial Examiner Batten: Objection overruled."

175.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain motion to dismiss and demurrer to the evidence made by intervenor at the close of petitioner's case (Page 2813 of transcript of record) and in later overruling said motion and demurrer.

176.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit intervenor to offer further witnesses or testimony concerning the meeting of March 18, 1937, as set forth in the following excerpt from the transcript of the record, Page 2832, to-wit:

"Trial Examiner Batten: Now, Mr. Tyler, as far as this March 18 meeting is concerned, there is no need of any more witnesses testifying to it, unless you have something you want to go into that has not already been covered."

[fol. 188] 177.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit intervenor to offer further witnesses or testimony concerning the negotiations between the Donnelly Garment Workers' Union and petitioner concerning the contract of May 27, 1937, and the Examiner's action, ruling and comments that further witnesses will not be permitted on said subject unless they can

may submit your offer of proof as though the witnesses were here and present.

* * * * *

"Trial Examiner Batten: Mr. Stoltle, if you have finished your questions about the April 27 meeting, I don't care to listen to any further witnesses on it, unless it is something that has not yet been covered by the previous witnesses".

173.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence I.L.G.W.U. Exhibit No. 16 over the objections of petitioner and intervener, as set forth in the following excerpts from the transcript of the record, Pages 2771, 2772 (R.II. 677), to-wit:

"Mr. Stoltle: Mr. Examiner, respondent is not objecting to the lack of identification, but respondent does object that it does not tend to prove or disprove any issue in the case and would therefore be immaterial.

* * * * *

"Mr. Tyler: We have no objection to the offer of the picture, but we do object if the picture is [tofered] with the inference that it is of the meeting of April 27, because the context shows it refers to a meeting of May 11.

* * * * *

"Trial Examiner Batten: It will be received for whatever value it has."

174.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling petitioner's motion to strike out answers of the witness Glynn Brooks Yarnell, as set forth in the fol- [fol. 187] lowing excerpts from the transcript of the record, Page 2809, to-wit:

"A. I told her I had been informed that the old Donnelly girls, that is, the union girls were being reinstated, and I told her I would like to come back to work if that was true.

171.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpt from the transcript of the record, Page 2712 (R.II. 658), to-wit:

"Trial Examiner Batten: Mr. Patten, on this question, which has come up frequently, I think about the first week, in fact, Mr. Tyler brought it up; this question of the mental attitude of these people, due to the organizational campaign of the International Ladies' Garment Workers' Union, and all that that goes along with it. I think I should tell you now that if there is any further testimony of that kind, you can put in an offer or proof, because I don't think it is material to the issues here, and I think I told Mr. Tyler one day when he spoke about it, said that he felt that it was a motive or would be one motive, that would explain the organization of the independent union, and I think at that time I disagreed with Mr. Tyler. So if you have any further evidence in that line, you will submit it in an offer of proof, and if you care to, of course, you may submit another witness and ask those questions to make your record. If you don't care to do that, you may submit it without offering another witness."

172.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit petitioner to offer further witnesses concerning the meeting of April 27, 1937, [fol. 186] and requiring petitioner to submit offers of proof thereon, as set forth in the following excerpts from the transcript of the record, Pages 2731 and 2766 (R.II. 662, 676), to-wit:

"Trial Examiner Batten: Mr. Stottle, I think after this witness covers the meeting of April 27, unless there are some new matters, I will not hear from any further witnesses about it, because I think there has been sufficient testimony about that meeting. As I said in other instances, you might call another witness and ask the questions and show that the witness was not permitted to answer, or you

"Q. (By Mr. Patten) Have you ever heard any employee complain that they didn't want to join the Donnelly Garment Workers' Union?

"A. No, sir.

"Mr. Leary: I object to that as calling for hearsay, and also, that it is immaterial.

"Mr. Patton: I asked what she heard.

"Trial Examiner Batten: I will sustain the objection. It is immaterial, and I will overrule the matter of hearsay.

"Mr. Leary: I move the answer be stricken.

"Trial Examiner Batten: It may be stricken."

170.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining objections to questions asked Mrs. Martin by counsel for intervener, as set forth in the following excerpts from the transcript of the record, Pages 2703, 2704 (R. II. 655), to-wit:

"Q. Do you know of any employee that is dissatisfied with the committee of the Donnelly Garment Workers' Union as their bargaining agent?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

[fol. 185] "The Witness: May I answer that question?

"Trial Examiner Batten: No.

"Q. (By Mr. Patten): Are you afraid of the International Ladies' Garment Workers' Union?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Patten): Were you afraid of that union in the spring of 1937?

"Mr. Leary: [Same] objection.

"Trial Examiner Batten: Same ruling."

"Mr. Tyler: Yes, sir.

"Q. (By Mr. Tyler) Mrs. Stites, did any officer of the company, or representative of officers of the company, tell you about these things you have said you heard about, or did you hear them from other people?

"Mr. Langedale: I object to that as immaterial.

"Trial Examiner Batten: Objection sustained."

168.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining objections to questions asked the witness Mrs. Lynn Davis by counsel for respondent, as set forth in the following excerpts from the transcript of the record, Page 2676 (R. II. 640a, 641), to-wit:

"Q. (By Mr. Stottle) Mrs. Davis, did you hear any statement made at the March 18th meeting by Mrs. Reed or anyone else that she wanted the names of the Donnelly Garment Company employees reported to her or reported to the management of any employees who belonged to the International Ladies' Garment Workers' Union?

"Mr. Leary: I object to that as cumulative.

[fol. 184] "Trial Examiner Batten: Sustained.

"(By Mr. Stottle) Did you hear Mrs. Reed state that she would never let the International Union into her plant?

"Mr. Leary: [Sam] objection.

"Trial Examiner Batten: Sustained."

169.

Petitioner assigns as error the rulings and action of the trial examiner in sustaining objections to question asked the witness Mrs. Martin by counsel for intervener and striking the answer made thereto (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, Pages 2702, 2703 (R. II. 654, 655), to-wit:

told that they were coming over to our plant—the expression they used was 'to get us next.' And there was quite a bit of fighting over there, and tearing of clothes off. Naturally, we felt we needed some protection of some kind.

"Mr. Langsdale: I ask that all of that part of the answer about what had been going on [other] there be stricken out as not responsive to the question.

"Trial Examiner Batten: It may be stricken."

167.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to permit the witness Nellie Stites to answer questions propounded by counsel for the intervener and in refusing the offer of proof made by intervener thereon, and in sustaining objection to subsequent [fol. 183] question asked said witness, as set forth in the following excerpts from the transcript of the record, Pages 2650, 2651 (R. II. 631, 632), to-wit:—

"Q. (By Mr. Tyler) You talked to people who told you they had met with violence at the Gordon and Gerngs plants?

"Trial Examiner Batten: Now, I think I have indicated all through this hearing that I am not going into these matters, Mr. Tyler.

"Mr. Tyler: Then, intervener joins in the same offer of proof on this matter just offered by the respondent.

"Trial Examiner Batten: You mean page 5, Mr. Tyler? That is the page that applies to this matter.

"Mr. Tyler: Yes.

"Trial Examiner Batten: With reference to the offer on page 5, it will be refused.

"Mr. Tyler: And also, repeat the offer of proof which intervener made on the same subject heretofore.

"Trial Examiner Batten: The offer is refused. In order to identify that, the respondent's offer of proof has been marked I-1111, and you are not referring to the fifth page of that?

"Mr. Langsdale: I object to that as immaterial.

"Trial Examiner Batten: You may ask your questions, but then I will ask you to present an offer of proof.

"Mr. Tyler: We will be very glad to join in the offer of proof, if the Examiner doesn't want to hear that.

"Trial Examiner Batten: I didn't overlook that you were asking the questions, but I thought, in order to have [fol. 182] the record indicate it, your question and the answer could go in, but then I intended to ask for an offer of proof.

"Mr. Tyler: Your Honor rules that she may answer this question?

"Trial Examiner Batten: Yes.

"Mr. Langsdale: The International Ladies' Garment Workers' Union wants to object on the ground that it calls for a conclusion of the witness and is invading the province of the Examiner, without any basis for showing that this witness knew what the effect was upon any other employee than herself.

"Mr. Tyler: I think it is a matter of fact which one constantly in a plant can testify to, as to the general attitude in the plant as to certain things—if she knows.

"Trial Examiner Batten: Well, if she knows, that is always different.

"Mr. Langsdale: He didn't put that in his other questions.

"Trial Examiner Batten: You may answer.

"A. We had been reading all of these articles in the paper about the strikes over there—

"Mr. Langsdale (interrupting): I object to that and ask that it be stricken as not responsive.

"Trial Examiner Batten: You may answer.

"A (continuing)—and we had talked to a lot of the girls, and a lot of them had been talked to by people who worked over at these other plants, and of course, we were

N. I-1111, as set forth in the following excerpts from the transcript of the record, Pages 2637, 2638 (R. II. 626, 627), to wit:

[fol. 181] "Q. Mrs. Stites, I will ask you to state whether you knew or heard of strikes—

"Trial Examiner Batten (interrupting): Now, Mr. Stottle,—that finishes that offer?

"Mr. Stottle: That finishes that part of it.

"Trial Examiner Batten: Well, I don't think it is at all necessary for her to answer any questions about the strikes and trouble in the other plant, because that, if you have an offer ready on that, I can pass on that one now.

"Mr. Stottle: Well, it is the last page of what I have given you.

"Trial Examiner Batten: It is all in one, is it?

"Mr. Stottle: I put it all together as an offer of proof by this witness.

"Trial Examiner Batten: **** Now, as to the last page, which is page 5, of the offer of proof on the Gernes and Gordon factories, and that other matter, that offer, as in accordance with my rulings, several rulings during the hearing, is refused."

166.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in striking out the answers of the witness Nellie Stites made in response to questions asked her by counsel for the intervener, as set forth in the following excerpts from the transcript of the record, Pages 2648, 2649, 2650 (R. II. 630, 631), to-wit:

"Q. Did you have knowledge of the disturbances down at the Gordon, Gernes, and Missouri Plants in the spring of 1937?

"A. Yes, sir, I did.

"Q. What was the effect on the Donnelly Garment Company employees of these disturbances at the Gordon, Gernes and Missouri plants in the spring of 1937?

"Q. (By Mr. Stoltle) Well, Mrs. Stites, I will ask you whether at the time of the organization of the Donnelly Garment Workers' Union, on April 27th, or prior thereto, there was any coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon you by the management of the Donnelly Garment [fol. 180] Company or the Donnelly Garment Sales Company through any of its officers, executives, or anyone representing the management, to cause or influence you, or which did cause or influence you to join or support the Donnelly Garment Workers' Union?

"A. None.

"Trial Examiner Batten: Well, now just a moment. The answer may be stricken."

164.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit the witness Nellie Stites to testify concerning the domination of the Donnelly Garment Workers' Union by the petitioner and concerning coercion upon or interference with the petitioner's employees concerning their free choice of a union or bargaining agency and requiring petitioner to make offers of proof concerning said matters and when petitioner proceeded to make offers of proof thereon, stating and ruling that such offers are outside said matters and in requiring as a condition precedent to the making of such offers of proof that the petitioner prepare "appropriate questions", as appears in the transcript of the record, Pages 2620 to 2631 (R. II. 618 to 624) and in later rejecting the offers of proof made by petitioner and joined in by intervener (page 2632) (R. II. 631) as to said witness Nellie Stites and as to other witnesses.

165.

Petitioner assigns as error the ruling and action of the trial examiner (and the Board's action in affirming same) in refusing to permit petitioner to ask the witness Nellie Stites' questions regarding strikes and disturbances at other garment plants and in refusing the offer of proof made by petitioner concerning said matters as to said witness Nellie Stites contained on Page 5 of Board's Exhibit

[fol. 179] "Trial Examiner Batten: *Well*, now, that is with respect to what ruling? The one on the meeting of March 18th?

"Mr. Stottle: *No*, as with respect to the ruling that she joined this of her own free will, if Your Honor will permit her to testify that she did, and other witnesses to testify on the question of whether she did join of her own free will, of course, we would prefer to call the witnesses.

"Trial Examiner Batten: *Well*, what do you mean, reverse my ruling? Is that what you mean?

"Mr. Stottle: *Well*, I thought you were intimating that I was making a different offer of proof.

"Trial Examiner Batten: *Well*, I do think it is different [that] even my ruling. You say to this witness 'You join of your own free will.' Now, you offer to show that the respondent in no way coerced or intimidated this witness. I don't think that is quite the same thing, do you?

"Mr. Stottle: *Well*, I will ask the question.

"Trial Examiner Batten: I say, do you think it is the same?

"Mr. Stottle: I do think so. If she joined of her own free will, I don't think she was coerced by the Donnelly Garment Company.

"Trial Examiner Batten: *Well*, of course, if you think it is the same thing, and that is what you mean by what you just said, then I will reject the offer.

"Mr. Stottle: *Well*, I would rather ask the question and have your Honor rule it out or let it in.

"Trial Examiner Batten: I don't care to pass upon it. If you think it is the same thing, I will reject that part of the offer."

163.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in striking the answer of the witness Nellie Stites to the question asked, as set forth in the following excerpts from the transcript of the record, Page 2617 (R. II. 617), to wit:

"Q. (By Mr. Stottle) Mrs. Stites, had you heard of the strikes and disturbances down at the Gordon and Gerres plants at about that time in March and April, 1937?

"Mr. Leary: I object to that for the reason that it is immaterial.

"Trial-Examiner Batten: Sustained.

"Mr. Stottle: Well, Mr. Examiner, we want to go into that matter to show that it did affect the employees and that that was one of the reasons why they formed this union, as tending to show that it was not due to the domination of the Donnelly Garment Company.

"Trial Examiner Batten: I think, Mr. Stottle, that I don't need to make any statement with respect to that ruling, because I have indicated on several occasions in this hearing just what my position is about that matter. You may make such offer as in your opinion is necessary to protect the interests of your client."

162.

Petitioner assigns as error the ruling, action and comments of the trial examiner (and the Board's action in affirming same) made while the witness Nellie Stites was on the stand, as set forth in the following excerpts from the transcript of the record, Pages 2615, 2616, 2617 (R. Li. 615, 616, 617), to wit:

"Mr. Stottle: Mr. Examiner, as to the two matters which you have excluded this witness from testifying to, respondent desires to make this offer of proof:

"Respondent offers to prove by this witness that if permitted to answer appropriate questions, she would testify that at or prior to the time of the organization of the Donnelly Garment Workers' Union on April 27, 1937, there was no coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon her by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives or supervisory officials, or anyone representing the management, to cause or influence her, or which did cause or influence her to join or support the Donnelly Garment Workers' Union.

189.

Petitioner assigns as error the rulings and action of the trial examiner in overruling the motion of petitioner to strike Board's Exhibit No. 18 (18-A to 18-J) (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, Page 3068, to-wit:

[fol. 202] Mr. Ingraham: I move to strike exhibit No. 18. There has been no showing that the exhibit was in the possession of the witness Greenbaw up to the time that she testified, and it now appears it has been in the possession of other parties, who have not appeared and testified it is the document which Elsa Graham Greenbaw transcribed.

"Mr. Langsdale: Of course Elsa Graham Greenbaw had the exhibit in her hands when she testified, and said this was the carbon of the minutes she took and turned over to Mr. Walsh's office.

"Trial Examiner Batten: Objection overruled."

190.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in denying petitioner's motion to strike the answers of the witness Rucker set forth on pages 3069 and 3070 of the transcript of the record.

191.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling the objections of petitioner and intervener to question asked the witness Mrs. Pike and in permitting her to answer same, as set forth in the following excerpts from the transcript of the record, Pages 3077, 3078 (R. III. 734-C), to-wit:

"Q. Was there ever any change, as far as you knew, in the duties of the instructors at the Donnelly Garment Company plant from the time you went to work there in 1926 or 1927 up to the time you left there in May, 1937?

* * * * *

"Mr. Lane: There is no showing who wrote this article, Board's exhibit No. 2, or that it was accurate.

* * * * *

"Mr. Tyler: There is no evidence that the Donnelly Garment Workers' Union or the Nelly Don Loyalty League had anything to do with that publication, regardless of who got it out.

"Trial Examiner Batten: Of course, there is the allegation in here, I believe that the Loyalty League is a labor organization—in the complaint.

"It will be received for whatever value it has.

(Thereupon the editorial above referred to was marked for identification 'I. L. G. W. U. Exhibit No. 19,' and received in evidence).

* * * * *

"Mr. Langedale: **** I offer I. L. G. W. U. Exhibit No. 19.

"Mr. Shepard: Respondent is making the same objection previously made.

"Trial Examiner Batten: Subject to the objection both parties have made, it is received."

188.

Petitioner assigns as error the rulings and action of the trial examiner in denying the motion of intervener to strike out all the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray, as set forth in the following excerpt from the transcript of the record, Page 3062 (R. III. 734b), to-wit:

"Mr. Tyler: I would like to move to strike out all of the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray on the ground that there is no evidence that she was acting on behalf of the Donnelly Garment Workers' Union or the Donnelly Garment Company, and that nothing said or done at that meeting could in any way bind the respondent or the intervener.

"Trial Examiner Batten: The motion is denied."

(Thereupon the photographs above referred to were marked for identification "Intervenor's Exhibit No. 20-A to 20-KK, inclusive.

"Mr. Tyler: That is an affidavit for an election.

"Trial Examiner Batten: You are offering these?

"Mr. Tyler: Yes, sir.

* * * * *

"Trial Examiner Batten: It will not be received. You may incorporate it in the offers of proof if you want to.

"Mr. Ingraham: We have made an offer—

"Trial Examiner Batten: (interrupting) I say, this is refused, and if any of the parties want to incorporate the material in an offer of proof, you may do so.

"Mr. Tyler, Very well.

* * * * *

"Trial Examiner Batten: It is refused now as an offer of proof."

187.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in admitting in evidence I. L. G. W. U. Exhibit No 19 over the objections of the petitioner and intervener, as set forth in the following excerpts from the transcript of the record, Pages 3057, 3058, 3059, 3060, 3061, 3062 (R. III. 734, 734a, 734b), to-wit:

"Mr. Langsdale: I offer from the February 15th issue of Liberty magazine the only editorial in that magazine. I do not offer anything except the one-page editorial.

"Mr. Ingraham: We object. It is immaterial to any issue in this case. There is no showing that this is the editorial referred to.

* * * * *

"Mr. Tyler: We object. There is no showing this is the [fol. 201] editorial that was read.

* * * * *

"Mr. Patten: And that those threats were made in connection with the International Ladies' Garment Workers' Union. The other witnesses' testimony would be substantially the same or similar to that we have offered—that this witness has testified to and Your Honor has ordered stricken.

"Trial Examiner Batten: The offer is refused.

"Mr. Stottle: Respondent excepts to the striking of the answer and to the refusal of the offer."

185.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in sustaining objection to and striking answer of the witness Lyle Jeter, as set forth in the following excerpt from the transcript of the record, Page 2993 (R.II. 718cc), to-wit:

"A. Miss Todd said as she called the names of the ones to be on the nominating committee, to stand up, and she called my name.

"Q. Were you surprised or not when that happened?

"Mr. Leary: Oh, I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Mr. Leary: And I move that the answer be stricken.

"Trial Examiner Batten: It may be stricken.

[fol. 200] 186.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in refusing to admit in evidence Intervenor's Exhibit No. 20-A to 20-KK inclusive (also referred to as Intervenor's Exhibit No. 18), and in refusing same as an offer of proof, as set forth in the following excerpts from the transcript of the record, Pages 3042, 3044, 3045, (R. III. 739, 731), to-wit:

"(Mr. Tyler) I now offer in evidence the exhibit, which I will ask the stenographer to mark intervenor's exhibit No. 18, lettering it from A to whatever that results in.

"Q. (By Mr. Patten): Mr. Jeter, did you interpret that as a threat to the employees of the Donnelly Garment Company?'

"Mr. Leary: I object to that as calling for a conclusion.

"Trial Examiner Batten: Objection sustained.

"Mr. Patten: The only thing lacking, apparently, under your definition of a threat, was for them to address him personally and say, 'You, Mr. Jeter, are going to be—'

"Trial Examiner Batten: (interrupting): Now, Mr. Patten, if a Donnelly employee was threatened personally, or any violence committed, I will receive that testimony. The fact that this man happened to be down there where something was going on and heard some remarks—I think there were some remarks like that in the paper, too, but I don't consider that matter an issue in this case. I think that is a matter between the employees. I don't see how the company can be held responsible for that situation.

"Mr. Patten: It shows the circumstances leading up to the formation of this union. If we can show the circumstances, that the union was inspired by the employees and did not rise out of the action of the company—In sofar as we show these circumstances which motivated them we negative the contention of the Board and the International.

[fol. 199] "Trial Examiner Batten: That might be possible, remotely. It may be stricken. I am not going to receive that type of testimony on that question.

"Mr. Patten: Mr. Examiner, the intervener offers to prove by this witness, and others, that threats were made in their presence in connection with physical acts of violence, which they personally witnessed, to the effect that those acts of violence were only circumstances to show what would be done to the Donnelly Garment Company employees when the International Ladies' Garment Workers' Union [stated] its drive to organize the Donnelly plant.

"Trial Examiner Batten: And the other witnesses' testimony would be substantially the same as this testimony?

"A. Threatened the Donnelly Garment Company.

"Q. Tell me what they said, and who it was.

"A. As this old lady got up and started in the building somebody said, 'Isn't that awful, the way they are treating her?' And Miss Tobin said, 'That's just a sample of what we are going to do down at Donnelly's.'

"Q. (By Mr. Patten): Did you report that at the plant?

"A. I talked it over with the employees.

"Q. Mr. Jeter, did you take any part in the meeting at which the Donnelly Garment Workers' Union was organized?

"A. I did.

[fol. 198] "Trial Examiner Batten: Now, Mr. Patten—

"Mr. Patten (interrupting): This is a point that has not been covered.

"Trial Examiner Batten: The point you have finished covering, I don't think that is material to this case.

"Mr. Patten: I understood you had said if we had cases involving actual threats to persons employed by the Donnelly Garment Company we could put that in.

"Trial Examiner Batten: Yes, if you have any actual threats of violence committed as to any employee of the Donnelly Garment Company, that should be in here. I don't think this sort of testimony has anything to do with it.

"Mr. Patten: That was a personal threat. He was an employee of the Donnelly Garment Company, standing around and heard this remark.

"Trial Examiner Batten: I do not consider that as a personal threat to him. That is something that may have occurred a thousand times. If somebody personally threatened this man, or something of that sort, I think that testimony would be relevant.

"Mr. Langsdale: Is this answer to be stricken then, so that it is not subject to cross-examination or rebuttal?

"Trial Examiner Batten: I want to hear the attorneys first.

"Trial Examiner Batten: We are not interested in the reason for joining.

* * * * *

"Mr. Tyler: I will ask her those questions but before doing so, I understand Your Honor excludes her answering the questions as to the effect the testimony of Velma Dowdy had on her?

"Trial Examiner Batten: Yes."

[fol. 197] 184

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in excluding evidence by the witness Lyle Jeter concerning violence to employees at other garment companies in Kansas City and threats that similar violence would be done at the Donnelly plant and as to the effect thereof upon the petitioner's employees and further assigns as error the comments of the trial examiner concerning the materiality of such evidence, and his action and rulings in sustaining objections thereto, and in striking answers given, and refusing intervener's offer of proof thereon, as set forth in the following excerpts from the transcript of the record, Pages 2293, 2294, 2295, 2296, 2297 (R.II. 718z, 718aa, 718bb), to-wit:

"A. One morning I was standing up there and Miss Tobin went back and forth across the street—I was standing in front of the plants—and an elderly lady started in the building and five or six ladies jumped on her and beat her up —

"Trial Examiner Batten (Interrupting): Tell me how you were threatened.

"Mr. Langsdale: I move that that part, the last part of his answer be stricken.

"Trial Examiner Batten: It may be stricken. Tell me how you were threatened.

"A. I have to tell a little bit about this first part, if I may.

"Q. (By Trial Examiner Batten): Did somebody threaten you personally?

[fol. 196] "Mr. Tyler: My theory is, it must be determined whether these employees are operating the Donnelly Garment Workers' Union out of either fear or favoritism of their employer, or whether they are doing it by their own wish. And, in order to show they are doing it by their own choice, they should be allowed to state the reasons for that choice, and whether those reasons are probably or improbably should throw some light on whether they are telling the truth.

"If this witness testifies she saves a substantial amount of money by belonging to this union over which she would be forced to pay if she belonged to the International Ladies' Garment Workers' Union —

"Trial Examiner Batten (interrupting): She wouldn't be forced to pay it unless she joined it, would she?

"Mr. Tyler: No, but it has been shown that the International Ladies' Garment Workers' Union wanted to organize these people.

"Trial Examiner Batten: That is not in this case. Wouldn't it be possible to have a union which was absolutely dominated by the employer, and they, not knowing it, would freely join it and pay their dues?

* * * * *

"Mr. Tyler: I submit the reason for the employees choosing this union is the most vital kind of evidence as to whether the company does dominate it or not.

* * * * *

"Trial Examiner Batten: I don't think it is material to the issues in this case. I think this lady has a personal right to join any union she wants to join, and if she prefers the Donnelly Garment Workers' Union she doesn't have to give the Labor Board or anybody else any reason for joining it. She doesn't have to show the Labor Board she has a reason. She may join it because the first name of it starts with a D and the last word with a U.

"Mr. Tyler: I agree, she doesn't have to give the Labor Board any reason, but I submit she has a right to give a reason in sustaining that it was her own free choice.

* * * * *

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit the witness Mrs. Weigand to answer questions propounded to her by counsel for intervener, and in sustaining objections of counsel for the I.L.G.W.U. thereto, and in ruling and announcing that such evidence is not material to the issues in this case, and in refusing to receive further testimony from said witness or other witnesses upon said matters, as set forth in the following [excerpts] from the transcript of the record, Pages 2939, 2940, 2941, 2942, 2943 (R.II. 718b, 718i, 718j, 718k), to-wit:

"Q. Did you ever hear Velma Dowdy testify in that case?

"A. Yes, I did.

"Q. Did her testimony have any effect upon your choice as to what union you wanted to belong to?

"Mr. Langsdale: I object to that as immaterial and not tending to prove or disprove any issue in this case. In the Miller case this witness testified how much dues were paid by the International Ladies' Garment Workers' Union, and I suppose that is what you want her to testify to here.

"Mr. Tyler: That is what I am leading up to.

"Mr. Langsdale: And I say it is immaterial to this case, the difference between the dues paid by the International Ladies' Garment Workers' Union and the dues paid by the Donnelly Garment Workers' Union.

"Trial Examiner Batten: If that is the purpose, I want to ask you, Mr. Tyler, how you think it is material. As I have previously stated, the employees can select their own union, one where the dues are nothing, or one where they are $10 a week. The Board has nothing to do with the union the employees select. As long as that union is not dominated or influenced by the company, the employees have a right to select any union they want to select, and pay any dues they want to pay.

* * * * *

"Trial Examiner Batten (interrupting): Mr. Tyler, I don't think it is material what her reasons are. She has a perfect right, as an employee of this company, to select any union she wants.

"Mr. Tyler: I submit, one of the questions involved here is whether she does prefer it or whether the company is so dominating her that she has to belong to it.

"Trial Examiner Batten: You mean by that, you contemplate calling all of the employees to testify to this question?

"Mr. Tyler: I contemplate calling a large number.

"Trial Examiner Batten: I can tell you now, I do not intend to listen to them.

"Mr. Tyler: Well, on the present question—

"Trial Examiner Batten (interrupting): She may answer this. I just don't think you should call these employees and put them on the stand and say 'Now, is this the union you want?' And so on, and so forth. This is no place to determine what the employees want. An election is the place to determine that. The thing we are trying to determine in this hearing is, did this company have anything to do with forming this union, or sponsoring it? That is the question we are trying to determine.

"Mr. Tyler: We are not, also, endeavoring to determine whether the employer is now dominating it or dominating these employees?

"Trial Examiner Batten: Yes; but you couldn't determine it by having these girls get up on the stand and testify here, in front of the management. The place to determine that is by a secret election, where they can vote and no one know how they vote. If you have a large number [fol. 195] her of witnesses to offer on that, you may make an offer of proof, because I don't intend to sit here and let you call all of these girls up here to testify whether they want this union to represent them.

"Mr. Tyler: Does that ruling go into effect immediately preceding this witness?

"Trial Examiner Batten: That is right."

"Trial Examiner Batten: If you intend, as Mr. Ingraham indicated to me that he did, calling a very large number of witnesses to testify to that point, I say you had better submit it in the form of an offer of proof. If you submit witnesses on other matters and you incidentally ask them that question, I have no objection, although I still don't consider it material, for the reasons I have previously stated in the record, but I wouldn't have any objection to it."

181.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) overruling the objections of petitioner and intervener to question asked the witness by Mr. Langsdale on cross-examination as set forth in the following excerpt from the transcript of the record, Page 2864, to wit:

"Q. (By Mr. Langsdale) Did you know at the Judge Miller hearing the position of the International Ladies' Garment Workers' Union was that Judge Miller of the District Court had no right to pass upon whether or not the Donnelly Garment Workers' Union was legally formed, and for that reason defendants put in no testimony tending to show it was legally formed!

"Mr. Tyler: I object to the question as calling for a conclusion of law by this witness.

"Mr. Stottle: Respondent makes the same objection.

"Trial Examiner Batten: He may testify, if he knows.

[fol. 194] 182.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) refusing to permit the offer of further witnesses or testimony upon the question of domination of petitioner's employees in regard to their union affiliations, as set forth in the following excerpts from the transcript of the record, Pages 2022, 2023, 2024 (R. II. 718a, 718b), to wit:

"Q. What are your reasons for preferring the Donnelly Garment Workers' Union!

"A. Well, in the first place—

veyer of material and competent evidence and of a fair trial upon the charges contained in the Complaint, which rulings, action and comments are set forth in the following excerpts from the transcript of the record, Pages 2837, 2838, 2839 (R. Il. 7046, 7047), to wit:

"Q. Do you know of any employee in the plant ever complaining that pressure was brought on him or her with regard to his or her affiliation with any labor union?

"A. No, sir.

"Mr. Tyler: That is all.

"Trial Examiner Batten: Mr. Tyler, on the three matters this witness has testified to, one being the last question you just asked, of his own free will, if you call a witness for some other purpose—I don't know as there is any objection to asking that question, although I don't consider it material to ask a witness that on the stand. From the respondent yesterday I asked for an offer of proof on that, so I don't want you to think that by passing the matter up—In other words, If you contemplate calling 1,200 [fol. 193] employees and asking them that question, it is an entirely different matter.

"On the meeting of April 27, which this witness testified to, unless you have witnesses that can add something to what has already been testified to, I don't want you to offer any further witnesses on it. You may make it an offer of proof.

"As to the March 27 to April 5 meeting, I permitted this witness to testify, because I thought perhaps he would be able to definitely place the date. Now, unless other witnesses have something to add to the testimony we have already received on this meeting, you may make an offer of proof as to that.

* * *

"Mr. Tyler: And as to the other matter, the free will of the witnesses, of course, Your Honor understand my position, that that is as much a fact as his indigestion or whether he has a broken leg and the best way to get that is to ask him about it.

* * *

I will offer a written offer of proof on that point, without endeavoring to go into it with individual witnesses.

* * *

"*Mr. Langsdale:* What about this answer be just made to the last question? Does that stand, so that it will be the subject of cross-examination?

* * *

"Trial Examiner Batten: Of course, I do not expect to have cross-examination on a matter which I have asked for an offer of proof on and stated that I don't consider it to be material. Therefore, I wouldn't consider the witness' answer, or the question, material.

* * *

"Mr. Langsdale: I move to strike the answer of the witness to the last question.

"Trial Examiner Batten: It may be stricken.

[fol. 192] * * *

"Mr. Stottle: Respondent does except to the striking of this answer."

180.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) refusing to permit further witnesses or testimony on the question of interference with the free will of petitioner's employees in regard to their labor union affiliations and in regard to the meeting of April 27, 1937, and in regard to the meeting of approximately March 27, to April 5, 1937, and in commenting that evidence on said matters is not deemed material by the Trial examiner, for the reason that such comments show the bias and prejudice of the trial examiner and show that he did not intend to consider such evidence and that he did not consider such evidence in arriving at his findings of fact, conclusions and recommendations, and for the further reason that said rulings deprived the petitioner and inter-

McConaughey, as set forth in the following excerpts from the transcript of the record, Pages 2838, 2839, 2840, 2841, 2843 (R. II. 700, 701, 702, 703), to wit:

"Q. (By Mr. Tyler) What was the attitude of mind of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company during March, 1937, in regard to the possible action of the International Ladies' Garment Workers' Union against them.

"A. Everyone felt that—I talked to numbers of them on my job in the service department at that time—I talked to hundreds of people every day, and they were all expressing concern over the happenings that were [talking] place all over town, and many of them told me of having heard directly from people they knew there, or else overheard people who were in the line of strikers, that we were going to be the next on the list, which naturally caused an agitated state of mind throughout the plant and no one could pursue his job with a great deal of peace of mind, because he didn't know at what time he was going to be kept from coming into the building himself.

"Trial Examiner Batten: Mr. Tyler, I think I have indicated previously on this matter of violence and this situation in Kansas City that I didn't think it was material, and therefore asked the respondent to make an offer of proof.

"And I think yesterday I indicated, on this attitude of mind of the employees as a result of this situation, that I didn't consider it material.

"Therefore, I will ask that you prepare an offer of proof on it, because I don't think the respondent can be held responsible for a situation that is a matter of employees organization by unions and matters of that kind.

"I think I have stated before, I don't think it is material to the issue as to whether or not the respondent formed this union, dominates it, or sponsors it. Therefore, I would ask that you prepare an offer of proof on that question.

"Mr. Tyler: I wanted to make it clear I wasn't waiving my point heretofore made on that matter. Hereafter, then,

ing, I am not going back; I don't think, now, on this record, and revise it from page 1 up to 3200, whatever it is, including all of the numerous exhibits. (pp. 3632, 3633) (R.VII, 2337).

"Mr. Langsdale: My point is this, Mr. Examiner; if there is going to be any contention that the records they bring in here are the originals, I think it would be well to send someone representing the National Labor Relations Board down there this afternoon to see where they get them, and how they get them and whether or not these are people who have been there any length of time.

[fol. 216] "Trial Examiner Batten: I don't think so, Mr. Langsdale, because I think the burden is entirely on Mr. Ingraham's shoulders. He signed this stipulation and agreed to this. It is in the record and has been used since—what is it now? —since July 1939.

"If it isn't correct, I think the burden is on you, Mr. Ingraham, to produce whatever is necessary to show that it is correct. You agreed to the stipulation.

"Mr. Ingraham: I agreed to the stipulation but—

"Trial Examiner Batten: Now, on that basis, as I said awhile ago, we are going to proceed on the assumption that this is correct.

"Mr. Langsdale: I say, if they are going to come in later with a lot of—

"The Witness: I didn't say this was incorrect. I said it was incorrect in the way it is put together. Sometimes the heading is carried over and sometimes refers to the employees on the next page, when it shouldn't. (p. 3634) (R. VII, 2337-38).

"Mr. Ingraham: I didn't make up this exhibit. I produced the pay rolls and Mr. Leary took the pay rolls and checked them.

"Trial Examiner Batten: Whether you prepared them or not, you were the attorney who signed the stipulation.

"Mr. Ingraham: Yes. The Board had these pay rolls before them—

"Trial Examiner Batten: I would suggest that the original pay rolls be marked and photostats be provided.

"Mr. Langsdale: If the Examiner please, I object to that change from the record as it now exists, until we look at the record and see what actually happened. * * * (pp. 3613, 3614) (R. VII. 2324, 2325).

"Mr. Ingraham: I was asked to produce these pay roll records, and I did produce them, and the next thing that appears is this stipulation.

"Trial Examiner Batten: Mr. Ingraham, you signed the stipulation, didn't you?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Then, it seems to me, if there is anything wrong with it, it is up to you folks to check it up—

"Mr. Ingraham: We will produce the pay roll records.

"Mr. Langsdale: I don't agree with that. I want to rely upon what they did produce in 1939.

"Trial Examiner Batten: You may rely completely, Mr. Langsdale, upon what is in the record, unless it is changed. Unless what is now in the record is corrected, it will remain, and any counsel may use it. * * * (p. 3615) (R. VII. 2325-26).

"Mr. Ingraham: That's true. Miss Weyand, and the Board, as I recall, never challenged the division of the people in the pay roll, there never was any question raised.

"Trial Examiner Batten: Well, we will proceed on the assumption it is correct, until otherwise shown. * * * (p. 3631, 3632) (R. VII. 2336).

"Mr. Ingraham: Mr. Langsdale, we produced the record the last time, that the Labor Board asked for, and I brought them in, and I have a receipt in my pocket.

"Trial Examiner Batten: Well, now, just a minute. I just said we are going to proceed on the basis this record is correct. Now, if the parties who contend it is not, may or may not have an opportunity to present it in this hear-

In connection with the foregoing assignment of error, petitioner calls particular attention to the following excerpts from the transcript of the record, to-wit:

"A. I don't find it.

"I would like to call the Examiner's attention to the fact that I was puzzled about this pay roll list yesterday, and last night I looked up to see why these queer headings would be on certain pages, and I saw the original pay roll that was put in evidence, and apparently when this was copied the pages were not followed. Now, when—

"Q. (By Trial Examiner Batten) Well, do you have the original pay roll? (p. 3013) (R. VII. 2324)

"Mr. Ingraham. We brought in the original pay rolls.

"Trial Examiner Batten: And wasn't this supposed to be a copy of it?

"Mr. Ingraham: Yes. I do not have any recollection of making a copy of those pay rolls. We brought the original pay rolls in.

"Trial Examiner Batten: Whoever made them, they were marked as an exhibit and were received on the assumption that they were a copy of the pay roll. Now, are they a copy or aren't they, Mr. Ingraham?

"Mr. Ingraham: They are a copy, as far as the names and wages are concerned.

"I think this is what actually happened: I was asked by the Board's counsel to produce the pay rolls for their inspection, and I brought up the pay rolls, including the ones for the particular exhibits that you were inquiring about yesterday, and the Board took those pay rolls—

"The Witness: The pages were mixed.

"Trial Examiner Batten. Do you mean the Board inserted these titles?

[fol. 215] "Mr. Ingraham: No. But the pages got mixed up.

"The Witness: A title would be carried over to the next page, and the wrong page would be there.

[fol. 213] "Trial Examiner Batten. In other words, she was not a part of any sewing section or department of the plant or the business; is that right?

"The Witness. She was a part of all of them. She simply went from one place to another, and when there was something missing, she would find out what it was, and then she would go to the motions department, if it was to get more thread, or—"

204.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) with reference to Board's Exhibit No. 28 (being purported copies of certain pay rolls of petitioner, which copies were prepared by the Board), as shown by the transcript of the record, pages 3612 to 3635 inclusive, pages 3688, 3689 (R. VII. 2323-2338, inclusive, 2366-2367), for the reason that such record shows the bias and prejudice of the trial examiner toward petitioner and its counsel and his evident desire to make use of error or mistakes of the Board in copying exhibits furnished by petitioner to the Board and because such record shows the trial examiner's fixed purpose to take said erroneous record as true and not accept testimony of the witness, Mrs. Reed, that same was incorrect, although the error therein was plainly pointed out by both counsel for the petitioner and by said witness Mrs. Reed, and shows the evident purpose and intention of the trial examiner to enlarge the terms of the stipulation with reference to said Exhibit 28 in a manner unfavorable to petitioner, casting the entire burden upon petitioner's counsel for the correctness of said exhibit when the error was wholly that of the Board in copying same, and in representing to petitioner's counsel that same was a true copy and thus obtaining the signature of petitioner's counsel to said stipulation, by reason of all of which the bias and prejudice of the trial examiner against petitioner [fol. 214] and its evidence is shown and the non-judicial attitude of the trial examiner is shown by his refusal to permit correction by the witness of palpable errors in evidence caused by the Board and the correction of which would result in favorable inferences to petitioner and the non-correction of which might be used for the purpose of drawing unfavorable inferences against petitioner.

"Mr. Hogsett: I can't see the remotest connection between that. I really have no objection, but I can't see it is at all relevant. I object to it, to save time.

[fol. 212] "Trial Examiner Batten: You may tell us: . . .

"Q. Could you indicate what factors in her experience impressed you with her qualifications for being an instructor?

"Mr. Reed: I think that is a ridiculous waste of time.

"Trial Examiner Batten: Is that an objection, Senator?

"Mr. Reed: I object. It is a ridiculous waste of time."

Petitioner further assigns as error the failure of the trial examiner (and the Board's action in affirming same) to instruct and require counsel for the Board to desist from such questioning upon utterly immaterial and irrelevant matters whereby the record is encumbered therewith and the true issues obscured and the trial examiner's findings and conclusions influenced by immaterial, incompetent and irrelevant evidence, all to petitioner's prejudice.

203.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record, page 3806 (R. VII. 2319, 2320), as showing the bias and prejudice of the trial examiner towards petitioner and its witnesses and his endeavor to get the witness to make a statement contrary to the facts:

"Q. Turning now to April 1937, was Rose Todd assigned to any department of the plant?

"A. I testified about three times that she went through the plant supplying notions of thread, or whatever supplies might be missing to complete cuts.

"Trial Examiner Batten. Mrs. Reed, the question is, was she assigned to any department? Was she assigned to any definite department or section in April of 1937?

"The Witness. No, her job was just to go through the plant from one section to another.

[fol. 211] "Miss Weyand. I do not intend to pursue this line of questioning further.

"Mr. Hogsett: She always says that, and then—

"Trial Examiner Batten: In view of Miss Weyand's statement that she does not intend to pursue it any further—

"Mr. Hogsett. —there is nothing you can do about it.

"Trial Examiner Batten. —that will dispose of the matter.

* * *

"I didn't assume, Miss Weyand, that when you said you didn't intend to pursue that further, you were precluded from asking any further questions it, in your opinion, it was necessary."

Petitioner further assigns as error the action of the trial examiner (and the Board's action in affirming same) in permitting counsel for the Board to examine and cross-examine witnesses at great length upon immaterial, incompetent and irrelevant matters, and when objection is made, permitting said testimony to stand as a result of counsel's statement that she does not intend to pursue the line of questioning further, or the statement that the questions asked are preliminary, or the statements that the questions are asked for the purpose of testing the witness' credibility, as a result of which the record is filled with incompetent, irrelevant and immaterial evidence which has improperly influenced the trial examiner's findings and conclusions adverse to petitioner.

202.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as shown by the following excerpts from the transcript of the record, pages 3391, 3398 (R. VII. 2310, 2314), to-wit:

"Q. Do your employees have credits for the purpose of purchasing dresses in your retail store, is that a cash transaction?

I. L. G. W. U. after the Trial Examiner had stricken said testimony, to further examine the witness with reference [fol. 210] thereto by reading into the record portions of said stricken testimony; and assigns as error each and all the rulings of the Trial Examiner with reference to said matter, all of which rulings and action of the Trial Examiner and said actions of counsel for the Board and for the I. L. G. W. U. were highly prejudicial to petitioner and show the Trial Examiner's bias against petitioner and his desire to acquit counsel for the Board of said improper examination, by reason of all of which petitioner has been denied a fair and impartial trial.

The matters herein referred to appear in the record at pages 3326 to 3335, 3350 to 3386, 3748 to 3750, 3847 to 3859, 3873 to 3881, 3910 to 3920, 3932 to 3940, and 3947 to 3952, inclusive. (R. VII. 2269-2275, 2283-2307, 2400-2402, 2441-2449, 2454-2460, 2477-2484, 2491-2497, 2497-2501, inclusive).

201:

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) set forth in the transcript of the record at pages 3544, 3545 and 3546 (R. VII. 2281, 2282), as shown by the following excerpts therefrom, to-wit:

"Q. (By Miss *Weyand*) Do you know what was the largest number of girls you ever employed in St. Joseph at one time?

"A. I do not.

"Q. Do you have any idea?

"A. Not any very definite idea.

"Q. Could you give us an approximation?

"A I really couldn't.

"Mr. Hogsett. If it please the Examiner, I object as wholly pointless. We have again run into a line of questions that haven't any bearing on this case at all. It might be of interest if someone were writing a history of the Donnelly Garment Company, but it hasn't anything to do with whether this company dominated, sponsored, or coerced the formation of the employees' union, which is the issue here to try. It is far afield.

has been asked what were his duties at a certain time, and what they were at another time. Now it is asked, to state the difference.

"Trial Examiner Batten: Well, the witness may state what the difference is, in her opinion.

"Mr. Reed: Well, I object to this interminable repetition.

"Trial Examiner Batten: She may tell us what she considers to be the difference."

200.

[fol. 209] Petitioner assigns as error the action of counsel for the National Labor Relations Board in introducing in evidence Board's Exhibit 32-E as a part of Board's Exhibit 32-A-B-C-D, and cross-examining the witness Mrs. Reed with reference to said Exhibit 32-E as being a part of said Exhibit 32-A-B-C-D, and as being filed in the Wages and Hours Division on October 31, 1940 as a part of said Exhibit 32-A-B-C-D in the files of the Wages and Hours Division, when as a matter of fact said Exhibit 32-E had not been prepared on said date and was not filed in said Wages and Hours Division on October 31, 1940 and was never a part of said Exhibit 32-A-B-C-D in the Wages and Hours Division, but on the contrary the data in said Exhibit 32-E was assembled and related to a much later date and was not filed in the Wages and Hours Division until after December 20, 1940, and was never filed therein as a part of said Exhibit 32-A-B-C-D; and petitioner assigns as error the attempt of counsel for the Board by the use of said official document Exhibit 32-A-B-C-D having the apparent authenticity of a document signed by the petitioner's Vice President and duly filed in the Wages and Hours Division and bearing its date-stamp as having been received therein on October 31, 1940, and by attaching said Exhibit 32-E thereto as a part thereof, to mislead, confuse and entrap the witness Mrs. Reed and thereby obtain testimony that the matter set forth in said Exhibit 32-E existed on and before said date of October 31, 1940; and assigns as error the examination by the Trial Examiner of said witness Mrs. Reed with reference thereto and the Trial Examiner's action in permitting counsel for the

[fol. 208] "Trial Examiner Batten: I would suggest, Mrs. Reed, if you understood the question, that you answer the questions, and then I think we will get along.

"A. Well, I will make a note of something then, when I get back.

Trial Examiner Batten: I think when Miss Weyand gets through, if your counsel wants to clarify these points, he can ask you questions regarding them.

"I told you yesterday, when you get through with your testimony, if you want to make a statement, you may do do, the witness may do so.

"Mr. Hogsett: Well, it is just a matter of her making a note now.

"Mr. Reed: I submit if the witness wants, at this time, to make a statement to clarify any answer she has made, she has a right to do it.

"Trial Examiner Batten: There is a question pending and I would like to clear that up first."

199.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) contained in the following excerpts from the transcript of the record, pages 3476 and 3485 (R. VII. 2240, 2245), to wit:

"Q. What was Ted Scales's position in January of 1935?

"Mr. Reed: That has been gone into, if Your Honor, please, these identical questions.

"Trial Examiner Batten: I am sure I couldn't say, Senator. Will you answer the question, Mrs. Reed? • • •

"Q. Prior to 1942, what difference was there between Jack McConaughey's duties and his present duties?

"A. Well, for—

"Mr. Reed: (Interrupting) I submit that question has been answered and the details given in each instance. It

"Mr. Hogsett: (Interrupting) It seems to me that is carrying this question of authority to an absurdity. Now, a truck driver might be driving a truck, and another assistant on the truck might say, 'You have got a flat tire, you'd better stop.' Would anybody say the assistant had authority to speak for the company, because he ordered the truck to stop? In other words, we reach a point beyond all reason.

"Trial Examiner Batten: Of course, I think the important point is the statement which Miss Weyand made yesterday, I believe, along with other matters, what was actually done in this plant.

"Mr. Hogsett: I agree.

"Trial Examiner Batten: Now, it seems to me the way to show what was done would be in the daily and ordinary operation of this plant. Now, you might call a person a foreman, when he is not a foreman, and you might call him a superintendent when he is not a superintendent; I think that is, as far as I am concerned, and I think as far as the Board is concerned, with what actually took place in this plant at these various times.

"Now, it seems to me some of these questions Miss Weyand has asked are hypothetical, and it seems there is no showing here that many of these things, which have been asked Mrs. Reed and answered, have ever occurred.

"Mr. Hogsett: That is exactly the point.

"Trial Examiner Batten: But I will say again, I am not going to attempt to tell any of the attorneys how to ask their questions. Thus far, with Mrs. Reed, I feel I have been very lenient with all of counsel, and I intend to pursue that policy until we are through with this witness, because she is the president of the company, and unfortunately was unable to testify in the prior hearing.

"Now, on that basis, Miss Weyand, you may proceed. Now, what was the question?

"A. Mr. Batten, may I try to throw a little light on this thing we are doing?

"*Miss Weyand*: No, the question was—

"A. (Interrupting) Well, I don't know what you mean.

"Q. (By Miss Weyand) Even if that did not occur, would the operator be free to—

"Trial Examiner Batten: Miss Weyand, I don't understand it then, myself. I am afraid I'd better quit.

"Mr. Hogsett: May I make a general observation?

We have sat here for hours, listening to hypothetical questions that are not predicated on any facts. In other words, Miss Weyand is working out questions with geometrical precision, and has spun out of that geometrical precision a psychological vacuum, and has predicated her questions on that theory of hypothetical assumptions; and I submit it doesn't get us any place. That technicality of interrogation, in character, is objectionable, and not founded upon anything that is known to exist, I submit.

"Trial Examiner Batten: Well, I don't believe I will sustain your objection. As I previously stated, Mrs. Reed is the president of the company, and thus far I have permitted, I think, somewhat more latitude with Mrs. Reed than I perhaps would have with other witnesses, in view of the fact she is the president of the company. I will permit Miss Weyand to proceed but I want to be sure that the witness understands the question.

"So, Miss Weyand, will you proceed, please?"

198.

[fol. 207] Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same), appearing in the record at pages 3454, 3455 and 3456 (R. VII. 2228, 2229), as shown by the following excerpts therefrom, to wit:

"Q. (By Miss Weyand) So Mrs. Tyburst has the authority to speak for the company in saying the notch should be put in?

"A. When you talk about authority—

196.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) in striking the testimony of the witness, Mrs. Reed, as set forth in the following excerpts from the transcript of the record, page 3212 (R. VII. 2089, 2090), to-wit:

"Q. (By Mr. Ingraham) You are referring to circulars be distributed to your customers?

"A. He had a circular made of the letter, copy of the letter be sent to me, he had that made and distributed to my employees, shortly after the letter come to me; I don't remember what date. I also know that he tried to put it in the newspaper and they wouldn't put it in.

"Mr. Langsdale: I ask that that be stricken out as hearsay.

"Trial Examiner Batten: It may be stricken."

[fol. 206] 197.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as shown by the following excerpts from the record, pages 3444, 3445 (R. VII. 2221, 2222), to-wit:

"Q. (By Miss Weyand) Then your answer would be she would decide for herself whether she wanted to follow the method given her by Mrs. Tyburst, or given to her by someone else, or some other method that she wanted to follow, without regard to the fact that she had other instructions?

"A. I don't know what you are getting at.

"Trial Examiner Batten: I think what you are trying to get at, when that situation existed in the plant that you just described, that is, Mr. Baty was responsible for the entire production, the sewing section, and the instructions suggested one method and Mrs. Tyburst should come through the section and suggest another, the operator then decided for herself which method she would use, is that correct?

and, also, renew our motion to dismiss each and all of the paragraphs in the complaint, which is Board's Exhibit No. 1-GGGG.

. . . . .

"Mr. Tyler: Intervener renews its motion to dismiss as heretofore filed."

[fol. 204] 194.

Petitioner assigns as error the action of the trial examiner and of counsel for the Board and I. L. G. W. U. with respect to the introduction of an examination of Mrs. Reed with reference to Board's Exhibit 32-A-B-C-D-E and Board's Exhibits 33 and 34 and 35, and the action of the Board in adopting and affirming all the rulings and findings of the trial examiner based thereon, as constituting prejudicial error against petitioner and as showing the bias and prejudice of the Board and its counsel and of the trial examiner against petitioner, said matters appearing in the record at pages 3326-33, 3350-86, 3748-3750, 3817-39, 3873-81, 3910-20, 3932-40, 3947-52, (R. VII, 2269-2275, 2283-2307, 2400-2402, 2411-2443, 2454-2460, 2477-2484, 2491-2497, and 2497-2501, all inclusive).

[fol. 205] 195.

Petitioner assigns as error each and all the rulings and action of the trial examiner James C. Batten made or taken during the second or further hearing of this matter over the objections or exceptions of petitioner or which are adverse to petitioner (as to which adverse rulings petitioner was allowed an automatic exception) and the Board's action in affirming said rulings and actions of the trial examiner, for each and all the reasons and grounds stated in the record and for the further reason that the bias and prejudice of the trial examiner toward petitioner and its evidence permeated said rulings and because by virtue of said rulings and each of same the record is filled with incompetent, irrelevant and immaterial evidence upon which the trial examiner has based his findings, conclusions and recommendations and by virtue of all of which petitioner has been denied a fair trial.

"Mr. Tyler: I object that she is not in a position to testify to what the duties were of the instructors at the Donnelly Garment Company plant.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: She may answer. Objection overruled."

[fol. 203] 192.

Petitioner assigns as error the rulings and action of the trial examiner (and the Board's action in affirming same) in overruling objection of intervenor to question asked the witness Mrs. Fike and permitting her to answer same, as set forth in the following excerpts from the transcript of the record, Page 3084 (R. III. 734g) to-wit:

"Q. (By Mr. Langsdale) Was there any change, as far as you observed, in the authority of the instructors from the time you went to work there in 1933 until you left on March 8, 1937?

"A. No, sir.

"Mr. Tyler: I object that this witness cannot tell by observation whether there was any change in the authority of the instructors.

"Trial Examiner Batten: I presume she is answering [us] to what she knows."

193.

Petitioner assigns as error the action of the trial examiner (and the Board's action in affirming same) in failing and refusing to sustain petitioner's motion to dismiss the entire complaint and also its motion to dismiss each and all of the paragraphs of the complaint which motions were renewed at the close of the case, and also assigns to the action of the trial examiner in failing and refusing to sustain intervenor's motion to dismiss the complaint which motion was renewed at the close of the case, which motions appear in the transcript of the record, at Pages 3102, 3103 (R. III. 734n), as follows, to-wit:

"Mr. Stoltze: Mr. Examiner, we desire to renew our motion to dismiss, which I think was marked Board's exhibit No. 1-FFFF, and related to the whole complaint;

In connection with this assignment of error, petitioner calls attention to the following excerpts from the transcript of the record and assigns as error each and all of said rulings and comments of the Trial Examiner, to-wit:

[fol. 229] "Trial Examiner Batten: I say to you, is this an introductory question opening up the question of violence through this witness?

"Mr. Ingraham. We made an offer of proof by the employees on the facts involved in the so-called strikes at 26th and Grand, and I was briefly going to inquire of Miss Tobin who had charge of the strikes up there and if it was the I. L. G. W. U. and what went on." (pp. 4031-32) (R. VIII. 2541)

* * * * *

"Mr. Ingraham. I think that we have a right to show by this witness what the facts were up there, so that—

"Trial Examiner Batten. As to violence, yes.

"Mr. Ingraham. —so that there will not be any question but what this violence did occur.

"Trial Examiner Batten. Then, I will say I am going to rule that it is immaterial, to this extent: I am now going to direct the order of proof to this extent, I am going to direct that we first receive the testimony of the 1,200 witnesses, if they testify to material evidence that was ordered by the court, in accordance with the order of the court remanding the case.

* * * * *

"I am going to direct that order of proof at this time. * * * Now, I am going to spend the rest of the afternoon listening to any argument which counsel have on my ruling that we will proceed with the 1,200 witnesses, as the court stated that testimony should be received. * * * (pp. 4032-33) (R. VIII. 2541-42)

"Mr. Ingraham. Before Miss Tobin is excused, and before making any offer of proof, I have just one other question.

"Trial Examiner Batten. Well, she has not answered the last one, has she?

"Q. (By Mr. Langedale) While you were reading articles in the newspapers about the I. L. G. W. U., let me ask you if you read this article in the magazine 'Life', August 1st, 1938."

* * *

"Mr. Ingraham: Yes. We object to this kind of an inquiry. This purports to be an article concerning the recreational activities of the I. L. G. W. U. I don't know what the purpose of it would be in this hearing.

"Trial Examiner Batten: Well, I don't either. I think the question to Mrs. Reed is, did she read this article or see it. Now, I will permit her to answer that question."

[fol. 228] 219.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) in directing the order of proof herein by requiring petitioner to proceed first with employee witnesses and by confining their testimony strictly to the offers of proof by "the 1200 employees", and in refusing to receive testimony under other offers of proof made by petitioner, and in denying to petitioner the right to put on its proof in the order it desires (when there was no reason such as the convenience of a witness involved which might call for the Trial Examiner's discretion in receiving particular evidence first), and in refusing to permit witnesses, while on the stand, to testify to matters which the Trial Examiner did not consider came within his strict construction of said "employee" offers of proof, and in refusing to receive pertinent and material testimony from said witnesses and other witnesses for petitioner bearing on the question "how and why" the DGWU was formed and on whether there was any coercion, interference or support on the part of petitioner in connection with the formation of said union.

These rulings and action and petitioner's objections and exceptions thereto made at the time appear in the transcript of the record at pages 4049 to 4096 inclusive (R. VIII 2540-2564, incl.)

[fol. 227] "Q. (By Mr. Langsdale) Did you make any order at all with reference to the use of the i. d. m. system by the Donnelly Garment Workers' representatives?

"Mr. Reed: I object to that as immaterial. The evidence so far, if it shows anything about this, is that this information, if it ever was received, came during the trial of these cases. If so, it is long subsequent to the charge that is filed here. If after this case was started or after this case was tried or while it was being tried the witness heard something in the trial, it is immaterial whether she went to investigate to find out whether it was going on or not.

"Mr. Langsdale: I am past that. I am asking her now if she made any order with reference to the use of the i. d. m. system by the Donnelly Garment Workers' representatives.

"Mr. Reed: If it was an order, it was the same thing.

"Trial Examiner Batten: At what time?

"Mr. Langsdale: At any time after she learned it was charged that they were using the i. d. m. system to pass information among the employees connected with that union.

"Q. (By Trial Examiner Batten) Mrs. Reed, you have stated you did not make any investigation of it. Did you take any action with respect to it?

"A. I never made an order—

"Mr. Reed: I make the same objection to the Examiner's question that I made to Mr. Langsdale's.

"Trial Examiner Batten: I will overrule the objection.

"Q. (By Trial Examiner Batten) Did you take any action on that?"

218.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as shown by the following excerpts from the transcript of the record (pp. 3953-84), to-wit:

women who was on the job, but he could tell us how much work we had of a certain type that this woman could do. We didn't lay off any double-stitchers if we had—

"Q. Mrs. Reed, I think you have explained that several times.

"A. But it comes back all of the time, Mr. Batten, and it would seem that Dewey had control of managing the plant.

"Q. No, we are not interested in managing the plant. We are interested in what these people did.

"A. I am trying to explain it to you.

"Q. Well, Mrs. Reed, you have already explained it several times. In fact, I think it was explained to Mr. Ingraham on direct examination and to Miss Wyland on cross-examination.

"A. Well, Mr. Langsdale seems to want to know about it again.

"Mr. Langsdale: I just don't want you to be confused about it, Mrs. Reed.

"The Witness: I am not confused about Dewey. You are the one that is confused about Dewey.

"Q. (By Mr. Langsdale) Didn't Mrs. Reeves testify: 'Nobody is let out of the Donnelly Garment Company unless four people pass on it.' Would you say that is true?

"A. That was my general knowledge.

"Q. Would you say this is true:

'Then that group of people are taken up with Mr. Atchison and Mr. Atchison discusses them very thoroughly and he sees what they have made and he knows the reasons about what happened each week because he analyzes each week our pay roll cards with the instructor and Mrs. Wheery.'?

"A. That wasn't my testimony, was it, Mr. Langsdale?

"Q. I asked you if that was true. That was Mrs. Reeve's testimony."

217.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record (pp. 3968-69), to-wit:

Petitioner assigns as error the action of the Trial Examiner (and the Board's action in affirming same) in repeatedly interposing in the examining of witnesses, an illustration of which appears in the excerpts from the transcript of the record hereinafter quoted from pages 3888-3889, and petitioner further assigns as error the said testimony so elicited by the Trial Examiner for the reason that same relates to a period prior to the passage of the National Labor Relations Act, and for further reason that said evidence contributed to the erroneous findings and conclusions of the Trial Examiner. As a part of this assignment of error petitioner calls attention to the following excerpts from the testimony (pp. 3888-3890), (R. VII. 2464, 2465), to-wit:

"Q. (By Trial Examiner Batten) Well, I thought this morning, in that old N. R. A. record—wasn't be one of the four that were mentioned as passing upon the people?

"A. I am saying they would get his opinion and—The reason they would get his opinion, Mr. Batten, was to see how much—if we had a lot of double-stitching to do, he would be the one to know it and—

"Q. Irrespective of what they got this opinion on, be was one of the four, was he not, Mrs. Reed?

"A. But his opinion was always on the work.

"Q. Whatever his opinion was on, he was one of the four mentioned by Mrs. Reeves, wasn't he, when she said they always got the opinion of these four people before they did anything?

"A. That is right. But I am trying to say, Mr. Batten, the reason his opinion would be worth something was because of his knowledge of how much of a specific kind of work we had to get through and how many machines we had to do it with, and from that point of view.

"Q. Well, of course, I didn't ask you why he is there.

"A. I think you ought to let me explain.

"Q. Mrs. Reed, I have no objection to your explaining. My only question to you was, was he one of the four mentioned this morning?

[fol. 226] "A. But it seems to me you ought to let me explain. It wasn't that he had personal control over the

"A. (Continuing)—and take two or three hours to do it, and—

"Trial Examiner Batten: Mrs. Reed, the question is, would you have approved this young lady's—I have forgotten her name—spending a day getting a petition signed in the plant?"

215.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record (pp. 3863-64) (R. VII. 2450-51), to wit:

"Q. (By Mr. Lampsdale) I asked you if you have any information that Lena Tyburst was not in the position that she is described as here in the handwriting of Lee Baty on June 1, 1937?

"A. Mr. Lampsdale, I have said over and over and over again here that while Mrs. Reeves and Mr. Baty were managing the factory I had no knowledge of my own of the details of how they did it and what they called the people who are in the plant.

"Trial Examiner Batten: Read the question, please.

"(Thereupon the last question was read by the reporter).

"Mr. Reed: That is calling for hearsay evidence. Whether you have heard something about it, that doesn't make evidence.

"Trial Examiner Batten: Do you understand the question, Mrs. Reed?

"The Witness: I have said over and over and over again—

"Trial Examiner Batten: Just a moment, Mrs. Reed. Do you understand the question?

"The Witness: Will you read the question again?

"Trial Examiner Batten: The question is this: Do you have any information that Lena Tyburst was not assistant factory manager on this date as described on this document by Mr. Baty?"

"Mr. Reed: All right.

"Trial Examiner Batten: That is, with respect to the 1935 situation.

"Mr. Reed: I just think it is encumbering the record.

"Trial Examiner Batten: You may proceed."

214.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) set forth in the following excerpts from the transcript of the record, pages 3825-26 (R. VII. 2437), to wit:

"Q. Would you have approved of her going around and getting these petitions signed and taking a whole day?

"Mr. Reed: We object to that. That is purely a hypothetical question.

"Trial Examiner Batten: She may tell us whether she would have approved.

"Mr. Reed: Approved something that never took place?

"Trial Examiner Batten: Whether she would have approved of Mrs. Shartzer's going around and spending a day getting a petition signed.

"Mr. Reed: There is no evidence that she took a day.

"Mr. Langsdale: I am going to assume it would have taken a day to get 1,000 names signed.

"Q. (By Mr. Langsdale) On that assumption, would you have approved of that?

[fol. 224] "Mr. Reed. How can she talk on an assumption made for the first time by Mr. Langsdale in this courtroom? I object to the question.

"Trial Examiner Batten: Objection overruled. You may proceed.

"A. I know we had week workers that would go out and have their hair done and—

"Mr. Langsdale: You said that before

"Mr. Reed: I insist, if your Honor please, this witness ought to be asked direct questions, and not have things read.

"Trial Examiner Batten: The question is not whether Mrs. Reeves' testimony is true, but was that the true situation in the plant at the time, if this witness knows.

"Mr. Reed: I object to that method of examination.

"Trial Examiner Batten: I will overrule the objection.

"Mr. Reed: As incompetent, and immaterial.

"Trial Examiner Batten: Do you know if that was the method?"

213

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) throughout the hearing in permitting testimony and evidence to be introduced concerning matters which occurred prior to the passage of the National Labor Relations Act, for the reason that said evidence is immaterial, irrelevant and incompetent, and for the further reason that same has contributed to the erroneous findings and conclusions of the Trial Examiner, and in connection with this assignment of error petitioner calls attention to the testimony at pages 3760-3784 (R. VII. 2407-2417, incl.), and to the ruling of the Trial Examiner concerning same as shown in the following excerpt from pages 3775-76 (R. VII. 2412), to wit:

[fol. 223] "Q. And Mrs. Reeves was your production manager at that time, was she not?

"A. Yes.

"Q. And reading further from the same testimony—

"Mr. Reed: (interrupting) Just for the record, we object to the testimony with reference to what happened in 1935 and prior thereto, as entirely remote. It does not throw any light, it does not furnish a background for this case.

"Trial Examiner Batten: Well, you may have a continuing objection to each question.

Mrs. Reed. I do not intend, Senator, as I previously stated, to attempt to limit the matter at this time. When Mrs. Reed is through, I am more than convinced we have to work out some sort of a limitation on this thing.

"Mr. Reed: This is something we didn't go into at all. It raises the question, if it raises anything, whether or not these girls were properly discharged.

"Miss Weyand: The company did go into the resignation of various persons, Jack McConaughey and Lyle Peter, that happened in 1939, 1940, and 1941.

"Mr. Reed: If the company went into the question of Jack McConaughey and somebody else who resigned from the union, that has nothing to do with the discharge of these two girls. There is no connection between them.

"Trial Examiner Batten: Read the question please.

"(Thereupon the last question was read by the reporter as follows:

"'Did the Donnelly Garment Workers' Union give the company a written notice that it desired the company to discharge these two girls?')

"Trial Examiner Batten: You may tell us. Do you know whether you received a written notice, Mrs. Reed?"

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth from the following excerpts from the transcript of the record (p. 3765), (R. VII. 2410, 2411), to wit:

"Mr. Langsdale: I would like to ask one more question.

"Q. (By Mr. Langsdale) Then, that group of people are taken up with Mr. Atchison, and Mr. Atchison discusses with them very thoroughly, he sees what they have made and he knows the reason that happened, he has listed each week on pay roll cards with the instructor, and Mrs. Sheery, was that true?

action and comments set forth in the following excerpts from the transcript of the record (pp. 3695-96 and pp. 3703-04), R. VII. 2371, 2375-6), to wit:

"Trial Examiner Batten: The question was, Mrs. Reed, did you make any investigation of it yourself after Mr. Baty reported the incident to you?

"A. After the incident was reported to me I made no further investigation.

"Q. (By Miss Weyand) Did you give any directions that the girls should be contacted and assured protection to remain in the plant and work?

"A. Mr. Baty was in charge of the plant, and I didn't feel that it was necessary for me to go into that incident at all.

"Trial Examiner Batten: The question is, Mrs. Reed, did you? Did you do anything about it?

"The Witness: But I say I didn't feel any reason for it.

"Trial Examiner Batten: Let's assume that you felt that way, did you do anything about it?

The Witness: I did not."

[fol. 221] 211.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as shown from the following excerpts from the transcript of the record (pp. 3743-44), (R. VII. 2398, 2399), to wit:

"Q. (By Miss Weyand) Did the Donnelly Garment Workers' Union give the company a written notice that it desired the company to discharge these two girls?

"A. That is my remembrance.

"Mr. Reed: Wait a minute. We object to that. That is opening up exactly the question the Commissioner has ruled out.

"Trial Examiner Batten: I didn't rule it out, Senator.

"Mr. Reed: If you didn't rule it out—

"Trial Examiner Batten: I have been trying to arrive at some sort of a limitation. I said we will proceed with

"At the time I wasn't thinking how they were dressed, so I don't remember whether they were wearing uniforms or not.

"Q. I would suggest that you give some thought to these questions, because after all that is the reason you are here, to answer these questions.

"A. I have been on the stand about five hours, and I am tired.

"Q. Irrespective of that, I would suggest that you give thought to these questions, and take your time.

"A. All right. Thank you.

"Q. And don't proceed to make an answer, and then make the statement later that you don't remember. I would think about the question first.

"A. Well, thank you very much.

209.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) appearing at pages 3690-94 of the transcript of the record (R. VII. 2368), as follows, to-wit:

[fol. 220] "Q. (By Miss *Weyand*) Is the door to your office one that leads into an outer reception office, or is it directly connected with the main part of the building?

"Mr. Reed: Now, Mr. Examiner, I have to object. This is a mere consumption of time. What difference does it make where her office door leads, or how many minutes it is open during a period six or seven years? I can't see the reason for questions of this character.

"Trial Examiner Batten: Well, Senator, as I have indicated before, I am not going to attempt to limit the examination at this point in any way. Whether it is material or not, I presume will appear. I don't suppose I can ask any of counsel on preliminary or introductory question just the purpose.

"I will permit you to proceed, Miss *Weyand*."

210.

Petitioner assigns as error the repeated interposition of the Trial Examiner (and the Board's action in affirming same) in the examination of witnesses and his rulings,

207.

Petitioner assigns as error the refusal of the Trial Examiner (and the Board's action in affirming same) to exclude testimony as to whether petitioner ever issued instructions to the instructors directing them to maintain a neutral attitude in labor matters, and the Trial Examiner's interposing and asking questions to elicit said testimony over the objection of the petitioner as same appears at page 3678 of the transcript of the record (R. VII. 2363), for the reason that said testimony is incompetent, irrelevant and immaterial to any issue in this case and said action of the Trial Examiner shows bis prejudice against petitioner and his prejudgment of the charges against petitioner, and because said incompetent, irrelevant and immaterial evidence contributed to the erroneous findings and conclusions of the Trial Examiner herein.

208.

Petitioner assigns as error the comments of the Trial Examiner (and the Board's action in affirming same) set forth on pages 3680, 3681 of the transcript of the record (R. VII. 2364, 2365), which shows the prejudice of the Trial [fol. 213] Examiner against petitioner and its witnesses. The following are excerpts from said comments:

"Q. Were the employees present there at the meeting wearing uniforms?

"A. A number of them were. I don't remember specifically how they were dressed. My plant employees do wear white uniforms.

"Q. (By Trial Examiner Batten:) You thought some of them were wearing uniforms?

"A. If this hadn't come to my attention, I don't think I would have thought about it. I didn't think about it.

"Q. Is that your recollection?

"A. I don't remember.

"Q. Then, Mrs. Reed, when you are asked these questions and you don't remember, say you don't remember.

"A. The first thing I was thinking of, naturally, Mr. Batten, my plant employees do wear white uniforms, and, it being time to go home in the evening, some of them may have changed or they may not.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) appearing at pages 3636 to 3638 inclusive (R. VII. 2351, 2352), and to the following excerpts therefrom, to-wit:

"A. I don't call to mind in a definite way a pin. I have heard discussions of a Loyalty pin, or a pin with the name Loyalty on it, but I don't remember that it was ever brought to my particular attention.

"Q. Was such a pin sold to employees around the plant?

"A. Not to my knowledge.

"Mr. Hogsett: If the Examiner please, I object to this line of questioning as being wholly immaterial, and not having the remotest infinitesimal value, whether proving the Donnelly Garment Company dominated a garment union. It has not, even a faint tendency to prove that. We are all sitting here, wasting the time of the government, and every individual in this room, to no purpose at all, listening to such examination.

"I know that Your Honor, and I think I might say that it is commendable—I know that you have been liberal in the examination in chief and in cross of this witness, for the reason, I think, that was commendable and a proper thing to do, but there must be a limit. • • •

[fol. 218] "Trial Examiner Batten: • • • Well, I am going to pursue the same policy I have consistently followed, unless I feel that it is entirely beyond any matter which we covered in the original hearing, and there was a great deal of testimony in the first hearing concerning the Donnelly Loyalty League. I will permit you to continue, Miss Weyand."

Petitioner further assigns as error said ruling (and the Board's action in affirming same) for the reason that the failure of the Trial Examiner to exclude said immaterial and irrelevant evidence encumbers the record therewith and obscures the real issues involved and has contributed to the erroneous findings of the Trial Examiner against petitioner.

"Trial Examiner Batten: Therefore, you must assume the responsibility of entering into the stipulation.

"The Witness: We didn't know the Board would do a thing like that until this morning.

"Trial Examiner Batten: If you find it is incorrect, check it up and— The burden is on you. (p. 3635) (R. VII. 2338). • • •

"Trial Examiner Batten: Miss Weyand, I said we will proceed on the assumption that it is correct. It is in the record, and it was stipulated, and unless some action is taken by one of the parties to make a motion or take some step to correct it, we will proceed on the assumption that the record is correct. (p. 3688) (R. VII. 2366). • • •

"Trial Examiner Batten: I am not going to initiate any action to change the record. The record stands. It has gone through the hearing, it has gone through the Board, and it has gone through the Court, and as far as I am concerned, I will accept the record as it is." (p. 3689) (R. VII. 2367).

[fol. 217] 205.

Petitioner assigns as error the ruling and action of the trial examiner (and the Board's action in affirming same) as shown by the following excerpts from the transcript of the record, page 3662 (R. VII. 2343), for the reason, among others, that same shows the purpose of the Trial Examiner to have elicited immaterial, irrelevant and incompetent evidence and then to base findings against petitioner thereon:

"Q. Did you ever hear of a Twilight Club, prior to reading that today?

"A. I did not.

"Mr. Hogsett: What possible difference would it make if she did or did not? I object; it is immaterial.

"Trial Examiner Batten: I overrule the objection; the answer is necessary."

"Trial Examiner Batten: (Interrupting) Just a moment, Mrs. Cooper, I don't believe at this point of the proceeding I would exclude hearsay, hardly.

"Mr. Reed: Well, we object to it.

"Trial Examiner Batten: I'll overrule the objection."

[fol. 239] 224.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) appearing on pages 1256-57 as shown by the following excerpts therefrom, to wit:

"Q. (By Mr. Langsdale) Would it have made any difference in your mental attitude toward the ILGWU had you believed Mr. Reed was telling the truth when he said that Mr. Dubinsky was a Communist and a Bolshevist?

"Mr. Reed: That is a purely hypothetical question, and the hypothesis is a mere assumption, 'Would it make any difference to you if something else had happened?'

"Trial Examiner Batten: Do you understand the question, Mrs. Cooper?

"A. I think he wants to know if I had heard that he was a Communist, if it made any difference in my opinion of the union.

"Mr. Langsdale: Yes.

"Trial Examiner Batten: Well, the question is, if you had believed Senator Reed's statement, would it make any difference?

"A. I was going mostly by their actions here in the city.

"Q. (By Mr. Langsdale) Now, Mrs. Cooper, that isn't the question.

"Mr. Langsdale. Will you read the question?

"Trial Examiner Batten: Will you please read the question?

are not restricted to offers of proof on cross-examination. I think, generally speaking, you are, assuming—

"Miss *Weyand*: I do not mean—

"Trial Examiner Batten: Just a moment.—assuming I am able to confine the direct examination to the offers of proof, which I will attempt to do.

"Now, as to your second point, I don't know your purpose, but I think I permitted some questions of this witness as to supervisory employees, instructors, and so forth, and following that examination on direct, I think you are within the direct examination, so you may proceed.

"Mr. Ingraham: Well, we object to this line of questioning as outside the scope of the ruling of the court.

"Trial Examiner Batten: I will overrule the objection".

223.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) appearing on pages 1227-28 of the transcript of the record as shown by the following excerpts therefrom, to wit:

"Q. Did you ever hear that either Sylvia Hall or Fern Sigler left their work as a result of certain demonstrations?

"A. I heard something about it.

"Q. What did you hear?

"Mr. Ingraham: Would you read the question, please?

"Miss *Weyand*: Will you read the last question, please.

"Trial Examiner Batten: Will you please read the last question?

(Last question was read by the reporter.)

"Mr. Reed: The answer was what?

(Last answer was read by the reporter.)

"Mr. Reed: We object to that as calling for pure hearsay evidence.

associates, will you now give us a secret election? And I challenge the Board to that.

"*Miss Weyand*: I would like to state the Board's position with reference to a secret election for the record.

"The Board's position has consistently been, and was upheld by the Courts in this regard, that a secret election cannot be fairly conducted if an employer's unfair labor practices have not been corrected or dissipated.

"*Mr. Reed*: Well, you assume there are unfair labor practices, therefore you assume you can't have an election; therefor you get an election if the Board wants it and not as a matter of right, and the Board's position is, 'We have prejudged you, you are guilty of unfair labor practices, and therefore we won't give you a chance to have an election or give the employees a chance to have an election to determine what their wishes are.'

"That is the fine logic we have in this case, and it runs throughout it."

222.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the transcript of the record at pages 4136-37 (and the Board's action in affirming, same) as shown from the following excerpts therefrom, to wit:

"Q. *Were you given any instructions, oral or written, or any rules of conduct, which stated what your duties as an operator were between January 1936 and July 1937?*

"*Mr. Ingraham*: I would like to ask *Miss Weyand* under what offers of proof this line of questioning comes.

"*Miss Weyand*: I do not believe that on cross-examination I am restricted to any offers of proof. I think as I develop my questioning the point at which I am aiming will be clear. I think it is proper cross, under the questions that were allowed over my objections to be put to this witness, and, therefore, even though I objected to the questions as to what the instructors' duties were, I can certainly cross-examine as to that matter.

[fol. 238] "Trial Examiner Batten: Of course, *Miss Weyand*, I don't believe I could agree with you that you

4056-4060) (R. VIII. 2544-47) to permit the witness Wave Tobin to answer the question asked by petitioner at page 4054 of the record (R. VIII. 2543), to wit:

"Q. (By Mr. Ingraham) Miss Tobin, who is the chairlady of the Marguerite Keyes shop at the present time?"

and assigns as error the ruling of the Trial Examiner in refusing to permit petitioner to recall said witness Wave Tobin to the stand for such purpose or for any purpose as shown by the Record at pages 4088-92 (R. VIII. 2560-1-2); and in refusing to permit petitioner to examine the witness Wave Tobin with reference to the matters set forth in section B of petitioner's answer, and with reference to the matters contained in or referred to in petitioner's offer of proof (Board's exhibit 1-SSSSS) as shown by the Record at pages 4090-4092 (R. VIII. 2561-62); and petitioner assigns as error the action of the Board in adopting and affirming all the foregoing rulings and actions.

In connection with this assignment of error petitioner calls attention to and makes a part hereof all the quotations from the Record set forth in petitioner's preceding assignment No. 219.

This assignment of error is made and based upon all the reasons and grounds set forth or referred to in said foregoing assignment No. 219, and upon the further ground that said ruling and action have denied to petitioner a fair trial therein and deprived it of due process of law under the Fifth Amendment of the Constitution of the United States.

221.

Petitioner assigns as error the refusal of the Trial Examiner and the Board to grant a secret election among the employees to determine their choice of a bargaining agency as set forth in the transcript of the record at pages 4137-38 (R. VIII. 2591, 2592), as will appear from the following excerpts therefrom, to wit:

[fol. 237] "Mr. Reed: I just want to ask—I tried to ask it before Mr. Tyler reached the floor—now, if you will give us a secret election, since you say these people are afraid to testify in the presence of their employers or their

[fol. 235] This assignment of error is made for all the reasons and grounds given at pages 4049-4096 and 4315-16 of the record (R. VIII. 2540-2564 and 2639-2641); and for the further reasons that said rulings were and are arbitrary and unnecessary to orderly procedure and constitute an abuse of any discretion vested in the Trial Examiner with reference thereto are contrary to law, and deprived petitioner of a fair trial and of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

220.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner appearing in the Transcript of the Record at pp. 4049-4073 inclusive (R. VIII. 2540-2555 incl.), and the statements and comments of the counsel for the Board and NLGWU therein appearing and the refusal of the Trial Examiner to permit counsel for petitioner to continue with the examination of Wave Tobin, the witness then on the stand, and his refusal to permit petitioner to proceed with the offering of its evidence in the order desired by petitioner and the refusal of the Trial Examiner to permit said witness to answer the question appearing at the bottom of page 4048 and top of page 4049 (R. VIII. 2540), as follows:

"Q. Now, Miss Tobin, there has been reference in this case to strikes at 26th and Grand, in the spring of 1937. Were you in charge of the strikers in the Missouri Garment Company plants?"

and in refusing to permit petitioner to proceed to elicit testimony from said witness concerning said matters and other pertinent matters therein," and assigns as error the Trial Examiner's requirement that petitioner submit an offer of proof as to what petitioner would prove by said witness' testimony for each and all the reasons stated by counsel for petitioner at pages 4051-52 and 4056-4060 of the Record (R. VIII. 2541-2542, 2544-2547, incl.), and petitioner further assigns as error the refusal of the trial [fol. 236] examiner (as shown by the Record at pages

"Mr. Reed: I want to call attention to this situation which has arisen:

"We are contending that Wave Tobin continue on the witness stand and that her testimony should be heard before other testimony is called for. That is the situation.

"Now, the Examiner rules that he will not rule at this time and directs us to go forward with other witnesses; he is going to reserve his decision. If the decision is not made at this time, then the effect of it will be that we will go on and hear these other witnesses and we don't have a ruling. I think we are entitled to a ruling now, so that we will know how to proceed.

"Trial Examiner Batten. Senator, I ruled this morning that I was first going to hear the 1,200 witnesses which the court referred to and which offers of proof I rejected, and I have not changed that ruling.

"Mr. Reed. You have not changed that ruling, but we have now filed a paper here and we ask a ruling on it, and you say you will reserve that ruling. Of course, if you make the ruling after the damage, as we think, is done, that will do us no good if you then decide it in our favor.

"Now, I don't think I will be able to change your mind, but I want to make this observation, that in the orderly procedure in courts of justice—and I have been there a good many years—and as said by the Court of Appeals here in its quotation from another eminent authority, it is the right of a litigant, through its counsel, to put its evidence in the order it sees fit, and the only question is whether the evidence is competent. The order of proof rests with the person proffering the proof.

"Now, this proceeding that we are now talking about I have never seen in any court, at any time, where a judge undertook to say in what order you shall put on your testimony.

"We offer it, and if it is incompetent, of course you can rule it out, but you cannot tell us, under any rule of law that I ever heard of, the order in which we shall proceed with our defense in this case." (pp. 4095-96) (R. VIII. 2563, 2564).

"Mr. Ingraham. I want to call the Examiner's attention to the last paragraph in respondent's last answer. It is Board's Exhibit No. 1-LLLL.

"Mr. Langsdale. What exhibit is that?

"Mr. Ingraham. Board's exhibit No. 1-LLLL. Page 3441 of the record.

"'Respondent further states'—I am reading from the answer—'that during all of the times mentioned in paragraph 11 of the Board's complaint the International Union, its officers, agents and members were engaged in the said and lawful conspiracy against respondent set forth in section (B) of this answer and the matters set forth in said section (B) of this answer are by reference made a part specifically of respondent's answer to paragraph 11 as though set out in haec verbae.'

"Now, section (B) of respondent's answer was stricken out. Paragraph 11 of the Board's complaint remained in the complaint, and our answer to it remained in our answer; it wasn't stricken out.

"Now, respondent offered to prove those facts which are in paragraph 11 by the following witnesses: Neil Quinlan Reed, Elizabeth Reeves, R. J. Ingraham, John Backofer, Margherite Keyes, Inez Warren, Pauline Shartzer, Mary Spreifera, Nelly Stites, Ruby Rickett, Lyle Jeter, Raymond Smith, Effie Hall, George Counten, Flora Rugen, W. D. Rosenfield, Gordon I. Gordon, Velma Dowdy, Meyer Perlstein, David Dubinsky, Wave Tobin, Sylvia Hull, and Ellen Fry.

[fol. 234] "That offer was rejected.

"We offered to prove the allegations contained in subdivision B of our answer and those are—I will not take the time to read subdivision B.

"Trial Examiner Batten. You mean subdivision B of your answer?

"Mr. Ingraham. Yes. Now, in order to proceed we feel that Wave Tobin's testimony is essential and that under the offers of proof we have a right at this time to examine her." (pp. 4030-31-32) (R. VIII. 2561, 2562).

* * * * *

"Trial Examiner Batten. I think I stated the last day we met, Senator, that I did not intend to require it, as far as Miss Tobin was concerned.

"We are ready to proceed in accordance with my ruling. We will proceed with the employees, in line with the offers of proof which were made and in line with the circuit court's opinion.

"Mr. Ingraham. Respondent excepts to your ruling. We will have to get the employees up here.

* * * * *

"Mr. Ingraham. I would like to call Wave Tobin to the stand.

"Trial Examiner Batten: I think I ruled on that this morning, Mr. Ingraham." (pp. 4087-88-89) (R. VIII. 2560, 2561).

* * * * *

[fol. 233] "Mr. Ingraham. Do I understand the ruling this morning is limiting the testimony to the testimony of Donnelly employees?

"Trial Examiner Batten. I don't think that was the ruling, Mr. Ingraham. You may read the record in the morning. I said I would receive first the testimony of the employees referred to by the circuit court in the offers of proof which I rejected.

"Mr. Ingraham: Now, we have made other offers of proof besides the offers of proof of the employees. There are other offers of proof that were made at the last hearing besides those made on behalf of the employees.

"Trial Examiner Batten. Yes, I think that is right.

"Mr. Ingraham. Now, are we to be limited to the evidence that is covered in the offers of proof of employees?

"Trial Examiner Batten. You are to be limited now to the 1,200 employees referred to by the court—why and how—the offers of proof made on behalf of those 1,200 employees. That is the matter which I will hear first." (pp. 4089-90) (R. VIII. 2561)

* * * * *

[fol. 232] "Trial Examiner Batten: Well, I don't intend to cover all the matters covered in the prior hearing, Mr. Landsdale. I intend to accept first the testimony of the employees referred to in the Circuit Court's decision in the offers of proof which I rejected. Now, that doesn't mean I am limiting the hearing to that. (p. 4077) (R. VIII. 2355)

• • • • •

"Mr. Reed: I confess I am not sure that I comprehend the ruling. Your Honor states that you will receive testimony of the employees on the matters that were referred to in the offers of proof. Do we understand that is all the testimony you are going to permit?

"Trial Examiner Batten: No, I think I stated that is the testimony which I intend to receive first, Senator. In other words, I believe the Circuit Court, in that one matter at least, was specific, and they said I should receive the testimony of the 1200 employees in accordance with the offers of proof. Now, that much of the decision is definite, and I think in line with the Court's decision, that is the testimony which I should receive first, and accordingly I am directing that order of proof." (p. 4078) (R. VIII. 2355)

• • • • •

"Mr. Reed: We are in the middle of the examination of Wave Tobin. We insist respectfully that we are entitled to proceed with that witness, and I call attention to the Examiner's ruling, which, as I understand it, is that be proposes now to regulate the order of proof, and to direct the Respondent how they shall put in their case. That, we think, deprives us of our right under the law, and that is bad practice in any event. (pp. 4078-79) (R. VIII. 2355-56).

• • • • •

"Mr. Reed: • • • • Now, we insist and we propose, on our part—of course, we cannot do it if the Examiner refuses—to go on with the examination of Miss Tobin, and when we ask questions that are outside the issues of this case, the proper objections can be made, but we are not required to tell counsel what we intend to prove by this witness.

ers, so that they were intimidated into riding there in busses or riding there in streetcars, all of that forms a part of this picture.

"The only question, then, is, was the violence here? *Not* what reasons they had for it. *We* do not have to go into that. But *was* the violence here? *Was* the danger here? *Was* the threat here? Those things we have the right to go into.

"Now, here is the lady who conducted the strike. We want to ask her a few brief questions about it.

"Now, if Your Honor undertakes to take this case out of the hands of the attorneys and tell us how we shall introduce our evidence and the order of it, all I can say is that we will have to do as we did before, save our exceptions." (pp. 4056-57-58-59) (R. VIII. 2544-2546, incl.).

* * * * *

"Mr. Ingraham: Won't you let us finish with the question that is asked this witness?" (p. 4060), (R. VIII. 2547).

* * * * *

"Trial Examiner Batten: I think we are ready to proceed. In line with my suggestion when we adjourned I went along the matter of the order of proof in the hearing, and with respect to the procedure which we will follow.

"First, I am going to receive the testimony of the employees referred to in the Circuit Court's decision, and on that basis we are ready to proceed.

"Mr. Langsdale: Mr. Examiner, may I ask you what you mean by 'in accordance with the Circuit Court's decision'? In other words, do I understand you to mean that you will receive the testimony of the employees that was offered?

"Trial Examiner Batten: That's right. In accordance with the offers of proof.

"Mr. Langsdale: And that doesn't mean then the same employees can go over the same matters that they did go over at the hearing?

her interest and to show that by her acts. And if we had no other ground than that, we have the right to ask this question and to have it answered now, and not two weeks from now, or some other time when we may reach it.

"I insist we have the right to ask this lady if she was here when these strikes occurred and to ask her if she did not take part in them, and to ask her if she did not have direction of the violence that took place, and to show her photograph here—her picture in the pictures that display the riotous conduct of these strikers. That for the purpose of showing her interest, if nothing else.

"Then, this evidence is competent for another reason. Of course, it cannot be that in a strike of this kind, violence of this kind, where there were hundreds and perhaps thousands of people concerned—we could not be expected to show by every one of the witnesses that we may put on here that they saw the strike. Some of them saw parts of it. But if we offer the person that was conducting the strike, who knows all about it, and prove the fact that the strike took place and the kind of strike it was, that it was given publicity through the papers and the employees hear of it and know it—the air is full of it, the air is full of danger for them, and that is a reason why they would want to organize a union of their own, to be protected against this violence, that is clearly within the decision of the Circuit Court of Appeals.

[fol. 231] "Now, here is what they said:—Mr. Hogsett called attention to it very graphically.

"'At the hearing before the Trial Examiner, the petitioners proffered the evidence of the employees of the Donnelly Company, some 1200 in number, to show how and why they formed the Donnelly Garment Workers' Union, to show that no influence was brought to bear upon them by the employer either in the formation or administration of the union, to show how and why they organized the union.'

"One of the whys is that this riotous conduct was going on, these brutal abuses were being visited upon girls going to work, that the threats had been made that the same thing would be done to the Donnelly Garment work-

"Mr. Ingraham. No. I understood you to state that you were going to have us make an offer of proof.

"Trial Examiner Batten. Yes, I want an offer of proof on that, as far as this witness is concerned; not a general offer of proof, Mr. Ingraham.

"Mr. Ingraham. Yes.

"Q. (By Mr. Ingraham) Miss Tobin, who is the chairlady at the Marguerite Keyes shop at the present time? (p. 4054) (R. VIII. 2542-3).

* * * * *

[fol. 230] "Mr. Ingraham. May the witness answer the question I have just asked, so that we can go ahead and present any argument we have on this legal point?

"Trial Examiner Batten. I prefer that you present your arguments now, Mr. Ingraham. That was my request.

"Mr. Reed. I want to say first, that the order of proof in a case is in the hands of the counsel who proffer the proof. If they do it in an improper way, it is then for a court or an examiner to rule on the evidence as it is offered. But no court has the authority to tell counsel the order in which they shall introduce proof. I don't think I am mistaken about that.

"So, I say we propose to exercise our right to offer our proof in the manner which seems to us is best and proper. If the Examiner sees fit to exclude it, we can only save our exception at that time.

"Now, in regard to this witness, you have stated that you did not propose to make any rule or follow any rule with regard to who brought in a witness—that you might bring in a witness and you might ask them questions like you would on cross-examination—

"Trial Examiner Batten. If they become adverse to you, Senator.

"Mr. Reed. Yes. Now, we have the right to show the interest of this witness. That is what we are trying to show, her employment for a number of years by the prosecuting force in this hearing. We have the right to show

"Mr. Reed: I object to that as incompetent and immaterial and entirely outside the issues in this case.

"Q. (By Trial Examiner Batten) Do you understand it?

"A. I think I do.

"Q. Well, if you do, you may answer it."

225.

Petitioner assigns as error the rulings, action and comments of the trial examiner (and the Board's action in affirming same) as shown in the following excerpts from the transcript of the record on page 4263, to wit:

[fol. 240] "Q. (By Mr. Langsdale) Did you get from this article any belief that Mr. Dubinsky was a Communist and a Bolshevist?

"Mr. Reed: Well, we object to that as immaterial and incompetent.

"Trial Examiner Batten: You may answer.

"Mr. Reed: I want to get my objection into the record, that is all.

"Trial Examiner Batten: Yes, I will overrule it, Senator."

226.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) throughout the hearing in permitting counsel for the Board and for the I. L. G. W. U. to adduce incompetent, irrelevant and immaterial testimony on the pretext that the same was for the purpose of credibility or that the questions asked were preliminary questions, whereby said improper and incompetent evidence was gotten into the record and contributed to the erroneous findings and conclusions of the Trial Examiner; that such was the purpose of the Board and its counsel is shown by the following excerpts from the transcript of the record at pages 4335, 4336 (R. VIII. 2651), to wit:

"Miss Weyand: I should say that if my cross-examination had brought out a connection of the company with the incident, the Board would be entitled to rely on it in its decision. * * *

"Miss Weyand: My purpose was directed at credibility, but I don't believe that when I direct a question at credibility which is a proper question to direct at credibility I am to be barred from taking the answer and saying I wish to use it for something else if the answer developed into a statement of a connection of the company with the incident."

227.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) appearing in the following excerpts from the transcript of the record at pages 4314 to 4316 inclusive (R. VIII. 2639-2640), to wit:

[fol. 241] "Q. Do you recall at that time what the International was—what charges they were making about the working conditions at the Donnelly plant?

"A. I think I do.

"Trial Examiner Batten: Mr. Ingraham, is that in the offer of proof, the N. R. A. hearing?

"Mr. Ingraham: No. But the Examiner and the Labor Board laid great stress on the events that occurred prior to the effective date—

"Trial Examiner Batten: I do not intend to go into that on these offers of proof.

"Mr. Ingraham: Well, I will have to except to Your Honor's ruling.

"Trial Examiner Batten: You may do so.

"Mr. Ingraham: That is all.

"Trial Examiner Batten: I think I stated pretty clearly, Mr. Ingraham, on these employees, I want to confine it first to these offers of proof. That is the thing that the circuit court clearly indicated I should have taken. Now, I am not making a ruling, as I said before, at this time that I will not take anything else, but I am going to take first the things the circuit court clearly indicated I should have received, and that is my reason for it.

"Mr. Ingraham: At this time do you want me to make an offer of proof on these matters that I am going into?

"Trial Examiner Batten: Of course, I don't know that it is necessary to make an offer of proof. If you want to, you can. I haven't excluded it.

"Mr. Ingraham: You have not excluded that testimony?

"Trial Examiner Batten: No.

"Mr. Reed: How, then, are we to try this case if—

"Trial Examiner Batten: Well, Senator, you are going to proceed, I hope, as I indicated yesterday, and I thought everybody understood, and take first the employees, in accordance with the offer of proof, which the court said I should have accepted.

"Now, that is the plan we are going to follow.

[fol. 242] "Mr. Reed: I seem to be unfortunate. Every time I try to make a statement you interrupt me. I would like to make a statement for the record.

"How are we to try this case if the Examiner undertakes to direct us as to what testimony we shall offer first and not tell us what other testimony will be received, but withholds his decision until we have put our witnesses upon the stand and examined them, within the limitations that he has fixed; then, after that is all done, he may open up the case and try many other things.

"Now, I simply protest that that method is unfair and I except to the ruling of the Examiner.

"Trial Examiner Batten: I understand, Senator, you excepted to it yesterday. You stated, however, that if I intended to pursue that policy, you would comply with it.

"Mr. Reed: We are forced to comply with it. I didn't state I would voluntarily comply with it.

228.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same), appearing at page 4350 of the transcript of the record (R. VIII. 2656), that "whether or not the employer exerted any pressure to exclude these people from the plant I don't think is material under these offers", and in refusing to permit petitioner to adduce such evidence.

229.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4352, 4354, 4355, 4356 (R. VIII. 2657-8-9-2660), to-wit:

"Q. Did Mrs. Hyde say anything to you?
"A. She did.
"Q. What did she say?
"A. She asked me to please go back to my machine.
"Q. And what did you do?
"A. Well, I still wanted to go down and see who the other girl was. I didn't know the other girl. But she asked me repeatedly to go back to my machine and go to work, and I went.

"Trial Examiner Batten: Now, you see, Mr. Lane, what this leads into. You are leading into trying out the whole issue. • • •

[fol. 243] "Trial Examiner Batten: The question here is how and why the Donnelly Garment Workers' Union was organized under the offers of proof.

"Mr. Lane: It is more than that. • • •

"Mr. Lane: Now, Your Honor makes repeated reference to the offers of proof and the Board's offers of proof. I find nothing in the opinion which confines the Intervener or the Donnelly Garment Workers' Union or the Respondent to specific offers of proof. The opinion says the evidence of the employees was to be taken, whether they were dominated or coerced.

"Trial Examiner Batten: Of course, Mr. Lane, I am referring to my ruling that we are first going to take the testimony of the employees in line with the offers of proof. Of course, if you concede this is in accordance with the offers of proof, it is not in accordance with my ruling. • • •

"Mr. Reed: The difficulty is we are trying to do the impossible, we are trying to separate evidence which bears upon the whole case and limit it to bear upon one feature

of the case, and that feature of the case is an essential part of the case itself; so that our difficulty arises from that attempt to first try one particular question.

"Now, you can't try that question, you can't try the very question here, without introducing evidence as to what took place. This lady saw it, and everything that took place there was dragged into this case by both sides before.

"Now, this witness is asked how she felt, what her state of mind was; she saw this difficulty. What took place at that time would affect her mind, and what took place at that time would do something else; it would be a factor in arriving at any other conclusion whether the company was guilty of unfair labor practice by not going in and protecting these people.

"Trial Examiner Batten: Well, of course, Senator, that is not because of the order of proof, and it is not because of the issues in the case. The difficulties that we are running into is that we are trying to explore the minds of people.

"Mr. Reed: Yes.

"Trial Examiner Batten: Now, I don't care whether it is a Labor Board hearing or what kind of a lawsuit it is, when you attempt to do as we are doing here, explore peoples' mental reactions and their opinions—

"Mr. Reed: That is shown by what they do, isn't it?

"Trial Examiner Batten: But you get into serious difficulty. I feel that is what the Circuit Court wanted done; within the limits of our ability, I am going to comply with the Circuit Court's decision. I have made my ruling we are going to proceed in that manner. If I am wrong, Senator, we probably will be back here again.

[fol. 244] "Mr. Reed: I think we will.

"Trial Examiner Batten: Well, I hope I live to be here; I have enjoyed it very much thus far, but I made the ruling, and that is the ruling which we are going to follow."

230.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4358 to 4360 inclusive (R. VIII. 2661-2662), to-wit:

"Mr. Lane: Well, the Board has taken the position, apparently—

"Trial Examiner Batten: (Interrupting) The Board hasn't taken any position. The Board has set aside its decision and order, there is no decision and order in existence, so that can't be used as stating what the Board's decision is.

"Mr. Reed: Well, is there a record in existence that is a part of this hearing?

"Trial Examiner Batten: Well, I would assume so, Senator. At least we started with page 3000 and something, so I assume something precedes it.

"Mr. Reed: Well, the record is here, whether the Board did or didn't make a finding—we know it did make a finding. We know this point adverse to us was in the minds of the Court, and this case has been sent back here, and the Board is ordered to set aside its judgment and decision, and we are here now, prepared to try the issues in this case.

"Trial Examiner Batten: That is the very point I am glad you mentioned, Senator. I have felt that way for some time, that the position of the Respondent is that on every point I passed, the Board made an adverse finding in its prior decision and order; that means the Respondent can now come in here in a further hearing for a specific hearing, and attempt to disprove all the adverse findings brought.

"Mr. Reed: And that, not because of the adverse finding, but because we are entitled to put in this evidence, and the adverse findings simply go to this fact, that it is apparent that the Board has in its mind the importance of this question, and that their opinion was that we were

guilty under this particular phase of the charge. Now, we come back to try it. We have the old record here and we have the right to meet every contention that is made. That contention is made by the Board today, although it set aside its findings, and the record is there, and it is here now, undertaking to say that on that record made, which is now, as I understand, a part of this hearing, certain deductions we have drawn, and it drew them. Now, we come in and want to show the facts in this case; and to shut us off from that—

[fol. 245] "Trial Examiner Batten: (Interrupting) Of course, Senator, I can't agree with you that you are coming in here to show the facts; you are coming in here to show the facts on the basis of the remand of the Circuit Court.

"Mr. Reed: I understand that, and you and I differ on that radically, on what the remand it, and we object to the ruling that has been made, to the effect that we are confined here to our offers of proof, and then we make the further point that our offers of proof are broad enough to cover every contention that we have thus far made in this case; and that we have the right now, under the offers of proof, to meet every issue in this case; and we object and except to any rulings to the contrary.

"Trial Examiner Batten: Well, of course, I think the record is pretty clear, Senator, that you have excepted to all of these rulings."

231

Petitioner assigns as error the rulings, action and comment of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at page 4365 (R. VIII. 2663), to-wit:

"Q. (By Mr. Lane) Will you state, Mrs. Saucke, what was said by anybody in the section?

"Trial Examiner Batten: Well, I'll object to that question and sustain my own objection. If this questioning indicates this witness can't identify what anybody said—I mean the names of anybody—then I would say the proper foundation is laid for your last question.

232.

Petitioner Assigns as error the ruling and action of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4381, 4382, to-wit:

"Q. Who did you deal with in arranging that picnic?

"Mr. Reed: Now, if Your Honor please, isn't this utterly immaterial to this case? I submit that it is. It is a useless consumption of time.

"Trial Examiner Batten: You may tell us. Who did you deal with?"

[fol. 246]

233.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at page 4393 (R. VIII. 2670), to-wit:

"Q. Do you remember what the vote was against you?

"A. No.

"Q. How was the vote conducted?

"Mr. Reed: If Your Honor please, isn't this testimony an utter waste of time.

"Trial Examiner Batten: Well, I don't know, Senator.

"Mr. Reed: Well, I am objecting to this line of questioning as incompetent and immaterial.

"Trial Examiner Batten: I'll overrule the objection. I think it has to do with the Donnelly Garment Workers' Union, Senator, clearly."

234.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4399, 4400, 4405-4406, 4410, 4411-4412, to-wit:

"Q. Did you know whether she would be a good person to represent you in the Donnelly Garment Workers' Union?

"Mr. Reed: Well, I object to that as utterly immaterial.

"Trial Examiner Batten: Well, she can answer.

"Mr. Reed: An opinion of the witness as to whether some other lady, whom she says she hardly knew, would be a good person to represent her or not—

"Trial Examiner Batten: She may answer.

"Mr. Reed: Well, I want to put my objection in. It is immaterial, outside of the issues in this case, and a useless consumption of time.

"A. Well, what little I have seen of her, I imagine she would be very capable.

"Q. (By Miss Weyand) Did you know her well enough to form an opinion?

[fol. 247] "A. I think I did.

"Q. And had you formed an opinion?

"Mr. Reed: I make the same objection.

"Trial Examiner Batten: Overruled.

* * * *

"Q. What discussions did you hear her participate in?

"A. I couldn't say.

"Mr. Reed: May my previous objection stand to any of this line of questioning?

"Trial Examiner Batten: Yes, you may have a continuing objection.

* * * *

"Q. Do you know what her opinion in regard to labor matters is?

"Mr. Reed: I object to that as calling for the information of somebody else, incompetent and immaterial.

"Trial Examiner Batten: Well, you have already answered it, haven't you?

"A. No, I haven't.

"Trial Examiner Batten: Well, you may answer.

"Mr. Ingraham: Respondent further objects, that the question is general.

"Trial Examiner Batten: You may answer. * * *

"Q. Did you ever hear him make any statement about labor matters? A. I don't remember.

"Mr. Reed: I wish to call to the attention of the Court that that question is unfair as it simply refers to labor matters. Now, there are a thousand—ten thousand different things that concern labor matters. The question does not mean anything in the form that it is put, and the witness might have to answer on matters entirely outside of this issue on labor matters. I got opinions on labor matters; most everybody has; and how many different opinions, and how many different kinds of questions is all open, it is all embraced in this one question on labor matters.

"I object to it as an improper form of examination.

"Trial Examiner Batten: We will recess until 20 minutes of 4. * * *

"Q. Did you know his character sufficiently to know whether he would make a good representative for the employees?

[fol. 248] "Mr. Reed: Now, I object to that as utterly incompetent and immaterial, did she know this man's character sufficiently to know whether he would make a good representative for the employees. How can that throw any light on this case? How can she be required to pass an opinion upon the qualifications of some man who is not even here in court?

"Trial Examiner Batten: Well, you may tell us whether you knew him well enough to have him represent you."

235.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at page 4421 (R. VIII. 2674-2675), to-wit:

"Q. (By Miss Weyand) And did you participate in the nomination of Mildred Mattox? A. Yes, I did.

"Mr. Lane: If the Examiner please, the Intervener Donnelly Garment Workers' Union objects to that question; whether this witness, Mrs. Saucke, participated in the nomination of Mildred Mattox in April, 1938, as a member of a nominating committee, whether this witness acted wisely or unwisely in so participating, or whether this witness was casually or intimately acquainted with Mildred Mattox doesn't throw any light whatever on the issues of this proceeding, it is entirely irrelevant and immaterial, doesn't even approach the issue we are here to try out, and I object to it for that reason.

"Trial Examiner Batten: We will proceed.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: Overruled."

236.

Petitioner assigns as error the failure and refusal of the Trial Examiner (and the Board's action in affirming same) to rule upon and sustain the objection made at page 4426 of the record (R. VIII. 2676) as shown by the following excerpts therefrom, to-wit:

"Miss Weyand: She said she didn't know who Stella Willis was and I just wanted the record to show how completely ignorant she was on what goes on there at the Donnelly Garment Company.

"Mr. Lane: I object to the comment and move that it be stricken."

[fol. 249]

237.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4454, 4455, 4456 (R. VIII. 2689, 2690), to-wit:

"Q. Do you know anything about the way it happened at this election? A. What year?

"Q. 1938, that the two tickets brought in each had Rose Todd for president on each ticket, Jack McConaughey for treasurer on each ticket, and Margaret Green for secretary on each ticket?

"Mr. Reed: I object to that as immaterial; whether the witness noticed it or didn't notice it, is purely immaterial in this case.

"Miss Weyand: She was a candidate on one of the tickets for vice president, and I think she would be a good person to explain.

"Mr. Ingraham: I didn't know there was a vice presidential candidate.

"Trial Examiner Batten: Do you know anything about it?

"A. I had nothing to do in making up those tickets, didn't know who was on those tickets until they were placed on the board in front of me.

"Q. (By Miss Weyand) And you didn't later learn how that happened?

"A. I didn't even inquire.

"Q. You don't to this day know how that happened?

"A. You mean how those names——

"Mr. Reed: (Interrupting) She has already said she was not present, that she didn't know how the list were made up. Now she is asked if she didn't know how that happened; I object to it.

"Miss Weyand: She indicated at that time——

"Trial Examiner Batten: The question is whether she ever found out it occurred.

"Mr. Reed: Then it would be hearsay.

"Mr. Langsdale: That is not a question from the testimony in this case.

[fol. 250] "Trial Examiner Batten: Did you ever find out, Mrs. Saucke?

"A. I never tried to find out.

"Q. (By Trial Examiner Batten) Then, you didn't find out? A. I didn't ask.

"Q. Then, if you didn't ask, you didn't find out, did you? A. No, I guess I didn't.

For the reason that the testimony elicited there and on similar matters shown in the succeeding pages of the record is wholly immaterial and irrelevant to the issues and does not tend to prove any of the charges in the complaint and obscures the real issues and contributed to the erroneous findings and conclusions of the Trial Examiner, and because said interposition of the Trial Examiner shows his partisanship and bias against petitioner.

238.

Petitioner assigns as error the constant interposition of the Trial Examiner (and the Board's action in affirming same) in the conduct of examinations by counsel and his refusal to rule on petitioner's objections and let counsel proceed to try the case in their own way, and his rulings, action and comments as same appear on pages 4483 to 4487 of the transcript of the record, said instance of such interposition by the Trial Examiner being but one of the hundreds throughout the record, all of which petitioner assigns as error.

239.

Petitioner assigns as error the rulings, action and comment of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4511, 4512, to-wit:

[fol. 251] "Q. Now then, would you have done the things you did on April 23, 1937, at Sylvia Hull's machine if you had known she was going there to represent only members of the I. L. G. W. U.?

"Mr. Reed. I object to that as incompetent and immaterial and asking the witness to testify to what she might have done under a state of facts which is not shown to have existed and which the witness did not have in mind, as shown by her own testimony.

"Trial Examiner Batten: Will you read the question, please?

"(Thereupon the last question was read by the reporter.)

"Trial Examiner Batten: You may answer.

"A. I certainly would, because the article also states they were going to call a strike.

"Q. That they were going to get permission—

"A. — to call a strike.

"Q. At any rate, you would have done and said exactly the same things you did say and do on April 23 at her machine or near her machine had you known she was going there to represent only employees of the Donnelly Garment Company that belonged to the I. L. G. W. U.?

"Mr. Reed. I renew my objection last made.

"Trial Examiner Batten: The objection is overruled.

"You may answer."

240.

Petitioner assigns as error the rulings, action and comment of the Trial Examiner (and the Board's action in affirming same) in ruling and requiring that the witness on the stand, Mrs. Warth, give the name of a friend who she stated had had her clothes torn in the I. L. G. W. U. strikes, and in striking out the testimony of said witness with reference thereto because of her refusal to state the name of said friend, which said rulings, comments and actions appear at pages 4565 to 4575 of the record (R.VIII. 2734-2738), and particularly in the following excerpts therefrom at pages 4573, 4574, 4575, (R. VIII. 2737-8), to-wit:

[fol. 252] "Trial Examiner Batten: If it is for the purpose of credibility, I will ask the witness to disclose the name.

"Mr. Reed: Do the counsel on the other side now say that they are going to test this lady's credibility by bringing in the witness, and do they vouch for the fact that that witness will contradict this witness?

"Trial Examiner Batten: That is not what I asked them. I asked Miss Weyand if it was a matter of credibility, and she said it was. I asked her, entirely so? And she said yes. Upon her statement, the witness may disclose the name of the person. • • •

"Mr. Reed: Are we, then, to understand that this question is to be asked, although limited to impeachment purposes, and that we can follow and show that this young lady, if she would come in and deny this, the fact back of it, or show, if she didn't deny it, that she spoke the truth?

"Trial Examiner Batten: I am making no ruling of any kind, Senator, except to this witness, that she may disclose the name of the person.

"Mr. Reed: That's the trouble.

"Trial Examiner Batten: That isn't the trouble. If you believe you have the right to present such testimony, Senator, you present it, and at the time it is presented I will rule upon it.

"Mr. Reed: I am going to say to the witness that she has the right to withhold this name, if she wants to.

"The Witness: I think I will stand on that right, then.

"Trial Examiner Batten: All right. You may do so, and I shall strike your testimony with respect to this incident which was given on direct examination—

"Mr. Lane: Intervener excepts to the ruling of the Examiner.

"Trial Examiner Batten: —in accordance with the Board's rules.

"Mr. Reed: And we also except to the ruling."

241.

Petitioner assigns as error the ruling of the Trial Examiner (and the Board's action in affirming same) refusing to permit petitioner to recall witness Wave Tobin to the stand and to continue its examination of her as shown by the following excerpts from the transcript of the Record at page 4692 (R. VIII. 2767), to-wit:

[fol. 253] "Trial Examiner Batten: Mr. Ingraham?

"Mr. Ingraham: I would like the record to show that Wave Tobin is present in court and has been present at every session since she was on the stand, and respondent again asks the right to continue its examination of her.

"Trial Examiner Batten: Has Mrs. Reed been in court since we started up again, Mr. Ingraham?

"Mr. Ingraham: No, she has not.

"Trial Examiner Batten: Well, I think I can verify the fact for you that, as far as I recall, Miss Tobin has been here every day.

"We will proceed.

"Mr. Ingraham: And my request to be permitted to continue my examination of her will be denied?

"Trial Examiner Batten: We will proceed in line with the ruling which I have previously made, Mr. Ingraham."

242.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) limiting the petitioner's examination of its witnesses strictly to the Examiner's conception of what is covered by the offer of proof and refusing to permit witnesses while on the stand to testify as to other material and pertinent phases of the case as set forth in the following rulings and comments of the Trial Examiner appearing in the transcript of the Record at pages 4755-56 (R. VIII. 2802-2803), to-wit:

"Mr. Reed: Will you pardon me at that point?

"We are now running into the vice, I think, of—I don't say that disrespectfully of the ruling. You say at the present time we are going to hear only from the witnesses who were named and that you are going to confine the issues to the one question of offers of proof.

"Trial Examiner Batten: That is right.

"Mr. Reed: But hereafter you will leave it open.

"Trial Examiner Batten: I am not ruling upon that matter.

[fol. 254] "Mr. Reed: So, when we undertake to present our case we are handicapped by a ruling which limits our right to put in evidence on only one phase of the case, when the same witness that we have here could testify as to the other phases, if you hereafter admit them.

"Now, we ought to know what is coming into this case, Mr. Examiner. We ought to know now.

"Trial Examiner Batten: Senator, I would like to know, myself. If I knew, I could make a ruling, but I don't know, so I can't rule.

"Mr. Reed: So we all proceed in the dark.

"Trial Examiner Batten: We certainly do.

"Mr. Reed: Very well, then, I object to that procedure.

"Trial Examiner Batten: Except in accordance with the ruling I have made that we are first going to take the testimony which I rejected in the offers of proof. That is the order of proof and we are going to follow that."

243.

Petitioner assigns as error the ruling and action of the Trial Examiner (and the Board's action in affirming same) in limiting petitioner's evidence to matters occurring within six months prior to March 18th, 1937, to-wit, from November, 1936 on, and in ruling that things prior to that date are not covered by the offers of proof and should not be received in evidence under the Examiner's ruling directing the order of proof, as set forth in the ruling and comments of the Trial Examiner appearing at pages 4763-64 of the transcript of the Record (R. VIII. 2808), as follows, to-wit:

"Trial Examiner Batten: I think we are ready to proceed, and I think the offers of proof contemplate the period in or about March 18, 1937, and as to any strikes or matters of that kind which occurred during that period, and I think it is reasonable to go back to—I think the offers contemplated at least a period, I would say from November on, and any things prior to that I will now rule aren't covered by the offers of proof, and therefore shouldn't be presented at this time, in line with my ruling directing the order of proof."

for the reasons among others that said ruling was and is unfair and prejudicial to petitioner and demonstrates the Trial Examiner's bias against petitioner and denies to [fol. 255] petitioner a fair trial and the opportunity to

meet evidence admitted on behalf of the Board and ILGWU and constitutes the taking of petitioner's liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

244.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) in the following excerpts from the transcript of the record at pages 4795-96-97-98 (R. VIII. 2823, 2824, 2825), to-wit:

"Miss Weyand: I am going to hand the witness Board's exhibit No. 2 and ask her to direct her attention to the second page thereof, which appears in the Circuit Court of Appeals record at page 4362, and ask her to read an article there appearing, entitled 'Nine Hundred Joined Loyalty League.' The article runs over to page 4363 of the Circuit Court of Appeals record.

"Mr. Reed: What is that?

"Miss Weyand. The article appears in the N. D. A. A. (being Nelly Don Athletic Association) News for February 1935.

"Mr. Ingraham: We object to the witness being examined about what appeared in the Nelly Don Athletic Association News. There is no showing that the company had anything to do with the publication or is in any way responsible for anything that appeared in it.

"Trial Examiner Batten: Of course, there isn't any question pending yet, Mr. Ingraham.

"Mr. Lane: Mr. Examiner, wasn't it your ruling this morning that you were going to confine the examination at this point to matters occurring within a reasonable time prior to April 27, 1937?

"Trial Examiner Batten: I say, there isn't any question pending yet to rule upon.

"Mr. Lane: She is directing attention to what occurred in 1935.

"Mr. Reed: I think if the Examiner will search his recollection, he will remember he refused to let Mr. Lane show the witness an article which lay outside of these limits, or examine about it.

(Thereupon the above-specified article was read by the witness.)

* * * * *

[fol. 256] "Q. (By Miss Weyand) Did you read that article when it appeared?

"Mr. Ingraham: I object to that question as immaterial to any issue in this case.

"Trial Examiner Batten: Overruled.

"Mr. Lane: Intervener makes the same objection.

"Trial Examiner Batten: Overruled.

"A. I don't remember whether I read that or not.

"Q. (By Miss Weyand) Have you ever read this article before?

"A. I don't believe that I read it.

"Q. Did you attend the meeting here described as a meeting at which 900 persons were present and cards were passed out for membership in the Loyalty League?

"Mr. Ingraham: Now, I object to that question. It is outside the scope of the offers of proof, and the witness has stated that she did not read the article.

"Mr. Reed: Outside of the scope of the ruling this morning made.

"Trial Examiner Batten: Did you state, Miss Barnes, that you did not read this article?

"A. I don't remember reading it in that pamphlet, no.

"Trial Examiner Batten: Of course, the question now is did she attend the meeting of 900 people, is that right?

"Miss Weyand: That is correct.

"Trial Examiner Batten: You may answer.

"Mr. Lane: I would like to have a continuing objection to showing the witness any article excluded by your ruling

this morning. This witness was questioned about something that happened in 1935 and 1936, and the Board has gone back to 1935, and I want to object.

"Trial Examiner Batten: Just a moment. You may have a continuing objection.

"Mr. Ingraham: The respondent would like to have the same continuing objection.

"Trial Examiner Batten: You may have the same continuing objection."

for reasons among others that said testimony and the testimony adduced thereafter and appearing on pages 4798 to 4805 of the record (R. VIII. 2825-2830, incl.), relating to the organization of the Loyalty League and similar matters is wholly immaterial and irrelevant to any [fol. 257] issue herein and contrary to the Trial Examiner's ruling that evidence of events occurring prior to six months before March, 1937, would not be received, and because said rulings are arbitrary, unfair and prejudicial to petitioner and demonstrate the biased and unfair attitude of the Trial Examiner toward petitioner and his nonjudicial attitude toward the evidence, by reason of all of which petitioner has been denied a fair trial and deprived of its liberty and property without due process of law.

245.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the Record at pages 4829-30-31-32 and 33 (R. VIII. 2838-2839), to wit:

"Q. No one discussed those by-laws, did they?
"A. No.

"Mr. Reed: Wait a minute. I think counsel ought not to try to mislead the witness. If he puts in part of these minutes, he ought to put in the qualifying phrase that it was explained that the by-laws could be changed at any time. Isn't that right in the minutes before you?

"Mr. Langsdale: No. Here is what Mr. Tyler said about it, 'I suggest that if the by-laws are satisfactory someone move they be adopted'.

"Mr. Reed: Is that all that was said?

"Mr. Langsdale: And then the motion was made by Ellen Nokes that 'we accept the by-laws as they were read; seconded by Virginia White, unanimous acceptance.'

"Mr. Reed: Give me the minutes.

"Mr. Langsdale: Senator, I am examining this witness. Wait until I get through.

* * *

"Trial Examiner Batten: You may proceed. There is no question pending.

"Mr. Lane: I submit that with respect to the minutes, he read only a portion of them.

[fol. 258] "Trial Examiner Batten: Of course, he hasn't read all the minutes; but I say, Mr. Lane, there is no question pending.

"Mr. Lane: Well, his statement is incomplete and misleading.

"Mr. Langsdale: Are you trying to suggest to the witness part of her answer?

"Mr. Lane: No, I am not, but I am objecting to the misleading nature of your examination.

"Trial Examiner Batten: If there is any misleading here, I think I would intercede. I am convinced he was not misleading anybody. Will you proceed, Mr. Langsdale?

"Mr. Ingraham: We would like, before you proceed, to make an objection to the question, and move that the question and answer be stricken out.

* * *

"Mr. Reed: Well, I move to strike out the question as misleading and improper for the reason that there is no connection with the other matter called attention to, which counsel did not refer to, although he apparently was reading from the records. This was said, 'I suggest to adopt, then, the bylaws, and then leisurely amend them, when the majority of you wish them changed. They are drawn

as follows:' so that there was in this meeting a statement made that if they adopted them, then they could change them afterwards.

"Now, I think Mr. Langsdale, perhaps inadvertently, omitted to call attention to that fact.

"Mr. Langsdale: I didn't do it inadvertently. I don't have to read everything that happened at that meeting.

"Trial Examiner Batten: Read the question and answer, please; there is a motion to strike.

"(Thereupon the last question and answer were read by the reporter as follows:

"'Q. No one discussed those by-laws, did they?

"'A. No.')

"Trial Examiner Batten: I don't see anything improper with that.

"A. Mr. Examiner, I think before that I was asked if these bylaws were accepted, and I said they were accepted subject to change.

"Q. (By Trial Examiner Batten) Well, then, you weren't misled by any questions Mr. Langsdale asked you, were you?

"A. No, but he didn't read all of it.

"Trial Examiner Batten: Well, if you weren't, the motion is denied. Let's proceed."

[fol. 259] 246.

Petitioner assigns as error the interposition of the Trial Examiner (and the Board's action in affirming same) in the examination of witnesses throughout the hearing and as illustrated by the following excerpts from the transcript of the Record at page 4917 (R. VIII. 2862-2863), to wit:

"Q. (By Mr. Ingraham) I will ask you to state whether or not after Mr. Baty took over the plant there was any change, to your knowledge, of the authority of instructors, passing on hiring or laying off or disciplining employees.

"A. I don't know as the instructors ever had that authority to hire and fire employees.

"Q. (By Trial Examiner Batten) You mean by that, not knowing whether they ever had it, you couldn't say whether there was any change? Is that what you mean?

"A. Oh, yes, there was a change—

"Q. No. My question to you is, Not knowing whether the instructors ever had the right to hire and discharge, you couldn't say whether there was any change?

"A. I know they never had the right to hire and discharge.

"Q. Well, then, can you say whether there was any change when Mr. Baty went in there?

"A. Yes.

"Q. As to hiring and firing?

"A. Well, as to—I don't know, but—

"Q. My question to you was, as Mr. Ingraham's question was, whether there was any change as to hiring and firing.

"Mr. Langsdale: I think the question was a little more comprehensive than that.

"Trial Examiner Batten. It may have been, but that was the point I was concerned about."

as showing the partisanship of the Trial Examiner against petitioner and his evident desire to elicit testimony favorable to findings and issues which he had already resolved in favor of the Board and against petitioner.

[fol. 260] 247.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 4945-46:

"Trial Examiner Batten: What did you understand it to mean?

"A. My understanding was she was going to represent all of us.

"Q. You mean from reading the article?

"A. From reading the article.

"Mr. Langsdale: We certainly are not bound by understanding of someone who doesn't understand the English

language when she reads it. I ask that the answer be stricken out as utterly irrational and having no foundation or basis in the article.

"Trial Examiner Batten: It may stand.

"Mr. Reed: I am protesting against the insulting remark made to a witness on the stand.

"Mr. Langsdale: I don't consider it insulting but when I get ready to make that kind of remarks I will come around and take some lessons from you.

"Mr. Lane: I move to strike out the remarks of Mr. Langsdale for the reasons they are argumentative and they are not directed to the question I asked. They are not proper remarks to be made by counsel.

"Trial Examiner Batten: Do you have a question pending?

"Mr. Lane: No, I am asking those remarks be stricken."

248.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the Record at pages 4962-63 (R. VIII. 2887-2888), to wit:

"Q. When was the first Loyalty League meeting, can you recall?

"A. Well, the first Loyalty League meeting I recall was in 1935, I think, when they joined the organization down there to the plant; the Loyalty League is a social affair—we joined our clubs together, each section had a club.

[fol. 261] "Mr. Lane: Mr. Examiner, may it be understood the intervener, Donnelly Garment Workers' Union, has a continuing objection to inquiring into matters around 1935 or thereabouts? Your ruling was given when the intervener was going into matters except those within a reasonable time prior to April 27, 1937.

"Trial Examiner Batten: Well, of course, this question has nothing to do with my ruling, but I'll grant you the continuing objection.

"Mr. Lane: Well, she is inquiring of something that occurred in 1935.

"Trial Examiner Batten: Yes, concerning the Loyalty League, Mr. Lane.

"Mr. Ingraham: It is understood the respondent still maintains its objection to any matters prior to July 15, 1939.

"Trial Examiner Batten: I didn't understand it, unless you make it.

"Mr. Ingraham: Well, I made an objection at the first hearing as to all matters that occurred prior to July 15, 1939.

"Trial Examiner Batten: You mean your original objection in the first hearing?

"Mr. Ingraham: That is correct.

"Trial Examiner Batten: Well, of course, the objection you made at that time, I assume, continues through the entire hearing.

"Mr. Ingraham: Well, that will be my understanding of it."

for the reasons, among others, that said rulings are contrary to the Trial Examiner's ruling refusing to permit petitioner to adduce evidence of matters occurring prior to six months before March, 1937, and for the further reason that said evidence does not tend to prove any of the charges against petitioner.

249.

Petitioner assigns as error the ruling of the Trial Examiner (and the Board's action in affirming same) permitting counsel for the Board to interrogate the witness concerning Board's Exhibit 2 and other related matters appearing in the transcript of the Record at page 4983 (R. VIII. 2896) over the objections of petitioner and intervener, for the reason that said examination is contrary to [fol. 262] the ruling of the Trial Examiner refusing to permit petitioner to adduce evidence prior to November, 1936, and for the further reason that said evidence does not tend to prove any of the charges against petitioner.

250.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth on pages 5006-07 of the transcript of the Record, to-wit:

"Q. Well, at that time did you learn that if you had a plant union and got a closed shop, that you could keep the I. L. G. W. U. out by firing everybody that joined it?

"Mr. Reed: That is what you do all the time.

"Trial Examiner Batten: Is that an objection, Senator?

"Mr. Reed: Yes, I object to the question as improper, not proper cross-examination.

"Trial Examiner Batten: Overruled.

"A. What was the question?

"Trial Examiner Batten: Read the question.

"(Thereupon the last question was read by the reporter.)

"Mr. Lane: Well I object to that for the reason that it is not the situation, and never had been the situation, that everybody that joined the I. L. G. W. U.—

"Trial Examiner Batten: Is that an objection?

"Mr. Lane: Yes, that is an objection.

"Trial Examiner Batten: What is the objection?

"Mr. Lane: Because the question states a hypothetical situation.

"Mr. Ingraham: Respondent makes the same objection.

"Q. (By Mr. Langsdale) Did you know or did you learn that at that time, if you should form a plant union, get a closed shop agreement, that everyone would have to belong to that union?"

[fol. 263] 251.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts of the transcript of the record (pages 5010-5011) (R. VIII. 2903), to-wit:

"Trial Examiner Batten: Of course, if the question is asked and answered, then an objection is not proper at this time, is it?

"Mr. Lane: You have been interrogating the witness yourself, so I didn't have an opportunity to make the objection. Now, my objection is, to the question Mr. Langsdale asked, the last portion of it, with respect to keeping—to preventing any employees from joining the I. L. G. W. U.—now, that is not a provision of the Wagner Act, and I submit counsel should not be permitted to ask that question, that if they get a closed shop they have a right to require all the employees to belong to that union, and the Wagner Act doesn't provide that every employee shall stay out of the I. L. G. W. U.

"Mr. Langsdale: Well, I say, Mr. Lane ought to go and read the Wagner Act, and read some of the decisions.

"Trial Examiner Batten: Well, if that is an objection, it is overruled, because the question has been put and the answer is in the record. So, you proceed, Mr. Langsdale."

252.

Petitioner assigns as error the rulings, action and comment of the Trial Examiner (and the Board's action in affirming same) as set forth in the excerpts from the transcript of the Record at pages 5063-64-65, (R. VIII. 2930, 2931), to-wit:

"Q. Did you know that you were being paid far in excess of wages that were being paid in plants that had contracts with the I. L. G. W. U. in Kansas City?

"A. I felt sure I was making far more than I would in some of these other factories.

"Q. Was this article—

"Trial Examiner Batten: How is that material? You say did she know. Well, of course, I have no objection to it, she had answered it. Of course, it doesn't mean that we are going into that whole question of whether, in fact, they were. The only question that will raise is whether or not this witness—what her own information is concerning the statement, whether it is supported by anything. I didn't want you to think that raises the whole issue of the truth.

[fol. 264] "Mr. Ingraham: We still contend that is an issue we are interested to go into and that even under your ruling, that is a factor that these employees have a right to consider.

"Trial Examiner Batten: Yes, that is what I just said.

* * * * *

"Trial Examiner Batten: I am only going into it to the extent I indicated. These witnesses have testified what it was that lead them to form the organization or why they did it. Now, I am permitting it to that extent and that doesn't mean I am excluding the testimony you indicated, Mr. Ingraham, that you still take the position it is an issue. I am not ruling on that matter now, only with respect to this witness' testimony."

253.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth on pages 5154 to 5160 and at pages 5168 to 5169 of the transcript of the Record, (R. VIII. 2973-2977; 2982-2983, incl.), as showing the bias and prejudice of the Trial Examiner towards petitioner and his evident desire to have elicited evidence [unfaborable] to petitioner even though the questions asked were clearly incompetent.

254.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the Record at pages 5203, 5204, 5205, to-wit:

"Q. Did you think you could ignore the Act up until the time the Supreme Court declared it constitutional?

"Mr. Reed: I object to that as incompetent and immaterial, entirely outside the issues in this case.

* * * * *

"Trial Examiner Batten: Will you read the question, please?

"(Thereupon the last question was read by the reporter, as follows:

" 'Did you think you could ignore the Act up until the time the Supreme Court declared it constitutional?')

"Trial Examiner Batten: Do you understand the question?

[fol. 265] "Mr. Reed: Now, how does that throw any light on the issues?

"Trial Examiner Batten: Do you understand the question, Mrs. Mudd?

"The Witness: I understand the question, but I don't believe he quoted me right.

"Trial Examiner Batten: Irrespective of whether he quoted you right or not, if you understand this question, you may answer.

* * * * *

"Mr. Reed: I submit that question is incompetent and immaterial for any purpose, whether she thought she could ignore it or couldn't ignore it. She has simply said she read about the Act in the paper and she read it was before the Supreme Court, and there is no question of whether she wanted to ignore it or didn't want to ignore it; that is not in this case.

"Trial Examiner Batten: Do you recall the question, Mrs. Mudd?

"The Witness. Yes, but—

"Trial Examiner Batten: You may answer."

255.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) refusing to sustain petitioner's and intervener's objections to questions propounded by the Board's counsel concerning the organization meetings of the Loyalty League and related matters extending back

as far as 1935, which examination together with petitioner's and intervener's objections appears at pages 5288 to 5301 of the transcript of the Record (R. IX. 3027-3034, incl.), for the reason that same are contrary to the rulings of the Trial Examiner limiting petitioner in the production of evidence to a time not prior to November, 1936, and because said rulings and action are emphatically unfair and prejudicial to petitioner, and by reason of which petitioner has been denied a fair trial herein.

[fol. 266] 256.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the Record at pages 5343-44 (R. IX. 3043), to wit:

"Q. Did the thought occur to you that getting that Loyalty petition signed and getting the pictures in the paper might be the answer of the company to Perlstein's interview?

"Mr. Reed. Read the question, please.

"(Thereupon the last question was read by the reporter.)

"Mr. Reed: I object to that as incompetent and immaterial and in no manner binding upon the parties to this case.

"Mr. Stottle: And assuming as evidence something that is not in evidence.

"Trial Examiner Batten: Do you understand the question?

"The Witness: I was going to say—

"Trial Examiner Batten: Well, do you understand the question that was asked you? Do you remember what it was?

"The Witness: Well, it referred to the pictures going to be in the paper.

"Trial Examiner Batten: Will you read the question please?

"(Thereupon the last question was read by the reporter.)

"Trial Examiner Batten: Do you understand the question?

"The Witness: Not clearly, not that part of it, 'answer of the company'. I don't understand just what he means.

"Trial Examiner Batten: Then, restate it, Mr. Langsdale. The witness says she doesn't understand the latter part of it.

"Q. (By Mr. Langsdale) Was there anything that came to your mind about the company's getting this petition signed and then having pictures in the newspaper as an answer to Perlstein's interview that you read 4 days earlier?

"Mr. Reed. I object to that as incompetent and immaterial and as assuming that the company had this petition signed, when all of the evidence is to the contrary.

"Mr. Langsdale: It isn't assuming at all. I am asking her—

"Trial Examiner Batten: The objection is overruled."

[fol. 267] for the reasons, among others, that same show the partisanship of the Trial Examiner and his desire to get into the Record an unfavorable statement of the witness with reference to the subject matter inquired about upon which the Trial Examiner was already committed in his previous findings and conclusions in this case.

257.

Petitioner assigns as error the ruling of the Trial Examiner (and the Board's action in affirming same) that so far as the offers of proof are concerned and the employee witnesses are concerned with respect to petitioner, that he had heard sufficient and that anything further would be cumulative and would not enable the Examiner or the Board or the Circuit Court to get any better picture of the situation, and assigns as error the Trial Examiner's ruling and determination that he had heard enough employee witnesses both as to the petitioner and intervener, and in refusing to permit petitioner to call any

more employee witnesses or adduce any further testimony under petitioner's offers of proof and assigns as error his ruling and action in refusing to permit intervener to put on any witnesses whatever or adduce any evidence whatever under the offers of proof, for the reasons, among others, that said rulings and action are contrary to the holding of the Circuit Court of Appeals in remanding the case and contrary to the order of the Board herein in ordering a further hearing of this matter; and for the further reason that petitioner was prepared to call and place upon the stand all or substantially all of the witnesses named in the offers of proof referred to, and all of said witnesses would have testified to matters refuting each and all the charges against petitioner and such testimony would have presented to the Trial Examiner, the Board and the Circuit Court of Appeals an overwhelming case [fol. 268] sustaining petitioner's contentions and refuting all of the charges against petitioner, and because said rulings and action of the Trial Examiner deny to petitioner an opportunity to adduce said material, competent and relevant evidence bearing on the issues involved herein, whereby petitioner has been denied a fair trial and has been denied due process of law in contravention of the Fifth Amendment to the Constitution of the United States; all of said rulings having been made over and against the objections of petitioner.

In connection with this assignment of error, petitioner refers to the following excerpts from the record (pages 5797, 5800), (R. IX. 3253, 3255), and assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) set forth therein for each and all of the reasons hereinabove seated, to wit:

"Trial Examiner Batten: Is there anything further?

"Well, if not, I think I shall rule at this time that as far as the offers of proof are concerned, and the employee witnesses are concerned, with respect to the respondent, that I have heard sufficient; that anything further would be cumulative, and any addition wouldn't enable the Examiner or the Board or the Circuit Court to get any better picture of the entire situation, the light of the entire hearing, the entire record and exhibits. * * *

"Trial Examiner Batten: Well, I feel, Mr. Tyler, if you want me to determine the question entirely myself, I take it that is in substance the same position which the respondent takes.

"Then, I will now determine that I have heard enough employee witnesses, both as to the respondent and the intervener.

"So, that disposes of that matter."

Petitioner further assigns as error the rulings and action of the Trial Examiner set forth above as constituting an abuse of any discretion vested in the Trial Examiner with reference to said matters and as being unfair and prejudicial to the petitioner and intervener by reason of other rulings and action of the Trial Examiner, and by reason of his subsequent rulings permitting the Board [fol. 269] and ILGWU to adduce in rebuttal extensive evidence which was not proper rebuttal but which related to matters which, if pertinent at all, should properly have been adduced in the Board's case in chief; and petitioner further assigns as error all the rulings and actions for all the reasons set forth in its exceptions to said rebuttal vidence.

258.

Petitioner assigns as error the ruling and action of the trial examiner in striking out all of the testimony of the witness Mrs. Reed pertaining to the period subsequent to July, 1939, for the reasons among others that said testimony is competent, relevant and material to many, if not all, of the issues involved in this case; and for the further reason that said ruling does not designate with any degree of certainty the particular evidence which it was the intention of the trial examiner to strike; and for the further reason that the trial examiner has permitted testimony to be adduced by the Board and ILGWU relating to the same matters to which said stricken testimony relates, and the striking of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial herein and denies to petitioner due process of law in contravention of the Fifth Amendment to the Constitution of the United States; all of said rulings and action having been taken over and against the objections of petitioner.

In connection with this assignment of error, petitioner refers to the following excerpts from the transcript of the [fol. 270] record (pages 5800, 5801) (R. IX. 3255, 3256), for each and all of the reasons hereinabove stated, to wit: and excepts to the rulings and action therein set forth

"Trial Examiner Batten: * * * Now, there are two or three other matters that I think I should dispose of with respect to Mrs. Reed. I am now striking out all of her testimony which pertains to the period subsequent to July 1939, in accordance with a ruling which I made after Mrs. Reed testified. * * *

"Trial Examiner Batten: So, any matters after that are stricken".

259.

Petitioner assigns as errors the rulings and action of the trial examiner in rejecting the offer of proof made by petitioner with respect to the testimony of witness Wave Tobin which offer of proof is designated as Board's Exhibit 1-SSSSS and the trial examiner's determination that the matters therein are not material to the issues herein, and assigns as error the ruling and action of the trial examiner in ruling and determining that the testimony already given in the hearing by said witness Tobin is not material or relevant to the issues herein, and assigns as error the trial examiner's ruling and action in striking out the testimony of said witness Tobin, for the reasons among others that said testimony given by said Tobin and that offered to be proved by her in said offer of proof was and is competent, material and relevant to the issues herein, and for the further reason that said testimony so stricken and said testimony so offered to be proved by said witness relates to matters as to which the trial examiner permitted the Board and the ILGWU to adduce testimony, and the striking out of the testimony so given and the refusal [fol. 271] to receive the testimony so offered is unfair and prejudicial to petitioner and deprives petitioner of a fair trial herein and of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States; all of said rulings and actions of the trial examiner have been taken over and against the objections of petitioner.

In connection with this exception, petitioner refers to the following excerpts from the transcript of the record (pages 5802, 5802), (R. IX. 3257), and excepts to the rulings, actions and comments of the trial examiner therein set forth for each and all of the reasons hereinabove stated, to wit:

"Trial Examiner Batten: Now, I think there is one other matter, the matter with respect to Wave Tobin. I believe at the time that matter came up Mr. Ingraham presented an offer of proof and a protest against the ruling of the examiner, which I made on August 19, 1942, which is Board's Exhibit 1-SSSSS. Now, as far as the offer of proof is concerned, I have gone over Board's Exhibit 1-SSSSS, and I don't consider that there are any matters in these which are material in the hearing, and therefore I reject the offer of proof; and furthermore— * * *

"Trial Examiner Batten: And furthermore, with respect to the testimony which Wave Tobin has thus far given, I have reviewed that, and I do not consider that it is material or relevant to the issues in this case, and accordingly it is stricken.

"Now, with these rulings I think, Mr. Ingraham, we are ready to proceed."

Petitioner further assigns as error said rulings and action of the trial examiner because of his subsequent rulings permitting the Board and ILGWU to adduce in rebuttal evidence relating to matters which said witness would have testified concerning, and permitting evidence in rebuttal which was not proper rebuttal but which related to matters which should properly have been adduced in the Board's case in chief, if pertinent at all.

[fol. 272] 260.

Petitioner assigns as error the rulings and action of the trial examiner in refusing to restrict the evidence of the Board and ILGWU after petitioner and intervener rested in the further hearing, to proper rebuttal evidence and in permitting the Board and ILGWU to adduce extensive testimony which, if pertinent at all to the issues, was properly a part of their case in chief, and not proper to be offered in rebuttal.

These rulings arose upon petitioner's objections to the question asked of Board's witness Etta Dorsey at P. 5844 of the record (R. IX. 3276), as follows: "Q. How did you learn of that meeting (referring to the organization meeting of the Donnelly Garment Workers' Union on April 27, 1937), as not being proper rebuttal testimony, and upon petitioner's motion to strike the answer given and upon petitioner's objection to the succeeding question (at p. 5844-5), (R. IX. 3276): "Q. Do you know how the girls working in your section learned of the meeting?" as not being proper rebuttal testimony. The next fifty pages of the record (R. IX. 3276-3308, incl.), contain a discussion of this objection, as a result of which the trial examiner permitted the answer given to stand and permitted the Board to continue the examination upon matters covered by the Board's case in chief. To this ruling and action of the trial examiner petitioner assigns error for all the reasons and grounds set forth in the statements and arguments of petitioner's and intervener's counsel appearing at p. 5844 and to p. 5895 inclusive of the record (R. IX. 3276-3309 incl.), and for the same reasons assigns as error all the testimony thereafter adduced by the Board and ILGWU [fol. 273] from said witness Etta Dorsey in pursuance of said ruling and action of the trial examiner.

In connection with this assignment of error and for convenience Petitioner refers to the following excerpts from the transcript of the record (pp. 5844, 5845, 5848, 5857, 5859, 5886 and 5894) (R. IX. 3276, 3279, 3285, 3286, 3303, 3308), setting forth the trial examiner's position and rulings to which rulings and action petitioner excepts for all the reasons aforesaid, which are too voluminous to be stated here, and for the further reasons that said ruling is unfair and prejudicial to petitioner in view of the trial examiner's rulings limiting petitioner's and intervener's evidence to the offers of proof and in restricting petitioner to some ten or eleven employee witnesses and in refusing to permit intervener to put on any witnesses, and because in applying said ruling the trial examiner permitted the Board and ILGWU to go far beyond even the limits set by the trial examiner in his said ruling as to rebuttal evidence, and as set forth in said excerpts from the transcript of the record, by reason of all of which pe-

titioner has been denied a fair and impartial trial and due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States. The excerpts above referred to are as follows:

"Q. How did you learn of that meeting?

Mr. Ingraham: I object to that. It is not proper rebuttal.

Miss Weyand: This is a preliminary question.

Trial Examiner Batten: Well, if it is preliminary, she may answer.

Q. (By Trial Examiner Batten): Do you want the question read?

[fol. 274] "A. No, that's all right. Well, I don't remember, but it was either by telephone or by Mrs. Wherry telling us; she usually went around and told the instructors.

Mr. Ingraham: Now, I move that the answer be stricken out; it is not a preliminary question, it is an attempt to prove the Board's case in chief, not proper rebuttal.

Trial Examiner Batten: Well, I'll determine whether it is preliminary. You may proceed.

Mr. Reed: I couldn't hear your closing ruling.

Trial Examiner Batten: I said I will determine whether it is preliminary.

Mr. Reed: This answer, now, is not a preliminary answer.

Q. (By Miss Weyand): Do you know how the girls working in your section learned of the meeting?

Mr. Ingraham: I object to that question as not proper rebuttal." (R. IX. 3276)

* * * * * * *

"Trial Examiner Batten: Well, all I can say is, Senator, I am going to require that Miss Weyand confine it to rebuttal. I further want to say that this undoubtedly is preliminary in nature. Now, if this lady, who was there at the time, is in position to testify concerning these definite things which these people testified to, I think it is rebuttal.

Now, I have no idea, and will say so now, of permitting Miss Weyand or Mr. Langsdale to go into this entire subject matter in any form or fashion, and it is confined to rebuttal." (p. 5848) (R. IX. 3279).

* * * * * * *

"Trial Examiner Batten: Of course, there is possibility of that, Senator, providing I were to permit it. Now, we may differ as to just what is rebuttal. I think clearly Miss Weyand's first statement is entirely out of line, as far as I am concerned. I mean by that that you aren't going to try all the issues of this case over again, but I am still convinced in my own mind that if this witness testifies about these matters, which these four or five or six girls testified about here, that were in her section, and about specific matters in their testimony in the record, I don't see why that isn't rebuttal." (p. 5857). (R. IX. 3285).

* * * * * * *

[fol. 275] "Trial Examiner Batten: Well, Mr. Langsdale, I think my statement that I have made two or three times, about what is rebuttal, would cover, perhaps, that matter. When a specific witness—you had several specific witnesses say that they worked in section 415 during March and April, that the instructor did not tell them to go to this meeting, nor did she say anything to them." (p. 5859). (R. IX. 3286).

* * * * * * *

"Trial Examiner Batten: I think that particular matter is in line with the suggestion which I indicated this morning, without having given any thought to the matter. As a matter of fact, I am more certain now, after having given the matter some thought, that my statement this morning concerning it is correct, and I am equally certain that my statement to Miss Weyand this morning about her first proposition is correct. So, as the result of two hours or two and a half hours of giving it some thought and listening to all counsel, I am still of the opinion that my statement on it this morning was substantially correct." (p. 5886). (R. IX. 3303).

* * * * * * *

"Trial Examiner Batten: Miss Weyand, you may proceed, in line with the suggestions which I made this morning, and if you have any other testimony in line with your other suggestion, you make it as an offer." (p. 5894). (R. IX. 3308).

261.

At pages 5895 to 5899 of the Record (R. IX. 3309-3311) petitioner objected to questions as shown by the following excerpts from the record and was allowed a continuing objection to said line of questioning, to-wit:

"Q. (Miss Weyand) Do you know how the girls working in your section learned of the meeting at which the union was organized?

Mr. Hogsett: That is objected to for all of the reasons heretofore asserted as not proper rebuttal and particularly unless the question is limited to the particular witnesses heretofore offered by respondent, by name.

Trial Examiner Batten: Well, you may answer the question, and then you may proceed, Miss Weyand, to bring it within the ruling which I made. (p. 5895). (R. 3309).

• • • • • • •

[fol. 276] "Thereupon the last question was reread by the reporter, as follows: 'Q. Do you know how the girls working in your section learned of the meeting at which the union was organized?')

A. Yes, I do.
Q. (By Miss Weyand): How did they learn that?
A. I told the girls.

Mr. Hogsett: That is objected to, unless the question is confined to witnesses offered by respondent who were working there in her section. (p. 5896). (R. 3310).

• • • • • • •

"Q. (By Miss Weyand): Was Oma Lee Cooper working in your section at that time?

Mr. Reed: I make the same objection.

• • • • • • •

Trial Examiner Batten: Well, Senator, I assume we may have the same arrangement we have pursued here all the time, a continuing objection if you so desire.

Mr. Hogsett: Yes, we do.

Trial Examiner Batten: In order that you don't have to object to every question, that will continue through with this witness. Of course, it will be necessary to renew it on the next witness.

Mr. Tyler: The same objection will be allowed for the intervener, as to this witness, I take it?

Trial Examiner Batten: Yes, that is correct. Let me say this, we will get started here pretty soon, I guess. You may have a continuing objection.

Now, that means to either the respondent or the intervener I am granting a continuing objection to Miss Weyand's examining this witness within the bounds of what I indicated that I thought was proper.

Now, if Miss Weyand exceeds the bounds, I of course, would expect counsel to object, not upon the basis of my ruling, but upon the basis of my statement to Miss Weyand that I don't propose to go into all inclusive matters." (pp. 5898-99). (R. 3311).

Petitioner assigns as error the rulings and action of the trial examiner in admitting said testimony and in

[fol. 277] permitting the Board's counsel to continue said line of questioning, and assigns as error the rulings and action of the trial examiner in overruling petitioner's and intervener's objections to each and all of the questions asked by Board's counsel of the witness Etta Dorsey at pages 5895 to 5944 of the transcript for the reasons, among others, that said testimony is not rebuttal and does not come within the trial examiner's ruling as to rebuttal evidence, and covers matters which petitioner was not permitted to go into in said further hearing herein, and because the admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.

262.

Petitioner assigns as error the rulings, action and comments of the trial examiner denying and overruling each and all of the special objections made by petitioner and intervener to particular portions of said testimony of Etta Dorsey, which objections and rulings appear on each and all of the following pages of the transcript; to-wit, 5900 to 5904 inclusive, 5907 to 5911 inclusive, 5913, 5914, 5916 to 5922 inclusive, 5924 to 5929 inclusive, 5931 to 5936 inclusive, 5938 to 5941 inclusive and 5943 respectively (R.IX. 3312-3342 incl.), for each and all of the reasons given in said respective objections and for the further reason that said questions related to matters which the trial examiner refused to permit petitioner and intervener to go into in further hearing, and because same does not come within the trial examiner's ruling as to rebuttal evidence, and be-[fol. 278] cause by the admission and consideration of said testimony petitioner has been denied a fair trial and due process of law.

263.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the Record at pp. 6042-6043 (R.IX. 3397-3398), to-wit:

"Q. Did the mere fact that you said, 'There is to be a meeting of the employees' in your opinion amount to an order to attend it?

A. Well the girls felt like I had the authority—I was given that authority. See?

Mr. Tyler: Now, I object—

Mr. Langsdale: Just a moment. He asked the question, and I suggest that he keeps still until she answers it, and then if he wants to move to strike out any part of it, all right.

Trial Examiner Batten: Just a moment.

Read the question and answer, please.

(Thereupon the last question and answer were read by the reporter.)

"Trial Examiner Batten: Now, finish your answer.

A. (Continuing) The girls felt like I had the authority to tell them what to do, and when I said, 'Do this', they usually did it.

Mr. Tyler: Now, I move that the answer be stricken out, because it doesn't state whether she felt she was giving the order, but only what she assumes the employees understood, which wasn't the question, and is a conclusion of the witness.

Mr. Langsdale: I submit, the answer is a perfect answer to his question. Certainly she has a right to judge from appearances and conduct of these people. And this is a pretty late day for Mr. Tyler to be talking about conclusions of the witness.

Mr. Stottle: Respondent objects because it is not responsive at all to the question."

[fol. 279] 263-a.

Petitioner assigns as error the rulings and action of the trial examiner in overruling petitioner's objections to the Board's questions of the witness Lola Skeens as shown in the following excerpts from the transcript of the record at pages 6096-6098 and 6100 of the transcript (R.IX. 3427-3430), to-wit:

"Q. Do you know of any occasions upon which she went to Mr. Tyler's office or attended to business of the Donnelly Garment Workers' Union during working hours?

Mr. Hogsett: Objected to as not rebuttal of anything in the respondent's case.

• • • • •

Trial Examiner Batten: You may answer.

Mr. Reed: Now, that embraces more than whether she went to the office. The question is, whether she knows of any occasion when she went to his office or attended to business of the union on company time. Now, that is not in rebuttal of anything we have put in this case.

• • • • •

Q. Do you know how the girls working in your section learned of the meeting?

A. I told them.

Mr. Ingraham: May respondent have a continuing objection to this line of questioning?

Trial Examiner Batten: Yes.

Mr. Hogsett: As not rebuttal.

Trial Examiner Batten: I presume it is upon the same grounds stated as to the previous witness."

for the reason that said testimony and rulings do not come within examiner's ruling as to rebuttal evidence and relates to matters which petitioner and intervener were not permitted to go into in said further hearing and the admission of same is unfair and prejudicial to petitioner and [fol. 280] denies to petitioner a fair trial and due process of law. In pursuance of the continuing objection allowed to petitioner by the trial examiner to said line of questions and testimony, respondent further assigns as error the admission of the testimony thereafter adduced by the Board and ILGWU from said witness Lola Skeens in pursuance of said ruling and action of the trial examiner appearing in the transcript of the record at pages 6098 to 6114 inclusive (R.IX. 3429-3440, incl.), and at pages 6166 to 6168 inclusive (R.IX. 3468-3469), for the reason that same is not proper rebuttal evidence but if pertinent to the issues at all was a part of the Board's case in chief, and for the further reason that same does not come within the limits set by the trial examiner as to rebuttal evidence and for the further reason that same relates to matters which the trial examiner refused to permit petitioner and intervener to go into in said further hearing herein, and because the admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.

264.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6172 to 6174 inclusive (R.IX. 3471-3473), to-wit:

"Mr. Hogsett: If the court please, we object to this line of examination on the ground that it isn't rebuttal of anything. In other words, it is just going into the Board's case in chief again.

Trial Examiner Batten: I think it is, insofar as it attempts to determine what transpired at the meeting.

Mr. Hogsett: Yes, that is the line of inquiry I am now objecting to.

[fol. 281] "Trial Examiner Batten: But, of course, part of this testimony as I recall it, was this witness' statement as to why she joined.

Mr. Hogsett: Which is not rebuttal either.

Trial Examiner Batten: Well, let's take them one at a time. I agree with you that the other matter, I don't believe is, the matter as to what transpired. But I gathered from the questions that it was an attempt of Miss Weyand's to set the time of the occurrence rather than what transpired.

Mr. Hogsett: Then, if that is so, I move to strike all of the testimony of this witness as to what transpired at the meeting of April 27, 1937, because it isn't proper rebuttal.

Trial Examiner Batten: I think it may stand, because I think that was the purpose of it.

Mr. Hogsett: And I move to strike out what occurred at the latter meeting, for the same reason.

* * * * *

Mr. Ingraham: May respondent have a continuing objection to this testimony, for reasons we have heretofore given?

Trial Examiner Batten: Yes. Of course, I agree that going into what transpired at the meeting is not proper rebuttal, but, as I said before, I don't think that is the purpose of it."

for the reason that said testimony is not proper rebuttal evidence and in pursuance to the continuing objection al-

lowed Petitioner by the trial examiner petitioner assigns as error said rulings and the admission of all the testimony of said witness Geneva Copenhaver adduced by the Board and ILGWU in pursuance of said ruling and action of the trial examiner, appearing in the transcript of the record at pages 6169 to 6200 inclusive (R.IX. 3470-3480; R.X. 3481-3487 incl.), and pages 6280 to 6287 inclusive (R.X. 3532-3537), for the reason that said testimony is not proper rebuttal evidence, and does not come within the limits of the ruling of the trial examiner as to rebuttal evidence and relates to matters which the trial examiner refused to permit petitioner and intervener to go into in said further hearing and is contrary to former rulings of the [fol. 282] trial examiner and the admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.

265.

Petitioners assigns as error the rulings and action of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6176-77-78 (R.IX. 3474-75-76), for the reasons stated in petitioner's objections therein made, to-wit:

"Miss Weyand. I offer Board's exhibit No. 37 for identification in evidence.

Mr. Reed. We object—

Trial Examiner Batten: What—For the purpose of indicating it recalled to the witness' mind that she attended the meeting?

Miss Weyand: No. I want to offer it for the purpose of showing that every girl that attended that meeting, as far as I can see, is in uniform. I think that is proper evidence for the Board to consider in connection with the testimony—

* * * * *

Trial Examiner Batten: I am certain everything said officially there is in the record. It doesn't make any difference. I will receive it, and I am receiving it on the same basis I have received other newspaper articles which have been received thus far—I think, about 38 of them.

Mr. Reed: We object as incompetent and immaterial and not proper direct examination, undertaking to introduce into the case as substantive evidence a mere newspaper article, and as not proper rebuttal.

Mr. Langsdale: I understand the article itself is not offered but merely the picture.

Trial Examiner Batten: Well, I have received it."

265-a.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6178-79 and 6182, (R.IX. 3476, 3479), to-wit:

[fol. 283] Q. Were you working on the same floor with Sylvia Hull the last day Sylvia Hull worked for the company?

A. Yes, I was.

Q. Do you recall what happened that morning?

Mr. Tyler: We object. The Sylvia Hull incident is in no sense proper rebuttal. It was gone into in long detail in the case of the Board in chief.

Mr. Hogsett: Your Honor, I ask you to just stop for a second and think if this is rebuttal—everything is rebuttal that pertains to the case in any way.

Trial Examiner Batten: Of course, my idea of the Sylvia Hull incident is this:—I tried to, I think, in my talk here a month or so ago, indicate I did not think it was within the offers of proof upon which I was taking testimony, but I don't remember whether Mr. Tyler, or who it was convinced me that I was wrong. I know Mr. Langsdale very strenuously opposed it and said it was a closed book.

Mr. Hogsett: I ask you to draw the line somewhere, if the Examiner please.

* * *

Trial Examiner Batten: As I recall, both witnesses presented by the Board so far has been permitted to testify about the matter.

Mr. Langsdale: Yes.

Trial Examiner Batten: You may proceed, Miss Weyand."

for each and all the reasons therein stated in petitioner's and intervener's objections and for the further reason that said questions relate to matters which the trial examiner refused to permit the petitioner and intervener to go into in said further hearing and because same does not come within the limits of the ruling made by the trial examiner as to rebuttal evidence and because same are contrary to former rulings made by the trial examiner in said further hearing and because same are unfair and prejudicial to petitioner and deprive petitioner of a fair trial and due process of law.

[fol. 284] 266.

Petitioner assigns as error the ruling and action of the trial examiner in refusing to permit petitioner to recall Wave Tobin to the stand, as shown by the following excerpts from the transcript of the record at page 5815 (R. IX. 3265), to wit:

"Mr. Reed: Now, Your Honor said for us to proceed. We would now like to recall Wave Tobin, we haven't finished her examination.

"Trial Examiner Batten: Well, I think, Senator, I disposed of that matter by my ruling on the offer of proof, and so forth."

267.

Petitioner assigns as error the rulings and action of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6189, 6190 (R. X. 3481), to wit:

"Q. Did you consider your instructors as supervisors?
A. Absolutely.

Mr. Ingraham: Now—

Trial Examiner Batten: Just a moment?

Mr. Ingraham: Now, I move to strike the answer out as not proper rebuttal.

Trial Examiner Batten: Well, the answer may be stricken. While you make your objection—I assume you had one?

Mr. Ingraham: Yes. I object to the question on the ground that it is not proper rebuttal.

Trial Examiner Batten: You may answer.

Mr. Lane: The intervener makes the same objection.

Trial Examiner Batten: You may answer.

A. Absolutely, I regarded her as being my supervisor.
Q. (By Miss Weyand) Why?

Mr. Ingraham: May I have a continuing objection?

[fol. 285] "Trial Examiner Batten: Yes. Well, I think there is already a continuing objection on this witness.

Mr. Ingraham: Well, if not, I want a continuing objection".

And further assigns as error the admission of subsequent testimony of the same nature received in pursuance of this ruling.

268.

Petitioner assigns as error the ruling and action of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6197, 6198 (R. X. 3486), to wit:

"Q. Do instructors eat in the cafeteria with the other girls?

A. They eat—

Mr. Ingraham: (Interrupting) Now, I object to that question for the reason it is immaterial to any issue in this case, and it is not proper rebuttal.

Mr. Hogsett: If I may supplement by this suggestion, that illustrates the thin character of this Board's case, that they would have to rely on the fact that domination could be shown by an instructor eating in the same cafeteria. Now, that is getting down to pretty thin stuff, I submit, and the subject matter is wholly immaterial.

Miss Weyand: I don't offer to prove they eat in the same cafeteria. That isn't the purpose of this question.

Mr. Hogsett: Well, it is in the same field, the same atmosphere.

Trial Examiner Batten: You may answer the question.

Mr. Lane: The intervener makes the same objection, it is not rebuttal.

Trial Examiner Batten: The same ruling."

269.

Petitioner assigns as error the ruling and action of the trial examiner in sustaining objection to the question asked by counsel for the intervener of the witness Copenhaver at page 6250 of the record (R. X. 3518) as to what was her husband's occupation.

[fol. 286] 270.

Petitioner assigns as error the ruling and action of the trial examiner in permitting the witness Bessie Weilert to testify as to matters which were not proper rebuttal evidence over the objections of the petitioner and intervener, which objections appear in the transcript of the record at page 6311 (R. X. 3551-3552), as follows, to wit:

"Q. (By Miss Weyand) Had you ever seen Mr. Tyler before the meeting at which the union was formed?

A. No.

"Mr. Lane: Mr. Examiner, with respect to all of these questions, the intervener objects, with respect to this witness, as not proper rebuttal.

Trial Examiner Batten: You may have a continuing objection.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: You may have a continuing objection.

And petitioner assigns as error the rulings and action of the trial examiner in permitting the Board's counsel and counsel for the ILGWU to continue said line of questioning of the witness Bessie Weilert and excepts to each and all the questions asked by Board's counsel and by counsel for the ILGWU of said witness as set forth in the record at pages 6308 to 6355 inclusive, 6358 to 6360 inclusive, 6435 to 6458 inclusive, 6496 to 6514 inclusive, and 6528 (R. X. 3550-3581; 3615-3621; 3631-3636; 3639), in pursuance

of said continuing objection, and assigns as error each and all the rulings of the trial examiner permitting said evidence to be adduced, for the reasons among others that said testimony is not proper rebuttal evidence and does [fol. 287] not come within the trial examiner's ruling as to rebuttal evidence, and for the reason that same relates to matters with petitioner and intervener were not permitted to go into in said further hearing, and is contrary to prior rulings of the trial examiner and the admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.

271.

Petitioner assigns as error the rulings, action and comments of the trial examiner in refusing to sustain the objections and motions to strike of the respondent and intervener to the testimony given by the witness Bessie Weilert at pages 6315 to 6317 inclusive (R. X. 3554-3556) for the reason that said testimony was not proper rebuttal testimony, related to a time prior to November, 1936 to which the trial examiner limited petitioner in its examinations and related to alleged events occurring prior to the enactment of the National Labor Relations Act, and is wholly immaterial, incompetent and irrelevant to the issues herein.

272.

Petitioner assigns as error the rulings and action of the trial examiner in refusing to sustain petitioner's objections and motion to strike out the answers and testimony of the witness Bessie Weilert given at pages 6327 to 6329 inclusive (R. X. 3561-3563) for the reason that said testimony was not responsive to the questions asked and was not proper rebuttal testimony.

[fol. 288]

273.

Petitioner assigns as error the ruling and action of the trial examiner in refusing to strike out the answer of the witness referred to in the following excerpts from the transcript of the record at page 6343 (R. X. 3572), to wit:

"Q. Do you know Mrs. Gray?

A. I do.

"Q. Who is she?

A. She was manager of our outside store.

Mr. Langsdale: I didn't get the answer.

A. She was manager of our outside store, to my knowledge.

Q. (By Miss Weyand) How do you know she is the manager?

A. Well, we always had to see Mrs. Gray if we wanted anything in the store, to see Mrs. Gray, and when it was remnant bundles, she would send i. d. m's, and say it was the remnant bundles.

Mr. Reed: I can't understand the witness.

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the last answer was read by the reporter.)

A. And [she] signature was on the i. d. m.

Mr. Lane: Now, I move to strike out the answer that Mrs. Gray was manager of the store, for the reason it is a mere conclusion; and the following answer of the witness doesn't state any facts upon which the conclusion can properly be based.

Trial Examiner Batten: It may stand."

274.

Petitioner assigns as error the ruling of the trial examiner at pages 6349, 6350 (R. X. 3574), permitting the witness Bessie Weilert to state that she considered the Donnelly Garment Workers' Union a company dominated union or a company union and to state why she thought [fol. 289] so, as follows: "A. Because it seemed it never done any good when you took grievances up with that committee; I never did get anywhere when I was on the committee, and everything went just as the company seen fit."

275.

Petitioner assigns as error the rulings, action and comments of the trial examiner at pages 6444 to 6446 inclusive (R. X. 3620), in permitting the witness Bessie Weilert to answer the question of counsel for the ILGWU, to wit: "Q. (By Mr. Langsdale) So then this part of this document, which you signed, is not true? and the question: "Q.

(By Mr. Langsdale) Or 'That said meeting was convened after the close of working hours at the plant'. That is not true, is it?" and in overruling petitioner's and intervener's objections thereto.

276.

At pages 6497 of the record (R. X. 3632), counsel for the Board asked the following question and the witness Bessie Weilert made the following answer, to wit:

"Q. (By Miss Weyand) Have you ever heard any girl, as a result of complaining in a union meeting or to a committee or anywhere, complain that she had been treated unfairly because she had made the complaint?

"A. I don't know that they put it in those words, that it was merely because of the complaint, but I think it was done, plenty of them."

Petitioner and intervener moved to strike out the answer and particularly that part of the answer "but I think it was done, plenty of them" and the trial examiner ruled that it should stand, to which ruling and action petitioner excepts for the reason that said answer is a conclusion, not proper rebuttal and prejudicial to petitioner.

[fol. 290] 277.

At page 6536 of the record (R. X. 3640-41), the following occurred:

"Q. I hand you ILGWU Exhibit No. 10 which appears at pages 5375 and 5961 of the Circuit Court of Appeals record and ask you to state when you first heard of that petition.

A. In the early spring of 1937.

Q. Where were you when you first heard of it?

A. In Mrs. Reed's home.

Q. What was the conversation that took place on that occasion?

A. Well, I had just come home from New York, and—

Mr. Lane: Just a moment, if Your Honor please. The intervener objects to this and all similar questions. It is not proper rebuttal testimony.

Mr. Hogsett: We join in that objection.

Trial Examiner Batten: Overruled."

Petitioner assigns as error the ruling and action of the trial examiner as set forth in the foregoing excerpt and his action in permitting the Board's counsel and counsel for the ILGWU to continue said line of questioning of the witness Keyes, and further excepts to each and all the questions of said counsel to said witness, appearing in the transcript of the record at pages 6535 to 6552 inclusive (R. X. 3640-3652, incl.), for the reasons that said testimony is not proper rebuttal evidence and does not come within the limits of the ruling as to rebuttal evidence made by the trial examiner, and for the reason that same relates to matters which petitioner and intervener were not permitted to go into in said further hearing and is contrary to prior rulings of the trial examiner, and the [fol. 291] admission of same is unfair and prejudicial to petitioner and denies to petitioner a fair trial and due process of law.

278.

At pages 6572-6573 of the record (R. X. 3662) appears the following:

"Q. Did you attend any meetings of the Loyalty League?

Mr. Tyler: Intervener objects, because this is not proper rebuttal.

Mr. Hogsett: We join in that objection, asking that counsel be restricted to rebuttal.

Trial Examiner Batten: You may proceed.

Mr. Hogsett: May we have a continuing objection, as in the case of other witnesses?

Trial Examiner Batten. Yes.

Mr. Tyler: And the intervener also?

Trial Examiner Batten: Yes."

Petitioner assigns as error the rulings and action of the trial examiner as set forth in the foregoing excerpts from the record and further excepts to the rulings and action of the trial examiner in permitting Board's counsel and counsel for the ILGWU to continue examination of said witness May Stevens, and to each and all the questions

asked by Board's counsel and by counsel of the ILGWU of said witness as set forth in the transcript of the record at pages 6573 to 6595 inclusive and 6638 to 6647 inclusive (R. X. 3662-3676; 3695-3698), and to each and all the rulings of the trial examiner permitting said evidence to be adduced on behalf of the Board and ILGWU, for the reasons, among others, that said testimony is not proper rebuttal evidence and does not come within the trial examiner's ruling as to rebuttal evidence, and for the reason [fol. 292] that same relates to matters which petitioner and intervener were not permitted to go into in said further hearing and is contrary to prior rulings of the trial examiner, and the admission of same is unfair and prejudicial to respondent and denies to petitioner a fair trial and due process of law.

279.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6581, 6582, 6584 (R. X. 3668, 3669), to wit:

"Q. What made you feel that way?

A. Well, the Fern Sigler incident, just previous to that, and by Mrs. Donnelly saying we would never have to have a union, and I decided that they had changed so [suffden] that it was surely something for the company and I had better join. And when in 1934, when I was in another shop, at Twenty sixth and Main, I met the Donnelly girls they had sent to that plant that were union girls—

Mr. Reed: Oh, wait a minute, now. That certainly is not rebuttal.

Trial Examiner Batten: Now, let the witness finish, Senator. If there is something you think should be stricken, all right, but don't interrupt the witness.

Read the answer thus far, please.

(Thereupon the last answer was read by the reporter.)

Trial Examiner Batten: Finish your answer.

A. (Continuing)—and talked to them most every day about the conditions and why they were sent down there, and they were told that they were not making their guaran-

tee, and they knew it was because they were union girls and that they would eventually be laid off.

Mr. Reed: I move to strike that as incompetent, immaterial, and as not rebuttal, being mere hearsay, and binding on no one. I think the Examiner excluded us from the right to even ask questions about 1934.

[fol. 293] "Trial Examiner Batten: Well, Senator, assuming I did, hasn't this witness a right to say why she felt that way? • • •

"Trial Examiner Batten: It may stand."

for the reasons therein stated and because said ruling is unfair and prejudicial to petitioner and shows the bias and prejudice of the trial examiner against petitioner.

280.

Petitioner assigns as error the rulings and action of the trial examiner in refusing to permit the witness May Stevens to answer the following question appearing in the record at page 6606 (R. X. 3683), to-wit:

"Q. By the way, what was your husband then, an organizer for the Union?"

and in rejecting the following offers of proof made by petitioner and intervener appearing in the transcript of the record at pages 6608, 6609 (R. X. 3685), to-wit:

"Mr. Hogsett: We offer to prove that the witness on the stand that at the time concerning which she has been testifying, namely, in February, March and April, 1937, and continuously up to the present time, her husband then was and at all such times has been and is now an organizer for a labor union.

Trial Examiner Batten: Well, I'll reject the offer on the basis of what I have just said.

Mr. Hogsett: Yes, Mr. Ingraham says that we desire now to make a similar offer of proof in relation to Geneva Copenhaver. • • •

Mr. Tyler: Intervener asks to be allowed to join in both offers of proof.

Trial Examiner Batten: You don't mean Mr. Langsdale's proof.

Mr. Tyler: No, Mrs. Copenhaver and this one.

Trial Examiner Batten: Both of the offers made by Mr. Hogsett? Mr. Tyler wants to join in the two offers of proof made by Mr. Hogsett."

[fol. 294] 281.

Petitioner assigns as error the rulings, action and comments of the trial examiner in sustaining objection to the following question asked by petitioner of the witness May Stevens at page 6662, to-wit:

"Q. (By Mr. Hogsett) Do you remember the taking of an oath in such a way that you would knowingly make a false affidavit" and in rejecting respondent's offer of proof (page 6663) that the witness if permitted to answer said question, would answer same in the affirmative.

282.

Petitioner assigns as error the comment of the trial examiner embraced in the words "without all of the flourishes" contained in the following excerpt from the transcript of the record at page 6667, to-wit:

"Q. The fact is, the Sylvia Hull incident occurred some seven weeks after the March 2 paper was signed by the employees, didn't it?

Mr. Langsdale: I object to that as argumentative.

Trial Examiner Batten: The question is, Did the Sylvia Hull incident occur seven weeks after?—without all the flourishes.

Mr. Hogsett: Well, I don't know why there is any flourish."

283.

Petitioner assigns as error the ruling, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at page 6702 (R. X. 3710):

"Trial Examiner Batten: Now, you may answer this if you want to, Mr. Ingraham, and if you don't want to you don't need to: Am I to assume you are going to have all of the girls in Section 518 here and testify about these specific matters?

[fol. 295] "Mr. Ingraham: I believe we are going to have a large number of them.

Trial Examiner Batten: Well, I want to tell you now that you are not, so don't plan on it. I would say, not to exceed three witnesses on those matters, out of that section."

for the reasons, among others, that said limitations upon petitioner to three witnesses out of said Section 518 was unfair and prejudicial to petitioner, for the reason that said testimony related to highly important issues in view of the former findings of the Board and trial examiner and of the contentions of the Board and ILGWU in this hearing, and unless the trial examiner was satisfied that the testimony of said three witnesses established the facts to which they testified, the limitation was unfair and prejudicial to petitioner, and in any event petitioner was entitled to put on additional witnesses for the consideration of the Board and Court and the limitation denied to petitioner a fair trial and due process of law.

284.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6704-5-6 (R. X. 3712, 3713):

"Q. (By Mr. Ingraham) There has been testimony given that the girls returned to work in that section after attending meetings. What are the facts about that?

Trial Examiner Batten: Now, Mr. Ingraham, I do not believe that is proper surrebuttal, because there was testimony by some witnesses concerning that and the Board put on some concerning it. Now, I don't believe that is proper questioning at this stage of the proceedings.

Q. (By Mr. Ingraham) There has been testimony given that if an operator did not intend to come to work

she would notify her instructor. What are the facts about that?

[fol. 296] Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

Q. (By Mr. Ingraham) There has been testimony given that after Mr. Baty took charge of the factory in 1935, and up until July 15, 1939, instructors had the authority to transfer girls from one section to another. What is the fact about that?

Mr. Langsdale: Objected to as not proper surrebuttal. Mr. Baty in 1939, ran the whole gamut with reference to that particular issue.

Trial Examiner Batten: Objection sustained.

* * * *

Mr. Ingraham: Respondent offers to prove by this witness that if she were permitted to answer the question to the effect that, Did girls return to work after attending any of the meetings referred to? she would answer in the negative.

Respondent further offers to prove by this witness—

Mr. Langsdale: Just a moment. I want to make an objection to that offer, for all of the reasons offered to the question.

Trial Examiner Batten: Proceed.

Respondent further offers to prove by this witness that if she were permitted to answer the question as to whom the girls would notify if they were not coming to work, she would answer, 'The employment office', and not 'the instructor'.

Mr. Langsdale: That is objected to in the offer for all of the reasons offered to the question.

Trial Examiner Batten: Any others?

Mr. Ingraham: No, that's all.

Trial Examiner Batten: The offers are rejected."

for the reasons, among others, that said rulings and action prevented petitioner from adducing proper and highly material evidence in view of the former findings of the trial examiner and Board and the issues as developed in the hearing, and by the denial thereof petitioner has been denied a fair trial and due process of law.

[fol. 297] 285.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6706-7-8-9 (R. X. 3713-14-15), to-wit:

"Q. (By Mr. Tyler) Mrs. Chaney, did you ever know of any instructor directing the girls in her section to go with her, the instructor, to any union meeting?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler): Did you hear Etta Dorsey give any instructions or information about the holding of union meetings to the girls in her section?

Mr. Langsdale: Objected to as not proper surrebuttal, and repetition.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler): Did you ever see any group of girls being herded together to a meeting of the union by any instructor?

Mr. Langsdale: Objected to as not proper surrebuttal. Respondent has so characterized it.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler): You joined the Donnelly Garment Workers' Union of your own free will?

Mr. Langsdale: Objected to as not proper surrebuttal.

Trial Examiner Batten: Sustained.

* * *

"Q. Do you know whether the employees of the Donnelly Garment Company obtained any improved conditions by the contract which the union made with the company in May 1937?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

* * * * *

[fol. 298] "Mr. Tyler: I offer to prove that this witness, if allowed to answer the question as to whether she ever saw any group of girls taken to union meetings by the instructor, would answer that she did not.

Mr. Langsdale: That offer is objected to for the reasons offered against the question.

* * * * *

Mr. Tyler: * * * * And I offer to prove that this witness, if asked the question whether there was any evidence of employees being herded to the union meetings, would answer No.

I offer to prove by this witness that if she were allowed to testify as to whether she knew of benefits received by the employees as a result of the contract of the Donnelly Garment Workers' Union with the company of May 27, 1937, would state that she did not know of definite benefits received by reason of that contract.

Mr. Langsdale: The offers are objected to for the reasons given against the questions.

Trial Examiner Batten: The offer is rejected.

Mr. Tyler: Of course, it is understood that an exception is allowed, without stating—

Trial Examiner Batten: Yes, you have an automatic exception."

286.

Petitioner assigns as error the ruling and action of the trial examiner as set forth in the following excerpts from the transcript of the record at page 6716 (R. X. 3715-16), to-wit:

"Q. (By Miss Weyand) Did you ever work, on a transfer slip, in a section other than your regular section —the transfer slip I have reference to—

Mr. Hogsett (Interrupting): Objected to on the same ground, as not proper cross-examination in surrebuttal.

Trial Examiner Batten: You may answer.

287.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following [fol. 299] excerpts from the transcript of the Record at pages 6731-2-3 (R. X. 3716-3717), to-wit:

"Mr. Hogsett: On page 6675 of the record yesterday, while Mrs. Stevens was on the stand, I made a verbal offer of proof in respect to the amount of dues of the International—

* * * * *

"I offer to prove by the witness May Stevens that the amount of regular dues of the International Ladies' Garment Workers' Union at the time of her membership was 35c a week, which, for 52 weeks a year would be $18.20 a year, and that in addition to that there were two regular assessments, one of $1 per year as a death benefit assessment, and the second an assessment of $1 a year as a fund in the Work Labor Movement as a whole. That is all.

Mr. Langsdale: The offer is objected to as immaterial, doesn't tend to prove or disprove any issue in this case. It is certainly immaterial, unless they prove what they got for the 35c a week, and how little the Donnelly Garment Workers' Union got for their 25c a month.

Trial Examiner Batten: I will reject the offer, because my recollection is that I rejected your tentative offer."

288.

(a) Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record relating to the testimony of witness Mrs. Reece, to-wit: (pp. 6742-3-4) (R. X. 3720-3721):

"Q. (By Mr. Tyler) Mrs. Reece, did you ever hear any instructor direct the girls or the workers in her section to attend union meetings in a group?

A. No, I did not.

Trial Examiner Batten: I think I ruled on that question with the prior witness. I do not consider it proper.

Mr. Tyler: I expect to ask two more questions on the same line. Shall I make an offer of proof first, or—

Trial Examiner Batten: No. Ask the questions, Mr. Tyler.

Q. Did you ever see any instructor in the Donnelly plant gather the girls in her section together and take them to any union meeting?

[fol. 300] A. No.

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: I make the same ruling with respect to that question, Mr. Tyler.

Mr. Langsdale: And I ask that the answer be stricken.

Trial Examiner Batten: I will wait until Mr. Tyler makes his offer of proof.

Proceed Mr. Tyler.

Q. (By Mr. Tyler) What was the custom in the Donnelly factory as to whether the employees went to union meetings with anybody they pleased or not?

Mr. Langsdale: Objected to as not proper surrebuttal.

Trial Examiner Batten: The same ruling I made to the other two questions, Mr. Tyler.

* * * * *

Mr. Tyler: * * * I offer to prove by this witness that if she were allowed to answer the questions which the Examiner has sustained objections to, she would testify that she never heard of any instructor direct the girls in her section to attend any union meeting in a group; that she never saw any instructor gather the girls together and take them to a union meeting; and that the custom at the Donnelly plant was that employees would attend union meetings with whomever they pleased, without obstruction or pressure or limitation.

Mr. Langsdale: I object to the offer for all of the reasons given against the question.

Trial Examiner Batten: The offer is rejected."

(b) Petitioner assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers by the witness Mrs. Hutchinson as set forth in the transcript of the record at pages 6751-52-53 (R. X. 3725-3726).

(c) Petitioner further assigns as error, the rulings, action and comments of the trial examiner made with refer-
[fol. 301] ence to similar questions and answers in the transcript of the record at pages 6789-90-91 (R. X. 3734-35-36).

(d) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness Lora Fries, as set forth in the transcript of the record at pages 6811-12-13-14 (R. X. 3739-3740).

(e) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness Lillie Reynolds, as set forth in the transcript of the record at pages 6824-25-26 (R. X. 3743-44).

(f) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness Alvin Reifel, as set forth in the transcript of the record at page 6941 (R. X. 3773).

(g) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness, Elizabeth Barrett, as set forth in the transcript of the record at pages 6947-48-49 (R. X. 3774-3775).

(h) Petitioner further assigns as error the rulings, action and comments of the trial examiner made with reference to similar questions and answers in the examination of the witness Marjorie Green, as set forth in the transcript of the record at pages 6962-63-64 (R. X. 3777-3778).

[fol. 302] 289.

Petitioner assigns as error the rulings, action and comments of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6762-63-64-66-67 (R. 3727-28-29-30).

"Mr. Ingraham: Mr. Examiner, I intended to state before I put this witness on the stand that I understood you to say that you limited respondent to three witnesses in connection with the matters that Etta Dorsey testified about.

Trial Examiner Batten: Well, is that the way you understand it?

Mr. Ingraham: I understood you to say that very positively.

Trial Examiner: Well, I think you are correct.

Mr. Langsdale:: Well, I understand the limitation would be with reference to all matters inquired about this morning in connection with Etta Dorsey's testimony.

Trial Examiner Batten: My understanding of what I intended to do was limit you to three witnesses from that section with respect to the matters that you asked the witnesses about. Now, is there any difference between that and your understanding?

Mr. Ingraham: No, that is what I understood you to say. Of course, we will prepare an offer of proof.

Trial Examiner Batten: If you have an offer, you make it right now, Mr. Ingraham.

* * * * *

Mr. Ingraham: Respondent offers to prove by Ruth Strandt, Ida Barton, Leone Sams, Beatrice Face, Goldie Sprague, Nina Gilardi, Grace Pardun, Anne Belan, Lulu Gordon, Ruth Chaney Miller, Ida Mauk, Estel Rothgeb, Ora Dull, Lela Stevens, Hazel Higgins, Violet Hawkins, Anne Elizabeth Stone, and each of them, that if permitted to testify they would testify that they were employed during the months of March, April, and May, 1937, by the Donnelly Garment Company, and during said time worked in Section 518; that during all of said time Etta Dorsey was their instructor and they had no other instructor during said time except Etta Dorsey; that Etta Dorsey did not inform them or state to them that they would be paid by the Donnelly Garment Company for the time spent at the meeting of March 18, 1937, where Mrs. Reed spoke; and they were not, in fact, paid for the time spent at said meeting; that Etta Dorsey did not inform them or state to them that they would be paid for the time spent at the meeting of April 27, 1937, and they, in fact, were not paid for the time spent at that meeting; that Etta Dorsey did not state to them that they would be paid for time [fol. 303] spent at union meetings, and they, in fact, were not paid for time spent at any union meetings; that they did not know of any employee being paid for time spent at any said union meetings, or the meeting of March 18, April 27, or any other meeting; that they did not attend any meetings during said time and return to work.

Mr. Langsdale: Union meetings, you mean?

Mr. Ingraham: Well, any of the aforesaid meetings, and return to work; that in the event they did not intend to come to work they would notify the employment office, and would not notify their instructor; that the employment office would transfer operators in their section and it was not done by the instructor.

* * * * *

I want to add to the offer of proof that each of said stated persons will further testify that they never received a pay check with the section number on it that was

not the correct section number in which said person worked and that each of said persons' pay checks had on it Section number 518 during the months of March, April and May of 1937.

* * * * *

Trial Examiner Batten: Well, my understanding is that the offer of proof is in line with the testimony of the three witnesses, and taking into consideration the objections offered by the various attorneys, representing the parties, and upon that basis I reject the offer."

for the reasons, among others, that said line of testimony was highly important to the issues herein in view of the former findings and conclusions of the trial examiner and Board, and in view of the contentions of the Board and ILGWU in the further hearing, and unless the trial examiner was satisfied that the three witnesses who had already testified to such matters had established same, it was prejudicial and unfair to petitioner to limit such testimony to three witnesses, and in any event petitioner was entitled to put on further witnesses as to said matters for the consideration of the Board and Court, and the limitation made by the trial examiner denied to petitioner a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

[fol. 304] 290.

Petitioner assigns as error the ruling, action and comment of the trial examiner as set forth in the following excerpts from the transcript of the record at pages 6784-85 (R. X. 3733), to-wit:

"Q. Do you recall ever being paid for any time you spent at any Loyalty League meetings?

A. No.

* * * * *

Trial Examiner Batten: —that doesn't change the situation at all, because this morning I had no idea of going into all of these generalities, which I don't think carry a great deal of weight, anyway."

291.

Petitioner assigns as error the rulings and action of the trial examiner and the action of the Board in affirming same in receiving in evidence over petitioner's objections the testimony and each and every part thereof offered by the Board and ILGWU from the old NRA case #160 and from the Judge Miller case No. 2924, and in overruling petitioner's objections thereto.

292.

Petitioner assigns as error the several findings, conclusions and recommendations of the trial examiner in the Intermediate Report and the Board's affirmance thereof for the reason that same thwart and violate the prime purposes and provisions of the National Labor Relations Act.

[fol. 305] 293.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 6834-35-36-37-38 (R.X. 3744-3745), to-wit:

"Mr. Ingraham: Mr. Examiner, does the same ruling apply to section 413 as to section 518?

"Trial Examiner Batten: Exactly.

"Mr. Ingraham: Then respondent makes an offer of proof that if Marie Richardson, Hazel Hardman, Emilea Raines, Grace Short Kunther, Eva Liberman, Edna Tattershall, Louis Kesinger, Millie Ihle, Katherine Sutulovick, Ruth Putnam, Emma Hansen, Edith Alexander, Lillie Reynolds, Bertha Taylor, Lucille Wilkey, Anna Spahr, Perl Hall, Nellie States, Ruth McBride, Lorene Johnson, Beulah Perkins, Mildred Brooks Ballard, Opal Richardson, Dorothy Dietz Sharp, Gladys Rudd, were permitted to testify, they would testify as follows;

"That they were employed at the Donnelly Garment Company during the months of March, April, and May, 1937; that their instructor was Lola Skeens during said period; that each attended the meeting of March 18, 1937;

that Lola Skeens did not notify them or any of them that said meeting was to be held; that Lola Skeens did not go up the north side of the section notifying the girls of the meeting; that Lola Skeens did not inform the girls that they were to be paid for the time spent at that meeting; that they were not paid for the time spent at that meeting; that each of said persons attended the meeting of April 27, at which time the Donnelly Garment Workers' Union was formed; that Lola Skeens did not notify any of them of said meeting; that Lola Skeens did not go up the north side of the section, telling the girls of the meeting, and that the thread girl did not go up the south side of the section, telling the girls of the meeting; that Lola Skeens did not tell the girls that they were to be paid for the time spent at said meeting; and that none of the persons named received any pay for the time spent at said meeting; that they attended union meetings, and were never notified by Lola Skeens that said meetings were to be held, and were not informed by Lola Skeens that they would be paid for the time spent at said meetings, or any of them; and they were not, in fact, paid for any time spent at any union meeting; that Lola Skeens did not notify them of any Loyalty League meetings, and they were never paid for any time spent at any Loyalty League meetings; that all the meetings above referred to were held after working hours.

[fol. 306] "Trial Examiner Batten: Now, aren't you including two things there that you haven't asked this witness thus far, Mr. Ingraham.

"Mr. Ingraham: What are those two things?

"Trial Examiner Batten: Well, you just said, 'All the meetings were held after working hours,' and you said they would testify that they were not paid for any Loyalty League meetings. I don't recall that you asked this witness that.

"Mr. Ingraham: I think I did, and I think I asked at least one of these witnesses if meetings were held after working hours.

* * * * *

"Trial Examiner Batten: I thought you were making me an offer now on the basis of those three last witnesses.

"Mr. Ingraham: I am, and I thought I asked that question.

* * * * *

"Trial Examiner Batten: * * * I will ask you if it is your intent that the offer of proof cover the testimony covered by the three prior witnesses?

"Now, if that is your intention, then I am willing to accept the offer of proof.

"Mr. Ingraham: All right.

"Trial Examiner Batten: I am perfectly willing the offer of proof be just as all-inclusive as the last three witnesses.

* * * * *

"Mr. Ingraham: That Lola Skeens did not turn the power off for the purpose of sending the employees in section 413 to any of the meetings referred to.

* * * * *

"Trial Examiner Batten: Well, the offer of proof will be rejected on the same grounds as previously stated, for the same reasons, and I will allow the same objections, if there were any."

for the reasons, among others, that said line of testimony was highly important to the issues herein in view of the former findings and conclusions of the Trial Examiner and Board, and in view of the contentions of the Board and ILGWU in the further hearing and unless the Trial Examiner was satisfied that the three witnesses who had [fol. 307] already testified to such matters had established same, it was prejudicial and unfair to petitioner to limit such testimony to three witnesses, and in any event petitioner was entitled to put on further witnesses as to said matters for the consideration of the Board and Court, and the limitation made by the Trial Examiner denied to petitioner a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

294.

(a) Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action

in affirming same) made with reference to the examination of the witness Fred Brown as set forth in the following excerpts from the transcript of the record at pages 6915, 6916, to-wit:

"Q. Do you know whether the employees obtained any benefits—additional rights under that contract that they didn't have before?

"A. Yes, they did. * * *

"Trial Examiner Batten: I don't think, Mr. Tyler, I want to open up that matter now, so I will ask you not to. If you have an offer of proof on it that you want to make, all right.

"Mr. Tyler: I offer to prove that this witness, if allowed to answer the question as to whether benefits were derived from the contract in the spring of 1937 and what the benefits were, would —

"Mr. Langsdale: Which contract?

"Mr. Tyler: I think there is only one.

"Mr. Langsdale: Two.

"Mr. Tyler: All right. The contract of May 27, 1937, as supplemented by the wage agreement of June 22, 1937.

"— would testify that he does not remember in detail all of such benefits, but that he is positive that some of the minimum— that the minimum pay before the contract was $15.00 a week and that by reason of the contract the minimum for anyone was raised to $16.50 a week, and that the [fol. 308] payments made to certain individuals, regardless of contract rights, were increased by reason of the contract, and that the time allowed for vacations with pay to certain employees was increased over the custom, as well as being established as a legal right which had not existed before, and that there were other benefits, although he may not recall them in detail.

"Mr. Langsdale: The offer is objected to as not proper surrebuttal.

"Trial Examiner Batten: I will sustain the objection. I don't think it is proper."

(b) Petitioner further assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) made with reference to similar questions and answer in the examination of witness Jack McConaughey as set forth in the transcript of the record at pages 6921, 6922.

(c) Petitioner further assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) made with reference to similar questions and answers in the examination of the witness Mabel Riggs as set forth in the transcript of the record at pages 6933, 6934 (R.X. 3770-3771).

295.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at page 6928, made with reference to the witness Jack McConaughey, to-wit:

"Mr. Langsdale: I do offer to prove by this witness, should he be permitted to testify on this, his answer would be that the union meetings were attended by the employees going to the meeting section by section, for the reason that the elevator service was limited to two elevators, with a capacity of 15 each, and that, therefore, it would be utterly impossible for all of the employees to reach the meeting at the same time.

[fol. 309] "Mr. Hogsett: We had no objection to his inquiring of the witness whether that is so or not—whether that is the witness' testimony or Mr. Langsdale's improvisation.

"Mr. Tyler: I object to the offer of proof because, as a matter of fact, the witness' testimony would not be to that effect. The witness is here, and if anybody wants to settle it, the opportunity is apparent.

"Trial Examiner Batten: I don't think I am going to start out, at this stage of the proceedings, to test out whether the offers of proof that have been offered so far are justified."

296.

Petitioner assigns as error the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts of the transcript of the record at pages 6967, 6968, 6969, 6970 (R.X. 3779-3780).

"Trial Examiner Batten: Mr. Tyler, I am still more convinced that any more witnesses along this line—it isn't only cumulative but it is repetitious, especially if they testified in the prior hearing, as was indicated this morning. If you have witnesses you want to present who will testify to specific matters or other matters, you may produce them.

"Mr. Tyler: I have one witness who will testify to an entirely separate state of facts. But I except to Your Honor's ruling, and I would like to make an offer of proof.

"Trial Examiner Batten: You may do so.

"Mr. Tyler: I offer to prove by the following witnesses: Rose Todd, Hobart Atherton —

"Mr. Langsdale: Just a moment. I wish the Examiner would permit him to bring Rose Todd here and put her on the stand.

"Trial Examiner Batten: Let's proceed.

"Mr. Tyler: (Continuing) —Hobart Atherton, Walter Higgins, Mary McClellan, and Finland Rife, that if permitted to testify they would testify that they were members of the Donnelly Garment Workers' Union between April 27, 1937, and July 15, 1939; and that at some part of that time they were members of the executive committee of the Donnelly Garment Workers' Union; and that at no time and on no occasion during that period were they ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for attending Donnelly Garment Workers' Union meetings or meetings of the execu- [fol. 311] tive committee of the Donnelly Garment Workers' Union; and that they had no knowledge of and never saw any instructor gather the employees in her section together and take them as a group to any meeting of the Donnelly

Garment Workers' Union; and that the employees were free to attend such meetings with whom and in such manner as they chose, without any interference, dictation or pressure from the employer; and that the women employees in the Donnelly plant frequently attended meetings of the Donnelly Garment Workers' Union held after working hours while still wearing their work aprons; and that they were never paid for the time spent at any meetings of either the Donnelly Garment Workers' Union or the executive committee of the Donnelly Garment Workers' Union by the Donnelly Garment Company or the Donnelly Garment Sales Company.

* * * * *

"Trial Examiner Batten: I will reject the offer for the reasons I have previously stated. . .

"Mr. Hogsett: Respondent joins in the offer and respectfully excepts to the ruling of the Examiner.

"Trial Examiner Batten: Of course, understand, my rejection of the offer, under those circumstances, would be also applicable to you."

for the reasons among others that said line of testimony was highly important to the issues herein involved in view of the former findings and conclusions of the Trial Examiner and Board and in view of the contentions of the Board and I.L.G.W.U. in the further hearing and said rulings and actions were unfair and highly prejudicial to petitioner and intervener unless the Trial Examiner was convinced that the facts testified to by the witnesses already called sufficiently established such facts so as to require findings in accordance therewith and even in such event, petitioner and intervener were entitled to have further witnesses called and testify with reference to said matters, for the consideration of the Board and Court, and the refusal of the Trial Examiner to permit intervener to call further witnesses for such purpose denied to peti- [fol. 310] tioner and intervener a fair trial and deprived them of due process of law in contravention to the Fifth Amendment to the Constitution of the United States.

297.

Petitioner assigns as error each and all the rulings, action and comments of the Trial Examiner (and the Board's action in affirming same) contained or referred to in the foregoing assignments of error numbered 196 to 296 inclusive, for each and all of the reasons therein set forth or referred to and because same show the bias and non-judicial attitude of the Trial Examiner and his prejudgment of the issues herein against petitioner and because same are unfair and prejudicial to petitioner and deny to petitioner a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States. In answer to some of the questions objected to, answers favorable to the petitioner were given and petitioner does not assign as error said favorable answers but does assign as error the rulings as showing the bias and non-judicial attitude of the Trial Examiner.

298.

The erroneous rulings, findings and conclusions of the Trial Examiner throughout the record and in the Intermediate Report are so numerous as to prevent setting same forth in detail in these assignments of error, but petitioner by the omission to quote or refer to any of the adverse findings or conclusions of the Trial Examiner in his Intermediate Report or the omission to assign as error many of the numerous rulings of the Trial Examiner throughout the hearing, does not mean that petitioner is [fol. 312] admitting the truth or correctness of any of said adverse findings or conclusions or that the correctness of said rulings, and petitioner hereby assigns as error each and all adverse rulings, findings or conclusions of the Trial Examiner (and the Board's adoption and affirmance thereof.)

299.

Petitioner assigns as error the ruling and action of the Trial Examiner (and the Board's action in affirming same) rejecting petitioner's offer of proof and protest against the ruling of the Examiner made August 19, 1942, contained in Board's exhibit No. 1-SSSSS, as appears from page 6981 of the transcript of the record herein, for the reasons among others that the testimony therein re-

ferred to and offered to be proved was highly important to the issues involved herein in view of the rulings of the Trial Examiner admitting evidence offered by the Board and I.L.G.W.U. relating to the same subject matter as that sought to be proved by said witness Wave Tobin and in view of the former findings and conclusions of the Trial Examiner and the Board and in view of the contentions of the Board and I.L.G.W.U. in the further hearing herein, and said ruling and action in rejecting said offer of proof and in refusing to permit petitioner to examine said Wave Tobin with reference to said matters and with reference to such other pertinent matters as would have been elicited in the course of such examination, and in denying to petitioner the right to place its witnesses on the stand in the order it desired, and denying to petitioner the right to continue and complete the examination of said Wave Tobin before proceeding to the introduction of the evidence of [fol. 313] other witnesses, were highly unfair and prejudicial to petitioner and there was no basis for the exercise of any sound discretion of the Trial Examiner in refusing to receive such testimony and the denial thereof and the rejection of said offer of proof deprived petitioner of a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

300.

Petitioner assigns as error the ruling and action of the Trial Examiner (and the Board's action in affirming same) set forth on page 6981 of the transcript of the record herein denying petitioner's reoffer of certain offers of proof and petitioner's reoffer of Petitioner's Exhibit No. 2 (rejected) and petitioner's reoffer of Intervener's Exhibit No. 20 (rejected) and each of same, for each and all the reasons and grounds set forth in the foregoing assignment of error No. 299. This refers to all the offers of proof made by petitioner in the former hearing of this matter before the Trial Examiner, including Board's Exhibit No. 1-OOOO and Board's Exhibits Nos. 1-JJJJ, 1-NNNN, 1-QQQQ, 1-XXXX, and intervener's offer of proof Board's Exhibit No. 1-RRRR, and each of same.

301.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth on page 6982 of the record herein rejecting and denying petitioner's supplemental offer of proof designated as Board's Exhibit No. 1-TTTTT, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 299 herein.

[fol. 314] 302.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth on page 6982 of the record herein, rejecting and denying petitioner's offer of proof designated as Board's Exhibit No. 1-UUUUU for the reasons among others that the testimony therein referred to and offered to be proved was highly important to the issues involved herein in view of the rulings of the Trial Examiner admitting evidence offered by the Board and I. L. G. W. U. relating to the same subject matters referred to in said offer and in view of the former findings and conclusions of the Trial Examiner and the Board and in view of the contentions of the Board and I. L. G. W. U. in the further hearing herein, and the rejection of said offer of proof and the denial to petitioner to adduce the evidence therein referred to was unfair and highly prejudicial to petitioner and there was no basis for the exercise of any sound discretion on the part of the Trial Examiner in refusing to receive said testimony and said rulings deprived petitioner of a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

303.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth on page 6982 of the record herein rejecting and denying petitioner's offer of proof designated as Board's Exhibit No. 1-VVVVV, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 302 herein.

[fol. 315] 304.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth on page 6982 of the transcript of the record herein (R. X. 3783), rejecting and denying petitioner's offer of proof designated as Board's Exhibit 1-WWWWW, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 302.

305.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth on page 6982 of the transcript of the record herein (R. X. 3783), rejecting and denying intervener's offer of proof designated as Board's Exhibit 1-XXXXX, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 302 herein.

306.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) set forth at page 6983 of the transcript of the record herein (R. X. 3783), rejecting and denying petitioner's offers of proof, and each of same, of witnesses employed or formerly employed in Sections 518 and 413 of the plant of the Donnelly Garment Company, for each and all the reasons and grounds set forth in petitioner's assignment of error No. 302 herein.

307.

Petitioner assigns as error the rulings and action of the Trial Examiner (and the Board's action in affirming same) as set forth in the following excerpts from the transcript of the record at pages 6984, 6985 (R. X. 3784), to-wit:

[fol. 316] "Trial Examiner Batten: * * * Yesterday there was a witness, Mary Copowycz, on the stand, and during the cross-examination of Mr. Tyler, which begins at page 6879, the question at line 2, the question at line 6, and the answers thereto, the question at line 4, page 6882, and the answer, and the question at line 8, and the answer—

those questions and answers are stricken, in accordance with my prior ruling on those other witnesses. Those are the questions which I find are the same as the others, Mr. Tyler. The answers may stand as an offer of proof."

308.

Petitioner assigns as error the findings of the Trial Examiner (and the Board's action in affirming same) that check-off cards were distributed by the petitioner to its employees for their signature and the finding of the Trial Examiner that Rose Todd went to the petitioner's plant at St. Joseph, Missouri to organize the employees in that factory, and was absent from her employment about a half of day without salary deduction therefor, and assigns as error the findings of the Trial Examiner that instructors regard themselves as supervisors and that they exercise supervisory and economic control over the operators and are regarded by the operators as supervisory employees, and that they are responsible to Baty for the quantity and quality of work in their respective sections, and that Baty never gave them any instructions or directions or conferred with them about their work, and assigns as error the findings of the Trial Examiner as to what payrolls Rose Todd and other persons were carried on, and the findings of the Trial Examiner to the effect that business of the DGWU was conducted during business hours, as not being supported by the evidence.

[fol. 317]

309.

Petitioner assigns as error the repeated rulings of the Trial Examiner (and the Board's action in affirming same) permitting the Board and ILGWU to adduce evidence relating to various subjects and relating to various periods of time; and his ruling refusing to permit petitioner and intervener to introduce countervailing evidence relating to said subjects and relating to said periods of time.

310.

Petitioner assigns as error the several rulings of the Trial Examiner (and the Board's action in affirming same) whereby he refused to hear further witnesses on the part of petitioner and intervener as to various issues involved

without signifying that the matters contended for by petitioner and testified to by petitioner's and intervener's witnesses had been sufficiently established and/or without signifying as to what if any controverted issues were not sufficiently established by petitioner's or intervener's witnesses.

311.

Petitioner assigns as error the rulings of the Trial Examiner (and the board's action in affirming same) in refusing to receive testimony from petitioner or intervener as to matters occurring after July 15, 1939, irrespective of whether such matters had any bearing upon the issues involved herein, and irrespective of whether same tended to disprove the charges against petitioner.

312.

Petitioner assigns as error the rulings of the Trial Examiner (and the Board's action in affirming same) [fol. 318] requiring petitioner to submit offers of proof as to the testimony of its various witnesses including Wave Tobin, instead of permitting petitioner to call said witnesses to the stand and adduce material testimony from them by oral examination, for the reason that it is well known that the testimony of a witness may be more fully and accurately developed by examination on the stand than by statements in an offer of proof, especially when the witness is an adverse witness, as was Wave Tobin, and counsel had not the opportunity of ascertaining fully the extent of her testimony, and for the further reason that said ruling is unfair and prejudicial to petitioner and demonstrates the bias of the Trial Examiner that he did not require the Board to submit offers of proof as to the testimony of Rose Todd and various other witnesses before calling them to the stand.

312-a.

Petitioner assigns as error each and all the rulings, actions and comments of the Trial Examiner (and the action of the Board in affirming and adopting same) set forth or referred to in the foregoing points numbered 34 to 312 inclusive, for each and all the reasons and objections

set forth in those points or made by petitioner or intervener at the time of said rulings, and for the further reasons that same were erroneous and prejudicial to petitioner and that by said rulings petitioner was excluded from adducing competent and material evidence which should have been received and considered by the Trial Examiner and Board in arriving at their findings and conclusions, and because by said rulings the Board and I. L. G. W. U. were permitted to adduce a mass of incompetent, irrelevant and immaterial evidence, which should [fol. 319] not have been received or considered by the Trial Examiner or Board but upon which the Trial Examiner and Board based their findings and conclusions and the order herein by reason of all of which petitioner has been denied a fair trial.

312-b.

The Board erred in its order, in paragraph 1 (b), ordering petitioner to cease and desist "from giving effect to its check-off agreement with" the Donnelly Garment Workers' Union, and in paragraph 2 (b) ordering petitioner to reimburse all of its employees for all dues and assessments, if any, "which it has deducted from their wages on behalf of Donnelly Garment Workers' Union", for the reason that petitioner has had no check-off arrangement with the Donnelly Garment Workers' Union and has not deducted any dues or assessments from its employees' wages "on behalf of Donnelly Garment Workers' Union", but such dues to the Donnelly Garment Workers' Union as have been deducted from the wages of petitioner's employees have been deducted and paid to the Donnelly Garment Workers' Union for them individually and at their individual request in writing and the Board's orders in these respects are not supported by the evidence and are contrary to law.

Petitioner further assigns as erroneous the said orders for the reason that the complaint, as amended, did not charge or notify petitioner that the Board sought to impose such action on petitioner and petitioner was not given fair or reasonable notice thereof and therefore was [fol. 320] not given adequate opportunity to introduce evidence upon such issue, and was denied a fair

trial upon such issue and such orders should be set aside for said reason as well as becuse they are not supported by the evidence and are not conducive to effectuating the purposes of the National Labor Relations Act, are unreasonable and arbitrary under the facts and circumstances, are contrary to the provisions of the Act and beyond the power of the Board.

[fol. 321]

313.

The trial examiner and the Board erred in failing and refusing to consider, find and report that this proceeding be dismissed, in whole or in part, for each and all of the reasons specified in Paragraphs 1 to 10 inclusive of Part A of petitioner's Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in petitioner's Answer to Amended Complaint, Exhibit No. 1-LLLL.

314.

The trial examiner and the Board erred in failing and refusing to consider, find and report that this proceeding be dismissed for each and all of the reasons specified in Part B of the Amended Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in Petitioner's Answer to Amended Complaint, Exhibit No. 1-LLLL.

315.

The trial examiner and the Board erred in failing and refusing to investigate, by secret election or otherwise, the true representatives of petitioner's employees and so report and certify the same in accordance with the petition contained in Part C of the Amended Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in petitioner's Answer to Amend Complaint, Exhibit No. 1-LLLL.

316.

The trial examiner and the Board erred in making the ruling contained in Paragraph 2 of Board's Exhibit No. VYY, overruling petitioner's motion, Exhibit 1-SSS, to dismiss the Complaint as amended.

[fol. 322]

317.

The trial examiner and the Board erred in making the ruling contained in Paragraph 3 of Board's Exhibit

1-YYY, overruling petitioner's motion, Exhibit 1-TTT, to strike from the complaint as amended, Paragraph 5, subparagraph C.

318.

The trial examiner and the Board erred in making the ruling contained in Paragraph 5 of Board's Exhibit 1-YYY, overruling petitioner's motion, Exhibit 1-VVV, to make the complaint as amended more definite and certain in each and all of the respects specified in said ruling.

319.

The trial examiner and the Board erred in making the ruling contained in Paragraph 6 of Board's Exhibit 1-YYY, ordering petitioner to submit a written statement of the evidence it would offer to prove the parts of the Answer set forth in the motion to strike of the International Ladies' Garment Workers' Union, Exhibit 1-QQQ.

320.

The trial examiner and Board erred in making the ruling contained in Paragraph 7 of Board's Exhibit 1-YYY, denying and refusing to consider petitioner's Petition for Investigation and Certification of Representatives pursuant to Section 9 (c) of the National Labor Relations Act, part C of petitioner's Answer, Exhibit 1-JJJ.

321.

The trial examiner and Board erred in denying petitioner's motion (Exhibit 1-PPP) to dismiss the amended complaint and in denying the intervener's motion to dismiss (Exhibit 1-LLL).

[fol. 323]

322.

The trial examiner and Board erred in denying petitioner's motion (Exhibit 1-AAAA) to strike portions of Paragraph 11 of the Amended Complaint, which was denied as to all parts except subparagraphs (o) and (p).

323.

The trial examiner and Board erred in denying intervener's applications for an election and continuance. (Tr. Rec. pp. 130, 131, 134) (R. I. 6, 7).

324.

The trial examiner and Board erred in refusing to consider the petitions for investigation and certification (Exhibits 1-NNN and 1-OOO) filed by intervener herein.

325.

The trial examiner and Board erred in its ruling and action contained in paragraph 2 (a) of Board's Exhibit 1-SSSS receiving in evidence Board's Exhibit 28, for the reason that said exhibit and evidence is irrelevant and immaterial to any issue herein and does not tend to prove any charge in the complaint; for the further reason that said exhibit is incomplete and covers only a period of three months' time and does not include earnings of piece workers, bundle boys, etc.

326.

The trial examiner and Board erred in its ruling and action contained in paragraph 2 (d) of Board's Exhibit 1-SSSS refusing petitioner's offer of proof (Exhibit 1-XXXX).

[fol. 324]

327.

The trial examiner and Board erred in the ruling and action set forth in paragraph 2 (e) of Board's Exhibit 1-SSSS sustaining motion (Exhibit 1-QQQQ) of the International Ladies' Garment Workers' Union to strike certain parts of petitioner's Answer.

328.

The trial examiner and Board erred in the ruling and action set forth in paragraph 2 (f) of Board's Exhibit 1-SSSS refusing the petitioner's offer of proof (Exhibit 1-NNNN) as to Part B of the Answer.

329.

The trial examiner and Board erred in the ruling and action contained in paragraph 2 (g) of Board's Exhibit 1-SSSS refusing petitioner's offer of proof (Exhibit 1-JJJJ).

330.

The trial examiner and Board erred in the ruling and action set forth in Paragraph 2 (h) of Board's Exhibit

1-SSSS refusing respondent's offer of proof (Exhibit 1-OOOO).

331.

The trial examiner and Board erred in the ruling and action set forth in paragraph 2 (i) of Board's Exhibit 1-SSSS refusing intervener's offer of proof (Exhibit 1-RRRR).

332.

The trial examiner and Board erred in the ruling and action set forth in paragraph 2 (f) of Board's Exhibit 1-SSSS, denying petitioner's request in Part A of its Answer for dismissal of the Complaint.

[fol. 325]

333.

The trial examiner and the Board erred in failing and refusing to accept or consider petitioner's offer of proof (Board's Exhibit 1-QQQQ) as to paragraph 2, Section A, of Petitioner's Answer.

334.

The trial examiner and Board erred in failing and refusing to sustain each and all the defenses and grounds for dismissal of the Complaint set forth in Part A of Petitioner's Answer herein.

335.

The trial examiner and Board erred in failing and refusing to sustain each and all the defenses and grounds for dismissal of the Complaint set forth in Part B of petitioner's Answer herein.

336.

The trial examiner and Board erred in making the statement in paragraph 2 (f) of Board's Exhibit 1-SSSS that the petitioner stated in the record that no offer of proof would be made on Part A of the Answer, for the reason that said statement overlooks petitioner's offer of proof (Board's Exhibit 1-QQQQ) as to Part A of its Answer.

337.

The trial examiner and Board erred in making the ruling contained in paragraphs 2 (j), 2 (k) and 2 (m) of Board's Exhibit 1-SSSS in so far as the effect or consideration of

the evidence contained in petitioner's NRA-JMC Exhibit 3 is limited by the following language in said ruling: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings [fol. 326] heretofore made with respect to the introduction of evidence upon certain subjects".

(a) Petitioner further assigns as error said part of said ruling because the same is so vague and uncertain as not to apprise petitioner as to what parts of the evidence in said NRA-JMC Exhibit 3 the trial examiner by said ruling considers or excludes or refuses to consider. Petitioner is thereby denied and has been denied a fair and impartial hearing herein and due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States.

(b) Petitioner further assigns as error said part of said ruling because the same constitutes a rejection, refusal or failure to consider any part of the testimony of Elizabeth Reeves contained in said NRA-JMC Exhibit 3 upon any of the issues or "subjects" referred to in said ruling. (Petitioner is unable to make this assignment of error more specific because of the vagueness and uncertainty of said ruling of the trial examiner.)

(c) Petitioner further assigns as error said quoted part of said ruling because the same constitutes a rejection, refusal or failure to consider any part of the testimony of witnesses Bachofer, Reeves, Keyes, Stites, Rosenfield, Gordon, Ruden, Dowdy, Kilby, Sprofera, Ball, Jeters, Rickett, Cauthen, Smith, Redish, Shartzer, Warren, Ingrahain, Hull, Perlstein, Fry, Dubinsky, Tobin, Mrs. Reed, Allison, Atchison, Wales, Owen, Rutherford, Reidel, Lutz, Patton, Neimoyer, Perkins, Richards, Stroup, White, or any of them, contained in said NRA-JMC Exhibit 3 upon any of [fol. 327] the issues or "subjects" referred to in said ruling. (Petitioner is unable to make this assignment of error more specific because of the vagueness and uncertainty of said ruling.)

338.

The trial examiner and Board erred in the action and ruling on October 2, 1939, denying motion of petitioner herein, entitled "Motion to Clarify Rulings of Trial Ex-

aminer" filed with the trial examiner on or about September 6, 1939; and also in the denial of each and every the several motions and requests for clarification set forth in said motion.

The trial examiner and the Board also erred in the ruling and action denying a like Motion for Clarification filed by intervener herein.

339.

The trial examiner and Board erred in the ruling and action on October 2, 1939, denying Motion of petitioner herein, filed with the trial examiner on or about September 12, 1939, for leave to file herein and make a part of the record, a certain petition for investigation and certification of representatives (which petitioner had attempted to file with the National Labor Relations Board), and copy of the letter of the Acting Regional Director for the Seventeenth Region to Donnelly Garment Company, dated September 8, 1939, refusing to file and docket said petition.

340.

The trial examiner and Board erred for the reason that the conclusions, recommendations, findings, contained [fol. 328] in the Intermediate Report adverse to petitioner, are based on purported evidence which is incompetent and irrelevant, and such findings, conclusions and recommendations are arbitrary, capricious, oppressive and contrary to the law and the evidence.

341.

The trial examiner and Board erred for the reason that the trial examiner consistently disregarded the obligation to weigh and consider all the evidence, and ignored the legal doctrine that the burden of proof was cast upon the Board to establish the charges as alleged by a fair preponderance of the evidence.

342.

The trial examiner and Board erred for the reason that the findings of fact, adverse to petitioner, and the conclusions and recommendations purported to be based thereon, are based wholly or substantially upon alleged acts occur-

ring prior to July 5, 1935, with the result that petitioner is convicted of violation of the National Labor Relations Act by reason of alleged acts occurring prior to the effective date thereof; and, which, if they occurred, were in all respects lawful and innocent.

343.

The trial examiner and Board erred for the reason that the trial examiner held petitioner to be bound by the alleged acts, omissions and declarations of employees, although no authority was shown for such alleged acts, omissions or declarations and the latter were not shown to be in the course or within the scope of any employment by [fol. 329] respondent and the undisputed evidence negatived such authority and such course and scope.

344.

The trial examiner and Board erred for the reason that the trial examiner held petitioner to be bound by the alleged acts, omissions and declarations of instructors although the undisputed evidence disclosed that instructors had no authority to hire, discipline or discharge, were not supervisory employees, and were not authorized to commit the alleged acts, omissions or declaration and the said alleged acts, omissions or declarations were not shown to be in the course of or within the scope of their employment, nor in any way binding upon petitioner.

345.

The trial examiner and Board erred because the trial examiner and Board have failed to find and conclude that the petitioner has not dominated or interfered with the formation and administration of the Donnelly Garment Workers' Union and has not contributed support to said Union, and has failed to find and conclude that the petitioner did not discriminate against the International Ladies' Garment Workers' Union or its members or discourage membership therein, and has failed to find and conclude that petitioner did not interfere with, restrain or coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has failed to find and conclude that the petitioner did not dominate, control, interfere with, or act through the

[fol. 330] Donnelly Loyalty League in any way, and has failed to find and conclude that the Donnelly Garment Workers' Union was not a successor of, or connected with, the Donnelly Loyalty League and that the Donnelly Loyalty League did not dominate or interfere in the formation or administration of the Donnelly Garment Workers' Union, and has failed to find and conclude that petitioner is not guilty of any of the unfair labor practices charged in the Amended Complaint and has failed to dismiss or recommend the dismissal of each and all of said charges against petitioner, and because the trial examiner has failed to find, state or consider material, relevant and uncontradicted facts and evidence favorable to petitioner and pertinent to the findings and conclusions made by the trial examiner, but has based his said findings and conclusions on incompetent and detached portions of the evidence deemed by the examiner to be unfavorable to petitioner, and upon conjecture and improper inferences not warranted by the evidence.

346.

The trial examiner and Board erred for the reason that the evidence and offers of proof herein (including the testimony or offered testimony of every member of the Donnelly Garment Workers' Union) show that the Donnelly Garment Workers' Union was formed and joined by one hundred per cent of the working employees of petitioner of their own free will and accord without any influence, domination, coercion or interference by respondent, and that they voluntarily chose said Union and its Executive [fol. 331] Committee to represent them for the purpose of collective bargaining with petitioner and have at all times desired to be so represented, and all the direct evidence was to the effect that none of petitioner's executives or supervisory employees with power to hire, discharge or discipline, attempted to dominate, coerce, restrain or interfere in any way with petitioner's employees in regard to their union membership or affiliations, and the findings and conclusions of the trial examiner that petitioner has violated Sections 8 (1), 8 (2), 8 (3) of the National Labor Relations Act are made in the face of this contradicted showing, and said findings, conclusions and recommendations of the trial examiner are contrary

to the letter and spirit of the National Labor Relations Act in that they deny to petitioner's employees the right to bargain with petitioner through representatives of their own choosing and require the violation by petitioner of the National Labor Relations Act by refusing to bargain with the representatives of a majority of the employees, and said conclusions and recommendations being upheld by the Board, the Board is in the position of violating, and requiring petitioner to violate, both the letter and spirit of the Act.

347.

The trial examiner and Board erred in the findings, conclusions and recommendations, and each of them, because said examiner and/or the National Labor Relations Board did not investigate and certify, although so requested, the exclusive representatives of all the petition-
[fol. 332] er's employees for the purpose of collective bargaining in accordance with Section 9, subsection c of the National Labor Relations Act prior to the institution and/or hearing of the present proceedings.

348.

The trial examiner and the Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraph 3 of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.

349.

The trial examiner and the Board erred in failing and refusing to dismiss and/or recommend dismissal of the following allegation in Paragraph 4 of the Amended Complaint (Board's Exhibit 1-KKKK): "* * * * and its predecessor, Donnelly Loyalty League", is a "labor organization", because said allegation is not proved or supported by the evidence and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

350.

The trial examiner and the Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 5, 5 (a) and 5 (b) of the Amended Complaint

(Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.

351.

The trial examiner and the Board erred in failing and [fol. 333] refusing to dismiss and/or recommend dismissal of Paragraph 5 (c) of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to or are based upon matters purporting to have existed or occurred prior to the effective date of the National Labor Relations Act, which were then not unlawful and from which no inference of unlawful conduct by petitioner after the enactment of said Act may be drawn.

352.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 5 (d), 6 and 7 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

353.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 8, 9 and 10 of the Amended Complaint (Board's Exhibit 1-KKKK).

[fol. 334]

354.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 11 and 11 (a) of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.

355.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 11 (b), 11 (c), 11 (e), 11 (f), 11 (l), 11 (m), 11 (q) and 11 (r) of the amended Complaint (Board's Exhibit 1-KKKK) because the allegations therein contained are not proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act.

356.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of the last paragraph in Paragraph 11 of the Amended Complaint (Board's Exhibit 1-KKKK) because said allegations are vague and indefinite and constitute the conclusion of the pleader and are in no way supported by the evidence.

357.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraph 12 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said alle-
[fol. 335] gations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

358.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraph 13 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

359.

The trial examiner and Board erred in failing and refusing to dismiss and/or recommend dismissal of Paragraphs 14, 15, 16 and 17 of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the

evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

360.

The trial examiner and Board erred in the ruling and action set forth on Page 130 of the transcript denying petitioner's and intervener's Motions to Dismiss the Complaint.

361.

The trial examiner and Board erred in the ruling and action set forth on Pages 130, 131 of the transcript of the record (R. I. 6), denying the application for an election [fol. 336] made by the intervener, Donnelly Garment Workers' Union, and refusing to entertain in this proceeding a petition for an election.

362.

The trial examiner and Board erred in the ruling and action set forth on Page 194 of the transcript of the record (R. I. 12), denying the motion of the intervener, Donnelly Garment Workers' Union, for a continuance of this proceeding for the purpose of the Board's holding an election to determine the representatives of the majority of the employees of petitioner and until the results of such election are known.

363.

The trial examiner and Board erred in the ruling and action set forth on Page 214 of the transcript of the record (R. I. 13), denying, except as to paragraphs (o) and (p), petitioner's motion (Exhibit 1-ZZZ) to Strike Portions of the Complaint as set forth in said Motion.

364.

The trial examiner and Board erred in the several findings, conclusions and recommendations in the Intermediate Report, for the reason that the evidence is so overwhelmingly contrary to most of said findings and to all

of said conclusions, as to show that the trial examiner either did not consider all the evidence or was so biased and prejudiced against petitioner that he intended to and did make his findings, conclusions and recommendations against petitioner notwithstanding that he knew that same were contrary to the overwhelming weight of the evidence, whereby, in either event, petitioner has been and is denied a fair hearing herein and deprived of its liberty and property without due process of law, in con- [fol. 337] travention of the provisions of the Constitution of the United States.

365.

The Trial Examiner and Board erred in the several findings and conclusions of the trial examiner, for the reason that it is the duty and obligation of the Board to prove its charges by a fair preponderance of the evidence and is the duty of the trial examiner and the board to make findings based on a fair preponderance of the evidence and the trial examiner and the board have violated their duty in this respect and have made essential findings which are not only not supported or proved by a fair preponderance of the evidence but are wholly contrary to the overwhelming weight of the evidence.

366.

The trial examiner and Board erred in their denial of credibility of petitioner's and intervener's witnesses and in their accepting the slightest testimony unfavorable to petitioner or the slightest inferences therefrom, in disregard of the overwhelming evidence offered by petitioner and intervener to the contrary, and refuting each and all of the charges in the Complaint.

367.

The Board erred in entering the decision and order directing petitioner to cease and desist from dominating and interfering with the formation and administration of the Donnelly Garment Workers' Union or any other labor organization of its employees and from contributing financial or other support to any labor organization of its [fol. 338] employees, for the reason that said order is

not based on substantial evidence, valid findings of fact or legal conclusions of law and is wholly contrary thereto; that said order is the result of bias and prejudice and is arbitrary, capricious and unjudicial; that said order is based upon alleged acts which occurred prior to the effective date of the National Labor Relations Act and cannot prove any violation of said Act; that in truth and fact all the credible and competent evidence disclosed that petitioner had never dominated, interfered with or contributed to any labor organization of its employees; and further disclosed that 100% of petitioner's employees, except officers and executives and persons with authority to hire, discipline or discharge, voluntarily formed and maintained the Donnelly Garment Workers' Union without any interference, domination or support of any kind or character on the part of the petitioner or any of its officers or supervisory employees.

368

The Board erred in entering the decision and order directing petitioner to cease and desist from giving effect to its contract of May 27, 1937, and the amendments, renewals and supplements thereof and from giving effect to its check off agreement with the DGWU for the reason that said order is not supported or justified by any substantial evidence, valid findings of fact, or legal conclusions of law; is unfair and the result of prejudice and bias and arbitrarily deprives petitioner and its employees of valuable property rights in violation of the Fifth Amendment [fol. 339] to the Constitution of the United States; that said order is based upon alleged acts which occurred prior to the effective date of the National Labor Relations Act and can not prove any violation of said Act. It wholly disregards the undisputed evidence that petitioner and the chosen representatives of 100% of its employees, after full negotiation, entered into said contracts and the same contain higher wages and more favorable terms and conditions of employment than are provided for in any contracts between the ILGWU and other similar garment manufacturers; that there is no agreement between petitioner and the DGWU for a check off and that the petitioner pays out of its employees' wages only such amounts as each employee, in

writing, authorizes and directs. Said order is void and contrary to the plain terms of Sections 1, 8, 5 and 9 (a) of the National Labor Relations Act.

369.

The Board erred in entering the decision and order directing petitioner to cease and desist from discouraging membership in the ILGWU or discouraging or encouraging membership in any other labor organization of its employees by discriminating in regard to hire, tenure of employment, or any term or condition of employment, for the reason that said order is not supported or justified by any substantial evidence or any reasonable inferences therefrom and is not based upon any valid findings of fact or legal conclusions of law or any reasonable inferences therefrom, and is partisan, biased and arbitrary and based on conjecture, inference and surmise and contrary to all the credible and competent evidence, and deprives petitioner [fol. 340] of its liberty and property without due process of the law in contravention of the Fifth Amendment to the Constitution of the United States.

370.

The Board erred in entering the decision and order directing petitioner to cease and desist from controlling or using the Donnelly Loyalty League to interfere with, restrain or coerce its employees to self-organization, for the reason that it is unsupported and unjustified by any substantial evidence or reasonable inferences therefrom, valid findings of fact or lawful conclusions of law and is contrary to law and all the credible and competent evidence; that it is arbitrary, capricious and oppressive and the result of bias and prejudice; that it relates to matters which occurred prior to the effective date of the National Labor Relations Act and cannot prove a violation of said Act. It wholly disregards the undisputed evidence that said Donnelly Loyalty League is a voluntary social organization of petitioner's employees and that the petitioner did not control or dominate said organization for any purpose.

371.

The Board erred in the decision and order in ordering petitioner to cease and desist from in any "other" manner interfering with, restraining, or coercing its employees in the exercise of their rights, for the reason that such order is outside the pleadings and the scope thereof, that said order is not based on any valid finding or findings of fact, is not supported by any substantial evidence or reasonable inferences therefrom, is contrary to law, is a [fol. 341] nullity and beyond and in excess of the jurisdiction of the Trial Examiner and of the National Labor Relations Board, is too broad in scope and too vague, uncertain, general and indefinite, and is therefore not susceptible lawfully of judicial enforcement as a final order, since the National Labor Relations Board has no power or authority to issue a general order of the character aforesaid and any order issued must be addressed specifically to the act or acts constituting the alleged coercion, interference or restraint which the Board has lawfully found upon substantial evidence to have been committed with the threat of continuing commission at the present time and thereafter, deprives petitioner of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, constitutes a departure from and is beyond and in excess of the issues made by the pleadings and the evidence, is arbitrary, capricious, oppressive, unjudicial and an abuse of discretion, and for the further reasons set forth in the assignments hereinbefore appearing.

372.

The Board erred in the decision and order in ordering petitioner to withdraw all recognition from and disestablish the DGWU, for the reason that said order is not based on any valid finding or findings of fact, is not supported by substantial competent evidence, is contrary to law, is a nullity and beyond and in excess of the jurisdiction of the Trial Examiner and of the National Labor Relations Board, is too broad in scope and too vague, uncertain, [fol. 342] general and indefinite, and is therefore not susceptible lawfully of judicial enforcement as a final order, since the National Labor Relations Board has

power or authority to issue a general order of the character aforesaid and any order issued must be addressed specifically to the act or acts constituting the alleged coercion, interference or restraint which the Board has lawfully found upon substantial evidence to have been committed with the threat of continuing commission at the present time and thereafter, deprives petitioner of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, is arbitrary, capricious, oppressive, unjudicial, and an abuse of discretion, and for the further reasons set forth in the assignments hereinbefore appearing.

373.

The Board erred in the decision and order aforesaid, in ordering petitioner to reimburse all employees who were members of the DGWU for the dues it has collected from their wages on behalf of said Union, for the reason that it is unsupported by any substantial evidence or reasonable inferences therefrom, by valid findings of fact and legal conclusions of law, is arbitrary, capricious and unjudicial, and the result of bias and prejudice and exceeds the jurisdiction of the Board and is not within the scope of the issues and is contrary to law and deprives petitioner of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, is contrary to law and is wholly predicated upon conjecture [fol. 343] and surmise and in absolute disregard of the undisputed evidence.

374.

The Board erred in the decision and order aforesaid in directing petitioner immediately to post notices and maintain those notices for a period of sixty (60) consecutive days, to the effect therein stated, for the reason that said order, and each constituent part thereof, is not based upon any valid findings of fact, is not supported by the evidence, is not supported by the substantial evidence, or the substantial competent evidence, is contrary to law, is a departure from the issues under the pleadings, in excess thereof, and not responsive thereto, is beyond and in excess of the jurisdiction of the trial examiner and of the

National Labor Relations Board, purports to require petitioner to confess violations of law which it denies, deprives petitioner of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, is arbitrary, capricious and an abuse of discretion, and for the further reasons set forth in the assignments herein.

375.

The Board erred in the decision and order aforesaid in directing petitioner to notify the Regional Director for the Seventeenth Region, in writing, within ten (10) days from the date of the order, what steps the petitioner has taken to comply therewith, for the reason that said order is in excess of the jurisdiction of the National Labor Relations Board and is predicated on the false assumption that peti- [fol. 344] tioner has violated the provisions of the National Labor Relations Act, is unsupported by any substantial evidence or reasonable inferences therefrom, by valid findings of fact and legal conclusions of law, and for each and all the reasons assigned herein.

376.

The Board erred in ordering petitioner to cease and desist from each and all of the matters and acts set forth under Paragraph 1 (a), (b), (c), (d) and (e) of its Order for each and all of the reasons set forth under Point 26, supra.

377.

The Board erred in ordering petitioner to take the affirmative action set forth under Paragraph 2 (a), (b), (c) and (d) of its Order for each and all of the reasons set forth under Point 27, supra.

Wherefore, your petitioner respectfully prays that this Court take or resume jurisdiction of this cause; that the National Labor Relations Board be forthwith directed, ordered and required to transmit to this Court the complete certified transcript of the entire proceedings in this cause before said Board; that upon the filing thereof this Court review the evidence, findings of fact, conclusions of

law and the decision and order of said Board and enter a judgment or decree vacating and setting aside said decision and order of the said Board; and that your petitioner have such other and further orders, decrees and relief in the premises as shall be proper and just.

Respectfully submitted,

DONNELLY GARMENT COMPANY,
By R. J. Ingraham.

Post Office address:
1828 Walnut Street,
Kansas City, Mo.

[fol. 345] State of Missouri,
County of Jackson.—ss.

R. J. Ingraham, of lawful age, first being duly sworn, states that he is Secretary of the Donnelly Garment Company, petitioner herein; that he is authorized to sign the foregoing petition and to make this affidavit on its behalf; that he knows the contents of said petition and that the facts, statements and allegations therein contained are true to his best knowledge and belief.

R. J. INGRAHAM.

Subscribed and sworn to before me this 19th day of June, 1943.

LAURA BAKER,
Notary Public in and for Jackson County, Missouri.

My commission expires July 14, 1945.

JAMES A REED,
BURR S. STOTTLE,
R. J. INGRAHAM,
Attorneys for Petitioner.

(Endorsed): No. 12,641. Petition of Donnelly Garment Company for Review of Order of National Labor Relations Board. Filed in U. S. Circuit Court of Appeals on June 21, 1943.

[fol. 346] Answer Of The National Labor Relations Board To Petition For Review And Request For Enforcement Of An Order Of The National Labor Relations Board.

In The United States Circuit Court Of Appeals
For The Eighth Circuit.

Donnelly Garment Company, Petitioner,
No. 12,641 vs.
National Labor Relations Board, Respondent.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Eighth Circuit:

Comes now the National Labor Relations Board, hereinafter called the Board, and, pursuant to the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, et seq.), hereinafter called the Act, files this answer to the petition for review filed herein and its request for enforcement of the Board's order:

1. The Board admits the allegations contained in paragraph b, appearing on pages 6-7 of the petition to review.

2. The Board denies each and every allegation of error contained in paragraph d, subparagraphs 1-377, appearing on pages 8-344 of the petition to review.

3. With respect to paragraph a, appearing on pages 1-6 of the petition to review, the Board prays reference to the certified record of the proceedings before the Board, filed in this Court, for a full and exact statement of the pleadings, evidence, rulings of the Trial Examiner, findings of fact, conclusions of law, and order of the Board.

[fol. 347] Wherefore, having answered each and every allegation contained in the petition for review, the Board prays this Honorable Court that said petition be denied.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on June 9, 1943, in proceedings designated on the records of the Board as Case No. C-1382, entitled "In the Matter

of Donnelly Garment Company and International Ladies' Garment Workers' Union and Donnelly Garment Workers Union, party to a contract."

In support of this request for enforcement of its order, the Board respectfully shows as follows:

(a) Petitioner is a Missouri corporation and is engaged in business in the State of Missouri, within this judicial circuit, where the unfair labor practices occurred. This Court therefore has jurisdiction of the petition for review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the Act.

(b) Upon proceedings had in said matter before the Board, the Board on June 9, 1943, duly stated its findings of fact and conclusions of law, and issued an order directed to petitioner, its officers, agents, successors, and assigns. So much of the aforesaid order, as relates to this proceeding, provides as follows:

Order.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Donnelly Garment Company, Kansas City, Missouri, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Donnelly Garment Workers' Union, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Donnelly Garment Workers' Union or any other labor organization of its employees:

[fol. 348] (b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement, with Donnelly Garment Workers' Union, and from giving effect to its check-off agreement with said organization;

(c) Discouraging membership in International Ladies' Garment Workers' Union, or any other labor organization of its employees, or encouraging membership in Donnelly Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Donnelly Garment Workers' Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representative;

(b) Reimburse all of its employees for all dues and assessments, if any, which it has deducted from their wages on behalf of Donnelly Garment Workers' Union;

(c) Post immediately in conspicuous places throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (e) hereof; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) hereof; and (3) that the re-

spondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, and that the respondent will not in any manner discriminate against any employee because of membership or activity in said organization;

(d) Notify the Regional Director for the Seventeenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

[fol. 349] (c) On June 9, 1943, the Board's decision and order was duly served upon petitioner.

(d) Pursuant to Section 10 (e) and (f) of the Act, the Board is certifying and filing with this Court a transcript of the entire supplemental proceedings before the Board, such supplemental record together with the record heretofore certified to this Court in a case designated on this Court's records as Case No. 475 original, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and of the certified supplemental record to be served upon petitioner; and that this Court take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the record and the order made thereon, a decree denying the petition to review and enforcing in whole said order as set forth in paragraph (b) above, and requiring petitioner, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
By Ernest A. Gross,
Associate General Counsel.

Dated at Washington, D. C., this 2nd day of August, 1943.

[fol. 350] District Of Columbia—ss.:

Ernest A. Gross, being first duly sworn, states that he is Associate General Counsel of the National Labor Re-

lations Board, respondent herein, and that he is authorized to and does make this verification on behalf of said Board; that he has read the foregoing answer and request for enforcement and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

ERNEST A. GROSS,
Associate General Counsel.

Subscribed and sworn to before me this 2nd day of August 1943.

JOSEPH W. KULKIS,
Notary Public, District of Columbia.

My Commission expires April 15, 1947.

(Seal)

(Endorsed): No. 12,641. Answer of the National Labor Relations Board to Petition for Review, etc. Filed in U. S. Circuit Court of Appeals on August 5, 1943.

[fol. 351] Response of Petitioner Donnelly Garment Company to the Board's Application for Enforcement of Order.

In The United States Circuit Court of Appeals In and For the Eighth Circuit.

Donnelly Garment Company, a corporation, Petitioner,
No. 12,641 vs.
National Labor Relations Board, Respondent,
Donnelly Garment Workers' Union, Intervener-Petitioner.

Comes now the above named petitioner and files this its response to the request of the National Labor Relations Board filed herein for enforcement of its order herein (which request for enforcement is set forth on pages 2 to 4 inclusive of its answer to petitioner's petition for review of the Board's order, and for such response petitioner states:

I.

Petitioner admits that it is a Missouri corporation engaged in business in the State of Missouri within the judicial circuit where the alleged unfair labor practices are

alleged to have occurred and that the Board on June 9, 1943, issued the order as set forth on pages 2 and 3 of the Board's answer and that copy of the Board's decision and order was mailed to and received by petitioner; and petitioner denies each and all the other allegations and statements contained in said request for enforcement.

[fol. 352] II.

For further response to said request for enforcement petitioner states that enforcement of said order should not be granted, for each and all of the following reasons, to wit:

(1) Because the order and decision of the Board and the findings of fact and conclusions of the Board on which said order and decision are based are not supported by the evidence.

(2) Because the findings of fact, conclusions, order and decision of the Board are based on incompetent, irrelevant and immaterial evidence.

(3) Because the Board excluded, ignored and refused to consider competent, material and relevant evidence offered by petitioner and intervener Donnelly Garment Workers' Union.

(4) Because the findings of fact, conclusions, order and decision of the Board are, upon the evidence, contrary to law.

(5) Because the findings of fact, conclusions, order and decision of the Board are based on statements and alleged statements and utterances of officers and employees of the petitioner, including statements alleged and found by the Board to have been made by Mrs. Reed at the meeting of employees on March 18, 1937, which statements were not coercive and all of which statements and utterances were within the rights and privileges of free speech guaranteed by the First Amendment to the Constitution of the United States, and if the National Labor Relations Act be so construed (as it is by the Board) as to hold that said statements or utterances constitute a violation of the National Labor Relations Act, such holding or construction would

and does constitute an infringement upon the right of free speech guaranteed by the First Amendment to the Constitution of the United States, and said Act is unconstitutional and said order and decision of the Board are void, by reason thereof.

[fol. 353] (6) Because the matters and things and each of same which the Board orders petitioner to cease and desist from doing, in paragraph 1 of its order, and the affirmative acts and each of same which the Board orders the petitioner to take in paragraph 2 of its order, are in excess and beyond the power and jurisdiction of the Board.

(7) Because the Board and its Trial Examiner were biased and prejudiced against petitioner and intervener Donnelly Garment Workers' Union and denied to petitioner a fair trial herein and denied to petitioner due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

(8) For and because of each and all the reasons assigned and set forth by petitioner in its petition for review heretofore filed herein, each and all of which reasons and assignments are made a part hereof by reference as fully as though set forth herein in haec verba and are hereby assigned as reasons why the order of the Board herein should not be enforced.

Wherefore petitioner respectfully prays that the Court deny the Board's request of enforcement of its order herein, and grant to petitioner the relief prayed in its petition to review and set aside said order.

JAMES A. REED,
ROBT. J. INGRAHAM,
BURR S. STOTTLE,
Attorneys for Petitioner,
Donnelly Garment Company.

(Endorsed): No. 12,641. Response of Petitioner Donnelly Garment Company to the Board's Application for Enforcement of Order. Filed in U. S. Circuit Court of Appeals on August 20, 1943.

[fol. 354] (Order of United States Circuit Court of Appeals granting Motion of Donnelly Garment Workers' Union for Leave to Intervene, etc.)

United States Circuit Court of Appeals, Eighth Circuit.

Donnelly Garment Company, a corporation, Petitioner,
No. 12,641 vs.
National Labor Relations Board, Respondent.

On Petition to Review and Set Aside Order of National Labor Relations Board.

Now on this day comes on to be heard, pursuant to notice, the motion of Donnelly Garment Workers' Union for leave to intervene herein and to file its petition for review of the order of the National Labor Relations Board referred to in the petition of the Donnelly Garment Company for review, and to be heard thereon and proceed thereafter as the rules and orders of this Court may direct. Mr. Frank E. Tyler appeared for movant. Counsel for petitioner not appearing and the Labor Board having indicated by telegram from Mr. Ernest A. Gross (Associate General Counsel for the Board) that it consents to intervention, it is now

Ordered by this Court that leave to intervene be and is hereby granted to the extent the movant may file its brief within the time provided, given, stipulated or extended for the Donnelly Garment Company to serve and file its brief, and to the further extent that counsel for said intervening union may be heard upon oral argument on such conditions and with such time therefor as may be allowed by the Court before which the petition for review by the Company is heard.

June 28, 1943.

[fol. 355] (Order of United States Circuit Court of Appeals granting leave to International Ladies' Garment Workers' Union to Intervene and to file Brief, etc.)

United States Circuit Court of Appeals, Eighth Circuit.

Donnelly Garment Company, Petitioner,
No. 12,641 vs.
National Labor Relations Board, Respondent.

On application, duly consented to by Petitioner and Respondent, International Ladies' Garment Workers' Union is hereby given leave to intervene and to file brief. The matter of allotting time to said intervener for oral argument will be required to await application to and ruling by the Division of the Court to which the cause is subsequently assigned for hearing.

September 30, 1943.

[fol. 356] (Board's Exhibit No. 1-DD.)

Case No. XVII-C-371.—Date 6/5/39.

Complaint.

United States of America, Before the National Labor Relations Board, Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers Union, Party to the Contract.

Case No. XVII-C-371

It having been charged by the International Ladies' Garment Workers' Union, hereinafter referred to as the I. L. G. W. U., that Donnelly Garment Company, Kansas City, Missouri, hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the Na-

tional Labor Relations Act approved July 5, 1935, (49 Stat. 449) the National Labor Relations Board by the Acting Regional Director for the Seventeenth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 1, as amended—Article IV, Section 1, hereby issues its complaint and alleges the following:

1. Respondent is and has been since 1919 a corporation organized under and existing by virtue of the laws of the State of Missouri, having its factory and principal place of business at 1820 Walnut Street, Kansas City, Missouri, and is now and has continuously been engaged in the business of designing, manufacturing, selling and distributing cotton, wool, silk and rayon low and medium-priced garments for women.

[fol. 357] 2. Respondent, in the course and conduct of its business, causes and has continuously caused substantially all of the materials used in the manufacture of its garments to be purchased and transported from and through states of the United States, other than the State of Missouri, to the Kansas City, Missouri factory of respondent, and causes and has continuously caused a substantial portion of the garments designed, manufactured, sold, and distributed, to be sold, transported, and distributed from the Kansas City, Missouri factory into and through states of the United States other than the State of Missouri to customers in other states.

3. International Ladies' Garment Workers' Union is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act.

4. Donnelly Garment Workers Union, and its predecessor, Donnelly Loyalty League, are labor organizations within the meaning of Section 2 (5) of said Act.

5. Respondent, while engaged at its Kansas City, Missouri plant, as aforesaid, on or about April 27, 1937, and down to and including the date of the filing of this complaint, has dominated and interfered in the formation and administration of a labor organization among its employees, known as "Donnelly Garment Workers Union," and has given financial aid and other support to said organization, in that respondent, among other things:

(a) Did encourage, allow, and permit supervisory and other employees acting in the interest of respondent to organize, promote, encourage, and coerce membership into the Donnelly Garment Workers Union on respondent's time and on respondent's property and at respondent's pay and at its expense.

[fol. 358] (b). Did, through its officers and agents acting in the interest of respondent, furnish financial and other support to Donnelly Garment Workers Union, in that supervisory and other employees were allowed to solicit membership, hold meetings and engage in concerted activities in behalf of Donnelly Garment Workers Union during working hours and on company property without loss of pay or other penalty and by various other means contributed financial aid and other support to said Donnelly Garment Workers Union.

(c) Did, through its officers and agents acting in the interest of respondent, form the Donnelly Loyalty League on or about February 12, 1935, for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and said officers and agents of respondent continued to dominate the administration of the Donnelly Loyalty League until on or about April 25, 1937, at which time said Donnelly Loyalty League at a meeting on respondent's property was succeeded by the Donnelly Garment Workers Union created to be a continuation of the Donnelly Loyalty League and to effect and carry out the policies of its predecessor and to be subservient and amenable to the wishes of respondent.

(d) Did enter into a closed-shop agreement with Donnelly Garment Workers Union on or about May 22, 1937, creating as a condition of employment, membership in said Donnelly Garment Workers Union, for the purpose of assisting said Union, compelling membership therein, depriving its employees of their rights guaranteed under the National Labor Relations Act, and to further manifest its approval of and to lend support to said Union.

6. Respondent, by the acts set forth in paragraph five (5), above, and by other acts, has dominated and interfered with the formation and administration of and has

[fol. 359] contributed financial aid and other support to labor organizations and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (2) of said Act.

7. Respondent, by the acts set forth in paragraph five (5), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of said Act and has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

8. Respondent, by its officers and agents at its Kansas City, Missouri factory, while engaged in the operations described in paragraphs one (1) and two (2), above, did discharge from its employment Sylvia Hull, on or about April 23, 1937, and May Fike on or about April 26, 1937, for the reasons that they had joined and assisted the I. L. G. W. U. and engaged in concerted activities in its behalf, and thus discouraged membership in the I. L. G. W. U.

9. Respondent, by its discharge of Sylvia Hull and May Fike, and by its refusal to reinstate said employees for the reasons set forth in paragraph eight (8), above, has thereby discriminated and is thereby discriminating in regard to the hire and tenure of employment of said employees and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of said Act.

10. Respondent, by the acts set forth in paragraph eight (8), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

11. Respondent, by the acts set forth in paragraphs five (5) and eight (8), above, by interfering with, coercing, intimidating, and threatening its employees to refrain [fol. 360] from becoming members or continuing membership in I. L. G. W. U., by keeping members and meetings of I. L. G. W. U. under surveillance, by openly manifesting bitter hostilitiy to the I. L. G. W. U., by the issuance of written and oral statements designed and calculat-

ed to discourage membership in the I. L. G. W. U., by showing preference and favoritism to the Donnelly Garment Workers Union, and making membership therein a condition of employment, by depriving its employees of the opportunity of joining an organization of their own choosing, by discriminating in the allotment of work of members or sympathizers of the I. L. G. W. U., by questioning employees individually and collectively with regard to their union activity and prejudices, by instigating, allowing or permitting violent demonstrations upon its time and property against certain employees of respondent who were members of the I. L. G. W. U., and by various other similar acts and conduct, has interfered with, restrained and coerced and is interfering with, restraining, and coercing its employees in the exercise of their rights to form, join, and assist labor organizations of their own choosing, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

12. That the aforementioned closed-shop contract is a direct and proximate result of the acts and conduct of respondent set forth in paragraphs five (5) to eleven (11), inclusive, and constitutes, culminates and perpetuates continuing intimidation, interference, restraint and coercion by respondent in violation of Section 8 (1), (2) and (3) of said Act and is, therefore, invalid, void and of no effect.

13. That aforementioned closed-shop contract was entered into with the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was not the representative of the respondent's employees within the meaning of Section 8 (3) and Section 9 (a) of the National Labor Relations Act, and at a time when [fol. 361] the Donnelly Garment Workers Union was a labor organization established, maintained, and assisted by actions defined in the National Labor Relations Act as unfair labor practices and that said closed-shop contract is, therefore, invalid, void and of no effect.

14. That by entering into the said closed-shop contract, respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees

in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said National Labor Relations Act and that said closed-shop contract is, therefore, invalid, void and of no effect.

15. That by entering into the closed-shop contract aforesaid, respondent did discriminate in regard to hire and tenure of employment and terms and conditions of employment and did thereby discourage membership in the I. L. G. W. U. and did thereby encourage membership in the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was established, maintained, and assisted by respondent, and respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the National Labor Relations Act and, therefore, the said closed-shop contract is invalid, void and of no effect.

16. The activities of respondent by the acts set forth in paragraphs five (5) to fifteen (15), inclusive, above, occurring in connection with the operations of the respondent described in paragraphs one (1) and two (2), above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

17. The aforesaid acts of respondent constitute unfair [fol. 362] labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of said Act.

Wherefore, the National Labor Relations Board on the twenty-seventh (27th) day of April, nineteen hundred and thirty-nine (1939), issues its complaint against the Donnelly Garment Company, respondent herein.

(Signature omitted.)

[fol. 364] (Board's Exhibit No. 1-CC.)

Case No. XVII-C-371—Date 6/5/39.

Amended Charge.

United States of America, Before the National Labor Relations Board, Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union.

Case No. XVII-C-371.

Date Filed April 6, 1939.

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Donnelly Garment Company, 1820 Walnut Street, Kansas City, Missouri, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (2) & (3) of said Act, in that on or about April 27, 1937, it, by its officers, agents and employees, formed among its employees at its Kansas City, Missouri plant a labor organization known as "Donnelly Garment Workers Union," which organization was the successor to and a continuation of the Donnelly Loyalty League, previously dominated and interfered with in its formation and administration by said company, and at all times since on or about April 27, 1937, said company has dominated and interfered with the operation and administration of Donnelly Garment Workers Union, and has contributed financial and other support thereto, and did, on or about May 22, 1937, enter into a closed-shop contract with said Union, making membership therein a condition of employment.

On or about April 23, 1937, it, by its officers, agents and employees, terminated the employment of Sylvia Hull, and on or about April 26, 1937, the employment of May Fike because of their membership and activities in behalf of the International Ladies' Garment Workers' Union, a labor organization, and at all times since such dates, it has refused and does now refuse to employ the above-named employees.

By the acts set forth in the paragraphs above, and by intimidating and threatening its employees to refrain from becoming members or continuing membership in the International Ladies' Garment Workers' Union, by keeping members and meetings of said Union under surveillance, by the president of said company addressing its employees on or about March 18, 1937, and discouraging membership in said Union and encouraging membership in the Donnelly Loyalty League, by instigating, promoting or permitting a violent demonstration against members and sympathizers of the International Ladies' Garment Workers' Union to occur on company time and property, by discriminating in the allotment of work to members of said Union, by questioning employees concerning union activities, by entering into a closed-shop contract with the Donnelly Garment Workers Union, and making membership therein a condition of employment, and by other acts and conduct, it, by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
By Jane Walker Palmer, Attorney,
818 Scarritt Building, Kansas City, Missouri.

Subscribed and sworn to before me this 6th day of April, 1939, at Kansas City, Mo.

GORDON A. SMITH
Notary Public.

My Commission expires Oct. 15, 1940.

[fol. 394] (Board's Exhibit No. 1-RR.)

Case No. XVII-C-371.—Date 6/5/39.

(Petition of Donnelly Garment Workers' Union for Leave to Intervene.)

United States of America

Before the National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

1. Now come Rose Todd, and Jack McConaughey, Marjorie Green, Walter Higgins, Bessie Weilert, Edith Williamson, Freeland Rife, Nina Smith and Mary McClelland, and state that they are respectively the chairman and members of the governing and executive committee of Donnelly Garment Workers' Union, a voluntary, unincorporated labor association, composed of all the employees of respondent, Donnelly Garment Company, and its associated company, Donnelly Garment Sales Company, below the grade of officer of the companies, or either of them, superintendents, supervisor or anyone with the right to employ or discharge; that they are the duly constituted representatives of said association; that said association has a membership of more than thirteen hundred persons; that said committee is authorized to intervene in this action; that the matters at issue in this cause are of common and general interest to all members of the association who constitute a class so numerous as to make it impracticable to bring them all before the Board; that said named persons by the authority so given them and in their own behalf and in behalf of all members [fol. 395] of their said association, all hereinafter referred to as Donnelly Garment Workers' Union, or as "intervener", file this, their petition for leave to intervene herein, and say:

2. Intervener is a duly organized, existing and functioning labor union.

3. Intervener, through its duly elected and constituted executive committee, has been since April 27, 1937, and now is the sole and exclusive collective bargaining agent for the said employees of respondent and its associated company. On or about May 27, 1937, intervener, through its said executive committee, bargained and concluded with the said respondent company and its associated company a contract covering working conditions, including a closed shop agreement, and on or about June 22, 1937, bargained and concluded with said companies a wage agreement; that said contracts are valid, binding and subsisting agreements and as such are valuable property rights owned and held by intervener and each and all of intervener's members.

4. The intervener is vitally interested in this matter because the charges made and the issues of fact and law raised by the allegations of the complaint challenge the validity of intervener's existence as a labor union, the validity of its contracts hereinabove referred to, and the jurisdiction of this Board is thereby invoked to have intervener's existence as a labor union declared invalid, to have intervener disestablished, and to set aside its contracts. The allegations of the complaint specifically charge, among other things, that respondent has dominated and interfered in the formation and administration of intervener, has given intervener financial aid and other support, has interfered with and coerced intervener's [fol. 396] members so as to destroy their freedom of choice, and has acted, in other ways, contrary to law, so as to destroy intervener's existence as a bona fide labor union under the Wagner Act and to destroy the validity and binding effect of its contracts hereinabove referred to. The issues of fact and law involved in the cause at bar concern intervener in that its members' legal and constitutional guaranties of freedom of choice, liberty of contract and property rights in contract are at stake, and if intervener is denied the right to intervene in this cause and protect its said rights, intervener and its members will have been deprived of their liberty and property without due process of law within the meaning of the Fifth Amendment of the Constitution of the United States.

5. Intervener denies that the allegations referred to are true.

Wherefore, intervener, Donnelly Garment Workers' Union, acting for and in behalf of all its members, too numerous to name or to be made parties hereto individually, prays that an appropriate order be made and entered herein permitting it to intervene in this matter, to be represented by counsel, to present evidence and arguments, to examine and cross examine witnesses, and to have full and unrestricted rights to establish, maintain and support its position and defense herein asserted, or as may be asserted in any permitted amendment, to the same extent as if it were named a respondent or full party to this proceeding.

DONNELLY GARMENT WORKERS' UNION
By Rose Todd, Chairman of Executive Committee.

GOSSETT, ELLIS, DIETRICH AND TYLER
FRANK E. TYLER
THOMAS J. PATTEN, LUCIAN LANE
Attorneys for Intervener.

State of Missouri
County of Jackson—ss.:

Rose Todd, of lawful age, being first duly sworn, upon [fol. 397] her oath, says that she is the chairman of the executive committee of intervener, Donnelly Garment Workers' Union; that she makes this affidavit for and on behalf of said intervener by authority of its executive committee; that she has read the foregoing petition and that the facts and matters therein stated are true and correct.

ROSE TODD.

Subscribed and sworn to before me this 2nd day of May, 1939.

(Notarial Seal)

MYRTLE BONNELL,
Notary Public, Jackson County, Missouri.

My commission expires Feby. 16, 1942.

[fol. 399] (Board's Exhibit No. 1-SS.)

Case No. XVII-C-371.—Date 6/5/39.

(Order permitting Intervention of Donnelly Garment Workers' Union.)

United States Of America

Before The National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers Union, Party to the Contract

Case No. XVII-C-371

Petition of Donnelly Garment Workers Union for Leave to Intervene having previously been filed in the above-entitled matter by the Donnelly Garment Workers Union and said petition having been duly considered:

It Is Hereby Ordered that the Donnelly Garment Workers Union may intervene in the above-entitled matter to such extent as its interests may appear.

Dated at Kansas City, Missouri, this third (3d) day of May, nineteen hundred thirty-nine (1939).

Seal
National Labor
Relations Board

PAUL F. BRODERICK,
Acting Regional Director,
Seventeenth Region,
National Labor Relations Board,
1016 Scarritt Building,
Kansas City, Missouri.

[fol. 400] (Board's Exhibit No. 1-AAA.)

Case No. XVII-C-371.—Date 6/5/39.

(Answer of Intervener, Donnelly Garment Workers' Union, to Complaint.)

United States Of America

Before The National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

Come now Rose Todd, and Jack McConaughey, Marjorie Green, Walter Higgins, Bessie Weilert, Edith Williamson, Freeland Rife, Nina Smith and Mary McClelland, being respectively the chairman and members of the governing and executive committee of Donnelly Garment Workers' Union, a voluntary, unincorporated labor union composed of all the employees of respondent, Donnelly Garment Company, and its associated Company, Donnelly Garment Sales Company, below the grade of officer of the companies, or either of them, superintendents, supervisor or anyone with the right to employ or discharge, in behalf of themselves and of all the members of said association, a class so numerous as to make it impracticable to bring all of them before the Board, all appearing herein as interveners, in the name of their union, Donnelly Garment Workers' Union, as intervener, by leave of court, for answer to the complaint of the National Labor Relations Board:

1. Admit the allegations in paragraphs 1, 2 and 3 of the complaint herein.

2. Admit that Donnelly Garment Workers' Union is a [fol. 401] labor organization within the meaning of Section 2 (5) of National Labor Relations Act, deny that Donnelly Loyalty League was or is a labor organization, deny that it was the predecessor of Donnelly Garment

Workers' Union, and deny that it has been or is in any way connected with or related to Donnelly Garment Workers' Union.

3. Deny the allegations of paragraphs 5, 5 (a), 5 (b), and 5 (c).

4. Admit that respondent and intervener entered a closed shop agreement on or about May 22, 1937, creating as a condition of employment membership in said Donnelly Garment Workers' Union, and deny all other allegations contained in paragraph 5 (d) of said complaint.

5. Deny all the allegations and conclusions of fact and law set forth in paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of said complaint.

And specifically deny each and every allegation contained in said complaint not specifically admitted herein.

DONNELLY GARMENT WORKERS' UNION,
By Rose Todd,
Chairman of Executive Committee.

GOSSETT, ELLIS, DIETRICH, & TYLER, FRANK E. TYLER, LUCIAN LANE, THOMAS J. PATTEN,
Their Attorneys.

State Of Missouri,
County Of Jackson—ss.:

Rose Todd, of lawful age, being duly sworn upon her oath says that she is chairman of the governing and executive committee of the Donnelly Garment Workers' Union, intervening defendant herein, in behalf of all its members; that she has read the foregoing answer and knows the contents thereof, and that all of the statements therein made are true as she either personally knows or is reliably informed and verily believes.

ROSE TODD.

Subscribed and sworn to before me this 2 day of May, 1939.

My commission expires Feby. 16, 1942.

Notarial Seal

MYRTLE BONNELL,
Notary Public, Jackson County, Missouri.

[fol. 403] (Board's Exhibit No. 1-JJJ.)

Case No. XVII-C-371.—Date 6/5/39.

(Answer of Respondent, Donnelly Garment Company, to Complaint.)

United States Of America

Before The National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

Comes now the above named Donnelly Garment Company, respondent, whose postoffice address is 1828 Walnut Street, Kansas City, Missouri, and files this its answer to the complaint filed herein, reserving, however, all objections and rights to object to the jurisdiction of the Board, and all objections and rights to object to the competency, authority, reasonableness and good faith of the Board in issuing said complaint and all objections and rights to object to the sufficiency of said complaint and to the amended charge upon which the said complaint is based, and to the relevancy or materiality of the allegations contained therein.

Respondent specifically denies each and every allegation in said complaint contained except as specifically and expressly admitted and makes further answer thereto as follows, to-wit:

[fol. 404] A.

Respondent avers and states that the National Labor Relations Board is without jurisdiction to maintain this proceedings and the same must be dismissed for the following reasons:

1. The Labor Board exceeded its jurisdiction in issuing the complaint herein at the request of an organization which does not represent a single employee in respondent's plant, has never raised a question as to representation upon which the Labor Board could hold an election and has been found by a United States Federal Court to be engaged in an unlawful conspiracy to force respondent to compel its employees to join said organization against their wills. The National Labor Relations Act does not vest the Labor Board with authority or power under said circumstances to maintain unfair labor practice proceedings.

2. The Labor Board exceeded its jurisdiction in issuing the complaint herein for the purpose of attempting to abrogate and nullify contracts between respondent and the exclusive representative of one hundred per cent of its employees when said contracts are entirely satisfactory to both parties thereto and have been determined by a United States Federal Court to contain higher wages and more favorable working conditions than are contained in any contracts entered into between the International Union and other garment manufacturers in this part of the country. The National Labor Relations Act does not vest the Labor Board with authority or power to interfere with, abrogate, or nullify, contracts concerning terms and conditions of employment which are satisfactory to every employee in respondent's plant.

[fol. 405] 3. The proceedings herein deprive respondent of its liberty and property without due process of law as guaranteed in the Fifth Amendment to the Constitution of the United States in that if this proceeding were sustained, respondent would be denied its constitutional right to freely contract with the chosen representatives of all of its employees and to freely determine and agree upon all terms and conditions of employment, including representation, without a judicial hearing.

4. The proceedings herein deprive respondent of its liberty and property as guaranteed in the Fifth and Seventh Amendments to the Constitution of the United States, because if said proceedings were sustained valid contracts between respondent and the chosen representa-

tives of all of its employees would be abrogated and nullified without a judicial hearing, due process of law, and a trial by jury.

5. The proceedings herein providing for the awarding of unearned wages to Sylvia Hull and May Fike, former employees of, respondent, together with their reinstatement, deprive respondent of property without due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States, and would deprive respondent of its right to trial by jury as guaranteed in the Seventh Amendment to the Constitution of the United States.

6. That the amended charge filed herein by the International Ladies' Garment Workers' Union does not allege the names of the individuals involved and the times and [fol. 406] places of occurrences said to constitute the purported unfair labor practices, and is vague, indefinite and does not state facts sufficient upon which a formal complaint by the Labor Board could be founded.

7. The National Labor Relations Act does not vest in the Labor Board the authority or power to allege conclusions of the Board purporting to show that respondent has in fact committed acts in violation of the National Labor Relations Act. That the National Labor Relations Board, in its complaint, pre-judges as true the amended charge filed herein in advance of any trial or opportunity to respondent to be duly and properly heard, all in violation of respondent's rights under the Fifth Amendment to the Constitution of the United States.

8. That the complaint filed herein is vague, indefinite, insufficient, and alleges conclusions of the Board and not facts as required by the National Labor Relations Act and Rules and Regulations, Series 1 as amended, of the National Labor Relations Act, Article II, Section 4. It does not inform respondent as to the facts involved in the alleged unfair labor practices, the names of the individuals and times and places of occurrences which are intended to

be charged against respondent, all in violation of due process of law as provided for by the Fifth Amendment to the Constitution of the United States.

9. This proceeding and the maintenance thereof, deprive respondent of liberty and property without due process of law contrary to the provisions of the Fifth [fol. 407] Amendment to the Constitution of the United States and constitutes an unlawful delegation of judicial power of the United States as provided for in Sections 1 and 2 of Article III of the Constitution of the United States, to wit, the said National Labor Relations Board is authorized to make an ex parte investigation when a charge is filed with the Board alleging an unfair labor practice on the part of an employer. That after investigation the said National Labor Relations Board, if it appears that a proceeding in respect thereto should be instituted, files a solemn complaint against such employer which complaint indicates the judgment of the Board that the employer has violated the Act as charged; that having thus instituted proceedings against the employer the National Labor Relations Board, through its agents, prosecutes said complaint based on said charge and investigation before another of its agents; that said agent reports his findings to the National Labor Relations Board, and the said Board from the said report makes its findings of fact conclusive in character; that thereupon the said Board purports to act as investigator, complainant, prosecutor, trier of the facts and judge of the controversy; that respondent is denied a judicial review of the evidence in accordance with the rules of law and evidence; that the foregoing procedure compels respondent to submit the controversies involved to the prosecutor and complainant thereof who has pre-judged the issues and in the light thereof is biased and prejudiced and can not and will not grant to respondent a fair and impartial trial and will deprive respondent of liberty and property without due process of [fol. 408] law contrary to the Fifth Amendment to the Constitution of the United States, and further compel respondent to submit to a determination of the issues involved by an administrative agency purporting to exercise judicial powers in violation of Sections 1 and 2 of Article III of the Constitution of the United States. For the foregoing

reason, this proceeding and the maintenance thereof is void and unconstitutional.

10. If it be construed that the amended charge and complaint filed herein raises a question as to representation within the meaning of Section 9 (c) of the National Labor Relations Act, the said amended charge and/or the complaint does not allege, nor is it a fact, that the International Union has at any time requested the National Labor Relations Board to investigate any question concerning the representation of the Donnelly Garment Company employees. That the amended charge and the complaint does not allege, nor is it a fact, that the National Labor Relations Board has at any time investigated any question concerning the representation of the Donnelly Garment Company employees. That the said Donnelly Garment Workers' Union has repeatedly offered to submit to a secret election under the auspices of the Labor Board in order that a determination could be had of the true choice and desire of each employee at the Donnelly plant. That said offers have been repeatedly refused by the representatives of the Labor Board. That said determination is a condition precedent to a trial on the alleged charges of unfair labor practices set forth in the complaint.

[fol. 409] B.

For further answer, respondent avers and states that the complaint herein must be dismissed for the reason that the National Labor Relations Board, its agents and representatives, have exceeded their authority and have demonstrated their bias and prejudice against respondent, and collusion with the International Union, by the filing of the complaint herein and the maintenance of this proceedings in the face of the following facts of which the Board and its representatives have actual knowledge, to wit:

During all of the times mentioned in the amended charge and the complaint filed herein, the International Ladies' Garment Workers' Union, David Dubinsky, president, Meyer Perlstein, Southwest Regional Director, Wave Tobin, manager of the Kansas City Joint Board, Jane Palmer, their agents and members, were engaged in an unlawful conspiracy to injure and destroy respondent's business for the sole purpose of forcing respondent in vio-

lation of the National Labor Relations Act to compel its employees against their wills to join the International Union and subject themselves to its domination and control. In furtherance of this conspiracy, the said International Union, its officers, agents and members, published or caused to be published false and libelous reports about respondent and the working conditions in its plant, and inaugurated and threatened to inaugurate secondary boycotts against respondent's customers and its merchandise in the various states of the Union, and threatened to cause gangs of lawless persons to assault respondent's employees and perpetrate the same unlawful acts of violence and intimidation, including stripping of women naked in the public streets, assaulting them with knives, razor [fol. 410] blades and other deadly weapons, which they perpetrated or caused to be perpetrated against the employees of other garment manufacturers in Kansas City, Mo., St. Louis, Mo., Memphis, Tenn., and Dallas, Texas. The said International Union announced in the public press that it had set aside a fund of $250,000 to finance its campaign against respondent.

Respondent, on or about March 2, 1937, shortly after the International Union had publicly announced the opening of the drive against respondent and its employees, was notified by all of its employees except three that they refused to acknowledge or accept the International Union as their representative for the purpose of collective bargaining. The International Union, knowing that it did not represent a single employee in respondent's plant, and knowing of the protest by the employees above mentioned, on or about March 9, 1937 sent to respondent a letter containing statements of alleged conditions of employment at respondent's plant which were known by the writers to be false and which were maliciously made. A conference was requested for the purpose of making a closed shop contract with respondent. Respondent determined that in the circumstances it could not legally contract with the International and did not reply to said letter. The International, on or about March 15, 1937, began an attack of fraud and violence upon the Missouri Garment Company, Gordon Brothers Manufacturing Company and Gernes Garment Company, all of Kansas City, Mo., for the purpose

of compelling those companies to force their employees to join the International. At said time, the International did not represent a single employee of the Gernes Gar-
[fol. 411] ment Company, and a very small minority in the two other said companies. Agents of the International Union announced that the acts of violence perpetrated against the employees of said companies would be perpetrated against the employees of respondent company and would be commenced against respondent's employees after the above mentioned companies had capitulated and yielded to the demands of the Union for a closed shop. The International further began the circulation throughout the country of the false and libelous statements contained in the above letter of March 9th.

Respondent was advised, on or about April 23, 1937, that one hundred per cent of its employees had voluntarily formed a union styled "Donnelly Garment Workers' Union" and selected their own representatives for the purpose of collective bargaining, and for the purpose of protecting themselves against the threatened assault of the International. Respondent did not suggest the formation of said Union or in any way interfere with or coerce its employees in the formation of the same and has at no time since interfered with or in any manner contributed, financially or otherwise, to the maintenance of the said union. That thereafter representatives of said Donnelly Garment Workers' Union requested that respondent enter into a collective bargaining agreement covering all terms and conditions of employment. Respondent thereupon sought to obtain a determination by the representatives of the Labor Board as to the right of said Union to be the exclusive bargaining agent of all of said employees, but was advised by the said representatives of the Labor Board that under the rulings of the Labor Board an application by an employer for certification or an
[fol. 412] election could not be granted. Thereafter respondent, on or about May 27, 1937, after negotiations, entered into a collective bargaining contract with the representatives of its employees which contract is now in full force and effect and provides for higher wages and more favorable conditions of employment than are contained in any contract which the International Union has

entered into with other garment manufacturers in this part of the country. Respondent and one hundred per cent of its employees settled all matters pertaining to the terms and conditions of employment and to employee representation, and there is not now, nor has there been, any dispute over the same.

Respondent on July 5, 1937, instituted in the United States District Court for the Western Division of the Western District of Missouri a suit to enjoin the said International Union, David Dubinsky, President, Meyer Perlstein, Southwest Regional Director, Wave Tobin, manager of the Kansas City Joint Board, Jane Palmer, officers, agents and members of said union from committing the unlawful acts of fraud and violence above described. A restraining order was thereupon issued by United States District Judge Otis enjoining the International, its officers, agents and members, from doing any of the unlawful acts complained of.

The International Union and other defendants in said case requested a three judge court to hear the case. Honorable Alba S. Van Valkenburgh, United States Circuit Judge and Honorable Albert L. Reeves, United States District Judge, were thereupon designated to sit with Honorable Merrill E. Otis, United States District Judge, [fol. 413] in the trial of the case. After an exhaustive hearing of evidence upon respondent's application for temporary injunction, Judge Van Valkenburgh and Judge Reeves in the majority opinion granted the temporary injunction and found the International, its officers and agents, to be guilty of the acts complained of in respondent's petition; copies of said opinions are hereto attached and marked Exhibit "A" and made a part of this Answer as though set out in *haec verbae*. United States District Judge Otis stated in substance that respondent had made an overwhelming case for an injunction but had not complied with the technical requirements of the Norris-La-Guardia Act which prohibits the issuance of an injunction by a Federal Court unless said requirements have been complied with (21 Fed. Supp. 809). The said findings of fact and conclusions of law made by said three judge court are attached hereto, marked Exhibit "A-1" and made a

part of this Answer as though set out in haec verbae. The International and other defendants appealed the judgment of said three judge court to the Supreme Court of the United States, which court held that the said suit was not one which required a three judge court and remanded the case to the United States District Court for a trial before a single judge (304 U. S. 243; 58 S. Ct. Rep. 875).

Thereafter, on or about August 25, 1938, respondent received the following letter from Ernest C. Dunbar, then acting regional director of the National Labor Relations Board, to-wit:

[fol. 414] "National Labor Relations Board
Seventeenth Region
Scarritt Bldg.,
Kansas City, Missouri.

August 25, 1938

Mrs. James A. Reed, President
Donnelly Garment Company.
1828 Walnut Street
Kansas City, Missouri

Re: Donnelly Garment Company
Case No. XVII-C-371.

Dear Mrs. Reed:

There was filed with the Seventeenth Regional Office of the National Labor Relations Board on August 9, 1938, against the Donnelly Garment Company, by Jane Walker Palmer, on behalf of the International Ladies' Garment Workers Union, charges of unfair labor practice within the meaning of Section 8, sub-Sections (1) (2) and (3) of the National Labor Relations Act, in that on or about March 18, 1937, and at various times since that date, said company interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of said Act, and that on or about April 27, 1937, and at all times since said date, said company interfered with and controlled the formation and administration of a labor organization among said company's employees, known as the "Donnelly Garment Workers Union" and further, that said company did on various dates discharge certain of its employees for the reason that they had joined or had assisted a labor organization of their own choosing,

and have at all times since said discharges refused to reinstate said employees.

Will you or your representative call at this office, 1016 Scarritt Building, Kansas City, Missouri, in the very near future and at your convenience, for the purpose of discussing informally the charges alleged by the International Ladies Garment Workers Union, the meeting to be strictly informal and to help us in our investigation of said charges.

Sincerely yours,

ERNEST C. DUNBAR
Acting Regional Director."

Respondent promptly communicated with said Ernest C. Dunbar and requested the names of individuals involved and the times and places of occurrences which were charged to constitute a violation of the National Labor Relations Act. This information was denied respondent. [fol. 415] Respondent repeatedly requested the opportunity to present evidence concerning any charges of unfair labor practice. The said representatives of the Board denied respondent this privilege. They threatened the filing of a complaint and a lengthy trial thereon unless respondent acceded to the demands of the International Union. They asserted that in case of a trial the Labor Board would find against respondent.

Conferences between the Labor Board, respondent, and the representative of the Donnelly Garment Workers' Union were later participated in by a representative of the International Union, and all matters alleged to be in controversy were then discussed, and the representative of the International Union in said conference admitted that the employees of the respondent company did not desire to belong to the International Union or be represented by it for the purpose of collective bargaining.

On or about February 4, 1939, at the request of the representatives of the Labor Board, the respondent, the Donnelly Garment Workers' Union, the International Union, and the acting regional director of the Labor Board, submitted to each other in writing proposals of settlement of all alleged matters in controversy between the parties. The International Union made the following proposal:

"1. The Donnelly Garment Company must consent that a decree be entered in the United States Circuit Court of Appeals for the Eighth Circuit disestablishing the Donnelly Garment Workers' Union as an agency for collective bargaining and the representation of the workers.

"2. Those employees, members of the International Ladies' Garment Workers' Union who were discharged and discriminated against because of their activities in behalf of that union, must be offered reinstatement with back pay.

[fol. 416] "3. The case of Donnelly Garment Company et al., against International Ladies Garment Workers' Union, et al., No. 2924, now pending in the District Court of the United States for the Western Division of the Western District of Missouri, must be dismissed at plaintiffs' cost.

The International agrees:

"First: To cease all activities of every kind and character which tend to keep anyone from purchasing any of the products of the Donnelly Garment Company, so long as the Donnelly Garment Company does not recognize any plant union as the bargaining representative of its employees.

"Second: The International Ladies' Garment Workers' Union will agree that it will continue the efforts to organize the workers of the Donnelly Garment Company by peaceful and lawful methods."

Said proposal required respondent to violate the plain terms of the National Labor Relations Act and forever to deny their employees the right guaranteed by the law to designate their own representatives for the purpose of collective bargaining.

The proposal of the representative of the Labor Board demonstrates a prejudgment of the issues involved on the ex parte evidence of the International and further demonstrates their efforts to assist and abet the International Union in its conspiracy to force respondent to violate the terms and conditions of the National Labor Relations Act

in order to prevent the destruction of its business. A copy of said proposal is attached hereto, marked Exhibit "B" and made a part of this answer as though set out in haec verbae.

Respondent advised that it could not legally and lawfully accept either the proposal of the International or of the Labor Board.

A trial of the above mentioned injunction suit was commenced March 22, 1939 and after an extended hearing of evidence, the District Court granted respondent a permanent injunction against the International Union, its officers, agents and members.

[fol. 417] The Court said of the International Union's aid against respondent: "They were caught doing unlawful things and for that they are being dealt with as law breakers".

The decree of the Court, together with the findings of facts and conclusions of law are attached hereto, marked Exhibit "C" and made a part of this Answer as though set out in haec verbae.

Respondent states that the circumstances surrounding the filing of the complaint herein and the constant attendance of the representatives of the Labor Board at the hearing for permanent injunction in the above mentioned injunction case and their frequent consultations during the examination of respondent's witnesses with representatives of the International Union, further demonstrates that the Labor Board has assisted and is assisting the International Union in its conspiracy against respondent company and is maintaining the proceedings herein in violation of any authority vested in the Labor Board by the National Labor Relations Act. Respondent states that the International Union instituted this proceeding as a part of its unlawful conspiracy above described and in bad faith. That the Labor Board, having knowledge of all of the foregoing facts, must dismiss the proceedings in accordance with the spirit and plain provisions of the National Labor Relations Act, the anti-trust laws of the United States, and the laws of the land.

C.

Respondent herewith petitions for investigation and certification of representatives of its employees, pursuant to Section 9 (c) of the National Labor Relations Act. The [fol. 418] respondent employs approximately 1200 persons who have advised respondent that they have formed and are maintaining a voluntary unincorporated plant union restricted to persons employed in respondent's plant. Respondent has been advised that one hundred per cent of said employees organized and are now members of said plant union, styled "Donnelly Garment Workers' Union". The International Union claims that the said Donnelly Garment Workers' Union is not the true representative of a majority of the employees of respondent's plant. Respondent, prior to May 27, 1937, but after the organization of the said Donnelly Garment Workers' Union, was furnished evidence of the membership of all of its employees in said union, and the representatives of said union requested that respondent enter into collective bargaining contract with said union, which said contracts, after negotiations, were entered into on May 27 and June 22, 1937. That respondent is and has been at all times willing to deal with the true representatives of a majority of its employees for the purpose of collective bargaining. The respondent further alleges that the question concerning representation is a question affecting commerce within the meaning of the National Labor Relations Act. Therefore, respondent requests that pursuant to Section 9 (c) of the National Labor Relations Act, the National Labor Relations Board investigate the true representatives of its employees by election or otherwise, and certify to respondent the name or names of the representatives that have been designated or selected by said employees.

[fol. 419] D.

1. Further answering said complaint and particularly paragraph numbered 1 thereof, respondent admits that it is a corporation organized and existing under the laws of the State of Missouri with its factory and principal place of business at 1828 Walnut Street, Kansas City, Missouri, and is engaged in the business of manufacturing and selling ladies' garments.

2. Further answering said complaint and particularly paragraph numbered 2 thereof, respondent admits that it purchases a substantial portion of its materials used in the manufacture of its garments from states other than the State of Missouri, and sells a substantial portion of its garments in states other than the State of Missouri.

3. Further answering said complaint and particularly paragraph numbered 3 thereof, respondent denies that the International Ladies Garment Workers Union is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act, and therefore denies the allegations of said paragraph 3 thereof.

4. Further answering said complaint and particularly paragraph numbered 4 thereof, respondent admits that Donnelly Garment Workers Union is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act. Respondent denies, on information and belief, that the Donnelly Loyalty League referred to in said paragraph numbered 4 is or ever was a labor organization within the meaning of Section 2 (5) of said [fol. 420] Act and further denies that said Donnelly Loyalty League is a predecessor of the Donnelly Garment Workers Union. Further answering, respondent on information and belief says that said Donnelly Loyalty League is not a labor organization and has never purported to act as a labor organization and has never dealt with respondent as a labor organization, but is a social organization of employees of respondent and is not connected in any way with the Donnelly Garment Workers Union as predecessor or otherwise; that respondent did not form, or assist in, or interfere with the formation of, said Donnelly Loyalty League and has not dominated same or maintained same, or assisted in the administration of same, or rendered financial or other support to same; and respondent further says that said Donnelly Loyalty League and its activities and all allegations of the complaint with reference to same are wholly irrelevant and immaterial to any matter within the jurisdiction of the National Labor Relations Board and that all allegations of the complaint with reference thereto should be dismissed.

5. Further answering said complaint and particularly paragraph numbered 5 thereof, respondent denies each and every the allegations, statements and averments in said paragraph 5, and in each of the subparagraphs thereof, contained.

Respondent further specifically denies that on or about April 27, 1937, and/or at any time since said date down to and including the date of the filing of said complaint, that it has dominated or interfered in the formation and/ [fol. 421] or administration of a labor organization among its employees known as "Donnelly Garment Workers' Union" and/or that it has given financial aid or other support to said organization, in any of the ways, methods or manner alleged or set forth in said paragraph 5, or in any other way, shape or manner whatsoever.

(a) Further answering said complaint and particularly paragraph numbered 5 (a) thereof, respondent specifically denies that it encouraged, allowed or permitted supervisory and other employees acting in the interest of respondent to organize, promote, encourage or coerce membership into the Donnelly Garment Workers' Union on respondent's time or on respondent's property or at respondent's pay or expense, or at any other time or in any other way or manner.

(b) Further answering said complaint and particularly paragraph numbered 5 (b) thereof, respondent specifically denies that it did, through its officers and agents acting in the interest of respondent, furnish financial or other support to Donnelly Garment Workers' Union, in that supervisory or other employees were allowed to solicit membership, hold meetings and engage in concerted activities in behalf of Donnelly Garment Workers' Union during working hours and on company property without loss of pay or other penalty and by various other means contributed financial aid and other support to said Donnelly Garment Workers' Union, and denies that it contributed or furnished financial or other support or aid to Donnelly Garment Workers' Union in any way or by any means

[fol. 422] (c) Further answering said complaint and particularly paragraph numbered 5 (c) thereof, respondent specifically denies that it did, through its officers and agents acting in the interest of respondent, form the Donnelly Loyalty League on or about February 12, 1935, and denies that it formed said Donnelly Loyalty League for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and/or that the officers and agents of respondent dominated or continued to dominate the administration of the Donnelly Loyalty League until on or about April 27, 1937, or for any period of time, and further denies that at said time, or at any other time or place, said Donnelly Loyalty League at a meeting on respondent's property was succeeded by the Donnelly Garment Workers' Union, and/or that said Donnelly Garment Workers' Union was created to be a continuation of the Donnelly Loyalty League and/or to effect and carry out the policies of said Donnelly Loyalty League, and/or to be subservient and to be amenable to the wishes of respondent.

Respondent further says that the allegations in the complaint that respondent through its officers and agents formed the Donnelly Loyalty League on or about February 12, 1935, and dominated and continued to dominate it, are immaterial and irrelevant and state no c. ge against respondent cognizable within the jurisdiction of the National Labor Relations Board; that the National Labor Relations Act was not approved until July 5, 1935, and any hearing or determination of said allegations or any [fol. 423] of them by the National Labor Relations Board or any rule or order which said Board might or may make against the respondent by reason of, or based upon said allegations or any of the same, would be beyond the jurisdiction of said Board, and contrary to and violative of Section 9 of Article I of the Constitution of the United States, and any ruling or order which said Board might or may make against respondent by reason of or based upon said allegations or any of same would be and constitute a denial to respondent of due process of law and would deprive respondent of its liberty and property without due process of law, all contrary to and violative of the Fifth Amendment of the Constitution of the United States; and

by reason thereof, respondent says that the allegations of said paragraph numbered 5 (c) of the complaint should be dismissed.

(d) Further answering said complaint and particularly paragraph numbered 5 (d) thereof, respondent admits that on or about May 22, 1937, respondent entered into an agreement with Donnelly Garment Workers' Union providing for rates of pay, hours of work and other conditions of employment, but specifically denies that said agreement was made for the purpose of assisting said Donnelly Garment Workers' Union or of compelling membership therein or of depriving respondent's employees of their rights guaranteed under the National Labor Relations Act, or to manifest its approval of or to lend support to said Union.

Further answering, respondent says that the National Labor Relations Act expressly authorizes a "closed shop" [fol. 424] contract, such as that made by respondent with the Donnelly Garment Workers' Union as representative of all of its employees, and the making of said "closed shop" contract and the provisions thereof constitute no violation of the National Labor Relations Act and constitute no unfair labor practice or any unlawful discrimination. That by reason of the foregoing, the allegations of said paragraph numbered 5 (d) of the complaint should be dismissed.

6. Further answering said complaint and particularly paragraph numbered 6 thereof, respondent specifically denies that by the alleged acts or any of them, alleged or set forth in paragraph 5 of said complaint or referred to in said paragraph 6, and/or by any other acts, it has dominated or interfered with the formation and administration of or has contributed financial aid or other support to labor organizations, and/or that it did thereby or in any manner or way engage in or is thereby or in any manner or way engaging in unfair labor practices within the meaning of Section 8 (2) of the National Labor Relations Act.

7. Further answering said complaint and particularly paragraph numbered 7 thereof, respondent specifically denies that by the alleged acts or any of them alleged or

set forth in paragraph 5 of said complaint or referred to in said paragraph 7, or by any other acts, it has interfered with, restrained and/or coerced its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act or that it has thereby or in [fol. 425] any other way or manner engaged in or is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

8. Further answering said complaint and particularly paragraph numbered 8 thereof, respondent specifically denies that, by its officers and agents at its Kansas City, Missouri, factory, while engaged in the alleged operations described in paragraphs 1 and 2 of said complaint, or otherwise, discharged from its employment Sylvia Hull on or about April 23, 1937, and/or May Fike on or about April 26, 1937, for the reasons that they had joined and/or assisted the I. L. G. W. U. and/or engaged in concerted activities in its behalf, and denies that it thus discouraged membership in the I. L. G. W. U., and denies that it discharged either of said persons for the purpose of discouraging membership in the I. L. G. W. U., and respondent denies that said Sylvia Hull and May Fike were discharged by respondent from its employ, but states that said Sylvia Hull and May Fike voluntarily left the employment of the respondent and thereupon ceased to be employees of respondent within the meaning of any of the provisions of the National Labor Relations Act. That because of each and all of the foregoing matters, the respondent is not now and has not been guilty of any unfair labor practices arising out of the alleged acts set forth in said paragraph 8, or of any discriminatory acts arising out of said alleged matters, and said paragraph 8 and the allegations thereof should be dismissed.

[fol. 426] 9. Further answering said complaint and particularly paragraph numbered 9 thereof, respondent specifically denies that it discharged or refused to reinstate said Sylvia Hull and May Fike, or either of them, for the alleged reasons or any of them set forth in paragraph 8 of the complaint or referred to in said paragraph 9, and denies that it has discriminated or is discriminating in regard to the hire and tenure of employment of said Sylvia Hull and May Fike, or either of them, for any of said

reasons; and specifically denies that, by reason of any of the matters, things, or reasons, set forth in said paragraph 8 or referred to in said paragraph 9, or by any other means whatsoever, it engaged in or is engaged in unfair labor practices within the meaning of said Section 8 (3) of the National Labor Relations Act, but respondent states that said Sylvia Hull and May Fike voluntarily left the employment of the respondent during respondent's busy season, when respondent was desirous of retaining them in its employ; that their employment by or work for respondent did not cease as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practices on the part of respondent; that Sylvia Hull became employed by the International Ladies' Garment Workers' Union as an organizer and May Fike obtained substantially equivalent employment elsewhere; that they did not then and do not now desire reemployment by respondent; that they voluntarily left respondent's employment and that they were not discharged or refused reemployment because of their union activities or as a punishment for, or as discouragement of union activities or union membership, or for any reason denounced by the National Labor Relations Act, but solely for other reasons pertaining to their conduct and qualifications as efficient and reliable operators.

[fol. 427] 10. Further answering said complaint and particularly paragraph numbered 10 thereof, respondent specifically denies that by the alleged acts referred to in said paragraph 10 and/or set forth in paragraph 8 of said complaint, or any of them, it has interfered with, restrained or coerced its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act and/or that it did thereby engage in or is thereby engaging in unfair labor practices within the meaning of Section 8(1) of said Act.

11. Further answering said complaint and particularly paragraph numbered 11 thereof, respondent specifically denies that it has done or is now doing any of the alleged acts or things in said paragraph 11 set forth or referred to,

and specifically denies that by the alleged acts referred to in said paragraph 11 and/or set forth in paragraphs 5 and 8 of the complaint, or any of them, or that by interfering with, coercing, intimidating or threatening its employees to refrain from becoming members or continuing membership in the I. L. G. W. U., or by keeping members and meetings of the I. L. G. W. U. under surveillance, or by openly manifesting bitter hostility to the I. L. G. W. U., or by the issuance of written or oral statements designed or calculated to discourage membership in the I. L. G. W. U., or by showing preference or favoritism to the Donnelly Garment Workers' Union, or making membership therein a condition of employment, or by depriving its employees of the opportunity of joining an organization of their own choosing, or by discriminating in the allotment of work to members or sympathizers of the I. L. G. W. U., or by questioning employees individually and collectively [fol. 428] with regard to their union activities and prejudices, or by instigating, allowing or permitting violent demonstrations upon its time and property against certain employees of respondent who were members of the I. L. G. W. U., or by various or any other similar or different acts and conduct, it has interfered with, restrained or coerced, or is interfering with, restraining or coercing its employees in the exercise of their rights to form, join or assist labor organizations of their own choosing, and/or that it did thereby engage in or is thereby engaging in unfair labor practices within the meaning of said Section 8 (1) of said Act.

12. Further answering said complaint and particularly paragraph numbered 12 thereof, respondent specifically denies that the "closed shop" contract referred to in said paragraph is a direct and proximate result of the alleged acts and conduct of respondent set forth in paragraphs 5 to 11 inclusive of the complaint, and denies that said closed shop contract constitutes, culminates and perpetuates continuing intimidation, interference, restraint and coercion by respondent in violation of Section 8 (1), (2) and (3) of the National Labor Relations Act, and denies that said closed shop contract is invalid, void and of no effect for said reasons or any other reasons; but respondent says

that such contract is expressly authorized by the National Labor Relations Act, and that the making thereof constitutes no violation of the National Labor Relations Act, and that the charges contained in paragraph 12 of the complaint should be dismissed.

[fol. 429] Respondent further states that David Dubinsky, President of the International Ladies' Garment Workers' Union, testified under oath at the hearing for permanent injunction in the case, elsewhere referred to in this answer, that said I. L. G. W. U. was seeking a "closed shop" contract with respondent, under which respondent would be obligated to employ only members of the I. L. G. W. U. That in the contracts made by said International Union with other garment companies in Kansas City, Missouri, said I. L. G. W. U. (which is the same union that filed charges herein against respondent), closed shop provisions were inserted when said union did not represent any of the employees of the one company and did not represent a majority of the employees of such other garment companies, and when a majority of said employees did not desire said I. L. G. W. U. to represent them. That in the face of sworn evidence of Perlstein and other witnesses adduced in the hearing of the above mentioned injunction suit, which was heard by representatives of the Labor Board, said representatives have taken no steps to protect the rights of said employees which under the law it is their duty to protect. That in view of the fact that one hundred per cent of respondent's employees have demanded a closed shop contract with respondent, the Labor Board is not vested with authority to emasculate the National Labor Relations Act by depriving respondent's employees of their right to designate their true representatives or to prohibit respondent from contracting with such representatives including the making of said closed shop agreement.

[fol. 430] 13. Further answering said complaint and particularly paragraph numbered 13 thereof, respondent denies that the closed shop contract therein referred to was entered into with the Donnelly Garment Workers' Union at a time when that union was not the representatives of respondent's employees within the meaning of

Section 8 (3) and Section 9 (a) of the National Labor Relations Act, and/or at a time when the Donnelly Garment Workers' Union was a labor organization established, maintained and assisted by actions defined in the National Labor Relations Act as unfair labor practices, and denies that said closed shop contract is invalid, void and of no effect for said reasons or any other reasons; but respondent avers that at the time of the making of said closed shop contract, the Donnelly Garment Workers' Union was the representative of the respondent's employees within the meaning of Section 8 (3) and Section 9 (a) of said Act, and respondent further denies that it established, maintained or assisted said Donnelly Garment Workers' Union in any way or at any time; that the making of said closed shop contract is expressly authorized by the National Labor Relations Act, that respondent violated no provision of said Act in making said contract, and the charges contained in paragraph 13 of the complaint should be dismissed.

14. Further answering said complaint and particularly paragraph numbered 14 thereof, respondent specifically denies that by entering into the closed shop contract re- [fol. 431] ferred to in said paragraph, that it interfered with, restrained and/or coerced, or is interfering with, restraining or coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and denies that it thereby did engage in or is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of the National Labor Relations Act and denies that said closed shop contract is for such reasons or any other reasons invalid, void and of no effect; that such closed shop contract is expressly authorized by the National Labor Relations Act, and the charges contained in said paragraph 14 of the complaint should be dismissed.

15. Further answering said complaint and particularly paragraph numbered 15 thereof, respondent specifically denies that by entering into the closed shop contract referred to in said paragraph, it discriminated in regard to hire or tenure of employment and terms and conditions of employment, and denies that it did thereby discourage

membership in the International Ladies' Garment Workers' Union and denies that it did thereby encourage membership in the Donnelly Garment Workers' Union at a time when the Donnelly Garment Worker's Union was established, maintained and assisted by respondent or at any other time, and denies that respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the National Labor Relations Act, and denies that the said closed shop contract is for such reasons or for any other reasons, invalid, void [fol. 432] and of no effect, and respondent further denies that the Donnelly Garment Workers' Union was established, maintained and assisted by respondent at any time; that the making of said closed shop contract violates no provision of the National Labor Relations Act, but is expressly authorized by said Act, and the charges contained in said paragraph 15 of the complaint should be dismissed.

16. Further answering said complaint and particularly paragraph numbered 16 thereof, respondent specifically denies that it did or pursued any of the activities set forth in paragraphs 5 to 15 inclusive of the complaint, and denies that any of said alleged acts or activities set forth in said paragraphs 5 to 15 inclusive of the complaint, occurred in connection with the operations of respondent described in paragraphs 1 and 2 of the complaint, and denies that said alleged acts set forth in paragraphs 5 to 15 inclusive of the complaint by themselves or occurring in connection with any of the operations of respondent described in paragraphs 1 and 2 of the complaint, have a close, intimate and substantial relationship to trade, traffic and commerce among the several states, or tend to lead or have led to labor disputes burdening and obstructing commerce or the free flow of commerce.

17. Further answering said complaint and particularly paragraph numbered 17 thereof, respondent specifically denies that it has done or permitted any of the alleged acts referred to in paragraph 17 of the complaint and further [fol. 433] denies that said alleged acts constitute unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of said Act, or any of them.

18. Further answering said complaint, respondent says that in and by each and all of its aforesaid denials, whether in the conjunctive or disjunctive form, of acts and matters charged or alleged in the complaint, respondent intends to and does deny each and all of such acts and charges severally and in the disjunctive and also collectively and in the conjunctive.

19. Further answering said complaint, respondent says that it has meticulously attempted to comply with and obey all the provisions of the National Labor Relations Act and denies that it has violated any of the provisions of said Act; that pursuant to the provisions of said Act and upon the demands of the chosen representatives of a majority of its employees, respondent made and entered into collective bargaining contracts with said representatives of a majority of its employees, to-wit: the Donnelly Garment Workers' Union, whose membership includes all employees of respondent, except those in executive and supervisory capacities; that by reason thereof and of the provisions of the National Labor Relations Act, respondent is precluded from bargaining collectively with any other union concerning terms and conditions of employment; that said contracts have been and are being complied with by respondent in every respect. Respondent further says [fol. 434] that it has not interfered with and has no desire to interfere with the free choice by its employees of representatives to bargain collectively for them, and at all times since the passage of the National Labor Relations Act, respondent has been willing to bargain collectively with any union or representatives selected by a majority of its employees, and that it has not discriminated against any employees because of their union or nonunion activities.

20. That by reason of the foregoing matters and things, respondent is not guilty of any of the unfair labor practices or acts charged in the complaint.

Wherefore respondent prays that said complaint be dismissed and that respondent be exonerated of the charges therein contained.

DONNELLY GARMENT COMPANY,
By R. J. Ingraham, Secretary.

REED & INGRAHAM,
Attorneys for Respondent.

[fol. 435] State of Missouri,
County of Jackson—ss.:

Robert J. Ingraham of lawful age, being first duly sworn, upon his oath states:

That he is Secretary of the Donnelly Garment Company, respondent herein, and he makes this affidavit for and on behalf of said respondent being legally authorized so to do.

Affiant further states that none of the other officers of respondent Donnelly Garment Company is available to verify the foregoing answer.

Affiant further states that he has read the foregoing Answer, is familiar with the matters and facts therein stated, and that said allegations and facts are true to the best of his knowledge, information and belief.

ROBERT J. INGRAHAM.

Subscribed and sworn to before me this 29th day of May, 1939.

My commission expires July 14, 1941.

LAURA BAKER,
(Notarial Seal) Notary Public in and for
Jackson County, Missouri.

[fol. 474] Exhibit "B".

"National Labor Relations Board.
Seventeenth Region,
Scarritt Building,
Kansas City, Missouri.

February 4, 1939.

"Reed and Ingraham
"1900 Telephone Building
"Kansas City, Missouri

Gentlemen:

"This will acknowledge receipt of your "statement of position" as was agreed at the close of our last conference in connection with the charges now on file in this office

against the Donnelly Garment Company filed by International Ladies' Garment Workers Union thru Jane Walker Palmer, attorney.

"In order to dispose of these charges the Board's position, based upon a very complete painstaking investigation, would require the following:

"1. Donnelly Garment Company post notices in conspicuous places throughout its plant and maintain said notices for a period of sixty days, which notices would state "Donnelly Garment Company will cease and desist from interfering with the rights of their employees to form, join or assist labor organizations, to bargain collectively thru representatives of their own choosing, and

"2. The Donnelly Garment Workers' Union forthwith be disestablished as an agency for the purpose of collective bargaining or in any manner to act as a representative of the employees in the exercise of the rights guaranteed under Section 7 of the National Labor Relations Act, and

"3. The Donnelly Garment Company offer full and immediate reinstatement without loss of seniority or any other rights and privileges previously enjoyed by them to all of the persons, (a list of whose names has already been furnished to you) who were discharged by reason of their membership in and/or activity in behalf of the International Ladies' Garment Workers or those whose discharges occurred prior to July 5, 1935, and whose applications for reinstatement to their former positions were refused because of their membership in and/or their activities in behalf of the International Ladies' Garment Workers and by making whole to said employees for such losses as they may have suffered by reason of their discharges and/or refusals to reinstate."

All of the above terms to be embodied into a decree, the entry of which in the Eighth Circuit Court of Appeals to be expressly consented to, which decree provides for the [fol. 475] enforcement in full of each and every provision thereof and further that the parties thereto expressly waive notice to the filing thereof.

"I assume that if the above is inconsistent with any understanding that you already have concerning our negotiations, you will promptly bring them to my attention.

Yours very truly,

PAUL F. BRODERICK,
Acting Regional Director.

Copies to:

Clif Langsdale, Attorney for ILGWU
Jerome Walsh, Attorney for ILGWU
Jane Walker Palmer, Attorney for ILGWU
Frank E. Tyler, Attorney for Donnelly Garment Workers' Union."

[fol. 489] (Board's Exhibit No. 1-MMM.)

Case No. XVII-C-371.—Date 6/5/39.

(Application of Intervener, Donnelly Garment Workers' Union, for an Election by the Employes and for Continuance.)

Now comes Donnelly Garment Workers' Union, an unincorporated labor union, and files its application and request for an election by the employes of the Donnelly Garment Company as to their choice and desire in connection with membership in the Donnelly Garment Workers' Union or the International Ladies' Garment Workers' Union, such an election to be held under the instructions and control of this Board to insure complete secrecy of the ballot of each employe, and the opportunity of each employe and of no one else to cast one ballot, and under such other restrictions and regulations as may to this Board seem just and proper, and as authorized by Section 9 (C) of the National Labor Relations Act.

Since such election would settle and determine many if not all of the questions involved in this pending hearing, intervener asks that further proceedings in such

hearing be postponed until such election has been held and the results announced to the parties.

GOSSETT, ELLIS, DIETRICH & TYLER
FRANK E. TYLER
THOMAS J. PATTEN
LUCIAN LANE
Attorneys for Intervener.

[fol. 491] (Board's Exhibit No. 1-NNN.)

Case No. XVII-C-371.—Date 6/5/39.

(Petition for Investigation and Certification of Representatives pursuant to Section 9(c) of the National Labor Relations Act.)

United States of America.

Before the National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Name of employer, Donnelly Garment Company.

Address, 1828 Walnut. .....

General nature of business, Manufacturer of women's dresses. .....

.....

Approximate total number of employees, 1,182.....

Description of the bargaining unit which petitioner claims is appropriate, Donnelly Garment Workers' Union, a voluntary unincorporated union representing all employees of respondent. .....

.....

Approximate number of employees in such unit, 1,182.

Classification of employees in such unit, giving approximate number of employees in each department or class .....

.....

.....

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining, All of them.....

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit, International Ladies' Garment Workers' Union. .....

.....

.....

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: International Ladies' Garment Workers' Union contends that Donnelly Garment Workers' Union is not the voluntary choice of said employees as their representative for collective bargaining, that it is therefore an illegal union under Secs. 7 & 9 of National Labor Relations Act, that the contracts made by it with the employer are therefore invalid, and that Donnelly Garment Workers' Union is not entitled to be the exclusive representative of all of said employees.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give

also the name and official position of the person acting for the organization.)

DONNELLY GARMENT WORKERS' UNION
By Rose Todd,
Chairman of the Executive Committee.

Subscribed and sworn to before me this 16 day of May, 1939, at Kansas City, Mo.

MYRTLE BONNELL,
(Notarial Seal) Notary Public, Jackson Co., Mo.

[fol. 492] (Board's Exhibit No. 1-OOO.)

Case No. XVII-C-371.—Date 6/5/39.

(Amended Petition for Investigation and Certification of Representatives pursuant to Section 9(c) of the National Labor Relations Act.)

United States of America

Before the National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Name of employer, Donnelly Garment Company.....

Address, 1828 Walnut.....

General nature of business, Manufacturer of women's dresses.....

.....

Approximate total number of employees, 1,166.....

Description of the bargaining unit which petitioner claims is appropriate, Donnelly Garment Workers' Union, a voluntary unincorporated union representing all em-

ployees of respondent below the grade of officer, superintendent, supervisor or anyone with the right to employ or discharge.....

Approximate number of employees in such unit, 1,166.

Classification of employees in such unit, giving approximate number of employees in each department or class, Operators 642; Miscel. Piece Workers 82; Hand Ironers 77; Folders 11; Examiners 41; Cutting Dept. 44; Dividers 15; Instructors & Work Distributors 44; Mechanics & Helpers 14; Designing & Pattern Workers 40; Bundle Boys 11; Clerical 62; Miscel. Time Workers 60; Porters & Maids 20; Watchmen 3;.....

Number or percentage of employees in such unit who have designated or selected petitioner to be their representative for collective bargaining, All of them.....

Names of any other known individuals or labor organizations who claim to represent any of the employees in such bargaining unit, International Ladies' Garment Workers' Union.....

.....

.....

The undersigned hereby alleges that a question has arisen concerning the representation of the employees in the above bargaining unit, in that: International Ladies' Garment Workers' Union contends that Donnelly Garment Workers' Union is not the voluntary choice of said employees as their representative for collective bargaining, that it is therefore an illegal union under Secs. 7 & 9 of National Labor Relations Act, that the contracts made by it with the employer are therefore invalid, and that Donnelly Garment Workers' Union is not entitled to be the exclusive representative of all of said employees.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said act.

The undersigned requests that pursuant to section 9(c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

Name and address of employees or representatives filing the petition. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

DONNELLY GARMENT WORKERS' UNION,
By Rose Todd,
Chairman of the Executive Committee.
Address—1008 Dwight Building, Kansas City, Missouri.

Subscribed and sworn to before me this 2nd day of June, 1939, at Kansas City, Mo.

MYRTLE BONNELL,
(Notarial Seal) Notary Public, Jackson Co., Mo.

[fol. 493] (Board's Exhibit No. 1-QQQ.)

Case No. XVII-C-371.—Date 6/6/39.

(Motion of Intervener, International Ladies' Garment Workers' Union, to strike portions of Answer of Donnelly Garment Company, and granting thereof.)

The International Ladies' Garment Workers' Union moves to strike from the answer of the Donnelly Garment Company the following language contained in Paragraph 2 of their A subdivision of their answer, which is on Page 2 of said answer, the language to be stricken being the following:

"And have been" referring back to the word contracts, "determined by a United States Federal Court to contain higher wages and more favorable working conditions than are contained in any contracts entered into between the International Union and other garment manufacturers in this part of the country," for the reason that said allegation refers to facts, if they be facts, which are not in any way material to any of the charges contained in the complaint, and for the further reason that this tribunal is not bound by any conclusions that may have been reached by any other tribunal, particularly, by the Federal Court to which they refer.

This union further moves to strike from said answer, commencing with the second paragraph on Page 7 of said answer, the following language:

"During all of the times mentioned in the amended charge and the complaint filed herein, the International [fol. 494] Ladies' Garment Workers' Union, David Dubinsky, president, Meyer Perlstein, Southwest Regional Director, Wave Tobin, manager of the Kansas City Joint Board, Jane Palmer, their agents and members, were engaged in an unlawful conspiracy to injure and destroy respondent's business for the sole purpose of forcing respondent in violation of the National Labor Relations Act to compel its employees against their wills to join the International Union and subject themselves to its domination and control. In furtherance of this conspiracy, the said International Union, its officers, agents and members, published or caused to be published false and libelous reports about respondent and the working conditions in its plant, and inaugurated and threatened to inaugurate secondary boycotts against respondent's customers and its merchandise in the various states of the union, and threatened to cause gangs of lawful persons to assault respondent's employees and perpetrate the same unlawful acts of violence and intimidation, including stripping of women naked in the public streets, assaulting them with knives, razor blades and other deadly weapons, which they perpetrated or caused to be perpetrated against the employees of other garment manufacturers in Kansas City, Missouri, St. Louis, Missouri, Memphis, Tennessee, and Dallas, Texas. The said International Union announced in the public press that it had set aside a fund of $250,000 to finance its campaign against respondent."

Said union moves to strike that paragraph for the reason that the allegations, facts, allegations purporting to be facts which are in no way material or germane to the issues in the case before this Examiner; that by said allegations the respondent seeks to do the thing that certain persons who criticized the National Labor Relations Act are now attempting to do in Congress by way of amendment, that is, to interpret this Act as though it were one designed to prohibit violence and intimidation from any source. The purpose, of course, of the National Labor

[fol. 495] Relations Act is simple, that is, to guarantee the right to bargain collectively to employees and to declare as unfair labor practices certain conduct of employers which impedes that right. Now, this allegation is an effort to try this case as though it were being tried in a court of equity with the rule that "He who comes into court of equity should come with clean hands" or "He who seeks equity should do equity." There is no such interpretation ever been placed upon the National Labor Relations Act and as I say, it is well known, of course, to the Examiner, that there is now an effort on the part of certain people, whom I will describe as enemies of the Act, to amend it so as to permit just such evidence as they attempt to plead here to be offered.

Now, the said union further moves to strike the next paragraph on Page 8, which reads as follows:

"Respondent, on or about March 2, 1937, shortly after the International Union had publicly announced the opening of the drive against respondent and its employees, was notified by all of its employees, except 3, that they refused to acknowledge or accept the International Union as their representative for the purpose of collective bargaining. The International Union, knowing that it did not represent a single employee in respondent's plant, and knowing of the protests by the employees above mentioned, on or about March 9, 1937, sent to respondent a letter containing statements of alleged conditions of employment at respondent's plant which were known by the writers to be false and which were maliciously made. A conference was requested for the purpose of making a closed shop contract with respondent. Respondent determined that in the circumstances it could not legally contract with [fol. 496] the International and did not reply to said letter. The International, on or about March 15, 1937, began an attack of fraud and violence upon the Missouri Garment Company, Gordon Brothers Manufacturing Company, and Gernes Garment Company, all of Kansas City, Missouri, for the purpose of compelling those companies to force their employees to join the International. At said time, the International did not represent a single employee of the Gernes Garment Company, and a very

small minority in the 2 other said companies. Agents of the International Union announced that the acts of violence perpetrated against the employees of said companies would not be perpetrated against the employees of respondent company and would be commenced against respondent employees after the above mentioned companies had capitulated and yielded to the demands of the union for a closed shop. The International further began the circulation throughout the country of the false and libelous statements contained in the above letter of March 9."

Said union moves to strike this paragraph for all the reasons stated in its motion to strike the previous paragraph, and for the reason that it seeks to interject into this hearing alleged happenings which are in no way germane or material to any of the issues here, and which of course, would cause the Examiner to go far afield and try a number of other labor controversies that they allege occurred at other plants and in other cities.

Said union further moves to strike from said answer, and from Page 10 thereof, the words commencing in the fifth line of said page, as follows: "And provides for—" referring back to the word contract, "for higher wages and more favorable conditions of employment than are contained in any contract with the International Union as entered into with other garment manufacturers in this part of the country," for the reason that the facts alleged [fol. 497] in that allegation are immaterial to the determination of the issues in this case.

Said union further moves to strike from said answer the following language, commencing on Page 10 of said answer, and commencing with the first full paragraph on said page, as follows:

"Respondent on July 5, 1937, instituted in the United States District Court for the Western Division of the Western District of Missouri a suit to enjoin the said International Union, David Dubinsky, president, Meyer Perlstein, Southwest Divisional Director, Wave Tobin, manager of the Kansas City Joint Board, Jane Palmer,

officers, agents and members of said union from committing the unlawful acts of fraud and violence above described. A restraining order was thereupon issued by United States District Judge Otis enjoining the International, its officers, agents and members, from doing any of the unlawful acts complained of.

"The International Union and other defendants in said case requested a 3 judge court to hear the case. Honorable Arba S. Van Valkenburgh, United States Circuit Judge and Honorable Albert L. Reeves, United States District Judge, were thereupon designated to sit with Honorable Merrill E. Otis, United States District Judge, in the trial of the case. After an exhaustive hearing of evidence upon respondent's application for temporary injunction, Judge Van Valkenburgh and Judge Reeves in the majority opinion granted a temporary injunction and found the International, its officers and agents, to be guilty of the acts complained of in respondent's petition; copies of said opinions are hereto attached and marked Exhibit "A" and made a part of this answer as though set out in haec verbae. United States District Judge Otis stated in substance that respondent had made an overwhelming case [fol. 498] for an injunction, but has not complied with the technical requirements of the Norris-LaGuardia Act which prohibits the issuance of an injunction by a Federal Court unless said requirements have been complied with (21 Fed. Supp. 809). The said findings of fact and conclusions of law made by said 3-judge Court are attached hereto, marked Exhibit "A-1" and made a part of this answer as though set out in haec verbae. The International and other defendants appealed the judgment of said 3-judge Court to the Supreme Court of the United States, which Court held that the said suit was not one that required a 3-judge Court and remanded the case to the United States District Court for a trial before a single judge (304 U. S. 243: 58 F. Ct. Rep. 875)." For the reason that the matters alleged in said paragraphs are in no way material to the charge before this Examiner and complaint, and this Examiner is in no way bound by the opinions if they be the opinions alleged in this answer of the judges of the other tribunal, and for the reason that it is an effort to try that injunction suit before this Examiner in this hearing.

Said union further moves to strike from said answer the following, commencing with the first full paragraph on page 12.

"Conferences between the Labor Board, respondent and the representative of the Donnelly Garment Workers' Union were later participated in by a representative of the International Union, and all matters alleged to be in controversy were then discussed, and the representative of the International Union in said conference admitted that the employees of the respondent company did not desire to belong to the International Union or be represented by it for the purpose of collective bargaining." For the reason that said facts as alleged, if true, are in no way material or germane to this hearing, and in no way binding upon this Examiner.

[fol. 499] Said union further moves to strike from said answer, the language commencing on Page 13, and contained in the last paragraph on said page, as follows:

"A trial of the above mentioned injunction suit was commenced March 2, 1939, and after an extended hearing of evidence, the District Court granted respondent a permanent injunction against the International Union, its officers, agents and members. The Court said of the International Union's raid against respondent: 'They were caught doing unlawful things and for that, they are being dealt with as lawbreakers.'

"The decree of the court, together with the findings of facts and conclusions of law are attached hereto, marked Exhibit "C" and made a part of this answer as though set out in haec verba," for the reason that said paragraphs are an effort, upon the part of the Donnelly Garment Company and its counsel, to retry that injunction suit before this Examiner, and for the further reason that the matters therein alleged are in no way material or germane to the issues here, and the decrees and findings of that court are in no way binding upon this court.

Said union further moves to strike from this answer the following paragraph contained on page 14 of said answer:

"Respondent states that the circumstances surrounding the filing of the complaint herein and the constant attendance of the representatives of the Labor Board at the hearing for permanent injunction in the above-mentioned injunction case and their frequent consultations during the examination of respondent's witnesses with representatives of the International Union, further demonstrates that the Labor Board has assisted and is assisting [fol. 500] the International Union in its conspiracy against respondent company and is maintaining the proceedings herein in violation of any authority vested in the Labor Board by the National Labor Relations Act. Respondent states that the International Union instituted this proceeding as a part of its unlawful conspiracy above described, and in bad faith. That the Labor Board, having knowledge of all of the foregoing facts, must dismiss the proceeding in accordance with the spirit and plain provisions of the National Labor Relations Act, the Anti-Trust Laws of the United States, and the laws of the land"; for the reason that the allegations of said facts and if said facts were true, are in no way binding upon the Examiner in this case, or that they are not material to any of the issues before this Examiner; that what prejudice, if any, some other representative of the Labor Board might have would, of course, not affect the Examiner in this case, or in any way be binding on him, and it is an effort to cast an aspersion upon certain representatives of this Board, which even if the conduct described therein should be true, is in no way material to the issues herein involved.

Said union further moves to strike from page 26 of said answer the following language, commencing at the top of said page:

"Respondent further states that David Dubinsky, President of the International Ladies' Garment Workers' Union, testified under oath at the hearing for permanent injunction in the case, elsewhere referred to in this answer, that said I. L. G. W. U. was seeking a "closed shop" contract with respondent, under which respondent would be obligated to employ only members of the I. L. G. W. U. That in the contracts made by said International Union with other garment companies in Kansas City, Missouri,

[fol. 501] said I. L. G. W. U. (which is the same union that filed charges herein against respondent), closed shop provisions were inserted when said union did not represent any of the employees of the one company and did not represent a majority of the employees of such garment companies, and when a majority of said employees did not desire said I. L. G. W. U. to represent them. That in the face of sworn evidence of Perlstein and other witnesses adduced in the hearing of the above-mentioned injunction suit, which was heard by representatives of the Labor Board, said representatives have taken no steps to protect the rights of said employees which under the law it is their duty to protect", for the reason that the allegations therein contained refer to facts, if they be facts, that are in no way germane and material to the issues here, and for the reason that the National Labor Relations Act does not permit this Examiner to take into consideration any alleged law violation, coercion, intimidation on the part of the complaining union.

CLIF LANGSDALE,
JANE WALKER PALMER.

Motion to strike granted.

See Rulings of Trial Examiner—Bd's Exhibit 1-SSSS.

J. O. BATTEN.

[fol. 503] (Board's Exhibit No. 1-RRR.)

Case No. XVII-C-371.—Date 6/7/39.

(Amended Complaint.)

United States of America.

Before the National Labor Relations Board.
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers Union, Party to the Contract.

Case No. XVII-C-371.

It having been charged by the International Ladies' Garment Workers' Union, hereinafter referred to as the I. L. G. W. U., that Donnelly Garment Company, Kansas City, Missouri, hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act approved July 5, 1935, (49 Stat. 449) the National Labor Relations Board by the Acting Regional Director for the Seventeenth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 1, as amended—Article IV, Section 1, hereby issues its complaint and alleges the following:

1. Respondent is and has been since 1919 a corporation organized under and existing by virtue of the laws of the State of Missouri, having its factory and principal place of business at 1820 Walnut Street, Kansas City, Missouri, and is now and has continuously been engaged in the business of designing, manufacturing, selling and distributing cotton, wool, silk, and rayon low and medium-priced garments for women.

[fol. 504] 2. Respondent, in the course and conduct of its business, causes and has continuously caused substantially all of the materials used in the manufacture of its garments to be purchased and transported from and through states of the United States, other than the State of Missouri, to the Kansas City, Missouri factory of respondent, and causes and has continuously caused a substantial portion of the garments designed, manufactured, sold, and distributed, to be sold, transported, and distributed from the Kansas City, Missouri factory into and through states of the United States other than the State of Missouri to customers in other states.

3. International Ladies' Garment Workers' Union is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act.

4. Donnelly Garment Workers Union, and its predecessor, Donnelly Loyalty League, are labor organizations within the meaning of Section 2 (5) of said Act.

4 A. Respondent, since on or about January 1, 1934, to July 5, 1935, intimidated, threatened, and coerced its employees and interfered with said employees' rights of self-organization, to form, join, and assist labor organizations, and to bargain collectively through representatives of their own choosing by:

(a) Dominating and interfering with the formation and administration of the Donnelly Loyalty League, since on or about February 12, 1935, and contributing financial and other aid thereto;

(b) Maintaining surveillance over members and meetings of the International Ladies' Garment Workers' Union at Musicians' Hall, Kansas City, Missouri, in March 1934, at Eagles' Hall, Kansas City, Missouri, in December 1934, at the homes of Glynn Brooks and Marion Burns in June 1934, and the offices of I. L. G. W. U. at 813 Walnut Street, Kansas City, Missouri, and at other places unknown;

[fol. 505] (c) Discharging from its employ in 1934 and 1935 the following named employees:

Ellen Fry	Thelma Owens
Glynn Brooks	Lillian Rutherford
Tillie Shirley	Lou Perkins
Pauline Lutz	Gladys Eldridge
Mamie Tubbesing	Virginia Stroup
Lillian Wales	Frances Reidel
Nora McKee	Loretta Sisson
Ollie Thompson	Minnie Liles
Clara Enloe	Edith Alexander

because of their membership and activities in behalf of the I. L. G. W. U.

(d) Attempting to prevail upon members of the I. L. G. W. U. in its employ to resign from said union;

(e) Issuing written and oral statements designed and calculated to discourage membership in the I. L. G. W. U.

5. Respondent, while engaged at its Kansas City, Missouri plant, as aforesaid, on or about April 27, 1937, and down to and including the date of the filing of this com-

plaint, has dominated and interfered in the formation and administration of a labor organization a[illegible]ng its employees, known as "Donnelly Garment Workers Union," and has given financial aid and other support to said organization, in that respondent, among other things:

(a) Did encourage, allow, and permit supervisory and other employees acting in the interest of respondent to organize, promote, and encourage membership into the Donnelly Garment Workers' Union particularly in the months of March, April, and May 1937 and thereafter, on respondent's time and on respondent's property and at respondent's pay and at its expense.

(b) Did, through its officers and agents acting in the interest of respondent, furnish financial and other support to Donnelly Garment Workers Union, in that supervisory and other employees were allowed to solicit membership, hold meetings and engage in concerted activities in behalf of Donnelly Garment Workers Union during working hours and on company property without loss of pay or [fol. 506] other penalty and by various other means contributed financial aid and other support to said Donnelly Garment Workers Union.

(c) Did, through its officers and agents acting in the interest of respondent, form the Donnelly Loyalty League on or about February 12, 1935, for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and said officers and agents of respondent continued to dominate the administration of the Donnelly Loyalty League until on or about April 27, 1937, at which time said Donnelly Loyalty League at a meeting on respondent's property was succeeded by the Donnelly Garment Workers Union created to be a continuation of the Donnelly Loyalty League and to effect and carry out the policies of its predecessor and to be subservient and amenable to the wishes of respondent.

(d) Did enter into a closed-shop agreement with Donnelly Garment Workers Union on or about May 22, 1937, creating as a condition of employment, membership in said Donnelly Garment Workers Union, for the purpose of assisting said Union, compelling membership therein, de-

prving its employees of their rights guaranteed under the National Labor Relations Act, and to further manifest its approval of and to lend support to said Union.

6. Respondent, by the acts set forth in paragraph five (5), above, and by other acts, has dominated and interfered with the formation and administration of and has contributed financial aid and other support to labor organizations and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (2) of said Act.

7. Respondent, by the acts set forth in paragraph five (5), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of said Act and has thereby engaged in and is [fol. 507] thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

8. Respondent, by its officers and agents at its Kansas City, Missouri factory, while engaged in the operations described in paragraphs one (1) and two (2), above, did discharge from its employment Sylvia Hull, on or about April 23, 1937, and May Fike, on or about April 26, 1937, for the reasons that they had joined and assisted the I. L. G. W. U. and engaged in concerted activities in its behalf, and thus discouraged membership in the I. L. G. W. U.

9. Respondent, by its discharge of Sylvia Hull and May Fike, and by its refusal to reinstate said employees for the reasons set forth in paragraph eight (8), above, has thereby discriminated and is thereby discriminating in regard to the hire and tenure of employment of said employees and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of said Act.

10. Respondent, by the acts set forth in paragraph eight (8), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the mean[illegible] of Section 8 (1) of said Act.

11. Respondent, since July 5, 1935, by the acts set forth in paragraphs five (5), and eight (8), above, by interfering with, coercing, intimidating, and threatening its employees to refrain from becoming members or continuing membership in I. L. G. W. U.; by keeping members and meetings of I. L. G. W. U. under surveillance; by openly manifesting bitter hostility to the I. L. G. W. U.; by acts and conduct of supervisory and other employees; by the issuance of written and oral statements designed and calculated to discourage membership in the I. L. G. W. U., including statements made by the president of respondent at a meeting on the property of the company called by officials of respondent on or about March 18, 1937; by inducing and compelling employees to sign a petition declaring their [fol. 508] loyalty to respondent on or about March 2, 1937; by showing preference and favoritism to the Donnelly Garment Workers Union since its inception on or about April 27, 1937; by indicating to employees that respondent favored their affiliation with that organization; by executing a closed-shop contract, making membership therein a condition of employment; by depriving its employees of the opportunity of joining an organization of their own choosing; by discriminating in the allotment of work of members of sympathizers of the I. L. G. W. U., by supervisory and other employees questioning employees individually and collectively with regard to their union activity and prejudices; by instigating, allowing, or permitting violent demonstrations upon its time and property on or about April 23, 1937, against Fern Sigler and Sylvia Hull, members of the I. L. G. W. U., has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of their rights to form, join, and assist labor organizations of their own choosing, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

12. That the aforementioned closed-shop contract is a direct and proximate result of the acts and conduct of respondent set forth in paragraphs five (5) to eleven (11), inclusive, and constitutes, culminates, and perpetuates continuing intimidation, interference, restraint, and coercion by respondent in violation of Section 8 (1), (2), and (3) of said Act and is, therefore, invalid, void, and of no effect.

13. That aforementioned closed-shop contract was entered into with the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was not the representative of the respondent's employees within the meaning of Section 8 (3) and Section 9 (a) of the Na-
[fol. 509] tional Labor Relations Act, and at a time when the Donnelly Garment Workers Union was a labor organization established, maintained, and assisted by actions defined in the National Labor Relations Act as unfair labor practices and that said closed-shop contract is, therefore, invalid, void, and of no effect.

14. That, by entering into the said closed-shop contract, respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said National Labor Relations Act and that said closed-shop contract is, therefore, invalid, void, and of no effect.

15. That by entering into the closed-shop contract aforesaid, respondent did discriminate in regard to hire and tenure of employment and terms and conditions of employment and did thereby discourage membership in the I. L. G. W. U. and did thereby encourage membership in the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was established, maintained, and assisted by respondent, and respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the National Labor Relations Act and, therefore, the said closed-shop contract is invalid, void, and of no effect.

16. The activities of respondent by the acts set forth in paragraphs five (5) to fifteen (15), inclusive, above, occurring in connection with the operations of the respondent described in paragraphs one (1) and two (2), above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

[fol. 510] 17. The aforesaid acts of respondent constitute unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of said Act.

(Signature omitted.)

[fol. 511] (Board's Exhibit 1-TTT.)

Case No. XVII-C-371.—Date 6/7/39.

(Motion of Respondent, Donnelly Garment Company, to strike portions of Amended Complaint.)

Comes now the above named repondent and without admitting the truth of any of the allegations contained in Paragraph 4A and the subparagraphs thereof of the Amended Complaint filed herein on June 7, 1939, and moves the Examiner to strike said paragraph 4A and each and all of the subparagraphs (a), (b), (c), (d) and (e) thereof, and paragraph 5, subparagraph C, and each and every allegation therein contained, and to dismiss said Paragraph 4A and subparagraphs and Paragraph 5, subparagraph C, and each and all of the charges contained in said Paragraph 4A and the subparagraphs, and Paragraph 5, subparagraph C thereof, for and upon the following grounds and reasons, to-wit:

1. Because the matters and things charged and alleged in said Paragraphs and in the subparagraphs thereof occurred prior to the passage of the National Labor Relations Act and each and all of said things alleged to have been done, if same were done, were lawful at the times they are alleged to have been done.

2. Because each and all of said acts and things alleged to have been done by respondent are remote and wholly immaterial, irrelevant and incompetent in this proceeding [fol. 512] charging respondent with unfair labor practices under the National Labor Relations Act because said alleged acts are alleged to have been done prior to the

passage of said National Labor Relations Act and approximately five years prior to the filing of the complaint herein.

3. Because any hearing or determination by the Examiner or the National Labor Relations Board of the matters charged in this complaint, based upon the acts alleged in said paragraphs and the subparagraphs thereof, is and would be beyond the jurisdiction of the Examiner and the National Labor Relations Board, and would deprive respondent of its liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

4. Because the charges and allegations contained in said Paragraphs and the subparagraphs thereof constitute an attempt to make the National Labor Relations Act retroactive and an attempt to make acts unlawful which were lawful at the time same are charged to have been done, and to charge respondent with acts as unlawful which were not unlawful at the time respondent is charged with doing same in violation of Section 9 of Article I of the Constitution of the United States, providing that no bill of attainder or ex post facto law shall be passed by Congress, and if the National Labor Relations Act be so applied as to permit the Labor Board to hear and determine said charges and matters, it is unconstitutional and void, as controvening said Section 9 of Article I and denying respondent due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States.

5. Because the allegations contained in said paragraphs above referred to are too vague, to apprise respondent [fol. 513] of the acts of unfair labor practice purported to be charged.

Dated the 7th day of June, 1939.

JAMES A. REED,
R. J. INGRAHAM,
Attorneys for Respondent.

[fol. 515] (Board's Exhibit No. 1-UUU.)

Case No. XVII-C-371.—Date 6/12/39.

(Motion of Intervener to strike portions of Amended Complaint.)

Now comes the intervener and moves to strike all of paragraph Four A, including all the sub-paragraphs thereof of the amended complaint filed herein on June 7, 1939, for the reason that all of the matters and things therein charged and alleged are charged to have occurred at a time too remote to be material to any of the issues involved in the present hearing.

GOSSETT, ELLIS, DIETRICH & TYLER,
Attorneys for Intervener.

[fol. 517] (Board's Exhibit No. 1-XXX.)

Case No. XVII-C-371.—Date 6/6/39.

(Motion of Intervener, Donnelly Garment Workers' Union, for Continuance.)

Now comes the Donnelly Garment Workers' Union, named in the complaint herein as party to the contract, and moves that the hearing in the above entitled action be continued for the following reasons:

(1) The Donnelly Garment Workers' Union has filed motion with the National Labor Relations Board asking that a fair and secret election of the employes be had under the direction of said Board for the purpose of determining the genuine and free will choice of the employes of a labor organization and of a collective bargaining agency for such employes. Such election would determine many if not all of the points of controversy involved in this hearing, and such hearing should not be held until after such election if at all.

(2) The charge filed in this matter does not comply with the regulations of the National Labor Relations Board and especially with Article 2, Section 4 (c) requiring a clear and concise statement of the facts construing the

alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrence, and the complaint based [fol. 518] thereon is insufficient as based on such charge and insufficient in not informing the Donnelly Garment Workers' Union of the charges against it, if any, and of the ultimate facts of evidence which it may be called upon to meet, and which it is entitled to meet before its rights as an organization and in and to its contract with its employers can be validly passed upon.

Wherefore Donnelly Garment Workers' Union moves that the hearing be continued until such election has been held and until the charge and complaint are amended and cured of the defects herein specified.

GOSSETT, ELLIS, DIETRICH & TYLER,
Attorneys for Donnelly Garment Workers' Union.

[fol. 520] (Board's Exhibit No. 1-ZZZ.)

Case No. XVII-C-371.—Date 6/12/39.

(Motion of National Labor Relations Board to amend Complaint.)

Comes now Daniel J. Leary, Attorney, National Labor Relations Board, and moves to amend the complaint in the above matter in the following particulars, to wit:

To strike paragraph eleven (11) of complaint, identified as Board's Exhibit No. 1-RRR, and to insert in lieu thereof the following, to be known as paragraph 11:

"11. Respondent, since July 5, 1935, has interfered with, restrained, coerced, intimidated and threatened its employees to refrain from becoming members or continuing membership in the I. L. G. W. U. and has encouraged, promoted, solicited and compelled membership in the Donnelly Garment Workers' Union by:

(a) the acts set forth in paragraphs five (5) and eight (8), above,

(b) discharging Fern Sigler from its employ on or about April 23, 1937,

(c) statements of Mrs. Elizabeth Reeves and Mrs. Ella Mae Hyde, supervisory employees of respondent, to Sylvia Hull, an employee, on or about April 23, 1937,

[fol. 521] (d) statements of Mrs. Ella Mae Hyde to May Fike, an employee, on or about April 23 and April 26, 1937,

(e) statements of Mrs. James A. Reed, president of respondent, on or about March 18, 1937, to a meeting of employees at the plant of respondent,

(f) statements of Dewey Atchinson, a supervisory employee, regarding the union affiliation of Fern Sigler on or about April 27, 1937,

(g) public statements of James A. Reed on or about October 1936 regarding members of the I. L. G. W. U. and its officials,

(h) causing or permitting rumors to be circulated at its plant in the spring of 1937 that respondent's empioyees would be subjected to violence, intimidation or assault at the hands of the I. L. G. W. U. or its members or agents,

(i) causing, allowing or permitting in the spring of 1937 a loud speaker system in its cafeteria to be used as a medium for spreading propaganda designed to induce membership in the Donnelly Garment Workers' Union and instill fear, hatred, and contempt in the minds of the employees for the I. L. G. W. U.,

(j) chartering busses to transport employees to and from their work, beginning on or about March 18, 1937, and issuing employment cards or passes to employee in order to create fear, hatred, and contempt in the minds of its employees with reference to the I. L. G. W. U.,

(k) keeping members and all meetings of the I. L. G. W. U. in Kansas City, Missouri since July 5, 1935, under surveillance,

(l) inducing and compelling employees to sign a petition professing their loyalty to respondent and permitting

and causing said petition to be circulated in its plant [fol. 522-532] during working hours on or about March 2, 1937,

(m) inducing, allowing, or permitting all instructors and other supervisory and confidential employees to become members of the Donnelly Garment Workers' Union and to be active in its affairs and administration,

(n) discriminating through their instructors in the allotment of work to I. L. G. W. U. members, Sylvia Hull and May Fike, in April 1937,

(o) refusing to recall or assign work when requested to Virginia Stroup in October 1935, Glynn Brooks and Lillian Wales in January 1938, all members of the I. L. G. W. U.,

(p) refusing to recall or assign work when requested to

Ellen Fry	Thelma Owens
Glynn Brooks	Lillian Rutherford
Tillie Shirley	Lou Perkins
Pauline Lutz	Gladys Eldridge
Mamie Tubbesing	Virginia Stroup
Lillian Wales	Frances Reidel
Nora McKee	Loretta Sisson
Ollie Thompson	Minnie Liles
Clara Enloe	Edith Alexander

all members of the I. L. G. W. U. on or about July 23, 1935,

(q) instigating, causing, allowing, and permitting its employees to engage in a violent demonstration on its time and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike, members of the I. L. G. W. U.,

(r) granting a contract on or about May 22, 1937, to the Donnelly Garment Workers' Union, making membership therein a condition of employment, and

(s) various other similar acts and conduct.

By all the acts above, respondent has interfered with, restrained, and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights to form, join, and assist labor organizations and [fol. 533] to bargain collectively through representatives of their own choosing, and did thereby engage and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act."

DANIEL J. LEARY,
Attorney.

[fol. 534] (Board's Exhibit No. 1-AAAA.)

Cas No. XVII-C-371.—Date 6/12/39.

(Motion of Respondent, Donnelly Garment Company, to strike portions of Amended Complaint.)

Comes now the respondent Donnelly Garment Company and moves the Examiner to strike the following portions of paragraph 11 of the Amended Complaint for each and all of the reasons hereinafter set forth, to wit:

1. That subparagraph (c) of said paragraph 11 should be stricken for the reason that it does not set forth the nature of the statements alleged to have been made, or show that said statements have any bearing upon the charge, or constitute any violation of the National Labor Relations Act, and are vague and indefinite.

2. That subparagraph (d) of said paragraph 11 should be stricken for the same reasons.

3. That paragraph (e) of said paragraph 11 should be stricken for the same reasons.

4. That subparagraph (f) of said paragraph 11 should be stricken for the same reasons.

[fol. 535] 5. That subparagraph (g) of said paragraph 11 should be stricken for the same reasons.

6. That subparagraph (h) of said paragraph 11 should be stricken for the reason that it fails to state the names of any persons connected with respondent who it is alleged caused or permitted the alleged rumors to be circulated.

7. That subparagraph (k) of said paragraph 11 should be stricken for the reason that it does not specify the dates of the meetings which are alleged to have been kept under surveillance and the names of the officers or employees of respondent who, it is alleged, did such acts, or set forth the names of the members of the I. L. G. W. U. who were kept under surveillance; and for the further reason that the allegations of said paragraph constitute no charge violating the National Labor Relations Act.

8. That subparagraphs (o) and (p) of said paragraph 11 should be stricken for the reason that said subparagraphs do not state or constitute any charge or acts violating the National Labor Relations Act; and for the further reason that it does not appear therein that any of the persons named therein were employees of respondent; and because said subparagraphs do not state any facts showing that the persons therein named were entitled to be recalled or to have work assigned to them; and for the further reason that said subparagraph (p) is an attempt to replead the matters and charges contained in paragraph 4A of the Amended Complaint which was stricken out of the complaint by order of the Examiner.

[fol. 536] 9. That subparagraph (s) of said paragraph 11 should be stricken for the reason that it is so vague, indefinite and uncertain as not to charge any violation of the National Labor Relations Act and not sufficient to apprize the respondent of what it is charged with.

REED & INGRAHAM,
Attorneys for Respondent.

[fol. 538] (Board's Exhibit No. 1-BBBB.)

Case No. XVII-C-371.—Dated 6/12/39.

(Answer of Respondent, Donnelly Garment Company, to Amended Complaint.)

United States Of America

Before The National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company,
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Now comes Donnelly Garment Company, respondent in the above entitled matter and for answer to the amended complaint states:

1. Respondent reiterates and adopts all the allegations contained in its orginal answer herein, reserving, however, all objections and rights to object to the jurisdiction of the Labor Board and all objections and rights to object to the competency, authority and good faith of the Board in issuing the amended complaint herein and all objections and rights to object to the sufficiency of said amended complaint and to the amended charge upon which said amended complaint is based and to the competency, relevancy and materiality of the allegations contained in said amended complaint.

2. Respondent states that the allegations contained in Paragraph 11 are vague, indefinite and uncertain in that they do not state the facts charging unfair labor practices under Section 8 (1) of the National Labor Relations Act and do not sufficiently advise respondent of the acts charged [fol. 539] to require an answer, and respondent makes the following answer for the reason that under the rules of the National Labor Relations Board unless matters are specifically denied the Board considers the same admitted.

3. Further answering said Amended Complaint and particularly Paragraph 11, respondent denies each and all the allegations therein contained and specifically denies that since July 5, 1935, it has interfered with, restrained, coerced, intimidated and threatened its employees to refrain from becoming members or continuing membership in the ILGWU and/or has encouraged, promoted, solicited and compelled membership in the Donnelly Garment Workers' Union by

(a) the acts set forth in Paragraphs 5 and 8 of the Amended Complaint filed herein;

(b) discharging Fern Sigler from its employ on or about April 23, 1937;

(c) statements of Mrs. Elizabeth Reeves and Mrs. Ella Mae Hyde to Sylvia Hull on or about April 23, 1937;

(d) statements of Mrs. Ella Mae Hyde to May Fike on or about April 23 and April 26, 1937;

(e) statements of Mrs. James A. Reed on or about March 18, 1937, at the plant of respondent;

(f) statements of Dewey Atchison regarding the union affiliation of Fern Sigler on or about April 27, 1937;

(g) public statements of James A. Reed on or about October, 1936 regarding members of the ILGWU and its officers;

(h) causing or permitting rumors to be circulated at its plant in the spring of 1937 that respondent's employees would be subjected to violence, intimidation or assault at [fol. 540] the hands of the ILGWU or its members or agents.

Respondent asserts that the International Union, its officers, agents and members, as a part of their unlawful conspiracy to injure and destroy respondent's business publicly announced that they would use against respondent and its employees the same unlawful acts of force and violence, including the assaulting of women workers with fists and deadly weapons, as they used against other garment manufacturers and their employees in Kansas City, Missouri during the spring of 1937; that the said International Union, its officers, agents and members, caused said threats to be communicated to the employees of respondent for the very purpose of accomplishing the conspiracy and, but for the issuance of injunctive processes by the Federal Court for the Western Division of the Western District of Missouri (referred to in Exhibits A, A1 and C), the said threatened acts would have been per-

petrated against respondent and its employees as a means to compel respondent to violate the rights guaranteed to its employees under the provisions of the National Labor Relations Act.

(i) Causing, allowing or permitting, in the spring of 1937, a loud speaker system in its cafeterias to be used as a medium for spreading propaganda designed to induce membership in the Donnelly Garment Workers' Union and instill fear, hatred and contempt in the minds of the employees for the ILGWU.

(j) Chartering busses to transport employees to and from their work beginning on or about March 18, 1937 and issuing employment cards or passes to employees in order to create fear, hatred and contempt in the minds of its employees with reference to the ILGWU.

[fol. 541] Respondent asserts that it did charter busses to transport employees for the purpose of attempting to protect said employees against the threatened violence of the International Union, its officers, agents and members, as described in Section "B" of this Answer, and Section "D", subsection 11, subparagraph (h). The International Union, its officers, agents and members, at the said time mentioned was engaged in an unlawful conspiracy to injure and destroy respondent's business in violation of the Anti-Trust laws of the United States. Respondent instituted an injunction suit on July 5, 1937, to enjoin the International Union, its officers, agents and members from engaging in the unlawful acts described in Section B of this Answer. That the Federal Court of the United States for the Western Division of the Western District of Missouri has twice found and determined that the International Union, its officers, agents and members, were engaging in the said unlawful conspiracy as aforesaid (Exhibits A, A1 and B), and that respondent has not violated any provisions of the National Labor Relations Act but complied therewith in all respects.

(k) Keeping members and all meetings of the ILGWU in Kansas City, Missouri, since July 5, 1935, under surveillance.

(l) Inducing and compelling employees to sign a petition professing their loyalty to respondent and permitting and causing said petition to be circulated in its plant during working hours on or about March 2, 1937.

Respondent asserts that said petition was circulated by the voluntary action of the employees and without knowledge on the part of respondent on account of the public [fol. 542] announcements of the ILGWU and its officers in the metropolitan press that they were about to institute their campaign to force the unionization of respondent's plant, said announcements being in furtherance of the said conspiracy set forth in Section B of this Answer.

(m) Inducing, allowing, or permitting all instructors or supervisors or confidential employees to become members of the Donnelly Garment Workers' Union and to be active in its affairs and administration.

(n) Discriminating through instructors in the allotment of work to ILGWU members, Sylvia Hull and May Fike, in April, 1937.

(q) Instigating, causing, allowing and permitting its employees to engage in a violent demonstration on its time and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike.

(r) Granting a contract on or about May 22, 1937, to the Donnelly Garment Workers' Union making membership therein a condition of employment.

(s) Various other similar acts and conduct.

Respondent specifically denies paragraph (s) for the reason that under the rules of the Labor Board respondent will be in a position of having admitted allegations unless they are specifically denied. However, respondent asserts that the Labor Board has no jurisdiction to hear or determine any matters construed to be charged in paragraph (s) for the reason that the same are not specifically [fol. 543] set forth and would deprive respondent of its liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

Respondent denies by all or any of the acts set forth in Paragraph 11 it has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights to form, join and assist labor organizations and to bargain collectively through representatives of their own choosing and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said National Labor Relations Act.

Respondent further states that during all of the times mentioned in Paragraph 11 the International Union, its officers, agents and members were engaged in the said unlawful conspiracy against respondent set forth in Section B of this Answer, and the said matters set forth in said Section B of this Answer are by reference made a part specifically of respondent's Answer to Paragraph 11 as though set out in haec verbae.

Respondent is not answering subparagraphs (o) and (p) of Paragraph 11 for the reason that the Examiner has reserved his rulings to strike said paragraphs from the Amended Complaint.

REED & INGRAHAM,
Attorneys for Respondent.

[fol. 545] (Board's Exhibit No. 1-CCCC.)

Case No. XVII-C-371.—Date . . . . .

(Answer of Intervener, Donnelly Garment Workers' Union, to Amended Complaint.)

United States Of America

Before The National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company,
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Comes now Donnelly Garment Workers' Union, Intervener, and for answer to amended complaint states

(1) Intervener adopts all the allegations contained in its original answer herein and reasserts and reiterates them in this answer to the amended complaint.

(2) Denies that the employes of Donnelly Garment Company or Donnelly Garment Sales Company were interfered with, restrained, coerced, intimidated, or threatened by the employer, its officers or agents in connection with refraining from becoming members of the International Ladies' Garment Workers' Union or forming, joining or becoming members of the Donnelly Garment Workers' Union.

(3) Specifically denies that the employer has interfered with, restrained, coerced, intimidated or threatened the employes or any of them in connection with refraining from membership in the International Ladies' Garment Workers' Union or in forming or joining the Donnelly Garment Workers' Union in the manner set forth in or by the acts set forth in sub-paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (q), (r), (s) of new paragraph 11.

(4) Intervener does not at this time answer sub-
[fol. 546] paragraphs (o) and (p) for the reason that the examiner has reserved his ruling on motion to strike said subparagraphs from the amended complaint.

GOSSETT, ELLIS, DIETRICH & TYLER,
Attorneys for Intervener.

[fol. 548] (Board's Exhibit No. 1-FFFF.)

Case No. XVII-C-371.—Date 6/30/39.

(Motion of Respondent, Donnelly Garment Company, to dismiss Complaint, and denial thereof:)

Comes now the above named respondent, Donnelly Garment Company, and moves the Trial Examiner to dismiss the complaint against respondent in its entirety and to

dismiss each and every paragraph and charge therein contained and/or to find and rule that the Board has not made a case against respondent upon said complaint or upon any of the several charges contained therein or adduced any substantial evidence to support said complaint or any of said charges, and moves the Examiner to discharge the respondent; the grounds of this motion being that the Board has introduced no substantial evidence sufficient to support a finding against respondent upon any of the charges in the complaint, but that said evidence is wholly speculative and conjectural and constitutes mere suspicion.

REED & INGRAHAM,
Attorneys for Respondent.

See Rulings of Trial Examiner in the Inter. Report. Motion denied.

J. C. BATTEN,
Trial Examiner.

[fol. 549] (Board's Exhibit No. 1-GGGG.)

Case No. XVII-C-371.—Date 6/30/39.

(Motion of Respondent, Donnelly Garment Company, to dismiss certain Paragraphs of Amended Complaint, and Ruling thereon.)

Comes now the above named respondent Donnelly Garment Company and makes the following separate motions to dismiss and motions to strike in the above entitled matter:

I.

Respondent moves the Trial Examiner to dismiss paragraph 5(a) of the complaint for the reason that the Board has introduced no substantial evidence sufficient to support a finding sustaining said paragraph 5(a).

II.

Respondent moves the Trial Examiner to dismiss paragraph 5(b) of the complaint for the reason that the Board

his introduced no substantial evidence sufficient to sustain the allegations and charges contained in said paragraph 5(b).

[fol. 550]

III.

Respondent moves the Trial Examiner to dismiss paragraph 5(c) of the complaint for the reason that the Board has introduced no substantial evidence sufficient to support a finding sustaining the allegations and charges contained in paragraph 5(c), and for the further reason that the Board has introduced no evidence showing any connection between the Donnelly Loyalty League and the Donnelly Garment Workers' Union, or any evidence that the respondent dominated the Donnelly Loyalty League or through that League dominated the Donnelly Garment Workers' Union, or that the Donnelly Garment Workers' Union succeeded the Loyalty League or was a continuation of the Loyalty League.

IV.

Respondent moves the Trial Examiner to dismiss paragraph 5(d) of the complaint for the reason that the Board has introduced no evidence showing that the closed shop agreement made with the Donnelly Garment Workers' Union was entered into for the purposes alleged in said paragraph 5(d) and for the further reason that the Board has introduced no substantial evidence sufficient to sustain the charges or allegations contained in said paragraph 5(d).

V.

Respondent moves the Trial Examiner to dismiss paragraph 6 of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations and charges contained in said paragraph 6.

VI.

Respondent moves the Trial Examiner to dismiss paragraph 7 of the complaint for the reason that the Board [fol. 551] has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 7.

VII.

Respondent moves the Trial Examiner to dismiss paragraph 8 of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 8.

VIII.

Respondent moves the Trial Examiner to dismiss paragraph 9 of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 9.

IX.

Respondent moves the Trial Examiner to dismiss paragraph 10 of the complaint for the reason that the Board has not introduced substantial evidence to sustain the allegations or charges contained in said paragraph 10.

X.

Respondent moves the Trial Examiner to dismiss paragraph 11(a) of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 11(a).

XI.

Respondent moves the Trial Examiner to dismiss paragraph 11(b) of the complaint for the reasons set forth in the preceding paragraph hereof.

XII.

Respondent moves the Trial Examiner to dismiss paragraph 11(c) of the complaint for the reason that the [fol. 552] Board has failed to introduce any evidence to sustain the allegations or charges set forth in said paragraph 11(c).

XIII.

Respondent moves the Trial Examiner to dismiss paragraph 11(d) of the complaint for the reason that the Board had not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 11(d).

XIV.

Respondent moves the Trial Examiner to dismiss paragraph 11(e) of the complaint for the reason that the evidence introduced by the Board as to the statements of Mrs. James A. Reed do not sustain the allegations or charges contained in said paragraph 11(e).

XV.

Respondent moves the Trial Examiner to dismiss paragraph 11(f) of the complaint for the reason that the Board has introduced no evidence sustaining the allegations or charges contained in said paragraph 11(f).

XVI.

Respondent moves the Trial Examiner to dismiss paragraph 11(g) of the complaint for the reason that the testimony introduced by the Board as to the public statements of James A. Reed failed to sustain the allegations of said paragraph 11(g), and because the Board has introduced no evidence connecting said alleged public statements of James A. Reed with the employees of the Donnelly Garment Company, or shown that such public statements interfered with, restrained, coerced, intimidated, or threatened said employees to refrain from becoming members or continuing membership in the I. L. G. W. U., or encouraged, promoted, solicited or compelled membership in the Donnelly Garment Workers' Union.

[fol. 553]

XVII.

Respondent moves the Trial Examiner to dismiss paragraph 11(i) of the complaint for the reason that the testimony introduced by the Board fails to show that the respondent caused, allowed or permitted the installation of said loud speaker system in its cafeteria or that the same was used for the purposes set forth in said paragraph 11(i), and for the further reason that the Board has failed to introduce any substantial evidence supporting the allegations or charges of said paragraph 11(i).

XVIII.

Respondent moves the Trial Examiner to dismiss paragraph 11(k) of the complaint for the reason that the Board

has introduced no evidence supporting the allegations or charges contained in said paragraph 11(k).

XIV.

Respondent moves the Trial Examiner to dismiss paragraph 11(l) of the complaint for the reason that the Board has introduced no evidence sustaining the allegations or charges contained in said paragraph 11(l).

XV.

Respondent moves the Trial Examiner to dismiss paragraph 11(m) of the complaint for the reasons set forth in the preceding paragraph.

XVI.

Respondent moves the Trial Examiner to dismiss paragraph 11(n) of the complaint for the reasons set forth in the preceding paragraph hereof.

XVII.

Respondent moves the Trial Examiner to dismiss paragraph 11(o) of the complaint for the reason that the Board [fol: 554] has introduced no evidence sustaining the allegations of said paragraph 11(o) as to Glynn Brooks.

XVIII.

Respondent moves the Trial Examiner to dismiss paragraph 11(p) of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 11(p) as to Ellen Fry, Glynn Brooks and Mamie Tubbesing, or any of them.

XIX.

Respondent moves the Trial Examiner to dismiss paragraph 11(q) of the complaint for the reason that the Board has not introduced any substantial evidence sufficient to sustain the allegations or charges contained in said paragraph 11(q).

XX.

Respondent moves the Trial Examiner to dismiss paragraph 11(r) of the complaint for the reason that the evi-

dence introduced by the Board as to the provisions of the contract of May 22, 1937, does not show that same were made or included for any unlawful purpose or for any of the purposes charged in paragraph 11(r) of the complaint.

XXI.

Respondent moves the Trial Examiner to dismiss paragraph 12 of the complaint for the reason that the Board has not introduced any substantial evidence sustaining the allegations or charges contained in said paragraph 12.

XXII.

Respondent moves the trial examiner to dismiss paragraph 13 of the complaint for the reason that the Board has not introduced any substantial evidence to support the allegations or charges contained in said paragraph 13.

[fol. 555]

XXIII.

Respondent moves the Trial Examiner to dismiss paragraph 14 of the complaint for the reason that the Board has not introduced any substantial evidence to support the allegations or charges contained in said paragraph 14.

XXIV.

Respondent moves the Trial Examiner to dismiss paragraph 15 of the complaint for the reason that the Board has not introduced any substantial evidence to support the allegations or charges contained in said paragraph 15.

Motion To Strike.

Respondent moves the Trial Examiner to strike all evidence introduced by the Board upon each of the paragraphs of the complaint which are dismissed by the Trial Examiner.

REED & INGRAHAM,
Attorneys for Respondent.

See Rulings of the Trial Examiner in Inter. Report.

J. S. BATTEN,
Trial Examiner.

[fol. 557] (Board's Exhibit No. 1-KKKK.)

Case No. XVII-C-371.—Date 7/13/39.

Amended Complaint.

United States of America

Before the National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers Union, Party to the Contract.

Case No. XVII-C-371.

It having been charged by the International Ladies' Garment Workers' Union, hereinafter referred to as the I. L. G. W. U., that Donnelly Garment Company, Kansas City, Missouri, hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act approved July 5, 1935, (49 Stat. 449) the National Labor Relations Board by the Acting Regional Director for the Seventeenth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations—Series 1, as amended—Article IV, Section 1, hereby issues its amended complaint and alleges the following:

1. Respondent is and has been since 1919 a corporation organized under and existing by virtue of the laws of the State of Missouri, having its factory and principal place of business at 1820 Walnut Street, Kansas City, Missouri, and is now and has continuously been engaged in the business of designing, manufacturing, selling and distributing cotton, wool, silk, and rayon low and medium-priced garments for women.

[fol. 558] 2. Respondent, in the course and conduct of its business, causes and has continuously caused substantially all of the materials used in the manufacture of its gar-

ments to be purchased and transported from and through states of the United States, other than the State of Missouri, to the Kansas City, Missouri factory of respondent, and causes and has continuously caused a substantial portion of the garments designed, manufactured, sold, and distributed, to be sold, transported, and distributed from the Kansas City, Missouri factory into and through states of the United States other than the State of Missouri to customers in other states.

3. International Ladies' Garment Workers' Union is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

4. Donnelly Garment Workers Union, and its predecessor, Donnelly Loyalty League, are labor organizations within the meaning of Section 2(5) of said Act.

5. Respondent, while engaged at its Kansas City, Missouri plant, as aforesaid, on or about April 27, 1937, and down to and including the date of the filing of this amended complaint, has dominated and interfered in the formation and administration of a labor organization among its employees, known as "Donnelly Garment Workers Union," and has given financial aid and other support to said organization, in that respondent, among other things:

(a) Did encourage, allow, and permit supervisory and other employees acting in the interest of respondent to organize, promote, and encourage membership into the Donnelly Garment Workers' Union particularly in the months of March, April, and May 1937 and thereafter, on respondent's time and on respondent's property and at respondent's pay and at its expense.

[fol. 559] (b) Did, through its officers and agents acting in the interest of respondent, furnish financial and other support to Donnelly Garment Workers Union, in that supervisory and other employees were allowed to solicit membership, hold meetings and engage in concerted activities in behalf of Donnelly Garment Workers Union during working hours and on company property without

loss of pay or other penalty and by various other means contributed financial aid and other support to said Donnelly Garment Workers Union.

(c) Did, through its officers and agents acting in the interest of respondent, form the Donnelly Loyalty League on or about February 12, 1935, for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and said officers and agents of respondent continued to dominate the administration of the Donnelly Loyalty League until on or about April 27, 1937, at which time said Donnelly Loyalty League at a meeting on respondent's property was succeeded by the Donnelly Garment Workers Union created to be a continuation of the Donnelly Loyalty League and to effect and carry out the policies of its predecessor and to be subservient and amenable to the wishes of respondent.

(d) Did enter into a closed-shop agreement with Donnelly Garment Workers Union on or about May 22, 1937, creating as a condition of employment, membership in said Donnelly Garment Workers Union, for the purpose of assisting said Union, compelling membership therein, depriving its employees of their rights guaranteed under the National Labor Relations Act, and to further manifest its approval of and to lend support to said Union.

6. Respondent, by the acts set forth in paragraph five (5), above, and by other acts, has dominated and interfered with the formation and administration of and has [fol. 560] contributed financial aid and other support to labor organizations and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(2) of said Act.

7. Respondent, by the acts set forth in paragraph five (5), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of said Act and has thereby engaged in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

8. Respondent, by its officers and agents at its Kansas City, Missouri factory, while engaged in the operations described in paragraphs one (1) and two (2), above, did

discharge from its employment Sylvia Hull, on or about April 23, 1937, and May Fike, on or about April 26, 1937, for the reasons that they had joined and assisted the I. L. G. W. U. and engaged in concerted activities in its behalf, and thus discouraged membership in the I. L. G. W. U.

9. Respondent, by its discharge of Sylvia Hull and May Fike, and by its refusal to reinstate said employees for the reasons set forth in paragraph eight (8), above, has thereby discriminated and is thereby discriminating in regard to the hire and tenure of employment of said employees and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8(3) of said Act.

10. Respondent, by the acts set forth in paragraph eight (8), above, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

11. Respondent, since July 5, 1935, has interfered with, restrained, coerced, intimidated, and threatened its employees to refrain from becoming members or continuing [fol. 561] membership in the I. L. G. W. U.; and has encouraged, promoted, solicited, and compelled membership in the Donnelly Garment Workers Union by:

(a) the acts set forth in paragraphs five (5) and eight (8), above,

(b) discharging Fern Sigler from its employ on or about April 23, 1937,

(c) statements of Mrs. Elizabeth Reeves and Mrs. Ella Mae Hyde, supervisory employees of respondent, to Sylvia Hull, an employee, on or about April 23, 1937,

(d) statements of Mrs. Ella Mae Hyde to May Fike, an employee, on or about April 23 and April 26, 1937,

(e) statements of Mrs. James A. Reed, president of respondent, on or about March 18, 1937, to a meeting of employees at the plant of respondent,

(f) statements of Dewey Atchinson, a supervisory employee, regarding the union affiliation of Fern Sigler on or about April 27, 1937,

(g) public statements of James A. Reed on or about October 1936 regarding members of the I. L. G. W. U. and its officials,

(g-1) statement of Alex Green in March 1937 to Mrs. Elsa Graham Greenhaw regarding the International Ladies' Garment Workers' Union,

(i) causing, allowing or permitting in the spring of 1937 a loud speaker system in its cafeteria to be used as a medium for spreading propaganda designed to induce membership in the Donnelly Garment Workers Union and instill fear, hatred, and contempt in the minds of the employees for the I. L. G. W. U.,

(k) keeping members and all meetings of the I. L. G. W. U. in Kansas City, Missouri since July 5, 1935, under surveillance,

[fol. 562] (l) inducing and compelling employees to sign a petition professing their loyalty to respondent and permitting and causing said petition to be circulated in its plant during working hours on or about March 2, 1937,

(m) inducing, allowing, or permitting all instructors and other supervisory and confidential employees to become members of the Donnelly Garment Workers Union and to be active in its affairs and administration,

(n) discriminating through their instructors in the allotment of work to I. L. G. W. U. members, Sylvia Hull and May Fike, in April 1937,

(o) refusing to recall or assign work when requested to Glynn Brooks in January 1938, a member of the I. L. G. W. U.,

(p) refusing to recall or assign work when requested to Ellen Fry, Glynn Brooks and Mamie Tubbesing, all members of the I. L. G. W. U., on or about July 23, 1935,

(q) instigating, causing, allowing, and permitting its employees to engage in a violent demonstration on its time

and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike, members of the I. L. G. W. U.,

(r) granting a contract on or about May 22, 1937, to the Donnelly Garment Workers Union, making membership therein a condition of employment, and

(s) various other similar acts and conduct.

By all the acts above, respondent has interfered with, restrained, and coerced and is interfering with, restraining, and coercing its employees in the exercise of their rights to form, join, and assist labor organizations and to bargain collectively through representatives of their own [fol. 563] choosing, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said Act.

12. That the aforementioned closed-shop contract is a direct and proximate result of the acts and conduct of respondent set forth in paragraphs five (5) to eleven (11), inclusive, and constitutes, culminates, and perpetuates continuing intimidation, interference, restraint, and coercion by respondent in violation of Section 8 (1), (2), and (3) of said Act and is, therefore, invalid, void, and of no effect.

13. That the aforementioned closed-shop contract was entered into with the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was not the representative of the respondent's employees within the meaning of Section 8 (3) and Section 9 (a) of the National Labor Relations Act, and at a time when the Donnelly Garment Workers Union was a labor organization established, maintained, and assisted by actions defined in the National Labor Relations Act as unfair labor practices and that said closed-shop contract is, therefore, invalid, void, and of no effect.

14. That, by entering into the said closed-shop contract, respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act and did thereby engage in and is thereby engaging in unfair labor practices within

the meaning of Section 8 (1) of said National Labor Relations Act and that said closed-shop contract is, therefore, invalid, void, and of no effect.

15. That by entering into the closed-shop contract aforesaid, respondent did discriminate in regard to hire and tenure of employment and terms and conditions of [fol. 564] employment and did thereby discourage membership in the I. L. G. W. U. and did thereby encourage membership in the Donnelly Garment Workers Union at a time when the Donnelly Garment Workers Union was established, maintained, and assisted by respondent, and respondent did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (3) of the National Labor Relations Act and, therefore, the said closed-shop contract is invalid, void, and of no effect.

16. The activities of respondent by the acts set forth in paragraphs five (5) to fifteen (15), inclusive, above, occurring in connection with the operations of the respondent described in paragraphs one (1) and two (2), above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

17. The aforesaid acts of respondent constitute unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of said Act.

Wherefore, the National Labor Relations Board issues its amended complaint against the Donnelly Garment Company, respondent herein.

(Signature omitted.)

[fol. 565] (Board's Exhibit No. 1-LLLL.)

Case No. XVII-C-371.—Date 7/13/39.

(Answer of Respondent, Donnelly Garment Company, to Amended Complaint.)

United States of America

Before the National Labor Relations Board,
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Now comes Donnelly Garment Company, respondent in the above entitled matter and for answer to the amended complaint filed herein on July 12, 1939, marked Board's Exhibit 1-KKKK, states:

1. Respondent reiterates and adopts all the allegations contained in its original answer herein, reserving, however, all objections and rights to object to the jurisdiction of the Labor Board and all objections and rights to object to the competency, authority and good faith of the Board in issuing the amended complaint herein and all objections and rights to object to the sufficiency of said amended complaint and to the amended charge upon which said amended complaint is based and to the competency, relevancy and materiality of the allegations contained in said amended complaint and without waiving any of its motions to dismiss or strike.

2. Respondent states that the allegations contained in Paragraph 11 are vague, indefinite and uncertain in that they do not state the facts charging unfair labor practices under Section 8 (1) of the National Labor Relations Act [fol. 566] and do not sufficiently advise respondent of the acts charged to require an answer, and respondent makes the following answer for the reason that under the rules of the National Labor Relations Board unless matters are specifically denied the Board considers the same admitted.

3. Further answering said Amended Complaint and particularly Paragraph 11, respondent denies each and all the allegations therein contained and specifically denies that since July 5, 1935, it has interfered with, restrained, coerced, intimidated or threatened its employees to refrain from becoming members or continuing membership in the

ILGWU and/or has encouraged, promoted, solicited and compelled membership in the Donnelly Garment Workers' Union by

(a) the acts set forth in Paragraphs 5 and 8 of the said Amended Complaint filed herein;

(b) discharging Fern Sigler from its employ on or about April 23, 1937;

(c) statements of Mrs. Elizabeth Reeves and Mrs. Ella Mae Hyde to Sylvia Hull on or about April 23, 1937;

(d) statements of Mrs. Ella Mae Hyde to May Fike on or about April 23 and April 26, 1937;

(e) statements of Mrs. James A. Reed on or about March 18, 1937, at the plant of respondent;

(f) statements of Dewey Atchison regarding the union affiliation of Fern Sigler on or about April 27, 1937; respondent denies that said Dewey Atchison was on or about April 27, 1937, a supervisory employee.

[fol. 567] (g) public statements of James A. Reed on or about October, 1936 regarding members of the ILGWU and its officials;

(g-1) alleged statement of Alex Green in March, 1937, to Mrs. Elsa Graham Greenhaw regarding the International Ladies' Garment Workers' Union.

Further answering said Amended Complaint and particularly Paragraph 11 (g-1), respondent states that said alleged statement of Alex Green in March, 1937, to Mrs. Elsa Graham Greenhaw regarding the International Ladies' Garment Workers' Union was as follows, to wit: (page 1624-25, testimony of Elsa Graham Greenhaw)

"Q. Did you have occasion to talk with Mr. Green some time in March or April, 1937?

A. Yes, I did.

Q. Do you remember any particular conversation that you had with him?

A. We had a short discussion of the strike that was being held at Gordon's at that time.

Q. What, if anything, was said by Mr. Green at that time with regard to the strike at Gordon's?

A. Well, I merely said something about the strike. He said he would advise me not to go near there because it was dangerous, that the Union people had weapons of various kinds on them and were injuring anyone who came near, and the whole thing was being run by communists."

Respondent, for further answer to said alleged charge, states that same shows on its face that it does not prove or tend to prove any issue in this case or any charge in the Complaint against respondent.

Respondent further states that Meyer Perlstein, Southwest Regional Director of the ILGWU was in charge of [fol. 568] the strikes at the Gernes, Gordon and Missouri strikes referred to; that Meyer Perlstein caused members of his Union to take possession of the entrances to the building in which said plants are located and engage in a sitdown strike, thereby preventing ingress and egress to the plants of said companies; that said Meyer Perlstein caused acts of violence on the part of the members of his Union to be engaged in against any employees of said companies who sought to go to work, including the tearing of their clothes, cutting them with knives and razor blades, striking them with other weapons; that said Meyer Perlstein has caused similar acts of violence to be engaged in by his agents in the cities of Memphis, Tennessee, and Dallas, Texas, and that in said cities he has publicly stated that strikes can only be won with violence and other remarks calculated to encourage revolution in the country; that all of said activities and remarks are un-American and intended to incite class hatred and destroy property rights contrary to American principle of government and in accordance with the doctrines of communism; that said activities above referred to by Meyer Perlstein were ratified and approved by the General Executive Board of the ILGWU and its president David Dubinsky.

(i) causing, allowing or permitting, in the spring of 1937, a loud speaker system in its cafeteria to be used as a medium for spreading propaganda designed to induce membership in the Donnelly Garment Workers' Union and instill fear, hatred and contempt in the minds of the employees for the ILGWU.

(k) keeping members and all meetings of the ILGWU in Kansas City, Missouri, since July 5, 1935, under surveillance.

[fol. 569] (l) Inducing and compelling employees to sign a petition professing their loyalty to respondent and permitting and causing said petition to be circulated in its plant during working hours on or about March 2, 1937.

Respondent asserts that said petition was circulated by the voluntary action of the employees and without knowledge on the part of respondent on account of the public announcements of the ILGWU and its officers in the metropolitan press that they were about to institute their campaign to force the unionization of respondent's plant, said announcements being in furtherance of the said conspiracy set forth in Section B of this Answer.

(m) Inducing, allowing, or permitting all instructors or supervisors or confidential employees to become members of the Donnelly Garment Workers' Union and to be active in its affairs and administration.

Respondent denies that instructors employed by it are supervisory or confidential employees.

(n) Discriminating through instructors in the allotment of work to ILGWU members, Sylvia Hull and May Fike, in April, 1937.

(o) Refusing to recall or assign work when requested to Glynn Brocks in January, 1938, a member of the I. L. G. W. U.

Further answering said subparagraph (o), respondent states that Glynn Brooks was not an employe of respondent on July 5, 1935, or at any time since the enactment of the National Labor Relations Act and that respondent was not in January, 1938, or at any other time since the enactment of the National Labor Relations Act, under any obligation to recall or assign work to said Glynn Brooks.

[fol. 570] (p) Refusing to recall or assign work when requested to Ellen Fry, Glynn Brooks and Mamie Tubbesing, members of the I. L. G. W. U., on or about July 23, 1935.

Further answering said subparagraph 11 (p), respondent states that neither of said Ellen Fry, Glynn Brooks, Mamie Tubbesing was an employe of respondent on July 5, 1935, or at any time since the enactment of the National Labor Relations Act and that respondent was not on July 23, 1935, or at any other time since the enactment of the National Labor Relations Act, under any obligation to recall or assign work to said Ellen Fry, Glynn Brooks, Mamie Tubbesing, or either of them.

(q) Instigating, causing, allowing and permitting its employees to engage in a violent demonstration on its time and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike.

(r) Granting a contract on or about May 22, 1937, to the Donnelly Garment Workers' Union making membership therein a condition of employment.

(s) Various other similar acts and conduct.

Respondent specifically denies paragraph (s) for the reason that under the rules of the Labor Board respondent will be in a position of having admitted allegations unless they are specifically denied. However, respondent asserts that the Labor Board has no jurisdiction to hear or determine any matters construed to be charged in paragraph (s) for the reason that the same are not specifically set forth and would deprive respondent of its liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 571] Respondent denies by all or any of the acts set forth in Paragraph 11 it has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of their rights to form, join and assist labor organizations and to bargain collectively through representatives of their own choosing and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (1) of said National Labor Relations Act.

Respondent further states that during all of the times mentioned in Paragraph 11 the International Union, its officers, agents and members were engaged in the said unlawful conspiracy against respondent set forth in Section

B of this Answer, and the said matters set forth in said Section B of this Answer are by reference made a part specifically of respondent's Answer to Paragraph 11 as though set out in haec verbae.

Wherefore respondent prays that said Amended Complaint be dismissed and that respondent be exonerated of the charges therein contained.

DONNELLY GARMENT COMPANY
By R. J. Ingraham,
Secretary.

REED & INGRAHAM,
Attorneys for Respondent.

[fol. 572] State of Missouri,
County of Jackson—ss.:

Robert J. Ingraham of lawful age, being first duly sworn, upon his oath states:

That he is Secretary of the Donnelly Garment Company, respondent herein, and he makes this affidavit for and on behalf of said respondent being legally authorized so to do.

Affiant further states that he has read the foregoing Answer, is familiar with the matters and facts therein stated, and that said allegations and facts are true to the best of his knowledge, information and belief.

ROBERT J. INGRAHAM.

Subscribed and sworn to before me this 13th day of July, 1939.

My commission expires July 14, 1941.

(Notarial Seal)

LAURA BAKER,
Notary Public in and for
Jackson County, Missouri.

[fol. 574] (Board's Exhibit No. 1-MMMM.)

Case No. XVII-C-371. — Date 7/15/39.

(Answer of Intervener, Donnelly Garment Workers' Union, to Amended Complaint.)

The United States of America

Before The National Labor Relations Board
17th Region.

In The Matter Of

Donnelly Garment Company, and
International Ladies Garment Workers' Union, and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Now comes Donnelly Garment Workers' Union, intervener in the above entitled matter, and for answer to the amended complaint filed by the Board herein on July 12, 1939, and marked "Board's Exhibit 1-KKKK" states:

(1) Intervener reiterates and adopts all allegations contained in its original answer herein and reasserts and reiterates them in this answer to the amended complaint.

(2) Denied that the employes of the Donnelly Garment Company were interfered with, restrained, coerced, intimidated or threatened by the employer, Donnelly Garment Company, or its officers or agents in connection with refraining from becoming members of the International Ladies' Garment Workers' Union, or informing, joining or becoming members of the Donnelly Garment Workers' Union.

(3) Specifically denies that Donnelly Garment Company or its officers or agents have interfered with, restrained, coerced, intimidated or threatened their employes or any of them in connection with refraining from becoming members of the International Ladies Garment Workers' Union, or informing or joining the Donnelly Garment Workers' Union in the manner set forth in, or by the acts set forth in, sub-paragraphs, a, b, c, d, e, f, g, (g1), i, [fol. 575] k, l, m, n, o, p, q and r of paragraph 11 of said amended complaint.

(4) Denies that the closed shop contract between intervener and respondent is a result of or constitutes interference, restraint or coercion by respondent of intervener.

(5) Denies that aforementioned closed shop contract was entered into at a time when intervener was not the representative of respondent's employes within the meaning of Section 8 (3) and Section 9 (a) of the National Labor Relations Act, or at a time when intervener was established, maintained or assisted by actions defined in the National Labor Relations Act as unfair labor practices and that respondent did interfere, restrain or coerce its employes by means of said closed shop contract.

(6) Specifically asserts and alleged that the Donnelly Garment Workers' Union is a valid labor organization, and at all times has been a valid labor organization as defined by the National Labor Relations Act, and is entitled to the protection of said Act, and asserts that its contracts with its employer are valid contracts, and as such entitled to the protection of this Board.

GOSSETT, ELLIS, DIETRICH & TYLER.

[fol. 576] (Board's Exhibit No. 1-TTTT.)

Case No. XVII-C-371. — Date 7/15/39.

(Motion of National Labor Relations Board to amend the Amended Complaint, and denial thereof.)

Comes now Daniel J. Leary, Attorney, Seventeenth Region, National Labor Relations Board, and moves to amend the amended complaint (Board's Exhibit 1-KKK) by inserting after paragraph 11, subsection (o) to be known as paragraph 11, subsection (p), the following, to-wit:

"(p) refusing to recall or assign work when requested to Ellen Fry, Glynn Brooks, and Mamie Tubessing, all members of the I.L.G.W.U., on or about July 23, 1935."

DANIEL J. LEARY,
Attorney 17th Region N.L.R.B.

See Rulings of Trial Examiner Board's Exhibit 1-SSSS. Motion denied.

J. C. BATTEN,
Trial Examiner.

[fol. 577] (Motion of Respondent, Donnelly Garment Company, to clarify Rulings of Trial Examiner.)

United States of America

Before The National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

(Pencil signature J. C. B.)

Comes now the above named respondent Donnelly Garment Company and moves the Trial Examiner in the above entitled proceeding to clarify his rulings in said proceeding, hereinafter referred to, for the reason that such rulings are vague and indefinite and do not specify the portions of the evidence or of the offers of proof which are excluded or refused by the ruling and because the rulings in such form do not apprize the respondent of what evidence is received and what evidence or offers of proof are rejected. Said rulings in such form are unfair and prejudicial to respondent and deny respondent due process of law. The rulings referred to are the following:

Rulings in Board's Exhibit 1-SSSS.

1. In subparagraph (g) of Exhibit 1-SSSS, the Examiner's ruling refuses respondent's offer of proof (Exhibit 1-JJJJ) "insofar as the offer contemplates matters barred by the ruling" of the Examiner.

Respondent asks that this ruling be clarified so as to [fol. 578] show what parts of the offer of proof are refused and what parts are accepted.

2. Respondent makes the same motion and request as to the ruling contained in subparagraph (h) of Exhibit 1-SSSS.

3. Respondent makes the same motion and request as to the ruling contained in subparagraph (i) of Exhibit 1-SSSS.

4. In subparagraph (j) the Examiner's ruling overrules the objections of the Board to NRA-JMC Exhibit 3, but the ruling further specifies: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects."

Respondent asks that this ruling be clarified so as to show what parts of the evidence contained in NRA-JMC Exhibit 3 are rejected and also so as to show upon what subjects any of said testimony is rejected.

5. Respondent makes the same motion and request as to the ruling contained in subparagraph (k) of Exhibit 1-SSSS.

6. Respondent makes the same motion and request as to the rulings contained in subparagraph (l) of Exhibit 1-SSSS.

7. Respondent makes the same motion and request as to the ruling contained in subparagraph (m) of Exhibit 1-SSSS.

Other Similar Rulings.

8. On pages 1861-62 of the transcript, the Examiner overruled the objections of respondent to NRA-JMC Exhibits 1-A to 1-BBBB but stated that "the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore [fol. 579] made with reference to the introduction of evidence upon certain objections (subjects)".

Respondent makes the same motion and request as to this ruling of the Trial Examiner.

9. Respondent makes the same motion and request as to the similar ruling made by the Examiner at page 1864 of the transcript with reference to NRA-JMC Exhibits 5-A to 5-GG.

10. Respondent makes the same motion and request as to the similar ruling made by the Trial Examiner on page

1865 of the transcript as to NRA-JMC Exhibits 9-A to 9-CC.

11. Respondent makes the same motion and request as to the similar ruling of the Trial Examiner on page 1866 of the transcript as to NRA-JMC Exhibits 13-A to 13-R.

12. Respondent makes the same motion and request as to all other similar rulings of the Trial Examiner contained in the record.

REED & INGRAHAM,
Attorneys for Respondent.

[fol. 580] (Motion of Intervener, Donnelly Garment Workers' Union, to Clarify Rulings of Trial Examiner.)

Case No. XVII-C-371.

Comes now the Intervener, Donnelly Garment Workers' Union, and joins in the motion of Respondent to clarify rulings of the trial examiner. Intervener moves the trial examiner to clarify rulings hereinafter referred to for the reason that such rulings are vague and indefinite and do not specify the portions of the evidence or of the offers of proof which are excluded or refused by the ruling, and because the rulings in such form do not apprise the intervener what evidence is received and what evidence or offers of proof are rejected. Said rulings in such form make it uncertain and impossible to determine the subjects and the evidence considered by the trial examiner in reaching his decision, and are unfair and prejudicial to intervener, and deny intervener due process of law. The rulings referred to are the following:

Rulings in Board's Exhibit 1-SSSS.

1. In Subparagraph (g) of Exhibit 1-SSSS, the Examiner's ruling refuses respondent's offer of proof (Exhibit 1-JJJJ) "insofar as the offer contemplates matters barred [fol. 581] by the ruling" of the Examiner.

Intervener asks that this ruling be clarified so as to show what parts of the offer of proof are refused and what parts are accepted.

2. Intervener makes the same motion and request as to the ruling contained in subparagraph (h) of Exhibit 1-SSSS.

3. Intervener makes the same motion and request as to the ruling contained in subparagraph (i) of Exhibit 1-SSSS.

4. In subparagraph (j) the Examiner's ruling overrules the objections of the Board to NRA-JMC Exhibit 3, but the ruling further specifies: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects".

Intervener asks that this ruling be clarified so as to show what parts of the evidence contained in NRA-JMC Exhibit 3 are rejected and also so as to show upon what subjects any of said testimony is rejected.

5. Intervener makes the same motion and request as to the ruling contained in subparagraph (k) of Exhibit 1-SSSS.

6. Intervener makes the same motion and request as to the rulings contained in subparagraph (l) of Exhibit 1-SSSS.

7. Intervener makes the same motion and request as to the ruling contained in subparagraph (m) of Exhibit 1-SSSS.

Other Similar Rulings.

8. On page 1861-62 of the transcript, the Examiner overruled the objections of intervener to NRA-JMC Exhibits 1-A to 1-BBBB but stated that "the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections (subjects)".

[fol. 582] Intervener makes the same motion and request as to this ruling of the Trial Examiner.

9. Intervener makes the same motion and request as to the similar ruling made by the Examiner at page 1864 of the transcript with reference to NRA-JMC Exhibits 5-A to 5-GG.

10. Intervener makes the same motion and request as to the similar ruling made by the Trial Examiner on page 1865 of the transcript, as to NRA-JMC Exhibits 9-A to 9-CC.

11. Intervener makes the same motion and request as to the similar ruling of the Trial Examiner on page 1866 of the transcript as to NRA-JMC Exhibits 13-A to 13-R.

12. Intervener makes the same motion and request as to all other similar rulings of the Trial Examiner contained in the record.

FRANK E. TYLER, LUCIAN LANE,
THOMAS J. PATTEN,
Attorneys for Intervener.

[fol. 583] (Rulings of Trial Examiner Denying Motion of Respondent, Donnelly Garment Company, to Clarify his Rulings.)

United States of America

Before the National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers Union, Party to the Contract.

Case No. XVII-C-371.

The respondent having moved to clarify certain rulings of the Trial Examiner (see Board Exhibit 1-ssss), and the undersigned having duly considered the same,

The motion to clarify is hereby denied.

Dated: October 2, 1939.

(Seal)

JAMES C. BATTEN,
Trial Examiner.

[fol. 584] (Motion of Respondent, Donnelly Garment Company, for Leave to File Certain Documents, etc.)

United States of America

Before the National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company, Donnelly Garment Sales Company

and

International Ladies Garment Workers' Union.

Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Now comes respondent Donnelly Garment Company and states:

That part C of its Answer filed in the above matter contained a petition for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act. That the Examiner, on or about June 8, 1939, ruled that said petition be not received or considered in the instant proceedings, and stated that the same should be made direct to the National Labor Relations Board.

Thereafter, on or about September 6, 1939, respondent filed with the National Labor Relations Board a petition for investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act. That on or about September 11, 1939, said petition and copies thereof was returned to respondent with a letter dated September 8, 1939, signed by Hugh E. Sperry, Acting Regional Director for the 17th Region of the National Labor Relations Board, advising that the said petition did not meet the requirements of the Board and the same was not docketed. A Copy of said letter and said petition so filed with the said Acting Regional Director of the 17th [fol. 585] Region of the National Labor Relations Board are as follows, to-wit:

"NLRB No. 89a

United States of America

Before the National Labor Relations Board
17 Region.

"In the matter of

Donnelly Garment Company,
Donnelly Garment Sales Company, Petitioners
and
Donnelly Garment Workers' Union,
International Ladies' Garment Workers' Union.

Case No. ..... Re .....

Petition by Employer for Investigation and Certification of Representatives Pursuant to Section 9 (c) of the National Labor Relations Act.

Name of employers Donnelly Garment Company, Donnelly Garment Sales Company.

Address 1828 Walnut Street, Kansas City, Missouri.

General nature of business manufacture and sales of ladies' house dresses and wash frocks.

Approximate total number of employees twelve hundred. Description of the bargaining unit or units which the competing labor organizations described below claim appropriate.

All employees of said Companies with the exception of officers, executives, supervisory employees and employees with authority to hire, discipline or discharge.

Approximate number of employees in such unit or units Twelve hundred.

Name or names and addresses of all known individuals or labor organizations which are disputing concerning the true representatives of petitioners' employees for the purpose of collective bargaining:

Donnelly Garment Workers' Union, K. C., Mo.; International Ladies' Garment Workers' Union, N. Y. C.

The undersigned hereby alleges that a question or controversy has arisen concerning the representation of

employees in that two or more of the labor organizations named above have presented to the undersigned employer conflicting claims concerning the true representatives of the majority of petitioners' employees for the purpose of collective bargaining.

Any other relevant facts.

The undersigned further alleges that said question concerning representation is a question affecting commerce within the meaning of said Act.

[fol. 586] "The undersigned requests that pursuant to section 9 (c) of the National Labor Relations Act, the National Labor Relations Board investigate such controversy and certify to the parties the name or names of the representatives that have been designated or selected by said employees.

"Subscribed and sworn to before me this 6th day of September, 1939, at Kansas City, Missouri.

(Signed) ANNABEL SHADDINGER,
Notary Public in and for Jackson County, Mo.

My commission expires Dec. 1, 1940.

Signature of employer filing the petition. (If filed by a corporation, give the name and official position of the person acting for the corporation.)

DONNELLY GARMENT COMPANY,
By R. J. Ingraham, Secretary.

DONNELLY GARMENT SALES COMPANY,
By R. J. Ingraham, Secretary"

"National Labor Relations Board
Seventeenth Region
Scarritt Building
Kansas City, Missouri
September 8, 1939

"Donnelly Garment Company and
Donnelly Garment Sales Company
1828 Walnut Street
Kansas City, Missouri

Attention: R. J. Ingraham, Secretary.

Dear Sir:

"We are returning herewith the original and three copies of a petition which you forwarded to this office under date of September 6, 1939, for the reason that this petition is deficient in form and does not meet the requirements of the Rules and Regulations of the Board. This petition has, accordingly, not been docketed.

"You will note that in Article III, Section 2 (b), Paragraph (5) of the Board's regulations it is required that a petition, when filed by an employer, shall contain a brief statement setting forth that a question or controversy affecting commerce has arisen concerning the representation of employees in that two or more such labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in the unit or units set forth in Paragraph (3) of Article III, Section 2(b). I wish also to direct your attention to the following language of Article III, Section 3, in which it is stated, '. . . Provided that the Board shall not direct an [ol. 587] investigation on a petition filed by an employer unless it appears to the Board that two or more labor organizations have presented to the employer conflicting claims that each represents a majority of the employees in the bargaining unit or units claimed to be appropriate . . .'

"If you should wish to secure a copy of the Rules and Regulations of the Board, Series 2, you may do so by writing to the Superintendent of Documents, Washington, D. C.

"If the petition can be sworn to in accordance with the requirements of Article III of said Rules and Regulations and is again submitted to us, we shall be pleased to docket it and to make such investigation and take such action as appears appropriate.

"We enclose herewith an original and five copies of the employer petition form.

Very truly yours,

Encls. HUGH E. SPERRY,
Acting Regional Director."

Wherefore, respondent moves the Examiner for leave to file herein and make a part of the record of this case said original petition so filed with the National Labor Relations Board on September 6, 1939, and a photostatic copy of said letter addressed to the Donnelly Garment Company and Donnelly Garment Sales Company, dated September 8, 1939, and signed by Hugh E. Sperry, Acting Regional Director for the Seventeenth Region of the National Labor Relations Board.

Dated this 11th day of September, 1939.

REED and INGRAHAM,
Attorneys for Respondent.

[fol. 588] (Order denying Motion of Respondent, Donnelly Garment Company, for leave to file certain Documents, etc.)

United States Of America

Before The National Labor Relations Board
Seventeenth Region

Case No. XVII-C-371

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers Union, Party to the Contract

The respondent having on or about September 6, 1939, filed with the National Labor Relations Board (Regional Office, Kansas City, Missouri) a petition for investigation and certification of representatives pursuant to Section 9 (c) of the Act, and the petition having been by letter dated September 11, 1939 returned to respondent by the

Regional Director, the respondent then by written motion moved the undersigned for leave to file and make a part of the record in the above-entitled case the original petition and the photostat copy of the letter of September 11, 1939.

The motion for leave to file and make certain documents a part of the record is hereby denied.

Dated: October 2, 1939.

JAMES C. BATTEN,
Trial Examiner.

(Seal)

[fol. 589] (Board's Exhibit No. 1-BBBBB.)

Dated July 6, 1942.

(Order designating James C. Batten as Trial Examiner in further hearing of case, etc.)

United States of America

National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designating Trial Examiner in the Matter of Donnelly Garment Company and International Ladies' Garment Workers' Union and Donnelly Garment Workers Union, Party to the Contract. Case No. C-1382.

Seal
National Labor
Relations Board

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 3rd day of July, A. D. 1942, at Washington, D. C.

BEATRICE M. STERN,
Executive Secretary.

[fol. 590] Order Designating Trial Examiner

United States Of America

Before The National Labor Relations Board

Case No. C-1382

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers Union, Party to the Contract

It Is Hereby Ordered that James C. Batten act as Trial Examiner in the further hearing in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 2, as amended, of the National Labor Relations Board.

Dated, Washington, D. C. July 3, 1942.

Seal
National Labor
Relations Board

GEO. O. PRATT,
Chief Trial Examiner.

[fol. 591] (Board's Exhibit No. 1-CCCCC.)

Case No. C-1382 (XVII-C-371).—Date 7/8/42.

(Application of Respondent, Donnelly Garment Company, for Designation of another Trial Examiner in the place and stead of James C. Batten.)

Comes now the above named respondent, Donnelly Garment Company, and respectfully requests the National Labor Relations Board to designate another Trial Examiner to hold the hearing in the above entitled case in the place and stead of James C. Batten, for the reasons, among others, that said James C. Batten is biased and prejudiced against respondent and has prejudged the issues in this case and the evidence to be adduced at the pending hear-

ing, and respondent cannot have a fair trial before him as Trial Examiner. An affidavit in support of this Application is attached hereto, made a part hereof, and filed herewith.

DONNELLY GARMENT COMPANY,
By Reed & Ingraham,
Its Attorneys.

Receipt of original and three copies of the foregoing Application and Affidavit is hereby acknowledged this 8th day of July, 1942.

.....
Regional Director, National Labor Relations Board
..... Region.

[fol. 592] Affidavit Of Prejudice.

State of Missouri,
County of Jackson—ss.:

Now comes R. J. Ingraham and being duly sworn on his oath, states that he is secretary of the Donnelly Garment Company, respondent herein, and makes this affidavit upon its behalf.

Affiant further states that he verily believes that James C. Batten, Trial Examiner in this case, is biased and prejudiced against this respondent so that respondent cannot have a fair trial or a fair hearing of the evidence which the Circuit Court of Appeals has ordered to be taken for the following reasons:

1. Said Trial Examiner has prejudged the evidence which the Circuit Court of Appeals has ordered to be taken and cannot give respondent a fair and impartial trial.

2. Said trial examiner has repeatedly declared that the evidence which he is directed to weigh in this hearing is worthless and not worthy of consideration as shown by the following excerpts from the record in the case:

[fol. 593] (Respondent's Exception No. 207, pp. 131, 132, Rec. pp. 557, 558, 559. Witness Rose Todd).

(On examination by Mr. Stottle re provisions of DGWU contract with respondent.)

"Q. Did you discuss any one of the points that you recall?

"A. I surely did. I think I probably discussed—I think I probably should say, then, that I particularly discussed with her these piecework guarantees. Now, there were operators there, and they may have said something too. No doubt they did.

"Q. Now, Miss Todd, 'may'—of course, 'may' anything. I don't want what may have happened or what might have happened. If you don't know anything about this meeting, just tell me you don't remember anything about it, and we will let it go.

"A. I just told you, Mr. Batten, that I could never forget that meeting the longest day I live.

"Mr. Ingraham: If your Honor please, I want to except to your remarks. This witness hasn't said she knows nothing about this meeting. She said they discussed every single point.

* * * *

"Trial Examiner Batten: No, but I think that a person who attended one of these bargaining meetings, if that is all she can tell about it, I think she has a very, very faint recollection of what happened, not sufficient to accept in any way, in any form, as evidence of anything.

"Mr. Ingraham: I except to Your Honor's remarks.

"Trial Examiner Batten: You may except, but I am saying that I don't think it amounts to anything.

* * * *

"Trial Examiner Batten: Well, of course, my only position about this witness is this: that either she has an extremely poor memonry or else she doesn't want to remember some of these things. Now, you may take exceptions to that, because that is clearly, Mr. Tyler, my impression thus far of this witness' testimony, and I think, as

the Examiner in this hearing, I have a perfect right to express such an opinion, and instead of expressing it in my report, I express it now so you may take the necessary exceptions to it.

"Mr. Ingraham: Respondent excepts to the remark.

"Mr. Tyler: The intervener excepts.

"Mr. Ingraham: As highly prejudicial.

"Trial Examiner Batten: Well, if it is incorrect, I think it is, Mr. Ingraham."

[fol. 594] (Respondent's Exception No. 220, pp. 144, 145, 146, Rec. pp. 857, 858, 864, 865, 866.)

"Q. (By Mr. Stottle) Miss Todd, do you know what the minimum wage provision is in the Gernes, Gordon, and other contracts **** in this city with the International Ladies' Garment Workers' Union?

* * * *

(Objections by Board and I. L. G. W. U.)

"Mr. Ingraham: If your Honor please, Mr. Langsdale asked this witness in regard to the terms and conditions of the contract which she negotiated with the company, and his questions were directed at showing that the contract was not a good contract for the employees. Now, I think we have a right to come in and show that it is a far better contract for the employees than any contract that the International has entered into with any other garment company in this part of the country. It is competent for that purpose.

* * * *

"The point has been raised that Miss Todd and other members of the Committee didn't really negotiate.

* * * *

"The company enters into a written contract, and in doing that, because it doesn't get into a fight with the employees, and because it doesn't haggle, and because they do arrive at a fair kind of a contract and the employees

have better wages than are contained in any of these other contracts, I think that is very conclusive evidence that this union is properly representing the employees.

• • • •

"Mr. Lane: It has been asserted here by Mr. Langsdale from time to time that he expects to offer evidence to establish that the intervener union is merely a sham union, that it is not in fact and under the law a representative of the employees. Now, in that connection the intervener asserts that the establishment of the results that were obtained in the contract which was entered into is an important point to be considered in determining the bona fideness of the intervener union, and in connection with determining the results that were obtained by that contract the prices and the minimum wages guaranteed by other garment concerns, the same industry, in the same community, is a point to be taken into consideration, so that a comparison of those figures will at least tend to show one of the results obtained by this contract.

"Trial Examiner Batten: I presume it would be well now to settle this question so that everyone will know, as I have done once or twice already, what my position is.

"I want you to be prepared for it, although the evidence is not submitted. I can tell you now, Mr. Lane, I do not propose to go into that matter. The only reason I tell you that is this, that you may be making your preparation and preparing an offer of proof. I want to advise the attorneys now that I am not going to try this case by comparison with other plants in this town or in other towns. It is not material to the issues in this case."

[fol. 595] (Respondent's Exception No. 223, p. 148, Rec. pp. 886, 887, 888.)

"Q. Miss Todd, there has been some question raised here as to whether there was real bargaining between your union and the company with regard to your union contracts. I will ask you to state if there were any provisions in the contracts that were favorable to the company, did you feel that they were more than offset by the provisions which you obtained favorable to the union?

"A. Yes, we felt like that is a good contract. We have certain things that we had to give—

"Mr. Langsdale (interrupting): I object to this part of the answer as voluntary and not responsive. Her answer to the question was 'Yes'.

"Trial Examiner Batten: I will sustain the objection."

[fol. 596] (Respondent's Exception No. 224, pp. 148, 149, Rec. pp. 908, 909.)

(Witness Rose Todd.)

"Q. (By Mr. Tyler): Had you or had you not seen notices in the papers of physical violence at the Gernes plant?

"Mr. Langsdale: I object to that as immaterial and not proving any issue in this case, as to what occurred at the Gernes plant.

"Mr. Tyler: I submit what is endeavored to be shown here is whether these people of their own volition desired to form their own labor union, and in so doing they are entitled to give reasons for taking that action. If the actions are probable they are persuasive; if they are not probable they are not persuasive. But they are entitled to give such reasons as they say they had to stay out of the International and join the Donnelly Garment Workers' Union, and if they did understand violence was being exerted by the International, that might well be a reason — whether it was true or not, if they so understood, that might well be a reason for their choice, and they are entitled to show good faith for their choice by citing their reasons.

"Mr. Langsdale: That speech might be proper at some other stage of the proceedings.

"Trial Examiner Batten: We will forget about speeches. I will sustain the objection. As I said yesterday, I am not going into all of these rumors. If you have any evidence of anyone who was threatened personally, they may come up and testify to it personally and I will receive that testimony, but I am not in this hearing going into all of the rumors that fly around during an organizational campaign of unions.

"Mr. Tyler: It is not the truth of the violence I am establishing. It is merely the reason these people had for staying out of the International and forming their own union.

"Trial Examiner Batten: I don't think it is material for the purpose for which you have offered it."

[fol. 597] (Respondent's Exception No. 225, pp. 149, 150, Rec. pp. 910, 911, 913.)

(On cross examination of witness Rose Todd by Mr. Tyler.)

"Q. Did you see any of the banners or signs the pickets carried?

"A. Yes, sir.

"Q. Do you remember what they said on them?

"Trial Examiner Batten: Just a moment, Mr. Tyler. I do not intend to receive any of that, either, unless it is something which was unlawful or illegal. If these pickets picketed this plant in the way in which they are permitted to under the law and there was nothing unlawful about it which amounted to actual coercion, I do not intend to go into all of those matters.

"Mr. Tyler: I expect to show, if the Court please, that these signs contained untruthful statements, and that that had some effect on the choice these people made.

* * * *

"Mr. Tyler: I submit to your Honor that in showing what their real choice of labor unions was they have a right to refer to any conduct, lawful or unlawful, of the International to show why they didn't want to join it. That is the vital crux. If the International had a habit of wearing red neckties and they didn't like red neckties and they didn't want to join the union for that reason, I submit they have a right to give their reasons for preferring their own union.

"Trial Examiner Batten: As I say, I do not propose to go into it with this witness, and if that is your theory on this particular matter you may submit it as an offer of proof."

[fol. 598] (Respondent's Exception No. 226, p. 151, Rec. pp. 913, 914, 916.)

(On cross examination of witness Rose Todd by Mr. Tyler.)

"Mr. Tyler: I wish to make an offer of proof.

"Intervener offers to prove by this witness that for months before the organization of the Donnelly Garment Workers' Union the employees had seen numerous accounts of violence by the International against employees of other garment plants in Kansas City and had, many of them, seen such violence with their own eyes, and had, many of them if not all, heard reports of such violence, that they were in a state of almost hysteria from constantly overheard statements that the same tactics were to be applied to the employees at the Donnelly Garment Company, and that this was a reason which affected them in their choice as to forming their own union or joining the International or staying out of all unions.

"Mr. Leary: I object to the offer of proof, Mr. Examiner.

"Trial Examiner Batten: The offer is denied."

[fol. 599] (Respondent's Exception No. 254, pp. 172, 173, Rec. pp. 1416, 1417, 1418, 1419, 1420, 1422, 1424, 1425).

(On cross examination of witness May Fike by Mr. Lane.)

"Q. And wasn't it common talk around the Donnelly plant that there was a great deal of commotion out there around those Missouri, Gernes and Gordon plants?

"Mr. Langsdale: I object to that as immaterial; wouldn't tend to prove or disprove any issue in this case, and opens up a new avenue for testimony. I think the Examiner has ruled that line out up to now.

"Mr. Lane: The purpose of my making this offer, or asking this question and similar questions, is to refute the charge that has been made here by counsel for the International and Board that this union we represent is a sham

union, and my purpose is to show that atmosphere that surrounded the employees at that time, and their reaction and attitude, as having some bearing upon why they took the action they did take on the part of the union.

"Trial Examiner Batten: Mr. Lane, I will make the same ruling that I did once before. That is this: if there were any actual threats or actual violence at this plant, that in any way can be chargeable to the respondent, I certainly want to receive it.

"Now I am not going into this organizational campaign that took in the city of Kansas City. Now, I am not going all over that again, and if you want to, you may make as complete an offer of proof on that, and, after all, that may be probably the best way to present that whole problem of this campaign that was going on by the Union here in Kansas City, but I can say now that I am not going to receive it in this hearing.

* * * * *

"Trial Examiner Batten: As I remember it. Well, now, I am going to take that position very definitely with respect to the intervener on this entire campaign that went on here in Kansas City, and I think we can just as well determine now that you shall prepare a complete offer of proof on it, because I don't intend to receive it.

"Mr. Tyler: May I understand the Examiner's ruling? Do I understand that you decline to permit us to show that the employees of the plant, as one of their reasons for choosing their own union, were affected by both fear of the campaign carried on by the International Ladies' Garment Workers' Union at nearby shops, threats that it should be able to be applied to the Donnelly employees, and dislike of those methods, you decline to let us show those things as establishing one of the reasons why these employees decided to, of their own free will, form their own union? Is that correct?

"Trial Examiner Batten: Mr. Tyler, not quite that broad. I said that if any threats were made against these Donnelly employees, or a violence there, I even question how material that may be, but I will receive that, but on the other, on your whole idea there that that was one of

the reasons for the organization of the Donnelly Garment Workers' Union, and a valid reason, I want an offer of proof submitted on it."

[fol. 600] (Respondent's Exception No. 270, pp. 194, 195, Rec. pp. 1651, 1652, 1653, 1654, 1655, 1656.)

(On Examination of witness Elsie Graham Greenhaw by Mr. Langsdale)

"Q. (By Mr. Langsdale): Mrs. Greenhaw, I show you a document which has been marked I.L.G.W.U. exhibit No. 11-A to No. 11-MM, inclusive, and call your attention to the first page and ask you if you ever saw that document before.

"A. Yes, I have seen it.

"Q. That is a document that purports to have been signed on the 8th day of July, 1937.

I call your attention to that page of the document which has been marked I.L.G.W.U. exhibit No. 11-H and ask you if you find a photostat of your signature on there.

"A. Yes, I do.

* * * * *

"Q. This document reads —

"Trial Examiner Batten (Interrupting): Now, are you going to offer it?

"Mr. Langsdale: Yes, I am. Is there any objection?

Mr. Ingraham: No.

"Trial Examiner Batten: Just a minute. I may have. Is that an affidavit signed by all of the Donnelly Garment Company employees that they want the Donnelly Garment Workers' Union?

"Mr. Langsdale: You can read it better than I can tell you. (Handing I.L.G.W.U. exhibit No. 11-A to 11-MM, inclusive, to Trial Examiner Batten.)

"Trial Examiner Batten: I certainly will not receive it.

"Mr. Langsdale: On what ground do you object to it?

"Trial Examiner Batten: I won't receive it, at least if it is offered for any purpose to show that these people have selected this union, that it is their free selection, or anything of that kind. I positively won't receive it for that purpose.

* * * * *

"Trial Examiner Batten: I won't receive it for that purpose, because I am not going to have 1,200 employees come up here and tell me the circumstances under which they signed this petition; and it wouldn't mean anything if they did.

* * * * *

[fol. 601] "Trial Examiner Batten (Interrupting): Well, Mr. Langsdale, my position on this situation is just this — and I have had it come up in about six cases where I have been presented either with a petition or with membership cards of a large number of employees in a plant, stating that they joined of their own free will, and so forth. Now, I don't consider that testimony, if it were given, of any value when they are put up here on the stand and testify under oath, with the respondent, and in some cases, the foreman and the superintendent present. It might result in coercion, and it might not.

* * * * *

"Now, I am making that as a very definite statement now, so that all of you, if you have an offer to make on this particular matter, may prepare your offer and I will receive it at any time before the close of the hearing, but I want it thoroughly understood that I am not going into this matter.

"Mr. Ingraham: Well, your Honor, do I understand that you are not going to allow witnesses to take the stand and testify that they were not dominated and that they did form this union of their own free will?

"Trial Examiner Batten: That is exactly what I mean.

[fol. 602] (Respondent's Exception No. 273, p. 199, Rec. pp. 1673, 1674.)

(On cross examination of Elsie Graham Greenhaw by Mr. Ingraham.)

"Q. Do you recall at that time the International was conducting a strike at the Gernes, Gordon, and Missouri Garment Companies?

"Trial Examiner Batten: Now, is this just for the purpose of establishing a time?

"Mr. Ingraham: I think, in view of this witness' testimony as to what was said by Mrs. Reed at this March 18th meeting, that we have the right to show what was going on.

"Trial Examiner Batten: Well, I don't propose to go into it, Mr. Ingraham. I have said before that on that matter, in the first place, supposing that Mrs. Reed did say that, supposing that Mrs. Reed got up and said other things about it, I still can't see, as I asked you this morning, why you should be permitted to show it, whether it is true or untrue. The thing is, did Mrs. Reed get up in this meeting and make certain statements. Are the statements she made—are they of such a nature that they intimidate, coerce or restrain the employee. It isn't a question of whether they are true or not. They may be true and they may still have the same effect. I still can't see by your explanation this morning how it can be material. The only thing is what did Mrs. Reed say at this meeting.

"Mr. Ingraham: Well, your Honor, it is our theory that we are entitled to show what the situation was, and the purpose, or one of the purposes of the March 18th meeting, and that Mrs. Reed did make a speech, and the reason she had for making the speech."

[fol. 603] (Respondent's Exception No. 327, pp. 251, 252, Rec. pp. 2610, 2611, 2612. Witness Nellie Stites.)

(On examination by Mr. Stottle.)

"Q. Does that union, the Donnelly Garment Workers' Union, and its bargaining committee represent your free choice in that matter?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

* * *

"Mr. Stottle: Well, Mr. Examiner, we are charged with preventing the employees from exercising their free will in the choice of bargaining representatives. That is one of these three complaints or charges in the complaint, and we submit that one of the best ways of finding out whether a person did anything of their own free will is to ask that person whether they did, and it is our purpose to ask this witness, and as many other witnesses—

"Trial Examiner Batten (interrupting): Well, I don't think that is any indication, to put these witnesses up on the stand in a hearing of this kind, in a "C" case, in front of all the other employees and representatives of the company, and ask them, 'is this your free choice?'. I mean it may possibly have some remote bearing, but I don't think it has sufficient that we should spend the time necessary to listen to 1300 employees get on the witness stand and testify to that point.

"Now, if that is your idea, you may make an offer of testimony with respect to these 1305 employees, or whatever it is, but certainly, we are not going to determine that in this hearing on that basis, at least.

* * *

"Mr. Stottle: Well, Mr. Examiner, don't you think we should have the testimony of this witness with the persons that you have referred to excluded from the court room?

"Trial Examiner Batten: No, I don't think it is of any value in the issues in this case, to parade these people on the stand. Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter."

[fol. 604] (Respondent's Exception No. 328, p. 253, Rec. pp. 2612, 2613.)

"Q. (By Mr. Stottle) Mrs. Stites, had you heard of the strikes and disturbances down at the Gordon and Gernes plants at about that time in March and April, 1937?

"Mr. Leary: I object to that for the reason that it is immaterial.

"Trial Examiner Batten: Sustained.

"Mr. Stottle: Well, Mr. Examiner, we want to go into that matter to show that it did affect the employees and that that was one of the reasons why they formed this union, as tending to show that it was not due to the domination of the Donnelly Garment Company.

"Trial Examiner Batten: I think, Mr. Stottle, that I don't need to make any statement with respect to that ruling, because I have indicated on several occasions in this hearing just what my position is about that matter. You may make such offer as in your opinion is necessary to protect the interests of your client."

[fol. 605] (Respondent's Exception No. 330, p. 255, Rec. p. 2617.)

"Q. (By Mr. Stottle) Well, Mrs. Stites, I will ask you whether at the time of the organization of the Donnelly Garment Workers' Union, on April 27th, or prior thereto, there was any coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon you by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives, or anyone representing the management, to cause or influence you, or which did cause or influence you to join or support the Donnelly Garment Workers' Union?

"A. None.

"Trial Examiner Batten: Well, now just a moment. The answer may be stricken."

[fol. 606] (Respondent's Exception No. 338, p. 261, Rec. p. 2712.)

(On cross examination of witness Clarice Martin by Mr. Patten)

"Trial Examiner Batten: Mr. Patten, on this question, which has come up frequently, I think about the first week, in fact, Mr. Tyler brought it up; this question of the mental attitude of these people, due to the organizational campaign of the International Ladies' Garment Workers' Union, and all that goes along with it. I think I should tell you now that if there is any further testimony of that kind, you can put it in in an offer of proof, because I don't think

it is material to the issues here, and I think I told Mr. Tyler one day when he spoke about it, said that he felt that it was a motive or would be one motive, that would explain the organization of the independent union, and I think at that time I disagreed with Mr. Tyler. So if you have any further evidence in that line, you will submit it in an offer of proof, and if you care to, of course, you may submit another witness and ask those questions, to make your record. If you don't care to do that, you may submit it without offering another witness".

[fol. 607] (Respondent's Exception No. 345, p. 267, Rec. p. 2838. Witness Jack McConaughey.)

(On examination by Mr. Tyler)

"Q. Were you familiar with the principal subjects of discussion among the employees of the two companies during the months of March and April, 1937?

"A. Yes, sir.

"Q. What were the principal subjects of discussion?

"A. Strikes at the Gernes plant, and what we might be able to do to protect ourselves from the apparent danger that was due us in a short while.

"Q. Did you hear of any threats that the same proceedings would be taken as to employees of the Donnelly companies as were being taken against employees at the Gernes, Gordon and Missouri plants?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Objection sustained."

[fol. 608] (Respondent's Exception No. 346, pp. 267, 268, 269, Rec. pp. 2838, 2839, 2840, 2841, 2843. Witness Jack McConaughey.)

"Q. (By Mr. Tyler) What was the attitude of mind of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company during March, 1937, in regard to the possible action of the International Ladies' Garment Workers' Union against them.

"A. Everyone felt that—I talked to numbers of them on my job in the service department at that time—I talked to hundreds of people every day, and they were all expressing concern over the happenings that were taking

place all over town, and many of them told me of having heard directly from people they knew there, or else overheard people who were in the line of strikers, that we were going to be the next on the list, which naturally caused an agitated state of mind throughout the plant and no one could pursue his job with a great deal of peace of mind, because he didn't know at what time he was going to be kept from coming into the building himself.

"Trial Examiner Batten: Mr. Tyler, I think I have indicated previously on this matter of violence and this situation in Kansas City that I didn't think it was material, and therefore asked the respondent to make an offer of proof.

"And I think yesterday I indicated on this attitude of mind of the employees as a result of this situation, that I didn't consider it material.

• • •

"I think I have stated before, I don't think it is material to the issue as to whether or not the respondent formed this union, dominates it, or sponsors it. Therefore, I would ask that you prepare an offer of proof on that question.

• • •

"Mr. Langsdale: I move to strike the answer of the witness to the last question.

"Trial Examiner Batten: It may be stricken.

• • •

"Mr. Stottle: Respondent does except to the striking of this answer."

[fol. 609] (Respondent's Exception No. 350, pp. 273, 274, Rec. pp. 2939, 2940, 2941, 2942, 2943. Witness Mrs. Weigand.)

(On examination by Mr. Tyler.)

"Q. Did you ever hear Velma Dowdy testify in that case?

"A. Yes, I did.

"Q. Did her testimony have any effect upon your choice as to what union you wanted to belong to?

* * *

(Objection by I. L. G. W. U.)

"Mr. Tyler: I submit, the reason for the employees choosing this union is the most vital kind of evidence as to whether the company does dominate it or not.

* * *

"Trial Examiner Batten: I don't think it is material to the issues in this case. I think this lady has a personal right to join any union she wants to join, and if she prefers the Donnelly Garment Workers' Union she doesn't have to give the Labor Board or anybody else any reason for joining it. She doesn't have to show the Labor Board she has a reason. She may join it because the first name of it starts with a D and the last word in the name starts with a U.

"Mr. Tyler: I agree, she doesn't have to give the Labor Board any reason, but I submit she has a right to give a reason in sustaining that it was her own free choice . . .

* * *

"Trial Examiner Batten: We are not interested in the reason for joining."

[fol. 610] (Respondent's Exception No. 351, pp. 275, 276, 277; Rec. pp. 2993, 2994, 2995, 2996, 2997. Witness Lyle Jeter.)

(On examination by Mr. Patten).

"A. One morning I was standing up there and Miss Tobin went back and forth across the street—I was standing in front of the plants—and an elderly lady started in the building and five or six ladies jumped on her and beat her up—

"Trial Examiner Batten (Interrupting): Tell me how you were threatened.

"Mr. Langsdale: I move that that part, the last part of his answer be stricken.

"Trial Examiner Batten: It may be stricken. Tell me how you were threatened.

"A. I have to tell you a little bit about this first part, if I may.

"Q. (By Trial Examiner Batten) Did somebody threaten you personally?

"A. Threatened the Donnelly Garment Company.

"Q. Tell me what they said, and who it was.

"A. As this old lady got up and started in the building somebody said, 'Isn't that awful, the way they are treating her?' And Miss Tobin said, 'That's just a sample of what we are going to do down at Donnelly's.'

"Q. (By Mr. Patten) Did you report that at the plant?

"A. I talked it over with the employees.

• • • •

"Trial Examiner Batten: The point you have finished covering. I don't think that is material to this case.

"Mr. Patten: I understood you had said if we had cases involving actual threats to persons employed by the Donnelly Garment Company we could put that in.

"Trial Examiner Batten: Yes, if you have any actual threats of violence committed as to any employee of the Donnelly Garment Company, that should be in here. I don't think this sort of testimony has anything to do with it.

• • • •

"Mr. Patten: It shows the circumstances leading up to the formation of this union. If we can show the circumstances, that the union was inspired by the employees and did not rise out of the action of the company—In so far as we show these circumstances which motivated them we negative the contention of the Board and the International.

"Trial Examiner Batten: That might be possible, remotely. It may be stricken. I am not going to receive that type of testimony on that question."

[fol. 611] (Record pp. 2922, 2923, 2924, 2925. Examination of witness Marjorie Green by Mr. Tyler).

"Q. Do you personally prefer the Donnelly Garment Workers' Union as your bargaining representative to any other union you know about?

"A. Yes, sir, I certainly do.

"Q. What are your reasons for preferring the Donnelly Garment Workers' Union?

"A. Well, in the first place—

"Trial Examiner Batten (Interrupting). Mr. Tyler, I don't think it is material what her reasons are. She has a perfect right, as an employee of this company, to select any union she wants.

"Mr. Tyler. I submit, one of the questions involved here is whether she does prefer it or whether the company is so dominating her that she has to belong to it.

"Trial Examiner Batten. You mean by that, you contemplate calling all of the employees to testify to this question?

"Mr. Tyler. I contemplate calling a large number.

"Trial Examiner Batten. I can tell you now, I do not intend to listen to them.

• • • • • • •

"Mr. Tyler. Are we not, also, endeavoring to determine whether the employer is now dominating it or dominating these employees?

"Trial Examiner Batten. Yes, but you couldn't determine it by having these girls get up on the stand and testify here, in front of the management. The place to determine that is by a secret election, where they can vote and no one knows how they vote. If you have a large number of witnesses to offer on that, you may make an offer of proof, because I don't intend to sit here and let you call all of these girls up here to testify whether they want this union to represent them.

• • • • • • •

"Mr. Shepard. I would like to have the record show, in view of your remarks with regard to a representative of the management being present, when this witness gave her

answer in response to Mr. Tyler's question in regard to domination no member or representative of the company was present.

"Trial Examiner Batten. I agree with you. Mr. Baty is not in the room, but I see him out in the hall. And of course the company's attorneys are here.

"Mr. Shepard. We are here of necessity, of course.

"Trial Examiner Batten. Yes, I assume you have to be here."

[fol. 612] 3. Said trial examiner by repeated adverse comments and criticisms openly made during the trial against respondents' and interveners' witnesses, demonstrated his prejudice and bias against respondent.

4. Said trial examiner, by adverse rulings made during the trial against respondent, and in the Intermediate Report of the Trial Examiner, demonstrated his prejudice and bias against respondent.

5. Said trial examiner conferred with a person or persons who were not present at the hearing heretofore held, and as a result of suggestions made to him prepared his Intermediate Report and by said acts demonstrates his disqualification to act as Trial Examiner.

Further affiant sayeth naught.

R. J. INGRAHAM.

Subscribed and sworn to before me by R. J. Ingraham this 6th day of July, 1942.

My commission expires July 14, 1945.

Notarial Seal

LAURA BAKER,
Notary Public in and for
Jackson County, Missouri.

[fol. 614] (Board's Exhibit No. 1-EEEEE.)

Case No. C-1382.—Date 8/3/42.

(Application of Respondent, Donnelly Garment Company, for Continuance of Hearing.)

Comes now the respondent Donnelly Garment Company and respectfully moves the National Labor Relations Board to grant a continuance of the further trial of this proceeding until a date not earlier than December 23, 1942, for the following reasons, to-wit:

On the 23d day of April, 1942, at the special instance and request of the War Department, respondent entered into a written contract with the Quartermaster Corps of the War Department of the United States, wherein respondent agreed to manufacture and deliver to the War Department, on or before December 23, 1942, 1,000,000 pairs of cotton shorts (drawers) to be used for equipment of the armed forces of the United States now stationed in Africa, Australia and at other war fronts. Respondent since the date of said contract has purchased large amounts [fol. 615] of material (having procured priority rating for the same) for the performance of said contract; and has been, and is now, actively and intensively engaged in the performance of said contract. Respondent has manufactured and delivered approximately 121,690 pairs of the 1,000,000 pairs of shorts contracted for, leaving a balance of approximately 878,310 pairs to be manufactured and delivered on or before December 23, 1942. This will require a production of an average of approximately 38,187 pairs per week during the remainder of the contract period.

In addition to the aforesaid contract with the War Department, respondent has accepted numerous orders from numerous defense plants for the manufacture of women's work garments of a particular type, especially designed for women engaged in hazardous work in the handling of powder and high explosives. These garments, at the request of representatives of the War Production Board, have been specially designed by respondent in cooperation

with safety engineers of said defense plants. Respondent is now actively and intensively engaged in filling these war orders, and will be so engaged for the next ninety days.

Previous to the present war respondent was engaged exclusively in the manufacture of ladies' garments. In order to enable respondent to perform its aforesaid contract with the War Department and to fill the aforesaid orders from defense plants, respondent has been and is now actively and intensively engaged in a conversion of its plant facilities and methods of operation in order efficiently and expeditiously to manufacture the products called for in said war contract and orders. The change-over of its said plant facilities and methods of work is a highly technical matter requiring the combined skill, knowledge and experience of all of its management and its [fol. 616] mechanical and technical staff, as well as the full cooperation of all of its employees. The aforesaid conversion of its plant facilities and methods of work is still in progress and will necessarily continue for at least the next ninety days.

In the existing circumstances the fulfillment of said contract with the War Department and the filling of said orders from defense plants will require respondent to operate its plant at full capacity. Any interference with plant operations through absence of many employees from their work would seriously affect and impair the ability of respondent to comply with its obligations under said contract with the War Department and said accepted orders from defense plants.

The Circuit Court of Appeals in this proceeding (123 F.2d 215, 221-225) has held that respondent is entitled to call as witnesses at the further trial of this proceeding many hundreds of its present employees, who were in its employ in the spring of 1937, to show by said witnesses how and why the employees formed the Donnelly Garment Workers' Union, to show that no influence was brought to bear upon them by the respondent either in the formation or administration of the union, to show what the president of the respondent company had said to the employees at the mass meeting in the spring of 1937, to show that the employees' freedom to organize and to choose their own

representatives for the purposes of collective bargaining had not been interfered with by respondent, and to show that the employees' union, both in its formation and administration, was exclusively controlled and supported by the employees. Necessarily the introduction of this proof would require several weeks' time, and would require the attendance before the Trial Examiner of a great many of respondent's said employees each day during said trial. Necessarily respondent's attorneys would require the as- [fol. 617] sistance at the trial of certain of respondent's executives and others having to do with the management of its plant operations. If respondent should offer said witnesses to make said proof, the necessary result would be seriously to interfere with and impede respondent's plant operation and its prompt performance of the aforesaid contract with the War Department and the prompt filling of said orders from defense plants.

Preparation by this nation for war, including equipment by the War Department of this nation's armed forces, is of supreme national importance; and time is of the essence. Prompt performance of contracts (such as respondent's aforesaid contract with the War Department) and prompt filling of orders from defense plants, for the supply of clothing and other equipment to the armed forces and to those engaged in war work, is an essential part of this nation's preparation for war; and it is in the national interest that nothing shall be permitted to interfere with prompt performance of such contracts.

Postponement of the further trial of this proceeding until after respondent has completed performance of said contracts and the filling of said orders will enable respondent to perform said contract and fill said orders on time. Such postponement will cause no injury to the rights of any party. In this connection respondent respectfully calls attention of the Board to the fact that the alleged facts set up in the complaint herein are alleged to have occurred in the spring of 1937; yet the International Ladies' Garment Workers' Union, though having immediate knowledge of said alleged facts, filed no charges against respondent with the Board until August 9, 1938; that the Board, though immediately possessed of full knowledge of said

alleged facts, filed no complaint against respondent until April 6, 1939; that although the Circuit Court of Appeals' decision herein became final on January 6, 1942, the Board [fol. 618] delayed compliance with the decision until April 21, 1942. These aforesaid delays by the International Ladies' Garment Workers' Union and by the Board tend strongly to show that neither has heretofore considered that there was any great need for haste in the disposition of this proceeding. Nothing has since occurred to create any need for haste in the disposition of this proceeding.

The trial of this proceeding should be continued as herein prayed for the further reason that if a continuance is denied and the trial proceeds, respondent will be denied the opportunity of a fair and adequate trial for the reason that in its desire and determination to serve the nation in the present emergency, by promptly supplying said goods for the armed forces and defense workers in accordance with its aforesaid contract and orders, respondent will be unable properly and fully to present the evidence which it is entitled to present herein, because of its inability to spare employees from their work to testify as witnesses herein.

For these reasons respondent respectfully appeals to this Honorable Board, in the exercise of its discretion, to order the further trial of this proceeding postponed until a date not earlier than December 23, 1942.

JAMES A. REED,
ROBT. J. INGRAHAM,
WM. S. HOGSETT,
Attorneys for Respondent
Donnelly Garment Company.

State of Missouri,
County of Jackson.—ss.

Alex C. Green, of lawful age, being first duly sworn upon his oath states that he is Vice President of the respondent Donnelly Garment Company, and that he is authorized to [fol. 619] and does make this affidavit in behalf of said

respondent; that affiant has personal knowledge of the facts stated in the above and foregoing application, and that the facts stated therein are true.

ALEX C. GREEN.

Subscribed and sworn to before me this 16th day of July, 1942.

ELSA LEAR,
Notary Public Within and For
(Seal) Jackson County, Missouri.

My commission expires October 6, 1942.

[fol. 620] (Board's Exhibit No. 1-GGGGG.)

Case No. C-1382. — Date 8/3/42.

(Order denying Applications of Respondent, Donnelly Garment Company, for Designation of another Trial Examiner and for a Continuance.)

United States of America

Before The National Labor Relations Board

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers Union, Party to the Contract.

Case No. C-1382.

On November 6, 1941, the Circuit Court of Appeals for the Eighth Circuit remanded the instant case to the National Labor Relations Board, herein called the Board, for further proceedings. [1] On April 20, 1942, the Board issued its Order Vacating Decision and Order, Reopening Record, Referring Proceeding to the Regional Director,

[1] Donnelly Garment Company vs. National Labor Relations Board, 123 F.(2d) 215 (C.C.A. 8).

and Directing Further Hearing. Thereafter, on June 6, 1942, the Board by the Regional Director for the Seventeenth Region (Kansas City, Missouri), caused notices of further hearing to be served upon Donnelly Garment Company, herein called the respondent, International Ladies' Garment Workers' Union, herein called I.L.G.W.U., and Donnelly Garment Workers Union, herein called D.G.W.U.

The further hearing commenced on July 6, 1942, before James C. Batten, the Trial Examiner duly designated by the Chief Trial Examiner. All parties were represented by counsel.

No testimony was taken in the reopened hearing. On July 8, 1942, the respondent filed with the Trial Examiner its Affidavit of Prejudice, for the purpose of obtaining the designation of another Trial Examiner. The D.G.W.U. concurred in the application. The Trial Examiner referred the matter to the Board.

On July 17, 1942, the respondent filed with the Board an application for continuance of the further hearing. On July 21, 1942, a hearing for the purpose of oral argument on the affidavit of prejudice and the application for continuance was held before the Board in Washington, D. C. Counsel for the respondent, for the I.L.G.W.U., and for the D.G.W.U. participated in the argument. Prior to the argument counsel for the Board submitted a letter in opposition to the respondent's affidavit of prejudice. At the argument counsel for the I.L.G.W.U. filed an answer to the respondent's application for continuance. After the argument counsel for the respondent and counsel for the D.G.W.U. submitted letters in support of the application for continuance. The Board has carefully considered, in the light of the oral argument and of the related documents filed, [fol. 621] the afore-mentioned application for designation of another Trial Examiner and motion for continuance, and has concluded that both requests should be denied.

The respondent's affidavit of prejudice alleges that Trial Examiner Batten, who presided at the original hearing in this matter, is prejudiced against the respondent so that it cannot have a fair hearing on the evidence which the

Circuit Court of Appeals found had been erroneously excluded by him. [2] It advances the following reasons for this contention:

1. The Trial Examiner has prejudged the evidence ordered to be taken.

2. The Trial Examiner has repeatedly declared that the evidence which he is directed to weigh in this proceeding is worthless and not worthy of consideration.

3. The Trial Examiner, by repeated adverse comments and criticisms openly made during the trial against respondent's and intervener's witnesses, demonstrated his prejudice and bias against respondent.

4. The Trial Examiner, by adverse rulings made during the trial and in his Intermediate Report, demonstrated his bias and prejudice against respondent.

5. The Trial Examiner "conferred with a person or persons who were not present at the hearing heretofore held, and as a result of suggestions made to him prepared his Intermediate Report and by said acts demonstrates his disqualification to act as Trial Examiner."

The specific items of proof advanced by the respondent in its affidavit consist of excerpts from the record of the prior hearing. All these excerpts, with the exception of two in which Trial Examiner Batten commented on the character of a witness' testimony, described instances in which Trial Examiner Batten, for the most part upon repeated offers by the respondent and the D.G.W.U., excluded evidence which the Circuit Court of Appeals later held these parties should have been allowed to introduce. It may be noted that similar evidence offered by the I.L.G.W.U. had likewise been excluded by the Trial Examiner. Each of the particulars relied on in the affidavit of prejudice was brought by the respondent to the attention of the Circuit Court of Appeals. The Court decided that the Trial Examiner and the Board had been free of

[2] The evidence in question was principally that of employees of the Donnelly Company concerning the reasons why and the circumstances under which they became and remained members of the D.G.W.U. Donnelly Garment Company vs. National Labor Relations Board, 123 F.(2d) 215 (C.C.A. 8).

any bias or prejudice. [3] Having carefully examined the matters now adduced by the respondent, we can see no reason for disagreeing with the finding of the Circuit Court of Appeals or for doubting that the evidence ordered by that Court to be admitted will be fairly and judiciously received and considered. Indeed, to disqualify the Trial Examiner for his previous error would be equivalent to barring a trial judge who had been overruled on a question of evidence by an appellate court, from presiding over the further hearing; such is not the customary practice. [4]

We have considered all the reasons advanced by the respondent in its affidavit and we find no merit in them.

[fol. 622] The respondent's application for continuance asserts that the hearing should be postponed to a date not earlier than December 23, 1942, for the reason that it is engaged in war production and that the employees it expects to call will not be available as witnesses without serious interference with such production. Experience amply supports the Congressional policy embodied in the Act that the effective safeguarding of full freedom of organization by employees constitutes a fundamental basis of industrial peace. [5] The need for the application of the principles of the Act to industry is even greater in time of war than in peacetime, while the abandonment or postponement of the Act's guarantees might well create the tensions that have in the past led to industrial discontent, disturbance, and unrest, with consequent impairment of efficiency and production.

Furthermore, it has been the Board's fixed policy to conduct hearings at such times and in such manner as to effect a minimum of interference with war production. We believe that the Trial Examiner is in the best position to make provision regarding the availability of particular witnesses and we hereby instruct him that, in so doing, he give every consideration to the desirability of causing as little hindrance as possible to the respondent's production.

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[3] Donnelly Garment Company vs. National Labor Relations Board, 123 F.(2d) 215 (C.C.A. 8).

[4] Berger vs. United States, 255 U.S. 22, 31; Minnesota & Ontario Paper Co. vs. Molyneaux, 70 F.(2d) 545, 547 (C.C.A. 8).

[5] National Labor Relations Board vs. Jones & Laughlin, 301 U.S. 1, 33.

It Is Hereby Ordered that the Affidavit of Prejudice be, and the same hereby is, dismissed, and that the Application for Continuance be, and the same hereby is, denied.

Signed at Washington, D. C., this 28 day of July, 1942.

Harry A. Millis,
Chairman.
Wm. M. Leiserson,
Member.
NATIONAL LABOR RELATIONS BOARD.

[fol. 623] (Board's Exhibit No. 1-QQQQQ.)

Case No. C-1382.

Exceptions of Respondent Donnelly Garment Company to the Denial of Its Application for the Designation of Another Trial Examiner and to the Denial of Its Application For a Continuance.

I.

Comes now the above named respondent, Donnelly Garment Company and excepts to the order (Board's Exhibit 1-), rulings and action of the National Labor Relations Board on July 28, 1942 (and of the Trial Examiner in pursuance of said order) denying Respondent's application for the designation of another Trial Examiner herein, for each and all of the following reasons, to wit:

1. Because said order, rulings and action are erroneous under the law and the facts.

2. Because said order, rulings and action deprive and will deprive Respondent of a fair trial herein, for all the reasons set forth in Respondent's application for the designation of another Trial Examiner and in the Affidavit of Prejudice attached thereto and made a part thereof.

[fol. 624] 3. Because the Trial Examiner acts in a judicial or quasi-judicial capacity and it appears from said Application and Affidavit and from the record herein that the Trial Examiner, James C. Batten, has formed and expressed a fixed and unqualified opinion that the kind of testimony which the Court has held should be received in this further

hearing, is worthless and of no probative value upon the issues involved in this proceeding, and because thereof said James C. Batten is unable to fairly weigh or appraise the evidence to be adduced in this hearing or to make an intermediate report or recommendations to the Board fairly and judicially weighing and appraising said evidence or fairly and judicially applying said evidence to the issues involved herein, and Respondent will be deprived of the fair, unbiased, judicial report and recommendation of the Trial Examiner contemplated by the provisions of the National Labor Relations Act; that as a consequence thereof Respondent by said order, rulings and action of the Board and the Trial Examiner, is and will be deprived of a fair trial and hearing herein and of its liberty and property without due process of law, in contravention of the Fifth Amendment to the Constitution of the United States and in violation of the porvisions of the National Labor Relations Act.

4. Because the said order, rulings and action of the Board and Trial Examiner are based upon a misconception of the holding of the Circuit Court of Appeals referred to in said order, and upon a misapplication by the Board of the Court's holding to the Respondent's Application for the designation of another Trial Examiner, in that the Court was not (as the Board assumes) dealing with the specific question presented by said Application, to wit, [fol. 625] whether the bias and prejudgment by the Trial Examiner of and toward the particular type of evidence to be adduced at the further hearing, is such that he cannot judicially and fairly appraise and act upon same as contemplated by the National Labor Relations Act and by the law of the land.

5. Because the only cure for the type of bias and prejudgment shown to exist in the mind of the Trial Examiner, James C. Batten, of and toward the type of evidence to be adduced in this further hearing, is a hearing before another Trial Examiner, of which the Board has many.

6. Because said order, rulings and action of the Board and Trial Examiner, if and in so far as same may be a matter resting in the sound discretion of the Board, constitute an abuse of such discretion under the circumstances here existing.

II.

Application for Continuance.

7. Respondent excepts to the order, rulings and action of the National Labor Relations Board on July 8, 1942 (and of the Trial Examiner in pursuance of said order) denying Respondent's application for a continuance of this hearing for the reason that under the facts shown such action constitutes an abuse of the sound discretion of the Board and Trial Examiner, and denies respondent a fair and adequate opportunity to present its case.

JAMES A. REED,
R. J. INGRAHAM,
WM. S. HOGSETT,
Attorneys for Respondent
Donnelly Garment Company.

[fol. 627] (Board's Exhibit No. 1-RRRRR.)

Case No. C-1382—Date 8/4/42.

(Exceptions of Intervener, Donnelly Garment Workers' Union, to order denying Designation of another Trial Examiner and for a Continuance.)

The intervener, Donnelly Garment Workers' Union, excepts to the order made by National Labor Relations Board on July 28, 1942 (Board's Exhibit 1-GGGGG) denying the application made by respondent, Donnelly Garment Company, and joined in by this intervener, for the designation of another trial examiner and application for continuance, and excepts to the rulings and actions of the trial examiner pursuant to such order for the following reasons:

1. Because upon the facts said order, rulings and action are contrary to law.

2. By said order intervener is denied due process of law contrary to the provisions of the Fifth Amendment of the Constitution of the United States in that intervener is denied a full and fair hearing before a fair and impartial tribunal because the trial examiner, James C. Batten, has formed a fixed conclusion in his mind that the evidence

which the Circuit Court of Appeals ordered received in this case has no probative value and should be given no weight or consideration.

[fol. 628] 3. Because the Board bases its order upon the erroneous assumption that the Circuit Court of Appeals ruled that trial examiner Batten was not shown to be biased or prejudiced whereas the Circuit Court of Appeals did not have presented to it and did not consider or rule upon the question of whether in receiving this evidence and making his findings and conclusions thereon and in making an intermediate report thereon said James C. Batten could act fairly and impartially and without a fixed opinion that such evidence was entitled to little or no weight or value.

4. Because said order in denying the continuance was, under the circumstances shown, an abuse of discretion upon the part of the Board.

FRANK E. TYLER,
LUCIAN LANE,
GOSSETT, ELLIS,
DIETRICH & TYLER,
Attorneys for Intervener, Donnelly Garment Workers' Union.

[fol. 629] (Board's Exhibit No. 1-YYY.)

Case No. XVII-C-371.—Date 6/12/39.

Rulings of the Trial Examiner.

United States of America.

Before the National Labor Relations Board, Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers' Union,
Party to the Contract.

Case No. XVII-C-371.

1. In this statement of rulings, the Donnelly Garment Company is referred to as the respondent; the Donnelly Garment Workers Union as the Intervener; the International Ladies' Garment Workers' Union as the Union.

2. On June 7, 1939, after the filing of an amended complaint, the respondent at the hearing moved (Board's Exhibit No. 1-SSS) to dismiss the complaint as amended. The motion is hereby denied.

3. On June 7, 1939, the respondent filed at the hearing a motion (Board's Exhibit No. 1-TTT) to strike from the complaint as amended paragraph 4 A and all of the subparagraphs (a), (b), (c), (d), and (e) thereof and paragraph 5, subparagraph (c). The motion is granted as to paragraph 4 A. and the subparagraphs (a), (b), (c), (d), and (e). The motion is denied as to paragraph 5, subparagraph (c).

4. On June 7, 1939, at the hearing, the Intervener orally moved (to be submitted in writing and marked Board's Exhibit No. 1-UUU) to strike paragraph 4 A from the [fol. 630] complaint as amended. The motion is hereby granted.

[fol. 632] 6. On June 5, 1939, Union's counsel orally moved (to be submitted in writing and marked Board's Exhibit No. 1-QQQ) to strike certain parts of the respondent's answer. Ruling is reserved on the motion. However, respondent is requested to submit a written statement of the evidence it would offer to prove the parts of the answer set forth in the motion to strike. Such written offer may be submitted at any time during the course of the hearing. After an examination of the offer of proof, the undersigned will rule on the Union's motion to strike.

See Rulings of Trial Examiner, Board's Exhibit 1-SSSS, J. C. Batten, Trial Examiner.

7. The answer of the respondent (Board's Exhibit No. 1-JJJ), parts A and B, allege certain reasons for the dismissal of the complaint. The respondent is requested to submit a written statement of the evidence it would offer to prove the allegations set forth in parts A and B.

See Rulings of Trial Examiner, Board's Exhibit 1-SSSS, J. C. Batten, Trial Examiner.

Such written offer may be submitted any time during the course of the hearing. After an examination of the offers of proof, the undersigned will make such ruling as is appropriate to the disposition of requests for dismissal. Part C of respondent's answer purports to be a petition for investigation and certification of representatives, pursuant to Section 9 (c) of the National Labor Relations Act. Such petition cannot be received or considered in this proceeding.

JAMES C. BATTEN,
Trial Examiner.

Dated: June 8, 1939.

[fol. 634] (Board's Exhibit 1-SSSS.)

United States Of America

Before The National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract

Rulings Of The Trial Examiner

Case No. XVII-C-371

1. In this statement of rulings, the Donnelly Garment Company is referred to as the respondent; Donnelly Garment Workers' Union as the intervener; and the International Ladies' Garment Workers Union as the Union.

2. On July 15, 1939, the hearing in the above entitled matter closed for the taking of oral testimony. In the record of June 15 (pages 3098 to 3116), certain exhibit numbers were reserved for the submission of offers of proof, testimony to be offered from the National Recovery Administration case and Judge Miller Federal Injunction case, and other matters. All matters having been submitted and made a part of the record, the undersigned makes the following rulings thereon:

(a) Board Exhibit 28, by stipulation a true and accurate reflection of the facts and figures of all of the respondent's time-workers' pay-roll records to whom it purports to refer for the period April 15, 1937 to July 15, 1937, will be received in evidence. (Board Exhibit 1-uuuu is respondent's objection to Board Exhibit 28).

(b) Board Exhibit 1-tttt is a motion to amend the amended complaint. The motion is denied. (Board Exhibit 1-uuuu is the respondent's objection to the motion [fol. 635] to amend the amended complaint). Board Exhibit 30-a, a motion to amend the offer of proof, providing the motion to amend the amended complaint is granted (Board Exhibit 30) by inserting a paragraph, is denied. (Board Exhibit 1-uuuu is the respondent's objection to the motion to amend the offer of proof.)

(c) Stipulation of the parties making no objection to Board's motion to conform the amended complaint to the proof. Motion is granted. The stipulation is hereby made a part of the record and designated as Board Exhibit 1-vvvv.

(d) Stipulation of the parties providing for the filing of an offer of proof by respondent. The stipulation is hereby received and made a part of the record and designated as Board Exhibit 1-wwww. The offer of proof attached to the stipulation is hereby made a part of the record and designated as Board Exhibit 1-xxxx. The offer is refused.

(e) Rulings of the Trial Examiner, Board Exhibit 1-yyy, paragraph 6, reserved ruling on the Union's motion (Board Exhibit 1-qqq) to strike certain parts of respondent's answer and requested respondent to file offer of proof with respect to the motion to strike. The motion to strike is granted.

(f) Rulings of the Trial Examiner, Board Exhibit 1-yyy, paragraph 7, requested the respondent to submit offers of proof on Parts A and B of respondent's answer (Board Exhibit 1-jjj). The respondent stated in the record that no offer of proof would be made on Part A of the answer. The request for dismissal of complaint in Part A of the answer is denied. The offer of proof sub-

mitted by the respondent on Part B of the answer is refused. (Board Exhibit 1-nnnn.)

(g) Respondent's offer of proof, Board Exhibit 1-jjjj, was submitted because of a definite ruling of the Trial Examiner as to the admissibility of certain evidence, and in so far as the offer contemplates matters barred by the ruling, it is refused.

(h) Respondent's offer of proof, Board Exhibit 1-oooo, was submitted because of a definite ruling by the Trial Examiner as to the admissibility of certain evidence, and [fol. 636] in so far as the offer contemplates matters barred by the ruling, it is refused.

(i) Intervener's offer of proof, Board Exhibit 1-rrrr, was submitted because of definite rulings by the Trial Examiner as to the admissibility of certain evidence, and in so far as the offer contemplates matters barred by the ruling, it is refused.

(j) Board's objections to NRA-JMC Exhibit 3, are endorsed on the exhibit. The objections are overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(k) Board's objections to NRA-JMC Exhibit 8, are endorsed on the exhibit. The objections are overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(l) Respondent's objections, Board Exhibit 1-uuuu, Part 4, to Board's and Union's NRA-JMC Exhibit 17, is overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(m) Respondent's offer of evidence (NRA-JMC Board Exhibit 17) from the record in the Judge Miller Federal Injunction proceeding is received without objection. Acceptance of the testimony is not intended to enlarge the

issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

3. Board Exhibit 1-ssss was reserved for the "Rulings of the Trial Examiner" and Board Exhibit 1-ssss is hereby made a part of the record.

4. You are further advised that the hearing in this matter is closed.

Dated: August 14, 1939.

JAMES C. BATTEN,
Trial Examiner.

[fol. 637] (Intermediate Report of Trial Examiner dated October 7, 1939.)

United States of America.

Before the National Labor Relations Board, Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers Union, Party to the Contract.

Case No. XVII-C-371.

Upon charges dated August 9, 1938, and amended charges, duly filed by International Ladies' Garment Workers' Union, herein called the Union, and acting pursuant to proper authority, the National Labor Relations Board, herein called the Board, by Paul F. Broderick, is Acting Regional Director for the Seventeenth Region, issued its complaint dated April 27, 1939, against the Donnelly Garment Company, herein called the respondent. The complaint and notice of hearing thereon were duly served upon the respondent, the Donnelly Garment Workers Union, herein called the Independent, and the International Ladies' Garment Workers' Union.

The complaint as amended, alleged that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, herein called the Act.

Concerning the unfair labor practices, the complaint as amended, alleged in substance that the respondent (a) on [fol. 638] or about February 12, 1935, formed the Donnelly Loyalty League for the purpose of preventing the organization of its employees by the International Ladies' Garment Workers' Union; (b) that on April 27, 1937, the Donnelly Loyalty League was succeeded by the Donnelly Garment Workers Union; (c) on or about April 27, 1937 and thereafter, the respondent has dominated, supported and interfered with the labor organization known as the Donnelly Garment Workers Union; (d) during March, April and May 1937, encouraged and permitted supervisory and other employees, acting in the interest of the respondent, to solicit members, hold meetings, and engage in concerted activities in behalf of the Donnelly Garment Workers Union on company property without loss of pay; (e) entered into a closed-shop agreement with the Donnelly Garment Workers Union, creating as a condition of employment membership in that union, thereby depriving its employees of their rights under the Act; (f) on or about April 23, 1937, respondent discharged and thereafter refused to reinstate Sylvia Hull, and on or about April 26, 1937, respondent discharged and thereafter refused to reemploy May Fike, employees of the respondent, for the reason that they had joined and assisted the International Ladies' Garment Workers' Union; and (g) by the above, and by statements of its officers and supervisory employees, has urged, persuaded and warned its employees to refrain from becoming members of the International Ladies Garment Workers' Union; by keeping members and meetings of the International Ladies' Garment Workers' Union under surveillance; and by instigating and permitting respondent's employees to engage in a violent demonstration on its time and property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike, members of the International Ladies' Garment Workers' Union, has interfered with, restrained and coerced its em-

ployees in the exercise of their rights guaranteed in Section 7 of the Act.

[fol. 639] The respondent's answer admitted certain allegations concerning its corporate structure and business, and denied that it had engaged in or was engaging in any unfair labor practices. Respondent affirmatively pleaded that the Board is without jurisdiction; that the Board has exceeded its authority by issuance of the complaint, thereby demonstrating its bias and prejudice against the respondent and collusion with the International Ladies' Garment Workers' Union; and that the International Ladies' Garment Workers' Union, in its organizational compaign in Kansas City, has interfered with, restrained and coerced respondent's employees. The answer included in form a petition for investigation and certification of representatives of the respondent's employees pursuant to Section 9 (c) of the Act.

Prior to the hearing, the Donnelly Garment Workers Union filed with the Acting Regional Director a petition for leave to intervene. The Acting Regional Director granted the petition in so far as the intervenor's interest may appear.

The undersigned, as duly designated Trial Examiner of the Board, conducted a hearing from June 5 to July 15, 1939, at Kansas City, Missouri, at which place all parties were afforded an opportunity to participate in the hearing, to call, examine and cross-examine witnesses and introduce other evidence.

During the course of the hearing, the respondent and the intervenor made several motions to dismiss the amended complaint. Decision on the motions having been reserved, the motions are hereby denied. The respondent, at the close of the Board's case, the respondent's case, and again at the close of the hearing, moved to dismiss certain paragraphs of the amended complaint. The motions are granted as to paragraph 11, subparagraphs d, g, g-1, i, k, n, o, and p of the amended complaint (Board Exhibit 1-kk-ll). The motions in all other respects are denied.

[fol. 640] At the conclusion of the hearing, the parties were afforded a reasonable opportunity to argue orally before the undersigned. The parties were further advised

that they might file briefs with the undersigned. The parties did not care to avail themselves of the opportunity to argue orally before the undersigned, and at the request of the undersigned, memorandum briefs were filed by the respondent, the intervenor and the Union, and have been considered in connection with this report.

Upon the record thus made and from his observation of the witnesses, the undersigned makes, in addition to the above, the following specific findings of fact:

Findings of Fact.

I. Business of the Respondent.

1. The Donnelly Garment Company, a Missouri corporation with its office and factory (respondent at times operates a small factory in St. Joseph, Missouri) located in Kansas City, Missouri, is engaged in the designing, manufacturing, selling and distribution of ladies garments, chiefly of cotton, wool, acetate, rayon and linen, under the trade name of "Nelly Don." In the years 1937 and 1938, the respondent's sales grossed over $4,000,000 per year, 96 per cent of which sales was to customers in States other than the State of Missouri. The respondent has purchased over 99 percent of its raw materials—cotton, wool, acetate, rayon and linen—in States other than the State of Missouri.

2. The respondent's departments, with those in general charge, are as follows: production, Lee Baty; merchandising, retail store and receiving, Elizabeth Reeves; office manager, J. B. Bachofer; and employment, Ella Hyde. The respondent's officers are: president and treasurer, Mrs. James A. Reed; vice president, Alex. C. Green; and secretary, R. J. Ingraham.

[fol. 641] 3. The Donnelly Sales Company, a Missouri corporation, organized in 1935, is exclusively engaged in the business of selling and distributing ladies garments manufactured by the respondent. The officers of the sales company are: president, Alex. C. Green; vice president and treasurer, Lee Baty; and secretary, R. J. Ingraham.

II. The Labor Organizations Involved.

4. The International Ladies' Garment Workers' Union is an unaffiliated labor organization and admitting to membership the plant employees of the respondent. The Donnelly Garment Workers Union is an unaffiliated labor organization and admitting to membership all the employees of the respondent.

III. The Unfair Labor Practices.

A. Events prior to April 27, 1937.

5. Prior to the summer of 1934, no effort was made to unionize the employees of the Donnelly Garment Company. At this time the International Ladies' Garment Workers' Union established an office in Kansas City, Missouri, and announced in the papers that an attempt would be made to organize the garment workers. During the summer and fall of 1934, at least a dozen of the employees of the Donnelly Garment Company joined the International Ladies' Garment Workers' Union. The Union, in the early part of its campaign, held an open meeting at the Eagles Hall, and Mrs. Elizabeth Reeves, production manager, Rose Todd and other supervisory employees of the respondent, attended.

6. On December 6, 1934, the Union filed a charge against the Donnelly Garment Company under Section 7 (a) of the National Industrial Recovery Act, complaining that eight girls had been laid off by the company because of their joining the Union. A hearing on these charges was held in Kansas City, Missouri, beginning in April 1935. The taking of testimony was completed and before a decision was made by the N. R. A., the Supreme Court declared the N. R. A. unconstitutional.

[fol. 642] 7. One of the complainants named in the charge was Glynn Brooks who had worked for the Donnelly Garment Company from December 1924 to July 1934, during all of which time she had been a competent and dependable operator. Some time in June 1934, Glynn Brooks invited 12 or 13 girls to meet at her home in Kansas City. At this meeting the girls discussed the advisability of joining and forming a local of the Union. Subsequent to this meeting, all of the girls who attended, except one, were either laid

off or discharged by the Donnelly Garment Company, Glynn Brooks' employment being terminated on July 12, 1934. The 12 girls whose employment was terminated, had in most instances been working in the main plant of the Donnelly Garment Company. On or about the time these girls joined the Union, they were all transferred to a temporary building which was used by the Donnelly Garment Company during the busy season. When the busy season was over and the use of the temporary building was discontinued, the girls, most of whom had several years service with the respondent, were laid off, and girls employed in the main plant with less service were retained. While no strict seniority system was followed in the plant, it was the customary practice to provide regular employment for the older and more experienced operators.

8. The organization campaign of the Union is directly related to a meeting which was held at the home of Martha Gray on February 5, 1935. At this meeting attended by 46 persons, the Donnelly Loyalty League was organized. There is a conflict as to whether the steps taken to form the League occurred at the home of Mrs. Gray or at a mass meeting of the employees shortly thereafter. That meeting was reported in the Nelly Don Athletic Association News bulletin of February 13, 1935. The News stated that "900 join Loyalty League." Herbert Mutchler was asked to act as temporary chairman. It was announced that the formation of the League "was to refute untrue statements and propaganda circulated by the Union." At [fol. 643] the meeting Mutchler read an editorial from a February 16 issue of a magazine, which editorial is entitled "Protection in the Right not to Strike." The editorial defends the right of employees not to strike and critically speaks of labor agitators and pickets. The cards signed by the employees read as follows:

I, the undersigned, hereby pledge myself to become a member of the Nell Donnelly Loyalty League and to take part in the activities of said League to the best of my ability.

I have signed this pledge of my own free will and without coercion or intimidation of any kind.

The League's activities, outside of occasional social affairs, in most instances are coincidental with the efforts of the Union to organize the respondent's employees.

9. The Donnelly Loyalty League held its meetings on company property. All of the executives and supervisory employees of the respondent were members except Mrs. James A. Reed, president of the company, and Mr. Baty, the general superintendent. The members of the Donnelly Loyalty League paid no dues, no constitution or by-laws were adopted, so that the organization remained in a rather nebulous form to be called into use when the occasion required.

10. Herbert Mutchler, a supervisory employee, was president of the Donnelly Loyalty League for 2 years, and was succeeded by Rose Todd, also a supervisory employee of the respondent. Bertha Estes, who was secretary of the Donnelly Loyalty League in 1938, received no records of any kind from the former secretary and Miss Estes kept no records of any kind. The Donnelly Loyalty League, according to respondent's witnesses, was purely a social organization for the purpose of holding dances and social affairs.

11. Unquestionably, the League did hold dances and social affairs, but its primary function was to combat union [fol. 644] propaganda and this is clearly shown by its activities and the support which the respondent gave to the organization. For instance, while the League officers denied that they, as representatives of the League, prepared a Loyalty petition, it is clear that it was part of the Loyalty League's plan.

12. On March 2, 1937, a petition was circulated by several employees through the plant during working hours. In many instances the petition, after being brought to the sections, was passed from person to person for signature, while the machines were in operation. The Loyalty petition read as follows:

We, the undersigned, as member of the Donnelly Garment Company, wish to make it known that we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any

union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed.

This petition was signed by all of the employees except Elsie Graham Greenhaw, a stenographer who worked in the main office. Mrs. Greenhaw was requested by Pauline Shartzer to sign the petition during working hours. Mrs. Greehaw refused to sign because of the statement "refuse to acknowledge any union labor organization," and stated to Miss Shartzer that as an employee of the Donnelly Garment Company she had a right to believe in a union or not as she pleased. Two other employees who refused to sign the petition at first, Sylvia Hull being one of those, were later permitted to sign the petition and thereafter their names were removed from the petition.

13. When the Loyalty petition was circulated through the plant, there was some doubt in the minds of those who circulated the petition whether the instructors who had charge of the sewing sections employing about 40 operators, should sign the petition. When Inez Warren, Pauline Shartzer and Mary Sprofera, the committee who circulated the Loyalty petition, presented the petition to Mrs. [fol. 645] Reed at her home in Kansas City, Mrs. Reed apparently noticed that the instructors had not signed the petition and she suggested to the girls that she would like to have the signatures of all the employees to put in the cornerstone of her new building. The committee then went back and secured the signatures of the instructors. At the time that the Loyalty petition was presented to Mrs. Reed at her home, a newspaper photographer was there and took a picture, which would indicate that Mrs. Reed or the committee had made the prior arrangements for the necessary publicity. Mr. Baty, the plant superintendent, testified that he was present at Mrs. Reed's home when the petition was presented; he insisted that he was in Mrs. Reed's living room discussing business matters when the petition was presented, while the weight of the testimony discloses that Mrs. Reed was out in her garden when they presented the petition. This is typical of the large number of inconsistencies in the testimony of the respondent's witnesses with respect to many events that occurred during 1935, 1936 and 1937.

14. The Donnelly Loyalty League, on March 18, 1937, held a meeting in the plant of the respondent which meeting, according to Rose Todd, then president of the League, was entirely a spontaneous meeting. Rose Todd testified that the meeting of March 18 was not a meeting of the Loyalty League but merely a meeting of the employees. However, the meeting was called by the officers of the Loyalty League; a representative of the Loyalty League, Rose Todd, was chairman of the meeting; and the meeting was called by notices sent to all of the various departments through the regular messenger service of the respondent, which notices when they reached the sections, were passed out by the instructors.

15. The meeting was held on the second floor of the building occupied by the respondent, and the records of the Kansas City Chair Company indicate that the chairs which were ordered for the meeting were ordered by the Donnelly Loyalty League. The testimony is rather conflicting as to just what transpired at the meeting, but there [fol. 646] is no denial of the fact that Mrs. Hyde, employment manager, and other supervisory employees, attended the meeting. Rose Todd, who acted as chairman, while denying that Mrs. Reed knew that there was a meeting to be held, selected a committee to go to Mrs. Reed's office and invite Mrs. Reed to speak at the meeting. Mrs. Reed did come to the meeting and was prepared for the invitation as evidenced by the fact that she read a letter she had received from the International Ladies' Garment Workers' Union. This clearly indicates to the undersigned that the letter of the International Ladies' Garment Workers' Union was the occasion for another meeting of the employees of the respondent and that the Donnelly Loyalty League and its officers were used for that purpose.

16. Mrs. Reed then made a short extemporaneous talk. There is much testimony in the record to indicate that Mrs. Reed's talk was directly connected with the Union's letter which was read. Mrs. Reed made it very clear to the employees that she was opposed to outside unions and the union referred to was the International Ladies' Garment Workers' Union. Mrs. Reed referred to the Loyalty petition in which all of the employees had advised Mrs. Reed

that they refused to recognize any union labor organization. It is further clear from Mrs. Reed's talk, particularly when she referred to the fact that she would not permit any union to force her employees to join a labor organization; that the employees, as far as the management was concerned, should not consider an outside union. Mrs. Hyde testified: "She (Mrs. Reed) said International, Dubinsky or any other 'buttinsky' would not intimidate her into making her compel or force her employees to join any labor organization which they did not choose." As will later appear in Section B of this report, the meeting of March 18 unquestionably laid the groundwork for the formation of the Donnelly Garment Workers Union on April 27, 1937.

17. Elsie Graham Greenhaw testified that Mrs. Reed spoke at the meeting of March 18 and stated that she would close her factory before she would permit it to be union- [fol. 647] ized. The undersigned accepts this testimony of Mrs. Greenhaw as correct for the reason that Mrs. Greenhaw, of all of the witnesses who testified at the hearing, was a disinterested party. Mrs. Greenhaw was not a member of any organization while employed at the Donnelly plant. Her testimony was given in a straightforward and unhesitating manner. She has always been employed in very responsible positions and left the respondent's employment with a good record. A further reason for the acceptance of her version is that the testimony of the respondent's witnesses with respect to the calling of the meeting and the circumstances surrounding it, varied substantially.

18. On February 26, 1937, there appeared in the Kansas City Times, an article which stated that the International Ladies' Garment Workers' Union was going to intensify its organizational activities, with particular reference to the Donnelly Garment Company. On that day and within a few days subsequently, Mr. Baty, the plant superintendent, increased the salaries of a large number of the employees of the Donnelly Garment Company. This is further evidence of the fact that meetings of the Donnelly Loyalty League and action of the respondent was always timed with some activity of the International Ladies' Garment Workers' Union.

19. There was a great deal of testimony concerning a meeting during the latter part of March or the first part of April 1937, at which meeting Rose Todd, who was then president of the Donnelly Loyalty League, advised the employees that she, Sallie Ormsby and Hobart Atherton, had employed a firm of attorneys in Kansas City to see what could be done in securing an injunction to protect the employees of the Donnelly Garment Company. Rose Todd testified that at this meeting a plan was proposed to collect from every employee 50 cents as she and the balance of the committee had promised the attorneys a retainer fee of $500. There was a substantial amount of conflicting testimony concerning this meeting. No one [fol. 648] except Mr. Smith, a machinist employed by the respondent, was able to definitely place the date of the meeting, he placing the date as March 30, 1937. Mr. Smith's testimony with respect to the date of the meeting or any of the transactions of the meeting cannot be accepted. His recollection of what transpired at the meeting was very hazy as was the testimony of all of the respondent's witnesses.

20. The undersigned is of the opinion that no such meeting was ever held and that the date of the latter part of March or the first part of April was used in order that it might be contended that the $500 paid the attorneys—which was paid by check of the Donnelly Loyalty League—was for services rendered the employees and not to be connected with the formation of the Donnelly Garment Workers Union. This position is untenable as the actual records disclosed that there was no such meeting; that the 50 cents collection was made subsequent to the formation of the Donnelly Garment Workers' Union; and that the Donnelly Loyalty League paid the retainer of $500 to the attorneys for the formation of the Donnelly Garment Workers Union.

21. Rose Todd, in her testimony, did not disclose that she, on March 30, 1937, went to the First National Bank of Kansas City, Missouri, and borrowed $1000, signing the note "Nell Donnelly Loyalty League," and that the $500 paid to the attorneys was paid out of this account. The latest definite date on which any of the witnesses place

the meeting in the latter part of March, is March 30, the day Todd made the loan, and if it had been planned to collect the funds on that date, a loan would have been unnecessary, or if so Todd would have reported the loan. Rose Todd did not advise the employees at any of the meetings of this loan or of the payment of the retainer fee from the proceeds of the loan.

22. The testimony is clear that the employment of the attorneys and the raising of the funds was for the purpose of organizing the Donnelly Garment Workers Union. The [fol. 649] Donnelly Garment Workers Union and its formation and organization is inseparably tied up with the Donnelly Loyalty League. Rose Todd, who was president of the Donnelly Loyalty League during the early part of 1937, was the organizer of the Donnelly Garment Workers Union and did not resign as such until at least 30 days after the Donnelly Garment Workers Union was organized.

23. An incident occurred in the plant on April 23, 1937 which again demonstrated the activity of the Donnelly Loyalty League and the respondent's opposition to the organization of a union in its plant. Again the respondent attributes the incident to an article which appeared in a Kansas City paper. Sylvia Hull, an employee of the respondent and a member of the International Ladies' Garment Workers' Union, was selected to attend a union convention in Atlantic City as reported in the paper. On the morning of April 23, 1937, and after the girls were seated at their machines a number of employees appeared and singing Donnelly Loyalty League songs, congregated around her machine. The employees left, and shortly thereafter another group of employees from several floors in the plant approached her and requested that she return the Donnelly Loyalty League pin which she refused to do unless they paid her 35 cents for the pin. Shortly thereafter, the girls returned, gave Hull 35 cents; and the pin was returned. At the request of Mrs. Hyde, Hull went to Hyde's office, followed by a number of the girls, in spite of the fact they had been ordered to return to work. Hyde's account of this affair is as follows:

So I went upstairs and I found a group of girls working in the section, same section as this Sylvia Hull, grouped

around her machine, and they were singing songs, and I suggested that since knowing about the notice that was in the paper the night before, that Sylvia Hull come down to the desk with me so that we could get these girls back to work and their remarks at the time were that they would not go back to work unless she left the building . . . . asked girls to go back and girls instead followed us down and when I asked them again to go to work, said they would when Hull went home, and then Hull said "I will go home. I didn't know the girls felt this way about it, or I wouldn't have done it."

Hyde stated that the refusal of the group to go back to their jobs was a refusal to work. None of the girls was ever disciplined in any way.

[fol. 650] 24. Later in the morning of April 23, 1937, there was another demonstration at which time Mr. Baty, the plant manager, and Rose Todd, president of the Donnelly Loyalty League, requested that Fern Sigler accompany them to the office. When Fern Sigler arrived at the office she was interviewed by Ella Mae Hyde, the employment manager, Mr. Baty, the production manager, and Rose Todd, president of the Loyalty League. There was a stenographer present who prepared a transcript of what was said at this conference. Rose Todd at this conference asked Fern Sigler how long she had belonged to the Union and wanted Miss Sigler to tell her "why you feel the way you do." Fern Sigler replied "that every employee has a right to join any organization they choose." Mrs. Hyde then stated: "It is perfectly all right, we have no objections." Fern Sigler replied: "An employer should be able to control their girls." Mr. Baty asked Fern Sigler "how did they find out you belonged to the union." Fern Sigler replied: "I wore my pin." Mrs. Hyde then asked: "Did you wear your Loyalty League pin?" Fern Sigler replied: "I haven't worn my Loyalty League pin for 2 weeks, I didn't wear either of them." Rose Todd advised Miss Sigler "time alters circumstances, personal opinions are incensed and it is a little difficult to keep that many people from expressing their opinions." Mr. Baty then suggested to Fern Sigler that she go home for a few days until things quiet down. Fern Sigler then said:

"It would be the same thing when I come back." Mrs. Hyde stated: "These girls won't stay at their machines as long as you are in that section." Rose Todd then asked: "What do you think you have gained that we haven't by joining the union." Further Miss Todd stated: "As president of the Loyalty League, I am not going to sell you on the idea that we are right but the majority will certainly rule in a case like this." Mr. Baty then said: "You will have to go temporarily, it is not a matter of choice. We don't wish to have a disturbance here. People from every floor in the factory were down at your machine a while ago." Fern Sigler then asked whether she would [fol. 651] be paid for the time off. Mr. Baty then replied: "Why do you think we should pay you while you are off? You joined this organization and these girls are much opposed to it. It is no fault of the company that they won't work around you." Fern Sigler replied: "Employers is supposed to be able to keep the employees at work." Mr. Baty replied: "We don't go into the Wagner Act. We are just running our business here and not a law office." Rose Todd then stated: "We are going to run an open shop as long as the majority feels that way. The majority is going to rule as always." Mr. Baty then closed the conference by stating: "I am going to ask you to go home temporarily and Mrs. Hyde will call you back when I think it is safe for you to come back."

25. During the Hull demonstrations Mrs. Allison the instructor in charge of the section and her assistant, Rose Hendricks, were present. With knowledge that girls were present from other sections and floors, no effort was made by these supervisory employees to control the girls. Pearl Collins, Fern Sigler's instructor was present at the time of the Sigler disturbance. Collins testified: "Well, I merely asked the girls to leave and go back to work" and when asked if the girls left, "Well, not immediately, but then they soon left." Mr. Baty when he appeared at Sigler's section saw the girls grouped around Sigler and did not at that time or later reprimand any of the employees taking part in the demonstration.

26. Mrs. Hyde, the employment manager, testified that Sylvia Hull and Fern Sigler did not violate any rules of

the company and that the girls who congregated around the machines of the girls were not disciplined in any way.[1]

27. The organization of the Donnelly Loyalty League and the support and encouragement which it received from the respondent and its agents, and more particularly the [fol. 652] fact that the Donnelly Loyalty League was only active on those occasions when it was necessary to call to the attention of the employees some activity of the International Ladies' Garment Workers' Union, while it does not indicate that the Donnelly Loyalty League was a labor organization, it most assuredly laid the proper foundation for the formation of the Donnelly Garment Workers Union on April 27, 1937.

28. The undersigned finds that the respondent by all of the activities as set forth herein, organized and dominated the Donnelly Loyalty League as a medium to discourage membership in I. L. G. W. U. and further finds that such activities have interfered with, coerced and restrained its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

B. The Donnelly Garment Workers Union:

(1) The formation and administration of the Donnelly Garment Workers Union.

29. The meeting of April 27, 1937 was the organizational meeting of the Donnelly Garment Workers Union. Cameron Herold, an employee of the respondent and a graduate of junior college, was unable to distinguish between the Donnelly Loyalty League meeting of March 18, and the organizational meeting of the Donnelly Garment Workers Union held on April 27, 1937.

Q. Do you remember any meeting of the Donnelly Garment Workers Union?

A. I do.

Q. Describe that meeting. How many meetings were there during this period that you can recall?

A. The first meeting was about the middle of March.

[1]The events following the Hull incident will be fully covered under Section C — Discharges.

30. Mrs. Lynn Davis stated that there was a meeting called or "there was employees went to see a lawyer and to see what we could do about forming a union of our own." This statement of Mrs. Davis indicates that the employees in the plant were unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment [fol. 653] Workers Union. Rose Todd and several others of those who were active in the organization of the Donnelly Garment Workers Union, attempted to show that the employment of the attorneys in the first instance was for the purpose of securing an injunction and not with relation to the organization of the Union. The testimony of Mrs. Davis would indicate that the employees were not of this opinion.

31. The Supreme Court of the United States, on April 12, 1937, in several decisions, upheld the constitutionality of the National Labor Relations Act. Hobart Atherton stated that the idea of an independent union originated between April 12 and 20, and further, that on April 26, 1937, he met with Rose Todd at her apartment and discussed the advisability of organizing an independent union on the following day. There must have been some discussion of the situation in the Donnelly plant, at least on April 13, 1937 when Rose Todd interviewed Mr. Tyler, the attorney who was later employed to organize the Donnelly Garment Workers Union. Rose Todd testified that the interview was with regard to an injunction, but the testimony is clear that Tyler was employed for the purpose of organizing an independent union.

32. Rose Todd's testimony as to why the meeting of April 27, 1937 was called, is decidedly different and in conflict with testimony of Hobart Atherton. Rose Todd's testimony indicates the meeting just happened.

33. Rose Todd was president of the Donnelly Loyalty League during 1937 and did not resign as president until about a month after the organization of the Donnelly Garment Workers Union on April 27, 1937, so that she, as a supervisory employee,[2] continued as the directing influence in the latter organization.

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[2]Todd's relationship to respondent is fully set forth in Part III, Section B-2.

[fol. 654] 34. The April 27 meeting was called immediately after work on the second floor of a building which was occupied by the Donnelly Garment Company and in the meeting room which had been formerly used by the Donnelly Loyalty League. It is true that the Donnelly Garment Company at the time did not have the second floor leased, but the employees in the plant were notified by the interdepartmental phone system of the respondent that there was to be a meeting. Many of the employees went to the meeting in their uniforms, and as Claris Martin testified, "the meeting was held immediately after working hours and I went in my uniform." Pearl Collins, an instructor, stated a message came that Rose Todd was calling a meeting of employees. Rose Todd stated, "In using our house telephone system in that manner, we have what we call floor girls or thread girls in each department. It is absolutely her duty to answer the phone and convey any message that might be given. That was what was done. The telephone operator called and said there would be a meeting on the second floor after work for the employees."

35. The testimony is undisputed that Rose Todd, a supervisory employee, called the meeting of the employees on April 27 and presided at the meeting. Although Rose Todd attended an open meeting of the International Ladies' Garment Workers' Union in 1935, referring to this meeting she testified: "Well, I just never had known anything much about labor organizations and I just—it was an open meeting as I understood and I just went." When Rose Todd opened the April 27 meeting she clearly indicated her dissatisfaction with unions by stating: "My first personal distress was the use of the word 'union'. You probably don't like it better than I do but you must see by this time that to meet the demand that can be made by outside unions, that our organization will have to be a union."

36. Nellie Stites came to the meeting in her uniform as well as a large number of the others. Nellie Stites was unable to distinguish between the meetings of the Donnelly [fol. 655] Loyalty League and the Donnelly Garment Workers Union, and after the organization of the union she did not know the representative of the union for her

department. The employees were definitely unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers Union. Mrs. Lynn Davis testified that she paid dues to the Loyalty League. This is another indication of the inability of the employees to differentiate between the Donnelly Loyalty League and the Donnelly Garment Workers Union. As further evidence of this fact, the chairs which were rented from the Kansas City Chair Company for the meeting of April 27, 1937 were ordered by the Donnelly Loyalty League evidenced by a notation on the margin of the books of the Kansas City Chair Company, so it is not surprising that the employees were unable to distinguish between these two organizations.

37. The organizational meeting lasted about 1 hour and during this time the employees, according to the minutes of the meeting, voted to form an independent union; Rose Todd and M.. Tyler addressed the meeting; adopted by-laws and the name Donnelly Garment Workers Union; appointed a nominating committee for representatives; elected 9 representatives; passed out cards for the signatures of the employees; and collected about 1300 signed cards.

38. Rose Todd, in her opening statements, stated that it was a gratifying sight to see so many present and that as chairman of the committee of employees, she called the meeting to discuss a matter of vital importance and clearly indicated in her talk, as recorded in the minutes of the meeting held April 27, 1937, that she had consulted with Mr. Tyler who acted as attorney for the employees, and "more and more these past few weeks it has seemed to me that we are approaching the time when it will be necessary to form an organization that will give us the protection that we need." She further explained that the Loyalty League, being a purely social organization, will not take care of the situation, "that another organization is necessary to give us representation to definitely confer with the [fol. 656] proper representatives of our company at times when we feel that is necessary." She further stated: "our new organization will be called the Donnelly Garment Workers Union." Miss Todd then introduced Mr. Tyler who stated: "Some weeks ago several employees came to my office and employed Mr. Gossett and myself as legal

advisers of the employees so that I am in fact at this moment acting as an attorney for you or for many of you even though you have never seen me before. First I want to say that I represent no labor union and in connection I represent no employer. You may believe in unions or you may disbelieve in unions and still agree with the advice I am now about to offer you. The reason for this advice I am going to give you is that we believe it is to your own best interest to organize your own individual unaffiliated plant union of the employees of the Donnelly Garment Company and proceed with such a union." Mr. Tyler went on to explain that one of the reasons for the organization was the fact that the International Ladies' Garment Workers' Union sent a representative to the national convention to represent the Donnelly employees and "in order to stop this and to make it clear that you are speaking for yourselves through your own representatives whom you choose we think your own union is desirable." Mr. Tyler further stated: "I do not think that this action can or will be considered as any act of unfriendliness to your employer. I believe they recognize your right to take this step and that isn't an unfriendly act to them. In fact, it is much better for them and yourselves for you to have your own union with your own representatives rather than having a group trying to represent outsiders from New York." Rose Todd then said: "Well, we are together as an entire group of employees. Let's form this organization," and a motion was then made that they form an independent unaffiliated plant union.

39. A motion was then made that a nominating committee be appointed to select a general chairman and group chairman. This motion was passed, the nominating com- [fol. 657] mittee retired, and in 15 minutes reported back to the chairman the nomination of nine persons who were voted upon en masse and all elected. Those elected were general chairman Rose Todd, Hobart Atherton, representative of the workers in general, and of the 9, 2 were operators to represent 800 employees of the respondent of the total of 1200. The bylaws were read by Mr. Tyler who had prepared the bylaws without consultation with Rose Todd and Hobart Atherton who were the organizers of the Union. Atherton testified that he had never seen

the bylaws in their entirety before the meeting. Rose Todd testified that Mr. Tyler wrote up the bylaws and that she made no suggestions with respect to the bylaws. The membership is strictly limited to the Donnelly Garment Company employees. The respondent suggested at a later date, during the negotiations for an agreement, that before any employee is eligible for election as a representative or chairman, he must have been employed for 1 year by the Donnelly Garment Company; this provision was then inserted. According to Mr. Tyler, this was to prevent any outsider who may become employed in the Donnelly Garment Company from being elected to an office in the Union and operating as a disruptive force in the organization.

40. As further proof of the fact that the employees were not only unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers Union, they were not familiar with the bylaws or the method of electing officers of the Donnelly Garment Workers Union. The officers are elected by the nine representatives, but Mrs. Lynn Davis testified that the officers were elected at the meeting of April 27, 1937.

41. The Donnelly Loyalty League, after the organizational meeting of the Donnelly Garment Workers Union on April 27, 1937, did not discontinue its operations. A meeting of the Donnelly Garment Workers Union was held on May 25, 1937, and according to the minutes of the meeting, Rose Todd read an article which appeared in the Kansas City paper that the International Ladies' Gar- [fol. 658] ment Workers Union had opened up headquarters to organize the Donnelly Garment Company. She announced at the meeting that the working agreement had been sent to Mrs. Reed and that they expected the agreement to be in Mrs. Reed's hands shortly. Rose Todd further announced a dance at the Play-Mor Friday night, June 11, and Hobart Atherton announced the arrangements for the dance and the importance of attending, and according to the minutes the meeting then adjourned.

42. Marjorie Green prepared the minutes of this meeting. There was a great deal of conflicting testimony with

respect to the meeting of May 25, 1937. Mrs. Elsie Greenhaw testified that she attended the meeting of the Donnelly Garment Workers Union on May 25, 1937 in accordance with a request from Marjorie Green. Mrs. Greenhaw prepared minutes of this meeting and a copy of the minutes clearly disclosed that the meeting started out as a Donnelly Garment Workers Union meeting and during the latter part of the meeting was conducted as a Donnelly Loyalty League meeting. Elsie Greenhaw's minutes of this meeting are accepted as correct and her testimony with respect to this meeting is accepted. Her testimony was convincing and straightforward, and although many attempts were made by the respondent and the intervenor to discredit her testimony, it stands as a logical and plausible account of the events of the meeting of May 25, 1937. There are many details in the testimony of the respondent's and intervenor's witnesses in their effort to explain the Greenhaw minutes which are not consistent with the minutes of the Donnelly Garment Workers Union, or with the chronology of events which preceded and followed the meeting of May 25, 1937.

43. The minutes of the meeting of May 25, 1937 are accepted as written by Mrs. Greenhaw, for at least on one occasion Marjorie Green who was secretary of the Donnelly Garment Workers Union, testified that she did not take the minutes of the meeting of April 27—other witnesses of the respondent testified that she did—but Miss Green did say that she changed the minutes of the meeting of April 27 as written by a person she could not recall and retyped the minutes.

[fol. 659] 44. Unquestionably, the Donnelly Loyalty League was an organization of all of the employees of the respondent including supervisory employees organized in an effort to prevent the unionization of the Donnelly Garment Company by the International Ladies' Garment Workers' Union, and when it was found to be ineffective, several of the supervisory employees—Rose Todd and Hobart Atherton—employed attorneys and organized the Donnelly Garment Workers Union. The Donnelly Loyalty League and the Donnelly Garment Workers Union were inseparably tied up in the financing, organization, formation and administration of the Donnelly Garment Workers

Union. Reference has been made heretofore to certain supervisory employees and the responsibility of the respondent's executives for the formation of both organizations. The relationship between the Donnelly Garment Company and the Donnelly Loyalty League and the Donnelly Garment Workers Union, as fully set forth herein, can result in only one conclusion, that is, that the respondent organized, formed, sponsored, dominated and supports the Donnelly Loyalty League and the Donnelly Garment Workers Union and the undersigned so finds.

(2) Relationship between the Donnelly Garment Workers Union and the respondent.

45. There is an unbroken relationship between the respondent and the Donnelly Loyalty League and the Donnelly Garment Workers Union from the time of the organization of the Donnelly Loyalty League on February 5, 1935.

46. Martha Gray, at whose home the Donnelly Loyalty League was started, is in charge of the respondent's so-called "outlet store." Rose Todd testified: "I assume you would say that she is in charge. The only charge I guess there could be is over the remnants or things of that type sent down there for them to sell. There are about six women down there that do that selling. I don't imagine the direct responsibility of that store is with Mrs. Gray. I think it would originate in the department where the material is purchased." Rose Todd further testified that she had read announcements of sales in the outlet store [fol. 660] coming out under Mrs. Gray's name. Mrs. Gray has been in charge of the retail store for 7 years and while she and the respondent deny that she is in a supervisory capacity, the facts clearly show that she is a supervisor.

47. The Donnelly Loyalty League admitted to membership all of the respondent's employees. Mrs. Hyde, the employment manager, Mrs. Reeves, formerly plant superintendent, and now in charge of miscellaneous departments, were members, and all the plant employees were familiar with the fact that such executives and supervisory officers were members.

48. Rose Todd first met Mrs. Reed when Mrs. Reed was a patient in one of the hospitals in Kansas City, Rose Todd being her nurse. Todd had been employed by the Donnelly Garment Company for 13 years, having left the Donnelly Garment Company January 1, 1931 and returning August 1, 1933. Rose Todd was an operator for several months and then helped on the floor as a thread girl. Todd at times has acted as an instructor. Todd testified that the company does not use the term "supervisor" but that they do have an individual that they call an instructor in charge of approximately 40 operators who compose the sewing sections, and a second girl that might perhaps be called an assistant instructor. Since Rose Todd's reemployment on August 1, 1933, she has helped in various sections covering the entire plant. During this time Rose Todd had not been assigned to any particular department, being directly responsible to Mr. Baty, the plant superintendent. She has had a desk located on the seventh floor and her explanation is that she just happens to be there or wherever there is an empty desk.

49. Miss Todd talks to all the instructors and thread girls each day and it is her responsibility, as she states, to act as a sort of supply girl and go through the plant and check the work to see that every section has supplies. The instructors and thread girls do call her at times to furnish supplies when they run short.

[fol. 661] 50. Mr. Baty described Rose Todd's work: "She checks with the sections all over the plant looking for merchandise that is delayed—dresses and bundles—checks to see what they need in the way of thread, lace, buttons, or any other notions . . . For a period in 1938 she worked on some special work with Mr. Atchison" (who resigned as a member of the Donnelly Garment Workers Union because of being a supervisory employee). Mr. Baty further stated that Rose Todd received the same vacations as given the instructors, that is 3 weeks instead of 2 as given to the operators. Rose Todd was supposed to take her vacation in August 1937 but Baty stated that "he couldn't let Todd go in August as she was indispensable." Everett Sweeney, chairman of the board of the First National Bank of Kansas City, Missouri, has known Rose Todd for 10 or 12 years, having met her at his office.

Sweeney stated "she was a kind of all-around man for the company," and had come in on matters for the company for several years.

51. Mr. Baty and the other witnesses for the respondent deny that Rose Todd is in a supervisory position; there is little doubt but that she succeeded to at least a part of the duties of Mrs. Wherry, a former assistant plant superintendent, or as Mr. Baty stated, a general instructor. Mr. Baty testified that Rose Todd's job in the factory is a sort of go-between in the sections. In other words, instructors contact her and she notifies him instead of the instructors going direct to Mr. Baty, so that she, Rose Todd, is unquestionably one step above the instructors in their relationship to Mr. Baty, the plant superintendent.

52. This dual relationship of Rose Todd as a supervisory employee and as president of the Donnelly Garment Workers Union, undoubtedly accounts for the fact that she has a desk on the seventh floor where she keeps the Donnelly Garment Workers Union records. Rose Todd as a representative of the Donnelly Garment Workers Union, transacted union business at her desk during working hours and the employees knew this because of Rose Todd's announcement to them that they could come to her desk and sign membership cards in the Donnelly Garment Workers Union, and this was particularly true for several days after April 27, 1937.

[fol. 662]. 53. Rose Todd's position with the respondent enabled her to use the inter-office mail service and the inter-office memorandum forms in notifying the employees of any matters in connection with the Donnelly Garment Workers Union, and as has been previously stated, gave her the use of the interdepartmental phone system of the respondent.

54. Hobart Atherton stated that he, with Rose Todd were responsible for the meeting of April 27, the employment of the attorneys, and for the organization of the Donnelly Garment Workers Union, while he and the respondent deny the fact that he is a supervisory employee. Hobart Atherton performs the duties of a supervisor in the mechanical department and was first employed by the respondent in November 1933 in the maintenance depart-

ment. According to his testimony he works on all floors and while he was indefinite about the fact that he received all the phone calls for repairs, there is no question but that that is his function. Atherton transmits the instructions to the employees in the mechanical department and on occasion shows them how to do the work. In addition to Atherton, the department has one electrician, one carpenter, one painter and three laborers. Atherton assigns the work and checks it when completed, and keeps a record of it in a notebook. Atherton denied that he had charge of the mechanical department. The impossibility of the respondent's plant operating with no supervisors is fully discussed below. However, Atherton's explanation of his duties and functions in the department creates an impossible situation. Someone must assume the responsibility for the assignment of work to the three different types of mechanical people employed, and certainly with the three laborers who are employed, it cannot be assumed that they or the mechanics decide what is to be done and go about their business. There is no testimony to indicate that Mr. Baty, the plant superintendent, in any way directs the work of these employees.

[fol. 663] 55. Mrs. Nichols who is in charge of the price-setting section, is supervisory employee although a member of the Donnelly Garment Workers Union. Ted Scoles is a member of the Donnelly Garment Workers Union and is in charge of the cutting section. All of the salesmen are members of the Donnelly Garment Workers Union.

56. Miss Pauline Hartman, who is treasurer of the Donnelly Loyalty League, is employed in the office and works on the time pay rolls. It is questionable whether Miss Hartman is in a supervisory capacity, but she is employed in a confidential position as she has access to the safe and vaults of the respondent where at times she keeps the funds of the Donnelly Loyalty League. There was some testimony to indicate that she has one or two persons under her supervision, and due to her seniority she does take a certain amount of responsibility for the work in her section. She is employed in a very confidential relationship with the respondent in the main office.

57. Jack McConaughey, the present treasurer of the Donnelly Garment Workers Union, is employed in the re-

spondent's main office on the tenth floor. Mr. McConaughey has been employed by the respondent for 9 years. At present Mr. McConaughey is employed on a salary basis and has the responsibility of the pay rolls, social security records, and so forth. Prior to his present position he was in charge of the service section or mechanical section.

58. Marvin Price is a supervisory employee being employed as the custodian of the plant. Mr. Milton Slotkin, manager of the Kansas City Chair Company, testified that he always consulted with Mr. Price concerning the rental of chairs and had received orders for the rental of chairs to be used by the company on several occasions. When Rose Todd as president of the Donnelly Garment Workers Union in April 1938 reported the number of meetings that had been held in the plant in order that the rental due could be determined, submitted the report to Marvin Price.

[fol. 664] 59. The Donnelly Garment Company employs 40 to 45 so-called instructors. These instructors are supervisory employees and have charge of the different sewing sections composed of 1 thread girl or assistant instructor, and about 40 machine operators. All of them are eligible for membership in the Donnelly Garment Workers Union and as far as the record discloses, all are members. These instructors have not been particularly active in the Donnelly Garment Workers Union. It is unnecessary that they should be because when the operators know that the instructors are members and attended the meetings regularly, it is sufficient indication to the girls working under their supervision that it is advisable for them to also belong to the Donnelly Garment Workers Union.

60. Mrs. Reeves, formerly plant manager, testified that "competent instructors teach the operators the particular operations to be performed by them and constantly supervise the same." As hereinbefore referred to, the instructors were left off the Loyalty petition until their signatures were requested by Mrs. Reed. In a meeting of the group, chairman, as shown by the minutes of June 15, 1937, Hobart Atherton stated: "I think department heads, instructors and so forth, should have all the privileges of membership except that they shall not be allowed the right to vote." This would indicate that even in the

minds of the officers of the Donnelly Garment Workers Union, there was some doubt about the advisability of permitting the instructors full membership in the Union and the curtailment of their membership rights can only be based upon the fact that they, the instructors, were in a somewhat different position than the ordinary plant employees. May Fike testified "that instructors give orders to the girls and tell them what to do" and that the instructors have a table in the section to themselves; further, that when the work is incorrectly done, the instructor tells the girls how it should be done; further, that the instructors have the responsibility to turn the power off and on in the various sections.

[fol. 665] 61. The instructors' supervisory authority is further shown by the fact that when the work is slack the instructors decide who shall take a day off and in what order the operators will take off their time. The instructors, according to the testimony of the respondent's and intervener's witnesses, are in fact supervisors in every sense of the word. Marjorie Green, secretary of the Donnelly Garment Workers Union, testified that on one occasion a complaint had been made to the Union because an instructor was unreasonable. Mable Riggs testified to the same effect. Rose Todd testified that grievances were taken up with Mr. Baty and the instructor and adjusted. This would clearly indicate that the instructor is a supervisory employee to be considered in the discussion and settlement of grievances with the operators. Instructors are paid twice a month and their names are carried on the time workers pay roll, while the operators are paid on a piece rate basis weekly.

62. Pearl Collins, an instructor, testified: "I work up and down the whole section and distribute work. I try to keep the girls busy." "I distribute work up and down the section. I try to keep the girls busy but I am not in charge of anything. I am just here." Pearl Atchison, an employee of the respondent who worked as an operator for 8 years, stated that she had been promoted to an instructor and that she was promoted she supposed because she was capable. Effie Wiegand, an operator, testified that Mr. Baty had never spoken to her about employment and had never given her any instructions or directions.

63. The respondent has a section that employees 25 or 30 examiners and inspectors whose duty it is to inspect the finished garments when they come from the different sewing sections. The examiners or inspectors are not supervisory employees in the same sense that the instructors are, but they do, although the respondent in general denies the fact, report at least to the instructors by referring back defective garments on the work of the various operators. Mr. Baty testified that the examiners had reported to him concerning the work of May Fike, but it was impossible for him to recall the examiner who reported the fact.

[fol. 666] 64. The evidence is undisputed that prior to June 1935, Mrs. Reeves who was then the production manager, considered the instructors as supervisory employees with a very definite responsibility. She testified:

After we decide that we have to lay off a certain group or a number of people we go over our records with the instructor and she makes the recommendation because she is in close touch with the operator and knows the type of work the operator does and whether she is efficient, obedient, cooperative and reliable . . .

65. In June 1935, Mr. Baty became production manager and according to his testimony, changes were made in the functions of instructors. Baty testified:

I changed the work of the instructors, I would say, to a very great extent. Prior to the time I took them, they were considered more or less supervisors, and entered into the discussions and recommendations as to the ability of different operators and made different recommendations as to which operators would be recalled after they were laid off, and after I took over the plant, I put instructors strictly on the basis of an instructor, and they were there to assist the operator in the performance of their work, and nothing else. They had no supervision over the girls, and it was none of their concern as to how the girls performed. They were to give them the work, take it away from them when it was finished, show them how to do it, if they didn't know how, and that was the extent that they were held liable for the girls in the section.

Under the changes made by Baty, he testified the instructors had no authority to hire, discharge, discipline or supervise operators; Baty retained all such authority over all employees in his department. On June 2, 1939, the number of employees included in Baty's department were as follows: 642 operators, 72 miscellaneous piece workers, 77 ironers, 11 folders, 41 examiners, 44 in the cutting department, 15 dividers, 44 instructors and distributors, 14 mechanics and helpers, 11 bundle boys, 52 clerical workers, 60 miscellaneous time workers, 20 porters and maids. These employees are located on 10 floors of the building occupied by the respondent's plant. Baty testified:

[fol. 667] Q. Mr. Baty, supposing when you start up tomorrow morning, if you were there, that say there are ten of these sections and a couple of girls didn't show up, how do you find that out?

A. We have a hospital department and the nurse maintains an attendance record. She calls each section in the morning and asks the floor girl or the instructor, whoever answers the phone, for her attendance, who is absent, and any cards that are not stamped in at the time clock, at the time for that group to report to work, are picked up and taken to the nurse's office. In a very few minutes after time to start to work, within fifteen minutes, it is known how many are absent.

Q. Who notified you? A. They don't notify me.

Q. How do you know? A. I go around and look.

Q. You mean, you check every section the first thing in the morning?

A. I go over the plant the first thing in the morning.

Q. How many sections do you have?

A. Well, there is sixteen, eighteen.

Q. Who do you inquire of in each section? How do you find out there is somebody missing?

A. All you do is look at the vacant chairs. You don't inquire of anybody.

Q. Do you know, then, who is gone?

A. I don't know the exact persons in all cases. I know that there are so many operators out of this section and so many out of the other one, and so on.

Baty further testified:

Q. You are the only one there, either book or pamphlet or human being or any other way that knows what these many hundreds of operators are doing?

A. No. Many other people there know what they are doing.

Q. Well, but it isn't anyone else's duty to know what they are doing except yours, is it?

A. Not necessarily.

. . . . . .

[fol. 668] A. The instructors are paid to know what they are doing.

. . . . . .

Q. What do they do with the knowledge they gain about what the operators are doing?

A. They continue to use it to provide them with similar work.

. . . . . .

Q. When you ask them if a girl is inefficient and ought to be let out, they tell you, don't they?

A. I don't ask them anything of that kind.

. . . . . .

Q. That is what we have been talking about, Mr. Witness. I asked you if any of the instructors ever say to you, either upon your request or otherwise, that such-and-such an operator is inefficient and cannot longer be continued in the employment?

A. They have no such duty to perform. It is not up to them to say whether they are efficient.

Q. Do you ever ask one of them that?

A. No.

Q. You just know all that yourself?

A. I can tell from their payroll record, and my own observation of the operator, and I talk to the operators myself.

. . . . . .

Q. Now, can you give me any good reason why you wouldn't permit an operator—I mean an instructor—to discipline the operator?

A. I can give you a very fine reason, and the reason.

Q. All right, let's hear it.

A. Because the instructors are not capable of disciplining operators.

Q. I see. You have instructors that have been there for 15, 16 years, haven't you? A. We have.

Q. And you never ran a machine in your life, did you?

A. I did.

Q. Where?

A. A few minutes down at the plant.

* * * * * *

[fol. 669] Q. Now, let's say that some operator is staying away from her machine, staying in the toilet a little too often, too much. How do you find that out? Do you get that on these inspection tours you make of the factory, or does some one tell you about it?

A. The operator would tell me herself.

Q. Oh, I see? A. Yes.

Q. So, if some operator is sneaking off to the toilet and taking the time of the company, why, she will come and tell you about it; is that it? A. Yes, sir.

Q. You wouldn't think of asking the instructor?

A. It wouldn't be necessary.

Q. The 600 or more operators, you wouldn't ask the instructor whether this little girl is behaving or not?

A. I would not.

66. Mrs. Reeves, formerly in charge of production, and now familiar with the respondent's operations, testified as follows:

Q. Now, you made an affidavit in the three-judge hearing, didn't you? A. Yes.

Q. And that affidavit, according to the record, was made and sworn to on the 30th day of October, 1937. If that is the record, that is correct, I assume. You remember that that three-judge hearing was going on in October, 1937? A. Well, if that is the date there.

Q. In that affidavit you stated (reading) "Competent instructors teach the operators the particular operations to be performed by them, and constantly supervise the same."

A. All right.

Q. Well, you said that, didn't you, swore to it?

A. If it is said there, yes, and it is true.

Q. They constantly supervised them, at least, by October 31, 1937? A. That is right.

[fol. 670] 67. Reeves further testified: "The authority that an instructor has from the company is to keep the operators in plenty of work and to follow the outline that is sent down to her from the office, as far as planning, and if it is impossible for her to do that, for some reason, she consults with Mr. Baty and he attends to all of the affairs as to personnel, transferring operators, and hiring and firing, and Mrs. Hyde assists him, under his instructions."

68. The change in June 1935 was hardly in accordance with Mrs. Reed's testimony of May 25, 1935 when she stated: "Now, in our plant I think that we have more supervision and more executives than—I know. I have more than are usual in a plant of this kind . . . Yes, our supervisors. Now in my plant I have 40 operators, 40 machines under one supervisor with an assistant one in charge."

69. May Fike, a witness for the Board, testified that when Mr. Baty took charge in June 1935, that thereafter there was no change in the conduct of the instructors or their relationship to the operators. As far as the record discloses, the operators were never advised in June 1935 that there had been a change in the method of supervision, and consequently, the operators knew nothing of the taking away from the instructors any authority which they had previously had. Whether the instructors continued in the same manner as far as the operators were concerned, they looked upon the instructors in the same way that they had during the regime of Mrs. Reeves as plant manager, so that the effect of the instructors in joining the Donnelly Loyalty League and the Donnelly Garment Workers Union would remain the same.

70. The relationship of the respondent to the Donnelly Garment Workers Union is not only clearly shown by these outstanding facts, but it is further proven by a number of rather, in themselves, small incidents.

71. Rose Todd testified that notices of meetings were made by memos to all departments sent through the respondent's messenger service and by placement on bulletin boards. She further testified that she just ad- [fol. 671] dressed the memos to each department and that they must have been passed through the instructors' hands to the various employees in the sections. On a few occasions, mail received for the Donnelly Garment Workers Union was received in the company mail and received by the mail clerk and stamped with the receiving stamp of the respondent. The Kansas City Chair Company, in keeping its account of chairs rented to the Donnelly plant, was unable to distinguish between the rentals made to the company, the Donnelly Loyalty League and the Donnelly Garment Workers Union. The accounts were all kept under one ledger name—Donnelly Garment Company, until January 1939 when separate accounts were opened.

72. The Donnelly Garment Workers Union had no office or meeting place except in the respondent's plant. The Independent used the respondent's equipment and supplies, such as typewriters, desks, ditto machine, files, safe and bulletin boards.

73. Again, the inseparability of the respondent from the Donnelly Garment Workers Union was conclusive to its employees. This inseparability is clearly set forth in the actions of the supervisory employees referred to herein; the leadership of these supervisory employees in the Donnelly Loyalty League, as well as the Donnelly Garment Workers Union; the use of the respondent's building, equipment and supplies, and the undersigned so finds. The Donnelly Garment Workers Union could perhaps successfully function as a company-dominated organization without a closed-shop contract. Although Mrs. Rece stated to the employees at the meeting of March 18, 1937 that she would not permit anyone to force her employees to join a union, when the agreement of May 27, 1937 was

entered into, there was embodied therein a closed-shop provision which met with the instant approval of Mrs. Reed and Rose Todd.

(3) Donnelly Garment Workers Union contracts with the respondent.

74. While Rose Todd's testimony concerning the meeting with Mrs. Reed on April 28, 1937 is indefinite and contradictory, the statements of Mrs. Reed were such that Todd was assured of recognition for the Donnelly Gar- [fol. 672] ment Workers Union. Miss Todd advised Mrs. Reed that the Independent was the representative of her employees and that they desired an agreement with the company. Mrs. Reed advised that an agreement, when properly prepared, would be considered. The evidence with regard to recognition, and particularly whether or not a check was made of the cards, is rather indefinite and conflicting. One witness for the respondent testified that no such check and count was made, while another testified and also Mr. Baty, the plant superintendent, that the cards were carefully checked. Certainly, if Mrs. Reed recognized the Independent on April 28, there could have been no careful check made of 1300 signatures and cards, and Mr. Baty's statement is entitled to no weight.

75. On May 27, 1937, Mrs. Reed was presented with a contract by the officers and representatives of the Independent. There were several other officials of the company present at this meeting on the morning of May 27. Paragraph 9 of the agreement reads as follows:

Closed Shop. The employer agrees that on and after June 5, 1937, no one of its employees shall be retained in its employ who is not a member of this union.

It is well to recall that on March 18, 1937, at a meeting of the Donnelly Loyalty League, Mrs. Reed, president of the respondent, spoke to the employee stating that no one could force her to force her employees to join a union. On April 23, 1937, Rose Todd stated to Fern Sigler: "We are going to run an open shop as long as the majority feels that way. The majority is going to rule as always." However, by May 11, 1937, at a meeting of the Donnelly Garment Workers Union, Rose Todd ad-

vised the members that "anybody coming to work for us will join the union immediately. If there is any doubt in their minds about whether or not they want to join our union, then there is some doubt in their minds as to whether or not they want to work here."

76. At a meeting on May 6, 1937, of the officers and representatives of the Independent, Mrs. Reed was in attendance. It was at this meeting that Rose Todd advised Mrs. Reed: "We are working on a working [fol. 673] agreement to submit to you for your consideration concerning hours, wages and working conditions (whichoup to now had been very satisfactory). There is one thing we want to ask you to consider when we submit this plan to you—and that is, we would like to have a closed shop. (Mrs. Reed: 'I understand that is very essential to industrial peace.')" Reed's and Todd's sudden reversal — in their viewpoint on the closed shop — can only be explained by the conclusion that having organized and dominated the Independent the respondent intended to insure its future control of this organization. With a closed shop agreement and the requirement in the Independent bylaws that its members could not join any other labor organization, the purpose of the Independent—"the protection of employees and members of this union from coercion, intimidation, violence or threats of violence in order to force them to join unions organized and dominated by outsiders not employees in this plant . . ."—as expressed in its bylaws would be an accomplished fact, that is the exclusion of all outside unions.

77. On the morning of May 27, according to the minutes of the meeting between the officers and representatives of the Independent, and Mrs. Reed and her assistant, Mrs. Reed said: "I would like to have a little time to look over this agreement. However, I think it is very much in line —there will possibly be one or two little changes." Mrs. Reed further said: "I think the only changes it will be necessary to make will just be legal phraseology. The spirit of this agreement is satisfactory." Rose Todd also stated that the contract was acceptable to the respondent as submitted except for certain minor changes which she was unable to point out.

78. The morning meeting adjourned at approximately 11 a. m., and in the afternoon at about 2:30 or 3:00 o'clock, after Mr. Ingraham, the company attorney, Mrs. Reed and other officials of the company, had considered the agreement, the contract was accepted practically as presented. Mr. Tyler, the attorney for the Independent, explained the contract in this manner to the officers and representatives [fol. 674] of the Independent: "There is no very important change between this document and the one we prepared ourselves a little while ago . . . In this agreement we find it necessary in defining employees not to include executives . . . Also we have added to this agreement that to become a member of this committee you must be employed here for at least one year. This is to eliminate the possibility of someone getting on this committee who is not a true representative of the employees and who may be working here merely to act as a traitor to the company."

79. Mr. Baty's testimony with respect to the agreement under discussion at the meeting of May 27, 1937, is in conflict with the weight of the testimony and should be given no weight. In fact, his entire testimony is at variance with the facts as established by the record, almost to the point of being entirely incredible.

80. On June 22, 1937, the Independent entered into a supplemental agreement with the Donnelly Garment Company and the Donnelly Garment Sales Company. The supplemental agreement covered primarily wages and hours, and classification of the operators and other employees involving a minimum wage. There was a great deal of testimony with respect to the provisions of the supplemental agreement as to whether it was beneficial to the employees and whether they had gained anything by the execution of the supplemental agreement. It is not necessary to discuss in this report any of the matters embodied in the supplemental agreement as the original contract of May 27, 1937 established as a requirement of employment that the employees of the respondent join the Donnelly Garment Workers Union, thus requiring them to join an organization which was and is sponsored, dominated and supported by the respondent.

81. A contract entered into under these conditions is void and no force or effect, and the undersigned so finds.

82. In the fall of 1937 the respondent and Rose Todd—without any authority from the members or group chairmen — agreed upon a method for the collection of member-[fol. 675] ship dues by means of a check-off. The membership dues of 25 cents per month were paid directly to the Independent during the months of May, June and July 1937. On November 3, 1937, the respondent by its check paid into the organization $735.75. This amount represented the dues deducted from employees' checks for the months of August, September and October. Since this time the respondent has monthly paid to the Donnelly Garment Workers Union the dues deducted. Rose Todd, the Independent's president, and Jack McConaughey, its treasurer, were unable to satisfactorily explain any plan that would enable the Independent to check the amount received. The respondent, in forwarding the check does not provide the organization with the names of those employees for which the deductions were made. The Independent does not have a record of the dues paid by its members and issues no receipts for dues. The employees' checks indicate deductions made for dues, Social Security tax, etc.

C. Termination of employment of Sylvia Hull and May Fike.

83. Sylvia Hull, an operator, was employed by the Donnelly Garment Company for 8 years with one interruption of work of 7 months in 1933. She was employed originally in the spring of 1929 and her employment was terminated April 23, 1937, at which time she was a member of the International Ladies' Garment Workers' Union. The details of the incidents which occurred on April 23, 1937 when Hull left the plant of the Donnelly Garment Company, has been fully covered in Section 3-A herein.

84. On April 22, 1937, a notice appeared in one of the Kansas City papers that Sylvia Hull had been selected to represent the Donnelly Garment Company employees at the International Convention of the Union in Atlantic City, and the next morning when Sylvia Hull appeared for

work she was advised by a girl whose name she could not recall, not to change her clothes and to go to work. As [fol. 676] related in the section hereinbefore referred to, just after the power was turned on, a group of girls came over to her machine and started talking about the Union. Mrs. Allison and Rose Hendricks, instructor and assistant instructor in charge of the section, were present during the entire time of the demonstration.

85. When Sylvia Hull left the plant of the Donnelly Garment Company on April [27], 1937, she left with Mrs. Hyde the telephone number of a neighbor. The testimony is uncontradicted that on April 24, 1937, Mrs. Hyde called the number that was left by Hull and was unable to reach Hull, and further, that on at least one or two other occasions, an effort was made by Mrs. Hyde to reach Hull. No effort was made by the employment department of the respondent to reach Hull by mail or by telegram.

86. The testimony is uncontradicted that Sylvia Hull, after she left the plant on April 23, never thereafter called the plant or applied for reinstatement. Hull testified in the Judge Miller injunction case that she desired to return to her former job at the Donnelly Garment Company under certain conditions. She stated that she would return under union conditions, however, qualifying this statement stating: "I don't know their conditions now."

87. The undersigned finds that Sylvia Hull was not discharged because of her membership or activities in behalf of the Union, but that she was excluded by the respondent from the [the] plant for that reason.

88. This exclusion of Hull from the plant is an unfair labor practice and the normal procedure would be to recommend her reinstatement. In this instance because of events occurring subsequently to April 23, 1937, such a recommendation is unwarranted. When Hull left the plant on April 23, 1937, she gave to Mrs. Hyde the telephone number of a neighbor. On April 24 and on at least one other occasion, the testimony is undisputed that Hyde called the number and although talking to someone was unable to contact Hull. In the Judge Miller Injunction proceedings heard in Kansas City, Missouri in the spring

of 1939, Hull testified she wanted her job back, but would not return except under union conditions.

[fol. 677] 89. May Fike was employed by the Donnelly Garment Company some time in 1927 and was, except for a 2 years' period in 1931-1932, employed continuously until May 1937, when she left at her request on a vacation. May Fike joined the International Ladies' Garment Workers' Union on March 15, 1937. During April 23, 1937, when Fern Sigler was excluded from the plant, it was unknown to the supervisory employees of the respondent that she, May Fike, was a sister to Fern Sigler. May Fike worked in a section on the same floor and after the demonstration against Fern Sigler, Pearl Atchison, her instructor, spoke to her and advised Fike that she would have to go home because the work in that section was slack. The testimony as to the occurrences on the following day is somewhat conflicting, but the fact is that Fike returned to work and worked during that week. At the end of the week, May Fike, who desired to go on vacation with her husband, requested Ella Mae Hyde, the employment manager, that she be given the privilege of taking her vacation at a time other than the period set for all of the girls in the section, it having been the customary practice of the respondent to grant vacations to all the girls operating in the section at the same time. The evidence is clear that May Fike was advised by Mrs. Hyde that if she did take her vacation, that her return to work would depend upon whether there was any work to be done. From this point on the testimony of other witnesses is at variance. It is not necessary in determining the issue with respect to May Fike to consider any of this conflicting testimony.

90. After May Fike returned from her vacation, she, on several occasions, got in touch with Mrs. Hyde and on each occasion was advised to call again and that if there was work available she would be requested to report.

91. The undersigned finds that May Fike was not discharged for union or concerted activities or her membership in the Union, and further recommends that the complaint as to May Fike be dismissed.

IV. The Effect of the Unfair Labor Practices Upon Commerce.

92. The undersigned finds that the activities of the [fol. 678] respondent in interstate commerce, as set forth in Section III herein, occurring in connection with the operations of the respondent described in Section I herein, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions and Recommendations.

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes that:

1. By dominating and interfering with the formation and administration of the Donnelly Garment Workers Union, and by contributing support to it, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

2. By discriminating in regard to the tenure of employment of Sylvia Hull and thereby discouraging membership in the International Ladies' Garment Workers Union, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. By interfering with, restraining and coercing its employees in their exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

Wherefore, the undersigned recommends that the respondent, and its officers, agents, successors and assigns:

1. Cease and desist from in any manner:

(a) Dominating or interfering with the formation or administration of the Donnelly Garment Workers Union or of any other labor organization of its employees, and

contributing support thereto or to any other labor organization;

(b) Discouraging membership in the International Ladies' Garment Workers' Union, or any other labor [fol. 679] organization of its employees, by discriminating in regard to their hire or tenure of employment or any term or condition of their employment;

(c) Recognizing the Donnelly Garment Workers Union as the representative of any of its employees for the purpose of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment;

(e) Giving effect to its contract with the Donnelly Garment Workers Union or to any modification, continuation, supplement, extension or renewal thereof;

(f) Giving effect to any agreement for the deduction or collection of dues from the wages of its employees on behalf of the Donnelly Garment Workers Union;

(g) Interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. In order to effectuate the policies of the Act, respondent takes the following affirmative action:

(a) Withdraw all recognition from the Donnelly Garment Workers Union as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and completely disestablish all relations with the Donnelly Garment Workers Union as such representative;

(b) Notify all its employees by individual letters sent through the United States mails; that they are free to join or assist any labor organization for the purpose of collective bargaining with the respondent;

(c) Immediately post notices in conspicuous places throughout all the respondent's departments and sections, [fol. 680] stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that the respondent's employees are free to join or assist any labor organization for the purpose of collective bargaining; (3) that the respondent has withdrawn all recognition from the Donnelly Garment Workers Union and has disestablished all relations including contractual, with said Donnelly Garment Workers Union (4) that the respondent's contract of May 27, 1937, with the Donnelly Garment Workers Union, or any modification, continuation, supplement, extension, or renewal thereof is void and of no effect; and (5) that such notices will remain posted for a period of at least sixty (60) consecutive days from the date of posting; and

(d) File with the Regional Director for the Seventeenth Region within twenty (20) days from the service of this Intermediate Report, a report in writing setting forth in detail the manner and form in which the respondent has complied with the foregoing requirements.

It is further recommended that unless within twenty (20) days from the service of this Intermediate Report the respondent notify said Regional Director in writing that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board, and that said Board issue an order requiring the respondent to take the action aforesaid.

Request for permission to file briefs with or present oral argument before the National Labor Relations Board upon issues raised by any exceptions to this report or on other issues upon which it is desired to file a brief or present oral argument, must be made to the Board, Shoreham Building, Washington, D. C., within twenty (20) days after the date of the order transferring the case to the board, as provided in Article II, Section 32 of the Rules and Regulations, Series 2, effective July 14, 1939.

Dated: Oct. 7, 1939.

JAMES C. BATTEN,
Trial Examiner.

[fol. 681] (Decision and Order of National Labor Relations Board, March 6, 1940.)

United States of America.

Before the National Labor Relations Board.

In the Matter of Donnelly Garment Company *and* International Ladies' Garment Workers' Union and Donnelly Garment Workers Union, Party to the Contract.

Case No. C-1382.—Decided March 6, 1940.

Ladies' Garment Manufacturing Industry—Interference, Restraint, and Coercion: domination and use of employees' Loyalty League to prevent organization of employees by "outside" labor organization; permitting employees to circulate anti-union loyalty pledge with assistance of supervisors and requesting that additional signatures be obtained; sponsoring and dominating anti-union meeting of employees and encouraging opposition to "outside" labor organization by promising "protection" to employees; speech disparaging union leader; approval and encouragement of anti-union demonstrations by employees in plant—*Company-Dominated Union:* domination of and interference with formation and administration; formation sponsored and financed by company-dominated League; participation by supervisors and by confidential employees who were held out as representatives of management; use of company property and facilities; union business conducted on company time and property; union committee controlled by management representatives; encouragement of inside union by speedy recognition, prompt negotiation of closed shop contract; ordered disestablished—*Evidence:* testimony of employees that they were not dominated or coerced but acted voluntarily is not controlling when record shows respondent committed acts of domination, interference and assistance—*Contracts:* with company-dominated union invalid; substantive provisions of relating to rates of pay, wages, hours of employment, or other conditions of employment, not to be affected by—*Check-Off:* agreement for, with company-dominated union; employer ordered to reimburse employees for amounts deducted from wages as dues for company-dominated union

—*Discrimination:* entering into and publicizing closed-shop agreement with company-dominated union, thus not within proviso of Section 8 (3), held discrimination as to terms and conditions of employment; temporary lay-off held discriminatory, but no order of reinstatement or back pay because employer subsequently took action equivalent to offer of reinstatement; denial of reinstatement after vacation discriminatory—*Reinstatement Ordered:* for discriminatory refusal to reinstate—*Back Pay:* awarded to employee who is to be offered reinstatement; computation of: period from date of service of Intermediate Report to Order excluded from.

Mr. Daniel J. Leary and *Mr. Henry H. Foster, Jr.*, for the Board.

Reed & Ingraham, by *Mr. James A. Reed, Mr. R. J. Ingraham, Mr. James J. Shepard, Jr.*, and *Mr. Burr S. Stottle*, of Kansas City, Mo., for the respondent.

Mr. Clif Langsdale and *Miss Jane Walker Palmer*, of Kansas City, Mo., for the I. L. G. W. U.

[fol. 682] *Gossett, Ellis, Dietrich & Tyler*, by *Mr. Frank E. Tyler, Mr. Thomas J. Patten*, and *Mr. Lucian Lane*, of Kansas City, Mo., for the D. G. W. U.

Mr. N. Barr Miller, of counsel to the Board.

Decision and Order.

Statement of the Case.

Upon charges dated August 9, 1938, and amended charges dated April 6, 1939, duly filed by International Ladies' Garment Workers' Union, herein called the I. L. G. W. U., the National Labor Relations Board, herein called the Board, through its Acting Regional Director for the Seventeenth Region (Kansas City, Missouri), issued its complaint, dated April 27, 1939, against Donnelly Garment Company, of Kansas City, Missouri, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

With respect to the unfair labor practices the complaint, as amended,[1] alleged in substance (1) that the respondent on or about April 27, 1937, and thereafter, dominated and interfered with the formation and administration of a labor organization among its employees, known as "Donnelly Garment Workers Union," herein called the D. G. W. U., and has given financial and other support to the said organization, *inter alia*, (a) by encouraging and permitting its supervisory and other employees to promote the organization of and membership in the D. G. W. U. on the respondent's time, property, and at its expense, (b) by forming, on or about February 12, 1935, through its officers and agents, the Donnelly Loyalty League, herein called the League, and continuing to dominate said League until on or about April 27, 1937, for the purpose of impeding and preventing the organization of its employees by the I. L. G. W. U., and (c) by entering into a closed-shop agreement for the purpose of assisting the D. G. W. U. and of depriving its employees of their rights guaranteed under the Act; (2) that the respondent discouraged membership in the I. L. G. W. U. by discharging 2 employees, Sylvia Hull and May Fike, in April 1937, be [fol. 683] cause said employees had joined and assisted the I. L. G. W. U.; (3) that the respondent by various acts[2] has coerced and restrained its employees from becoming members or continuing membership in the I. L. G. W. U. and has encouraged and compelled membership in the D.

[1]The allegations are summarized from the complaint as amended at the close of the evidence put in by the Board at the hearing. By stipulation, dated July 22, 1939, the amended complaint was further amended to conform it to the proof.

[2]The principal acts enumerated in the amended complaint are: (a) by discharging Fern Sigler in April 1937, (b) by statements of the respondent's president and of certain supervisory employees in March and April 1937, (c) by public statements against the I. L. G. W. U. made by James A. Reed, (d) by permitting a loud-speaker system in its cafeteria to be used as a medium of propaganda in favor of the D. G. W. U. and in opposition to the I. L. G. W. U., (e) by keeping members and meetings of the I. L. G. W. U. under surveillance, (f) by circulating and inducing its employees to sign a petition professing their loyalty to the respondent, (g) by permitting certain supervisory and confidential employees to become members and active in the affairs of the D.G.W.U., (h) by discriminating in the allotment of work and by refusing to recall to work certain named employees who were allegedly members of the I. L. G. W. U., (i) by instigating and permitting its employees to engage in a demonstration on April 23, 1937, against certain members of the I. L. G. W. U., and (j) by granting a contract to the D. G. W. U. making membership therein a condition of employment.

G. W. U. It is further alleged that the respondent by entering into a closed-shop contract with the D. G. W. U. has violated Sections 8 (3) and 8 (1) of the Act and that the aforesaid closed-shop contract between the respondent and the D. G. W. U. is void and of no effect.

Upon motions of the respondent and the D. G. W. U. the Trial Examiner dismissed the allegations in the amended complaint relating to certain of the acts of interference, restraint and coercion,[3] but overruled all motions of the respondent and the D. G. W. U. to dismiss the complaint or amended complaint in its entirety.[4] These rulings are hereby affirmed.

The complaint and notices of hearing thereon were duly served upon the respondent, upon the I. L. G. W. U., and upon the D. G. W. U., party to the contract. On May 2, 1939, the Donnelly Garment Workers Union filed its petition to intervene, which was granted, by order of the Acting Regional Director for the Seventeenth Region, in so far as its interests might appear.

Hearings were held before James C. Batten, the Trial Examiner duly designated by the Board, from June 5 to July 15, 1939, inclusive, at Kansas City, Missouri. At the hearing the Board, the respondent, the D. G. W. U. and the I. L. G. W. U. were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to all parties.

[fol. 684] The respondent and the D. G. W. U. filed motions to make the charge and the complaint more definite and certain. The Trial Examiner granted in part the motions referring to the complaint, and ordered counsel for

[3] The portions of the amended complaint dismissed were subparagraphs d, g, g(1), i, k, n, o, and p, of paragraph 11, relating to: (1) public statements of James A. Reed, (2) statements of Alex Green and Mrs. Ella Mae Hyde, supervisory officials of the respondent, concerning the I.L.G.W.U., (3) use of a loud-speaker system in the respondent's cafeteria to influence its employees regarding their union affiliations, (4) surveillance, (5) discrimination in the allotment of work to employees who were members of the I. L. G. W. U., and (6) the refusal of the respondent to recall or assign work to certain named employees who were members of the I. L. G. W. U.

[4] These motions were made at various times during the course of the hearing. The Trial Examiner reserved decision and announced the rulings, as stated, in his Intermediate Report.

the Board to make the complaint more definite and certain in specified respects. Counsel for the Board, in compliance with the Trial Examiner's ruling, thereafter moved to strike certain portions of the complaint and to amend it, which motion was granted. At the close of the presentation of evidence by the Board in support of the complaint, said complaint was again amended on motion of counsel for the Board, and service of said amended complaint was acknowledged by the parties. Various other motions by the respondent and the D. G. W. U. to make the complaint more definite and certain were denied and the respondent's contention that portions of the amended complaint were so vague, indefinite, and uncertain that they do not sufficiently apprise the respondent of the acts charged was overruled by the Trial Examiner. These rulings of the Trial Examiner are hereby affirmed.

On June 1, 1939, the respondent filed its answer which was divided into four parts. In Part A the respondent contended that upon ten stated grounds[5] the Board is without jurisdiction to maintain the proceedings. In Part B of its answer the respondent avers that the complaint must be dismissed "for the reason that the Board, its agents and representatives, have exceeded their authority

[5]The stated grounds were: (1) the Board is without jurisdiction to issue a complaint "at the request of an organization which does not represent a single employee in the respondent's plant," * * * and (which) has been found by a United States Federal Court to be engaged in an unlawful conspiracy to force respondent to compel its employees to join said organization against their wills"; (2) the Board has no authority to issue a complaint "for the purpose of attempting to abrogate and nullify contracts between the respondent and the exclusive representative of 100 per cent of its employees when said contracts are entirely satisfactory to both parties thereto and have been determined by a United States Federal Court to contain higher wages and more favorable working conditions than are contained in any contracts entered into between the International Union (I. L. G. W. U.), and other garment manufacturers in this part of the country"; (3) this proceeding deprives the respondent, without a judicial hearing, of its right freely to contract as guaranteed by the Fifth Amendment to the Constitution of the United States; (4) if this proceeding were sustained valid contracts between the respondent and the chosen representatives of its employees would be abrogated without a judicial hearing, due process of law, and a trial by jury, in violation of the Fifth and Seventh Amendments to the Constitution; (5) this proceeding deprives the respondent of its property without due process of law and of its right to trial by jury by providing for the awarding of unearned wages to former employees and for their reinstatement; (6) the amended charge of the I. L. G. W. U. is vague, indefinite and does not state facts sufficient to support a formal complaint; (7) the Board, without authority, by the issuance of its complaint, has prejudged as true the allegations in the amended charge of the I. L. G. W. U.; (8) the complaint is vague, indefinite, insufficient and alleges conclusions instead of facts,

[fol. 685] and have demonstrated their bias and prejudice against the respondent, and collusion with the International Union (I. L. G. W. U.) by filing of the complaint herein and by the maintenance of this proceeding in the face of [certain enumerated] facts of which the Board and its representatives have actual knowledge." [6] Part C of the respondent's answer is a petition for investigation and certification of representatives of its employees. The answer, in Part D, admits certain allegations in the complaint concerning the corporate structure and the nature of the business of the respondent, but denies specifically each and every allegation that it has engaged in or is engaging in unfair labor practices.

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all in violation of due process of law; (9) the maintenance of this proceeding violates the Fifth Amendment and Article III, Sections 1 and 2 of the Constitution of the United States by permitting the Board to act as investigator, complainant, prosecutor, trier of the facts and judge of the controversy and by denying the respondent a judicial review of the evidence in accordance with the rules of law and evidence; (10) the Board has not conducted an election among the respondent's employees to determine their choice of representatives, which is a condition precedent to a proceeding based on charges of unfair labor practices.

[6] The answer of the respondent alleges as facts of which the Board has knowledge: (1) that the I. L. G. W. U. has engaged in an unlawful conspiracy to injure and destroy the respondent's business by publishing false and libelous reports about the respondent and the working conditions in its plant, by inaugurating and threatening to inaugurate secondary boycotts against the respondent's customers and merchandise, by threatening assaults on the respondent's employees similar to those perpetrated against employees of garment manufacturers in Kansas City, Missouri, St. Louis, Missouri, Dallas, Texas, and Memphis, Tennessee; (2) that the I. L. G. W. U., knowing that the employees had refused to be represented by the I. L. G. W. U., publicly announced a drive against the respondent and its employees, requested by letter containing false statements a conference with the respondent for the purpose of making a closed-shop contract, and began attacks of fraud and violence against three other garment manufacturing companies in Kansas City, Missouri, at the same time announcing that similar acts of violence would be perpetrated against the respondent's employees; (3) that the respondent after receiving a request to enter into a collective bargaining agreement with the D. G. W. U., a voluntary organization of its employees, sought to obtain a determination by the Board of the right of the D. G. W. U. to be the exclusive bargaining agent of its employees, but was advised by representatives of the Board that an application by an employer for certification of representatives could not be granted under the rules of the Board, and thereafter entered into a collective bargaining agreement with the D. G. W. U.; (4) that sometime after July 5, 1937, the United States District Court for the Western Division of the Western District of Missouri, three judges sitting, temporarily enjoined the I. L. G. W. U. from committing unlawful acts of fraud and violence against the respondent and its employees which decision was appealed to the Supreme Court of the United States and by that Court remanded to be heard before a single judge in the District Court; (5) that the Board's Acting Regional Director for the Seventeenth Region (Ernest C. Dunbar) on August 25, 1938, notified the respondent by letter that charges of unfair labor practices had been filed

At the hearing the respondent filed a motion requesting that the complaint be dismissed for the reasons stated in [fol. 686] Parts A and B of its answer.[7] At the same time, the I. L. G. W. U. moved to strike certain portions of the respondent's answer, viz., from Part A of the respondent's answer the allegation that a United States District Court had determined that the contracts beween the respondent and the D. G. W. U. contain higher wages and more favorable working conditions than contracts between the I. L. G. W. U. and other garment manufacturers in the area; from Part B of the answer the allegations that the I. L. G. W. U. was engaging in an unlawful conspiracy against the respondent, that it had engaged in violence against employees of other garment manufacturers and had announced that similar acts would be perpetrated against employees of the respondent, that the respondent's contract provided for higher wages and more favorable working conditions than contracts obtained by the efforts of the I. L. G. W. U.; the allegations referring to the find-

against the respondent by the I. L. G. W. U. and requested a conference on said charges, and thereafter the respondent requested the said Regional Director for the facts alleged in the charges and for an opportunity to present evidence thereon, but this privilege was denied by the representatives of the Board who threatened to file a complaint and conduct a long hearing unless the respondent acceded to the demands of the I. L. G. W. U. and further asserted that if a hearing were held the Board would find against the respondent; (6) that on or about February 4, 1939, at the request of representatives of the Board, written proposals upon which settlement of the charges might be reached were submitted to each other by the respondent, the D. G. W. U. and the I. L. G. W. U., and that the proposal of the I. L. G. W. U. included an offer to drop all boycott activities against the respondent "so long as the respondent does not recognize any plant union as the bargaining representative of its employees," acceptance of which proposal by the respondent would have compelled it to violate the terms of the National Labor Relations Act; (7) that the hearing on the remanded injunction suit was begun in the United States District Court on March 22, 1939, at the close of which a permanent injunction against the I. L. G. W. U. was granted pursuant to the respondent's petition, and that representatives of the Board were in constant attendance at the said hearing and consulted frequently with representatives of the I. L. G. W. U. during the examination of the respondent's witnesses, thus demonstrating that the Board assisted and is assisting the I. L. G. W. U. in its conspiracy against the respondent and is maintaining the proceedings herein in violation of any authority vested in the Board by the Act.

[7] Part B of the respondent's answer includes the findings of fact and conclusions of law of the United States District Court for the Western Division of the Western District of Missouri in an injunction suit brought by the respondent against the I. L. G. W. U. (See *infra*, note 10.) In its brief and at the oral argument the respondent sets forth as a reason for dismissal of this proceeding the fact that the above-named District Court had found that the respondent's employees acting unanimously had voluntarily formed the D. G. W. U. and at all times freely administered and maintained

ings and decrees of the United States District Court for the Western Division of the Western District of Missouri, the averment that the I. L. G. W. U. admitted that the respondent's employees did not desire to be represented by the I. L. G. W. U., the allegations regarding the assistance of the Board's representatives in the alleged conspiracy of the I. L. G. W. U. against the respondent; from Part D the averments that the I. L. G. W. U. sought closed-shop agreements even when it represented only a few or none of the employees of the company with whom it sought such agreements. The reasons stated as grounds for striking these portions of the answer are that they are immaterial to the issues before the Board; that the Board is not bound by the findings of other judicial tribunals, that the "clean hands" doctrine of equity does not apply to proceedings before the Board, that these portions of the answer constitute an attempt by the respondent to try [fol. 687] before the Board the Federal District Court injunction suit between the respondent and the I. L. G. W. U., and that under the Act the Board is not empowered to take cognizance of alleged law violation, coercion, or intimidation on the part of the complaining union.

The Trial Examiner took these motions under advisement and requested the respondent to submit a written statement of the evidence it would offer to prove the averments set forth in Parts A and B of the answer and any other parts of the answer referred to in the motion to strike. The respondent submitted no statement of evidence in support of Part A of its answer except as to the

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it. This finding of fact is not binding upon the Board and does not preclude an independent finding by the Board on this issue. Section 10 (a) of the Act provides:

> The Board is empowered . . . to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. *This power shall be exclusive*, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. [Italics added.]

See *Matter of National Electric Products Corp.* and *United Electrical and Radio Workers of America, Local No. 609*, 9 N. L. R. B. 475, 500. See also *Union Premier Food Stores, Inc.* v. *Retail Food Clerks and Managers Union, Local No. 1357 et al.*, 98 F.(2d) 821 (C.C.A. 3), where it was held that the District Court was without authority to conduct an election to determine the exclusive bargaining representative of certain employes since the Act vests power to determine that question exclusively in the Board. Cf. *Blankenship* v. *Kirby*, 96 F.(2d) 459 (C.C.A. 7); *Int'l. Brotherhood of Teamsters* v. *Int'l. Union*, 106 F.(2d) 871 (C.C.A. 9).

paragraph relating to the wages and working conditions provided for in contracts entered into between the I. L. G. W. U. and other garment manufacturers. On Part B of the answer the respondent submitted certain parts of the transcripts of testimony taken in an N. R. A. hearing, in which it was also the respondent and the I. L. G. W. U. the charging union, and in the United States District Court injunction suit between the respondent and the I. L. G. W. U. The Trial Examiner refused the proffered evidence, granted the motion of the I. L. G. W. U. to strike, denied the request of the respondent for dismissal of the complaint based on Part A of the answer, and refused to receive the respondent's petition for investigation and certification of representatives as set forth in Part C of its answer. The Board has reviewed these rulings of the Trial Examiner and they are hereby affirmed.

Prior to the commencement of the hearing, the D. G. W. U. filed a motion requesting that the Board conduct an election among the respondent's employees to determine whether they desired to be represented by the D. G. W. U. or by the I. L. G. W. U., and that the hearing be postponed until the outcome of such election had been announced. Thereafter, on May 17 and June 3, 1939, the D. G. W. U. filed a petition and amended petition, respectively for investigation and certification of representatives. The Trial Examiner denied the motion and petitions, which rulings are hereby affirmed. The D. G. W. U. also filed an answer denying all the allegations relating to the unfair labor practices of the respondent, but admitting the existence of a closed-shop agreement between the respondent and the D. G. W. U.

At the hearing the Trial Examiner excluded certain evidence offered by the respondent and the D. G. W. U., in some instances on the ground that it was irrelevant or immaterial and in others that it was cumulative. He permitted the parties to submit written offers of this proof. These rejected offers of proof have been considered by the Board and for reasons hereinafter stated the rulings of the Trial Examiner rejecting said offers are hereby affirmed. By [fol. 688] stipulation the parties placed in evidence, subject to the privilege of making objections thereto on the grounds of relevance, materiality, hearsay character, or

occurrence prior to the passage of the Act, certain portions of the record in a proceeding conducted in 1935 under Section 7 (a) of the National Industrial Recovery Act[8] in which the respondent was similarly charged by the I. L. G. W. U. with interference with the rights of its employees to organize,[9] and of the record in the injunction suit brought by the respondent against the I. L. G. W. U., heard in the United States District Court for the Western Division of the Western District of Missouri before the United States District Judge Andrew Miller.[10] The Trial Examiner permitted these partial transcripts of testimony to be introduced in the record,[11] and overruled all objections directed to the relevancy, materiality, and competency of certain questions and answers contained therein. He ruled, however, that the admission of such evidence was "not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects." After the close of the hearing the respondent and the D. G. W. U. filed motions requesting the Trial Examiner to clarify his ruling, alleging that it was unfair, prejudicial, and denied them due process of law. The Trial Examiner denied these motions. We have examined the evidence contained in these partial transcripts in the light of the Trial Examiner's other rulings on the admission and exclusion of evidence[12] and find no prejudicial error in his denial of these motions. His denial of said motions is hereby affirmed.

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[8] 48 Stat. 198.

[9] *I. L. G. W. U., Complainant* v. *Donnelly Garment Company, Respondent*, Case No. 160, N. R. A. Regional Labor Board, Twelfth District.

[10] *Donnelly Garment Company, et al.* v. *I. L. G. W. U., et al., D. G. W. U. Interveners*, Case No. 2924.

[11] Except as to the offer of the respondent to prove Part B of its answer, which we have already found above to be irrelevant to the issues drawn by the present complaint.

[12] It is manifest that the Trial Examiner's ruling excludes any evidence in these partial transcripts relating, *inter alia*, (1) to contracts between the I. L. G. W. U. and other garment manufacturers, (2) to the claim of the respondent that it pays higher wages and maintains better working conditions than do other garment manufacturers, (3) to strikes and violence allegedly fomented by the I. L. G. W. U. at other garment factories, (4) to the al-

The respondent also filed with the Trial Examiner after the close of the hearing a motion for leave to file and make part of the record a copy of its petition for investigation and certification of the representatives of its employees, which had previously been filed with the Board's Acting Regional Director for the Seventeenth Region and rejected [fol. 689] by him. The motion was denied by the Trial Examiner and his ruling is hereby affirmed.

During the course of the hearing, the Trial Examiner made numerous rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

At the conclusion of the hearing the parties were afforded an opportunity to argue orally before the Trial Examiner and were advised that they might file briefs with him. The parties did not avail themselves of the opportunity to argue orally before the Examiner, but filed memorandum briefs.

On October 11, 1939, the Trial Examiner filed his Intermediate Report, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2) and (3)[13] and Section 2 (6) and (7) of the Act. He further found that May Fike had not been discriminatorily discharged. He recommended *inter alia*, that the respondent cease and desist from the unfair labor practices which it was found to have engaged in, withdraw all recognition and completely disestablish the Donnelly Garment Workers Union as the representative of its employees for the purposes of collective bargaining, cease and desist from giving effect to its contracts and check-off agreement with said Donnelly Garment Workers Union, and that the allegations of the complaint as to May Fike be dismissed.

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leged conspiracy of the I. L. G. W. U. against the respondent, (5) to testimony of the respondent's employees that they were not interfered with, restrained, or coerced by the respondent in their choice of the D. G. W. U. or their rejection of the I. L. G. W. U., and that the D. G. W. U. was formed by the employees because of the strikes and violence occurring at other garment factories which the I. L. G. W. U. was attempting to organize.

[13] He found that the discharge of Sylvia Hull was discriminatory within the meaning of the Act but did not recommend reinstatement or back pay for her for reasons discussed in Section D, *infra*.

On October 12, 1939, the case was transferred from the Regional Office of the Seventeenth Region to the Board in Washington, D. C., and continued before the Board, pursuant to Article II, Section 32, of National Labor Relations Board Rules and Regulations—Series 2.

At the request of the parties the time allowed for filing exceptions to the Intermediate Report and to all parts of the record was extended by the Board from November 1 to December 1, 1939, and on that date exceptions were filed by the respondent, the D. G. W. U., and the I. L. G. W. U. Briefs were thereafter filed by the same parties, which have been given due consideration by the Board.

On January 9, 1940, a hearing for the purpose of oral argument was conducted before the Board in Washington, D. C., at which the respondent, the D. G. W. U., and the I. L. G. W. U. appeared.

The Board has considered the exceptions to the Intermediate Report and to all parts of the record and, save [fol. 690] as consistent with the findings, conclusions, and order set forth below, finds them to be without merit.

Upon the entire record in the case, the Board makes the following:

Findings of Fact.

I. The Business of the Respondent.[14]

The Donnelly Garment Company is a Missouri corporation with its principal office and factory located at Kansas City, Missouri. It is engaged in the business of designing, manufacturing, selling, and distributing ladies' garments, under the trade name of "Nelly Don." The respondent, in the course of its business, purchases over 99 per cent of its raw materials—consisting chiefly of cotton, wool acetate, rayon, and linen—in States other than the State of Missouri. In the years 1937 and 1938, the respondent's sales amounted to more than $4,000,000 per year. Ninety-six per cent of the garments designed, manufactured, and sold were caused by the respondent to be transported and distributed to customers in States other than the State of Missouri.

[14]The findings in this section are based in part on a stipulation of facts signed by all parties.

Officers of the rspondent company are: Nell Donnelly (Mrs. James A.) Reed, president and treasurer; Alex C. Green, vice president; R. J. Ingraham, secretary. The principal departments of the respondent and the persons in charge of them are: production, Lee Baty; merchandising, retail store, and receiving, Elizabeth Reeves; office manager, J. B. Bachofer; employment manager, Ella Mae Hyde.[15]

During the peak production periods of the year, the respondent employs more than 1200 persons.

The parties stipulated and agreed that the operations of the respondent have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and that the respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. The Organizations Involved.

International Ladies' Garment Workers' Union is an unaffiliated labor organization maintaining organizational offices in many States. It admits to membership the plant employees of the respondent.

Donnelly Garment Workers Union is an unaffiliated labor organization. According to its bylaws, it admits to membership all employees of the respondent.

[fol. 691] **III. The Unfair Labor Practices.**

A. Events prior to the effective date of the Act

The I. L. G. W. U. made its initial efforts to organize employees of the respondent in 1934 when it established a regional office in Kansas City, Missouri. On March 15, 1934, an open meeting of the I. L. G. W. U. was held in Musicians' Hall in Kansas City to which all employees of the respondent were invited. Few of the operators (i. e., production employees paid at piece-work rates) attended, but a number of the respondent's officials, supervisors, and instructors were present. Soon after, several

[15]For further findings concerning the respondent's supervisory staff see *infra*, Section C 1.

of the respondent's employees, including Glynn Brooks Yarnell,[16] who had been an operator in the respondent's plant since December 1924, made application for membership in the I. L. G. W. U. In June 1934 Mrs. Yarnell held a dinner at her home attended by 12 or 13 of her fellow employees. At this meeting the girls discussed the advisability of joining the I. L. G. W. U. and of forming a local branch. Glynn Brooks Yarnell was discharged in July 1934. Within a few months all except one of the girls who had attended the dinner were either laid off or discharged by the respondent.[17]

On December 6, 1934, the I. L. G. W. U. filed a charge against the respondent under Section 7 (a) of the National Industrial Recovery Act, alleging that eight operators had been laid off because they had joined the I. L. G. W. U. Before proceedings were completed and a decision issued, the National Industrial Recovery Act was declared unconstitutional by the Supreme Court of the United States.

The record[18] establishes that the respondent, through its supervisory employees, openly and actively resisted the initial organizational activities of the I. L. G. W. U. In 1934 Mrs. Elizabeth Reeves, who was then production manager, had expressed the opposition of the respondent to the I. L. G. W. U. She made a practice of questioning employees concerning their relations with the I. L. G. W. U. She criticized several operators for joining or applying for membership in the I. L. G. W. U. She told various employees that they had been "listening too much to somebody outside," that "Donnelly's don't belong to the union (I. L. G. W. U.) and they never will," that she had thought they "had

[16]The complaint, exhibits, and transcript designate this employee as Glynn Brooks. At the close of the hearing the entire record was amended to designate her Glynn Brooks Yarnell.

[17]We make no findings with respect to the reasons for these discharges which occurred prior to the effective date of the Act and which are not in issue herein.

[18]Evidence of the activities of the respondent in 1934 is contained in the partial transcript of testimony from the N. R. A. hearing conducted early in 1935, which transcript was introduced in this proceeding pursuant to a stipulation of the parties.

better sense" than to join the I. L. G. W. U., and that they [fol. 692] had been misled is doing so.[19] There is abundant testimony, also, that the respondent's instructors, who were in charge of the operators and at that time admittedly had authority to recommend lay-offs and dismissals, warned the operators to "let the International (I. L. G. W. U.) alone" if they expected to keep their jobs. In a conversation with an employee during 1934, Mrs. Allison, an instructor, labeled I. L. G. W. U. leaders "dirty foreigners,"[20] and Grace Gnotta,[21] also an instructor, referred to those who had joined that organization as the "scum" of the respondent's employees.

The dominant and often reiterated note in the respondent's anti-union campaign during this period was a plea to the employees to be loyal to Mrs. Nell Donnelly Reed, president of the respondent. For example, the record reveals that Mrs. Allison, one of the instructors, forbade a discussion of unionism in the plant, and added: "You should have more respect for your employer than to talk unionism in here." Mrs. Martha Gray, in charge of the respondent's outlet store,[22] talked to Virginia Stroup, an operator in one of the sewing sections who had joined the I. L. G. W. U., and reminded her that the firm had been good to her by continuing to employ her during the "hard months" and that in return Mrs. Stroup owed it to the Company to be fairer than to join the I. L. G. W. U. Mrs. Gray also said that she "would hate to think that old David Dubinsky would come in here and tell Mrs. Donnelly (Reed) what to do." The testimony of May Fike is undenied that in February 1935 or thereabouts,

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[19]Mrs. Reeves denied saying that they had been misled, but did not deny the other quoted remarks attributed to her. She admitted having talked to these employees about their relationship to the I. L. G. W. U. and, in many instances was unable to remember whether she had made the statements that other witnesses testified to. We are convinced from the record that Mrs. Reeves engaged in the activities herein described and made the remarks we have quoted.

[20]Mrs. Allison denied ever having discussed the I. L. G. W. U. with Lillian Wales, the operator who testified concerning this remark. However, the record contains so many instances of anti-union statements attributed by other employees to Mrs. Allison that we are unable to accept her general denial in this instance, and accept as true the statement of Lillian Wales.

[21]In parts of the record this employee is referred to as Grace Gonotte.

[22]See *infra*.

while the I. L. G. W. U. drive was being pressed, employees in groups of 10 were sent by their instructors to Mrs. Reeves' office, where Mrs. Reeves talked to them about loyalty to the respondent. Also during this period employees were told that Mrs. Reed had built up the business of the respondent in order to keep them supplied with work and that an outside labor organization should not be allowed to come in to run it.

On or about December 12, 1934, Mrs. Reeves sent for Virginia Stroup, one of the respondent's employees who had obtained a charter for a local branch of the I. L. G. W. U. Mrs. Stroup told Mrs. Reeves that she was the shop chairman for the I. L. G. W. U. and that it was her duty to determine why employees who were members of [fol. 693] the I. L. G. W. U. were laid off. Mrs. Reeves stated that she did not intend to give Mrs. Stroup any information and immediately instructed Mrs. Hyde, the respondent's employment manager who was present at the interview, not to release any such information, for "that is none of Virginia's business." A short time later, when Mrs. Stroup attempted to negotiate with the respondent in regard to a grievance of Pauline Lutz, an employee who was a member of the I. L. G. W. U., the respondent unequivocally refused to deal with Mrs. Stroup. At the conference, Mrs. Reeves criticized Mrs. Stroup's production work, told her that she was wasting too much time away from her machine talking to other employees, and threatened her with dismissal unless she increased her piece-work production to a point where it met the minimum wage rate set by the N. R. A. code in effect at that time. The respondent stood firm on its position not to deal with the I. L. G. W. U. and Mrs. Stroup was entirely unsuccessful in adjusting the grievance of Pauline Lutz or of any other of the respondent's employees who were members of the I. L. G. W. U.[23] A few weeks later, the Kansas City office of the I. L. G. W. U. attempted to open negotiations with the respondent. On January 25, 1935, Meyer Perlstein, regional director of the I. L. G. W. U., and Virginia Stroup joined in addressing a letter to the respondent, stating that the I. L. G. W. U. had

[23]These facts are recited here for the purpose of showing the respondent's attitude toward the I. L. G. W. U. during this period.

granted a charter to a group of the respondent's workers who had applied therefor. The letter asserted that these employees, since joining the I. L. G. W. U., had suffered discrimination and had been threatened with discharge unless they should abandon their union affiliation. In conclusion, the respondent was requested to grant the I. L. G. W. U. an opportunity to present the views of labor and to adjust peaceably employer-employee differences. The record does not indicate whether or not the respondent made any reply to this letter.

Within a week or two after the receipt of the I. L. G. W. U.'s letter, the respondent, acting through certain of its supervisory employees, commenced the formation of an organization among its employees to be known as the "Nelly Don Loyalty League." Mrs. Martha Gray, in charge of the respondent's outlet store,[24] and Mrs. Strickland, an employee in the pattern-making department,[25] took the lead in forming the League. On February 5, 1935, plans were laid at a meeting at the home of Mrs. Gray, which was attended by approximately 46 employees representing the various divisions of the respondent's factory. Memberships for the League were solicited in the plant during working hours by circulation among [fol. 694] the employees of membership pledge cards[26] and a statement which declared that the employees recognized the generous treatment received from Mrs. Reed, the respondent's president, and would resist the efforts of outside labor organizations to negotiate with the respondent on their behalf.[27]

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[24]See *infra*.

[25]The record does not disclose the details of Mrs. Strickland's employment except that she received a salary of $80.00 per week, which was a salary higher than that received by any other employee in the pattern department.

[26]The pledge cards are as follows:

> I, the undersigned, hereby pledge myself to become a member of the Nelly Don Loyalty League to take part in the activities and to support said league to the best of my ability.
>
> I have signed this pledge of my own free will without coersion [sic] or intimidation of any kind.

[27]The full statement follows:

> The employees of the Donnelly Garment Company hereby associate themselves under the name of the "Nelly Don Loyalty League."

In contrast to the hostility with which it met the advent of the I. L. G. W. U. in the plant; the respondent not only interposed no obstacles to the organization of the Loyalty League, but also by affirmative assistance facilitated its progress. In some sections of the plant the instructors in charge of the sections assisted with the circulation of these documents and told the employees to sign them. In other areas of the factory Mrs. Gray, accompanied by Mrs. Strickland, distributed the League membership cards. Virginia Stroup, who at that time was president of the local branch of the I. L. G. W. U.,[28] was told by Mrs. Strickland, in the presence of Mrs. Gray whom we find hereinafter to be a supervisory employee of the respondent, that the cards should be signed by the employees in order to protect their jobs, because Mrs. Reed would close the plant before she would allow it to become a union shop. At the same time, Mrs. Stroup was refused a membership card because she belonged to "another organization."

Virtually all the respondent's supervisors, except Mrs. James A. Reed, president and principal owner, Lee Baty, production superintendent,[29] and perhaps Mrs. Anna

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We protest against and will resist all attempts of outside interference with the business of said company, or with our relations to the company as employees.

We recognize the fact that for many years this company has paid wages far in advance of the wages paid in similar factories. That our working conditions are good; that we have had practically continuous employment throughout the year which is almost unknown in this line of industry; that we have had generous and fair treatment from Nelly Don (Mrs. Reed), President of the company, and we repose our confidence in her rather than in professional agitators who are sent here to create discontent among the employees of the company.

This document was received as an exhibit by the Trial Examiner subject to further identification, after the witness, Rose Todd, stated when asked if it was sent out with the formation of the Loyalty League: "Yes, something similar to that, as near as I can tell it would be a copy." Subsequently, May Fike identified the document as the statement which was circulated among the operators at the time of the formation of the League. The record does not indicate that the document was thereafter unqualifiedly received in evidence by the Trial Examiner. In view of the testimony of these two witnesses, we hereby rule that the document was properly identified and it is hereby received in evidence.

[28] This was the local chartered by the International to admit employees of the respondent to the membership.

[29] At the time the League was organized in February, 1935, Mrs. Elizabeth Reeves was production manager. Mr. Baty did not succeed her until June 1935. Mrs. Reeves was a member of the League.

[fol. 695] Wherry, factory manager, were members of the League. Mrs. Reeves, production manager at that time, Dewey Atchison, her assistant, and Mrs. Ella Mae Hyde, employment manager, were among the supervisory officials who testified that they were members of the League. The membership included all instructors and other department heads in the plant. Its first two presidents were supervisory employees of the respondent. Herbert Mutchler,[30] who was no longer in the employ of the respondent at the time of the hearing in this proceeding, was the first president of the League and continued in office until early in 1937. He was succeeded by Rose Todd, who held office until after she was elected General Chairman of the D. G. W. U. in April 1937.[31]

The League has no constitution or bylaws and no regular meeting dates; nor do its members pay dues. Since its inception it has sponsored a number of social activities, such as picnics and dances, but as will subsequently appear its principal energies have been devoted to obstructing and interfering with the efforts of the I. L. G. W. U. to organize the respondent's employees.

The events recited above convince us that prior to the effective date of the Act the respondent's supervisors expressed to employees the uncompromising hostility of the respondent toward all labor unions and particularly toward the I. L. G. W. U. Employees were made fully aware of their employer's attitude and those who applied for membership or joined the I. L. G. W. U. did so secretly. During this period it was made plain to the employees by their supervisors that loyalty to the respondent meant renunciation of unionism. In February 1935, when the I. L. G. W. U. requested a conference on behalf of those employees who had joined that organization, the respondent's agents immediately organized the Loyalty League for the purpose of preventing other employees from affili-

[30] The Trial Examiner found Herbert Mutchler was a supervisory employee. The record shows that Mutchler formerly held the position occupied by Rose Todd at the time of the hearing in this proceeding. Since we find in Section C 1, *infra*, that Rose Todd is a supervisory employee, we herewith make the same finding as to Mutchler.

[31] The formation of the D. G. W. U. is discussed in detail in Section C, *infra*.

ating with the I. L. G. W. U. The membership and influence of management representatives in the Loyalty League enabled the respondent to foster and organize employee resistance to outside unions.

The respondent contends that Mrs. Martha Gray, who "instigated" the League and at whose home the organizers met, is not a supervisory employee in charge of the outlet store, but is no more than the senior clerk in point of service, and that therefore the responsibility for her acts cannot be attributed to the respondent. We cannot agree with this contention. In the first place, we believe that the evidence establishes that Mrs. Gray is the manager of the store. The store, which is located in the same building with the respondent's factory, is oper- [fol. 696] ated to dispose of remnants, discontinued lines of merchandise and the like. It employs approximately 6 saleswomen. Rose Todd, who had been an employee of the respondent for a number of years, and whom we find *infra* to be a supervisory employee, stated when asked about Mrs. Gray's relation to the outlet store: "I assume you would say that she is in charge." Mrs. Elizabeth Reeves, who at the time of the hearing was in charge of the respondent's merchandising department, testified that Mrs. Gray generally reported to her. Since Mrs. Reeves does not personally operate the outlet store, it is reasonable to believe that the duty was left to Mrs. Gray and that it was matters pertaining to the management of the store which she reported to Mrs. Reeves. That the employees regarded Mrs. Gray as in charge of the outlet store is evidenced by the publication of the following announcement in the N. D. A. A. News, a news sheet published by an athletic association composed of employees:

Mrs. Gray Announces
Spring and Wool Remnants
Closeouts

Also Virginia Stroup, one of the respondent's operators at the time the League was organized, considered Mrs. Gray an "executive" of the respondent. Mrs. Gray testified, but did not describe the nature of her duties. While it is true that she does not have authority to hire or dis-

charge the other clerks in the store, we are convinced from the evidence that Mrs. Gray directs the work of these salespeople and is responsible for the store. On the basis the above-stated facts we find that Mrs. Gray is the manager of the respondent's outlet store, and as such is a supervisory employee for whose statements and acts relating to labor policies the respondent is responsible. Moreover, the respondent is responsible for the acts of Mrs. Gray, Mrs. Strickland, and others who assisted them in bringing the Loyalty League into existence, inasmuch as the respondent's officials ratified and adopted their acts by joining and participating in the League and by permitting those individuals and instructors who were supervisory employees to circulate pledge cards and canvass for membership on company time and property, as we have hereinabove found. Membership of such officials as the employment manager, the production and merchandise manager, assistant manager, instructors, and other supervisors with authority to discipline and to recommend discharges and lay-offs, coupled with their patent support, must inevitably have convinced the rank and file of the respondent's employees that here was an organization approved by the respondent to which they must give their support, and that they must correspondingly refrain from joining or assisting the I. L. G. W. U. which the League so consistently opposed.

[fol. 697] The respondent contends that since the above-related activities took place prior to July 5, 1935, the effective date of the Act, they are entirely irrelevant to the issues in this proceeding and that all evidence thereof should have been excluded. This contention fails to recognize that the Loyalty League continued in existence after the effective date of the Act, and was a useful instrument in the formation of the D. G. W. U., hereinafter discussed. Furthermore, evidence of an employer's attitude and conduct with respect to labor unions for a reasonable period before the effective date of the Act has often been admitted in evidence for the purpose of evaluating the significance of events occurring after such date.[32]

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[32] See *N. L. R. B.* v. *Pacific Greyhound Lines, Inc.*, 303 U.S. 272, rev'g 91 F.(2d) 458, and enf'g *Matter of Pacific Greyhound Lines, Inc.* and *Brotherhood of Locomotive Firemen and Enginemen*, 2 N. L. R. B. 431.

Having been inspired by the respondent and fully supported by its officials from its inception, we conclude and find that the League was dominated and controlled by the respondent and that prior to the effective date of the Act the respondent used it to prevent its employees from joining the I. L. G. W. U. or any other outside labor organization.[33]

B. Interference, restraint, and coercion prior to April 27, 1937.

After the National Industrial Recovery Act was declared unconstitutional [34] in 1935, and the complaint issued against the respondent under Section 7 (a) of that Act was dismissed, the I. L. G. W. U. continued to some degree its efforts to enroll the respondent's employees as members but it was not until early in 1937 that an intensive campaign was renewed. On February 26, 1937, there appeared in the Kansas City Star, a daily newspaper published in Kansas City, Missouri, an article stating that the I. L. G. W. U. had announced a campaign to organize the respondent's employees and had appropriated a large sum of money to be spent in a drive for recognition of the I. L. G. W. U. as the collective bargaining agent in the respondent's plant.[35]

[fol. 698] A few days thereafter, on March 2, 1937, three members of the League [36] circulated among the factory and office employees of the respondent a loyalty pledge, which

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[33] See *infra* for further findings concerning the League after the effective date of the Act. As to the events described in Section A, above, we make no findings of unfair labor practices, since they occurred prior to the effective date of the Act.

[34] See *A. L. A. Schechter Poultry Corp.* v. *United States*, 295 U.S. 495, declaring unconstitutional 48 Stat. 195, *et seq.*

[35] Meyer Perlstein, regional director of the I. L. G. W. U., was quoted in the article as saying: "We are going to send a letter to the Donnelly Garment Company within a week suggesting a conference to establish collective bargaining on the question of wages and working hours. If the firm refuses, we'll go to the consuming public of the country and advise buyers of the wages and hours prevailing there now. . . . Within a year we'll have it. [the respondent's plant] completely organized. As soon as we have enough members, we'll call a strike. This will be in addition to carrying our side to the consumers."

[36] Mary Sprofera and Inez Warren, shipping clerks, and Pauline Schartzer, an office employee.

declared that the signers refused to "acknowledge any union labor organization."[37]

The pledge was circulated in the plant during working hours and in some, if not all, of the production sections it was passed from person to person for signature, at the instance of the instructors, while the machines were in operation. It was signed by some 1125 employees—practically all of the respondent's factory and office employees except the instructors who were not asked to sign it in the first instance.[38] When the pledge was presented to Mrs. Reed at her house on the afternoon of March 2, she expressed her pleasure at receiving such a statement, and requested that the signatures of the instructors be added. This was done on March 5. Thus, the respondent not only ratified that action but by express request had it circulated among other employees.

The respondent contends that it cannot be held liable for commission of an unfair labor practice in connection with the circulation of the pledge since the three employees who initiated the pledge had no supervisory authority and circulated it without instructions or suggestions of the management. We reject this contention and find that the respondent by permitting three employees openly to circulate the loyalty pledge in the plant during working hours with the assistance of instructors, and by requesting that additional signatures be secured, gave approval and lent assistance and encouragement to the solicitation of its employees to pledge themselves not to join the I. L. G. W. U., and thereby interfered with, restrained and coerced them in the free choice of a collective bargaining agent.[39]

[37] The text of the pledge: "We, the undersigners [sic], as members of the Donnelly Garment Co. wish to make it known that we are positively happy and contented with the positions which we hold with this organization, and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed." The girls who circulated the pledge stated that they devised the pledge in answer to the announcement of the I. L. G. W. U.

[38] The record does not explain the original omission of the instructors as signatories to the petition.

[39] It may be noted that the circulation of this loyalty pledge, coincidental with the renewed organizational activities of the I. L. G. W. U. among the respondent's employees, bears striking similarity to the circulation of the Loyalty League membership cards and anti-union statements by the respondent 2 years earlier, soon after the I. L. G. W. U. had initiated its cam-

On March 6, 1937, the Kansas City Journal-Post carried an article stating that David Dubinsky, president of the I. L. G. W. U., at a meeting of 700 union members in Kansas City, had officially launched a movement to organize employees of the respondent company. This announcement [fol. 699] was followed by a letter to the respondent from Wave Tobin, manager of the Kansas City Joint Board of the I. L. G. W. U., under date of March 9, 1937, requesting a bargaining conference between the I. L. G. W. U. and representatives of the respondent.[40]

Concurrently with the renewed organizational campaign of the I. L. G. W. U. the League was aroused to new activity.[40a] A meeting of all the respondent's employees took place on the afternoon of March 18, 1937, in the building housing the respondent's plant.[41] The employees were notified orally during the working day by their instructors or other supervisory employees of the respondent that the meeting was to take place. The record affirmatively shows that among the supervisory employees who attended was Mrs. Ella Mae Hyde, the respondent's employment manager, and the instructors. It is not denied by the respondent, and we find, that this meeting was generally attended by supervisory employees.

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paign among the employees. In each instance, the pleas to the employees to be loyal to the respondent and to resist outside interference, appeared at crucial junctures in the campaign of the I. L. G. W. U. to organize the respondent's employees.

[40]In the meantime, the record indicates that the respondent's employees had become alarmed by hearing reports that at other garment factories in the Kansas City area, where the I. L. G. W. U. was conducting organizational campaigns, clashes had occurred involving picketers, non-striking workers, and local police. The Trial Examiner excluded evidence of these incidents, occurring elsewhere than at the respondent's plant and not involving the respondent's employees, and we have affirmed his ruling. During the course of the hearing the Trial Examiner stated that he would permit testimony of threats of violence made directly to employees of the respondent by representatives of the I. L. G. W. U. Some of the respondent's employees discussed the reports and expressed fear that an organizational campaign at the respondent's plant might precipitate similar strikes and violence.

[40a]During the 2 years which intervened between the formation of the League and the date of this renewed activity, there is no evidence that its character had been altered in any way. Its original purpose was never disavowed and officials and supervisors of the respondent continued to hold membership therein.

[41]The meeting was held on the second floor of the building in which the respondent's plant was located. However, the respondent on March 18, 1937, did not have the second floor under lease.

Rose Todd, president of the League, called the meeting and presided. Chairs for the meeting were rented from the Kansas City Chair Rental Company in the name of the League. A committee appointed at this meeting to act on behalf of the employees thereafter employed attorneys whose retainer fee was paid by a check of the Loyalty League. From these facts we conclude, despite the denial of Rose Todd,[42] that the gathering was a meeting of the respondent dominated Loyalty League.

Rose Todd made certain opening remarks,[43] after which Mrs. Reed was requested to come in and address the employees. Mrs. Reed brought with her the letter which the respondent had received from the I. L. G. W. U. under date of March 9, 1937, requesting a conference, which letter was read to the employees. Mrs. Reed thereupon [fol. 700] made an extemporaneous talk. She expressed her pleasure at receiving the loyalty pledge which had been presented to her on March 2, told the employees that the respondent corporation was an institution to be proud of, that it had taken care of its employees by keeping the plant in operation during the depression, and that she intended to continue to run the business. Then she spoke of threats of violence that the I. L. G. W. U. was alleged to have made against the employees of the company, and promised protection against such violence. Finally, she directed her remarks to the question of unionization of the plant. What she said at this point is a matter of dispute. The Board's witnesses testified that Mrs. Reed stated that she would close her factory before she would permit it to be unionized and that she would not allow "Dubinsky or any other 'ski' to tell her how to run her business." According to the respondent's version,[44] Mrs. Reed stated ". . . neither Dubinsky or any other buttinsky is going to intimidate me or the company into forcing you to join the

[42] At the hearing Rose Todd testified that the meeting was a "spontaneous" gathering of the employees to discuss what means might be adopted to protect the respondent's employees against anticipated violence in connection with the I. L. G. W. U.'s projected organizational campaign.

[43] She was unable to recall what she said at that time.

[44] The respondent placed in evidence a purported transcript of Mrs. Reed's talk. The circumstances surrounding the production in this proceeding of a transcript of Mrs. Reed's remarks are somewhat peculiar. Mrs. Frances

International Union (I. L. G. W. U.) against your will." The respondent's version is corroborated by Mrs. Ella Mae Hyde, employment manager, by Rose Todd, who also denied that Mrs. Reed said there would be no union in her plant, and by several other witnesses. The respondent also offered to put on the stand about 1,000 of its employees who would testify that Mrs. Reed's version of what she said was correct and would deny that she said she would not permit the I. L. G. W. U. to come into her plant. The D. G. W. U. likewise offered to call as witnesses a large number of employees who would deny that Mrs. Reed said at the March 18 meeting that she would not permit members of the I. L. G. W. U. to work in the Donnelly plant. These offers were rejected by the Trial Examiner at the hearing because the testimony was cumulative in character. We have affirmed these rulings.

[fol. 701] The Trial Examiner found that Mrs. Reed stated that she would close her factory before she would permit it to be unionized. However, we do not consider it necessary to resolve the precise conflict on this point since in our view, upon Mrs. Reed's own version of her speech, the March 18 meeting and the events which took place there constituted an unfair labor practice, as alleged in the complaint. We have found that the meeting was sponsored by the League, which was controlled by the respondent, and was attended by many of the respondent's supervisory

Strine, Mrs. Reed's secretary, testified that she made the transcript on the instruction of Mrs. Reed. The tenor of Mrs. Reed's remarks at the March 18 meeting was the subject of testimony in the injunction suit brought by the respondent against the I. L. G. W. U. in the United States District Court for the Western Division of the Western District of Missouri. In that suit, Mrs. Reed filed an affidavit stating the substance of what she claims to have said at the March 18 meeting, and her secretary, Frances Strine, made three affidavits concerning Mrs. Reed's appearance at the meeting. Yet in none of the affidavits is any mention made of the taking of a transcript of the speech. Mrs. Reed herself testified in rebuttal in the District Court suit and did not tell of it. Frances Strine stated she had not seen the copy placed in evidence between the day it was transcribed and the day she identified it at the hearing. At the oral argument before the Board in Washington the respondent stated in explanation of its failure to produce the transcript of Mrs. Reed's speech in the injunction suit before Judge Miller that Mrs. Reed's testimony in rebuttal on this matter was met by objections which were sustained by the trial judge and that the evidence offered by the I. L. G. W. U. was so weak and discredited that it was unnecessary to answer it in detail by introducing the transcript.

employees. Through the presence of supervisors and the sponsorship of the League, which had for its purpose the exclusion of outside union organizations from the plant, the employees must inevitably have been aware of the anti-union character of the meeting, and could not have been free to express their independent views. It may be true, as the respondent contends, that many of them feared the alleged threats of the I. L. G. W. U., but instead of permitting the employees to decide for themselves what attitude they would adopt with regard to the I. L. G. W. U., the respondent seized upon such fears as may have existed to build up and strengthen a militant employee opposition toward that labor organization. Mrs. Reed painted the I. L. G. W. U. as the common enemy of both the respondent and its employees, and promised the employees the respondent's protection and assistance against that organization. Mrs. Reed disparagingly labeled David Dubinsky, president of the I. L. G. W. U., a "buttinsky," who was seeking to force the respondent's employees to join that union. She promised that no employee would be compelled to join any union against his will.[40] While Mrs. Reed sought to appear as the disinterested defender of the respondent's employees in the exercise of their right to join or not to join a labor organization, against the background of the respondent's widely publicized hostility to the I. L. G. W. U. and the past repeated reminders to employees that loyalty to the respondent demanded repudiation of outside union organizations, we think that Mrs. Reed's remarks made it plain that the respondent's attitude toward unionization had not changed and that membership of any of the employees in the I. L. G. W. U. would not be tolerated.

We find that by its sponsorship and domination of the March 18 meeting and by Mrs. Reed's talk at said meeting, the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Before the meeting closed a committee composed of Rose Todd, Hobart Atherton, and Sally Ormsby was appointed

[40] This statement should be contrasted with Mrs. Reed's approval of the closed-shop agreement with the D. G. W. U. less than 2 months later. See *infra*, Section C 2.

and authorized to take steps necessary to provide protec-
[fol. 702] tion for the employees. On March 27, 1937, this committee called on the law firm of Gossett, Ellis, Dietrich and Tyler of Kansas City, Missouri, where they conferred with Frank Tyler, a member of the firm. They stated that they represented the respondent's employees and desired to know what legal steps they might take to protect themselves from the alleged threats of the I. L. G. W. U. Mr. Tyler tentatively suggested the possibility of an injunction and promised to investigate the matter if a retainer fee of $500 were paid.

On March 30, 1937, Rose Todd went to the First National Bank of Kansas City, Missouri, and there consulted with Edward F. Swinney, Chairman of the Board of the Bank, who agreed to lend her $1,000 on the note of the Loyalty League, without any other security. The note bears the signature "The Nelly Don Loyalty League, Rose Todd—President." Swinney testified that no one other than Rose Todd communicated with him in any way concerning the loan and no one guaranteed its repayment "except Miss Todd said she would see it was repaid." Swinney further testified that he had known Rose Todd for 10 or 12 years, that he had first met her at his office in the bank as "a kind of 'all-around man' for the company." The First National Bank carries the account or accounts of the respondent corporation, and personal accounts of Mrs Nell Donnelly Reed, and of her husband, James A. Reed. At the time of the hearing the Loyalty League note had been repaid from monies collected through assessment of members of the League.

Out of the $1,000 loan Attorney Tyler received a check for $500, dated April 1, 1937, and bearing the signature "The Nelly Don Loyalty League, Rose Todd, Pauline Hartman."

Attorney Tyler investigated the use of an injunction as a means of obtaining protection for the respondent's employees and on April 13, 1937, the day following the decisions of the Supreme Court of the United States upholding the constitutionality of the Wagner Act,[46] he reported to

[46] *N. L. R. B. v. Jones & Laughlin Steel Corporation*, 301 U.S. 1, and other cases decided by the Supreme Court of the United States on the same day.

the committee adversely on the use of an injunction proceeding and recommended the organization of a plant union as the most effective means of "securing protection."

In the meantime, on April 22, 1937, the Kansas City Journal-Post, a daily newspaper, carried an announcement by the I. L. G. W. U. that Sylvia Hull, one of the respondent's operators, had been named as a delegate to the biennial convention of the I. L. G. W. U. Sylvia Hull appeared for work as usual at the respondent's plant on the morning of April 23. A few minutes after 8 o'clock while she was working at her machine on the eighth floor of the plant two groups of employees—each consisting of [fol. 703] 15 or 20 persons—successively gathered at Sylvia Hull's machine. They demanded to know what authority she had to represent them at the I. L. G. W. U. convention. Some of the girls stood on top of nearby tables. They sang Loyalty League songs, told her they would not allow her to belong to a union, demanded that she surrender her League pin, threatened to tear her clothes off and to throw her out of the window. Mrs. Allison, the instructor in charge of Sylvia's section, was present throughout the demonstrations and did not order the girls back to work or take any action of the kind; Mrs. Bogart, in charge of the dividing department, was present and pointed Sylvia out to some of the demonstrators. Mrs. Hyde, the respondent's employment manager, appeared at the scene of the demonstration and told the demonstrators to return to work. The girls refused, saying they would not work while Sylvia was there. Mrs. Hyde thereupon took Sylvia down to her office on the seventh floor. They were followed by a number of the demonstrators, shouting that they would not return to work until they heard Sylvia say she would go home. Sylvia then said: "I will go home. I didn't know the girls felt this way about it or I wouldn't have done it." According to Sylvia's testimony, which is undenied, Mrs. Hyde told her she would have to go home. Sylvia replied that she did not want to quit, but would go home for the day. Mrs. Hyde took her employee identification pass and Sylvia left a telephone number through which she might be reached.[47]

[47] The alleged discriminatory discharge of Sylvia Hull is discussed in Subsection D, *infra*.

Later, during the same morning on which the above-described incidents occurred, Fern Sigler, an operator who had displayed on that day for the first time her I. L. G. W. U. membership pin, was subjected to three similar demonstrations. These three demonstrations took place at intervals between 8 and 10:30 o'clock. The second and third groups of demonstrators numbered as many as 40 or 50 employees from various floors of the plant. They surrounded Mrs. Sigler's machine, sang songs, derided her, took her League pin from her, and shouted: "Get up and go home; we don't want you in here." The demonstrations subsided when Lee Baty, plant superintendent and production manager, accompanied by Rose Todd, ordered Fern from her machine to a nearby office. As Fern left the floor the girls shouted: "We are not going to work as long as she remains here." After a conference participated in by Baty, Mrs. Hyde, Rose Todd, and Fern Sigler, Mrs. Sigler was sent home. Baty promised to talk to the girls and "quiet them down," and to call her back when the unrest had subsided. Despite his promise, Baty admitted at the hearing that he did nothing to allay antagonism toward the I. L. G. W. U. in the plant.

[fol. 704] Without deciding whether the respondent was responsible for originating and inciting these anti-I. L. G. W. U. demonstrations, we are convinced that the respondent condoned, approved, and encouraged them. In the first place, the respondent made no sincere efforts to check the demonstrators. During the demonstrations instructors and some other supervisory officials stood by and made no effort to take steps which might have been effective in terminating the demonstrations. Even Lee Baty and Mrs. Hyde watched the demonstrations for a short time without seriously attempting to stop the participants. In the second place, the method which the respondent finally adopted to end the demonstrations revealed its attitude of approval. Instead of disciplining the demonstrators who had disrupted the normal operation of the factory for 2 hours or more, the respondent capitulated at once to their demands and laid off the two members of the I. L. G. W. U., who had admittedly violated no rule of the respondent and were attempting to do their work. Lee

Baty, the respondent's production manager, claimed that there was no other way of restoring order in the plant. Even if it was necessary to remove these two employees from the floor at the time of the demonstrations, the respondent could then have made it clear to the demonstrators and their sympathizers that no further demonstrations against these two employees would be tolerated and that any efforts to stage them would result in severe personal discipline. Furthermore, the respondent's officials did not discipline or reprimand in any way those employees who participated in the incidents. Finally, we think the approval and encouragement of the respondent is shown by the fact that despite Baty's promise to Fern Sigler that he would "quiet the girls down," he admitted at the hearing that he did nothing after the demonstrations to protect these two or any other employees who were members of the I. L. G. W. U. from the recurrence of such demonstrations and the accompanying threats of violence, or otherwise to make it possible for these two employees to return to their work in the plant unmolested.

We find that the respondent approved of and encouraged the demonstrations and took advantage of them to reveal once more to its employees its hostility to the I. L. G. W. U. and its support of anti-I. L. G. W. U. activities. We further find that by such action the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act.[48]

We further find that by using the company-dominated Loyalty League, as hereinabove described, for the purpose [fol. 705] of impeding and preventing the organization of its employees by the I. L. G. W. U., the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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[48] See *Matter of General Shoe Corp.* and *Georgia Federation of Labor*, 5 N. L. R. B. 1005, mod. and enf'd in *N. L. R. B. v. General Shoe Corp.*, 99 F.(2d) 223 (C.C.A. 5); *Matter of General Motors Corp.* and *Delco-Remy Corp.* and *International Union of U. A. W. A., Local No. 146*, 14 N. L. R. B. 113.

C. Domination and interference with the formation and administration of the D. G. W. U. and contribution of support.

On April 27, 1937, a meeting of employees took place immediately after working hours on the second floor of the building in which the respondent's plant was located.[49] The record establishes that it lasted approximately an hour. Rose Todd opened the meeting and stated that its purpose was to organize a union which would be called the "Donnelly Garment Workers' Union." Miss Todd pointed out that the League was no longer adequate to withstand the pressure of outside labor organizations and that a plant union had become necessary. She thereupon introduced Attorney Tyler who advised the assembled employees to form an independent, unaffiliated labor organization. After his talk it was unanimously decided by a viva voce vote of the approximately 1,300 assembled employees to form such a union. A nominating committee of five was then appointed by Rose Todd to select a General Chairman and eight Group Chairmen to serve as representatives and officers of the new organization. While the committee retired to select its nominees, charter membership cards, previously prepared, were distributed for signature. Thereafter, Attorney Tyler read the bylaws which the committee had requested him to draft.[50] They were immediately adopted without alteration. The nominating committee returned to the meeting and presented the names of the nominees for offices in the organization, who were unanimously elected, with Rose Todd as General Chairman. The 1,300 membership cards previously distributed were collected and the meeting declared adjourned.

[49] At the time of this meeting, the respondent did not have under lease the second floor of the building in which its plant was located, but leased only floors three to ten.

[50] The bylaws reveal that the purpose of the D. G. W. U. was in part the same as that of the Loyalty League, which, in the words of Rose Todd, had become inadequate to give the employees the "protection" they needed.

Article 2 of the bylaws provides *inter alia*: "The purpose of this organization (D. G. W. U.) shall be . . . the protection of employees and members of this Union from coercion, intimidation, violence or threats of violence in order to force them to join unions organized and dominated by outsiders not employees in this plant."

The Loyalty League played a leading role in the formation of the D. G. W. U. Rose Todd testified that she, Hobart Atherton, and Sally Ormsby were instrumental in calling the meeting of April 27 after "a general request from a great many employees that we try to do something for our own protection." The persons named constitute the committee appointed at the Loyalty League meeting of [fol. 706] March 18 to determine what could be done by way of protection against the I. L. G. W. U. The ledger sheets of the Kansas City Chair Rental Company show that chairs were rented by the Nelly Don Loyalty League for use on that date,[51] and the canceled checks of the Loyalty League show that the League drew a check in favor of the Chair Rental Company on May 4, 1937, in payment therefor. The respondent's telephone operator called on the interdepartmental telephone system each department of the plant and gave notice that Rose Todd was calling a meeting of employees on the second floor after work. Instructors and other supervisory employees assisted in notifying the employees and sending them to the meeting.[52] Rose Todd presided at the meeting, but denied that she was acting in her capacity as president of the Loyalty League.

On the basis of the evidence above recited, we find that the meeting of April 27 was sponsored and financed by the Loyalty League, through its president, Rose Todd, and the committee appointed by it at the meeting of the League on March 18.

The assistance rendered by the Loyalty League in the formation of the D. G. W. U. was not limited to sponsoring and financing the organizational meeting of April 27. We have already pointed out that the committee appointed at the League meeting on March 18, 1937, engaged Attorney Tyler, that Rose Todd borrowed $1,000 in the name of the League and out of that loan paid $500 to Tyler as a retaining fee. Members of the League were subsequently

[51] The ledger sheet gives as the date of the rental April 28, 1937, but the manager of the K. C. Chair Rental Company testified that entries are made in the ledger the day on which the chairs are returned rather than on the day they are delivered.

[52] See *infra*, note 55.

assessed 50 cents each in order to retire that obligation.[63] Although it is contended that the $500 retainer fee was in payment only for advice concerning a projected injunction suit against the I. L. G. W. U. for the protection of the respondent's employees, we are convinced that the fee covered Tyler's services in connection with the organization of the D. G. W. U. Prior to the organization of the D. G. W. U. the proposed injunction suit was rejected as a method of protection and instead Tyler advised the League committee to form an unaffiliated union. He attended the April 27 meeting and read the bylaws which he had previously drafted on instruction of the League committee. Thereafter, in May and June 1937, he drafted proposals for a closed-shop contract and wage agreement [fol. 707] with the respondent. Tyler received no fees from the D. G. W. U. until November 23, 1937, which was 7 months after its formation and at a time when the D. G. W. U. had undertaken other legal action involving court litigation. The minutes of the Group Chairmen of the D. G. W. U. for June 15, 1937, record that Rose Todd stated in explanation of the fee: " . . . we paid Mr. Tyler $500 retainer's fee. He helped us write up our bylaws and working agreement and will advise us and help us when we need it." From these facts we find that the League financed the employment of Attorney Tyler, paid him a retainer fee of $500, and that the said fee covered the cost of his services in connection with the formation of the D. G. W. U. and the drafting of its bylaws.

The day after the organizational meeting Rose Todd took the membership cards to Mrs. Reed, president of the respondent, and told her that the D. G. W. U. represented a majority of the employees. Mrs. Reed assured her at once that the respondent would consider the proposals of the D. G. W. U. On May 6, 1937, the Group Chairmen represent-

[63] At the hearing there was a controversy as to the date of the League meeting at which the assessment was decided upon. The respondent contended it occurred between March 27 and April 5, 1937, before the organization of the D. G. W. U. was conceived. Mrs. Elsa Graham Greenhow testified that she took minutes of such a meeting and that it occurred on May 25, 1937, immediately after a meeting of the D. G. W. U. It is unnecessary to resolve this conflicting testimony inasmuch as we find that the League paid the $500 retainer fee to Attorney Tyler, and that said fee covered the cost of his services in connection with the formation of the D. G. W. U.

ing the D. G. W. U. met with Mrs. Reed and discussed certain matters concerning the terms of an agreement, covering all the respondent's employees. From these facts it seems clear, and we find, that recognition as the exclusive bargaining agent of the employees was accorded the D. G. W. U. almost as soon as it was organized, although no statement of recognition in writing appears until the contract between the respondent and the D. G. W. U. was signed on May 27, 1937, as hereinafter discussed.

After the conference between Mrs. Reed and Rose Todd on April 28, at which Mrs. Reed agreed to consider the proposals of the D. G. W. U., Attorney Tyler commenced to draft an agreement for the D. G. W. U. to present to the respondent. The proposed draft of the agreement, containing a closed-shop provision, was approved by the Group Chairmen of the D. G. W. U. on the morning of May 27 and presented at once to Mrs. Reed. Attorney Tyler read it to her and other representatives of the respondent and urged that it be given prompt attention. Mrs. Reed replied: "I would like to have a little time to look over this agreement. However, I think it is very much in line—there will possibly be one or two little changes." Later, she added: "I think the only changes it will be necessary to make will just be legal phraseology— the spirit of this agreement is satisfactory." The minutes kept by the secretary of the Group Chairmen of the D. G. W. U. do not indicate that there was any discussion of the provisions, although several of the respondent's witnesses declared extended discussion took place. At the close of the conference it was agreed that Mrs. Reed and other representatives of the respondent would meet with Rose [fol. 708] Todd and Mr. Tyler, attorney for the D. G. W. U., at 3 o'clock that afternoon, and that Mr. Tyler could then report the outcome to the committee of Group Chairmen of the D. G. W. U. at 3:30 o'clock. When the D. G. W. U. committee met in the afternoon, as agreed, its minutes disclosed that Mr. Tyler reported that the respondent had proposed three or four modifications, acceptance of which he recommended to the committee. The only important change in the substance of the agreement was the addition of Section 4:

The employer recognizes the election of a committee of the union to represent it, *provided members of such committee shall have been continuously employed by the employer for the period of at least a year immediately preceding election to such committee . . . .*"[54]

Attorney Tyler explained to the committee that the purpose of such a provision was "to eliminate the possibility of someone getting on this committee who is not a true representative of the employees and who may be working here merely to act as a traitor to the company." The agreement as modified was then adopted by the committee representing the D. G. W. U. and signed by the parties.

Subsequently, on June 22, 1937, a supplemental agreement was entered into between the D. G. W. U. and the respondent. This agreement dealt with minimum wages for piece-work operators and other employees which had not been included in the earlier agreement. For the purpose of determining wage rates operators paid on a piece-work basis were classified in four groups. This classification was prepared for the D. G. W. U. by Lee Baty, production manager of the plant, and accepted by the committee representing the D. G. W. U. without change. The terms of the supplemental agreement were never submitted to the D. G. W. U. membership for approval. The D. G. W. U. demanded a minimum weekly wage of $16.50 for the respondent's lowest paid piece-work operators. Rose Todd explained that the I. L. G. W. U. had announced that it was seeking a $16.00 weekly minimum in the garment industry and she therefore thought it a good idea to improve a little on that minimum to defeat efforts of the I. L. G. W. U. to organize the respondent's employees. The respondent acceded to this demand. By its terms the original agreement of May 27, 1937, was to remain in effect for a period of 2 years, while the expiration date of the supplemental wage agreement of June 22, 1937, was set for July 1, 1938, with a provision for automatic extension from year to year unless either party gave written notice to the other of a desire to terminate it. On June 2, 1939, the original

[54] Italics added.

[fol. 709] agreement of May 27, 1937, was extended for a 6-year period without essential modification. So far as the record indicates the supplemental wage agreement has continued in effect without change.

In August or September 1937 the respondent agreed, at the request of the D. G. W. U., to a check-off of the monthly dues of 25 cents. Each employee signed a card prepared and distributed by the respondent, agreeing to permit his dues to be checked off at the end of each month. Pursuant to the agreement the respondent submits to the D. G. W. U. each month a memorandum showing the number of employees on the pay roll during the month and a check covering their dues. The D. G. W. U. issues no receipts, keeps no record of individual dues payments, and has no means of knowing what individuals paid dues in past months. Nor were the general chairman and the treasurer of the D. G. W. U. able to state at the hearing what proportion of each month an employee must work to entitle the D. G. W. U. to collect his dues from the respondent.

Soon after the D. G. W. U. was organized the Group Chairmen who composed its executive committee appointed a committee to represent the D. G. W. U. in adjusting piece-work rates with the respondent. Some 600 to 800 of the respondent's 1,300 employees were paid on a piece-work basis and the work of this committee was described as one of the most important functions of the D. G. W. U. The committee appointed consisted of Mrs. Lula Nichols, Josephine Spalito, and Rose Todd. Mrs. Nichols and Miss Spalito are employed by the respondent for the purpose of setting piece-work prices. The record shows that Mrs. Nichols has final authority in setting the rates on behalf of the respondent. The procedure of setting piece-work prices in the first instance and of adjusting subsequent complaints of operators that the price set is too low, is described in the following testimony of Mrs. Reeves:

A. After a garment is designed, that particular garment is analyzed very thoroughly by Mrs. Nichols, who was a former piece-work operator; Joseph Spalito, a former piece-work operator; Rose Todd, a former piece-

work operator. Prices are then discussed with the operator, and also the instructor . . .

Q. If there is any employee who thinks the price is too low, what redress does she have?

A. She discusses it with the people who set prices—Miss Todd, Mrs. Nichols, or her instructor . . .]

Q. Who has complete charge of the making of piece rates after the report is made by this committee?

A. Mrs. Nichols. (Ibid)

Thus, it becomes clear that the same persons who set the rates on behalf of the respondent in the first instance are [fol. 710] also representatives of the D. G. W. U. for the purpose of protesting, and negotiating with regard to those rates.

In connection with the formation and subsequent administration of the D. G. W. U., property of the respondent has been freely utilized. Membership cards were mimeographed after working hours by employees in the respondent's Circular Department on a machine owned by the respondent. Copies of bylaws of the D. G. W. U. were produced on a ditto machine belonging to the respondent. The D. G. W. U. owns no typewriter and the secretary of the D. G. W. U. has often used a typewriter owned by the respondent for typing the minutes of meetings of the D. G. W. U. and of the Group Chairmen. The respondent's bulletin boards have been freely used for the posting of announcements, notices of D. G. W. U meetings and for a display of pins from which the D. G. W. U. pin was chosen. Rose Todd keeps the membership cards of the D. G. W. U. in a file of the respondent which is located near her desk in the plant.

Meetings of the D. G. W. U. are announced by sending a so-called I. D. M. to each department of the plant through the respondent's regular messenger service. An I. D. M. is the respondent's term for interdepartmental memoranda. Memoranda concerning the D. G. W. U. business pass through the same channels as those of the respondent. The thread girls in the various sewing sections, who are assistant instructors, receive the D. G. W. U. notices and take responsibility for their circulation

to the operators in their respective sections.[55] Mail addressed to the D. G. W. U. is also delivered to D. G. W. U. representatives by the respondent's employees.

The D. G. W. U. has never maintained an office outside the respondent's plant, and since its inception has conducted all of its business in the building occupied by the respondent. At a meeting of the D. G. W. U. on May 11, 1937, Rose Todd stated:

> There are probably a number of you that have not had occasion recently to be on the ninth floor, but on the right-hand side of the door you will find a desk where our work will be conducted.

At this desk, which was assigned by the respondent to Rose Todd in connection with her work as supervisory employee, is conducted the day-to-day business of the D. G. W. U. Membership cards not collected at the organiza- [fol. 711] tional meeting on April 27 were subsequently signed and left at the desk by employees. Cards authorizing the check-off were signed by the members of the D. G. W. U. at Rose Todd's desk. The respondent made a practice of sending communications relating to the D. G. W. U. to Miss Todd's desk for her attention. The Group Chairmen, who composed the executive committee of the D. G. W. U., met for several months in the office of Beulah Spilsbury, a supervisory employee, and later in the respondent's first-floor auditorium. No rental was ever paid for the use of this property.

Regular monthly meetings of the D. G. W. U. were held on the second and later on the first floor of the building occupied by the respondent, which building was owned by the Corrigan Estate. At the time of the organization of the D. G. W. U. neither of these floors was under lease to the respondent, but on May 10, 1937, the respondent signed a

[55] The respondent offered to prove by the testimony of the employees that no instructor or supervisor had directed them to attend meetings of the D. G. W. U. Since there is no conflict between this offer and the testimony that thread girls were responsible for the distribution of notices, there is no prejudicial error in the rejection of this offer of proof. We think that the offer does not apply to the organizational meeting on April 27, 1937, since that was not, at the outset, a meeting of the D. G. W. U., but was, as we have found, a meeting sponsored by the Loyalty League.

lease for all ten floors of the building and has since continued to lease and occupy all of these floors. Prior to May 10, the D. G. W. U. obtained the permission of the representative of the Corrigan Estate to use the second floor as a meeting place, and paid no rent therefor. After May 10, the D. G. W. U. continued to meet there until the respondent remodeled a portion of the first floor to serve as an auditorium, which then became the meeting place. Although the witnesses, Rose Todd and Lee Baty, stated that a monthly rental was agreed upon in May 1937, we think the record is clear that the question of paying rent for this space was not considered for some months after the respondent had become the lessee of the space, and that the respondent never broached the matter to the D. G. W. U. The minutes of the Group Chairmen of the D. G. W. U. show that on November 13, 1937, the D. G. W. U. raised the question of rental payments and that the respondent subsequently agreed to charge $3 per meeting, to be paid at the end of the D. G. W. U.'s fiscal year.

Rose Todd was a full-time employee of the respondent. At the same time, as General Chairman of the D. G. W. U., she carried on the business of that organization representing 1,300 or more employees. Soon after the formation of the D. G. W. U. at the respondent's Kansas City plant, Rose Todd went out to the respondent's temporary auxiliary plant at St. Joseph, Missouri to organize the employees there. She was absent from her employment about one-half day without any salary reduction. At a meeting of the D. G. W. U. on May 11, 1937, she made the following statement:

> I do want to say this, that any of you, at any time, that want to talk to me, remember I can always be reached at noon *or any time necessary*.[56]

[fol. 712] Miss Todd's testimony indicates that grievances are reported to her during the working day, often dealt with at once, and their disposition reported to the aggrieved employee soon thereafter. Miss Todd checks on behalf of the D. G. W. U. all of the piece-work prices fixed

[56] Italics added.

by the respondent and all written instructions issued by the respondent to its operators. The respondent also submits to her each week, often during working hours, the pay-roll cards of its 600 to 800 piece-work operators which she examines for the purpose of determining whether each operator has received the minimum wage guaranteed by the respondent's agreement with the D. G. W. U.

According to its bylaws, membership in the D. G. W. U. is open to all employees of the respondent, although the record indicates that the respondent's officials who have final authority to hire and discharge are not members. The membership roll of the D. G. W. U. includes the instructors, and inspectors or examiners who pass upon the quality of the operators' work and return unsatisfactory products to the operators. Among other members of the organization [57] are Ella Mae Hyde, employment manager, Lena Tyhurst, described by Baty as assistant factory manager or general inspector, Mrs. Nichols, in charge of setting piece-work rates, Marvin Price, adviser on mechanical matters and in charge of maintenance of the factory building and equipment, Ted Scoles, who distributes and directs the work in the cutting department, Mrs. Bogart, who delegates the work and instructs the employees in the dividing department, and Mrs. Martha Gray, who is in charge of the respondent's outlet store.[58] At a meeting of the Group Chairmen of the D. G. W. U. on June 15, 1937, it was proposed to restrict the privileges of department heads and instructors who held memberships in the organization by denying them the right to vote, but the record does not indicate that any such action was taken at that time or subsequently.

[57] Evidence of the membership of Mrs. Hyde and certain other supervisory employees is found in the respondent's rejected offer of proof that these named employees would testify that they had joined the D. G. W. U. of their own free will and have since continued to belong to the D. G. W. U. of their own free will and accord uninfluenced by the respondent. Even though the offered testimony was rejected, such an offer remains in the record as an admission of the respondent that the named persons are members of the D. G. W. U. See *Int'l Ass'n. of Machinists, Tool and Die Makers Lodge No. 35, affiliated with the I. A. M.*, and *Production Lodge No. 1200, affiliated with the I. A. M.* v. *N. L. R. B.*, Ct. of App., D. C., No. 7258, decided November 20, 1939.

[58] See *supra*.

1. Conclusions as to the D. G. W. U.

a. Supervisory employees

(1) Instructors

In the incidents described in the preceding section certain employees designated by the respondent as in- [fol. 713] structors have figured prominently. The respondent contends that they are not supervisory employees because no authority to hire, discharge, or discipline has been vested in them since July 1935.

The respondent's plant is in part composed of sewing sections. In each of these sections there are approximately 40 operators, each of whom operates a sewing machine. Assigned to each of these sections is an instructor and an assistant called a thread girl or floor girl. Among the duties of the instructor and thread girl in each section is the distribution of materials and supplies with which the operators work. The instructors also distribute directions as to how the work is to be done and teach the operators how to execute each step of the process. This much is undisputed. It is also admitted by the respondent that prior to the advent of Lee Baty as production manager and plant superintendent the instructors had had a part in determining lay-offs and discharges in their respective sections and also had disciplinary authority. Baty testified that after he became production manager of the plant on June 25, 1935, he took from the instructors and from all other supervisory employees the authority to hire, discharge, and discipline and vested all such authority in himself, so that he has been since that time the sole supervisory employee in the plant, and personally observes the conduct, character of work, efficiency, and general attitude of all employees.

The respondent has in its employ between 1100 and 1300 persons. On June 2, 1939, there were employed in the production and maintenance divisions, of which Baty is superintendent, 642 operators, 72 miscellaneous piece workers, 77 ironers, 11 folders, 41 examiners, 44 cutting-department employees, 15 dividers, 44 instructors and distributors, 14 mechanics and helpers, 11 bundle boys, 52

clerical workers, 60 miscellaneous timekeepers, 20 porters and maids, working on 10 floors of the plant. In view of the number of employees and the size of the plant, we find Baty's testimony in regard to the elimination of supervisors to be incredible. The record convinces us that after June 25, 1935, the instructors continued to be supervisors in charge of the operators who worked in the various sewing sections of the factory. The operators were never notified of the change in the authority of instructors. Nor was there any apparent change in the conduct of instructors after the advent of Baty in June 1935. None of the operators testified that Baty personally gave them any instructions or directions, or conferred with them about their work. The instructors continued to transmit directions to the operators, distributed the work and "kept the girls busy." The instructors are responsible to Baty and apparently report directly to him. Furthermore, Mrs. Reeves, who had preceded Baty as production manager and was afterward placed in charge of the respondent's merchandising department, stated in an affidavit [fol. 714] dated October 30, 1937, that "competent instructors teach the operators the particular operations to be performed by them, *and constantly supervise the same.*" When work is slack in a section the instructor of the section determines the order in which operators shall take a day or half day off. Although Baty denied the instructors are charged with the duty of reporting on the efficiency of the operators who work in their respective sections, he admitted that he has asked the instructors on occasions and has received their opinions. The above-stated facts make it clear that prior to June 25, 1935, the instructors were supervisory employees authorized to discipline their subordinates and to participate in the determination of lay-offs and discharges, and that since that time the respondent has continued to hold them out to the operators as supervisory employees and has given no notice of any kind to the operators that the instructors had any less authority than formerly. On the basis of all the evidence, we find that the instructors are supervisory employees representing the management of the respondent in its relation to the operators who work in the various sections.

(2) Rose Todd

Among the employees of the respondent who were active in the affairs of the Loyalty League and in the formation and administration of the D. G. W. U., Rose Todd has been outstanding. She was president of the League during the time that it played so effective a part in resisting the organizational campaign of the I. L. G. W. U. She was the dominating figure at the crucial meetings of the League on March 18 and April 27, 1937. Rose Todd's status in the plant and her relation to the management of the respondent is a subject of dispute. She has been in the employ of the respondent for approximately 13 years. She had variously served as a machine operator, thread girl, and on occasion as an instructor; she also had been engaged in setting piece-work rates for the respondent and had assisted Dewey Atchison, a supervisory employee in the manufacturing division, in making special studies of production methods. She left her employment with the respondent in 1931 and for about a year worked for the Gernes Garment Company where she first either assisted the production manager or in fact had charge of the plant and later acted as a traveling sales representative. When she returned to the employ of the respondent in 1933, she testified that she was told she would have to take whatever work there was. She worked for a time in the model department where model dresses are made up before general production in the models is begun. Sometime prior to 1937 she was given a desk in the plant—first on the ninth floor and later on the seventh floor—and assigned to her present duty which is the responsibility for keeping the [fol. 715] various sewing sections supplied with the necessary materials for maintaining operations. She moves about throughout the various sections of the plant each day, consulting with instructors and thread girls. When they report that requisitioned supplies have not been received, Miss Todd locates them and sends them to their proper destination. She is under the direct supervision of Lee Raty, the respondent's production manager. She receives a salary of $130 per month from the respondent; the D. G. W. U. pays her $65 per month for the work she does as General Chairman of that organization.

The Trial Examiner found that Miss Todd is a supervisory employee of the respondent. We agree with the Trial Examiner that Rose Todd is employed by the respondent in a supervisory capacity,[59] and so find.

Moreover, we are of the opinion that Rose Todd occupied a close and confidential relation to the management of the respondent which was made known to the employees by the respondent's conduct. Her close relation to the management is illustrated by the fact that on April 23, 1937, when the demonstrations in the plant occurred, the disturbance was reported to Rose Todd. When Baty ordered Fern Sigler from the floor to the office, he was accompanied by Rose Todd. At the conference which followed, Rose Todd dominated the scene and took the lead in questioning Fern Sigler about her union affiliation, although both Baty and Mrs. Hyde, the employment manager, were present. A reading of the transcript of that conference shows that Rose Todd opened the conference and talked to Fern Sigler of the respondent's policy of operating an open shop as if she represented the respondent. For example: ". . . we have had union people work here for years . . .We don't care. We have hired union people . . . I talked to some of the girls yesterday afternoon and tried to get them to see that it is all right if you want to work and belong to the union. However, they feel so keenly about it, we don't think we can do anything about it . . .We are going to run an open shop as long as the majority feels that way." Miss Todd also said: "My advice to you is, that if you feel that strongly about the union and have enough people to back you up, be in a union shop. I wouldn't anymore think I could join a union than the man in the moon. I'd expect to be put out on the street and left there." Baty and Mrs. Hyde acquiesced in all that Miss Todd said and talked in the same vein. Thus, in this manner as well as in other ways hereinafter discussed, she was held out by the manage-

[59] Since she is a supervisory employee, the respondent is liable for her acts under the doctrine of *respondeat superior*. *Swift & Co. v. N. L. R. B.*, 106 F.(2d) 87 (C.C.A. 10), mod'g and enf'g *Matter of Swift & Co.* and *Amalgamated Meat Cutters and Butcher Workmen of North America, Local No. 641, and United Packing House Workers Local Industrial Union No. 300*, 7 N. L. R. B. 269.

ment of the respondent as an employee having authority to advise other employees with respect to joining or not joining labor organizations.

[fol. 716] Another fact pointing to the conclusion that Miss Todd represents the management is her statement during the conference above referred to: "We went downstairs and sent those girls back to work and they went back to work," and her testimony at the hearing that on the morning of the Sigler-Hull demonstrations she told employees, here and there in the plant, to return to their work. That the employees regarded her as a supervisor and agent of the respondent is evidenced by their obedience to her orders. Furthermore, her position in the plant was such that the respondent's telephone operators accepted and carried out her instructions when she requested an operator to notify each department that she wanted a meeting of employees.

The respondent likewise knew that Miss Todd made use of its facilities in carrying on the business of the D. G. W. U., part of which was its campaign against the I. L. G. W. U.,[60] for the respondent regularly sent to Miss Todd's desk in the plant information designed for the use of the D. G. W. U. and in other ways pointed out above, assisted her in administering the affairs of the D. G. W. U. Moreover, so far as the record indicates, the respondent did nothing to discourage any of these activities on company property and time.

We find that Rose Todd occupied a close and confidential, as well as supervisory, position with the respondent and further find that in her activities in the Loyalty League and the D. G. W. U. she was acting for, on behalf of, and with the knowledge and consent of the respondent.[61]

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[60] That the D. G. W. U. was active in resisting the I. L. G. W. U. is evidenced by the repeated requests of Miss Todd at D. G. W. U. meetings that the members report to her when they had been solicited by I. L. G. W. U. representatives and what these representatives had said.

[61] *Int. Ass'n. of Machinists, Tool and Die Makers, Local No. 35 and Production Lodge No. 1200 v. N. L. R. B.*, Ct. App., D. C., No. 7258, decided November 20, 1939, enf'g *Matter of The Serrick Corp.* and *Int. Union, U. A. W. A., Local No. 459*, 8 N. L. R. B. 621, in which the Court states:

> The statute, we think purposely, does not define the particular methods or agents by which the employer may intermeddle unlawfully

[fol. 717] (3) Hobart Atherton

Hobart Atherton has been employed in the maintenance department of the respondent since November 1933. In addition to Atherton, the department employs one electrician, one carpenter, one painter, and three laborers. Atherton transmits instructions to the other employees in the department, receives requests for repairs, refers them to the proper employee, and keeps a record of the jobs assigned and those completed. He also assists with repair work wherever needed. Atherton and the respondent deny that he is a supervisory employee in charge of the maintenance department. To accept their testimony would leave this department without supervision and would mean that each of the employees in the department decides for himself what repair jobs he will undertake. There is no evidence that Baty, the plant superintendent, in any way directs these employees in their work.

We find that Hobart Atherton is a supervisory employee of the respondent in charge of the maintenance department of the plant.

(4) Ella Mae Hyde

The respondent does not contest the Trial Examiner's finding that Mrs. Ella Mae Hyde is the employment manager for the respondent. However, there is testimony that she does not have final authority to hire and discharge employees. Such authority is unnecessary to establish that

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So to confine representation of him would open easy escape from the Act's provisions. Nothing in it requires that such representation be limited to officials having any particular kind or degree of authority such as "hiring and firing," "disciplinary power," or even "supervisory capacity." These evidences of authority make more plain the connection of the actor with the employer, but their absence does not preclude the existence of such a connection. What is required is that substantial evidence show that the actor, whatever his official position, is acting in fact on behalf of the employer, not for himself or others only, and that, by whatever method or means, the employer brings pressure to bear upon his employees which deprives them of free and independent choice.

Cf. *Cupples Co., Manufacturers v. N. L. R. B.*, 106 F.(2d) 100 (C.C.A. 8th), mod. and aff'g *Matter of Cupples Co.* and *Matckworkers Federal Labor Union*, 10 N. L. R. B. 168, where the Court refused to hold the respondent liable for the acts of an employee inasmuch as the respondent had not held out the said employee as a person having authority to advise others with respect to joining or not joining labor organizations, had not directed the acts to be done, and the acts had not been done with the respondent's knowledge or consent.

Mrs. Hyde is a supervisory employee authorized to represent the management with regard to its employment policies. Mrs. Hyde interviews all applicants, and makes recommendations when other department heads notify her of vacancies in personnel. She has apparent authority to lay off employees as evidenced by the fact that she sent Sylvia Hull home on the morning of April 23, 1937, after the anti-union demonstrations previously discussed.

We find that Mrs. Ella Mae Hyde is a supervisory employee of the respondent in charge of its employment department and has authority to represent the management with respect to the respondent's employment policies.

(5) Certain other supervisory employees

We have found that certain other employees, occupying responsible positions, were members of the D. G. W. U. These persons are Mrs. Lena Tyhurst, assistant factory manager or general inspector, Marvin Price, in charge of maintenance of the building and equipment and adviser to Superintendent Baty on mechanical matters, Ted Scoles, distributor and director of work in the cutting department, and Mrs. Bogart, who delegates the work and instructs the [fol. 718] employees in the dividing department. Some of these employees had had authority to hire, discharge, and discipline employees before the appointment of Baty as plant superintendent and production manager. They are all directly responsible to Baty and transmit his instructions to other employees in their respective departments. There is no showing that other employees in these departments were aware of any curtailment of the authority of these department heads after Baty took charge.

We find that the above-named persons are supervisory employees and as such were representatives of the management.

b. Conclusions as to the respondent's formation and domination of the D. G. W. U.

We have found that prior to the effective date of the Act the respondent adopted a policy of opposition and hostility to unions generally and to the I. L. G. W. U. specifically. In furtherance of this policy the management

made it plain to the employees that loyalty to the respondent was synonymous with the rejection of outside union affiliation. We have further found that the respondent inspired and dominated the Loyalty League which had for its primary purpose the frustration of the efforts of the I. L. G. W. U. to organize the employees of the respondent. When in April 1937 the I. L. G. W. U. commenced to prepare for another organizational campaign among the respondent's employees, the respondent through the medium of the dominated Loyalty League and through its supervisory employees formed the D. G. W. U. to prevent such outside organization. The League hired the attorney who planned the D. G. W. U. and wrote its bylaws. It was the League which borrowed $1,000 at the First National Bank on the security of its members, who included prominent supervisory officials of the respondent, and later raised, by assessment of its members, $500 to pay his retainer fee, part of which retainer was for the attorney's services in organizing the D. G. W. U. The meeting of April 27, 1937, at which the D. G. W. U. was formed, was sponsored and financed by the League and was announced through the use of the respondent's facilities and attended by many of its supervisory staff. Rose Todd, president of the League, directed almost single-handed the course of that meeting. The rank and file of the respondent's employees had heard nothing of the formation of a labor union prior to the meeting, but under the stimulus and pressure thus provided by the respondent, they emerged from that gathering with a labor organization of 1,300 members.

Like the League, membership in the D. G. W. U. includes a large number of the respondent's supervisory [fol. 719] employees whose presence inevitably prevents the organization from being free of the respondent's domination. Through Rose Todd who has been General Chairman of the organization since its formation and whom we have found to be an agent of the management, the respondent has retained complete control of the policies of the D. G. W. U.

The record is replete with evidence of the respondent's assistance in the administration of the D. G. W. U. The

organization has no office or headquarters of any kind apart from the respondent's plant. The respondent's facilities have been freely used in carrying on the business of the D. G. W. U. The respondent denies knowledge of the use of its various facilities, but so persistent and frequent has been the practice of employment of the respondent's messenger, mail, and telephone service, bulletin board and filing cabinets, of conducting union business at Rose Todd's desk, and of holding meetings of the Group Chairmen in a supervisor's office, that we find it impossible to believe that the respondent was without knowledge of these activities. The fact that the respondent permitted meetings of the D. G. W. U. to take place on the first and second floor of the plant for many months without any question of charging rent therefor is also indicative of the respondent's encouragement of the organization.

Rose Todd is allowed to take whatever time during working hours is necessary for handling union business without any deductions from her salary, as illustrated, *inter alia*, by her trip to the respondent's St. Joseph plant to organize the D. G. W. U. there. Although some of this business has been carried on before and after working hours, it is clear from the record that she makes a practice of taking up union business at any time during the day. Sometimes the respondent has made available for examination during working hours the pay-roll cards, which Miss Todd checks each week on behalf of the D. G. W. U. Grievances are reported to Miss Todd and considered by her within a few minutes or an hour. These facts demonstrate that the respondent has permitted and encouraged Rose Todd to make use of company time for conducting the business of the D. G. W. U. and has thereby lent assistance to the D. G. W. U.

That the respondent lent encouragement and assistance to the D. G. W. U. becomes even more clear when its cooperative attitude toward the D. G. W. U. is compared with that expressed to the shop chairman of the I. L. G. W. U., Virginia Stroup, some 2 years earlier. In contrast to the hostility with which the respondent met the I. L. G. W. U. and its chairman, the D. G. W. U. was recognized by the respondent as a bargaining agent the day after

its organization and Rose Todd, president of the League and General Chairman of the D. G. W. U., was accorded almost complete freedom to rove through the plant, engaging alternately in performing duties in connection with the production process, and in handling matters relating first to [fol. 720] the Loyalty League and then to the D. G. W. U. without interference or objection from the respondent. This contrasting conduct necessarily conveyed to the employees the respondent's approval of the League and the D. G. W. U.

The completeness of the respondent's domination is demonstrated by the personnel of the D. G. W. U. committee for the adjustment of piece-work rates. Two of the three members of the committee are persons employed by the respondent to set piece-work rates in the first instance, and one of these two, Mrs. Nichols, is the respondent's final authority on what the rates shall be. The result is that the respondent sits on both sides of the bargaining table and the aggrieved operators are left without any of the means of independent collective bargaining with regard to piece-work rates ordinarily afforded by a labor organization.[62]

Negotiations between the respondent and the D. G. W. U. with regard to the terms of the articles of agreement signed on May 27, 1937, were completed in a few hours and the agreement signed on the same day it was submitted to the respondent. Despite Mrs. Reed's determined opposition to a closed-shop contract with the I. L. G. W. U., voiced only 2 months earlier,[63] she made no protest when the D. G. W. U. made the same proposal. She stated, "I understand that [i. e. closed shop] is very essential to industrial peace." The closed shop was granted and membership in the labor organization of the respondent's choice became obligatory upon its employees. The contract also included a provision that the bargaining committee of the D. G. W. U. must be composed of employees with at least 1 year of prior employment in the respondent's plant. It was put in at the request of the respondent and without

[62] See *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc., and Greyhound Management Corp.*, 303 U.S. 261.

[63] See *supra*, Section B.

protest from the committee representing the D. G. W. U. In effect it deprives the respondent's employees of their right to representatives of their own choosing. We do not mean to say that employees may not voluntarily limit their right in this way, but we think the fact that a clause so favorable to the employer was inserted without protest from the representatives of the employees is indicative of the respondent's domination. Although the quick negotiation of the contract with the D. G. W. U., the closed-shop clause insuring the stability and continuity of that organization, and the inclusion of a limitation as to persons who shall constitute the D. G. W. U. bargaining committee, standing alone, do not conclusively prove that the respondent dominated the D. G. W. U., where, as here, the record establishes other acts of direct intervention and assistance [fol. 721] by the respondent and where officers and membership of the employee organization include many of the respondent's supervisory employees, we are convinced that these were further acts of domination of and interference with the D. G. W. U. and contributions of support thereto.[64]

The respondent and the D. G. W. U. contend that its employees formed and joined the D. G. W. U. of their own free will in order to resist unionization by the I. L. G. W. U. and were not coerced or interfered with in their choice of the D. G. W. U. or in their rejection of the I. L. G. W. U. In support of this contention they sought to introduce the testimony of the members of the D. G. W. U. that they were not dominated by the respondent but formed, joined, and supported the organization of their own free will. They also offered evidence to show that the employees knew of the violence accompanying the I. L. G. W. U. organizational campaigns at other garment factories and of threats by I. L. G. W. U. representatives that the same tactics would be used at the respondent's plant and formed the D. G. W. U. for that reason. The Trial Examiner refused these offers of proof, ruling that such testimony was irrelevant and immaterial to the issues. We have affirmed the rulings of the Trial Examiner on those

[64] See *Hamilton-Brown Shoe Co. v. N. L. R. B.*, 104 F.(2d) 49 (C.C.A. 8th), mod'g and enf'g *Matter of Hamilton-Brown Shoe Co.* and *Local No. 125 United Shoe Workers of America, C. I. O.*, 9 N. L. R. B. 1073.

offers of proof because, giving full credit to such testimony and assuming that the employees had other motives for rejecting the I. L. G. W. U. and joining the D. G. W. U. as an instrument for opposing the I. L. G. W. U., the fact remains that the record shows the respondent to have committed acts of domination, interference, and assistance in the formation and administration of the D. G. W. U. which makes that organization company dominated and not the free agent of its members.[65] Section 8 (2) proscribes such conduct on the part of employers, regardless of the ostensible willingness of employees to accede to it.

It is contended by the respondent that the Trial Examiner was in error in excluding testimony and exhibits concerning the provisions of various contracts existing between the I. L. G. W. U. and other garment companies offered to show that the bargaining negotiations between the D. G. W. U. and the respondent were genuine and the D. G. W. U. a bona fide union. Inasmuch as the issue before us is not whether the contracts were advantageous or beneficial to the employees, but whether the respondent dom- [fol. 722] inated or interfered with the formation and administration of the D. G. W. U., we believe the proffered evidence was correctly excluded.

Upon all the evidence we find that the respondent dominated and interfered with the formation and administration of the D. G. W. U. and contributed support thereto; and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Conclusions with respect to the contracts

We have found that the respondent dominated and interfered with the formation and the administration of the D. G. W. U. within the meaning of Section 8 (2) of the Act. The D. G. W. U., therefore, is not and never has been the lawful representative of the respondent's employees for the purposes of collective bargaining with regard to

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[65] *N. L. R. B.* v. *Brown Paper Mill Co.* (C.C.A. 5th), decided January 17, 1940, enf'g *Matter of Brown Paper Mills Co., Inc.* and *Int. Brotherhood of Paper Makers, affiliated with the A. F. of L.*, 12 N. L. R. B. 60; cf. *Matter of New Era Die Company* and *I. A. M. Lodge 243, A. F. of L.*, 19 N. L. R. B., No. 27.

rates of pay, wages, hours of employment, or other conditions of employment. Under these circumstances, the closed-shop contract, the supplemental wage agreement, and the check-off agreement, and any extensions, renewals, modifications, or supplements thereof, and any superseding contracts or agreements, between the respondent and the D. G. W. U. are void and of no effect.[66]

Moreover, the closed-shop agreement was an integral part of the respondent's plan to discourage and prevent membership of its employees in the I. L. G. W. U. The agreement required all employees of the respondent to join the D. G. W. U., and the bylaws of the D. G. W. U. prohibited its members from holding membership in any other labor organization. By making and publicizing among its employees a contract which compelled membership in the D. G. W. U. and in effect prohibited membership in the I. L. G. W. U. as a condition of employment, the respondent not only precluded its employees from making their own choice of a collective bargaining representative, but also, by adoption of such an employment policy, discriminated with regard to hire, tenure, terms, and conditions of employment.[67] The closed-shop proviso of Section 8 (3) of the Act does not protect such discrimination when committed pursuant to a contract with a labor organization found to have been company dominated.

We find that the respondent by entering into and publicizing the closed-shop contract with the D. G. W. U. discriminated in regard to the hire, tenure, terms, and conditions of employment of its employees, thereby discouraging membership in the I. L. G. W. U.; and that the [fol. 723] respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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[66] See *Hamilton-Brown Shoe Co.* v. *N. L. R. B.*, 104 F.(2d) 49 (C.C.A. 8th), mod'g and enf'g *Matter of Hamilton-Brown Shoe Co.* and *Local No. 125 United Shoe Workers of America, C. I. O.*, 9 N. L. R. B. 1073.

[67] *Matter of Monticello Manufacturing Corporation and Steel Workers Organizing Committee, No. 2085, affiliated with the C. I. O.*, 17 N. L. R. B., No. 109.

D. *The alleged discharges*

The amended complaint alleges that the respondent discharged from its employment Sylvia Hull on or about April 23, 1937, and May Fike, on or about April 26, 1937, and thereafter refused to reinstate them, because they had joined and assisted the I. L. G. W. U.

Sylvia Hull became a member of the I. L. G. W. U. on March 23, 1937, and on April 22, 1937, it was publicly announced by the I. L. G. W. U. office in Kansas City that she would represent the respondent's employees at the biennial convention of that organization in May 1937.

We have previously described the anti-union demonstration by employees against Sylvia Hull on the morning of April 23, 1937, which we have found was condoned and encouraged by the respondent. During the demonstration Mrs. Hyde, the respondent's employment manager, removed Sylvia from her machine and told her that she would have to go home. Sylvia replied that she did not want to quit but would go home for the day. Mrs. Hyde took her employee identification card which was necessary for admission to the plant and when Sylvia asked how she would get back into the plant Mrs. Hyde told her that she would come down to the door and admit her. At the same time Mrs. Hyde took the telephone number of a neighbor through whom Sylvia stated she could be reached and agreed to call her, and also asked Sylvia to get in touch with the respondent if she did not receive a call, inasmuch as the telephone number Sylvia left was that of a neighbor. Sylvia thereupon left the plant. Mrs. Hyde testified that she attempted to reach Sylvia by telephone the next morning, April 24, and on another occasion within a month thereafter, on the instruction of Mr. Baty, the respondent's production manager.[68] Sylvia never received notification to return to work and never applied to the respondent for reinstatement. She did not testify in this proceeding.

The respondent contends that Sylvia voluntarily left the employ of the respondent. This contention is based on Sylvia's statement, made when a number of the anti-union

[68] Mrs. Hyde testified that the purpose of these calls was to inform Mrs. Hull that "Mr. Baty would like to talk with her again."

demonstrators demanded that Sylvia go home, that she would go home, and on the fact that she did not thereafter seek to return. However, when Mrs. Hyde subsequently told her she would have to leave the plant, Sylvia refused to quit her employment but agreed to go home for the day. [fol. 724] We think that the facts plainly show that Sylvia did not voluntarily give up her position with the respondent, and only acquiesced in a 1-day lay-off under pressure from the respondent. Furthermore, the fact that Mrs. Hyde agreed to call her indicates that the respondent did not consider Sylvia's statement a resignation of her employment.

We find that Sylvia Hull did not voluntarily leave the employment of the respondent, but that she was temporarily laid off by the respondent because of her membership in and activity on behalf of the I. L. G. W. U.[69] We therefore find that the respondent discriminated in regard to her tenure of employment,[70] thereby discouraging membership in the I. L. G. W. U., and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act. We further find that under all the circumstances the respondent's effort to communicate with her after her lay-off was equivalent to an offer of reinstatement [71] and that the respondent did not, discriminatorily refuse to reinstate her within the meaning of Section 8 (3) of the Act.

May Fike was first employed by the respondent in 1926 or 1927 and with the exception of approximately 2 years

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[69] See *Matter of Pennsylvania Greyhound Lines, Inc., Greyhound Management, Co. Corporations* and *Local Division No. 1063 of the Amalgamated Ass'n of Street, Electric Ry. and Motorcoach Employees of America*, 1 N. L. R. B. 1, 36, where the Board held a "furlough" because of union activities was a violation of Section 8 (3) of the Act.

[70] The respondent does not contend that it was compelled to lay off Mrs. Hull because of the demands of its other employees. Even assuming that such action was taken for that reason, the existence of such coercive pressure affords no defense to a violation of the Act. See *National Labor Relations Board v. Star Publishing Co.*, 97 F.(2d) 465, 470, enf'g *Matter of Star Publishing Co.* and *Seattle Newspapers Guild, Local No. 82*, 4 N. L. R. B. 498.

[71] While Mrs. Hyde did not state that the respondent sought to offer Mrs. Hull reinstatement, from all the circumstances we infer that that was the respondent's purpose. The Trial Examiner in effect so found and did not recommend either reinstatement or back pay for Mrs. Hull.

in 1931-32 was continuously in the employ of the respondent until May 1, 1937. She joined the I. L. G. W. U. on March 15, 1937. She is a sister of Fern Sigler, a member of the I. L. G. W. U., against whom three anti-union demonstrations were staged by the respondent's employees on the morning of April 23, 1937, as a result of which Mrs. Sigler was forced to leave the plant. Mrs. Fike, who was employed in a sewing machine section adjacent to that in which these demonstrations occurred, testified that a number of the operators in her section talked to her in the presence of her instructor, Pearl Atchison, about the fact that Mrs. Fike's sister was a member of the I. L. G. W. U. She further testified that Mrs. Atchison questioned her on the morning of the demonstration about her knowledge of Fern Sigler's membership in the I. L. G. W. U. and about her own membership in that union. Mrs. Fike stated that she first denied and then admitted that she was a member of the I. L. G. W. U. She also testified that her instructor [fol. 725] told her that she would lose her job because of the demonstration against her sister, Fern Sigler. Mrs. Atchison denied that the conversation concerned Fern Sigler and the demonstration against her or that she asked Mrs. Fike whether she was a member of the I. L. G. W. U. However, Mrs. Atchison does not deny that she talked to Mrs. Fike that day, nor does she deny that she discovered Mrs. Fike was a member of the I. L. G. W. U. In view of the widespread commotion caused by the demonstration against Fern Sigler in the adjacent section and the fact that it was generally known that Mrs. Sigler and Mrs. Fike were sisters, we are persuaded that Mrs. Fike's version of the conversation is substantially correct. Accordingly, we find that Mrs. Atchison knew that Mrs. Fike was a sister of Fern Sigler and that both were members of the I. L. G. W. U.,[72] and warned her that she was in danger of losing her job because of these facts. Since Mrs. Atchison is a supervisory employee, and in her

[72]Lee Baty testified that he did not learn of Mrs. Fike's membership in the I. L. G. W. U. until 1939. Under all the circumstances we do not credit that testimony.

capacity as instructor represented the management, the respondent is responsible for her statements and conduct.[73]

The demonstrations and statements made by Mrs. Atchison to Mrs. Fike hereinabove described occurred on Friday, April 23. On Monday, April 26, when Mrs. Fike reported for work, Pearl Atchison told her that she would have to go home because work in that section was slack. It was customary, when work was slack, for girls in the section to take a half day or a day off in turn. However, Mrs. Fike had already taken her turn. When she protested at being laid off out of turn, Mrs. Atchison replied, " . . . that is orders from the office." Mrs. Fike thereupon went to Mrs. Hyde, the employment manager, and asked her if she had been singled out for a lay-off because of the demonstration against her sister. Mrs. Hyde denied this[74] and told her to telephone the plant about work the following day. Mrs. Fike did so, and was directed to return. She worked from the afternoon of April 27 through April 30. Although Mrs. Fike was returned to work after losing only 1 day's employment we are convinced and find that her lay-off out of turn was because of her connection with the I. L. G. W. U.[75]

On April 28 or 29, May Fike requested Mrs. Hyde to permit her to take her vacation the first 2 weeks in May. According to Mrs. Fike, Mrs. Hyde told her she might go, [fol. 726] but that if she did so, she would have to take whatever work there was when she returned, since the volume of production at the plant would be reduced by that time. Mrs. Fike testified that with this understanding she went on her vacation.

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[73] *Swift & Co.* v. *National Labor Relations Board*, 106 F.(2d) 87, mod'g and enf'g *Matter of Swift & Co.* and *Amalgamated Meat Cutters and Butcher Workmen of N. A., Local No. 641*, and *United Packing House Workers Local Independent Union No. 300*, 7 N. L. R. B. 269.

[74] The respondent did not offer any explanation for Mrs. Fike's lay-off out of turn either at the time of the latter's protest or at the hearing.

[75] The complaint does not allege that the 1-day lay-off of Mrs. Fike was a discrimination with regard to hire and tenure of her employment, and our finding in respect thereto is stated here only in support of our ultimate conclusion that Mrs. Fike was discriminatorily refused reinstatement and in effect discharged at a later date.

Mrs. Fike's vacation period expired on Monday, May 17. Prior to that date, on May 12, she came down to the plant, and while there inquired of Mrs. Hyde whether there would be work on the following Monday. Mrs. Hyde told her that she did not know and instructed her to call in on Friday, May 14. Mrs. Fike called, and Mrs. Hyde told her that she did not know whether there would be work, but to inquire again on Monday morning, May 17. On Monday, Mrs. Fike was told that there was no work, but to call up later. Thereafter, over a period of several weeks, Mrs. Fike telephoned to Mrs. Hyde a number of times. Each time she was told that there was no work. On the last occasion Mrs. Hyde told Mrs. Fike that she would call her when the respondent needed her. Mrs. Fike has never been called by the respondent during the 2 years intervening between the termination of her employment and the date of the hearing in this proceeding.

The respondent defends the termination of Mrs. Fike's employment on the ground that she left voluntarily on April 30, 1937, after being told that if she took her vacation at that time she could consider herself discharged. Mr. Baty and Mrs. Hyde both stated that Mrs. Fike was so informed. However, we do not think this testimony is consistent with Mrs. Hyde's subsequent conduct. When Mrs. Fike inquired of her about work on May 12, Mrs. Hyde did not mention any discharge and told her to call in again. On later occasions, during the several succeeding weeks, when Mrs. Fike telephoned, Mrs. Hyde told her that there was no work but to call again, and finally told her that the respondent would notify her when she was needed. This conduct on the part of Mrs. Hyde indicates to us that Mrs. Fike was not told, as claimed by the respondent, that if she insisted upon taking her vacation she could consider herself discharged; rather, it supports Mrs. Fike's testimony that she was told she would have to take whatever work there was when she returned. We therefore find that May Fike did not voluntarily leave the employ of the respondent on April 30, 1937, but went on vacation at that time with the understanding that she would be taken back when work was available.

It is also contended by the respondent that May Fike was refused reinstatement on May 17 and thereafter because there was no work for her. But the respondent's own employment records and testimony show that this is not true. Prior to the time May Fike took her vacation she was engaged in sewing underseam bindings. In her [fol. 727] section there were some 14 or 15 operators who devoted all of their time to underseam binding. The employment cards of these 14 operators show that during the week of May 17, which ended on May 21, every one of them worked more than 40 hours—the customary workweek. Nearly all of the 14 worked 53 hours that week. During the week ending May 28, 11 of the 14 worked overtime and only 2 put in less than 40 hours. Yet, during these 2 weeks, Mrs. Fike was told on several occasions that there was no work. Furthermore, the respondent's production manager, Lee Baty, testified that from April 1, 1937, to June 15 or 20, the respondent was unable to meet its production dead lines. Baty also admitted that there was work at the time Mrs. Fike desired to return, but he asserted that there was not enough to justify bringing back operators who had been laid off. Mrs. Hyde testified that the month of May was one of the biggest production months, that on May 12, 1937, the plant was operating at capacity and continued to operate at capacity until the latter part of June. Moreover, even though the slack season was approaching when Mrs. Fike completed her vacation, this is no defense to the respondent's refusal to give her work sometime later when production again increased. Although Mrs. Hyde last said that she would call Mrs. Fike when the respondent needed her, neither Mrs. Hyde nor any other of the respondent's supervisors has done so in the 2 years since May 1937. From these facts we find that May Fike was not denied reinstatement by the respondent because there was no work for her.

Finally, the respondent takes the position that Mrs. Fike has never been reinstated because she was an inefficient operator. Lee Baty testified that he recalled that over a 3-year period a great deal of her work had been returned to her by the respondent's inspectors for repairing and resewing. No records were available to show the amount of repair work, nor did any of the inspectors testify con-

cerning Mrs. Fike's work. On the other hand, Mrs. Fike had been employed by the respondent for more than 10 years. It does not seem reasonable to suppose that the respondent would have continued to employ her for so long a period if her work was unsatisfactory. Nor is there evidence that any of the respondent's supervisory officials ever discussed with Mrs. Fike the character of her work.

On the basis of all the evidence we find that May Fike was denied reinstatement and in effect discharged by the respondent after her vacation because of her membership in and activities on behalf of the I. L. G. W. U. We therefore find that the respondent discriminated in regard to the hire and tenure of employment of May Fike, thereby [fol. 728] discouraging membership in the I. L. G. W. U.,[76] and interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Since the termination of her employment at the respondent's factory, Mrs. Fike has worked intermittently at two other garment factories, and had employment at the time she testified in this proceeding.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES

We find that the activities of the respondent set forth in Section III above, occurring in connection with its operations described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

We have found that the respondent has engaged in and is engaging in unfair labor practices by dominating and interfering with the formation and administration of the D. G. W. U. and by contributing support to it; by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the

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[76] See *Matter of Waterman Steamship Corp.* and *N. M. U. of America, Eng. Div., Mobile Branch, Mobile, Ala.*, 7 N. L. R. B. 237, 249-50, enf'd in *Waterman Steamship Corp.* v. *N. L. R. B.*, U.S. Sup. Ct., Case No. 193, decided February 12, 1940, rev'g in part and aff'g in part 103 F.(2d) 157 (C.C.A. 5).

Act; and by discriminating in regard to the hire and tenure of employment of its employees and the terms and conditions of their employment, thereby discouraging membership in the I. L. G. W. U. and encouraging membership in the D. G. W. U. We shall order the respondent to cease and desist from these unfair labor practices. To effectuate the policies of the Act we shall order the respondent to withdraw recognition from the D. G. W. U. and to disestablish it completely as the representative of any of the respondent's employees for the purpose of collective bargaining. Since we have found that the D. G. W. U. is dominated and assisted by the respondent and that the closed-shop contract granted to the D. G. W. U. by the respondent was an integral part of the respondent's campaign to encourage membership in the D. G. W. U. and to discourage membership in the I. L. G. W. U., we shall order the respondent to cease and desist from giving effect to the contract of May 27, 1937, to the supplemental wage agreement of June 22, 1937, to all extensions, renewals, modifications, and supplements thereof, and to any superseding contracts which may now be in operation. However, nothing in this Decision and Order shall be taken to [fol. 729] require the respondent to vary or abandon the substantive features embodied in the contracts, relating to rates of pay, wages, hours of employment, or other conditions of employment.[77] We shall also order the respondent to cease and desist from giving effect to the check-off agreement with the D. G. W. U. and to reimburse its employees for all amounts deducted from wages as dues for the D. G. W. U.[78]

We have found that the respondent discriminated in regard to the tenure of employment of Sylvia Hull on April 23, 1937, because of her membership in and activities on behalf of the I. L. G. W. U. Upon all the evidence we have also found that Sylvia Hull never communicated with the respondent after she left the plant on April 23 and

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[77] *Matter of Monticello Manufacturing Corporation* and *Steel Workers Organizing Committee, No. 2085, affiliated with the C. I. O.*, 17 N. L. R. B., No. 109.

[78] *Matter of The Heller Brothers Company of Newcomerstown* and *International Brotherhood of Blacksmiths, Drop Forgers and Helpers*, 7 N. L. R. B. 646, 656.

that the respondent made bona fide but unsuccessful efforts to communicate with her to offer her reinstatement. We have found that under all the circumstances the respondent's action was equivalent to an offer of reinstatement which Mrs. Hull, by her failure to communicate with the respondent after instructions to do so, refused to accept. We shall therefore withhold our customary order of reinstatement and we shall not require the respondent to make Mrs. Hull whole for any loss of pay incurred because of the discrimination against her on April 23, 1937.

We have found that the respondent discriminatorily discharged May Fike by refusing to permit her to resume her work at the termination of her vacation on May 17, 1937, because of her membership in and activities on behalf of the I. L. G. W. U. We shall, therefore, order the respondent to offer to May Fike full and immediate reinstatement to her former or substantially equivalent position. We shall also order the respondent to make whole May Fike for any loss of pay she may have suffered by reason of the discriminatory failure to reinstate her, by payment to her of a sum equal to the amount which she normally would have earned as wages from May 17, 1937, the date of that discrimination,[79] to the date of the respondent's offer of reinstatement, less net earnings[80] during said period, excluding from the computation of her back pay, the period from the

[79]We have chosen May 17, 1937, since that is the date on which Mrs. Fike's vacation period terminated and she normally would have returned to work. It is true that the record does not affirmatively establish that there was work for her on that day, but in view of the testimony that the respondent's plant was operating at capacity from May 12, 1937, to the latter part of June 1937, we find that the respondent could have given Mrs. Fike employment on May 17, 1937, and that her award of back pay should be computed from that date.

[80]By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtaining work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. *See Matter of Crossett Lumber Company* and *United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers, Local 2590*, 8 N. L. R. B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects are not considered as earnings, but, as provided below in the order, shall be deducted from the sum due the employee, and the amount thereof shall be paid over to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects.

date of service of the Intermediate Report to the date of [fol. 730] the Order herein, since the Trial Examiner found she was not discriminatorily discharged and recommended dismissal of the complaint with respect to her. [51]

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the Board makes the following:

CONCLUSIONS OF LAW

1. International Ladies' Garment Workers' Union and Donnelly Garment Workers Union are labor organizations, within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Donnelly Garment Workers Union, and contributing support to it, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to hire and tenure and terms and conditions of employment of its employees, thereby encouraging membership in the Donnelly Garment Workers Union and discouraging membership in the International Ladies' Garment Workers' Union, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Re-

[51] This is in accord with our usual practice. See *Matter of The Louisville Refining Co.* and *Int. Ass'n. of Oil Field, Gas Well and Refinery Workers of America*, 4 N. L. R. B. 844, 875.

lations Board hereby orders that Donnelly Garment Company, Kansas City, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Donnelly Garment Workers Union, or with the formation and administration of any other labor organization [fol. 731] of its employees, and from contributing financial or other support to said union or to any other labor organization of its employees;

(b) Giving effect to its contract of May 27, 1937, and its supplemental wage agreement of June 22, 1937, or to any extensions, renewals, modifications, or supplements thereof or to any superseding contract and agreement which may now be in force with Donnelly Garment Workers Union; and from giving effect to its check-off agreement with the Donnelly Garment Workers Union;

(c) Discouraging membership in International Ladies' Garment Workers' Union, or discouraging or encouraging membership in any other labor organization of its employees, by discharging or refusing to reinstate any of its employees or by discriminating in any other manner in regard to hire or tenure of employment, or any term or condition of employment;

(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from and completely disestablish Donnelly Garment Workers Union as the representative of any of its employees for the purpose of

dealing with it concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(b) Reimburse all employees who were members of the Donnelly Garment Workers Union for the dues it has deducted from their wages on behalf of said union;

(c) Offer to May Fike immediate and full reinstatement to her former or substantially equivalent position without prejudice to her seniority and other rights and privileges;

(d) Make whole May Fike for any loss of pay she has suffered by reason of her discharge, by payment to her of a sum of money equal to that which she normally would have earned as wages during the period from May 17, 1937, to the date of such offer of reinstatement, less her net earnings during that period, but excluding from the computation of the amount due her the period from October 9, 1939, the date of service of the Intermediate Report, to the date of this Order; deducting from the amount otherwise due her monies earned by her during the period included within the computation for work performed upon Federal, State, county, municipal, or other work-relief projects and pay over the amount so deducted to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Post immediately and keep posted for at least sixty (60) consecutive days from the date of posting, in conspicuous places throughout the plant, notices stating that the respondent will cease and desist in the manner set forth in paragraphs 1 (a), (b), (c), (d), and (e), and will take the affirmative action set forth in paragraphs 2 (a), (b), (c), and (d) of this Order; and further stating that the respondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, and that the respondent will not discriminate against any employee because of membership in or activity on behalf of that organization;

(f) Notify the Regional Director for the Seventeenth Region in writing within fifteen (15) days from the date of this Order what steps the respondent has taken to comply herewith.

[fol. 732] (Decision and Order of National Labor Relations Board, June 9, 1943.)

United States of America

Before the National Labor Relations Board

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers Union, party to a contract.

Case No. C-1382.

On November 27, 1942, the Trial Examiner issued his Intermediate Report in the above-entitled proceeding, finding that the respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action as set forth in the copy of the Intermediate Report attached hereto.

During the hearing, the Trial Examiner ruled upon various motions and upon objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Pursuant to notice, a hearing for the purpose of oral argument was held before the Board on March 16, 1943, at Washington, D. C. The respondent, the I. L. G. W. U., and the D. G. W. U. were represented by counsel and presented argument. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations made by the Trial Examiner, with the exceptions and qualifications noted below:

A. The remand; the evidence adduced pursuant thereto.

In remanding the case to the Board for further hearing, the Circuit Court directed that the respondent and the D. G. W. U. be permitted to adduce the previously proffered testimony of respondent's employees to show, in substance, that they formed and joined the D. G. W. U. of their own

free will and that they were not influenced, interfered with, or coerced by the respondent in choosing that organization as their bargaining representative. In compliance with the Court's mandate and pursuant to the respective offers of proof submitted by the respondent and [fol. 733] the D. G. W. U. at the original hearing, the Board permitted the introduction of such testimony.[1] We have carefully considered all such evidence adduced by the respondent and the D. G. W. U. We find, however, that the testimony in question does not overcome more positive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the D. G. W. U. which subjected that organization to the respondent's domination and which removed from the employees' selection of the D. G. W. U. the complete freedom of choice which the Act contemplates. Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the D. G. W. U., we are moreover impelled to adhere to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature is immaterial to issues such as those presented in this case.[2] A consideration of all the evidence convinces us, and we find, that the respondent dominated and interfered with

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[1]At the original hearing, the Trial Examiner, although denying the broad offers of proof submitted by the respondent and the D. G. W. U., nevertheless permitted 9 witnesses to testify that they joined the D. G. W. U. of their own free will. Twelve witnesses, whose testimony before Judge Miller in the injunction proceeding was admitted as part of the record, likewise testified that they voluntarily joined the D. G. W. U. At the further hearing, the respondent was permitted to introduce 11 witnesses who gave similar testimony in accordance with the respondent's offer of proof. Five of these witnesses, had also signed the D. G. W. U.'s offers of proof, and all of the 11 were examined by the D. G. W. U. pursuant to its offers.

[2]See Bethlehem Steel Company, et al. vs. N. L. R. B., 120 F. (2d) 641 (App. D. C.), enf'g Matter of Bethlehem Steel Corporation, a Delaware corporation and Steel Workers Organizing Committee, 14 N. L. R. B. 539; American Enka Corp. vs. N. L. R. B. 119 F. (2d) 60 (C. C. A. 4), enf'g Matter of American Enka Corporation and Textile Workers Union, No. 22129, American Federation of Labor, 27 N. L. R. B. 1057; N. L. R. B. vs. Brown Paper Mill Co., 108 F. (2d) 867 (C. C. A. 5), cert. den. 310 U. S. 651, enf'g Matter of Brown Paper Mill Company, Inc. Monroe, Louisiana and International Brotherhood of Paper Makers, affiliated with the American Federation of Labor and International Brotherhood of Electrical Workers, affiliated with the American Federation of Labor, 12 N. L. R. B. 60; Bethlehem Shipbuilding Corp. vs. N. L. R. B., 114 F. (2d) 930 (C. C. A. 1), enf'g Matter of Bethlehem Shipbuilding Corporation, Limited and Industrial Union of Marine and

the formation and administration of the D. G. W. U. and contributed support thereto; and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. Membership and participation in the D. G. W. U. by alleged supervisory employees.

The Trial Examiner found that Harry Grogan, listed on the pay roll under the heading, "Instructors and Floor Ladies," and Hilda Richmond and Veda Hoyland, listed under the payroll heading, "Buying Records," were supervisory employees whose participation in D. G. W. U. affairs was attributable to the respondent. It appears that Grogan was inadvertently listed on the payroll as an instructor. [fol. 734] There is no other evidence that he was employed in a supervisory capacity. While Richmond and Hoyland appear under the heading of "Buying Records," which covers the executive force and other salaried workers of the respondent, we are of the opinion that this fact, in the absence of other evidence, is insufficient to warrant a finding that they enjoyed a supervisory status. Accordingly, we find that the activities of these three employees in connection with the D. G. W. U. are not attributable to the respondent.

Order.

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Donnelly Garment Company, Kansas City, Missouri, its officers, agents, successors, and assigns shall:

Shipbuilding Workers of America, 11 N. L. R. B. 105; N. L. R. B. vs. Newport News Shipbuilding & Dry Dock Co., 308 U. S. 241, rev. mod. of Board's order in 110 F. (2d) 506 (C. C. A. 7), enf'g as mod. Matter of Link-Belt Company and Lodge 1604 of Amalgamated Association of Iron, Steel and Tin Workers of North America through the Steel Workers Organizing Committee, affiliated with the Committee fo. Industrial Organization, 12 N. L. R. B. 854; Corning Glass Works vs. N. L. R. B., 118 F. (2d) 625 (C. C. A. 2), enf'g as mod. Matter of Corning Glass Works, Macbeth-Evans Division and Federation of Flat Glass Workers of America, 15 N. L. R. B. 588; N. L. R. B. vs. New Era Die Co., 118 F. (2d) 500 (C. C. A. 3), enf'g as mod. Matter of New Era Die Company and International Association of Machinists, Lodge 243, A. F. of L., 19 N. L. R. B. 227.

1. Cease and desist from:

(a) Dominating or interfering with the administration of Donnelly Garment Workers Union, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to Donnelly Garment Workers Union or any other labor organization of its employees;

(b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement, with Donnelly Garment Workers Union, and from giving effect to its check-off agreement with said organization;

(c) Discouraging membership in International Ladies' Garment Workers' Union, or any other labor organization of its employees, or encouraging membership in Donnelly Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

(d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act.

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Withdraw all recognition from Donnelly Garment Workers Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representative;

(b) Reimburse all of its employees for all dues and assessments, if any, which it has deducted from their wages on behalf of Donnelly Garment Workers Union;

(c) Post immediately in conspicuous places throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices [fol. 735] to its employees stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a) to (e) hereof; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a) and (b) hereof; and (3) that the respondent's employees are free to become or remain members of International Ladies' Garment Workers' Union, and that the respondent will not in any manner discriminate against any employee because of membership or activity in said organization.

(d) Notify the Regional Director for the Seventeenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

And It Is Further Ordered that the complaint, insofar as it alleges that the respondent, by discriminating in regard to the hire and tenure of employment of May Pike, has engaged in unfair labor practices within the meaning of Section 8 (3) of the Act, be, and it hereby is, dismissed.

Signed at Washington, D. C., this 9 day of June, 1943.

Harry A. Millis, Chairman.

Gerald D. Reilly, Member.

(Seal) John M. Houston, Member.

NATIONAL LABOR RELATIONS BOARD.

[fol. 736] Intermediate Report.

The Intermediate Report attached to the foregoing Decision and Order of the National Labor Relations Board is omitted at this place in the printed record for the reason that the same heretofore appears at page 3837 of Volume X of the printed record.

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CLERK'S COPY.

Volume I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1940

No. 26

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 20, 1940
CERTIORARI GRANTED APRIL 22, 1940

VOLUME I.

RECORD.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 475, Orig.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

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34, Article appearing in Kansas City Journal Post of April 10, 1937, entitled "Garment Unions get Closed Shop in 3 more Plants"	7053	4169
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[fol. 1] (Transcript of Testimony and Proceedings before National Labor Relations Board taken from the Transcript of Record in Case No. 475; Original.)

No. 475, Original.

United States of America.
Before the National Labor Relations Board,
Seventeenth Region.

In the Matter of:

Donnelly Garment Company,

and

International Ladies' Garment Workers' Union and Donnelly Garment Workers' Union, Party to the contract.

Case No. XVII-C-371.
Regional Office,
National Labor Relations Board,
Scarritt Building,
Kansas City, Missouri,
June 5, 1939.

The above entitled matter came on for hearing, pursuant to notice, at 10:00 a. m.

Before:

James C. Batten, Trial Examiner.

Appearances:

Daniel J. Leary and Henry H. Foster, Jr., 1016 Scarritt Building, Kansas City, Missouri, appearing for the National Labor Relations Board.

R. J. Ingraham, James J. Shepard, Jr., and Burr S. Stottle, 1900 Telephone Building, Kansas City, Missouri, appearing for the Donnelly Garment Company.

Frank E. Tyler, Thomas J. Patten, and Lucian Lane, 1008 Dwight Building, Kansas City, Missouri, Appearing for the Donnelley Garment Workers' Union.

[fol. 2] Clif Langsdale, 922 Scarritt Building, Kansas City, Missouri and Jane Walker Palmer, 818 Scarritt Building, Kansas City, Missouri, appearing for the International Ladies' Garment Workers' Union.

[fol. 3] Proceedings.

Trial Examiner Batten: I want to make a short statement.

* * * * * * *

[fol. 5] The Trial Examiner will allow an automatic exception to all adverse rulings during the course of the [fol. 6] hearing, and upon appropriate order an objection and exception will be permitted to stand to an entire line of questioning.

* * * * * *

Now, I want to say at this point that when I complete this statement I am going to request the Board's attorney to file the pleadings thus far in the case, asking that they will be marked Board's Exhibits 1-A, B, C, and so forth, whether they are respondent's pleadings or intervener's pleadings, in order that we have something before us to start with.

* * * * * *

[fol. 49] Trial Examiner Batten: You are allowed an automatic exception to all adverse rulings. You don't have to ask for them, and you will all receive them.

* * * * * *

[fol. 66] Mr. Leary: Well, I am willing, Mr. Examiner, to amend paragraph 11 to read as follows:

"Respondent, since on or about July 5, 1935, and thereafter, by the acts set forth", and so forth.

Mr. Langsdale: Why would you limit it to July 5, 1935?

Mr. Leary: I would want it understood, though, Mr. Examiner, that by that amendment I wasn't estopping

myself from offering evidence which would go to show the background of the employment conditions at the plant prior to July 5, 1935.

Trial Examiner Batten: In other words, you are putting in a date but you don't want to be bound by it; is that what you mean?

Mr. Leary: No, not at all. I think the Act only became effective on July 5. That is why I am selecting that date.

Trial Examiner Batten: I understand what you mean by background. Of course, background may be necessary up to a certain point, but, of course, if the background becomes the picture it is not so well.

Mr. Langsdale: Well, we would like to put in evidence to show the attitude of this respondent toward the International Ladies' Garment Workers' Union, commencing in 1935 down to now.

* * * * * * *

[fol. 67] Mr. Ingraham: If Your Honor please, the pleading starts with April 27, 1937.

Mr. Leary: Excuse me. I must take exception. It starts with February 12, 1935.

Mr. Ingraham: That is the date of the Donnelly Loyalty League. But, I want to call Your Honor's attention to this: There was a case before the old N.R.A. Labor Board and that case began approximately the 1st of February, and ran clear to June. Now, if we are going into all these old ancient history matters we are going to be here for over a year, because as soon as they go into it we have got to. We have got to deny the evidence and put in our evidence, and that is going to consume a terrible length of time; and, in addition, Your Honor, that is all mat-[fol. 68] ters that occurred prior to the passage of the Wagner Act that I can't believe would be material.

* * * * * * *

[fol. 94] Mr. Langsdale: I wish to dictate into the record a motion to strike certain portions of the answer of the Donnelly Garment Company, which motion I will at a later date reduce to writing, if the Examiner wishes.

* * * * * * *

[fol. 95] Trial Examiner Batten: You may proceed with the motion and I will assign a number to it now. That would be Board's Exhibit 1-QQQ.

* * * * * *

[fol. 106] Trial Examiner Batten: Mr. Ingraham, have you anything?

[fol. 107] Mr. Ingraham: Well, your Honor, I think that these facts are certainly germane to this issue, go to the very guts of the case.

Trial Examiner Batten: Well, you mean that we should try out both of these injunction suits.

Mr. Ingraham: No, your Honor, that is res adjudicata. These parties were bound by that decree, but I do say that we have a right to show the conspiracies and the fact that the International is now using the Wagner Act to carry on this conspiracy. It is using the instrumentalities of the Labor Board to injure respondent.

Trial Examiner Batten: Well, do you think, Mr. Ingraham, in a case where you are charged with a 8(1), (2), and (3), that you should be able to come in and try the International Ladies' Garment Workers' Union and the Labor Board in this hearing?

* * * * * *

[fol. 108] Mr. Ingraham: But I would think, if Your Honor please, that Your Honor would certainly consider germane as to whether or not the International had complied with the Wagner Act or whether it was acting contrary to the very spirit of the law that Your Honor is here to enforce.

* * * * * *

[fol. 109] Trial Examiner Batten: Now, surely, in an action, if you were charged with some offense under a Federal statute, and you should come into court and show that the person who appeared before the Grand Jury or filed the information was a worse person than you, would that relieve you of any responsibility?

Mr. Ingraham: No; but, let me put this question to Your Honor: Supposing in a prosecution it is charged

that the prosecuting attorney is in a conspiracy with the complaining witness. Do you mean to say that the court wouldn't allow the defense to show that?

Trial Examiner Batten: Well, I say that in that action you would not show that by an answer, surely.

Mr. Ingraham: I don't know how else you would show it, then. You could go—

Trial Examiner Batten: (Interrupting) Do you mean to tell me that you would go into court in answer to—we will say you were charged with a violation of the Nar- [fol. 110] cotics Act, and you were to come in and show that the Narcotics Division Agent and the prosecuting attorney were in a conspiracy to convict you of a violation of the Narcotics Act; would that relieve you of any responsibility?

Mr. Ingraham: I certainly think it would be material along with my denial.

Trial Examiner Batten: My point is, do you think the Federal Court would entertain such a proposition?

Mr. Ingraham: I certainly do; in all earnestness I think that. And I think that for the purpose of understanding the situation that exists in this case, that it is very important that you would give consideration to what has taken place and what has been proven in court. I don't think that it is certainly the province of the Labor Board to assist in any way, shape or form, anybody that is out for the sole purpose of violating the Wagner Act itself, that is, injuring and attempting to damage a company because it won't violate the Wagner Act.

Trial Examiner Batten: Of course, Mr. Ingraham, don't misunderstand me. I don't say that your contention is not one which the Board should entertain if properly presented to them. My only point is, is this the place? Is it a defense to the thing which the respondent is here charged with? I still don't see—when you say to me that if it were all true it still doesn't relieve you of the 8 (1), [fol. 111] (2) and (3), if it is proven. In other words, if you have committed an unfair labor practice and the record shows it, the evidence proves it, which is received,

and there is no prejudicial error, there is no lack of due process, it is reviewable by the Board and the Circuit Court of Appeals, and the Circuit Court of Appeals reviews it and they say there is no error, there is no lack of due process and they are guilty of 8 (1), (2) and (3); now, you don't mean to tell me that based upon the evidence that the Court would set it aside if these other things were not admitted by the union?

. . . . . .

Mr. Ingraham: Your Honor, I would think that it would not be the province of the Labor Board, at the request of somebody that is violating the—or attempting to violate the Labor Board Act, to prosecute a company on [fol. 112] charges made by that person or union, when it is known and been found that that union has been party to a conspiracy, has been a party to a scheme to make the company by force violate the very law that the Labor Board is to enforce.

I think the Labor Board, very properly, should hear matters of that character, and I think that the fact that it goes to the good faith—that is, witnesses get on the stand; if they were in good faith, that may be one thing, if you would believe that they were in good faith—but when it can be shown that they are just a party to a scheme and being used for a purpose, that is absolutely in violation of the Wagner Act, I think.

. . . . . .

[fol. 130] With respect to the motions made by the respondent and the intervener to dismiss, those two motions are denied.

Now, with respect to the request of Mr. Tyler, representing the intervener, the Donnelly Garment Workers' Union, an application for an election, of course, that would have to be denied because this is not in our proceeding, Mr. Tyler, and the Trial Examiner, of course, could not entertain a petition for an election in this proceeding, [fol. 131] and that decision is based partly upon the two petitions which were filed, marked as Board's Exhibit 1-NNN and 1-OOO.

. . . . . .

Now, with respect to the motions to make more definite and certain, is there any objection on the part of the respondent and the intervener, if we consider both motions jointly?

* * * * * *

[fol. 133] Mr. Leary: With reference to paragraph 5 (a), Mr. Examiner, I am willing to amend the paragraph by inserting after the words "Donnelly Garment Workers' Union" the words "particularly in the months of April and May, 1937, and thereafter," so that the paragraph as amended will read "did encourage, allow and permit supervisory and other employees acting in the interest of respondent to organize, promote, encourage and coerce membership in the Donnelly Garment Workers' Union, particularly in the months of April and May, 1937, and thereafter, on respondent's time and on respondent's property, and at respondent's pay and at its expense."

* * * * * *

[fol. 135] Mr. Langsdale: There will be some evidence in my opinion very material to the allegation of paragraph 5 (a), of matters and things that were said and done prior to that time.

* * * * * *

[fol. 136] Trial Examiner Batten: All I can say is this: I am interested in limiting the time we are going to cover in this proceeding. I think I indicated yesterday that I am not going to go outside of the time stated in this complaint on the basis that it is background unless there are some allegations in the complaint with reference to it.

Now, I am not going to spend time in this hearing so that the background becomes the case. I have no objections in this case, as in all other Board cases, and which has been approved by the Supreme Court in the Greyhound cases, showing, for instance, the labor history of the Donnelly Garment Company by probably one witness in a half hour, that just merely gives the background of [fol. 137] the labor history; but I am not going to try out the Donnelly Garment Company dating back a number of years without an allegation in the complaint to that effect; and if that is the intent and purpose of the Board's attor-

neys, then they had better amend their complaint and I will then pass upon the complaint as amended.

I don't mean by that that even if it is amended that I will receive it in this hearing; but, certainly, if that is the purpose—I mean, if it is the purpose to go rather extensively into the labor history by a number of witnesses and devote quite a bit of time to it, then, certainly, this complaint needs amending.

* * * * * *

[fol. 138] Trial Examiner Batten: We are ready to proceed, I think.

Mr. Leary: Mr. Examiner, during the past half hour we have been attempting to particularize the complaint and particularly draft a paragraph concerning happenings prior to the effective date of the act, and we have found now that it is just about impossible to do it in a short time, and I would rather not go ahead, and within the next few minutes offer an amended paragraph without having the opportunity of studying the evidence completely on it.

Trial Examiner Batten: Well, now, of course, you understand what I said a moment ago, I don't want you to misunderstand my remarks,—I said that in accordance with the rulings of the Board, and the Supreme Court in the Greyhound cases, if all you intended to do was to have, [fol. 139] we will say just one witness briefly sketch the labor relations of this plant, and take, just hastily run over it in order that it would be a background, I have no objection to that, and by that I don't mean that the other parties might not have an objection. I am merely stating the Examiner's position. If it is your plan, as I get it from Mr. Langsdale's remarks, that you intend to go into it extensively and show the discrimination, and so forth, prior to the time stated in the complaint, certainly, the complaint should so state because I don't propose to have the background become the case in this hearing.

* * * * * *

[fol. 155] Trial Examiner Batten: Now, I think that we may proceed with any further matters that the respondent

has without prejudice, of course, to the first motion that you have stated, a motion to dismiss.

Mr. Stottle: Well, the respondent has a motion to strike, which is directed to the new paragraph 4 (a), which has [fol. 156] been incorporated in the amended complaint, 1-RRR, which I desire to read and urge upon the Examiner. It reads as follows:

* * * * * *

[fol. 159] (Thereupon the document above referred to was marked as "Board's Exhibit No. 1-TTT" for identification.)

* * * * * *

Mr. Leary: Let me review briefly, Mr. Examiner, my position on this complaint. I believe that based upon the complaints that the Board has been issuing in the past, and in the various reviews that have been made of those complaints in the circuit courts, courts of appeals and in the Supreme Court, that that complaint as set out and originally served on the parties here was entirely sufficient so far as it permitted the counsel for the Board to offer any testimony regarding the background of the labor, [fol. 160] or the background of the unfair labor practices at the plant of the company.

Now, based upon the motion that respondent has made to make the complaint more definite and certain, and also based partially upon the discussion that was had between all parties at the hearing room yesterday, I attempted to, in paragraph 4-A, to set out in some detail the things that we propose to cover and the nature of the background. Now, none of those things—I concur with Mr. Stottle on it—are violations of the Act, because the Act was not a law at that time, but I do think that they are perfectly proper for the Board to consider in determining whether or not the acts and conduct of respondent since July, July 5, 1935, are unfair labor practices and, therefore, violations of the Wagner Act.

* * * * * *

[fol. 164] Trial Examiner Batten: Well, let me ask you this, Mr. Leary, with respect to those individuals: in this

hearing, unless you show that those individuals were dis-[fol. 165] charged for union activities, it is of no value to you or to your case, is it?

Mr. Leary: No, it isn't.

Trial Examiner Batten: All right. If you show that, isn't the respondent entitled then to come in and show they were not discharged for union activities, but for cause; isn't that correct?

Mr. Leary: I believe you are correct, yes.

Trial Examiner Batten: All right. Then what it means, that we must try out the issues of the discharging of all those persons. It is of no value to you unless you show they were discharged for union activity. If you do, the respondent is entitled to come in and show that that is not the reason for the discharge. Therefore, we have to try out every one of these as an 8(3) case, even though you don't allege it as an 8(3) case.

* * * * * *

[fol. 184] Mr. Tyler: Mr. Examiner, if you please, I would like to have my motion for continuance marked and filed at this time. It is in the same words and figures as was exhibited to you a day or two ago, and I wish to make a remark about it.

* * * * * *

[fol. 185] Mr. Tyler: Well, I wish to present at this time, if the Examiner please, and has it been given a number?

Trial Examiner Batten: 1-RRR, I believe that is right. No, that is the amended complaint, and 1-XXX we will give to that.

Mr. Tyler: I desire to call the attention of the Examiner to the fact that since this motion was originally called to his attention, the intervener has filed with the Board a motion to elect—a motion asking for an election—

Trial Examiner Batten: (Interrupting) You mean you filed the petition with the Board, is that right?

Mr. Tyler: Yes, the intervener has filed a petition, an application, I call it, for an election of the employees with

the Board on a form presented and prepared by the Board and marked with an "R" number and not marked as being in this hearing.

[fol. 191] Trial Examiner Batten: Let me ask you the question again, Mr. Tyler, if the Board were to hold a secret election under the Board's supervision, and this hearing were to demonstrate that this organization were absolutely dominated by the employer, that it was formed by the employer, that it was sponsored by the employer, that it is supported by the employer, do you think that the next day you could hold an election and that all of that domination and support which we will say has run over a period of 2 or 3 or 4 years would be dissipated to the point where all the employees would go down and freely express their opinion in an election?

Mr. Tyler: I think Your Honor's suggestion involves a [fol. 192] contradiction in itself, that is impossible. If a secret, fair election shows that these employees desire to continue with the bargaining agency they now have, I think it would be impossible to find that they were dominated or controlled because the secret election—

Mr. Leary: (Interrupting) I wonder—

Trial Examiner Batten: (Interrupting) Will you tell me what you mean by "secret and fair election?"

Mr. Tyler: I mean an election which secures to the employee the right to express his own opinion without anyone finding out how he voted.

Trial Examiner Batten: I agree with you, absolutely.

Mr. Tyler: That can be done by this Board.

Trial Examiner Batten: I agree with you, Mr. Tyler, a hundred per cent, that if this Board feels such an election could be conducted, it ought to be done tomorrow.

Mr. Tyler: I submit the Board can do it.

Trial Examiner Batten: Well now, the only question is whether or not the Board agrees with you and me that the situation is such that you can do that.

Mr. Tyler: And I submit that the Examiner should continue this hearing until the Board decides whether to hold an election, and if they do, until the results of that election are known, because it is the most decisive and the most complete way of determining, the most important fact involved.

* * * * * *

[fol. 194] Trial Examiner Batten: (Interrupting) The fact remains, that the Board has held, beyond any question of a doubt, that when there are unfair labor practices charged involving an organization, that under no circumstances will they hold an election. Now, I have nothing to do with the "R" case. I have nothing to do with determining whether they will or not, and I am here to hear a complaint on a charge and we are going to proceed with it. So, I would deny the motion to continue for any such purpose. That disposes of that, and we will meet Monday morning at 9:30 a. m. in the Kansas City Court of Appeals.

* * * * * *

[fol. 203] Trial Examiner Batten: If there is no objection, 1-ZZZ and 1-AAAA will be received on the same basis as Board's other exhibits 1.

* * * * * *

Trial Examiner Batten: Mr. Ingraham, have you anything to say with regard to Board's Motion to strike and amend?

Mr. Ingraham: Your Honor, I am filing a motion to strike the Board's exhibit. I will take that up, if you desire.

Trial Examiner Batten: You may proceed with that motion.

Mr. Ingraham: I think, in order for Your Honor to understand my position, I will have to read the Board's motion to strike.

* * * * * *

[fol. 206] Paragraphs (o) and (p) we move to strike for the reason that nothing contained in said paragraphs con-

stitutes any charge or act in violation of the National Labor Relations Act.

Now, in connection with paragraphs (o) and (p), Your Honor recalls that the Board in its first amendment alleged that the respondent discharged the persons named in these paragraphs on account of their union affiliations. These people were discharged prior to the enactment of the Wagner Act. Your Honor then struck out that allegation of the Board's amendment. Now the Board inserts these same names again which of course will involve the same issues that were involved in this prior amendment which Your Honor has struck out.

* * * * * *

[fol. 207] If we are going to go into those issues or would have to be compelled to meet that issue it is going to require going back over the whole NRA proceeding and the issues involved in that proceeding, and I think, in view of Your Honor's ruling that the Board should not be permitted to again plead these issues which you have ruled out and which are going to require a great deal of testimony if we go into it.

* * * * * *

[fol. 214] Trial Examiner Batten: Well, the respondent's motion to strike is denied except as to paragraphs "O" and "P" in the Exhibit 1-ZZZ. I will reserve my decision on that until this afternoon, at which time I will decide what should be done with it, and if there is no further motions, we will proceed.

* * * * * *

[fol. 221] Rose Todd, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Leary:

Q. State your name and address, please.
A. Rose Todd; 4343 Oak.
Q. Is that Kansas City, Missouri?
A. Kansas City, Missouri.

Q. Where are you employed?
A. Donnelly Garment Company.

* * * * * *

By Mr. Leary:
Q. Are you a member of the Donnelly Garment Workers' Union?
[fol. 222] A. Yes, sir.
Q. What is your position in that union?
A. Chairman.
Q. How long have you been chairman?
A. Since its organization in April—April 27, 1937.
Q. When did you first become employed by the Donnelly Garment Company?
A. Approximately 13 years ago. Two years of that time I was not in their employ.
Q. And you began in about 1926?
A. I believe it was 1926, yes.
Q. And what two years were you not in their employ?
A. Around November 1st of 1931 until about August 1st of 1933. I believe that is correct. I sometimes get confused on those dates, but I think that is correct.
Q. Where had you been employed prior to the time you went to work for the Donnelly Garment Company in 1926, or thereabouts?
A. For approximately five and a half or six years at the Thornton Minor Sanitarium, for Dr. W. E. Minor.
Q. In what capacity?
A. As assistant in his surgical work, assistant nurse, I mean, in his surgical work.
Q. Was that your first employment that you had?
A. Yes, sir.
Q. When you began with Donnelly in 1926, what was your work?
[fol. 223] A. Operator on power machine.
Q. How long did you remain as an operator?
A. I don't remember, Mr. Leary, just definitely, but I don't know whether to say several months or a few months, but it was, I would judge, about five or six months.
Q. Then what work did you start to do?
A. I helped on the floor as thread girl.
Q. When you—
A. (Interrupting) In one of the departments.

Q. When you say on the floor, will you explain that?

A. Yes, in one of the sections, helping at times distribute our work and giving out thread, notions; things of that type.

Q. Isn't a section composed of somewhere around forty girls?

A. I think it was approximately at that time forty girls.

Q. That is an independent operating unit, is it not, within the plant?

A. Yes, sir.

Q. And there are many sections in the plant?

A. I don't know as "independent" is the word to use. We have sections, but they are dependent on each other.

By Trial Examiner Batten:

Q. You mean by that that one section doesn't complete a garment? Is that correct?

A. Sometimes, yes, but seldom without some work being done, in another section.

Q. Well, do each of these sections have a certain def- [fol. 224] inite work they perform? I mean a part of the operation, or the entire operation?

A. Well, at times they might perform all—well, they never do perform all the work, because that would go to—we would have to have button holes and various things, and various preparations for our notions with it, but you would call it a department inasmuch as that is possible. I don't believe any factory could function, at least, that one couldn't function, without the other departments.

Q. Well, of course, that is true. Will you just tell us in a few words exactly what this section did that you first worked in there as a thread girl, or whatever you call it? If you remember.

A. It has been so long ago I don't even remember what section it was, but at that time when some of the other sections—we were making dresses.

By Mr. Leary:

Q. Isn't it true, Mrs. Todd, in so far as possible, after the materials are cut and all the various parts are assembled and put in bundles, that they pass through a section and an effort is made to complete it?

A. I think so.

Q. All the sewing on the garment was in one section?

A. Not always, no, sir, Mr. Leary. Is it "Leary" or "O'Leary"?

Q. It is Leary now. After you had worked as an oper-
[fol. 225] ator, I believe you testified you worked on the floor?

A. Yes, as a thread girl.

Q. Now, who are the persons that are in charge of these various sections?

A. The production manager, at that time, would have been Mrs. Reeves. Now, it is Mr. Baty.

Q. Do you have what you call an [instruction] in each section?

A. We have, yes, but our instructors in that plant are not given any directive authority, other than to handle the work.

Mr. Leary: I move to strike all that part the witness answered after the first six or seven words, Mr. Examiner.

Trial Examiner Batten: Will you read the question and answer?

(Whereupon, the following question and answer were read by the reporter:

"Question: Do you have what you call an instructor in each section?

"Answer: We have, yes, but—")

Trial Examiner Batten: It may be stricken from that place on.

* * * * * *

[fol. 226] By Mr. Leary:

Q. Your answer is that you do have instructors?

A. We do have instructors.

Q. And the instructor doesn't do any operating at all,—do they?

A. Any actual sewing?

Q. Yes.

A. She shows the operator how to do her work.

Q. Does the instructor do any actual operating on the machines?

A. Do you mean productive operating?

Q. Yes.

A. Other than the amount necessary to show an operator how to proceed with her operation.

Q. That might take up about 2 or 3 per cent of her time during the [way] wouldn't you say?

A. I wouldn't think I could say the percentage, but any amount that is necessary with that many people.

Q. And are those instructors also called supervisors?

A. No, sir. They have always been called instructors, ever since I worked at the Donnelly Garment Company.

Q. You then don't have any persons whom you call supervisors, is that it?

A. We don't use that term.

Q. Do you remember—did you hear the testimony in [fol. 227] the NRA hearing in 1935?

A. No, sir.

Q. Well, there is also in each section, is there not, a person designated as an assistant instructor?

A. No, sir. We have in our department what we call thread girls. That is what I was referring to when you asked me what I did.

Q. And isn't it a fact that these thread girls, even if they are not called assistant instructors, do act in that capacity of an assistant instructor in her work?

A. I think I couldn't say that, Mr. Leary, because oftentimes those people are not operators.

Q. But very often, and most often, as a matter of fact, they are the better type operators who have been promoted in a sense to be thread girls?

A. No, sir.

Mr. Tyler: If the Examiner please, I object to the leading form and cross-examination form of the questions and ask that proper form of direct examination be followed by the Board.

Trial Examiner Batten: He may proceed. I think I said on the opening day, Mr. Tyler, that I am not going to try to tell the attorneys how to ask their questions. You may proceed, and if you testify for the witness, why, it simply means that no weight can be given to the testimony, [fol. 228] that is all, so you attorneys will have to assume the responsibility for the method in which you proceed on that. You may proceed.

Trial Examiner Batten: Mr. Langsdale, in my hearings I don't class any of the witnesses any way. I mean, after all, we are not bound by the rules of evidence and why be bound by any technical proceeding of the court. We are interested in getting all the facts we can get, and it is immaterial to me whether it is an adverse witness or your witness or the respondent's witness. If we get the information we need here, that is the thing we are interested in.

* * * * * *

[fol. 229] Trial Examiner Batten: We will proceed on the basis I have just explained.

By Mr. Leary:

Q. Isn't it true that in every section there is an instructor and a thread girl?

A. Yes, sir. There might be at times an exception to that, but as a rule that is true.

Q. That has been the situation ever since you have been employed by the company, has it not?

A. Yes, sir.

Q. When you speak of working on the floor you refer, do you not, to the work done by either a thread girl or an instructor?

A. Yes, sir.

Q. And all other work, then, at the plant is done by girls at machines; is that it?

A. No, not all other work, Mr. Leary.

Q. But substantially all other work as distinguished from work done on the floor is done on machines?

A. That is true in our sewing section.

Q. How long did you work as a thread girl?

A. Well, I don't remember. I think we were in the Coca-Cola Building at that time. I would have to refer to the records of the company, Mr. Leary, to tell you that.

Q. (By Trial Examiner Batten) Could you tell us approximately, roughly?

[fol. 230] A. Let me see. It must have been most of the time for, I think I would be safe in saying 2 or 3 years, but I am being more truthful when I say I can't tell you without referring to their records.

Q. Are those records available to you?

A. They would be in the employment department. Yes, they would show where I worked.

Trial Examiner Batten: Mr. Ingraham, I don't suppose there is any objection, is there, to respondent giving us this young lady's employment history?

Mr. Ingraham: No, if we have such a record I will produce it.

The Witness: It would just show, as I recall it, what department you worked in.

By Mr. Leary:

Q. After you worked as a thread girl what position did you assume?

A. Let's see. That must have been, after that, in the department where we made samples part of the time, and made dresses for our factory part of the time.

Q. How long did you work at that?

A. Well, part of that, Mr. Leary, was clerical work and part of it was working on the floor, doing anything that needed to be done. I am not definite about that period, because that was about the time that I began helping to set prices. I am not definite about that time, but it was in [fol. 231] that department.

Q. What is the name of that department, please?

A. I never thought of it having a name. I don't think it had a name. It was just another sewing department.

Q. Were you the instructor there? A. No.

Q. Were you ever the instructor there?

A. I don't think in that department you would say that that was an instructor. At that time Mr. Atchison had charge of that department, and there was always one or two girls there on that work.

Q. Who was Mr. Atchinson?

A. Dewey Atchison.

Q. What is his position now?

A. I think you had better ask Mr. Ingraham what you call him. I never think to call him anything. I don't know what the company calls him. He has been there so long—People around that place don't have titles.

By Trial Examiner Batten:

Q. He was in charge of this department at the time you were helping in it?

A. That is right.

Q. What do you mean by having charge of it?

A. Making time studies and directing that work.

Q. And you say there were two of your girls working under him?

[fol. 232] A. I said sometimes there were two, and sometimes one.

Q. If there was only one under his supervision, would you be the one?

A. I would be the one.

Q. Did you assist in making time studies?

A. Yes, sir.

Q. You would go out in the different departments and study the work? A. Yes, sir.

Trial Examiner Batten: Mr. Leary, do you have any objection if I ask questions?

Mr. Leary: No.

By Mr. Leary:

Q. Are you referring to the work Mr. Atchinson was doing back at the time you were working in this section?

A. I am referring to what he was doing then. I thought that is what you were asking. If I didn't understand the question—

Q. Now, is Mr. Atchison still in that same line of work?

A. He worked in the production department, but we don't do that work in that manner. I don't recall that it has been done in that manner for, oh, I guess 5 or 6 years.

Q. Would you call that work efficiency work?

A. I think that would be all right, yes. I don't know that I am any authority as to what it should be called.

Q. What is your best judgment as to the year when [fol. 233] you began this work which, for want of a better term, we will call efficiency work? A. That I began it?

Q. Yes.

A. Well, Mr. Leary, I never did do that work—I mean that I develop a plan or how it should be done. I followed instructions from Mr. Atchinson. You will just have to let me find out about that. I can't tell you the

year. It isn't that I don't want to; I would be glad to tell you, but I don't remember it.

Q. It was sometime before 1931, was it?

A. Oh, absolutely. I was just going to tell you that. When I left the Donnelly Garment Company's employ in 1931 I was setting piecework prices, and all of this was previous to that time. I would say it was—I would just have to refer to those records some way. I just can't tell you those dates.

Q. It was something more than a few months before 1931, wasn't it?

A. Oh, yes, absolutely, but I don't like to try to give you accurate dates when I don't know the dates. I would have to have a chance to find out what it was.

Q. This man, Dewey Atchinson, was in charge of this work of setting the prices?

A. Yes, sir. Not in charge particularly of setting the prices, but in charge of the manner in which they were set. [fol. 234] When I made out—

Q. How many persons were employed under Mr. Atchinson at that time and assisted him?

A. In doing that work?

Q. Yes.

A. We have had other people, one or two at a time. I don't believe there were ever more than two at a time working on that work.

Q. Who was the other one than yourself?

A. I can't think of that little girl's name. I can find out her name, but I can't think of it now.

Q. Is she still employed there? A. No.

Q. Describe what your duties were when you were employed under Mr. Atchinson on this price-setting operation.

A. Sometimes taking time studies, and then out of that, Mr. Leary, is the time that I learned and acquired the information for setting piecework prices.

Q. First you started off doing this work taking the time studies of the various operations, didn't you?

A. Yes.

Q. That is the first thing everybody in that line does?

A. I had sewed and working in the departments in the sense of putting a garment together, and things like that, previous to that. Then, we took our time studies with a stop watch.

[fol. 235] Q. And you used to take those in all of the departments of the plant, did you not?

A. Any place that was necessary, where we could find an average person that was working on different types of work so that we could establish something to work from.

Q. Who would it be that would tell you where to take a time study?

A. Sometimes it would be the girls requesting it, that they were not making enough money, of that they had a new type of operation. I don't know that it would be a specific decision. If we were making one dress in the department and we were having some difficulty with it, or it was a new type of work, if that girl asked—or—sometime, if we thought it was new and we were not sure of how we should set that price and what it should be, then we would time one of those girls for an average.

Q. After you had certain experience merely making time studies, then you actually began to set the prices yourself? A. Yes, sir.

Q. How many persons were setting the prices at the time you first began to do it?

A. That was Dewey's job, and I helped him do that in the beginning.

I don't think I am explaining it very satisfactorily, but that is a thing in a place like that—and I presume in [fol. 236] any factory—that you sort of grow into. At least, the foundation has to be there, and that is where I acquired mine, from his instruction.

* * * * * *

Q. You and Mr. Atchinson were setting the prices for the company at this time, were you not?

A. Not without assistance, no; not without somebody going over it and knowing whether it was going to be satisfactory.

Q. Who would go over it?

A. As I said a few minutes ago, whatever department had worked on it, the instructor from that department [fol. 237] might look over that. That was just an agree-

ment so that we would know that we were coming as near as possible to something satisfactory on that. And if we had made a time study of an operator, then you had that very definitely to go by.

Q. You merely conferred with the instructors for the purpose of seeking information, did you not? A. Yes.

Q. Could the instructors change the price you and Mr. Atchinson fixed?

A. As long as I have been at the Donnelly Garment Company anybody requesting to have a price changed, it could always be changed. It has always been possible to make an adjustment.

Q. The point is, instructors or operators could request a change, but could they actually make the change themselves?

A. An operator or an instructor, or Dewey or I, or none of us, no one person would say, "We are going to change this price." It would have to be a mutual agreement, or whether we needed to change it, or if they didn't have enough money on it and would ask for more all there would need to be was a discussion on it and we would put more money on it.

* * * * * *

[fol. 242] Q. Why was it that you left the Donnelly plant in 1931?

A. I had an ambition to be a saleswoman, and I thought if I could help a little bit inside until I got onto the hang of it there I could go out on the road.

Q. And you returned to Donnelly's in 1933?

A. Yes.

Q. What position did you assume then?

A. Worked as a thread girl in the building at 2618 something Walnut.

Q. How long did you work as a thread girl?

A. I think that time it was three or four months, or [fol. 243] four or five months.

Q. Then what did you become?

A. Well, I have done just little things here and there and helped out in various departments where they needed help since then. Let me see if I can remember. I helped

in one of the other sections over there in the other building since that, I don't remember which one. Then, for awhile—

Trial Examiner Batten: (Interrupting) Just a moment.

By Trial Examiner Batten:

Q. What do you mean, you helped? What did you do?

A. As a thread girl. Then, I helped, in the following Spring—I think that is when I helped with the belt section. If I remember correctly, I spent a few weeks in [their]—or maybe I should say more than a few weeks, in the department where we make samples, helping the person—I don't know that you would say she was in charge, but we have usually two people up there that have had some sewing experience and run these errands and carry stuff back and forth to the girls making samples.

By Mr. Leary:

Q. When did you begin that work?

A. This has all been since 1933.

Q. When did you begin this sample room work, as you call it?

A. This is 1939—1938—I believe I did that part of it in 1935, and I know I did some of it again in the winter of 1936 and the spring of 1937. And one time in there when there wasn't any particular work for me to do—when [fol. 244] I went back of course I didn't expect to get the job back I had had—that desk had been filled and is still filled by the same person—I did some pattern work, or tried to.

* * * * * *

[fol. 245] By Mr. Leary:

Q. In your work, then, in the sample room, Miss Witness, was it not encumbered upon you to go all through the factory?

A. At times.

Q. And to talk to the instructors in the various sections?

A. Yes. If we wanted information from the factory, or if they wanted information from the sample room, or even taking those garments to the people setting prices and figuring that line on the production you would necessarily go through the plant.

Q. Who was the person who had your old job back when you returned there in 1933?

[fol. 246] A. Mrs. Nichols.

Q. Was Dewey Atchinson still in his same capacity when you returned?

* * * * * *

(Thereupon the last question was read by the reporter.)

A. I would say yes, as near as I know.

By Mr. Leary:

Q. And is Mr. Atchinson still in that capacity?

A. Well he worked with the production and the efficiency—the planning of some of that work. I don't know what kind of a title you would say he has. He worked with Mr. Batty in the production department.

Q. Does Mr. Batty have a title?

A. Production manager.

* * * * * *

[fol. 247] Q. Does he have charge of the price setting?

A. No.

Q. Who has charge of that?

A. Mrs. Nichols, and she has a young lady that assists here with that work, setting prices, and before they are sent down to the factory, they are O.K.'d by me.

Q. Is a Mrs.—

A. (Interrupting) May I add this: I O.K. them as a representative of the Donnelly Garment Workers' Union.

Q. Does Mrs. Nichols have a Miss Spalito?

A. Spalito; that is right.

Q. This Miss Spalito, the young woman, you say assists Mrs. Nichols?

A. Yes, sir.

Q. What is Mrs. Nichols' first name?

A. Lulu, L-u-l-u.

Q. And what is Miss Spalito's first name?

A. Josephine.

Q. What is [Mrs.] Atchinson's duties; what is he doing now?

A. Well, other than what I told you a minute ago, I really don't know what his duties are, the particular duties that he has. I think Mr. Baty could explain that to you. He works with him, with the production, and I don't know the details of that.

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[fol. 248] Q. Where are their offices?

A. On the ninth floor, adjoining our designing department.

Q. Where is Mr. Baty's office?

A. On the tenth floor.

Q. Where is Mr. Atchinson's office?

A. Tenth floor.

Q. Where are the general offices of the company?

A. On the tenth floor. I might add in explanation, Mrs. Nichols doesn't have an office, and Mr. Atchinson doesn't have an office. They have desks, but not an office, a private office.

Q. Who is it, then, that at the present time sets the prices on behalf of the company?

A. Nobody—well, on behalf of the company, we are all employed by the Donnelly Garment Company, and Mrs. Nichols, that is her responsibility.

Q. She sets them on behalf of the company and has an assistant, Miss Spalito?

A. Miss Josephine Spalito.

Q. And then—

[fol. 249] A. (Interrupting) And I O.K. them on behalf of the Donnelly Garment Company, a plan that was estab-

lished shortly after our union was organized. We discussed it at some length and decided it was a proper thing to do in view of the fact that I had had some experience, and knew approximately what should be fair and reasonable.

Q. What discussion was had on this matter?

A. With the committee [of] chairman of the Donnelly Garment Workers' Union.

Q. And with what representatives of the company?

A. Well, after we—after we had decided that that was what we thought should be done, it was taken up with Mr. Baty until we notified him that was what we desired to do.

Q. Now, if Mrs. Nichols establishes a price on behalf of the company, can that price be put into effect without your agreement?

A. No, sir. Without the agreement of the Donnelly Garment Workers' Union?

Q. Yes.

A. No, sir. There are never any prices sent to the plant to be used that you might say, more or less permanently, at least, on our first cutting of dresses, without our O.K.

Q. And if you—

A. (Interrupting) I would like to add this, Mr. Leary: that that doesn't establish a final say-so that there will [fol. 250] never be a change in those prices. If an operator makes an objection, she may make it to either Mrs. Nichols or tell her instructor, or she oftentimes comes to me or some other member of the committee. She can go to anybody that she wants to. I think that our members have been thoroughly informed that they should.

Q. What committee do you refer to?

A. The committee of the union.

Q. Is that what you call your executive committee?

A. Yes, sir.

Q. Mrs. Nichols,—is she in the Donnelly Garment Workers' Union?

A. Yes, sir.

Q. Miss Spalito in the Donnelly Garment Workers' Union?

A. Yes, sir.

Q. How long have they been in the organization?

A. Well, I think since the origin in 1937.
Q. Do they hold any office in the organization?
A. No, sir.
Q. Have they ever held any office?
A. No, neither one of them.
Q. Do they pay their dues regularly, do you know?
A. Yes, sir.
Q. Where do you have your desk at the plant?
A. On the seventh floor.
[fol. 251] Q. And is that in what you call this sample group?
A. No. That is just inside the door there on the seventh floor. I don't work in that department any more, in the sample room.

I think I didn't explain very clearly; I said "sample." We call that sample department, and it really is not what you probably term a sample department. We make our first garment up there. It is a small sewing section, connected with our designing department where we make—it shouldn't be called a sample department. It should be called models, is what they really are, because our samples proper are made in our plant in various sections.

Q. The designers complete their work and it is sent to—

[Q]. (Interrupting) To that small department.
Q. Which is called the sample department, but is really the model department?
A. I inadvertently called it the sample, and it really isn't what I should say as a sample. It is the model.
Q. You have your desk in that modeling department now?
A. No. That is on the ninth floor, and my desk is on the seventh floor.
Q. What department is in the same room as you have your desk?
A. It really isn't any. It is just a space, as you go in on the seventh floor, the nursing department is on one [fol. 252] side and around in the other part of the room are three or four sections, sewing sections, and there is just a space there where I—
Q. (Interrupting) You are rather isolated, by yourself; and no other workers are with you; is that it?

A. It was just a vacant space where I could have a desk and handle my work that was convenient to the factory.

Q. Will you explain what work you are doing now?

A. As I said a while ago, I don't know that I have any title to it other than—the nearest thing I have for it is supply person, you might say supply girl there, keeping track—not track, but if our different departments, I make it a point to go through the plant and keep in contact with it—if they are needing notions or thread or, say, various work, that might be done in another section, and it isn't coming through, I would call. They might call me, even, if I wasn't there, and say they needed so-and-so, and I might try to find it for them, and if it were notions, for instance, I would call the notion department and ask them why it wasn't up there, that we were working on those dresses, and they needed those notions, and then if they say they didn't have it or back ordered on it, or something of that type, I would possibly call Mrs. Reeves, or if I saw her I would tell her that the department or the section was short on such-and-such articles, and we needed it.

[fol. 253] Q. When the department needs certain material or parts or notions, where does the requisition go?

A. It goes from the merchandising department to the notion department. We have a department we call the notion department.

Q. You don't ever see those requisitions, do you?

A. I have no occasion to handle them. If one of the thread girls say to me "We are short on navy thread" or "We need some material for such-and-such a garment," she might pull out her requisition that she has, showing maybe that she got part of it; if she hadn't gotten any of it she wouldn't have a requisition, and other than that, that would be the only occasion I would have of seeing them.

Q. And with regard to the flow of work through the plant, is it your responsibility to see that—

A. (Interrupting) No.

Q. (Continuing)—the various departments have the work available which is to be done?

A. No. It is my responsibility to see that they have notions and supplies. It isn't my whole responsibility. That responsibility primarily originates in the notion de-

partment. They are sent requisitions or instructions of some type to send those notions, and that thread, and equipment, to such-and-such a department. It is only my responsibility, if they don't receive it as quickly as they need it, and they are going to be short of work because they [fol. 254] haven't these supplies. Then they would call me and say "Rose, will you see if you can get such-and-such a thing for me. We are going to have it in a little bit," and then, in a plant of that size, we have basket boys that carry work and carry things from various departments, and they are young boys, and I sometimes—you will sometimes find that sitting around in baskets that should be delivered.

Q. It is your job, then, to check up on the delivery of these various notions and supplies and material that should be at the various departments or sections?

A. That is right.

Q. How many other persons are doing this same work as you?

A. Well, if an instructor knew she was short on it, she might, if she didn't see me or it wasn't convenient to find me, it took longer to find me, she might call the notion department or the thread girl.

Q. Are there any other persons who have the same duties and responsibility, exclusive of you?

A. No, I don't believe so.

Q. Do you have any assistant?

A. No.

Q. Who had the job you have before you held it?

A. I don't know, Mr. Leary. [That] has always been somebody to kind of do that work. I believe, as near as [fol. 255] I can remember that must have been Herbert Mutchler.

Q. Do you know whether Mutchler ever had any assistant?

A. I don't believe he did.

Q. How long have you had this job which you are doing now?

A. Oh, I have been doing that, I guess, since either December or January, December of 1936 or January of 1937.

Q. What is Mutchler doing now?

A. I don't know. He isn't employed at the Donnelly Garment Company. The last time I heard of him he was in California.

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[fol. 257] By Mr. Leary:

Q. Who is your supervisor?

A. Mr. Baty.

Q. Is he the only person who gives you instructions?

A. That is right.

Q. Is it not true, Miss Witness, that in your duties at the plant, at present, that you do go around and talk to practically all of the instructors almost daily?

A. Yes, sir.

Q. And you talk to almost all of these girls daily in addition?

A. Yes.

Q. Do you know [do] any employee at the plant whose duties carry them to more places in the plant daily than you?

A. Well, that is rather a broad question. Mr. Baty would certainly be through the plant every day, but, of course, you take your basket boys, anybody that is supply-[fol. 258] ing work to that plant, the size it is, would have to be through it. We have errand girls from various floors, have pick-up boys. I could name any number of people that go through that plant all day long. We have a pick-up system that two boys, that is all they do all day long, is go through the plant.

Q. They are messenger boys?

A. Take our thread girls there, that work necessarily takes them, going from one department to the other, notion department and pressing department.

Q. How did it happen that you were placed in the position you have now?

A. Well, I don't know, Mr. Leary. I have never thought of it as being a position, especially.

Q. Well, call it a job, if you desire.

A. I think that would be more like it. I don't know, because ever since I have been back there, having no opportunity to do the work that I had done previously, not even expecting that I would have as long as the person who occupied it was doing satisfactory, I have just filled in one

place and another, and I don't [support] any particular thought was given to it.

Lots of times I might have been helping in one department and they needed something, some help in another section, and I would be called after I had gone to work, and they would say "You go help some place else." I don't [fol. 259] think that I could say I have ever definitely had a—known just what my work would be week in and week out since I have been back.

Q. Why was it—

A. (Interrupting) That was the only understanding I had when I went back, was that I would have to take what they had to give me, and that is about what I had to do.

* * * * * *

[fol. 260] Q. Since you returned to the Donnelly Garment Company in '33, what has been the nature of the work you have been assigned in the various sections throughout the plant?

A. Well, I think that would be going over what I have done. I have just helped in various places. I have never had any definite work. That was just any job, and nothing else.

Q. When you say "helped in the various sections" you mean you operated a machine?

A. Well, I did do that for a little while.

Q. When?

A. I don't remember. Sometimes when they have been —just haven't had another—any other work for me, I [fol. 261] have done a little of it, very little of it, but I have more often helped on the floor, or, as I say, in that department where we make models.

Q. When you say help on the floor—

A. (Interrupting) In the sewing section.

Q. I mean, take the place of the thread girl.

A. Yes.

Q. Or the instructor.

A. I think when I had that—when we had the belt section on the ninth floor, there was—well, I was helping then. I wasn't in charge of the section then. Then there was a girl—I don't remember any work that I have done in an actual section that wasn't helping some one else.

Q. Have you ever been—

A. (Interrupting) I did at one time help when they were just getting samples, sample line out, which actually is a sample department where they prepare samples for the salesmen. I helped back there a time or two.

Q. Have you ever taken the place of an instructor during vacation period?

A. Yes, sir.

* * * * * *

[fol. 262] Q. Are you on a salary at present?

A. Yes, sir.

Q. What is your salary?

A. One hundred and—I have a check of $32.50 twice—

Q. (Interrupting) Wait. That isn't—

A. (Interrupting) I don't believe that is right. $60—oh, they deduct a little of this, and it is around $65.

Q. What is your basis a month?

A. It is $65 either—well, I think $65 by the time the deduction is made, around $62. It is odd figures sometimes. $65 a month.

Q. What is your monthly salary?

A. Then I receive a check of $32.50 twice a month from the Donnelly Garment Workers' Union, for the work that I do for them.

Q. So you receive, then about $130 from the company each month?

A. It is $125, I believe, Mr. Leary.

Q. You say $125?

A. That is right.

Q. And in addition you receive $30—

A. (Interrupting) $2.50.

[fol. 263] Q. From the union twice a month?

A. Twice a month.

Q. So you receive $65 from the union?

A. That is right.

Q. By what arrangement do you receive a check from the union?

A. By what arrangement?

Q. Yes, and for what work done?

A. That I would spend my noon time and whatever time was necessary before and after working hours to

work, to do whatever was necessary for them, which I have been doing. Then, of course, during this last hearing we had, and this one, whatever time I spend here, they will pay me for this, and they did also with that last Federal Court hearing.

Q. Does the company pay you in addition?

A. Pay me in addition?

Q. Yes.

A. Only the hours that I work for them. I can't tell you just now the figures of it, but the Donnelly Garment Workers' Union paid me for all of the hours that I was at that trial, and the company paid me for the number of hours that I worked for them during those weeks.

Q. How much of your days, how much of each of your days are taken up in price fixing?

A. I don't fix prices, Mr. Leary. I O. K. them after [fol. 264] they are figured.

Q. Well, O. K.ing prices.

A. I don't do any of that in the daytime. I do, sometimes, do that at noon and sometimes do it in the evening. Sometimes I go down early in the morning and do it, but I don't do any of that during my working time.

Q. Well, do you do that in conference with Mrs. Nichols?

A. No.

Q. And Miss Spalito?

A. No, not necessarily. I seldom do. I usually take them and look them over, myself, because I am quite familiar with how a garment should go together, and I think reasonably so of what a price should be. If there are any, I have any questions about it, I would take it up with them.

Q. Did you work on a piece rate basis when you were doing piece work?

A. Yes, sir.

Q. Since 1933?

A. Yes, sir,—well, no, no.

Q. You have been on a salary, have you not, at all times since '33?

A. Yes, sir, I have worked on piece work, however, previous to that time.

Q. When was the first time that you ever went on a salary for the Donnelly Garment Company?

[fol. 265] A. I don't know, Mr. Leary. That is what I was telling you earlier. I dont remember just when I quit

sewing on a power machine. I couldn't be accurate about that.

Q. Well, what was the first salary that you received from the company? I am referring now to a monthly salary, or a weekly salary.

A. I don't remember that, either. I believe that it was around $25 a week. I think it would have had to be, because when I quit sewing on the power machine, I was making around $25 a week, and I think I wouldn't have started working for them for less, but I couldn't be accurate in telling you that.

Q. What were you receiving when you began your work with Mr. Atchinson, some time prior to 1931, on the price fixing? A. I don't know.

Q. Haven't you any idea?

A. Well, it seems rather unreasonable that I wouldn't, but I haven't the slightest idea. If you ask me what Gernes paid me, I can't tell you that, either.

Q. Do you know what you were receiving when you left Donnelly's in 1931?

A. I don't know accurately. I think it was around $175 a month, I believe.

Q. And what did you receive when you returned in 1933? A. $25.00 a week.

Q. How long did you remain on that basis?

[fol. 266] A. Oh, for just ages. I don't remember that, either. It seems to me that was in 1933, and this is 1939, 6 years. I think it must have been 3 years or so, about 3 years.

* * * * * * *

[fol. 267] Mr. Leary: Now, Mrs. Todd, how do you arrive at your conclusion in your O. K.'ing of the prices, that a price is fair and reasonable as far as the operator is concerned?

A. Well, Mr. Leary, I have done that work, had done it for several years, and you may get rusty on some of those things, but you never forget that, and I don't allow myself to get rusty on it because it is a vital part of the work that I could do if I had the opportunity to do it, and with our work in our plant and the association with

the operators, I just make it a part of my business to kind of keep informed on what is right and what is wrong. I don't say that I am as accurate as a lot of people would [fol. 268] be, but I do try to have a working knowledge of it and there is just never a day that some of the girls don't discuss with me what they are making, and I make it a point to discuss it with them.

* * * * * *

[fol. 272] Q. Do you know whether the Loyalty League is still in existence?

A. Yes, sir.

Q. Who are the officers of the Loyalty League now?

A. I don't think I can tell you. I know that Miss Kathleen Denzel is president of the Loyalty League. It is a little difficult to recall all of those officers of it. They have one representative from each department, and it is about sixty people, I believe, and the chairman of one of their committees is Carl Crawford.

Q. Who is the secretary, if you know?

A. I don't recall at the present time who the secretary is. I believe Miss Hartman is the treasurer.

Q. What is the first name? A. Pauline.

Q. Are you still a member of the Loyalty League?

A. Yes, sir.

[fol. 273]—Mr. Tyler: Just a moment, Mr. Examiner. I object to any testimony or questions in regard to the Donnelly Loyalty League, for the reason it is purely a social organization that has no connection whatever with the matters involved in this case or with the Donnelly Garment Workers' Union.

Trial Examiner Batten: Of course, Mr. Tyler, they allege it is a labor organization, and I presume the only way I could determine that is to get some facts that will enable me to do it. So, I will overrule the objection.

By Mr. Leary:

Q. Can you think of that secretary's name now, please?

A. No, Mr. Leary. I can't right now, but I will find out for you at noon time.

Q. If you will, please.

A. I get confused thinking of the officers of the union.

[fol. 275] Q. Do you know how many drafts were made of your contract with the company? I don't mean copies of the complete contract. I mean drafts that were prepared for you to sign.

A. You mean in working it out?

Q. Yes.

A. No, I don't. There were so many that I don't know how many of those. Now, you don't mean when it was completed, how many copies were made when it was all completed?

[A.] No, I don't mean that.

A. No, Mr. Leary, I don't know. There are several, but I don't know the exact number.

Q. Do you have any list of your members?

A. Yes, sir, we have a file.

Q. In what form is that?

A. We have a file, and I try to keep it up to date.

Q. In what form is that?

A. A metal card, about this size (indicating).

Q. A 3 by 5 card?

[fol. 276] A. I would say so.

Q. Is this the treasurer's card or the secretary's card, or whose card?

A. Well, it is kept in our desk there on the seventh floor where I keep it.

Q. You keep all the records yourself?

A. I keep those locked up. We try to keep them locked up.

Q. Who owns the file? A. Who owns the file?

[fol. 277] Q. Who owns the file?

A. The Donnelly Garment Company.

Q. How long have you been using it?

A. I don't know. Ever since I have had that desk that file has been there, or some desk, or something of that type. There used to be some other metal cabinets there.

Q. Explain what kind of file it is.

A. Just a plain metal file, two drawers.

Q. Two drawers, to hold 3 by 5 cards?

A. No. That file belongs to the Donnelly Garment Workers, that little file. And there is a file sitting there at my desk that I use to lock things up in; that is what I thought you were referring to.

Q. That is the company's file?

A. Yes, but it is my desk.

Q. Is that a four-drawer file cabinet?

A. It has two drawers in it. Did you say four?

Q. Yes.

A. It has two drawers in it.

Q. What else do you keep in this company file?

A. Oh, anything that I need to lock up I just put it in there. I don't know that I can tell you the details of what is in there. There are a couple of insurance policies in it now that somebody wanted me to lock up for them.

Q. Do you keep any of the company papers in that file?

[fol. 278] A. I don't have any occasion to keep any papers for the company.

Q. All of the material in that file are Donnelly Garment Workers' papers except for perhaps a few insurance papers you mentioned?

A. I expect it is. I suppose there might be some magazine clippings and things like that in there. I think right now I might have a few sheets of instructions I take upstairs when I get a chance to.

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[fol. 288] Q. Are you familiar with the Donnelly Athletic Association, or the Nelly Don A. A., as it is sometimes called?

A. It is an organization for the men employed at the Donnelly Garment Company. I am not familiar with any details of it at all. It is a social organization.

[fol. 289] Q. That has been in existence for a matter of five or six years, anyway?

A. I think every bit of that. They have golf tournaments, baseball, and things of that kind.

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Q. Do you know whether any labor organizations were in existence at the plant of the Donnelly Company in 1934?

A. No, sir, there wasn't. The first labor organization we had was the formation of our union in 1937.

* * * * * *

[fol. 290] By Mr. Leary:

Q. Your position is that you do not class the Loyalty League as a labor organization; is that what you mean?

A. No, sir. It is purely a social organization, and always has been.

Q. Do you know who formed the Loyalty League?

A. I think that would be difficult to say. I don't remember a great deal of the details. I do remember that there were some meetings of—oh, as I remember it, of, say 20 or 25 people, discussing it and making plans for it, but I don't know the details of it.

Q. Do you know Mrs. Gray?

A. Yes, sir. She works in our store.

Q. When you say your store, what do you mean by that?

A. The store they have there in the building.

Q. What is her first name, please?

A. I don't know. I have always called her Mrs. Gray. It seems like I should know, too. I don't know.

Q. Is she in charge of this outlet store?

A. I assume you would say she is in charge. The only charge I guess there could be is of remnants and things of that type sent down there for them to sell.

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[fol. 291] Q. Mrs. Gray was one of the persons who was concerned with the formation of the Loyalty League, was she not? A. Yes.

Trial Examiner Batten: You mean newspaper announcements? You asked about announcements.

Mr. Leary: I refer to announcements in the various publications of the organizations that emanated from those organizations.

By Mr. Leary:

Q. Do you know of any other persons who were connected with the formation of the Loyalty League?

[fol. 292] A. I think that Mrs. Strickland was, and I know there were girls from the different departments but I don't know the names of the others.

Q. What was Mrs. Strickland's first name?

A. Florence.

Q. What was her position at the plant in early 1935?

A. She makes patterns.

Q. Was she an operator?

A. She makes patterns to make dresses off of.

Q. Does she have charge of that pattern department?

A. No, sir.

Q. Who does, or who did at that time?

A. Well, I think I would be right in saying Mrs. Pilsbury has charge of that department.

Q. Is she in the Donnelly Garment Workers' Union?

A. No, sir.

Q. What is her first name? A. Beulah.

Q. This Loyalty League was formed in the early part of February, 1935, wasn't it?

A. I don't remember just the month, but it was the early part of 1935.

Q. When did you become a member?

A. I don't remember that, but I judge that I would have at probably the time of its formation, or near about that time.

[fol. 293] Q. You eventually became the president of that, did you not?

A. I believe I was elected president, probably the third time they elected officers.

Q. You did not hold office very long as president of the Loyalty League, did you? A. No.

Q. As a matter of fact, it was on March 18, 1937 that you were elected president, was it not?

A. I don't remember. I was under the impression it was in February.

Q. February, 1937?

A. It is purely a social organization, and I think their officers are due to be elected in January, and something prevented it. I thought it was February. You may have the date correct; I don't know about that.

Q. You continued as president how long?

A. Until very shortly after the organization of our union, and, being elected chairman of that organization, I resigned as president of the Loyalty League.

* * * * * *

[fol. 298] Q. Did you attend all the meetings of the Loyalty League during the period when you were president? A. When I was president?

Q. Yes.

A. I don't know whether we had any or not. I don't recall having had any. We had—I was present the day that their officers were elected. That, I think, as I remember it, I don't know whether they have a constitution or by-laws, it has been so long ago that I haven't had occasion to look it up, but the officers of the Loyalty League are elected by a group of what we call representatives. One person from each department, and it would be about sixty, I think, or seventy people, and the officers were elected each year by that group of people.

[fol. 299] Q. How often does the Loyalty League hold meetings?

A. They haven't any regular time for them. They meet more often, if they are planning some activity, and if they aren't, but they do not have a definite date for them.

Q. Do they ever have general meetings of the entire body? A. Yes, sir.

Q. Where was the meeting held when you joined the organization?

A. I don't know that, Mr. Leary.

Q. Was it held at the plant?

A. I imagine so, yes. Sure. I don't know that they have ever had any meetings any place else.

Q. Where at the plant are the meetings of the Loyalty League held that you attended?

A. Well, the one I referred to a minute ago, where they had their election of officers in 1937, I believe it was held in one of the recreation rooms.

Q. On the third floor?

A. On the third floor. What did you say?

Q. I said, on the third floor.

A. I think the third floor.

Q. How many recreation rooms does the company have?

A. At the present time, only one in the basement for the boys.

Q. And did they ever have one at any other place?

[fol. 300] A. They had one on the third floor for the women employees, which was later transferred, I believe, to the second floor, and is now used, being used, for some other purpose. As I say, they have just one now for the boys at the present.

Q. Now, is that hall on the third floor the one that is used for the Christmas parties?

A. No, Mr. Leary, that is a very small room, I would say probably—it isn't on the third floor. It is on the second floor, and I think it is probably 16 by 20 feet. It is not larger than that.

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Q. As I understand it, then only the various departmental representatives of the Loyalty League were present at the meeting at which you were elected president?

A. Those people elected the officers of the Loyalty League. That is the way they are elected.

Q. Now, for the present, let's refer only to the general meetings of the Loyalty League.

A. The general meetings?

Q. Are you able to state where any of those were held?

[fol. 301] A. What did you say?

Q. Are you able to state where any of those were held?

A. Well, they would have been held at different times probably on the third floor when it wasn't occupied, or on the second floor if it wasn't occupied, and now they would be held on the first floor because that is the only available large space that is not occupied.

Q. When you say occupied, what do you mean by that?

A. Well, on the first floor of the—it is the Corrigan Building at the present time, the entire building is occupied by the Donnelly Garment Company and the first floor is an auditorium. It is just an empty room used for recreational purposes and various and sundry purposes. At other times it isn't used for anything.

Q. But this Loyalty League held meetings on the property of the company regularly—do they not?

A. Yes, sir.

Q. Do you know whether any rent was charged for those meetings? A. No, I don't.

Q. Of what was the membership of the Loyalty League composed?

A. As near as I can remember, it would just have been employees of the Donnelly Garment Company.

Q. All employees?

A. I don't know that I ever given it any thought. I [fol. 302] would assume so.

Q. Work supervisors?

A. We discussed the word "supervisor" this morning. If you are referring to our instructors, yes. I think that all of the employees of the Donnelly Garment Company can belong to the Loyalty League.

Q. Mr. Baty?

A. I don't know whether I ever given it any thought. I don't know whether he is a member or not.

Q. Mrs. Ella Mae Hyde?

A. She might have been. I really don't know, but being a social organization, I would presume anybody working there that wanted to belong to it, it would be all right.

Q. What is Mrs. Ella Mae Hyde's position?

A. She is employed in our employment department.

Q. Is she not the employment manager? A. No, sir.

Q. Who is?

A. That is not my understanding. I understand that Mrs. Hyde interviews people and can employ people, but if it was a place of any great importance, I suppose she would have to take it up with the department head or Mr. Baty or somebody, the office manager or something of that kind.

Q. What do you mean by "matter of importance"?

A. Well, if it was going to be a position that somebody [fol. 303] was in charge of a department or something, I would assume. I don't really know the details of Mrs. Hyde's work.

Q. Mrs. Hyde hires the operators, does she not?

A. Yes, I have known lots of instances where operators have gone to Mr. Baty, also, and gotten employment, but I am sure if we needed operators and they told Mrs. Hyde to get some, she would try to do it.

Q. What is Mrs. Reeves' position?

A. I think you would say she was in charge of the merchandising department.

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[fol. 304] Mr. Leary: I show you what has been marked for identification as Board's Exhibit 2, Miss Todd, and ask if you identify that as an issue of the N. D. A. A. News of February 13, 1935?

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[fol. 305] A. Yes, sir.

Trial Examiner Batten: What was that date?

Mr. Leary: February 13, 1935.

Mr. Langsdale: Did she answer the question?

The Witness: I said yes, sir.

Mr. Leary: Miss Witness, referring to the first paragraph in the article entitled "900 join Loyalty League", on page 1 of Board's Exhibit 2, as follows:

"The employees of the Donnelly Garment Company have in the past week formed the Nelly Don Loyalty League to refute untrue statements and propaganda circulated by the Union." Do you know whether that is true?

A. I think that is true.

Mr. Leary: Board offers its Exhibit 2.

Mr. Ingraham: I object for the reason that there has been no showing that the Donnelly Company Athletic Club —what is the name of this? The N. D. A. A. represents the company in any shape, way, shape or form, and nothing that it publishes in any way is binding upon the respondent.

Trial Examiner Batten: May I see it, please?

Mr. Ingraham: Yes, sir.

The Witness: At that time, I think—

Mr. Leary (interrupting): Now, just a moment.

Trial Examiner Batten: Just a moment.

[fol. 306] The Witness: Pardon.

Trial Examiner Batten: Well, you are offering it in its entirety?

Mr. Leary: I am, Mr. Examiner; yes, sir.

Mr. Tyler: The intervener desires to object to it on the ground that nothing done or said by the Athletic Association would be binding on the Donnelly Garment Workers' Union or any of their members; also, that it is incompetent, irrelevant and immaterial.

Trial Examiner Batten: Well, of course, at this stage in the proceeding, it is pretty difficult for me to determine what, if anything, has any relevancy. So I will receive it subject to the connection with later testimony. In other words, the first day this hearing starts, I certainly can't tell what relevancy anything has.

(The document heretofore marked as "Board's Exhibit No. 2" was received in evidence.)

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[fol. 309] Q. (By Mr. Leary) What was this meeting about Mr. Dubinsky you refer to?

Trial Examiner Batten: Just a moment; I don't want to go into that. I stopped the witness from making a voluntary statement, and you ask her about that. Did you want to go into that?

Mr. Leary: Yes, I certainly do.

Trial Examiner Batten: All right, Miss Todd, you may proceed with your voluntary statement about it.

The Witness: It seems to me there had been a meeting at which Mr. Dubinsky had talked and I know a conversation around the plant regarding some of the union activities, and saying what such terrible things about the working conditions at the Donnelly Garment Company, and [fol. 310] that was what we were trying to refute, that they shouldn't exist.

By Mr. Leary:

Q. You refer to David Dubinsky, International President of the International Ladies' Garment Workers' Union; is that correct?

A. Yes sir, I do, Mr. Leary.

* * * * * *

Q. Who was saying this?

[fol. 311] A. Well, as I said a minute ago, it was general conversation and I remember of hearing that there were various members of the International saying that we had such awful sweat shop conditions, and we worked such long hours. It has been a long time ago, and I don't remember the details of it, but I do recall that that was what we were trying to refute in that statement.

* * * * * *

Q. Isn't it a fact that you heard these statements from, —about the purposes of the organization campaign of the International Union from employees of the Donnelly who had been to meeting of the International Union?

A. I couldn't say as to that. It was such general conversation I wouldn't have any idea.

Q. Did you ever attend any of the meetings yourself?

A. One.

Q. Where was that?

[fol. 312] A. I believe it was over on Michigan, at the Music Hall.

Q. Is that what you call Musicians Hall?

A. Yes.

Q. Who spoke at that meeting?

A. I don't remember.

Q Under whose instructions did you attend that meeting? A. Nobodys.

Q. Was Mrs. Hyde there?

A. I don't recall who was there other than I stopped at the drug store and drank a coke with somebody from the pressing department. I don't remember who that was.

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[fol. 314] Trial Examiner Batten: Is this covered, Mr. Leary, in the NRA proceeding?

Mr. Leary: To a certain extent, yes.

Trial Examiner Batten: I don't want to go into those matters covered in those proceedings except by reference. I am not going back and try those things all over again. If it refers to the matters in those proceedings, if you want to make it part of this hearing by reference, as I told you, subject to objection, I will receive it, but I am not going to try out all of those matters that were tried in that hearing in this hearing.

Mr. Langsdale: Let me understand. Do I understand we can offer the record in those proceedings?

Trial Examiner Batten: I said I would receive it subject to objection by the attorneys; I mean by that, Mr. Langsdale, I am not going to try out all of the issues and repeat all of the testimony and go over all of the matters that have been gone over in that hearing in this hearing.

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[fol. 315] Mr. Ingraham: If Your Honor please, of course we object to any of those matters as being immaterial and not bearing on any issues now pending.

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Mr. Ingraham: Your Honor, I would suggest this, I will be glad to confer with Mr. Langsdale and Board's counsel and see if we can agree on some stipulation to the effect that it be introduced over certain objections, and see if we can get together on it.

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[fol. 317] By Mr. Leary:

Q. Who was the first president of the Loyalty League?

A. I believe Herbert Mutchler was.

Q. Who was the president after Herbert Mutchler?

A. He was the second one I remember. Then, I was, for that short period of time.

Q. Who was the first one, then?
A. He was.

Trial Examiner Batten: He served two terms, is that it?

A. Two terms, yes, sir. I think I am correct in that. That is just my memory.

By Mr. Leary:

Q. Are you able to name the other officers of the Loyalty League at the various times?

A. No, Mr. Leary, I wouldn't be. There were so many of them, and it is old, and I never have paid that close attention to it.

Q. Do you know what steps the Loyalty League took to refute the propaganda that had been passing among the [fol. 318] employees concerning the union?

A. No, I don't. I don't remember a lot about it, Mr. Leary.

Q. Who is it that would know a lot about the Loyalty League?

A. Well, I don't believe I would be much help to you on that either, not at the present time certainly. It is old, and really I can't think not—I could tell you in substance who could give you information about it at the present time.

Q. Who is that?

A. The president of the Loyalty League just now. I gave you those officers as I remembered them this morning.

Q. What duties did you have as president of the Loyalty League?

A. I think they must have been rather nominal. It lasted such a short time—It was just a social organization, and if you had something you wanted to do or a party you wanted to have the officers would take the initiative in it.

. . . . . .

[fol. 319] Q. What is the form referred to as an I.D.M.?
[fol. 320] A. That is a notice that you might call an interdepartmental memorandum they used at the Donnelly Garment Company.

Q. Is that prepared on a special form somewhat like the little memorandum pad I hold in my hand?

A. Something on that order.

Q. And the company is the one who controls and has charge of all of those; is that it?

A. If they sent out I. D. M.'s they would be sent by the company or somebody working for them. Are you referring to company business, or what business are you referring to?

Q. They are used primarily for company business, are they not?

A. I suppose they are used for company business. If I send out a notice I don't refer to it as an I. D. M. If I sent out something for the company it would probably be an I. D. M.

Q. If you wanted to meet a friend on the corner you wouldn't send her an I. D. M. through the mail, would you?

A. No.

Q. The I. D. Ms. are exclusively, as a matter of fact, for the use of the company in the company's business?

A. That is just a term applied to a memoranda sent around. I don't know where you would draw the technical line on it.

Trial Examiner Batten: You mean by that, is it not a printed form?

A. No. It is just a blank sheet of paper, and it ac-
[fol. 321] quired that name some way. It had no official significance whatever.

Mr. Leary: What were the matters that were discussed at these Loyalty League meetings?

Mr. Tyler: Just a minute. Mr. Examiner, I wish to renew my objection to questions as to the Loyalty League, the method by which it did business, where it held meetings, and the way it carried on its affairs, because it has no connection with the Donnelly Garment Workers' Union and because it has no bearing on the issues tried in this case.

Trial Examiner Batten: He may testify as to what was discussed at any meeting he attended. To that extent I will overrule the objection. As I said this morning, there is an allegation here that it is a labor organization, and I

presume the only way we can determine that is to get the evidence.

At any meetings you attended you may tell us what business was transacted.

A. I don't know. As I say, Mr. Leary, I don't recall any discussion that was business that wasn't about parties and such as that, so far as meetings of the Loyalty League were concerned.

. . . . . .

[fol. 322] Q. You did not decide, did you, to resign as president of the Loyalty League until after the April 27 meeting of the Donnelly Garment Workers' Union?

[fol. 323] A. I am sure I didn't, no. I don't think—There wouldn't have been any occasion to. I wouldn't have given it any thought.

Q. So, it was sometime after April 27 that you resigned; is that it?

A. Surely. Yes, sir.

. . . . . .

[fol. 324] Q. Do you know Marry Huffaker?

A. Thelma Huffaker?

Q. Yes.

A. Yes. Now you have the information. I believe she was elected president. I had forgotten all about that. If that is true, then Miss Denzel must have been elected the next time. I am not positive about that, but I think Miss Huffaker was, because she became ill following that and has been in the sanitarium some time.

Q. Do you remember a meeting held on March 18, 1937, at the plant of the Donnelly Garment Company?

A. Yes, sir.

Q. Who called that meeting?

A. I don't remember.

Q. Who presided at the meeting?

[fol. 325] A. I did.

Q. Who told you to preside at the meeting?

A. I don't know. That was just one of those spontaneous outbursts—

Q. (Interrupting) As a matter of fact, you called the meeting yourself, didn't you?

A. I may have, Mr. Leary. I don't remember about that. I have been trying to remember about that, but with the excitement and turmoil of things happening then, I can't remember about that.

Q. Where in the building at 1828 Walnut was the meeting held on March 18, 1937?

A. I think that meeting was held on the second floor, as near as I can remember.

Q. Who gave you permission to hold it on the second floor?

A. That was a meeting of employees, and I don't know that anybody would have objected or would have thought to ask, other than talking to somebody in the maintenance department about preparing for a meeting.

Q. What did you definitely do that day to prepare for that meeting, if you did anything?

A. I wouldn't have done anything, Mr. Leary. You are saying I sent out the notices of the meeting, and I said I don't know whether I did or not, I don't remember.

Q. Did you talk to anyone about calling the meeting? [fol. 326] A. There is no doubt that I did, because I am sure, with as much conversation as was going on about the plant then, any number of us was talking about this, that, and the other.

Q. You talked to Nell Quinlan Reed about it, didn't you?

A. No. We did ask her to come down to the meeting. As I remember that, she was leaving town, or planning to leave town, or something, and we asked her to come down to that meeting to talk to us and tell us what she was going to do in the way of protection.

Q. For the purpose of the record, Nell Quinlan Reed is the former Mrs. Donnelly, or Mrs. Reed?

A. That owns the business, yes.

Q. She is the president of the company?

A. Yes, sir.

Q. Who was it talked to Mrs. Reed before the meeting, in addition to yourself?

A. I don't think anybody talked to her before the meeting. During the meeting I asked one of the boys who was standing in the aisle if he would go—I think I had seen Mrs. Reed come in—it seems to me as I came down to the meeting I saw Mrs. Reed go upstairs—and I asked him if he would go ask her if she would come down and talk to us.

Q. You wanted to find out from her what protection she was going to give you, is that it?

A. That is right, because at that time, if you remember, [fol. 327] these strikes and things were going on up on Grand Avenue, and the threats were that the same thing would be done to us, and that was the idea of asking her to come down and talk to us.

Q. What do you actually know of your own knowledge about threats being made?

A. If you are asking me what I actually know or of somebody telling me definitely, that was general conversation, and around a plant of that size, with as much as you could see in the newspapers, and could hear by word of mouth, that is what I would have to give you as information. It was very general.

Q. It was all hearsay, was it not, to you?

A. I don't know just the way you use the word legally as to hearsay but—yes, it was hearsay.

Q. Did anyone ever make any threat to you just prior to March 18?

A. Personally, no.

Q. Did you ever hear anyone make any threats to anyone else before March 18?

A. I don't know of anything personally, just as it was passed on to me.

Q. Who was it passed it on to you?

Trial Examiner Batten: Now, suppose she can remember 50 people that passed on these rumors, it means we will have to bring those 50 people in here. I am wondering [fol. 328] how far we should go with these threats of violence.

Everybody knows when there is an organizational campaign on in a plant the employees say many things. That is, as I see it, none of our particular concern in this hearing. Employees have a right to do a great many of these things.

The question is, did the respondent take part in them? Did the respondent do these things? The employees as employees have a right to do many of these things, and if they do, it is no violation of the Wagner Act in any form or fashion.

[fol. 331] Mr. Langsdale: It seems to me this is all far afield. The question asked the witness was, who asked her to call this meeting, and she wandered all around the courtroom with this speech of hers, which she has been doing all afternoon, that there were so many speeches of violence she doesn't know who told her to call the meeting or whether Mrs. Reed was there, or what not.

I think the Court was right this morning in telling me to wait until my time comes, but I would like to see this witness answer the questions directly. Every time she answers a question she makes a speech. The question was, who asked her to call this meeting, and why, and before she gets through with that she has gone into all of these other things.

[fol. 332] Mr. Ingraham: I submit, Your Honor, the witness is answering the questions. I don't think the witness should be subjected to any harangue such as Mr. Langsdale is giving.

Trial Examiner Batten: I realize, of course, that counsel must indicate in the record the situation. I don't feel for one minute that the witness is deliberately attempting to proceed in this manner. I do think she is entirely too talkative. I think I told her twice this morning for her own good if she would answer the question and stop we would get along much better here, but I am not going to attempt to shut off the witness, nor am I going to attempt to tell a witness what they should say or not say. The thing we are primarily interested in in this matter is getting at the facts, and for that reason I do not propose to put anybody in a straight jacket.

Mr. Leary, you may proceed with your question, with this understanding, that the only matter we are concerned about here is whether the respondent or any of its agents were involved in these rumors. I will say again I will not sit here and listen to statements employees made on either side, because if I do we will be here until Christmas.

We will recess until 20 minutes of four.

[fol. 334] Q. The main purpose of this March 18th meeting was to discuss the protection the company was going to give the employees, is that right?

A. That is right.

Q. And you testified, did you not, or did you, that you had discussed it with officials of the company prior to the meeting?

A. No, Mr. Leary. I said that I did not, but we did ask Mrs. Reed to come to that meeting after the meeting started.

Q. Why did you ask Mrs. Reed to come to the meeting?

A. Because we were wondering if she was going to do anything, if there was anything she could do to give us any protection whatsoever. I stated that she was leaving town, that we had heard about that, and that was the primary reason why we were trying to get some information from her direct.

* * * * * *

[fol. 335] Q. This was a Loyalty League meeting, wasn't it?

A. It was a meeting of the employees; not Loyalty League.

Q. Did you mention the Loyalty League at all when you presided at that meeting?

[fol. 336] A. I don't recall that I did. I don't imagine that I did, because it was not primarily a Loyalty League meeting. It was a meeting of the employees.

* * * * * *

[fol. 339] Q. What did Mrs. Reed talk about?

A. Well, she told us at that time that she had made arrangements to employ busses to bring us back and forth from work at different sections of the city, and as I remember, that bus system was established the following morning and lasted, I am not positive, but I think it was about the second or third week in May. Anyway, it lasted for a few weeks, and that was the same meeting that she said she was not going to be forced by Mr. Dubinsky or anybody that would force her employees to do something that she didn't wish to do.

Q. She said she wasn't going to let Mr. Dubinsky or [fol. 340] his union—

A. (Interrupting) That is right, to force her to sign up with somebody that would force her employees to do something against their will.

Q. She said also at that time, there was not going to be any union in that plant, didn't she?

A. No, Mr. Leary, I don't remember that. I don't ever remember hearing anybody say that there wouldn't be any union in that plant.

Q. She did tell the girls they wouldn't have to belong to a union to work there, didn't she?

A. That they wouldn't have to belong to a union to work there?

Q. Yes. A. I don't recall that.

Q. Did you get permission from anyone to hold that meeting during the working hours?

A. Mr. Leary, I didn't get permission. I was not wholly responsible for the meeting. As I tried to state a while ago, it was a spontaneous thing, a demand of a lot of people here and there, and I don't know whether we did or not.

* * * * *

[fol. 341] Q. (Interrupting) The truth is that you don't recall anything at all about this meeting, is that it, except what Mrs. Reed said?

A. That is what I have been trying to recall.

Q. After Mrs. Reed had spoken, what happened at the meeting?

A. I don't remember. I rather think that her talk closed that meeting. I am not positive about that.

Q. Do you remember any letter being read at the meeting?

A. I believe there was. That is the first recollection I have of that now. I am not even positive about that. I rather think, though, that there was a letter read at that meeting, that was from the International Union, but I couldn't say that that is positive.

Q. That was a letter from the International Ladies' Garment Workers' Union to the company, was it not?

A. That letter was read, and I am inclined, since I bring it to my memory, it was read at that meeting.

Q. And it was read by Mrs. Reed, was it not?

A. I don't know. I don't remember Mrs. Reed reading anything. I don't remember any outstanding point of her conversation other than the two I have named.

Q. Did Mrs. Reed say at that meeting she was going to answer the letter?

A. No, I don't remember. The letter was new to me, [fol. 342] and I don't recall the details of it at all.

* * * * * *

Q. Then a few days later did you and a group of employees call on the Police Department in Kansas City?

A. Yes, I think you are right. Now, I am not positive about the secrets of that, but we did go down there, a group of us.

Q. Who was it went to see Mr. Higgins?

A. Well, I believe Mrs. McTernan was with that group.

Q. Is that Mr. Otto Higgins, the former Director of Police here?

A. That is right. I did have a picture in a newspaper clipping of that, but as to the individuals that went, I am not very clear about who they were.

Q. Who do you mean?

A. About the names of who went, if that is what you want to know. Is that what you want to know?

Q. Yes, and you had a picture of it, did you say?

A. I have had, but I don't have it any more, a newspaper clipping.

Q. Did you have—

[fol. 343] A. (Interrupting) Now, I think that Mrs. Strickland went down there. I don't remember who those people were.

Q. How many went altogether

A. I think there must have been something like fifteen or eighteen or twenty.

Q. When did you go to see Mr. Higgins?

A. I don't remember the date.

Q. Was it during the day? A. Yes, I believe it was.

Q. Did you get permission from the company to go?

A. I don't know about that, because I didn't instigate it at all. All I did was go, and I don't remember.

Q. Who instigated it?

A. I don't recall—don't really know.

Q. Who asked you to go?

A. I don't recall when I went down whether I was in the—there was a group of girls there in one of the rooms, and I don't remember. I think I was just passing there and they said "Come in", something of that kind. I don't remember the details of who called me at all.

Q. You were in the plant when you were asked to go along with the girls going to see Mr. Higgins?

A. Yes, sir.

Q. And who—did you leave your work then and go?

A. I don't remember what time we went, Mr. Leary. [fol. 344] It was—we may have. It was around—I would say, as near as I can remember, it was some time in the early part of the afternoon.

Q. And did you ask the company for permission to leave your work at that time?

A. I did not. As I said a minute ago, I don't know who made those arrangements.

Q. Do you ordinarily leave your work without asking the company's permission to absent yourself?

A. No, I am not in the habit of doing that.

Q. How did you happen to do it on this occasion?

A. I don't recall. I suppose that I assumed that some arrangement had been made. I really don't know about that.

Q. You name as many as you can of the people that went to that meeting, will you?

A. Well, I don't know who else went to that meeting.

Q. How many—who have you named this far?

A. Will you read those names?

Trial Examiner Batten: Mrs. McTernan and Mrs. Strickland.

The Witness: That is right.

By Mr. Leary:

Q. You can't remember any others?

A. No, I don't at the present time. I have a rather poor memory for names.

Q. This Mrs. Strickland, was the one that formed the Loyalty League?

A. Mrs. Strickland was one that helped form the [fol. 345] Loyalty League.

Q. Who is Mrs. Strickland?

A. Well, she worked, at that time, I believe in a little department we have up there where they keep notions and supplies for the designers, and that is where she was working.

Q. Did she hold any position in the Loyalty League?

A. I think not. I never remember that she did.

Q. You say you remember seeing a picture in the paper of your group with Director Higgins?

A. Yes, I do.

Q. How did you happen to have a photographer there?

A. Down at Director Higgins' office? I don't have any idea, but I suppose there is always a photographer around a place like that.

Q. Did you call Director Higgins and tell him you were coming?

A. Mr. Leary, I didn't have anything to do with planning that. I was simply asked to go along and went. I don't know the details of it. I am sorry, I can't give them to you. I don't know them.

Q. Do you know anyone that would know the details of that call to Director Higgins?

A. That has been so long ago and one of those things that happened so quickly, I couldn't tell you on that.

Q. Did you know when you were on the way to Director Higgins' office why you were going there?

[fol. 346] A. Yes, I think I did, surely. I stated—

Q. (Interrupting) Why were you going there?

A. To see what we could expect in the way of protection from the Police Department, because of the things that had been reported going on up at 26th and Grand.

Trial Examiner Batten: Miss Todd, please—when you answer a question, the question was, why did you go.

The Witness: Well, pardon me, Mr. Batten.

Trial Examiner Batten: I have no idea of wanting to stop you.

The Witness: That is all right.

Trial Examiner Batten: But when you answer a question as you think you should answer, and if they want to ask you further questions, they may do so.

By Mr. Leary:

Q. Why was it, then, that you wanted to go to Higgins' office?

A. To find out what the police would do in the way of protection for us at the plant, in case of any violence.

Q. Had you been satisfied with the protection Mrs. Reed had promised you at the March 18th meeting?

A. I don't think, Mr. Leary, that I can answer that. By that time, I think you will recall the amount of ar-

ticles that were in the paper, and the amount of disturbance that was going along. I don't know—we were just looking for protection, too. These things that had been [fol. 347] threatened would happen to us, only more so, and all we were asking was that it didn't happen to us or there be some protection there in case it did.

By Trial Examiner Batten:

Q. Miss Todd, between the time that Mrs. Reed spoke at this meeting and said that the busses would be provided, how long after that was it that you went down to the Chief of Police?

A. Mr. Batten, I don't remember exactly, but I believe it was a few days. This was a terrific thing in our understanding that was going on.

Q. I know, but between the time of the specific time, March 18th, and the time you went down to the Chief of Police, did anything actually occur?

A. Nothing actually occurred.

Q. So there were no reasons, then, for you going to the Chief of Police then, a few days after the 18th, than there was on the 18th, when you had the meeting?

A. I mean, a continuation of that same—

Q. (Interrupting) I mean, as far as any actual occurrence was concerned.

A. No activity at our plant, no. It was outside plants.

By Mr. Leary:

Q. Well, after your visit to Director Higgins, were any meetings of the employees held?

A. I don't believe so. I don't recall any that were held immediately, or within a week or so. I don't recall any.

[fol. 348] Q. Did you tell the officials of the company what Director Higgins had said to you?

A. I didn't, Mr. Leary. I didn't.

* * * * * * *

Q. Did you lose any wages for being absent from the plant that afternoon?

A. I believe not.

* * * * * * *

Q. And after going to see Mr. Higgins, a meeting subsequently was called on April 27th, was it not?

A. I believe you are right.

Q. Who was it that decided to call that meeting of April 27th?

. . . . . .

[fol. 349] The Witness: Pardon me. Does the question say who called it, or who decided to call it?

By Mr. Leary:

Q. Who decided, I believe.

A. I don't know exactly how many people there were there. I believe that I should say that the three people that were instrumental in calling it were Rose Todd and Hobert Atherton and Sally Ormsby, but there was a general request from a great many employees that we try to do something for our own protection, and that was why this meeting was called. What date did you say, Mr. Leary?

Q. April 27th.

. . . . . .

[fol. 350] Q. Did any of them say why they wanted to meet, the meeting to be held on April 27th?

A. Yes. Now, it would take a little explanation of that, Mr. Leary, if you want me to give it.

[fol. 351] Q. You answer the question.

A. Well, previous, about around the 27th or the latter part of March, three of us had gone down to Mr. Gossett's office and talked to him, asking, the idea we had in mind was, would an injunction do us any good—

. . . . . .

[fol. 354] By Mr. Leary:

Q. Who was it who suggested that the Donnelly Garment Workers Union should be formed?

A. Well, I believe that suggestion, I can't rightfully say whether it came from some of us as employees or whether it came from Mr. Tyler. It—well, I guess that answers the question. I don't know.

Q. You don't know who selected the name for the organization?

A. I believe Mr. Tyler suggested that name.

Q. When did he suggest it?

A. At a meeting that we held on April 27th.

Q. Was it the meeting of April 27th that he suggested the name? A. Yes, sir.

Q. Was that the first time that you decided it, or anyone had suggested a name for the organization?

A. The first time there I recall. I know I had tried to think of something, and oh, we may have talked about it here and there among the little conversation discussions that came up, but I don't remember anything definite being said about it previous to that time.

Q. Now, before this meeting was held on April 27, by-laws had been prepared, had they not? A. Yes sir.

Q. They had been prepared by Mr. Tyler?

[fol. 355] A. Yes sir.

Q. Mr. Tyler read these by-laws at the meeting, did he not? A. That is right.

Q. Had you ever seen these by-laws before this meeting? A. Yes, sir.

Q. Had you read them?

A. I don't quite know, Mr. Leary, how to answer these questions without telling you what leads up to this, and I haven't had an opportunity to tell you. Now, I can—it requires some explanation, but it is rather difficult for me to just go ahead. I have been critized for talking too much.

Trial Examiner Batten: Now Miss Todd, you haven't been criticized. I am not criticizing you. This question should be answered very easily. The question was, had you read these before this meeting?

A. Yes, Mr. Batten.

Trial Examiner Batten: All right, that answers the question.

By Mr. Leary:

Q. Where did you read them?

A. I don't remember whether I read them at home or whether I read them in Mr. Tyler's office.

Q. Do you know who else read them before the meeting?

A. I think Mr. Atherton did, and I think Mrs. Ormsby [fol. 356] did. We were the three that went to see Mr. Gossett in the first place.

Q. When were these by-laws adopted that you refer to?

A. At the meeting held on April 27, 1937.

Q. Isn't it true, that you were the first one who said that your new organization would be called the Donnelly Garment Workers Union at the meeting of April 27th?

A. I believe I am, but Mr. Leary, if you are reading from those minutes, I don't recall all of the wording of those minutes, but I believe you will find there that Mr. Tyler had made that suggestion.

Q. That is the first time you had any idea what the name of the organization would be?

A. Mr. Leary, I don't remember a great deal of discussion about the name in deciding what it would be called. We had had some little discussion about it, but as to just saying that would be, I think you will find in those minutes it was put to a vote of the employees.

Q. Well, after the by-laws were read, did you do anything else at that meeting?

A. Mr. Leary, that is the meeting where we formed our union?

Q. Yes, and after the by-laws were read, did you do anything else?

* * * * * * * *

[fol. 357] A. I don't know that I have just the chronological order in mind of that meeting, but I will tell you as best I can how the meeting was formed and what happened following that. We had gotten past the place where I guess we voted on the name for the organization, and then we had voted to form the meeting—form the organization and the name of the organization. The by-laws were read, and as I remember it, that is where a vote was taken giving the Chairman of the meeting the right to appoint a nominating committee to elect officers for that organization.

Q. Then, you had somewhat of an election there and so forth?

A. That is right.

Mr. Tyler: If the Examiner please, I suggest that the minutes themselves are the best evidence of the meet-

ing, and the witness ought to be allowed to refresh her recollection from that, rather than be cross-examined on her memory of those minutes.

Trial Examiner Batten: Mr. Tyler, I see no objection [fol. 358] to Mr. Leary questioning the witness as to what she recalls. It is quite apparent he is examining her from the minutes, and if it is the purpose of counsel, of course, to examine with respect to a large number of meetings, when the minutes are here, I would suggest that the minutes be put in.

Now, I have no objection, Mr. Leary, to your proceeding to examine the witness with respect to her recollection. Of course, this is a matter that occurred back in 1937.

Mr. Tyler: Mr. Examiner, I suggest if the object is to bring out what happened at that meeting, that it is proper that the witness be allowed to refresh her recollection from the minutes, but if the object is to test her memory, that is purely and solely cross-examination, which is not proper at this time unless she had a chance to tell her story in chief, and I ask that she be allowed to refresh her recollection from the minutes.

* * * * * *

Trial Examiner Batten: Well, of course, I see no ob- [fol. 359] jection to this witness, or any other witness in line with your suggestion, Mr. Tyler, using a memorandum that she may have prepared or a record for the purpose of refreshing her recollection.

Now, in this instance, I see no need of it. She was there at the meeting, she was chairwoman of the meeting, and can tell us what she recalls. If there is any variance, I don't presume it would indicate that this witness is lying about it by any means. It is something that happened a couple or three years ago.

By Mr. Leary:

Q. Do you know whether any stenographer was present at this April 27 meeting?

A. Yes, there was.

Q. Who was it?

A. I don't remember. I don't think her initials are on that. As I recall it, I don't remember now who took those minutes.

Q. Who arranged to have a stenographer present at the April 27 meeting?

A. I don't know whether I did or not. I may have. In all probability, I did.

Q. And who did you see in order to have a stenographer there? A. Who did I see?

Q. Yes.

[fol. 360] A. Well, I would have seen the stenographer, but I don't—I have tried a dozen times to remember who that was, and haven't remembered.

Q. You have no idea at all? A. No, I haven't.

Q. Your memory is a complete blank on this matter of the stenographer and how she was obtained and who she was and so forth?

Mr. Tyler: Well, I object to that as repetition and argument with his witness. She said she doesn't remember. I object to the method of cross-examination and brow-beating of this witness.

Trial Examiner Batten: Now, Mr. Tyler, there is no brow-beating or even indication of it thus far, not even a semblance of it thus far. I think Mr. Leary has been very gentlemanly, and that is what I expect all counsel to be in this hearing. Now, I am here for some purpose and if it got to the point in this hearing where anybody attempts to brow-beat a witness, I will see that they are amply protected.

Mr. Tyler: I submit that repeating the question with emphasis after she once answered it amounts to improper cross-examination, and is not proper at this time.

Trial Examiner Batten: You may answer.

* * * * * * *

[fol. 362] By Mr. Leary:

Q. Did anybody make any formal application for membership in your organization at that meeting?

A. Yes, Mr. Leary. At that—do you want me to tell about that?

Q. Yes, you may proceed.

A. We have passed out some cards there, of which I

[fol. 363] gave you a copy at noontime.

* * * * * * *

By Mr. Leary:

Q. I show you what has been marked as Board's Exhibit 3 and ask if that is a card similar to those that were passed out to the persons present at the April 27 meeting?

A. Yes, sir.

Q. About how many of those cards were passed out at [fol. 364] that meeting?

A. I believe that there were—I would probably say there were approximately 1300 or a few under, or a few less, a few under or a few over. I don't recall exactly.

Q. And the name of the organization hadn't been selected until the meeting itself started; isn't that right?

A. It was voted on at that meeting.

Mr. Leary: Board offers its Exhibit 3 in evidence.

* * * * * * *

(The document heretofore marked as "Board's Exhibit No. 3" was received in evidence.)

By Mr. Leary:

Q. Isn't it true, Miss Witness, that this card, Board's [fol. 365] Exhibit 3, is mimeographed?

A. Yes, sir.

Q. Were all the cards mimeographed?

A. They were all like that, Mr. Leary.

Q. Who mimeographed them?

A. I don't remember now. I asked one of the boys if he would do that one evening, and he said he would and did.

Q. You asked one of the boys where?

A. One of the boys in the department, in the circular department.

Q. Of the company, you mean?

A. That is right. I don't remember which one it was right now.

Q. They have their own mimeograph machines and so forth there?

A. Yes, sir, and he prepared them for us after work one evening.

Q. Who was that boy?

A. I don't know. There are two or three boys in that department, and I don't remember which one it was.

Q. What are the names of the three boys in there, or were in there at that time?

A. I think I would have to go back to the record. I don't recall who they are now.

Q. Haven't you any idea of anybody who ever worked in there?

[fol. 366] A. Yes, I have, but to give you the ones that —I can probably find out for you by tomorrow, but the ones that are there now were not there then.

Q. How do you know he did it after work?

A. I asked him to do it after work, and I am sure that he did. I don't think he would—I know I wouldn't take that much of the company's time to do something like that.

Q. Is it your testimony you can recall definitely you asked him to do it after work?

A. I know I did.

Q. But you can not remember his name?

A. No; but I will be very glad to find out for you.

Q. Where were you when you were talking to this boy?

A. I don't recall.

Q. Whose cards did he use to do the mimeographing?

A. Some that we bought.

Q. Who bought?

A. The employees. I think I bought those cards myself.

Q. Where did you buy them?

A. Well, I don't remember, but I think I can look around my desk and find out. I may have gotten them from a man by the name of Westerholdt, but I will check on that and let you know.

Q. Who is this Westerholdt?

A. He is a young man I know who does printing part time.

[fol. 367] Q. Did you get any receipts from Mr. Westerholdt?

A. I don't know whether I did or not, but I think I may have some notation of it.

Q. How much did you take?

A. I don't remember.

Q. Did the union ever pay you back?

A. I don't recall about that either.

Q. Did you ever ask the union to reimburse you?

A. I have spent, at different times, some odd amounts that I never have asked for. Sometimes I have for things that were expense, and sometimes I have not. They pay me a salary each month, and sometimes I would buy little things that we might need.

Q. This all happened before the union was formed, did it not?

A. Yes, you are right. By knowing of the possibility that we might form a union, I provided some cards to use.

Q. How did you know the employees were going to form this union at the time you had these cards printed?

A. Previous to this time, Mr. Leary, the Wagner Act, on the 12th of April—there were big headlines at that time that the Wagner Act was declared valid, and on the 12th of April there was an announcement in the paper that Sylvia Hull had been chosen to go to the convention to repre ent us. That was what put the idea into our heads to organize some kind of a union. We know by that time [fol. 368] that we could do that. That accounts, approximately, for the date of the meeting, Sylvia's announcing she was going to represent us, and we thought it was high time we did something to represent ourselves.

Q. What do you mean by "we"?

A. The employees.

Q. Where was it you got the idea, after reading Sylvia Hull's announcement in the newspaper, that you could form a union?

A. I just stated there was practically an inch and a half or two-inch headlines in the Kansas City Star on the 12th of April that the Wagner Act had been declared valid. I don't remember whether Mr. Tyler told us we could form

an employees' union or whether we called him and asked him about the details. We have had some discussion about it at times. But we knew by that time we could form an employees' [under] under the Wagner Act if we wanted to.

Q. Didn't you know you could form a union before April 12?

A. No, sir.

Q. Did you think a labor organization was illegal before then?

A. We didn't give any thought to forming a union of any kind before that. We did previously try to get an injunction in the court, and that was primarily what we went to see Mr. Tyler about in March. We went down to see Mr. Gossett, and talked to Mr. Tyler.

* * * * * *

[fol. 369] Q. What other materials have either of those boys duplicated for you [expect] the original application for membership cards?

A. I don't recall that those two have done any. I don't recall that they have.

Q. Did they mimeograph the copies of your bylaws?

A. Those are not mimeographed, are they, Mr. Leary?

Q. Did they mimeograph the copies of your agreement?

A. I think I ran those you have off on the ditto machine myself. I think they are dittoed.

Q. You are referring to the bylaws?

A. Yes.

Q. Where did you run them off on the ditto?

A. On a ditto machine down at the office. I would like [fol. 370] to state that whenever I done anything like that I always done it on my own time.

Q. Did you always pay the company for using their equipment?

A. No, sir.

Q. Did the company ever reprimand you for using their equipment?

A. I don't know that they ever knew I did it.

Q. Did they ever reprimand you for using their equipment? A. No, sir.

Q. Was anything ever said to you about using their mimeograph equipment?

A. No, Mr. Leary; I don't think I ever asked them. I have, lots of times, run things off on the ditto machine, and I don't think I ever gave it any thought.

Q. Who prepared the dittos for you?

A. Our secretary.

Q. Who was that, Majorie Green?

A. Majorie Green.

Q. Did she prepare them in the company's office?

A. No. We pay our secretary and our treasurer a nominal amount to take care of things we have to have done either at their noontime or after work, any time they see fit to do it.

Q. You, then, yourself did the actual ditto work, but the ditto was prepared by Miss Green?

A. Yes.

* * * * * *

[fol. 371] Q. Does your union maintain any office?

A. No, sir.

Q. Do you own any typewriter?

A. No.

Q. Do you own any office supplies?

A. We own the paper and things we need to work with of that type.

Q. Majorie Green carries on all of her secretarial work in the offices of the company?

A. I don't think she does, all of it, no. She may have used that typewriter at times, but I know lots of times she has taken work home for me at night.

* * * * * *

[fol. 372] Q. Who prepared the form for this application card which has been identified as Board's exhibit No. 3?

A. That time we had had numerous discussions with Mr.

Tyler. I don't know whether that was a discussion of the three of us that had been talking with him—it came out of some of those conferences with Mr. Gossett and Mr. Tyler.

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[fol. 377] By Mr. Leary:

Q. Who was it that actually wrote these bylaws?

A. I believe Mr. Tyler did.

Q. Did you suggest any idea yourself as to the bylaws?

A. I am inclined to think that— I know Mr. Tyler wrote them, or at least he said he wrote them, that is all I

know, and they were discussed in a very slight measure. I don't remember, Mr. Leary, that there was any detailed discussion of the bylaws. They were to be presented and were presented at that first meeting, and I think you will find in the minutes there that there was some discussion that if anybody desired to make any changes in them, to request the changes and we could make them later if necessary.

Q. There never were any changes made, though, were there?

A. I don't think there have been, no.

[fol. 378] Q. Did you suggest any portions of these bylaws?

A. I didn't write those bylaws, Mr. Tyler wrote them.

Q. Did you suggest any part of them, or is Mr. Tyler responsible for all of them?

A. I don't recall that I made any worthwhile suggestions as to the bylaws. I am not familiar with organizing the meeting, and I don't recall making any suggestions as to those bylaws.

[fol. 379] Q. Do you know whether Hobart Atherton or Mrs. Ormsby made any suggestions as to them?

A. No, I don't know.

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[fol. 381] By Trial Examiner Batten:

Q. Miss Todd, did you three you have mentioned have a meeting with Mr. Tyler?

A. We had several meetings with him.

Q. When did you have the first meeting with Mr. Tyler?

A. We went to see Mr. Gossett on the 27th of March—around the last part of March, Mr. Tyler tells me it was the 27th of March.

Q. Was it the day of the meeting?

A. No. The 27th of April was the day of the meeting.

Q. What occurred at the first meeting?

A. There had been this disturbance at 18th and Grand—

Q. (Interrupting) Don't tell me anything except what you said and what Mr. Tyler said in this meeting.

[fol. 382] A. We went to see about an injunction at that time.

Q. At the first meeting was anything said about a union?

A. There never was a meeting of employees where Mr. Tyler attended until the 27th of April.

Q. At this meeting at the law office was anything said about a union?

A. Not at that time.

Q. When was the next meeting at the lawyer's office?

A. I don't remember the date.

Q. How long afterwards? Was it the next day, or a few days later?

A. Probably two or three days later.

Q. Were the same three people in attendance at that meeting?

A. That is right.

* * * * * *

[fol. 383] Q. Did you have a third meeting up in the lawyer's office?

A. Yes. We have had more than that.

Q. What was said at the third meeting?

A. We were discussing by that time that a Federal injunction was what we needed instead of a state injunction, something of that type.

Q. Was anything said at this third meeting about the Donnelly Garment Workers' Union?

A. There was never anything said at any of these meetings about a union until after April 12.

Q. Do you remember how many meetings you had with the attorneys after April 12 about this matter?

A. I don't remember just the number.

Q. Did you have more than one?

A. Yes. We had several telephone conversations, and we had—

Q. (Interrupting) Tell me about the first meeting after April 12.

A. I can't tell you just in detail about that.

Q. Well, tell me in general.

A. I think the first meeting—Mr. Tyler called some time after April 12 and said—

Q. Called who?

A. Me.

[fol. 384] Q. And what was said?

A. That he had seen in the paper that the Wagner Act had been declared valid, and he had rather been inclined to think it wasn't a legal act. I don't know that I am using the right term, but that was the idea. And I don't re-

member that there was any particular me[illegible]ng or any particular conversation until after this notice in the paper on the 22d or 23d of April.

Q. What did he say at that time?

A. On the 22d or 23d of April one of our employee's picture was in the paper, with some other girls, saying she had been elected—

Q. (Interrupting) Just a minute. I am not concerned with what prompted anything. Tell me what Mr. Tyler told you and what you told him on the telephone.

A. He called and said there might be the possibility that there was something else we could do besides the injunction, that we might form an employees' union. I don't remember the remark I made; I no doubt said it was worth considering, or something of that sort.

Q. What was done?

A. Nothing was done until after the 23d of April, and then we called him and told him we had better be finding out what we could do about organizing.

Q. Up to the 23d of April you had not discussed in Mr. [fol. 385] Tyler's office anything about the Donnelly Garment Workers' Union?

A. I doubt that very seriously.

Q. I am asking you if you did.

A. No. We had no discussion with him until after the 23d.

Q. What do you mean, after the 23d? The next day after the 23d or—

A. In all probability it would have been the 23d.

Q. Who went with you to Mr. Tyler's office on that occasion?

A. I think, Hobart Atherton, Sally Ormsby, and I. I don't remember whether one other person went or not.

Q. Tell me just what was done at that meeting.

A. We told Mr. Tyler we knew we needed not to do something to represent ourselves, that we had had other representation claimed to be elected by our people and sent to the convention as representatives of the Donnelly Garment Company. He gave us as much as he knew—he said he didn't know anything about organizing labor organizations but he would look into it very thoroughly,

and do so as soon as possible, and give us whatever information he could.

Q. How long were you there on this occasion?

A. I think we were there quite awhile at that time, a half hour or 40 minutes or so.

Q. When was the next time you had a conference with Mr. Tyler?

A. I don't know, Mr. Batten, because that is just—four or five days had elapsed in there until we had this [fol. 386] meeting. There was considerable telephoning back and forth.

Q. Did you have any other meeting with him in his office, you and your committee?

A. It seems to me we went down there two or three times in regard to that, but as to any definite time, I can't give that, but I know we had quite some conversation with him about it.

Q. In his office?

A. Part of it was in his office.

Q. Tell me about the next meeting; when you went to his office what occurred?

A. I don't recall anything more definite other than his telling us he had read the law and we had the right, under the law, to organize a labor union, giving us some instruction. We discussed how we might do it, or if we should do it, and he wasn't concerned with that other than to tell us we had the right to do it.

Q. How long before the meeting of April 28 was it that you went over these by-laws?

A. I think the day before it was that we talked to Mr. Tyler about it.

Q. The day before you talked about the by-laws?

A. I believe it was the day before.

Q. That was your committee that went up there?

A. That is right.

Q. How long were you there at that time?

[fol. 387] A. I would judge, half an hour or so.

Q. Did Mr. Tyler have the by-laws all prepared when you got there?

A. Mr. Batten, I don't believe those by-laws were written out in complete form. I really don't remember.

Q. In other words, as you remember, at the last meeting you had with Mr. Tyler before April 28, when you

organized, you had never seen a completed copy of the by-laws?

A. I don't recall whether the copy Mr. Tyler brought down to the meeting—whether he had it ready at that meeting or not, but they were discussed quite generally at the meeting on the 27th of April, in quite some detail.

Q. In Mr. Tyler's office?

A. No.

Q. Prior to your meeting of April 27 you had never gone over these by-laws, clause by clause, with Mr. Tyler, or other members of the committee?

A. Not in great detail.

Q. You didn't sit down and—

A. (Interrupting) We did, to some extent.

Q. Did you sit down and take paragraph 1 and discuss it and [why] should be in it?

A. No, sir, because I didn't feel I was capable of writing by-laws, and I don't believe either of the other people did at that meeting.

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[fol. 394] Q. Tell us the departments. Are there, for instance, five or six general departments and the subdivisions of those?

A. Would it be clear to you if I told you the departments on each floor?

Q. Yes.

A. The tenth floor is the office. The ninth floor is the designing department and the sample room where our salesmen's samples are sent. There is also up there what is called a binding department where binding is prepared for the factories. The eighth floor is the sewing room, composed of five sections, I believe it is, and the mechanical department emanates from there.

Q. You mean by that the department that does the repair work?

A. That is right. The seventh floor covers the sewing department and our infirmary, if you want to call it that. It is where our nurses and hospital equipment are located.

The sixth floor is also a sewing department. The fifth floor is the cutting and dividing department. The fourth floor is the pressing and shipping department. The third

floor is the notions department, receiving department and the cafeteria. The second floor is a sewing room. The first floor, there is an employment office there, and the auditorium, and the entrance to the building.

Q. You have someone in charge of the office depart-
[fol. 395] ment? There is an office manager, is there?

A. I believe that is what Mr. Bachafor is. I am not sure that is his official title.

Q. As far as you know he apparently had charge of the office part of it? A. Yes.

Q. You have someone who has charge of the mechanical department, do you know?

A. I assume Mr. Batty has charge of that.

Q. I don't want you to assume, Miss Todd.

A. I don't know.

Trial Examiner Batten: Mr. Ingraham, do they have an organizational chart, do you know?

Mr. Ingraham: I don't think so.

Trial Examiner Batten: Most plants have a chart that shows the departments, and so forth.

Mr. Ingraham: I don't know of any chart like that, but I could get you the heads of the departments.

Trial Examiner Batten: Will you get that for me, please, so that we will have it in the record, so that anyone reviewing the record will know what we are talking about.

Mr. Ingraham: Yes.

By Mr. Leary:

Q. On what floor did you say your desk is?

A. The second floor.

Q. And the notions are on the fourth floor?

[fol. 396] A. Third floor.

Q. Did your office ever be on the ninth floor?

A. I never have had an office. I had a desk for a while. This desk I have now has been around different places where it was convenient to put it. I had it on the ninth floor for awhile.

Q. When was that?

A. I believe that was sometime in 1937, possibly for a few weeks, as I remember, Mr. Leary.

Q. Did you conduct any union business at that desk?

A. No, sir. I never do conduct any union business at my desk unless there is some work I am doing at noontime.

Q. How long is your noon hour?

A. How long is my noon hour?

Q. Yes. 30 minutes or—

A. No. An hour.

Q. How long do you take for lunch?

A. Sometimes from 11 to 12, sometimes from 12 to 1. I don't take the same time every day. It depends on when I am busy.

Q. Did you have to punch a time clock? A. No, sir.

Q. Did the other employees at the plant have to punch a time clock?

A. Some do and some do not.

Q. Which are those who do and which do not?

[fol. 397] A. I don't know, Mr. Leary, I know the pieceworkers do, and when I was a pieceworker I did. Since I haven't been doing piecework I haven't punched a time clock.

Q. Salaried employees do not punch a time clock, is that it?

A. I don't know about that. I am inclined to think some of them do, but I am not positive.

Q. Isn't it true, Miss Todd, that you are available at your desk to conduct union business from 11 to 12:45 daily? A. No, sir.

Q. Have you ever been during those hours?

A. I don't recall that I have ever spent that much time in the middle of the day.

Q. Do you remember ever announcing to the employees that you would be available during those hours?

A. No, sir.

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[fol. 400] Q. And do you remember what your duties were on April 23, 1937?

A. I believe that I was helping in the model department at that time on the ninth floor. Did you say April 23rd?

Q. Yes, 1937.

A. I am not positive about that, whether I was doing that or whether I was doing what I am doing now, the exact date of it.

Q. This was just before the April 27th meeting, if you can use that to establish the time.

A. To be definite about that, Mr. Leary, I would have to think about it a little bit. I have helped around various departments where they needed assistance or where I could be of help, and I would have to think about it a little bit.

Q. At that time did you have anything to do with the personnel?

A. I never have had anything to do with personnel.

Q. Do you remember the incident on April 23, 1937, regarding Fern Sigler?

A. Yes, sir, I remember some of it. I wasn't—I think I came to work about 8 o'clock that morning. I might have been there a few minutes before.

Q. On what floor did you see the incident take place? [fol. 401] A. I didn't see any of that.

Q. You didn't see any of that?

A. I didn't see the incident itself.

Q. But you heard about it, did you not? A. Yes.

Q. And you knew that practically the whole plant had engaged in the incident? A. No, I think not.

Q. How many girls did you find out had engaged in it?

A. I think all that I ever heard about was probably ten to twenty girls on the floor where she was working.

Q. What floor was that? A. The sixth floor.

Q. Did you talk to Fern Sigler at all that day?

A. Yes, sir.

Q. Did you make any effort to protect Fern Sigler that day from violence?

A. There was no need at that time, that I saw her, to do anything, Mr. Leary, of any kind.

Q. Well, do you mean that the violence was all over?

A. I didn't know there was ever any violence.

Q. At what time during the day did you talk with her?

A. As near as I can remember, it was about 10:30 or 11 o'clock. I expect 10:30 is nearer the time.

Q. Where were you when you talked to her?

[fol. 402] A. At her machine on the sixth floor. I went down with Mr. Baty and he asked her to come up to the seventh floor.

Q. You went down with Mr. Baty, you say?

A. Yes, sir.

Q. How did you happen to be with Mr. Baty at this time?

A. The girls had been talking to me about her, and in the early morning there shortly around the time I came in to work, and so when I knew Mr. Baty was in the building, I asked him if he would go downstairs and see what was going on or if there was anything needed to be done.

Q. Now, what girls had talked to you before 8 o'clock?

A. I haven't any idea.

Q. Or before the time you talked to Mr. Baty?

A. I haven't any idea, Mr. Leary, because at that time, so many people are coming and going and the time clock is right there inside the door on seven.

Q. What was the substance of the information these girls gave you?

A. I think that would be very difficult to remember. Of course, the thing they were incensed about was that she had an I. L. G. W. U. pin on and they were rather upset about it.

Q. How many girls talked to you about it?

A. I haven't any idea; any number. I would probably be safe—that hour of the morning there are at least two or three hundred people coming through there on the [fol. 403] various floors. I don't even remember what floor I was on; just as I went to work coming up on the elevator. I don't remember just where I stopped.

Q. Well, had this incident occurred at the time they talked to you, or did it occur afterwards?

A. I can't give you the details of that. I don't remember.

Q. You knew that the girls were going down to her floor, didn't you?

A. Going down to her floor?

Q. Yes.

A. No, I didn't know that.

Q. Well, at what time did you decide to talk to Mr. Baty?

A. I don't remember that. It was later in the morning.

Q. Well, in the sequence of the events that happened that morning, when did you decide to talk to Mr. Baty?

A. I don't remember, Mr. Leary.

Q. Haven't you any idea at all?

A. Well, I stated a while ago that when we talked to her, and when Mr. Baty talked to her, and I was present at that conversation, as near as I can remember, it was around 10:30 in the morning and I had only talked to him just a few minutes before that, so to get it down to a time, it must have been between 10 and 10:30.

[fol. 404] Q. It was after, then, the so-called incident had taken place that you talked to her with Mr. Batty, is that correct? A. That is right.

Q. Why was it you talked to Mr. Batty in the first place?

A. I really haven't any definite reason for having talked to Mr. Batty about it. With that many girls around [distributed] about a thing of that kind—a number of them had asked me, "What are we going to do about it," and the only comment I had to make about a thing like that is, "What is there to do about it? If she wants to wear a pin, let her wear it. That is her own business."

Q. Was that your attitude, also?

A. It is still my attitude, Mr. Leary. It doesn't make any difference about who belongs to what organization, or when. That is everybody's privilege.

Q. Why is it that your union asked for a closed shop from the company?

A. Well, I think the law gives us that right if we think it is the best thing for our organization. I understand the law does give us that right, according to the information we have received from our legal counsel, and I think we have a perfect right to expect the people employed at the Donnelly Garment Company should belong to our union, and we asked the company to agree to that, and they did.

Q. But you still believe they should be permitted to [fol. 405] belong to any union they desire?

A. I never question anybody about what organization —we just expect them to belong to ours, and if they belong to others, that is their business.

Q. What was your purpose, then, in talking to Mr. Batty?

A. Well, Mr. Leary, with that many girls disturbed and talking to first one and then another about it—the only purpose I had at all was to let everybody stay at work and be peaceful and happy about it.

Q. Was that any concern of yours at that time?

A. No personal concern. I think anyone in an organization of that size, connected with the plant in any way, would like to see things run on as smooth as possible. It is no responsibility or no personal concern other than I would be interested in things that were going on.

Q. In what capacity did you talk to Mr. Batty?

A. No capacity—just as an employee.

Q. You were the president of the Loyalty League, were you not?

A. That would have no bearing on it. I wasn't thinking of the Loyalty League.

Trial Examiner Batten: The question is, were you president of it?

A. Yes, sir.

By Mr. Leary:

Q. Where did you first meet Mr. Batty that morning.

[fol. 406] A. I haven't any idea. I don't even know where I was when I called him. I might have been in one of the sections. I don't know.

Q. Did you talk to him personally or call him over the phone? A. I don't remember.

Q. What did you say to him?

A. I don't remember that either.

Q. You had no idea at all what the substance of your conversation was?

A. Not the faintest. I imagine I would have called him on the phone probably, or have asked the operator to locate him so I could talk to him.

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[fol. 409] By Mr. Leary:

Q. Did you hear any of his conversation with Miss Sigler? A. Some of it.

Q. You stood right at the machine, did you not?

A. Close by.

Q. Was the incident over by the time you and Mr. Batty arrived at her machine?

A. There was no incident at that time.

Q. Had the power been turned back on and were the other girls working?

A. Everybody was working.

* * * * * *

[fol. 410] By Mr. Leary:

Q. Why was it you went upstairs?

A. I don't know, Mr. Leary. We do things sometimes for no particular reason. I don't know why I went.

Q. Was it any part of your business when Mr. Batty asked Miss Sigler to come to his office?

A. Probably none of my business other than just an interest in people, as you can't help but have and you couldn't help but have if you had worked around that plant as many years as I have, and I have always been interested in people.

Q. Did Mr. Batty ask you to go, did you ask to go yourself, or did Fern Sigler ask to have you go?

A. I don't know.

[fol. 411] Q. You don't know how you happened to go?

A. No. I didn't give any thought to it.

Q. Did Mr. Batty send you back to your own work?

A. I don't remember being sent back to my work. I usually try to take care of my work as I should. I don't remember anybody says, "It is time to get back to work." I don't think I would need to be told that.

Q. How many persons went to Mr. Batty's office?

A. Fern Sigler, Mr. Batty, and I went. I don't remember whether Mrs. Hyde was there or not. I rather think she was, but I am not positive.

Trial Examiner Batten: Who was that?

A. Ella Mae Hyde.

By Mr. Leary:

Q. Was any other person present in the room?

A. There was a stenographer there.

Q. Who was that?

A. I don't remember who that was, Mr. Leary.

Q. What did the stenographer do?

A. She was taking notes.

[fol. 412] Q. Under whose instructions did they take notes of that conversation?

A. I have no idea.

Q. Was she in the office when you arrived with Mr. Baty and Miss Sigler?

A. I don't remember.

Q. Did you hear Mr. Baty call her to the office?

A. No, I didn't. I don't know who called her to the office, Mr. Leary, or when.

Q. Well, do you know, Miss Todd, whether or not it is a usual thing at the plant to have a stenographer present when the production manager and the employment manager are talking to the employees?

A. No, I don't. I haven't any occasion to talk with the production manager and the employment manager when they are talking to the employees. I couldn't say.

Q. You never had occasion before, did you?

A. I never had occasion before?

Q. You never had occasion to be present when a production manager and the employment manager, or either of them, were talking to an employee before; is that your testimony?

A. State your question again. I don't think I understood it.

Mr. Leary: Please read the question, Mr. Reporter.

(Whereupon, the question was read by the reporter.)

[fol. 413] A. When the production manager or the employment manager, or either of them talked to employees before? Yes, I have.

By Mr. Leary:

Q. On what occasions?

A. Oh, I don't know, Mr. Leary, that I could mention a definite occasion.

Q. Well, in what capacity would you be in their office when they were talking to an employee prior to April 23, 1937?

A. I might have gone in to ask for some information myself.

Q. You might have been incidentally passing through the office? A. Yes, sir.

Q. But I mean in this situation on April 23rd, you were definitely there, not incidentally there; isn't that correct?

A. I don't know whether you would call that incidentally or definitely or not. I don't—I think that would be difficult to define. It was something that happened on the spur of the moment.

Q. Didn't you do most of the talking at the April 23 conference in Mr. Baty's office?

A. It was in Mr. Baty's office, and as I remember, I did have very little to say. I did very little of the talking.

Q. Where was it held then?

A. In the nurses' office on the seventh floor, I believe.

Q. Who was the—

A. (Interrupting) You are speaking of the conversa-
[fol. 414] tion with Fern Sigler now?

Q. Yes.

A. I think I remember that was in the nurses' office.

Q. Who was it that suggested you go to the nurses' office?

A. I don't know. I didn't have anything to do with that part of it at all. I think Mr. Baty can probably answer that.

Q. Do you remember what, if anything, you said at that conversation?

A. No, I don't believe that I remember that conversation, Mr. Leary, to be clear enough to give it to you.

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[fol. 425] By Mr. Leary:

Q. Miss Witness, I hand you what has been marked for identification Board's Exhibit No. 5 and ask you to read the document and state whether or not that is a transcript of the events that happened at that conversation about which you are testifying now.

A. You want me to read this first page or the whole thing?

Q. All of it.

A. I can tell you now, Mr. Leary, I know I have never seen this before. After I see it now I can't swear that it is, because I have never seen it before.

(Thereupon the document above referred to was marked "Board's Exhibit No. 5.")

Trial Examiner Batten: If you will, just read it, Miss Todd, and then tell us if that is what occurred at that meeting.

A. All right.

(Witness reads document identified as Board's exhibit No. 5.)

[fol. 426] Mr. Ingraham: Mr. Examiner, if I can look at this just a second, I think I can admit it is a transcript or copy.

Trial Examiner Batten: You may look at it.

Mr. Shepard: We will admit this is a copy.

Trial Examiner Batten: Respondent admits that, then, is a copy?

Mr. Ingraham: That is correct.

[fol. 428] Q. Well, did you know on April 22d that Fern Sigler was in the union?

A. Mr. Leary, I am not clear on the date of that.

[fol. 429] Q. Well, that would be the day before this meeting. A. In the evening; possibly that night.

Q. April 22d?

A. It was either the 22d or the 23d. I don't know which it was. Whatever date that you say will have to stand, because I couldn't remember the date. It was the first that I knew anything about Sylvia Hull. I didn't know anything about Fern Sigler until this morning. So, what,—in that conversation there, I don't think I was referring to Fern at the time. It was just a general discussion of different people, about their feeling toward people that

belonged to the International Union. As you will remember, that feeling was created by the disturbance that was going on around town, and particularly up at 26th and Grand.

Mr. Leary: I move, Mr. Examiner, that be stricken as not responsive.

* * * * * *

Trial Examiner Batten: Do you want the entire answer stricken?

* * * * * *

[fol. 430] Mr. Leary: Let the whole answer be stricken.

Trial Examiner Batten: The entire answer may be stricken, and read the question, please, Mr. Reporter.

* * * * * *

Q. Now, is it not true that you appeared at that meeting as president of the Loyalty League?

A. No, sir.

Q. Do you remember saying at the meeting, "As President of the Loyalty League, I am not going to try to sell you on the idea that we are right, but the majority will certainly rule in a case like this."?

A. I did say that, I guess. That is what this transcript says, Mr. Leary.

Q. Were you then appearing there as President of the [fol. 431] Loyalty League?

A. I should say not. No, I was not. You may make statements and include conversations of that kind without giving any serious thought to it. This was a thing that came up very quickly and I certainly wasn't giving any definite and serious thought to the words that I chose to use.

Q. By what authority did you tell Fern Sigler that "If you want to go home, all right."?

A. No authority whatsoever, very definitely saying something I had nothing—shouldn't have had anything to do with.

* * * * * *

[fol. 432] Q. Why was it you told Fern Sigler that you had worked in more different places at the plant—more different ones—than anyone else? What was your point in that?

A. I think this conversation here is explanatory. Do you object to my reading it?

Q. I do object, yes. A. I don't know why I did.

Trial Examiner Batten: I didn't hear your statement, Mr. Leary.

Mr. Leary: I said I do object to her reading it. I asked her why she made the statement.

Trial Examiner Batten: I don't know that it is particularly material, anyway, why she made it. The Board and the Examiner, and the parties, can take these statements and read them, and at this late date, two years later, I don't know that the witness' reason would be of any particular weight or value.

A. From the conversation, I suppose I was just trying to say in a rather lengthy way here any place you were you [fol. 433] expect the majority feeling to rule. That is what I would expect.

By Mr. Leary:

Q. Why did you think at that time that if you joined the union you could not any more get by with it than "the man in the moon"?

A. That is a very crude way of expressing a thing like that. I felt that way because there had been so much resentment over the manner in which the I. L. G. W. U. had been conducting their organization at Twenty-sixth and Grand, and all of those things had a tendency to make you form opinions of what you wanted to do and what you didn't want to do, and I very definitely didn't want to be treated like that, and it was already very obvious that a great many of the employees of the Donnelly Garment Company did not want to be treated that way. That conversation was very high. That is what I meant. I

just meant to say I would either have to keep rather quiet about it or I would have to let my feeling be known with the majority.

Q. You knew if you joined you would be fired, isn't that correct? That is the way you felt?

A. No, sir. That never occurred to me.

Q. Didn't you state you would expect to be put out on the street and left there?

A. Yes, this article says that, Mr. Leary. I think, on the impulse of the moment you would say things and express them in a poor manner. There certainly wouldn't be [fol. 434] any thought in my mind that I would literally be thrown out on the street.

Q. You knew at the time the employees of the Donnelly Garment Company could not discharge each other, didn't you?

A. I didn't have any reference to being discharged. I didn't seriously have any reference to being thrown out on the street. I am sure we all make remarks in a conversation that if we knew it was going to come up and be used at a time like this we would use a little more discretion about the words we choose.

Q. Who was it that told you that Miss Sigler had told everyone she belonged to the union?

A. What time are you referring to, please? I don't know. Nobody definitely. I guess I should answer your question in that way. I don't know who told me. It was the first thing, I think, I heard when I came on the floor.

Q. When you stated, "we went downstairs and sent those girls back to work, and they went back to work," who did you mean by the word "we"?

A. That is a very bad use of the word "we". I didn't go down and send anybody back to work. I went down, I believe, with a group of girls. If I went through the plant any place at that time and people weren't working I would just say, "get back to work, get back to work."

Q. You would say, then you went down with a group of girls?

[fol. 435] A. I haven't the slightest idea. When I came on the floor I heard about some of this disturbance. I

don't know what floor I got off on. I couldn't honestly tell you or anybody else.

I am sure there isn't anybody working in that plant and seeing people not at work and more or less disturbed who wouldn't say, "Let's get back to work."

Q. Didn't you mean you and Mr. Batty when you used the word "we"?

A. Mr. Leary, I think I told you earlier in the morning I don't recall talking to Mr. Batty until around 10 or 10:30 in the morning. I don't know whether he was in the building or not.

. . . . . .

[fol. 440] Q. Did the committee representatives have any preliminary meetings to discuss what they would ask the company?

A. A great many.

Q. When was the first one held?

A. I don't remember the date.

Q. Did the Donnelly Workers' Union at any time request the company to recognize them as the exclusive bargaining agent of the employees of the company?

A. Yes, sir.

Q. Did you say there was a letter sent?

A. I don't remember that there was a letter sent. It was a verbal conversation.

Q. Who made the verbal request for recognition?

A. I talked to Mrs. Reed, I believe it was the following day after our union was formed.

Q. On April 28, 1937, you talked to Mrs. Reed?

A. Yes, sir.

Q. Where? A. In her office.

Q. What did you say to her?

A. Explained to her our union had been formed the previous night, calling it the Donnelly Garment Workers' Union, and also that we would like to reach some agreement with the company, the Donnelly Garment Workers' Union being the representative agency to bargain with them, and [fol. 441] that is what led to this article of agreement.

Q. What, if anything, did Mrs. Reed say to you in reply?

A. I don't remember just the words she used. In sections, she said that if it were properly prepared she would consider it.

Q. Did she say at that time that she would recognize the union as the exclusive bargaining agent of the employees of the company? A. No, sir.

Q. Did she ever tell you she would recognize the union as the exclusive bargaining agent?

A. The words of this agreement, Mr. Leary, this supplemental agreement I believe will answer the question. It has her signature on it.

Q. That was the only occasion you remember when she did say she would recognize the union?

A. We have had various meetings with Mrs. Reed. I can't tell you just the conversation at those meetings, but when these agreements were signed, they are worded so that she has agreed to that matter.

Trial Examiner Batten: May I see that?

The Witness: Yes. (Handing agreement to Trial Examiner Batten.)

By Mr. Leary:

Q. Did Mrs. Reed ever request you to prove that you represented a majority of the employees?

[fol. 442] A. I believe we did that in the first conversation I had with Mrs. Reed, because previously the cards that had been signed had been counted, showing a majority.

Q. Who counted them? A. I did.

Q. And as a result of that count what did you determine?

A. There is an affidavit of mine some place, and as I remember it, it is 1,303 people signed either that day or the following day, within a short period of time, and it wasn't an entire representation of the employees because

some of them were ill and some of them away on account of no work, and some out of town.

* * * * * *

[fol. 444] Q. Where were the cards when you talked to Mrs. Reed on April 28? A. I had them with me.

Q. Did she count the cards?

A. I don't recall whether she did or not. I know she didn't do it. I don't know whether she had someone do it or not.

Q. She took your word for it, didn't she?

A. Mrs. Reed wouldn't take anybody's word for anything without proof of it. The cards were all together in a box there, Mr. Leary.

Q. What is your definite testimony, if you are able to be definite, as to the proof you showed at that time and what was done? Are you able to relate all of the circumstances?

A. Oh, presenting these cards to her and telling her that they had been signed by employees of the Donnelly Garment Company and the Donnelly Garment Sales Company, requesting membership in the Donnelly Garment Workers' Union.

Q. Did you at that time have any fear for the various employees if you disclosed their names to Mrs. Reed?

A. What do you mean?

Q. Did you have any fear if Mrs. Reed knew the names of the employees in the Donnelly Garment Workers' Union they would be discharged?

A. She had every opportunity to know.

Q. How?

[fol. 445] A. I have no fear—

Q. (Interrupting) How did she have an opportunity to know?

A. Because the cards were there.

Q. Did you have any fear that because she knew who the members of your union were she might discriminate against those persons in any way?

A. I wouldn't have any fear of Mrs. Reed not knowing what union anybody belonged to. That is everybody's privilege, to belong to any union they care to.

Mr. Leary: I move to strike the last part of that, Mr. Examiner.

Trial Examiner Batten: It may be stricken.

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[fol. 446] By Mr. Leary:

Q. At what time on April 28th did you talk to Mrs. Reed?

A. I don't remember, Mr. Leary. She just came into the office at irregular times, and when she came in, I think I talked to her shortly after that. I don't remember what time [on] the day it was.

Q. Well, do you ordinarily know when Mrs. Reed is going to be in her office?

A. No, I do not. If I ever have any occasion to want to talk to Mrs. Reed about any business matters, I would call her secretary, or if she wasn't there I would call the telephone operator and ask her to notify me when she was in, but [—] I were to see her, I would have to make an appointment through somebody.

Q. How had you collected all of these 1,300 cards?

A. Part of them—most of them had been signed at the meeting, and the minutes of the meeting show they were collected at that meeting, with instructions [of] the people wanted to turn them in in the morning they could.

[fol. 447] Q. And in whose custody did those cards remain that evening?

A. As I remember, they were locked in my desk.

Q. That is, your desk on the seventh floor, or were you on the ninth floor?

A. I think that my desk was on the ninth floor at that time.

Q. And when was it that you yourself had counted the cards?

A. That evening following our meeting.

Q. Did you remain at the plant and count them?

A. No, I took them home with me.

Q. You took them home with you that night?

A. Yes, and brought them back.

Q. Brought them back when?

A. I don't remember whether I brought those back late or whether I brought them in the following morning.

Q. Well, have you not just testified that they remained locked in your desk that night?

A. Well, Mr. Leary, that is rather technical. I shouldn't have worded it just that way. I had the cards with me long enough to count them, and I think that I brought them back that night, as I remember it. Now, I am not quite positive about that.

Q. Now, is it your testimony now that you counted them at the plant or counted them at home?

A. No, sir. I took the cards with me at home and [fol. 448] counted them.

Q. Then, how far away from the plant do you live?

A. I lived at that time at 3401 Central.

Q. That is about 2 miles from the plant, would you say?

A. I suppose that is as good a guess as any.

Q. And then, after you were through counting them that night, you returned to the plant with them and put them under lock and key at your desk?

A. I rather think I would. I would have to think about that a little.

Q. How did you get back in the plant that night?

A. You can always get in the building down there by ringing the door bell. There is always a night watchman there.

Q. Can any employee get back into the plant after it is closed for the day?

A. Yes, sir, by signing the book.

Q. Why did you desire to take them back to the plant that night?

A. Well, I assumed just to take care of them.

Q. Well, did you have fear that they would be lost, destroyed or stolen at your own home or apartment?

A. I don't think I gave that any serious thought at all.

Q. Well, was this special trip that you made back to the plant after you had counted the cards at your home that night, only for the purpose of depositing them in your [fol. 449] desk where they could be locked?

A. I don't remember that, Mr. Leary. Oftentimes, if I have things in my desk, either personal or things that might be pertaining to my work, and I want them, I feel perfectly free to go back and forth and get them.

Q. Was any other member of your organization present when you counted the cards that evening?

A. Not at that time.

Q. So, you were the only one, then, who knew definitely how many members had joined the Donnelly Garment Workers' Union?

A. No; the following morning, Marjorie Green and I checked over them. I tried to get them in somewhat of an alphabetical order.

Q. What time did you get to work the next morning?

A. As I remember now, it was about 7 or 7:30; something like that.

Q. And after you got to work, you started counting them again?

A. No, Mr. Leary, I didn't go to work until 8 o'clock in the morning, as a rule. Some morning, if I have work to do, I might go a little earlier. Oftentimes I go and take care of union work early in the morning, that I want to do then, but, officially, I go to work at 8 o'clock.

Q. How long did it take you to count them again in the [fol. 450] presence of Marjorie Green in the morning?

A. I don't remember. It wouldn't take a great while to count that many cards.

Q. Why did you count them over again the next morning?

A. Well, just to have—we were checking them to be sure we had some accurate idea of how many there were.

Q. Did you talk to any official of the company between the time when the meeting ended on April 27th and the time you talked to Mrs. Reed the next day?

A. When I talked to Mrs. Reed that day was the first official comment that I had made with any of the company,

or the first comment that I had made with any official of the company, is what I meant to say.

Q. Did you talk to Ella May Hyde in the meantime?

A. I don't remember talking with Mrs. Hyde. I don't know what business it would have been of hers.

Q. Do you remember talking to Mrs. Reeves?

A. Mrs. Reeves?

Q. Yes. A. No, I don't remember seeing Mrs. Reeves.

Q. Who was present in the room when you talked to Mrs. Reed on the—some time in the day of April 28th?

A. I don't remember whether Miss Frances was there or not. That is her secretary. She has a desk just outside of Mrs. Reed's office, and I don't recall whether she [fol. 451] was there in the room or whether she was outside.

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[fol. 452] Q. How long did your conversation with Mrs. Reed last on that day?

A. That is rather difficult to say. I would think some probably 15, 20 or 25 minutes; something of that kind. I don't know. Probably 20 minutes would cover it.

Q. Twenty minutes at the most. You would say that is it?

A. No, I wouldn't, Mr. Leary. I think that would cover it. It was a general conversation pertaining to the formation of our union and what we expected to do, and the fact that we would expect the plant, and draw up some kind of an agreement to submit to her.

Q. What did Mrs. Reed ask you about the formation of your union? A. Not a thing.

Q. Would you state everything that was said as far as you remember? A. I think I have.

Q. In that conversation.

A. As far as I remember, Mr. Leary, in substance. I [fol. 453] don't recall the details of the words that were used. What I have said wouldn't take 15 or 20 minutes to say, but that was the gist of the conversation, and what we were talking about.

* * * * * *

Trial Examiner Batten: Well, do you recall how it was left when you left the meeting? What was your under-[fol. 454] standing of the situation?

A. I don't know just how I said it previously. I will try to state it again; that she would be willing to listen to

anything we had to say and use her own judgment about it, and at a later date we submitted a working agreement to her, for her consideration, and the signing of these two agreements here are her answer to what she would do.

By Mr. Leary:

Q. Did you definitely ask her to recognize your union in that conversation? A. Certainly.

Q. What was her answer to that?

A. I don't remember just the definite answer she gave, Mr. Leary, and I don't think she would have given an answer to say "yes, I will do it" until she had proof. I left those cards with her to look over to see how many people had signed them; showed her how many had signed them, and further worked with her.

Q. Are you sure, now, you left the cards with her during that meeting?

A. I was going to say I left the cards. I didn't leave them. We used them while we were there. I didn't leave the cards with her indefinitely, no.

Trial Examiner Batten: Did you take the cards with you when you left the meeting?

A. I took the cards with me when I left, yes.

[fol. 455] By Mr. Leary:

Q. Did Mrs. Reed make any check of those cards in your presence?

A. I don't know whether Mrs. Reed checked the cards. I don't think she did. I think Miss Frances did, her secretary.

Q. Well, what was the next request that you made to the company after this April 28th conversation with Mrs. Reed?

A. When our working agreement was presented to them, was the next.

Q. When was that?

A. I don't remember the date when it was first given to them. It was signed the 27th of May—yes, I think I do remember. I believe that agreement was given to them, I know it was, on the morning of May 27th, in Mrs. Reed's office.

Trial Examiner Batten: What was that date?

A. May 27, 1937. As near as I remember, it was about 10 or 10:30 in the morning.

By Mr. Leary:

Q. It was given, the Board's Exhibit 6 was given to her at that time?

A. The working agreement?

Q. Yes.

A. Yes, sir, that is right, and it was left with her and her—Mr. Ingraham was there, Mr. Tyler was there, the committee of the union was there, Mr. Batty was there. I don't know that I remember the others that were there, but after some discussion about it, it was left with Mrs. [fol. 456] Reed and Mr. Ingraham and her counsel, anyway, until the afternoon of that day.

* * * * * *

[fol. 457] Q. Now, is this original which I show you now of the articles of agreement, the one or a copy of the one that you brought with you and left with Mrs. Reed that morning at about 10 or 10:30?

A. I didn't understand just how you worded that, Mr. Leary. I have a general idea of what you want, but I don't remember just the wording of it.

Trial Examiner Batten: The question is, is that the agreement you left with Mrs. Reed on the morning, at the morning conference?

The Witness: There were two copies of this. This is one of them.

[fol. 458] By Mr. Leary:

Q. You left two copies with her that morning, is that correct?

A. I might have left three. Now, I am not positive about that. I may have left three, but I rather think it was two. This (indicating) was ours, and she kept [on].

Q. This document I show you is similar in all respects to the dittoed copy of it, Board's Exhibit No. 6, is it not, with the exception of the signatures on the last page?

A. I haven't read it word for word, but I gave it to you as a copy, and I think it is.

Q. Is it true—

Mr. Langsdale: (Interrupting) Let me hear that answer again.

(Thereupon the last answer was read by the reporter.)

Mr. Langsdale: I think we are entitled to a definite answer.

By Trial Examiner Batten:

Q. The copy is a copy which you furnished, Miss Todd?

A. That is right.

Q. And you prepared the copy yourself?

A. Yes.

Q. The question is, is it a copy?

A. Yes, it is. I have read the copy this was run off of.

By Mr. Leary:

Q. And in all respects, then, the articles of agreement which you presented in the morning were the ones that [fol. 459] were eventually signed?

A. No, I think not, Mr. Leary. I think there were some changes in this copy, and I think that one you have there was typed later in the day. There were, I believe, some minor changes of wording, and so forth, after that discussion with Mrs. Reed. This is a copy of the one that was signed. There were some few changes in that original agreement.

Q. Will you point out what, if any, changes were made in the original agreement?

A. I don't believe I can do that from memory.

Q. You have a copy of the Board's Exhibit No. 6 in your hand now, have you not?

A. Yes, sir.

Q. Reading that, are you able to point out any place where any changes were made?

A. Not now I am not, no, sir.

Mr. Ingraham: Could I get this clear? Are you asking the witness whether the identical paper which you are handing her is the paper that was left with Mrs. Reed on the morning of that conference?

Mr. Leary: I do not propose to answer that.

Mr. Ingraham: That is a fair question.

Trial Examiner Batten: Mr. Leary, I think the attorney has a perfect right to inquire what you mean by a question. I gathered what you meant was, was this contract, the way

[fol. 460] it is now worded in Board's Exhibit No. 6 for identification, the same as it was presented to Mrs. Reed in the morning.

Mr. Leary: Yes, and she answered it was.

The Witness: No, I did not, Mr. Leary, I said it was changed.

Trial Examiner Batten: There is no use discussing what she said. The record will disclose what she said.

Mr. Ingraham: My thought was, from the questions, as I understood Mr. Leary, he wants to know whether the papers that were given to Mrs. Reed in the morning were the identical papers that were signed in the afternoon.

Trial Examiner Batten: I didn't gather, Mr. Leary, that you meant it was the same piece of paper. Did you?

Mr. Leary: I think the record is clear on that, Mr. Examiner.

Trial Examiner Batten: I am asking you, is that what you meant, that it was the same piece of paper? I gathered what you meant was the same wording. If you want to know whether it was the same piece of paper I think the witness should know that is what you mean.

Mr. Leary: I am not concerned with the identical piece of paper. I am concerned with the writing on the paper.

Trial Examiner Batten: That is what I thought.

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[fol. 461] By Trial Examiner Batten:

Q. The present question is, Miss Todd: Can you find out any place in Board's Exhibit No. 6 which you now have, which is a copy of this executed instrument, any changes made between the morning and afternoon meetings?

A. They were not made during the meetings, Mr. Batten.

Q. Between the meetings, I said. Can you point out any change of any kind.

A. Made between the meetings, you said?

Q. Yes. In other words, you presented her with a copy in the morning, and in the afternoon you signed Board's Exhibit No. 6?

A. I can't point them out at this time, no, sir.

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[fol. 465] Q. You mean you can't remember whether Mrs. Reed said, on any point, "I won't do this." In other words, did she refuse to do anything in the morning conference?

A. Mr. Batten, I don't remember that she very frankly said, "I just refuse to do any of these things." She very definitely refused to do anything about it until she had had time to study it. As to the conversation, with that many people in the room, I certainly can't remember what it was.

Q. How many people were there?

A. There were nine members of our committee, ten rather, Mr. Tyler was there, Mr. Ingraham was there, Mrs. Reed was there, and I am not positive whether Miss Frances, her secretary, was there or not, I am inclined to think she was, and Mr. Batty was there. I don't recall whether there was one or two other people there with Mrs. Reed or not. The ones I have mentioned are the ones that were there representing the Donnelly Garment Workers' Union.

Q. Where did you meet?

A. In Mrs. Reed's office.

[fol. 466] Q. Who talked first?

A. I don't remember whether I did or whether Mr. Tyler did, but I am inclined to think, as chairman of the executive committee I probably opened the meeting.

Q. Who talked after you talked?

A. I would think Mr. Tyler did.

Q. I don't want to know what you think.

A. Mr. Batten, that is all—

Q. If you haven't any recollection of it—Miss Todd, I told you yesterday and I told you this morning if you don't know say you don't know. Now, that is the most advisable thing to do. I do not want you to answer questions I ask, or that any of the attorneys ask, if you don't know.

A. I do know, Mr. Batten, generally what took place at that meeting. As to who said the first word, or who said the second word, I don't know.

Q. What did you say when you first talked?

A. I can't remember just the words.

Q. Tell me what you said.

A. What I have been saying we had spent some time preparing what we thought was a fair working agreement

which we wanted to present to her at that time, and I believe what followed was that Mr. Tyler read it to her.

Q. Then, what followed that, if you remember?

A. I don't remember who talked and—

[fol. 467] Q. Well, what was done next?

A. Everybody was given an opportunity to discuss it, Mrs. Reed, Mr. Ingraham, and members of our committee, and there was quite some discussion, lasting, as I have stated, from an hour and a half to an hour and 45 minutes.

Q. What, if you remember, in substance, did Mrs. Reed say when she first talked? A. I don't remember.

Q. Did she talk more than once?

A. Yes, Mr. Batten. There was a general discussion by everyone, discussing it very thoroughly.

Q. You do not recall even the substance of anybody's conversation, is that correct?

A. I don't believe that I can quote what the others said and what I said two years back.

Q. I said, the substance of what they said.

A. The substance of what we were saying—

Q. (Interrupting) Not "we". Any one person.

A. No, sir, I can't, Mr. Batten. I am sorry.

Trial Examiner Batten: Mr. Leary.

By Mr. Leary:

Q. Who was it who arranged this conference?

A. I think I must have arranged it, or maybe Mr. Tyler did. I don't know whether he arranged it through Mr. Ingraham or whether I arranged it through Miss Frances. One or the other of us would have done it.

[fol. 468] Q. Had you read the articles of agreement before you went to Mrs. Reed's office that morning?

A. Yes, sir. We had been working on them for some time.

Q. Who do you mean by "we"?

A. The committee and Mr. Tyler.

Q. Isn't it true, Miss Witness, that Mr. Tyler was the one who wrote the articles of agreement?

A. It is true that Mr. Tyler worded them as to the legal manner, but I don't think Mr. Tyler knew enough about the garment business to know what you would need in the contract except in a legal way.

Q. What, if anything, did you tell Mr. Syler you wanted in that contract?

A. We had a great many discussions and conferences about this. I don't remember the details of them, but the substance of what came out of those meetings is in the contract.

By Trial Examiner Batten:

Q. The question is, Miss Todd, what if any one thing did you tell Mr. Tyler to put in that contract?

A. Do you mean I, personally?

Q. Yes, you.

A. I was particularly interested in our guarantee, and I was particularly interested in the promotion and seniority rights.

Q. You were interested. My question is, what did you tell Mr. Tyler should be in the contract?

[fol. 469] A. I can't tell you everything that I have discussed with him, because that would be beyond my memory.

Q. Tell me one thing.

A. Our agreement as to our minimum wage. Promotion and seniority rights. And I was one of the ones interested in having a closed shop if we could get it, and in having the union recognized as the sole bargaining agency.

Q. You were interested. Did you tell Mr. Tyler to put those things in the contract?

A. Yes, I did, Mr. Batten. I felt they were things we should actually have in our contract—

* * * * * * *

A. I can't claim all of these ideas in this contract. There isn't anything here that I wouldn't want to have in the contract.

Trial Examiner Batten: I didn't ask you that. I asked you what you personally suggested to Mr. Tyler.

A. I was wanting something definite said about vacations in this contract, because we hadn't ever had as definite an understanding previous to that time as we had [fol. 470] with this contract. And our hours of working, too. I believe I mentioned, didn't I, that I wanted to have in here some way that this union would be the sole bar-

gaining agency if it represented the majority of the employees?

. . . . . .

[fol. 471] Trial Examiner Batten: It may be stricken. The question is, did you ever hold a meeting of all the employees and get from the employees an expression of opinion of what they wanted in the contract?

A. No, but we have had meetings with different departments concerning the contract; not all of them at one time, but different departments.

By Mr. Leary:

Q. Now, what meetings did you have with the various departments to discuss the contents of your agreement with the company prior to the time the representatives themselves began meeting with Mr. Tyler?

A. I can't give you the dates of the meetings.

[fol. 472] Q. I don't desire the dates. I want to know how many, for instance, you held between April 27th and the first time you discussed the contract with Mr. Tyler.

A. No, Mr. Leary, we did not have them in that manner.

Q. In what manner did you have them?

A. The contract was presented to small groups of employees subject to their suggestion as to any changes that would be necessary.

Q. Isn't it true that the draft of the contract that you presented to Mrs. Reed on the morning of May 27th was the first complete draft of the contract that you had?

A. I wish you would read that question again, please. It doesn't seem to be very clear. May he read it?

Trial Examiner Batten: Read the question, please.

(Whereupon, the question was read by the reporter.)

A. The first complete draft—I think it is rather confusing, a confusing question.

By Mr. Leary:

Q. What is confusing about it?

A. It is confusing in this way: there were numbers of contracts written and changes made as we were working on it. Now, this is not this one, but the one presented to her in the morning is the completion of that work done previous to that time.

Q. Now, do you have copies of any of the drafts that you prepared?

[fol. 473] A. No, I do not.

Q. Do you know what was done with those?

A. No, I assume they were destroyed. I wouldn't know any reason for saving them.

Q. Did you ever discuss any draft of a contract with any group of employees at the plant? A. Yes, sir.

Q. When did you do this?

A. I don't remember the instance, but through the entire life of this organization people have been constantly reminded whenever the opportunity presented itself to be thinking of what they needed in the contract. For instance, with our contract that just came up, everybody has been given ample—and requested and asked to make any suggestions necessary. They have always been that way.

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[fol. 474] Trial Examiner Batten (interrupting): Now, Miss Todd, just a moment. The question is, when did you discuss with any group of employees in this plant the drafts of this contract?

A. The drafts of this actual contract were not discussed with a group as a whole.

Trial Examiner Batten: Were they discussed with any group?

A. Yes, sir, very definitely.

Q. When?

A. They were discussed with a committee innumerable times, Mr. Batten, and general information through the plant; this was a new organization—

Q. (Interrupting) Now, just a moment. Did you discuss personally with any group of people in this plant—

A. (Interrupting) Hundreds of them.

Q. Well, now, give me the names of those you talked to.

A. I don't think I could, Mr. Batten.

Q. Could you name one person?

A. Yes, I could name one.

Q. Well, name one.

A. Well, Ruby Hackett.

Q. Any others?

A. I could if I thought about it. I don't know. I could do it if I thought about it a few minutes.

[fol. 475] Q. You think about it a few minutes, and name some that you talked to.

A. You take 1,200 members, and everybody interested in the same thing, they were primarily interested in making a contract that would be worth while.

Q. I am not concerned about that, Miss Todd. I am concerned about whether before this contract was signed, and before the morning that you presented this copy to Mrs. Reed, who you talked over this contract with.

A. Mr. Batten, it was discussed at great length at meetings of the committee. In a general way with other members, as they came in contact with each other. People called me on the phone at home.

Q. I want to know who. I want to know their names.

A. I just stated, I don't believe I could do it. If I think about it a little while, I can probably tell you twenty-five or thirty.

Q. Well, we will give you a few minutes to think about it.

A. I don't think I can honestly tell you just that morning or within a period there of three or four week's time, just who I talked to. There were too many to do that.

Q. Well, can you tell me anybody besides the one you named that you talked to before the morning that you went in to see Mrs. Reed?

A. Do you want the names of the committee?

[fol. 476] Q. No, I want the names of others, other than those in the committee.

A. Well, Lynn Davis would be one. I think Pearl Black. I don't think I know—Pearl Fields, Ruby Lago talked to me about it. It is rather difficult to remember names of people, that many employees, without having it to refer to. If I had a list of them, I could probably tell you two hundred or three hundred of them. I don't believe I can name any more of them at this time, Mr. Batten.

By Mr. Leary:

Q. When was it that you talked to Lynn Davis?

A. I don't remember, Mr. Leary.

Q. Where did you talk to her?

A. Where—I don't remember just where. I talked to her over the phone several times. I have talked to her at 1820 Walnut.

Q. Well, what does Lynn Davis do?

A. She is an operator.

Q. In what department?

A. 411, I believe is where she is.

Q. And you talked with her over the phone at the plant, you mean?

A. No, at home.

By Trial Examiner Batten:

Q. Miss Todd, when you say "411"—

A. (Interrupting) That is the number of one of our [fol. 477] sewing sections.

Q. You mean each section has a number; is that what you mean? A. That is right.

By Mr. Leary:

Q. When did you talk to Pearl Black?

A. I don't remember that, either.

Q. Where did you talk to her? A. I don't remember.

Q. Where did you talk to Pearl Fields?

A. I don't remember, Mr. Leary.

Q. When did you talk to Pearl Fields?

A. I don't remember any of these people that I have mentioned. I have no doubt talked to them more than once about it. I have talked to so many, anybody that would listen to me.

Q. Do you know when and where you talked to Ruby Lago? A. No, I don't.

Q. Do you remember whether any of these persons made any suggestion to you as to what should be incorporated in your proposed agreement to the contract?

A. As to definite proposals, I don't remember.

Q. What, if any, proposals were made by any employees of the company to you?

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[fol. 478] A. I can't remember which of these came in that manner or which came from the committee, or just —I couldn't designate them in that manner.

Q. Well, are you able to name any proposal at all?

A. No, sir. This is a corporation of ideas, of a lot of ideas, and which one belonged to who, I cannot tell you.

Q. And did you talk to these four persons whom you have named, Davis, Black, Fields and Lago, individually?

A. No doubt I have.

Q. Well, did you talk to them between the time, April 27th and May 27th? A. I am sure that I did.

Q. Individually? A. Yes, sir.

Q. Did you talk to any of these persons while they were with a group of employees?

A. I may have. I don't remember. That would be a very logical thing to have happen.

Mr. Leary: I move that that portion of the answer be stricken, Mr. Examiner.

Trial Examiner Batten: It may be stricken.

By Mr. Leary:

Q. How much time did you yourself spend on this contract prior to the time it was presented to the officials of the company?

A. In hours' time, Mr. Leary, I couldn't tell you. I [fol. 479] spent so many nights working for the Donnelly Garment Workers' Union, I haven't the faintest idea how many hours I spent at that time.

Q. Did you have access to the plant at night to use your desk and the records of the union, which were kept in the file cabinet near you?

A. I don't ever recall going to the office to do union work at night.

Q. You mean with the exception of the time you took your application cards back?

A. I may have that, and I may have stopped and picked up paper or something other times. I am not positive about that. If I want to go and write a personal letter and use my desk, I do. Oftentimes, I go back to the plant at night.

Q. Who was it that proposed that the wage scale should not be included in the articles of agreement made between the company and the Donnelly Garment Workers' Union?

A. That they not be enclosed?

Q. Yes.

A. That was a general idea of the committee, because we didn't have—we wanted to get some sort of working agreement signed, and did not have time to give to it to

work out a wage scale at that time. As to a definite person having that, that idea, I don't remember who.

Q. Was the time of the essence in getting the articles [fol. 480] of agreement signed—

* * * * * * *

Trial Examiner Batten: The question means,—that is a legal phrase—the question means, was it important to get some kind of a contract signed as soon as possible.

A. We felt that having organized our union, it was important to get some sort of an agreement signed; yes, sir.

Trial Examiner Batten: And for that reason, you decided to delay the matter of a wage scale?

A. Yes, sir. We felt that needed a great deal more thought than we had time to give to it.

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By Mr. Leary:

Q. I don't understand, Miss Witness, why it was of importance to you to get a contract or an agreement [fol. 481] signed right away.

A. I think I can explain that, Mr. Leary. This was following the time that Sylvia Hull had announced in the paper that she had been elected by the Connelly employees to represent us at the International Union. The law gave us a right to do something to protect ourselves, and the injunction was not doing a very good job, or we didn't feel very secure with it.

Q. At that time had you filed the injunction?

A. We had filed an injunction previous to the formation of this union.

Q. In what court had you filed an injunction previous to May 27, 1937?

* * * * * * *

A. I don't remember whether we had filed. We had been to see Mr. Tyler in the latter part of March about getting an injunction. He was working on it. I don't recall all the technicalities of that. I know he can tell you; and following this episode, or this announcement, rather, in the paper that Sylvia was going to represent us at the International, we felt like people here and there, most anybody, might say they had been elected to represent us. We hadn't elected her. Nobody had any knowledge of it, and that is why we formed this organization, and that is why we felt that we needed to be recognized by our

[fol. 482] employer as our representatives, and our bargaining agency.

By Mr. Leary:

Q. Had you made an investigation to determine that no one had elected Sylvia Hull?

A. We knew, it was common talk around the plant, and 1,200 people would tell you they didn't know anything about it. That was the thing that caused all that thing to happen.

Q. You mean, to form the union? A. Yes, sir.

Q. That was the only reason?

A. I don't know that it was the only reason, but it was certainly the reason that made us get busy in a hurry.

Q. Was it the main reason, would you say?

A. I wouldn't say that it was. The law gave us the privilege to do that, and if the majority wanted to do one thing or wanted to do another, and it happened in this instance that the majority thought they ought to form their own union, it isn't very likely that 1,200 people would want to sit around and wait for somebody here and somebody there to say they represented them.

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[fol. 484] MARJORIE GREEN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Foster:

Q. State your name and address.

A. Marjorie Green, 25 West Seventy-third Street Terrace.

Q. Kansas City, Mo.? A. Kansas City, Mo.

Q. Are you presently employed, Miss Green?

A. Yes, sir.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed at the Donnelly Garment Company?

A. A little over six years.

Q. How did you happen to secure employment at the [fol. 485] Donnelly Garment Company?

A. I was sent there through an employment agency.

Q. Do you have any relatives at the Donnelly Garment Company that work there? A. No, sir.

* * * * * * *

Q. What is your present position at the Donnelly Garment Company?

A. Stenographer and typist.

Q. In what department or what part of the plant are you employed? A. Merchandising.

Q. Is that in the general offices of the company?

A. Yes, sir.

Q. Do you work for the sales company or the Donnelly Garment Company?

A. Donnelly Garment Company.

Q. And where is the office located in which you are employed? A. On the tenth floor.

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[fol. 487] Q. Now, who do you take orders from?

A. Mrs. Reeves is in charge of the merchandising department.

Q. And are you her private stenographer?

A. No, sir.

Q. Is there any other stenographer that does work for Mrs. Reeves other than yourself?

A. Mrs. Richmond is Mrs. Reeves' stenographer.

Q. And does she work for Mrs. Reeves more than you do? A. Yes, sir.

Q. Now, outside of yourself and Mrs. Richmond, are there any other employees who do stenographic work for Mrs. Reeves?

A. Well, not regularly. They might if some one was gone, was out on vacation, out on account of illness, they might. Teressa McFadden is the stenographer in our department and there are others who can act as stenographers, although that isn't the regular duty.

Q. But you and Mrs.—

A. (Interrupting) I don't work regularly for Mrs. Reeves. She has charge of the department in which I work.

Q. Whom do you work for directly, then?

A. Mrs. Nichols.

[fol. 488] Q. And who is Mrs. Nichols?

A. She works in the production department.

Q. Is that Lulu Nichols? A. Yes, sir.

* * * * * *

Q. Does her work consist of adjusting and fixing piecework prices? A. Yes, sir.

* * * * * *

[fol. 490] By Mr. Foster:

Q. What is it that you do for Mrs. Nichols?

A. I do some typing.

Q. Are you a member of the Donnelly Garment Workers' Union? A. Yes, sir.

Q. How long have you been a member?

A. Since its formation.

Q. To the best of your recollection is that since April, 1937?

A. It was in April, 1937.

Q. And have you held any office in the Donnelly Garment Workers' Union? A. Yes, sir.

Q. And what office is that? A. Secretary.

Q. How did you become secretary?

A. I was appointed or selected.

Q. By whom were you appointed?

A. By the committee, nine group chairmen.

Q. Now, just exactly how did that happen, and when did it occur?

A. It occurred at the first meeting, I believe, of the group chairmen.

Q. Now, approximately when was that?

[fol. 491] A. It was a few days after April 27, 1937.

* * * * * *

[fol. 493] Q. Where are your union files?

A. We have a file at Miss Todd's desk.

Q. You mean, then, that any records that you have custody of were kept in her file?

A. That is, when I finish with them they are turned over and put in the book and kept in the file.

Q. If you want to get them then, you have to go to Miss Todd for them; is that correct? A. Yes, sir.

* * * * * *

[fol. 494] Mr. Foster: All right. Will you mark that, please?

(Thereupon, the document above referred to was marked as "Board's Exhibit No. 8" for identification.)

Mr. Foster: Mr. Examiner, this is the thought of counsel for the Board, that we introduce the minutes of the general meetings and the meetings of the group committee, meetings of the Donnelly Garment Workers' Union, as one exhibit, and ask leave to substitute copies of the minutes, either photostatic or stenographic copies of them.

Trial Examiner Batten: Well, this Board's Exhibit 8, then, is the minutes of the general meetings as well as the minutes of the committees?

Mr. Foster: It is the minutes of the general meetings of the union and the minutes of the—or the group chairman of the union.

Mr. Langsdale: Now, if it please the Examiner, I want the union to be understood that we don't admit that these are authentic minutes of either the union or the executive committee, that we are claiming, and we think that we will [fol. 495] be able to prove that some of the minutes have been doctored and are not authentic, and are not true records of the occurrences at those meetings.

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[fol. 496] Trial Examiner Batten: Of course, in view of Mr. Langsdale's statement, I am certainly going to require very definite and positive identification of these minutes before ever I receive them. So I advise you of that now.

So, you proceed in any manner you please.

Mr. Foster: Miss Witness, I hand you what has been marked for the purpose of identification as Board's Exhibit No. 8, and ask you whether that—the minutes

contain therein are the official minutes of the Donnelly Garment Workers' Union from April 27, 1937, to date, including both the general meetings and the meetings of the group committee?

Mr. Langsdale: May I inquire as to what counsel for the Board means by "official"?

. . . . . .

Mr. Langsdale: If you mean by that that I am to be bound by the authenticity of these reports, I don't expect to be.

. . . . . .

[fol. 500] Mr. Lane: The intervener objects to Mr. Langsdale being permitted to take an adversary position to that taken by the Board for the reason that Mr. Langsdale is here representing the International Union, the complainant here. It would be highly unfair to the intervener to permit Mr. Langsdale to cross-examine witnesses which the Board puts on in support of the claim made here by the I. L. G. W. U., and therefore I object [fol. 501] to his right to interpose objections to the questions which the Board asks and to cross-examine the witnesses which the Board produces.

Mr. Foster: Mr. Examiner, may I state my position?

Trial Examiner Batten: In just a second. I want to make this statement:

Of course, Mr. Lane, under the rules of the Board, there is no doubt in your mind, is there, that any party to the proceeding shall have the right to appear at the hearing in person, by counsel, or otherwise, and to examine or cross-examine the witnesses, and to introduce in the record documentary evidence?

The thing I was concerned about in starting this was, I wanted to understand the position of the parties.

Do you have any doubt, under Section 25, page 6, that it is entirely proper?

Mr. Lane: I think he cannot be permitted to take two positions in the same action, and I think he is going to take an adversary position he should do so.

Trial Examiner Batten: What do you mean, take two positions?

Mr. Lane: If he is cooperating with the Board as claimant in this case in the production of witnesses and of testimony, then I think he is taking another position in undertaking to cross-examine the witnesses the Board pro- [fol. 502] duces. I don't think the rule is so extensive as to give him that right. I think that is equal to cross-examination of his own witnesses.

Trial Examiner Batten: In the first place, of course we are here because the National Labor Relations Board has issued a complaint. That is the basis of this action. And any party in interest may appear by counsel or otherwise.

I don't think there is any question about Mr. Langsdale's rights, as far as that is concerned. I was only concerned in trying to set forth the disposition so that I as Examiner can rule when matters come up.

Mr. Foster: I would like to be permitted to withdraw my question.

Mr. Lane: The Board asked the witness a question and before she was permitted to answer the question Mr. Langsdale interfered, asking for an interpretation of that question, which I say he has no right, under this proceeding, to do.

Mr. Foster: I withdraw my question.

Trial Examiner Batten: I suppose any attorney has the right, if he doesn't understand the other man's ques-

tion or wants it explained or made more complete, to do so.

You may proceed, Mr. Foster.

Mr. Foster: I withdrew my previous question.

Trial Examiner Batten: It may be withdrawn.

By Mr. Foster:

Q. Miss Witness, what does the document which has been marked for purposes of identification as Board's [fol. 503] Exhibit No. 8 purport to be?

A. It appears to be the minutes of the meetings of the Donnelly Garment Workers' Union and the minutes of the chairmen of the Donnelly Garment Workers' Union.

Q. Who compiled or made the minutes appearing in what has been marked for purposes of identification as Board's Exhibit No. 8?

A. I did, practically all of them.

Q. Which of them did you not prepare?

A. I don't know. There are some times when I was on my vacation, or possibly I might have been ill, when somebody else might have done it.

Q. Do you know when your vacation was?

A. No, I don't; I don't know exactly.

By Trial Examiner Batten:

Q. Is there any way you can identify the ones you prepared and the ones you didn't? Don't your initials appear on them?

A. My initials are on the ones I prepared. Shall I take them a meeting at a time?

By Mr. Foster:

Q. I would like to have you turn to the first minutes there and see if your initials appear. That is the meeting of April 27. A. No, they don't.

Q. Do you know who made those minutes?

A. I typed this copy here. There was some misspelling [fol. 504] of names in the original copy.

Q. Who prepared the original copy?

A. I don't know.

Q. You simply retyped it? A. Yes.

Trial Examiner Batten: What is the date of that meeting?

Mr. Foster: April 27, 1937.

By Mr. Foster:

Q. Now, turning to the meeting of May 25, 1937, will you tell me whether you typed and prepared the minutes for that meeting? A. Yes, I did.

Q. You are positive you prepared them, as well as typed them? A. Yes, sir.

Q. Are those minutes accurate and complete, with reference to that meeting? A. Yes, sir.

Q. Was there any other stenographer present at that meeting? A. Not to my knowledge.

Q. Now, turning to the minutes of the group committee, will you tell me who prepared and typed the minutes of the meeting of April 29, please—if you know?

A. I typed them.

Q. Turning to the minutes for May 27, 1937—

A. (Interrupting) Is that a chairmen's meeting?

[fol. 505] Q. Yes.

Mr. Langsdale: Was the 29th a chairmen meeting?

Mr. Foster: Yes.

By Mr. Foster:

Q. With reference to the various minutes of different meetings of group chairmen on May 27, 1937, will you please state who prepared the various minutes for those meetings? A. Which meeting?

Q. Of the different meetings.

A. Of the group chairmen?

Q. Yes.

A. I did, all of those that have been referred to.

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[fol. 506] Q. Do the various minutes of the various meetings on May 27, 1937, purport to be true and accurate accounts of what occurred at the various meetings?

A. Yes, sir.

Q. How did you prepare those minutes?

A. How? I don't believe I understand you.

Q. Did you take stenographic notes? A. Yes, sir.

Q. In shorthand? A. Yes, sir.

Q. Did you take down everything that was said?

A. Well, I don't claim to be an expert. There were possibly a few words I missed, but this is the sum and substance of those meetings.

Q. Directing your attention to the minutes for the meeting of July 12, 1938, I would like to ask you, if you know, who the initials P. G. stand for.

Mr. Langsdale: Is that a committee meeting or mass meeting?

Mr. Foster: This is a general meeting.

A. No, just offhand I can't say.

By Mr. Foster:

Q. You have no idea?

A. I think I was on my vacation at that time. I wouldn't be positive, though.

Q. You have no idea who P. G. was?

[fol. 507] A. No, I don't offhand. We have a number of girls there. I can't think just now who that could be.

Q. Was there anyone who had the initials P. G. who was a member of the group committee?

Mr. Lane: Mr. Examiner, may I ask the date that is being referred to now?

Trial Examiner Batten: July 12, 1938.

A. No, I believe not.

By Mr. Foster:

Q. Now, referring to the minutes of the meeting on May 11, 1937—

A. (Interrupting) General meeting?

Q. Yes. On page 18. Will you please tell me who the initials E. N. stand for, if you know?

Mr. Langsdale: What date is that?

Mr. Foster: May 11, 1937.

Mr. Langsdale: General meeting?

Mr. Foster: Yes.

A. I don't know who that would be.

By Mr. Foster:

Q. Have you no idea whatsoever?

A. No.

Q. How many stenographers do you have at the Donnelly Garment Company, approximately?

A. I don't believe I could guess. A number of them. I would hate to guess.

Q. And you cannot recall any stenographers with the [fol. 508] initials E. N. or P. G., is that correct?

A. I don't recall anyone I can think of.

Mr. Foster: The Board would like to offer in evidence at this time as Board's exhibit No. 8 the minutes of the general meetings, or what purports to be the minutes of the general meetings of the Donnelly Garment Workers' Union, and to offer in evidence as Board's exhibit No. 9 what purports to be the minutes of the group committee of the Donnelly Garment Workers' Union.

[fol. 512] Trial Examiner Batten: If there is no objection, they will be received.

(Thereupon, the documents heretofore marked as "Board's Exhibits 8 and 9" were received in evidence.)

By Mr. Foster:

Q. Now, Miss Witness, do you have any other minutes of any meetings which have not been included in the minutes which have been produced for the Board that you know of?

A. There are a couple that I do not have written up as yet.

Q. And they are of recent meetings?

A. Yes.

Q. And with that exception, are all the minutes of all the meetings present that you know of?

A. Well, we might have said some chairmen meetings at which there were no minutes kept.

Q. But these are all the minutes that you know of?

A. Besides those I have mentioned.

[fol. 514] Q. There is one question I would like to ask before Mr. Langsdale starts. Do you have in the secretary's records— or let me ask it this way: do you have any other records of these meetings except the records, the Board's Exhibits 8 and 9 that you have just looked over?

A. No, those are the copies.

Q. My point is this: do you have originals? Do you have any stenographic notes? Do you have any sheets of paper with penciled memorandums on them?

A. No; my notes have been destroyed by now.

Q. In other words, this is the only record you have of these meetings?

A. Yes, sir.

Q. And all other records, notes, matters of that kind have been destroyed. Is that correct?

A. Yes, sir.

Mr. Lane: Mr. Examiner, prior to Mr. Langsdale's cross-examination I renew my objection as to his right to cross-examine this witness on the ground that he is taking the position adversary to that of the Board, which he, being counsel for the International Ladies' Garment Workers' Union, which is the claimant in this case.

[fol. 515] Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: The objections are overruled.

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Cross Examination.

By Mr. Langsdale:

Q. You stated that you are Mrs. Lulu Nichols' stenographer. What position does Mrs. Lulu Nichols occupy with the Donnelly Garment Company?

A. I do some typing for Mrs. Nichols.

Q. Well, you state, did you not, that you were her stenographer?

A. No, I don't believe I did. I do some typing for her.

Q. I don't want to misquote you. That is what I understood you to say. Do you type for anyone else except Mrs. Nichols?

A. Yes, I do.

Q. Who else?

A. Well, I do just general typing for the department which I work in. I also run a Teletype machine and a Western Union machine. I have typed different reports. I have various duties.

Q. Who is Mrs. Nichols?

A. She makes the instructions on the dresses which are sent down to the factory to be made.

Q. What do you mean, "instructions"?

A. Well, on how to make the dresses.

[fol. 516] Q. Does she fix prices, piecework prices?

A. Yes, I suppose what you would call it.

Q. Well, do you know what I mean when I say "piecework prices"? Do you?

A. Yes, she puts the prices on the different types of work.

Q. And do you type those prices for her to be sent around in the various sections?

A. I type the instructions on how the dress is made.

Q. You type the piecework prices?

A. I type the instructions on the various operations of the dress.

Q. Do you type the piecework prices? "Yes" or "no."

A. Well, I don't believe I understand.

Q. Well, do you know what I mean by "piecework prices"? You say Mrs. Nichols fixes those. Now, do you ever type them for her? A. Yes, I type some.

* * * * * *

[fol. 517] Q. Do you have a typewriter at your home?

A. I borrow a typewriter occasionally.

Q. I mean, do you own one that you keep at home?

A. No, I don't own one.

Q. For what purpose do you borrow one?

A. I borrow one to do union work at my home.

Q. That is, these minutes that you have written up, you mean to say you have written on some typewriter that you have borrowed to take home? A. That is right.

Q. Did you ever write any of these minutes up at the plant? A. Yes, I have.

Q. During the daytime? A. No, sir.

Q. When?

A. Unless it would be on my lunch hour, lunch hour or in the morning before time to go to work, or in the evening.

[fol. 518] Q. Always, of course, outside of working hours? A. Yes, sir.

Q. And where would you do that work outside of working hours?

A. Well, at my typewriter.

Q. Whose typewriter is that?

A. It belongs to the company.

Q. The Donnelly Garment Company? A. Yes, sir.

Q. Can you give us the name of any stenographer [tho] took any minutes of any of the meetings of the Donnelly Garment Workers' Union except yourself?

A. Well, I wouldn't know. If anyone took any, it would be while I was away. I wouldn't know who it was.

Q. You don't know, then, the name of any stenographer who ever took any minutes except yourself?

A. No, I don't.

Q. What kind of record did you take of the minutes or of the happenings in these various meetings? I mean, did you take them in shorthand? A. Yes, sir.

* * * * * *

[fol. 529] By Mr. Ingraham:

Q. Miss Green, did any officer, official, or anybody with authority to hire or fire ever pay you anything or ask you to do anything for the Donnelly Garment Workers' Union?

A. No, sir.

Q. Has the company and the men I have mentioned, or the officers of the company I have mentioned had anything to do in any way with the preparation of the minutes you have been referring to?

A. No, sir, not one thing.

Mr. Ingraham: That is all.

* * * * * *

By Mr. Lane:

Q. Now, Miss Green, referring to Board's Exhibit No. 8, pages 1 to 11, inclusive, those are the minutes of the meeting held on April 27, 1937, are they not?

A. Yes, sir.

Q. And are those 11 pages, the pages which I have in my hand here, which I am showing you, pages which you yourself typed? Was this typewriting on these pages done by you? A. Yes, sir.

Q. When was that done by you?

A. Several days after the date of that meeting.

Q. How many days?

[fol. 530] A. I can't say exactly, but I would say within 3 days.

Q. Three days after the April 27, 1937, meeting?

A. Yes, sir.

Q. Have there been any changes of any kind made on those 11 pages since those three days after the 27th of April, 1937?

A. No, sir.

Q. And these are the original pages which you typed within that time and which have been kept by you ever since?

A. Yes, sir.

Q. With respect to all of the other minutes which you yourself typed have there been any changes made in them from the time you typed them up to the present time?

A. No, sir.

Trial Examiner Batten: Just a moment. You have 300 and some pages there.

By Trial Examiner Batten:

Q. You mean that your answer, Miss Green, covers all of those pages?

A. Well, from what I can see.

Q. As to those that have your initials, there have been no changes made, is that correct?

A. From what I can see from glancing through it.

Q. I don't want any qualifications. All of those that bear your initials are now as you typed them? Is that what you want me to understand?

A. I would have to read them over to say definitely.

[fol. 531] Q. I am only interested in your statement. That is your answer, that they are now as they were when you typed them?

A. I haven't made any changes in them. If these are like—

Q. (Interrupting) Now, Mr. Lane's question was, are they now, as they are before you, the same as when you typed them and placed your initials on them?

Mr. Lane: May I add to my question the phrase, as far as you know?

A. As far as I know, they are.

Trial Examiner Batten: Well, now, how far do you know?

A. I have glanced at a number of the minutes, and from a glance they appear to be as I have typed them.

Trial Examiner Batten: You can proceed as you please, but I think if that answer is to be of any value, either the witness should look them over and say whether they are, because when she makes the statement she has just made, as far as she knows, that means all she has to do with regard to any one is to say, "I didn't look that one over carefully."

Mr. Lane: I will rephrase my question. I will ask this question of the witness.

By Mr. Lane:

Q. Miss Green, within what time after each of the respective meetings where you yourself kept the notes and transcribed the notes, within what time did you type the notes which you made at those meetings?

[fol. 532] A. Oh, within three or four or five days, I would say.

Q. After each of the respective meetings?

A. Yes, sir.

Q. As to all of the minutes here which you yourself typed, have you made any change in any of those minutes from the time you typed them up to the present time?

A. No, sir.

Q. Were the minutes of the meeting which you yourself did not take down in shorthand typed by you or by somebody else?

A. They were typed by somebody else, with the exception of this first meeting here (indicating in minutes book).

Mr. Langsdale: Did I understand her to say she took the minutes of the first meeting?

The Witness: No, sir.

Mr. Langsdale: You did not?

A. No, sir.

By Mr. Lane:

Q. From what material did you type these first 11 pages?

A. From the typewritten copy that whoever took them had made.

Q. You were present at that first meeting?

A. Yes, sir.

Q. And was there supplied you a typewritten copy purporting to be minutes of that first meeting of what took place at that first meeting? A. Yes, sir.

Q. What did you do with that typewritten copy?

[fol. 533] A. It was destroyed.

Q. Before it was destroyed what did you do?

A. I retyped it.

Q. This is merely a retyping of that original report that was furnished you? A. Yes.

Q. Have you read over the minutes of that first meeting? A. You mean just now, or—

Q. Well, have you read it over recently enough so that your recollection is refreshed as to what it contains?

A. Yes.

Q. I will ask you whether or not the minutes as contained in these 11 pages, of the meeting of April 27, accord with your recollection of what occurred in that first meeting? A. Yes, they do.

Q. Miss Green, will you take this minute book sometime at your leisure and go through and find out what minutes were taken down at each of the meetings by somebody other than you, and report that fact back to us at some place or date? A. Yes, sir.

* * * * * *

[fol. 535] Rose Todd, a witness previously called by and on behalf of the National Labor Relations Board, resumed and was further examined and testified as follows:

Direct Examination (Continued).

By Mr. Leary:

Q. Miss Todd, I notice in Board's Exhibit No. 7, on page 3 thereof, the words "methods now used by the employer in determining piecework rates shall be continued." [fol. 536] Do you see the sentence to which I refer?

A. Yes, sir.

Q. What methods had been in force and effect prior to the time this agreement was entered into on June 22, 1937?

A. As far as I know, Mr. Leary, they had been made out by Mrs. Nichols, with the help of Miss Spalito.

Q. Had you taken any part in the making of piecework rates prior to June 22, 1937?

A. That used to be my work down there.

Q. Yes. But just immediately prior to that time had you yourself been engaged in that system at all?

A. No, sir.

Q. Where in your articles of agreement, Board's Exhibit No. 6, or your supplemental agreement, Board's Exhibit No. 7, copies of which I now show you, is any mention made of the fact that the piecework rates will be reviewed by you as representative of the union?

A. That statement is not in either one of these agreements.

Q. By what arrangement with the company did you begin to review the piecework rates?

A. By a verbal arrangement with Mrs. Reed.

Q. When did you make such arrangement?

A. I don't remember the date. It was—oh, possibly—it must have been something like two or two and a half months. I don't remember just the time.

[fol. 536-A] Q. What were the circumstances leading up to the inauguration of your reviewing the piecework rates?

A. Discussion at the meetings of the executive committee of the manner in which we thought would be a fair way of doing that.

Q. Showing you Board's Exhibit No. 9, are you able to pick out the date of the meeting in which you first discussed with the other members of the executive committee the proposition of your reviewing the rates set by Mrs. Nichols and Miss Spadito?

A. I don't know that I will be able to. I will be glad to look through here and see if I can find them. As I think I stated this morning, these minutes of our executive meetings are very incomplete, as you can see. Some of them are very brief, and it might not be in here at all. If it is here—Shall I take time to read these?

Q. You are able to set approximately the time when you started this, aren't you? A. Yes.

Q. Well, check the executive board meetings about that time.

(Witness looks through Board's Exhibit No. 9.)

A. I don't see it in these minutes.

Q. That was a matter of relative importance to your organization, was it not, Miss Todd?

A. It was of greatest importance to us.

[fol. 537] Q. And you do not find any mention of it in the minutes of your executive board meetings?

A. I do not at this time, in glancing through them. It was discussed at great length as to what would be the best way for us to handle that.

Q. How did the discussion begin?

A. I don't know. I don't remember the details of it. It was a meeting of our committee.

Q. At whose suggestion was the matter taken up in the first place?

A. I don't remember whether it was one of the operators or whether—I don't remember who it was.

Q. What, if anything, was said about it during the discussions of the matter?

A. I don't think, Mr. Leary, I remember the details of that discussion. There have been a number of requests or comments by different people, particularly pieceworkers.

Q. Is it a fact that they were not satisfied with the way the company was setting the rates?

A. I think it isn't a question of their not being satisfied with the way they were being set, but they felt we should have some check on them, that the union should have some check on them, so that we would be in a position to know whether they were right or wrong.

Q. The union wanted to check up on the company, is that it?

[fol. 538] A. That is right.

Q. Had you had any experience to indicate that the company needed to be checked up in this matter?

A. I can't say we had had any serious complaints. Any of the pieceworkers in that plant, or any of the time workers for that matter, if they are not satisfied can go to anybody they want to to make complaints. And, as a matter of safeguarding our right and privilege, we felt we should have a check on these prices before they were sent to the factory.

By Trial Examiner Batten:

Q. Had some of them actually complained?

A. With that many garments in a place the size of that, Mr. Batten, it is a very common thing that there may be some change necessary in prices.

Q. Did anybody complain to you?

A. Why, I am sure that they did. I have some—

Q. (Interrupting) Now, I don't want you to say you are sure unless you recall who they were and when it was.

A. I have in my desk some records of complaints we have had. A great many of them have been taken up and settled and they have never been written down.

By Mr. Leary:

Q. Were not the operators satisfied with the piecework prices when they were being set by members of their own union?

A. Not entirely. We are all human beings and can [fol. 539] make mistakes setting prices, especially if you have a new type operation. In that case it is rather impossible that anybody would just set a price there and know that was going to be absolutely right. On the whole I would say we do a very good job of it.

Q. Isn't it true, Miss Witness, the setting of the piecework prices is perhaps the most important thing the individual operators have to bargain for with the company?

A. I guess you are right.

Q. It is a constantly recurring situation, is it not, and it is a daily happening, that piecework prices will be changed? A. No, sir.

Q. Isn't it true that Mrs. Nichols and Miss Spalito spent all of their time adjusting piecework prices, and so forth?

A. No, sir.

Q. What proportion of their time would you say they spent setting piecework prices?

A. It takes most of their time doing that work. That is what their work is. That is what they are employed for. I don't know what the percent is. Sometimes they might not be as busy as others. I can't tell you the percentage.

Q. Who represents the company in setting the prices?

A. Other than Mrs. Nichols and Miss Spalito being hired by the company nobody represents them.

Q. And you represent the union yourself?

[fol. 540] A. Yes, sir. There is never any hesitancy on any operator's side, if she isn't satisfied she doesn't hesitate to say so, I am sure.

Mr. Leary: I move to strike the last part of the witness' answer, Mr. Examiner.

Trial Examiner Batten: It may be stricken.

Mr. Leary: Did you have any open meetings of your organization to discuss the certain provisions of the supplemental agreement identified as Board's Exhibit No. 7?

A. Not before it was signed. It has been thoroughly discussed with departments or groups of departments since then.

Q. Did you discuss it with any groups of employees prior to the time it was signed?

A. Yes, sir. Do you want any explanation of it?

Q. No, I do not, not right now. Who were the persons who you talked to personally?

A. The executive committee of the Donnelly Garment Workers' Union.

Q. Did you in your capacity as chairman of the execu- [fol. 541] tive committee discuss the provisions of your proposed supplemental agreement with any employees or groups of employees prior to June 22, 1937?

A. That was thoroughly discussed by the committee—not at a general meeting, no, sir.

Q. Did you give the employees any opportunity at all to have any say-so in what they desired to be included in the supplemental agreement? A. Yes, sir.

[fol. 542] Q. What opportunity did you give them?

A. We have always tried to keep the members of the Donnelly Garment Workers' Union informed as to these activities or something that we are working on so that if they have any suggestions they might make them. I don't know when they did it.

By Trial Examiner Batten:

Q. Will you tell me what you did to advise the employees that you were going to make the supplemental contract? A. I have no doubt—

Q. (Interrupting) I don't want any doubts. Tell me what you personally did.

A. I have talked to any number of individuals.

Q. How many, off-hand, would you say you talked to before the supplemental contract was entered into?

A. I think that was an important as that to us, I no doubt would have discussed it with numerous, I would say probably hundreds of people. I don't know whether the minutes will show—

[fol. 543] Q. Now, just a moment. You discussed it with them before the supplemental contract was signed?

A. As we were working on it, I mean. I never did have a general meeting.

Q. Now, just a moment. As you were working on this you discussed it with several hundred employees?

A. Different phase of it.

Q. Now, over how long a period were you working on this?

A. I would say that I know we were working on it better, the better part of a month, and even before our working agreement was signed, we were thinking of it and trying to formulate in our minds what should go into this other agreement.

Q. Well, now, was it over a month that you talked with several hundred employees about it? A. Yes, sir.

Q. How many hundred would you say?

A. I have no idea.

Q. Well, can you give me any idea? Was it 200 or 500 or 800?

A. Well, where you would be with a group of people, there might sometimes be one and might sometimes be six or eight or ten that would be interested in talking about the thing. I couldn't give you a definite figure on how many.

Q. Well, I am asking you, was it 100, more than 100?

A. I am sure that it was.

Q. Was it more than 200?

[fol. 544] A. Well, I couldn't—I don't know that I could sit here and name 200 people, but I surely feel like I am justified in saying more than 200.

Q. Was it more than 300? A. I don't know.

Q. Well, would you say more or less than 300?

A. I don't know, Mr. Batten. I think I could safely say between 200 and 300 people that I have discussed that with.

Q. Now, during this month, where did you talk to 200 or 300 people?

A. Well, if you were with a group of people, having a party, that the topic of conversation with employees of that plant at that time and members of our union would be what we should do about this.

Q. Well, did you talk with the two or three hundred at a party? A. No, not as a whole group of people.

Q. Well, tell me where you did.

A. Whenever we have a party there is all the way from 1,000 to 3,000 people there.

Q. Where did you talk with the two or three hundred people?

A. I would say some time around the plant. Sometime I met socially with them. Sometimes I would go to a [illegible] my house or

numbers of people called me on the phone and talked to me about it.

[fol. 545] By Mr. Leary:

Q. Do you know whether any of the employees gave you any suggestions as to what should be included in the supplemental agreement?

A. There were numerous suggestions made.

Q. What, if any, were some of the suggestions made?

A. Well, there was quite some discussion of various ones, and comments by various ones of what our minimum wage scale should be.

Q. And what did you decide it should be?

A. Our minimum wage scale, as you will notice in our working agreement, calls for $15. I don't know just where the idea originated that that agreement should read $16.50 in that supplemental agreement.

Q. Now, when you refer to your original agreement, do you mean Board's Exhibit 6?

A. I don't remember the number on it. Yes. This calls for $15. We all felt that the company was probably able to pay more than that, and, at least, we could ask for it, and in the working out of this supplemental agreement, we established a $16.50 minimum.

Q. And you agreed that on May 27th that the minimum would be $15; is that correct? A. Yes, sir.

Q. Now, what did you agree the minimum would be in your supplemental agreement of June 22d?

[fol. 546] A. $16.50 for an absolute minimum.

* * * * * *

Q. Well, referring particularly to your minimum wage, was that—what are the circumstances leading up to the change in your minimum wage on June 22nd, when less than a month before you had established a minimum wage?

A. Well, we felt like there wasn't any harm in asking for it, and if we could get it, we would be glad to have it.

Q. You were cognizant of the fact, were you not, that you had agreed to work with a minimum wage for two years, beginning May 27, 1937?

A. I believe that is worded "Unless there is some change demanded by the other party." I am not positive about that.

Q. To what clause of the contract identified as Board's Exhibit 6 are you referring?

A. That wording is not in that agreement. That was [fol. 547] my mistake.

Q. Now, then, who was it who suggested that you ask for a $16.50 minimum?

A. I don't remember where that came from. Mr. Tyler and I have had some discussions as to whether he did or I did, or whether I said that some of the operators mentioned it. We never have agreed on who originally thought of it.

Q. What was the purpose of asking for a $16.50 minimum?

A. The purpose of asking for a $16.50 minimum?

Q. Yes. Why did you select $16.50 rather than, say, $16 or $17?

A. As I recall, my memory is correct, there had been an article in the paper that evening that the International were going to get $16 for it, and we thought if we could get $16.50, we would do it, and we did.

Q. Without any difficulty at all?

A. Well, we had a little difficulty over it, but got it.

Q. What difficulty did you have?

A. Well, from $1.50 more, more than they had guaranteed in the first place to give us, was quite a little money.

Q. What difficulty did you have?

A. Well, I don't know what you mean by "difficulty" in that sense.

Q. Well, did you go through any bargaining process with Mrs. Reed in order to get this $16.50 minimum?

[fol. 548] A. Absolutely.

Q. All right. What were the things that you asked for in addition to this $16.50 minimum when you went in to bargain on your supplemental agreement?

A. Holidays, pay for holidays for pieceworkers who previously had not been paid for these holidays.

Q. Did you get that? A. Yes.

Q. And you asked for the $16.50 minimum, and you got that, did you? A. Yes, sir.

Q. Did you ask for anything else that was different from the conditions of employment of the plant?

A. We asked for classification of our operators, and if,—as you no doubt have seen, this is worked out in quite

some detail, and it gives you a grouping here with a higher guarantee than $16.50 for a major portion of our operators.

Q. Well, is it true that the company had no groups of operators for salaried purposes or pay purposes prior to the June 22d supplemental agreement?

A. I don't believe they had ever been divided into groups.

Q. And what information—strike that, please. Who was it who prepared those groupings?

A. There was a great deal of work that was done by the committee, with Mr. Tyler's assistance. The informa-
[fol. 549] tion as to the factory for that, he would not be familiar with, came from the committee. The technicality of it was his suggestion, and it is his formation.

Q. And when you had all your groupings prepared, did you present them to Mrs. Reed?

A. After we had worked on it for some time, and rearranged it a great many times.

Q. What, if any, changes were made in the supplemental agreement you presented first to Mrs. Reed?

A. I don't believe I remember the details of those changes, Mr. Leary. We worked with this thing so long.

Q. How long did you work on it with Mrs. Reed?

A. Well, I believe the first meeting we had with her about this was in Mr. Tyler's office.

Q. On what date, approximately, was that?

A. I don't remember just now. I remember it was an awfully hot afternoon and we were there quite a long time. I don't remember the length of time.

Q. Did you present your proposed supplemental agreement to Mrs. Reed on this occasion? A. Yes, sir.

Q. And then what did she say?

A. Well, she considered this agreement at quite some length, and I think, particularly, this holiday part and this minimum for all employees, of $16.50.

* * * * * *

[fol. 550] Q. Now, how long after you presented this agreement to Mrs. Reed was it signed?

A. I don't remember, Mr. Leary.

Q. Haven't you any idea at all?

A. It seems to me in substance, not, now, just the way this is now, that we discussed it with her two or three days, or a day or two, before this agreement was signed.

Q. Now, what, if anything,—

A. (Interrupting) It was signed in Mr. Tyler's office.

Q. What, if anything, did you ask for in the supplemental agreement proposed by yourself that is not contained in the agreement which was signed by the company?

A. What did you say?

Mr. Leary: Read that question, please.

(Whereupon, the question was read by the reporter.)

Trial Examiner Batten: In other words, was there anything that you asked for that you didn't get?

A. Yes, there were. The major thing we are asking [fol. 551] for, the difficult [thin], or the major thing was these guarantees. Now, I don't know in substance—

Q. (Interrupting) In substance, you got everything that you demanded; is that it?

A. Yes, I believe that is right.

Q. In other words, there might have been some differences in the details? A. That is right.

Q. But, in substance, you obtained what you asked for?

A. That is right. Not by merely asking, but by discussing.

Q. Well, whatever the process was, you got it.

A. That is right.

By Mr. Leary:

Q. Now, were there any things that Mrs. Reed wanted contained in that agreement which are not in the agreement? A. I don't recall at the present time.

Q. In substance, then, there are none that she wanted in that that are not in there now?

A. There are none she wanted in that are not in there now.

Mr. Shepard: The witness said she can't recall.

A. (Continuing) I don't recall Mrs. Reed, her personal comments on this. I know the things we were definitely concerned about getting. Now, if there were things that Mrs. Reed wanted in there, she would have to answer that question herself.

[fol. 552] By Trial Examiner Batten:

Q. Well, was there any one thing in this supplemental agreement that was originally proposed by Mrs. Reed and incorporated in the agreement?

A. Yes, I think, Mr. Batten, this agreement is worded—

Q. (Interrupting) Well, now, read it over and tell me. A. I can't tell you the details of it.

Q. I want to know any one point. I don't care about the wording of any one point. This agreement covers a certain number of points, doesn't it?

A. That is right.

Q. Vacations, and so forth. Now, you look through there and tell me one of those subdivisions or main points that was proposed by Mrs. Reed and incorporated in the contract.

A. I can't give you those details. There are so many here that I think look like things that she would have been—would have demanded, but I am not positive about it.

Q. Well, then, your answer in substance, is that you can't say. Is that right?

A. That is right.

By Mr. Leary:

Q. Well, in order to obtain the $16.50 minimum per week of 40 hours, did you have to make any concessions to the company?

A. Did we have to make any concessions? I don't think I know what you mean by "concessions".

Q. Well, if you had asked for $20 per week minimum, [fol. 553] and a 30-hour week, would it not have been a concession for you to work 40 hours a week at the same minimum? Now, do you understand what a concession is?

A. Yes, I do. I believe that—doesn't our working agreement call for a 40-hour week?

Q. I merely used that as an example, Miss Todd. What concession, if any, did the union make to the company in order that they might obtain the $16.50 minimum per week of 40 hours?

A. We didn't have in mind making any concession. I don't recall that we did.

Q. I want to know, Miss Todd, what, if any, bargaining took place between you and the company.

A. I don't know whether I use the word "bargaining" in the sense that you use it, or not. Maybe I am using the word "discussion."

Trial Examiner Batten: Well, bargaining, Miss Todd, in simple words, means, did you do any horse trading.

By Mr. Leary:

Q. Did you give and take with the company?

A. In working out this agreement to the satisfaction of both, there were changes, minor changes, in this agreement, yes. I don't know whether "Yes" is the word I should answer that question, or not, with, but this agreement was not just written up and handed over, and they signed and said "We are just thrilled to death to do it." [fol. 554] There was a great deal of discussion about it before it was signed.

Q. You remember there was a great deal of discussion, do you? A. I certainly do.

Q. Do you remember any matters that you discussed?

A. Yes, each step of that thing was discussed, Mr. Leary, in detail.

Q. Now, will you explain any bargaining that went on between yourself and the company?

Mr. Lane: Now, if the Examiner please, I submit that calls for a conclusion and I think the witness said there was a great deal of discussion pro and con, back and forth, about the terms, and that constitutes a part of it.

Trial Examiner Batten: Well, of course, I will agree with you this far: that there is some difference of opinion as to what bargaining is. I think if the witness will tell, the unfortunate part about it, Mr. Lane, is that the witness just can't tell us what the discussion was.

Now, she said there was a lot of discussion. That doesn't mean anything. Now, if she could remember what, as usually is done in these matters, she could tell what she said, what Mrs. Reed said, what the other members said, but she can't remember what anybody said. So I can't accept her statement that there was any discussion, when she can't remember anything, even if it was 2 years ago.

[fol. 555] The Witness: Mr. Batten—

By Mr. Leary:

Q. You may state, Miss Witness, any discussion that took place.

A. I did say, or try to say, that each step of this agreement was discussed.

Trial Examiner Batten: But, Miss Todd, there is the point where I would like to ask you a question. Now, that

doesn't mean anything unless you can tell in substance, at least, what you said and what Mrs. Reed said, who was another very important party to this transaction, or what the attorneys said. You can't tell us anything about it.

A. Well, I don't know, Mr. Batten. This agreement was primarily drawn up by the Donnelly Garment Workers' Union with the assistance of our attorneys, and we would naturally have been presenting this to her as it was written.

By Trial Examiner Batten:

Q. I know all that, but, Miss Todd, my point is this: that if I attended the meeting, at which I entered into a contract, and I were to enter the organization, even if it were two years ago, a matter of wages and working conditions, I would have some idea about what took place at the meeting. At least, I would remember what I did and what I said. Now, you don't seem to have any recollection of it.

A. Well, I certainly will never forget that meeting. Now, as to going in and telling—I seem to be in this [fol. 556] position: that if I say I said such-and-such a thing on that day, then I am to be asked something about this, and if—I couldn't word a thing that I said on that day like that now.

Q. Miss Todd, I am asking you, in substance, what did you say, if anything?

A. That this was what we had prepared; not this particular paper, but a similar paper, and we would want to offer it to her for her consideration.

Q. Well, now, just—

A. (Interrupting) And these are the things that were demanded—

Q. (Interrupting) Just a moment. Are you the one that offered her the paper?

A. I don't think that I did. I think—

Q. (Interrupting) Who did?

A. I think Mr. Tyler did.

Q. Well, are you sure that you didn't?

A. Yes, I am quite certain that Mr. Tyler read this to Mrs. Reed. I know I am right about that.

Q. Now, at any point in this conference, did you say anything at any time?

A. Yes, Mr. Batten. I had a great deal to do with the conversation. It was a general discussion of the people that were there.

Q. Well, now, tell me now some of the things that you said.

[fol. 557] A. Well, I just don't know how to tell you any further than that; discussing each point of this contract is what went on, at that meeting. I don't know how to tell you any different.

Q. Did you discuss each point?

A. I don't know that I discussed each one, but I took an active part.

Q. Did you discuss any one of the points that you recall?

A. I surely did. I think I probably discussed,—I think I probably should say, then, that I particularly discussed with her these piecework guarantees. Now, there were operators there, and they may have said something, too. No doubt they did.

Q. Now, Miss Todd, "may"—of course, "may" anything. I don't want what may have happened or what might have happened. If you don't know anything about this meeting, just tell me you don't remember anything about it, and we will let it go.

A. I just told you, Mr. Batten, that I could never forget that meeting the longest day I live.

Mr. Ingraham: Just a moment—

Trial Examiner Batten, (interrupting): Tell me what you remember about it.

A. I don't seem to know how to tell it.

Mr. Ingraham: If your Honor please, I want to except to your remarks. This witness hasn't said she knows [fol. 558] nothing about this meeting. She said they discussed every single point.

Trial Examiner Batten: I said as to specific things that transpired at the meeting. Now, when she says she discussed everything, Mr. Ingraham, surely you don't think that means anything from the standpoint of evidence, do you?

Mr. Ingraham: I certainly think when she says they discussed every point, that that is about as far as anybody can go. You mean that she is to tell some conversation?

Trial Examiner Batten: No, but I think that a person who attended one of these bargaining meetings, if that is all she can tell about it, I think she has a very, very faint recollection of what happened, not sufficient to accept in any way, in any form, as evidence of anything.

Mr. Ingraham: I except to your Honor's remarks.

Trial Examiner Batten: You may except, but I am saying that I don't think it amounts to anything.

Mr. Tyler: The intervener wishes to except, also, and calls your Honor's attention to the fact that this meeting occurred more than two years ago, attended by many people, that the results of it were crystallized in written form, which is the summary of the witness' memory of what was done; that there is no provision or presumption that she doesn't remember conversations connected with it, any further than that, that her evidence is, you say, worthless.

[fol. 559] If the court will recall, she has testified that these demands were submitted as demands of the union.

Trial Examiner Batten: Well, of course, my only position about this witness is this: that either she has an extremely poor memory or else she doesn't want to remember some of these things. Now, you may take exceptions to that, because that is clearly, Mr. Tyler, my impression thus far of this witness' testimony, and I think, as the Examiner in this hearing, I have a perfect right to express such an opinion, and instead of expressing it in my report, I express it now so you may take the necessary exceptions to it.

Mr. Ingraham: Respondent excepts to the remark.

Mr. Tyler: The intervener excepts.

Mr. Ingraham: As highly prejudicial.

Trial Examiner Batten: Well, if it is incorrect, I think it is, Mr. Ingraham.

Mr. Ingraham: I think it is incorrect.

Mr. Stottle: Mr. Examiner, I doubt if anyone present could state what question Mr. Leary last asked, and that occurred less than an hour ago.

Trial Examiner Batten: Mr. Stottle, I think the record will clearly indicate what everybody's position is, what questions were asked and what the answers are. Of course, if it is prejudicial, the record will bear it out.

* * * * * *

[fol. 567] Mr. Leary: I show you what has been marked for identification, Miss Witness, as Board's Exhibit 10, and ask you if that is a copy of extension of agreement between the company and the Donnelly Garment Workers' Union?

[fol. 568] (Thereupon, the document above referred to was marked as "Board's Exhibit No. 10" for identification.)

A. Yes.

Mr. Leary: The Board offers its Exhibit 10.

Trial Examiner Batten: If there is no objection, it will be received.

(The document heretofore marked as "Board's Exhibit No. 10" was received in evidence.)

Trial Examiner Batten: Is that a supplemental contract?

Mr. Leary: Yes, that is entitled "Extension of Agreement", having been signed June 2, 1939.

[fol. 569] Q. Did you sign any agreements with the company during the year 1938, Miss Witness?

A. I think not.

Q. The only ones you have signed are the ones that you signed on May 27, 1937, and June 22, 1937?

A. That is right. Using the word "agreement" as our original agreement?

* * * * * *

By Mr. Leary:

Q. Do you remember, Miss Todd, going to St. Joseph, Mo., in May, 1937? A. Yes, sir.

Q. On what business was that trip made?

A. To explain to the employees working in part of the plant that was operating in St. Joseph that the employees in Kansas City had organized an employees' [fol. 570] union, and asking them if they cared to join.

By Trial Examiner Batten:

Q. You have a branch plant there, is that it?

A. We did at that time, Mr. Batten. The company was operating, I don't remember how many machines, but it was a small place there.

Q. Do you remember approximately how many employees there were at that time?

A. I think there must have been around 75. I do have a record of that some place.

Q. Just roughly.

A. I think, 75, 80, or something like that.

By Mr. Leary:

Q. Did you hold a meeting with those employees?

A. Yes, sir.

Q. When did you leave Kansas City on that trip?

A. I think, Mr. Leary, it must have been probably 1 o'clock or 1:30, something like that.

Q. When did you return?

A. I returned that evening sometime.

Q. That was not on a Saturday, was it?

A. No, it wasn't. I don't remember the day. I have a record of the date, but I don't remember the day. I think I ate dinner in St. Joseph and came back that evening.

Q. Did you obtain permission from the company to leave your work that day?

[fol. 571] A. I don't recall. I don't think I ever leave the plant without asking to go. I am not in the habit of leaving the plant without saying I want to get away for a while.

Q. Well, did you do it on that day?

A. I must have, Mr. Leary. I don't think I would ever leave the plant without asking to leave.

. . . . . .

[fol. 572] Q. Do you know whether your pay was docked by the company for that afternoon you were gone?

A. I don't recall that it was. I don't imagine. When I am asked to leave, I would always explain why I was leaving. I don't remember.

Q. I don't understand your answer. Do you know whether your pay was docked or not?

A. I do not, no.

Q. Would that be indicated on the payroll records of the company?

A. I presume so, but I don't know about that, either, Mr. Leary.

Q. Your union at one time or another had membership pins or buttons, didn't they? A. Yes, sir.

Q. Was an opportunity given to the employees to see the pins before they bought them? A. Yes, sir.

Q. Where were the pins displayed?

A. On the seventh floor.

Q. Where on the seventh floor?

A. Well, I believe it was on the north wall, just inside [fol. 573] the door.

Q. Is that a bulletin board? A. Yes, sir.

Q. A company bulletin board?

A. I don't know whether it is a company bulletin board or whether it belongs to the building. It is a bulletin board.

Q. But the company occupies the entire seventh floor, do they not? A. Yes, sir.

Q. Who puts the pins on exhibition there?

A. I don't remember, Mr. Leary. I might have put them up, or Marjorie might have. I don't remember who put them up.

Q. And then, who was—what method was followed to determine what pins the employees desired to have?

A. I remember of announcing at a meeting that the pins would be displayed on the seventh floor, and that the employees could make their choice known. The manner in which it was done?

Q. Yes. A. I don't recollect.

Q. Did you ever take any vote on what pin you wanted to select as your union pin?

A. In some manner we did, because I remember very definitely stating that whatever the majority selected, that decision would be abided by.

* * * * * *

Q. What was your custom of notifying members or [fol. 574] employees of meetings of your organization?

A. By sending a notice around to the different departments.

Q. What kind of a notice; an I. D. M.?

A. I don't know that you would call it an I. D. M. I would refer to it as a notice.

Q. Would it be an I. D. M. form?

A. We do not have any I. D. M. forms that belong to the union.

Q. The company has, do they not?

A. It would be a piece of note paper, Mr. Leary.

Q. Who customarily prepares those notices?

A. Our secretary.

Q. Under your instructions?

A. Yes, sir. Well, unless it would be a request by somebody else, but if I am calling a meeting, I would instruct her to prepare them.

Q. Then how is the notice passed around through the plant?

A. By a pick-up system that is operated in the plant. It is just, you might call it a post office system, if you want to refer to it that way. There is a box on a lot of desks.

Q. Is that where these messenger boys you are talking about came in?

A. That is all they do; yes, sir.

Q. And those notices would be put, say, in your out box or in Marjorie Green's out box?

A. That is right.

[fol. 575] Q. And then the messengers would pick them up and take them to the various departments?

A. That is correct.

Q. When you prepared notices of your meetings, do you prepare one copy for each department?

A. I usually try to.

Q. And then, to whom in the department does the notice of the meeting go?

A. To the department. If I was sending it to Section 517, for instance, I would write "517" on it.

Q. And who in 517 gets the mail?

A. Well, the thread girl usually picks up something like that and would give it to the operator and pass it through the section. They would pass it from one to the other.

Q. Do you ever post notices of your meetings?

A. I sometimes do in addition to that, probably post the same notice.

Q. Where do you usually post it?

A. In the bulletin boards, on the different floors.

Q. Are there in your recollection now, bulletin boards on each of the floors that the company has?

A. Most of them, Mr. Leary. I think not on all of them.

Q. Where are those bulletin boards? Are they in the main corridors?

A. Usually just inside the door from the hall.

[fol. 576] Q. Has the company ever reprimanded you for posting notices on the bulletin boards?

A. No, Mr. Leary. The bulletin boards are used by anybody that cares to use them.

* * * * * *

[fol. 577] Q. Are you able to remember, Miss Witness, how long you continued to hold meetings of your general membership on the second floor of the Corrigan Building?

A. No, Mr. Leary, I am not. We did that as long as the Donnelly Company did not lease that floor. They have been held, since the company leased the building, on the first floor, but we pay rent for the use of that space since that time. I think I could get that information for you, but I don't recall just the date.

Q. By what arrangement did you use the space on the second floor?

A. By an arrangement made with the management of the building.

Q. Who was that in particular?

A. I believe at that time it was a man by the name of Meyers, but it is the Corrigan estate. Whoever operated that estate is who it was taken up with.

* * * * * *

[fol. 578] Q. Who was it made arrangements with Mr. Meyers? A. Hobart Atherton.

Q. And you never paid the Corrigan estate any rental, did you?

A. We offered to, Mr. Leary, and they would not accept it. It was a vacant space, and they said, "Use it."

Q. The company leases, as far as you know, all of their property from the Corrigan estate, did they not?

A. As far as I know.

Q. Do you know or remember the occasion when you were notified that the second floor would no longer be available to you?

A. No, I don't. I expect I noticed that by seeing it was being occupied by someone else. I don't remember the definite time.

[fol. 579] Q. Then you began to use the first floor of the building, is that correct?

[fol. 580] A. After the Donnelly Garment Company had leased the entire building we began to use the first floor.

Q. By what arrangement did you begin to use the first floor?

A. By an arrangement with the Donnelly Garment Company.

Q. Did you enter into any agreement with them to lease the space? A. Yes, sir.

Q. What was the agreement?

A. It was an agreement with Mr. Green, I believe.

Q. Who is Mr. Green?

A. I have forgotten what official he is of the company. Mr. Ingraham can tell you. It shows on that agreement, too. I don't know what officer he is, I don't remember.

Q. Is he one of the executives of the company?

A. Yes, sir.

Q. What is his first name?

The Witness: What is Mr. Green's first name? (Addressing Mr. Ingraham)

Mr. Ingraham: Alec.

By Mr. Leary:

Q. Is there any written agreement with Mr. Alec Green?

A. I believe there is, Mr. Leary. I would have to look through the files. I think there is a letter to that effect. I remember talking to him, and I think there was also a letter.

[fol. 581] Q. That space on the first floor is in the form now of an auditorium, is it not? A. That is right.

Q. And it was not an auditorium prior to the time you began holding your meetings there, was it?

A. It was a sort of a vacant space then, just occupied for miscellaneous purposes, and it has since been built into an auditorium.

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[fol. 584] By Mr. Leary:

Q. Whom did you say Miss Pilsbury was, the other day?

A. In charge of the designing department.

Mr. Langsdale: What department?

A. The designing department. That is S-p-i-l-s-b-u-r-y.

By Mr. Leary:

Q. Now, there is no Miss Pilsbury down there, is there?

A. No, sir. You misunderstood the name.

• • • • • • • •

Q. Isn't it true, Miss Witness, that you paid no rental for your hall for meetings during the year 1937?

A. Mr. Leary, I think that is not true, and I can—we have checks and very definite records as to how long that rent has been paid, and it has been paid ever since the Donnelly Garment Company leased that part of the building. The dates I can't give you at this time, but I can give them to you if you care to have them.

Q. When was it decided, Miss Todd, to ask the company for a check-off system?

A. I have records on that, and I believe that it was when the union was about three months old. Now, I am not just positive whether it was the end of the second [fol. 585] month or the first of the third month, but we have records on that.

Q. You made no arrangements with the company, nor had any discussion with the company concerning the check-off prior to the time you wrote your agreement on April 27, 1937, and your supplemental agreement on June 22, 1937, did you?

A. I—in answer [—] the previous question, I think you will find it comes between those two agreements. April, May—I think it was either the last of May or the first of June, Mr. Leary. There are some records over there (indicating), if you care to have them.

Q. You began your discussion of it at that time, or entered into an agreement with the—

A. (Interrupting) I can't give you the date of the discussion, but I have a letter that—or I have a copy of a letter that will give you that information.

Q. The check-off has never been incorporated in your contract or agreements, has it? A. No, sir.

* * * * * *

[fol. 586] Q. Was this check-off system suggested by the company or was it suggested by the union?

A. It was—it began as a request of some of the members of the union.

Q. Who were they?

A. Well, I believe, I know the committee had discussed it with those members, and agreed that we would like to do it if they—if we could get the company to do it, and I believe Margaret Dulcolumbier—may I be understood that these are names that come to me; that is the best of my recollection?

Q. Yes.

A. Lena Canady, Linda Crume, Charlotte Casey, Virginia Dare, Helen Walton, Ethel Carpenter.

Q. Are those the committee members that you are naming?

A. Dora Mattocks. No, I believe I did repeat one of the committee members' names there.

Q. Now, where did you talk to each one of these girls?

A. Probably around the building, Mr. Leary.

Q. Where in the building in particular?

[fol. 587] A. I don't know any place that I might have seen them; before work or at noon time, or as you were going or coming from the building.

Q. How do you remember definitely that you talked to Ethel Carpenter?

A. I have a very definite recollection. She is a rather positive person about things she wants and doesn't want. I remember talking to her about that.

Q. What did she positively say then?

A. Why didn't we do it some way to make it a little easier for us.

Q. Beg pardon?

A. Why can't we do it some way to make it a little easier.

Q. What was found difficult in the collection of dues?

A. It was difficult in this respect: that with that many members it takes quite a little time to collect that money and that small amount of money from each person.

Q. Didn't you have one person in each section to collect dues?

A. Yes.

Q. And who was that person, usually?

A. It was—I couldn't give you a list of those. I think I could refer to our records, I could, and give them to you, but it was a person that was appointed in each department.

Q. Who were they appointed by?

[fol. 588] A. I believe the committee of chairmen did that.

Q. They used to go through the section and collect the dues every once in a while; is that it?

A. No, sir.

Q. How did they used to do it?

A. Collect them at noon time.

Q. As a matter of fact, they were Loyalty League representatives, were they not?

A. No, sir, they were not representatives. It was just an individual selected, one in each department, to collect those dues.

Q. Well, these are the same girls who sold the union pins, are they not, in each section?

A. No, sir. The union pins were not sold in the sections at all. If anyone—my recollection of the union pins is this: anyone wanting them came to my desk and got them.

Q. Are you able to state, Miss Witness, any of the things that were mentioned to you about the check-off by these certain persons that you talked to?

A. Well, the thing that they were primarily concerned about, Mr. Leary, was in making it an easier plan to handle, and we spent a little money to have our dues collected, and not having very much money, we were interested in saving it, and that is what their conversation consisted of.

Q. You relate the conversation in substance of any one

[fol. 589] girl in particular.

A. Well, I think my conversation with Ethel Carpenter was very much along that line. "Couldn't we find an easier way to do it and other people used to use the check-off system. Why couldn't we use it." I have had others ask me was it the right thing to do, having in mind that some one had advised them that it was not a correct thing to do.

Q. What was not satisfactory with the system of having a person in each department collect the dues?

A. We were more interested in saving a little money on that account than anything else. It was just the effort, and the little bit that we could save doing it in another manner.

Q. Isn't it true you used to give the people that collected dues free membership?

A. We allowed them their dues for collecting the dues, yes.

* * * * * *

[fol. 597] Q. Do you remember talking with Mrs. Reed about the arrangement by which you would work part time for the company and part time for the union?

A. To spend whatever time, as I recall it, was necessary for my work with the union.

[fol. 598] Q. Was that the arrangement you made with Mrs. Reed?

A. No. That was the discussion. And then, with our committee discussing it and deciding it would not be necessary to spend any company time if I would be willing to spend my own noontime was the arrangement that was made, that I would do my work before and after working hours and at noontime.

Q. Why was it necessary to discuss the employment by the union of yourself with Mrs. Reed?

A. Because she was wondering if I was going to be working for her full time, or whether I would be working for the union.

By Trial Examiner Batten:

Q. Miss Todd, in this Board's Exhibit No. 9-1, if you will read it, there is a statement here as follows: "The suggestion was made that the Donnelly Garment Workers' Union employ Miss Todd's services part time, the company to retain her as an employee the balance of the time." Is that correct?

A. There was a discussion, Mr. Batten, but the decision that was reached by the time we had gotten into it a little was that I wouldn't need to work—

* * * * * * *

[fol. 599] By Mr. Leary:

Q. What, if any, follow-up was made of that suggestion, Miss Todd?

A. The final decision being it was not necessary for me to work part time, that I would do my work at noontime for the union, and before and after work.

* * * * * *

[fol. 615] Mr. Leary: Who was it selected Josephine Spalito and Mrs. Nichols to be on the price-fixing committee?

A. That is their work, Mr. Leary. They are employed by the Donnelly Garment Company, and at a meeting of the chairmen—Do you want me to find the place? I couldn't find it the other day, but it was the meeting of June 3. At that meeting it was discussed what would be the best manner in which to handle this, and that was the decision that was reached. The exhibit is marked 9-18. It was agreed on by the committee of chairmen.

* * * * * * *

[fol. 619] Q. Do you accept into membership all of the instructors of the company? A. Yes, sir.

Q. Do you know what the basis of pay to instructors and inspectors is?

A. Approximately. I know what our guarantee is, that our contract calls for.

Q. Is it a weekly salary or a piecework proposition with them?

A. With the instructors it is a weekly salary. It is with the examiners, too.

Q. You mean the inspectors? A. Yes, sir.

Q. Do the thread girls get weekly salaries, too?

A. Yes, sir.

* * * * * * *

[fol. 621] Q. What employees of Donnelly Garment Company do you exclude from your union?

[fol. 622] A. Department heads and people with the power to employ and discharge.

Q. Who are the department heads that you can remember who are excluded?

A. And the officials of the company, too.

Q. Yes. Will you name the department heads and the departments of which they have charge?

A. Mr. Keyes, salesmen. Mrs. Stephenson, credit department. Mrs. Reeves, merchandising department. Dewey Atchison, production department. Mrs. Pilsbury, designing department. And Mr. Batty and Mr. Green.

Q. What is Mr. Batty's title?

A. Production manager, I think. And Ella Mae Hyde—

Mr. Langsdale: Who was the [only] following Mr. Batty?

A. Mr. Green.

[fol. 623] By Mr. Leary:

Q. What is Mr. Green's position?

A. I don't know, Mr. Leary. He is an official of the company. I don't remember the office.

Q. Did you mention Ella May Hyde? A. Yes, sir.

Q. What is her position?

A. In the employment department.

* * * * * *

Q. Are any others excluded?

A. It seems to me I have forgotten one other. Mr. George Barton.

Q. What is his position?

A. He is one of the representatives, sales representatives, and some time back was an officer in the company. I don't remember how long ago. It seems to me there should be one more, that I am forgetting. I don't recall it now, but if I do, may I refer you to it after lunch?

Q. All right. Is everyone in the cutting department in [fol. 624] your union? A. Yes, sir.

Q. Who is the top man in the cutting department?

A. Ted Scoles is the top man in the department proper, but his work is directed by Mr. Batty.

* * * * * *

[fol. 630] Q. Showing you, Miss Witness, Board's Exhibits No. 1-OOOO, is that not the original of the amended petition for investigation and certification of representatives pursuant to section 90C of the National Labor Relations Act which was signed on June 2, 1939, by the Donnelly Garment Workers' Union by Rose Todd, chairman of the executive committee? A. Yes.

Q. And you are the Rose Todd who signed that original petition? A. Yes, sir.

Q. Now I direct your attention to the portion of the exhibit entitled Classification of Employees in Such Unit, giving approximate number of employees in each department or class, and call your attention, first, to operators, 642. All of the operators are under Mr. Batty, are they not?

A. Yes, sir.

Q. Next, Miscellaneous Pieceworkers, 82. Are they not under Mr. Batty?

A. I think they are. Now, I am not positive about the ones in the notions department.

Mr. Lane: Mr. Examiner, I submit there is a better source of this information than this witness. If information is what they want, I think it is improper to ask this witness as to details of the different employees.

Trial Examiner Batten: She has been asked a good [fol. 631] many questions about such things. I think she may answer, if she knows. I think she said in the first part of her testimony that she daily went over the plant, so I think she should have some knowledge of it.

Mr. Lane: I object to it as not the best evidence.

Trial Examiner Batten: I will overrule the objection.

A. I think these people are under Mr. Batty. There might be some few exceptions in the notions department. I am not positive of how all of that might be tabulated in their accounting system.

By Mr. Leary:

Q. That is, the miscellaneous pieceworkers group?

A. To my judgment, they are.

Q. The hand ironers, 77.

A. They would be.

Q. Folders, 11.

A. They would be.

Q. Examiners, 41.

A. Yes, sir.

Q. And by "examiners," Miss Todd, do you mean inspectors?

A. Inspectors. And I see I made a mistake in my number awhile ago.

Q. Cutting department, 44?

A. Yes, sir.
Q. Dividers, 15.
[fol. 632] A. Yes, sir.

By Trial Examiner Batten:
Q. What do you mean by "dividers"?
A. The persons who divide our work into bundles preparatory to sending it to the plant for sewing purposes.
Q. In other words, they make up the bundles that go to these different sections?
A. That is right.

By Mr. Leary:
Q. Instructors and work distributors, 44.
A. Yes, sir.
Q. And by your answer "Yes, sir," you mean they are under Mr. Batty, do you not?
A. Yes, sir.
Q. Mechanics and helpers, 14, are they under Mr. Batty?
A. I think they are.
Q. Designing and pattern workers, 40.
A. I think they are not.
Q. Under whom are they?
A. My observation would be that they are under Mrs. Spilsbury.
Q. Mrs. Spilsbury, in turn, under Mr. Batty, do you know?
A. I believe Mrs. Spilsbury is under Mrs. Reed.
Q. Bundle boys, 11.
A. I believe they are under Mr. Batty.
Q. Clerical, 62.
A. I am not able to state about that.
Q. By clerical you mean the office staff?
[fol. 633] A. And it might mean some in connection with the plant. I can't tell you about that, Mr. Leary. That might be divided.
Q. Does the company have an office manager?
A. I don't know. Mr. Bachofer is there, but I don't know if they term it that way.
Q. Miscellaneous time workers, 60.
A. Now, I think part of those would be under Mr. Batty and part not. I can't tell you definitely.

Q. By time workers, you mean persons on a salary, do you not? A. Yes.

Q. As distinguished from girls and men on piecework basis? A. That is as I understand.

Q. Generally what do you include in that category as miscellaneous time workers?

A. I don't know, Mr. Leary. I cannot separate that for you. That would have to be done by the person who gave me this information.

Q. Who was it that gave you that information?

A. Miss Pauline Hartman, I believe.

Q. Who is Miss Hartman? A. She is in the office.

Q. Porters and maids, 20.

A. I don't know about that.

Q. Watchmen, 3.

[fol. 634] A. I can't tell you about those either.

Q. In what category are you included, Miss Witness?

A. I expect, in those time workers.

Q. Miscellaneous time workers, 60? A. Yes, sir.

Q. You wouldn't be possibly included in the designing and pattern workers, would you? A. No, sir.

Q. Will you explain any others, Miss Todd, who are not eligible for membership in your union than you have named previously in your testimony?

A. I have been trying to think. It seems to me there is just one other, Mr. Leary.

Q. By chance, is that Mr. Bachofer?

A. He doesn't belong, no. I didn't mention him, but he doesn't.

Q. Might it be George Fitzgerald?

A. He does belong to our union.

Q. What is Mr. Fitzgerald's position?

A. He is in the advertising department.

Q. Who is the head of the advertising department?

A. I think he is.

Q. How many persons are in that advertising department? A. I don't know.

Q. Do all of the salesmen belong to your organization,

[fol. 635] Miss Todd?

A. With the exception of Mr. Barton.

Q. What is his first name, please? A. George.

Q. That is the one you stated was once an officer of the company, is that correct? A. Yes, sir.

Q. Is he what you would designate as sales manager?

A. No, I wouldn't.

Q. Is there a sales manager for the company?

A. I don't know, Mr. Leary. Mr. Keyes seems to have charge of the salesmen; I don't know whether they call him sales manager or not.

Q. Does your organization have as members all of the road salesmen of the company? A. Yes, sir.

* * * * * * *

[fol. 639] Q. Let us take in this same person with the $18 guarantee, who worked during certain weeks only 20 hours, [fol. 640] but who during those 20 hours of work earned only $9, or rather, $8.50, on a piecework basis. What would be the person's pay check for that week?

A. I am not very good at mathematics.

Mr. Stottle: The respondent doesn't object to the witness telling what she can about that, but we do object to a witness trying to interpret a written contract, which is here in evidence, and—

* * * * * * *

Mr. Stottle: And allow those interpretations of a written contract to be deemed as binding on the respondent. We don't believe that is proper.

Trial Examiner Batten: Well, don't you think, Mr. Stottle, a person who is a party to the contract has a right to give their idea of how it should be interpreted; whether it is binding, I am not passing on that, but surely the person who signed it ought to be in a position to say what they think about it.

Mr. Leary: I will withdraw the question, if Mr. Stottle will point that portion out in the contract to me.

Mr. Stottle: I say, there is a written contract that provides, that all of that is provided about the guarantee.

Mr. Leary: Will you point that particular part out to me now?

[fol. 641] Trial Examiner Batten: The witness may answer the question. I have said she is qualified as a party to this contract to give her idea of what it is.

* * * * * * *

[fol. 642] Q. Well, are time workers, Miss Todd, paid when they are absent from duty?

A. A great many of them are, Mr. Leary. I am inclined to think that all of them are, but I couldn't answer that question truthfully.

Q. Are you, yourself paid when you are absent from duty? A. Yes, sir.

Mr. Ingraham: Mr. Leary, will you state what you mean by "absent from duty"? Do you mean by sickness or what purpose?

Mr. Leary: Well, for any purpose.

Trial Examiner Batten: What is it?

[fol. 643] Mr. Leary: I think for any purpose at all.

Trial Examiner Batten: Well, of course, I would suggest this, Mr. Ingraham: that if that question needs any further,—or there should be a further question asked, why, of course, the attorneys on cross-examination may inquire of the witness as to what she meant by it. If Mr. Leary wants the question to stand as it is.

* * * * * * *

[fol. 644] Q. Have you had the assistance of your advertising department, or, rather, the company's advertising department in the preparation of posters for your parties? A. No, sir.

Q. Have you had the assistance of the advertising department of the Donnelly Garment Company in any way in connection with your organization?

A. Only as some of the members may have donated some of their time to make some of those posters, some of the members of the union, but not made by the Connelly Garment Company.

* * * * * * *

[fol. 650] Trial Examiner Batten: Mr. Langsdale?

Mr. Langsdale: If—

Mr. Lane: Now, if the Examiner pleases, before Mr. Langsdale begins any examination of this witness, I desire

to object to counsel for the International Ladies Garment Workers' Union being permitted to interrogate this witness or to cross-examine this witness, for the reason that counsel for that organization, the claimant in this case, [fol. 651] have during the entire progress of this hearing sat across the counsel table from the attorneys for the Board, have continuously and constantly consulted with the attorneys for the Board, have been in numerous conferences with them, have passed notes back and forth across the counsel table, have participated in directing the course of the examination made by the Board's Counsel of this witness, to permit counsel for the International Ladies' Garment Workers' Union, which has shown itself to be so identified with the Board in this case, it being the complaining party, as to have a unity of interest and to be essentially the same as the Board in this case, for purposes of prosecuting this case. To permit counsel to interrogate this witness at this time would permit a double cross-examination by the same parties of this witness. This witness has, over our objection, been subjected to what we consider cross-examination for pretty nearly three days, and to now permit counsel for the International Ladies' Garment Workers' Union to take over examination at this point, and further cross-examine, or to cross-examine this witness at all, would be unfair to this witness, would be illegal examination and—

Trial Examiner Batten (interrupting): Now, just a moment. Whenever you say a thing is illegal, I want you to tell me why. I mean, I can't accept that.

Mr. Lane: On the ground that it is so far a departure from the rules of procedure and progress which obtain in [fol. 652] courts of law, and which should obtain in administration tribunals as to be a negation of the rules of fair play, as to deprive the intervener in this case of due process.

[fol. 653] Mr. Stottle: Respondent makes the same objection.

* * * * * *

[fol. 654] Trial Examiner Batten: I think it is very clear the rules permit a party to call witnesses, examine them, cross-examine them, and take part in the proceedings.

Mr. Langsdale, you may proceed.

[fol. 655] Cross-Examination.

By Mr. Langsdale:

Q. Miss Todd, you stated that prior to going to work for the Donnelly Garment Company you worked for Thornton and Minor? A. Yes, sir.

Q. That was a firm of physicians engaged in rectal surgery, isn't that correct?

A. Partially, Mr. Langsdale.

Q. That was the major part of their business?

A. Not the major percentage of it. That is not the thing I spent the major part of my time at.

Q. Are you a registered nurse? A. Yes, sir.

Q. From where did you graduate?

A. Research Hospital.

Q. When? A. 1918.

Q. Was any official of the Donnelly Company ever a patient of Thornton and Minor while you were employed by them? A. I don't recall that they were.

Q. Was Mrs. Reed a patient of Thornton and Minor while you were employed there?

A. I believe she was, but I don't remember—

Q. (Interrupting) Did you become acquainted with her while she was a patient there?

[fol. 656] A. To a very minor extent. I had forgotten all about it.

Q. And it was after that acquaintance that you quit Thornton and Minor went to the Donnelly Garment Company and secured employment?

A. It was following those years, but it had no bearing on that—

Q. (Interrupting) I am not asking you that. I am asking you if it wasn't subsequent to your becoming acquainted with Mrs. Reed while you were a registered nurse that you quit that employment and went to work for Mrs. Reed. A. Yes, sir.

Q. Now, you were president of the Donnelly Loyalty League when the meeting of March 18 was called?

A. I was president of the Loyalty League on March 18, yes.

Q. Is that the day Mrs. Reed appeared before the employees and read a letter she had received from the International Ladies' Garment Workers' Union?

* * * * * *

A. That is the day she appeared before the employees, and it is the day the letter was read.

Q. I believe you stated that you were responsible for calling that meeting of the employees?

A. I acted as chairman at that meeting. I don't know whether I stated I was responsible for calling the meet-
[fol. 657] ing or not.

Q. Did you initiate the call?

A. I don't recall that I did.

Q. Do you know who did?

A. No, Mr. Langsdale, I don't believe I could tell you. That was a spontaneous thing of employees, and I don't know that I recall who called me.

Q. Tell me what you mean by a spontaneous thing of the employees. They were all distributed about the plant, 1,200 of them, doing their work, weren't they?

A. Yes, sir.

Q. Then, someone said, "Let's call them together." Who did that?

A. I don't know.

Q. Who told you to take part in it?

A. I don't believe anyone did.

Q. You presided at the meeting? A. Yes, sir.

Q. As president of the Loyalty League? A. No, sir.

Q. Why did you preside at the meeting?

A. The only explanation I could have for that is that at a time like that, when people are distressed and wondering what could be done and talking about things that were happening about town, any one person or group of
[fol. 658] persons would be apt to take an initiative in it.

Q. And that happened to be you.

A. That is why I got into it.

Q. You just happened to be the one who led the flock there and presided at that meeting?

A. I can't say I led the flock.

Q. You presided? A. Yes, sir.

Q. Did anyone tell you to? A. No, sir.

Q. You just went up and took the chair?

A. I don't remember how that happened.

Q. Did anyone tell you to?

A. I don't recall anyone telling me to.

Q. You didn't do it as president of the Loyalty League? A. No, sir.

Q. You were president of the Loyalty League?

A. Yes, sir.

Q. Was there any reason why you didn't call the Loyalty League together that day?

A. It didn't occur to me.

Q. That was a meeting of the members of the Loyalty League? A. They were employees.

Q. They were all members of the Loyalty League, were they not?

[fol. 659] A. Not all of them.

Q. Who was there who was not a member of the Loyalty League? A. I don't recall.

Q. Do you know of any one of them?

A. I wouldn't know, because my recollection of the members of the Loyalty League is they have to be employed 90 days before they become members, and there might have been a sizeable group of people there who were not members. That is purely a matter of choice, whether they belong or not.

Q. Can you name any one individual who was at that meeting who was not a member of the Loyalty League?

A. No, Mr. Langsdale. If I might refresh my memory later—

Q. I am asking you if you can now. If you can't, then you can refresh your memory. Can you tell me now?

A. I can't tell you now.

Q. Was Mrs. Reeves there?

A. I don't remember seeing Mrs. Reeves.

Q. Was Mrs. Hyde there?

A. I doubt that. I don't remember that she was.

Q. Was Mr. Batty there?

A. I don't remember seeing Mr. Batty.

Q. Was Mr. Green there?

A. I don't remember seeing him.

Q. Was any executive there, anyone you would call an executive?

[fol. 660] A. I don't believe I saw a single executive there.

Q. Was there any reason why no executive was there?

A. Not that I know of. Mrs. Reed was there.

* * * * * *

Q. What was the purpose of calling the meeting on March 18?

A. Because the employees were becoming quite distressed about the threats that were being made against us, and because of the picketing, and so forth, primarily, at Twenty-sixth and Grand, the threats having been made that what they did up there was just a sample—after they organized these small places they were going to organize [fol. 661] us, and what they did up there was nothing to what they would do to us.

That was the primary reason that was called. And we were interested in knowing if Mrs. Reed was going to do anything to protect us. That was the primary reason for getting her down there at that meeting.

Q. I believe you stated when you were on your way to the meeting you saw Mrs. Reed come in.

A. That is correct.

Q. She wasn't at the plant, then, when the meeting was called? A. When it was called?

Q. Yes.

A. I don't know. I don't think she was, no.

Q. Then, how did you expect to find out from her when you called the meeting what she was going to do to protect you?

A. Maybe I didn't explain it correctly, or maybe you misinterpreted it. I believe I said I hoped we would be able to get an expression from her.

Q. Did you first ascertain whether she was at the plant before you called the meeting?

A. No. I think I saw Mrs. Reed as I came down on the elevator, or in the hall, when I came down to the meeting.

Q. On your way to the meeting? A. Yes.

[fol. 662] Q. You called the meeting to get an expression from Mrs. Reed as to whether or not she was going to do anything to protect your union, not knowing whether she was in the plant and available?

. . . . . .

A. I am somewhat using Mrs. Reed's name as meaning the head of the company. We would have asked anybody, but seeing her, we asked her. But, also, we were interested in discussing what different things might mean to us, and all of this disturbance that was going on around town. It was a get-together of the employees.

Mr. Langsdale: Now, Miss Todd, you did say one purpose of calling the meeting was to find out what Mrs. Reed was going to do to protect you from all of this [fol. 663] rumored violence, is that right?

A. It is only partially correct.

Trial Examiner Batten: Is that much of it correct, Miss Todd? The question is, did you say that?

A. I said that, but I wasn't confirming my meaning to Mrs. Reed personally.

By Mr. Langsdale:

Q. When you got to the meeting you took charge, didn't you?

A. I did, I did.

Q. Did you call for a secretary?

A. I don't remember, Mr. Langsdale.

Q. Did you call a stenographer?

A. I don't remember whether there was a stenographer at that meeting or not.

. . . . . .

[fol. 664] Q. Give us your best judgment of the time the meeting started.

A. I don't believe I could, other than that, Mr. Langsdale.

Q. You could say whether it was 2, 2:30, 3, 3:30, 4 or 4:30 couldn't you?

A. No. My best memory is, it was late in the afternoon, but as to the definite time I can't give it to you.

Q. It was before the plant shut down, was it not?

A. I don't remember.

Q. Wasn't the power shut off for the purpose of having this meeting?

A. I don't remember that.

Q. Did the employees return to their machines after the meeting?

A. I don't remember that.

Q. Did you take it upon yourself to call a meeting while the plant was in full operation? Had the power been shut down without consulting any of the management?

A. I don't remember that I took the responsibility for calling that meeting.

Q. Was the management consulted about calling that meeting? A. I don't know.

. . . . . .

[fol. 666] Q. Well, was anything done at all, any business transacted or anything brought up before the meeting before Mrs. Reed got there?

A. No doubt there was, Mr. Langsdale, but at the time, I don't remember. I don't remember.

Q. Why do you say "no doubt there was"?

A. Well, I just assume the meeting must have been opened, or something.

. . . . . .

[fol. 668] Q. Well, did anyone suggest to you that you act as chairman?

A. They must have.

Q. Well, did they? Tell me.

A. I don't remember who did.

Q. You don't remember anyone who suggested that you take the chair? A. No, I do not.

Q. All right, now. The only thing you recall that happened before Mrs. Reed got to the meeting was that you did take the chair and you opened the meeting; did you? A. Yes, sir.

Q. You remember with what statement you opened the meeting? A. No, I do not.

Q. Did you tell them why the meeting was called?

A. I don't recall what I said at that meeting.

Q. Now, at that time did you know that Mrs. Reed had received a letter from the International Ladies' Garment Workers' Union? A. I did not.

* * * * * *

[fol. 670] Q. Was any rent paid down for the second floor that afternoon? A. I do not know.

Q. Now, that is the same floor that you used on the 27th of April, when you formed your union; isn't it?

A. Yes, sir.

Q. When Mrs. Reed got there, she immediately started to talk, did she?

A. I believe she did. I believe, I remember, I have stated previously that I asked one of the boys to get her.

[fol. 671] Q. Yes.

A. Asked her if she would come down and I believe I must have said "Mrs. Reed is here and we will ask her to talk to us."

Q. Well, did she start talking to you right away?

A. I don't remember that.

Q. Did anyone else talk before she did that you know of? A. I don't recall.

Q. All right. Now, how long did she talk?

A. She just talked a few minutes.

Q. Well, can you state whether it was five, ten, fifteen or twenty?

A. I think it couldn't have been more than between five and ten minutes.

Q. And when she got through—

A. (Interrupting) According to the comments she made.

Q. When she got through, did you adjourn the meeting?

A. I believe so.

Q. So the only business transacted at that meeting, so far you can recall, was the speech of Mrs. Reed?

A. That seems to be the only thing I remember.

Q. Now,—

A. (Interrupting) In detail.

Q. It was at this meeting that Mrs. Reed read the letter of March 9th which she had received from the Inter-

[fol. 672] national Ladies' Garment Workers' Union, was it?

A. That is that meeting where the letter was read.

Q. Do you know that she said she was not going to reply to it? A. No, I don't remember that.

Q. You say she didn't say that?

A. I didn't say. I said I don't remember.

Q. Do you remember that it was at that meeting that she said she wasn't going to permit any Dubinsky or any other "sky" to tell her how to run her business?

A. That is not what she said, Mr. Langsdale.

Q. What did she say that is similar to that?

A. She said she was not going to [—] any Dubinsky or any "butinsky" force her to do something that would force her employees to do something they did not want to do.

Q. Now, did she say what that was she didn't want them to force her employees to do?

A. I don't know that she said that, but we knew what she was talking about.

Q. Well, what did you understand her to mean?

A. I understood her to mean that she was not going to be forced into any labor organization that would force us to join against our own desires.

Q. Now, did she say at that meeting that there was not going to be any union in the Donnelly Garment Workers' Plant?

[fol. 673] A. She did not.

Q. You don't remember that?

A. She did not say that.

Q. You say positively she didn't say it?

A. I surely do.

Q. What else did she have to say about this one letter?

A. I don't remember any other details or comments about that letter.

[fol. 674] Q. Was that the first time you had seen Mrs. Reed, if you remember, on that day, March 18, 1937; I mean, the time that you saw her coming in while you were on your way to the meeting?

A. That I had seen her?

Q. Yes.

A. I might have seen her coming or going from work, I don't know.

Q. Had you talked to her? A. I had not.

Q. Had any of the employees, to your knowledge, talked to her?

A. I don't know that any of them had talked to Mrs. Read.

Q. Do you know of any group of employees talking to Mrs. Reed on that day?

A. No. I was of the impression that day that that was the first I had known of her being in the building. If she had been in previous to that time I didn't know it.

* * * * * *

Q. Let me ask you if you have read or heard read an [fol. 675] affidavit filed in that suit, signed by Nell Quinlan Reed, dated November 5, 1937, in which she stated, "In the first place, a group of employees—

Mr. Lane (interrupting): Just a moment. I am objecting, of course, to his reading the affidavit made in that trial as not being proper cross-examination of this witness and an improper way of trying to get that into this record.

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Mr. Langsdale: Have you heard this part of Mrs. Reed's [fol. 676] affidavit read:—

Mr. Lane (interrupting): Just a minute. The witness' testimony, as I understand it, is she has not read or heard read any portion of that affidavit.

Trial Examiner Batten: Mr. Lane, there is no objection to asking her if she has? You don't mean this has anything to do with the evidence, because an attorney reads it in here? I suppose if you got up and read this whole case in here, line by line, then when you got through you asked the witness if she had ever heard it read before—It doesn't mean anything when the attorney reads it.

Mr. Lane: I object to it.

Trial Examiner Batten: You may proceed.

Mr. Langsdale: Let me ask you if you heard read in that lawsuit this part of Mrs. Reed's affidavit: "In the first place, a group of employees on or about March 18, 1937, came to my office and told me that all of the employees were going to meet and discuss ways and means to protect themselves against any assaults or acts of violence on

the part of the International Ladies' Garment Workers' Union."

A. I did not know that.

* * * * * *

[fol. 677] Q. Did Mrs. Reed state at that meeting that the Donnelly Loyalty League was all the union the employees needed?

A. I don't remember that.

Q. Would you say she didn't say it?

A. I said, I don't remember that she said it. I don't remember hearing it.

Q. Did Mrs. Reed say at that meeting if any employees knew of any of her employees belonging to the I. L. G. W. U. she wanted that reported to her?

A. I don't remember hearing Mrs. Reed make a statement like that.

Q. Would you say she didn't make it?

A. I said I never heard a statement like that made by Mrs. Reed.

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[fol. 678] Q. Did she say that she was going to make [fol. 679] plans which would prevent the unionization of her shop?

A. I don't remember that.

Q. Did she say she had called you all together to say, "If we would stand by her she would stand by us?"

A. I don't remember a statement like that.

Q. Would you say she didn't say it?

A. I said I don't remember a statement like that.

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[fol. 680] By Mr. Langsdale:

Q. When you first came back to this plant in 1933, my recollection is not clear as to what you said you started to do.

A. My memory is that I was a thread girl in one of the sections over at the building at 26th and Walnut.

Q. Now, when was that?

A. It was,—I don't remember the date, Mr. Langsdale. It was in 1933, in the summer.

Q. In the summertime?

[fol. 681] A. Yes, sir. The weather was still hot.

Q. And how long did you remain there?

A. I don't know.

* * * * * * *

Q. Did you attend a meeting of the International Ladies' Garment Workers' Union held at the Musicians Hall on Washington Street, in 1934?

A. I attended one meeting over there, and I don't remember the date.

Q. And who went with you? A. I went by myself.

Q. Were you instructed to go by anybody?

A. No, sir.

Q. Now, how did you happen to go?

A. Curiosity, interest.

Q. Did you have any notion whatever that you might join that union?

[fol. 682] A. Well, it was possible, if it was the kind of an organization I thought was worth while.

* * * * * * *

[fol. 683] Q. Well, would your say about August, 1933, you went back up to the main plant?

A. I don't remember.

Q. What duties did you assume when you went back up there?

A. I don't remember that. I have just done—at that time, I was taken back with the understanding that I would fill in any place they could find work for me to do, and I couldn't begin to tell you.

Q. And was it at that time you commenced to have a position that sent you all over the plant?

A. I think it was. Most of the work I have done in the years I have been at the Donnelly Garment Company has been work that has done that, always.

Q. Now, as a thread girl, as thread girl, you would be confined to one section; wouldn't you?

A. Not necessarily.

Q. Well, when—

A. (Interrupting) You might have to go to one de-

[fol. 684] partment to get thread or might be looking for something you needed to go with some work in your de-

partment. You might have to go to the notion department. You might be sent on errands any place in the plant.

Q. Well, the general duties of a thread girl are in connection with one section. Is that true?

A. To a certain extent.

Q. Yes. Now, then, when you went back up to 1828 Walnut, you got a position that caused you to go all over the plant, from one floor to the other?

A. I just stated, Mr. Langsdale, that I believe most of the work I have had since I have been at the Donnelly Garment Company—

Q. (Interrupting) Now, just answer the question.

A. I can't answer the question.

Q. Did you, when you went back—

A. (Interrupting) I don't remember when I first went back.

Q. Did you take a position that confined you to any particular location in the plant?

A. I don't remember what I did when I went back over there. It wasn't a position. It was merely a job.

Q. Well, you can call it a job or a position, but what were the duties of it?

A. I don't remember what it was, to be very truthful.

Q. You don't remember when you were elected Presi-
[fol. 685] dent of the Donnelly Loyalty League?

A. Yes, I do.

Q. What date?

A. Sometime in February, 1937.

Q. That League was organized in February, 1937, was it not?

A. I believe it was organized in the early part of 1935.

Q. '35. You are right about that, but in February, 1937, you became president? A. Yes, sir.

Q. Did you have any office in it prior to that time, the Loyalty League?

A. It seems to me that one time I was one of the representatives. I don't remember about that.

Q. Well, representative from what department?

A. Until you mentioned it that minute I hadn't thought of it, it was so many years. I couldn't tell you.

Q. You don't know what department you were a representative from?

A. No, sir, I don't. I had forgotten all about it.

Q. But on April 23d you were President of the Loyalty League? A. Yes, sir.

Q. And that is the day that Fern Sigler and Sylvia Hull were sent home. Is that correct?

A. I didn't know they were sent home.

Q. Well, at any rate, they left the employment of the [fol. 686] Donnelly Garment Company that day?

A. They left that day.

* * * * * *

[fol. 687] By Mr. Langsdale:

Q. Well, did you get hold of Mr. Batty and go down to where Fern Sigler was? A. Yes, sir.

Q. And she was told to go to the office?

A. Yes, sir, she was asked to come to the office.

Q. And you and Mr. Batty went up to the office?

A. Yes, sir.

Q. Now, again, at that time you were the President of the Loyalty League? A. Yes, sir.

* * * * * *

[fol. 688] Trial Examiner Batten, (interrupting) Yes, in what capacity did you call Mr. Batty to go down to see Mrs. —what is her name?

A. Fern Sigler. No, no capacity especially; just as an employee.

By Mr. Langsdale:

Q. It was just a "happen so" was it?

A. Yes, sir.

Q. Just like it was a "happen-so" that you took charge of the meeting on March 18th?

A. It was the same kind—

* * * * * *

By Mr. Langsdale:

Q. Well, was it spontaneous or spontaneity that caused [fol. 689] you to call Mr. Batty?

A. I think it was.

Q. You think it was? A. I think it was.

Q. Did anyone suggest it to you at all?

A. I don't know that they did.

Q. And was it spontaneity that caused you to take—to say what you said when you got up to the office?

A. I think that was interest and curiosity, needless conversation, probably.

Q. Well, it was not in your capacity as president of the Loyalty League? A. No, sir.

Q. Nor can you tell us in what capacity it was that you went up there?

A. I think I stated yesterday, Mr. Langsdale, and I feel the same about it today, there was no capacity to it.

Q. You just—

A. (Interrupting) It was something I did and just as well not done, I presume.

Q. Something rather spontaneous?

A. If that is the word you want to apply to it.

Q. This has been offered as an exhibit, has it not?

Trial Examiner Batten: That is Exhibit 5, is it not? Is that that transcript?

[fol. 690] Mr. Langsdale: Yes, sir.

By Mr. Langsdale:

Q. Miss Todd, I am reading from Exhibit 5, which purports to be a stenographic transcript of what occurred in the office. After you and Mr. Batty and Mr. Sigler got up there, this transcript shows that you said to Miss Sigler—that you opened the conversation; that is true?

A. I don't remember. I don't know whether—I don't think I read that the other day.

Q. Well, you have read it, haven't you?

A. No, I haven't. What I saw of it the other day is the only time I ever seen it.

Q. Well, is it correct that you opened the conversation?

A. If that is stated so there.

Q. It says you say "I hardly know what to say. It is all right for you to work. I don't know what you can do with that many girls that feel that way." Now, what did you mean when you said it was all right for Fern Sigler to work?

A. As I look back at it, and hear you read it there, all I would have meant was that—

Q. (Interrupting) Well, what did you mean?

A. Will you read that again, please, Mr. Langsdale?

Q. You are speaking to Fern Sigler: "I hardly know what to say. It is all right for you to work, but I don't

know what you can do with that many girls that feel that way."

A. Well, that was a very terse time, Mr. Langsdale. [fol. 691] There had been an article in the morning paper that Sylvia Hull was representing us at the International, and then she had a union pin on and there were so many girls around here that didn't feel the way she did about it, that I just felt like it was rather difficult to expect that nobody was going to make any comment about it.

. . . . . .

[fol. 693] By Mr. Langsdale:

Q. Did you have any right to tell her she could or could not work?

A. None whatever.

Q. Then, you asked her, "How long have you belonged to the Union?" And her answer was, "A couple of wee."

Did you have any right to ask her how long she had belonged to the union?

A. No, I didn't have any right to, but it was just a question that you would be interested in knowing.

[fol. 694] Q. Just as any of the other 1,300 employees would have been?

A. I think any one of them would have said the same thing to her.

Q. You were not asking her as president of the Donnelly Loyalty League?

A. It didn't make any difference to me.

Q. Were you asking her as president of the Donnelly Loyalty League? A. No, sir.

Q. Then, you asked her, "I wish you would tell me why you feel the way you do." Why did you ask her that question?

A. I think all of this was just a varied conversation. I don't know why I asked her. I think that is just a natural reaction, that you would ask a person a question like that.

Q. But you had this girl up in the office with Mr. Batty?

A. I didn't have her in the office.

Q. You were there with her? A. Yes, sir.

Q. And there was a stenographer there taking down what she said? A. Yes, sir.

Q. You were examining her?

A. I wasn't examining her.

Q. I think the transcript will show you were.

* * * * * * *

[fol. 696-697] Mr. Stottle: Mr. Examiner, respondent objects to this whole line of testimony on this exhibit for the reason that Mr. Leary went through the same exhibit and asked the same questions, and it is repetition, for one thing; and, for another thing, the transcript speaks for itself. As to why she said a certain thing or didn't say it is immaterial to any issue in the case. I believe the Examiner in his own statements made some such remark as that when this was gone into before.

Trial Examiner Batten: What have you to say as to that, Mr. Langsdale?

Mr. Langsdale: As to what part of it, Mr. Examiner?

Trial Examiner Batten: I presume you are referring to the entire line of questioning, are you not?

Mr. Stottle: As to this exhibit, yes.

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[fol. 698] Trial Examiner Batten: I am going to sustain the objection unless you take the position that you are an entirely independent and separate party to this action, Mr. Langsdale. If you are, then I will permit you to proceed as an entirely separate and independent party.

Mr. Langsdale: I have taken that position, and I take it now.

Mr. Stottle: Mr. Examiner, we object to his being accorded the right to take that position.

Trial Examiner Batten: I am not according it. The rules so provide. The International Ladies' Garment

Workers' Union is mentioned in this complaint. And if that is Mr. Langsdale's position, he may proceed as a separate and independent party and assume the responsibility for the conduct of his case independent of the Board's attorneys.

[fol. 700] Mr. Ingraham: If the Examiner please, if Mr. Langsdale is representing a separate party he should also apprise all other parties of the position he takes, and all other parties should have pleadings setting forth his position.

Trial Examiner Batten: I am not going to complicate this question I have raised by the matter of pleadings. I will permit you to raise it when I get my point settled.

[fol. 703] Mr. Bane: We do not agree with Your Honor's position. Our position is, if the Examiner please, this witness is produced by the Board, and that the I. L. G. W. U., by rule 5 is party a party to the proceeding, the complaint being filed in the name of the Board, and that in attempting to cross-examine this witness Mr. Langsdale is in effect attempting to cross-examine his own witness.

There is not anything in rule 25 which gives the Board or Mr. Langsdale the right to cross-examine his own witness.

[fol. 730] Mr. Langsdale: Now, Miss Todd, further down in this transcript of the happenings when Fern Sigler was in the office is the following statement made by you:

"Of course, we have had union people working here for years. I have been here most of the last twelve years and there has always been union people here. We don't care. We have hired union people."

For whom were you speaking when you used the word "we" in those three instances.

[fol. 731] A. I was just thinking of the employees, the group, the organization as a whole, Mr. Langsdale.

Q. But you stated you were not representing the Loyalty League in that meeting? A. No, sir.

Q. Were you representing any organization at all?

A. No, sir.

Q. Just yourself? A. Yes, sir.

Q. When you said, "We have hired union people," about whom were you talking?

A. I don't know that I had anything definite in mind at that time, Mr. Langsdale, but when you have worked in an organization so long you just say "we" without giving any thought to it. I would say "we" about the Donnelly Garment Company or about a group of employees. It is just a word you use and don't give it a great deal of thought. It doesn't have a definite meaning.

Q. Farther on you stated, "I talked to some of the girls yesterday afternoon and tried to get them to see it is all right if you want to work and belong to the union."

In what capacity did you talk to those girls that afternoon?

A. Not any, Mr. Langsdale. As I remember, some of the girls had talked to me—they were disturbed and didn't [fol. 732] like the happenings that had been going on, and would naturaliy—

Q. (Interrupting) Just a moment. I asked you the simple question, in what capacity were you talking?

A. Just as an employee, just as one of them.

Q. Not for the Loyalty League? A. No, sir.

Q. Nor for any group?

A. No, sir, not other than as one of the employees.

Q. Then you said: "However, they felt so keenly about it we don't think we can do anything about it."

Did you mean just yourself then?

A. I meant the employees.

Q. Were you representing the employees?

A. No, I wasn't. I don't know. Maybe I didn't explain the use of the word "we" very clearly. I wasn't speaking for anybody. I was just using "we" without any particular thought about it.

Q. Farther on you asked Fern Sigler:

"What do you think you have gained that we haven't by joining the union?"

In what capacity were you asking her that question?

A. None whatever, just a personal question.
Q. And Fern Sigler said, "Shorter working hours."

And you say, "You have been able to work most any hours you wanted to. Nobody forced you to work on Saturday."

[fol. 733] Were you just talking for yourself there, or were you talking for the management?

A. Speaking for myself.
Q. Farther on you say to Miss Sigler:

"Nobody is going to do any violence against you. If you want to go home, all right."

In what capacity were you telling her it was all right for her to go home?

A. I didn't have any right to tell her at all.
Q. You did do it?
A. Yes, sir.
Q. Do you know why?
A. No, sir. I wasn't doing it—

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[fol. 737] Mr. Langsdale: Now, Miss Todd, after further consideration of this transcript and after my examination, is your memory refreshed upon the fact that you were not at that hearing as president of the Loyalty League?

Mr. Stottle: Mr. Examiner, that is the same question that you just sustained an objection to,—it is, in substance.

Trial Examiner Batten: I think she may answer the question as to whether or not since that time she has given

any further thought to it. Is that in substance your question?

Mr. Langsdale: Yes, sir.

A. I have thought about it, Mr. Langsdale, but it was still something done on the impulse of the moment. No serious thought had been given to anything that was said there.

By Mr. Langsdale:

Q. Your answer is still that you were not there representing the Loyalty League? A. Yes, sir.

Q. In this transcript, in your talk with Miss Sigler, you say: "I used to have a desk upstairs." What did you mean by that?

A. Is there any more to that, Mr. Langsdale?

Q. Yes. I will read that which both precedes and follows it. "I have no authority. There isn't anybody who has worked around this place and in as many different places as I have. I used to have a desk upstairs. I was gone a couple of years and took what they had to give me when I came back."

[fol. 738] Now, does that call your attention—

A. (Interrupting) Is that all of it, please?

Q. No.

A. I would like to hear the rest.

Q. (Reading): "Nobody has done more different kinds of work than I have. Many times I didn't know where I was going to work."

Now, is that enough of it for you to understand, now?

A. I think so.

Q. What you meant when you said you used to have a desk upstairs?

A. Well, I must have been referring to a desk where I worked when I worked on instructions.

Q. Well, did you mean by that that you used to have a place of authority as an executive at your desk upstairs?

A. No, Mr. Langsdale. I have never had any authority in all the years I worked at the Donnelly Garment Company.

Q. Well, when you did have that desk upstairs, you were fixing time, piece prices, weren't you?

A. I was setting piece prices but I wasn't the last word in what they were going to be.

Q. Well, you were setting piece prices at the time you had the desk upstairs that you referred to?

A. Yes, sir, but they were passed upon by somebody else after I finished with them.

[fol. 739] Q. Further on, you say "My advice to you is, if you feel that strongly about the union, and have enough people to back you up to be a union shop—"

A. (Interrupting) I didn't understand just the last of that, just before "union shop."

Trial Examiner Batten: Is that in the same statement, Mr. Langsdale?

Mr. Langsdale: Yes, sir.

Mr. Shepard: At the top of page 7.

A. To be in that, is what I didn't understand.

By Mr. Langsdale:

Q. What did you mean by that?

A. I believe that says "If you feel that way and you have enough people to back you up to be in a union shop" —well, if you had enough people to back you up you would have a union shop.

Q. Did you mean for her to do that at the Donnelly Garment Company, or get out and go to some other union shop?

A. I don't think I gave it a great deal of thought as to what I meant about it.

Q. Then you followed that with the statement "I wouldn't any more think that I could join a union and get by with it than the man in the moon. I would expect to be put out in the street and left there."

You made that statement?

A. If it says it, I did.

* * * * * *

[fol. 741] The Witness: I said—may I make an explanation of it?

Trial Examiner Batten: Yes, if you have anything further to say, Miss Todd, you may say it.

The Witness: Well, the feeling that I had was, the girls were incensed about it. I didn't mean that anybody would throw me out in the street, literally, but I would feel, with a plant as disturbed as they were by happenings caused by the I. L. G. W. U., I would feel with the majority of them against me, I would sort of hesitate to say that I belonged to an organization of that kind. I don't think I could blame them for not liking it.

Mr. Langsdale: And the next few lines, you say—well, that is the same answer she gave you.

A couple of lines farther down, you say "We went downstairs and sent those girls back to work and they went back to work." Who did you mean by—when you say "We went downstairs and sent those girls back to work"?

A. I haven't any idea, Mr. Langsdale. I don't think—

Trial Examiner Batten: (Interrupting): Mr. Langsdale, it seems to me that came within the ruling I made a while ago, when I said the use of this word "we" I think has been sufficiently gone into.

Mr. Langsdale: Well, I mean, I am not asking it in [fol. 742] exactly the same sense, if the Examiner please. What I want to know is, did you send the girls back to work?

A. I have made a statement about that before. I don't remember the words I used, but I didn't send the girls back to work.

By Mr. Langsdale:

Q. So when you said "We sent them back to work," you were inaccurate, at least?

A. Absolutely. I don't even recall that I was down there.

Q. And the last statement you make in that transcript is this sentence: "We're going to run an open shop as long as the majority feels that way."

You made that statement?

A. That is what that transcript says.

Q. Well, do you say you didn't?

A. I don't say I didn't, but I say I don't know why I made it. It was just another remark, made on the impulse of the moment.

By Trial Examiner Batten:

Q. Miss Todd, as far as any of these statements in any of these transcript that are attributed to you, this is correct, a correct transcript, is it not, of that meeting?

A. As far as I know, Mr. Batten. I have never seen it until I was here that day, and it has been a long time, and something quite impulsive done, but I think generally speaking it is correct.

. . . . . .

[fol. 743] Q. Now, despite the fact that you said on the 23d day of April that "We're going to run an open shop", you presided at a meeting four days later where the Donnelly Garment Workers' Union was formed?

Mr. Lane: Mr. Examiner, I object to that for the reason the question omits certain important additions made in the statement as shown by the transcript. The full statement attributed to Miss Todd being "We're going to run an open shop as long as the majority feels that way. The majority is going to rule, as always."

Mr. Langsdale: Well, now, I object to his incorporating anything in my question. I have a right to take such parts of the statement as I desire to examine her about and not use her self-serving—

Trial Examiner Batten (Interrupting): Read the question, please.

[fol. 744] (Whereupon, the question was read by the reporter.)

Trial Examiner Batten: You may answer.

A. Yes, sir.

By Mr. Langsdale:

Q. And on the 27th day of May, you and other officers of the Donnelly Garment Workers' Union entered into a working agreement with the Donnelly Garment Company in which you provided for a closed shop.

A. Yes, sir, but in the meantime, Mr. Langsdale, the happenings of April 22d paper in the evening, and the morning of the 23d of April, 1937, were the things that very definitely made us decide it was time to protect our own rights in the manner we chose to do.

Q. But those things had happened when you stated on the 23d that "We're going to run an open shop", hadn't they? A. Also, the happenings—

Q. (Interrupting) Had they or had they not

A. Yes, sir, but, also, Sylvia Hull had announced in the newspaper she had been chosen—

Trial Examiner Batten (Interrupting): Now, I have no objection, Miss Todd, to your explaining your answer. I do think that it would be better if you would answer the question and the cross-examination by—

The Witness (Interrupting): I am sorry. I thought I had.

Trial Examiner Batten (Continuing):—by the attorney [fol. 745] for the intervener. They may ask you such further questions as—

The Witness (Interrupting): I am sorry. There is such a definite explanation of that, I couldn't resist making it.

By Mr. Langsdale:

Q. In reply to one of Mr. Leary's questions I believe you stated that there was nothing of any importance in the working agreement as presented by you and your committee to Mrs. Reed changed at Mrs. Reed's sugges-

tion or at the suggestion of anyone representing the management.

A. Did I say "nothing of importance"?

Q. Yes. Didn't you?

A. Well, I don't know. I can't imagine saying "nothing of any importance" when I know how important that agreement is to us.

[fol. 745] Q. No, I don't believe you understood me.

Trial Examiner Batten: Mr. Langsdale, I think you are referring to the fact, are you not, that you testified, as I recall, that there was no substantial change.

Mr. Langsdale: Yes, I used the words "not of any importance."

By Mr. Langsdale:

Q. Did you understand the question, Miss Todd? You remember in answer to Mr. Leary's questions you stated that you and your committee had presented a working agreement drawn up by you and Mr. Tyler to Mrs. Reed, which she took and kept for a few hours, and brought back [fol. 746] with certain suggested changes; is that correct?

A. Yes, sir.

Q. And that none of those suggested changes—

A. (Interrupting) I didn't say Mr. Tyler and I drew up that agreement, I believe, Mr. Langsdale.

Q. I didn't get that.

A. I don't think I said Mr. Tyler and I drew up that agreement.

Q. Whoever did, you and Mr. Tyler and the rest of your committee, is that the answer you wish?

A. Yes, sir.

Q. At any rate, whoever drew it up and presented it to Mrs. Reed, and she brought it back with no changes of any importance in your mind?

A. I think, Mr. Langsdale, I said I couldn't remember at that time. I do remember since what they were. I didn't remember that morning.

Q. Well, did you know at the time that you submitted this working agreement to Mrs. Reed, that you had placed no limitation upon your right to choose your representa-

tives, and that she did place a limitation upon your right to choose your representatives at the time it got back to you?

A. I can't answer that question without referring to this agreement, Mr. Batten.

Q. Well, I will—I have in mind particularly,—I have [fol. 747] in mind particularly paragraph 4 of the agreement, which reads "The employer recognizes the election of a committee of the union to represent it, provided members of such committee shall have been continuously employed by the employer for a period of at least a year preceding election of such committee."

Now, that was not in the agreement when you submitted it to Mrs. Reed, was it?

A. I think it was; might not have been worded that way, Mr. Langsdale. We had a provision in there that we wanted them that were going to represent us to be people that had been there long enough to know the employees and to know our problems. The wording "The employer recognizes the election", I don't know whether that changed any or not.

Q. Don't you know it was changed by Mr. Reed before she would sign it?

A. Well, Mrs. Reed didn't have anything to do with that clause other than to agree with it. That is a thing that we very definitely wanted in that agreement.

* * * * * * *

[fol. 748] Q. Then why did you submit to a change in your working agreement by Mrs. Reed in which she places a limitation upon that right by saying that those representatives must have been employed at least one year?

* * * * * * *

[fol. 749] Mr. Patten: She had just said a few minutes before that Mrs. Reed did not make the change. His question assumed that Mrs. Reed had made the change, and she submitted to it.

Trial Examiner Batten: I can't help what the question assumes. I don't think the question implies that Mrs. Reed wrote it. The question is, why did she submit:

Mr. Stottle: To a change made by Mrs. Reed.

Trial Examiner Batten: Was that the intent of your question?

Mr. Langsdale: No, I—the intent of the question—

Trial Examiner Batten (Interrupting): I don't think it was.

Mr. Langsdale: Was to find out why she submitted to that clause in that contract, regardless of who placed it there.

Trial Examiner Batten: With that clarification, you may answer. In other words, why did you agree to the contract, with that clause in it?

The Witness: Well, we think we are being smart to have people on our committee, Mr. Batten, that have been there long enough to understand our problems; not somebody that might come in on a week's notice and not know the conditions that we are concerned with. I think we are smart to have that clause in there.

. . . . . .

[fol. 751] Q. Let me ask you if the minutes of your meeting of the group chairmen for May 27, 1937, refreshes your memory with reference to that particular point?

A. May I have the minutes, please?

Trial Examiner. What date was that?

[fol. 752] Mr. Langsdale: May 27, 1937. It is marked 9:15.

(Mr. Lane hands minutes book to the witness.)

The Witness: Do you want me to refer to this—

By Mr. Langsdale:

Q. Now that you have been permitted to refer to that, I want to ask you a question about it. I want to ask you if this really occurred at that meeting. This was a meeting of your group chairmen after the contract had been in the hands of Mrs. Reed and her attorneys for some hours, was it not?

A. Yes, sir, if you are talking about the second meeting of the day.

Q. Yes. And in that Mr. Tyler said, "In this agreement we find it necessary in defining employees not to include executives. Also, we have added to this agreement, to become a member of this committee you must be employed here for at least a year. This is to eliminate the possibility of someone getting on this committee who is not a true representative of the employees and who is working here merely to act as a traitor to the company."

Does that refresh your memory as to whether or not that provision was in the contract when you submitted it to Mrs. Reed?

A. The way this was worked, Mr. Langsdale, it wasn't added until later in the day, but I didn't recall that it wasn't there. I know we had talked about it and considered it.

. . . . . .

[fol. 753] Q. Do you know why you submitted to that limitation upon the activities of the members of your committee?

[fol. 754] A. There is no limitation as to the activities of our committee, Mr. Langsdale.

Q. There is the limitation that none of them can spend any working hours for the union except the general chairman.

A. No, sir. If we felt that was necessary we would make provision for it.

Q. Nevertheless, that is the provision in the contract, isn't it?

Mr. Stottle: Mr. Examiner, the contract speaks for itself, whatever it may say, and we object to asking the witness to interpret something that is perfectly plain in whatever it says. If it wasn't plain I don't believe this witness would have the right to interpret a written contract.

. . . . . .

[fol. 758] Mr. Langsdale: Well, I want to be sure that I [fol. 759] understand the Examiner, and I am going to ask another question, which may be ruled upon.

Mr. Langsdale: Miss Todd, paragraph 11 of the working agreement entered into on May 27, 1937, is as follows:

"The employer agrees that the individual who may be chosen as general chairman of the union shall be entitled to spend the necessary time on the affairs of the union and to continue her employment with the company at the proportionate rate of pay hitherto received by the company in the time thereafter given to the company."

Will you tell me why you as a member of this contracting committee submitted to paragraph 11, placing a limitation upon the activities of the representatives of that union as paragraph 11 does limit them?

Trial Examiner Batten: You mean as it does or if it does?

Mr. Langsdale: As it does.

Mr. Patten: Mr. Examiner, intervener objects to the question, adopting for that purpose the objection heretofore made by Mr. Stottle, and sustained, and the objection made by Mr. Lane; and further—

. . . . . .

[fol. 760] We further object because the question assumes, as other questions have assumed, that this committee submitted to it. There is no evidence whatever that they submitted to anything. For that reason we ask that the question be excluded.

Trial Examiner Batten: Objection sustained.

Mr. Langsdale: The union makes an offer to prove that this witness, if permitted to answer the question, would testify she intentionally desired to limit the activities of the representatives of the union for the purpose of crippling that representation and, in addition to that, the further motive was developed by propaganda indulged in by the management of this company against union representation and the necessity therefor.

. . . . . .

Trial Examiner Batten: Of course, if this witness will answer as you have just said, I will permit you to ask the

question, because you have said if she is permitted to testify she would testify in a certain way. On the basis of [fol. 761] that you certainly can proceed.

Mr. Patten: If the Examiner please, I suggest that Mr. Langsdale agree to be bound by the witness' answer. Otherwise his offer is improper.

* * * * * *

Trial Examiner Batten: I would suggest that Mr. Langsdale proceed with his offer of proof.

Mr. Langsdale: Now then, will you say why you did submit to the limitation of paragraph 11 upon the activities of the representatives of the Donnelly Garment Workers' Union?

* * * * * *

A. There are no limitations on the committee of the Donnelly Garment Workers' Union.

[fol. 762] They all take an active interest. They all have time at noon or after work, the same as I have, and you will find continuously through these minutes where they have done a lot of work and taken an active interest in it. I couldn't dominate those people if I wanted to.

Mr. Langsdale: I move that the answer be stricken out as not responsive.

The question was, why did she submit to paragraph 11, which puts a limitation upon the activities of the members?

Mr. Stottle. Mr. Examiner, respondent objects in that the offer of proof is not being made, and asks that it be stricken.

Trial Examiner Batten: It may stand.

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[fol. 768] Mr. Langsdale: Now, the question is, why did you sign a contract with paragraph 4 in it?

* * * * * *

[fol. 769] A. We were very much interested that anybody would not be discharged because they belonged to the Donnelly Garment Workers' Union. We feel like we have asked for a lot of things in this contract, and that we couldn't entirely deny the employer the right to hire

people when he needs them, and when he didn't need them, because in the garment industry, you do have a seasonal business. Now, if we have people that have been laid off because they feel they were being—that they were not being treated fairly, we would call them back to work and discuss it with the employer as to why they were laid off, and why they shouldn't be brought back.

Q. Now, Miss Todd, under this provision, you permit the employer to discharge any employee whose services are unsatisfactory to the employer for any reason, which to the employer shall seem sufficient. Did you think there was anything left there to arbitrate?

A. As to the particular—

Mr. Patten (Interrupting): If the court please, this is purely argumentative. I don't think it furthers the pur- [fol. 770] pose of this hearing at all, and I object to it.

Trial Examiner Batten: Well, of course, the point is, Mr. Langsdale, as a matter of fact, an employer can discharge a person for any cause or no cause, can't they, as long as it is not for union activity?

Mr. Langsdale: That isn't true in what I consider a real, genuine labor contract, not any cause that may be sufficient to the employer.

Trial Examiner Batten: Well, I mean, as far as the law is concerned.

Mr. Langsdale: Well, when it comes to collective bargaining, I never saw a contract with this broad provision in it, and I have helped negotiate hundreds of them, that an employer can discharge an employee for any reason that may seem satisfactory to the employer. Why have union contracts? What possible benefit is it except maybe setting wages and hours, something of that sort.

Trial Examiner Batten: Well, of course, any contract, even this contract, the supplement and the later contracts, aren't those all matters, subjects of negotiation, collective bargaining?

Mr. Langsdale: If the Examiner please, it is my purpose to show that this contract doesn't take on any of the attributes for real, genuine, collective bargaining union.

Trial Examiner Batten: If that is the case, wouldn't the [fol. 771] supplement—the contract and the supplement speak for itself?

Mr. Langsdale: Now, in addition to that, I am asking this witness to tell me why she entered into such an obviously poor agreement for her people. She might say, of course,—I feel sure she isn't going to say it—at least, I have a right to prove she did it because she was representing the management and not the people.

Trial Examiner Batten: Well, of course, I have no objection to your proving that.

Mr. Langsdale: Why can't I prove it by her; at least, ask her the question?

Trial Examiner Batten: I will sustain the objection. I don't see it is material.

Mr. Langsdale: Well, does the Examiner get my theory in this line of questioning, that this contract is no protection at all, or isn't the result of real, genuine bargaining between the employer on the one hand and the employee on the other?

Trial Examiner Batten: Mr. Langsdale, I think the Examiner, as well as the Board, can determine what the status of this contract is, if the evidence is put into this record of leading, which Mr. Leary did, the negotiations leading up to it and what is embodied in the contract, and those matters are matters for consideration, and if all those matters are placed in the record, the Examiner and [fol. 772] the Board can consider the evidence and make such findings as are proper.

The Witness: May I add an explanation?

Trial Examiner Batten: I would suggest, Miss Todd, that—there is no question pending.

By Mr. Langsdale:

Q. Well, it is true, Miss Todd, is it not, that your prime purpose in assisting in the organization of the Donnelly Garment Workers' Union was to keep out the International Ladies' Garment Workers' Union? A. No, sir.

Q. That was not your prime purpose?

A. Mr. Langsdale, I feel that anybody has a right to belong to any labor organization they want to. It is very definitely shown that a large majority, in fact, a unanimous majority, as far as I know, of the employees of the Donnelly Garment Company wished to form their own union, and did so, but that still doesn't give them the privilege today, they can do as they please. If they want to join the International or anybody's union, they still have that right.

Q. But, of course, they can't do it under your closed shop agreement, can they?

A. I think there is a wording in our agreement where it says they shouldn't belong to any other union, but I still don't know that if they want to belong to it, how we know or what difference it would make.

Q. If anyone should join any other union than yours, [fol. 773] they could be immediately discharged, and would be, under your contract?

A. Wait until I find the wording of that, please.

Q. Well, don't you remember it? We have read it several times.

A. Well, I have read it several times, but I don't know just how it is worded. Pardon me a minute.

"Closed shop: the employer agrees on and after June 5, 1937, no one of its employees shall be retained in its employ who is not a member of this union. It is further agreed that hereafter no person shall be employed by the employer who does not at or prior to such employment sign an application for membership in this union, and no such person shall be returned as an employee who shall not within two weeks after such employment begins be accepted by the union as a member."

We do have a closed shop agreement, and we expect them to belong to our union. It says "It is further agreed no one shall be continued as an employee after such person shall have resigned from or ceased to belong to this union, either by voluntary retirement or by expulsion."

Q. Then, by Article 3 of your By-laws, you provide this—

A. (Interrupting) That is what I am wanting.

Q. "The union shall be opened to all employees of the Donnelly Garment Company, shall be an independent organization, not affiliated with any other labor union or [fol. 774] organization of labor union and members of it shall not be members of any other labor union."

A. That is worded—that is the way it is worded.

Q. So that no employee of the Donnelly Garment Workers' Union—strike that. No employee of the Donnelly Garment Company can continue as or in her employment after joining the International Ladies' Garment Workers' Union.

A. Well, we would expect, if they were interested in our union, and belonged to it—

Q. (Interrupting) Just answer the question.

A. They wouldn't—

Q. (Interrupting) Answer the question, Miss Todd.

A. I wouldn't have any control over an individual as to what union he belonged to.

Q. But under your by-laws, in your contract, no one can continue to work for the Donnelly Garment Company who joins the International Ladies' Garment Workers' Union; is that correct?

Mr. Stottle: Just a moment. Mr. Examiner, we object to this question for the reason, as we have several times, this just involves an interpretation of the by-laws and contract. If this witness gave an answer, your Honor wouldn't feel bound by it, if you thought the contract meant something else, and what is the materiality of having her answer something that wouldn't bind you and bind Mr. [fol. 775] Langsdale and not bind the respondent. It possibly might be binding on the intervener, I don't know that it would be, with a written contract made by the intervener.

Mr. Langsdale: The question is provoked by the long answer of this witness that anyone could join any organization anyone wanted to with the Donnelly Garment Company, and, of course, this is very plainly written that cannot be done.

Trial Examiner Batten: I think it isn't so much a question of interpretation of the contract. It is a ques-

tion of this witness on the basis of her volunteering a statement that anybody can join anything they please.

By Trial Examiner Batten:

Q. Now, the question, Miss Todd is this, or at least, my question: How can a person join any union they please under the restrictions in these contracts?

A. Well, any individual might join something because they were going to be employed here, join our organization, and want to belong to some other organization.

Q. Well, supposing you knew that several people had joined some other labor organization, and you have this restriction.

A. We have a closed shop agreement, and we would expect them not to be employed at the Donnelly Garment Company if they did not belong to our organization.

Q. Well, supposing they belonged to another one with this clause that you have here?

A. I think that would be taken up as an individual [fol. 776] thing, and under the terms of our contract, we don't have to keep them there.

By Mr. Langsdale:

Q. Under the terms of your contract, they would have to discharge them? A. That is correct.

Q. Now, Miss Todd, getting onto another subject: Mr. Leary asked you if you had received any raise in salary from the—just prior to the organization of this union, and I believe you said you didn't think so. Was that your answer?

A. I said I didn't remember the date, Mr. Langsdale.

Q. Well, can you give us the approximate date?

A. No. You asked me to find out about that.

Q. Well, to save time —

A. (Interrupting) I told you I could find out about it.

Q. We have here what purports to be a copy of the payroll, including your salary, showing that in February, 1937, you were receiving $54.17 every two weeks.

A. Yes, sir; I was.

Q. And in March, 1937, you got up at $65 every two weeks. A. That is 1937?

Q. Yes.

A. I thought it was 1936. 1937.

Q. Just the month before this union was organized, you got a raise, didn't you?

A. I didn't remember the date, Mr. Langsdale.

[fol. 777] Q. Well, does this refresh your memory?

A. Well, I would just have to take that as a fact. If that is a fact, that is it. I did receive that raise at the time a great many others did, however. I remember that distinctly.

Q. Now, you never were after that time, during 1937, or clear through 1938, docked one cent because of any time that you gave to the union?

. . . . . .

[fol. 778] A. I don't believe that I have. I have tried to take care of it, as I explained before.

Q. Now, you spent five and one-half weeks in the United States District Court recently, didn't you?

A. I explained that, to Mr. Leary.

. . . . . .

By Mr. Langsdale:

Q. Has there been any time since the formation of this union that you have not received your full salary check from the Donnelly Garment Company?

A. Yes, sir.

Q. When?

[fol. 779] A. During that time I was paid by the Donnelly Garment Workers' Union for all the time that I spent.

Q. And you were not paid by the Donnelly Garment Company? A. No, sir.

Q. Well, that was what I thought—

A. (Interrupting) That is all right, but I didn't make the explanation of it before.

Q. Were you paid anything by the Donnelly Garment Company during that five and a half weeks?

A. For the hours that I worked for them.

Q. Well, weren't you in court all the time?

A. No, sir. We only had, I believe—

. . . . . .

[fol. 780] Q. Without going to the records, can you tell us what your—the deduction was from your salary checks during that five and one-half weeks?

A. You mean in dollars and cents?

Q. Yes.

A. No, I couldn't. I can only tell yor this; that it was the hours that I spent, the union paid me in accordance with what the Donnelly Garment Company would have paid me.

* * * * * * *

[fol. 784] Q. Approximately after you entered into your working agreement contract you entered into what you called a wage and hour supplement agreement?

A. Yes, sir.

Q. And you entered into that on what date, if you know?

A. The 22d day of June it says, Mr. Langsdale.

Q. That has been marked Board's Exhibit No. 7. In that agreement you provide for wages and salaries for the various classes of employees of the Donnelly Garment Company? A. Yes, sir.

Q. The first group you provide for is marked group 1, operators. There you say "Operators who work a portion of the time on garments selling above $45 per dozen work the remainder of their time on garments selling at $45 per dozen and below, and who efficiently perform two or more different types of operations or operate efficiently two or more different types of machines, conforming to the quality standards set by the employer."

Who passed upon that classification, as to whether or not the employee did the work efficiently?

A. The daily performance of their work would show that, Mr. Langsdale.

Q. I know, but show it to whom and to whose satisfaction?

A. It would show it to the employer, and to the union also.

Q. But who passed upon who belonged to that classifi-
[fol. 785] cation, group 1 operators, performing their work efficiently?

A. Who passed on this, at this time?

Q. Yes, under this contract.

Mr. Stottle: If the Examiner please, respondent objects to the question as to who passed upon it. There is nothing to indicate the question has ever arisen as to whether the operator was efficient or otherwise.

Trial Examiner Batten: Of course Miss Todd is reading this. Apparently someone has to pass on it if the question arises. I think the witness should testify who. The statement is there, as Mr. Langsdale has read it—I haven't read it.

It seems to me that this witness should state that. That apparently is the sum and substance of the paragraph.

Mr. Stottle: How could the witness state who passed on something if it never has been passed upon?

Mr. Langsdale: Here is the contract that provides for the classification of employees on the basis of efficiency. Certainly I am entitled to know who says an employee is efficient or is not efficient.

Trial Examiner Batten: Mr. Langsdale, is that contained in all of these classifications, or many of them?

Mr. Langsdale: Not in all of them, but in most of them.

Trial Examiner Batten: Miss Todd, in those classifications, where it states, "who efficiently performs . . ." [fol. 786] who would determine that efficient performance?

Mr. Stottle: Mr. Examiner, I think we should make our objection to your own question, also—

Trial Examiner Batten: (Interrupting). You are perfectly free to.

Mr. Stottle—for the reason that you are asking the witness to interpret a provision of the contract which does not say who is to, and you are asking her to say who is to do something that is not provided for.

Trial Examiner Batten: That is why I cannot possibly determine it myself by reading the contract, it does not say who it is.

Mr. Stottle: There are lots of things that contract has not mentioned; that is one of them. If it isn't stated in the contract it is not a part of the contract.

Trial Examiner Batten: As far as the Examiner is concerned, I would like to know what this witness, who was a party to the contract, representing this organization, says as to who performs efficiently.

By Trial Examiner Batten:

Q. Who determines that?

A. The operator herself would help determine that.

Q. Who else would help?

A. Any member of the committee has that information available to her if she wants to get into it. I know what those girls do. The performance of their work shows you that.

[fol. 787] By Mr. Langsdale:

Q. Miss Todd, that is not the question. The question is, whose final duty is it to classify these employees as to efficiency? Who says Jane Smith belongs to group 1 because of efficiency, or that she does not belong to that group?

A. Jane Smith's work would speak for itself.

Q. That is your answer?

A. Yes, sir, with my explanation.

Trial Examiner Batten: Your objection is overruled. I didn't say so, but by the following question I asked I supposed it was understood.

Mr. Stottle: Mr. Examiner, may respondent have a continuing objection to this kind of questioning as asks for an interpretation of provisions of the contract?

Trial Examiner Batten: I prefer that you not have it, because I don't know that I am going to make the same ruling on all of the questions that may be asked. I would prefer you make your objections, Mr. Stottle, as the questions are asked; that is, on this matter.

[fol. 789] By Mr. Langsdale:

Q. You have here "group 1 operators, which includes operators who work a portion of the time on garments selling above $45 per dozen and worth the remainder of their time on garments selling at $45 per dozen and below, and who efficiently perform two or more different types of operators or operate efficiently two or more different types of machines, conforming to the quality standards set by the employer."

In this contract you don't say who shall pass upon the efficiency of the operator. What was the understanding at the time you entered into this contract as to who should pass upon the efficiency of the operator, if there was any understanding.

Mr. Bane: If your Honor please, that is not in line with the suggestion Your Honor made as to the type of question that could be asked. What would be the under-[fol. 790] standing in the minds of the parties to the contract would not be a proper question, because the contract itself. As I understood, Your Honor's suggestion was he could ask what has been the practice as to the classification of employees since the contract was entered into.

Trial Examiner Batten: That was the suggestion I made, and it seems to me that is the important point in connection with this. It is not what she may think it is; it is what has been done since it was entered into.

Mr. Langsdale: I think I have a right to ask the question I have framed, and that is, what was the understanding at the time this contract was made, if there was an understanding?

Trial Examiner Batten: Was there an understanding at the time the contract was signed? You may just say Yes or No.

A. Yes, sir.

Mr. Langsdale: What was the understanding as to who should pass upon the efficiency of the operator, placing her in one group or another?

A. Wait a minute. What was the question.

Mr. Langsdale: Read the question, please.

(Thereupon the last question was read by the reporter.)

A. Considering that person as an individual, her work would show whether she could or whether she could not. [fol. 791] She was considered, the union was considered, and so was the company.

* * * * * * * * *

Trial Examiner Batten: The question is what was the understanding? Who was to pass upon this matter?

A. All of the people involved in it passed upon it.

Mr. Langsdale: Isn't it true the employer is the one who graded the operators into one class or another, and has done it ever since this contract was signed?

A. It is not.

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* * * * * * * * *

[fol. 792] (Whereupon, the hearing was resumed, pursuant to recess, at 2 o'clock, p. m.)

Trial Examiner Batten: The hearing will come to order, please.

Rose Todd, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross-Examination (Continued).

By Mr. Langsdale:

Q. Miss Todd, the Donnelly Garment Workers' Union members wear pins? A. If they care to.

Q. Well, did you adopt some pin that was worn by all of those who care to? A. Yes, sir.

Q. You don't have but one pin, do you? A. No, sir.

Q. Have you one with you? A. No, sir.

Q. Have you ever worn one? A. Yes, sir.

Q. Was there any vote taken by the membership as to which pin should be adopted? A. Yes, sir.

Q. Do you know what the result of that vote was? [fol. 793] A. The result was in favor of the pin that was adopted.

Q. Well, was there any percentage of votes, or anything of that sort?

A. There was a great percentage. I don't remember the percentage any more, but that was why it was chosen, the greatest percentage of them chose that one.

Q. Refreshing your recollection, was it 84 per cent of those chose that pin?

A. I don't remember. It is in our minutes some place.

Q. I just asked you if you remembered.

A. No, sir, I do not.

Q. What did you sell the pin for?

A. Exactly what it cost us.

Q. What?

A. 81 cents, and 6 mills, if they happened to have the mills.

Q. Do you know what jewelry store made up the pin?

A. Yes, sir.

Q. Which one?

A. Green Jewelry.

Q. Green Jewelry? A. Yes, sir.

Mr. Langsdale: Mark that as an exhibit.

(Thereupon, the document above referred to was marked as [fol. 794] "International Ladies' Garment Workers' Union Exhibit No. 1" for identification.)

By Mr. Langsdale:

Q. I hand you this document which has been marked International Ladies' Garment Workers' Union Exhibit No. 1 and ask you to state what that is, if you know.

A. It doesn't look like anything I have seen before, but it says—do you want me to read it?

Q. First, you say you haven't seen that before?

A. I don't recall it.

Q. Or any copy of it?

A. Not in this color ink, Mr. Langsdale.

Q. Well, any other color ink?

A. I don't recall a thing just like this, but it is for, about our pins.

Q. Is there anything in that that isn't true?

Trial Examiner Batten: Were there two exhibits or just one exhibit with two pages?

The Witness: It is just a blank piece of paper on the back. In substance, I believe this is true.

Mr. Langsdale: I offer it in evidence.

Mr. Ingraham: Let's see it. Well, has this witness identified that?

Mr. Langsdale: Yes. She said in substance it was true.

The Witness: I said I never saw it before.

Mr. Ingraham: Well, I object to the introduction. [fol. 795] She hasn't identified it.

* * * * * * *

Trial Examiner Batten: Well, I think there is insufficient identification, Mr. Langsdale. I might ask this, Mr. Langsdale, if you care to tell me, what is the purpose of this? I will excuse the witness if you don't want to say it in front of her. The thing is, I don't exactly see—

Mr. Langsdale: (Interrupting) That hasn't anything to do with my desire to get the document in. I don't like to tell the witness what the purpose is.

Trial Examiner Batten: Well, I am not asking you to tell the witness nor do you need to tell me if you don't want to. I don't think it has been properly identified.

[fol. 796] Mr. Langsdale: I think you are right about that.

* * * * * * *

[fol. 797] Q. When was it, Miss Todd, that you decided it was time to form a plant union?

A. I didn't decide that it was time.

Q. Well, for yourself, when did you come to the conclusion that it was time to form a plant union?

A. The thing that was directly responsible for that was the announcement by Sylvia Hull on April 23, 1937.

Q. On April 23 you told Fern Sigler that you were going to run an open shop. Now, on April 27 you presided at the meeting when the union was formed. Was

[fol. 798] it sometime between those two dates that you determined for yourself it would be a good time to form a union?

A. That was what made me decide it was high time for us to do something about some representation for ourselves.

Q. You didn't approve of labor unions, did you, at that time?

A. I have always approved of labor unions, Mr. Langsdale.

Q. Well, I find in the minutes of your first meeting, held on April 27, 1937, the following statement by you:—

* * * * * * *

[fol. 799] Mr. Langsdale: I was getting ready to quote from this. The question preceding this was that, "You didn't like labor unions?" And she said she always liked labor unions. Now then, I wish to read this from the minutes of April 27.

By Mr. Langsdale:

Q. (Reading from minutes). "We have been trying to think of a name to call this organization because as many of the details as we can should be worked out today. I have this suggestion to make, and we have also talked this over with Mr. Tyler, and we have agreed that it is a good one. Our new organization will be called the [fol. 800] Donnelly Garment Workers' Union. I am launching right into discussing this with you because we have a busy afternoon and a lot to take care of. My personal distress was the use of the word 'union'."

What did you find distressful about the use of the word "union," Miss Todd?

A. I was particularly referring, Mr. Langsdale, to all of the disturbance that had been caused by the I. L. G. W. U. at Twenty-sixth and Grand, as had other employees in the plant, too.

Q. Then, you did have a distaste—distress for labor unions?

A. Not for labor unions as a whole.

Q. "My first personal distress was the use of the word 'union.' You probably don't like it any better than I do but you must see by this time to meet the demand that can be made by outside organizations that our organization will have to be a union."

You made that statement, didn't you?

A. In substance, yes, sir. There is also more of that statement.

[fol. 801] Q. Now, Miss Todd, you have testified you went to see Mr. Gossett and Mr. Tyler? A. Yes, sir.

Q. And when asked as to how the three were chosen, I believe you made this statement, this answer, at the hearing before Judge Miller:

"I think there was nothing definite about that, either. I have been personally one of those people that kind of always get into everything, and I got into this some way."

Is that correct?

A. Yes, sir.

Q. The committee wasn't chosen by the Loyalty League?

A. No, sir.

Q. It wasn't chosen by any mass meeting of employees?

A. I don't recall that it was.

Q. Just you three; you got the other two together and you went to see Mr. Tyler and Mr. Gossett?

A. I don't remember that I got them together particularly. We had been talking about it, a number of us, and the three of us decided to do something, and that is what we did after talking with the employees, some of the employees.

Q. Not after any meeting of the Loyalty League?

A. No, sir.

Q. Or any other meeting of employees?

A. I don't know that it wasn't after that. It was after [fol. 802] that, but I don't know that that was directly responsible for it. It was partially.

Q. Just you and these other two, Mr. Hobart Atherton and Mrs. Ormsby; is that correct?

A. We were the three that went, Mr. Langsdale.

Q. I have here an affidavit filed in the three-judge hearing, signed by Sally K. Ormsby. She was one of the three that went down to see Mr. Gossett and Mr. Tyler?

A. Yes, sir.

Q. In which she states: "The committee of employees was authorized at a meeting of employees to see what could be done about protecting us from threats, violence and intimidation, and I was a member of that committee. We consulted attorneys."

Is that a true statement in that affidavit?

A. I think, Mr. Langsdale, you are referring to that meeting of March 18th, and I don't remember—don't seem to remember the details of that meeting. Now, that may be what she is referring to. I don't know.

Q. Well, I am asking you if that happened as stated by Mrs. Ormsby, that at a mass meeting of the employees, a committee selected, of which she was one, and you were one, and Hobart Atherton was the third, to visit attorneys?

A. Well, I think the only way I can answer that question is that I don't remember the details of that meeting.

Q. Do you remember that that committee was selected [fol. 803] in that way? A. No, I don't.

Q. Well, I have here an affidavit of Hobart Atherton signed on the 12th of October, and subscribed to, 1937, filed in the same three-judge proceeding, in which he states: "A committee of the employees was authorized at a meeting of the employees to see what could be done about protecting us from threats, violence and intimidation. I was a member of the committee, and we consulted attorneys."

Is that true?

A. I don't think those two people would make that statement if it wasn't true.

Q. Well, do you know whether it is true or not?

A. No, sir.

Q. Well, here is your own affidavit filed in the same proceeding, signed by you on the 7th of July, 1937, in which you stated, "As a result of the above conditions and for the purpose of protecting them in their rights to continue work without being prevented therefrom by violence or intimidation, a large number of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company authorized several employees of that company, including myself, to make such arrangements as

we deemed proper to protect the employees from situations being forced on the plant by outsiders similar to those which had occurred at other garment plants men-
[fol. 804] tioned. Those representatives consulted and employed attorneys."

Were you telling what happened in that affidavit?

A. I think I would have to see the first of that affidavit. I haven't seen it since the day it was written.

Q. Well, do you remember whether that correctly states the occurrence?

A. Mr. Langsdale, if that is my affidavit, I think it does.

Q. I am asking you if your recollection is that is the way you three people got together to go see the attorneys?

A. I think that must be correct. My memory of that is from memory, and is not good, but I certainly abide by anything that is in that affidavit.

Q. Now, how did you happen to go to Mr. Tyler's office?

A. Primarily, we were going to Mr. Gossett's office, and I had known them, or who they were, and had known Mr. Tyler and Mr. Gossett somewhat for several years, and anyone that we had talked to knew immediately who Mr. Gossett was, and we just thought it was a good place to go, and went to see what we could find out.

Q. Had you ever had any business with either Mr. Tyler or Mr. Gossett before you went with this committee of three?

A. No, sir. You mean business?

Q. Yes. A. No, sir.

Q. Had you ever had any social contact with either
[fol. 805] Mr. Tyler or Mr. Gossett prior to that time?

A. No, sir.

Q. Had you ever met Mr. Gossett? A Yes, sir.

Q. Where?

A. Through Dr. Sulzbacher at Thornton-Minor.

Q. Had he been there as a patient?

A. Not that I recall, Mr. Langsdale. I don't know.

Q. Well, you had just been introduced to him then, was that it?

A. I have seen him up there numbers of times.

Q. By Dr. Sulzbacher? A. Yes, sir.

Q. Dr. Sulzbacher is dead, is he not?

A The one I am referring to is not.

Q. Now, you had never known him, though, in a professional way?

A. Well, I have never known him personally, in a professional way. I knew he had been a member of the Council for a good many years.

Q. Well, of course, everyone knew Mr. Gossett was.

A. Yes, sir.

Q. But did you also know that his partner, Ellis, at one time was a partner of Senator James A. Reed?

A. No, sir, I didn't.

[fol. 806] Q. Did that have anything to do with your going up there?

A. I didn't know who Mr. Ellis was until a few weeks ago.

Q. Now, in your testimony before Judge Miller, you testified that you had known Mr. Gossett in a professional way for some years. That wasn't correct, was it?

A. Well, I think not the word, used the word "professional." I had known Mr. Gossett through the manner I testified to a minute ago for years, and had known him in the halls to speak to him, and talk to him.

Q. Just like we all know any prominent man about town by name, and so forth. What day was it you went to see Mr. Gossett?

A. I believe it was March 27, 1937.

Q. And did you have any consultation with him at all?

A. Yes, sir.

Q. Mr. Gossett was then in quite bad health, was he not?

A. Not in very good health, but he was there.

Q. And so he turned you over to Mr. Tyler?

A. Yes, sir.

Q. That meeting was when, if you know?

A. When, did you say?

Q. Yes, the first meeting with the attorneys.

A. March 27, 1937.

Q. Following that meeting, a number of you went down to see the Director of Police, Higgins?

[fol. 807] A. Yes, sir.

Q. Among those who went to see the Director of Police was Mrs. Strickland and Mrs. Gray?

A. I know Mrs. Strickland went. I am not positive about Mrs. Gray. I have been trying to think of that since the other day, and I am not positive about it.

Q. Well, if you testified that Mrs. Gray went, in your testimony before Judge Miller, is that correct?

A. Yes, sir.

Q. Now, Mrs. Strickland and Mrs. Gray were the organizers of the Loyalty League, were they not?

A. No, sir.

Q. What did you say?

A. No, sir.

Q. Well, the meeting was held at their home where the first organization work was done on the Loyalty League, was it not?

A. The meeting of some of the employees. I don't know where that was held, Mr. Langsdale. I know there was a meeting of quite a number of them, but I don't know where it was held.

Q. Had it ever occurred to you before the 12th of April, 1935, or '37, rather, when the National Labor Relations Act was declared constitutional by the Supreme Court of the United States, to organize a union?

A. No, sir.

[fol. 808] Q. Did you know that that had been the law since July 5, 1935?

A. That it had been?

Q. Yes.

A. No, I did not.

Q. You mean you didn't know there was any such thing as the Wagner Act?

A. I knew there was a Wagner Act, but I didn't know it had been declared valid until April 12, 1937.

Q. You knew it had been passed by Congress and signed by the President, and that they had examiners and attorneys and directors in charge of offices all over the United States, didn't you?

A. I don't think I had occasion, Mr. Langsdale, to pay any particular attention to the details of that.

Q. Had you been advised to pay no attention to the Wagner Act because it wasn't constitutional prior to April 12?

A. I hadn't been advised about it at all, because the thing we went to see Mr. Gossett about was an injunction, not a union.

By Trial Examiner Batten:

Q. What date was this you first went up there?

A. The 27th of March, 1937, Mr. Batten, we went to see Mr. Gossett, and the thing we had in mind was an injunction or some kind of protection, and that was all we talked about.

[fol. 809] Q. Was there any talk up there at that time about forming a union?

A. None whatever.

Q. You stated in your testimony before Judge Miller before April 12 the Wagner Act had been declared constitutional and Mr. Tyler called you and said he would like to talk to you, he had been reading the Labor Act and said, "There are certain things that would be a benefit to us." Is that right?

A. I believe that is correct.

Q. Then when he talked with you you decided to form this Donnelly Garment Workers' Union?

A. No, we didn't decide that soon.

Q. How soon after that?

A. As I remember, there was quite a little conversation with one and then another after that time, and then the thing that made us definitely decide to discuss it and see if it was what we should do was the event of Sylvia Hull and Fern Sigler on April 23, 1937.

Q. That was the day on which you said they were going to run an open shop?

A. That was in that conversation, yes, sir.

Q. Now, you started your meeting on the 27th of April, 1937. That was the meeting in which the Donnelly Garment Workers' Union was organized. You had already had the cards printed and had them there at the meeting place to be signed by the employees, to the [fol. 810] effect that, "I hereby join the Donnelly Garment Workers' Union"?

A. Yes, sir.

Q. Where did you have those printed?

A. I tried to remember the other day and didn't remember it correctly, and in looking back over our records I find we had them printed at the Kauffman-Eppinger Printing Company.

Q. And they were printed with the name in them, and everything?

A. Yes, sir.

Q. And Mr. Tyler appeared at that meeting with the by-laws all drawn up?

A. Yes, sir.

[fol. 811] Q. You consulted with Mr. Tyler about a great many matters before April 27, 1937?

A. Before April 27, 1937.

Q. Yes. Before the formation of the union?

A. Yes, sir.

Q. Did you pay him for that advice?

A. For which advice do you mean?

Q. The advice about the injunction?

A. Yes, sir.

[fol. 812] Q. With what money?

A. With money of the employees.

Q. Where did you get it?

A. We donated it.

Q. Who donated it?

A. The employees.

Q. How did you get it together?

A. We donated 50 cents a piece.

Q. I am talking about prior to the formation of the union.

A. Yes, sir.

Q. How much did you pay Mr. Tyler prior to the formation of the union?

A. I believe it was $500.

Q. Did you have a meeting in which that $500 was collected?

A. Yes, sir.

Q. Where did you have the meeting?

A. We must have had it on the second floor. I think that was the only available space to have it.

Q. On what day did you have the meeting?

A. I don't remember.

Q. In your testimony before Judge Miller you mentioned just the three of you going down to see Mr. Tyler. You didn't recall having any authority from any meeting. When was it you had that meeting to collect the money?

A. I don't recall, Mr. Langsdale. It would have had [fol. 813] to be the latter part of March.

Q. How much money did you collect?

A. I don't remember the dollars and cents of that. I judge we collected around $500.

Q. Did you have any treasury of the Loyalty League?

A. The Loyalty League had a treasury, yes, sir.

Q. Did it have any money at that time?

A. I don't know. I wasn't treasurer.

Q. You were president of it, weren't you?

A. Yes, sir.

Q. Do you know whether they had $500 in the treasury of the Loyalty League at the time you paid Mr. Tyler the $500?

A. I don't recall.

Q. Did you take the money out of the treasury of the Loyalty League to pay Mr. Tyler that $500?

A. As I remember, that $500 was put into the Loyalty League treasury to pay Mr. Tyler. We had no treasury of the employees except that, and we used it.

Q. That $500 paid him for the advice about the injunction and for drawing up the bylaws and other advice leading up to the meeting of April 27, 1937?

A. That $500 paid him for his advice about the injunction.

Q. You paid him $500 just to talk to him about the injunction?

A. I wouldn't say it as light as that. We paid him for the advice and assistance he gave us.

[fol. 814] Q. Did he send you a bill for $500 for advice about the injunction?

A. I believe he did.

Q. He didn't draw up any papers for an injunction, did he?

A. I don't remember about all of the details of that now. I know he said he went down to court, and I think I remember him saying he went to two or three different courts where the same thing has been considered.

Q. You went to him first on the 27th of March, 1937, didn't you?

A. That is right.

Q. How many times did you visit him between that and April 27, 1937?

A. I have no idea.
Q. Was it more than twice?
A. Between that and when?
Q. April 27.
A. More than twice?
Q. Yes.
A. Oh, yes, sir.
Q. How many times?
A. I don't remember.
Q. Give us your best judgment.
A. We talked to him on the phone several times, and we went to see him several times. I can't tell you the [fol. 815] number of visits, Mr. Langsdale.
Q. When did you pay him the $500?
A. I don't remember the date of that either.
Q. Wasn't it after the union was formed?
A. It was not, no sir.
Q. You paid him the $500 before the union was formed?
A. Yes, sir.
Q. How did you pay him, in cash or by check?
A. By check.
Q. Of the Loyalty League?
A. Yes, sir.
Q. Signed by whom?
A. I explained that a few minutes ago.
Q. Signed by you?
A. I don't remember. The treasurer would have signed that. I don't remember who it was.
Q. Do you know where the cancelled check is?
A. No, sir.
Q. Are they kept in the records of the Loyalty League?
A. I don't know about that.
Q. Do you know where that $500 check is?
A. No, I don't.
Q. But you feel certain it was paid to him prior to April 27, 1937?
A. Yes, I do.
[fol. 816] Q. Who gave him the check?
A. Who gave him the check?
Q. Yes. Who manually handed it to him, if anybody; or who mailed it to him?
A. I don't remember that either.

Q. I wish you would be a little more definite, Miss Todd, as to when you made this $500 payment, if you can.

A. Mr. Langsdale, I did state, and I am very positive about it, that it was paid to him before the Donnelly Garment Workers' Union was ever organized. As to the date, I just can't tell you.

Q. Whether it was paid one day, two days, three days, or a week before, you don't know?

A. No, sir, I can't tell you. I am not trying to be evasive, but I just don't remember.

Q. Is there anything in your memory that makes you positive it was between the 27th of March and the 27th of April?

A. I know it was done before then.

Q. You say you know it, but is there any milestone or anything else you base that on?

A. Yes. I base it on that meeting of employees we had and donated 50 cents apiece. The date of that meeting I don't remember, but it was the latter part of March or the first part of April, within a week or ten days there. It might have been the 5th, 6th, or 7th, I don't remember.

[fol. 817] Q. Is that cancelled check available so that you can produce it in court?

A. I don't know about that. I haven't thought of it for so long I haven't any idea.

Q. As president of the Loyalty League did you keep the cancelled checks?

A. I [didn,] no, sir.

Q. Where did you keep the Loyalty League account?

A. At the First National Bank.

Q. In whose name was that account kept?

A. I imagine it was kept in the name of the Loyalty League.

* * * * * * *

[fol. 819] Q. Now, in your testimony before Judge Miller, I find from the transcript that you gave there—

Mr. Ingraham (Interrupting): What page?

Mr. Langsdale: Page 698—1082.

By Mr. Langsdale:

Q. "As employees, we have always felt free to discuss any grievances with our employer. We recently formed

our employees' union because we did not dare to be dictated to by anyone from the outside."

A. That is a mistake. It says "care."

Q. Well, it says "dare."

A. Well, it is a mistake by the stenographer, because I called Mr. Tyler's attention to it when it happened.

Q. You said "care"? A. That is right.

Q. Instead of "dare"?

A. That is right. I called Mr. Tyler's attention to that, as soon as he showed me that transcript.

* * * ** * *

[fol. 821] By Mr. Langsdale:

Q. Miss Todd, I hand you this document which has been marked "I.L.G.W.U. Exhibit 2" and ask you to read it and see what it is, if you know.

A. What did you ask me about it, Mr. Langsdale?

Q. Do you recognize that document as a copy?

A. I think I do.

Q. That was sent out with the formation of the Loyalty League?

A. Yes, something similar to that, as near as I can tell it would be a copy.

Mr. Langsdale: I offer that in evidence.

* * ** * * *

Mr. Stottle: Mr. Examiner, respondent objects to the introduction of this exhibit at this time because there hasn't been any identification that would show that it has any materiality on the case.

Mr. Langsdale: Well, now, there are two objections in one. You object to it once because it isn't identified and another because it isn't material.

Mr. Stottle: Yes. I am making both of them, neither identified properly or material if it were identified properly.

Mr. Langsdale: Well, I think it has been sufficiently identified and certainly, it is material.

Trial Examiner Batten: Well, I don't see; I will receive it subject to further identification. I don't think this

[fol. 822] witness' statement, Mr. Langsdale, is sufficient to receive it without qualifications.

* * * * * * *

Trial Examiner Batten: I said I would receive it subject to further identification. I don't think that is sufficient, and there is also a question there in connection with that that I would like to ask, Mr. Langsdale. [If] that notice, it refers to the fact that the employees there were receiving good wages, and so forth. I don't recall. Of course, I don't want to be put in the position where, we are going to have to prove, in this hearing, compare the wages, and go through all that, that is paid here and paid in other places, because I don't think it is of sufficient importance on the issues of this case to open up that whole line of questioning; and I just want to say now that by receiving it, I am not putting myself in a position where—

Mr. Langsdale (Interrupting): I am not offering it for [fol. 823] that purpose. My only purpose is to show why the Loyalty League was organized.

* * * * * * *

[fol. 825] Q. In April, 1937, when your membership attended a meeting, was it customary to change from working clothes to street clothes before going to the meeting?

A. In April, 1937?

Q. Yes.

A. Some of them might have and some of them might not have. I think that would be just a personal choice in the matter.

Q. It would have been convenient if the shop was closed to have changed their clothing first and have gone to the meeting?

A. No. Often times, Mr. Langsdale, a lot of the girls will come down with their uniforms on and change them afterwards. Sometimes it is hot in there and they don't care to change.

Q. And some of them wouldn't?

A. Yes, sir. As a whole, I expect most of them wouldn't in hot weather.

Q. You [suspect] most of them would not change their [fol. 825a] working clothes to street clothes?

A. Yes, sir.

Q. In cooler weather was it customary to change their uniforms to street clothes before going to the meeting?

A. I think that would depend on whether they were in a hurry to get there, whether they might have just a few minutes or whether they might have several minutes.

* * * * * *

Mr. Stottle: Miss Todd, it is alleged in the complaint filed here that the respondent, which is the Donnelly Garment Company, has dominated and interfered in the formation and administration of the labor organization among its employees known as the Donnelly Garment Workers' Union, and has given financial aid and other support to said organization by the various things [fol. 826] that are thereafter listed.

I now wish to ask you whether you know of any officers or executives or supervisory employees of the Donnelly Garment Company encouraging, allowing or permitting other employees to organize, promote, or encourage membership in the Donnelly Garment Workers' Union, particularly in the months of March, April, and May, 1937?

Mr. Leary: Just a minute. Mr. Examiner, I wish to object to that question as calling for a conclusion. And, along that line, I want to say that the issues raised in this case here and to be determined by the Board are the very issues he wants this witness to answer or give an opinion on. I think it is invading the prerogatives of the Examiner and the Board to permit an answer from this witness on that question.

Trial Examiner Batten: You may answer.

A. The question is, do I know if any of the officials of the company have prevented the Donnelly Garment Workers' Union being organized?

Mr. Stottle: Or encouraged or promoted the formation of the Donnelly Garment Workers' Union.

A. Whether they have encouraged or promoted—

Mr. Stottle: Read the question, please.

* * * * * *

[fol. 827] Mr. Leary: Mr. Examiner, I want to say, also, that I think this witness should be permitted to state what was said and done during those particular months with reference to the question that Mr. Stottle has asked her, but I don't think that it is proper to ask her to give the legal conclusion that the question is calling for.

Trial Examiner Batten: Mr. Leary, I have said before in this hearing that I am not going to attempt to tell attorneys how to ask their questions. If Mr. Stottle wants to ask it in that form, I permitted the witness to answer.

The Examiner and the Board, when they consider the evidence that is in here, will give such weight to answers as in our opinions those answers should have.

Mr. Leary: Well, on the other hand, Mr. Examiner, I don't think that if the question is improper to begin with that the witness should be permitted to answer.

Trial Examiner Batten: I don't consider it to be improper.

By Mr. Stottle:

Q. Well, did any of the officers or executive employees of the Donnelly Garment Company ever come to you, Miss Todd, and suggest that you form the Donnelly Garment Workers' Union? A. No, sir.

Q. Did you ever hear them say that to any other employees? A. I never did.

[fol. 828] Q. You stated that you had gone over the plant a good deal in the course of your work, talking to 200 or 300 employees. Did any of those employees ever say to you, Miss Todd, that any of the officers had suggested to them that there be a Donnelly Garment Workers' Union formed?

A. I never have.

Mr. Leary: I object, Mr. Examiner, to that as calling for a self-serving statement, and improper cross-examination in that it is assuming facts that are not in evidence. Now, we haven't put in the evidence, thus far, as to the fact that are mentioned in Mr. Stottle's question. He is

denying, he is asking to have be denied now things that aren't affirmatively proven.

Trial Examiner Batten: You mean, that you want to restrict the cross-examination to the direct examination? Is that what you are in substance meaning?

Mr. Leary: Yes, Mr. Examiner, I do. That isn't the entire purport of my objection, though, Mr. Examiner.

Trial Examiner Batten: Well, of course, I have always taken a position in these hearings that cross-examination doesn't necessarily have to be restricted to the direct examination and that if an attorney in a cross-examination of a witness cares to examine the witness about some matters that might be considered affirmative, that they may do so, rather than the necessity of bringing the wit- [fol. 829] ness back. Now, of course, if we are going to proceed on that basis, I don't see there would be any objection to this examination.

Mr. Leary: Well, in that event, Mr. Examiner, if Mr. Stottle will state that he doesn't intend to bring the witness back, I will withdraw that portion of the objection.

Mr. Stottle: Mr. Examiner, we don't wish to state that. I think this is a proper cross-examination on matters brought out. Their whole case is on these points. If their examination didn't relate to these matters, it ought to be all stricken out to this point.

Trial Examiner Batten: You may answer.

The Witness: Is there a question to be answered? I thought I answered that.

Trial Examiner Batten: Read the question.

(Whereupon, the question and answer were read by the reporter.)

Trial Examiner Batten: You may proceed.

Mr. Stottle: Do you know of their encouraging or promoting the organization after April, March and May, 1937?

A. I haven't had a thing to do with it—

Trial Examiner Batten: (Interrupting): Well, now, let me ask you this, Mr. Stottle: are you going to have her categorically deny each one of these allegations and then go into all the details of each one?

Mr. Stottle: Well, that was somewhat along the line I [fol. 830] had in mind.

Trial Examiner Batten: Well, of course, if that is your plan, I see absolutely no necessity of categorically sitting there reading the allegations, having the witness say "No", because I think you know as well as I do that not a great deal of weight could be given to that.

Mr. Stottle: Well, if your Honor please, if the company's officers said nothing to this witness about the matter, there is nothing she could say that they did say.

Trial Examiner Batten: That is true. My question to you was, are you going to read all of these and have her deny them, and then are you going to start out and examine her in detail with respect to the testimony which she has thus far given? I mean; I can't see that there is any reason for doing both.

Mr. Stottle: Well, it seems to me the only way you can show by this witness whether she was encouraged, is to ask whether the officers encouraged her or promoted the organization.

Trial Examiner Batten: I have no objection to your asking her that.

Mr. Stottle: That is what I have asked is whether any executive officers have encouraged her or other employees that she knows about.

Trial Examiner Batten: You may answer.

[fol. 831] A. They have not.

Trial Examiner Batten: I think you did answer, did you not?

The Witness: I did.

Mr. Stottle: Miss Todd, do you know of any financial aid or other support that the Donnelly Garment Company

or any of its officers have given to the Donnelly Garment Workers' Union?

A. They have never given us a dime.

Mr. Leary: Mr. Examiner, I desire to make my record objection to that question.

Trial Examiner Batten: You may have a continuing objection.

By Mr. Stottle:

Q. Would that apply to the Donnelly Garment Sales Company as well?

A. That does apply to the Donnelly Garment Sales Company as well.

Q. Miss Todd, you stated that you were a member of the Loyalty League?

A. Yes, sir.

Q. Did the Loyalty League or its officers ever act as a labor union down at the Donnelly Plant?

A. Never to my knowledge.

Mr. Langsdale: I object to that—just a moment,—as calling for, certainly, a conclusion this witness shouldn't [fol. 832] be permitted to draw, because that depends on acts and conduct and a great many things, and it is for the Examiner to conclude; not this witness.

By Trial Examiner Batten:

Q. What do you mean, Miss Todd, when you say they did not act as a labor organization?

A. As a labor organization?

Q. Yes.

A. Well, they never did, Mr. Batten.

Q. Well, what—

A. (Interrupting) It has always been a social organization.

Q. What does a labor organization usually do?

A. Well, I assume—

Q. (Interrupting) What is the function of a labor organization?

A. Well, the activity of our Donnelly Garment Workers' Union is what I consider the activity of a labor union, and taking their right and opportunity and using it for collective bargaining.

By Mr. Stottle:

Q. Well, Miss Todd, did the Loyalty League or its officers ever tell the employer down there, the employees down there, that they couldn't work or they could work? Did it do that?

A. No, sir, not to my knowledge.

Q. Did it recommend to the officers of the company what employees should be hired or discharged?

[fol. 833] A. No, sir; not that I know of.

Q. Did it ever ask the Donnelly Garment Company to recognize it as a bargaining agent for the employees?

A. Never.

Q. Did it ever ask the Donnelly Garment Company to recognize it as a union under the Wagner Act?

A. No, sir.

Q. Did the Loyalty League ever make any demand on the company as to establishing working hours?

A. I never heard of any.

Q. Did they ever make any demands on the company as to establishing wages?

A. Not to my knowledge; no, sir.

Q. Did they make protest to the management for discharging any employee or for paying too low wages, or anything of that kind?

A. I never heard of it.

Q. Did it ever enter into any contracts with it, with the Donnelly Garment Company or the Donnelly Garment Sales Company concerning working conditions of any kind?

A. No, sir, that—not that I know of.

Q. Since the formation of the Donnelly Garment Workers' Union, has there been any change in the Loyalty League in the nature of its work?

A. Not any that I know of.

[fol. 834] Q. That has always continued to be social, as it was before?

A. It has always been a social organization and still is.

Q. It still functions as a social organization down there?

A. It is still an active organization, as it has been the last—since its organization.

Q. Have you ever heard or known of any discussion about changing the name of the Loyalty League to the Donnelly Garment Workers' Union? A. No, sir.

Q. Well, is there any connection at all that you know of, Miss Todd, between the Loyalty League and the Donnelly Garment Workers' Union except the fact that there may be the same members or some of the same members in each organization?

A. There is no connection whatsoever. There is some definite statements in the minutes of that first meeting about the Loyalty League status and what this union would be if we formed it. It has never been anything but a social organization.

Q. If there was a mass meeting or a general meeting of employees down there, Miss Todd, there would necessarily be members of the Loyalty League present, would there not?

A. There couldn't be otherwise, because everybody, the employees, belong to both organizations.

[fol. 835] Q. If you held a meeting of the Donnelly Garment Workers' Union, a mass meeting, there would necessarily be Loyalty League members there, would there not?

A. Yes, sir.

Trial Examiner Batten: I don't believe I recall the testimony—Did the Donnelly Loyalty League have a constitution or by-laws?

A. I don't believe it has been in the testimony, Mr. Batten. They have something that is so old, I don't remember what it is. They do have something; I don't know whether they call it by-laws or what they call it.

By Mr. Stottle:

Q. You have been asked a number of times by counsel for the Board or the International Ladies' Garment Workers' Union if you were president of the Loyalty League at the time you did certain things, attended certain meetings or otherwise. Is it a fact, Miss Todd, that while you held that office you were the president when you ate your lunch or whatever your activity might be?

A. Yes, sir, I was president, but it didn't always mean I was acting as president of the Loyalty League when I attended meetings.

Q. When you participated in the Fern Sigler incident that you have testified about, although you may have been president of the Loyalty League, is it your testimony that you did not act or purport to act as representing the Don-
[fol. 836] nelly Loyalty League?

A. I was not representing the Loyalty League.

Q. Did the Donnelly Garment Company or any of its executives or supervisory employees ever tell you, Miss Todd, that you could solicit membership, hold meetings, and engage in other activities on behalf of the Donnelly Garment Workers' Union during the working hours and on company property?

A. They never did say I could do it during working hours. Any activities that we have on company property in the way of meetings we pay rent for.

I think there are two questions in one there.

Q. Well, Miss Todd, do you know of any, whether it is one I mentioned or not in which the Donnelly Garment Company or its officers or supervisors or employees have contributed to the support of the Donnelly Garment Workers' Union or promoted or encouraged it?

A. Not in any way whatsoever.

Q. Miss Todd, it is alleged in the complaint that the respondent, that is, the Donnelly Garment Company has interfered with and restrained, coerced, intimidated or threatened its employees to refrain from becoming members or continuing membership in the International Ladies' Garment Workers' Union by certain acts that are thereafter set forth. I will now ask you whether, to your knowledge, any of the officers, executives or supervisory
[fol. 837] employees of the Donnelly Garment Company have restrained or intimidated you or any of the other employees from becoming members in the International Ladies' Garment Workers' Union.

Trial Examiner Batten: You mean, as far as she knows?

By Mr. Stottle:

Q. As far as you know.

A. Not as far as I know. I have never heard of it.

Q. They never did that to you, anyway?

A. No, sir.

Q. Did you ever hear any other employee, in going about over the plant, say that?

A. I have never heard anyone say that.

Q. Miss Todd, do you know of any rumors circulated by the officers or supervisory employees or other executives of the Donnelly Garment Company at its plant in the spring of 1937 that respondent's employees would be subjected to violence, intimidation, or assault at the hands of the International Ladies' Garment Workers' Union or its members or agents?

A. It was very common knowledge around that plant at that time.

Q. That that would happen?

A. Will you repeat the first of the question, Mr. Stottle? All of the employees were talking about the things that were happening.

Mr. Stottle. Will you read the question, please?

(Thereupon the last question was read by the reporter.)

[fol. 838] A. I never heard it circulated by the officers of the company. It was common knowledge, and being circulated among the employees.

Trial Examiner Batten: Now, you have answered the question. Let's not get into these rumors, because if we try to run half of them down we will be here until this time next year. In any place where you have a couple of unions trying to organize you have so many rumors you can't keep up with them.

By Mr. Stottle:

Q. Were you ever told or did you understand, Miss Todd, that the company was going to charter buses for the purpose of creating fear and hatred and contempt in the minds of the employees against the International Ladies' Garment Workers' Union?

A. No, sir.

Q. What was the purpose of chartering buses?

A. The purpose was to give the employees protection in coming to and from work that apparently was needed.

By Trial Examiner Batten:

Q. You say "apparently." What do you mean by "apparently"?

A. Because of all of these threats and rumors.
Q. Were you ever threatened individually by anybody?
A. Not any one person, Mr. Batten.
Q. Did anybody ever threaten you personally?
A. Not personally, no, sir.
[fol 839] Q. Then, all you know about it is what you heard, is that right?
A. That is right.

Mr. Stottle: Miss Todd, you had read in the paper what was going on at the other garment company plants, had you not?

A. The papers were full of it, and I could see what was going on at Twenty-Sixth and Grand as I came to and from work.

Mr. Langsdale: I object to that as not material, and if it is material we want to be permitted to show that when A. A. Ahner hired strikebreakers it was to prevent most of the violence she claims she saw.

Trial Examiner Batten: We are not going to try out the newspaper in this case and have all of those articles brought in, and then have the reporters brought in and prove that it is true or not true. If there were threats and violence, bring the people in here that were threatened, and the people violence was done to, and let them testify.

I will sustain the objection as far as that part of it goes. We are not going to try out all of those matters.

By Mr. Stottle:
Q. Miss Todd, it is alleged here that the respondent interfered with, restrained, coerced and intimidated its employees to refrain from becoming members of the International Ladies' Garment Workers' Union by keeping [fol. 840] its meetings in Kansas City, Mo., since July 5, 1937, under surveilance. Do you know of any officers or supervisory employees of the company that were keeping the meetings of the International Ladies' Garment Workers' Union under surveilance?
A. No, sir, I don't.
Q. Did they ever ask you to go to any of those meetings and report on what occurred?
A. No, sir.

Q. Do you know of their telling any other employee to go to the meetings and report what occurred?

A. Not that I ever heard of.

Q. It is alleged that they induced and compelled employees to sign a petition professing their loyalty to respondent, and permitting and causing said petition to be circulated in its plant during working hours on or about March 2, 1937. Are you acquainted with that petition?

A. Yes, sir.

Q. Do you know of any of the officers or supervisory employees asking that that be signed?

A. I don't believe they did. That was circulated by two employees in the shipping department, shipping clerks.

Q. It was circulated by the employees among the employees?

A. Yes, sir.

Q. Do you know of the company, or any of its officers [fol. 841] or supervisory employees, inducing or allowing or permitting instructors or other supervisory or confidential employees to become members of the Donnelly Garment Workers' Union and to be active in its affairs?

A. The company had nothing to do with who would be members of the union. And the officers are not members.

Mr. Langsdale: Will you read the question and answer, please?

(Thereupon the last question and answer were read by the reporter.)

Trial Examiner Batten: You mean the officers of the company?

A. Yes.

By Mr. Stottle:

Q. The instructors are members, are they not?

A. Yes, sir.

Q. Were they permitted to join at the instance of the company?

A. No, sir. They didn't have anything to do with it. The company had nothing to do with it.

Mr. Langsdale: I object to that conclusion and ask that it be stricken out for the reason that the Examiner has a right to find if the instructor is in a supervisory ca-

pacity. The instructor is the company, acting as an agent for the company. Our contention is that these instructors [fol. 842] are in a supervisory capacity, and in a position to hire and fire. And for her to say that no officer of the company permitted any supervisory employees to join the union is pure conclusion.

Trial Examiner Batten. Assuming this to be true, Mr. Langsdale, if you very definitely proved the thing which you say you are contending, her answer to this question would not stand in the Examiner's or Board's way, would it, in considering the case?

Mr. Langsdale: That is true. Nevertheless it is a conclusion.

Trial Examiner Batten: I see no objection to permitting it to stand.

By Mr. Stottle:

Q. Miss Todd, do you know whether the company or its executives or supervisory employees instigated, caused, allowed, or permitted its employees to engage in a violent demonstration on its time and property about April 23, 1937, against Fern Sigler, Sylvia Hull, and May Fike, or other members of the International Ladies' Garment Workers' Union?

A. The company didn't allow that, no, sir.

Q. That is the incident you have already testified to?

A. Yes, sir. It was something the employees did.

Q. Do you mean by your answer that it occurred voluntarily, or what is your answer to that, Miss Todd?

[fol. 843] A. It was a voluntary act by the employees. The company did not promote it or have anything to do with it.

Q. You didn't see any of their officers promoting that incident?

A. No, sir.

Q. Did any of the officials, Mr. Batty or others, try to stop that demonstration or put an end to it?

A. Mr. Batty talked to Fern Sigler after she came to work, but I don't remember seeing any of the officials there. Mrs. Hyde, I believe, was there earlier and asked them to go back to work.

Q. Who was that?

A. Mrs. Hyde.

Q. Did Mr. Batty ask them to go back to work, do you know?

A. I don't know whether Mr. Batty was there at that hour of the morning or not.

Trial Examiner Batten: At what time was it that this started, Miss Todd?

A. It was early in the morning, Mr. Batten; I think, around 7.20 to 7:30. It only lasted a few minutes. It might even have been 25 minutes of 8, I don't know.

By Mr. Stottle:

Q. There was no actual violence there, was there, Miss Todd?

A. No; it was just a demonstration. The girls didn't [fol. 844] like the articles they had seen in the paper, and didn't like the pin being worn.

Q. Did you personally feel, Miss Todd, that you had been interferred with, as far as you personally were concerned, as to what union you should join or belong to, by the officers of the company, or any of its supervisory employees?

Mr. Leary: Mr. Examiner, I wish to object to that question because it calls for the mental feelings of the witness.

Trial Examiner Batten: I have no objection to this witness answering it. I, of course, don't want either the respondent or the intervener to assume that because I permit this witness to answer that question that I would not want to give very serious thought to the matter if you were going to bring in 1,200 people up here and ask them that one question, but as long as the witness is here, I see no reason why she shouldn't answer it.

Mr. Stottle: Of course by silence I don't want to indicate that it might not be the desire of the respondent to offer further evidence along that line, because we have been charged that these people have been dominated.

Trial Examiner Batten: I didn't mean by my statement—I said, I believe to Mr. Tyler, on that other matter

that I don't want to be put in the position on this particular question—I am not passing on it now. If you present [fol. 845] the problem to me I will then pass upon it, but I didn't want you to use this as a precedent for bringing them in here. If you do contemplate that I hope you will bring the matter up before you bring them all up here in the courtroom, so that we may argue the matter out here.

By Mr. Stottle:

Q. Miss Todd, the complaint alleges that the respondent has coerced its employees in what union they might belong to, and threatened them against belonging to the International, and dominated the Donnelly Garment Workers' Union by the making of a closed shop contract with the Donnelly Garment Workers' Union. I will ask you if that closed shop contract was sought in the first instance by the Donnelly Garment Company or its officers.

A. It was sought by the Donnelly Garment Workers' Union, and at first Mrs. Reed didn't know whether she would agree to it or not. There was quite a bit of discussion before she decided she would agree to it.

[fol. 846] Q. In other words, you sought that yourself on behalf of the union?

A. It emanated from the Donnelly Garment Workers' Union.

Q. Miss Todd, recalling your attention to the first meeting of the Donnelly Garment Workers' Union, I mean the one on April 27th, when the union was formed, I wish you would tell the Examiner whether the company or any of its officers or executives, or supervisory employees, had anything to do with the calling of that meeting.

A. They did not.

Q. Did they have anything to do with the carrying on of the meeting after it was called?

A. No, sir. I called the meeting and they had nothing to do with it.

Q. Did any of them suggest the formation of the union at that meeting?

A. No, sir.

Q. Do you recall whether the officers of the company were present at that meeting?

A. I did not see any of them, and I don't think they were.

Q. Did you see any of the—the officers—any officers that would be deemed supervisory employees of the company at that meeting?

A. No, sir.

Trial Examiner Batten: You mean that she would consider?

[fol. 847] Mr. Stottle: That she would consider.

Trial Examiner Batten: Supervisory, is that what you mean?

Mr. Stottle: Yes.

A. I did not.

Trial Examiner Batten: That is a little indefinite. Of course, you may let it stand that way if you wish.

Mr. Stottle: Well, did you see anyone that would have authority to hire or discharge employees present at the meeting?

A. I did not.

Mr. Leary: Now, I object to that in that there has been no showing that she knows who does have authority to hire and fire.

Mr. Stottle: Was Mr. Batty present at the meeting, that you know of?

A. No, sir.

Mr. Leary: I move the witness' answer to that question, if it was received, be stricken now, Mr. Examiner, pending a ruling upon my objection.

[fol. 848] Trial Examiner Batten: It may stand.

Mr. Stottle: Did you see Mr. Batty at the meeting?

A. I did not.

Trial Examiner Batten: Who, as far as you know, had the right to hire and discharge, Miss Todd? Do you know?

A. I think that is confined to—

Mr. Langsdale: (Interrupting) Will you answer a little louder, please?

A. (Continuing) So far as I know, that is confined to Mr. Batty, as far as the Donnelly Garment Company.

Trial Examiner Batten: That is what I mean't in the production department Mr. Batty hires and fires?

A. Yes, sir.

By Mr. Stottle:

Q. Now, at this meeting of April 27th, you say a great many cards were signed that night at the meeting? A. Yes, sir.

Q. About how many were signed at that time?

[fol. 849] Q. About how many were signed at that time?

A. I expect that well over 1,200 of them. I know there was probably 1,260, 1,250; something like that, and the balance of them were turned in the following morning.

Q. Approximately how many employees were there in the Donnelly Garment Company and the Donnelly Garment Sales Company at that time?

A. As I remember, it was 1,333 and 1,303 signed that evening or by the following morning.

* * * * * *

By Mr. Stottle:

Q. So that when you went to see Mrs. Reed the following day or the day after that, you knew that she had a membership of far more than a majority of the employees?

A. Yes, sir, around 1,300 people.

Q. I believe you testified you had those cards with you, or some of them, when you went to see Mrs. Reed?

[fol. 850] A. Yes, sir.

Q. Did you tell her how many there were, approximately? A. Yes, sir.

Q. Did Mrs. Reed examine those cards?

A. Yes, sir; not every individual one, but they were there in a box together.

Q. What did Mrs. Reed do regard to the cards, if anything?

A. Turned them over to her secretary to check to see that there was that approximate number there.

Q. Well, did she express any doubt as to whether there was the cards there equaling more than a majority of the members?

A. No, she did not, because there was around 1,300 cards there.

By Trial Examiner Batten:

Q. What was the name of the secretary?

A. What is the name?

Q. Yes. A. Miss Frances.

Q. Frances? A. Yes, sir.

By Mr. Stottle:

Q. Then after that, Miss Todd, what did you do towards the making of a contract with the Donnelly Garment Company on behalf of your union?

A. This contract was drawn up and presented to Mrs. Reed on the officials of the company on the 27th of May, 1937.

[fol. 851] Q. Well, now, during that period of approximately a month, well, exactly a month, I guess, between the time your union was organized and the time you presented this completed contract, or, at least, the form of contract that you wanted, to Mrs. Reed, what did you do with regard to preparing that contract?

A. Well, there were a number of conferences and discussions with the members and with the members of our committee with Mr. Tyler, about this contract, and quite a little conversation with Mr. Batty too, regarding some salaries in different departments so that we would have some more definite ideas to work with.

Q. Well, Miss Todd, it has been intimated here this wasn't a good contract for you. Did you examine any contracts of other unions during that month or as to any knowledge of the contracts of other unions?

A. We have some knowledge of others, and their guarantees, being much lower than what we asked for. We felt that this contract, when we—after we negotiated with Mrs. Reed, was better than any that we knew about.

Trial Examiner Batten: You mean as to the minimum wage?

A. Yes, sir. This contract, of course, called for a supplemental or a wage contract to be negotiated later.

By Mr. Stottle:

Q. Well, after the first contract was signed, what ne- [fol. 852] gotiation among yourselves or otherwise did you have leading up to the making of the supplemental contract?

A. The discussion of the committee and comments of the members as to what they thought would need to be written into this contract, and with Mr. Tyler, and furthermore, from Mr. Batty and officials also of the Donnelly Garment Sales Company showing us, giving us some idea of what they were paying so that we would know what we were working with.

Q. Well, when was the supplemental contract presented to the company, do you remember that?

A. June 22, 1937, is when it was signed, and, well, that answers that question, I believe.

Q. Well, now,—well, what information, Miss Todd, did you ask from the company as to what wages had been paid? Did you ascertain from them what the average wages of employees were?

A. No. We were interested particularly in our mechanical department, in our cutting department, in places like that, as to what they were paying their men, so that we could compare with what we understood was being paid in other plants, and you will find in that contract that there was a substantial increase gained in our contract after this discussion and negotiation with Mrs. Reed. Not that she was heartily in favor of doing it, but she did sign the contract with that in it.

[fol. 853] Q. Well, now, on the first contract with Mrs. Reed, which you presented, I believe you say on May 27th in the morning, what did she say with regard to signing the contract at that time?

A. I believe, in substance, she said she would like to look it over and discuss it with Mr. Batty and Mr. Ingraham, and the officials of the company, and to have some time to think it over. In substance, it might be all right. However, there were some changes made in that contract before it was signed in the afternoon.

Q. Well, did she make any objection to signing a contract with you at all, a written contract? Was that matter discussed?

A. She—I don't remember that she objected to it, because we had far in the majority that we were asking,

we were asking to represent ourselves because we had a great majority. She did make some objections to one or two points in that contract.

Q. Now, this meeting that you attended at the Musicians Hall, Miss Todd, that you testified about, why was it you went to that meeting?

A. Mr. Stottle, I was just curious to know about their organization.

Q. Well, what information—did they—didn't they hand out circulars in front of the plant? A. Oh, yes.

[fol. 854] Q. Inviting you to attend?

A. It was an open meeting, and we were requested as employees of the Donnelly Garment Company. That seemed to be the primary reason for having that particular meeting. That is the one that I went to.

Q. Well, in what way were you requested to attend the meeting, Miss Todd?

A. By an invitation from the International, that the employees of the Donnelly Garment Company attend their meeting.

Q. Well, was that in the form of handbills?

A. Yes, it was some sort of a circular that was passed around.

Q. You saw some of those handbills? A. Yes, sir.

Q. And it was a result of seeing them that caused you to go to the meeting? A. Yes, sir.

Q. And not any request of the officials of the company that you should go there?

A. Oh, no, no one ever asked me to go to that meeting.

Q. Well, now, Miss Todd, you have testified about a check-off in the—being inaugurated. That wasn't provided for at the time the contract was entered into?

A. No, sir.

[fol. 855] Q. Well, isn't it a fact, Miss Todd, that the company objected to giving you the check-off when you asked for them?

A. Our conversation I remember about that was that we asked for it and Mr. Ingraham said "Oh, no, we can't do that." But they did finally agree to it. There was quite a little discussion about it pro and con.

Q. Isn't it a fact that the company or Mr. Ingraham, representing the company, refused to sign or to agree to

that, until every employee had signed a card or a request asking that it be done?

A. Oh, yes. That was his request, that if they did it, that is the only way they would do it. If each individual member would request that it be done.

Q. Well, wasn't that card in the form of an authority on the part of the employee to the company that the company could take this money out of their wages?

Mr. Langsdale: I think the card would speak for itself, and be the best evidence.

Trial Examiner Batten: I think the card, if you have a copy—

The Witness (Interrupting): I will be glad to bring one. It is something about "We hereby request",—

Mr. Langsdale: Just a moment, Miss Todd.

Trial Examiner Batten: I think this card would be much better.

Mr. Stottle: At least, that was one matter that the [fol. 856] union presented to the company in the nature of a complaint, but not of a complaint of something that you wanted, and you eventually did get that from the company? A. Yes, sir.

Mr. Langsdale: Do I understand that you will present—

Mr. Ingraham (Interrupting): We will present the card, yes, showing the authority.

Trial Examiner Batten: I understand it would be furnished. What is it, the form of an individual assignment of so much per month?

Mr. Ingraham: That is right, as I recall, it is authority on the company, signed by the individual employee to deduct a certain amount.

Trial Examiner Batten: Well, you can bring in a blank one.

Mr. Ingraham: I will do that, your Honor.

By Mr. Stottle:

Q. Now, Miss Todd, there has been some comment here about why you didn't put the wage agreement into the first agreement. What is the fact in regard to that?

A. We didn't feel that we had had enough time to work on that wage agreement when this working agreement was presented, and it was agreed, and we felt that we needed some negotiation with her because we represented a majority of the employees and expected her to agree to some sort of a working agreement, and we wanted more time to work out the salaries and wages to be paid. [fol. 857] Q. Well, when you put the provision in the first contract about the minimum wage being $15, was it contemplated at that time that there would be another contract that would cover all matters relating to wages?

A. Yes, sir.

Q. And hours? A. Yes, sir.

Q. All of that was discussed—

Trial Examiner Batten (Interrupting): As a matter of fact, I think the first contract specified that, as I recall it.

The Witness: It says something about it.

Mr. Stottle: Miss Todd, do you know what the minimum wage provision is in the Gernes, Gordon, and other contracts—

Mr. Leary (Interrupting): I object to that as incompetent,—

Trial Examiner Batten (Interrupting): Wait just a minute. Will you read the question that you have?

(Whereupon, the question was read by the reporter.)

Mr. Stottle: I wasn't quite through.

Mr. Stottle (Continuing)—in this city with the International Ladies' Garment Workers' Union?

Mr. Leary: Let the record show my objection, Mr. Exam- [fol. 858] iner.

Trial Examiner Batten: What is your objection?

Mr. Leary: On the ground it is incompetent, irrelevant and immaterial.

Mr. Langsdale: The union wants to further object upon the ground it is immaterial and doesn't bear upon any of the issues before the Examiner unless we want to go into all of those contracts and show where they started from, how they built them up, and even go into some of them as early as 1933 to show that they were then getting $3 and $4 a week, and the union came along and built them up to their present contract. That hasn't any bearing upon whether or not this is a company dominated union or any of the charges in the complaint.

Mr. Ingraham: If your Honor please, Mr. Langsdale asked this witness in regard to the terms and conditions of the contract which she negotiated with the company, and his questions were directed at showing that the contract was not a good contract for the employees. Now, I think we have a right to come in and show that it is a far better contract for the employees than any contract that the International has entered into with any other garment company in this part of the country. It is competent for that purpose.

* * * * * *

[fol. 860] Mr. Langsdale: My thought is this, whether or not this is a company-dominated union does not depend upon what someone else pays as wages. We made certain specific charges here that the Donnelly Garment Workers' Union is company-dominated, company-financed, and that they discriminated against certain employees because they belonged to the International Ladies' Garment Workers' Union. Now, what they pay in some other factory does not bear upon those issues at all. If it does, then we expect to be permitted to go back to 1933, before the International Ladies' Garment Workers' Union came to Kansas City, and show what the contract was with those employees at Gordon's, Gerney's and others.

Trial Examiner Batten: I was going to say this, irrespective of what questions Mr. Langsdale has asked or what questions Mr. Leary has asked, I am assuming all of those questions merely to the question of how these matters were negotiated and whether there was bargaining and whether those parties as a result of collective bargaining arrived at these things.

Mr. Langsdale: That is right.

Trial Examiner Batten: The purpose of the question—I think I made a remark this morning in which I said that any labor organization can sit down and negotiate a contract with an employer, and the Labor Board never has and never will attempt to pass upon the actual pro-
[fol. 861] visions of the contract except in so far as it has been negotiated through collective bargaining with a labor organization.

Now, therefore, I do not consider any questions that have come up thus far raise the question of proving by comparison with another plant that they are getting more or are getting less. I think it is immaterial whether they are getting more or getting less, because one group may be in a better position to bargain and negotiate than another group. There may be all of the factors come in which Mr. Langsdale has mentioned.

Maybe other plants pay substantially less than the Donnelly Garment Company over a long period of years, so that the increased amount received by the employees in these shops, while not equal to the minimum wage at the Donnelly plant, was a very substantial gain for the employees, which would mean that we would have to try out all of the conditions surrounding all of these contracts.

Now surely you do not mean, Mr. Ingraham, we would have to do that.

Mr. Ingraham: No. Here is my position, Your Honor: If this Donnelly Garment Workers' Union is a dominated union and would be used by the company to beat down wages, and the company would be taking unfair advantage of the employees, that is one thing; but I think when the evidence shows, and the only evidence that should be admissible would be the contract itself—when it shows when these employees were able to obtain from the company better rates of pay than have been obtained by the In-
[fol. 862] ternational with other companies—

Trial Examiner Batten: I don't think in this case it means a thing unless you try out, Mr. Ingraham, all of the things I have just said.

Mr. Ingraham: No, Your Honor. The point has been raised that Miss Todd and other members of the committee didn't really negotiate.

Here is a company that has been paying good wages, here is a company that treats its employees fairly, here is a company that does not try to beat down the wages. These employees come in and say they want to bargain collectively and want to enter into a written contract.

The company enters into a written contract, and in doing that, because it doesn't get into a fight with the employees, and because it doesn't haggle, and because they do arrive at a fair kind of a contract and the employees have better wages than are contained in any of these other contracts, I think that is very conclusive evidence that this union is properly representing the employees.

Trial Examiner Batten: I would say this, Mr. Ingraham, if all of the things you have just mentioned are proved, except the last thing, that is, that they have better wages than the others, then you do not need that. In other words, the situation, it seems to me, is this: If there was collective bargaining here and if this organization was not [fol. 863] formed by the employer and is not supported by the employer and there were negotiations here, that is all there is to it. I just can't see how comparison with somebody else means anything.

Mr. Ingraham: Your Honor, it certainly means that this union was able to obtain for its members the best collective bargaining contract that has been obtained in the industry here, and that is an accomplishment and it should be recognized.

Trial Examiner Batten: But, of course it might, on the other hand—there is just a possibility it might mean they were given it to encourage membership and discourage membership.

Now, don't misunderstand me. I am not saying that that is what is even being attempted to be proven here, but you can't help but agree with me that the very point you want to prove might be used either way.

Mr. Ingraham: Your Honor, I think it would be very farfetched to say a company would enter into a binding

agreement which goes on over a period of years of paying substantially 30 to 50 per cent more to its employees than is paid by other garment companies, that that company would do that just for the purpose of keeping out of the International.

Trial Examiner Batten: My remark simply was that it might be used either way. It might be worth that much to the company.

[fol. 864] Mr. Ingraham: I certainly think, Your Honor, that since Mr. Langsdale has gone into the question of the negotiations, and he said, "Now, do you think this was good for your people?" "Do you think that provision was good for the members of your union?" I think in view of that examination of this witness we are certainly entitled to show just what contract was obtained, and of course it will show that the company gave up a great deal. The company signed a contract—

Trial Examiner Batten (Interrupting): Mr. Ingraham, you may go ahead on the basis you are now talking just as fully as you desire. In fact, I want you to show the negotiations, the bargaining, and the process that was gone through in arriving at it. You may go into that as fully as you care to, but I am not going to go into this matter from the standpoint of comparison with other companies here or any other place.

If you want to do this, I have no objection—of course the other attorneys may—I have no objection if you want to select, we will say, a dozen collective bargaining contracts by different unions and offer them here as a sample of the substance which is usually embodied in a collective bargaining agreement. But even then, I am not going to in this hearing attempt by comparison to go into all of those matters.

As far as this organization is concerned, the respondent, I want you to fully develop the idea of collective bargain-
[fol. 865] ing and the negotiations that were had in arriving at it.

Now, what they arrived at is none of the Board's concern, and none of my concern, if it was arrived at by an organization which was selected by the employees without

any interference, coercion, or anything of the kind on the part of the respondent.

Mr. Lane: Mr. Examiner, may I state the intervener's position in connection with this matter?

Trial Examiner Batten: Yes.

Mr. Lane: It has been asserted here by Mr. Langsdale from time to time that he expects [of] offer evidence to establish that the intervener union is merely a sham union, that it is not in fact and under the law a representative of the employees. Now, in that connection the intervener asserts that the establishment of the results that were obtained in the contract which was entered into is an important point to be considered in determining the bona fideness of the intervener union, and in connection with determining the results that were obtained by that contract the prices and the minimum wages guaranteed by other garment concerns, the same industry, in the same community, is a point to be taken into consideration, so that a comparison of those figures will at least tend to show one of the results obtained by this contract.

Whether that result was obtained by collective bargaining or not would have to be determined from some other [fol. 866] means. But the comparison of the prices is an important factor to determine the result obtained by this union in the contract, and I submit it is therefore proper, and we will expect to offer evidence to show that the minimum wage guarantee obtained in our contract was substantially in excess of that obtained in other garment industries.

Trial Examiner Batten: I presume it would be well now to settle this question so that everyone will know, as I have done once or twice already, what my position is.

I want you to be prepared for it, although the evidence is not submitted. I can tell you now, Mr. Lane, I do not propose to go into that matter. The only reason I tell you that is this, that you may be making your preparation and preparing an offer of proof. I want to advise the attorneys now that I am not going to try this case by comparison with other plants in this town or in other towns. It is not material to the issues in this case.

I think the material thing is, as I told Mr. Ingraham, whether there were negotiations, whether there was collective bargaining, and whether it was arrived at freely by a representative of the employees and the management. If so, it wouldn't make any difference what the employees of the Donnelly Company were getting, whether $5 minimum, or half as much as any other plant in town. The employees, if they are free to bargain and contract, can [fol. 867] contract and bargain for anything they want, so you do not have to compare it, Mr. Lane, with somebody else's plant.

. . . . . .

[fol. 870] Mr. Stottle: Mr. Examiner, of course, one of the reasons we are going into this, although not the sole reason, is that Mr. Langsdale has taken the position that provisions in this contract were not good provisions for this union.

Trial Examiner Batten: Not with respect to the minimum wage.

Mr. Stottle: No, but with respect to other provisions. He said "I have negotiated hundreds of contracts but I have never seen a provision like this," or words to that effect.

Trial Examiner Batten: That particular provision you can examine this witness about all you please.

Mr. Stottle: I was referring to the principle thereof, that this was not a good contract for the company.

Trial Examiner Batten: Irrespective of what Mr. Langsdale said, I am not receiving his statement as evidence, and you may proceed on the basis I have just stated; that is, you may go as far as you please into the nego- [fol. 871] tiating and the bargaining, and whether this was freely arrived at, and if it was, as I said a moment ago, they could have put in a minimum of $1.50 a week, and it would have been their own affair.

By Mr. Stottle:

Q. Miss Todd, you had a contract on May 27th for $15 minimum; why didn't you leave that in?

A. Because there was a notice in the paper, I believe—and Mr. Tyler, I think, called our attention to it, and I think several members—more than several members of the union had mentioned that the I.L.G.W.U. was going to try to get a contract for us for $16, and we thought if we could get a contract for $16.50 we would give our members a higher guarantee, and we had better get it.

Q. Was that suggested to you by the company or by any officer or supervisor or employee of the company?

A. Oh, no. That originated from our side of the argument, and Mrs. Reed wasn't very much in favor of doing that.

Q. That was the matter you negotiated about with the company?

A. That is correct. She said that was a lot more than she had expected, and we had already asked for $15. I don't know just what she did but I know she took some time and did some investigating or telephoning, or something, to get in touch with her bookkeeping department to see if she should sign it with that clause in it.

Q. At lease, that matter was demanded by the union [fol. 872] and you eventually did get the increase?

A. That is right.

Q. Miss Todd, it is alleged in the complaint that the company caused a violent demonstration against Fern Sigler and others as a means of causing the employees either to join the Donnelly Garment Workers Union or to refrain from joining the International Union. I hand you here a paper which is marked Respondent's exhibit No. 1, and will ask you if that is one of the notices in the newspapers that you have referred to that caused the incident at the plant that you testified about.

(Whereupon, the newspaper clipping above referred to was marked "Respondent's Exhibit No. 1" for identification.)

Mr. Langsdale: I object to that as an improper question. She is merely handed the document and asked to identify it, and he tacks onto that question, "Was it something that caused the incident about Fern Sigler at the plant."

By Trial Examiner Batten:

Q. Have you seen that before, or read it? A. Yes.

Q. At the time it was in the paper, is that it?

A. Yes, sir. That is very definitely what caused that disturbance that morning.

Mr. Leary: What was that?

The Witness: That article in the paper, Sylvia saying [fol. 873] she was going to represent the employees—

Mr. Leary: I move that the witness' statement be stricken out. I asked the reporter what the witness' answer was.

* * * * * *

Trial Examiner Batten: It will be stricken.

May I ask, Mr. Stottle, if you are merely offering this as an article that appeared in the paper—not as proof of the truth of anything stated therein, are you?

Mr. Stottle: No. I am offering it to show what caused that demonstration.

Trial Examiner Batten: I am asking you, are you offering this to prove or disprove any statements made in the article?

Mr. Stottle: Well, we will want to ask a question about that.

Mr. Leary: About what?

Mr. Stottle: About the statement that is contained in that clipping.

Trial Examiner Batten: Well, we had better proceed with the examination, Mr. Stottle.

* * * * * *

[fol. 874] By Mr. Stottle:

Q. Miss Witness, this exhibit which has been shown to you, Respondent's exhibit 1, a copy of the newspaper item, which you have testified about in the Fern Sigler incident? A. Yes, sir.

Q. And is that, the printing of that article in the paper and the seeing of it by the employees, is that what caused the demonstration against Fern Sigler on the morning of April 23d?

Mr. Langsdale: Just a moment. I object to that question as calling for a conclusion on the part of this witness. [fol. 875] She can't tell what was in the minds of the other people who caused the demonstration, and it—

Trial Examiner Batten (Interrupting): Well, this hasn't been offered yet, has it?

Mr. Stottle: Well, I was trying to identify it sufficiently to offer it.

Mr. Langsdale: Well, you have identified it as an article that appeared in the newspaper. There has been no objection to that identification.

Trial Examiner Batten: Are you offering it, Mr. Stottle, as yet?

Mr. Stottle: Well, I was going to await this answer and then offer it.

Trial Examiner Batten: Well, of course, I think you should break it up. I think you should identify this first, although you can proceed any way you please, but I want to know when this is offered. I have some questions I want to ask about it.

Mr. Langsdale: I want to make some objections to it.

Mr. Stottle: Well, will the reporter read my last question?

(Whereupon, the last question was read by the reporter.)

By Mr. Stottle:

Q. Miss Todd, as I understand, this is an article that appeared in the Kansas City paper on the date shown there?

[fol. 876] A. Yes, sir.

Q. You read it at the time, did you?

A. Yes, sir.

Mr. Langsdale: Now, I object to that upon the ground it is calling for an improper conclusion from this witness,

calling for her to pass upon the mental attitude, status and purpose of those who were engaged in that demonstration and not being in any way defense to the company's conduct, standing by and permitting it.

Trial Examiner Batten: She may testify, as far as she herself is concerned, as to what—

Mr. Langsdale (Interrupting): It seems to me to be by way of confession—

A. (Interrupting) I think this article in the paper is what prompted that action that taken place down there that morning—

Trial Examiner Batten (Interrupting): I said you may testify as to your own feeling in the matter, as to what prompted you.

A. Yes. Well, I didn't take part in it.

Trial Examiner Batten: Well, then, if you didn't take part in it, are you able to testify as to what prompted the other people—

A. (Interrupting) From the reading of that article and the comments around, I don't know if that is permis- [fol. 877] sible or not.

Trial Examiner Batten: Go ahead, Mr. Stottle.

By Mr. Stottle:

Q. Did you hear other employees talking about this article that morning?

A. Yes.

Q. Was that the general topic of conversation among the employees at the plant that morning?

A. Yes, sir.

Mr. Stottle: Well, we now offer in evidence Respondent's Exhibit 1.

Trial Examiner Batten: Well, as I understand it, Mr. Stottle, you are not offering this as any proof of truth of the statements contained in there; simply as a newspaper article which apparently some of the employees read.

Mr. Ingraham: But Your Honor, the next question will probably go into that. Miss Todd was present in court

when Sylvia Hall testified as to the truth of that article, and she heard Sylvia Hull's testimony in that respect.

Trial Examiner Batten: But I mean as far as the newspaper article itself, Mr. Ingraham, is concerned, you certainly aren't offering that as being true or untrue?

Mr. Ingraham: No.

Trial Examiner Batten: Merely as a newspaper article which this witness read, and on the basis of what she heard from some of the other employees, they acted upon it.

[fol. 878] Mr. Ingraham: That is right.

Trial Examiner Batten: That is the purpose of it thus far.

Mr. Ingraham: That is right.

Trial Examiner Batten: It will be received on that basis, then. You may proceed.

(The document heretofore marked as "Respondent's Exhibit No. 1" was received in evidence.)

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[fol. 886] By Mr. Stottle:

Q. Miss Todd, are you acquainted with Mr. Fitzgerald, employed by the Donnelly Garment Company?

A. Yes, sir.

Q. Is he a member of your union at this time?

A. Not at the present time. Very recently he asked to be—to withdraw his membership as he had been made head of the advertising department.

Q. About when did that occur, do you know, that he was made, or given a promotion?

A. I think around the first of June, is my information.

Q. Around the first of June? A. Yes, sir.

Q. And he has withdrawn, then, from the union since then? A. Yes, sir.

Q. Miss Todd, there has been some question raised here as to whether there was real bargaining between your [fol. 887] union and the company with regard to your union contracts. I will ask you to state if there were any provisions in the contracts that were favorable to the

company, did you feel that they were more than offset by the provisions which you obtained favorable to the union?

Mr. Leary: I object to this, Mr. Examiner, as calling for a legal conclusion.

Trial Examiner Batten: You may answer.

Mr. Langsdale: Well, I object to it if he is asking her if any provisions with reference to wages and hours offset those provisions which prohibit collective bargaining as defined by the Wagner Act, because I don't think that those provisions can be offset, as the Examiner stated yesterday, by any wage agreement or any other agreement with reference to hours or conditions.

Trial Examiner Batten: You may answer.

* * * * * *

A. Yes, we felt like that is a good contract. We have certain things that we had to give—

Mr. Langsdale: (interrupting): I object to this part of the answer as voluntary and not responsive. Her an- [fol. 888] swer to the question was "Yes."

Trial Examiner Batten: I will sustain the objection.

By Mr. Stottle:

Q. Well, what was your feeling with regard to that matter, Miss Todd?

A. Well, we felt that we have had good working conditions and we have gained certain rights and certain things with that contract over what we had been receiving before, and we also had to allow the company to obtain certain privileges, but we felt that we did work out a good contract for our members of our union.

Q. I believe you testified that from the time the union was formed, you spent approximately a month before you were able to fully negotiate the first contract?

A. Yes, sir.

Q. And during that time, were you working on the terms of that contract?

A. Yes, sir. We spent a great deal of time working out that contract before it was presented to the company.

Q. And at that time you didn't feel fully ready to go into the second contract at the time the first one was formed?

A. No, sir. We didn't think that we had had time enough to work out the details to draw up a satisfactory wage agreement. That was deferred until a later time.

Q. And then did you spend from May 27th until the signing of the second contract, June 22d, in gathering in- [fol. 889] formation and preparing the second contract to submit to the Donnelly Garment Company? A. Yes, sir.

Q. Miss Todd, I notice in yesterday's transcript that I asked you this question, which was not answered, and I now ask you the question over:

"Did you personally feel, Miss Todd, that you had been interferred with as far as you personally were concerned, as to what union you should join or belong to, by the officers of the company or any of its supervisory employees?"

A. I did not.

Mr. Leary: I object to that, Mr. Examiner,—

Mr. Langsdale (interrupting): I ask the answer be stricken until he has a chance to make his objection.

Trial Examiner Batten: What is your objection?

Mr. Leary: On the ground it calls for a conclusion and asks her for her opinion and mental state.

Mr. Langsdale: Instead of requiring her to state the facts.

Trial Examiner Batten: I think I ruled on the same matter yesterday. The same ruling will stand.

[fol. 890] Mr. Stottle: Mr. Examiner, I don't believe you excluded the answer yesterday. It just got into a discussion and she didn't answer it. You did say you would reserve a ruling as to whether we should ask every one of the 1,200 employees the same question.

Trial Examiner Batten: My recollection is that yesterday I permitted her to answer that as far as she was personally concerned, but in doing so I wasn't passing on the general question as to whether every employee could be brought in to this hearing and asked the same questions.

Mr. Stottle: That is right. But after the ruling she didn't answer, and that is the reason I am asking it over.

Trial Examiner Batten: My same ruling would apply.

Mr. Langsdale: I understood you to say her answer might stand now.

Mr. Stottle: What was the answer, then? It was moved that it be stricken out.

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the last answer was read by the reporter.)

Mr. Stottle: Miss Todd, I will ask you whether by any act or deed or word to you, or any that you heard, any of the officers or supervisory employees of the company ever attempted to interfere with what union you should join or to coerce you into joining the Donnelly Garment Workers' Union.

Mr. Leary: I make the same objection, Mr. Examiner.

[fol. 891] Trial Examiner Batten: Same ruling.

A. I never have heard any of them object. I never have had it brought to my attention.

Mr. Langsdale: I move that that be stricken as not responding to the question. She was asked about herself.

Trial Examiner Batten: Are you speaking of yourself personally?

A. I thought he asked—

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter.)

Mr. Langsdale: That question applies to herself and no one else.

The Witness: I misinterpreted it, then.

Mr. Stottle: Mr. Langsdale's comment, I think, is not correct. It asks if she heard anything of the kind.

Trial Examiner Batten: If she heard a supervisory employee or official say anything, is that correct?

Mr. Stottle: That is correct.

Mr. Langsdale: Which affected her joining.

Trial Examiner Batten: I don't think there is any question about its being clear.

Trial Examiner Batten: Did any supervisory employee or officer of the company ever say anything to you about that?

Is that correct, Mr. Stottle?

Mr. Stottle: Said to her, or that she heard.

[fol. 892] Trial Examiner Batten: Or that she heard them say?

Mr. Stottle: That is correct.

A. I never heard them say anything of that kind, and I still think I have a right to join any labor organization I want to.

Mr. Leary: I move that the latter portion of that, beginning with the words "I still" be stricken.

Trial Examiner Batten: It may be stricken.

By Mr. Stottle:

Q. Were you given to understand in any way whatever that if you did join the International or if you didn't join the Donnelly Garment Workers' Union that you might lose your job down there?

A. No, sir. I don't think I would lose my job for belonging to any labor organization.

Q. Miss Todd, have you received any money from the Donnelly Garment Company or any of its executive officers for use on behalf of the Donnelly Garment Workers' Union?

A. No, sir, not a bit.

Q. Do you know whether the company has contributed any money toward the payment of the counsel for the Donnelly Garment Workers' Union, Mr. Tyler, or his associates?

A. Well, I know they haven't in this respect, that we have paid every dime Mr. Tyler sent a statement for.

Q. By "we" you mean the Donnelly Garment Workers' Union?

A. The Donnelly Garment Workers' Union has taken care of that entire expense.

[fol. 893] Q. Miss Todd, you testified in answer to some question on direct examination that you wouldn't be afraid of being discharged for anything you did. I believe that is on page 446 of the record. Do you mean that literally, that you could do anything and not expect to be discharged?

A. What I meant was, I wouldn't expect to be discharged for any labor affiliation. I might do other things I would be discharged for.

Q. You had previously been discussing that question, membership in labor organizations, when you made that answer? A. That is as I remember it, yes, sir.

* * * * * *

[fol. 894] Mr. Stottle: Miss Todd, I hand you respondent's exhibit No. 2, and I will ask you if those are copies of the contracts made between the International Ladies' Garment Workers' Union and other garment manufacturers.

(Thereupon the contracts above referred to were marked "Respondent's Exhibit No. 2:")

* * * * * *

[fol. 898] By Mr. Tyler:

Q. Miss Todd, something was said in your direct examination about your using a filing cabinet of two drawers owned by the company, for your union papers. Did the company ever furnish you, or furnish the union, a filing cabinet, Miss Todd?

A. That was not furnished for us by the union. It was a file that had been there, that one, or there had been another one there, but there had always been a file at that desk, and I just used it.

Q. How long had it been there?

A. Well, it had been there, I don't—I couldn't tell you how long.

Q. Well, for a long time before the union was formed?

A. Oh, yes. Any time I used that desk, there had been some sort of a file with it.

Q. Did you ask anybody's permission to use that filing [fol. 899] cabinet? A. No, sir.

Q. Now, you also mentioned a small file. To whom does that small file belong?

A. The small file belongs to the Donnelly Garment Workers' Union and contains our membership cards.

Q. Who paid for the small file?

A. The Donnelly Garment Workers' Union.

Q. On your direct examination, you didn't seem to be clear as to whether the Donnelly Garment Workers' Union purchased the cards used for the charter memberships, for memberships. Do you know now whether the Donnelly Garment Workers' Union paid for those cards or not?

A. Referring to our treasurer's book, I know that they did pay for them.

Mr. Tyler: I will ask that the reporter mark this paper for identification.

(Thereupon, the document above referred to was marked as "Intervener's Exhibit No. 1" for identification.)

Mr. Langsdale: We have no objection.

By Mr. Tyler:

Q. What is the paper I hand you marked Intervener's Exhibit No. 1?

A. Well, it is the payment for the printing of those cards.

Q. Well, isn't it a bill for the payment? A. Yes, sir. [fol. 900] Q. For those cards?

A. Well, I should have said, a bill.

Mr. Tyler: We offer it in evidence.

Trial Examiner Batten: It will be received.

(The document heretofore marked as "Intervener's Exhibit No. 1 was received in evidence.)

By Mr. Tyler:

Q. Was that bill paid, Miss Todd?

A. Yes, sir. It is marked "Paid."

Q. By whom?

A. I paid that particular part right there.

Q. Now, in your direct examination you were asked about making a statement in a talk with Sylvia Hull on April 23, 1937, to the effect that "I wouldn't expect to join the union and get away with it."

Did you say anything like that in the incident in which Sylvia Hull or Fern Sigler—

Mr. Langsdale (interrupting): Wait a minute—

* * * * * *

[fol. 907] A. I was thinking of the feeling of the employees and the girls through the plant.

Q. Had the employees before that time manifested resentment against the actions of the International Ladies' Garment Workers' Union?

A. Very definitely.

Q. In what ways?

A. One way was, we had been to talk to Mr. Gossett and Mr. Tyler previous to that time.

[fol. 908] Q. And had been to the police prior to that time?

A. And had been to the police. There had been a meeting of the employees, discussing what they could do in the way of protecting themselves against the actual physical attacks that were being threatened.

Trial Examiner Batten: Just a minute, Miss Todd.

Trial Examiner Batten: Did anybody physically attack you?

A. Not personally.

Mr. Tyler: Had you or had you not seen notices in the papers of physical violence at the Gerney plant?

Mr. Langsdale: I object to that as immaterial and not proving any issue in this case, as to what occurred at the Gerney plant.

Mr. Tyler: I submit what is endeavored to be shown here is whether these people of their own volition desired to form their own labor union, and in so doing they are entitled to give reasons for taking that action. If the actions are probable they are persuasive; if they are not probable they are not persuasive. But they are entitled to give such reasons as they say they had to stay out of the International and join the Donnelly Garment Workers' Union, and if they did understand violence was being exerted by the International, that might well be a reason—whether it was true or not, if they so understood, that might well be a reason for their choice, and they are entitled to show good faith for their choice by citing [fol. 909] their reasons.

Mr. Langsdale: That speech might be proper at some other stage of the proceedings.

Trial Examiner Batten: We will forget about speeches. I will sustain the objection. As I said yesterday, I am not going into all of these rumors. If you have any evidence of anyone who was threatened personally, they may come up and testify to it personally and I will receive that testimony, but I am not in this hearing going into all of the rumors that fly around during an organizational campaign of unions.

Mr. Tyler: It is not the truth of the violence I am establishing. It is merely the reason these people had for staying out of the International and forming their own union.

Trial Examiner Batten: I don't think it is material for the purpose for which you have offered it.

Mr. Tyler: All right.

By Mr. Tyler:

Q. Had there been picketing of the Donnelly plant by the International before the incident to which you referred? A. There had been.

Q. On about what date did the International picket the Donnelly Garment plant?

A. That has been done a good many times, as far back as December, 1934, and I think again in the early part—January or February of 1935. And there has been [fol. 910] some other picketing since that time with—they had thrown pamphlets and circulars.

Q. Did you see this picketing you speak of yourself? A. Yes, sir.

Q. Did you see any of the banners or signs the pickets carried? A. Yes, sir.

Q. Do you remember what they said on them?

Trial Examiner Batten: Just a moment, Mr. Tyler. I do not intend to receive any of that, either, unless it is something which was unlawful or illegal. If these pickets picketed this plant in the way in which they are permitted to under the law and there was nothing unlawful about it which amounted to actual coercion, I do not intend to go into all of those matters.

Mr. Tyler: I expect to show, if the Court please, that these signs contained untruthful statements, and that that had some effect on the choice these people made.

Trial Examiner Batten: I would suggest you embody that all in an offer of proof.

Mr. Langsdale: I wish to make a further objection to this question at this time. The question was asked her to explain her answer in the Fern Sigler incident that she wouldn't expect to join the union and get away with it. My objection to this picketing situation is that it is too remote to in any way throw any light on the Fern [fol. 911] Sigler incident, the picketing having taken place two years prior to the Fern Sigler incident.

Trial Examiner Batten: The only matter I am concerned about here is this—As far as its being remote is concerned, we might say that about a good many matters that have come up here or that might come up in the future.

My point is, if anything, Mr. Tyler, which you want to offer and show is actual coercion it should be received. Now, I can't see how you could possibly say that a thing which was being done such as picketing and these other matters, if they are lawful, could coerce anybody. They have a right to do them.

Now, if you intend to show that they did things which were unlawful, which amounted to coercion and not just a fight between the employees in one union and the employees in another union, which everybody knows occurs day in and day out all over the country—As I say, if you intend to go into actual coercion on this matter, then it ought to be in this record.

Mr. Tyler: I wish to say, we will show at a later period the acts of violence by the complainant in this case, and the threats that had been applied to these interveners, but I don't make my offer of evidence on that ground.

I submit to Your Honor that in showing what their real [fol. 912] choice of labor unions was they have a right to refer to any conduct, lawful or unlawful, of the International to show why they didn't want to join it. That is the vital crux. If the International had a habit of wearing red neckties and they didn't like red neckties and they didn't want to join the union for that reason, I

submit they have a right to give their reasons for preferring their own union.

Trial Examiner Batten: As I say, I do not propose to go into it with this witness, and if that is your theory on this particular matter you may submit it as an offer of proof.

Mr. Stottle: Mr. Examiner, you have stated every party has an exception without asking for it?

Trial Examiner Batten: That is right.

Mr. Stottle: In order that it might be clear, would the respondent be granted an exception to a question asked by the intervener when it is overruled?

Trial Examiner Batten: All parties receive exceptions to all adverse rulings.

Mr. Stottle: You might not deem it adverse to us.

Trial Examiner Batten: I am not going to pass on that. If the parties deem it adverse you may have the exception. In other words, I do not intend to go through the record and determine whether it is adverse to certain parties or not.

Mr. Langsdale: Mr. Stottle asks if he could have an exception to Mr. Tyler's objection?

[fol. 913] Trial Examiner Batten: No. To the Examiner's ruling on the objection.

Mr. Langsdale: I would think if the respondent wishes an exception to an objection made for the intervener the respondent would have to join in the objection, because he has no objection that is overruled.

Mr. Stottle: I am not objecting to the intervener—I asked if I would have an exception to the Examiner's ruling, even though the ruling was made to a question asked by the intervener.

Trial Examiner Batten: I would say yes.

Mr. Langsdale: Even if he does not make an objection?

Trial Examiner Batten: Yes, if it is adverse.

Mr. Langsdale: The same applies, then, to the International Ladies' Garment Workers' Union where the Board may make an objection?

Trial Examiner Batten: That is correct.

Mr. Langsdale: We do not have to repeat that objection? We get an exception?

Trial Examiner Batten: That is correct.

Mr. Tyler: I wish to make an offer of proof.

Intervener offers to prove by this witness that for months before the organization of the Donnelly Garment Workers' Union the employees had seen numerous accounts of violence by the International against employees of other gar- [fol. 914] ment plants in Kansas City and had, many of them, seen such violence with their own eyes, and had, many of them if not all, heard reports of such violence, that they were in a state of almost hysteria from constantly overheard statements that the same tactics were to be applied to the employees at the Donnelly Garment Company, and that this was a reason which affected them in their choice as to forming their own union or joining the International or staying out of all unions.

Mr. Langsdale: May I ask Mr. Tyler a question about that offer?

Trial Examiner Batten: If an attorney makes an offer of proof—

Mr. Langsdale (Interrupting): I want to know how to make my objection to it.

Mr. Tyler, is this offer of proof in connection with your effort to have this witness explain what she said as to the Fern Sigler incident?

Mr. Tyler: Partially.

Mr. Langsdale: Then, I object to it on the ground that it has no bearing whatever on the meaning of this witness' statement at the Sigler hearing.

Trial Examiner Batten: What is the balance of your reason?

Mr. Tyler: I submit it does, because she is saying of what she was apprehensive. She is entitled to say the [fol. 915] feeling of these employees was such that it would be very uncomfortable for her to join the union, and to say why the feeling of the employees was that way.

She is also entitled to testify along that line for the purpose of showing reasons for the forming of the Donnelly Garment Workers' Union.

[fol. 916] Mr. Leary: I object to the offer of proof, Mr. Examiner.

Trial Examiner Batten: The offer is denied.

* * * * * *

By Mr. Tyler:

Q. Miss Todd, why did the Donnelly Garment Workers' Union ask for the check-off system in collecting dues? First, do you understand what the check-off system is?

A. Yes, sir.

Q. Why did the Donnelly Garment Workers' Union ask for the check-off system in the matter of collecting dues?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: You may answer.

A. Primarily, to save time and trouble of collecting the dues, and it was a small amount of expense to us. We were interested in saving that, also.

By Mr. Tyler:

Q. How long after the organization of the union did they ask for the check-off system?

A. I believe that that was in August. I believe it became effective in August or September. I rather think it was August.

Q. Of what year? A. Of 1937.

[fol. 917] Q. Was any discussion of the matter of asking or demanding for that system had by the executive committee of the Union? A. Yes, sir.

Q. Will you refer to that in the minutes, please?

A. I think you will find it in the meeting of June 3, 1937, not very complete, but there is some reference to

them, and some conversation with—that is not referred to there with Mr. Ingraham, in regard to that.

By Trial Examiner:

Q. Is that the group meeting? A. Yes, sir.

Q. What date was that?

A. June 3, 1937.

By Mr. Tyler:

Q. I hand you the minutes and ask you to locate the reference to which you refer? A. 9-18.

Q. Will you read, please,—

A. (Interrupting) Wait a minute. That isn't it. That was something else I had in mind. I remember so distinctly discussing that, and I thought it was in these minutes.

Q. Take your time and see if you can locate it.

Trial Examiner Batten: You mean there was some official action, Mr. Tyler?

Mr. Tyler: I believe there is a memorandum about the discussion, about that.

The Witness: There definitely was, and I thought it [fol. 918] was in here.

Trial Examiner Batten: I just thought if you had a note about it, it would save time.

Mr. Tyler: No, I don't have. I just believe it is in there.

The Witness: We discussed it several times and didn't know whether it would do us any good to ask for it or not.

By Trial Examiner Batten:

Q. Do you remember what date it was that you first took the matter up? It ought to be somewhere around that date.

A. Well, Mr. Batten, we wanted to do it from the time the thing was organized. We talked about it and that was where I thought that June 3d confused me, but I know our records show that. It didn't take place—I

mean, it didn't actually become effective until about August.

Mr. Tyler: Well, May I suggest that we pass that and during the noon recess, [shw] may be able to find it; if she can't all right.

Trial Examiner Batten: All right.

By Mr. Tyler:

Q. Now, did you say that some discussion was had with Mr. Ingraham about the union getting a check-off system?

A. Yes, sir.

Q. Just state what that discussion was, and how it came about.

[fol. 919] A. Well, we asked if the company would take the dues out of our checks, and Mr. Ingraham objected to it, but after discussing it the only way he would agree to do it was if each Individual member of the Donnelly Garment Workers' Union would sign a request that that be done, and I was asked yesterday to bring one of those cards, and I did bring it.

Q. Did each member of the union sign a request or authorization that his or her dues should be deducted from his pay check and paid directly to the treasurer of the union? A. Yes, sir.

Mr. Tyler: I will ask, if Mr. Stottle will produce that, or if he can produce said request of the employees, that their dues be deducted from the pay check.

Mr. Stottle: Mr. Tyler, I have just handed you the card which was furnished to me this morning and which I should have offered, and I neglected to do so.

Mr. Tyler: Well, do you have the signed requests of the employees?

Mr. Stottle: Well, I presume they are down at the company, but I don't have them here.

Trial Examiner Batten: I didn't understand that we wanted any signed one, did we?

The Witness: No.

Mr. Tyler: Well, it was my intention to ask for the signed—

[fol. 920] Trial Examiner Batten (interrupting): Well that isn't what I asked for. I think I said a blank one, did I not?

Mr. Tyler: Well, I will ask the stenographer to mark this for the purpose of identification.

(Thereupon, the document above referred to was marked as "Intervener's Exhibit No. 2" for identification.)

By Mr. Tyler:

Q. What is the Intervener's Exhibit No. 2 which I hand you, Miss Todd?

A. It is a card that each member of the Donnelly Garment Workers' Union signed, requesting the dues to be taken out of their check.

Q. That is the form that each employee signed?

A. Yes, sir.

Mr. Tyler: I offer it in evidence.

Trial Examiner Batten: It will be received.

(The document heretofore marked as "Intervener's Exhibit No. 2" was received in evidence.)

By Mr. Tyler:

Q. Now, Miss Todd, has the Donnelly Garment Workers' Union paid rent for the use of the room in the building occupied by the Donnelly Garment Company since the company became the lessee of that room? A. Yes, sir.

Q. Has the union paid the rent for the chairs which are [fol. 921] used in those meetings when chairs are brought in in any number? A. Yes, sir, always.

* * * * * * *

By Mr. Tyler:

Q. I ask you, Miss Todd, what these papers are, marked Intervener's Exhibits 3 to 14, inclusive?

A. They are statements from the Kansas City Chair Rental Company for chairs that the union rented.

Q. Were those bills paid? A. Yes, sir.

Mr. Tyler: I offer them in evidence.

[fol. 922] Mr. Langsdale: No objection as far as the union is concerned.

Mr. Leary: Well, I object to them, that they are incompetent, irrelevant and immaterial.

Trial Examiner Batten: They will be received.

(The documents heretofore marked as "Intervener's Exhibits Nos. 3 to 14, inclusive", were received in evidence.)

By Mr. Tyler:

Q. Miss Todd, how has the union raised funds for its operation?

A. By our dues, some parties, and some special assessments.

Q. Has the employer directly or indirectly ever contributed money to the Donnelly Garment Workers' Union?

A. The employer has never contributed one penny to the support of the Donnelly Garment Workers' Union.

Q. Have the bills of Gossett, Ellis, Dietrich & Tyler for legal services furnished the union or the employees in any way separate from the union, been paid by the employees or by anyone else?

A. They have been paid by the employees.

Q. Now, in a general way, what expenses has the union had? I don't mean, to detail them dollar by dollar, but what general expenses have they had?

Mr. Langsdale: Pardon me, Mr. Examiner. I was asleep when that question and answer before this was had. [fol. 923] Would you mind stopping and reading it?

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Mr. Tyler: Now, Miss Todd, state in a general way what expenses the union has had during its existence.

Trial Examiner Batten: Mr. Tyler, might I say, are you going over every item?

Mr. Tyler: No.

Trial Examiner Batten: I thought if you were, she had better have her book.

Mr. Tyler: Well, I will hand her the book, anyway. It may refresh her recollection. I don't mean to read this book into the record, but I want her to tell generally what expenses.

A. Well, our largest expense has been our fees for our legal counsel, and we have had our—well, the general chairman's salary and our secretary and treasurer, and current expenses incidental to supplies, and if we have had parties we have had to pay the expense of that, and the rent of the auditorium or the room wherever we had our parties, and the chairs, things of that type.

By Mr. Tyler:

Q. What about printing of briefs?

A. We have paid for all the printing of briefs that have [fol. 924] been used in any of these court proceedings, and also, the Donnelly Garment Workers' Union paid any of their members that it was necessary that they be at the hearing before Judge Miller. We paid that.

Q. What about traveling expenses?

A. We have paid any traveling expenses incurred by Mr. Tyler.

Q. What traveling expenses have you paid?

A. To St. Paul and to Washington, and I am inclined to think there was a trip to St. Louis. I am a little bit hazy about that. There have been other times, oh, for taxi fare for members of the union back and forth, gasoline books or something like that.

By Trial Examiner Batten:

Q. Miss Todd, pardon me. Does any member of the committee that incurs any expense, do they present that expense to the committee? Is that the—for reimbursement, I mean, generally speaking.

A: Generally speaking, I think sometimes. I know, myself, I don't always do it, and I know Jack drives his car and don't always do it. Sometimes we do. We should

always do it, I guess. On the whole, we take care of it, if it is anything of any consequence. We might run down, you know, might run an errand, not do it on one errand.

By Mr. Tyler:

Q. Has the union ever been reimbursed by the employer directly or indirectly for any of those sums they spent?

[fol. 925] A. We have never received a penny from outside help from the company or anybody?

Q. Well, have they ever made any promise or agreement or suggestion that some day they would reimburse you?

A. Never one.

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By Mr. Tyler:

Q. Well, how much are the dues in the Donnelly Garment Workers' Union, Miss Todd?

A. 25 cents a month.

Q. Have you had assessments in the union besides the dues? A. Yes, sir.

Q. Tell the court how many assessments and in what amounts.

A. I believe we have had one of a dollar some time the early part of the formation of our union. I say, early. I think I mean within—this book will show it—but I think it was within the first six or seven months, or so, and during the hearing before Judge Miller it was voted and we decided by the majority to donate $2 apiece.

[fol. 926] Q. That is the—what other income have you had besides dues and assessments?

A. Well, we have had some parties that we have made a little money off of from time to time.

Q. Would that income be shown in the treasurer's book?

A. All of our financial statements are in there; anything that we have made in the way of money is in there; any bills that we have made, I think are in there.

Q. Now, Miss Todd, during your membership on the executive committee of the Donnelly Garment Workers' Union, has that committee received and handled complaints of employees about their wages or their treatment or their hours or their holidays? A. Yes, sir.

Q. Would your memory be refreshed as to some of those complaints if you were shown written records of them?

A. Yes, sir.

Q. Are there written records kept of complaints made by employees?

A. The greatest proportion, no. We do keep some of them.

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[fol. 929] By Mr. Tyler:

Q. Miss Todd, can you give us some idea of the percentage of complaints handled which were in writing, and the percentage which were never put in writing?

A. The largest percentage were never put in writing.

Q. Now, will you state in the record some of the complaints you can remember which were not put in writing? Describe them and tell what was done with them.

A. Well, I recall Della Flannery in the pinking department objected to the way our work was being distributed, which I talked to Mr. Baty about and he talked to the instructor, and I talked to her, also, and it was adjusted satisfactorily.

I also have in mind a complaint of Virginia Dare about prices on first part work that she was doing, that she felt was low. That was taken up and adjusted. The price was raised.

Q. Who was it taken up with?

A. I believe that one was taken up with Mrs. Nichols.

By Mr. Langsdale:

Q. What complaint was that?

A. About a price on her first part, on the work that she was doing that was too low.

[fol. 930] Q. I mean, whose complaint was it?

A. Virginia Dare.

Mr. Tyler: And was any relief secured for Virginia Dare?

A. I stated that the price was raised, yes.

I remember a complaint of Alphonso Staab. He wanted to be returned to the cutting department. That was taken up with Mr. Baty and was taken care of. He was not returned immediately, but he was returned as soon as it could be handled with the work that he was doing.

The complaint of Edith—Edna Troutman, and Edna Davis, about their vacations. They felt they were entitled to vacations. That was adjusted and they were given their vacations.

That makes me think, in 1938, there was some complaint from several people about not receiving their vacation of two weeks. In some instances, a few, it might have been one week that they were entitled to, and I took that up very thoroughly with Mr. Baty, and had discussed—the committee had discussed it, too, and Mr. Baty had their records gone over and there was some forty or forty-three people who received vacations that they had not previously been told they were entitled to.

Q. Was that as a result of taking up the matter by the committee with Mr. Baty?

A. Absolutely. I don't believe that the committee as a whole took that up with Mr. Baty. We discussed it, but [fol. 931] I think I talked to Mr. Baty about it myself.

Paul Sterner wanted a change of work and that was taken up with the company and he was changed to another position.

[fol. 932] Trial Examiner Batten:

Q. These are all other than the ones that are in writing; is that it?

A. Yes. Ruby Lago complaining about a price on the operation that she was doing which we called joining, and that was raised.

Effie Weigand complained about skirts she was working on being low. That was raised.

Don Lytle had been for some months folding boxes and wanting to get into the cutting department. That was

discussed with Mr. Batty and arrangements were made for him to be placed in the cutting department.

I remember a pinking operation that Nellie Stites was complaining about being too low, which was raised.

. . . . . .

[fol. 933-934] Mr. Ingraham: I would like the record to show, Your Honor, that respondent has produced the cards of the employees authorizing the company to deduct 25 cents a month from their wages and turn it over to the Donnelly Garment Workers' Union.

Trial Examiner Batten: As I understand it, those are here for anyone's inspection.

Mr: Langsdale: May I ask a question?

Mr. Ingraham: Certainly.

Mr. Langsdale: Was this action unanimous?

Mr. Ingraham: We have a card from everybody from whose wages we have deducted 25 cents.

Mr. Langsdale: Has anyone refused to sign it?

Mr. Ingraham: I can't say.

The Witness: Do you want me to answer that?

Mr. Langsdale: Yes.

A. Everybody has been told, Mr. Langsdale, they didn't have to pay their dues that way.

[fol. 935] By Mr. Langsdale:

Q. That is not the question. Did everybody sign it?

A. With the exception of the salesmen. The company did not agree to take the dues out of the salesmen's checks.

Q. But everyone that the company did agree to take dues from signed the card?

A. Yes, as far as I know. There might be—

Mr. Ingraham: They signed the cards before the company turned over any money or agreed to turn it over?

A. Absolutely, yes, sir.

Trial Examiner Batten: I think, as long as they are in here, anyone may inspect them and go over them, and then if there are any questions—

Mr. Langsdale: (Interrupting) My only thought was, I don't care to inspect them if I have an answer that everybody signed the cards.

The Witness: Yes, everybody did.

Trial Examiner Batten: With the exception of the salesmen?

A. With the exception of the salesmen. The company refused to take theirs out of their checks. They paid theirs in cash.

Trial Examiner Batten: We will proceed.

Mr. Tyler: Miss Todd, at the time of adjournment you were repeating certain oral complaints of employees which [fol. 936] had been handled by the committee. Can you recall other complaints which were oral and not written?

A. Naomi Osipik wasn't satisfied to work continuously in the department where she was and wanted to be transferred. We were able to get a transfer for her to the department where they make models.

I remember that Ben James, in the cutting department, wanted an increase in salary. That was taken up with the company and he received an increase.

And I remember a complaint that Ola Jewett made about some prices on some work she was doing, and that was raised.

I remember a complaint rather recently of one of the operators on a button machine, Laura Lee Royce, who asked to have her guarantee lowered. I talked to her and told her I didn't think that was necessary. She had been ill and was out for several weeks. She said, well, she wanted it lowered anyway; if I didn't want it lowered she would go down and talk to Mr. Baty or somebody, because she

didn't feel she was up to her earning capacity and didn't want to feel she was having to push herself in any way.

Then, a complaint that was made against one of the instructors, that she was being harsh in her manner of talking to the operators, and there was quite a little discussion about that. I remember at two meetings the committee discussed it, and it was taken up with Mr. Baty. [fol. 937] I know he reprimanded her and got results from that reprimand.

Q. Do you remember any oral complaint about the day before Decoration Day?

A. Yes. There had been a number of requests that the girls would like—some of them would like to be off Decoration Day and work the Saturday previous to Decoration Day. They became so numerous that we talked to Mr. Baty about that and asked him—well, the committee discussed it, also, at one of their meetings, about whether we would be justified in asking to trade Monday for Saturday.

Q. What Monday and what Saturday are you talking about?

A. The Monday before Decoration Day, trade it for the Saturday previous to that Monday so that it would give us a holiday, we would be off on Monday and Tuesday, three days there together. And the committee thought it was all right, if the majority of them wanted to do it. We asked Mr. Baty if he would do that. We got into some discussion but—oh, I think probably 10 or 12 girls in one department, because they said they didn't want to do that. It was settled in a satisfactory manner. There got to be quite a little discussion there about it, but it was decided that the majority would rule, and everybody had an opportunity to express their desire as to whether they preferred to trade Monday for the previous Saturday or not.

We did have those three days holiday, and it was decided [fol. 938] by the majority expressing their desire to do that.

Then— Did I mention Nell Stites before lunch?

Q. Yes. Were there other oral complaints handled by the committee which you do not recall by name or circumstances at this time?

A. Yes. There have been numerous--many complaints. I don't just recall all of the names of them right now. I know there were a great many requests that their guarantee be raised and that they be moved into another group, into a higher group.

One of those, I remember, was Mabel Bracey. She thought her guarantee should be raised from $22.50 to $25.60. That was discussed with Mr. Baty and it was taken care of.

Q. Has the committee taken any part in any requests or applications of employees for an increase in either classification or pay?

A. I got some information out of my desk here—

Q. Has the union taken any part in that?

A. Yes, sir.

Q. Will you name instances, if any, in which the union was successful in securing a raise in classification or a raise in pay for members?

A. There was one instance where there were 15 or 20 taken care of at one time. There are numerous instances where individuals have been taken care of. I can remember some, and I can give them to you if I can refer to this [fol. 939] sheet of paper.

Q. Is that a memorandum of your own?

A. Yes.

[fol. 940] Q. Will you give it, please.

A. Edna Rawlings—all of these are requests that have come to some member of the committee and have been taken up with the company and satisfactorily adjusted. Edna Rawlings. Her guarantee was raised to $25.60. Ethel Carpenter was raised to $25.60. Dorothy Deitz, her name now is Sharp—

By Mr. Langsdale:

Q. (Interrupting) Dorothy what?

A. Dorothy Deitz Sharp, D-e-i-t-z, was raised to $22.50. Inez Engle was raised to $22.50. All of these are guarantees that were raised that I am going to name, that are satisfied, that were raised to $22.50. May Ingold, Ann Murray, Opal Simmons, Pearl Boswork, Ruth Lowes, Regina Platner, Katherine Sutulovich, Laura Hills. I have one here, I have E. Cameron. I think her name is Elsie.

I get her confused with Edith Coll. Pearl Black, Lois Kessinger, Tibitha Miller, Mary Cox, Pearl Hall, Virginia Dare, Katherine Hardsau, Laura Hanson, Marie E. Richardson, Allie Rieman, Verna Harrison was handled in the same manner and raised to $22.50. Reba Hisel was raised from $16.50 to $18. Ellen Burton was raised to $20. Bessie Maxwell to $20. In fact, all of the following are to $20: Nina Stewart, Mary Warth, Rubie Clayton, Mary Crume, Evelyn Lewis, Ruth Davidson.

I would like to say this is not all of them, but these are notations that I have made of various kinds.

Q. Miss Todd, the wage agreement has some provision [fol. 941] to the effect that 40 per cent of the operators are guaranteed $25.60?

A. Yes, sir.

Q. I think my figures are correct. I want to ask you whether you do any checking or in any way check the situation to see that this guarantee by the company is carried out, that 40 per cent do get as much as $25.60?

A. I do check that each week, and if they are not correct, they are adjusted so that that is true.

Mr. Tyler: I ask the stenographer to mark the papers I hand him, being twenty-nine sheets of paper labeled, each labeled "Complaint form", Intervener's Exhibit 15-A, B, C, and so forth, on to the twenty-ninth sheet, making AA the second time around.

Trial Examiner Batten: They all pertain to the same thing?

Mr. Tyler: Yes. They are all about complaints.

(Thereupon, the documents above referred to were marked as "Intervener's Exhibits Nos. 15 to 15-BB" for identification.)

By Mr. Tyler:

Q. What are these papers which have just been marked by the stenographer, which I hand you, Miss Todd?

A. They are complaints or adjustments of complaints made by members of the Donnelly Garment Workers' Union.

Q. Included in them are some responses by the company [fol. 942] to complaints?

A. That is correct.

Q. I will ask you if the printed form on them is the form supplied by the Donnelly Garment Workers' Union for the use of its members making complaints?

A. Yes, sir.

Mr. Tyler: I offer them in evidence.

* * * * * *

Trial Examiner Batten: They will be received.

(The documents heretofore marked as "Intervener's Exhibits Nos. 15 to 15-BB, inclusive" were received in evidence.)

Mr. Tyler: On the sheets marked "complaint form", I understand that the printing is the form of complaint prepared by the Donnelly Garment Workers' Union for the use of its employees who want to make complaints. Is that correct? A. Yes, sir.

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[fol. 944] Q. Are there any of them in which more than one employee joined in a complaint?

A. Yes, sir. The one on the top is by three employees.

Q. Will you point out others and give the names of others joining in the complaint where there are more than one?

A. There is one here that has several prices on it that needed to be changed. Those were made by different people, but I took that up with Mrs. Nichols personally and these were the changes that were made. Now, there is another sheet here—

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[fol. 945] Q. Are these all of the written complaints, as far as you know, that have been filed with the committee by employees?

[fol. 946] A. They are the only ones I have ever known anything about.

Q. Why didn't you have more complaints?

Mr. Leary: Just a minute.

A. We did have more complaints.

Mr. Leary: I object to that as being immaterial.

Mr. Tyler: I think she has a right to—They are criticizing us on the theory that it wasn't a real union because there were no complaints. I think the witness has a right to say whether there were a few or whether there were many.

Trial Examiner Batten: Mr. Tyler, you do not mean that that is a proper question.

Mr. Leary: It calls for a conclusion, also.

Mr. Tyler: Yes, I think it is a proper question. If there were few complaints or many complaints, I think she should say—

Mr. Langsdale: How could she know the mental attitude of 1,300 people about signing or not signing complaints?

Trial Examiner Batten: She may say why she thinks there were not any more. Of course, I suppose first we will have to determine, should there have been some more, and if not, why not?

Mr. Tyler: I don't think we have come to that as yet, Your Honor.

Trial Examiner Batten: She may answer the question. [fol. 947] A. Well, there were more complaints. I didn't say there were not. There might be more.

I think we have a pretty good contract, and I don't think to just ask for something unreasonable— We do try to ask for the thing that is right and the thing we think we are entitled to, and try to get it.

By Trial Examiner Batten:

Q. But what has that to do with why you didn't get more complaints?

A. I think we have already established a good setup in our salaries and piecework prices we are not apt to have as many as if we just had a very small guarantee.

Q. In other words, you think that would indicate the majority of the employees are very well satisfied?

A. In most instances—in a great many instances. I don't know whether that is just the word I should use. But, on the whole, we have a good contract. We have higher guarantees than they have around town.

Q. Does that stop anybody from wanting more?

A. It doesn't, but it does make us not want to be unreasonable and ask for something we couldn't possibly get. We have already created a condition by our contract whereby we have more than similar industries in Kansas City.

Q. Do you think on that basis you should forever be satisfied, then, as long as you are one jump ahead of somebody else?

A. I don't think we would forever be satisfied, no, sir.

[fol. 948] Q. Then, how much has that to do with it?

A. We have worked out an agreement there that is above the average in Kansas City, and in doing that we are not possibly creating a thing that makes somebody want something more, more, more, that is unreasonable.

Q. Suppose all of the other shops in Kansas City beginning the first of next month reduced their wages 50 percent, do you think you should agree to reduce yours 25 percent so you do not get too far away from them?

A. I don't think we would.

Q. Then, what relationship is there between them? Isn't it a question of what you produce and how our plant operates, and so forth, that should govern what you get?

A. It does. We have always, Mr. Batten, had good wages at the Donnelly Garment Company. We did get some decided increases in our contract—

Q. (Interrupting) Just a moment. I want you to tell me what you mean by "good." How do you determine what is good?

A. I think in a community where—

Q. (Interrupting) Let's forget all about the community. You are putting this entirely on a basis of comparison. Outside of that point, what point do you mean by "good"?

A. They are away above the average—

Q. (Interrupting) I say, let's forget all about comparisons. On any other basis are they good?

[fol. 949] Mr. Tyler: If the Examiner please, I submit she cannot give an opinion as to whether the wages are good without in some way comparing them with others.

Trial Examiner Batten: Then, she should say so. I am asking her if on any other basis outside of comparison they are good. I am trying to find out if that is the only basis for determining if they are good.

A. No. I think the contract and the salaries the employees receive will speak for themselves, aside from anything else. We know that they are good.

Trial Examiner Batten: That is all.

By Mr. Tyler:

Q. What other elements besides prices paid in other garment factories did you consider in determining what wages you should ask for in this contract, if any?

A. Well, we were trying to give some consideration to the living conditions, what we had to have to live on. In this community it may not cost us as much to live as in some other community; it may cost more than in some other community. We tried to give thought to those things, and we tried to get as much as we thought was reasonable to get, and we did get in some instances more than Mrs. Reed cared to give.

Q. Did you or did you not give consideration to general business conditions in the garment industry?

A. We tried to, yes, sir. We all have friends that are in the garment industry and know in substance, not in detail, what they are making. You have a general knowl- [fol. 950] edge of that from one industry to another when you are working in an industry of this kind.

Q. Did you or did you not give any consideration to the capacity of this particular company, your employer, to pay wages?

A. We felt they were able to pay higher wages, and that is why we asked for higher wages.

Q. Do you know of your own knowledge whether it has been announced in meetings of the union that the

employees were expected to present their complaints, if they had complaints, to the committee of the union? Has that ever been announced at the meetings?

Mr. Leary: I object to that as a self-serving statement of the witness.

Trial Examiner Batten: If she remembers; she may testify.

A. I think I am safe in saying we never have a meeting that that is not mentioned, if they have complaints to take them to the individual or anybody but please to let us know about them. If they have complaints and don't tell us there is nothing the committee can do about it.

By Mr. Tyler:

Q. Have the minutes of the meetings of either the union or the executive committee been "doctored"?

A. No, sir.

Q. In whose custody have those minutes been since they were originally prepared?

[fol. 951] A. In most instances, Marjorie Green's, or the secretary, when she is typing them—she has been the secretary all of the time. And, I have had them. Since this trial has been going on they were down for about 20 hours—the International Union, the accountants had them going over them, and they have been taken to Mr. Tyler's office, and the Labor Board has used them, and they have been at the photographer's—they have been a good many places.

Q. It is not your pretense or statement that these minutes are a word-for-word account of every word spoken in any of the meetings, is it? A. Not by any means.

[fol. 951] Q. What do the minutes represent?

A. They just represent—

Mr. Leary: (Interrupting) I object, Mr. Examiner. There has been no showing she took these minutes. I think this question might be proper of the person who took them. I can refer the Examiner to the fact that quotation marks are used almost throughout the minutes.

Trial Examiner Batten: I don't see that this witness is qualified to answer the question. In the first place,

this witness is not the officer of the union responsible for these minutes. Unless she is definitely qualified I do not see how she can answer the question. If the secretary of [fol. 952] the organization, the person who took them—

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By Mr. Tyler:

Q. Were or were not these minutes submitted to the executive committee after they were written? Did the executive committee go over them after they were written?

A. In most instances; not in every instance.

Q. Were you present at these meetings that are written up in these minutes? A. Yes, sir.

Q. From examining the minutes after they were submitted to the executive committee, and from your knowledge by attending these meetings, and from the instructions of the executive committee about taking minutes, can you tell the Court what these minutes purport to be, as to whether they are a word-for-word report of everything that was said, or what are they?

Mr. Leary: I object to that, Mr. Examiner on the same ground.

Trial Examiner Batten: You may tell what you think they are, as far as you know.

A. I know they are not word-for-word, Mr. Batten. In some instances—

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[fol. 953] Mr. Tyler: I submit neither these minutes or the minutes of a similar body purport to be more than a substance of what action was taken.

Trial Examiner Batten: Is it your position, Mr. Tyler, that these in substance relate any action that was taken?

Mr. Tyler: That is my position. In substance they relate the action that was taken.

Trial Examiner Batten: Your question of the witness merely relates to whether it was a verbatim report; is that it?

Mr. Tyler: Yes. Our opponents suggest these minutes are incorrect in that they purport to be a word-for-word account, and they do not.

Trial Examiner Batten: These are not a verbatim report of everything that was said at the meetings?

A. No, sir.

Mr. Langsdale: May I suggest to the Examiner, a very [fol. 954] large percent of these minutes are in quotation marks. Would you want to qualify that question?

Trial Examiner Batten: If you will wait a moment, Mr. Langsdale—

By Trial Examiner Batten:

Q. As far as you know, they in substance show what action and what general subjects were discussed at the meetings; is that it?

A. Mr. Batten, I can't say that they do. In some instances I know they are the things that happen at some of these meetings. Here is one in my hand I can tell you very definitely about.

[fol. 955] Q. Well, then, you can't even say that they in substance represent—

A. (Interrupting). I do say in substance they do. I know there are things that are not even mentioned that are talked about at these meetings.

Q. I know, talked about, but matters of any importance that were passed upon or discussed, at least, it is mentioned in these minutes?

A. Any motions that were made, and so forth, those are very definitely here. I don't recall leaving any of those out.

Q. And official actions you took are recorded in the minutes? A. That is correct.

Q. So that the other might be argument, discussion, pro and con? A. That is right.

Q. Now, Mr. Langsdale referred to certain matters which have quotation marks. Wherever there are quotation marks, I presume there is no question about that statement, is there?

A. Yes; I don't know. I don't see one just this minute. Well, yes, I do, right here in this one. I know there is something very definite should be in this thing that is here.

Q. I say, are the things here in quotation marks as far as they go correct?

[fol. 956] A. I don't feel that I could say yes without reading every one of them.

Q. Well, then, you better start out reading them, because we got to find out something about these minutes. They are either worth something or nothing.

Mr. Langsdale: I object to her answering the question upon the ground that she has already, by her answer, shown she is not qualified to answer.

Trial Examiner Batten: Well, I think I shall let her go ahead and start out, Mr. Langsdale. These minutes mean something or don't mean anything. We might as well find out.

Mr. Tyler: May we defer the matter of her reading them more carefully until there is a recess or until this evening? It would take her, I expect, an hour or two to read them.

Mr. Langsdale: My experience is, I would say it would take nine hours.

Trial Examiner Batten: Well, I am perfectly agreeable, Mr. Tyler, if you want to have Miss Todd take your copy of those and go over them. I won't say that it even has to be done by tomorrow, but I would like to have her go over them carefully so she can make some sort of a statement. That is, the minutes either in substance are correct, or she has said they are correct, where there are motions, or they are correct where there are quotations. In other words, if she goes over them in the next day or two, [fol. 957] she can get some kind of an idea what they are.

Mr. Tyler: We agree to do that.

Mr. Langsdale: Mr. Examiner, wouldn't it be better to have the person who took this down testify about whether

or not they contain what was done? Of course, I can see how her testimony would have some value. She was there, to some of them, not all of them, but the stenographer who claims to have taken down a shorthand record of everything that was done would be the best witness to testify as to whether or not these records show—

Trial Examiner Batten (interrupting): I would like to have Miss Todd look them over and take sufficient time so that she can come in here and say definitely just what those minutes are or what they mean. She certainly doesn't know now.

Mr. Langsdale: My point is that Miss Green could give us a more valuable statement about that.

Trial Examiner Batten: I have no objection to getting Miss Green's statement, but I would like to have Miss Todd's statement, too, as to what she thinks they mean.

By Mr. Tyler:

Q. Miss Todd, was there any instance, to the best of your knowledge, or any occasion, to the best of your knowledge, when events that actually happened at any meeting was kept out of these minutes because it was feared they might be damaging to the union? A. No, sir.

[fol. 958] Q. Was there any instance or occasion, to the best of your knowledge, when things that did not happen were put into the minutes with the idea that it might be helpful to the union? A. No, sir.

Q. What advantage, if any, Miss Todd, did the Donnelly Garment Workers' employees gain by the wage agreement and the contract which they didn't have before the wage agreement and the contract were adopted?

Mr. Leary: Now, I object to that as calling for a conclusion, Mr. Examiner. The documents will speak for themselves.

Trial Examiner Batten: Well, we haven't any document here showing what they were getting before.

Mr. Leary: Well, those are the payroll records of the company and I think those are the best evidence.

Trial Examiner Batten: Well, I think she may go ahead and answer.

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[fol. 960] Mr. Tyler: You may answer, Miss Todd.

A. Well, we established in this articles of agreement, this $15 minimum was established.

Trial Examiner Batten: Well, now, the important thing is not what you established. What was the minimum before? What was the situation in this plant before you ever had a contract?

A. In some instances some employees had been guaranteed $15. It was not my knowledge that all of them had been guaranteed nothing less than $15.

Mr. Tyler: Well, Miss Todd, can't you take certain paragraphs and say what the situation before this contract was and what it is since the contract, paragraph by paragraph, in cases where you know of a change?

A. Well, our operators had a guarantee at that time of $15, but time workers didn't have a definite guarantee, or a definite minimum at all, and that is established in this paragraph 2 of this working agreement.

Mr. Langsdale: Who was that that didn't have any [fol. 961] guarantee?

Trial Examiner Batten: The time worker did not.

A. (Continuing) I think the time workers did not. It was not my impression that they did have.

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[fol. 966] By Trial Examiner Batten:

Q. Now, what was the situation before the contract?

A. The situation before had been that the employer had the right to increase or reduce his working force, but this contract gives the union also the right to interfere if he feels so—if we feel that some one is being allowed to go unnecessarily.

Q. You mean because of the union activity?

A. Well, no, not necessarily that. We certainly would do that if they were being let go because of union activity, but if they are being let go and we felt it was not right, the union still has the right to go to the employer and see if these people couldn't be retained.

Mr. Langsdale: Now, I object to that answer and ask that it be stricken out as an explanation for paragraph 14, because there isn't anything in paragraph 14 upon which to [fol. 967] base that statement or conclusion, not anything. That says, "The employer shall have the right to discharge."

Trial Examiner Batten: I was just getting ready to ask another question or two, but in view of your motion I will have it stricken. I was going into that some more. You may proceed.

. . . . . .

[fol. 969] By Mr. Tyler:

Q. Now, Miss Todd, will you take the wage agreement and without—if you can, without reading out loud the whole agreement, read the paragraph to yourself, and when you have knowledge of any change produced by that wage agreement, state what the fact was before and what the fact was after the execution of that wage agreement in such paragraphs as you have knowledge of any change, if there was any.

A. The second paragraph of this agreement calls for five holidays, which are allowed all of the employees, and previous to this time the piece worker had not been paid for the holidays.

By Mr. Langsdale:

Q. That is the supplemental agreement?

A. Yes, sir, which is approximately—it is equivalent of a week's work during the year.

By Mr. Tyler:

Q. I don't think your answer is plain. Do you mean it gives five holidays which shall be allowed with pay?

A. Shall be recognized, all workers shall be paid for these holidays.

Q. Now, what was the status before?

A. Piece workers had not received these days, these holidays, with pay. Piece workers "All workers shall be [fol. 970] paid for these holidays" is the way this contract reads, and is the way it has been executed, piece workers on the same basis as paid vacations, and if I didn't make [myself] clear, what I am trying to say is that piece workers had never received the five days vacation during the year with pay, which is the equivalent to them of a week's work.

This Group 1 operators gives these operators a much higher guarantee than they had ever been guaranteed before. Forty per cent of them receiving—

Mr. Langsdale (interrupting): Now, I object to that answer as a conclusion upon the part of the witness. The evidence ought to be as to what the increase is.

Mr. Tyler: I think it is desirable that she should give the figures as she knows them, but I think that if she can say as a fact that the figures are higher, she is entitled to state that, even if she can't give the figures.

Trial Examiner Batten: I don't think it means a thing in the way she answered, much higher. If she doesn't know, let's get somebody here that does. I mean, there is no use trying to have a witness answer questions that they can't answer. Now, surely there is somebody in the organization or with the respondent who could very definitely state, Mr. Tyler.

The Witness: I thought I stated, Mr. Batten, that we had received a $15 guarantee. Now, this supplemental con- [fol. 971] tract calls for a $16.50 minimum guarantee. This Group 1 raises this percentage of these operators to $25.60 for 40 hours, in this Group 1 operators receive a $25.60 guarantee as a minimum.

Trial Examiner Batten: Instead of what?

A. Instead of $16.50, instead of in this contract, and previous to this contract, they had not had a guarantee of over $15.

By Mr. Tyler:

Q. Do you mean there was no guarantee applying specially to that group of operators before this wage agreement was signed?

A. Before this wage agreement was executed, we had a minimum of $15.

Q. But no especial minimum for that particular group of operators?

A. No, sir.

Q. All right. Go ahead.

A. Then there was established a definite thing for all the employees to receive a minimum of $15 in this wage agreement. Now, this supplemental agreement established the $16.50, which we gained after some—

Trial Examiner Batten (interrupting): Well, now, you have told us that, Miss Todd.

A. (Continuing) Then, this Group 1, 40 per cent of them were guaranteed as a minimum, $25.60.

[fol. 972] Mr. Langsdale: $25.60?

A. Forty per cent, $25.60 per week of 40 hours; 30 per cent in that same group were guaranteed $22.50, and 30 per cent of them were guaranteed $22.

By Mr. Tyler:

Q. Now, Miss Todd, was it a fact that before this supplemental agreement went into effect, that they were all, the only guarantee any of them had was that flat minimum of $15 a week?

A. Yes, sir.

Q. All right. Go ahead.

A. Group 2 operators, 40 per cent of the operators shall receive a minimum of $20, and all the way through this, Mr. Batten, they had never had a guarantee of over $15 previous to this time.

By Trial Examiner Batten:

Q. Do you have any idea how much the payroll shows these same people actually made over a period of, say, 5 years, or 2 years before this contract? Do you have any of that information?

A. No, Mr. Batten, I couldn't give you that information.

Q. In other words, you wouldn't know whether by putting the guarantee in it actually meant more money to them or not?

A. Yes, I do. At the time that we were working on this agreement, we had a great deal of information from the company as to what people had been receiving in the [fol. 973] way of salaries, piece workers and time workers, too, but to tell you now just what those dollars and cents were, I don't think I could do that.

Q. But your recollection is that this is actually, this minimum has actually meant more to these people than the same groups' average wage we will say for 5 years before the contract was signed or 1 year, we will say?

A. Yes, I think so, Mr. Batten, because in this instance, if previous to that time they only had a guarantee of $15 and something happened to them, now, they should fall down below their earnings—

Q. (Interrupting) I am talking about what they actually earned when they were working.

A. Now, a lot of these people—

Q. (Interrupting) In other words, does the guarantee mean anything if they already made more than that?

A. Well, yes, I think it does.

Mr. Langsdale: I object to her answer for the reason that she shows she has no definite information and the payrolls themselves are the best evidence.

Trial Examiner Batten: Well, I admit they are the best evidence, but they are not here at the present time.

Mr. Langsdale. We can get them here. They are available.

Trial Examiner Batten: Well, I presume if proper [fol. 974] steps are taken, I presume they would be brought here.

Mr. Tyler: I suggest that regardless of the facts that it did on the whole improve the actual income of these people, the mere fact that a guarantee is in existence for 2 years, which the company couldn't lower, existed, was an advantage in itself, even if it didn't raise the wages.

Trial Examiner Batten: Well, I didn't mean to imply, Mr. Tyler, it didn't.

Mr. Tyler: Well, I got your impression that you felt it was worthless unless they could show an actual increase in dollars and cents.

Trial Examiner Batten: No, I didn't mean to intimate such a thing.

Mr. Tyler: My mistake.

* * * * * *

[fol. 976] Mr. Tyler: Miss Todd, will you proceed with any other paragraphs in the wage agreement in which changes were accomplished by the wage agreement, and point out what the changes were?

Trial Examiner Batten: Mr. Tyler, may I ask a question about this, please?

Mr. Tyler: Yes.

Trial Examiner Batten: You are going into all of these piece rates and getting a statement here from a person who apparently has not had access to all of the company's records. Supposing these questions are asked, and you have to bring in here all of these piece rates and time studies in connection with them, and just how they were arrived at, and check up all of these back payrolls, I am perfectly willing to do it, if you think this is of sufficient value to you.

Mr. Tyler: I do, Your Honor. I do not believe this witness can testify as to the actual number of dollars increase that was received, but I think she was in the price fixing department, she did work on this committee for years, she made investigations, and in most cases I think she knows of her own knowledge that rates of pay of certain classes were increased, and I think it is important to have that in the record.

Trial Examiner Batten: I am perfectly willing, as I [fol. 977] said a moment ago. It is material evidence on this contract.

Mr. Tyler: I think in most cases she knows of her own knowledge the changes, and I think it important that it be in the record.

Trial Examiner Batten: You may go ahead, Miss Todd.

A. Group 2 operators, 40 percent of these people were given a guarantee of $20 a week; 30 percent, $18; and 30 percent, $18.60. Group 3, 40 percent were given a guarantee of $18, and the remainder, $16.50.

Group 4, which—

Mr. Tyler: (Interrupting) Just a minute, Miss Todd. Do you mean by your testimony that in each case where you recite those guarantees, that before the wage agreement the parties you mentioned had no guarantee except the $15 flat minimum? Is that the meaning of your testimony?

A. That is correct. Then, group 4, that we considered beginners were guaranteed the minimum of $16.50. The classification of beginners—

Mr. Langsdale: (Interrupting) Everybody in group 4?

A. Yes. Those people are considered beginners. And this period does not extend longer than 12 weeks.

The hand ironers are classified in groups the same as the operators, and— I think I can look through this very quickly, these in these different groups. They are getting more now than they were getting previous to the contract.

[fol. 978] By Trial Examiner Batten:

Q. Would your statement be with respect to all of the classifications mentioned? In other words, they now have a guarantee which amounts to more than the $15 guarantee before there was a contract; is that it?

A. Yes, sir. The hand ironers, 40 percent of that group, $25.60; 30 percent, $22.60; 30 percent, $20. Group 2, 40 percent of them were guaranteed $20; 30 percent, $18; 30 percent $16.50; all of which was higher than they had been guaranteed previously. Group 3, 40 percent were guaranteed $18; the remainder, $16.50.

The beginners, hand ironers, were guaranteed $16.50, the same as the operators.

The folders, who had previously had a guarantee not as high as this, were guaranteed, 40 percent of them, $20, and the remainder of them $18. Group 2, 40 percent of them, $18; the remainder, $16.50.

The beginners, folders, the same as the other groups, were guaranteed $16.50.

In our examiners' group, they were definitely given a raise. This contract calls for 21 and $18, which was a raise over what they had been guaranteed.

Q. What had they been guaranteed?

A. I don't know that they had a guarantee, but I know they had been receiving that much money.

[fol. 979] By Mr. Langsdale: Examiners, you say?

A. Yes, sir.

Mr. Leary: You mean inspectors by the word "examiners," also?

A. Yes, sir. In the cutting department there were increases there of approximately $2.50 a week.

Trial Examiner Batten: You mean they are paid by the week?

A. They were increased $2.50 a week, yes, sir. Cutters are paid by the week.

* * * * * * *

Mr. Langsdale: They are what workers?

A. Cutters. And there is an increase here in the stretchers. As I remember it, that is $2 or $2.50 a week there.

In the dividing department, there is an increase there of —Mr. Batten, I am not positive about that. As I remember, it was $1.50 to $2.50 a week.

[fol. 980] Trial Examiner Batten: If you are not positive about it you had better not testify about it.

The Witness: I am not. There is an increase there; I don't recall what it is right now.

In the mechanical department there is an increase of $2.50 a week there in some instances; in some instances not quite that much.

To my knowledge, the work distributors had never had a guarantee that they would never receive any less than they were receiving. This does establish a minimum of $20 to $25 per week of 40 hours. I think I have stated that this is the first contract we have ever had, or the first agreement we have ever had that no one would receive less than $16.50.

There is another paragraph in this contract that we thought was a good thing for us:

(Reading.) "It is recognized in order to maintain as nearly as possible constant employment throughout the year it may be necessary to transfer people from one department to another."

We were particularly interested in that so that we can have as much employment as possible.

. . . . . .

By Mr. Tyler:

Q. State to the Court what change was made in the [fol. 981] rest of that paragraph, if any. Read the last sentence of it.

A. (Reading.) "But in case of such transfer should compensation be higher than the section from which the employee was transferred they shall be entitled to such higher rate while so transferred."

Q. Was there any agreement to that effect before this wage agreement was entered into?

A. No, sir.

Q. Do all of the guarantees you have referred to extend for a period of two years in the future from the date they were executed?

A. Yes, sir.

Q. Miss Todd, did you hear the testimony of Velma Dowdy in the injunction suit tried before Judge Miller?

A. Yes, sir.

Q. Have you had occasion to use the figures she testified that she paid to the International Ladies' Garment Workers' Union as a member of that union for a period of a year—

Mr. Langsdale (Interrupting) Just a minute. I object to that as immaterial.

Mr. Tyler: Let me finish my question.

Mr. Langsdale: Then, you have the witness wait until I make my objection.

Mr. Tyler: I will. Please don't answer until Mr. Langs-
[fol. 982] dale makes his objection.

Mr. Tyler:—the figures she testified she paid to the International Ladies' Garment Workers' Union as a member of that union with the figures which the members of the Donnelly Garment Workers' Union paid to their union, each for a period of one year?

Now, don't answer yet.

Mr. Langsdale: I object to that as immaterial. It doesn't tend to prove or disprove any issues in this case. It involves a lot of collateral issues which will greatly prolong this hearing, as we should be entitled to show what we do with that money and why we need it.

Trial Examiner Batten: I am not concerned with what you should be entitled to show. What is your objection to this question? That is the thing I am concerned with.

Mr. Langsdale: I object for the further reason it is incompetent and irrelevant what she heard someone testify to in some other court. We are about to enter into a stipulation, I hope, and then if they want to produce that testimony the Examiner will have an opportunity to rule on it.

Trial Examiner Batten: I now rule it is absolutely immaterial and irrelevant to this hearing. I do not intend to have a comparison between the International Ladies' Garment Workers' and the Donnelly Garment Workers' Unions. The International Ladies' Garment Workers' [fol. 983] Union is not on trial here, neither is the Donnelly Garment Workers' Union. It is the respondent who is here answering to charges of unfair labor practices. That is the thing we are going to try. If you have any further testimony of any kind pertaining to this matter you can present it in the form of an offer of proof, but I do not intend to receive it.

* * * * * *

[fol. 990] By Mr. Tyler:

Q. Miss Todd, suppose that the operator and the instructor disagree about what instruction is given as to some garment, or whether it is made according to instructions. Who would decide that dispute?

A. You say the operator and the instructor?

Q. Yes, or whoever—who would look at the garment made by the operator and comment on whether it was properly made or not?

A. That was the reason I was asking. If the garment was finished and it was being looked at, being examined, it would be the examiner or the instructor.

Q. Suppose the Examiner and operator disagree on whether it is made right. Who would decide that dispute?

A. Well, the operator would talk to her instructor first.

Q. All right, then. What—

[fol. 991] A. (Interrupting) And if the instructor agreed that she was right and the operator agreed that she was right or what she had been told, I think that operator would either take it to the union or she might take it to Mr. Baty.

Q. Suppose Mr. Baty sided with the inspector. Is there anything that the operator can do then, if she still believes she is right?

A. I think she would very likely bring it back to the union.

* * * * * *

[fol. 993] By Mr. Tyler:

Q. Miss Todd, are you an executive down at the Donnelly Garment Company plant? A. No, sir.

Q. Have you ever been an executive? A. No, sir.

Q. Has the management ever discussed with you or explained to you how the plant was organized as to departments, or who has jurisdiction of what number of employees? A. No, sir.

Q. When you say in direct examination that Mr. Baty has charge of such-and-such group of employees, what do you base that sort of a statement on?

A. On general knowledge from working there, and in referring to Mr. Baty, I do know that he is the production manager.

Q. How do you know that?

A. Well, I think I have never been definitely told that. I have that information the same way, just general information.

Q. That is, you gather information about the organization of the plant just from your observation, as any other employee would? A. Yes, sir.

* * * * * *

[fol. 995] Q. Did Mrs. Reed or did any other executive or representative of an executive ever give you orders or instructions about the organization or the operation of the Donnelly Garment Workers' Union?

A. Never did.

Q. What reasons, Miss Todd, did you personally have for coming to the belief that it was to the advantage of the employees to organize their own labor union?

Mr. Foster: I object to that as immaterial.

Trial Examiner Batten: Are you going to have her express an opinion as to why she thought it was for all of the employees, or are you going to have her give her views on it?

Mr. Tyler: I am going to have her give her views as to why she made that choice.

Trial Examiner Batten: She may give her views on it as to why she made that choice.

Mr. Foster: I submit, Mr. Examiner, that is not the question in the form it was asked.

Trial Examiner Batten: I say, that is what she is now going to give.

A. I didn't like the manner in which the I. L. G. W. U. seemed to conduct their plan or organization. I felt like we could operate a union with less expense than they apparently did.

The Wagner Act practically, from the parts Mr. Tyler [fol. 996] had read to us and discussed with us—practically invited us to form an employees union of our own; and, the law giving us that privilege, I thought we would be smart to do it, was the reason I wanted to do it.

Mr. Foster: Mr. Examiner, I move that the answer be stricken out due to the fact that it contains only conjecture and opinions of this witness not shown to be based on any facts.

Trial Examiner Batten: I don't think there is any question but that this witness can express her opinion if she wants to. It may stand.

Mr. Tyler: Had you had any report on what injunctions could do for you that was not entirely satisfactory as to your protection of your individual members and employees?

. . . . . .

[fol. 998] A. Mr. Tyler did advise us he had attended some hearings of injunctions that were being asked for by other companies and he did not feel that they would give us the protection we were asking for and felt that we needed—and we felt that a union of our own employees would give us more protection.

By Trial Examiner Batten:

Q. And did Mr. Tyler advise you that he thought that was the thing to do?

A. Yes, Mr. Batten. In reading from the Wagner Act—He didn't advise us he thought it was the thing to do; he advised us we could do it, and read and discussed parts of the Wagner Act. The way it is worded—

Q. (Interrupting) You gathered from what he told you that he was of the opinion that it would be better to form this union than to bother with the injunction?

A. Yes.

By Mr. Taylor:

Q. How long after you first consulted Mr. Tyler and Mr. Rossett did you get such advice with reference to a union from them, or either of them?

[fol. 999] A. How long after we first consulted them?

Q. Yes.

A. The first consultation was on March 27, and it was after the 12th of April when we had any advice as to form an employees' union.

Q. Can you fix the time any more definitely than by saying after the 12th of April?

A. I think it was probably April 13, or it might have been the morning of the 14th, or something like that. It was shortly after the Wagner Act was declared valid, which was April 12, 1937.

Q. Miss Todd, in your direct examination something has been said about the company putting a stage on the first floor of the building. The first floor, that is right, isn't it? A. Yes, sir.

Q. Do you know of any reason the company had for putting a stage on that floor?

A. Yes, sir.

Q. What was it?

A. It was for the purpose of having their style shows there when they were presenting a new line.

Q. And so far as you know, it was not for the purpose of providing something for the union to use?

A. Oh, No. It was provided solely for that purpose. They use it six or seven times a year for that purpose.

[fol. 1000] Q. Did the Donnelly Garment Workers' Union ever petition the National Labor Relations Board to hold an election of employees?

A. Yes, sir.

Mr. Leary: I object to that, Mr. Examiner, and move the answer be stricken. I think if there is any petition they might have filed, it would be the best evidence.

Trial Examiner Batten: Well, of course, I think that it is immaterial whether they have or haven't, so far as this hearing is concerned. What is the—how is it material to these issues, Mr. Tyler?

Mr. Tyler: I wish to show that they have at all times been willing to have such an election and have so expressed themselves, and have been confident of their ability to win such an election; that they have petitioned the Board for it, and that the suggestion which has appeared somewhere, I believe—I may be wrong about that—that they didn't petition until very late, has a very sound reason, that it doesn't in any way discredit their statement that they can prove their choice by an election.

Trial Examiner Batten: Mr. Tyler, I don't see it has anything to do with this hearing at all. Any matter connected with the petition or anything with relation to it.

Mr. Tyler: Then, I wish to make an offer of proof.

Trial Examiner Batten: You may make an offer of proof.

[fol. 1001] Mr. Tyler: I offer to prove by this witness that the Donnelly Garment Workers' Union has filed two petitions with the National Labor Relations Board for an election of the employees as to bargaining representatives and labor unions, both recently, before the beginning of this hearing; that the reason they did not file any such petition earlier was because they had a contract with their employer and were operating satisfactorily under it through representatives of their own choosing, and they felt that their situation was satisfactory and that if any outsider disputed the claim that they were being represented by representatives of their own choice, it was devolved upon such outsider to ask for such an election to change the status quo. Also, that the union on several occasions authorized their attorney to agree to submit to an election of the employees and abide by the result, and that that was done in the record and the three-judge court hearing and again during the hearing before Judge Miller.

* * * * * *

[fol. 1002] Trial Examiner Batten: Mr. Tyler,—well, no, I don't know as—I thought I wanted to ask you a question there. Of course,—I think that I will. Of course, you know that any request of the three-judge court or Judge Miller is of no force and effect, don't you?

Mr. Tyler: I don't concede that, your Honor.

Trial Examiner Batten: I mean, as far as the Wagner Act is concerned, you concede that it is not?

Mr. Tyler: I concede that the Wagner Act does not authorize Judge Miller to hold an election. I concede that.

Trial Examiner Batten: That is what I meant.

Mr. Tyler: But I would insist very respectfully, but very earnestly, that what we are trying to find out here is what these employees really want of their own free will and this is some evidence of it. Now, it may be they are dominated in that, or somebody ordered them to do that, but I submit that I have a right to show that they are eager to have an election and they are willing to have it, whether it is under the Wagner Act or otherwise, and agree to abide by the results.

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[fol. 1006] Mr. Langsdale: My only purpose in making this statement is the idea that I have that these—that Mr. Tyler has the thought that maybe if the Examiner feels that these very highly respectable tribunals ruled on this same evidence and found some way, it might have some weight with the Examiner. It might have some weight with the Examiner, and the fact is they didn't rule on that issue at all.

Trial Examiner Batten: Well, it is immaterial to me. I won't give any consideration to it unless it is the evidence that was submitted here, was received in this hearing.

Mr. Langsdale: Well, I feel sure of that.

Trial Examiner Batten: If any such was offered.

Mr. Tyler: I cannot let Mr. Langsdale's statement stand, because I assert that Judge Miller did find as a fact that this union was organized and operated by the free will of the employees. It is in the findings of fact, and I can't let Mr. Langsdale's statement stand without making that statement.

Trial Examiner Batten: Now, the record may stand as it is. I said that the Board has exclusive jurisdiction as far as the Act is concerned, and if the facts warrant it, we will take such jurisdiction, and if they don't, the Board would not take the jurisdiction irrespective of what may have been done in any other proceeding. We will proceed.

[fol. 1007] By Mr. Tyler:

Q. Miss Todd, when you applied for work at the Donnelly Garment Company, did you use Mrs. Reed's name in order to get a job? A. I did not.

Q. What was your acquaintance with her before that time as to whether it was casual or close?

A. It was very casual.

Q. Have you ever been on intimate terms with Mrs. Reed? A. Never.

Q. Or terms other than those of another employee?

A. That is correct.

* * * * * * *

[fol. 1013] Q. Do you consider you have some knowledge of what a girl ought to be able to do if she is a good workman on a certain machine, in a certainly kind of operation, based on your experience? A. I certainly do.

By Trial Examiner Batten:

Q. You mean that covers the entire plant?

A. The entire plant?

Q. The entire production department?

A. I am speaking now of pieceworkers.

Q. That covers all of the pieceworkers? A. Yes, sir.

Q. You think you personally are sufficiently familiar with all of these pieceworkers and the operations, and so forth, so that you are in a position to pretty well determine—

A. (Interrupting) I think that I have sufficient information and past experience, years of it, that would give me a very good knowledge that would be dependable enough to work from. Now, that doesn't prevent that operator, if I should—

Q. (Interrupting) I am just talking about your own personal knowledge.

[fol. 1014] A. Yes.

Mr. Tyler: Did you or did you not consult other members of the committee, or parties in departments where a particular piece of work was under question, before coming to a decision of what that was?

Mr. Langsdale: I object to that as leading and suggestive. Having seen the apparent defect in her answer, he wishes to supply it by this question.

Mr. Tyler: I object to the comment on the part of counsel.

Trial Examiner Batten: I will sustain it on the ground that if you want to show what she actually did—If Miss Todd will just tell us what processes she has actually gone through, that is more important than what she would do if something should happen.

Mr. Tyler: If you will do that, Miss Todd—

A. You want me to tell you—

By Trial Examiner Batten:

Q. Tell us of a specific case. You have mentioned several people where you handled oral complaints for them. Just take one of those and tell us what you did.

A. I think, rather than to tell you just what I do, if she complained about the price you would have a clearer picture than to tell you how I arrived at it.

Q. I want to know what you have actually done in [fol. 1015] some case which you have handled.

A. In the way of a complaint?

Q. Yes.

A. You will admit, that already there is a price on that operation?

Q. I won't admit anything.

A. I mean, there is a price on that operation?

Q. I assume there is.

A. Then, if she would complain to me—I am trying to think.

Q. Now, let's go through an actual case once.

A. I am trying to think of one, and then I will tell you. For instance, Nell Stites—I mentioned her name yesterday—complained she wasn't making enough money on setting a sleeve in a certain garment. I don't remember the number of the garment—I think I could find that out—

Q. Just tell us the steps.

A. In discussing it with her she said, "I just can't do it." I said, "Nell, is it that something is wrong with the work that has been done previously, or that there isn't enough money on it?" She said, "There isn't enough money on it."

My conversation with her would be this: "I want you to tell me how much you have earned, how many you are able to put in in an hour, and I will talk to Mrs. Nichols and the other girls and we will see if there is something [fol. 1016] wrong with the work that has been done and see if you have enough money."

Q. Is that what you did? A. Yes, sir.

Q. Go ahead and tell us what else you did.

A. In talking to Mrs. Nichols my stand would be, I don't think there is enough money on it until this girl shows us she can't do it. She is an efficient person and she needs more money on that. If I had any difficulty with Mrs. Nichols—

Q. (Interrupting) If you did? Did you?

A. Yes, I did.

Q. Tell us about that.

A. In some instances I did and in some I didn't.

Q. Tell us about when you did.

A. In that instance I went to Mr. Baty about it and told him I thought Miss Stites was justified in asking for more money, and more money was put on it.

Q. Then, Mr. Baty made that adjustment? A. Yes.

Q. When you got more money on this operation did that mean more money on this same operation with the other employees? A. Absolutely.

Q. It was adjusted with all of them for that operation?

A. Absolutely. If one would receive it they all would receive it.

Q. Well, did they?

[fol. 1017] A. Yes, sir.

Q. When did this occur, if you remember?

A. Well, this is June, and, as near as I can remember about this particular thing, Mr. Batten, it might have been February or it might have been January; I would have to look that up. I can't tell you definitely about that.

Q. This year? A. Yes, sir.

Q. What was the number of that department or section, do you remember?

A. Well, no. It would either have been 411 or 415. I would have to look into that, too, because she might have been one place or the other.

Trial Examiner Batten: That is all.

By Mr. Tyler:

Q. Is the matter of whether an operator is classed among the more efficient operators a matter which is arbitrarily left to the employer, or does the union ever undertake to do anything about that classification?

A. It is not left entirely with the employer. I stated yesterday that there were—I think I gave some 20 or 30 instances there where their guarantee had been raised at the request of the union.

Q. Does that mean their classification had been changed at the demand of the union? A. Yes, sir.

* * * * * *

[fol. 1018] Q. In regard to the bulletin boards you testified on direct examination, I believe, that the union at some time placed notices on the bulletin boards in the factory. Is it not a fact that individuals also used the bulletin boards for lost and found, and matters like that? A. Yes, sir.

Q. Has any request been made by the union from the company for permission to use those bulletin boards?

A. No, sir. Anybody uses them, and we have just used them.

Mr. Leary: I move to strike all except the first two words of her answer as not responsive.

Trial Examiner Batten: It may be stricken.

Mr. Tyler: Now, at the time you received what I believe you have testified to as the only raise you have had from the company, is it or is it not a fact that a large number of employees received raises at the same time?

A. It is a fact.

Mr. Langsdale: I object to this constant leading of this witness, his own witness, his own client, and I suggest that the payroll is the best evidence of that. How does this woman know what was on everybody's envelope or everybody's check.

[fol. 1019] Mr. Tyler: She has not testified to everybody's envelope or everybody's check.

Trial Examiner Batten: Mr. Langsdale, I think your objection goes to the weight that may be given this testimony. If that remains as it now stands, without any cooperation, or anything of the kind, certainly the Examiner nor the Board could give a great deal of weight to it.

. . . . . .

[fol. 1020] By Mr. Tyler:

Q. Did you consult Mrs. Reed or any officer or representative of the company about hiring lawyers for the employees? A. I did not.

Q. Did Mrs. Reed, or anyone on behalf of the company, ever say to you or say in your hearing that she was opposed to labor unions? A. No, sir.

Mr. Tyler: I think if the Court please, I will release this witness, reserving the right to recall her, as has been generally reserved in the record.

. . . . . .

[fol. 1021] Redirect Examination

By Mr. Leary:

Q. Have you prepared a schedule of the wages you received during the period of the Judge Miller trial in 1939?

A. I asked for it, and then I didn't ask for it again. I know what the union paid me, but I didn't have a place where I could look up the cancelled checks. I moved and I couldn't get them.

. . . . . .

[fol. 1023] Q. Do you remember whether or not the Loyalty League and the Donnelly Garment Workers' Union have ever held a joint meeting? A. No, sir.

Q. You deny that they have?

By Trial Examiner Batten:

Q. You don't remember?

A. I don't believe they ever have.

Q. You say you don't believe they have. Did they?

A. I don't remember that they did.

By Mr. Leary:

Q. Do you remember presiding over any meeting that was a meeting of the Donnelly Garment Workers' Union and then right after that they held a meeting of the Loyalty League? A. No, I don't.

[fol. 1024] Q. Do you remember a situation where a Loyalty League meeting was held and then a Donnelly Garment Workers' meeting was held?

A. No, I don't. You mean that both meetings were held at the same time?

Q. Yes. A. I don't remember it, Mr. Leary.

Q. Do you say you never presided over such an affair, where meetings of both organizations were held?

A. I don't remember ever doing that.

Q. Now, you think back carefully of the number of meetings of the Loyalty League over which you presided. Isn't it true, Miss Todd, that you only presided over two meetings of the Loyalty League?

A. I am just trying to think, Mr. Leary, and I have been trying to off and on since this thing has been going on these two weeks, and I don't remember having any meeting of the Loyalty League during that time. We had some meetings of employees at that time, and then we came along in April and organized the union.

By Trial Examiner Batten:

Q. What do you mean "meetings of the employees?"

A. They were very definitely meetings of the employees.

Q. Do you mean this was a third group that met?

A. They were, very definite, yes. They were not meet-
[fol. 1025] ings of any organization, they were meetings of the employees.

Q. Were they meetings you presided at?

A. Some of them were.

Q. When were they?

A. One of them was on March 18. I don't remember the date of the other one. That is the one I testified about yesterday.

Mr. Langsdale: April 27.

A. Yes, but, Mr. Langsdale, I testified to another one there around the latter part of May, when we were discussing—when we raised the money to pay Mr. Tyler. That was a meeting of the employees, and it would have been the 29th or 30th of May, or the 1st or 2nd of April—within just a week or two in there.

Mr. Ingraham: The witness has said the last of May or the first of April.

Mr. Ingraham: Do you mean, Miss Todd, March or May? A. I meant the last of March.

By Mr. Leary:

Q. You distinctly remember this March 18 meeting, do you not?

A. Mr. Leary, I don't remember a lot about that meeting. I remember a few more things than I did the other day, but it has been so long ago. I have refreshed my memory since in talking to some of the other people.

Q. You remember, do you not, the large assemblage of [fol. 1026] employees on the second floor of the plant meeting together on March 18?

A. Yes, I believe I remember that.

Q. Do you remember, also, the large [assembled] of employees meeting together on April 27?

A. Yes, sir.

Q. Do you remember any other occasions around that time when the same large assemblage of employees met on the second floor of the plant?

A. That is what I am referring to; I think it was yesterday morning I testified to that. I do remember that meeting, and that was when we raised money to pay Mr. Tyler for investigating this injunction.

Q. You are definite about that meeting, are you?

A. Yes, and I testified to that yesterday.

Q. What is your testimony now as to the date of that meeting?

A. The date of it was sometime the very last of March or right around the first of April. I don't remember the date of it.

Q. Did you testify yesterday you were positive as to the date of that meeting, or the approximate date of the meeting?

Mr. Tyler: That is objected to as improper cross-examination.

Trial Examiner Batten: She may answer.

A. I don't remember whether somebody asked me that [fol. 1027] or not, but I think I did.

Mr. Leary: Am I correct, you did use the word "positive" in stating it was held some time in the latter part of April, 1937, or perhaps in the first few days of May, 1937?

Mr. Tyler: I object to that as being argumentative.

Trial Examiner Batten: She may answer.

Q. I made a mistake, Mr. Leary, and corrected it. I meant to say it was the last of March or the first of April.

By Mr. Leary:

Q. How are you able to be positive in the establishment of the approximate date when that meeting was held?

A. Because I know when we went to talk to Mr. Tyler and he wanted to know whether we were representing the employees or not. We said we did, and he said, well, he would discuss it with us on that basis, and if we didn't he would very soon find out. And then, I know we paid him shortly—I don't remember just the date, but very shortly after that we paid him, and that was why we had that meeting, was to discuss the suggestions Mr. Tyler had made, and our talk with Mr. Gossett. That was the meeting where we donated 50 cents apiece to take care of any expense concurrent with this.

Q. Do you swear under oath that you as president of the Loyalty League authorized the payment of $500 to Mr. Tyler before April 27, 1937?

[fol. 1028] A. I didn't do it as president of the Loyalty League. I will state that I did—I donated my 50 cents, the

same as everybody else, and that is the purpose for which that money was used, and it was paid before April 27.

Q. The Loyalty League paid that, did they not?

A. No, sir. That was donated by the employees and paid by the employees, but it was paid by the Loyalty League treasury because there wasn't any other treasury of the employees available. That is exactly how that happened. We had no other treasury and, for convenience, used it, not knowing whether we would ever need any more or not.

Q. Are the members of the body of the Loyalty League and the members of the body you call "the employees" the same?

A. They might be. They might not be in its entirety. All employees would be employees, but all employees would not necessarily be members of the Loyalty League.

Q. Is it a fact, then, that the Loyalty League assumed the obligations of an organization or a group of employees some of whom were not members of the Loyalty League?

A. It is not a fact that the Loyalty League assumed the obligations of any employees.

Q. The Loyalty League assumed the obligations of only its members, is that correct?

A. The Loyalty League had nothing to do with this. This was a donation made by employees, 50 cents apiece, [fol. 1028] and there were between 1,200 and 1,300 employees. There was approximately—I can't say definitely now, I don't know that. I did not definitely then. It was approximately $600 they donated at that meeting, or collected from the result of that meeting. There might have been a few dollars less or a few dollars more. But that did not belong to the Loyalty League. Merely as a courtesy the Loyalty League let us use their checking account, because we didn't think it necessary to create another one.

[fol. 1030] Trial Examiner Batten: Were all contributions—were they paid by the individual?

A. They were paid by the individual in cash, and I think that I could get the check that was paid to Mr. Tyler, if you want it.

* * * * * *

Mr. Leary: Who has the check now, do you know?

A. No, I haven't. I would have to ask—I haven't the faintest idea.

• • • • • •

[fol. 1033] Q. Who told you what the company's reason was for hiring busses?

A. Mr. Leary, that was announced by Mrs. Reed, that they were considering doing that at that meeting on March 18th, as I recollect, and—

Q. (Interrupting) Was it Mrs. Reed, who told you?

A. She didn't tell me: She told that at a group at that meeting, and it was done.

Q. Well, did she consult you before? A. Me?

Q. On the matter, yes. A. No.

Q. Do you remember at that March 18th meeting, whether or not they passed out identification cards to the employees? A. They did not.

Q. When did they do that?

A. My memory is that that was two days later.

Q. Well, did they announce the intention of using the identification cards at the time of the March 18th meeting?

A. I don't remember that they did that then. It isn't my memory that they did.

[fol. 1034] Q. Well, isn't it a fact, Miss Todd, that the use of an—the use of identification cards and the hiring of busses go right hand in hand in that you had to have your identification card to board the bus, and so forth?

A. Yes, it was used as sort of a kind of identification.

• • • • • •

[fol. 1035] Q. Did you get an identification card?

A. Yes, sir.

Q. Did you know what it was for when it was given to you?

A. It was for the purpose of using of those busses.

• • • • • •

Q. Had you ever used identification cards at the plant before?

A. No. We were very definitely using those busses to give us protection to get in and out of the building.

• • • • • •

[fol. 1040] Q. Did you testify, Miss Todd, that the company had nothing to do with the April 23d demonstration?

[fol. 1041] A. The company had nothing to do with the April—did you say, did I testify that they had nothing to do with it?

Mr. Leary: Read the question.

(Whereupon, the question was read by the reporter.)

A. If I didn't, I will. The company didn't.

By Mr. Leary:

Q. How do you know that to be a fact?

A. Well, it was one of those things—why, the employees voicing their opinion of what they thought.

Q. Well, of your own knowledge, Miss Todd, not what you heard about the plant, but of your own knowledge, how do you know the company had nothing to do with the demonstration of April 23d?

Mr. Lane: That is objected to as calling for a conclusion.

Trial Examiner Batten: Well, I don't think I am going to stop the witness at this stage drawing conclusions.

. . . . . .

A. Well, I think my best explanation of it would be that [fol. 1042] it happened early in the morning when the girls—just after they had come to work, and I doubt if there were any officials of the company there, but I certainly think that was the girls were responsible for that.

. . . . . .

[fol. 1046] Q. What was it that you saw about a demonstration involving Sylvia Hull on the seventh floor? When did it happen? Who was present? What happened?

A. All that I saw of that was just the end of it, and the girls were there, I think some twenty—

Q. (Interrupting) What time did this occur?

Trial Examiner Batten: Now, just a moment, Mr. Leary. I am not going to go all over this again.

Mr. Leary: I believe she brought up another demonstration, Mr. Examiner.

Trial Examiner Batten: If you want to determine that question, whether this is something additional, all right.

A. I have told you two or three times, Mr. Leary, in my testimony, that it was with Sylvia Hull, is what caused all outburst.

[fol. 1047] Q. What outburst are you referring to?

A. I mean the thing that prompted us to get busy and form a union of our own, is the thing Sylvia Hull did.

Q. I am referring to April 23d, Miss Todd.

A. Yes, sir.

Q. And ask whether or not there was a demonstration other than the demonstration that we have spoken about before involving Fern Sigler? A. Yes, sir.

Q. And what was that demonstration?

A. It was over Sylvian saying that she had been elected by us to represent us at the International Convention.

Q. When did that happen?

A. It happened on the morning of the 23d of April, 1937.

By Trial Examiner Batten:

Q. Were you there at this demonstration?

A. I was there at the end of it, Mr. Batten; yes, sir.

Q. You were there before it finished?

A. Yes, sir.

By Mr. Leary:

Q. What time did it take place?

A. Well, it must have taken place between 7:30 and 8 o'clock, because, as a rule I get to work around 8 o'clock unless I have—

Q. (Interrupting) Had the power been turned on?

A. Why, I don't know about that.

[fol. 1048] Q. Where on the seventh floor did it take place? I want to limit it to what you saw, now, Miss Todd, and what you saw—

A. (Interrupting) What I saw was at the employment office, or around the employment office there on the seventh floor of the building.

Q. You are referring to Mrs. Ella May Hyde's office?

A. That is right.

Q. What, if anything, took place that you saw?

A. The only thing, that a group of girls were there, and they were objecting—I mean, that was their form of objecting to Sylvia saying she represented them at the International. They were simply standing around there.

Q. Did you see girls standing around and talking? Was that it?

A. They were about, I would say there were about fifteen or twenty girls standing there.

Q. Was Sylvia Hull in the group?

A. She was not in the group. She was in Mrs. Hyde's office, you mean?

Q. Sylvia Hull was in Mrs. Hyde's office?

A. Yes, sir.

Q. Was Mrs. Hyde in there with her?

A. I think she was.

Q. And what, if anything, were those girls doing in addition to just standing there and talking among themselves?

[fol. 1049] A. They weren't doing anything.

Q. Now, that is what you refer to as a demonstration?

A. Yes, sir.

Q. Is that the demonstration where you say there was no violence?

A. I say, there was no violence at that demonstration, and that I was told, there was no violence of those others.

Trial Examiner Batten: In other words, as far as you are concerned, you didn't see any; is that it?

A. I never did see any violence; no, sir.

By Mr. Leary:

Q. Well, did you or did you not testify that Ella May Hyde made an effort to break up some demonstration on April 23d?

A. This is it. This is the one.

Q. This is the one about 7 or 7:30 or 8 o'clock in the morning on the seventh floor?

A. Between 7:30 and 8 in the morning.

Q. What effort did Mrs. Hydes—

A. (Interrupting) And the part I saw was near 8 o'clock.

Q. What effort did Mrs. Hyde make to break up this demonstration?

. . . . . .

[fol. 1051] Mr. Leary: Mr. Examiner, with reference to the question I was asking just preceding the recess, I haven't been able to find the portion of the record on that point, but I would desire to ask the witness whether or not that was her testimony, namely, whether or not Mrs. Hyde tried to break up any of the demonstrations on April 23. I have my note that that is what she did testify.

Trial Examiner Batten: You may answer, as far as you know.

A. My recollection is that she did, yes, sir.

Mr. Leary: And you are referring, are you not, to the Sylvia Hull demonstration on the seventh floor?

A. I could refer to both.

Trial Examiner Batten: Are you referring to both?

A. Yes, sir.

By Mr. Leary:

Q. Did your testimony that she did try to break up the demonstration involving Fern Sigler? A. Yes, sir.

Q. On what floor did that demonstration take place?

A. It would have had to take place on the seventh floor, I guess, Mr. Leary, because that is where she worked.

Q. Did you see Mrs. Hyde make an effort to break up that demonstration on the sixth floor involving Fern Sigler? A. No, sir.

Q. What, if anything, did Mrs. Hyde do to break up [fol. 1052] the demonstration involving Sylvian Hull on the seventh floor that you yourself saw?

A. She asked the girls to go back to work, and they said they would if Sylvia would go home, and Sylvia said, "I want to go home." She said, "I will go home."

Q. Did you hear Sylvia Hull say that? A. Yes, sir.

Q. Where was Sylvia Hull when she said that?

A. Inside the rail in the employment department.

Q. Is that adjacent to Mrs. Hyde's office?

A. It was her office at that time. All it was was just a partition by a rail there.

Q. Miss Todd, will you explain the nature of Mrs. Hyde's office, as to whether or not it is completely en-

closed with a [well] going to the ceiling or whether or not there is a low railing?

A. It wasn't enclosed at all, Mr. Leary. At that time there was just a low railing there.

Q. When you say that on one occassion Sylvia Hull was in Mrs. Hyde's office, you mean she was inside the railing where Mrs. Hyde's desk was located?

A. Yes, sir.

Q. And these girls were standing right outside the railing? A. That is right.

Q. And they could see and hear everything that transpired or that went on between Mrs. Hyde and Sylvian Hull, is that it?

[fol. 1053] A. I don't believe they could hear anything. They were not there but a few minutes, and that space is good sized.

Q. Were you in that group of girls outside of the railing? A. I believe I was.

Q. Or were you inside? A. I believe I was outside.

Q. Were you talking among yourselves, or were the girls' remarks being directed at Mrs. Hyde or Sylvian Hull? A. Both.

Q. You mean they were being directed to both of those persons inside the railing?

A. They were directed to both. I mean, they were making comments, and being directed at Sylvia, too.

Q. At the present time where is Mrs. Hyde's desk located? A. On the first floor.

Q. And are you on the seventh floor now?

A. Yes, sir.

Q. Is your desk where the employment office used to be? A. No, sir.

Q. Is the entire employment office now on the first floor? A. Yes, sir.

Q. Did you ever have a desk in or near the employment office on the seventh floor? A. Never did.

Q. You were never located on the seventh floor when [fol. 1054] the employment office was up there?

A. No, sir. I have worked on the seventh floor in one of the sections but not [hear] the employment department.

Q. Where was your desk at that time, namely, April 23, 1937?

A. I don't believe I had a desk at that time.

Q. What were you doing at that time?

A. What did you say?

Q. What were you doing at that time?

A. I testified to that, Mr. Leary. I was working in the model department.

Q. On what floor? A. Ninth floor.

Q. How did you happen to be on the seventh floor at the time Sylvia Hull was in Mrs. Hyde's office?

A. Well, the nursing department is right there on the seventh floor. I don't recall any particular reason for being there. I might have been going in there.

Q. You then had, on April 23, no desk; is that correct?

A. So many of the times there has been a desk around and I have stashed things in it. I don't recall that I had one right then.

Q. Were you really working in the model department on April 23?

Trial Examiner Batten: Mr. Leary, what is the purpose [fol. 1055] of going over all of this? We have gone over all of this with this witness, what she did, where her desk was—There certainly were no questions I can recall that were brought up by the respondent or intervener since your examination that raises this issue again.

Mr. Leary: The record on it is confusing, Mr. Examiner, to this extent, that on April 27 she had a desk and on April 23 she didn't have a desk, she tells us now, and I want to know when she did get a desk.

Trial Examiner Batten: I do not propose to go over all of this thing again.

Mr. Leary: Well, I don't think it is going over it again, Mr. Examiner. I think we should have the record clear on it. I, frankly, am not clear on it.

* * * * * *

[fol. 1056] Mr. Leary: Why, Miss Todd, is there no provision in either of your agreements with the company, or your supplemental agreement, regarding the check-off system.

* * * * * *

A. The reason I would know was because we hadn't discussed it at that time, and it came up later.

Mr. Leary: You have written another contract, haven't you, since the check-off system was inaugurated or agreed upon?

[fol. 1057] A. Are you referring to the May 27, 1939, working agreement?

Q. Yes. A. Yes, sir.

Q. Why was it not incorporated in that, Miss Witness, if you know?

A. We didn't think it was necessary.

Q. Did you take the company's word for their responsibility as to the check-off proviso?

A. I think you will have to explain that question a little bit.

Q. Were you, Miss Todd, as president of the Donnelly Garment Workers' Union satisfied to accept the company's oral promise that they would abide by a check-off arrangement?

A. They have agreed to do that, Mr. Leary.

Q. Yes. Were you yourself satisfied with their oral promise?

A. I have every reason to feel they will live up to their agreement. I suppose it is still their right, if they don't want to do it, not to do it. At some future date are you referring to?

* * * * * *

[fol. 1060] Q. Is it not true, Miss Todd, that you previously testified, in response to a question by me, that the application cards for charter membership in the Donnelly Garment Workers' Union were printed by a boy at the plant?

A. Mr. Leary, I think I explained that yesterday; and I did testify to that. In going back over the books I found this notation and that bill that was presented yesterday, which is the truth.

Q. You were in error, then, Miss Todd, in the answer you gave to my question in the first place?

[fol. 1061] A. Yes, I was, Mr. Leary.

* * * * * *

[fol. 1062] Mr. Leary: Miss Todd, I show you what has been admitted as intervener's exhibit No. 1, purporting

to be an invoice from Kauffman and Eppinger Printing Company for 1,500 applications for charter member slips. Is that not correct?

A. That is what that is, yes, sir.

• • • • • •

[fol. 1063] Q. Who made the notation "pd. 50 cents" in the lower left-hand corner of that exhibit?

A. When I say this I looked it over, and I am inclined to think Mr. Eppinger wrote that (indicating), and I wrote this (indicating).

Q. Who wrote the word "paid" under "O. K. R. T."?

A. I think I wrote that.

• • • • • •

[fol. 1064] Q. Now, what, if any, agreement did you have with Mr. Eppinger?

A. Well, I talked to Mr. Eppinger about these cards.

Q. When was the first time you talked to him?

A. Well, I think I talked to him either the 25th or the 26th, right around the time of that thing, because it was just a small thing, and discussing with him that if we did form an organization, we might need some other thing, and he said, "Well, then, if you think you might, we will just let this thing ride," or something to that effect, "and you pay for the printing of them and you can pay for the cards later." Now, there is another invoice in that stack over there that will show where the cards were paid for; not the printing, but the cards. That is at a later date.

Q. Did you know Mr. Eppinger before this date?

A. No, I didn't know him other than I knew that he had printed some things for the Boys' Athletic Association.

• • • • • •

[fol. 1066] Q. I show you what has been marked for identification, Miss Todd, as Board's Exhibit 11, and ask you to state whether or not that is the application card for membership of an individual known as Madge Cole?

(Thereupon, the document above referred to was marked as "Board's Exhibit No. 11" for identification.)

A. Yes, sir, it is, and I would like to make a little comment on this, if I may.

• • • • • •

[fol. 1067] Q. How many of the cards similar to Board's Exhibit 11 did you have printed? A. This last one?

Q. Yes.

A. Well, Mr. Leary, they were all printed at the same time. These cards were all printed at the same time.

Q. How many of the Board's Exhibit 11 did you have printed?

A. Well, we had approximately 1,500 of them printed at the same time.

Q. You mean to say—

A. (Interrupting) That applied to the first ones and the—

Q. (Interrupting) Together, Board's Exhibit 3 and Board's Exhibit 11, you had a total of 1,500?

A. Yes, sir.

* * * * * *

[fol. 1069] By Mr. Leary:

Q. Now, I believe there has been some confusion, Miss Todd. Am I not correct in this statement: that you had first printed Board's Exhibit 3? A. That is correct.

Q. For which you have the invoice identified as Intervener's Exhibit 1? A. That is correct.

Q. And that invoice shows you had 1,500 of those cards printed?

[fol. 1070] A. That is correct.

Q. Now, with reference to Board's Exhibit 11, is it your testimony that they were printed some time after April 26, 1937, the date which you cannot tell now?

A. That is correct.

Q. And the number of them that you cannot remember now? A. That is correct.

Q. Well, are you able to explain the circumstances as to why you do not have an invoice for the payment of those cards identified as Board's Exhibit 11?

A. I think I can. We have an invoice showing for the payment of cards, which is paid at the same time that Exhibit 11 was paid for.

Q. Where is that invoice, please?

A. Over there in the Treasurer's book. That makes me think that we must have run off about 1,500 of these. I can find that if you want me to.

Q. I would prefer, if you have any jurisdiction over those records, to produce it now, please.

A. I know where it is.

• • • • • •

[fol. 1072] Q. By the way, do you know where the cards were printed? A. I think I do.

Q. Where?

A. On the mimeograph machine at the Donnelly Garment Company.

Q. When you say you think you do—

A. (Interrupting) Well, that is my recollection, and if you asked me if I looked for the invoice, and I will look for it at noon, my recollection is that there won't be one, that we ran those off on the mimeograph machine at the Donnelly Garment Company,—and you are talking about Exhibit 11?

Q. Yes. A. That is correct.

Q. Yes. With reference to Intervener's Exhibit 2, do you know who paid for the printing of that card?

A. I—

Q. (Interrupting) And also the card similar to it, approximately 1,300, I imagine?

A. The company requested this, and provided cards. They requested it be done this way, and they provided the cards. I guess they paid for it and had it done.

Q. Then the company gave the cards to the union, is that it, for signature?

A. Well, it is a card that they kept, Mr. Leary, and requested our signature on before they will deduct the dues.

[fol. 1073] Q. All right. After the card identified as Intervener's Exhibit 2 was printed by the company, do you know what was done with them, looking toward the obtaining of signatures by the employees?

A. How the signatures were obtained?

Q. Yes. A. The union obtained them.

Q. All right. Now, were all of the cards similar to Intervener's Exhibit 2 given to you as president of the union? A. No, sir.

Q. Who were they given to?

A. Well, what I needed were given to me. Is that what you mean?

Q. All right. How many were given to you?

A. Well, I think enough to cover that—

Q. (Interrupting) About 1,300, would you say?

A. About that many.

Q. Then what did you do with the cards?

A. We gave each member an opportunity to sign one.

Q. Where did you give them that opportunity?

A. At my desk.

Q. Is it true, then, that all the members of your organization had to come to your desk on the seventh floor and sign the card? A. I think that is true.

[fol. 1074] Q. You didn't distribute any of them first throughout the sections, did you? A. No.

Q. How long did it take you to obtain the signatures on the check-off cards identified as Intervener's Exhibit 2?

A. Several days. I think that took about two weeks, Mr. Leary, as I remember it.

Q. Do you know whether any cards were signed at any place other than your desk on the seventh floor?

A. I don't believe there were.

Q. Now, what does your invoice show as to the date on which you purchased the cards upon which the printing was done, referring to the cards, Board's Exhibit 11?

A. May 10, 1937.

Q. What does your invoice show as to the date on which you bought the cards identified as Board's Exhibit 3?

A. They are included in this invoice of May 10, 1937.

Q. May I see that invoice, please? A. Yes, sir.

Q. They are included, are they not, Miss Todd, in that notation on this invoice from Coffman and Eppinger Printing Company in the item 3,000 black cards, 3 by 5, $3.50? A. That is correct.

Q. Now, what is referred to here as 1,500 employees' memo sheets, questionnaire, $8.50?

[fol. 1075] A. Oh, I know what that is. It was a sheet of some information pertaining to the Wagner Act, as I remember, prepared by Mr. Tyler and we had them printed. I think it was questions that might be asked about the Wagner Act and the answers for the information of the members of the union.

Q. You have no objection if I use the document you have just referred to as a part of this formal file?

A. No, sir.

Q. I show you what has been marked for identification as Board's Exhibit 12, and ask you to state whether or not that is the original invoice from Coffman & Eppinger Printing Company dated May 10, 1937, to the Donnelly Workers' Union, 1828 Walnut, Ninth Floor, in the amount, including the tax, $21.26?

(Thereupon, the document above referred to was marked as "Board's Exhibit No. 12" for Identification.)

A. Yes, sir.

Q. This was delivered to the ninth floor, then, in the building? A. That is my recollection.

Q. To whom, on the ninth floor, was that invoice delivered? A. To me, I believe.

Q. Did you have headquarters on the ninth floor in May, 1937?

[fol. 1076] A. I think that I was still on the ninth floor at that time. Now, I am not—I think I stated before, Mr. Leary, that I was not clear about that particular month.

Q. Is the model department on the ninth floor?

A. Yes, sir.

Q. Do you customarily have mail for the Donnelly Garment Workers' Union delivered to you at your offices?

A. Yes, sir. What do you mean by that, Mr. Leary?

Mr. Leary: Read the question, please.

(Whereupon, the question was read by the reporter.)

A. At 1828 Walnut?

By Mr. Leary:

Q. Ninth floor?

A. It would be delivered to me wherever my desk is.

Q. Well, you are the Miss Todd you—the Miss Todd referred to on Board's Exhibit 12, are you not, as the person who gave the order? A. Yes, sir.

Q. And it was on your instructions, was it not, that the invoice be sent to the Donnelly Garment Workers' Union, 1828 Walnut, Ninth Floor?

A. Yes. I don't know whether that might be right or wrong, but that is what that said, and I would certainly have it sent to me at 1828 Walnut. I can't imagine saying what floor.

Q. Did you get any authority from the company to have mail concerning the Donnelly Garment Workers' [fol. 1077] Union delivered to you at their plant?

A. No, sir.

Q. Did you get—do you get any other personal mail there? A. Lots of times.

Q. Do you know whether other employees have the privilege of receiving personal mail at the company?

A. I know there is never a day I don't see some in the mail box, going to somebody.

Q. Now, with reference, Miss Todd, to the handling of mail at the plant, is not the mail all opened before it is delivered to the individual?

A. No, sir. Why, nobody would open a letter that belonged to me; no, sir.

Q. Do you know where the mail first comes in to the company? Is there a mail receiving clerk?

A. I never had thought about it. The mail comes in there. The postman brings it, and I don't know whether there is anybody there that picks it up or not. I never had given it any thought. There is a pick-up system around there, and whenever I get my mail, that is the way it comes to me and the postman comes in there every day.

Q. How much mail do you get every day?

A. Do I get?

Q. Yes.

A. Some days, Mr. Leary, I might not get any, and [fol. 1078] some days two or three. Some days none.

Q. Well, the only mail that you receive is mail concerning the Donnelly Garment Workers' Union?

A. No.

Q. What other mail do you receive?

A. Personal Mail?

Q. Yes.

A. Lots of times I get personal letters at the Donnelly Garment Company.

* * * * * * *

[fol. 1079] Q. Does the union maintain any records of the employees who have authorized the company to check off dues from their pay checks?

A. We keep our file current, Mr. Leary. I think that will answer your question.

Q. What record do you keep as to the persons who have authorized the company to deduct union dues from their pay checks?

A. Well, it is easier for us to keep a record of the ones that haven't, and our file is current, and if there were any people who had not authorized their dues to be taken out in this manner then we would have a list of those. Does that answer your question?

Q. Do you get a list of new employees, then, with the company?

A. No. We try to keep in contact and know who our new employees are.

Q. Has it not been your testimony, Miss Todd, that the members of your organization were unanimous in authorizing the company to check off union dues from their pay checks? A. No, sir.

Q. How many did not authorize the company?

A. The salesmen. What I testified to, Mr. Leary, was that everyone was given an opportunity and told they didn't have to do this if they didn't want to, but if they [fol. 1080] so desired they signed this card. But the Donnelly Garment Company refused to take the salesmen's dues out of their checks.

Q. So, the salesmen are not part of the agreement, are they? A. No, sir.

Q. All of the persons who were a part of the agreement and covered by the same, does the union keep any record of those persons who have authorized the company to deduct dues? A. Yes, sir.

Q. What record do they have?

A. Our membership file is a record of that. We keep that file, as much as possible, up to date. There are a few

cards that belong in it right now, but it has been gone so long that is the only reason they are not in there.

Q. Does the company give the Donnelly Garment Workers' Union a statement of account periodically of the moneys that have been checked off their union dues?

A. They give us a check. This card (indicating Board's Exhibit No. 12) states it will be taken out after—No, it isn't on here. They take that out after the first pay day and give us a check for that amount.

Q. They give you a company check, do they not?

A. That is right.

Q. Who signs that?

A. I think Jack could answer that better than I can. [fol. 1081] One would be from the Donnelly Garment Company and one from the Donnelly Garment Sales Company.

Q. Do they carry any covering statement with that check?

A. No, because we check that ourselves. We check that when we get it to know that they haven't made a mistake.

Q. What basis do you use to check the company's statement?

A. From our file, our membership file. If those people are there and we have their cards active in that file we know they should be paying their dues, and that is what we check it against.

Q. For instance, let us take the case of Marie Patten; did she pay her dues for January, 1939?

A. You say, did she?

Q. Yes. A. Yes.

Q. Do you have the treasury records available here?

A. Yes, Mr. Leary. All of our treasurer's books are there. I don't think that you are understanding how we check that.

Q. I, frankly, do not, Miss Todd. That is what I want to trace through. Let's take Marie Patten for the month of January. Can you show me where in the records state-

ment is made that Marie Patten paid for the month of January, 1939?

A. We don't make a statement like that. That is what I said, Mr. Leary.

Q. Do you make any entries in your record as to Marie Patten's payment of dues for January, 1939?

[fol. 1082] A. We don't make a statement like that. That is what I said, Mr. Leary.

Q. Do you make any entries in your record as to Marie Patten's payment of dues for January, 1939?

A. Mr. Leary, for the check-off system we use another method entirely.

* * * * * *

Trial Examiner Batten: I want you to show us how it shows in those records that Marie Patten paid her dues for January, 1939?

A. This is the file of our membership, of our union, and when we receive a check from the Donnelly Garment Company—or sometimes we do it before and wait—you know, so that we have a check on it. If there is a card in there from every member of our union we are entitled to that many quarters from those people.

By Mr. Leary:

Do you have information currently as to the number of employees who have done any work at the Donnelly Garment Company, say for any particular month?

A. Do I have?

Q. Yes. Or, does your union receive such information?

[fol. 1083] A. Surely.

Q. What information do you receive?

A. Any member of the Donnelly Garment Workers' Union will report to you, if there is a new person in that department, that there is a new employee?

Q. There are lay-offs and discharges sometimes?

A. Yes, sir.

Q. Are you advised of that fact by the company?

A. Well, Mr. Leary, we take this file and keep this thing active. We have to have it.

Trial Examiner Batten (interrupting): The question is, how do you keep it active? Who tells you when a person is discharged or when these people are laid off? They do not pay dues when they are laid off?

A. Why, no, sir.

Trial Examiner Batten: Well, all right, then, how do you know when they are laid off or discharged?

A. The company would tell me if they were laying off a lot of people.

By Mr. Leary:

Q. What method does the company use to tell you they are laying off a lot of people?

A. By giving me a list of names.

Q. Do you have any of those lists of names that the company has given you?

A. I don't recall that I have any, no. I don't know [fol. 1084] whether I have or not.

Q. How does it happen that the company gives you a list of those names?

A. Why, we asked them.

Q. When?

A. A long time ago, when this union was first formed. Our agreement calls for people employed by the Donnelly Garment Company to be members of our union, and we are certainly entitled to know who is employed by the Donnelly Garment Company.

In a good many instances the members themselves would say, "There is a new girl in our department who wants to join the union." But the company gives that information, as to who they employ and don't employ.

Q. Do you have an established system whereby the company advises you periodically who their new employees are?

A. Not periodically, no, sir, but if they employ new employees I am notified. I don't mean I am notified, but the union is notified.

Q. Who in the union?

A. Well, it is sent to me.

Q. What form does the company use?

A. Just a piece of paper, or a notice—well, just a plain piece of paper.

Q. Have you any of those notifications from the company?

A. I don't know that I have right now. I haven't been [fol. 1085] there for two or three days, there might be one on my desk now.

Q. Will you search the files at noon and determine that?

A. Yes, I will.

Q. Now, Miss Todd, with reference to, let us say Marie Patten, for the month of January, 1939, and her dues payments in connection with the check-off system—Will you first take Marie Patten's card out of the file? Is it not true, Miss Todd, that the card you have there is similar to Board's exhibit No. 3?

A. Yes, sir.

Q. That is what you call her application for membership card?

A. That is correct.

Q. Does your union have any record at all that Marie Patten's dues were checked off for the month of January, 1939?

A. Mr. Leary, as long as this card is active in this file we know that—Each month if the members compare with these cards and the company's records—I mean the amount the company has given us, then we know that every one of those people have paid their dues. It doesn't say this individual paid, but by your balance of cards and your balance of quarters you can tell. That answers your question, doesn't it?

By Trial Examiner Batten:

Q. You mean for the current month?

A. Yes, sir.

Q. Supposing you wanted to check back for the month [fol. 1086] of January, 1939?

A. We have never established, Mr. Batten—

Q. (Interrupting) I mean, without reference to the checks the company gave you, suppose you were going to determine just how many people paid dues in January, 1939, and who they were?

A. If we wanted to know who, we wouldn't know, because we keep these books current. We would know how much.

By Mr. Leary:

Q. In what amount did the company render a check to you for the month of January, 1939?

A. I can't tell you without looking at that book.

Q. Will you please determine that now?

A. (Referring to book.) Did you say January, 1939?

Q. Yes.

A. From the Donnelly Garment Company, $265.50; from the Donnelly Garment Sales Company, $21.

Mr. Langsdale: That is for January, 1939?

A. Yes, sir.

By Mr. Leary:

Q. Have you any manner or means of determining, Miss Todd, whether that check was rendered to you in the correct amount?

A. I did have at the time. I don't have now.

Q. At the time what method would you use to determine whether it was correct?

A. Just the same one, Mr. Leary, that I told you awhile ago. We keep this file current, and we check it against this [fol. 1087] to know if our balance is right. We did the same thing then that we do now. We have always done it. I don't know, it may be a good method or a bad one, but it is the one we use. We felt like we were doing the right thing.

Q. When you make the statement "by keeping the cards current" you refer to your application for membership cards, do you not?

A. And at the time, Mr. Leary—

Trial Examiner Batten (Interrupting): That is what you are referring to, Miss Todd?

A. Yes, sir.

By Mr. Leary:

Q. Do you count the cards each month you receive that check, Miss Todd?

A. Yes, sir.

Q. Do you make any notation or entry as to the number you counted for that month?

A. No, we don't.

Q. Have you ever found any error, Miss Todd, in the check the company has rendered you each month?

A. Yes, we have found an error several times of people that I might have neglected to see and have them join the union and cheated ourselves out of a few quarters. I have never known there to be an error in the reverse, though, that the company had given us too many.

Q. Is there any arrangement, Miss Todd, whereby an [fol. 1088] employee has to be employed so many days per month in order that his dues should be checked off?

A. Yes.

Q. How many days a month must an employee work?

A. We expect if they work a week out of the month—

Is it a week or two weeks, do you remember, Jack? (Addressing Mr. Conaughey) It is some place in our minutes there. I believe it is a week, Mr. Leary.

Q. Right offhand do you know whether there is contained in your agreements with the company or in your bylaws of your union?

A. No. That is the agreement that the members of the union made.

Q. When did they make that agreement?

A. I don't remember how long it has been. It is in the minutes there some place.

Q. Now, Miss Todd, what method do you use to determine each month whether or not the members of your organization have been employed for at least one week by the company during that month?

A. We always do that against their payroll card, Mr. Leary.

Q. You see their payroll card every month, then?

A. Every week I see it.

Q. Who performs that check?

A. I do.

[fol. 1089] Q. When do you see the payroll?

A. I see the payroll every week, because I want to know that the people who have been guaranteed such and such salaries are receiving them.

Q. When is the payroll made available to you during the day?

A. Usually on Wednesdays.

Q. At what time on Wednesdays?

A. There isn't any set time for it.

Q. Is it during the working hours?

A. Why, sometimes it is and sometimes it isn't.

Q. How long does it take you to make such a check of the payroll every Wednesday?

A. I don't know.

Q. Do you go over the names of the 1,300 people individually?

A. This is a piecework payroll I am referring to.

Q. Are there about 7 or 8 hundred names on that piecework payroll?

A. I think probably nearer six.

Q. Do you check the payroll of each one of those persons?

A. Yes, sir.

Q. Do you check the time cards?

A. No, sir. It isn't necessary to check both, Mr. Leary. If they are being paid for a day's work they are already there.

Q. Are the number of hours work during the week indicated on the payrolls?

[fol. 1090] A. Yes, sir.

Q. What is your best judgment, Miss Todd, as to how long it takes you each week to make such a check?

A. It doesn't take very long to run through that many cards.

By Trial Examiner Batten:

Q. How long?

A. I don't know. Sometimes I get into it and a few of them would not be ready—

Q. Well, would it take 10 minutes?

A. Oh, it would take longer than 10 minutes.

Q. 20 minutes?

A. I judge that during the week it would probably take an hour, 45 minutes to an hour.

By Mr. Leary:

Q. Against what do you make your check when you review the payroll on each Wednesday, Miss Todd?

A. Against the hours they work, Mr. Leary. Was that question, against what do I make my check?

Q. Yes. Do you carry in your head the wages or the guarantees of each of those 600 employees?

A. No. I have a sheet of paper.

Q. What sheet of paper do you have?

A. Just a penciled written sheet of paper.

Q. Containing the names and guarantees of 600 employees?

A. It does have that on it.

Q. Do you have that sheet available?
A. No, I haven't.
[fol. 1091] Q. Do you make a new sheet each month?
A. Mr. Leary, that isn't my sheet. I don't make it all.
Q. Whose sheet is it?
A. It belongs to the Donnelly Garment Company.

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[fol. 1097] Trial Examiner Batten: I think the stipulation has been signed by the attorneys in the case, concerning certain testimony in the so-called NRA case before Honorable Andrew Miller, in the injunction case in the United States District Court, and the stipulation will be marked 1-DDDD and will be received on the same basis as the other exhibits and Board's Exhibit 1.

(The document heretofore marked as "Board's Exhibit No. 1-DDDD" was received in evidence.)

Trial Examiner Batten: Now, in connection with this [fol. 1098] exhibit, I want to say that this exhibit, of course, does not cover the offers of proof which I have requested or might in the future request from any of the parties in this case, except this far: it is my understanding that all of you attorneys agreed that any evidence which has been introduced into this case, you might refer to by reference in your offer of proof. Now, is that the understanding which we had?

Mr. Ingraham: That is correct, your Honor, as far as the respondent is concerned.

Trial Examiner Batten: Mr. Leary?

Mr. Leary: That is correct, Mr. Examiner.

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[fol. 1104] Redirect Examination (Continued)

Mr. Leary: Do you have those records here, Miss Todd, that you had yesterday, referring to your long file of cards?

A. They are over there, yes, sir.

Q. Miss Todd, have you ever had occasion to determine whether or not an employee of the Donnelly Garment Company who is a member of your organization has paid his dues for any certain month since you had the check-off agreement with the company?

A. No, sir.

Q. Do you know whether or not the company prepares any kind of an invoice or slip to be attached to the employee's pay envelope or pay check indicating what disposition has been made of certain deductions taken from the pay check or pay envelope?

[fol. 1105] A. Yes, sir.

Q. What does that slip say?

A. There is a stub on the end of the check I received that says "Deduct so much for Social Security." And if it is time to deduct for the dues, it will state that or anything they have been authorized to deduct from the check is stated on this stub.

By Trial Examiner Batten:

Q. You mean, Miss Todd, that is a part you can tear off and retain; is that it?

A. Yes, sir.

By Mr. Leary:

Q. Do you know whether the company keeps a duplicate of these small stubs that you refer to?

A. No, I don't.

Q. What other things is the company authorized on occasion to deduct from the employee's pay check?

A. On mine it is hospitalization or insurance, group insurance.

Q. When your labor organization authorizes the payment, let us say, of a dollar, in addition to your regular dues, for Mr. Tyler and his law firm, is that deducted from the pay check also? A. No, sir.

Q. How is that collected?

A. From the individual by the union, in cash.

[fol. 1106] Q. Do you have your record indicating the amount of money that has been paid to the union as a result of this check-off system? All I want, Miss Todd, is the amount that each month the company has turned over to you.

A. Yes, sir.

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[fol. 1107] The Witness: I said I thought maybe we better compare it with our check stubs, because it is entered here the first time three months together, and I didn't keep these books, so I wanted to know why. Here is the first entry, Mr. Leary, 11-3-37, dues for August, September and October by check from the company, $735.75, and these are the stubs for them. See, right here? As I remember, when we first started working on that—

By Mr. Langsdale:

Q. What is the date of that entry? A. 11-3-37.

Q. $700 and what?

A. $33.75. Also the check stubs are here.

When we first started doing this there was some difficulty in working out how they going to do it, and the first [fol. 1108] check came to us in that manner, those two.

By Mr. Leary:

Q. Miss Todd, when was it that you made arrangements with the company to check off the dues of the employees?

A. I think the first that was—the first of it was some time in July.

Q. Well, do you know whether the check-off authorization cards which the company has indicated the date on which they were signed?

A. No, they do not. That is partially the reason for part of the arrangement of this. It was the early part of July when we talked to them about it and it took a while to get these cards signed and turned in.

Q. Why was it, then, that is wasn't until November—is that the date that you started?

A. No; August, Mr. Leary. It was for the first of August.

Q. But the collections were not made until November 3, 1937; isn't that correct?

A. Well, does it say the date here? Yes, that is correct, November 3d.

. . . . . .

[fol. 1109] By Mr. Leary:

Q. What was the amount of the two checks you received on November 3, 1937?

A. One check, $681.25 from the Donnelly Garment Company and the Donnelly Garment Sales Company, $54.50, which gives you that total of $735.75.

Q. Will you explain why it was that the company's check for the month of August collections was not rendered to you before November 3, 1937?

A. Yes, sir, because they were having some difficulty how they were going to handle it. They asked if it made any difference. It didn't make a great deal of difference to us, as long as we had a check on it, and so that was the reason it wasn't given to us until November.

Q. Well, you didn't decide until November, then, to definitely have the check-off, is that it?

[fol. 1110] A. No, sir. We decided in July, the early part of July, that we were going to have it. They evidently were having some difficulty, as I understood it, as to how they were going to handle it, how they were going to do it. Not that they weren't going to do it, but how they were going to do it.

Q. Who did you talk to representing the company on that matter?

A. Mr. Ingraham.

Q. Have you any place in your record, Miss Todd, any entry showing a date on which you made this check-off agreement with the company, and I include in your records, your minutes and all?

A. I can't answer that question without referring to the minutes.

Trial Examiner Batten: Well, you will just have to get the minutes and go over them, please. If you need them, why, you better go over them.

The Witness: I don't know how long it would take me to look through.

Trial Examiner Batten: Well, it doesn't make any difference how long, if that is what you need, why, we will just have to wait.

A. July 14th, Mr. Leary, meeting of the chairmen.

By Mr. Leary:

Q. And on—

A. (Interrupting) July 14, 1937, 9:34.

[fol. 1111] Q. Well, now, that was the occasion, was it not, Miss Todd, when you decided to ask the company for this check-off system?

A. That is the occasion that we decided finally to officially take care of it, yes sir. We had had—I had had some discussions with Mr. Ingraham about it before, and we had talked to Mr. Tyler about it on several occasions.

Q. I want you to trace, Miss Todd, as well as you can, the arrangements that you went through in order to obtain this check-off system.

[Q]. You want me to go over it again?

Q. No, not again. When was the first time that your union discussed it?

A. As members of the union, there had been discussions about it ever since the union was organized among themselves. The early part of—the first week in July was the first time I mentioned it to Mr. Ingraham. I had and I know other members of the committee had talked to Mr. Taylor about it several times previous to that, and this is when we finally made the final arrangements, decided to make the final arrangements about it. I think that I talked to Mr. Ingraham, I don't know whether it was a day or two or three days later, but it was—went right in close to this date here.

[fol. 1112] Q. Now, did the employees or members of your organization ever vote to request the company for the check-off system?

A. The members of the committee voted on it, Mr. Leary.

Q. Did the members of your organization as a body ever have that question put before them, namely, whether or not they would request the company for the check-off system?

A. As a vote, no, but as a general discussion, yes.

Q. In what meeting was it discussed generally?

A. It was discussed in—it seems to me the meeting in June that was discussed.

Q. If it was discussed, then, it will show up in your minutes, will it not?

A. No, I don't know about that. It might not at all. We have never said, Mr. Leary, in these minutes, "Don't show everything that has taken place in these minutes."

Q. Would you say if there was a vote taken on the question by the members of your organization that the results of that vote would show up in the minutes of your general meetings?

A. Mr. Leary, I said there wasn't a general vote taken, but before this was done every individual signed a card requesting that it be done. There has never been a penny taken out of our checks to pay for dues that there isn't a card in that file to show for it.

Q. What came first the discussion by the employees as to whether or not they would ask the company, or the signing of the cards by the individual employees?

[fol. 1113] A. The discussion by the employees, by the members of the union.

Q. What was the decision made as a result of the discussion by the employees?

A. The minutes show at a meeting of the committee chairmen representing the Donnelly Garment Workers' Union they discussed it and voted on it, and then every member of the union was given an opportunity to sign a card, which was turned over to the Donnelly Garment Company.

Q. Do your treasury records, the book to which you have made reference a short time ago, indicate what other payments were made by check from the company to the union under the check-off system?

A. It will show every one we have ever received.

Q. Will you itemize those for the record, please?

By Trial Examiner Batten:

Q. What was that, every check—what?

A. Every check that we have ever received from the Donnelly Garment Company or Donnelly Garment Sales Company for dues received by them, they are listed in here month by month.

By Mr. Leary:

Q. Will you read those, the dates and the amounts, please?

* * * * * *

[fol. 1115] Trial Examiner Batten: I am going to recess, and will you prepare a statement of this, please Miss Todd? Just make it out in writing.

* * * * * *

[fol. 1117] By Mr. Leary:

Q. You have handed me, have you not, Miss Witness, what you have prepared during the recess?

A. Yes, sir.

Q. Indicating the month and the year for which the dues were collected, beginning in August, 1937, and con-

tinuing through May, 1939; in the second column, date on which the check was deposited at the bank—

A. (Interrupting) That is what I think it is, from going through the book. It looks like the date that it was deposited.

Q. And in the third column, the amount of money that was paid by the Donnelly Garment Company's check, and in the fourth column, the amount of money paid by the Donnelly Garment Sales Company. Is that it?

A. Donnelly Garment—

Trial Examiner Batten (interrupting): Is that the name, Donnelly Garment Sales Company?

Mr. Ingraham: Donelly Garment Sales Company.

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[fol. 1118] Mr. Leary: Will the Examiner please direct the reporter to copy this information into the record at this point?

Trial Examiner Batten: Yes. He may incorporate it in the record.

(The two sheets above referred to are as follows:)

"August	1937)				
Sept.	1937)		D. Gar. Co.	D. G. Sales Co.	
October	1937)	11-3-37			735 75
Dec.	1937 —	12-9-37	238 50	18 50	
Jan.	1938	1-10-38	246 25	19 75	
Feb.	"	2-1-38	246 75	20 00	
March	"	3-1-38	274 75	20 50	
April	"	4-8-38	292 50	21 00	
May	"	5-7-38	303 50	21 50	
June	"	6-7-38	281 00	20 75	
July	"	7-20-38	263 00	20 75	
August	"	8-3-38	257 25	21 25	
Sept.	"	9-1-38	253 25	20 25	
Oct.	"	10-5-38	245 50	20 00	
November	"	11-10-38	248 50	20 25	
Dec.	"	12-31-38	249 75	21 25	
Jan.	1939	1-27-39	268 50	21 00	
Feb.	"	2-9-39	266 25	20 50	
March	"	3-14-39	264 00	21 25	
[fol. 1119] Jan.	1939	1-27-39	265 50	21 00	
Feb.	"	2-9-39	266 25	20 50	
March	"	3-14-39	264 50	21 25	
April	1939	(deposit made in May 1938)			
May		5-2-39	264 50	21 00	
		5-24-39	275 50	21 75"	

By Mr. Leary:

Q. Miss Todd, what record do you have as to the dues payment for the months of April, May, June and July, 1937?

A. Of what—of April, May, June and July?

Q. '37.

A. Well, we have some little gray books that have it in, some little looseleaf sheets, is what they are.

Q. Are those available in the court room now?

A. I doubt if they are. We carried them around here for several days. I don't think they are here this morning, are they?

Mr. Patten: No, they are not here. They are at the office. We can bring them over for you, Mr. Leary.

Mr. Leary: If you will, please.

By Mr. Leary:

Q. Now, was it your testimony, Miss Todd, that the first time you talked with Mr. Tyler was on March 27, 1937? A. Yes, sir.

[fol. 4120] Q. Is the check, cancelled check, identified as Board's Exhibit 13, the check that was sent to Mr. Frank Tyler, dated April 1, 1937, in the amount of $500 from the Nelly Don Loyalty League, Rose Todd, Pauline Hartman?

(Thereupon, the document above referred to was marked as "Board's Exhibit No. 13" for identification.)

A. The words that you read are contained on this check, but I can't answer that question.

* * * * * * *

By Mr. Leary:

Q. You identify that as a check that was sent to Mr. Frank Tyler from the account of the Nelly Don Loyalty League on April 1, 1937? A. Yes, sir.

Mr. Leary: Board offers its Exhibit 13.

* * * * * *

[fol. 1121] Trial Examiner Batten: It will be received.

(The document heretofore marked as "Board's Exhibit No. 13" was received in evidence.)

Mr. Leary: Will the intervener admit that this is Mr. Frank E. Tyler's signature on the back of the check?

Mr. Lane: Yes, sir.

* * * * * *

[fol. 1123] Mr. Leary: Do you know whether any records have been kept by the Nelly Don Loyalty League as to the persons who contributed certain amounts to cover that check?

Mr. Patten: We object to the form of that question. It assumes facts not in evidence, that the Nelly Don Loyalty League is the organization that took these 50 cent dues that were paid. The testimony was that it was at a meeting of employees.

Trial Examiner Batten: Well, I think the question is, is there any record any place of those who paid this amount. Is that it, Mr. Leary?

Mr. Leary: Correct; yes.

Mr. Lane: He said the Loyalty League.

Trial Examiner Batten: I am saying, the question is, is there any record of the people who paid these amounts to make up the $500.

Mr. Stottle: May the respondent inquire, then, whether Mr. Leary's question is withdrawn for the purpose of answering your own?

Mr. Leary: I make no point over using the words "Nelly Don Loyalty League" here at all.

Trial Examiner Batten: No. I asked Mr. Leary if that is the question. I assume that is the question the witness is to answer.

[fol. 1124] Trial Examiner Batten: In other words, do you have a record any place showing the names of the people who paid these amounts?

A. No sir. We don't have, that I know of.

* * * * * *

[fol. 1128] Q. Do you know whether you had chairs for your March 18 meeting?

[fol. 1129] A. I don't think we did. I asked somebody about that, trying to refresh my memory about it, and I didn't arrive at any conclusion about it.

Q. Do you remember whether you had chairs for the April 27 meeting? A. Yes, we did.

Q. Who arranged for the obtaining of those chairs?

A. That was paid out of the balance of the money—not the balance of it, but part of that money that we used to pay that $500 for Mr. Tyler's fee. Part of that money was used for those chairs, I believe—I know it was.

Q. Do you have any record of that? A. No.

Q. Would your treasurer have a record of it?

A. I don't know. I haven't thought of that for a long time.

* * * * * *

[fol. 1131] Recross-Examination.

By Mr. Langsdale:

Q. Miss Todd, I am not entirely clear about the small file, as to where it is kept.

A. It usually sits on my desk.

Q. Your desk is on what floor? A. Seventh floor.

Q. Now, let me ask you, since this check has been produced, showing that the payment of $500 was made to Mr. Tyler on April 1, 1937, if your memory is thereby re-

freshed as to when the meeting was had of "the employees," as you have called it, to raise the money.

Mr. Patten: We again object to the question for the reason that it has been gone into heretofore.

Trial Examiner Batten: I will overrule the objection.

A. I don't know the exact date of that meeting, Mr. Langsdale.

By Mr. Langsdale:

Q. Is your memory refreshed as to whether or not the meeting was held between March 27 and April 1?

A. I am positive that it was, but the date of it I don't know.

Q. Some date between those two dates?

[fol. 1132] A. Yes.

Q. Who called that meeting?

A. I believe I called that meeting.

Q. How did you call it?

Mr. Patten: If the Court please, I think that meeting has been discussed pages and pages in this record.

Mr. Langsdale: All we have asked her about is when it was held.

Mr. Patten: You are asking her as to who called it.

Mr. Langsdale: She answered that. The only question asked her about that meeting—In fact, the meeting was never mentioned until yesterday, when it was discussed in connection with the payment made to Mr. Tyler, and she says the meeting was called in which everyone was assessed 50 cents to pay Mr. Tyler. We didn't get that information until now, as to who called it. I want to know how [how] it was called, whether by telephone, by i. d. m., or by what method.

Trial Examiner Batten: You may ask this question, because there hasn't been any prior information as to

who called it, so there couldn't have been anything about how it was called.

Mr. Patten: I think that has all been gone over.

Trial Examiner Batten: The witness didn't testify before that she called it. You may answer.

A. I don't remember.

[fol. 1133] By Mr. Langsdale:

Q. Have you any recollection at all? A. No, sir.

Q. Did you ask Mrs. Reed to help you get the employees together? A. No, sir.

Q. Do you recall what time of day the meeting was held? A. In the late afternoon.

Q. What do you mean by "late afternoon"?

A. My recollection is, it was about 4:30 or 4:15.

Q. 4:30 or 4:15. Now, you haven't the slightest recollection of how you got the employees together?

A. I have not.

Q. You stated that you raised something over $600 at that meeting? A. Yes, sir.

Q. Out of which you paid $500 to Mr. Tyler. And this morning you have stated you paid for the chairs with part of that money raised in that way.

Mr. Patten: Intervener objects to the question, and submit, Your Honor, it has all been gone into time and time again.

Mr. Langsdale: It is purely preliminary.

Mr. Langsdale: What did you do with the rest of the money?

Mr. Patten: Wait for the ruling.

Trial Examiner Batten: If it is only preliminary, you [fol. 1134] may answer.

A. I can't tell you the details of what was done with the balance of that money.

By Mr. Langsdale:

Q. There was a balance, was there not?

A. There would probably be a balance.

Q. Have you any records anywhere as to how much was collected at that meeting?

A. Not any more, Mr. Langsdale. I have had.

Q. Have you now? Is there any record now in your possession, or in anyone else's possession, as to how much money you collected at that meeting?

A. Not that I know of.

Q. Have you any invoice for the chairs that were rented for that meeting? A. I have not.

[fol. 1135] Q. Has anybody that you know of?

A. I can't answer that, because I do not know.

* * * * * *

Q. You have stated that when you first approached the management about the check-off system, that Mr. Ingraham objected. Do you recall what his objection was?

A. I recall that he had a very good objection. He was just very positive—

Mr. Langsdale (interrupting): I ask that the "very good objection" be stricken out.

Mr. Langsdale: I asked you what the objection was.

Trial Examiner Batten: It may be stricken.

A. He was very positive in saying they just couldn't do it.

By Mr. Langsdale:

Q. Well, why? Did he tell you why?
A. I don't recall that he did.
Q. He just refused to do it?
A. What did you say—just refused to do it.
Q. You don't remember any reason that he assigned?
A. No, I do not.

* * * * * *

[fol. 1143] By Mr. Langsdale:

Q. Miss Todd, how many people would you ordinarily have in your meetings of the Donnelly Garment Workers' Union? A. You want an average?

Q. Yes.

A. I think we never have less than—unless it is during a vacation period when there isn't so many people there—that we have less than 6 or 7 hundred people.

[fol. 1144] Q. Did you ever have more than that?

A. Yes, sir.

Q. What would be your judgment as to the average? You said you never have less than 6 or 7 hundred.

A. Well, I think, Mr. Langsdale, that would be about an average. I know we have had a meeting or two or three where there have been less than that; they would be meetings during vacation times, or at Christmas and the holiday time, or something like that. I know we have had meetings when practically everyone was there.

Q. That is, 1,100 or 1,200? A. Yes, sir.

Q. And you have chairs for everybody?

A. No, sir.

Q. Do these invoices state the number of chairs you had for every meeting? A. Yes, sir.

Q. I notice on October 1, 1938, you called for just 450 chairs.

A. We usually have 400, 450 or 500 chairs, and the remainder of the members have to stand.

Q. October 4, 450 chairs. I notice here in this meeting of August 8, 1938, you ordered only 100 chairs. Do you remember that?

A. I think I do, but to be more definite about it I will [fol. 1145] have to see the minutes.

Q. Will you examine the invoice?

A. Yes. (Referring to invoice.)

Q. One hundred chairs for the meeting that day?

A. Yes, sir.

Q. Did the Donnelly Garment Company own any chairs at that time? A. Not to my knowledge.

Q. You do not know of any chairs that the Donnelly Garment Company owned?

A. Other than they use all of the time—I don't know of any chairs that they use for meetings and things of that kind.

Q. When you would have a meeting of everybody in the plant, executives, employees, and everyone else, were the chairs brought from the outside, or did the Donnelly Garment Company have some chairs?

A. I have never known the Donnelly Garment Company to own any chairs, Mr. Langsdale.

Q. You don't know of any down there now?

A. No, sir. I have never known of any.

* * * * * *

[fol. 1146] Q. When these invoices were mailed by the K. C. Chair Rental Company to the plant, to whom were they mailed?

A. To the Donnelly Garment Workers' Union.

Q. And by whom were they received? A. By me.

Q. All of them? A. To my knowledge, yes, sir.

Q. I think this question has been asked you, but it is purely preliminary. Did anyone representing the Donnelly Garment Company open any of the mail that was addressed to the Donnelly Garment Workers' Union?

A. I have never known that to happen.

Q. Let me show you this exhibit No. 11 and call your attention to the receipt stamp there of the Donnelly Garment Company.

A. What is the date on that?

Q. August 10. A. August 8.

[fol. 1147] Q. That is when you made the order and it was delivered August 10th, is the date that you evidently received the invoice?

A. I think, Mr. Langsdale, what has happened to this, I have O. K.'d it there, but in sending it to the treasurer, inadvertently, the boy that picks up that mail or delivers those things must have laid it down on the desk of somebody connected with the company, some clerk or somebody, and before she noticed what it was, she put that on it.

Q. Well, this round circle that is stamped on there, on Exhibit 11, is the regular receipt stamp of the Donnelly Garment Company for mail that comes into that plant, is it not?

A. I never have seen that, Mr. Langsdale. I don't know.

Q. You mean in your long 10 years with the Donnelly Garment Company, you never saw their mail receipt stamp before?

Mr. Lane: Just a moment. If your Honor please, that is argumentative. He just asked the question once, and she answered it. Now, he repeats it in an argumentative form and I object to the argument with the witness.

Trial Examiner Batten: You may answer whether you ever have seen it?

A. I have never seen it, and never noticed it on there.

By Mr. Langsdale:

Q. You had never seen the stamp before? A. No, sir.

Q. Now, the stamp is also on the next exhibit, Exhibit 10. Do you know who placed that mail receipt [fol. 1148] stamp on there?

A. I don't know why it would be on there. Who did—I think it looks like carelessness of some sort.

Q. At any rate, the stamp is there, isn't it?

A. Yes, it is.

Q. And that is not the Donnelly Garment Workers' Union stamp, is it?

A. We do not have a stamp.

Q. And that is the Donnelly Garment Company's stamp, is it?

A. I don't know. I have never seen it before.

Q. Now, Miss Todd, a check has been produced which shows that, dated April 1, 1937, drawn on an account in the name of the Donnelly Loyalty League. Let me ask you if it isn't true that that money to meet that check was not loaned by the Donnelly Garment Company?

A. Oh, no, Mr. Langsdale.

Q. Was any other payment made to Mr. Tyler about that time or within the next—subsequent to the organization of the Donnelly Garment Workers' Union?

A. The next payment that was made to Mr. Tyler by was by the Donnelly Garment Workers' Union and will show in the book of our treasurer.

Q. Well, have you any independent recollection of the books as to when the next payment was made?

. . . . . .

[fol. 1150] Trial Examiner Batten: In other words, do you know when the next payment was made to Mr. Tyler?

A. I do not remember just the date of it.

By Mr. Langsdale:

Q. Can you give us an approximate date?

A. No, I don't believe I can, Mr. Langsdale. It has been a long time ago.

Q. Did you ever pay him for his advice and work in drawing up the by-laws? A. Yes, sir.

Q. Did you ever pay him for his advice and work in helping you draw up the working agreement?

A. Yes, sir.

Q. Did you ever pay him for his advice and work in helping draw up the supplemental agreement?

A. Yes, sir.

Q. And did you pay him for his visit to the 27th of April meeting in which he explained the purposes of the

meeting and produced the by-laws and gave other legal advice? A. Yes, sir.

Q. Now, do you know when you paid him for that work?

[fol. 1151] A. I do not, from memory; no, sir.

Q. No recollection whatever?

A. I have no recollection from my memory when we paid him, but we paid him for everything that he has done or everything that he has requested.

Q. Was this $500 payment permitted to cover those services? I mean by that, the services I have just mentioned?

A. It was not. That was very definitely for a retainer fee and advice given us about an injunction, and that was all it was for.

. . . . . .

[fol. 1152] By Mr. Langsdale:

Q. Was any check drawn upon the bank account of the Donnelly Loyalty League in payment for services to Mr. Tyler or his firm subsequent to the check of April 1, 1937?

A. There had never been but one check issued, given to Mr. Tyler or sent to Mr. Tyler from the Donnelly Loyalty League.

[fol. 1153] Q. Now, you know that, do you?

A. Yes, sir, I do.

Q. Was any money collected subsequent to April 27, 1937, which was paid to Mr. Tyler for legal advice and services by the Donnelly Loyalty League, either by check or cash?

A. No, sir, by the Donnelly Loyalty League, you say?

Q. By the Donnelly Loyalty League? A. No, sir.

Q. You stated that the Loyalty League is still active. What do you mean by that?

A. I mean it was a social organization, Mr. Langsdale, and it is still active, as it has always been.

Q. Well, has it held any party? A. It has.

Q. And can you tell us when?

A. Well, they had one or two last winter.

Q. Well, do you know when?

A. I don't remember when.

Q. Do you mean in the winter of 1938?

A. Well, I think they had one during—since Christmas, since the first of the year.

* * * * * *

[fol. 1155] Q. Now, the Donnelly Workers' Union since April 27, 1937, has given a number of dances, skating parties, steak fries, carnivals, and other similar parties?

A. Yes, sir.

Q. And you mean to tell the Examiner that in addition to all of the parties that are shown by the minutes of the Donnelly Garment Workers' Union the Loyalty League has given other parties? A. I certainly do.

Q. Do you know where any of those parties was given?

A. I don't remember where they had the big party. There are several places around town where they have parties.

Q. Do you know where any one of them was given?

A. It seems to me the steak fry they had out at Swope Park, or they might have had it out at the club house.

* * * * * *

[fol. 1156] Q. You say you think a party was given at the club house. What do you mean by that?

A. Mr. Langsdale, that club house is for the use of the employees, and I doubt if there are two nights out of the week that that club house is not used.

Q. Where is it? A. I don't recall the address.

Q. Tell us approximately where it is located.

A. North of Swope Park and east of Swope Parkway.

Q. What is its capacity?

A. It is purely a club house.

Q. I know, but how many people can give a party there?

A. It is a 3-story house. I have been out there when there have been as many as 125 or 130 people.

Q. To whom does that club house belong?

A. I suppose it belongs to Mrs. Reed.

Q. To the Donnelly Garment Company?

A. I don't know, Mr. Langsdale.

Q. It does not belong to the Donnelly Garment Workers' Union, does it? A. No, sir.

Q. And it does not belong to the Loyalty League?

A. No, sir.

[fol. 1157] Q. Are any people kept out there to maintain it? A. Yes, sir.

Q. How many?

A. Well, I don't know that either. When I have been out there, there have been all of the way from two to three or four people, and I don't know whether they are temporary, permanent, or what.

Q. Cooks and people who wait on those assembled?

A. If you are there for dinner, there are people there to prepare it and to wash the dishes.

Q. Did the Loyalty League ever pay any rent for the use of that club house, to the Donnelly Garment Company, or anyone else?

A. That is a club house for the use of the members and the employees are entitled to belong to it. They pay dues to belong to it, and whenever they want to use it they are privileged to use it. In addition to the use of it, depending on the number of guests you have or what you are doing, there is an additional charge for using it.

* * * * * *

By Trial Examiner Batten:

Q. As far as you know, did they ever pay any rent? [fol. 1158] A. I don't think the club house is rented.

Q. I say, did they ever pay any rent, as far as you know? A. No, sir.

By Mr. Langsdale:

Q. You say they pay dues to use the club house. What do you mean by that? Who pays dues?

A. If you are a member, privileged to use that club house, you belong to it, unless you want to pay for it as a special assessment. I don't know the details.

Q. To what organization must an employee of the Donnelly Garment Company belong to have the privilege of using that club house?

A. None.

Q. Then, what do you mean by dues? Are there some monthly dues that the employees pay for the privilege of using that club house?

A. For the privilege of being a member.

Trial Examiner Batten: If you remember, what [does] do you pay? A. $2 a year.

Mr. Langsdale: A member of what?

A. Well, I think it says on the card "Nelly Don Country Club," or "Nelly Don Club"—I don't know what it is.

Q. Is there another association, I mean different from any of those that have up to now been mentioned, to which [fol. 1159] you pay $2 a year dues?

Mr. Stottle: Mr. Examiner, respondent objects to getting into still additional organizations, if there are any. Certainly the respondent has a right to provide a country club for its employees if they want to, and let them pay so much a month. There is no showing that it is done for the Donnelly Garment Workers' Union.

Trial Examiner Batten: I don't suppose there is any argument that the respondent could furnish the employees a country club for nothing if they wanted to.

Mr. Stottle: And of course it would not be material to these issues.

Trial Examiner Batten: I can't determine whether it is material or not until I find out about this matter of these rentals Mr. Langsdale is inquiring about.

Mr. Langsdale: Read the question, please.

(Thereupon the last question was read by the reporter.)

A. I haven't mentioned all of the ones there are.

By Mr. Langsdale:

Q. To whom do you pay this $2 a year?

A. I think that card says "Nelly Don Country Club."

Q. To whom do you pay it? To what individual do you pay the $2?

A. Right now I don't know. I had a little envelope sent down to me with a card in it stating that I owed my dues, and I put it in the envelope and sent it back.

[fol. 1160] Q. Do you know who sent you the card?

A. No, sir, I don't.

Q. Do you know who sent you the dun for the $2.

A. No, I don't.

A. Well, I have told you as near as I can remember.

Q. Do you have the card in your pocketbook or anywhere else here? A. I think I have.

Q. Will you produce it?

(Witness looks through purse, procures card and hands it to Mr. Langsdale.)

Q. I hand you this card which has been marked International Ladies' Garment Workers' Union's exhibit No. 3 and ask you to state what it is—not what is on it, but what it is.

A. It is a membership card of the club out there.

(Thereupon the card above referred to was marked "International Ladies' Garment Workers' Union's Exhibit No. 3.")

Mr. Langsdale: I offer exhibit No. 3.

Mr. Stottle: Respondent objects on the ground that it is wholly immaterial to any of the issues in this case.

Trial Examiner Batten: Thus far I don't see that it has any bearing.

Mr. Langsdale: I want to ask some questions about it.

Trial Examiner Batten: You may proceed.

[fol. 1161] Mr. Lane: Intervener objects to International's exhibit No. 3 for the reason that it is not material—it is not within any of the pleadings in this case, and for the reason that it opens up ramifications that are wholly outside of any proper inquiry in this investigation.

Trial Examiner Batten: You may proceed until I can determine. And if when he completes this matter, Mr. Lane, if it is not connected up with the issues in any way you may make a motion to have it stricken and it will be stricken.

* * * * * * *

[fol. 1162] Q. Is the club membership identical to the membership of the Loyalty League?

A. It has nothing to do with it at all.

* * * * * *

[fol. 1163] Q. Well, has the membership, the club membership, anything to do with whether or not members of the Loyalty League have the privilege of going to the club house to a Loyalty League party?

* * * * * *

Mr. Stottle: Respondent objects to that as being speculative as to whether there was a Loyalty League party or what Loyalty League party, wholly immaterial to any issues. It has been testified heretofore that the employees of the Donnelly Garment Company, a great many of them belong to the Loyalty League, that a great many of them belong to the Donnelly Garment Workers' Union, that a great many of them belong to this club business, a great many of them belong to the Athletic Association. If anything is done down there that involves employees, there is bound to be certain overlapping.

* * * * * *

[fol. 1167] By Mr. Langsdale:

Q. You stated that someone named Fitzgerald asked to withdraw his membership from the Donnelly Garment Workers' Union, because he had been made head of the advertising department.

A. That is correct.

Q. If he hadn't asked to withdraw, what would his status have been in that union?

A. Well, we would have asked him to withdraw. He [fol. 1168] wouldn't have been in the union.

* * * * * *

[fol. 1173] Mr. Lane: Mr. Examiner, so the record may be clear, I would like to have the record show that in response to Mr. Leary's request that we produce the record showing the collection of dues from the members of the Donnelly Garment Workers' Union from the period of its formation up to the time the check-off went into effect, we produced here for his use this morning a series of records which he returned to us, saying he didn't care to examine on them at the present time. I want the record to show that we did have them here.

* * * * * *

[fol. 1181] Q. Did you have any occasion to leave the plant on union business?

A. Well, lots of times I have gone.

* * * * * *

[fol. 1182] Q. Well, tell me any one of them, Miss Todd.

A. Lots of times I have gone to Mr. Tyler's office when I left work at night, and I have gone lots of times at noontimes.

* * * * * *

[fol. 1184] Q. In answer to Mr. Leary's question about comparing the checks that you received monthly from the Donnelly Garment Company for dues of your members you stated that you had some document for each member which you checked over to see whether or not this check of the Donnelly Garment Company was correct; is that true?

A. That is correct.

Q. Now, that [cocument] contained what information?

A. It isn't a document.

Q. Well, a piece of paper, record, or what-not.

[fol. 1185] A. Our cards, Mr. Langsdale, as I explained yesterday—we checked that from our membership file.

Q. But you stated, in connection with that testimony, that at that time you examined the records that you had before you, furnished you by the company, to see whether or not the check that was paid each member was correct.

A. I don't want to dispute you, Mr. Langsdale, but I don't think that is what I said, because we had the file up here on the desk and I was trying to show you how we checked that each month. I don't recall saying that we had a document we referred to.

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[fol. 1189] By Mr. Langsdale:

Q. Now, Miss Todd, will you tell me whether or not you received data from the Donnelly Garment Company management which you checked to see whether or not the payments made to your members, to the members of the Donnelly Garment Workers' Union were correct payments? A. I did not.

Q. Did you ever at any time have any information that would tell you whether the Donnelly Garment Company was paying your membership what they should have paid them?

A. I don't know any way to answer that, Mr. Langs-
[fol. 1190] dale, but the way I have answered it before.

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By Mr. Langsdale:

Q. Did you check up the payments made by the Donnelly Garment Company to the members of the Donnelly Garment Workers' Union to determine whether or not those payments were correct?

A. I do check them every month.

[fol. 1191] Q. How?

A. By the use of our membership file.

Q. I know, but according to what you have already stated, Miss Todd, all you have is the amount paid and the file which shows you that the member is a member.

A. Mr. Langsdale, I think this is the way I have stated it before. We keep that membership file active. If there are 1,240 cards in that file, we have 1,240 quarters coming to us, and that is the way we check it every month.

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[fol. 1192] Mr. Stottle: Mr. Examiner, the respondent, if Mr. Langsdale is finished with that offer of proof, moves that the latter part be stricken from the record as not made in good faith, because he hasn't asked the witness to go ahead and state that she spent hundreds of hours, or whatever his offer or proof was, on this matter.

Mr. Langsdale: Well, I—

Mr. Stottle (interrupting): It was just—it is not fair to have it appear in the record that he made an offer of proof by this witness—

Mr. Langsdale (interrupting): What have I done to you if I don't prove it?

[fol. 1193] Trial Examiner Batten: Well, Mr. Stottle, I think— I think that Mr. Langsdale's offer of proof, and the questioning of the witness subsequent thereto speaks for itself.

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By Mr. Langsdale:

Q. I don't know whether you have been asked, Miss Todd, when Mr. McConaughey was transferred from the mechanical department to the bookkeeping department, was it, or the accounting department?

A. Bookkeeping department, I think.

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[fol. 1194] Q. I have forgotten whether he was on your first Board of Chairmen or not.

A. Yes, sir.

Q. He has been on all three of them, hasn't he?

A. Yes, sir.

Q. I note from what I have from the books that he was getting $59.58 every two weeks until in the month of May, 1937, when he was raised to $65 every two weeks. Do you know whether or not that is true? A. I don't know.

Q. Now, Hobart Atherton was a member of your first board of chairmen? A. Yes, sir.

Q. Is he still a member? A. No, sir.

Q. Was he a member of your second board?

A. No, sir. Wait a minute. I don't remember, Mr. Langsdale. I have that information, and I can get it for you. But I don't recall right now. I think not, however.

[fol. 1195] Q. I note from the information I have from the company's records that Hobart Atherton was receiving $65 every two weeks until the middle of May, 1937, was raised to $75.83. Do you know that to be [illegible]? A. I do not, no.

Q. Fred B. Brown was a member of your first board, is he not? A. Yes, sir.

Q. And from what information I have, I note that he was drawing $92.09 for the first half of May, 1937, when he was raised to $97.50. Do you know whether or not that is true?

A. I don't know, Mr. Langsdale.

Q. Charlotte Casey was a member of your first board, was she not? A. Yes, sir.

Q. And I note from what information I have from the company's records that she was getting $43.34 for the first half of May, 1937, when she was raised to $48.75. Do you know whether or not that is a fact?

A. That is probably a fact. As I listen to the date you are reading there, and our contract calls for a raise of some of those people in the dividing department, and I think she was one of them.

[fol. 1196] Q. How long did Fred Brown continue on your board of chairmen?

A. Through the first year.

Q. That was down to April, 1938? A. Yes, sir.

Q. I note that in January, 1938, Fred Brown got another raise, from $97 to $108.54 every two weeks. Do you know whether or not that is a fact?

A. No, Mr. Langsdale, I don't.

Mr. Stottle: Mr. Examiner, respondent objects to this evidence as being immaterial, what different employees,

of which there are 1,200 or 1,300 down there—what raises in pay they may have received. The answers have all been in the negative and there is probably no evidence on it as yet, but it seems to me it is immaterial.

Trial Examiner Batten: Mr. Stottle, in the first place, I don't suppose she knows about these matters. And, in the second place, I cannot tell now whether it is material or whether it isn't. If Mr. Langsdale has the records and [fol. 1197] that is what they show—

Mr. Langsdale (Interrupting): We will bring them in, but I think I have a right to inquire whether or not the president of the union knew about these matters.

Trial Examiner Batten: I am not telling you to discontinue.

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[fol. 1213] Q. I note in your contract, your supplemental contract that you entered into on the 22d of June, 1937, which is Board's Exhibit No. ....

Trial Examiner Batten (interrupting): 7.

By Mr. Langsdale:

Q. —7, the following: "Now, therefore, it is stipulated and agreed as follows: the following holidays shall be recognized, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas. All workers shall be paid for these holidays, pieceworkers on the same basis as paid vacations." Following that, "The employer shall have the privilege to make up the time lost on account of holidays."

Can you tell me what that means, "Employer shall have [fol. 1214] the right to make up for time lost on account of holidays?"

A. Yes, sir. If they are in a busy season and they want their production, they reserve the right to ask us to work on the following Saturday or a day to make it up.

Q. Without pay? A. No, sir.

Q. What? A. No, sir.
Q. Well, without overtime?
A. I think you will have to interpret that, Mr. Langsdale. It isn't clear to me what you mean.

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[fol. 1215] Q. Well, say you work 48 hours a week; do you work for the same prices you work for 40 hours a week? A. No, sir.
Q. What happens the other 8 hours?
A. They have—get time and a half.
Q. Now, that is what I thought. A. Part of them.

* * * * * *

[fol. 1219] Mr. Langsdale: Miss Todd, your working agreement signed on May 27, 1937, as I recall, one month following the organization of the Donnelly Garment Workers' Union, and your supplemental agreement signed on June 22, following, now you have testified that between those dates you and your board of chairmen and Mr. Tyler were working with material to get up this supplemental agreement. Do you know when you first presented your supplemental agreement to Mrs. Reed or anyone representing the management?

You can answer that by telling me whether it was the day it was executed, or two days before, or—

* * * * * *

[fol. 1221] A. The 21st and 22d of June.

By Mr. Langsdale:
Q. The first day you submitted it to the management was the 21st of June?
A. To the best of my recollection, yes, sir.
Q. And had anyone connected with the management of the Donnelly Garment Company been helping you get up that agreement?
A. No, sir.
Q. Had you consulted with anyone connected with the management about the terms of that agreement before the 21st of June, 1937?

A. Not about the terms of the agreement.

Q. Had you consulted with the management about any of the minimum wages provided for in that agreement prior to the 21st of June, 1937?

* * * * * * *

[fol. 1222] A. No, sir.

Q. Had you consulted with anyone connected with the management about the different groups—I mean, group 1, group 2, and group 3, as to who should be placed in the different groups, prior to the 21st day of June, 1937?

A. No, sir.

Q. Had you consulted with any of the management about the percentage of the employees to be placed in each group; that is, 40 per cent in one class, 30 per cent in another, and 30 per cent in another, prior to the 21st day of June, 1937?

A. No, sir.

Q. That was all done by your committee and Mr. Tyler?

A. Yes, sir.

Q. And the first time the management saw that agreement or knew anything about its contents was the 21st day of June, 1937, isn't that correct?

A. To the best of my recollection, that is correct.

Q. And on the 22d day of June the management signed it without any changes, is that correct?

A. No, sir.

Q. What changes were made between the 21st and 22d of June?

A. The changes— Wait a minute. I don't think I answered the question previous to this one correctly, Mr. Langsdale.

Mr. Langsdale: Will you read the next to the last ques-
[fol. 1223] tion and answer?

(Thereupon the next to the last question and answer were read by the reporter.)

Q. Do you want to change that answer?

A. No, sir.

Mr. Langsdale: Now, read the instant question, please?

(Thereupon the last question was read by the reporter.)

Mr. Langsdale: Do you want to change your answer to the question: "And the management signed it on the 22d day of June without making any changes?"

A. I will think about it a little bit. I can't answer the question that way. I have told you about that $16.50.

Q. I know. That was a change from your working agreement.

Trial Examiner Batten: Just a minute. She is—

A. What I was trying to say was, I can't answer the question that way, because I have answered and told you what happened about that $16.50 minimum.

Q. Well, Miss Todd, as I remember, you said your working agreement contained the $15 minimum, and when you presented your supplemental agreement you had changed that to $16.50?

A. Yes, sir.

Q. That was in the supplemental agreement when you submitted it to the company on the 21st of June, wasn't it, $16.50?

A. That is correct.

Q. Now, the present question is, did the management [fol. 1224] insist on any changes in the agreement you submitted to them on the 21st day of June, 1937?

A. They did insist on that $16.50 being changed.

Q. You mean they tried to put it back to $15?

A. There was a discussion of putting it back to $15, and a discussion of leaving it at $16, and they finally agreed to sign it for $16.50.

Q. Can you think of any other provision in your supplemental agreement about which there was any discussion whatever—

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By Mr. Langsdale:

Q. (Continuing)—after you submitted it to the company and before they signed it?

A. Yes, sir.

[fol. 1225] Q. What?

A. Discussion about the guarantee for the mechanics was higher than they wanted to sign it.

Q. But they did sign it?

A. Yes, sir.

Q. Now, can you think of any other provision in the agreement as you submitted to them on the 21st of June, about which there was any discussion before they signed it?

A. Yes, sir.

Q. What?

A. The guarantee for the dividing department.

Q. That is the minimum guarantee?

A. Yes, sir.

Q. Any other provision?

A. May I look at that contract a minute? Here is one, Mr. Langsdale.

There was a discussion about these five holidays.

Q. Yes. All right. That is, you mean the management was reluctant to sign the agreement with that provision in there?

A. Yes, sir.

Q. Now, tell me anything else.

A. There was a discussion about this group 1 operators and hand ironers.

Q. What was that discussion?

A. About the percentage that should be guaranteed, $25.60.

[fol. 1226] Q. And you wanted 40 per cent to be guaranteed that, did you?

A. Yes, sir.

Q. And what did the management want?

A. To the best of my recollection, it is that they would consider 25 per cent, yes, that is correct.

Q. And have they always had that divided into 40 per cent and 30 per cent and 30 per cent?

A. No, sir.

Q. All right. Go ahead. You said something about the hand ironers.

A. That same thing applies to that percentage of hand ironers.

Q. Yes. All right.

A. It seems to me like there was one more. I don't recall any others just now.

Q. But they did sign the agreement on the 22d of June, just as you submitted it to them on the 21st of June, without change. Is that true?

A. In substance, I think it was signed as it was presented to them.

Q. With whom did you have the discussion about these various matters that you have mentioned?

A. Mrs. Reed, Mr. Baty and Mr. Ingraham.

Q. Where?

[fol. 1227] A. In Mr. Tyler's office.

Q. Well, that meeting in Mr. Tyler's office on the 22d—it was on the 22d, was it not?

A. Yes, sir.

Q. And that is when you had the discussion?

A. Yes, sir.

Q. And how long was Mrs. Reed there on the 22d of June before she actually signed the agreement?

A. Mr. Langsdale, I don't remember how long. That meeting was two or three hours that afternoon.

Q. In Mr. Tyler's office?

A. Yes, sir.

Q. And she was there during that two or three hours, was she?

A. Yes, sir. She was out part of the time, but she was there.

* * * * * * *

[fol. 1230] By Mr. Langsdale:

Q. Now, you were asked yesterday, but I don't think you made a definite answer, as to whether or not you had a desk at which, or with which you worked on the [fol. 1231] 23d of April, 1937. That is the date of the Sigler-Hull demonstration.

A. Are you asking me that?

Q. Yes. Did you have a desk on that day?

A. I did get confused on it yesterday. I did have a desk on the 9th floor.

Q. One the 23d? A. That is right.

Q. Now, Mr. Leary asked you yesterday if the Donnelly Garment Workers' Union and the Donnelly Loyalty League ever held a meeting jointly, and I believe you

said no, not to your recollection. Did they ever hold a meeting, or meetings, consecutively. That is, I mean, was there ever a meeting of the Donnelly Garment Workers' Union when that union meeting was adjourned and then the Loyalty League was called to order?

A. Not to my recollection.

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[fol. 1239] By Mr. Stottle:

Q. Miss Todd; I believe you testified in answer to a question by Mr. Leary that you never had occasion to determine whether any member of the union had paid his dues since the check-off system was established. Hadn't you previously testified that you determined whether every member of the union had paid their dues—their dues had been included in the check from the company each month?

A. Yes, sir.

Q. Miss Todd, in answer to Mr. Langsdale's questions on the matter of separation of your supplemental contract of June 22, exhibit No. 7, you had obtained information from Mr. Baty and others concerning wages, and so forth, at the plant that your committee used in preparing that contract, did you not?

A. Yes, sir.

Q. You did not just prepare it out of your own head and submit it on June 21?

A. No, sir. I didn't think that was what he asked me.

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[fol. 1242] MAY FIKE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Leary:

Q. State your name and address, please.

A. May Fike, 5221 East Twenty-ninth Street.

Q. Is that Kansas City, Mo.? A. Yes, sir.

Q. How long have you lived in Kansas City?

A. Over 20 years.

Q. Were you ever employed by the Donnelly Garment Company? A. Yes, sir.

Q. When did you first become employed by that company?

A. It was sometime in 1926 or 1927 the first time, I don't just remember.

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[fol. 1243] Q. How long then did you remain on the single needle machine? A. About a week or ten days.

Q. Is that the elementary operation with a machine, the operation on which all operators first start to learn?

A. No. When I first started they put me on this first machine, and then she asked me if they needed a binder, and she asked me if I could do binding, and I told her I could if anyone else could, and she put me on the binder.

Q. Were you an experienced operator before you went to Donnelly's?

[fol. 1244] A. Yes, sir, but not on dresses.

Q. Who do you mean by "she" put you on a binder?

A. The instructor.

Q. Who was that? A. Pearl Collins.

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[fol. 1246] Q. Do you know a Fern Sigler?

A. Yes, sir.

Q. Was she ever employed by the Donnelly Garment Company? A. Yes, sir.

Q. Do you know when she began work there?

[fol. 1247] A. I think she started there in '36, but I don't know just when. It was either the first of the year of '36 or the latter part of '35, and I don't know exactly. I think it was in the early part of '36 she started.

Q. Is Fern Sigler related to you?

A. She is my sister.

Q. Now, in what section and under what instructor were you working from the time you went back to the plant in 1933?

A. I worked under three or four of them. I worked under Pearl Collins, and Mrs. White.

Q. Mrs. Whom? A. White.

Q. Was that Pearl White?

A. No, Pearl Collins and Mrs. White.

Q. What is Mrs. White's first name?

A. I don't know.

Q. Is it Lillian? A. I believe it is.

Q. Now, who are the other instructors under whom you worked beginning in 1933?

A. Rose Hendricks and Pearl Atchison, and then I worked a few days for Marie Patton.

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[fol. 1248] Q. During all the time that Fern Sigler worked there, did both of you work on the same floor?

A. Yes, sir.

Q. About how large are those floors on which you worked? A. The whole floor?

Q. Yes.

A. Oh, I don't know. It was about half a block one way and I couldn't say just how far, I suppose, 200 feet or more the other way. I don't know.

Q. On what floor was that that you and Fern Sigler worked? A. On the sixth floor.

[fol. 1249] Q. And on that sixth floor, how many sections were there?

A. There was either four or five on that floor.

Q. Now, is there any wall between the sections so that you can't see from one to the other?

A. No, sir; no walls.

Q. Are there any obstructions of any kind on the entire floor?

A. There is just—well, I don't know what they call them, them braces that they hold up the building with.

Q. You mean, pillars?

A. Yes, sir; pillars. I guess that is what they called them.

* * * * * * *

Q. Well, at the sixth floor of the Donnelly plant where you and Fern Sigler were working, could you see where she was working?

A. Yes, sir. She was just across the table from me, on the next table across from me.

Q. Now, what do you mean by "table"?

A. They had, in each section, they had two long tables.

Q. About how long would you say each of the tables were? A. Oh, I wouldn't know. I don't know.

Q. Would you say about anywhere near as long or longer than the Court's bench right back of you?

[fol. 1250] A. Yes. It was as long as this room, or longer. There was 20—there was 10 machines on each side of these tables. There was 20 machines on each table, and they were about 27 or 30 inches apart, the machines were.

Q. The machines were set right into a cutout of the table, were they? A. Yes, sir.

Q. And did the machines receive their power off of a central drive shaft under each table?

A. One drive shaft run—

Q. (Interrupting) Each half section?

Mr. Ingraham: Now, just let the witness answer.

A. I think one of those switches run both sides of the table, a shaft on each side. It was the center, and one switch run all twenty of them machines.

By Mr. Leary:

Q. Now, then, were there two switches then that you would have to start up to start a section going?

A. If you started a whole section, yes, one table. One switch run one table. There was a switch to each table.

Q. How far away, then, were—was the table at which you worked from the table at which Fern Sigler worked?

A. Oh, about 14 or 15 feet. Maybe not that far. It wasn't over that.

. . . . . .

[fol. 1251] Q. Now, in what section were you working as of the 30th day of April, 1937?

A. What section?

Q. Yes. A. 523.

Q. How long had you been working in Section 523?

A. Well, I don't know exactly. It was over a year.

Q. Who had been your instructor in Section 523?

A. Rose Hendricks and Pearl Atchison. I worked under Rose Hendricks first and then Pearl Atchison took the section.

Q. Do you know who the thread girls in Section 523 were during the time you worked there?

A. No, I don't remember who they were.

Q. Now, will you explain, Mrs. Fike what these thread girls do or did in the section where you worked?

[fol. 1252] A. They carry your work to you, and take it away, and bring your thread and your binding, keep you supplied, and answer the telephone when the instructor is busy.

Q. Where is the telephone in each section?

A. Ours was at the end of the east wall.

Q. Does the instructor ever work at anything?

A. The instructor?

Q. Yes.

A. Only when she is instructing some girl.

Q. When she—

Mr. Patten (interrupting): Will the witness speak just a little louder, please?

By Mr. Leary:

Q. And when the instructor is not teaching some girl or instructing some girl, what does she do?

A. Well, she usually examines work part of the time. I don't remember. I don't know just what she does do most of the time.

Trial Examiner Batten: Can you hear her now, Mr. Patten?

Mr. Patten: I heard that, yes.

A. (Continuing) She gives the girls their orders, and answers the telephone when she is not busy instructing.

By Mr. Leary:

Q. Does the instructor have a desk?

A. Well, they have a table up there, yes.

Q. That is a table separate from the other two tables in each section that you refer to?

[fol. 1253] A. Yes.

Q. Who tells you what work to do or who did [you] tell you what work to do when you were in that section?

A. The instructor, Pearl Atchison.

Q. Do you know who it was who told the thread girl what to bring to each operator?

A. The instructor.

Q. Have you ever heard the instructor say that to a thread girl?

A. Yes, sir.

Q. What would be the circumstances or what was the circumstance when you did hear that?

A. She would tell her to bring us a certain number of work, if we should be changing work. If we wasn't changing work, she would just tell her to bring us work, if we didn't tell her. We sometimes told the thread girl ourselves.

Q. What do you mean by "changing work"?

A. A different style dress.

Q. How often would you change your work?

A. In my double needle work, it was—they was brought to us mixed up.

Q. What?

A. They were brought to us all mixed up. It was the same work on all of the—on the double needle, but on the straight binder, why, the work varied. I bound skirts part [fol. 1254] of the time, and waists part of the time; done trim binding, that was binding pockets or collars on the straight binder, but on the double needle, it was all the same work, just under arm and underneath the arm.

Q. Did you ever have any question as to what work you should do or how you should do any particular operation?

A. Well, not so much so on the double needle.

Q. Well, when you were on the single needle doing your binding?

A. On the straight binder?

Q. Yes.

A. Well, the instructor would have to show us lots of times, or tell us how to do it if it happened to be new work.

Q. Well, is it a fact that she did do this occasionally?

A. I don't understand.

Q. Is it a fact that the instructor did occasionally have to tell you personally how to do your work?

A. Yes. She had to tell all of them part of the time, if it happened to be new work. They would have to tell us how to do it, how to put it together. It come to us all cut, punched, and notched.

Q. What do you mean by "notched"?

A. Well, that is places where, which ends goes together, and such things as that, and punches, if it would have to be punched, that was marked where to sew to or where to [fol. 1255] bind to, or where to leave off or where to add another piece on.

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[fol. 1256] By Mr. Leary:

Q. Miss Witness, when an operator did an operation incorrectly who would tell the operator that it had been done wrong?

A. Our instructor.

Q. Has that situation ever happened to you?

A. A few times.

Q. When you had any question about your prices with whom did you take them up?

A. The instructor.

Q. And did the instructor remedy the situation or do anything at all about the prices?

A. Sometimes she did. I don't know just who she took that up with. She would take that up with someone else sometimes, and sometimes we would get a raise. Most of the time we didn't.

Q. Do you know who it is who turns on and shuts off the power in the various sections?

A. The instructor.

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By Mr. Leary:

[fol. 1257] Q. Mrs. Fike, on any occasions were any employees laid off for a few hours or a half day or a day?

A. In slack season the girls took turns about, each one of them; or, maybe one or two or three would take a half day or a day off, but the time was divided between the girls.

Q. Who would tell you when to take your time off?

A. Our instructor.

Q. While you were employed in this section 523, or any other section, did any person other than your instructor give you any directions as to how you should do your work?

A. As to how to do our work?

Q. Yes.

A. No, sir.

Q. And when orders came from the office do you know who handled them in each section?

A. The instructor.

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[fol. 1261] Bertha Estes, a witness called by and on behalf of the International Ladies' Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Trial Examiner Batten:

Q. What is your full name?

A. Bertha Estes.

* * * * * * *

[fol. 1262] Q. Are you employed by the Donnelly Garment Company?

A. Yes.

Q. How long have you been employed by that company?

A. Twelve years.

Q. What do you do for that company?

A. I am a stenographer in the credit department.

* * * * * * *

Q. Do you occupy any position or office in the Nelly Don Loyalty League?

A. Yes.

Q. What position?

A. Secretary.

Q. How long have you been secretary?

A. Since February, 1938.

* * * * * *

[fol. 1263] Q. Were there any books or minutes turned over to you by your predecessor secretary?

A. No, sir.

Q. Have you kept any minutes of any meetings of the Nelly Don Loyalty League?

A. We do not keep minutes.

Q. You don't keep any minutes at all?

A. No.

Q. Do you know whether any minutes were kept by your predecessor secretary?

A. Not to my knowledge.

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[fol. 1264] May Fike, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Direct Examination (continued).

Mr. Leary: Have you the last question, Mr. Reporter?

Trial Examiner Batten: The last question you asked was about the Nelly Don Loyalty League, the very first question about that.

By Mr. Leary:

Q. Were you ever a member of the Nelly Don Loyalty League?

A. I was.

Q. Did you become a member when the organization was first formed?

A. Yes, sir.

* * * * * * *

[fol. 1265] Q. Tell how it happened that you became a member of the Nelly Don Loyalty League?

A. From my first knowledge?

Q. Yes.

A. There was a slip of paper sent around, I don't remember what it read on that paper, informing us of something like that.

Q. Well, I show you what has been identified as I.L.G.W.U. Exhibit No. 2 and ask if that is the slip of paper you refer to.

A. Yes, sir.

Q. That was passed around where?

A. Through the sections.

Q. By whom?

A. I don't know who brought it there. It was started at one end of the tables and came down from girl to girl. I took it from the girl on my right.

Q. And when it came to you what were you asked to do with it? A. Read it and pass it on.

Q. Sign it?

A. I don't remember if we signed it that time. I think we did, though I know there was another slip passed around [fol. 1266] after this, or about the same time. They might have been both at the same time. I don't remember.

[fol. 1267] Q. I show you what has been marked for identification Board's exhibit No. 14 and ask you to state, if you know what that is.

A. That is the pledge we signed for the Loyalty League, to join the Loyalty League.

(Thereupon the pledge above referred to was marked for identification "Board's Exhibit No. 14.")

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Mr. Lane: Mr. Examiner, has that been introduced as yet?

Trial Examiner Batten: It was just marked, Mr. Lane.

Mr. Lane: I object to any further interrogation on it, except for purposes of identification, until it is introduced and we have had a chance to look at it.

Mr. Leary: I will offer it at this time.

Mr. Lane: I object to exhibit No. 14 for the reason that it has not been properly identified. There has been no showing as to where it originated, how it originated, or who was responsible for getting it up, and for that reason it could be in no way binding here on anybody.

Trial Examiner Batten: It will be received.

[fol. 1268] Mr. Ingraham: Respondent makes the same objection, and the further objection that it is immaterial to any issue in this case.

Trial Examiner Batten: It is received.

(The pledge heretofore marked "Board's Exhibit No. 14," was thereupon received in evidence.)

Trial Examiner Batten: Have you another copy of that, Mr. Leary?

Mr. Leary: No. I will have a copy made.

By Mr. Leary:

Q. Did you sign this Board's exhibit No. 14 at about the time you also saw for the first time International's exhibit No. 2, which I just showed you?

A. I think they were all attached, but I am not quite sure about that.

Q. Where were you when you signed Board's exhibit No. 14, the little card?

A. At my machine.

Q. Did Board's exhibit No. 14 come to you in the same manner that International's exhibit No. 2 came to you?

A. Yes, sir.

Q. Did that happen during working hours?

A. Yes, sir.

Q. Do you know whether or not your instructor was present when those documents came through your section?

A. She was in the section, yes, sir.

[fol. 1269] Q. Do you know whether or not she said anything at the time?

A. She said we should sign and pass that to the next girl, if I remember right.

Mr. Ingraham: Mr. Examiner, I move the answer be stricken out as not binding on respondent, what the instructor said.

Trial Examiner Batten: Objection overruled. By overruling the objection I am not saying it is binding, but I am overruling the objection.

Mr. Stottle: We further object because it is not identified as to what instructor said that.

Trial Examiner Batten: She may proceed.

By Mr. Leary:

Q. Did you at that time know Mrs. Elizabeth Reeves, referring to February, 1935, when this Loyalty League was started?

A. Mrs. Reeves?

Q. Yes.

A. Yes, sir.
Q. Who was she?
A. I think she was production manager.
Q. About this time, in February, 1935, or thereabouts, did you have occasion to go to Mrs. Reeves' office with any other girls?

Mr. Lane: Mr. Examiner, intervener objects to this and all similar questions with respect to the formation of the Nelly Don Loyalty League for the reason that it was long [fol. 1270] prior to the formation of the Donnelly Garment Workers' Union. There is no connection between the two organizations, and this testimony could in no way be binding on the intervener here; and for the further reason it is anterior to the matters inquired about under the complaint here, and for that reason it is immaterial.

Trial Examiner Batten: You are not representing the Loyalty League, are you, Mr. Lane?

Mr. Lane: I am representing the intervener, and I make the objection on behalf of the intervener for the reason that what happened then does not in any way bind the intervener and does not prove any of the issues brought by this complaint.

Trial Examiner Batten: Of course, it is hard for me to tell now whether it does or doesn't. Objection overruled.

Mr. Ingraham: Respondent objects to the question for the reason that it relates to matters prior to the passage of the National Labor Relations Act.

Trial Examiner Batten: Objection overruled.

* * * * * *

A. If I remember right, we were called up there to Mrs. Reeves' office, ten at a time.

Q. Who sent you to Mrs. Reeves' office?
A. The instructor.

Mr. Ingraham: Your Honor, may my objection go to all [fol. 1271] of these matters?

Trial Examiner Batten: Yes, you may have a continuing objection. Mr. Lane, do you wish to have the same?

Mr. Lane: I ask that I have an objection to all of these things.

By Mr. Leary:

Q. Was this during working hours? A. Yes, sir.

Q. Did you go to Mrs. Reeves' office? A. Yes, sir.

Q. With the ten other girls? A. Yes, sir.

Q. And when you got to Mrs. Reeves' office who was present?

A. Mrs. Reeves, and there was someone else in there but I don't remember who that was.

Q. In addition to the girls with you, is that correct?

A. Yes, sir.

Q. And what, if anything, did Mrs. Reeves talk about in that meeting?

A. I don't just remember what she did talk about; something concerning the loyalty of the girls. I don't just remember what it was.

[fol. 1272] Mr. Leary: Was there any discussion at that meeting about your unions?

Mr. Ingraham: Now, I object to the question. It is leading. The witness has answered she didn't know what was talked about.

Trial Examiner Batten: Well, of course, the witness said she didn't [recollection] just what it was. I presume under those circumstances you have a right to further question the witness, don't you?

Mr. Ingraham: I don't think counsel has got a right to suggest what the subject of the discussion was when he asked the question, and he is doing that.

A. It was something concerning that, but I don't remember—concerning the union, but I don't remember what it was.

* * * * * *

[fol. 1273] Q. Mrs. Fike, do you remember whether or not you went to any meetings of the Loyalty League after it was formed in February, 1935?

A. Yes, I attended all the Loyalty League meetings they had while I was there.

Q. Where did those meetings used to be held?

A. Most of them on the second floor. It seems to me we might have had a few on the third, but I am not sure about that.

Q. And when would the meetings be held?

A. During working hours.

Q. How many persons would go to the meetings?

A. Well, the whole factory, as far as I know. They must have went.

Q. Who would send you, if anyone, to the meetings?

A. Our instructor.

Q. Would the power continue to run while you were at the meetings?

A. No, sir. The instructor would shut the power off before we left our machines; tell us to go to the second floor, or whichever floor it happened to be on.

Q. Do you know whether or not your instructors were in the Loyalty League? A. Yes, sir.

Q. Did they attend the meetings?

[fol. 1274] A. Yes, sir.

Q. Do you know whether or not any other officials or executives of the company were ever at any of the Loyalty League meetings that you attended? A. Yes, sir.

Q. Who were those persons?

A. Mrs. Reeves, sometimes Mrs. Nell Donnelly would be there, Reed. Well, I think most of them, but I don't just recall the names of all of them.

* * * * * *

[fol. 1277] Q. Now, I direct your attention to March 18, 1937, and ask you if you attended any meetings on that day. A. March 18th?

Q. Yes. A. Yes, sir.

[fol. 1278] Q. Where was this meeting held?

A. On the second floor.

Q. How were you notified of the meeting?

A. The instructor told us about the meeting.

Q. Who was the instructor?

A. Pearl Atchison.

Q. What did the instructor say?

A. She said they were calling a meeting—had turned off the power and were calling a meeting on the second floor—for all of us to go to the second floor.

Q. Did all of the girls in your section go to the second floor? A. Yes, sir.

Q. And did you see the girls from the other sections going to the second floor, too? A. Yes, sir.

* * * * * *

Mr. Leary: Is that the same way in which you were sent to the Loyalty League meetings?

[fol. 1279] A. Yes, sir.

Mr. Lane: That is objected to as assuming she was sent to the Loyalty League meetings.

Trial Examiner Batten: She just testified she was.

By Mr. Leary:

Q. What is your recollection, Mrs. Fike, as to the time of day when this meeting was held on March 18?

A. It was during the afternoon, I think some time between 2 and 3 o'clock.

Q. And at this meeting do you know who presided?

A. It seems to me it was Rose Todd.

Q. Do you know whether any supervisors were present at this March 18 meeting?

Trial Examiner Batten: Well now, Mr. Leary, I think you had better ask her if any of these people were there. You asked about supervisors; her idea of supervisors may be different from mine or yours.

By Mr. Leary:

Q. Was Mrs. Hyde there? A. Yes, she was.

Q. Was Mrs. Gray there? A. Yes.

Q. Was Mrs. Reeves there? A. Yes, sir.

Q. Do you remember whether or not Mr. Baty was there?

A. Yes, sir, I think he was.

* * * * * * *

[fol. 1280] Q. Will you state, Mrs. Fike, what was the first thing that happened at that meeting?

A. I think Rose Todd presided at that meeting and—

Q. (Interrupting) Did somebody introduce Miss Todd?

A. I don't remember. I don't believe they did.

Q. What, if anything, did Miss Rose Todd say that you remember now?

A. She said they had received a letter from the International Ladies' Garment Workers' Union that they were going to read at the meeting. I don't just remember what her conversation was.

Q. What about this letter? Do you know whether or not it was read? A. Yes, sir.

Q. What is your recollection as to who read the letter?

A. Mrs. Reed read the letter. She introduced Mrs. Reed, and she read the letter. She cried over the letter, and was grateful for the loyalty of the girls for standing by her in this—I don't know what you call it, trouble, I suppose.

Q. Do you remember what, if anything, else Mrs. Reed said?

[fol. 1281] A. She said they were not going to have any union in their shop, that she was capable of running her own business and when she wasn't capable of running her own business she would go out of business, that Dubinsky or any other "ski" wasn't going to tell her how to run her business.

Q. Go on with anything else you remember Mrs. Reed saying.

A. I don't just remember all of her conversation.

* * * * * * *

[fol. 1287] Q. Mrs. Fike, do you remember signing a document known as a Loyalty petition on March 2, 1937, which read as follows:

"We, the undersigners, as members of the Donnelly Garment Company, wish to make it known we are positively happy and contented with the positions which we hold with this organization, and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed"?

A. Yes, sir, I signed one of them.

[fol. 1288] Q. Is that what was commonly referred to as the "Loyalty petition"? A. Yes, sir.

Q. Will you tell the circumstances under which you signed that petition?

A. Well, it was brought into the section—it started up at the other end. I don't know who brought that, because I was working and didn't see, but it came down the row of machines and each girl read it and signed it.

Q. Did you sign it? A. Yes, sir.

Q. Do you know whether your instructor was present?

A. Yes, sir.

Q. Now, Mrs. Fike, do you know whether or not the instructor can see any papers that pass down the table which the girls read and sign?

A. There is never no papers come into that section that she don't know about it before the girls get them, and—

Mr. Lane: I move to strike the answer as not responsive.

Trial Examiner Batten: Let her finish.

Mr. Lane: I thought she had finished.

Trial Examiner Batten: She was saying something else there.

Trial Examiner Batten: What were you saying?

A. She is notified of what comes into that section be-
[fol. 1289] fore the girls get it. Sometimes she personally brings it to us. At that time it was started up at the other end of the machine.

. . . . . .

Mr. Lane (Interrupting): Just a moment. If the witness has now finished her answer, I move that it be stricken for the reason that it is not responsive.

Trial Examiner Batten: It may stand.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: Objection overruled.

Mr. Lane: I object to it further for the reason that it calls for a conclusion on the part of the witness.

Trial Examiner Batten: Objection overruled.

By Mr. Leary:

Q. Can the instructor watch what is passing down the table? A. Yes, sir

Q. Was this "Loyalty petition" passed down the table during the working hours? A. Yes, sir.

Q. Do you know whether or not Mrs. Reed, Nellie Don Reed, ever said anything about the "Loyalty petition," when you were present?

A. She said at that March 18 meeting that she was thankful for the girls' loyalty to her.

Trial Examiner Batten: Mrs. Fike, speak louder, please.

A. She said at that March 18 meeting she was thank-
[fol. 1290] ful for the girls' loyalty to her, and that it touched her deeply to think they were all so loyal to her.

By Mr. Leary:

Q. Now, Mrs. Fike, do you know whether there are any rules of conduct that the girls must follow when they are working in the sections? A. Yes, sir.

Q. What are some of the rules that you recall?

Trial Examiner Batten: Just a minute. Are they public rules, or posted rules, or what kind of rules?

A. The instructor gives you those orders when you first go to work there.

Trial Examiner Batten: Tell what orders she gives you.

Mr. Lane: May I inquire, what time is being spoken of?

By Trial Examiner Batten:

Q. Are you referring to the time you went to work there? A. At all times.

Q. Tell us what rules you are talking about.

A. That we should wear white uniforms, leave our machines once in the morning and once in the afternoon—

By Mr. Leary:

Q. For how long a period each time?

A. For 5 minutes—and that our uniforms should always be clean, changed at least twice a week, and oftener if they became soiled before, and that there was to be no talking during working hours. That is about all I remember.

[fol. 1291] Q. When was it, Mrs. Fike, that you became a member of the International Ladies' Garment Workers' Union? A. March 15, 1937.

* * * * * *

Q. On April 23, 1937, did you work at the plant?

A. Yes, sir.

Q. Did you see your sister, Fern Sigler, outside or in the corridors of the plant that morning before you began work?

A. I seen her before she went into the building.

* * * * * *

[fol. 1292] Q. At what time were you supposed to go to work that morning? A. 8 o'clock.

Q. What time would you say it was that you talked to your sister, Fern Sigler?

A. Between 7:30 and a quarter of 8.

Q. Do you know whether at that time Fern Sigler was wearing a union button? A. Yes, sir.

Q. Was that an International Ladies' Garment Workers' Union button? A. Yes, sir.

Q. Had you ever known of anyone at the plant of Donnelly Garment Company wearing such a button before?

A. No, sir.

Q. What, if anything, did Fern Sigler say to you about the union button?

Mr. Ingraham: I object to that as hearsay.

Trial Examiner Batten: You may answer.

A. She told me that she had on her pin that morning and that she was going to wear it into the shop, and I told her she had better not or she would lose her job.

[fol. 1293] She said, well, she was going to wear it anyway. And I said, "Well, I will lose mine too." And she said, well, she didn't think I would—I don't remember her exact words, but something to that effect.

She told me to go on up and not stay with her at all, so I went upstairs. Her locker wasn't in the same place mine was. That is the last I talked to her until the evening of the 23d.

Mr. Ingraham: I move that the answer be stricken out—I object to the part of the answer that relates to what Fern Sigler said; and I move that the balance of the answer be stricken out as self-serving.

Mr. Lane: Intervener makes the same objection and the same motion to strike.

Trial Examiner Batten: Objection overruled—

Mr. Leary (Interrupting): Now, I submit this is outside of the scope of the intervener's interest.

Trial Examiner Batten: Just a minute.

(Continuing)—and the motion to strike is denied.

Mr. Leary: Whose motion to strike is denied?

Trial Examiner Batten: Mr. Ingraham's motion to strike.

* * * * * *

[fol. 1294] Q. Was Fern Sigler on the sixth floor in her white uniform, and so forth, when you arrived there?

A. No, sir. She came in after I went in.

Q. About how long after your arrival on the sixth floor [fol. 1295] did Fern Sigler arrive there?

A. Oh, just a minute or two. It wasn't long.

Q. Did you see Fern Sigler when she went to her machine? A. Yes, sir.

* * * * * *

Q. Now, after the power was turned on, will you tell what happened?

A. They turned on the power at 8 o'clock. We went to work, and I heard a commotion and turned to look.

Q. How long after you started to work did you hear this commotion?

A. Oh, about 10 or 15 or 20 minutes. I don't know the exact time.

Q. And had the power been turned on in Fern Sigler's section at the same time, if you know?

A. Yes, sir. She was working.

Q. When you heard this commotion and turned, what did you see?

A. A group of girls coming into the hall, or into the building from the hall, and went up to her machine, back of her—

[fol. 1296] Q. (Interrupting) To whose machine? Fern's machine?

A. Fern's machine, back of her, and across the table and around the end. They were singing songs and yelling and throwing slurs.

Mr. Ingraham: I object to the answer "throwing slurs." Let the witness state what was said.

Trial Examiner Batten: Just tell us, Mrs. Fike, what there was said.

A. I don't remember what was said then about that.

Trial Examiner Batten: What do you mean by "slurs"? You must have heard something. How could you describe it?

A. Well, anybody that didn't have any more sense than to join the International Ladies' Garment Workers' wasn't decent, or was indecent; something to that effect.

Mr. Ingraham: Now, I move that the answer be stricken out for the reason the witness hasn't named the persons that made such remarks.

By Trial Examiner Batten:

Q. Do you recall who made those remarks?

A. No, I don't recall.

Q. How many people were coming in there? How large a crowd?

A. Oh, about 25 or 30. I don't know exactly how many. There was a bunch of them. They were all yelling.

Q. You mean, coming right in through the door and right into this section you worked in?

[fol. 1297] A. Yes, sir,—

By Mr. Leary:

Q. (Interrupting) Just a moment; were you working in this section, or was it Fern Sigler's section they were coming to?

A. They went by the end of our section over to her machine. They had to pass our section to get to her's.

Q. They went directly to Fern Sigler's section; is that it? A. Yes, sir.

Mr. Lane: Mr. Examiner, the intervener makes the same motion to strike as made by the respondent for the reason that the persons alleged to be making such remarks are not identified.

* * * * * * *

[fol. 1298] Trial Examiner Batten: I will deny the motion to strike, but you clearly have the right to make it upon the statement of the Board's counsel.

* * * * * * *

By Mr. Leary:

Q. Now, in this first group, and I wish you would restrict yourself to the first group of girls that came down there, Mrs. Fike,—is it your testimony, there were how many in it? A. About 25 or 30.

Q. And did those girls come from other sections on the sixth floor, or did they come from some other sections on other floors?

A. Part of them were from the sections on the sixth [fol. 1299] floor and part of them came from outside.

Q. Did they all have their white uniforms on?

A. Yes, sir.

By Trial Examiner Batten:

Q. Now, Mrs. Fike, you say part from other floors?

A. Yes, sir.

Q. Now, how do you know they were from other floors?

A. Because I knew all the girls that were on our floor, and there was girls among them that I knew to be on other floors.

* * * * * * *

Mr. Lane: I make the same objection and move to strike the latter portion of the answer as to what they told her, for the reason that no person making such a statement has been identified.

Mr. Ingraham: Respondent makes the same objection, and the further objection that it is hearsay testimony.

* * * * * * *

[fol. 1302] By Mr. Leary:

Q. Were there any instructors present when this first group of girls came to Fern Sigler's machine?

A. Yes, sir.

Q. Now, who were the instructors that you know and saw as being present?

A. In her section?

Q. Well, in her section and your section.

A. Pearl Collins.

Q. Was she an instructor in Fern Sigler's section?

A. Yes, sir.

Q. Who was the instructor in your section?

A. Pearl Atchison.

Q. Where was Pearl Collins when this demonstration was happening?

A. Up at the east end of the table, the other end from where Fern was.

Q. But in the same section?

[fol. 1303] A. Yes, sir.

Q. Where was Pearl Atchison when this demonstration took place?

A. She was at the east end of our section, between the two tables.

Q. How far away would you say Pearl Collins was from the demonsfration or from the place where Fern Sigler was sitting?

A. Pearl Collins?

Q. Yes.

A. Well, I couldn't judge exactly. It was lacking one machine of being the full length of that table, whatever the length of the table was. I suppose it would be, oh, maybe a hundred-foot table. It had ten machines, the length of ten machines, and they were either 27 or 30 inches apart, those machines were. There was ten of them.

* * * * * *

By Trial Examiner Batten:

Q. Mrs. Fike, when this crowd came in, how many were there crowded around Fern Sigler?

A. About 25 or 30 in the whole crowd.

Q. And were they all around her there as she sat at the table?

A. Yes, sir.

Q. And were there more than one talking?

[fol. 1304] A. They were all hollering and talking. That is the reason—

Q. (Interrupting) I mean, everybody was yelling, hollering and talking?

A. Yes, sir. That is why I couldn't judge just who said what, because our instructor told us to go on about our work, and I couldn't just set and look over there all the time, but I was looking, and they was all hollering and I couldn't tell which one. I heard a lot of remarks, but I couldn't tell which one said which, because I was about 10 or 15 foot from where she was at.

Q. Well, do you recall the names of any of this first group that was around her?

A. Well, Ethel Carpenter was down there, and if I remember right, she worked on eight, and I know she was in that bunch, but I don't just remember. There was one girl by the name of Sprofera.

By Mr. Leary:

Q. Was that Mary Sprofera?

A. Yes.

[fol. 1305] Q. Where did she work?

A. I believe she was out in the finishing department on that floor, but I don't remember just where she worked.

By Trial Examiner Batten:

Q. Now, will you just tell me what you remember; first, just what was done when this group came up to Fern Sigler's chair there?

A. They all hollered, "Get up and go home. We don't want you in here." And they said she had on—that is what they hollered, that she had on both her Loyalty League pin and her union pin. Of course I never seen the Loyalty League pin and I don't know—

Q. (Interrupting) Just tell me what happened, Mrs. Fike.

A. And they started singing songs, part of them was the Loyalty League songs, which I don't remember now,

and telling her they didn't want her there, and that she couldn't wear a union pin in there.

Q. Now, can you identify any of the individuals that you heard say any of those things, Mrs. Fike?

A. Well, of course they were all hollering. I couldn't describe now which ones did say which.

Trial Examiner Batten: That is all.

Mr. Lane: Intervener renews the motion to strike this testimony for the reason that the persons alleged to have made such remarks have not been identified.

Trial Examiner Batten: The motion is denied.

[fol. 1306] Mr. Ingraham: Respondent makes the same motion.

Trial Examiner Batten: The motion is denied.

. . . . . .

By Mr. Leary:

Q. Do you remember, Miss Fike, what songs these girls were singing?

A. Well, they were the Loyalty League songs, but I don't remember what those songs were.

Q. How many songs did the Loyalty League have, do you know?

A. Oh, two or three—maybe more. I don't just remember how many they had.

Q. Have you told the Examiner all of the things that you heard said to Fern Sigler by this crowd of girls?

A. They told her she couldn't belong to the International Union and work in their shop.

Mr. Lane: Intervener makes the same objection that has been heretofore made.

Trial Examiner Batten: The objection heretofore made?

Mr. Lane: To this same line of testimony. I made an objection to the nature of it, and I am renewing it now.

Trial Examiner Batten: Objection overruled.

Mr. Lane: In order not to burden the record, may I have a continuing objection?

[fol. 1307] Trial Examiner Batten: You mean as to this incident of April 23?

Mr. Lane: Yes, sir.

Mr. Ingraham: Respondent moves to strike the answer out for the reason that it calls for hearsay testimony; and for the further reason that anything the employees said is not binding on the respondent.

Trial Examiner Batten: Motion denied.

Mr. Ingraham: And, your Honor, may I have a continuing objection to this incident?

Trial Examiner Batten: Yes, to this incident.

By Mr. Leary:

Q. Mrs. Fike, do you know whose duty it was to send these girls back to their machines?

A. The instructor, if she could do it.

Q. Do you know whether or not either of the instructors who you testified did see the demonstration, namely, Pearl Collins and Pearl Atchison, did attempt to send them back?

A. No, sir, they didn't.

Q. How long did this first demonstration continue?

A. Well, about 10 or 15 minutes. I don't remember the time.

Q. And while this first demonstration was going on did any of the girls in Fern Sigler's section continue to work?

A. No, I don't think they worked, but they wasn't in that crowd.

[fol. 1308]—Q. And then finally did this group of girls leave Fern Sigler's section?

A. Yes, sir, they left.

Q. Then, how long a time passed before any other group of girls came in?

A. I should judge about 10 minutes; maybe a little more.

Q. How many girls were in the second group?

A. About 40 or 50.

Q. Do you know where those girls came from?

A. No. They were from different floors, that is, from what I was on. Of course some of the girls on our floor got up and came into the bunch when they came back; that is, from the finishers and pressers, but most of them were from off that floor.

Q. When you say "off that floor" you mean from floors other than the sixth floor?

A. Yes, sir.

Q. How many groups of girls came to Fern Sigler's section that morning?

A. How many different groups?

Q. Yes.

A. Three.

Q. What time was it that the demonstrations finally stopped?

A. Somewhere after 10 o'clock—between 10 and 10:30, I don't remember just what time.

[fol. 1309] Q. Were the instructors present when the second and third demonstrations took place?

A. Yes, sir.

Q. Do you know whether or not the instructors made any effort to stop the second or third demonstration?

A. No, sir, they didn't.

Mr. Lane: I move to strike that out as a conclusion. She may state what she observed but not the conclusion that they made no effort.

Trial Examiner Batten: It may stand as it is.

By Mr. Leary:

Q. Will you state what was said and done by this second group of girls when they came to Fern Sigler's section?

A. Well, about the same thing as the first ones said and did, only of course they made more noise because it was a larger crowd. And they pushed her chair up under the machine.

Q. Could Fern Sigler work when her chair was pushed up under her machine?

A. No, sir. They held her so tight up against the machine she couldn't move.

Q. Do you know how many girls were in the third group that came to Fern Sigler's section?

A. Not exactly, but they were a larger crowd than any one of the other two. They filled both aisles around the end, and they couldn't all of them get around past the end of our section.

[fol. 1310] Q. So that some of them had to remain in your section?

A. At the end of our section, yes, sir.

Q. Did the second and third groups likewise point right at Fern Sigler's machine and surround it?

A. Yes, sir. The first group took her Loyalty League pin away from her, the first group that came up there.

Q. Tell us what was said and done about taking the Loyalty pin away from her.

A. They told her they wanted her pin, and she told them they could have it if they would give her the 35 cents she had paid for it, and Ethel Carpenter gave her the 35 cents for the pin.

Q. How did she give it to her; was it wrapped up at all?

A. It was wrapped up in a piece of toilet paper.

Q. Did you hear any threats made to Fern Sigler?

A. The last bunch that came in there threatened to throw her out of the window. They said they didn't want her in there, and kept hollering at her to go home, that she couldn't work with them and belong to that union —to our union—the International Ladies' Garment Workers' Union, and kept suggesting they throw her out of the window.

Mr. Ingraham: I move that the answer be stricken out for the reason that it calls for hearsay testimony, not binding on the respondent; and for the further reason, the witness has not identified a single individual in this

[fol. 1311] third group, and has not identified anyone as making the remarks she has just stated.

Trial Examiner Batten: I will deny it as to the second reason. As to the third reason, the matter of identification, Mr. Leary, I think you should further identify this group.

* * * * * * *

By Mr. Leary:

Q. Are you able to name any persons in the third group?

A. Ethel Carpenter was in all of them, and Mary Sprofera—I don't remember the names of all of them. I really knew more than that, but I don't remember the names of all of them. There was—I can't think of her [fol. 1312] first name, her last name is Hayward—

Q. Do you know where this person named Hayward worked?

A. I believe she either worked on the seventh or eighth floor, I don't remember which.

Q. Was she an operator?

A. Yes, sir.

Q. Can you name any other persons who were in any of the groups?

A. I don't believe I remember the names of them.

Trial Examiner Batten: The third objection, Mr. Ingraham, is overruled.

* * * * * * *

By Trial Examiner Batten:

Q. Can you identify any of the people in the third group who said any particular thing, Mrs. Fike?

[fol. 1313] A. Well, Ethel Carpenter and May Sprofera told her they didn't want her in there. I am not sure about who said "Throw her out the window." I think that was Mary Sprofera, but I am not sure about it.

Mr. Shepard: I ask that her answer about throwing the girl out the window be stricken out for the reason that she is not sure who said it.

Trial Examiner Batten: Motion denied.

* * * * * * *

Q. Did you see any persons, men in particular, standing around the sixth floor when these three demonstrations took place?

A. Mr. Baty, if I remember right, was standing at the west end of one of our tables watching it.

Q. That is, in your section?

A. At the end of one of the tables in our section.

Q. Did you see Mr. Baty do anything?

A. No, sir.

Q. When the demonstrations concluded, some time between 10 and 10:30, as you have testified, do you know what happened to Fern Sigler?

A. I think it was Mr. Baty—there was someone else too, but I don't remember who, took her to the office.

Q. Do you remember whether Rose Todd was present?

* * * * * *

[fol. 1317] Q. Did any of the girls that you remember in Fern Sigler's section continue working during these three demonstrations?

[fol. 1318] A. No, sir, I don't believe they did.

Q. How long a time separated all of the demonstrations?

A. Between demonstrations?

Q. Yes.

A. About 10 or 15 minutes.

Q. After the demonstrations were over, did you go back to work?

A. Well, we was supposed to be working the whole time, but we couldn't work with all that uproar.

* * * * * *

By Mr. Léary:

Q. Well, had you been doing any work while the demonstrations were going on?

A. Trying to. We worked a little.

Q. Then the -then did things go back to normal and you continued to work all the time after the demonstrations ended?

A. Yes, sir.

Q. Did you hear your instructor say anything to you after you went back to work?

A. Yes. She asked me if I didn't know Fern belonged to the union.

Q. Well, when was it that she asked you this?

A. During the demonstration, and I told her no, I didn't, and she kept insisting that I did know it, and I—she said, "Well, do you belong", and I said "No, I don't [fol. 1319] belong." And she said, "Now, May, you don't aim to tell us that your own sister, that you didn't know she belonged to the union," and I said, "No, I didn't", and she said, "Well, you know that this will cause you to lose your job", and I said—

Mr. Ingraham (interrupting): Now, just a minute. Your Honor, is my objection standing that it is hearsay and not binding?

Trial Examiner Batten: Well, I understood both Mr. Lane and Mr. Ingraham had a continuing objection to the incident of April 23, 1937.

Mr. Ingraham: That is all—this, yes.

Trial Examiner Batten: I mean, concerning all of this incident.

By Mr. Leary:

Q. Now, go on with what your instructor, Pearl Atchison, was saying to you.

A. She said "You know this will make you lose your job, don't you?" and I said "Well, it shouldn't." I said "She is three times seven; what she does is no concern of mine." And she said "Well, it would." And I said "Well, I couldn't help that, it wasn't my fault", and she still kept insisting that I belonged to the union, and that I knew Fern did, and I finally told her—of course, after the demonstration, after the demonstration was over, she came to me again and was talking about it, and she kept insisting that I belonged, and I finally told her I did.

Q. Did the other girls in your section say anything to you in Pearl Atchison's presence during that day?

A. Yes.

Q. Who were the other girls who talked to you?

A. I don't remember what Glady's last name was, the girl that sit on my right of me, said she felt sorry for me. She said that "You know, May, you will lose your job", and I said "Yes, I suppose I would." And she said "It was a shame that Fern would do a thing like that to me", and she said that if she had been a sister like she ought to have been she wouldn't have done that at all because it would cause me to lose my job, too, and Pearl Atchison said it was a shame, after I had been there these many years that Fern would do a thing like that to me, and Violet Sneed said that if it had been her sister—if her sister would do her that way that she would beat hell out of her.

Mr. Shepard: If your Honor please, I object to all of this as being absolutely irrelevant and immaterial, doesn't tend to prove anything in the case as to what these other operators have told her what they would do if Fern Sigler were her sister.

Trial Examiner Batten: Well, you may proceed. I think we should have the whole story about these instances, irrespective of who said it.

[fol. 1321] By Mr. Leary:

Q. Pearl Atchison was present when all of this was being said, wasn't she?

A. Yes, sir.

* * * * * * *

[fol. 1322] Q. Well, did Mrs. Atchison have a desk in your section, or a small table, where she worked?

A. Yes, sir.

Q. Did she sit at this small table while she was making these various statements to you during the day?

A. No, sir.

Q. Where was she when she made the statements?

A. At my machine before noon.

Q. And when these other girls that you have testified about as having talked to you during the day were talking to you, was Mrs. Atchison at your machine?

A. During the day?

Q. Yes.

A. Yes, sir.

Q. And how far away from Mrs. Atchison's table was your machine?

A. About 8 or 10 foot.

Q. How many girls sat between you and Mrs. Atchison?

A. Two.

Q. Do you know whether Fern Sigler returned to her [fol. 1323] machine that day after she went to the office with Mr. Baty?

A. No, sir, she didn't.

Q. Did she up until April 30, 1937, ever return to work there?

A. No, sir.

Q. Did you continue to work the remainder of the day, April 23d?

A. Yes, sir.

Q. Did you work the next day?

A. I believe that was Saturday morning. I did work the next day. I remember going to work, but I think that was Saturday morning.

* * * * * * *

By Mr. Leary:

Q. Now, I show you a calendar for the year 1937 and ask you to state whether or not the 23d of April wasn't on a Friday.

A. Yes, sir. I know it was now.

Q. And were you working regularly on Saturdays during that period of time?

A. Not regularly.

Q. You might have worked on the 24th of April, is that it?

A. I did work the 24th.

Q. Did you return to work on April 26th?

A. Yes, sir.

[fol. 1324] Q. The following Monday?

A. Yes, sir.

Q. Was that month of April during the busy season or the slack season, Mrs. Fike?

A. Well, work was a little slack, not very much, though.

Q. And when—do you know what the practice was in the section where you worked when work was slack, as to laying off girls, and so forth?

A. Each girl would take a half a day or maybe a couple of them at a time would take a half a day or a day off, and they took turns about, about taking their days so some one wouldn't lose any more time than the other.

Q. Who was it, now, who told the various girls to take their proportionate time off?

A. Pearl Atchison, the instructor.

* * * * * * *

[fol. 1325] Q. Then when you went to work on April 26th, what time did you start?

A. What time did I start to work?

Q. Yes.

A. 8 o'clock.

Q. How long did you continue to work?

A. 2 hours, or about that.

Q. Were you running your machine during these 2 hours?

A. Yes, sir.

Q. What, if anything, happened after about 2 hours' work?

A. I worked the 2 hours and Pearl Atchison came to me and told me that there wasn't work enough for all the girls, and I would have to go home. I asked her why I should go home, I had taken my time off already, that I didn't see why I should go home when the rest of them was working, and she said, well, she said "That is what—that is the orders from the office.

Q. And what, if anything, did you say?

A. I asked her if I was being laid off on account of Fern and she said no, she didn't think so. So I—

Q. (Interrupting) That is Mrs. Atchison you are talking about now?

A. Yes, sir.

Q. What did you do after you had had your conversa-
[fol. 1326] tion with Mrs. Atchison?

A. I went up to the employment office to Mrs. Hyde and asked her why I was being sent home, and she told me on account of no work, and I said "Well, I feel like you are sending me on account of this episode of Fern's."

Q. What else did you say to her?

A. And I said "Well, it wasn't my fault because Fern did what she did," that I didn't know why I should be sent

home on account of her, and she wouldn't admit that that is why they was sending me home.

Q. Well, what finally was said between you and Mrs. Hyde?

A. I asked her when I was to come back, and she told me to call in the next morning; that would be Tuesday, the 27th.

Q. Was anything said when you were sent home on the 26th of April about the character of the work you were doing, as to whether it was good or bad?

A. No, sir.

. . . . . .

[fol. 1329] Q. Did you call Mrs. Hyde on the next day, April 27?

A. The next morning, I went to the union office first, and then I called up the shop afterwards and she told me there was no work.

Q. What time did you call the shop?

A. Oh, no. I am mistaken. Excuse me. My answer is that wasn't right. Let me change it.

Q. All right. Did you talk to Mrs. Hyde the next day?

A. Yes, sir.

Q. What time was it that you talked to her?

A. About 10 o'clock.

Q. Was it over the telephone?

A. Yes, sir.

Q. What did you say to Mrs. Hyde, or was it she personally that you talked to?

A. Yes, sir. I told her who I was, and she said, "We have been trying to get you all morning. We want you to come in to work right away." Now, that is April 27 you are talking about, isn't it?

Q. Yes, sir.

A. And I said, "All right, but I am downtown. I will have to go home first." So I went home.

I didn't work any in the morning, because the lunch hour was on when I got in. I believe it was about 12 when I went to work.

. . . . . .

[fol. 1330] Q. Did you continue to work the rest of that day, April 27, and the following days in that week?

A. Yes, sir.

[fol. 1337] By Mr. Leary:

Q. I believe you testified you were called back to work on the morning of April 27, is that correct?

A. Yes, sir.

Q. Did you go to work in your regular section after the lunch hour on that day?

A. Yes, sir.

Q. What time was it that your lunch hour ended and you began working?

A. I believe it was 12 o'clock.

Q. That was, the lunch hour ended?

A. Or 12:15. I think it was 12:15.

Q. That is when your lunch hour was over?

A. Yes, sir.

Q. And you began working again?

A. Yes, sir.

[fol. 1338) Q. How long were you supposed to work that day?

A. To 4:30.

Q. Did your instructor say anything to you and the other girls in your section during that afternoon?

A. Yes. Pearl Atchison said it was a shame that as good an operator as Fern was, she should do a thing like that. She said she was the fastest and best operator in Pearl Collins' section.

Q. Did you attend any meeting that afternoon?

A. Yes, sir.

Trial Examiner Batten: What date was that?

Mr. Leary: April 27.

By Mr. Leary:

Q. How were you notified of the meeting?

A. At 2 or 2:30 the power was turned off and we were all told to go to the second floor.

Q. Who told you that?

A. Our instructor.

Q. What did the instructor say?

A. She sent everybody to the second floor. She said there was going to be a meeting and everybody should stay in a body so we could get back to work together, or something like that.

Q. Did you have your white uniform on at the time she [fol. 1339] shut the power off?

A. Yes, sir.

Q. Did you wear your white uniforms to the meeting on the second floor?

A. Yes, sir.

Q. Did you stay in a group with your instructor, Pearl Atchison, when you went to the second floor?

A. Yes, sir.

Q. Did you consider that second floor company property?

A. Yes, sir.

Mr. Lane: That is objected to as calling for a conclusion on the part of the witness.

Trial Examiner Batten: Well, I think, Mr. Leary, it certainly calls for a conclusion. If you want to let it stand, however, as it is, I will overrule the objection.

Mr. Ingraham: Respondent moves that all statements as to what Pearl Atchison said be stricken out as not binding on respondent.

Trial Examiner Batten: Denied. I think the objection goes primarily to the weight that can be given such testimony.

By Mr. Leary:

Q. Did you go to this meeting on the second floor as soon as the power was shut off and your instructor made this statement to you and the remainder of the girls in your section?

A. Yes, sir.

. . . . . .

[fol. 1340] Q. Did you see the girls in the other sections on your floor leave their machines and proceed, in a manner similar to the girls in your section, to the second floor?

A. I saw them all going to the elevator. We went down on the elevator to the second floor.

Q. Did you see girls coming from all of the other floors of the building to the second floor?

A. After I got on the second floor you could see them; there was some there, and there was some coming in.

Q. And when you were on the second floor do you know how many girls eventually came into the auditorium or hall?

A. All of them, as far as I know.

Q. As far as you know, was the plant completely shut down? A. Yes, sir.

Q. Were you present during the entire time of this meeting?

A. Yes, sir.

Q. About how long would you say it lasted?

A. Well, I didn't work any more that afternoon. I don't remember just how long it lasted but I never went back to work any more that afternoon.

Q. Did you go back to your section with your instructor at the conclusion of the meeting?

[fol. 1341] A. Yes, sir, to put our machines and working materials away.

Q. When you left to go to the meeting did you put any of your machinery away or clean it up, or put your materials away? A. No, sir.

Q. Did you fully expect at that time to return to work that afternoon? A. Yes, sir.

Q. What is your best judgment as to the length of time this meeting occupied?

A. Well, I don't know just what time it was when we went. It was around 2 or 2:30, and it was around 4:30 or 5 before we left the second floor after the meeting.

* * * * * * *

Q. Now, I show you, Mrs. Fike, what have been identified as Board's exhibits Nos. 8-1 to 8-11, inclusive, which purport to be notes on a meeting held April 27, 1937, and ask you to read those notes or minutes and, at the conclusion of your reading them will you state to the Examiner

whether the things related in those minutes actually hap-
[fol. 1342] pened, to the best of your recollection.

Mr. Ingraham: Now, Your Honor, I submit that is highly improper procedure for an examination. He can ask this witness what took place at this meeting, or what she heard, but to hand her minutes and have her read the minutes and refresh her memory or put some ideas into her head, and then have her answer the question Yes or No about the minutes I say is improper.

Mr. Shepard: Further, Your Honor, there has been no showing that the witness' memory needs to be refreshed. She says she attended that meeting. She should be questioned from her memory of that meeting.

Trial Examiner Batten: I wouldn't say it is an improper way to proceed. I would say there are more satisfactory ways, and one is to have this witness testify, first, as to what transpired at this meeting from her recollection.

. . . . . .

[fol. 1343] Mr. Lane: Intervener desires to object on the ground it is an illegal and improper method of examination.

. . . . . .

[fol. 1344] Trial Examiner Batten: Well, now, as I stated, if Mr. Leary wants to proceed this way, you may go ahead and read it and answer the question.

Mr. Leary: Now, I will withdraw the question.

Mr. Leary: Who presided at that meeting, Mrs. Fike?

A. Rose Todd.

Mr. Tyler: I would like to ask if the witness has finished reading the minutes.

The Witness: I haven't finished looking through them.

. . . . . .

[fol. 1345] Mr. Tyler: I objected, that the record will show that Mr. Leary has handed the witness what purports to be, and I presume is, copies of the minutes of the first meeting, and asked her to read it, and then tell him whether that expresses what happened, and then after waiting long

enough for her to almost read all of them, he then withdraws the question and presents another question as to what happened. Now, that destroys the possibility of ruling on whether it is a proper method of examination [fol. 1346] to ask her to read the minutes first, and then ask her what happened.

Trial Examiner Batten: Well, Mr. Tyler, I have already ruled that as far as the Examiner is concerned, Mr. Leary's question was proper. I said it was not improper and I overruled the objection and permitted him to proceed in that manner if he wanted to, and he chose to withdraw the question, which he has a perfect right to do.

* * * * * * *

[fol. 1347] By Mr. Leary:

Q. Who was it who presided at that meeting, Mrs. Fike?

A. Rose Todd.

Q. Was she president of the Loyalty League at the time? A. Yes, sir.

* * * * * * *

[fol. 1348] Q. What, if anything, did Rose Todd say in opening the meeting, that you remember now? I don't want her exact words. I want the substance of what she said, Mrs. Fike.

A. She said that it had come to a point where the Loyalty League was not sufficient to protect the Donnelly Garment Workers, and that they would have to form a union of their own, and that they had retained a lawyer or two of them—Mr. Tyler, and I believe the other one was Mr. Gossett—or something like that, and they had retained them to form this union and that some of the girls would wonder why the Loyalty League wasn't sufficient. She explained that it wouldn't be sufficient, that they would have to have an organized union in their shop to keep out this International.

[fol. 1349] Q. Did she say what the name of the union would be?

A. Yes, she said that they had decided on a name, the Donnelly Garment Workers' Union, and that as bad as they hated the name "union", they would have to add that to their organization in order to make it a legal union, and

then, I don't remember all her conversation. That wasn't all of it. But she introduced Mr. Tyler and he got up and spoke about it. I don't remember what his conversation was—and he had the by-laws.

Q. What by-laws do you refer to?

A. The by-laws that had been made for our union organization, our new—

Q. (Interrupting) That had been made for you by Mr. Tyler, you mean? A. Yes, sir.

* * * * * *

[fol. 1351] Q. Do you remember whether any votes were taken at this meeting?

A. Yes, sir there were.

Q. Well, what was the first thing that you now remember that you voted upon?

A. Well, it wasn't exactly a vote. We passed out cards for the employees to sign to join this union.

Q. Who passed out the cards?

A. The machinists. The cards were given to the machinists.

Q. Was anything said by anyone on the rostrum as to the reason the cards were being passed out and what to do with them, and so forth?

A. Yes, sir. Miss Todd said these cards were being passed out for the employees to sign for, in order to form their union, and that they were not to be signed until Mr. Tyler had made his speech.

Q. Are these the cards that you saw passed out, namely, Board's Exhibit 3?

A. Yes, sir.

Q. Was one of those cards given to you?

A. Yes, sir.

Q. By whom was it given to you?

[fol. 1352] A. One of the machinists. I don't remember who.

Q. And after he gave it to you, did you sign it?

A. Yes, sir.

Q. And then what did you do with it?

A. One of the girls sitting beside of me reached over and took the card and started picking up the cards in that row of seats, and Miss Todd told her to give them back and let us hold them until Mr. Tyler was through,

and then she would have the machinists personally pick them cards up.

Q. Did she go on to explain why she wanted to follow that system of picking them up personally from each of the girls?

A. She wanted him to read the by-laws before the cards were picked up.

Q. Did Miss Todd say definitely why she wanted each individual to hold onto her particular card until the machinists or one of them could pick up the cards from that person?

A. I don't remember.

Q. Did the machinists later on in the meeting pick up the individual cards from each of the girls?

A. Yes, sir.

Q. Do you know whether everybody in the hall signed the card at that time?

A. They were all picked up but two.

Trial Examiner Batten: Well, now, you mean does she know, personally whether everybody in the hall signed a card, Mr. Leary?

[fol. 1353] Mr. Leary: Well, when I say signed the card, I mean returned the card to the officers of the organization on the rostrum.

Trial Examiner Batten: Of course, it must be obvious she wouldn't know that.

Mr. Leary: I will withdraw the question.

Trial Examiner Batten: If I had been there I couldn't tell that, or anybody else, I don't think.

Mr. Leary: Well, she could have been told such.

Trial Examiner Batten: Well, that is a different question.

By Mr. Leary:

Q. All of these cards were picked up but two. Is that it? A. Yes, sir.

Q. And how do you know that some two individuals had failed to return their cards?

A. Because they counted, the machinists counted the cards when they gave them out and they were supposed to pick up that many cards when they picked them up.

Q. Where did you get this information?

A. Rose Todd told us, and when they picked up the cards each one counted their cards, and I don't remember which one it was said that there was two cards missing, and they called for these cards.

Q. Who called for the cards?

[fol. 1354] A. Rose Todd, and I don't remember if they turned them back or not. I don't know who had the cards.

Q. Do you remember anything in addition that Rose Todd said about the two missing cards?

A. She said they could return the cards whether they wanted to sign or not.

* * * * * *

[fol. 1355] By Mr. Leary:

Q. I believe, Miss Fike, that before the noon recess you were giving testimony concerning the meeting of April 27, 1937. Further on that line of examination, do you remember whether any officers were elected at that meeting? A. For the union?

Q. Yes. [Q.] Yes, there was.

Q. Do you remember what method was used to nominate officers?

A. They selected, I think it was four or five—there could be more, to go outside and decide who they should nominate.

Q. Who was it that selected the four or five persons to make up the nominating committee?

A. Miss Todd, if I remember right.

* * * * * *

[fol. 1358] Q. Were there any other persons' names placed in nomination than the ones who the nominating committee had brought back?

A. No, sir.

By Trial Examiner Batten:

Q. Did they vote on each office separately, or on all of them together?

A. I don't think so. No, they didn't. They voted on all of them together.

Q. You mean, they voted on the entire group of officers at one time? A. Yes, sir.

By Mr. Leary:

Q. After these persons were elected to their respective offices, do you know whether they appeared on the platform or the rostrum?

A. No. I believe they just stood up.

Q. I don't know whether I asked you or not to state whether the by-laws were voted upon at that meeting.

A. No, sir; they wasn't.

* * * * * * *

[fol. 1359] Trial Examiner Batten: Go ahead, Mr. Langsdale.

Mr. Lane: Before Mr. Langsdale begins his examination, I desire to renew the objection I made at the time he began his examination of Miss Todd. I don't want to burden the record by being compelled to make that objection with respect to every witness' examination, but I do renew it here so the record is clear that I am not waiving that objection.

Trial Examiner Batten: Just what was that objection?

Mr. Lane: I objected to his examination of Miss Todd for the reason that his position as counsel for the International is one in unity with interest of that of the Board, and in view of that fact, he should not be permitted to have [fol. 1360] a separate examination of the witness the Board produces, separate from that of the Board itself.

Trial Examiner Batten: Supposing that you be allowed a continuing objection.

Mr. Lane: I would like the record to show that that objection will continue throughout the trial as to the witnesses the Board produces.

Trial Examiner Batten: On that matter—and I will make the same ruling.

Mr. Shepard: Your Honor, may the record show that the respondent makes the same objection and requests the same objection continue throughout the trial?

Trial Examiner Batten: You may have the same objection and the same ruling, and a continuing objection.

Cross-Examination.

By Mr. Langsdale:

Q. Mrs. Fike, it is testified to here that some time between the 27th of March and the 1st of April, there was a meeting of employees at which each one was requested to contribute 50 cents for the purpose of raising money to pay Mr. Frank Tyler for services to the employees. Was there ever any such meeting that you know of?

A. There never was no such meeting, to my knowledge.

Q. When was the first time that you ever heard that Miss Todd or anyone else had consulted Mr. Tyler or any other lawyer in behalf of the employees?

[fol. 1361] A. On the 27th day of April, I mean in the afternoon.

Q. That was at the meeting in which the union was formed? A. Yes, sir.

Q. And that is the first you ever heard of Mr. Tyler, was it? A. Yes, sir.

Q. And the first information you ever had that anyone had consulted him? A. Yes, sir.

Q. Mrs. Todd—Mrs. Fike,—I beg your pardon—did you ever attend any dance or other function given by the Nelly Don Loyalty League at what is known as the Club House? A. No, sir.

Q. You never were there?

A. Not at this Club House.

Q. Were any dues paid by the members of the Nelly Don Loyalty League? A. You mean into the League?

Q. Yes. A. Yes, sir.

Q. Did you pay dues?

A. Oh, I don't remember whether there was in that or not.

Q. Now, did they have other clubs or associations within the—among the employees of the Donnelly Garment Company besides the Loyalty League?

[fol. 1362] A. Other clubs?

Q. Yes. A. Yes, sir.

Q. What other club did you belong to there?

A. Each section has a club. We formed one in the section I was in that was known as the Betty Boop Club.

Q And did you pay dues in that club?

Mr. Lane: I didn't understand the name of that.

The Witness: Betty Boop.

By Mr. Langsdale:

Q. Did you pay dues in that club? A. Yes, sir.

Q. Do you know how much?

A. I don't remember exactly. I think it was 5 cents a week.

Q. Do you know what was done with the money that was accumulated by payment of those dues?

A. For entertainment, steak fries, parties at different one's houses belonging to the club.

* * * * * *

[fol. 1363] Q. Who was Mrs. Wheary?

A. She was [supervisors] over all instructors.

Q. She was over Pearl Atchison and all of the other instructors? A. Yes, sir.

* * * * * *

[fol. 1365] Trial Examiner Batten: Mr. Ingraham?

By Mr. Ingraham:

Q. Mrs. Fike, did I understand you to say that you went to work at the Donnelly Garment Company in 1927 or 1928?

A. It was sometime during one or the other of those years. I don't remember just when I did go there.

Q. What was your name at that time? A. Sutton.

Q. Later, Mrs. Fike, did you go under the name of Dulle?

A. Yes, sir. I was married to a man by the name of Dulle.

Q. When was that?

A. That was in—I think, when I went back to work the last time.

Q. In 1933?

A. Yes, sir. No, It wasn't. It was before that.

Q. About how long before that?

A. I don't remember.

Q. I will hand you respondent's exhibit No. 3 and ask if [fol. 1366] that is in your handwriting? Is that your signature, Mrs. Fike? A. Yes.

(The application sheet above referred to was marked for identification "Respondent's Exhibit No. 3.")

Q. Is the rest of the writing your handwriting?
A. Yes, sir.
Q. Now, do you see on this application that you made to the Donnelly Garment Company, May 9, 1932, the question:

"Have you ever been employed by the Donnelly Garment Company"?

And the answer: "No."

A. I see it, yes, sir.
Q. And you wrote that "No"?
A. I don't know. I guess I did.
Q. Well, that is in your handwriting?
A. Yes, sir.

Mr. Ingraham: Respondent offers in evidence exhibit No. 3.

Mr. Leary: I object to the introduction of this exhibit, Mr. Examiner, for the reason that it is incompetent, irrelevant and immaterial. It neither tends to prove or disprove any of the issues in this proceeding.

Mr. Ingraham: Your Honor, it goes to the credibility of the witness.

[fol. 1367] Trial Examiner Batten: It will be received.

* * * * * *

[fol. 1368] By Mr. Ingraham:
Q. Mrs. Fike, you stated that you were at the March 18 meeting of the employees of the Donnelly Garment Company? A. Yes, sir.
Q. And you stated that Mrs. Reed was there at that meeting? A. Yes, sir.
Q. Will you please state again what Mrs. Reed said at that meeting?
A. She read that letter, if I remember right.
Q. Are you sure about that?
A. The letter that we got from the International Ladies' Garment Workers' Union.

Q. Now, let's just stop a second there. What did the letter state? A. I don't remember..

* * * * * *

By Mr. Ingraham:

Q. You do not remember anything about what was stated in the letter? A. No, I don't remember.

Q. What else did Mrs. Reed say?

A. She said they didn't intend to have any union in their shop.

[fol. 1369] Q. What else?

A. She was capable of running her own business, and when she wasn't capable of running her own business, she would go out of business.

Q. Did she say anything else?

A. I don't remember.

Q. Now, when did you remember that Mrs. Reed said that?

A. Well, it has been since the Judge Miller trial.

Q. Who have you talked to since the Judge Miller trial in connection with this case?

Mr. Leary: I object to that, Mr. Examiner.

Trial Examiner Batten: She may answer.

A. I talked with, since the Judge Miller case?

By Mr. Ingraham:

Q. Yes.

A. I talked with Mr. Langsdale; Jane Palmer.

Q. Did they refresh your memory about what Mrs. Reed is supposed to have said?

A. In going over my statement after the 23d of April, it refreshed a lot of my memory.

Q. Had you made a statement prior to that time?

A. Prior to what time?

Q. April, that you have referred to. A. No, sir.

Q. You have made a statement later?

A. After that 23d of April, 1937.

[fol. 1370] Q. Well, when did you make the statement?

A. I think that was—I don't remember the exact date. I think that was on the morning of the 27th of April, if I remember right. I could be wrong.

Q. Who did you make the statement to?

Mr. Leary: Just a minute. I think you are both talking about different years. May the witness state what year she is referring to?

Mr Ingraham: Certainly.

The Witness: 1937.

By Mr. Ingraham:

Q. Who did you make the statement to at that time?
A. Miss Jane Palmer.
Q. That is April 27, 1937?
A. I think it was. I am not sure.
Q. Where did you give that statement to Miss Palmer?
A. In Miss Palmer's office.
Q. At the union office? A. Yes, sir.
Q. What time of day? A. I don't remember.
Q. In the morning?
A. I think so, but I don't remember.
Q. And had Miss Palmer sent for you?

Mr. Leary: I will object to that, Mr. Examiner, as [fol. 1371] entirely immaterial.

Trial Examiner Batten: You may answer.

A. No, sir, she hadn't.

By Mr. Ingraham:

Q. How did you happen to go up to Miss Palmer's office? A. I don't remember why I went.
Q. Didn't you call the Donnelly Garment Company from Miss Palmer's office that morning?
A. Yes, sir.
Q. And what did you ask—strike that out.

Why did you call the Donnelly Garment Company?

A. Because she told me to call that morning, Mrs. Hyde told me to call that morning.
Q. Did Miss Palmer tell you to call?
A. No, sir, Mrs. Hyde told me to call.
Q. Now, what else did you talk to Miss Palmer about?

Mr. Leary: I object to that, Mr. Examiner, as immaterial.

Trial Examiner Batten: Well, unless there was something that had to do with this case—

Mr. Ingraham: Strike the question.

Mr. Ingraham: Did you talk to Miss Palmer about your employment at the Donnelly Garment Company?

Mr. Leary: I object to that as immaterial. I don't see as it has any bearing on this case.

[fol. 1372] Trial Examiner Batten: You may answer.

A. I don't remember.

Mr. Ingraham: Do you recall anything that Miss Palmer told you to do?

Mr. Leary: I object to that, Mr. Examiner, on the same ground.

Trial Examiner Batten: You may answer.

Mr. Leary: May I have a continuing objection to her conversation with Miss Palmer at this time?

Trial Examiner Batten: Yes.

A. What was the question?

Trial Examiner Batten: Read the question.

(Whereupon, the question was read by the reporter.)

A. No, I don't remember.

By Mr. Ingraham:

Q. Did Miss Palmer tell you to get information for her?

A. No, sir.

Q. Now, why were you up at Miss Palmer's office?

A. I don't know exactly why I went there. I just went. That was all.

Q. So your memory now is blank on why you were there?

. . . . . .

[fol. 1373] By Mr. Ingraham:

Q. Mrs. Fike, at that time you were in the employ of the Donnelly Garment Company; is that not true?

A. That was on Tuesday after I was laid off on Monday.

Q. Well, did you work after that for the Donnelly Garment Company?

A. Well, I came up at 10 o'clock or thereabouts. She told me to come in to work; Mrs. Hyde told me to come in to work.

Q. Now, how many times before this particular visit had you been to see Miss Palmer? A. Never.

Q. Can you state whether Miss Palmer sent for you?

A. That morning?

Q. Yes. A. She did not.

Q. How did you know where her office was?

A. Well, I knew. I belonged to the union and I knew where the office was.

Q. Was Miss Palmer at the union office?

A. Yes, sir.

Q. Who else was there?

A. I don't remember who else was there.

Q. Now, I want you to take time and think of everything [fol. 1374] that occurred that morning when you talked to Miss Palmer.

* * * * * *

A. I don't remember.

By Mr. Ingraham:

Q. Did Miss Palmer give you any money?

A. No, sir.

Q. Did Miss Palmer promise you a job? A. No, sir.

Trial Examiner Batten: Now, just a moment. Are you examining this witness on the basis of part of your answer that the Ladies' Garment Workers' Union—if you want to excuse the witness, I will be glad to, but I want to know definitely whether this has anything to do with trying this Ladies' Garment Workers' Union. If it has, why, we will stop because they are not on trial here, [fol. 1375] and I am just not going to go into those matters.

Mr. Ingraham: Well, your Honor, I think that if this witness could remember what took place it would establish that she voluntarily left the employ of the Donnelly Garment Company.

Trial Examiner Batten: I mean, if your purpose is not the purpose I have stated, but something else, you may proceed, if you tell me it is some other purpose.

Mr. Ingraham: I expect, your Honor, of course, if this witness makes any admissions, to use it for any purpose.

Trial Examiner Batten: Well, you may use it for any purpose except the purpose which I have said I don't propose to go into now, but you are to put in your offer of proof. In other words, I don't propose that any of the attorneys are now going into matters that I have called for offers of proof on. Now, if you are examining a witness for some other purpose, you may go ahead and proceed.

Mr. Ingraham: Mrs. Fike, when next did you see Miss Palmer after this meeting of April 27th?

* * * * * *

[fol. 1376] A. I don't remember. I don't think I saw her until, oh, for a month or more.

By Mr. Ingraham:

Q. When did you make this statement that you refer to?
A. The statement I made to her?
Q. Yes.
A. I told you, on the morning of the 27th.
Q. And what was that statement?
A. They have it here. I don't remember just when it was.

Mr. Ingraham: Have you got that statement?

Mr. Langsdale: Yes, we have it, but we are not going to give it to you. It is confidential.

Mr. Ingraham: I don't know anything confidential about it.

Mr. Langsdale: Well, it is. Would you give us all the [fol. 1377] statements you got from Rose Todd and everybody else in your case?

Mr. Ingraham: Mr. Langsdale, this witness says she has made a statement. She isn't a party to it.

Mr. Langsdale: I don't think it is necessary to produce from counsel the statements that have been given by clients in the trial of a lawsuit.

Trial Examiner Batten: The only time that I require the production of them is when counsel use them for examining a witness, or to refresh a witness' recollection. Then I always insist they be made a part of the record, whether there is any request or not. Now, you may make your request upon Mr. Langsdale or Miss Palmer, and if they do not want to produce them, I certainly shall not instruct them to do so.

Mr. Langsdale: Miss Palmer says that she doesn't have it here, Bob. My objection seems to be premature. It is my policy to refuse to give statements, and yours, too, in a lawsuit.

Mr. Ingraham: All right. You haven't got it?

Mr. Langsdale: Miss Palmer says she hasn't it here with her.

By Mr. Ingraham:

Q. Mrs. Fike, at this time, now, can you remember just what you said in that statement?

A. No, I don't remember, only that they had laid me off after 2 hours' work on Monday.

[fol. 1378] Q. And that is all that you remember was in the statement?

A. That is all I remember right now.

Q. Now, they laid you off after 2 hours' work on Monday? A. Yes, sir.

Q. Is that the Monday, April 26th? A. Yes, sir.

Q. And so at that time you were laid off from your employment with the company?

A. For that day; yes, sir.

Q. Then you went back later?

A. I went back on Tuesday.

Q. Now, when did you go back on Tuesday?

A. The 27th.

Q. I mean, what time?

A. Well, it must have been after 11:30 because I never worked any until we went back to work after our lunch hour, and I believe our lunch hour ended at 12:15.

. . . . . .

[fol. 1385] Q. Now, you were a witness in the case before Judge Miller in the Federal Court? A. Yes, sir.

Q. And of course you talked to the attorneys for the International before you took the witness stand in that case? A. Yes, sir.

Q. You told them all that you knew about the facts at that time?

A. I might not have told them all I knew. I might have told them all I remembered at that time.

Q. You told them all that you remembered at that time? Didn't counsel for the International put you on the witness stand to testify in that case?

A. What was the question, please?

Mr. Ingraham: Withdraw it.

Q. Did counsel for the International put you on the witness stand in the case before Judge Miller?

A. Yes, sir.

Q. And counsel for the International asked you questions? A. Yes, sir.

Q. I will ask you if this question was asked by counsel for the International:

"Q. Were you at a meeting there in the month of March? A. March 18?

"Q. At which you were all called downstairs?

[fol. 1386] "A. Yes, sir.

"Q. And who were present representing the management at that meeting?

"A. There was several there. They were all there that could get away to go to the meeting. Miss Gray, Miss Hyde."

Were you asked those questions and did you make those answers? A. Yes, sir.

Q. "Q. Was Mrs. Reed there, Mrs. Donnelly?

"A. I don't just remember. I think she was. Mrs. Reeves and they were nearly all there."

Did you make that answer?

A. Yes, sir.

Q. "Q. Was Mrs. Reed there that day, Mrs. Donnelly?

"A. Yes, I think she was.

"Q. Did she make a speech?

"A. Yes, she did.

"Q. I wish you would state, to the best of your recollection, the substance of what Mrs. Reed said.

"A. She said that— I don't remember who said this, I don't remember her speech."

Q. Did you make that answer? A. I did.

Q. "Q. Do you remember the speech of any of them, Mrs. Fike?

"A. Yes. I believe that was—someone who got up and [fol. 1387] spoke and said they wouldn't have no union in their shop."

Q. Did you make that answer?

A. Yes, sir.

Q. "Q. Do you remember what any of the management said at that meeting, if they said anything, with reference to the union?

"A. They said there was not—

"Q. You will have to name somebody that said it, if anything was said.

"A. I don't remember who said it."

Q. Did you make that answer?

A. I said, what?

(Thereupon Mr. Ingraham showed the portion of the transcript referred to to the witness.)

A. Yes, sir.

* * * * * *

[fol. 1393] Q. Mrs. Fike, did you tell Jane Palm that the Donnelly Garment Company was a sweat shop?

A. I don't—

Mr. Leary (interrupting): I object to that as being immaterial.

Trial Examiner Batten: Well, I don't see how it is material.

Mr. Leary: I didn't hear you.

Trial Examiner Batten: Unless it is in line with this matter that I asked you to submit an offer of proof on.

Mr. Ingraham: Well, I think I have a right to inquire from this witness just what she thinks of the Donnelly Garment Company working conditions, to show her good faith about whether she wants her job back. That is her contention.

Trial Examiner Batten: If that is the purpose of your examination, you may proceed.

Mr. Ingraham: In your opinion, does the Donnelly Garment Company operate a sweat shop?

Mr. Leary: I object to that as calling for a conclusion.

Trial Examiner Batten: You may answer.

A. What was the question?

Mr. Leary: I don't believe I understand what the meaning of a sweat shop is.

[fol. 1394] Trial Examiner Batten: I think I have a pretty good idea of what it means, and I haven't worked in a shop, either. I don't think there is any question—

Mr. Leary (interrupting): I don't think it can be defined.

Trial Examiner Batten: I know, but there is a lot of things you can't define, and you still have some idea of what they are, Mr. Leary. You may answer.

Mr. Langsdale: Mr. Examiner, I don't recall that in this complaint of the Board any charges have been made at all that the Donnelly Garment Company is a sweat shop.

Trial Examiner Batten: Well, Mr. Langsdale, on the basis of Mr. Ingraham's purpose of this question, she says that she wants her job back. Now, Mr. Ingraham states that he wants to question her on these matters to show whether she made that statement in good faith or not.

Mr. Langsdale: Well, of course, you mean that she wants her job back, that statement?

Trial Examiner Batten: Yes.

Mr. Langsdale: We are not charging them with being a sweat shop in this complaint.

Trial Examiner Batten: Well, I told Mr. Ingraham to go ahead on the basis that he stated he was examining her i respect to these matters.

The Witness: May I have the question?

* * * * * *

[fol. 1395] A. I don't believe I ever told anybody that. I don't remember ever telling anybody that.

Mr. Ingraham: Well, is the plant, in your opinion, a sweat shop?

Mr. Leary: I object to that as calling for a conclusion and asking the witness' opinion.

Trial Examiner Batten: I don't know that it is calling for a conclusion, but I certainly don't think it is within this matter that you stated, Mr. Ingraham, what she thinks about it herself.

Mr. Leary: I wonder whether or not that would be a valid defense to the company.

Trial Examiner Batten: Just a minute—

Mr. Leary (interrupting): Pardon me, if you are not through.

Trial Examiner Batten: I mean, now, if she said these things to somebody else, or made disparaging remarks about this company, for instance, they were no good, and she never wanted to go back to work and work for them, and she wouldn't go back if somebody offered her a job.

Now, that is one thing, but to ask her, now: what do you think about it? I don't think, Mr. Ingraham, that question is—

* * * * * *

[fol. 1396] By Mr. Ingraham:

Q. Have you ever told anybody that the Donnelly Garment Company is a sweat shop?

A. I don't think I ever did.

Q. Have you ever told anybody that they paid low wages?

A. No, sir.

Q. Have you ever told anybody that they have a speed-up system that ruins girls' health?

A. I don't think I ever did.

Q. Were your wages higher at the Donnelly plant than they are at these other plants at which you have worked since you left the Donnelly employment?

A. They wouldn't be if we had steady employment, as the Donnelly Garment Company has.

Trial Examiner Batten: Well, the question is, were the amounts that you were receiving at the Donnelly Garment Company more than you have been receiving at these plants,—isn't that it?

Mr. Ingraham: That is right.

A. Yes, sir.

By Mr. Ingraham:

Q. Now, Miss Fike, you stated that you joined the International Union on March 15, 1937?

A. That is right.

Q. Where did you join?

[fol. 1397] A. At my home.

Q. Was that the time that the International was beginning its campaign against the Donnelly Company?

Mr. Leary: Objection. There has been no showing that they ever had any campaign against the company.

Trial Examiner Batten: I will sustain the objection.

Mr. Ingraham: Was the International conducting a drive against the Donnelly Garment Company at that time?

Trial Examiner Batten: Well, now, Mr. Ingraham, that comes very definitely, I think, within the matter I want an offer of proof on. That is, now, if you want to ask this witness, is that the time that the union started its organizational campaign, that is an entirely different thing, but when you say, was that the time when they started their campaign against the Donnelly Garment Company, now, I am not going into that until I get an offer of proof on it, Mr. Ingraham.

Mr. Ingraham: Well, can I make an offer through this witness?

Trial Examiner Batten: You mean, as a part of the offer which I have requested you to make?

Mr. Ingraham: Yes.

Trial Examiner Batten: Well, I think all you will have to do is to incorporate the offer you would make at this time in that written offer of proof. I am not going, as we [fol. 1398] go through, Mr. Ingraham, as I said before, trying the issues as I have now defined them—I am going to limit it to those issues.

Now, when the time comes for you to make your written offer of proof on that entire matter, I want it in one place, and you may make it, I think, as we tentatively agreed upon, in any way you see fit, either by reference to testimony or by other means, but I am not going to delay this part of the hearing as we go along with these witnesses, beginning to make this offer. It has got to be present all at one time in one place so that I can pass upon the whole matter.

Mr. Ingraham: Well, now, do I understand, your Honor, that later when I submit the written offer of proof, I can include an offer that I would make through this witness?

Trial Examiner Batten: Yes, you may.

Mr. Ingraham: And not stop now to do it?

Trial Examiner Batten: Yes, you may. In other words, I am not going to place any restrictions upon any of the parties in the offers that I have asked you to make. You may make them just as complete as you please, just as little as you please, by any method you please, but I don't want to delay this part of the hearing to have those made.

* * * * * * *

[fol. 1400] By Mr. Ingraham:

Q. Now, where did you sit with reference to Fern Sigler? A. Across one table.

Q. Were you facing each other? A. No, sir.

Q. Your back was to her back? A. Yes, sir.

Q. About how far away was Fern Sigler?

A. Oh, about 14, 15, 16—I don't know exactly. I am no judge of feet.

Q. Was there anything in between where you were sitting and where Fern Sigler was sitting?

A. What do you mean?

Q. Any tables, or anything?

A. There was one table.

Q. Now, did you go over to where Fern Sigler was?

A. You mean, during the demonstration?

Q. Yes. A. No, sir.

Q. What did you do? A. Stayed at my machine.

Q. Did you sew? A. Part of the time.

Q. What did you do the rest of the time?

A. Watching the demonstration.

[fol. 1401] Q. Did you stand up?

A. No, sir.

Q. You were seated all the time?

A. Yes, sir.

Q. Was the power on?

A. Yes, sir.

Q. That was on during the entire time of the demonstration?

A. Mine was; yes, sir.

Q. Do you know whether Fern's was?

A. No, I don't.

Q. I will ask you, Mrs. Fike, if that is a picture of the section in which you were employed, and also is the section in which Fern Sigler was employed?

(Thereupon, the document above referred to was marked as "Respondent's Exhibit 4" for identification.)

A. Which is the east end of that? Is this the east end (indicating)?

Q. Yes.

A. It doesn't look—this is supposed to be our section?

Q. I think so. I think it is this one (indicating).

A. Well, there was girls working on this other row here, up to about there. I don't see none at that end.

Q. Well, this isn't that day.

A. Oh, I see. Well, that is the way our section looked. [fol. 1402] Yes, that looks like our section.

Mr. Ingraham: Respondent offers in evidence Exhibit 4.

Trial Examiner Batten: Does that include, Mr. Ingraham, more than one section?

Mr. Ingraham: Yes. Fern Sigler's section and Mrs. Fike's section.

Mr. Ingraham: Mrs. Fike, I will hand you Respondent's Exhibit 4, and could you put a check mark where you were sitting and where Fern Sigler was sitting?

Mr. Langsdale: Mr. Ingraham, will you state in the record—

Trial Examiner Batten (interrupting): Have her mark it in ink, I would suggest.

Mr. Langsdale: Will you state in the record when this photograph was taken?

Mr. Ingraham: This photograph was taken—

Trial Examiner Batten (interrupting): I would suggest that you put a cross, No. 1, where she was and a cross, No. 2, where the other person was.

Mr. Ingraham: This was taken just prior to the hearing in the injunction suit before Judge Miller.

[fol. 1403] Mr. Langsdale: Long after the 23d of April, 1937?

Mr. Ingraham: Yes.

A. That doesn't look quite familiar to me. I can't swear that was the section. So many of those sections look alike that I couldn't swear that was the section. I

can't tell you who those girls are. If I could tell who they are, I could be sure.

By Mr. Ingraham:

Q. Is the arrangement similar to the arrangement that was in existence when you were there in 1937? I mean by that, the tables and the machines?

A. Yes; the tables look like they are arranged the same.

Q. And will you state if you were sitting at the table at the left, or some other table?

A. Well, which would be the left on here?

Q. There (indicating on exhibit).

A. I think, if this is our section, it was about there (indicating) that I was sitting, but I can't swear just where.

Q. Would you mark that, please, with ink?

A. I wouldn't want this taken as a definite answer.

Trial Examiner Batten: You said, if that is your section, that is where you were sitting?

A. Yes.

(The exhibit was accordingly marked by the witness.)

A. It was about there (indicating).

Mr. Ingraham: Will you mark where your sister, Fern [fol. 1404] Sigler, was?

A. This (indicating) is the other table in our section. If this is the one, it was about there. (Indicating).

Trial Examiner Batten: You had better put "number 1" on the cross where she said she was, and "number 2" where she says Fern Sigler was.

(The exhibit was accordingly marked.)

Mr. Ingraham: Let the record show that "number 1" refers to where Mrs. Fike was sitting, and "number 2" re-

fers to where Fern Sigler was sitting, in respondent's exhibit No. 4.

By Mr. Ingraham:

Q. Mrs. Fike, what you saw there you saw while you were sitting at your machine? A. I did.

Q. And the power was on? A. Our power was on.

Q. When the power is on is there any noise from the shaft?

A. There is a little, but only if the machines are running is there an excessive noise.

. . . . . .

[fol. 1405] By Mr. Ingraham:

Q. Well, did you hear what was said at your sister's table?

A. I didn't hear everything.

Q. You have recited everything you did hear?

A. Well, it might not be all, but that is what I remember.

Q. Your instructor told you to keep at work?

A. She told us a time or two to get to work.

Q. And she told the other girls in your section the same thing?

A. Yes, sir.

Q. Did any of the girls from your section join in the demonstration?

A. No, sir.

Q. Do you know whether or not the instructor in Fern Sigler's section told the girls there to keep at work?

A. I couldn't hear what she said. She was up at the other end.

Q. So, you didn't hear anything that she said?

A. Fern's instructor?

Q. Yes.

A. No, sir.

. . . . . .

[fol. 1412] Trial Examiner Batten: Mr. Lane.

By Mr. Lane:

Q. Mrs. Fike, in connection with this meeting of March 18, 1937, I believe you stated that Rose Todd presided at that meeting.

A. I think I did.

Q. Now, who talked at that meeting?

A. Rose Todd talked.

Q. And who else?

A. Mr. Tyler.

Q. Mr. Tyler?

A. Yes, sir.

Q. At the meeting of March 18, 1937?

A. Oh, I am mistaken in that. I believe it was Herb Mulcher.

Q. Anybody else?

A. I don't believe I remember right now who it was. I did know at the time.

Q. Can you tell me the name of anybody else who talked at that meeting other than Rose Todd and Herbert Mulcher?

A. March 18th meeting?

Q. March 18, 1937.

A. Mrs. Reed.

Q. And anybody else?

A. There was others, but I don't remember who they were.

Q. You say there were others who talked?

[fol. 1413] A. I think there was. I don't know. I don't remember.

Q. You can't name the name of anybody other than those three that you have mentioned?

A. Not right now, I can't.

* * * * * *

[fol. 1416] Q. And wasn't it common talk around the Donnelly plant that there was a great deal of commotion

out there around those Missouri, Gernes and Gordon plants?

Mr. Langsdale: I object to that as immaterial; wouldn't tend to prove or disprove any issue in this case, and opens up a new avenue for testimony. I think the Examiner has ruled that line out up to now.

Mr. Lane: They went into the matter of these busses and these identification cards, and these men on the dock. I think, therefore, I have a right to show what was taking place there with—

. . . . . .

[fol. 1417] Mr. Lane: The purpose of my making this offer, or asking this question and similar questions, is to refute the charge that has been made here by counsel for the International and Board that this union we represent is a sham union, and my purpose is to show that atmosphere that surrounded the employees at that time, and their re-[fol. 1418] action, and attitude, as having some bearing upon why they took the action they did take on the part of the union.

Trial Examiner Batten: Mr. Lane, I will make the same ruling in that I did once before. That is this: if there were any actual threats or actual violence at this plant, that in any way can be chargeable to the respondent, I certainly want to receive it.

Now, I am not going into this organizational campaign that took in the City of Kansas City. Now, I am not going all over that again, and if you want to, you may make as complete an offer of proof on that, and, after all, that may be probably the best way to present that whole problem of this campaign that was going on by the union here in Kansas City, but I can say now that I am not going to receive it in this hearing.

Mr. Ingraham: Well, if your Honor please, in regard to the use of the busses and passes, I understood that you

ruled that the respondent could not go into this drive of the International at this time. It, of course, is the respondent's position that on account of what the International was doing, and these other plants, threatening to do against the Donnelly plant, that that was the reason for the busses and the cards, and now, as I understood your ruling, you said that at this time we couldn't present those matters, that that was going into the evidence regarding the conspiracy and the drive of the International against the Donnelly [fol. 1419] plant, and that you didn't think it was proper to go into it.

Trial Examiner Batten: Yes, I said that with respect to the respondent, but, of course, I am speaking now of Mr. Langsdale, and I think that the other day—I think, didn't we discuss this same thing and I think Mr. Tyler then brought the matter up, did you not, Mr. Tyler?

Mr. Tyler: I believe so, yes.

Trial Examiner Batten: And at that time I think I said, and you made an offer of proof, did you not, as to the witness which was on the stand?

Mr. Tyler: Yes, I think so.

Trial Examiner Batten: As I remember it. Well, now, I am going to take that position very definitely with respect to the intervener on this entire campaign that went on here in Kansas City, and I think we can just as well determine now that you shall prepare a complete offer of proof on it, because I don't intend to receive it.

Mr. Tyler.

Mr. Tyler: May I understand the Examiner's ruling? Do I understand that you decline to permit us to show that the employees of the plant, as one of their reasons for choosing their own union, were affected by both fear of the campaign carried on by the International Ladies' Garment Workers' Union at nearby shops, threats that it should be able to be applied to the Donnelly employees, and [fol. 1420] dislike of those methods, you decline to let us

show those things as establishing one of the reasons why these employees decided to, of their own free will, form their own union? Is that correct?

Trial Examiner Batten: Mr. Tyler, not quite that broad. I said that if any threats were made against these Donnelly employees, or any violence there, I even question how material that may be, but I will receive that, but on the other, on your whole idea there that that was one of the reasons for the organization of a Donnelly Garment Workers' Union, and a valid reason, I want an offer of proof submitted on it.

• • • • • •

[fol. 1421] In other words, what I am attempting to do by this is to eliminate from this hearing all of this violence, intimidation, all of those matters, from the present hearing, so that I may have an offer of proof on them and determine at that time just how material they are to this hearing. Now, I don't mind saying, as far as I can see this far, I don't see that they have anything to do with these issues.

• • • • • •

[fol. 1422] Mr. Langsdale: I want to understand the Examiner's ruling on this particular matter. I have understood up to now you have permitted both respondent and the intervener to show threats made to any of the employees but not to go into disturbances that may have occurred at Gerney's or Gordon's, or anything of that sort.

Trial Examiner Batten: That is correct. I want to eliminate everything by this offer of proof except direct threats and direct violence. I think I asked Miss Todd on several occasions, "Did anybody threaten you? Did anybody ever commit any violence as far as you were concerned?" I will receive that in this hearing; I don't want that in the form of an offer of proof.

Mr. Langsdale: It is my opinion, and I think it coincides with the Examiner's, that the intervener would also have

a right to show direct threats to their membership as some evidence of why they formed their union. I would hate to see the Examiner exclude that, because I believe it would be error to do so.

Trial Examiner Batten: Mr. Langsdale, I have made two rulings already, one two or three days ago, that exclude that.

Mr. Langsdale: I know you have, but Mr. Lane has made a statement to the effect that he wants to offer evidence of violence and threats as one reason for forming their union. Now, if they can do that, in my humble opinion it [fol. 1423] is material, but to go out and show what was happening at Gordon's and Gerney's, or some remote place, that wasn't a threat or violence toward any of their members, I think that is not proper, and that has been the ruling of the Examiner up to now.

Trial Examiner Batten: Mr. Lane may proceed in line with my ruling.

* * * * * *

[fol. 1424] Mr. Lane: I want to make this further observation with respect to the question I asked:

I desire to show the attitude or state of mind of the employees, whether that attitude was created by rumor or by [fol. 1425] ideas of terrorism, which may or may not be true, nevertheless it is the state of mind which I want to show; and to show further that that state of mind actuated to cause them to want to form their own union, and that would go to the bona fideness of their union and would be a good reason for the formation of their union, whether founded upon fact or not.

Trial Examiner Batten: I agree with you, Mr. Lane. And, even if founded upon information which was absolutely false, if it is relevant to these issues—I mean, the truth or falsity of these things is not in issue.

Mr. Lane: That was the purpose of my question, to show that fact.

Trial Examiner Batten: And that matter, of course, will be included in this offer of proof.

. . . . . .

[fol. 1428] Mr. Stottle: Mr. Examiner, don't you think when the Board's witness is on the stand and she is asked some question about buses, instead of letting them put in their case and then when we attempt to repute it, cut us out—

Trial Examiner Batten: Mr. Stottle, I agree with you, when this—whatever her name is—was on the stand I did permit some of those questions. I will have the record indicate now that all of that testimony is stricken out and [fol. 1429] will have to be resubmitted in the form of an offer of proof. It was really an oversight on my part.

Last night, in working this out, I fully intended to eliminate the two allegations in the complaint. And, as I said a moment ago, if when the Board makes its offers on those, I eliminate them, the respondent has nothing to do.

. . . . . .

[fol. 1429] By Mr. Lane:

Q. Did you at the meeting on the 27th of April, 1937, sign a card similar to this? A. Yes.

Q. A card with the same words that appear on there except, of course, the signature that appears on this card? [fol. 1430] A. I don't remember whether they were the exact words, but it was similar.

Q. You did sign a card similar to this that was passed out at that meeting?

A. Yes, sir. That is April 27.

Q. That is the day on which you had been spending the morning, part of the morning, in Jane Palmer's office?

A. Yes, sir.

. . . . . .

[fol. 1435] Milton Slotkin, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Foster:

Q. State your name, please.

A. Milton Slotkin.

Q. What is your address?

A. 4936 Troostwood Road.

Q. By whom are you employed, Mr. Slotkin?

A. By the Kansas City Chair Rental Company.

Q. And in what capacity?

[fol. 1436] A. The capacity of manager.

Q. How long have you held that position?

A. The last two years.

Q. Are you familiar with the books and records of the Kansas City Chair Rental Company?

A. Well, to a certain extent. Not as much as my secretary.

Q. But you have had occasion to review the records of that company? A. Occasionally.

Q. Now, has your company ever had an account with the Donnelly Garment Company?

A. With the Donnelly Garment Company; yes, sir.

Q. And over what period of time would you say that you have had an account with the Donnelly Garment Company?

A. Well, as long as I have been there, and I imagine since—well, I imagine about three or four years before that, roughly. I wouldn't say for certain.

Q. Now, has your company on numerous occasions during the last four or five years delivered chairs to the building at 1828 Walnut, which houses the Donnelly Garment Company? A. Yes, sir.

Q. And has your company supplied chairs there rather regularly, at regular intervals, for that company?

A. Well, I wouldn't say that.

Q. Have you made a check of your records to deter-[fol. 1437] mine upon what dates chairs have been rented from your company by the Donnelly Garment Company?

A. I have gone into that as far as I possibly could, with the books I had to work with.

Q. Now, I wonder, Mr. Slotkin, if you would turn to your books and state for the record the date, and the number of chairs delivered since 1935.

* * * * * *

[fol. 1438] Trial Examiner Batten: (Interrupting) You mean, those are the original sheets, or those are copies?

A. No, these are the original sheets from my ledger, as far back as I could go.

Mr. Stottle: Mr. Examiner, we object on the ground those are not the books of original entries, but his original entries have been transferred to these sheets, and, further, on the ground that the entries there have not been shown to have been made by this particular witness.

Trial Examiner Batten: I will overrule the objection.

Trial Examiner Batten: This comes out of the regular book you keep down there, doesn't it?

A. It is supposed to; yes, sir.

By Mr. Foster:

Q. You may proceed with your answer.

A. 1936, January 5, 60 chairs for 2 days. March 4—

Q. (Interrupting) Pardon me, Mr. Slotkin. Can you tell who ordered those chairs?

A. I can't tell you that at all. I have no invoices going [fol. 1439] back to this particular year. The only record I have is from 1938, August, until now, when I had a regular system installed by an auditor.

Mr. Stottle: Now, Mr. Examiner, the respondent objects further on the ground there is [now] showing as to who ordered the chairs that he is purporting to testify about.

Trial Examiner Batten: Well, he can read into the record what this ledger sheet shows. Now, if there are any further questions, Mr. Foster, I would suggest that you wait until he has read into the record just what this ledger sheet shows.

* * * * * * *

A. (Continuing) May 9, 40 chairs. June 14, 65 chairs, 3 days.

Mr. Shepard: Would you go a little slower, please?

A. (Continuing) June 14, 65 chairs, 3 days. June 14, 20 chairs for 3 days. August 1, 35 chairs. August 18, 70 chairs, 3 days. December 19, 450 chairs. December 19, 100 childs' chairs.

Mr. Langsdale: What year?

A. 1936.

Mr. Patten: Read the last one again, please.

A. December 19, 450 chairs. December 19, 100 childs' chairs. February 19, 100 chairs, 2 days. March 21, 15 chairs. April 23, 20 chairs.

Mr. Langsdale: 1937 now?

[fol. 1440] A. No. I will inform you when I get to 1937.
Q. That is 1936?
A. Yes, all '36. April 21, 50 chairs.

Mr. Shepard: What month?

A. This is April 21.

Mr. Patten: What year?

A. 1936.
Q. What was the number of chairs on the 23rd?
A. 20.

[fol. 1441] Trial Examiner Batten: He said when he gets to 1937 he will advise all of us. In other words, what he is reading now is 1936.

The Witness: June 12, 100 chairs. April 12, 25 chairs. August 7, 60 chairs, September 26, 40 chairs. October 14, 125 chairs. October 16, 50 chairs. October 16, 50 chairs. October 27, 100 chairs.

November 3, 1,100 chairs. December 19, 154 childs' chairs. December 29, 50 chairs.

I see here by this book that the first eight dates that I gave you gentlemen were for the year 1935. I didn't realize that until I finished that page.

That is all of 1936.

By Mr. Langsdale:

Q. November 3, 1,100 chairs. That was 1936, was it?

A. That is right.

Q. Whose name is on that ledger?

A. There isnt any one particular person. There is a Miss Fitzgerald here on March 21.

By Mr. Foster:

Q. The account is in the name of Donnelly Garment, 1828 Walnut. Is that not what the ledger sheet shows?

A. Yes, sir.

Q. And by Donnelly Garment you refer to the Donnelly Garment Company at 1828 Walnut, do you not?

[fol. 1442] A. I wouldn't swear to any order that occurred after 1937, because I wasn't there and I will not take any responsibility for it.

Q. Will you proceed through 1937 as through 1936?

A. February 13, 1937, 50 chairs. February 24, 48 chairs. March 9, 50 chairs. March 9, 100 chairs. March 19, 1,200 chairs.

Mr. Patten: What was that last figure, please?

A. March 19, 1,200 chairs.

By Mr. Foster:

Q. Are you positive that is March 18, or March 19?

A. As I understand the system when I came to work there, the entries were made the day after the chairs were picked up.

Q. So, those chairs were delivered for use on March 18?

A. I wouldn't say that. It might have been the 18th or the 19th.

April 28, 1,200 chairs. April 30, 65 chairs.

May 12, 1,200 chairs. June 7, 945 chairs. June 8, 65 chairs.

July 22, 250 chairs. July 22, 750 chairs. July 22, 150 chairs.

By Mr. Langsdale:

Q. What was the 750 chairs, what date?

A. July 22. The last three dates were all the same.

July 31, 50 chairs.

October 8, 929 chairs. October 12, 65 chairs. October 25, 50 chairs.

[fol. 1443] November 19, 595 chairs.

December 8, 500 chairs. December 8, 75 chairs. December 9, 20 chairs. December 18, 151 childs' chairs and 5 adults' chairs. December 23, 24 chairs. That concludes 1937.

Mr. Foster: What is the heading on that invoice sheet or ledger sheet?

A. Donnelly Garment Company, 1828 Walnut, Miss Fitzgerald and Mr. Price.

* * * * * *

Q. Is he usually the party who puts in the order for chairs, when you have been there?

A. I don't know. I never answered the telephone. My job is outside.

Q. How do you know about what was ordered?

A. I have personally supervised the setting up of the chairs for fashion shows.

* * * * * *

[fol. 1444] Mr. Stottle: Mr. Examiner, may it be understood our objection continues to all of this testimony, on the same ground, the witness did not make the entries, doesn't know who ordered the chairs—

Trial Examiner Batten: You may have a continuing objection, Mr. Stottle.

By Mr. Foster:

Q. I wish you would proceed in the same manner with 1938.

A. There is one more date here for 1937—the 23d, 24 chairs.

Q. The 23d of what month? A. December.

By Mr. Shepard:

Q. I think you gave that. Were there two on the 23d?

A. That is right. It was just continued over to the new ledger.

January 5, 500 chairs. January 2, 500 chairs.

March 9, 500 chairs. March 10, 929 chairs. March 14, 65 chairs. April 6, 500 chairs. April 28, 45 chairs and 6 tables.

May 11, 500 chairs. May 12, 40 chairs and 4 tables. May 16, 25 chairs. May 16, 125 chairs.

June 13, 30 chairs. June 13, 60 chairs and 4 tables. June 15, 400 chairs. June 13, 75 chairs. June 27, 40 chairs.

July 6, 350 chairs. July 12, 600 chairs.

August 3, 500 chairs. August 8, 100 chairs. August 9, 50 chairs.

* * * * * *

[fol. 1446] By Mr. Foster:

Q. Now, do you have any separate accounts with either the Donnelly Garment Sales Company or the Nelly Don Loyalty League?

A. On the reverse side of this ledger sheet I see the girl had made a separate account for the Donnelly Garment Workers' Union at 1828 Walnut.

Q. When was that second account made?

A. Beginning—

Q. (Interrupting) Started?

A. Beginning of this year, 1939.

Q. The beginning of 1939 was the first time that the Donnelly Garment Workers' Union had an account with your company; is that correct?

A. Yes, sir, that is right.

Mr. Langsdale: What date?

A. Not because of their asking. I don't know why this is on here. I would have to call the office and find out.

Mr. Foster: What date in 1939 did it start? The first of the year?

A. It started with the first month, January 10th.

Q. What are the entries on that account?

A. January 10th, 450 chairs.

Mr. Stottle: What are you reading from now—1939?

A. Still 1939.

Mr. Stottle: I thought you said you had finished—

[fol. 1447] Trial Examiner Batten (interrupting): This is the Donnelly Garment Workers' Union account, Mr. Stottle.

Mr. Stottle: Oh; I see.

By Mr. Langsdale:

Q. January 10—what?

A. 450 chairs. February 7, 450 chairs. March 14, 450 chairs. April 4, 450 chairs.

Now, on here I see she has a notation "Athletic Club". I don't happen to know what that is. There are six orders down here from them.

By Mr. Foster:

Q. You might read those, too, so your record will be complete.

A. March 14, 50 chairs. March 18, 500 chairs. March 19, 50 chairs. March 21, 100 chairs. March 24, 500 chairs. March 25, 450 chairs. May 2, 500 chairs, and June 6, 400 chairs.

Q. Now, Mr. Slotkin, that completes your record or account of the records of the account for the Donnelly Garment Workers' Union and the Donnelly Garment Company; is that true? A. Yes, sir.

* * * * * * *

[fol. 1448] Q. Mr. Slotkin, do you have any records or documents, deposit slips, indicating in what manner and by whom these various accounts that you have referred to were paid?

A. Yes, sir. I have deposit slips here, only as far back as the ninth month, 1937.

Q. And with what bank are those deposit slips made? [fol. 1449] A. Union National.

Q. I wonder if you would read whatever information is on those deposit slips pertaining to the Donnelly Garment Company or the Donnelly Garment Workers' Union?

A. All the way through?

Mr. Stottle: Do I understand, Mr. Examiner, our objection continues as to this testimony, also?

Trial Examiner Batten: Yes, it may. Mr. Foster, I don't know as I understand. You want him to read into the record, you mean, the date of the deposit slip and any-

thing that appears on that slip pertaining to these two requisitions?

* * * * * *

Mr. Foster: I want to find out, if I can, who paid for these invoices for the use of these chairs; if there is anything on those deposit slips tending to show that, I want it read into the record.

Mr. Stottle: Well, we add to our objection that this would not be the best evidence of whether the Donnelly Garment Company or the Donnelly Garment Workers' Union paid for them, as to what they might have written on the deposit slips.

Trial Examiner Batten: Well, of course, I can't tell until I see what he is going to read, Mr. Stottle.

* * * * * *

[fol. 1450] Mr. Patten: I want to make a further objection and ask a qualifying question, that is, a preliminary question.

By Mr. Patten:

Q. Mr. Slotkin, did you prepare the deposit slips yourself?

A. Well, a few of them when the girl happened not to be at work or on vacation.

Q. Is the person present who prepared the deposit slips?

A. No, sir.

Q. Is she still in the employ of your company?

A. Well, part of these were prepared before she ever came to work at our company.

Mr. Patten: Now, the intervener, Donnelly Garment Workers' Union, objects to the reading or introduction of [fol. 1451] these deposit slips for the reason that they are not the best evidence. Mr. Slotkin did not prepare them himself, and what somebody, some absent person unknown to this intervener may have put on there is not binding on this intervener.

Trial Examiner Batten: The objection is overruled.

* * * * * *

[fol. 1452] The Witness: Do you want me to read these now?

Mr. Foster: Yes, please.

A. October 25, 1937—Shall I read it exactly as it is on here?

By Mr. Foster:

Q. Yes.

A. Donnelly Gar. $66.33. November 14-38, Donnelly, $19.18.

November 11, 1938, Donnelly, $22.85.

October 12, 1938, Donnelly, Gar. $2.11.

September 12, 1938, Donnelly, $11.22.

October 15, 1938, Donnelly, $10.20.

August 6, 1938, Donnelly Ga. $10.20.

July 30, 1938, Donnelly, 75 cents.

July 21, 1938, Donnelly, $19.38.

June 20, 1938, Donnelly Gar., $8.16. June 19, Nelly Don, $2.94.

Q. What year, please?

A. 1938, June 9.

Mr. Stottle: June 9 or June 19?

[fol. 1453] A. 9.

May 23, Donnelly Garment, $7.65.

May 21, 1938, Donnelly Gar., $10.20. May 20, 1938, Donnelly Gar., $3.36.

April 9, 1938, Donnelly Gar., $10.16.

March 27, 1938, Donnelly Gar., $2.68. March 23, 1938, Donnelly, $70.98.

February 14, 1938, Donnelly, $4.78. And, the same deposit slip, same date, Donnelly Gar., $10.20.

January 12, 1938, Donnelly Gar., $10.20.

December 13, 1937, Donnelly Gar., $10.20. December 3, 1937, Donnelly Gar., $12.14.

November 12, 1937, Donnelly, $5.30. November 8, 1937, Donnelly, $4.08.

January 4, 1938, Donnelly, $16.36.

By Mr. Foster:

Q. Those are all of the deposits that have been made upon the accounts which you have just previously testified to, is that correct?

A. I have a few more.

Q. Excuse me.

A. June 19, 1939, Donnelly Gar., $3.06.

Here is one that is not dated—just says Donnelly Gar., $5.31.

May 12, 1939, Donnelly, $2.04. May 5, 1939, Donnelly Works, $24.48.

. . . . . .

[fol. 1454] By Mr. Langsdale:

Q. How much is that?

A. $24.48. On the same deposit slip, the same day, it says, "Nelly Don, Ath., $29.78."

April 15, 1939, Donnelly, $9.18.

March 13, 1939, Donnelly, $22.44.

January 16, 1939, Donnelly Workers, $9.18.

Q. What is that date?

A. January 16, 1939. January 7, 1939, Donnelly, $29.58.

That is all of the deposit slips.

. . . . . .

[fol. 1455] By Mr. Foster:

Q. Mr. Siotkin, I wonder if you would have any objection, when you get back to your office, having your girl bookkeeper come up to this court room and explain a few matters which you evidently have no personal knowledge of, and whether you would have any objection to leaving your books and account records here so that she could have them with her at that time?

A. Do you know specifically when you will need her. I am pretty busy this week. See, she has just came back [fol. 1456] from her vacation. I have been there two weeks, and lots of things to do for the 4th of July, or else, I will lose some orders.

Q. Could you get her up here right away now? I don't believe it would take longer than 15 minutes or so.

A. We have no car there. I imagine she would have to take the street car. You mean you would want her at the same time I am here?

Q. I would want her here as soon as possible. It wouldn't be necessary that you remain, Mr. Slotkin.

A. I see no objection.

Q. Incidentally, Mr. Slotkin, you are here, are you not, under subpoena?

A. Yes, sir.

Q. And your were subpoenaed to produce the various records which you have testified from. Is that correct?

A. That is correct.

Q. Mr. Slotkin, we will make arrangements to have some one go with a cab to pick up the young lady at your office. Now, what is her name, please?

A. Her name is Mary Afton Alexander.

* * * * * *

[fol. 1458] Cross-Examination.

By Mr. Langsdale:

Q. Mr. Slotkin, I hand you these pages which have been marked "I.L.G.W.U. Exhibits 4, 5, 6 and 7" and ask you to state just what they are.

A. They are the ledger sheets taken from the accounts receivable ledger.

(Thereupon, the documents above referred to were marked as "I.L.G.W.U. Exhibits Nos. 4, 5, 6 and 7" for identification.)

By Mr. Langsdale:

Q. And where did you get them to bring them to this hearing?

A. My file.

Q. And are those—is that the regular file that you maintain in your office in the regular course of your business?

A. Yes, sir.

Q. And have you any other file containing those same entries?

A. Only in those books.

Q. This is one of the regular and usual records that you keep and maintain in carrying on your business?

A. Yes, sir.

Q. And you got these from that file to bring to this hearing?

A. That is correct.

[fol. 1459] Q. I mean, I.L.G.W.U. Exhibits Nos. 4, 5, 6 and 7.

Now, Mr. Slotkin, is there any other item that you know of, of any chairs having been sent to 1828 Walnut during the period covered by Exhibits 4, 5, 6 and 7?

A. I couldn't think of any offhand.

Q. Well, these are all of the records, aren't they?

A. They are all that I know about.

Q. So far as you know, this 4, 5, 6 and 7 contain a record of all the chairs that were sent to 1828 Walnut during the period covered by these exhibits Nos. 4, 5, 6 and 7?

A. Yes, sir.

Mr. Langsdale: We offer Exhibits 4, 5, 6 and 7 in evidence.

Mr. Stottle: Respondent objects on the ground that they are not the best evidence, and that the witness personally didn't make the entries; that there is no showing that any person authorized by the Donnelly Garment Company ordered any particular item on the list; that it is not binding on the respondent and constitutes hearsay, and is wholly immaterial to the issues.

Mr. Langsdale: Of course, they are taken from the regular records used and maintained in the business of this witness, and are material for whatever they prove.

Trial Examiner Batten: Mr. Patten.

Mr. Patten: Intervener objects for the reason that how [fol. 1460] the Chair Rental Company may have kept the books is a matter wholly beyond the control of the Donnelly Garment Workers' Union, or the respondent, for that matter. There is no showing here, either the respondent or the intervening union directed these accounts to be mixed up and kept on one ledger sheet.

Trial Examiner Batten: The objections are overruled. They will be received.

(The documents heretofore marked as "I.L.G.W.U. Exhibits Nos. 4, 5, 6 and 7" were received in evidence.)

* * * * * *

[fol. 1462] By Mr. Langsdale:

Q. Now, do you know who wrote on this invoice "Donnelly Garment Workers' Union"?

A. No, sir, I don't.

Q. Did you have any account with the Donnelly Garment Workers' Union at that time, as far as these ledger sheets show?

A. Yes, sir.

Q. With the Donnelly Garment Workers' Union?

A. With the union?

Q. Yes. On October 31, 1938?

A. Well, I would say no, not that I know of.

Q. Well, 4, 5, 6 and 7 contain records of the accounts of all of the chairs that were sent to 1828 Walnut, by the period covered by 4, 5, 6 and 7, do they not?

A. Yes, sir. It is designated there on the ledger sheet so, whether they were for the Workers' Union, or whatever they were for, as far as I can see. You know as much about those ledger sheets as I do.

* * * * * *

[fol. 1470] Q Now, I show you I.L.G.W.U. Exhibit No. 4 and call your attention to the item dated March 19, 1200 chairs, Invoice No. 1497, $24, and ask you what is written in the left-hand column of that record.

A. Did you say 1497?

Q. Yes.

A. "Nelly Don Loyalty League."

Q. That is for March 19, 1937, is it?

A. 1937; yes, sir.

Q. I hand you the same exhibit, I.L.G.W.U. Exhibit No. 4, and call your attention to invoice No. 1934, dated April 28, 1200 chairs at $24.

A. Yes, sir.

Q. And ask you to state what is written in the left-hand column of that record.

A. "Nelly Don Loyalty League."

Q. That is 1937?

A. Yes, sir.

* * * * * *

[fol. 1475] Q. I suppose the payment of this account was always made by check?

A. As far as I knew.

Q. That was indicated by your deposit slips?

A. Well, we can't say that unless we actually check the slips against—

Q. Let me have those deposit slips you testified from.

(The deposit slips referred to were handed by the witness to Mr. Langsdale.)

A. Those are the ones I testified to.

[fol. 1476] Mr. Langsdale: Will you mark these as exhibits, please?

Trial Examiner Batten: I would suggest that you mark those exhibit No. 8, 8-A, B, C, and so forth.

(Thereupon the deposit slips above referred to were marked "I.L.G.W.U. Exhibits No. 8-A to 8-GG, inclusive.")

[fol. 1477] By Mr. Langsdale:

Q. Mr. Slotkin, I hand you these deposit slips which have been marked "I.L.G.W.U. Exhibit 8-A to 8-GG," inclusive, and ask you to state where you got them to bring them to this court room?

A. Out of my filing cabinets.

Q. And is that filing cabinet maintained there in the regular course of your business?

A. Yes, sir.

Q. And where you keep that kind of records permanently?

A. Well, only for about 2 or 3 years. Then we put them in a box.

Q. But during that two or three years you keep them there, do you?

A. Yes, sir.

Q. And that is where you got them this morning?

A. Only the ones for 1939. The others came from the box.

Q. The others came from where?

A. Came from a box where we store our old records that we have there.

Q. Well, that is a box where you regularly in the course of your business store your records of that age or date, is it?

A. Well, it is where we will, the records that we have, yes.

Q. You got them from that place?

[fol. 1478] A. Yes, sir.

Q. And brought them to the court room this morning?

A. Yes, sir.

Mr. Langsdale: I offer International Ladies' Garment Workers' Union Exhibits Nos. 8-A to 8-GG, inclusive.

Mr. Stottle: The respondent objects to the introduction of these exhibits for all the reasons that we have heretofore urged, including the fact that they are not the best evidence; that there is no showing by this witness—

Trial Examiner Batten (interrupting): Now, just a minute, on that point. What would be the best evidence?

Mr. Stottle: The best evidence I would say, or some of the best evidence, would be an invoice that had been sent to these different persons and the payment of this. This is just a deposit slip in the bank.

Trial Examiner Batten: You mean the payment—you mean the check it was paid with?

Mr. Stottle: Well, an invoice that it had been paid with. This is not even the check. It is just a notation on a bank slip.

Trial Examiner Batten: That is true, but I assume that what we are trying to do here is get a complete record. I presume we will have to take it in part.

Mr. Stottle: Well, that is one of the objections, that it is not the best evidence and hasn't any sufficient relation [fol. 1479] to this to have any probative effect or tend to prove or disprove any of the issues in this case. Furthermore, we object that the items on here were not made by this particular witness, and not shown to have been made by any person that would bind the respondent or the intervener, even bind this company; that it constitutes hearsay testimony and is so mixed up with other records and so mixed up between the parties here, charges to one and payment by another, that it is wholly impossible to be separated.

Trial Examiner Batten: That doesn't indicate that on these slips, does it?

Mr. Stottle: But the testimony taken together with these slips indicates that.

* * * * * *

Mr. Stottle: Mr. Examiner, we wish to add, also, that it is not made from—it doesn't constitute the original entry made in this company. It is about 3 or 4 degrees off from that. The original records, entries, would be the best evi-
[fol. 1480] dence.

Trial Examiner Batten: If there is no further objection, they will be received.

Mr. Patten: Intervener makes the same objection as the respondent.

Trial Examiner Batten: They will be received.

(The documents heretofore marked as "I.L.G.W.U. Exhibits Nos. 8-A to 8-GG," inclusive, were received in evidence.)

* * * * * *

[fol. 1483] Mr. Langsdale: I think that is all.

Trial Examiner Batten: Mr. Stottle.

Mr. Stottle: Mr. Examiner, Respondent now renews its motion to strike out all of the evidence of this witness, including the exhibits introduced while he has been on the stand, for the reason that there hasn't been any showing that would make them probative evidence in this case. The items are all lumped together under one account, when the witness has stated that some of them might have been for other accounts. The deposit slips are all lumped together and there is nothing here that would enable the Examiner to give any credence to the statements because they are so mixed up and were kept in such a way that they don't show the true facts, and for the further objection that we have already made, it is not the best evidence, and not the original record entries, and not binding on the respondent.

[fol. 1484] Trial Examiner Batten: The motion to strike is denied.

Mr. Stottle: Mr. Slotkin, I hand you I.L.G.W.U. Exhibit No. 4 and will ask you if you know who ordered the first item there, February 13, 50 Acme, $4?

Mr. Langsdale: What year is it?

Mr. Stottle: 1937.

A. No, sir, I don't.

By Mr. Stottle:

Q. I will ask you if you know who ordered the second item?

A. No, sir, I don't know.

Q. Dropping down to the fifth item, opposite which is written the notation "Nelly Don Loyalty League", March 19, 1200 chairs, I will ask you if you know who ordered those.

A. No, sir, I don't.

Q. Do you know whether they were ordered for the Donnelly Garment Company or the Loyalty League or for whom they were ordered?

A. No, sir.

[fol. 1485] Q. Dropping down to the item of April 28, opposite which is "Nelly Don Loyalty League, 1,200 chairs," I will ask you if you know who ordered that item.

A. I can't say, because I don't know.

Q. Do you know whether it was ordered for the Nelly Don Loyalty League or for the Donnelly Garment Company or for the Donnelly Garment Workers' Union?

A. No, sir, I don't.

Q. As far as you know, it might have been ordered by any one of those or used by any one of those?

A. Yes, sir.

Q. Is it not a fact that it might have been ordered by the Athletic Club, as far as you know?

A. Perhaps.

Q. Is it not a fact, Mr. Slotkin, that as to all of the items, each and all of the items, on I. L. G. W. U. exhibits Nos. 4, 5, 6 and 7 that you do not know who ordered any one of those items or for whose use they were ordered?

A. No, sir, I can't say.

. . . . . .

[fol. 1486] By Mr. Stottle:

Q. Do you know whether any of these items were ordered by or used by the Donnelly Garment Company or the Donnelly Garment Workers' Union or the Nelly Don Athletic Club or the Loyalty League?

A. I can't say specifically, no.

Q. Isn't it a fact that all of these items were lumped together in the one account under the name Donnelly Garment Company until perhaps 1939, when there was some separation?

A. Yes, sir; that is the way it was when I came.

Q. And is it not a fact that, although they were listed under Donnelly Garment Company, notations appear throughout the account of "Workers' Union"?

A. Yes, sir, those notations appear.

* * * * * *

[fol. 1489] Q. Isn't it a fact that these ledger sheets, I. L. G. W. U. exhibits Nos. 4, 5, 6, and 7, were made up from those invoices or from other records of your company?

A. They were supposed to have been made up from the invoices.

By Trial Examiner Batten:

Q. When you have a person call in for some chairs you immediately write out an order, is that it?

A. Yes, sir.

Q. Is that written out in triplicate, duplicate, or—

A. In triplicate.

Q. Then, it is from that record that the entries are made on this sheet, is that right?

A. That is right.

Q. Then, you do have an invoice down there for each one of these items?

A. I don't know, for all of them. You see, our records were destroyed, a lot of them, when I came to work there. After a year I managed to get myself lined up so I could install a regular system.

Q. You mean, up to a year ago you had no regular in-

[fol. 1490] voice records?

A. Nothing I could go to like I can now.

Q. Have you anything—

A. I might have some old invoices, a few of them, pertaining to those ledger sheets, and I might not.

Q. What records were destroyed?

A. The invoices. You see, they are all mixed up.

Q. You say you destroyed the invoice records?

A. They were destroyed. I didn't destroy them myself.

Q. Someone representing your company destroyed them?

A. Yes.

Q. In other words, then, you do not have the invoices or the carbons for these invoices running back over a year ago?

A. No, sir.

Mr. Stottle: Mr. Examiner, respondent now renews its objection to strike I. L. G. W. U. exhibits Nos. 4, 5, 6, and 7 for the reason that they are not the original entries but are made up from some other records which were not the original entries.

Trial Examiner Batten: I think I denied the same motion a while ago.

Mr. Stottle: I understand, Mr. Examiner, but this fact has been brought out since then.

Trial Examiner Batten: You certainly wouldn't expect him to produce invoices that had been destroyed, would you?

[fol. 1491] Mr. Stottle: No. But he says these are not the original entries.

Trial Examiner Batten: Well, that would go to the weight to be given to these.

Mr. Stottle: May I explain the point is, those original entries might have had Donnelly Garment Workers' Union on the invoice. If we had those it would show who was the person who ordered them.

Trial Examiner Batten: But, Mr. Stottle, they are destroyed. If the record is destroyed it is impossible to get it.

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[fol. 1520] Recross Examination.

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[fol. 1534] By Mr. Stottle:

Q. Now, Mr. Slotkin, to clear up the question the Examiner asked in this particular order that you have been testifying about, which is Board's Exhibit 16-A and 16-B, which you say you wrote up, you wrote that up from some memorandum that is on a sticker on the desk?

A. Yes, sir.

Q. And at that time you thought it was the Donnelly Garment Company?

A. Well, I might have thought—or I might have just seen Donnelly Garment Workers' Union and just made it out to the Donnelly Garment. You see, by our ledger, we [fol. 1535] didn't attempt to make it different.

Q. Then two days later the girl who took the order in the first place made out the corrected bill to the Donnelly Garment Workers' Union because, as you say, she knew who had placed the order?

A. That is right.

Q. That is what your testimony is?

By Trial Examiner Batten:

Q. Now, you say that was just exactly the way it was done. The girl did it because she found she had made a mistake. Is that what you mean?

A. No, because she seen the invoice wasn't made out correctly.

Q. In other words, then, the girl in your office found this error and no one called concerning an invoice, is that it?

A. I didn't state specifically that some one called. I said they might.

Q. I am asking you now, you said to Mr. Stottle, as I gatbered it, your answer was that the girl found out she made a mistake so she made out another invoice. Now, was that the way it happened, do you know?

A. No, I don't.

Q. Or might it have happened the other way?

A. It might have happened the other way.

Mr. Stottle: Now, Mr. Slotkin, does the same situation—the same situation has been gone into as to two other ex- [fol. 1536] hibits here where the original to the Donnelly Garment Workers' Union is made out that way, and the carbon copies which you have read "Donnelly Garment

Company". What is your explanation on those other two instances, Intervener's Exhibit 10 and Intervener's Exhibit 8?

A. The same possibility occurred there as on the first one that we discussed.

[fol. 1593] ELSA LOU GREENHAW, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Leary:

Q. State your name, please.

A. Mrs. Elsa Lou Greenhaw.

Q. What is your address?

A. 503 East Walnut.

Mr. Ingraham: Kansas City, Missouri?

A. Portland, Indiana.

Mr. Lane: Mr. Examiner, I am sorry, I can't hear the witness. Will you have her speak a little louder, if you can?

Trial Examiner Batten: Will you please speak louder, so they can all hear you.

By Mr. Leary:

Q. Is that a permanent address of yours, Mrs. Greenhaw?

A. No, it is not.

Q. Do you have a permanent address?

A. At present I do not.

Q. Were you ever employed by the Donnelly Garment Company?

A. Yes, I was.

Q. Do you remember when you began your employment with that company?

A. I think it was in the spring of 1936.

[fol. 1594] Q. And in what capacity were you employed by the company at that time?

A. At that time I was a stenographer.

Q. What experience had you had as a stenographer before you went with the Donnelly Garment Company, in numbers of years, I mean?

A. Well, I had some years of experience as a stenographer, and perhaps about six in secretarial work.

* * * * * *

[fol. 1595] Q. When was it that you left the employ of the company?

A. November, 1937.

Q. And under what circumstances did you leave?

A. I was married.

Q. Did you resign? A. Yes.

[fol. 1596] Q. Did you have a supervisor in the order department?

A. The head of the order department was Miss Ruth Alexander. I don't believe she was called supervisor, however.

Q. How many persons were in the order department when you worked there?

A. I think about 25. There may have been some in addition to that who spent their time down in the factory, I don't know.

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[fol. 1597] Mr. Leary: Did Miss Alexander ever give you directions?

A. Just very infrequently.

* * * * * *

[fol. 1601] By Mr. Leary:

Q. Mrs. Greenhaw, I show you what purports to be a photostatic copy of what has been referred to here as a Loyalty petition dated March 2, 1937, as follows:

"We, the undersigners, as members of the Donnelly Garment Company, wish to make it known we are positively happy and contented with the position which we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed."

Do you remember ever seeing either that document or one containing similar words upon its heading?

A. Yes, I do.

* * * * * *

[fol. 1602] By Mr. Leary:

Q. Do you remember who it was who showed you that document?

A. I believe it was Pauline Shartzer.

Q. Who was Pauline Shartzer?

A. She was either a bookkeeper or stenographer in the accounting department.

Q. And had you known Pauline Shartzer in your work around the Donnelly Garment plant?

A. Yes, sir.

Q. Where were you when Pauline Shartzer spoke to you about the so-called Loyalty petition?

A. At my desk.

Q. Was it during the working hours?

A. Yes.

Q. And did she have anything in her hand when she came to you to speak about the Loyalty petition?

A. Just the petition, I think, and a pen.

Q. Were there names signed on the petition at the time?

A. I believe a few.

Q. What, if anything, did Pauline Shartzer say to you?

A. She asked me if I would like to sign it.

Q. What, if anything, did you do?

[fol. 1603] A. I read it and told her I didn't want to sign it.

Q. Well, I direct your attention to March 8, 1937, Mrs. Greenhaw, and ask you if on that date you attended any meeting which was attended by other employees of the Donnelly Garment Company.

A. Yes, I think there was a meeting of all the employees that day.

Q. How do you identify—strike that, please. Was that the first large meeting of employees that you remember as having happened about this period of March and April, 1937?

A. Of course, it is hard to recall dates, you know.

Q. Well, how do you identify it by the events that happened at the first large meeting you attended during this period?

A. One of the first meetings Mrs. Reed talked to the employees.

Q. Now, with reference to this meeting where Mrs. Reed talked to the employees, I ask you to state in what manner you were advised that the meeting would be held?

A. I think we were informed by the head of our department.

Mr. Ingraham: I move the answer be stricken out as speculative.

Trial Examiner Batten: It may stand.

By Trial Examiner Batten:

Q. Who was the head of your department?

A. Miss Alexander.

[fol. 1604] By Mr. Leary:

Q. What, if anything, did she say to you with regard to this meeting?

A. She told us there was to be a meeting of the employees on the second floor at a certain time, and we were all to be there.

Q. Did you go to the meeting?

A. Yes.

Q. Do you remember what time that meeting took place?

A. In the late afternoon, I think, about 4 o'clock.

Q. Do you know Rose Todd?

A. I do.

. . . . . .

[fol. 1605] Q. Did you see Mrs. Reed at the meeting?

A. Yes.

Q. What, if anything, did Mrs. Reed say at this meeting?

A. She talked to us with reference to something that had been in the paper, I believe, just before that time. I think the newspaper article, or letter, or whatever it was—possibly it was a letter that had been sent to the company, and I think it was read first.

Q. It had been sent to the company by whom?

A. By the labor union.

Q. The International Ladies' Garment Workers' Union?

A. I couldn't be positive just from whom it came.

Q. Nonetheless, the letter was read?

A. Yes.

Q. And after the letter was read, what, if anything did Mrs. Reed say?

A. She said she wouldn't permit a union to come in and tell her how to run her business, she wouldn't be dictated to by any labor individuals, and she named Mr. Dubinsky particularly.

Q. Do you remember what, if anything, she said about Mr. Dubinsky?

A. She said, "I won't allow Dubinsky or any other 'ski' to tell me how to run my business."

[fol. 1606] Q. Do you remember at this time any other things that were said or done at that meeting?

A. Well, I believe Miss Todd spoke to us, and I think there was a general expression of loyalty from the employees—that is, in response to Miss Todd's remarks, or possibly there was some other individual.

Q. I direct your attention, Mrs. Greenhaw, to April 27, 1937, and ask you to state whether or not you again attended a meeting of the employees of the Donnelly Garment Company on the second floor of the building.

A. Yes, there was another meeting about that time.

Q. What is the outstanding incident that you remember about that meeting? How do you identify it in your mind?

A. Well, there were a number of meetings along over a period of time and it is a little hard for me to say what happened at each meeting.

Q. Do you know a Mr. Frank Tyler?

A. Yes, I have heard him speak.

Q. Where was the first time that you ever saw Mr. Tyler?

A. He spoke to the employees of the Donnelly Garment Company.

Q. Would you say that that was on the date of April 27?

A. I imagine about that time.

Q. Now, with that recollection established, Mrs. Greenhaw, do you remember how you were advised that that meeting of April 27 was to be held?

[fol. 1607] A. I think, in the same manner.

Q. That is, by Miss Alexander?

A. Yes. Somebody in the department asked us to go to the second floor for a meeting.

Q. Do you remember at what time of day that meeting was held?

A. I think, in the late afternoon.

Q. I direct your attention to May 25, 1937, Mrs. Greenhaw, and ask if on that date you attended a meeting of the Donnelly Garment Workers' Union.

A. I believe so.

Q. Do you remember specifically what incident brings that meeting to mind?

A. It is hard for me to identify those meetings by the dates, because there were so many meetings along about that period of time.

Q. Did you at any of the meetings that you attended on the second floor of the plant take any notes?

A. I took the minutes of one meeting.

Q. How were you notified that that meeting at which you took the minutes was to be held?

A. I think Miss Marjorie Green came to my desk and asked me if I could help her take the minutes of the meeting.

Q. Did you know at that time whether or not Marjorie Green held any office in the Donnelly Garment of Workers' Union?

[fol. 1608] A. I believe she was secretary of the union.

Q. And pursuant to Miss Green's request or suggestion did you go to the second floor of the plant that afternoon?

A. I did.

Q. When you arrived at the second floor of the plant were there any persons in there?

A. Yes.

Q. About how many?

A. Well, the employees were gathering there for the meeting.

Q. The meeting had or had not started when you arrived there?

A. It had not.

Q. Did you take in shorthand the events that happened at that meeting?

A. Yes, I did.

Q. Did you remain there during the entire course of the meeting? A. Yes.

Q. Where did you sit during the meeting?

A. I sat at a table just below the speakers' table, where there was a microphone.

[fol. 1609] Q. After that meeting had concluded did you transcribe the notes you had taken? A. Yes, I did.

Q. Where did you transcribe them?

A. I took them to my desk on the tenth floor.

Q. Do you remember whether you transcribed them on the same day or not?

A. Yes, I did it immediately afterwards.

Q. Then, when you had transcribed your notes, what did you do with the original copy?

A. I gave it to Miss Green.

Q. Where was she when you gave it to her?

A. On the same floor.

Q. Do you remember whether or not you gave it to her that same day or the next day?

A. It was either that day or early the next morning.

Q. Did you make any more than the original?

A. I made one copy.

Q. Did you make the original on the paper of the company? A. Yes.

Q. What color was that paper?

A. White, I think.

Q. And did you make the carbon on the paper of the company?

A. Yes.

Q. And what color was that?

[fol. 1610] A. Yellow.

Q. Were those the ordinary papers that you used in your stenographic work?

A. Yes.

Q. For the company?

A. Yes, it was.

Q. I show you what has been marked as Board's Exhibit 18, Mrs. Greenhaw, and ask you to state briefly what that is.

A. This is a copy of the minutes of the meeting of the Donnelly Garment Workers' Union on May 25, 1937.

Q. Now, is that the yellow copy that you referred to?

A. Yes.
Q. As having made, just a few moments ago?
A. It is.

Mr. Leary: Now, I ask, Mr. Examiner, in view of the fact that this consists of ten pages, that it be marked 18-1, 2, 3, and so forth.

Trial Examiner Batten: Well, I would prefer it if you will make it 18-A, B, C, and so forth.

Mr. Leary: That is satisfactory to me.

(Thereupon, the documents above referred to were marked as "Board's Exhibits Nos. 18-A to 18-J, inclusive," for identification.)

By Mr. Leary:
Q. When you stated to me, Mrs. Greenhaw, briefly [fol. 1611] what this document was, did you not read from the heading of the document on the first page?
A. Yes, but I was speaking of personal knowledge, also.
Q. Now, do you know whether this document contains anything other than the minutes of the Donnelly Garment Workers' Union for that day?
A. Yes, it contains the minutes of the Loyalty League meeting.

* * * * * *

Mr. Leary: Do you know, Mrs. Greenhaw, whether or not the meetings of these two organizations, the Donnelly Garment Workers' Union and the Loyalty League followed each other at that time without any interruption?

A. Yes, they did.

Mr. Leary: The Board offers its Exhibit 18-A to 18-J.

* * * * * *

[fol. 1613] Trial Examiner Batten: Are the attorneys yet in a position to offer their objections, if any, to Board's exhibit No. 18?

Mr Ingraham: I object to the introduction of Board's exhibit 18 for the reason that it purports to be a copy of some minutes, and the original would be the best evidence.

Mr. Langsdale: Of course, they have produced what they say is the original, and these minutes that we have had photostated I told the Examiner we proposed to show they "doctored" those minutes, and now we have what she says is a carbon copy of the minutes she turned over to Marjorie Green, and Marjorie Green produces what she says is the original.

Mr. Lane: Intervener objects to it on the ground that it is not identified.

Mr. Leary: In what particular?

Mr. Lane: It purports to be some copy of an original instrument which is supposed to be in existence.

Trial Examiner Batten: It will be received.

(Thereupon the document previously marked, as above set out, "Board's Exhibit No. 18," was received in evidence.)

By Mr. Leary:

Q. Mrs. Greenhaw, during the tenure of your employment with the Donnelly Garment Company did you have occasion to see incoming mail or documents?

A. I believe all of the incoming mail was—May I change that?

[fol. 1614] Q. Yes.

A. I saw mail that came in with reference to orders and various things.

Q. Do you know whether or not a time stamp was used upon the incoming mail?

A. I think every piece of incoming mail was marked with the time—had a time stamp on it.

Q. During the time you were employed there did you become familiar with that time stamp?

A. I believe so.

Q. I show you intervener's exhibit No. 11 and direct your attention to the bottom center of the document and ask whether or not you note anything on there with reference to a time stamp.

A. That is the time stamp.

* * * * * *

[fol. 1615] Q. During the tenure of your employment with the company did you come to know a person named Marvin Price? A. Yes, I knew him.

Q. On what floor was your office located, or your desk?

A. My desk was on the tenth floor.

Q. Was it on the tenth floor during all of the time you were employed by the company? A. Yes.

Q. Did Marvin Price have a desk on the tenth floor?

A. Yes.

Q. Do you know what Mr. Marvin Price's work was?

A. Yes.

Q. Will you please state what it was?

A. I think he was called custodian, and I believe he [fol. 1616] was in charge of the ordering of materials of all sorts for that building.

Mr. Ingraham: I move that the answer be stricken out as a conclusion of the witness.

Trial Examiner Batten: It may stand.

Mr. Leary: And when you say "materials for the building" do you distinguish in your answer from other materials that are ordered in the operation of the business?

A. Yes. He had no connection with the ordering of piece goods and that sort of thing.

* * * * * * *

By Mr. Leary:

Q. Do you know who it was that ordered the piece goods?

A. That was done by another department. I don't recall the name of the department, but Mrs. Reeves was the head of it.

Q. Do you know how many persons were in the department under Mr. Marvin Price?

A. I don't believe anyone was.

* * * * * * *

[fol. 1624] Q. Did you have occasion to talk with Mr. Green some time in March or April, 1937?

A. Yes.

Q. Do you remember any particular conversation that you had with him?

A. We had a short discussion of the strike that was being held at Gordon's at that time.

. . . . . .

Mr. Leary: What, if anything, was said by Mr. Green at [fol. 1625] that time with regard to the strike at Gordon's?

. . . . . .

A. Well, I merely said something about the strike. He said he would advise me not to go near there because it was dangerous, that the Union people had weapons of various kinds on them and were injuring anyone who came near, and the whole thing was being run by communists.

Trial Examiner Batten: Who is Mr. Green?

A. He was vice-president of the company.

Mr. Leary: Do you remember now what, if anything else, Mr. Green said on that occasion?

A. He said that some of the girls with the union had razor blades fastened in the soles of their shoes, and during the fight different people were badly cut on the legs and hurt in other ways.

[fol. 1626] Trial Examiner Batten: Isn't that a matter that I asked for an offer of proof on? This, it seems to me, is included in the matter I asked for the offer of proof on.

Mr. Leary: I don't believe this is in that matter.

Trial Examiner Batten: Where else would you put it? It is under (H), isn't it, in the allegations of your complaint?

Mr. Langsdale: (H) with reference to rumors? This is not a rumor. This is a direct statement.

Trial Examiner Batten: Where else would it come under this complaint, is what I want to know.

Mr. Leary: I might say, it seems to me it brings up the very same thing that I, I think, stopped Mr. Lane on the other day, or Mr. Tyler, or Mr. Patten, on this question of what occurred at these other places, and opening up that matter. I think that was the time I said I wanted an offer of proof on this entire thing.

Was that you, Mr. Lane?

Mr. Lane: Yes, sir.

Trial Examiner Batten: What is the distinction between this and the other matter?

Mr. Ingraham: Your Honor, respondent is perfectly willing—

Trial Examiner Batten (Interrupting): Now, just a minute, until I get my question answered.

Mr. Leary, what is the difference between this and the [fol. 1627] matter I stopped Mr. Lane on the other day—I mean, rather, asked for an offer of proof on?

Mr. Leary: Just a minute. Let me consider it for a minute, will you?

Trial Examiner Batten: We will recess until 20 minutes of 12.

(Thereupon a short recess was taken.)

Trial Examiner Batten: We will proceed.

Mr. Leary: Mr. Examiner, with reference to the witness' answer as to what Mr. Alex Green said to her, I do believe that that portion of her answer with regard to what was happening at the Gernes or Gordon strikes in 1937 is without the issues. I do believe, however, that that portion of the answer regarding the use of the word "communist" by Mr. Green is not without the issue. I believes that it can be considered, under subsection (s) paragraph 11.

Trial Examiner Batten: I am going to strike it, and you may submit it in an offer of proof.

Mr. Leary: In the event the Examiner does not consider the portion of the answer regarding the use of the word "communist", referring to the union, I desire at this time to move to amend the complaint by inserting a subsection in paragraph 11 of the complaint to be known as subsection (g-1), to read as follows:

". . . statement of Alex Green in March, 1937, to Mrs. [fol. 1628] Elsa Graham Greenhaw regarding the International Ladies' Garment Workers' Union."

Trial Examiner Batten: Mr. Leary, my objection to it is that the entire matter comes under the matter which I

requested an offer of proof upon. It is not an objection that it may or may not be included in the complaint. I do not see how you can say that does not come within the purview of my request for an offer of proof.

Mr. Leary: I agree with you, Mr. Examiner, as far as the statement of Mr. Green to Mrs. Greenhaw with regard to what the union was doing at Gernes and Gordon plants is concerned, but I do think his statement that the union was run by communists certainly can be a part of the subsection (s) of paragraph 11.

Now, I understood you didn't consider it to be such, and therefore I moved to amend the complaint merely for the purpose of covering the statement that the union was being run by communists.

Trial Examiner Batten: What have you to say, Mr. Ingraham, about this amendment?

Mr. Ingraham: Your Honor, if Mr. Leary amends in such manner, of course respondent intends to prove that the activities of the union at these other strikes would be proof of the communistic domination of the union.

Trial Examiner Batten: Mr. Ingraham, let me ask you [fol. 1629] this question: Does it make any difference whether the statement that they are communists is true or untrue? Just the fact that the statement is made— Supposing you were to show that it is true, would it make any difference at all, as far as the Wagner Act is concerned?

Mr. Ingraham: I don't think it would, but evidently Mr. Leary seems to think that that is a statement that could be construed as showing discrimination against the International.

Trial Examiner Batten: I mean, do you agree with me this far, Mr. Ingraham, that a statement which we will say a recognized official would make—it wouldn't make any difference whether the statement were true or untrue if the statement in itself were such that it would intimidate or coerce; then it isn't in issue, is it, as to whether it is true or untrue?

Mr. Ingraham: I think very much so. I think if the statement is made and there is any challenge to it respondent would have a right to show it is true.

Trial Examiner Batten: Supposing you prove it is true, would it make any difference as far as the statement is concerned?

Mr. Ingraham: I think, then, the Board could not take the position that we were making statements that were discriminatory and that, in fact, by making them we were trying to influence the employees by falsely accusing the International.

[fol. 1630] Trial Examiner Batten: There is no allegation in here, is there, that you falsely did it?

Mr. Ingraham: No, but if the Board includes that in their complaint and considers that a statement of that character amounts to an unfair labor practice on the part of the respondent, I certainly think the respondent has a right to show that the statement is true.

Trial Examiner Batten: On what basis, if it doesn't make any difference in the final analysis?

Mr. Ingraham: If it doesn't amount to anything, then I don't think it should be in the complaint.

Trial Examiner Batten: I mean, if it doesn't make any difference whether it is true or untrue. The only question is, did Mr. Green say a certain thing? Does that raise the issue as to whether or not the statement was correct? Supposing Mr. Green had said, "I don't want any of you people to join the Ladies' Garment Workers' Union." You wouldn't think that would open up the entire question, would you, as to the advisability of joining the union?

Mr. Ingraham: I think Your Honor's comparison is not a very good comparison, but—

Trial Examiner Batten: Perhaps not.

Mr. Ingraham (Continuing). I think if the Board includes any statement of this character as a showing of discrimination of unfair labor practice, that then we have [fol. 1631] the right to show that the statement is true.

Now, I think, certainly, if we would make a false statement and it wasn't true the Board could use that against us, that it was a statement that was without foundation, and then they could put it in their complaint that we were making the statement for the purpose of influencing the employees. But, if it is the position of the Board that this

statement is material as to show an unfair labor practice, then I certainly think we have the right to offer evidence on it.

Trial Examiner Batten: Mr. Patten, what is your view on this?

Mr. Patten: As I understand it, the purpose for which the Board now pleads it or desires to show it in evidence is to show the possible effect upon the employees of the Donnelly Garment Company, and in order to show what that effect is you have to show what the meaning of the word is.

The popular conception of the word is different from its technical conception, but there is a definite meaning. To get at that meaning, and what effect it would have upon the minds of the employees, we have to go into whether it is true or untrue, and what that meaning is. If we go into it at all we have to go all of the way, to determine the full meaning of the word.

Trial Examiner Batten: Let me ask you the same question I asked Mr. Ingraham. Supposing the Board were to [fol. 1632] admit that it is true, what difference does it make with respect to this proceeding?

Mr. Patten: From the standpoint of the intervening union, what was happening at those other plants—

Trial Examiner Batten (interrupting): I am not talking about that. I am talking about the one word now, and the one amendment.

I say, supposing it were true that all of these people were communists and you had to be a communist before you could join the union, what difference would it make if an official of this company said to one of its employees, "Stay away from that outfit. They are a bunch of communists." What would be the result if you proved they are communists, as to the officer making the statement to an employee?

[fol. 1633] Mr. Patten: Well, if it were true that they were communists, then the statement to the employee would not be taking any unfair advantage of the employee or unduly coercing the employee; simply stating the truth.

Trial Examiner Batten: Well, might not an employer even state the truth to an employee and yet interfere with

their rights to self-determination in the union they selected. It isn't a question, is it, whether they tell the truth or untruth. It is what they say, and the circumstances under which they say it, isn't it?

Mr. Patten: What they say, what we are trying to get at, offering what they say is to get at what effect what they say would have upon the hearer, what probable effect. To get at the probable effect you have got to show what the probable meaning of that word is on the hearer's mind, and then we have got to show whether or not the hearer would believe that the statement was true or not true, in accordance with the meaning that the words could note on the hearer's mind.

* * * * * *

Cross-Examination.

[fol. 1636] By Mr. Langsdale: Mrs. Greenhaw, how long did you live in Kansas City? A. About 8 years.

Q. And during about a year and a half of that time you were employed by the Donnelly Garment Company?

A. Yes.

Q. Did you state this morning where you were employed before going to the Donnelly Garment Company?

A. No, I did not.

Q. Will you now state?

A. I was employed by the Federal Reserve Life Insurance Company.

Q. And where was their office?

A. In Kansas City, Kansas.

Q. In what capacity?

A. As secretary to the president.

[fol. 1637] Q. How long were you employed by that company? A. About three years.

Q. Who was the president of the Federal Reserve Life Insurance Company? A. Mr. B. Frank Bushman.

Q. Was there anyone who was later connected with the Donnelly Garment Company who was connected with the Federal Reserve Life Insurance Company during the period that you worked there?

A. Yes. Shortly before I left the Federal Reserve Life Insurance Company, Mr. Bushman died, and Mr. Green became president.

Q. And what Mr. Green? A. Mr. Alex C. Green.

Q. Is that the same Mr. Green who was vice-president of the Donnelly Garment Company? A. Yes.

Q. While you were there? A. Yes.

Q. Did Mr. Green have anything to do with your employment by the Donnelly Garment Company?

A. Yes. He brought me over.

Q. That is when he left the Federal Reserve Life Insurance Company and went to the Donnelly Garment Company, you went with him, did you?

[fol. 1638] A. Well, not immediately. He told me at the time he went to Donnelly's that he was going to get me a position with Donnelly's, but he didn't do it at once. I think it was—

Q. (Interrupting) How much time elapsed?

A. I imagine a year or more. I just don't recall exactly.

* * * * * * *

Q. And you were a widow up until the fall of 1937 when you married Mr. Greenhaw? A. Yes, sir.

Q. Your first husband's name was Graham? A. Yes.

Q. Have you any children? A. I have two children.

Q. And are they both the children of Mr. Graham?

[fol. 1639] A. Yes, sir.

Q. How old are they?

A. The older one is nineteen and the younger one is seventeen.

Q. Had you had any previous—pardon me. While you were with the Federal Reserve Life Insurance Company did you do stenographic work? A. Yes, I did.

Q. Was that the large part of your work with that company? A. Stenographic and secretarial work.

Q. Well, secretarial work includes stenographic work, does it not? A. Yes, it does.

Q. Now, prior to going there had you had any stenographic experience? A. Yes, I had a number of years.

Q. Where? A. In Wichita, Kansas, chiefly.

Q. With whom, in Wichita?

A. I was employed by the University of Wichita in a secretarial position, and then before that I worked in several law offices in Wichita.

Q. In Wichita? A. Yes.

Q. Were you secretary to an official of the University

[fol. 1640] of Wichita?

A. Yes, the bursar or business manager. They called him bursar.

Q. And prior to that you had worked for a number of attorneys in Wichita? A. Yes, sir.

* * * * * * *

[fol. 1648] By Mr. Langsdale:

Q. Mrs. Greenhaw, you were asked this morning about the Loyalty pledge which was presented to you in March by Miss Shartzer. I believe you identified the language that is in [ths] pledge as being the language of the one that was presented to you by Miss Shartzer.

A. Yes, I did.

Trial Examiner Batten: That is Union's Exhibit 10-A?

Mr. Langsdale: Union's Exhibit 10-A.

Trial Examiner Batten: To 10-N.

Mr. Langsdale: Inclusive.

The Witness: Yes.

By Mr. Langsdale:

Q. You didn't sign it? A. No.

Q. Did you give Miss Shartzer any reason for not signing it?

A. Yes, I explained to her that I couldn't sign it as to the one statement, that I would be happy to sign it as far as all the pledge was concerned, except the sentence that had to do with the union and its organization.

Q. That is, you objected to this language—

Mr. Ingraham (interrupting): Well, I object to Mr. Langsdale reading what she objects to.

Trial Examiner Batten: Yes. Let her select the lan-

[fol. 1649] guage.

By Mr. Langsdale:

Q. Will you select the language?

A. I told her I would be very happy to sign it all, and I agreed with it all except for the phrase: "And refuse to acknowledge any union labor organization."

Q. And because of that language in the pledge, you refused to sign it? A. Yes, I did.

Q. Now, was that the only time you were solicited to sign this pledge?

A. No, I think a second time later in the day another girl brought it to me and asked if I had signed it, and I told her I had not, and I didn't care to.

Q. Do you recall who the other girl was?

A. I can't be sure about that.

Q. Both of those solicitations were made while you were there working, during working hours? A. Yes.

* * * * * * *

[fol. 1651] By Mr. Langsdale:

Q. Mrs. Greenhaw, I show you a document which has been marked I. L. G. W. U. Exhibit No. 11-A to No. 11-MM, inclusive, and call your attention to the first page and ask you if you ever saw that document before?

A. Yes, I have seen it.

Q. That is a document that purports to have been signed on the 8th day of July, 1937.

I call your attention to that page of the document which has been marked I. L. G. W. U. exhibit No. 11-H and [fol. 1652] ask you if you find a photostat of your signature on there. A. Yes, I do.

Q. Signed what? A. Elsa Lou Graham.

Q. That was your name on the 8th day of July, 1937?

A. Yes, it was.

Q. This document reads—

Trial Examiner Batten (Interrupting): Now, are you going to offer it?

Mr. Langsdale. Yes, I am. Is there any objection?

Mr. Ingraham. No.

Trial Examiner Batten. Just a minute. I may have.

Is that an affidavit signed by all of the Donnelly Garment Company employees that they want the Donnelly Garment Workers' Union?

Mr. Langsdale. You can read it better than I can tell you. (Handing I. L. G. W. U. exhibit No. 11-A to 11-MM, inclusive, to Trial Examiner Batten.)

Trial Examiner Batten. I certainly will not receive it.

Mr. Langsdale. On what ground do you object to it?

Trial Examiner Batten. I won't receive it, at least if it is offered for any purpose to show that these people have selected this union, that it is their free selection, or anything of that kind. I positively won't receive it for that purpose.

Mr. Langsdale. I am not offering it to show it is their [fol. 1653] free selection.

Trial Examiner Batten. I don't know what you are offering it for.

Mr. Langsdale. Shall I tell you, in the presence of this witness, why I am offering it?

Trial Examiner Batten. I am saying, I won't receive it as a general offer.

Mr. Langsdale. I am offering it for the purpose of showing under what circumstances this witness was induced to sign this document, which states that "Each of us formed our own union and selected our own representatives."

Trial Examiner Batten. I won't receive it for that purpose, because I am not going to have 1,200 employees come up here and tell me the circumstances under which they signed this petition; and it wouldn't mean anything if they did.

Mr. Langsdale. Then, are you going to permit them to cross-examine her with reference to her signature on there?

Trial Examiner Batten. I certainly am not.

Mr. Langsdale. I have no object in offering it except—

Trial Examiner Batten (Interrupting). Well, Mr. Langsdale, my position on this situation is just this— and I have had it come up in about six cases where I have been presented either with a petition or with membership cards of a large number of employees in a plant, stating that they joined of their own free will, and so [fol. 1654] forth. Now, I don't consider that testimony, if it were given, of any value when they are put up here on the stand and testify under oath, with the respondent, and in some cases, the foreman and the superintendent present. It might result in coercion, and it might not.

There is only one way to determine this question of majority, and that is by an election, which is not involved in this hearing. I am not going to have a parade

of witnesses here on this stand testifying, and for that reason I will not accept it.

Now, I am making that as a very definite statement now, so that all of you, if you have any offer to make on this particular matter, may prepare your offer and I will receive it at any time before the close of the hearing, but I want it thoroughly understood that I am not going into this matter.

[fol. 1655] Mr. Ingraham: Well, your Honor, do I understand that you are not going to allow witnesses to take the stand and testify that they were not dominated and that they did form this union of their own free will?

Trial Examiner Batten: That is exactly what I mean.

Mr. Ingraham: Of course, respondent excepts to the ruling.

Trial Examiner Batten: Well, I assume that the intervener will, too.

Mr. Langsdale: You have nothing to except to.

Mr. Lane: Yes, we do. We assume we have an exception.

Trial Examiner Batten: Well, I want to make it very clear at this time to everybody, while I am not attempting to rule on the matter the point, as I said once before, if you want to bring some witnesses up here and offer it, I want you to do it. In other words, I don't want the respondent's attorney, or the intervener's attorney, to fail to do something that you think you should do to protect your record, but I do think I ought to tell you just exactly what my position is.

I am not going to receive it, and—

Mr. Stottle (interrupting): Mr. Examiner, don't you think you should make a ruling now striking out the charge that it is a dominated union, if you are not going to permit us—

[fol. 1656] Trial Examiner Batten (interrupting): Do you want to make that motion?

Mr. Ingraham: Yes.

Mr. Langsdale: It appears to me this is my offer; not yours.

Trial Examiner Batten: I say, does Mr. Stottle want to make that motion now? If so, he may do so.

Mr. Stottle: Well, in view of the Examiner's statement as to his position on the matter, the respondent does move that the charge in the complaint that the union is a dominated union should be dismissed.

Trial Examiner Batten: Motion denied.

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[fol. 1657] Q. When did you leave Kansas City?

A. I don't recall exactly, but probably 2 weeks after I resigned, I think I resigned on November 5.

Q. And you think you left about the 19th?

A. Possibly, or perhaps I stayed 3 weeks after that. I don't recall.

Q. Did you at any time prior to that time that you quit [fol. 1658] the employment of the Donnelly Garment Company contact anyone connected with the International Ladies' Garment Workers' Union, either as attorney or in any other capacity?

A. Yes, I contacted their attorney, Mr. Frank Walsh.

Q. And do you remember when that was?

A. It was the latter part of September, I think.

Q. And where did you contact Mr. Walsh in the latter part of September, 1937?

A. At his office.

Q. In the Bryant Building?

A. Yes, sir.

Q. And did you talk to him about the Donnelly Garment Company or the Donnelly Garment Workers' Union or anything that had transpired at the Donnelly Garment Company's plant?

A. Yes. I talked to him about those things.

Q. Then did you after that first visit contact Mr. Frank Walsh again?

A. Yes.

Q. Where?

A. Well, I think he had set up temporary offices in the Muehlebach Hotel and I met him there and talked to him, with some other attorneys.

Q. At one time, or more than one time?
A. Just the one time there.
Q. And did you see Mr. Frank Walsh again after this time?
[fol. 1659] A. Yes, several times.
Q. Where?
A. At his office.
Q. In the Bryant Building?
A. Yes.
Q. And on each of these occasions did you discuss with him occurrences at the Donnelly Garment Company's plant?
A. Yes, I did.
Q. And at that time you were in the employ of the Donnelly Garment Company?
A. Yes.
Q. How did you happen to first contact Mr. Frank Walsh?
A. Well, I knew of the case that was going on and—
Q. (Interrupting) You mean the injunction suit?
A. Yes, and I felt like there were so many things that—concerning employees—that perhaps he would be interested in knowing, and I felt like I would like to offer my services to him.
Q. Did any member of the International Ladies' Garment Workers' Union or any representative of the International Ladies' Garment Workers' Union say anything to you at all about going to see Mr. Frank Walsh?
A. No, I never spoke to any of them nor they to me.
Q. Did anybody ask you to go to see Mr. Frank Walsh?
A. No.
[fol. 1660] Q. Before you went to him the first time?
A. No one.
Q. When you left Kansas City in November, 1937, where did you go?
A. To Chicago.
Q. And did you leave your address with Mr. Walsh or anyone connected with his office?
A. I believe I did.
Q. And you were in Chicago how long?
A. That winter; the rest of that winter.
Q. And then where did you go?
A. Then I was down South with my husband for a time.

Q. Your husband's business is what?
A. He travels as a representative for a circus.
Q. And was he doing that work when you married him?
A. Yes.
Q. Did you meet Mr. Jerome Walsh?
A. Yes, I did.
Q. And did you talk with him about occurrences at the Donnelly Garment Company plant?
A. Yes.
Q. Did you meet Mr. Roy Rucker?
A. Yes, I did.
Q. Did you talk to him about occurrences at the Donnelly Garment Company plant?
[fol. 1661] A. Yes, I did.
Q. And was there any public stenographer ever present at any of these conversations?
A. Yes, at one or two of them there was.
Q. Do you know who it was?
A. I think it was Miss Anna Feltenstein.
Q. Now, Mr. Roy Rucker, when he talked with you was one of the attorneys for the International Ladies' Garment Workers' Union in the injunction suit you talked about?
A. Yes.
Q. And Mr. Jerome Walsh was a son of Mr. Frank Walsh?
A. That is right.
Q. And he also was an attorney for the International Ladies' Garment Workers' Union in that suit?
A. Yes, he was.
Q. You have talked with me during the recess?
A. Yes.
Q. That is, the late recess that started at 12:30?
A. That is right.
Q. And have you read the statements that were taken from you by Mr. Rucker or Mr. Walsh during that period?
A. Yes, I did.
Q. Now, Mrs. Greenhaw, let me ask you with reference to the meeting of April 27, 1937, which was the meeting at which the Donnelly Garment Workers' Union was formed,
[fol. 1662] if you heard Miss Todd say anything at that meeting about the—

Mr. Ingraham (interrupting): I object—

Mr. Langsdale, continuing: —officers of the Loyalty League meeting the night before and deciding the only thing to be done was to form this union?

Mr. Ingraham: I move the question be— I object to the question for the reason that it is leading and suggestive and an improper way to examine this witness. He can ask the witness what Miss Todd said, but I don't think it is proper for him to read from what purports to be some statement, and then ask if she heard that.

Mr. Langsdale: It seems to me it—

Mr. Patten (interrupting): The intervener makes the same objection.

Mr. Langsdale: The Examiner has many times said the attorney is responsible for the form in which he asks his questions.

Trial Examiner Batten: Well, I still say that is true, and, of course, if the attorney wants to ask a question such as this, why, of course, it will have to be weighed. If it has any value, it will receive it, and if it hasn't, of course, it won't.

Mr. Langsdale: I am willing to take that chance.

Trial Examiner Batten: I think under my ruling that is your privilege.

* * * * * *

[fol. 1664] A. She did make such a statement.

By Mr. Langsdale:

Q. You stated this morning that when you reported the meeting of May 25, 1937, that is, the meeting of the Donnelly Garment Workers' Union, you were requested to do so by Miss Green?

A. Yes.

Q. Did you then speak to any official of the company with reference to whether or not you could do so?

A. No. I merely mentioned it to the head of the department I was working in and told her about it so she would [fol. 1665] know I was to leave the department.

Q. Who was that?

A. I probably spoke to Miss Nobles about it.

Mr. Ingraham: I move that the answer be stricken out.

Trial Examiner Batten: It may be stricken.

By Mr. Langsdale:

Q. What is your best judgment as to the person to whom you spoke about it?

A. It would have been either Miss Nobles or Miss Alexander.

Q. You did speak to one or the other?

A. To one or the other.

Mr. Lane: I move to strike the answer on the ground that it is a mere guess.

Trial Examiner Batten: Well, I don't know whether we could start at this stage of the proceedings striking on that basis. It may stand.

Mr. Langsdale: Mrs. Greenhaw, referring to the meeting of March 18, you identified that meeting as the one at which the letter from the International Ladies' Garment Workers' Union was read, and at which meeting Mrs. Nelly Don Reed spoke. I will ask you if at that meeting Mrs. Reed stated that she would close her shop before she would permit it to be unionized.

Mr. Ingraham: I object to the question for the same reason that I have objected to the previous question that Mr. Langsdale asked when he was reading from this docu-
[fol. 1666] ment that he has in his hand.

Mr. Lane: Intervener makes the same objection.

Trial Examiner Batten: I will overrule the objection.

A. Mrs. Reed did state she would close her factory before she would permit to be unionized.

Mr. Langsdale: Did Mrs. Reed state at that meeting that she would make plans to protect the employees from the union?

Mr. Ingraham: Same objection.

Trial Examiner Batten: Objection overruled.

A. I don't remember the exact words, but it was definitely stated that the employees would be protected against the union, the union's activities.

By Mr. Langsdale:

Q. By Mrs. Reed?

A. I don't remember that she stated who would do it.

Q. But she is the one who stated that?

A. Yes.

Q. Mrs. Greenhaw, had you ever taken down the proceedings of any meetings prior to this meeting of May 25, 1937? A. Yes, many times.

Q. Where had you done that?

A. Well, I had taken depositions in the law offices where I worked, and I had reported a good many conferences at one of the places I formerly worked.

Q. Where?

[fol. 1667] A. Federal Reserve Life Insurance Company.

Q. Were those conferences where there were a number of people? A. Yes.

Q. You have examined Board's exhibit No. 18-A to 18-J, inclusive, have you? A. Yes, I have.

Q. Let me ask you if this is a true and correct record of what was said at the meeting of May 25, 1937.

A. Yes, it is.

Q. Both, of the Donnelly Garment Workers' Union and of the Loyalty League? A. Yes.

Q. Is it your judgment that you got everything that was said by these persons whom you quote? A. Yes.

* * * * * * *

[fol. 1668] By Mr. Ingraham:

Q. Do you belong to a union?

A. No, I don't.

Q. Now, in answer to Mr. Langsdale's question about your reporting meetings you stated that you had previously reported meetings, previous to the date of May 25, 1937? A. Yes, I had.

Q. Had you ever reported any meetings at the Donnelly Garment Company?

A. No, only that one.

Q. Did you ever write up any meetings that had been reported by anyone else?

A. No.

Trial Examiner Batten: You mean, someone else had taken the notes?

Mr. Ingraham: Yes.

By Mr. Ingraham:

Q. Where someone else had taken the notes and then dictated to you what had occurred?

[fol. 1669] A I never did.

Q. Have you ever seen any other minutes than the minutes of May 25, 1937?

A. I have seen the copies the attorneys have.

Q. When did you see those?

A. Within the last few days.

Q. Where did you see them?

A. In Mr. Leary's office.

Q. When were the minutes of May 25, 1937, written?

Mr. Leary: What minutes are you referring to?

Mr. Ingraham: The minutes of May 25, 1937.

Mr. Leary: Whose minutes?

Mr. Ingraham: Board's exhibit No. 18.

A. I wrote them immediately after the meeting. I think I finished them the next morning and then delivered them to Miss Green.

By Mr. Ingraham:

Q. And the meeting was on May 25, 1937? A. Yes.

Q. Now, can you tell me what, in substance, was said at that meeting?

A. Well, it was quite a long meeting; or, rather, two rather long meetings.

Q. Just stop there. How long did the meetings last?

A. I don't recall that.

Q. Do you remember when the meetings started?

[fol. 1670] A. I don't remember exactly, but it was late afternoon.

Q. Well, how long, in your best opinion?

A. About 4 o'clock I think the meeting was called.

Mr. Langsdale: Have I the right to give her this document, or are you trying to test her recollection?

Mr. Ingraham: I am trying to test her recollection.

Mr. Langsdale: What does the Examiner say?

Trial Examiner Batten: I see no objection to testing her recollection. If she doesn't recall she may take the document and testify from it, but if it is Mr. Ingraham's purpose now to test her recollection he may proceed.

By Mr. Ingraham:

Q. You say the meeting started around 4 o'clock?

A. I would think so.

Q. And how long did it last?

A. I imagine it lasted an hour all together.

Q. Now, Mrs. Greenhaw, were the members of the Loyalty League and the members of the union the same people?

A. I think so.

Q. Were you a member of both organizations?

A. I was a member of the union but not of the Loyalty League.

Q. Now, after you wrote up the minutes of May 25, 1937, Board's Exhibit No. 18, what did you do with the copy?

A. You mean the copy that I made for them?

[fol. 1671] Q. Yes.

A. I gave it to Miss Green.

Q. Well, you gave Miss Green the original, I understood. A. Yes.

Q. What did you do with the copy you made?

A. I kept it.

Q. Did you take it home?

A. No. I think I had it in my desk.

Q. When did you take it out?

A. I don't recall.

Q. What is your best recollection of when you took it away from your desk?

A. I don't recall at all.

Q. Did you wait until you left the employ of the Donnelly Garment Company?

A. I don't recall when I took it. I don't have any recollection of when I took it away.

Q. When you left the Donnelly Garment Company did you take what papers you considered personal with you?

A. Yes, I took a few things.

Q. Did you take any papers that were copies of letters that the company had sent out?

A. No.

Q. Did you take any property of the company?

A. No.

[fol. 1672] Q. Did you take your shorthand notes?

A. No.

Q. What did you do with the shorthand notes of this meeting of May 25, 1937?

A. I suppose I disposed of them. We always did. We threw away our notebooks. When we had finished with one we usually put it in the wastebasket.

[fol. 1673] Q. Now, Mrs. Greenhaw, you state you were present at the March 18th meeting?

A. Yes.

Q. Is it not a fact that Mrs. Reed stated at that meeting that she was not going to be intimidated by the International into forcing her employees to join the International against their will?

A. I believe she did make some such statement.

Q. And didn't she say that Mr. Dubinsky or no other "butinsky" was going to force her to do that?

A. Yes.

Q. Do you recall approximately how long Mrs. Reed spoke at that meeting?

A. No, I don't.

Q. It wasn't very long, was it?

A. No, I don't believe so.

Q. Do you recall at that time the International was conducting a strike at the Gernes, Gordon, and Missouri Garment Companies?

Trial Examiner Batten: Now, is this just for the purpose of establishing a time?

Mr. Ingraham: I think, in view of this witness' testimony as to what was said by Mrs. Reed at this March 18th meeting, that we have the right to show what was going on.

Trial Examiner Batten: Well, I don't propose to go [fol. 1674] into it, Mr. Ingraham. I have said before that on that matter, in the first place, supposing that Mrs. Reed did say that, supposing that Mrs. Reed got up and said other things about it, I still can't see, as I asked you this morning, why you should be permitted to show it, whether

it is true or untrue. The thing is, did Mrs. Reed get up in this meeting and make certain statements. Are the statements she made — are they of such a nature that they intimidate, coerce or restrain the employee. It isn't a question of whether they are true or not. They may be true and they may still have the same effect. I still can't see by your explanation this morning how it can be material. The only thing is, what did Mrs. Reed say at this meeting.

Mr. Ingraham: Well, your Honor, it is our theory that we are entitled to show what the situation was, and the purpose, or one of the purposes of the March 18th meeting; and that Mrs. Reed did make a speech, and the reason she had for making the speech.

Trial Examiner Batten: Well, in the second place, doesn't that come within the matter, that I have asked to have an offer or proof on?

Mr. Ingraham: I think it does, your Honor. I will, of course, make an offer of proof.

• • • • • •

[fol. 1676] By Mr. Ingraham:

Q. Mrs. Greenhaw, when did you go to see Mr. Walsh, Mr. Frank Walsh?

A. It was the latter part of September, 1937.

Q. And where did you go to see him?

A. I first contacted him at — perhaps I should say this: I had a friend contact him first for me at his office, and [fol. 1677] then an appointment was made for me to meet him at offices he had in the Muehlebach Hotel.

Q. Who was the friend?

A. Well, it is a lady who isn't here any longer.

Q. What was her name?

A. Mrs. Ella Stokes.

A. Do you know where she is now?

A. She is some place in California.

Q. Do you recall whether it was the first part of September or the last part of September that you saw Mr. Walsh?

A. It was the last part, perhaps the third week.

Q. Was the trial going on in the case of the Donnelly Garment Company against the International?

A. I couldn't say as to that.

Q. Now, when you saw Mr. Walsh at the Muehlebach Hotel, did you deliver any papers to Mr. Walsh?

A. No, sir.

Q. Did you have any papers with you?

Trial Examiner Batten: You will have to speak out or the reporter won't get your answer. What was your last answer?

The Witness: No.

By Mr. Ingraham:

Q. Did you have the minutes of May 25, 1937?

A. I had them, but I didn't have them with me.

[fol. 1678] Q. Did you later bring those minutes down to Mr. Walsh?

A. Yes.

Q. And did you leave them with Mr. Walsh?

A. Yes, sir.

Q. Have they ever been in your possession since that time?

A. No, they have not.

Q. Now, did you leave any other papers with Mr. Walsh?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: You may answer.

A. I don't recall the one little exhibit, I think, and I don't know, perhaps one or two others.

By Mr. Ingraham:

Q. Well, will you just tell me what the others were, please?

A. Well, it is the exhibit that was introduced this morning.

Q. You mean that exhibit (indicating)?

A. Yes.

Q. Exhibit 17. Now, what other papers —

Trial Examiner Batten (interrupting): Board's Exhibit 17.

By Mr. Ingraham:

Q. Board's Exhibit 17?

A. I think that is all.

Q. I wish you would be sure about that, Mrs. Greenhaw.

A. I don't recall anything else.

Q. And at the time you saw Mr. Walsh you were work-
[fol. 1679] ing at the Donnelly Garment Company?

A. Yes.

Q. Did you tell anybody at the Donnelly Garment Company?

A. No, sir, I didn't.

Q. About this matter of seeing Mr. Walsh?

A. No, I did not.

Q. Why didn't you?

A. Well, I think the company knew how I felt toward things that were going on.

Q. Now, what things were going on?

A. And when I had refused to sign petitions, and a number of things that I felt was within my rights in refusing? I think they knew how my attitude was.

Q. Now, what things were going on that you didn't like?

A. Well, I felt that there was a definite coercion of the employees there.

Q. By whom?

A. By the company officials.

Q. By — name the officials.

A. All of the officials?

Q. Well, just name the officials, please.

A. Mr. and Mrs. Keyes and all of the department heads.

Q. Who are the department heads? Just name them.

A. Mrs. Reeves, Miss Alexander, and Mrs. Keyes was the head of a department, and, of course, that was my personal knowledge, and I had good reason to believe
[fol. 1680] that it was going on throughout the factory.

Q. Well, now, just say, or just state what Mrs. Reeves said to you.

A. Well, I didn't have so much to do with Mrs. Reeves.

Q. Well, you have named Mrs. Reeves. Now, just state one thing that Mrs. Reeves said to you that was coercion, in your opinion.

A. Many of these things I judged just by watching others, Mr. Ingraham.

Q. So it wasn't — there wasn't anything said to you at all by Mrs. Reeves?

A. I don't recall, because I didn't work under her.

Q. But you have named Mrs. Reeves as one of the executives that you had personal knowledge was engaging in coercion.

A. Yes. I was judging by her — the way the employees generally were treated.

Q. But she said nothing to you?

A. No, she would have no reason to.

Q. Well, now, did you personally see her engage in any coercion with other employees?

A. No.

Q. And if so, name the employees and the time and the place.

A. No, I didn't personally see it.

[fol. 1681] Q. Now, who are some of the other department heads that were engaging in coercion?

A. Of course, that is a hard thing to answer.

Q. Well, you are testifying now. Just give the names, please, Mrs. Greenhaw, of these people that were engaging in coercion.

A. Because it was a general feeling —

Q. (Interrupting) I am not — just answer —

Trial Examiner Batten (interrupting): Just a minute. Let her finish.

Mr. Ingraham: I object to it as not responsive.

Trial Examiner Batten: Don't stop her. Let her say what she wanted to. We have had witnesses here before and, certainly, no one stopped them yet when they wanted to explain an answer, or talk.

Mr. Ingraham: If your Honor please, I don't object if she will answer and then explain.

Trial Examiner Batten: Well, let her answer. We can't tell, Mr. Ingraham, until she gets through.

By Trial Examiner Batten:

Q. What were you saying?

A. Well, I have worked in a number of other places, you know, and then when I went to work there there was a very different atmosphere and a different attitude among the employees and toward them, and there was a feeling that they were held very closely in line at all times by the [fol. 1682] officials of the company, and I am sure that for years the company had been building up that sort of a thing.

Mr. Ingraham: Now, I move the answer be stricken out. It is not responsive.

Mr. Lane: The intervener moves it be stricken out as stating a conclusion, not founded upon any fact testified to by the witness.

Trial Examiner Batten: It may stand.

By Mr. Ingraham:

Q. I again ask my question: Will you name the department heads that were engaging in coercion?

A. I am sure that you couldn't have worked there and be a department head if you hadn't.

By Trial Examiner Batten:

Q. Well, Mrs. Greenhaw, can you name any specific one?

A. Yes, I can name myself, and the treatment I had.

Trial Examiner Batten: Is that what you mean?

By Mr. Ingraham:

Q. Were you a department head?

A. I worked for a department head.

Q. Well, the only one that you know of that was engaging in coercion was yourself?

Mr. Leary: I object to that. There hasn't been any testimony to —

Trial Examiner Batten (interrupting): Just a moment.

A. I refused to sign everything that was handed to me, if you call that coercion.

* * * * * *

[fol. 1686] If you have offered exhibit No. 10, it will be received.

(Thereupon the document above referred to, previously marked "I. L. G. W. U. Exhibit No. 10," was received in evidence.)

* * * * * *

Q. Now, Mrs. Greenhaw, can you give the name of any department head that was engaged in coercion?

A. Of course, you know that was a thing that had been built up for sometime—

Mr. Ingraham (Interrupting): Now, just a minute, Your Honor.

Trial Examiner Batten: The question is, can you name any one particular person who was engaged in coercion?

[fol. 1687] A. Well, if it was the policy of the company—

By Trial Examiner Batten:

Q. (Interrupting) Can you name one person so engaged in coercion?

Mr. Leary: I submit, Mr. Examiner, we should have a definition of the type of coercion you are referring to here. There are hundreds of different types of coercion.

Trial Examiner Batten: I don't think there is much question about the type of coercion we are talking about. From the testimony of the witness thus far she seems to have a good idea of what it is.

A. It was rather a settled thing.

By Trial Examiner Batten:

Q. The question Mr. Ingraham asked you was, can you name a single, definite person who was engaged in this coercion?

A. Yes. Mrs. Keyes I remember making a statement.

By Mr. Ingraham:

Q. Was Mrs. Keyes working at the Donnelly Garment Company in the spring of 1937?

A. Yes.

Q. You are sure of that?

A. Yes. She was there until the time I left.

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Volume II

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 29, 1946
CERTIORARI GRANTED APRIL 22, 1946

Nos. 786 - 787

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VOLUME II.

RECORD.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 475, Orig.

United States Circuit Court of Appeals
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Q. What statements did Mrs. Keyes make?

A. Well, there were a number of statements. One I remember particularly about the employees being careful how they voted.

Q. Voted for what?

[fol. 1688] A. During the general election in 1936.

By Trial Examiner Batten:

Q. You mean the National election?

A. Yes.

Trial Examiner Batten: Now, I am not going to take in any more territory than we have. I mean, if the reference there is to the National campaign or election, it may be stricken. I certainly am not going into that.

Mr. Langsdale: Mr. Leary asked that it be defined as to what kind of coercion she meant. I don't think it is the witness' fault—

Trial Examiner Batten: I am not criticizing the witness. I am saying we are not going into the matter of the National election.

By Mr. Ingraham:

Q. That is the coercion you have reference to?

A. That was only one small incident. Of course, he is trying to pin me down, and it was a thing that was so general—

Trial Examiner Batten: Mrs. Greenhaw, if you cannot name any particular person, or if you do not recall any particular person, then the thing to do in answering the question is to say so.

The Witness: Well, may I say this, that the coercion was conducted more by acts than by words.

By Trial Examiner Batten:

Q. Then, can you tell whether any supervisors by their acts engaged in coercion?

[fol. 1689] A. Well, I was demoted a number of times because I didn't fall in accord with the company's suggestions.

By Mr. Ingraham:

Q. How do you know that, Mrs. Greenhaw?

A. Well, I was moved about from one place to another.

Q. Do you know, as a matter of fact, that Mr. Green was practically creating a job for you at the Donnelly Garment Company when you obtained employment there?

A. Yes. I appreciate that. He told me that. But the things that went on, had I taken a different attitude I wouldn't have had the position.

Q. You wouldn't have what?

A. I wouldn't have had the position, I feel sure.

Q. That is just your conclusion, isn't it, Mrs. Greenhaw?

A. The attitude of those employees who did conform—or perhaps I should say the treatment of the employees who did conform was quite different than that which I got.

Q. Was any employee that went to work at the Donnelly Garment Company after the time of your employment moved up ahead of you?

A. Well, I was in a position where it couldn't have been done, because I was working in a small department originally.

Q. So, it wasn't done?

A. No, I don't mean that.

Q. As a matter of fact, didn't you request to be made the private secretary of one of the officers of the company?

[fol. 1690] A. No, I did not.

Q. Well, wasn't that the job that you wanted?

A. When Mr. Green brought me over he told me that for the time being there would be no such position for me, but he knew my experience and he said probably eventually there would be an opening and he would try to see if he couldn't work me into it.

Q. And didn't Mr. Green try to do that?

A. I am sure he did do everything he could.

Q. Did you know of any vacancies in the positions of secretaries of any executives?

A. No, there were none.

Q. So, you do not contend that you were not given a place of that kind because of your views on unionism?

A. I feel quite sure that if my attitude had been more harmonious with the general feeling of the employers that I would have been compensated by a good position.

Q. Well, you have just stated there wasn't any vacancy in those positions. Did you expect the company to create a position?

Mr. Leary: I object to that as argumentative.

A. Such positions are often made. I have seen it done.

By Mr. Ingraham:

Q. So, you expected the position to be made for you?

A. It was done up there at times, I think.

[fol. 1691] Q. Who had a place made for them at the Donnelly Garment Company, outside of yourself?

A. I don't recall.

Q. Isn't it a fact that Mr. Keyes is in charge of the order department?

A. I believe he was known as general manager when I was there.

Q. Just answer the question, please. Wasn't he in charge of the order department?

A. I understood Miss Ruth Alexander was.

Q. Didn't Mr. Keyes have charge of the order department?

A. I think she probably took instructions from him.

Q. And he was in charge of the order department?

A. He was her superior, I understand.

Q. And wasn't that true, also, of the returns department?

A. Yes.

Q. And, in connection with the order department, Miss Alexander and Miss Nobles were instructed as to what they would do by Mr. Keyes?

A. That is right.

Q. And in regard to the returns department, wasn't Miss Sandy instructed as to what she would do by Mr. Keyes?

A. I believe she was.

* * * * * *

[fol. 1695] By Mr. Ingraham:

Q. Mrs. Greenhaw, you stated that you had been demoted at the Donnelly Garment plant several times. Had your wages been reduced?

A. No, they hadn't.

* * * * * * *

[fol. 1696] Q. Now, you stated that you talked to Mr. Jerome Walsh and Mr. Roy Rucker?

A. Yes, I did.

Q. When did you talk to them?

A. In September, 1937.

Q. When was the last time you talked to either one of those gentlemen?

A. I couldn't say exactly, but it was some weeks or per-

[fol. 1697] haps a week or two before I left town.

Q. Did you go up to see them of your own accord?

A. Yes, I did.

Q. Did you give them any papers at that time?

A. None other than the papers that we have referred to.

Q. Now, did you ask anybody — strike that. Did you ask the Donnelly Garment Workers' Union for permission to turn over copies of the minutes to these attorneys?

A. No, I didn't, because I knew they would be in favor of the idea.

Q. You didn't ask authority?

A. No.

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[fol. 1698] Trial Examiner Batten: Mr. Lane.

By Mr. Lane:

Q. Mrs. Greenhaw, what is your husband's full name?

A. L. B.

Q. What do the initials stand for?

A. Leon Bland.

Q. When did Mr. Graham die?

A. He isn't dead. I am divorced from him.

Q. You are divorced from him; and when were you divorced from him?

A. About 10 years ago.

* * * * * * *

[fol. 1699] By Mr. Lane:

Q. What was Mr. Graham's occupation?

A. He was in the investment business, and was a salesman of life insurance and investments.

[fol. 1700] Q. You are not a member of any union?

A. No, I am not.

Q. And have never been? A. No.

Q. Now, on March 2, 1937, when this so-called Loyalty petition was sent around, you declined to sign it?

A. Yes, sir.

Q. And you declined on the ground that it contained in it the statement "and refuse to acknowledge any labor organization"?

A. That is right.

Q. In other words, you had in your mind at that time that you would like to acknowledge a labor organization in connection with the employment at the Donnelly plant, didn't you?

Mr. Leary: I object to that—

Trial Examiner Batten (interrupting): She may answer.

A. I felt, as an employee of the Donnelly Garment Company, I had a right to believe in a union, or not, as I pleased.

[fol. 1701] By Mr. Lane:

Q. Well, you had that idea in your mind at that time?

A. I objected to signing something saying that I didn't believe in it when I might have the right to, did have the right to, and might believe in it.

Q. And that was the idea that was in your mind and that is what motivated you in refusing to sign this petition? A. No.

Q. On the second of March?

A. No. The thing—the reason I objected was because it was too obviously intimidation.

Mr. Lane: I move to strike that out as not responsive, and being merely a conclusion on the part of the witness.

Mr. Langsdale: I submit he asked for it.

Trial Examiner Batten: It may stand.

By Mr. Lane:

Q. This was shown to you by Pauline Shartzer, wasn't it? A. I believe so.

Q. She gave it to you and asked you to read it?

A. Yes, sir.

Q. Did you read it? A. Yes, sir.

Q. And you refused to sign it?

A. I explained to her —

Q. (Interrupting) Just answer my question. You re-
[fol. 1702] fused to sign it?

A. Yes, I did —

Mr. Leary (interrupting): I submit, she started to explain —

Trial Examiner Batten (interrupting): Just a minute —

Mr. Leary (interrupting): And by our agreement here she has a right to explain.

Trial Examiner Batten: The question was, did she refuse to sign it, and the witness said she did.

By Mr. Lane:

Q. During the day, a second time, it was shown to you by somebody else?

A. Yes.

Q. Who was the second person?

A. I don't recall.

Q. That person was just an employee, wasn't she?

A. Yes, another employee.

Q. And you again refused to sign it? A. Yes.

Q. When was the Donnelly Garment Workers' Union formed?

A. Well, I don't recall the exact date, but it was some time after this first petition.

Q. Was it a week after this first petition or two weeks, or what is your recollection of it?

A. I don't recall right now. I can't tell you the date.

Q. But you don't have —

[fol. 1703] Trial Examiner Batten (interrupting): Now, just a moment. Mr. Lane, let her finish.

By Mr. Lane:

Q. Had you finished your answer?

A. We had a number of meetings. I don't recall the exact date of the meeting it happened. I think it was either the second or third meeting of the employees.

Q. Well, you don't have any independent recollection now of the date on which the Donnelly Garment Workers' Union was formed; is that correct? A. No.

Q. Is my statement correct? A. Yes.

Trial Examiner Batten: Yes, she said no. Will you speak a little louder, please, so that the reporter also can get your answer?

By Mr. Lane:

Q. Now, at this meeting that was held on the 25th of May, 1937, you say you were asked by Marjorie Green to take minutes? A. Yes.

Q. Was Marjorie Green at that meeting? A. Yes.

Q. She was there in person? A. Yes.

Q. What was she doing at that meeting?

A. She also was taking minutes.

[fol. 1704] Q. She was taking minutes, but she asked you to take minutes, as well?

A. Yes.

Q. Where did she speak to you about the matter?

A. On the tenth floor, I think, at my desk.

Q. Did she ask you to keep a carbon copy of the minutes?

A. No, she didn't say anything about that.

Q. Did she ask you also to take minutes of the Loyalty League meeting you say was held?

A. Well, she didn't tell me not to. She, I think, took some, and we stayed at the meeting until it was concluded, and the people were dismissed.

Q. Did anybody ask you to keep minutes of the Loyalty League meeting you say was held that day?

A. I didn't know there was going to be such a meeting. She asked me to take the minutes of the meeting that day.

Q. Did anyone ask you to keep the minutes of the Loyalty League meeting that was held that day?

Mr. Leary: I submit the witness has answered.

Mr. Lane: I have asked her three times, and haven't an answer to it yet.

Trial Examiner Batten: Well, of course, she said she was asked to take the minutes of the meeting.

Mr. Lane: I am asking her with respect to the Loyalty League meeting, whether anybody asked her to keep min-
[fol. 1705] utes of the meeting.

By Trial Examiner Batten:

Q. When you went down there, did you know there was two meetings?

A. No, and I didn't know there was to be two meetings or there was to be a meeting between the Loyalty League, or the meeting was to be split up into two meetings. Nothing to that effect was said to me. I stayed until the meeting was dismissed and took the notes on everything that happened.

Mr. Lane: Well, now, I submit I am entitled to an answer to my question.

Trial Examiner Batten: I think it has been answered as far as the witness can answer it.

Mr. Lane: I think she can answer "yes" or "no", whether anybody did or did not.

Trial Examiner Batten: Well, no witness in this proceeding has to answer "yes" or "no" to any question. I think I said that about the first day.

By Mr. Lane:

Q. Well, then, I will ask the witness whether anybody did ask her, and if so, who did ask her to keep the minutes of the Loyalty League meeting?

A. Well, I wasn't informed that there was to be a meeting of the Loyalty League after this other, and I don't think anyone else knew there was to be, because it wasn't mentioned.

[fol. 1706] By Mr. Lane:

Q. Is it your answer, then, that nobody asked you to keep minutes of that meeting?

A. Yes, that is right.

Q. You have testified, I believe, that the meeting of the union lasted for an hour?

A. As near as I can recall.

Q. How long did the meeting of the Loyalty League last?

A. Pardon me. I meant we stayed down there, I think, for about an hour. I don't know how long each meeting took.

Q. Both meetings, then, you think occupied about an hour's time?

A. I believe so.

Q. How long would be required for you to type nine and a portion of a tenth page the size of the pages of Board's exhibit No. 18? A. Perhaps an hour.

Mr. Langsdale: To type them?

Mr. Lane: That is right.

By Mr. Lane:

Q. And is it your testimony that after the adjournment of that meeting or meetings that you went back up to your machine on the tenth floor and typed these minutes?

A. Yes.

Q. So, you spent approximately from 5 o'clock to 6 o'clock that evening getting these minutes typed up?

A. I expect so.

[fol. 1707] Q. What kind of machine did you use there?

A. I think all of the machines were Royals, if I remember right.

Q. It was a Royal machine that you used?

A. I believe it was.

Q. Was it a new machine? A. No.

Q. How old a machine was it? A. I can't say.

Q. Did you finish the minutes up that evening?

A. I don't recall, but I probably did, or very nearly finished.

Q. It is your recollection that you stayed there until you finished that evening?

A. I might have completed them the next morning, but I remember giving them to her quite early the next morning.

Q. Now, I will ask you to state what was done with this carbon which I hold in my hand after you had delivered the original to Miss Green.

A. I kept it in my book for quite awhile.

Q. What was your purpose or reason for keeping a carbon of those minutes?

A. I thought they would be useful at some later time.

Q. In what respect did you think they might be useful?

A. I felt with things going on as they were there that [fol. 1708] the time might come when I might want to speak out on behalf of the employees.

Q. You had in mind when you went down there and took these minutes, as a member of the union, and as acting secretary—you had a personal purpose in mind, did you? A. Yes.

Q. And your purpose was to make a carbon which you might want to use at some later date?

A. I thought it might be useful. I didn't have any definite purpose, you understand, but I thought there might be points brought out in it that would be useful to remember or to refer to later.

Q. Didn't you think the original would serve that purpose? A. Not my purpose.

Q. Then, you were not keeping these minutes primarily as acting secretary of the union; you were keeping them for a personal purpose of your own?

A. Well, not really personal, probably, in the true sense of the word.

Q. There was no lawsuit pending at that time, was there, on the 25th of May?

A. I don't recall when the lawsuit was started.

Q. Do I understand your testimony to be that the first time you ever had any contact at all with Mr. Frank Walsh was in September of that year?

[fol. 1709] A. Yes, sir.

* * * * * *

[fol. 1710] Q. At these numerous conferences you had with Mr. Frank Walsh and Mr. Jerome Walsh and the others you have mentioned did you go in the daytime?

A. No, in the evenings.

Q. You have never been in their offices during the daytime?

A. I was, when I was no longer employed.

Q. During the time you were employed by Donnelly you went there during the evenings?

A. Yes, sir.

* * * * * *

[fol. 1714] Trial Examiner Batten: I think you had better have it marked as Trial Examiner's exhibit No. 1, and it will be received only in so far as you have asked these questions from it. In other words, I am not receiving the entire thing.

[fol. 1715] (Thereupon the document above referred to, having been marked "Trial Examiner's Exhibit No. 1," was received in evidence.)

Mr. Lane: Intervener objects to the document for the reason that it is not identified, and for the reason that it has been stated by counsel to be a mere copy, when there is apparently an original in existence; and for the further reason it is inadmissible for any purpose, the intervener not having been present when any statements contained therein were made; and for the further reason that they are self-serving and hearsay. Intervener objects to its being received for any purpose.

Trial Examiner Batten: It is received for whatever it purports to be.

Mr. Lane: Intervener further objects on the ground that it is highly prejudicial and improper to permit a memorandum of that kind to be used to refresh the recollection of a witness who has testified she has no independent recollection of the matter. I say it is prejudicially erroneous to permit it to be used for that purpose.

* * * * * *

[fol. 1717] Mr. Stottle: Mr. Examiner, the respondent objects to the Examiner's Exhibit No. 1 for the reason that

it is not taken under oath, not testified to under oath, that the witness who is purported to have signed it is here on the stand now, and her own testimony should be the testi-
[fol. 1718] mony of this witness, and not any statement that she may have prepared at some prior time. It is not even signed by the witness, and is — purports to be a carbon copy of some statement which she may have signed.

Trial Examiner Batten: May I see it a moment?

Mr. Stottle: We also object that it is just immaterial and improper for any purpose whatsoever.

* * * * * *

[fol. 1731] Trial Examiner Batten: Read the next to the last question.

(Thereupon the following question was read by the reporter:)

"Q. Did any incident occur while you were there in
[fol. 1732] which Mr. or Mrs. Keyes was engaged that in your opinion was coercion?"

Trial Examiner Batten: Do you understand the question, Mrs. Greenhaw?

A. I don't know how to answer it, because I don't understand just what the attorney means.

Mr. Langsdale: May I withdraw the question and ask another one?

By Mr. Langsdale:

Q. Did Mr. Keyes ever call any of the employees into his office? A. He often did.

Q. And were you ever present when any of the employees were in Mr. Keyes' office? A. Yes.

Q. And what was the subject of Mr. Keyes' conversation on occasions when you were present?

Mr. Lane: Intervener objects for the reason that no date has been fixed.

By Trial Examiner Batten:

Q. Can you place the time?

A. The incidents I recall particularly happened during the summer of 1936, when Mr. Keyes called several employees in to reprimand them for their work, and they had been working at such a high rate of speed, top speed, that they were so nervous they didn't know what they were doing, and they burst out crying—

[fol. 1733] Mr. Lane (Interrupting): Intervener moves—

Trial Examiner Batten (Interrupting): Just a moment. Wait until she has finished.

A. (Continuing) —they were so nervous and wrought up, they broke out crying there in the office.

Mr. Lane: Intervener moves to strike out the portion as to the employees being nervous and wrought up, for the reason that it is not responsive to the question.

Trial Examiner Batten: What is the intervener's interest in this question?

Mr. Lane: My interest is the same as it has been in other matters. I will put it this way: If the Board states this is not offered as showing domination of the union, then I will withdraw my objection.

Mr. Langsdale: The Board isn't asking this question.

Mr. Lane: Well—

Trial Examiner Batten: It may be stricken. I don't think it has anything to do with these issues, anyway.

* * * * * *

[fol. 1760] PAULINE HARTMAN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Leary:

Q. State your name, please.

A. Pauline Hartman.

Q. What is your address? A. 5327 Lydia.
Q. By whom are you employed?
A. The Donnelly Garment Company.
Q. How long have you been employed there?
A. Thirteen years.
Q. In what capacity?
A. In the accounting department.

* * * * * *

By Mr. Leary:
Q. What work, in particular, do you do in the accounting department?
A. Well, I work on the books and work on various accounting records, on the payrolls.
Q. Who is in charge of the payrolls?
A. Mr. Bachofer.
Q. What is Mr. Bachofer's title?
[fol. 1761] A. Office manager.
Q. Who is superior to Mr. Bachofer?
A. Mrs. Reed, I guess. Mrs. Reed.
Q. How many persons are in the accounting department?
A. I would say about twelve or fifteen, offhand. I don't know exactly.
Q. You work exclusively on the payroll?
A. Not exclusively.
Q. What portion of your time do you spend on the payroll?
A. I would say probably a third of my time.
Q. Does anyone else work on the payroll other than yourself? A. Oh, yes.
Q. How many persons?
A. You mean on the entire routine of the payroll?
Q. Yes. A. There are about six.
Q. Well, is your work in connection with the payroll of a confidential nature?
A. The time workers' payroll. It is not confidential, however.
Q. What do you mean by "time workers' payroll"?
A. A person on a weekly salary.
Q. Is that the only payroll that you handle?
A. That is the only payroll I work on.

Q. Well, on that time workers' payroll, are the in-
[fol. 1762] structors listed?

A. The instructors, yes, they are.

Q. How large a payroll is that each week?

A. That is a semi-monthly payroll that the instructors are on.

Q. About how many names are on that time workers' payroll?

A. Let me see. Just the time workers, that the instructors are listed on, that must be about 150 names of various time workers. That includes the instructors.

Q. In that group, also, does it include the office workers? A. Yes.

Q. Clerical? A. Yes, sir.

Q. Stenographic, and so forth? A. Yes, sir.

Q. Are you a member of the Nelly Don Loyalty League?

A. Yes, I am.

Q. When did you first become a member?

A. Well, since its organization.

Q. Would you say that was in—

A. (Interrupting) In the spring of '35.

Q. Did you join when it was first organized?

A. Yes, I did.

Q. Have you held any office at any time in the Loyalty League? A. Yes, I have.

[fol. 1763] Q. When was that first occasion when you were elected to any office?

A. I have been the treasurer since its organization.

Q. Have you been re-elected annually during the period since 1935? A. Yes.

Q. What method is used to elect the officers of that organization?

A. They have a representative that is selected from each department and the representatives select the officers.

Q. How are the representatives determined?

A. Well, each department selects their own. They vote on their own.

Q. When did the last election of departmental representatives in the Loyalty League take place?

A. Well, I am sorry, I can't tell you that. It seems to me it was—I don't know. I haven't any idea.

Q. Was it during this past year?

A. Oh, yes, it has been during the past year, but I do not know what month.

Q. Where did that election take place?

A. Well, that election took place in the department. You mean, for the representative?

Q. Yes. A. Yes.

[fol. 1764] Q. Who conducts that election?

A. Always the representatives, the past representative handles the election in the department.

Q. Now, are there nominees for departmental representatives?

A. No, they just take the highest vote.

By Trial Examiner Batten:

Q. They just what?

A. They take the person who has the most votes and that person is selected.

Q. Any department? A. That is right.

By Mr. Leary:

Q. Do the same representatives usually carry over?

A. No. They are nearly always changed.

[fol. 1765] Q. Did they elect such representatives once a year? A. Yes, I believe it is once a year.

Q. And then, after the departmental representatives have been elected, what procedure is followed to elect the officers?

A. They always call the representatives together, and the election is handled at this meeting, and the representatives—a nominating committee is appointed from this group of representatives.

Q. Incidentally, how many persons are in that group of departmental representatives?

A. I would say between 30 and 40. I am not sure of that figure. It seems to me there must be that many.

Q. Continue with your recitation of the method in which the officers are elected after the departmental representatives have been selected.

A. Well, the nominating committee makes its report, and then the representatives vote on the nominees. It is handled just as any other election.

Q. Did you attend the meeting in your department where the departmental representative was selected last February or March? A. Yes.

Q. Where was that meeting held in your department?
A. It was just after office hours, up on the tenth floor.

[fol. 1766] Q. Were you elected representative from your department?
A. No. No, I am not the representative.
Q. Who is the representative from your department?
A. I think, a Mr. Bud Grogan. I am not sure.
Q. Is that William Grogan?
A. I don't know what the "Bud" is for, I am sorry.
Q. Are the officers usually elected from the departmental representatives, or can the departmental representatives elect anyone they want?
A. Oh, no. They can elect anyone they want. They do not have to elect an officer from the representatives, not at all. They can elect anyone who is an employee and a member of the Loyalty League.
Q. Were you ever a departmental representative?
A. No.
Q. Has your organization a constitution or a set of by-laws?
A. I don't believe so. I have never seen them.
Q. Have you attended all meetings of the Loyalty League since it was formed in 1935?
A. No, I haven't, not all of them.
Q. What ones have you missed?
A. I can't tell you exactly. I have missed quite a few of them. At some of them I got in on the last of the meet-
[fol. 1767] ing, not on the entire meeting.

Q. Did your organization collect any dues during the year 1935? A. Any dues?
Q. Yes. A. No, not under "dues."
Q. Did they collect any in 1936? A. Dues?
Q. Yes. A. No.
[fol. 1768] Q. 1937? A. No.
Q. Or 1938 or 1939? A. No.
Q. What receipts, if any, did your organization have during the year 1935?

A. 1935? I believe we had one activity in the fall of 1935, a dance.

Q. During the year 1936?

A. In 1936 we had several more dances; I can't tell you offhand how many.

Q. Did your organization have any bank account in 1935? A. No.

Q. Did your organization have any bank account in 1936? A. No.

Q. Did your organization have any bank account in 1937? A. Yes, we did.

Q. In order that the record may be clear, did you testify you had been treasurer ever since 1935?

A. That is right.

Q. In 1937 at what bank did you have a bank account?

A. The First National Bank.

Q. Of Kansas City, Mo.? A. That is right.

Q. Have you had an account with that bank at all times [fol. 1769] since the occasion in 1937 when you opened the account there?

A. We have had a balance on hand at the First National since then.

Q. Do you have in your possession, Miss Hartman, the records relating to the bank account which you opened with the First National Bank in 1937?

A. Yes, I have.

Q. May I see those records, please?

(Thereupon the records referred to were produced by the witness and shown to Mr. Leary.)

Q. Showing you your bank statement for the month of March, 1937, is it not a fact that a deposit of $1,000 was made on March 30, 1937? A. That is right.

Mr. Stottle: Just a moment. Mr. Examiner, respondent objects to this question, and all questions relating to the Loyalty League, on the ground that it is immaterial. We understand the allegation in the complaint that there is a connection, but there has been no testimony indicating that the Loyalty League has anything to do with the Donnelly Garment Workers' Union. It is merely a social organization, and the Donnelly Garment Workers' Union is a separate organization.

We think it is encumbering the record to go into these activities of the Loyalty League.

[fol. 1770] We haven't objected a great deal to this, but we think the matter should be presented to the Examiner, and that we should have a continuing objection to any testimony regarding the Loyalty League.

[fol. 1771] Trial Examiner Batten: Well, you may have a continuing objection. As I recall it, you have, on about three occasions objected to it at the beginning of the hearing, and I at this time will make the same ruling I have in the past. I will overrule the objection, but you may have a continuing objection.

Mr. Stottle: And also on the ground it is not binding on the respondent, anything this witness may say, as well as being immaterial to the issues.

Trial Examiner Batten: That may be incorporated.

Mr. Patten: Intervener makes the same objection, and adds to it the testimony as to what may have happened in the Loyalty League prior to the organization of the union is immaterial and irrelevant.

Trial Examiner Batten: Overruled. You desire a continuing objection, Mr. Patten?

Mr. Patten: I do.

By Mr. Leary:

Q. Your testimony is, is it not, Miss Hartman, that in March, March 30th, you deposited $1,000? A. Yes, sir.

Q. In the name of the Nelly Don Loyalty League?

A. Yes, sir.

Q. Now, where did that $1,000 come from?

A. Miss Rose Todd handled that entirely. She came to me and told me that a few employees had been talking to her—

Q. (Interrupting) No, I don't mean that. Where did [fol. 1772] the $1,000 come from, do you know?

A. I don't understand your question.

Q. Where did the Nelly Don Loyalty League obtain the $1,000 in order to deposit it in a checking account?

A. I am telling you that now. May I explain?

Q. Well, do you know where they got it?

A. Well, it was borrowed under the Loyalty League name.

Q. It was borrowed from the First National Bank?

A. That is right.

Q. Was an application for a loan of $1,000 to the First National Bank made?

A. That is right.

Q. And was a note given to the union in the amount of $1,000? A. To the union?

Q. I beg your pardon. Was a note given to the bank by the union in the amount of $1,000?

A. No, not by the union.

Q. I beg your pardon. By the Loyalty League?

A. Yes.

Q. And do you have that note? A. Yes, I do.

Q. May I see it, please?

(Whereupon, the document above referred to was handed by the witness to Mr. Leary.)

Q. (Continuing) Do you have any objection, Miss [fol. 1773] Hartman, to our offering this note at this time for the record, and then having it photostated and withdrawn so that the original may be returned to you for your records? A. Yes, sir.

Q. I show you, Miss Hartman, what has been marked for identification as Board's Exhibit 19, and ask you to state whether or not that is the note taken from the official records of the Nelly Don Loyalty League that you just referred to in your testimony? A. That is right.

(Thereupon, the document above referred to was marked as "Board's Exhibit No. 19" for identification.)

Mr. Leary: Board offers its Exhibit 19.

Mr. Stottle: Respondent objects to the exhibit for the grounds already stated, that it is immaterial to the issues here, and also that it is not binding on the respondent in any way.

Trial Examiner Batten: Well, I assume that your continuing objection applies to the note as well.

Mr. Stottle: Well, I thought it might, but I wasn't sure that it would.

Mr. Batten: The intervener desires its continuing objection to apply to the note.

Trial Examiner Batten: It will be received, subject to [fol. 1774] those objections.

(The document heretofore marked as "Board's Exhibit No. 19 was received in evidence.)

* * * * * *

By Mr. Leary:

Q. Do you know, Miss Hartman, whether or not your records contain any information as to what security was required to obtain that loan?

A. The only security was the fact that it was the Loyalty League name. That is the only reason we used the Loyalty League, it was the only organization of all the employees that we had at that time.

Q. Did the bank—were you present when any of the conversations relating to the loan were had between Rose Todd and any officers of the bank? A. No, I was not.

Q. And immediately upon receipt of that $1,000 loan, was that same $1,000 used to deposit in the account of March 30th? A. That is right.

Q. On March 30, 1937? A. That is right.

* * * * * *

[fol. 1775] Q. I show you what has been identified as Board's Exhibit 13, and ask you to state whether or not your signature is contained on the lower right-hand corner? A. It is.

Q. Do you know whether or not that is the signature of Rose Todd, adjacent to your name (indicating)?

A. Yes, it is.

Q. You are, and have been, familiar with her signature, have you not? A. Yes, sir.

Q. Who was it wrote the "Nelly Don Loyalty League"?

A. I believe Miss Todd.

* * * * * *

[fol. 1778] By Mr. Leary:

Q. In order, Miss Hartman, that it not be necessary to call you back here later, I wonder if you at this time

will state for me whether the names Rose K. Todd and Pauline Hartman on all of the checks you have handed me are the signatures of those two persons? Will you look at that entire group and state whether that is a fact?

A. Yes, they are.

Q. Now, Miss Hartman, I note that the last monthly statement you have handed me is for the month of July, 1937. A. Yes.

Q. Do you have any monthly statements for any period later than July, 1937? A. No, I haven't.

Q. Have you any explanation as to why you do not have them?

A. I simply haven't picked them up. We have this same balance.

Q. When you say you haven't picked them up, you mean you have not gone to the bank to obtain them?

[fol. 1779] A. That is right.

Mr. Langsdale: Is that July, 1937?

Mr. Leary: Yes.

By Mr. Leary:

Q. And as far as you know, there have been no checks written upon your account since the withdrawal of the $750 on July 22, 1937, leaving a bank balance at that time, and as of the present date, of $88.71?

A. That is right.

Q. Do you have any other financial records in your possession, Miss Hartman?

A. Yes, I do have.

Q. Will you state, please, what they are?

A. This (indicating) is merely an account showing the deposits on the proper dates, and the total checks issued, showing a daily balance from the bank.

This (indicating) is a record of the checks issued, merely a record of what you have there, the cancelled checks. And this (indicating) is the balance of the account. It is up to date, through March 6, 1939.

Q. The document you show me is a stenographic notebook, is it not?

A. It is just a notebook where I keep the record of all of the expenses and receipts.

Q. Miss Hartman, I notice you have in this book here certain entries for the year 1938 and for the year 1939. [fol. 1780] Now, are those expenses reflected in any way in your checking account, or did you handle them entirely by cash?

A. By check and by cash. I started that bank account in March, 1937.

These (indicating) are all checks through July 13, 1937. The balance is cash.

Q. Is it a fact, then, Miss Hartman, that you now have a balance of $435.49?

A. This isn't brought up to date, because I have some bills I haven't paid out of there. It isn't complete. Our last activity has not been completed.

Q. Your record shows that on March 6, 1939, you had a balance of $435.49?

A. That is right.

Q. Now, have you the records of your disbursements since that time?

A. It isn't complete. I have this here (indicating), but I don't have all of the bills.

Q. Are there any expenses of a major nature?

A. Only this one activity that we had, our picnic, in June.

Q. Did not your organization repay $750 on the loan sometime in 1937? A. That is right.

Q. Would you be able to select that date from the [fol. 1781] records which you have? A. July 19.

Q. Has the remaining $250 been repaid?

A. Yes, it has.

Q. On what date was that repaid?

A. On March 20, I believe.

Q. Do you have a record of that with you?

A. Yes. March 20.

By Trial Examiner Batten:

Q. What year? A. 1939.

By Mr. Leary:

Q. Are those two sections of the notebook which you have shown me the only sections that contain any writing or information pertaining to the Loyalty League?

A. That is right.

Q. They consist, do they not, of four pages all together? A. Yes.

Q. One, a group of three, and the last one a page entitled "Special Account"? A. That is right.

Q. Do you have any other financial records in your possession?

A. I have the itemized account of each activity — of the net profit of each activity.

Q. Will you let me see that, please?

A. (Handing the document to Mr. Leary.) This is October, 1938.

Q. That was a carnival and dance that you held?

A. That is right.

[fol. 1782] Q. Do you have any other records, or are all of your other records itemized accounts of your individual activities? A. That is right.

* * * * * *

[fol. 1783] Cross-Examination.

By Mr. Langsdale:

Q. Miss Hartman, I assume that you didn't go to the bank with Miss Todd to negotiate the loan?

A. No.

Q. You don't know anything about the circumstances surrounding a negotiation of the note?

A. Only what she told me.

Q. Now, I see that you paid $750 on it July 22, 1937?

A. That is right.

Q. Where did you get the money?

A. Well, part of that was made up from contributions from the employees.

Q. Well, have you any record of those contributions?

A. That is in my records you have there.

Q. You mean in this record (indicating)?

A. That is right.

(Whereupon, the record above referred to was handed by Mr. Langsdale to the witness.)

[fol. 1784] A. (Continuing) Right here, this figure, $501.10.

Q. Now, you show that $501.10 as of the date of the 13th of May? A. Right.

Q. How did you get $501.10 from the employees on the 13th of May?

A. Well, each employee, I believe it was 50 cents was taken up during that week. I just accumulated it at that time. It was given to me and I totaled it at that time.

Q. Well, how did they give it? Did you go around from machine to machine and collect the 50 cents?

A. I do not know about that.

Q. Have you any idea at all when and where the employees contributed 50 cents apiece?

A. No, I do not know.

Q. Well, from whom did you get the money?

A. From the representatives of each department.

Q. That is, those representatives who were representatives in the Loyalty League? A. That is right.

Q. And how they got the money, or when or where, you haven't any idea? A. That is right.

Q. Now, you have as of the 21st of May, $71.50?

A. Yes. That is a balance of cash.

[fol. 1785] Q. Where did you get that?

A. That is the balance of that figure (indicating).

Q. Well, that is some money you also got from the representatives of the different departments, that is, the Loyalty League representatives?

A. No. Let me see. I don't have any notation on that. Well, that was cash that was deposited at that time.

Q. I know, but where did you get the cash?

A. That was from that same source. It was all that employees' contribution.

Q. That was from the Loyalty League representatives then? A. They turned in the money.

Q. Did you keep any record of the amount that was turned over to you by each representative of each department? A. No, I didn't.

Q. Is this the only record you have of $501.10 and $71.50? A. That is right.

. . . . . .

[fol. 1786] Q. Now, this one page, entitled "Special Account," is the only record you ever kept of the receipts

and the disbursements of the Nelly Don Loyalty League?
[fol. 1787] A. That is right.

* * * * * *

Q. Miss Hartman, I show you this loose-leaf page in the notebook which has been marked I. L. G. W. U. exhibit No. 12. That is a page from which you have been testifying about the cash of $501.10 and $71.50; that is correct, is it? A. That is right.

(The notebook page above referred to was marked for identification "I. L. G. W. U. Exhibit No. 12.").

Q. And that, with the $1,000 that you got from the First National Bank, are all of the receipts that you have noted for the Nelly Don Loyalty League?

A. In addition to this, what I showed you up here (indicating).

Q. Exhibit No. 12 is in pencil, the notations, that is correct, is it? A. Yes.

Q. Where is the other page you showed me?

* * * * * *

[fol. 1788] Trial Examiner Batten: There are four pages there, so that will be No. 13-A, 13-B, and whatever it is.

Mr. Langsdale: There are only three.

The Witness: Yes. I thought there were four.

By Mr. Langsdale:

Q. In addition to I. L. G. W. U. exhibit No. 12, you have in this lose leaf notebook, in pencil, some other records on the pages that have been marked I. L. G. W. U. exhibit No. 13-A, 13-B, and 13-C, have you?

A. That is right.

(The notebook pages above referred to were thereupon marked for identification "I. L. G. W. U. Exhibits Nos. 13-A, 13-B, 13-C.")

Q. Those are all of the records that you have ever kept of the receipts and disbursements of the Nelly Don Loyalty League since its creation in the early part of 1935?

A. In addition to what you have on your desk.
Q. Have you any other records of disbursements?
A. No.
Q. Of receipts? A. No.

Q. What I have on my desk are checks and bank statements? A. That is right.

[fol. 1789] Mr. Ingraham: Just a minute, Mr. Langsdale I understood the witness to testify this morning about some other papers that were records of entertainments that she had.

Mr. Langsdale: Here they are.

The Witness: That is what I am referring to.

Mr. Ingraham: I thought she handed some loose papers to somebody. Have you got those?

Mr. Langsdale: Will you pick out of these any other records of receipts or disbursements that you have kept of the Nelly Don Loyalty League?

(Whereupon, the above requested documents were handed to Mr. Langsdale by the witness.)

By Mr. Langsdale:

Q. Now, you have handed me a sheet of paper typewritten which is headed "Loyalty League Dance, 11-22-35", have you?
A. That is right.
Q. That is typewritten?
A. That is right.
Q. And you have handed me a sheet of paper which is marked "L.L. Dance, Stueben Club, 11-20-36"?
A. That is right.
Q. That is the record of the receipts and disbursements for some entertainment given on the 20th of November, 1936, at the Steuyben Club?
A. That is right.
[fol. 1790] You have handed me a sheet of paper which is headed "Loyalty League Dance, Plaza Hall, 2-5-37"?
A. That is right.
Q. Is that a record of the receipts and disbursements of that dance?
A. That is right.
Q. And that is typewritten?

A. That is right.

Q. You have handed me a sheet of paper which is dated "April 17, 1936" and headed "Dance, Stueben Club". Is that a record of the receipts and disbursements of that dance?

A. That is right.

Q That is in typewriting?

A. That is right.

Q. And you have handed me a sheet of paper which is dated 4-29-38, and it is headed "Loyalty League May Dance, Scottish Rite Temple."

A. That is right.

Q. Is that a record of the receipts and disbursements of that dance?

A. That is right.

Q. That is in typewriting?

A. That is right.

Q. You have some notations at the bottom. Are they in ink or pencil?

[fol. 1791] A. Pencil.

Q. This pink sheet of paper, entitled "L. L. Dance, 11-20-36, Stueben Club", is that in pencil?

A. Pencil.

Q. You have handed me a sheet of paper dated 10-29-38, entitled "Loyalty League [Carnial] and Dance, Ararat Temple".

A. That is right.

Q. It that a record of the receipts and disbursements of the dance given on that date?

A. That is right.

Q. At that place?

A. That is right.

Q. And that is in ink?

A. Right.

Q. And you have handed me a sheet of paper dated 2-12-36, entitled "N. D. L. L. Valentine Dance, Pla-Mor"?

A. That is right.

Q. It that a record of the receipts and disbursements of that party?

A. That is right.

Q. And that is in ink?

A. That is in pencil.

Q. Is that pencil? That is in pencil?

A. That is right.

Q. Now, those are all the records that you ever kept of [fol. 1792] any of the receipts and disbursements of the Loyalty League?

A. That is right.

Q. These records kept on I. L. G. W. U. Exhibit 13, A, B, C, purport to be records of receipts and disbursements from January 1, 1936, to March 6, 1939?

A. That is right.

* * * * * *

[fol. 1793] Mr. Langsdale: We offer these checks which have been identified as Board's exhibits Nos. 21-A to 21-O, inclusive.

Mr. Stottle: Respondent makes its continuing objection to these exhibits.

Trial Examiner Batten: You may have a continuing objection.

Mr. Lane: We make our general objection.

Trial Examiner Batten: That is, the same continuing objection you have made?

Mr. Lane: Yes.

Trial Examiner Batten: I will reserve decision on the offer.

By Mr. Langsdale:

Q. Miss Hartman, I hand you this sheet of paper which has been marked Board's Exhibit No. 22, which purports to be a record of an account kept in the First National Bank. A. That is right.

(Thereupon the statement above referred to was marked for identification "Board's Exhibit No. 22.")

Q. Is that record in your handwriting or in the handwriting of someone connected with the bank?

A. It is mine.

Q. That is a record you made?

A. That is my own record.

Q. I note that you have as of May 24, 1937, a deposit [fol. 1794] of $229.89 in the First National Bank. Where did you get that money?

A. That is probably made up of some money I had on hand.

Q. Do you know where you got it?

A. I can't tell you without going over all of those records again.

Q. Have you any records to show you where you got the money on deposit that day?

A. No, only the records you have.

Q. Will you look at them and tell me where you got it?

Trial Examiner Batten: Miss Reporter, a while ago you marked the pages showing the receipts Union's Exhibit No. 12 and the disbursements Union's exhibit No. 13-A, B and C. I want those numbers withdrawn and changed, Union's exhibit No. 12 to Board's exhibit No. 23, and Union's exhibit No. 13-A, B, and C withdrawn and changed to Board's exhibit No. 24-A, B, and C.

(Thereupon the exhibits above referred to were withdrawn as I. L. G. W. U. exhibit No. 12 and I. L. G. W. U. exhibit No. 13-A, 13-B, and 13-C, and marked for identification "Board's Exhibits Nos. 23 and 24-A, 24-B, and 24-C.")

By Mr. Langsdale:

Q. Have you figured out where you got the money?

A. I am not able to tell you the exact amount. It no doubt is made up of this one item of $127.63, on February [fol. 1795] 22, plus $68.50, an item on May 4. That totals $196.13, leaving a difference of $33, which I no doubt used as the money I had on hand.

Q. Where were you keeping that money in February, 1937?

A. I always kept cash on hand. I made no attempt to deposit all of the money in the bank.

Q. Where did you keep that? A. Down in the safe.

Q. In the office?

A. In the office. I had no other place to keep it.

Q. In your opinion those two items you have mentioned are part of the $229.89? A. That is right.

Q. You don't know where you got the balance of it?

A. It was just the cash I had on hand at that time, but I don't have an analysis of this item.

Q. What are those dates?

A. The dates I called to you?

Q. Yes. A. February 22.

Q. And that was how much? A. $127.63.

Q. You had that money, and borrowed $1,000 from the bank?

A. Yes. This was the proceeds of the dance at the Plaza Hall.

[fol. 1796] Q. But you still had the money, and you borrowed the money from the bank? A. Yes.

Q. What is the other item? A. $68.50.

Q. What is the date of that?

A. May 4. That was the date of the deposit.

Q. That was obtained where?

A. That was the proceeds of a dance at the Pla-Mor.

Q. These checks that are marked Board's exhibit 21-A to O, inclusive, all of the checks were drawn on the account in the First National Bank of the Nelly Don Loyalty League? A. That is right.

Q. Do you say to the Examiner that you never saw a constitution of the Nelly Don Loyalty League?

Mr. Patten: We object to that. It is repetitious — going over the same ground the Board has gone over.

Mr. Langsdale. It is preliminary.

Trial Examiner Batten: If it is a preliminary question you may ask it. She has already testified to that, that she has never seen one or heard of one.

The Witness: The question was asked, had I seen one? I said no.

By Trial Examiner Batten:

Q. Had you ever heard of one? A. No.

[fol. 1797] By Mr. Langsdale:

Q. I notice these checks are signed "Rose K. Todd and Pauline Hartman."

A. That is right.

Q. How did it happen that you signed those checks with those two names?

A. I think perhaps the bank requested two signatures.

Q. Well, do you know anything about that?

A. No, I don't.

Q. Where did you get the information that the bank requested two signatures?

A. Miss Todd told me to go down and put my name on a signature card at the First National Bank.

Q. Which you did? A. Which I did.

Q. And did you observe that her name was there?

A. Yes.

Q. Have you any idea when she went out of the office as president of the Nelly Don Loyalty League?

A. It was early in 1937. I can't tell you exactly when.

Q. Have you any idea at all?

A. It seems to me it should be May of 1937. I am not positive.

Q. Well, I note here that Board's exhibit No. 21-J, dated July, 1937, signed "Nelly Don Loyalty League, by Rose K. Todd,"—Was she president at that time?

[fol. 1798] A. She was president at that time, yes.

Q. When she signed this check dated July 19, 1937?

A. I believe she was.

[fol. 1799] Q. You think she was president then when she signed all of these checks?

A. I don't know the date. Let me think.

Q. Well, they all are dated April 1 to July 19, 1937. All of them signed "Donnelly Loyalty League by Rose K. Todd and Pauline Hartman." Was she president during all of that time?

A. I know she was president up to about, I think it is May. I am not positive. Now, whether or not we did not have her name taken off of the signature card on that, I do not know.

Q. I note that the balance of this note which has been marked Board's Exhibit 19 was paid on March 20, 1939. I don't see any check. Do you know how that payment was made?

A. That was made in cash.

Q. Well, how do you know that?

A. Because I had the money.

Q You took the cash over there?

A. That is right.

Q. And you paid the cash?

A. For the balance of the note, that is right.

Q. Can you show me anything on your records about having that cash on hand at that time?

A. July, 1937, the balance was $309.82.

Q. That was your bank balance?

A. This is made up of the bank balance and cash on hand. I have another sheet showing the bank account at all times.

[fol. 1800] Q. Well, will you show me the other sheet so I can see what was the bank account and what was the cash?

A. Well, we actually had $88.71 in the bank. The balance was cash on hand.

Q. And you, on March 20, 1939, then paid the balance of this note of $250 partly in cash and partly in check?

A. No, I paid it in cash.

Q. Do you remember how much interest you paid at that time? A. $23.92.

Q. When?

A. Wasn't that the difference? That is what it is, $273.92. I have a sheet here.

Q. Now, I hand you this, what has been marked as Board's Exhibit 25, and ask you to state what it is, if you know.

A. That is a statement from the First National Bank, the balance of our loan plus the interest.

(Thereupon, the document above referred to was marked as "Board's Exhibit No. 25" for identification.)

Q. The total is $273.92? A. That is right.

Q. You say you paid that all in cash?

A. That is right.

Mr. Langsdale: The Board offers its Exhibit 25.

Mr. Stottle: Respondent makes the same continuing [fol. 1801] objection to this exhibit.

Mr. Langsdale: I think that is all.

By Mr. Stottle:

Q. Miss Hartman, did the Donnelly Garment Company or the Donnelly Garment Sales Company ever pay or contribute any money to the Nelly Don Loyalty League?

A. They did not.

Mr. Leary: I object to that.

By Mr. Stottle: Miss Hartman—

Trial Examiner Batten (interrupting): What is the basis of your objection?

Mr. Leary: It calls for a conclusion. I think she might say what was said or done, but as to whether or not they made a payment, I don't think she is in a position to testify.

Trial Examiner Batten: It may stand.

By Mr. Stottle:

Q. Well, did you receive, as Treasurer of the Nelly Don Loyalty League, any money from the Donnelly Garment Company or the Donnelly Garment Sales Company?

A. I did not.

Q. Miss Hartman, I believe you testified that in answer to one of Mr. Langsdale's questions, that Miss Todd may have continued to sign checks after she resigned as President of the Loyalty League, on account of her name not having been changed at the bank? A. That is right.

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[fol. 1802] JACK McCONAUGHEY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Leary:

Q. State your name and address, please.

A. Jack McConaughey, 3104 Paseo.

Q. By whom are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed there?

A. Nine years.

Q. Are you a member of the Donnelly Garment Work-
[fol. 1803] ers' Union? A. I am.

Q. How long have you been a member?

A. A little over 2 years.

Q. Are you the treasurer of the organization at this time? A. Yes, sir.

Q. Have you always been the treasurer of the organization? A. No.

Q. Who was the first treasurer? A. Mr. Fred Brown.

Q. Who was he? A. Beg pardon?
Q. Who was he?
A. He is in the cutting department.
Q. When did you become treasurer?
A. In April of 1938.
Q. Do you have in your possession now the official treasury records of the organization? A. Yes, sir.
Q. And do those records indicate the receipts and disbursements from the time the organization began?
A. They do.

* * * * * *

[fol. 1804] Q. Do you have those 1337 records of Mr. Brown now? A. Yes, sir.
Q. Will you look at those records and tell me the first date on which any rent was paid to the Donnelly Garment Company for the use of space in the biulding known as the Thomas Corrigan Building, at 1828-30 Walnut Street, Kansas City, Missouri? A. In April of 1938.
Q. On what date? A. The 22d.

By Mr. Langsdale: April, 1938?
A. The 22d of April, 1938.

By Mr. Leary: To what book are you referring now, Mr. McConaughey?
A. I am looking at the cash disbursements and cash receipt books.
Q. And that, is that the ledger page for the month of April, 1938? A. It is.
[fol. 1805] Q. Will you point out that entry to me, please?
A. There, the third entry from the bottom (indicating).
Q. That shows that you paid on April 22, 1938, $33.00; is that correct? A. Yes, sir.
Q. And for what rentals and on what dates of rent does that entry cover?
A. I don't know what dates. It covers a year's rental.
Q. Is that a year in advance?
A. It is a year past. We don't know how many meetings we are going to have. We couldn't very well pay them in advance.
Q. You knew, then, in April, 1938, how many meetings you had had in the past. Is that right?
A. That is right.

Q. So you decided to pay the company for all the meetings you had in the last—

A. (Interrupting) Yes, sir.

[fol. 1806] Q. How many meetings had you had from the time your organization started until April 22, 1938?

A. That was paid on the basis of $3 a meeting, which would be eleven meetings.

* * * * * *

[fol. 1807] Q. I show you what has been marked for identification Board's Exhibit No. 26 and ask you to state briefly what that is.

A. A list of the dates of meetings, the first one beginning May 11, 1937, and ending with April 5, 1938.

(Thereupon, the list above referred to was marked for identification "Board's Exhibit No. 26.")

Q. That is the document to which reference has been made in my questions just previous regarding the name of "Marvin," and in whose writing it is, and so forth?

A. Yes.

Q. It is in Miss Todd's handwriting, and "Marvin" at the top refers to Marvin Price; is that correct?

A. Yes, sir.

[fol. 1808] Mr. Leary: The Board offers its exhibit No. 26.

Mr. Stottle: Respondent objects that it is immaterial and does not seem to throw any light upon the issues in this case.

Mr. Patten: Intervener has no objection.

Trial Examiner Batten: It will be received.

(Thereupon, the list previously marked, as above set out, "Board's Exhibit No. 26, was received in evidence.)

By Mr. Leary:

Q. What was your position at the company on April 27, 1937?

A. I was working in the service department, taking calls on complaints where the machines broke down.

Q. Were you a mechanic? A. No, sir.

Q. Is the service department sometimes referred to as the mechanical department? A. Yes, sir.

Q. Who notified you that the April 27 meeting would be held?

A. I believe I heard it over the telephone. The telephone operator called on one of our house phones.

Q. What did the telephone operator tell you?

A. That Rose Todd had asked the employees to gather on the second floor for a meeting.

* * * * * *

[fol. 1809] Q. What do your records show, Mr. McConaughey, as to the money paid Mr. Frank Tyler?

A. Well, there are different entries throughout the book, Mr. Leary. I couldn't tell you in a round sum what has been paid Mr. Tyler.

Q. You start at the beginning of your book and tell me what has been paid to him.

A. All right. (Referring to book.)

The first entry is on the 23rd of November, 1937. Check to Gossett, Ellis, Dietrich and Tyler, $1,000.

The next entry is on the 10th of January. Gossett, Ellis, Dietrich and Tyler—Pardon me. Do you want all checks [fol. 1810] to Gossett, Ellis, Dietrich and Tyler, or only those for legal services?

Q. Only for legal services. Do you have others for printing your briefs, and so forth? A. Yes.

Q. I am not concerned with those at the present.

A. The next entry for legal service is, January 28, 1938, a check for $250. On March 22, 1938, an entry of a check to Gossett, Ellis, Dietrich and Tyler for $600.

In April of 1938, the 13th, there is an entry for $650.

On July 19, a check to Gossett, Ellis, Dietrich and Tyler for $500.

On August 29, 1938, Gossett, Ellis, Dietrich and Tyler, $250. On September 8, 1938, Gossett, Ellis, Dietrich and Tyler, $250.

On May 16, 1939, Gossett, Ellis, Dietrict and Tyler, $2,000. That is the last entry.

Q. Are there any amounts due and owing Gossett, Ellis, Dietrich and Tyler which are unpaid now?

A. Yes; there is a balance of $4,000 owed to Gossett, Ellis, Dietrich and Tyler at the present time.

Q. Have you been rendered a bill for that amount?
A. We have.
Q. Where is that bill?

* * * * * *

[fol. 1813] Cross-Examination.

By Mr. Langsdale:

Q. I refer you to Board's Exhibit 26, which purports to be a pencil memoranda of meetings held by the Donnelly Garment Workers' Union for which rent was paid, a total amount of $33.00. I note that on this exhibit is check No. 81.

A. That is right.

[fol. 1814] Q. Have you that check?

A. We have the cancelled checks, I believe. It would be April or May of '38. There is check No. 81.

(Thereupon, the check above referred to was handed by the witness to Mr. Langsdale.)

Q. Now, check No. 81 is drawn on the First National Bank, dated "Kansas City, Missouri, April 22, 1938," made payable to the Donnelly Garment Sales Company and the Donnelly Garment Company, $33.00, signed "Donnelly Garment Workers' Union, Rose K. Todd, J. V. Brown"; is that correct? A. F. V. Brown.

Q. Who was F. V. Brown?

A. It was Fred Brown, the treasurer at that time.

Q. You became treasurer when?

A. I was elected in April, took the books over in May of 1938.

Q. The First National Bank is where you kept the Donnelly Garment Workers' Union account?

A. Yes, sir.

* * * * * *

[fol. 1816] Q. When the Donnelly Garment Workers' Union was formed, you were, you stated, in the mechanical department.

A. That is right.

Q. You are not a machinist? A. No, sir.

Q. You just took the calls? A. Yes, sir.

Q. Some one else did the repair work? A. Yes, sir.

Q. Were you the head of that department?

A. No, sir.

Q. What would you call yourself?

A. Well, I was called everything. I never knew what to call myself.

By Trial Examiner Batten:

Q. Did you receive all the calls from all over the plant?

A. When I was there, yes. There was three phones there. If a machine would break down, or anything, they would call there, and I merely relayed it to the mechanics.

Q. How would you relay it to the mechanics?

A. I have a call board that I would reach out, and we had a coding for that, where the machine was.

Q. Just what would the call board show? Suppose I [fol. 1817] was a mechanic and I come in and I looked at the call board. What would it indicate?

A. Well, it would indicate the location of the machine and what was the matter with the machine, the time the call came in, the time it was answered, and the time it was finished being repaired.

Q. How would I know, supposing there was half a dozen, would I take the one that came in the soonest? Is that right? A. That is right.

* * * * * *

[fol. 1825] WAVE TOBIN,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Leary:

Q. State your name and address, please.

A. Wave Tobin, the Aladdin Hotel, 1215 Wyandotte.

Q. By whom are you employed?

A. By the Kansas City Joint Board of the International Ladies' Garment Workers' Union.

Q. Of what is the Kansas City Joint Board of the International Ladies' Garment Workers' Union composed?

[fol. 1826] A. The Kansas City Joint Board is made up of representatives of each local that we have in Kansas City.

Q. How many locals do you have in Kansas City?

A. Seven.

Q. And is there one local for each company with which you have contracts or agreements? A. No.

Q. Or do some of your locals encompass more than one shop? A. Yes, they do.

Q. How many shops in Kansas City are there with whom your organization has agreements?

A. There are about, I think, fifteen shops.

Q. Where are the International Offices of the International Ladies' Garment Workers' Union?

A. The International office, at 3 West 16th Street, New York.

* * * * * * *

Q. Do you know who the officers of the organization are at this time?

A. The president is David Dubinsky. He is the president and secretary-treasurer, and the general executive board is made up of twenty-one vice presidents.

* * * * * *

[fol. 1828] Cross-Examination.

By Mr. Ingraham:

Q. Mrs. Tobin, you are familiar with the contracts the International has made with garment companies located in Kansas City? A. I am.

Q. I will hand you Respondent's exhibit No. 2 and ask you if these are photostatic copies of contracts which the International has with other garment manufacturers in Kansas City.

A. There are two contracts here, one for the Liberty, and one for the Mayfair, which were the contracts negotiated in 1937, but have since been renewed with changes. The others are the contracts that are in force now.

Q. What are the names of the other companies?

A. Missouri, Gernes, and Gordon.

Mr. Ingraham: Respondent offers in evidence exhibit No. 2.

[fol. 1829] Mr. Leary: Now, I object to that, Mr. Examiner, as being entirely incompetent, immaterial, and irrelevant. It has no bearing on the issues in this matter that we are trying now.

Mr. Ingraham: Mr. Examiner, counsel for the Board and counsel for the International have called the Exam-

iner's attention to various provisions in the Donnelly Garment contract with the Donnelly Garment Workers' Union. I want to show that similar provisions are in the contracts that the International makes with other garment manufacturers.

Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the exhibit for the reason that the only purpose of offering the contract with the Donnelly Garment Workers' Union and the Donnelly Garment Company and the only purpose of calling attention to any provisions thereof was upon the question of whether or not there was bargaining as provided by the Wagner Act. The provisions of these contracts are in no way material. The comparison between these and the contracts between the Donnelly Garment Workers' Union and the Donnelly Garment Company are in no way material. The only question is, were the contracts made with the Donnelly Garment Workers' Union and the Donnelly Garment Company the result of collective bargaining by a free and independent union, as provided by the Wagner Act and the National Labor Relations Act?

[fol. 1830] Trial Examiner Batten: Mr. Leary, do you agree with Mr. Langsdale that the only purpose of the Donnelly contracts and the questions with respect to them was for the purpose of showing what negotiations were conducted, and that is all?

Mr. Leary: That is it, yes.

Trial Examiner Batten: Of course, if that testimony is limited, as you say it is, I will reject the offer of these contracts, because any comparison of the contracts would be unnecessary.

By Mr. Ingraham: Mrs. Tobin, you are familiar with the Gernes Garment Company contract with the International, are you not? A. Yes.

[fol. 1831] By Mr. Ingraham: I will ask you if that contract did not contain the provision that "Present prices for piece workers shall remain intact and shall be based on a basis that not less than 75 per cent of the workers in the different departments of the shop shall be able to earn not less than $15 per week per capita."?

Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the question for all of the reasons heretofore stated as objections to the offer of the contract itself.

Trial Examiner Batten: Sustained.

* * * * * *

[fol. 1834] THOMAS C. BOURKE,

a witness called by and on behalf of the National Labor Relations Board was examined and testified as follows:

Direct Examination.

By Mr. Foster:

Q. State your name and address, please.

A. Thomas C. Bourke, 644 West Sixtieth Street Terrace.

Q. Mr. Bourke, what is your position or occupation?

A. President of Corrigan Properties, Inc.

Q. Does Corrigan Properties, Inc., have a lease with reference to the Corrigan Building at 1828 Walnut Street, which is leased to the Donnelly Garment Company?

A. Yes.

* * * * * * *

Mr. Leary: It is hereby stipulated by and between the parties to this proceeding that the Donnelly Garment Company has since June 25, 1935, leased space in the building located at 1828-30 Walnut Street, Kansas City, Mo., otherwise known as the Thomas Corrigan Building, from the [fol. 1835] Corrigan Properties, Inc., Kansas City, Mo.

On June 25, 1935, a rental agreement was consummated covering the top seven floors of the 10-story building, plus 1,500 square feet in the basement of said building at the rent of $2,441 per month.

On July 24, 1936, the Corrigan Properties, Inc., consummated a rental agreement with the Donnelly Garment Company for the top eight floors of said building plus 1500 sq. ft. in the basement of said building at the rent of $3,000 per month.

On May 10, 1937, the Corrigan Properties, Inc., consummated an agreement with the Donnelly Garment Company for all ten floors of the building, plus all of the basement, excepting the portions used for utilities, at a rental of $3,500 per month. The total square feet of space in the basement of said building, [exlusive] of space used for utilities, is approximately 7,000 square feet.

On March 17, 1939, the Corrigan Properties, Inc., executed a rental agreement with the Donnelly Garment Company for all ten floors of the building, plus 7,000 square feet of basement space, at a monthly rental of $3,565, which lease has until August 31, 1939, to run.

Trial Examiner Batten: Mr. Ingraham, is that stipulation satisfactory?

Mr. Ingraham: Yes.

Trial Examiner Batten: Mr. Tyler?

[fol. 1836] Mr. Tyler: It is agreeable to me, of course, subject to the objection that it is incompetent, immaterial and irrelevant.

Mr. Stottle: Mr. Examiner, respondent also objects that it is immaterial. We are stipulating as to the facts.

Trial Examiner Batten: When asking you about the stipulation I am not asking you to forego any objection. All you are agreeing to is the facts; whether or not they are relevant is an entirely different matter.

* * * * * * *

Cross-Examination.

By Mr. Langsdale:

Q. Mr. Bourke, you have been handling that building, the entire building, the Corrigan Properties, Inc., for how long? A. Practically since it was built in 1921.

Q. Have you since the Donnelly Garment Company has occupied any part of it had any representative at the building?

A. About five years ago we turned over the management of the building to E. B. Murray and Company. Is that the management you have reference to?

Q. That is a realty company?
A. He is a real estate operator, yes. He is a building operator.

• • • • • •

[fol. 1837] Q. Has there been anyone there representing either E. B. Murray or the Corrigan Properties, Inc., during the last five years?
A. Oh, yes, there has been somebody representing one or the other, I think.
Q. I mean, at the building. A. Yes, the employees.
Q. The employees of whom?
A. They are E. B. Murray's employees, as I understand it.
Q. Was there anyone there as manager of the building, of E. B. Murray?
A. Oh, I see what you mean. At the present time there is a man named Brady who is the manager of the building.
Q. Does he maintain an office in the building?
A. He has a desk there, yes. He doesn't spend his entire time there. I understand he spends some of it at another building.
Q. The boys who operate the elevator are whose employees? A. My understanding is they are Murray's.
Q. Do you know how long the first and second floors were vacant?
A. No, but I would say it was probably about three years, maybe four.
[fol. 1838] This is, immediately prior to May 10, 1937?
A. Yes.

• • • • • •

Q. Prior to May 10, 1937, were those two floors used for any purpose at all? A. Not to my recollection.
Q. Let's be more specific. From January 1, 1937, to May 10, 1937, was either the first or second floor used by anybody? A. Not to my recollection.
Q. Was any rent ever collected by the Corrigan Properties, Inc., for any use that either of those floors was put to between January 1, 1937 and May 10, 1937?
A. Well, I would have to consult some sort of record to give you a definite answer on that, for this reason, it

is very possible that sometime during the period the second floor might have been used for a day or two or three days at a rental of a nominal sum. It seems to me at one time the Donnelly Garment Company did use the floor, or one of the floors down there for some temporary purpose, [fol. 1839] for just a matter of a few days. It was an inconsequential amount of money, so I don't recall the details, and I don't recall whether it was between the period January 1 and May 10, 1937. It might have been earlier than that, but it was somewhere in there.

* * * * * *

[fol. 1840] By Mr. Ingraham:

Q. Mr. Bourke, in 1937, prior to the execution of the extension agreement that you have referred to, did you advise the Donnelly Garment Company that if they extended the lease they would have to lease the entire building? A. When did you say I asked them that?

Q. In 1937.

A. Yes. That is when the extension agreement was made covering the entire building, yes.

Q. And that was your proposition, that the company take the entire building? A. It was my suggestion.

* * * * * *

[fol. 1841] By Mr. Tyler:

Q. Mr. Bourke, did either the Corrigan Estate or Murray have a man named Joe Appleby down there in charge of the building for a time?

A. Yes. He was an employee, as I recall it, of Mr. Murray.

Q. Of Murray? A. Yes, sir.

Q. And he had charge of the building during the time he was down there? A. That is right.

Q. Can you tell the dates he was down there now?

A. No, I can't [rell] you.

Q. Was he there in 1937? A. I think he was.

* * * * * *

Mr. Leary: Mr. Examiner, we have had prepared from the bank statements which were used during the testimony of Miss Hartman in regard to the Nelly Don Loyalty League this morning, the exhibit for which Board's Exhibit No. 20 was reserved. I now offer that exhibit.

[fol. 1842] (Thereupon, the document above referred to was marked as "Board's Exhibit No. 20" for identification.)

Trial Examiner Batten: Have the other attorneys been furnished with a copy of it?

Mr. Ingraham: Yes.

Mr. Leary: They all have, Mr. Examiner. I believe they all stated to me that they agree that the facts on Board's Exhibit 20 are the same as the facts and information contained on the bank statements that Miss Hartman was referring to; is that correct?

Mr. Ingraham: That is correct.

Mr. Tyler: That is correct.

Mr. Stottle: Mr. Examiner, that is subject to our continuing objection as to materiality as to the Loyalty League matter.

Trial Examiner Batten: It will be received subject to the objections of the respondent and the intervener, both that is, your continuing objections.

(The document heretofore marked as "Board's Exhibit No. 20" was received in evidence.)

Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis, and Board's Exhibit 25, in which I reserved a decision, will be received on the same basis, subject to the same objections.

[fol. 1847] Mr. Foster: Mr. Examiner, I wish to state that the respective parties to this proceeding have signed a stipulation with reference to the nature and character of respondent's business, which I suggest be incorporated as part of the formal file of Board's exhibit No. 1, unless someone suggests to the contrary.

Trial Examiner Batten: That will be Board's exhibit No. 1-EEEE.

Mr. Foster: Will you mark this for identification?

(The stipulation above referred to was marked "Board's Exhibit No. 1-EEEE.")

* * * * * *

[fol. 1848] (Thereupon the stipulation ordered copied into the record will be found in words and figures, to-wit:)

"It is hereby stipulated and agreed by and between Donnelly Garment Company, International Ladies' Garment Workers' Union, Donnelly Garment Workers' Union, and Daniel J. Leary, attorney, Seventeenth Region, National Labor Relations Board, as follows:

I.

"1. Donnelly Garment Company, hereinafter referred to as respondent, is and has been since 1919 a corporation organized under and existing by virtue of the laws of the State of Missouri, having its factory and principal place of business at 1828 Walnut Street, Kansas City, Missouri,

and is now and has continuously been engaged in the business of designing, manufacturing, selling, and distributing low and medium priced ladies' garments chiefly of cotton, wool, acetate, rayon and linen content, under the trade name of "Nelly Don" and with the trade mark of a Nelly Don triangle. Respondent's garment business for the years 1937 and 1938 grossed over four million dollars ($4,000,000) per year.

"2: Respondent, in the course and conduct of its business, causes and has continually caused over ninety-nine (99) percent of the materials used in the manufacture of its garments, including cotton, wool, acetate, rayon, and linen, to be purchased and transported via rail from and [fol. 1849] through States of the United States, other than the State of Missouri, to the Kansas City, Missouri, factory of respondent, and causes and has continuously caused approximately ninety-six (96) percent of the garments designed, manufactured and sold to be transported and distributed via rail from the Kansas City, Missouri, factory into and through States of the United States other than the State of Missouri, to customers and to approximately 2,000 stores located in all of the States of the United States.

"3. The Donnelly Garment Sales Company has been since 1935 a corporation organized under and existing by virtue of the laws of the State of Missouri with its office and principal place of business at 1828 Walnut Street, Kansas City, Missouri, and is now and has been continuously exclusively engaged in the business of selling and distributing ladies' garments so manufactured by respondent. The officers of Donnelly Garment Company are:

President and Treasurer	Mrs. James A. Reed
Vice-President	Alex C. Green
Secretary	R. J. Ingraham

"The officers of Donnelly Garment Sales Company are:

President	Alex C. Green
Vice-President & Treasurer	Lee Baty
Secretary	R. J. Ingraham

[fol. 1850] II.

"It is stipulated and agreed that the operations of respondent have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the National Labor Relations Act.

III.

"It is stipulated and agreed that this stipulation and the facts herein contained may be introduced and received into evidence in the hearing in the above entitled matter and have the same force and effect as if testified to by competent witness at said hearing.

"Dated at Kansas City, Missouri, this 30th day of June, nineteen hundred thirty nine (1939).

DONNELLY GARMENT COMPANY,
By R. J. Ingraham, Its Attorneys.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
By Clif Langsdale,
Jane Walker Palmer,
Its Attorneys.

DONNELLY GARMENT WORKERS' UNION,
By Gossett, Ellis, Dietrick, Tyler,
Its Attorneys.

DANIEL J. LEARY, Attorney NLRB"

* * * * * *

[fol. 1856] Trial Examiner Batten: Mr. Leary, Board's Exhibits 22, 23 and 24 have not been offered, and Mr. Ingraham I think your record is clear. Mr. Langsdale your Exhibits Nos. 1, 2, 3 and 9 have not been offered. Your Exhibits 12 and 13, of course, we changed the number on those, made those Board's Exhibit 23 and 24 and they have not been offered by the Board.

Mr. Tyler, all of your exhibits thus far have been offered and received.

Mr. Leary: Board offers Exhibits 23 and 24-A, 24-B, 24-D.

Trial Examiner Batten: Board's Exhibits 23 and 24 were those accounts; 23 was the special fund account of the Donnelly Loyalty League and 24 was the general fund account.

Mr. Stottle: Respondent makes its continuing objection to any of these exhibits that refer to the Loyalty League matters, and also, we haven't as yet had an opportunity to check the correctness of the figures.

Trial Examiner Batten: Well, of course, I might say this: that any exhibits which are received, of course, are received subject to correction if there are figures or dates [fol. 1857] that are found to be incorrect.

Mr. Stottle: Then, our continuing objection was as to the materiality of that Loyalty League evidence.

Mr. Tyler: Intervener renews its objection to any evidence in connection with the Loyalty League on the ground that it is purely a social organization, having no connection with the Donnelly Garment Workers' Union, and that any of its actions would not in any way be binding on the intervener, and that it is immaterial and irrelevant to any issue in this case.

Trial Examiner Batten: Well, they will be received.

(The documents heretofore marked as "Board's Exhibits Nos. 23 and 24-A, 24-B and 24-C" were received in evidence.)

* * * * * *

[fol. 1858] Mr. Leary: Board offers what purports to be Miss Hartman's memoranda of the Loyalty League and special account maintained at the First National Bank, identified as Board's Exhibit 22. I will have this photostated, and ask permission to insert the photostat.

Trial Examiner Batten: It will be received subject to the same objections by respondent and intervener as to Board's Exhibits 23 and 24.

(The document heretofore marked as "Board's Exhibit No. 22" was received in evidence.)

* * * * * *

Mr. Leary: Yes, I have several matters. I have the offer of proof that I desire to make at this time, in connection with certain sub-sections of paragraph 11.

Trial Examiner Batten: That will be marked Board's Exhibit 30.

* * * * * *

[fol. 1859] Mr. Ingraham (interrupting): Just a minute, Mr. Leary. What was the number of that last exhibit, the offer of proof?

Trial Examiner Batten: Board's Exhibit 30.

Mr. Ingraham: Well, the respondent objects to the exhibit 30 for the reason it is immaterial and irrelevant to any issue in this case, and refers to matters that occurred prior to the passage of the Wagner Act.

Mr. Tyler: Intervener makes the same objection.

Trial Examiner Batten: I will reserve the decision on it.

Mr. Leary: The Board at this time moves to strike from the complaint, in paragraph 11, subsection (h) and (j), and from subsection (o) the words " . . . Virginia Stroup, in October, 1935..." and the words "... and Lillian Wales . . ." And to strike from subsection (p) of the same paragraph the names of all persons listed, with the exception of Ellen Fry, Glynn Brooks, and Mamie Tubbesing.

Trial Examiner Batten: The motion will be allowed.

* * * * * *

[fol. 1861] Trial Examiner Batten: In accordance with the stipulation, which is marked Board's exhibit No. 1-DDDD, the Board has served upon all of the parties certain testimony taken from the N. R. A. proceeding and the so-called Judge Miller case.

I think I explained to the attorneys that for the purpose of putting all of this testimony in one place so that it may be bound separately and not mixed up with all of the exhibits, I have designated all of these matters "N. R. A.-Judge Miller case" exhibits, beginning with No. 1, so that they will all be found in one place in the record with the testimony, the objections, and the rulings thereon.

The first exhibit, N. R. A.-Judge Miller case exhibit No. 1-A to BBBB is certain testimony which is offered by the Board from the N. R. A. proceedings and it consists of 80 pages.

N. R. A.-Judge Miller case exhibit No. 2-A, B, and C are the objections and motions of the respondent and intervener to strike the N. R. A. testimony offered by the Board. That is exhibit No. 1-A to BBBB, containing 80 pages, and the following ruling is made, endorsed on exhibit 2-A, B, and C, on sheet 2-C;—

Mr. Langsdale: How have you designated the objections?

Trial Examiner Batten: N. R. A.-Judge Miller case exhibit No. 2-A, B, and C.

The objection is overruled and the motion to strike is [fol. 1862] denied, and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections.

I want to say that proviso is attached to all of the rulings and will be hereafter attached to all of the testimony by the intervener, for the reason that in reading over the testimony I notice there have been some questions included

that refer to the so-called loyalty pledge which was signed by all of the employees, or refers to some other matters which during the course of the proceedings I have stated I would not entertain evidence on.

I didn't want any of the attorneys to think that because there were a few questions in there involving some of those matters that I was in any way reversing my rulings on those subjects.

Mr. Ingraham: Are you receiving in evidence the testimony of the different named individuals that testified in the N. R. A. case with regard to their discharge and those matters they testified to in the N. R. A. proceedings?

Trial Examiner Batten: I am receiving it in accordance with this ruling, the testimony in exhibit No. 1, subject to that proviso which I stated.

Mr. Ingraham: I don't understand what you are ruling out and what you are leaving in.

[fol. 1863] Trial Examiner Batten: I think if you take this and read it, Mr. Ingraham, you will understand just what I am receiving.

I have gone through the evidence and read it carefully and I find in some instances indirect reference to some of the matters which I have said I would not receive evidence upon, and I just want to make it clear that I am not reversing my rulings in opening up those two or three subjects for receipt of further testimony.

If there is any question about it after you go over it I will be very glad to clarify it.

Mr. Ingraham: Of course it will be necessary to go over that before we proceed with our evidence.

Trial Examiner Batten: If it meets with the satisfaction of the other attorneys, I have set aside N. R. A.-Judge Miller case exhibit No. 3 for the N. R. A. testimony which

will be offered or may be offered by the respondent so that it follows right after this testimony.

Mr. Ingraham: Then, you mean the respondent, in view of your ruling allowing in the N. R. A. testimony, may itself offer N. R. A. testimony without waiving its objections to the materiality and relevancy?

Trial Examiner Batten: Surely. That is why I set aside exhibit No. 3. In case you do want to offer some of it, it will be marked exhibit 3.

[fol. 1864] And I have set aside exhibit No. 4 for any N. R. A. testimony the intervener may want to offer under the same circumstances.

N. R. A.-Judge Miller case exhibit No. 5-A to 5-GG is certain testimony offered by the Board from the Judge Miller case, consisting of 33 pages.

Exhibit No. 6-A, B, and C, the objections and motions to strike, of the respondent and intervener.

Exhibit No. 5-A to 5-GG, the objection to such testimony is overruled, and the motion to strike is denied; and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain subjects.

[fol. 1865] 7 is reserved for the respondent, for such testimony as it may offer with respect to 5-A to 5-GG, and 8 is reserved for the intervener for such testimony as it cares to offer with respect to 5-A to 5-GG.

9-A to 9-CC is certain testimoony from the Judge Miller case, offered by the Board, being the testimony of Sylvia Hull.

In the case of Exhibit 9-A to 9-CC, the respondent has indicated on the exhibit objections to certain questions through the entire testimony of 29 pages. The intervener objects to all of the testimony.

The rulings of the Trial Examiner are indicated on the various pages where the individual objections of the respondent appear, and as to the intervener's objection, the objection is overruled and the motion to strike is denied and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects. The objections being marked 10-A, consisting of one sheet, and the rulings entered thereon.

11 is reserved for such testimony as respondent offers in connection with 9, and 11 is reserved for there intervener for the same reason—

Mr. Tyler (interrupting): You mean 12?

Trial Examiner Batten: or 12, pardon me, for the inter-
[fol. 1866] vener.

NRA-Judge Miller Case Exhibits 13-A to 13-R, consisting of 18 pages, is certain testimony from the Judge Miller case offered by the Board.

Exhibit 14 is the objections by the respondent to 13-A to 13-R, and the following ruling:

Objection is overruled and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, and, further, it is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects.

In the case of Exhibits 13-A to 13-R, the intervener made no objection, and Mr. Tyler advises me that he would have no objection to that testimony. Is that correct, Mr. Tyler?

Mr. Tyler: That is correct

Trial Examiner Batten: Exhibit 14 has been reserved for such testimony as the respondent may offer with re-

spect to 13-A to 13-R, and 15 reserved for the intervener for the same purpose.

Mr. Stottle: Pardon me, Mr. Examiner. You have said Exhibit 14 was our objection.

Trial Examiner Batten: Pardon me. The reservation for the respondent is 15 and for the intervener is 16.

Now, I think that covers all of the testimony that has been offered by the Board or the International Ladies' [fol. 1867] Garment Workers' Union; is that correct, Mr. Leary?

Mr. Leary: So far as I know, it does, Mr. Examiner.

Trial Examiner Batten: Well, you are not contemplating any more, are you?

Mr. Leary: No, I am not.

* * * * * *

[fol. 1868] Mr. Leary: Mr. Examiner, during the recess I was informed by the witness for the Board, Thomas Bourke, by telephone, that there were no rentals collected for the first and second floors of the building at 1828-30 Walnut for the period January 1, 1937, to May 10, 1937, and I believe Mr. Ingraham and Mr. Tyler are willing to agree that if Mr. Bourke were here, he would so testify.

Trial Examiner Batten: Is that correct?

Mr. Ingraham: Correct.

Mr. Tyler: That is satisfactory with me.

* * * * * *

[fol. 1870] (Whereupon the hearing was resumed, pursuant to recess, at 2 p. m.)

Trial Examiner Batten: We are ready to proceed.

I think I should say, in connection with Mr. Leary's motion this morning to strike paragraphs (h) and (j) of the amended complaint, all testimony with respect to the two matters in those subparagraphs may be stricken from the record.

I want to further say, with respect to Mr. Leary's motion of June 21 to amend the complaint, the motion is allowed.

With respect to Board's exhibit No. 30, which was an offer of proof by the Board, the testimony which is attached thereto, Mr. Ingraham, and Mr. Tyler, I wish you would review that with a view of making such objections as you have to that testimony. And, Mr. Leary, you may present the witness referred to in your offer of proof subject to any objections the intervener or respondent has at that time.

And, Mr. Leary, will you have an original made of the testimony attached to Board's exhibit No. 30 so that Mr. Ingraham and Mr. Tyler may attach their objections to that to the original?

Mr. Leary: The original has been admitted as Board's exhibit No. 30.

Trial Examiner Batten: I want you to make another original so that it may be made a part of the N. R. A.-Judge [fol. 1871] Miller exhibits the same as we did this morning.

Mr. Leary: The format of Board's exhibit No. 30 is entirely different than that of the N. R. A.-Judge Miller testimony.

Trial Examiner Batten: I am simply saying I want to make it a part of the N. R. A.-Judge Miller exhibits. If you want to use a copy and that is agreeable to the respondent and intervener, you may do so.

* * * * * *

[fol. 1872] Mr. Stottle: Mr. Examiner, respondent desires to file its motion to dismiss the complaint in its entirety.

Trial Examiner Batten: That will be marked Board's exhibit No. 1-FFFF.

[fol. 1873] (Thereupon the motion above referred to was marked for identification "Board's Exhibit No. 1-FFFFF.")

Mr. Stottle: The grounds of the motion, Mr. Examiner, are that there has been no substantial evidence in the record to support any of the charges. In some instances there has been some evidence but it has been of a conjectural and speculative nature that would not be sufficient to constitute a case against the respondent.

Mr. Tyler: If the court please, the intervener wishes at this point to demur to the evidence of the Board and the International Ladies' Garment Workers' Union and move to dismiss the complaint on the grounds that the evidence introduced, if taken as true, would not be sufficient upon which to base any finding which would affect the rights of the intervener; it would be insufficient to base an order on just establishing the Donnelly Garment Workers' Union as bargaining representatives; it would be insufficient to base an order upon which would in any way cancel or affect the contract which the Donnelly Garment Workers' Union have with their employers, or their contract rights; it would be insufficient in any way to use as a basis for any decree, order, or judgment affecting the rights and interests of the intervener.

Trial Examiner Batten: Mr. Ingraham, do you have any further motions?

Mr. Ingraham: Yes.

. . . . . .

[fol. 1874] Mr. Stottle: Mr. Examiner, we have another motion to dismiss that goes to each of the paragraphs separately.

Trial Examiner Batten: The first is a general motion, and this is a specific motion.

Mr. Stottle: To practically all of the paragraphs, yes, but not every one of them. We will submit it at this time if you will give me a number.

Trial Examiner Batten: That will be Board's exhibit No. 1-GGGG.

(Thereupon the motion above referred to was marked for identification "Board's Exhibit No. 1-GGGG.")

* * * * * *

[fol. 1890] Mr. Tyler: Yes. If the Court please, I wish to amplify the motion of the intervener heretofore made to dismiss by adding as a basis for that motion that no evidentiary basis for any finding that the union was organized by the company or is company dominated has been laid, and that therefore no finding could be made, because no evidence has been submitted as a basis;

That no basis has been laid for any finding that the company coerced or intimidated or influenced any employee in joining the Donnelly Garment Workers' Union;

And that no basis has been laid for any possible finding that the company contributed, directly or indirectly, financial aid or other aid to the Donnelly Garment Workers' Union;

No basis has been laid that the union is not a bona fide labor union, with all of the rights guaranteed such union under the Wagner Act;

[fol. 1891] And that no basis has been laid for any finding that the union is not a free will choice of the majority of the employees and is not entitled to representation of all of the employees in collective bargaining.

* * * * * *

[fol. 1892] Mrs. Elizabeth Gates Reeves, a witness called by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. State your name, please.

A. Mrs. Elizabeth Gates Reeves.

Q. Mrs. Reeves, are you employed at the Donnelly Garment Company?

[fol. 1893] A. I am.

Q. How long have you been employeed at the Donnelly Garment Company? A. Eighteen years.

Q. Will you just state the different positions you have held with the Donnelly Garment Company?

A. I started out as a payroll clerk. Then I helped Mrs. Reed around the factory for a number of years. And then I became production manager, and now merchandise manager.

Q. When were you production manager?

A. I was production manager, I would say, from about 1924 to approximately June, 1935.

Q. Will you just state what the duties of a production manager are?

A. Well, the duties of a production manager are to oversee the workings of a factory or the productive parts of a factory. It starts with the cutting of the dresses, until they are completely folded and ready to go into the shipping department. They supervise the personnel in the factory.

Q. Now, Mrs. Reeves, will you describe for the Examiner the plan of manufacture at the Donnelly plant?

A. Well, in manufacturing our dresses the first step is the buying of the piece goods.

After the piece goods is purchased the garments are designed.

[fol. 1894] We create our own original models. After the model is designed, one operator, who is in the booth with the designer, makes the first model. After that has

been submitted and approved and accepted for the line the work begins, as far as matching up the trimmings and checking into the operations of just how this particular garment should be made.

To continue with the designing—

Q. (Interrupting) Just a minute. You mentioned its being accepted in the line. What do you mean by "line"?

A. Well, after a model has been designed and the Donnelly Garment Company decides that this particular style of garment should be put in its line of salesmen's samples, work starts as far as the actual planning of that garment is concerned.

Q. Is there a line gotten out by the company for each season in the year?

A. Yes. We have six different lines during the year.

Q. What are those seasons?

A. The first fall line, the second fall line, or holiday line, the first spring line, the second spring line, the first summer line, and the mid-summer line.

Q. Now, will you go ahead, please, with what happens next?

A. After the model is definitely decided upon to be put into the line for selling, a pattern is made, very carefully. We use perforated patterns. The pattern makers mark those into one long—It is rather hard to [fol. 1895] describe. They mark it in the different sizes. We call them block patterns. They mark in the sizes. The sleeves, skirts and everything in that particular garment is marked out, and then it is perforated.

We use those same patterns throughout the season.

The value of the use of that perforated pattern is that we are sure of perfect cutting and our operators have a perfect garment to work with and they don't have to

worry if some operator comes along and cuts off a sleeve, they don't have to worry about what to do with that piece that is missing, and so forth.

While that part of the factory is planning and making our patterns another part of the factory is planning just how this particular garment should be made.

They write it out in detail, and describe in very great detail the instructions, as to whether an operation should put—For instance, on this dress (indicating), whether they should tuck these pockets or not. The next operation might be setting on the pockets after they are tucked.

As the next operation, a girl may be taking the skirt of this dress (indicating) and tucking that.

I am just using that as an illustration.

After that is all planned out in detail those instructions are sent down to the instructors, ready to be given out to the operators.

[fol. 1896] In the meantime the perforated [patters] I talked about a moment ago are sent down to the cutting department and the piece goods is spread up and we cut 142 layers deep, or maybe 100 or 125 dozen garments at a time.

After the garments are cut out, then the blocks, size 16, and so forth, are put over into the dividing department. We generally send down about 24 garments in a bundle. The front, back, sleeves, and so forth, size 16, are put in one bundle and sent to the operator, ready to sew.

In our planning department upstairs, which is in connection with my department, we plan in detail just what we are to cut, what styles are to be cut. Then, we take and figure out just how many—I say "we;" there is a young man there who is responsible for it, really. He figures out how many straight sewers will be needed on this, how many underarm seam binders, how many pocket girls, how many joiners, how many tuckers, how many zig-zag people, and so forth.

All of that detail work of planning is done upstairs on the tenth floor before it is sent down to the section. When it gets down to the section the instructor and the

floor girl who help the operators in order to carry on their work a little more efficiently and better, they give out these bundles of work to the different operators as they are classified, whether they be underarm seam binders, straight sewers, or what-not.

[fol. 1897] After the garment is manufactured it is thoroughly examined to see if there are any flaws in the construction of the dress. If the dress is perfect, it is then sent to the button and buttonhole department, hooks and eyes, and snaps, and it is then pressed and folded and sent in to the shipping department ready to be sent out to our customers.

Q. Mrs. Reeves, will you describe what assistance time workers give to the operators of the machines?

A. We have two time operators to every section of approximately 40 machines who—one helps out, if an operator doesn't know just how to handle an operation she shows her how to handle it. The other girl gives out thread, binding, lace, and bundles of work.

Q. The first girl you mentioned, is she what is called an instructor? A. Yes.

Q. And the second girl is—

A. —a floor girl.

Trial Examiner Batten: Is that the one that is sometimes called a thread girl?

Mr. Ingraham: I was going to ask her that.

A. Yes.

By Mr. Ingraham:

Q. Mrs. Reeves, will you name the executive heads of the various department?

A. Mr. George Keyes, Mr. Lee Baty—

[fol. 1898] Q. (Interrupting) Will you state the department that each is the head of?

A. Mr. George Keyes is in charge of sales, the order department, returned merchandise, and shipping.

Q. And Mr. Baty?

A. Mr. Baty is in charge of the production. He is production manager.

Q. Will you state how long he has been production manager? A. Since June, 1938.

Q. Now, what other heads are there?

A. Mrs. Stephenson is our credit manager. Mr. Bachofer is in charge of accounting, and office manager. I am in charge of merchandising. And I believe recently Mr. George Fitzgerald has been made advertising manager. Dewey Atchison is in charge of the cutting and the helping of the planning of the work. That is a recent duty, the planning of the work.

Q. Will you just state what departments come under the merchandising department?

Trial Examiner Batten: Mr. Ingraham, I don't think the witness mentioned—On this chart I asked you for there is the designing, the pattern, and the employment.

Mr. Ingraham: Yes.

By Mr. Ingraham:

Q. Who is in charge of the pattern and designing?

A. Mrs. Beulah Spilsbury.

[fol. 1899] Q. In charge of the personnel?

A. Mrs. Ella Mae Hyde.

Q. Does Mr. Baty have anything to do with that?

A. Yes. Mrs. Hyde is under Mr. Baty.

Q. Now, will you state what your work is as merchandise manager?

A. I am in charge of all of the purchasing, as to quantities, and so forth. I don't do the entire selecting. And then, I do the planning of what shall be cut and how much shall be cut.

Q. You mean, in charge of purchasing materials that are used in the manufacture of the garments?

A. Of purchasing everything.

Q. I will ask you, Mrs. Reeves, if the retail store is in your department?

A. Yes, directly—under me.

Q. Mrs. Reeves, what is sold in the retail store?

A. Remnants, notions—overstocks really.

Q. Mr. Reeves, I would like for you to describe the factory itself, the physical property, very briefly.

A. We have a 10-floor fireproof building, with windows on three sides.

I would say it is the most modern factory of its kind in the United States.

We have mostly daylight, and when it is necessary to use [fol. 1900] artificial lights we have plenty of them.

We have one entrance for all of the employees, both factory and office help and executives.

We have plenty of ice water, Coolerators, janitor service, maid service, and adequate washroom facilities.

Mr. Leary: I move to strike all of this witness' answers except the portion pertaining to the fact that it is a 10-story building as not being responsive.

Trial Examiner Batten: It may stand. I don't know that we need to know it in such detail. It is a good sales talk.

You may go ahead.

Q. (Continuing) We have hospital facilities, two trained nurses, a cafeteria, a recreation room for the boys, and a ladies' lounge where they can play cards and rest, and we have—Well, I think we have everything.

Trial Examiner Batten: Don't you have a little meeting room with a stage in it?

A. Yes. Downstairs we have an auditorium where the employees can give their own shows, or where we put on our style shows now.

I believe that describes it.

* * * * * *

Mr. Ingraham: Mrs. Reeves, I wish you would state [fol. 1901] whether or not in 1931 there was a change in the policy of the company in regard to increasing production and giving employment.

A. Yes. Up to 1931 it had been Mrs. Reed's policy to—

Mr. Leary (interrupting): Mr. Examiner, I believe this comes within the category of the testimony we are supposed to cover by the N. R. A. excerpts.

Trial Examiner Batten: Well, I think I spoke to Mr. Ingraham about that this morning. And of course the stipulation which you men drew provided that you might

call witnesses. However, I asked Mr. Ingraham if he would not present it in written form wherever he could. If it is necessary to ask a question or two, where you want to enlarge upon it, you may do so.

Now, of course, under the circumstances, if you prefer to call all of these witnesses and examine them, you have that right, but if you exercise that right I certainly think it is beyond the understanding which we had.

Mr. Ingraham: This is leading up to the evidence which the Board has submitted dealing with these matters that we are taking up in this N. R. A. case.

Trial Examiner Batten: I say, Mr. Ingraham, you may proceed.

Mr. Ingraham: I will not go into it in any detail like it was gone into in the N. R. A. proceedings.

[fol. 1902] Trial Examiner Batten: As I said this morning, and just now, if there is a question or two to get the proper connection between the testimony you want and that which has been given before, you may go ahead, but I certainly want you to stay within reasonable bounds.

By Mr. Ingraham:

Q. Go ahead, Mrs. Reeves.

A. Pardon me. Will you repeat the question, Mr. Ingraham?

Mr. Ingraham: Read the question, please.

(Thereupon the last question was read by the reporter.)

A. It was the policy not to put on people during the fall of the year, which in every wash dress industry is a slack season of the year, and the volume in summer would mostly more than take care of it.

In 1931, due to the fact that so many people were out of work, she changed her policy. As long as she had an excess of orders, she bought additional machines and put on a group of temporary workers. She put on approximately 100 in 1931, 100 more in 1932, as our spring and summer business warranted it, and another 100 in 1933, which we considered about 300 temporary or extra workers to take care of our summer rush.

Q. What occurred in 1934?

A. In 1934, due to a business slump generally, it was impossible for us to keep all of these extra employees busy, so we had to lay off, from July until October, approximately [fol. 1903] 300 people due to lack of work.

Q. I will ask you, Mrs. Reeves, if among the 300 employees that were laid off there was Ellen Fry, Tillie Shirlie, Pauline Lutz, Mamie Tubbesing, Thelma Owen, Glynn Brooks, Nora McKee, Olive Thompson—

Trial Examiner Batten (Interrupting): Now, are we interested in that entire list?

Mr. Ingraham: Your Honor, the next question I intend to ask Mrs. Reeves is whether or not over half of these people were called back to work.

Trial Examiner Batten: Oh, well, then. I thought perhaps you—

Mr. Langsdale: If he is permitted to ask that we certainly want to disprove it on rebuttal.

Trial Examiner Batten: You go ahead and make your objections and I will pass upon the objections when they are made.

Mr. Ingraham: That is just what I don't understand. I understood Mr. Langsdale and the Board have offered evidence regarding these people, and their offers have been received.

Mr. Leary: Not regarding all of the persons you have named I suggest you read Board's exhibit No. 30 and note that it includes only three names.

Mr. Ingraham: But you submitted evidence on more than those three people, and the evidence has been received, [fol. 1904] as I understand it. You submitted evidence on about ten of them.

Trial Examiner Batten: You mean in some of those other exhibits this morning?

Mr. Ingraham: Yes.

Trial Examiner Batten: Of course if there is other evidence there with respect to their discharge it should be stricken out, shouldn't it, Mr. Leary?

Mr. Leary: If it is limited strictly to their discharge, yes, but as to discriminatory remarks, and so forth, made to these persons, I don't think it should be stricken.

Trial Examiner Batten: I will say now, if there is any such testimony, Mr. Ingraham, in the exhibit, it certainly wasn't my intention that any of that testimony should remain in there with respect to the discharge of these people except those three, and in the N. R. A.-Judge Miller case exhibits Nos. 1 to 16 if there is any testimony of that nature it may be stricken, with respect to the discharge of all of the persons except—what were those three, Mr. Leary?

Mr. Leary: Tubbesing, Fry, and Brooks.

[fol. 1905] Mr. Ingraham: I will ask you whether or not—

Mr. Langsdale (Interrupting): Let me understand the Examiner. I offered the Judge Miller exhibit, the Judge Miller record of the testimony, with reference to some of these people who are not named in the three, by the Board, not for the purpose of proving an 8 (3), but for the purpose of showing other things that are pertinent and material to this hearing, and I don't know just what the Examiner means by saying that it is stricken. Do you mean for any purpose?

Trial Examiner Batten: I mean, Mr. Langsdale, exactly what I said.

Mr. Langsdale: I don't understand exactly what you said.

Trial Examiner Batten: Well, I think it is clear in the record. Mr. Reporter, will you read it, please?

(Whereupon the ruling of Trial Examiner Batten was read by the reporter.)

Mr. Langsdale: Now, I don't understand [that] you mean by "any testimony of that nature." There is certain evidence offered in these exhibits taken from the Judge Miller hearing with reference to other people than the three named by Mr. Leary, not offered for any purpose except to show other conclusions as to conduct of instructors, and surveillance, and matters of that sort, which I think is material and pertinent to this hearing. Do you mean by "tes-

timony of that nature" an 8(3)? Of course, I submit that [fol. 1906] we didn't offer it for that purpose.

Trial Examiner Batten: Well, if you didn't offer it for that purpose, then certainly my ruling can't in any way interfere with the purpose for which you offered it, Mr. Langsdale; I can't see that it does.

Mr. Langsdale: I didn't understand whether you were striking it out for all purposes.

Trial Examiner Batten: I stated very definitely just what it was being stricken out for.

Mr. Langsdale: Maybe I am dumb, but I didn't get it very definitely.

Trial Examiner Batten: Well, I am afraid the record will have to speak for itself.

By Mr. Ingraham:

Q. Mrs. Reeves, do you recall whether or not Ellen Fry, Glynn Brooks and Mamie Tubbesing were among the 300 persons that were let out in 1934?

A. They were.

Q. I will ask you to state whether or not there were any employees that were let out during 1934 for the reason of any union affiliations or activities, or any sympathy for any unions?

Mr. Leary: I object to that, Mr. Examiner, because it hasn't been shown that this witness knows why all the people down there were let out.

[fol. 1907] Mr. Ingraham: She was in charge of the factory.

Trial Examiner Batten: She may answer.

* * * * * *

A. They were not.

* * * * * * *

Mr. Ingraham: Mrs. Reeves, I hand you Respondent's Exhibit 6, which is a newspaper article appearing in the Kansas City Star, February 26, 1937, setting out statements by Meyer Purlstein and Wave Tobin, and ask you if if you have read that article.

* * * * * * *

[fol. 1908] A. I did.

Mr. Ingraham: The respondent offers in evidence Exhibit 6.

Trial Examiner Batten: Do you have a copy of it?

Mr. Ingraham: Yes, I have.

Trial Examiner Batten: Do you mean, you offer this whole article?

Mr. Ingraham: Yes.

Trial Examiner Batten: For what purpose?

Mr. Ingraham: For the purpose of showing the situation at this time, and I will offer other articles up until April 23d, when Sylvia Hull and May Fike had their difficulty at the plant.

Trial Examiner Batten: Well, are you offering this, all the statements in here as being true?

Mr. Ingraham: If your Honor please,—

Trial Examiner Batten (interrupting): Or not being true?

Mr. Ingraham: No, they are true. These statements were testified to in the Judge Miller case by Mr. Purlstein and Wave Tobin—by Mr. Purlstein.

Trial Examiner Batten: Well, Mr.—

Mr. Leary (interrupting): Well, I submit if they are true that you better bring in that testimony.

Trial Examiner Batten: Well, I might say that I don't like trying these Labor Board cases in the newspapers.

[fol. 1909] Mr. Ingraham: Well, Mr. Leary offered a long article of Senator Reed's, and it set out the background and the history, and I am showing our side of this background. Now, I am asking this witness—

Trial Examiner Batten (interrupting): Well, of course, you stipulated on that yourself, that if the reporter were called, he would testify that the statements contained therein were true as related to him.

Mr. Ingraham: Well, they have stipulated that the Judge Miller evidence can be accepted.

Trial Examiner Batten: Well, is this all contained in the Judge Miller testimony?

Mr. Ingraham: Yes.

Trial Examiner Batten: Well, then I will say you had better submit it as a transcript from that.

Mr. Ingraham: Well, I will prove as to the truth of this statement from the Judge Miller testimony, but I would like to examine this witness in regard to whether or not she read this and what occurred. As far as the facts being true, I will prove that by the Judge Miller evidence.

Mr. Leary: Well, I don't see in what direction Mr. Ingraham is pointing, Mr. Examiner, when he is going into this line of examination of this witness. I wonder if it is setting up an excuse for perhaps the discharges of Hull and Fike, or the formation of a Donnelly Garment [fol. 1910] Workers' Union, or is it a defense to some allegation in the complaint?

Mr. Ingraham: I am setting it up for the purpose of showing the situation.

Trial Examiner Batten: The general situation?

Mr. Ingraham: At that time.

Trial Examiner Batten: You mean, background?

Mr. Ingraham: That is right.

Mr. Tyler: If the court please, the intervener will also wish to use it on the ground that we are trying motives here, and inner intent, and you can't adequately try a question of that kind without showing the situation, to show what things would affect their intent, or their actual motive. There is no other way to get at motive and intent without showing the surrounding circumstances and things that would influence it.

Trial Examiner Batten: Do you expect me to be able to determine people's inner feelings?

Mr. Tyler: I think Your Honor is going to have to determine what the motive was, and you have got to base it on surrounding influences that would —

Trial Examiner Batten (Interrupting): I am perfectly willing that you should have a reasonable amount of background, as the Board had in the NRA proceeding. They showed it almost entirely by transcript of that testimony. Now, if this means calling large number of witnesses for that purpose, I don't want to have the background, as I [fol. 1911] have said so many times in this case, become the picture.

Mr. Ingraham: I don't think it will result in that.

Trial Examiner Batten: Well, if you want to offer it on that basis, I will receive it on that basis, that you offer it for, Mr. Ingraham, but not for the purpose which Mr. Tyler stated that he expected to use it for.

(The document heretofore marked as "Respondent's Exhibit No. 6" was received in evidence.)

Mr. Langsdale: There is a lot of this stuff that can't be proved by the witness here. They quote Senator Hugh Johnson about the NRA code. Now, I would like to put all that in.

Trial Examiner Batten: Mr. Langsdale, I am not going to accept any newspaper article under any conditions to prove the truth or untruth of anything that is contained in it. If Mr. Ingraham wants to offer it as a newspaper article, for whatever it is worth, I will receive it. I am not going to accept newspaper articles as to the truth or untruth of anything that is contained in them.

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[fol. 1912] Mr. Ingraham: Mrs. Reeves, do I understand you to say that you read that article? A. Yes.

* * * * * * *

[fol. 1913] Mr. Ingraham: What, if anything, happened at the Donnelly plant after that article appeared in the paper?

A. The employees were thoroughly indignant—

* * * * * *

Q. (Continuing) And as a result of their indignation, why, they got up a petition to present to Mrs. Reed, stating just what their feelings were toward the Donnelly Garment Company and their working conditions.

Trial Examiner Batten: Now, is this the petition that we have all been trying to get in here for three weeks?

Mr. Ingraham: No. This is the petition that was received in evidence.

Trial Examiner Batten: I see.

[fol. 1914] Mr. Ingraham: What is the number of that petition?

Mr. Leary: I. L. G. W. U. Exhibit No. 10.

By Mr. Ingraham:

Q. Mrs. Reeves, in the case before Judge Miller in the Federal Court, did you have occasion to see the original of this document which is I. L. G. W. U. Exhibit 10?

A. I did.

Q. And was that the petition that you referred to when you said the employees circulated a petition? A. It was.

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By Mr. Ingraham:

Q. Do you know whether or not there was a newspaper article in the Kansas City press on or about March 6th, purporting to set forth the speech of David Dubinsky made in Kansas City?

A. I believe so. I think I have seen that article.

Q. I will ask you, Mrs. Reeves, if on or about March 9, the Donnelly Garment Company received a letter from the International Ladies Garment Workers' Union, on or about March 9, 1937? A. Yes.

[fol. 1915] Q. I will hand you Respondent's Exhibit 7, and ask you if you read that article that appeared in the Kansas City Journal Post on March 6, 1937.

* * * * * * *

A. Yes.

Mr. Ingraham: Respondent offers Exhibit 7.

Trial Examiner Batten: Do you have a copy of that?

Mr. Ingraham: I haven't, your Honor.

Trial Examiner Batten: Let me see that, please.

(Whereupon, the document above referred to was handed to the Examiner by Mr. Ingraham.)

Trial Examiner Batten: Well, now, it seems to me that we are getting into this political argument, apparently, between Dubinsky and Mr. Reed, which we certainly aren't interested in here. If those two men happen to have a feud, I don't know why everybody else has to suffer for their feud.

Mr. Ingraham: Your Honor, I submit it will show the situation that existed and what now will follow—

Mr. Langsdale (interrupting): Is this the March 6 item in the paper?

Mr. Ingraham: Yes.

Trial Examiner Batten: Now, here is the thing: are you going to introduce the newspaper articles of the whole [fol. 1916] story, from start to finish, in connection with all the other plants and the violence, if there was any, and all that?

Mr. Ingraham: Not from the newspapers, no.

Trial Examiner Batten: Well, I am certainly not going to try this case with the newspapers.

Mr. Ingraham: No. The only matters that I am offering that appear in the newspapers are statements of Mr. Purlstein or Dubinsky, concerning the Donnelly Garment Company.

Trial Examiner Batten: And as I said, they are for the purpose that you offered the other exhibit 6?

Mr. Ingraham: That is correct.

Trial Examiner Batten: Are there any objections?

Mr. Leary: Well, I object on the same ground as heretofore made, it is incompetent, irrelevant and immaterial.

Trial Examiner Batten: It will be received.

(The document heretofore marked as "Respondent's Exhibit No. 7" was received in evidence.)

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[fol. 1917] Trial Examiner Batten: On the basis I received the other one, and this one, it doesn't open up anything, because I am not receiving it to show the truth or the untruth of any statements in the article, merely as an article from the newspaper for whatever it is worth.

Mr. Langsdale: If it is worth anything, it is worth rebutting.

Trial Examiner Batten: I say, there is nothing to rebut if it doesn't prove anything. If it doesn't prove the truth or the untruth of any statement contained in it, I don't think it opens up anything.

Mr. Leary: For all of your reasons, I don't think it should be admitted, Mr. Examiner.

Trial Examiner Batten: Well, I am admitting it, Mr. Leary, as I told Mr. Ingraham, and he is offering it for the purpose of showing the background of what was occurring about that time, and on that basis I will receive it.

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Mr. Ingraham: I will hand you Respondent's Exhibit 8-A and 8-B, and ask you if you saw the original of [fol. 1918] that letter? A. Yes, sir.

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Mr. Ingraham: Well, then, respondent offers Exhibits 8-A and 8-B.

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[fol. 1920] (The document heretofore marked as "Respondent's Exhibit No. 8" was received in evidence.)

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[fol. 1921] By Mr. Ingraham:

Q. Mrs. Reeves, were you at a meeting at the Donnelly Garment Company on March 18, 1937? A. I was not.

Q. Where were you at that time, Mrs. Reeves?

A. I was in New York City.

Q. And how long were you away from Kansas City at that time?

[fol. 1922] A. Oh, I would say approximately 6 weeks.

Q. Mrs. Reeves, did you talk to Sylvia Hull on or about April 23, 1937? A. No.

Q. Did you know anything about the difficulties that Sylvia Hull had April 22, 1937,—April 23, 1937?

A. No, I did not.

Q. Were you in town at that time?

A. I don't believe I was.

Q. Did you have any conversation with Fern Sigler on or about April 23, 1937? A. I did not.

Q. Mrs. Reeves, did you ever have any conversation with Elsa Graham Greenhaw, with reference to union affiliations? A. I did not.

Q. Did she work in your department?

A. She did not.

Q. Did you, at any time prior to April 27, 1937, call in a group of operators to your office and discuss the formation of a union? A. I did not.

Q. Have you ever, at any time, discussed with any employees of the Donnelly Garment Company the advisability of organizing a plant union? A. I have not.

[fol. 1923] Q. Did you ever instruct, advise or suggest in any manner, directly or indirectly, to any employees of the Donnelly Garment Company, or the Donnelly Garment Sales Company, that they should join the Donnelly Garment Workers' Union and should not join the International Ladies' Garment Workers' Union? A. I did not.

Q. Did you ever hear Mrs. Reed, Mr. Green, Mr. Keyes, Mr. Batty, or any other executive or person with authority to hire or fire, suggest or advise, directly or indirectly, the employees of the Donnelly Garment Company or the Donnelly Garment Sales Company, to form a union or to join in the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you ever hear any of those persons ever advise or suggest or instruct the employees not to join the International Ladies' Garment Workers' Union? A. No.

Q. Did you ever say anything in order to intimidate any employees by threatening the loss of their jobs if they joined the International Ladies' Garment Workers' Union? A. I did not.

Q. Did you ever intimidate any employees in any way in order to force them to join the Donnelly Garment Workers' Union? A. I did not.

[fol. 1924] Q. Did you ever hear Mrs. Reed, Mr. Keyes, Mr. Green or Mr. Baty ever make any statement or suggestion in order to intimidate any employee not to join the International Ladies' Garment Workers' Union?

A. I did not.

Q. Did you hear any of those persons ever make any statement in order to intimidate employees to join the Donnelly Garment Workers' Union? A. I did not.

Q. Have you ever contributed any financial support to the Donnelly Garment Workers' Union? A. I have not.

Q. To your knowledge, has Mrs. Reed, Mr. Green, Mr. Keyes or Mr. Batty ever contributed financially, directly or indirectly, to the Donnelly Garment Workers' Union?

A. They have not.

Trial Examiner Batten: You mean, as far as you know?

A. As far as I know.

By Mr. Ingraham:

Q. Has the Donnelly Garment Company or the Donnelly Garment Sales Company contributed financially to the Donnelly Garment Workers' Union, as far as you know? A. As far as I know, they have not.

[fol. 1925] Q. Do you know of any assistance that you have given the Donnelly Garment Workers' Union?

A. I haven't given them any assistance.

Q. Have you ever authorized the use of typewriters by members of the Donnelly Garment Workers' Union for the purpose of writing union minutes or any other union business? A. I have not.

[fol. 1926] Q. Did you ever authorize Marjorie Green to use the company's typewriters for the purpose of writing the Donnelly Garment Workers' Union minutes?

A. I did not.

Q. Does Marjorie Green work in your department?

A. She does.

Q. Did you ever discharge or recommend that any employee be discharged on account of their union affiliations or sympathies? A. I have not.

Q. Did you ever hear Mrs. Reed, Mr. Green, Mr. Keyes, or Mr. Baty, or any other person with authority to hire

or fire ever recommend that an employee be discharged on account of their union affiliations? A. I have not.

Q. Have you ever authorized the Donnelly Garment Workers' Union or any member thereof to use the bulletin boards in the plant for the purpose of union business?

A. No.

Q. Have you ever seen any union notices on the bulletin board? A. No.

Q. Have you ever interfered in any way, directly or indirectly, with any employee's right to join any labor organization?

[fol. 1927] A. I have not.

Q. I will ask you, Mrs. Reeves, were you present when the contract between the Donnelly Garment Company, the Donnelly Garment Sales Company and the Donnelly Garment Workers' Union was entered into?

A. I was not.

Q. You did not take part in any of the negotiations?

A. I did not.

Q. Did you in any way assist in the formation of the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you at any time assist in the formation of the Donnelly Loyalty League? A. I did not.

Q. Were you a member of that organization?

A. I was a member. I still am a member.

Q. Did you join after it was organized? A. Yes.

Q. Will you state whether or not that organization at any time dealt with the company respecting hours and wages and conditions of employment of the employees?

A. They did not. It was purely a social organization, and—

Mr. Langsdale (Interrupting). Just a moment. I ask that the latter part of the answer be stricken out as not responsive, "It is purely a social organization."

[fol. 1928] Mr. Ingraham: State whether or not—

Mr. Langsdale (Interrupting): Just a minute. I want a ruling on that.

Mr. Ingraham: Well, it may be stricken.

Mr. Ingraham: State whether or not the Donnelly Loyalty League is a social organization.

Mr. Langsdale: I object to that as calling for a conclusion of the witness, not asking her to state the entire activities of the organization so that the Examiner may pass upon it himself.

Trial Examiner Batten: You may answer.

A. It is a social organization. It was originally organized to refute untrue statements—

Trial Examiner Batten (Interrupting): Just a moment. The question is, is it a social organization? I think I should probably say the same to you as I have some prior witnesses: If you answer the question and stop you will get yourself into less difficulty.

By Mr. Ingraham:

Q. Will you state what the activities of that organization are?

A. Now they are just purely social.

Q. Has it always been just a social organization?

A. No. It was originally organized for social reasons and also to refute untrue and false statements that were made by outside interests.

[fol. 1929] Q. Did the employees of the Donnelly Garment Company organize the Loyalty League? A. Yes.

Q. Did any officer or official of the Donnelly Garment Company, to your knowledge, instruct or advise the formation of that organization? A. They did not.

Q. To your knowledge has the Donnelly Garment Company or the Donnelly Garment Sales Company ever contributed financially to that organization?

A. They have not.

Q. Do you pay dues in that organization?

A. We do not.

Q. How does that organization pay any expenses that it may have, that you know of?

A. Well, they give carnivals, and they give shows, and they give dances and picnics, mostly by donations of the Donnelly Garment Company as far as the picnics are concerned. By "donations" I mean donations of cake, potato salad, and stuff like that. And at the carnivals you go and spend as much as you want to.

Q. State whether or not the officers or the officials of the Donnelly Garment Company or the Donnelly Gar-

ment Sales Company have ever assisted, to your knowledge, in any way, directly or indirectly, the Nelly Don Loyalty League.

[fol. 1930] A. Well, indirectly. I certainly attended some carnivals and I bought plenty of soda pop, and I bought plenty of tickets for their plays.

Q. By tickets, you mean—

A. Admission to the plays.

Q. You say "plenty of tickets."

A. Well, two tickets. Every time there has been a show I bought a ticket for myself and escort.

* * * * * * *

Mr. Ingraham: Are there any other organizations of [fol. 1931] the Donnelly Garment Company? A. Yes.

Q. Will you state the names of those organizations?

A. Well, there is The Pioneers, the Nelly Don Athletic Association, and I think practically every section has some kind of a club. They have what they call the Krazy Kats.

Trial Examiner Batten: And the Betty Boop?

A. Yes. I believe there must be 20 or 30 of them. I really couldn't remember them all.

Trial Examiner Batten: We are only interested in the ones that are named in the complaint.

By Mr. Ingraham:

Q. Did you ever authorize any employee of the Donnelly Garment Company to solicit membership in the Donnelly Garment Workers' Union during working hours or at any other time? A. I did not.

Q. Did you ever have anything to do with the solicitation of membership in the Donnelly Garment Workers' Union? A. I did not.

Q. Have you ever authorized the use of any of the company's property for purposes of the union? A. No.

Q. Have you ever dominated in any way any employees of the Donnelly Garment Company or the Donnelly Garment Sales Company in order to force them to join any particular union?

[fol. 1932] Mr. Leary: Now, I object to that as calling for a conclusion.

Trial Examiner Batten: Of course we might do what we did with one other witness, have her tell us what domination means, and then have her answer the question.

Mr. Ingraham: Do you know what the word domination means?

I will use the other witness' word, instead of domination.

Did you ever coerce any employees?

Mr. Leary: I make the same objection, that it calls for a conclusion.

By Mr. Ingraham:

Q. Do you know what coerce means?

A. I don't know what Webster says, but I think coerce means—Yes, I know what it means.

Q. What?

A. I think it means to force somebody, either mentally or physically, to do something against their will.

Trial Examiner Batten: Well, we might compare that with the other definition that one of the attorneys gave. I think you may answer.

Mr. Langsdale: She has looked it up since I gave that definition.

The Witness: I beg your pardon. I never heard you.

Trial Examiner Batten: Did you ever coerce anyone [fol. 1933] into joining any organization?

A. I did not.

By Mr. Ingraham:

Q. Did you at any time ever suggest to Rose Todd or any other employee that he or she organize or promote the organization of the Donnelly Garment Workers' Union? A. I did not.

Q. Will you state, if you know, what position Rose Todd holds with the Donnelly Garment Company, or what her duties are?

A. Well, Rose Todd works in the factory, and she is a —I would say a sort of a go-between between the sections that are actually working on the garments, helping them check up. In an organization of that kind there

are lots of things that get misplaced, like lace, buttons, and things like that, and she assists in getting things to the section that they need to work with, and notifying anyone if the operators do not have what they need to work with, such as if we had a cut of work downstairs and we didn't have the proper kind of thread she would check up on it and notify me. And the same, whether it be lace, buttons, rick rack or whatever it is.

Q. Is Rose Todd in a supervisory position?

A. She is not.

Q. I will ask you, Mrs. Reeves, if you ever authorized any employees to use the telephone for union business.

[fol. 1934] A. I did not.

Q. Did you ever authorize the bundle boys or the boys that pick up packages to carry messages for union purposes?

A. I did not.

Q. Did you ever know of that being done?

A. I did not.

Q. Did you ever know of any employee, and particularly Marjorie Green, using the company typewriter for union business? A. I did not.

Q. Has Rose Todd ever been in a supervisory capacity?

A. She has not.

Mr. Ingraham: That is all.

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Cross-Examination.

By Mr. Tyler:

Q. Mrs. Reeves, has an instructor in the Donnelly Garment Company factory the authority to hire any employee?

A. They do not.

Q. Or to fire any employee? A. They do not.

[fol. 1935] Q. Or to transfer them from one department to another? A. They do not.

Q. Or to reprimand them for the way in which they do their work? A. No.

Q. Just tell us what the authority that an instructor has from the company is.

A. The authority that an instructor has from the company is to keep the operators in plenty of work and to follow the outline that is sent down to her from the of-

fice, as far as planning, and if it is impossible for her to do that, for some reason, she consults with Mr. Baty, and he attends to all of the affairs as to personnel, transferring operators, and hiring and firing; and Mrs. Hyde assists him, under his instructions.

Q. Might she on some occasions pass along orders she would receive from somebody else?

A. I don't believe so, no.

Q. She shows the operators how to do work in cases where they are not clear about it themselves?

A. Yes, as far as setting a pocket on, or some such operation is concerned.

Q. That would apply especially to beginners?

A. No. Every time you have new merchandise in the factory, it applies to that. There are little things that [fol. 1936] come up sometimes.

Q. Do some of the operators make more money than the instructors?

A. I believe so. Quite a lot.

Q. Do you know anything about the building of a stage in the auditorium on the second floor; that is, do you know why it was built?

A. No, I don't believe I do.

Q. Did it have anything to do with the company's giving style shows?

A. Yes. We do use it constantly for style shows. That is where we give all of our style shows.

Mr. Ingraham: I don't understand this. Did you say the second floor?

Mr. Tyler: I meant to say the first floor.

By Mr. Ingraham:

Q. Is that the auditorium?

A. Yes, that is where the auditorium is.

By Mr. Tyler:

Q. That is the place used by the company to give style shows? A. Yes.

Q. And you say they give them frequently?

A. About every two weeks.

Q. What is the purpose of those style shows?

A. To sell merchandise.

Q. Is that style show given in connection with selling [fol. 1937] merchandise?

A. Yes. We invite buyers in and give a regular style show and model all of our garments—purely for selling.

Q. Do the instructors punch the time clock in the factory? A. They do.

Mr. Tyler: That is all.

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[fol. 1939] By Mr. Leary:

Q. Before Dewey Atchison was in the position he has now what was his work?

A. He was in the cutting department.

Q. I believe you testified he is in the cutting and planning now. A. Yes.

Q. What was he doing before that?

A. Well, in 1935 he was my assistant.

Q. He was assistant production manager?

A. In 1935.

Q. How long had he been assistant production manager?

A. Oh, about three or four years, I guess. Previous [fol. 1940] to that time he was a cutter.

Q. When did he cease to be assistant production manager?

A. Well, he started in, I believe—I am a little hazy on it, but I believe he did some efficiency work, individual work in planning and setting up some work throughout the factory for a period of time. I don't know just exactly what period of time that was.

[fol. 1941] Q. Was that after he had been your assistant?

A. Yes. He did some individual engineering work.

Q. Was that the same type of work that he does now?

A. No. He went into something on—I don't know. Well, I really can't answer you.

Q. You tell us what he does now.

A. Well, what he does now. Well, after he assists me, after I plan how many garments are going to be sold, or I think are going to be sold, and taking the figures, and orders, and so forth, Mr. Atchinson analyzes that particular garment and sends it down to each section where it is to be made. We have certain sections that make certain types of work, and other sections that make other

kinds of work. By that, I mean that if a section has been used to doing a lot of zigzagging and underarm seam binding, and things like that, why, he analyzes the garment and tells where that cut should go. Then he follows in detail and breaks that down a little bit further and analyzes how many operators shall be put on this particular garment of each type, in order to get it out.

Q. How long [have you] been doing that?

A. Well, I think that last job he has been doing for about the last 6 months, and as far as routing the cuttings, he has been doing that, I would say, for about the last year.

* * * * * *

[fol. 1942] Q. Are you familiar, personally, with all the circumstances surrounding the layoffs or discharges of what you testified to be about 300 employees in 1934?

A. Well, I went over everybody's record at that time.

Q. Well, who was it who selected the persons you laid off?

A. Well, at that particular time, we had a committee of three people that did it.

Q. Who was on that committee?

A. Why, we would discuss it first with the instructor, and then check it up with Mrs. Wherry, who had charge of the factory, and then Mr. Atchinson, and myself.

Q. Is Mrs. Wherry still there?

A. No, she isn't. She resigned.

Q. Who has Mrs. Wherry's job now?

A. Beg pardon?

A. Who has Mrs. Wherry's job now?

A. She hasn't a job. I mean, there is no job there.

Q. And for what purpose did you discuss these 300 [fol. 1943] layoffs with the instructors in 1934?

A. Because I wanted to discuss with them and find out what they thought personally of each operator, as far as their ability was concerned.

Q. What their attitude was?

A. And so forth.

Q. What else?

A. Well, that is all.

Q. Their ability, their attitude, whether they came to work on time, and so forth?

A. Well, anything that you would discuss in laying off people when you had to lay off anyone.

Q. As a matter of fact, no one on the committee other than the instructors knew anything about the individual operators, did they?

A. What is it—yes, Mrs. Wherry was in close contact, and myself, I was in very close contact with the factory. I was down on all the floors at least two and three times a day, and Mr. Atchinson was familiar with them. We really did know the people.

Q. Well, all of your contacts were the same with the 1,300 as they were with any one employee?

A. We didn't have 1,300 at that time.

Q. How many did you have?

A. I don't know, but I believe we had about 750.

[fol. 1944] Q. Did the instructor at that time make written recommendations to you? A. No.

Q. Don't you remember the instructors filling out a card?

A. Yes, that was cards, and they checked what they thought of their employees and sent it down to the office at that time.

Q. Do you have any of those cards?

A. I don't think so. I believe Mr. Baty went in and put in a new system when he took charge of the factory.

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By Mr. Leary:

Q. I show you what has been marked as Board's Exhibit — I beg your pardon, — Respondent's Exhibit 1, and ask you to state whether or not you remember reading that in the newspaper?

[fol. 1945] A. May I see it? I have read it.

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By Mr. Leary:

Q. When you refer to the "outside interests" in your answer with regard to the formation of the Loyalty League, you referred to the International Ladies' Garment Workers' Union, did you not? A. Yes, I did.

Q. And why did you want to keep out of I.L.G.W.U. from your plant?

[fol. 1946] Mr. Stottle: Respondent objects to that as assuming that she has testified that they wanted to keep the I.L.G.W.U. out.

Trial Examiner Batten: Well, she just said, Mr. Stottle, that when she said "outsiders" she referred to the International Ladies' Garment Workers' Union; didn't you?

Mr. Stottle: Yes, but, Mr. Examiner, she said it was to refute untrue statements, not that she was trying to keep them out.

The Witness: That is what I said.

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[fol. 1947] By Trial Examiner Batten:

Q. You previously stated that when you said it was to refute certain untrue statements, and so forth, from outsiders, that you did refer to the International Ladies' Garment Workers' Union in that statement; wasn't that correct? A. Yes.

Q. Now, tell us why.

A. Well, I want to explain—I think I can explain this. During this time there were some very uncomplimentary pamphlets that were passed in front of the building, and also some speeches that were very uncomplimentary that were made about and against the Donnelly Garment Company, and the employees, when they organized this Loyalty League, they were indignant that these untruths should be spread, and that was one of the reasons I stated that they joined—they formed the Loyalty League.

Q. Now, don't speak for the employees. Speak for yourself. A. All right. Well, the—

Q. (Interrupting) The reason why you—

A. (Interrupting) The reason I signed the card, when [fol. 1948] they came to me and handed it to me, was because I read it over and I thought the sentiments were good on it—I couldn't even tell you what they were now, and I signed it and said "Yes, I would like to be a member of the Loyalty League", and it had nothing to do or said anything about keeping out any union, at that time.

By Mr. Leary:

Q. Well, why were you personally interested in refuting the alleged untrue statements?

A. Well, after all, when you have worked for a place 15 years and somebody says something that is absolutely untrue, if you have got any sort of something in you at all, why, naturally, you call them on it, don't you? I mean, you want to protest.

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[fol. 1950] By Mr. Langsdale:

Q. Did you say, Mrs. Reeves, who was the head of the planning department?

A. Planning department?

Q. Yes.

A. Well, which phase of it, Mr. Langsdale?

Q. Well, you referred to the planning department. Have you more than one phase of it?

A. Yes.

Q. How many?

A. Well, the garments are planned out, and then they are sent upstairs and they are checked and Mr. Atchinson assists, and then I plan the actual cuttings.

Q. Well, now, how many different phases have you named?

A. I think there would be about four.

[fol. 1951] Q. And who is at the head of the first one you mentioned?

A. Well, I think that Mrs. Nichols and a young lady who helps her is the first one. They take the garment and analyze how it should be made.

Q. Now, what is Mrs. Nichols' name, given name?

A. Lulu.

Q. And plans how the garment is to be made?

A. Yes.

Q. And who is her assistant?

A. Josephine Spalito.

Q. And is there anyone else who assists her?

A. Well, I think Katy Schleischer assists her sometimes, and I don't know, during the rush season, they might get in some other people.

Q. Where is her office, Mrs. Nichols?

A. She is on the ninth floor.

Q. Now, she does the first planning of the garment, does she?

A. Yes.

Q. Just what does that include?

A. How the garment should be made and put together.

Q. For many, many years Mrs. Nichols has been also on the price fixing committee of the Donnelly Garment Company?

A. That is right.

Q. And still is?

[fol. 1952] A. That is right.

Q. And has Josephine Spalito assisted her at that work, too?

A. Yes, sir.

Q. At fixing prices?

A. Yes, sir.

Q. And how long has she assisted her at fixing prices?

A. Approximately 2 years.

Q. How long?

A. About 2 years.

Q. Now, this other young lady, Katy Schleischer, is that her name?

A. Katy Schleischer.

Q. What are her duties in that phase of the planning department?

A. Well, she used to plan the—how the operation was to be made. Now she plans on how it should be cut and then she checks up on what should go on the garment, and does that detail work.

Q. Well, purely as an assistant to Mrs. Nichols?

A. No, she has a job of her own.

Q. She has a job of her own?

A. Yes.

Q. I asked you who were the assistants to Mrs. Nichols, and you said Josephine Spalito and Katy Schleischer.

[fol. 1953] A. Well, then, they discuss with other people who have had experience. I am not sure; I wouldn't answer who is helping now.

Q. But the head of that particular phase is Lulu Nichols?

A. That is right. I wouldn't say she is the head, Mr. Langsdale, because after she plans that all, why, she is head of the pricing, with the assistance of Josephine Spalito and the individual operators, and also Miss Todd checks the prices.

Q. I am not talking about prices now. I am talking about the planning phase.

A. Of how the garment should go together?

Q. Yes. She is head of that particular phase?

A. No, I wouldn't say that.

Q. Who is?

A. Mr. Atchinson. They are sent upstairs to Mr. Atchinson, and when he analyzes how these garments should be sent downstairs and how they should be made, he checks those over and discusses it with Mr. Batty.

Q. But Mr. Atchinson takes it up where Mrs. Nichols leaves off?

A. Yes, that is right.

Q. So up to that time Mrs. Nichols is the head of her work; is that correct?

A. Until she turns it over, yes.

. . . . . .

[fol. 1955] Q. No, no. Mr. Atchinson gets through with his phase of the planning, and he sends then his completed job down to the various instructors, to have the garment made up. Is that correct? A. That is right.

Q. Then the third phase is headed by the numerous instructors that are there?

A. They give—they follow their instructions.

Q. Yes, that they get from Mr. Atchinson?

A. Yes, sir.

Q. And they give those instructions to the various girls? A. That is right.

. . . . . .

Q. What do the instructors do? Just stand around and twirl their thumbs, or what?

A. She helps give out work, and if a girl is having difficulty in doing a certain operation she explains to her how to do it. She is more of a teacher than anything else.

Q. And, of course, she just stands there and lets the [fol. 1956] forty girls run the machines all by themselves without any reprimand of any kind or character?

A. Well, I don't know if you would call it reprimand, but I am sure, if one of them was doing an operation entirely wrong she would show her how to do it.

Q. If one of them was laying down on the job, what would the instructor do?

A. I am sure I don't know. I know it would be checked up on.

Q. Do you know what the instructor would do?

A. I am sure she would report it to Mr. Batty.

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[fol. 1957] Q. Now, I believe you testified that when Mr. Atchinson finishes his phase, why, he typewrites elaborate instructions.

A. I am sorry, Mr. Langsdale. You misunderstood me, if that is what you thought I said.

Q. Well, what does he do? How does he communicate what he wants done to the garments to the instructors?

A. They are typewritten sheets. He doesn't typewrite them, though. Mrs. Nichols sends up her written instructions, and he takes the garment and analyzes it, too, and he analyzes how many dozen you to plan to have cut, or have cut, I should say, of that particular garment, so he can analyze how much work there is of each particular type of operation, and then he looks over how these garments are put together, and if he has any suggestions or advice, why, he makes it, and then it is discussed, as I said, with Mr. Batty, and perhaps one or two others. It might be a question of material coming in narrow or something like that, and a hazard we can't understand, and that is given to a young lady in my department, who typewrites [fol. 1958] the instructions, and they are sent down automatically by the pick-up boys to the instructor.

Q. But it is a composite of what Mr. Atchinson's duty is to get ready for the instructor after talking to Mr. Batty, and maybe you and someone else?

A. That is right.

Q. And that goes to the instructor, doesn't it?

A. That is right.

Q. That doesn't go to each one of the sewing machine girls, does it?

A. I really don't know whether they have any individual typewritten instructions now or not. I don't believe they do.

Q. So the instructor has to instruct the sewing machine girls what she finds on this typewritten list?

A. Well, then, she has her sample garment, and the girls know. All of her operations are pretty standard, you know.

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[fol. 1959] By Mr. Langsdale:

Q. You say you have the buttonhole department?

A. Yes.

Q. Who is the head of the buttonhole department?

A. Mr. Baty. Do you want to know who the instructor is?

Q. You said the buttonhole department. Does Mr. Baty go down there himself and superintend making the buttonholes? A. No.

Q. Who does?

A. Miss Willis is our instructor in the buttonhole department.

Q. Is she the only instructor in the buttonhole department?

A. No. I think there are two more. There are three more.

Q. Who is immediately under Mr. Baty?

A. Downstairs?

Q. In the buttonhole department.

A. Well, I don't know. Do you mean, who is the supervisor down there?

Q. Yes.

A. Miss Willis is the supervisor. I think Ada Woolf has a certain number of machines, and I think Frances Morrison has a number, and someone else. And I don't know which ones are floor girls and give out work or which ones are the instructors.

Q. If any one of those has any superior that they wish to talk with about their work Mr. Baty is that superior, is [fol. 1960] he, or is there any intermediary between Miss Willis and Mr. Baty? A. There is not.

Trial Examiner Batten: We will adjourn until 9 o'clock tomorrow morning.

Mr. Ingraham: If Your Honor please, may I ask the witness one further question first? I believe she misunderstood something.

Mr. Ingraham: Did you intend to say Miss Willis and these other people you named were supervisors or did you mean they were instructors?

Mr. Leary: I object to that, Mr. Examiner. That is the very crux of the case here.

Trial Examiner Batten: That is all right, let him ask the witness. It all appears in the record together, and I think I can take the record and draw my own conclusions irrespective of what the attorneys say, or ask.

A. The words we use are instructors and floor girls.

By Mr. Langsdale:

Q. When did you quit using the word supervisor?

A. Well, I used it just a few minutes ago.

Q. You have always used it?

A. It means one and the same to me.

Trial Examiner Batten: I think the important thing is not what you call them on the payroll or what you designate them, but the important thing is what they do? [fol. 1961] You can call them any thing you want.

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[fol. 1973] Q. Now, you made an affidavit in the three-judge hearing, didn't you? A. Yes.

Q. And that affidavit, according to the record, was made and sworn to on the 30th day of October, 1937. If that is the record, that is correct, I assume. You remem-

ber that that three-judge hearing was going on in October, 1937? A. Well, if that is the date there.

Q. In that affidavit you stated, (reading):

"Competent instructors teach the operators the particular operations to be performed by them, and constantly supervise the same."

[fol. 1974] A. All right.

Q. Well, you said that, didn't you, swore to it?

A. If it is said there, yes, and it is true.

Q. They constantly supervised them, at least, by October 31, 1937? A. That is right.

Trial Examiner Batten: What page is that? An exhibit number, or what is it?

Mr. Langsdale: This affidavit has not been offered in evidence. I am merely reading from the three-judge transcript.

Trial Examiner Batten: Yes, but I say, what page?

Mr. Langsdale: Page 284 of the record that is filed in the Supreme Court of the United States, in Volume 1, entitled, "International Ladies' Garment Workers' Union", and so forth, "et al., appellant, versus Donnelly Garment Company, Donnelly Garment Sales Company and Donnelly Garment Workers' Union", and so forth, "et al."

. . . . . .

[fol. 1978] Mr. Stottle: Mr. Examiner, respondent, of course, objected to this N. R. A. testimony as being immaterial because it related to matters long before the or-[fol. 1979] organization of the Donnelly Garment Workers' Union and before the passage of the National Labor Relations Act, and we would object to these questions on the same basis that we have to the N. R. A. testimony.

Trial Examiner Batten: Mr. Stottle, I don't know whether the record is clear or that it is understood, but, as I recall, you made a continuing objection to all testimony that refers to a time prior to the passage of the Wagner Act. And, if I am not mistaken, Mr. Tyler, you joined in that objection.

Mr. Tyler: I intended to.

Trial Examiner Batten: I think the record is quite clear.

Mr. Stottle: May it be understood, if it isn't clear our objection is made?

Trial Examiner Batten: If it isn't clear, it is understood that you have an objection; and Mr. Tyler, also.

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[fol. 1980] Did you tell me who was the head of the cutting department?

A. Mr. Baty is the head of the cutting department.

Q. Directly?

A. I think Dewey Atchison works with him now.

Q. Dewey Atchison is your assistant?

A. I would say so.

Q. Isn't there someone who spends his time in the quarters where the cutting is done who is the responsible head of that department?

A. Who instructs the men and gives out the work, and so forth? Yes.

Q. Who is that? A. Ted Scoles.

Q. Is he the only one in there who instructs and gives out the work?

A. Well, I think they have one of the other boys getting the lays ready, and so forth. I am not down in the factory very much any more, Mr. Langsdale.

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[fol. 1981] Q. In the dividing department, could you tell me who was the head of that department?

A. There is a woman there who delegates the work, and that is Mrs. Bogart.

Trial Examiner Batten: What did you call that department?

Mr. Langsdale: Dividing department.

The Witness: Or bundling.

Trial Examiner Batten: Which one of these main departments you spoke about does that come under?

A. Production department—Mr. Baty.

By Mr. Langsdale:

Q. Of course everything comes under Mr. Baty except sales and purchasing?

A. Merchandising, sales, designing, and pattern making.

Q. But Mrs. Bogart is the one who is in the quarters where the dividing is done and instructs people there how to do it, when to do it, and so forth.

A. And authorizes the cuts to be divided, yes.

Q. Is the bundling department the same as the dividing department? A. Yes.

Q. And the sewing department, of course that is where all of the machines are. A. That is right.

Q. Now, the examiners and inspectors, is that a separate department?

[fol. 1982] A. Yes, I would say it is a separate unit.

Q. Who is the head of the examining and inspecting department? A. Mr. Baty.

Q. Under Mr. Baty who is the person?

A. Mrs. Tyhurst.

Q. And the pressing department, who is the head of that department, besides Mr. Baty?

A. The instructor in the pressing department is Lulu Waddell.

Q. Just the one?

A. I think they have a floor girl, also, or several floor girls.

Q. Lulu Waddell is the instructor? A. Yes.

Q. And you have a folding department?

A. That is in with the pressing department.

Q. That is the same?

A. That is the same thing, pressing and folding.

Q. And Lulu Waddell is the instructor of both pressing and folding? A. That is right.

Q. You named in this testimony a notions department. What is the notions department?

A. Well, that is part of my department. We receive the buttons, lace, and thread, and get it ready to send down [fol. 1983] to the factory, authorizing certain cuts, take so many dozen buttons, and so forth. It is a preparation.

Q. Of course you do not supervise the people doing that work?

A. You want to know the instructor in that department?

Q. Yes. A. Helen Little.

Q. Is that department one where they fit on belts?

A. What?

Q. Fit on belts, on dresses that have belts on them. Is that in the notions department? It seems to me I read something like that in this—

A. I don't believe so.

Q. Are the belts sewed on or fitted on by the sewing machine girls?

A. There are no sewing machine girls in that department.

Q. Take your dress, for instance. You have a belt on it, haven't you? A. Yes, sir.

Q. Would that belt be put on there by a sewing machine girl?

A. No—by a floor girl. This particular belt would be put on in the pressing department by a floor girl.

Q. The receiving department. I suppose you are the head of that department, are you?

[fol. 1984] A. I really don't know whether I am or whether Mr. Baty is.

Q. But next to you or Mr. Baty, who is it down there telling the employees what to do?

A. Heath Cowan receives the merchandise.

Q. Where is that department?

A. That department is on the third floor.

* * * * * *

[fol. 1987] Q. (By Mr. Langsdale) Did you know who circulated the petiton of March 2, 1937?

A. Not at the time. I did afterwards, after it was circulated and presented to Mrs. Reed I heard who did it.

Q. You knew nothing about it until after it had been all signed up?

A. That is right.

* * * * * *

Q. Did you have any knowledge of how the photographer happened to be on the job at that moment?

A. No, I really didn't, Mr. Langsdale.

Trial Examiner Batten: Well now, Mr. Langsdale, I don't know as I want to go any further into that matter that you are just questioning about, because you say, do you know how the photographer happened to be there. Well, I don't want an inference in the record that makes it necessary for the respondent to go out and produce the [fol. 1989] photographer here to show how he happened to be there, or otherwise somebody might draw an improper inference from it.

* * * * * *

[fol. 1990] Q. Did you attend any meetings of the Loyalty League? A. No, I didn't.

Q. Did you know of any meetings of the Loyalty League?

A. I think that I have heard, yes, I have heard. I have heard that they were having meetings, and so forth.

Q. Where? A. What is it?

Q. Where?

A. Well, I really don't know, Mr. Langsdale. I never attended, and I never went into it.

[fol. 1991] Q. You never went into one of them?

A. I never went into a Loyalty League meeting.

Q. Did you ever see the constitution of the Loyalty League? A. No, I didn't.

Q. Did you know that it had one?

A. I don't believe I did.

Q. Now, you have what you call an outlet store, do you not? A. That is right.

Q. And who is in charge of that besides you?

A. Well, Mrs. Gray. I think you would call her a clerk. She is a clerk down there.

Q. Well, but she is in charge of it, isn't she?

A. I wouldn't say. There are just about three or four clerks down there, and they all have about the same rating. Maybe she has been there a little longer than the rest of them. You might call her a senior clerk.

Q. Well, to whom is she responsible?

A. Well, she generally reports to me.

Q. Didn't you say that she was very indirectly—

A. (Interrupting) Yes, I did.

Q. (Continuing) —associated with you? A. Yes.

Q. So, then, she has pretty nearly full charge of the outlet store?

A. There really isn't much to have charge of, Mr. Langsdale.

[fol. 1992] Q. You have three or four clerks there?

A. Yes.

Q. And you sell—

A. (Interrupting) Remnants and close-outs, and odds and ends, and stuff that we want to turn over and get rid of, just to get it out of the way.

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[fol. 1993] Redirect Examination.

By Mr. Ingraham:

Q. Mrs. Reeves, isn't it a fact that every employee at the Donnelly Garment Company has charge of their particular work? A. That is right.

Q. You testified yesterday that Mr. Baty has been in charge of the plant since July, 1935.

A. That is right; the latter part of June or the first of July. I don't remember which.

Q. Do you know whether or not Mr. Baty made various changes in the operation of the plant after he became in control? A. I do.

Q. Is it not a fact, now, that Mr. Baty and Mrs. Hyde [fol. 1994] are the only persons that have anything to do with hiring and discharging employees?

* * * * * * * *

A. Yes.

Mr. Ingraham: Mrs. Reeves, state whether or not you know that after the time that Mr. Baty took charge of the factory, that instructors were not given authority to hire or fire or discipline operators that worked in their section?

* * * * * *

[fol. 1995] A. That is true.

By Mr. Ingraham:

Q. In what department does Mrs. Bogart work?

A. She is in the bundling department, or dividing department.

Q. Now, is that department in the production department? A. Yes.

Q. Now, does Mrs. Bogart carry out Mr. Baty's orders?

A. She does.

Q. Has she any authority to make orders of her own?

[fol. 1996] A. She has not.

Q. Has she any authority over anybody that works in the department in respect to disciplining or discharging or transferring employees?

A. She has not.

Q. And whatever orders she gives, they are the orders that come to her from Mr. Baty?

A. That is right.

* * * * * *

By Mr. Ingraham:

Q. State whether or not Mrs. Nichols can give any orders in respect to the setting of prices to the other people that work in that department?

A. That is individual work, Mr. Ingraham.

Q. And Mrs. Nichols has no authority over anybody [fol. 1997] else that assists her?

A. She has not.

Q. I believe you have mentioned that Mrs. Dallas was an instructor, or Willis, I guess it is:

A. Yes, Mrs. Willis is an instructor.

Q. And Mrs. Waddell was an instructor?

A. Miss Waddell.

Q. Now, have either of those two persons or any other instructor any authority to order or discipline or fire people that work in their sections?

A. They have not.

Q. Now, what department did you say that Mrs. Tyhurst worked in?

A. Mrs. Tyhurst is in charge of the quality of the work. She works with the garment itself, to see that the stitches are all right, and that the garment goes together all right. She works with the examiners.

Q. Now, has she any authority over the examiners in respect to giving orders with reference to hiring or firing or disciplining?

A. She has not.

Q. I believe you said that Mr. Cowan was in the receiving department?

A. Yes, sir.

Q. Now, has he any authority over the people in the [fol. 1998] receiving department with respect to hiring, firing or disciplining the people in that department?

A. He has not.

Q. Do these people I have mentioned get their instructions—state who these people that I have named get their instructions from.

A. Well, Miss Willis and Miss Waddell and Mrs. Tyhurst and Mrs. Bogart get their instructions from Mr. Baty, and the work is all planned out. It comes down in a routine way, and Mr. Cown, if there were any special instructions, would get them from me, but his work is generally depending on the amount of merchandise that is received, also, so there aren't a lot of instructions as far as he is concerned.

By Trial Examiner Batten:

Q. Well, pardon me. Does Mr. Cowan then pass on your instructions to the other people in that section? Is that it?

A. Yes, that is right, if—well, all my instructions would be is that "we are getting in some freight; just check it in."

Q. My question is this: that if you issue instructions to a certain person, that person passes along your instructions; is that it, if there are several people to do a particular thing? You don't go down and tell each person?

A. No. It is planned out.

Q. So, it is planned, and you issue your instructions to [fol. 1999] a certain individual like an instructor, for instance, and the instructor passes along those instructions; is that it?

A. Yes. It is a planned work, though.

Q. I understand it is planned, but I am just trying to get how it gets down to the people who do the work. Somebody has to pass it along to them.

A. Well, with the instructors, it is written instructions and there really aren't very many—and as far as Mr. Cowan is concerned, there are planned cutting cards and he gets out the material to go to the cutting table, and he checks in the freight. I mean, there are no instructions, really, and as far as the personnel in that department, Mr. Baty tends to that.

Q. But take your girls that work on the machines, do you send a copy of these instructions for every one of the forty persons?

A. I don't think so, no.

Q. In other words, the instructions, the planning which is done, goes to the instructor?

A. That is right.

Q. And she in some manner passes it along to the people who actually perform the work; is that right?

A. That is right.

By Mr. Ingraham:

Q. Isn't it a fact that the instructor is directed to pass the instructions to the operators?

A. That is right.

[fol. 2000] Q. With reference to Mr. Cowan, do you direct Mr. Cowan, in case there is new merchandise, to handle the merchandise in a certain way, and to have certain people assist him?

A. That is right.

Q. And he has no authority on his own initiative to go out and order people to assist him?

A. No.

Q. Now, you mentioned that Mrs. Gray worked in the store? A. That is right.

Q. Has Mrs. Gray any authority over the other people who work in the store, with reference to ordering them about their work, and with reference to hiring and firing and disciplining these other people?

A. No.

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Recross-Examination.

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By Mr. Leary:

[fol. 2004] Q. Who other than Mr. Baty, if anyone, has charge of the examiners?

A. You mean, who directs their work after they get their instructions from Mr. Baty?

Mr. Leary: Read the question, please.

(Thereupon the last question was read by the reporter.)

A. Well, Mrs. Tyhurst is their instructor, or directs their work.

* * * * * *

By Mr. Leary:

[fol. 2005] Q. In the event Mrs. Tyhurst finds something wrong with the work she is examining, do you know what she does with it?

A. She sends it back to the operator to have it repaired.

Q. She does not go and ask Mr. Baty if it is O. K. to send it back to the opefator, does she?

A. No, because those were the instructions he gave her previously.

Q. Do any of the examiners who work, as you say, with Mrs. Tyhurst, or under her direction, have to ask Mrs. Tyhurst or Mr. Baty before they send any work back to the operators?

A. No. That is part of the policy Mr. Baty set up. If the repair work is bad or something is wrong they just [fol. 2006] send it back to the operator.

Q. The judgment is solely with the examiner himself or herself?

A. Well, I don't think you would call it judgment, but if something is wrong they are capable of knowing whether it is right or wrong.

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[fol. 2022] Mr. Ingraham: Mr. Keyes.

George Keyes, [a witness,] a witness called by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. State your name, please.

A. George Keyes.

Q. Mr. Keyes, are you employed by the Donnelly Garment Sales Company?

A. I am.

Q. In what capacity?

A. I am generally in charge of sales, one of the managers, in charge of the order handling, and I handle the sales force, deal with the customers, and see that the goods are sold and shipped.

Q. Mr. Keyes, how long have you been—

Trial Examiner Batten (Interrupting). Pardon me.

By Trial Examiner Batten:

Q. This chart I have indicates you have something to do with returns.

A. Returns of goods. The merchandise is shipped out, and then the incidental part of merchandise that comes back is handled by me.

By Mr. Ingraham:

Q. How long have you been connected with the Donnelly Garment Sales Company?

[fol. 2023] A. I have been here in Kansas City for six and a half years.

Q. I would like to ask, Mr. Keyes, if you ever instructed, advised, or suggested, in any manner, to any employee of the companies, that is, the Donnelly Garment Company or the Donnelly Garment Sales Company, that they join the Donnelly Garment Workers' Union.

A. No, sir.

Q. Have you ever instructed, or advised, or suggested, in any manner, directly or indirectly, to any employee of those mentioned companies that they should not join the International Union? A. No, sir.

Q. Did you ever hear Mrs. Reed, Mr. Baty, Mrs. Reeves, or any other official or any person with authority to hire and fire or discipline, advise or suggest to any employee that they should join the Donnelly Garment Workers' Union? A. No, sir.

Q. Or that they should not join the International Union? A. No, sir.

Q. Did you ever at any time intimidate or coerce any employee into joining the Donnelly Garment Workers' Union? A. No, sir.

Q. Did you ever hear Mrs. Reed, Mr. Baty, Mrs. Reeves, or any other official of the companies, or any person with authority to hire and fire, intimidate any employee in or-
[fol. 2024] der to force them to join the Donnelly Garment Workers' Union? A. No, sir.

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By Mr. Ingraham:

Q. Did you ever at any time bring any pressure on any employee in order to force them to join the Donnelly Garment Workers' Union? A. No, sir.

Q. Did you ever contribute financially or in any other way to the Donnelly Garment Workers' Union?

A. No, sir.

Q. Did you ever hear that Mr. Baty or Mrs. Reeves or Mrs. Reed ever contributed financially or any other way to the Donnelly Garment Workers' Union? A. No, sir.

Q. Did you ever cause any employee to be discharged because of any union affiliation?

[fol. 2025] A. No, sir.

Q. Or any union sympathy? A. No, sir.

Q. Do you know of any employee that has ever been discharged by the companies on account of their union affiliation? A. No, sir.

Q. Did you assist in the organization of the Nelly Don Loyalty League? A. No, sir.

Q. Did you become a member of that organization?

A. Yes, sir.

Q. Have you ever been to a meeting of that organization? A. No, sir.

Q. Are you a member of the Donnelly Garment Workers' Union?

A. No, Mr. Ingraham.

Q. Did you assist in any manner in the organizing of the Donnelly Garment Workers' Union?

A. No, Mr. Ingraham.

Q. Have you ever authorized the use of bulletin boards at the plant by union members for union purposes?

A. No, Mr. Ingraham.

Q. Did you ever see on the bulletin boards any union matters? A. No, I never have.

Q. Have you ever authorized any union member to use any property of the companies' for union purposes?

[fol. 2026] A. No, Mr. Ingraham.

Q. Have you ever authorized them to use any stationery for union purposes? A. No, Mr. Ingraham.

Q. Have you ever authorized them to use the telephone for union purposes? A. No, sir.

Q. Have you ever kept any members or any meetings of the International Ladies' Garment Workers' Union under surveillance? A. No, Mr. Ingraham.

Trial Examiner Batten: Mr. Ingraham, I presume the answers that Mr. Keyes gives are—Is Mr. Keyes employed entirely by the Sales Company?

Mr. Ingraham: Yes, sir. Of course, as a matter of fact, Mr. Examiner, the Sales Company and the Donnelly Garment Company are in the same building, the offices are together, and the members of both of these companies are the same.

Trial Examiner Batten: Your question, then, is intended to cover both; is that it?

Mr. Ingraham: Yes, anything he may know.

[fol. 2027] (By Mr. Ingraham) I will ask you, Mr. Keyes, if at one time there was a young lady by the name of Elsa Graham employed in the sales department?

A. Yes, there was.

Q. Do you recall how long she worked there?

A. It would be my impression, Mr. Ingraham, it was somewhere between a year and a half and a year and three-quarters.

Q. And did she leave the employment voluntarily?

A. She did.

Q. Would you state, please, what her salary was?

A. She received a weekly compensation of $35.

Q. Was that the salary that she received during the whole time of her employment?

A. Yes.

Q. Was she, at any time, ever demoted?

A. No, sir,

Q. Was her salary ever reduced?

A. No.

Q. Did you ever discuss with Mrs. Greenhaw any matters relating to the I.L.G.W.U.?

A. No, Mr. Ingraham.

Trial Examiner Batten: Well, I don't recall. Did she work in Mr. Keyes' department?

The Witness: Yes, immediately with me.

[fol. 2028] Q. (By Mr. Ingraham) Did you, at any time, exert any coercion on Mrs. Greenhaw in order to force her to join the Donnelly Garment Workers' Union?

A. No, Mr. Ingraham. I knew her as Graham. I never knew her as Greenhaw.

Q. Mr. Keyes, did you take part in the negotiations of the contract between the Donnelly Garment Company and the Donnelly Garment Workers' Union?

A. I did.

Q. Now, I believe that contract was with the Donnelly Garment Company and the Donnelly Garment Sales Company and the Donnelly Garment Workers' Union; is that a fact? A. That is my understanding.

Q. Will you just state what occurred with reference to the negotiations of that contract?

A. There had been one or two conversations with Mrs. Reed after—

Q. (Interrupting) Well, just state what you know of your own knowledge.

A. Of my own knowledge. I had a conversation with Mrs. Reed, that there was a negotiation about to take place with the union, and there were various points mentioned, that would come up for discussion, namely, a minimum salary. I was told that Mrs. Reed would meet with her associates and with representatives of the union, I [fol. 2029] believe it was in May, 1937. It was somewhere between May 20 and May 28, as I recall. We went in to Mrs. Reed's office, and I met for the first time Mr. Tyler. There were present, the attorney for the company, you were there, Mr. Ingraham,—Mr. Brown, Mr. Hobart Atherton, Miss Marjorie Green, Miss Rose Todd, of course, Mr. Baty was there, as was Mr. Green. There were one or two others whose names do not come to me at this particular time.

There was a general discussion of the contract. The representatives of the union were very much concerned about a $15 minimum for a period of 2 years—

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A proposal was made for a 2-year contract with a minimum wage of—a minimum of 40 hours. I protested against that very vigorously, and Mr. Tyler referred to my remarks as typical of management, and was very critical of the position that I took. I pointed out—

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[fol. 2030] Q. Mr. Ingraham: (Interrupting) Well, Mr. Keyes, not to interrupt you, but just tell what took place at this meeting. What was said—not attempting to quote what somebody said, but in substance what was said?

A. I objected to a 2-year contract because of the seasonal character of the business. The depression was not over. $15 was a rate—I believed, a higher rate than any other rate in the United States for a 52-week year. Mr. Tyler, as I recall, felt that because there had been a minimum of $15, that was the least that should prevail.

I pointed out that Mrs. Reed was binding herself to a period of two years, when we didn't know what was going to [fol. 2031] happen to the country.

I also objected to having the salesmen become members of the union; 28 men seemed to me that they didn't belong in the union at all, and Mr. Tyler took the position that they all should be there.

There was also a proposal regarding arbitration. Mr. Ingraham, as I recall very clearly, took the position that there should be arbitration, but that, nevertheless, any person in the organization should have the right of a direct access to the management and ownership of the business, and while he discussed arbitration in a favorable way, he held out very definitely for that right of appeal independently, without interference, to the proper person in the business.

There were—

Q. (Interrupting) Just let me interrupt a minute at that stage. Was it a fact that Mr. Tyler desired or made a proposal that would require any employee with a grievance to first take the grievance up with the union and then the union would take the matter up with the company?

A. Yes, sir.

Q. And was there any objection on the part of the representatives of the company to that?

A. The company had no serious objection, as I recall, to that, but they wanted the individual to feel free and able to come to the management with his or her par-
[fol. 2032] ticular situation.

Q. Well, isn't it a fact that Mr. Tyler objected to any provision that would allow the employees to come direct to the company? A. I do so recall.

Q. Well, just proceed, then.

A. During the conference there was a discussion of whether the arrangement should be one of understanding between persons who trusted each other, or whether there should be a written contract.

As I recall, you definitely had some reservations about the necessity or the propriety of a written contract. That point was discussed.

Mrs. Reed said that she didn't want to hold people at arm's length, that she had never worked with people at arm's length, and she wondered whether it was necessary to have a formal contract with those persons whom she referred to as her people.

Trial Examiner Batten: Isn't the date definitely agreed on here as to when this meeting took place?

Mr. Ingraham: Yes, it was May 27, 1937.

Mr. Ingraham: I hand you a copy of the contract, Mr. Keyes, and ask you to look at it and state any other matters—

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[fol. 2033] (Whereupon, the Board's Exhibit No. 6 was handed to the witness.)

A. Mr. Ingraham, there was a discussion of arbitration, to which I have referred, and then there was a reference to the fact that the contract provided for no strikes during the period of the contract, no stoppages. That was mentioned by Mr. Tyler as an argument in favor of the closed shop arrangement, and also for the long period of the contract, to which we had taken exception.

Then the vacation schedule came up, and while I, individually, of course, learning this from Mrs. Reed when I came out here nearly 7 years ago, believed in vacations, inasmuch as this clause is the only kind that I know of in the needle work industry contract, I wasn't sure that the company would bind itself to give vacations with pay, which prior to that time had been optional and in the discretion of the management.

Trial Examiner Batten: Now, just a moment, Mr. Keyes, Mr. Keyes, volunteering that statement there, I [fol. 2034] thought that we had the understanding that—I mean, I advised you, rather—I don't know as you all agree with me—that I didn't want to get into a comparison of this contract with other contracts, and I limited the Board's testimony the other day, when I asked them the direct question, if all the questions which they asked applied only to how the contract was negotiated.

Now this, of course, brings up—Mr. Keyes volunteering this statement that no needle contract has such a phrase any place, you are beginning to compare the contracts.

The important thing with this contract, and with this union, is not what is in this contract. The important thing is, did the union, in good faith, and the respondent, sit down and negotiate a contract?

Now, a union can negotiate any terms they see fit in a contract. So, the only question here is, did Mr. Tyler and the committee representing the Donnelly Garment Workers' Union negotiate in good faith, did the respondent negotiate in good faith? And, having arrived at an agreement, they put it in writing and signed it. Therefore, Mr. Keyes' statement about this particular paragraph in comparing it with some other contract, I don't consider that it should be accepted, in accordance with my prior ruling. Therefore, I won't receive it.

Mr. Tyler: Your Honor has in mind that the intervener asserts that comparison with other contracts is valid and [fol. 2035] admissible evidence to show the genuine negotiation of this contract and the genuineness of the desires of the employees to negotiate in this matter, and have their own union, and we except to your ruling that comparisons are not proper.

Trial Examiner Batten: Yes, I understand your position, Mr. Tyler, and I only say in answer to that, this: that the Donnelly Garment Workers' Union or the International Ladies' Garment Workers' Union or any other union can negotiate any contract they want. I mean, they could go out here and negotiate a contract for less wages, less salaries, no vacations, and abominable conditions, if the union wanted to do it. So I say that I am not concerned about comparison of these contracts. I am concerned about, did they actually negotiate, and agree on these things, and when they agreed, sign the contracts; and, of course, as I understand it, that is the matter, Mr. Tyler, which you except to?

Mr. Tyler: Yes.

Mr. Ingraham: Respondent excepts.

By Mr. Ingraham:

Q. Mr. Keyes, will you state what other provisions were discussed?

A. Paragraph 2 refers to rate of pay and minimum of $15, especially applicable to less experienced and under-average piece work operators, messengers, bundle boys, and other unskilled workers. There was a reference to that clause in the discussion, as being excessive in the [fol. 2036] opinion of the management, for ordinary labor in Kansas City, working 40 hours. Bundle boys, right out of school.

Of course, there were several—this you hand me, Mr. Ingraham, is the final draft. There were several drafts, as I recall, of this agreement, and I also remember that you went to the telephone and discussed this with Senator Reed, various phases of it. So that this draft that you are handing me is the final contract, which followed a number of other drafts which had been discussed with the union.

Q. Did Mr. Tyler have a draft prepared when the meeting began?

A. I think not. I think he came in with a memoranda of notes.

Q. Well, he read something, though?

A. He read something to us.

Q. And then he left for our—strike that. Did the meeting adjourn?

A. Yes, for further consideration. Mrs. Reed said she wanted to take up certain points with you and with her various managers, and, of course, with Mr. Baty.

Q. And did Mr. Tyler leave his memoranda with us?

A. Yes, he did.

Q. Did that occur in the morning? A. Yes.

Q. Then did we have a later meeting that day?

[fol. 2037] A. There was a later meeting in the afternoon.

Q. And in the meantime did we prepare a form of contract? A. We did.

Q. And the final contract is the one that you have?

A. It is, Mr. Ingraham. That is the one of the 27th of May.

By Trial Examiner Batten:

Q. Mr. Keyes, about how long did this morning meeting last, if you recall?

A. Well, I should think that it started about 10 or 10:30 in the morning; an hour or an hour and a half, at least, possibly 2 hours.

Q. How long was the afternoon meeting, if you recall?

A. I should think about 2 hours. I think some of us had lunch in the factory, so that we could—so that it might be very accurately said that we considered it longer than the period given you, sir, and, of course, there had been other conversations of an informal nature by Mrs. Reed with me.

By Mr. Ingraham:

Q. Now, Mr. Keyes, is there a Miss Alexander in your department? A. Yes.

Q. What character of work does she perform?

A. She assists me in the correspondence with the stores, on matters having to do with the filling of orders.

Q. Has she any supervisory powers? A. No, sir.

Q. Is she in charge of the work that Elsa Graham per-

[fol. 2038] formed?

A. No. I was in charge of that work.

Q. Is there a girl in your department by the name of Sandy? A. Martha Sandy, yes.

Q. What work does she do?

A. She assists me in the return department.

Q. Does she have any supervisory powers?

A. No.

Q. Was she a superior of Elsa Graham.

A. No, sir.

Q. As a matter of fact, did Miss Sandy receive a higher salary than Elsa Graham?

A. No, she received less.

Q. Was there a girl by the name of Elizabeth Nobles in your department? A. Yes.

Q. What character of work did she do?

A. She assisted me also in the correspondence.

Q. Does she have any supervisory powers?

A. No, sir.

Q. Was she a superior of Elsa Graham? A. No, sir.

Q. Did she receive a higher salary than Elsa Graham?

A. No; a lower salary.

[fol. 2039] Q. Did you, in any way, assist in the organization of the Donnelly Garment Workers' Union?

A. No, sir.

Q. Do you know of any official of the company, or any person with authority to hire or discipline or discharge that assisted in the organization of the Donnelly Garment Workers' Union?

A. I do not.

Q. Do you know of any financial contributions the Donnelly Garment Company has ever made to the Donnelly Garment Workers' Union?

A. I do not.

Q. Do you know of any kind of support that the Donnelly Companies have given the Donnelly Garment Workers' Union?

A. No, sir.

Q. Have you, yourself, given any support to the Donnelly Garment Workers' Union?

A. I have not.

Q. Have you ever instructed anybody or any employee at the Donnelly Garment Company to join the Donnelly Garment Workers' Union?

A. I have not.

Q. Have you ever advised or instructed any employee not to join the International Ladies' Garment Workers' Union?

A. I have not, Mr. Ingraham.

* * * * * *

[fol. 2040] Cross-Examination.

Mr. Tyler: Mr. Keyes, isn't it a fact that in the discussions which were had pending the execution of the contract on May 27, that Mrs. Reed said that she wanted her people to be free to come directly to her with complaints, and that I said, "Certainly, they are guaranteed that right under the Wagner Act. All I want is that they shall also have the right to handle complaints through the union and union representatives, if they so choose."?

Mr. Langsdale: Just a moment. I object to the question for the reason that the witness has already testified Mr. Tyler was in there insisting that they have to go through the union first, whereas, Mr. Ingraham was insisting that they had the right to go to the management. It is an effort to get this witness to change his testimony, because Mr. Tyler probably knows that we have dug his speech out of one of these minutes, telling them that.

Trial Examiner Batten: Well, I don't see any objection if Mr. Tyler wants to examine this witness with respect to matters in a meeting which he took part in.

Mr. Tyler: Frankly, I wish—

Mr. Langsdale (interrupting): He is—

Trial Examiner Batten (interrupting): Just a moment.

[fol. 2041] Mr. Tyler (continuing): To force him to change his statement I think he is wrong. I have a right to do it on cross-examination.

Trial Examiner Batten: Let's proceed. Read the question.

(Whereupon, the question was read by the reporter.)

Trial Examiner Batten: There is no objection to that question, is there?

Mr. Langsdale: Yes, sir.

Trial Examiner Batten: I thought you were just making that remark to Mr. Tyler.

Mr. Langsdale: There is an objection. The witness has already testified to the contrary.

Trial Examiner Batten: If it was in the form of an objection, it is overruled.

A. Mr. Examiner, in answering the question, this is my first experience of this nature. Am I privileged to state that I don't understand that I am changing my testimony?

Trial Examiner Batten: Well, of course, any witness has a perfect right to answer a question, and then, when you have answered the question, if you have any statement that you want to make, you may make it.

[fol. 2042] The Witness: Your statement of what happened there agrees with my recollection, Mr. Tyler.

By Mr. Tyler:

Q. Mr. Keyes, do you recall or do you not recall that on the occasion when the union asked that the minimum be raised from $15 to $16.50 a week that you or someone else left the room and went to the books and counted up how

many people would actually have their salaries raised if the minimum was raised to $16.50 a week?

A. Mr. Tyler, I had nothing to do with that other negotiation.

Trial Examiner Batten: You mean, that is Board's exhibit No. 7?

Mr. Tyler: That is the wage agreement of June 22.

By Mr. Tyler:

Q. You had nothing to do with that?

A. Nothing whatsoever.

Q. Who brought up the matter of arbitration as a part of the contract of May 27, 1937?

A. My recollection is that the union brought the matter of arbitration up. There was a discussion as to what kind of agency should be established if the necessity should arise, and my recollection is—I believe I am right—either Mr. Ingraham or Mrs. Reed thought that if there was to be a group of people the third person should be someone such as a Federal judge, and I believe a board of three was [fol. 2043] established, one designated by the union, another by the firm, and then a Federal Judge. That was the trend of the discussion, as I recall it.

Q. But, the best of your recollection is that the union was the first one to mention the matter of putting arbitration in the agreement, is that right?

A. That is right, that is my recollection.

Q. How much time intervened between the morning session and the afternoon session, according to the best of your memory?

A. An hour or an hour and a half or two hours, sir.

Q. During that time did you or did you not spend time in considering the propositions made by the union?

A. We did.

By Trial Examiner Batten:

Q. Who do you mean, "we"?

A. Well, we talked it over with Mrs. Reed, Mr. Ingraham, Mr. Baty, Mr. Green, and we discussed it with some of our assistants.

By Mr. Tyler:

Q. Do you have any knowledge of either the Donnelly Garment Company or the Donnelly Garment Sales Company ever paying any bills of indebtedness of the Donnelly Garment Workers' Union?

A. No, sir.

Q. Has there ever been any instructions or permission gone out for either company to pay any bills of the union?

A. No, sir.

[fol. 2044] Q. Do you have any knowledge or did you ever hear of either the Donnelly Garment Company or the Donnelly Garment Sales Company ever paying or instructing or permitting the payment of any sums to Gossett, Ellis, Dietrich, and Tyler in connection with either the Loyalty League or the Donnelly Garment Workers' Union?

A. No. Sir.

* * * * * *

LEE BATY, a witness called by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. State your name, please.

A. Lee Baty.

Q. Where are you employed, Mr. Baty?

A. Donnelly Garment Company.

Q. In what capacity?

A. Production manager.

Q. How long have you been production manager?

[fol. 2045] A. Since about the 25th of June, 1935.

Q. Will you just state what is included in the production department?

A. Well, that is a pretty large field. Everything pertaining to the production of the garments. It starts in with the cutting, and then the bundling by the dividers. From there it is distributed to the sections, with different parts of the garments made in various sections. The skirts are made in one section, waists in another, belts in another, and then the examining of the dresses after they are completed, and the ironing of the dresses, and the folding, and the passing of them into the shipping room ready for shipment.

Q. Mr. Baty, I will hand you I. L. G. W. U. exhibit No. 10 and ask you if you had anything to do with the circulation of that petition.

A. I did not.

Q. When did you first learn that there was such a petition as that?

A. When it was delivered to Mrs. Reed at her residence.

Q. To your knowledge, did any official of the company, or any person with authority to hire and fire or discipline, cause that petition to be circulated?

A. They did not.

Q. Were you present at a meeting of March 18 of the Donnelly Garment Company?

[fol. 2046] A. A meeting of employees, you mean?

Q. Yes.

A. No.

Q. Did you have anything to do with the arrangement of that meeting?

A. I did not.

* * * * * *

[fol. 2047] By Mr. Ingraham:

Q. Was there a girl employed at the Donnelly Garment Company by the name of May Fike?

A. There was.

Q. What particular work did she do?

A. Well, shortly before she left she was doing underarm seams.

Q. State whether or not that character of work had been [fol. 2048] handled by each section prior to 1937.

A. Sometime before that, I think it was in 1936, according to my recollection, I changed the underarm seams for the cotton garments from the individual sections to a special section, which was designated by number, section 523.

By Trial Examiner Batten:

Q. You mean by that, Mr. Baty, that all of this underarm seam work then went to one unit?

A. To one unit, section 523.

Q. In other words, the other units did all of the work up to that point, and then the bundles were taken over to this one unit that did this particular work, is that correct?

A. That is correct to a certain extent. On these dresses work is performed all over the factory. The department did perform the work on the underarm seams.

Q. That is the only place where they did that work?

A. That is the only place where they did the underarm seams for the cotton garments.

By Mr. Ingraham:

Q. Prior to the time that you made that change state whether or not the operators that performed underarm hemming would do, also, other operations?

A. Yes, they would. During the previous period, before I made this change, there would be from two to four operators in a section that would perform the underarm seams, when available, but there was a great deal of the time we didn't have enough underarm seam work to keep these two [fol. 2049] to four busy and as a result they would be required to do some other kind of work.

In order to provide more continuous work on the same operation for these particular people I assembled them in one section and brought the work to them from all sections.

Q. After that change was made the operators that performed underarm hemming did not perform any other operations; is that a fact?

A. That is right.

Q. What kind of work did May Fike do?

A. May Fike was doing underarm seams just prior to the time she left.

Q. Was she capable of doing any other kind of work?

A. She had worked on other work prior to the time she was transferred into this special section. She had done some binding of different kinds, but her best—

. . . . . .

[fol. 2060] (Whereupon, the partial answer was read by the reporter as follows:

"A. She had worked on other work prior to the time she was transferred into this special section. She had done some binding of different kinds but her best —").

Trial Examiner Batten: Let the record show Mr. Langsdale withdraws his objection.

A. Her best work was on the underseam binding. Her earnings for a piece work rate basis was far better on the underseam binding, and that is the reason I had transferred her to that section. Her work in the other sections was not satisfactory as compared to other operators' work.

By Mr. Ingraham:

Q. How many underarm binders were in this section that you refer to?

A. There was — it run from twelve to fourteen. Occasionally, there might be fifteen.

Q. In comparison with the other underarm binders, was May Fike of equal ability?

A. I would say that we had more work returned to May [fol. 2061] Fike to be corrected than any other underseam binder we had.

Mr. Tyler: Mr. Baty, can you speak a little louder, please? I can't catch all of it.

The Witness: Yes.

By Mr. Ingraham:

Q. Now, Mr. Baty, will you state the months that are the peak seasons in the Donnelly Garment Company?

A. Well, the peak seasons are March, April and May.

Q. I will ask you if that was true in 1937?

A. Yes, sir.

Q. I will ask you, Mr. Baty, around the first of May, the first several weeks in May, if the plant was operating at full capacity?

A. Yes.

Q. And was that true with respect to work for underarm binders?

A. Yes, it was true to this extent: possibly one day a week you would be low on that particular operation and it might be necessary for any number of the underseam binders to go home for one or two hours, or maybe half a day.

[fol. 2062] Q. I will ask you if the operators in section 523 took their vacations during the month of May?

A. Do you mean, with reference to 1937?

Q. Yes.

A. They did not.

* * * * * *

[fol. 2063] By Mr. Ingraham:

Q. Mr. Baty, did you have any conversation with Mrs. Hyde regarding May Fike's vacation?

A. I did.

Q. Will you just state what occurred?

Mr. Leary: I object to this, Mr. Examiner, as being a self-serving statement.

Trial Examiner Batten: You may answer.

A. Along about the first of May, 1937, May Fike came to Mrs. Hyde's desk, which was located on the seventh floor. I had a desk located about 15 feet away, within the [fol. 2064] same enclosure, such a thing as this rail in front of me (indicating).

May Fike told Mrs. Hyde she wanted to go on her vacation because her husband was getting his vacation at that particular time.

Mrs. Hyde came over to my desk and asked if May Fike could have her vacation. I told Mrs. Hyde we could not permit anybody to go on their vacation at that time, that we had too much work in the factory to permit anybody to leave, but that if she insisted on going we couldn't prevent her, we couldn't keep anybody from quitting, but if she went, to make it clear to her that she was leaving our employment.

Mrs. Hyde went back and told May Fike she could not take her vacation at that time—

By Trial Examiner Batten:

Q. (Interrupting) Just a minute. Were you there?

A. I was as close as I am to you.

Q. Did you hear this?

A. I heard every word.

Mrs. Hyde told May Fike if she went she would be leaving our employ. May Fike said, "Regardless of that, I am going." Mrs. Hyde said, "Well, now, you want to understand that you are quitting the employment of the company." And May Fike left.

By Mr. Ingraham:

Q. Did you ever hear that May Fike called Mrs. Hyde after her return from her vacation?

[fol. 2065] A. Mrs. Hyde told me about the first of June, or shortly afterwards, that May Fike had called in, asking to come back to work, and I told Mrs. Hyde we didn't have any work for her. That was in June, 1937.

Q. Now, in June, 1937, was there a lack of work at the plant?

A. In June, 1937— We run out of work, usually, about the middle of the month. That is, in all of the departments the work commences to dwindle down, starting in in the first part of June, and each department gradually runs out

of work. We finish up the work approximately the middle of the month, approximately the 23d or 25th.

* * * * * *

[fol. 2066] Q. Did you know that May Fike was a member of the International Ladies' Garment Workers' Union prior to the time she testified in court?

A. No.

* * * * * *

[fol. 2067] By Mr. Ingraham:

Q. At the time May Fike left, did you know she was a member of the International?

A. No.

Q. Now, Mr. Baty, how far was May Fike's machine from Fern Sigler's?

A. The exact distance, by measurement, is 31 feet and 5 inches from needle to needle.

Q. And you have measured that?

A. I measured it.

Q. I will hand you Respondent's Exhibit 4, and ask if that is a picture of the sections in which May Fike worked and Fern Sigler worked?

A. Yes, it is.

Q. I will ask you if you can point to the machine at which May Fike worked.

Mr. Leary: I object to his testifying on that after it is already pointed out here.

By Mr. Ingraham:

Q. I will ask you if the mark on this exhibit at the left-hand side is over the machine at which May Fike worked.

A. It is.

Q. And is the mark on the other side of the picture over the machine at which Fern Sigler worked?

A. It is.

Q. Now, Mr. Baty, if May Fike was sitting at her ma-[fol. 2068] chine, state whether or not she would be facing Fern Sigler.

A. If she was sitting at her machine, facing her machine?

Q. Yes.

A. She would be facing north, and could not see Fern Sigler's machine.

Q. Was Fern Sigler's machine behind her?

A. It was behind her and quite a bit to the left.

Q. Is it possible, or would it have been possible, for May Fike, sitting at her machine, to have turned and seen Fern Sigler at her machine?

A. As long as she remained seated, no.

Q. She would have had to have stood up?

A. She would have to stand up in order to see Fern Sigler's machine.

By Trial Examiner Batten:

Q. You mean by that the obstructions on the top of the table are such—

A. (Interrupting) Are such that she wouldn't be able to see over.

Q. Could she see a crowd of people if they were standing up over there?

A. She could see people standing, but she couldn't see anybody that was seated.

Mr. Ingraham: Mr. Baty, if the power is on, would it have been possible to hear people talking at a distance of 31 feet away from May Fike's machine?

[fol. 2069] Mr. Langsdale: Now, I object to that as calling for speculative conclusions. That would depend entirely upon how [long] the other people were talking, and, certainly, this witness can't say that any tone of voice, you couldn't hear some one 31 feet away. That is about the distance across the room. It is purely speculative; guess work.

Trial Examiner Batten: You mean, with all the machines running on the floor? Is that what you mean?

Mr. Ingraham: That is what I mean.

Mr. Langsdale: I still say it is purely speculative, depending upon how loud the voices were.

Trial Examiner Batten: You may answer, in an ordinary tone of voice would you hear?

Mr. Langsdale: Well, that wasn't incorporated in the question.

Trial Examiner Batten: Well, I am incorporating it.

A. In an ordinary tone of voice, you couldn't hear it at all. The only way you could possibly hear would be if it was shouted rather loud, and it would have to be mighty loud, at that.

By Mr. Ingraham:

Q. Mr. Baty, did you have occasion to go to this Section 523 on the morning of April 23, 1937?

A. I had occasion to go near it, and past it. I didn't stop at that section.

Q. What was the occasion that brought you up to that [fol. 2070] floor?

A. I received a telephone call that there was considerable commotion down on that floor, and I went down to investigate to see what the occasion was.

Q. And will you just state what occurred?

A. I went in on the floor and I saw a crowd of operators gathered up around the machine of Fern Sigler, located in Section 521, and I went down to the machine and asked Fern Sigler to come go to the office, and she refused to go, said she wasn't going to the office, that she wasn't going any place, and I said "Well, I am telling you to go now. I am not asking you any longer. You go to the office. I want to talk to you." And after quite a few words that she wouldn't go, that she didn't have to go, why, she finally got up and went to the office with me.

Q. Then you had a conversation with her at the office?

A. In the office, she went in the office and I called Mrs. Hyde. I called a stenographer and told the stenographer to prepare to take a statement, and I stepped out of the room to gather some chairs, and I came back in, and Rose Todd was talking to Fern Sigler, and there was quite an exchange of words there between the different ones present.

Q. I will hand you Board's Exhibit No. 5, and ask you, Mr. Baty, if that was the statement that was taken down at that meeting with Fern Sigler in your office? (Indicating).

[fol. 2071] A. Yes.

Q. I notice, Mr. Baty, in this statement, you made this statement: "It is just the publicity in the paper, and the people are pretty well riled up. It is impossible to control them as long as you remain."

What publicity were you referring to?

A. That was an article that came out in the paper the night before stating that Sylvia Hull had been chosen as a representative of the employees of the Donnelly Garment Company to go to the convention at Atlantic City, to represent them in the International Ladies' Garment Workers Union.

Q. I hand you Respondent's Exhibit 1, and ask you if that is the article you refer to.

A. It is.

Q. Did Fern Sigler leave after that conversation?

A. She left. I think it was some 30 minutes, or something like that, after she got to the office.

Q. State whether or not she then performed services for the International Ladies' Garment Workers' Union?

Mr. Langsdale: I object to that as immaterial.

Trial Examiner Batten: Sustained.

Mr. Ingraham:

Q. Do you know whether or not she called on the customers of the Donnelly Garment Company in Kansas City?

Mr. Langsdale: I object to that as immaterial. This [fol. 2072] is not an 8(3) case.

Trial Examiner Batten: Sustained.

By Mr. Ingraham:

Q. I will ask you, Mr. Baty, if you had any conversation that same day with Sylvia Hull.

A. I did not.

Q. Did Sylvia Hull go home that morning?

A. She did.

[fol. 2073] Q. Did you give any instructions later in regard to calling Sylvia Hull?

A. I instructed Mrs. Hyde to call Sylvia Hull, and a day or two following that morning Mrs. Hyde reported back to me that she had called Sylvia Hull and got no reply, was unable to reach her.

Q. Did she call more than once? A. She did.

Q. Over what period of time?

A. She called—I think it was the second day after she left she called intermittently all morning the phone number Sylvia Hull had left with her.

Q. Did you later learn that Sylvia Hull was in Atlantic City attending the International Ladies' Garment Workers' Union convention?

A. I did.

Q. Was there a newspaper article in the papers regarding that?

A. There was.

Trial Examiner Batten: You mean, she was there at the time these calls were made?

A. No. She was there after the calls were made trying to locate her.

Trial Examiner Batten: Then, I don't see what that has to do with it. I don't think it has anything to do with [fol. 2074] it if it was after these calls were made.

Mr. Ingraham: If Your Honor please, I want to show that we not only called but later learned she was in Atlantic City, and therefore there wouldn't have been any use to call, if she was there.

Trial Examiner Batten: I don't think that is material at all. The testimony about her being in Atlantic City, if it was after your attempts to call, may be stricken out.

Mr. Ingraham: Your Honor, I want to show she made a speech in Atlantic City.

Trial Examiner Batten: You may make an offer of proof on it.

Mr. Ingraham. They are asking for reinstatement of Sylvia Hull.

Trial Examiner Batten. You mean, this was a speech to the I. L. G. W. U.?

Mr. Ingraham: Yes.

Trial Examiner Batten: And that she said some things there that were not true?

Mr. Ingraham: Yes.

Trial Examiner Batten: Suppose she did?

Mr. Ingraham: I think it would show we would be justified in not reinstating her, in view of her statements. She states she was going to call a strike at the Donnelly Garment Company.

[fol. 2075] Trial Examiner Batten: You may make an offer of proof on it. I don't think it is material to the issues.

Mr. Stottle: Further, if Your Honor please, if she was employed by this other concern, it would go to the reinstatement.

Trial Examiner Batten: If you want to show she had substantially equivalent employment, that would be a different thing. But, as I said before, there is no use showing what her earnings were, because if the Board should find she is entitled to reinstatement you can then determine what her earnings were.

Your purpose is not the question of substantially equivalent employment, is it, Mr. Ingraham?

Mr. Ingraham: That is going to be part of it.

Trial Examiner Batten: That she had substantially equivalent employment?

Mr. Ingraham: Yes, that she went to work for the International.

Trial Examiner Batten: If you want to show that she had substantially equivalent employment, you may show that.

Mr. Langsdale: When should they show that, now?

Trial Examiner Batten: I say, Mr. Ingraham may show that if she got a job, who it was with, and how much she made.

Mr. Langsdale: You mean, at this time, before the Board passes upon the question of reinstatement.

[fol. 2076] Trial Examiner Batten: There is a difference between substantially equivalent employment and showing

what her earnings were. This is not for the purpose of showing her earnings.

By Mr. Ingraham:

Q. Mr. Baty, has Sylvia Hull ever requested reemployment at the Donnelly Garment Company, to your knowledge?

A. She has not.

Q. I hand you respondent's exhibit No. 10 and ask you to state what publication that is.

A. It is "Justice," published by the International Ladies' Garment Workers' Union.

(Thereupon the publication above referred to was marked for identification "Respondent's Exhibit No. 10.")

Mr. Ingraham: I offer in evidence respondent's exhibit No. 10, the report of Sylvia Hull's speech.

Trial Examiner Batten: What date is that?

Mr. Langsdale: June 1, 1937.

Trial Examiner Batten: Mr. Ingraham, what is the purpose of this, if you care to disclose it? Is it to show the situation as it existed? It is not to prove the truth or untruth of anything in there, is it?

Mr. Ingraham: Yes, indeed. This is the official paper of the International.

[fol. 2077] Trial Examiner Batten: I certainly won't receive it to prove anything, an article in a newspaper.

Mr. Ingraham: Even though it is published by the International?

Trial Examiner Batten: I don't care whom it is published by.

Mr. Ingraham: Wouldn't that be considered as an admission?

Trial Examiner Batten: I don't believe in trying any of these hearings on newspapers, trade papers, or anything of that kind. If you want to offer it on the same basis you offered the other newspaper articles, I will receive it on that basis.

Mr. Ingraham: I offer it, of course, for all purposes.

Trial Examiner Batten: I am saying I will not receive it for all purposes. But if you want to offer it on the same basis as exhibits Nos. 6 and 7, although it restricts your general offer, I will receive it on that basis, on the basis of respondent's exhibits Nos. 6 and 7, and then you may have your exception.

Mr. Ingraham: I am still offering it for all purposes, and you are not allowing it to be received for all purposes?

Trial Examiner Batten: That is correct. But my question still is, do you want me to receive it on the same basis I did receive exhibits Nos. 6 and 7, having refused to re-
[fol. 2078] ceive it for general purposes?

Mr. Ingraham: Oh, yes.

Mr. Stottle: Mr. Examiner, may it not also be received to show that she said these things, even though the things she did say were not true?

Trial Examiner Batten: Mr. Stottle, I assume this article is in the same class as the other two, it speaks for itself.

Mr. Stottle: You let Senator Reed's statement in to show that he said certain things, didn't you?

Trial Examiner Batten: It was stated, in connection with that, that if the reporter were here he would testify Senator Reed said those things. I will receive it on that basis, although that is not Mr. Ingraham's offer. I am not going to receive these newspaper articles as proving or disproving anything that is said in them. I will receive them for just what they are worth as newspaper articles, and that is all.

(Thereupon the publication previously marked, as above set out, "Respondent's Exhibit No. 10," was received in evidence.)

* * * * * *

[fol. 2079] By Mr. Ingraham:

Q. Mr. Baty, did you ever give any instructions that Sylvia Hull and May Fike should not be recalled or rein-

stated on account of their union membership in the International? A. I did not.

Q. I will ask you, Mr. Baty, what action you took on the morning of April 23, 1937, in regard to getting the operators back to work.

A. I don't understand what occasion you mean.

Q. April 23, 1937.

A. I went down to the sixth floor, the machine where Fern Sigler was working, and got Fern Sigler to go to the office, and at the same time, I turned and in-
[fol. 2080] structed the girls to all get back to their machines and get to work.

Q. Was there any violence, to your knowledge?

A. There was none.

Q. What, if anything, did the operators say in regard to returning to work as long as Fern Sigler was there?

A. I heard shouts from amongst the crowd that they wasn't going to work until Fern Sigler left.

Trial Examiner Batten: You wouldn't call that a sit-down strike, would you?

A. I would say it was a stand-up.

By Mr. Ingraham:

Mr. Baty, after you took charge of the production of the factory, did you make any changes in reference to the method of production, or the plan of work? A. I did.

Q. I direct your attention to the work of the instructors. What, if anything, did you change in regard to their duties?

A. I changed the work of the instructors, I would say, to a very great extent. Prior to the time I took them, they were considered more or less supervisors, and entered into the discussions and recommendations as to the ability of different operators and made different recommendations as to which operators would be recalled after they were laid off, and after I took over the plant, I put instructors strictly on a basis of an instructor, and they were there to assist the operator in the performance of [fol. 2081] their work, and nothing else. They had no supervision over the girls, and it was none of their concern as to how the girls performed. They were to give them the work, take it away from them when it was fin-

ished, show them how to do it, if they didn't know how, and that was the extent that they were held liable for the girls in the section.

[fol. 2082] Q. Now, Mr. Baty, when did you put that plan into operation?

A. That plan was put into operation, as near as I can remember, about the month of July, 1935.

Q. Have instructors any authority to take work away from operators and give it to someone else?

A. They only have that authority when I give it to them. I will instruct them to do that on some occasions.

Q. Will you please explain how the work is distributed?

A. The work is sent from the cutting room—first, the plans are made as to where the work will be performed, and then the work is bundled in the cutting room, and the bundle ticket shows to what section the work is to go, and the bundles go to that section. And the instructors then have the operators, or if they do not have them we immediately transfer operators into that section to do that work. Sometimes the work gets there ahead of the operators. Then I have to transfer operators to that particular location to take care of the work.

The instructor merely takes the work out to the machine and gives it to the girl, and if the girl doesn't know how to do it the instructor sits down and does one or two operations to show her how.

When the work is done the instructor ties it up, and the thread girl or floor girl, whichever you want to call her, [fol. 2083] picks the work up and puts it in the basket to transfer it to the next section.

Q. Have the instructors any authority to withhold work from operators? A. They have not.

Q. As operators finish with bundles do the instructors see that they get additional work?

A. As soon as an operator finishes with one bundle she stands up at her machine, which is a signal to the instructor or floor girl that she needs work, and immediately, if there is any work, they take the bundle to her.

Q. Have instructors any authority to hire to discharge employees? A. They do not have.

Q. Have they any authority to discipline workers?

A. They do not have any authority to discipline operators.

Q. Do they have any supervisory authority?

A. They do not.

Q. Do the floor girls have any supervisory authority?

A. No.

Q. What are the duties of the floor girls?

A. The duties of the floor girls are to provide thread and trims in the way of binding, lace, and any other articles that go with the work.

The instructor, as a rule, starts the girl out on the [fol. 2084] bundle of work she is to do. Immediately, then, the thread girl follows up and sees that she has the proper thread and notions to go with it.

Q. How many operators are in a section?

A. Well, it depends upon our sections. In some sections we have 40 and some 44, and different amounts. The regular section, I would say, would be considered as 40.

Q. What position does Dewey Atchison hold?

A. At this time he is assisting me in planning the work for the factory and is paying particular attention to the cutting department. He prepares the statement of work that is going to be available. He then brings it to me and we go over it and prepare our plans a week or, sometimes, two weeks in advance.

Mr. Atchison's duty is to figure the various kinds of work that is in the group of style numbers, prepare it so that we will have the patterns on it available at a particular time, so that we can set up our factory for the work. And then I designate to him which ones he shall prepare an order on to be cut first in the cutting department.

Q. How long has Mr. Atchison been performing that character of work?

A. That has been since, I believe, around in December, 1938, he has been on this particular work and putting in the greater portion of his time on it.

[fol. 2085] Q. What character of work did he do in 1937?

A. In 1937 Mr. Atchison was doing considerable checking of the plannings as to what work could be done in the factory with the equipment we had. He worked with the pricing department, and after they had priced the garment he took the garment and checked it to see what machinery it was going to require in the factory to perform

the work, and made many checks of various kinds of operations which would improve the handling through the factory, but he had no connection whatever with the factory itself.

Q. Did he have any supervisory authority?

A. He did not. He worked alone as an individual employee.

Q. Did he have any authority to fire or hire or discipline? A. He did not.

* * * * * *

By Mr. Ingraham:

Q. I believe you stated you did not attend a meeting of employees on March 18, 1937; is that correct?

A. I did not.

Q. Did you attend a meeting of employees on April 27, 1937? A. I did not.

Mr. Langsdale: What date is that?

Mr. Ingraham: April 27, 1937.

By Mr. Ingraham:

Q. Will you state whether or not there was a meeting of employees on that date, during working hours?

A. There was not.

Q. At that time did the Donnelly Garment Company or the Donnelly Garment Sales Company have any control over the first or second floor of the Corrigan building?

[fol. 2087] A. They did not.

Q. Neither of those companies rented that space?

A. No.

By Trial Examiner Batten:

Q. What hours did you work then?

A. Do you mean me or the factory?

Q. The factory. What time did they work? I presume you mean the superintendent. You work when you feel like it, don't you? What time does the factory close?

A. The factory closes at various hours. They go to work in the morning at, sometimes as early as 7:10, 7:20, 7:30.

Q. What I am interested in is, on April 27, 1937, what were the hours that day?

A. The hours that day would be from 7:30 until approximately 4:30. They start quitting at 3:50, 4 o'clock, 4:10, 4:20, 4:30.

Q. You mean they quit in shifts and start in shifts?

A. They quit in groups.

Q. Groups?

A. The starting time is staggered in order to handle the people in and out of the building. There are too many people to be handled on two small elevators all at one time. In order to help the people getting in and out, we stagger the starting time and quitting time.

By Mr. Ingraham:

[fol. 2088] Q. Did you, in any way, assist in the organization of the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you contribute financially at any time to that union? A. I have not.

Q. Mr. Baty, is there a cafeteria in the building?

A. Yes.

Q. On what floor is that cafeteria at the present time?

A. Third floor.

Q. Is that cafeteria operated by the Donnelly Garment Company or the Donnelly Garment Sales Company?

A. It is not.

Q. Would you state the arrangement under which that cafeteria is operated?

A. The cafeteria is operated by a party by the name of Kranz. He has a lease on the space. The Donnelly Garment Company furnishes him with lights, water and the heat, chairs, and tables and a few of the counter fixtures. Mr. Kranz furnishes all other equipment.

Q. What arrangement does he have with respect to rent? Does he pay rent? A. He pays rent, yes.

Q. What is the rent?

A. The rent he pays is $1 a year.

Q. And what is the arrangement under which he oper-

[fol. 2089] ates that cafeteria in respect to price of food, and so forth?

A. It is understood in the arrangement with Mr. Kranz that he was to furnish good food and make it possible to furnish a meat and a vegetable and a drink for approximately 20 cents, and in order to enable him to do that, the

company furnished the chairs, tables and such equipment as they did furnish to help eliminate his overhead and make it possible for him to furnish these reasonable lunches to the employees.

Q. Now, does the company share in any way in the profit he makes in the operation of the cafeteria?

A. They do not.

Q. And is he in sole control of the cafeteria?

A. He is.

Q. Does the Donnelly Garment Company pay any of the wages of the employees? A. They do not.

Q. Do they pay for any of the food that Mr. Kranz sells? A. They do not.

Q. Mr. Baty, were you present when the contract between the Donnelly Garment Company and the Donnelly Garment Sales Company and the Donnelly Garment Workers' Union negotiated? A. I was.

Q. Will you just state what occurred?

Mr. Langsdale: I didn't hear that question.

[fol. 2090] Trial Examiner Batten: You mean the first contract?

Mr. Ingraham: Yes, the first contract.

Trial Examiner Batten: Board's Exhibit 6.

A. I was called to Mrs. Reed's office, which is located on the tenth floor, and was informed by Mrs. Reed, along with three or four other people—Mr. Ingraham was there, Mr. Keyes, Mr. Green—that the committee for the Donnelly Garment Workers' Union was going to call upon Mrs. Reed to negotiate a contract, and in a few minutes, the members of the committee were received at the office. I think, as I recall it now, Mr. Tyler said that he had a proposed contract or memorandum of some sort that he wanted to read, and asked the company to consider it.

Mr. Tyler read that contract, and I think he read it approximately half way through, and as I recall at this time, Mrs. Reed stopped him and told him that she thought that they had gone into that far enough at the time, but she believed she would like for him to leave the contract and give her an opportunity to go over it with her associates; that she didn't believe that they could save any

time or do any good until she had a chance to go over it with her associates.

I think this meeting was in the neighborhood of 10 o'clock or 10:30 in the morning and at that time we discussed a few points in this proposed contract that Mr. [fol. 2091] Tyler had presented, read part of it, and Mrs Reed asked the committee for the union to retire and give her a chance to go into it with her people; that some time in the neighborhood of noon, close to 12 o'clock, when they left, and as I recall it now, they returned about 2 o'clock.

At about 2 o'clock the contract was read paragraph for paragraph and many comments were made by the executives of the company, as well as the members of the committee, and Mr. Tyler, and changes were made, and it was some time in the neighborhood of 5 o'clock when the contract was finally signed. Different paragraphs had been retyped any place from three to ten times.

[fol. 2092] Q. Do you recall the discussion of any of the provisions of the contract? I will hand you Board's exhibit No. 6 and ask you if you want to refer to the contract.

A. One of the first discussions that came up was the employees that the contract was supposed to cover. I know at the time I objected to the contract covering all of the employees. I was of the opinion that the contract should be made to cover only the factory workers and could see no reason why they should incorporate all of the employees of the company in the contract.

After considerable argument we decided that if the Donnelly Garment Workers' Union insisted, their committee insisted that they all be members the company would take no further action on it, they would agree to it.

Q. State whether or not Mr. Tyler and Miss Todd and the other members of the committee informed the company that all of the employees had joined the union and wanted to be represented by the union.

A. Mr. Tyler and Miss Todd informed the officials of the company that they had cards signed by every employee of the company, authorizing them to represent them in the preparation of a contract, or to represent them as their committee to carry on these negotiations.

Q. State whether or not Miss Todd had submitted cards of these members of the union, of the Donnelly Garment [fol. 2093] Workers' Union, to the company.

A. It was quite some time before this meeting to enter into this agreement—I think it was some time in the neighborhood of the first of May, I was called to Mrs. Reed's office and given a box of cards by Mrs. Reed. She asked me to go over those cards and determine if the names that were on those cards were the names of our company. I think there was something like 1,100 cards at the time. I took those cards and went through them to determine if they were the employees of our company, and returned them to Mrs. Reed with the information that they were.

Q. Were there cards for all of the employees of the company?

A. I think not, not at that time. There were some that were not there—there were a few.

Q. Did Mrs. Reed state whom she had obtained the cards from?

A. Mrs. Reed told me she had received the cards from Miss Todd the day before.

Q. Mr. Baty, will you continue on with the examination of the contract?

A. Well, the paragraph pertaining to the specification of hours, 40 hours per week, I objected to that paragraph, but in the discussions and arguments that followed I was overruled on it. I didn't like the idea of being held to any specific hours. As production manager I wanted all of the hours I could get.

[fol. 2094] Q. Is it not a fact that it is a practice in the garment industry that during peak seasons the garment plants must work over 40 hours in order to get out the production?

A. There is, during the peak seasons. As far as our company is concerned, it is impossible to fill our orders, or to begin to fill them, without working our machines more than 40 hours a week.

There are several weeks where our orders will be so far in excess of the capacity of the plant that the only possible way to make any showing toward filling them is to work additional hours, in excess of 40 hours.

Trial Examiner Batten: Under this contract you can work more than 40 hours?

A. Yes.

By Mr. Ingraham:

Q. Does the contract provide that anything in excess of 40 hours is overtime?

A. The contract does provide that any time in excess of 40 hours shall be overtime.

Q. Have you stated the reasons why you objected to that provision in the contract?

A. For the reason that I wanted to be able to change the hours any time I saw fit. I didn't want to be restricted.

Trial Examiner Batten: You mean, change them without paying overtime?

A. Yes.

[fol. 2095] Mr. Ingraham: Will you continue on?

A. During this conference—I might say here that Fred Brown was the member of the committee who objected so strenuously to the idea of leaving the hours per week open.

Prior to the time I had taken the factory they had worked considerable time in excess of 40 hours; they had worked 45 hours on occasions, and 50 hours, and such employees as were on a weekly rate, a good many of them received no compensation for the additional hours of work occasioned when they would change their hours, and Mr. Brown was very much excited with regard to this and wanted to be sure this contract covered that phase of it.

By Trial Examiner Batten:

Q. You mean, time workers?

A. Time workers, yes, sir. When this contract was executed it was established that the hours per week for all employees would be 40, regardless of their position or how they were paid, whether by the hour, week or piecework, and anything in excess of that was to be overtime.

There was considerable discussion about the promotions and seniority rights. The members of the committee insisted that any positions that were open throughout the plant, that somebody in the plant be given the first opportunity to fill them.

Q. What positions do you mean?

A. All kinds of time positions—instructors, floor girls. [fol. 2096] And there was considerable discussion on that point. I didn't like the idea of giving up the right to place anybody you chose in any position. And many took the position that the employees that were already in the service should have first opportunity to any position that was open, provided they could fill it. And after considerable discussion that was arrived at. The conclusion was as in the contract.

By Mr. Ingraham:

Q. You mean at times of layoffs, for instance, the oldest people would be retained?

A. At the time of layoffs and at the time of additional help coming in, or vacancies occurring by people leaving or resigning, and some of the positions that were weekly, continuous work, the piece workers wanted the privilege of having an opportunity to go on those positions.

We had quite a discussion about the meal period.

Before this contract was entered into with the Donnelly Garment Workers' Union it had been the practice of the company to extend the meal period, the lunch period. When it would come time to have the noonday lunch period the management of the plant, instead of taking a specified noon period of 30 minutes or 40 minutes, would notify the employees to take an hour and a half or two hours off for lunch and then return to work, because of the fact that they didn't have sufficient work for them at the time but they would expect to have it in a couple of hours. As a result of that practice, the committee for the employees insisted [fol. 2097] upon this regular meal period and got it.

Paragraph 14. The management insisted upon this paragraph about the reduction of the number of employees in accordance with the work they had to perform, and upon the right to discharge any employees whose services were unsatisfactory.

Paragraph 15. Vacations. Up to this time the pieceworkers in the plant had been receiving one week's vacation with pay, and the members of the committee insisted upon the pieceworkers being on the same basis as weekly-rated employees and that they should have the same vaca-

tion with pay as other employees. After considerable discussion it was agreed upon.

Paragraph 16. Members of the union committee insisted upon this paragraph. The company previous to the execution of this contract, had paid insurance and had given the employees such privileges as these, and the committee insisted that this be continued.

Then, there was considerable discussion as to the duration of the contract, and Mrs. Reed objected very strenuously, as well as the other executives, to entering into a contract for a period of two years. There was a great liability on the company's part in entering into a contract of this kind when nobody could foretell what the future was to bring; it was a great hazard that the company was taking to enter into such an arrangement as this [fol. 2098]. That is about all I can recall at this particular time.

[fol. 2099] Mr. Ingraham: Was there a discussion among the executives of the company?

A. Between the time that Mr. Tyler and the committee for the Donnelly Garment Workers' Union called upon Mrs. Reed in the morning and left about noon, and up until something like 2 o'clock, when they returned, amongst the officials of the company, we were in constant attendance, and every few minutes that phase of making a written contract was brought up and discussed, and it was only after the advice of Mr. Ingraham to the effect that he understood under the law that we would probably be compelled to do so, probably be better for us to enter into a contract, than not to.

Trial Examiner Batten: Mr. Ingraham, was that your interpretation of the Wagner Act?

Mr. Ingraham: I reserve my views on that, your Honor.

Trial Examiner Batten: Well, I mean, is the witness' statement correct as to your advice?

Mr. Ingraham: At the time?

Trial Examiner Batten: Yes.

* * * * * *

[fol. 2100] By Mr. Ingraham:

Q. Mr. Baty, did the contract, Board's Exhibit 6, provide for the making of an additional wage agreement?

A. I don't see it in here, but it is my recollection that it did.

Q. Well, was there a wage agreement that was entered into after the time that this contract was executed?

A. There was an additional agreement entered into, approximately one month later, which was about the 22d of June, 1937, to cover the rates of pay for the various employees, various departments.

Q. I will hand you Board's Exhibit 7, and ask you if that is the agreement.

A. Yes, this is a supplemental agreement.

Q. Were there any negotiations respecting this contract? A. There was.

Q. Prior to the time that this contract was entered into, did Rose Todd request any information from you?

A. Rose Todd? Yes.

Q. What was the information she wanted?

A. After the signing of the first agreement, some few days after, possibly a week or 10 days, Miss Todd asked me to prepare for her a statement showing the rates of pay that the various employees throughout the Donnelly Garment Company and the Donnelly Garment Sales Com-
[fol. 2101] pany received, the workers in the different departments, such as checkers, mechanics, spreaders and the helpers in the cutting department, dividers, the examiners, the floor girls, instructors and the—some figures on the average earnings of the operators on the different floors of the plant.

Q. Prior to the time this contract was entered into, did the company guarantee operators any amount in excess of $15 minimum, which the company had been paying for a number of years?

A. They did not.

Q. Well, will you just state what occurred with reference to the negotiations of this contract, Board's Exhibit 7?

A. About the time this contract was signed, this supplemental agreement, I believe it was the afternoon before, Mrs. Reed and Mr. Ingraham and I went to Mr. Tyler's office and met there with Mr. Tyler and the committee of

the Donnelly Garment Workers' Union, and we discussed throughout the afternoon the question of wage agreement for the various employees.

Mr. Tyler had a draft set up, various proposals, and I think we were there until some 6 o'clock or 6:30 that evening. We agreed tentatively on certain phases of it, and then I think we came back the next day, some time close to noon. I don't know whether it was before or after noon. It was about noon, and we had discussed very [fol. 2102] thoroughly, I remember on the first day, the idea of possibly agreeing to a $16 minimum as the low minimum for everybody.

We had discussed various other minimums, $18 for certain people, $20, and $22.50, $25.60 for different groups of operators, depending upon the kind of work and the class of work they were doing.

The next day, on our arrival, and shortly after the negotiations started again, why, we were confronted with a demand for $16.50 for an absolute minimum instead of $16. Well, after considerable discussion, Mrs. Reed and Mr. Ingraham and myself left the room where Mr. Tyler and the committee were, went into another office and called up the plant, got some information concerning the number of employees that would be involved in this $16.50 minimum, and after a delay of some hour or hour and a half, we concluded that we could meet their demand and give them—

Q. (Interrupting) Did Mrs. Reed refuse, at first, to agree to $16.50?

A. Mrs. Reed did refuse to even consider it at first, and after we left the meeting, Mrs. Reed, Mr. Ingraham and myself went into another room and discussed it further. Mr. Ingraham suggested that we call the plant and see how many people would be involved, and what the possible expense would be to the company.

Q. When you say "how many people would be in- [fol. 2103] volved", you mean how many people were receiving less than $16.50? A. Less than $16.50.

Q. And what information did we find from the plant in regard to that?

A. We found that there would only be in the neighborhood of 100 or possibly 150 that would be involved, so we concluded that we could meet it.

Q. Do you mean 150 employees? A. Employees.

Q. Will you look through the contract and state what other discussions took place.

A. Well, we have here the recognition of five holidays, consisting of Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day. Mr. Tyler, with the committee, demanded that the company pay piece workers on the same basis as they did weekly rated employees.

Before the contract was executed, a weekly rated employee was paid for holidays, although they did not work. So Mr. Tyler, with his committee, demanded that the piece workers be placed upon the same basis and after considerable argument one way and another, that was granted.

The only concession that the company got in that privilege was to tack on a sentence giving the employer the privilege to make up for time lost on account of holidays. That means that the employer can work the operators [fol. 2104] and other employees on a Saturday following, to make up this holiday, without having to pay them time and a half for such time. They only have to pay them straight time, since they did not work the holiday, and that is the only concession that the company got from that.

The method of determining piece work rates was discussed at this conference, and it was agreed that they were —that the basis at the time being used by the company was very satisfactory, and that they could be continued.

It was further discussed about dividing the work performed by the machine operators according to the class of work that they performed. That is, in regard to the different materials and the selling price.

The operators were divided into three groups. The first group was to cover the operators who worked a portion of their time on garments selling above $45 per dozen, and the remainder at a lower price.

There was a second group that was established to cover operators who worked on garments that sold, wholesale, at $45 and under, which we more or less termed at that time as the lower priced cottons.

There was a third group of operators established to cover operators who worked exclusively on what we termed the lower priced cottons, or cottons which sold wholesale at $22.50 and under, and a separate and distinct minimum [fol. 2105] was established for each of these three groups of operators, and they had a fourth group of operators which was placed in this agreement to cover beginners.

Q. I will ask you, Mr. Baty, if the representatives of the union made the proposal to classify the operators as provided in the contract? A. They did.

Q. Did the representatives of the union take the position that the company should guarantee operators who worked on the higher priced garments a higher guarantee than $16.50? A. They did.

Q. Did the company take the position that the company segregate a certain number of employees and have them work the year around on higher priced garments and nothing else and would guarantee those employees the higher guarantee?

A. The company took the position that they would be unable to segregate the work so that any specified group would be able to handle the work of the higher priced garment, and keep the people employed at such work, employed throughout the year, but they did say that by being able to give these people that were the ones which the committee for the union was requesting the higher guarantee, if they could give them some of the cotton work which wholesaled at $45 and under, that they would be able to meet such a condition, and after considerable discussion this arrangement was agreed upon [fol. 2106] whereby they would, as I recall now, the committee for the union requested a $22.50 guarantee for all employees who worked on any of the garments that wholesaled above $45.

[fol. 2107] Q. Is it a fact that the employees that would come under the first classification could product all of the garments the company makes that sell at above $45.

A. They could.

Q. Will you continue on and state what else took place?

A. Well, in addition to the operators, a very similar arrangement was made to cover the ironers. The ironers who performed the work on the garments that sold above $45 were placed in a group, and a second group was provided for the ironers who performed the work on the middle classed cottons, or lower classed, as we commonly term it, and a third group was provided for ironers who work only on the lower classed cottons or the ones that wholesale at $22.50 and under.

* * * * * * *

By Mr. Ingraham:

Q. Will you state what took place?

[fol. 2108] A. The committee for the union, after getting the setup for the three groups of operators, insisted upon the similar setup for ironers, and followed with a similar setup for folders.

Each and every class of employee was covered in this wage agreement.

The cutters at the time of this agreement were receiving $40 a week, and this agreement provided for a regular $42.50.

Q. Did the union representatives demand that the cutters' wages be increased?

A. They did. Prior to this arrangement there was no specification as to what a cutter would be paid, or a stretcher, or anybody else, except the one minimum of $15 per week, and all of these items appearing in this agreement were at the request and the insistence of the representatives of the union, along with Mr. Tyler.

Q. After the union advised you and Mrs. Reed and myself as to the minimums that they were demanding did we check up on the payrolls to find out whether or not that would cost the company any considerable amount of money? A. We did.

Q. And was that the reason that the meeting was adjourned until the next day?

A. At the time we adjourned the meeting we had no information whatever as to what it would cost us, and we held a conference and decided it would be impossible for [fol. 2109] us to meet any of their demands or enter into any agreement with them covering any of those increases that were demanded without first checking our expenses to see if we could meet them, and that was the occasion for adjourning to meet the second time.

The second day we had satisfied ourselves as to the conditions and the possibility of meeting such additional expense, until we went into the meeting on the second day and then were struck with the proposal for a minimum for all employees of $16.50, which we have not had presented to us the day before and had had no opportunity to check it up or have any information on it, and we had again to seek additional information before we could go any farther.

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[fol. 2110] By Mr. Ingraham:

Q. Did you check the figures for the purpose of determining whether or not the proposals of the union would cost the Donnelly Company any considerable amount of money in excess of what it was paying?

A. I did.

Q. What did you find out about that?

A. I found out that unless we could make considerable improvement in our production methods that it would cost us a lot of money, and Mrs. Reed and I determined in discussing it that by changing our process of manufacture we would be able to meet this additional expense and make it possible for the piecework earners to earn their money.

Q. What change in methods of production?

* * * * * *

[fol. 2111] A. We discussed the way that we could overcome this additional expense that would be placed upon the company if we signed that agreement and we arrived at the conclusion that if we would make certain changes in our production methods that we would be able to overcome this additional expense.

Q. Then, the contract was finally entered into?

A. Then the contract was signed.

Q. Were there many changes in the wording of the contract from the language that was first proposed by the representatives of the union?

A. There was considerable changing of the wording. There wasn't a whole lot of changing of the establishment of the rates. There was a great number of changes in the [fol. 2112] paragraphs and the wording of them—additions put in and some things taken out which would clarify the meaning. And in the discussions they were discussed very thoroughly so that we would all have the same thoughts concerning them.

I don't think there was any paragraph in the contract that is in it now that was in the proposed draft. I don't think any one of them ever remained the same.

Q. Is that wage agreement still in effect?

A. It is.

Q. It has been extended by the companies and the union?

A. It has.

Trial Examiner Batten: And that extension agreement is Board's Exhibit No. 10, I believe.

Mr. Ingraham: I think it is, yes.

Trial Examiner Batten. That is according to my record.

By Mr. Ingraham:

Q. Mr. Baty, does Rose Todd hold any supervisory position at the Donnelly Garment Company?

A. She does not.

Q. What work does she perform?

A. Rose Todd checks with the— Do you want it at this particular time?

Q. Yes.

A. She checks with the sections all over the plant, looking for merchandise that is delayed, dresses and bundles —checks to see what they need in the way of thread, lace, buttons, or any other notions.

[fol. 2113] Mr. Langsdale: What time are you talking about, today or—

Trial Examiner Batten: Now.

A. Now. And I might add, she has been doing that, I think, right close to two years or more. It has been the greatest part of her work. For a period in 1938 she worked on some special work with Mr. Atchison.

Trial Examiner Batten: You say that was 1938?

A. 1938.

By Mr. Ingraham:

Q. In 1937 what did she do?

A. She was working on the same work that she is now, checking delivery of notions and supplies to the sections.

Q. Are you a member of the Loyalty League?

A. No.

Q. Did you have anything to do with the organization of the Nelly Don Loyalty League?

A. No.

Q. Have you ever contributed financially to the Nelly Don Loyalty League?

A. No.

Q. Will you say whether or not the Donnelly Garment Company or the Donnelly Garment Sales Company has ever contributed financially to the Loyalty League, to your knowledge?

A. They have not.

[fol. 2114] Q. Have you ever authorized any member of the Donnelly Garment Workers' Union to use any of the bulletin boards at the plant for union purposes?

A. No.

Q. Have you ever authorized any members of the union to use the telephones at the plant for union purposes?

A. No.

Q. Have you ever authorized bundle boys or pick-up boys, or any employees during working hours to carry messages of union members for union purposes?

A. I have not.

Q. Have you ever authorized the use of any company property for union purposes?

A. I authorized the renting of the first floor for meetings.

Q. Well, just explain that, since you have mentioned it.

A. The Donnelly Garment Workers' Union rents the first floor to hold meetings, I would say approximately once a month, for which they pay a rental of $3 per meeting.

Q. Have you, or the Donnelly Garment Company, allowed outside parties to use the first floor at any time?

A. I have, yes.

Q. What were the occasions?

A. I permitted the Missouri State Table Tennis Association to use that floor for a period of about 2 months, [fol. 2115] nights, to carry out their state tournament. I have permitted basketball teams from other firms to use that floor.

Trial Examiner Batten: You mean, for games or for practice?

A. For practice and for games.

By Mr. Ingraham:

Q. Have you ever rented or allowed the Donnelly Garment Workers' Union to use the first floor during working hours?

A. I have not.

Q. Have you ever authorized the use of typewriters or any other property of the company of that character for the use of the Donnelly Garment Workers' Union?

A. I have not.

Q. Do you know whether or not the Donnelly Garment Workers' Union have used the telephones of the company for union business?

A. Not to my knowledge.

Q. Did you have anything to do with a meeting of the employees on April 27, 1937?

A. I did not.

Q. Were you in any way consulted about that meeting?

A. I was not.

Q. Was the plant closed down prior to the usual hour of quitting on April 27, 1937?

A. It was not.

[fol. 2116] Q. Did you instruct any employees to go to that meeting?

A. I did not.

Q. Did you know, in advance, that there was to be a meeting?

A. I did not.

Q. At that time did the Donnelly Garment Company rent the first or second floors of the building. April 27, 1937?

A. No, they did not.

Q. Prior to the time that the Donnelly Garment Company remodeled the first floor and made an auditorium, did the company hold style shows?

A. They held style shows at the auditorium, the City auditorium, in the Municipal Building, or in the plant, you mean; in the plant?

Q. No; any place.

A. They had style shows down in the Municipal Building. They held style shows on the tenth floor, on the west side of the building. They have three offices that will open up into one big room, and they have style shows there for the salesmen that come in.

Q. Sometimes, you say the company held style shows at the Municipal Auditorium?

A. Yes.

Q. Since the auditorium has been built in the first floor of the Corrigan Building, does the company hold its style [fol. 2117] shows there?

A. Yes.

Q. How frequently are style shows held?

A. Well, they are held in the neighborhood of every 6 to 8 weeks. There is a new line designed approximately every 6 to 8 weeks. The last 3 or 4 years we have had about six lines a year. So it is necessary to have a style show to present these new numbers to the men, six times a year, or seven, if we have seven lines.

Q. Does the company rent chairs when they hold style shows?

A. They do.

Q. How many dresses are in a line, generally speaking, Mr. Baty?

A. Well, the last 2 years there has been approximately seventy to ninety new models go into each line, with the exception of the midsummer line, which usually runs in the neighborhood of forty new styles.

Q. And during the entire year, there is approximately 500 different models of dresses manufactured by the company; is that a fact?

A. Yes, about that.

Q. In 1937, when the Donnelly Garment Company negotiated with Mr. Bourke in regard to making the new lease on the Corrigan Building, did Mr. Bourke propose

that the Donnelly Garment Company rent the entire building?

[fol. 2118] A. Mr. Bourke didn't only propose it. He stated as one of the requirements of the extension, if they didn't rent the entire building, they would be required to move.

* * * * * *

[fol. 2123] By Mr. Ingraham:

Q. To your knowledge, did Sylvia Hull ever make any [fol. 2124] request to be returned to work after the time she left on April 23, 1937?

A. She did not.

Q. And was it a fact that she had obtained employment with the International and was working for them?

A. She had.

Q. Mr. Baty, reference has been made to raises that were given to certain employees who were on the union committee. I will ask you to state whether or not raises were given also to many other employees.

A. They were.

Q. Were the raises given to the members of the union committee on account of the fact that they were members of the committee? A. They were not.

Q. Can you state the names of the other employees who were given raises?

A. I could not do it from memory, because it will run any place from 150 to 200, possibly 300. I have no way to remember the volume of people that were given increases.

Q. Well, have you a memorandum of the people and the names of the people that were given raises?

A. I have. I brought down this morning the sheet authorizing the increases.

Q. Well, will you look at that memorandum and state [fol. 2125] the names of the people that were given increases.

* * * * * *

Mr. Ingraham: Have you a complete memorandum on several pages of paper that gives the names of the persons that were given increases?

A. These memorandums are the authorization of the increases which I give to the payroll department, showing the date effective, the amount of the increase, the various dates during the year 1937, and 1938.

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[fol. 2127] By Mr. Ingraham:

Q. Mr. Baty, I will hand you the Board's exhibit No. 29-A and B, which is a tabulation of the wages paid during the year 1937-1938 to Rose Todd, Hobart Atherton, Fred Brown, Marjorie Green, Jack McConaughey, and Charlotte Casey; that is for the year 1937. And the tabulation for the year 1938, showing the monthly pay of Rose Todd, Hobart Atherton, Fred Brown, Marjorie Green, Jack McConaughey, Alvin Riefel, Mable Riggs, and Walter Higgins. I will ask you to examine that tabulation and state whether or not any increases that are shown there were given on account of the fact that the people named were officers of the union. A. They were not.

Q. Or members of the union committee?

A. They were not.

Q. Was Rose Todd given an increase? A. Yes.

Q. When did she receive an increase?

A. March 1, 1937.

Q. Did she receive any increase in 1938?

A. She has received no increase since the first day of March, 1937.

Q. Now, will you state, if you know, how it happened that Rose Todd was given an increase?

A. Rose Todd was given an increase the first of March, 1937, along with possibly 50 to 100 other people through-[fol. 2128] out the plant, due to the fact that for the past two years there had been very few increases to anybody, and the first of March, 1937, Mrs. Reed decided to check the payroll and give all of the people possible, and all of those who had not had an increase for quite some time, an increase, as our business for the last half of 1936 had been much better than it had been for several years.

Q. Will you state what happened in regard to the next person?

• • • • • •

A. I see Hobart Atherton has received two increases.

It is my recollection at this time, without referring to my memorandum, where the increase was granted, the first increase Hobart Atherton received was approximately May 16, 1937. This increase was given to Mr. Atherton along with several other people at that time who had not received an increase on March 1.

Later, approximately September 1, 1937, Mr. Atherton [fol. 2129] received an additional increase. This increase was due to a change in his duties. He was performing labor in the mechanical department and was changed to clerical duties in connection with that work. Due to the change in his duties he was granted the increase.

By Mr. Langsdale:

Q. That is September?

A. Yes. The next party here is Fred Brown. Fred Brown was increased about the 16th of May, 1937, and it is my recollection that this increase was from $40 to $42.50. This was at a time where the employees throughout the plant, a large number of them, were given increases.

I might add at this time, in partial explanation as to these increases back in 1932 and the latter part of 1931, a great many of these people received reductions in their rate of pay, and these decreases were due to the falling off of business the country over, which affected the Donnelly Garment Company, and they were unable to meet their payroll and had been compelled to make reductions in various salaries. At this time, when their business was built back up again, they began to restore these reductions the people had received several years before.

Fred Brown received an additional increase January 1, 1938. As I recall it, his salary was placed at $50 a week at that time.

This amount of $108.34 is arrived at by computing $50 [fol. 2130] per week for the 52 weeks and dividing it by 26, which gives the amount to be paid every two weeks.

By Mr. Leary:

Q. You meant, dividing by 24, didn't you?

A. 26. I may be wrong on that. I haven't checked it for quite some time, but I think it was 26. It is 52 weeks.

His salary is for the year, 52 weeks; and you divide by 26 to get his semimonthly rate. I think that is the way it is done; I am not positive without checking it.

[fol. 2131] A. (Continuing) Mr. Brown was given this particular increase due to the fact that he was changed from all time cutting in the cutting department to part floor work. He distributed the work to other cutters and was, therefore, given an increase in pay.

The next one on this list is Marjorie Green. For the year 1937, she shows no increase in salary. The sheet for 1938 shows an increase for Marjorie Green the first of March, and I am unable to tell you why this increase was granted, as I am quite sure I am not responsible for it. She worked for Mrs. Reeves, and evidently the authorization for this increase was secured from Mrs. Reed.

Jack McConaughey is the next party on this list. This party shows an increase effective March 1, 1937, and an additional increase effective either June 1 or June 15. That is, 1937. The 1st of March, 1938, this party received an additional increase.

The first increase of March 1, 1937, was granted along with a great number of others, and was due to the better business condition which existed at that time. The increase granted this party about June 1, 1937, was due to the fact that he was removed from the clerical position in the cage on the eighth floor to the mechanical department, and placed in the mechanical department as a repair man, learning this work. McConaughey spent many nights [fol. 2132] on his own time with other mechanics learning this work, and after several months we were able to place him in that department.

The next increase of March 1, 1938, was given Mr. McConaughey, due to the fact that he advanced to a great extent, and he was able to perform much of the simpler work in repairing the machines.

The next party—

By Mr. Ingraham:

Q. (interrupting) Just a second, Mr. Baty. Has Mr. McConaughey, to your knowledge, been given an increase since 1938, if you know?

A. It is my recollection that he has. I am quite positive he did get an increase since the 1st of March, 1938.

Q. Has he been changed from the mechanical department to another department?

A. It is my recollection about this last increase of his, it shows here he was receiving $30 per week, and I think I raised him to $32.50 some time around the 1st of 1939, which was due entirely to the advancement in his ability to perform the work in the mechanical department.

Q. Well, is he in the mechanical department at the present time?

A. He is not. He is now working in the accounting department, in the office.

Q. Do you know the circumstances that caused him to be placed in the accounting department?

[fol. 2133] A. I do.

Q. State what you know about that.

A. Mr. McConaughey was attending Rockhurst College at night, in the accounting classes, under our office manager, Mr. Bachofer. Mr. Bachofer asked me if I could release McConaughey, informing me that he was taking this accounting course, and that he was very well pleased with his work, and that he would like to have him in his department, and arrangements were made, I think within a week or 10 days, and we permitted McConaughey to go to the office.

Q. Will you take the next person, please.

A. Charlotte Casey is the next party on this list for 1937. This party received an increase June 1, 1937, along with several other people working in the same department with her. There was a general increase in all salaries for the department, which is the dividing department.

By Trial Examiner Batten:

Q. Did you say June 1?

A. June 1, yes. This record shows June 15, but I am quite positive it was June 1. It could be June 15, however, but I think my slips that I brought in this morning will show that this was effective June 1, and was paid to them, their first day would be June 15, when they would receive it.

Q. Well, it seems to me this shows May 15.

A. May—it does, yes. I missed that one-half a month, but I still say it will show along with a great many others [fol. 2134] in that department, by referring to the authorization for the increase.

This party's name does not appear on the sheet for 1938.

The next party listed on these sheets is Alvin Riefel. There is an increase shown here for this party May 1, 1937,—

Q. (Interrupting) 1938?

A. '38, right; and this increase was given to this party at this time because he was spending part of his time learning to cut. Prior to that time he had been a helper in the cutting department.

The next party listed on this sheet for 1938 is Mable Riggs. This party received an increase the 1st of October, 1938, and this increase was granted to her along with other people in the department in which she was working, a general adjustment of rates in that particular department, and referring to the sheet where this was authorized, you will find a great many other names.

Q. What was that department, Mr. Baty, do you recall?

A. That was the pattern department.

Q. Pattern?

A. Yes. The next party listed on this sheet for 1938 is Walter Higgins. This party received an increase April 1, 1938. I think Mr. Higgins was receiving $42.50 per week prior to this increase. Mr. Higgins is about the second best mechanic the Donnelly Garment Company has [fol. 2135] in their employment. This particular increase was granted Mr. Higgins because of his efforts in making a steam attachment to a pleating machine which permitted us to pleat material and stick it with gum paper at the same time, and eliminate the necessity of sewing the pleating before it was sewed into a dress.

It has always been the custom of the Donnelly Garment Company, when an employee accomplishes a saving for the company, he is rewarded with an increase in salary.

That is all the names I find on the list.

Trial Examiner Batten: We will recess until 10:25.

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[fol. 2136] (By Mr. Ingraham): Mr. Baty, I will hand you respondent's exhibit No. 11-A to 11-EE and ask you to state what that is.

A. This is a typewritten copy of memoranda made by me to the payroll department, authorizing increases to various time workers of the Donnelly Garment Company during the year 1937 and the year 1938.

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[fol. 2137] Mr. Ingraham: Respondent offers respondent's exhibit No. 11-A to 11-EE, inclusive.

Trial Examiner Batten: They will be received.

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[fol. 2138] Q. Did Mr. Atchison have any supervisory authority? A. He did not.

Mr. Langsdale. You are talking about July, 1937?

Mr. Ingraham. Yes.

By Mr. Ingraham:

Q. Did he have any authority to hire, discipline, or discharge employees? A. He did not.

Q. Will you state in what department Mrs. Bogart works? A. Dividing department.

Q. What character of work does she perform?

A. She distributes work to the dividers. The work is brought over to the dividing department by what is known as a bundle boy, and Mrs. Bogart is furnished with a list of the style numbers which I desire to go to the factory first, and she distributes these bundles of style numbers [fol. 2139] to the various dividers.

Q. Has she any supervisory authority?

A. She has none.

Q. Has she any authority to hire, discharge, or discipline employees? A. She has not.

Q. Will you state what work Mrs. Tyhurst performs?

A. Mrs. Tyhurst is engaged as an individual in checking the quality of the work produced by the operators. She works with the examiners. Any fault that the examiners find with the garments, they show it to Mrs. Tyhurst, and Mrs. Tyhurst takes it back to the operator to find out the occasion for the error and has the operator correct any faults that are in the garment.

Q. Does Mrs. Tyhurst [—] any supervisory authority?

A. She has none.

Q. Has she any authority to hire, discipline, or discharge employees? A. She does not.

Q. Will you state the work that Mrs. Waddell performs?

A. Mrs. Waddell distributes the work in the pressing department. The work comes in in baskets and is piled on a rack, and Mrs. Waddell sorts it out in various piles and distributes it according to the group that it belongs to.

Q. Has she any supervisory authority?

[fol. 2140] A. She has none.

Q. Has she any authority to hire, discipline or discharge employees? A. She does not.

Q. What kind of work does Miss Little perform?

A. Miss Little is in the notions department. She fills orders for requisitions sent to her from the office, sending thread, lace, buttons, and such other items to the section as shown on that requisition that they should go to.

Q. Has she any supervisory authority?

A. She has none.

Q. Has she any authority to hire, discipline, or discharge employees? A. She has not.

Q. What department is Mr. Cowan in?

A. Mr. Cowan is in the receiving department.

Q. Has he any supervisory authority?

A. He has none.

Q. Has he any authority to hire, discipline, or discharge employees? A. He has not.

Q. What is the character of work of Stella Willis?

A. Stella Willis is an instructor in the button and buttonhole department.

Q. Has she any supervisory authority?

[fol. 2141] A. She has not.

Q. Has she any authority to hire, discipline, or discharge employees? A. She has not.

Q. Will you state, Mr. Baty, who has the authority in the production department to hire, discipline, or discharge employees? A. I do.

[fol. 2142] Q. Has anybody else? A. Nobody else.

Q. What are the duties of Ella Mae Hyde?

A. Ella Mae Hyde is in charge of the employment office. Her duties are to interview people that come in looking for positions, talk to them about their qualifications, and what work they prefer, and what work they think they can do, and later, as the demand comes up for filing positions, she calls in such people as she thinks will fill the requirements that have been designated to her by the heads of the department, meaning the sales department, Mr. Keyes, merchandising department, Mrs. Reeves, designing-pattern department, Miss Beulah Spillsbury, production department, Mr. Baty, and the office and accounting department, Mr. Bachofer. Mrs. Hyde hires and fires nobody on her own accord.

Q. Mr. Baty, to your knowledge, has the Donnelly Garment Company or the Donnelly Garment Sales Company ever paid for the rental of chairs that were used by the Donnelly Garment Workers' Union? A. They have not.

Q. Does the Donnelly Garment Company, at times, rent chairs? A. They do.

Q. On what occasions?

* * * * * *

[fol. 2143] A. They rent chairs on a great many occasions for style shows and merchandise meetings and occasionally, parties which they might give for buyers that come in from over the country.

By Mr. Ingraham:

Q. Have you, to your knowledge, or any official of the Donnelly Garment Company, ever authorized the use of any loud speaker on company premises during working hours? A. They have not.

Q. Mr. Baty, have you ever authorized the Donnelly Garment Workers' Union or any members thereof, to use bundle boys for the purposes of carrying union messages? A. I have not.

Q. Have you ever authorized the use of any company filing cabinets for union purposes? A. I have not.

Q. Have you ever authorized the use of any typewriters for union purposes? A. I have not.

Q. Have you ever authorized the use of any property [fol. 2144] of the company, save the renting of the auditorium, for union purposes? A. I have not.

Q. Have you ever authorized the use of the telephones for union purposes? A. I have not.

Q. Are telephones available for the use of employees?

A. They are.

Q. Did you ever know that the Donnelly Garment Workers' Union was, at any time, using the company telephones for union purposes or using the bundle boys, the pick-up boys, to carry union messages? A. I did not.

Q. Did you know, at any time, that Rose Todd was using a filing cabinet for any union purpose?

A. I did not.

Q. Was it a fact that Rose Todd, in connection with her work for the company, was allowed to use a filing cabinet? A. She was.

Q. Did you ever know of the use of any typewriters of the company for union purposes? A. I did not.

Q. Did the company, to your knowledge, ever give any stationery or any other kind of paper, to the union for its use?

[fol. 2145] A. They did not.

Q. Did you ever authorize the use of any ditto machines or mimeograph machines for union purposes?

A. I did not.

Q. Did you ever, at any time, instruct, advise or suggest in any manner, directly or indirectly, to any employee of the Donnelly Garment Company, or the Donnelly Garment Sales Company, that he or she should join the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you ever instruct, advise or suggest in any manner, that any employee should not join the International Ladies' Garment Workers' Union?

A. I did not.

Q. Did you ever hear Mrs. Reed, Mr. Green or Mr. Keyes, Mrs. Reeves or any other official, or person with authority to hire or discipline or discharge, instruct, advise or suggest in any manner that the employees join the Donnelly Garment Workers' Union? A. I did not.

Q. Or that they not join the International Ladies' Garment Workers' Union? A. I did not.

Q. Did you ever, at any time, say or suggest to any employee that he or she might lose their jobs if they [fol. 2146] joined the International Ladies' Garment Workers' Union? A. I did not.

Q. Or that they would lose their jobs if they did not join the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you ever hear Mrs. Reed, Mr. Green, Mr. Keyes or Mrs. Reeves, or any official or any person with authority to hire, discipline or discharge, make any statement of that character? A. I did not.

Q. Did you in any way bring any pressure or encourage any of the employees to organize or form the Donnelly Garment Workers' Union? A. I did not.

Q. Did you assist in any way, financially or otherwise, in the formation of the Donnelly Garment Workers' Union? A. I did not.

Q. Do you know of any official of the company, or any person with authority to hire, discipline or discharge, that in any manner assisted in the formation of the Donnelly Garment Workers' Union? A. I do not.

Q. Or any of the persons named that contributed financially to the Donnelly Garment Workers' Union?

A. I do not.

[fol. 2147] Q. Did you ever discharge or recommend that any person be discharged or refused employment or refused promotion, or demoted on account of any union affiliations? A. I did not.

Q. Did you ever hear Mrs. Reed, Mr. Green, Mr. Keyes, Mrs. Reeves, or any other official or any person with any supervisory authority, make any such recommendation?

A. I did not.

Q. Did the Donnelly Loyalty League or any official or members thereof ever propose to the company, or to you, that the Donnelly Loyalty League represent the employees for collective bargaining? A. They did not.

Q. I believe you stated you never had been a member of the Donnelly Loyalty League? A. I was not.

Q. Did you ever authorize or suggest or encourage membership in the Donnelly Garment Workers' Union by offering to promote or advance employees if they would join? A. I did not.

Q. Did you ever refuse to—refuse promotion to employees or in any manner discriminate against them on account of their failure to sign the March 2, 1937, document? A. I did not.

[fol. 2148] Q. Did you ever hear of any employee being discriminated against on account of their failure to sign that document? A. I did not.

Q. Did you ever give permission or hear any other official of the company give permission to employees to solicit membership in the Donnelly Garment Workers' Union during working hours and on the company's premises?

A. I did not.

Q. Mr. Baty, have you ever made any statements to any employees in regard to whether or not they should join or not join a labor union? A. I have not.

Q. Have you ever belonged to a labor union?

A. I have.

Q. What union was that?

A. The International Brotherhood of Railway and Steam Ship Clerks.

Trial Examiner Batten: Is that affiliated with the American Federation of Labor, Mr. Baty?

A. It was when I was a member.

By Mr. Ingraham:

Q. Mr. Baty, have you at any time kept members and meetings of the International Ladies' Garment Workers' Union in Kansas City, Mo., since July 5, 1935, under surveillance? A. I have not.

[fol. 2149] Q. Have you ever authorized any person to keep members and meetings of the International Ladies' Garment Workers' Union under surveillance?

A. I have not.

Q. Have you ever heard that the company ever caused members or meetings of the I. L. G. W. U. to be kept under surveillance? A. I have not.

Q. Have you ever induced or attempted to induce any employee of the Donnelly Garment Company to become a member of the Donnelly Garment Workers' Union?

A. I have not.

Q. Or to be active in the affairs and administration of said union? A. I have not.

Q. Have you ever directed that members of the I. L. G. W. U. be discriminated against in the allotment of work?

A. I have not.

Q. Did you ever direct anybody to discriminate, in the allotment of work or in any other manner, against Sylvia Hull or May Fike in April, 1937?

A. I did not.

Q. I believe yesterday I asked you when you learned that May Fike was a member of the International Ladies' Garment Workers' Union.

[fol. 2150] A. The only information I ever had on it was when she appeared to testify for them before Judge Miller.

Q. I will ask you, Mr. Baty, if Ellen Fry, Glynn Brooks or Mamie Tubbesing ever applied for work at the Donnelly Garment Company since you have been in charge of the factory, to your knowledge?

A. They have not.

Q. When did you take over the factory?

A. June 25, 1935.

Q. I will ask you to state whether of not Ellen Fry and Mamie Tubbesing are organizers for the International Ladies' Garment Workers' Union.

A. They are.

* * * * * *

[fol. 2151] By Mr. Ingraham:

Q. Mr. Baty, do you know of any financial contribution that the company has ever made to the Donnelly Loyalty League? A. I do not.

Q. Did the Donnelly Garment Company or you, yourself, instigate a violent demonstration at the Donnelly plant on or about April 23, 1937, against Fern Sigler, Sylvia Hull, and May Fike? A. I did not.

* * * * * *

[fol. 2152] Trial Examiner Batten: I suppose the witness' answer is in so far as he knows.

Mr. Langsdale: The question was not predicated on that kind of a supposition.

Mr. Ingraham: Well, as far as you know, Mr. Baty?

A. I was the only official of the Donnelly Garment Company there.

Mr. Langsdale: I object to that as not responsive.

Trial Examiner Batten: The question is, in so far as you know?

A. They didn't do it. I say, I was the only one there, and they couldn't have done it.

[fol. 2153] By Mr. Ingraham:

Q. Was any other official of the company there at the time?

A. There was not.

Q. Did you do all you could to stop the demonstration?

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Trial Examiner Batten: That certainly is repetition. You went into quite some detail yesterday about what he did when he went up on the floor with these different girls, and sent the others back, and so forth. Of course, if you want him to just categorically deny everything that is in the complaint, just read it to him and then I have no objection to him denying it, Mr. Ingraham.

* * * * * *

[fol. 2154] Mr. Ingraham: All right. Mr. Baty, did you or any official of the company, cause or allow or permit any of the Donnelly employees to engage in a violent demonstration—

* * * * * *

By Mr. Ingraham, continuing:

Q. A violent demonstration on its time or property on or about April 23, 1937, against Fern Sigler, Sylvia Hull and May Fike, members of the I.L.G.W.U.

* * * * * *

[fol. 2155] A. I did not.

By Mr. Ingraham:

Q. Did any official of the company, to your knowledge?

A. They did not.

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Cross-Examination.

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[fol. 2156] By Mr. Tyler:

Q. Mr. Baty, you have been asked about several employees who were members of the committee of the Donnelly Garment Workers' Union and who received raises. In advance of granting them raises did you investigate to see whether they were members of the committee or not?

A. I did not.

Q. Did you know at the time raises were granted whether these people were members of the committee of the Donnelly Garment Workers' Union or not?

A. I did in some cases.

Q. Did that fact have anything whatever to do with the question of whether they were granted a raise or not?

A. It did not.

Q. Did you get any recommendations from anyone about any of the raises you have granted since 1937? I mean, does anyone in the plant recommend to you that so-and-so be raised as a part of routine?

A. They do not.

Q. Can you give me approximately the number of employees of the companies who have received raises in pay or compensation since April, 1937?

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[fol. 2158] By Mr. Tyler:

Q. Mr. Baty, one of the terms of the wage agreement provides that 40 per cent of the employees of a certain class shall receive not less than $26.50 a week. When some employee is raised so as to become one of that 40 per cent, is it the practice that some other employee in the 40 per cent class is reduced or excluded from that class?

A. It is not.

Q. Is that 40 per cent treated as a minimum or a maximum?

A. That is a minimum.

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By Mr. Tyler:

Q. Have you ever directed or had any knowledge of any surveillance of the employees in their meetings or in at-

[fol. 2159] tending meetings of any labor union?

A. I have not.

Q. Mr. Baty, it has been testified that Rose Todd had about 3 weeks' vacation, I think, about last Christmas time. What was the reason for her being given more than 2 weeks' vacation?

A. Last July I lined up with Rose Todd for her to take her vacation about the first of August, and as the date approached it became necessary for me to make different arrangements with her. I requested her to change her date and take her vacation the 16th of August, and as that date approached it became necessary for me again to request her to change her date, so it was postponed indefinitely. At the time I told her that I would give her 3 weeks' vacation later on in the year, when I could spare her.

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[fol. 2160] By Mr. Tyler:

Q. Mr. Baty, do you direct or operate any spy system in your management of the Donnelly plant?

A. I do not.

Q. Did you ever know of any spy system being operated [fol. 2161] in that plant to give the employer information about the predilections of the employees as to labor unions or labor organizations?

A. I have not.

Q. Were there other employees besides Rose Todd who have received as much as three weeks' vacation in the last year?

A. To the best of my judgment, I would say there was any place from 85 to 100 who received three weeks' vacation.

Q. Was there any other reason for Rose Todd getting three weeks' vacation except that her vacation was delayed about six months?

A. The fact that I gave all of the floor girls and instructors three weeks' vacation. We had a very good season last year. The production department got along very well. And as a reward for the people who did not have the opportunity to earn more money on piecework I gave them an additional week's vacation.

Q. Do you recall whether or not the period of Rose Todd's vacation included Christmas and New Year's days?

A. It is my recollection that it did.

Q. Did the fact that she was chairman of the Donnelly Garment Workers' committee have anything whatever to do with the fact that she was given three weeks' vacation?

A. It did not.

Q. Mr. Baty, what were the reasons for the company's leasing the first and second floors of the Corrigan Building?

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[fol. 2162] A. There was one reason. We were compelled to take the entire building at the time the lease was up for renewal, and we took advantage of the occasion to build a stage on the first floor, and build an auditorium, in order to save the rental that we had been paying for the use of the room at the Municipal Building for our style shows, which cost us 5 or 6 hundred dollars about three times a year.

Q. Is it any more convenient to hold your style shows on the first floor of your own building than to hold them downtown in the auditorium?

A. It is much more convenient.

Q. Was there any purpose in connection with leasing this floor of doing something to favor the Donnelly Garment Workers' Union?

A. There was not.

[fol. 2163] Q. I believe it is in evidence that there was a rental of $3 a meeting agreed upon with the Donnelly Garment Workers' Union for their use of this room after you leased it to hold meetings in. How was that figure arrived at?

A. Well, for the additional space that we were required to take, it is my recollection now, the way I arrived at that figure, we paid $500 a month additional, and these two floors I considered as being on a basis of $200 a month, the basement on the basis of $100 a month, and figuring the floor at 30 days a month in the rental we were paying for the use of the floor, it would be approximately $6 a day, a little over that, and for the use of the floor for a few hours we would be amply paid at $3 a meeting.

Q. I will ask you whether there was an agreement and understanding that the union would pay what it was reasonably worth before the amount was actually agreed upon.

A. I don't understand the question.

Mr. Tyler: I will withdraw the question.

Q. Were there negotiations about payment for the room, and an understanding that it would be paid for, before the actual amount that they would pay was agreed upon?

A. There were.

Q. Do you know about how long those negotiations continued?

A. I think it was some week or ten days in between the time that the first request was made for the use of the [fol. 2164] building before it was determined as to the amount they should pay.

Q. You spoke of the Missouri Table Tennis Association holding a meeting in that room. What rent did you charge them?

A. They were given the use of the room without charge.

Q. Has any other organization been allowed to use that room besides the Donnelly Garment Workers' Union and the Missouri Table Tennis Association?

A. All I can recall at this time is basketball teams from several other industrial plants that secured permission to practice and play games there.

Q. What rent was charged them?

A. No rent.

Trial Examiner Batten: Did the Donnelly Loyalty League use that room for their meetings?

A. Not to my knowledge.

By Mr. Tyler:

Q. Have any of the other organizations, such as the Missouri Table Tennis Association, that have used this room any connection with the Donnelly Garment Workers' Union?

A. Not to my knowledge.

* * * * * *

[fol. 2165] Q. Did you have any advance information that at the meeting of April 27, 1937, the employees were considing the organization of a labor union?

[fol. 2166] A. I did not.

Q. Did you have any advance notice of that meeting itself?

A. I did not.

Q. Did you know anything about there being a meeting before the meeting was actually held?

A. I did not.

Q. Did you attend it?

A. I did not.

Q. Was there any closing down of the factory on that date before regular closing hours?

A. There was not.

Q. Do you know whether there was any closing down of the factory during regular working hours on March 18, 1937?

A. There was not.

Q. Do you know of any time when the factory has closed down during working hours or ceased operating before the end of operating hours for the purpose of accommodating a meeting of the employees in connection with either the Loyalty League or the Donnelly Garment Workers' Union?

A. There has been none since I have been in charge of the plant.

* * * * * *

[fol. 2167] Trial Examiner Batten: We will proceed. Mr. Tyler.

By Mr. Tyler:

Q. Mr. Baty, when you first heard of a demonstration of April 23, 1937, involving Sylvia Hull, did you take immediate action, or did you delay taking action?

A. When I first heard about it I went up to the eighth floor. At the time, my office was on the seventh floor, and I went up to the eighth floor, and everything was quiet. Everybody was working.

Q. Well, did you go to the eighth floor immediately after hearing of it, or did you wait a while?

A. I went immediately.

Q. Well, did you do all you could to stop that demonstration?

* * * * * *

A. There was no demonstration or anything unusual going on on the floor when I arrived there.

By Mr. Tyler:

Q. When did you hear about the Fern Sigler incident; at the same time you heard about the Sylvia Hull incident, or a different time?

A. I heard it at the same time, that there had been some kind of a demonstration or disturbance of some sort on the sixth floor. I went up to the eighth floor and looked that over, and everybody was quiet, and I went down on [fol. 2168] the sixth floor and everything was quiet there.

Q. You went to the eighth floor first?

A. I did.

Q. Immediately after you had had word of the disturbance?

A. Yes, sir.

Q. And from the eighth floor, did you go immediately to the sixth floor?

A. I did.

Trial Examiner Batten: Mr. Tyler, I have no objections to your questioning about this, but didn't this incident occur before the Donnelly Garment Workers' Union was organized?

Mr. Tyler: Yes, it did. It occurred four days before the union was organized. I think it may be argued by the Board that this was staged for the purpose of dominating the employees or persuading them in some [say] about union activities, and I think I have a right to show that there is no basis for such argument.

Trial Examiner Batten: Well, I say, I have no objection to your question. I just wondered on what basis that it was.

Mr. Tyler: That is my theory.

By Mr. Tyler:

Q. Mr. Baty, did you ever authorize payment, by either the Donnelly Garment Company or the Donnelly Garment Sales Company of any bill or account or indebtedness of [fol. 2169] the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you ever permit such payment by either company of any bill or account or debt of the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you ever know of any such payment being made at any time?

A. I did not.

* * * * * *

By Mr. Leary:

Q. As of June 2, 1939, Mr. Baty, did you have charge of the 642 operators in the company?

A. I did.

Q. Did you have charge of the 82 miscellaneous piece workers?

[fol. 2170] A. Not quite all of them.

Q. How many of the 82 did you have charge of?

A. I had charge of all of them with the exception of possibly eight or ten.

Q. In what group were those persons?

A. They are in the notions department.

Q. And you do not have charge of that department?

A. I do not.

Q. Did you have charge of the 77 hand ironers?

A. I did.

Q. Did you have charge of the 11 folders?

A. I did.

Q. Did you have charge of the 41 examiners?

A. I did.

Q. Did you have charge of the 44 in the cutting department? A. I did.

Q. And the 15 dividers? A. I did.

Q. And the 44 instructors and work distributors?

A. I did.

Q. And the 14 mechanics and helpers? A. I did.

Q. And the 40 persons in the designing and pattern group? A. I did not.

Q. Who had charge of those?

[fol. 2171] A. Miss Beulah Spillsbury.

Q. And the 11 bundle boys? A. I did.

Q. And of the 62 clerical workers? A. I did not.

Q. Who had charge of those persons?

A. Mrs. Reeves has charge of some of them.

Q. How many does she have charge of?

A. Some eight or ten.

Q. Who has charge of the others? A. I do.

Q. And of the 60 miscellaneous time workers?
A. I have charge of them.
Q. And of the 20 porters and maids?
A. I have charge of them.
Q. And of the three watchmen?
A. I have charge of them.
Q. Were you at Mrs. Reed's home when this March 2d petition was given to Mrs. Reed? A. I was.
Q. How did you happen to be there?
A. I was out talking to her over some business matters.
Q. You were merely incidentally there?
A. Incidentally there.
Q. Who else was there with you and Mrs. Reed?
[fol. 2172] A. Mrs. Reed and I alone.
Q. Did you excuse any employees from work on that day to bring the petition to Mrs. Reed?
A. They didn't bring it to Mrs. Reed during the working hours.
Q. I didn't ask you that.

* * * * * *

A. I did not.

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[fol. 2174] Q. When did you first become employed by the company? A. January 1, 1933.
Q. And in what capacity?
[fol. 2175] A. As a clerical worker.
Q. What was your wage then?
A. I think $40 a week.
Q. When you say "clerical worker" are you able to define with any degree of definiteness what you mean by the words?

* * * * * *

A. Well, I made up several reports covering the receipts of material shipped to us from the mills in the East; transportation costs; checked the possibility of eliminating excessive cost by having them shipped in by freight instead of by express or by truck, and the possibility of getting them here in a normal length of time, which would not delay putting the materials into production in the factory.

By Mr. Leary:

Q. Well, would you say that you made statistical and economical studies of the business?

A. Well, to a certain extent, yes.

Q. And all of those were with regard to the transportation factor? A. Not all of them.

Q. What other factors, then, did you consider in your study?

[fol. 2176] A. Well, I studied the accounting methods used, the clerical work in connection with the factory, planning the work, looking for any possibilities of short cuts, and the same through the accounting department. I went through part of their records to determine, if possible, if we could eliminate certain phases of it, and see what was necessary for the economical continuance of the business and what could be eliminated, and still furnish information which you might want for future reference.

Q. How long did you continue in that work?

A. Well, I think I continued in that work for a couple of years, close to it.

Q. Then, what duties did you assume?

A. I went into the production department, worked with Mrs. Reeves in connection with the work for the cutting room, and planning the amount of work required to keep the different sections operating to capacity.

[fol. 2177] Q. Was Dewey Atchison working with you during that period? A. Very little.

Q. What else was he doing during that period?

A. He was assisting Mrs. Reeves at that time.

Q. Was he considered as assistant production manager, or were you considered as such?

A. He was.

Q. How long did that arrangement continue?

A. Oh, approximately six months.

Q. That brings you to what time?

A. To June 25, when I took over the production department.

Q. You then had had nothing to do with the production until you became the production manager yourself; is that it?

A. No. I worked in the production part of it for the last six months without any interruption before I took over the plant.

Q. What work did you do in the production department during that six months' period?

A. Planning the cuttings and the work for the sections.

Q. Had you had any experience in the garment industry prior to your connection with the Donnelly Garment Company? A. I had not.

Q. Where had you been employed prior to the time you came there?

A. By the railroad company.

[fol. 2178] Q. Was that in a clerical capacity?

A. Yes.

Q. Exactly what were you doing for the railroad company? A. At what time?

Q. Prior to the time you went to work for the Donnelly Company.

A. I worked for them for 20 years.

Q. Immediately prior to the time you went to work for the Donnelly Company.

A. I had some 20 or 40 different jobs.

Q. Immediately prior to the time you went to work for the Donnelly Garment Company?

A. I was what is known as a joint facility clerk.

Q. For what company was that?

A. M-K-T.

Q. In what city were you located?

A. Parsons, Kans.

Q. Were you located there for all of the duration of your employment with the railroad? A. I was.

Q. In April, 1937, had you any record of the amount of production work May Fike had done in the various sections where she had worked?

A. I had no record of what May Fike did.

Q. Isn't it a fact, Mr. Baty, that during this three-

[fol. 2179] year period you have referred to during which you testified she had excessive returns, she did the repair work on her own time?

A. She did it on the company's time. I don't know what you mean by "her own time."

Q. Let us say she worked on dress A and performed a certain hemming operation; isn't it a fact that perhaps she was paid 10 cents for doing that operation on a dozen dresses?

A. No, she would be paid more than that.

Q. I am just using that as an illustration.

Trial Examiner Batten: Irrespective of the amount, it was a piece-rate job; is that it, Mr. Baty?

A. Yes, that would be the basis.

By Mr. Leary:

Q. And in the event the work was completed on that particular dozen dresses it would be examined, then, by an examiner, would it not?

A. Sometimes then, and sometimes later. It would be possibly sometime later, after she worked on it, before it would be examined.

Q. In the event the examiner determined that the operation May Fike had performed on these dozen dresses was wrong would it not then be returned to May Fike by the examiner? A. It would.

Q. And then, would not May Fike be required to make the corrections and repairs on that particular dozen? [fol. 2180] A. She would.

Q. And would the company pay her extra for the repair work she was doing then?

A. They would.

Q. In what way?

A. On some occasions, not on all. On the piecework basis, if she earned sufficient during the term of the week of 40 hours, or whatever her wage covered at that particular time—at that time it would be 40 hours, April, 1937—if she performed enough piecework that her earnings were above her guarantee, then I would consider she had performed the work on her own time while she was on duty at the company. However, if she had earned less than her guarantee, then she would be repairing that dress on the company's time and the company would have to make up the difference between whatever her piecework earnings were and what her guarantee was.

Q. Do you know what her guarantee was at the time?

A. I do not.

Q. What would happen if in the week following a week when she was given money by the company to reach her minimum, if she in the week following made more than the minimum?

A. She would get whatever her piecework earnings were, if they exceeded the minimum.

Q. Then, there would be no equalization at all?

A. There would be none.

[fol. 2181] Q. Was that system in force and effect at all times during that three-year period prior to April, 1937?

A. It has been in effect ever since I have had the plant.

* * * * * * *

[fol. 2190] Trial Examiner Batten: Just a moment, please. Just start in and tell us how you first heard about it, and tell us in your own words, will you, to the time that—what was this young lady's name that left the plant?

Mr. Ingraham: Fern Sigler.

The Witness: Sylvia Hull.

[fol. 2191] Trial Examiner Batten: Tell us the steps right along.

A. All right. That will be very short. Sylvia Hull was gone when I reached the plant and—

Mr. Langsdale (interrupting): I didn't hear that.

A. (Continuing) —Sylvia Hull was gone, had already left the plant when I arrived. I arrived a few minutes after she had gone, and there had been some demonstration on the sixth floor about the same time that the one took place, or shortly after the one that took place on the eighth floor, and I was informed of the two incidents by Mrs. Hyde when I arrived at work, and that was some time between 8 and 8:30, and approximately 9 o'clock, I received the telephone call that there was a disturbance on the sixth floor. That was the Fern Sigler incident.

By Mr. Leary:

Q. Now, what did Mrs. Hyde say to you between 8 and 8:30 regarding the demonstrations on the sixth and eighth floors?

A. She told me that there had been a crowd gathered around the Fern Sigler machine, and that after some few minutes that they had left and gone back to work. There had been a crowd around on the eighth floor, and that Sylvia Hull had decided to go home. At first she went down to the office and she talked to her, and that Sylvia decided to go home.

Q. That is what Mrs. Hyde told you?

A. That is about the extent of it.

[fol. 2192] Q. Did she tell you anything else that you remember now? A. That is all that I recall.

Q. Now, upon receiving that information did you go to the eighth floor? A. I did.

Q. And you reached there and found nothing out of order? A. There was nothing out of order in any way.

Q. Did you go to the sixth floor then? A. I did.

Q. And when you arrived on the sixth floor, what did you find? A. There was nothing out of order there.

Q. Then, you went back to your office?

A. Then, I went back to my office.

Q. Did you talk to Fern Sigler on that first occasion when you went to the sixth floor? A. I did not.

Q. Why did you not?

A. There was no occasion to talk to her. She was working. Everybody else was working. Why should I talk to her?

Q. Did you investigate the cause of that disturbance that Mrs. Hyde had advised you of, referring to the Sigler Demonstration now?

A. The investigation was complete, so far as I was concerned. She told me that there had been a disturbance, [fol. 2193] and that the girls had returned to work, and there was no occasion to make any further comments about it.

Q. You weren't concerned with who started the demonstration, or anything? A. Not at that time.

Q. Well, then, you went back to your office and received a telephone call at 9 o'clock, did you not?

A. Approximately 9 o'clock.

* * * * * *

[fol. 2194] By Mr. Leary:

Q. With reference to this telephone conversation you received at about 9 o'clock, what was said in that conversation?

A. Something was said to the effect that, "There is some disturbance or disorder of some sort down on the sixth floor."

Q. Were you in your office when you received that call?

A. I was.

Q. And you have no recollection now who called you?

A. I do not. I didn't know at the time.

Q. Did you go immediately to the sixth floor?

A. I did.

Q. And when you went there did you find practically all of the girls in the building there? A. I did not.

Q. About how many girls did you find there then?

A. Any place from 25 to 40.

[fol. 2195] Q. Were they all working? A. No.

Q. Will you describe what was happening there when you arrived?

A. There was a number of girls, any place from 25 to 40, standing around in the vicinity of the machine where Fern Sigler was working. A good many of them were across the machine table facing her, and when I went in there was no hollering or shouting of any kind—just standing in that vicinity.

Q. Did you recognize any of the girls who were at her machine? A. I did.

Q. Were they girls who were supposed to be around her machine? A. Some of them.

Q. And some of them were from other sections, were they not?

A. Some of them were from other sections.

Q. Were they from other floors, also?

A. Some of them.

Q. Fern Sigler was sitting perfectly still at her machine, was she not? A. No, she was not.

Q. What was she doing?

A. She was attempting to work.

Q. And she wasn't successful in her attempt, was she?

[fol. 2196] A. Well, she was going through the motions.

I wouldn't say she was successful or wasn't successful. She was going through the motions of working.

Q. That is all that you saw, you, yourself, of that situation, is that correct? A. That is all I saw.

Q. And, based upon that, you determined to send Fern Sigler home, is that right? A. I did.

Q. Did you reprimand any of the other girls who were on the floor at that time around her section?

A. I did not.

Q. Did you make any investigation yourself to determine what the cause of the disturbance was? A. I did.

Q. What investigation did you make?

A. I asked the operators that were sitting around Fern Sigler.

Q. And they told you that she had worn a union button, is that correct? A. They did.

Q. And, with that information, you called Fern Sigler to your office?

A. No. The information that there were people standing around there, gathered around her machine, was the [fol. 2197] reason I took her to the office.

Q. And before you took her to the office the information given you by the operators around her machine was that she had worn a union button; is that it?

A. That is the reason they gave me for gathering around her machine.

Q. And you accepted that as the truth? A. I did.

Q. And, based upon that information, you called her to the office, and subsequently sent her home; is that correct?

A. I called her to the office with the idea that when I took her away from the floor the disturbance would stop and the girls would go back to work.

Q. What information did you have at the time you decided to take her from the floor?

A. The information I had was that the girls were gathering around there, and I saw them.

Q. And that she was wearing a union button?

A. I was told by Mrs. Hyde that they had been there earlier in the morning.

Q. You also knew, when you took her off of the floor, that she had on a union button? A. I didn't know it.

Q. Didn't you just testify someone told you that?

A. The girls said she had one on. I didn't see it.

[fol. 2198] Q. Did you accept that as the truth?

A. I accepted it, that she had a button on evidently.

Q. You knew at that time that the article identified as Board's exhibit No. 15 had appeared in the paper the night before, did you not? A. I did.

Q. When did you first become cognizant of that article?

A. The night before. The night that appeared in the paper—the day that appeared, I read the article that night.

Q. Did you make any effort to control the girls who had gone to the sixth floor?

A. I told the girls to return to their machines, that I was taking Mrs. Sigler to the office.

* * * * * *

[fol. 2199] Q. Did you know that it would be impossible to control the girls as long as Fern Sigler remained there at work?

A. I considered it so, yes.

Q. Where did you get that information?

A. As I left the floor with Fern Sigler they shouted, "We are not going to work as long as she remains here."

* * * * * *

[fol. 2203] Q. Did you ever, yourself, or direct anyone to call Fern Sigler back to work? A. I did.

Q. What did you do about it?

A. I instructed Mrs. Hyde to call Fern Sigler back to work.

Q. Do you know whether or not she did it?

A. She called.

Q. Did she get in touch with her, do you know?

A. She did not.

Q. Well, after the second incident involving Fern Sigler did you feel it was necessary to talk to the girls to keep them quiet? A. I did not.

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[fol. 2206] Mr. Leary: Will you explain what system the company was using as of June 25, 1935, when you became production manager—

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By Mr. Leary:

Q. (Continuing) —with reference to the handling of orders and the line of responsibility for carrying out orders?

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A. After I took it, or just before I took it?

[fol. 2207] Q. Just before you took it.

A. Mrs. Reeves was head of the production department.

Q. You didn't make this change you mentioned the first day you went in there, did you? A. I did not.

Q. Let's consider it now the first day you went in there, where did the orders emanate? A. The first day?

Q. Yes. A. With me.

Q. Then, to whom did they go.

A. To the various people who were in charge of the different departments.

Q. Do you include in that category instructors?

A. I do.

Q. What kind of orders were given those persons?

A. That effective immediately they would no [long] have any supervision.

Q. That is with reference to your change of policy, is it not, Mr. Baty?

A. That is with reference to my changing the entire setup.

Q. Didn't you just testify you did not make any changes the first day?

A. I didn't change it until I took charge. The first thing I did was to call on them and tell them their [fol. 2208] supervision was taken away from them.

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By Mr. Leary:

Q. Is it not your testimony that written and verbal orders are given to instructors? A. They are.

Q. What percentage of them are verbal?

A. It depends entirely upon what kind of orders you [fol. 2209] are referring to.

Q. What kind are you referring to when you use the word "orders," as being given to instructors?

A. I presume you would mean instructions for work to be performed—if that is what you want.

• • • • • •

Q. All right. Let's go on with the word "instructions." Are written and oral instructions given to instructors?

A. Yes.

Q. What percentage of those given are verbal?

A. It depends entirely upon what subjects the instructions are covering.

Q. You list all of the subjects that are covered by "instructions?".

A. Written instructions are given them covering their work, the procedure of their work. Any deviation is given to them orally.

Q. What do you mean by "any deviation?" Deviation from what?

[fol. 2210] A. Any change from their written instructions.

Q. Who is it that makes out the written instructions?

* * * * * *

A. Mrs. Nichols.

Q. Does she prepare all of the instructions that go to all of the instructors?

A. She does. She prepares the instructions, her and Josephine Spalito.

Q. Do you prepare any of the instructions yourself?

A. Not pertaining to the process that the garment is to go through that is being manufactured. No, I don't.

Q. Outside of the persons who handle the physical preparation of the instructions, that is, the typing, mimeographing, or whatever method you use, do any persons handle the instructions from the time they leave Mrs. Nichols' or Miss Spalito's desk until they reach the instructors? A. Yes.

Q. Who? A. Pick up boys.

Q. Excluding the physical handling of the instructions, [fol. 2211] Mr. Witness.

A. Well, what other kind of handling do you refer to, other than physical?

Q. I refer to the mental handling. Are they reviewed by anyone after Mrs. Nichols and Miss Spalito complete their work on them? A. They are.

Q. By whom?

A. By Mr. Atchison and Miss Todd, and by myself.

[fol. 2212] Q. Does Mr. Atchison see everything that passes over Mrs. Nichols' or Miss Spalito's desk in the way of instructions? A. I would say he did not.

Q. Well, of the things that Mrs. Nichols'—and when I use her name, I intend to include Miss Spalito, also—of

the things that pass over Mrs. Nichols' desk, what type of instructions go to Dewey Atchison?

A. All instructions pertaining to the manufacture of garments.

Q. And what instructions do not go to Dewey Atchison?

A. Well, any other matters that she might handle.

Q. What are the other matters that she might handle?

A. Well, I don't know. She could have many other matters. She handles a great many matters with the pattern department, the designing department, before ever her written instructions are prepared.

Q. Mr. Witness, I want to limit ourselves, for the time being, to the written instructions that leave Mrs. Nichols' desk. Now, is it your testimony that all of those instructions do or do not go to Dewey Atchison? A. They do.

Q. All of them do? A. Yes.

Q. Do all of them go to Rose Todd?

A. They don't any of them go to Rose Todd.

[fol. 2213] Q. Did you not so testify? A. I did not.

Q. What did you mean to testify when you referred to Rose Todd a few pages back?

A. I said that she went over them, the written instructions.

Q. Does she go over all of the written instructions?

A. She does.

Q. Now, does Rose Todd go over them after Dewey Atchison sees them, or before?

A. Either before or after. It is not specified when she will go over them. She goes over them when she can.

Q. After Dewey Atchison has completed with the instructions what does he do with them?

A. The instructions are typed. Sometimes they are questioned and sent back to Mrs. Nichols. Sometimes he takes them back himself and discusses them with her, and if there is any changes made, they change them and make a corrected copy, put them in the box and they go out to the sections where the work is to be performed covered by such instructions.

Q. I want to understand you correctly, Mr. Witness. Did you just testify that Rose Todd sees all the instructions? A. She does.

Q. And your testimony is that it doesn't make any difference whether she sees them before or after Mr. Atchison? A. That is right.

[fol. 2214] Q. Now, in the event that Mrs. Nichols issued an instruction that goes to Dewey Atchison and then into the various sections to the instructors, when does Rose Todd see it?

A. She sees them when she has the opportunity to do so, either before or after they go out.

Q. Does she come to Miss Spalito, or rather, Mrs. Nichols' desk to see the instructions? A. Sometimes.

Q. How does she handle the situation otherwise?

A. She goes to Mr. Atchison's desk.

Q. In the course of a day, how many instructions are issued by Mrs. Nichols?

A. That would depend entirely upon the time before a line, or whether it was after a line had been put in the plant.

Q. Would you say that after a line had been put in the plant, that the instructions are normal?

A. After a line has been put in the plant, there will be approximately two or three weeks that she wouldn't issue more than one or two sets of instructions, and then there will be merely a correction or a slight change from some other instruction that has been previously issued.

Q. And then while a line is being installed, how often does she issue instructions?

A. Well, prior to a line going in the plant, say for [fol. 2215] approximately 3 weeks or a month, approximately 20 working days, something of that matter, she will issue any place from 3 to 10 or even as high as 12 or 14, her with Miss Spalito, instructions covering, sets of instructions to cover each style or each garment that is to go into the line.

Q. Over the course of a year, then, she will prepare about five or six hundred instructions, would you say?

A. She will.

Q. That is, she prepares one instruction for each new style dress that you start making at the plant? A. Yes.

Q. Now, are those the only instructions that are given to the instructors during the course of the year?

A. They are the only instructions covering the construction of garments.

Q. Well, what other instructions are given to the instructors?

A. To change from the constructions that they have and perform their work in some other manner.

Q. And Mrs. Nichols gives all of those out?

A. She does not.

Q. Who gives those out? A. I do.

Q. You give all of them out? A. I do.

Q. Mrs. Nichols then handles the primary instructions, [fol. 2216] is that it, and you handle all the supplements or changes?

A. I handle all of them. She performs that work as an individual for me.

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[fol. 2218] Q. Now, as of the time the instructor receives the original set of instructions, she has not material upon which to work, does she, to carry out those instructions?

A. You mean material in the way of instructions?

Q. No.

A. Or do you mean—

Q. (Interrupting) I mean the thread and the cloth, and so forth.

A. She frequently does. She is waiting on the instructions many times. She has the piece goods cut and in bundles, and is waiting on the instructions many times.

Q. Well, she has already ordered that and it has come into the section; is that it?

A. She does not order them.

Q. How does she get them?

A. They are delivered to her without an order from her.

[fol. 2219] Q. Is it your testimony, then, that your supply rooms furnish the various sections with the cloth materials to make the dresses before the instructions are prepared?

A. Sometimes.

Q. How is it possible for the supply rooms to know what will be necessary in each section before the instructions are sent out?

A. The planning is done in the office. The cut is made, and at the same time the people preparing the instructions are working on them and they do not have to wait to get the instructions before they can cut the garment.

Q. After the instructor has the original written instructions and has the materials available what does she do?

A. She goes over the instructions, reads them, and starts in to distribute the work, according to the class of operation, to the operators that perform that kind of work, and if they don't know how to do the work, she shows them.

Q. The instructor ordinarily knows what each girl in her section is capable of doing, doesn't she?

A. She knows what they do, what they are in there for.

Q. These written instructions by no means set out what particular operator is supposed to carry out a certain feature of the instructions, do they?

A. They do not.

Q. There are no individuals named on the instructions [fol. 2220] at all, are there?

A. There are not.

Q. So, the selection is left entirely to the instructor as to who does what work, is it not?

A. It is not.

Q. Who makes the selection?

A. I do.

Q. Do you pick out the individual operator who will do every individual operation?

A. I do not.

Q. Who does it?

A. I place the operators in the section to perform that particular work, and the instructor gives the work to them then.

Q. For instance, if today in section 999 original instructions came to the instructor, and she had 40 girls there, is it not a fact that if she had to have operation C done she would pick operator No. 13, for instance, of the group of 40?

A. She would not.

Q. Who would say that operator 13 would do operation C?

A. It would depend entirely upon what operation C was, and it would be very possible she wouldn't have any girls in her section that had ever performed that kind of work.

Q. I presumed in my illustration, Mr. Witness, that the instructions were sent to that section properly, and that she [fol. 2221] does have the girls there who can do that kind of

work. Who would pick out operator 13, to do, say, any operation in that set of instructions?

A. I don't understand what you are talking about.

By Trial Examiner Batten:

Q. Mr. Baty, don't you have sections where all 40 girls operate the same type of machine, do the same operation?

A. I don't think so; none that I can remember.

Q. You certainly have sections where you have at least 10 or 12 or 13 girls that do the same identical operation, don't you?

A. Yes.

Q. The question is, if you have 10 or 15, is it the instructor who selects the ones that will do that particular work, or does she just go along and dump a bundle on each one's table?

A. She selects them after they have been selected by me and placed in that section.

Q. But if there is more than one in that section of that particular kind, then it is the instructor who selects the particular one, if any selection is necessary?

A. Oh, yes; she is the one who gives them the bundle of work. Whatever it is they are especially placed there for, she gives that to any one of 8 or 12.

By Mr. Leary:

Q. The individual selection is left to the instructor, is it not?

[fol. 2222] A. Yes, amongst the ones that are there in that group.

* * * * * *

[fol. 2225] By Mr. Leary:

Q. Isn't it true, Mr. Baty, that none of the operators themselves have permission to get a new bundle when they are out of work?

A. It is not.

Q. Isn't it your testimony that when they are out of work they merely stand up at their machine?

A. They do.

Q. Why do they stand up?

A. In order that the instructor and floor girl will see them.

Q. And they want to see them for what purpose?

A. That is to indicate that they either want work or thread or some other notion, that they need in the performance of their work.

Q. The girls can't go and get that themselves, can they?

A. They can, if the instructor and floor girl are not there.

Q. Well, as a general rule the instructor and floor girl are there, are they not?

A. We make every effort to have one of them present at all times.

Q. When they are present, either the thread girl or the instructor, the operators who do not have permission to go after supplies or material, or more work, do they?

[fol. 2226] A. They do not.

Q. And it is incumbent upon the instructor to see to it that when the operator runs out of work they are given more work. Is that not it?

A. Either her or the thread girl.

Trial Examiner Batten: It that the same as the floor girl?

A. Or floor girl. The thread girl or floor girl are one and the same term.

By Mr. Leary:

Q. How is it called to your attention when there are not enough girls in a section to do the work?

A. It is not called to my attention. I know it before it happens. The work available for a certain section is figured, computed as to the approximate number of operators that it will require to do that given amount of work, and I know it before it goes to the section.

Q. Well, in an emergency situation, how are you advised? A. I will see it.

(By Trial Examiner Batten): Mr. Baty, supposing when you start up tomorrow morning, if you were there, that say there are ten of these sections and a couple of girls didn't show up, how do you find that out?

A. We have—

Q. (Interrupting) Or do you find it out?

A. We have a hospital department and the nurse main-

[fol. 2227] tains an attendance record. She calls each section in the morning and asks the floor girl or the instructor, whoever answers the phone, for her attendance, who is absent, and any cards that are not stamped in at the time clock, at the time for that group of people to report to work, are picked up and taken to the nurse's office. In a

very few minutes after time to start to work, within 15 minutes, it is known how many is absent.

Q. Who notifies you? A. They don't notify me.

Q. How do you know? A. I go around and look.

Q. You mean, you check every section the first thing in the morning?

A. I go over the plant the first thing in the morning.

Q. How many sections do you have?

A. Well, there is sixteen, eighteen.

Q. Who do you inquire of in each section? How do you find out there is somebody missing?

A. All you do is look at the vacant chairs. You don't inquire of anybody.

Q. Do you know, then, who is gone?

A. I don't know the exact persons in all cases. I know that there are so many operators out of this section and so many out of the other one, and so on.

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[fol. 2232] Q. When did Mrs. Wherry leave the employ of the company?

A. Sometime in the middle of 1937, I believe.

Q. What was her position when she left?

A. She had been the general instructor.

Q. What were her duties in that capacity?

A. To check up with the different sections and see that the proper work was in the bins for those people, and to see that it was rushed through as fast as possible.

[fol. 2233] Q. Was she a supervisor? A. She was not.

Q. Had you changed her work at all in your new setup?

A. I did.

[fol. 2234] Q. Was the work she was doing somewhat similar to that done by Rose Todd, now?

A. It was not.

Q. Well, what is the difference?

A. Rose Todd has nothing whatever to do with the work being transferred from one place to the other, and has nothing whatever to do with the garments except location of notions and hunting lost bundles, and getting thread and parts that are misplaced.

Q. Is Mrs. Wherry's name "Anna"?

A. I couldn't tell you that.

Q. Well, is there any other "Wherry" down at the plant? A. None that I know of.

Q. What was the title you said that you gave to Mrs. Wherry? A. General Instructor.

Q. Was that as of June 1, 1937?

A. That was the only title that I could give her. In fact, people at that place don't have titles.

Q. You wouldn't say she was factory manager, would you?

A. I would not.

Q. Not under any circumstances at all?

A. Not under any circumstances.

Q. Well, Mr. Baty, I show you what has been marked as Respondent's Exhibit 11-A to 11-EE, and ask you to state [fol. 2235] whether or not—I am not asking you to check the accuracy now—but ask you to state whether or not those are the documents that are taken from,—those are the typewritten copies, rather, that are taken from the group of inter-office memoranda, penciled notations, that are in the court room?

A. These are taken from the memorandums which I sent to Miss Hartman, covering increases and wages of the various employees.

Q. And those memoranda are the ones that I hold in my hand, are they not?

A. Yes, sir.

Q. Whose handwriting are these memoranda in?

A. They are in mine.

Q. All of them?

A. No; the signature, I think, is all mine. I have not checked them. I picked these up from Miss Hartman, and I have not gone through them.

Q. Well, you did go through them when you signed your name to them, did you not?

A. I signed my name to them when I sent them to Miss Hartman on the dates that are shown at the top.

Q. You knew what was on the documents, didn't you?

A. Yes.

Q. The ones that you didn't make in your own handwriting?

A. I read them, yes.

. . . . . .

[fol. 2236] By Mr. Leary:

Q. Now, is Board's Exhibit 31-A and 31-B in your handwriting? A. Yes.

Mr. Leary: Board offers its exhibits 31-A, 31-B and suggests that photostats will be made and inserted in the record.

Trial Examiner Batten: I don't suppose there is any objection? We have the original of what we now have [fol. 2237] a copy of.

Mr. Ingraham: I have no objection to the copy being made and substituted, but I may object to this exhibit.

Trial Examiner Batten: Any objections?

Mr. Ingraham: No objections.

Trial Examiner Batten: Mr. Tyler?

Mr. Tyler: No objection. He said that was in his handwriting, did he?

Mr. Tyler: Mr. Baty, did you say that was in your handwriting?

A. Yes.

Trial Examiner Batten: They will be received.

(The documents heretofore marked as "Board's Exhibits Nos. 31-A and 31-B" were received in evidence.)

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[fol. 2239] Q. What is Mr. Price's job?

A. Mr. Price's job is the maintenance of the building, to look after the equipment, check the equipment, and check on any new equipment that I might want to go into to put in the factory. He checks up and gets prices on it, sees how it operates, and reports to me what he [fol. 2240] thinks about it, if it will be of benefit to us.

Q. Is he somewhat of an adviser to you in mechanical matters?

A. He does advise me considerably as to mechanical matters.

Q. When was that that you made these arrangements for the rental of the first floor to the Donnelly Garment Workers' Union?

A. I think the arrangements were made some time in the early part of 1937. It was shortly after we acquired the first and second floors.

. . . . . .

Q. When was it that you discussed with the officials of the Donnelly Garment Workers' Union about having [fol. 2241] their rent for the first floor.

A. I think it was sometime in the month of May, 1937.

[fol. 2242] Q. And did you agree then it would be $3 a month rent? A. We did.

Q. Who did you make the agreement with?

A. Rose Todd.

Q. Did you sign any written agreement with Miss Todd or the officers of the Donnelly Garment Workers' Union concerning the rental of the space? A. I did not.

Q. Do you know whether any other officer of the company did? A. I think not.

. . . . . .

[fol. 2243] Q. Now, did you give all these increases that your records reflect without conferring with anybody? Is that your sole responsibility?

A. I did not.

Q. Who did you confer with? A. Mrs. Reed.

Q. Well, other than that, did you and Mrs. Reed give them all yourselves?

A. We did, between us.

Q. You had no conferences with any other persons on the increases? A. We did not.

Q. I believe you testified that Mrs. Tyhurst checked the quality of the girls' work. Is that correct?

A. That is right.

. . . . . .

[fol. 2252] By Mr. Langsdale:

Q. Mr. Baty, are you related to Mrs. Reed, by blood or marriage? A. By marriage.

Q. What relative of Mrs. Reed's did you marry?

A. A niece.

Q. When did you leave Parsons?

A. On what particular occasion?

Q. To come here to go to work for the Donnelly Garment Company.

A. December 31, 1932.

Q. Did you work for the M.-K.-T. Railroad up to December 31, 1932? A. I did.

[fol. 2253] Q. And you went to work for the Donnelly Garment Company on the 1st of January, 1933?

A. I did.

Q. You had never had any experience of any kind or character in any garment factory prior to this time?

A. No.

Q. I believe you stated that you were in some clerical department of the M. K. & T., joint utilities clerk, did you say? A. Joint facility.

Q. Facility? A. Yes, sir.

Q. How long had you been in that position?

A. Well, I would say approximately 3 or 4 years.

Q. And prior to that what did you do?

A. I was chief clerk to the district engineer.

Q. Located at Parsons? A. Yes.

Q. How long were you there?

A. Oh, approximately 2 years.

Q. And before that?

A. The division accountant.

Q. At Parsons? A. Yes.

Q. How long?

[fol. 2254] A. A couple of years.

Q. Before that?

A. Statistician in the general manager's office.

* * * * * * *

Q. What union did you say you at one time joined?

A. The National Brotherhood of Railway Clerks, Railway & Steamship Clerks.

Q. When did you join that?

A. Some time in 1918 or 1919.

Q. And how long did you belong?

A. I belonged until approximately a year after I come to work for the Donnelly Garment Company.

Q. Was that union functioning down on the M. K. & T. at the time you left there? A. It was.

* * * * * * *

[fol. 2255] Q. Was that organization affiliated with the A. F. of L. as long as you were a member of it, or didn't it become a company union?

A. They were affiliated with the A. F. of L.

Q. What did you say?

A. They were affiliated with the A. F. of L.

* * * * * *

By Mr. Langsdale:

Q. Did you sign the petition of March 2d?

A. I did not.

Q. And you were out at Mrs. Reed's, I believe you said, when it was delivered there. Can you tell us who delivered it?

A. Inez Warren; Mary Sprofera.

Q. Now, you didn't have the slightest idea that it was being circulated until you got there and they came to Mrs. Reed's home? A. I did not.

Q. And it had some 1,100 names on it?

A. My recollection is there was 900 and some.

Q. And in your many rounds about the factory, you never saw anybody signing that petition, and didn't know [fol. 2256] it was even in circulation?

A. I did not.

Q. When the girls arrived, where were you at Mrs. Reed's home?

A. Sitting in a chair in the living room.

Q. Talking business, were you? A. Yes.

Q. And the girls came to the front door and Mrs. Reed let them enter; is that correct?

A. No, I opened the door and let them in.

Q. And they both came in, or were there three of them? A. There was three.

Q. Now, was the photographer there at the time?

A. I saw no photographer.

Q. Didn't you know there was a picture taken and printed in the paper?

A. I have never seen it.

Q. You never saw it? A. No.

* * * * * *

Q. Now, you have named two. Who was the third one?

[fol. 2257] A. Pauline Shartzer.

Q. And do you know how long the girls stayed there?

A. I do not.

Q. Did you leave before they did? A. I did.

Q. So, let me show you I. L. G. W. U. Exhibit No. 14.

Mr Ingraham: Are you offering that?

Mr. Langsdale: I will show it to him first.

By Mr. Langsdale:

Q. Now, I show you this Exhibit 14, which purports to be an issue of the Kansas City Star for the 4th of March, 1937, which is a group picture of Mrs. Reed and these three girls whom you have mentioned. It says that it was taken when they delivered this March 2d document to her. You left before the photographer took that, did you?

A. I didn't see any photographer.

(Thereupon, the document above referred to was marked as "I. L. G. W. U. Exhibit No. 14" for identification.)

Q. Well, now, despite your intimate connections with the Donnelly Garment Company, you never did see this picture? A. I did not.

Q. On the front page of the Kansas City Star?

A. I did not.

Q. Never have seen it until now? A. No.

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[fol. 2259] Trial Examiner Batten: Well, I will receive it on the same basis, for a limited purpose that I have received Respondent's Exhibits 6 and 7, which are newspaper articles, not to prove anything that is true or untrue that is stated therein.

(The document heretofore marked as "I. L. G. W. U. Exhibit No. 14" was received in evidence.)

* * * * * *

[fol. 2261] Q. Florence Strickland. Is she the head of the pattern department? A. No.

Q. You have her marked here "Patterns." And I see her salary is $80 a week. Was anyone else in the pattern department getting as much as $80 a week? A. No.

Q. This was the salary you raised her to on the first of June, 1937. Is that still her salary, or is she getting more than that now?

A. It is my recollection her salary is still the same.

[fol. 2262] Q. Mrs. Anna Wherry, $80 a week. And I believe you said, in answer to Mr. Leary's question, that she was not known as the factory manager; is that correct? A. That is right.

Q. Will you tell me why you, in your own handwriting, designated her as factory manager? A. Did I?

Q. Well, you look and see. (Handing Board's Exhibit No. 31-A to the witness.) Did you?

A. That is the title Mrs. Reeves bestowed upon Mrs. Wherry. After I took over the factory Mrs. Wherry was very much upset over the methods that I put in, and was very much concerned, and she did go, to some extent, carrying that title, but all supervisory matters were taken from her hands.

Q. So, you, when you sent the note to Miss Pauline Shartzer, you just wanted to cajole her a little bit in describing her as factory manager, is that it?

A. I placed on that piece of paper what appeared on the card, and it has nothing to do with verifying what position she holds.

Q. Now, Lena Tyhurst, you said she was not known as assistant factory manager, didn't you? A. I did.

Q. Will you tell me why you in your own handwriting, [fol. 2263] designated her, when you raised her salary, as assistant factory manager?

A. That was the title that had been on her card during the time she was under Mrs. Reeves, and I presume she had been designated as that by Mrs. Reeves.

Q. C. Marvin Price. I see you raised him to $70 a week. What did you say his job was down there?

A. He works in the maintenance department.

Q. Why did you call him head mechanic when you raised him to $70 a week?

A. Because he provided me with the necessary information.

Q. Oh, yes. So, you just called him head mechanic without his really being head mechanic; is that it?

A. He is not head mechanic.

Q. Hortense Root. What does she do?

A. She works for Mr. Keyes.

Q. Doing what?

A. I don't know a whole lot about what she does do.

Q. What was she doing when you raised her, on June 1, 1937, to $42.50 a week?

A. She was assembling samples and shipping them to the salesmen out on the road.

Q. You called her sample department head, in your own handwriting, didn't you?

A. I called her what appeared on the card from which [fol. 2264] that name was taken.

Q. And you wrote that to Miss Hartman when you raised her salary. Who was Anna Price?

A. Anna Price is a shipping clerk.

Q. Head of the department?

A. Mr. Keyes is head of the department.

Q. Why did you call her shipping clerk head when you raised her salary to $52.50 a week?

A. That was taken off of the card from which the information was secured.

Q. So, you just left it there and raised her salary?

(No answer.)

Trial Examiner Batten. Do you want the question answered?

By Mr. Langsdale:

Q. You did leave it there, didn't you?

A. Leave what?

Q. You left the designation "shipping clerk head" after Anna Price's name when you raised her salary?

A. I did.

Q. I will hand you this bunch of memoranda and ask if they are all in your handwriting.

(A group of papers thereupon were handed to the witness by Mr. Langsdale, which papers were examined by the witness.)

A. They are not all in my handwriting, but I have [fol. 2265] signed all of these.

Q. They are not all in your handwriting? A. No.

Q. I believe you stated that you had read the article in the Kansas City Times that has been marked respondent's exhibit No. 6, published as of the 26th of February, 1937?

A. I don't think I said I read that.

Q. Well, didn't you? A. I don't believe I have.

Q. You never saw that article before?

A. I saw the article, but I don't believe I have ever read it.

Q. Well, it is headed "Reopen a Garment Feud. Union Plans to Seek Donnelly Company Recognition."

That is dated February 26 Kansas City Times.

Did you testify in answer to Mr. Ingraham's question that you had read the article?

A. It is not my recollection [ow] that I read the article.

Q. Well, the article is about the I. L. G. W. U. about ready to start a campaign to try to organize the workers in the Donnelly Garment Company.

I note that on the same day, February 26, 1937, you have three sheets of raises here.

. . . . . .

[fol. 2274] Q. Now, can you give me any good reason why you wouldn't permit an operator—I mean an instructor—to discipline an operator?

A. I can give you a very fine reason, and the reason.

Q. All right. Let's hear it.

A. Because the instructors are not capable of disciplining operators.

Q. I see. You have instructors that have been there for 15, 16 years, haven't you? A. We have.

Q. And you never ran a machine in your life, did you?

A. I did.

Q. Where? A. A few minutes down at the plant.

Q. Oh, I see. But you think you are more capable of knowing whether an operator is good than these old instructors that have been there 15 or 16 years?

A. It is not my judgment, so that the party that put me on the job must know.

[fol. 2275] Q. Who is that? A. Mrs. Reed.

Q. She thinks you know more than these [told] time instructors that have been there 15 or 16 years, is that it?

A. I don't know what she thinks. She is evidently satisfied or she would move me.

Q. Now, let's say that some operator is staying away from her machine, staying in the toilet a little too often, too much. How do you find that out? Do you get that on these inspection tours you make of the factory, or does some one tell you about it?

A. The operator would tell me herself.

Q. Oh, I see. A. Yes.

Q. So is some operator is sneaking off to the toilet and taking the time of the company, why, she will come and tell you about it; is that it? A. Yes, sir.

Q. You wouldn't think of asking the instructor?

A. It wouldn't be necessary.

Q. The 600 or more operators, you wouldn't ask the instructor whether this little girl is behaving or not?

A. I would not.

Q. Now, of course, you say that you have no record whatever of the disposition of the various operators, their [fol. 2276] cooperativeness, their skill, their ability to work, fast or slow, except that which you carry in your head. Do I understand you to mean that?

A. I didn't say that.

Q. Well, have you any written record at all down there about these various qualities of your operators?

A. We have a payroll record which speaks for the operators, as to their efficiency.

Q. The payroll record doesn't tell you whether the girl is cooperative or not, does it? A. It does not.

Q. It doesn't tell you whether the girl is quarrelsome or not, does it? A. It does not.

Q. It doesn't tell you whether the girl is spending time away from her machine, does it?

A. Well, if she is spending too much time away from there.

Q. Well, what do you call too much? Say she is a girl that can run a machine fast, and she spends an hour a day in the toilet, would you call that too much if she still gets out considerable work?

A. If she would spend too much time away and would fall down on her guarantee, I would call the girl to the office and inquire into the occasion for it.

Q. Well, let's say she wouldn't fall down on her guar-
[fol. 2277] antee. She was a fast operator and a good operator and still, she had an hour to throw away, and make her guarantee. How would you find this out?

A. I would probably catch her going to and from there.

Q. But you wouldn't think of asking the instructor; you wouldn't do that? A. I would not.

Q. Now, how often do you make the rounds of these various sections?

A. Well, when I am at the plant I spend approximately 6 hours a day in the actual factory part.

Q. Walking around?

A. From one section to another.

Q. Just looking these girls over and seeing what they are doing?

A. Not just looking at them. I talk to them occasionally.

Q. Do you spend any time in your office? A. I do.

Q. Well, what have you got to do down there besides watch these operators?

A. I have to O. K. the payroll.

Q. Anything else?

A. A good deal of planning work to do, which takes me an hour and a half or 2 hours a day.

Q. And you have a lot of other people under your
[fol. 2278] jurisdiction, you testified, besides operators?

A. I do.

Q. And you have to step around and see whether they are doing the job or not? A. I do.

Q. You wouldn't leave that to anybody else?

A. I do not.

* * * * * *

[fol. 2281] By Mr. Langsdale:

Q. You have been here in the court room, Mr. Baty, during practically all of the time that testimony has been taken? A. Yes.

Q. You were here when Rose Todd testified?

A. Most of the time, I think.

Q. You heard her testimony that she called you and had you go with her down to May Fike's — or not May Fike's, but Fern Sigler's machine? A. I did not.

Q. You didn't hear her say that? A. I did not.

Q. Well, did Rose Todd go with you down to Fern Sigler's machine on the morning of the 23d of April, 1937?

A. She did not go with me. She might have followed me.

Q. Well, was she there at the same time you were?

A. I did not see her.

Q. You don't know whether she was there or not?

[fol. 2282] A. I did not see her.

Q. Did she talk to you about going to Fern Sigler's machine before you went down, or up, or whichever direction you went to Fern Sigler's machine?

A. Not that I recall.

Q. I wasn't quite sure whether you told Mr. Leary that you didn't know who it was who called you to go to Fern Sigler's machine or not.

A. I said I did not know who it was.

* * * * * *

[fol. 2291] Q. I believe you stated that you didn't join the Nelly Don Loyalty League?

A. I did not.

Q. Was here any reason for not joining it?

A. None whatever. I just didn't join it.

Q. Were you asked to join? A. I was.

Q. Who asked you? A. I don't recall now.

Q. But you refused?

A. I didn't refuse, and I didn't say I would or wouldn't. I just didn't do it.

Q. You said that you didn't go to the March 18th meeting. That is the meeting at which the letter from the International Ladies' Garment Workers' Union was read. Where were you when that meeting was going on?

A. I was probably on my way home.

Q. You said you didn't even know there was going to be a meeting. A. Well, I still didn't know it.

Q. You were at that time in charge of the entire plant? A. I was.

Q. You have just learned that practically all of the employees were at the meeting? A. I have.

[fol. 2292] Q. Did you observe that chairs were being brought in and placed on the second floor for the convenience of those going to the meeting?

Mr. Ingraham: I object to that. There has been no evidence that chairs were brought in and placed on the second floor.

Mr. Langsdale: Yes, there has.

Trial Examiner Batten: This is the meeting of March 18th?

Mr. Langsdale: March 18th. We have a receipt for chairs that day, haven't we, to the Loyalty League?

Mr. Leary. Oh, yes.

Mr. Ingraham: March 18th?

Mr. Leary: The company's records show they delivered them there early that afternoon.

Mr. Ingraham: I don't recall it.

By Mr. Langsdale:

Q. Well, did you observe the chairs were being brought in for the convenience of those attending the meeting on March 18th?

A. I did not. I would have had no occasion to go to the second floor. The company didn't use the second floor.

Q. But you had a lot of people who were moving chairs in there that you had supervision over, didn't you?

A. I did not.

Q. Who had supervision over the janitors?

[fol. 2293] A. What janitors?

Q. Did you have any janitors?

A. We have janitors, yes.

Q. So you hadn't the slightest information that there was going to be a meeting on that occasion, the 18th of March, 1937? A. I did not.

Q. Did you think there was any reason why everyone else in the plant should hide that from you?

A. I know of no reason.

Q. Mrs. Reed went to the meeting, didn't she?

A. Yes, and I understand, and heard in the court room that Rose Todd sent for her up in her office. She just came in a few minutes before.

Q. But she was there; and do you know whether Mrs. Reeves was there or not?

A. I do not.

Q. Do you know whether anyone in the whole plant failed to go except yourself?

A. I don't.

Q. Now, the meeting of April 27th, that was the meeting at which they formed this Donnelly Garment Workers' Union. I believe you have testified that you didn't have the slightest intimation there was going to be a meeting of the employees on April 27th; is that correct?

[fol. 2294] A. I think so.

Q. You didn't know they were putting chairs in for the convenience of those who were going to attend that meeting?

A. I did not.

Q. Did you know that they were sending messages around over the company telephones to the various sections and departments, informing them of that meeting?

A. I did not.

Q. Now, of all of the supervision that you have been exercising out there for 3 or 4 or 5 years, everything that you have learned and carry in your mind, it escaped you entirely that there were 1,300 people in this plant going to a meeting on April 27th?

A. There was no occasion for me to know it.

Q. Well, you didn't know it, did you?

A. No, I didn't know it.

Q. Was there any reason that you knew of why the employees or anyone else should hide it from you that they were going to form a union that night?

A. There was no reason why they would hide it.

Q. But either they did hide it or you just never found it out?

A. I wasn't interested in it in any way.

Mr. Lane: Now, the intervener objects to that for the reason it is argumentative. There is no testimony here

[fol. 2295] that anything was hid from him. He testified that he didn't know it, and the question that it was hid from him is argumentative and not proper cross-examination.

Trial Examiner Batten: Read the question.

(Whereupon, the last question was read by the reporter.)

Trial Examiner Batten: Is that the question?

Mr. Lane: Yes, and the previous question contains an expression that they hid it from him.

Trial Examiner Batten: It may stand.

By Mr. Langsdale:

Q. Now, I believe you stated that the leaving time of the employees was staggered in order that the elevator service out there might accommodate them. You just had two passenger elevators; is that true?

A. That is right.

Q. And do you know the capacity of those two elevators?

A. I do not.

Q. Well, do you know how many people can conveniently ride in one of the elevators?

A. I do not.

Q. Are the elevators the same size?

A. Approximately, yes.

Q. Now, you have been the manager out there since 1935 and you mean to tell the Examiner you haven't the slightest idea whether these elevators will hold six or fifteen?

A. I didn't say I didn't have the slightest idea. I said [fol. 2296] I didn't know.

Q. Give us your best judgment as to how many can conveniently ride on these elevators.

A. I imagine ten to twelve people on each elevator at one time.

Q. So, having some 1,300 people leaving the plant, you stagger the leaving time so that the two elevators can take them down; is that correct?

A. I didn't say that the two elevators took them all down.

Q. Well, how do they get down? Walk?

A. No.
Q. How else do they get down?
A. We have two freight elevators.
Q. Well, did your employees use the freight elevators?
A. One of the freight elevators has been changed into use for a passenger elevator.
Q. Well, now, how many passenger elevators did you have in April, 1937?
A. Two.
Q. All right. Then at that time your employees were not using the freight elevator?
A. They were.
Q. What?
A. They were. It is still a freight elevator, even though they were using it.

[fol. 2311] By Mr. Langsdale:
Q. You stated that shortly after this meeting of April 27 you got from Mrs. Reed the cards that had been signed by those who desired to become members of the Donnelly Garment Workers' Union and took them and kept them and checked them over. How long did you keep them?
A. Just a few hours.
Q. Well, during one day?
A. I think so.
Q. You were talking about the various provisions in the working agreement yesterday, and about discussions of the various sections of that agreement. Was there any discussion at all about paragraph 9, known as the closed shop provision?
A. When do you mean?
Q. Well, that was agreeable to everybody, wasn't it?
A. At what time?
Q. At the time you were discussing whether or not you would sign the articles of agreement that were presented to you.
A. Do you refer to the time that Mr. Tyler and the committee came to Mrs. Reed's office?
Q. Yes. On May 27, 1937.
A. The article was discussed.
Q. By whom?
A. By Mr. Tyler and by Mrs. Reed.

Q. Were there any objections to it by Mrs. Reed; of any [fol. 2312] kind?

A. There was.

Q. What did she say about it?

A. She couldn't understand why it should be in there.

Q. She didn't believe in it?

A. She did not.

Q. Did she say any more about it than that?

A. She said considerable about it.

Q. Tell me something that you recall that she said about it.

A. She said she could understand no reason why there should be a provision of that kind.

Q. Did she state any of her personal objections to it?

A. The only reason was, she couldn't see why anybody couldn't work there regardless of their union affiliation, with that union or any other union. She didn't think it was necessary to have any such clause in the contract.

Q. Let me ask you if this isn't what Mrs. Reed said, after reading over the contract that had been presented to her by Mr. Tyler and Miss Todd and whoever else was there from the committee:

"I think the only change it will be necessary to make will be some legal phraseology. The spirit of this agreement is satisfactory."

Did Mrs. Reed say that?

A. She did not.

[fol. 2313] Trial Examiner Batten: What page, Mr. Langsdale?

Mr. Langsdale: Sir?

Trial Examiner Batten: What reference is that you are reading?

Mr. Langsdale: This is the reference to the minutes in Mrs. Reed's office, of May 27, 1937, of the board of chairmen of the union. It is Exhibit 9-14.

By Mr. Langsdale:

Q. And didn't Mrs. Reed say at that meeting, "I would like to have a little time to look over this agreement. However, I think it is very much in line. There will possibly be one or two little changes."

A. She said that, some of that.
Q. Well, did you say all of it?
A. And quite a bit more.
Q. Did she say that?
A. I wouldn't say she said exactly that, no.
Q. Did you say that, in substance?
A. Part of it—
Q. (Interrupting) That "It was very much in line and it might be necessary to make one or two little changes."?
A. I did not hear her say that.
Q. That is from 9-13. Didn't Mrs. Reed agree with the closed shop proposal and state that she thought it was necessary for industrial peace?
A. She did not.

. . . . . .

[fol. 2343] By Mr. Langsdale:
Q. You stated when you first went over to Mr. Tyler's office to consider this supplemental agreement that was the day before you actually executed the agreement?
A. That is right.
Q. And at the time this contract was presented to you with all of these wage arrangements, minimums, precentages, and so forth, and that you hadn't the slightest knowledge at that time what effect that would have upon the overheads of the Donnelly Garment Company, is that correct? A. It is not.
Q. Did you have any prior knowledge of what these [fol. 2344] demands would be at the time you went there on the 21st of June?
A. After looking at the proposals, the rates they propose, I did have some knowledge; I wouldn't say I didn't have the slightest.
Q. Did you have any knowledge of what those demands would be before the 21st of June?
A. Not what the demands would be, no.
Q. So, that was presented to you without any prior negotiations at all, prior to June 21?
A. It depends on what you call negotiations.
Q. Had they been talking to you about what their demands were going to be on the 21st of June?

A. They had not, but they had requested me to furnish the statement of what all of the various employees' salaries were. If you want to call that negotiations—

Q. They had obtained some information from you?

A. Yes.

Q. Did they at any time before the 21st of June tell you what minimums they were going to demand for the various classes of workers?

A. They did not.

Q. Or what percentage of those workers they wanted to differentiate between, 30 percent, 40 percent, and so forth? A. They did not.

Q. And you had to make your investigation of that [fol. 2345] between the time they presented it to you on the 21st of June and the time you signed the contract on the 22d? A. Yes.

* * * * * * *

[fol. 2351] By Mr. Langsdale:

Q. Now, Mr. Baty, you testified yesterday that quite a large number of employees of the Donnelly Garment Company had received vacations of 3 weeks, besides Rose Todd. Give me the name of one who had a vacation of 3 weeks on pay, except executives?

A. Except—

Q. (Interrupting) Executives?

A. Executives. Florence Strickland.

Q. Florence Strickland is the one who gets $80 a week in the pattern department? A. She does.

Q. She is the highest paid person in the pattern department?

[fol. 2352] A. Miss Spillsbury is the highest paid person in connection with the pattern department.

Q. Well, is Miss Spillsbury and Miss Strickland both in the pattern department? A. Yes.

Q. Or is one of them in the designing department, or is that the same department?

A. It is the same department.

Q. What is Miss Spillsbury's salary?

A. What is what?

Q. What is her salary? A. I don't know.

Q. Well do you say she gets more than $80 a week?

A. Because I have heard it is well over that amount.
Q. Well, do you know what it is?
A. I know it is well over that amount.
Q. Don't you fix it? A. I do not.
Q. Well, who fixes her salary? A. Mrs. Reed.
Q. You don't know what it is except what you have heard?
A. I do not know definitely what it is.
Q. Now, tell me some one else besides Miss Strickland who had had 3 weeks vacation. A. Anna Pric
[fol. 2353] Q. Anna Price. She is the one that was listed here as the head of—well, who besides Anna Price? I will find this in a minute. A. Fred Brown.
Q. Fred Brown. Is he the same Fred Brown that is one of the chairmen of the union committee?
A. He is.
Q. Who else? A. Mrs. Fred Brown.
Q. Mrs. Fred Brown is Fred's wife? A. Yes.
Q. And who else? A. Margaret Broker.
Q. Margaret who? A. Broker.

Trial Examiner Batten: Well, Mr. Baty, wouldn't your social security cards show all those who had a vacation, and the length of it? A. It would.

Trial Examiner Batten: Well, if you want a list of all those, why can't it be prepared and put in here?

Mr. Langsdale: I would like to get at it that way, if I can. Will you do that?

Trial Examiner Batten: Mr. Ingraham, is there any objection?

[fol. 2354] Mr. Ingraham: No objection.

Mr. Langsdale: All I care for is those that had a vacation of three weeks or more, during the year 1937 or '38; '37 or '38.

Mr. Langsdale: Will you prepare that list so we can have it Monday.
A. Yes.

. . . . . .

[fol. 2356] Redirect Examination.

[fol. 2357] By Mr. Ingraham:

Q. Mr. Baty, you stated that Mrs. Elizabeth Reeves was production manager prior to the time that you took over the plant. Is that true? A. That is right.

Q. Now, what other duties did Mrs. Reeves perform in addition to being production manager?

A. She had charge of the merchandising, which included the purchasing of all materials, piece goods, and notions.

Q. Did that require her to make frequent trips to the East in order to buy? A. It did.

* * * * * * *

[fol. 2359] By Mr. Ingraham:

Q. Now, Mrs. Reeves would be away for long periods of time, would she not? A. She would.

Q. And was it finally determined by Mrs. Reed that there should be a separation between the person handling the production and the person handling the merchandise?

A. She did.

Q. And Mrs. Reeves had had long experience buying the merchandise and she was designated to handle that department; is that a fact? A. She was.

Q. And you were then put in charge of the production department? A. Yes.

[fol. 2360] Q. And were you to give all your time to handling the production department? A. I was.

Q. And had Mrs. Reeves been able to give more than 50 percent of her time in handling that department?

A. She had not.

Q. Now, you didn't take over the merchandising department that Mrs. Reeves had been handling?

A. I did not.

Q. After you had been designated to take over the production department, did Mrs. Reed ask you to make an analysis of the department, and recommend any changes that you thought should be made? A. Yes.

* * * * * *

[fol. 2361] Q. Now, after you became production manager at the Donnelly Garment Company, you did make some changes, did you? A. I did.

Q. Why did you make those changes?

A. Because it was agreed upon between Mrs. Reed and I.

Q. Had you made an analysis and reached the conclusion that certain changes should be made?

A. I had.

Q. What changes did you make, and can you state very briefly your reasons for determining that those changes should be made?

* * * * * *

[fol. 2362] A. Prior to the time I took the factory, there were numerous people designated throughout the production department with more or less authority. In order to eliminate the conflicting orders that were issued to the various departments, Mrs. Reed agreed that I should relieve everybody of their authority and have one control power to cover the whole thing. Any changes in the regular routine of the work should come to me before anything could be changed, eliminating everybody else in the departments of any authority to hire, fire or discipline any employee.

I think that covers it, briefly.

By Mr. Ingraham:

Q. Well, was it on account of the fact that Mrs. Reeves had other work to perform and was not available to be in complete control that different other people had been designated to exercise a certain amount of authority?

A. It was.

By Trial Examiner Batten:

Q. Well, now, how did you know that before you ever became production manager?

A. I worked with Mrs. Reeves.

Q. Well, she told you that was the reason?

A. I worked with her.

Q. I say, did she tell you that was the reason?

A. Who?

Q. Mrs. Reeves?

[fol. 2363] A. Mrs. Reeves didn't do it. It was Mrs. Reed made the change.

Q. Did she tell you that was the reason?

A. She made the change and that was the reason she wanted it made.

Q. Because she didn't think it was working, was that it?

A. She thought it would be a better management to have one head central power than to have all these conflicting ideas that the various people were exercising.

By Mr. Ingraham:

Q. Had the company increased its number of employees and increased its production for the three or four years prior to the time that you became production manager?

A. It had.

Q. Can you estimate, approximately, the number of additional employees that had been put on the payroll since 1932?

A. I would estimate approximately 400 additional employees; at the time I came to work, which was the 1st of January, 1933, there was close to 800, between 800 and 900 employees.

Q. At what time?

A. In January, at the time I came to work there in 1933.

Q. And how many when you took charge of the factory?

A. When I took charge of the factory there was approximately 1,000.

Q. Now, in the changes that you made, did you relieve [fol. 2364] Mrs. Wherry of any supervisory control over any other employees?

A. I did.

Q. Is that true of Mrs. Tyhurst, too?

A. It is.

* * * * * *

[fol. 2372] Recross-Examination.

By Mr. Patten:

Q. Mr. Baty, when you made the change and took charge of the production in 1935, what was the purpose of that change?

A. The change in supervision, you mean?

Q. Yes.

A. We had had a great deal of trouble with our conflicting orders that had been issued throughout the plant,

and when we would try to determine the party who had issued those orders it was practically impossible, and it was retarding the production. In order to improve the handling of the production Mrs. Reed decided she wanted one central authority to have all of the jurisdiction over the production.

Q. Were the results of the change what you expected, beneficial?

A. Well, they have been very satisfactory ever since.

Mr. Patten: That is all.

. . . . . .

By Mr. Langsdale:

Q. You mean if a supervisor or instructor would tell a girl to quit talking and go to work there would be some conflict over that order; is that it?

A. We have no supervisors in the production depart-
[fol. 2373] ment, Mr. Langsdale. We wouldn't have one there that could do it except myself.

. . . . . .

[fol. 2375] Q. So, as far as disciplining the operators was concerned, and watching over them to see that they kept at work, you didn't have any difficulty of conflicting instructions, prior to the time you took over in 1935?

A. We never have, regarding their work. Everybody there wants to work. They come down there to work; they are very anxious to work, and there is no difficulty keeping them working. Give them the work, and they will keep on working.

Q. Let me understand you, Mr. Baty—and this will be my last question.

You mean to say, from your observation it has never been necessary, from the time you took over in 1936, for an instructor to discipline an operator by telling that operator to do her work instead of wasting her time? It never had happened?

A. I didn't say it had never happened. It did happen.

Q. Then, the instructor would discipline them and tell them, "Go to work," wouldn't she—I mean, the instructor?

A. She would.

Q. Did you have any trouble about that kind of instructions?

A. Not a great deal.
Q. Did you have any?
A. Some.
Q. What kind?
A. A few minor cases where there would be a disturb-
[fol. 2376] ance start between the instructor and the girl.
Q. Not of sufficient importance to cause you to tell the instructor she couldn't do it any more?
A. We did.

* * * * * *

[fol. 2377] Mr. Langsdale: Mr. Baty, I hand you I. L. G. W. U. exhibit No. 18-A and ask you to state what that is.
A. This is a list of the employees, exclusive of executives, which received three weeks' vacation with pay during the year 1937.

Trial Examiner Batten: Is that from the time payroll or from both payrolls?
A. That is from both.

Mr. Langsdale: I hand you I. L. G. W. U. exhibit No. 18-B and ask you to state what that is.
A. This is the list of the employees, exclusive of executives, who received three weeks' paid vacation during the
[fol. 2378] year 1938.

(Thereupon the lists above referred to were marked for identification "I. L. G. W. U. Exhibit No. 18-A and 18-B.")

* * * * * *

[fol. 2382] Ella Mae Hyde, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

* * * * * *

By Mr. Ingraham:
Q. Just state your name, please.
A. Ella Mae Hyde.
Q. Where are you employed, Mrs. Hyde?
A. Donnelly Garment Company.

Q. How long have you been employed at the Donnelly Garment Company?

A. About 10 and one-half years.

Q. What is your present position with the Donnelly [fol. 2383] Garment Company?

A. I have charge of the work in the employment office.

Mr. Langsdale: I didn't get that answer.

The Witness: Charge of the work in the employment office.

By Mr. Ingraham:

Q. How long have you held that position?

A. About 7 or 8 years.

Q. Now, what work is done by the employment office?

A. We do the interviewing necessary, applicants coming in and leaving their applications, and assist in filing the [requestions] for help as are turned in to us by the heads of the departments.

Q. Does that bring you in close contact with Mr. Baty?

A. Very close, yes.

Q. Were you present at any conference between Mr. Baty and Mrs. Reed on or about the month of June, 1935?

A. Yes.

Q. Did Mr. Baty have a plan, or method, of handling the management of the factory that was different from the one that had been in effect?

• • • • • •

A. Yes, he did have.

• • • • • •

[fol. 2384] By Mr. Ingraham:

Q. Just state very briefly what changes Mr. Baty was proposing to be made.

A. He suggested that there be a central person from whom orders should be issued, rather than a group of people; that he had found difficulty in getting production through as he felt should be done efficiently, because of the conflicting instructions or orders that were given by various people in the factory. In order to obtain the best results, he felt that this should be eliminated. Then there would be no misunderstanding or conflicting agreements.

Q. What instructions did Mrs. Reed give to you?

A. That Mr. Baty was to do the hiring and firing and disciplining of all employees; that I was to work under his directions on those matters.

Q. Did you know whether or not Mr. Baty put that plan of operation into effect?

A. Yes.

Q. After he took charge of the factory?

A. He did.

. . . . . .

[fol. 2385] By Mr. Ingraham:

Q. Mrs. Hyde, were you present at a meeting of employees on or about March 18, 1937?

A. I attended the latter part of the meeting.

Q. Were you present when Mrs. Reed spoke?

A. Yes.

[fol. 2386] Q. State whether or not you heard Mrs. Reed say that the International Union was never going to come into the Donnelly plant?

A. Mrs. Reed said—

. . . . . .

By Mr. Ingraham:

Q. Well, were you present during the entire speech Mrs. Reed made?

A. Yes, I was.

. . . . . .

[fol. 2387] By Mr. Ingraham:

Q. Did you hear Mrs. Reed make the statement that "Dubinsky or no other 'ski' is going to run my business."?

A. No.

. . . . . .

By Mr. Ingraham:

Q. State whether or not you heard Mrs. Reed say that she wanted the employees to get the names of any of the employees that belonged to the International Union.

[fol. 2388] A. No, I did not.

Q. Will you state, in substance, what Mrs. Reed did say.

A. She began her conversation, or talk, with the employees by telling them that we had enjoyed what one would consider a nice business; that we had opened up a few more

Nelly Don departments, and that she knew that the employees were worried to a certain extent, and that she would like them to know that she would give them all the protection that she could; that she felt the police would also give protection, and in case they would not, that it would have to be resorted to the courts.

Q. What, if anything, did she say with reference to the International Union?

A. She said that the International, Dubinsky or any other "buttinsky" would not intimidate her into making her compel, or force her employees, to join any labor organization which they did not choose.

Q. Can you state the time of day that this meeting occurred?

A. Yes. It was just about 5 o'clock.

Q. How did you happen to attend the meeting?

A. Well, for the simple reason that I had gotten a call that there was a meeting for all employees, including everyone, invited to this meeting, and I couldn't arrange my work to get away at the beginning, so I went down as soon as I could.

[fol. 2389] Q. Do you know who called you?

A. No, it was just a call over the phone.

Q. Had you had any discussion with Mrs. Reed or any executives of the company in regard to holding such a meeting as that?

A. No, I didn't know [that] it was about.

Mr. Langsdale: I didn't get that answer.

The Witness: I said no, I did not. I did not know what it was about.

By Mr. Ingraham:

Q. Mrs. Hyde, were you at work on the morning of April 23, 1937? A. Yes, I was.

Q. Will you just briefly state what occurred with reference to Sylvia Hull?

A. Well, I arrived a few minutes after 8, and was told, I can't remember by whom, that there was some confusion on the 8th floor. So I went upstairs and I found a group of girls working in the section, same section as this Sylvia Hull, grouped around her machine, and they were singing songs, and I suggested that since

knowing about the notice that was in the paper the night before, that Sylvia Hull come down to the desk with me, so that we could get these girls back to work, and their remarks at the time were that they would not go back to work unless she left the building. When I asked them to go back to work and she came down to the office with [fol. 2390] me, instead of these girls all going back to work, a group of them followed us down, and when I asked them to again return, they said they would as soon as they heard Sylvia say she was going to go home, at which time Sylvia did say "I will go home. I didn't know the girls felt this way about it, or I wouldn't have done it."

Q. Did you ask Sylvia Hull why she joined the union?

A. I did not.

Q. Did you ask her why she joined the International Union?

A. No, I didn't. There was very little conversation. She went home.

Q. What, if anything, did she say with reference to going home?

A. She said that she wanted to go home.

Q. Now, did she leave any telephone number or any [say] to be reached?

A. Yes, she did. I asked her to leave her telephone number, and she said it was the number of a neighbor, and I told her that I would get in touch with her, but that if I didn't contact her, would she please allow me the courtesy of getting in touch with me, since she was leaving a neighbor's telephone number.

Q. Did you ever make any efforts to call Sylvia Hull?

A. Yes, I did.

Q. When did you do that?

[fol. 2391] A. The next morning.

Q. Were you able to reach her? A. I was not.

Q. Did you ever try after that? A. Yes, I have.

Q. Over how long a period?

A. Oh, I don't recall. For a number of days.

Q. Did Mr. Baty instruct you to try to communicate with Sylvia Hull? A. Yes.

[fol. 2392] Q. You mentioned that there was a newspaper article in the paper the night before this occur-

rence took place. I will hand you respondent's exhibit No. 1 and ask you if that is the newspaper article you referred to. A. Yes, it is.

Q. Now, on that same morning was there any other disturbance at the plant? A. Yes.

Q. Will you just state what occurred with reference to the other disturbance?

A. A little later, after Sylvia left, approximately an hour, I heard this confusion outside my doorway on the seventh floor. There was a group of girls coming from the eighth floor, going down to the sixth, and I asked them where they were going. They said, "Down to visit Fern Sigler." They said she had on a union button. And I made the suggestion to them that they go back to work, and they said they would as soon as they visited Fern. And when I insisted, the greater portion of them went on back to the eighth floor, but a few went on down to six.

I followed them down there. They went in and looked at Fern's machine, and turned around and went back upstairs.

Q. Now, did you go down to the sixth floor again after the first time? A. No.

[fol. 2393] Q. Did Mr. Baty go down to the sixth floor when he arrived? A. Yes, he did.

Q. Did you tell Mr. Baty what had occurred?

A. I told him of both instances that morning.

Q. Did Mr. Baty bring Fern Sigler to the office?

A. He did.

Q. I say "office." That is your office, isn't it?

A. He didn't bring her to my office. He took her inside the nurses' office.

Q. I will hand you Board's Exhibit No. 5 and ask you whether or not that is what occurred at the office with reference to what Fern Sigler said and what Mr. Baty said and what you said. Will you just please read it?

. . . . . .

(The exhibit referred to was [ready] by the witness.)

By Mr. Ingraham:

Q. Is that what occurred, Mrs. Hyde? A. Yes.

Q. And Fern Sigler went home that morning?

A. Yes, she did.

Q. This occurred on the 23rd of April, 1937?

[fol. 2394] A. That is right.

* * * * * *

[fol. 2395] Q. Is it true that the plant was working at full capacity during the latter part of April and the first part of May? A. Yes, they were.

Q. Weren't most sections working over 40 hours?

[fol. 2396] A. Yes, they were.

Q. Wasn't the section in which May Fike was working, working over 40 hours?

A. Yes, they were.

Q. Now, Mrs. Hyde, had Mr. Baty a short time prior to April, 1937, transferred all operators that performed underarm hemming to one section?

A. He had transferred all operators that performed underarm seam binding.

Q. To this one section?

A. Yes.

Q. About how many operators that performed that kind of work were in that section?

A. About 14 or 15, something like that.

Q. As a result of doing all of that character of work in one section was the company able to get along with a less number of operators doing that class of work?

A. On that type of operation they were, yes.

Q. Did May Fike do any other kind of operations satisfactorily?

A. She was a binder only.

Q. Now, Mrs. Hyde, in your work in the employment office have you ever received any instructions or orders from the company or any officer of the company, Mrs. Reed

or Mr. Baty, to discriminate against applicants on ac-
[fol. 2397] count of any union affiliations?

A. No, I have not.

Q. What, in fact, have been your instructions?

A. That that would make no difference. Regardless of what union or labor organization to which they might belong, as long as they had the qualifications to fill the positions which we needed to be filled, that was all that was necessary.

Q. Have you ever been instructed to inquire into the matters of that kind in connection with applicants?

A. I have never inquired about that.

Q. Have you ever advised or suggested to any applicant that they would not be employed at the Donnelly Garment Company if they were a member of the International Ladies' Garment Workers' Union?

A. I have not.

Q. Have you ever suggested or said anything to any employee of the Donnelly Garment Company that they couldn't hold their job at the Donnelly Garment Company if they joined the International Ladies' Garment Workers' Union?

A. I have never said that.

Q. Have you ever heard Mrs. Reed, Mr. Green, Mr. Keyes, Mr. Baty, Mrs. Reeves, or any other official, or any person in a supervisory capacity, make such a statement?

A. No, I have not.

Q. Have you ever discharged or recommended for discharge any person on account of their union affiliations
[fol. 2398] or sympathies?

A. I have not.

Q. Did you ever hear Mrs. Reed, Mr. Green, Mr. Keyes, Mr. Baty, Mrs. Reeves, or any other official or supervisory employee of the company make such a suggestion? A. I have not.

Trial Examiner Batten: Mr. Ingraham, as I understand it—Is Mrs. Hyde one of the ones who is a head of a department?

Mr. Ingraham: She works with Mr. Baty. She can't actually discharge without Mr. Baty's approval.

Mr. Langsdale: Just a minute. I object to that statement.

Trial Examiner Batten: The list says "heads of departments."

Mr. Ingraham: It is his department.

Trial Examiner Batten: Is Mrs. Hyde in the same position, relatively speaking, as the instructors?

Mr. Ingraham: No. She has more to do than the instructors.

Trial Examiner Batten: Is she considered as a supervisor?

Mr. Ingraham: I would say this, Mr. Batten: Mr. Baty is the final one who passes on, for instance, the discharge, but Mr. Baty does consult with Mrs. Hyde, and Mrs. [fol. 2399] Hyde keeps advised as to the people who it would probably be to the best interest of the company to let off.

Trial Examiner Batten: In other words she does, as far as recommendations are concerned, then—

Mr. Ingraham: She does. I would class Mrs. Hyde in an entirely different category than the instructors. In other words, it is her job to keep up on who it is advisable to retain with the company and who should be laid off.

By Mr. Ingraham:

Q. Mrs. Hyde, did you ever authorize or suggest to any employee that they should form the Donnelly Garment Workers' Union? A. I did not.

Q. Did you assist in the organization of the Donnelly Garment Workers' Union in any way?

A. I have not.

Q. Have you ever granted permission to any employees to solicit membership in the Donnelly Garment Workers' Union during working hours, on company property?

A. I have not.

Q. Do you know of any financial contribution, or any contribution, that has been made by the company, or any official of the company, to the Donnelly Garment Workers' Union? A. I do not.

Q. Have you yourself ever contributed any money or any other assistance to the Donnelly Garment Workers' Union?

[fol. 2400] A. I never have.

Mr. Ingraham: That is all.

. . . . . .

Cross-Examination.

By Mr. Leary:

Q. What portion of your time is occupied with interviewing?

A. The greater part of it, Mr. Leary.

. . . . . .

[fol. 2404] By Mr. Leary:

Q. Now, what kind of songs were these girls singing around Sylvia Hull's desk?

A. The old one that we all know, "Hail! Hail! The gang's all here!"

Q. Weren't there any others?

A. I don't recall any others. I was only there a very few minutes.

Q. Do you remember any of the Loyalty League's songs?

A. No, I don't.

Q. Haven't you ever been in the Loyalty League?

A. Have I what, did you say?

[fol. 2405] Q. Have you ever been in the Loyalty League?

A. I am a member of the Loyalty League.

Q. Have you been a member since its formation?

A. Yes, I have.

Q. And you never heard any of their songs?

A. No, I never did.

Q. Have you ever heard any of their songs sung?

A. I couldn't answer you truthfully about that.

Q. They do have songs, don't they?

A. I think they do. In fact, I think I heard them sing one at a dance one time.

Q. About how many girls, would you say, were around Sylvia Hull's machine?

A. Oh, I would say around fifteen or twenty.

Q. You didn't insist that they go back to work, did you?

A. I certainly did, Mr. Leary.

Q. I believe you testified before that you suggested.

A. And then I told you that I insisted.

Q. Insisted on the Fern Sigler incident, isn't that correct?

A. I insisted on both of them, whether I used the word "suggested" or not.

Q. Do you mean to convey the same idea when you use the word "suggest" as when you use the word "insisted"?

A. Yes, I do.

Q. Well, after your insisting that the girls on the eighth floor go back to work, and they refused to go back, did you reprimand any of them?

[fol. 2406] A. What do you mean, "reprimand them"?

Q. What education have you had?

Mr. Ingraham: I object to that question.

Mr. Stottle: He should ask the witness what she did.

Trial Examiner Batten: Well, I think she may answer to determine whether or not—she should know what "reprimand" means.

By Trial Examiner Batten:

Q. Do you know what that word means?

A. Yes, I do, Mr. Batten. Of course, I do. In fact, as far as insisting on people returning to work, I can't take them physically and force them back, Mr. Leary.

By Mr. Leary:

Q. As a matter of fact, you did nothing, did you, except to lead Sylvia Hull out of there?

A. I did do other things. I insisted on the girls returning to work.

Q. But they didn't return to work, did they?

A. But they did, when Sylvia Hull said that she was going home.

Q. But Sylvia Hull didn't say that, if I remember your testimony correctly, until after she was in the office.

A. That is right.

Q. Now, I am referring to the incidents that occurred [fol. 2407] on the eighth floor in the section around Sylvia Hull's machine, about which I believe you testified that you suggested the girls going back to work; is that correct?

A. Yes, I think I used the word "suggested", as you said.

Q. And they refused to go back to work, didn't they?

A. Yes. They said they would go back to work when Sylvia Hull left the building.

Q. Did you consider that a refusal to go back to work?

A. I would say it was, to a certain extent, yes.

Q. Now, did you do anything else at that time, while you were on the eighth floor, to make those girls obey your order, namely, that they return to work?

A. There was nothing else I could do, Mr. Leary. No,

. . . . . .

[fol. 2409] By Mr. Leary:

Q. Well, as far as Sylvia Hull was concerned, and as far as the company was concerned, was the blame put on Sylvia Hull because the other girls wouldn't work, or was the blame placed on the girls themselves?

A. There was no blame placed on anyone, Mr. Leary.

Q. Did you report to Mr. Baty that the girls on the eighth floor refused to work? A. Yes, I did.

Q. Do you know whether Mr. Baty reprimanded any of them?

A. I don't know what Mr. Baty did, except to go on the eighth floor after he arrived at work. He also went on the sixth floor after he arrived, and there was no disturbances. People were in perfect order.

Q. There were no discharges on the sixth and eighth floors, were there? A. No.

Q. And there were no girls off other than the ones we have referred to here, Sylvia Hull and Fern Sigler?

A. There was no one laid off.

Q. There was no one sent home other than Sylvia Hull?

[fol. 2410] A. Sylvia Hull went home by her own choosing.

Q. Well, disregarding Sylvia Hull and Fern Sigler?

A. No.

Q. No girls were docked in pay for that day, were they?

A. I don't know about that.

Q. You have the record, haven't you?

A. I haven't looked them up. I certainly can't answer your question.

Q. Well, did you talk to anyone on the eighth floor, other than the girls who were singing and stating that they refused to work?

A. I didn't talk to the girls on the eighth floor only to tell them to go back to work, Mr. Leary, and then to ask Sylvia Hull to come to the office with me.

Q. Now, before asking Sylvia Hull to come to the office, did you make any attempt to ascertain what, perhaps, might be considered as her side of the story?

A. No, except that she offered the explanation herself, that she didn't know the girls would feel that way, that if she had, she would never have done it.

Q. Well, that was said in the office later, wasn't it?

A. That was said to me downstairs.

. . . . . .

[fol. 2412] Q. Wouldn't you say that on the basis of your last few answers, that it was the other girls who were violating the rules of the company, and not Sylvia Hull, while you were on the eighth floor?

A. I would let the Examiner decide that.

Q. Well, I am asking what your judgment is.

A. I don't have any judgment on that subject, Mr. Leary.

Q. Now, then, did you go to the seventh floor, was it, to your office? A. Yes.

Q. And how many persons were present in the office when you talked to her?

[fol. 2413] A. Oh, there was a group of girls standing around, I should say maybe eight or ten.

Q. Most of those on the eighth floor had come down to the office? A. No, not most of them.

Q. About how many of them?

A. I said about eight or ten; something like that. I couldn't just be real truthful about that number.

Q. That group of eight or ten girls heard your entire conversation with Sylvia Hull on the seventh floor, didn't they?

A. They stayed there until they heard Sylvia Hull say that she was going home, yes.

Q. Did you tell Sylvia Hull that it wasn't necessary for her to go home?

A. I did not tell her that.

Q. Did you tell Sylvia Hull that she would be given any protection by the company, if necessary?

A. No, I didn't. It wasn't necessary to have protection.

. . . . . .

[fol. 2414] Q. Did you, at any time, during the incident concerning Sylvia Hull, tell these girls that they would

have to work, and that they would have to work with Sylvia Hull?

* * * * * *

A. No, I did not.

Q. Did you make any investigation to determine whether or not the girls on the eighth floor were just, or reasonable, in taking a position that they would not work with Sylvia Hull?

A. No, I didn't do that.

Q. Have you ever made such an investigation?

A. It is not my responsibility, Mr. Leary.

Q. Well, have you ever made such an investigation?

A. No, I have not. I have no authority.

Q. Have you ever suggested any to Mr. Baty?

A. No.

Q. Do you know whether Mr. Baty has ever made such an investigation?

A. No, I do not.

Q. Do you know whether any official of the company has?

A. No, I do not.

Q. If such investigation were made, and action taken, [fol. 2415] such action would be reflected upon your personnel records, would it not?

A. It depends upon what the action would be, Mr. Leary.

Q. Well, as far as layoffs or discharges were concerned, they all would be reflected on your records, wouldn't they?

A. If you mean reasons for people leaving, yes. I would have that information, probably, but with no thorough explanation.

Q. Well, now, this business of April 23rd was something that couldn't be considered usual, and as having happened in the normal course of your business, would it?

A. No.

Q. As far as the handling of employees and the personnel problem was concerned, it was something that will long be remembered there, and did make an impression upon yourself, didn't it?

A. I remember the incident, as far as I, personally, am concerned, yes.

Q. You had Sylvia Hull's address on your personnel records, didn't you?

A. Yes.

Q. You never wrote her a letter?

A. No.

Q. Never sent her a telegram requesting her to come to work?

[fol. 2416] A. I called her a number of times.

Q. I asked you if you ever sent her a telegram?

A. No.

Q. What time did she leave the plant that morning?

A. I would say about 8:15 or 8:20; something like that.

Q. Did you reprimand any of the girls who refused to return to work when you told them to return to work, when such girls were on their way down to the sixth floor to see Fern Sigler?

A. I can only insist, Mr. Leary, I do not reprimand or discipline employees.

* * * * * *

[fol. 2417] Trial Examiner Batten: Did you reprimand them in this situation?

A. No, I did not.

By Mr. Leary:

Q. Did you give Mr. Baty all of the details of your attempts to get the girls to return to the eighth floor?

A. I tried to, yes.

Q. Do you know whether or not Mr. Baty reprimanded any of the girls?

A. I do not.

Q. For the benefit of the record, I am referring to the group that came down to the sixth floor to see or visit Fern Sigler.

A. I don't know. I wasn't there at the time Mr. Baty was there.

Q. If there had been any reprimands in the way of layoffs or discharges they would be reflected on your records, would they not?

A. Well, Mr. Leary, I wouldn't consider a reprimand a layoff or a discharge. I consider a reprimand a correction.

Q. Well, if there had been any layoffs or discharges resulting from the girls failing to return to work when they were instructed to, wouldn't such layoffs or discharges be reflected upon your personnel records?

A. I probably would have known it.

[fol. 2418] Q. It is more than a probability? It is an actual fact, is it not, that you would have known it?

A. I might have known about a girl leaving, Mr. Leary, but I might not know the full reasons for that girl leaving.

Q. Mr. Baty never told you, did he, that it was incumbent upon him to lay off or discharge any girls because of their participation in the April 23 incidents?

A. He didn't tell me.

Q. In so far as Fern Sigler is concerned, she didn't violate any rules of the company, did she?

A. If you mean by rules, she was there at a given time, and she had on a white uniform and behaved, yes.

Q. She was sitting at her machine?

A. Yes.

Q. And attempting to do her work?

A. Yes.

Q. Are there any other rules of the company she should have been following that morning?

A. No, I don't recall any.

Q. Would you say she wasn't violating any rules of the company?

A. Not at the time I saw her.

Q. And as far as any information that you picked up from the girls that you talked to is concerned, she had not violated any rules of the company, had she?

[fol. 2419] A. I am sorry, I didn't talk to any of the girls about Fern Sigler, other than insisting that they return to work.

Q. So that from all of the information you have, from Mr. Baty, or from what you saw yourself, you would say that she did not violate any rules, wouldn't you?

A. That is my personal knowledge.

Q. And from the knowledge acquired from conversations with Mr. Baty, is that also your answer?

A. What conversations?

Q. Did you have any conversations with Mr. Baty regarding the Fern Sigler situation?

A. I told Mr. Baty after he arrived at work that there had been a disturbance on the sixth floor involving Fern Sigler.

Q. You knew Mr. Baty had gone to the sixth floor and looked the situation over, didn't you?

A. Later. Not then. After I told him.

Q. Did Mr. Baty ever tell you that he had found Fern Sigler violating any rules of the company?

A. He did not tell me.

Q. How long did the plant continue to run at full capacity in 1937?

A. How long after what?

Q. Read the question.

(Thereupon the last question was read by the reporter.)

Q. Did it ever slow down?

[fol. 2420] A. The latter part of June in 1937.

Q. And it ran at peak capacity up to that time, is that right?

A. Yes. The months of March, April, and May are our biggest months.

Q. So that, as of May 12, 1937, it was running at full capacity?

. . . . . .

[fol. 2433] By Mr. Langsdale:

Q. Mrs. Hyde, are you married?

A. I am.

. . . . . .

Q. Now, at the time of the Fern Sigler and Sylvia Hull incident, you were the personnel manager, were you not?

A. I have never carried that title, Mr. Langsdale.

Q. Not even before the NRA decision?

A. I never claimed that I did, no.

Q. Never called yourself the personnel manager?

A. I have always called myself employment manager.

Q. You made a number of affidavits which were filed in [fol. 2434] the NRA—I mean, in the three-judge hearing?

A. Yes, sir.

. . . . . .

Trial Examiner Batten: Mr. Langsdale, according to Mr. Ingraham's statement, in answer to my question a while ago, there isn't much dispute, is there, about what her position is?

Mr. Langsdale: Well, my own conception of the title, personnel manager, is a little different from what she says her duties were at that time.

Trial Examiner Batten: Well, of course, I think I have said several times before that the important thing is, not titles peoples have; the important thing is, what do they do.

Mr. Langsdale: Yes, and, of course, we are attempting to show what she does, and in addition to that we are attempting to show what title she holds herself out as having.

Mr. Langsdale: Let me show you this affidavit, Mrs. Hyde, which purports to be one signed by you on the 5th day of November, 1937.

Trial Examiner Batten: Which proceeding is that in?

Mr. Langsdale: The three-judge proceeding.

(Whereupon, the document above-mentioned was handed to the witness by Mr. Langsdale.)

By Mr. Langsdale:

Q. That is your affidavit?

A. That is right.

Q. It states, does it not, "I have been employed at the [fol. 2435] Donnelly Garment Company for the last nine years and have been personnel manager for the last seven years." You signed that and swore to it on the 5th of November, 1937?

A. That is right.

Q. Now, I believe you stated that Sylvia Hull voluntarily said that she would go home. I think I have your exact language,—and she further said, "I didn't know the girls felt that way about it or I wouldn't have done it." Is that what your testimony was, this morning?

A. That is right.

Q. Let me show you this affidavit filed in the three-judge hearing, purporting to be one signed by you on the 5th of November, 1937, and ask you to read it and see whether or not that is an affidavit that you signed on that date.

Whereupon, the document above referred to was handed to the witness by Mr. Langsdale.)

A. That is right.

Q. On this affidavit, signed on the 5th of November, 1937, you state "The same group of girls followed us to the office. After my instructions that they again return to their work, they made the remark in unison 'We will return to work as soon as we hear her say she will go home', at which time Mrs. Hull answered 'I will go home'."

A. That is right.

Q. You said nothing in this affidavit about her saying [fol. 2436] that if she had known they felt that way about it, that she wouldn't have done it?

A. It isn't in there.

[fol. 2437] Q. You say that Sylvia Hull left with you a telephone number which she told you was a neighbor's number?

A. That is right.

Q. And that you called her the next day?

A. That is right.

Q. What did you have in mind saying to her the next day?

A. I was going to tell her what Mr. Baty would suggest that I tell her.

Q. What did Mr. Baty suggest that you tell her?

A. He had made no suggestion definitely at the time except that he would like to talk to Sylvia again.

Q. Then, you didn't call her for any purpose other than to say Mr. Baty would like to talk to her?

A. I don't know what Mr. Baty was going to tell her. Mr. Langsdale.

Q. You called there with the intention of talking to Sylvia Hull?

A. That is right.

Q. I don't understand just what you say you meant to tell her.

A. I don't say I meant to tell her anything except that Mr. Baty would like to talk with her again.

Q. Did you put down the telephone number that she gave you?

A. Yes, I did.

Q. Did she give you the name of the neighbor?

[fol. 2438] A. I don't recall whether she did or not.

Q. Did you get any answer over that telephone at all?

A. I did.

Q. Did you talk to some person over the telephone?

A. I did.

Q. Do you know whether it was a man or a woman?

A. I don't recall.

Q. Did you tell that person who you were?

A. I don't remember whether I did or not.

Q. Did you tell her you wanted to talk with Sylvia Hull? A. I did.

Q. What did this person tell you?

A. She left the phone and came back and said she wasn't at home.

Q. Did you leave any word with her for Sylvia Hull?

A. No, I did not.

Q. You say you called again. How much later?

A. I don't recall.

Q. Was it the following day, week, or two weeks?

A. I can't answer that. I don't know.

Q. Can you tell us any time within a month?

A. I would say it was within a month, yes.

Q. Was it after Sylvia went to Atlantic City?

A. I don't know when she went to Atlantic City accurately, so I can't answer your question.

[fol. 2439] Q. You [say] the newspaper publicity at that time? A. I did.

Q. Does that refresh your memory as to whether it was after she went to Atlantic City or before, that you called her? A. It doesn't help me a bit.

Q. What did you want to talk to her about the next time? A. The same reason, Mr. Langsdale.

Q. Just to tell her Mr. Baty wanted to talk to her?

A. Yes.

Q. Did you tell this man or woman, or whoever answered the phone that time—or did they answer the phone that time?

A. I can't tell you accurately, but I believe it was the same setup. They said she wasn't at home.

Q. They left the phone, came back and reported she wasn't at home? A. Yes.

Q. Did that happen more than twice?

A. I don't recall that I called more than twice.

[fol. 2440] By Mr. Langsdale:

Q. Mr. Baty not being there, who had the authority, if anyone, to send these girls back to work who refused to go back to work until Sylvia Hull should go home?

A. There wasn't anybody there who had the authority to make them do anything.

Q. No one but Mr. Baty?

A. No, only the power I was exercising at that time as strongly as I could.

Q. But you really didn't have any power? A. No.

Q. You stated in your testimony this morning that a little later you saw a group of girls in front of your office on the seventh floor and you asked them where they were going, and they said they were going down to the sixth floor to see Fern Sigler. A. I said that.

[fol. 2441] Q. And that you told them to go on back, and most of them did go on back, but a few of them went on?

A. That is right.

Q. [That] what they did was to go down there and stand and look at her, and then turned around and went right back? A. They did.

Q. Let me show you another affidavit that purports to be one signed by you on the 5th of November, 1937, and which was filed in the so-called three-judge proceedings, and asked you to read it and see whether or not that is your affidavit.

(The exhibit was accordingly handed to and read by the witness.)

A. That is right.

Q. In this affidavit you say:

"About 10 o'clock of the morning of April 23, 1937, I investigated a commotion in the hallway on the seventh floor and found that a group of operators whose place of employment was on the eighth floor were on the way to the sixth floor to visit Fern Sigler."

A. That is right.

Q. You further say: "I demanded that these girls return to their machines and work, advising them that it was after 8 o'clock and they had no right to disrupt the organization, to which they replied, "We will only be gone a few minutes." A. That is right.

[fol. 2442] Q. You further say: "I followed these girls to the sixth floor and witnessed their actions. At no time did any person touch Fern Sigler or her clothing. They requested in unison that she leave the building."

A. That is right.

Q. You made that affidavit? A. That is right.

Q. "These girls returned to their machines at the end of this limited conversation." Is that correct?

A. That is right.

Q. "The next time I saw Fern Sigler she entered the door of the nurses' office with Mr. Baty." Is that correct? A. That is correct.

Q. The portions I have read are all a part of an affidavit made and signed by you on November 5, 1937?

A. Yes, they are.

Q. You stated in answer to one of Mr. Ingraham's questions that never in your employment there had you been ordered to discriminate against any employee because of union affiliations. Is that correct?

A. That certainly is.

Q. And you meant by that to cover the time of the life of the N. R. A.?

A. Yes, I did.

Q. And you further stated, in answer to one of Mr. [fol. 2443] Ingraham's questions, that you never had inquired about the union affiliations of any employee?

A. That is right.

Q. And you meant to cover that same time by that answer?

A. Yes, sir.

Q. And you further stated, in answer to Mr. Ingraham's question, that you had never discharged or recommended for discharge any person because of union affiliations?

A. That is right.

Q. And you meant that answer to cover that same time?

A. Yes.

Q. Did you attend the meeting of April 27, 1937?

A. I did not.

Q. When did you first learn that there was to be a meeting?

A. I don't know that I knew there was to be a meeting, Mr. Langsdale.

Q. You just didn't know anything about it?

A. No, sir.

Q. At any time?

A. I might have known it when the meeting was over, I don't know.

Q. You didn't know there was any preparation for a meeting? A. No, I didn't.

Q. Do you know why the message didn't get around to you when it was being telephoned around the plant?

[fol. 2444] A. I am left out of a lot of invitations, Mr. Langsdale.

* * * * * *

Q. About the meeting of March 18, when did you first learn that there was to be such a meeting?

A. When I saw the girls going downstairs as an assembly and I had previously received a telephone call to the effect that there was a meeting for all employees, and I knew the time that it was, because these girls were going down there and they went past my desk.

Q. At what time did you receive that telephone call that there was to be a meeting of all employees?

A. Oh, I don't remember, Mr. Langsdale.

Q. Well, how much before the meeting, if you know?

A. I couldn't even tell you that.

Q. In the middle of the afternoon?

A. I should say it was.
Q. Did you consult with Mrs. Reed about it?
A. No.
Q. Do you know whether she was at the plant that afternoon? A. I did not, no.
Q. You became a member of the Nelly Don Loyalty League when it was first organized? A. Yes.

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[fol. 2455] HOBART F. ATHERTON,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:
Q. State your full name, please.
[fol. 2456] A. Hobart F. Atherton.
Q. Where are you employed, Mr. Atherton?
A. At the Donnelly Garment Company.
Q. How long have you been employed at the Donnelly Garment Company? A. Since November 9, 1933.
Q. In what capacity are you employed?
A. Employed in the maintenance department.

By Mr. Langsdale: Since 1933, did you say?
A. I have been employed at the company since November 9, 1933.

By Mr. Ingraham:
Q. Mr. Atherton, do you recall a newspaper article appearing in the Kansas City Times of February 26?
A. I don't remember.
Q. I will hand you Respondent's Exhibit 6, and ask you if you saw that article.

• • • • • •

A. Yes, I remember seeing that article.

By Mr. Ingraham:
Q. I will ask you to state whether or not there was a petition circulated by the employees after that article had appeared in the paper. A. There was.

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[fol. 2457] By Mr. Ingraham:

Q. Well, did you read this article in the paper at the time? A. I did.

Q. Did you sign the petition that was circulated March 2d? A. I did.

Q. Did any officer of the company ask you to sign that petition? A. No.

Trial Examiner Batten: Well, now, Mr. Ingraham, do I understand that you intend to call a large number of individual employees?

Mr. Ingraham: Yes, your Honor.

Trial Examiner Batten: To testify?

Mr. Ingraham: Yes.

Trial Examiner Batten: Well, now, of course, I don't propose to have a large number called to testify to this point. You may call a reasonable number, and use your own judgment as to what is reasonable.

Mr. Ingraham: All right, your Honor.

Trial Examiner Batten: And make an offer of proof on the entire balance, if you want to, but I am not going to [fol. 2458] listen to all of them, but you use your own judgment as to what you think is a reasonable number, and at that time I think we can probably determine what will be done.

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[fol. 2462] By Mr. Ingraham:

Q. Mr. Atherton, do you recall who it was that had the petition of March 2 when you signed it?

A. Mary Sprofera.

Q. In what department does she work?

A. The order filling department.

Q. Is she just a clerk in that department? A. Yes.

Q. Did she state whether or not the company or any of its officers were sending her around to obtain names to that petition?

A. She stated that she was doing it of her own accord.

Q. Did she make any threats about what would happen if you didn't sign it? A. She did not.

Q. What did she state?

A. To the best of my recollection, she said that the employees were signing this petition to [protect] against the [fol. 2463] things that had been said against the company and against its working conditions, and so on?

Q. Did she say you could sign it or could not sign it, just as you saw fit? A. That is right.

Q. Mr. Atherton, did you witness any violence at the Missouri, Gernes, or Gordon plants during the month of March, 1937?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Sustained.

By Mr. Ingraham:

Q. Were you at a meeting of employees on March 18, 1937? A. Yes.

Q. Can you state approximately the time of day that meeting took place?

A. It was called between 4:30 and 5 o'clock.

Q. Will you just state briefly what took place at that meeting?

A. The meeting was opened by Rose Todd, who acted as chairman of the meeting. She gave a short talk and told the purpose of holding the meeting.

Q. In substance, what did she say?

A. That there had been so many requests from different employees, or inquiries as to what we were going to do, in view of the threats that had been coming to us by different methods, and that apparently all employees were [fol. 2464] anxious to do something, or to find out what they should do in case these threats materialized, and she thought it would be a good thing if we all got together and talked it over, and that was the purpose of the meeting.

Q. Did Mrs. Reed come down to the meeting?

A. Not until quite a good deal later in the meeting.

Q. What then next took place at the meeting?

A. There were several employees who made little talks at this meeting as to what their experience had been, some of them in other unions, and some of them what had been said to them by people who were then working in other garment plants.

Q. Were these employees operators?

A. Some of them were operators, and some of them worked in other departments. Most of them were operators.

Q. Did Mr. Baty make a talk?

A. Mr. Baty wasn't there.

Q. Did Mrs. Reeves make a talk?

A. Mrs. Reeves wasn't present at that meeting.

Q. Was Mr. Keyes at the meeting? A. He was not.

Q. Was Beulah Spilsbury at the meeting?

A. She was not.

Q. Please just state in substance, what Mrs. Reed said.

A. Well, the inquiries had been, what Mrs. Reed or the company was going to do in the way of giving the em- [fol. 2465] ployees protection, or as to what their order might be. Somebody from the floor suggested, see if Mrs. Reed was in the building and, if she was, have her come down and tell us what she was going to do. Someone was asked to ascertain whether she was in the building or not, and, if so, to have her come down to this meeting. So, it was found that she was in the building, and she was asked to come down and make this speech.

Q. Tell in substance what she said, as you remember it.

A. In substance, she said that it wasn't her purpose to compel her employees to join any organization against their will, and that she would see that they had all of the protection they could be provided, she didn't know what it might be. She said she would consult with her attorneys and see what could be done in the way of giving them protection, and she would also see if we could get police protection if necessary.

Q. Did you hear Mrs. Reed make the statement that the International Union was never going to come into the Donnelly plant? A. I did not.

Q. Or anything similar to that statement?

A. I did not.

Q. Did you hear Mrs. Reed say that Dubinsky or no other "ski" was going to tell her what to do?

A. I did not.

[fol. 2466] Q. Did you hear her say that the plant would be closed if the employees joined the International Union?

A. I did not hear her say so.

Q. Did you hear Mrs. Reed ask that the employees report to her any members among the employees of the International Union? A. No.

Q. After Mrs. Reed finished speaking, did she leave the meeting? A. She did.

Q. Did the company, its officers, or Mrs. Reed, have anything to do with the calling of that meeting?

A. They did not.

Q. Do you know how the meeting happened to be called? A. I do.

Q. Will you just state how it happened to be called?

A. As I previously stated, there had been so much discussion among the employees that a few of us had been talking about the thing quite seriously among ourselves. We decided it would be a good thing if we did have a general meeting of all the employees and allow each one to express his or her opinion, and on the previous evening Rose Todd and myself were talking about this and decided that it would be a good thing to call a meeting of all the employees. We did, the next day.

Mr. Langsdale: Is that the March 18th meeting?

[fol. 2467] Mr. Ingraham: March 18th.

By Mr. Ingraham:

Q. Did the employees take any action at that meeting?

A. They did not.

Q. Did the violence at the Missouri, Gernes and Gordon plants increase from that date on?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Sustained.

By Mr. Ingraham:

Q. What next was done by the employees?

A. Do you mean at that meeting?

Q. No, I meant if you finished with that meeting, what occurred after the meeting, within the next week or 10 days?

A. Well, a number of the employees, including myself, continned a discussion of the things that occasioned that meeting, and decided that we wanted to see, ourselves, what could be done in the way of protecting our jobs, the right to work if we so desired, so that a few of us

took it upon ourselves to call on a firm of attorneys, to find out what we could do or what we would be entitled to do, what we could get in the way of protection.

Q. What firm of attorneys did you call upon?

A. We called on Gossett, Ellis, Dietrich & Tyler.

Q. Who did you talk to at that meeting?

Trial Examiner Batten: Who was in this group?

By Mr. Ingraham:

Q. Who was in this group?

[fol. 2468] A. The group that called upon the attorneys?

Q. Yes.

A. Rose Todd, Sally Ormsby and myself.

Q. Well, was there a larger group who had conferred with you about calling on attorneys?

A. Not specifically. There was a larger group who had been talking things over from time to time.

Q. Well, who did you talk to at Gossett's office?

A. We first talked to Mr. Gossett. He took us in and introduced us to Mr. Tyler, and we then talked to Mr. Tyler.

Q. Now, will you just state what occurred at that meeting?

A. We told Mr. Tyler that we represented the employees of the Donnelly Garment Company; that we were desirous of knowing what we could do, or what could be done for us in the way of getting protection against such things as were occurring at the Missouri, Gordon and Gernes Brothers' plants.

. . . . . .

By Mr. Ingraham:

Q. Just state, in substance, what was said.

[fol. 2469] A. Mr. Tyler asked us if we represented all the employees. We replied that we did, and he said well, he would soon find out whether we did or not, or words to that effect. He said that before he could give us any counsel, or advice, or do anything for us, he would have to have a substantial retainer fee. We told him that we could get it.

Q. Did he state any amount?

A. He named the sum of $500.

Q. How soon did he want that?

A. He didn't say how soon. He said before he could do any work on it he would have to have that money.

Q. Was anything else said in reference to any legal action that might be taken?

A. Yes. We asked him if it was possible for us to secure an injunction against the International Ladies' Garment Workers' Union or any other outside organization who might interfere with us.

Q. Then after the meeting in Mr. Tyler's office, what next occurred?

A. We discussed ways and means of raising this money that had been asked as a retainer fee, and after some discussion on the subject, it was generally agreed between us that we could get it from the employees, but as Mr. Tyler had previously stated, he had to have this money before he could undertake to do any work for us, [fol. 2470] and we were very anxious to have him start immediately. Miss Todd said that she thought she could borrow the money, thought she knew where she could get it. I said if that was the case, for her to go ahead and get it, that we knew we could get it from the employees to repay it. So it was agreed that Miss Todd try to borrow the money.

Q. Do you know whether or not she did borrow the money? A. She did.

Q. Did you later raise money among the employees to repay that sum that Miss Todd borrowed? A. We did.

Q. How did you raise the money?

A. Sometime around the last of March, or the first part of April, we again called a meeting of the employees, at which time Miss Todd told them that Miss Ormsby and Miss Todd and myself had called on Mr. Gossett and Mr. Tyler, and that they had asked us for this retainer fee and it would be necessary to raise the money to pay this, and we asked the employees generally for a suggestion as to how they would like to raise it. Some suggested that we give a party or a dance, raise it by that method. Finally, some one got up in the meeting, Eva Lieberman, I believe,—I am not positive,—and made a motion from the floor that the employees contribute 50 cents apiece to raise this sum. That motion was put to the meeting and was carried unanimously.

[fol. 2471] Q. The money was raised in that fashion?

A. It was.

Q. Were you present at the plant on the morning of April 23, 1937? A. I was.

Q. I will ask you to state whether or not you saw this article that appeared in the Journal Post on the 22d of April, 1937?

(Thereupon, the article above referred to was handed by Mr. Ingraham to the witness.)

Trial Examiner Batten: That is Respondent's Exhibit 1?

Mr. Ingraham: Respondent's Exhibit 1.

A. Yes, I did.

By Mr. Ingraham:

Q. What effect did that article have on the employees of the Donnelly Garment Company?

* * * * * *

[fol. 2472] A. As I came in the eighth floor, I saw a group of operators around one of the machines, and I asked somebody what was the matter, and they said that Sylvia Hull's machine—the girls were protesting about the article that appeared in the evening paper the evening before, stating that she was a delegate of the Donnelly workers to the convention in Atlantic City for the International Ladies' Garment Workers' Union.

[fol. 2473] By Mr. Ingraham:

Q. Did you see any violence?

A. I did not.

Q. Were you present at a meeting on April 27 of the employees of the company? A. I was.

Q. What was the reason for calling that meeting?

Mr. Langsdale: What meeting was that?

Mr. Ingraham: April 27.

A. Miss Todd, Miss Ormsby, and myself had had several conferences with Mr. Tyler, and after the Wagner Act have been declared constitutional we had another conference with Mr. Tyler, at which time he suggested to

us that it might be a good thing if we could organize our own independent union, and that if such were the case he would be much better enabled to get us the protection we needed, if we were an organized group rather than a group of individuals.

He stated that, under the Wagner Act, we had the right to self organization, and that he didn't think injunctive relief would give us the thing that we wanted. So, it was decided that we would call a meeting of the employees on the evening of April 27 and put this proposition before [then,] as to whether they wanted to organize an independent union or not.

Q. Did that meeting occur during working hours or after working hours?

[fol. 2474] A. After working hours.

Q. Who arranged for the meeting place? A. I did.

Q. Did you take the matter up with the Donnelly Garment Company? A. I did not.

Q. Did the Donnelly Garment Company at that time lease the second floor of the building, if you know?

A. So far as I know, they did not.

Q. Whom did you arrange with for the use of that floor? A. Mr. Appleby.

Q. Who is Mr. Appleby?

A. At that time Mr. Appleby was representative of Murray & Company, who had the management of the Corrigan Building.

Q. Did Mr. Appleby give you permission to use that space? A. He did.

Q. Will you very briefly state what occurred at that meeting?

A. The meeting was called to order by Rose Todd. She explained the purpose of holding the meeting and stated what Mr. Tyler had told her, Miss Ormsby and myself concerning the value of forming our own union, and asked that a motion be made to organize an independent plant union.

That motion was made, seconded and carried unanimously, that we organize an independent plant union.

[fol. 2475] Next was the naming of the organization. That was something that had been previously discussed

by Miss Ormsby, Miss Todd, and myself, and Mr. Tyler, in trying to arrive at a suitable name, and we offered the name of the Donnelly Garment Workers' Union. That was acceptable to the employees, and it was so moved and seconded and carried, that that be the name of the organization.

Miss Todd then introduced Mr. Tyler, who was present at that meeting and made a short talk to the employees.

Then, Miss Todd said that she would ask to be given the authority to appoint a committee of people to select nine people to be the executive committee of the union.

The motion was made that she appoint that committee. It was seconded and carried. She appointed this committee to select the nominees for the executive committee positions, and they retired from the room.

While they were gone from the room Mr. Tyler again spoke at the meeting and said that it was necessary that the organization have a set of bylaws, that he had prepared a set, which he would suggest that we adopt, and, if necessary, amend later, at our convenience.

Those bylaws were read. The motion was made that they be adopted, and it was carried.

The nominating committee then—At that time I believe some cards were passed out, or sometime during [fol. 2476] the meeting cards were passed out for the employees to sign if they wished to become members of the Donnelly Garment Workers' Union.

The nominating committee then returned to the room and stated that they had arrived at a group of people to be the executive committee, a group of names. Those names were read to the meeting.

An opportunity was then given for any other nominations from the floor. There were no other nominations, and this committee was voted upon and elected to be the executive committee of the Donnelly Garment Workers' Union.

Then, as I recall, Miss Todd asked if everybody had received a membership card and if they wished to sign

it. There were some in the back of the room who had not yet received cards. The cards were given to them, and they were told if they didn't want to sign those cards they didn't have to, or if anybody desired to think the matter over before they signed, they had the right to do so. And the cards were asked to be collected, those that had been signed, and they were collected by a group of boys who were acting as ushers at the meeting.

The meeting was then adjourned.

Q. Now, was the Nelly Don Loyalty League the predecessor of the Donnelly Garment Workers' Union?

A. In so far as it was in existence before the formation [fol. 2477] of the Donnelly Garment Workers' Union, yes.

Q. I mean to say, was the Nelly Don Loyalty League responsible in any way for the organization or formation of the Donnelly Garment Workers' Union?

A. It was not.

Q. Is the Nelly Don Loyalty League still in existence?

A. It is.

Q. Is that purely a social organization? A. It is.

Q. Do they pay dues in that organization?

A. They do not.

Q. Did any official of the Donnelly Garment Company or any person with supervisory authority ever talk to you about the organization of the Donnelly Garment Workers' Union? A. No.

Q. Did the company, to your knowledge, or any of its officials, in any way assist in the organization of the Donnelly Garment Workers' Union? A. They did not.

Q. Was Mr. Baty, Mrs. Reeves, Mr. Keyes, Mr. Green, Miss Spilsbury, or Mrs. Reed at the April 27 meeting?

A. They were not.

Q. Do you know of any meeting prior to that time called by Mrs. Reed where she talked to a group of operators in her office in regard to the formation of any union?

[fol. 2478] A. I do not.

Q. Now, what occurred after the organization of the Donnelly Garment Workers' Union with reference to the union seeking bargaining rights for the employees?

A. The executive committee of the union immediately got to work upon drafting a working agreement, or a contract, which we wanted to negotiate with the Donnelly Garment Company and the Donnelly Garment Sales Company.

After numerous conferences among ourselves, and with Mr. Tyler, we finally worked out a draft of what we wanted and asked the company officials for a meeting at which we wanted to present this contract to them.

Q. Did that meeting occur on or about May 27, 1937?

A. Yes.

Q. Who was present at that meeting?

A. Mrs. Reed, Mr. Ingraham, Mr. Baty and Mr. Keyes were present for the company, and the executive committee of the Donnelly Garment Workers' Union were present.

* * * * * *

[fol. 2479] By Mr. Ingraham:

Q. Mr. Atherton, will you just briefly state what occurred at that meeting?

A. Mr. Tyler, on behalf of the committee of the Donnelly Garment Workers' Union, presented this draft that we had prepared to the officials of the company and started to read it to them. He read several paragraphs, and there was quite a bit of discussion about different paragraphs of the contract between the officials of the company and the committee and Mr. Tyler.

After much discussion concerning these paragraphs or sections of the contract Mrs. Reed stated that she would like some time to think it over and asked that the committee return later in the day, namely at 2 o'clock that afternoon, for further negotiations.

[fol. 2480] Q. Was there a meeting later in the day?

A. There was.

Q. Were the same parties present?

A. They were.

Q. State what occurred at that later meeting.

A. The company had prepared a draft of this contract, certain things that they wanted in it, and so on. There was a great deal more discussion. I think one of the first things we discussed was the 40-hour week. The company objected to binding themselves to an agreement to limit the working week of the plant to 40 hours. The executive committee insisted that that be in the contract, that we did agree that we would work more than 40 hours, but for anything over 40 hours, we should be paid overtime.

Q. Was there any discussion as to what employees would be members of the union and covered by the contract?

A. There was.

Q. Will you state what occurred with reference to that matter?

A. The executive committee of the union insisted that all employees of the company, of both companies, the Donnelly Garment Company and the Donnelly Garment Sales Company, be members of the Donnelly Garment Workers' Union. The company objected to that. They couldn't see why it was necessary that the office employees or the salesmen or anyone except piece workers be members of the [fol. 2481] Donnelly Garment Workers' Union. The committee had a different idea. They felt that if we wanted to be the bargaining agent for the employees, that we wanted all employees to be members of the union.

Q. Was there any discussion about the minimum of $15 per week?

A. Yes, there was.

Q. State what occurred with reference to that.

A. We asked that the minimum, demanded in this contract that a minimum of $15 a week for any employee, beginner or otherwise, of the company, be $15 a week. There were some employees at that time who were getting less than that, some of the basket boys, bundle boys, errand girls. The union felt that $15 was a fair minimum to be paid these workers.

Q. Did the company object to binding itself for two years to any minimum?

A. They did. They stated they didn't think it was necessary that we have a written contract. We said that we wanted the written contract with them, and asked that it be made for a period of two years. They said they didn't want to bind themselves for any stated length of time, that

they couldn't tell what businness conditions would be at the end of two years, and after much discussion pro and con, that was finally drafted into the final agreement.

Q. Was there any discussion in regard to the recogni-
[fol. 2482] tion of the union as the bargaining agent for all employees?

A. Yes, there was.

Q. At that time were all the employees of the Donnelly plant members of the Donnelly Garment Workers' Union?

A. To the best of my knowledge, they were. There may have been some who were out on sick leave that hadn't returned, or some salesmen who were on the road at that time, whom we had not been able, as yet, to take into membership.

Q. Well, what, if anything, was discussed in reference to the recognition of the Donnelly Garment Workers' Union?

A. We asked that the Donnelly Garment Workers' Union be recognized as the sole bargaining agent of all employees, on any matters pertaining to wages, hours, working conditions and any other thing that might be subject to discussion with the company.

Q. Did the company object to that provision?

A. There was some discussion on it as to whether we—they wanted to know whether we thought we were able to bargain for, for instance, the people on the road, the salesmen, the office employees, and so on. We stated that we thought we were.

Q. State whether or not Mrs. Reed objected to any recognition that would include anybody other than the factory workers.

A. She did object to anything that included others ex-
[fol. 2483] cept piece workers.

Q. Piece workers?

A. Yes, sir.

Q. Was there any discussion in regard to instructors and floor girls being chosen from the ranks of the operators?

A. There was much discussion on that point. The committee of the union felt that in case of promotion, that the people who had been working in the plant should have preference to those positions. The company took the stand that they should have the right to fill those positions in any way they saw fit. We insisted that employees—previous employees, be given preference in any position where they

could be promoted from piece work job to a time worker's position.

Q. Was there any discussion with reference to the procedure in case an employee felt that he or she was unjustly treated in order to obtain any correction of that matter, that that employee would first seek action by the committee of the union?

A. There was. The committee of the union demanded that any grievances or complaints of any employee be brought to them so that they might take it up with the company.

Q. Did the company object to such a provision?

A. They did. They objected, said that they wanted any employee of the company to feel free to come to them with any complaint or grievance they might have, not have to go [fol. 2484] through somebody else. It was finally agreed, after much discussion, that the employee should have the privilege of taking it up either way, either with the committee of the union or with any official of the company, if they so desired, or with both, if they so desired.

Q. Was there any discussion about the meal period?

A. Yes.

Q. Just state what occurred with reference to that.

A. We demanded, in our contract, that meal period be not less than 30 minutes or more than 1 hour. The company objected to that because in some departments in times past, if the work was slack, the employees would be told to come back, take 2 hours for lunch, and return to work at 2 or 3 o'clock, or whatever time the company thought they might have work for them. This demand of ours limited the time which they could be kept out on their meal periods.

Q. Was there any discussion with reference to a closed shop?

A. There was.

Q. Will you just state what occurred with reference to that?

A. The union committee demanded that we have a closed shop. The company objected, saying that they had always had an open shop, employing anybody they saw fit to employ. They saw no reason why they should change. We reiterated our demand that we have the closed shop, because we were to be the bargaining agent for the em-

[fol. 2485] ployees and we didn't want any conflict among ourselves as to who was going to have the right to bargain for the employees, and if we were the only union or organization that come in there and have the right, we should represent all employees. For that reason we demanded a closed shop.

After much negotiation on it, the company finally agreed to give us a closed shop.

Q. Did you again argue that you had in your union all the employees?

A. We did.

Q. And that you represented every employee in the plant?

A. We did.

Mr. Langsdale: That discussion was the 27th of May meeting?

Mr. Ingraham: Yes.

By Mr. Ingraham:

Q. Now, what was the discussion in reference to layoffs?

A. The company demanded that they have the right to lay off employees when conditions so necessitated, due to slack seasons, emergency or to being no work, for other reasons such as being unable to obtain materials, and so on. The union recognized that, after some discussion, as a fair demand on their part, and so agreed to it.

Q. What occurred with reference to the provision that [fol. 2486] the general chairman should spend the necessary time in the affairs of the union and continue at his or her employment with the company at a proportionate rate of pay?

A. Well, it was necessary that the chairman of the union devote some portion of her time to the affairs of the union, inasmuch as we were just getting started. There was quite a number of things to look after and work out, but it wasn't necessary that she give her full time to it, and the committee of the union didn't feel like they wanted to pay her salary for full time. We couldn't afford it at the time, so we asked the company to make that provision in the contract, that they would employ her at her previous salary, and pay her for that time that she did not give to the union

affairs. The union would pay her for the time that she spent in union matters.

Q. Was it after much discussion finally agreed by the committee of the union that Miss Todd would spend her time that she gave to the union after working hours?

A. It was.

Q. Was there any discussion with reference to arbitration?

A. Yes. It was recognized by both parties that arbitration was the only fair means of settlement of any difficulties, and it was agreed that the union should name one arbitrator and the company name the other, and then there was quite a good deal of discussion as to who the [fol. 2487] third arbitrator should be. Both parties wanting the privilege of naming the third arbitrator. Finally, after a great deal of discussion, it was agreed upon that if the union and the company could not agree upon the third arbitrator, that the arbitrator should be named by the District Judge of the Federal Court.

* * * * * *

[fol. 2488] By Mr. Ingraham:

Q. Mr. Atherton, was there any discussion on the part of the company and the members of the union that there would be any objection to any Federal Judge?

A. There was none.

Q. Do you know of any reason why your committee or why the company would object to any Federal Judge for the Western District?

Mr. Langsdale: I object to the question as calling for a conclusion of the witness.

Trial Examiner Batten: He may answer. I assume that they would have no objection to a district federal judge. I merely asked him the question, supposing they could not agree, what would happen? That was just a supposition.

A. There was no thought in the minds of any of the union committee that any federal judge would not be fair-minded in naming a third arbitrator, and for that reason they didn't object—

Trial Examiner Batten (Interrupting): Mr. Atherton, don't misunderstand me. I assume any federal judge would be acceptable to any of them. I merely asked you the question, what would happen if that should occur?

By Mr. Ingraham:

Q. Mr. Atherton, was there any discussion as to strikes, stoppages and lock-outs? A. There was.

Q. Will you state what occurred with reference to that?

[fol. 2489] A. We demanded that the company provide in this contract that there would be no stoppage of work or lock-out of its employees for any reason. And after much discussion on that, the company agreed to do so if the employees would agree not to strike or walk out.

Q. Was there any discussion with reference to the discharge of employees by the company? A. Yes.

Q. What occurred with reference to that?

A. The company maintained that they had the right to discharge any employee for any reason. The committee of the union objected to that and said that while they would grant that the company had the right to discharge employees for certain reasons, they stipulated that they should not be discharged because of membership in the Donnelly Garment Workers' Union or any work they might do in connection with performing their work in the Donnelly Garment Workers' Union.

Q. Did not the company insist that it did have the right to discharge for inefficiency or the nonperformance of work, and for any reason except the employees' affiliation with the Donnelly Garment Workers' Union?

A. They did.

Q. Was there a discussion with reference to vacations?

A. There was. The union committee felt that the piecework employees were entitled to paid vacations on the [fol. 2490] same basis as any time worker was.

Q. And was that provision finally agreed to?

A. It was, after much discussion. It has been the policy in the past that the company would give a week's vacation with pay to piecework employees. The union committee felt that after a certain period of service the piecework employees were entitled to two weeks' paid vacation, the same as the time workers.

Q. Was there in effect prior to the execution of this contract an arrangement whereby the company paid half of the premium on sick and accident insurance carried by the employees? A. There was.

Q. And that the company paid half of a group life insurance plan that was carried by the employees?

A. That is right.

Q. State whether or not representatives of the union wanted a provision guaranteeing that contribution on the part of the company in the contract.

A. We did. We demanded that that be incorporated in the contract, guaranteeing us those things would be continued for the duration of the contract.

Q. That also applied with reference to the maintenance of a hospital room and trained nurses?

A. It did.

[fol. 2491] Q. Was there a wage agreement entered into at a later time? A. There was.

Q. Will you state approximately when that contract was entered into?

A. It was about the 22d of June, 1937.

Q. Were there any negotiations with reference to that contract? A. There were.

Q. Will you just state what occurred?

A. The first thing they negotiated was the recognition by the company of five legal holidays, that the piecework operators be paid for those holidays on the same basis as paid vacations. Theretofore the company had had the privilege of deducting holidays from the pay of the employees if they so desired.

Q. Prior to the meeting in regard to this contract between the company officials and the representatives of the union had the representatives of the union requested certain data and information regarding the wages from the company? A. They had.

Q. Had the representatives of the union drafted a proposal regarding wages?

A. We had, with Mr. Tyler's assistance.

Q. Do you recall whether or not that original draft provided that employees that worked on the eighth floor on what is called the Donnelly plant higher-priced gar-

[fol. 2492] ments would receive a certain minimum wage?

A. It was.

Q. Do you recall what the amount of that minimum wage was?

A. $25.60, I believe, was the amount we had stipulated in our first draft for employees on the eighth floor, working on garments selling at $45 a dozen and above.

Q. Were operators classified in the various groups in the contract? A. They were.

Q. Do you recall what group 1 operators were engaged in sewing?

A. Group 1 operators were engaged, or spent the major portion of their time working on garments selling at $45 and above.

Q. Did this supplemental agreement provide for a different minimum than was provided for in the original contract? A. It did.

Q. What amount was this minimum?

A. That minimum is $16.50.

Q. When was that proposal made to the representatives of the company?

A. In the first draft we proposed to the company that the minimum be $16, stating we thought that that was a fair minimum, and after some discussion they agreed to that. And in another conference, before the final draft [fol. 2493] of the supplemental agreement, the committee, in discussing the agreement with Mr. Tyler, felt that maybe we could get more than a $16 minimum, so we decided to ask for a $16.50 minimum.

By Mr. Langsdale:

Q. More than what minimum?

A. The $16 minimum which we had in our first draft of the supplemental agreement.

By Mr. Ingraham:

Q. Did the company ask for time to check their records? A. They did.

Q. I will hand you this supplemental agreement and ask you to state what other discussions took place with reference to this supplemental agreement.

A. This paragraph stating:

"All workers, whether paid by the piece or by the week, including office workers, shall be on the same basis in

regard to hours, vacations on pay, service in hospital rooms, privileges of sick and accident insurance, group life insurance, hospitalization, and any other services which may be offered by the employer and for which the employer pays all or any part of the cost."

That was the subject of quite a good deal of discussion.

Q. Can you state what occurred with reference to that?

A. The committee of the union maintained that in as much as all employees were members of the Donnelly Garment Workers' Union they should all be accorded the [fol. 2494] same privileges or treatment by the company, regardless of whether they worked in the office, designing room, or whether they worked on a machine, with regard to any benefits and privileges given by the company.

The company, after some objection, finally agreed to that.

Q. Was there considerable discussion with reference to the minimums contained in group 1?

A. Yes. The union, as I stated before, demanded that the operators on the eighth floor who were working on garments selling at $45 a dozen and above be guaranteed a higher minimum than operators working on lower-priced garments.

At that time most of the work, if not all of the work on that priced garments was done on the eighth floor.

The company objected to paying all of those people a higher minimum. After much discussion and negotiations it was finally agreed that operators who worked on any floor who spent a portion of their time on garments selling at $45 and up should be included in this group 1 operators, and that 40 percent of that group, at least 40 percent of that group, would be given a minimum of $25.60 a week.

Q. Is it not a fact that the company contended that they could work the operators that are in the first classification of group 1 the entire year on the higher-priced garments and manufacture all of the garments of that class?

A. That is true.

[fol. 2495] Q. Was it the position of the union that they would prefer that the company distribute that work and not confine it to a certain group of operators the year around?

A. That was the position of the union committee.

Q. Were the other classifications that are contained in the contract based on similar grounds as the first group?

A. They were. Group 2 operators and group 3 operators were operators working on garments selling below $45 a dozen.

Q. I had in mind the classification of other type of workers, as the hand ironers.

A. Yes, the same method was used in arriving at the establishment of minimum wages for hand ironers, for mechanics, folders—

Trial Examiner Batten: And pressers?

A. We have no pressers. The stipulation is in the contract, or mention is made of pressers, but we have no pressers. That was just to take care or provide for them in case we would have any pressers.

By Mr. Ingraham:

Q. Mr. Atherton, was this contract agreed to at the first conference between the company and the representatives of the union? A. It was not.

Q. Was it agreed to at a later time?

A. It was agreed to at a later date.

Q. To your knowledge, has the Donnelly Garment Company or the Donnelly Garment Sales Company ever con-[fol. 2496] tributed money or any other assistance to the Donnelly Garment Workers' Union? A. They have not.

[fol. 2497] Q. Have any officers of the company or any executives or persons with supervisory authority ever contributed directly or indirectly to the Donnelly Garment Workers' Union?

A. They have not.

* * * * * *

[fol. 2498] By Mr. Ingraham:

Q. Mr. Atherton, has the Donnelly Garment Company or the Donnelly Garment Sales Company ever paid for

the use of any chairs for the Donnelly Garment Workers' Union? A. They have not.

. . . . . .

By Mr. Ingraham:

Q. Well, according to your knowledge.

A. They have not.

Q. Have either of the companies ever paid for the use of a loud speaker, to your knowledge?

A. They have not.

Q. Have either of the companies ever paid for the use of the second floor to the Corrigan Realty Company prior to the date that the Donnelly Company rented that space?

Mr. Langsdale: It is assumed that all these questions include "to your knowledge"?

[fol. 2499] Mr. Ingraham: Yes.

A. They have not.

By Mr. Ingraham:

Q. Has the Donnelly Garment Workers' Union used the bulletin boards for union purposes at the factory?

A. They have not.

. . . . . .

By Mr. Ingraham:

Q. Have you ever heard any official of the company, or any person with supervisory authority authorize the use of the telephones by members of the union for union purposes? A. I have not.

Q. Have you ever heard any official of the company, or person with supervisory authority, authorize bundle boys to carry messages for members of the union for union purposes? A. I have not.

Q. Have you ever heard any official of the company, or person with supervisory authority, authorize any member of the union to use typewriters, filing cabinets, for [fol. 2500] union purposes? A. I have not.

Q. Did you ever hear Mrs. Reed, Mr. Green, Mr. Keyes, Mr. Baty, [Mrs. Reed] or any other official of the company, or any person that had the authority to hire, discipline or discharge, say or suggest that an employee

would lose his or her job if they didn't join the Donnelly Garment Workers' Union? A. I did not.

Q. Did you ever hear any of those named persons make such statements that an employee would lose his or job if they joined the International Ladies' Garment Workers' Union? A. I did not.

Q. Did you ever hear any of those persons state that the company would not employe any person that belonged to the International Ladies' Garment Workers' Union?

A. No.

* * * * * *

Cross-Examination.

By Mr. Tyler:

Q. Mr. Atherton, was the subject of disturbances at the Missouri, Gordon and Gernes plants before March 18, 1937, a subject of common discussion among the employees at the Donnelly Garment plant?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Sustained.

[fol. 2501] By Mr. Tyler:

Q. What was the state of mind of the employees of the Donnelly Garment Company in regard to conditions at the Missouri, Gordon and Gernes plants before March 18, 1937?

Mr. Leary: I object to that as being without a foundation, that this witness knows what the state of mind of the employees at the plant was; and immaterial, also.

Trial Examiner Batten: Well, I will sustain it on the ground it is immaterial.

Mr. Tyler: I offer to prove by this witness that the subject of the violence at the Missouri, Gordon and Gernes plants before March 18, 1937, was one of almost continual conversation by the employees of the Donnelly Garment Company plant, and the Donnelly Garment Sales Company, and that the condition of the employees' minds at that plant was one almost bordering on hysteria and continued to increase in intensity as the strikes went on at the Gordon, Gernes and Missouri plants, and that that was one of the main causes of their employing attorneys,

and later on was one of the impelling reasons for them to organize their own labor union.

Mr. Leary: I will object to the offer on the same grounds.

Trial Examiner Batten: The offer is refused.

Mr. Langsdale: The International Ladies' Garment [fol. 2502] Workers' Union objects to the offer upon the ground that it includes, a part of it, to permit this witness to pass upon the mental attitude of other employees, and he has shown no knowledge, laid no foundation to show that he is capable of passing on the mental attitude of those employees.

Mr. Tyler: The record shows that this witness was employed at the plant; that his duties caused him to circulate about the plant, and I submit that any employee in such circumstances is competent to tell what the subjects of discussion were which were uppermost, and what the general attitude of employees was.

Trial Examiner Batten: Well, of course, I assume—I don't know—I wasn't [here], but I assume that probably there was so much talk in the plant that it even interfered with production. In fact, I have never seen a case yet where two unions, or one union, is conducting an intensive organizational campaign that it doesn't affect production in the plant. I mean, it just goes without saying that it is a part of it. You can't separate it, so I don't suppose there is any argument but what in this plant and all the rest of the plants, if it was all material to this hearing, the production was reduced.

Now, my point on this is this: That if the respondent, or any of its officers formed this union or assisted in forming it, or after it was formed they sponsored it or in [fol. 2503] any way assisted it, even if you were to prove that all the 1,350 employees were ready to shoot the next International Ladies' Garment Workers' Union member which they met, it still wouldn't detract one ounce from the fact that the respondent had either formed, sponsored or dominated the union, and even though you were to definitely prove that and permit it on the record, if the Board hasn't proved that this union was either formed, sponsored or is now dominated by this company, the respondent is not guilty of an unfair labor practice, irrespective of what the employees do, because they can

do whatever they please, I mean, within reasonable limits, and I thought I ought to make that statement just in explanation of my ruling.

Mr. Tyler: If the Examiner please, I intend to make no point as to reduction of production by these difficulties. I do say that there is no more important fact, and no fact approaching in importance the fact of what caused the employees of this company to form their own union. The Board is claiming that it was domination or fear or bribery, or some such influence by the employer.

I submit that the employees asserting that they formed the [plant] of their own free will, will, in establishing that fact, have the right to refer to the causes which influenced them in making that choice, and undertake to show by this witness that one of the causes was not the employer [fol. 2504] domination, but was fear and dislike of what the International was doing in its campaign to organize garment workers in Kansas City.

I take it I have an exception to your Honor's ruling without—

Trial Examiner Batten: (interrupting) Well, of course, you have an automatic exception.

Mr. Stottle: And, Mr. Examiner, you will recall that Mr. Ingraham asked similar questions as to violence down at the Gordon and Gernes plant, and whether it increased, and your Honor sustained the objection to those questions. Our position also is that that would show a motive or a reason for the formation of this union, and would tend to show that it was not company domination.

Trial Examiner Batten: Well, you may have an objection and I will make the same ruling, Mr. Stottle.

Mr. Stottle: Mr. Ingraham didn't make an offer of proof. When he comes back, I will ask him if he desires to enter it, or let the question go.

Trial Examiner: Let him decide when he comes back, and I will determine it, and I would make the same ruling, and I would say the same to the respondent. It isn't a question of whether these people had a motive to organize the union. The only question is, did the respondent have anything to do with it, and if they didn't, they can have any motive they please.

* * * * * *

[fol. 2506] Mr. Shepard: Respondent makes the same offer of proof, and takes exception to your ruling.

* * * * * *

By Mr. Tyler:

Q. Mr. Atherton, I direct your attention to your testimony about the first time you and the other employees went to see attorneys. At the time of that visit had you been authorized or directed by the Loyalty League to go and see attorneys, or was it merely at the informal suggestion of a number of employees?

A. It was the suggestion of a number of employees as employees.

Q. Did any officer of the company, of the Donnelly Garment Company or the Donnelly Garment Sales Company, have anything to do with that previous discussion that led up to your going to see attorneys?

A. They did not.

Q. At that conference was anything discussed with the attorneys other than whom you represented, how the work was to be paid for, and whether you could get an injunction, and whether an injunction would do the work you wanted? A. That was all.

Q. Was the possibility of forming a labor union mentioned at all at any time in that meeting? A. It was not.

[fol. 2507] Q. What events brought about the formation of the Donnelly Garment Workers' Union, Mr. Atherton?

A. At a conference which we had with you, Mr. Tyler, some time after the 12th of April, at which time notice appears in the papers that the Wagner Act had been declared constitutional, you informed us that you thought if we would organize our own independent union you would be much better enabled to give us the protection we desired. To the best of my knowledge, it was the declaration of the constitutionality of the Wagner Act that was the most compelling motive in causing us to decide to organize our own union.

Q. Did the report in the paper of Sylvia Hull's purported planned trip to Atlantic City have anything to do with it? A. It did.

Q. Was there a hope or desire on the part of the employees that they might in some way better their conditions that had anything to do with the formation of the union? A. There was.

Q. When was the first time that the possible formation of a union was ever suggested, as nearly as you can fix it from your own memory?

A. Some time between the 12th of April, and I would say, the 20th of April.

Q. Have you in your direct testimony told all you can remember of what happened at the meeting of April 27, [fol. 2508] when the union was formed?

A. I think, in substance I have.

Q. Isn't it a fact that a number of people got up and asked questions or made inquiries during the course of that meeting? A. That is true.

Q. Can you remember at this time the names of any of those people?

Trial Examiner Batten: Do you have copies of those minutes of that meeting, here?

Mr. Tyler: If the Examiner please, it is not the contention of the intervener that those minutes cover everything that was said or done at that meeting.

Trial Examiner Batten: I understand that, Mr. Tyler. I just wondered if they were here?

(Thereupon the minutes referred to, Board's exhibits Nos. 8 and 9, were handed to the Examiner.)

Trial Examiner Batten: Go ahead, Mr. Tyler.

By Mr. Tyler:

Q. Did you ever know of anyone down there at the plant, any employee, complaining, either secretly, openly, or in any other way, about being coerced or that they didn't have a chance to express their true feelings at that meeting? A. I did not.

Q. Did you ever hear of any employee down there making that complaint about any meeting that the Donnelly [fol. 2509] Garment Workers' Union ever had?

A. No. It was the practice at all meetings which I attended that any member of the union was given the

privilege, and many times urged, to get up and say anything they wanted to say.

Q. Have you ever heard whoever was speaking at that meeting, whether it was Miss Todd, myself, or somebody else, urge those present to follow their own wishes in what they did and to pay no attention to what Mrs. Reed might want, or what Mr. Baty might want, or what Mr. Dubinsky might want, or what Mr. Perlstein might want? Have you ever heard that urged? A. I have.

Q. More than once? A. Many times.

Q. Have you ever heard anyone at any of those meetings urge the employees to do such and such a thing because Mrs. Reed wanted it done? A. I have not.

Q. Mr. Atherton, what, if anything, was done in preparation by the committee of the union for determining what wages they would ask in the wage agreement?

A. The company was asked to give certain data as to wages and salaries paid different classifications of employees. And those were furnished to us.

They were discussed at much length, living conditions, [fol. 2510] cost of living—By that I mean the cost of housing, food, clothing, and so on. All of those things were discussed between us as to arriving at what demands we would make in the way of minimum wages.

Q. Did you make any investigation of what wages were being paid in other garment plants in this locality?

A. We did, to a certain extent, inasmuch as we received information from individuals as to what they were getting, and we had been told what wages were being paid under the I. L. G. W. U. contracts in other shops in Kansas City.

Q. I believe you personally got a raise in wages since the contract was executed between the union and the company, did you not? A. I have.

Q. Did you ever have a raise in wages before the contract was executed? A. I have.

Q. Do you know of other persons who have gotten raises in wages since the contract was executed? A. Yes.

Q. Many of them?

A. I have heard of quite a good many.

Q. Do you know of employees or groups of employees who got raised by virtue of the agreements in that contract? A. I do.

[fol. 2511] Q. Just tell the Examiner what things the employees gained by virtue of that contract that they didn't have before the contract.

A. They were guaranteed a minimum wage, where theretofore there had never been any minimum guarantee in existence for the employees.

They gained the right of collective bargaining with their employer.

They gained the agreement of the company to continue in effect for the period of the contract the benefits of accident and health insurance, group life insurance, hospitalization, where before that time there was no guarantee that the company would continue that in operation. They had the privilege, if they so desired, of discontinuing it without any notice.

In the supplemental agreement they gained recognition of five holidays, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day—that all employees should be paid for those holidays, whereas, before that, the company had the privilege of deducting from their wages for time given for those holidays.

They gained the right to—the continuation of the right to use the main entrance to the building and the passenger elevator for their entrance and exit of the building, which they had had theretofore, but it wasn't guaranteed in any way.

[fol. 2512] Q. Were wages in any classification raised?

A. Wages were raised in the cutting department, spreading, in the dividing department; minimum wages were raised in all piece work departments. A great many operators were making as much or more than the minimum guarantee, but if the work was such that they couldn't make that they would be guaranteed that, anyway. A number of miscellaneous employees were guaranteed a minimum, which had never been established before, and all beginner operators, or apprentices, or beginner employees in any department of the company, were guaranteed a salary of $16.50 a week. Also, the employees were guaranteed that a classification of beginners should not extend over a period of 12 consecutive weeks, whereas,

before, if the company so desired, they could continue an employee as an apprentice for an indefinite length of time.

The same benefits from increased minimums were accrued to the hand ironers, folders, as well as the operators, and the mechanical department.

The wages of some of the mechanics were raised. Mechanical helpers and apprentices were benefitted by a raise in salary, and, as I previously testified the operators or any other piece work employee would have the right to be promoted to any time work position which might be open, and employees were guaranteed overtime pay for all time in excess of 40 hours. Before, they did not have that guarantee.

[fol. 2513] Q. Was there any change about holidays?

A. Yes. I mentioned that.

Q. Was there any change about vacations?

A. Yes. The piece work employees were guaranteed a week's vacation after 6 months' service with pay and 2 weeks' after 2 years' service, with pay; whereas, heretofore, they had not been given the paid vacation, with the exception of some piece work operators who were given a week's paid vacation each year. They gained 2 weeks instead of 1.

Q. Well, Mr. Atherton, I want to direct your attention to the conference with Mrs. Reed at which the working agreement was signed. I believe you stated in your direct examination that the employees demanded that all employees of the companies be members of the union.

Isn't it a fact that what they demanded was that all employees under the rank of those having the right to hire, fire, discharge and discipline, only, be members of the union?

A. I did. When I said "employees", I meant any of those under the rank of those with authority to hire, fire or discipline.

Trial Examiner Batten: What was the date of that meeting?

Mr. Langsdale: May 27th.

Mr. Tyler: May 27th.

By Mr. Tyler:

Q. And at that meeting, is it not a fact that Mrs. [fol. 2514] Reed said "I want all my people to be free to come to me directly", and that a committee of the union, or some one for them, said "They have the right under the Wagner Act. All we want is that they shall also have the right to proceed with complaints through union representatives, if they choose."

Didn't that happen? A. That is right.

Q. You were a member of the first committee elected to represent the union, were you not, Mr. Atherton?

A. I was.

Q. And how long did you remain a member of that committee? A. One year.

Q. During the time of your service on that committee, did the committee handle any complaints of employees who wished some change made in their situation with the company? A. They did.

Q. About how many did it handle?

Mr. Langsdale: We have the record of it here, haven't we?

A. To the best of my recollection, there were probably several hundred complaints.

By Mr. Tyler:

Q. Can you remember any particular ones, yourself?

A. Yes.

[fol. 2515] Q. Name some of them?

A. One particular case that a complaint was made to me, personally, as a member of the committee, by an employee in the shipping department, as to pay for their overtime work. They had been taking time off for their overtime work in that department, and certain employees in that department wanted to be paid overtime for that work, instead of taking the time off. I was asked to [that] that up with the union committee, and get some settlement on the matter for them.

Q. What was done?

A. It was discussed in a meeting of the committee, and taken up with the management and settlement was finally made that certain employees in that department were to be paid overtime for their work when they did work overtime.

Q. Do you remember any other complaint?

A. There was another complaint that was brought by one of the operators who, incidentally, was a member of the union committee, as to piece work rates in her section.

Q. Any others?

A. There were other complaints from employees who wanted to be transferred from one department to the other.

Mr. Tyler: May I have the Board's list of exhibits, which was a list of complaints brought in by Miss Todd?

* * * * * * *

[fol. 2516] By Mr. Tyler:

Q. I direct your attention to the Intervener's Exhibit 15-BB, and subsequent numbers, and ask you if that calls to your mind any other complaints you have not so far recalled.

A. This Exhibit 15-AA is the one I had in mind when I said that there were complaints of employees that wanted to transfer to another department. This is one concerning Mr. Stobb, in his request to be transferred to the cutting room. Also, Mr. James Van Camp, his request to be transferred to the cutting room.

Exhibit 15-X, recalls another one to my mind. Some employees, I can't recall their names, were objecting because they had not been given the vacations with pay as stipulated in the contract, because of poor attendance record. In our contract, we stipulated that those with irregular attendance records should be given this 2 weeks' vacation with pay. These employees were complaining that they came under that classification.

* * * * * * *

[fol. 2517] Trial Examiner Batten: Well, of course, I don't see any particular value to just rehearsing these that are in writing.

Mr. Tyler: Well, I haven't asked him to mention any unless he actually remembers them.

A. I remember this request of Morton Griggs, to be placed on the permanent employees' list. That was taken up with the management and settled satisfactorily.

I would like to state, Mr. Tyler, that there were a great many complaints presented to the union, presented directly to Miss Todd, as chairman of the union, it having been previously agreed by the members of the executive committee of the union that Miss Todd could so handle these complaints, if she saw fit, without taking them up with other members of the executive committee. So a great many of the complaints were handled by her as chair-
[fol. 2518] man of the executive committee of the union.

By Mr. Tyler: Do you know whether there were complaints handled by the committee verbally, without any written record being made of them at all?

A. There were a great many of them.

Q. Mr. Atherton, do the cafeteria employees belong to the union? A. They do.

Q. Why?

A. At the meeting of April 27th, 1937, the employees of the cafeteria were present, and —

By Mr. Langsdale:

Q. Did you stay at that meeting?

A. Yes, and got up and asked, after the union was organized, if they could become members of the Donnelly Garment Workers' Union, stating that while they were not employees of the Donnelly Garment Company, or the Donnelly Garment Sales Company, they felt that if there were no Donnelly Garment Company or Donnelly Garment Sales Company they would have no positions, or a job, and if there were no objections on the part of the members of the Donnelly Garment Workers' Union, they would like to join that union.

By Mr. Tyler:

Q. Do the elevator boys that operate the elevators in the building belong to the union?

A. They do not.

Q. How often does the union hold meetings, Mr. Atherton?

[fol. 2519] A. They have a regular meeting once a month.

Q. Well, do they hold meetings that often?

A. They do.

Q. About how often did the committee of chairmen meet while you were a member of it?

A. At least twice a month.

Q. Is the Nelly Don Loyalty League still in existence, Mr. Atherton? A. It is.

Q. Do you know of any connection between it and the Donnelly Garment Workers' Union? A. I do not.

Q. Do you remember any discussion of the committee of [chairman] as to whether it would sufficiently protect the interests of the employees to have Rose Todd check on the fixing of piece work prices? A. I do.

Q. What was the conclusion reached on that subject?

A. Inasmuch as Miss Todd had formerly worked in the pricing department, and was familiar with how those piece work rates were arrived at, and as she had been a former operator, familiar with the sewing section, with the work of the operators, we felt that the interest of the members of the union and of the committee would be satisfactorily served to allow her to check those rates.

[fol. 2520] Q. In taking part in the formation of this union personally, were you influenced by any fear or coercion or pressure brought by the management or any representative of the management of either company?

A. I was not.

Q. Whose interests did you represent when you were a member of the committee?

A. I represented the members of the Donnelly Garment Workers' Union.

Q. Did you ever see Mrs. Reed or Mr. Baty or Mrs. Reeves or Mrs. Hyde, Mr. Keyes, or Mrs. Spillsbury, or any officers of either company present at any meeting of the Donnelly Garment Workers' Union?

A. I never saw them at any meeting.

Q. Or at any meeting of the committee of [chairman] of the Donnelly Garment Workers' Union?

A. I did not.

Q. Do you know of occasions when employees would go to meetings after working hours wearing their work aprons and then after the close of the meeting go back and change their aprons?

A. I do. I saw them at meetings in their aprons after working hours.

Q. Can you estimate the amount of delay it would take to get them to a meeting after work hours if all of them [fol. 2521] changed their work aprons to their street clothes? A. Oh, anywhere from 15 minutes to an hour.

* * * * * *

[fol. 2523] Q. Was there any particular incident that you know of that brought about the visit of the employees to Chief Higgins of the police force?

A. Yes; the rumored threats that we would be next on the list—

Trial Examiner Batten: Now, just a moment. I think that is covered entirely by the offer of proof that I have asked for, Mr. Tyler.

Mr. Tyler: Very well.

Trial Examiner Batten: I mean, in those paragraphs which Mr. Langsdale has asked to have stricken, as I recall it, those matters are covered.

Mr. Tyler: Your Honor rules this witness cannot testify as to the visit of the employees to Chief Higgins and what it was for?

Trial Examiner Batten: I have merely said, when I receive those offers of proof, which includes this matter, I will then determine how much, if any, of that we will take [fol. 2524] testimony upon.

Mr. Tyler: Very well.

Mr. Langsdale: The record shows that that visit was about April 2.

Trial Examiner Batten: The record doesn't need to show anything about it until I get the offer of proof.

Mr. Langsdale: The point is, I want to put in an objection and—

Trial Examiner Batten (Interrupting): The record doesn't need to show that now, because I have asked Mr. Tyler not to go into that until I get the offer of proof. The offer of proof will show it all.

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[fol. 2525] Q. Do you have any knowledge of any officer of either company, or representative of the management of either company, instructing or hinting to an employee that he or she had better join the Donnelly Garment Workers' Union?

A. No.

Q. Do you have any knowledge of any such person contributing support to the Donnelly Garment Workers' Union in any way or at any time?

A. I have not.

* * * * * *

[fol. 2526] By Mr. Tyler:

Q. Was there a meeting about the last of March or the first of April for the purpose of raising money to pay the legal expenses with respect to advice and investigations that were brought up?

A. There was.

Q. Did you attend it?

A. I did.

Q. About what was the date of it, as near as you can fix it?

A. It was between the 27th of March and the 5th of April.

Q. Where was it held?

A. On the second floor of the Corrigan Building.

Q. Who arranged for that meeting, for the use of the space? Do you know?

A. I did.

Q. In what manner?

A. I asked Mr. Appleby, who was superintendent of the Corrigan Building for Murray & Company, if we might use that floor that evening for a meeting of the employees.

Q. Tell us everything you remember that happened at that meeting.

A. Miss Todd opened the meeting and told the em- [fol. 2527] ployees that we had consulted attorneys to see what could be done in the way of getting relief and protection for the employees.

. . . . . .

By Trial Examiner Batten:

Q. Tell us what occurred at that meeting, Mr. Atherton.

A. Miss Todd told the employees the purpose of the meeting, that we had called on attorneys and asked them [fol. 2528] to represent us and that they had demanded the retainer fee before they could do anything, and that we had assured them that that retainer fee would be paid; that we had paid it, borrowed the money to pay it, and that we had to repay that loan.

She then asked me to talk to that gathering. As near as I can recall, I stated the amount of the retainer fee, $500, and asked for suggestions from the meeting as to how we could raise the money to get this $500.

Different persons suggested one plan and another, and finally one plan of donation was suggested, which was put in the form of a motion, and was carried, that each employee donate 50 cents toward repaying this $500.

I recall I made some further remarks that I thought 50 cents was a very small contribution to ask from any of them; that, if necessary, each employee should be willing to contribute as much as $50; that to me, personally, it was worth that much.

After the motion was carried that each employee would donate 50 cents there were some further general remarks, and the meeting was adjourned.

Mr. Tyler: Were contributions under that plan made on that day or during the days following from time to time?

A. Some of them were made that day. It was stated that they could be paid that day or the next pay day that the employees had, and that provision would be made for [fol. 2529] a place to pay their contributions.

* * * * * *

By Mr. Leary:

Q. At the March 18 meeting who read the letter that the union had sent to Mrs. Reed?

A. I don't recall definitely who read that letter. Mrs. Reed gave it to someone and asked them to read it.

Q. Do you know whether she gave it to you or not?

A. She did not.

Q. You haven't any idea whom she gave it to?

A. No. There were a number of people in the front of the room at that meeting, and it was handed to someone who was close to where she was standing and she asked them to read it.

Q. On what floor or in what department was Mary Sprofera employed?

A. She was employed in the order filling department on the fourth floor.

Q. Where is the maintenance department?

A. The maintenance department has no specific location.

Q. Don't you have headquarters?

A. No.

Q. Where is your locker?

A. On the first floor.

Q. Where do you keep your tools?

[fol. 2530] A. In my locker.

Q. Where is this call-board for repair work?

A. On the eighth floor.

* * * * * *

Q. Who is it that tells you what work to do?

A. Mr. Baty.

Q. He gives you all of your instructions?

A. He does.

[fol. 2531] Q. What kind of work do you do in the maintenance department?

A. I do some of the actual maintenance myself, and I am clerk of that department.

Q. Where do you perform your duties as clerk?

A. Wherever I may be. I have no desk or specific location in the plant. I am on all floors of the plant at some time each day.

Q. You do not have any work bench at all?

A. We have a work bench on the first floor where we do sawing, planing, or anything of that type.

Q. Where was it in April, 1937?

A. On the eighth floor.

Q. Where was it in February, 1935?

A. On the eighth floor.

Q. Did you designate those as the maintenance department headquarters?

A. In those years, yes.

Q. Now, since you have moved it down on the first floor, you do not mention it as the maintenance headquarters; is that it?

A. No.

Q. Do you know the reason for such a change?

A. No, except if I was busy in some other part of the building I couldn't be on the eighth floor, so my instructions are sent to me by telephone and by notice wherever I [fol. 2532] may be or at whatever work I may be doing anywhere in the building.

Q. When did you first go to work in the maintenance department?

A. When I started in the employ of the company.

Q. I asked you, when?

A. November 9, 1933.

Q. Who was in charge of the maintenance department then?

A. Mrs. Reeves.

Q. Was anyone else in charge of it?

A. No.

Q. You had no head mechanic, or supervising mechanic, as you might call him?

A. None that I ever knew of.

Q. Did Mrs. Reeves give you all of your instructions as a maintenance man while she was still production manager and before she was replaced by Mr. Baty?

A. Specific instructions, yes. On general maintenance, any employee of the plant could turn in a request for certain things to be done of any minor nature that came through the call-board that was caged on the eighth floor and turned over to anybody in the maintenance department to take care of.

Q. Isn't it true, Mr. Witness, there are occasions when some problem arises in the maintenance department that requires the assistance of someone who is perhaps better qualified than the average maintenance man or mechanic [fol. 2533] to solve the problem?

A. If that is so those are taken up with Mr. Baty.

Q. Is it your answer that such occasions do arise?

A. They probably do. If so, he gives me instructions on it.

Q. Isn't the work in the maintenance department of a technical nature?

A. Not necessarily.

By Trial Examiner Batten:

Q. Just what does the maintenance department cover, Mr. Atherton?

A. Minor repairs, remodeling, and moving of departments or objects in the building occupied by the Donnelly Garment Company.

Q. All of the maintenance of the equipment, machinery; is that it?

A. Not of sewing machines. That is taken care of by the mechanical department.

Q. Then, the maintenance department is separate from the mechanical department; is that it?

A. It is.

Q. Does the maintenance department have to do with the upkeep of the building?

A. It does.

Q. Like the janitors?

A. No, we don't have anything to do with the janitors.

Q. That is a separate section; is that it?

[fol. 2534] A. That is right.

By Mr. Leary:

Q. Do you have carpenters, plumbers, [millrights], and so forth, in your department?

A. We have carpenters and electricians and laborers.

Q. How many are in the maintenance department now?

A. It varies. At this time I would say there are about five.

Q. Who are they? A. You want their names?

Q. Yes. A. Ben Charde—

Q. What does he do.

A. Electrician. Lynn Owen, carpenter. Joe DeCavelle, laborer. Roy Broman, painter, Robert Siney, laborer. William Guerant, laborer.

That is all I know of at the present time.

[fol. 2535] By Mr. Leary:

Q. What are your duties as clerk of the maintenance department?

A. To transmit instructions to members of the maintenance department, and to, if necessary, show them how to do any particular work.

Q. Well, are you qualified as a general maintenance man, as a painter, a carpenter, and so forth, and electrician?

A. My employer thinks so, I guess, or I wouldn't be doing it.

Q. Well, I asked you if you are.

A. I think I am, the work that is necessary.

Q. Did you have those qualifications when you came to work with the company in November, 1933?

A. I had some of them.

Q. Now, is it your testimony that Mr. Baty gives all the instructions to the maintenance department, to you?

A. Not always.

Q. Well, would you say he gives most of the instructions to you?

A. If an employee should ask Mr. Baty to have something done in their department, Mr. Baty might O. K. a slip and hand it to them, and they would bring that slip to me, or to some other member of the maintenance department, and give it to us.

Mr. Leary: Read the question, please.

• • • • • •

By Mr. Leary:

Q. Would you say he gives most of the instructions to you?

A. In so far as I know.

Q. And it is the exception, rather than the rule, when he gives them to any other person in the department than yourself?

A. No. That happens quite often.

Q. Yes, but I say, it is the exception rather than the rule?

A. Well, I don't know that I know what you mean by "rule". If that was in any order that was supposed to be in existence, no.

Q. Well, what records do you keep, as clerk of the maintenance department?

A. I keep a memorandum notebook of the work that is to be done, and when the work is finished, I check it off.

Q. How do you know when the work is finished?

A. By going to see whether it is or not.

Q. Mr. Baty doesn't tell you, does he?

A. Not always.

Q. You tell Mr. Baty, as a matter of fact, when the work is finished, do you not?

A. Not always. If there is any doubt in my mind, I ask Mr. Baty to come and look at it.

[fol. 2537] Q. What is the purpose of your keeping the notebook?

A. So that I will know when we have completed the work which we have been asked to do.

Q. Why is it necessary for you to know that?

A. Well, I don't claim to be able to remember everything that I am asked to do. I have to keep a memoranda of it because sometimes we have numerous requests at the same time, or about the same time, for certain things to be done, and to be sure that I don't forget them, I write them down in my notebook.

Q. The point is, that when you are asked to do anything, you are held responsible for having that work done, are you not?

A. As much as any employee is when they are designated any work to be done.

Mr. Leary: Read the question, please.

(Whereupon, the last question was read by the reporter.)

By Mr. Leary:

Q. Now, is that the true situation?

A. No, unless I am asked personally to do the work, I am not held responsible for it.

Q. Do you keep any other work records of that department? A. I do not.

Q. What portion of your time do you spend keeping those records?

A. Whatever time is necessary to write them down.

[fol. 2538] Q. I asked you what portion of your time you spend.

A. Well, I couldn't say. It would all depend on what I have been given to do.

Q. Well, considering all contingencies, what portion do you spend?

A. As previously stated, I cannot tell you definitely. Whatever time is necessary to write down the memoranda.

Q. Would you say you spend half of your time over a period of a month doing that?

A. Certainly not.

Q. Would you say a quarter of the time? A. No.

Q. What amount would you say?

A. Just a very small time; just long enough to write down a note.

Q. Then when you are not doing that, namely, keeping records what do you do?

A. I work in the maintenance work.

Q. What is your particular line?

A. Whatever is necessary to be done, I work on.

Q. Well, are you primarily a carpenter or an electrician, or what? A. I am not.

Q. Are you primarily anything?

A. I assist any of the fellows in the maintenance de-

[fol. 2539] partment that need any help on anything. If it is necessary to move a bin, I help them move it, if they need help or anything of that kind.

Q. Well, you are not in the same category as an apprentice helper is to these electricians and carpenters, are you? A. No, I wouldn't say so.

Q. What is your wage there? A. Beg pardon?

Q. What is your wage? A. $40 a week.

Q. What is the wage of the electricians?

A. I don't know.

Q. What is the wage of the carpenters?

A. I don't know.

Q. What is the wage of the laborers in the department? A. I don't know.

Q. Do you know the wages of any persons in the department?

A. In the maintenance department?

Q. Yes. A. I do not.

Q. Have you ever known their wages?

A. I have not.

Q. Why was it that you testified in response to a question on direct examination that you knew of raises that were obtained for persons in the maintenance department?

[fol. 2540] A. I don't believe I so testified.

Q. Where were you when Mary Sprofera asked you to sign this March 2, 1937, petition?

A. I believe I was on the eighth floor.

Q. What were you doing up there?

A. Pursuing my daily work.

Q. Did Mary Sprofera have any business in the maintenance department on the eighth floor?

A. She might have.

Q. Did she on this occasion? A. I don't know.

Q. How do you know that the company had nothing to do with calling the meeting of March 18th?

A. Because I was partly responsible for that meeting being called.

Q. Do you know who was entirely responsible?

A. Miss Todd and myself were entirely responsible.

Q. You are positive on that? A. Absolutely.

Q. To whom, besides Miss Todd, had you spoken concerning this March 18th meeting prior to the time it was held?

A. I don't recall anybody, concerning the actual holding of the meeting.

Q. Well, had you talked to persons other than Miss Todd about related matters prior to the meeting?

[fol. 2541] A. It was a matter of general discussion among all the employees of the plant.

Q. Did you attend any meeting the night before?

A. Miss Todd and I had a meeting the night before.

Q. Who was present at the meeting?

A. Miss Todd and myself.

Q. Where was that meeting held?

A. At her—it was held at her apartment.

Q. No one else was present? A. There were not.

Q. Was it then that you decided to hold the March 18th meeting? A. That is right.

Q. How was notice given to the employees that such a meeting would be held?

A. I didn't give the notice of the meeting. Miss Todd said she would take care of that. As to what manner she handled it, all I know is a matter of hearsay, or testimony that I have heard.

Q. You haven't any idea how the people were advised of that meeting?

A. Well, I understand they were advised by telephone.

Q. For the March 18th meeting, too? A. Yes.

Q. Are you confusing that with April 27th meeting?

[fol. 2542] A. I am not.

* * * * * *

[fol. 2543] Q. What was the basis of the statement that you, Todd and Ormsby made to Tyler that you represented all the employees?

A. It was a matter of which we took the responsibility ourselves for so doing.

Q. You were self-appointed ambassadors of all employees; is that it?

A. That is right.

Q. And you felt qualified to bind the employees about this certain loan that was made?

A. I had nothing to do with making any loan.

Q. Now, was the situation this, as of the time you concluded your first conference with Tyler, namely, that he had demanded $500 before he opened a book or gave

any opinion and that Miss Todd said she could get the $500. Is that it? A. That is right.

Q. Now, did the committee make any—strike that. Did the committee have any conversation as to how Miss Todd should proceed to get the loan?

A. Not so far as I know.

Q. Did Miss Todd ever mention the subject to you after the time you left the law office?

A. Until when?

Q. Until at this minute.

[fol. 2544] A. Yes, she told me after she negotiated the loan.

Q. Between the time you left the law office and until the time she notified you that she had negotiated the loan, did she ever mention the subject to you at all?

A. She did not.

Q. Did she tell you, at any time, how she was going to get the money? A. No.

Q. While you were in the law office, did she ask your opinion as to how she could get it?

A. She did not.

Q. Now, in your own words, what was the decision of the three committeemen as to the next step to be taken when you left the law office?

A. It was to notify the employees as to what steps we had taken, and as to what was necessary in the way of raising the money.

Q. Well, I want you to go into detail on that, Mr. Witness. You were to notify them what had taken place?

A. That we had called on attorneys and had asked them to represent us.

Q. And that you had made what decision?

A. That they had asked for a retainer's fee.

Q. Of how much?

A. $500, and that we would ask the employees as to [fol. 2545] how they wanted to raise this $500.

Q. Is that all?

A. Substantially. All that I can remember right now.

Q. Do you know, then, what the other $500 was borrowed for?

A. I do not, except there hadn't been any sum talked of except the $500. I didn't know what sum we borrowed until after I was told.

Q. You had not obligated yourself to pay any other lawyers any money, had you? A. We had not.

Q. Your entire transactions involved Mr. Tyler alone, isn't that correct? A. That is right.

Q. And the total figure was $500?

A. That is the amount he named.

Q. You had no other contemplated expenses at the time the loan was made, had you?

A. Except that we knew that if we did have a meeting of employees we would be out for chair rental and whatever other incidental expenses there were to that meeting.

Q. Now, the chairs rented for about $12 a meeting, didn't they?

A. It depended on how many chairs.

Q. Well, I want to know what you contemplated doing with the other $500, other than the amount that you ex-
[fol. 2546] pected to pay for chair rentals.

A. I said I didn't know anything about the other $500 until after it had been borrowed.

Q. Did you rent chairs for this meeting that you mentioned? A. We did.

Q. From whom did you rent them?

A. The Kansas City Chair Company.

Q. Did you order those chairs? A. I did not.

Q. Who did?

A. As far as I know, Miss Todd ordered them.

Q. Well, you are clear, are you not, on the meeting I am talking about?

A. I am, the March 18th meeting.

Q. No, I am talking about the meeting between March 27th and April 5th.

A. The meeting in which the contribution was taken up? Yes, there were no chairs ordered for that meeting. The employees stood up at that meeting.

Trial Examiner Batten: You haven't been talking all the time about this—

The Witness (interrupting): I understand he was talking about the March 18th meeting.

Trial Examiner Batten: Have you?

Mr. Leary: Pardon?

[fol. 2547] Trial Examiner Batten: You haven't been talking all the time about this meeting between the end of March and the 5th of April, have you?

Mr. Leary: Well, I certainly have, and I believe the witness' answers in the record will reflect that we were talking about the extra $500, and what they contemplated doing with it.

Trial Examiner Batten: Yes.

Mr. Leary: I think the record bears my point.

Trial Examiner Batten: What I am talking about is, you have talked about meetings in several questions for the last several minutes, 10 minutes, maybe. Now, when did you change from the meeting of the 18th to this other meeting?

Mr. Leary: Well, I have been going along in chronological order, and when I left the March 18th meeting and then took up the conversation with Mr. Tyler, I thereafter referred to the next meeting, which he alleges took place—

Trial Examiner Batten (interrupting): Well, it may show that in the record, but I certainly didn't get it.

By Mr. Leary:

Q. What, exactly, did Miss Todd say at this meeting between March 27th and April 5th concerning the loan?

A. To me?

Q. No, to the employees at the meeting?

A. I don't know that she said anything to them.

[fol. 2548] Q. Wasn't the purpose of the meeting to explain to the employees the $500 that Mr. Tyler had discussed with you? A. That is right.

Q. And also the loan from the bank?

A. There was nothing said to the employees about any loan from the bank.

Q. What did Miss Todd say at the meeting?

A. I couldn't give you her exact words now.

Q. I am not asking you for the exact words. I want to know substantially what she said at that meeting.

A. She told the employees that we three had consulted attorneys; that they asked us if we represented the employees, and we told them we did, and he said he would have to have a substantial retainer fee in the amount of $500 before he could undertake any work for us, and that it was necessary for us, as employees, to—we wanted them to represent us, to raise this retainer fee of $500.

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[fol. 2552] Trial Examiner Batten: Now, on the matter of Board's Exhibit 1-IIII, which is the objection and motion of the respondent and the intervener to the Board's offer, which is marked "Board's Exhibit 80", the objections are overruled and the motion to strike is denied, which means, Mr. Leary, that the NRA testimony which was in the offer will be accepted, and you will have one witness ready for presentation of her testimony, strictly limited to the point in your offer.

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[fol. 2555] By Mr. Leary:

Q. What was it that Rose Todd told at this meeting which took place some time between March 27 and April 5?

• • • • • •

A. She told the meeting of employees that Miss Ormsby, Miss Todd and myself had consulted the firm of attorneys of Gossett, Ellis, Dietrich and Tyler, and had asked them as to what we might be able to do in the way of getting protection; that it would be possible for us to get an injunction, and that Mr. Tyler had asked us if we represented all the employees, and we had told him that we did, and

he said well, if we didn't he would soon find out, and that if he undertook the work, it would be necessary that he have a retainer fee of $500.

Miss Todd asked the meeting for suggestions as to how to raise that $500. There were numerous plans offered. Finally, a motion was made from the floor that all employees donate 50 cents a piece.

Q. Who made that motion?

A. Eva Lieberman. That motion was seconded and carried.

Q. Do you remember anything else that was said or [fol. 2556] done at the meeting?

A. I don't recall anything else that she said, except that she told the meeting that I would like to make a few remarks about this donation.

Q. What did you say?

A. Well, I told the employees that I thought 50 cents apiece was a very reasonable sum for each of us to donate, for the purpose for which we wanted to use it in getting protection for ourselves, and protecting our jobs, and our right to go to and from work without molestation; that it would be worth $50 apiece to each of us.

Q. And who was designated to collect the money?

A. That, I do not know.

Q. Haven't you any idea what system was followed?

A. To the best of my recollection, different employees throughout the building were asked to collect the donation.

Q. Was that collecting done?

A. So far as I know. Some of the donations were paid after that meeting that evening.

Q. Who collected them then?

A. That, I don't know.

Q. Do you know to whom the money was turned over to?

A. The money was turned over to Miss Hartman after collections.

Q. Who collected the contribution from yourself?

[fol. 2557] A. I paid it to Kenneth Peck.

Q. Who was he?

A. He was in the mechanical department.

Q. And do you know how much money was collected at that time, approximately?

A. Approximately $575.

Q. And was that money paid Mr. Tyler?

A. $500 was paid Mr. Tyler.

Q. Out of that $575; is that it?

A. Mr. Tyler had been paid $500 from this loan, and this $500 that was taken up by donation, some of it wasn't paid, I understand, until the employees' next pay day, which may have been a week for some of them and two weeks for some of them, and at the time the entire amount was collected, that was repaid at the bank, the $500.

Q. Well, isn't it true, Mr. Witness, that your committee first went to see Mr. Tyler for the purpose of sounding out the possibilities of obtaining an injunction and to secure protection for yourselves?

A. Miss Ormsby, Miss Todd and myself consulted Mr. Tyler as to the possibility of getting an injunction, or as to what else we could do in the way of gaining protection.

Q. And Mr. Tyler, at some occasion before the April 27th meeting, told you that the matter of obtaining an injunction and of securing protection could be handled easier [fol. 2558] if the employees were grouped together in an organization; isn't that true?

A. That is true.

Q. And it was in furtherance of that idea of the injunction protection that the Donnelly Garment Workers' Union was formed; is that it?

A. That was partly the reason.

Q. Well, that was the reason Mr. Tyler gave you, wasn't it?

A. The reason he gave us was that we were entitled to do so under the Wagner Act, after it had been declared constitutional, and that as an organized group he would be enabled to give us, or secure for us, better protection.

[fol. 2559] Q. Do you know who took the minutes of the April 27th meeting?

A. As far as I know, Marjorie Green took the minutes of that meeting.

Q. You are sure of that?

A. Reasonably so.

Q. You were at that meeting, were you not?

A. I was.

Q. During the entire course of it?

A. I was.

Q. Were you on the nominating committee?

A. I was not.

Q. Had you ever seen the bylaws before Mr. Tyler read them?

A. Not in their entirety.

Q. How much of them?

A. Certain parts of them had been discussed with Miss Todd and myself.

Q. Had your bargaining committee made any study as to the weekly earnings of the various employees before you presented your first proposed contract to the company?

A. We had.

Q. I am referring now, Mr. Witness, to the first contract that was signed Board's exhibit No. 6, entitled Articles of Agreement. Do you understand to what I am referring?

A. The working agreement?

[fol. 2560] Q. I am referring to the Articles of Agreement.

A. The study of the wage schedules, and so on, was made after the working agreement was negotiated and before the supplemental agreement was signed.

Q. So, no study was made before Board's exhibit No. 6 was executed?

A. No intensive study was made.

Q. What study was made, if any?

A. There had been some discussion in committee meetings of the executive committee of the union as to what steps to take, what methods to use, in setting up a draft of the supplemental agreement or the wage agreement.

Q. I am referring alone to the Articles of Agreement, not the supplemental wage agreement, Mr. Witness.

A. That is what I said, there had been some discussion—

Q. (Interrupting) Is it your testimony there had been some discussion among the members of the executive committee before you executed Board's exhibit No. 6?

A. That is true.

Q. Was that the only discussion had?

A. We had discussed methods and ways—

Q. The only persons who took part in it were the executive committee members?

A. That is right. That is, before the working agreement or the articles of agreement were signed.

* * * * * *

[fol. 2563] By Mr. Leary:

Q. On the executive committee what department did you represent?

A. General employees.

Q. What do you mean by that?

A. Those not specifically designated in other departments by the executive chairmen.

Q. Who were in that category?

A. That took in the janitors and maids, maintenance, shipping department, order filling department, the basket boys, bundle boys, pick-up boys—employees of that nature.

* * * * * *

[fol. 2564] Q. Did you testify as to just where you were when Mary Sprofera presented to you the petition of March 2?

A. I did.

Q. Where were you?

A. On the eighth floor.

Q. Did you have a desk there?

A. I did not.

Q. About what time of day was it?

A. I don't remember.

Q. It was during working hours?

[fol. 2565] A. Yes.

* * * * * *

Q. You stated, with reference to the March 18 meeting, that you and Rose Todd were almost entirely responsible for that meeting, I believe.

A. I said we were entirely responsible for the meeting being called.

Q. You were entirely responsible for it?

A. That is right.

Q. Did you consult with Mrs. Reed about it?

A. We did not.

* * * * * *

[fol. 2566] By Mr. Langsdale:

Q. Was there any particular reason why you and Rose Todd were having these meetings at this time, prior to the formation of the union?

A. None, except we assumed that responsibility.

Q. Just the two of you?

A. That is right.

Q. When you went up to see the lawyers it was just you and Miss Todd and this other woman who determined it yourselves, I believe.

A. We determined to take that responsibility, yes.

Q. There had been no meeting of the employees to select you as a—

. . . . . .

[fol. 2567] By Mr. Langsdale:

Q. You had no meeting? You three just took it upon yourselves?

A. We had no meeting authorizing us to do so.

Q. You filed an affidavit in the three-judge hearing, did you not, signed by you, on the 12th day of October, 1937?

A. I don't remember.

. . . . . .

[fol. 2569] Q. Now, I am now referring to page 627, Volume 2, the transcript of the record in the case in the Supreme Court of the United States, October 10, 1937, No. 801, entitled "International Ladies' Garment Workers' Union", etc., "et al, Appellants, versus Donnelly Garment Company, Donnelly Garment Sales Company, Donnelly Garment Workers' Union", and so forth, "et al", an appeal from the District Court of the United States for the Western District of Missouri, filed in the Supreme Court of the United States on February 16, 1938, and on said page 627 is the record of an affidavit signed and sworn to by Hobart F. Atherton, dated "Kansas City, Missouri," on the 12th day of October, 1937, which was received in evidence and marked "Intervener's Exhibit 28", and was as follows: without reading the whole affidavit, I will ask you if you didn't make this statement in that affidavit:

[fol. 2570] "A committee of the employees was authorized at a meeting of the employees to see what could be done about protecting us from such threats, violence and intimidation. I was a member of that committee. We consulted attorneys and were advised that we would be entitled to the protection of an injunction issued by the court against such actions, and it was arranged that we would be ready to secure such injunction if needed."

Now, particularly referring to the language "a committee of the employees was authorized at a meeting of the employees to see what could be done about protecting us from such threats, violence and intimidation. I was a member of that committee." You made that statement and swore to it, did you not, on the 12th day of October, 1937?

A. I did, but I did not say that the meeting authorized us to consult attorneys.

Q. Well, I am just asking you if you made the statement that is in the affidavit? A. I did.

Q. And was it true at the time you made it?

A. To the best of my recollection.

* * * * * * *

[fol. 2579] By Mr. Langsdale:

Q. Now, you stated, in answer to both Mr. Ingraham's and Mr. Leary's questions, that there was a meeting held [fol. 2580] by the employees, at which it was suggested that each one pay 50 cents for raising the fund. You said that meeting occurred sometime between March 27 and April 5. Can't you be more definite about that date than that? A. I can't recall the exact date.

Q. Why do you say it was between those two dates?

A. Because it around the 27th of March that we consulted Mr. Tyler, when he asked for this retainer fee.

Q. How does April 5 come in?

A. I don't recall whether it was toward the end of the week or not, whether Saturday and Sunday intervened, or just what it was, and for that reason I can't be positive in my statement. It was between those two dates, to the best of my recollection.

Q. No record of any kind or character was kept of that meeting?

A. There was not, as far as I know.

* * * * * * *

[fol. 2589] By Mr. Ingraham:

Q. Mr. Atherton, after March 18, 1937, did you have many conversations with other employees of the Donnelly plant, with reference to taking some action to protect yourselves? A. I did.

Q. Was the matter of obtaining attorneys discussed?

A. No, it was just the general trend, was what we could do to protect ourselves. Everybody was asking everybody else as to what they thought we could do.

Q. Did many of the employees ask you personally, and Rose Todd, to see what could be done?

* * * * * * *

A. Yes, they did ask me to see what could be done.

Trial Examiner Batten: I think the testimony showed yesterday that there was plenty of conversation.

By Mr. Ingraham:

Q. Did the article that appeared in the paper on April 22d, wherein Sylvia Hull stated that she had been selected by the Donnelly employees to represent them at the International Convention, have anything to do with the forma-
[fol. 2590] tion of the Donnelly Garment Workers' Union?

A. It did.

Q. In what respect?

A. We all felt if any employee could—

* * * * * * *

By Trial Examiner Batten:

Q. Well, what do you mean by "we"?

A. Everyone with whom I talked or who talked to me concerning this article that appeared in the paper, felt that if any employee could attend a convention to represent the Donnelly Garment Workers without our permission, or any authorization, it was high time we did something to protect ourselves, so that we could designate our own representatives or delegates.

Q. Well, was there any reason why she couldn't go down there, if she wanted to?

A. As far as she herself, personally, was concerned, but she had no authorization by the employees to represent the Donnelly Garment Workers.

Q. Did she say she represented the majority of them?

A. She said she was going as a delegate of the Donnelly Garment Workers, to the best of my recollection.

Q. Well, as far as you know, that might be true, [fol. 2591] mightn't it? She might have represented some of them, mightn't she?

A. She might have, but not to my knowledge.

* * * * * * *

By Mr. Ingraham:

Q. I will hand you Board's Exhibit 18, which purports to be the minutes of a meeting of the Donnelly Garment Workers' Union on May 25, 1937, and I will ask you—strike that. I will ask you, first, if you were present at a meeting of the Donnelly Garment Workers' Union on May 25, 1937?

A. I attended every meeting of the Donnelly Garment Workers' Union during the entire year of 1937.

Q. Did you see, at any time, a stenographer by the name of Elsa Graham, present name is now Greenhaw, take any minutes of meetings?

A. I did not.

Q. I will hand you Board's Exhibit 18, which purports to be the minutes of a meeting of May 25, 1937, of the Donnelly Garment Workers' Union, and ask you if the minutes correctly state what took place at that meeting?

Mr. Langsdale: Didn't you go into that with him yesterday?

[fol. 2592] Mr. Ingraham: No, I didn't.

Trial Examiner Batten: No; Mr. Tyler did.

Mr. Ingraham: Did he?

Trial Examiner Batten: Yes, I just checked my notes.

Mr. Ingraham: Did he show him the exhibit?

Trial Examiner Batten: Yes, he did. He read the exhibit.

The Witness: I didn't read the exhibit through yesterday.

Trial Examiner Batten: You looked it over and—

Mr. Langsdale (interrupting): You spent enough time on it.

Trial Examiner Batten (continuing): And you testified that on no occasion, that a Donnelly Garment Workers' Union meeting was called by a Donnelly Loyalty League meeting, and the converse of that, that is, on no occasion was the Donnelly Loyalty League meeting ever held and a Donnelly Garment Workers' Union meeting held immediately thereafter, and that the minutes as shown by the Greenhaw testimony, that such meetings never occurred in which he was in attendance.

Mr. Ingraham: Well, I would like to have the witness read the minutes of the meeting very briefly. There are several matters I want to inquire about that are stated in the minutes.

(Whereupon, the minutes above referred to were [fol. 2593] handed by Mr. Ingraham to the witness for his reading of same.)

By Mr. Ingraham:

Q. Mr. Atherton, I will ask you to state whether or not at any meeting of the Donnelly Garment Workers' Union you made the statement that is contained in Board's Exhibit 18, "There seems to be a little misunderstanding as to why the Loyalty League needs this money, and a little later on I will explain that to you. We are going to have this dance on June 11 at the Pla-More under the auspices of the Donnelly Garment Workers' Union. As you all know, there are a lot of people on the outside who are very friendly to us, and we have been advised that it would be a good thing to give something that those friends can attend and show their appreciation, and give their support to that which they feel they want to."

Now, at any union meeting, did you ever make any remarks of that character, referring to the Loyalty League?

A. I made no remarks at any union meeting referring to the Loyalty League.

Q. Did you make any of the remarks that are contained in this exhibit attributed to you?

A. Remarks concerning the dance that was to be given at the Pla-More by the Donnelly Garment Workers' Union, I did make a statement similar to that at a union meeting.

Q. But you did not refer to a Loyalty League Dance?

A. I did not.

[fol. 2594] Q. Did you make the statement at the Loyalty League meeting which these minutes purport to cover, also, "So the Loyalty League had a meeting of representatives and were authorized by the representatives to retain legal counsel. We retained Mr. Tyler, as you all know. He came down here and talked to us. That debt, the bill of Mr. Tyler, is the only debt that the Loyalty League has not paid, and Mrs. Todd told you that isn't pressing. The bill amounts to approximately $500, as that is his retainer fee."

I won't read all of this with reference to that fee.

Did you make any such statement like that at any Loyalty League meeting?

A. I did not.

Q. Did you make any kind of a statement with reference to raising 25 cents a month at the Loyalty League meeting?

A. I did not.

[fol. 2595] There is mention made of a Sweepstakes or Derby in the meeting of the Loyalty League of May 25, 1937. Will you just state what is meant by the Sweepstakes?

A. The Nelly Don Athletic Association each year had a golf tournament, which ran for several months. At the end of the season, or in the fall, they had their final play-offs, and once or twice in the last several years they have had what they called a gold sweepstakes; that is, the As-

sociation, the Nelly Don Athletic Association, sold tickets which bore, each ticket, a name of a member of the Nelly Don Athletic Association, or that many tickets were numbered, according to the number of members of the Athletic Association, and if the ticket carried a number which corresponded to a number given a member of the Nelly Don Athletic Association the holder of that ticket was awarded a prize. If the number of that ticket corresponded to a member of the Nelly Don Athletic Association who was a player in the golf tournament, then for each match he would win, the holder of that ticket would win an additional prize. And that we called our golf sweepstakes or golf derby.

Q. Did that tournament take place in the fall of the year?

A. It did.

Q. Were arrangements ever made by anybody in the spring for that tournament?

A. Not to my knowledge.

Q. And the tournament and the activities were con-
[fol. 2596] ducted by the Athletic Association?

A. By the Nelly Don Athletic Association.

Q. Did you join the Donnelly Garment Workers' Union of your own free will? A. I did.

Q. Does the Donnelly Garment Workers' Union and its bargaining committee represent your free choice of representatives for the purpose of collective bargaining?

A. It does.

Q. Did any of the officers or executives of the Donnelly Garment Company or the Donnelly Garment Sales Company, or anyone representing the management, or anyone in a supervisory capacity, bring any pressure on you to influence you to join the Donnelly Garment Workers' Union or to continue membership therein?

A. They did not.

Q. Was the violence and intimidation of the employees at the Gernes, Gordon, and Missouri Garment factories by the International Ladies' Garment Workers' Union, and the threats they made against the Donnelly Company and its employees to do the same thing, one of the principal factors in causing you to join the Donnelly Garment Workers' Union or to assist in its organization?

Mr. Leary: We object to that on the basis that it is immaterial.

[fol. 2597] Trial Examiner Batten: Sustained.

Mr. Ingraham: In so far as you could observe, was the formation of the Donnelly Garment Workers' Union the free and voluntary action of the employees of said companies, without any coercion or influence on the part of the management?

Mr. Leary: I object to that as calling for a conclusion.

Trial Examiner Batten: I think he was one of the organizers. I think he is in a position to answer the question.

You may answer.

The Witness: May I hear the question again, please?

(Thereupon the last question was read by the reporter.)

A. It was.

* * * * * *

Recross-Examination.

* * * * * *

[fol. 2600] By Mr. Patten:

Q. Now, as to the meeting at which it was proposed that each employee contribute 50 cents, when, with reference to your visit to Mr. Tyler, was that meeting held? [fol. 2601] A. Within a few days following the meeting with Mr. Tyler.

Q. Was there ever a second meeting at which that matter was discussed and brought up?

A. A second meeting of the employees, you mean?

Q. Yes. A. Not to my recollection.

Q. Was the meeting held a few days after you were in Mr. Tyler's office for the first time a Loyalty League meeting? A. It was not.

Q. Do you remember attending a union meeting, a meeting of the Donnelly Garment Workers' Union, on May 25, 1937?

A. If that was our regular meeting date for May, I do. I wouldn't otherwise, without—

Q. (Interrupting) Do you know of any union meeting in the year 1937 that was held during working hours?

A. I do not.

Q. If a meeting had been held on May 25, of the Donnelly Garment Workers' Union, would it have been convened at 3 o'clock or 3:45 in the afternoon?

A. It would not.

Q. If any meeting had been convened at that time would you recall it? A. I would.

[fol. 2602] Q. Mr. Atherton, I show you Board's Exhibit 8-21, 8-22 and 8-23, and ask you to state whether you were present at the meeting of which those are minutes.

Trial Examiner Batten: What date is that?

The Witness: May 25, 1937.

By Mr. Patten:

Q. Do you remember that meeting now, Mr. Atherton?

A. I do.

Q. Was Marjorie Green present at that meeting?

A. She was.

Mr. Langsdale: I didn't get that last question.

Mr. Patten: Was Marjorie Green present at that meeting.

By Mr. Patten:

Q. What was Marjorie Green doing at that meeting?

A. Taking the minutes of the meeting.

Q. Where was she sitting?

A. She was sitting on the speakers' platform, or stage.

. . . . . .

By Mr. Langsdale:

Q. Do you remember who was present taking the minutes of every meeting of the Donnelly Garment Workers' Union? A. During the year 1937.

[fol. 2603] Q. You do? A. Yes.

Q. Who was present taking the minutes of the meeting of April 27th?

A. Marjorie Green. However, that was not a union meeting.

Q. You are sure of that, are you? A. Absolutely.

Q. Now, there was a meeting of the Donnelly Garment Workers' Union, according to the minutes furnished us by the intervener on May 11, 1937. Do you know who took the minutes at that meeting? A. May 11th?

Q. Yes. A. 1937?

Q. Yes. That is a meeting in between the April 27 meeting and the May 25 meeting.

A. Well, if there was a meeting held on the 11th of May, Marjorie Green took the minutes of it.

Q. You are sure of that?

A. She took the minutes of all meetings of the Donnelly Garment Workers' Union all the time I served on the committee.

Q. That is, she took the minutes of each and every meeting of the Donnelly Garment Workers' Union in 1937, did she? A. Until April, 1938.

Q. Every meeting?

[fol. 2604] A That is my recollection, yes. To the best of my recollection.

Q. You are positive of that, are you?

A. I said, to the best of my recollection.

Q. Well, you are just as positive of that as you are that she took the minutes of the meeting of May 25, aren't you?

Mr. Lane: That is objected to as being argumentative. He says to the best of his recollection, she took it.

Trial Examiner Batten: Sustained.

By Mr. Langsdale:

Q. Have you any better recollection or any reason for having a better recollection of who took the minutes of the meeting on May 25 than you have for knowing who took the minutes at any other meeting in 1937?

A. I have.

Q. Why?

A. At all regular meetings of the Donnelly Garment Workers' Union, I also sat on the speakers' stage, and Miss Green sat within a few feet of me and took the minutes of the meeting.

Q. Well, that would apply to all regular meetings?

A. All regular meetings.

Q. And what about call meetings, other meetings?

A. I couldn't testify as to call meetings without knowing the dates and seeing the minutes of them, as to whether I was there or not. I would have to have something to [fol. 2605] refresh my memory.

Q. Now, you stated a moment ago that Miss Marjorie Green took the minutes of every meeting of the Donnelly Garment Workers' Union during the year that you served on the committee. Now, do you want to qualify that answer in any way?

A. I said, of all regular meetings.

Q. Is that what you meant to say, of all regular meetings?

A. That is what I meant to say.

Q. Who took the minutes of those meetings that were not regular meetings?

A. To the best of my recollection, Marjorie Green took them.

* * * * * *

NELLY STITES, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

[fol. 2606] By Mr. Stottle:

Q. State your name, please.

A. Mrs. Nellie Stites.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed by the Donnelly Garment Company? A. About 7 years.

Q. What is your work for that company?

A. I am an operator.

Q. What kind of operation do you do?

A. Well, I am a pinker and binder and I do straight sewing.

Q. During the entire 7 years have you been an operator? A. Yes, I have.

Q. Mrs. Stites, do you recall a meeting of the employees on March 18, 1937?

A. Well, I don't recall the exact date, but I know there was a meeting.

Q. I am referring to a meeting where it has been testified that Mrs. Reed or some one read a letter from the International Ladies' Garment Workers' Union. Does that recall to you the meeting? A. Yes, sir.

Q. Mrs. Stites, was that meeting held during working hours of the company?

[fol. 2607] A. It was not. It was after we finished our work.

Q. I will ask you to state what you recall that occurred at that meeting, what the purpose of it was, what occurred.

Trial Examiner Batten: Mr. Stottle, I will permit this witness to testify, but I certainly don't intend to listen to any more witnesses of what occurred at the March 18th meeting, because thus far in the record, there is apparently no dispute. I mean, there is no use of going on with an unlimited number of witnesses telling about a meeting. So if there is any further witness to be offered on the March 18th meeting, it will have to be in the form of an offer of proof.

Mr. Stottle: Mr. Examiner, of course, the respondent's position is that if that matter is controverted, we are entitled to show by any number of witnesses as to what did happen.

Trial Examiner Batten: Well,—

Mr. Stottle: (Interrupting) And we are willing to make an offer of proof as to this witness, or succeeding witnesses.

Trial Examiner Batten: I say, you may proceed with this witness, but I am telling you now that if you had in mind offering any further witnesses about this March 18th meeting, I don't propose to go into it.

Mr. Stottle: Well, in view of your Honor's ruling, we will make offers of proof as to other witnesses.

[fol. 2608] By Mr. Stottle:

Q. Mrs. Stites, did you heard it announced at that meeting by Mrs. Reed, or anyone else, that she or the management wanted the names of any persons that joined the International reported to her? A. No, sir.

Q. Was such a statement made?

A. Not that I heard.

Q. Did you hear Mrs. Reed make a statement in the speech she made there that she would never let the International into her plant? A. No, sir.

Q. Tell us, in substance, or tell the Examiner, in substance, what Mrs. Reed did say with regard to the International Union?

A. Well, she said that she wouldn't let any union force her to force her employees to join anything that they didn't want to join.

Q. Now, do you recall, Mrs. Stites, the meeting of April 27, 1937, by which meeting I refer to the one when the Donnelly Garment Workers' Union was organized?

A. Yes, sir.

Q. I will ask you to state whether that meeting was held during working hours, or after working hours?

A. It was held after working hours.

Q. Were any of the executives or officers of the Don-[fol. 2609] nelly Garment Company present at the April 27th meeting? A. Not that I saw.

Q. What was the purpose of that meeting, Mrs. Stites, or what was done at the meeting; I will ask it that way.

A. What date?

Q. April 27th.

Mr. Leary: I object to that as cumulative.

Trial Examiner Batten: Well, as far as the April 27th meeting is concerned, I don't think that I am in a position, at this time, to say that it is cumulative with respect to the April 27th meeting, because that was the meeting at which the union was organized. I think we will proceed with this witness.

A. Well, I remember all the meetings, but, of course, I don't remember the exact dates, as far as that.

By Mr. Stottle:

Q. This was the meeting at which the union was organized. Do you remember Mr. Tyler being there?

A. Yes. That meeting was called for the purpose of organizing our union. Mr. Tyler had spoken to the employees and told them what we could do in the way of protection for ourselves, and he suggested the best thing for us to do was to form a union, if that was what we wanted to do.

Q. And was there a vote taken there as to whether you would form a union?

A. Well, I just don't remember.

Q. Well, were cards passed out among the members, [fol. 2610] among the employees?

A. Yes, sir, there was cards passed out for each employee to sign, if they wanted to.

Q. Did you sign one of the cards at that time?

A. Yes, sir, I did.

Q. At that meeting, Mrs. [Stiles], did they elect officers for the union? A. I believe they did.

Q. Was there any announcement made at that meeting by Mr. Tyler or Miss Todd, or anyone else, that the management of the company wanted you to form this union? A. No, sir.

Q. Did you sign the card joining the union of your own free will, Mrs. Stites? A. I did.

Q. Does that union, the Donnelly Garment Workers' Union, and its bargaining committee represent your free choice in that matter?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Sustained.

Mr. Stottle: What was the ruling, Mr. Examiner?

Trial Examiner Batten: Sustained.

Mr. Stottle: Well, Mr. Examiner, we are charged with preventing the employees from exercising their free will in the choice of bargaining representatives. That is one [fol. 2611] of these three complaints or charges in the complaint, and we submit that one of the best ways of finding out whether a person did a thing of their own free will is to ask that person whether they did, and it is our purpose to ask this witness, and as many other witnesses—

Trial Examiner Batten (interrupting): Well, I don't think that is any indication, to put these witnesses up on the stand in a hearing of this kind, in a "C" case, in front of all the other employees and representatives of the company, and ask them, "Is this your free choice?" I mean it may possibly have some remote bearing, but I don't think it has sufficient that we should spend the time necessary to listen to 1300 employees get on the witness stand and testify to that point.

Now, if that is your idea, you may make an offer of testimony with respect to these 1305 employees, or whatever it is, but certainly, we are not going to determine that in this hearing on that basis, at least.

Mr. Tyler: Could I ask you if the Examiner holds that there is any presumption that these people are being dominated by somebody in the court room in this matter, or any presumption that they would commit perjury?

Trial Examiner Batten: I didn't even intimate such a thing.

Mr. Tyler: I understood you to say that their testi- [fol. 2612] mony, as to what they wished, would be either of no value or extremely little value.

Trial Examiner Batten: I didn't say any such thing, I don't think.

Mr. Tyler: I misunderstood you, then.

Trial Examiner Batten: The record will state what I said in my remarks.

Mr. Stottle: Well, Mr. Examiner, don't you think we should have the testimony of this witness with the persons that you have referred to excluded from the court room?

Trial Examiner Batten: No, I don't think it is of any value in the issues in this case, to parade these people on the stand. Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter.

Mr. Stottle: Well, I will ask another further question.

Mr. Stottle: Mrs. Stites, had you heard of the strikes and disturbances down at the Gordon and Gernes plants at about that time in March and April, 1937?

Mr. Leary: I object to that for the reason that it is immaterial.

Trial Examiner Batten: Sustained.

Mr. Stottle: Well, Mr. Examiner, we want to go into that matter to show that it did affect the employees and that that was one of the reasons why they formed this union, as tending to show that it was not due to the domi- [tol. 2613] nation of the Donnelly Garment Company.

Trial Examiner Batten: I think, Mr. Stottle, that I don't need to make any statement with respect to that ruling, because I have indicated on several occasions in this hearing just what my position is about that matter. You may make such offer as in your opinion is necessary to protect the interests of your client.

By Mr. Stottle:

Q. Well, Mrs. Stites, did you see an article in the Newspaper of April 22, 1937, regarding Sylvia Hull having been chosen to represent the employees of the Donnelly Garment Company at the convention of the International Union? A. I did.

Q. What effect, [Mr.] Stites, did that have on you and other employees, so far as you observed at the Donnelly Garment Company plant, so far as forming this union is concerned?

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[fol. 2614] A. Well, when the article was read, naturally, we were all very much surprised that one person would take it upon themselves to say that they were going to represent us at Atlantic City in a union that we didn't even belong to or we hadn't any association with.

By Mr. Stottle:

Q. Was that one of the factors that caused you and the other employees to form this Donnelly Garment Workers' Union?

A. Yes, sir. We decided that if some one was going to represent us, why, we would choose our own representatives.

By Trial Examiner Batten:

Q. Now, who do you mean "we"?

A. Well, myself and the workers that I worked with. The people that we associate with daily.

Q. You mean the girls that you talked to; is that what you mean? A. Yes, sir.

Q. In your section?

A. Well, my section, the cafeteria, wherever I happened to be at different times. It was just a general discussion all over the plant.

[fol. 2615] Q. It was the talk of the town, wasn't it, the next day? A. That is right.

Q. During the working hours and at noon and after work and before, wasn't it?

A. Well, I wouldn't say during working hours, because we make quite a bit of noise up there and we can't hear very well talking.

Q. You mean, then, there was no talk during working hours about it?

A. I wouldn't say that.

Mr. Tyler: Mrs. Stites, so far as you could observe, was the formation of the Donnelly Garment Workers' Union at this meeting of April 27th, the voluntary action of the employees? A. It was.

Mr. Stottle: Mr. Examiner, as to the two matters which you have excluded this witness from testifying to, respondent desires to make this offer of proof:

Respondent offers to prove by this witness that if permitted to answer appropriate questions, she would tes-

tify that at or prior to the time of the organization of the Donnelly Garment Workers' Union on April 27, 1937, there was no coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon her by the management of the Donnelly Garment Company [fol. 2616] or the Donnelly Garment Sales Company through any of its officers, executives or supervisory officials, or anyone representing the management, to cause or influence her, or which did cause or influence her to join or support the Donnelly Garment Workers' Union.

Trial Examiner Batten: Well, now, that is with respect to what ruling? The one on the meeting of March 18th?

Mr. Stottle: No, as with respect to the ruling that she joined this of her own free will, if your Honor will permit her to testify that she did, and other witnesses to testify on the question of whether she did join of her own free will, of course, we would prefer to call the witnesses.

Trial Examiner Batten: Well, what do you mean, reverse my ruling? Is that what you mean?

Mr. Stottle: Well, I thought you were intimating that I was making a different offer of proof.

Trial Examiner Batten: Well, I do think it is different than even my ruling. You say to this witness "You join of your own free will." Now, your offer is to show that the respondent in no way coerced or intimidated this witness. I don't think that is quite the same thing, do you?

Mr. Stottle: Well, I will ask the question.

Trial Examiner Batten: I say, do you think it is the same?

Mr. Stottle: I do think so. If she joined of her own [fol. 2617] free will, I don't think she was coerced by the Donnelly Garment Company.

Trial Examiner Batten: Well, of course, if you think it is the same thing, and that is what you mean by what you just said, then I will reject the offer.

Mr. Stottle: Well, I would rather ask the question and have your Honor rule it out or let it in.

Trial Examiner Batten: I don't care to pass upon it. If you think it is the same thing, I will reject that part of the offer.

Mr. Stottle: Well, Mrs. Stites, I will ask you whether at the time of the organization of the Donnelly Garment Workers' Union, on April 27th, or prior thereto, there was any coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon you by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives, or anyone representing the management, to cause or influence you, or which did cause or influence you to join or support the Donnelly Garment Workers' Union? A. None.

Trial Examiner Batten: Well, now, just a moment. The answer may be stricken.

By Trial Examiner Batten:

Q. You just tell me now just what the question means, beginning at the beginning of Mr. Stottle's question. Do [fol. 2618] you remember the first part of the question?

A. Well, my idea—

Q. (Interrupting): Well, I mean, now, tell me, do you remember the first part of the question?

A. Well, no, I don't.

Trial Examiner Batten: Will you read the question, please, Mr. Reporter.

* * * * * *

Trial Examiner Batten: Now, you understand it now, do you?

A. Yes, I do.

Q. Now, do you recall one part in there that said "pressure either directly or indirectly"?

[fol. 2619] A. Yes.

Q. Now, tell me what that means.

A. Well, my idea of that would be, if you were told to join the union and if you didn't join it certain things would happen to you. That is the way I would define it.

Q. That is your definition of it?

A. Well, that is.

Q. I mean, that is what it means to you?
A. That is what it would mean to me.

Trial Examiner Batten: Well, you may answer.
A. Well, I can only answer it one way. There was none.

By Mr. Stottle:
Q. Did you hear or know of any such coercion or pressure or influence or suggestion by the officers of the company brought to bear upon any other employee of the Donnelly Garment Company to cause them to join the Donnelly Garment Workers' Union?
A. I did not.
[fol. 2620] Q. Was there any threat made to you by the management or anyone representing the management that if you didn't join this Donnelly Garment Workers' Union or organize a plant union of your own that you might lose your job, or make membership in that union a condition of employment?
A. No.

Trial Examiner Batten: Did you finish your offer, Mr. Stottle?

Mr. Stottle: Well, if your Honor is going to let her testify on these matters, I think I need not make it.

Trial Examiner Batten: Well, I am not. I ruled it out, and it is still out. I have no intention of changing my ruling whatsoever.

Mr. Stottle: May I inquire, Mr. Examiner, if we will be permitted to ask other witnesses, employees down there, whether they were dominated, as we have of this witness, by the officers of the Donnelly Garment Company?

Trial Examiner Batten: Let me ask you: Isn't it possible that 1,200 employees might come in here and testify honestly that they were not coerced, and you might have two that would come in and say they were, if the 1,200 said No, and the two said Yes, the 1,200 wouldn't prove that the two were wrong, would they? In other words, you might have 1,200 that were not, and you might have two that were? Isn't that true?

[fol. 2621] Mr. Stottle: It is possible.

Trial Examiner Batten: The 1,200 that were not would not disprove that the two were; isn't that correct?

Mr. Stottle: I think in that case the Donnelly Garment Workers' Union would still be the overwhelming choice of the majority.

Trial Examiner Batten: I am talking now about the question of coercion. You might have one who was coerced, and you might have every other employee who was not. That would not prove that the one was not coerced, would it?

Mr. Stottle: But, as Mr. Tyler said, it would disprove, in my mind at least, that the Donnelly Garment Company coerced the formation of the union.

Trial Examiner Batten: It is not a question of whether they coerced the formation of it. It is a question of whether they sponsored it or dominated it.

Mr. Tyler: Intervener wishes to suggest in that case there would be no basis laid for a decision that it was dissolving, displacing, or in any way interfering with the rights of this union.

Trial Examiner Batten: Mr. Tyler, let me ask you: Isn't it possible to have 95 percent of the employees in a company voluntarily join a union of their own free will, absolutely, and yet have it sponsored or assisted by a company?

[fol. 2622] Mr. Tyler: I think that is conceivable, although it would be so exceedingly improbable it would be very improbable that any such finding could be made in that case that the rights of 95 percent to their own union and their own contract could be dissolved, under the law, because some one or two or more had been coerced.

Trial Examiner Batten: I am not talking about coercion. I say, isn't it possible for a company to form a so-called company union and support it, and yet have 95 percent of the employees join it of their own free will without any coercion on the part of the company.

Mr. Tyler: I think that is theoretically possible, but in a situation where the union has continued to operate

for a period of over two years, and where no substantial testimony of any kind is offered by the persons upon whom the burden of proving that devolves, after two years for gathering it, and unlimited funds for gathering it, I submit no possible basis for that kind of a decision has been laid in this case.

Trial Examiner Batten: I am not ruling on this case, I am just asking you, isn't that possible?

Mr. Tyler: I think, theoretically, that is possible.

Trial Examiner Batten: And there is one further question I would like to ask in connection with your remark. I don't know whether you meant to imply it or not, but is it your thought that if, an independent union having been [fol. 2623] formed by a company or assisted by a company —admitting that to be true in the beginning—is it your idea that over a period of time that independent organization can purge itself of the control or the domination which it started out with?

Mr. Tyler: I will be glad to answer your Honor's question. Let me begin by making it clear, I do not for one moment admit there was any fault or domination in the formation of this union—

Trial Examiner Batten (Interrupting): You do not need to answer it at all if you were not implying that in your answer to my former question.

Mr. Tyler: I want to answer it. I don't think there is any evidence in this case of domination of this union, or formation of it, by the company. But, if that had been true, I still believe the law to be—if that had been true and, nevertheless, at the present time the union actually represents the free will choice of the members, what Your Honor calls purging would have taken place and the employees would have the right to continue to operate that union and bargain for it. I believe that to be the law.

* * * * * *

Mr. Stottle: Respondent offers to prove by this witness, if permitted to answer the appropriate questions, that on April 27, 1937, she joined the Donnelly Garment Workers' Union of her own free will and accord, uninfluenced by the

[fol. 2624] management of the Donnelly Garment Company or the Donnelly Garment Sales Company, or any of its officers, executives, or anyone representing its management in any way; that since such time she has continued to belong to and support said union of her own free will and accord, uninfluenced by the management in any way; that she voted for and chose the executive or bargaining committee and succeeding committees of the Donnelly Garment Workers' Union.

Trial Examiner Batten: You mean, in the meeting of April 27? Of course at that meeting she says she doesn't recall that she voted for any, as I recall the testimony.

Mr. Stottle: Mrs. Stites, did you at any time ever vote for a bargaining committee?

Mr. Langsdale: Just a moment. I object to that as immaterial and repetitious. She did testify she didn't recall the meeting of April 27. Now, are you talking about some time later?

Trial Examiner Batten: Oh, no. She recalled the meeting very definitely.

Mr. Patten: Her testimony was, she didn't recall whether they voted to form a union.

Trial Examiner Batten: Yes, that is right, Mr. Patten.

You may proceed, Mr. Stottle.

Mr. Stottle: Did you vote for the bargaining committee that was chosen by the Donnelly Garment Workers' Union, [fol. 2625] and does it represent your free choice of bargaining representatives?

A. I did vote for it.

Trial Examiner Batten: Who was on the committee you voted for?

A. Well, I don't believe I could remember right now the different ones. I do remember we voted Rose Todd as the chairman, and, I believe, Mr. Fred Brown and Mrs. Riggs. I don't believe I recall the other names.

Mr. Stottle: Whatever their names were, Mrs. Stites, the committee did represent your desire and choice as a bargaining committee of the union?

A. Oh, yes, sir.

Mr. Stottle: Respondent further continues the offer of proof by this witness that the choice of the bargaining committee by her was of her own free will and accord, uninfluenced by the management or any of the officers of the Donnelly Garment Company or the Donnelly Garment Sales Company in any way; and makes the same offer of proof by this witness as to each succeeding bargaining committee or executive committee elected by the union, namely—

Trial Examiner Batten (Interrupting): Mr. Stottle, it seems to me you are going entirely outside of the matter which I suggested I wouldn't permit testimony on.

I am going to adjourn now and ask you to prepare your [fol. 2626] offer in writing so that I may read it over and give it some thought, because I don't see that the offer of proof you are now making conforms at all to the question which I permitted her to answer. I want you to put it in writing so that I may read it and give it some thought.

* * * * * * *

And if you will put in a short offer in writing on the March 18 meeting that I sustained an objection to—

* * * * * * *

[fol. 2627] By Mr. Stottle:

Q. Mrs. Stites, are you a member of the Loyalty League?

A. Yes, sir.

Q. Did you join it at the time of its formation, or when?

A. Yes, I did.

Q. Are the Loyalty League and the Donnelly Garment Workers' Union both the same organization?

A. They are entirely separate.

Q. What is the nature of the Loyalty League as to what it does, its activities?

A. It is purely a social affair.

Q. Did you gain the impression, Mrs. Stites, from anything that happened at the April 27th meeting, when the Donnelly Garment Workers' Union was formed, or from any other source, that the Donnelly Garment Workers'

Union was just a continuation or a successor to the Loyalty League?

A. No, sir.

Q. Did you attend any meetings of the Donnelly Gar-
[fol. 2628] ment Workers' Union after the organization meeting of April 27, 1937?

. . . . . .

A. Oh, yes.

Q. Did you see or observe any participation by the officers of the company, or any of the executives of the company, in any of those meetings?

A. No, I didn't.

Q. Was Mrs. Reed or Mrs. Reeves, Mr. Keyes, Mr. Green, or Mr. Baty present at any of those Donnelly Garment Workers' Union meetings that you attended?

A. Not to my knowledge.

Q. Do you know of any of those officials, or any other supervisory official of the company ever participating in the affairs of the Donnelly Garment Workers' Union?

A. No, sir.

Q. Or giving any advice as to how they should conduct the union? A. No.

Mr. Stottle: Mr. Examiner, I have prepared, rather hurriedly, an offer of proof now on the points that I deem Your Honor ruled out. This relates only to two things; one, the question of her free will in joining the union, and [fol. 2629] the domination by the company. I cannot distinguish between the two matters.

It seems to me that if she exercised her free will, she was not dominated by the company, and if she was dominated by the company she did not exercise her free will.

This offer of proof, which covers about four and a half pages, covers those two phases; but I deem them one phase, although they are separate charges in the complaint.

Trial Examiner Batten: You did not cover the matter of the March 18 meeting, then?

Mr. Stottle: No, because you permitted her to testify to that. I did, in this same offer of proof, cover the matter

of strikes, and so forth, at the Gernes plant, which you excluded.

. . . . . .

[fol. 2631] Trial Examiner Batten: I think you had better proceed with this witness. I will permit the questions and answers, and then I will pass upon any further witnesses.

You may just proceed with this witness.

. . . . . .

[fol. 2632] By Mr. Stottle: Mrs. Stites, I will ask you if on April 27 you joined the Donnelly Garment Workers' Union of your own free will and accord, uninfluenced by the Donnelly Garment Company or the Donnelly Garment Sales Company, or by any officer, executive, or supervisory employee thereof, or by anyone representing the management of said companies? A. I did.

. . . . . .

Mr. Stottle: Mrs. Stites, I will ask you if since that [fol. 2633] time, since April 27, 1937, you have continued to belong to and support the Donnelly Garment Workers' Union of your own free will and accord, uninfluenced by the management of said companies or anyone representing the management of said companies?

A. I have.

Q. Mrs. Stites, I will ask you if the executives or the bargaining committee of the Donnelly Garment Workers' Union, which was chosen at or about the time of the formation of the union, on April 27, 1937, and each of the bargaining committees which has been chosen since that time represents the free choice—represents your free choice as a bargaining committee to represent you in all matters relating to collective bargaining and working conditions, wages, hours, and so forth, at the Donnelly plant.

A. It does.

Q. And that choice was made of your own free will and accord, and not influenced by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company, or anyone representing the management of said companies? A. It was.

. . . . . .

[fol. 2635] Q. Mrs. Stites, I will ask you to state whether or not prior to the time of the organization of the Donnelly Garment Workers' Union on April 27, 1937, there was any coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon you by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company, any of its officers, executives or supervisory officers, or anyone representing the management, to cause or influence you, or which did cause or influence you to join or support the Donnelly Garment Workers' Union or interfere in any way with the exercise by you of your own free will in determining whether you should join, or support that union?

A. There was not.

Q. Since the formation of the Donnelly Garment Workers' Union, has there ever been any threat, intimidation, coercion or suggestion given to you, or received by you, directly or indirectly, from the management of the Donnelly Garment Company or the Donnelly Garment Sales Company, or anyone representing the management of either of said companies that you must or should continue to support and belong to the Donnelly Garment Workers' Union, or that you should refrain from joining the International Ladies' Garment Workers' Union or in any way interfering or attempting to interfere with your own free will in determining whether you should or should not con-[fol. 2636] tinue membership in the Donnelly Garment Workers Union or refrain from joining or supporting the International Ladies' Garment Workers' Union?

A. No, sir, there was not.

Q. I will ask you, Mrs. Stites, whether you know of or have ever heard of any such coercion, intimidation, pressure or suggestion being brought to bear by the management of those companies on anyone representing the management, upon any other employee of the Donnelly Garment Company or the Donnelly Garment Sales Company, to cause or influence them to join or continue membership in the Donnelly Garment Workers' Union, or interfering in any way with the exercise of their own free will and choice in regard to such matters?

A. No, sir.

Q. Have you mingled and talked with a great many of the employees at various times regarding the Donnelly Garment Workers' Union? A. I have.

Q. And you have never heard any intimidation that any of those employees that you have talked with or from anything that they have said that they were influenced by the management in that regard? A. I never have.

Q. I will ask you whether there has ever been any threat or suggestion made to you, directly or indirectly, [fol. 2637] by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company or by anyone representing the management, that if you or the other employees did not organize, join or support the plant union, that you or the other employees would or might lose your jobs or positions or indicating to you in any way that membership in the Donnelly Garment Workers' Union was a [dondition] of employment at the Donnelly plant, or interfering in any way with the exercise by you of your own free choice and will with regard to said matters? A. No, sir.

Q. I will ask you whether you have ever received any communication, oral or otherwise, from any officer, executive or supervisory employee of the Donnelly Garment Company or the Donnelly Garment Sales Company, or anyone representing the management of said companies which has caused you to think or feel that the management of those companies was placing any restriction on your rights or desires or freedom, or on the rights, desires or freedom of any other employees, as to what union they should join, or whether they should join or not join any union? A. I have not.

Q. Mrs. Stites, I will ask you to state whether you knew or heard of strikes—

Trial Examiner Batten (interrupting): Now, Mr. Stot- [fol. 2638] tle,—that finishes that offer?

Mr. Stottle: That finishes that part of it.

Trial Examiner Batten: Well, I don't think it is at all necessary for her to answer any questions about the strikes and trouble in the other plant, because that, if you have an offer ready on that, I can pass on that one now.

Mr. Stottle: Well, it is the last page of what I have given you.

Trial Examiner Batten: It is all in one, is it?

Mr. Stottle: I put it all together as an offer of proof by this witness.

Trial Examiner Batten: Well, I will take the matter of the offer of proof under advisement, and unless you are notified otherwise, it is unnecessary to produce any further witnesses on those matters.

Now, as to the last page, which is page 5, of the offer of proof on the Gernes and Gordon factories, and that other matter, that offer, as in accordance with my rulings, several rulings during the hearing, is refused.

Mr. Stottle: Mr. Examiner, it so happens that this witness is on the stand when we make this offer of proof, but as to other witnesses, of course, it would hardly seem that we should be made to bring them up here and have them sworn as preliminary to making the offer of proof.

Trial Examiner Batten: Well, Mr. Stottle, I talked [fol. 3639] with Mr. Ingraham about that, that is, not in connection with this particular question, but whether it would be necessary on some of these matters to have the witnesses here, and I told Mr. Ingraham that I thought it advisable to put on at least one, in some cases, perhaps two or three, but it would not be necessary to have them all here in court. So I am assuming that this is one of the matters where you had intended to bring in a large number of witnesses.

Mr. Stottle: That is correct.

Trial Examiner Batten: Who would be asked the same questions and it isn't necessary for you to produce them here.

Mr. Stottle: Well, we will prepare offers of proof on these two points, then, the strike situation, and the domination, and free will situation, as to other witnesses without actually producing the witnesses.

Trial Examiner Batten: Well, you can put it on the basis of each individual or you can put it on the basis of

an offer of proof which a certain list of witnesses would testify to so that you don't have to make individual offers.

Mr. Stottle: That is all, Mrs. Stites.

Trial Examiner Batten: That is, unless you are notified tomorrow that I will receive the testimony, and in that case, of course, you can produce the witnesses.

Mr. Tyler.

Cross-Examination.

[fol. 2640] By Mr. Tyler:

Q. Mrs. Stites, have you ever been a member of the committee of chairmen of the Donnelly Garment Workers' Union? A. No, sir.

Q. Did you ever have a complaint about the rates of piece work pay on underarm work or some work that you were doing at the factory. A. I have.

Q. What did you do about that complaint?

A. Well, I went to Miss Rose Todd about it.

Q. What was the complaint? What was the nature of it?

A. Well, it is a certain operation we have of pinking sleeves in, and it was a very difficult sleeve to put in—

Mr. Langsdale (interrupting): Can you fix the date on that?

Mr. Tyler: I will ask her in a minute.

A. (Continuing) And we felt like that it was worth more money than we had been getting, so we took the matter up with Rose Todd.

Mr. Tyler: Give me about the date you took it up with Miss Todd. Was it [cinse] the formation of the union?

A. Yes, sir.

• • • • • •

A. Well, I believe it was some time in January.

By Mr. Tyler:

Q. What year? A. 1939.

Q. The present year? A. Yes, sir.

Q. What was done about that complaint?

A. Well, we explained to her what the complaint was, and she said that she would investigate it, and so we got the price that we asked for.

* * * * * *

By Mr. Tyler:

Q. Was that complaint made on behalf of yourself alone, or on behalf of yourself and others?

A. On behalf of myself and others.

Q. Can you name any of the others at this time?

A. Well, I believe Mrs. Irene Rush was with me when we talked about it.

[fol. 2642] Q. Do you attend the meetings of the Donnelly Garment Workers' Union when they are held?

A. Yes, sir, I do.

Q. Do the employees generally attend them as fully now as they did in 1937, or not? A. Yes, they do.

Q. Did you ever see the employees come down to those meetings, the women employees, after working hours, still wearing their work aprons? A. Many times.

Q. What is their customary procedure when they do that?

A. Well, it is much easier to get down to the meeting with your apron on and dress afterwards. We can save more time.

Q. Can you give me your best estimate as to what per cent of the women come in still wearing their work aprons at those meetings?

A. Well, I would be—at least 80 per cent of them.

* * * * * *

[fol. 2646] By Mr. Tyler:

Q. Now, Mrs. Stites, confining yourself to the times after the union was organized, do you know of any meetings of the union at which the employees stood up?

A. No, I don't.

Q. Now, you have referred to a meeting prior to the organization of the union at which they did stand up.

A. That was a meeting of the employees only. That was before the union was formed.

Q. Now, will you tell what happened at that meeting?

A. Well, the meeting was called. Miss Todd had told us that her and Mr. Atherton, and I believe Sally Ormsby,

went to see attorneys about what protection we could have against these threats that had been made to us, and she told us that we had to have a retainer fee of $500, and she asked us what we wanted to do about it, and what suggestions we could offer as to how to raise the money. One suggestion was made that we have a dance, as we had had before, and some one made a motion that we all give 50 cents apiece, and that motion was carried.

[fol. 2647] By Mr. Tyler:

Q. What was the date of that meeting, as near as you can remember?

A. I believe it was the latter part of March.

Q. What year? A. 1937.

Q. Do you know whether the employees did raise money in the form suggested by the motion or not?

A. Yes, sir, I do.

Q. How do you know that?

A. Well, part of it was paid at the meeting, and part of it was collected by different girls. Some of it was right away, and others waited until their pay day to pay it.

Q. Do you know whether the employees raised money in any other way except this collection of 50 cents apiece?

A. That is all I know of.

Q. Did you ever know of a meeting of the union, Mrs. Stites, to be followed immediately, in the same room, by the same people, by a meeting of the Loyalty League?

A. No, sir.

Q. Did you ever know of a meeting of the Loyalty League to be followed immediately, in the same room by the same people, by a meeting of the union? A. No, sir.

Q. Did you attend all of the union meetings in the year 1937?

[fol. 2648] A. To the best of my recollection, I have.

Q. Did you ever hear any employee down at the plant complain, either secretly or otherwise, that he or she was being coerced into joining the Donnelly Garment Workers' Union? A. No, sir.

Q. Are you or are you not at the present time satisfied with the Donnelly Garment Workers' Union as your bargaining representative? A. I am satisfied.

Q. Did you have knowledge of the disturbances down at the Gordon, Gernes, and Missouri Plants in the spring of 1937? A. Yes, sir, I did.

Q. What was the effect on the Donnelly Garment Company employees of these disturbances at the Gordon, Gernes and Missouri plants in the spring of 1937?

. . . . . .

[fol. 2649] A. We had been reading all of these articles in the paper about the strikes over there—

. . . . . .

A. (Continuing) —and we had talked to a lot of the girls, and a lot of them had been talked to by people who worked over at these other plants, and of course we were told that they were coming over to our plant—the expression they used was "to get us next." And there was quite a bit of fighting over there, and tearing of clothes off. [fol. 2650] Naturally, we felt we needed some protection of some kind.

Mr. Langsdale. I ask that all of that part of the answer about what had been going on over there be stricken out as not responsive to the question.

Trial Examiner Batten. It may be stricken.

Trial Examiner Batten: Did anybody threaten you, personally?

A. No.

Q. Did anybody ever threaten to beat you up? A. No.

Q. So, all you know, then, is what you read in the papers and heard somebody else say; is that it?

A. I talked to girls who had worked over at the Missouri and Gordon garment factories—

Q. (Interrupting) I say, all you know is what somebody told you, then? A. That is right.

Mr. Tyler: You talked to people who told you they had met with violence at the Gordon and Gernes plants?

Trial Examiner Batten. Now, I think I have indicated all through this hearing that I am not going into those matters, Mr. Tyler.

Mr. Tyler. Then, intervener joins in the same offer of proof on this matter just offered by the respondent.

Trial Examiner Batten. You mean page 5, Mr. Tyler? [fol. 2651] That is the page that applies to this matter.

Mr. Tyler. Yes.

Trial Examiner Batten. With reference to the offer on page 5, it will be refused.

Mr. Tyler. And also, repeat the offer of proof which intervener made on the same subject heretofore.

Trial Examiner Batten. The offer is refused. In order to identify that, the respondent's offer of proof has been marked 1-JJJJ, and you are now referring to the fifth page of that?

Mr. Tyler. Yes, sir.

(Thereupon the offer of proof above referred to was marked "Board's Exhibit No. 1-JJJJ.")

By Mr. Tyler:

Q. Mrs. Stites, did any officer of the company, or representative of officers of the company, tell you about these things you have said you heard about, or did you hear them from other people?

Mr. Langsdale. I object to that as immaterial.

Trial Examiner Batten. Objection sustained.

. . . . . .

[fol. 2652] Trial Examiner Batten. Mr. Tyler, did you intend by your questions to cover the same matters Mr. Stottle did with respect to his offer of proof, pages 1 to 4? I don't think you did.

Mr. Tyler. I will join in the same offer of proof the respondent made, pages 1 to 4, as well as 5.

. . . . . .

[fol. 2653] By Mr. Leary:

Q. Were you employed at the plant continuously through the year 1937? A. Yes, sir.

Q. Did you attend all meetings of all employees of a general nature held that year?

A. To the best of my knowledge, I did.

Q. What was the first one you attended that year? I will include the Athletic Association, the Loyalty League, and so forth.

A. We had a Loyalty League meeting—I can't tell exactly the date—that year.

Q. What is your best judgment as to the date?

A. I can't say.

Q. You have some judgment about it, don't you?

A. Not as to that date, no.

Q. You know nothing at all about it?

A. I don't remember anything at all about the date. I know we did have a meeting.

Q. Was that the first meeting of the employees that year that you attended? A. I wouldn't say.

Q. Do you remember specifically the first meeting you attended? A. No, I don't.

Q. No incident is outstanding in your mind now that [fol. 2654] would tend to identify that meeting for you?

A. Well, I do know we had a meeting in April, 1937.

Q. What date was that?

A. The first—we had a meeting of employees in March, the 18th.

Q. I want the date of this Loyalty League meeting in April.

A. I can't remember the date of the Loyalty League meeting. I know we had a meeting, but I don't remember the date.

Q. What was the approximate date in April?

A. I don't know.

Q. Who presided at the meeting?

A. I believe a Mrs. Gray did, as well as I can remember it.

By Trial Examiner Batten:

Q. Who was that?

A. Mrs. Gray.

Q. Presided, you say?

A. Yes.

By Mr. Leary:

Q. Where did this meeting take place?

A. I believe that meeting was on the third floor.

Q. Where on the third floor?

A. Well, it was just an open space there then. There was nobody using that part of the building.

Q. The third floor, you say?

A. It was either the third floor or the second floor. I wouldn't be positive about that.

Q. What is your best judgment?

[fol. 2655] A. I am not positive.

Q. I am not asking you to be positive. What is your best judgment?

A. I wouldn't say.

Q. You haven't any judgment?

A. Not concerning that.

Q. What was the subject of that meeting?

A. I don't remember.

Q. You have no idea at all?

A. No.

Q. How do you place that meeting as having taken place in April, 1937?

A. I wouldn't say that the meeting took place in April.

Q. It might have been March?

A. I know we had a Loyalty League meeting in 1937.

Q. Might it have been in March?

A. No, sir, I can't say.

Q. Might it have been in May?

A. It might have been any time. I don't remember.

Q. Why did you answer that it was in April?

Mr. Ingraham: She didn't answer that it was in April.

Mr. Leary: She did.

Trial Examiner Batten: Just a minute. She said she thought it was in April.

Mr. Ingraham: I understood her to say there was a [fol. 2656] meeting of employees in April, and then she said, "I don't know when the Loyalty League meeting was."

Trial Examiner Batten. She said the employees' meeting was in March. I think that is what she said. Irrespective of what she said, go ahead, Mr. Leary.

By Mr. Leary:

Q. At this meeting you are talking about where Mrs. Gray presided, who called that meeting?

A. I don't know.

Q. Was it a Loyalty League meeting?

A. It was.

Q. Is it your testimony, or was it your testimony that it was held in April?

A. It was not.

Q. What is your testimony now as to the time the meeting was held?

A. I don't remember when the meeting was held. All I remember, I know we had a Loyalty League meeting. We have had several.

Q. How do you know that? What places it in your mind?

A. I can't answer that.

Q. Now that you have been thinking about it, do you believe you could tell when the first meeting was you went to with all of the other employees of the company in the year 1937?

A. I wouldn't say which was the first meeting in 1937.

Q. How many meetings of employees did you attend in 1937?

A. I expect I attended several.

* * * * * * *

[fol. 2658] Q. Will you name the dates of the eight meetings, or thereabouts, that you attended in 1937?

A. Well, we had a meeting around, I would say, the middle of March, one the latter part of March, and we had one in April, and our regular union meetings after that were on the first Tuesday in every month.

* * * * * * *

[fol. 2659] By Mr. Leary:

Q. How many meetings did you attend in 1937 where Rose Todd presided?

A. Oh, I would say five or six.

Q. What was the date of the first one?

A. I believe it was in March.

Q. What date?

A. Somewhere around the middle of March.

Q. The 13th?

* * * * * * *

[fol. 2660] By Mr. Leary:

Q. How did you establish the date of the meeting which you say took place some few days after March 27?

A. I don't understand that question.

Q. Is it your testimony that a meeting did take place some few days after March 27? And, by the word "few" I mean within three to six or seven days.

A. I don't remember saying that.

Q. Is it your testimony now that no such meeting took place?

[fol. 2661] A. I wouldn't say that.

Q. I am referring to the year 1937. You understand that?

A. Yes, sir.

Q. And you say, then, that from March 27 on for the next six to ten days there were no meetings?

A. I didn't say that.

Q. What do you say?

A. I don't understand your question, what you want me to answer.

Q. What do you say as to whether or not there was a meeting held from the 25th of March on?

A. After our union was formed we had a meeting the first Tuesday in every month. That is as near as I can give you the date.

Q. What do you say as to whether or not there were any meetings of employees, including the Nelly Don Athletic Association, the Loyalty League, the Donnelly Garment Workers' Union, and so forth, from March 25 on? Name the first one.

A. From March 25, did you say?

Q. Yes.

A. Well, the latter part of March the employees had a meeting.

Q. How do you establish that meeting as having taken place in the latter part of March?

A. How?

[fol. 2662] Q. Yes.

A. Well, for the reason that all of this trouble was going on about the strike. We had been reading a lot about it, and we were concerned about our own welfare, and the meeting was called to see what could be done about it.

Q. How do you fix that as being in the month of March?

A. Because all of this trouble was taking place in the month of March.

Q. Did you attend any meetings the first week in April?

A. I might have. I don't remember the date.

Q. Did you attend any the second week of April?

A. I don't remember the date.

Q. Did you attend any in the third week of April?

A. Not that I remember.

Q. Did you attend any the fourth week of April?

Mr. Ingraham: Your Honor, the witness has testified—

Mr. Leary (Interrupting). Just a minute. He is going to put the answer in her mouth this time.

Trial Examiner Batten: She may answer as to whether she attended a meeting on certain dates. When your turn comes you may clarify anything about that, Mr. Ingraham.

Mr. Ingraham: I think it is an unfair examination.

Trial Examiner Batten: What is unfair about it?

Mr. Leary: I submit, Mr. Examiner—

Trial Examiner Batten: Just a minute.

[fol. 2663] Mr. Ingraham: The witness has stated when she attended a meeting the latter part of April, and now counsel—

Mr. Langsdale (Interrupting): And I say that is the worst kind of suggestion.

Trial Examiner Batten: She testified she attended a meeting on April 27, which would be the fourth week of April.

Mr. Ingraham: So, now, counsel says, the first week, the third, or the fourth week—

Trial Examiner Batten: Of course there is no point now in having the witness answer the question.

Mr. Leary: No. The entire effect of it is lost.

Mr. Ingraham: I do not think that kind of examination is good.

Trial Examiner Batten: I don't see any objection to her saying when she attended the meetings.

* * * * * *

[fol. 2664] By Mr. Leary:

Q. Who took the minutes of this meeting you attended late in April?

A. Marjorie Green.

Q. You are sure of that now?

A. Well, she was sitting on the platform in front of all of us.

Q. Writing down in a stenographer's notebook?

A. Yes, sir.

• • • • • •

By Mr. Langsdale:

Q. Mrs. Stites, are you married?

A. Yes, I am.

• • • • • •

[fol. 2665] Q. Who employed you, Mrs. Stites?

A. Mrs. Hyde.

Q. Ella Mae Hyde, who sits back here?

A. Yes, sir.

• • • • • •

[fol. 2666] Q. Were you at the organization meeting of the Loyalty League?

A. Yes, sir.

• • • • • •

A. Well, I don't remember the year.

Q. Mrs. Cray presided at that meeting, the organization meeting?

A. I believe so.

• • • • • •

By Mr. Langsdale:

Q. Where was that meeting had, if you recall?

A. Well, it was either on the second or third floor. I wouldn't be sure.

Q. Of the plant where the Donnelly Garment Company [fol. 2667] did business?

A. Well, that was a vacant floor at the time.

Q. I know, but in the same building? A. Yes, sir.

Q. Now, did you hear the constitution read at that meeting of the Loyalty League? A. No, sir, I didn't.

Q. Well, let me call your attention to Board's Exhibit 2, which is an issue of the "N.D.A.A."—I think that is the Nelly Don Athletic Association,—February 13, 1935, and call your attention to this paragraph where I have my thumb (indicating). It says "Cards were passed out

and 900 joined." Do you remember that event, that cards were passed out to 900 employees, and all but 11 were signed and returned? Do you remember that happening?

A. I do.

Q. And "Because of the overwhelming response, a constitution was drafted and a mass meeting called for February 8." Do you remember that?

A. I don't remember about the constitution.

Q. Well, you say there was or wasn't one drafted?

A. Not to my knowledge.

Q. It says "Mrs. Gray opened the meeting with an account of what had been done and will be done. She displayed a drawing of a tentative pin and explained [fol. 2668] the meaning of the word 'Loyalty'."

Do you remember that? A. Yes, sir.

[fol. 2668] Mr. Stottle: Mr. Examiner, the respondent has objected to questions concerning the Loyalty League, and all matters that took place prior to the Wagner Act. It is understood we have a continuing objection to these questions?

Trial Examiner Batten: Well, what was your understanding the other day?

Mr. Stottle: I thought we did have as to the Loyalty League matters.

Trial Examiner Batten: I think the record will show.

Mr. Lane: The intervener has not made an objection to this specifically, for the reason that we assumed we had an objection to questions along that line.

Trial Examiner Batten: Well, I presume the record will show.

Mr. Lane: That is why we have not made a specific objection.

* * * * * *

[fol. 2670] Q. Do you know whoever had been the Loyalty League representative in your department?

A. Well, yes.

Q. Who was the Loyalty League representative in 1937, at the time of this March 18th meeting?

A. I believe the one in our section, I believe it was Mrs. Martha Armstrong.

Q. Armstrong or Ormsby? A. Armstrong.

Q. She was your representative at the time of this March 18th meeting, in 1937, was she?

A. Well, I couldn't say.

* * * * * *

[fol. 2671] Q. Now, Miss Todd presided at the meeting of March 18, 1937, did she not? A. I believe she did.

[fol. 2672] Q. And she was president of the Loyalty League then, Miss Todd was?

A. I believe she was.

Q. Do you remember who your instructor was on April 27, 1937?

A. I believe it was Ada Vining.

Q. That is, April 27, 1937?

A. Now, I wouldn't be positive about that, because we had a change along there some time or other.

Q. Well, was Ada Vining present at the meeting of April 27, 1937? A. Yes, sir.

Q. That is when the union was formed. That is the date of the formation of the union, wasn't it?

A. Yes, sir.

Q. Now, what other instructor did you have about that time besides Ada Vining? A. Mrs. Lola Skeens.

Q. And was she present at that time?

A. Yes, sir.

Q. Do you remember that your instructor said "Now, we girls will all stay together and go to the meeting together", the April 27th meeting?

A. No, I don't remember anything like that.

* * * * * *

[fol. 2675] Lynn Davis, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Stottle:

Q. State your name, please. A Lynn Davis.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed by the Donnelly Garment Company?

A. Ten years.

Q. In what capacity are you employed there?

A. I am an operator.

Q. Have you been an operator during this entire period? A. Yes, I have.

Q. What type of operation do you do?

A. I am a binder and I do some straight sewing.

Q. Did you attend a meeting of employees on March 18, 1937? A. I did.

Mr. Stottle: Mr. Examiner, you indicated to me that you didn't want us to continue with that line of testimony.

[fol. 2676] Trial Examiner Batten: Yes, I think unless some testimony appears later in the proceedings with respect to the March 18th meeting, I see no need of continuing to have these people testify about that meeting.

Mr. Stottle: Well, I will ask the question, and you can exclude it if you want to, and then that would raise the issue.

Mr. Stottle: Mrs. Davis, did you hear any statement made at the March 18th meeting by Mrs. Reed or any-

one else that she wanted the names of the Donnelly Garment Company employees reported to her or reported to the management of any employees who belonged to the International Ladies' Garment Workers' Union?

Mr. Leary: I object to that as cumulative.

Trial Examiner Batten: Sustained.

Mr. Stottle: Did you hear Mrs. Reed state that she would never let the International Union into her plant?

Mr. Leary: Same objection.

Trial Examiner Batten: Sustained.

Mr. Stottle: Mr. Examiner, we haven't prepared an offer of proof on that point, but we will prepare an offer of proof as to this witness and other witnesses on that subject.

Trial Examiner Batten: Well, I would suggest, Mr. Tyler, that you prepare it. Then you may offer it and as [fol. 2677] I arranged in the other instance, you may attach a list of people if you want to, and it will not be necessary to bring all those people here in order to make your offer.

Mr. Stottle: All right.

By Mr. Stottle:

Q. Mrs. Davis, are you a member of the Donnelly Garment Workers' Union? A. I am.

Q. Did you attend the meeting of April 27, 1937, at which that union was formed? A. I did.

Q. I will ask you to state whether that meeting took place during working hours or after working hours.

A. It took place after working hours.

Q. Did you go down in your uniform or did you change to your street clothes? Do you remember?

A. I don't remember at that particular meeting. I do sometimes.

Q. You sometimes go to meetings in your uniform?

A. I do.

Q. Were any officers or executives of the Donnelly Garment Company, or supervisory officials like Mrs. Reeves or Mr. Baty present at the April 27th meeting at the time the union was organized? A. Not that I saw.

Q. Do you remember the occasion of a meeting the [fol. 2678] latter part of March, or the first few days in April, a meeting of employees at which contributions of 50 cents apiece were taken up to help pay lawyers?

Mr. Langsdale: I object to the question as leading and suggestive. They are not taking any chances whatever upon the witness' memory.

Trial Examiner Batten: Well, I don't think there have been any objections sustained thus far that I know of about questions. This witness may be examined with respect to this meeting, and then after this witness, I see no need of any further witness about this particular meeting.

By Mr. Stottle:

Q. Well, do you remember a meeting at which donations of 50 cents were taken up from employees or at least, it was voted to do that? A. Yes, I do.

Q. You were at that meeting? A. Yes, I was.

Q. Now, was that meeting held towards the latter part of March or the first of April, or when was it held?

A. Well, I don't remember just exactly the date of it; probably the last day in March, or maybe the first of April. I don't remember for sure.

Q. Did you contribute 50 cents for that purpose?

A. I did.

Q. Did you pay it at that time, or later, do you recall? [fol. 2679] A. I think I paid mine that night at the meeting.

Q. Did you observe other employees paying their 50 cents at that time? A. Yes, I did.

Q. Were there quite a number of them, or just one or two?

A. Well, I don't remember how many. I know there was several people down there giving their 50 cents, and some of them were waiting until a later time.

Q. Mrs. Davis, tell us as briefly as you can what took place at this meeting on April 27th, at which this union was organized, as far as you can remember.

A. Mr. Tyler was at this meeting, and told us in what manner that we might organize a union, and if the employees so desired,—and it was voted that we would form a plant union. Miss Todd was there, and there was a vote taken as to whether Miss Todd should appoint a nominating committee, and it was voted upon that she should. She appointed this nominating committee, and they were to select nine persons to represent the employees. They left the room, and while they were gone, there were cards passed out among the employees to sign. They could sign them after the meeting there or they could take them home with them and talk it over with anyone that they wished, as to whether they would like to sign them or not. On this card, it was something to the effect that "I hereby wish to become a charter [fol. 2680] member of the Donnelly Garment Workers' Union."

This nominating committee returned to the room and they had selected nine or ten persons, I am not positive, to represent the employees. These people were voted upon and they were elected.

[fol. 2681] Q. Were officers elected at that meeting, or later, do you know?

A. Yes, they were, at that meeting.

Q. Now, Mrs. Davis, are you a member of the Loyalty League? A. Yes, I am.

Q. When did you join that?

A. Well, I don't remember.

Q. Was it at the time of its original formation or sometime later?

A. It was at the time of its original formation.

Q. Have the Loyalty League and the Donnelly Garment Workers' Union been merged into one organization, Mrs. Davis? A. They have not.

Q. Is the Loyalty League still in existence at the Donnelly plant? A. It is.

Q. Did you gain any impression from any announcement that the Donnelly Garment Workers' Union was just to be a continuation or successor to the Loyalty League?

A. No, I did not.

Q. What is the nature of the activities of the Loyalty League? A. Purely social.

Q. Did you ever hear of that League attempting to make bargaining agreements with the company on behalf [fol. 2682] of its members as to working hours and things like that? A. No, I have not.

Q. Do you pay any dues to the Loyalty League?

A. We did.

Q. How does it raise any money that it might need to raise? A. By dances, carnivals, or such as that.

Q. During the period that you belonged to it, do you recall whether it gave quite a number of dances or other parties? A. Yes, we have.

Q. Have you attended some of those? A. Yes.

Q. Mrs. Davis, do you remember who took the minutes at the first meeting of the Donnelly Garment Workers' Union, the April 27 meeting?

A. No, I don't remember who took them.

Q. Have you attended other meetings of the Donnelly Garment Workers' Union since that time?

A. Yes, I have.

Q. When do they hold their meetings, or when are they supposed to hold their regular meetings?

A. The first Tuesday in each month, I think, has been designated for that.

Q. Have they been holding those meetings with some regularity since the formation of the union?

A. Yes, they have.

[fol. 2683] Q. Have you attended most of those meetings, or how many?

A. Well, not every one, but most of them.

Q. What time of day are those meetings of the Donnelly Garment Workers' Union held?

A. 5 o'clock or 5:15.

Q. That is, it is after working hours? A. Yes.

Q. I will ask you whether any instructor or any officer or other person directed you to join, or to go to the April 27 meeting when the Donnelly Garment Workers' Union was formed. A. They did not.

Q. Your action in going there was voluntary?

A. Yes, it was.

Mr. Stottle. Now, Mr. Examiner, I would ask certain questions along that line, but I will make an offer of proof on it.

Trial Examiner Batten. I presume this young lady's name will be included in the list attached to that offer?

Mr. Stottle. That is right. And the same thing is true with reference to the strikes and other information.

* * * * * *

Cross-Examination.

By Mr. Patten:

Q. Mrs. Davis, how do you identify the meeting of March 18 referred to here? You have in mind apparently [fol. 2684] what is referred to as the March 18 meeting. How do you know that meeting was held on March 18?

A. Well, I know that we were very undecided as to what we might be able to do and what kind of protection we might be able to have.

Q. What was the chief topic of discussion at that meeting?

Mr. Ingraham. Just a minute, please.

Did I understand the Examiner to rule that, as far as the March 18 meeting is concerned, he is not going to allow any more testimony with regard to that meeting?

Trial Examiner Batten. By that, of course, I didn't mean to exclude the testimony of the present witness.

By Mr. Patten:

Q. Did any of the employees talk at that meeting, other than Rose Todd? A. Yes, I think they did.

Q. Do you remember the names of any of them?

A. I don't believe I do.

Q. Were you in a group that went to see Director Higgins? A. I was not.

Q. Were you in any group that called on Mrs. Reed?

A. No, I was not.

Q. Was the meeting of March 18 a Loyalty League meeting, according to your understanding?

A. No, it was not.

Mr. Patten. That is all.

* * * * * *

[fol. 2685] By Mr. Leary:

Q. What does Rose Todd do at the plant?

A. I don't know what her duties are.

Q. Have you any idea? A. No.
Q. Don't you ever see her around there? A. Yes.
Q. What does she do when you see her?
A. Oh, occasionally I see her around over the building, in the cafeteria during the lunch hour.
Q. During working hours do you ever see her?
A. She is on our floor sometimes.
Q. On what floor do you work? A. Eighth floor.
Q. How often is she on the eighth floor?
A. I don't know.
Q. When she was on the eighth floor what was she doing?
A. There was nothing special that she was doing. I would probably just see her as she came into the department on the eighth floor.
Q. Did you ever see her doing any work on the eighth floor?
A. Well, I am usually busy. I don't watch what she is doing on the eighth floor. I don't know what she does.
Q. Have you ever seen her do any work on the eighth floor?
A. What do you mean, work? What kind of work? No, I haven't.

. . . . . .

[fol. 2686] Q. Who told you to go to the March 18 meeting?

Mr. Stottle. Mr. Examiner, you excluded respondent's questions to this witness as to the March 18 meeting, and I don't believe she should be permitted to testify to it in answer to other persons' questions.

Mr. Leary. I don't believe he did in this witness' answers exclude the March 18 meeting. Mr. Patten was examining her on the March 18 meeting.

Trial Examiner Batten. I permitted Mr. Patten to go ahead with it, thinking I had permitted her to answer your questions, Mr. Leary. I sustained the objection to it, did I?

Mr. Stottle. To one or two objections.

Trial Examiner Batten. On the March 18 meeting?

Mr. Stottle. Yes.

Trial Examiner Batten. My thought was, I said this [fol. 2687] would be the last witness on the March 18 meeting.

I did sustain your objection, did I not, Mr. Leary?

Mr. Leary. I would rather be bound by the record. I, frankly, can't tell you now.

Trial Examiner Batten. I made a note for you to make an offer. Do you remember definitely that I did, Mr. Stottle?

Mr. Stottle. I remember you sustained it. And I remember saying I would make an offer.

Trial Examiner Batten. If that is the case, I will have all of the testimony with respect to the March 18 meeting stricken out.

* * * * * *

[fol. 2688] Mr. Patten. As I said before, there are a num-[fol. 2689] ber of points about the March 18 meeting that have not been touched upon in this hearing, and the intervener feels it is important to bring those out in the testimony. On the three questions that you sustained the objection to, as asked by Mr. Stottle, those points have been covered several times.

Trial Examiner Batten. But, as I understood, the objections and Mr. Stottle's offer of proof go to an offer of proof covering the March 18 meeting. Isn't that right, Mr. Stottle?

Mr. Stottle. I had understood you wanted us to do it that way.

Trial Examiner Batten. In other words, when I said put it in an offer of proof I wasn't limiting it to these two specific questions.

Mr. Stottle. I didn't understand you were, or I would have asked more questions.

Trial Examiner Batten. But Mr. Patten apparently understood me to mean these two objections.

Mr. Patten. The objection was that they were repetitious and cumulative, as I understood it; and I understood the further testimony would be so confined.

There are points about that March 18 meeting that have not reached you at all, and I think if intervener wants to bring those points out it would be [predjudicial for us to be required to do it merely by an offer of proof.

[fol. 2690] Trial Examiner Batten. I am not going to require you to do it by an offer of proof, if there is something that has not been brought out, but I would very much prefer, if you have no objection, that when the intervener puts its case on you put your own witnesses on on that matter rather than do it through the witness which is presented by the respondent. I am not telling you you must do that, but it seems to me it would be better from the standpoint of your case.

Mr. Patten. Sometimes the respondent uses the same witness the intervener intends to use.

Trial Examiner Batten. That is true, but I didn't want to complicate this matter of an offer of proof with the matter of the March 18 meeting.

Mr. Patten. Then, your suggestion would be that we recall the witness when we get to our case if there is some such matter we want to take up?

Trial Examiner Batten. You may ask the questions now and I will rule on them, if you want to. I merely suggested that so that you do not get the thing mixed up with the respondent's position.

I have talked this matter over with Mr. Stottle and Mr. Ingraham, of presenting all of the witnesses which they would like to present in order to make a record on these matters which may be cumulative, and I assume they are now presenting these witnesses in accordance with the [fol. 2691] discussion we have had, but you may go ahead, if you want to, and I will rule on yours now.

Mr. Patten. I suggest, as to the questions I have already asked this witness, and she has answered, they are not questions that are cumulative, and that the ruling be allowed to stand on those.

Trial Examiner Batten. I will have the reporter read them back.

(Thereupon Mr. Patten's cross-examination of this witness was read by the reporter.)

Trial Examiner Batten. I don't see any objection to permitting those questions to stand. I don't see anything new there, particularly, but it may stand as it is.

(By Mr. Leary) Who advised you that the April 27 meeting was to be held?

A. I don't remember any certain person.

Q. Who told you that the May 11 meeting was to be held? A. Nobody told me about a meeting.

Q. Did you go to a meeting on May 11?

A. Not that I remember of.

Q. Did you go to a meeting where they were talking about Donnelly Garment Workers' Union pins?

A. I don't believe I did.

* * * * * *

[fol. 2692] By Mr. Langsdale:

Q. Are you married? A. Yes, I am.

* * * * * *

Q. Who was in charge of the employment office when you went to work at Donnelly's?

A. Mrs. Hyde employed me.

Q. Mrs. Ella Mae Hyde, who sits here in the courtroom? A. Yes.

* * * * * *

[fol. 2693] Q. Do you remember what section you were working in on the 27th of April, 1937, when the Donnelly Garment Workers' Union was formed?

A. No, I don't remember.

Q. Do you remember who your instructor was at that time, April 1937? A. No, I am not sure who it was.

* * * * * *

MRS. CLARIS MARTIN,

a witness called by and on behalf of the respondent, was examined and testified as follows:

Direct Examination.

By Mr. Stottle:

Q. Give your name to the Examiner.

A. Claris Martin.

[fol. 2694] Q. You live in Kansas City, Mo.?

A. I live in Johnson County, Kans.

Q. Are you employed by the Donnelly Garment Company? A. Yes, sir.

Q. How long have you been employed by that company? A. Thirteen years.

Q. In what capacity are you employed by them?

A. I am an operator.

Q. Have you been an operator during that entire period?

A. Well, yes. There have been times when I inspected, during slack seasons, but that was a long, long while ago.

Q. Are you married? A. Yes, sir, I am.

Q. Do you remember the occasion of the meeting at which the Donnelly Garment Workers' Union was formed?

A. Yes, sir. The April 27 meeting.

[fol. 2695] Q. What date did you give?

A. April 27th.

Q. 1937? A. Yes, sir.

Q. Did you attend that meeting? A. Yes, sir, I did.

Q. I will ask you to state whether that meeting was during working hours or after working hours?

A. It was immediately after working hours.

Q. Did you attend the meeting in your uniform, or did you change to your street clothes first?

A. I attended in my uniform.

Q. Have you attended other meetings of employees or of the union after working hours in your uniform?

A. Yes, sir.

Q. Will you give the reason why you would attend in your uniform rather than your street clothes?

A. Well, there have been meetings where we have attended and tried to dress, and people coming down from various departments and getting off at different hours, I know at one particular meeting, we missed half of the meeting because there was a congestion in the dressing room. People couldn't get in and they couldn't get out, because the company had arranged these various hours of starting work and getting off of work to take care of that jam in the dressing room, and so, after about once or twice [fol. 2696] losing time like that, we decided they had better go down in their uniforms.

Q. It is a matter of convenience, then, to do that way?

A. Very much so.

Q. I will ask you to state, Mrs. Martin, briefly, as you remember it, what occurred at this meeting of April 27th at which the union was formed?

A. Well, there had been meetings preceding that one, and at this particular meeting I believe Hobart Atherton and Rose Todd had gone and talked with Mr. Tyler, and I believe that was what Rose said when she introduced Mr. Tyler, and that she believed he was in a position to explain to us more clearly what we could do, or should do, if we were in a position to be afraid, and we all were afraid. So Mr. Tyler talked with us, told us what courses were open, and that he believed if we had this plant union, that no outsider would be able to come in and tell us what we had to do, and it was common opinion at that time, the newspapers and radios and everything else were filling the public with fear of strikes and losses of jobs, and things like that, as well as terror.

Q. Were cards passed out?

. . . . . .

[fol. 2697] By Mr. Stottle:

Q. Mrs. Martin, were cards passed out at that meeting for the purpose of joining the union, if you chose to do so?

A. Yes, sir, they were.

Q. Was there any announcement made as to whether you had to sign those cards or didn't have to?

A. Yes, sir, there was an announcement made that we didn't have to sign those cards unless we wanted to, and if we wanted to sign at that particular time, we could. If we wanted to take them home and talk the matter over with our husbands, or family, that was permissible.

Q. Do you recall who made that announcement?

A. I would say Mr. Tyler, because he was taking charge of that particular meeting. There had been no officers elected at that time.

Q. Did you sign your card at that meeting?

A. Yes, sir, I did.

[fol. 2698] Q. Do you recall whether a bargaining committee and officers were elected at that meeting?

A. Yes, sir, I believe they were.

Q. Do you recall the procedure that was taken to elect the officers and bargaining committee?

A. Well, I know that a nominating committee was appointed, and that they went outside, I believe, and came back in with name that were submitted, and those people left the room that were voted upon.

Q. And were they elected as a result of that vote?

A. Yes, sir. They were.

Q. Did you observe any officers of the company or any of the executives such as Mr. Baty, or Mrs. Reeves, at that meeting?

A. No, sir, I didn't.

Q. Did any official of the company or any supervisory employee direct you to go to that meeting, Mrs. Martin?

A. No, sir. That was just passed down the line of machines.

Q. Did you go of your own free will then?

A. Yes, sir, I did.

Q. Are you a member of the Loyalty League?

A. Yes, sir.

Q. When did you join that organization?

A. Well, I don't recall when I joined, because I don't believe that I was working when it was organized.

[fol. 2699] Q. You joined some time after it was organized? A. After that.

Q. Is the Loyalty League and the Donnelly Garment Workers' Union the same organization?

A. No, sir, they are not.

Q. Did you gain the impression from anything that was said at the April 27th meeting, or any other meeting, that the Donnelly Garment Workers' Union was taking over the Loyalty League?

A. No, sir. It has always been quite clear in my mind that they were two separate things.

Q. What is the nature of the Loyalty League?

A. It is a social organization; sponsors dances and parties.

Q. Have you attended any of the parties or dances of the Loyalty League?

A. Yes, sir, I have.

Q. Did you ever hear them discuss union matters at any of these meetings?

A. No, sir, I have never attended any of their meetings; just their social affairs.

Q. Do you now whether the Loyalty League does have meetings in addition to the actual dance or social affair?

A. I suppose they do, because it is a club, but I am indirectly in it. I belong, but I have very seldom attended. It is for parties and social activities. I have other interests. [fol. 2700] Anything that doesn't appeal to me, I don't take an active part in.

Q. Have you attended meetings of the Donnelly Garment Workers' Union?

A. Yes, sir.

Q. Since the organization?

A. Yes, sir, I have.

Q. How often do they hold meetings, approximately?

A. They hold them once a month.

Q. Have you been going to those meetings regularly, or practically so?

A. Well, I haven't attended every meeting, but a majority of them I have.

Q. Did you ever see any executives of the company at any of those meetings?

A. No, sir, I haven't.

Q. Do you know of any way in which the executives or supervisory employees, like Mr. Baty, or Mrs. Reeves, have participated in the affairs of the Donnelly Garment Workers' Union?

A. No sir, not to my knowledge.

Q. Do you know of any financial support that they have given to the union? A. No, sir.

Q. Do you know of any money that the company itself has paid to the union?

[fol. 2701] A. No, sir.

Q. For its support? A. No, sir.

Q. Mrs. Martin, are you satisfied with the bargaining committee and the union as your representative as a bargaining committee?

A. Yes, sir, I am, quite definitely.

Q. Have you always been satisfied with it since the organization of the union? A. Yes, sir.

Q. Have you had any compla. ts that have been adjusted or not?

A. In our department, you mean?

Q. Any complaints as to personal complaints as to not receiving high enough piece work prices, or anything of that nature that you have complained to the union about?

A. No, sir, I don't believe that I have.

Mr. Stottle: Mr. Examiner, with the same understanding as to offers of proof on domination, free will and violence, and so forth, we rest on this witness.

Trial Examiner Batten: Well, of course, as far as I know, there will be no restrictions as to the names you shall include.

Mr. Stottle: No, I just wanted it understood, since she was here, that the reason I haven't asked the questions [fol. 2702] is because I intend—

Trial Examiner Batten (interrupting): I even said you didn't have to have them here to make your offer, didn't I?

Mr. Stottle: That is right.

Trial Examiner Batten: Mr. Patten.

Cross-Examination.

By Mr. Patten:

Q. Are you Miss Martin or Mrs. Martin?

A. I am Mrs. Martin.

Q. Do you know any employee of the Donnelly Garment Company that—or the Donnelly Garment Sales Company—that has complained that they didn't like the Donnelly Garment Workers' Union?

A. No, sir.

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Sustained.

Mr. Leary: I move that the answer be stricken.

Trial Examiner Batten: Stricken.

Mr. Patten: Have you ever heard any employee complain that they didn't want to join the Donnelly Garment Workers' Union?

A. No, sir.

Mr. Leary: I object to that as calling for hearsay, and also, that it is immaterial.

Mr. Patten: I asked what she heard.

[fol. 2703] Trial Examiner Batten: I will sustain the objection. It is immaterial, and I will overrule the matter of hearsay.

Mr. Leary: I move the answer be stricken.

Trial Examiner Batten: It may be stricken.

By Mr. Patten:

Q. Have you ever heard of any employee being coerced or pressure being brought to bear on any employee?

A. No, sir.

Q. To lead such employee to join the Donnelly Garment Workers' Union? A. No, sir.

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: You may answer. What was your answer?

The Witness: No, sir.

By Mr. Patten:

Q. Are you now satisfied with the Donnelly Garment Workers' Union Committee as your bargaining agent?

A. I am, sir.

Q. Do you know of any employee that is dissatisfied with the committee of the Donnelly Garment Workers' Union as their bargaining agent?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Sustained.

The Witness: May I answer that question?

[fol. 2704] Trial Examiner Batten: No.

Mr. Patten: Are you afraid of the International Ladies' Garment Workers' Union?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Sustained.

Mr. Patten: Were you afraid of that union in the spring of 1937?

Mr. Leary: Same objection.

Trial Examiner Batten: Same ruling.

By Mr. Patten:

Q. Do you recall a meeting of March 18, 1937?

A. Yes, sir, I do, sir.

Q. Were you present? A. Yes, sir.

Q. Do you recall who spoke? A. Yes, sir, I do.

Q. Who?

A. I can't recall every one. I may not know all of their names, but I know that Hobart Atherton spoke at that meeting, and I know that two of the operators from the eighth floor spoke, and I know that I spoke, myself.

Q. You spoke, yourself? A. Yes, sir, I did.

Q. What was the substance of what you said?

Trial Examiner Batten: I don't know whether I asked this question once before, but, of course, you are repre-
[fol. 2705] senting the Donnelly Garment Workers' Union, and it wasn't organized on March 18th, and all the testimony, the questions which you have asked, and the respondent, have gone to indicate there was absolutely no connection between the two.

What is the interest of the intervener in the meeting of March 18th?

Mr. Patten: We want to show that we think it is most material to this case; that one of the reasons for forming the union, that led the organization to union, was the anxiety and fear and hysteria of all these employees down there over what might happen to them if they didn't get protection in some manner, shape or form; that meeting, in our theory, the meeting of March 18th, was the production of this fear and hysteria.

Several of the employees spoke there. We think that what she said will go a long ways in convincing the Examiner that the union was the product of this fear, this desire for protection, and in so far as that is shown to be the fact, it will negative any possible inference that the union is the product of company influence.

Trial Examiner Batten: And you mean that that fear, and so forth, and the meeting of March 18th, was sort of a prelude to the meeting of April 27th?

Mr. Patten: No, not that this meeting had anything to do with the meeting of April 27th, but that the state of

[fol. 2706] mind existed on March 18th that later bore fruit in the meeting of April 27th.

* * * * * *

[fol. 2710] A. (Continuing) I said at this meeting that these people were coming in and promising a lot of things that they couldn't fulfill; that they were people from the East who were coming in and trying to organize the people in the Middle West, and the conditions were absolutely not the same; that I had been in New York City a few years before, and that at that particular time the people who operated the same kind of machines that I operate here were striking for an outrageous sum of money, and it was very noticeable to me, because I did that kind of work here, but after I had been in New York City for two or three weeks and learned what it cost to eat and to live in New York City, that there was no comparison, and that in my mind these people had no business coming in and trying to tell us to do it, and I further said that I wouldn't let them come in and tell me what I would do or what I wouldn't do; that if I was satisfied, I wanted to stay just as I was; that I had worked for the Donnelly Garment Company for a good many years, and I was always free to leave at any time that I wanted to, or come back [fol. 2711] when I wanted to, and that I was perfectly satisfied.

By Mr. Patten:

Q. Now, do you remember any other employees speaking at that meeting?

A. Yes, I do. There were these two operators from the eighth floor.

Q. Do you remember the names?

A. Well, there was an Eva someone, that I remember, and I don't know the other lady.

Q. Do you know how Mrs. Reed happened to attend that meeting?

A. Yes, sir, I do. There has been—Mr. Atherton had spoken, and these other two ladies, three ladies, had gotten up and said what they wanted to, and I had spoken, too, and everyone, of course, was excited and some one remarked that they believed that Mrs. Reed was in the build-

ing, and some one else said yes, that Mrs. Reed had been seen on the elevator, and so they sent some one after her. Some one said they would go see if she was still there. I don't know whether it was a boy from the cutting room or one of the mechanics. I know it was some one of the employees in the factory department who left the room and came back a few minutes later with Mrs. Reed.

Q. Were you working or visiting in New York?

A. I was not working or visiting. I was there as a representative of the Y. W. C. A. from the Industrial [fol. 2712] Women in the Middle West, attending a conference.

Mr. Patten: That is all.

Trial Examiner Batten: Mr. Patten, on this question, which has come up frequently, I think about the first week, in fact, Mr. Tyler brought it up; this question of the mental attitude of these people, due to the organizational campaign of the International Ladies' Garment Workers' Union, and all that that goes along with it. I think I should tell you now that if there is any further testimony of that kind, you can put it in in an offer of proof, because I don't think it is material to the issues here, and I think I told Mr. Tyler one day when he spoke about it, said that he felt that it was a motive or would be one motive, that would explain the organization of the independent union, and I think at that time I disagreed with Mr. Tyler. So if you have any further evidence in that line, you will submit it in an offer of proof, and if you care to, of course, you may submit another witness and ask those questions, to make your record. If you don't care to do that, you may submit it without offering another witness.

[fol. 2713] By Mr. Leary:

Q. Isn't it true, Mrs. Martin, that the Donnelly Company is run in a very orderly fashion?

A. Yes, sir, it is.

Q. It is rather highly systematized, is it not?

A. Well, everyone seems to know their job and what they are supposed to do.

Q. And they have rules and regulations so that there will be smooth operations and no confusion; isn't that correct?

A. I don't know—

* * * * * *

[fol. 2714] A. Well, everyone knows what time their department starts working, and what time it stops, and what time we go to lunch; and all of us are satisfied to the extent that we work to the best of our ability.

By Mr. Leary:

Q. For instance, some people come to work at 7:30 in the morning, some at 7:40, and some at 7:50? A. Yes, sir.

Q. And that is all for the purpose of having a speedy access to the building; isn't that it? A. Yes, sir.

Q. Because your elevators are limited?

A. Because the elevators are limited, and then the space is limited to the dressing rooms.

Q. And when you go in in the morning, for instance, on the 7:40 shift, about the time you arrive there the girls that were supposed to have gone to work at 7:30 have already left the dressing rooms and have gone out to their work upstairs? A. They are supposed to.

Q. And it runs smoothly?

[fol. 2715] A. They all try to get there on time. They know when they are supposed to be there.

Q. And there isn't confusion, as a rule, when the plant opens in the morning and the girls are coming in at 10-minute intervals? A. No, sir.

Q. And the same applies, does it not, at the noon hour?

A. Yes, sir.

Q. That is, if they all get off at the time they are supposed to get off they will go down on the elevator?

A. Yes, sir.

Q. The girls will not be running over each other in the elevator and hallways? A. No, sir.

Q. Let's say, Miss Witness, for instance, at noon if everybody stopped working at once and started down on the elevators together there definitely would be confusion, wouldn't there? A. There would be.

Q. And at any time, if they all got off at once and started out, there would be confusion?

A. That is what I explained awhile ago, the reason they wear their uniforms to these meetings, they all get off at different times and the elevators are crowded and some of them go down in their uniforms, because they get off at later intervals.

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[fol. 2724] Trial Examiner Batten: A recess was permitted for the purpose of having the attorneys review an-

amended complaint which has been submitted by the Board as of the close of the Board's case, which is marked "Exhibit No. 1-KKKK." Do you have the original of that, Mr. Leary?

Mr. Leary: Yes. I am now handing it to the reporter.

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Trial Examiner Batten: Mr. Stottle and Mr. Tyler, as I understand it, you men have gone over this amended complaint; is that correct?

Mr. Tyler: Correct.

Mr. Stottle: Correct.

Trial Examiner Batten: Do you have any statement on it, Mr. Stottle?

Mr. Stottle: Well, I understand the purpose of the recess was to see whether we agreed that this did represent [fol. 2725] the situation as existed at the close of the Board's case, and from our reading, we don't find any variation of it.

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[fol. 2726] Trial Examiner Batten: I was going to say that all the objections, as well as the motions, such as the motions to make more definite and certain, motions to strike, directed to the complaint, or any amendment thereto, will apply to this amended complaint as though made, with respect to this particular document, and all the argument with respect to those motions and rulings.

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[fol. 2727] Trial Examiner Batten: Some question has arisen, I think, and I discussed it with Mr. Ingraham and Mr. Tyler as to just what matters yesterday were covered upon which offers of proof are to be made, and, first, there was the meeting of March 18th; second, was the matter of violence, and so forth, in Kansas City, with respect to other plants, and in that connection, Mr. Tyler's matter of yes-
[fol. 2728] terday afternoon, what, if any, effect that had upon the mental attitude, and so forth, of the employees of the Donnelly Garment Company; then, the meeting that occurred between March 27 and April 5, that is, the meeting at which donations were asked, 50 cents each from the employees; and Mr. Stottle's matter of asking the witnesses "Did you join this organization of your own free will?"

In other words, there are four matters then that—

Mr. Tyler (interrupting): That would make five.

Trial Examiner Batten: Well, except the matter of the mental attitude of the employees. I classified that under the one matter, Mr. Tyler, that is, of violence and the things which created that atmosphere.

• • • • • • •

Mr. Patten: Mr. Examiner, do we understand that we are not to touch on any subject on the matter of the meeting of March 18th?

Trial Examiner Batten: I told Mr. Ingraham and Mr. Tyler this morning, in this conference, that, of course, these rulings do not apply, Mr. Patten, to matters upon which there has been no testimony.

In other words, I certainly am not eliminating those matters that have not been testified upon, and I think Mr. Ingraham and Mr. Tyler indicated that they understood that.

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[fol. 2729] HELEN WALTON, a witness called by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Stottle:

Q. State your name to the Examiner.
A. Helen Walton.
Q. Where do you live, Miss Walton?
A. 4908 Lister Avenue.
Q. Where are you employed?
A. Donnelly Garment Company.
Q. How long have you been employed there?
A. Seven years.
Q. What is your position with the company?
A. Operator.
Q. Have you been an operator during that period?
A. Yes, I have.
Q. What kind of operation do you do?
A. I am a binder and pinker.
Q. Are you a member of the Donnelly Garment Workers' Union?

A. Yes, I am.

Q. Did you attend the meeting of April 27, 1937, at which that union was organized?

[fol. 2730] A. Yes, I did.

Q. Was that after working hours or during working hours?

A. It was after working hours.

Q. Did you go down in your uniform or change to your street clothes?

A. I went down in my uniform.

Q. Did you attend other meetings in your uniform, Miss Walton, after working hours?

A. Well, yes. I very seldom change.

Q. Did anyone direct you to go to the April 27 meeting, or did you go to it of your own accord?

A. I went of my own accord.

Q. I wish you would tell us in a brief way what occurred at that meeting.

A. April 27?

Q. April 27, 1937.

A. Well, Miss Todd spoke, and we nominated a committee to appoint general chairman and to form our union. Mr. Tyler spoke to us, and we signed cards.

Q. What were the cards you signed?

A. You mean, what did they have on them, the writing?

Q. Yes. What was the purpose of the cards, or what did they say on them?

A. "I hereby become a charter member of the Donnelly Garment Workers' Union and abide by its bylaws and regulations."

[fol 2731] Trial Examiner Batten: Mr. Stottle, I think after this witness covers the meeting of April 27, unless there are some new matters, I will not hear from any further witnesses about it, because I think there has been sufficient testimony about that meeting. As I said in other instances, you might call another witness and ask the questions and show that the witness was not permitted to answer, or you may submit your offer of proof as though the witnesses were here and present.

Mr. Stottle: All right, Your Honor.

By Mr. Stottle:

Q. Miss Walton, did you see any officers or executives of the Donnelly Garment Company or the Donnelly Garment Sales Company present at this meeting of April 27?

A. No, I don't believe I did.

Q. Did you gain the impression at that meeting, Miss Walton, that the Donnelly Garment Workers' Union which you formed there was to take the place of the Loyalty League?

A. No, sir.

Q. Are you a member of the Loyalty League?

A. I am.

Q. When did you join the Loyalty League?

A. 1935.

Q. Did any officer or executive of the company direct you to join the Loyalty League, or suggest that you join it?

A. No, sir. I asked to be allowed to join it.

Mr. Stottle: I believe that is all.

[fol. 2732] Trial Examiner Batten: Mr. Patten?

Cross-Examination.

By Mr. Patten:

Q. You are Mrs. or Miss Walton?

A. Miss Walton.

Q. What section are you in, Miss Walton?

A. I am in 413 now.

Q. [Where] you on the 23rd of April, 1937?

A. In 412.

Q. Was Fern Sigler or Sylvia Hull in that section?

A. Sylvia Hull was.

Q. Were you there on the morning of April 23, 1937?

A. Yes, sir.

Q. Did you see any unusual occurrence around Sylvia Hull's machine?

A. Well, it was a general upsetting.

Q. How close were you to it?

A. Across the table.

Q. Was there any violence?

A. No, sir.

Q. Did the instructor take part in it?

A. No, sir.

Q. Were any threats made?

A. None.

Q. Was the power shut off?

A. Not that I remember of.

[fol. 2733] Q. What was the instructor doing?

A. I believe she was away, at the end of the tables, by the bins. I think she was kind of crying about it.

Q. Do you recall anything about bylaws at the April 27 meeting?

A. No, not right offhand, with the exception of the ones I spoke of a few minutes ago.

Q. The bylaws read at the meeting?

A. Yes.

Q. Was anything said about amending the bylaws?

A. I don't remember.

Q. Do you remember what was said about whether you could sign the cards or not, as you pleased?

A. Well, we were told if we wanted to sign the cards there, we could, or if we cared to take them home and have someone read them over with us, we could do so.

Q. Did you sign the card as your own voluntary act?

A. I did.

Q. You were not in fear of anyone in signing that card?

A. No.

Q. Going back to the morning of April 23 and the Sylvia Hull incident, how much noise do the machines make? In other words, how far away can you hear a person talking in a normal voice when the machines are running?

A. If I am talking to the girl across the table from me I [fol. 2734] quit working at that time, because I would be unable to hear with both machines running.

Q. Do you have to raise your voice any for her to hear you?

A. Some, yes.

Q. How far is that?

A. Well, it is about this distance (indicating), across the table.

Trial Examiner Batten: What is that, about four or five feet? How far is it, Mr. Ingraham, across those tables?

Mr. Ingraham: I think it is about four or five feet.

Trial Examiner Batten: Mr. Baty, how far is it across those tables where the machines sit?

Mr. Baty: Across from one side to the other?

Trial Examiner Batten: Yes.

Mr. Baty: Four feet.

By Mr. Patten:

Q. Did you ever attend at one time a meeting of both the Loyalty League and the union, the Donnelly Garment Workers' Union?

A. I have not.

Q. Do you recall any occasion when a union meeting came to an end and the employees of that meeting were asked to stay and attend the Loyalty League meeting?

A. No, sir.

[fol. 2735] Q. Or the other way around?

A. No, sir.

Q. Did that ever occur, to your knowledge?

A. It has not.

Q. Do you attend union meetings regularly?

A. Well, I have missed a few on my bowling nights, but, otherwise, I attend them all.

Q. Well, how about early in 1937, from the time the union was organized on until the end of the year?

A. Yes, I attended those fairly regularly during that time.

Q. Do you recall any meeting ever having been held before the end of the working day or during working hours?

A. No, I don't.

Mr. Patten: That is all.

Trial Examiner Batten: Mr. Leary.

By Mr. Leary:

Q. Who told you to go to the April 27th meeting?

A. No one told me. I went because it was a general discussion among we girls.

Q. How did you know there was going to be a meeting?

A. Well, there had been quite a bit of talk about it during the day, and the girl next to me, I think, maybe, told me.

Q. Do you know where she got her information?

A. She didn't say.

Q. Do you know Marjorie Green?

[fol. 2736] A. I do.

* * * * * *

Q. What did you go to that April 27th meeting for?

A. Well, we wanted to find out, I think the most of us, just what we were going to do in the way of protection.

Q. Did you think they were going to form a union then?

A. Well, no. We had been talking something about doing whatever we could.

Q. Is it then your answer that you didn't know they were going to form a union at that meeting?

A. We didn't know exactly what they were going to do.

* * * * * *

By Mr. Langsdale:

Q. Who was your instructor on April 23d, the date of the Sylvia Hull incident?

A. Who was she?

Q. Yes.

A. Mrs. Allison.

* * * * * *

[fol. 2737] Q. Were you one of the girls who followed Sylvia Hull to the office?

A. No, I didn't follow her.

Q. Some of the girls did, did they not?

A. I don't know.

Q. You say all Mrs. Allison did was just stand over and cry some place; is that it?

A. She was standing in the back, yes.

Q. She didn't make any effort to stop it?

A. Well, she asked we girls to sit down and go to work, and she didn't seem to have very much luck with us, because we didn't want to work with her.

Q. Were you one of those who refused to work if Sylvia Hull stayed there?

A. I was.

* * * * * *

[fol. 2739] Q. You saw Mrs. Hyde at that meeting on the 27th?

A. I don't remember.

* * * * * *

By Mr. Patten:

Q. You understood you could sign that card, or not, as you pleased?

A. I didn't get the question.

Q. Did you understand that you could sign the membership card, or not, as you pleased?

[fol. 2740] A. That is the way I understood it, and I signed it of my own free will.

* * * * * *

PEARL COLLINS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Just state your name, please.

A. Pearl Collins.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed at the Donnelly Garment Company?

A. About 12 years.

[fol. 2741] Q. In what capacity are you employed there at the present time?

A. Instructor.

Q. Were you an instructor in 1937?

A. Yes.

Q. In what section?

A. 521.

Q. Was Fern Sigler an operator in that section at that time?

A. She was.

Q. I will ask you if on the morning of April 23, 1937, there was any commotion on the sixth floor?

A. There was.

Q. Were there operators from other floors on that floor at any time?

A. Yes.

Q. State whether or not these operators congregated around Fern Sigler?

A. They did.

Q. State whether or not they sang songs.

A. Well, I think they sang songs. I don't remember exactly what they sang.

Q. What did you do, if anything, when they were there?

A. Well, I merely asked the girls to leave and go back to work.

[fol. 2742] Q. Was the power on in your section at that time?

A. It was.

Q. Was Fern Sigler working at that time?

A. She was.

Q. Did the girls leave when you asked them to?

A. Well, not immediately, but then they soon left.

Q. State about what time it was when this first commotion started.

A. I think it was about 8 o'clock.

Q. Later, did these girls return?

A. Well, I don't know whether the same group of girls returned, but some other girls did return.

Q. Did you see anybody touch Fern Sigler?

A. No.

Q. Did you see any of the girls push Fern Sigler under her machine?

A. No.

Q. What, if anything, did you do with respect to the second group of girls that come?

A. Well, I put a telephone call in to ask the operator to locate Mr. Baty.

Q. Did Mr. Baty come up at that time?

A. No, not immediately. He came later.

Q. When Mr. Baty first came up, at that time were there any girls from other floors congregated around Fern Sigler?

[fol. 2743] A. Well, when he first came in, there wasn't.

Q. Then did he return to the office or leave the floor?

A. He left the floor.

Q. Then did another group of girls come down to your floor?

A. They did.

Q. Did you attempt to reach Mr. Baty again?

A. Yes, I did.

Q. Did he come to your floor?

A. He did.

Q. And what did Mr. Baty do?

A. Well, I don't know what he did. I wasn't close enough to hear what he said, but I knew Fern Sigler left with him.

Q. Did you hear any of these girls congregated around Fern Sigler make any statements that they were going to throw her out of the window?

A. No.

[fol. 2744] Q. That they were going to tear her clothes off?

A. No.

Q. Did you, at any time, order the operators in your section to attend any meetings of the Donnelly Garment Workers' Union?

A. No.

Q. Have you at any time solicited members for the Donnelly Garment Workers' Union?

A. No.

Q. Did you at any time assist, in any way, in getting operators to join the Donnelly Garment Workers' Union?

A. No.

Q. Has any official of the company, or any person with authority to hire, fire, or discipline employees, ever ordered you to become a member of the Donnelly Garment Workers' Union?

A. No.

Q. Did you join of your own free will?

A. I did.

Q. Have you ever had any discussion with any officials of the company, or any person with supervisory authority, in regard to the Donnelly Garment Workers' Union?

A. No.

Q. Did you attend the meeting of April 27, 1937?

A. I did.

Q. Will you just state how you received notice of that meeting?

[fol. 2745] A. Well, I don't remember exactly whether I received notice myself, or whether the thread girl, did, but a message came that Rose Todd was calling a meeting of the employees.

Q. Will you state whether or not that meeting occurred during working hours or after working hours?

A. It was after working hours.

* * * * * * *

Cross-Examination.

By Mr. Langsdale:

Q. When Mr. Baty finally came down to Fern Sigler's [fol. 2746] section, who, if anyone, was with him?

A. I didn't see anyone with him.

Q. Did you see Rose Todd?

A. No, I didn't.

Q. Was she in that section on that day, to your knowledge?

A. Not to my knowledge, no.

Q. How far were you from Fern Sigler?

A. I was right next to her part of the time, because I worked up and down the whole section.

Q. But, when this disturbance was going on?

A. Part of the time I was right there.

Q. You say you worked up and down the section?

A. I distributed work up and down the section.

Q. I thought you were an instructor.

A. I am.

Q. Isn't it the thread girl's duty to distribute work?

A. It is my duty, too.

Q. Isn't it a fact that you are charged with the quality, whereas the thread girl is charged with quantity?

A. I try to keep the girls busy, too.

Q. You are charged with both quality and quantity?

A. I am not in charge of it.

Q. What are you in charge of?

A. I am not in charge of anything.

Q. You are just there?

[fol. 2747] A. I am just there.

Q. How long have you been there?

A. I think, a little over 12 years.

Q. You distribute the work, as well as instruct the girls?

A. Yes.

Q. Didn't you have a thread girl there at that time whose duty it was, also, to distribute?

A. Yes, sir.

Q. Was she on the job that morning?

A. Sure.

Q. You say Rose Todd wasn't there around Miss Sigler at all, that you saw?

A. Not that I saw.

Q. You stated that you did not suggest to anyone that she join the Donnelly Garment Workers' Union?

A. No, I didn't.
Q. Why didn't you?
A. Well, it wasn't any of my business whether they joined or not.
Q. Why not?
A. What do I care what the other employees do?
Q. But you were a member of the union, weren't you?
A. Yes.
Q. Weren't you anxious to see that the other employees joined?
A. Not particularly, no.

[fol. 2749] PEARL ATCHISON, a witness called by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

[fol. 2750] Direct Examination.

By Mr. Ingraham:
Q. State your name, please. A. Pearl Atchison.
Q. Where are you employed, Mrs. Atchison?
A. Donnelly Garment Company.
Q. In what capacity? A. Instructor.
Q. How long have you been employed at tht Donnelly Garment Company?
A. About ten and a half years.
Q. What section do you work in? A. 523.
Q. Was May Fike an operator in that section in the spring of 1937? A. Yes.
Q. Was she there on the morning of April 23, 1937?
A. Yes, sir.
Q. Was there a commotion on that floor that morning?
A. There was.
Q. Did the girls in your section work during that commotion? A. Yes, sir.
Q. Was the power on at all times? A. It was.
Q. Were you in the section during the time these various commotions were going on?
[fol. 2751] A. I was.
Q. Did you hear anything that was said by the groups of girls that went over to Fern Sigler? A. No, sir.
Q. Were those girls from other floors, these groups of girls that went over to Fern Sigler?

A. I couldn't hear anything.

Q. Did May Fike continue to work during the times that these groups of girls were over at Fern Sigler's machine? A. Yes, sir.

Q. When May Fike was working did she have her back to where Fern Sigler was sitting? A. She did.

Q. Would it be possible to see Fern Sigler from May Fike's machine unless May Fike stood up and turned around? A. No, she could not.

Q. Did you see May Fike at any time stand up?

A. No, sir.

Q. Now, that morning did you have any conversation with May Fike relative to Fern Sigler? A. I did not.

Q. Did you have any conversation with May Fike with reference to the commotion? A. No, sir.

Q. Did you at any time say to May Fike that it was [fol. 2752] too bad that Fern Sigler joined the union?

A. No, sir, I did not.

Q. Did you ask May Fike if she was a member of the union? A. No, sir.

Q. Did you attend the meeting of April 27, 1937?

A. Yes, sir.

Q. Did any official of the company, or any officer with supervisory authority, suggest or order that you attend that meeting? A. No, sir, they did not.

Q. Did any official of the company, or any person with supervisory authority, talk to you at any time with reference to joining or not joining the Donnelly Garment Workers' Union? A. No, sir.

Q. Did any official of the company, or any person with supervisory authority, ever discuss with you whether or not you should join or should not join the International Ladies' Garment Workers' Union? A. No, sir.

Q. Did you at any time solicit members for the Donnelly Garment Workers' Union? A. No, sir.

Q. Have you ever suggested to any employee at the Donnelly Garment Company that he or she should join the Donnelly Garment Workers' Union?

[fol. 2753] A. No, sir.

Q. Did you on April 27 order May Fike and the other operators in that section to go to the second floor and attend the meeting for the purpose of forming a union?

A. No, I did not.

[fol. 2754] Q. Did you order May Fike or any other operator to go down to that meeting in a body and stay together so that you could return to work as soon as the meeting was over? A. No, I did not.

Q. State whether or not that meeting occurred during working hours or after working hours.

A. After working hours.

Q. Following April 23, 1937, did May Fike work the rest of that week?

A. She didn't come in on a Monday morning.

Q. Well, I mean just the week of April 23d. I think April 23d was on Thursday.

A. Yes. She worked the rest of that week.

Q. Well, then, the following Monday, did May Fike work?

A. She didn't work on a Monday morning, but came in at noon, and then—

Q. (Interrupting) Did she work the rest of that day?

A. She worked the rest of that day.

Q. Had she notified you or anybody connected with the company, to your knowledge, that she would not be in that Monday morning to work?

A. No, she did not.

Q. Well, now, state whether or not she worked Tuesday.

A. She didn't come in Tuesday morning, but came in at noon and worked Tuesday afternoon.

[fol. 2755] Q. That was April 27, 1937?

A. Yes, but Mr. Baty came in the section Tuesday morning and I told him I needed another operator, and so I told him that she wasn't there, and he got in touch with her.

Mr. Langsdale: Will you speak a little louder? I didn't get any part of that answer.

A. (Continuing) Got in touch with her, and she came in at noon.

By Mr. Ingraham:

Q. Now, the operators worked the rest of that afternoon? A. Yes.

Q. Was your section busy at that time?

A. Yes, very busy.

Q. Well, following April 27th, did May Fike work the rest of the week?

A. Yes, she worked the rest of the week.

Q. Did she then, or did she during that time, say anything to you with reference to taking a vacation?

A. Yes, she wanted a couple of weeks' vacation.

Q. Did you tell her that she would have to see Mrs. Hyde? A. I did.

Q. Did your section, the operators in your section, in which you worked, take their vacations the first part of May?

A. No, sir, we did not.

Q. What time were vacations taken that year?

[fol. 2756] A. Around the middle of June.

* * * * * *

Cross-Examination.

By Mr. Patten:

Q. Mrs. Atchison, did any officer of the company or any other person in authority ever ask you to send your girls down to any union meeting?

A. No, sir, they did not.

Q. Did any officer or other person representing the company ever ask you to encourage any employee of the Donnelly Garment Company or the Donnelly Garment Sales Company to join the Donnelly Garment Workers' Union?

A. No, sir, they did not.

Q. Did you ever try to lead your girls any place, or take them with you, or do they go and come as they please?

A. They go and come as they please.

* * * * * * *

[fol. 2758] Q. Who told you of the April 27th meeting?

A. Well, I really don't know.

Q. Will you speak louder, please?

A. Whether some of the operators or the basket boy, or who.

* * * * * *

[fol. 2760] Q. Now, you say you never encouraged or suggested to any employee at the Donnelly Garment [fol. 2761] Company that employee joined the Donnnelly Garment Workers' Union?

A. No, sir.

* * * * * *

Q. You never did in the entire existence of that organization suggest to anyone?

A. No, I did not.

Q. That he join or remain a member, or that she join or remain a member of that union?

A. I did not.

* * * * * *

[fol. 2762] PEARL FIELDS, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Stottle:

Q. State your name to the Examiner, please.

A. Mrs. Pearl Fields.

Q. Do you live in Kansas City, Mrs. Fields?

A. In the Inter-City district.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed there?

A. Four years.

Q. What is the nature of your work for the company?

A. Operator.

Q. Have you been an operator during that entire period? A. Yes, I have.

Q. What is the nature of your operation?

A. Straight sewing, the first part operation.

Mr. Stottle: Mr. Examiner, I wish to ask this witness [fol. 2763] questions about the April 27th meeting as a foundation for our offer of proof, unless you have decided to let her answer.

Trial Examiner Batten: Well, you mean the question is in line with the questions asked previous witnesses; is that it?

Mr. Stottle: Yes.

By Mr. Stottle:

Q. Did you attend the meeting of April 27, 1937, at which the Donnelly Garment Workers' Union was formed?

A. Yes, sir, I did.

[fol. 2764] Q. State what occurred at that meeting, briefly.

A. Well. Mr. Tyler talked to us, and then a nominating committee was named, and they left the room and came back with a list of officers and representatives, and they were elected unanimously to serve as the first officers of our union.

I don't know that there was much else took place that I remember, only that our union was organized at that meeting.

Q. Were you instructed by any officer or executive to go to that meeting? A. No, I was not.

Q. Did your instructor direct you to go to that meeting? A. No.

Q. I will ask you to state whether that meeting took place during working hours or after working hours.

A. It was after working hours.

Q. Did you wear your uniform or go in your street clothes?

A. I went in my street clothes.

Q. Did most of the employees there go in their street clothes or their uniforms?

A. I wouldn't say most of them. I think most of the girls who got off earlier changed to their street clothes in order to get home as quickly as they could after the meeting.

Q. Did you see any officers or executives of the Donnelly Garment Company or the Donnelly Garment Sales [fol. 2765] Company present at that meeting?

A. No, I did not.

Q. Was anything said at that meeting by Rose Todd, Mr. Tyler, or anyone else, to the effect that Mrs. Reed or the management of the Donnelly Garment Company wanted the employees to form a plant union? A. No.

Q. Were membership cards passed out at that meeting?

A. Well, not membership cards.

Q. Were some cards passed out?

A. Yes—that we wanted to become charter members of the union.

Q. You mean application cards?

A. Yes. They were not membership cards.

Q. Was any pressure brought to bear upon you to sign those cards at that meeting, or what were you told about that?

A. We were told to use our own discretion, sign them or not, as we wanted to.

Q. Did you sign yours at that meeting?

A. Yes, I did.

Q. Did you gain the impression, Mrs. Fields, from anything said at that meeting that the Donnelly Garment

Workers' Union was to take the place of the Loyalty League? A. No.

Q. Are you a member of the Loyalty League?

[fol. 2766] A. Yes, I am.

Trial Examiner Batten: Mr. Stottle, if you have finished your questions about the April 27 meeting, I don't care to listen to any further witnesses on it, unless it is something that has not yet been covered by the previous witnesses.

Mr. Stottle: Mr. Examiner, I expected you to rule me out, but you didn't, so I went ahead asking the questions. If you say you don't want us to ask any more such questions we will, of course, submit an offer of proof.

Trial Examiner Batten: The offer of proof, of course, will be submitted in the same manner as if you had presented the witnesses.

By Mr. Stottle:

Q. When did you join the Loyalty League?

A. Shortly after I started working there; I don't know just when.

Q. Did any official of the company, or any executive, ask you to join the Loyalty League? A. No.

Q. Is the Loyalty League still in existence? A. Yes.

Q. What is the nature of the activities of the Loyalty League?

A. It is purely a social organization.

Q. Did it ever, to your knowledge, act as a labor union down at the plant?

[fol. 2767] A. No, they haven't; not since I have been there, anyway.

Q. Did you ever hear of their negotiating with the Donnelly Garment Company for a union contract or concerning wages? A. No.

Q. Did you ever see any officers of the Donnelly Garment Company or the Donnelly Garment Sales Company at any of the later meetings of the Donnelly Garment Workers' Union? A. No, I haven't.

Q. You have attended a good many of those meetings?

A. Yes, I have.

Q. Do you know of any participation that the officers of the company have had in any meetings of the Donnelly Garment Workers' Union? A. No.

Q. To your knowledge, has the Donnelly Garment Company, or any of its officers or executives, given any financial support or any other aid to the Donnelly Garment Workers' Union? A. Not to my knowledge.

Q. Have you been directed by any officer or executive of the Donnelly Garment Company, or by any instructor, to go to any of the subsequent meetings of the Donnelly Garment Workers' Union? A. No, I have not.

Q. Have any of those meetings of the Donnelly Garment Workers' Union that you have attended been held [fol. 2768] during working hours? A. No.

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Cross-Examination.

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[fol. 2771] Mr. Stottle: Mr. Examiner, respondent is not objecting to the lack of identification, but respondent does object that it does not tend to prove or disprove any issue in the case and would therefore be immaterial.

Trial Examiner Batten: In other words, it is about in the same classification as some of the other newspaper articles we have had. It may indicate something, but it doesn't prove anything.

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[fol. 2772] By Mr. Langsdale:

Q. Did you purchase a union pin?

A. I have a union pin, yes.

Q. When did you get it?

A. Sometime after I joined the union—after our union was organized.

Q. How soon after?

A. I can't remember how soon.

Q. They were all bought at about the same time, weren't they? A. I think so.

* * * * * *

[fol. 2775] Ruby Lago, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. State your name, please. A. Ruby Lago.

Q. Are you employed at the Donnelly Garment Company? A. I am.

Q. How long have you been employed at the Donnelly Garment Company? A. Almost 5 years.

Q. Are you an operator? A. Yes, I am.

Q. I will ask you if you are a member of the Loyalty League? A. I am.

Q. When did you join that organization?

A. When it was first organized.

Q. State whether or not that is a social organization?

A. It is.

Q. State whether or not it was also the purpose to—strike that. State whether or not the Loyalty League was organized also for the purpose of refuting untrue statements made about the company.

[fol. 2776] A. No.

Q. It was not?

A. I don't know that part of it, what it was supposed to be for. When I joined the Loyalty League I understood it to be absolutely a social organization.

Q. Have you attended any meetings of that organization?

A. Well, I don't remember if I ever attended one after it was organized. I have only attended dances we have had at the Pla-Mor.

Q. Has the company or any of its officers or officials, to your knowledge, controlled the Nelly Don Loyalty League?

A. No, they don't.

Q. Did any officials of the company, anybody connected with the management, ask you to become a member of the Nelly Don Loyalty League? A. No, they did not.

Q. Did you join it of your own free will?

A. Yes, I did.

Q. To your knowledge, has the Loyalty League any connection with the Donnelly Garment Workers' Union?

A. No, it hasn't.

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[fol. 2777] MILDRED FRANCES STRINE, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. State your name, please.

A. Mildred Frances Strine.

Q. Are you employed by the Donnelly Garment Company? A. I am.

Q. In what capacity?

A. Secretary to Mrs. Reed.

Q. How long have you been Mrs. Reed's secretary?

A. About 7 years.

Q. I will ask you, Mrs. Strine, if you were present at a meeting of the employees on March 18, 1937?

A. Part of the meeting, I was.

Q. Who asked you to go to that meeting?

A. Mrs. Reed.

Q. Will you just state when Mrs. Reed arrived at the plant on that day?

A. Well, Mr. and Mrs. Reed were leaving for Florida that evening, and right after lunch Mrs. Reed and myself [fol. 2778] went down in town and did a little shopping, and we stopped by the office late in the afternoon.

Q. Will you just state what occurred with reference to your going down to attend this meeting?

A. Well, Mrs. Reed came out of her office to mine and she said that a group of employees had come up and told her that there was a meeting downstairs, and had asked her to talk, and asked me to go downstairs with her.

Q. Did you go? A. Yes.

Q. Did Mrs. Reed make a talk? A. She did.

Q. Did Mrs. Reed ask you to take notes of what she said?

A. Yes, when we started down, she said that I had better take a pad and take down her statement.

Q. And you took just Mrs. Reed's speech?

A. That is as long as I was at the meeting. I was just there while Mrs. Reed spoke.

Q. Was Mrs. Reed introduced to speak as soon as she arrived at the meeting?

A. Yes. I didn't go to the platform with Mrs. Reed, but she went up to the platform and I believe Rose Todd was on the platform when we walked in, and Miss Todd introduced Mrs. Reed and then she started talking.

Q. And when Mrs. Reed finished, did she leave the meeting?

[fol. 2779] A. We left immediately.

Q. Now, what did you do with the notes with reference to writing them up?

A. Well, we went out to Mrs. Reed's home, and Laura Baker, Mr. Reed's secretary, was doing some work for

him out there and she was at the typewriter, and so I dictated my notes to Miss Baker and she wrote them off.

Q. Did you give the original to Mrs. Reed?

A. Yes, I did.

Q. Were copies made? A. One carbon, yes.

Q. I will hand you Respondent's Exhibit 12, and ask you if that was the carbon copy of the notes that were written? A. It is.

(Thereupon, the document above referred to was marked as "Respondent's Exhibit No. 12" for identification.)

Q. I will ask you to state whether or not you asked Mrs. Reed for the original of this.

A. I did, but she didn't have it. She must have misplaced it, or something. She didn't have it.

Mr. Ingraham: Respondent offers in evidence Exhibit 12.

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[fol. 2780] Mr. Ingraham: Could I ask one further question of the witness?

Trial Examiner Batten: Yes.

By Mr. Ingraham:

Q. You have read Respondent's Exhibit 12?

A. I have.

Q. If that is a correct statement of what Mrs. Reed said at that meeting?

A. It is. It is my notes. I stood by Miss Baker's machine and dictated those to her and she handed them to me.

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[fol. 2781] By Mr. Ingraham:

Q. Mrs. Strine, I will ask you to state if you know whether or not Mrs. Reed had any knowledge of the meeting of March 18, 1937, until—

Mr. Leary (interrupting): Just a moment, please. What about the exhibit?

Trial Examiner Batten: Well, you may go ahead.

Mr. Ingraham: Until Mrs. Reed arrived at the plant?

A. I am sure she did not.

Trial Examiner Batten: It will be received.

(The document heretofore marked as "Respondent's Exhibit No. 12" was received in evidence.)

By Mr. Ingraham:

Q. Mrs. Strine, has Mrs. Reed been ill this spring?

A. Yes, she has.

Q. Has she had any surgical operation?

A. She had two operations this spring, yes.

Q. Is she now under the care of a trained nurse?

Mr. Leary: Now, I object to this as immaterial.

Trial Examiner Batten: Well, what is this for?

Mr. Ingraham: Well, I just want to show that Mrs. Reed is sick.

* * * * * * *

[fol. 2782] Mr. Ingraham: Well, she would be here if she was well.

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Cross-Examination.

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[fol. 2787] By Trial Examiner Batten:

Q. Do you belong to the Donnelly Garment Workers' Union? A. No, sir.

Q. Do you belong to the Loyalty League? A. No, sir.

Q. Are you employed by the Donnelly Garment Company? A. Yes, sir.

* * * * * * *

[fol. 2788] By Mr. Langsdale:

Q. Miss Strine, what did you do before you became secretary to Mrs. Reed?

[fol. 2789] A. I did stenographic work.

Q. For whom?

A. For Mrs. Stephenson in the credit department, and for Mr. Donnelly.

Q. You mean in the credit department of the Donnelly Garment Company? A. Yes, sir.

Q. Were you secretary to Mr. Donnelly while he was there?

A. Well, I did his stenographic work. I don't believe he had any secretary at that time.

Q. How long have you been employed by anyone in connection with the Donnelly Garment Company?

A. How long have I been there?

Q. Yes. A. Fifteen years.

Q. And you have been doing stenographic work all of that time? A. Yes, sir.

Q. That is, taking dictation for letters, correspondence?

A. Yes, sir.

Q. Have you ever done any reportorial work?

A. No, sir.

Q. All you have done is to take dictation of correspondence, is that right?

A. And I have handled matters for Mrs. Reed.

[fol. 2790] Q. But, I mean as far as your dictation is concerned, you have taken dictation only for correspondence?

A. I don't know whether I understand what you mean.

Q. Well, you have never recorded any hearings of any kind, have you?

A. Not except that one.

Q. With this one exception, in your whole lifetime you have never reported any meeting?

A. No, I don't believe I have.

Q. Do you remember the hearing commonly known as the three-judge hearing? A. Yes, sir.

Q. And you filed some affidavits signed by you in that case, didn't you? A. Yes.

Q. When did you first see this carbon copy that has been introduced and designated as respondent's exhibit No. 12?

A. When Miss Baker gave it to me, when she had finished typing it.

Q. When did you next see it?

A. I think, this morning.

Q. Who showed it to you this morning?

A. Mr. Ingraham.

Q. Do you know where he got it?

A. I suppose he got it out of my file out at the house.

Q. Do you know where he got it?

[fol. 2791] A. No.

Q. Has it been in his possession since the time you first saw it after taking it out of the typewriter and this morning? A. All of this time?

Q. Yes. A. No. It has been in my file.

Q. I understand. But you haven't seen it—you haven't looked at it since the day it was made until this morning? That is true, is it not?

A. I don't believe I have. I don't know; I may have looked at it in going through my file; I don't remember.

Q. You have no recollection of having read that exhibit No. 12 between the day it was made and this morning, do you?

A. No, I don't know that I have.

Q. And you don't know that anyone else has read it between those dates, do you?

A. I don't know.

Q. And when Mr. Ingraham handed it to you did he tell you where he had gotten it?

A. I don't believe he did.

Q. You knew in this three-judge hearing, the one that went to the Supreme Court of the United States, that there were a number of affidavits filed by different parties with reference to what Mrs. Reed had said at the meeting of March 18, 1937, didn't you?

[fol. 2792] A. Yes.

Q. And you knew that Mrs. Reed had made an affidavit in which she had related what she said at the meeting of March 18, didn't you? A. Yes.

Q. And you filed three affidavits in that hearing, signed by you, didn't you? A. I think I did.

Q. And you didn't say one word in any of them about having taken down what Mrs. Reed said at the meeting of March 18, did you? A. It didn't come up.

Q. Your attorneys prepared the affidavits, didn't they, and you signed them?

A. I signed the affidavits.

Q. And you didn't say one word in any of the affidavits about having taken down what Mrs. Reed said at the meeting of March 18, did you?

A. Mrs. Reed covered that.

Q. You didn't say that? A. No.

Q. You were present at the Judge Miller hearing?

A. Part of it.

Q. You did not take the witness stand in that hearing?

A. No.

[fol. 2793] Q. And you didn't tell anyone in that hearing that you had taken this matter, exhibit No. 12? Did you tell anybody in this hearing that you had taken this?

A. No.

Q. You didn't even look up this carbon for anybody's use, did you? A. No.

Q. You didn't even call your attorney's attention to the fact that somewhere out there in your files you had this carbon copy of the minutes or of the speech Mrs. Reed made at the March 18 meeting?

A. My attorneys knew it was there.

Q. You didn't tell them, did you?

A. I didn't need to. They knew it.

Q. Who knew it?

A. Mrs. Reed and Mr. Ingraham.

Q. Mr. Ingraham, you mean to tell the Court, sat idly by and didn't produce that carbon in the Judge Miller hearing? A. He intended to.

Q. But he didn't do it?

A. Mrs. Reed was going to testify to this herself.

Q. Mrs. Reed testified in the Judge Miller hearing?

A. Yes.

Q. But she didn't say anything about your taking this down, in that hearing, did she?

[fol. 2794] A. Mr. Reed and Mr. Ingraham intended for her to, and Judge Miller wouldn't let her.

Q. Why do you say Judge Miller wouldn't let her?

A. Because he stopped her testimony.

Q. We have a record of her testimony here. We will see if he did or not.

By Trial Examiner Batten:

Q. You mean, stopped her from using these minutes?

A. He wouldn't let this go in. I think Mrs. Reed intended to testify about this.

Q. Did she testify about it and he told her he wouldn't receive it?

Mr. Ingraham: No, he stopped her before that—

Mr. Langsdale (Interrupting): Wait a minute, Bob. This witness is on the stand.

Trial Examiner Batten: I am asking the witness.

By Trial Examiner Batten:

Q. Did she refer to these minutes? A. No.

Q. Then, he didn't stop her, did he?

A. He didn't stop her on these minutes, no.

Trial Examiner Batten: That was Mr. Langsdale's question.

Mr. Langsdale: And you didn't take the witness stand at all in that hearing, did you?

[fol. 2795] A. No, sir.

Mr. Langsdale: Now that it is admitted that Judge Miller didn't stop her, there is no need of offering this testimony of Mrs. Reed in the Judge Miller hearing.

By Mr. Langsdale:

Q. You didn't even testify, by affidavit or orally, leaving out the consideration of this so-called transcript, as to what Mrs. Reed said at the meeting of March 18, 1937, either in the three-judge hearing or in the Judge Miller hearing, did you?

A. No, I didn't, because I didn't think it was important enough. I thought Mrs. Reed would take care of that.

Q. You didn't leave that up to counsel? You just thought it wasn't important enough? Is that what you wish to say?

A. Counsel knew about it, and they didn't bring it up with me.

Q. Let me call your attention to an affidavit—

I had better get the original on this. No. 8. It follows Mrs. Reed's, I think.

Q. Let me show you an affidavit which was filed in the three-judge hearing, which purports to be one signed by you on the 30th day of October, 1937—signed by Mildred Frances Strine—and ask you to examine it and see if that is an affidavit that you made and swore to on the date that is indicated on the document. (Handing to the witness the document referred to.)

Is that an affidavit that was made and sworn to by you?

[fol. 2796] A. Yes, sir.

Q. And filed in the three-judge hearing? A. Yes, sir.

[fol. 2797] Mr. Langsdale: Now, I offer in evidence the affidavit of Mildred Frances Strine, as appears commencing on page 209 of the record of what has been called the Three-Judge Court, and in Volume 1 of that record at that page, the same being the transcript of the record filed in the Supreme Court of the United States for the October Term, 1937, No. 801, entitled "International Ladies' Garment Workers' Union", and so forth "et al, Appellant, versus Donnelly Garment Company, Donnelly Garment Sales Company and Donnelly Garment Workers' Union", and so forth "et al," appealed from the District Court of the United States for the Western District of Missouri.

Trial Examiner Batten: Mr. Langsdale, how many pages is that affidavit? Can't you have a copy of that made and you folks agree that is what it is, and put it in as an exhibit, because whoever reviews the record—

Mr. Langsdale (interrupting): My only purpose is to show that it makes no reference whatever to this document, Respondent's Exhibit 12, that was brought in this morning.

Mr. Ingraham: Well, I will agree that that is true.

Trial Examiner Batten: Well, in that case it will not be necessary to offer the affidavit, will it?

Mr. Langsdale: No, not necessarily.

Now, then, there are two other affidavits.

By Mr. Langsdale:

Q. Let me hand you this copy of an affidavit, one that [fol. 2798] is signed by you on the first day of November, 1937, filed in the Respondent's case in rebuttal, in the three-judge hearing, just referred to, and ask you to read it and state whether or not that is a copy of an affidavit made and sworn to by you, and filed in this cause?

(Whereupon, the affidavit above referred to was handed by Mr. Langsdale to the witness.)

A. Yes, sir.

Mr. Langsdale: The purpose of offering this affidavit is to show that there is no reference made in it of any kind or character to any speech having been taken by this witness, at the meeting of March 18th.

Mr. Ingraham: I will agree that is true.

Mr. Langsdale: Is there any reason why they should agree it is true?

Mr. Lane: I am endeavoring to locate the affidavit. Do you have the page number in the three-judge transcript where they appear?

Trial Examiner Batten: Page 209 is one.

Mr. Langsdale: The other is in Volume 2.

Trial Examiner Batten: Of course, the Respondent's attorneys, if they agree that it isn't in there—

Mr. Lane (interrupting): Well, Mr. Langsdale asked if we agreed. I want to look at it.

Mr. Langsdale: Now, I show you a third affidavit, sworn to by you on the 3d day of November, 1937, and filed by [fol. 2799] the plaintiff, or the Donnelly Garment Company in this three-judge case that has been referred to, in rebuttal, by the plaintiff, Donnelly Garment Company, and ask you to read it and state whether or not you made and swore to that affidavit as of the date therein described?

(Whereupon, the affidavit above referred to was handed by Mr. Langsdale to the witness.)

A. Yes, sir.

Mr. Langsdale: Now, my object in calling the witness' attention to, and having her read this third affidavit, is to show that there was no reference made in that affidavit to her having taken down a speech made by Mrs. Reed on the 18th day of March, 1937.

Mr. Ingraham: That is correct.

Mr. Langsdale: Will it be admitted?

Mr. Ingraham: That is admitted.

Mr. Langsdale: Now, will it also be admitted that there was no other affidavit made by this witness and used in that same trial?

Mr. Ingraham: That is correct.

Mr. Langsdale: And will it also be admitted that this witness did not testify in the so-called Judge Miller hearing?

Mr. Ingraham: That is correct.

Mr. Langsdale: Let me show you an affidavit that purports to have been signed by Nell Quinlan Reed on the [fol. 2800] 5th day of November, 1937, and which was filed by the plaintiff, the Donnelly Garment Company, in rebuttal, in the so-called three-judge hearing, and have you tell the Examiner whether or not you are familiar with that affidavit.

(Whereupon, the affidavit above referred to was handed by Mr. Langsdale to the witness.)

Mr. Ingraham: Well, Mr. Langsdale, I will make no objection to the introduction in evidence of that affidavit that you are asking the witness to identify.

Mr. Langsdale: What I want to show is that Mrs. Reed, while talking about what she said at that meeting, said nothing about this witness having taken it.

Mr. Ingraham: It is all right with me for that affidavit to go into the evidence.

Mr. Langsdale: May we offer this whole affidavit?

Trial Examiner Batten: Well, I suppose you are all agreed.

* * * * * *

Redirect Examination.

By Mr. Ingraham:

Q. Mrs. Strine, I will ask you if you were present at a conference between Senator Reed, Mrs. Reed and myself, prior to the hearing before the three-judge court, at which time there was a discussion about the use of the transcript of Mrs. Reed's speech?

[fol. 2801] A. Yes, I believe I was, and as I recall, Senator Reed—

Q. (Interrupting) Well, just state what took place there, and what Senator Reed said.

A. Senator Reed—before the Miller case?

Q. No, the three-judge.

A. The three-judge. Mr. Reed, as I recall, said that this would not be used in that case; that that was on the temporary injunction and he didn't think that it was necessary to use that; that that should be used in that case, but when the case went to trial on a permanent injunction, that Mr. Reed and Mr. Ingraham decided that that was when this would be brought in.

Q. Now, state whether or not you were present at any conference prior to the time Mrs. Reed testified before Judge Miller, at which time it was discussed as to whether or not Mrs. Reed would testify about this transcript and offer it in evidence? A. It was.

Q. And tell what was decided, if you remember, about whether or not she would, before Judge Miller, offer it in evidence?

A. Well, I don't remember in detail, except when it was discussed, it was decided that Mrs. Reed would offer this herself before Judge Miller, in her own testimony.

* * * * * *

[fol. 2802] Mr. Ingraham: Your Honor, on some of these matters in which you stated that you would allow offers of proof, you have said that we could put another witness on, or we could stop and make the offer.

Now, we have other witnesses here in regard to the matter of the Loyalty League. We have offered several witnesses and these other witnesses will testify about the same, to about the same facts.

Trial Examiner Batten: Well, as I recall, I have not indicated that you should not call any further witnesses about the Donnelly Loyalty League?

Mr. Ingraham: No, that is correct.

Trial Examiner Batten: And I certainly see no need of calling any further witnesses, unless it is on matters that have not been covered by prior witnesses.

Now, you may offer one further witness on that, or you may make an offer of proof, the same as if the witnesses had been present here in court, and it will have the same force and effect.

Mr. Ingraham: Well, with that understanding, then, [fol. 2803] we will make the offers of proof, and at this time, I think outside of possibly one more witness, a doctor, the Respondent rests.

Trial Examiner Batten: Well, you mean with respect to Mrs. Reed?

Mr. Ingraham: Yes.

* * * * * * *

[fol. 2805] Appearances:

Daniel J. Leary and Henry H. Foster, Jr., 1016 Scarritt Building, Kansas City, Missouri, appearing for the National Labor Relations Board.

R. J. Ingraham, James J. Shepard, Jr., and Burr S. Stottle, 1900 Telephone Building, Kansas City, Missouri, appearing for the Donnelly Garment Company.

Frank E. Tyler, Thomas J. Patten, and Lucian Lane, 1008 Dwight Building, Kansas City, Missouri, appearing for the Donnelly Garment Workers' Union.

[fol. 2806] Clif Langsdale, 922 Scarritt Building, Kansas City, Missouri, and Jane Walker Palmer, 818 Scarritt Building, Kansas City Missouri, appearing for the International Ladies' Garment Workers' Union.

* * * * * * *

[fol. 2817] Jack McConaughey,

a witness called by and on behalf of the Intervener, Donnelly Garment Workers' Union, having been previously duly sworn, was recalled and further examined and testified as follows:

* * * * * * *

Direct Examination.

By Mr. Tyler:

Q. State your name, please.

A. Jack McConaughey.

Q. You are the same Mr. McConaughey who has previously testified in this case? A. Yes, sir.

Q. Where are you employed, Mr. McConaughey?

A. Donnelly Garment Company.

Q. How long have you been employed there?

A. Nine years.

Q. In what capacity are you now working there?

Mr. Langsdale: It seems to me, if the Examiner please, that this line of preliminary examination is all repetition. This witness has been on the stand before and has given all of this information and it is not disputed.

Trial Examiner Batten: I think, part of it; I don't know that I would be certain it all has.

[fol. 2818] I might say this, with respect to this matter of witnesses, that you recall, Mr. Tyler, that where they have been on before and all of the preliminaries have been covered, you may do the same as the other attorneys have done, ask such preliminary questions as you think you need to in order to lead up to what you are approaching.

Mr. Tyler: I will endeavor not to repeat.

What was the last question?

(Thereupon the last question was read by the reporter.)

A. Working in the accounting department.

By Mr. Tyler:

Q. How long have you been in the accounting department?

A. Since March or April of this year.

Q. Are you a member of the Donnelly Garment Workers' Union?

A. Yes, sir.

Q. How long have you been a member of that union?

A. Since its inception, April 27, 1937.

Q. Are you a member of the executive committee or board of chairmen of that union? A. Yes, sir.

Q. How long have you been a member of that executive committee?

A. Since the inception of the committee, in 1937.

Q. Do you hold any office in that union? A. Yes, sir.

[fol. 2819] Q. What is it?

A. Treasurer.

Q. How long have you been treasurer?

A. For a year and about three months.

Q. You have knowledge of the financial affairs of that union, based on your work as treasurer?

A. Yes, sir.

Q. Does that organization pay its own bills?

A. Yes, sir.

Q. Did you ever know of anybody else except the organization itself paying any of its bills?

A. No, sir.

Q. I ask you what these papers are that I hand you at this time. (Handing papers to the witness.)

* * * * * *

A. Those are invoices of the Kansas City Chair Rental Company.

* * * * * *

[fol. 2821] Mr. Langsdale: What number is that one (indicating), Mr. Tyler?

Mr. Tyler: 17-A.

By Mr. Tyler:

Q. Mr. McConaughey, did these invoices come out of your files as treasurer? A. Yes, sir.

Q. I notice that some of them are billed to the Donnelly Garment Company. Did the Donnelly Garment Company pay any of those bills which are invoiced to the Donnelly Garment Company?

Mr. Langsdale: Mr. Tyler, to save time, would you mind asking which ones are Donnelly Garment Company? [fol. 2822] I saw only one.

Trial Examiner Batten: Mr. Langsdale, for your information, I have just checked up on my notes, and Mr.

Slotkin testified on June 26 that there was no account for the Donnelly Garment Workers' Union until January, 1939.

By Mr. Tyler:

Q. Will you state for the record which ones of these exhibits are billed to the Donnelly Garment Company? Look them over and state for the record.

A. Shall I use the exhibit number or the invoice number?

Q. The exhibit number.

A. Exhibit No. 17-B and 17-E are billed to the Donnelly Garment Company.

Q. Did the Donnelly Garment Company pay the bills represented by those invoices?

A. No, sir.

Q. Did the union pay them? A. Yes, sir.

Q. Did you ever give any instructions to the Kansas City Chair Rental Company to charge any rental for chairs used by the union to the Donnelly Garment Company? A. No, sir.

Q. Have you checked your accounts to see whether you have paid, as treasurer for the union, for chairs for every meeting that the Donnelly Garment Workers' Union ever had? A. Yes, sir.

[fol. 2823] Q. What result did you find?

A. That there were three meetings for which we had no invoice for chairs.

Q. How can you explain that, if you can explain it?

A. Either because it was billed to the Donnelly Garment Company and the invoice not forwarded to us, or else we just don't have the invoice.

Mr. Langsdale: I ask that the answer be stricken out as speculative and having no probative value whatever.

Trial Examiner Batten: It may stand.

By Mr. Tyler:

Q. Has the Kansas City Chair Rental Company presented any unpaid claim to you in the last few months?

A. No, sir. All of our bills have been paid.

Trial Examiner Batten: What were the dates of these three meetings, if you can recall them?

A. I believe there were two in 1937 and one in 1938, but I don't remember the dates.

By Mr. Tyler:

Q. Did the Donnelly Garment Workers' Union ever have any meetings at which the members stood up?

A. Yes, sir.

Q. Do you remember the dates of any of those meetings?

A. There was one in 1937, the date of which I don't remember.

Q. Will the treasurer's books of the Donnelly Garment Workers' Union show the moneys paid out by that union for various months since its organization?

[fol. 2824] A. Yes, sir.

Q. I will ask you to take the treasurer's book, which I now hand you, and read into the record the disbursements made by that union for two or three months, which you may take at random.

Trial Examiner Batten: You want just any two or three months as typical?

Mr. Tyler: I want to show that every month they paid substantial bills for themselves. I don't think it is necessary to put the whole book in evidence, but I want to show the payments made by the union for that month.

. . . . . .

Mr. Tyler: If the Examiner please, my recollection is that this is not in evidence. Moreover, I think it has some probative value, showing that month after month they paid their own bills, rather than a summary of all bills.

Trial Examiner Batten: If you are going to pick two or three months, I have no objection. However, [fol. 2825] it seems to me it would have more value if you would have a photostatic copy made of two or three months and put it in, but you may do as you please.

Mr. Langsdale: May I state to the Examiner, this is a report of a certified public accountant, which takes in each payment each month, stating the item and the amount, commencing with May, 1937, and running through De-

cember, and commencing with January, 1938, and running through December. That is, it takes in all of the expenditures from the date of its [information] down through 1938.

Mr. Tyler: My recollection is, that has not been offered as yet. I am not sure.

Mr. Patten: It has not been identified or offered.

Mr. Langsdale: You may look at it and see if it reflects the facts, and maybe it will save a lot of time.

Mr. Tyler: I will look at it at recess. How will that be?

Mr. Langsdale: All right.

Trial Examiner Batten: You may go ahead.

A. November 2, 1937, there was an expenditure for the Schooley Printing Company, $4.67; the 8th there was an allowance for checking dues of 50 cents; refund on dues for overcharge, $3.25; refund on dues for overcharge, $1. On the 16th there was Rode Todd's salary, from the 1st to the 16th, $32.50. On the 16th, Rode Todd, taxi fare, $4.85. On the 16th, The Culino Company (cards for [fol. 2825-A] party), $16.22. On the 23d, Gossett, Ellis, Dietrich and Taylor, $1,000. On the [22th], Rose Todd's salary, 16th to the 1st, $32.50. On the 30th, Fred V. Brown's salary for November, $5. On the 30th, Kansas City Chair Rental Company, $12.14. On the 30th, G-R Sound Service, $15.

. . . . . .

[fol. 2829] By Mr. Tyler:

Q. I see an item there for the month of November, 1937, "Allowed for collecting, cafeteria." What does that mean?

A. That was the dues that were allowed the collector of dues in the cafeteria for the actual collection of dues.

Q. Was or was it not the custom of the union to allow a compensation for members who collected dues during those [fol. 2830] early days?

A. Yes, sir.

Q. If that was abandoned, when was it abandoned?

A. It was abandoned, with the beginning of the check-off system they asked the company for.

Q. Who asked for that check-off system?

A. The Donnelly Garment Workers' Union.

Q. I see, also, an item for refund in connection with dues. What does that mean?

A. The dues had been overcharged. At this time, because of this change from one method of collecting dues to another, this possibly would have been a payment ahead of two or three months' dues, which some of the members chose to do, and then when we began to deduct that from their salary we refunded some that had been paid ahead.

Q. As treasurer have you ever knowingly received or accepted from the company a larger amount of money representing dues held out by the company than the actual number of members of the union? A. No, sir.

Q. Will those pages of monthly receipts and disbursements show payments every month since the existence of the union?

A. Yes, sir, I believe so.

Q. Mr. McConaughey, do you remember a meeting of employees of the Donnelly Garment Company on March 18th, 1937?

[fol. 2831] A. Yes, sir.

Q. Were you present at that meeting?

A. Yes, sir.

Q. What time of day was it held?

A. After working hours.

Q. Where was it held?

A. On the second floor of the Corrigan Building.

Q. Was that floor of the Corrigan Building at that time leased by the Donnelly Garment Company or the Donnelly Garment Sales Company? A. No, sir.

* * * * * * *

[fol. 2832] Mr. Tyler: Mr. McConaughey, you were a member of the executive committee of the union at the [fol. 2833] time of the negotiations of the working agreement with the companies on May 27, 1937?

A. Yes, sir.

Q. Did you attend any conference between the representatives of the union and the representatives of the company on May 27, 1937? A. Yes, I did.

Mr. Tyler: May I have a copy of the working agreement?

Trial Examiner Batten: Board's Exhibit No. 6.

(Thereupon Board's Exhibit No. 6 was handed to Mr. Tyler.)

Mr. Tyler: I hand you Board's Exhibit No. 6, being the articles of agreement between the Donnelly Garment Workers' Union and the Donnelly Garment Company and the Donnelly Garment Sales Company, and ask you what matters were discussed in those negotiations between the union and the companies on May 26, 1937.

Trial Examiner Batten: Mr. Tyler, I want to make the same ruling on this that I just made on the other. There have been two members of this executive committee testify in detail about this, and either two or three of the respondent's witnesses. So, unless you are going to cover matters that have not thus far been covered, I don't want to go into it with this witness. Now, if there is anything else, anything new, I want you to cover it with this wit- [fol. 2834] ness, but Miss Todd and Mr. Atherton, both of whom were at this meeting, testified quite extensively about these negotiations—and Mr. Baty, and I believe Mrs. Reeves. So, unless there is something new, I think it is cumulative.

Mr. Tyler: Your Honor has stated it is regarded by you as a matter of substantial importance as to whether there were real negotiations. I think the number of witnesses who were present and who recall matters of discussion or argument tends to establish genuine negotiations.

If Your Honor regards that fact as definitely established I will not offer further evidence on that point. If you do not consider it as definitely established, I certainly think I should go into it.

Trial Examiner Batten: You do not expect me to answer that question, do you?

Mr. Tyler: Well—

Trial Examiner Batten: As Trial Examiner of this case, do you expect me to answer that question now?

Mr. Tyler: I have no expectation one way or the other, but I do think that unless Your Honor feels that is definitely established, I should be allowed to present the evidence by the persons who were present at those negotiations.

Trial Examiner Batten: You may present it by an offer of proof.

Mr. Stottle: Mr. Examiner, respondent would say, in [fol. 2835] that connection, that your statement that unless some new matters were to be gone into—it could hardly be determined what the witness would testify to unless he is permitted to answer the questions and state what did occur.

Trial Examiner Batten: Mr. Stottle, I presume Mr. Tyler has interviewed this witness as to his testimony, and gone over it thoroughly, as every attorney should before examining his witness, so that he should be able to judge that. I can't. I am simply saying, if there is anything this witness can testify to about these negotiations that will add to the information in this record, certainly the Examiner wants it and the Board wants it. If it is simply a matter of repeating what at least four other witnesses have testified to, I don't think it is necessary.

Mr. Stottle: Respondent desires to show in an offer of proof that the witness is excluded from testifying, for the reason you have indicated, that is an important matter; and, for the reasons Mr. Tyler has stated.

Trial Examiner Batten: I think it is an exceedingly important matter. I agree with you on that.

Mr. Stottle: What is the ruling on the objection to this witness being excluded from testifying on it?

Trial Examiner Batten: I will reserve my decision.

Mr. Tyler: For the present the ruling is, this witness in not allowed to go into the negotiations of May 27, 1937?

[fol. 2836] Trial Examiner Batten: Excepting in so far as he testifies to matters that have not yet been covered.

By Mr. Tyler:

Q. Do you know, Mr. McConaughey, as to what matters have been described in this hearing as being covered by the negotiations of May 27?

A. I wasn't present at the time of the testimony of any other witnesses in this courtroom on that subject, so I don't know exactly what has been covered.

Q. Has anybody told you fully, in detail, as to what has been covered by the other witnesses? A. No, sir.

Q. Were you present at any negotiations of June 21 or June 22, 1937?

Mr. Stottle: Just a moment. Mr. Examiner, in view of the witness' last two responses, respondent renews its objections to his being excluded from testifying, because it is apparent that no one could determine now whether he has any new matters [of] not.

Trial Examiner Batten: Mr. Stottle, you have been present every day of this hearing, haven't you?

Mr. Stottle: Yes.

Trial Examiner Batten: And you, Mr. Tyler?

Mr. Tyler: I have been absent a day or two.

Trial Examiner Batten: But you have had Mr. Patten or Mr. Lane, or someone, representing you every day of [fol. 2837] this hearing, have you not?

Mr. Tyler: Yes.

Mr. Stottle: But, Mr. Examiner, I have never discussed with Mr. McConaughey one word as to what his negotiations were—

Trial Examiner Batten: I want the record to show that while the witnesses have not been here all the time, the attorneys have been.

* * * * * *

[fol. 2838] By Mr. Tyler:

Q. Mr. McConaughey, your work requires that you be present in the building of the Donnelly Garment Company practically every working day, does it not?

A. Yes, sir.

Q. Does it require that you go from floor to floor in that building frequently? A. Yes, sir.

Q. Were you familiar with the principal subjects of discussion among the employees of the two companies during the months of March and April, 1937? A. Yes, sir.

Q. What were the principal subjects of discussion?

A. Strikes at the Gernes plant, and what we might be able to do to protect ourselves from the apparent danger that was due us in a short while.

Q. Did you ever hear of any threats that the same proceedings would be taken as to employees of the Donnelly companies as were being taken against employees at the Gernes, Gordon and Missouri plants?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Objection sustained.

By Mr. Tyler:

Q. What was the attitude of mind of the employees of the Donnelly Garment Company and the Donnelly Garment [fol. 2839] Sales Company during March, 1937, in regard to the possible action of the International Ladies' Garment Workers' Union against them.

A. Everyone felt that— I talked to numbers of them on my job in the service department at that time—I talked to hundreds of people every day, and they were all expressing concern over the happenings that were taking place all over town, and many of them told me of having heard directly from people they knew there, or else overheard people who were in the line of strikers, that we were going to be the next on the list, which naturally caused an agitated state of mind throughout the plant and no one could pursue his job with a great deal of peace of mind, because he didn't know at what time he was going to be kept from coming into the building himself.

Trial Examiner Batten: Mr. Tyler, I think I have indicated previously on this matter of violence and this

situation in Kansas City that I didn't think it was material, and therefore asked the respondent to make an offer of proof.

And I think yesterday I indicated, on this attitude of mind of the employees as a result of this situation, that I didn't consider it material.

Therefore, I will ask that you prepare an offer of proof on it, because I don't think the respondent can be held responsible for a situation that is a matter of employees' [fol. 2840] organization by unions and matters of that kind.

I think I have stated before, I don't think it is material to the issue as to whether or not the respondent formed this union, dominates it, or sponsors it. Therefore, I would ask that you prepare an offer of proof on that question.

Mr. Tyler: I wanted to make it clear I wasn't waiving my point heretofore made on that matter. Hereafter, then, I will offer a written offer of proof on that point, without endeavoring to go into it with individual witnesses.

Trial Examiner Batten: Yes. And I want to say, as I said to Mr. Ingraham yesterday, the offer of proof which you make will have the same force and effect as though you had presented the witnesses here and offered it that way.

Mr. Langsdale: What about this answer he just made to the last question? Does that stand, so that it will be the subject of cross-examination?

Trial Examiner Batten: I permitted the questions to be asked up to the point where I could tell what it was all about. I thought Mr. Tyler was going into that subject matter.

Mr. Langsdale: There is one phase of the answer I want to cross-examine on if the answer stands.

Trial Examiner Batten: Of course, I do not expect to have cross-examination on a matter which I have asked [fol. 2841] for an offer of proof on and stated that I don't

consider it to be material. Therefore, I wouldn't consider the witness' answer, or the question, material.

Mr. Tyler: If the Examiner has already ruled that it is, in his opinion, incompetent and not admissible, and therefore when I offer this written proof I may expect you to make the same ruling, I see no ground for cross-examination.

Trial Examiner Batten: I don't believe I said it was incompetent. I don't think I used that term.

Mr. Tyler: No.

Trial Examiner Batten: But any offers of proof the parties offer, Mr. Tyler, when they are offered I intend to make a ruling, as I stated at the beginning of this hearing, that will be served on all of the parties. You cannot assume that I will make the same ruling, because I might change my mind and want to hear all of that testimony.

Mr. Langsdale: I move to strike the answer of the witness to the last question.

Trial Examiner Batten: It may be stricken.

Mr. Lane: Mr. Examiner, do I understand if you reject an offer, so that the record stands that there is no evidence —

Trial Examiner Batten (interrupting): If I would reject this offer on the ground that I do not consider it material and relevant, of course this witness—As yesterday, with the respondent, we permitted a witness, in some cases, [fol. 2842] to go ahead and answer the question, because, as I have discussed with you attorneys frequently, I want sufficient questions in the record so that if the matter is reviewed by the Board or the Courts they will know what it is all about.

Mr. Lane: Do I understand if these written offers are accepted by you the hearing will be reconvened so that these witnesses can be recalled?

Trial Examiner Batten: Whatever ruling I make will be sufficiently covered and you will be advised of exactly what the status of the matter is.

Mr. Langsdale: If you do permit the offer, then it would be necessary, would it not, to call the witness for the purpose of cross-examination?

Trial Examiner Batten: I just said, Mr. Langsdale, when I make my ruling all of these matters will be fully covered in the ruling. That is exactly what I mean. And when my ruling is served on the parties, if you have an exception to take, you may take your exception.

* * * * * *

[fol. 2843] Mr. Stottle: Mr. Examiner, although the witness is a witness of the intervener, respondent deems the answer which was made, which has just been stricken out, as material evidence in the case and desires to except to the ruling, and asks the Examiner if it may be understood that respondent may have exceptions to rulings you make as to the intervener's witnesses without requesting it each time.

Trial Examiner Batten: You are requesting that you be allowed to save exceptions to rulings as to intervener's witnesses from now on?

Mr. Stottle: No. May it be understood we have an automatic exception to the rulings? If it were considered an adverse ruling to us, I understand we would automatically have an exception, but Your Honor might not deem this matter an adverse ruling to the respondent.

Trial Examiner Batten: The record will stand as it is now as to my statement on exceptions. I think that matter is covered in the record.

Mr. Stottle: Respondent does except to the striking of this answer.

Mr. Tyler: Mr. Examiner, it will be somewhat difficult for me to prepare written offers of proof at the same time as offering oral evidence. May I have—

[fol. 2844] Trial Examiner Batten (interrupting): I understand, Mr. Tyler, of course, you being the last one, I can't expect you to prepare them now. When the oral testimony is finished—all of the parties—I will give you a reasonable length of time to prepare these offers of proof.

Mr. Lane: Does Your Honor have a complete statement of the offers we are to make, or are we bound to keep track of it?

Trial Examiner Batten: I think the record indicates it. I am also keeping track of it. If you miss any I will probably call it to your attention. I intend to set a date by which time all offers and all material must be in, and if they are not received by that date I will assume you do not intend to submit any, because sometime, on some date, this thing has to be closed, but I will make it a reasonable time.

By Mr. Tyler:

Q. Mr. McConaughey, did any employer or representative of the employer ever in any way endeavor to coerce or threaten you in connection with membership in the Donnelly Garment Workers' Union or any other union?

A. No, sir.

Q. Did any employer or representative of the employers offer you any inducement such as favorable working conditions or increase in pay, or promotion, in case you would take part in the organization or membership in the Donnelly Garment Workers' Union?

[fol. 2845] A. They did not.

Q. Do you know of any employee in the plant, or any extra employee in the plant, who was threatened or induced in connection with membership in that union or any other by the employer or any representative of the employer?

A. Not to my knowledge.

Q. Have you had any increases in salary, or in wages, since you have been employed by the Donnelly Garment Company?

A. Yes, sir, innumerable ones.

Q. Will you name them?

* * * * * * *

[fol. 2851] By Mr. Tyler:

Q. Mr. McConaughey, I show you the minutes of the Donnelly Garment Workers' Union of May 25, 1937, in which appears an article which was read to those present

from the noon paper. The article is set out on the first page. I will ask you if you remember that meeting.

(Thereupon the article referred to was handed to the witness by Mr. Tyler.)

A. Yes, sir, I remember the meeting.
Q. Did that meeting convene at 3:45 p. m.?
A. No, sir. We have never had a union meeting except after working hours.
Q. At that meeting did Miss Todd say to those present along at the beginning of her remarks, "I want to tell you this is going to be two meetings, the first being a meeting of the Donnelly Garment Workers' Union and after that the meeting of the Loyalty League"?
A. No, sir, she did not say that.
Q. Was that meeting followed by a meeting of the Loyalty League?
[fol. 2852] A. No, sir.
Q. Mr. McConaughey, when you were on the stand previously in this case did Mr. Langsdale ask for the folders containing the invoices of the Donnelly Garment Workers' Union?
A. Yes, sir.
Q. Were they handed to him? A. Yes, sir.
Q. Were the invoices for chair rentals which you have identified at this time on the stand in the folders which were handed to him?
A. Yes, sir.
Q. Do you know whether he had possession of those folders for any length of time or not?
A. He had possession of them over the lunch hour.

Trial Examiner Batten: You are referring to Intervener's Exhibits 17-A to 17-I, inclusive?

Mr. Tyler: Yes, sir. Those offered this morning.

By Mr. Tyler:
Q. Were you present at a meeting of the employees along about the end of March or the first of April, 1937?
A. Yes, sir, I was.

Q. Where was that meeting held?
A. On the second floor of the Corrigan Building.
Q. What time of day was it held?
A. Just after working hours.
[fol. 2853] Q. Can you fix the date of that meeting?
A. I believe it was the 29th or 30th of March. At least, it was about a month before the formation of our union.
Q. What was the date of the formation of the union?
A. April 27.
Q. What happened at that meeting?
A. It was a short meeting. We all stood up around the platform, and Miss Todd called the meeting to order. She informed us she had consulted Mr. Tyler a few days before with a view to getting injunction relief in case it was necessary, and he desired to have a retainer's fee, and wanted to know how we wanted to get it.

There was a number of ideas put forth as to how to do it—dances, and stuff like that, but one of the members got up and made the motion that we donate 50 cents apiece to pay Mr. Taylor his retainer's fee.

The meeting was adjourned as soon as that business was transacted.

Q. Do you know who made that motion?
A. Miss Daisy Kilby.
Q. Was that motion put to a vote?
A. Yes.
Q. What was the result?
A. That we would take it up, the 50 cents.
Q. Do you know whether 50 cents apiece was collected [fol. 2854] from the employees?
A. Well, I got it from the ones in my department, and paid it myself.
Q. From about how many people did you collect 50 cents apiece?
A. The boys that work around there, 10 or 12.
Q. How soon did you make that collection?
A. Within a few days. I might have waited until April 1 for a pay day, I don't remember.

Q. Did you or did you not attend a meeting on April 27, 1937? A. I did.

Q. Where was that meeting?

A. On the second floor of the Corrigan Building.

Q. What time of day was it held?

A. Right after working hours, between 4:30 and 5, I would say.

Q. Who attended that meeting, in a general way?

A. All of the employees. I didn't see any of our executives, or anybody like that, but everybody else was down there.

Q. Did you see any officer of either company there?

A. No.

Q. Was anybody with authority to hire or fire employees there? A. No.

Q. Tell the Examiner what occurred at that meeting.

A. Well, we all went down—word was passed around [fol. 2855] that there was to be a meeting, and we went down on the second floor, and the meeting was called to order by Miss Todd, acting as chairman, and she said that recent news press notices had said the Wagner Act was valid, and Mr. Tyler, as a result of that, had gone into the fact and was going to advise us about forming a labor union.

Mr. Tyler then spoke about why he thought it was a good idea for us to form our own labor union, if we wanted to.

Then, we had a discussion among the members there, and it was moved by someone from the floor that we have a labor union, and the motion was carried.

Then, the matter of the name was brought up. The name Donnelly Garment Workers' Union was suggested, and the motion was made that Miss Todd appoint a nominating committee to bring in names for nine chairmen, and the motion was carried and the nominating committee left the room.

While they were out of the room we passed out cards which said, "I hereby desire to become a member of the

Donnelly Garment Workers' Union and abide by its by-laws," and we were told to sign them if we wished, or not to if we didn't wish.

And then, Mr. Tyler read the by-laws that he had drawn up tentatively; with the provision that in case we wished to amend them they could be amended at any meeting by a majority vote. These by-laws were adopted.

[fol. 2856] By that time the committee had returned from selecting their Board, and we put that to a vote, after there had been requests for any other nominations from the floor, and there were none. We put this group to a vote, and they were elected.

Some of the cards were collected at the meeting, I think the major portion of them—some of them the next day.

Then, that adjourned the meeting, I believe.

Q. How did you get notice that that meeting was going to be held?

A. I may have answered the phone call, or I may have had one of the other boys—just by word of mouth some way.

Q. Did anybody give you orders to attend that meeting?

A. No, sir.

Q. Did anybody hint to you that it would be for your own good to attend that meeting or to your damage if you didn't attend it? A. No, sir.

Q. Did you ever hear at a meeting of the union the statement made from the platform that the employees should not consider what Mrs. Reed or Mr. Dubinsky wanted, but only what they themselves wanted with regard to union matters?

A. That has been repeated repeatedly.

Q. Did you ever hear any contrary statement to the effect that the employees should find out what Mrs. Reed wanted and give consideration to that?

[fol. 2857] A. That wasn't their concern.

Q. Did you ever hear any statement made that you should give attention to what Mrs. Reed wanted?

A. No, sir.

Q. Did you join the union of your own free will and accord? A. Yes, sir.

Q. Was any inducement offered you to join the union?

A. None whatever.

Q. Are you satisfied with it as your bargaining representative? A. Yes, sir.

Q. Do you know of any employee in the plant ever complaining that pressure was brought on him or her with regard to his or her affiliation with any labor union?

A. No, sir.

Mr. Tyler: That is all.

Trial Examiner Batten: Mr. Tyler, on the three matters this witness has testified to, one being the last question you just asked, of his own free will, if you call a witness for some other purpose—I don't know as there is any objection to asking that question, although I don't consider it material to ask a witness that on the stand. From the respondent yesterday I asked for an offer of proof on that, so I don't want you to think that by passing the matter up —In other words, if you contemplate calling 1,200 [fol. 2858] employees and asking them that question, it is an entirely different matter.

On the meeting of April 27, which this witness testified to, unless you have witnesses that can add something to what has already been testified to, I don't want you to offer any further witnesses on it. You may make it in an offer of proof.

As to the March 27 to April 5 meeting, I permitted this witness to testify, because I thought perhaps he would be able to definitely place the date. Now, unless other witnesses have something to add to the testimony we have already received on this meeting, you may make an offer of proof as to that.

Mr. Tyler: I understand, then, as to any testimony regarding the April 27 meeting, unless I have some item about it hitherto not touched upon it is your ruling that I need not ask succeeding witnesses those questions, but to make an offer of proof on it?

Trial Examiner Batten: You do not need to present another witness for the purpose of having the witness sworn and ask the question and then have the witness stopped. You may make your offer the same as if the witnesses were here and sworn.

Mr. Tyler: And the same ruling as to the meeting held about the last of March or first of April?

Trial Examiner Batten: As to any offer of proof you make.

[fol. 2859] Mr. Tyler: And as to the other matter, the free will of the witnesses, of course Your Honor understands my position, that that is as much a fact as his indigestion or whether he has a broken leg, and the best way to get that is to ask him about it.

Trial Examiner Batten: You say it is an objective like a broken leg. I can see a broken leg, but I can't see this witness' mental reaction to that question.

Mr. Tyler: The best way you can is to hear him testify about it. As to that question, shall I put that in an offer of proof?

Trial Examiner Batten: If you intend, as Mr. Ingraham indicated to me that he did, calling a very large number of witnesses to testify on that point, I say you had better submit it in the form of an offer of proof. If you submit witnesses on other matters and you incidentally ask them that question, I have no objection, although I still don't consider it material, for the reasons I have previously stated in the record, but I wouldn't have any objection to it.

Mr. Tyler: That is all, Mr. McConaughey.

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Cross-Examination.

[fol. 2860] Mr. Langsdale: How long have you worked for the Donnelly Garment Company?

A. Nine years.

* * * * * *

[fol. 2866] Q. When asked by Mr. Tyler how you got notice of the meeting of April 27 you stated that you might have answered the phone, or one of the boys might have answered? A. That is right.

Q. That you didn't just recall?

A. I beg your pardon.

Q. That you didn't just recall how you got that notice?

A. That is right.

Q. In the so-called Judge Miller hearing I find that, on [fol. 2867] page 1163, in talking about that meeting you were asked this question:

"Q. What kind of notice was given of that meeting?

"A. Well, I have a house phone, one of our inter-departmental phones in our department. I was called by the telephone operator to the effect that there would be a meeting, and would I please inform the people in my department to that effect, and I did."

You made that answer to that question in the Miller hearing?

A. If it is there, I suppose I did.

Q. Well, is that true?

A. Yes. And, further, in the same hearing, the Miller hearing, the question and answer following the ones just read:

"Q. Who was it called you, do you know?

"A. It was Miss Wardell, the telephone operator."

Did you make that answer to that question?

A. If it is in the record.

Q. Well, is it true?

A. It was my recollection then, and now, that you refresh my memory, it is true.

* * * * * * *

By Mr. Leary:

Q. I believe you stated the company has never overpaid the union on the check-off. Is that what you meant to say? [fol. 2868] A. That is right.

Q. Is the check-off money given to you monthly?

A. Either to myself or Miss Todd.

Q. Has it ever been given to you? A. Yes.

Q. What check do you make to determine whether or not there is too much money in the amount the company gives you?

A. Well, my check on that is to take the figure and divide it by 25, find out what the total number is, and find out how many we should have, and see how it comes out.

Q. Where do you find out the number you should have?

A. We have our file of cards that are signed by members, which we keep in Miss Todd's desk at all times, and we know how many members we have.

Q. Who keeps that file up to date?

A. Either myself, Miss Todd, or Miss Green.

Q. Where do you get your information to keep it up to date? A. From the employment department.

Q. When do you check with the employment department on that matter?

A. We get a slip from them just periodically, no special time.

Q. Have you any of those slips you have ever received?

A. No, sir.

* * * * * *

[fol. 2869] Q. Do you ever give any receipts to your individual members? A. No, sir.

Q. Does the company give them receipts for money they have paid to the union?

A. Give the employees receipts, is that what you mean?

Q. Yes.

A. No.

Q. Are you sure of that?

A. Oh, I suppose you would call it a receipt. On our check stubs it lists all of our deductions, hospitalization, and so forth, and union dues are marked on the stub. It is thumbnailed on there.

Q. And, as far as you know, the members of your union accept that receipt as all they need; is that it?

A. That is right.

* * * * * *

[fol. 2870] Q. Isn't it true that an employee must be working a certain number of days per month in order to be paying dues? A. Yes, primarily.

Q. What is it? A. Yes, in a general sense.

Q. How many days a month do you have to be employed in order that you must pay dues?

A. I don't know.

Q. You haven't any idea?

A. Not the slightest.

Q. You are the treasurer, you say?

A. Yes, I am.

Q. Has that question ever arisen in your experience as treasurer of the organization? A. No, sir.

Q. Is it your testimony that Miss Todd came to this meeting of an unidentified date, sometime late in March, 1937, or thereabouts, and stated that a committee of three had called on Mr. Tyler and that it was necessary to raise $500 as a retainer for Mr. Tyler?

A. I don't recall she said how many. She said, we and some other employees.

[fol. 2871] Q. Other than that, is not my statement correct?

A. It is substantially correct, yes.

Q. Your understanding of that was that nothing was to be done by Mr. Tyler until he received the $500; is that it?

A. I am sorry, I don't understand a retainer's fee as clearly as that. I just thought he would probably go ahead with his investigation. I don't know what a retainer's fee means to you fellows.

Q. Nonetheless, the $500 was collected, was it not?

A. Yes.

* * * * * *

[fol. 2874-75] Q. When you collected this money sometime in late March or early April, 1937, did you give the payors receipts? A. No, sir.

Q. Whom did you give the money to?

A. I don't remember.

Q. Haven't you any idea?

[fol. 2876] A. No, I haven't.

* * * * * *

[fol. 2877] Redirect Examination

By Mr. Tyler:

Q. Is the Loyalty League still in existence?

A. Yes, sir.

Q. Have you attended any meetings, parties, picnics, or socials in the last couple of years?

A. I don't remember any meetings. I have attended a number of picnics.

Q. Was the meeting of March 18, 1937, a meeting of the Loyalty League? A. No, sir.

Q. Was the meeting held about the end of March or the first of April a Loyalty League meeting?

A. No, sir.

Q. Did that meeting toward the end of March or the first of April approve or ratify the report of the employees who said they had hired attorneys about the injunction investigation? A. Yes.

Q. Is the Donnelly Garment Workers' Union a successor to the Loyalty League?

A. In no way.

Q. Did you ever attend a meeting of the Loyalty League at which the members talked about, "Now we will [fol. 2878] have the Donnelly Garment Workers' Union to do so and so." Did you ever attend any such meeting or hear any such conversation? A. No, sir.

* * * * * *

[fol. 2879] Recross Examination.

Mr. Stottle: Will you state what negotiations occurred on May 27, 1937, between your committee and the Donnelly Garment Company and the Donnelly Garment Sales Company as to your working agreement?

Trial Examiner Batten: Will you give him a copy of that?

* * * * * *

[fol. 2880] A. On May 27, the committee of employees [fol. 2881] met in Mrs. Reed's office, and we took along a draft of our agreement that we had drawn up to be [ready] over and considered by Mrs. Reed and her affiliates.

We convened about 10 o'clock in the morning, 9 or 10 o'clock in the morning, and Mr. Tyler read the contract,

or read part of the contract to the parties that were there, and there was conversation about various points as he came to them. But after he was about halfway through Mrs. Reed said she would like to go over the contract with her constituents, and we were to meet again in the afternoon, possibly at 12 o'clock.

We were in Mrs. Reed's office from about 10 to about 12, and returned again at 2 o'clock.

During this time Mrs. Reed had read the contract, and we took up the various points which she didn't like and the points we didn't like that she might have offered.

I believe the first point of controversy I can notice here (referring to Board's Exhibit 6) is on the rates of pay in paragraph 2.

It states that we should have a minimum of $15, and Mrs. Reed objected to this because she didn't feel she should tie herself down for a two-year period for paying that minimum wage. Although she had been paying that $15 minimum wage to some of the pieceworkers, yet none of our time workers had received such a minimum guarantee at all.

[fol. 2882] The working hours of 40 hours a week, Mr. Brown was very insistent on bringing that point in. I know most of the boys in the department where he was working and where I was working were very desirous of getting the 40-hour week. We had had a taste of it under the N. R. A. and we liked it.

By Trial Examiner Batten:

Q. Are these all matters you discussed in the May 27 meeting? A. Yes, sir.

Q. That you had had a taste of it under the N. R. A. and all of those things you are stating, are things you stated there?

A. With the exception of the taste of it.

Q. Mr. Stottle's question was, tell us what went on in the meeting.

A. All right. I will watch that. Under the seventh paragraph, Complaints and Grievances, Mrs. Reed wanted to have the right of having an employee come to her as

well as our own union, and of course that was acceptable to us, because that was a right under the law, anyway, but that was a point she brought out, and it was inserted.

Q. A right under the law. What do you mean?

A. According to the Wagner Act, as it has been explained to me, the employee doesn't necessarily have to go through the group.

Q. You mean, the individual can go and bargain with the boss?

[fol. 2883] A. Under Complaints and Grievances.

Q. What is your opinion of the difference between grievances and bargaining?

A. Well, bargaining is the original concept of what is right and what is wrong for the two groups. After the contract has been made, any points that the person seems to feel is not living up to the contract would be a grievance. The contract itself, of course, is not a grievance.

Q. Does that mean if a matter should arise not covered by the contract the individual could go to the Employer?

A. I don't know. That hasn't arisen, to my knowledge.

Q. I just wondered.

A. Paragraph 9 Mrs. Reed objected to, but we were very insistent on getting a closed shop for our own protection.

By Mr. Langsdale:

Q. Is paragraph 9 the closed shop paragraph?

A. Yes, sir. But she agreed to it, after some discussion with her constituents.

Paragraph 12, on arbitration, was presented by ourselves, with the exception that the company asked that the third party on the arbitration should be made up of a judge of the United States District Court.

Q. You say that was the suggestion of Mrs. Reed?

A. I said, that point of the arbitration was suggested by her, which was written in. However, arbitration was in [fol. 2884] our original contract.

Q. She suggested the Federal Judge?

A. Right. Vacations, under paragraph 15, was a heated subject of controversy, because it required Mrs. Reed to give any employee who had been there over two years—

any piecework employee, or any employee, as far as that is concerned, two weeks' vacation with pay.

It had been the custom before that for anyone over there a year, to give them one week's vacation with pay, and there was a tie-up of certain money to her which she didn't want to do. But we brought out the point that our time workers had gotten two weeks and we felt we were bound to do as well by our pieceworkers, which represented a larger group, as the time workers had.

Paragraph 16, although it had already been the practice of the company to pay a portion of our Prudential Life Insurance, and so forth, was a point put in by us. We brought out the point that she was doing it, and we said we wanted it in there, anyway, so that the assurance of that for two years would be ours, so that we wouldn't have the anxiety in case she should decide not to do it.

The length of the contract, that was discussed. We wanted a two-year contract. We felt we couldn't probably, get a contract for any longer than that, but we did want it for two years. Mrs. Reed was very insistent that it be a year's [fol. 2885] contract because she didn't want to tie herself down to any two years to be paying the increases she would be forced to pay by the new contract.

I think that pretty well covers it, Mr. Stottle.

By Mr. Stottle:

Q. Mr. McConaughey, did you and your committee feel that a Federal District Judge would be as fair and unbiased as any person who could be chosen to act as a third party on the committee?

A. Oh, yes. We had no objection to that.

Q. Mr. McConaughey, you testified that the first meeting was from approximately 10 o'clock to 12 o'clock is that right? A. That is right.

Q. Was discussion going on between the parties during that period of time?

A. Yes. They were reading the contract and voicing opinions on it.

Mr. Stottle: That is all.

Trial Examiner Batten: Mr. Langsdale?

By Mr. Langsdale:

Q. You say at the meeting of May 27 Mrs. Reed held out on the closed shop provision of the contract, paragraph 9? A. That is right.

Q. Do you recall anything she said about it?

A. Just that she wanted to be able to hire whom she [fol. 2886] liked. She didn't want to be restricted to a closed shop.

Q. Did she say why?

A. Nothing but that she wanted a free rein in whom she would hire.

Q. Did she think someone might want to work there who wouldn't want to join the Garment Workers' Union? Did she say that? A. She didn't say that.

Q. Was there anything else she said in expressing her opposition to a closed shop?

A. No, sir, I don't believe so.

Q. Did I understand you to say the pieceworkers had never had any minimum at the Donnelly Garment Company until this contract of May 27?

A. No, sir. I believe you misunderstood me. I said it had been the practice of the company to pay pieceworkers a $15 minimum; not that they were guaranteed it, but it had been their practice.

Q. You stated in answer to one of Mr. Leary's questions that you gave those employees who paid their 50 cents at the April 1, 1937, meeting no receipt?

A. That is right.

Q. Did you keep any record yourself of those who paid?

A. No.

Q. How did you know who paid and who had not paid? [fol. 2887] A. I would write down the names of the boys working around me, and when they would pay me I would put down a check mark, and send the money to whoever got it.

Q. How would those in charge of collecting from the 12 or 13 hundred, then, know who had paid, without any records at all?

A. I believe the primary—

Q. (Interrupting) Just answer the question. Do you know how those in charge of collecting the fund knew who had paid and who had not?

A. No.

Mr. Langsdale: That is all.

By Mr. Leary:

Q. Did you testify that you knew you wouldn't get more than two-year contract; is that it?

A. I didn't say we knew; I said, we didn't feel.

Q. You didn't feel as though you would get more than a two-year contract?

A. That is right.

Q. And you wanted more than a two-year contract; is that it?

A. Not exactly. I don't know whether we did or not. It was the subject of discussion, whether we could get more than a two-year contract, or what we could reasonably expect to get.

Q. You did testify you felt you would only get two years, didn't you? A. Yes.

* * * * * *

[fol. 2888] Redirect Examination

By Mr. Tyler:

Q. Mr. McConaughey, on this 50-cent collection, did you actually collect from all of the boys in your group?

A. Yes.

Q. Did you report to whomever you turned the money over to that you had collected from everybody in your group? A. Yes, sir.

Q. In these negotiations about closed shop, do you remember Mrs. Reed said anything about she would like to feel anybody could work in her shop regardless of what he did or didn't belong to?

A. I believe that was the idea.

Q. I am not asking you for the idea. Did she say anything along that line? A. Yes, sir.

Q. She did say something along that line?

A. Yes, sir.

[fol. 2889] Q. Will you repeat what she said about that?

A. She felt she should be able to employ whom she wanted to, no matter who they were, or what they belonged to. She wanted to feel she would have a free rein in employing anybody who came into the place that she wanted to employ.

Q. Did the committee before it went to see Mrs. Reed on May 27 determine how long a contract they were going to ask for, before they went in to talk to Mrs. Reed at all?

A. Yes, sir.
Q. What did they determine on?
A. Two years.
Q. Did they make up their own minds about how much time they were going to ask for before they went in there? A. Yes, sir.

* * * * * *

[fol. 2890] Trial Examiner Batten: Before proceeding with the witnesses I think I should indicate for the record that Board's Exhibit No. 1-KKKK is the amended complaint, which is received.

Board's Exhibit No. 1-LLLL is the respondent's answer to the amended complaint.

And, Mr. Tyler, 1-MMMM will be reserved for the intervener's answer, so that those three documents will be together in the record.

1-LLLL will be received.

1-MMMM is the respondent's offer of proof covering sub-section B of its answer.

(Thereupon the documents, above referred to were marked for identification "Board's Exhibits Nos. 1-KKKK, 1-LLLL, 1-NNNN," and were received in evidence.)

I presume in that offer of proof, Mr. Ingraham, you refer to certain named persons who would testify?

Mr. Ingraham: That is correct.

Trial Examiner Batten: Then, you say, further, " including the documents and exhibits which are in the N. R. A.-Judge Miller case Exhibit No. 3. You are including all of that in your offer?

[fol. 2891] Mr. Ingraham: I am including all of the exhibits that the witnesses I have named testified about.

Trial Examiner Batten: You are restricting your offer to the witnesses named in Board's Exhibit No. 1-NNNN.

Mr. Ingraham: That is correct—and the documents they testified about.

Trial Examiner Batten: No. 1-OOOO is the offer of proof by the respondent which covers the matters upon which an offer was requested as follows: The meeting of March 18, the meeting that occurred between March 27 and April 5, the matter, "Did you join of your own free will?" And the matter of the violence and the organizational campaign of the International Ladies' Garment Workers' Union in Kansas City. Is that correct?

Mr. Ingraham: That is correct.

Mr. Stottle: It includes some more, though, Mr. Examiner.

Trial Examiner Batten: What else does it include?

Mr. Stottle: The April 27 meeting.

Trial Examiner Batten: Pardon me. Also, the April 27 meeting. Five matters.

Mr. Stottle: No. It includes, also, the Loyalty League matter. We did include that in the offer of proof.

Trial Examiner Batten: I don't have that in my notes.

Mr. Ingraham: Your Honor, if you recall, we put on one witness, and then I said we had other witnesses, but if [fol. 2892] you were going to make a ruling that we should make an offer, that we would do that; and then, you made the same announcement made previously about the other matters.

Trial Examiner Batten: Whether I did or not, the record will indicate.

Mr. Ingraham: Yes, the record will show.

Trial Examiner Batten: Oh, pardon me. I do see that. You are correct, Mr. Ingraham. Now, those are the only matters included in your offer of proof, No. 1-OOOO, is that correct?

Mr. Ingraham: That is correct.

Trial Examiner Batten: Let me ask this question: The only matters which you have included in your offer of proof are the matters within my ruling?

Mr. Ingraham: That is correct.

Trial Examiner Batten: That is, you have not included in this offer of proof any new matters?

Mr. Ingraham: No.

Trial Examiner Batten: In other words, it is your intent and purpose to include in the offer of proof only those matters that might be construed as cumulative or repetitious? On the violence matter, of course, it couldn't be, because I wouldn't accept any testimony on that. But I want it understood that in the offer of proof you are not offering any testimony other than that under my ruling. That is, I [fol. 2893] told you if there is anything new, new testimony would be received. Is that correct?

Mr. Ingraham: Yes.

Mr. Stottle: That was our intention, and I think that is correct.

Trial Examiner Batten. I wanted that understood. It will be received.

(Thereupon the offer of proof above referred to was marked for identification "Board's Exhibit No. 1-OOOO," and received in evidence.)

Mr. Langsdale: Suppose something should crop up that is not new in the offer of proof, it would be just as necessary for us to move to strike it.

Trial Examiner Batten: That is the reason I wanted to clarify this point. If there should be something entirely new in there, I am not receiving it on the basis of an offer of proof. In other words, this offer of proof I am receiving contains only those matters within my ruling?

Mr. Ingraham: Yes. As I understood Your Honor, for instance, about the March 18 meeting, you ruled that you didn't care to hear any more testimony on that, and we could make an offer of proof about the March 18 meeting.

Trial Examiner Batten: Yes. But I said, with respect to all of these matters, that if you had witnesses to testify upon any new matters that hadn't been gone into, I would [fol. 2894] receive it.

Mr. Ingraham: Yes.

Trial Examiner Batten: And in receiving the offer, it is on the basis of that ruling?

Mr. Ingraham: Yes.

Trial Examiner Batten: The N. R. A.-Judge Miller case exhibits—I think you will all recall I reserved Exhibit No. 2 for certain N. R. A. testimony of the respondent, and I reserved Exhibit No. 7 for certain testimony of the respondent with respect to the Judge Miller case, and I reserved Exhibit No. 11 for the respondent's testimony with reference to the Sylvia Hull matter, and I reserved Exhibit No. 15 for certain testimony of the respondent.

The respondent has presented N. R. A.-Judge Miller case Exhibit No. 3 and has asked to have that marked as Exhibit No. 3. It will be received.

(The document above referred to was marked for identification "N.R.A.—Judge Miller Case Exhibit No. 3," and received in evidence.)

This contains not only the N. R. A. testimony but the Judge Miller testimony, also, and all testimony which the respondent wants to offer from the N. R. A. and the Judge Miller case. Therefore, Exhibits 7, 11, and 15 will not be used, although they were reserved for the respondent. You will find all of that testimony in Exhibit No. 3.

[fol. 2895] Now, the other attorneys have all been served with these papers; that is, the offer of proof, 1-OOOO and N. R. A.-Judge Miller case Exhibit No. 3. I will expect them to file with me any objections to this testimony or to the offers of proof by Saturday morning at 9:30, and any additional testimony which they care to offer.

* * * * * *

[fol. 2899] Trial Examiner Batten: If that is the case, I can give you notice now that the day this oral testimony closes, we will reconvene ten days from that date, and if it is otherwise I will notify you in the meantime.

We will proceed.

Mr. Ingraham: Mr. Examiner, yesterday I said I would bring a doctor's report in with regard to Mrs. Reed. I have now a letter from her doctor, and I would like to offer it in evidence. I have shown it to Mr. Langsdale and Mr. Leary.

(Thereupon the letter above referred to was marked for identification "Respondent's Exhibit No. 14.")

Mr. Ingraham: I offer Respondent's Exhibit No. 14.

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[fol. 2902] Mr. Langsdale: What you want is to explain to the Examiner why she isn't here?

Trial Examiner Batten: For what it may be worth?

Mr. Ingraham: That is right.

Mr. Leary: I would say it is immaterial, then.

Trial Examiner Batten: On that basis I will receive it.

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[fol. 2904] Marjorie Green, a witness recalled, by and on behalf of the intervener, having been previously duly sworn, having been further examined and testified as follows:

Direct Examination.

Mr. Tyler: State your name, please.

A. Marjorie Green.

Mr. Langsdale: May I interrupt a minute? I requested Mr. Ingraham to bring in a list of the employees of the Donnelly Garment Company who received a raise to $16.50 a week by reason of Board's Exhibit No. 7, which is the supplemental contract. He states that he has checked the payroll record and that there is no time worker who received any increase by reason of the $16.50 provision of that contract? Is that correct? (addressing Mr. Ingraham.)

Mr. Ingraham: That is correct, but I do not state that [fol. 2905] the $16.50 has been paid to the piece rate operators.

Mr. Langsdale: Well, are you checking that?

Mr. Ingraham: I am checking that, but that is a tremendous job.

By Mr. Tyler:

Q. Your name is Marjorie Green?

A. Yes, sir.

Q. And you are the same Marjorie Green who has testified before in this hearing?

A. Yes, sir.

Q. You are a member of the Donnelly Garment Workers' Union?

A. I am.

Q. And of the executive committee, or committee of chairmen, of that union?

A. Yes, sir.

Q. What office do you hold on that committee?

A. Secretary.

Q. How long have you been secretary?

A. Since the formation of the union.

Q. Miss Green, did you take the notes, the minutes of the organization meeting of the Donnelly Garment Workers' Union on April 27, 1937?

A. No, sir.

Q. Who did take those minutes?

A. I don't know.

Q. How do you happen to remember that you did not [fol. 2906] take them yourself?

A. I remember, because I sat in the back of the room.

Q. Did you come in late?

A. Yes, sir.

Q. Do you remember who was on the platform when you came in?

A. No. I couldn't see the platform clearly at all.

Q. Have you taken or kept minutes of other meetings of the Donnelly Garment Workers' Union?

A. Yes, sir.

Q. And, also, of meetings of the committee of that union? A. Yes, sir.

Q. Do you know whether you have kept minutes of all of those meetings or not?

A. No, I haven't kept a record of all of the chairmen's meetings; and there were some general meetings of which I did not keep the [meetings.]

Q. Do you say that was because you were absent?

A. Absent on vacation, or on account of illness.

Q. Would you say that you have kept most of the minutes? A. Yes, sir.

Q. You do stenographic work, Miss Green?

A. Yes, sir.

Q. How long have you done that?

A. About ten years.

Q. Have you ever been secretary of any organization before this one?

[fol. 2907] A. No, sir.

Q. You know what quotation marks mean, do you, Miss Green? A. Yes, sir.

Q. What do they mean?

A. The words of another person.

Q. I hand you the minutes of the Donnelly Garment Workers' Union and ask you to notice whether you have used quotation marks rather freely in those minutes?

Mr. Leary: I think the minutes speak for themselves, Mr. Examiner.

Trial Examiner Batten: Do you mean, Mr. Tyler, that wherever the quotation marks appear in the minutes it means the persons have been quoted verbatim?

Mr. Tyler: That is what I am going to ask her, if that is what she means by the quotation marks?

Trial Examiner Batten: I understood she said that.

Mr. Tyler: No. She said she understands what quotation marks mean. I am going to ask her whether in using them in these minutes, she was quoting the exact words or not.

The Witness: May I answer?

Trial Examiner Batten: Yes.

A. No. I have used them incorrectly in some instances there. In a great many instances these are the exact words, but it doesn't mean in every place they are all of the words used. And I have changed some of the wording somewhat.

[fol. 2908] Q. (By Trial Examiner Batten) Then, they do not mean anything, do they, to anybody reading through there? Your quotation marks do not mean anything?

A. No. They have been used wrongly in this instance.

Q. (By Mr. Tyler) What was your effort in keeping those minutes as to putting down everything that was said and exactly what was said, or something else?

A. I tried to take down the main points brought out, and all motions made, and all things of importance that were discussed.

There were times when I couldn't hear everything that was said, or things I didn't think were of importance, and did not put them down.

Q. Did you ever put anything into those minutes that did not happen? A. No, sir.

Q. Did you ever leave anything out of those minutes for the reason that you thought it might look bad to somebody who was examining them.

A. No, I didn't.

Q. You put down what you thought were the important actions taken? A. Yes sir.

Q. Will you look at the minutes for May 27, 1937?

A. That is a meeting of the chairmen?

[fol. 2909] Q. Yes. May 27.

(Thereupon the witness referred to the minutes specified by Mr. Tyler.)

Q. Have you looked over those minutes?

A. Yes, sir.

Q. If the words you have written there were all that were said in those negotiations and they were said without unusual delays, how long would it have taken you to take down that much notes?

A. Probably not more than 10 minutes.

Q. Do you know of your own knowledge whether those negotiations lasted longer than that or not?

A. Yes. They lasted several hours.

Q. Are you positive of that?

A. I am sure they did.

Q. What is the reason you do not have a greater amount of notes for those negotiations?

A. There was just too much general conversation. There would be a group of two or three here talking and answering each other's questions, and another group somewhere else, and people were interrupting one another too much. I put down what I thought were the conclusions we came to, and I didn't attempt to take down every word that was said.

Q. Did you ever ask Mrs. Greenhaw, whom you may have known as Mrs. or Miss Graham, to take notes of any meetings of the union or the committee of chairmen for you?

[fol. 2910] A. No, sir, I never did.

Q. Did she ever turn in to you any record which she said was notes she had taken of any meeting?

A. No, sir.

Q. Did you ever hear of her taking any notes of any meeting before this hearing?

A. Not to my knowledge.

Q. I will show you Board's Exhibit No. 18-A, and the letters following A, and ask you to look it over.

(Thereupon Board's Exhibit No. 18-A was accordingly read by the witness.)

Q. Have you read the exhibit, Miss Green?

A. Yes, sir.

Q. Is that or is it not a substantially true record of any meeting held that day?

A. It is not.

Q. What reasons do you have for saying it is not?

A. It appears to me to be a combination of meetings. In the first place, we have never had any meeting at 3:45 in the afternoon. It seems to be a combination of some other meetings.

I notice here in one place there is some talk about identification cards—about showing those. We used those identification cards when we were using the busses to come to work, and that was from about the middle of March to [fol. 2911] about the first of May. I don't think we were

using identification cards to get in the building at this late date in May.

Q. Do you notice any statement by Miss Todd about one meeting to be followed immediately by another one?

A. We never had anything like that.

Q. Did you ever hear Miss Todd make such a statement at any meeting?

A. No, sir, I never did.

Q. What investigation, if any, did the committee of the union make before making proposals to the employer on May 27, 1937?

A. We secured a list of salaries from the company, and we looked into business conditions and what would constitute a living wage in Kansas City, and wages paid in other garment companies, and we had heard friends who worked in other garment factories discuss it—we spent a great deal of time on it.

Q. Did the committee make any investigations again before presenting their demands as to wages in the wage schedule which was executed June 22, 1937?

A. Yes. We spent a great deal of time working on this.

Q. What matters did you consider?

A. We considered the wages that had been paid, and the wages that other companies paid, and the general cost of living.

[fol. 2912] Q. I show you Board's Exhibit No. 7, labelled "Supplemental Agreement," the agreement of May 27, 1937, and ask you what subjects, if any, mentioned in that wage agreement were the subject of negotiation between the representatives of the union and the management.

* * * * * *

Q. (By Mr. Tyler) The question was, which matters mentioned there were the subject of actual negotiations between the union representatives and representa-

[fol. 2913] tives of the management.

A. On the second page here the subject of holidays, the five paid holidays—We had asked for five paid holidays. We had asked for this, and Mrs. Reed, or some other member of the organization, didn't like this [ideal] very well, and they granted us these five paid holidays but re-

served the right to make up for these holidays, if necessary, if they felt they needed the work.

Before, pieceworkers had not been paid for holidays.

And then, in this agreement the minimum wage was raised to $16.50, and officials of the company stated that they—in fact, they just didn't want to agree to this at all, but we held out and insisted we have this minimum established throughout the plant of $16.50, and the minimums of different classes of operators was raised.

Before, there had been a minimum throughout for pieceworkers of $15. However, a great many of them made more, but they were not guaranteed anything above $15.

And the minimum on cutters was raised from $40 to $42.50. And the same applies to mechanics. We asked for those increases.

Bundle boys were guaranteed a minimum of $16.50 and $18 per week of 40 hours. And throughout the plant the minimum for the different classes of operators were increased.

Q. Whose interests were you representing in these negotiations?

[fol. 2914] A. I was representing the interests of the employees.

Q. Were you doing that in good faith, or just pretending to do it?

A. I was doing it in good faith, to the best of my ability.

Q. How long did those negotiations last?

A. Oh, one day we had a meeting, and I think that lasted probably several hours, and the following day there was another meeting held, and it lasted an hour or two hours.

Q. Where was it held? A. In Mr. Tyler's office.

Q. Will you state who was present at the first conference you spoke of, which would be June 21, 1937?

A. I believe there was Mrs. Reed, Mr. Ingraham, Mr. Baty, Miss Frances, Mr. Tyler, and different members of the union committee.

Q. Who was present at the negotiations on June 22?

A. I think, about the same group.

Q. Miss Green, do you take dictation from Mrs. Reeves?

A. No, sir.

Q. Is your desk in her office?

A. No, it isn't.

Q. Where is your desk located?

A. It is out in the main office, and it is—well, I am not a very good judge of distance, but I imagine it is 10 or 15 feet from the door to her office.

[fol. 2915] Q. Has Mrs. Reeves ever undertaken to tell you what should be done about the union affairs, or what you should do in connection with union affairs?

A. No, sir.

Q. Has any other member of the Donnelly Garment Company or the Donnelly Garment Sales Company, or representatives of the officials, so undertaken to order you about the union affairs? A. No, sir.

Q. Has any of them ever given you a hint as to whether it would be to your welfare to join or not to join the Donnelly Garment Workers' Union?

A. No, sir, no one of them has.

Q. Or to join any other labor organization?

A. No, sir.

Q. You have never been offered any inducement by any member of the company to join the Donnelly Garment Workers' Union? A. No, sir.

Q. Do you know of any other employee being coerced or induced by the management as to taking action with respect to the Donnelly Garment Workers' Union?

A. No, sir.

Q. Did you ever have any knowledge of any financial support of the Donnelly Garment Workers' Union by any employer of the Donnelly Garment Company or Donnelly Garment Sales Company, or any representative of either company, or any official of either company?

[fol. 2916] A. No, sir.

Q. What is this piece of paper I hand you, Miss Green?

A. It is a resignation from the Donnelly Garment Workers' Union signed by Dewey Atchison, and it was made at our request.

* * * * * * *

Mr. Tyler: I ask that it be marked Intervener's Exhibit No. 19.

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Mr. Tyler: If I haven't offered this in evidence, I offer [fol. 2917] it in evidence now.

Trial Examiner Batten: If there is no objection, it will be received.

* * * * * * *

Q. What complaints can you recall at this time that you gave consideration to as a member of the committee?

A. We had numerous complaints on the work, where the girls were unable to make their guarantees and we have investigated it and had it changed, and we have had numerous complaints of people there wanting to be transferred from one department to another, and we have had complaints about wanting increases in salary, and we have [fol. 2918] had complaints about holidays.

In one instance we were off on Monday and worked the following Saturday, and we handled that complaint. Some of them thought that should be considered as overtime, and we took care of that.

And then, we have had another complaint where it was brought to our attention that a certain instructor was being unreasonable with her employees, and that complaint was taken up with the management and the situation corrected.

Q. What did you mean to say "with her employees"?

A. What is that?

Q. You said a certain instructor was being unreasonable with her employees. Is that what you mean?

A. With the girls in her department.

Q. What was about [about] that?

A. It was taken up with the officials of the company.

Q. Was any improvement secured?

A. Yes, there was.

* * * * * * *

[fol. 2919] Q. (By Mr. Tyler) How often has the committee of the union held meetings?

A. Oh, twice a month, and in a great many instances oftener than that.

Q. Has the attendance at those meetings been about the same recently as it was when it was first formed?

A. Yes.

Q. Has the attendance at general union meetings been about the same in the last few months as the first few months?

A. Yes, I think it has.

Q. Do you, yourself, habitually attend meetings of the union? A. Yes, sir.

Q. Have you seen employees at those meetings wearing their working clothes?

A. Yes, I have seen some there wearing working clothes, and others in their street clothes.

Q. Did you ever attend a meeting held during working hours?

A. No, sir, I never did.

[fol. 2920] Q. Did you ever know of any meeting of the union held during plant working hours?

A. No, sir.

Q. How do you explain the girls' attending these meetings wearing working clothes if they are not there during working hours.

A. I assume—

Mr. Leary (Interrupting): I object to what her assumptions are.

Q. (By Trial Examiner Batten) Do you know, Miss Green?

A. Well, no one told me so, but I just am sure that is the fact.

Q. What?

A. That some of them get off just a few minutes before time for the meeting to start and rather than take time to go to their lockers and change clothes and have to run the risk of having to stand in the back of the room, they hurry on to get a seat and then dress after the meeting is over.

Q. (By Mr. Tyler) Is it a fact that those who come in late generally have to stand up at those meetings?

A. Yes.

Q. About how large is the average [attended] at union meetings?

A. Oh, I would say when we have a great number of employees it runs around 1,000 or 8 or 9 hundred. At other times, when we don't have so many people employed, it [fol. 2921] is naturally less than that, but there is a great number there.

Q. Did you ever see any official of the company or anyone else direct the employees to attend those meetings?

A. No, sir, I never did.

Q. Did you ever hear of that happening?

A. No, sir.

Q. Did you ever see any instructor tell the girls in her department to follow her to a meeting?

A. No, sir.

Q. Or take them to the meeting with her?

A. No, sir.

Q. Are you a member of the Loyalty League?

A. I am.

Q. How long have you been a member?

A. Well, I don't recall exactly, but I expect I have been a member ever since it was organized.

Q. Is it still in existence?

A. Yes, sir, it is.

Q. Have you gone to any functions, parties, picnics, or meetings it has held in the last two years?

A. Yes. I have been to carnivals, dances, and picnics.

Q. Was the meeting of March 18, 1937, a Loyalty League meeting? A. No, sir.

[fol. 2922] Q. Was the meeting about the end of March or the first of April, 1937, a Loyalty League meeting?

A. No, sir, it was not.

Q. Have you ever been present at any meeting of the executive committee when the matter of Rose Todd acting for the employees in connection with price-fixing was discussed? A. Yes, I have.

Q. What was said, what was talked in such a meeting?

A. Well, there was just a great deal of conversation, and it was agreed that since Miss Todd had spent, I should

say, several years—maybe longer—in doing that type of work, she was very familiar with it and understood it and would be the logical person to represent the union in that type of matter. She had formerly worked on the machines and understood a great deal about that type of work.

Q. Do you personally prefer the Donnelly Garment Workers' Union as your bargaining representative to any other union you know about?

A. Yes, sir, I certainly do.

Q. What are your reasons for preferring the Donnelly Garment Workers' Union?

A. Well, in the first place—

Trial Examiner Batten (interrupting): Mr. Tyler, I don't think it is material what her reasons are. She has a perfect right, as an employee of the company, to select [fol. 2923] any union she wants.

Mr. Tyler: I submit, one of the questions involved here is whether she does prefer it or whether the company is so dominating her that she has to belong to it.

Trial Examiner Batten: You mean by that, you contemplated calling all of the employees to testify to this question?

Mr. Tyler: I contemplate calling a large number.

Trial Examiner Batten: I can tell you now, I do not intend to listen to them.

* * * * * *

Mr. Tyler: Well, on the present question—

Trial Examiner Batten (interrupting): She may answer this. I just don't think you should call these employees and put them on the stand and say, "Now, is this the union you want?" And so on, and so forth. This is no place to determine what the employees want. An election is the place to determine that. The think we are trying to determine in this hearing is, did this company have anything to

do with forming this union, or sponsoring it? That is the question we are trying to determine.

Mr. Tyler: We are not, also, endeavoring to determine whether the employer is now dominating it or dominating these employees?

Trial Examiner Batten: Yes, but you couldn't determine it by having these girls get up on the stand and testify here, in front of the management. The place to determine [fol. 2924] that is by a secret election, where they can vote and no one know how they vote. If you have a large number of witnesses to offer on that, you may make an offer of proof, because I don't [inten] to sit here and let you call all of these girls up here to testify whether they want this union to represent them.

* * * * * *

A. In the first place, we are able to be independent and manage our own affairs. We think we understand the needs of our plant better than anybody outside can understand them. What affects somebody in New York or Los Angeles doesn't affect us here.

And not only that, it is much more economical.

It gives us the right to bargain with our employer rather than through someone else.

Q. Miss Green, did you or did you not attend any meeting at which the employees decided to contribute 50 cents each toward the payment of attorneys for injunction advice?

A. I did attend that meeting.

Q. When was that meeting held?

A. Either the last of March or the first of April.

Q. Of what year? A. 1937.

[fol. 2925] Trial Examiner Batten: Mr. Tyler, are you going to ask her about something on this that has not been testified to yet?

Mr. Tyler: No, I am not going into that. That is one thing I understand I am restricted to an offer of proof on. I just wanted to ask her the date.

Trial Examiner Batten: If she knows the date—As a matter of fact, if you have any witnesses that have the exact date, I think we should have it.

Mr. Tyler: Do I understand the Board's position is that no such meeting took place?

Trial Examiner Batten: If you have any witness who can testify as to when this meeting did occur, I think we should receive it.

Mr. Tyler: That is all.

Mr. Shepard: I would like to have the record show, in view of your remarks with regard to a representative of the management being present, when this witness gave her answer in response to Mr. Tyler's question in regard to domination no member or representative of the company was present.

Trial Examiner Batten: I agree with you. Mr. Baty is not in the room, but I see him out in the hall. And of course the company's attorneys are here.

Mr. Shepard: We are here of necessity, of course.

Trial Examiner Batten: Yes, I assume you have to be here.

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Cross Examination.

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[fol. 2926] By Mr. Langsdale:

Q. Was it a man or woman who took the minutes at the April 27 meeting? A. I don't know.

Q. How many men stenographers did you have there?

A. I don't know, but I would say they would be very few.

Q. Do you know any of them by name?

A. Well, I know we have had several young fellows there who have been going to school—

Q. (Interrupting): I mean some stenographer capable of taking the minutes of a meeting like that.

A. Mr. Powell is a stenographer, but I don't know whether he was employed there at that time or not. And we had a Mr. Wrenn, but I don't believe he is employed there now.

* * * * * *

[fol. 2927] Q. Now, you stated that the question of raising [fol. 2928] the bundle boys to $16.50, and other time workers of that class, came up in the negotiations that were had in connection with Board's Exhibit No. 7, which is your supplemental agreement. There was quite an argument about it?

A. I don't think there had ever been any definite minimum wage set for bundle boys.

Q. Tell me, was there any argument about that?

A. I don't know that there was any argument, because we were asking for a minimum of $16.50 throughout the entire plant.

Q. Did Mrs. Reed object to it?

A. Yes, I think she did. I think she objected that in many instances it would be too much, that they were young boys, without much experience and—

Q. (Interrupting) Was that what she said?

A. That was the conclusion I drew from what she said.

Q. That was the substance of what she said? A. Yes.

Q. For these bundle boys generally $16.50 was a little high? A. Yes.

Q. Did you know at that time there wasn't a single one of them getting less than $16.50?

A. I assumed they were getting less than $16.50.

Q. It is admitted in the record by counsel that there [fol. 2929] wasn't a single one of them getting less than $16.50. Was that one of the matters you were arguing about? A. It was discussed.

* * * * * *

[fol. 2931] Q. Why was the request made of Dewey Atchison that he resign from the union?

A. We discussed it and thought it was best.

Q. Why?

A. We just thought, while he wasn't in the capacity of an official or supervisor, he worked rather close to production, and we thought it best to ask him to resign.

Q. Explain that a little more clearly. What did his proximity to production have to do with membership in the union?

A. I can't explain his job, I don't understand it.

Q. The fact is that because he was an executive you asked him to resign?

A. He isn't an executive.

Q. You had no reason for it, then?

A. We thought it best.

. . . . . .

[fol. 2932] Q. Now, you stated that at one time you took up with the management the fact that one of the inspectors was being unreasonable with the girls in her department. Who was that instructor?

. . . . . .

A. Miss Wardell.

By Mr. Langsdale:

Q. What had Miss Wardell been doing that was unreasonable?

A. Well, we had had different girls come to us saying she was being unreasonable about different matters, that she was unfair about different things.

Q. Tell me one thing she was unfair about?

A. I don't recall offhand.

Q. Tell me one thing.

A. I think one thing she complained about was that they spent too much time in the washroom.

Q. What did she say to them about that?

A. I don't know.

Q. At any rate she didn't want them to spend so much [fol. 2933] time in the washroom?

A. That was one of the reasons.

Q. With whom did the committee take up that matter?

A. That was taken up with Mr. Baty, I believe.

Q. Well, do you know?

A. I didn't take it up myself.

Q. Were there any other complaints that you recall having been made against any of the instructors?

A. No, I don't recall any others.

Q. That is the only one you know of?

A. That is the only one I recall.

Q. Is Mr. Wardell still there? A. Yes, sir.

Q. You say that because Miss Todd spent some time in piecework pricing you thought she would be one who could represent your union in that matter?

A. Yes, sir, I said that.

Q. Who was representing the company?

A. They had two employees who work on piecework prices.

Q. Representing the company?

A. That is their work. They were former operators, and that is their work, setting piecework prices, that is their job.

Q. Why didn't you use Mrs. Nichols to represent the union?

A. Miss Todd was a member of our committee, and she [fol. 2934] was very familiar with the work.

Q. Mrs. Nichols was a member of your union, too?

A. Yes.

Q. But you thought, on account of her doing it for the company, you had better have someone check her?

A. We wanted to have someone representing the union check that work.

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[fol. 2935] MRS. EFFIE WEIGAND,

a witness called by and on behalf of the intervener, Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tyler:

Q. Your name is Effie Weigand? A. It is.

Q. You are employed by the Donnelly Garment Company, are you, Mrs. Weigand? A. I am.

Q. How long have you been employed by them?
A. Approximately two and one-half years.
Q. In what capacity? A. I am an operator.

* * * * * *

[fol. 2937] Q. Have you ever had to do with any filing or presenting of a complaint at the Donnelly plant to or through the Donnelly Garment Workers' Union committee?

A. Well, no, I didn't file the complaint. I took part in it after the complaint was filed.

Q. Tell us what that complaint was.

A. Well, the early—when we were changing from the winter styles to the spring styles. They were new, in the spring line and, of course, soft material, and we had some darts we were putting in that were difficult to put in, and [fol. 2938] the rates were arranged about the same as for those we had been putting in that were straight, and a number of girls complained to their representative at that time, who was Sallie Ormsby, and I was one who was asked to check on how much I could do on that work.

Then, we went in a group and discussed it with Miss Todd—the group who had made complaints and myself, we went up and discussed it with her.

Q. Did any adjustment of any kind result from your taking part in that complaint?

A. Yes, sir.

Q. Did you ever take part in any other complaint since the formation of the union that you now recall?

A. No, I don't believe I have.

Q. What is your guarantee down at the Donnelly plant?

A. $22.50.

Q. What do you customarily make down there?

A. Well, that varies. I usually make about the approximate guarantee, and there are a number of weeks that I don't make it. And then, during the rush season, when I stay on one thing, I have made as high as $39.85. I believe that was my highest check.

Q. Do you remember that minimum guarantee is of value to you personally?

Mr. Leary. I object to that as immaterial.

[fol. 2939] Trial Examiner Batten: She may answer.

A. It is.

Q. (By Mr. Tyler) Why, Mrs. Weigand?

A. Because I must have a weekly income to provide for a growing family and their schooling. My expenses go on weekly, and I need this weekly income to provide for those expenses.

Q. Have there been weeks when you wouldn't have gotten that much without the guarantee?

A. Oh, yes.

Q. Mrs. Weigand, did you attend part of the hearings of the so-called Judge Miller trial in the Federal Court a few weeks or months ago?

A. Part of them.

Q. Did you ever hear Velma Dowdy testify in that case? A. Yes, I did.

Q. Did her testimony have any effect upon your choice as to what union you wanted to belong to?

Mr. Langsdale: I object to that as immaterial and not tending to prove or disprove any issue in this case. In the Miller case this witness testified how much dues were paid by the International Ladies' Garment Workers' Union, and I suppose that is what you want her to testify to here.

Mr. Tyler: That is what I am leading up to.

Mr. Langsdale: And I say it is immaterial to this case, the difference between the dues paid by the International [fol. 2940] Ladies' Garment Workers' Union and the dues paid by the Donnelly Garment Workers' Union.

Trial Examiner Batten: If that is the purpose, I want to ask you, Mr. Tyler, how you think it is material. As I have previously stated, the employees can select their own union, one where the dues are nothing, or one where they are $10 a week. The Board has nothing to do with the union the employees select. As long as that union is not dominated or influenced by the company, the employees

have a right to select any union they want to select, and pay any dues they want to pay.

Mr. Tyler: I agree with you. And I think that is the purpose of the Wagner Act, to do that.

Trial Examiner Batten: That is the only prime purpose.

Mr. Tyler: My theory is, it must be determined whether these employees are operating the Donnelly Garment Workers' Union out of either fear or favoritism of their employer, or whether they are doing it by their own wish. And, in order to show they are doing it by their own choice, they should be allowed to state the reasons for that choice, and whether those reasons are probable or improbable should throw some light on whether they are telling the truth.

If this witness testifies she saves a substantial amount of money by belonging to this union over which she would be forced to pay if she belonged to the International Ladies' Garment Workers' Union—

[fol. 2941] Trial Examiner Batten (interrupting): She wouldn't be forced to pay it unless she joined it, would she?

Mr. Tyler: No, but it has been shown that the International Ladies' Garment Workers' Union wanted to organize these people.

Trial Examiner Batten: That is not in this case. Wouldn't it be possible to have a union which was absolutely dominated by the employer, and they, not knowing it, would freely join it and pay their dues?

Mr. Tyler: No, I don't think that is possible. If the employees, in their own minds, desired to belong to that union, their reason might be bad, and they might be even deceived by the employer, yet they have a right to that union.

Q. They have a right to the union, but the union hasn't any right to represent the employees if it is formed by the

employer, sponsored by the employer, or dominated by the employer.

Mr. Tyler: I submit, the reason for the employees choosing this union is the most vital kind of evidence as to whether the company does dominate it or not.

Mr. Langsdale: The objection I want to make to this testimony—This witness testified she joined the Donnelly Garment Workers' Union in 1937, April 27, I assume. She didn't hear the Dowdy testimony until 1939, so, manifestly, it couldn't have had any effect on her joining a union.

[fol. 2942] Trial Examiner Batten: I don't think it is material to the issues in this case. I think this lady has a personal right to join any union she wants to join, and if she prefers the Donnelly Garment Workers' Union she doesn't have to give the Labor Board or anybody else any reason for joining it. She doesn't have to show the Labor Board she has a reason. She may join it because the first name of it starts with a D and the last word in the name starts with a U.

Mr. Tyler: I agree, she doesn't have to give the Labor Board any reason, but I submit she has a right to give a reason in sustaining that it was her own free choice.

Trial Examiner Batten: Nobody is questioning Mrs. Weigand's reason for joining this union.

Mr. Tyler: The Board is questioning the reason for the majority of employees joining this union.

Trial Examiner Batten: No, the Labor Board is not questioning her reason for joining this union.

Mr. Tyler: Is it questioning that of any employee whatever?

Trial Examiner Batten: We are not interested in the reason for joining.

Mr. Tyler: But we are interested in the reason the great bulk of them have for joining, are we not?

Trial Examiner Batten: I don't think so.

Mr. Tyler: I have not included this lady's testimony in [fol. 2943] the offer of proof in the Judge Miller case.

Trial Examiner Batten: We are interested in it to this extent, whether or not she knows whether any executive or officer of this company influenced her to join it, or whether she was told by any such person to join it, or if she knows of any officer of the company who helps operate it or helped form it.

Mr. Tyler: I will ask her those questions but before doing so, I understand Your Honor excludes her answering the questions as to the effect the testimony of Velma Dowdy had on her?

Trial Examiner Batten: Yes.

Mr. Tyler: I offer to prove, this witness, if permitted to testify, would testify as follows:—I am going to read her testimony in the Judge Miller case.

Mr. Langsdale: Where are you reading from?

Mr. Leary: Why can't it be set out in the record here?

Mr. Tyler: All right. I will mark it and let the reporter copy it.

Trial Examiner Batten: That will be all right.

Mr. Tyler: I will mark it. It would be about the fourth page of her testimony, beginning at page 1173, with the second question, and continuing to the bottom of page 1177.

Mr. Langsdale: Now, without reading that, may I inquire if it all has to do with what she heard Velma [fol. 2944] Dowdy testify to? If you have something else there I may have a different suggestion.

Mr. Tyler: Yes. It all refers to the difference financially to her, but it does include the question as to what difference it makes to her to work for the Donnelly Company or at any other garment company.

* * * * * *

Q. (By Mr. Tyler) Mrs. Weigand, did any official of either the Donnelly Garment Company or the Donnelly [fol. 2945] Garment Sales Company, or any representative of any official of either company, ever endeavor in any way to coerce you to belong to the Donnelly Garment Workers' Union?

A. They never have.

Q. Did any such person ever offer you any inducement to join the Donnelly Garment Workers' Union?

A. They have not. I have never had any communication with any official of the company.

Q. Have you ever talked with an official of the company about any union or union connection?

A. Not on any matter.

Q. Did you ever hear any employee at the plant complain, secretly or otherwise, that he or she had been threatened or coerced in connection with union membership of any kind?

A. I have not.

Q. Did you ever see any instructor at the plant gather the people in her section together to attend a meeting?

A. I never have.

Q. Did you ever hear anyone in the plant order anybody to attend any meeting of the Donnelly Garment Workers' Union?

A. No, I haven't.

Q. I believe you testified that you are not and never have been a member of the committee of the Donnelly Garment Workers' Union.

[fol. 2946] A. I have not.

Q. Have you been a member of the Loyalty League?

A. Yes.

Q. Have you attended any functions of the Loyalty League in the last two years?

A. Yes, I have. I attended a dance at the Pla-Mor, and just recently I was on the committee to help arrange for

the picnic of the Loyalty League; and I have attended several representative meetings.

Q. Did you ever hear in any meeting of the Loyalty League or any committee of the Loyalty League, any plans to arrange what the Donnelly Garment Workers' Union would do?

A. I have not.

Q. What custom have you followed as to whether you would attend meetings of the Donnelly Garment Workers' Union in your work clothes or in your street clothes?

A. Well, it has always been my custom to go down in uniform, because I can get a better seat where I can hear what is going on.

Q. Is it a fact that those who go in late frequently have to stand up? A. That is true.

Q. Have you or have you not seen a substantial number of the employees at those meetings in their work clothes?

A. Yes. A great many of us have attended in our work clothes.

[fol. 2947] Q. Did you attend any meeting of the employees about the end of March, 1937, at which it was moved that employees contribute 50 cents each towards attorney's fees in connection with the injunction?

A. I did.

Q. Did you hear such motion as I have described made?

A. I did.

Q. Can you fix the date of that meeting?

A. I believe it was the 30th of March.

Q. How do you fix that date?

A. Well, my birthday falls on the first day of April, and it was a few days before that, because I remember we had some carrying on and talking. I believe my birthday fell in the latter part of the week that year. This happened in the early part of the week.

Q. The year you are speaking of was 1937?

A. That is right.

Q. That motion referred to was carried, was it, by those present? A. Yes.

Q. Do you know whether any of those 50-cent contributions were collected thereafter? A. Mine was.

Q. How do you know?

A. Because I gave it to the girl.

[fol. 2948] Q. Do you remember whom you gave it to?

A. No, I don't remember that.

Q. Mrs. Weigand, did you ever attend a meeting of the employees at which a meeting of the Loyalty League was announced first, and then it was announced it would be immediately followed by a meeting of the union, and the two were held in the same room, one right after another?

A. I don't recall ever attending a Loyalty League meeting—that is, a meeting.

Q. Then you, of course, do not remember attending a Loyalty League meeting that was intermingled with or immediately following a union meeting?

A. No.

Q. Did you ever hear anybody else talk about such a meeting before this hearing began? A. No.

Q. Do you attend most of the meetings of the Donnelly Garment Workers' Union?

A. Yes; I attend regularly.

* * * * * *

Cross Examination.

By Mr. Langsdale:

Q. I didn't get what your birthday and this 50-cent [fol. 2949] meeting had to do with each other. Will you tell me?

A. Well, my birthday—that is rather an odd time of the year, and I, of course, am the recipient of many jokes.

Q. But this was two days before April Fool's Day?

A. That is true.

Q. What did they have to do with each other?

A. We had our meeting—I know it was in the last part of March or the first part of April, and my birthday came around in that week. The first part of March I know the meeting was held, the first of the week, and necessarily—I wouldn't swear it was the 30th of March but, as near as I can remember it, it was the 30th of March, which I would say was Monday or Tuesday of that week.

Q. What day of the week did your birthday come on?

A. I think it was Thursday.

Q. Your memory is pretty good. Have you been reviewing a calendar lately? A. No, I haven't a calendar.

Q. Did Mr. Tyler show you a calendar? A. No.
Q. On what day of the week was your birthday in 1936?
A. I don't know.
Q. Do you know what day it fell on?
A. I might have been—
[fol. 2950] Q. (Interrupting) Now, tell me, if you can, what day your birthday fell on in 1936?
A. I remember I was given a birthday party.
Q. On what day of—

Mr. Lane (interrupting): I object to that.

A. I wouldn't know, unless I had a calendar.

By Mr. Langsdale:
Q. What day did it fall on last year, 1938?
A. Friday, last year.
Q. In 1938? A. I believe it was on Friday.
Q. What day was it on in 1939, this year?
A. Saturday morning—well, on Saturday.
Q. What were you going to say about changing your department?

Mr. Leary: Had a party, she said.

A. Oh, my daughter gave me a birthday party. It was the first birthday party my girl had ever given me.

By Mr. Langsdale:
Q. But this meeting you think was two days before April 1, how does your birthday cause you to recall this meeting, the loss of the 50 cents?
A. It might have been that, I don't know.
Q. Anything else?
A. I just associate it with the fact—I can't fix the date definitely, but I associate it—My birthday came in the lat-
[fol. 2951] ter part of that week, and I know this meeting came in the first part of the week.
Q. How do you know?
A. As near as I can recall, it came early in the week, and I believe I paid my 50 cents that week.
Q. Why do you say it came early that week? Why not the next week?

A. I can't understand the question. What came early in the week?

Q. This 50-cent meeting.

A. Because I recall this meeting came early in the week.

Q. But it might have been early in the next week?

A. Oh, no.

Q. You are sure of that.

A. It was right closely associated with the latter part of March.

Q. And that is the only reason you can give to the Examiner for saying this was about the 30th of March?

A. Just my memory, and incidents associated with about that time.

Q. Well, what other incidents?

A. No other incident that I recall, at that time.

Q. You say you never spoke to any executive about anything down there?

A. I never have, except I have spoken to Mr. Baty here [fol. 2952] in the courtroom. Those are the first words I have ever exchanged with any executive with authority at the Donnelly plant.

Q. Mr. Baty has never spoken to you about your employment down there about, anything?

A. He never has.

Q. Has he ever given you any instructions about anything? A. Never has.

Q. Or any directions about anything? A. No.

Q. Do you know Mrs. Ella Mae Hyde? A. Yes.

Q. Have you spoken to her? A. Yes.

Q. You got your job from her, didn't you?

A. I put in my application. I don't remember who called me.

Q. But you put it in with Mrs. Hyde, didn't you?

A. She and a stenographer both interviewed me.

Q. Have you been a member of the board of representatives of the Loyalty League?

A. I was chosen by my section this spring to represent my section to the Loyalty League.

Q. How were you chosen, do you know?

A. By vote. The girls in the section chose two of us, and we were both voted on by ballot.

* * * * * *

[fol. 2953] Q. The time for leaving work down there is staggered, is it not? A. It is.

Q. Starting when?

A. Well, I am not familiar with all of the starting times. I have started at 7:30, and—

Q. (Interrupting) I am talking about starting to leave work.

A. Oh. I have left all the way from 4 to 5:30.

* * * * * *

[fol. 2958] Mrs. Mabel Riggs, a witness called by and on behalf of the intervener, Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Tyler) Will you state your name?

A. Mabel Riggs.

[fol. 2959] Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed there?

A. It will be 10 years this August.

Q. In what capacity?

A. Well, I have been in the pattern department during that time.

Q. What department are you in now?

A. Still in the pattern department.

Q. Are you a member of the Donnelly Garment Workers' Union? A. I am.

Q. Did you take any particular part in the meeting in which that union was organized—any specific part, except being present, I mean?

A. Well, I was on the committee.

Q. What committee. A. The nominating committee.

Q. Who made up that nominating committee?

A. Mr. Jeter, Mr. Crawford, Miss Taylor, and Mrs. Moore.

Q. (By Mr. Langsdale) What was the last name?

A. Mrs. Moore, from the operators. I think that was all.

Q. (By Mr. Tyler) What was that committee asked to do?

A. We were instructed to bring in a representative committee from the different departments to act as the chairmen of the Donnelly Garment Workers' Union.

* * * * * *

[fol. 2961] Q. (By Mr. Tyler) Will you tell us, Mrs. Riggs, what you mean by the word "representative", as you used it in your answer "to pick out a representative committee"?

A. I don't know that I should have used that word. They wished to have a person on this committee to represent the different departments. For instance, we had one form the cutting department, another from the mechanics, and I know we had more operators than other people—we did want at least two from the group of operators—and one from the handwork department in raising a good many things not covered by the operators or mechanics or cutting; and we did want a person from the office, and possibly a person from the group at large that didn't probably have any certain department. Those were our instructions.

Q. Was it your personal purpose to do that for the interest of the employees, or because of some outside domination by the employers?

A. We did it from the standpoint of the employees.

Q. Have you ever been ordered or directed by any employer or representative of the management as to what you should do in connection with the union?

A. I have not.

[fol. 2962] Q. Have you ever had any inducement offered to you by any official of the Donnelly Garment Company or the Donnelly Garment Sales Company or any representative of such official, in connection with your union activities?

A. I have not.

Q. Have you made your union affiliation of your own free will and accord? A. I have.

Q. You were at one time on the committee of [chairman], I believe, were you not? A. Yes, sir.

Q. You have heard in this courtroom of a complaint about a certain instructor that came to the committee?

A. Yes.

Q. Tell the Examiner what the complaint was as it came to you and what was done about it.

A. As I understood the complaint, there were people in the department thinking that perhaps the instructor exercised more authority than she should. In other words, she would have an unhappy frame of mind and rather take it out on them just a sort of personal conflict. I don't know what else you call it. For instance, she would just have it in for them today, and maybe she would like them tomorrow, and it was rather burdensome on the people who worked under her.

* * * * * *

[fol. 2963] Q. Have you ever attended meetings of the Donnelly Garment Workers' Union wearing your work clothes and not your street clothes?

A. Well, I work in street clothes, largely.

Q. Have you ever attended meetings of the Donnelly Garment Workers' Union during office hours—during plant hours? A. I have not.

Q. Did you ever know of any employee in the plant complaining, secretly or otherwise, that he or she was coerced in connection with membership in the Donnelly Garment Workers' Union?

A. I never heard of any.

[fol. 2964] Q. Did you ever hear of any employee being induced by favors to have anything to do with the Donnelly Garment Workers' Union, favors from the employer?

A. No, sir.

Q. Did you ever receive such inducement yourself?

A. Never have.

Q. You belong to that association by your own free will and accord? A. I do.

* * * * * *

[fol. 2965] Cross-Examination.

Mr. Langsdale: What is your salary, Mrs. Riggs?

A. Well, we consider salaries a personal matter.

Mr. Tyler: I object to that.

Trial Examiner Batten: She may answer.

Mr. Langsdale: What is your salary?

A. I make $65 every two weeks.

[fol. 2966] Q. When did you receive your last raise?

A. I think it was October, 1938.

Q. Was that while you were a member of the committee of [chairman]?

A. Yes. I was a member of the committee of chairmen in 1938.

Q. You are in the pattern department? A. Yes, sir.

Q. Who is the supervisor in that department?

A. The head of the department is Miss Spilsbury.

Q. Who was the supervisor there in 1937?

A. Miss Spilsbury—Well, I don't know. We always call her the head of the department. I suppose you mean by that, supervisor?

* * * * * * *

[fol. 2970] Read the last question.

(Thereupon the last question, as follows, was read by the reporter:)

"Did you have anyone you called supervisors in April, 1937?"

Trial Examiner Batten: You may answer.

A. I don't know that I know exactly what you mean by "supervisor"? The head of my department was Miss Spilsbury. She was in 1937.

Q. (By Mr. Langsdale) Who is Mrs. Strickland?

A. Mrs. Strickland is a lady who works in our department.

Q. Supervisor?

A. No. I don't know what you mean by "supervisor." We don't call anyone in our department a supervisor.

* * * * * * *

[fol. 2974] Redirect Examination.

By Mr. Tyler:

Q. Mrs. Riggs, what events occurred at the meeting of April 23, 1937, according to your memory?

A. The Donnelly garment employees met on the second floor of the Corrigan Building after working hours on April 27, 1937.

Miss Todd presided at the meeting. She talked generally about things we had been discussing in groups preceding this meeting.

She told us again that Mr. Tyler and Mr. Gossett had been engaged as our attorneys, and it was time for us to make some definite plans of procedure. She said Mr. Tyler was present and would talk to us.

* * * * * *

[fol. 2977] Q. Have you ever heard anything that sounded to you like an intimidation that you had better belong to this organization, or you had better continue in it, or the management would avenge itself on you? A. I have not.

Q. Have you ever heard any pressure used by any executive of the Donnelly Garment Company or any member of the Donnelly Garment Workers' Union to get you to join the union? A. No, sir.

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[fol. 2986) EDWARD F. SWINNEY, a witness called by and on behalf of intervener, Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Tyler) Will you state your name, please?
A. Edward F. Swinney.
Q. You are a resident of Kansas City, Mo?
A. Jackson County.
Q. What is your business connection, Mr. Swinney?
A. Chairman of the Board of the First National Bank, Kansas City, Mo.
Q. How long have you held that position?
A. I have been in the bank 52 years.
Q. How long have you lived in Kansas City, or Jackson County? A. Fifty-two years.
Q. Mr. Swinney, do you know Rose Todd?
A. Yes, sir.

Q. Do you recall any incident, about the end of March, 1937, when she came to you concerning borrowing some money for some employees of the Donnelly Garment Company?

A. Yes, sir. I remember—I don't know the exact time, but it was about two years ago.

Q. Now, Mr. Swinney, did anyone else except Rose [fol. 2987] Todd communicate with you, by letter, or telephone, or messenger, or in any other way, concerning that loan?

A. No, sir, no one whatever.

Q. Did anybody gauarntee that loan?

A. No, sir, except Miss Todd said she would see it was paid.

Q. Why did Miss Todd say she wanted that money, if you remember?

Mr. Langsdale. I obgject to that as calling for hearsay testimony and a self-serving statement.

Trial Examiner Batten. He may answer.

A. Miss Todd came to me and said the employees had a way of collecting money down there by way of 50 cents and a quarter around among the employees, but that they needed some money right away, and asked if we would make them a loan of $1,000, which I did.

Q. (By Mr. Tyler) Did you take a note for that loan, Mr. Swinney?

A. They did over at the discount cage, yes, sir.

Q. Was that the first time, as a banker, you have ever loaned money without collateral security?

Mr. Langsdale. I object to that as immaterial and not tending to prove or disprove any issue in this case.

Trial Examiner Batten. Objection sustained. I suppose [fol. 2988] this man has been in the banking business long enough that if he makes such a loan he has to take the responsibility for it. I suppose this bank is like any other bank, they do it every day.

Q. (By Mr. Tyler) Mr. Swinney, was there any collusion, outside guarantees or hints or suggestions about this loan?

Mr. Langsdale. I object to the question as calling for a conclusion of the witness.

Trial Examiner Batten. He may answer.

A. I never had any conversation with anybody except Miss Todd pertaining to the loan.

Q. (By Mr. Tyler) Or any message, or—

A. Nothing at all.

Q. Was that loan repaid, Mr. Swinney?

A. Yes, sir, Mr. Tyler.

Mr. Tyler. That is all. Thank you.

Mr. Stottle. No questions.

Trial Examiner Batten. Mr. Langsdale?

Cross-Examination.

By Mr. Langsdale:

Q. Mr. Swinney, how long had you known Rose Todd prior to the time she made application for this loan?

A. I would say about 10 or 12 years.

Q. Where did you meet her, Mr. Swinney?

A. At my office.

Q. In what connection?

[fol. 2989] A. She was a kind of "all-around-man" for the company.

Q. For the Donnelly Garment Company? A. Yes, sir.

Q. And she had come in there before on matters for the company, had she? A. Oh, yes.

Q. You had made a good many loans to the Donnelly Garment Company, Mr. Swinney, during that period?

A. No, sir.

Q. Had you made any?

A. Away back when they first started, we made them a loan. I don't think we have since.

Q. That is probably because they haven't needed it. They carry their account with you? A. Yes.

Q. Does the Donnelly Garment Sales Company carry their account with you?

A. I don't know what companies they have now.

Q. There is the Donnelly Garment Company and the Donnelly Garment Sales Company.

A. There may be an account of that kind. They have one or two accounts. They do their business with us.

Q. Do you also carry the account of Mrs. Reed, Nell Quinlan, Donnelly Reed? A. Yes, sir.

[fol. 2990] Q. Do you carry the Senator's account?

A. Yes, sir.

Q. Do you carry the account of Gossett, Ellis, Dietrich, and Tyler—Gossett? A. I don't think so.

Q. You don't know? A. No.

Q. But over a period of 10 years, do you know whether Rose Todd had contacted you in behalf of the Donnelly Garment Company?

A. Just coming and going, bringing some stuff up to my office, or something of that kind; just in a general way.

Q. And, as you explained it, your impression of her position down there was that she was a sort of "all-around-man" for the company? A. Yes, sir.

* * * * * * *

Redirect Examination.

Q. (By Mr. Tyler) Mr. Swinney, did any official of the Donnelly Garment Company or the Donnelly Garment Sales Company ever tell you that Rose Todd ever had any position of authority down at the Donnelly Garment Company? A. No, sir.

[fol. 2991] Q. Did Rose Todd herself ever tell you she had any position of authority down there?

A. No, I don't think she did.

* * * * * * *

LYLE JETER, a witness called by and on behalf of intervener, Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Patten) State you name, please.

A. Lyle Jeter.

Q. Where do you live? A. 7800 Jarboe.

Q. By whom are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed there?

A. Over 11 years.

[fol. 2992] Q. In what capacity? A. Machinist.

Q. Were you working there in March of 1937.

A. Yes, sir.

Q. Did you have occasion to go by the plant of the Missouri, Gernes, and Gordon Garment companies in March of 1937? A. Yes, sir, I did go by.

Q. Where is that plant?

A. About Twenty-Sixth and Walnut.

Q. Is there more than one plant there?

A. You mean more than one company?

Q. Yes. A. Yes, sir.

Q. Did you see any excitement around the doors of the building where these companies have their places of business? A. Yes, sir.

Q. Did you stop there at that time? A. I did.

Q. Tell what was happening there.

Mr. Leary. I object to this as immaterial.

Trial Examiner Batten. That is all right, if you people want to go into all of this thing.

Mr. Patten. This man knows of a personal threat to the Donnelly employees.

Trial Examiner Batten. Made to him?

[fol. 2993] Mr. Patten. In his presence.

Trial Examiner Batten. Made to him?

Mr. Patten. Yes, made to him; he was standing around in the group.

Trial Examiner Batten. You may go ahead and I will see what it is.

A. I stopped up there three or four different times, and the girls that were working for these different companies were trying to get into the building. There were pickets there, and when the girls would try to enter the building—

Trial Examiner Batten (Interrupting). Just a minute. Tell us what the threat was.

A. One morning I was standing up there and Miss Tobin went back and forth across the street—I was standing in front of the plants—and an elderly lady started in the building and five or six ladies jumped on her and beat her up—

Trial Examiner Batten (Interrupting). Tell me how you were threatened.

Mr. Langsdale. I move that that part, the last part of his answer be stricken.

Trial Examiner Batten. It may be stricken. Tell me how you were threatened.

A. I have to tell a little bit about this first part, if I may.

Q. (By Trial Examiner Batten). Did somebody threaten you personally?

[fol. 2994] A. Threatened the Donnelly Garment Company.

Q. Tell me what they said, and who it was.

A. As this old lady got up and started in the building somebody said, "Isn't that awful, the way they are treating her?" And Miss Tobin said, "That's just a sample of what we are going to do down at Donnelly's."

Q. (By Mr. Patten) Did you report that at the plant?

A. I talked it over with the employees.

Q. Mr. Jeter, did you take any part in the meeting at which the Donnelly Garment Workers' Union was organized? A. I did.

Trial Examiner Batten. Now, Mr. Patten—

Mr. Patten (Interrupting). This is a point that has not been covered.

Trial Examiner Batten. The point you have finished covering, I don't think that is material to this case.

Mr. Patten. I understood you had said if we had cases involving actual threats to persons employed by the Donnelly Garment Company we could put that in.

Trial Examiner Batten. Yes, if you have any actual threats of violence committed as to any employee of the Donnelly Garment Company, that should be in here. I

don't think this sort of testimony has anything to do with it.

Mr. Patten. That was a personal threat. He was an [fol. 2995] employee of the Donnelly Garment Company, standing around and heard this remark.

Trial Examiner Batten. I do not consider that as a personal threat to him. That is something thay may have occurred a thousand times. If somebody personally threatened this man, or something of that sort, I think that testimony would be relevant.

Mr. Langsdale. Is this answer to be stricken then, so that it is not subject to cross-examination or rebuttal?

Trial Examiner Batten. I want to hear the attorneys first.

Q. (By Mr. Patten) Mr. Jeter, did you interpret that as a threat to the employees of the Donnelly Garment Company?

Mr. Leary. I object to that as calling for a conclusion.

Trial Examiner Batten. Objection sustained.

Mr. Patten. The only thing lacking, apparently, under your definition of a threat, was for them to address him personally and say, "You, Mr. Jeter, are going to be—"

Trial Examiner Batten (Interrupting) Now, Mr. Patten, if a Donnelly employee was threatened personally, or any violence committed, I will receive that testimony. The fact that this man happened to be down there where something was going on and heard some remarks—I think there were some remarks like that in the paper, too, but I don't consider that matter an issue in this case. I think that is a [fol. 2996] matter between the employees. I don't see how the company can be held responsible for that situation.

Mr. Patten. It shows the circumstances leading up to the formation of this union. If we can show the circumstances, that the union was inspired by the employees and did not rise out of the action of the company—In so far as we show these circumstances which motivated them we negative the contention of the Board and the Internationak

Trial Examiner Batten. That might be possible, remotely. It may be stricken. I am not going to receive that type of testimony on that question.

Mr. Patten. Mr. Examiner, the intervener offers to prove by this witness, and others, that threats were made in their presence in connection with physical acts of violence, which they personally witnessed, to the effect that those acts of violence were only circumstances to show what would be done to the Donnelly Garment Company employees when the International Ladies' Garment Workers' Union started its drive to organize the Donnelly plant.

Trial Examiner Batten. And the other witnesses' testimony would be substantially the same as this testimony?

Mr. Patten. And that those threats were made in connection with the International Ladies' Garment Workers' Union. The other witnesses' testimony would be substantially the same or similar to that we have offered—that this witness has testified to and Your Honor has ordered [fol. 2997] stricken.

Trial Examiner Batten. The offer is refused.

Mr. Stottle. Respondent excepts to the striking of the answer and to the refusal of the offer.

Trial Examiner Batten. Mr. Stottle, by that you certainly don't want to imply that the respondent was responsible for all of this difficulty between groups of employees of those different companies, do you?

Mr. Stottle. No. Our position is, when evidence has occurred from the stand, if it would tend to disprove the charges in the complaint, we are entitled to it from the stand.

Trial Examiner Batten. You think that testimony would tend to prove the thing Mr. Patten has stated; is that right?

Mr. Stottle. That is right—or tend to disprove some of the charges in the complaint.

Trial Examiner Batten. Tend to disprove what charge in the complaint?

Mr. Sottle. The charge of domination, is one.

Trial Examiner Batten. That was Mr. Patten's point I think. What other charge in the complaint?

Mr. Stottle. I would have to read the record through, Mr. Examiner.

Trial Examiner Batten. You read it and let me know what other complaint. That might change entirely the complexion of my ruling. If there is anything else, you will [fol. 2998] let me know?

Mr. Stottle. Yes.

Q. (By Mr. Patten) Mr. Jeter, did you have any part in the meeting at which the Donnelly Garment Workers' Union was organized? A. I did have.

Q. What part did you play in that meeting?

A. I was one of the nominating committee.

Q. How were you appointed?

A. Miss Todd said as she called the names of the ones to be on the nominating committee, to stand up, and she called my name.

Q. Were you surprised or not when that happened?

Mr. Leary. Oh, I object to that as immaterial.

Trial Examiner Batten. Sustained.

Mr. Leary. And I move that the answer be stricken.

Trial Examiner Batten. It may be stricken.

Q. (By Mr. Patten) Was it prearranged?

A. I didn't know it if it was.

Q. Nothing had been said to you—

Mr. Langsdale (Interrupting). I object to that as self-serving.

Trial Examiner Batten. You may answer.

Q. (By Trial Examiner Batten) Did you know ahead of time Miss Todd was going to appoint you on this committee?

[fol. 2999] A. No, sir.

Q. You had never heard of it before? A. No, sir.

Q. (By Mr. Patten) What did your committee do?

A. Left the room and went to another floor, the girls' recreation room. We tried to pick out one from the different departments—I don't remember how many, but I believe it was 8 or 9, to form the executive committee to run the union for one year.

Q. Did you have in mind that you should get persons of whom Miss Todd would approve?

A. We tried to get the ones who were pretty well known to all of the employees in the factory, in all of the departments.

Q. Were you thinking about the employees? A. Right.

Mr. Patten. That is all.

Mr. Lane. Mr. Examiner, there are various other matters we would inquire about of this witness except for the rulings of Your Honor with respect to offers of proof. We will make those offers of proof.

Trial Examiner Batten. Mr. Lane, I assume when you make your offers you will include this witness' name as one of those. There will be no restriction on you in the names you include in your offer.

Mr. Lane. I merely make that explanation as to why [fol. 3000] we don't go into further matters with this witness.

Trial Examiner Batten. I understand you do not go into those matters with this witness, or any further witness, for the same reasons.

Mr. Lane. Yes.

Trial Examiner Batten. Mr. Stottle?

Mr. Stottle. Mr. Examiner, you have excluded his answers on threats. That would be the only question I would want to ask about.

Cross-Examination.

Q. (By Mr. Stottle) Mr. Jeter, will you state the circumstances of the threat which you heard against the Don-

nelly employees down at the other factories here in Kansas City?

Mr. Leary. I object to that as repititious now.

Mr. Langsdale. It's having been ruled on. And it is immaterial. You said "the" threat?

Mr. Stottle. Yes, the same one.

Mr. Langsdale. I object to it as immaterial, and as already having been ruled on by the Examiner.

Trial Examiner Batten. I don't think there is any question about that.

Mr. Stottle. The objecion is sustained.

Trial Examiner Batten. I don't know that it is in the form of an objection. I think I ruled on the matter, as far as the intervener was concerned, and I think you joined in [fol. 3001] it, and took exception to the ruling. Now, what is the purpose—

Mr. Stottle. The only purpose would be that, if respondent wouldn't have a right to object to a question of the intervener—

Trial Examiner Batten (Interrupting). Is there any doubt in your mind that you have or have not that right.

Mr. Stottle. Well, not in my mind, no.

Trial Examiner Batten. I don't think there is any question about it.

Mr. Stottle. That is all.

* * * * * *

[fol. 3003] Q. (By Trial Examiner Batten) What is your job at the Donnelly Garment Company?

A. I am a machinist.

Q. How many machinists are employed there?

A. Oh, about 7 or 8, I would say.

Q. Do you have anyone in your department who acts as a person that assigns the work, or anything of that sort?

A. Well, we have a call-board on the eighth floor, and we have—

Q. (Interrupting) Do you have anything to do with that yourself?

A. No. They have a boy there that takes the calls.

Q. Do you have anything to do with that?

A. No. I just answer calls off the board.

Trial Examiner Batten. The testimony with reference to this matter may be stricken. Apparently this man is only an employee. The respondent cannot be charged with what he does.

Mr. Langsdale. He hasn't said he did anything.

Trial Examiner Batten: I don't want the record to be in such condition that Mr. Ingraham or Mr. Stottle might [fol. 3004] feel they should call other witnesses to go into things brought out in this testimony.

Mr. Patton, do you have any further questions?

Mr. Patten. No further questions.

Q. (By Mr. Langsdale) Mr. Jeter, are you the assistant of Marvin Price in that department?

A. No, sir.

Q. Who is? A. Assistant to who?

Q. Marvin Price.

A. I don't know whether he has any assistant or not.

* * * * * *

Mrs. Edith Koll, a witness called by and on behalf of intervener, Donnelly Garment Workers' Union, [fol. 3005] being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Patten:

Q. State your name, please. A. Edith Koll.

Q. You are Miss or Mrs. Koll? A. Mrs.

Q. What is your address?

A. 1916 East Sixty-Ninth Terrace.

Q. How long have you been employed by the Donnelly Garment Company?

A. I think, about ten years.

Q. Were you employed there in the month of March, 1937? A. Yes, sir.

Q. Did you attend a meeting at which Mrs. Reed spoke in the month of March, 1937? A. Yes, sir.

Q. Did you take any part in that meeting?

A. I did.

Q. Tell what part you took in that meeting.

A. Well, I asked if Mrs. Reed was in the building and if she could talk to us.

Q. Where were you sitting in that meeting?

A. Well, I wasn't sitting. We were standing. I was —oh, I expect about 8 or 9 from the platform.

Q. Did you ask that question of your own volition? [fol. 3006] A. Yes, sir.

Q. No one told you to ask it? A. No, sir.

Q. With respect to the beginning and the middle and the end of the meeting, at what point did you ask that question?

A. You mean, what prompted me to say it?

Q. At what time during the meeting?

A. Well, we were just talking about conditions of the other garment companies that were on strike, and we just wondered in what way we could get protection.

Q. How long had the meeting been going on before you said anything?

A. Oh, I expect 15 or 20 minutes.

Q. Did you see anyone leave the room after you asked that question? A. Yes, sir.

Q. Do you know who it was?

A. No, I can't say.

Q. Do you know whether several people left the room?

A. Yes, I remember about three—two or three people.

Q. Did you know whether Mrs. Reed was in the building or not? A. No, sir.

Q. Now Mrs. Koll, what is the nature of your work down [fol. 3007] there? A. Operator.

Q. Is there a place in the building where the employees buy Coca-Cola, a soft drink stand, or something of that kind? A. The cafeteria.

Q. Do you drink Coca Cola once in awhile?

A. I sure do.

Q. When you go to get a Coca-Cola do you ask anybody's permission?

A. No, sir. I just get up and go.
Q. Do the other operators do the same thing?
A. Yes, sir.
Q. Do you keep track of the time you are absent?
A. No.

Mr. Langsdale: I object to that as immaterial and not tending or prove or disprove any issues in the case, and ask that her answers about going to get Coca-Cola be stricken.

Trial Examiner Batten: It may stand.

Mr. Patten: These persons you saw leaving the room, did they leave the room in response to your question?

A. Yes, sir.

Mr. Patten: That is all.

Trial Examiner Batten: Mr. Stottle?

Mr. Stottle: No questions.

Trial Examiner Batten: Mr. Langsdale?

[fol. 3008] Cross-Examination.

By Mr. Langsdale:
Q. Mrs. Koll, to whom did you address your question?
A. Rose Todd, I believe, had opened the meeting, and she was—
Q. (Interrupting): You addressed your remark to Miss Todd?
A. I just merely asked the question. I don't know who took it up.
Q. Did you ask it of some girl next to you, or Miss Todd?
A. No, sir. I asked it of someone on the platform.
Q. What reply did you get from Miss Todd, if any?
A. I don't remember who answered me, but someone said, "We will see if she is in the building," that it was getting late and she had probably gone home; but she hadn't gone home and she came down and talked to us.
Q. Miss Todd was in charge of the meeting, wasn't she? A. Yes.
Q. So, it was Miss Todd who replied to your question?
A. I don't remember.

Nos. 786-787

VOLUME III.

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EIGHTH CIRCUIT.

No. 12,641

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DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

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[fol. 3008] Q. Did she tell you she had just seen Mrs. Reed come in? A. No, sir.

Q. Did anyone make that remark? A. No, sir.

Q. You say, "We stood up." What do you mean "We stood up at that meeting?"

A. We didn't have any chairs at that meeting.

[fol. 3009] Q. No chair at all? A. No, sir.

Q. Everybody stood up?

A. As well as I remember.

Mr. Langsdale: That is all.

Trial Examiner Batten: Mr. Leary?

Mr. Leary: No questions.

Trial Examiner Batten: Mr. Patten?

Mr. Patten: No questions.

Trial Examiner Batten: That is all.

(Witness excused.)

CARL CRAWFORD, a witness called by and on behalf of intervener, Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Patten) State your name, please.

A. Carl Crawford.

Q. Where do you live?

A. 1720 Claremont, Englewood.

Q. That is in Jackson County? A. Yes, sir.

Q. You are an employee of the Donnelly Garment Company? A. Yes, sir.

[fol. 3010] Q. Were you employed there in March of 1937? A. Yes, sir.

Q. Did you attend a meeting at which Mrs. Reed spoke?

A. Yes, sir.

Q. Do you know Miss Frances, or Mrs. Strine, who is Mrs. Reed's secretary? A. Yes, sir.

Q. Did you see her at that meeting? A. Yes, sir.

Q. Were you a member of a committee that went to see Director Higgins of the Kansas City police?

A. Yes, sir, I was.

Q. Who organized that committee.

A. Well, offhand I can't say. All I remember is that several of the girls called up and wanted to know who all would go down, and I volunteered to. I had a car, and I told them I would take a carload of them down.

Q. Do you remember who called you?

A. Grace McTernan, I believe.

Q. As far as you know, did Rose Todd have anything to do with getting that committee together? A. No, sir.

Q. Do you recall any time, at any meeting of the employees of the Donnelly Garment Company, that a meeting of the Donnelly Garment Workers' Union and of the Loyal-
[fol. 3011] ty League were held on the same afternoon?

A No, sir, there hasn't been.

Q. Would you say that has never happened?

Mr. Leary. That is, as far as you know.

A. I know that it has never happened.

Q. (By Mr. Patten) Was the meeting at which Mrs. Reed spoke a Loyalty League meeting?

A. No, sir.

Q. Are you a member of the Loyalty League?

A. Yes, sir.

Q. Have you ever understood the Donnelly Garment Workers' Union was organized by the Loyalty League?

A. No, sir, in no way.

Q. Is it a continuation of the Loyalty League?

A. No, sir.

Q. Does the Loyalty League still continue to have dances and parties. A. Yes, sir.

Q. How close were you to Mrs. Strine at the meeting at which Mrs. Reed spoke?

A. I wasn't very close. I was in the back of the room.

Q. Do you know whether she was taking notes or not?

A. I believe she was, but I wouldn't swear to that.

Q. Were you a member of the nominating committee that was appointed at the meeting at which the Donnelly [fol. 3012] Garment Workers' Union was organized?

A. Yes, sir, I was.

Q. Was your selection to serve on that committee a matter about which you had any advance notice?

A. No, sir.

* * * * * * *

Cross-Examination.

By Mr. Langsdale:

Q. How many of you went down to see Director Higgins?

A. I would say there was approximately 25.

Q. Why so many?

A. Well, I guess they just wanted a good representation down there.

Q. [Do,] you went down in a crowd? A. That is right.

Q. And had your picture taken while you were there with Director Higgins?

A. I believe there was a picture taken there.

Q. And published in the paper?

A. I believe it was, yes.

Q. Did you arrange for a photographer to be there?

A. No, sir.

Q. Who called the meeting of March 18th?

[fol. 3013] A. I can't tell you.

Q. How did you get any notice of it?

A. Well, there is just a general line—someone called up and said, "We are going to have a meeting."

Q. What message was delivered to you?

A. That there would be a meeting.

Q. Was that all? A. That is all.

Q. Just that there would be a meeting? A. Yes, sir.

Q. Nothing else was added to that at all? A. No, sir.

Q. Where did they say the meeting would be?

A. On the second floor.

Q. When did they say it would be?

A. After working hours.

Q. Now, that is absolutely all that was said about the meeting?

A. That is all that was said to me.

* * * * * * *

[fol. 3014] Q. Who was president of the Loyalty League at that time?

A. I believe Rose Todd was.

Q. Did you hear Rose Todd say what the purpose of the meeting was?

A. Well, she said they would have a meeting to see what might be done in the way of protection.

Q. She said they would have a meeting. What did she mean by that?

A. All of the employees of the Donnelly Garment Company.

Q. What did she say about it?

A. She said she had called this meeting to see how they felt and what they wanted to do.

Q. She said she had called it?

A. As our president, yes.

Q. How long was your nominating committee out?

A. Oh, I would say approximately 15 minutes, as I recall.

* * * * * *

[fol. 3019] RAYMOND SMITH, a witness called by and on behalf of intervener, Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Patten) State your name, please.

A. Raymond Smith.

Q. Where do you live? A. 5536 Brooklyn.

Q. You work for the Donnelly Garment Company?

A. Yes, sir.

Q. What is the nature of your work?

A. Machinist.

[fol. 3020] Q. Were you working there in March of 1937? A. Yes, sir.

Q. Did you have occasion to leave town on or about the 24th of March, 1937? A. I did.

Q. Where did you go?

A. St. Joseph.

Q. What was that the last time, with respect to the 24th of March, you were at the plant at the Donnelly Garment Company?

A. I left on the morning of the 24th. I came back the 30th.

Q. For what purpose did you go to St. Joseph.

A. Well, we had a plant up there, and I went up there to get the machines in shape, ready to start work.

Q. You say you returned on the 30th? A. Yes, sir.

Q. What day of the week was that? A. Tuesday.

Q. What time of day did you return?

A. Well, it was shortly after 5 o'clock. We closed at 4. It is about one hour and ten minutes drive from our plant, the St. Joseph plant, down here.

Q. Did you go directly to the plant?

A. I went directly to the plant, yes, sir.

Q. Was that the first time you had been back to the plant since you left on the 24th?

[fol. 3021] A. Yes, sir.

Q. What happened when you got back to the plant?

Mr. Langsdale. What day of the week was this?

Mr. Patten. He has testified it was the 30th of March.

Q. (By Mr. Patten) What happened after you got back to the plant?

A. They were having a meeting on the second floor, and I went up to the meeting.

Q. Who was there? A. Everybody was there.

Q. All of the employees? A. Yes, sir.

Q. Did you see any officer or person of authority from the company there? A. No, sir.

Q. What were they talking about?

A. Well, they were discussing means of raising a fund to pay our lawyers.

* * * * * * *

Cross-Examination.

By Mr. Langsdale:

Q. Now, that was the 24th of May, 1937, that you went to St. Joseph to make this setup?

[fol. 3022] A. The 24th of March.

Q. And you went there for what purpose?
A. To get some machines ready to start the factory.
Q. Did the committee go, too, the committee chairmen?
A. What committee chairmen?
Q. Of the Donnelly Garment Workers' Union?
A. There wasn't any such thing as the Donnelly Garment Workers' Union then.
Q. Where was the plant in St. Joseph located?
A. It was in the Brittens Building between—It was on the corner of Third and Jule.
Q. They were just opening it up? A. Yes, sir.
Q. They hadn't any plant up there until that time?
A. Oh, yes.
Q. They had had a plant there? A. Yes, sir.
Q. What was it they were opening up?
A. Opening up the factory up there.
Q. Opening the factory?
A. Yes, sir. It had been closed up to that time.
Q. For how long?
A. Since 1934. I believe it was the year before.
Q. You left St. Joseph at what time?
A. About four o'clock.
[fol. 3023] Q. How did you leave there? A. In my car.
Q. You came back what highway? A. 71.
Q. Where did you live at that time?
A. I lived at, I believe it was 4821 Cypress.

* * * * * *

[fol. 3024] Q. What were you going by the plant for at that time of the evening, after the plant had shut down?
A. I came in to get some machines lined up so the truck driver could bring them up to me the next morning.
Q. The plant wasn't in operation at that hour of the day, was it? A. No, sir.
Q. How long did this meeting remain in session?
A. Well, I can't say as to that, because I wasn't there when it started. It was over at about a quarter of 6, I imagine. I never asked the time on it.
Q. How long did it last after you got there?
A. I imagine 20 or 25 minutes.
Q. And it had been going on some time before you got there?

A. Evidently not some time. It had been going on a short time. I got in shortly after it opened.

Q. Who was in charge of the meeting?

A. I believe Miss Todd was.

Q. What part of the room were you in while you were at the meeting?

A. I was close to the freight elevator, approximately in the center of the room.

Q. Standing up? A. Yes, sir.

* * * * * * *

[fol. 3025] By Mr. Leary:

Q. Was this the first trip you had ever made to St. [fol. 3026] Joseph for the company? A. No.

Q. You had made a lot of them?

A. Yes, I had made a lot of them. I have been at the plant every time they opened one up there.

Q. How many times did you go up there in 1937?

A. I can't tell you. I would go back and forth most every night—every day I was up there I drove back and forth after I got the factory going.

Q. What was the date of your first trip to St. Joseph in 1937? A. 24th of March, 1937.

Q. That was the first time? A. Yes, sir.

Q. When did you return from your second trip to St. Joseph?

A. The second trip? I think I came in the end of the week.

Q. What date?

A. It was along about the first or second day of May—April, that I came back.

Q. Have you checked any records to tell you this was the 30th of the month, Tuesday? A. Yes, I have.

Q. What records do you have?

A. I have my book I always keep for my own personal [fol. 3027] record. When I am out of town like that on a job I put down the dates and the day I received my equipment, or whatever I might have received, in that book, and then I consult a calendar along with my book, and that is how I came to have it.

Q. Have you that book here? A. Yes.

Q. May I see it, please?

(Thereupon the book referred to was handed by Mr. Patten to Mr. Leary.)

Mr. Leary: No further questions.

* * * * * *

Mr. Tyler: I would like to call Mr. Baty for a couple of questions.

LEE BATY, a witness called on behalf of intervener, Donnelly Garment Workers' Union, having been previously duly sworn, was examined and testified further as follows:

Direct Examination.

Mr. Tyler: Mr. Baty, did Ellen Fry or Glynn Brooks or Mamie Tubbesing, or any or either of them, apply for reinstatement or for jobs at the Donnelly Garment Com- [fol. 3028] pany in July, 1935, or any time after that, either personally or through the International Ladies' Garment Workers' Union?

Mr. Langsdale: Just a minute. What is the intervener's interest in this?

Mr. Tyler: My interest is, the complaint includes, in one of its clauses, the claim that the company has dominated this union by refusing to reinstate workers who were either members of the International Ladies' Garment Workers' Union or not in sympathy with the employers' plans.

Trial Examiner Batten: Is there any objection?

Mr. Lansdale: No.

A. They did not.

Mr. Tyler: Since July, 1935, has the plan of operation of the business been such that if these people had applied for work it naturally would have come to your attention?

A. Yes.

* * * * * *

[fol. 3037] ELLA MAE HYDE, a witness called by and on behalf of intervener, Donnelly Garment Workers' Union, having been previously duly sworn, was examined and testified further, as follows:

Direct Examination.

By Mr. Tyler:

Q. Mrs. Hyde, did Glynn Brooks ever apply to you for work in the Donnelly Garment Company in January or February, 1938, or at any time since then?

[fol. 3038] A. She did not.

Q. Has your desk ever been on the fifth floor of the building in which the Donnelly Garment Company is located? A. Never.

Mr. Tyler: That is all.

Trial Examiner Batten: Mr. Stottle?

Cross-Examination.

Mr. Stottle: Did you have a conversation with Glynn Brooks at all, that you remember, in January or February of 1938?

A. I have never seen Glynn Brooks.

* * * * * * *

[fol. 3041] Mr. Tyler: It is admitted by attorneys for the Board, the International Ladies' Garment Workers' Union, the respondent, and the intervener, that Arch S. Welch, if present in court, would testify that the 37 photographs which I now hand the stenographer are photographs taken by him on the afternoon of Friday, July 9, 1937, of 37 sheets of paper, each containing an affidavit signed by a number of individuals and acknowledged before a notary public, the whole bound together under a cover which was stamped indicating that it had been filed with the National Labor Relations Board on June 7, 1939;

and that he made photographs of such sheets of paper bound together under that exhibit stamp;

and that these photographs are photographs of each page, and nothing else, and that there are no alterations, [fol. 3042] subtractions, additions, or changes.

I now offer in evidence the exhibit, which I will ask the stenographer to mark intervener's exhibit No. 18, lettering it from A to whatever that results in.

(Thereupon the photographs above referred to were marked for identification "Intervener's Exhibit No. 20-A to 20-KK, inclusive.")

Mr. Tyler: That is an affidavit for an election.

Trial Examiner Batten: You are offering these?

Mr. Tyler: Yes, sir.

Trial Examiner Batten: Any objection?

Mr. Leary: I don't understand the purpose of the offer.

Mr. Tyler: It goes to the choice and free will of these employees of the Donnelly Garment Company, and as to whether they were dominated by their employer or not in forming the Donnelly Garment Workers' Union.

Mr. Leary: I submit, Mr. Examiner, that is an improper way of trying to show such testimony. There is no showing that the witnesses are not available.

Trial Examiner Batten: I don't suppose that the witnesses are available, because I did advise the respondent and the intervener I didn't want them to call all of the employees down here and ask them the very questions that are in these exhibits. I presume that is why the witnesses are not here.

* * * * * *

[fol. 3043 Trial Examiner Batten: I understand. Just the [fol. 3044] one matter of the free will and choice of the employees.

Mr. Tyler. Yes.

Mr. Ingraham: Yes, I think it covers the free choice of the employees.

Trial Examiner Batten: My thought is this, if this covers the matter of the free choice of the employees, while I have my very serious doubts as to how material it is to this case, as I have indicated before—I mean, having the employees all come in here and be sworn and testify, and so forth, I would have no objection to receiving this if it covers the respondent's and the intervener's offer of proof on this question of free will.

Mr. Tyler: On that point, it will cut down the amounts of the offer of proof I made in the future with reference to these other matters, the meetings of March 18, March 30, and April 27, and I so offer it.

Mr. Ingraham: Your Honor, I don't like to have this substituted for the offer of respondent.

Trial Examiner Batten: It is not substituted. I am not asking for any substitution.

Mr. Langsdale: You don't want it substituted for what?

Mr. Ingraham: I said I didn't want it substituted for our offer.

Trial Examiner Batten: It will not be received. You may incorporate it in the offers of proof if you want to.

[fol. 3045] Mr. Ingraham: We have made an offer—

Trial Examiner Batten (Interrupting): I say, this is refused, and if any of the parties want to incorporate the material in an offer of proof, you may do so.

* * * * * *

[fol. 3053] MRS. MARTHA GRAY, a witness called by and on behalf of the International Ladies' Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Langsdale:

Q. Will you state your name?

A. Mrs. Martha Gray.

Q. Where do you reside, Mrs. Gray?

A. St. Regis Hotel, Lindwood and Paseo.

Q. What do you do?

A. I am employed by the Donnelly Garment Company.

Q. In what department?

[fol. 3054] A. I work in the retail store.

Q. How long have you been there in the retail store?

A. Seven years.

Q. Is that your first employment with the Donnelly Garment Company? A. Yes, sir.

Q. Mrs. Gray, I call your attention to a document which has been marked Board's exhibit No. 2 and ask you to read the article in the right-hand column headed by the words "Nine Hundred Join Loyalty League."

A. You want me to read it?

Q. I want you to read this (indicating on exhibit), and this continuation of it (indicating on exhibit).

* * * * * *

Q. Does that article "Nine Hundred Join Loyalty League" refresh your memory as to matters that occurred on the occasion mentioned? A. Yes.

* * * * * * *

[fol. 3055] Q. It says here, "February 5, on the instigation of Mrs. Gray and Mrs. Strickland, about forty-six employees, representing as nearly as possible the entire factory, met at the home of Mrs. Gray." Is that correct?

A. Some of them met there.

Q. (Continuing reading) "They decided to sound out the personnel on the forming of the League." Is that correct?

A. Well, there had been talk, and that came out there. I don't know anything about that.

Q. It says, "Mrs. Gray opened the meeting with an account of what had been done and will be done. She displayed a drawing of a tentative pin and explained the meaning of the word 'Loyalty' as it pertains to the League's purposes." Is that true?

A. That didn't take place at my home.

Q. Did it take place at another meeting?

A. I suppose so. I thought you were asking me about the meeting at my home.

Q. It says, "Mrs. Gray displayed the drawing of a tentative pin." Did you do that?

A. Certainly not at my home.

Q. Was there a mass meeting which followed the [fol. 3056] meeting of your home?

A. As I recall it.

Q. (Continuing reading.) "Cards were passed out to 900 employees and all but 11 were signed and returned." Do you remember that?

A. No, I can't say that I do. I don't know much about that.

Q. (Continuing reading) "Because of the overwhelming response, a constitution was drafted." Is that correct?

A. Well, I know nothing about it.

Q. Have you that constitution? A. I have not.

Q. You have never seen it?

A. I have not.

Q. Do you know where it is? A. I do not.

Q. Then it says, "Mrs. Gray opened the meeting with an account of what had been done and will be done." Is that correct?

A. I don't remember presiding at any meeting. I think we had a meeting there. I do remember something about the word "Loyalty," spelling it out, but I don't remember such as that.

Q. Did you open the meeting?

A. To the best of my knowledge, I did not, but it is very indistinct in my memory.

Q. It says Herbert Mutchler was there. Who was Herbert Mutchler?

[fol. 3057] A. He was an employee.

Q. (Continuing reading.) "Herbert Mutchler was asked to act as temporary chairman. He read a pertinent editorial from the February issue of Liberty magazine."

Do you remember what the editorial was about?

A. No, I don't.

* * * * * *

Mr. Langsdale: I offer from the February 16th issue of the Liberty magazine the only editorial in that magazine. I do not offer anything except the one-page editorial.

Mr. Ingraham: We object. It is immaterial to any issue in this case. There is no showing that this is the editorial referred to.

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[fol. 3058] Mr. Tyler: We object. There is no showing this is the editorial that was read.

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Trial Examiner Batten: I don't know why you don't all agree that this should go in. I suppose the only question is whether or not this is the thing that was read at the meeting; is that it?

Mr. Langsdale: The article says it was read, and this article is in.

Trial Examiner Batten: Mr. Langsdale, I think you are getting pretty close to the matter I have asked the respondent and the intervener not to go into in this case.

Mr. Langsdale: What is that?

Trial Examiner Batten: The matter of what goes on where one union starts to organize, and there are strikes, and so forth.

Mr. Langsdale: That is not the purpose of it, if the Examiner please. They have paraded a number of witnesses before the Examiner to the effect that this is purely a social organization, organized only to give dances, tea [fol. 3059] parties, card parties, and things like that. At this organization meeting this was read and—

Trial Examiner Batten (Interrupting): What exhibit have you there?

A. I have Board's exhibit No. 2.

* * * * * *

Mr. Tyler (Interrupting): This witness didn't say an editorial of that date was read.

Mr. Lane: There is no showing who wrote this article, Board's exhibit No. 2, or that it was accurate.

Mr. Langsdale: It is in evidence now.

Trial Examiner Batten: It is a Nelly Don Athletic Association bulletin?

Mr. Lane: It has no bearing here.

Trial Examiner Batten: It must have some or it wouldn't have been admitted.

Mr. Lane: It was over our objection.

Mr. Tyler: There is no evidence that the Donnelly Garment Workers' Union or the Nelly Don Loyalty League had anything to do with that publication, regardless of who got it out.

Trial Examiner Batten: Of course, there is the allega- [fol. 3060] gation in here, I believe, that the Loyalty League is a labor organization—in the complaint.

It will be received for whatever value it has.

(Thereupon the editorial above referred to was marked for identification "I. L. G. W. U. Exhibit No. 19," and received in evidence.)

* * * * * *

[fol. 3061] Mr. Langsdale: And it is further agreed, is it not, Mr. Tyler, that this is the only editorial in the Liberty magazine for February 16, 1935?

Mr. Tyler: I said, apparently it is. Perhaps I should make a study of the magazine.

Mr. Langsdale: Do you want to do it over the recess?

Mr. Tyler: Yes, I will admit that that is the only editorial in that exhibit.

Mr. Shepard: It is admitted.

Mr. Langsdale: Counsel for all parties admit that I. L. G. W. U. exhibit No. 19 is the only editorial in the Liberty magazine for February 16, 1935, and that that page may be taken from the magazine and offered the same as though the entire magazine were offered.

I offer I. L. G. W. U. exhibit No. 19.

[fol. 3062] Mr. Shepard: Respondent is making the same objection previously made.

Trial Examiner Batten: Subject to the objection both parties have made, it is received.

Is that all, Mr. Langsdale?

Mr. Langsdale: That is all until tomorrow morning.

Mr. Tyler: I would like to move to strike out all of the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray, on the ground that there is no evidence that she was acting on behalf of the Donnelly Garment Workers' Union or The Donnelly Garment Company, and that nothing said or done at that meeti could in any way bind the respondent or the intervener.

Trial Examiner Batten: The motion is denied.

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[fol. 3075] MAY FIKE, a witness called by and on behalf of the International Ladies' Garment Workers' Union, being first duly sworn, was further examined and testified as follows:

Direct Examination.

By Mr. Langsdale:

Q. Mrs. Fike, you have been previously sworn and testified in this case? A. Yes.

Q. Your name is May Fike? A. Yes.

* * * * * * *

[fol. 3077] Q. Mrs. Fike, you first went to work there in what year, did you say?

A. In 1926 or 1927, I am not sure which.

Q. Was there ever any change, as far as you knew, in the duties of the instructors at the Donnelly Garment Company plant from the time you went to work there in 1926 or 1927 up to the time you left there in May, 1937?

Mr. Tyler: Just a minute.

* * * * * * *

[fol. 3078] Mr. Tyler: I object that she is not in a position to testify to what the duties were of the instructors at the Donnelly Garment Company plant.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: She may answer. Objection overruled.

A. Not as far as my orders were concerned.

* * * * * * *

By Mr. Langsdale:

Q. From whom did you receive your orders up to the time you left in 1937? A. The instructor.

Q. Did you ever receive any order or direction at any time from Mr. Baty? A. Never.

Q. Or from Mrs. Hyde? A. No, sir.

Mr. Langsdale: That is all.

[fol. 3079] Cross-Examination.

By Mr. Ingraham:

Q. Mrs. Fike, did you testify previously that the rest of the operators in your section took their vacations a week after you had taken yours?

A. I didn't know the exact time.

Q. Didn't you make that statement, though?

A. I said it was a week or ten days. I don't know what my answer was, exactly, but I do know it wasn't over two weeks—that I understood the vacations would be taken—that was my understanding.

Q. I am asking you whether or not you said the other operators took their vacations within a week or two weeks after you had taken yours?

A. I don't know whether I said that or not, because I didn't know.

Q. So, if you said it, the answer you made wasn't true?

A. The understanding was—

Q. (Interrupting) Just answer the question, please. If you made such a statement, that the other operators took their vacations within a week or two weeks after you took yours, that answer wasn't true?

Mr. Langsdale: Just a moment. I object to that as argumentative, and for the further reason that she now says she doesn't know when they took them.

Trial Examiner Batten: She can say that if she did [fol. 3080] answer a certain way, whether it was true or not.

Mr. Langsdale: Did she mean to answer that way?

Mr. Ingraham: Was it true or not?

A. Well, if I answered it that way, I could have been mistaken. I don't know how I answered it.

Mr. Ingraham: Then, it wasn't true, if you answered it that way?

Mr. Langsdale: I object to that. This witness does not now know when they took their vacations.

Trial Examiner Batten: The record is clear.

(Addressing the reporter.) Will you get the record?

(Thereupon the transcript of the previous proceedings in this matter was produced by the reporter and examined by the respective attorneys.)

Mr. Ingraham: Mr. Examiner, I think the record will show whatever she said, and I am willing to go ahead. We can't find that right now.

Trial Examiner Batten: We will proceed, then, and if you find it—Mrs. Fike, will you remain here?

The Witness: Yes.

By Mr. Ingraham:

Q. Mrs. Fike, did you ever hear any official of the company give any orders to instructors? A. No, sir.

Q. Did you ever see any written instructions that were given to instructors by the management?

[fol. 3081] A. I have seen them hand lots of things—I didn't know what was in them.

Q. And you do not know what orders the management gave the instructors at any time, do you?

A. I know only what instructions I got, and where from.

* * * * * *

Edna Lucas, a witness called by and on behalf of International Ladies' Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Langsdale:

Q. Will you state your name, please?

A. Edna Lucas.

Q. Where do you live? A. 2716 Harrison.

* * * * * *

[fol. 3082] Q. Are you a member of the International Ladies' Garment Workers' Union? A. No, sir.

Q. Are you working on a permit there?

A. Yes, sir.

Q. But at one time did you work for the Donnelly Garment Company? A. Yes, sir.

Q. When did you go to work for that company, if you recall?

A. I went to work there in the year of 1933; I don't know the date.

Q. When did you sever your connection with that company? A. I beg your pardon.

Q. When did you quit, or when were you discharged or whatever— A. I was fired, I guess.

Q. When? A. March 8, 1937.

Q. During all of the time that you were there from whom did you receive your instructions?

A. From Pearl Atchinson, my instructor.

Q. And any orders, instructions or directions you got came from whom?

[fol. 3083] A. From my instructor.

Q. And when you left there, on March 8, 1937, who told you about it, and what did she tell you?

A. Pearl Atchinson told me I was wanted in the office, Miss Ella Mae's. So, I went up to the office and she told me not to come in the following morning, to call in.

Q. Prior to that time did you hear your instructor, Pearl Atchinson, say anything with reference to what might happen there?

A. Yes, I did. I went in one morning and turned up my machine and started to go to work, and she said to this other lady that there [there] three girls there that were giving her trouble and she was going to get rid of them.

Q. To whom did she say that?

Mr. Ingraham: I object to that. It is not binding on the respondent, as to what Pearl Atchinson said.

Mr. Tyler: I object to this line of questioning as improper rebuttal.

Trial Examiner Batten: How is this rebuttal, Mr. Langsdale?

Mr. Langsdale: It shows who was giving instructions— The first time any evidence was produced here to show there was any change in the duties of instructors was when Mr. Baty took the stand.

Trial Examiner Batten: There was no objection as to Mrs. Fike, about whether there was any change when she [fol. 3084] was there.

Mr. Langsdale: I am asking this witness the same thing.

Trial Examiner Batten: I am talking about, with reference to this last question.

Mr. Langsdale: This is only an individual piece of testimony to show who was, as a matter of fact, getting rid of the girls down there.

Trial Examiner Batten: I will sustain the objection on this question.

Mr. Ingraham: And I move to strike the answer.

Trial Examiner Batten: It may be stricken.

Mr. Langsdale: Was there any change, as far as you observed, in the authority of the instructors from the time you went to work there in 1933 until you left on March 8, 1937? A. No, sir.

Mr. Tyler: I object that this witness cannot tell by observation whether there was any change in the authority of the instructors.

Trial Examiner Batten: I presume she is answering us to what she knows.

By Trial Examiner Batten:

Q. Were you an operator there? A. Yes, sir.

Q. You mean by your answer—As far as you know, was there any difference in the way the instructor treated you, [fol. 3085] or in the instructions she gave you between 1933 and 1937? A. No, sir.

By Mr. Langsdale:

Q. Did you ever receive any instructions from anybody but your instructor down there? A. No, sir.

Q. Or any orders or directions? A. No, sir.

* * * * * *

Cross-Examination.

By Mr. Ingraham:

Q. Did you work steadily for the Donnelly Garment Company from 1933 to 1937?

A. No, sir, I didn't. I worked during seasons, but I worked steadily one year. I drew one vacation check.

Q. What year was that? A. I think it was in 1937.

Q. Now, did you receive your instructions as to how to sew from the instructors?

A. Well, I did nothing but hem, and I knew how to put hems in.

Q. Did the instructor show you how to do that?

A. No, sir. I knew how to do it when I was put at the machine. She just gave me the work, and I put the work in.

Q. And the instructor never showed you anything about how to sew, the new workings, or anything of that kind?

A. Well, a hem is just the same.

* * * * * *

[fol. 3087] LULU CHAMBERS, a witness called by and on behalf of the International Ladies' Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination.

Mr. Langsdale: State your name, please.

A. Lulu Chambers.

* * * * * *

[fol. 3088] Q. Did you at one time work for the Donnelly Garment Company? A. I did.

Q. When did you first go to work there?

A. About 1928.

Q. When did you last work there?

A. March, 1937.

* * * * * *

[fol. 3089] Trial Examiner Batten: Just a moment. I want it understood that this testimony only goes to the point about change, as far as orders and instructions are concerned.

Mr. Langsdale: That is what I intended to elicit.

* * * * * *

[fol. 3090] Mr. Ingraham: Of course, Your Honor, I didn't know the names of the witnesses or what they were going to testify to, other than, as I understood, they were going to be offered to show there was no change made by Mr. Baty.

Trial Examiner Batten: That was my understanding, that that was the only reason for calling these witnesses.

Mr. Langsdale: That was it.

* * * * * *

[fol. 3091] By Mr. Langsdale:

Q. You received your orders and directions during that entire time from your instructor? A. Yes, sir.

Q. During all of those years, in the same manner?

A. Yes, sir.

* * * * * *

Cross-Examination.

By Mr. Ingraham:

Q. Did you work steadily at the Donnelly Garment Company from 1928 to 1937?

A. No. I worked seasonally until in 1932. Then, in 1936 I was out.

Mr. Langsdale: Wait a minute.

Mr. Langsdale: That was from 1932 on?

A. Yes.

By Mr. Ingraham:

Q. You worked steadily? A. Yes.

Q. Then, what happened in 1936?

A. I was out for my vacation, and I called in and asked for additional time, which they let me have, and then they [fol. 3092] called me back, and then I was laid off in March.

Q. Did the instructors show you how to perform the different operations?

A. Yes, when I ~~first~~ went there. But I hemmed all of the time, and, of course, after I learned it I didn't have to have any more instructions.

Q. After you learned to hem, from then on the instructor didn't assist you in any way.

A. No, only to tell when we needed to put in a narrow hem, a wide hem, or something of that kind.

Q. When you were called back to work, was that done by Mrs. Hyde? A. Yes.

Q. And when you were laid off, was that done by Mrs. Hyde? A. Pearl Atchinson—

* * * * * *

[fol. 3093] When did you ever hear Mrs. Wherry tell an instructor what her duties were?

A. She would stand, sometimes—

Q. (Interrupting) When? What year?

A. It happened practically any time anything would come up.

* * * * * *

By Mr. Tyler:

Q. Were you talking about Mrs. Wherry giving instructions to the instructors about what they should do, or to the operators? A. To both of us.

Q. You heard her, did you? A. Absolutely.

Q. On what occasion did, you hear her give instructions [fol. 3094] to the instructor?

A. At different times when we would be talking.

* * * * * *

By Mr. Tyler:

Q. Did you testify there was a change in that while you were there or not?

A. No. I don't think there was any change during the entire time I was there. Mrs. Wherry would give the instructors orders about us talking, and different things that would come up in the work.

* * * * * *

Clare Silvey, a witness [call] by and on behalf of the International Ladies' Garment Workers' Union, being first duly sworn, was examined and testified as follows:

[fol. 3095] Direct Examination.

* * * * * *

Q. Were you ever employed by the Donnelly Garment Company? A. I was.

Q. When did you first go to work there?

A. It was in 1933 sometime.

Q. When did you last work there? A. 1937.

Q. During the entire time that you were there, between the date when you went to work in 1933 and the date when you left in 1937, did you ever observe any change in the conduct or authority of the instructors?

A. No, I did not.

* * * * * *

[fol. 3096] Cross-Examination.

By Mr. Ingraham:

Q. Did you work steadily from 1933 to 1937?

A. Well, I was off during seasonal layoffs.

Q. Were you not an extra?

A. No. I had worked there—if I hadn't been laid off I would have gotten my vacation with pay that year.

Trial Examiner Batten: You mean, in 1937?

A. Yes. I had worked right straight on through.

By Mr. Ingraham:

Q. Did your instructor show you how to perform the operations that you made on the garments that you were sewing on?

A. When I first went there she did.

Q. How long after you were there did she do that?

A. Well, about a month, I guess.

Q. Just a month? A. Yes.

Q. And from that time on your instructor never showed [fol. 3097] you how to perform any operations on this sewing?

A. Well, you see, I was a hemmer, and we had a punch on our hem for a 1-inch, 3-inch, or whatever size hem we put in the dress, and we had so much to turn under. That is what I did, was hemming.

Q. Did you ever hear Mrs. Reed, Mr. Baty, or Mrs. Reeves talk to any of the instructors about their duties?

A. No, I didn't.

* * * * * *

[fol. 3099] Mr. Leary: I want to present in writing my oral motion of yesterday to amend the amended complaint by inserting paragraph (p) again.

And, in connection with that, I have an amendment to the offer of proof, of Board's exhibit No. 30, prepared in writing, which I will not ask to be marked or identified now, because I desire to have Your Honor's ruling, when you are prepared to give it, upon the motion to amend the complaint:

Trial Examiner Batten: I don't intend to make any ruling more than to say that when all of these offers of proof are put in, all of the motions, and so forth, I intend to go over all of them and make a ruling, which will be served on all of the parties.

[fol. 3100] Mr. Leary: In that event, then, I will put into the record in writing my oral motion of yesterday to amend the complaint.

Trial Examiner Batten: I don't think it is necessary. I didn't request that it be in writing. The rules state it may be made in writing or orally.

Mr. Leary: I am required to do it, Mr. Examiner.

Trial Examiner Batten: Well, you may do it, but I have not requested it. I have stated it may be made either orally or in writing.

Mr. Leary: Well, I have it in writing. I am asking for an exhibit number for it.

Trial Examiner Batten: I presume the reporter can assign you one.

Mr. Stottle: Respondent desires to object—

Trial Examiner Batten (Interrupting): It isn't offered yet.

Mr. Leary: In connection with this exhibit, which we are without a number for now, I desire to offer an amendment to the offer of proof, Board's exhibit No. 30, with attached exhibit D.

Mr. Stottle: Respondent objects to the offer of proof on all the grounds which we have heretofore suggested to (o) and (p). And also make the further objection that if the Examiner should receive this new offer of proof, that we [fol. 3101] would have to recall Mr. Baty, who was on the stand when the matter came up and was not permitted to go ahead and answer questions on that subject.

Trial Examiner Batten: Are you offering that offer of proof now?

Mr. Leary: I was going to ask to have it marked first, and then I intended to offer it right away.

Trial Examiner Batten: You are not going to offer it, are you, until after your amendment has been marked? There is nothing to base it on, is there, until that is done? However, you may offer it.

Mr. Leary: I would prefer to get it into the file. I don't think, Mr. Examiner, full consideration can be given to the motion to amend unless we have the offer of proof in connection with it.

Trial Examiner Batten: If you make an offer of the offer of proof before the other has been marked, how could I receive it, under that consideration—because it doesn't apply to anything. If you offer that first, what does it apply to?

Mr. Leary: Can't we have a number now for the motion to amend? Don't you have the number?

Trial Examiner Batten: We will take care of that.

Mr. Stottle: Mr. Examiner, if numbers are going to be assigned to these motions and offers of proof when re-
[fol. 3102] spondent is not here to enter objection—

Trial Examiner Batten (Interrupting): Now, Mr. Stottle, there is no intention of proceeding in such manner. If you are even intimating that such a thing is going to be done, I certainly want to take exception to that.

Mr. Stottle: I didn't mean to put in the manner the Examiner has stated, but we would like to have an opportunity to make objections when the offer of proof and amendments are put in.

Trial Examiner Batten: You certainly will, Mr. Stottle. I asked Mr. Leary to delay the matter until I have passed on some other matters.

Do you have any other motions, Mr. Leary, besides the one to amend the complaint, and the offer that accompanies it?

Mr. Leary: No, I haven't.

Trial Examiner Batten: Mr. Ingraham, have you any motions?

Mr. Stottle: Mr. Examiner, we desire to renew our motion to dismiss, which I think was marked Board's exhibit No. 1-FFFF, and related to the whole complaint; and, also, renew our motion to dismiss each and all of the paragraphs in the complaint, which is Board's exhibit No. 1-GGGG.

Trial Examiner Batten: Do you have any further motions, Mr. Stottle, or Mr. Ingraham?

. . . . . .

[fol. 3103] Mr. Tyler: Intervener renews its motion to dismiss as heretofore filed.

. . . . . .

Trial Examiner Batten: The numbers in Board's exhibit No. 1 have been assigned up to 1-SSSS, so the amendment to the complaint, Mr. Leary, which you submitted awhile back will be 1-TTTT; and, having reserved my decision on it when it was made orally, I will not dispose of it any further at this time.

(Thereupon the amendment to the complaint was marked for identification "Board's Exhibit No. 1-TTTT," and received in evidence.)

Trial Examiner Batten: And your offer of proof is an amendment to Board's exhibit No. 30?

Mr. Leary: That is correct.

Trial Examiner Batten: It will be received, but not as evidence, of course, until it is passed upon by the Examiner, and it will depend upon the amendment 1-TTTT. [fol. 3104] If 1-TTTT is rejected, that will automatically dispose, of course, of the offer of proof to Board's exhibit No. 30.

. . . . . .

[fol. 3105] Trial Examiner Batten: There are several matters I would like to have the attorneys make careful notes on so that there won't be any slip-up when the time comes for the Examiner to review the record.

Mr. Tyler, as I understand, you are not going to submit any of the N. R. A. testimony?

Mr. Tyler: That is correct.

Trial Examiner Batten: Now, the Judge Miller case testimony which you submit, I would like to have you mark it N. R. A.-Judge Miller case No. 8.

Mr. Tyler: N. R. A.-Judge Miller case exhibit No. 8.

Trial Examiner Batten: That is right. That, then, will, of course, cancel the following numbers which were assigned previously to the N. R. A.-Judge Miller case exhibits: 12, 4, and 16.

Now, that testimony, Mr. Tyler, you will have up to and including Wednesday, July 19, to prepare, and you will serve it, of course, upon the other parties, and you will serve the original at the reporter's office; she will give you the address. And you will mail to the Trial Examiner, in care of the National Labor Relations Board, in Washington, one copy of the testimony.

Mr. Tyler: Should that original show receipt of service by these other people, or will it be assumed that it has been served on them?

[fol. 3106] Trial Examiner Batten: You may do that if you care to. I haven't required it in other instances.

With respect to the offers of proof, Mr. Tyler, you have several of those to make, and you will mark them all No. 1-RRRR, and the original will be delivered to the reporter's office by Saturday noon, July 22; and you will serve copies upon the other parties, and you will forward to me three copies of the offers of proof, one for my record and two for the Board's record. That will be sent to the Examiner, in care of the Board, at Washington, D.C.

Mr. Tyler. That will be addressed to you personally, in care of the Board?

Trial Examiner Batten: That is right. With respect to any rebuttal that any of the parties have to the written testimony in the N. R. A. or the Judge Miller case, that will all be marked, no matter whose rebuttal testimony it is—you will indicate on the first page whose rebuttal it is, respondent's rebuttal, Board's rebuttal, or intervener's rebuttal, and that will all be marked N. R. A.-Judge Miller case exhibit No. 17.

Now, that must be in the hands of the reporter at her office by noon Saturday, July 22.

Mr. Ingraham, as I understand it, you have no offer of proof to make on part A of the answer, those being jurisdictional matters?

[fol. 3107] Mr. Ingraham: That is correct.

Mr. Langsdale: You say it must be in Washington by Saturday, June 22?

Trial Examiner Batten: No. In the reporter's office.

No. 1-SSSS, when prepared, will be the rulings of the Trial Examiner on all pending matters, which will be forwarded to the Regional Director in Kansas City for service on all of the parties.

Mr. Langsdale: Must this rebuttal be sent to you, also?

Trial Examiner Batten: Yes. I would like to have one copy of the rebuttal testimony forwarded direct to me.

Now, all of these delayed exhibits, as I stated before, are to be filed with the reporter on or before noon, Saturday, July 22.

As I understand it, Mr. Tyler, you will recall when Mr. Ingraham made his offers of proof with respect to the matters which the Trial Examiner stated he would not want to receive any further testimony on, that at that time it was understood that the offers of proof are to cover only those matters which are repetitious and cumulative, outside of the item of violence, and the things that go with that, the effect which that had upon the minds and the actions of the employees at the Donnelly Garment Company. Is that correct?

Mr. Tyler: I am not sure I understand you. My offer of proof has about seven matters which it is entitled to cover, and one of those is the effect on the minds or atti-
[fol. 3108] tudes of the Donnelly garment workers employees.

Trial Examiner Batten: My point is, only one of those matters, which has two parts, is a matter upon which I have received no testimony. Isn't that correct?

Mr. Tyler: Which one is that?

Trial Examiner Batten. The matter of violence and mental attitude of the employees, their reaction to the violence, and so forth. In other words, whatever we discussed, Mr. Stottle, at the time you made your offers, which was agreed to by the respondent. That is what I am getting at. Your offer will be upon the same basis. That is, it is not supposed to include new testimony—I mean, new matters.

Mr. Tyler: No. The matters specifically excluded by your rulings.

Trial Examiner Batten: Yes, except for the one, of course, that I receive no testimony on. That, of course, can be as broad as you want to make it.

Mr. Tyler: You are not restricting me as to the number of people I say would testify, but only that no new subjects may be gone into?

Trial Examiner Batten: I am not restricting you to anything you put in the offer, but I want you to understand—does not include new matters.

One other thing, in view of the fact that the offers of proof which have been offered, practically all of them have
[fol. 3109] been offered at the request of the Examiner. The attorneys may make such objections to those offers as you care to. If you do not care to make an objection to an offer of proof, it is not necessary that you do it, because, having requested the offers of proof, the Examiner feels it is his obligation to pass on those offers.

Mr. Stottle: Mr. Examiner, you mean we could make those objections in writing and mail them in?

Trial Examiner Batten: That will all have to be in the hands of the reporter by Saturday noon, July 22, and the originals and copies mailed to me.

Mr. Langsdale: If we prepare objections to the offers of proof in writing will they have an exhibit number?

Trial Examiner Batten: I think I stated that all objections would—

Mr. Langsdale (Interrupting): You said the offers of proof will be 1-RRRR.

Trial Examiner Batten: I think I had better assign a different number for any objections which might be filed. That would be 1-UUUU, Mr. Langsdale. I am glad you called that to my attention, because I thought I had one for that.

Mr. Langsdale: Is that for all parties, the objections of all parties, 1-UUUU?

Trial Examiner Batten: Yes. The thing that I want to impress upon everybody is that all of these delayed ex-
[fol. 3110] hibits, if they are not in the hands of the reporter by Saturday noon, July 22, when the record of the transcript and the exhibits are forwarded to Washington, it means they just will not be included in the record, so I want to impress upon you the importance of having it here.

Mr. Lane: May I make this inquiry? We have offered as intervener's exhibit these 37 pages of affidavits, which were rejected. In making an offer of proof on that subject will we assume that they are now part of the record?

Trial Examiner Batten: You don't need to assume it, Mr. Lane. All rejected exhibits are bound in a separate binding and are part of the record.

Mr. Lane: So, we may refer to it?

Trial Examiner Batten: You may refer to it as intervener's rejected exhibit—whatever it is.

There was one other matter you, Mr. Leary, and Mr. Ingraham, had with reference to some payroll matters.

Mr. Ingraham: We will take care of that.

Trial Examiner Batten: What do you mean, you will take care of it? You mean you may yet want to use Board's exhibit No. 28, which was reserved for the payrolls?

Mr. Leary: Yes.

Trial Examiner Batten: In connection with that, Mr. Ingraham, is it understood that you are going to submit certain payrolls to Mr. Leary?

[fol. 3111] Mr. Ingraham. Yes.

Trial Examiner Batten: If he cares to have photostats made of those and made a part of the record, as Board's exhibit No. 28, you have no objection to their receipt?

Mr. Ingraham: I think the payroll is immaterial to any issue in this case. I don't want to say I have no objection to the introduction of that evidence. I am going to bring in the payrolls and if Mr. Leary wants to use them, of course that is up to him, but I would object to the materiality.

Trial Examiner Batten: Then, it had better be handled this way: Mr. Leary, if you do decide to use some of them you will mark them Board's exhibit No. 28, and they will be in the hands of the reporter, at her office, on or before July 19.

Mr. Ingraham, those payrolls, if Mr. Leary desires to use them, will be marked Board's exhibit No. 28, and will be in the hands of the reporter by Wednesday, July 19. And then, you will have until Saturday noon, July 22, to file any written objections; and if there are no objections filed, the Examiner will assume there are no objections.

Mr. Leary: In connection with the payrolls, Mr. Examiner, I haven't had an opportunity to look at them, and I don't want to be foreclosed in offering them in any other manner than the original or the photostat of them. I might find it possible to prepare—as I understand, there are only 150 names on each one of them—just prepare the 150 names, [fol. 3112] the date, and the figure, and it can all be done by a more compact method than having photostats of the payroll.

Trial Examiner Batten: I will not accept them in any form other than photostats, or a delayed exhibit, because that opens up too wide a variance. You and Mr. Ingraham might get into a discussion of what should be in and what should be out.

If you and Mr. Ingraham want to stipulate, subject to his objection as to its being material, then you may mark it Board's exhibit No. 28 and make it anything you want, as long as you two agree. But I am not going to leave a matter open in the record upon which the attorneys do not agree.

* * * * * *

[fol. 3401] (Board's Exhibit 1-DDDD.)

Stipulation.

United States of America
Before The National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company,
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers' Union, Party to the Contract.
Case No. XVII-C-371.

It is hereby stipulated and agreed by the parties hereto that the evidence taken before the NRA Regional Labor Board, Twelfth District, in Case No. 160 styled "International Ladies' Garment Workers' Union, Complainant vs. Donnelly Garment Company, Respondent" or any part thereof may be offered or received in evidence in the instant proceedings with the same force as though the witnesses were personally present and sworn and so testified, subject, however, to the right of any party to make an objection that said evidence or any part thereof is immaterial, irrelevant or hearsay, or deals with matters which occurred prior to the passage of the National Labor Relations Act.

It is further stipulated and agreed by the parties hereto that the evidence taken before the Honorable Andrew Miller, United States District Judge, in the case entitled "In the District Court of the United States, for the Western Division of the Western District of Missouri. Donnelly Garment Company, et al., vs. International Ladies' Garment Workers' Union, et al., Donnelly Garment Workers' Union, Interveners, Case No. 2924" may be offered or re-
[fol. 3402] ceived in evidence in the instant proceedings with the same force and effect as though the witnesses were personally present, sworn, and so testified, subject, however, to the right of any party to make an objection that said evidence is immaterial or irrelevant to any issue herein or is hearsay testimony, or deals with matters which occurred prior to the passage of the National Labor Relations Act.

It is further understood and agreed that nothing herein contained shall deny any party hereto the right to call any witness whose testimony has been taken in either of the above proceedings, either for further examination or in lieu of using such witness' testimony as incorporated in either of said transcripts, but this does not apply to offers of proof made in either of the above proceedings.

DONNELLY GARMENT COMPANY;
By Reed and Ingraham,
Its Attorneys.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
By Clif Langsdale,
Jane Walker Palmer,
Its Attorneys.

DONNELLY GARMENT WORKERS' UNION,
By Gossett, Ellis, Dietrich & Tyler,
Its Attorneys.

DANIEL J. LEARY,
Attorney, N. L. R. B.

[fol. 3418] (Board's Exhibit 1-IIII.)

Date 7/7/39 — Witness

Objections and Motion to strike of Respondent to offer of Proof filed by Board and marked Board's Exhibit No. 30.

United States of America

Before the National Labor Relations Board

Seventeenth Region

In The Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

Respondent objects to the offer of proof made and filed by the Board herein designated as Board's Exhibit 30, and referring to the testimony which it is claimed Ellen Fry, Glenn Brooks and Mamie Tubbesing would give, which testimony is set forth in Exhibits A, B, and C attached to said exhibit, and is taken from the testimony given in the N. R. A. hearing before the International Labor Relations Board, Twelfth District, in the matter of Donnelly Garment Company and International Ladies' Garment Workers' Union, Case No. 160, in the year 1935, and objects to the testimony offered to be proved by each of said witnesses, and objects separately to each and every question and answer therein set forth, and moves that the above mentioned offers of proof as to each of said witnesses be rejected, and moves that the testimony of each of said witnesses and that each and every of the questions and answers thereto be excluded and stricken and not considered as evidence in this proceeding for each and all of the following reasons, to-wit:

[fol. 3419] Because said Ellen Fry, Glenn Brooks and Mamie Tubbesing were not employees of respondent on July 23, 1937 and were not employees of respondent on or after July 5, 1935, the date of the enactment of the National Labor Relations Act, and it does not appear in their said testimony or in the evidence given in this proceeding that they were employees of respondent on or after either of said dates, or that the respondent is or was under any obligation to recall said Ellen Fry, Glenn Brooks or Mamie Tubbesing, or assign them work on July 23, 1937, or at any other time, after July 5, 1935.

That said testimony was given prior to July 5, 1935, and refers to matters which purport to have existed or occurred prior to said date, and said testimony and each and every question and answer thereof is immaterial and irrelevant to any issue in this proceeding and deals with matters purporting to have existed or occurred prior to the enactment of the National Labor Relations Act; that the conditions, acts and conversations testified to by said witnesses, if they existed or occurred, were lawful at the time they existed or occurred, and the fact, if it is a fact, that such things existed or occurred or that respondent or any of its representatives may have done or said or authorized any of such things, at the times referred to, or when same were lawful, carries no imputation and does not tend to prove that the respondent (or intervenor), or any one representing either of them, would violate or has violated the National Labor Relations Act after its enactment, or that they would or did commit, authorize or do, after the enactment of said Act, any of the acts or unfair labor practices alleged in the complaint herein, and such testimony is therefore conjectural, speculative and [fol. 3420] irrelevant as to any issue in this proceeding; and for the further reason that there is no showing that the persons testifying or referred to in said testimony had authority to bind or speak for respondent (or intervenor) at said times, or if they had such authority at said times,

there is no showing that such authority continued after the enactment of the National Labor Relations Act or that respondent handled or managed its business or the various departments thereof in the same way or by the same division of authority after the enactment of said Act as it did at the times said testimony was given or that what was said by said witnesses applies to conditions in respondent's business or the methods of handling same since the enactment of said Act and hence said testimony is too remote, is not binding upon respondent or intervenor, is immaterial, irrelevant, conjectural, and without probative value as to any of the matters here in issue; that there is no charge in the complaint of any discrimination by respondent against said witnesses or the persons referred to in said testimony; that said testimony is hearsay and states conclusions; that the Donnelly Garment Workers' Union was not then in existence or even contemplated and said testimony can have no bearing on the question of whether said union was formed, dominated or maintained by respondent or whether it represents the free will and choice of respondent's employees as their bargaining agency: that said testimony does not tend to prove or disprove any issue in this proceeding and, if received, would require extended testimony on the part of respondent and intervenor to refute such irrelevant and immaterial testimony, all of which would needlessly encumber the record; that for each and all of said reasons, the reception or consideration of said testimony in this proceeding would be improper, illegal and prejudicial to respondent and intervenor.

[fol. 3421] Respondent further objects to the second paragraph of said offer of proof and to the offer of proof made therein relating to the testimony which it is alleged Glenn Brooks would give if permitted to testify in this proceeding, for the reason that said testimony, if given, would not prove or tend to prove any of the issues in this proceeding, or to prove or tend to prove that the respond-

ent engaged in any of the unfair labor practices charged in the complaint and because same is immaterial and irrelevant to any of the issues herein and would not be binding on respondent; and it does not appear that said Glenn Brooks was an employee of the Donnelly Garment Company at the time of the enactment of the National Labor Relations Act or since said date, and it does not appear that there was any obligation on the part of respondent to recall said Glenn Brooks or assign work to her at the times referred to in said offer of proof or in the complaint; and respondent moves that the said offer of proof as to Glenn Brooks be rejected and not considered as evidence in this proceeding.

REED & INGRAHAM,
Attorneys for Respondent.

Intervenor joins in the above objections and motion.

GOSSETT, ELLIS, DIETRICH & TYLER,
Attorneys for Intervenor.

July 10, 1939.

Objections are overruled and the motion to strike is denied. The Board may proceed with the evidence offered.

JAMES C. BATTEN,
Trial Examiner.

[fol. 3445] (Board's Exhibit 1-NNNN.)

Offer of Proof.

United States of America

Before The National Labor Relations Board

Seventeenth Region.

In the Matter of the

Donnelly Garment Company,
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers' Union, Party to the Contract.

Case XVII-C-371.

Respondent offers to prove each and every allegation contained in sub-division B of its Answer by the witnesses Nell Quinlan Reed, Elizabeth Reeves, R. J. Ingraham, John B. Bachofer, Marguerite Keyes, Inez Warren, Pauline Shartzer, Mary Sprofera, Nelly Stites, Ruby Rickett, Lyle Jeters, Raymond Smith, Effie Ball, George Cauthen, Flora Ruden, W. B. Rosenfield, Gordon. I. Gordon, Velma Dowdy, Meyer Perlstein, David Dubinsky, Wave Tobin, Sylvia Hull and Ellen Fry, whose testimony is contained in N.R.A.-J.M.C. Exhibit 3, including documents and exhibits made a part thereof; that said testimony of said witnesses and exhibits attached thereto is made a part of this offer by reference as though set out in haec verbae.

REED and INGRAHAM,
Attorneys for Respondent.

Offer of Proof refused. See Rulings of Trial Examiner Bds. Exh. 1-SSSS.

J. C. BATTEN,
Trial Examiner.

(Board's Exhibit 1-OOOO.)
Offer of Proof by Respondent.
United States Of America.

Before The National Labor Relations Board.
Seventeenth Region.

In The Matter Of
Donnelly Garment Company
And
International Ladies' Garment
Workers Union
And
Donnelly Garment Workers' Union,
Party To The Contract.

Case No. XVII-C-371.

Offer Refused. See Rulings of Trial.
Examiner Bds. Exh. 1-SSSS.

J. C. BATTEN,
Trial Examiner.

Respondent offers to produce and examine the persons hereinafter named as witnesses in this proceeding if permitted to do so, and offers to prove that said witnesses, to wit:

[fol. 3447]

Ted Scoles
Cecile Ealy
Lena Tyhurst
Katie Schleicher
Lulu Nichols
Ella Mae Hyde
C. Marvin Price
Florence Strickland
Gertrude Cain
Nellie Kraft
Lillian Marrs
Yolanda Prosperi
Ella Brown
Martha Gray
Frances M. Berko
Berrien E. Riley
Alice Raynor
Evelyn Burke
Edith Biot
Mary Jane Woodworth
Mary Messineo
Rose O'Leary
Pauline Hartman
Ellen Hughes
Thomas Harkness
Russell Frizell
Edwin Toms
Gerald Atherton
Rogers Pearson
Ray Brinkmeyer, Jr.
Randall Brockman
William Hall
Ralph Hootman
Margaret Turner
Doris McConkey
Edna Vining
Billie Shick
Orra Wachtel

William Dwyer
Gene Hagberg
Melvin McDonald
Earl Martindale
Goldie Grossman
Robert Combe, Jr.
Sam Griggs
Paul Oliver
Stuart Hill
Bill Norton
J. B. Casperson, Jr.
Ralph Hanford
Jack Kenney
Dale Bennett
John Kleinman
June Stites
Ava Dean Schaeffer
Helen Murdock
Anne Budelovich
Minnie Storm
Gertrude Doyle
Ruby Taggart
Reba Hisle
Mary DuPage
Lucille Orten
Derrell Johnson
Dorothy DeLange
Elizabeth Stewart
Sarah Perry
W. J. Stickle
John Barry
Dean Tutt
Calvin Burton
Gilbert Kemp
John Moreland

John Hooks
Dorothy Roberts
W. E. Baker
Harvey Edwards
Birdie Baker
W. S. Riley
Nora Williams
Nancy Beach
Dora Perry
J. C. Huey
Roland Frost
Ed Corbin
Ernest Riley
Gustav Anderson
H. C. Morton
Fred Harris
Arthur Porter
Phenias Peterson
Joe DeCavelle, Jr.
A. D. Scott
H. W. McKenzie
Robert Siney
Roy Broman
Bill Guerrant
Edward Cook
Georgia Lee Maxwell
Gladys Bandel
Mary Jane Ruble
Doris Railsback
Peggy Hill
Lorene Lehman
Ivetta Dixon
Lyda Burns
Catherine Nold
Raydene Gedney

[fol. 3448]

Dorothy Greenwood
Alta Stevenson
Lucinda Moore
Hazel Jones
Louise Robinson
May Ingold
Deal Head
Helen Shumate
Ethel Carpenter
Eva Rockford
Ina Davidson
Pearl Black
Marie Jameson
Opal Richardson

Florence Atkinson
Pernice Hull
Iris Litten
Edith Koll
Marie Cahall
Virginia Waers
Edith Shearer
Polly Griffith
Amy Apperson
Dora Mattox
Orpha Renner
Irene Ross
Opal Halliday
Grace Hamilton

Gladys Rudd
Naomi McQuiston
Dolly Otis
Katherine Horvat
Mynie Jones
Fern Myers
Audrey Bechtel
Regina Plattner
Fannie Stears
Patricia Carrell
Marie Richardson
Sarah Saucke
Laura Hanson
Beulah Light
Alma Murphy
Katherine Sutulovick
Allie Reiman
Mamie Carlson
Tibitha Miller
Margaret Leger
Mildred Burch
Pearl Hall
Gladys Austin
Sallie Ormsby
Laura Hills
Lorene Johnson
Beulah Harbison
Mabel McLain
May Proctor
Lucille Wilkey
Blanche Shelton
Viola Gordon
Mary Hyde
Mary Verhulst
Betty Dhaenens
Anna Mollie
Mary Brown
Grace Dunlap
Teresa Somfleth
Grace Greer
Roberta McClanahan
Inez Engle
Maudia Modrell
Ethel Bingman
Laura Perry
Martha Haase

[fol. 3449]

Tessie Hershey
Lois Kesinger
Hazel Hardman

Lutie James
Lucy Evans
Chloe McLaughlin
Lena Canaday
Anna Sosenski
Ethel Jones
Lydia Phillips
Edna Rawlings
Anna Spahr
Nora Johnson
Ann Murray
Mable Forster
Bertie Lafferty
Mary Ana Gustin
Katie McKinsey
Elsie Wright
Jane Beal
Ruby Srader
Dessie L. Horak
Ruth Lowes
Edith Livesay
Emma Hansen
Gladys Brands
Josephine Smith
Ruby Welch
Florence Meuwissen
Virginia Bryson
Eva Liberman
Ola Lantz
Cordia Hundley
Ruth Putnam
Mary Wood
Pearl Hogan
Helen Boor
Virginia Dare
Vivian Helms
Elsie Williamson
Louise Garrett
Nora Cotten
Martha Haroff
Mildred Brooks
Boyd Mumford
Nellie Boan
Maude Copenhaver
Ora Brown

Helen Donnelly
Emma Harris
Augusta Jester

Bessie Winner
Anna Sypyhoski
Martha Dickson
Cora Raines
Lela Cline
Opal Noland
Leta Uptegrove
Katherine Hardsaw
Lois Barnes
Josephine Nichols
Bessie Weilert
Dorothy Sharp
Nina Gilardi
Hazel Higgins
Lulu Gordon
Elsie Shipman
Agnes Hutchinson
Brooksey Steger
Lela Stevens
Amerlia Webb
Iva Andrus
Ada Lee Stark
Myrtle Roberts
Pearl Logan
Jennie Farrell
Lois Hall
Irene Rush
Lorene Horrocks
Estelle Redona
Etta Zimmerman
Ethel Riegel
Nell Prine
Julia Harralson
Mamie Riddle
Hylda Brewer
Lena Ehrhardt
Mary Van Gordon
Bessie Coates
Anna Hurley
Susan Winters
Clare Phelps
Mary Snedden
Ruth Jessup
Stella Balding
Minnie Vickers
Kathryn Baldwin
Bernice Winburne
Rada Walker
Lucy Broman
Evelyn Stover
Fannie Lockwood

Sinie Cawthorn
Etha Kelly
Alice Gates
Nell Harper
Velma Holt
Sadie Wainscott
Ruby Williams
Betty Griffith
Ruth Hayes
Lucy Cox
Alta Hinkle
Bessie Boan
Wilma Knox
Jewel Toler
Elva Gardner
Helen Bilyeu
Pearl Bozworth
Bertha Cook
Catharine Atchison
Beulah Perkins
Virginia Gleason
Edith Cameron
Margaret Hunter
Opal Chaney
Leona Sams
Lois King
Ruth Strandt
Ida Barton
Elizabeth Wheeler
Violet Taylor
Beatrice Fase
Anna Reece
Emma Shaw
Bessie Clark
Angie Brazeal
Lottie Lawrence
Lena Carlson
Goldie Coles
Gertrude Richardson
Augusta Yates
Kathryn Chandler
Edith Dean
Jennie Brown
Gertrude Dauben
Christine Ereth
Augusta Davidson
Ruth Eastman
Mable Bracy
Opal Stufflebean
Zella Fisher
Jennie Swanson

Mary McClellan
Elizabeth Campbell
Edith Lawson
Stella McKinney
Marie Compton
Idella Rimmer
Mary Alice Hardin
Flora Gwin
Loretta Mace
Flora Taylor
Nettie West
Mary Hutchison
Dorothy Frye
Mildred Horde
Mary Riddle
Irene Hayward

[fol. 3450]

Johanna Hunter
Mary Love
Opal Maxfield
Anna Hartman
Lindie Crum
M. Ducoulombier
Helen Wilson
Anna Vogliardo
Irene Wittman
Margaret Galey
Mary White
Merle Beals
Lena Carpenter
Florence Lentz
Myrtle Keidel
Mary Lee O'Brien
Hazel Kellogg
Ethel Junes
Bertha Watson
Sophie Gulick
Fannie Melton
Jennie Cress
Pearl Boden
Margaret Broker
Mildred Harrison
Mary Dockery
Venita King
Bessie Dawson
Pearl Shields
Anna Crewse
Mary Rogers
Bertha Newnham
Nell Patrick
Dorothy Box
Pauline Kammer
Josephine Dunagan
Katherine Bodine
Helen Gunderman
Mary Sites
Mary Crume
Dimple South
Alyne Houts
Aleta Miller
Ruth Noll
Ethel Biewener
Oma McDonald
Thelma Lily
Evelyn Lewis
Rhonda Stotler
Emma Voorhies
Caroline Atkins
Edna Tattershall
Lucile Ward
Annie Jonas
Margaret Kline
Leona Moore
Hazel Donovan
Louise Herlong
Opal Kelly Frye
Zella Hemme
Ida Basham
Alice Freed
Nell Wheeler
Hannie Lee Bullock
Pearl Bennett
Millie Ihle
Verle Selvy
Gladys Salva
Cora Vernon
Juanita Wallace
Margaret Kahmann
Grace Shiner
Flossie Mossman
Dorothy Perry
Clara Long
Eva Vernor
Artie Vaught
Jessie Bray
Frances Shoemaker
Margaret Taylor
Helen Angold
Ruby Dorrell

Mary Cox
Dorothy Gill
Winnie Underwood
Dorothy Sebastian
Grace Farrell
Jean Kirk
Dorothy Leavell
Juanita Willey
Ruby Vidrickson
Leona Doughty
Felice Smith
Iola Hamby
Alice Murphy
Martha Pollock
Mary Walker
Lorean Lewis
Ruth Couts
Helen Getz
Cora Pitcock
Rose Campbell
Freda Schweiger
Nola Leeds

Pearl Uto
Mable Soderstrand
Josephine Miles
Ruth Akeman
Mary Everly
Blanche Wilson
Mary Kruger
Gladys Anderson
Myrtle Willis
Cassie Kent
Emma Yount
Pearl Toler
Susie Clayburg
Edith Alexander
Mildred Snare
Ethel Bogan
Ruby Kitchen
Ethel Bettis
Mary Sprouse
Sallie Delaney
Roma Mahoney

[fol. 3451]

Bernice Lobdell
Ora Dull
Opal Cox
Virginia Vassar
Minnie Gage
Blanche Swisher
Ola Jewett
Gladys Lester
Nellie Bartow
Cordia York
June Watson
Florence Helm
Glenda Webb
Hattie Corder
Helen Vest
Harriet Duck
Katurah Rigdon
Josephine Chapman
Mattie Rudd
Myrle Quinn
Elva Walter
Ruby Kennedy
Lillian Trabon
Mary Halcro
Violette Bennett
Hassie Channing
Bernice Anderson

Mildred Reece
Cerese Audsley
Okal Shoptaw
Opal Dobbs
Annette Stewart
Pearl Douglass
Daisy DeVault
Gladys Russell
Irma Wise
Aileen Vogts
Sue Nell Huston
Emma Warren
Corinne Blackwood
Etta Mae McCurry
Agnes Hollyday
Augusta Kaberline
Inez Meinke
Catherine Sprague
Gladys Speaker
Hattie Caudell
Nova Gray
Bessie Stiles
Rhoda Jackson
Elizabeth Eubanks
Gertrude Adams
Myrtle Johnson
Anna Cummings

Margaret Etzel
Ethel Maxwell
Dorothy Clements
Velma Merriott
Mary Louise Mercier
Flora Cox
Zola McNeil
Butonne Holder
Grace Berry
Ethel Everett
Edna Flynn
Anna Fountain
Elva Tyler
Hulda Beals
Rena Cansler
Delcie Gillham
Nevora Davis
Katherine Farrell
Erma Kelling
Mary Burns
Emma Gosnell
Frances Harley
Hattie Fuller
Agnes Hinson
Louise Pritchett
Laura Lee Royce
Opal Koefoed
Ethel Pittillo
Ann Virgo
Nettie Ely
Beatrice Robinson
Gertrude Wixted
Rose Velghe
Marie Holloway
Dorothy Mead

Beulah Bond
Mae Flucht
Florence Moore
Hazel Bradshaw
Lillian Lubben
Dorothy Lewis
Blanche Thornton
Mary Jo Thomas
Eula Smith
Laura Colley
Margaret M. Edwards
Virginia Irby
Laura Plummer
Elsie Felser
Carrie Wright
Edna Geer
Carrie McClurg
Dixie May
Irene Tillery
Nina Collins
Edna Morlang
Etta Jones
Grace Hendrix
Anne Belan
Kathryn Howe
Madge Cole
Marie Jaskinia
Grace Briscoe
Merle Page
Frances McAnally
Mary Agnes Diesko
Flora Moore
Verna Reed
Gladys Wilson
Bessie Gilliland

[fol. 3452]

Marjorie Sinnett
Ida White
Valeria Boatka
Iva Campbell
Carrie Peach
Saide Comer
Elisabeth Dye
Alice Maggio
Edith Hicks
Loretta Meyers
Carolyn Grier
Vilet Snell
Cora Erwin
Jewell Jones

Beth Gfeller
Doris Appril
Irene Ransdell
Lorraine Smith
Wilma Kile
Agnes Kendall
Carrie Scott
Lorene Welty
Gladys Briner
Margie Stacy
Bertha Klein
Georgia Foster
Blanche Benus
Mary Pfeil

Gertrude Greaves
Bess Phillips
Minnie Allen
Opal Hatfield
Lena Gravino
Matilda Jackson
Lena Fauloner
Carrie Brian
Audrey Wisdom
Emily Fisher
Ann Perry
Lena Carpenter
Mary Robeson
Maude Copenhaver
Beulah Light
Helen Dial
Shirley Yoder
Emma Davis
Beulah Bunch
Gladys Steger
Margaret Howard
Elsie Holloway
Jessica Davis
Lucy McCaulley
Mable Spielbusch
Bertie Johnson
Ella Close
Beulah Green
May Pitts
Mary Self
Bess Jacob
Cora Fitzwater
Estel Rothgeb
Mary Malfreda
Edith Leibold
Eva Fowler
Rubi Clayton
Marth Widson
Jewel Wolfskill
Ruth Voris
Louis Broker
Clara Scot
Altha Wilde
Nina Smith
Betty Davis
Gertrude Dora
Olive Cooney
Elizabeth Fromholtz
Dale Stark
Nellie Colley
Nettie Womacks

May Stevens
Elizabeth Barrett
Elsie Hauser
Ardath Saunders
Esther Kramer
Ruby Slankard
Maurine Kavanaugh
Lillian Fry
Grace Williams
Iva Mueller
Catherine Kellogg
Nell Ball
Mary Stewart
Mildred Tebbe
Ellen Nokes
Gallilia Hoffsett
Margaret Adams
Mary Viscek
Dorothy Inbody
Oma Nicely
Irene Carr
Mildred Lowe
Lela Brown
Elizabeth Rencoske
Alline Jones
Velma Lee Elgin
Dolan Mahon
Opha Smith
Jessie Kelly
Carrie Fain
Myrtle Wilkins
Ida Mauk
Doris Brown
Donna Rickett
Catherine Carroll
Mona Bowerson
Vergie Chambliss
Martha Leavell
Erma McDermott
Katherine Kelly
Ethelyn Robinson
Beulah Kelly
Helen Charp
Carolyn Meuhlberger
Della Scammahorn
Mary Lois Kinpe
Christine Merritt
Margaret Draine
Minnie Fisk
Catherine Stahl

Hilda Fisher
Lucille Weber
Bertha Fried
Mildred Hulshizer
Virginia Winningham
Birdie Taylor

[fol 3453]
Oral Gould
Leona Brink
Charlotte Avise
Eva Vernor
Mabel Haven
Verline Fike
Bernice Davis
Margaret Luce
Ethel Hinckley
Iollian Haughaboo
Edna Curry
Rhoda Kauble
Mabel Gruver
Dorothy Ocshler
Minnie Fisk
Georgia Ward
Anna Farmer
Wilma Kile
Dorothy Smith
Mary Warth
Lora Herring
Alpha Elston
Catherine Pflumm
Hazel Christian
Ruth Ellen Baldwin
Gladys Ward
Geneva Copenhaver
Catherine Lasister
Ruth Davidson
Pearl Norris
Eleanor Swigart
Anna Moore
Jennie Frieaz
Helen Hays
Jake Rust
Johanna Thieme
Neva Reazin
Leonora Benge
Lena Vanderhoof
Edna Davis
Edna Troutman
Grace Kempton
Eva Lee Perew

Regina Thieman
Alice Caton
Mary Sue Cook
Margaret Dishong
Helen Angold
Lora Fritz

Gertrude Loar
De Sylvia Allbaugh
Lena Krepps
Alice Baggerly
Verna Allison
Mary Schutte
Hazel Boyer
Wilma Blanton
Bessie Rudy
Lillian Richards
Loretta Armstrong
Marie Gravina
Edith Wilson
Agnes Lennon
Martha Stodgell
Nora Witten
Ione Bodwell
Nell Craddock
Sara Taber
Gladys Hosey
Frances Pierce
Mildred Foster
Ethel Mills
Florence Belcher
Lucille Harp
Elsie Phipps
Anita Welch
Roberta Blain
Mary Rose
Gloria Bosler
Margaret Shulsky
Ruth Mewkirk
Olive Bell
Cecile Smith
Evelyn Pembleton
Olive Hopp
Sarah Hrencher
Freda Herndon
Nona Lowder
Nellie Starr
Alice McCray
Bessie Maxwell
Doris Schroder

Mary Budelovich
Beulah Bowman
Olive Palmer
Cecil McCoy
Dorris Collins
Hazel Gans
Marjorie Tucker
Anna Horvat
Helen Herring
Mary Fostich
Ruby Etherton
Edith Voorhies
Irene Curchill
Margaret Klug
Ruth Bonnel
Minnie Batman
Bertha Nicoll
Clara Stubbs
Nell Miller
Nina Bartles

[fol. 3454]
Verna Jones
Florence Bonen
Avis Mowry
Martha Hamilton
Martha Waye
Theresa Mohesky
Ethel Roscoe
Belle Wise
Martha Pallanich
Bessie Kalinich
Lucille Stockton
Verna Harrison
Lorena Dougan
Gennetta Redman
Anna Kalick
Mary Lee Crawford
Helen Reardon
Ruth Broadus
Gretha Redman
Katherine Kuchko
Beulah Hayhurst
Irene Boothe
Mary Elardo
Frances Porter
Nina Stewart
Thelma Emerson
Rose Gorman
May Lamon
Paula Freeman
Vilet Caven

Verna Edwards
McWayne Ready
Myrtle Campbell
Bessie Taylor
Rose Lee Greeley
Anna Richards
Eva Broyles
Carolyn Stillwell
Myrtle Stewart
Florence Lippold
Edith Williamson
Julia Arvin
Mamie Weeks
Lillian Frohock
Rose Callowick
Audrey Hoyle
Leona Cooper
Mabel Ridley
Ellen Burton

Christine Shane
Jewel Howard
Nellie Llywelyn
Katherine Truders
Mary Shinpaugh
Effie Lake
Della Harrison
Grace Campbell
Sophia Glavenich
Lois Barnes
Ida Barton
Myrtle Roberts
Opal Hatfield
Mary Malfreda
Gladys Hosey
Katherine Kuchke
Cyrea Bottoms
Ruby Broyles
Lillian Barger
Helen Clark
Mildred Rigby
Dorothy Simmers
Ethel Harris
Helen Dee
Margaret Young
Belva Johnson
Marie Albano
Iris Callowick
Murpha White
Tyra Pittman

Sylvia Farrell
Georgia Elliott

[fol. 3455]
John Ferretti
Ben James
Harold Boyd
James Van Camp
Gerald Cole
George Fallis
Heber Hayes
Samuel Reese
Charles Hamilton, Jr.
Perry Kerr
Sherman Andrew
Clyde Davidson
Earl Wheeler
Clifton Craig
Thelma Sachen
Jessie Forsen
Rhea Byars
Charlotte Casey
Verdoe Rainey
Irene Wilhite
Ruby Scott
Eulah Carter
Mary Cusick
Edwina Jones
Crayce Cooper
Blanche Endres
Mary Bogert
Lola Skeens
Marie Patton
Emma Grober
Etta Dorsey
Edna Bienert
Adaline Bailey
Marie Ashley
Kathryn Rosen
Carrie Abrams
Clara Finnell
Lulu Waddell
Elma Jennings
Ada Wolfe
Francis Silvers
Roy Beller
U. H. White
Lloyd Lynn
Wood Reynolds

Eleanor Downing
Ruth Morris

T. G. Boozell
George Blair
Hinton Noland
Robert Kirk
Frances Endsley
Virginia White
Jean Skinner
Lowell Sachen
Wm. Fredereck
Odell DeCavelle
Frank Cooper
Alvin Riefel
William Hawks
Earl Willoughby
Durward Reece
John Crist
Glen O'Brien
Otto Dramshek
Alphonse Staab
Donald Lytle
Carl Lohrengel
Gertrude Gorham
Mary Hall
Dorothy Easter
Doris Emig
Macie Westendick
Doris McConkey
Reba Hisle
Myrtle Cox
Vera Hinds
Mildred Snyder
Edith Nickum
Dessa Craig
Mollie Smith
Jessie Mudd
Nellie Biggs
Bernice Bryant
Rose Henricks
Martha Gorman
Grace Gnotta
Rosetta Cook
Margaret Martin
Bessie Neimoyer
Grace Davis
Frances Dumit

Malissa Harvey
Zona Hayes
Stella Willis
Vera Marshall
Fred Ellis
Earl DeGraffenreid
Kenneth Peck
Lynn Owen
Alfred Charde

W. G. Weaverling
Morton Griggs
James Dunn
Glen Bingham
Kathryn Bateman
Eileen Gay
Helen Hauser
Rose Todd
Josephine Spalitto

[fol. 3456]

Teresa McFadden
Helen Olson
Katholeen Denzel
Alice Blodgett
Georgia Bailey
Alice Scott
Elayne Albright
Margaret Wells
Marjorie Florence
Karlyn Anspach
Grace McTernan
Elizabeth Goodenow
Corinne Robinson
Effie Ball
Nell Beatz
Dorothy Riggs
Helen Morlan
Kellogg Leach
William Neale
Vesta Dixon
Mary Hanback
Ruth Anderson
Camilla A. Cochran
Lucille Evans
Mary Wiltshire
Mary Andrew
Heath Cowan
Hilda Richmond
Jane Daugherty
Elizabeth Belter
Margaret Quinn
Freda Caudle
Betty Barber
Harlan R. Justus
Pauline Shartzer
Deloris Robertson
Helen Swope
Mildred Moore
Lillian White
Ceva Vaughn

Mabel Bayless
Nora Stevenson
Freda Smeltzer
Ann Scott
Effie Canfield
Garnet Hallsman
Harley Ferguson
Amy Lamar
Meri Beitling
Edythe Hughes
Lorene McCarroll
Ava Dean Schaefer
Katherine Ruppert
Mary Margaret Griffith
Diana Rutherford
Anna Kappelman
Elva Hill
Oscar Steinborn
Zelma Humphrey
Evelyn Cook
Dorothea Dankenbring
Lucille Turner
Freeland Rife
Naomi Osipik
Jeanne Gier
Grace Sampsell
Regina Stearman
Rose Murray
Grace Stephens
Fathe Johnson
Ora Gordon
Helen Little
Ted Kirkland
Cecilia Winterscheidt
Amy Lou Westerhold
Robert D. Livesay
Ruth Austin
Helen Atkinson
Dorothy Heinlein
Pearl Henry

Lena Berry
Sam Sparks
Elva Canon
Lucille Briggs
Nannie Barger
Pearl Davis
Norma Duncan
Nell W. Gregg
Pearl Doyle
Emilea Raines
Rosemary McClelland

[fol. 3457] if produced, sworn and examined would severally testify to the following facts and circumstances, substantially as follows, to wit:

(In this offer of proof, the witnesses are, for convenience, referred to by the masculine gender but such reference is to be construed as masculine or feminine as the case may be.)

That he (or she) is an employee of the Donnelly Garment Company or Donnelly Garment Sales Company; that he is a member of the Donnelly Garment Workers' Union.

I.

That he joined the Donnelly Garment Workers' Union of his own free will and accord, uninfluenced by the Donnelly Garment Company or Donnelly Garment Sales Company or by any officer, executive or supervisory employee thereof, or by anyone representing the management of said companies; that since said time he has continued to belong to and support said Donnelly Garment Workers' Union of his own free will and accord, uninfluenced by the management of said companies or by anyone representing the management of said companies; that the Executive or Bargaining Committee of the Donnelly Garment Workers' Union chosen at the time of the formation of said Union on April 27, 1937, and each of the bargaining committees subsequently chosen or elected, represent his free choice of a bargaining committee to represent him and said Union in all matters relating to terms and conditions of employment at the Donnelly plant and that such choice of bargaining committees was made of his own free will and accord, uninfluenced by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company or any one representing the management of said companies.

[fol. 3458] That at or prior to the time of the organization of the Donnelly Garment Workers' Union on April 27, 1937, there was no coercion, intimidation, pressure, suggestion or inducements of any kind, direct or indirect,

brought to bear upon him by the management of the Donnelly Garment Company or Donnelly Garment Sales Company through any of its officers, executives or supervisory officers or anyone representing the management, to cause or influence him, or which did cause or influence him, to join or support the Donnelly Garment Workers' Union, or interfere in any way with the exercise by him of his own free will in determining whether he should join or support said Union.

That since the formation of the Donnelly Garment Workers' Union there has never been any threat, intimidation, coercion, suggestion or inducements given to him or received by him, directly or indirectly, from the management of the Donnelly Garment Company or Donnelly Garment Sales Company or any one representing the management of either of said companies, to cause him to continue to support and belong to said Donnelly Garment Workers' Union or to cause him to refrain from joining the international Ladies' Garment Workers' Union or in any way interfering or attempting to interfere with his own free will in determining whether he should or should not continue membership in said Donnelly Garment Workers' Union or refrain from joining or supporting the International Ladies' Garment Workers' Union.

That he does not know and has never heard of any coercion, intimidation, pressure, suggestion or inducements being made by the management of those companies or any [fol. 3459] one representing the management, upon or to any other employees of the Donnelly Garment Company or Donnelly Garment Sales Company to cause or influence them to join or continue membership in the Donnelly Garment Workers' Union or interfering in any way with the exercise of their own free will and choice in regard to such matters. That he has mingled with the employees at the Donnelly plant and heard a great deal of discussion by them concerning the Donnelly Garment Workers' Union and never heard any conversation by any employees indicating that the management had brought any pressure or influence to bear upon them in regard to such matters.

That there has never been any threat or suggestion made to him directly or indirectly by the management of the Donnelly Garment Company or Donnelly Garment Sales Company or by any one representing the management,

that if he or other employees did not organize, join or support a plant union that he or other employees would or might lose their jobs.

That he does not know of and has never heard of the Donnelly Garment Company or Donnelly Garment Sales Company, or any officer, executive, supervisory employee or any one representing the management of said companies, doing or saying anything either prior or subsequent to the formation of the Donnelly Garment Workers' Union on April 27, 1937, calculated or tending to encourage, promote or foster membership in the Donnelly Garment Workers' Union or in any "plant union" or tending to discourage membership in the International Ladies' Garment Workers' Union or local thereof.

[fol. 3460] That he does not know and has never heard of any officer, executive or supervisory employee or any one representing the management of the Donnelly Garment Company or Donnelly Garment Sales Company assisting in the formation, maintenance, or administration of the Donnelly Garment Workers' Union or contributing financial or other aid of any kind to that union, or rewarding in any way any person for their assistance or support of the Donnelly Garment Workers' Union.

That he was never directed or ordered by any one, either by instructors employed by the Donnelly Garment Company, or by any official, executive or supervisory employee of the Donnelly Garment Company or Donnelly Garment Sales Company, to attend the meeting of April 27, 1937, at which the Donnelly Garment Workers' Union was organized, or to attend any other meetings of said Union, or to join or support said Union, or how to vote upon any matter at meetings of said Union, but that his attendance at all such meetings and his support of said Union and his vote and all other action taken by him at any of said meetings has been wholly voluntary on his part and was done of his own free will and accord, uninfluenced by any officer, executive, supervisory employee, or any person representing the management of the Donnelly Garment Company or Donnelly Garment Sales Company.

That he has never received any communication or information, oral or otherwise, directly or indirectly, from, or purporting to come from, any officer, executive or super-

[fol. 3461] visory employee of the Donnelly Garment Company or Donnelly Garment Sales Company or anyone representing the management of said companies which has caused him to think or feel that the management of those companies was placing any restriction upon the rights, desires or freedom of himself or other employees as to what union they should join or whether they should join or not join any union, or interfering in any way with the exercise by him of his own free will and choice in regard thereto, that all information which he has received has been to the effect that the management of the Donnelly Garment Company and Donnelly Garment Sales Company wanted the employes to do as they pleased as to joining any union they pleased and that there would be no discrimination against them because of their joining or not joining any union.

[fol. 3462] II.

That he knew of the strikes taking place at the Gernes and Gordon factories in Kansas City during March and April, 1937, and heard of violence and molestation of employees of those companies by the International Ladies' Garment Workers' Union or its representatives in connection with those strikes and of interference with employees of those companies in going to and from work, and had heard that the International Ladies' Garment Workers' Union was going to do the same things to the Donnelly Garment Company employees as it had done to the employees of such other companies and that he had read the newspaper articles concerning those strikes and had read the newspaper article of April 22, 1937, stating that Sylvia Hull had been chosen to represent employees of the Donnelly Garment Company at a convention of the International Ladies' Garment Workers' Union at Atlantic City; that those matters caused him and other Donnelly employees to become greatly wrought up and was one of the factors which caused the employees to organize the Donnelly Garment Workers' Union; that such action was taken by him, and so far as he could observe was taken by the other employees, voluntarily, of their own free will and accord, without any interference, suggestion, coercion, or inducement on the part of the management or anyone representing the management of the Donnelly Garment Company or Donnelly Garment Sales Company.

[fol. 3463] III.

That he was present at a meeting of employees held on March 18, 1937 on the second floor of the Corrigan Building; that said meeting took place after working hours; that said meeting was arranged by Rose Todd and Hobart Atherton; that Miss Rose Todd, an employee of the company, presided at the meeting; that the principal topic discussed at the meeting was the strikes which were then occurring at the Missouri, Gernes and Gordon garment factories and the violence and molestation of the employees of such companies by the International Ladies Garment Workers Union and the threats that the Donnelly Garment Company "would be next" and the same things would be done to the employees of the Donnelly Garment Company as were being done at the Missouri, Gernes and Gordon plants, and what action the employees could take to protect themselves against such threatened action; that no executive or supervising employee took any part in conducting the meeting; that near the end of the meeting someone was sent to invite Mrs. Reed to come and speak to the meeting, and she came and made a short talk to the employees; that Mrs. Reed in her talk spoke of the threats which the International Ladies Garment Workers Union was making of what would happen to the Donnelly employees, and said that she would do everything she could to protect us against any violence. She said it was our own business whether we wanted to join a union. She said that she wasn't going to let Mr. Dubinsky or any other buttinsky force her to force her employees to join the International Union against their will; that Mrs. Reed did not say that she would not permit the International Ladies Garment Workers Union to come in her plant; that she did not say that she wanted reported to her the names of any Donnelly employees who belonged to the International Ladies Garment Workers Union; and that he did not hear any such announcement or request by any other person at said meeting; that when Mrs. Reed had finished her talk she immediately left the meeting; that he was not told or directed by anyone, either instructors employed by the Donnelly Garment Company [fol. 3464] or by any officer, executive, or supervisory employee of said company, to attend said meeting, but that he received information that the employees were holding a meeting and that his attendance at said meeting was

wholly voluntary and of his own free will and accord, uninfluenced by any action or suggestion on the part of the management of the Donnelly Garment Company or Donnelly Garment Sales Company.

[fol. 3465] IV.

That about the last of March or first of April, 1937, he attended a meeting of employees on the second floor of the Donnelly plant; that said meeting occurred within a few days of the first day of April and did not occur on May 25th; that it was held long before the Donnelly Garment Workers' Union was organized on April 27; that said meeting was arranged for by Hobart Atherton and Rose Todd and was held after working hours; that said meeting was stated by Rose Todd and Hobart Atherton to be for the purpose of discussing means of raising money by the employees to pay retainer fee, $500.00, to the law firm of Gossett, Ellis, Dietrich & Tyler for their advice and services concerning an injunction to protect the Donnelly employees against threatened violence and molestation such as was occurring at the Gordon, Gernes and Missouri garment factories in Kansas City; that various suggestions were made for raising the money and finally a motion was made and carried that employees be asked to contribute fifty cents (50¢) apiece for that purpose; it was stated that payment of the fifty cents might be made at that meeting or at the following pay day; that he understands something over $500.00 was raised in this way; that this meeting was not a Loyalty League meeting but was a meeting of employees; that he was not directed or ordered to go to the meeting by any officer, executive or supervisory employee of the Donnelly Garment Company or Donnelly Garment Sales Company, but he attended same of his own free will and accord; [the] he saw no officer, executive or supervisory employee of the Donnelly Garment Company at said meeting and so far as he knows no such officer had anything to do with the calling of said meeting.

[fol. 3466] V.

That he attended a meeting of employees at the Donnelly plant held on April 27, 1937, at which the Donnelly Garment Workers' Union was formed; that said meeting took place after working hours; that he attended said

meeting of his own free will and accord; that he was not instructed or invited to go to said meeting by any officer, executive or other supervisory employee of the Donnelly Garment Company or Donnelly Garment Sales Company; that he was not directed or instructed to go to said meeting by any instructor employed by the Donnelly Garment Company; that he did not see at said meeting any officer, executive or supervisory employee of the Donnelly Garment Company or Donnelly Garment Sales Company and knows that no such officer, executive or supervisory employee participated in any way in said meeting; that Rose Tood presided at said meeting and stated that she and some other employees had been to see the law firm of Gossett, Ellis, Dietrich & Tyler to see what protection the employees might secure against the threatened violence and molestation of employees, similar to that which had been occurring at the Missouri, Gernes and Gordon garment factories; that after the National Labor Relations Act had been declared constitutional Mr. Tyler had advised that the employees were entitled to organize a union if they so desired; that this meeting was called to see what they wanted to do about it; that she introduced Mr. Tyler to the meeting and Mr. Tyler explained to the meeting what the employees were entitled to do in the way of organizing a union; that the name of Donnelly Garment Workers' Union was suggested as a name for such union if they should decide to form one; that the meeting voted to form such a union; that application cards for membership in such union were distributed among the employees and it was stated by Mr. Tyler or Miss Todd that the employees should feel entirely free to sign or not to sign the cards as they might choose and that they might either sign at said meeting or take the cards home for consideration or discussion with their families; that a nom-[fol. 3467] inating committee was chosen by the meeting with instructions to nominate persons for officers and a bargaining or executive committee of said union; that this nominating committee retired from the room and later returned and made certain nominations for bargaining committee and officers; that the persons nominated were voted upon and elected by the unanimous vote of those present; that he did not gain the impression from anything said at said meeting by Rose Todd, Mr. Tyler or

anyone else, that Mrs. Reed or the management of the Donnelly Garment Company or Donnelly Garment Sales Company were asking or wanted the employees to form a plant union; that there was no pressure brought to bear by anything said at said meeting to coerce anyone present at the meeting to join the union or to sign the application cards, but that matter was left to the voluntary action of the employees; there was nothing said or done at that meeting which gave him the impression that the Donnelly Garment Workers' Union was to take the place of the Nelly Don Loyalty League or that there was any connection whatever between those two organizations; that he signed one of the application cards referred to and voluntarily joined said union; that he has attended most of the subsequent meetings of the Donnelly Garment Workers' Union and that he has never seen any officer, executive or supervisory employee of the Donnelly Garment Company or Donnelly Garment Sales Company at any of such meetings and that to his knowledge no such officer, executive or supervisory employee has ever participated in any of the affairs or subsequent meetings of said union.

[fol. 3468] VI.

That he is a member of the Nelly Don Loyalty League; that he was not asked to join the Loyalty League by an official, executive or supervisory employee of the Donnelly Garment Company or Donnelly Garment Sales Company; that the Loyalty League is a social organization and has never engaged in any of the activities of a labor union; that there are no dues in the Loyalty League; that the Loyalty League was not merged into the Donnelly Garment Workers' Union and the Donnelly Garment Workers' Union was not a continuation of or successor to the Loyalty League in any way; that the Loyalty League is still in existence and has continued its meetings and activities since the organization of the Donnelly Garment Workers' Union; that to his knowledge no coercion, suggestion or influence was never exerted or attempted to be exerted by the Donnelly Garment Company or the Donnelly Garment Sales Company through the Nelly Don Lyalty League or any of its officers in the formation and administration of the Donnelly Garment Workers' Union; that so far as he knows or ever heard the two organizations have

always been and are now wholly separate and distinct; that to his knowledge at no time did the said Donnelly Garment Workers' Union and the Nelly Don Loyalty League hold a joint meeting nor did a meeting of the Donnelly Garment Workers' Union immediately either precede or follow a meeting of the Nelly Don Loyalty League.

REED & INGRAHAM,
Attorneys for Respondent.

[fol. 3469] (Board's Exhibit 1-QQQQ.)

Offer of Proof by Respondent.

United States of America
Before the National Labor Relations Board
Seventeenth Region
Case No. XVII-C-371.

In the Matter of
Donnelly Garment Company
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers' Union, Party to the Contract.

Respondent's attention has been called to the fact that its previous offers of proof herein do not cover the following portions of International Ladies' Garment Workers' Union's motion to strike parts of respondent's original answer, as called for by the Trial Examiner's ruling (paragraph 6 of Exhibit 1-yyy). In pursuance of said ruling, the respondent offers to prove the facts set forth in the clause of Paragraph 2 of Section A, on Page 2, of its original Answer which the ILGWU has moved to strike, by the certified copy of the decree, findings of fact and conclusions of law of the U. S. District Court for the Western District of Missouri in Case No. 2924 which has been offered in evidence herein as a part of NRA-JMC Exhibit 3, and by the testimony of John B. Bachofer analyzing the contracts made by the ILGWU with other garment companies which testimony is also contained in NRA-JMC Exhibit 3 and by the contracts themselves made by the ILGWU with other [fol. 3470] manufacturing companies, which contracts were in evidence in the Judge Miller case and certified copies of which are contained in Respondent's Exhibit 2 for identification which exhibit was previously offered in evidence

by respondent in this proceeding and which offer, respondent's Exhibit 2, is now renewed.

Respondent offers to prove the portion of its original answer contained in paragraph 12, section D at the top of Page 26 of its said answer which the ILGWU has moved to strike, by the testimony of David Dubinsky contained in NRA-JMC Exhibit 3, and by the contracts of the ILGWU above referred to contained in respondent's Exhibit 2 for identification, and by the testimony of John B. Bachofer above referred to, contained in NRA-JMC Exhibit 3, and by the testimony of Meyer Perlstein given in said Judge Miller case and by the testimony of A. B. Gernes and Hyman Gordon who are officers or executives of Gernes Garment Company and Gordon Bros. Manufacturing Company.

REED & INGRAHAM
Attorneys for Respondent

Offer of Proof refused. See Ruling of Trial Examiner Bds. Exh. 1-SSSS.

J. C. BATTEN,
Trial Examiner.

[fol. 3471] (Board's Exhibit 1-RRRR.)

Offer of Proof by Intervener.

United States of America
Before the National Labor Relations Board
Seventeenth Region
Case XVII-C-371.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Received copy 7/22/1939.

CLIF LANGSDALE,
for I.L.G.W.U.

Received copy July 22, 1939.

DANIEL J. LEARY,
Reed & Ingraham.

Received copy July 22, 1939.

JANE W. PALMER.

Offer is refused. See Rulings of Trial Examiner Bds. Exh. 1-SSSS.

J. C. BATTEN.

Intervener offers to produce and examine under oath as witnesses herein the persons whose names are signed hereto, and offers to prove that if such witnesses are produced, sworn and examined they would testify in substance as follows:

The undersigned, all being employees of the Donnelly Garment Company or Donnelly Garment Sales Company below the rank of anyone with authority to employ, or discharge, or reprimand employees, and all being members of the Donnelly Garment Workers' Union, hereby state that they have read this statement in full, signed it of their own free will and choice, and if present in court they would testify under oath to the following facts:

To the best of their knowledge and belief the meeting of March 18, 1937, was called by employees on their own initiative and without any action, influence or suggestion of the employer, or any representatives of the employer; that at such meeting Mrs. Reed was sent for after the meeting had been going on some little time and that when she came to the meeting and spoke she did not say that she would not allow members of the International Ladies' Garment Workers' Union to work in the Donnelly Company; [fol. 3472] that she did not say that the ILGWU would never be allowed in her plant, nor did she express such an idea or purpose in substance in any other language, nor did she say that she wanted the names of anyone who joined the ILGWU reported to her.

The undersigned would also testify under oath if present in court in this hearing that during the month of March, 1937, the disorders and violence connected with the Gordon, Gernes and Missouri strikes then being carried on were a subject of common and frequent conversation and comment and discussion by the employees of the Donnelly companies; that it was commonly reported, and each of the undersigned had heard, that the ILGWU, or some of the pickets or strikers in those strikes, had committed acts of violence, and that they, or some of them, had stated that the Donnelly plant was next on the list, or similar words,

the substance of which was that the people connected with these strikes and the violence connected therewith, planned and intended to subject the employees of the Donnelly companies to similar violence if such employees did not join the International Ladies' Garment Workers' Union; that the undersigned had all seen or heard of articles in the newspapers concerning the strikes at Gordon, Gernes and Missouri; that as a result of this information the attitude of mind of the undersigned parties, and of the employees of the companies in general, was one of apprehension, uneasiness, and fear that the employees of the Donnelly companies would be shortly subjected to similar violence and intimidation to that which they understood and believed was being carried on in connection with the Gordon, Gernes, and Missouri strikes; that such state of mind of apprehension was one of the causes of the action of employees in ratifying and approving the action of certain employees in employing legal counsel in connection with in- [fol. 3473] vestigation as to whether an injunction could be secured giving the employees of the Donnelly Companies legal protection against such anticipated violence, and that later on toward the end of April, 1937, such information and belief as to possible or probable violence or intimidation by the International Ladies' Garment Workers' Union was one of the reasons which caused the undersigned to approve and take part in the formation of the Donnelly Garment Workers' Union in the belief that such union would increase the rights of the employees to legal protection as well as being of value to the employees in connection with other matters such as negotiating contracts and agreements covering conditions of employment, wages, etc.

The undersigned state that they are members of the Donnelly Garment Workers' Union and that they joined said union and have at all times since remained members thereof solely of their own free will, choice and preference, and that they have not been influenced by any threats, coercion or pressure of their employer, or any representatives of said employer, and that they have no knowledge of any instance in which the employer or any representatives of the employer have exerted pressure, intimidation, coercion or any other influence upon the undersigned or any other employees to join the Donnelly Garment Workers' Union or to stay out of any other labor union.

Ora Fowler	
Patricia Knight	Gary Williams
Lillian Fray	Edna Phelps
Ina Andrus	Mary Gail
Beatrice Fare	Elva Waller
Carrie Fair	Inez Meinke
Lucinda Moore	Helen Phelps
Lucia Gordon	Ula Crawford
Lucie Hershey	Gusty Fabers
Betty Griffith	Irene Rensel
Alta Hinkle	Marie Stacy
Corinne Blackwood	Josephine Chapman
Ora Brown	Pearl
Christine Smith	Velma Hadley
Laura Plummer	Audrey Wadsworth
Elsie Wright	Hazel Channing
Dessa Cary	Carrie Scott
Opie Halfday	Nora Stevenson
Nell Bugg	Corinne Robinson
Bernice Anderson	Beulah Bond
Lucille Orton	Florence Moore
Edith Nielsen	Laura Lee Royce
Inez Life	Mae Hicks

Iona Lile	Mae Hinkle
Cleo Lile	Helen Wilson
Margaret Lucas	Lillie Stearns
Linda Rickett	Helen Lutz
Ona Holloway	LaVaughn McMillen
Jessie Kelley	Mary Brandt
Vera Remmel	Zola McNeil
Mary Alice Hardin	Minnie Vickers
Lela Brown	Pearl Bennett
Ruby Kennedy	Margaret Rehmann
Nettie Eby	Hazel Kellogg
Bessie Reedy	Anna Moore
May Stevens	Maine Redd
Dorothy Mead	Nell Patrick
Nettie Womacks	Winnie Underwood
Maude Lucas	Fannie Melton

Lena Daughty
Jane Kirk
Myrtle Anson
Lindie Crum
Lena Canaday
Tessa Somfleth
Ida Basham
Wood Reynolds
Clifton Craig
Maudie McBell
Annie Jones
Lewie Clayburg
Pearl Lyler
Velma Hall
Nell Harper
Johnnie Hunter
Hazel Donovan
Lena Howe
Ethel Bagan
Elva Tyler
Opal Fipe
Audrey Beeltel
Ruby Titchen
Mattie Willis
Mary Andrew
Ruth Anderson
Regina Stearman
Pearl Hagan
Katherine Stutsbergh
Edith McLaughlin
Freda Schweizer
Mamie Johnson
Alta Stevens
Ethel Bingman
Lena Hale
Ruth Putnam
Gertrude Doyle
Pearl Blake
Martha Haase
Mamie Gardner
Lucy Espey
Ruby Welch
Altha Wilde
Martha Hamilton
Marie Jameson
Beulah Hayne
Gill Litton
Margaret Shanley

Margaret Shuleby
Helen Boord
Nola Lieb
Mamie Carlson
Florence Belcher
Martha Pellavich
Ann Mowry
Hazel Embree
Martha Mayer
Lillian Barger
Violet Cavers
Mary Clarke
Gretta Ferguson
Nora Lowder
Anna Rebenda

Mattie Willis
Effie Canfield
Caroline Atkins
Louise Hosking
Elayne Allbright
Lydia Campbell
Leslie Ward
Katherine Culpepper
Kenneth Clark
Mary Saraspera
William Speake
Joe Hellams
Carl Carmichael
Lorene Dungan
Ethel Rosboro

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Ruth Jenkins

Alice McCray

Kathryn Tindua

Georgia Elliott

Nellie Stone

Lydia E Burns

Lora Herring

Ruth Davison

Irene Boothe

Vessie Harrison

Ruth Morris

Verdae Rainey

Otto Dramstek

Zetta Dixon

Jennie O Brown

Catherine Nold.

Emma Seaberg

Murpha White

Grace Greer

Ann Murray

Heath Cowan

Roy J. Baller

Josephine Smith

Dorothy Acosta

Lela Chrie

Helen Donnelly

Ada Lee Stark

Mable Foster.

Jane Watson

Asma Wojaglonki

Cora Raines

Ruth Hayes

Jennie Weibel

Virginia Henson

Edis Barnes

Blanche Shelton

Lois Keaing

Tullah Tate

Helen Hall

Mrs. Fredericks

William C. Frederick

Birtha Estes

Flora Taylor

Billie Shirk

Opal Dunsby

Edna Gardner

Margaret Hunter

Katherine Hardman

Dorothy Acabier	Katherine Hardeman
Catherine Kellogg.	Okal Shoptaw
Frances Dunnit	Josephine Nichols
Grace Davis	Edith Cameron
Leta Uptegrove	Georgia Foster
Ruby Lags.	Mary Hall
Effie Welgand	Ethel Byars
Mary Everly	Nettie West.
William Hawks	Doris Emig
Mildred Tebbe	Evelyn Stowe
Grace Hamilton	Bernice Winburne
Charlotte Casey	Elizabeth Campbell
Lucian Richards	Mary Wendrick
Opal Stufflebean.	Stella McKinney.
Wilma Knox	Bess Phillips

Irene Eberhardt

Nina Cotten.

Lucy Brannon

Flora Hurie

Iona Davidson

Cordia Hundley

Grace Dunlap

Lois Hall.

Betty Davis

Mary Ingold.

Frances Atkinson

Mary Hyde

Wilda Pitts

Ella Close

Ola Jewett

Laura Hanson

Broadus Steger

Lamar Johnson

Boyd Mumford

Mary Self

Martha Hatch

Clara Engle

Mildred Brooks

Beulah Light

Shirley Tyler

Bess Jacob

Lucy McCarley

Maude Copenhaver

Martha Wilson

Gertrude Dors

Alice Conroy.

Elizabeth Hedin

Mable Busey

Edith Hall

Dolly Otis

Ethel Riegel

Lena Lewis (Miller)

Enid Livesay

Jaly a Hartalson

Catherine Lawter

Dorothy Imbody

Gallilee Hoffitt

Naomi McQuiston

Katherine Hurst

Lloyd Lynn

[redacted]

Hazel Huggins

Alpha Elston

Amy Apperson.

Irene Ellis

Beulah Light	Amy Apperson
Shirley Yoder	Irene Rees
Jewel Lyvolfskiel	Edith Shearer
Anna Sosenski	Anna Spahr
Wilma Kile	Margaret Adams
Augusta Davidson	Ellen Nokes
Kathryn Chandler	Gladys Anderson
Ruth Ellen Baldwin	Irene Carr
Elsie Holloway	Augusta Yates
Cora Fitzwater	Beulah Hurdle
Anna Cessy	Etta Zimmerman
Estel Kellogg	Lena Carlson
Mildred Burch	Zora Fisher
Ina Hibbens	Jewel Tolen
Geneva Copenhaver	Jennie Farrell

Bernice Bryant
Marie Ashley
Alfred B. Clarke
Gertrude Richardson
Mary Van Gordon
Gladys Steger
Pearl Hall
Nellie Biggs
Edna Shipman
Mary Lamberg
Betty Saunders
Edris Martin
Vera Marshall
Evelyn Lewis
Roberta McClanahan
Virginia Helms
Laura Perry
Florence Mendriksen
Gertrude Graham
Ethel Carpenter
Lutie James
Irene Rush
Gladys Austin
Opal Richardson

Tessa Pittman
Pearl Harris
Lyons Davis
Lizzie Rockford
Bernice Lull
Cora Kelley
Anita Nelson
Ethel Bill
Virginia Irby
Helen Walton
Florence Liffell
Irene Churchill
Helen Heaney
Jessie Cooper
Louise Brooks
Vesta Jones
Mabel Shellhorn
Evelyn Pendleton
Zella Hemmi
Florence Bowen
Nell Marie Miller
Bessie Maxwell
Mary Stewart
Minnie Batman

Opal Richardson	Minnie Batman
Nellie Stitts	Dorris Collins
Lena Carpenter	Eva Broyles
Beulah Harbison	Myrtle Stewart
Sallie Ormsby	Edith Voorhees
Ruby Etherton	Paula Freeman
Emma Davis	Jewell Howard
Olive Hopp	Iris Callowick
M. Hayes Brady	Jannie Stinson
James R. Dunn	Beulah Haywood
Mary Rose	Ruby Broyles
Margaret Young	Rose Campbell
Rose Callowick	Elizabeth Rousseau
Nina Bartlett	Nina Stewart
Grace Campbell	Elsie Williamson
Katie McKinney	Bertha Nicoll

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Mabel Ridley
Emma Robbins
Edna Rawlings
Lelia Griffith
Gladys Rudd
Ruth Lowes
Jane Beal
James Mary Camp
Edna Geer
Earl Wheeler
Beulah Perkins
Orpha Reames
Bertie Lafferty
Harold Boyd
John Ferrell
Dolf De Carlo
Ben James
Nessie Hook
Anne Scott
Catherine Atchison
Geary Hall
Lowell Lashen
John T. Crist
Glenn B. Rigbel

Lucile Turner
Etta Mae McCurry
Anne Budelewski
Kellogg Leach
Dimple South
Beth Kellen
Dent Hurd
Minnie Storm
Mary White
Pearl Davis
Oscar Stephenson
Roland Frost
Naomi Abbott
Gladys Lake
Pete Bivway
Lucinda Ann Chilson
Dirt Fort
Minnie Page
Norma Duncan
Thelma Lilly
Edna Hite
Evelyn L. Cook
Ray Smith
John T. Lark

Vhem E. Ruffel	Lois T. Lantz
Earle Coles	Grace McKernan
Charles Whittier	Helen Atkinson
Jessie Townsend	Virginia L. Harper
Thelma Jackson	Marjorie Hoekee
Opal Halliday	Lavina Mearidee
Mary Gilbert	Ann Miller
Dorothy Beatty	Velma Humphreys
Susan Winters	Optie Vaught
Al Stark	Thelma M. Kenney
Lyle Peter	Mary George
Rhoda Jackson	Robert D. Livesay
Mary Snedden	Edythe M. Hughes
Georgia Lee Maxwell	Mrs Bytting
Ronald Newell	Joana Stuckt

Alice Maggio
Donald M. Lytle
Gladys Briner
Neisse Davis
Ruth Jessup
Edith Hicks
Helen Vest
Katherine Farrell
Florence Helm
Cordia York
Adaline Bailey
Agnes Kendall
Violet Snell
Cora Erwin
Matilda Jackson
Vera Sinks
Margaret Kline
Bertha Newnham
Edith Daan
Bertha Klein
Anna Cummings
Dorothy Liberatore
Mary Halerd
Mildred Hardy
Margarine Byline

Mary Rogers
Gladys Wilson
Lillian Trabor
Alice Gates
Mary Riddle
Millie Dille
Hinton Noland
Alice Murphy
Mary Lou
Opal Mayfield
Edna Bienert
Jessie Bray
Pauline Hammer
Alice Freed
Dorothy Gill
Florence Leaf
Edna Satterfall
Lassie Dynamy
Harriet Donnelly
Myrtle Higinbotham
Ora Duer
Dorothy Crandall
Myrtle Roberts
Blanche Swisher
Irene Hittinger

Katherine Bybee
Lucy Lewis
Ruth Akeman
Emma Gosnell
Ruby Vidrickson
Margaret Haley
Dorothy Frye
Edna Davis
Mary Dockery
Lenora Reese
Ola Lee Perew
Grace Kempton
Dellie Williams
Helen Gunderman

Irene Hittyman
Grace Shiner
Hulda Beals
Mary Sprouse
Freda Caudle
Mary Verhulst
Ethel Jones
Ruby Donnell
Jennie Ceresa
Celyne Arispach
Lucille Briggs
Pearl Wayle
Pearl Henley
Neva Reagan 400

Dorothea Dankenbring
Mary Sitter
Ella Whaley
Hallie Obenchain
Edna Flegal
Opal Cox
Alta Millard
Carrie Kent
Eulah Carter
Myrtle Cox
Lucile Ward
Rose O'Leary
Mildred Moore
Amy Lu Porterfield
Lucy Hall
Lena Berry
Lucille Seybold
Edgar Craft
Helen Scoppa
Nell Black
Elsie Eaton Kleinberg
Madeline Kleinmeyer
Vera Vaughan
Emilia Raines

Emma Raines

Harry Brogan

[illegible] Dixon

Ora Goodson

Grace Stephens

Rose Todd

Anna Kippelman

[fol. 3482] Offer of Proof By Intervener

United States of America
Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

Intervener offers to produce and examine under oath as witnesses herein the 1165 persons who signed the affidavit which was introduced in evidence herein as intervener's Exhibit 20-a to 20-kk, being the affidavit and application for election offered in evidence in this case on June 7, 1939, and again on July 14, 1939, the original of which was filed with the National Labor Relations Board at its Regional Office in Kansas City, Missouri, on or about June 7, 1939, which said intervener's Exhibit 20-a to 20-kk and the affidavit and signatures thereon are incorporated in this offer by reference with the same force and effect as though set out herein in full. Intervener offers to prove that said 1165 witnesses if produced, sworn and examined herein would testify that the Donnelly Garment Workers' Union is their free and voluntary choice as bargaining representative for them with their employer; that they joined and have at all times remained members of said Donnelly Garment Workers' Union of their own free will and without coercion, intimidation or other influence of their employer, and that they have repeatedly in the past and do now again offer to abide by the results of a fair and [fol. 3483] secret election held under the auspices of the National Labor Relations Board as to their preference between Donnelly Garment Workers' Union, International Ladies' Garment Workers' Union or no affiliation with any labor union whatsoever.

GOSSETT, ELLIS, DIETRICH
& TYLER.
Attorneys for Intervener.

[fol. 3484] Offer of Proof by Intervener.

United States of America
Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

Intervener, Donnelly Garment Workers' Union, offers to produce and examine as witnesses herein under oath if permitted to do so the persons whose names are signed hereto, and offers to prove that said witnesses if produced and examined would testify under oath to the following facts, viz.:

That they are now and were on March 18, 1937, employees of Donnelly Garment Company or Donnelly Garment Sales Company; that on said day they attended a meeting of employees held on the second floor of the Corrigan Building; that several hundred employees attended that meeting and that it appeared to the undersigned that virtually all of the employees were present; that the meeting was not convened until after the close of the regular working hours of the plant and that none of the employees quit work during regular working hours or ahead of closing time to attend the meeting; that they were not ordered or directed by any officer or anyone representing the management to attend the meeting but they attended it of their own free will; that they did not see any executive officers or supervisory employees of the companies present at the meeting except that Mrs. Nell Donnelly Reed came after [fol. 3485] after the meeting had been in progress for some time, as hereinafter stated; that the meeting had been called by Rose Todd, Hobart Atherton and some others, and that it grew out of the unrest and apprehension and feeling of danger caused by the violent disturbances connected with the strikes at Gordon, Gernes and Missouri Garment plants, and threats that the Donnelly employees

would be next, which matters had been the principal topic of conversation around the Donnelly plant since the strike had started; that the meeting was a voluntary meeting of employees; that it was not a meeting of the Nelly Don Loyalty League and those who called the meeting were not acting in any capacity for the Loyalty League; that the Loyalty League was not mentioned at the meeting and had nothing to do with the meeting; that the officers, executive or supervisory employees of the companies had nothing to do with calling the meeting and, so far as these witnesses know, did not know that the meeting was to be held or was being held.

Intervener offers to prove that the matters talked about at the meeting concerned what the employees themselves as a voluntary group could do about protecting themselves from the kind of treatment that was being given the employees of other garment concerns by International Ladies' Garment Workers' Union. Several employees made speeches from the floor about that subject when someone from the floor suggested, after the meeting had been in progress for some minutes, that Mrs. Reed, if she were in the building, should be asked to come down to tell what the company was going to do or was able to do in the matter of providing protection for the employees. Two or three employees at the suggestion of the chairman left the room to go after Mrs. Reed and in a little while Mrs. Reed came into the meeting. She had someone read to the meeting a letter that had been received from Meyer Perlstein of [fol. 3486] the International Ladies' Garment Workers' Union. Mrs. Reed then talked for a few minutes, the substance of her talk being that the company was going to do everything legally possible to provide protection and that she was consulting the company attorneys in that connection and that arrangements were being made to provide busses for transportation. Mrs. Reed stated that she was not going to allow Dubinsky or anyone else to force her to intimidate or compel her employees to join a union they did not want to join. Mrs. Reed did not say that the International Ladies' Garment Workers' Union was never going to be allowed in her plant or that she wanted the employees to report to her the names of any employees who belonged to the International. Mrs. Reed left the meeting

immediately after her talk and the meeting was adjourned shortly thereafter.

Each of the undersigned has read or has had read to him the foregoing offer of proof and states that he would so testify in substance if produced as a witness in this case.

Madge Cole
Flora Taylor
Margaret Rucumbier
Sallie Osmaby
Roy L. Beller
Marie Cahall
Anna Molle
Daisy Kilby
Virginia Dare
Zora Phillips
Ora Peterson
Pearl Fields
Lucy McCauley
Pearl Black
Ethel Carpenter
Katherine Hank
Morton E Suggs

Mary Hyde
Estelle Hall
Alma Murphy
Ella Close
Jane Beal
Beatrice Hyde
Ruby Page
Ruth Lindsay
Ruby Riddle
Linnie Crum
Beulah Perkins
A. Staab
Lowell Lachen
Irma Lile
Wood Reynolds
Ida Mauk
Emily Fisher

3486

787

[fol. 3487] Offer of Proof by Intervener

United States of America
Before the National Labor Relations Board
Seventeenth Region

Case No. XVII-C-371

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers' Union, Party to the Contract

The intervener offers to produce and examine as witnesses herein under oath, if permitted to do so, the persons whose names are signed hereto, and offers to prove that said witnesses, if produced and examined under oath, would testify substantially as follows, viz.:

That toward the end of March or the early part of April, 1937, a meeting of employees was held on the second floor of the Corrigan Building; that all of the undersigned and substantially all of the employees of Donnelly Garment Company and Donnelly Garment Sales Company were present at that meeting; that the meeting occurred after the close of working hours; that they were not ordered or directed or asked to attend the meeting by any officers, executives or supervisory employees of the companies and no such persons were present or had anything to do with the meeting, but that it was a voluntary meeting of employees and the employees attended of their own free will; that it was not a meeting of the Nelly Don Loyalty League; that at the meeting Rose Todd presided and explained that she, [fol. 3488] Hobart Atherton and Sally Ormsby had taken it upon themselves to consult attorneys to see what could be done by the employees themselves toward securing an injunction against violence and threatened violence or to secure other legal protection for the employees; that they had consulted the law firm of Gossett, Ellis, Dietrich & Tyler and had been informed that before the employment could be undertaken a retainer fee of $500.00 would be required; that at such meeting the action of Rose Todd, Hobart Atherton and Sally Ormsby in consulting attorneys on behalf of the

employees was approved by all those present, and various ways and means of raising the money, such as by giving dances or carnivals, etc., were suggested and discussed; that during such discussion a motion was made from the floor that all employees donate fifty cents each for the purpose of raising that fund and that the motion was seconded and carried; that some contributions in that amount were made at that meeting and others were made later, the collections being made by individuals in the various sections or departments, and that the money for the purpose of paying the attorneys' retainer fee was raised in that way; that these witnesses understood that the legal services for which this money was being raised concerned obtaining injunctive relief or other legal protection and were not connected with the formation of a plant union; that this meeting was held a considerable time before the union was organized on April 27, 1937. All of the undersigned paid their contributions and the foregoing meeting and the agreement to do so resulted from the voluntary action of the employees, without suggestion, pressure, coercion or inducement from any officers, executives or supervisory employees of the companies.

Jessie Hook
Flora Gwinn
Pearl Bennett
Mary Alice Hardin
Mary Robeson
Sadie Crum
Daisy Kelley
Cordia Hundley
Irene Pugh
Martha Wilson
Pearl Fields
Nina Gilardi
Ethel Carpenter
Gertrude Dora
Bess Jacob
Beryl Falls
Julia Harralson
Kathryn Chandler
Annie Lesenski
Regina Platner
Anna Reece
Mamie Riddle
Margaret Breuckenbier

Margaret Breckenridge

Ruby Birkett

Orpha Renner

Asbra Wyszynski

Catherine Atchison

Thelma Jackson

Harold Boyd

Arch Lile

Alvin Rupel

Josephine Donegan

Kenneth Peck

Lissie Underwood

Katherine Bodine

Ellen Nokes

Mary Sprofera

[fol. 3490] Offer of Proof by Intervener

United States of America
Before the National Labor Relations Board
Seventeenth Region

Case No. XVII-C-371

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers' Union, Party to the Contract

Intervener offers to produce and examine under oath as witnesses herein the persons whose names are signed hereto, and offers to prove by such witnesses that if produced, sworn and examined they would testify in substance as follows:

That they are and on April 27, 1937, were employees of Donnelly Garment Company or Donnelly Garment Sales Company; that on said date a general meeting of employees of said companies was held on the second floor of the Corrigan Building; that said meeting was convened after the close of working hours at the plant and that no employees left work during working hours in order to attend the meeting; that the meeting was called by employees and no officers, executives or supervisory employees of the companies had anything to do with calling the meeting and no such persons attended the meeting or participated in it in any way, and no such persons suggested, urged or asked the employees to attend, nor did any instructors ask or direct the employees to attend, but that the employees went to said meeting voluntarily of their own free wills. Virtually all of the employees appeared to be present at the meeting.

[fol. 3491] Miss Rose Todd acted as chairman and explained that the meeting was called to discuss whether the employees wanted to form their own labor union in order to secure greater protection for themselves as employees than could be otherwise obtained and to be a business organization to deal with the companies as representatives of

the employees. Miss Todd introduced Mr. Frank E. Tyler, of the law firm of Gossett, Ellis, Dietrich & Tyler, who had been consulted on behalf of the employees. Mr. Tyler talked for a few minutes and explained that the Wagner Act had been held constitutional by the Supreme Court and that under the act the employees had a right to form their own union if they chose to do so and that a union of employees would afford a better chance to secure adequate protection than could be obtained if the employees were unorganized. He stated that he had drawn a brief form of by-laws which he would submit if the employees decided to form a union. The matter of forming an employees' union was then discussed and a motion was then made that an independent, unaffiliated plant union be formed. The motion was seconded and a vote was taken and so far as the undersigned know all of the employees present voted in favor of forming such union. The name of the union was discussed and it was decided to call it "Donnelly Garment Workers' Union". A nominating committee of five persons was then appointed for the purpose of nominating nine people to be voted on to compose the executive committee of a general chairman and eight group chairmen. The nominating committee retired from the room.

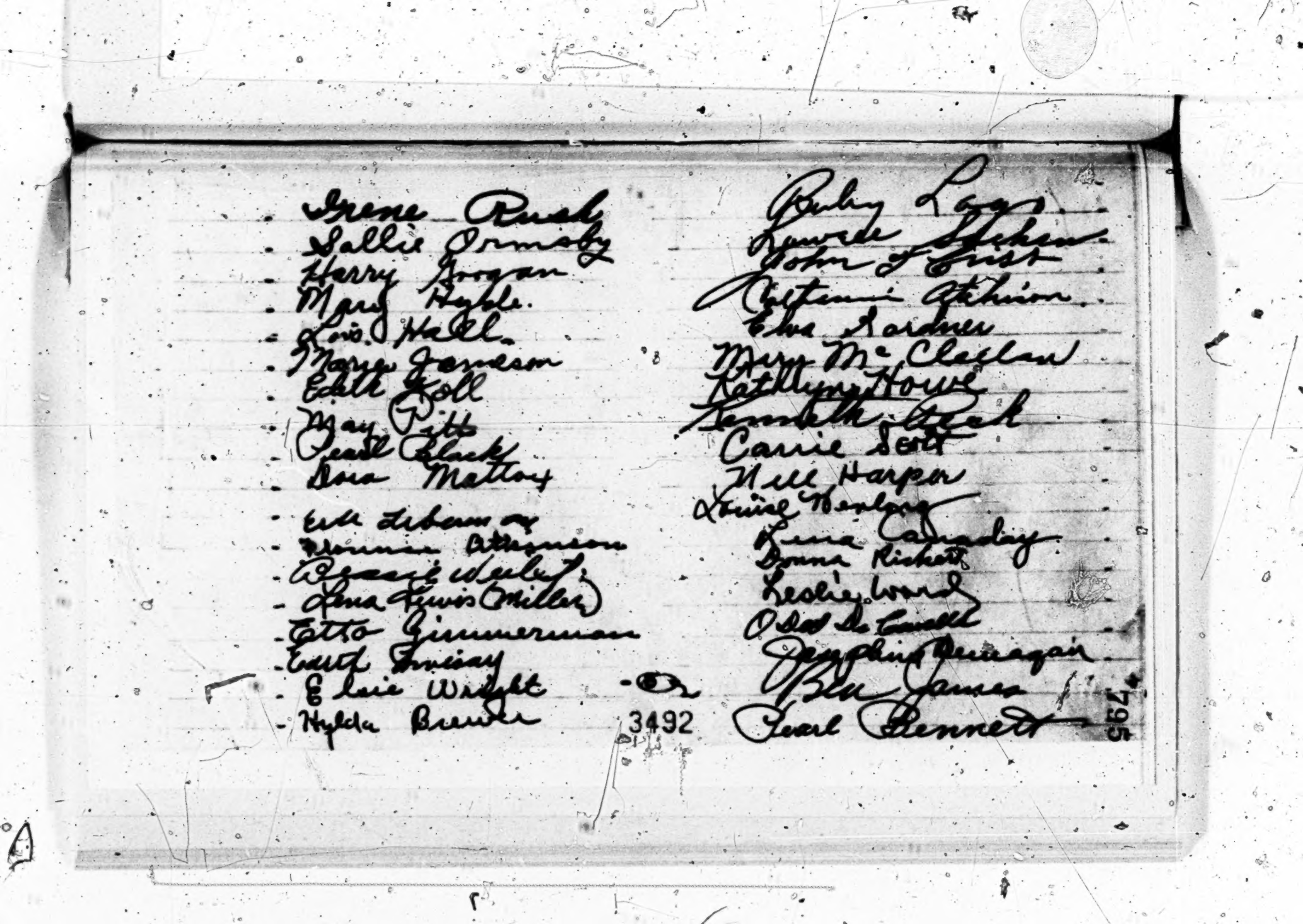
The chairman then passed out cards, which said in substance, "I hereby agree to become a charter member of Donnelly Garment Workers' Union and agree to abide by its by-laws and regulations". It was explained that the employees could sign these cards or not, as they chose, and that they should sign them only if doing so was their own voluntary choice.

[fol. 3492] The by-laws as prepared by Mr. Tyler were then read by him and he suggested their adoption, with a right to amend when necessary, and by vote of the employees the by-laws were adopted.

The nominating committee then returned with its report. The chairman asked for any additional nominations from the floor but none were made. A vote was taken and those nine persons nominated by the committee were elected. Rose Todd was elected general chairman and she introduced all of the group chairmen. The cards that had been passed out were then collected. Miss Todd then asked

that anybody with suggestions to make should report them to the committee.

This organization meeting convened at 4:30 or 4:45 o'clock and lasted about an hour and a half or longer. The organization of the union was the voluntary action of the employees and did not result in any way from suggestion, pressure, coercion or intimidation of the management or anybody connected therewith, and its formation was in no way sponsored, assisted or dominated by anyone connected with the companies in an executive or supervisory capacity.


Irene Rush
Sallie Ormsby
Harry Morgan
Mary Hyde
Lois Hall
Mary Jameson
Edith Foll
Mary Pitt
Pearl Black
Dora Mattox
Ella Liberman
Norman Stephenson
Grace Wesley
Lena Lewis Miller
Otto Zimmerman
Ruth Smiley
Elsie Wright
Hylda Brewer
3492
Ruby Lacy
Lowrie Stephens
John F. Crist
Gertrude Atkinson
Elva Gardner
Mary McClellan
Kathleen Howe
Kenneth Peck
Carrie Ford
Nell Harper
Louise Berlyn
Lena Cavaday
Donna Richett
Leslie Lovell
Odell McConnell
Josephine Donegan
Ben James
Pearl Bennett
57

[fol. 3508] (Board's Exhibit 1-UUUU—First Part)

Date 7/22/39—Witness .....

Respondent's Objections to Board's Exhibit 1-TTTT and Board's Exhibit 30-A

United States of America

Before the National Labor Relations Board

Seventeenth Region.

In the Matter of Donnelly Garment Company and International Ladies' Garment Workers' Union and Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

Comes now the respondent and objects to Board's Exhibit 1-TTTT (Motion to amend complaint by adding new subparagraph (p) of paragraph 11 of the complaint), and objects to Board's Exhibit 30-A (Amendment of offer of proof contained in Board's Exhibit 30), and asks that said motion and said offer of proof be denied and rejected for the following reasons, to wit:

1. The Complaint (Board's Exhibit 1-RRR), in paragraph 4A, contained a similar charge, as to eighteen persons. This was stricken by the Trial Examiner. The Board then modified paragraph 11 and inserted a similar allegation in subparagraph (p) thereof, limited, however, to three of said eighteen persons, to wit: Ellen Fry, Glynn Brooks and Mamie Tubbesing.

Respondent submits that the same reasons which justified the dismissal of the charge as to the eighteen persons named in paragraph 4A also justify the denial of the proposed amendment as to three of such persons, and the rejection of the amendment of offer of proof in support thereof.

[fol. 3509] Respondent therefore objects to said amendment to the Complaint and to said amendment of offer of proof, for each and all the reasons contained in respondent's Exhibit 1-TTT (Motion to strike 4A, dated June 7, 1939), and also for all the reasons set forth in respondent's Exhibit 1-HHHH (objections and motion to strike Board's Exhibit 30).

2. The respondent further objects to said Exhibits 1-TTTT and 30-A, for the reason that the testimony offered in Board's Exhibit 30-A in support of the proposed amendment to the Complaint, shows on its face that said testimony would not tend to prove the unfair labor practice charged in paragraph 11, to wit, that respondent by said alleged acts interfered with its employees' freedom of choice in forming or joining a labor organization, in violation of Section 8(1) of the National Labor Relations Act; and because said evidence is immaterial, irrelevant, and remote to any issue herein.

3. For further objection, respondent states (and the evidence shows) that none of said three persons, Ellen Fry, Glynn Brooks and Mamie Tubbesing, was an employee of the respondent on or since July 5, 1935, the date of the enactment of the National Labor Relations Act, and hence there was no obligation on the part of respondent to re-employ them on July 23, 1935, even assuming the truth of the evidence set forth in Board's Exhibit 30-A (which evidence is denied by respondent); and said evidence, if true, would not constitute proof of any unfair labor practice by the respondent in violation of Section 8(1) of the National Labor Relations Act, as charged in said paragraph 11.

4. Respondent further objects to said proposed amendment to the complaint and said amendment of offer of proof for the reason that if said amendment to the Com- [fol. 3510] plaint (Exhibit 1-TTTT) is allowed or said offer of proof (Exhibit 30-A) is accepted, it will be necessary for respondent to offer oral testimony in rebuttal of the evidence contained in Exhibit 30-A. The Trial Examiner will recall that this matter came up while Mr. Baty was on the stand but that he was not permitted to testify

concerning the matter which is contained in Board's Exhibit 30-A pending the Trial Examiner's reservation of ruling on Board's Exhibit 1-TTTT and Board's Exhibit 30-A.

REED AND INGRAHAM,
Attorneys for Respondent.

Intervenor Joins in the Above Objection.

GOSSETT, ELLIS, DIETRICH & TYLER,
Attorneys for Intervener.

See Rulings of Trial Examiner Bd's. Exh. 1-SSSS.

J. C. BATTEN,
Trial Examiner.

[fol. 3511] (Board's Exhibit 1-UUUU—Second Part.)

Date 7/22/39—Witness .....

Respondent's Objections to Board's Exhibit 28 (Information taken from Payrolls.)

United States of America

Before the National Labor Relations Board

Seventeenth Region.

In the Matter of Donnelly Garment Company and International Ladies' Garment Workers' Union and Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

Respondent objects to Board's Exhibit 28 for the reason that same and the information therein contained is imma-

terial and irrelevant and does not tend to prove any charge in the complaint.

Respondent further objects thereto for the reason that said Exhibit 28 covers only the period of three months' time and does not include the earnings of piece workers, bundle boys, etc., and no inference may be drawn from said Exhibit tending to prove any charge in the complaint.

REED & INGRAHAM,
Attorneys for Respondent.

See Rulings of Trial Examiner, Bd's. Exh. 1-SSSS.

J. C. BATTEN,
Trial Examiner.

[fol. 3514] (Board's Exhibit 1-UUUU—Fourth Part.)

Date 7/22/39—Witness .....

Respondent's Objections to "NRA-JMC Exhibit 17".

United States of America

Before The National Labor Relations Board.

Seventeenth Region.

In the Matter of Donnelly Garment Company and International Ladies' Garment Workers' Union and Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371

Respondent makes the following objections to NRA-JMC Exhibit 17, being rebuttal testimony offered by the Board and the ILGWU from the N. R. A. and Judge Miller case transcripts.

I.

(Testimony of Tillie F. Shirley, Mrs. Reeves, Lillian Rutherford and Lou Perkins.)

Respondent objects to the offered testimony of Tillie F. Shirley, Lillian Rutherford, Mrs. Reeves and Lou Perkins contained in the above-mentioned exhibit, for the following reasons:

1. That same is immaterial and irrelevant to any issue in this proceeding and for the reason that same deals with matters purporting to have occurred prior to the enactment of the National Labor Relations Act.

2. For the reason that respondent was under no legal obligation, at the times referred to in said evidence, to reemploy any of the persons referred to.

[fol. 3515] 3. Respondent further objects thereto for all the reasons set forth in NRA-JMC Exhibit 2A, 2B and 2C (being respondent's objections to the NRA testimony originally offered herein by the Board).

4. Respondent further objects to said testimony as not being proper rebuttal after the close of the oral testimony, and for the further reason that it is irrelevant to any evidence put in by respondent or intervenor.

II.

(Testimony of Thelma Owen.)

Respondent objects to the testimony of Thelma Owen (1 page) offered from the Judge Miller case transcript, for the reasons:

1. Because same deals with matters as to which the respondent and intervenor were excluded from offering testimony.

2. Because same is not proper rebuttal for the foregoing reason, and also because offered after the close of the oral testimony.

3. Because same is irrelevant to any testimony received on behalf of respondent or intervenor.

III.

(Testimony of Sylvia Hull.)

Respondent objects to the offered testimony of Sylvia Hull, consisting of six pages of the above mentioned exhibit, for the following reasons:

1. Said testimony deals with wages and hours and other alleged grievances concerning working conditions at the Donnelly plant which matters are immaterial and irrelevant to any issue in this proceeding.

2. For the reason that said testimony is not proper rebuttal after the close of the oral testimony.

[fol. 3516] 3. Respondent objects to the last page of said testimony for the further reason that same refers to the "March 18" meeting, as to which subject the Examiner has ruled that no further testimony would be received.

IV.

(Testimony of Clif Langsdale.)

Respondent objects to the offered testimony in said exhibit of Clif Langsdale as not being proper rebuttal testimony, after the close of the oral testimony.

Respondent further objects thereto for the reason that said testimony refers to and deals with a stenographic transcript of a conference, which transcript is not offered in conjunction therewith, and therefore said testimony is incomplete and indefinite and should not be considered in the absence of the transcript referred to.

REED & INGRAHAM,
Attorneys for Respondent.

See Rulings of Trial Examiner—Bd's. Exh. 1-SSSS.

J. C. BATTEN.

[fol. 4362] (Board's Exhibit 2.)

N. D. A. A. News.

Vol. 2. Feb. 13, 1935. No. 14.

* * * * * * *

The Staff.

Editor ..... H. Dille
Sports Editor ..... B. James
Plant Editor ..... J. McConaughey
Makeup Editor ..... H. Jensen
Business Mgr. ..... J. O'Connor
Circulation Mgr. ..... J. Tobin
Printer ..... H. Ramsay

Reporters

C. Fisher—L. Sachan—S. Sparks.

* * * * * * *

900 Join Loyalty League..

The employees of the Donnelly Garment Company have, in the past week, formed the "Nelly Don Loyalty League" to refute untrue statements and propaganda circulated by the unions.

February 5th, on the instigation of Mrs. Gray and Mrs. Strickland, about 46 employees, representing as nearly as possible the entire factory, met at the home of Mrs. Gray. They decided to sound out the personnel on the forming of the League.

Cards were passed out to 900 employees and all but eleven were signed and returned. Because of the overwhelming response, a constitution was drafted and a Mass meeting called for February 8th.

Mrs. Gray opened the meeting with an account of what had been done and will be done. She displayed a drawing of a tentative pin and explained the meaning of the word [fol. 4363] "loyalty" as it pertains to the league's purpose.

In separate meetings, representatives had been chosen from each department to assure the future and fairness of the directory board. These names were announced and taken down by the secretary pro-tem.

Herbert Mutchler was asked to act as temporary chairman. He read a pertinent editorial from the February 16th issue of "Liberty" Magazine. He announced that the directory board would act as an election board. The result of their selection will be ratified or refused by a mass meeting to be held soon. By-laws will be decided upon at this meeting.

There will be no dues in the League.

[fol. 4365] (Board's Exhibit 3.)

Date 6/13/39—Witness Green.

I hereby agree to become a charter member of The Donnelly Garment Workers Union and to abide by its by-laws and regulations.

Sign here MARJORIE GREEN.

[fol. 4366] (Board's Exhibit 4.)

Date 6/12/39—Witness Todd.

By-Laws
of
The Donnelly Garment Workers Union

Article I.

Name:

The name of this organization shall be the Donnelly Garment Workers' Union.

Article II.

Purpose:

The purpose of this organization shall be the protection and furtherance of the rights and interests of the employes of the Donnelly Garment Company by means of dealing with proprietors and employers through a committee representing this Union as to wages, terms, hours, and conditions of employment in the Donnelly plant; the protection of employes and members of this Union from coercion, intimidation, violence or threats of violence in order to force them to join unions organized and dominated by outsiders not employes in this plant; to enable the employes of this plant to continue in their employment therein with what is believed to be the smallest reasonable expense of unionization; the greatest chance of continuous employment without strikes or lockouts, and under the best conditions as to wages, hours, and surroundings which can be reasonably obtained; to promote the welfare of the employes of the Donnelly Garment Company as a group and individually by all lawful and proper means.

Article III.

Nature of Organization:

This Union shall be open to all employes of the Donnelly Garment Company. It shall be an independent organization, not affiliated with any other labor union or organization of labor unions, and members of it shall not be members of any other labor union.

[fol. 4367] Article IV.

Dues:

The dues of members of this organization shall be Twenty-five cents (25¢) per month.

Article V.

Officers and Representatives:

The members of this Union shall annually elect a chairman and eight (8) group members, making up a committee of nine (9), all of whom shall be employes of the Donnelly Garment Company, and who shall have authority to call meetings of the members of the Union at which the general chairman, or some other member of said committee, shall preside, to represent the members of this Union in dealing with employers as to wages, hours, terms, and conditions of employment, and negotiating with employers concerning any disagreements between employers and employes, and investigating and presenting any complaint of any employe or employes as to any matters connected with his or her employment. The committee shall have no power to call or direct a strike of the members of the Union without first presenting such matter to the membership at a meeting open to members of the Union only and at which meeting there shall have been a majority vote in favor of such action.

Article VI.

Officers:

In addition to the general chairman of the committee of nine, there shall be designated by election of the Union, or if not so done by the Union then by appointment of the general chairman, a vice-chairman who shall preside in the absence of the chairman, a secretary and a treasurer who shall be members of the committee of nine and who shall exercise the duties generally exercised by such officers [fol. 4368] in similar organizations.

Article VII.

Elections:

The general chairman shall call a meeting for the purpose of the annual election of members of the committee of nine on the fourth Tuesday of April of each year, giving notice

of such meeting at least three days in advance thereof, at which meeting each employe being a member in good standing of this Union shall be entitled to one vote. If the general chairman shall fail to call such election, then a majority of the committee may send a call for an election at a date selected by them.

Article VIII.

Authority of Committee:

The committee of nine shall have full authority to represent the Union in taking all necessary and proper steps to complete the organization of this Union, to represent it in any matters in which it may be properly concerned, to employ counsel for it to take steps to comply with any legal requirements or regulations to which it may be subject, to preserve and protect the rights of its members in the peaceful carrying on of their employment, to represent further and protect the interests of its members in dealings with their employers.

[fol. 4369] (Board's Exhibit 5.)

Date 6/13/39—Witness Todd.

Plaintiff's Exhibit No. 78.

State of Missouri,
County of Jackson—ss.:

MARY HANBACK, of lawful age, being first duly sworn, on oath states:

I am a stenographer employed in the designing office of the Donnelly Garment Company and have been so employed for approximately six years. I am a qualified stenographic reporter.

On April 23, 1937, I made a stenographic record of a conversation which took place in the nurse's office in the Donnelly Garment Company's plant between Mrs. Fern Sigler (an operator), Mrs. Ella Mae Hyde (employment manager), Mr. Lee Baty, (Production Manager), and Miss Rose Todd (in the pattern department). The attached typewritten transcript, marked Exhibit 1 and made a

part hereof, is a correct transcript of the aforesaid conversation so reported by me.

MARY HANBACK.

Subscribed in my presence and sworn to before me this 28th day of October, 1937.

M. L. WATERS,
Notary Public in and for
Jackson County, Missouri.

My commission expires May 9, 1939.

[fol. 4370] Exhibit 1.

Fern Sigler April 23, 1937

R. Todd: I hardly know what to say. It is all right for you to work but I don't know that you can do with that many girls that feel that way. How long have you belonged to the union?

Fern Sigler: A couple of weeks.

R. Todd: I wish you would tell me why you feel the way you do.

F. Sigler: I think it is the best idea. Every employee has a right to join any organization they choose.

Mrs. Hyde: It's perfectly all right. We have no objections.

F. Sigler: An employer should be able to control their girls.

R. Todd: It is a little bit difficult when there are 44 people in a section and one feels entirely differently.

F. Sigler: I haven't bothered anybody. I don't know what business it is of theirs if I belong to anything else.

Mr. Baty: How did they find out you belonged to the union?

F. Sigler: I wore my pin.

Mrs. Hyde: Did you wear your Loyalty League pin?

F. Sigler: I haven't worn my Loyalty League pin for two weeks. I didn't wear either of them.

R. Todd: Of course, we have had union people work here for years. I have been here most of the last twelve years and there has always been union people here. We don't care. We have hired union people. They have come over from Lee's and worked week after week when their work was slack over there. However, time alters circumstances, personal opinion is incensed and it is a little difficult to keep that many people from expressing their opinion.

[fol. 4371] Mr. Baty: You think the matter over and I suggest that you go home for a few days until things quiet down.

F. Sigler: It will be the same thing when I come back.

Mr. Baty: It's just the publicity in the paper and the people are pretty well riled up. It is impossible to control them as long as you remain but in a few days it should quiet down.

R. Todd: I talked to some of the girls yesterday afternoon and tried to get them to see that it's all right if you want to work and belong to the union. However, they feel so keenly about it, we don't think we can do anything about it. It's a case of the majority ruling. If we have many people who feel the way you do about it, they would be after the other that felt differently. Apparently, they don't feel that way. It is very evident that they don't.

Mrs. Hyde: These girls won't stay at their machines as long as you are in the section.

F. Sigler: If they wanted to show their loyalty to Mrs. Reed, they would be back at their machines and not wasting time. I was trying to do my best to produce but you can't do anything with a mob standing over you.

R. Todd: It's not a personal thing, Fern. I could go down and sit down and sew and they wouldn't bother me but I don't feel the way you do about

it. When that many people are incensed about a thing and feel so sincerely that they are right, they can't help but express themselves. One does and the others are going to follow. What do you think you have gained that we haven't by joining the union?

F. Sigler: Shorter working hours.

R. Todd: You have been able to work most any hours [fol. 4372] you wanted to. Nobody forced you to work on Saturday.

F. Sigler: Two weeks ago when I was off sick, and still sick when I came back, I got bawled out two different times for being off sick.

R. Todd: Bawled out by whom?

F. Sigler: By Ella Mae.

Mrs. Hyde: My name is Mrs. Hyde. Do you know how many days you have missed so far this year?

F. Sigler: Two days on account of death and the other four or five days I was sick.

Mrs. Hyde: At the time, you admitted that you could have been on the job more.

F. Sigler: I said I was sick. If you will give me an authorized statement to go home, I will take it and go.

R. Todd: Nobody is going to do any violence against you. If you want to go home, all right. You got yourself in it and you can stay in it or get out if you want to get out. As president of the Loyalty League, I am not going to try to sell you on the idea that we are right but the majority will certainly rule in a case like this. You expect the majority to rule if they believe like you; we expect it to rule when they believe like we do. We have had no violence and we don't intend to have any violence.

Mr. Baty: You will have to go temporarily. It's not a matter of choice. We don't intend to have a disturbance here. If you will go home, we will call you back when we think it is quieted down. It

is the only thing we can do. People from every floor in the factory were down at your machine a while ago.

F. Sigler: I didn't invite them down. I was tending to my own business.

Mr. Baty: They weren't ganged up at any other spot [fol. 4373] so there is no doubt as to who was causing the dissention and we can't send home 700 people and keep one. You get ready and go home and we will call you back when this has blown over.

F. Sigler: This is a layoff then?

Mrs. Hyde: Nobody has fired you.

Mr. Baty: It is just temporary. When things have quieted down, we will call you back in here.

Mrs. Hyde: Do you have anything at your machine you want?

F. Sigler: I don't know whether I have or not. I may have a blouse down there.

Mrs. Hyde: It's safe if you want to leave it but if you want it, I'll get it for you.

Mr. Baty: We will see what happens and call you Monday or Tuesday.

R. Todd: That will give the girls time to calm down.

Mr. Baty: We will talk to them in the meantime and keep them quiet.

Mrs. Hyde: We had better be sure we know how things are down here before we have her come in. I will call her Monday morning.

Mr. Baty: The whole thing is an outbreak from the publicity in the paper last night.

F. Sigler: What was the publicity?

R. Todd: An article in last night's Post. Haven't you attended any meetings?

F. Sigler: No, I haven't attended.

R. Todd: Read the Post after you leave and keep informed on it.

F. Sigler: Are you paying me for the time I am off? I need my pay as well as any of the other girls. How do you think I'm going to live?

Mr. Baty: Why do you think we should pay you while you are off? You joined this organization and these [fol. 4374] girls are very much opposed to it. It is no fault of the company that they don't like you and won't work around you.

F. Sigler: An employer is supposed to be able to keep the employees at work.

Mr. Baty: We won't go into the Wagner Act. We're just running our business here and not a law office.

F. Sigler: These factories all come under that, you know.

R. Todd: Did you join because you really wanted to join?

F. Sigler: Yes, I certainly did. I have a mind of my own and I don't let anybody control it.

Mr. Baty: Do you think the union will give you better working conditions and better treatment personally.

F. Sigler: I wouldn't say. I don't know.

Mr. Baty: The thing that I am interested in is that if there are any particular conditions here that are not right, I want to correct them.

R. Todd: It has always been the practice here that if we had any complaints to make, we made them. If we don't make them, we certainly can't straighten them out.

F. Sigler: You can do things I don't have the authority to do.

R. Todd: I have no authority. There isn't anybody who has worked around this place in as many different places as I have. I used to have a desk upstairs. I was gone a couple of years and took what they had to give me when I came back. Nobody has

done more different kinds of work than I have. Many times I didn't know where I was going to work. This old business of living is kind of a "give and take" proposition and you might as well be happy about it. I have operated a machine and worked in the dividing department and done a little [fol. 4375] pattern work. If you are going to work in any organization you have to fit in. You also have to do things the way the majority want them done. My advice to you is, if you feel that strongly about the union and have enough people to back you up, be in a union shop. I wouldn't any more think that I could join the union and get by with it than the man in the moon. I'd expect to be put out in the street and I'd ought to be. You can't expect any organization to revolve around one or two people. There are 1200 of us. I have no way of knowing how many of you there are but it is very evident that it is not a majority. I talked to some of the girls last night and asked them to be quiet about it and they went away thinking they would. When they all got together they couldn't stand it. What do you think you had better do?

F. Sigler: I don't know.

R. Todd: Didn't you expect this to happen when you told everybody you belonged to the union?

F. Sigler: I didn't see why it should.

R. Todd: Did you think you had enough people here to back you up? What did you expect? I never tried anything in life that the majority didn't rule. We went downstairs and sent those girls back to work and they went back to work.

F. Sigler: Didn't I have a right to join this union? As long as I don't bother anyone, what business is it of theirs if I belong?

R. Todd: If you had a majority of union people and I came to work in your organization, you wouldn't feel very friendly towards me, personally and as an individual. By the time you got ten or twenty people together, you wouldn't be very nice to me about it.

Mrs. Hyde: They wouldn't let you work if you didn't belong to the union.

[fol. 4376] R. Todd: It would be a closed shop and you would hire nobody except union people. We are going to run an open shop as long as the majority feels that way. The majority is going to rule, as always.

Mr. Baty: I am going to ask you to go home temporarily and Mrs. Hyde will call you back when I think it is safe for you to come back.

[fol. 4377] (Board's Exhibit 6.)

Date 6/13/39—Witness Todd

Articles of Agreement.

This Agreement is made and entered into between the Donnelly Garment Workers' Union, a plant labor union made up of 1305 out of a total of 1333 employees of the employer below mentioned, party of the first part, and the Donnelly Garment Company, a Missouri corporation being engaged in manufacturing, and the Donnelly Garment Sales Company, a Missouri corporation being engaged in selling, each of said corporations having its home office and principal place of operation at 1828 Walnut Street, Kansas City, Missouri, parties of the second part. Party of the first part and parties of the second part hereby contract and agree as follows:

(1) This agreement shall apply to each corporate employer and its employees, it being recognized that the business of said companies and the relation of the employees of the said corporation are, in certain respects, dependent upon each other, and that it is desirous to have the same general conditions of employment in each of said companies. The word "employees" as used herein shall apply to the employees of bot' companies except executives or any person or persons having authority to employ or discharge, and the word "employers" as used herein shall refer to both corporate employers.

(2) Rates of pay: The rates of pay of employees under this contract shall be such as are agreed upon by the par-

ties hereto. However, such rates shall have a minimum of Fifteen Dollars ($15.00) per week as hereinafter stated, this minimum being especially applicable to less-experienced and under-average piece work operators, messengers, bundle boys, and other unskilled workers. Wages for experienced operators, cutters, mechanics, pressers, etc., shall be based on their experience and skill.

(3) Hours: The working hours of the employees shall be eight (8) hours per day exclusive of meal period and forty (40) hours per week. Any time in excess thereof shall be deemed as overtime.

(4) The employer recognizes the election of a committee of the union to represent it, provided members of such [fol. 4378] committee shall have been continuously employed by the employer for the period of at least a year immediately preceding election to such committee, and the employer agrees to further negotiate and deal with such committee in regard to the working conditions, wages and hours of labor of employees, and all other matters properly within the jurisdiction of such committee.

(5) Promotion and Seniority rights: Instructors and floor girls in addition to those employed at the date of this contract, or substituted for any of those now employed, shall be chosen by the employer from the rank of operators or other employees of the company except in cases of emergency or where definitely exceptional circumstances exist.

(6) The employer recognizes the union as the sole bargaining agency on behalf of the employees.

(7) Complaints and grievances: Any employee considering himself or herself unjustly disciplined or unjustly treated shall have the right to present such matter to the duly authorized committee of this union, and such committee by a majority vote may elect to take the matter in question up with the employer for the purpose of securing redress for any proper grievance or injustice which the committee may believe to exist. Nothing in this agreement, however, shall prevent any employee from taking up any matter of dissatisfaction directly with the management in addition to presenting such complaint to the committee representing the union.

(8) Meal period: The meal period for employees shall not be less than thirty (30) minutes per day nor more than one (1) hour per day, but within such limits as may be fixed by the committee.

(9) Closed shop: The employer agrees that on and after June 5, 1937, no one of its employees shall be retained in its employ who is not a member of this union. It is further agreed that hereafter no person shall be employed by the employer who does not, at or prior to such employment, sign an application for membership in this union, and no such person shall be retained as an employee who shall not, within two weeks after such employ-
[fol. 4379] ment begins, be accepted by this union as a member.

It is further agreed that no one shall be continued as an employee after such person shall have resigned from or ceased to belong to this union either by voluntary retirement or expulsion.

(10) Lay-offs: It is recognized by the parties hereto that it is desirable that employment should be as regular and continuous as is consistent with proper merchandising and working conditions. If the employer shall believe that a shorter day for employees will avoid a lay-off of any substantial number of employees, such shorter day with proportionate rates of pay for employees on hourly or weekly basis may be established.

(11) The employer agrees that the individual who may be chosen as general chairman of the union shall be entitled to spend the necessary time in the affairs of the union and to continue his or her employment with the company at the proportionate rate of pay hitherto received from the company for the time thereafter given to the company.

(12) Arbitration: The union and the employer agree that in the event they are unable to agree with reference to any matter of dispute, the question in dispute shall be submitted to a Board of Arbitration, one member to be chosen by the union, one by the employer and the third by the two above-referred-to, and if the two cannot agree as to the third arbitrator, then the third member shall be

chosen by a Judge of the United States District Court of this district. The parties hereto agree to accept and abide by any decision made by a majority of said Board of Arbitrators.

(13) Strikes, Stoppage and Lockouts: This agreement provides for an orderly adjustment of differences. Therefore it is agreed by the parties hereto that during the term of this agreement, there shall be neither a strike, stoppage in work by the employees, nor a lockout by the company.

(14) It is understood that the employer shall have the right to reduce the number of employees in accordance with its judgment as to business requirements, and to discharge any employee whose services are unsatisfactory [fol. 4380] to the employer for any reason which, to the employer, shall seem sufficient, but such discharge shall not be because of the affiliation of said employee with this union or his or her activities therein.

(15) Vacations: Each employee of this plant who shall have been employed for a period of not less than six (6) months of consecutive employment, and who has a regular attendance record, shall be entitled to one week per year vacation with pay. An employee who shall have been employed for a period of not less than two (2) years consecutive employment, with a regular attendance record, shall be allowed two weeks vacation per year with pay. The times at which such vacations shall be taken to be arranged by the employees and a representative of the employer, and in case of any claim of unfairness to the employee the matter to be referred to the committee of the union for adjustment with the employer.

(16) The members of this union shall have the privilege of taking out sick and accident insurance with the Prudential Life Insurance Company as at present contracted for, and the employer agrees to pay not less than one-half of the premiums on such insurance so long as said contract is in effect. The members of the union shall have the right, at their option, to become parties to a group life insurance plan with the Prudential Life Insurance Company as at present contracted for, and the employer agrees to pay one-half of the premiums on such in-

surance so long as said contract is in effect. The employer agrees, as at present, to maintain in its plant at 1828 Walnut Street, Kansas City, Missouri, or at any successor plant in Kansas City, Missouri, a hospital room with not less than two trained nurses in attendance, said service to be for the benefit of all members of the union free of charge.

(17) Duration of contract: This contract shall continue in full force and effect for a period of twenty-four months from the date hereof.

[fol. 4381] In Witness Whereof, we have hereunto affixed our hands, this 27th day of May, 1937. Executed in duplicate.

DONNELLY GARMENT
WORKERS' UNION
By Rose K. Todd, General Chairman
Mamie Riddle, Vice Ch.
Marjorie Green, Sec.
F. V. Brown, Tres.

Committeemen,
Party of First Part,
Charlotte Casey
Anna Richards
Lillian Ellis
Sallie K. Ormsby
Jack McConaughey
H. F. Atherton

DONNELLY GARMENT CO.
By Nell Quinlan Reed, Pres.

Attest:
R. J. Ingraham,
Secretary.

DONNELLY GARMENT SALES CO.
By Alex C. Green, Pres.

Attest:
R. J. Ingraham,
Secretary.
Party of Second Part

[fol. 4382] (Board's Exhibit 7.)

Date 6/13/39—Witness Todd.

Supplemental Agreement Provided In The Agreement Of May 27, 1937.

Whereas, an agreement was, on the 27th day of May, 1937, entered into between the Donnelly Garment Company, Donnelly Garment Sales Company, and the Donnelly Garment Workers' Union, which said agreement provided that rates of pay should be agreed upon by the parties thereto;

Now, Therefore, it is stipulated and agreed as follows:

[fol. 4383] The following holidays shall be recognized:

Decoration Day
Independence Day
Labor Day
Thanksgiving Day
Christmas Day

All workers shall be paid for these holidays, piece-workers on the same basis as paid vacations.

The Employer shall have the privilege to make up for the time lost on account of holidays.

[fol. 4384] Methods now used by the Employer in determining piece-work rates shall be continued.

For the purpose of this agreement, employes shall be designated by groups according to the types of work performed.

Group "I" Operators shall include:

Operators who work a portion of the time on garments selling above $45.00 per dozen and work the remainder of their time on garments selling at $45.00 per dozen and below, and who efficiently perform two or more different types of operations or operate efficiently two or more different types of machines conforming to the quality standards set by the Employer. This group includes operators on any two types of machines, including special machines such as:

Pinking	Taper
Binding	Double Stitcher
Blind Stitching	Tuckers
Hemstitching	Button and buttonhole
Embroidery	Snap
Shirring	Hook and eye
	Zigzag

The piece-work rates shall be the same for all operators in this Group and are so fixed that at least;—

40% of the operators shall receive an average minimum of not less than 64¢ per hour, viz. $25.60 per week of 40 hours.

And that at least 30% shall receive an average minimum of not less than 56¼¢ per hour, viz. $22.50 per week of 40 hours.

And that the remainder shall receive an average minimum of not less than 50¢ per hour, viz. $20.00 per week of 40 hours.

It is estimated that approximately 40% of the operators of this Group could perform all the sewing on gar- [fol. 4385] ments selling above $45.00 per dozen if all of this type work was assigned to specific operators. However, to permit the distribution of this work to a larger number of operators and to provide more continuous employment throughout the year, the above method for minimum wages has been agreed upon.

Group "II" Operators shall include:

Operators who work on cottons, linens, etc., selling at $45.00 per dozen and below, and who efficiently perform two or more different types of operations or operate efficiently two or more different types of machines conforming to the quality standards set by the Employer.

The piece-work rates shall be the same for all operators referred to in this paragraph and are so fixed that at least;—

40% of the operators shall receive an average minimum of not less than 50¢ per hour, viz. $20.00 per week of 40 hours.

And that at least 30% shall receive an average minimum of not less than 45¢ per hour, viz. $18.00 per week of 40 hours.

And that the remainder shall receive an average minimum of not less than 41¼¢ per hour, viz. $16.50 per week of 40 hours.

Group "III" Operators shall include:

Operators who work exclusively on lower priced cottons and who are not included in Groups "I", "II", or "IV".

The piece-work rates shall be the same for all operators referred to in this paragraph and are so fixed that at least;—

40% of the operators shall receive an average minimum of not less than 45¢ p r hour, viz. $18.00 per week of 40 hours.

The remainder shall receive an absolute minimum of [fol. 4386] not less than 41¼¢ per hour, viz. $16.50 per week of 40 hours.

Group "IV" Operators shall include:

Beginner operators, working on low priced cottons.

The operators included in this group shall receive an absolute minimum of 41¼¢ per hour, viz. $16.50 per week of 40 hours.

The classification of "beginners" shall not extend as to any one worker longer than a period of twelve consecutive weeks.

There shall be no discrimination in piece-work rates paid to beginners.

Pressers:

Machine pressers shall be paid at the rate of 75¢ per hour, viz. $30.00 per week of 40 hours.

Group "I" Hand Ironers shall include:

Hand Ironers who work a portion of the time on garments selling above $45.00 per dozen and work the remainder of their time on garments selling at $45.00 per dozen and below, and who efficiently perform their duties conforming to the quality standards set by the Employer.

The piece-work rates shall be the same for all hand ironers in this group and are so fixed that at least;—

40% of the hand ironers shall receive an average minimum of not less than 64¢ per hour, viz. $25.60 per week of 40 hours.

And that at least 30% shall receive an average minimum of not less than 56¼¢ per hour, viz. $22.50 per week of 40 hours.

And that the remainder shall receive an average minimum of not less than 50¢ per hour, viz. $20.00 per week of 40 hours.

[fol. 4387] Group "II" Hand Ironers shall include:

Hand Ironers who work on cottons, linens, etc., selling at $45.00 per dozen and below and who efficiently perform their duties conforming to the quality standards set by the Employer on all classes of the aforesaid goods.

The piece-work rates shall be the same for all hand ironers referred to in this paragraph and are so fixed that at least:—

40% of the hand ironers shall receive an average minimum of not less than 50% per hour, viz. $20.00 per week of 40 hours.

And that at least 30% shall receive an average minimum of not less than 45¢ per hour, viz. $18.00 per week for 40 hours.

And that the remainder shall receive an absolute minimum of not less than 41¼¢ per hour, viz. $16.50 per week of 40 hours.

Group "III" Hand Ironers shall include:

Hand Ironers who work exclusively on lower priced cottons and who are not included in Groups "I", "II", or "IV".

The piece-work rates shall be the same for all hand ironers referred to in this paragraph and are so fixed that at least;—

40% of the hand ironers shall receive an average minimum of not less than 45¢ per hour, viz. $18.00 per week of 40 hours.

The remainder shall receive an absolute minimum of 41¼¢ per hour, viz. $16.50 per week of 40 hours.

Group "IV" Hand Ironers shall include:

Beginner hand ironers, working on low priced cottons. The hand ironers included in this group shall receive an absolute minimum of 41¼¢ per hour, viz. $16.50 per week of 40 hours.

The classification of "beginners" shall not extend as to [fol. 4388] any one working longer than a period of twelve consecutive weeks.

There shall be no discrimination in piece-work rates paid to beginners.

Group "I" Folders shall include:

Folders who work a portion of the time on garments selling above $45.00 per dozen and work the remainder of their time on garments selling at $45.00 per dozen and below, and who efficiently perform their duties conforming to the quality standards set by the Employer.

The piece-work rates shall be the same for all folders in this group and are so fixed that at least;—

40% of the folders shall receive an average minimum of not less than 50¢ per hour, viz. $20.00 per week of 40 hours.

And that the remainder shall receive an average minimum of not less than 45¢ per hour, viz. $18.00 per week of 40 hours.

Group "II" Folders shall include:

Folders who work on cottons, linens, etc., selling at $45.00 per dozen and below, and who efficiently perform their duties conforming to the quality standards set by the Employer.

The piece-work rates shall be the same for all folders in this group and are so fixed that at least;—

40% of the folders shall receive an average minimum of not less than 45¢ per hour, viz. $18.00 per week of 40 hours.

And that the remainder shall receive an absolute minimum of 41¼¢ per hour, viz. $16.50 per week of 40 hours.

Group "III" Folders shall include:

Beginner folders, working on low priced cottons.

The folders included in this group shall receive an absolute minimum of 41¼¢ per hour, viz. $16.50 per week of 40 hours.

[fol. 4389] The classification of "beginners" shall not extend as to any one worker longer than a period of twelve consecutive weeks.

There shall be no discrimination in piece-work rates paid to beginners.

Miscellaneous Piece-workers

It is agreed that at least 50% of all piece-workers not included in the foregoing groups, such as belt turners, workers in notion department, button hand sewers, etc., shall receive an average minimum of not less than 45¢ per hour, viz. $18.00 per week of 40 hours. The other 50% shall receive an absolute minimum of 41¼¢ per hour, viz. $16.50 per week of 40 hours.

Group "I" Examiners shall include:

Employes to whom silks, woolens and cottons selling above $45.00 per dozen are regularly assigned for examination, and who efficiently perform their duties conforming to the quality standards set by the Employer.

Group "I" examiners shall receive an average minimum of not less than 52½¢ per hour, viz. $21.00 per week of 40 hours.

Group "II" Examiners shall include:

Examiners who work on cottons, linens, etc., selling at $45.00 per dozen and below and who efficiently perform their duties conforming to the quality standards set by the Employer.

Group "II" examiners shall receive an average minimum of not less than 45¢ per hour, viz. $18.00 per week of 40 hours.

Group "II" Examiners shall include:

Examiners who work on cottons, linens, etc., selling at [fol. 4390] $45.00 per dozen and below and who efficiently perform their duties conforming to the quality standards set by the Employer.

Group "II" examiners shall receive an average minimum of not less than 45¢ per hour, viz. $18.00 per week of 40 hours.

It is recognized that in order to maintain as nearly as possible constant employment throughout the year it is frequently necessary to transfer manufacturing employes from one section to another, in which case they shall retain the standing of their regular section. But in case of such transfer if the compensation be higher than the section from which the employe was transferred, they shall be entitled to such higher rate while so transferred.

"A" Class Machine Cutters

"A" Class Machine Cutters shall receive a minimum of $42.50 per week of 40 hours.

Stretchers

Stretchers shall receive a minimum of $33.00 per week of 40 hours.

Helper Stretchers

Helper Stretchers shall receive a minimum of $25.00 per week of 40 hours.

Apprentice Stretchers

Apprentice Stretchers shall receive a minimum of $18.00 per week of 40 hours.

Group "I" Dividers shall include:

Dividers who perform efficiently all types of dividing work conforming to the quality standards set by the Employer.

Group "I" dividers shall receive an average minimum [fol. 4391] of not less than 56¼¢ per hour, viz. $22.50 per week of 40 hours.

Group "II" Dividers shall include:

Dividers who work almost entirely on cottons selling at $45.00 per dozen and below and who efficiently perform their duties conforming to the quality standards set by the Employer.

Group "II" dividers shall receive an average minimum of not less than 50¢ per hour, viz. $20.00 per week of 40 hours.

Group "III" Dividers shall include:

Beginners in the dividing department and shall receive a minimum of 45¢ per hour, viz. $18.00 per week of 40 hours.

Group "I" Mechanics shall include:

Mechanics who efficiently service all types of sewing machines and other mechanical equipment.

Group "I" mechanics shall receive a minimum of $42.50 per week of 40 hours.

Group "II" Mechanics shall include:

Mechanics who efficiently service all single needle sewing machines and a limited number of special sewing machines.

Group "II" mechanics shall receive a minimum of $40.00 per week of 40 hours.

Mechanic Helpers

Shall receive a minimum of $25.00 per week of 40 hours.

Mechanic Apprentices

Shall receive a minimum of $18.00 per week of 40 hours.

[fol. 4392] Miscellaneous Indirect Labor—Week Workers.

Work Distributors $20.00 to $25.00 per week of 40 hours.

Janitors and Maids—experienced—Minimum of $18.00 per week of 40 hrs.

Bundle Boys $16.50 to $18.00 per week of 40 hours.

There shall be a minimum of $16.50 per week of 40 hours for beginners in all lines of work in plant or office.

[fol. 4393] It is recognized that in order to maintain as nearly as possible constant employment throughout the year it is frequently necessary to transfer manufacturing employes from one section to another, in which case they shall retain the standing of their regular section. But in case of such transfer if the compensation be higher than the section from which the employe was transferred, they shall be entitled to such higher rate while so transferred.

The position and classification of each individual is to be determined by the Employer.

Workers employed on a strictly temporary basis shall not be compelled to join the union, unless the union so requests.

All workers, whether paid by the piece or by the week, including office workers, shall be on the same basis in regard to hours, vacations on pay, service in hospital rooms, privileges of sick and accident insurance, group life insurance, hospitalization, and any other services which may be offered by the Empioyer and for which the Employer pays all or any part of the cost.

There shall be no factory entrance, the lobby and elevators shall be open to all employes whether in plant, office or designing room.

Salesmen, office employes, shipping clerks, instructors, designers, and any other employe not heretofore included shall receive the compensation now being paid unless changes are made by mutual consent. But no person shall receive less than a minimum of $16.50 per week of 40 hours..

[fol. 4394] This contract may be amended from time to time by the mutual consent of the parties hereto, and shall in its present form and as amended be in force from this date until twelve o'clock noon on the first day of July 1938, and shall be deemed to be extended from year to year, unless one of the parties to the contract shall, at least sixty days before the first day of July in any year, give notice in writing to the other party that the contract shall terminate on July 1, of that year.

In Witness Whereof, the parties hereto have caused this contract to be signed by their respective representatives and officers this 22 day of June, 1937.

Executed in Triplicate.

DONNELLY GARMENT COMPANY,

DONNELLY GARMENT SALES COMPANY.

DONNELLY GARMENT WORKERS UNION.

[fol. 4395] (Board's Exhibit 8.)

Date 6/13/39—Witness Todd.

Notes on Meeting Held April 27, 1937.

Meeting opened by Rose Todd. "I believe everyone is present and it certainly is a very gratifying sight to see this many of us together again. I sincerely hope this meeting is going to be as enthusiastic as our last one was.

"As chairman of the committee of employees, I have called this meeting this afternoon to discuss a matter of vital importance to us as employees.

"Several weeks ago it seemed to me that it was necessary to obtain some legal advice for us. After considering where we could obtain that advice we decided to ask Mr. A. Gossett and Mr. F. E. Tyler to act as attorneys for the employees.

"I have known Mr. Gossett and Mr. Tyler personally for years. More and more these past few weeks it has seemed to me that we are approaching a time when it will be necessary to form an organization that will give us the protection that we need.

"Your first question no doubt it, 'won't the Loyalty League do that?' My answer is, 'it will not'—because the Loyalty League is purely a social organization that we want to keep alive and going, and this will be a business organization to take care of our problems and give us representation to definitely confer with the proper representatives of our company at times when we feel that it is necessary.

"I am not presenting this to you without giving the plan very careful thought and after asking the advice of Mr. Gossett and Mr. Tyler.

"No doubt you are hearing rumors, and recent activities show you that we have reached the time when our plans must be definite.

[fol. 4396] "Our loyalty and sincerity to ourselves and to each other can well be displayed at this time.

"The law gives us the privilege to organize a labor union and we need this protection immediately.

"We have been trying to think of a name to call this organization, because as many of the details as we can should be worked out today. I have this suggestion to make (and we have also talked this over with Mr. Tyler), and we have agreed that it is a good one. Our new organization will be called DONNELLY GARMENT WORKERS' UNION.

"I am launching right into discussing this with you because we have a busy afternoon and a lot to take care of. My first personal distress was the use of the word 'union'. You probably do not like it any better than I did but you must see by this time that to meet the demand that can be

made by outside unions that our organization will have to be a union. We are legally entitled to form a union of our own for representation, and if we do we cannot be forced to join any outside union. (Applause) I think what I intended to say was not necessary. I am going to ask you to think this over carefully and sanely as we have been doing for the past few weeks. The evidence is here.

"Now, Mr. Tyler is here with us this afternoon, and I am going to ask him to make a little explanation to you and to talk to you for a few minutes. Mr. Tyler."

Mr. Tyler: "Ladies and Gentlemen. I am appearing before you in a rather unusual position this afternoon. Some weeks ago several employees came to my office and employed Mr. Gossett and myself as legal advisers of the employees, so that I am, in fact, at this moment, acting as an attorney for you, or for many of you, even though you have never seen me before.

[fol. 4397] "We have given your situation the most careful attention we can, and we have a definite piece of legal advice which we wish to submit to you, as your attorneys. First, I want to say that I represent no labor union, and in connection I represent no employer and I am not here to discuss the question of whether a labor union is or is not a good thing. You may believe in unions, or you may disbelieve in unions, and still agree with the advice I am now about to offer you. The reasons for this advice I am going to give to you as they came to us, that we believe it is to your own best interests to organize your own individual unaffiliated plant union of the employees of the Donnelly Garment Company, and proceed with such union.

"To some of you that will be somewhat unwilling, but I wish to give you the reasons that are behind our suggesting this action to you. We noticed in the paper two or three days ago that some representative, or some committee of the Donnelly Garment Workers was shortly to go East to represent those workers at some national convention, or some labor meeting. So far as we have been able to learn there is no authorization by you of any such individual, or any such committee. As long as you remain unorganized, I think that will continue to happen. Some group here or there will be making tentative arrangements

with this or that organization without your authority. Here four or five labor organizations will claim the right to speak for you without your proper authority.

"In order to stop this, and to make it clear that you are speaking for yourselves through your own representatives whom you choose, we think your own union is desirable.

"In the second place, you know as well as I do that in these days it is not at all unlikely that more or less violent efforts can be made to force the employees of a certain factory to join this union or that union. In many cases, [fol. 4398] force, violence, intimidation, threats and similar measures are used to unionize you against your will. It isn't at all unusual for a group of some union to crowd your doorsteps so that you can't get into your work without serious danger. We have already taken precautions against this sort of action, but an injunction is not a very satisfactory remedy. It is rather difficult to try to govern thousands of people by an injunction, and we suggest that if you have your own plant union and bargain for yourselves with your employers you will then be in a position to say to those outside groups, 'There is nothing here to organize, we are already organized'. I think we would be able to give you much better protection in case of any violent attempts of threats or intimidations.

"You probably noticed that the Supreme Court has declared the Wagner Act constitutional. I am not prepared to say that the Wagner Act applied to this organization, because you are engaged in manufacture, and not Inter-State Commerce. However, the lines drawn on Inter-State Commerce are drawn very close, and perhaps the Wagner Act does apply to you. If it does, it certainly does everything it can to encourage unionization. It says employees shall have the right to organize their own union. It encourages you to take such action as I am now recommending. If the Wagner Act, certainly since it has been declared constitutional, is to extend its protection to you, it will by reason of your becoming unionized and fully recognizes your right to form your own union. I do not think this action can or will be considered as any act of unfriendliness to your employer. I believe they recognize your right to take this step, and that it isn't an unfriendly

act to them. In fact, it is much better for them, and for yourselves, for you to have your own union with your own representatives, rather than have a group here trying to [fol. 4399] represent outsiders from New York, and another group here representing some other outside union, etc.

"Your chance for continuing satisfactory and beneficial employment, your chances for satisfactory wages, for satisfactory hours, for continuous employment, for friendly cooperation among yourselves, will be vastly increased by your joining together in your own union. Certain difficulties may arise (I can't point out just what might possibly happen) but as long as your officers will continue to request Mr. Gossett and myself to advise you and counsel you, we shall be glad to meet these difficulties and do our best to protect you in all your legal rights.

"This organization has a reputation not only in Kansas City, but throughout the Middle West of having an unusual warm and friendly spirt of loyalty, not only with your employers, but among yourselves. That spirit should add very greatly to the satisfaction you get out of your work from day to day, as well as the actual money wages you get. I hope very much that that spirit will continue and that reputation will spread throughout the entire nation. Looking toward that end I again earnestly recommend to your consideration and to your favorable action the formation this afternoon of an independent, unaffiliated labor organization of your own, controlled by a committee that you shall choose, acting for your interests, and representing you both in your dealings with your employer, and to deal with outside parties who may seek to control you. If we reach that stage, if your verdict is in favor of the formation of that union, I should then like to present a brief form of by-laws, and recommend them to you. They would, of course, be subject to your change when and if you see fit."

Rose Todd: "I think Mr. Tyler has made it very clear [fol. 4400] to us how an organization of this kind could act for us, and there isn't any doubt in my mind that there isn't something we can do. I have not felt at liberty to say yes or no because I wanted to talk to Mr. Tyler about

it. There is this one thing that we can do, and I would say that we should not put it off one more day. While we are together as an entire group of employees let's form this organization. I want to ask then for a motion to be made that we form a union at this meeting.

(Motion made by Ethel Reigel that "we form an independent, unaffiliated plant union at this meeting". Seconded by Arch Lile.)

All in favor make it known by saying 'I'. (Unanimous).

"That was very gratifying to me, and I am sure it will be to each one of you. The next thing we should take up, and I should like to ask for a motion to be made that we select or appoint a nominating committee to retire from the room and take enough time, any amount that is necessary, to bring back to us a group of chairmen to act as officers for our union.

(Motion made by Lena Faulconer that a nominating committee be appointed to select a General Chairman and eight Group Chairmen to represent our independent union and to act as officers of our union. Seconded by Eva Lieberman.)

All in favor make it known by saying 'I'. (Unanimous).

"I am going to appoint on that committee five people, headed by a General Chairman. I will ask Mrs. Riggs, of the 9th floor, to act as chairman of the Nominating Committee. As I call your name will you please stand:

Lyle Jeter.
Carl Crawford
Cordelia Taylor (Pressing Department)
Leona Moore (representing the operators)

I am going to ask you all to leave the room after I have given you a few instructions, think this over carefully, and bring back the names of a group of people, one that can act for us as a General Chairman and eight other people that will be a very good representation of our organiza- [fol. 4401] tion as a whole. I have written down here the departments that I think you should remember to represent. My suggestion, first, as I said, is that you have a General Chairman, then have one group chairman say

from the Cutting Department, and I think with the number of operators that we have on the machines that we should have two from that group. We should have one representing our hand-work, and by that I do not mean just hand-sewing. We have various places throughout the organization that when you get together I am sure will come under this classification, 'hand-work', notions, buttons, dividing, receiving department, shipping department; we need one from the office; one from the pressing department; one from the mechanics, etc., and I think we could cover the balance of our employees if you will select one person that is fairly well known to represent the employees in general. We have people in our Receiving Department, various people on the third floor that are in different departments, our maids and our porters. Make this a committee that will be a good representation of our organization.

"I am going to ask this committee of five people with Mrs. Riggs acting as chairman to leave the room—I think the best place for you would be the Recreation Room on the third floor.

"While the Nominating Committee is out of the room, I want to ask all the boys from the Cutting Department, and it may be necessary that I ask for more, to please come to the platform. There is a good big gathering of boys over in the right-hand corner—will you please come forward too?

"I have a card here that I am going to read to you, and after a while I am going to ask Mr. Tyler to read to you the By-Laws that he has drawn up for us to use for our union organization, and it may be that those things will be changed a little, but we could not very well have this meeting today without having our By-Laws read to us. I am [fol. 4402] going to ask the boys to pass these cards out and they will take them up later during the meeting.

(Reading: "I hereby agree to become a charter member of the Donnelly Garment Workers' Union, and to abide by its By-Laws and regulations.")

This is not just for fun, it is all business now. Any of the cards that you do not pass out, please b ng back to the

platform. Do not take any of these up yet. I am going to ask you to be patient as the meeting goes along because we have several things yet to take care of. Remember, you do not have to sign these cards unless you want to. If you want to wait until after the By-Laws are read, that is all right, sign your card whenever you want to. Does everyone have a card? Some in the back of the room do not have. Will someone take some cards to the back of the room? Anyone that does not have a card now, please stand up until the boys can get one to you. We have plenty of cards if they are needed. I do not want the cards taken up yet, hold them until I ask for you to take them up. Also, I want to make it clear, if any of you are wondering about the people that are not here—they will have an opportunity to join tomorrow or the first day they are back (a few are out on account of no work, and a few are out on account of illness).

"Hugo Kranz is asking particularly about the employees in the cafeteria. Of course, they are really not employees of the Donnelly Garment Company but if it were not for the Donnelly Garment Company they would not be here, so for the time being we are going to include those people in the cafeteria as employees and members of our Union. If we find that in the future this isn't correct, we will take care of it at that time.

[fol. 4403] "I am going to ask Mr. Tyler now to read the By-Laws that we have asked him to draw up to present to you, because I do not think the committee has had enough time. In the meantime, I will ask him to read the By-Laws to you."

Mr. Tyler: "I wish you would keep in mind as I read these By-Laws that the last thing I want to do is cram anything down your throats if you don't want it. These are your By-Laws, and your union—not mine. If you want to you can decide that a woman has to wear a striped dress or a polka dot scarf to belong to your union, and because we decided to take prompt action does not mean that we are trying to force you to agree to anything. I do suggest, though, that if we tried to discuss the individual viewpoints of each of you we would be here next Monday morning. If these will do at all temporarily, I hope you

will adopt them and later talk them over, and I assure you that a majority of you may amend them, whenever you make up your minds to do so. I suggest you adopt them and then leisurely amend them when the majority of you wish them changed. They are drawn as follows:

Reading of By-Laws.

(Insert right before 'Article III . . . "I might fill in a statement to the effect that under the Wagner Act the fact that you have a committee representing you does not take away your right to go directly to your employer about a complaint. You still have that right even though you have a committee that represents you as a body."

"Some suggestion was made about the employees in the cafeteria. The Labor Relations Board has a right to say that the people in the cafeteria and office will have to have a separate union because they are doing a different kind of work. I do not believe it will happen, but if it does we will meet them when the time comes."

"This union will not finance what some unions finance. You are not financing for the support of some strike in this, or some other city.

[fol. 4404] "In that case you don't need any large dues (25¢ per month in the By-Laws; which can possibly be reduced to 15¢).

"I suggest that if the By-Laws are satisfactory someone move they are adopted.

(Motion made by Ellen Nokes that we accept the By-Laws as they were read. Seconded by Virginia White. Unanimous acceptance.)

"The Nominating Committee has returned to the room, and we will hear from them now. Mrs. Riggs will you come close so we can hear you. Come a little closer, will you please? I think it would be just as well if you would come up here and talk before the microphone."

Mrs. Riggs: "Madame President, and Fellow-Workers. The Committee has arrived at a decision. We submit the following:

as group chairman from the cutting department, Fred Brown; two group chairmen from the operators, Sally Ormsby and Mamie Riddle. As Group Chairman from the Pressing Department, Anna Richards. One Group Chairman from the office, Marjorie Green. One Group Chairman from the Mechanics, Jack McConaughey. One Group Chairman from the workers in general, Hobart Atherton." Charlotte Casey from the tine workers.

Miss Rose Todd: "You have heard the names of the General Chairman and the eight group chairmen, which I will not repeat, but I will ask that a motion be made that these chairmen be accepted as a group.

(Motion made by Hazel Sauke that we accept these chairmen as a group; seconded by Anna Reese. Unanimous decision).

I am going to ask at this meeting that each of these new chairmen come to the platform.

"Our meetings as an entire group of employees are not so frequent, and I thought it would be a very opportune [fol. 4405] time for me to present the new chairmen that will act as our representation at any time that is necessary.

(Presentation of Committee Chairmen)

"I want to ask everyone to remain seated now until we have taken up these cards, and have no one to leave the meeting until we are dismissed. Will the boys please take up the cards now? Has everyone had a card? If not, please stand.

"I have just a few words more that I want to say. If at any time you feel that there are little things going on that should be reported to the committee, please feel free to do so. Is there anything else that should come before this meeting? If not, the meeting will stand adjourned."

[fol. 4406] Notes On Employees Meeting May 11, 1937.

Rose Todd (General Chairman, Donnelly Garment Workers' Union): "I want to call the meeting to order

and ask you to be as quiet as possible. A few people are smoking—will you please put that off until a little later—it isn't any too well ventilated in here anyway.

"I have called this meeting of the Donnelly Garment Workers' Union because so many people have expressed themselves to me today, and it seemed to me it was just as smart to do it today as to wait until tomorrow. I am sorry that a few of the employees had to go home earlier today before we made this decision.

"I want to read this, because I want to be sure to get everything into it that I thought of today:

"Many of the employees have stopped at my desk today to express their feelings in answer to the recent newspaper attack that the Dubinsky Union has made against the Donnelly Garment Company and the Donnelly Garment Workers' Union.

"It seems needless to ask you if the Donnelly Garment Workers' Union is going to answer this threat. But for the satisfaction of each member, I am going to ask this question: 'Are we going to defend our rights as a Plant Union and win this fight?'

"It is always encouraging to each of us to hear the enthusiasm and the expression of determination of our fellow workers. If Mr. Dubinsky has any hirelings here they can carry a report to him.

"In the capacity of Attorney, Senator Reed for many years represented the Donnelly Garment Company, many times preventing infringement on Nelly Don patents, winning a decision against 29 companies that I can remember. In any contact I have never found that Mr. Reed has any or has ever had any connection with the Donnelly Garment Company, other than his interest in Mrs. Reed's business and its preservation for us as employees. We intend to protect our jobs. The Donnelly Garment Workers' Union gives us the bargaining agency that we need with the company officials and the protection we need. Our working agreement with the company officials will be worked out satisfactorily and the interest of [fol. 4407] each employee maintained. Satisfactory work-

ing conditions will be continued and we do not need outside help to accomplish any of these things. Many things have been accomplished by the employees of the Donnelly Garment Company and we finish every job we tackle.

"This one will receive our whole-hearted support and attention and victory will be ours.

"Mr. Dubinsky says they are going to spend $100,000 to organize this plant. $100,000 could be spent to much better advantage helping their own members. But they evidently intend to attack us and use any available method to get us to join their union. Several reports have been made of calls on our employees. Many of you have the correct answer ready. The rest of you might prepare yourselves. Because we are not going to join Dubinsky's Union.

(General Applause).

"I think that is a splendid answer. All we can hope for.

"I can't help but feel that that $100,000 might be spent to very good advantage on their own employees.

"They evidently intend to attack us in every way possible. A number of our girls have been reporting to me from time to time that there have been people who call on them at night. The answers they have given them have been quite apt. I think if I were the rest of you I would get my answer ready.

"I think we all understand now that we are not going to join their Union. (Applause). Any reasonable efforts that we want to take to protect ourselves, we are going to do it. Let's be as peaceful as possible.

"We do have now a little business that has been taken care of since our first meeting and I want to present that to you. If you have any questions to ask that is perfectly all right. There are several things that the Group Chairmen have considered at their meeting, and we have also had a meeting with the officials of the company.

[fol. 4408] (Aside: "If I do this long enough, I may be able to do it without notes.")

"You all know that our dues are to be twenty-five cents a month. I want to tell you now those dues are to be collected on the first Tuesday of each month, so save your quarters.

"We are having a Union card printed—quite a nice looking card, and the twelve months of the year will appear on the card. We are also having some stickers made that will act as receipts for our dues that are paid each month. Last time they were not printed and it was quite a job getting them all ready. Each person in the department collecting the dues as you pay them will paste a sticker on your Union card. You will notice on this card, there is a place to sign your name. Please do not neglect to do that. They should be ready by Friday of this week, but it will be almost impossible to get them to all of you before next Monday or Tuesday.

"There are probably a number of you that have not had occasion recently to be on the ninth floor, but on the right hand side of the door you will find a desk where our work will be conducted.

"In keeping our Union as a very business-like organization, the question of salaries came up. The Group Chairmen asked the officials of the company to consider that the Union pay part of my salary, and the company retain me in their employment the balance of the time. I do not think that will be a great burden to you.

"Then there are other expenses. I do not want anyone to go away feeling that twenty-five cents is too much for you to pay. If things go smoothly, we can always lower our dues. At the present time, it does take quite a little to get an organization of this kind started. Our Union cards are costing something and all those little things have to be taken into consideration.

[fol. 4409] "You realize now that Mr. Tyler is representing the Donnelly Garment Workers' Union, and he will have to be paid. I expect a good many of you are wondering what he is going to charge. I talked to him in some detail, and I am sure you will feel that he is quite right in the answer he gave me. He doesn't know what his answer will be, because it depends on how much

trouble we cause him, and how much work he will have to do for us.

"The Union does have to be self-supporting in every detail. Being a thoroughly reliable group of employees we can take care of our own financial obligations.

"First I want to tell you that each person collecting dues in each department is allowed his dues for doing that work. You will understand that in some departments that isn't anything at all and in others it is too much. There may come a time when we can arrange the collecting of our dues in some other way. At the present time no one has been able to suggest a better plan.

"Our Treasurer at the present time is Fred Brown—he may not be next year but whoever it is will have to spend one night a month taking care of the book work. It seems to me only fair that we pay him for that work. Anybody in our Union would be glad to give their time, but if you have somebody doing that work you expect them to be dependable and reliable and we should pay them something.

"At the present time it seems to me $5.00 would be all right for a month's work on that. It doesn't seem very much and if we find that it will take more than one night, we will pay the Treasurer more than that.

"I have told you, or it was mentioned, that the Group Chairmen had a meeting and after that meeting I wrote a [fol. 4410] letter to the officials of the Donnelly Garment Company, addressing to [to] the attention of Mrs. Reed asking that they appoint a time and a place for the Chairmen to meet with them. That meeting was held last Thursday afternoon. I want you to understand that with Mr. Tyler helping us, and all, our working agreement is going to be worked out satisfactorily and everybody's interests maintained. One thing we did ask the officials of the company for is a closed shop. That is a detail that cannot come in our By-Laws. It is an agreement that will have to be made between the Union and the officials of the company. Under the Wagner Act we are entitled to it to the extent that anybody working for the Donnelly Garment Company must belong to our Union and cannot belong to any outside Union. (Applause).

"Another question that I have been asked a number of times is 'Can we put a label in our dresses'? We are entitled to put a label in our dresses signed by the Donnelly Garment Workers' Union.

"Lots of people are asking if we are going to have pins. May I hear a motion that we adopt a pin.

Motion: "I move that we have a pin." (Seconded, and approved unanimously).

"I think that takes care of any business that has come up since our last meeting. I want to make this your meeting as well as mine and if there is any new business, let's take care of it at this time. I'm a little bit stingy and it costs quite a bit to get these chairs and this microphone. If any of you have any business you would like to bring up, let's do so at this time.

Question: "Can we pay our dues in advance?"

Answer: "You can pay your dues anyway you want to. That is you have the privilege of paying them in advance if you want to do it."

[fol. 4411] "I do want to say this, that any of you at any time that want to talk to me, remember I can always be reached at noon or anytime necessary. Feel perfectly free to ask any questions you want to ask. The Group Chairmen will have meetings of their own from time to time. When the girls and boys come back from these meetings feel perfectly free to ask them what went on, even if it is a meeting among themselves or with the company officials. There are no secrets about the union.

"During the year there will be a financial statement made, and our books will be balanced every month at the time the dues are collected. That will be our only income for the time being, and if you stop and think about it, you will realize that maintaining our own legal counsel will cost us quite a bit of money alone.

Question: "Can we maintain our standing as a Union and meet on premises maintained by the company?"

Answer: "So far we can."

Question: "How about a Union newspaper?"

Answer: "I have been doing a little scouting around on that. In the past the boys have attempted a paper and the girls have helped a little (very little). We are trying to work out a scheme with the employees, whereby we will have a very interesting news organ and somebody in charge of it that will have time to give to it. We may be able to work this out in the near future."

Question: "If a new employee comes in are you going to set a time before they have to become a member of the Union?"

Answer: "Anybody coming to work for us will join the Union immediately. If there is any doubt in their minds about whether or not they want to join our Union, then there is some doubt in their minds as to whether or not they want to work here."

"Does any one have any other questions? I am going to give you a minute and then we are going to adjourn the [fol. 4412] meeting. If there is anything you want to consider before we have another general meeting, please say so now. It has been so very nice to see you all together again."

Meeting adjourned.

[fol. 4413] Meeting of St. Joseph Plant Employees May 13, 1937.

Rose Todd: "On April 27th we formed a Plant Union, and if you have been reading the papers you will notice and understand that under the Wagner Act we are entitled to have a Plant Union.

"At this meeting of April 27th I was elected General Chairman, and in that capacity I have called this meeting to ask you to join our Union. I want you to feel free to do as you please.

"We have nine chairmen, including the General Chairman, and we have met with Mrs. Reed and officials of the company and asked for a Closed Shop. We are legally entitled under the law to ask for a Closed Shop. Anybody working for the Donnelly Garment Company and belonging to our Union cannot belong to any other Union.

"The question was asked, 'How much time will be allowed before definitely stating whether or not you will join the Union?' I think if you are interested in working for the company you will be interested enough to join the Plant Union. You will not be allowed to belong to any outside Union if you belong to our Union. I want you to understand, however, that we have no grudge against other Unions. All we want is the protection I believe we are legally entitled to for our employees. That is why we formed our Union.

"Any Plant Union has to operate on its own and carry its own expenses. We want it that way, and it is necessary to charge twenty-five cents (25¢) per month dues. I am employed part time by the Union and the other part by the company.

"Our Attorney suggested that we select one chairmen [fol. 4414] from the St. Joseph plant to represent the employees of this plant at our meetings in Kansas City. Will someone please make a nomination for that person now?

(Motion made by Christine Westbrook that Mrs. Lillian Ellis be elected to represent the employees of the St. Joseph Plant. Motion seconded by Raymond Smith. Accepted unanimously.)

"We will let you know a little later when the dues will be collected and by whom.

"We are going to have Union cards printed. On this card will be the 12 months, and as your dues are paid they will be marked on the card. You will not have to pay dues when you are not working for the Donnelly Garment Company."

Meeting adjourned.

[fol. 4415] Notes on Meeting of Donnelly Garment Workers' Union, May 25, 1937.

Rose Todd: "Will the meeting please come to order. We have a few things we want to take care of today. First, I want to tell you that our Union cards are being distributed and will be taken care of as quickly as possible.

"I want to read you an article that appeared in the noon paper. No doubt some of you have read it—probably a good many of you haven't seen it yet." (Reading)

"Meyer Perlstein of St. Louis, southwest regional director of the International Ladies Garment Workers' Union, opened headquarters at 1022 Baltimore Avenue today to organize, he says, the Donnelly Garment Company.

"We will open with an advertising campaign through newspapers and radio against the patronage of garments manufactured in the Donnelly plant", Perlstein said. "Six girls now are undergoing training to travel from coast to coast visiting store keepers handling the Donnelly garments urging them to stop handling the Kansas City product. If the store operators refuse to comply their stores will be picketed.

"As membership of our union in the Donnelly plant increases, a strike will be called. In such a case additional money will be required and we are ready to spend $250,000 to accomplish our goal, and that amount is ready."

"There are two organizers working in the plant at the present time, Miss Wave Tobin, manager of the local union, said, and this number will be increased to fourteen, she said, to build up the membership of the I.L.G.W. union in the Donnelly plant. Both Miss Tobin and Perlstein said a strike would be necessary. (Unquote)

"That is raising their 'ante' quite a bit in two weeks. But I still can't feel they can sign up enough people here to call a strike. (Applause)

[fol. 4416] "If there are any people in here working—I would advise you to work very quietly.

"I think you will all be interested in knowing this—a number of people have asked me if our working agreement has been sent to Mrs. Reed, and a number are wondering if we shouldn't have it there now. I have tried to explain to the various ones that have asked me, that our working agreement is being drawn up by Mr. Tyler. I want to tell you now that I went down to see Mr. Tyler this morning and our working agreement will be finished and in Mrs. Reed's hands this afternoon or in the morn-

ing—I do not know just which time as it has to go through the mail.

"No doubt you noticed in our paper published last week that we are going to have a dance at the Pla-Mor, Friday night, June 11th. I am going to ask Hobart Atherton to explain why we are having this dance."

Hobart Atherton: "I think I said the last time I talked to you that I was mad. I have been mad several times since, but this outside interference is entirely unnecessary.

"We are going to have this dance June 11th at the Pla-Mor, to be given under the auspices of the Donnelly Garment Workers' Union. At this dance we are going to have a few carnival booths so those who do not want to dance can have a good time doing something else.

"I don't know of anything else I can tell you about the dance that you don't already know, so I will turn the microphone back to Miss Todd."

Rose Todd: "If anyone has any questions to ask about the dance, I think this would be a very opportune time to do it.

"I think we should all understand that we are having [fol. 4417] this dance primarily because a great many of our outside friends would like to know us as a group of employees and this will give us an opportunity to have a nice time and get together and make new friends.

"If there is any business or any questions, please bring them up now.

"I might tell you this—we will have the tickets for our dance ready to go on sale about Thursday or Friday of this week. I don't believe we can make it much sooner.

"If there isn't any further business to take care of at this time I would like to hear a motion made to adjourn."

Question: "Will we have card tables for those who want to play cards?"

Rose Todd: "We will have card tables for those who want to play cards. We will also have enough booths to

lend a carnival spirit and give us something besides cards and dancing.

"Any further questions? I don't want you to get tired but I do want to answer all your questions.

"If there is no further business, the meeting will stand adjourned."

5/25/37
MG

[fol. 4418] Meeting Donnelly Garment Workers' Union
Friday, May 28, 1937

Meeting opened by Rose Todd, General Chairman.

"Please be quiet. I think this is a very fine way for us to end a splendid week of work and the fine things we accomplished yesterday and a grand way to start a three days' vacation.

"The first thing I want to tell you (and then Mr. Tyler will talk to you) is that on Tuesday morning we are going to place on the 7th floor, the pins from which we want to make our selection to use as our union pin. There will be several different styles (one plain gold one; one plain silver one; one silver with enamel; one gold with enamel). I want you to take the opportunity to go by and look at these pins, and on Friday I will ask a representative in each section to send a note around letting each person express his or her desire for a pin, and we will total them and let that stand as our choice of a Union pin. On the note with the pins will be the price of each one.

"A great many have asked about Union dues. If there is no objection to this, the following statement will tell you how we will handle our dues. When you are not employed you will not pay dues. Our dues will be collected on the first Tuesday of each month. Anyone returning to work, whether it is from the 15th to the end of the month, will not have to pay dues that part of the month. But on the first Tuesday of each month you will pay your dues for that month. If there are no objections we will let it stand that way. If there are any objections, please don't hesitate to make them.

"The next thing I would like for you to remember is that friends make friends. There has been some little [fol. 4419] disturbance around this week. Maybe the girls are right; maybe they are wrong—I am not the one to say. If we have people here we feel are not entirely sincere to our way of thinking, I believe if you will think it over and try to be tolerant and be nice about it, you may be able to win them over to your side. I'm not telling you what to do, but just asking you to think it over.

"I will ask Mr. Atherton to tell you about the Dance and Carnival."

Hobart Atherton: "As I told you the other day, we are having this dance of the D. G. W. U. at the Pla-Mor on June 11th. This will be our first party or dance as a Union. Let's all try to make it a huge success. There will be a few carnival concessions in some part of the ballroom, so those that don't want to dance will have ample opportunity to enjoy themselves. Let's turn out and bring our friends and have a grand party! Thank you."

Rose Todd: "Mr. Tyler is going to give you some explanation of our working agreement. Mr. Tyler."

Mr. Tyler: "Miss Todd and members of the Donnelly Garment Workers' Union, I might read this working agreement which was entered into yesterday, by your committee on the one side, and the employer on the other, but there are at least a half dozen questions that have been asked a number of times and I would rather spend my time giving you my views on those questions and will ask someone else to read the actual working agreement to you.

"I want first to trace the steps you have made in the last month, I say to you, that a careful study of the Wagner Act should convince any fair-minded person, be he lawyer or layman, that every step we have taken is in exact conformity with the law.

(Reading from Wagner Act)

[fol. 4420] "That is the Government saying to you that collective bargaining, in its opinion, is an element of continuing peace and they propose to protect you in your right of self-organization and bargaining as a whole. That

is exactly what you have done. You self-organized and formed your organization in response to the invitation of the Government. Of course, if you had decided to join some other organization that was your right to do so.

(Reading from Wagner Act—Section 7)

"In accordance with that provision of the law, you elected your own representatives. They were representatives of your own choosing.

(Reading from Wagner Act)

"In other words, the Government says in the Wagner Act that if in such organization as you join or as you form, you actually have a majority of the employees, then that organization has the right to bargain for all employees. There is not a shadow of a doubt but what you have the majority of the employees of this plant in this organization. As a matter of fact, you have substantially all of them. Therefore, your organization has the right under the Wagner Act to bargain for all employees. And when you hear the terms of your working agreement read you will see that your representatives, by virtue of this act, have bargained for all employees.

(Reading from Wagner Act)

"Your Union can not take away from you the right as an individual to go directly to your employer to present any grievance you have. You will see when the articles are read that they do not take away your right as an individual to go to your employer with anything you don't [fol. 4421] think is right. You may also go to the committee, and if the committee thinks you are right they will fight it out with the employer, or you may go to your employer if you so desire.

(Reading from Wagner Act)

"That actually says that nothing in the law shall prevent the employer from making a contract with you. Not that the employer has to, but the employer is entitled to make a contract with you if you present it to him that no one shall work in his plant unless they are a member of the Union representing that plant. (Applause)

"In accordance with that provision, in the exercise of your full legal right, a clause will be read to you in that agreement, that on and after June 5th no one shall be employed in this plant who is not a member of this Union. (Applause) But up to that time no discrimination shall be made among the employees because anyone does or does not belong to the Union (up to June 5th). A few are out of town; a few are on the road. They will be given the opportunity to join the Union by June 5th.

"The next thing it seems to me at the present time is a little moderation and a definite feeling of peace. Remember, there are always two points of view in any question. I have no doubt but what some of you have friends or relatives who are disappointed that you have chosen to go this route rather than another. Maybe some of you would have preferred to have gone some other route rather than this one. Remember, those people are entitled to their views—they are human.

"You have won a complete and sweeping victory. Don't endeavor to stir up difficulty. If it is true there are outside organizations that are trying to break down this Union, one way they would naturally go at it would be to stir up trouble in this organization. Don't play into [fol. 4422] their hands by endeavoring to use too much influence on someone you think is not whole-hearted about this matter. Don't take the chance of injuring an employee because you think they may not be loyal.

"I can assure you if there are people here in this organization who are here for the sole purpose of making trouble, they will work their way out in the course of reasonable time. I want to ask you to exercise a little tolerance, realizing you have won an over-whelming victory. Be tolerant and don't instigate anything that might be unfair or aggressive.

"A number of people have said to me, 'should we get a charter for this Union', or 'why don't we get one' or is one necessary?' It is not necessary for you to have a charter for your Union but you can have it if you want it. A few unions are incorporated; a few have charters. But they don't want to accept the responsibility that will follow. If a union is incorporated the court can enjoin and

fine that corporation. It has a method of control over unions that it doesn't have when they are not incorporated. I don't think that applies to you at all.

"It might increase your feeling of unity to have a charter. You can have it if you want it. It would probably cost you about $100.00. You would have to file a petition in court and the court would appoint a referee, who would make a return of his findings and the charter would be filed by the Secretary of State at Jefferson City. If you feel you should have a charter, you can have it but I don't think it is necessary. It might be worth while and add to your feeling of unity and responsibility. Let's leave that to the committee to work on. I can assure you that you don't have to have it. Your organization is legal without it. You can choose if you want to take on that additional expense.

"Several people have suggested, 'should not we have legal dealing with the Labor Board?' The Labor Board [fol. 4423] is not created to organize any labor union—it is not to obstruct any labor union. Its duty is when a disturbance results as to which labor union is to bargain with the employer, or whether the employer is in some way coercing or intimidating the employees, or whether they are being dominated by outside influences. Or in other words, if the Union is not getting a square deal the Labor Board hears testimony from both sides and decides which side is right. There is no need for the Labor Board to take any action whatever until such a disturbance or situation arises. I can't see the slightest sign or any possible question of anything done here by force, intimidation or by outside domination. I can't see how a membership of 1305 out of 1333 employees isn't a majority. I can't see any question for the Labor Board to pass on at the present time.

"I have talked to the national attorney for the Labor Board and with the local Labor Board. I told them that we are carrying on a strictly lawful labor union and if there are any proper requirements, lay them on the table and we will abide by them.

"The Labor Board has the right to determine what labor union has the right to bargain with the employees. If there

is any disturbance the Labor Board will determine which union represents the majority. There is no possible question as to this Union representing not only the majority but substantially all of the employees, but we will keep that in mind. The committee is working on that question and if you desire we will go to the Labor Board and ask for a certificate, certifying this Union is entitled to deal with the employer for all employees.

"There are certain rumors that come to us. (Quotes from article in Kansas City Star, May 25).

"I don't believe they will spend that much money to go out and see that people don't buy our garments. If it is [fol. 4424] true that that much money has actually been raised to attack this company, then the people that contributed that money are in need of some very serious protection. (Applause)

"This is still a free country. To say that any outside organization (I don't care how good or how perfect) has the right to force a Union in this plant, disturb the employees or endeavor to force them to break their contract with their employer, is to say that liberty has flown from this country. I think you are going to get the full protection of the courts in this country but I doubt if it will be needed.

"If those things proceed in any substantial way (I don't mean by any peaceful picketing), I say to you, you are going to get the full protection of the courts and my confidence in them is a whole lot.

"There are perhaps other questions you will have—more detail to be ironed out.

"The Labor Board has the right to say, if it so elects, that the proper unit for dealing here should be changed. They have the right to say that the work of the people who are operators and the work of the people in the office should be made into separate divisions, with the salesmen or office force having a separate agreement from the rest of you. If so, we will do it that way. There are perhaps some other changes that we will have to make as time goes on.

"There is no ground for any threat that you need fear against the legality and the right of your Union to the full protection of the law and to develop its interest as long and as far as it may be desired.

"I want to congratulate you for reaching this agreement without violence and without trouble in the plant. It is a credit to you, a credit to the town and a credit to labor throughout the whole nation." (Applause)

[fol. 4425] Rose Todd: "It is getting late now—would you rather leave now or have the working agreement read to you? It has already been signed and accepted. We will be glad to read it to you if you want to hear it. (Unanimously requested working agreement be read). I will ask Mr. Atherton to read it to you—he reads better than I do."

Hobart Atherton: "This is our Declaration of Independence." (Applause)

(Mr. Atherton reads working agreement)

Rose Todd: "Is there any other business to come before the meeting? If not, we will adjourn."

Meeting adjourned.

[fol. 4426] Meeting Donnelly Garment Workers Union
Wednesday, July 21, 1937

Rose Todd: "Will you please come up to the front—we have about 200 seats up here we would like to have filled.

"I believe everyone is present now, so will you please be quiet. The Union has a few things of importance to take care of at this meeting. First, I want to rectify a mistake I made in talking to a group of operators on the third floor. One of the operators asked if anyone with a $16.50 minimum would work on silk dresses. I previously had read the Wage Agreement which states this group will work on dresses on which the wholesale price is $45.00 and under, but I just made a mistake and gave you the wrong answer. Our Neldas come under this price, and sometimes we have a few acetates that sell for this same price.

"Another thing I want to bring to your attention—in checking our Union pins I find we have pins out in the

amount of $19.75 which are not paid for. If anyone has not paid for their pins, please get in touch with the representative in your department and take care of this as soon as possible. We would like to make another substantial payment on our pins this week.

"Also, for the benefit of a number of you, I have a few grievances that have been handed to the company on which I have not had a report. It will only be another day or two until I will be able to give you a report on these.

"Yesterday, at a meeting of the Group Chairmen, we asked Mr. Tyler to come down and discuss a few things of great importance to us at this time. I will now ask him to explain the things we discussed with him yesterday. Mr. Tyler."

[fol. 4427] Mr. Tyler: "Miss Todd, and members of the D.G.W.U., I am going to 'bore' you more or less with a little talk about a legal situation which I think affects you, and I am going to offer some advice which, in my opinion, you should take. In doing this I am thinking only of your interests. I do not think it will be unwelcome to the employer—but I don't care whether it is or not—because I am considering it from the viewpoint of your own interests and I want you to consider it yourselves in the light of your own interests, because that is really your first business to take care of yourselves and your own interests.

"I want to tell you the situation of the lawsuit that is now pending between the Donnelly Garment Company and the I.L.G.W.U. Of course, as you know, this suit was filed some two or three weeks ago. I had no notice of it until I read it in the paper and I made it my business to become familiar with the details of it.

"The Donnelly Garment Company has filed an injunction suit in the Federal Court in Kansas City against the I.L.G.W.U. and certain of its officers and members. This suit says the defendants (I.L.G.W.U., the C.I.O. and certain of their members) are doing and are threatening certain unlawful things to the damage of the company, and they ask the court to order these people to stop doing those things. If the court does stop them, it will be by an injunction. . . . This petition, of which I have a copy, says

that the I.L.G.W.U. and certain members of that Union, which it names, has carried on certain illegal acts and is threatening the employees of this plant that unless they abandon their plant Union and join the C.I.O. they will sooner or later lose their jobs and will be beaten up. It is making false statements as to the inhuman system of work in this factory which causes employees to faint and fall in the aisles and injuring their health from overwork. These [fol. 4428] reports are being spread about the country falsely for the purpose of injuring the company. It says the defendant has stated it will, and can, and is about to cause a strike in this plant, although it has no right to bargain in this plant. It has threatened violence and intimidation to the employees if they do not join their Union. It has threatened people who buy goods from the Donnelly Garment Company—it is carrying on secondary boycott which is against the law. We can say we won't buy any goods from (say Montgomery-Ward) if we don't want to —we have the right to do that, but we do not have a legal right to organize a gang and threaten 'Mr. Jones' if he buys there, and do damage to him and tell false tales about that company to prevent him from buying there. That is called secondary boycott and is against the law.

"The I.L.G.W.U. is doing and threatening these unlawful things, and the company asks that the Federal Court order them to cease and desist doing these things—they ask that these things be stopped by an injunction against them.

"The defendant says the Norris-LaGuardia act is involved in this case—that there is a labor dispute—and that the court cannot grant an injunction to the employer unless three things exist. First, if there is a labor dispute, then the employer must say he has tried to deal with the party he is asking the injunction against and cannot deal with them. Also, show that an opportunity has been given in court for the purpose of hearing testimony and cross-examination.

"They say in this case now pending that they can't have an injunction because there is a labor dispute between the C.I.O. and the Donnelly Garment Company—because there

have been no efforts made by the Donnelly Garment Company to negotiate with the I.L.G.W.U.

[fol. 4429] "The company, in answer, says: First, this is not a labor dispute. There is no dispute or quarrel between the Donnelly Garment Company and its employees. There is no labor dispute in this plant. This is an attempt by outsiders to injure the business of the Donnelly Garment Company by telling untruths about it; by violence and intimidation. That is not a labor dispute—that is an outsider attempting to injure the business of the company. The mere fact that it is a labor union that is charged with doing this does not exempt them. I do not think it is a labor dispute. I am not sure what the answer will be.

"The employer says also that they cannot negotiate with the C.I.O. and I believe they are right there. Under the Wagner Act, when one Union has a majority of the employees, that Union is the sole bargaining agency for all employees. There is no doubt this Union has a substantial majority; therefore, the employer has to deal with us under the law. If they started to deal with the C.I.O., it would be a violation of the law. Negotiations can be had only with the Union representing the majority in any plant. The court will decide that question sooner or later.

"It may be the court will say this injunction was brought too soon. It may say the company is entitled to an injunction if these things are true. Then efforts will be made to determine whether these things are true. The defendants have admitted these things— nevertheless they will be entitled to be heard in court.

"What is your interest in this lawsuit? I do not know to what extent they can damage the business of the Donnelly Garment Company. They are spreading false reports in a good many towns—what affect this will have on buyers I do not know, but at least there is a threat. I do [fol. 4430] not know to what extent they can damage the company. It will affect us in this way: If they can damage or ruin the business of the company you will be out of a job. If they are seriously damaging the company, wages will be reduced for you. If the company has to do a poorer business they will have to lay off employees or cut down wages. If the company is forced to negotiate with these

other people it concerns this Union. You have the right to ask and you can be protected if you think it is wise to do so.

"I have gone over the matter with the committee and told them I thought it would be wise for you, as a Union, to go into court and file an intervening petition. We would file a petition stating our rights and that we wanted to be protected against the same things the company is asking to be protected against. Further, we would ask that the C.I.O. be enjoined from endeavoring to break our contract between our Union and the employer. Also, we would ask that the employer be enjoined from making any negotiations with the I.L.G.W.U. We have this right under the law. They must deal with the Union having the majority. Therefore, if the employer is put under pressure to deal with the C.I.O. you have the right to ask the court to tell him not to do so. He is legally bound to deal only with you.

"After very careful study and consideration I believe it would be worth your while to file an intervening petition and ask the court to protect your interests in this lawsuit, and I believe you are entitled to do so. I believe your position would be strengthened, and incidentally the company's (but that is merely incidental) when both the company and the employees ask for this protection. It is my opinion that a little aggressiveness would pay you in the long run and would strengthen your position.

[fol. 4431] "This litigation will go ahead whether you file a petition or not. The court may say it was brought too soon and it will be dismissed. If it is the company can immediately file again. If you should decide to enter that litigation the court would at the same time consider your rights and make some sort of an order as to your rights. Otherwise, you would be left out of the question being considered and the court would consider only the company's rights.

"You would, of course, incur certain expenses if you decide to file an intervening petition. I cannot tell you how much that would be. I don't know whether there would be one brief and I would have to appear in court only once or whether it would take many weeks—it might even go to the Supreme Court. However, I can assure

you the fee would be fair and reasonable under the circumstances. If this Union should 'blow up' and I couldn't collect, no individual would be liable as an individual for any part of this expense. The Union would be expected to pay the expense of that litigation.

"The committee considered and recommended unanimously that we should file this intervening petition. They felt it was your Union and your business and it was important to all of you and that your sentiments should be taken.

"A thorough study of the Wagner Act convinces me that the dominating factor is the sentiment of the employees themselves. So long as you have a substantial majority of your members who really want to carry on bargaining with the employer you are going to be successful in this Union, and neither the C.I.O., the I.L.G.W.U. nor the Labor Board can prevent (I say this after most careful thought) you as long as you have a substantial majority who really want to support this Union and give it some thought and effort. The big point in the whole thing is that you yourselves can have what you want by [fol. 4432] a substantial majority but you have to give it some thought and time. If you want to do that you will be successful in your Union.

"After most careful consideration it is my opinion it would be to your benefit, and incidentally to the company's, to appear in court and, as a Union, file an intervening petition asking that your rights as a Union be considered in any decree the court makes. I want you to consider this, and I will now turn the meeting back to Miss Todd."

Rose Todd: "I know a good many of you have been wondering what was going to become of this suit. That was one thing that prompted us to have a meeting of the committee and ask Mr. Tyler to discuss this with us. A number of employees have asked me, 'why can't we do something?' So yesterday at this meeting Mr. Tyler discussed this very thoroughly with us—we had had some discussion among ourselves previous to that time. The committee unanimously approved taking this action. Mr. Tyler has explained it to you just as he explained it to

us. I hope you have given it careful thought because we have a legal case and it seems that we should do something about it and take advantage of it. I am going to ask that someone make a motion that we file an intervening petition.

(Motion made by Ethel Reigel "that we do file an intervening petition." Seconded by Marie Cahill.)

All in favor make it known by saying 'I'. (Unanimous).

"If anyone wants to say 'No', say it now. We consider this a matter of vital importance to us, and I want to know we are unanimous in it or how many 'No's' we have. The motion has been made, seconded and carried unanimously.

"Does anyone have any business to bring up before this meeting? Does anyone want to ask any questions? If so, [fol. 4433] Mr. Tyler will be glad to answer them. Don't feel one bit timid about asking questions. Be sure to ask them—don't go away wishing you had asked some of these questions. It might be a question that would be of great interest to the rest of us. If you don't think of them now, you are free to ask them any time."

Question: "Will we all have to go into court?"

Mr. Tyler: "I think that is a very good question. Nobody will have to go to court in the beginning. The first thing to be determined is whether this suit is properly brought. If it is properly brought the court will hear the testimony. The company can ask any individual and have the court order any individual brought into court to testify. Probably two or three dozen will be asked. Maybe we, as a Union, will want certain members to testify. Any party to a lawsuit has the privilege of having witnesses brought into court to testify. You need not be the slightest bit uneasy about that. Just tell the truth and you will be fully protected in your rights. It will probably be several months before anyone will have to testify in court. You have probably noticed that the company has asked for damages from the C.I.O. They are not incorporated . . . and I wouldn't give very much for their chances of collecting."

Rose Todd: "Any other questions? I thought you might be wondering about the question of finances. I don't think we need be greatly concerned about the expense. The small amount this would cost would be nothing in comparison with what it would cost if a strike was called here and we were out of work for two or three weeks."

Question: "Who can call a strike besides members of this Union?"

Rose Todd: "If they can get enough C.I.O. people here they can call a strike.

[fol. 4434] "Any other questions? In the meantime, I want to tell you that about one-third of the space in this room has been taken up by lockers, so will you people in the front please keep your seats until the people in the back rows have left. It won't take but a few minutes—it just takes about twelve minutes to empty this room.

"Does anyone have any further business that should be brought up at this meeting?"

Wilma Kile: "May we have meetings on company property?"

Rose Todd: "Mr. Tyler advises there is no objection to our having meetings here unless we feel we are dominated by the employer. This, however, is not company property—the Donnelly Garment Company have only a lease on this building.

"If there is nothing else, the meeting will stand adjourned."

Meeting adjourned.

7/21/37
MG

[fol. 4435] Meeting Donnelly Garment Workers Union
Thursday, Nov. 18, 1937.

Rose Todd: "Will you people who are standing please come down here and sit down? You can get out just as easily on the 19th street side. We are going to make this meeting as short as we can, but we want to get as many

people seated as possible. Won't some of you please come around on this side—we still have room for about 50 people over here.

"I have a few things to say and two or three others have a few things to say. We will make this meeting as short as possible.

"I think you know that several months ago we appointed an Auditing Committee and that committee was comprised of Bertha Estes, Chairman, Flora Brown and Heath Cowan. These three people were to audit the treasurer's books twice a year. I thought you would be interested to know that we came out twenty-five cents to the good. I thought we did well to collect those three months' dues the way we did and come out twenty-five cents over.

"I want to thank each one of you for the help you have given us the last few months, and I still want you to bear in mind if you have any information that you think would be of any value, please tell me or any one of the committee. Sometimes it may not seem to you to be of importance but it is of importance when we get down to facts, so please keep that in mind, and I certainly do appreciate the help you have been.

"There is one other thing I want Hobart Atherton to talk to you about. We discussed this at our meeting of the chairmen on Tuesday of this week. Mr. Atherton."

Hobart Atherton: "We had a meeting of the chairmen of the D.G.W.U. the other day and it was unanimously [fol. 4436] decided that we should have a regular meeting once a month. We had a discussion as to the night to have that meeting. I know most of your social engagements come the latter part of the week, so how about the first Tuesday of each month for a regular meeting night? The meeting to be held at five o'clock. All in favor make it known by saying 'I'. (Unanimous).'

Any objections?"

Question: "Why five o'clock?"

Hobart Atherton: "Would you rather come back at eight o'clock? The reason we have to have it at five o'clock is because the people who are in the office are not

through until five o'clock, and a great many throughout the plant are not through until four-thirty and four forty-five—the cutters are not through until five o'clock. So if five o'clock is agreeable to all of you, we will have our meetings the first Tuesday in each month at five o'clock. It seems to be agreeable, so that is when we will have it."

Rose Todd: "I want to add a little bit to that—a day or two in advance I will post a notice reminding you of our meeting. I want you to make an effort to stay for these meetings. We will have them regularly and they will not be as long as our meetings usually are. That is a little personal responsibility of each member of this Union. I find if we don't do these things the first part of the week we don't get them done. These meetings will be comparatively short.

"I talked to the committee and we discussed it quite a lot—knowing that all of you were interested in the trial and a number of you didn't have time to read the papers or maybe didn't get a lot out of them, we decided to ask Mr. Tyler to talk to us and tell us what happened at this trial.

"Before I ask him to do that I want to read a letter [fol. 4437] which was sent to one of our friends here in Kansas City from a Jewish friend in New York. This letter was written in Jewish and was translated and brought to me. I thought you would be interested in hearing it because it gives you a good example of working conditions in New York according to hours and the work they have during the year." (Reads letter).

Dear Friend Feldman:—I wish to say that we are all well and hope you and your family are also, well. My dear friend Feldman, the conditions in New York are just terrible. You cannot imagine how bad it is here especially when you are out of a job, and the season was so poor that even those people that had jobs were working only a few weeks. I hoped that I would get a little work during the season but I could not find anything. And the reason for it was that Weinstein, my boss, took sick and spent 12 weeks in the hospital, and now his factory is closed altogether.

If you could do something for me in the way of finding a job for me in Kansas City, I would never forget it all my life because my suffering is beyond description. Please, dear friend, do me this favor, because my family must eat even if I starve.

Your friend,

(Signed) A. GORDON,
1775 Walton Ave.
(Presser, Local 35) Bronx, New York City, N. Y.

Rose Todd: "I will now ask Mr. Tyler to talk to you. Mr. Tyler."

Mr. Tyler: "Miss Todd, and members of the Donnelly Garment Workers Union, I am going to make this very brief. I feel, however, as your attorney and as your employee, I really should report to you on what was done in accordance with your instructions delivered at a meeting held some three or four months ago.

"You will recall you authorized your attorney to file an intervening petition in the suit brought by the Donnelly Garment Company against the I.L.G.W.U. and a number of individuals. In accordance with that authority, my firm filed that intervening petition on your behalf, in which we asked for you that the I.L.G.W.U. be permanently enjoined from acts of violence on any member of this com-
[fol. 4438] pany or any one of these employees; that they be permanently enjoined from boycotting the products of this company because if those products are seriously boycotted the effect will be that some of you will lose your jobs or have your wages lessened. So we asserted we had a right in the protection of the business of this company; also in the protection of our own individual liberty in going to and from work.

"We also asked that the Donnelly Garment Company, our employer, be enjoined from dealing with the I.L.G.W. U. because we had a contract with them ourselves and if they undertook to negotiate with the I. L. G. W. U. they would be violating their contract duty with us. In both of those things I think we are fully justified.

"The trial lasted a week. In your brief we set up that if the Court should hold that the Norris-LaGuardia Act prevented us from having an injunction at this time, then the Norris-LaGuardia Act was unconstitutional, and I believe that to be the law. By reason of that issue injected into the case, it became necessary for a three judge court to hear the case. Judge VanValkenburgh, Judge Reeves and Judge Otis sat in hearing the case. The trial lasted a week, during which time two attorneys representing you attended and presented evidence by way of affidavits, some of which came from you people, and argued the case in your behalf.

"The court took the matter under consideration and I imagine it will be some 30, 60 or 90 days before a decision is handed down. No doubt whichever side loses will appeal it. Ordinarily, an appeal from a three judge court goes directly to the United States Supreme Court. It is possible there will be another trial here—in that case the testimony will be oral and the case will last three or four weeks. It is more likely that the loser will appeal directly to the Supreme Court.

[fol. 4439] "We presented your side of this case just as fully as we could. We did our best with it. We briefed and are still briefing the law and will present to the court a full brief of the law. We gathered the evidence that was available and saw to it that it was a part of the record.

"Toward the end of the case there had been all week repeated suggestions that the I.L.G.W.U. had greatly improved the conditions of employees of firms who had become members of that association, and hence it would be a wonderful thing for us, but we were just to 'plain dumb' to see it.

"At the end of the defendant's case, in which that statement had been made many times, the employers of five firms of this city whose employees have been unionized by the I.L.G.W.U. were subpoenaed to bring their books into court and present them to the court and they came, most of them unwilling, but a court order has the force of bringing them and their books in against their will. They came into court and brought their books showing the wages they were paying after they had been unionized by the

I.L.G.W.U., and these figures they were paying have become, under oath and with the original books presented, a part of the records.

"I am going to read some of those figures to you. I cannot attempt to read all of them—I cannot attempt to analyze all of them at this time, but I can take a sample page from one firm and read the wages paid the week before the case was tried, about Oct. 9th. I think you have a right to have these figures placed before you. I am going to read right down the line of a sample page. It is a fair representation of all the books, in my opinion. We have not picked out some page that looks lower than others. We have just taken a sample page here and there and gone down the weekly payroll in those firms in Kansas City. I [fol. 4440] don't do this with any feeling of glorification or with any feeling of crowing over anyone else. I feel genuinely sorry for these people, but I think it is due you to know what the results have been in the places that have been unionized by the I.L.G.W.U. in Kansas City. You can draw whatever conclusions you wish, but at least those figures were brought out from the books themselves and you have the right to know it. I am not telling you what firms they are. If you doubt the authenticity of them I can show you the photographic pictures of the pages of the books. The books have gone back to the company that presented them. These figures, under sworn testimony in court, run about like this:

"Here is one set. I will read typical wages received by one firm the week of May 5, 1937. Remember, the attorneys for both sides were watching this book so nobody can slip anything over—the attorneys from all sides were watching while these were read. These are the week's wages for finishers in that particular plant. They are not giving the number of hours—in some of these only a few hours were worked that week. This is the payroll for that week:

$ 5.40	$16.00	$11.94
3.30	2.25	14.00
11.15	14.00	13.25
12.60	7.71	11.25
10.54	10.49	11.38

That is for the week ending May 5, 1937.

"Here are the operators in that company which has been unionized by the I.L.G.W.U. for the week's work ending May 19th:

$ 8.51	$ 6.76	$ 8.56
5.25	8.09	7.54
2.28	2.22	13.05
5.86	7.74	9.82
4.51	7.21	7.96

"Here are the figures concerning the cutters. I will have to read a little testimony on this.

[fol. 4441] (Quoting from testimony)

These two are for 55 hours.

Question: Do they work 55 hours a week? Answer: No, that is overtime.

Question: For 55 hours work that cutter got $43.31? Another man worked 57 hours that week and he got $44.89? Answer: That is right.

Question: And you are the concern that ostensibly has a 35 hour contract with the I.L.G.W.U.? Answer 'Yes' or 'No'. Answer: Yes.

"Here are some further figures from another company—for operators who were organized by the I.L.G.W.U. I will read these right down the page:

$ 9.00	$14.18	$10.72
9.17	12.26	12.21
8.24	6.43	18.25
6.95	10.31	

Question: This is the highest on the page? Answer: Yes.

Reading further:

$10.21	$10.43	$ 8.14
13.54	12.34	8.55
10.70	7.44	17.11
2.88		

Question: That is the second highest on the page?

Reading further:

$10.80	$10.41	$10.71
11.22	10.10	9.51

The rest are in line.

"Then still another company which was organized by the I.L.G.W.U. One of these weeks is the week just before the case was tried—the ink was hardly dry. The weekly pay of operators reading right down the page:

$10.69	$10.21	$11.12
14.68	13.00	9.99
10.82	17.00	11.31
12.12	17.80	12.12
14.96	10.40	10.10
10.10	13.44	

"I don't read this with any feeling of crowing over anyone. I tell you truthfully I feel a sense of unhappiness in reading these figures. I had believed all the time that the [fol. 4442] Union activities of the I.L.G.W.U. could not bring about the results that they claimed they would bring about. I had believed that the people who were herded into that Union, against the will of the majority of them, would find that they had gained nothing and lost the amount of the dues they had to pay and lost a far more valuable thing, their independence of action, and the right to do as they please without dictation from outside sources, but I was actually thunderstruck when these figures from the books themselves were placed on the stand. They may mean a different thing to you than they do to me, but I believe this evidence, given under oath, should be read to you.

"You have been, it seems to me, successful. You have avoided disorder and violence such as was shown in the pictures at the trial. You have avoided that almost entirely in this plant. You have continued your employment and, it seems to me, in a profitable way. You have asserted your own independence and have maintained it.

"I want to say to you, the battle is not over—I don't know what turn it will take but I don't want you to go away and forget about it. If this Union is of value to you, give it your active support. This thing is not over and no

victory and advantage is maintained by people who sleep on their rights. I am not going to tell you what you should do about the Union—the one valuable thing beyond all others is your own actual independence. If you believe in your Union and if you do want to control your own destiny about these things, then give it your whole support. But if I am mistaken—if you do not feel that way, follow your own wishes. Don't let me dictate to you, don't let Miss Todd dictate to you, don't let your employer dictate to you—but think it out for yourself. If I can be of help by answering any questions, I will be glad to do so. But I [fol. 4443] urge you and appeal to you to make up your own mind by following your own independent reasoning without relying on me, Miss Todd, your employer or the I.L.G.W.U. and put that in force by your own loyal support.

"If there is anything I can do for you in the matter of legal suggestions—I consider you very good clients—write me a letter or come down to see me and I will try to explain anything I can. My services, such as they are, are wholly at your disposal. Thank you."

Rose Todd: "Does anyone have any questions you want to ask? If so, now is a real good time to get them answered. Is there any business any of you feel we should take up at this meeting? I don't want to dismiss you if there is anything we should bring up at this meeting.

"We want to remember that the first Tuesday in December will be our regular meeting of the Union. If there are any problems in the meantime on which I can be of help to you, I certainly want to do it. If I am not handling things the way you want, then I want to be told. Don't hesitate to take anything up with me individually, the group chairmen or your employers.

"I will ask you once more—do you have any questions to bring up at this meeting? If not, the meeting will stand adjourned. Thank you."

Meeting adjourned.

11/18/37
MG

[fol. 4444] Meeting Donnelly Garment Workers Union
Tuesday, Dec. 7, 1937—5:00 P. M.

Rose Todd: "I think you will all be real proud of this loud speaker when I tell you that the one we have been using at our meetings cost us $15.00 each time we rented it. This is one that has belonged to us for some time but we have just recently had it fixed so it will work.

"I think we can really begin our meeting now—there may be a few people coming in from time to time.

"I would like to bring to your attention at this time that if you have any grievances, please be sure to let us know about them. When you are dissatisfied about your problems come directly to me, any one of the committee or to your employer. We are just human beings and we can't all be happy all of the time. But, after all, we do have to make this thing apply to 1152 people, and we want to make any necessary adjustments satisfactory to you.

"We could have joined the C.I.O.—we can still join. It would cost us thirty-five cents per week dues—and incidentally they fine you every time you do not attend a meeting. Twice a year the girls pay $1.00 to renew their union cards. It costs us twenty-five cents per month to operate our Union, and I know we are smart enough because of the results we have obtained from our own Union. There is not a one of you in this room that doesn't have a guarantee that is higher than the C. I. O. Mrs. Reed could have signed up with the C.I.O. and gotten anything she wanted. We have all worked hard—that is the only reason [fol. 4445] we have accomplished what we have tried to do with our Union. We have a better contract than anyone in town. (Applause)

"The Chairmen of this Union are simply your agents—If you feel like we are not handling the work the way it should be handled, come and tell us. We don't know how to work these things out unless they are brought to our attention. Some of these criticisms are not just. Sometimes they are thoughtless and sometimes they are not. I know that as happy and as much as we have gotten out of our Union we want to keep it rolling along in a nice clean way. (Applause) We want everyone of you to have what is

coming to you as nearly as we can. We will make every reasonable effort. So my theory is—and I am perfectly sincere—let's ask for the things that are reasonable and then work toward that end and we will get them. Don't ask for a lot of things that are unreasonable. Another thing, I think all of you realize from time to time we just have to work together on this. Please bear that in mind.

"I am going to ask Fred Brown to read our financial statement to you. Mr. Brown."

(Fred Brown reads financial statement.)

Rose Todd: "I want to read you a letter from the firm of Gossett, Ellis, Dietrich & Tyler—you should know what that means. This letter is addressed to me.

(Reads Letter.)

"I think I had better make a little explanation here. I will make it before instead of afterwards. From time to time a number of people have asked me what I thought our bill from Mr. Tyler would be, and I said that I didn't have any idea. When we got into this and got into court, I began to realize how much work and time it was taking, so I thought if we got a bill for $3500.00 or $4000.00 we needn't be surprised. When you think it over from this angle—[fol. 4446] there are 1152 people employed here—1141 are members of this Union. The only people who are not members of this Union are employed temporarily or have not been put on the permanent payroll, so scattered over a year's time, it is a small item compared to the number of people.

(Reads statement)

"As Fred told you, we have paid $1500.00 of this amount. This is our reply to Mr. Tyler, which is short.

(Reads letter)

"As you noticed, the letter signed by Mr. Tyler stated we could take care of this as we are in a position to do so.

"I want anyone who has any questions to ask about this to feel perfectly free to do so—don't go away from here and make a lot of thoughtless remarks. If you feel this isn't fair (I don't know what we can do about it) but at

least you should express yourself. I feel, considering the amount of work that has been done, that it really is a nominal fee to pay for what we are getting out of it.

"I want to tell you I have a book here—I only have four copies. It is a printed copy of our brief prepared by Mr. Tyler's firm for our case. Any of you may borrow it. I only have four copies because Mr. Tyler just had a limited number run off as they were rather expensive to print. Any of you that care to may read these books. In a way it is rather dry reading for most of you, but it is interesting to us as members of our Union. It is the exact thing that was given to the Federal Judges in our case. Mr. Tyler told me that in all probability it would be after the first of the year before a decision is rendered in our case.

"I want you to ask any questions you want to. If you have any questions to ask, please don't hesitate to ask them.

"I will ask Mr. Atherton to read a letter to you which [fol. 4447] was received from one of our customers. I think it is real cute and I think you will enjoy it. About two or three weeks ago Miss Stuart showed it to me and I told her at that time that the next time we had a meeting I wanted to read it to you. Shortly after lunch I found out that Mr. Keyes had had some copies made and sent down to Mr. Baty. When I asked Mr. Baty about it he said that he had sent it through the factory. I've been planning to read this letter to you for three weeks and he beats me to it, but I do not think a great many of you have had an opportunity to see it as yet. I will ask Mr. Atherton to read it to you. Mr. Atherton."

(Mr. Atherton reads letter)

Rose Todd: "I think that is a pretty nice letter, but if it were not for the individual help of each of you it would not be possible.

"I thought you would be interested to know this—The Globe Knitting Mills had the same problem to face that we did. They did the same thing we are doing and they won their argument.

"I want you to feel perfectly free to ask any questions. This is your meeting—just because I am doing most of the talking doesn't make it my meeting—it is our meeting."

Stella Willis: "If we don't have enough money in the treasury to pay Mr. Tyler, couldn't we put it to a vote and each one donate fifty cents to take care of it?"

Rose Todd: "I don't think that will be necessary, Stella. [4448] We can pay it at our convenience. When you figure about 1200 employees at twenty-five cents per month, our annual income will be about $3600.00. We may even have some more expense—whoever loses the case will appeal it to the Supreme Court and there will be more expense. Several times when I have been down at Mr. Tyler's office his table was stacked high with books, and all of that material had to be read and decided what pertained to our difficulty and put into our brief. They are not concerned about our not paying our bill. However, before long we will be having another party. Our parties certainly have been a success and we will be able to make a little money in that way. We don't need to worry about it—we will make our expenses.

"Does anyone have any comments to make? It is about 5:30, so if there is nothing else, the meeting will stand adjourned. Thank you."

Meeting adjourned.

12/7/37
MG

[fol. 4450] Meeting Donnelly Garment Workers Union
Tuesday, Jan. 4, 1938—5:00 P. M.

Meeting opened by Mamie Riddle, Vice-Chairman. (Miss Todd away on her vacation)

Mamie Riddle: "If the meeting will come to order now, Marjorie Green, our secretary, will review the minutes of the last meeting.

(Minutes of last meeting reviewed)

"I will ask Mr. Atherton to speak to you now. Mr. Atherton."

Hobart Atherton: "At our last meeting it was announced that we would send a donation to the Mayor's Christmas Tree association. I have a letter from Mayor Smith, addressed to Marjorie Green, our secretary, thanking us for this donation, which I will read to you.

(Reads letter from Mayor Smith)

"We also have a letter from our General Chairman, Miss Todd, who is vacationing in California, which I will read to you.

(Reads letter from Miss Todd)

"You all know, of course, of the nice turkeys we received the day before Christmas. I would like to have an expression from you on what you think about authorizing our secretary to send a note of thanks to Mrs. Reed for this lovely gift. Will someone make a motion?"

(Motion made by Ola Jewett that we authorize our secretary to send a note of thanks to Mrs. Reed expressing our appreciation for the lovely turkeys we received. Seconded by Violet Bennett.)

All in favor make it known by saying 'I'. (Unanimous)

"I don't believe there is a lot of new business to take up today—not that the chairmen know of at any rate. If any of you members know of anything that should come up at this meeting, don't be backward

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[fol. 4463] Meeting Donnelly Garment Workers Union, Tuesday, March 8, 1938—5:00 P. M.

Rose Todd: "I think this is a grand crowd we have this evening and I hope we can do it every time.

"We have approximately 125 to 150 new members in our Union so let's give them a glad hand. (Applause)

"During the meeting we are going to read our by-laws for the benefit of all of us. I get a little 'rusty' on them as I know some of you older members do and, of course, our new members haven't heard them. I am going to ask

Jack McConaughey to read the by-laws of the Donnelly Garment Workers Union to you."

(Jack McConaughey reads by-laws)

Rose Todd: "I am going to ask Hobart Atherton to read our working agreement a little later in the meeting. First, I want to ask you a few questions.

"It is about time to make out new Union cards for the coming year and I would like to know if you approve of our card as it stands. The only thing we would need to do is to eliminate the names of the months from around the edge of the cards, as it is not necessary to have this the way we are now handling the collection of our dues. If our card is satisfactory (with the one change) as it stands, please make it known by saying 'I'. Opposed 'No'. (Accepted unanimously).

"I thought those of you who are interested in ice skating would be interested to know that we made about $10.00 over and above our expenses at our party last Tuesday night. We might bear this in mind—it is a little previous—but next fall we might plan to have these parties once or twice a month.

[fol. 4464] "I would like to read you a letter which we received from Gossett, Ellis, Dietrich and Tyler dated Feb. 25th. No doubt you read in last night's paper that our case comes up in the Supreme Court during the first two weeks in April.

(Reads letter from Gossett, Ellis, Dietrich and Tyler, signed by Mr. Tyler)

"That brings to my mind, and we took it up at our chairmen meeting last Friday, that we still owe Gossett, Ellis, Dietrich and Tyler $1200.00, and with the amount of expense we have had this past year and possibly will have more (not a heavy expense but a little more in the next two or three months) I feel we should give it some consideration, and I would like to hear some expression from a number of you on what you think we should do about it. I would like to hear from not just one or two of you but from a number of you. We have paid more than half of our bill to Mr. Tyler but it will soon be time to elect officers for the coming year and I would like to get

this bill cleaned up before we elect new officers. We have done a great deal of work on this and we are still just as interested as we ever were. I would like to hear some discussion from several of you. Let's make up our mind to do something at this meeting."

Hazel Saucke: "How many members do we have in our union at the present time?"

Rose Todd: "We have approximately 1325 to 1335 members at the present time. We have about 1350 employees—some of these people are employed temporarily and do not belong to the Union."

Hazel Saucke: "It seems to me that the quickest way and the least amount of work would be for each one to donate $1.00."

Nell Prine: "I was going to suggest the same thing."

Eva Lieberman: "I was also going to suggest this."

Rose Todd: "I have given this considerable thought—we all feel a personal responsibility for this and we [fol. 4465] would like to keep our expense as nominal to each individual as we possibly can. I have also given a great deal of consideration to our new employees as to whether we should ask them to pay the same amount, and I am sure they will agree with us that if they had gotten work anywhere else they would not have had a $16.50 per week guarantee, or perhaps would not have gotten work at all. I want you to feel perfectly free to discuss this and raise any objections or make any suggestions you wish. We want to make this an open discussion.

"I have this suggestion, if we vote to do this, that we pay one-half of this amount this week and one-half the first week in April. I would like to see us get this bill cleaned up while the old officers are still in office."

Agnes Lennon: "I would like to say for the new members that I feel sure everyone would be glad to help with this."

Helen Little: "I think most of the employees realize that if they belonged to the C. I. O. or the A. F. L. they would be assessed quite a little bit more. I think the

minimum is $1.25 per month, and I think everyone would be willing to help out and donate $1.00."

"If there is no further comment I would like to ask for a motion that each member donate $1.00 toward paying our indebtedness to Gossett, Ellis, Dietrich and Tyler, fifty cents to be paid this week and fifty cents the first week in April. Will someone make a motion to this effect?"

(Motion made by Helen Little that each member donate $1.00 toward paying our indebtedness to Gossett, Ellis, Dietrich and Tyler, fifty cents to be paid this week and fifty cents the first week in April. Seconded by Agnes Lennon.)

[fol. 4466] Rose Todd: "It has been moved and seconded that each member donate $1.00 toward paying our indebtedness to Gossett, Ellis, Dietrich and Tyler. All in favor, make it known by saying 'I'. Opposed 'No'. (Accepted unanimously).

"I will tell you while we are all together how we will handle the payment of this. If you have any objections, make any suggestions you care to make. I would suggest that we appoint one person in each department, and I will appoint that person myself and will send out an I. D. M. with instructions on how to collect this money. This is my idea as to what to put on that I. D. M.:

"The name of the person who is to collect the money, and have that person list the names of each person in the department. When this is turned in, put the money in an envelope and return it to me between 11:00 and 12:45 on the 7th floor, or between 4:00 and 5:00 on the 10th floor, with the name of each member paid or unpaid, your name and section number, with the money.

"I just make this as a suggestion, and if any of you have any suggestions, please make them."

May Crume: "May we pay it all at one time?

Rose Todd: "You may pay this money all at one time if you wish.

"I want to thank you personally for handling this matter in this way. It is a load off my mind—I felt like it was a personal responsibility.

"I was going to ask if we wanted to continue having our meetings at 5:00 o'clock. At our last meeting we didn't have a very good crowd, but tonight we have a grand crowd. If you would rather, we could have our meetings at some other time in the evening."

May Crume: "I think it is better to have these meetings while we are all here."

[fol. 4467] Stella Willis: "Would it be possible to have our meetings at 4:30?"

Rose Todd: "We just can not have our meetings at that time because many of our members work until five o'clock.

"Another thing I want to mention—our by-laws state that our election of officers is to be the 4th Tuesday in April so we will have to postpone our meeting for April until the 4th Tuesday in April. I will send out a notice reminding you of this and will also send out a notice that we will not have our meeting on the first Tuesday in April.

"I am going to ask Hobart Atherton to read our working agreement to you. I was going to try to read our wage agreement or at least the part of it that concerned the most of our new members, but as this has been a long meeting we will not take the time. Any time any of you older members or any of the new members would like to know in detail about our wage scale, come to my desk on the 7th floor and you may read this wage scale and I will be glad to explain it to you. I do think it is worth while to take enough time to read our working agreement. Mr. Atherton."

(Mr. Atherton reads working agreement)

Rose Todd: "I want to make an announcement. Anna Moore, who has been in the hospital for about three weeks, wishes to express her thanks to you for the flowers and cards which you have sent her and for calling on her, so I have volunteered to extend her thanks to you.

"Do not forget our dance March 25th. This date is definite now and there will be no more changes. We will get the tickets out on Thursday of this week. I thought you would be interested to know we have already sold quite a number of tickets to the salesmen. They are always very generous and they have been particularly so [fol. 4468] this time. I know we will give this dance the same loyal support we always give affairs of this kind.

"I want to thank each of you individually for attending this meeting tonight—it does me good to see so many of you here.

"If there is no further business the meeting will stand adjourned."

Meeting adjourned.

3/8/38
MG

[fol. 4469] Meeting of Donnelly Garment Workers Union
Tuesday, April 5, 1938—5:00 P. M.

Rose Todd: "A number of people had to work until five o'clock today so our meeting is a little late in starting. We have a number of things to take care of, so please don't be impatient.

"I am going to ask Fred Brown to read our financial report to you. This report itemizes the different things for which we have been spending our money. Mr. Brown."

Fred Brown: "This report lists every item from November 1st to date." (Reads financial report)

Rose Todd: "I want to remind everyone again—from time to time we hear a few complaints here and there (and I am sorry to say when they come to me they are from the people who are earning the most money), 'what are we doing with our money?'—'what are we spending our money for?' I hope you have listened to this report with all fairness. We are trying to operate this Union to the best of our ability and we are all interested in it. It does seem like quite a lot of expense but if you stop to think if you would divide this expense by 1300 employees, I think you will agree it is very nominal.

"Mr. Atherton wishes to make an announcement regarding the trial and has a few remarks to make. Mr. Atherton."

Hobart Atherton: "We have received a letter from Mr. Tyler, who is our attorney, stating that our case will be heard before the Supreme Court on April 25th. A good many of you were under the impression that our case would be heard the first two weeks in April, but it has been postponed until April 25th. There will undoubtedly be some additional expense to the Union, but as Miss Todd has said if we would divide this expense by the membership [fol. 4470] in this Union I am sure you will be agreeably surprised by the per capita cost.

"Miss Todd has said that the complaints which we have had so far seem to be coming from the people who are making the most money. If that is true I think they should give these matters a little more thought. If we had belonged to the C.I.O., which could possibly have happened, our average wage would have been about $13.00, and out of that we would have been paying to the union about $5.00 per month. So far we have been assessed about $1.50, in addition to our regular dues of 25 cents per month. If anyone can complain about that I do not think they have very good grounds. I was going to say if it cost us $50.00 it would be worth it to work for the Donnelly Garment Company and not the C.I.O." (Applause)

Rose Todd: "I want to add a word to that. I think we lose sight of the fact sometimes that if Mrs. Reed had wanted to sign up with the C.I.O. it would have been a very simple matter. Other employers around town have done it. I think we know what it means to us to organize our own Employees' Union and handle this ourselves. We are getting a much better guarantee than any other organization in Kansas City. I do not think these remarks are malicious—they are just thoughtless, but by the time they get around to a dozen people or so you wouldn't recognize your own remark.

"One thing of importance we want to do at this meeting is to bring before you several plans as to how to elect our officers at our meeting April 26th, and while we are all here we should decide in what manner we will do that.

[It] any of you have any suggestions on how we should handle this, please feel free to give them to us.

"I am going to take the privilege of telling you two or three ways we could do it. I discussed this with Mr. Tyler [fol. 4471] to be sure we were handling it properly and he made several suggestions. I am going to give you the three plans which we thought were the best. After that I would like to hear expressions from you.

"We could handle this in a regular election ballot way. That presents some difficulties and I will name a few of them. If we have ballots printed, naturally we would want to know we had gotten every ballot back from the printers. The problem of handling them out to this many people and getting them all back and not getting some back that didn't belong, to me, does present a little difficulty.

"We could have an open meeting like we have had in the past, except as our organization has grown and we know more about it; I do not think it would be fair unless we counted everyone's vote. There are about 750 people here this evening, but surely at our next meeting we will have a full turn-out.

"Another way we could handle it would be to elect two nominating committees and let those committees, between now and the last Tuesday in April, each prepare a ballot of our own members who have been employed here over a year (our by-laws state that officers of our Union must be employed here at least one year), and at our meeting the third Tuesday in April these ballots, prepared by each nominating committee, could be presented to us as a whole. This would give us a very fair choice of two separate tickets.

"I would like to hear some expression from several of you as to how you think best to handle this. I really would like some expression on which you think is best. I know you have an idea which is right, which is wrong and which is best for us, so please do not hesitate to make some comment on whether you would like to hold a regular election, whether you would like to elect two nominating committees [fol. 4472] or whether you would prefer to have an open election."

Ruby Kennedy: "I would like to leave the officers just as they are."

Rose Todd: "That is very nice. I think we would be wise to retain a few of the old members who know something about the work, but I think we need some new blood. There are so many capable people here and I think it would be smart to make some changes. You do not have to agree with me—that is quite all right."

Violet Bennett: "Why must we have two nominating committees?"

Rose Todd: "I just suggested this because it gives us more of a choice. The last time, when we organized our Union, we just had one nominating committee, but we didn't know as much about organizing, etc., then as we do now. With this many people I think it is much fairer to have two committees instead of one."

Iris Kallowich: "What about each department electing its own representatives?"

Rose Todd: "That part has been taken care of in our by-laws, which state that we shall have nine chairmen, unless we vote to change it, and one person from each department would form a committee of approximately 70 people."

Clarice Martin: "I think that two nominating committees of four or five people would be able to know the members personally and make a very good selection."

Rose Todd: "We will put it to a vote—I believe that is the best thing to do. But first we must make it as a motion. May I hear a motion to the effect that we appoint two nominating committees, who will, between now and the last Tuesday in April, prepare separate tickets to be presented to the members of our Union as a whole at our meeting on April 26th?"

[fol. 4473] (Motion made by Ellen Nokes that we appoint two nominating committees, who will, between now and the last Tuesday in April, prepare separate tickets to be presented to the members of our Union as a whole at our meeting on April 26th. Seconded by Jo Chapman.)

All in favor of electing two nominating committees today who will prepare two separate tickets covering our officers for the coming year, to be presented to the members of our Union as a whole for our vote at our meeting the last Tuesday in April, make it known by saying 'I'. Opposed 'No'. (Carried unanimously)

"We will have to take time enough to elect these people. Remember, we have to elect two committees and I would suggest that these committees consist of five members each. That will give us a better representation than three, and it doesn't seem necessary that we need eight.

"May I hear a motion to the effect that we elect two committees of five members each?"

(Motion made by Fred Ellis that we elect two committees of five members each. Seconded by Kenneth Peck.)

"All in favor of electing two committees of five members each, please make it known by saying 'I'. Opposed 'No'. (Carried unanimously)

"The next thing we have to do is to nominate these ten people."

Fred Ellis: "I nominate Kenneth Peck." Seconded by Louise Broker.

Jessie Mudd: "I nominate Ruby Lago." Seconded by Ellen Nokes.

Louise Broker: "I nominate Mildred Maddox." Seconded by Hazel Saucke.

Nell Biggs: "I nominate Elsie Wright." Seconded by Rose Hendricks.

Jessie Kelley: "I nominate Bessie Gilliland." Seconded by Hilda Richmond.

Clarice Martin: "I nominate Margaret Ducolumbier." Seconded by Veda Hoyland.

Mary Sprofera: "I nominate Leslie Ward." Seconded by Ula Crawford.

[fol. 4474] Mary Sites: "I nominate Daisy Kilby." Seconded by Louise Broker.

Edna Rawlings: "I nominate Winnie Underwood." Seconded by Mary Sprofera.

Anna Reece: "I nominate Ollie Cooney." Seconded by Jack McConaughey.

Rose Todd: "We have elected ten people. I am sorry we cannot have everybody but we only need ten people to make up these committees. I will ask these ten people to come forward so everyone may see who they are, and we will vote on each one.

(Introduction of the ten people elected to make up the two committees. Leslie Ward not present.)

"We will now vote on these people.

"All in favor of Margaret Ducolumbier, make it known by saying 'I'. Opposed 'No'. (Unanimous)

"All in favor of Daisy Kilby, make it known by saying 'I'. Opposed 'No'. (Unanimous)

"All in favor of Winnie Underwood, make it known by saying 'I'. Opposed 'No'. (Unanimous)

"All in favor of Elsie Wright, make it known by saying 'I'. Opposed 'No'. (Unanimous)

"All in favor of Bessie Gilliland, make it known by saying 'I'. Opposed 'No'. (Unanimous)

"All in favor of Leslie Ward, make it known by saying 'I'. Opposed 'No'. (Unanimous)

"All in favor of Ollie Cooney, make it known by saying 'I'. Opposed 'No'. (Unanimous)

"All in favor of Mildred Maddox, make it known by saying 'I'. Opposed 'No'. (Unanimous)

"All in favor of Ruby Lago, make it known by saying 'I'. Opposed 'No'. (Unanimous)

"All in favor of Kenneth Peck, make it known by saying 'I'. Opposed 'No'. (Unanimous)

[fol. 4475] "I am going to ask Margaret Ducolumbier to act as chairman of the group consisting of Daisy Kilby, Winnie Underwood, Elsie Wright and Bessie Gilliland. I

will ask Leslie Ward to act as chairman of the group consisting of Ollie Cooney, Mildred Maddox, Ruby Lago and Kenneth Peck.

"Is there any other business to come before this meeting? If not, the meeting will stand adjourned. Thank you."

Meeting adjourned.

4/5/38
MG

[fol. 4476] Meeting Donnelly Garment Workers Union
Tuesday, April 26, 1938—5:00 P.M.

Rose Todd: "I am so thrilled with this new auditorium—I think it is just grand. (Applause)

"Quite a number of people have asked me today about our hearing in Washington. It was to come up either yesterday, today or tomorrow. So far we haven't had a wire saying they had presented it to the Supreme Court, so in all probability it will be tomorrow. It will be some little time before we have a report or decision. They are allowed thirty days to render a decision. I do not know how true it is, but I understand they are trying to rush this case through, so it seems to me that within a couple of weeks we should be hearing something.

"I want to mention this, too. At least a dozen people have mentioned to me this week that they ride back and forth to work with people who are employed here who won't stay for the meetings. I know it is some little inconvenience if you have a ride back and forth not to be able to come and go in the regular way, but I want to ask you individually to talk to these people. It doesn't take long for our meetings and this Union means our jobs and our 'bread and butter'. We may get a favorable decision from the Supreme Court and then we may not, and it would just mean that we would have to start all over again.

"I do wish we could get better crowds to stay for our meetings—we would probably have had more people here tonight if they had realized we had a new auditorium.

"I am going to ask Hobart Atherton to copy on the blackboard the two ballots that have been selected by our nominating committees, following our instructions at our last meeting, and number these ballots No. 1 and No. 2, [fol. 4477] and we will vote on them accordingly.

"Very soon now it will be time for our new Union cards. You will notice we did not have the months of the year put around the cards. Since our dues have been taken out of our pay checks we haven't been using the stickers.

"I would like to ask for some expression from different ones if you would be interested in having some bit of entertainment or something in the way of educational interest taken up at our meetings from time to time. I know the new officers coming in will be interested in anything we can offer them. I wish a number of you would feel free to speak up as to whether you wish to continue to have just a very short business meeting or whether you would like to combine it with something else.

"Someone mentioned to me some time ago that they thought Miss Spilsbury would, when she had the time and if we wanted her to, be glad to tell us about her trip to South America and show us the moving pictures which she took. Things of that type, and I could think of a half dozen more, would take up 15 or 20 minutes. Please let me hear some expression from some of you."

Stella Willis: "I think it would be very nice and it wouldn't take very much longer."

Rose Todd: "This meeting is our annual meeting for election of officers. Our regular meeting is the first Tuesday in the month, and next Tuesday will be day for our regular meeting. I will send out a notice reminding you of this. Let's talk up this meeting and tell everyone about our new auditorium and try to have a better crowd at our next meeting. This is not a bad representation but let's have a better crowd next Tuesday night.

"Something else I want to mention while Mr. Atherton is [fol. 4478] copying the ballots—I was talking to Mr. Baty today because I realize that we have laid off a few people and it seems the way the work is and the way the material is coming in that we will have to lay off some more people. He wanted me to tell you not to be unduly alarmed. We

will keep as many people busy as we possibly can. I know on the 8th floor one section is pretty low on work and part of the girls will stay home tomorrow. That will happen throughout the building and in all probability in most departments, and it may be a number of you will be laid off temporarily. Please do not get panicky about it, but if they haven't the material to work on they cannot furnish the work.

"Does anyone have any business to bring before the meeting while Mr. Atherton is finishing copying the ballots on the blackboard?

"Can all of you see the blackboard? We will try to bring it up a little closer. I will read the names on the ballots and ask these people to come forward. I think if you see them you will know who they are. Quite often we know people but do not know their names.

"Will two or three boys please come up to the platform and help balance the blackboard? As I read the names will these people please come up and sit on the front row?"

(Reads names):

Ballot No. 1:

Rose Todd, General Chairman
Marie Cahall, Vice-Chairman
Jack McConaughey, Treasurer
Marjorie Green, Secretary
Walter Higgins, Mechanics
Mrs. Riggs, 9th floor
Irene Boothe, Pressing Dept.
Elizabeth Barrett, Sec. 531
Alvin Riefel, 5th floor

[fol. 4479] Ballot No. 2:

Rose Todd, Chairman
Hazel Saucke
Jack McConaughey, Treasurer
Marjorie Green, Secretary
Walter Higgins
Anna Reese
Mary Sprofera
Rada Williams
John Crist

"I am going to take it upon myself to give you a little history of these people in case some of you do not know them:

"Marie Cahall is a member of the Pioneer Club and has been employed here for more than 15 years. She works on the 8th floor in section 412.

"Jack McConaughey you all know, I am sure.

"Marjorie Green was one of our chairmen last year.

"Walter Higgins, I think everyone knows.

"Mrs. Riggs works on the 9th floor in the Pattern Department.

"Irene Boothe works in the Pressing Department and has been employed here about 6 years.

"Elizabeth Barrett works in section 531. She has just recently been transferred down to the second floor. She has worked here about 9 years.

"Alvin Riefel works on the 5th floor in the Cutting Department.

"I am going to ask the first group of chairmen to please stand up."

(Miss Todd introduces group No. 1).

"In group No. 2:

"Hazel Saucke works on the 8th floor and has been employed here for several years.

"Anna Reese works in section 524 and has been here a number of years. I am sure everyone knows her.

[fol. 4480] "Mary Sprofera works in the Shipping Department and is well known.

"Rada Williams is a member of the Pioneer Club and as far as I know has always been an inspector.

"John Crist works in the Cutting Department on the 5th floor."

(Introduction of group No. 2).

"I believe the best way to take this vote is by standing. May I hear a little comment? Would you rather

vote by saying 'Yes' or 'No' or by standing? I believe it would be more satisfactory by standing. I have some ballots prepared in case there is any question so we can count the votes if there is any doubt.

"I will ask how many of you are in favor of ticket No. 1. If you are not through studying these ballots, just say so. I think you have two good, strong tickets. You have some of the old members and some new ones. I think the nominating committees have given this quite a lot of thought, and I think the people on these tickets are people who are well known and to whom you can go and talk over your troubles at any time.

"If there is anything else you want to take up at this meeting we can do that now and you can be thinking about this.

"It is now time for our Auditing Committee to audit our books again and they want to be sure to do this before they are turned over to the new treasurer. They can do this sometime in the near future.

"Now, I am going to ask all in favor of ticket No. 1. Let me repeat it for you. I think the nominating committees have acted and tried to be very wise in selecting two groups of people that will be a good representation of this many employees.

(Reads group No. 1).

[fol. 4481] "That gives you two operators, the same as we had last time.

"All in favor of ticket No. 1, please make it known by standing. The balance of you that do not stand this time please do not hesitate to stand the next time.

"All in favor of ticket No. 2, please make it known by standing.

"I do not think there is any doubt but what No. 1 has the majority. If anyone has any doubt about it please say so. I do not want anyone to go away saying we did not do this properly.

"I want to hear some expression from several people on different sides of the room. I will ask Lola Skeens what her opinion is."

Lola Skeens: "I think No. 1 has it."

Stella Willis: "I think No. 1 has the majority."

Anna Richards: "I think No. 1 has it."

Rose Todd: "I will have these names posted on the bulletin boards tomorrow so you can familiarize yourselves with them. I think it is a very good representation and people who have been here for a number of years and who are very well known.

"Personally, I will try to do a better job this year than I did last year, and with your help we will accomplish a great many fine things.

"Is there any other business to come before the meeting tonight? Do not be timid about speaking up.

"We have this new auditorium and there is no reason why we can't have interesting meetings. If you have any suggestions to make, please tell us about them.

"If there is no further business I will ask for a motion to adjourn.

"It has been moved and seconded that we adjourn. Thank you."

Meeting adjourned.

4/26/38
MG

[fol. 4494] Meeting Donnelly Garment Workers Union
Tuesday, July 5, 1938—4:45 P. M.

Jack McConaughey: "I don't think this will be a long meeting. Mrs. Cahall, our Vice-Chairman, has asked me if I would start the meeting and tell you what we have on hand. I don't believe we have a great deal to take care of except we do want to hear from Mr. Tyler in regard to our case which was tried before Judge Collett.

"I do understand there have been some arrangements made for swimming at the Pla-Mor, and from several people I have talked to I understand they had a very nice time last Thursday evening. I think this is a very nice way to get together to have a good time.

"We also have quite a number of clippings from a Dallas paper with reference to Meyer Perlstein. It seems he had gone down to Dallas to organize and they were so dissatisfied with him that the pickets turned around and started to picket him. They even went so far as to write to New York to have Meyer Perlstein ousted from the Union.

"I will now present Mr. Tyler who, I am sure, is known to all of you. He will talk to us about Judge Collett's decision. Mr. Tyler."

Mr. Tyler: "Mr. Chairman and members of the Donnelly Garment Workers Union, this is too hot an afternoon to listen to a lecture about a lawsuit. I will make it as brief as I can. I have been asked to bring you up to date on the status of the litigation in which your Union is a party. I will go over this briefly.

"You remember one year ago today the Donnelly Garment Company filed a suit asking for an injunction against the I.L.G.W.U. and a lot of individuals, giving their names. In this Union we had a meeting and after a good deal of thought we decided to file an intervening petition in that [fol. 4495] lawsuit. We did file that intervening petition in which we said we wanted a restraining order against the I.L.G.W.U. preventing them from interfering with our independence, boycotting our products, using violence against us and interfering with our contract with the Donnelly Garment Company. Then the I.L.G.W.U. said since we (your Union) had raised the question of whether the Norris-LaGuardia act was unconstitutional if it prevented us from getting an injunction, then Walsh said that being the case we will have to have it tried before a three-judge court and appeal, if we lose, directly to the United States Supreme Court.

"We had a hearing which lasted a week and the three-judge court decided in our favor. Then our opponents appealed directly to the United States Supreme Court. That court said to our opponents, 'you should not have come to this court'. They sent the case back to the Kansas City court so we came back to this court and Judge Otis of Kansas City before whom the case was originally filed, practically disqualified himself and sent the case to

Judge Collett. Judge Collett is also a United States District Judge.

"Our opponents filed a motion to dismiss or dissolve the temporary restraining order, which says they cannot picket us, start false statements about us, endeavor to force us to break our contract with our employer, attack us or boycott our products. That order has been in effect a year—today is the anniversary of when that order went into effect.

"Before the case was heard before Judge Collett we spent a week writing a brief on the status of the case and one day arguing it. I would rather not try to guess what his opinion will be. I think you can safely rely on this, that whoever loses will go to the United States Circuit Court of Appeals. It may be that we will have to have oral testimony and witnesses be cross-examined. If [fol. 4496] we do it will probably take two or three weeks of time and I hope we don't have to do that. It may be there will be just an appeal of this order in which case your lawyers will handle it; it may even be the temporary restraining order will be vacated temporarily; it may be we can be picketed for several weeks. If so, I think you can rely on it being peaceful picketing. It will not be a repetition of what happened at the Gordon and Gernes plants.

"I am sure if it is true, and if it remains to be true, if a substantial majority of you (not just half of you) but as I believe is the case, some 95% or 98% are satisfied with your own Union to make your own contracts and are willing to fight for it, I can tell you you can win. I don't know how long it will take. It may take another six weeks, six months or a year. I don't know what future litigation there may be, but as long as an over-whelming majority want to carry on your own plans, if you want to stay with the fight you can win. (Applause)

"Let me just go back two or three minutes. Do you remember a year ago last March what was happening at the Gordon and Gernes plants? I could read you from the Supreme Court testimony. The testimony says that cots were set up at that plant and employees after break-

ing through the picket lines had to go to bed when they got inside; their clothes were torn; their hair pulled and in several cases some were knocked unconscious. Some are still suffering from the effects. That is sworn testimony. Some of you saw those things happen a year ago last March. Not less than twenty or thirty times people heard these rioters say, 'this is just a curtain raiser to what we are going to do to the Donnelly Garment Company'. I could quote from sworn testimony of many witnesses to that effect. That was what was facing us when we took up the question of what we should do.

"Let's see what has happened since July 5th when the [fol. 4497] court granted us this restraining order, requiring other people to leave us alone and if they didn't they would have to deal with 'Uncle Sam'. Since July 5th at the time when we decided we should go into court, we have had a solid year of peace. I don't believe anyone has been interfered with in going back and forth to work or has had any reason to be afraid of any violence, isn't that a fact? Have we accomplished that? If so, we have had a solid year of peace. Furthermore, we haven't had continual dissension in the plant; we haven't had two, three or five Unions fighting over who had the majority or continually being on the brink of labor trouble. We have had a solid year of peace. Another thing that we have had is reasonably continuous employment. These are not 'boom' times—there are 10 million people out of work in this country yet, but for the past year we have had fairly continuous employment in this plant unless I am mistaken. That is something we would not have expected if we hadn't stood up for our own rights. More than that you have had reasonably good wages—you have had better wages than in any other garment plant in this town or in this neighborhood. That is something we have had because we stood up for our own rights. You have had substantially lower dues than that paid in other Unions; more independence and ability to control your own affairs and do as you like.

"I am not a labor organizer—it is not my business to tell you what labor organization you are going to join. I am not trying to make up your minds for you. If I am

mistaken, if you don't want this Union then I will drop out and you can go elsewhere for advice. It is not my business to tell you what to do, but as long as you want me and members of my firm to fight your court battles for you and give you the best advice we can we will do so to the best of our ability. We are ready and willing to do this as long as you want us to.

[fol. 4498] "You can really have what you want but you will have to give it your time and attention. You must take this thing seriously and work on it. Unless I was willing to work and give it some serious thought I wouldn't want to take a job on that board. Anyone who isn't willing to work on it shouldn't take a job on that committee. You are representing about 1000 people and I wouldn't want to take the responsibility unless I was willing to work on it. If I were on that committee I would use the best judgment I had and give the best thought I had to the job.

"I think you should keep in mind this is a democratic organization. It is impossible for 1000 people to agree on exactly just what should be done. It isn't human nature for everyone to think alike. Where there is a majority, those of you who are disappointed should fall in with the majority until the next election and then try to change the policy of the Union. I suggest to you that you run this Union on a democratic plan. The majority should rule. If some of you don't agree with the majority, then I think you should go along until the next election. I think it is good sense for you to run as a democratic organization with the majority ruling. I want to say that 'vigilance is the price of liberty'. You can't ignore this Union and expect it to take care of you. If this Union is worth anything it is worth your support and worth working for. (Applause)

"I really would rather have you vote to dissolve this Union today than to have you just forget about it and pay no attention to it at all, but I think you have done splendidly. I have had letters from the Atlantic Coast and letters from the Pacific Coast saying that those Donnelly employees must be an outstanding bunch that have the backbone to stand up for what they want. There are a lot of places in this country that have this attitude about us.

[fol. 4499] "I want to heartily congratulate you on the swell job you have done the past year. I am here to help you along any line. If any of you want to ask any questions here or in my office I will be glad to answer them to the best of my ability."

Jack McConaughey: "Any questions you want to ask Mr. Tyler? If so, let's ask them while he is here.

"I was just thinking while Mr. Tyler was talking, it has just been a year since we have had this injunction—this is a second 'Independence Day' for us.

"I would liked to have had a treasurer's report for you today but I am very sorry I don't have it. We have over $1000.00 in the bank at the present time and with this month's receipts it will probably be $1300.00 or $1400.00. From a financial standpoint we are pretty well on our feet.

"I think we have not 95%, not 98%, but 100% of Donnelly employees who are supporting this Union.

"If there is nothing else, may I hear a motion that we adjourn? The motion has been made and seconded that we adjourn."

Meeting adjourned.

7/5/38
MG

[fol. 4532] January 16, 1939.

Meeting Donnelly Garment Workers Union Tuesday, January 10, 1939—5:00 P. M.

Rose Todd: "If the meeting will please come to order, I will ask Jack McConaughey to read the minutes of our last meeting.

(Minutes of last meeting read.)

"May I hear a motion that we accept these minutes as read?

(Motion made by Ortense Root that we accept the minutes as read. Seconded by Irene Brush.)

(Accepted unanimously.)

"I want to bring to your attention the matter mentioned by Mr. Tyler at our last meeting in regard to our new contract. It will not be long now until time for our new contract to be drawn up, and if you have any ideas about changes that should be made please send them to me. As Mr. Tyler said, do not let these things go until the last minute and think we will have everything in that we want in. Of course, when we renew our contract it will be necessary that we make a few changes. We should give this some thought so we will take care of the things that are necessary and worth while to us.

"I talked to Mr. Tyler this morning and asked him if he had heard anything that would be of interest to us. The thing that will be of most interest to us, of course, is that he has filed a brief (a rather short brief) with the Supreme Court because, as you no doubt know, the International Ladies' Garment Workers' Union has filed a brief with them asking that the Supreme Court take this case and review the evidence and set aside the decision that was rendered by the Federal Court in St. Paul. Mr. Tyler says [fol. 4533] because of the type request it is that they are asking them to hear this case—we have no assurance they will—it remains to be seen whether or not they will. In making a request of this kind it is necessary that we file a brief and I assume we will know their decision within the next few weeks. In case they do agree to hear it, the case would have to be presented in brief form and taken to the Supreme Court, very similar to what it was a year or two ago. At that time they refused to hear the case because they had no jurisdiction. In case they say now it does not come under their jurisdiction, the only recourse left would be for them to go back to the Federal Court. They could either drop it or have a trial on its merits.

"There is another thing I want to mention to you. A number of people have mentioned it to me from time to time and we thought we should give it some thought. I want to explain to you what it is.

"Several months ago one of our members mentioned to me that they thought it would be a nice idea if we would create a death benefit fund of $250.00 to give to our employees in case of death. On the surface it sounded very

nice and of course we do a lot of nice things as members of our Union and employees of the Donnelly Garment Company. Then someone else mentioned they thought it would be nice if we could include husband or wife of employee.

"It doesn't seem it is a large amount of money for us to take care of (possibly $200.00 or $250.00). There was some discussion about the amount we would have in this fund. Someone else mentioned 'I don't have a husband or wife and it would just be an expense to me, why should I do it?' We really gave it a lot of thought and mentioned it to quite a few different people. A number of people had not heard of it and on the surface thought it sounded [fol. 4534] nice. We discussed it at our chairmen meetings and decided to select a group very representative of our employees and have a meeting. We had this meeting of about twenty-four or twenty-five people; some men; some women; some married; some had husbands; some had wives; some did not have either; some had no one other than themselves. We gave it quite a lot of thought and discussed it thoroughly, and I want to give you a few of the facts that were brought out in this discussion.

"We do, as I said before, a lot of nice things and $250.00 in case of death certainly could be used by any of us, but the thought was brought out during the discussion that that is the reason we have our group insurance. We pay one-half of this insurance and the company pays one-half. That actually makes us, if we carry the minimum of $500.00, pay for only $250.00. The majority of the people, in fact all of them, agreed that we should encourage people to carry this insurance and we should not encourage them to feel that they would get $250.00 so why should they carry this insurance. They felt it was stepping on the toes of the provision that has already been made for us. I wanted to explain this to you as a number of people have inquired about it and I think if you give it any thought you will feel it is a very nice thought but really not at all necessary.

"I want to ask if any of you have any problems or any business that should be brought up at this meeting.

"I have another thing I want to talk to you about. We have been discussing it at our chairmen meetings—and that

is to have a carnival and dance around Valentine's Day. We had a meeting of eight or ten people, and we in turn discussed it with a good many of our members, and it seems to be the general opinion, and I want to ask you how you feel about having, what we had in mind calling a 'Mardi-Gras', Feb. 11th.

[fol. 4535] "All in favor make it known by saying 'I'.

"All opposed make it known by saying 'No'. (Carried unanimously)

"I want to say this: I know we have never had anything of this kind that did not turn out successful. The only possibility that might hurt us is that we usually have bad weather during February. When we have had Valentine parties before we have always had good crowds. I am very anxious, and I know you are, that we make this a success.

"We had a meeting with several people who have worked on these carnivals before and found out whether we could get the hall or not, so now that you have approved it we will make arrangements to get the hall.

"We appointed Hugo Kranz to take care of the beer concession and he will select the people he needs to help. We thought it would be more advisable if any of the departments want to help at any of these booths to get in touch with us on the 7th floor. The committee lined out what they thought would be good booths to have. If any of you have any suggestions about booths that would really make money, we would like to know about them. We will have to get into this and figure out the floor space and just what we can accommodate in the way of booths and concessions.

"What we had in mind, because it was the Union (as sometime during the year we will probably have some additional expense) was that it would be an opportunity for us to make some money, the departments to make a little and for us to get together and have a nice party.

"I would like to hear some expression from a number of you on what you think about dividing the profits from each booth between the departments doing the work and

the Union, giving the department 25% and the Union 75%. I find from talking to some of the people who were on the committee for the last carnival that they cleared a nice [fol. 4536] amount of money and I am sure we can clear about twice as much.

"The Union has not had a nice get-together for several months and I think if everyone will put forth the effort there is always a lot of entertainment at these parties and we always have a good time.

"I would like to hear some expressions from a number of you on the sharing of the profits—25% to go to the department doing the work and 75% to go to the Union."

Stella Willis: "As long as it is our Union I think after our expenses are paid it should all go to the Union."

Rose Todd: "I feel practically the same way, but it is a great deal of work and I know some of the departments have clubs and like to make a little money and, as I said before, it is a lot of work and I think that is worth considering. A number of people have said the same thing.

"I would like to hear from someone else."

Edwina Jones: "I feel the same way Stella does, that everyone is willing to help out the Union and they would just be that much more willing to get behind it."

Rose Todd: "I think that is a very nice way to feel about it. I would like to hear from some others. Just because these two people have said they thought all the profits should go to the Union, you do not have to agree with them."

Lyda Burns: "I suggest that we take a vote on it."

Virginia Dare: "I feel we are all members of our Union and the profits should go to them."

Rose Todd: "All in favor of sharing the profits with the departments doing the work, the department to re- [fol. 4437] ceive 25% and the Union 75%, make it known by saying 'I'.

"All in favor of having all of the profits go to the Union, make it know by saying 'I'.

"I think it would be best to have a rising vote.

"All in favor of dividing the profits, the departments doing the work to receive 25% and the Union 75%, make it known by standing.

"All in favor of giving all of the profits to the Union please stand. (Majority vote to give all profit to the Union) (Applause)

"I think that is very nice. Let's all get behind this carnival and make it a success. If we have bad weather start early and get there. This carnival and dance will be held at Ararat Temple on Feb. 11th. It is a grand place to have a party and it will accommodate all of us and a lot of our friends."

Stella Willis: "May we take our friends?"

Rose Todd: "Absolutely, bring them and let's all have a good time.

"If you have any ideas you think would work out nicely for booths or any ideas that would work out for our party please let us know.

"We will appoint a committee to get busy and work out the concessions and booths. This committee will consist of the chairmen of the Union, and I will send out a notice to the other members of the committee, and we would like to have a meeting Monday evening at 4:30. The following people will be on this committee:

The Chairmen of the Union
Carl Crawford, Chairman
Hugo Kranz
Hobart Atherton
Marvin Price
Clara Phillips
Margaret Ducolumbier
Katherine Atchison

[fol. 4538] "Is there any other business to come before the meeting? If not, the meeting will stand adjourned."

Meeting adjourned.

1/16/39
MG

[fol. 4539] February 10, 1939

Meeting Donnelly Garment Workers' Union Tuesday, February 7, 1939—5:00 P. M.

Rose Todd: "I wish to thank you for staying this evening. It really does me good to see such a nice crowd.

"We have several things we want to discuss this evening.

"I think our chief concern at the present time in the way of any activity is our Carnival. We are not particularly concerned, but we haven't heard a great deal about the ticket sale. However, a number of people wait until the last minute to buy their tickets. If everyone here will make a real effort to be at the Carnival and to sell a few tickets and if you will ask the ones who are not here to do the same thing, we will not have any trouble in putting this Carnival over.

"Anything of this kind is a great deal of work and unless you have worked with something on this order you do not realize just how much work it is, and it takes all the rest of us being there to put it over so we can have a good time and make it a success, as well as a success financially.

"I will ask Jeanne Skinner to say a few words to you about the Carnival."

Jeanne Skinner: "Just a word about the Carnival Saturday night. You are going, of course, and I am sure you are enthusiastic about it, and we want to make this the biggest party we have ever had. I imagine some of you have been planning to go in costume, and if you [fol. 4540] haven't why not give it a thought? You know, after all, it is to be a Mardi Gras and if you are in costume I think you can have more fun. So why not try it just this time? We don't want you to think you have to be dressed up. Come any way and let's have a grand time."

Rose Todd: "I will ask Carl Crawford to say a few words also. I believe I mentioned at our last meeting that Carl is chairman of the Work Committee."

Carl Crawford: "I think this Carnival coming up Saturday night, without a doubt, will be one of the best Carnivals we have ever had. There are a lot of people interested in it—everyone is taking a part in it. I am going to disagree with Jeanne Skinner about costumes. I say come if you have to dress like 'Lil Abner' or 'Daisy Mae'. A Nelly Don house dress would be just fine. I am sure everyone will feel at home. As far as entertainment is concerned, we can assure you we will have plenty."

Rose Todd: "I want to mention this: I hope the person is here today who came to me the day after our last meeting in January and offered to help with the Carnival in any place she could. I did not write down her name at the time and I do not remember who it was. I have been trying to think of it and I hope she will let me know as we will need a number of people to work in the different booths.

"I have a letter here from the Mayor's Christmas Tree Fund which I wish to read to you. It is a little late but I forgot to read it at our last meeting.

(Reads letter)

This is to thank us for the check for $15.00 which we sent to them.

[fol. 4541] "Does anyone have any questions they would like to ask? If you have, do not be hesitant about asking them.

"I want to say a few words in behalf of the people who do not want to wear costumes—certainly do not stay away on that account. Come anyway and have a good time laughing at the ones in costume—they won't care. Wear a house dress; wear anything, but come and have a good time. Be sure and be there.

"I want to ask again, does anyone have any questions or business to bring before the meeting? If you do have any questions this is a good time to get them answered."

Stella Willis: "When does our contract run out?"

Rose Todd: "Our contract expires on April 27th. There may be a few minor changes—there may be some changes of a more serious nature. We are giving it every thought.

If you have any suggestions to make, send them to us and we will look them over carefully. When the time comes to draw up our new contract Mr. Tyler will help us, of course. It will be two years this coming April 27th since our Union was organized.

"I want to mention this also: We will send out notices tomorrow regarding some of the booths, and during the week we will have small meetings of the different groups of people who are going to work in each booth and discuss just what each one's work will be that night.

"Is there anything else? Any more questions?

"I just can't tell you how grateful I am to see so many here tonight.

"If there is no further business, the meeting will stand adjourned."

2/10/39
MG

[fol. 4542] March 15, 1939

Meeting of Donnelly Garment Workers Union, Tuesday, March 14, 1939—5:30 P. M.

Rose Todd: "Will the meeting please come to order? I believe we can start now as I do not think there will be many more coming in.

"There is one thing I want you to remember, and I want the ones who are here to carry the message back to the ones who are not here this evening; and that is, we must have a good crowd out for our next meeting as that is the day on which we have our election of officers for the coming year. So bear this in mind and try to get everyone to stay for this meeting. We must have a good attendance—besides being a new year it is almost time to draw up a new wage agreement and a new working agreement, and we should be giving this some thought.

"As you will remember, we organized our union on April 27, 1937, and on May 27, 1937, our working agreement was signed. This agreement was to run for two

years. Also, our wage agreement comes up for renewal on June 22nd, so please keep these things in mind.

"No doubt during the last two years we have all learned a great deal about unions—I know I have. There must have been a few things you have thought of, something that might be well to have changed in our agreements with the company, so bear that in mind, and if you have any suggestions or you hear anyone commenting on it and they have any suggestions to make, please make them to me or to some member of the committee. On the whole I think it has worked out very well, but I have a few minor changes in mind that should be made and I know some of you have as different people have mentioned them to me from time to time. I really think this is one [fol. 4543] thing that it is very important for us to remember and we should take care of it in a business-like and thoughtful way.

"I know you have probably been a little curious as to how we came out on our Carnival, but at our last meeting our report wasn't complete. At this time I will ask Jack McConaughey to read you the report on the Carnival.

(Jack McConaughey reads report on Carnival)

(Applause)

"It was a great deal of hard work for everyone but I know we are all pleased with the results.

"Do any of you think of anything in the way of business that should be brought up at this meeting? Really, the way to make these meetings interesting enough for everyone to want to stay is for everyone, if you have any ideas, to take part in them. If you have anything you think will be of interest to the rest of us, please don't hesitate to mention it.

"I do want to repeat for the benefit of those who have just come in, if you have any suggestions about changes that should be made in our working agreement which comes up for renewal on May 27, and our wage agreement which comes up for renewal on June 22, please let us know about them. Keep that in mind and if you have any suggestions please be sure to tell us. Some of them might be very good ones that should be taken into consideration.

"Probably most of you noticed in the paper but for the benefit of those who might not have seen it, I want to [fol. 4544] mention that our trial is not to come up before Judge Collet. It has been set up to a week from today (March 21st) so far as we know now. I understand it will be heard by Judge Miller from North Dakota, and it will be heard here in Kansas City. It may be, as Mr. Tyler has told you before, that some of you will be called as witnesses. If that is true do not be alarmed about it as all we have to do is tell the truth. Surely if we stick together as we have during the last two years we will still win.

"Is there anything at all you might suggest that would be of interest to us or that should be taken care of at this meeting?

"Please bear in mind that the fourth Tuesday in April is the date on which we elect our officers for the coming year. We will not have a meeting on the first Tuesday in April, but will postpone it until the fourth Tuesday, which is April 25th. I want to repeat, I want everyone to make an effort to attend that meeting. It is of vital importance to us as members of this union and everyone should be there.

"In preparation of that election, I want to ask if you care to elect our officers this year in the same manner as we did last year. In case you have forgotten I will tell you how we handled it last year.

"We discussed two or three different methods and the one we thought best and the one we adopted was to appoint two Nominating Committees who in turn would present two groups of officers to be voted on at our meeting the fourth Tuesday in April. If that is a satisfactory arrangement—or first, does anyone have any other suggestions that would be better? If you do have, this is the time [fol. 4545] to make them. If you think the plan we used last year is satisfactory, I would like to hear a motion that we elect our officers by appointing two Nominating Committees, who in turn, will present two groups of officers to be voted on at our meeting the fourth Tuesday in April."

(Motion made by Hinton Nolan that we elect our officers for the coming year by appointing two Nominating Committees, who in turn, will present two groups of officers to be voted on at our meeting the fourth Tuesday in April. Seconded by Violet Bennett.)

Rose Todd: "It has been moved and seconded that we elect our officers by appointing two Nominating Committees who will present two groups of officers to be voted on at our meeting the fourth Tuesday in April. All in favor make it known by saying 'I'. Opposed 'No'. (Carried unanimously).

"During the week, or within the next few days, the committees will be appointed who will take care of preparing these two ballots. Notices will be sent out to each section and posted on the bulletin boards advising you who are on these committees.

"Is there anything else? I might mention this, if you hear of anything you think would be of any value to us in this trial which is coming up next week, do as you have before—mention it to us as it might be of some value. There is nothing for you to be alarmed or excited about. We will just go along in the same steady way we have in the past and take care of our problems as they come up. But please bear in mind, if you hear of anything please let us know.

"As you know they (I. L. G. W. U.) have been allowed, since Judge Collet gave his decision several months ago, to picket us peacefully, but they have never taken advantage of it.

[fol. 4546] "I do not think of anything else which we should take up at this time. If you think of anything, please say so now.

"I certainly do want to thank you for staying tonight, and before our next meeting let's all get busy and have a grand crowd out for our meeting the fourth Tuesday in April.

"If there is no further business the meeting will stand adjourned."

Meeting adjourned.

3/15/39
MG

[fol. 4547] April 5, 1939.

Meeting Donnelly Garment Workers' Union Tuesday, April 4, 1939—5:30 P. M.

Rose Todd: "Will the meeting please come to order? I know the thing you are primarily interested in right now is how the trial is coming along. I think it is just too bad it had to happen when we are so busy so we couldn't hear more of it, but we will try to give you a few details so you will know what progress is being made.

"The Donnelly Garment Company and the Donnelly Garment Sales Company are presenting their case first, as you no doubt know from the papers and conversation around the plant. It has been going on for two and one-half weeks and it looks like they will be through by noon tomorrow, or at least by the middle of tomorrow afternoon. I think you will be interested in knowing there have been a number of witnesses from out of town; several buyers from different sections of the country—one from Pittsburgh, one from Florida, one from Oklahoma City, one from Tennessee and two or three others. I think the next thing of interest to you in the way of witnesses have been two operators from other plants in Memphis, Tenn. Before we have finished with the meeting I want to bring something before you that one of the witnesses testified which is vitally important and of interest to us. The next witness to take the stand will be the Donnelly Garment Workers' Union which will begin probably tomorrow afternoon or Thursday morning, depending upon how long it takes them to finish up with the case as it now stands. Following that the International Ladies' Garment Workers' Union will present their case; after that the rebuttal by all three sides will be given. That will close it, and I think we are going to win—in fact, I know we will win. (Applause)

[fol. 4548] "If you will remember, at the last meeting I told you I had appointed a Nominating Committee to nominate a group of officers for us to vote on the last Tuesday in April, as our officers for the coming year. I want to present this Nominating Committee to you, and following that I would like to have a motion made and seconded to accept these committees, then we will vote on it.

"I am going to appoint two committees of five members each. The first committee:

Katherine Hamel, Shipping Dept.
O'Dell DeCavelle
Harry Grogan
Opal Holliday
Gladys Anderson

"On that committee I am going to ask Katherine Hamel to act as chairman.

"The second committee will consist of:

Pearl Bennett
Laura Plummer
Ben James
Polly Griffith
Hilda Richmond

"I will ask Hilda Richmond to act as chairman of the second committee.

"I want to ask if you have any other nominees, and if you do, feel perfectly free to do so. One thing, we do need balanced committees. I want you to feel perfectly free to add nominees if you wish. Does anybody care to nominate anyone else to be on these committees? If not, may I hear a motion that these committees be accepted?

(Motion made by Anna Reece that these committees be accepted. Seconded by Pearl Norris.)

All in favor of these committees as they stand, make it known by saying 'I'. Opposed 'No'. Motion is carried unanimously.

[fol. 4549] "I will post the first thing in the morning or tomorrow noon, where these people are, and any suggestions you have to make, you can send them an I.D.M., get in touch with them on the phone in the house, or call from home and talk to them personally. Do not feel at all hesitant about recommending anyone you feel will be a fair representation of our organization. I think when you see that you will note that we have quite a fair representation throughout the organization in these people.

"Now, I want to tell you a little about the testimony of one of the girls from Memphis, Tenn. What I want to tell you is that she was sworn and in her testimony on the stand as a witness, she testified that they received a guarantee from the I.L.G.W.U. of $11.00 per week which of course we know is far below anything we have in the way of a guarantee. They charged 35 cents per week for dues, $8.50 per person for initiation fee, and $1.00 twice a year for a new card. As you probably know, a union card is a card that consists of a little place to put stickers when dues are paid, and on the right-hand side they have from two to three to four special assessments to make. She also stated that if they did not attend their meetings twice a month they were charged a 50¢ fine. I want to ask some of those girls who have been sitting there waiting to be witnesses what they figure it would have cost us to belong to the I.L.G.W.U. for one year. Will any of you volunteer?"

Ruby Lago: "The $8.50 initiation fee. Then the 35¢ each week for dues is $1.40 a month. Then $2.00 a year she said was for cards would be over 16¢ a month. The first month alone would be over $10.00. About $10.16 per person."

[fol. 4550] Rose Todd: "For the whole plant, in round figures, it amounts to $37,110.00 for the first year for our 1300 people. It is really unbelievable. That was actual testimony on the witness stand. I know you will be interested to know that the total amount of money we collected during the first year of our organization was between $6,000.00 and $6,500.00. The total amount of money that we have collected during our entire organization is a little over $11,000.00. Last week we had a little over $1,100.00 in the treasury but this week we have a little under that. Of course, we are paying any expense for any of our members requested by Mr. Tyler to be at the trial for any occasion whatsoever. That is being taken care of by the D.G.W.U. No one has ever given us a thin dime and we do not need anyone's assistance now. This is our Union and we intend to keep it ours. (Applause). I was just really amazed when I sat down and figured out that we have actually saved ourselves about

$31,810.00. That doesn't mean any special assessments which no doubt we would have had to pay because I have heard so many say that they do have them, and mentioned that we might have other assessments. Then I think we have every reason to feel that if we were forced into the I.L.G.W.U. they would expect more from us, for our guarantee is above $11.00 per week, and no doubt they would expect more money. In fact, I have been hearing quite frequently that the dues in Kansas City for plants having a higher guarantee have been more because they need money to fight this case.

"May we give a little attention to our own finances? We need to raise some money soon. I want to ask some of you to express yourselves very freely on what you think of this. The trial probably will not be over before the middle of next week; maybe longer. I wish ever so many of you would express your opinion on what we should [fol. 4551] do about it; in what manner we should raise some money. We need to add to our treasury to take care of the expense connected with this trial."

Effie Weigand: "This same operator testified that working conditions were better before joining the union and her pay was definitely more."

Rose Todd: "Yes, she said working conditions were not as good as before joining the union. She was the one who had her clothes entirely torn off her in the picket line, and she appeared to be very sincere regarding her testimony.

"I want to hear some expression from you as to what we should do about this thing."

Comment: "I suggest each one contribute one dollar."

Ben James: "Would a dollar from each member be enough? How much do we need?"

Rose Todd: "Well, I do not know just what we do need."

(Motion made by Etta McCurry that each member donate $2.00. Seconded by Harry Grogan.)

(Opportunity given for further discussion of donation)

Daisy Kilby: "I have been down there for two weeks and if some of these girls could hear some of the testimony they would be willing to give $2.00. Just think what they would be out if they belonged to something like that. $2.00 in two years isn't much. I know we can give $2.00."

Ben James: "How much do you need?"

Rose Todd: "You ask me what I need? Really, I do not know what we need. I know that from looking back, quite a bit of the expense we have had so far in this union has given us exactly what we want. In the first place, we have had our independence. We have a guaran- [fol. 4552] tee far above any that has been presented in the trial. They have been reading payrolls that have been subpoenaed by the Donnelly Garment Company and have entered them as evidence. The payroll of the Marlene Frocks here in Kansas City, and who make ready-to-wear, was entered as evidence, and as I remember it there were about four salaries about $25.00, the highest one being $28.06. Some of them were pitifully low for forty hours' work. They are allowed six weeks of apprenticeship during which time they earn from $3.50 to $5.00 to $7.50 per week. Presser after presser and operator after operator is expected to live respectfully on $7.00 and $10.00 per week."

Harry Grogan: "You mentioned it might cost us $10.00 a year. Even at that, we know it isn't a third or even a fourth of what it would have cost us, so I think maybe $2.00 each would be fair, and if anything is left over we could put it in our treasury or maybe we could have a 'shindig'."

Daisy Kilby: "Today, they had testimony where their guarantee was supposed to be $13.00 but those men taking care of the payroll testified that they did not get the guarantee if they did not make it."

Rose Todd: "I want to tell you that we would not expect you to pay this $2.00 in one lump sum. I think perhaps the wisest thing to do would be to give 50¢ a week, or $1.00 one week, then wait two weeks and give the other $1.00. We have never made but one donation to the Donnelly Garment Workers' Union previous to this time,

and that was $1.00. I think the plan we used before to collect this money would work out very nicely. I would ask one person in each department to collect the money at noon time or after work."

Comment: "One of the girls said to me that it must [fol. 4553] have cost a great deal for this trial, and she thought even $5.00 would not be too much to pay. I have heard a number of the girls say the same thing."

Rose Todd: "We really do not need that much, and we do not want this to be a burden to our members. We have our independence and it is certainly worth keeping. We are going to win this thing, we have the right to win, and it takes money to carry on a lawsuit. (Applause)

"A motion was made previously by Etta McCurry and seconded by Harry Grogan that each member donate $2.00. All in favor of donating $2.00 per member to the Donnelly Garment Workers' Union, make it known by saying 'I'. (Remember that this is a majority of the members here and if we vote to do this, then we expect the others to abide by it. However, that is no different than we have always done; the majority rules and I presume always will.) If you have any objections, please make them now. All in favor of each member donating $2.00 please make it known by saying 'I'. Opposed 'No'. (Carried unanimously).

"I think that is very fine and I really think it is the way for us to do it. Remember this, if you feel it is difficult for you to pay this donation in two payments, you can pay it a small amount each week, but do not make it difficult for the person in your department who is collecting this money. We will work out a method of collecting and that is about the easiest way to handle this donation.

"Do we want to make this donation 50¢ per week, or $1.00, say this Friday, and $1.00 two weeks from Friday?

"All in favor of paying 50¢ per week beginning this week, make it known by saying 'I'. Opposed 'No'. (Very little response either way)

"Would you rather wait until week after this to pay one dollar and two weeks later pay another dollar? All in

[fol. 4554] favor of this, make it known by saying 'I'. Opposed 'No'. We have voted that a week from this Friday or a week from Thursday, anyway the day or so following pay day, we will pay one dollar, then two weeks from that day we will pay another dollar. I will send out these notices and tell you what date that will be. I will also appoint one person in each department to collect the money and will have on this card I give her the date to collect it.

"Is there any other business to come before the meeting? We will have another meeting later in the month for our actual election of officers.

"I want to say we appreciate such a fine attendance at our meetings.

"Is there any other business to come before this meeting? If not the meeting will stand adjourned."

4/5/39
hd

[fol. 4555] April 29, 1939

Meeting Donnelly Garment Workers Union Tuesday, April 25, 1939—5:30 P. M.

Rose Todd: "Will the meeting please come to order now? We have a number of things to take care of tonight.

"I imagine you have heard by word of mouth that the trial is drawing to a close; in fact, it is all over except the arguments by the attorneys which will begin in the morning. They have been allowed five hours in which to present their arguments. Two hours have been alloted to the plaintiffs (Donnelly Garment Company and Donnelly Garment Sales Company). Mr. Hogsett has one hour and then Mr. Reed closes the case the last hour. Mr. Tyler has one and one-half hours for our side of it and Mr. Walsh has one and one-half hours for his side. We do not know whether we will have a decision right away or whether it will be some time. As I understand it from Mr. Tyler, being a trial on its merits, the Judge could give his decision from the bench but if he wants more time to study the case he is allowed to have it. All we are hoping

is that it will be in our favor. So far we think it will be—but that remains to be seen.

"I want to ask at this time if any of you have any questions you would like to ask about anything that has happened in the trial that you are not clear about. It is too bad it had to come at a time when we were so busy so that more of you could have heard it. I am serious about this—if you have any questions feel free to ask them. At our last meeting I tried to tell you the high points, but if there are any questions tonight feel perfectly free to ask them. Do any of you have any questions you want to ask about the trial? I know some of you must have."

Question: "Is this decision going to be final?"

Rose Todd: "No, it isn't. I think that is a very good point. This is something we should know and understand as members of this union. They are never going to give up trying to organize this plant, but if we 'stick by our guns' they will never do it. However, we cannot get lax [fol. 4556] about it. You probably noticed the comment in the paper in which Mr. Dubinsky said they would accept this union as a whole just as it is. That does make me think—it isn't something I can do, it is something we have to do ourselves, it is our job. The Donnelly Garment Company has nothing to do with it and they cannot do it. If we aren't interested enough in this union to maintain it the way we are—don't misunderstand me—but we should realize this thing will go on through the years. It may not be a trial that is as long and drawn-out as this one, but they very definitely state they will never give up trying to organize the Donnelly Garment Company employees as long as they have the legal right to do so, but as far as I am concerned as long as we have the legal right we won't let them. (Applause)

"The only thing that is going to keep this organization alive and going is for each individual member to do his own thinking. We have done it so far and there is no reason why we cannot do it in the future. It is the first time in history that individual groups of employees have had the legal right to organize.

"Our hearing before the Labor Board begins next Monday morning. You probably noticed in the paper the other

day where they have ruled against the employees' union of the Kansas City Structural Steel Company, and they have also ruled against the Kansas City Power & Light Company employees' union. If this union isn't organized right we can certainly organize another one.

"As I said, the Labor Board hearing comes up next Monday morning. The only information we know now is that it may last six weeks and it may last six months, we do not know. At a meeting of the chairmen the other day we voted to ask the firm of Gossett, Ellis, Dietrich & Tyler to continue being our legal representatives and to take whatever steps are necessary so far as this Labor Board hearing is concerned. I talked to Mr. Tyler the early part of this afternoon and he says he does not know yet just what steps will have to be taken but as they get into it they will know more about it and will take whatever steps they feel are necessary.

"In connection with that, we do not know but we have heard by the grapevine system, that a number of our members will be subpoenaed for this trial. If you are, get in touch with Mr. Tyler or with some member of the com- [fol. 4557] mittee of chairmen. If you do not find them available get in touch with me. There isn't any reason why, if you are subpoenaed for this trial, that you should not notify some one. That is what we have Mr. Tyler for. If you are subpoenaed get in touch with some of us. I think it is to your interest and to all of us to let some of us know about it if you are subpoenaed so we will know what we are up against.

"I also want to mention this—it is just about time for new union cards and we will have them ready in a short time. They are being printed now and we will get them out just as quickly as possible. I think possibly we have two people we have not asked to join our union. Our supply of cards ran out and we thought we would just wait until we had our new union cards.

"Next week is time again for another regular meeting. I think it might be wise to wait another week. We might make it a call meeting but we will let you know. I know after this trial is over you will all be interested in having

Mr. Tyler come down and tell you the points that would be most interesting to us.

"I want to ask if you would like to have some meetings in smaller groups, say two or three departments or sections at a time. We would be glad to do it and in that way we could give you a little more detailed information about this trial. I think it would be interesting to hear from some of our members who have been down there and have testified and heard some of the trial. Really, unless you have heard some of these things and the testimony that has been given you just cannot realize what a difference it makes to us and what this union has meant to us. Perhaps we could have two or three meetings next week. We could have them immediately after the departments finish work for the day and it wouldn't take very long. Maybe in smaller meetings everyone would feel a little more free to ask questions and to discuss some of these things. We will put it to a vote. If you are interested will someone make a motion that we have meetings of about three departments at a time to give you a little more detailed information about this trial?

(Motion made by Nina Smith that we have small meetings of about three departments at a time for the purpose of getting a little more detailed information regarding the trial. Seconded by Catherine Atchison.)

[fol. 4558] "It has been moved and seconded that we have some small meetings to discuss some of our problems and to explain more in detail the fine points of this trial. All in favor make it known by saying 'I'. Opposed 'No'. (Carried unanimously).

"We will make it at your convenience when we have these meetings. We will see what night is convenient for the most of you.

"I want you to be thinking about this: Would you rather have one large mass meeting or would you rather make it two or three meetings? In that way maybe it would create more of an interest and people would make it more of a point to come. We have a grand crowd tonight and we want to continue to have good crowds. It is of vital importance to us as members of this union and

there is nobody who can put it over but ourselves. I do not want you to think I am getting upset about it because I am not but I wish you would discuss this generally and when we have another large meeting we will talk about it further. If you think it is worth while we will put it to a vote.

"I want to particularly thank you for the way in which you have been paying the money you have pledged. Everyone has just been grand about it. Most of it will be in this week or by next week I am sure.

"As I understand it the Nominating Committees have had two or three meetings to discuss who they wanted to appoint on these committees for you to vote on tonight.

"If some of you here tonight were not at our last meeting the first Tuesday in April, I want to tell you that we voted to elect our officers in this manner: By appointing two Nominating Committees, which you approved at our meeting the first Tuesday in April, and these names are to be presented as a group to be voted on. If you want to make any other nominations or any changes you will have the opportunity to do so.

"I will repeat these names for you—listen carefully in case you cannot see the blackboard. The group on the left-hand side is as follows:

[fol. 4559] (Group No. 1):

Present officers 1939-1940.

Rose Todd, Chairman
Nina Smith, representing the operators, Vice-Chairman
Jack McConaughey, Treasurer
Marjorie Green, Secretary
Edith Heidbrink Williamson, Pressing Dept.
Walter Higgins, Mechanics
Freeland Rife, Cutting Dept.
Bessie Weilert, operator, Sec. 414
Mary McClelland, Inspector Sec. 521

In Group No. 2:

Rose Todd, Chairman
Jack McConaughey, Treasurer
Marjorie Green, Secretary
Frank Cooper, Cutting Dept.
Walter Higgins, Mechanics
Avis Mowry, Pressing Dept.
Ruth Miller, Operator
Edith Wilson, Notions Dept.
Lynn Davis, Operator, Sec. 411

"Do you have any other nominations you would like to make? If you have any suggestions now is the time to make them and we can vote on whether we shall change these groups or add anyone to them.

"In Group No. 1 the Nominating Committee has selected Nina Smith to act as Vice-Chairman; in Group No. 2 Walter Higgins has been selected to act as Vice-Chairman.

"Do I hear any comments or any desire to change any of these people? I want to look these over a moment to see if they have remembered the different departments to represent. They have selected two people from the operators; Jack McConaughey is now in the Accounting Department but formerly was in the Mechanical Department; Marjorie Green is from the office; they have selected one person from the Pressing Department (which is true on both tickets); the person they have selected to represent the people at large is Mary McClelland on Ticket No. 1 (who is an inspector in Section 521); on the other ticket they have selected Edith Wilson from the Notions Department; from the mechanics they have selected Walter Higgins on both tickets; from the Cutting Department, on ticket No. 1 they have selected Freeland Rife, and on the other ticket Frank Cooper.

"I want everyone to feel perfectly free if you have any suggestions—if you have anyone you think would be better or someone else you would rather have, speak up now. [fol. 4560] "You have two good strong tickets. I will read ticket No. 1 again.

(Reads names on ticket No. 1.)

Please bear this in mind—speak up when you say 'Yes'."

Comment: "Why don't we have a standing vote?"

Rose Todd: "That is a very good idea. All in favor of Group No. 1 please stand. I will ask Sam Sparks, Jack McConaughey and Nina Smith to come up on the platform while we are voting. I do not want anyone to go away and say there is any doubt about it.

"All opposed to Group No. 1 make it known by standing. (Group No. 1 carried by majority vote.)

"I am going to ask these people to please come forward. (Bessie Weilert and Edith Heidbrink not present). We do have two people who are on this committee that you might not be familiar with—Bessie Weilert and Edith Heidbrink. I am sure most everyone knows Bessie Weilert as she has been quite active in the By-Jingo Club. Edith Heidbrink works part time on the ninth floor pressing samples. The next time we have a meeting we will ask them to come up.

"Please bear in mind this work is new to some of these representatives and old to some of us. It has certainly been an education to me, and I think I can speak for the old ones in saying that every year we know a little more about it. We have always tried to do things the way you want them done. If we haven't speak up and tell us what we have done that you do not like. Keep this in mind—throughout the entire year let's keep this a live organization—do not get lax about it. Let's speak up and make our wants known."

Question: "When will we get to hear our new contract?"

Rose Todd: "That is a very good question. Our Working Agreement comes up for renewal on May 27th. Our Wage Agreement comes up for renewal on July 1st. It was signed effective as of June 22nd to take care of the payroll for that week. I am glad you mentioned that. We have had several suggestions made, particularly concerning our Wage Agreement. If you have any other suggestions or ideas please mention them in the next two or three weeks. I am really quite sincere about this—do not

[fol. 4561] wait until these agreements come up and then someone say, 'I wish we had done so and so'. Of course, we can always amend them but now is the time to make suggestions and as much as we can we would like to take care of them at that time.

"I want to mention this, when we have these small meetings I am going to ask a number of these people who have attended some of the trial to talk to you and give you their viewpoint on it and the reaction they got from the testimony they heard given.

"Is there any further business that should come before the meeting? I think it is grand of you to stay like this—it is a nice representation. These meetings do take time but to me they never get to be a bore when I think what it means to us.

"Are there any other questions?"

Question: "Why are Emery Bird's carrying our dresses exclusively?"

Rose Todd: "The company gave it to them exclusively. They have been wanting it for some time and I imagine the company feels they will get a greater volume of business to center it in the oldest department store in town. Emery Bird's are delighted to have it and they are doing very nicely.

"Are there any other questions? Do you have anything that you want to ask—anything about the trial that you would like to know?"

Question: "When we come up before the Labor Board and they subpoena us, if we could not locate Mr. Tyler, who is on the committee?"

Rose Todd: "I will read these names to you again."

(Reads names of committee)

In all probability if they subpoena you it would be in the evening. I do not know that they will but it is just a thought I wanted to pass on to you.

"Any other questions? I wish you would ask them at an open meeting like this as it might answer questions that other people have been wanting to know about.

"If there is no further business the meeting will stand adjourned."

4/29/39
MG

[fol. 4579] (Board's Exhibit 9.)

Date 6/13/39—Witness Todd.

May 6, 1937.

Notes on Meeting of Group Chairmen With Mrs. Reed Thursday, May 6, 1937.

Meeting opened by Rose Todd, General Chairman.

"Being a new organization there are many things to be worked out satisfactorily. (Mrs. Reed: "It is all very new to me too.")

"We do have a few things of importance to discuss at this time. We are working on a working agreement to submit to you for your consideration, concerning hours, wages and working conditions (which up to now have been very satisfactory) There is one thing we want to ask you to consider when we submit this plan to you—and that is we would like to have a closed shop. (Mrs. Reed: "I understand that is very essential to industrial peace.")

"Another thing we want to submit for your consideration, is that we feel that the Donnelly Garment Workers' Union should (if it is satisfactory with you and with the union) pay part of the General Chairman's salary, if the company is willing to pay their part. (Mrs. Reed: "That is satisfactory with me.") Later it may be necessary that the union pay the General Chairman full time." (Mrs. Reed: "I do not feel at the present time that you would need to give all of your time to the union.")

Mrs. Reed: "I really haven't anything to bring up—I was just waiting to hear from you. When you get your agreement written up and get it into definite form, I will

be very glad to consider it. In the meantime it is nice to get to talk to you and I hope these meetings will be very friendly.

"I want you from time to time when you meet with me (I do not expect any but what will be pleasant) to be very [fol. 4580] frank. If you have any suggestions I will receive them in the same disposition that you give them. Let's be very frank about all of this. Perhaps some good things can come from it. I want you to know I am very sincere and have the feeling that when we have this opportunity to meet we may be able to use the time to very good advantage."

Hobart Atherton: "At our meeting of chairmen last week we talked about the meeting that was held at Burris Jenkins' church and we discussed writing the different churches. We thought it might be a good idea for us, as a union, (with your approval) to write the Ministerial Alliance and invite them as a group to make a tour of inspection of our plant."

Mrs. Reed: "I think that would be very much within your province. If these people go out and boycott Nelly Don garments it works against you folks as well as me. I think any organization is more respected if they are known to stand up for their rights."

Hobart Atherton: "We thought perhaps the churches would be glad to have the films shown that we made for the Jubilesta last fall. (Mrs. Reed: "I think that would be splendid.")

Mrs. Reed: "The thing that makes it so important in my mind is that the School for Christian Living is a national organization and what they do here they might do other places. I think people are prone to listen to things they hear in the churches."

Rose Todd: "If it is agreeable with Mrs. Reed to write to the Ministerial Alliance, I think we should discuss it further."

Rose Todd: "If there is nothing further to discuss, the meeting will stand adjourned."

5/6/37
MG

[fol. 4581] May 18, 1937.

Meeting of Group Chairmen Tuesday, May 18, 1937.

A meeting of the Group Chairmen was held Tuesday, May 18, 1937.

At this meeting a definite time for our chairmen meetings was discussed. The suggestion was made and accepted that we meet at 12:00 Noon (on the 10th floor) on the first and third Tuesday of each month. Should any matters of importance come up, a special meeting will be called.

The matter of Miss Todd's salary was again brought up and the suggestion was accepted unanimously that the Union pay Miss Todd $20.00 per week (to begin May 1st) to be paid on the first and sixteenth of each month. It was decided that no definite time limit would be set for Miss Todd to spend in working for the Union, but that she would devote the time necessary to this work, as this will only take a nominal amount of time.

Arrangements have been made to publish a paper, and a draft was submitted to the chairmen for their approval. The draft was accepted unanimously as drawn up, and 10,000 copies will be printed (the cost of this paper to come out of the treasury). These papers will be given out among the employees and they will be asked to distribute them among our friends.

The Group Chairmen expressed their desire to have a note of thanks appear in this paper, and a draft was drawn up and accepted unanimously by the chairmen.

A little later on plans may be made to publish a paper monthly, with someone in charge that can devote the time necessary to it. Definite arrangements can be made [fol. 4582] later.

The matter of our Union pin was discussed and it was generally agreed that these pins should be a small, gold-plated pin. Samples of pins carrying our emblem will be submitted for our approval.

So many outsiders have expressed their interest in our Plant Union and expressed the desire that they would like to help us in some way, that it has been decided the D. G.

W. U. will sponsor a dance and sell tickets to our friends outside the company. This dance will be held at the Pla-Mor on June 11th—tickets 50¢ per couple.

The matter of Union cards was discussed, but Miss Todd reported that Mr. Tyler advised us not to do anything further on these until our working agreement is ready to submit to the company officials.

The chairmen were asked to report any grievances that had been discussed with them, and Mr. Atherton stated that the employees in the Shipping Department had come to him with a complaint that they were not being paid for working overtime. Mr. Atherton is to talk with them again, and the matter will be brought up at our next meeting.

Miss Todd requested the Group Chairmen to advise her if any of the girls report to them that they have been offered money, as she would like to talk to them.

Miss Todd also reported that Mr. Tyler is drafting our Working Agreement.

Since there was no further business to take care of, the meeting was adjourned. The next meeting will be held on Tuesday, June 1, 1937.

5/18/37
MG

[fol. 4583] May 21, 1937

Meeting of Group Chairmen With Mr. Tyler Thursday, May 20, 1937.

The Group Chairmen of the D.G.W.U. met in Mr. Tyler's office on Thursday, May 20, 1937.

The main purpose of this meeting was to discuss our Working Agreement and suggest any terms which we believed should be incorporated in our Working Agreement.

Mr. Atherton brought up the matter regarding the boys in the Shipping Department. These boys had talked to Mr. Atherton a few days ago and made the statement that they thought they should be paid for overtime. This was discussed with Mr. Tyler and since it pertained to only four

or five people, we decided this was something that should be settled by the committee and officials of the company, and not put into our Working Agreement, as our Working Agreeement should be more general and not cover individual cases.

Mr. Tyler will come down within the next few days and inspect our plant and see for himself the conditions under which we work. He will also look over our payroll and decide if he thinks a minimum wage should be included in our Working Agrement. In drawing up this agreement the chairmen and Mr. Tyler agreed that we should make a set of general terms to cover all employees, as we cannot make an agreement to cover each department, and that we should not try to set up a scale of wages. In order to have year round employment it is necessary that the employees go from one department to another.

We will also ask for a Closed Shop in our Working Agreement.

When this agreement is ready and has been approved by [fol. 4584] the Group Chairmen, we will present it to the company officials and they may make any counter-suggestions they wish.

Mrs. Lillian Ellis, representing the St. Joseph plant, was asked to report to us any criticisms or demands made by the St. Joseph employees; also we would welcome any suggestions they had to offer.

We will meet with Mr. Tyler again whenever we have anything of importance to discuss. In the meantime, he will proceed with the Working Agreement and when it is ready we will have another meeting, and if there are no objections we will present it to the company officials.

Mr. Tyler mentioned that he had heard very favorable comment on our plant Union and the stand the employees have taken. He stated we have done something that is well known, not only in Kansas City but throughout the country as well, and the outsiders are well pleased with the way we are conducting ourselves and have expressed the desire to help us in some way.

Mr. Tyler also mentioned to us that he had talked to City Manager McElroy, and he promised to give us pro-

tection in case of any violence at our plant. Mr. Tyler told him that if he would give us just six men with definite instructions to keep order, that would be all we would need. Mr. McElroy promised we would have protection if we needed it.

We discussed with Mr. Tyler the plans for our Carnival on June 5th and our dance on June 11th. It was his opinion that we would be able to get enough outside people who are interested in us to attend both our Carnival and Dance to enable us to make some money. The question was brought up as to whether or not it would be all [fol. 4585] right for us to advertise in the paper, and Mr. Tyler advised that he thought it would be quite in line.

The chairmen will have another meeting and make more definite plans for the Dance which is scheduled for June 11th.

Meeting adjourned.

5/21/37
MG

[fol. 4586] May 27, 1937

Meeting 10:30 A. M. Thursday, May 27, Group Chairmen and Mr. Tyler.

Mr. Tyler: "I want to read over our working agreement to you and if you have any suggestions to make, please make them.

"I do not believe this working agreement is final—we will consider adding other things later on. Also, I don't think Mrs. Reed will just take this agreement and sign it. She will want to look it over and check it with her lawyers and make any investigations she wishes.

"However, I do think it is a step in advance and think it is the thing for us to do. It will create a feeling of solidarity, and it gives us a certain legal right.

"I suggest that we do not load up this agreement with a lot of detail. Of course, there will have to be amendments. As yet the wage agreement is to be worked out. If this agreement covers the general form or general

principles, we can work on the details later. I would like to get this working agreement definitely into force as soon as possible, as it will help our morale and help us as a Union.

"Under the law Mrs. Reed is bound to deal with us but she isn't bound to accept this agreement.

"We cannot set a definite fixed wage scale, but we are asking for a minimum wage in our working agreement. Also, I would recommend that you be the sole bargaining agency for the employees.

"If Mrs. Reed agrees to a closed shop, no one but members of this Union can work here. Any new employee coming to work here will be given one week in which to join our Union."

[fol. 4587] Question: "Can anyone belong to an outside union and work here?

Mr. Tyler: "No one can belong to any outside union and work here, as stated in our By-Laws.

"In asking for a closed shop, we are perfectly within our rights. I do not believe this will cause any trouble with the I. L. G. W. U. and I don't think we should be afraid of their threats.

"If we do not ask for a closed shop, we may encourage others to fight it. They may say they are being discriminated against and will complain that they are not being treated as well as the rest of the employees.

"We are given the right, under the Wagner Act, to ask for a closed shop if Mrs. Reed agrees.

"I want to tell you people before we go up to Mrs. Reed's office, that to the best of my knowledge I have never spoken a word to Mrs. Reed, and I don't want to except in the presence of this committee.

"In presenting this working agreement to Mrs. Reed we will ask that it become effective June 1st (or a later date if we find it necessary) and to be for a term of two years."

Rose Todd: "If any of the employees have any complaints to make, shouldn't they be made in writing?"

Mr. Tyler: "I think it would be quite all right to take up any petty complaints verbally, but anything of a serious nature should be put in writing and should have an acknowledgment from the committee."

Meeting adjourned.

[fol. 4588] May 27, 1937

Meeting In Mrs. Reed's Office May 27, 1937

(Those present: Mrs. Reed, Mr. Green, Mr. Keyes, Mr. Ingraham, Mr. Baty, Mr. Evans and the Group Chairmen)

Rose Todd: "Mrs. Reed, at this time we want to present our working agreement to you. We feel this is quite an important meeting in our lives."

Mr. Tyler: "We really do not think this working agreement is a master piece, but we do want to present it to you for your consideration.

"One of our proposals is that we shall, as employees, be allowed to proceed without outside domination as to what we demand, whether we shall strike or what dues we shall pay. We believe we can manage our own affairs, have peaceful conditions and better conditions for ourselves, and for the management also. At the same time we are endeavoring to represent the interests of the employees as employees. We do not think it would be to their interests to make any demands which business conditions did not allow and therefore bring about periods of unemployment. However, we do think it is good business to make reasonable suggestions."

(Mr. Tyler reads working agreement)

Mr. Tyler: "There is no doubt this Union represents far in excess of 51% of the employees. Under the Wagner Act we have the right to ask to deal for all employees and ask for a closed shop. We think, since we overwhelmingly represent the opinion of the plant, that if a small group remaining outside the Union continued to work here, there would be constant friction. If there should not be enough work and some were laid off, there [fol. 4589] would be constant complaints about their being

laid off and being discriminated against, and the girls would be irritated by the presence of a small non-union group.

"I feel that a closed shop is justifiable in this plant and the committee, by unanimous vote, has asked that a closed shop be put into effect.

"It is our opinion that it is best for peaceful operation of the plant as well as our own peace and quiet to have a closed shop.

"We submit this agreement to you and if you wish to take it under consideration and have it checked by anyone else, that is your full right. We suggest, however, that no extended time be taken in regard to the matter, and if you have any additions or counter-proposals we will be glad to go into them and consider them. I think the general situation of this Union would be helped by as prompt attention as possible."

Mrs. Reed: "I would like to have a little time to look over this agreement. However, I think it is very much in line—there will possibly be one or two little changes."

Mr. Ingraham: "After we have a chance to go over this agreement we would like to meet with you again this afternoon, and if there are any changes or modifications to be made, we could discuss these with you and you in turn could take it up with the committee."

Mr. Tyler: "That is satisfactory with me. I would like to ask Miss Todd be present when we go over this agreement."

Mr. Ingraham: "If three o'clock is satisfactory with you we will meet here and discuss it and you can then meet with the committee about three thirty and discuss it with them."

[fol. 4590] Mrs. Reed: "I think the only changes it will be necessary to make will just be legal phraseology—the spirit of this agreement is satisfactory."

Meeting adjourned.

5/27/37
MG

[fol. 4591] May 27, 1937

Meeting of Group Chairmen With Mr. Tyler May 27, 1937.

(After working agreement had been presented to Mrs. Reed and a few modifications made).

Mr. Tyler: "This form has been modified in three or four places. Miss Todd was here every minute of the time when these modifications were made. In my opinion it is a satisfactory form and I suggest to you and advise you to execute it.

"It does not undertake to settle every situation which would come up—we decided that we couldn't possibly do that. But I do think it is of substantial value to the employees of the Donnelly Garment Company as a body.

"There is no very important change between this document and the one we prepared ourselves a little while ago."

(Mr. Tyler reads agreement)

"In this agreement, we find it is necessary in defining 'employees' not to include executives.

"Also, we have added to this agreement, that to become a member of this committee you must be employed here for at least one year. This is to eliminate the possibility of someone getting on this committee who is not a true representative of the employees and who may be working here merely to act as a traitor to the company.

"The clause regarding arbitration is a new one that has been added since we made up our first agreement."

Working agreement read by Mr. Tyler and accepted [fol. 4592] unanimously by the committee.

Working agreement signed by both the chairmen of the Union and officials of the company.

Meeting adjourned.

5/27/37
MG

[fol. 4593] June 3, 1937

Meeting of Group Chairmen June 3, 1937.

Plans for the Dance and Carnival which is to be given June 11th were discussed at this meeting, and the committee appointed to take care of the concessions and buy supplies will meet Monday noon.

The suggestion was made that we should see Miss Fitzgerald about having some posters for our party made up. Also [wee] about having an ad put in the paper—this to be in the form of an invitation rather than an advertisement.

Tickets for the dance will be given out to the representatives of the different departments to be sold to the employees and to their friends.

Rose Todd: "Have any of you heard of any complaints which should be straightened out? If so, they should be taken care of at our meetings.

"Mr. Tyler is drawing up a form for us to use for any grievances that might come up. If we have any complaints that are just, let's use these forms.

"I want to ask you to spread the news around that the girls do not have to work nine hours if they do not want to. They are not being forced to work nine hours unless they wish to. They should know this, but let's be sure and make it clear to them.

"The pins from which we are to make our selection for a Union pin are posted on the 7th floor, and a decision will be made on these the first of the week.

"We shouldn't have so many bills from now on and [fol. 4594] we can begin to accumulate a little money in our treasury.

"I would like to have a committee named to set piece work prices. As you know, we have never had any trouble with the company about piece work prices but I feel we should have a committee to handle this for us.

(Motion made that Rose Todd, Josephine Spalitto and Lula Nichols form this committee. Motion seconded.) Unanimous.

"If there is no other business to be taken care of, the meeting will stand adjourned."

Meeting adjourned.

6/3/37
MG

[fol. 4595] June 15, 1937

Meeting of Group Chairmen Tuesday, June 15, 1937.

Rose Todd: "I think we are all here now—Anna Richards is on her vacation and Fred Brown is unable to attend today.

"If any of you know of any business that should be taken care of at this meeting, please be sure to bring it up.

"Several of the girls have been talking to me about vacations. I think they have misinterpreted the clause in our working agreement in regard to vacations (which says that anyone who has been employed here for six months consecutively, with a regular attendance record, shall receive one week's paid vacation; and anyone who has been employed here for two years consecutively, with a regular attendance record, shall receive two weeks' vacation with pay).

"We want to make it clear that girls who have worked here for a number of years, have been gone for three or four months and who have been back at work six months, will still get one week's paid vacation.

"Several of the girls have asked Miss Guerrant about this, but I believe she has also misinterpreted the meaning of this. However, if a girl has been here for six months she will get one week's vacation.

"One thing I think we do want to discuss at this meeting is that I believe we should have an article or clause attached to our working agreement regarding a wage scale. I have discussed this with Mr. Baty and they are working out a plan for a definite wage scale, to be submitted to the Donnelly Garment Workers' Union committee. This will be somewhat graduated and will have cer-
[fol. 4596] tain classifications to take care of employees

who have not been here as long as others. We will work further on this and get it straightened out."

Hobart Atherton: "I would like to ask that the Union furnish me with a gasoline book."

Rose Todd: "Will someone make a motion that we buy Mr. Atherton a $10.00 gasoline book to use in taking care of Union business?

(Motion made that we buy Mr. Atherton a $10.00 gasoline book to be used in taking care of Union business. Motion seconded.)

Motion carried unanimously.

Jack McConaughey: "I would like to ask about seniority rights in regard to vacations. Shouldn't employees who have been here a greater number of years have preference over newer employees in choosing the time they would like to have their vacations? Several people have asked me about this."

Rose Todd: "We will bring this up in a written form and submit to to Mrs. Reed or Mr. Baty. This, of course, does not apply to large groups or sections who take their vacations during slack seasons, but to small groups of employees.

"I intended to talk to the employees in the Shipping Department about their being paid for overtime, but I have not done it as yet. I want to discuss this further with Mr. Baty and will let it go until next week.

"A notice will go out either this afternoon or tomorrow morning in regard to our Union pins. These pins have already been purchased. Everyone that asked for a pin will have to take it. A few may say we didn't buy the pin they wanted and they won't buy the one selected. I think we made it perfectly clear to everyone that the majority would rule and the pin that received the largest number of votes [fol. 4597] was the pin we would buy for our Union pin. So we expect everyone that signed up for a pin to take one.

"The suggestion was made to me by Fred Brown that we send out a note of thanks from the committee expressing our appreciation for the fine cooperation we received from the employees in making our party a success. If this meets with your approval, will someone make a motion that we send out this note of thanks."

(Motion made that we send out a note of thanks expressing our appreciation for the cooperation we received from the employees in making our party a success. Motion seconded.)

Motion carried unanimously.

Rose Todd: "I think the following is something we should ask for (and there isn't any reason why we should not have it) and that is I think we should ask to be paid for every holiday in the year. This will not be deducted from anyone's overtime. I think we should have this and we will ask Mrs. Reed for it.

"I do not think the department heads all realize the Union is functioning. I have talked to Mr. Baty about this, and Mrs. Reed will talk to the department heads. We do not want anyone to feel we are going to the department heads and telling them what to do, but there isn't any reason why we should not make our demands for anything that is reasonable.

"Several weeks ago some of the girls on the 9th floor were paid for working on Decoration Day. Miss Spilsbury called me and said she thought it would be necessary for some of the girls to work Decoration Day (it is always necessary for someone to work then as it always comes at a time when we are getting out a fall line) and she wanted to know if it would be satisfactory, if the girls would rather, for them to get the money instead of taking the time off later."

[fol. 4598] Hobart Atherton: "I think the following is a situation that should be ironed out: I understand that at our party Friday there were certain people who thought that executives were not entitled to attend this party. Since this dance was open to the public the executives had as much right to attend as anyone else. I think some of our people probably thought since this was the first party

the Union had given, the C. I. O. might take the opportunity to say it was an employer's organization.

"When the Union gives a dance or party for Union members and their families, executives should not attend, but any dance that is open to the public, the executives are perfectly entitled to attend."

Rose Todd: "Our by-laws do not state who should be members of our Union and who should not be; who should attend our meetings and who should not. I think we should have an amendment added to our by-laws to take care of this question. There isn't any reason why practically all of the employees shouldn't belong to the Union, with the exception of executives (Mr. Keyes, Mrs. Keyes, Mr. Green and Mr. Baty).

"The question also comes up regarding Miss Guerrant —I do not believe she should be entitled to belong to our Union as she is in charge of the Personnel Department and has the authority to hire people. I discussed this with Mr. Tyler and he said he felt we were right about it.

"Another general meeting will be held in a week or two and we will add amendments to our by-laws. We will also discuss the matter of attendance of employees at these meetings and whether a fine should be imposed for non-attendance, except in emergency cases."

Hobart Atherton: "I think department heads, instruc-
[fol. 4599] tors, etc., should have all the privileges of membership except that they shall not be allowed the right to vote."

Rose Todd: "The plant at St. Joseph has been closed temporarily due to seasonal slack in work. Will someone make a motion to the effect that if the plant at St. Joseph is reopened within the year, Mrs. Ellis will remain as representative from that plant?"

(Motion made that if the St. Joseph plant is reopened within the year, Mrs. Ellis will remain as representative from that plant. Motion seconded)

Motion carried unanimously.

Question: "I understand people are saying that we paid Mr. Tyler $500.00 to organize our Union."

Rose Todd: "As you know, and as we have explained quite thoroughly, we paid Mr. Tyler $500.00 retainer's fee. He helped us write up our By-Laws and Working Agreement and will advise us and help us when we need it."

"Is there anything else now to be taken care of? If not, we will adjourn."

Hobart Atherton: "I think we should ask Mr. Tyler if we can be held responsible for any mishap that might befall any guest at a party which we would give at some public place (such as the Pla-Mor) or would they be responsible. If we could be held responsible, I think we should take out insurance to protect ourselves.

"Has anything further been done regarding a newspaper?"

Rose Todd: "A great many feel that we are not financially able to publish a paper at this time.

"If there is no further business, we will adjourn. These meetings will continue to be held in Miss Spilsbury's office unless you are notified to the contrary."

Meeting adjourned.

6/15/37
MG

[fol. 4600] June 17, 1937.

Meeting Of Group Chairmen June 17, 1937.

Rose Todd: "A wage scale has been drawn up and I want each one of you to look at it and read it very thoroughly. Our prices are not being changed in any way.

"I want you to look over this wage scale very carefully and ask any questions and make any suggestions you wish. Please be sure to read it very thoroughly. I don't want anyone to go away saying they don't know what is in it.

"This wage scale is to be effective as of June 7, 1937. This is only a tentative agreement—to take care of our payroll for today.

"We will meet again tomorrow after you have had time to think about it, and if you have any suggestions then, please make them. I think there will be some—I can see several things which I believe can be improved upon."

Meeting adjourned.

6/17/37
MG

[fol. 4601] June 18, 1937.

Meeting of Group Chairmen June 18, 1937.

Rose Todd: "The purpose of this meeting is to discuss our wage scale.

"I want each one of you to state your suggestions and tell me just how you feel about this wage scale. My suggestion is this:

"That in Group "2", we should ask them to change the minimum from $15.00 to $16.50. My reason for this is that, as you know, the C.I.O. has definitely stated that in garment companies (not just ours) they will ask for a minimum of $16.00. I think we would be smart to go them one better and make it $16.50. I think Mrs. Reed will agree to this—at least we can ask for it.

"We will leave Group "1" as it is. I would like to be able to ask them to change the minimum from $20.00 to $22.50. I think we are handicapping the new girls on the 8th floor as long as we have 40% that will get a minimum of $25.60; 30% that will get a minimum of $22.50, which is 45¢ over what they are asking. Then the other 30%, even though they come in the $20.00 bracket, that doesn't mean if they have the ability that they cannot earn more than that.

"Our prices are not going to be lowered one bit. They will be kept at a high standard.

"In Group "3", which reads—40%—$18.00
30%— 16.50
30%— 15.00

I would like to ask, if you agree, to change that to—

40%—$18.00
60%— 16.50

This will raise our minimum above any that I know of doing similar work.

[fol. 4602] "In the garment industry, most of the contracts are for $13.00—they do not say they have to pay $13.00.

"I want each of you to feel perfectly free to express your opinions. Mamie, what do you think about this wage scale?"

Mamie Riddle: "I think it would be all right to get away from the $15.00 minimum, then the C.I.O. would not have any comeback. In my section (and it is probably true everywhere) they can make $16.50 as easy as they can make $15.00."

Charlotte Casey: "It seems reasonable to me. The girls are pleased with what they are making. The suggestion was made to me (it wasn't my suggestion) 'why is it that the boys make so much more than the girls'?"

Rose Todd: "I think you all realize you have to have a more skilled person to do cutting than to do dividing. I do not think any girl could turn out the amount of work a man could. I know of factories where they do use girls—I know of some factories where they use both girls and boys. If they will tell you the truth, they will tell you the girls cannot make as much as the men. We can discuss this with them. There are certain types of work that men are better suited to than women."

Fred Brown: "In our wage scale, does it mean if a girl doesn't make the minimum she will be replaced with someone else?"

Rose Todd: "They are rearranging the 8th floor, changing the sectional work. (Some of the girls will just have shoulder joining—some, other types of work.) We know after a certain length of time when we get the work organized it will be much easier for the girls to earn their money. They will do the same type of work all the time, and the prices will be regulated so a girl that does tedious work will be paid more for it. When you get into ace-
[fol. 4603] tates, rayons, etc., it will take a different type person—sometimes it takes someone who is not so fast

but who is very good on tedious work, and the prices will be regulated accordingly."

Fred Brown: "If a new girl comes in does she start out at the minimum wage?"

Rose Todd: "It depends on her experience. No one will start for less than $16.50. Other places are only paying $6.75 for 12 weeks. If they let a girl off for two or three days and she comes back, they can still consider her as a beginner."

Fred Brown: "Take Group "1" for instance—say they have a slack in the better class dresses and would have to work on cheaper merchandise, what about their minimum?"

Rose Todd: "We will make only higher priced dresses on the 8th floor."

Fred Brown: "Do you think there will be any dissension among the girls about this?"

Rose Todd: "I think there will be some discussion as to what group they are to be in. We have gone back over the earnings for weeks past. Take for instance an operator who is under the $22.50 guarantee. If she can operate two or three machines, giving her an opportunity to have year round work, with the exception of slack seasons, certainly that girl deserves more consideration than the girl who can operate only one type machine.

"If over a period of weeks a girl earned more than $20.00, she would automatically be put in the $25.60 group.

"If there is any dissatisfaction among the girls about this, they should feel perfectly free to discuss it with the Union (that is what it is for) or with Mr. Baty."

[fol. 4604] Fred Brown: "I think it would be better to give them something a little bit better than the C.I.O. offers."

Rose Todd: "The minimum the C.I.O. is asking for is $22.05 on better merchandise and $16.00 on cottons."

Sally Ormsby: "Don't you think six months is long enough to figure an average? I know a girl in my sec-

tion who is the fastest operator we have, but because of a few bad months her average would be lowered."

Rose Todd: "There may be times during the year when a girl cannot earn her minimum."

Sally Ormsby: "The girl I have in mind is the fastest operator we have in the section."

Rose Todd: "You must take into consideration that maybe for three or four months you will have work that is not as fast as others—the company cannot help that. Nelly Don comes as near having year round work as any factory of this type could have."

Sally Ormsby: "I feel there is a month when you cannot make it—when the line changes."

Rose Todd: "I think a girl is entitled to an average over the year."

Mamie Riddle: "I think so too. On Spring work we can work faster and do more—on the Fall line we can't do so much."

Rose Todd: "This wage scale will have to be set as a general rule governing everybody.

"Sally, this girl you refer to may not be the fastest girl on all types of work. I will look into this case individually."

Jack McConaughey: "In regard to the mechanics—what is the basis for the two groups?"

[4605] Rose Todd: "I presume it is an average of their salaries. I will ask about it. Do you have any information?

Jack McConaughey: "It is probably on the basis of their ability—maybe years of service. You do not have the same thing on the cutters' scale. What is the basis for their scale—of getting into one group or the other?"

Rose Todd: "I think ability should enter into that. A person that works out ways of doing things that make it easier, certainly deserves more credit than the one who does not."

Jack McConaughey: "After they have served their apprenticeship are they considered an old cutter?"

Rose Todd: "Our agreement says that the company shall retain the right to give increases in salary and the right of hiring and discharging. I do not think that is unreasonable."

Fred Brown: "I do not understand about spreaders and spreaders' helpers. I do not see why they would make any difference there."

Rose Todd: "You certainly wouldn't turn a new spreader to spreading material without someone to help him."

Fred Brown: "What is the difference between a spreader and spreader's helper and apprentice? I do not see where they would draw the line, unless it would be the length of time they have been here."

Rose Todd: "I will discuss this with Mr. Tyler and see if he cannot word it a little more clearly. If he wants to meet with us, we will have a meeting."

Charlotte Casey: "What about the ticket girls, recut girls and the receiving department? They have all asked me what their minimum would be."

Fred Brown: "One of the porters (on the 5th floor) [fol. 4606] came to me and told me that several of the porters had gotten raises but he was still getting the same salary he got when he was here five months."

Rose Todd: "We will see about that. What we are trying to do now is to get something worked out to take care of the piece work operators. We are still working on the wage scale."

Marjorie Green: "I do not know a great deal about the work downstairs, but this sounds very reasonable to me."

Rose Todd: "Is there anything else to be discussed?"

Fred Brown: "Has the Shipping Department been taken care of as yet?"

Rose Todd: "The Shipping Department and Office will come under the Donnelly Garment Sales Company. They are working on that now."

Fred Brown: "How about the Maintenance Department?"

Rose Todd. That will come under the office group.

"Is there anything else to be discussed? Let's not overlook anything on this. We want to get it straightened out. Mrs. Reed is giving it her personal attention and we want to get it settled. She is going away within the next two or three weeks, depending on how we get this worked out and on the weather."

Meeting adjourned.

6/18/37.
MG

[fol. 4609] July 14, 1937.

Meeting of Group Chairmen July 14, 1937.

Rose Todd: "There are several matters I want to discuss with you at this meeting. One thing, Mr. Tyler has been talking to me again regarding the D.G.W.U. asking for an injunction again t the I.L.G.W.U. When we have our regular meeting next Tuesday Mr. Tyler will be here and discuss this with us in great detail. He believes now that the company has taken the initial steps it would be smart for us to do the same thing. I want you to be thinking it over and we will discuss it with Mr. Tyler on Tuesday.

"Another thing I believe we should discuss—I have been talking to Fred Brown about this, but I believe we should take a vote on it. I think that the General Chairman and Treasurer of the D.G.W.U., at the present time and in times to come, should be bonded. I believe $1000.00 would be ample, as we will probably never have much more than $1000.00 in the treasury at one time. The cost of these bonds will be $7.50 each or $15.00 per year, this expense to be paid by the Union. If during the year, the officers should change, a new bond would cost an additional $5.00."

(Motion made by Jack McConaughey that the General Chairman and Treasurer of the D.G.W.U. be bonded for $1000.00. Seconded by Marjorie Green.)

Accepted unanimously.

A general discussion was held regarding appointing an Auditing Committee to audit the Union's books twice a year. It was decided that this committee should be comprised of three people, one from the office; one from the inspectors (as we have two on our committee from the [fol. 4610] operators) and one other person. The following committee was submitted for approval:

Bertha Estes, Chairman
Flora Brown
Heath Cowan

(Motion made by Hobart Atherton that we elect Bertha Estes from the office, to act as Chairman; Flora Brown from the inspectors, and Heath Cowan from the Receiving Department to serve as an Auditing Committee and audit the Union's books twice a year (April 27th and October 27th). Seconded by Fred Brown.)

Accepted unanimously.

Rose Todd: "I want to mention one other thing I have discussed with Mr. Tyler and he advises us to put it to a vote, and that is: To have cards printed and given to each employee to sign, requesting the company to take our dues out of the payroll. Will someone please make a motion to this effect?"

(Motion made by Sally Ormsby that we ask the employees to request the company to take our dues of twenty-five cents per month out of the payroll the first pay day in each month. Seconded by Mamie Riddle.)

All in favor make it known by saying 'I'. Opposed 'No'.

(Carried unanimously).

Fred Brown stated that he needed some sort of a file to keep invoices and paid bills in, and permission was given him to go ahead and purchase this file. The cabinet which Miss Todd is now using will be given to Mr. Brown to keep his invoices and bills in.

A general discussion was held regarding the salary which Miss Todd receives from the Union, Miss Todd advising that she believed she could handle this work on her lunch hour and after hours at this time.

[fol. 4611] (Motion made by Marjorie Green that we pay Rose Todd $15.00 per week ($32.50 the first and sixteenth of each month), effective as of June 1st. Seconded by Jack McConaughey.)

Carried unanimously.

Rose Todd: "Is there any other business to come before the meeting at this time? If not, the meeting will stand adjourned."

Meeting adjourned.

7/15/37
MG

[fol. 4619] October 1, 1937

Meeting of Group Chairmen Oct. 1, 1937

The purpose of this meeting was to discuss plans for our Hallowe'en Party. The date has been moved up to October 29th instead of October 22nd, as the Pla-Mor was not available on the date previously set.

At this party it was decided we would pay more attention to card playing. A committee will be appointed to take care of the cards, and each table will be responsible for their own cards. Bridge prizes will be given. It will be necessary for those desiring to play cards to make their reservations in advance.

An I.D.M. regarding this party will be sent out within a few days. Also, the Advertising Department will make us some posters to advertise our party.

The price of admission will be the same as last time—25¢ per person.

Meeting adjourned.

10/1/37
MG

[fol. 4622] November 5, 1937

Meeting of Group Chairmen Nov. 5, 1937.

Rose Todd: "I haven't finished checking up on the money from the dance, as we still have some money out. I

will try to finish checking this sometime next week as we want to have our books audited. I don't know as yet just how much money we will have, but think we made a little money on our party.

"We have a few bridge and pinochle cards left from our party which we want to sell (35¢ and 50¢).

"I think we should send Mr. Tyler some money about next week. We haven't received a statement from him as yet but we probably will within a few days.

"Does anyone have anything that should be brought up or taken care of at this meeting? If you do, please be sure to mention it."

Sally Ormsby: "A few of the girls in Section 413 have talked to me about not making their average."

Rose Todd: "If you will give me the names of these girls and the style numbers I will investigate—I won't be able to do it today, but I will see about it the first of next week and get it straightened out.

"Is there any other business to be taken care of? If not, we will adjourn."

Meeting adjourned.

11/5/37
MG

[fol. 4623] November 16, 1937

Meeting of Group Chairmen November 16, 1937

Rose Todd: "I have been checking over the piece work prices on the numbers which were brought up at our meeting of November 12th with some of the girls from the 8th floor, and I will call those girls and go over these changes with them. Some of them should be changed—especially those on long darts, but I think we should wait a little while on some of them as I believe they will work out all right."

Sally Ormsby: "Some of the girls were a little disappointed, I think."

Rose Todd: "If the girls will do their part, I know Mrs. Nichols will do hers. Of course, once in a while there is bound to be a mistake. On that one dress with the six darts in the sleeves, it originally had only four and this was overlooked. If the girls see there is an easier way to handle some of these things, they should bring them up sooner and satisfactory adjustment will be made.

"I have several things on my mind that I want to mention at this meeting.

"First, the Auditing Committee which we appointed some weeks ago, went over the Union books and report that we were twenty-five cents over on our dues. I think this is grand.

"Fred, how much did we make on our dance?"

Fred Brown: "We cleared about $75.00 after all bills were paid."

Rose Todd: "A number of the girls have asked me different things about the trial, and I thought it would be nice to have a meeting and have Mr. Tyler come down and [fol. 4624] explain to us about the trial and the results of it. Thursday is the only day this week he will be able to come and I thought it would be a good idea to have a meeting on the first floor. What do you think about it?"

Sally Ormsby: "Thursday is pay day and most of the girls like to leave on time so they can get their checks cashed."

Rose Todd: "I realize Thursday is pay day, but I think this is of vital importance to all of us and it is the only day Mr. Tyler will be able to come. We will send out a notice notifying the girls so they can make arrangements to stay."

(Motion made by Hobart Atherton that we have a meeting Thursday afternoon on the first floor for the purpose of Mr. Tyler explaining to the members of the Union about the trial. Seconded by Fred Brown.)

Rose Todd: "We haven't received a bill from Mr. Tyler as yet, but I would not be a bit surprised at any amount it would be as he has spent a lot of time and done a lot of

work on this trial. Some time ago he even made a trip to Washington for which he has never charged us. During the week of the trial two attorneys from his office were there the entire time. I think our expense will be heavy but I do not think it will be a burden to us.

"Mr. Tyler advises that this case is one that will be written up in law books and is being watched with great interest all over the country. He says that whoever loses this case will very probably take it to the Supreme Court. Or, it could be set aside entirely and in that case it would start all over again with oral testimony and would probably take three or four weeks. If they set aside this intervening petition we can immediately ask for another one.

"If it does get to Washington it will take about a week or ten days to present it and, of course, the lawyers will [fol. 4625] have to be there. If it goes to the Supreme Court no additional information will be added.

"Another thing I would like to bring up is this—I think we should set a definite date for Union meetings—say the first Tuesday in each month at five o'clock. I think the members would rather stay then than go home and come back in the evening. We will put this to a vote at our meeting Thursday evening.

"I understand the company leased this entire building some time back and we should ask them about paying some rent for the use of the space for our meetings."

Marjorie Green: "I think $2.50 or $3.00 would be sufficient. We have to furnish the chairs ourselves in addition to that, which makes it rather expensive."

Rose Todd: "We will write a letter to the company regarding this.

"Does anyone have any other business? Do you think there are enough people here who would be interested in a gym class? How about ice skating—do you think we could get 15 people who would be interested in that? We could get admission tickets for 30 cents if we could guarantee 15 persons. I will send out a notice regarding this."

Sally Ormsby: "Several girls have asked me if they were off the Wednesday before Thanksgiving if they would get paid for Thursday."

Rose Todd: "I do not know about this—I will check up on it before our meeting Thursday and let you know then.

"If there is no further business to be taken care of, the meeting will stand adjourned."

(Anna Richards not present—not at work today)

MG

[fol. 4626] December 15, 1937.

Meeting of Group Chairmen December 15, 1937.

Rose Todd: "I thought it would be nice if the Chairmen of the Union sent a Christmas Greeting to the different departments, so if it meets with your approval I will send a little note to each department saying you join me in wishing them the very best for the coming year.

"Another thing I have thought of if you approve of the idea—and that is that we should pay our Secretary this month. She has done quite a lot of work in the last six or seven months, so if it meets with your approval will someone make a motion that we pay our Secretary $15.00 this month."

(Motion made by Hobart Atherton that we pay our Secretary $15.00 this month for services rendered. Seconded by Fred Brown.)

Carried unanimously.

Rose Todd: "I think it would be nice if we would plan to have a Valentine's Party—what do you think about it?"

Hobart Atherton: "I believe the N.D.A.A. is planning to have a play the latter part of January. Would that be too close together?"

Rose Todd: "We have always had a Valentine's Party every year as everyone seems to want to have a party then and it is a very easy party to have. The Friday closest to Valentine's is Feb. 11th.

"I will talk to Hugo Kranz regarding the play and see if they can't get busy on it and have it by the latter part of January.

"I will be back from my vacation on January 10th. You will have one meeting while I am gone. Mamie Riddle will be at my desk on the 9th floor from 11:00 to 12:45 each day to take care of anything that might come up. I don't think of anything right now that should be taken up at [fol. 4627] your next meeting, but there will probably be several things before that time."

Hobart Atherton: "I wanted to mention this—we have quite a few temporary employees here—people who have been working out at the Club House and different places and have been here for sometime, and they would like to join our Union."

Rose Todd: "I think we should do something about this, as some of these people have been here from six to eight months."

Hobart Atherton: "I think they should be allowed to join our Union. Of course, they would only pay dues while they are employed here."

Rose Todd: "About seven of these boys have asked me about this in the last week." Let's put it to a vote."

(Motion made by Fred Brown that we ask temporary employees who have been employed here for as long as thirty days to join our Union. Seconded by Sally Ormsby.)

Carried unanimously.

Hobart Atherton: "I don't think we should ask them to buy pins. If they want to that is all right."

Rose Todd: "We have never asked anyone to buy a Union pin—that is optional and left entirely up to them."

Hobart Atherton: "How are we going to take care of the balance of our bill from Mr. Tyler—in monthly payments or wait until we have a larger sum?"

Rose Todd: "I don't think we should worry about this bill. I believe they would rather we pay it in a larger sum than in small amounts.

[fol. 4628] "Fred, when I get back, or while I am gone, if you will give Marjorie Green a list of the salesmen who

are late with their dues she will write to them requesting that they bring their dues up to date."

Hobart Atherton: "What do you think about the Union sending a check for $15.00 or $25.00 to the Mayor's Christmas Tree?"

Rose Todd: "What do you think of this? I think it would be very nice. What do you think about $15.00?"

(Motion made by Jack McConaughey that we send a check for $15.00 to the Mayor's Christmas Tree. Seconded by Sally Ormsby.)

Carried unanimously.

Hobart Atherton: "What do you think about the Union starting a Credit Union?"

Rose Todd: "I have thought about this quite a bit and have talked to several people about it. Also talked to one of the men at the Missouri Credit Association. Have talked to several people about it and have been trying to get different opinions on it.

"There would be considerable work attached to it, and if we should start anything like that we want to go into it very carefully and check it thoroughly."

Hobart Atherton: "I believe we could make about $3000.00 per year on it."

Rose Todd: "To do anything like this would require one person's entire time and it would have to be someone who is a good bookkeeper. We would probably have to pay them about $100.00 per month.

"Several of the girls downstairs have asked me about starting a Christmas Savings. One of the sections has a [fol. 4629] Christmas Savings, and the way they handle it is to elect two girls to take care of it and collect from the girls and deposit the money under one name. I think this is all right for the sections to do something like this but we couldn't handle anything of that kind.

"I think we should give this Credit Union some more thought and find out all we can about it. If we should start anything of this kind we certainly would have to have

a good strong board of directors as you will always have a certain percentage of people who are not satisfied with the way you handle things. I believe we should give this some more very serious thought before doing anything definite about it.

"Another thing, we have corresponded with Mr. Green and he advises that $3.00 per meeting will be satisfactory rent for us to pay for the space used for our meetings, to be paid at the end of our fiscal year.

"Is there any other business to be brought up? If not, the meeting will stand adjourned."

12/15/37
MG

[fol. 4640] March 4, 1938

Meeting of Group Chairmen March 4, 1938

Rose Todd: "As you know, our general meeting is next Tuesday evening, so if any of you know of anything we should bring up at this meeting, please be sure to mention it.

"I thought you would be interested to know that our ice skating party last Tuesday night turned out very well. We made our expenses and a little over.

"There are still a number of people I haven't asked to join our Union. I will see these people before our meeting Tuesday evening.

"I was talking to Mr. Tyler a few day ago and he advises our case comes up in the Supreme Court sometime during the two weeks following March 28th, which would be about the first two weeks in April. We will possibly have a little more expense, so what do you think about our taking this up at our meeting Tuesday evening and discuss raising the money to pay the balance of our bill to Mr. Tyler? I would like to get this bill cleaned up, and my suggestion would be to pay one-half of it in March and one-half in April. This would cost each of us about $1.00, or 50 cents in March and 50 cents in April. Of course, it will be necessary for Mr. Tyler to be in Washington when our case is heard there—I don't know whether this was

included in the bill which he has already rendered us. What do you think of this plan? Let's think it over and we will discuss it further at our meeting Tuesday.

(Chairmen agreed unanimously that they believed this would be a good plan and thought the employees would be glad to take care of the balance of Mr. Tyler's bill in this way)

[fol. 4641] "Mr. Tyler also advised me it was necessary to have some briefs printed. The reason the C. I. O. didn't have to stand this expense was because they didn't think it had any bearing on the case. If the Supreme Court decides it does have bearing on the case, then they will have to pay for it. If not, we will be obliged to pay it.

"A number of people have asked me if it wouldn't be possible for us to have our meetings at 4:30 instead of 5:00, having the people who work until 5:00 o'clock come in a little earlier or take a shorter lunch period. I discussed this with Mr. Tyler and he didn't think it advisable to do this. After all, we only have these meetings once a month, so let's all get as many people out as we possibly can.

"As you know, our dance is March 25th. Let's get behind this and sell as many tickets as we can. When do you think we should put our tickets on sale? I think we should get them out by Friday, March 11th.

"The election of new officers will come up at our meeting in April, so that will take up most of our time at that meeting.

"Miss Berning was talking to me (and I believe she had discussed it with Miss Spilsbury) in regard to having Miss Spilsbury show us the moving pictures which she took on her trip to South America. I am sure she would be glad to show these pictures at one of our meetings if we would like for her to. Since our election of officers comes up at our April meeting, it would probably be May before we could have her show these pictures.

"Mr. Price was telling me something about a very interesting talk some man gave before the N. D. A. A. Fred, will you tell us something about this?"

Fred Brown: "This man was from the Investment Syndicate and his talk concerned money management and [fol. 4642] what they are doing to establish a course in schools throughout the country to teach children how to manage and handle their money after they earn it."

Rose Todd: "I thought it would be nice to have something like this at our meetings before long.

"Do you know of any other business we should bring up at our meeting Tuesday evening?

"Don't you think it would be a good idea to read our by-laws at this meeting? We have quite a number of new employees, and no doubt quite a few of the older employees would like to hear them again.

"If there is no further business, the meeting will stand adjourned."

Meeting adjourned.

(Note: Hobart Atherton not present at meeting)

3/4/38
MG

[fol. 4640] May 3, 1938

Meeting of Group Chairmen May 3, 1938

Rose Todd: "I don't believe there is a great deal of business to be taken care of today.

"I want to tell you a few things we have tried to remember in the past. Anything you hear in the way of complaints, or any suggestions you have to make that would make our organization any stronger and help keep it active, please be sure to mention them.

"I feel that we have this Union and we should always have it and we should always keep it active and going. We have learned a great deal and we still have a lot yet to learn. I think this organization should be maintained as long as the Donnelly Garment Company is in existence. It is a good thing for the employees and a good thing for the Company, and I think we should work to keep it active.

"At our last meeting of the chairmen we discussed having a party of the old and new officers. What do you people think of a steak fry or weenie roast, or would you rather have a chicken dinner? Of course, a chicken dinner would cost us a little more. What do you think would be best? And what night would be suitable for all of you?

(It was decided to have a steak fry at the Club House Thursday evening, May 12th, each person having the privilege of inviting one guest)

"Our next general meeting will be Tuesday, May 10th, and I thought it would be nice if we would ask Mr. Tyler to come down and talk to us, as we are all anxious to hear about our case.

"One other thing I do want to mention to you is this. At different times several people have asked me if it [fol. 4647] would be possible for our Union to have a savings and loan account. At the present time I think we should keep our money in the bank, but maybe a little later on we could do something like that. I talked to Mr. May at the First National Bank about this and he will let us know if they can work out something that we could use, and maybe at some time in the near future we can handle something of this kind.

"I think from now on we will have our chairmen meetings in the auditorium on the first floor.

"If there is nothing else, the meeting will stand adjourned."

Meeting adjourned.

5/3/38
MG

[fol. 4651] July 5, 1938

Meeting of Group Chairmen July 5, 1938

A very short meeting of the chairmen was held Tuesday afternoon, July 5th, at 4:30, for the purpose of Mr. Tyler meeting the new members of the committee.

This meeting was very brief as Mr. Tyler was to talk to us at our general meeting at 4:45.

Mr. Tyler suggested that we make a note to get together about sixty days before our contract with the company expires for the purpose of working out a new contract.

Meeting adjourned.

(Note: Rose Todd and Al Reifel not present—on vacations)

7/5/38
MG

[fol. 4695] (Board's Exhibit 10.)

Date 6/13/39—Witness Todd.

Extension of Agreement.

This Extension of original Articles of Agreement entered into by and between the Donnelly Garment Workers' Union, party of first part, and Donnelly Garment Company and Donnelly Garment Sales Company, parties of second part, on May 27, 1937, Witnesseth that

The parties hereto being willing to extend the aforesaid agreement and continue the terms therein fixed with the exception on line three, paragraph two on page one, which it is hereby agreed shall be amended to read: "A minimum of $16.50 per week", instead of $15.00 per week, it is hereby

Agreed by mutual promises and agreements set forth that said contract with the exception above set out shall be and the same is continued in full force and effect for a period of twenty-four (24) months from the date hereof, with the additional provision added thereto becoming paragraph numbered Eighteen thereof as follows:

"(18) This contract shall be deemed to be extended for a period of two (2) years from the expiration of it or of its extensions unless one of the parties to the contract shall at least sixty (60) days before the expiration of this or any other extension give notice in writing to the other party that the contract shall terminate on the expiration of the extension then in force."

[fol. 4696] In Witness Whereof we have hereunto affixed our hands this 2 day of June 1939.

DONNELLY GARMENT WORKERS' UNION,
By .....
General Chairman.
.....
.....
.....
.....
.....
.....
.....
.....
.....
Committeemen,
Parties of First Part.

Executed in duplicate.
DONNELLY GARMENT COMPANY,
By s/d R. J. Ingraham, Sec.
Attest:
.....

DONNELLY GARMENT SALES COMPANY,
By s/d R. J. Ingraham,
Parties of Second Part. Sec.
Attest:
.....

Board's Exhibit 13.

NATIONAL LABOR RELATIONS BOARD
CASE NO. XVII-C-371 EXHIBIT NO. 13
IN THE MATTER OF Donnelly Garment Co.
DATE 6-30-39 WITNESS
DANIEL W. ROSS, Official Reporter
BY

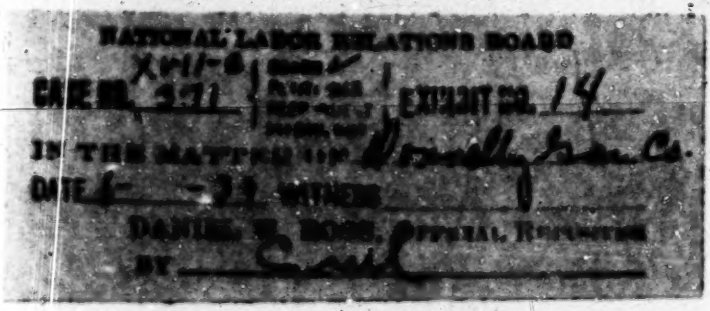
4699

Board's Exhibit 14.

I, the undersigned, hereby pledge myself to become a member of the Nell Donnelly Loyalty League to take part in the activities and support said league to the best of my ability.

I have signed this ~~same~~ pledge of my own free will without coersion or intimidation of any kind.

Bd. Ex. 14



[fol. 4709] (Board's Exhibit 18.)

Date 6/27/39—Witness Greenhan.

Minutes of meeting of Donnelly Garment Workers' Union, May 25th, 1937, at 3:45 p. m.

Rose Todd: This meeting has been called very hurriedly. We were to have chairs at 3:30; they were to be here at 3:30, but it takes a few minutes to get them and set them up and it takes a few minutes to get you all down here, but I didn't know there were none until I came down. However, the meeting won't last very long, so if you will be patient I am sure we can get through before very long.

I want to tell you this is going to be two meetings, the first being a meeting of the Donnelly Garment Workers' Union and after that a meeting of the Loyalty League.

No doubt some of you heard that yesterday in 411 and 412 I passed out your union cards and the remainder of them will be given to you as quickly as we can take care of them. I expect to get some of it done tomorrow—it will probably take two more days to finish.

I want to read an article to you in the noon paper. Some of you I know have read it and some haven't:

Clipping

That is increasing their amount quite a bit in two weeks. But I still can't feel they are going to sign up enough people in here to call a strike.

[fol. 4710] For your people in here working—I want to advise you to work quietly. In the first place, I don't know just what I would do if anybody asked me to join the C. I. O.

I think you will all be interested in knowing this—a number of people have been asking me if our working agreement has been sent to Mrs. Reed. A number have asked if it shouldn't be there and if we needed it and I have tried to explain our working agreement is being drawn up by Mr. Tyler and I want to tell you now I went down to see him and it will be finished and in Mrs. Reed's hands this

afternoon or in the morning. I don't know the time. It first has to go through the mails.

No doubt you noticed in our little paper published last week, we want to have a dance at the Plamor on the night of June 11th—that is Friday night. I am going to ask Hobart Atherton to explain to you why we are having this dance.

Hobart Atherton: I think I said the last time I talked to you that I was mad. I have been mad several times since.

There seems to be a little misunderstanding as to why the Loyalty League needs this money and a little later on I will explain that to you.

We are going to have this dance June 11th at the Plamor to be given under the auspices of the Donnelly Garment Workers' Union. As you all know we have a lot of people on the outside who are very friendly to us and we have been advised that it would be a very good thing to give something that these friends can attend to show their [fol. 4711] appreciation and give their support to that which they feel they want to.

At this dance we are going to have a few carnival booths so those who don't want to dance can have the opportunity to do something else.

I don't know anything else I can tell you about the dance that you don't already know, so I will turn the mike back over to Miss Todd.

Miss Todd: If any of you have any questions you want to ask about the dance, I think this would be a very opportune time to do it.

I think we should all understand that we are primarily having this dance because a great many of our outside friends would like to know us as a group of employees. It would give us an opportunity to have a nice time and make new friends.

If there is any business pending of the Union, please bring it up now. If there isn't, I want to close this and open it as a Loyalty meeting.

I might tell you this—we will have our tickets for the dance ready to go on sale about Thursday or Friday of this week. I don't believe we can make it much sooner.

If there isn't any further Union business to take care of at this time I would like to hear a motion that the meeting be adjourned, but please don't leave the room.

Question: Aren't there to be cards as well at the dance?

Miss Todd: We will have card tables and cards for anybody who wants to play cards and the booths to lend [fol. 4712] carnival spirit and give us something besides dancing and cards.

Any further questions? I don't want you to get tired but I do want to answer further questions.

A motion has been made that we adjourn our Union meeting and immediately open our Loyalty meeting. Second.

The meeting adjourned.

Meeting of the Loyalty League May 25th, 1937

Miss Todd: There have been several things come up that the Loyalty League will be interested in. Mainly about this sweepstakes. I think some of the people understand it and some do not and a great many people have expressed to me the desire "Let's not do that." We will talk about it a little. I will ask Hobart to make a talk and then I will ask Miss Hartman to give you a report of our finances.

First, at each meeting I have made it clear that the Loyalty League has only one bill—not "bills". And that isn't a bill we have to be worried about and it isn't a bill that has to be taken care of immediately.

Yesterday we found out before our meeting and a representative also went last night, that it was impossible to rent the floor of this building for a carnival. We weren't [fol. 4713] faced with any alternative. It took so much to rent the Plamor for another meeting and so last night a meeting of the representatives of the Loyalty League was held with the representatives of the Athletic Associa-

tion and we discussed holding this derby and very hurriedly in the last few minutes we cancelled the derby entirely.

Now, I want everyone who has any question to ask about our indebtedness, I want you to ask them. I will ask Miss Hartman to come up and read the financial report.

Report read by Miss Hartman.

Miss Todd: I am going to ask Hobart to explain where our indebtedness is and I will talk to you and give you an opportunity to ask questions about it.

Hobart Atherton: As Miss Todd has already told you, we only have one debt of the Loyalty League. A good many of you seem to be under the impression we have accumulated quite a lot of bills as we have gone along but we have only one.

You all realize when this agitation first started, we didn't have any union started and it was up to some organization to take the initial step to protect our rights as employees of the Donnelly Garment Company. So the Loyalty League had a meeting of the representatives and were authorized by the representatives to retain legal counsel. We retained Mr. Tyler, as you all know. He came down here and talked to us. That debt, the bill of [fol. 4714] Mr. Tyler is the only debt the Loyalty League has which has not been paid and as Miss Todd told you, that isn't pressing. We want to pay it but we don't have to do it right off hand as some may have been given the impression we have to.

That bill amounts to approximately $500.00, as that is his retainer's fee. That may sound like a lot of money off-hand but when you consider the number of people we have—1200 people, to be conservative—divided into $500.00, makes a cost of approximately forty-five cents each, which is mighty cheap attorney's fees.

Five hundred dollars is $50,000

Miss Todd: Now I want several of you to ask any questions about anything you want to know about the Loyalty League's finances. Please don't go away without some-

body asking about it, because I haven't been able to answer questions fast enough all afternoon.

I think it was very unjust and thoughtless for someone to say, "I just work here, I don't know anything about these bills." As I said at the last meeting, we haven't any secrets. We are all working here. It is everybody's business. There is only one person who doesn't work here and that is Mrs. Reed. She owns the business. Don't feel timid about asking questions. We are all just one employee talking to another.

Question: Some of the girls were under the impression the Union was to pay that.

Miss Todd: I am glad you asked that. The Union [fol. 4715] will have to take care of Mr. Tyler's expenses from now on. I told you in our last meeting I didn't know what his services were and I don't know now. I talked to him again and made him this proposition—we would pay him a retainer fee of $500.00 but I certainly can asure you if we get into court with this thing, and we very likely will, that we will probably have to have more money during the year. We asked him to draw up our by-laws at that time. We asked what our dues were to be—twenty-five cents a month is very nominal. But the Loyalty League, thrugh the officers of the Loyalty League, assumed this responsibility—this retainer's fee, but as Mr. Atherton said, it was the only organization the employees had, and I felt as long as we had that organization we certainly were privileged to go ahead and do something about it. We had to protect ourselves.

We are just beginning on this thing, so don't let's get rusty already. If anybody is interested in joining the Union, you don't want to let me know. If you are interested, you had better keep quiet about it. There has never been any force about belonging to the Loyalty League. Anybody is privileged to belong or not belong. As far as belonging to the Union is concerned, you don't have to belong to that either. But one of these days they are going to work for a closed shop and I think we are going to get it. So you had better belong then.

I haven't any doubt about a few who have joined the Union. I think in time they will give themselves away about that. But we want to be fair and square.

Question: Won't everyone be willing to give fifty cents to pay that debt?

[fol. 4716] Miss Todd: I am going to say that we think this thing over a while. Mrs. from Section 411 has just made a suggestion that if each of us give fifty cents we will have enough in our treasury to take care of this indebtedness.

Applause.

Miss Todd: I think that is grand spirit to show. May I hear a motion then to the effect that each member of the Loyalty League donate fifty cents to take care of any current indebtedness we have.

Lena Lewis moved each member of the Loyalty League pay fifty cents to take care of any current indebtedness we have.

Seconded by Louie James.

Miss Todd: I think right here in this meeting we will ask each representative to accept this money and keep close check. This is purely voluntary, if you want to do it, all right. If you don't want to do it, all right.

The sweepstakes, or derby as we call it—we will forget it.

This meeting right here takes care of the only thing we were concerned about, that is the derby and that is taken care of. Our dance we talked of in the last meeting and we will have a picnic one of these days. We have had lots of nice times and they haven't cost anything and I am sure you feel real good about it and I do too.

There is one more thing—a great many people haven't carried their identification cards. Please bring them. They are getting fussy about us getting in down stairs and I don't blame them.

[fol. 4717] I think we better put it to a vote—all in favor of donating fifty cents for the Loyal League indebtedness make it known by the usual sign. Carried.

I think one of the boys should come up and tell us what has been done at the picnic grounds. I think everybody would like to know. Will some of the boys come up and tell us what shape the picnic grounds are in; whether we have water and so on?

While he is coming up I will tell you, last night in our meeting of the Chairmen, I resigned as President of the Loyalty League and we elected a new President, Thelma (?) Hufaker, in Section 411.

Fred Brown: The Picnic grounds aren't in very good shape right now. We have weeds about knee high and two ovens and three tables now, but when the time comes to have a picnic I think we will have another oven or two built and I think we will have to get the boys out there and cut those weeds. That is the shape it is in right now.

Miss Todd: Is there any other business to come before the Loyalty League. If not, you can give your fifty cents to the representative in your department. If you want to give a dime at a time, that is all right.

Now I want to introduce Miss Hufaker, your new President.

Miss Hufaker: Girls and fellow workers. This is quite an honor to me. To the best of my ability I will carry on, the best I know how. Thank you.

Miss Todd: If there is no other business, the meeting is adjourned.

[fol. 4718] Mr. Atherton: I don't want this meeting to break up without giving to Miss Todd a big hand for what she has done.

Applause.

Miss Todd: I appreciate that very much and I will try to do my best.

The meeting adjourned.

Board's Exhibit 19.

$1,000.00
150
250.00

10 Kansas City, Mo., MAR 30 1937 192

On demand I promise to pay

3 Ef-19 to the order of the First National Bank,
OF KANSAS CITY, MO.

One Thousand & 00 Dollars

for value received at its office in Kansas City with interest from date at the rate of eight per cent per annum. All makers and parties hereto jointly and severally waive demand and protest. The Kelly Doc Loyalty League

No. 5460 Due

By Fred Todd President.

JUL 22 1937 Interest Paid to 6-30-37

NATIONAL LABOR RELATIONS BOARD

CASE NO. 37-1 EXHIBIT NO. 19

IN THE MATTER OF

DATE 6-30-37 WITNESS

DANIEL W. ROSS, Official Reporter

BY

[fol. 4720] (Board's Exhibit 20.)

Date 6/30/39 —— Witness Bourke.

The Nelly Don Loyalty League

Statement of your account with
The First National Bank
Kansas City, Missouri

Checks in detail	Date	Deposits	Date	Balance
Balance Brought Forward				
	3/30/37	1,000.00	3/30/37	1,000.00
	-0-			
Balance Brought Forward	3/31/37	1,000.00	3/31/37	1,000.00
Checks in detail				
500.00			4/7/37	500.00
242.40 25.61 50.00			4/12/37	181.99
	-0-			
Balance Brought Forward	4/30/37	181.99	4/30/37	181.99
Checks in detail	5/4/37	229.89	5/4/37	411.88
24.24			5/5/37	387.64
8.00			5/6/37	379.64
15.00			5/10/37	364.64
36.63			5/11/37	328.01
35.63	5/11/37	36.63	5/11/37	329.01
12.00			5/27/37	317.01
	-0-			
Balance Brought Forward	5/29/37	317.01	5/29/37	317.01
Checks in detail				
35.58 3.64			6/26/37	277.79
	-0-			
Balance Brought Forward	6/30/37	277.79	6/30/37	277.79
Checks in detail				
15.00			7/1/37	262.79
	7/13/37	623.20	7/13/37	885.99
12.78			7/14/37	873.21
33.50 1.00			7/16/37	838.71
750.00			7/22/37	88.71
	-0-			
Balance Brought Forward	7/31/37	88.71	7/31/37	88.71

Board's Exhibit 21-A.

FIRST NATIONAL BANK
OF KANSAS CITY, MO.

KANSAS CITY, MO., May 26 1937

PAY TO THE ORDER OF American Chair Rental Co. $12 00/100

Twelve ——— DOLLARS

Daily Men Loyalty League
Pat N. Todd.
Pauline Hartman

No. 507

AMERICAN CHAIR RENTAL CO.

21

CITY NATIONAL BANK & TRUST CO.
KANSAS CITY
CLEARING HOUSE
MAY 27 1937
33
KANSAS CITY, MO.

NATIONAL LABOR RELATIONS BOARD
CASE NO. WIFC 371
EXHIBIT NO. 21-A
IN THE MATTER OF Daily Men's Co.
DATE 6-30-39 WITNESS Hartman
DANIEL W. ROSS, OFFICIAL REPORTER
BY

Board's Exhibit 21-B.

Bd Ex - 21-B

FIRST NATIONAL BANK 10-2/10
OF KANSAS CITY, MO.

KANSAS CITY, MO., May 4 1937

PAY TO THE ORDER OF Kansas City Chair Rental Co. $24

Twenty Four and 00/100 DOLLARS

The Kelly Dan Loyalty League

NO. 505 Rose Todd

Pauline Hartman

Kansas City, Mo.
Kingston

18-9 PAID
THROUGH CLEARING HOUSE
MAY 5 1937
UNION NATIONAL Bank
KANSAS CITY, MO. 18-9

NATIONAL LABOR RELATIONS BOARD

CASE NO. 18-C-271 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 21-B

IN THE MATTER OF Donnelly Dan Co.

DATE 6-30-39 WITNESS A. Erdman

DANIEL W. ROSS, OFFICIAL REPORTER

BY Jackson

4722

Board's Exhibit 21-C.

Bd Ex. 21-C

FIRST NATIONAL BANK
OF KANSAS CITY, MO.

KANSAS CITY, MO., May 4 1937

PAY TO THE ORDER OF G. R. Rounds & Sons $15 00

Fifteen and 00 DOLLARS

The Kelly Ston Loyalty League

No. 506

Ross Toll.
Pauline Hartman

G. R. Rounds & Sons
by E. Rounds
Pres.

J. W. Roche
Secretary

TRUST CO
HAY
PAID

Pay to the order of any Banker or Trust Co.
for credit to the
WILSON & CO., INC.
KANSAS CITY, KANSAS

NATIONAL LABOR RELATIONS BOARD
XVII-C
CASE NO. 211 EXHIBIT NO. 21-C
IN THE MATTER OF Kelly Ston Co
DATE 6-3-37 WITNESS Hartman
DANIEL W. ROSS, OFFICIAL REPORTER
BY: Mackey

4723

Board's Exhibit 21-D.

BE-21-D

FIRST NATIONAL BANK
OF KANSAS CITY, MO.

KANSAS CITY, MO., May 4 1937

PAY TO THE ORDER OF Midwest Merchandise Co. $ 8 00

Eight 8 00 DOLLARS

M. P. 16-3

No. 503

The Nelly Don Loyalty League
Rose Todd
Pauline Hartman

PAY TO THE ORDER OF
FIRST NATIONAL BANK
KANSAS CITY, MISSOURI
954.
MIDWEST MERCHANDISE CO.

NATIONAL LABOR RELATIONS BOARD
CASE NO. 21-C EXHIBIT NO. 21-D
IN THE MATTER OF Nelly Don Co.
DATE 6-3-37 WITNESS Hartman
DANIEL W. ROSS, OFFICIAL REPORTER
BY

4724

Board's Exhibit 21-E.

BdEx. 21-E

FIRST NATIONAL BANK 10-2/10
OF KANSAS CITY, MO.

KANSAS CITY, MO., May 4 1937 63

PAY TO THE ORDER OF The Green Co. $35

Thirty Five and -00 DOLLARS

The Kelly-Springfield Tire Co.

No. 504

Rose Todd

Pauline Hartman

PAID THRU

BALTIMORE BANK
KANSAS CITY 10-20 CLEARING HOUSE
MAY 11 1937

PAY TO THE ORDER OF
BALTIMORE BANK
KANSAS CITY, MO.
Subject to the Conditions Guaranteed
FOR DEPOSIT
THE GREEN CO.

NATIONAL LABOR RELATIONS BOARD

CASE NO. XVII-C-371 BOARD / PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 21-E

IN THE MATTER OF Kelly-Springfield Co.

DATE 6-30-39 WITNESS Hartman

DANIEL W. ROSS, OFFICIAL REPORTER

BY Duncanson

Board's Exhibit 21-F.

Bd Ex-21-F

FIRST NATIONAL BANK
OF KANSAS CITY, MO.

KANSAS CITY, MO., June 21 1937

PAY TO THE ORDER OF A-R Sound Service $15 00

Fifteen and 00/100 DOLLARS

No. 508

Nelly Don Loyalty Ledge
Rose K. Gill
Pauline Hartman

By Robert Lehman
Sec'y Treas.
Labor & Parts

MERCANTILE TRUST CO. BANK
18-18
KANSAS CITY, MO.
JUL 1 1937

NATIONAL LABOR RELATIONS BOARD
CASE NO. XVIII-C-221 | BOARD PETITIONER RESPONDENT INTERVENOR | EXHIBIT NO. 21-F
IN THE MATTER OF Nelly Don Co
DATE 6-30-39 WITNESS Hartman
DANIEL W. ROSS, OFFICIAL REPORTER
BY [illegible]

1726

Board's Exhibit 21-G.

BEx-21-G

FIRST NATIONAL BANK 19-2/10

OF KANSAS CITY, MO.

KANSAS CITY, MO., July 13 1937

78

PAY TO THE ORDER OF First National Bank $ 12

Twelve 00 DOLLARS

Shelby Shop Loyalty League

No. 611 Rose K. Hall

Pauline Hartman

NATIONAL LABOR RELATIONS BOARD

CASE NO. XVII-C-311 EXHIBIT NO. 21-G

IN THE MATTER OF Shelby Shop Co.

DATE 6-30-39 WITNESS Hartman

DANIEL W. [illegible] OFFICIAL REPORTER

BY [illegible]

4727

Board's Exhibit 21-H.

P.E. 21-H

FIRST NATIONAL BANK 19-2/10
OF KANSAS CITY, MO.

KANSAS CITY, MO., July 13 1937

PAY TO THE ORDER OF The Green Co. $33 50

Thirty Three — 50/100 — DOLLARS

NO. 513

Nelly Don Loyalty League
Rose M. Todd
Pauline Hartman

BALTIMORE BANK
KANSAS CITY, MO.
FOR DEPOSIT
THE GREEN CO.

PAID THRU

BALTIMORE BANK
KANSAS CITY
CLEARING HOUSE

JUL 16 19

NATIONAL LABOR RELATIONS BOARD
CASE NO. 371 EXHIBIT NO. 21-H
IN THE MATTER OF
DATE 6-30-39 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

4728

Board's Exhibit 21-I.

1-A Ex. 21-J

FIRST NATIONAL BANK
OF KANSAS CITY, MO.

KANSAS CITY, MO., July 13 1937

PAY TO THE ORDER OF Jenkins Music Co. $1 00

One ——— 00/100 ——— DOLLARS

Nelly Don Loyalty League
Rose K. Todd
Pauline Hartman

NO. 512

UNION NATIONAL BANK
KANSAS CITY, MO.
31
JUL 16 1937
FOR DEPOSIT ★
JENKINS MUSIC COMPANY
31

18-9 PAID
THROUGH CLEARING HOUSE
JUL 16 1937
UNION NATIONAL BANK
KANSAS CITY, MO. 18-9

NATIONAL LABOR RELATIONS BOARD
CASE NO. 211-C { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 21-J
IN THE MATTER OF Nelly Don Co
DATE 6-30-39 WITNESS Hartman
DANIEL W. ROSS, OFFICIAL REPORTER
BY Nicholson

Board's Exhibit 21-J.

B.E.X-21-J

FIRST NATIONAL BANK 19-2/10
OF KANSAS CITY, MO.

KANSAS CITY, MO., July 19, 1937

PAY TO THE ORDER OF First National Bank 750 00

Seven Hundred Fifty and 00/00 DOLLARS

Nelly Don Loyalty League
Rose K. Todd
Pauline Hartman

NO. 514

5

NATIONAL LABOR RELATIONS BOARD

CASE NO. XVII-C 371 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 21-J.

IN THE MATTER OF Nelly Don's

DATE 6-30-39 WITNESS Hartman

DANIEL W. ROSS, OFFICIAL REPORTER

BY Nicholson

4730

Board's Exhibit 21-K.

B'd Ex-21-K.

FIRST NATIONAL BANK 19-2/10
OF KANSAS CITY, MO.

KANSAS CITY, MO., Apr 9, 1937

PAY TO THE ORDER OF The Green Co. $50 00

Fifty and 00/100 DOLLARS

The Nelly Don Loyalty League

NO. 500

Rose K. Todd

Pauline Hartman

BALTIMORE BANK
KANSAS CITY, MO.
Previous Endorsements Guaranteed
FOR DEPOSIT ONLY
THE GREEN CO.

2 KANSAS CITY APR 12 1937 BALTIMORE BANK 1220 CLEAR HOUSE

PAID THRU 4

NATIONAL LABOR RELATIONS BOARD
XFH-C
CASE NO. 371 EXHIBIT NO. 21-K
IN THE MATTER OF Nelly Don Co
DATE 6-3-39 WITNESS Stanley
DANIEL W. ROSS, OFFICIAL REPORTER
BY

Board's Exhibit 21-L.

Bd Ex-21-L

FIRST NATIONAL BANK
OF KANSAS CITY, MO.

KANSAS CITY, MO., Apr. 9 1937

PAY TO THE ORDER OF Kansas City Chair Rental Co $ 25 61/100

twenty five ——— DOLLARS

The Nelly Don Loyalty Leag.
Rose K. Todd
Pauline Hartman

No. 501

18-9 PAID
THROUGH CLEARING HOUSE
APR 12 1937
UNION NATIONAL BANK.
KANSAS CITY, MO. 18-9

Kansas City Chair Rental

NATIONAL LABOR RELATIONS BOARD
CASE NO. XVII-C 371 | BOARD PETITIONER RESPONDENT Int. Ex. No. | EXHIBIT NO. 21-L
IN THE MATTER OF Donnelly Garment Co
DATE 6-30-37 WITNESS Hartman
DANIEL W. ROSS, OFFICIAL REPORTER
BY Nielsen

Board's Exhibit 21-M.

Bd Ex-21-M

FIRST NATIONAL BANK 19-2/10
OF KANSAS CITY, MO.

KANSAS CITY, MO., Apr 9 1937

PAY TO THE ORDER OF Flo-Mar Amusements, Inc. $242.40

Two Hundred Forty Two ——— 40/100 DOLLARS

The Nelly Don Loyalty League

No. 502

Rose K. Todd

Pauline Hartman

PAY TO THE ORDER OF
UNION NATIONAL BANK
KANSAS CITY, MO.
Professional Building Branch
FOR DEPOSIT ONLY
FLAMOR AMUSEMENT, INC.

18-9 PAID
THROUGH CLEARING HOUSE
APR 12 1937
UNION NATIONAL BANK.
KANSAS CITY, MO. 18-9

NATIONAL LABOR RELATIONS BOARD
CASE NO. XVII-C-371 BOARD'S PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 21-M
IN THE MATTER OF Nelly Don Co.
DATE 6-30-37 WITNESS Hartman
DANIEL W. ROSS, OFFICIAL REPORTER
BY Nicholson

4733

Board's Exhibit 21-N.

B.E.T.-21-N

FIRST NATIONAL BANK
OF KANSAS CITY, MO.

10-2
10

KANSAS CITY, MO., June 21, 1937

PAY TO THE ORDER OF The Thermoid Co. $35 58

Thirty five 58/00 DOLLARS

No. 510

Needy Don Loyalty League
Rose K. Taft
Pauline Hartman

BALTIMORE BANK
KANSAS CITY, MO.

FOR DEPOSIT
THE GREEN CO.

PAID THRU BALTIMORE BANK CLEARING HOUSE 1420 JUN 28 1937 KANSAS CITY, MO.

NATIONAL LABOR RELATIONS BOARD
CASE NO. XFIL-2 371 EXHIBIT NO. 21-N
IN THE MATTER OF Needy Loy. Co
DATE 6-30-39 WITNESS Hartman
DANIEL W. ROSS, OFFICIAL REPORTER
BY

Board's Exhibit 21-0.

BEE-21-0.

FIRST NATIONAL BANK 10-2/10

OF KANSAS CITY

KANSAS CITY, MO., June 21 1937 7/64

PAY TO THE ORDER OF Jackson Murray Co. $ 3

Three 64/100 DOLLARS

No. 509

Nicely Dun Loyalty League
Robt. H. Gall
Pauline Hartman

NATIONAL LABOR RELATIONS BOARD
CASE NO. 311 EXHIBIT NO. 21-0
IN THE MATTER OF Donnelly Garment Co.
DATE 6-30-37 WITNESS Hartman
DANIEL M. ROSS, Official Reporter
BY

4735

Board's Exhibit 22.

First National Bank Acct (Loyalty League and Special Acct.)

		Deposits	Checks Issued	Bal.
Mar.	30. 1937	10000		
Apr.	1		500 00	9500 00
	9		318 01	9181 99
May	4	2298	82 87	9297 01
	13	6232 0	—	9529 21
	26		1200	9402 1
June	21/37		5422	8859 99
July	13		4728	8387 71
July	19/37		750 00	8871

Bd. Ex. 22

NATIONAL LABOR RELATIONS BOARD
XVI-C
DATE: 6-30-37 EXHIBIT NO. 22
IN THE MATTER OF Loyalty League
DATE 6-30-37 WITNESS Stockton
DANIEL W. ROSS, Official Reporter
BY Quell

Date		Deb.	Cr.	Bal.
11,26				
1/1/36	Bal.	2.76		
2/15	Pin Money	17.85		20.61
2/16	Dance - Pla Mor 2/15/36	110.25		130.86
3/11	Emmert Chair Co.		10.00	120.86
3/15	Sale of Pins	7.35		128.21
5/6	50% of Dance Stauber Cl. 4/17/36	22.87		151.08
5/6	Post Cards		1.00	150.08
5/20	Miscel. Exp. (Picnic Found)		20.00	130.08
10/14	Sale of Pins	5.25		135.33
10/16	Green Jewelry Mountain Co.		16.67	118.66
10/16	Liberty Printing Co.		2.75	115.91
11/20	Dance - Stauber Club	103.60		219.44
1/5/37	Alpha Floral Co (Mrs McCormick funeral)		5.40	214.01
2/5	Howard Davidson (Flower fund)		7.00	207.01
2/22	Sale of Pins 2/6/37	8.75		215.76
	Dance Plaza Hotel	127.63		343.39
95	[illegible] (Closed & Bal. 6.24			[illegible]

		Deb.	Cr.	Bal.
				343.39
4/6/37	Green Co ✓		50.00	293.39
	H.C. Chair Rental ✓		25.61	
	Pla-Mor ✓		242.40	25.38
5/4/37	Checking - Dance at Pla Mor ✓	68.60		93.88
	Midwest Mdse Co. ✓		8.00	
	The Green Co. ✓		35.63	
	H.C. Chair Rental ✓		24.24	
	U.R. Sound Service ✓		15.00	14.01
5/18	Sale of Pins ✓	122.10		136.11
5/26	American Chair Co ✓		12.00	124.11
6/21	U.R. Sound Service ✓		15.00	
	Jenkins Music Co. ✓		3.64	
	The Green Co. ✓		35.58	66.89
7/18	Jenkins Music Co ✓		1.00	65.89
	The Green Co ✓		33.50	32.39
9/21/37	Money from Dance	104.00		136.39
9	[illegible] (Closed & Bal.			[illegible]

NATIONAL LABOR RELATIONS BOARD

CASE NO. XXX-C-1 | BOARD | P. I. NO. | REP. DEPT. | EXHIBIT NO. 24-A

IN THE MATTER OF Donnelly Garment Co

DATE 6-30-39 WITNESS Kaufman

DANIEL W. ROSS, OFFICIAL REPORTER

BY Creel

NATIONAL LABOR RELATIONS BOARD

CASE NO. XXX-C-1 | BOARD | P. I. NO. | REP. DEPT. | EXHIBIT NO. 24-B

IN THE MATTER OF Donnelly Garment Co

DATE 6-30-39 WITNESS Kaufman

DANIEL W. ROSS, OFFICIAL REPORTER

BY Creel

Board's Exhibit 24.
Date 6/30/39 - Witness Hartman.

	Cr.	Bal.					
		343.39					136.79
	60.00	283.39	12/16/38	Carnival Flowers	363.14		499.93
	25.61		12/16/38	L. L. Price		6.00	493.93
	212.40	25.38	12/22	Charity Donation		25.00	468.93
			1/27/39	Donation Bowling Team		5.00	463.93
8.60		93.88	3/3	Dress - Price		1.60	463.93
	8.00		3/6	Dinner for representatives at Club House		23.25	440.08
	35.63			Ice Cream H. Krieg for dinner		4.59	435.49
	24.24						
	15.00	11.01					
22.10		133.11		~~G.C.W.W. Ex 13-C~~			
	12.00	121.11		(changed to Bd. Ex. 24-C)			
	16.00						
	3.64						
	35.58	66.89					
	1.00	65.89					
	33.50	32.39					
4.40		136.79					

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1 [illegible] EXHIBIT NO. 24-C
IN THE MATTER OF Kennedy Harness Co.
DATE 6-30-39 WITNESS Hartman
DANIEL W. ROSS, Official Reporter
BY [signature]

4739

Board's Exhibit 23.

Special Account

		Dr.	Cr.	Bal.
3/30/37		1,000.00		
4/1/37	F. E. Tyler		500.00	500.00
4/13	Cash (Emp. C)	501.10		1001.10
5/21	Cash	71.50		1072.60
7/13	First National Bank		12.78	1059.82
7/19	" " "		750.00	309.82
3/20/39	" " "		273.92	35.90

~~R L B to H. Ex. 12~~
(changed to Bd. Ex. 23.)

NATIONAL LABOR RELATIONS BOARD
Case No. C-371 | Resp. No. | EXHIBIT NO. 23
IN THE MATTER OF Donnelly Bros.
DATE 6-30-37 WITNESS
DANIEL W. ROSS, Official Reporter
BY.

4740

Board's Exhibit 25.

KANSAS CITY, MO. MAR 20 1939 193

The Nelly Don Loyalty League Bd Ex-25

FIRST NATIONAL BANK, KANSAS CITY, MO.

INTEREST MEMORANDUM

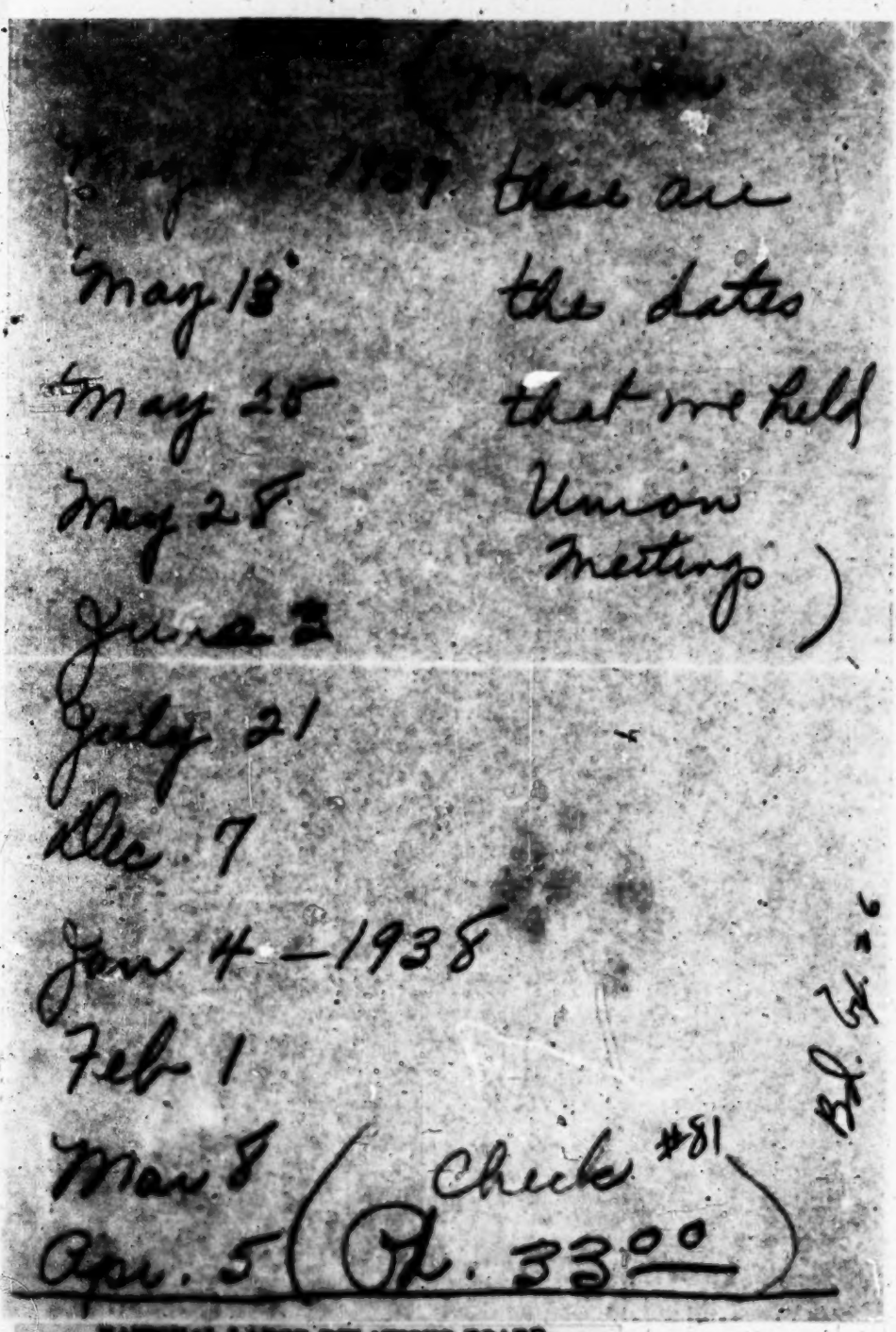
FORM NO. 152

NATIONAL LABOR RELATIONS BOARD
CASE NO. 321 EXHIBIT NO.
IN THE MATTER OF
DATE 6-22-37 WITNESS
DANIEL W. REID, Official Reporter
BY

RATE	FROM	TO	DAYS	AMOUNT	INTEREST	TOTAL
5%	June 30 '37	July 22 '37	22	$ 1000 —	$ 3 06	
	July 22 '37	Sept 20 '37	60	250 —	20 86	
					$ 23 92	
	Springfield				250 —	
						$ 273 92

FIRST NATIONAL BANK
MAR 20 1939
DISCOUNT CHARGE
KANSAS CITY, MO.

4743



March
May 1 1937 these are
May 18 the dates
May 25 that we held
May 28 Union
June 2 Meeting)
July 21
Dec. 7
Jan 4 — 1938
Feb 1
Mar 8
Apr. 5 (Check #81 $2.33 00)

Bd Ex 26

NATIONAL LABOR RELATIONS BOARD
CASE NO. XVII-C-491 EXHIBIT NO. 21
IN THE MATTER OF Kentucky Bag Co.
DATE 4-30-37 WITNESS McConaughey

4742

[fol. 4744] (Board's Exhibit 28.)

Date 7/22/39. Witness .....

United States of America
Before the National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Worker's Union

and

Donnelly Garment Worker's Union, Party to the Contract.

Case No. XVII-C-371.

It Is Hereby Stipulated And Agreed by and between Donnelly Garment Company, respondent herein, by its attorneys, R. J. Ingraham and B. S. Stottle, Donnelly Garment Workers Union, intervener herein, by its attorney, Frank E. Tyler, International Ladies' Garment Workers' Union, by its attorney, Clif Langsdale, and Daniel J. Leary, attorney National Labor Relations Board, that with reference to Board's Exhibit No. 28, attached hereto and hereby offered by the Board, consisting of sixty-eight (68) pages, the facts and figures contained in such exhibit are true and accurate reflections of the facts and figures of all of the respondent's timeworkers' payroll records of whom it purports to refer for the period April 15, 1937, to July 15, 1937.

DONNELLY GARMENT COMPANY,
By R. J. Ingraham,
B. S. Stottle, Its Counsel.

DONNELLY GARMENT WORKERS' UNION,
By Frank E. Tyler, Its Counsel.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
By Clif Langsdale,
Jane Walker Palmer, Its Counsel.

DANIEL J. LEARY, Attorney
N.L.R.B.

Received. See Rulings of Trial Examiner, Bds. Exh. L-SSSS.

J. C. BATTEN,
Trial Examiner.

[fol. 4745] Pay Roll Record

Donnelly Garment Company—Semi-Monthly Pay Roll

Cutting Department — Period Ending 4/16/37–4/30/37

Employee Name			Gross Earnings
Ted Scoles			119.17
Perry Kerr	2 wks vac		86.67
Lowell Sachen			54.17
Ben James			39.00
Wm. Frederick	55 hrs. overtime—No Bal		28.88
Wm. Fredereck			45.50
Harold Boyd	2 wks vac		86.67
Odell DeCavelle			75.83
William Neale			86.67
Frank Cooper			92.09
Gerald Cole			39.00
Alvin Riefel			48.75
George Fallis			65.00
Clyde Davidson			43.34
Carl Crawford	advanced rate 86.67		60.00
Carl Crawford	Less advanced 60.00		26.67
Earl Willoughby			86.67
Heber Hayes			86.67
Durward Reece	16 hrs. overtime Bal 40 hrs.		7.20
Durward Reece	2 wks. vac		39.00
Samuel Reese			54.17
John Crist			92.09
Cameron Herold	@ .375	43	16.13
Cameron Herold	@ .375	44½	16.69
Freeland Rife	advanced 1 wk. vac. time off later		40.00
Freeland Rife			86.67
Fred Brown			92.09

[fol. 4746] Raymond Luce			43.34
Otto Dramshek			39.00
Sherman Andrew	@ .375	46½ hrs.	17.44
Sherman Andrew	@ .375	49 hrs	18.38
Kellogg Leach			97.50
James Van Camp			59.58
Elmo Boston	6 days (4/16–4/23)		30.00
Dividing Dept.			
Mary Bogert			65.00
Gertrude Gorham			54.17
Thelma Sachen			37.92
Mary Hall			43.34
Jessie Forsen			43.34
Dorothy Curry	2 wks vac		48.75
Rhea Byars			37.92
Doris Emig			37.92
Charlotte Casey			43.34
Macie Westendick			37.92
Irene Wilhite			37.92
Verdoe Rainey			32.50
Ruby Scott			37.92
Dorothy Curry	overtime—no Bal . 39		21.96
Binding Dept.			

[fol. 4747] Binding Department — Period Ending 4/16/37–4/30/37

Employee Name		Gross Earnings
Mollie Smith	rate 65.00 26 hrs. @ .75	84.50
Alphonse Staab	rate 70.42 26 hrs. @ .812	91.53
Robert Kirk	rate 39.00 28½ hrs. @ .45	51.83
Instructors & Floorladies		
Marie Patton	rate 75.83 26 hrs. @ .875	98.58
Marie Grampp	rate 48.75 26 hrs. @ .563	63.39
Lena Allison	rate 75.83 26 hrs. @ .875	98.58
Rose Henricks	rate 59.58 26 hrs. @ .687	77.44
Lola Skeens	rate 75.83 26 hrs. @ .875	98.58
Nellie Biggs	rate 48.75 26 hrs. @ .563	63.39
	rate 75.83	

Ada Vining	26 hrs. @ .875 rate 54.17	98.58
Anna Barthol	26 hrs. @ .625 rate 59.58	70.42
Clara Finnell	26 hrs. @ .687 rate 48.75	77.44
Emma Grober	26 hrs. @ .563 rate 54.17	63.39
Grace Davis	26 hrs. @ .625 rate 65.00	70.42
Grace Gnotta	26 hrs. @ .75 rate 48.75	84.50
Mary Snedden	26 hrs. @ .563 rate 65.00	63.39
Lillian White	26 hrs. @ .75 rate 59.58	84.50
Mary Copowycz [fol. 4748]	18 hrs. @ .687 rate 65.00	71.95
Etta Dorsey	26 hrs. @ .75 rate 54.17	84.50
Vera Marshall	22 hrs. @ .625 rate 65.00	67.92
Rosetta Cook	26 hrs. @ .75 rate 54.17	84.50
Jessie Mudd	26 hrs. @ .625 rate 65.00	70.42
Pearl Collins	10 hrs. @ .75 rate 43.34	72.50
Martha Gorman	10 hrs. @ .50 rate 75.83	48.34
Cecile Ealy	10 hrs. @ .875 rate 48.75	84.58
Edna Bienert	26 hrs. @ .563 rate 54.17	63.39
Bear Atchison	26 hrs. @ .625 rate 59.58	70.42
Kathryn Rosen	26 hrs. @ .687	77.44
Claris Griggs	@ .50 53 hrs.	26.50
Claris Griggs	@ .50 53 hrs. rate 65.00	26.50
Carrie Abrams	26 hrs. @ .75 rate 43.34	84.50
Frances Dumit	18 hrs. @ .50 4/24 to — (Pd. 1 wk not here Pd. 1 wk 5/15—making 2 wks pd. while off ill)	52.34
Pressing & Folding Dept.		
Lulu Waddell	rate 75.83 26 hrs. @ .875 rate 59.58	98.58

Zona Cleveland	26 hrs. @ .687	77.44
	rate 43.34	
Elma Jennings	17 hrs. @ .50	51.84
Button & Buttonhole Dept.		
[fol. 4749]	rate 86.67	
Stella Willis	16 hrs. @ 1.00	102.67
	rate 54.17	
Ada Wolfe	26 hrs. @ .625	70.42
Mildred Davis	@ .375 53 hrs.	19.88
Mildred Davis.	@ .375 53 hrs.	19.88
Harold Etherington	@ .375 53 hrs.	19.88
Harold Etherington	@ .375 53 hrs.	19.88
Hand Sewing Dept.		
	rate 48.75	
Francis Morrison	26 hrs. @ .563	63.39
W. G. Weaverling		54.17
T. G. Boozell		75.00
Production Control		
Virginia White		54.17
Kathryn Bateman		43.34
Frances Endsley		43.34
Eileen Gay		37.92
Helen Hauser		54.17
Dorothy Martin		43.34
Herbert Mutchler		75.83

[fol. 4751] Designing Dept. Period Ending 4/16–4/30/37

Employee Name	Gross Earnings
Merl Beitling	54.17
Edythe Hughes	65.00
Margaret Glover	39.00
Georgia Bailey	35.75
Alice Scott	35.75
Lorene McCarroll	70.42
Kathernie Ruppert	43.34
Marjorie Florence	39.00
Diana Rutherford	65.00
Grace McTernan	54.17
Designing (Patterns)	
Virginia Gale	39.00
Elva Hill	43.34
Mable M. Riggs	59.58
Zelma Humphrey	54.17
Anna Kappelman	70.42

Nell Beats			70.42
Elizabeth Goodenow			35.75
[fol. 4752] Nancy Newton			39.00
Corinne Robinson			48.75
Evelyn Cook			37.92
Marie Hiller			48.75
Karlyne Anspatch			39.00
Oscar Steinborn			86.67
Dorothea Dankenbring			49.83
Designing (Sewing)			
	rate 48.75		
Ceva Vaughn	4/16	9.18	
	4/23	9.94	67.87
Ann Scott			48.75
Pearl Davis			48.75
Mabel Bayless			48.75
	rate 48.75		
Norma Duncan	4/16	9.18	
	4/23	9.94	67.87
	rate 48.75		
Nora Stevenson	4/16	8.41	
	4/23	9.94	67.10
	rate 48.75		
Nell W. Gregg	4/16	8.41	
	4/23	9.94	67.10
Helen Morlan			39.00
	rate 48.75		
Malissa Harvey	4/16	8.41	
	4/23	9.94	67.10
Nannie Barger			81.25
Freda Smeltzer			48.75
Effie Canfield			48.75
Pearl Doyle			54.17
Rose Todd			65.00
[fol. 4753] Vesta Dixon			35.75
Grace Sampsell			35.75
Mary Hanback			54.17
Remnants Dept.			
Mildred Callahan	@ .375	52 hrs	19.50
Mildred Callahan			18.56
Naomi Osipik			35.75
Eulah Carter			43.34
Retail Store			
Mary Wiltshire			39.00
Regina Stearman			39.00
Rose Murray			48.75

Ruth Anderson		43.34
Camilla A. Cochran		39.00
Ora Gordon		48.75
Grace Stephens		39.00

[fol. 4754] Receiving Dept. (Notions & Stat.) Period Ending 4/16/37–4/30/37

Employee Name		Gross Earnings
	rate 54.17	
Helen Little	26 hrs. @ .625	70.42
	rate 39.00	
Vera Webb	26 hrs. @ .45	50.70
	rate 35.75	
Edwina Jones	26 hrs. .413	46.49
	rate 35.75	
Mildred Combs	26 hrs. @ .413	46.49
	rate 39.00	
Grayce Cooper	26 hrs. @ .45	50.70
	rate 35.75	
Blanche Endres	25 hrs. @ .413	46.08
Grayce Cooper (short 4/9 and 4/16 Chg 811		8.68

Receiving Dept. (Piece Goods)

Heath Cowan		81.25
Robert Livesay		48.75
James Dunn		48.75
Hinton Noland		43.34

Buying Records

Amy Lou Courtney		48.75
Hilda Richmond		54.17
[fol. 4755] Herb Fountain	2 wks vac.	140.84
Anna Wherry		162.50
Lena Tyhurst		108.34
Katie Schleicher		162.50
Lula Nichols		108.34
Ella Mae Hyde		86.67
C. Marvin Price		140.84
Florence Strickland		162.50
Rose Hughes		86.67
Gertrude Cain		119.17
Nellie Kraft		140.84
Yolanda Haines		140.84
[fol. 4756] Lillian Marrs		140.84
Ella Brown		97.50
Martha Gray		86.67
Marjorie Nagle		69.33
Frances M. Berko		86.67
Berrien E. Riley		108.34

Alice Raynor	65.00
Evelyn Burke	60.67
Rose O'Leary	92.09
Veda Hoyland	81.25
Pauline Hartman	108.34
Ellen Hughes	65.00
[fol. 4757] Mary Stratton	39.00
Margaret Quinn	48.75
Jane Daugherty	43.34
Marjorie Green	48.75
Freda Caudle	35.75
Jane Wilkins	43.34
Harlan R. Justus	70.42
Pearl Henry	48.75
Lena Berry	54.17
David Green	37.92

Accounting Department

Pauline Shartzer	65.00
Helen Swope	54.17
Cecile Guerrant	39.00
Lucille Briggs	43.34
Mildred Moore	37.92
Mary Risley	35.75

[fol. 4762] Dividing Dept (Contd) Period Ending 5/1/37 to 5/15/37

Employee Name		Gross Earnings
Irene Wilhite		37.92
Verdoe Rainey		32.50
Ruby Scott		37.92
Verdoe Rainey (Opr. overtime)	32 hrs. @ .375	12.00
Rhea Byars (Opr. overtime)	13 hrs. @ .437	5.68
Doris Emig " "	13 hrs. @ .437	5.68
Macie Westendick "	14 hrs. @ .437	6.12
Irene Wilhite "	14 hrs. @ .437	6.12

Binding Dept.

[fol. 4764] Instructors & Floorladies (Contd.)

Period Ending 5/1/37 to 5/15/37

Employee Name		Gross Earnings
	Rate 65.00	
Rosetta Cook	10 hrs. @ .75	72.50
	Rate 54.17	

Jessie Mudd	10 hrs. @ .625	60.42
Bertha Siney	2 wks. @ 25.00 (off ill)	50.00
	Rate 65.00	
Pearl Collins	10 hrs. @ .75	72.50
	Rate 43.34	
Martha Gorman—	10 hrs. @ .50	48.34
	Rate 75.83	
Cecile Ealy	10 hrs. @ .875	84.58
	Rate 48.75	
Edna Bienert	10 hrs. @ .563	54.38
	Rate 54.17	
Pearl Atchison	10 hrs. @ .625	60.42
	Rate 59.58	
Kathryn Rosen	10 hrs. @ .687	66.45
Claris Griggs	45 hrs. @ .50	22.50
Claris Griggs	45 hrs. @ .50	22.50
	Rate 65.00	
Carrie Abrams	10 hrs. @ .75	72.50
Francis Dumit	(off ill—Pd. 1 wk. while off in semi-monthly ck of 5/1—making 2 wks Pd. for time off)	43.34
	Rate 35.75	
Harry Grogan	5 hrs. @ .413—thru 5/7	37.82
Pressing & Folding Dept.		
	Rate 75.83	
Lulu Waddell	10 hrs. @ .875	84.58
	Rate 59.58	
Zona Cleveland	10 hrs. @ .687	66.45
	Rate 43.34	
Elma Jennings	10 hrs. @ .50	48.34
Nell Beatz	8 hrs. @ .812—St. Joe. Instr.	6.50
Corinne Robinson	8 hrs. @ .563 " " "	4.50
Nannie Barger	8 hrs. @ .937 " " "	7.50
Button & Buttonhole Dept.		
	Rate 86.67	
Stella Willis	— @ 1.00	86.67
	Rate 54.17	
Ada Wolfe	10 hrs. @ .625	60.42
[fol. 4765]	1 wk.	
Mildred Davis	53 hrs. @ .375	19.88
Mildred Davis	45 hrs. @ .375	16.88
Harold Etherington	45 hrs. @ .375	16.88
Harold Etherington	45 hrs. @ .375	16.88
Hand Sewing Dept.		
	Rate 48.75	
Francis Morrison	18 hrs. @ .563	58.88

W. G. Weaverling		54.17
T. G. Boozell		75.00
Rose Todd	½ or Semi-monthly rate (65.00) (See Payroll of 5/31/37—issued ck. of 32.50 to make up regular rate of 65.00)	32.50

Production Control

Virginia White		54.17
Kathryn Bateman		43.34
Frances Endsley		43.34
Eileen Gay		37.92
Helen Hauser		54.17
Herbert Mutchler		75.83
Frances Endsley	opr. overtime 40½ hrs. @ .50	20.25
Eileen Gay	opr. overtime 26 hrs. @ .437	11.36
Kathryn Bateman	opr. overtime 37 hrs. @ .50	18.50
Virginia White	opr. overtime 40½ hrs. @ .625	25.31
Margaret Peterson	2 days @ 27.50	11.00

Personnel (Employment)

Katholeen Densel	43.34

[fol. 4766] Personnel (Hospital) Period Ending 5/1/37 to 5/15/37

Employee Name	Gross Earnings
Alice Blodgett	75.83

Maintenance (Mechanics)

Walter Higgins—Opr. overtime 63 hrs. @ 1.00	63.00
Lyle Jeter	92.09
Roy Beller	86.67
Fred Ellis	86.67
Walter Higgins	86.67
Earl DeGraffenreid—Opr. Overtime 71 hrs. @ 1.06	75.26
Earl DeGraffenreid	92.09
J. H. White	48.75
Kenneth Peck	92.09
Patrick Haniford — See Weekly P. R.	
H. F. Atherton	65.00
Fred Ellis — Opr. Overtime 81¼ hrs. @ 1.00	81.25
Ray Beller " " 33¼ hrs. @ 1.00	33.25
Lyle Jeter " " 105 hrs. @ 1.06	111.30
Raymond Smith " " 49¼ hrs. @ .75	36.94
Hobart Atherton " 51¼ hrs. @ .75	38.44

Maintenance (Clerical)

Jack McConaughey	50¼ hrs. @ .687½	34.52
Jack McConaughey		59.58
Kenneth Peck—Opr. Overtime	50¼ hrs. @ 1.06	53.27
J. H. White " "	91½ hrs. @ .563	51.51
George Blair (Trip to St. Joe—night 4/16)		2.75

Accounting Dept.

[fol. 4767] Herb Fountain		140.84
Anna Wherry		162.50
Lena Tyhurst		108.34
Lula Nichols		108.34
Ella Mae Hyde		86.67
C. Marvin Price		140.84
Lillian Marrs (Pd. for 3rd wk. Vac.)		65.00
[fol. 4768] Helen Swope		54.17
Lucille Briggs		43.34
Bernadine Schooley		48.75
Cecile Guerrant		39.00
Mildred Moore		37.92
Mary Risley		35.75
Deloris Robertson		39.00
Robert Livesay overtime (No. Bal.) 39 hrs.		21.96
Heath Corvan—Opr. overtime	26 hrs.	24.36
James Dunn " "	25 Hrs. @ .563	14.08
Robert Livesay " "	37 Hrs. @ .563	20.83
James Van Camp " "	14 Hrs. @ .687	9.62
Naomi Osipila " "	27 Hrs. @ .413	11.15
Eulah Carter " "	38 Hrs. @ .50	19.00
Ruby Scott " "	5 Hrs. @ .437	2.19
Mildred Callahan	45 Hrs. @ .375	16.88
Rose Hughes—Ck of 5/15 & 6/1		
	Leaving 5/7/37	173.34

[fol. 4772] Instructors & Floor Workers Period Ending 5/16/37 to 5/31/37

Employee Name		Gross Earnings
Rosetta Cook	rate 65.00—14 hrs. @ .75	75.50
Jessie Mudd	rate 54.17—12 hrs. @ .625	61.67
Pearl Collins	rate 65.00—12 hrs. @ .75	74.00
Edna Bienert	rate 48.75—12 hrs. @ .563	55.51
Pearl Atchison	rate 54.17—18 hrs. @ .625	65.42
	rate 65.00—18 hrs. @ .75	
Kathryn Rosen	2.50 Inc. to 30.00	78.50
	rate 48.75—10 hrs. @ .563	
Martha Gorman	2.50 Inc. to 22.50	54.38
Carrie Abrams	rate 65.00—18 hrs. @ .75	78.50
	rate 48.75—13 hrs. @ .563	
Frances Dumit	2.50 Inc. to 22.50	56.07

Pressing & Folding Department

Lulu Waddell	rate 75.83—18 hrs. @ .875	91.58
Zona Cleveland	rate 59.58—18 hrs. @ .687 11 hrs. overtime @ .563	71.95
Elma Jennings	2.50 Inc. to 22.50 as of 5/16	54.94
Harry Grogan	rate 35.75	35.75

Button & Buttonhole Department

Harold Etherington	@ .375—53 hrs.	19.88
Harold Etherington	@ .375—45 hrs.	16.88
Stella Willis	rate 86.67—8 hrs. @ 1.00	94.67
Ada Wolfe	rate 54.17—18 hrs. @ .625	65.42

[fol. 4773] Button & Buttonhole Department

Period Ending 5/16/37-5/31/37

Employee Name		Gross Earnings
Mildred Davis	rate 15.00	18.87
Mildred Davis	@ .375 52 hrs.	19.50

Hand Sewing Department

	rate 54.17 18 hrs. @ .625	
Francis Morrison	2.50 Inc. to 25.00	65.42
W. G. Weaverling		54.17
T. G. Boozell		75.00
Rose Todd		65.00
	5/1/37 to 5/15/37—65.00	
Rose Todd	Pd. —32.50	32.50

Production Control

Virginia White		54.17
Kathryn Bateman		43.34
Frances Endsley		43.34
Eileen Gay	(2 wks. vac. 5/24)	37.92
Helen Hauser		54.17
Margaret Heimovics		
Herbert Mutchler		75.83
Cecile Ealy		75.83
Eileen Gay	(overtime @ .437)	10.05

[fol. 4774] Personnel (Employment) Period Ending 5/16/37-5/31/37

Employee Name		Gross Earnings
Katholeen Denzel		43.34

Personnel (Hospital)

Alice Blodgett		75.83
Lillian Hedquist	Began 5/17/37—rate 40.00 wk.	86.67

Maintenance (Mechanics)

Lyle Jeter		92.09
Roy Beller		86.67
Fred Ellis		86.67
Walter Higgins		86.67
Earl DeGraffenreid		92.09
J. H. White		48.75
Kenneth Peck		92.09
Patrick Haniford		
H. F. Atherton	5.00 Inc. to 35.00	75.83
Pat Haniford		
Earl DeGrafenreid	(advanced)	70.00

Maintenance (Clerical)

Jack McConaughey	59.58

[fol. 4775] Maintenance (Clerical) Period Ending 5/16/37-5/31/37

Employee Name	Gross Earnings
Herb Fountain	140.84
Anna Wherry	162.50
Lena Tyhurts	108.34
Lula Nichols	108.34
Ella Mae Hyde	86.67
C. Marvin Price	140.84

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fol. 4783] Button & Buttonhole Dept. (Cont'd.)

Period Ending 6/1/37-6/15/37

Employee Name		Gross Earnings
W. G. Weaverling	(2 wks vac. time off later)	50.00
W. G. Weaverling		54.17
T. G. Boozell		75.00
Rose Todd		65.00
Wood Reynolds	(Wk. 5/28 rate 16.50 plus 12 hrs.)	21.45

Production Control

Frances Endsley	(Overtime) @ .50 40 hrs.	20.00
Vivian Saderburg	5 days @ 18.00	18.00
Virginia White		54.17
Kathryn Bateman		43.34
Frances Endsley	(2 wks vac)	43.34
Eileen Gay	(2.50 Increase to 20.00 as of 6/1)	5.42
Eileen Gay	(new rate 43.34)	37.92
Helen Hauser	(5.00 Increase to 20.00)	65.00
Herbert Mutchler		75.83
Cecile Ealy		75.83

Elizabeth Belter	(See Dept. 962 Sales Co. P. R.)				
Dorothy Heinlein	"	"			
Vivian Saderburg	4½ days	@ 3.60			16.20
Virginia White (May Overtime)		@	.625	28 hrs.	17.50
Francis Endsley (May Overtime)		@	.50	20 hrs.	10.00
Katherine Bateman (May Overtime)		@	.50	20 hrs.	10.00
Vivian Saderburg	5 days @ 3.60				18.00
Personnel (Employment)					
Katholeen Denzel	(2.50 Increase to 22.50)				48.75
Personnel (Hospital)					
[fol. 4784] Alice Blodgett					75.83
Lillian Hedquist					86.67
Maintenance (Mechanics)					
Raymond Smith					65.00
Walter Higgins (Additional Overtime)		@ 1.06	8 hrs.		8.50
Lyle Jeter					92.09
Roy Beller					86.67
Fred Ellis	(2 wks vac.)				86.67
Walter Higgins (2.50 Inc. to 42.50—2 wks vac.)					92.09
Earl DeGraffenreid					92.09
J. H. White	(2.50 Increase to 25.00)				54.17
Kenneth Peck					92.09
H. F. Atherton					75.83
Lyle Jeter (May Overtime)		@ 1.06	84½ hrs.		89.57
Roy Beller (May Overtime)		@ 1.00	26 hrs.		26.00
Fred Ellis (May Overtime)		@ 1.00	44½ hrs.		44.50
Walter Higgins (May Overtime)		@ 1.00	22 3/4 hrs.		22.75
Earl De Graffenreid (May Overtime)		@ 1.06	23¼ hrs.		24.65
Maintenance (Clerical)					
Jack McConaughey	(2.50 Inc. to 30.00)				65.00
J. H. White (May Overtime)		@	.563	58 hrs.	32.65
Jack McConaughey (May Overtime)		@	.687	27 3/4 hrs.	19.06
Kenneth Peck (May Overtime)		@ 1.06	28 hrs.		29.68
Raymond Smith (May Overtime)		@	.75	44½ hrs.	33.38
Hobart Atherton (May Overtime)		@	.875	30 3/4 hrs.	26.91
Accounting Department					
Helen Swope					54.17
Lucille Briggs					43.34
[fol. 4785] Herb Fountain					140.84
Anna Wherry	(5.00 Increase to 80.00 as of 6/1/37)				10.84
Anna Wherry	(3 wks vac.—5/28)				162.50
Lena Tyhurst	(2.50 Increase to 52.50)				113.75

Lula Nichols	(5.00 Increase to 55.00)	119.17
Ella Mae Hude	(5.00 Increase to 45.00)	97.50
C. Marvin Price	(5.00 Increase to 70.00)	151.67
[fol. 4786] Bernadine Schooley		48.75
Cecile Guerrant	(2.00 Increase to 20.00)	43.34
Mildred Moore	(2.50 Increase to 20.00)	43.34
Deloris Robertson		39.00
Ed Corbin	(rate 150.00 month 6/1 to 6/15)	75.00
Harry S. Bucker	(6/1 to 6/15)	75.00
Robert Eckert	(6/1 to 6/15)	75.00

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[fol. 4791] Button & Buttonhole Dept. (Cont'd)

Period Ending 6/16/37-6/30/37

Employee Name		Gross Earnings
W. G. Weaverling		54.17
T. G. Boozell		75.00
Rose Todd		65.00
Production Control		
Virginia White		54.17
Kathryn Bateman	40 hrs. overtime—No Bal.	20.00
Kathryn Bateman	(2 wks vac.)	43.34
Frances Endsley		43.34
Eileen Gay		43.34
Helen Hauser		65.00
Herbert Mutchler		75.83
Cecile Ealy		75.83
Elizabeth Belter		—
Dorothy Heinlein		43.34
Personnel (Employment)		
Katholeen Denzel		48.75
Personnel (Hospital)		

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[fol. 4793] Accounting Department (Cont'd) Period Ending 6/16/37-6/30/37

Employee Name		Gross Earnings
Herb Fountain		140.84
Anna Wherry		173.34
Lena Tyhurst		113.75
Lula Nichols		119.17
Ella Mae Hyde		97.50
C. Marvin Price	3 wks. vac.	151.67
[fol. 4794] Lucille Briggs		43.34
Bernadine Schooley		48.75
Cecile Guerrant	2 wks. vac.	43.34
Mildred Moore		43.34

Deloris Robertson		39.00
Harry S. Bucher		75.00
Robert Eckert		75.00
Ed Corbin	1 day @ 6.00	6.00
Ed Corbin		75.00
	Overtime thru 6/1 to 6/11	
Marie Patton	@ .937 10 hrs..	9.37
Marie Grampp	@ .625 9 hrs.	5.63
Lena Allison	@ .875 14 hrs.	12.25
Rose Henricks	@ .687 14 hrs.	9.62
Lola Skeens	@ .937 14 hrs.	13.12
Nellie Biggs	@ .625 14 hrs.	8.75
Ada Vining	@ .875 14 hrs.	12.25
Anna Barthol	@ .625 11 hrs.	6.88
Clara Finnell	@ .75 8 hrs.	6.00
Emma Grober	@ .563 8 hrs.	4.50
Grace Davis	@ .625 10 hrs.	6.25
Grace Gnotta	@ .75 9 hrs.	6.75
Mary Snedden	@ .563 9 hrs.	5.07
Lillian White	@ .75 9 hrs.	6.75
Mary Copowycz	@ .687 9 hrs.	6.18
Etta Dorsey	@ .75 10 hrs.	7.50
Vera Marshall	@ .625 7 hrs.	4.38
Rosetta Cook	@ .75 9 hrs.	6.76
Jessie Mudd	@ .625 9 hrs.	5.63
Pearl Collins	@ .75 10 hrs.	7.50

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[fol. 4798] Pay Roll Record

Donnelly Garment Company—Semi-Monthly Pay Roll

Dividing Department — Period Ending 7/1/37-7/15/37

Employee Name	Gross Earnings
Gertrude Gorham	54.17
Thelma Sachen	43.34
Mary Hall	48.75
Jessie Forsen	48.75
Dorothy Easter	48.75
Rhea Byars	43.34
Doris Emig	48.75
Charlotte Casey	48.75
Macie Westendick	43.34
Irene Wilhite	43.34
Verdoe Rainey	35.75
Remnants Department	
Mildred Callahan	18.00
Mildred Callahan	18.00
Naomi Osipik	39.00

Eulah Carter		48.75
Ruby Scott		43.34
Hattie Corder	On P. W.	—
Mildred Callahan		18.00

[fol. 4800] Remnants Department (Cont'd) Period Ending 7/1/37-7/15/37

Employee Name		Gross Earnings
Mollie Smith		65.00
Instructors And Work Distributors		
Mary Bogert		65.00
Marie Patton	@ .937 4 hrs.	3.75
Marie Patton		81.25
Marie Grampp		54.17
Lena Allison		75.83
Rose Henricks		59.58
Lola Skeens		81.25
Nellie Biggs		54.17
Ada Vining		75.83
Anna Barthol		54.17
Clara Finnell		65.00
Emma Grober	2 wks vac.	48.75
Grace Davis		54.17
Lena Ollison	(overtime wk 6/18) 8 hrs	7.00
Rose Henricks	" " 10 hrs	6.87
Grace Gnotta		65.00
Mary Snedden	2½ days 6/21 6/22	11.25
Mary Snedden		48.75
Lillian White		65.00
Mary Copowycz		59.58
Etta Dorsey		65.00

[fol. 4803] Maintenance (Mechanics) Period Ending 7/1/37-7/15/37

Employee Name		Gross Earnings
Lyle Peter		92.09
Roy Beller		86.67
Fred Ellis		86.67
Walter Higgins		92.09
Earl DeGraffenreid		92.09
J. H. White		54.17
Kenneth Peck		92.09
H. F. Atherton	2 wks. vac.	75.83
Raymond T. Smith		65.00
Mechanics Delpers		
Morton Griggs		—
Alfred Charde		—

Maintenance (Cletical)

Jack McConaughey			65.00
Roy Beller	(June overtime)	@ 1.00 7¼ hrs.	7.25
Lyle Jeter	" "	@ 1.06 38½ hrs.	40.81
Fred Ellis	" "	@ 1.00 19 3/4 hrs.	19.75
Walter Higgins	" "	@ 1.06 14½ hrs.	15.37
Earl DeGraffenreid	"	@ 1.06 15¼ hrs.	16.17
J. H. White	(June "	@ .625 53 3/4 hrs.	33.59
Jack McConaughey	" "	@ .75 18½ hrs.	13.88
Raymond Smith	" "	@ .75 28½ hrs.	21.38
Hobart Atherton	" "	@ .875 32¼ hrs.	28.22
[fol. 4804] W. G. Weaverling			54.17
T. G. Boosell			75.00
George Blair			59.58
George Blair		@ .687 10 hrs.	6.87

Receiving Department (Piece Goods)

James Dunn		48.75
Hinton Noland		43.34
James Van Camp		59.58
Wood Reynolds	2 wks. Vac.	39.00
Phenias Peterson		70.42
Harry S. Bucher		75.00
Robert Eckert		112.50
Ed Corbin		75.00

[fol. 4805] Receiving Department (Piece Goods) (Cont'd)

Period Ending 7/1/37-7/15/37

Employee Name		Gross Earnings
Rose Todd		65.00

Production Control

Virginia White	Sat. 7/10 8 hrs.	5.00
Virginia White	2 wks. vac.	80.00
Virginia White	40 hrs. overtime (7/1 to 7/9 7 days @ 25.00)	60.00
Kathryn Bateman		43.34
Frances Endsley		43.34
Eileen Gay		43.34
Helen Hauser		65.00
Herbert Mutchler		75.83
Cecile Ealy	1 wk. vac.	75.83
Dorothy Heinlein		43.34
Herbert Mutchler	advance 2 wks. vac.	70.00

Personnel (Employment)		
Katholeen Denzel		48.75
Personnel (Hospital)		
Alice Bloigett		75.83
Lillian Hedquist		86.67
Designing Department		

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[fol. 4808] Receiving Dept. (Notions & Stat.) (Cont'd)

Period Ending 7/1/37-7/15/37

Employee Name		Gross Earnings
Helen Little		65.00
Heath Cowan		81.25
Buying Records		
Amy Lou Courtney		48.75
Hilda Richmond		54.17
Margaret Quinn		48.75
Jane Daugherty	2 wks. vac.	43.34
Elizabeth Belter		39.00
Marjorie Green		48.75
Freda Caudle		39.00
Robert Livesay		48.75
Harley M. Ferguson		43.34
Harlan R. Justus		70.42
Pearl Henry		48.75
Lena Berry		54.17
[fol. 4809] Herb Fountain		140.84
Anna Wherry		173.34
Lena Tyhurst		113.75
Katie Schleicher		173.34
Lula Nichols		119.17
Ella Mae Hyde		97.50
C. Marvin Price		151.67
Florence Strickland		173.34
Gertrude Cain		119.17
Nellie Kraft		140.84
Yolanda Haines		140.84
Lillian Marrs		140.84
[fol. 4810] Ella Brown		97.50
Martha Gray		86.67

Frances M. Berko		86.67
Berrien E. Riley		108.34
Alice Raynor		65.00
Evelyn Burke	Vac. ck. of 7/15 issued on Sales Co. Ck.	—
Virginia La Manna		47.70
Rose O'Leary		97.50
Veda Hoyland		81.25
Veda Hoyland	advanced	35.00
Ellen Hughes	2 wks. vac.	65.00
Pauline Hartman		108.34

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Increase 6/1/1937 Sheet No. 11 Miss Pauline Hartman. P&E-7-31-A June 1, 1937.

Dept	Name		Class of Work	Rate	Increase	New Rate
11	Hayes, Hebe	S	Cutter	40.00	2.50	42.50 S
11	Kerr, Perry	S	" "	40.00	2.50	42.50 S
11	Willoughby, Earl	S	" "	40.00	2.50	42.50 S
11	Neale, William	S	" "	40.00	2.50	42.50 S
11	Reese, Samuel	S	Spreader	27.50	5.50	33.00 S
11	Fallis, George	S	" "	32.50	2.50	35.00 S
11	Davidson, Clyde	S	Helper	22.50	2.50	25.00 S
11	Frederick, William	S	" "	22.50	2.50	25.00 S
21	Ramey, Taylor	S	Remnants	15.00	1.50	16.50 S
21	Scott, Ruby	S	" "	17.50	2.50	20.00 S
21	Emery, Doris	S	Divider	20.00	2.50	22.50 S
31	Kirk, Robert	S	Helper	20.00	2.50	22.50 S
91	Powell, H. B	S	Steno-Secy	32.50	2.50	35.00 S
93	Strickland, Florence	S	Patterns	75.00	5.00	80.00 S
93	Bentley, Merl		Design	25.00	5.00	30.00 S
93	Blount, Margaret		" " Clerical	18.00	2.00	20.00 S
93	Marjorie, Florence	S	" " Patterns	18.00	2.00	20.00 S
94	Carter, Eulah	S	Recuts	20.00	2.50	22.50 S
94	Callahan, Mildred	S	" Remnants	15.00	3.00	18.00 S
99	Beach, Nancy	S	Maid	20.00	2.50	22.50 S
99	Williams, Nora	S	" "	17.50	[illegible]	18.00 S
99	Baker, Birdie	S	" "	12.50	[illegible]	18.00 S
99	Roberts, Dorothy	S	" "	17.50	[illegible]	18.00 S
99	Buchanan, Margie	S	Porter	15.00	1.50	16.50 S
99	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]
99	Waddell, Lawrence	S	" "	15.00	3.00	18.00 S
99	Kent, Gilbert	S	" "	16.00	2.00	18.00 S
99	Hooks, John	S	" "	16.50	1.50	18.00 S
99	Scott, A. [illegible]	S	" " Maid Helper	20.00	5.00	25.00 S
900	Wherry, Emma	S	Factory Mgr	75.00	5.00	80.00 S
90.	Zyhurst, Lena	S	Asst " "	50.00	2.50	52.50 S
902	Jay, Eileen	S	Asst Clerical	17.50	2.50	20.00 S
902	Gallagher, Kate	S	" " " "	75.00	5.00	80.00 S
902	Nichols, Lula	S	" " " "	50.00	5.00	55.00 S
903	Hyde, Ella Mae	S	Employment Office	40.00	2.50	42.50 S
903	Bengel, Kathleen	S	Clerical	20.00	2.50	22.50 S
906	White, J. R.	S	Mach. Helper	22.50	2.50	25.00 S
906	Briggs, Morton	S	" "	22.50	2.50	25.00 S
906	Ford, C Marion	S	Lead Mach.	65.00	5.00	70.00 S
906	McConaughey, Jack	S	Mach Helper	27.50	2.50	30.00 S
906	Hissam, Walter	S	" Mach	40.00	2.50	42.50 S

(Board's Exhibit 31.) Date 7/5/39 -- Witness Ba

906	McConaughey, Jack	"	Meat Helper	27.00	2.50	30.00 "
906	Higgins, Walter	"	" Meat	40.00	2.50	42.50 "
911	Root, Ortense	"	Temple Dept Hd	40.00	2.50	42.50 "
922	McMillin, Lavaughn	"	Stock Clerk	16.50	1.50	18.00 "
922	Ward, Leslie	"	Ship Clerk	25.00	5.00	30.00 "
922	Williams, Tony	"	" "	25.00	5.00	30.00 "
922	Price, Annie	"	" " Hd	47.50	5.00	52.50 "
922	Arndt, Mary	"	Order "	20.00	2.50	22.50 "
922	Crawford, Lyle	"	" "	17.00	3.00	20.00 "
922	Hamel, Katherine	"	" "	30.00	2.50	32.50 "
922	Eckert, Barbara	"	Stock "	22.50	2.50	25.00 "

Seniors 6/1/1937 - Sch. 2. Miss Ruth Hartman 6/1/1937 31-B

Dept.	Name	Class of Work	Rate	Incr.	New Rate
932	Berger, Thomas	Instr. - Umpire	37.50	2.50	40.00 M
932	Daly, Mary	Secty	15.00	3.00	18.00 M
942	Corbin, Eleanor	Nurse Clk.	18.00	2.00	20.00 M
942	Eckes, Agnes	" "	16.50	1.50	18.00 M
942	Jones, Edwina	" "	16.50	1.50	18.00 M
942	Lobb, Vera	" "	18.00	2.00	20.00 M
942	Libbi, Helen	" "	25.00	5.00	30.00 M
961	Jones, Helen M.	Chief	32.50	2.50	35.00 M
961	O'Brien, Mrs. F.B.	Activity Dept	50.00	2.50	52.50 M
962	O'Leary, Rose	Matt. Fireman	42.50	2.50	45.00 M
963	Lamb, Kitty	Clerical	22.50	2.50	25.00 M
963	McInnis, Helen	" "	20.00	2.50	22.50 M
963	Lamping, Lauretta	" "	17.50	2.50	20.00 M
966	Hallauer, Joe	" "	20.00	2.50	22.50 M
966	Brogan, Harry	" "	16.50	1.50	18.00 M
968	Bryant, Gertrude	" "	18.00	2.00	20.00 M
968	Hartzer, Pauline	" "	30.00	5.00	35.00 M
968	Bryant, Cecil	" "	18.00	4.50	22.50
41	Ritter, Marie	Instr.	35.00	2.50	37.50 M
41	Adams, Lola	"	35.00	2.50	37.50 M
1943	Reynolds, Woodie	Rec. Dept	16.50	1.50	18.00 M

965	Haskell, Josephine	Clerical	16.50	1.50	18.00
902	Hansen, Helen	Clerical	25.00	5.00	30.00
962	Caudle, Freda	" "	16.50	1.50	18.00
931	Hill, Elvia	" "	20.00	2.50	22.50
931	Humphrey, Zelma	" "	25.00	5.00	30.00
931	Newton, Nancy	" "	18.00	4.00	20.00
931	Gardemeier, Elizabeth	" "	16.50	1.50	18.00
931	Cook, Evelyn	" "	17.50	2.50	20.00
922	Davis, Mary	Stock Clerk	18.50	1.50	18.00
922	Rahmeyer, Emma	" "	16.50	1.50	18.00
902	Cason, Elsie	Clerical	15.00	1.50	16.50
904	Wheeler, Earl	Bench Boy	15.00	1.50	16.50
905	McDonald, Evelyn	" "	15.00	1.50	16.50
904	Hamilton, Clarice	" "	15.00	1.50	16.50
94	Osipik, Nanno	Agent	16.50	1.50	18.00
93-94	Person, Zeta	Clerical	11.50	1.50	13.00
93-94	Sandvall, Grace	" "	16.50	1.50	18.00
93	Scott, Alice	" "	16.50	1.50	18.00
93	Bailey, Georgia	" "	16.50	1.50	18.00
71	Davis, Mildred	Clerical	15.00	3.00	18.00

4858

7/1/39

(Board's Exhibit 31.)
Date 7/5/39 -- Witness Baty.

NATIONAL LABOR RELATIONS BOARD
XrIBC
No. 371 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 31-B
IN THE MATTER OF Connelly Dairy
DATE 7-5-39 WITNESS Baty
DANIEL W. ROSS, Official Reporter
BY

JOURNAL-POST.

DONNELLY WORKER WILL BE SENT TO UNION CONVENTION

Garment Organization Seeking Support for Strike at Plant.

Sylvia Hull, an employe of the Donnelly Garment company, has been named a delegate from Kansas City to the International Ladies' Garment Workers' union biennial convention May 3 at Atlantic City, Meyer Peristein, regional director, announced Thursday.

The Donnelly worker, according to Peristein, was one of a committee from that garment company who appeared Wednesday night before a joint group representing various Kansas City locals and requested representation at the national convention.

Peristein said the Donnelly committee desired one of their number to appear at the convention and ask the international body to indorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours and improved conditions. The Kansas City joint committee, Peristein asserted, agreed to pay all expenses of the Donnelly delegate.

Other delegates from Kansas City are

Cinderella Robinson and Grace Ballard, members of local No. 230 [illegible] Ladies' Garment Workers' union; Lodine Smith, local No. [illegible] Leavenworth Cloak Workers' union; Alice Davis, local No. 116, employed by the Williamsburg Garment company; Arlene Gaither, local No. 178, employed by the Gordon Brothers Manufacturing company; Ora Thompson and Annie Vaughan, local No. 269, employes of the Hart-Shaffner-Prins company, and Miss Wave Tobin, business representative of the Kansas City locals.

Peristein said the executive committee of the various local unions in Kansas City would meet Thursday afternoon to consider a resolution calling on the national organization to appropriate funds to carry on a strike at the Donnely plant.

The delegates from this section will meet April 30 in St. Louis to go to Atlantic City by special train. Peristein will be a delegate from St. Louis. The convention will last two weeks.

NATIONAL LABOR RELATIONS BOARD
Case No. C-371 Exhibit No. 1
In the Matter of Donnelly Garment Co.
Date ____ Witness ____
Daniel W. Hoch, Official Reporter
By ____

4859
Res Ex. 1

Respondent's Exhibit 1.

Form 12.908

APPLICATION FOR EMPLOYMENT

Education
Experience
Knowledge
Health

DONNELLY GARMENT COMPANY

Name Mae C. Dooley Date May 9, 1932

Address 3841 Fisher K.C.K. Telephone Number Lo 2970 Leawood

Age 30 Date of Birth July Work Preferred Binding

Are you Single? yes Married? Widowed? Divorced?

How far did you go in—Grade School? Seventh St. High School? No

Business School? Junior College College or University?

Have you ever been employed by the Donnelly Garment Company? No When?

Under whom? Why did you leave?

Have you relatives in our employ? No. Their names

Whom should we notify in case of emergency? Name Miss L. J. Smith Mother

Address 3841 Fisher K.C.K. Roesdale Sta

Telephone

PREVIOUS EMPLOYERS	PERIOD OF EMPLOYMENT From	To	POSITION	Rate of Earnings
Name Hollywood Frock Co.		2 yrs.	Binding Piping	
Address 840 Los Angeles Calif.			Sample Maker	
Reason for leaving Father died Sister married				
Name Liberty Gar. Co.				
Address 209 So. Broadway address unknown				
Reason for leaving West to J. A. writes employed				
Name Sanitary Bedding Co				
Address 12th & Grand		18 mos	Piece	
Reason for leaving Left to go to work at Liberty Gar Co				

(Respondent's

's Exhibit 3.)

1016 A

PERSONAL REFERENCES

Name Teresa Malley

Address 627 Forest

Telephone K. C. Mo.

Name Mrs John Slater

Address 39th Boat St.

Telephone Lo 2070

Signature of Applicant Mae E Healey

Res. Ex. 3

NATIONAL LABOR RELATIONS BOARD

CASE NO. XVII-C 371 | BOARD / PETITIONER / RESPONDENT / INTERVENOR | EXHIBIT NO. 3

IN THE MATTER OF Donnelly Bag Co

DATE 6-27-39 WITNESS John

DANIEL W. ROSS, OFFICIAL REPORTER

BY Ewell

4861

Respondent's Exhibit 4.
Date 6/23/39 -- Witness Fike.

Respondent's Exhibit 6.

REOPEN A GARMENT FEUD

UNION PLANS TO SEEK DONNELLY COMPANY RECOGNITION.

Regional Director Says the International Headquarters Will Give Financial Backing to Campaign.

The feud between David Dubinsky, president of the International Ladies' Garment Workers' Union, and James A. Reed, former United States senator, was reopened yesterday with the announcement that the union plans a campaign to organize workers in the Donnelly Garment Company, founded and owned by Mrs. Reed.

Meyer Perlstein, of St. Louis, regional director of the union, said that the international headquarters had appropriated a large sum to be spent in the drive seeking recognition of the I. L. G. W. U. as the collective bargaining agent in the Donnelly Garment Company.

Dubinsky, who exchanged words with Mr. Reed several times in the presidential campaign last fall, will arrive next week to attend a dinner next Friday night at the Hotel Muehlebach of union officials and officers of the Liberty Frocks, Inc., and the Stern-Siegman-Prins Company, which recently signed union agreements here.

A LETTER TO COMPANY.

"We are going to send a letter to the Donnelly Garment Company within the week suggesting a conference to establish collective bargaining on the questions of wages and working hours," Mr. Perlstein said. "If the firm refuses, we'll go to the consuming public of the country and advise buyers of the wages and hours prevailing there now."

The regional union director, who will remain in Kansas City to supervise the organization campaign, said the minimum wage in this section for women making silk dresses is $22.80, working a 5-day week. He said the Donnelly Garment Company employees receive a minimum of $15 weekly, and that they are working forty-five hours weekly now.

Mr. Perlstein announced that Miss Jane Walker Palmer, 4040 Bellefontaine avenue, a graduate of the Kansas City School of Law in 1932, started work yesterday organizing an educational campaign for members of the union.

After-work classes in music, art, economics, public speaking, trade unionism, parliamentary law, and dramatics will be offered the members. The board of education will be asked to furnish teachers, Mr. Perlstein said.

THE CAMPAIGN LIMITS.

Part of the union's campaign directed against the Donnelly Garment Company will be to send six women to cities and towns where its garments are said "advising retailers and labor organizations," Mr. Perlstein said. Miss Palmer will have charge of this squad of field workers.

The union claims only twenty-five members among the Donnelly workers, but officials said "hundreds of others are related to union members."

"Within a year we'll have it completely organized," Mr. Perlstein said. "As soon as we have enough members, we'll call a strike. This will be in addition to carrying our side to the consumers."

Last November, Dubinsky announced a nation-wide drive to organize 80,000 clothing workers, and announced that an office would be set up in Kansas City because the union "wants to give Jim Reed a break."

Approximately 1,200 persons are employed by the Donnelly Garment Company. In a statement made last fall Mr. and Mrs. Reed said the minimum wage paid was $15 a week, that many employees made from $20 to $25 a week, and that some workers received as high as $80 weekly.

They said that under the NRA code Gen. Hugh Johnson investigated the company's books, pay rolls and working conditions, and decided its wages were higher than those they would have received under the different schedules of the NRA code. General Johnson even authorized a reduction of wages, which was never put into effect, their statement said.

[redacted]

NATIONAL LABOR RELATIONS BOARD
BOARD EXHIBIT NO. 6
CASE NO. XVI-C-321
RESPONDENT
DATE 7-5-37
IN THE MATTER OF Donnelly Garment Co.
WITNESS Rathbun
DANIEL W. ROSE, OFFICIAL REPORTER

Resp no-6

ment along the lines of economic improvement and control of work conditions for the whole of our international union. It has been the forerunner of every great reform in the women's garment trades—from the day it first introduced genuine collective bargaining and responsibility for work conditions in the shops to the recent period when it first legislated into the life of this industry jobber control, contractor limitation and took the lead in national standardization of employment terms through the formation of the voluntary recovery board and through the promotion of its label on coats and suits which is operative in every market in the country.

Demands Justified

"Your Committee subscribes to the demands for a 35-hour week and for a substantial increase in wages. The cloak trade solely for their livelihood, and it will contribute to the lengthening of the work seasons and thereby add a little greater economic security to the lives of the cloakmakers. The argument that the cloak industry cannot stand a 35-hour week, we are convinced, holds no water. They used to say it when the 35-hour week was about to be introduced. Nevertheless, the cloak manufacturers and jobbers are making today greater profits than they ever made.

"Your Committee calls upon this Convention to rally behind those cardinal demands of the New York Cloakmakers' Union the entire material and moral force of our great International body. We do not have to instruct our general officers to assist the Cloakmakers' Joint Board in the negotiations with the cloak manufacturers' association. This labor are already doing with President Dubinsky at the head. But while the conferences for the renewal of the agreements are proceeding thus far uninterruptedly, a break or crisis in these negotiations may ensue at any hour and the Union may be put to the great task of enforcing its demands through a general strike.

Entire Resources

"It is for the event of such an emergency that your Committee is calling upon this Convention to line up like a solid wall behind the 35,000 cloakmakers in the metropolitan district of New York and help them to victory. No effort should be too great, no sacrifice too hard for us to protect the living and working conditions of this magnificent division of workers in our organization, to win for them the essential improvements which this Resolution calls for.

"Your Committee moves the adoption of this Resolution."

Vice-President Ziegler: "Realizing the intenseness of the hour and taking into consideration the fact that the delegates have had an opportunity to listen to the report that I submitted in behalf of the 35,000 cloakmakers whom I have the honor and privilege to represent, I rise at this moment merely to express, not only in my name but in the name of all the delegates representing the Cloakmakers' Joint Board in the City of New York and the thousands of men and women comprising this splendid organization, our appreciation to the Committee on Resolutions for their fine and splendid report and recommendations. I am sure that all the delegates will vote as one for this recommendation."

SUN TAN

Though sessions were long and prolonged many of the delegates managed to accumulate a tan that will make the folks back home think the Convention was held in the tropics.

in which they are engaged, work harmoniously together, and no decision and no restrictions could change that situation.

"What I said with regard to what existed in former years, I hope and I am sure will continue as long as our Unions continue to exist. Though we may disagree on certain things at present within the American labor movement, that traditional relationship and the cooperative spirit and the admiration that we have for that organization and for its great leader will always remain."

"It is because of this and because of our real and sincere desire that that spirit shall continue, that this friendship should be everlasting, that I am glad he is with us today and that I have the honor and privilege of presenting to our Convention a true statesman of American labor, the President of the Amalgamated, Sidney Hillman!"

of the fight. Delegates, today in this hall, no question on this matter exists any more. The mass production industries are being organized and will be organized. Unless there is organization of those industries, none of us will survive. We will not be permitted to live and enjoy the American standard of living and enjoy the liberties that we enjoy today unless labor is fully organized.

"We have shown in the last year and a half what can be done. What the ILGWU did under the leadership of David Dubinsky, what the United Mine Workers did under the leadership of John L. Lewis, what the Amalgamated has done, could have been done in the major industries of the land. I challenge anyone to contradict me.

"I have been given the privilege of heading the drive in the great textile industry, and remember, the textile industry affects every industry in the country. You cannot

Continued on page 19)

Supreme Court Memorial Sent

(Continued from page 14)

Court plan is making another definite plea for independence of the three branches of government.

"The independence of each of the three branches of government is found only in the exclusive powers granted by the Constitution to each of them. These powers include independence in each branch to interpret its own powers. This is fundamental to independence. One branch cannot be subject to the views of another and be independent. The Supreme Court, which has exclusive power only to try cases in which public ministers and States are parties, should have complete independence to interpret its own powers in this field, because its authority is made exclusive by the Constitution. Likewise, Congress, if it is an independent branch of the government, must interpret its powers and authority on subjects of legislation committed to its discretion by the Constitution, such as commerce, the general welfare, the common defense, taxes. Over these subjects the Court has no jurisdiction, except as Congress may give it authority. If doubt exists as to the precise meaning of commerce or the general welfare, Congress may interpret their meaning for legislative purposes, for Congress has exclusive power in this field. These are made legislative, not judicial subjects by the Constitution.

"American labor respects the law. It respects judicial processes. During the desperate distress of the depression, American labor, with other groups of citizens who constitute the national community, maintained public order by respect for and voluntary obedience to the law, notwithstanding that during those years of intense suffering, of unemployed labor, great corporations and individuals with large incomes openly violated or secretly evaded acts of Congress.

"Out of this experience we are moved to declare that the legislative method is the democratic and peaceable method of working out economically sound industrial relations and the establishment of economically desirable working and living standards.

"For these reasons we exercise the right of citizens to demand of their representatives in Congress that the recommendations of the President, clearly foreshadowed in the issues of the recent election, be speedily enacted into law."

Coal Becomes Union Symbol

One of the Most Interesting Gifts Given to President Dubinsky Was a Large Block of Coal Sculptured by a Pennsylvania Negro Miner. The Symbol of the ILGWU Was Worked Out on the Surface in Mosaic. Vice-President Reisberg, Who Created the Idea and Made the Formal Presentation, is Shown With the Gift.

Plaintiff's Exhibit No. 1d

Kansas City Journal Post

March 6, 1937

DUBINSKY STARTS UNION DRIVE IN K.C. GARMENT PLANTS

Political Animus Toward Reed Is Disavowed at Dinner.

Picture on Picture Page.

Answering many of the charges hurled at him by James A. Reed during the presidential campaign, David Dubinsky, president of the International Ladies Garment Workers' union, Saturday officially launched a movement to organize the Donnelly Garment company, controlled by Mrs. James A. Reed.

Dubinsky, speaking before more than 700 union members in the little theater of the Municipal auditorium, outlined what he considered to be the need for organizing all Kansas City garment factories, including the Donnelly concern.

"Mr. Reed said many harsh things about me during the recent political campaign," Dubinsky said, "but all that is past and I shall deal with him only as a maker of dresses. He shall be treated with consideration during our movement to organize his workers, regardless of the stand he takes."

Dubinsky said that "Reed hates Dubinsky, but all nonunion employers hate Dubinsky because he stands for hither wages."

Refers to Hitler.

Dubinsky also defended the president's plan for reorganizing the United States supreme court, asserting the opponents were the same group who opposed Roosevelt's reelection.

"The election November 3 should be considered a mandate by the people for the changes proposed by Mr. Roosevelt since they voted for him knowing that he would do whatever was possible to help them."

Dubinsky said that Reed would receive a polite letter within a few days inviting him to confer with Kansas City labor leaders about signing a union contract.

"If he refuses to meet with us, we shall start our campaign," the union president said. "It may take a long time to organize the Donnelly company plant, but we will win out in the end, as all the 240,000 members of our organization are behind us."

Install Officers.

Dubinsky said that his union had about 1,200 members in Kansas City, and that only the Donnelly company and three or four smaller concerns remained to be organized.

At the conclusion of the meeting he installed officers in the new local union which was chartered at the Stern-Siegman-Prins company when that concern signed a union contract.

The officers are Omar Rose, president; Ethel Foster, vice president; Ann Herrig, secretary-treasurer, and Joe Easton, sergeant-at-arms.

Other speakers were M. Perlstein, Kansas City regional director of the union, and Ben Gilbert, St. Louis regional director.

Respondent's Exhibit 7.

Refers to Hitler.

Discussing the report that employes of the Donnelly company signed a pledge of allegiance to their employers, Dubinsky said:

"I also read in the papers yesterday that all the Germans swore loyalty to Hitler.

"In the presidential campaign Mr. Reed called me a Bolshevik and said many other uncomplimentary things about me. You would imagine that I had long whiskers, a pocket crammed with bombs and did nothing else but wave a red flag.

"The Bolshevik charge is old stuff. Nonunion employers always call their employes such names when they ask for a raise in pay.

"Mr. Reed also said I sent money to Spain. Of course I did. But the Spanish government never got a cent. It all went to the Red Cross and Mr. Reed knows it."

NATIONAL LABOR RELATIONS BOARD

CASE NO. XVII-C-221 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 7

IN THE MATTER OF Donnelly Garment Co.

DATE 7-5-39 WITNESS Reeves

DANIEL W. ROSS, OFFICIAL REPORTER

BY Nicholson

207

4865

Resp-7

1021

[fol. 4866] (Respondent's Exhibit 8.)

Date 7/8/39. Witness.....

March 9, 1937.

Donnelly Garment Company
1828 Walnut Street
Kansas City, Missouri

Gentlemen:

The Kansas City members of the International Ladies' Garment Workers' Union feel compelled to place before you the following grievances that should be adjusted immediately.

Fifteen members of our Union were discharged by your firm because of their affiliations with our organization. Their case was up before the National Labor Relations Board. During the period the hearings took place the NRA was declared unconstitutional by the Supreme Court of the United States and the Government could proceed no further. The discharged workers have not as yet been returned to work by your firm.

The Dress Industry, in which your firm is engaged, is highly unionized throughout the country. Nearly every producer of dresses is in contractual relations with our Union. The 150,000 Union workers employed in this industry are enjoying a 5-day, 35-hour working week and a $22.05 per week minimum wage scale for operators, and reasonable, fair minimum scales for finishers, pressers, cutters, et cetera. Piece workers, who compose the majority of workers in your shop as well as in the industry, are enjoying the right, through committees selected by them, of having an equal voice with the management in each shop in determining the piece rates for each garment or operation on a garment.

The workers in most of the industry enjoy the freedom and rights of organization. Collective bargaining has been established as a permanent institution. These are the conditions and wage scales in the organized industry.

However, in your shop the minimum wage scale for operators is between $12.50 and $15.00 per week.

The wage scales for finishers, pressers and cutters are at least 30 per cent lower than those that exist in the industry.

The hours of work in your shop are 40 and more per week.

Your workers are denied the right of joining a labor organization, and those who do, are immediately discharged. Your workers are denied the privileges of genuine collective bargaining. The piece workers in your shop have no voice as to what the piece rates should be as they are set exclusively by representatives of your firm.

[fol. 4867] The conditions and wages under which your employees are working not only deprive them of the privileges and opportunities enjoyed by the workers in this industry, but endanger their general work standards and wage scales. Your firm has undue and unjustified advantages over your competitors. The Union believes in "Fair Competition," but it does not consider competition fair when it is gained solely at the expense of the workers.

Under your system of production, workers are compelled to invest extraordinary effort, but the reward that follows is very meager in proportion to the efforts invested. Under modern methods of production such treatment of workers is not only wrong from the humane point of view, but also destructive from the economical point of view. In comparison with other shops in the industry which produce the same type of garment the production in your shop is about 30 per cent higher while the earnings of the workers are about 30 per cent lower.

We, therefore, believe that a conference between our Union and your firm, for an adjustment of these grievances, should take place immediately. The Union has named a committee which stands ready to meet a similar committee named by your firm.

May we respectfully request that you advise us before the end of this week as to when and where it would be convenient for you to meet our Conference Committee.

Our aim is industrial peace. We believe in intelligent co-operation between employer and employee. Such co-

operation is essential for the welfare of all factors in industry, including the consuming public and community at large. Peace and harmony prevail in the major part of the Dress Industry and we are eager to extend this co-operation to include your firm. Let us join hands to avoid industrial conflict.

Respectfully yours,

Kansas City Joint Board
INTERNATIONAL LADIES'
GARMENT WORKERS' UNION,
By Wave Tobin, Manager.

Approved by: Meyer Perlstein, Regional Director, International Ladies' Garment Workers' Union

MP

Selmor Garment of St. Louis Signs Union Agreement

Novelty Frocks Also Joins Union List

Unionization work in St. Louis, held up for two weeks while the ILGWU convention was in progress in Atlantic City, was resumed at full tempo this week, according to advices received from Meyer Peristein, at the Union's Southwestern headquarters in that city.

In a message to President Dubinsky, dated May 21, Peristein writes:

"Signed today closed shop agreement with Selmor Garment Company, underwear shop employing 175 people. Also signed agreement with Novelty Frocks, a smaller shop, with 30 people.

"Conferred twice with National Underwear Corporation which has been on strike for several months. Endeavoring to reach settlement."

Wm. Green Denies Lewis Charge in Letter to Dubinsky

Before the adjournment of the Wednesday, May 12, session of the Convention, President Dubinsky received a telegram from William Green, president of the American Federation of Labor, in which he took sharp exception to several remarks in the speech of John L. Lewis, delivered on that day before the ILGWU delegates.

President Dubinsky refrained from commenting on the message from President Green, but read the telegram to the convention at the morning session on Thursday, May

"Washington, D. C.,
May 12, 1937.

"David Dubinsky, President, International Ladies' Garment Workers' Union Convention, Chelsea Hotel, Atlantic City, N. J.: I was amazed when I read a report of the address delivered by President Lewis of the United Mine Workers of America at the convention of the International Ladies' Garment Workers' Union yesterday, which quoted him as saying that I had demanded that Governor Murphy, of Michigan 'not permit any settlement of the strike with the CIO or the United Automobile Workers.' That statement is false and because it is false I prefer to believe that Mr. Lewis lacked proper understanding of the telephone conversation I held with Governor Murphy when he made it. I most emphatically deny that charge and resent with all the power at my command the other allegation made by Mr. Lewis, as reported in the press, that General Motors could probably get the support of the president of the American Federation of Labor. I offer as an answer to this unwarranted allegation my life's record of service to the cause of organized labor. May I supplement this foregoing denial with a protest against a statement made in the address by Mr. Lewis 'that the lack of unity in the labor movement did not seem to be such a bad thing.' Such a statement might well be made by an avowed enemy of labor for division, discord and hatred can injure labor when the opposition of hostile employers fails. I plead for unity, solidarity and co-operation within the ranks of labor and I am willing to render any service that lies within my power in an effort to bring about this result.

(Signed)
"WILLIAM GREEN,
"President, American Federation of Labor."

Delegates and Guests Sampling the Famous Boardwalk

Top Row: (Left) John S. Martin, Jennie Matyas and Sarah Limbach; (Center) Alex Student, Israel Horowitz and Bernard Schulz; (Right) Mrs. Richard Rahman and Joan Dubinsky.

Second Row: (Left) Mr. and Mrs. Morris Bialis; (Center) Sally Rosenthal, Nina Wender and Alice Donovan; (Right) Samuel Shore and Jacob Heller.

Third Row: (Left) Philip Kramer, Mrs. David Dubinsky, Emil Schlesinger and Mrs. Frederick Umbey; (Right) Ben Gilbert Takes Wavo Tobin Fo Center) and Another Middle Westerner for a Stroll.

Bottom Row: Rose Pesotta Finds Herself Captured on Boardwalk by Group of Delegates.

Convention Supports Cloakmaker Demands

Lines Up Solidly For Wage Increases and 30-Hour Week

Full support for the New York Cloakmaker organization in its negotiations for a new contract to succeed the one expiring June 1 was voted by the Convention when the Committee on Resolutions brought in a recommendation. Specific mention is made of the 30-hour week and wage raise demands. The entire moral and financial power of the International will be placed behind the cloakmakers in the eventuality of a general strike.

The proceedings discussing cloakmaker support follow:

"Your Committee gives its wholehearted and undivided endorsement to the demands of the great organization of the cloakmakers in the New York market as it is now entering upon the decisive stage of negotiations with the employers' associations in this industry for the renewal of collective agreements to replace the current contracts which expire on June 1st.

"Your Committee is fully aware of the significance attached to the renewal of these contracts in so highly important an industry as the manufacture of coats and suits and the bearing which it has on the general structure of work-hours and wage scales in our entire industry. The New York Cloakmakers' Union has consistently over a period of three decades blazed the trail of progress and achievement along the lines of economic improvement and control of work conditions for the whole of our industry.

"We are convinced of the industrial soundness of the demands of the New York Cloak Organization which it proposes to embody in the new agreements with the employers. There is not a vestige of doubt in our minds that the cloak workers of New York are entitled to the 20 per cent wage raise which is put forth by the conference committee of the Union. This resolution voices an incontrovertible truth when it asserts that the steadily rising cost of living has made such an increase imperative. The mark-up on all necessities of living is soaring to alarming proportions. Rent, food, clothing, and the smaller needs of existence cost today a great deal more than they cost in 1935 when the present contracts in the coat and suit industry were signed. To meet his modest annual budget, the cloakmaker must have his earnings raised, and his organization, the New York Cloakmakers' Union, should exert every effort to win this demand from the employers.

30-Hour Week Sound

"Equally justified is the demand for a shorter work-week, for the 30-hour week. Unemployment, or partial employment, is a curse upon industry in general but it is tragedy when it afflicts a seasonal industry such as the cloak trade. Unemployment in the cloak industry means sentencing thousands of people to misery and hunger. The 30-hour week will eliminate this deplorable unemployment of work people who depend upon the cloak trade solely for their livelihood, and it will contribute to the lengthening of the work-

"Good Neighbor"

President Sidney Hillman of the Amalgamated Clothing Workers of America and Chairman of the TWOC Told the Convention That the Committee Had Organized 80,000 Textile Workers in 5 Weeks and Prophesied the Eventual Organization of 1,500,000 Workers in the Field.

with the cloak manufacturers' as-

HILLMAN STRESSES CLOSE TIES BETWEEN AMALGAMATED - ILGWU

Greeted by thunderous applause when he said that nothing would ever be permitted to create a rift between the Amalgamated and the ILGWU, President Sidney Hillman of the Amalgamated Clothing Workers of America addressed the Convention on May 13.

He discussed the progress made by the CIO in organizing the mass production industries, and as chairman of the Textile Workers' Organizing Committee, revealed that 80,000 textile workers had been organized in less than six weeks.

In introducing President Hillman, President Dubinsky said:

"When I introduce the next speaker, I introduce the president of a union that is closer to our Union and closer to our hearts than any other organization within the American Labor movement. For many, many years there was a close relationship and the best spirit of cooperation between these two unions. We were partners in many activities, many undertakings. Our two unions were always known as the twin unions within the labor movement and when the Amalgamated was outside the A.F. of L. and we were inside, we, though, it may have been against the policies and tradition of the American Federation of Labor, had the closest relationship and close cooperation with the Amalgamated. It was generally realized that these two unions must, because of the close relationship of the industry in which they are engaged, work harmoniously together, and no de-

The highlights of President Hillman's address follow:

"Your achievements are a source of encouragement and inspiration to all who are concerned with the destinies of labor. Let me say to you, President Dubinsky and officers and delegates of this convention, that nothing will ever be permitted to make a rift, to permit any disagreements between our two great internationals of labor.

"There are no difficulties that cannot be adjusted if the good will that has always existed between the membership of our organizations continues. That cannot and will not be changed.

"Who is there so small, so narrow-sighted, that would permit friction between those who have the responsibility to carry onward and forward the great task that we today have before us?

"Delegates, I bring you the greetings of our organization, sincere greetings with no reservations. We are proud because of your achievements; your great accomplishments have helped us as our progress has helped you.

"I know this hall. I was here just a little over a year ago, when there was the theoretical debate on how to organize labor and where we were told that American labor in the major industries could not be organized. Those of us who had courage to make the challenge and who said that it could and must be done, later had to carry the brunt of the fight. Delegates, today in this hall, no question on this mat-

Convention Blasts Senator Jim "Nell Don" Reed;

ILGWU Counters Attack by Ex-Senator James Reed, Nell Donnelly Head

Ready to Teach Him Lesson in Americanism

No sooner did the newspapers carry across the country the decision of the Atlantic City Convention to allocate $100,000 for the unionization of the Nell Donnelly Dress factory in Kansas City, Mo., than Missouri's ex-Senator, James Reed, issued a blast directed against David Dubinsky and the International Ladies' Garment Workers' Union in which he also denied that he had any control in the dress firm owned by his wife.

Reed declared that "Dubinsky had the nerve to talk about Americanism although he was born in Russia and has been in this country only a few years." He also reiterated the election campaign canard of the Fall of 1936 that Dubinsky was a "Socialist, a Communist and a Bolshevik" and that his name on the Democratic electoral ticket was an offense to the Democratic Party and to all decent American citizens.

Dubinsky Replies

Replying to the Reed statement from the Convention platform, on Tuesday, May 11, President Dubinsky said as follows:

"Mr. Reed is, first of all, very much incensed over the fact that yesterday, at the convention of the International Ladies' Garment Workers' Union which is right now meeting in Atlantic City, representing a quarter of a million women's garment workers, I, in the capacity of president of that organization, challenged his patriotism on the ground that he, directly or indirectly, is responsible for allowing work conditions in the factory of the Nell Donnelly Manufacturing Company, owned and controlled by his wife, to be inferior to those prevailing in other dress factories of the same grade and thereby undermining work standards in the entire dress industry. Mr. Reed's reply to this is that I 'had nerve' to talk about Americanism in view of the fact that I had committed the unpardonable offense of having been born in Russia. On the basis of this test of Americanism, we must be permitted to believe that James Reed, when about to be born, decided to choose America as the place of his birth, while I, given the same free selection, picked Russia.

"Mr. Reed's denials that he has anything to do with the control and management of the Nell Donnelly Manufacturing Company would also have carried more weight if we were not acquainted with the public record of Mr. Reed's relations with the Donnelly concern. I did not charge Mr. Reed with managing the sales force or being the manager in charge of production. But everyone who is familiar with the protracted litigation, for instance, of the Donnelly firm during the NRA period, when it attempted to get preferred conditions and special privileges for itself as far as work terms and work pay were concerned, knows well that it was Mr. Reed who came to Washington time and again appealing to General Hugh S. Johnson on behalf of his wife's dress manufacturing concern for exceptions. It was Mr. Reed, who, after a study of his claims had been made by the then administrator, Mr. Byres H. Gitchell, together with an expert, and a recommendation had been made by them to General Johnson that proper work standards should be established in the Donnelly factory in order to eliminate unfair competition, made the threat to General Johnson that if these concessions were not granted to the Donnelly firm, he would tour the country opposing President Roosevelt and the New Deal. Everyone in Kansas City who has anything to do with garment manufacturing is equally well informed that not a thing of importance with regard to employment policy is being done in the Donnelly concern without the advice and approval of Mr. Reed.

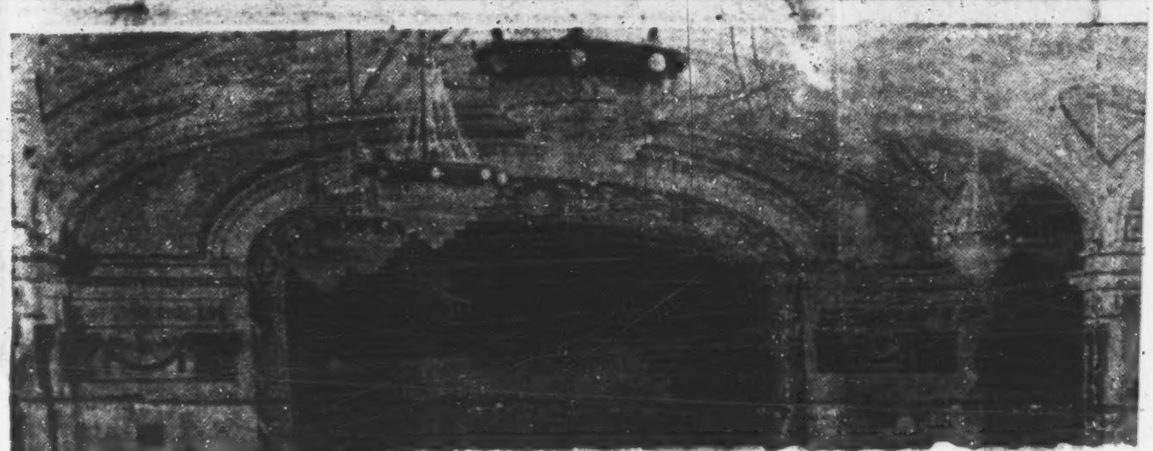
Certainly, everybody knows that the union-baiting policy of the Donnelly firm is reflected in the special brand of antagonism to union labor which Mr. Reed has displayed in recent years.

"Mr. Reed claims that he never attacked our Union during the last Presidential campaign but that he was only outraged by my nomination by the American Labor Party and the Democratic Party in New York State as a Roosevelt presidential elector, which was 'an offense both to the Democratic Party and to all decent American citizens' on account of my being 'a Socialist, a Communist and a Bolshevik.' Well, first of all, this terrible offense to American citizenship did not seem to hurt my candidate, as Mr. Reed may recall, just as it did not do any good to his candidate, Mr. Landon. The American people amply replied to these absurd charges, by which many supporters of Mr. Roosevelt were being [illegible]ed by Mr. Reed

Puerto Rico

Teresa Anglero
All the Way from Puerto Rico Came Teresa As a Delegate to the Convention. She Delivered a Spirited Address in Both Spanish and English

The Twenty-third ILGWU Convention in Session in



Teresa Angiero Sees Education As Labor Goal In Puerto Rico

Head of Island's Unions Brings Message From Puerto Rico Needle Trades Workers.

This is a part from a speech by Teresa Angiero, Secretary of the Puerto Rico Locals of the ILGWU, made on May 6 before a wildly applauding audience of delegates and guests:

"It is a great privilege and an honor to be here as a delegate to this Convention, representing the needle workers of Puerto Rico. I bring to you the greetings and the most sincere appreciation of the Puerto Rico needle workers for all the interest and good will you all have shown to improve workers' conditions on our island.

"Our island, 100 miles long and 26 miles wide, has already a population of 1,700,000 people. Agriculture is its most important occupation, while the needlework trade is its first industry if we take into consideration the number of workers who earn their living in it.

"Nobody knows exactly how many needleworkers there are on the island, all told, but it has been estimated by the Department of Labor that about 75,000 persons are working in the industry, with a further estimate that 9,000 are working in the shops and the others in their homes.

"The organization of home workers is a very hard task, and not only is it hard to organize them but also they are a menace, together with the unemployed people, for the workers when we demand our better wages and workers' rights.

"Company unions and dual labor organizations are also a great handicap for the organization of the workers. There are several associations, such as the Union Regional de Trabajadoras de Aguja, Asociacion Hijos del Trabajo y Liga Defensora de Mayaguez, etc., through which the bosses are doing all they can to keep the workers out of our ranks. Now there are two new ones already organized in Mayaguez, the Needle Workers Fraternity and the Blondi Association. Workers don't have to pay dues, while their leaders promise them to work for the welfare of the community.

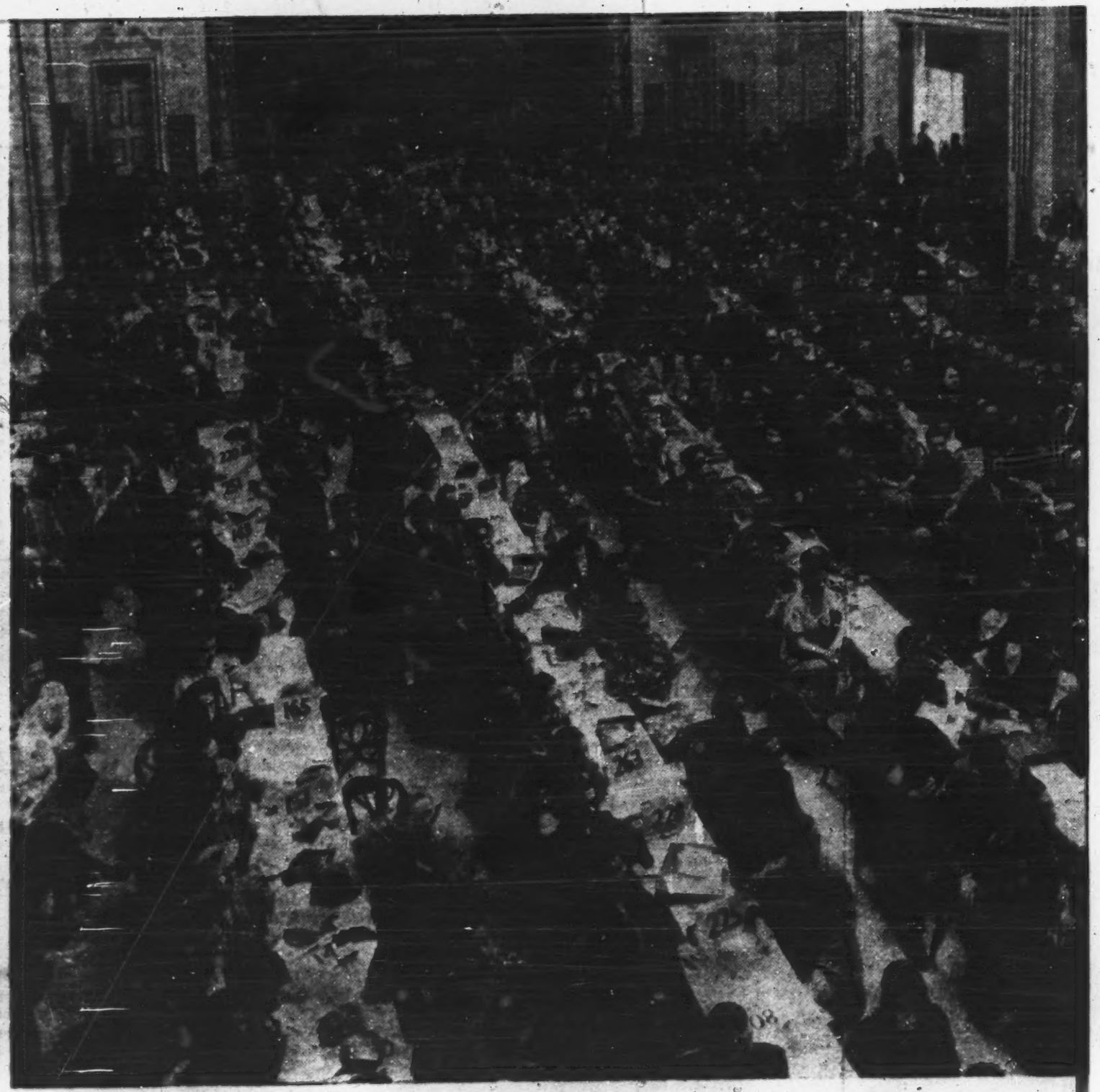
"There is another great handicap, and I consider it the most important of all, and that is the lack of proper workers' education among the people. To overcome these difficulties, we are having regular meetings by barrios, towns, and cities, and we have centers for evening classes for the benefit of the masses.

"After more than one year of constant demand, we had the opportunity of having a Workers' Education Center organized and paid for with Federal funds, where fifty teachers were trained to help in the workers' educational field. When the teachers were ready the budget appropriation for them to go into the field was cut off, because, as they said, we were preaching radical ideas in our center.

"We will continue working in the organization of Workers' Education classes so as to impress in the minds of the workers that the only weapon workers have to better their economic situation is a powerful organization.

"We encounter all kinds of difficulties in our way, but as we are assisted by the great power of justice and fraternity and a better world for our comrade workers, we hope we will succeed.

"Please excuse me for my poor English. I hope sooner or later we will have the opportunity to reciprocate all the assistance you are giving to our exploited Puerto Rico workers."



4897

RESPONDENT'S EXHIBIT 10.

1027

Res. Ex. 10

ed; Votes $100,000 to Organize Kansas City Plant

and his friends, by making the election of Mr. Roosevelt nearly unanimous. Secondly, much as I should like to believe him, I still find it hard to dissociate the Mr. Reed, who has been bitterly and avowedly opposing our Union's effort to unionize the Nell Donnelly factory, from the selfsame Mr. Reed, who, during the Fall of 1936, kept continually heaping abuse upon myself, who happened to be at that time not only a Roosevelt elector but also the president of the labor organization which was trying to improve work conditions and secure the right to collective bargaining in his wife's factory.

"In one breath Mr. Reed heatedly disclaims that he has anything to do with the Nell Donnelly Manufacturing concern, and, in the other, he just as heatedly declares that no spying on workers, no discrimination for union activity, no speed-up, no discharge of girls who secretly join our Union, no long hours for low pay are permitted in that factory. If he knows nothing about the Donnelly management, where does he get all this intimate information about the work conditions and the work policy in the plant of that firm and what value can anyone, therefore, attach to his assertions that our charges are 'gross lies'?

"Mr. Reed is furthermore trying to create the impression that our International Union's act yesterday, at the convention, in voting a fund of $100,000 to support the efforts of our Kansas City Joint Board to unionize the Donnelly Manufacturing Company is a sort of reprisal because he, James Reed, was trying to abuse me during the last campaign. Well, that really is too childish to deserve a serious rebuttal. As far as our Union, or myself, is concerned, Mr. Reed may join the Klu Klux Klan, Mr. Townsend's League, Father Coughlin's outfit, the Liberty League, of which he is one of the main props, or any other group which, according to his lights, is truly American.

"The 1936 campaign is already a good way off, and why should Mr. Reed, of all people, bring it up now? But we are very much concerned with the Donnelly Manufacturing Company of Kansas City, manufacturers of dresses under inferior work conditions and the persecutor and bounder of work people who dare join our Union while in that company's employ. We do not intend to rest until the work hours and work pay in the Nell Donnelly firm are brought to a level of equality with other dress manufacturers in all markets and the right of genuine collective bargaining, not the company-union brand, is established in that factory. In this work, we admit, we are very much concerned with Mr. James Reed, and all his protestations to the contrary notwithstanding, we recognize him as a dress manufacturer with whom we expect to do business in the not distant future."

on in Westminster Hall, Hotel Chelsea, Atlantic City

Delegate From Donnelly Firm in Kansas City Pleads For ILGWU Help

Convention Appropriates $100,000 For Campaign to Unionize Reed-Controlled Low-Pay Dress Shop

Sylvia Hull, delegate of Local 118, representing the Nell Donnelly factory in Kansas City, Mo., presented the following plea in behalf of the 1,500 girls employed in that shop to the convention:

"I have been working for the Donnelly Garment Company for the past eight years. I know the situation in the shop very well. At this convention I have had an opportunity for the first time to talk to the dressmakers who work on the same line of dresses in union shops in New York, Chicago, St. Louis and several other cities, about the wages being paid in their shops. I find that the wages paid by the Donnelly Garment Company are at least 40 per cent lower than the workers in the other shops are earning.

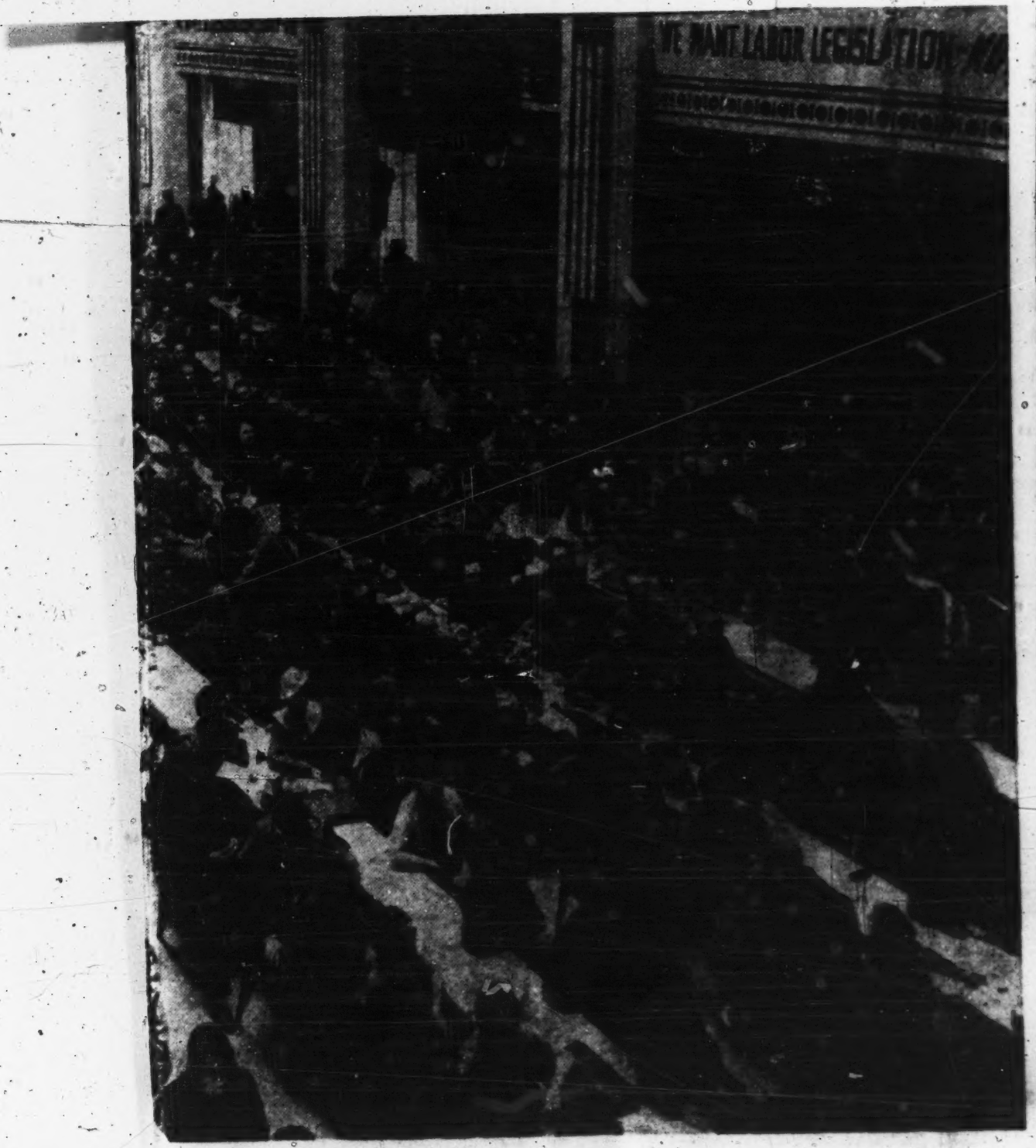
"We have no say in our shop in the settlement of prices. The foreladies settle the prices for us, and while the earnings of an average dressmaker in the cities I have mentioned range from $25 to $40 a week, the earnings of an average worker in the Donnelly Garment Company are between $15 and $18 a week. And while the workers in the union shops in these cities enjoy a 35-hour week, we work 40 and 53 hours a week. And what is worse than anything else is the inhuman speed-up which the company has developed in its factory. As a result of this speed-up system, the majority of the girls in the factory terminal to make this shop a union shop, a shop where the rights of the human being will be recognized. In their behalf, I urge this convention to help the Kansas City Joint Board establish union hours and union wages in the Donnelly Garment factory.

"Mr. President, we ask for the support of this great organization in these efforts. We, the girls in Kansas City, will do the rest."

Courageous!

Alice Hull

The "Loyalty League" in the Nell Donnelly Shop, the Kansas City Cotton Garment Shop, in Which Senator Jim Reed Has Absolutely No Interest, Didn't Ap-



tory must quit working after a few years because their nerves become overstrained and they break down In many instances, these workers are not able to return to work. I have experienced, a nervous breakdown which was caused by this speed-up and I am still under the doctor's care.

"The owner of this firm, Mr. James Reed, a former United States Senator, travels around the country promoting what he calls 'democracy.' In his own shop, however, the rights of the human being are completely ignored and the right of the worker to join a labor organization is brutally suppressed.

"I joined the Union several months ago. I kept my membership in the Union secret because I knew that I was being watched and spied on by the detectives employed by the firm. Every worker in the shop is spied on and followed, inside and outside the factory. A few days before I left Kansas City, the newspapers announced the fact that I was a delegate to this convention. The next morning, the instructors of the shop and the leaders of the Donnelly Loyalty League, the company union organized by the Reeds, surrounded me and threatened me. They asked me to get out of the shop. They spoke with their own voices, but the words were the words of James Reed.

"I have done nothing that could in any way be interpreted as not living up to the rules of the shop. I have done my work well and have always been considered an efficient worker. But the firm has been fighting against the inroads of the Union into its plant and when they got to know of my membership in the Union and of my appointment as a delegate to this convention, they organized their forces of intimidation and forced me out of the shop.

"I plead with this convention to adopt the resolution introduced by the Kansas City delegates. I and hundreds of girls working in the Donnelly Garment factory are depraye of Alice Coming to the Convention. As a Matter of Fact It Ganged Up on Her. But Alice Come to the Convention; the Union Will Come to the Shop; and the Loyalty-Leaguers Who Mobbed Her Will Yet Praise Her.

12 WORKERS REGAIN JOBS; THANK UNION

A resolution of thanks marks the final step in a victorious action just concluded by the Union.

Some two months ago, the B. S. & G. Dress Company, 1553 Gates Avenue, Brooklyn, discharged 12 workers, including the chairlady. An investigation also furnished the basis for presentation of charges to the Impartial Chairman that the firm had been guilty of underpayments and falsification of books. The Impartial Chairman ordered the workers reinstated and a settlement made for underpayments.

When the firm refused to comply with the decision of the Impartial Chairman, the Union, interested in piling up legal precedent for the sanctity of the collective agreement as a legal contract, carried the case into court through Emil Schlesinger, counsel to the Dress Joint Board. Before the case came to trial, the firm consented to an injunction under the terms of which the workers were reinstated with pay for time lost and a settlement was made for the underpayments.

The twelve workers signing the resolution were Josephine Giuliano (Chairlady), John Valenti, Joe Sincere, Luciano Pomillia, Connie Ponanti, Mana La Moinia, Lena Gangi, Agata Marceca, Caterina Buttafuoco, Mary Ferranti, Nettie Genco and Francis Molia. Specifically mentioned in the resolution were the Dress Joint Board, General Manager Julius Hochman, Williamsburg Manager Giacomo Di Nola, Business Agent Peter Bonanno and Popular Price Department Manager Frank Olivo.

[fol. 4898] (Respondent's Exhibit 11.)

Date 7/7/39—Witness Baty.

January 5, 1937

Miss Hartman:

Please grant following pay increases effective 1/1/37.

Lyda Burns	$15.00 to $16.50
Otto Dramshek	16.50 to 18.00
Alphonse Staab	30.00 to 32.50
Nellie Biggs	20.00 to 22.50
Jessie Mudd	20.00 to 22.50
Marie Grampp	20.00 to 22.50
Edna Bienert	20.00 to 22.50
Francis Morrison	20.00 to 22.50
Elizabeth Fromholtz	18.00 to 20.00
Francis Dumit	17.50 to 20.00
Ella May Hyde	35.00 to 40.00

L. Baty

[fol. 4899]

2/2/37

P. Hartman

Increases effective Feb. 1st, '37 —

Durwood Reeces	16.50 to 18.00
Eula Carter	17.50 to 20.00
J. H. White	20.00 to 22.50
Pearl Stchison	22.50 to 25.00

L. Baty

[fol. 4900] Sheet #1

Feb. 26, 1937

Miss Hartman:

Please make following increases in payroll rates to be effective Mar. 1, 1937.

	Increase	New Rate
John Ferreti	2.50	25.00
Ted Kirkland	2.50	25.00
Ted Scoles	5.00	55.00
Frank Cooper	2.50	42.50
Heber Hayes	2.50	40.00
Perry Kerr	2.50	40.00
James Van Camp	2.50	27.50
Mollie Smith	5.00	30.00
Clifton Craig	2.50	20.00
Carl Lohrengal	1.50	18.00
Cecile Ealy	5.00	35.00
Lola Skeens	5.00	35.00
Lena Allison	5.00	35.00
Marie Patton	5.00	35.00
Bessie Neimoyer	2.50	32.50
Carrie Abrams	2.50	30.00
Pearl Collins	2.50	30.00

Rosetta Cook		2.50	30.00
Etta Dorsey		2.50	30.00
Grace Gnotta		2.50	30.00
Mary Copowyds		2.50	27.50
Grace Davis		2.50	25.00
Emma Grober		2.50	22.50
Mary Snedden		2.50	22.50
Anna Barthol		2.50	25.00
Jessie Mudd		2.50	25.00
Rose Henricks		2.50	27.50
Ada Wolfe		2.50	25.00
Ada Vining		5.00	35.00
Lula Waddell		5.00	35.00
Zona Cleveland		2.50	27.50
Stella Willis		5.00	40.00
Vera Marshall		2.50	25.00
W. G. Weaverling		2.50	25.00
Rose Todd		5.00	30.00
Katie Schleicher		5.00	75.00
[fol. 4901]	Sheet #2		
Frances Endsley		2.50	20.00
Kathryn Bateman		2.50	20.00
Alice Blodgett		5.00	35.00
Lyle Jeter		2.50	42.50
Earl DeGraffenreid		2.50	42.50
Kenneth Peck		2.50	42.50
Fred Ellis		2.50	40.00
Roy Beller		2.50	40.00
Alfred Chards		2.50	22.50
Wood Reynolds		1.50	16.50
R. T. Smith		2.50	30.00
George Blair		2.50	27.50
Morton Griggs		2.50	22.50
Lena Lewis		2.50	22.50
Merl Beitling		2.50	25.00
Alice Scott		1.50	16.50
Georgia Bailey		1.50	16.50
Karlyne Anspatch		3.00	18.00
Nell Beatz		2.50	32.50
Katherine Ruppert		5.00	20.00
Elizabeth Goodenow		1.50	16.50
Helen Moflan		1.50	18.00
Anna Kappelman		2.50	32.50
Mable Riggs		2.50	27.50
Corinne Robinson		2.50	22.50
Evelyn Cook		2.50	17.50
Elva Hill		2.00	20.00
Nannie Barger		2.50	37.50
Ann Scott		2.50	22.50
Mabel Bayless		2.50	22.50
Freda Smeltzer		2.50	22.50
Norma Duncan		2.50	22.50

Nora Stevenson	2.50	22.50
Pearl Davis	2.50	22.50
Ceva Vaughn	2.50	22.50
Nell Gregg	2.50	22.50
Malissa Harvey	2.50	22.50
Effie Canfield	2.50	22.50
Pearl Doyle	5.00	25.00

[fol. 4902] Sheet #3

Lillian White	2.50	30.00
Camilla Cochran	3.00	18.00
Regina Margerumi	3.00	18.00
Ruth Anderson	2.00	20.00
Rose Murray	7.50	22.50
Martha Gray	5.00	40.00
Helen Little	2.50	25.00
Edwina Jones	1.50	16.50
Vera Webb	3.00	18.00
Grayce Cooper	1.50	18.00
Blanche Enres	1.50	16.50
Heath Cowan	2.50	37.50
Nora Williams	2.50	17.58
Birdie Baker	2.50	17.50
W. J. Stiekle	1.50	18.00
Dean Tutt	2.50	22.50
Calvin Burton	1.50	22.50
Dorothy Roberts	2.50	17.50
W. E. Baker	2.50	25.00
Ernest Riley	2.00	20.00
Phenias Peterson	2.50	27.50
Ed Corbin	2.50	22.50

Lee Baty

[fol. 4903] 3/2/37

Miss Hartman:

Effective 3/1/37 Increase;

William Neale	37.50 to 40.00
O'dell Decavelle	32.50 to 35.00
Earl Willoughby	37.50 to 40.00
Lowell Sachen	21.00 to 25.00
Kellogg Leach	42.50 to 45.00
Ben James	16.50 to 18.00
Naomi Osipik	15.00 to 16.50

L. Baty

[fol. 4904] James Dunn Increase 20.00 to 22.50 Effective 3/16/37

Lee Baty

[fol. 4905] 4/9/37

Miss Hartman:

Please make payroll changes;

Dorothy Curry	20.00 to	22.50
Gertrude Gorham	22.50 to	25.00

L. Baty

[fol. 4906] 4/28/37

Miss Pauline Hartman:

Increase—Helen Little
Effective—5/1/37
$25.00 to $27.50

O. K.
L. Baty

[fol. 4907] Miss Pauline Hartman

Increases — 6/1/37

	Increase	New Rate
Hayes, Heber	2.50	42.50
Kerr, Perry	2.50	42.50
Willoughby, Earl	2.50	42.50
Neale, William	2.50	42.50
Reese, Samuel	5.50	33.00
Fallis, George	2.50	35.00
Davidson, Clyde	2.50	25.00
Fredereck, William	2.50	25.00
Rainey, Verdoe	1.50	16.50
Scott, Ruby	2.50	20.00
Emig, Doris	2.50	22.50
Kirk, Robert	2.50	22.50
H. B. Powell	2.50	35.00
Strickland Florence	5.00	80.00
Beitling, Merl	5.00	30.00
Glover, Margaret	2.00	20.00
Marforie, Florence	2.00	20.00
Carter, Eulah	2.50	22.50
Callahan, Mildred	3.00	18.00
Beach, Nancy	2.50	22.50
Williams, Nora	.50	18.00
Baker, Birdie	.50	18.00
Roberts, Dorothy	.50	18.00
Buchanan, George	1.50	16.50
Wardell, Swenson	3.00	18.00
Kemp, Gilbert	2.00	18.00
Hooks, John	1.50	18.00
Scott, A. D.	5.00	25.00
Wherry, Anna	5.00	80.00
Tyhurst, Lena	2.50	52.50
Gay, Eileen	2.50	20.00

Schleicher, Katie	5.00	80.00
Nichols, Lula	5.00	55.00
Hyde, Ella Mae	5.00	45.00
Denzel, Katholeen	2.50	22.50
White, J. H.	2.50	25.00
Griggs, Morton	2.50	25.00
Price, C. Marvin	5.00	70.00
McConaughey, Jack	2.50	30.00
Higgins, Walter	2.50	42.50
Root, Ortense	2.50	42.50
McMillin, Lavaughn	1.50	18.00
Ward, Leslie	5.00	30.00
Williams, Guy	5.00	30.00
Price, Anna	5.00	52.50
[fol. 4908] Brandt, Mary	2.50	22.50
Crawford, Ula	3.00	20.00
Hamel, Katherine	2.50	32.50
Eckert, Barbara	2.50	25.00
Barger, Nannie	2.50	40.00
Risely, Mary	3.00	18.00
Cooper, Grayce	2.00	20.00
Endres, Blanche	1.50	18.00
Jones, Edwina	1.50	18.00
Webb, Vera	2.00	20.00
Little, Helen	5.00	30.00
Jensen, Helmer	2.50	35.00
O'Brien, Mrs. P. B.	2.50	52.50
O'Leary, Rose	2.50	45.00
Barnett, Nettie	2.50	25.00
McInnis, Thelma	2.50	22.50
Lamping, Lauretta	2.50	20.00
Hallauer, Joe	2.50	22.50
Grogan, Harry	1.50	18.00
Gassert, Gertrude	2.00	20.00
Shartzer, Pauline	5.00	35.00
Guerrant, Cecile	4.50	22.50
Patton, Marie	2.50	37.50
Skeens, Lola	2.50	37.50
Reynolds, Wood	1.50	18.00
Haskell, Jacquelyn	1.50	18.00
Hauser, Helen	5.00	30.00
Caudle, Freda	1.50	18.00
Hill, Elva	2.50	22.50
Humphrey, Zelma	5.00	30.00
Newton, Nancy	2.00	20.00
Goodenow, Elizabeth	1.50	18.00
Cook, Evelyn	2.50	20.00
Dawe, May	1.50	18.00
Rehmeyer, Irma	1.50	18.00
Canon, Elva	1.50	16.50
Wheeler, Earl	1.50	16.50
McDonald Melvin	1.50	16.50

Hamilton, Charles	1.50	16.50
Osipik, Naomi	1.50	18.00
Dixon, Vesta	1.50	18.00
Sampsell, Grace	1.50	18.00
Scott, Alice	1.50	18.00
Bailey, Georgia	1.50	18.00
Davis, Mildred	3.00	18.00

L. Baty 6/1/1937

[fol. 4909] 6/24/37

P. Hartman

Effective 6/16/37

Lena Lewis 22.50 to 25.60

All Machine operators in Design Dept. 25.00 to 25.60

L. Baty

[fol. 4910] 7/12

Increase effective July 1, 1937 —

Alfred Charde 22.50 to 25.00

Effective July 5th, 1937 —

Sherman Andrew 16.50 to 18.00

L. Baty

[fol. 4911] 7/22

P. Hartman

Increase — 7/16/37

Aurle Martindale
$16.50 to $18.00

L. Baty

[fol. 4912] 9/14/37

Miss Hartman:

Please make following increases in wages on rates—effective 9/1/37.

	Amount of Increase	New Rate
Hinton Noland	2.50	22.50
Odell De Cavelle	2.50	37.50
Clyde Davidson	2.50	27.50
Lowell Sachen	5.00	30.00
Alvin Riefel	2.50	27.50
Durward Reece	2.50	22.50
Ben James	2.50	22.50
James Van Camp	2.50	30.00
Alphonse Staab	2.50	35.00
Cecile Ealy	10.00	45.00
H. F. Atherton	5.00	40.00

Raymond Smith	5.00	35.00
Wood Reynolds	2.00	20.00
Chas. Hamilton	1.50	18.00
Earl Wheeler	1.50	18.00
Carl Lohrengel	2.00	20.00
Mary Cooney	1.50	18.00

L. Baty

[fol. 4913] Increases effective—10/16/37.

Clifton Craig	2.50 week
Don Lytle	2.50 "
Sherman Andrew	2.00 "
Kathleen Denzel	2.50 "
Bob Kirk	2.50 "

L. Baty

[fol. 4914] Please increase the following effective Nov. 1, 1937.

James Dunn	$22.50 to $25.00
Ada Vining	35.00 to 40.00
Marie Patton	37.50 to 40.00
Lola Skeens	37.50 to 40.00
Amy Lamar	25.00 to 35.00

L. Baty

[fol. 4915] 12/1/37

P. Hartman

Increase effective Dec. 1st —

Loyd Lynn	18.00 to 20.00

L. Baty

[fol. 4916] Miss Hartman:

Please increase — 1/1/38.

Ted Scoles	55.00 to 60.00
Fred Brown	45.00 to 50.00
Joe Spalitto	5.00 per week

L. Baty

[fol. 4917] 1/3/38

P. Hartman

Effective Jan. 1st, 1938

Carl Lohrengel	20.00 to 22.50
Durward Reece	22.50 to 25.00

Effective Jan 3, 1938

Earl Wheeldt	18.00 to 20.00

L. Baty

[fol. 4918] 1/14/38

P. Hartman

Increase effective 1/10/38

Melvin McDonald	$2.50 per week
Charles Hamilton	$2.00 per week

L. Baty

[fol. 4919] 1-31-38

Miss Pauline Hartman:

Please make following payroll changes effective Jan. 16, 1938:

Lena Allison	Increase $5.00 to 40.00
Mary copowycz	" 2.50 to 30.00
Grace Davis	" 2.50 to 27.50
Elma Jennings	" 2.50 to 25.00
Frances Dumit	" 2.50 to 25.00
Edna Bienert	" 2.50 to 25.00
Emma Grober	" 2.50 to 25.00
Martha Gorman	" 5.00 to 27.50
Anna Barthol	" 2.50 to 27.50
Pearl Atchison	" 2.50 to 27.50
Rose Hendricks	" 2.50 to 30.00

L. Baty

[fol. 4920] 2/2/38

Raymond Luce
20.00 to 22.50
effective Feb. 1, 1938

L. Baty

[fol. 4921] 3/3/38

P. Hartman

Increase —
effective 2/28/38

W. S. Riley	$16.50 to $18.00

Effective 3/1/38

Verdoe Rainey	16.50 to 20.00
T. Sachen	20.00 to 22.50

L. Baty

[fol. 4922] 3/7/38

Lloyd Lynn	$20.00 to $22.50	effective	3/1/38
Henry Hodges	18.00 to 20.00	"	2/28/38
Jack McConaughey	30.00 to 32.50	"	3/1/38

L. Baty

[fol. 4923] Miss Hartman:

Please put following increases in effect 9/1/38.

	Increase	New Rate
Bill Norton	1.50	18.00
Dorothy De Lange	1.50	18.00
Kenneth Smith	2.50	22.50
Wm. Neale	2.50	45.00
Lowell Sachen	5.00	35.00
Wm. Fredereck	2.50	27.50
Ben James	2.50	25.00
James Van Camp	3.00	33.00
Gerald Cole	2.50	22.50
Odell DeCavelle	2.50	40.00
Alphonse Staab	2.50	37.50
Sherman Andrew	2.50	22.50
Robert Kirk	2.50	27.50
G. O'Brien	3.50	27.50
G. Fallis	2.00	37.50
Mary Bogert	2.50	32.50
Dorothy Curry	2.50	25.00
Irene Wilhite	2.50	22.50
Macie Westendick	2.50	22.50
Rhea Byars	2.50	22.50
Ruby Scott	2.50	22.50
Amy Lamar	5.00	40.00
Horace Lane	2.00	20.00

Lee Baty

[fol. 4924] Ben Charde
$25.00 to $27.50
effective 10/1/38

L. Baty

[fol. 4925] 11/29/38

P. Hartman:

Edith Nickum
Increase $16.50 to $18.00
Effective 11/16/38

L. Baty

[fol. 4926] 12-14-1938

Miss Hartman:

Please increase rate for

Mary Copowycz $30.00 to $35.00
Effective Dec. 1, 1938.

L. Baty

[fol. 4927] January 12, 1939

Miss Pauline Hartman:

Please make the following changes in the payroll effective with Jan. 1, 1939.

	Increase	New Rate
Katholeen Denzel	2.50	30.00
Carrie Abrams	2.50	32.50
Kathryn Rosen	2.50	32.50
Pearl Collins	2.50	32.50
Grace Gnotta	2.50	32.50
Martha Gorman	2.50	30.00
Nellie Biggs	2.50	27.50
Pearl Atchison	2.50	30.00
Margaret Martin	1.90	27.50
Bernice Bryant	1.90	27.50
Adeline, Bailey	1.90	27.50
Alvin Riefel	3.00	33.00
Clyde Davidson	2.50	30.00
William Frederick	5.50	33.00
Otto Dramshek	2.50	25.00
Charles Hamilton	2.50	22.50
Gertrude Gorham	2.50	27.50
Jessie Forsen	2.50	25.00
Charlotte Casey	2.50	25.00
Doris Emig	2.50	25.00
Mary Hall	2.50	25.00
Thelma Sachen	2.50	25.00
Ruby Scott	2.50	25.00
Heath Cowan	2.50	40.00
James Dunn	2.50	27.50
Wood Reynolds	2.50	22.50
John Berry	2.50	25.00
Dean Tutt	2.50	25.00
W. S. Riley	2.00	20.00
Fred Ellis	2.50	42.50
Roy Beller	2.50	42.50
Raymond Smith	2.50	37.50
J. H. White	2.50	30.00

L. Baty

[fol. 4928] 3/15

Ora Wachtel
Increase from 25.60 to 30.00 wk. as of 3/13/39

L. Baty

[fol. 4929] (Respondent's Exhibit 12.)

Date 7/12/39—Witness Stites.

March 18, 1937.

Mrs. Reed: "I want to say that I am awfully happy to have this opportunity to tell you how proud I was when those girls wrote the petition out, and—well, I have had lots of nice things happen to me in my lifetime, but I have never had anything that made me so proud and so happy as that list of names that came to my house. Many of those girls I had worked with—and who had really helped to build this business into what it is now.

Over a period of twenty-one years we have built up an institution which anybody can be proud of, anybody connected with it. I had a letter from one of the girls last night telling me that she had worked for the Donnelly Garment Company but she wasn't ashamed to tell anyone that she had worked for a garment company. When Mr. Dubinsky put Mr. Reed into the garment business —he didn't know he was in it before—he said he would not be ashamed to belong to the Donnelly Garment Company.

We have an institution we can be proud of. You folks are just beginning to be initiated into the knowledge of just what kind of a business we are in, and some of the people that are in it.

A great many years ago when I first started, a man in St. Louis said, "You know you have to have two fires and a failure to stay in that business". We have not had any fires or any failures yet. We are twenty-one years old and we are pretty well grown up, and I think we know how to run our own business.

[fol. 4930] Just from a practical standpoint, let me say that this business has grown up around the policy of year-around work. Up until the time of the depression we practically kept that up. I increased my business in the fall of the year and I increased my machines, and then we always had plenty of business the next spring. In the spring when the depression came on I put new machines in with the idea that I had the business and that

I could give a certain amount of work to a certain number of women for a few months. A number of you will remember that the old girls agreed that they would share their work with the new ones that fall if they had to. They did not have to very much, but they did a little. By the time the next spring came along the new ones were the old ones, and they wanted to work too, so we have made every effort in the world to keep the plant going.

We have built up a Nelly Don garment, and we have built up a Nelly Don trade, and each time we get up a line we try to make something that enough women will buy to keep our plant running. There has been so much talk "Mrs. Reed isn't interested any more; Mrs. Reed doesn't care anything about it any more, etc." Mrs. Reed may not work as many hours as she used to, but the burdens on her are bigger now than ever. No matter what anybody else may say, I'll be right here running this business.

I know you are thinking about the threats of violence that the Union is making against you and the company. I want to say that the Company and I intend to do every-[fol. 4931] thing possible to protect you in case of any violence. We are now trying to make arrangements with the street car company for its busses to go to certain points and pick you people up and bring you to the plant. We will let you know about this as soon as arrangements can be made.

Many of you have been here for a number of years and you know that you have never been asked whether or not you belong to a union. The company has not discriminated against anyone on that account and Mr. Dubinsky is not going to make me discriminate against employees because they would not belong to his Union. If you want to belong that is your own business and it is up to you to decide. I will say that neither Dubinsky or any other buttinsky is going to intimidate me or the Company into forcing you to join the International Union against your will.

I can't say at this time what will be done to protect you against violence, but the company's attorneys will con-

sider what legal steps might be advisable. In any event, you can understand that the company will not submit to any unlawful attacks lying down.

[fol. 4934] (Respondent's Exhibit 14:)

Date 7/13/39—Witness .....

Dr. Peter T. Bohan

Plaza Medical Building

Kansas City, Missouri

Dr. James H. Danglade Dr. Maxwell G. Berry

July 13, 1939.

National Labor Relations Board,
Scarritt Building,

Kansas City, Missouri.

Attention: James C. Batten,
Trial Examiner.

Gentlemen:—

Reporting on the physical condition of Mrs. James A. Reed.

Operation on right shoulder in Iowa City in February and has carried her arm in a sling ever since.

Tonsillectomy at St. Luke's Hospital about two months ago, and she had a very stormy convalescence.

Because of her extreme exhaustion, weakness, and highly nervous condition a prolonged period, perhaps a number of months, of absolute mental and physical rest was advised.

For four or five weeks she has been up north under the care of a trained nurse. In my opinion, there is a defi-

nite contraindication to her returning here to testify or even to giving a deposition where she now is.

Very truly yours,

P. T. BOHAN.

PTB:ar

[fol. 4937] (Intervener's Exhibit 2.)

Date 6/20/39—Witness Todd.

The Donnelly Garment Sales Co.
The Donnelly Garment Company
Kansas City, Missouri

Gentlemen:

This is your authority to deduct from my first pay check each month, twenty-five (25¢) and turn this money over to the Donnelly Garment Workers Union as payment of my dues.

Signed .....

[fol. 5030] (Intervener's Exhibit 19.)

7/13/39—Witness .....

Rose Todd, General Chairman

At your request, I am asking withdrawal of my name from the Donnelly Garment Workers Union.

(Signed) DEWEY ATCHISON.

[fol. 5031] (N.R.A.—J.M.C. Exhibit 1.)

Extracts From Testimony of Mrs. Ellen Fry on February 26, 1935.

(Pages 12 to 47)

p. 12 Q. (By Mr. Rucker) Your name is Ellen Fry?
A. Yes, sir.
Q. Where do you reside? A. 1432 Summit.

p. 16 Q. Did you hear anyone in authority—I mean by that persons having jurisdiction over you—make any statements at any time about July 1933 with reference to the necessity for weeding out or discharging employees who could not make the code?

A. Yes, sir.

Q. By whom did you hear those statements made?

A. I have heard them made by my instructor.

Q. Well, name the person. A. Mrs. Allison.

Q. By any other person?

A. Yes, sir; Mrs. Reeves.

p. 17 Q. Mrs. Reeves? A. Yes, sir; Mrs. Reeves.

Q. Now, is it a fact that a number of employees were let out about that time, if you know?

A. Yes, sir.

Q. Were you among the persons let out at that time? A. No, sir.

p. 21 Q. Two or three weeks is all right. Are you a member of the International Ladies' Garment Workers' Union? A. Yes, sir.

Q. When did you join?

A. In August 1933.

[fol. 5032] Q. Was there anything said, so far as you know, at the Donnelly factory at that time about your having joined the union?

A. No. Nobody knew a thing about it.

Q. Well, you mean by that you didn't say anything to anybody about it?

A. No, sir.

Q. All right. Now, I will ask you if you were aware of the fact that on the 15th day of March 1934 there was a mass meeting of employees of the Donnelly Company, called for the purpose of discussing the feasibility and practicability of forming a union among the workers. A. March?

Q. March 15, 1934.

A. The employees of Donnelly called that?

Q. No.

A. A mass meeting?

Q. Was there a mass meeting among certain of the girls?

A. Yes, there was a mass meeting.

Q. Where was it held?

p.22 A. Eagles' Hall. No, Musicians' Hall.

Q. Musicians' Hall? A. Yes, Musicians' Hall.

Q. Now, do you know whether there was in attendance at that meeting a person who apparently was taking shorthand notes of what was said there by the various people?

A. Yes, sir.

Q. Did you or any person who you know of who was employed at the Donnelly factory and who met there for this purpose—I mean by that employees in your class—have anything to do with employing this stenographer?

A. Well, I couldn't say that I know—

[fol. 5033] Q. I say, do you know anything about it? Did you girls employ him or not?

A. No, we did not employ him.

Q. That's what I want. You don't actually know who did employ him, do you?

A. No.

Q. Now, how many, approximately, of the Donnelly employees attended that meeting on March 15, 1934?

A. There weren't very many of the girls, the operators, attended, but the entire officials attended; all the instructors and a good many of the others. Mrs. Reeves attended and a good many more.

Q. Now, can you give me approximately the number of girls?

p. 23 A. Not over 10 or 15.

Q. 10 or 15. You speak of Mrs. Reeves. Who is Mrs. Reeves, and what position does she occupy there in the Donnelly factory?

A. Well, some say that she is the factory manager, and some say production manager.

Q. Well, did she have authority over you? Did her rank go higher than yours? A. Oh, yes.

Q. Were you required to take instructions from her and obey whatever orders she gave you?

A. Whatever orders she gave, we had to obey; yes, sir.

Q. Now, shortly after the 15th day of March 1934 did Mrs. Reeves call you at her office?

A. She did.

Q. And did she question you about your union activities? A. Yes, sir.

Q. Now, tell the Board, just as nearly as you can, what was there said by Mrs. Reeves and by you.

[fol. 5034] A. The first question she asked me when I entered the door was if I belonged to the union; that she knew I had attended the meetings because she had seen me there. I told her, "Yes, sir." Then she wanted to know how long I had been a member. Well, I didn't figure that that was—

Q. Don't say what you figured. Just tell what was said.

p. 24 A. So I told her I had belonged a long time. So she asked me what good that the union could do for me. And I said, Well, I didn't know. She asked me how much it cost me to join the union, and I told her; that it cost me $1 to join. She says, "What's your dues?" I said, "25 cents a week." She says, "Well, I can't understand why that you girls want to join that old union and pay 25 cents a week dues." she says, "On account of", she says, "here we talk our heads off to get you to pay 17 cents for insurance, and we pay $50 a square foot for the cafeteria, and give them that in order that they can sell the girls 4-cent coffee."

And then she came to me again, and she says, "I want you to tell me just exactly what that union is doing for you girls. Is it giving you your jobs?" And she kept me three hours, just questioning me and cross-questioning me back and forth over what the union was going to do for me. And if I would rather have the union, why didn't I go to the union and work?

And I told her I was perfectly satisfied to work at Donnelly's; that I had been doing my work satisfactorily, had few repairs. And she said she couldn't understand why I wanted to pay out 25 cents a week and go down there and attend that union. And that was the whole run of the conversation from the start to the finish.

Q. (By Mr. Rucker) Now, you were not docked, of course, for that time you spent in the office?

p. 25 A. No. I told her during that time I couldn't make my average sitting there talking to her about the union while I wasn't sewing, so she told me that she would pay me the time I was in the office.

Q. And she did do it? A. Yes, sir.

Q. Now, shortly thereafter, after this occasion and occurrence about which you have just testified, did a group of the girls meet at the home of one of the girls?

A. Yes, sir.

Q. Do you remember how many girls were there, approximately? A. Well, I think 7 or 8 of us.

Q. At whose home did you meet?

A. Well, it was an outsider's home. I cannot recall the woman's name. I had never met her before. But we met there with the Burns girls.

[fol. 5035] Q. The Burns girls are connected with some union, are they?

A. Yes. Marian Burns is the president of the Women's Trade League here in Kansas City. The other girl is a stenographer.

Q. President of what?

A. The Women's Trade League.

Q. That's a union affiliation, is it, or organization? A. Just an organization.

Q. Did you discuss the formation and organization of a union there that night?

A. Yes, sir.

Q. At this woman's home?

p. 26 A. Yes, sir.

Q. Do you know whether cards were passed either at the meeting of March 15, 1934, or at this meeting at the residence, where the girls signified their intention of joining the union?
A. It was at the residence.
Q. At the residence? A. Yes, sir.
Q. Did the girls who met there on that occasion sign up? A. They did.
Q. All of them? A. Yes, sir.
Q. Did they all pay in at that time?
A. No, they did not.
Q. Sign an application card?
A. They signed an application.
[fol. 5036] Q. All right. Now, were any of those girls let out at the Donnelly factory shortly after that occasion?
A. After that occasion, yes, they were let out.
Q. How many of them? A. All of them.
Q. All of them? A. Yes, except one.
Q. Except one? A. Yes.
Q. Who was that one? Do you remember?
p. 27 A. Cordie Huntley.
Q. Just give testimony about facts that you know of yourself. Now, after the occasion of your meeting over there at this residence, were you continued on in the same kind and character of work that you formerly had?
A. Just the minute they found out I was a union girl the attitude changed in the section. My instructor immediately put another girl in my work, and when we ran out of that work, she continued with keeping the other girl on the work I had been on and gave me this other girl's work.
p. 28 Q. What was the difference?
A. Well, I was joining, and had been joining ever since I had been in her section this time.
Q. (By Dir. Pratt) Whose section was that?
A. Mrs. White's.
Dir. Pratt. Mrs. White's.
Q. (By Mr. Rucker) What did she give you to do?

A. She gave me an operation of tucking, where I had to tuck 120 tucks for 25 cents.

[fol. 5037] Q. Was your work frequently changed about that time?

A. After that, why, it was changed.

Q. And how often?

A. One time I kept count of it, and I was changed seven times in one day.

Q. Now, when your work was changed could you make the code?

A. No, sir; I could not. I went to Mrs. Reeves about it.

Q. Now, when were you laid off? A. July 10.

Q. 1934? A. Yes, sir.

Q. Were you taken back? A. No, sir.

Q. Did you go to Mrs. Reeves after that time?

A. I did.

p. 29 Q. What talk, if any, did you have with her?

A. Well, I told her that I could not—that I did my work right, and that I knew that I was one—had received more money according—that is, above the code or around the code—than the average one in that section, because I had made it a point to find out how the girls' checks were. And at that time when I was laid off they said they were laying off the lowest girls in the section, and I knew it wasn't so. And that I had to work; that I had a family of four children and an invalid, my husband's father, with us, and that I had to work in order to support them, and that he didn't get very much money.

And Mrs. Reeves told me that that was not a charitable institution; that if I was going to lose my home that I could go to the Federal Loan Association and apply for a loan. And I told her that I had gone to the Federal Loan, but that wasn't meeting the expenses; that I wanted to work; that I hadn't done anything to cause myself to be laid off; that they had always kept the best operators, and, being that they had kept me before and all,

that I would rather have my work. She said, "Well, go some place else, then. I don't know when we can ever put you back."

[fol. 5038] Q. Did she ever say anything to you about going to the union?

A. Yes. She said if I wanted work so bad to go down to the union and let them get me something to do.

Q. Had you been active in union work before you were laid off?

p. 30 A. Yes, sir.

p. 31 Q. (By Mr. Reed) And as far as you know, there isn't a single one of the managers of the Donnelly Garment Company that knew on July 10 that any of you girls had had that meeting, as far as you know?
That's the truth, isn't it?

A. No, it isn't. But I am not supposed to answer that.

Mr. Rucker. Q. Answer any questions the Senator asks you.

A. All right. I know Mrs. White knew everything about it.

Q. (By Mr. Reed) How do you know she knew about it? Did you tell her?

Mr. Rucker. Just a minute. I insist the witness be permitted to answer. She started to answer. Now, go ahead.

Dir. Pratt. Q. Yes, take your time, Mrs. Fry, and just tell—

Mr. Reed. But when she says she knew it, I am asking her, before that sort of an answer goes in, if she ever told Mrs. White prior to July 10.

A. Cordie Huntley came to me and told me, is the way that I knew that Mrs. White knew that we had the meeting.

Q. Cordelia Huntley told you? A. Yes.

p. 32 Q. When did Cordelia Huntley tell you?

A. Cordelia Huntley told me that—

Q. When did she tell you, I asked.
A. After this meeting.
Q. How long after the meeting?
A. I couldn't tell you exactly, because I never put that down.

[fol. 5039] Q. Well, about how long?
A. It was before the lay-off.
Q. Well, how long before the lay-off?
A. About 1 week.
Q. Now, where were you when she told you?
A. I was standing at my machine.
Q. Well, since you have brought Cordie Huntley in, what did Cordie Huntley tell you?
A. Cordie Huntley told me, she says, "I am telling you as a friend", she says, "Mrs. White is going to frame you to get you out of this section because you are a union girl. She doesn't want any union girls in this section."
Q. That's what Cordie Huntley told you?
A. Yes, sir.
Q. But Mrs. White didn't tell you?
A. No. I know Mrs. White didn't. I told you why I knew that; that Cordie had told me.
Q. That Mrs. White said she was going to frame you? A. Yes, sir.

p. 34 Q. Well, we will pass that. You were employed on July 14, 1931, were you not?
A. Yes, sir; that's when I was employed.

p. 42 Q. Well, when were you given this hard work? Just since you joined the union or before?
A. Well, I have been given hard work lots of times, but when they joined the union is when they made the discrimination.
Q. You say they changed you seven times in one week? A. In one day.

p. 43 Q. In one day? A. Yes, sir.

[fol. 5040] Q. Now, as a matter of fact, don't you know that that isn't the case?
A. I absolutely know it is.
Q. Isn't there a record kept down there on everything you worked on?
A. I beg your pardon?

Q. What were these seven operations that you were given down there on one day?

A. Well, I can't recall just exactly at the time, but you can give me binding or you can give me piping—

Q. Well, what did you have that day? That's what I want to know.

A. I don't exactly recall the seven different ones in that day, but I recall how my total went down in that day. I couldn't make no $3 a day, and no one else could, and change like that.

Q. What day was that?

A. That's beyond my recall. I had no idea that I would have to bring it up at the time.

Q. Well, you went right on working after that, didn't you?

A. I was laid off on Friday after that, during the same week.

Q. (By Dir. Pratt) This time when you got the seven different operations was 3 or 4 or 5 days prior to the time you were laid off?

A. It was during that last week; yes, sir.

p. 45 Q. All right. You spoke of a young lady down there as Cordie Huntley. (By Mr. Reed)

A. Yes. Mrs. Reeves knows her. She's a personal friend of Mrs. Reeves.

p. 46 Q. Well, you went to Mrs. Reeves and told Mrs. Reeves that Mrs. White didn't like you, didn't you? A. No, sir; I did not.

Q. What did you tell her?

A. I went to Mrs. Reeves and told Mrs. Reeves that Mrs. White, since she had found out that I belonged to the union, was not treating me fair.

Q. That's that one conversation that you have referred to before? A. Yes, sir.

[fol. 5041] Q. Same one? A. Yes.

Q. Now, you know Mrs. Reeves investigated that, don't you? A. I couldn't say.

Q. Now, you didn't tell Mrs. Reeves that Mrs. White—well, I will use a slang expression—

"had it in for you" on account of the union, did you?

A. I told Mrs. Reeves that Mrs. White wasn't treating me right since she found out I was union; that she immediately took me off my work that I had been making my average on, and that she put me on something that I couldn't make it, and she knew that I had never did that kind of work before.

[fol. 5042] Extracts From Testimony of Mrs. Thelma Owen on Febr. 26, 1935.

(Pages 48 to 91)

Vol. I

p. 48 Q. Your name is Thelma Owen? A. Yes.
Q. Where do you live?
A. You mean my address?
Q. Yes.
A. 1317 Troost.
Q. Were you ever employed by the Donnelly Garment Company? A. Yes, sir.
Q. Do you remember when your first employment was? A. It was in August of 1924.
Q. How long did you work at that time?
A. Well, I worked about 2 or 3 years. I don't know the exact date. I was off and called back in 5 weeks.

p. 49 Q. And do you remember how long you worked then?
A. Well, a couple or three years. I don't know exact.
Q. Without any interruption? A. Yes, sir.
Q. Now, do you speak now of the time when you came back to work in 1929?
A. I remember that very clearly.
Q. Well, is that the time when you worked 2 or 3 years again?
A. No. I have worked from 1929 until 1934.
Q. All right. From 1929 to 1934? A. Yes.
Q. I think that's far enough back. Now, when were you laid off?

A. I was paid with a paid vacation the last week in June; was supposed to come back to work July 9. They sent me a letter and told me it would be a few days before I could come back. And then they sent me another letter and told me that they didn't see fit to call me and for me to look elsewhere for work.

Q. Have you joined the Ladies' Garment Workers' Union?

A. I had filled out my application--

Q. I say, have you joined? A. Yes, sir.

Q. Now, when did you actually join?

A. I joined the 13th day of November,

[fol. 5043] p. 50 Q. 1934? A. Yes, sir.

Q. When had you filled out the application blank? A. In the spring.

Q. In the spring of 1934? A. Yes, sir.

p. 51 Q. At the time you went back to Mrs. Reeves with reference to your re-employment, did she say anything to you about your union activities?

A. Well, I was working, and they transferred me to a small section of the ninth floor.

Q. Now, listen. After you were laid off and were told to come back, did you have a talk with her? A. She called me to her office.

Q. Now, at that time was anything said about the union at all? A. Yes.

Q. Now, just tell the Board what was said.

A. She said, "Thelma Owen, why did you go to old Meyer Perlstein's office and call me?" "Why didn't you come to me? We have got together and have thrashed this thing out." She said, "Why don't you go out and get you a job keeping house?" I said, "Mrs. Reeves, after working in the factory 10 years I think

p. 52 I would be a very poor housekeeper." So I said, "I thank you for the many nice things you have did for me, and think just as much of you as I ever did. I like all my instructors and you also." And she said, "Well, Thelma, I may get soft-hearted again,

but don't make a mountain out of a mole hill." Those were my last words with Mrs. Reeves.

Q. Had you gone to a union meeting before you were laid off? A. I had.

Q. Had you talked in favor of forming a union group out there before you were laid off?

A. I did.

[fol. 5044] p. 54 Q. Now, was there any other thing said by any person who was your superior there to you about your union activities or the formation of a union unit out there except what you have already related?

A. Yes.

Q. What is it, and when was it?

A. Well, I worked for Mrs. Reeves and always made my code. Then they transferred me upstairs on the ninth floor to a smaller section. Having to make my own living, and looking after my mother and father—

Q. Just tell the facts. That's all the Board is interested in.

A. Well, I asked to have a talk with Mrs. Reeves, and she called on a Monday and said I could talk to her. I went up there and talked to Mrs. Reeves. She asked why I didn't want to be transferred. I told her it being a small section, it would be the first one to be closed

p. 55 down. And she looked at me and shook her finger in my face, and she said, "Thelma Owen, you have nothing to worry about. You have never been laid off for being a slow operator; and you go right back to work for Mrs. Nannie Barger. She needs you, and you will get along just swell."

But she said, "Are you a union member?" And I said, "Mrs. Reeves, I have never paid 5 cents union dues in my life." And she said, "It's funny, but somebody said today, "Did Thelma get transferred because she is active in the union?'" And the reason I didn't tell Mrs. Reeves I was going to the union was because I would lose my job.

Q. Now, it was the custom down there to give the operators who had been there some time
p. 59 two weeks vacation with pay, wasn't it?
A. Yes.
Q. Yes. And you took your vacation and got your pay? A. Yes, sir.
Q. At that time you didn't belong to any union?
A. I had signed my application early in the spring.
Q. You signed it early in the spring; six or seven of you girls. Have you got that application?
A. I think you can get it.
p. 67 Q. You didn't know that if you sent out a dress with half the number of stitches—
A. That's what they have instructors for there.
[fol. 5045] Q. Yes, to catch you. You make the mistake and then trust to the inspector to find it, is that it? A. May I say one thing?
Q. Just answer the question.
A. Will you repeat that question, please?
Q. I say that you went on and made these goods, and you say it was the inspector's business to find it out. You were willing to do that sort of work down there?
A. I was not. I showed my work to the inspector before I turned my bundle in. She said they had other bundles turned in—
p. 74 Q. At the time you took your vacation, what decided you to take it? Who did you talk to about that?
A. They tell you when to take your vacation.
Q. Well, who told you?
A. Our instructor. Our whole section taken their vacation at the same time.
Q. Who was that? A. Mrs. Neimeyer.
Q. And she told your whole section to take a vacation? A. Yes.
p. 78 Q. But you knew you were not a member of the union until you paid, didn't you?
A. It was my understanding I was.
Q. It was your understanding you were?
A. Yes.

Q. But it was after that you told Mrs. Reeves you didn't belong to any union?
A. For fear of losing my job.
Q. And you told her that, didn't you?
A. I did. I didn't tell her I didn't belong to the union. I told her I had never paid 5 cents union dues in my life.

[fol. 5046] Extracts from the Testimony of GLYNN BROOKS on Febr. 26, 1935.

(Vol. I, Pages 138 to 180)

p. 138 Q. (By Mr. Rucker) Your name is Glynn Brooks?
A. Yes.
Q. Where do you live?
A. 2206 East Sixty-seventh Terrace.
Q. Were you formerly employed by the Donnelly Garment Company? A. Yes.
Q. Do you remember approximately when you entered the employ of that company? A. Yes.
Q. When was it?
A. Well, it was in December, about the 16th, 1924.
p. 139 Q. How long did you work there?
A. Up until last July, about the 12th.
Q. July 1934? A. Right.
p. 141 Q. Now, do you now belong to the Ladies' Garment Workers' Union? A. Yes, I do.
Q. When did you join?
A. Well, I made application last spring. I imagine in March or April.
Q. Now, after you had made the application did you, during the noon hours and after hours, talk to the girls then about becoming members of the union? A. Yes, I did.
Q. Did you attend union meetings before you were discharged? A. Yes.
Q. Now, did you have a meeting at your home of girls to discuss the question of forming a unit of the union? A. Yes, I did.
Q. Do you remember when that was?
A. Well, it must have been in the latter part of June?

Q. June 1934? A. Yes.

[fol. 5047] Q. And you were discharged in July?

A. Yes.

Q. Now, after that meeting at your home did you notice any difference in the attitude of your superiors towards you?

A. Well, I think I did.

p. 144 Q. Now, did you go back and try to get reinstated? A. Well, I did, yes.

Q. And to whom did you report down there?

A. Well, I heard through a friend of mine —

Q. No. I say, to whom did you report when you went down?

A. Well, I went down to Ella Mae Guerrant at that time.

Q. Did you talk to Mrs. Reeves?

A. Yes, I did.

Q. Did you ask her why you couldn't return to work? A. Yes.

Q. What reply did she give you?

A. Well, she told me that I hadn't been making the code.

p. 147 Q. Now, did any officer or person whose place was superior to yours, connected with the Donnelly Company, ever say anything to you or to any other person in your presence about union activities there? A. Yes, they did.

Q. Now, tell the Board just what was said.

A. Well, I had a friend and a sister who worked over in another section, in Pearl Cleveland's section, and during my lunch hour I went over and I talked to this friend of mine and asked her if she would like to come down and visit one of our meetings. And she said: "Well, listen, Glynn, that union is all right, and I am for it, but Pearl tells me whatever I do to stay out of that union; if I don't, I will lose my job; and you know I can't afford to be out of work. I have my little daughter to support." And I said, "Well, if you would come down and listen to some of their meetings and hear the good they can do for

[fol. 5048]

us, I don't think you would be afraid." But she wouldn't at that time. I didn't talk to her any more. But she told me at this time, "Pearl says, 'Now, be sure and stay out of
p. 148 there because it's going to cost you your job if you don't.'" And I talked to several girls in this particular section who told me the same thing.

Q. And that's your reason for saying in your statement that you believed it was on account of your union activities that you were laid off?

A. It certainly is.

p. 161 Q. (By Dir. Pratt) Mrs. Brooks, have you any thought or any knowledge or any reason to believe that the officials of the Donnelly Garment Company knew of this meeting that you had?

A. I have every thought that they believed this.

Q. What's that?

A. I really do. I believe they knew about this meeting that I had.

Q. Now, on what is that belief based? Why do you think that?

A. Well, because a very good friend of Mrs.
p. 162 Reeves was at this meeting, and she taken out an application the same as I did, and soon after it she just shunned us all and quit. And she was called upstairs a day or two after I was laid off.

Q. Your thought is that this good friend of Mrs. Reeves told Mrs. Reeves— A. Absolutely.

Q. —who was at this meeting?

A. Yes. And she was one of them. I brought her out to my home and gave her a nice dinner.

Q. Who was this? A. Cordie.

Q. Do you know her last name?

A. No, I don't. Because she told me time and time again of doing things for Mrs. Reeves' mother and what good friends they were.

[fol. 5049] Q. Have you anything other than your thought or suspicion to base that on?

A. Well, I don't absolutely have any pure facts, but all indications in the world point that way.
Q. Now, you say all the conditions:
A. "Indications."
Q. Now, what are those in your mind?
A. Well, I know that I always did hard work in our section—that is, tedious work and samples and things of that kind—and I very seldom had any repair.
p. 163 Q. Did you ever ask this Cordie whether she did tell Mrs. Reeves?
A. I have never seen Cordie since.
Q. Since you were discharged, or since you had this meeting?
A. Well, I have seen her, yes. Since I was discharged, I have seen her. But not since I got called back, is what I mean.
Q. And you have never asked her whether that was—
A. I have never talked to her about it, no.
Q. Did Cordie join the union later?
A. Well, she has never come to any of our meetings, I know that.
Q. (By Mr. Birkhead) She doesn't attend any of your meetings? A. No.
Q. (By Dir. Pratt) But she is the one whom you think told Mrs. Reeves about it?
A. I think so, yes.
Q. (By Mr. Doud) You say there was a meeting held out at your place? A. Yes.
Q. At this meeting did anybody advise that the signing of these applications would put you under the jurisdiction or, you might say, the help of the union?
A. I didn't get that question clear, please.
[fol. 5050] Q. In signing these applications was it explained that in signing these applications that the union officials had pledged help or protection in helping you along until the union was organized?

p. 164 A. Well, we thought to sign those applications that it would show that we were for the union.

Q. And they explained to you that you didn't have to pay dues— A. Yes.

Q. —until the union was organized? A. Yes.

Q. But that the union officials would help along with it, is that it? A. Yes.

Q. After these meetings was it common knowledge around the plant of who attended the meetings?

A. Why, yes, it was talked in our section.

Q. During the dinner hour when it was talked, did it seem to be common knowledge of who had attended these meetings and who had signed the blanks? A. Yes, it did.

Q. Did that gain credence or gain headway by you people who were holding these meetings, or was it being dropped by some who had failed to attend the meeting?

A. I don't quite understand that question.

Q. Who would start those rumors of that kind? Would it be the ones who had attended these meetings and signed up, or the ones who had not?

A. Started the rumors over the building about us being members?

p. 165 Q. Yes.

A. Well, I really don't know. I would just have different girls come to me and say, "Well, I heard you had a dinner out at your house, trying to organize a union."

Q. They didn't say who it was heard from?

A. No, they didn't tell me who.

[fol. 5051] Q. Was there anything expressed in these rumors as to the management's attitude toward the union? Was there any caution to keep still?

A. Yes, there was until we were organized, so there wouldn't be any disturbance or any trouble in the plant. We didn't mean to hide it — we didn't care for that — but we just

didn't want to have a lot of trouble, because, you know, you want to protect your job and get along and do the best you can.

Q. What I want to know, was there anything in these rumors that would indicate that the management had expressed a desire for the union not to be organized? A. No.

Q. That didn't come back to you at all?

A. Well, I don't know if I get that question clear. I don't know why I can't. I can't hear very well.

Q. In these rumors that came back to you that were discussed, was there anything in those rumors that would indicate that the executives of the company or your foremen or, as I understand, your instructors didn't want to see a union organized?

A. Why, certainly.

p. 166 Q. That came back to you through those rumors?

A. Yes.

Q. That's what I wanted to get.

A. Why, certainly, we knew that.

Q. (By Mr. Birkhead) I wanted to ask you, how many girls did you have out to your house for your dinner?

A. Well, I think, as well as I remember, it was about 12 or 13 girls.

Q. And how many of those girls have been discharged? A. Well, all of them except one.

All except one?

A. Yes. And that's this Cordie. That's one reason I feel that she was our spy.

[fol. 5052] Extracts From Testimony of Miss Mamie Tubbesing on Febr. 26. 1935.

(Vol. I Pages 181 to 200)

p. 181 Q. (By Mr. Rucker) Your name is Mamie Tubbesing? A. Yes.

Q. Where do you reside? A. 1620 Lister.

Q. Were you recently employed at the Donnelly Garment Company? A. Yes, sir.

Q. How long did you work there?
A. Nine years.
p. 182 Q. What was your particular work out there?
A. Binding.
Q. Did you ever assist in instructing or act as assistant floorlady or anything of that kind?
A. I assisted the instructor.
Q. You assisted the instructor? A. Yes.
Q. For how long a period?
A. About 3 months.
Q. When was that? Do you remember?
A. In the spring of 1934.
Q. Did you work on sample lines and try-outs?
A. Yes, sir.
Q. Silk and wool lines? A. Yes, sir.
Q. And cotton? A. Yes, sir.
Q. You worked the whole line, did you?
A. Yes, sir.
p. 183 Q. Do you belong to the union?
A. Yes, sir.
Q. When did you actually join?
A. October 1934.
Q. Had you signed an application card before that time? A. No, sir.
Q. Had you talked about it? A. Yes, sir.
Q. When were you laid off? A. October 3.
[fol. 5053] Q. Before October 3 had you talked out at the factory during the noon hours and had you talked to girls after work hours about joining the union? A. Yes, sir.
Q. Had you expressed your intention of becoming a member of the union before you were laid off? A. Yes, sir.
Q. Now, before your lay-off did you go out and make individual calls on girls and discuss with them the advisability of becoming members of the union? A. Yes, sir.
p. 184 Q. Now, after you were laid off, did you talk to Mrs. Reeves about when you would be called back to work? A. Yes, sir.
Q. What did she say to you?
A. She told me she didn't think they would ever call me back.

Q. Did she give you any reason why?
A. Yes, sir.
Q. What reason did she assign?
A. She said it was my attitude.
Q. What did she say, if anything, to you about the character of your work?
A. She said my work was satisfactory.
Q. But it was your attitude? A. Yes, sir.
Q. Did you ask her what she meant by that?
A. I asked her, "What attitude?" and she says, "You know what I mean."

[fol. 5054] Q. What did you tell her, now? Go ahead and tell the whole conversation.
A. I told her I didn't know, and she says, "Oh, yes, you do, Mamie"; and she says, "No, I don't think we will ever call you back."
Q. Did she ask you anything about your calling on the girls? A. Yes, sir.
Q. Just tell the Board, now, the conversation.
A. She asked me why I called on the girls and said all these terrible things about the Donnelly Garment Company, and I asked her, "What terrible things?" and she says, "That the wages are unfair and the girls don't make their average." And then she asked me if I really thought that was true, and I said, "Yes."

And she went on to tell me how hard they were trying to regulate those prices so that the girls could make their wages and the wages would be fair; and I told her maybe some of that time and money should be put on the wages. And she says, "Maybe that's true. Maybe the Donnelly Garment Company doesn't need me; maybe my salary should be put on those wages."

And she told me how hard she worked, how much time she spent down there; that she even worked nights about those things. And I told her I thought we owed it to our own personal beings that when we left work to leave it there; and she said, "Yes", that was true.

Q. Did she say anything to you about having listened too much to certain people?

A. Yes, she did. She said, "Well, Mamie, I think you have been listening too much to somebody outside"; and I told her that I had a mind of my own and I usually made my own judgments.

Q. Was that the extent of the conversation?

p. 186 A. Well, she told me about how the prices were set, you know, on the different ones, and asked me if I didn't think that it was better to let the girls work the entire year at $15 rather than, you know, make a difference in the different kinds of work—that is, on the silks and wool and on the cotton.

Q. Now, was anything said about the union further than what you have already said?

A. Well, she told me, she says, "Mamie", she says, "you try working at one of these places that has this system of pricing and see how you like it, and then in 2 months you report back to me. If you find that you are wrong, maybe we can help you. If you find out that we are wrong, maybe you can help us."

[fol. 5055] Q. Did you have an instructor by the name of Patton while you were there? A. Yes.

Q. Did she ever make any inquiry of you about any union activities?

A. In the spring of 1934 in April she asked me if I had ever heard any of the girls talk about the union, and I told her "no", because at that time I had not.

Q. Did she express any opinion herself about the union? A. No, sir.

Q. Now, when you were finally let off, were you told that you would be called back?

A. Well, I asked Marie about that, and she said, "Don't take your things home; you are not laid off." That is, my uniforms and my

p. 187 scissors and bobbins and things.

Q. (By Mr. Birkhead) Who is Marie?

Q. (By Mr. Rucker) Was she the instructor?

A. Marie Patton, my instructor.

Q. Now, were you ever called back?
A. No, sir.
Q. You tried to get back?
A. I went down to see Ella Mae about going back.
Q. You mean Mrs. Hyde? A. Yes, sir.
Q. Were you successful in getting reinstated?
A. That is at the time that Mrs. Reeves told me that they didn't think they would ever call me back.
Q. And have they ever called you since that time? A. No, sir.

[fol. 5056] Q. Now, did they ever at any time complain to you about your work? A. No, sir.
Q. During the 9 years you worked there?
A. No, sir.
Q. Do you know whether or not they have employed women of less experience than yours since you have been laid off? A. Yes, sir.
Q. Have they or not? A. They have.

[fol. 5057] Extracts From Testimony of Mrs. Elizabeth Gates Reeves on February 28, 1935, Volume 2, Pages 202 to 318, inclusive.

By Mr. Rucker:

p. 202 Q. Your name please?
A. Elizabeth Gates Reeves.
Q. And you live in Kansas City, do you Mrs. Reeves?
A. I live in Kansas City, Missouri.
Q. You are employed by the Donnelly Garment Company, are you? A. Yes, sir.
Q. In what capacity?
A. I am production manager.
Q. How long have you occupied that position with the company? A. About eight years.
Q. And prior to that time were you associated with the Company?
A. Yes, sir, I was a clerk in the office, payroll.
Q. How long have you been connected in one capacity or another with the Donnelly Garment Company?

A. It will be fourteen years this March.

p. 203 Q. What are your duties as production manager, Mrs. Reeves?

A. Well, along with production manager, I merchandise the line and I am general superintendent, I imagine, of the entire factory; I have charge of the factory, all the producing.

Q. In other words, all of the young women who have testified, and others who occupy the same relative positions down there are under your supervision and control?

p. 203 A. Yes.

p. 207 Q. Now, do you know what they mean here by the statement they are forming this Loyalty League to refute untrue statements and propaganda circulated by the Union?

Mr. Reed: She had nothing to do with it. You are just asking her to interpret something somebody else wrote.

Q. Are you in close contact with these people who are mentioned here, Mrs. Gray and Mrs. Strickland and Mr. Mulshe? A. No.

Q. You don't see them very often?

p. 208 A. No.

Q. Are they there every day? A. Yes, sir.

Q. Are they there every day? A. Yes.

[fol. 5058] p. 208 Q. Are they under you?

A. Mr. Mulshe is indirectly under me because he is a cutter. Mrs. Strickland is not and Mrs. Gray is very indirectly.

Q. Now, you did hear of the fact that there was going to be an effort made to form some sort of a league, didn't you? A. No, I didn't.

Q. Was the first notice of it that you had when you found it in this publication?

A. No. The first notice I had of it was when I was asked—told about it and was asked if I would like to become a member.

Q. And did you decline? A. No, I did not.

Q. Did you become a member?

A. Yes, I did.

p. 210 Q. Just forget about that, forget about the League. I will ask you if this conversation occurred between you—

Mr. Reed. When?

A. When?

Q. Approximately about December 12, 1934?

A. A conversation did occur between Virginia Stroup, and Frances Reidel and myself and this was the conversation and how it happened to occur. Virginia Stroup and Frances Reidel went into their section one morning in December and immediately announced to their instructor, "I belong to the Union now and I can do as I want to; we have our feet on the ground, you cannot lay us off."

p. 217 Q. And did Virginia say "the organization of the Donnelly Garment employees, I am the chair lady?"

A. Yes, Virginia announced to me that she was now the chairman of the Nelly Don Union and I said "I never heard of it, what is it Virginia" and she said "well, you better call up the Union and find out," and I said "who put you there Virginia; and how did you happen to be the chairman." She said "you better call up the Union and find out, they will tell you all about it", and I said "well, Virginia, it seems to me that if any steps like that was taken that it is up to them to notify us of your position and so forth. It is all news to us." I said "what are your duties Virginia." She said "I am to investigate any time that anybody is laid off." I said "by whose authority" and she said "well, call up the union and find out." And I said "well, Virginia, as far as I am concerned I don't recognize you as having any authority whatsoever." I said "nobody has ever notified me or told me; no operator, no girl has ever said to me that they wanted you to represent them or to the Donnelly Garment Company in any way."

[fol. 5059] p. 220 Q. Didn't you, in that same conversation say to Virginia "by the way, what is your office" and did she not reply to you "I am to find out why you lay a girl off and take it to the offce."

A. I didn't have to ask her—

Q. I didn't ask you whether you had to.

A. She announced to me what her position was and that is what she said.

Q. And told you she was to find out why you laid a girl off? A. Yes, sir.

Q. Didn't you say in reply to that statement by her "I don't see that that is any of your business. Mrs. Hyde, don't you put out any information about why we lay a girl off."

A. I certainly did. I didn't say to Virginia that it was none of her business; I asked her just by what authority that we should tell her and then I told her that as far as I was concerned I did not intend to give her any information and I authorized Mrs. Hyde not to give her any of the information. I didn't say what you said.

p. 221 Q. Now, at that point, did you not say "Virginia, just what is your organization for" and did she not say "Well, Mrs. Reeves, you call the office, they will tell you everything I have left out."

A. That took place.

Q. That took place? A. Yes.

p. 222 Q. You had a stenographic report of the meeting that had been held at the Eagles Hall of the various Union organizations in Kansas City, did you not? A. I did not.

Q. You went to the meeting?

A. Yes, I did.

p. 241 Q. (By Director Pratt) One more question. The last four weeks as to this Thelma Owen, according to the card these things did not occur, I mean there was no machine trouble and no time out, according to this card?

A. Well, Mr. Pratt, they did occur, and furthermore that is the only reason why we laid

Thelma off. Her instructor complained constantly and even then when Thelma wanted to come back I personally took it up with our instructors and I asked each one of them if they would not give her another chance and they just absolutely refused.

[fol. 5060] p. 245 A. Mr. Rucker, if I may explain our policy at the Donnelly Garment Company, maybe that will answer the question for you. Every week when we analyze our payroll cards there are three people that go over that payroll card, the instructor, Mrs. Wherry, who has charge of the factory and Mr. Atchison, my assistant.

Now, we analyze each one of those cards very carefully and consider what the operator has done during the entire week, what handicap she might have been under and we do quite a lot of things gratis, and then also we take in consideration if it is hard for them to handle new work and if it is, sometimes we give them an extra allowance, just to get started and then also we take into consideration that maybe a girl has had repair work and we don't want her to fall down too low because she is an $18.00 operator and we will give her money gratis.

p. 261 A. Mr. Rucker, in hiring our employees, I want to explain that we take into consideration quite a number of things; first the quality of the work and then the quantity enters into it and then whether the operators are reliable, cooperative and obedient. Those are our requirements for a good operator.

Mr. Birkhead: What do you mean by obedient?

A. That they will do as they are told; when an instructor gives them work to do that they do it. . . . We get that report from our in-

p. 291 structors. We always get our report from Mrs. Wherry who is in charge of the factory

and Mrs. Tyhurst who has charge of the work, and the examiners.

Q. You are getting beyond the scope of my question entirely. What I am trying to get and I wish you would answer the question is simply this: Does the fact that these girls have made this complaint have any bearing upon your attitude as to whether you would employ them or not?

A. Well, Mr. Pratt, it is just like that. I certainly think these girls, by their statements up here, have not admitted in several cases where they have been disobedient, that they did not follow instructions, and I would not be human if I say that I don't take a little bit of that in consideration at this date. There are certain people that you like but it is not because of their Union affiliations whatsoever. I would feel exactly the same way if they were non Union or if they were white or black or Catholics or Protestants or whatever their nationality is.

p. 292

p. 307 A. Nobody is let out of the Donnelly Garment Company unless four people pass on it. After we decide that we have to lay off a certain group or a number of people we go over our records with the instructor and she makes the recommendation because she is in close touch with the operator and knows the type of work the operator does and whether she is efficient, obedient, cooperative and reliable. After the instructor makes that selection it is checked by Mrs. Wherry who is in charge of our factory, who knows what is going on in every section of the place and Mrs. Wherry might make a suggestion, "Well, possibly we won't be able to use that girl in that section but we might be able to transfer her to another section." That is gone into very thoroughly. Then that group of people are taken up with Mr. Atchison and Mr. Atchison discusses them very thoroughly and he sees what they have made and

he knows the reasons about what happened each week because he analyzes each week our payroll cards with the instructor and Mrs. Wherry. We spend an awful lot of time and money and thought each week, that I don't believe there is another factory in the United States that spends two whole days going through their payroll each week analyzing the type of operator the girl is. We treat our people like individuals and they each have certain things that they can do and we classify them and so forth and then after that is
[fol. 5061] p. 309 done it is brought up to me for a final O. K. and I go into all the reasons and whys and wherefores, and then if we all four agree that this group of people should be laid off we lay them off. Like I repeated in the case of Thelma Owen, I had overruled the instructor and Mrs. Wherry and Mr. Atchison just about a month before she was finally laid off, and when it was brought up again to me with her past record I had to agree because I expect certain things of those instructors; they have to get out a certain quantity of work in order to make our factory efficient and I certainly expect to get out quality. Well, I cannot expect them then to keep people in their section that won't cooperate and won't help them maintain the quality and standard of our work so sometimes we do come along and say "well, maybe we can put this girl in another section and maybe she can get along a lot better". Does that answer your question?

[fol. 5062] Extracts from testimony of LILLIAN WALES on April 15, 1935.

Volume No. 3, Pages 321 to 330.

p. 321 Q. (By Mr. Rucker) State your name, please.
A. Lillian Wales.
Q. How long have you been in the employ of the Donnelly Company?

A. About 4 years, I think. I don't exactly remember.

Q. Are you a member of the union?

p. 322 A. Yes, sir.

Q. Do you remember when you joined?

A. The 8th day of January.

Q. 1935? A. Yes, sir.

Q. Before joining the union, did you engage in union activities? In other words, had you contemplated joining prior to the time you did actually join? A. Yes, sir.

Q. Who is your immediate superior?

A. Mrs. Allison.

Q. And has she been for some time?

A. Yes, sir.

Q. At what building do you work?

A. Twenty-sixth and Walnut.

Q. Have you always worked in that building?

A. No, sir.

[fol. 5063] Q. How long have you been working in that building?

A. Since the 21st day of January.

Q. Where did you work before that time?

A. At Eighteenth and Walnut, on the eighth floor.

Q. Have you at any time had any discussion of the unionizing of the shop out there with any of your superiors? A. Yes, sir.

p. 323 Q. Now, just tell the Board, please, in your own way, with whom you talked and what the conversation was.

A. Well, I was sent over to the other building on the 21st day of January, and Mary Copowycz is our thread girl, and she came to me and asked me—

Q. (By Mr. Blume) What is the name?

A. Mary Copowycz.

Q. Is she superior to you? A. Yes, sir.

Q. In authority? A. Yes, sir.

Q. Does she have the power to hire or discharge you?

A. I don't think so. I really don't know.

Mr. Blume: Proceed.

Q. (By Mr. Rucker) Go ahead, now.

A. And she asked me why I joined. I told her because I wanted to and I thought it was right. And she insinuated that it was Frances—

Q. Don't say "insinuated."

A. She said Frances—

p. 324 Dir. Pratt: Q. Go ahead.

[fol. 5064] Q. (By Mr. Rucker) Go ahead now, please, with your testimony.

p. 325 A. Well, she said that, asked me why, and I told her; and she said, "Well, you know it won't do you any good." She said, "You can't get a job anywhere else." And then she went on telling me about how the union had been a long time ago, and I still told her I thought it was all right.

And she didn't have anything to say to me for quite a while; and several days later Mrs. Allison came to me and asked me, she said, "Why did you join this union?" and I said, "Because I thought it was right"; and she said, "Well, I would like to have talked to you." She said, "I believe if I could have talked to you that you wouldn't have joined this union."

She said, "The first time when I heard that Frances Riedel joined", she said, "I knew that you two kids were friends, and I was afraid of it." And I said, "Well, you could have wrote me a note, couldn't you?" and she said "Yes"; and I said, "Yes, but you couldn't have incriminated yourself that way, could you?" and she said "No."

And then she went on to say, "Well, why do you girls want to give your money to those foreigners so they can sit around and just take your money? and they are not going to do anything for you." And she said, "You can't get a job anywhere else, and the first time that

you do something that this union doesn't like you are going to be completely left out, and then where are you going to be?"

p. 326 Q. (By Mr. Rucker) Now, you are still employed there? They have never discharged you? A. No, sir.

Q. Is that true?

A. Yes, sir. But I worked over at the other building on the same floor at the same machine through several lay-offs for over a year. And Frances Riedel—Mrs. Allison came and asked her if I belonged to the union, and she told her "Yes." And on Monday preceding that date I was sent to the other building. There was never a word said about it; I was just called and sent over there with the rest of them.

Q. Now, do I understand that all of the girls who belonged to the union are in that one section, the 2609 Walnut Street building?

A. Well, I really don't know, Mr. Rucker.

Q. You don't know about that?

A. No.

Q. Do you know who works in that section and is a member of the union?

[fol. 5065] A. Yes, sir.

Q. Who? A. In our building, you mean?

Q. Yes.

A. Virginia Stroup, Frances Riedel, Nora McKee, Flossie Walton.

Q. And yourself?

A. And myself. There are several others, but I—

p. 327 Q. Do you know of any girl who belongs to the union out there that was not sent over to that section? A. No, sir.

Q. Do not?

A. Oh, you mean from Eighteenth and Walnut, Mr. Rucker?

Q. Yes. Do you know any of the girls who belonged to the union who are working in the building where you worked previously?

A. No, I don't know any of them. They sent us all over there.
Q. Well, that's what I asked you.
A. Well, I didn't understand. As soon as they found out I was, they sent me over there. And then they sent Flossie Walton and Katie McKinsey the next day. I was sent on Monday, and they were sent on Tuesday.
Q. Now, has there been any discussion about an abandonment of that section in which you are working?
A. Well, that building is only run through a rush season, and then it's closed.
Q. Then it's closed? A. Yes.
Q. Now, the rush season is not yet over, is it?
A. No.
Q. About when will that be over?
[fol. 5066] A. Well, that's hard to say. Usually around the first of June.
Q. Then in the other building the sections continue to work, do they, except for very brief periods?
p. 328 A. Yes, sir.

Extracts from Testimony Given by FRANCES RIEDEL, April 15, 1935, Volume No. 3, Pages 330 to 350.

By Mr. Rucker:
p. 330 Q. State your name, please.
A. Frances Riedel.
Q. Are you employed at Donnelly's?
A. Yes, sir.
Q. How long have you been working there?
A. Well, a little over 3 years.
Q. In what building are you working?
A. Twenty-sixth and Walnut.
Q. That's the same building that Mrs. Wales works in?
p. 331 A. Yes, sir.
Q. How long have you worked there?
A. Well, just since I have belonged to the union.

Q. Is that supposed to be a more desirable location than the other building or not?

A. Well, not for myself it isn't, no.

Q. Well, why?

A. Well, I would just rather work over in the other building. It's not a nice building. We have not the conveniences over there that we had over at the other building.

Q. You had worked at the other building steadily, had you—

A. Yes, sir.

Q. Before you joined the union? A. Yes, sir.

[fol. 5067] Q. How long was it after if was known at the factory that you had become a member of the union before you were transferred?

A. About a little over two weeks; not quite three.

Q. Have you ever had any talk with any official in authority at the Donnelly factory? With reference to the union.

A. Yes, I have. I have talked to Mrs. Reeves and Mrs. Allison and Mary Copowycz.

Q. Tell the Board about your talk with Mrs. Reeves.

Q. (By Dir. Pratt) When and where, please?

Mr. Rucker. Q. Yes.

A. Well, it was about 2 weeks after I joined the union.

p. 332 Q. (By Dir. Pratt) When was that?

Q. (By Mr. Rucker) When did you join the union?

A. In October.

Q. In October. The latter part of October?

A. Yes. And we came back from our union meeting on a Tuesday; and on a Wednesday, why, Grace called us—

Q. Who is Grace, now?

A. It was my instructor at that time.

Q. What was her last name? That's what I mean. For the record.

A. Gnotta. And she came to Virginia and I and asked us if we belonged to the union. And I

said "Yes", I did. And she said, "Well, I am awfully sorry"; and I said, "I don't see anything to be sorry about that I belong to an organization; I don't see that that's anything wrong." And she said, "Well, I just feel awfully sorry for you little girls." And then Mrs. Reeves called her or they had a conversation over the telephone, and she called Virginia up to the office.

Q. Now, were you there? A. No.

Q. Well, just tell what you know, when you were present.

[fol. 5068] Q. (By Mr. Blume) Called Virginia Who?

A. Virginia Stroup. And then later on they called me up, and Virginia was in the office at the time. And just as I got in the door she had been talking to Virginia, and she said she

p. 333 was getting awfully tired of this foolishness, and said that Grace had been listening to it and she wasn't going to listen to it any more, and that she was getting awfully tired of Virginia and I wasting time in the section. And there was Mrs. Reeves and Mr. Dewey and Grace Gnotta and Mrs. Wherry, and that was all that was in the room.

Q. (By Mr. Rucker) Is that all she said?

A. No. When I came in the room she asked me if I was Frances Riedel, and I said "Yes", and she said, "Do you belong to this organization?" and I said, "Yes, ma'am, I do." Then she called another girl up to the office and she didn't belong, and so she sent her back and just kept Virginia and I there.

And she asked us what this penny organization was, what we called it; and we told her it was the Nelly Don Association. And she said, "What right have you to use the Nelly Don name?" and we said we didn't know but we were organizing, trying to organize, the Nelly Don Shop into a union shop. And she said, "Well, do you think you girls, after

Mrs. Donnelly has built this building up, this business up, that you are going to come in here and run it with an organization?" And Virginia said "No", that we were not going to run it or the organization didn't intend to run the business.

And she just said that she was awfully sorry for us little girls and she thought we had better sense than to do a thing like that. And when she asked us about our organization she re-
p. 334 ferred to it as a "one-horse organization", and they all laughed. And then Mr. Dewey asked us girls why we didn't come to them about our wages and things instead of going down to a bunch of foreigners; that we would get far more out of it.

Q. Dewey? A. Yes.

Q. Dewey Atchison?

A. Yes. And Virginia said she had came several times but it didn't do any good. And Mrs. Reeves said, Well, there wasn't any work down there that we couldn't make our average on; and we said there was; and she said she certainly didn't know of it if there was.

And when we left she said we two little girls reminded her of the two little girls that had been misled, and that we wouldn't be laid off as long as we did our work. And then she said to Ella Mae—

Q. (By Mr. Blume) Who do you mean by "Ella Mae"?

[fol. 5069] A. Ella Mae Guerrant. That isn't her name now.

Q. Ella Mae Hyde? A. Hyde.

Mr. Blume. All right.

The Witness. And she said that Ella Mae Hyde's job was to watch us two girls, the times we went to the rest room and how long we spent there. And Virginia asked her if just us two girls, just because we belonged to an

organization, were to be timed the time we
p. 335 went to the wash room; and she said "Yes", she was not going to have any girl in her section that was wasting time, and that I was a very poor operator and that she could lay us both off any time she wanted to because our records were poor.

And I hadn't very much to say; I just sat and listened. And the only thing I did say to her was that I didn't blame her if a girl run all around and spent a lot of time in the wash room; that I would lay her off, too, if she spent all her time running to the wash room.

Q. (By Mr. Rucker) Well, had you been doing that?

A. No, sir; not that I recall.

Q. Did you tell her you had not been spending your time running to the wash room and talking? A. Yes, I did.

Q. And was that the end of that conversation?

A. Yes, it was.

Q. Now, on the following Thursday, after you had been called up to Mrs. Reeves' office, did you have a talk with Grace Gnotta?

A. Yes, Grace Gnotta came to me and asked me why I belonged to that organization. She said, "If it hadn't been for Virginia, you wouldn't have belonged, would you?" and I said, "Why, yes, I have a mind of my own; I don't have to ask Virginia what to do."

And she said that she had talked with Mrs.
p. 336 Reeves, and she said, "You won't get laid off." And I said, "Well, Mrs. Reeves done told me that my record was poor and she could lay me off any time that she wanted to." And she said, "Well, that talk wasn't intended for you"; she said it was intended for Virginia. And she said, "I talked to Mrs. Reeves and told her you were a good little operator"; and I said, "Well, Grace, I don't know whether I am a good operator or not, but I think I am the average, and I have al-

ways tried to do my work to the best of my ability; but", I said, "I did not join that organization because Virginia asked me." And she said, "Well, I am sure if you just let this organization alone, why, you would have a job here as long as you behaved."

[fol. 5070] And it was right at Christmas time when she came and talked to me, or before Christmas, and she said, "Why don't you give me a nice little Christmas present and tell me that you don't belong to this organization any more?" and I said, "Well, I have already got a Christmas present"; and that was all our conversation.

Q. Did she tell you that the girls that belonged to the union organization were the scum from Donnelly's?

A. Yes, she did. She said, "You know, you don't look like those girls; they are the scums from the company." "Yes", she said, "you don't belong to that bunch." And I said, "Well, I don't feel like just because I have a better dress or a better coat than somebody that I am better than anybody else, because I feel I

p. 337 am the equal to every girl that works down here and they are to me.

Q. Did she ask you not to attend any more union meetings?

A. Yes. She asked me if I would give her a nice little Christmas present and tell her I didn't attend any more meetings or didn't have any more to do with it.

Q. And you wouldn't make that promise?

A. Why, no, I wouldn't.

Q. Now, there's another organization out there, isn't there? A. Yes.

Q. Company organization? A. Yes.

Q. Are you a member of that? A. Yes, I am.

Q. (By Mr. Blume) What one are you talking about? Let's have that cleared up. There are several organizations.

A. The Loyalty League.

Q. (By Mr. Rucker) You belong to the Loyalty League?

A. No, I don't. They wouldn't allow us.

Q. Well, that's what I am asking you. Now, why do you say they wouldn't allow you to?

A. Well, I asked for one of the cards, and Mrs. Allison wouldn't even let me have it. And they made the remark to Virginia that she couldn't carry water on both shoulders.

[fol. 5071] Q. And did you hear that?

p. 338 A. Yes, I did.

Q. Who made that remark?

A. I don't know that lady that made the remark. It was two ladies from the other building that came over.

Q. In other words, you were not permitted to join the Loyalty League, which was a company organization, for the reason that you belonged to the union; is that right?

A. Yes, I guess it was the reason. I don't know what other reason it would be.

Q. You were not asked to join afterwards?

A. They had even passed notices around of their meetings and things and wouldn't even allow me to see the letters; would pass them around me.

Mr. Rucker. That's all.

p. 348 Q. Now, did you ever hear any official of the company or anybody superior to you say anything about Ellen Fry?

A. Yes. I didn't belong to the union at that time, but I did hear Mrs. White say something about Ellen Fry.

Q. What did you hear her say?

A. She was sitting up there at her machine one day, and I was talking to her; on the corner machine where she sat at lunch time. And she had been called up to Mrs. Reeves's office for something—

Q. (By Mr. Blume) Mrs. White had been?

p. 349 A. Yes, and so had Ellen. And Mrs. White told me personally that she did not like Ellen and she was not going to have her in her section; that she was going to get rid of her.

Q. (By Mr. Rucker) Was Ellen then a member of the union?

A. Yes, sir; she belonged then. That's when she came to me and was talking to several of us girls at the time, asking us if we would like to belong.

Q. And did Mrs. White mention the union in connection with that conversation?

[fol. 5072] A. Yes.

Q. What did she say?

A. She said Ellen Fry belonged to the union.

Q. And did she assign that as the reason why she was going to get rid of her?

Mr. Blume. You don't suppose that's a little bit leading, do you?

Mr. Rucker. It may be.

Mr. Blume. I think there ought to be some limit to leading questions.

Dir. Pratt. Q. Go ahead and answer.

A. She said that Ellen Fry had caused lots of trouble, she belonged to the union, and she was not going to have her in her section. That's the words that she said to me.

Mr. Rucker. That's all.

[fol. 5073] Extracts From Testimony of Mrs. PAULINE LUTZ on April 15, 1935.

(Volume 3 Pages 351 to 378, inclusive)

p. 351 Q. (By Mr. Rucker) State your name, please.

A. Pauline Lutz.

Q. Were you employed at the Donnelly Garment Company? A. Yes, sir.

Q. When did that employment cease?

A. About the 18th of January.

Q. 1935? A. Yes.

Q. How long had you been employed at Donnelly's before that date?

p. 352 A. Well, I think it's 5 years this last March. Would be. I may be mistaken, but I think it is 5.

Q. What type of work did you do largely during the 5 years before you were discharged?

A. Small hemming mostly.

Q. What type of work were you doing when you were discharged?

A. Well, I was doing all kinds of straight sewing.

p. 353 Q. When were you sent to the other building with reference to the time when you joined the union?

A. Well, I was sent over there about the 18th of January, and I joined sometime the week before. I don't remember exactly.

Q. Was the work which you were given to do at the other building—that is, the building to which you were moved—different from the work you had been doing?

A. Why, yes. It was straight sewing and I had been doing hemming.

p. 355 Q. Now, did you ever have any talk with any of your superiors about the union?

A. Yes, sir.

Q. What was it, and with whom did you have the talk?

A. The first that I ever heard about the union, Mrs. Reeves and Mr. Dewey and Mrs. Wherry called us up, the whole section, up

p. 356 in the office; and all they said about the union was that some of the girls had joined the union, and that they knew just who those girls were. And they said, "We will not tell you who they are because we don't want to humiliate you"; but they said, "Why didn't you girls come to us and tell us about it? If you want to join the union, that's all right, but why didn't you come and tell us about it?"

And they talked about having these secret meetings and everything, and they looked toward me, Mrs. Wherry did. And I said—

[fol. 5074] p. 356 I thought maybe they thought that I belonged, and in fact, I had never even heard of it. I didn't even know they had even started the union, and I had been in the section with Ellen Fry all the time, and I had never even heard of it; and I said that. And they said, "Well, you must have been asleep."

So then Mrs. Reeves, she said that she never had lied to any of us, and everything we had asked for she had tried to do. And then she said, "If any of you girls hear anything about the Union, I want you to come and tell me about it." And, of course, I thought, "Well,—"

Q. (By Mr. Rucker) You can't tell what you thought.

A. Well, I just thought, "Well, I would do that."

Q. You can't tell what you thought. All you can testify to is facts, conversations, and not your thoughts.

A. Well, that's what happened up there.

Q. Now, did you afterwards join the union?

p. 357 A. Yes, sir.

Q. How long was it after that meeting before you joined?

A. Well, I think that was about in October, and they never laid me off—

Q. Now, wait a minute. Just answer my questions, will you? That was in October. When did you join the union?

A. Sometime in January.

Q. January 1935? A. Yes.

Q. All right. Now, did you have any talk with anybody about unionism before you joined?

A. You mean, of the people in the— You mean, from the office, from the union office?

Q. Any of the officers or your superiors there. I am not talking about girls who worked there.

A. You mean our superiors in the factory?
Q. Yes, ma'am. A. Yes.
[fol. 5075] p. 357 Q. All right. When was that? What was the conversation, and with whom?
A. Well, the first time was that me not knowing what the union meant or anything after Ellen Fry and—
Q. Now, you don't understand me. I am asking you—
A. Well, I wanted to tell you how the conversation came up.
Q. All right.
p. 358 A. And Tillie Shirley there: I said, "I didn't know about Ellen Fry; and what do you think of Tillie Shirley being there?" And Mrs. White said, "Yes, to think she joined that union, when I made it possible; I made her. I gave her joining all the time so she could make $18 and $19 a week, and this is the way she did us."
Q. The way she treated her?
A. The way she treated Donnelly's. And, of course, I thought that was all right. And so, then, the next time we had any conversation about it was that it was just— I think it was the day before Christmas.
Q. Now, even up to that time you hadn't yet joined? A. No.
Q. But you had thought about it at that time?
A. Well, I felt this way: I would like to know both sides of it.
Q. All right. Go ahead.
A. So this morning as I went in somebody handed me a pamphlet, and it happened to be the charter, and I didn't know a charter from anything else; so I looked at it and went upstairs, and I went over to Ella Mae—she is in the office there—and I said, "Did you see this?" and she said, "Yes, I have one of them." And so I walked on away.

And I put on my uniform and went to my machine, and I had this pamphlet in my hand.

p. 359 I was really making light of it. I was joking more than anything else. And I went to one girl, and I said, "Look here; we belong to the union"; jollying; "here is the local, here is the number of the local." I just read that; I didn't know what it meant. And Mrs. White says, "Well, she's not interested." She says, "anybody with any sense wouldn't read that dirty thing." And I said, "Well, I don't see anything dirty about it." And so I went and sat down at the machine.

I went over to one of the other girls and said, "See, we belong to the union. Did you know it?" And she said, "isn't that fine!" And I said, "I'll tell you right now, if I knew
[fol. 5076] p. 359 where these meetings were, I would like to go and hear that side of it. I don't think anybody ought to say they wouldn't join anything until they know both sides of it." And one of the girls said, "You had better look out, you will lose your job."

Then Mrs. Reeves came around in a little while and gave us our $5 with a Christmas card, and she always wished us a merry Christmas and a happy New Year; and she didn't do that to me. She just handed me the card and said, "Pauline, I want you to understand that Donnelly's don't belong to the union and they never will." And I said, "Why, I never thought anything about it." I really didn't. I just didn't know what it meant. And so she went past me, and when she came back I kind of took a hold of her hand and pulled her over to me and said,
p. 360 "Didn't Mrs. White tell you that?" And she said, "No, you did." But I hadn't seen Mrs. Reeves to tell her. I hadn't even seen her to say anything about it. And that's all that was said.

So then when I came back after Christmas to work, why, I don't know whether it was that

next day after Christmas or the next Monday that they sent me over to the other building.

Extracts From Testimony of MRS. VIRGINIA STROUP on April 15, 1935, Volume 8, Pages 379 to 443, inclusive.

p. 379 Q. (By Mr. Rucker) State your name, please.
A. Virginia Stroup.
Q. How old are you? A. Twenty-seven.
Q. How long have you worked at Donnelly's?
A. Approximately 6 years.
Q. You are a member of the union, are you?
A. Yes, I am the president.
Q. Of that local. A. Yes.
Q. During the past 6 years that you worked at Donnelly's, what has usually been the character of work given you?
A. Well, I have done— Binding and straight sewing have been my main operations.
Q. In what building are you now working?
A. Twenty-sixth and Walnut.

[fol. 5077] p. 379 Q. How long have you worked there?
A. You mean at this new building?
Q. Yes.
A. Well, I think I was sent over there about the 13th or something like that of December, last year.
Q. 1934? A. Yes.

p. 380 Q. (By Mr. Rucker) Now, is the place you are now working looked upon as the more desirable building in which to work?
A. No, it is not.
Q. Why? Have you any reasons for saying that?
A. Well, the sanitary conditions over there aren't just up to par. That is, the rest rooms. And we don't have as much space. And our horses and our equipment— There's no comparison between this building and the
p. 381 other building as for conveniences.
Q. Then, as I understand it, the other building is the more desirable building? A. It is.

Q. How long had you worked at the other building steadily before you were sent over here now in December?

A. Well, since the code came in, I should say, in 1933.

Q. And you have worked there something over a year and a half? A. Yes.

Q. Steadily? A. Yes.

Q. And you had also worked there, with the exception of 5 months, during all the time that you had been employed by Donnelly's?

A. Yes.

Q. Now, are you a member of the Loyalty League?

A. No, sir.

[fol. 5078] p. 381 Q. Were you asked to join, or did you attempt to join?

A. Well, the day that Mrs. Gray came over with Mrs. Strickland with the Loyalty League cards, they had distributed them mostly before I got up there. And Mrs. Gray was holding the cards in her hand just like that.

Dir. Pratt. Indicate fan shape.

A. Fan shape. And I asked Mrs. Gray what they were. And Mrs. Strickland took up the conversation then. She said that Mrs. Donnelly would close her doors before she would

p. 382 have a union shop, and we should sign these cards to keep our jobs and keep us in work because she would close the doors and thus throw all the girls out of employment.

So I started to take one of the cards like this, but she had her thumb holding it until I couldn't get it. She says, "Virginia, we would like to have you in our organization, but you can't carry water on both shoulders." She says, "There are no dues in this Loyalty League, and you can't belong to an organization that you pay dues to and belong to the Loyalty League."

Q. (By Mr. Rucker) So you were not given a card, then? A. No.

Q. And not asked to join? A. No.

Q. And, as I understand it, you were told in effect that you couldn't join? A. Yes.

Q. Now, did you ever have any conversation with any of your superiors with reference to the union? A. Yes.

Q. Now, I wish you would just take it up in your own way, now, and relate just what was said to you by any person superior to you in the organization with reference to the union.

Dir. Pratt: Q. And, when you are doing this, state when and where the various conversations occurred.

p. 383 Q. (By Mr. Rucker) Giving the dates and the place where they occurred and the persons with whom the conversations was had.

A. Well, I think—I mean the first time that I ever heard "union" mentioned in the shop

[fol. 5079] p. 383 was approximately the time they laid Ellen off.

Q. You mean Ellen Fry now? A. Yes.

Q. I wish you would give the person's name.

A. Mrs. Ellen Fry.

Q. Because the Board can't remember by first names.

Mr. Blume. And that time was what?

Dir. Pratt. July 8; 6 or 8.

Mr. Birkhead. Of 1934?

Dir. Pratt. Yes.

A. Mary Copowycz had a section at that time, and she said, "If the union would only leave our girls alone, we would get along all right." Then the next time that I heard anything about the union down there from a superior, after this lay-off in June, I believe it was,—

Q. (By Mr. Rucker)—Or July?

A. No. In October. I think they had a lay-off in October.

They called the girls up in Mrs. Reeves' office approximately October 18, or somewhere along there, to tell them first how hard they had worked to keep us in work and what a
p. 384 strain it was. And Mrs. Reeves said that she had nervous indigestion, she knew, more than anyone. And at first it was a lecture as to how good they had always been to us.

And about the middle of the conversation, I should say, she said that some of the girls had been going to union meetings. "Now, we know who those girls are, but we don't want to cause them humiliation"; but at the same time she looked right straight back at me. And she says, "Virginia, what do you know about this?" And I got up on my feet and told Mrs. Reeves that I had been to one union meeting at a private home. Of course, I didn't join the union at that time.

Q. Just relate the conversation.
A. She said, "Just what did you gain by it?" And I sort of laughed, and I said, "Well, nothing, Mrs. Reeves, only a good ham dinner." And of course, everyone laughed.

Q. (By Mr. Blume) Pardon me. Was that the meeting at the Brooks home?
A. Yes.
Q. Do you know the date of it?
[fol. 5080] p. 384 A. No, I don't.
So then she asked a couple or three others to get up and testify as to what they knew about the union, if anyone had approached them, and, if so, what they had said. Well, she wound up the conversation, then, by saying that anyone knowing or finding out any information about anyone having anything
p. 385 to do with the union, she would very much appreciate it if we would come and tell her. And with that we were dismissed.

Then about the first of December, about 3 o'clock one afternoon, Mrs. Reeves sent for

me to come to her office. And I went up there. She says, "Virginia, do you belong to the union?" I said, "No ma'am." She says, "Well, there's been some rumors around about your being with a bunch of girls up on a certain date that ook a girl with you in the car, didn't tell where you were taking her until you got on your way; and when the girl found out where she was going, which was supposed to be a union meeting, she jumped out of the car." And I said, "Mrs. Reeves, I don't know anything about that." I said, "I have studied the economic situation, and I think I know it, but I don't belong to the union." So she was very well satisfied with my answer and let me go.

Then, of course, the charter was drawn up the 6th, and I was one on the charter. And December 12 was the day that she called Frances Ridel and myself up to the office. I went first. That morning— I would like to put this in. That morning I had asked a girl an address just be— I don't know; I just asked her for an address. So this girl was called up with us. Her name was Fannie something. I have forgotten her name. So the minute I got in the room Mrs. Reeves— I could see Mrs. Reeves, Mr. Dewey,—

Q. (By Mr. Rucker) Dewey is his first name.

p. 386 A. Dewey Atchison, Mrs. Ella Mae Hyde, and did I mention Mrs. Wherry? And Miss Gnotta, our immediate instructor. She was sitting with her back sort of to us, the instructor was.

She beat her first down on the table, just like that.

Q. Who did?

A. Mrs. Reeves. And she said "I am getting darned sick of you girls carrying on like this." And she sat Frances and I right in

front of her. In fact, I was in direct line of her, and Frances was like to the side.

About that time Fannie came in, and she said, "This goes for you, too, Fannie." And I said, "Mrs. Reeves, Fannie doesn't even know what you are talking about." So with a few words to Fannie about what she must do, go down and make her code or else out she goes, she told Fannie she was dismissed. So then she told us, she said, "I don't care if you belong to 25,000 unions, you can't come in here and tell us how to run our industry. Just where to you get the idea of using the Donnelly Garment Company's name in a local union?" And I told her that it was for the Donnelly workers; it wasn't for any other dress shop but the Nelly Don workers.

So she said for us to report to Sol Goldberg to keep his nose down there in his own business. And she said she was anxious to kno just what we would report to our office so she could be prepared to know what to say.

And she sort of smiled and she said, "Just
p. 387 what is your job in this one-horse organization?" And I said, "Well, Mrs. Reeves, I am the shop chairlady." She said, "Well, just what does that job consist of? What do you do?" I said, "Well, when a girl is laid off or has any complaints, she comes to me with them. And, of course, we have committees, and we try to take care of those things, and I am the shop chairlady to make the report to the office." And she laughed and said, "Isn't that just lovely!"

And then she said that Frances and I were just like a couple of little children that had gone wrong and we were misled, and she would just like to take us over her lap and give us a darned good spanking,—is what she said. Well, of course, she kind of smiled.

Then Mr. Dewey spoke up and said if we girls could make $18 a week they would be glad to keep us. Then Mrs. Reeves asked me, she says, "How is it that last week you only made $13.99 on this one operation, and this other girl over here made $19.56? She even went so far as to bring out their records. And I said, "I couldn't say, Mrs. Reeves, because I worked terribly hard on those dresses." But I know, though, how the girl did make part of it. She turned her pockets at noon time, and I don't work at noon time. So then she said that Frances and I had both been very punk operators. She said, "Neither one of you are very good. I had to allow you, Frances, different money now and then. And, Virginia, I have allowed
p. 388 you this and that." She went into specifications of how much she had allowed us. And she says, "We are not going to keep you unless you can make your code. Now you go down there and make your code, or else out you go. We are just awfully sorry."

And then she told Ella Mae— The subject came up about— When Gnotta said that— Grace Gnotta said that the girls were wasting time in the rest room, taking other girls out in the rest room and talking to them,—which I never did, and I know Frances didn't. So she pointed her finger over to Ella Mae, and she said, "Ella Mae, that's your job from now on. You see how many times these girls go to the rest room and how long they stay."

And, then, let's see. She said so many things I can't remember. She said, "Why don't you take your little band and walk out?" Also she said, Don't you think that the Donnelly Garment Company has always been fair to you in every way?"

Q. (By Mr. Rucker) Did you answer any of those questions? Did you do any talking yourself?

A. Not very much. She would ask one question in getting real friendly with us, and then the very next minute she would storm into something else, and really she didn't give us much time to answer.

Q. Well, was that the end of that conversation?

A. I believe that was the end of that conversation.

p. 389 Q. Was unionism mentioned at any other time by anybody down there?

A. Well, that same day she released Frances to go downstairs, and then she called me back. And, of course, the speed-up system down [fol. 5082] p. 389 there is very strict, and it is very hard. So she said, "Virginia, you don't seem to get along very good." And so she says, "Why don't you let me put you on a straight-time position", she said. And I thought I could see through that, so I said, "No, Mrs. Reeves, I have never done anything but sew, and I know I couldn't please you in any other department in this shop." I knew it would be only a matter of time. So then she excused me.

A. Well, upon arriving downstairs in the section of the atmosphere in that short time had changed until the girls didn't want to look p. 390 up at me. You know, they didn't talk to me or smile. In other words, they didn't have anything to say to me when I came downstairs, which was very unusual.

And Mrs. Gnotta went to the girl who worked immediately across from me and told her—Her name was Lillian Foster. She is the crippled girl. And she said, "Lillian, don't ask Virginia what time it is any more. We will be going up and down the aisles, and you can ask us." I heard her say that. So I think that was about all that was said to me at that building.

Then I went over to the other building, and the atmosphere was much the same, very

cold, and anyone seen taling to me would have immediate conversation with Mrs. Allison to either tell Mrs. Allison what I had said, or Mrs. Allison would ask them what I had said.

p. 394 Q. (By Mr. Rucker) Now, do you recall having had a conversation with Mrs. Reeves along about the middle of December 1934? I believe you stated that she asked you what your business was, what you were going to do as president, and that you told her that one thing was to see about why girls were laid off. Now, did she tell you in that conversation
p. 395 that she didn't see that that was any of your business, and did she tell Mrs. Hyde not to put out any information about why they laid a girl off?

A. When Mrs. Reeves asked me what my position was, she said— And I told her that; that I was to find out why a girl was laid off. She turned immediately to Mrs. Hyde and said, "You are not to put out any information about why we lay a girl off. That is none of Virginia's business."

Q. Now, did you ever make any effort to discover why anybody had been laid off there?

A. Well, in one case I called Mrs. Reeves about Pauline.

Q. Pauline Lutz? A. Yes.

Q. What conversation did you have with Mrs. Reeves?

A. Well, I called her to tell her that Pauline wasn't getting a square deal.

Q. Did you tell her that?

[fol. 5083] p. 395 A. Yes; I told Mrs. Reeves that Pauline wasn't getting a square deal. And she told me that Pauline was still a member of the Donnelly Garment Company and, as such, they would be glad to talk to her, but not through me. They didn't recognize my organization and, therefore, would talk to Pauline direct. And I told Mrs. Reeves that it was

in all fairness to her and to this girl that she wasn't having her regular work and it was being given to other people.

p. 396 Q. Now, did Mrs. Reeves, or did she not, refuse to talk to you about Pauline's case?

A. She said she didn't care to discuss that case with me at all. And with that, that was all that was said that time.

Q. Now, is that the only time you talked to her about it.

A. Well, no. I think it was the next day Mrs. Reeves came over and sat at my machine for 45 minutes. And she told me in the conversation that she thought that I was a smart girl but that brains had been known to get people into trouble and that in my case that would be probably what would happen, and that she certainly felt sorry for me because I had joined the organization. In fact, she had always felt sorry for me; that's why they had kept me so long. And she said that I was throwing a thousand girls out of her employ and she sure wouldn't want that on her soul.

Q. Sorry you joined the organization. Are you referring now to the union?

A. The union, yes. That she would hate to be in our shoes.

Q. Now, go ahead, if you have your testimony in mind now sequentially so you can take up each thing in order. Perhaps you can do it better than if I ask you about it.

A. Well, she talked with me quite a few minutes there; as I said, 45 minutes. And the conversation just sort of went over the same thing again and again, such as she said again that she didn't care if we joined 25,000 unions, if wouldn't do us one bit of good.

And then she left my machine and went over into Mr. Reeves' office there. This used to be Mr. Reeves' plant there. And she went in his office and called me in there. And she said,

"Virginia, when this place does union I'll lose my job. So this place will never go union. So get that straight." And she turned to Mrs. Allison, and she says, "We all like Virginia", she says; "we can't help but like her. It's just the things that she does." And she said so many things I can't remember.

Q. Well, just a repetition of what she said to you before, as I understand you?

A. Yes.

[fol. 5084] p. 398 Q. Now, is there anything else? Have you told all the conversations you had, now? Did you have any conversations with any other persons in authority?

A. Well, yes. One morning we girls were discussing over around the inspector's table about something that had occurred that morning. Mrs. Reeves had called Nora and told her not to talk unionism during working hours. And I know that Nora does not do that. She does not talk while she works. One girl had said that Nora talked so much unionism to her it made her sick.

So we were discussing this matter, and Mrs. Allison came over and said, "You girls can't talk unionism in this shop. Now, if you want to talk unionism you go out in the hall or go completely outside. You should have more respect for your employers than to talk unionism in here." I told Mrs. Allison, I said, "Mrs. Allison, as long as we are not on that machine, and as long as we are not supposed to be working, we can talk about unionism." She said, "I beg your pardon."

p. 399 And, in fact most of the girls that were listening in on the conversation just sort of left, and I was standing there talking to Mrs. Allison myself.

And another time Mrs. Allison came over to my machine, and she said, "Virginia, somebody told me that you called somebody a

scab on the elevator the other night"; and I said, "Mrs. Allison, that isn't so." She said, "Oh, yes, it is." I said, "No, it is not, Mrs. Allison. You produce the person that said that I said that, and I will prove that I didn't say it." But she didn't produce the person. She said, "Virginia, if anybody is a scab, you are, because you are a union girl working in a nonunion place."

And then another day—that was along in January or February, just to show the atmosphere—Mrs. Allison came along, and I said, "Mrs. Allison, the girls preceding me doesn't tie her bundles securely; they fall apart." And I showed her this bundle. "This bundle is falling apart. If I lose my chalk mark, that will be my fault. I wish you would tell that girl." "Virginia", she said, "you are crazy." That's what she said. After I showed her the work, she didn't pay any attention to me and went on about her business.

Then there was another conversation. I went over to the other building to buy a dress. And Mrs. Gray, one of the executives over there, got me in the corner and asked me what I had done it for. What did I do it for? What did I join the union for? She said, "Oh, I would hate to think that that old David Dubinsky would come in here and tell Mrs. Donnelly what to do." She said, "I think it's a shame, Virginia; you should see further than that." She said, "Don't you like your job? Why don't you—If you want to work in a union shop, why don't you go work in a union shop?" And I said, "Mrs. Gray, you understand me, it's the wages and the sweatshop conditions that I want to help. We want job security here. That's what we are asking. We want to understand and have an understanding when anything happens in this

shop we would have a little say about what happens."

And she said, "Virginia, let me show you something. Now, you have a daughter, and so have I. If that daughter should grow to be so large and so—growing out of your hands, in other words—what would you do about it? You would appreciate my coming
[fol. 5085] p. 400 to you and saying something about it, wouldn't you. I said, "Well, in that case, applying to this, I would think the child would either get married, or, in this case, if the business got so big that I couldn't handle it and it caused me so much trouble, I would sell it." That's the very words I told Mrs. Gray.

Well, she said that I owed that much to Patsy, not to listen to what everyone said that came along; that the firm had been so good to me and kept me on during the hard months; they had kept me through there, and that I owed
p. 401 that much to the company to be fairer with them than that.

So I never did get to buy the dress. She talked to me so long that I had to leave. I never did get to buy the dress.

And I believe that that is all of my conversation.

Q. Now, you testified about attitude and atmosphere. (By Mr. Ingraham)
A. Yes.
Q. You say that the other girls wouldn't look at you.
A. They certainly wouldn't.
Q. And do you blame the company for that?
A. I am not talking about the company; I am talking about the girls, the workers themselves. They had been turned, you know, against us.
Q. And who turned them?
A. Well, the instructors, I suppose.

Q. Well, that's just your supposition. You don't know anything of your own knowledge?

A. Well, I know that Grace Gnotta told Lillian Foster not to talk to me. She said, "Don't ask Virginia what time it is. We will be going up and down the aisles, and you ask us."

Q. Well, was it your job to tell the other operators what time it was down there?

p. 423 A. Why, no, but I didn't have to stop work to tell anyone what time it was.

Q. But that wasn't part of your duties as an operator?

A. Why, no; I am not a timekeeper, no.

Q. And because the instructor told the girls not to stop you from your work and ask you what time it was, why that's turning the girls against you?

A. Grace Gnotta went around and whispered in

[fol. 5086] p. 423 each girl's ear privately, and what she said to the girls she surely wouldn't be telling them a bedtime story, because after that time those girls would shun you and stand around with their back to you; or if you looked at them and gave them a smile, you got a blank look back. And if I should have had horns, I don't think they would have been much more afraid of me.

The instructor, Mrs. Allison, told us repeatedly that we were going to get laid off, us union girls would get laid off. That's exactly what she said. And that she sure felt sorry for us. And the girls were scared to death to talk to us because it might mean their job.

[fol. 5087] Extracts from Testimony of DEWEY ATCHISON on April 22, 1935.

(Volume 4, Pages 444 to 663, inclusive)

p. 448 Q. (By Mr. Ingraham) State your name.

A. Dewey Atchison.

Q. Where are you employed, Mr. Atchison?

A. Donnelly Garment Company.
Q. In what capacity? A. Production engineer.
Q. How long have you been employed at the Donnelly Garment Company?
p. 449
A. Going on 17 years.
Q. What are your duties as production engineer?
A. Well, I assist in production operations, work on production records, employment records, and general production work.
Q. Do you have charge of the maintenance of records of the employees?
A. All production records and employment records are under my supervision.
Q. Do you have anything to do with the hiring and firing of employees?
A. Yes.
Q. Now, in regard to the employing of operators, what do you take into consideration as to qualifications?
A. Well, in the consideration of all of our operators, whether or not we employ them or reemploy them, we first take into consideration the quality of their work. That is the very first consideration, because the success of the company has been built on quality.

Then we take into consideration the quantity of their work. We take into consideration the cooperativeness of employees; their adaptability to do different types of work, whether or not they are fitted to do various different things, and whether they are capable of changing from one type of operation to another. In other words, whether they are dextrous with
p. 450
their hands. Then—Well, I believe I have covered cooperativeness.

Q. Now, has there been any practice at the Donnelly Garment Company to train new employees for the last 10 or 15 years?
A. There has been a practice ever since I have been with the company to train new employees regularly. The practice before 1928 was not

[fol. 5088] p. 450 set up as we set it up in 1928. I have an example here of what was done in 1928, if the Board would like to see it. I wouldn't part with this because it is the original. This was set up in 1928. Our practice then was put down and made in the form of a detailed analysis of training of operators. I might read you a little of the first page or two here.

Q. Just tell the Board—We' go ahead and read it.

A "Through an arrangement made with Mrs. Reeves, production manager of the Donnelly Garment Company, and Mr. Dewey Atchison, their planning engineer, a series of meetings was arranged in which their instructors, together with Mr. Atchison and Miss Moore, personnel director, discussed with Mr. Day and Mr. Anderson their instructional methods used by their trainers. Meetings are being held each Tuesday and Thursday on the eighth floor of the Coca-Cola Building.

"In the first meeting Mr. Anderson explained the purpose of the meetings, pointing out objectives that it was hoped might be accomplished. Particular emphasis was placed upon the fact that 'conference methods' were to be used. Early developments indicated that

p. 451 benefit to the instructors and to the company and to the employees as individuals might be had through a detailed consideration of all of the instructional responsibilities carried out in the placing of new and inexperienced workers on power sewing machine jobs and in the continuous supervision of each worker until satisfactory maximum production is reached."

And here is another paragraph down here that I would like to read to you on it that will clear it up:

"It is the opinion of Mr. Day and Mr. Anderson that, although a high grade of in-

struction is being extended to the workers, yet it is not done on a systematized or uniform basis and it is felt that considerable benefit may be had through organizing, by means of the discussions, a standardized course of procedure that will be acceptable to all, which will result in uniform practices.

"The value of such practice, thoroughly established, is very great and it will have a tendency not only to shorten the learning period for the worker, with its increasing effects upon the worker's income, but will also materially increase the production and stabilize the conditions for the company."

p. 453 Q. Would the company keep records of employees as to their qualifications to become three-type operators?

A. We keep a record of the supervisor's estimate of an operator. That does not give exactly whether the instructors thought she would become a three-type operator, but it does set forth wh ther—It takes into consideration the quali, of her work, the quantity
[fol. 5089] p. 453 of her work, and the reliability and cooperativeness, and the opposite—the unreliability and the disobedience.

Q. (Producing card) Is that the card that the company keeps a copy of?

A. Yes. This is a copy of the supervisor's estimate of employees.

p. 456 A. In laying off our operators the first step is to take all of the sections and go through their pay roll record and select the operators who have had the poorest showing in piecework earnings. That is taken for a period of a year.

Then there are two and sometimes three other people called in to the meeting. That meeting will include Mrs. Wherry, the lady who is in entire charge of the factory; the

instructor, who is in charge of the 40 girls in that section; and myself.

p. 457 We then go into the question of whether or not the quality of the work of this particular person or her personal characteristics would warrant keeping her over some other girl who might have had a greater piecework earning. For instance, if Mary Jones and Bessie Smith both had a piecework earning of 38 cents an hour, but if Mary Jones's quality of work was better, then she would be kept in preference to the other girl.

Then after that procedure has picked out the desired number of girls to be laid off, they are given to Mrs. Reeves, who checks them over again.

p. 458 A. When a girl is laid off this particular card is dated—The girl's name is inserted by the employment department and the card sent to the supervisor, who, in turn, checks the different qualifications and returns it to the employment department.

Q. That's made out after they are laid off? (By Dir. Pratt)

A. Yes, at the time of the lay-off.

Q. Well, in arriving at the girls to be laid off, are the supervisors and instructors consulted?

A. Yes. As I stated, Mrs. Wherry, who is in charge of the factory, is present, and the supervisor of the particular girl is present. And at that time we go into the different qualities of the girl—whether she reliable or not, whether her work is good, and whether the earnings are good. We discuss it from all of the different angles from which we consider an operator.

Q. (By Mr. Ingraham) And you get the opinion of the supervisor? A. Yes, always.

Q. Now, the supervisor makes that card out?
p. 459 A. Yes, sir.

Q. (Mr. Dir. Pratt) Let me get this straight. You have talked about "supervisor" and "instructor." Are those two different persons?
[fol. 5090] p. 459 A. An instructor and a supervisor is the same, I believe.

Dir. Pratt. Same thing.

Q. (By Mr. Ingraham) Now, will you just read the various elements that the supervisor takes into consideration in passing on the girl's record?

A. (Referring to respondent's exhibit 1) The exhibit reads a certain date. It has whatever the girl's name is. ". . . has left our employ for the following reason:" And that reason is put in there by the employment department. "Would you recommend reemployment in your department?" There is a blank for checking in "yes" and checking in "no."

Then the card says, "Please check the employee on the following: Quality of work." Under that is "excellent", "good", "fair", and "poor". "Quantity of work: 'Excellent, good, fair, and poor." Under "personal characteristics", "obedient", "reliable", "cooperative", "unreliable", "disobedient", "not cooperative," and a place for this instructor's signature.

Q. How long has that card been used by the Donnelly Company?
A. That particular proceeding has been in use about 9 years, as I remember it.

p. 464 Q. (By Mr. Ingraham) Now, you do, in addition, consult with the employee's present instructor as to the employee's qualifications?
A. We always consult with the employee's instructor and Mrs. Wherry, who is in charge of

the factory. She is the factory superintendent.

p. 470 Q. (By Mr. Ingraham) Well, have you got the employment records here?

A. I haven't. Mrs. Reeves may have her particular card. I don't have her record here.

Q. Well, can you testify from your own knowledge, without the records?

Mr. Rucker. I am going to take his word for it. It is 1928. I am going to cut out the balance of it. Take 1928.

p. 471 Q. (By Mr. Ingraham) Well, do you have to refer to the records, Mr. Atchison, to answer that question?

A. I would have to if there was anything— Every time a person is laid off one of these cards is made out by the girl's supervisor.

p. 485 Q. Had you considered her unreliable and disobedient?

A. Yes, I considered her a couple of times a lit-

[fol. 5091] p. 485 tle bit, but only from the knowledge that I had through her immediate superiors. I have nothing to do with the direct work and actions of the individuals in the factory.

p. 496 Q. (By Mr. Rucker) You never heard of Mr. Blume, your attorney, employing Miss Feltenstein and her assistant, Miss Friel, to go down and report that meeting and what the speakers had to say?

A. I did not.

p. 497 Q. You didn't know anything about that?

A. No.

Q. And so that was done by somebody other than you in the organization, if it was done?

A. The only thing I knew about a stenographer taking that was when it was announced at the meeting, I believe by Mr. Dubinsky, that some stenographer was taking minutes of the meeting.

Q. You went to the meeting yourself, didn't you?

A. Yes, I went to the meeting.
Q. Now, did you intend to join the union?
A. Well, I don't know.
Q. You went there, thinking maybe you might?
A. No. I went there to see what it was all about and to hear the speakers, which some of them were nationally known.

p. 506 Q. Have you a list of the members of the Loyalty League?
A. I do not have anything to do with the Loyalty League whatsoever, excepting that I have signed an application card.

p. 638 A. I think it was in July—the 18th, some place around there—that I received a letter from the union office, Mr. Perlstein and it was signed "Mr. Perlstein." Was that right? Yes, July 18, 1934.

"Donnelly Garment Company. Gentlemen:
"A number of your girl employees who are members of our union have complained to us that they were laid off because of their membership in the International Ladies' Garment Workers' Union. Most of these girls have worked for your firm for a number of years, and they say that the lay-off is due solely to their joining the union. They also claim that before the lay-off took place they were called individually into the office and were asked if they were members of the union, and that the lay-off took place after some of the girls admitted, and some did not deny, that they had joined the union.

p. 639 "The National Industrial Recovery Act guarantees the right and freedom of the individual to join a labor union of his or her own choosing, and that he or she cannot legally be discharged because of so doing. If these girls were discharged by you because of their union affiliations, they have a just grievance;

[fol. 5092] p. 639 if they were not discharged for that reason, they have no such grievance.

"As the representative of the labor union of which these girls are members, I respectfully request an interview with you at as early a date as convenient.

"Hoping for your favorable reply, I am,

"Sincerely yours,

"(Signed) MEYER PERLSTEIN."

[fol. 5093] Extracts From Testimony of Mrs. Gladys Elledge Richardson on April 27, 1935. (Pages 664 to 813)

Vol. 5

p. 665 Q. (By Mr. Rucker) What is your full name?
A. Gladys Elledge Richardson.
Q. When did you go to work for the Donnelly Garment Company? A. The first time?
Q. Yes, ma'am.
p. 666 A. I believe it was in the fall of 1918.
Q. And how long did you work then?
A. I worked there until January 15, 1935.
p. 668 Q. All right. Now, before the time of your lay-off in August or when you quit on account of illness in August, had you at that time been active in the attempt to form a local of the International Ladies' Garment Workers' Union out there, or did your activity commence, your own activity, after your return in December?
A. I started and I was a very active member for the union in the spring.
Q. In the spring?
A. Yes, sir.
Q. Now, did you attend any of these meetings that have been mentioned in evidence here held at various women's houses?
A. Yes, sir. I was at Mrs. Glynn Brooks' home, and there was a good many members there, and from that day on, why, things were different.

p. 672 Q. Had you and these other girls whose names you have mentioned talked in favor of trade unionism before June 1934?

A. Yes, sir.

Q. You actually joined the union, I believe—that is, you received your membership card—on the 12th day of December 1934, is that correct?

A. I did.

p. 672 Q. Had you, in company with any other girl, called on employees of the Donnelly Garment Company at night and talked to them about the advisability of forming a company union or a local? A. I did.

[fol. 5094] p. 672 Q. What was the name of the other woman? A. Thelma Owen.

p. 673 Q. Had you ever had any complaints from any of your instructors before the time when you became active in an effort to bring about the formation of a local of the union?

A. No, sir; I did not.

p. 674 Q. Did any of your instructors or assistant instructors ever inquire of you about the question as to whether or not you or any of the other girls at the factory belonged to the union? A. Yes, sir.

Q. And when was it? Tell me who it was, the occasion, and what was said.

A. I was transferred from Mrs. White's section up into the ninth floor for Mrs. Neimeyor. And then I was laid off in June, and when I when back to work I was working for Grace—I can't recall her last name.

Q. There has been a Mrs. Grace Guerrant mentioned.

A. No. And I was transferred from her section down to Stella Willis' section, which is the finishing department—

Q. I didn't ask you about all that. I want to know the names of the persons who talked to you, if you know them; when it was, and what was said.

A. Ada is Stella Willis' assistant.

Q. All right. Now, did Ada talk to you?
A. Absolutely.

Mr. Reed. Ada Who?

Mr. Rucker. She says she doesn't know her last name. She only knows her—

Mr. Reed. Is it Vining?

The Witness. I don't believe I ever heard her last name.

Q. (By Mr. Rucker) She was the assistant to whom?
p. 675 A. Stella Willis.
Q. Assistant to Stella Willis. All right. Now, what did she say to you?
[fol. 5095] p. 675 A. She says to me, "Gladys, why in the world did you join the union?" I said, "Well, after all", I said, "sometimes there's a few people around this place that can force you to join anything." And I said, "The union might help you." "And I said, "The way that things are going and the way the instructors are treating the girls, after all, I think it would be a good thing to join the union."
Q. Did she ask you if you knew the names of any girls who were active—
A. Yes, sir.
Q. —in connection with the union?
A. She did.
Q. What did you tell her?
A. I told her that I knew a good many of them but I didn't know them all.
Q. Now, then, when you went back to work at Donnelly's in December 1934 did you have any talk with Mr. Dewey Atchison, the assistant factory superintendent?
A. The day that I went to work the elevators were down—
Q. I didn't ask you about the elevators. I am just asking you whether you had a talk with him or not.

A. I did.

p. 676 Q. All right. Now, was there anything said in that conversation with reference to the union?

A. Yes. He took me by the arm, and he says, "Gladys, don't you get messed up in this union business."

Q. Go ahead, now. Is that all he said?

A. Why certainly. We was going up in the elevator, and he was whispering. He couldn't say any more.

Q. I didn't ask you whether he was whispering or talking out loud. I am asking you whether or not that was the entire conversation.

A. That was.

Q. Now, as I understand it, then, all he said was, "Do not get mixed up in this union"?

[fol. 5096] p. 676 A. "Or you will get fired."

Q. Well, you didn't say that before. Did he make that statement? A. Absolutely.

Q. That statement to you on that occasion?

A. He did.

p. 696 Q. Is that the woman that you were talking with in regard to the insurance that you just spoke about?

Oh, Ada is the assistant instructor, is that right?

A. Yes, sir.

Q. When did she say that to you?

A. During working hours.

Q. When?

A. When I was working on the buttonhole machine. I didn't write the date down. I should have.

Q. It was right when you were working on the machine? A. Yes, sir.

Q. Was there anybody else there to hear it?

A. No, sir.

Q. What did you say to her?

A. She says, "Well, if you bring in the union and this place goes union, there will be a thousand girls put out of work." And I said, "What do

you mean?" and she says, "Why, Gladys, we will all lose our jobs if this place goes union." And I said, "I don't think we would. I think it would help conditions in a lot of the sections."

p. 697 Q. Now, you say nobody heard that but you and Ada? A. Yes, sir.

Q. Yes. Now, Ada is an assistant instructor?

[fol. 5097] p. 697 A. Yes, sir. And she also asked other girls if I belonged to the union, and they said, "Why don't you go and ask Gladys if she belongs to the union?"

Extracts From Testimony of R. L. Blume (Page 712) Vol. 5.

p. 712 Q. (By Mr. Rucker) Mr. Blume, who directed you to employ Miss Feltenstein, assisted by Miss Friel, to report a meeting held on December 4 at the Eagles' Hall?

A. I didn't employ her.

Q. You did not employ her?

A. No.

Q. Then you didn't call her about it?

A. I may have done so.

Q. Well, who employed her?

A. The job came into my office; a call, as I now recall it, from Senator Reed's office. My shorthand reporting office.

[fol. 5101] Extracts from Testimony of Mrs. Lillian White on May 4, 1935. (Pages 814 to 957) Vol. 6

p. 815 Q. (By Mr. Ingraham) Just state your name, please. A. Mrs. Lillian White.

Q. Mrs. White, where are you employed?

A. Donnelly Garment Company.

Q. How long have you been in the employ of the Donnelly Garment Company?

A. 9 years.

Q. Did you go to work there as an operator?

A. I did.
Q. How long did you work as an operator?
A. 5 years.
Q. Then, you worked as an instructor?
A. Yes.
Q. Is that your present work there?
A. Yes.
Q. Mrs. White, what section have you charge of at this time? A. 522.
Q. What kind of work is done in that section?
A. Well, it is straight sewing, binding and underarming.
Q. Last June, what section did you have charge of? A. I had 521.
p. 816 Q. Did Lillian Rutherford work in your section last June? A. She did.
[fol. 5102] p. 816 Q. What type of work could she do?
A. Only straight sewing.
Q. She was limited to that one operation?
A. Yes.
Q. Do you know whether or not her quality of
p. 817 work was good or bad?
A. Her quality was poor.
Q. What about her quantity?
A. Well, it was fair.
Q. Would you say that she was a poor operator?
A. I would.
Q. Did you recommend in June that she be one of the ones from your section to be laid off?
A. I did.
p. 820 Q. Did Glynn Brooks work in your section?
A. She did.
p. 821 Q. Did you have to be careful in selecting the kind of work you would give her?
A. I did.
Q. What do you mean by that, Mrs. White?
A. I couldn't give her anything like necks or sleeves on account of her stretching them.
Q. Did you change her work more than any other operator?
A. No, I didn't, because she was just one binder and that was all.

[fol. 5103] p. 821 Q. Did you recommend that she be one of the girls or operators to be laid off from your section in June, 1934?

A. I did, on account of her work.

p. 825 Q. Now, have you got the recommendation cards that you signed in regard to Lillian Rutherford, Glynn Brooks, Thelma Owen, Ellen Fry and Tillie Shirley?

A. I have all but Thelma Owen's.

Q. Well, you have the rest of them?

A. Yes, I have.

p. 826 Q. Did you sign these cards?

A. I signed and checked the lower part. The upper part was made out by the clerk in the office.

Q. Were you consulted at the time of the lay-off of many operators last June as to who would be laid off in your section?

A. Yes, I was.

Q. Who passes on the question of selecting the girls to be laid off?

A. Well, there are four of us. I guess I am included as one. Mrs. Reeves, Mrs. Wherry, Mr. Atchison, and myself.

Q. They ask you to express an opinion as to the kind of work that the operators are doing in your section? A. That is it.

Q. And these cards show your opinion as to the kind of operators these respective complainants are? A. Yes.

Mr. Ingraham: We offer these cards in evidence. They are marked exhibits 19 to 22, inclusive.

p. 828 Q. You do recall that she told the girls, however, that Mr. Dubinsky made a speech up here at Eagles' Hall—

A. I was at Eagles' Hall, myself, that night.

[fol. 5104] p. 828 Q. And heard Mr. Dubinsky speak?

A. I did.

p. 833 Q. So a girl who had worked there four years had to be instructed on how to put a dart in?

A. No; not necessarily. Whenever we have a new number coming through, it doesn't make

any difference if it is the same as it has been before, the instructor always sits down and
p. 834 instructs the operator.

p. 863 Q. (By Mr. Rucker) You mean to say that they have a policy down there that applies to your section and not any other section?

A. I couldn't tell you. I manage my own section and let anybody else take care of their's.

p. 864 Q. (By Mr. Rucker) Now, have you any record —Do you make any record of the repairs that a girl has to make in your section?

A. No, I don't.

Q. How do they determine that down there. Is
p. 865 there any record made at all by anybody?

A. Just by the reports that are brought back from the inspectors to the instructors.

Q. Well, does that show the girls who have been guilty of doing the work improperly?

A. Well, it does, yes.

Q. And you don't know anything about—You have nothing to do with the reports on repairs, then?

A. I have an idea the inspector—

Q. I am not asking about your ideas. Do you have anything to do with those reports on repairs?

A. I see that the girl gets the repairs.

Q. Do you have anything to do with making a report about the amount of repairs any operator has to do? A. I do, yes.

Q. In what form do you make that report?

[fol. 5105] p. 865 A. If a girl has very many repairs, I go to Mrs. Reeves and Mrs. Wherry.

p. 876 Q. Was that the only meeting you attended, or did you go to another?

A. There were two.

Q. The first one was at the Musicians' Hall and the second was at the Eagles' Hall, wasn't it?

A. I believe it was.

Q. And you attended both of them?

A. I did.

Q. What other executives of the company attended those meetings?

Mr. Ingraham: Object to that question. This witness isn't an executive.

Mr. Rucker: Withdraw the question.

Q. (By Mr. Rucker) What executives of the company attended that meeting that you saw?
A. I believe Mrs. Reeves was there.
p. 878 Q. All right. Now, then; you also had in your section, did you not, Glynn Brooks?
A. I did.
Q. You recommended her lay-off, did you?
A. Yes.
Q. Her discharge? A. Yes.

[fol. 5106] Extracts From Testimony of Mrs. Bessie Neimoyer.

(Pages 1004 to 1025)

p. 1004 Q. (By Mr. Ingraham) State your name, please.
A. Mrs. Bessie Neimoyer; N-e-i-m-o-y-e-r.
Q. Mrs. Neimoyer, are you employed by the Donnelly Garment Company? A. Yes, sir.
Q. In what capacity?
A. As an instructor.
Q. How long have you worked at the Donnelly Garment Company?
p. 1005 A. I don't remember just how long. I think around 11 years.
Q. You have been an instructor how long?
A. Ever since I have been there.
Q. What is the number of your section?
A. That I am working in now?
Q. Yes.
[fol. 5107] p. 1005 A. 411.
Q. What section were you working in last June and July? A. 531.
Q. 531. Was Thelma Owen in that section?
A. Yes, sir.

p. 1011 Q. Did you ever know of a girl who was found by you to be disobedient, unreliable and non-cooperative—did you ever recommend such a girl for re-employment?

A. I don't just understand your question.

Q. Well, do you—When they call you to ask you whether you will recommend, we will say, Mamie Smith for re-employment—she had been laid off and she had worked for you—and when you made out your estimate of her on the card you said she was disobedient, unreliable and non-cooperative—now, do you recommend the re-employment of that sort of girl? A. I don't.

Q. Never have?

A. I don't know that I have. I couldn't say positively.

Q. You don't know of any instructor down there that ever did recommend the re-employment of such a girl, do you?

A. Will you please state that question again so I can understand what you mean?

Q. You don't know of any instructor, who has found a girl working under her to be disobedient, unreliable and non-cooperative, after that finding, to have recommended that that girl be re-employed?

A. I don't know what the other instructors do.

p. 1018 Q. Did you go down to the union meetings that they had at Musicians' Hall and the Eagles' Hall? A. Yes, I did.

Q. Went to both of them, did you?

A. I went to two.

[fol. 5108] Extracts from Testimony of Ella Mae Guerrant Hyde on May 6, 1935. (pages 1025 to 1053)

Volume 7.

p. 1025 Q. (By Mr. Ingraham) Just state your name, please.

A. Ella Mae Guerrant Hyde.

Q. Where are you employed, Mrs. Hyde?

A. At the Donnelly Garment Company.
Q. In what capacity?
A. Employment manager.
Q. How long have you worked at the Donnelly Garment Company? A. 6½ years.
p. 1026 Q. Now, you are the party referred to when the witness have stated "Ella Mae Guerrant"?
A. Yes. I have given my whole name.
Q. That was your former name? A. Yes.
Q. How long have you had charge of the employment office?
A. For the last 3 years.
Q. For the last 3 years. What are you duties?
A. To employ and discharge.
p. 1026 Q. Now, in connection with Lillian Rutherford, she stated in her testimony that you promised to put her back to work. Did you ever make a promise of that nature to her?
A. No, I didn't. I would have no authority to do that.
p. 1027 Q. Who passes on the re-employment of operators?
A. The person in charge directly over the girls. That is the instructor, and Miss Wherry, the superintendent.
p. 1032 Q. You had attended some of the meetings held at Musicians' Hall and the Eagles' Hall?
A. Yes.
Q. Both of them? A. Yes.
[fol. 5109] p. 1040 Q. Now, are you a member of the Loyalty League? A. I signed a pledge card.
p. 1042 Q. The employees are not consulted at all on price fixing, are they? A. Yes and no.
Q. Explain that answer.
p. 1043 A. A girl may not say just exactly how much is to be given on a particular operation, but if she thinks it isn't fair it certainly is gone into in time study and then taken care of. A girl has the right to suggest that it be corrected.
Q. Is there any committee of any kind among the employees which is consulted before changes in prices are made, either up or down?

A. You mean office people?
Q. No. I mean among the employees—the people who actually turn the work out.
A. There is a committee in the office.
Q. Who is on that committee?
A. Mrs. Nichols, Mrs. Reeves, Mr. Atchinson and Mr. Sleicher.
Q. Is there a single operator on that committee?
A. I don't think so. I don't know of anyone.
Q. They are all executives, aren't they?
A. I should say so.

[fol. 5110] Extracts from Testimony of Mrs. James A. Reed on May 25, 1935.

(Pages 1054 to 1115) Vol. 8

p. 1074 A. . . . Now, in our plant I think that we have more supervision and more executives than —I know I have—more than are usually in a plant of this kind. But that's been a very big part of the business of having this splendid organization, of taking merchandise that's ordinarily classed as something that has to be handled, oh, just from hand to mouth, we have made a real institution in our place.
Q. You have referred to people who have appeared before the Board. Do you mean the witnesses for the Donnelly Garment Company?
p. 1075 A. Yes, our supervisors. The different people that have appeared before the Board as witnesses for the Donnelly Garment Company.
p. 1077 A. . . . Now, in my plant I have 40 operators, 40 machines, under this one supervisor with an assistant. One of them is in charge of quality and the other quantity. And, of course, they both work with one another on both things; but that's their general responsibility.

p. 1087 Q. (By Mr. Ingraham) Mrs. Reed, what is the minimum wage for workers at the Donnelly
p. 1088 Garment Company?

A. $15.

Q. Previous to the code?

A. It has been $15.

p. 1091 A. . . . But, now, I want you to understand that my piecework prices are not based on that minimum. That for 10 years or more we considered a $15 operator as only a 75 percent operator. We expected an operator that had had 6 months' or more experience, we expected her to make $20 a week. As a matter of fact, we couldn't have maintained our

p. 1092 set-up on operators if all of our operators had only earned $15 a week.

So the minimum was $15, but we based an average operator at $20 a week; and then a great many of our girls were able to earn $25 and some of them $30 and $35 when the work came through in the best way.

We have girls out there right now who are making $35 and $40 a week and have made it right along this spring. And we have had them—Since 1919 I have had operators, based on my piecework operations, that can make from $20 to $30 and more than that, $35, a week.

p. 1093 Q. (By Mr. Ingraham) Has it always been the practice of the company to weed out the $15 operators as much as possible?

A. Yes. We have had a standard of an operator not being our standard operator unless she could make, generally speaking, $20 a week.

p. 1107 Q. And I suppose your instructors are more or less under your personal supervision?

A. Yes. I come in contact with them all the time.

[fol. 5111] (N. R. A.—J. M. C. Exhibit 2.)

Date 7/6/39—Witness

Objection And Motion To Strike Of Respondent And Intervenor To "N. R. A." Testimony offered By The Board.

Respondent and intervenor severally object to all and every part of the testimony offered herein by the Board referred to as the "N. R. A." testimony, being portions of the testimony taken before the N. R. A. Regional Labor Board, Twelfth District, in case No. 160, styled "International Ladies' Garment Workers' Union, complainant, vs. Donnelly Garment Company, respondent", to-wit, all the testimony of Ellen Fry, Thelma Owen, Glynn Brooks, Mamie Tubbesing, Elizabeth Gates Reeves, Lillian Wales, Frances Riedel, Pauline Lutz, Virginia Stroup, Dewey Atchison, Gladys Elledge Richardson, R. L. Blume, Meyer Pearlstein, Lillian White, Marie Patton, Bessie Neimoyer, Ella Mae Guerrant Hyde, Mrs. James A. Reed, and contained in N.R.A. & J.M.C. Exhibit 1-A to BBBB at pages 1 to 8D inclusive, and object to each and every question and answer therein set forth, and move that the testimony of each of said witnesses, and that each and every of said questions and the answers thereto, be excluded and stricken and not considered as evidence in this proceeding (this objection and motion going to each question and answer separately as well as to the testimony of each of said witnesses as a whole), for each and all the following reasons, to-wit:

That said testimony was given prior to July 5, 1935, and refers to matters which purport to have existed or occurred prior to said date, and said testimony and each and every question and answer thereof is immaterial and irrelevant to any issue in this proceeding and deals with matters purporting to have existed or occurred prior to the enactment of the National Labor Relations Act; that [fol. 5112] the conditions, acts and conversations testified to by said witnesses, if they existed or occurred, were lawful at the time they existed or occurred, and the fact, if it is a fact, that such things existed or occurred or that

respondent or any of its representatives may have done or said or authorized any of such things, at the times referred to, or when same were lawful, carries no imputation and does not tend to prove that the respondent (or intervenor), or any one representing either of them, would violate or has violated the National Labor Relations Act after its enactment, or that they would or did commit, authorize, or do, after the enactment of said Act, any of the acts or unfair labor practices alleged in the complaint herein, and such testimony is therefore conjectural, speculative and irrelevant as to any issue in this proceeding; and for the further reason that there is no showing that the persons testifying or referred to in said testimony had authority to bind or speak for respondent (or intervenor) at said times, or if they had such authority at said times, there is no showing that such authority continued after the enactment of the National Labor Relations Act or that respondent handled or managed its business or the various departments thereof in the same way or by the same division of authority after the enactment of said Act as it did at the time said testimony was given or that what was said by said witnesses applies to conditions in respondent's business or the methods of handling same since the enactment of said Act and hence said testimony is too remote, is not binding upon respondent or intervenor, is immaterial, irrelevant, conjectural, and without probative value as to any of the matters here in issue; that there is no charge in the complaint of any [fol. 5113] discrimination by respondent against said witnesses or the persons referred to in said testimony; that said testimony is hearsay and states conclusions; that the Donnelly Garment Workers' Union was not then in existence or even contemplated and said testimony can have no bearing on the question of whether said union was formed, dominated or maintained by respondent or whether it represents the free will and choice of respondent's employees as their bargaining agency; that said testimony does not tend to prove or disprove any issue in this proceeding and, if received, would require extended testimony on the part of respondent and intervenor to refute such irrelevant and immaterial testimony, all of which would needlessly encumber the record; that for each and

all of said reasons, the reception or consideration of said testimony in this proceeding would be improper, illegal and prejudicial to respondent and intervenor.

Objection is overruled and the motion to strike is denied. Dated: July 5, 1939. James C. Batten, Trial Examiner.

Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

[fol. 5114] Respondent maintains that any evidence relating to matters which occurred prior to the passage of the National Labor Relations Act is incompetent, irrelevant and has no bearing on the issues involved in this case, and such evidence is submitted only because of the Examiner's ruling allowing the Labor Board and the International Union to introduce evidence relating to the hearing before the NRA Labor Board.

See rulings of Trial Examiner, Bds.-Exh.-1-SSSS, J. C. Batten, Trial Examiner.

Re: N. R. A. — J. M. C. Exh. #3.

[fol. 5115] (N. R. A.—J. M. C. Exhibit 3.)

Proceedings Before The NRA Labor Board.

MRS. JAMES A. REED called as a witness, being duly sworn, testified as follows:

Direct Examination.

1055 Q. (Mr. Ingraham) State your name, please?
A. Mrs. James A. Reed.
Q. And you live in Kansas City, Mrs. Reed?
A. Yes.
Q. You are president of the Donnelly Garment Company? A. Yes.
Q. Mrs. Reed, when was the business of the Donnelly Garment Company started?
A. In January, 1916.
Q. Did you start that business? A. Yes.
Q. Will you just explain how you happened to go into that business?

Objection—Immaterial.

A. Well, I started this business with two machines—.
Q. Well, did you get orders from stores, Mrs. Reed?

Objection—Immaterial.

A. I made up some dresses for myself and had some admiring friends think they were attractive, and I made some presents to my friends, and they thought there would be a market for them; they thought other women would like them. And at the time Mr. Donnelly was desirous of going into his own business, and I took two of my dresses that I had made for myself down to one of the department stores of Kansas City, and they gave me an order for 10 dozen of one and 18 dozen of the other. And I got two machines and two women to sew and started my business that way.

From that time on for a number of years it was just a matter of putting in a few more

machines to take care of my orders, merchandise sold, and I first did the cutting and all the work on the garment except the sewing.

Q. You actively managed the production end of the business?

Objection—Immaterial.

A. I did, I started in the factory and I planned and worked out the ways of producing the garments. I had had no experience in manufacturing or, as a matter of fact, in any designing or any other part of the business, so I learned it as I went along. I sold my merchandise and designed new models and worked with the operators in the plant to work out better ways of production.

So until I had a hundred machines, I personally directed operators on the machines; I mean in the same way that an instructor, I call them, does in my plant now. And all through the years I have actively managed the plant, as I have always felt that my greatest contribution to the business was in the management of the factory.

Q. Mrs. Reed, will you explain the kind of garment that you first manufactured? I mean by that, was it a garment that had operations that were easy to perform?

Objection—Immaterial.

A. I don't know what you mean.

Q. I mean by that, the operators that were employed by you in the early days of your business: They were just qualified for simple sewing?

Objection—Immaterial.

A. Yes. I made what I called "apron frocks" and, in fact, the first two operators I had—neither one of them had ever operated a power machine before.

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Volume IV

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 36

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 28, 1946
CERTIORARI GRANTED APRIL 22, 1946

VOLUME IV.

RECORD.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

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FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 475, Orig.

O.K.

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[fol. 5116] Q. And you would take operators then and
1057 teach them the operations:

Objection—immaterial.

A. Yes. When my business started in 1916—later on, after the War began and my business got a little larger, while it was large enough for me to need more operators, I wasn't able to get experienced operators, and so I started in having to teach my own operators.

Later on when my plant became more established and in 1920 when so many of the other plants in Kansas City closed down and I could get experienced operators, I found that, generally speaking, I was much better off with the operators I trained myself. So until about 1930, I constantly had what I
1058 called a training section. That is, I didn't the first few years; I had such a small plant and I didn't have it organized to the point of having a training section. But I found that it was a better way to do. Rather than put new operators right into the shop, I established this training section where we trained them to do three different kinds of work, so if we were short on one kind of work they could do another kind.

Q. Now, all during the time up until a few years ago, Mrs. Reed, you worked 8 hours a day right with these operators?

Objection—immaterial.

A. Until I had to go to Mayo's for a very serious operation and my health was impaired for a little while, and that was in 1931. Up until that time I didn't work 8 hours a day; I worked longer than that. But I was at the office at my plant at 8 o'clock every morning, and I usually didn't leave until 6. I worked in the factory all day long and I usually did my designing after hours. But until 1931 from 1916 I very actively was at my plant, and most

of that time my work has always been in the factory except the trips I took to New York to buy merchandise and do designing.

Q. Now, in respect to the work of operators, did you require that the quality of their work be the first consideration?

A. Yes. I feel that on the Nelly Don merchandise the most outstanding thing about that merchandise is the quality. As a matter of fact, that was the only real excuse for my
1059 existing in this business, was that I could turn out attractive little frocks that were made carefully, and the good quality of workmanship, and all the other little things I added to it in the way of designing and good fitting and generally making honest merchandise.

Q. What was the style of house garments at the time you went into this business?

Objection—immaterial.

A. Well, they were, generally speaking, very poorly made and made of very cheap merchandise, poorly designed, with no fit or style; something like a Mother Hubbard. The bungalow apron was at the height of its popularity at that time, and it was such a commonplace ordinary garment that a woman who had any pride in her appearance usually made her dresses at home, her house dresses at home, or had someone make them. To my knowledge, the best garment on the market at that time was a 69 cent or 59 cent apron.

Q. What did you do to improve garments of that kind?

Objection—immaterial.

[fol. 5117] A. Well, the first thing I did was to cut them so they would fit a woman. And then I used attractive colors and nice designs and had them made carefully.

Q. What have you done to develop your designing?

Objection—immaterial.

A. Originally I did all of the designing myself; and as the business grew and required my attention in the management of the factory and the purchasing of materials, I have employed other designers. I have developed a very excellent designing department. And
1060 in the past 10 years either myself or some of my assistants have gone to Europe every year. We have bought patterns for fabrics over there, and we have had our own materials printed in these attractive patterns, and our own dyeing in good style colors. I have brought French designers over here to—

Q. (By Mr. Cox) You call that converting, don't you?

Objection—immaterial.

A. Well, we convert practically all of our own cotton goods and some of our own silks and rayons; most of our own rayons. I have a New York office with an experienced mill man, a man who owned and managed one of the largest mills in New England for a number of years now has charge of my New York office and attends to the converting and general buying of piece goods.

Q. (By Mr. Ingraham) How much money, Mrs. Reed, has the Donnelly Garment Company spent on its designing department?

Objection—immaterial.

A. Well, we have an expense of around $100,000 a year for designing. A number of designers, two very fine designers and a number of assistant designers.

Q. What has been the result?

Objection—immaterial.

A. Well, I think that we have taken our place as the leader in this industry. We have departments, special Nelly Don departments, in practically every large city and town in the

United States. All through New England, all the large cities on the West Coast, and in the East; in fact, all over the country.

1061 Q. Has the business been built up, Mrs. Reed, on style and fit and fine workmanship of the garments manufactured?

A. Yes, that's what it has been built on.

Q. The company has constantly been making a higher type garment and through the years?

A. We have constantly striven to make better quality merchandise and improve it in every way.

Q. Now, did that require a higher type of workmanship than was necessary in making the garments that were first manufactured?

[fol. 5118] A. Yes. With the help of Mr. Atchison and Mrs. Reeves and Mrs. Wherry and a number of other people in my employ, we have developed a plan in the factory that has enabled us to turn out a very good quality garment at a low enough price to make it possible for us to compete with any plant, even though their prices were lower priced. I have a planning department that works on the piecework, made up of several people who have been with me practically from the start, 15 or 16 years. And in my plant the supervisors are all taken from the machines, some of them having worked on the sewing machines at piecework rates for a number of years.

1062 Q. Mrs. Reed, how much rent do you pay a year for your factory?

Objection—immaterial.

A. Well, for just the factory at 1827 Walnut I pay $30,000 a year now. Up until 2 years ago, I paid $33,000 for five floors. Now I have gotten more space at a lower rent. That is, I pay the same rent for seven floors now that I paid for five. But that was on a very short term lease. They wouldn't give me a long lease on that because they thought that prices would come up again.

1063 Q. Now just describe, Mrs. Reed, the character of the building; the light and the heating and the hospital and the other conveniences.

Objection—immaterial.

A. Well, we have a first class factory building. It has excellent heating facilities. We maintain a hospital room with two trained nurses and five beds. I don't know whether it would interest anyone to know that we keep five janitors and five colored maids keeping the place clean all the time. We have the same type of wash rooms for our girls in our factory that we have in our office. I suppose the fact that I was in the factory so many years myself made me have a feeling that my girls in the factory were entitled to the same accommodations and services that the girls in the offices are used to expecting.

There has never been a back entrance at any time in my factory, even when I first started in a little store room out on Brooklyn Avenue. There has been one entrance that I came in and my office girls and designing room girls and the girls that worked in the factory came in.

The hospital room is maintained for everybody in the plant. If I am ill myself or feel badly, I go down to help from the nurse; or someone from my designing room or my office. There is one cafeteria. I don't run the cafeteria, but I give the space free to the woman who does run it so that she can serve food at a low cost. And that one cafeteria: The girls from the office or any place else—we all go to the same one.

Q. What window lighting have you?

Objection—immaterial.

A. We have excellent—I don't know what they call it, but it's lighting that's supposed to be

very good for factory use. Now, when I moved into that building, this kind of light—these windows are very good for the eyes, but women like to look out, and you couldn't see out of them; and while the postoffice men didn't ever seem to mind it, the first thing I noticed when I went in there was that I couldn't see out of the windows. And I know that women object to that sort of a shut-in feeling, and so I had the windows changed, enough of them, where they could see out. I did that at partial expense to myself. Mr. Burke assumed part of that, but part of that expense was borne by myself.

Q. You spoke of the post office. Was that the Federal postoffice?

Objection—immaterial.

[fol. 5119] A. The Federal postoffice occupied the five lower floors of the building for a number of years. They just moved out when they moved into their new quarters a couple of years ago.

Q. Now, what was done about changing the floors?

Objection—immaterial.

A. Well, the floors were concrete, and I had those floors changed to wooden floors.

Q. Why?

Objection—immaterial.

A. Well, I think it is conceded that wooden floors are much easier on people to work on.

Q. Now, in regard to the windows: They have all steel frames, do they not?

Objection—immaterial.

A. Yes. It's a thoroughly fireproof building. It's a building that could be used as an office building It is not a loft. It is all plastered. And we have it painted every year or two when it needs it; nice light colors.

Q. Is it not, Mrs. Reed, considered the finest kind of building for the purpose for which it is used in this locality?

Objection—immaterial.

A. Well, as far as I know it is.

Q. Mrs. Reed, the company is using another building at Twenty Sixth and Grand?

Objection—immaterial.

A. Yes.

Q. Will you just describe that?

Objection—immaterial.

A. Well, that's a thoroughly fireproof building. That does not have wooden floors, but where women have to stand I have wooden frames so that they don't have to stand on the concrete. And, of course, the operators: when she sits at a machine, her feet are on a frame above that in this other building, so that there isn't anyone standing on concrete in that building. Otherwise that's just as high type a building as the one we are in and the best building I know of available in Kansas City.

Q. Now Mrs. Reed you have constantly tried to have work the year around, have you not?

Objection—immaterial.

A. Until 1931, with the possible exception of a few days—I won't say that there never was one day; there might have been a few days—I have run my business the year round for 15 years. My business was managed and my merchandising was done, the lines that I got up, the time of the year, and the type of people I sold, and everything was based on forcing a year round business.

And when I say "forcing" a year round business, I don't know of any other term that would be stronger to use. If I did, I would. Because when I went into this business there was no such thing as a year round business with anybody making women's dresses or aprons or anything connected with women's clothing as far as I know.

[fol. 5120] Q. What was necessary to be done in order to have work the year round?

Objection—immaterial.

A. In the early years of my business I simply opened new accounts in the fall. My old accounts always used a certain percentage in the fall of what they used in the spring, but it was a very small percentage. So I always opened up new territories. And, of course, eventually there were no new territories to open that would bring in the amount of business we needed to keep going the year round. So about 10 years ago I started my first line of fall dresses that had wool in them.

I had been experimenting, trying to plan how we could turn out wool garments with our type of manufacture and and our workers. And as a matter of fact, I wasn't able to do that well enough to put out a line for two years. I made sample lines two years before, but the garments didn't please me, didn't seem to me would be saleable. But eventually I was able to make the garments and managed the work in such a way that we could turn out wool dresses in our plant. And that gave us a certain amount of extra selling or another line of merchandise to help with our fall line.

Another thing, I refused to sell anybody that didn't maintain an open department the year around. In fact, right in Kansas City I had one of our accounts here, Kline's, who wanted to buy our merchandise a number of years ago, and they only had a spring department because they didn't feel there was enough volume in the fall to warrant their bothering with our department.

And I wouldn't sell them.

They went to the trouble of having one of their friends, who was connected with Macy's

in New York, with whom I was doing a very nice and very large business at the time, come out to influence me to give them my line for the spring; and I didn't do it because I was so determined to do a year round business that, even though the spring business was very tempting, I didn't sell anybody that didn't maintain this open department during the year around.

When Harzfeld's wanted to put in our merchandise a number of years ago, they intended only having a spring department. I went to see Mr. Harzfeld myself on that and finally convinced him that he could run a year around department with our merchandise. And then they put it in and have done that.

Now, that's been a great struggle in a factory that turns out merchandise in mass like we do with our system, to make merchandise that would sell; and also to make that kind of merchandise that would sell in a house dress department, which departments were established. So in the last several years our accounts have put in special Nelly Don departments where they sell any kind of merchandise I turn out.

Now, in a number of the large stores, large department stores, the departments are very definitely separated; and there was a great deal of prejudice against putting in my better dresses. But where that came up, very often I went out to see the heads of the firms myself and explained to them my desire to run my business the year around and also told them what effort I was [make] to make merchandise that would sell the year around; and in practically every case the stores have set aside this Nelly Don department and given the buyers permission to buy anything that I made.

Q. (By Mr. Cox) What is your price range? Where do you start?

Objection—immaterial.

A. Well, we start with our Handy Dandy aprons that retail for 79 cents, and we usually stop with $13.95, although I have made silk pajamas that have sold for up to $25. Generally speaking, the price is limited to $10.95 or $13.95.

Q. When you stated those prices, Mrs. Reed, you mean retail prices?

Objection—immaterial.

1069 [fol. 5121] Q. Mrs. Reed, you stated that there was some prejudice on the part of department stores to sell part of your garments. Why was there a prejudice?

Objection—immaterial.

A. Well, the other buyers thought that my merchandise looked pretty good at the prices that they were sold at. The other departments felt probably that I was turning out an awfully good garment at a pretty moderate price.

Q. Wasn't the price lower than the price for a similar kind of merchandise?

Objection—immaterial.

A. Well, when I get into my higher price, my better merchandise, there isn't any other merchandise just exactly like it on the market. It is practically entirely machine made. And the only way that I can turn this out at the price that I do is on this volume basis and on the sectional way that I make it. I have probably from 10 to 20 operations on one garment, even in my high-priced merchandise. And I think that there is no ready-made merchandise turned out on the same basis—that is, what's called the regular ready-to-wear merchandise. But this line that I make, the higher priced merchandise, has been developed

to take care of that time when there is very little sale for regular house dresses.

1070 Q. (By Mr. Cox) don't you find that by splitting your operations up the operators do better and make more?

Objection—immaterial.

A. Oh, my yes indeed. I had an experience in my very beginning when I had just five machines, and at that time each operator made a dozen garments and made the whole garment herself. And then I was making some little play suits for Emery, Bird, Thayer's; really a special order, but it was a large order, a hundred dozen, and they were very complicated in the making. And so when I started each of these women, I really was giving up my whole five machines to this particular order. They were making it in dozen bundles. And there were a number of little operations, and we were making no headway. I could see one girl would be doing one particular thing very well, and another one another thing pretty well; but each one—they were not only not making many garments, but they were not doing a very good job of them.

So I took one of the garments myself on the machine and sat down to figure out just how it should be made, which operation would go first. I would see one girl handle hers one way, one another way, and another one another. So I sat down at the machine myself with a dozen of these garments and figured out the easiest way that they could be made.

1071 Now I gave separate operations to these different girls of what they were to do. And in a week's time, instead of getting one dozen a day from each operator, I got two dozen a day from each operator. And by the end of the second week, instead of 5 dozen a day,

as we started out, we got 20 dozen garments a day, with a much better quality garment.

At first the operators didn't think they liked it as well because they thought that the other operator didn't do as good work as they did, one of two of them, and it would spoil the looks of her garment. But I was able to pay them more, and they found that the work was much easier on them because it wasn't so tedious. And by the time I had delivered those garments, I got re-orders on them and kept that little garment going for quite a while, and then sold some to other stores.

[fol. 5122] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

And that was the beginning of my sectional work. I had never worked in a factory. I didn't know anything about manufacturing except just what I learned in my own plant. But from that day on I tried to put in sectional work.

It took me a long time to really get it in because in the first days I bought my own merchandise and I sold my own merchandise, and I would be in the plant a couple of weeks, and then I would go out for a couple of weeks and buy and sell enough to run me for another couple of weeks. And while I was away usually they would start over to making their own garments. Everybody would make the same—that is, they would quit doing the sectional work. I don't know just why, but it seemed that they hadn't been used to doing it. And then I didn't have my regular factory workers. So it took me several years to get the sectional work started. But there is no comparison in my mind in that—

1072 Q. (By Mr. Cox) You find they are more efficient when they are doing sectional operation?

A. They are more efficient, and it is easier on an operator. If a girl has to figure out everything she does with a bundle, she constantly has to be thinking about her work and how she is going to put it together. I think it is much more trying on her than if she knows what she is doing and can put it right along.

Q. (By Mr. Ingraham) A girl can make more money?

A. Oh, yes. A girl can make more money on the sectional work. You can afford to pay it. As a matter of fact, if I hadn't developed the sectional work I would never have got beyond the little five machines. I couldn't have stood the competition, even though my garments were better made and more attractive. The prices would have been so high that I couldn't have competed. I certainly couldn't have kept my people working in the pleasant circumstances and done as many things for them and have them make as much money as they do.

Q. (By Mr. Ingraham) Mrs. Reed, is it not a fact that the principal purpose in working the year round is to give year round employment to your operators?

1073 A. It is. That was the real inspiration. When I worked in the plant with these girls, I became acquainted with them, and I liked them, and I wanted to—well, I found that they needed work, wanted to work, and I couldn't —well, I just couldn't stand the thought of having to turn people out every fall. And I found that I had a very nice class of women, and I felt that by having work the year around I would attract a better class of workers and that it would be so much better for them. As a matter of fact, I have found, and I believe that my reputation, outside of maybe Mr. Perlstein thinks differently, I think I have a reputation for paying the highest wages that are paid in this line of business. And that

begins with my janitors, my pressers, and my operators, cutters, my executives, all the way through. My attitude has always been to pay people as much as I could. And apparently it's been good business because I have been reasonably successful. But it's surrounded me with — at least, I have always felt they have been — a very contented and happy lot of people.

1079 Q. (By Mr. Birkhead) That is, setting a minimum wage, you mean, and then paying that whether the girls made the amount or not?

[fol. 5123] A. No, that isn't the exact thing. In the very beginning I paid my operators just so much a week. And then after I got this system of breaking up the work, I started paying them piecework and guaranteeing them the amount that they had been getting but then I could afford — Of course, when I could turn out that much more goods, I could afford to pay them more. And so I started them with piecework, and then they had their guarantee: When they made more than the guarantee, they got it.

But getting back to this girl that can do well on a special machine and isn't a very good operator: Probably while she is doing the other work, then I will pay her a little to help her along: From the very beginning, I have striven for two things: One of them was year around work. The other was to make your pieceworker, as near as it was possible, make a very fairly same average. Now, that isn't possible because when you are in your very best season and you have lots of the same work going on, you will have some "hits" that you will sell thousands of dozens of one garment. And when a girl does on making more of that, we sell it, and she can make more money; and when she does, I am very glad that she does. It turns out more production for us.

It's just like a salesman. The more a salesman makes, the more valuable he is to the owner of the business. And with a salesman, he goes out and sells his merchandise: and if you have "hits" and he can sell a lot of a number, that makes a certain amount of velvet for him.

Well, long before there was any minimum wage or NRA, I had my own minimum wage. But I have not even kept my people to that minimum wage. Now, for years and years I didn't make any promise to anybody that I would give them that. One thing is there are always a few that spoil things,—if you don't keep your courage pretty strong. But when you are having a minimum rate, there's a few women that will sit back and don't care if they don't make any more than that. As a matter of fact, they don't care whether they make that, because they will get that much.

Well, of course, if all of your people were like that, you couldn't have a minimum because that would increase your costs so very much. But in my experience and my close contact with my workers, I have found in a very large majority of cases that it is only a rare occasion where they aren't very fair.

Now, this thing of bringing up about that the minute anybody makes any money on a garment that we cut the price: We don't do that. Of course, that's all been explained, and I am not going to take a long time to go over it.
1081 But when you put your garment in at first, naturally, you are experimenting to some extent on the price. With all the experience you have, your prices won't be exactly even. You know that it would be much easier for us if it were possible to put out your first piecework prices, that it would be exactly the same basis you were working on, if you were working with a great number of people, if that would be humanly possible.

And I have done everything that I know of to make that possible. We have taken time studies. We have the very people that I know of that I have in my plant that have been there for years and years, worked on piece rates themselves for years and years, and we have all of our experience back of us. So we do everything we can to make that piece rate the same. But it won't be the same all the time. So there will be adjustments to make. One you will increase, and the other you will probably decrease. But if we kept the records over all the years that we have been in business — we showed some of those records down here — we will probably have three increases where we have one decrease.

Now, if a woman can make good money just we happen to have a good run on a garment, we don't cut that person's price — we don't have to — but I want those workers to make — the more they make, the better people
[fol. 5124] they are for me; the better workers they are, the better satisfied they are, and the better
1082 production I will have. You know, your production as a matter of fact, goes up as you can pay more. It is easier for them. I think when a person makes a little more money that it is easier for them. They probably don't have to go home and do their washing at night and things like that, and I have taken that into consideration.

And I have here these figures that I just got. These are exact figures:

Objection—immaterial.

Q. (By Mr. Ingraham) Mrs. Reed, why do you pay these bonuses?

Objection—immaterial.

A. I pay this bonus —
I couldn't enumerate all the exact reasons that I have paid these gratuities. I know

that for 15 years I was in pretty close contact with the people that did the work, the actual piecework in our plant; and I had a very great desire to make their earnings as regular as I possibly could.

1083 And so it's been the practice in our place to make up for — oh, if a girl's machine breaks down, I allow a certain amount per hour, based on what that girl makes over a year's period. Not the time that she makes the most, and not the time that she makes the least. But, in a general way, pieceworkers have a way of establishing a good average of what they make.

Now, I did that simply because it seemed kind of hard for a girl to have her machine down and have to sit and not make any money at the time. And in our pricing we allowed — We don't expect a girl to sit at her machine every minute in the day, and we make allowances for their not being at their machines.

But I want to go on record that this has been a general practice of my giving out a certain amount of money here to my piecework operators that I didn't have to do, because I was already paying a higher piece-rate price than was paid any place in Kansas City and I think any place in the country on my type of work.

Q. Mrs. Reed, about how many times higher?

Objection—immaterial.

A. Well, in the depression in the last three or four years, I know there was an investigation in Kansas City, and they were paying—well I think I was paying three or four times as much as they were. And from what I have heard of what was going on over the country, the same thing happened.

There was only one time, and that was in 1932 when times looked the worst, and they

were the worst that I had in my business, that I reduced the piecework pay 10 per cent. That 10 per cent was put back as soon as our spring business started in 1933.

This 10 per cent reduction, which was the only one that was made, and was not made until the spring of 1932, was put back in either January or February of 1933, and that was on our piecework rates.

In 1928: These are just gratuities to pieceworkers:

Q. (By Mr. Birkhead) You mean that they were over and above what they earned?

Objection—immaterial.

A. Over and above what they earned.
Q. You had a minimum, was that?

Objection—immaterial.

[fol. 5125] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

1084 A. I don't give all this money to the poorest workers. The poorest workers that just hand on to a minimum, Mr. Birkhead, I don't feel deserve all the consideration. So sometimes some of these go to girls that might be ordinarily making $25 a week and then something happens. Sometimes they don't just feel so well, I suppose; and sometimes there is more new work, business isn't as good, or there's a thousand and one reasons why a pieceworker sometimes won't make as much money. Now, if we feel that she has done everything she could to make her money, why we will help her out, even if she is a higher priced girl. So all of this is not put in to maintain a minimum. Part of this has gone to the better operators who just fall down at individual times.

In 1928 this amounted to $39,919.
In 1929, it amounted to $51,088.
In 1930, $40,962.
In 1931, $28,916.
In 1933, $42,077.
In 1932, $28,154.
In 1934, $57,697.

Now, of course, in 1934 I had more operators. But in 1929 I paid over $51,000. Now, that money has come out of my profits. I could have put it in my pocket as far as the operators are concerned. I was glad that I had it to do that. But I was not in any way forced to do it, because my piecework prices are and have been far above the average of what's been paid in this industry.

Q. (By Mr. Rucker) May I interrupt you, Mrs. Reed? I didn't get the years.

A. That was 1928 to 1934. And this didn't just begin in 1928. Our books back of 1928 are put away, and I didn't think it was necessary to get the figures, but they were comparatively along this line except that I had fewer employees.

Q. (By Mr. Ingraham) Mrs. Reed, you made the statement that you paid your employees "a little". You mean a little extra?

A. A little extra, yes.

Q. Now, Mrs. Reed, can you tell approximately what it costs the company a year to maintain year around work?

1086

A. Well, of course, I can't tell that; I couldn't now. A great part of this designing department is maintained particularly to take care of this fall business. If I didn't want that business, I wouldn't have to maintain nearly so expensive a designing department. And, of course, in a very general way it increases our overhead considerably. I have given vacations to my pieceworkers from the very beginning.

Q. (By Mr. Birkhead) With pay?

A. With pay. In every way I have had the attitude of putting my factory workers on the same basis as my office workers.

Q. Do you know if that's the general practice among manufacturers who pay on a piece basis?

[fol. 5126] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I know that it is not.

Q. It is not?

A. It is not. I don't know of any other factory that does it. They may, but I don't know of any other that does it.

Q. (By Mr. Ingraham) What about these gratuities in connection with other factories?

A. I have never heard of them doing it.

Q. (By Mr. Birkhead) Well, since the NRA regulations they are supposed to, aren't they? Pay a minimum wage?

A. They have to pay a minimum wage, yes. But I haven't limited myself just to people that were—to hold them up to the minimum wage. This $57,000 that I paid out this year has not all gone to people on a minimum wage, to make up the minimum. In fact, I think only a moderate portion of it.

1087 Q. (By Mr. Cox) Is your vacation period in that, the pay on it?

A. No.

Q. That's not in it?

A. No. Then, in addition to that I pay part of the sick benefit insurance. I pay a little more than half. We figure about what it should be; and when it's more than that, as it has been many times, my half is a bigger half than the other. We haven't increased it to the others.

Q. (By Mr. Ingraham) Can you estimate, Mrs. Reed, how much is paid for paid vacations?

A. No, I couldn't. I just really couldn't. I have never figured that out.

Q. Now, is it the policy of the company to carry the insurance of workers when they are sick?

A. Yes. And if we have a lay off, we carry our workers for a month on their insurance.

Q. (By Mr. Cox) You mean you pay it all?

A. We pay it all if a worker it off. If we have to close a section for two or three weeks or up to a month, we pay the whole insurance.

Q. (By Mr. Ingraham) Mrs. Reed, what is the minimum wage for workers at the Donnelly Garment Company?

1088 A. $15.

Q. Previous to the code?

A. It has been $15.

Q. (By Mr. Birkhead) Previous to the code?

[fol. 5127] Objection is made to all questions and answers on this page because the questions answered are immaterial.

A. Yes, for a great many years. As a matter of fact, over 10 years; with the exception of the time that I put—say, in 1931. Up to that time I have said that I ran my plant the year around. There were times of the year that I didn't employ new people and there would be fewer workers, because where you have a number of women working there's always a certain number that leave for different reasons.

But in 1931 we had a good many—when we sent our line out in November we had a very good response to it and more orders came in than we would be able to make; we knew that. Mrs. Reeves knew it; and, of course, in our particular plant everybody in the place knows whether we have lots of business or not so much.

It's sort of general information.

And this year Mrs. Wherry and Mrs. Reeves came to me along in December and said —they had started to fill up our machines, the ones that weren't entirely filled. The people had left probably a couple of months before, and we began to fill the machines, and they had so many applicants for work.

1089

And they said, "We are turning away almost hundreds of girls every day, and here we have more orders than we will be able to fill, and can't we do something about getting them made"? And all through the years there had been times in the spring that I hadn't been able to fill all my orders; but, on my proposition of running a factory the year around, I hadn't felt too badly about it.

Well, this year when Mrs. Reeves came, I said, "Well, I hated to start up another big plant"; and she, Mrs. Wherry, and Dewey said, "Well, we have a certain number of machines that we have replaced with special machines; we have accumulated quite a number of machine heads". And Mrs. Reeves had already gone out to see somebody about a building, and she said "Mr. Shukert said we can rent a building and pay for it by the month, just the months that we use it".

She knew where we could rent some machines, and maybe I would buy a few, and we would start this other plant up and use these orders. She said these girls, even if we couldn't give them more than 3 months' work they would be glad to have it because they had no work at all.

Q. (By Mr. Reed) That was during the depression?

A. That was during the depression. That was in 1931.

Well, it did seem to me a shame for us to have business that we were letting go when

people were needing work. And I told her to go ahead, and I gave her a certain amount of money to buy new machines. So we rented some machines and found a few machines in our own shop, and started up in the Shukert Building. And we had a very good spring business and we kept over a hundred, around that many, working for 6 months.

And then in the fall we had a fairly good fall business and kept the girls in our own building; they said that they would share the work. After these girls had worked several months — of course, they were glad to have that much work, but they didn't want to quit working. And that was a time when there was a great deal of talk of everybody helping out.

And so our old operators, a great many of them, that, of course, had been with me for years and years, and my first class operators, would have had plenty of work if I had just kept them. But they agreed to take time off. And we individually went to each one and said, "If you can afford it now, you stay off a week or two weeks and let us give some of these other women that haven't been working, give them a chance".

And Mrs. Reeves and Mrs. Wherry and our other instructors did that work. Now, they didn't have to do it. As far as they were concerned, it made a whole lot more work for them. But we were anxious to give everybody work we could, and so they shared the work.

[fol. 5128] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Now, the time when that was going on I didn't maintain that minimum all the time. It just would have cost me more than I could

have afforded, because you have people working a few days. But I didn't cut my rates. It was after that when it really got to a point where I was losing so much money that I felt that I had to.

1091 Q. (By Mr. Ingraham) That's when you made the cut of 10 per cent?

A. Yes.

Q. (By Mr. Reed) Which you restored when?

A. I restored that in the early spring of 1933. So that when the NRA came out I was paying my — before there was any NRA in existence, I had restored that 10 per cent cut and was working on a basis of the highest prices in the best times.

And that was the particular reason that after Mr. Johnson sent investigators out to my plant, they looked at my pay rolls, they saw my books, they went through my factory. They were there, oh, 4 or 5 days, almost a week, investigating my plant; and they reported to Mr. Johnson that I had a higher standard than the NRA required.

Now, my minimum which I had restored when I restored that ten per cent—$15 a week: we made an average, taking the amount of time that the operators worked on these silks and wools and the time they worked on the cottons, and, drawing that average, it would have amounted to $14.60 minimum.

But now I want you to understand that my piecework prices are not based on that minimum. That for 10 years or more we considered a $15 operator only a 75 per cent operator. We expected an operator that had had six months or more experience, we expected her to make $20 a week. As a matter of fact, we couldn't have maintained our set up on operators if all of our operators had

1092 only earned $15 a week.

So the minimum was $15, but we based an average operator at $20 a week; and then a great many of our girls were able to earn $25 and some of them $30 and $35 when the work came through in the best way.

We have girls out there right now who are making $35 and $40 a week and have made it right along this spring. And we have had them — Since 1919 I have had operators, based on my piecework operations, that can make from $20 to $30 and more than that, $35 a week.

Q. (By Mr. Ingraham) Mrs. Reed, you just testified that your wages were restored before the code came into effect.

A. Before we ever heard of the code.

Q. What was the amount of your minimum wage at that time?

A. Well, it was $15.

Q. $15?

A. Yes.

Q. Now you have testified that operators that just earned $15 were 75 per cent operators.

[fol. 5129] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. That's what we have always considered them in our planning of piece-work. And we took timing. We have done that with our regular piecework operators for a good many years. We don't hav a certain special operator. And we have found that, except in a rare instance, that we can make our piece rates right by our own operators, and they will be fair about it.

1093 Where we have to do certain timing—there are some operations that are so very new that every so often we have to do timing, even though we have had all these years of experience. And we have our work so well

sectionalized that no matter what you do on a dress, we practically have a sectionalized operation that takes care of that.

Q. Has it always been the practice of the company to weed out the $15 operators as much as possible?

A. Yes. We have had a standard of an operator not being our standard operator unless she could make, generally speaking, $20 a week.

Now, when we had slack times—there are certain times that we have had to weed out operators that either were not adaptable or they were not good enough in any one particular way to make them valuable, and then we would have to let them go. And, of course the way I felt about it was that if I maintained this high standard that I have set for myself that I simply had to have good workers.

Now to me a good worker is just as entitled to a benefit as one that isn't so good. As far from a humanitarian standpoint, one woman is entitled to a job as well as another. And, on the other hand, we have never been ruthless about turning individual people away that needed work and that were not entirely up to our standard. We have always kept a few women like that.

1094 But, of course, they would be some woman that did particularly nice work or that was very exceptionally agreeable and would — well, that you could never get an instructor to let her go; that would be one thing. And we would think, "Oh, well, we can carry a few along". And we have done that all through the years, even though I had this $15 minimum.

Now, I have there a woman that's been there, I suppose, 15 years who has one leg cut off, and I myself helped to figure out a machine that we could let that woman work on. We

had to put our knee lifter on the other side It was a sort of contrivance — she came in there and by some friend or some way she got to doing a little special work that played out that we had just done. I don't know what it was; maybe handling remnants or something. And then she said she could sew, that she wanted to sew; that she could sew on a home machine but, of course, that has only one treadler. Well, the woman's limb was amputated, the wrong one for our regular power machines, but we figured a way for her to do it. And she is still out there and is a good operator.

But we haven't been ruthless about just absolutely sifting out. On the other hand, if we just have a regular worker that is not
1095 particularly good in any way, and she doesn't do a great deal of work, she doesn't do very good work, she is possibly troublesome all the time, and thinking it is everybody else's fault except her own, why, naturally, those are the first people you let out. Naturally you do. We have always done it. We have to do it to maintain our business and to maintain the standard that we have set for ourselves and for our employees.

[fol. 5130] Q. (By Mr. Cox) Did you ever at any time try to arrive at an average? Take just your machine operators, take a week's pay, and divide the number of machine operators, and arrive at the average of what they earned?

Objection—immaterial.

A. I don't believe we have Mr. Cox.

Q. I have done that myself many times. It gives you a surprising figure as to what your average would be.

Objection—immaterial.

A. Yes. I don't believe we have done that.

Q. (By Mr. Ingraham) I believe you stated, Mrs. Reed, that the company maintained a training section for a number of years to train new operators?

Objection—immaterial.

A. Yes.

Q. Does it frequently happen that an operator can only do one kind of work and it is impossible to train her for any other operation?

Objection—immaterial.

A. Yes. That very often happens; that an operator just happens to be able to do some one type of work fairly well, she can't
1096 —you put her on something else and she can't do it well at all. She may have happened to have fallen into a certain kind of work that you had a great deal of at the time she started, and she has learned and can do that. And then when you don't have that work and you put her on general work, even of the same character, she just doesn't seem to be able to do it. We have always had a certain amount of that.

Q. Does it also happen that frequently an operator who has done good work will, without any knowledge on your part or cause, start doing poor work?

Objection—immaterial.

A. Well, that's happened. It happened when I was in the plant myself. Sometimes a woman has domestic difficulties, and her health may not be so good. But every so often we have that happen. A woman has done very good work, and I don't know what happens, whether she becomes dissatisfied; but very often, maybe not often but certainly all through the years that has happened, because at times when I was supervising the work myself, I could hardly believe that a girl—She had done very well, good work, and all of

a sudden anything she makes isn't made right, or she has a lot of spoiled work, or she doesn't keep up the amount that she had been doing. I can't always explain it.

1094 Q. Now Mrs. Reed have you or has any official at the Donnelly Garment Company, ever at any time discriminated against an employee on account of union affiliations or sympathies?

A. I have not.

Q. Has any official ever authorized any employee to discriminate against any other employee on account of union affiliations?

[fol. 5131] A. Certainly not. Not with my knowledge, and I am sure I would know about it.

Q. Have you employed union people at the Donnelly Garment Company?

A. All through the years I have never asked any question about whether a person belonged to a union or not. I know that there have been numbers of people there that have belonged to a union. And when I employ anybody, we don't ask any questions about any of their affiliations, and never have. We have always had some union people working there.

Q. (By Mr. Dond) Have you ever entered into any contracts with any of the unions?

A. No. Not personally I haven't.

Q. I mean with the plant. Has it ever been under contract with any of the unions?

A. No.

Q. (By Mr. Birkhead) There was something said about the cutters in your plant belonging to a union. Did they have an agreement as a union with you, or as individuals?

A. No, I have never had any agreement. But a number of the cutters belonged to the union. And I understand one of the cutters that is employed as an extra cutter is a member of a union. I don't know whether any of the others are or not. Some of them have at

different times belonged. But I have always paid my cutters from $2.50 to $10 a week more than ordinary union wages; and I didn't even know it, and somebody told me a few years ago that I was. I just paid them what I thought they were worth and what you have to pay to have a good cutter. And it is very important in my business that I should have very excellent cutters.

Q. (By Mr. Ingraham) Have you had in your employ a carpenter who has been a member of the union?

Objection—immaterial.

A. I have had a number of different carpenters that have belonged to the union; union carpenters that have worked for me off and on. At our home last year we had about 25 or 30 union carpenters and bricklayers and plasterers and plumbers and painters, etc. And this one carpenter that has worked for me a number of years at one time was president of the carpenters' union. And I have in my employ a young man whose father was president of the carpenters' union here for a number of years and used to do some work for us. He died very suddenly, and I took both of his youngsters to work for me. They were both just out of high school, and the girl worked for me until she was married. And I am still looking after that girl's interest. And the boy is one of our good cutters there. Several years ago he got an idea he wanted to go away, and he went away and I took him back. But I have had an interest in the family since the father died; and he was president of the carpenters' union. I have no prejudice against the unions as unions; never had any occasion to have.

[fol. 5132] Proceedings—Before N. R. A. Board.

ELIZABETH GATES REEVES, Called as a witness, testified as follows:

Direct Examination.

p. 202 By Mr. Rucker:

Q. Your name please?

A. Elizabeth Gates Reeves.

Q. And you live in Kansas City, do you Mrs. Reeves?

A. I live in Kansas City, Missouri.

Q. And have lived here for how many years?

A. About twenty-three.

Q. How old are you? A. Over twenty-one.

Q. You are employed by The Donnelly Garment Company, are you? A. Yes, sir.

Q. In what capacity?

A. I am production manager.

Q. How long have you occupied that position with the company? A. About eight years.

Q. And prior to that time were you associated with the Company?

A. Yes, sir, I was a clerk in the office, payroll.

Q. How long have you been connected in one capacity or another with the Donnelly Garment Company?

A. It will be fourteen years this March.

p. 203 Q. What are your duties as production manager, Mrs. Reeves?

A. Well, along with production manager I merchandise the line and I am general superintendent, I imagine, of the entire factory; I have charge of the factory, all the producing.

Q. In other words, all of the young women who have testified, and others who occupy the same relative positions down there are under your supervision and control? A. Yes.

Q. Have you any sort of an organization among the employees of the Donnelly Garment Company Mrs. Reeves?

A. What kind of an organization?

Q. I mean an employee organization of any kind?

[fol. 5133] A. We have, to my knowledge, about fourteen such organizations.

Q. Could you tell me the names of them?

A. No, I could not but we have our machines grouped in forty machines to a section and each one of those sections have a small club of their own and then we have a Nelly Don Athletic Association. That is about the only clubs we have.

Q. Now, these clubs you say which are formed among the various units or sections, I believe you referred to—

p. 204 A. Yes.

Q. They are purely social, are they?

A. Purely social.

Q. And your Athletic Organization is more or less social, isn't it?

A. Social, and then it goes in for athletics.

Q. Is that the only organization that has been founded among the employees?

A. Recently I have heard about a Loyalty League.

Q. Are you acquainted with the Loyalty League?

A. No, I am not personally.

Q. You know nothing about it?

A. I just heard about it.

Q. You publish a paper down there which is called the "N. D. A. A. News?"

A. Yes. No. The organization does not publish that. The Nelly Don Athletic Association, as I understand it, is formed from the employees of the Nelly Don Company?

A. Of employees only.

Q. Are there any fees or dues?

A. I don't know; I am just an honorary member of the Nelly Don Athletic Association.

Q. You don't know then, who provides for the publication of this paper called the Nelly Don Athletic Association News?

p. 205 A. No.

Q. Do you ever read it?

[fol. 5134] A. Yes, I do.

Q. Do you recall the issue of February 13, 1935?

A. No.

Q. Refreshing your memory, I am referring particularly to an article headed "900 joined the Loyalty League." Do you recall that now?

A. Yes, I do.

Q. Now I want to read this article to you.

Mr. Reed: Just a minute. Do you have anything to do with this at all?

The Witness: No, I don't, not in any way.

Mr. Reed: I do not think it is very material.

Mr. Rucker: Here is one of the chief executives of this company and I think I have a right to inquire of this witness about this organization, notwithstanding.

Dir. Pratt: We will hear it, subject to its being connected up in some way.

Q. I want to read you the article "The employees of the Donnelly Garment Company have in the past week formed the Nelly Don Loyalty League to refute untrue statements and propaganda circulated by the Union. February 5, on the instigation of Mrs. Gray and Mrs. Strickland"—now who are Mrs. Gray and Mrs. Strickland?

p. 206 A. Well, Mrs. Gray works in our Outlet Store and Mrs. Strickland is a pattern maker.

Q. (Continuing reading) "about forty-six employees representing as nearly as possible the entire factory, met at the home of Mrs. Gray. They decided to sound out the personnel on the forming of the League. Cards were passed out to nine hundred employees and all but eleven were signed and returned. Because of the overwhelming response a constitution was drafted and a mass meeting called for February 8th. Mrs. Gray opened the meeting with an account of what had been done and

will be done. She displayed a drawing of a tentative pin and explained the meaning of the word 'loyalty', as it pertains to the League's purpose. In separate meetings representatives had been chosen from each department to assure the future and fairness of the directorate board. These names were announced and taken down by the Secretary pro tem." Can you tell me who the secretary pro tem is? A. No, I have no idea.

Q. (reading) "Herbert Mulshe was asked to act as temporary chairman." Do you know who Herbert Mulshe is?

A. Yes, Herbert Mulshe is a cutter of ours.

Q. Is he here?

[fol. 5135] A. No.

Q. Is Mrs. Gray here?

A. No, she doesn't happen to be here.

p. 207 Q. Is Mrs. Strickland here?

A. No.

Q. (reading) "He read a pertinent editional from the February 16 issue of Liberty magazine and announced that the directorate board would act as an election board; the result of their selection would be ratified or refused by a mass meeting to be held soon. By-laws will be decided upon at this meeting. There will be no dues in the league." Now, do you know whether they followed this initial meeting with the other meetings which were spoken of in this publication?

A. I don't know really; I have no knowledge whatever about their activities.

Q. In other words, you have taken no interest in it, as one of the chief executives down there?

A. That is true.

Q. Now, do you know what they mean here by the statement that they are forming this Loyalty League to refute untrue statements and propaganda circulated by the Union?

Mr. Reed: She had nothing to do with it. You are just asking her to interpret something somebody else wrote.

Q. Are you in close contact with these people who are mentioned here, Mrs. Gray and Mrs. Strickland and Mr. Mulshe? A. No.
Q. You don't see them very often? A. No.
p. 208 Q. Are they there every day? A. Yes, sir.
Q. Are they there every day? A. Yes.
Q. Are they under you?
A. Mr. Mulshe is indirectly under me because he is a cutter. Mrs. Strickland is not and Mrs. Gray is very indirectly.
Q. Now, you did hear of the fact that there was going to be an effort made to form some sort of a league, didn't you?
[fol. 5136] A. No, I didn't.
Q. Was the first notice of it that you had when you found it in this publication?
A. No. The first notice I had of it was when I was asked—told about it and was asked if I would like to become a member.
Q. And did you decline?
A. No, I did not.
Q. Did you become a member?
A. Yes, I did.
Q. You have done nothing, you say, toward promoting the declared purposes of the League since you became a member?
A. I have done nothing about it, absolutely.
p. 209 Q. As a matter of fact you know nothing about what its purpose is?
A. No, I don't know anything about it except that I read the card that I signed.
Q. Well, do you remember what was on that card?
A. No, I don't, not exactly.
Q. So far as you know, that organization has no committee from among the employees of the Company for the purpose of seeing that code prices are fairly fixed, do you?
A. No.
Q. You have no committee on working conditions?
A. No.
Q. And so far as you know the only person who has ever made any complaint down there

about the discharge of any employee is Miss Stroup, the representative of the Union, isn't she?

A. Miss Stroup did not make any complaint about the discharge of any employee to me.

Q. To whom did she make it?

A. I don't know. Miss Stroup called me up and told me to put a certain girl on a certain kind of work.

Q. Now, do you not recall having had a conversation with Miss Stroup, which was shortly after a number of the young women joined the Union, in which this or in substance this
p. 2 conversation occurred. Didn't you say "Virginia, I understand you are a member of the Union" and did she not say "yes, I am." Didn't she tell you she was a member of the Union?

[fol. 5137] A. I don't get your question. You talk about a League and then—

Q. Just forget about that, forget about the League. I will ask you if this conversation occurred between you—

Mr. Reed: When?

A. When?

Q. Approximately about December 12, 1934?

A. A conversation did occur between Virginia Stroup, and Frances Reidel and myself and this was the conversation and how it happened to occur. Virginia Stroup and Frances Reidel went into their section one morning in December and immediately announced to their instructor "I belong to the Union now and I can do as I want to; we have our feet on the ground, you cannot lay us off."

Q. You heard that, did you?

A. I am going to tell you the whole story.

Q. I say did you hear that? Just answer my question, will you please?

A. I heard it later from Virginia, and Frances Reidel.

Q. All right, now go on ahead?

p. 211 A. Virginia Stroup and Frances Reidel immediately proceeded to take several girls out of the section and go into the wash room, wasting time when they should be at their machines, holding useless conversation. Mrs. Gonotte, their instructor immediately reported that conversation to Mrs. Wherry. Mrs. Wherry came up and reported it to me. I called Virginia Stroup and Frances Reidel up in my office and I told them that as far as I was concerned that they could belong to twenty thousand Unions but as long as they worked at the Donnelly Garment Company they had to do their work right, and they had to be efficient and they had to be courteous and they had to turn out good work; that as far as we were concerned we had never discriminated against any group of people or any person in the Donnelly Garment Company, but as far as them wasting our time we could not let them do that and that whoever told them that because they belong to a Union that they could do as they pleased certainly misinformed them and I told Virginia and Frances Reidel that it was up to them to go to work and do their work well. They announced they belonged to the Union. I didn't ask them.

Q. Have you concluded now what you wanted to say? A. Yes.

Q. Now, to refresh your recollection, when you got into the conversation which was about 9:50 in the morning, they were then in conference with Mrs. Hyde and Mrs. Gonnotte, were they not, both these girls?

p. 212 A. No.

Q. You say neither Mrs. Hyde nor Mrs. Gonotte were there?

[fol. 5138] A. I didn't say that. I said that at 9:50 in the morning that Virginia and Frances were not in conference with Mrs. Hyde and Mrs. Gonotte.

Q. Well, what time was it?

A. When I called Mrs. Gonotte up to my office, the same as I did Mrs. Hyde, but they were not in conference. They were at their machines and they were supposed to be there but they were between their machine and the wash room previous to that time. They were not on the job. That is the reason why they were called.

Q. Didn't you open the conversation by saying "Virginia, I understand you [—] a member of the Union."

A. I told Virginia that she had announced that she was a member of the Union and that her feet were on the ground, and she said "well, they are," she says "I am a member of the Union now and I know where I stand."

Q. At that time Mrs. Reidel was not in the room?

A. Yes, Miss Frances Reidel was in the room.

Q. All the time?

A. Yes. I called Virginia Stroup and Frances Reidel and Fanny Lockwood.

Q. You say you did not ask her if she belonged to the Union; you already knew she belonged?

A. I knew she belonged, she had announced it.

p. 213 Q. Then you said "Just what do you think you can do with a one horse organization."

A. I certainly did not.

Q. "I don't care if you belong to twenty-five thousand Unions, there is nobody can tell us when we lay a girl off we have to take her back. Where do you think you get authority to tell us how to run our industry." Didn't that occur?

A. I told you just a few minutes ago—

Q. Just answer my question?

A. Wait a minute.

p. 214 Q. In substance, didn't you make that statement to her?

A. No, I didn't. I never heard a conversation misrepresented as thoroughly as what you read to me.

Q. You just said a moment ago you did tell her you didn't care if she belonged to twenty-five thousand Unions?

[fol. 5139] A. I said "I don't care if you belong to twenty thousand unions, Virginia, you have got to get down here and do your work and you cannot spend your time wasting it, running back and forth to the wash room." That is what I said.

Q. Now, isn't it true that just about the time you made whatever statement you did make in that connection that Frances Reidel came in and did not you say when she entered the room "now Frances, that goes for you, too, you are a member of the Union."

A. I have already stated —

Q. Just answer the question.

A. Well, Mr. Pratt, I thought this was an informal hearing and I think that I have a right here, when people make statements like that,

p. 215 that are absolutely untrue, and they have thoroughly misrepresented and taken just exactly one phase of one thing, then I think I have a right here to explain to these gentlemen just exactly how the conversation occurred and all about it.

Dir. Pratt: There is no question about that but at the same time, if Mr. Rucker has asked you something and you say that it is not so, all you have to say is no and then go ahead with your explanation. Do you see my point? You say that did not happen. You can answer no and then go ahead with your explanation.

The Witness: All right.

Dir. Pratt: Ask that question again.

Q. Did you say to Frances Reidel, in substance; "That goes for you, too."

A. Yes, I did.

Q. "Are you a member of the Union."

A. No, I didn't ask Frances if she was a member of the Union. I already knew it. I called Frances and Virginia up together.

Q. I beg your pardon, you made the statement "you are a member of the union."

A. I did not say "you are a member of the Union." In fact Frances stood there and I don't believe she opened her mouth the entire time she was there. Virginia did the most talking and I was talking to the three girls, including Fanny Lockwood.

Q. Did you also say in this conversation "I am getting darned sick of you girls messing around and causing trouble all the time."

p. 216

A. No, I did not.

Q. Did you turn to Virginia and say "how long have you worked here" and did she reply "six years."

[fol. 5140] A. No.

Q. That didn't occur?

A. No.

Q. Did you say during that time "you have been a very punk operator, and you, too, Frances; your records are both very poor. I allowed you three and four dollars and even one time six dollars Virginia. Just how long do you think I will put up with this foolishness." Did you make that statement?

A. No.

Q. Did you say "I have allowed you, too, Frances $1.80 one time and $3.00 another time and so on. We can lay you off any time we see fit and nobody can keep us from doing so."

A. Well, as a matter of fact Frances Reidel was always considered a pretty fair operator.

Q. I ask you if you made that statement?

A. No, I did not.

Q. Nor any statement like that?

A. I don't remember making any statement like that.

Q. Did you say to Virginia "about six years ago, Virginia, we kept you here when you were not able to work."

p. 217 A. I have said that to Virginia but not at this particular time. I have said that since.

Q. That was since December?

A. Yes.

Q. Who is Grace?

A. Grace Gonotte. She is [Virginia] instructor.

Q. She was present at this conversation wasn't she?

A. Yes, sir.

Q. Did you speak up and say she had always felt sorry for Virginia?

A. No, as I remember I did most of the talking.

Q. Did you [way] "we kept her here because we were a bunch of softies. Just what is this organization of yours."

[fol. 5141] A. No, I didn't say that. It might be true, but I didn't say it.

Q. You didn't admit it?

A. No, I didn't admit it. I think we were, me, particularly.

Q. And did Virginia say "the organization of the Donnelly Garment employees, I am the chair lady?"

A. Yes, Virginia announced to me that she was now the chairman of the Nelly Don Union and I said "I never heard of it, what is it Virginia" and she said "well, you better call up the Union and find out," and I said "who put you there Virginia; how did you happen to be the chairman." She said "you better call up the Union and find out, they will tell you all about it", and I said "well, Virginia, it seems to me that if any steps like that was taken that it is up to them to notify us of your position and so forth. It is all news to us."

p. 218 I said "what are your duties Virginia." She said "I am to investigate any time that anybody is laid off." I said "By whose authority" and she said, "well, call up the Union and find out." And I said "well, Virginia, as far as I am concerned I don't recognize you as having any authority whatsoever." I said "nobody has ever notified me or told me; no

operator, no girl has even said to me that they wanted you to represent them or to the Donnelly Garment Company in any way."

Q. Now, didn't you say to her when she told you that she was the chairwoman and that she was there to find out why your laid a girl off and take her to the office —

A. I think maybe you are getting mixed up a little bit.

Q. I may be. Now, didn't you say "well, now, isn't that lovely; now let me tell you one thing, you are going down there and make your average and if you don't, out you go."

A. I don't remember saying "isn't that lovely."

Q. Do you remember saying the rest of it?

A. I told Virginia she was going downstairs and she was going to get to work and she had to make an effort to make her average and do her work right. It had come to a point where you have two girls come into a section of forty machines and announce themselves, it is a question of whether you are going to run a factory or close down the place and let them run it. It is a matter of discipline.

Q. You didn't care to have anybody there speaking for these girls, did you?

p. 219 A. That didn't enter into it at all. I would not let a girl, regardless, do a thing like that without calling her on it; regardless of who she was or what her religion or what her nationality was, whether she was Union or non Union. You have got to keep discipline in a factory if you are going to run a successful organization.

Q. I agree with you on that and I say you would not have premitted anyone of the employees to come there and take up the battle of the girls whom you discharged; you would not tolerate it?

[fol. 5142] A. Now wait a minute. It depends on how they come. It depends entirely upon the circumstances.

Q. How did you want them to come there? On their knees?

A. I don't think your question is right, myself.

Q. Now, didn't she say to you in that conversation "well, Mrs. Reeves, there is some of the work you can't make fifteen dollars a week on."

A. I don't remember her saying that.

Q. And didn't you say "oh, no, there isn't, darling; other girls can do it and you can too; you girls waste too much time of the company kidding and going to the wash room. That has got to stop. Don't let us catch you talking and you, Ella May Hyde, that is your job to see how many times these two girls go to the wash room and how long they stay. I am anxious to know what you report to the office."

p. 220

A. Well, part of that conversation occurred there and part of it occurred when Virginia was causing us some more trouble at a later date and I told Mrs. Hyde at that particular time that we absolutely had to put a stop to these girls running back and forth and taking the other operator's time, conversing in the wash room, during the Donnelly Garment Company's time, when they should be at the machines, and I told Ella May Hyde to keep a check on it. It is a matter of discipline.

Q. Didn't you, in that same conversation say to Virginia "by the way, what is your office" and did she not reply to you "I am to find out why you lay a girl off and take it to the office."

A. I didn't have to ask her —

Q. I didn't ask you whether you had to.

A. She announced to me what her position was and that is what she said.

Q. And told you she was to find out why you laid a girl off?

A. Yes, sir.

Q. Didn't you say in reply to that statement by her "I don't see that that is any of your business. Mrs. Hyde, don't you put out any information about why we lay a girl off."

A. I certainly did. I didn't say to Virginia that it was none of her business; I asked her just by what authority that we should tell her and then I told her that as far as I was concerned I did not intend to give her any information
p. 221 and I authorized Mrs. Hyde not to give her any of the information. I didn't say what you said.

Q. Didn't you say to Virginia "you are just fixing to throw a thousand girls out of work and I certainly would not want that on my soul. I think you girls are just a couple of girls misled; I ought to turn you over my lap and give you a spanking."

A. I didn't say that.

Q. You didn't say that?

[fol. 5143] A. I couldn't.

Q. It wasn't a question of whether you could or not. Did you tell her that is what you thought you ought to do?

A. No, I did not.

Q. Now, at that point, did you not say "Virginia, just what is your organization for" and did she not say "well, Mrs. Reeves, you call the office, they will tell you everything I have left out."

A. That took place.

Q. That took place?

A. Yes.

Q. Did you not then ask her "is Ollie Thompson a member of your organization?"

A. No, I didn't.

Q. And didn't she say "I don't know?"

A. No, I didn't because I had already received a letter from Mr. Pratt on December 7th stating that Ollie Thompson was a member of the union.

p. 222 Q. Was this before — did this conversation occur before the 12th of December; didn't you have a conversation at one time with Virginia in which you asked her whether Ollie Thompson was a member or not?

A. No, I did not.

Q. Now, did you not say this "I don't care how many Unions you belong to, belong to all of them if you think they will do you any good; go tell Sol Goldberg he will do better if he keeps his business right down there at his own place."

A. No, I didn't; I don't know who Sol Goldberg is.

Q. You don't know Sol Goldberg?

A. Never heard of Sol Goldberg.

Q. You had a stenographic report of the meeting that had been held at the Eagles Hall of the various Union organizations in Kansas City, did you not?

A. I did not.

Q. You never [say] that report?

A. I certainly did not.

Q. You knew one was made didn't you?

[fol. 5144] A. No, except that at that meeting it was announced that somebody was making a stenographic report; I believe that Mr. Dubinsky mentioned the fact.

Mr. Reed: That was a public meeting.

A. That was a public meeting, mass meeting.

Q. You went to the meeting?

A. Yes, I did.

p. 223 Q. Did you go for the purpose of possibly joining the Union?

A. No, I didn't. I went to see what it was all about.

Q. And you didn't like it?

A. I enjoyed several of the speeches very much.

Q. Did you like the main purposes that were expressed there?

Mr. Reed: I think that is probably incompetent in this case.

Q. Did you report back to your superior about the meeting?

A. No, I didn't.

Q. Made no report?

A. I did not.

Q. Are you in the habit of going to these mass meetings held by the various Union organizations?

A. Oh, I have been invited to several.

Q. Had you ever gone before?

A. I have been to functions that the Carpenter's Union have given.

Q. I mean meetings of a type similar to this?

A. I had never been to a mass meeting before.

Q. That was the first you had attended?

A. Yes.

Q. Have you attended any since?

[fol. 5145] A. No.

Q. Did you not say to Virginia in this conversation "what do you think you could do about anything with your petty position."

A. No, I didn't.

p. 224 Q. Was your purpose in calling these two young women in your office to complain to them about their conducts, which had been reported to you?

A. Well, I was really reprimanding them for the way in which they were acting, which I would do any employee of the Donnelly Garment Company.

Q. You don't tolerate insubordination from any of your employees do you?

A. We do and we don't.

Q. Now, was it true that Virginia Stroup, was a splendid operator or just an ordinary operator?

A. Well, Virginia was a fair operator; she is not a particularly good operator.

p. 225 Q. How about Frances Reidel?

A. Frances Reidel we always considered a very good little operator.

Q. Very good?

A. Yes.

Q. Is she still working for you?

A. Yes, sir.

Q. How about Thelma Owen?

A. Thelma Owen is a fast operator, and could turn out good work if she wanted to, and there

are several periods when an instructor would stand over Thelma and make her do good work and she would do it but every chance Thelma got she would put out bad work.

Q. Over what period of time had that situation existed with reference to Thelma Owen? Ever since she worked for you?

A. Ever since she worked for us.

Q. And you kept her how long?

[fol. 5146] A. Thelma Owen was let go — just a minute, I will have to check up on my records. Thelma Owen was first employed at the Donnelly Garment Company August 3rd, 1925. She was let go on December 3rd, 1929 on account of irregular attendance and on account of neglecting her work, and Thelma Owen came back and asked me personally for a job January 2nd, 1930, and she was let go in November, 1930 because she repeated her past offenses. Thelma came back on March 7th, 1932 and asked me personally for a job. The instructors of the Donnelly Garment Company

p. 226 were thoroughly fed up on Thelma and her work and the things she did while she was at her machine, her conversation and so forth. I personally felt sorry for Thelma. She told me that she needed the work and I have always tried my best to be sympathetic and understanding to our girls, and I knew that Thelma could do good work if she only would, and I always felt that it is a pity, when a girl was capable of doing as good work, that she just won't get in and do her part, so I personally put Thelma on to work over at our branch factory, away from the main building because there was nobody at the main building at that time who would have Thelma Owen in their section, and at that time that we reemployed Thelma Owen I talked to her seriously and I told her "Thelma, do try now, this time, to get along and make good" and she promised me that she would and she did work very well for a period of time and did turn out good

work and then she got into her sloppy ways again and we had trouble with Thelma again and just a month previous to Thelma being laid off she was in Mrs. White's section, and Thelma wouldn't do her work well and she wasted time, she wouldn't get in and do what she should do and she had more break downs on her machine than any body, and furthermore, you folks know that in running a car, that a poor driver can wreck many a good car. Well, an operator who is not careful of their car can certainly have a lot machine trouble and Thelma had a lot of machine trouble because she was wrecking her machine, and Mrs. Wherry and Mrs. Atchison,
p. 227 after talking to Mrs. White, came up my office and they suggested that we lay off Thelma because she was not turning out any kind of work and she was wasting time and a very inefficient employee.

Q. When was that?

A. That was in May, 1934, and I guess I got soft hearted again and I said "well, let us give her one more chance, we are starting this new section up on the 9th floor and let us see if Thelma can't make good under an entirely new instructor" so I called Thelma up to the office to talk to her and I said "now, we are giving you one more chance, won't you get in there and make good" and Thelma said to me "well, Mrs. Reeves, I don't want to go up to Mrs. Neimeyor's section because I might be laid off if they close down that section" and I said to her "well, Thelma, if you get in there and do your work right and are careful, why there is no reason on earth why we would even want to lay you off" so Thelma was given that one last chance and when she went upstairs to Mrs. Neimeyor's section she didn't do her work right; the inspectors complained that when they took her work back to Thelma she was very rough in her language to them; the mechanic complained and Mrs. Neimeyor

complained and said she would not have her in her section and Mrs. Tyhurst who is in charge of the quality of our work said she absolutely would not be responsible any more if we continued to keep Thelma Owen in our employ. Thelma can make good if she wants to but she didn't want to and she was given four chances to make good at the Donnelly
p. 228 Garment Company and I think four chances is being quite lenient with anyone person.

Q. You have her payroll card there, haven't you?

A. Yes, sir.

Q. Can you tell me Mrs. Reeves, which of these columns represent the money she drew in 1934?

[fol. 5147] A. This last column.

Q. That is the last column on the right side of the card?

A. The last one.

Q. Do I understand that is for the month of June here?

A. Yes.

Q. And on the reverse side, that is the last week of June?

A. Yes; she got the last week vacation. She was laid off July 11th, 1934.

Q. That was following a two weeks vacation?

A. Yes.

Q. Did she get that vacation with pay?

A. She got one week with pay.

Q. What are the requirements for one week's vacation with pay?

A. That they cannot be absent over eleven days during the year except when we have no work and that is not their fault.

Q. All right. This card shows she received on the week off June 22nd, $19.97, is that correct?

A. Yes, sir.

Q. And on the previous week $18.14?

A. Yes.

p. 229 Q. And on the previous week $20.85; on the previous week $15.75; on the previous week $17.49; the previous week $20.77; the previous week $18.66; the previous week $17.30.

A. I am sure our records are right.

Q. Now that is the last eight weeks beginning with the week of May 4th, as I understand it, and on the last week she worked she received $16.80?

A. Which was her average for the year.

Mr. Reed: Is that her vacation week?

A. Yes, that is her vacation week, that was gratis.

Dir. Pratt: Let me just interrupt there. The pay that you give them for one week is their average for the entire year?

A. Yes.

[fol. 5148] Dir. Pratt: And $16.80 was her average for the entire year?

A. That was her average during the entire year.

Q. Now, the amount that she was required to earn under your code and under your plan, as I understand it, was $15.00 a week?

A. Well, $15.00 was our minimum; that would be our poorest operator.

Q. But as a matter of fact, her earnings for the entire year was $16.80 and that included the times she was absent, didn't it?

A. Yes, but you didn't include there the amounts that we had to allow —

p. 230 Mr. Reed: You mean that that was her average when she was there?

The Witness: When she was there.

Mr. Rucker: Well, I don't know whether it was or not. That is what I am trying to find out.

A. That was her average when she was there.

Q. I am not acquainted with the plan. Does that mean the average during the year she actually worked?

A. Yes.

Q. Or is that the average including the days she was not on the job?

A. We take their hourly rate when they are there. You could not strike an average if they were not there.

Q. I notice here one of the columns is headed "Expense". What does that mean?

p. 231 A. That means repair work and waiting for a machine to be fixed, allowances, things like that.

Q. I don't care to go back any further than April but here is April 13. As I understand that is April 13, 1934, is that correct?

A. Yes, sir.

Q. That starts out there with [eight] three cents under the heading of "Expense". Can you tell me what that eighty three cents was for?

A. I think that must be about two hours time on machine repair.

Q. Now, I note that she earned that week $19.10?

A. Yes, because we paid her while she was waiting for her machine to be fixed.

Q. So you had to pay her eighty three cents?

[fol. 5149] A. Yes, and in addition to that we gave her $2.10 while she was just sitting there waiting.

Q. Just sitting there waiting, that is for her machine, I assume?

A. Yes.

Q. Now then there is an item of ninety-seven cents the next week?

A. I imagine that is machine trouble, too.

p. 232 Q. And the next week thirty-eight cents?

A. Yes.

Q. That is right, is it?

A. Yes.

Mr. Reed: Was that machine trouble too, in your opinion?

A. It is my opinion, yes, that that is machine trouble.

Q. Now there are no items then under the heading of expense shown on this card for the week of —

A. No, but there is quite —

Q. I will get to that. Let us get it one at a time. Is that May 11th?

A. That is May 11th.

Q. Then there are no items shown under the heading of expense after the week of May 11th?

A. That might be; that expense either might be machine time or repair; most likely it was repair.

Q. I just want to get a picture of the card. There are no figures under the heading of expense after that time, are there, on this card?

A. No.

Q. Now, we come over here to another heading "Idle Time."

A. Yes.

Q. Now, I note that there are four entries under that heading, one the week of the 18th of May seventy-five cents, another the week of May 25th fifty-six cents, another June 8th, sixty-

p. 233 nine cents, and another June 22nd nine cents. Now, what other time did this girl lose during that period except the time that is mentioned there on that card?

[fol. 5150] A. I don't understand your question.

Q. Well, I don't think I could make it any plainer.

A. Well, I am sorry I don't understand.

Dir. Pratt: What does idle time refer to?

A. When a person is waiting for a machine or waiting for a mechanic, and suspend activity, repair work where they have to do their own repair work.

Dir. Pratt: But I think the explanation we want to get at is, the testimony has been that she had a lot of machine trouble?

A. Yes, she had.

Dir. Pratt: Now, is there one item or two items for machine trouble? In other words, does idle time come from machine trouble or when they are waiting for —

A. (interrupting) Idle time is coming from machine trouble and the repair work is from expense. You see, what we do, in our cost system, we analyze those things pretty closely and sometimes we keep them under the two headings. Sometimes when a mechanic is having trouble with a machine we put that under idle time and sometimes when the girl has really caused the trouble herself we put that under expense so that when we analyze our
p. 234 card we make that differential ourselves so that when we are judging the type of operators we know.

Q. (By Mr. Rucker) Now, have you an operator out there by the name of Magdalene Hammers?

A. Yes.

Q. Will you give me her card please?

A. I don't happen to have her card here.

Q. Will you produce it for me, please?

A. Yes.

Q. Have you a girl there by the name of May Innis?

A. Yes.

Q. Do you have her card?

A. No, I do not.

Q. Do you mean you have only brought the cards of these girls that are here?

A. Well, the cards that are listed. I could not bring six hundred cards down here.

Q. I would like now to have the cards of Magdalene Hammers, and May Innis?

[fol. 5151] A. May Innis is not in our employ any more.

Q. Clare Enlow, Loretta Sisston, Ollie Thompson, Nora McKee, Kathleen Jenkins, Naomia McQuiston?

A. Now, as far as Nora McKee is concerned, she is an examiner. She is on a flat rate of eighteen dollars a week.

Q. Has she never been a sewing girl?

A. No, she has never sewed.

Q. Never ran a machine?

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A. Not that I know of.
Q. She did not make dresses?
A. No, she is an examiner.
Q. All right, if she didn't make dresses you need not bring her card. How about these other girls?
A. They are all operators.
Q. Will you give me the card please of Ellen Fry?
A. Mr. Rucker, I just want to say one thing. You are emphasizing this machine trouble just an awful lot.
Q. Mrs. Reeves, I don't want to argue with you about this. This is not the proper time to argue the case. Just answer the question. Senator is well able to argue the case.

Dir. Pratt: We will hear her explanation.

Q. If you want to make an explanation go ahead.
A. You are passing over it very lightly and I do not want these gentlemen to forget that I have testified that Thelma Owen was a fast operator but on the other hand she had more trouble with her work than any ordinary operator. Now the thing is this, that she would turn out bundles at a time but you can sew a lot of bundles, a lot easier and faster than you can spend your time repairing those bundles after they are sent to the examiners and have to be sent back for repair, and Thelma did not do her work right. She would stretch the seams and she would roll her binding in and absolutely spoil the entire fit of a garment. Now, in manufacturing Nelly Don products we have always been careful of our reputation as good manufacturers and that

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is why we have had to hire girls who were careful of the quality of our work.

Dir. Pratt: Let me ask you, Mrs. Reeves, along that line. When Thelma Owen turned out a batch of bad garments, the seams stretched and bindings rolled under, and they

were turned down by the inspector, then what did you do? Did you send them back to Thelma Owen?

[fol. 5152] A. But we had to pay Thelma for the time that she was repairing them.

Q. (By Director Pratt) You paid her for the time that she repaired them?

A. Repaired them.

Q. Do you mean at a flat hourly rate?

A. Absolutely; that is according to the N.R.A. Code.

Q. And there was no penalty whatever except the difference between her piece work rate and the hourly rate?

A. Yes.

Q. If she made poor garments, is that correct?

A. Well — you cannot have a girl come in and time in for her work and have her sit there at a machine without paying her time. Now, if Thelma Owen had timed in in the morning and she was with the Donnelly Garment Company four hours, we certainly would have to pay her for that four hours time under the N.R.A.

Q. What I am getting at is this, take for example if she spent four hours repairing some work

p. 237 that she had done the day before, we will say, you would pay her for time work, that is whatever it was on an hourly basis for the repairs that she made, because of her poor operations the day before?

A. We would have to if she did not make the code.

Mr. Rucker: That's it.

Mr. Cox: If she made the code do you pay for that repair?

A. We allow a little time.

Mr. Cox: Has that always been customary?

A. Yes, it has always been customary except in one instance, I remember now that several

years ago when Thelma was in our employ, she did the same thing. That was before the N.R.A. and as I remember Thelma turned out about six bundles of work which was very bad and we made her repair them on her own time as a matter of discipline.

Mr. Cox: Isn't it unusual to pay for that repair work?

A. Well, the girls fall down if you don't. You have to pay for it in one way or the other.

Mr. Cox: But if they go over the code isn't that unusual?

[fol. 5153] A. The thing is, that if they turn out the work at the end of the payroll week and then on the following week if they have to do their repair work it almost works out like you have to pay them the entire time.

Q. (By Director Pratt) Is there any sum on Thelma Owen's card there which represents time work paid for repair work?

p. 238 A. Yes, I am sure that there are.

Q. Let me look at the card again?

A. That all represents expense. This here looks like an hour's time.

Q. She made $18.66 that week; that was over the code, wasn't it? Would you pay that whether she went over the code or not?

A. I don't know. We take things into consideration.

Mr. Rucker: Did she say they paid that if she went over the code?

Dir. Pratt: No, she hasn't said that.

A. We do sometimes. You see the point is here, that you take these girls, they are working on crews, you have a certain crew and Thelma was an under arm seamer. Well, she sent her work to the examiners. Sometimes two or three days will elapse before that work gets back and then sometimes Thelma gets one

garment out of a bundle and it stays at her machine a day or so, so there is a lapse of time there that it over reaches one week to another.

Q. Take this week ending April 20th, an item of 33¢ under expense. For money that week she made $15.30, that was over the code? I am assuming the code amount would be $14.83. Now can you tell from this card, there are not all the records on this card of course, but can you tell from this card whether that was —

p. 239 A. (interrupting) No, I cannot but I will say this, that the Donnelly Garment Company always had a policy of trying to maintain their operators on a certain earning capacity. If you asked me just roughly what price operator Thelma Owen was I would say Thelma is about an $18.00 operator. I refreshed my memory and found out she was not quite as good as I thought she was.

Mr. Birkhead: What would you call a good operator?

A. A really good operator make around $25.00; I would say from twenty to twenty-five dollars on under arm seam binding, that is a standard operation. You never change your work on that. That is just one operation constantly, under arm seams, and every garment that we make has under arm seams.

Q. (By Director Pratt) When a girl, an operator down there turns out bad work, which necessitates going back for repair because she did not do it properly in the first place, no particular penalty attaches to that; if it gets too bad you let them go but aside from that there is no particular penalty, is that it?

[fol. 5154] A. Well, I think you have expressed it.

Mr. Cox: Is that customary in all garment factories:

A. No, it is not. These paid vacations is not a customary thing of manufacturing concerns. I believe we are the only people that do that but this extra allowance, when girls start on a new operation, is not customary. We give that to our girls in order to help them along and encourage them, and there are a great many girls, when you give them a new bundle, and I have even had complaints that when you change the color of the same identical dress they have difficulty with it. Well, in order to not have a girl be very unhappy about it, and say "oh, I am not going to make anything on this," we just say "well, you get in there and do your best and we will give you an allowance on it." Those things the regular factories doesn't do but we have always done it. Just like before we ever heard of the code, we always went through the payroll cards and analyzed them every week. I know when I started with the Donnelly Garment Company and I was on the payroll, that one of the first things that we had to do before we made up the payroll, if a girl fell down too much we would go into the reasons and the cause and the why and make it up to them.

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Mr. Cox: Are you still working on the forty hour code?

A. No, we are working under the thirty-six hours now.

Mr. Cox: You know it didn't go into effect until December 26th.

A. Well, I am not sure then.

Mr. Cox: It was tied up by the injunction, you know?

Mr. Reed: We didn't have any injunction, so the record will be clear on that.

Mr. Cox: It was not in the dress business, it was in the cotton garment.

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Mr. Reed: This code had no injunction.

Mr. Cox: No, but the injunction was filed and you could take advantage of that up until December 26th.

Mr. Reed: Could have, but did not.

A. Then another thing, as far as Thelma Owen was concerned, is as long as we are still on Thelma Owen, besides poor quality of the work and having to keep after her constantly was that we had complaints constantly about her conversation and her rough talking at the machine with the mechanics and disturbing the other employees and as I have stated previously it was through my own personal influence, really over riding the judgment of other people in our organization that I was personally responsible for bringing Thelma back as many times as we did because I wanted to give her another chance and I thought when she did she would be able to make it.

[fol. 5155] Q. (By Director Pratt): One more question. The last four weeks as to this Thelma Owen, according to the card these things did not occur, I mean there was no machine trouble and no time out, according to this card?

A. Well, Mr. Pratt, they did occur, and furthermore that is the only reason why we laid Thelma off. Her instructor complained constantly and even then when Thelma wanted to come back I personally took it up with our instructors and I asked each one of them if they would not give her another chance and they just absolutely refused.

Q. All I was saying is that this card does not indicate the repair work during the last four

p. 242 weeks?

Mr. Reed: I think it does.

A. Yes, it does. No. Look at this machine time that she had out, it is a question of all these things.

Q. (By Director Pratt) But is there any repair work?

A. Not in that particular case.

Q. In the last month it was machine trouble?

A. Well, we evidently didn't allow her then from May on; that was when I had that talk with her and I told Thelma that she just had to get in and do better work.

Q. And you were not going to make the allowance to her if she didn't, is that the idea?

A. I imagine that is what happened there. She did have a lot of break downs in Mrs. Neimeyor's section. She testified here Wednesday that she had this machine trouble.

Q. (By Mr. Rucker) Now, as a matter of fact, don't you recall that she had some words with her instructor because her machine, with which she had been working, was taken away from her and given to a woman by the name of Jennie Brown?

A. I don't recall anything about that but I do recall that Thelma Owen was constantly having words with every instructor she ever had.

Q. And that was true the entire time she worked there?

A. Yes, that is just why they didn't want her back.

p. 243 Q. Do I understand you to say that if a girl makes over the code that she is not charged with the time that she puts in on repairs?

A. I thought that I made it clear to all you gentlemen that we try —

Q. Please answer my question.

[fol. 5156] Mr. Reed: Let her answer.

A. We treat each problem as an individual problem and we analyze our operators and their problem. You take for instance if a girl sometimes would make a lot of garments that were

wrong and she was conscientious about doing it and so forth, instead of not letting her fall down constantly we would give her so much gratis time but if a girl makes a habit of constantly having repair work and didn't care, we would possibly make her pay for it herself.

Q. That was true of Thelma Owen you say, she constantly had repair work?

A. Yes, she did.

Q. Then under the rule you just announced, Thelma Owen was charged with the time she put in on repairs, wasn't she?

A. Well, I will not say that she was the entire time. It looks from analyzing this card that we were working with Thelma Owen very conscientiously and worked with her on her repairs until she was transferred to another section and she had this conversation with me and I told her it was up to her to get up there and make good, and from analyzing this card and knowing what I do of the situation, instead of having repairs, then she had machine break downs. She was constantly complaining about her machine break downs. That was not new at all. When she went up to Mrs. Neimeyor's section she had the same experience as when she was under Mrs. White.

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Q. I want you to answer this question. Is it the policy of your company where an operator runs over the code for a week's work, to charge the girl with the time she puts in on repairs?

A. I answered that.

Q. Well, please answer it, I didn't get the answer.

A. I said I treated each case —

Mr. Reed: Does the girl pay?

Mr. Rueker: No, she doesn't pay anything but the time is charged against her that she puts in on repairs, without pay.

Mr. Birkhead: You mean the time is taken out?

Q. (By Mr. Rucker) Is that the policy of your company?

A. I said it depended.

Q. What is your general policy?

A. We haven't any definite policy. Now that answers your question, doesn't it?

Q. No, it does not to my satisfaction.

[fol. 5157] A. We haven't any definite policy I say.

p. 245 Q. What is your usual plan?

Mr. Reed: Let her answer.

A. I said that we took each case and we analyze it very carefully.

Q. I understood you to say that.

A. All right.

Q. But have you no plan at all with reference to whether or not the time put in by operators, who have gone over the code, upon making repairs is charged against them?

A. Mr. Rucker, if I may explain our policy at the Donnelly Garment Company, maybe that will answer the question for you.

Every week when we analyze our payroll cards there are three people that go over that payroll card, the instructor, Mrs. Wherry, who has charge of the factory and Mr. Atchison, my assistant.

Now we analyze each one of those cards very carefully and consider what the operator has done during the entire week, what handicap she might have been under and we do quite a lot of things gratis, and then also we take into consideration if it is hard for them to handle new work and if it is, sometimes we give them an extra allowance, just to get started and then also we take into consideration that maybe a girl has had repair work and we don't want her to fall down too low because she is an $18.00 operator and we will give her money gratis.

Also a lot of times we just sort of figure, well she did have repair work but she will do better
p. 246 after this and we try to talk to our girls and inspire them to do better.

We have no set policy on that particular question. It is a matter of judgment and we use the very best judgment that we have and it takes three people's judgment.

Q. Now, do you make extra allowances to your operators who exceed the code?

A. Sometimes we do, absolutely.

Q. How often?

A. Well, I would say that on quite a number of occasions we do. We have one group of people that we call a flying squad, and we make them an allowance of so much an hour in addition to everything they earn.

Q. How many people in that squad?

A. Well, during busy seasons we have ten to twelve people.

Q. And how many people have you on your payroll down there, how many operators?

A. I would say that around January 1st we had about six hundred.

Q. How many have you now?

[fol. 5158] A. I don't know. I would have to check it up, that changes constantly.

Q. Approximately how many had you on the first day of November, 1934?

A. I don't know.

Q. Have you any records with you which will disclose that information?

A. Yes, we have records.

p. 247 Q. Will you be kind enough, when you come back after the noon recess, to bring me the number of operators you had on the 15th day of January, 1934, and each succeeding month thereafter on the 15th day of the month, up until now?

A. It would be impossible to get that record because we would have to go back and copy it. We do not have an active record on how many

we have. It would take a couple of days to get that information.

Q. You have no record at all which shows the number of employees that you have in the factory each day?

A. We can get it, we have to compile that information.

p. 265 Q. Now, Mrs. Reeves, I am just going to ask you a question about each one of these girls. I believe Glynn Brooks was discharged on account of inefficiency, that is the only reason, an inefficient and poor worker?

Mr. Reed: Was she discharged singly or did she go out with the rest of them?

A. No, she was laid off with one hundred and sixty-five other people and there were a lot of reasons besides that, that I could go into detail. Glynn Brooks is very irritable and she could not change from one operation to the other. Now, I want to tell you one of the policies [of the policies] of the Donnelly Garment Company and what we consider a first class operator.

p. 266 Q. Ellen Fry, was she discharged for the same reason?

Q. Was she let off for the same reason?

Q. (By Mr. Rucker) Then why was Ellen Fry not recalled?

A. Well, on analyzing our records and going through I have been able to find other people who we figured filled our requirements better than Ellen Fry.

p. 267 Ellen Fry was employed steadily from June 22nd, 1932 until July 13th, 1934.

Q. That is two years?

[fol. 5159] A. And the reason why Ellen Fry was kept those two years was due to the fact that during the depression we tried to carry out the idea of sharing work because we knew that it was hard to get a job any place else in

Kansas City that could give them year round employment. We talked to the operators about it and put it up to them and they were very enthusiastic about sharing the work plan which had been talked about a lot in the newspapers and I think originated from President Roosevelt, and so it came to the point of whether we were going to lay these people off or not and our operators wanted to take off a few days on their own time in order to give other people work and we allowed them to do that and we were very proud that they were willing to do that.

p. 280 Q. Now Mamie Tubbesing was let out. She was not let out at the July cut down?

A. At the time that Mamie Tubbesing came up and talked to me and asked me if we were going to call her back I said I didn't know and I didn't call anybody back unless I checked their record and I checked Miss Tubbesing's record and she told me that her instructor said she was satisfactory. I checked it up with her instructor and I checked it up with Mrs. Wherry and I checked it up with

p. 281 Mr. Atchison because that was the committee that decided, taking everything into consideration, which of these girls we would lay off. I offered Mamie Tubbesing some time work and she flatly refused to have time work. Miss Tubbesing came to my office with the express purpose of getting me told, telling me what she thought of me and what she thought of the Donnelly Garment Company and everybody in the Donelly Garment Company.

She certainly was. I never saw anybody that was madder or more incoherent. She was almost ready to burst into tears and I said "well, Mamie, if you think so bad of the Donnelly Garment Company and we are so terrible, why do you want to come back here and work." And she said "I don't want to come back here to work; I am just asking

whether you intend to call me back Mrs. Reeves" and she said "why, was I laid off", and I said "well, Mamie, you know that, it was your attitude," and she said "what attitude" and I went on to explain to Mamie that it was her indifference" and Mamie Tubbesing was taken off of the floor because several of the girls went to Mrs. Wherry and complained. If you are interested to know the name of the girl at the head of that group of girls I will be very happy to tell you.

p. 282 Katherine Chandler went to Mrs. Wherry and asked if Mamie could be taken off the floor because she was absolutely indifferent; she kept the girls waiting for thread and binding. Mamie was taken off the floor about July 20th, and due to Mamie's long service we kept her on the machine and we tried to do everything we could to help Mamie and when Mamie came back, when she got through telling me what she thought of me, I said "well, Mamie, how would you like to have some time work" and Mamie said she did not want time work. By time work I thought we might have some kind of work in either the dividing department or the renmant department or the turning of belts or something like that that Mamie was capable of making good at and she flatly refused me.

Q. Did I ask you about Tillie Shirley?

A. No.

Q. She was also let out in October?

p. 283 A. Yes.

Q. For [inefficency]?

[for. 5160] A. Yes, selected as one of our poorer operators. We do not go right out and pick these girls out; we had a problem on our hands. We did not have the work and we had to make a selection of one hundred and sixty-five people at one time and one hundred and forty-six at another time.

p. 284 Q. Why was Pauline Lutz let out?

A. Well, it has been the policy of the Donnelly Garment Company all during the years to weed out operators for their inefficiency. We cannot keep operators constantly who are inefficient and cannot make their average.

p. 285 Q. Now, Virginia Stroup did call upon you to take up the question of Pauline Lutz's discharge, didn't she?

Q. And did she not tell you that Pauline was one of the Union girls?

A. She did.

Q. And did you not say "as far as I am concerned we don't recognize you or your organization."?

A. I said "as far as I am concerned, Virginia I don't know why you should be speaking for Pauline. Pauline has never told me that she wanted you as a representative, or anybody else."

p. 296 Q. (By Mr. Rucker) You knew on February 13th, 1935 that certain of your employees were Union members, did you not?

A. Yes, sir.

Q. Then you told the boys that you had reemployed eight of the persons who signed the complaint at the time the complaint was filed?

A. Before the complaint was filed.

p. 298 I want to say, as far as Union employees of the Donnelly Garment Company, ever since I have been at the Donnelly Garment Company we have never asked anybody about whether they were Union or whether they were not Union and as far as any outside work was concerned we have always hired Union carpenters and Union electricians and people like that, so we have never discriminated in any way against anybody and have never been interested in their affiliations.

[fol. 5161] N. R. A. testimony:

p. 611 Mrs. Elizabeth Gates Reeves recalled as a witness, having been previously sworn, testified as follows:

Direct Examination.

Q. (By Mr Ingraham) Mrs. Reeves, are you acquainted with Thelma Owen?

A. Yes.

Q. Will you just tell the Board the kind of work that Thelma Owen did?

p. 612 A. Well, Thelma Owen was a fast operator and was capable of doing good work if she wanted to, but Thelma's instructors had to stand over her constantly and force her to do good work. And I have personally seen quite a few of her bundles that have been taken up to me for examination because her work was so poor. And I can speak very definitely that Thelma does very bad work, and I am personally responsible for having kept Thelma with the company as long as possible and bringing her back several times after we had laid her off.

Q. Now, she testified that when she was transferred to the ninth floor on May 3, 1934, that

p. 613 you asked if she belonged to the union. Is that true?

A. No, that is not true.

Q. When was the first that you learned of her union affiliations?

A. December 7, I believe, when we received Mr. Pratt's letter.

Q. After her lay-off did Thelma Owen and Blynn Brooks call at your office?

A. Yes.

Q. Did you ask her why she had called you from "old Perlstein's" office?

A. I asked Thelma if she had called me from Mr. Perlstein's office, and she said "No", she had not.

Q. Well, [retlate] just what took place at that time.

A. Well, Thelma came back and wanted to work. And about a month before, when we had transferred Thelma up to the ninth floor to give her one more chance, I had talked to her and told her to try to do better. And I per-

sonally knew that no instructor would have her back in their section. And I don't quite remember all the conversation now about Thelma.

Q. Well, did you ask her at that time of she belonged to the union?

A. No, I did not.

Q. Did you promise to put her back to work?

A. No, I did not.

Q. Now, what type of operator is Lillian Rutherford?

[fol. 5162] p. 614 A. Lillian Rutherford is a very poor operator, mediocre operator. She could do just the simplest work; straight sewing, I believe. Her instructor had to pick out the simplest kind of work for Lillian Rutherford to do. I believe that Lillian Rutherford made the statement that she had worked on samples.

p. 615 Q. She also states, "Very few repairs ever came back to me." Is that true?

A. That is not true.

Q. Could Lillian Rutherford make the code?

A. If an instructor picked out the very easiest work and had plenty of the very simplest operation and constantly kept enough work at her machine, it was possible for her to make the code at times. I wouldn't say it was possible for her to make the code over any period of time whatsoever.

Q. Now, in regard to Glynn Brooks, what type of operator was she?

A. Well, when Glynn Brooks first worked for the Donnelly Garment Company, she came into the employ of the Donnelly Garment Company through the efforts of her sister, Gladys Hosey. We thought a lot of Mrs. Hosey, and we still do, and we gave Glynn an opportunity and a chance. In fact, we taught her all she knows about sewing. Glynn made very, very good up until the time that it seemed like she was having some family difficulties, and she had a nervous breakdown and she quit. And

then during that period that she was off it seems like her husband died. And when Glynn came back to the employ of the Donnelly Garment Company she was a different person entirely, and she wasn't capable of doing the kind of work that she had done previously. And instead of having the inclination to get in and try, she became disagreeable and irritable, and it was almost impossible to
p. 616 make her understand, when she did do repair work, have repair work, how to fix it. She couldn't do anything but binding.

Q. Now, she came back March 20, 1933?
A. Yes.
Q. Now, since that time—
A. Pardon me. May I add that the reason why we took her back at that time, because she really hadn't made good, but we made allowances for that due to the fact that we knew she was under a nervous strain and we knew her home conditions; and one of the reasons we hired her back was due to the fact that Mrs. Hosey asked us if we just wouldn't have her back and the next time we had an opening wouldn't we give Glynn Brooks another chance and opportunity. It was due to her sister's insistency in bringing her to our mind all the time that we hired Glynn Brooks back again; not from her past record.
Q. Is her sister still in your employ?
A. Still in our employ.
Q. Was she able to make the code after she was returned? Mrs. Brooks?
[fol. 5163] A. According to our records, we had to make up to her nine times out of the last nine weeks she worked.
Q. Was she a slow operator?
A. Yes, Glynn was a slow operator.
Q. Did she admit to you at one time that she was?
p. 617 A. When she and Thelma came up, why, she admitted that she was a slow operator.

Q. Did you promise to call her back to work?
A. I said that I would look around and do everything I could to try to find something else for Glynn to do, which I did. And we didn't seem to get any busier then, and up to date I haven't been able to find anything that I think Blynn could do successfully. I had in mind at that particular time she might be able to turn belts, but we have been using a lot of ribbon belts and we haven't had as many belts to turn as we have had previously.
Q. When was the first that the company learned that Glynn Brooks was a member of the union or had any sympathies with the union?
A. December 7, when we received Mr. Pratt's letter.
Q. I don't think I asked you when the company or you learned of Lillian Rutherford's union affiliations or sympathies.
A. About the same time. December 7, I would say.
Q. Let me go back to Blynn Brooks. Do you recall that Glynn Brooks states in her complaint, "I did the most particular work in the section?"
A. Yes, I remember reading it. I don't remember her saying it.
Q. Is that true?
A. No, that is not true.
p. 618 Q. Now, are you familiar with the type of work that Tillie Shirley did?
A. Tillie Shirley did straight sewing; one type of work.
Q. Was she a three-type operator?
A. No, she wasn't. She could do just the one thing—straight sewing.
Q. Did she have any trouble making her code?
A. Yes, she did. We made up to her seven times during the last 9 weeks of her employment.
Q. Did she receive donations?
[fol. 5164] A. Yes, we give our girls allowances when they seem to have a hard time getting started

on new work, and we have put quite a few allowances on Tillie Shirley's work in order to help her along.

Q. Did she have any repair work?

A. Yes, Tillie Shirley had a lot of repair work.

Q. What was the date that you or the Donnelly Garment Company first learned that Tillie Shirley had any union affiliations or sympathies?

A. November 6, 1934.

Q. (By Mr. Ingraham) Will you explain that?

A. Tillie Shirley called on a young lady who happened to be living with my mother, and Nora McKee was with her, and they called and they said they were soliciting for the union; and, naturally, it being my mother, why she told me about it.

p. 619

Q. When was she laid off?

A. She was laid off in October; at the same time that there were 145 others laid off on account of seasonal slack and a limitation placed on us by the code.

Q. Do you recall in her statement that she states she joined the union October 23, 1934?

A. That date sounds familiar.

Q. Are you acquainted with the type of work that Mamie Tubbesing performs?

A. Yes, I am.

Q. Was she a good operator?

A. We considered Mamie a pretty good binder when we had plenty of binding. And we were pleased with her work, and we gave Mamie— When we ran out of binding, we picked her to go on the floor as thread girl and to give out bundles of work. And due to the fact that Mamie didn't make good on the floor and the girls in her sections complained about her constantly because she was indifferent and didn't care anything about giving them work and keeping them on work, they went to Mrs. Wherry and asked if she couldn't be taken

off the floor, and we had to take Mamie off the floor.

After putting her back on the machine we didn't have any more binding because we had changed our operation—it happened to be in
p. 620 the fall of the year—and we put her on pinking, giving her an opportunity on that. We tried to work with Mamie but her attitude was such that it was almost impossible to work with her, and she couldn't make the code on pinking. All Mamie seemed to be able to do was binding. All that shows from her previous record.

[fol. 5165] So when we laid off the people in October, due to her attitude and her indifference and her lack of cooperation, why, we chose Mamie to be laid off.

Q. Now, after she was taken off the floor and put back on the machine, did the company give her a donation in order that she would make a minimum of $18 a week?

A. We did for one week, I believe. And then we did make her some allowances on her work until she got started on pinking, in order to have her maintain her $18 a week standard.

Q. Now, did you offer to give her time work after she was laid off?

A. Yes, I did.

Q. Did she refuse to accept the offer?

A. Yes. And she told me she wasn't asking for work and she didn't want to come back to work. She just wanted to know if we intended to call her back to work. And what I had in mind as far as time work is concerned, I figured that anyone with Mamie's experience would have been a good person in the dividing department; and if she would have ac-
p. 621 cepted the offer we would have been able to put her in the dividing department where she would have started out with $15 a week and very soon worked up to $18 and $20 a week.

Q. Did she state that she had temporary employment?

A. Yes, she did.

Q. Did she state where?

A. No, she didn't.

Q. During this conversation, did she complain about the company?

A. Yes. She came up there, it seemed, with the express purpose of telling me everything that was wrong with the Donnelly Garment Company. In fact, as I believe I testified before, she was very angry, and she seemed to be getting all worked up. I couldn't quite find out just exactly what all was wrong, but everything was wrong from her own statements.

Q. Was she constantly complaining when she was employed?

A. No, her attitude was very indifferent, and she didn't seem to be getting along at all, and she made herself very unhappy. That is, after she was put back on the floor. But we sort of thought that was natural in anyone who had been given a position as a thread girl, for, after all, it was a demotion.

Q. Well, after she was put back on the floor did she have trouble making her code?

A. After she was put back on the machine?

Q. Yes.

[fol. 5166] A. Yes.

p. 622 Q. (By Mr. Ingraham) Are you acquainted with the type of work Ellen Fry did?

A. Yes, Ellen Fry was a straight sewer.

Q. When was she laid off?

A. Ellen Fry was laid off in July with our first lay-off. Or in June. Which was it.

Dir. Pratt: July. We all know that.

Q. (By Mr. Ingraham) Was she a three-type operator?

A. No. Ellen Fry couldn't do anything but straight sewing, and she couldn't do that very well.

Q. Her work was poor?
A. Very poor. And she was constantly complaining of every little thing.
Q. Did Ellen Fry have any repair work?
A. Ellen Fry had lots of repair work.
Q. Will you tell about a conversation that took place in your office with Ellen Fry?
A. I believe I have gone over that. I will go over it again if you want me to.
p. 623 Q. Well, I will ask you if Ellen Fry stated that she was very badly in need of work.
A. Yes. Ellen Fry was constantly— That's the reason we reemployed her when we did, because she was always complaining about how badly she needed work, and she had four children, and we felt very, very sorry for her. And the last time Ellen Fry came up and talked to me, why, she told me she was going to lose her home, and I was sorry, but there were about 150 more that were in about the same condition and I took time to investigate a little bit more that time, and I found out from my investigations that Ellen's husband was employed and Ellen wasn't so bad off as some of the other people that we put to work.
Q. Is her husband employed at the Kansas City Wholesale Grocery Company?
A. That's what I understand.
Q. And has been employed for the last 2 or 3 years?
A. That's what I understood.
Q. Was it necessary to make up to Ellen Fry during the last 9 weeks she was employed in order that she be paid her code?
[fol. 5167] A. Yes, six times during the last 9 weeks she was employed.
Q. Now, do you know whether or not her work was changed seven times in one day, as she testified?
A. I know that's not true, because Ellen came up and told me the same thing, and I immediately investigated at that particular time and I found it was not true.

p. 624 Q. When was the first that you learned that Ellen Fry belonged to the union or had any union affiliations?

A. I think the first I knew about Ellen Fry belonging to the union was on December 4 when she personally handed me one of these invitations as I was going into the building, to go to a mass meeting.

[fol. 5168] Proceedings — Before N. R. A. Board.

p. 755 Mrs. Elizabeth Gates Reeves, recalled as a witness, having been previously sworn, testified as follows:

Q. (By Mr. Ingraham) Mrs. Reeves, do you know Gladys Elledge?

A. Yes.

p. 756 Q. Did the company have any knowledge that Gladys Elledge was a member of the union?

A. None whatever.

Q. Did the company have any knowledge that she was sympathetic to the union?

A. No, not at all.

Q. Was the sole reason for her discharge the fact that the insurance company had advised the Donnelly Garment Company that she had worked at another garment company during the time that she was supposedly ill and had been receiving sick benefits?

A. That was the sole reason that Gladys Elledge was discharged. Otherwise we wouldn't have kept up her insurance for her and had her come back to work the minute she said she was able.

Q. Are you acquainted with Lou Perkins?

p. 757 A. Not personally. I don't ever remember of seeing Mrs. Perkins.

Q. Can you state the date of her last employment?

A. Yes. Mrs. Perkins was employed the last time August 20, 1934.

Q. And how long did she work at that time?

A. She worked until September 13, 1934.

Q. Was her employment at that time temporary employment?

A. Yes. Mrs. Perkins was employed to do hemming, and we tried her on hemming and she didn't make good, and we had to lay her off.

Q. Can you state whether or not she made the code during her last employment?

A. No. The [weeking] ending August 24, Mrs. Perkins made $9.07; August 31st $10.40; and she only worked 14 hours the next few days, and she made $2.45,—the Donnelly Garment Company having to make up to her $5.63 the week of August 24, $4.60 the week of August 31, and $2.89 for the 14 hours that she worked the week of September 7.

Q. Can you state the type of operator that she is?

[fol. 5169] A. Mrs. Perkins? I don't know anything personally about Mrs. Perkins' record, but I have the supervisors' estimate cards here. Mrs. Perkins was in our employe and laid off July 25, 1933. Mrs. Lena Allison signed this

p. 758 as her instructor and said she was too slow. Her quality of work was fair, but her quantity of work was poor. Her personal characteristics were that she was obedient, reliable, and cooperative.

On her lay-off of June 22, 1934, Mrs. Wherry signed her supervisor's estimate card of the employee, and her quality of work was fair, her quantity poor; and as to her personal characteristics she was obedient, reliable, and cooperative.

On September 13, 1934, we have the reasons "Temporary" here, and Mrs. Gnotta signed her estimate card and said "No," she wouldn't consider her for reemployment. Her quality of work was fair, her quantity of work was poor; she was obedient, reliable, and cooperative.

That's the complete record on Mrs. Perkins.

Q. Now, at the time she was last laid off, did the Donnelly Garment Company have any knowledge that she was a member of the union or had any sympathies for the union?

A. No.

Q. When was the first the company learned of her union affiliations?

A. The letter from Mr. Pratt Dated December 6; received by the Donnelly Garment Company December 7.

p. 759 Q. (By Mr. Ingraham) Mrs. Reeves, you were present here and heard Virginia Stroup testify?

A. Yes.

Q. Do you recall her testimony in regard to a conversation with you on the afternoon of the 1st of December when she gave the following testimony:

p. 760 "Then about the first of December, about 3 o'clock one afternoon, Mrs. Reeves sent for me to come to her office. And I went up there. She says, 'Virginia, do you belong to the union?' I said, 'No, ma'am.' She says, 'Well, there's been some rumors around about your being with a bunch of girls up on a certain date that took a girl with you in the car, didn't tell where you were taking her until you got on your way; and when the girl found out where she was going, which was supposed to be a union meeting, she jumped out of the car.' And I said, 'Mrs. Reeves, I don't know anything about that.'"

Now, do you recall any conversation like that with Virginia Stroup?

A. No, I don't recall any conversation like that at all.

Q. Well, did you ask Virginia whether or not she belonged to the union?

A. No, I didn't.

Q. She further testifies as follows:
"And I said, 'Mrs. Reeves, I don't know anything about that.' I said, I have studied the

economic situation, and I think I know it, but I don't belong to the union.' So she was very well satisfied with my answer and let me go." Did she make any statement like that?

[fol. 5170] A. I don't remember any of that conversation at all. I don't remember calling Virginia up around December first or anything about it at all. I don't believe we had such an conversation.

p. 761 Q. Do you remember her testimony where she said that she was called up to your office with Frances Riedel and a girl by the name of Fannie? And she testifies that you said as follows:

"'I am getting darned sick of you girls carrying on like this.' And she sat Frances and I right in front of her. In fact, I was in direct line of her, and Frances was like to the side.

"About that time Fannie came in, and she said, 'This goes for you, too, Fannie.' And I said, 'Mrs. Reeves, Fannie doesn't even know what you are talking about.' So with a few words to Fannie about what she must do, go down and make her code or else out she goes, she told Fannie she was dismissed.

"So then she told us, she said, 'I don't care if you belong to 25,000 unions, you can't come in here and tell us how to run our industry. Just where do you get the idea of using the Donnelly Garment Company's name in a local union?' And I told her that it was for the Donnelly workers; it wasn't for any other dress shop but the Nelly Don workers."

Now, did that conversation take place?

A. I was reprimanding Virginia and Frances Riedel for wasting time running back and forth to the wash room. Virginia announced that she was now a member of the union and that she had her feet on the ground and that the Donnelly Garment Company could not let

her go because she knew where she stood now.

And I told Virginia that I didn't care whether
p. 762 she belonged to 20,000 unions; that she had to go downstairs and do her work and she couldn't waste time that she was being paid for. Just the same as I did Fannie Lockwood, who was not a member of the union. We can't tolerate that kind of conduct.

Q. What was the occasion of calling Virginia Stroup and Frances Riedel up to your office at that time?

A. It had been reported to Mrs. Hyde that Frances Riedel and Virginia Stroup were running back and forth to the wash room and that Virginia had refused to go to her machine earlier in the morning when the power was turned on. And I called Mrs. Gnotta up first to find out whether those were the facts in the case, and she assured me that they were. And then I called up Virginia and Fannie at the same time. Virginia and Frances came into the room at the same time, and Fannie Lockwood came in a few minutes later.

Q. She further testified that you said as follows: "So she said for us to report to Sol Goldberg to keep his nose down there in his own business."

Did you say anything like that?

A. No, I didn't even know who Sol Goldberg—I never heard the name "Sol Goldberg." I knew a Mr. Plotkin who had been connected with the union. And I had had a conversation with a Meyer Perlstein over the telephone on July 18 and had made an appointment for him to keep, which he didn't keep when he told
p. 763 me that he was sure there must have been a mistake and that we were not discriminating against anybody, and where I did not say to him that he was wasting time or that we were wasting time, as he testified this morning.

Q. Now, that conversation took place after you received a letter from Mr. Perlstein dated July 18, 1934?

[fol. 5171] A. Yes, I think it was July 17 or 18. And I called up immediately when I received the letter to find out what it was all about.

Q. When was the next that you had any communication with Mr. Perlstein?

A. He called me up and said that I had made an appointment with him for 11 o'clock for the following day, and he told me that he was trying to get his girls lined up. And so then he called up and said that he guessed there must have been some mistake, and he broke the appointment, and I haven't heard from him since.

Q. So that was the last time you heard from Mr. Perlstein?

A. That's the last time I ever heard from Mr. Perlstein, and today is the first time I ever saw him.

Q. And that was approximately July 19?

A. Just about that date.

Q. These complaints were filed December 6?

A. Yes.

Q. Virginia Stroup further testifies that you said that you were anxious to know "Just what we would report to our office so she could be prepared to know what to say."

p. 764

A. I don't remember saying anything like that. I might have. I don't know.

Q. Did you state to her, "Just what is your job in this one-horse organization"?

A. She told me that she was the chair lady at the plant to find out just exactly why people were laid off. And I said, "Well, what are your duties, Virginia?" and she said, "Well, I am to investigate each lay-off." And I said, "From whom are you going to get your information?" and she said, "You are supposed to report to me." And I told Virginia that I absolutely was not reporting to her. And I also turned to Mrs. Hyde and said,

"Now, Ella Mae, you are to give out no information about the other employees of the Donnelly Garment Company. Our records are confidential."

Q. Well, what was the occasion of your inquiring about Virginia Stroup's position with the union?

A. Because she announced what she was; that she had her feet on the ground, and that now she was chairlady, and I wanted to find out what this "chairlady" meant.

Q. Did you state to her that Frances and herself were just like a couple of little children that had gone wrong and were misled, and that you would just like to take them over your lap and give them a darned good spanking?

p. 765 A. I don't really consider them children from their age, and they have children of their own. Virginia has two daughters of her own, I understand. Not children.

Q. (By Mr. Reed) Did you make any such statement?

[fol. 5172] A. [Do,] I didn't make any such statement.

Q. (By Mr. Ingraham) Did she at that time complain about her work?

A. She did say something about that she was working hard—She was making some excuses about, oh, not working; and I think she did mention something about working awfully hard, and so forth. And I said, "Well, what seems to be the matter, Virginia?" and she said, well, she didn't seem to be able to make it. And there was some conversation about it, but I just couldn't tell you exactly what it was.

Q. Did you at that time state that she and Frances had to get down there and work?

A. Yes, I did.

Q. Did you state to her, "Why don't you take your little band and walk out? Don't you think that the Donnelly Garment Company

has always been fair to you in every way?" Did you make those statements?

A. No, I didn't say, "Why don't you take your little band and walk out?" I might have said that the Donnelly Garment Company had always been fair to them.

Q. She testifies that the speed-up system is very strict and is very hard. What is the speed-up system?

p. 766 A. Well, I am sure I don't know what she means by the speed-up system at all. Our system, I would say, is the best in the United States. We take in consideration our employees. We have broken our operations down to such a point that a girl who hasn't spent years and years and years as an apprentice can really get in and make a good operator. We have spent hours on planning and have built up a real system; and, as a result,—this sounds like bragging—we are about the most efficient factory I would say in the United States. But it is because we spend so much time and energy planning our work for our girls.

Now, to go into detail on that, I would say that at most factories the girls have to get up and get their own work. We have two people there, keeping them supplied constantly with work.

Q. (By Mr. Blume) Each section?

A. Each section. Each section of 40 girls has two people who keep them in work constantly and have their thread and binding and everything that goes to make that garment for them so that the girls don't have to waste their time by getting their own work. And they are paid for it. Now, that in itself is a speed-up system, but, of course, it costs the Donnelly Garment Company a lot of money to supply that supervision.

Q. (By Mr. Ingraham) It is not a system in the sense that they term it, but it means a more efficient system?

p. 767 A. It is a more efficient system, and it isn't that word that is misused, "speed-up."

Q. And it is not any harder on the employees? In fact, it is easier?

A. It is easier on the employees.

Q. And they are enabled to make more money?

[fol. 5173] A. They are enabled to make more money by our efficiency in our planning, in getting the work down to them.

The same thing is followed through from our cutting. Our garments are cut right, and they are inspected after they are cut before they are sent down to the section, and the operator doesn't have to pay for a cutter's inefficiency, like they do in a lot of places.

Q. [No,] did Virginia Stroup call you in regard to Pauline Lutz?

A. Virginia Stroup did.

Q. What did [you] state to you?

A. She said she would like to talk to me about Pauline Lutz and would like to have me change Pauline's work.

p. 768 Q. (By Mr. Ingraham) Did you state at that time that you were sorry for Virginia and that she was throwing a thousand girls out of employment and that you wouldn't want that on your soul?

A. I didn't say that. I didn't say anything like that.

Q. Now, have you got the attendance record of Virginia?

A. Yes.

Q. Will you state how many absences she has had since the first of the year?

A. From January 4 until and including the week of March 8 Virginia had only put in one full week's time, and that was January 25; one entire week, full time.

Q. Were there any special days she was absent?

A. She was absent—I haven't the days down here. I couldn't say.

Q. (By Dir. Pratt) You are referring to 1935?

A. 1935.

Q. (By Mr. Ingraham) When was Virginia transferred to the Twenty-sixth Street Building?

A. December 19, 1934.

Q. Now, since that time have you got her record of the wages she received?

A. Yes. Virginia has earned 43.7 cents per [our] since she has been working over at the—Since January to April. During the month of December her earnings were 42.1. During the year of 1934 Virginia's entire piecework earnings during the entire year were 38.27. So she has improved since she has been transferred over to the [over] building.

p. 769

p. 776 Q. (By Mr. Ingraham) Now, getting back to Virginia Stroup again. She has testified that she was a joiner, she joined dresses around the waist; and that after she was transferred to the Twenty-sixth Street building that type of work was taken away from her. Do you know whether that's a fact or not?

[fol. 5174] A. I believe that that's a fact. I believe Mrs. Allison ran out of joining, and she put her on straight sewing. I believe setting pockets at one time, as I remember it, or sewing seams in skirts, which is a very simple operation. In fact, we start all our beginners out on setting pockets. Maybe that is the reason why Virginia's showing is better.

Q. She is making better money?

A. She is now than when she was over at the 1828 Walnut Building when she was working on joining.

Q. When this new section was created on Twenty-sixth and Walnut, how many union girls were sent to that section? that you know were union?

A. Well, that's hard to answer. None that I knew were sent—When it was first opened—When we open a new section, we pick out a few to do first-part work and gradually fill in when we get the work ready for them. I
p. 777 believe that we opened that section first with six girls, sent six girls over first; and, as I remember, none of the people here who have stated that they belonged to the union were among those six. Then I think the next day we followed through with six more, and maybe 2 days afterwards we followed through with six more, until we had completed a section, picking out the girls that we felt would do better over there or would help in building up a section.

Q. Well, how many union girls are there now, that you know?

A. Nine.

Q. (By Mr. Rucker) Will you give their names please?

A. Virginia Stroup, Frances Riedel, Nora McKee, Ollis Thompson, Loretta Sisson, Flossie Walton, Lillian Wales, Katie McKinsey, Kathleen Jenkins.

Q. (By Mr. Ingraham) What is the total number in that section?

A. There are 40 girls in that section, and I think there's three inspectors.

Q. Well, when these nine girls whose names you have read were sent to that section, did the fact that they had union affiliations have anything to do with sending them there?

A. Not at all.

Q. Now, some of the operators, including Virginia Stroup, that work in that section at the present time are making more money than they did at the old building?

A. They are.

p. 778 Q. Now, are the sanitary conditions and working conditions in the building at Twenty-

sixth and Walnut just as good as they are in the building at Eighteenth and Walnut?

A. Absolutely. We have State supervision there the same as we have any place else.

Q. Mr. Rucker the other evening asked you to produce the record of an employee that was hired December 6 as a little hemmer. Have you got that record?

A. I have.

[fol. 5175] (By Mr. Rucker)

p. 791 Q. I am quite sure you are!
Now, didn't you tell them about the first of October approximately this, or in meaning: "That I know exactly who belongs to the union." Didn't you tell each section that?

p. 792 A. No, I did not.

Q. What did you say about it?

A. Well, I don't remember discussing the union very much at all. In fact, I don't believe I said anything about it. I was discussing general things with the girls, like I do every so often; and I don't call one section unless I call every section in the place.

Q. All right.

A. And I couldn't tell you just exactly that conversation, because it was just a general conversation. I might have been talking to them that our Spring line was coming out, our first spring line would be out about November 15, and it might be possible that we might have to lay off a few more girls until we got under way on this spring work, or something like that.

Q. Now, let's see if we can get this "yes" or "no." Do you now deny that when you called the various sections in your factory before you for discussion of various matters about the first week of October 1934 that you then said to each section, "We know exactly who belongs to the union"?

A. I don't remember saying anything like that at all.

Mr. Rucker: That's all.

Redirect Examination.

Q. (By Mr. Ingraham) And would you have remembered it if you had said anything like that?

p. 793 A. I am sure I would, because I had received instructions a good many years ago, when I first took over a position of authority from Mrs. Reed, that, as far as we were concerned, we were an open shop and we wouldn't discriminate against any persons, and we never even considered whether they belonged to the union or not. Those have been my instructions ever since I have worked for the Donnelly Garment Company. And since signing the code, I have read 7-A, and it would be a discrimination if we discriminated against or for the union.

N.R.A. Testimony.

[fol. 5176] p. 448 Dewey Atchison, called as a witness, being duly sworn, testified as follows:

Direct Examination.

Q. (By Mr. Ingraham) State your name.
A. Dewey Atchison.
Q. Where are you employed, Mr. Atchison?
A. Donnelly Garment Company.
Q. In what capacity?
A. Production engineer.

p. 452 A. That is the practice of the company continually, to find and develop operators who can do several classes of work in order that we may give them work throughout the year.
Q. Now, even before 1928 was that the practice of the company?
A. Yes, that has always been the practice of the company.
Q. What has been the practice of the company in weeding out poor operators?

A. The company has always, with the exception of, I believe, 2 years in 1932 or 1933 when we had the share-the-work plan, —we have always through the slack seasons endeavored to first lay off our operators who were not adaptable for the different operations and who were the poorest operators in wage earning, also the ones who did the poorest quality of work; and, as I stated earlier, using the different
p. 453 things which we consider when we employ operators.

p. 457 Q. (By Mr. Ingraham) Now, do I understand you to say that if Mary Jones and Bessie Smith earn the same amount that, then, in case Mary's work was of a superior quality, she would be retained? Or do you mean to say that the quality of the work comes first even though Mary Jones wouldn't earn as much as Bessie Smith?

A. The quality of the work comes before the earnings.

Q. In other words, you retain operators whose earnings are not as large as some operators laid off, on account of the quality of the work?

A. Yes.

Q. That has always been the practice of the Donnelly Garment Company?

p. 458 A. Yes. As I stated before, the success of our plant is largely due to the quality of work which we produce.

p. 487 Q. Well, Ellen Fry was one of those brought back, wasn't she?

A. I think she was, as I remember it.

Q. Then how do you account for the fact that you bring back your best operators, and you brought her back in 1933 as one of your best operators, and then when you get ready to lay her off you find she has all the qualifications of your poorest operator?

[fol. 5177] p. 488 A. Ellen Fry was never considered one of the best operators.

Q. Yet you brought her back in 1933 when you just got through telling the Board you brought back the best operators.

A. She was one of the best operators in that group, but that does not have any bearing on the conditions where you have around 500 operators. She may be one of the best operators in a section of 40; therefore, she was not laid off. She was brought back to 1828 Walnut.

Q. Now, isn't it true that you did call her back there, she worked until there was a scarcity of work, you laid her off for a few days until her old section on cotton dresses was opened up, when she was recalled?

A. I don't remember that instance exactly.

Q. You don't remember that. And don't you know that she was changed from the binder to straight sewing and put on joining?

A. She has done some straight sewing, as I remember her case.

Q. Now, you knew that Ellen Fry had union learnings at the time you laid her off, didn't you? A. No, sir.

p. 495 Q. (By Mr. Rucker) Now, do you know a Mrs. White, who is employed by the respondent?

A. Mrs. White? You mean an instructor by the name of Mrs. White?

Q. Yes, Mrs. White, an instructor.

A. Yes.

Q. Did you call upon Mrs. White when you were determining which girls to lay off from her section?

A. I do not remember which section— You are referring to Ellen Fry?

Q. I am talking about all of the girls. Now, that's a general question. In her section.

A. All of the girls in her section, yes.

Q. Now, do you remember Mrs. White saying anything about their union affiliations?

A. Mrs. White did never say anything to me about any of their union affiliations.

p. 496 Q. In fact, as I understand it, you never heard anything about any girls in your organization belonging to the union until this complaint was filed?

[fol. 5178] A. Meaning which? The complaint of Mr. Pratt's?

Q. Yes.

A. I believe that's the first time I knew of their union affiliations.

Q. Never heard of anybody in your factory having union affiliations? A. No, sir.

Q. Is that right?

A. With the exception of one instance, a cutter.

Q. But of these women, I am talking about.

A. No, there was none of them that I ever heard being affiliated with the union.

p. 505 Q. Now, do you mean to tell this Board that there was no effort made out there to prevent anybody joining the union?

A. I do.

Q. You knew that these girls who were known to be members of the union were not permitted to join your Loyalty League, don't you?

A. I do not.

Q. You didn't know anything about that?

A. No, sir.

Q. Have you a list of the members of the Loyalty League?

A. I do not have anything to do with the Loyalty League whatsoever, excepting that I have signed an application card.

Q. Well, who does have anything to do with it out there?

A. The employees themselves.

Q. No executive had anything to do with forming it, then? A. No, sir.

Q. Well, what employees started it?

A. As I remember and have heard through the publication of our N. D. A. A. News, it originated with Mrs. Strickland and Mrs. Gray.

Q. Who are they?

[fol. 5179] A. Mrs. Gray works in the store, retail store. She has a sales position. Mrs. Strickland works in the pattern department.

p. 511 By Mr. Rucker:

Q. Now, next we will take up Glynn Brooks. Now, Glynn Brook's average was 37 cents. Was that one of the reasons for not recalling her? A. It is one of the few reasons.

Q. Now, I note you say here in subparagraph 2, "Of the two groups laid off, there are over 100 who are unquestionably non-union and who have not yet been recalled." What information did you have, and where did you get your information, about when these girls joined the union?

A. We did not have any information on when they belonged to the union.

Q. Never have heard that?

A. Except the letter from Mr. Pratt and the statement on Christmas when we got the card.

p. 518 By Mr. Rucker:

Q. Now, aside from this card you have here which is headed "Donnelly Garment Company: Names and addresses of employees", you have no original record to present to the Board which shows the reason of Glynn Brook's discharge, have you?

A. Original reasons of Glynn Brooks's discharge?

Q. I say, you have no original record of the Company, aside from this card here, which shows the reason for her discharge, have you?

A. No.

Q. And that shows that she was let out because

p. 519 there was no work, doesn't it?

A. Yes.

Q. Well, that was true; there wasn't any work?

A. That's right.

Q. And that was the reason for letting her out?

A. That was the reason for letting her out.

p. 520 By Mr. Rucker:

Q. Now, going to Mamie Tubbesing: Mamie Tubbesing, according to your record, went to work for you first in September 1925, did she not? A. She did.

Q. Now, was one of the reasons for discharging her because of her inefficiency?

[fol. 5180] A. One of the reasons, yes.

p. 522 Q. And she was laid off when? The fourth of October? A. Yes.

Q. So you had to make up to her the last 10 weeks she was employed?

A. Eleven weeks, with the exception of one.

Q. Now, during that time were you present when Mrs. Reeves offered her time work?

A. I was.

Q. Did she refuse to accept it?

A. As I remember, she did.

p. 525 Q. All right. You say Mamie Tubbesing was discharged in this report which you made to the Board, which you say came from your records, because the quality of the work was only fair, the quantity was only fair, she was noncooperative, very unreliable and insubordinate. That's what you told the Board, wasn't it?

p. 526 A. No, sir.

Q. That isn't what you told the Board?

A. No, sir. You asked me the question just now if that's the reason she was laid off. That isn't the reason she was laid off. She was laid off on account of no work.

Q. Well, what have you got all these things in here for?

A. She was not recalled for those reasons.

p. 595 Q. (By Mr. Ingraham) Mr. Atchison, you were present when Frances Riedel testified, were you not?

A. At this meeting?

Q. Yes, at this hearing.

A. Yes.

Q. Do you recall that she testified that she had a conversation with Mrs. Reeves, at which you were present, and that during that conversation she testified that this was said: This is her testimony: "And then Mr. Dewey
p. 596 asked us girls why we didn't come to them about our wages and things instead of going down to a bunch of foreigners; that we would get far more out of it." Do you recall making any such statement as that?

A. No, I did not make any such statement as that.

[fol. 5181] Proceedings—Before N. R. A. Board

Mrs. Bessie Neimoyer was sworn and testified as follows:

Direct Examination

p. 1004 Q. (By Mr. Ingraham). State your name, please.

A. Mrs. Bessie Neimoyer; N-e-i-m-o-y-e-r.

Q. Mrs. Neimoyer, are you employed by the Donnelly Garment Company?

A. Yes, sir.

Q. In what capacity?

A. As an instructor.

Q. How long have you worked at the Donnelly Garment Company?

A. I don't remember just how long. I think around 11 years.

p. 1005 Q. 531. Was Telma Owen in that section?

A. Yes, sir.

Q. Now, will you just tell the Board the type of operator that Thelma Owen was.

A. Well, she was a very poor operator. Her quantity was good but she had so many repairs. She had been tried by so many other instructors, and I absolutely almost refused to take her, but Mrs. Reeves insisted that I take her and give her another trial.

Q. Did you have trouble with her, then, when she worked in your section?

A. Yes.

Q. What was the nature of that?

A. She was very careless about her dress.

Q. What about her work?

A. Her work was very poor. She stretched the seams, and every chance she got she would lengthen the stitch.

p. 1006 Q. You recommended that Thelma Owen be laid off?

A. She was laid off when my whole section was laid off.

p. 1007 Q. I say, you have never given any consideration, on the question of reemployment of Thelma Owen, that she was a member of the union or had any union affiliations?

A. No, sir.

[fol. 5182] Proceedings—Before N. R. A. Board.

MARIE PATTON was sworn and testified as follows:

Direct Examination.

p. 959 Q. (By Mr. Ingraham) Just state your name, please.

A. Marie Patton.

Q. Where are you employed now, Mrs. Patton?

A. For the Donnelly Garment Company.

Q. In what capacity?

A. As an instructor.

Q. What is the number of your section, Mrs. Patton?

A. 412.

Q. Was Mamie Tubbesing an operator in your section?

A. She was.

Q. When was she laid off?

A. I don't know the exact date.

p. 960 Q. (by Mr. Ingraham) Did you have any trouble with Mamie Tubbesing in regard to the work she could do?

A. At times, yes.

Q. Just explain what you mean by that, Miss Patton.

A. Well, she was just a binder and if I didn't have any binding I didn't have anything I could give her. I couldn't change her on straight sewing or anything else. Just binding is all she could do.

p. 961 Q. Will you tell the circumstances regarding your having her to do that kind of work?

A. She was put on because we didn't have any binding and didn't have any work I could give her. At that time our line was practically all straight sewing. In my section, it is about all straight sewing, and we picked her out and put her on the floor to give her work.

Q. What was the occasion of putting her back to work as an operator?

A. Well, she didn't do right—didn't carry out her work right on the floor. She slacked in several of her duties and I was asked by a number of the operators to give them some one else to help them—to get their work to them. I had complaints from different ones, and she just didn't carry out her work.

p. 962 Q. And the girls complained?

A. Constantly. The girls, further, went over my head and went to the floor lady and asked to have her taken off the floor. I asked to have her removed; and it went on for awhile and the girls went to the floor lady.

Q. Was her quality of work good after she returned as an operator?

[fol. 5183] A. No. Her attitude was different. It seems that she didn't take hold like she did before.

Q. Now, you recommended that she be laid off in October, 1937?

A. I did.

p. 964 Q. But you did recommend that she not be re-employed because—

A. Of her attitude.
Q. Because of her attitude?
A. Yes.
Q. Just explain what you mean by her attitude, Miss Patton.
A. After she was put on the floor her attitude towards her work was different. She didn't seem to care whether she took hold and got out the quantity of her work that was required for her to get out, and in general, she just took a different stand on her work after she was taken off the floor.
p. 965
Q. Do you mean that she resented the fact that she was reduced from a floor girl to an operator?
A. Yes.
Q. Did you know that the company had to make up to her ten times during the last ten weeks that she worked?
A. She had quite a lot of expense.

[fol. 5184] Proceedings Before the NRA Labor Board

Mr. Ingraham. Mrs. White, please take the stand.

Mrs. Lillian White was sworn and testified as follows:

Direct Examination

Q. (By Mr. Ingraham) Just state your name please. A. Mrs. Lillian White.
Q. Mrs. White, where are you employed? A. Donnelly Garment Company.
p. 816 Q. And you were put in charge of 521?
A. Yes.
Q. Did you have in that section only girls or operators that could do the simplest kind of work?
A. Yes, I did.
Q. Was that section the section that new girls would be sent to?

A. Yes; and as they advanced they would be taken out of my section to other sections.

Q. Did Lillian Rutherford work in your section last June?

A. She did.

Q. What type of work could she do?

A. Only straight sewing.

Q. She was limited to that one operation?

A. Yes.

p. 817 Q. Do you know whether or not her quality of work was good or bad?

A. Her quality was poor.

Q. What about her quantity?

A. Well, it was fair.

Q. Would you say that she was a poor operator?

A. I would.

Q. Did you recommend in June that she be one of the ones from your section to be laid off?

A. I did.

p. 818 Q. Mrs. White, at the time you recommended in June that she be one of the ones from your section to be laid off, did you consider in any way any union sympathies or affiliations which Lillan Rutherford might have had?

A. I did not.

Q. Did you know that she had any union affiliations or sympathies at that time?

A. No, I did not.

[fol. 5185] Q. When was the first you ever heard that Lil- Rutherford had any union affiliations or sympathies?

A. One day when Mrs. Reeves called me into her office. At that time she had received a letter from Mr. Pratt that this girl had belonged.

Q. Now, in considering girls to be re-employed, have you ever taken into consideration in determining whether or not to be recommend the re-employment of Lillian Rutherford the fact that she is now a member of the union or has union sympathies?

p. 819 A. No; because her work was a poor class of work.

Q. Now, you had also in your section a girl named Thelma Owen?

A. I did.
Q. Was she in section 521?
A. Yes.
Q. And she was in that section last June?
A. Yes, she was.
Q. 1934?
A. Yes.
Q. Will you tell the Board what the quality of her work was?
A. Well, it was poor. I had to watch her work. She used 6 stitches to an inch instead of our 12 stitches that we are required to use. Also she stretched her seams badly and there was a lot of repair work from other instructors that came back. I went to Mrs. Reeves one day and asked her if she couldn't be changed; that she probably would do better work for someone else.

p. 820 Q. Did you know at that time that Thelma Owen had any union affiliations or sympathies?
A. No, I didn't.
Q. When you asked that she be transferred from your section, the fact that she had any union affiliations or sympathies wasn't considered by you in any way?
A. No, it wasn't.
Q. When was the first time you learned that Thelma Owen had any union affiliations or sympathies?
A. Not until the letter from Mr. Pratt came into the office.
Q. That was in December, 1934?
A. Yes.
Q. Long after she had been transferred from your section?
A. Oh, yes.

[fol. 5186] Q. Did Glen Brooks work in your section?
A. She did.
Q. What type of an operator was she?
A. Just a binder.
Q. That was the only operation she could do?
A. That was all.
Q. What was the quality of her work?

p. 821 A. Well, it was poor.
Q. What was the quantity of her work?
A. Well, it was fair.
Q. Did she have much repair work?
A. Yes, she did.
Q. Did you recommend that she be one of the girls or operators to be laid off from your section in June, 1934?
A. I did, on account of her work.
Q. At that time did you know of any union affiliations or sympathies which she had?
A. No, I didn't.
Q. In considering laying her off, did you take into consideration the fact that she was a member of the union or had any sympathies with the union?
p. 822 A. No; not whatever.
Q. When was the first you learned that she had any union affiliations or sympathies?
A. When this same letter came in from Mr. Pratt.
Q. Now, in considering re-employment of operators. have you ever taken into consideration the fact that Glynn Brooks belongs to the union or has union sympathies in determining whether she should be re-employed?
A. No; I haven't thought anything about it because I had quite of a lot of trouble with her.
Q. Did Ellen Fry work in your section last June?
A. Yes, she did.
Q. What type of work did she do?
A. Joining only.
[fol. 5187] Q. What was the quality of her work?
A. Poor.
Q. What was the quantity?
A. Well, it was—I would say poor.
Q. Did she have much repair work?
A Yes, she did.
Q. Did you ever state at any time that you going to frame Ellen Fry?
A. No, I did not.
Q. To get her out of your section?
A. No, sir; never thought of it.

p. 823 Q. Did you change her work seven times a day?
A. I couldn't; not on these simple dresses that I had. There weren't that many operations to a dress.
Q. So when she makes that statement, that is not true?
A. It isn't true.
Q. You mean that there are not that many operations on the dresses that were being made in your section?
A. I meant straight sewing operations. There is only one thing and that is joining, and that is about all she could do.
Q. Did you ever show her two types of operations and take 45 minutes showing her?
A. No, I didn't.
Q. Now, prior to the time Ellen Fry was laid off, do you know whether or not she was making the code?
A. No, she wasn't.
Q. Did Cordie Huntley tell you of a meeting at Glynn Brooks's house where Ellen Fry and some of the other complainants were present?
A No, she didn't.
Q. Did you ever hear of any meeting at Glynn Brooks' house until after the complaints were filed in this case?
A. No, I didn't. I didn't hear a thing about it.
Q. Now, in considering, selecting or recommending that Ellen Fry be laid off from your section, did you take into consideration the fact that she had union affiliations or sympathies?
p. 824 A. No, I didn't.
[fol. 5188] Q. Did she ever tell you that she belonged to the union?
A. She never did.
Q. Did any of these complainants ever tell you that they belonged to the union?
A. They never talked to me once about the union and I never talked to them.
Q. When was the first you knew that Ellen Fry was a member of the union?

A. When Mrs. Reeves called me to her office after she received Mr. Pratt's letter.

Q. Now, did you take into consideration, in determining who should be re-employed, the fact that Ellen Fry belonged to the union and, therefore, she should not be re-employed?

A. No.

Q. Did Tillie Shirley work in your section?

A. She did.

Q. What type of operator was she?

A. One type, straight sewing.

Q. What was the quality of her work?

A. Well, it was poor.

Q. How about her quantity?

A. Well, it was fair.

Q. Did you ever pick her out as one of the best operators?

A. No, I didn't.

p. 825 Q. Did you ever tell her that her work was satisfactory?

A. Not that I know of.

Q. Was she able to make the code?

A. No, she wasn't.

Q. Did you know at the time you recommended her lay-off that she had any union affiliations or sympathies?

A. No, I did not.

Q. You didn't consider, in determining her lay-off, that she had any union affiliations or sympathies?

A. No, I did not. It was the grade of work she was putting out.

[fol. 5189] Q. When was the first time you knew that she had any union affiliations?

A. When I was called to the office the same time about the other girls.

Q. In determining the re-employment of operators, did you take into consideration that Tillie Shirley was a member of the union or had union affiliations in passing upon whether she should be re-employed or not?

A. No, I haven't.

p. 829 Q. (By Mr. Rucker) Now, don't you know, as a matter of fact, that there was a great deal of discussion about unionism in the Donnelly factory from the spring of 1934 on up until this day and this hour?

A. No; there wasn't.

Q. (By Mr. Rucker) You never heard of the union?

A. We were told not to discriminate between the union or non-union people.

p. 830 Q. I never asked you what you were told. I asked you if you heard about the efforts to unionize the Donnelly Garment Company.

A. No, I didn't.

p. 866 Q. (By Mr. Rucker) Do you know Pauline Lutz?

A. I do.

Q. Did you ever talk to her down there?

A. No.

Q. You never had any conversation at any time with her in your whole life? I mean, during the time you have been down there at the Donnelly factory you have never talked to her at any time?

A. We have passed the time of day, and spoke like that, but that is all.

Q. Didn't you tell her on one occasion that you could get anyone you wanted fired?

A. I did not.

Q. You never told her any such thing?

A. I did not.

Q. At any time?

A. At any time.

Q. That was a fact, wasn't it? You could get anybody fired that you wanted to?

A. No, I couldn't.

[fol. 5190] Q. By making an adverse report couldn't you get them fired?

A. No.

p. 867 Q. Didn't they depend on your report?

A. Yes, they did, but they looked into it further. They inquired into it and made sure my report was right.

Q. What inquiry did they make?

A. I don't know.
Q. Why do you say they made an inquiry?

Mr. Blume: What occasion are you talking about; any occasion in particular.

Q. (By Mr. Rucker) Why do you say you don't know when you say they inquired into it?

The Witness: Would you please read the question back?

Q. (By Mr. Rucker) When your attorney interrupted, why did you say they made an inquiry if you don't know what kind of an inquiry they made?
A. Mrs. Reeves always looks into anything further to make sure that the statement I made is correct.
Q. What sort of an inquiry would she make, now?
A. She would talk to the girl herself.
Q. Talk to the operator herself?
A. Yes.
Q. Do you know whether she called Ellen Fry and talked to her about your report of disobedience and unreliability, and that she wasn't cooperative?
A. I think that Mrs. Reeves knew that.

Objection, motion to strike—not responsive.

p. 874 Q. (By Mr. Rucker) You say you never made any statement to anybody about Ellen Fry being in your section?
A. What do you mean?
Q. I mean what I asked you. Did you ever make any statements to anybody about getting rid of Ellen Fry?
A. That is a different question.
Q. Did you?
A. I didn't.

Q. Did you ever say to Frances Riedel that you were not going to have Ellen Fry in your section because she belonged to the union?

A I didn't.

[fol. 5191] Q. Of course, you knew that Ellen Fry belonged to the union, didn't you?

A. I didn't.

Q. Did you see her down at the union meeting that you attended?

p. 875 A. Yes, I saw her down there.

Q. And you reported the names of all the girls that you saw down there?

A. I didn't.

Q. You had a conference among the executives down there about the girls who attended that meeting, didn't you?

A. No, sir.

Q. Didn't you attend that conference?

A. We didn't have any conference.

Q. If you don't call it a conference, did you have a talk about it?

A. No, we didn't.

p. 886 Q. You couldn't even say about that. Now, I notice on this card, which I presented here, marked Exhibit 32, Glynn Brooks was rated by N. Patten, an instructor—by the way, is she still there?

A. Yes.

Q. (Continuing)—as being fair as to the quality of her work, poor as to the quantity, and unreliable, but not disobedient, and marked as

p. 887 cooperative. At least, there are no marks one way or another. It is checked as unreliable, checked as poor as to the quantity of her work, and fair as to the quality of her work. She was let out of the employ because of illness. The instructor at that time checked that she would not recommend her for employment. As a matter of fact, she was reemployed?

A. I guess she was.

p. 898 Q. (By Mr. Ingraham) Mrs. White, I believe you have testified that your section did the simplest kind of work in the factory?

A. Yes, the section I have do the cheap numbers, which are just very plain dresses.

Q. And the operators that were sent to your section were the poorer operators?

A. They were.

p. 899 Q. And Glynn Brooks was sent to your section sometime in December, 1933?

A. That is what the card shows. I just couldn't say exactly what month it was.

Q. And she was irritable while she worked for you?

A. She was.

[fol. 5192] Q. And that was attributed to the fact that she had been previously ill?

A. I would take for granted that it was.

Q. And you did, while she was in your section, try to help her?

A. As much as I could, yes.

Q. (By Mr. Ingraham) What type of operator was Tillie Shirley?

A. One type; straight sewer.

Q. Did you ever tell her that she was one of the best operators?

A. No, I didn't.

Q. Was she one of the best operators in your section?

A. No, she wasn't.

Q. Did you ever tell her that her work was satisfactory?

p. 990 A. No, I didn't.

Q. What was the quality of her work?

A. It was poor.

Q. What was the quantity?

A. Fair.

Q Do you know whether or not she was able to make the code?

A. No, she wasn't.

Q. Did you at any time ever consider the fact that she had Union affiliations or Union sympathies in considering whether you would recommend her lay-off?

A I didn't

Q. You did not?

A. I did not.

Q. Have you ever considered her Union affiliations or Union sympathies in determining whether or not she should be reemployed?

A. No, I haven't.

Q. Those considerations were not given at all to the request of her lay-off or reemployment?

A. No; not at all. It was on her work.

Q. You did recommend that she be laid off?

[fol. 5193] A. I did with the experience I had [had] of her work.

p. 936 Q. (By Senator Reed) A witness by the name of Frances Riedel has testified here that you told her you didn't like Ellen Fry, and that you were not going to have her in your section;

p. 937 that you were going to get rid of her. Did you have any such conversation as that?

A. No, I didn't.

Q. (By Senator Reed) Now, you were asked if, in connection with that conversation or alleged conversation to which I have just called your attention, you mentioned the union in that conversation, in connection with Ellen Fry, and if you said in that conversation that Ellen Fry belonged to the union?

A. I didn't because I didn't know that Ellen Fry belonged.

Q. Did you have in this alleged conversation—Did you say in substance and effect, or in words, that Ellen Fry had caused lots of trouble; that she belonged to the union and you were not going to have her in your section?

A. I did not.

Q. Did you say anything like that?

A. I did not.
Q. You say you didn't now that Ellen Fry belonged to the union?
A. I didn't know she belonged.
Q. You understand that Pauline Lutz testified that you made the following statement regarding Tillie Shirley; that you were asked the question what you thought of Tillie Shirley being there, and that you answered it:
p. 938 "Yes; I think she joined that union. I gave her joining all the time so she could make 18 or 19 dollars a week and this is the way she did us."
A. I truthfully say that I didn't make that statement.
Q. Did you make anything like it?
A. I didn't.
Q. As a matter of fact, you have said twice, I believe, that you didn't know this girl belonged to the union?
A. No, I didn't.

[fol. 5194] Proceedings—Before N. R. A. Board

MRS. LENA ALLISON, called as a witness, being duly sworn, testified as follows:

Direct Examination.

p. 797 Q. (By Mr. Ingraham) State your name, please.
A. Lena Allison.
Q. Where are you employed, Mrs. Allison?
A. At the Donnelly Garment Company.
Q. How long have you been employed at the Donnelly Garment Company?
A. Fifteen years.
Q. Did you go to work there as an operator?
A. Yes, sir.
Q. How long did you work as an operator?
A. Well, about 18 months, I think.
Q. Then you became an instructor?

A. Yes, sir.
Q. And you have been an instructor since that time? A. Yes, sir.
Q. At present where is your section?
A. Section 551 at Nineteenth and Walnut.
Q. (By Dir. Pratt) Is that the floor number?
A. No, it is the third floor. That's the section number.
Q. (By Mr. Ingraham) Mrs. Allison, did Pauline Lutz work in your section?
A. Yes, sir.
p. 798 Q. What kind of work could she do?
A. Straight sewing.
Q. She was limited to that one operation?
A. Yes.
Q. Could she make her code?
[fol. 5195] A. No, sir; she didn't.
Q. Well, during the time she was in your section did she do any work on little hemming?
A. No, sir; I don't believe she did. If I remember right, I don't think I had any hemming at all.
Q. You didn't have any little hemming in your section? A. No, sir.
Q. When did she come to work in your section?
A. Well, I don't know whether it was in the last of December or the first of January. It was something like that.
Q. Have you had any little hemming in your section since that time?
A. No, sir.
Q. Did you recommend that Pauline Lutz be laid off?
A. No, sir; I didn't recommend it.
Q. Well, how did it happen that she was laid off?
A. Well, they sent some slips over, where they said that if the girls didn't make their quota they would be laid off at a certain time. I think they gave them 3 weeks to make their quota.
Q. And did she make her quota during that time?

p. 799 A. No, sir.

Q. What kind of an operator is Pauline Lutz in respect to whether she is a good operator or a mediocre operator or a poor operator?

A. Well, she is a fair operator.

Q. What is the quality of her work?

A. Well, most all the time she did fair work.

Q. Was she able to do a fair amount in respect to the quantity?

A. Well, no; not all the time she didn't. She was rather slow on doing the work that I gave her to do.

Q. Now, are you talking about her work on operations other than little hemming?

[fol. 5196] A. Yes, that's what I am talking about.

Q. She didn't do any little hemming in your section?

A. No, she didn't do any little hemming for me.

Q. And when was she laid off?

A. Well, I can't tell you just exactly.

Mr. Rucker. Sometime in January, I think, About the 6th.

Mr. Blume. Eighteenth.

Mr. Rucker. Yes, 18th of January.

Q. (By Mr. Ingraham) And at that time she wasn't able to make her code?

A. No, sir.

Q. And hadn't been able to make her code since she had been sent to your section?

p. 800 A. I think that's just about right because I couldn't remember just how many weeks she didn't make her code, because when I went and told her she said, well, she didn't know whether she could make it or not.

Q. Mrs. Allison, have you received any instructions from any superior in regard to the attitude of the instructors in connection with the girls joining the union or not joining the union?

A. Well, Mrs. Reeves always told us to be neutral towards anything like that.

Q. Were you instructed to refrain from a discussion of the matter?

A. Yes.

Q. Did you give Pauline Lutz more difficult work to perform than other operators in your section?

A. No, sir; I did not. I felt sorry for Pauline, and I tried to do the very best I could for her; and when they told me that she couldn't make her code and sent that little note, I tried to give her the very best that I had for her so she might make her code.

Q. Then you didn't discriminate against Pauline Lutz in any respect?

A. No, sir; I did not.

Q. Did you know at the time that Pauline Lutz belonged to the union?

A. No, sir; I did not.

p. 801 Q. Have you at any time in your section discriminated against anybody on account of union activities or affiliations?

[fol. 5197] A. No, sir.

Q. You have never at any time instructed any operators that they could not join the union?

A. No, sir; I haven't.

Q. Did you ever say that if they did join they would be fired?

A. No, sir; I never done anything of the kind.

Q. Now, during the time that Pauline Lutz worked for you or in your section, did you have any trouble with her work on account of the fact that she was color blind?

A. No, not over there, I didn't.

Q. Well, has she ever worked for you in any other section?

A. Well, she worked for me when we worked upstairs once before, but not very much.

Q. And did you know that she was color blind?

A. Not that time, I didn't; but I did this time, the last time she worked for me.

Q. And how did you discover that?

A. Well, she told me herself that she put some wrong-colored thread on some hemming, some little hemming. For another section, though; not for me.

Q. Not in your section?
A. No.
Q. But she did say to you that she had done
p. 802 that? A. Yes.

Redirect Examination.

p. 805 Q. (By Mr. Reed) You said you had to watch her all the time, and you were not permitted to tell, because you were interrupted, why you had to watch her.
A. Why you had to watch her, because, you know, she would do things that wasn't right. You had to watch her work. And she would say, "Well, Mrs. Allison, if I had such and such work, I could make it." And I would give her that work, and she couldn't make it. She said she could make it on joining, and I gave her joining, and she couldn't make it. Then, I had some work with little bits of pieces in here, and she said she could make it on that; and I gave that to her, and she couldn't make the code.
Q. You tried every way you could to help her?
[fol. 5198] A. Yes, I did.
p. 806 Q. (By Mr. Ingraham) Mrs. Allison, does Lillian Wales work in your section?
A. Yes, sir.
Q. Did you ever ask Lillian Wales this question: "Why did you join the union?"
A. No, sir.
Q. Did you ever discuss the union with Lillian Wales? A. No, sir; I didn't.
Q. Did you ever state to her: "Well, I would have liked to talk to you. I believe if I could have talked to you, you wouldn't have joined the union."
A. No, sir; I did not.
Q. You never did?
A. No, sir.
Q. Have you ever discussed the union with Virginia Stroup? A. No, sir.
Q. Never have? A. No, sir.
Mr. Ingraham: That's all.

p. 810 Q. (By Mr. Birkhead) You said that you got this notice that those who didn't make the code within 3 weeks—I think you said 3 weeks' trial you gave them—that they would be liable to be discharged.

A. Yes.

p. 811 Q. And you also said, I think, that you didn't discharge everyone who failed to make the code. And what I want to know is, how did you arrive at a method of knowing which ones who hadn't made the code to discharge, and which ones who hadn't made the code to keep on?

A. Well, Mr. Atchison sent me the notices. He went over the cards. And I have one girl yet, that she got a notice but she is making good now.

Q. (By Mr. Reed) The Doctor wants to know how you arrived at that; if you kept one girl and let the other go, what would be the reason?

[fol. 5199] A. Well, she got in and worked and made her code. I have got one girl here, and this last week, yesterday or Thursday, she drew $22, better than $22.

Q. Do you sometimes keep people who are improving. A. Why, surely.

Q. And haven't quite made up yet, but have confidence they will? A. Yes, sir.

Q. You take that into consideration?

A. Yes.

Q. Didn't you give Pauline Lutz an additional week? A. Yes, sir.

Q. You received notice about other girls than Pauline Lutz? A. Yes, sir.

p. 812 Q. And if you operate and they can't make the code, it means that they are not earning the amount they are paid? A. Yes, sir.

Q. And the company has to make it up, stand the loss? A. Yes, sir.

[fol. 5200] Cross-Examination of Lillian Wales.

By Mr. Hogsett:

Q. Miss Wales, your complaints you have testified to on Direct Examination, you relate to

incidents that occurred about three years prior to March 9, 1937, is that right?

A. I don't understand what you mean.

Q. Well, this case we are trying began, as we contend, with a letter dated March 9, 1937. Everything you said in the way of complaints, such as they are, occurred about three years before that, back in 1934? A. 1935.

Q. Well, all right. You left in what period of 1935? A. In the month of June, 1935.

Q. All right. This occurred then between two and three years prior to March, 1937. That would be right, wouldn't it? A. Yes, sir.

Q. You joined the union on what date?

A. Jauuary 8, 1935.

Q. You continued to work at the Donnelly Company until June, 1935? A. Yes, sir.

Q. I believe you said. And at that time, there was a general lay-off, wasn't there?

A. I was sent to the 2609 Walnut building. I don't remember the date when that was laid off, that building was laid off. They told us to go over to the other building, and we did. We talked to Miss Hyde. She would have to lay us off. We asked her when she thought she would have work for us. She said she didn't know, maybe next season. We called her up. She said, no, she didn't have anything just then, that she would call us when they did.

Q. Did you get the question that I asked you?

A. I think so.

Q. What is the answer to it?

A. That building was laid off, yes.

Q. You were laid off at the same time as how many other employees, both union and non-union?

A. Well, I couldn't say, because I don't know how many girls there was in that section. It consisted of one section. I can't remember if it was just a few or not.

Q. A normal section is 40 people plus the instructors, is that right?

[fol. 5201] A. That is right.

Q. At that time, did they discontinue the use of that building? A. Yes.

Q. When did they begin the use of that temporary space at 2609, Miss Wales?

A. I don't remember. I was sent over there in January.

Q. You do not know how far ahead of that it was? A. I couldn't say.

Q. A matter of months, you think? I wouldn't try to pin you down exactly.

A. Possibly a month before that.

Q. Had you worked there before that? A. Yes.

Q. When? I mean at the 2609 location.

A. When I first went to work at Donnelly's.

Q. You were hired to work at that place? You began there, isn't that true? A. Yes.

Q. That was before you were a union girl?

A. Yes.

Q. In fact about a year before, wasn't it?

A. No, it was longer than that.

Q. Then you, as a non-union girl, just began work in that building, didn't you?

A. That is right.

Q. How long did you work at that building before you were transferred to the Main building at 18 something Walnut?

A. I couldn't say for sure. It was a few months.

Q. Yes, Ma'am. But you worked there a few months at the last time when you were assigned there in January or thereabouts, and quit in June, is that right?

A. I didn't quit in June. I was fired in June.

[fol. 5202] Q. I will say what you first said "laid off." You were laid off, weren't you? A. Yes.

Q. That is your own term, Miss Wales. I am not coining it. You worked at that building about as long as a non-union girl as you did as a union girl. Frankly, isn't that the truth. A. I don't understand.

Q. You say you began with the Donnelly Company working in the auxiliary space in 2609,

worked there for several months, and at that time you were a non-union girl? A. Yes.

Q. Then after you joined the union, you again worked in that building for several months?

A. Yes.

Q. Then after you joined the union, you again worked in that building for several months?

A. Yes, but it was on a different floor.

Q. Oh my, my! On a different floor!

A. It was not the regular space that the Donnelly Garment Company had.

Q. You really were put on a different floor. What floor did you work on when you were a non-union girl?

A. If I remember correctly, it was the 6th or 7th floor. The last time it was the 3rd floor.

Q. You were actually put on the third floor, the same space on the third floor. A. No, sir.

Q. Bigger or smaller? A. Smaller.

Q. Was the whole section for this purpose on the third floor? A. Yes.

Q. And of that section, there were perhaps three-fourths or more of them, non-union girls, weren't there? A. I couldn't say.

Q. You did say so at the testimony you gave at the NRA Labor Board, didn't you? You remember that? A. Yes, I think so.

[fol. 5203] Q. You did so testify, didn't you?

A. I don't know how many of the girls that were over there were non-union, because I don't know how many girls in the whole section. I can't remember whether the section was filled or not.

Q. How many union girls were there there?

A. I couldn't rightfully say that either.

Q. All you could name were five when you were asked about that at the NRA hearing, isn't that true, Miss Wales?

A. Yes, I think so.

Q. Well, is that still true?

A. Yes, I believe I could name those girls again.

Q. I think you misunderstood my question, inadvertently. Is it still true that five girls were all that were over there that were union girls?
A. Five girls was all I knew personally.
Q. You knew your own union girls, didn't you?
A. Yes, but those five girls were all our crowd.
Q. You mean you knew your own union girls, but didn't know more than five union girls who worked at that building. You have got me confused. You knew your own union girls by name, surely, didn't you?
A. Some of them, yes. Some of them I knew better than others.
Q. But you knew them all by name, didn't you?
A. Yes.
Q. And five were all that you could name as being union girls employed at 2609 Walnut at the NRA hearing. Isn't that true?
A. That was all there was at that time, yes.
Q. And a section, if it was filled, was 40 girls?
A. That is correct.
Q. Now you joined the union in January, 1935. Are you still a member? A. I am.
Q. Were you a member at the time of the drive to unionize the Gernes, Gordon, and Missouri Garment Companies in March and April, 1937? A. Yes, sir.

[fol. 5204] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. Were you out there at the time the Gernes, Gordon, and Missouri plants during that drive?
A. Yes, sir.
Q. What were you doing there, Miss Wales?
A. Just like everybody else, I guess.
Q. Just exactly what would that mean, "just like everybody else"? Just what was everybody else doing?
A. Watching.

Q. Oh, just watching. Is that all you did?
A. Yes, sir.
Q. Just watched?
A. That is correct.
Q. How long were you out there watching?
A. You mean every day?
Q. Yes.
A. Presumingly an hour.
Q. Who sent you out there?
A. We went of our own accord.
Q. How many days were you out there?
A. Well, I couldn't rightfully say.
Q. Where were you working then?
A. Eppy Coat Company.
Q. What time in the day did you go there?
A. Oh, about 7:30.
Q. In the morning?
A. Yes.
Q. Did you see the employees trying to get into work? Is that the reason you chose that hour?
A. No, I wanted to see what was going on.

[fol. 5205] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. You had a natural curiosity about it, I assume?
A. Yes, sir.
Q. What time were you supposed to go to work at the Eppy Coat Company?
A. 8:30.
Q. And you would go to the Gernes, Gordon and Missouri entrance about an hour before that?
A. Yes, sir.
Q. Who did you go with?
A. Oh, sometimes by myself.
Q. And sometime with someone else?
A. No one in particular. I would see girls out there I knew, other people I knew.
Q. Union girls?

A. Yes, sir.
Q. What were these other girls doing? Were they just watching too?
A. Yes, sir.
Q. Did you see any union girls there at the Gernes, Gordon and Missouri entrance who were doing anything else except just watch?
A. Not while I was there, no.
Q. You never, at any of the days you were there at 7:30 in the morning for an hour saw any union girls doing anything else except just watching?
A. That is correct.
Q. Did you see the police there?
A. Certainly.
Q. Certainly? Why do you use that [work]?
A. They were there. There was quite a few of them. You couldn't miss them.
Q. 25 or 30, sometimes 50?
A. I wouldn't say that. I really don't know.
Q. Was there any disorder there, violence, girls having their hair pulled out, slugged, pocketbooks thrown out in the street, clothes torn off: Did you see any of that?

[fol. 5206] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. Not while I was there.
Q. How many days were you there at 7:30 in the morning when the Gernes employees were trying to get in?
A. Several days.
Q. How many is several?
A. Well, I couldn't say for sure.
Q. Were you there as much as 20 days or 30, or two months?
A. Oh, no.
Q. All right. You estimate it, if you will, please.
A. Well, I would say a couple of weeks.
Q. A couple of weeks. Your curiosity was such that one morning, or two or three

didn't satisfy you, and you continued to go every morning for two weeks and spent an hour there, is that right?

A. Approximately that long, yes.

Q. All right. I am not trying to pin you to the exact hours or number of days. Was there any violence there at all during that two weeks that you spent an hour there each morning?

A. I didn't spend an hour each morning, sometimes less. There was no violence that I saw.

Q. In what part of this drive was this? Would you consider it the early part of the drive or toward the end?

A. Well, some of it was at first, some of it sort of—I never went every day, if that is what you mean.

Q. Who was in charge of the other union girls just watching?

A. We had no one in charge of us.

Q. And was Miss Wave Tobin there?

A. I think I saw her once.

Q. You think so. Is that all? Aren't you sure?

A. No, because there were so many there, I wasn't looking for anyone in particular.

Q. You knew Miss Tobin because she is of your union?

A. That is right.

[fol. 5207] Q. Did you say you saw her there at all?

A. I said I think I saw here there once.

Objection—immaterial.

Q. Once. Yes. What was the object, if you knew, of these police being out there, and what were the police doing?

A. I don't know.

Objection—immaterial

Q. Madam?

A. I don't know what their object was.

Objection—immaterial

Q. If you don't know what their object was, what were they doing? What did you see them doing? You say you were watching.
A. Some of them were sitting in the car, some of them were walking, some of them were on their motorcycles.

Objection—immaterial

Q. Is that all you saw the police doing?
A. That is right.

Objection—immaterial

Q. Did you see any of the police line up in two lines from the curb of Grand Avenue across the sidewalk to the entrance into the building, so that when employees would come up, in cars or taxicabs and unload at the curb, these officers would be there as a guard to enable them to get into this plant to go to work? Did you see anything like that?
A. Not while I was there, no.

Objection—Immaterial

Q. Not while you were there. Are you aware that has been shown in moving pictures and photographs? Do you know that?
A. Yes, but that does not mean that I was it.

Objection—immaterial

Q. But you were there an hour for each of say twelve mornings, according to your own estimate?
A. Approximately, yes.

Objection—immaterial

Q. And you didn't see anything like that at all?
A. Not while I was there, no.

Objection—immaterial

Q. Now, Miss Wales, exactly what is your complaint about being transferred or assigned rather, to work at the 2609 Walnut Building? Just tell me again in your own way. I want you to tell everything you have in your mind about your complaint about working at this building? Have you done so?

A. I think so.

Q. You said you had always worked at the main plant. That is not so, because you began and worked several months at this 2609 temporary location at the very beginning of your employment. Had you forgotten that?

A. Of course, I meant by that when I was transferred over there to the 18th street building.

[fol. 5208] I was there all during lay-offs. I was never laid off during lay-offs. The only time I was off was during my two weeks' vacation. After I went into the 18th Street Walnut Building, I was kept there continuously up until January 31, 1935.

Q. You thought that was more of a complaint—to select you to work there, putting it plainly, that is what you thought, is that right?

A. Well, it looked to me like to be taken out of that building that was supposed to be on the best floor and the better garments, and be transferred to another building where the material and all the dresses were a cheaper line of dresses, was like having a good job and being demoted.

Q. When you were first hired to work in that 2609 Building, you say you worked there several months, and then you went back to the main factory? You said that, didn't you?

A. Yes.

Q. At the time you were transferred back to the main factory, the company closed that 2609 space, didn't they?

A. I was transferred before that.

Q. About the same time, were you not? They really closed it at the time or about the time you were transferred to the Main Building. That is true, isn't it?

A. Yes.

Q. When you were reassigned to that building, whatever time it was, it then—the company reopened that space at 2609 Walnut. That is the fact, isn't it?

A. Yes.

Q. Well now, the company under the circumstances was required to have additional space, and they put different people in there, but you think they ought not to have put you back there. That is your complaint.

A. Yes.

Q. All right. Who do you think the company should have select in your place to work there, somebody had to go—

Q. This 2609 Walnut was in fact one of the new factory buildings in Kansas City at that time?

A. I don't know.

Q. But it wasn't as fine as the main Donnelly factory?

A. No sir.

[fol. 5209] FRANCES RIEDEL

Cross-Examination.

By Mr. Hogsett:

Q. Miss Riedel, lets get again the last time that you work for the Donnelly Garment Company?

A. I started to work for them in the year 1931.

Q. I mean the last day or time that you were there? A. I was there in 1935.

Q. Now, all this thing that you have been telling about them occurred at least three and one-half years before the time of the beginning of this trouble between the Internation-

al and the Donnelly Garment Company, didn't it?

A. It occurred between 1931 and 1935.
Q. What date in 1935 was it?
A. It was, I believe in June.
Q. What have you been doing since June, 1935?
A. I worked for Lindall Coat Shop.

Objection—immaterial.

Q. At what wages?
A. We worked piece work there.

Objection—immaterial.

Q. What did you draw?
A. Well, my salary varied.

Objection—immaterial.

Q. What was the average?
A. I believe I drew on the average of $17.00 or $18.00 a week.

Objection—immaterial.

Q. And how long were you there?
A. I was there possibly seven or eight months.

Objection—immaterial.

Q. And then where did you work?
A. I worked at Lindall Coat Shop.

Objection—immaterial.

Q. And at what wages, on the average?
A. Well, I don't think I drew less than $18.00 at Lindall's.

Objection—immaterial.

Q. How long did you work there?
A. About eight months.

Objection—immaterial.

Q. And then where did you work.
A. Then I worked at Lyons.

Objection—immaterial

[fol. 5210] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. And at what wages, on the average?
A. Well, it varied, too; I averaged $14.00, $15.00, $16.00.
Q. How long did you work there?
A. I couldn't say exactly how long I worked there; I imagine it was about six months.
Q. And then where did you work.
A. I haven't worked since then.
Q. When was the last time you worked there?
A. I worked at Lindall's first and then Bracken's and then Lyons' and it has been two years since I quit at Lyon's, or more.
Q. Then within a period of a year and a half or such a matter—maybe I haven't got the time right, you worked at about four different places, after you left Donnelly's?
A. Three different places.
Q. In Kansas City? A. Yes.
Q. You don't keep a job very long, do you?
A. I wasn't laid off at Lindall's; I was told by Mr. Rice whenever he had a job—that is season work—that I could come back, but I got a job in the meantime at Bracken's, and I didn't care to quit at Bracken's, because I was working for him.
Q. The fact remains you have had three jobs in a year and a half since you left Donnelly's. A. Yes, sir.
Q. And you also, while at Donnelly's were taking this beauty course with a view of leaving Donnelly's and becoming a beauty operator, did you say?
A. I never made a statement that I would leave Donnelly's.
Q. What did you say about taking a beauty course?

A. I was taking a beauty course, yes.
Q. While at Donnelly's? A. At nights.
Q. I say while you were working at Donnelly's?
A. Yes.

[fol. 5211] Q. What for, if you didn't intend to work at it?
A. Well, because I thought maybe in later years I might be able to start up a shop of my own, but I never could have even figured on starting one for quite some time.

Objection—immaterial

Q. In this group that was laid off when you were laid off, how many were in that group?
A. I can't say altogether; I think about twelve or fifteen.
Q. And this whole group was laid off at one time? A. Yes.
Q. It was a whole section, as a matter of fact, was it now? A. Yes.
Q. It wasn't a picking out of you or just one or two girls; it was a laying off of the whole section?
A. Yes, but they replaced a lot of girls over at the other building when they closed down this building, too.
Q. Would you just as soon answer the question. It was a lay off of a whole section, is that right? A. Yes, sir.
Q. And that section included how many people?
A. I couldn't say.
Q. Roughly? A section is at least forty, isn't it? A. Yes.
Q. Well, then, it was at least forty people that were laid off at the same time? A. Yes.
Q. And most of those were non-union employees?
A. Yes, but that is what I am trying to tell you.
Q. You see, you are arguing with me again and all I asked you was the simple question, whether most of them were non-union employees. A. I am sorry.

Q. How many non-union employees were there in that group?

A. I couldn't say that either, because I don't remember.

[fol. 5212] Q. How many union employees were in that forty group?

A. I just got through saying I think there were twelve; I couldn't say for sure, twelve or fifteen.

Q. You said something to Mr. Walsh and I did not get clear what you meant, something about a threat to your instructor and I believe you said you did not mean it for her or did not mean it as a threat; I forget.

A. I didn't mean it as a threat, no, sir.

Objection—immaterial

Q. In any case let us clear up what it was. What was this so-called or threat to Mrs. Allison?

A. I couldn't tell you. I am afraid you would have to ask Mrs. Reeves that because I didn't mean it as a threat.

Objection—immaterial

Q. Do you know what it was they were talking about and construed as a threat?

A. No, I couldn't, only the day before Mrs. Allison came to me and told me that us little girls had been talking too much and she said "Now, Frances, I want you to quit doing so much talking" and I said "I don't think I am the only one that is doing so much talking." Now, if that could have been a threat, I don't know.

Objection—immaterial

Q. I would hardly think that would be construed by anyone as a threat. Do you know what it is you said that they thought was a threat?

A. No, I couldn't say because I don't think—

Objection—immaterial

Q. Is that all this talk about the threat amounts to,—this conversation that you just spoke of?
A. I imagine so: I didn't even know what she meant by it.

Objection—immaterial

Q. That so-called threat, if that is a threat, occurred in January, 1935, you said?
A. Yes.

Objection—immaterial

Q. And you were not laid off until June?
A. Yes.
Q. Do you attribute any connection between those two incidents? You seemed to, in your direct testimony?
A. I never said I was laid off because I threatened Miss Donnelly.
Q. I gathered that impression, perhaps without warrant, but I at least did. Now, you had worked at this other building at 26th and Walnut before you joined the union, hadn't you?
A. I was hired at that building.
Q. And how long had you worked at that building before you joined the union?
A. I was hired in that building in 1931.
[fol. 5213] Q. And worked there how many years?
A. I worked there about four months, six months maybe.
Q. Altogether how long did you work there at the 26th and Walnut auxiliary plant before you joined the union?
A. About six months.
Q. And did the company then discontinue that place or keep it?
A. I really don't know because I was transferred to the other building. The girls were still working there, when I left.
Q. Do you know how long the company did have the auxiliary plant at 26th and Walnut?
A. No, I couldn't say.

Q. Do you know how many employes were transferred there by the company?
A. When do you mean, transferred?
Q. One section, two sections, three sections, how many worked,
A. You mean when I was transferred back.
Q. No. While you worked at 26th and Walnut how many other employes worked there?
A. I believe there were two sections there at the time I first was employed there.
Q. That would mean at least eight, wouldn't it?
A. I imagine so.
Q. With the added help of the bundle boys and whatever else goes with it?
A. I imagine so; they didn't have any bundle boys there.
Q. Well, whatever they had.
A. Just the operators and instructors.
Q. Now, that was due to an over-flow of work,—not of work but a need for additional space which they could not get in their mail building is the reason they had that building; you understood, didn't you?
A. I just knew they had it I was hired the; I didn't know anything about it.
Q. I mean you were given to understand that that was just an auxiliary space used in addition—
A. They never did any explanation at all to me about that building.
[fol. 5214] Q. Whether they did or the employes did, didn't you understand that to be the fact?
A. No.
Q. Now did you claim that only union girls were sent to this building?
A. Oh, no; there were some other girls transferred.
Q. Well, I thought so. Now, how many union girls worked there while you were there out of this eighty odd?
A. How many girls worked there?
Q. How many union girls worked there?
A. They were all transferred over there.

Q. Yes. How many were there?
A. I just told you a while ago I thought there were twelve or fifteen; I couldn't say positive.
Q. And who were they?
A. Well, I couldn't name them all.
Q. Name those that you can name?
A. Lillian, Wales, Flossie and myself.
Q. Flossie who?
A. Flossie Walton, and Virginia Stroup and May Innie and I can't remember the rest of them.
Q. Those are all the union girls you can remember. How many non-union girls were put to work there?
A. I couldn't tell you because I don't know how many was in the section.
Q. Didn't you agree a moment ago that there were at least forty in a section.
A. Well, all the rest that wasn't union was non-union girls.
Q. Exactly. Now, assuming the maximum, that there were fifteen union girls, and eighty in all, would leave sixty-five non-union girls?
A. Sure. I don't imagine they would open up a section and put twelve union girls over there by themselves.
Q. I didn't think so, but I wanted to get the matter clear of any implication to the contrary. Now, do you claim that you were given any class of work different, since you joined the union—different from what you had before?
A. Yes, I was.
[fol. 5215] Q. In what respect was the class of work different?
A. Well, before I was transferred over to that building I did mostly joining; I did joining all the time and after I was sent over there I was put to setting pockets on.
Q. Do you think that is a harder job?
A. It was because the work wasn't good.
Q. Anything else now that you complain of in the way of a change in the type of work?

A. I don't remember just what other operations there are; I do remember one operation we were given, for the pockets.

Q. Is that all you can remember on that subject?

A. I do remember that they gave us these pockets to put on, and they gave these pockets to Lillian Wales and I, and we had been joining over at the other building, both of us.

Q. What is the significance of that? What does that mean?

A. Well, if you do one job of work and they take you off of it and put you on another, you haven't got the speed to do new work that you had on joining.

Q. When you testified before the N. R. A. Board on this identical subject, this exact question that I have just asked you, did you give these answers to these questions,—I will read them: "Q. Now, have you done any class of work different since you joined the union that you did before you joined the union? A. No sir. Q. Then to get back to my original question—"

Q. Did you give that answer?

A. I must have did it if it is there.

A. I remember testifying before the N. R. A. that they did change my work, too.

Mr. Hogsett: Do you agree, gentlemen, that that is what she said? It is the second question on that page. Is that admitted, gentlemen?

Mr. Walsh: Yes.

Q. Now, did you give this additional testimony on identically the same subject. "Then to get back to my original question your work has not been made harder since joining the union than it had been before? A. No, sir." Did you testify that way?

A. If it is there I must have.

Further Cross-Examination.

By Mr. Tyler:

Q. You were able to do the work in this beauty school that you attended at night, were you?

A. Yes.

Objection—immaterial.

[fol. 5216] Q. You were not too tired out at the end of the day's work to do the additional study work?

A. No, because we went there and just studied; we studied all week and then on Saturday we did our practical work.

Objection—immaterial.

Q. When was the last time you have been in the Donnelly garment factory.

A. When I got my check the following week I was laid off.

Q. You haven't been there since June, 1935?

A. No, sir. I called Ella Mae and she said there was no need to come in. There wasn't any work.

Q. What nature of work did you do at Lindall's?

A. Making coats.

Objection—immaterial.

Q. And what nature of work did you do at Lyons'?

A. Lingerie.

Objection—immaterial.

Q. And how much did you get paid at Lyons'?

A. From $14.00 to $15.00, $16.00, somewhere around there.

Objection—immaterial.

[fol. 5217] Cross Examination of Thelma Owen.

By Mr. Hogsett:

Q. Miss Owen, you have spoken here of Mrs. Reeves in a way that indicated she treated

you rather badly. Was that the impression you desired to leave with the court?

A. Personally, I like Mrs. Reeves, but I was treated very bad in the shop.

Q. But I believe you rather indicated in some of your answers that you thought she treated you badly.

A. She did ask me questions I didn't like very well.

Q. Now, when you testified before the NRA Board, on page 52, you said this upon that same subject, didn't you, speaking of your conversation with Mrs. Reeves: "So I said I [think] you the many nice things you have done for me, and think just as much of you as I ever did. I like all my instructors, and you also." A. I did.

Q. You said that to Mrs. Reeves? A. I did.

Q. Were you sincere or saying that for effect?

A. I was sincere about Mrs. Reeves.

Q. Were you sincere about the instructors?

A. I was.

Q. The statement was sincere, and you meant it exactly as you said it, did you? A. I did.

Q. Now on the same subject, did you further testify before the NRA as follows:

"Q. Now, you worked for a long time after that, and when you had your last conversation with (Mr.) Reeves, you thanked her for your nice treatment.

"A. I certainly did. Mrs. Reeves, personally, I liked her very much.

"Q. She has always used you all right?

"A. She certainly has."

You said that did you?

A. Mrs. Reeves wasn't in the employment office to hire you. She was not my instructor.

Q. I didn't ask you that. Did you or did you not before the NRA Labor Board on the 26th of February, 1935, within eight months after you left the Donnelly Company, testify as I have read?

The Court: Now, repeat it.

Q. "Q. (By Mr. Reed): Now, you worked for a long time after that, and when you had your last conversation with Mrs. Reeves, you thanked her for your nice treatment?
"A. I certainly did. Mrs. Reeves personally, I liked her very much."

[fol. 5218 Did you give that answer?

A. I did.

Q. "Q. She has always used you all right?"
"A. She certainly has." Did you give that answer?

A. "Use" was not supposed to be in that. I meant treated.

Q. You are drawing a distinction now between treated and use. Did you answer this question?

A. I don't remember that, no.

Q. Now, let's see. You didn't actually join this union in the spring of 1934, at all, did you?

A. I [digned] applications, was considered a member.

Q. I will show you your application, which Mr. Walsh has produced, and ask you if it isn't dated 10/30/34, and if it doesn't bear notation: "Received 10/30/34" at the top. Just answer yes or no. A. Yes.

Q. In any case you had left the Donnelly Company's service four months before you signed this paper, hadn't you? A. Yes.

Q. Now you tried to give the Court the impression you had become a union member before you left, and you had been let out on that account?

A. As I said before, we signed the applications, and you have to have a large number of girls to give you power to accomplish anything as large as the Donnelly Garment Company. We considered ourselves members.

Q. Once more if I may ask you for an answer. What becomes of your testimony on direct

examination that you were discharged because you were a union member, when the fact is you didn't sign the application for four months after you left? If you have any explanation for that, please let us have it.

A. I signed the application in May, paid my initiation the 30th day of October, 1934.

Q. When you were talking to Mrs. Reeves, therefore, in June of 1934, at the time you left—by the way, did I get that straight, is that straight, is that when you did talk to her?

A. Six months to the time I was let out, I had two different talks with Mrs. Reeves.

Q. The last one? A. In July.

[fol. 5219] Q. Of 1934? A. Yes.

Q. Was that when you left, or quit, or were laid off? A. I was fired, June, 1934.

Q. And you did later talk personally?

A. Yes, personally, by telephone and personally.

Q. We will take the one when you were, as you say, "fired", in June. You didn't then belong to the union?

A. It was my understanding I belonged to the union when I filled out the application blank.

Q. All right. Did you ever tell any of your friends that time that you belonged to the union? A. I did not.

Q. Then, to the best of your knowledge, Mrs. Reeves didn't know it?

A. She accused me of it.

Q. And you said no you never paid five cents union dues in your life?

A. I didn't say "Mrs. Reeves, I never belonged to the union" for fear of losing my job. I said I didn't pay my dues.

Q. You were wording that answer carefully, not denying you were a union member, but denying you had paid dues. A. Yes.

Q. It was your design and purpose to give Mrs. Reeves to understand you were not a union member?

A. I said I had never paid five cent's dues.

Q. Why did you tell her that?
A. Because she looked a hole through me.
Q. Aside from that, why did you tell her that? Did you want her to understand you were a union member or not?
A. I did not want her to know it.
Q. Now during the time you were "fired", there were about 160 others who were laid off, is that right?
A. I wouldn't know. I don't keep books.
Q. Now, if you will give a direct answer. I didn't assume you kept books.
A. I wouldn't know how many was laid off.
[fol. 5220] Q. You know whether there was a big reduction in the force at the same time, do you not?
A. I don't know.
Q. Well, now, you don't know that now, you say; but when you testified before the NRA Board, did you then know?
A. I don't remember what I said.
Q. I will refresh your memory from page 59 with this excerpt from your testimony: "Q. Now it was the custom down there to give the operators who had been there some time, two weeks' vacation with pay, was it not?
"A. Yes.
"Q. Yes. You took your vacation and got your pay?
"A. Yes, sir.
"Q. And then the force was being decreased and you were let out along with 160 or 170 other girls?
"A. Yes, sir."

You testified that way, did you?

A. During vacation times there is as high as three or four sections taking vacations at the same time.
Q. Mrs. Owen, did you testify this way?
A. At the time I taken my vacation there must have been 100—

Q. (Interrupting) Will you kindly answer the question by answering whether you testified this way or not?

A. You don't understand me.

The Court: Will you read the question, please?

Q. Would you kindly look it over with me (going to the witness stand):

"Q. Now it was the custom down there to give the operators who had been there some time two weeks vacation with pay, wasn't it?

"A. Yes.

"Q. Yes. And you took your vacation and got your pay?

"A. Yes, sir.

"Q. And [them] the force was being decreased and you were being let out along with 160 or 170 other girls?

"A. Yes, sir."

Do you see it there?

A. I misunderstood that.

Q. You didn't understand it? A. No, I didn't.

Q. Did you ever have any complaints there from your superiors because you would go away from your machine and go out in the waiting rooms and put in your time talking union?

A. I never talked union during working times.

Q. Is your memory better now or not so good as it was shortly after your lay-off?

A. I talked morning and lunch hours' union.

[fol. 5221] Q. I will read from Page 60:

"Q. You would go away from your machine and go out where the girls were in the [anti]-rooms, waiting rooms, and there you would put in your time talking union?

"A. Some."

Did you testify that way?

A. If it is there, I certainly did.

Q. Now another step. You do admit, do you not —I don't know that you said anything about

it on direct examination, but I will ask you the direct question: Didn't they have a good deal of trouble with you there over sending work back that had been improperly done?

A. Never.

Q. That never happened at all?

A. No, sir.

Q. Do you have a clear memory of these facts?

A. I try to have.

Q. I just wanted to know. At Page 66 of your testimony before the NRA Board, did you testify as follows on the subject of your having work sent back to you—on the subject matter of your having work sent back to you because you had put in only six stitches instead of twelve stitches to the inch; do you remember being questioned on that subject? Is that all a complete blank to you, or do you remember anything about that?

A. I wonder if I can be allowed to explain this?

Q. On that subject did you testify as follows, beginning on Page 65:

"Q. Isn't it a fact that the rule was 12, and that repeatedly you skimped your work and would put in six stitches to the inch?

"A. I did not.

"Q. Or less than 12; and that work was sent back to you repeatedly on that account; isn't that a fact?

"A. There was some work sent back to me and when I compared them they were not mine."

And then later, Page 66:

"Q. Well, I ask you if, when you were sewing these goods and putting in these smaller number of stitches, you did not know that the machine was not sewing them in right?

"A. I certainly did.

"Q. And you went on and made the goods, didn't you?

"A. Some of it.

"Q. A good deal of it didn't you?

"A. No, sir.
"Q. How much of it?
"A. Very little."

And then further on Page 67:

"Q. Well, how many were there in this bundle you put on the six stitches in?
"A. I don't remember.
"Q. Well, you knew, didn't you, that if goods went out improperly stitched that would result in a loss to the company; didn't you know that?
"A. I did not."

Did you testify that way?

A. I don't think I did.

[fol. 5222] A. May I explain why I had less [that] the amount of stitches I should have had?

Q. Yes.

A. The machines were set and locked by the machinists, and when they would get caught and unlocked they would skip stitches. I showed my instructor, Mrs. Neimoyer. They were cheaper dresses and she told me to go ahead and maybe it would get back like it should. I changed the needle—

Q. (Interrupting) Then you did have some trouble with work that didn't have the right number of stitches, but you say it was due to the machine?

A. I was told to go ahead, by my instructor.

Q. And make it wrong?

A. Yes.

Q. Who was the instructor? A. Mrs. Neimoyer.

Q. How often did that sort of thing happen?

A. Not very often; I will say once.

Q. About how many times did it happen that your machine was out of order and the in-

structor knew that you weren't putting in enough stitches and she told you to go ahead and make it up anyway?

A. That only happened once about the stitches.

Q. You were at the Donnelly plant about how long in all?

A. From 1924 until 1927; laid off five weeks; called back by the company and worked until the fall of 1927; in November; was off close to a year or about a year; went back and worked until June, 1934.

Q. Now, I want to ask you this question as to the amount of your earnings there, if on the first week of January, 1934, you did not make $17.68, the second week, $30.46, the third week, $22.41, the last week in that month $19.71; and then, without bothering to call the months, $18.12, $20.89, $16.64, $24.10, $24.69, $23.34, $13.86 or a part week, $12.78 for a part week, fifty percent of your time; the next week, $14.00, $14.60 and that for part time, the next week $15.54, $18.15, $15.01, $13.33, and if you weren't allowed six hours time because your machine was out of order that day and you were paid $2.10 extra for it; $16.59 the next week, $17.44 and had machine trouble and you were allowed a dollar extra for that; the next week $16.93 with one and a half hours time for which you were paid fifty-six cents, $15.00, $17.90, $18.14, and the last week, the 22nd of June, $19.88, and allowed you for twenty-five minutes time when there was some lost time? That is the kind of wages you were getting down there?

A. My average was $15.00 a week. I don't know what you mean by part time.

Objection—immaterial

[fol. 5223] Q. I only know what the record shows.

A. You know if you are off so many days you don't get a paid vacation.

Objection—immaterial.

Q. Did you ever make wages like that at any time?

A. I have, by working mornings and on my noon hours.

Objection—immaterial

Q. You understood this question counted overtime, every time there was overtime. Did you make those wages for that amount of time?

A. I did.

Objection—immaterial

Q. You said you were able to by super-human effort of working at your noon hour and in the morning?

A. Yes.

Objection—immaterial

Q. Don't you know that the machines did not run at the noon hour?

A. Before the NRA went into effect we worked mornings, and I have worked my full noon hour. We weren't allowed to be at our machines before five minutes before time after the NRA went into effect, and we had to leave them at noon.

Objection—immaterial.

Q. Who is Mrs. White?

A. She was one of my last instructors.

Q. You say that did not happen while you were working for her?

A. That did not.

Objection—immaterial

Q. You spoke of taking work home with you. Did you have any sort of equipment there to do the work?

A. Well, it was like trims that had to be sewed up at both ends with an opening left in the middle that had to be turned. It taken so much time I was allowed to take them home and turn them at night.

Objection—immaterial

Q. Where have you lived from the time you left the Donnelly Garment Company up to now?

A. 1317 Troost.

Q. Continuously?

A. No, San Francisco, California.

Q. You have lived at 1317 Troost except for what interval?

A. August of 1936. I came back here last September.

Q. And returned September, 1938?

A. Yes.

[fol. 5224] Q. Where did you live in San Francisco?

A. 715 McAllister Street.

Q. Were you employed there?

A. Yes, I was.

Q. Where?

A. Varsity Sport Wear.

Q. When you left Donnelly Garment Company where did you go to work?

A. Gernes, Gordon's, Missouri, Azar's and Lyons'.

Q. How long were you at Gernes?

A. About two weeks.

Q. Then how long at Gordon's?

A. About a week.

Q. And how long at Missouri?

A. About six weeks.

Q. And this other place, how long were you at that place?

A. Just off and on when they needed me, I will say three months.

Q. You did not keep your jobs very long after you left Donnelly did you?

A. No, because I had to change my name when I left Donnelly Garment Company, when they found out I was Thelma Owen, and I had worked at Donnelly's.

Q. What name did you use?

A. My maiden name, Thelma Edmondson.

Q. Were you at Gernes' when they had the riot down there?

A. I was not.

Q. Were you a member of the union at that time?

A. I was.

Q. Were you down at the Gernes, Gordon, and Missouri riot?

A. I think that was while I was gone. That is the reason I went to California, I go so I couldn't get a job in Kansas City because I had worked at Donnelly's.

[fol. 5225] Q. You did not see the disorders down there at the Gernes' plant?

A. No.

Further Cross Examination

By Mr. Tyler:

Q. Mrs. Owen, do you know an employee at the Donnelly plant by the name of Jennie Brown?

A. I do.

Q. I will ask you whether you had a conversation with her near 13th and Troost shortly after you left the Donnelly employ in which you said to her in substance, "Whatever you kinds do, be smart and don't sign up with the union. You have the best jobs in Kansas City. I wish I had mine back."?

A. I did not. The only time I had a conversation—

The Court: That answers the question.

Objection—material

Q. You did not make any statement to her that included any part of that?
A. I did not.

Objection—immaterial

Q. Or to anyone else?
A. I did not.

Objection—immaterial

Q. You do not know Maude Fisher at all?
A. I know Maude Fisher by working in the plant. Maude Myers, I knew her by.
Q. Did you ever have a conversation with Maude Fisher?
A. Yes, I have called at her home.
Q. But the conversation Miss Fisher swore you had with her you didn't have, or any conversation like that?
A. No, sir.
Q. Do you know Velma Wooley?
A. I do not.
Q. Therefore, of course, you did not have the conversation she swears you had with her?
A. I couldn't; I was in California at the time.
Q. When did you want you went to California?
A. In August, 1936.
[fol. 5226] Q. How long were you there?
A. Until September of this past year.

Recross Examination

By Mr. Hogsett:
Q. You have heretofore testified for the defense?
A. Yes.

Q. In answer to Mr. Walsh's questions did you testify to this page 1226: "Miss Owens, a lady here named Mrs. Maude Fisher testified here and said that in April, 1937 she had a conversation with you at 13th and Troost in Kansas City in which you said to her we have always been good friends and I am going to give you a little tip. You better not drive your car Monday morning because we will all be there, the Fords, Chevvys all will be there and we are going to upset all the cars, cut the tires and beat you up and we are going to give Mrs. Donnelly one big go around, we are going to take Mrs. Wherry for a one-way ride, and also Ella Mae Hyde. Mrs. White, is is my meat alone. I am taking her alone. You get good salaries, but you will have to sign up with us anyway. We are going to sign up the Donnelly Garment Company. Did you or did you not say that to Mrs. Fisher at that time?

A. In 1937, I was in San Francisco, California.

Q. You testified to that?

A. I did.

Q. And at the very time you said you were in San Francisco, California, you were working here for the Marlene Dress Company as an operator, from December 9, 1936 to May 5, 1937, weren't you? Yes or no?

A. Yes, I understood the month of August, 1937.

Q. You heard Mr. Walsh plainly say that Mrs. Fisher and Miss Velma Wooley testified that you had this threatening conversation in April, 1937?

A. I misunderstood him.

Q. Pardon me, you heard that, didn't you?

A. I heard that, but I misunderstood the months.

Q. And the fact is you were working for the Marlene Dress Company from December 9, 1936 to May 5, 1937?

A. I was.

Q. Now, we subpoenaed the payrolls and also the union records to prove that you were paying dues at the union not only in April, but up through July and as late as October, 1937—you learned that, didn't you?

A. Yes. May I explain that?

Q. You heard that didn't you?

A. Yes.

[fol. 5227] Q. And you immediately became quite concerned over the testimony that you had given here before this Court, didn't you?

A. The dues was—

Q. (Interrupting) Pardon me, didn't you become quite concerned over the testimony that you had given?

A. Yes, I did.

Q. Pardon me, you were in Kansas City at the time of the alleged conversation, weren't you, in April, 1937?

Pardon me, you haven't yet answered. You were in Kansas City at the time of the alleged conversation in April, 1937?

A. I was.

[fol. 5238] N.R.A. Testimony.

p. 379 Mrs. Virginia Stroup, called as a witness, being duly sworn, testified as follows:

Cross-Examination.

p. 415 Q. Well, did Mrs. Reeves tell you or say in your presence that anybody that joined the union was going to get fired or discharged?

A. She said you could join 25,000 unions but that wouldn't keep them from laying off a girl if they saw fit.

Q. And you would have to behave yourself and do your work, isn't that a fact?

A. She didn't say "behave myself", but she said I would go down there and make my code or else out I would go.

Q. And she never told you that the company would discharge a girl because she belonged to the union if the girl did good work?

A. Yes, and if they didn't change her work, why,—

Q. Just answer my question.

Mr. Rucker. Q. Answer his question, and don't argue with him.

Q. (By Mr. Ingraham) Did she say that?

Q. (By Dir. Pratt) Did she say that?

A. Say that again.

Q. (By Mr. Ingraham) Did Mrs. Reeves say to you that a girl would be discharged because she joined the union even though she did good work?

A. She didn't say that, no.

p. 418 Q. Now, when was the first time you told any official of the Donnelly Garment Company that there was a union?

A. December 12.

Q. December 12. Before that time had you held meetings with different employees for the purpose of organizing a union?

A. I had gone to one union meeting besides the time we drew up the charter.

Q. And when did you draw up the charter?

[fol. 5239] A. The 6th of December.

Q. That was the first time?

A. Yes, sir.

Q. Then after that how many meetings have you held?

A. Well, we have had weekly meetings, every week, since we got started.

Q. Now, this charter: Does it contain the names of the organizers?
A. It contains the names of the charter members.
Q. How many charter members were there?
p. 419 A. Seven.
Q. How many have joined since that time?
A. I don't know.
Q. Well, how many of the seven that were charter members are working at the Donnelly Garment Company now?
A. I would like to see the names of those or like for you to read me the names of those on the charter.
Q. Virginia Stroup, Frances Riedel, Ellen Fry, Mamie Tubbesing, Clara Enloe, Lillian Rutherford, Tillie Shirley, Thelma Owen, Nora McKee.
A. Three.
Q. Now, at the time this union was organized, how many of these union people were employed at the Donnelly Garment Company?
A. I don't know.
Q. And there are just the three of you—Virginia Stroup, Frances Riedel and Nora McKee?
A. I don't know about that.
Q. Well, you know that those three—
A. Those three are working now.
Q. Those three are working now?
A. Yes.
Q. And at the time that the union was organized the rest of them were not working at the Donnelly Garment Company?
A. I don't know that.
Q. You don't know that?
[Vol. 5240] p. 420 A. No, I don't know that.
Q. Now, when was Ellen Fry laid off?
A. Well, it was along in the summer of 1934.
Q. When was Mamie Tubbesing?
A. Hers was about her vacation time last year, I believe.
Q. Lillian Rutherford?
A. Well, her vacation time.

Q. That was around June or July?
A. June, I think. Well, I should say Lillian Rutherford was laid off along in June.
Q. Tillie Shirley? A. I don't know.
Q. Thelma Owen?
A. I don't know about that, either.
Q. Now, is Ollie Thompson a member of the union? A. Yes, sir.
Q. Is Loretta Sisson? A. I don't know.
Q. Flossie Walton? A. Yes.
Q. Kathleen Jenkins? A. Yes.
Q. May Innis? A. I don't know.
Q. Gladys Ellidge? A. Yes.
p. 421 Q. Glynn Brooks? A. Yes.
Q. But at the time that this union was organized they were not employed at the company?
[fol. 5241] A. I don't know.
Q. Well, you have sat here during all these hearings, you have heard the testimony, haven't you? But you want to tell the Board that you don't know? You have talked to each one of them about it, haven't you? About their complaint in this case?
A. Those complaints?
Q. Yes. A. Yes.
Q. Everyone of these girls. Now you want to tell this Board that you don't know that they were laid off at the time that this union was organized? A. I don't know.

Mr. Rucker: Oh, I think they were according to your records and their testimony. They have all testified they were.

Mr. Ingraham. Sure.

Q. Did any official or superior to you ever tell you, or state in your presence, that if a girl joined the union she would be fired or laid off even though she did good work?
A. I don't believe I recollect hearing anyone say that.

Mr. Ingraham: I believe that's all.

Q. (By Mr. Rucker) What did Mrs. Allison say to you?

A. She said she sure felt sorry for we girls that belong to the union.

Q. What would happen to you?

A. That we would be laid off.

Q. And was she superior to you?

A. Yes. But that wasn't the way I got that question.

Q. (By Mr. Ingraham) And you haven't been laid off?

A. No, sir. And since the last hearing I should say everything has been very, very nice over there. Just like it used to be.

Q. It's [alright] now?

[fol. 5242] p. 429 A. Yes, [alright] now, but it wasn't for a while.

Q. Well, you have done pretty good work yourself, haven't you?

A. Pretty good work?

Q. Yes. A. What do you mean?

Q. Well, you don't make a practice—I mean your actual work has been up to the code?

A. Well, I hope so.

Q. Well, you know whether it has or not, don't you? A. Just what do you mean?

Q. (By Mr. Rucker) Well, have you made the code or not?

A. Why, yes. There might have been a few times, but I think everyone falls down once in a while.

p. 435 Q. (By Mr. Birkhead) Well, did Pauline Lutz ask you to make this complaint?

A. We had talked about it.

Q. I mean, she asked you to make the complaint for her? A. Yes.

Q. And the only superior in the Donnelly Garment Company, only superior to you, that ever threatened you with a lay-off or dismissal for your union affiliations was this Mrs. Allison?

p. 436 A. Yes, Mrs. Allison.
Q. And did she tell you that it had been suggested to her that she give you this warning from Mrs. Reeves?
A. She didn't say that that came from Mrs. Reeves, that we little girls would be laid off on account of our union affiliations. She told us that herself.
Q. What is her position?
A. She is an instructor. She instructs the girls how to work, the different operations.

[fol. 5243] p. 665 Proceedings—Before N. R. A. Board

MRS. GLADYS ELLEDGE RICHARDSON, called as a witness, being duly sworn, testified as follows:

p. 693 Q. (By Mr. Reed) You learned, did you not, that the Prudential Insurance Company made an investigation of this employment of yours that you had with the Gernes Company?
A. I did not.
Q. Did you learn of it?
A. I heard of it, but I didn't learn it.
Q. How did you hear of it?
A. Mrs. Ella Mae Hyde told me.
Q. And she told you about a letter that the insurance company had written, didn't she?
p. 694 A. That's correct.
Q. Showed you a letter?
A. She did not show it to me. I asked to see the letter, and she said, "After all, Gladys, that wouldn't be fair to the insurance company, and I certainly won't show it to you."
Q. Well, she read it to you?
A. She did not.
Q. Did you see the paper at all?
A. I did not.
Q. Didn't you see that paper right there (indicating)? A. No, sir.
Q. Well, wait till you look at it.

A. I never did. That's the first time I ever saw the paper.

Q. She had a letter in her hand, however, didn't she? A. She did not.

Q. What did Ella Mae Hyde say to you when she talked to you?

[fol. 5244] A. She came down to my machine and I was working, and she said, "Gladys, when you finish your bundle, you come to my office;" and I said, "All right, Mrs. Guerrant." When I got there she says, "Gladys, we don't need you any longer." I turned around and looked at her so funny. I said, "Why don't you need me any longer, Mrs. Guerrant? You are hiring a lot of new help, and, after all, I am an old girl. Why don't you need me any longer?"

p. 695 And she says, "We don't hire dishonest people." I said, "What do you mean, dishonest?" Mrs. Guerrant said, "Well, you received money from the insurance company which you were not entitled to." And I said, "What do you mean?" And she said, "Well, we received a letter from the insurance people, stating that you worked for the Gernes Garment Company and you were not entitled to this money, and we don't want you any longer." I said I would like to see the letter. She said, "No, Gladys." She said, "After all, that wouldn't be fair to the insurance company, and I want to be fair to everyone."

Q. So you were discharged there because you were drawing sick benefits from the insurance company during a period when you were working under a different name than Elledge, the name by which you were carried on the insurance policy—

A. It's strange you had my name as Gladys Elledge Richardson on that paper.

Q. —and you were informed that the insurance company had complained about it. That's why you were discharged, isn't it?

A. Yes. It was in one way, because they couldn't find anything wrong with my work. But they caught me talking unionism, and they wanted me out of there because they said, Well, after all, every girl that talked unionism down there, they was going to get them out.

p. 698 Q. When did you first talk to anyone about joining the union?

A. The first time I talked to anyone about joining the union was in the spring. We were out at Glynn Brooks' home, and she had a group out there, a group of people, and we had representatives out there, such as Marion Burns.

p. 700 Q. (By Mr. Reed) Now, when was the next time that you girls had any meeting?

A. We had several. I couldn't call the day.

Q. Where did you meet?

A. Different places; different girls' homes.

Q. Just this same little group?

A. No. There was a lot of others that was added to it.

Q. Well, how many others?

A. I couldn't say.

Q. Can't you give me some light as to when you actually organized this union branch.

A. We started in the spring.

Q. When did you actually organize it?

[fol. 5245] A. At the same time.

Q. Did you elect any officers?

A. Yes, we had a few officers.

Q. Who did you elect?

A. Well, I just don't remember, but we had officers.

Q. You don't remember who you officers were? Don't remember when you elected them?

A. No.

p. 701 Q. Don't remember at whose house you were when you elected them?

A. No, sir.

Q. Now, you girls who had these meetings: Did you make them public, or did you have secret meetings? A. No, they were public.

Q. Public to whom?
A. To the employees of the Donnelly Garment Company.
Q. Did you invite the rest of them to come there?
A. They invited a few. As many as the house would hold.
Q. And did they come?
A. Yes, sir.
Q. There was nothing said there about keeping this secret?
A. No, sir.
Q. Did you go out and tell it to everybody?
A. Certainly.
Q. Did you go down to the shop and tell it down there? A. I did.
Q. Did you down there in the shop urge people to join? A. I did.
Q. During working hours?
[fol. 5246] A. No, sir.
Q. When?
A. Lunch hours and after working hours.
Q. On the premises of the company?
p. 702 A. No, sir. I went to their homes and their business places.
Q. Well, I am asking what you did down there at the company. You said you did talk it down there.
A. In lunch hours, I did.
Q. Yes. Where are the lunches taken?
A. Sometimes I went out for lunch and went to other restaurants, and sometimes I had lunch in the lunch room.
Q. And you talked it up in the wash rooms and around there, did you?
A. During lunch hour.
Q. Yes, during lunch hour. All right. But on the premises of the company?

p. 703 Q. (By Mr. Reed) Well, you did talk it during lunch hour while you were on the premises of the company?
A. Yes.

Q. And you did it repeatedly, didn't you?

A. During lunch hours; yes, sir.

Q. All right. Now, the meeting that you had at Glynn Brooks' house was held in May, 1934?

A. Yes, sir; around that time.

Q. And you were sick until sometime in August or later, and then you came back to work. What date was it? I have asked this once, but I don't remember. When you came back to work.

A. I returned to work the 8th day of August, I worked the 8th and the 9th, and I had a relapse of the heat stroke, and I was down.

Q. And then you went back when?

A. I was called back December 12, I believe, to be correct.

Q. Now, when you were down there at the company, you were very enthusiastic for the union, I take it?

[fol. 5247] A. Certainly.

p. 704 Q. And you talked there among the girls and the people continuously from the time you went down, and you continued to advocate the union?

A. I did at mornings and noons and evenings, but not during working hours.

Q. And you made no secret of it?

A. No, sir.

Q. Now, from the time that you had the meeting out there in Glynn Brooks' house—I believe that's the name. A. Yes, sir.

Q. At the time you had that in the spring you became enthusiastic for the union. And you went back to the company and worked until July when there was a lay-off?

A. I did not work until July.

Q. When? A. I was laid off in June.

Q. In June? A. Yes.

Q. Very well. I don't mean to cavil about the date. During all that time you talked union down there, just as you said?

A. I certainly did.

Q. And notwithstanding that fact, you were called back in the month of December? Called back in August and worked 2 days, and then called back in December?

A. That's right.

p. 705 Q. And you were kept there in the shop or in the factory until the 15th day of January. Then you were called in and were told that you were being let out on account of this insurance matter. That's right, isn't it?

A. That's what they told me.

[fol. 5248] Proceedings—Before N. R. A. Board

p. 713 Mrs. Lou Perkins, called as a witness, being duly sworn, testified as follows:

p. 722 Q. (By Mr. Reed) Had you been around there telling that you belonged to the union or making any fuss or agitation?

A. Well, I had talked union to the girls.

Q. There on the premises?

A. Yes, sir.

Q. When did you begin doing that?

A. Well, in June and July. In July when I went back to work. And I had talked it that spring that I was there.

Q. And notwithstanding the fact that you had talked it in the spring, you were called back in the summer?

A. I wasn't called back. I went back.

Q. Well, you went back and you got a job?

A. Yes. But I didn't get a steady machine.

Q. What are you? A straight operator?

A. I do straight sewing and hemming.

Q. When did you say you joined the union?

A. Joined the union in November.

Q. Of 1937?

A. Yes.

Q. That's when you were out of work, not working for the Donnelly Garment Company?

p. 723 A. Yes. And I called down there and asked for work at that time. And I don't know who answered; I don't know whether it was Mrs. Guerrant, or whether it was the nurse who answered the phone. And she said, "Wait a minute"; and I waited, of course,—

Q. You don't know who you were talking to?

A. No, I don't.

Mr. Rucker: Q. Go ahead and finish the answer.

A. She said, "Wait a minute." and I waited. And then she came back and said, "You wait till we call you." And I am still waiting.

[fol. 5249] Q. (By Mr. Reed) Did you sign any application to join the union?

A. Yes, sir.

Q. When?

A. In November.

Q. As a matter of fact, you didn't join the union until February 11, 1935, and that fact is shown on your card, isn't it?

A. I didn't do any active work in it until then.
Q. Well, did you join it?
A. I joined and filled out my application.

[fol. 5250] Direct Examination of Mrs. Reeves

By Mr. Reed: (Letter of March 9th, 1937, marked Exhibit 32, received in evidence)

Q. So far as you know, did either of the signers of this letter have any relationship with your employees or with your company?

Objection—immaterial

A. They did not. They were strangers.
Q. This statement—this letter rather contains the statement "15 members of our union"—that is the ILGWU—"were discharged by your firm because of their affiliations with our organization. Their case was up before the National Labor Relations Board". At that time or otherwise, did you learn who these 15 members that they claimed were discharged were?
A. At the hearing before the Labor Board, I heard who these 15 members were. Before that I knew through a letter we had received from the Labor Board.
Q. I ask you if you could name these parties from any knowledge which you received at the hearing or otherwise as to who these 15 girls were, their names if you can remember them? A. Yes.
Q. Was Lillian Rutherford one of them? A. Yes.

Q. Was Thelma Owens one of them? A. Yes.
Q. Was Glynn Brooks one of them? A. Yes.
Q. Was Tillie Shirley? A. Yes.
Q. Mamie Tubbesing? A. Yes.
Q. Ellen Fry? A. Yes.
Q. Was Magdalene Hammers? A. Yes.
Q. Was May Innis? A. Yes.
Q. Was Loretta Sisson? A. Yes.
Q. Was Ollie Thompson? A. Yes.
Q. Was Nora McKee? A. Yes.
Q. Was Lou Perkins? A. Yes.
Q. Was Margaret Howard? A. Yes.
Q. Was Kathleen Jenkins? A. Yes.
Q. Was Nora McQuiston?
A. Nora McQuiston was the one that I heard I think.
Q. Had those girls worked at the factory at one time? A. Yes.
Q. At the time you received this March 9th. letter. About December 6, 1934, there was a letter received from the Labor Board which you referred to a moment ago in your testimony which was stricken, naming these particular people as having been discharged?
A. Yes, sir.
Q. Now, at that time were any of these people that I have just named working for the company?
A. Yes, eight of them.
Q. Now, let us get back—were any of these people ever discharged by the company because they belonged to a labor organization?

[fol. 5251] p. 112 Q. Who is it at the plant determines when the number of employees shall be increased or shall be decreased?
A. When these—
Q. In 1934 when this occurrence happened?
A. There was a committee of three who decided upon which number to be laid off; taking into consideration their qualifications.
Q. Who was that committee, do you remember, in 1934?
A. Mrs. Wherry, Mr. Athicison and myself.

Q. Was there more than one general lay off that year? A. There were two.

Q. In July, 1934, how many employees were let off? A. Approximately 115.

Q. In October, 1934 was there another lay off?

A. Yes.

Q. About how many?

A. Approximately 180.

p. 113 Q. When you laid off these employees, this 124, or 115 I think you said, and 180 you said—whatever number was laid off—those two lay offs, were they laid off solely because of lack of work?

p. 114 A. They were laid off entirely on account of lack of work.

Q. When the lay offs of this kind were made, how was it determined who should be laid off?

A. We would analyze the operators very carefully, the ones that were incapable of doing more than just one very small proportion of work, only one type operators, who couldn't change from one machine to another, least efficient operators were naturally the ones laid off first.

Q. You have spoken of the question of efficiency and ability to operate machines. Were there other things taken into consideration?

A. Yes, there are always things taken into consideration. We have kept people who have been physically disabled for years. We have kept people we knew their financial condition at home, that they were the sole support, we have tried to be just as humane and considerate of all of our employees, and take all those cases into consideration with the situation when we had to have a lay off of any kind.

[fol. 5252]

p. 115 Q. Do you or do you not also take into consideration the attitude and manner and abilities or disabilities of these employees?

A. We certainly do.

Q. When you let out this approximately 124 in July, I believe you said 115, when you let them out did you take into consideration anything except the lack of work and the other considerations you have just mentioned?

A. That was the only thing we could take into consideration.

Q. Now, was there a further diminution of work after the month of July and before the month
p. 116 of October so that you had to lay off additional people? A. Yes.

Q. Were the reasons for that reduction in the force the same as you have given with reference to the July lay off? A. Yes.

Q. Did you know at the time you let these employees out that any of them belonged to any labor union? A. I did not.

Q. Was that matter considered by your committee? A. No, we didn't know it.

p. 117 Q. Now, there was a hearing before the Labor Board which I believe—you remember receiving a letter from the Labor Board in which they made the charge that these people had been—this list of names, 16 or 17 had been discharged because they were members of the union and had not been hired back, or brought back when there was an increased employment. Do you remember that letter?

A. I remember receiving a letter like that.

Q. Before you received that letter, had you been calling back employees? A. Yes, sir.

Q. As a matter of fact had you called back any of these complaining girls?

A. There were eight of them that had been called back.

Q. Did you at that time know that they had ever been affiliated with any labor organization?

A. I did not.

Q. Were they called back just as part of the
[fol. 5253] general calling back of employees in the ordinary way?

A. Yes.

Q. Do you remember about how many employees were called back at that time, former employees?

A. I believe around 80 I am not positive. I would have to refer to the records.

Q. Among that number that were called back, 8 of these girls it is claimed had joined the union after they had been let out?

A. Yes.

Q. There were 15 let out, and eight of them had been called back. Did the other 7 ever, to your knowledge, apply for work at the company? A. Not to my knowledge.

Q. You spoke about the statement that was made before the Labor Board by various of these employees, former employees. Was there one of them—did it come out at those hearings, one of them claimed to have been a member of the union before she was let out?

A. Yes.

Q. Who was that? A. Ellen Fry.

Q. She was the only one? A. Yes.

Q. Are some of those that were called back—that is I am referring to the eight, still working for the company? A. Yes.

Q. Do you know whether or not other union people had been working for that company for years? A. I do.

Q. Was there any question raised or objection made to their union affiliations by the company? A. They were never asked.

Q. Was the fact that any of the 7 who were not called back due to the fact that they had joined any union or that you had any information that they had joined any union?

[fol. 5254] p. 120 A. That was not the reason they were not called back. The reason they were not called back was that [there] were not efficient operators. They were not three type operators.

Q. This letter states "150,000 workers employed in this industry are enjoying a five day, 35 hour working week and a $22.05 per week

minimum wage scale for operators". What are the facts about that, if you know?

Do you know from your general knowledge of this business what the wages were that were paid in many factories for this class of work? And the hours of labor they were being worked?

Objection—immaterial.

A. Our competitors?
Q. Yes. Just answer yes or no.

Objection—immaterial.

A. Yes.
p. 122 Q. What are the facts with reference to the hours of labor and wages being paid by your competitors right here in Kansas City or elsewhere?

Objection—immaterial.

A. I obtained this knowledge also through what the other shops were paying, through applications of operators who came to us and applied for jobs, put it down in black and white, what the conditions were they were working under.
Q. What was the fact about these employees here in Kansas City, and these other factories working on five days a week, 35 hours?

Objection—immaterial.

A. They were working 40 hours a week.
Q. What do you know about $22.05 being a minimum wage scale for operators in these Kansas City plants?

Objection—immaterial.

A. Not according to their contracts, as I remember.
Q. What was it?

Objection—immaterial.

A. $13.50 was the minimum for most of them, with the exception of one.

Q. One contract?

Objection—immaterial.

A. One contract.

Q. Whose contract was that?

Objection—immaterial.

A. The Marlene Dress Company.

Q. What were the wages being paid in the Donnelly Company for finishers, pressers, cutters at the time this letter was written, March 9, 1937?

Objection—immaterial.

A. Our minimum wage was $15 per week; and our cutters were getting from forty to fifty for a first class cutter; and our finishers were averaging from $20 to $25 to $30 per week. Our operators were averaging as a minimum $15 per week. An efficient operator was making and did make from $25 to $50 a week; the less efficient operator made from $20 to $25 a week.

[fol. 5255] Q. Was $15 a guaranteed minimum, whether they made it or not?

p. 124 A. $15 was a guaranteed minimum—even a bundle boy that had worked two days, that was his guarantee.

Q. Statement is made in this letter "That the wage scale for finishers, pressers and cutters are at least thirty per cent lower than those that exist in the industry". What is the fact about that? A. That is not true.

Q. Statement is made that "the hours of work in your shop are 40 and more per week". What is the fact about that?

A. Our regular work week is 40 hours per week. During peak seasons, while we do work over time with the full consent of the operators,

nobody is ever compelled to work if they do not care to. They do it voluntarily.

Q. They get paid for that?

A. They get time and a half for every hour they work overtime.

Q. Was that true in 1934?

A. I don't remember. They got over time I know. But I don't remember whether they got time and a half or not.

Q. Is it true that today they get time and a half for all the work above 40 hours a week?

p. 125 A. Yes, sir.

Q. In 1937 when this letter was received did your workers, when they worked more than 40 hours a week, receive time and a half pay?

A. Yes.

Q. Statement is made in this letter that "the conditions and wages under which your employees are working, not only deprive them of the privileges and opportunities enjoyed by the workers in this industry, but endangers their general work standards and wage scales". Was there any such condition as that in this plant?

A. No, there was not.

Q. The statement is made in this letter "Under your system of production the worker is compelled to invest extraordinary effort, but the reward that follows is very meager in proportion to the efforts invested". Is that true in this plant? Is there any system down there like a speed up system which forces operators to do a certain amount of work?

[fol. 5256] p. 126 A. There is not.

Q. Has there ever been?

A. That is not.

Q. Tell the Judge what is meant by line work, whether there are shops that have a system by which each operator must do the work that is pushed over to him by another operator, and keep up with the rest of them. Is that what you call line work?

A. That is what you call line work. Yes.

Q. Has any such system ever been used in the Donnelly Company? A. It has not.

Q. The statement is made in this letter "Your workers are denied the right of joining a labor organization". Was that true?

p. 127 A. No, it was not.

Q. And this statement follows: "Those who do, are immediately discharged". Was that true?

A. No it was not.

Q. Statement is made "The piece workers in your shop have no voice as to what the piece rates should be as they are set exclusively by representatives of your firm". I believe you went over that the other day and told us how they were fixed?

A. Yes, sir.

Q. The letter states "Your workers are denied the privilege of genuine collective bargaining". What is the fact about that? Was any worker of the Donnelly Company ever denied the right to collective bargaining? A. No.

Q. Did they ever come in and ask for it?

A. No.

Q. Have you had in the plant any trouble whatever with your employees over wages, hours or working conditions in the 17 years of your connection with the company?

A. Have not.

Q. Has it or has it not always been true that any employees who thought their scale of prices was too low could make that known to the company and would receive consideration?

[fol. 5257] p. 128 A. That is true.

Q. Would adjustments be made?

A. They would.

Q. Was anybody ever discharged because they came and made such a request?

A. There were none.

Q. State, Mrs. Reeves, all you know about the organization of the Donnelly Garment Workers' Union?

A. I don't know anything about it.
Q. Did you learn that such an organization existed?
A. I did, around—some time in May.
Q. Can you state now from knowledge you have since received when it was organized. I would like to fix a date.
A. I think April 27th. I am not positive of that date.
Q. Before this date of April 27th, which you
p. 129 have tentatively fixed, in 1937, what was the condition as to strikes in Kansas City in other garment companies?

Objection—immaterial

p. 130 A. I want to correct the statement I made. I believe that I said that prior to April 27th, we paid time and a half for all over time. During our peak seasons, when we did work overtime, we paid for overtime and sometimes we would pay time and a half. But it was optional. We didn't always stick to the one rule.
Q. When did you begin paying time and a half regularly? A. I think after April 27th.
Q. That is the date that the union made a contract? A. Yes, 1937.
Q. Whatever the date was the union contract was made, it was after that you began regularly paying time and a half for over time?
A. I believe May 27th when the first working agreement was made; June 22nd was when the wage and hour agreement was made.
Q. You said you knew of strikes occurring in these other garment factories in Kansas City? Did they continue from about March 15th to April 27th?

Objection—immaterial

A. Yes, sir.
Q. What companies were there strikes in?

Objection—immaterial

[fol. 5258] p. 1931 A. Gernes Garment Company, Missouri Garment Company, and the Gordon Garment Company.

Q. Where were those companies located?

Objection—immaterial

A. 26th and Walnut.

Q. How far is that from your place of business?

Objection—immaterial

A. About six blocks—six to eight.

Q. Did you go behind those buildings and see what was going on at different times?

Objection—immaterial

A. Yes, I did.

Q. What did you see?

Objection—immaterial

A. I saw milling in the streets, lots of excitement; pickets going back and forth in front of the building, and a lot of commotion.

p. 1932 Q. Did you see policemen there?

Objection—immaterial

A. Yes, sir.

Q. What were they doing?

A. Trying to help girls get into the building, in order that the girls might go to work.

Q. Were there accounts of these strikes in the newspapers?

Objection—immaterial

A. There were, and pictures.

Q. Did you observe the effect of these strikes and threats on your employees?

Objection—immaterial

A. Yes.

p. 133 Q. State what you observed?

Objection—immaterial

A. They were very nervous and upset, and they said they had heard threats that the union was going to come and try the same tactics on the Donnelly Company, as soon as they settled strikes with other plants; they asked what could be done about it to protect them from such violence.

p. 135 Q. Now, did you or as far as you know, any officer or executive or superintendent or foreman or any other superior have anything to do whatsoever with the organization of the plant union? A. They did not.

[fol. 5259] p. 148 Q. (By Senator Reed) I hand you a circular marked for identification Exhibit 36 and ask you to examine the circular and state when you first knew of that circular being distributed.

Objection—Offer of Exhibit 36 immaterial.

p. 149 A. In May and June, 1937.

Senator Reed: I offer in evidence Exhibit 36. For the information of the Court it contains a copy of the March 9th letter which I have already introduced in evidence.

The Court: The polite Letter?

Senator Reed: Yes, the polite letter. Now, I read the big type, or I read that part of the circular which was not contained in the March 9th letter. On the cover printed in large letters "We do not patronize the 'Nelly Don' Dress." On the next page it says:

(Senator Reed reads Exhibit 36).

p. 150 Q. (By Senator Reed) From the reports which have come in, from the facts which you have learned, how wide or general was the distribution of this Exhibit 36 throughout the country?

Objection—immaterial

A. A national distribution?

Q. Was it [send] in to you by numerous of your purchasers?

Objection—immaterial

A. Yes, sir.

Q. By purchasers, I mean your regular customers?

Objection—immaterial

A. Yes, sir.

Q. Taking up the part of this circular which is in addition to the letter of March 9th, I want to ask you some questions regarding the statements contained in that. Statement is made "The workers of the Donnelly Garment Company are compelled to work long hours while their wage scale is far below that which prevails everywhere else in the dress industry." I think you have covered that when you stated there were 40 hours per week in general, and you have also covered the wages. This statement, however, was it true or untrue?

Objection—immaterial

A. Untrue.

Q. I read from the circular "The speed-up system is such that most of the 1300 workers employed by this firm are in a state of exhaustion and fatigue." Is that statement true or untrue?

Objection—immaterial

A. Untrue. False.

p. 151 Q. What was the fact with reference to the condition of your workers down there with reference to their health?

Objection—immaterial

A. The health of our workers is far above the average; and as I said before, on health insurance, we got a return premium to the Donnelly Garment Company over $6,000.00, which

Mrs. Reed immediately redistributed to her employees.

Q. Has there ever been a speed-up system or anything like a speed-up system in that plant since you have been with it?

Objection—immaterial

[fol. 5260] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. There certainly has not.

Q. Is it a fact, if an employee who is working on piece work, for instance, simply produces what she feels able to produce or desires to produce, that as long as they work with decent regularity, that is all there is to it?

A. That is the fact, the case.

Q. Statement is made "many of them"—that is the employees "must have constant medical attention because of the nervous strain imposed upon them by this system. Numerous workers, suffer complete nervous breakdowns." Is that true?

A. That is not true.

Q. Has it ever been true?

A. No, it has never been true.

Q. Have you ever known of a single case where a person was overworked down there and broke down under it?

A. I have not.

p. 152 Q. How many people in that plant have been there over ten years?

A. 25% of the workers, today, that have been there over ten years; and 50% over five years.

Q. And some of them have been there how long?

A. Some of them have been there since the company started when Mrs. Reed started out originally before there was even a corporation.

Q. Now, Mrs. Reeves, has there ever been a spy system in that plant?

A. There has not.

Q. Have you ever in any manner undertaken to spy upon your employees?

A. We have not.

Q. Now, they say "The spy system is under the direct supervision of a notorious strike-breaking detective agency, through which every worker is spied upon." Is that true or not true?

A. That is absolutely not true.

Q. Then follows this statement "Those who dare to complain of conditions or join a labor organization, or express a favorable opinion of the union, are immediately discharged." Is that true?

[fol. 5261] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. That is not true.

Q. Was it ever true?

A. No, it was not.

Q. Has there been any expression among the employees, general expression, with reference to the untruth and the repudiation of the statements contained in this circular?

p. 153 A. There certainly has. They are very indignant, and their expression took the form of sending Mrs. Reed personally 750 letters to her, telling her just exactly what she meant to them as an individual, what the Donnelly Garment Company had meant to them, and denying these charges.

Q. Were those voluntary statements?

A. They were, yes. They were all personal letters sent to her.

Q. Were there also any affidavits made?

A. Yes, there were.

Q. Have you ever seen them?

A. Yes, I saw them.

Q. Were they delivered to the company.

A. Well, I don't know where they were delivered but I saw them when Mrs. Reed happened to have them.

Q. They were in her hands? A. Yes, sir.

Q. Did you see them?

A. I saw them and read them, everyone of them.

Q. Were you acquainted with the persons who wrote them? A. Yes, sir.

Q. I hand you a bundle of papers which I will hereafter identify, a very large bundle. Look them over and see if those are the letters which you saw in Mrs. Reed's hands, and which were written by the various employees of the company voluntarily?

A. These are the letters.

[fol. 5262] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

p. 154 Senator Reed: I offer them in evidence.

The Court: How will you identify them, Senator?

(4 bundles containing approximately 175 to 200 letters is marked Plaintiffs' Exhibits 38, 39, 40 and 41 for identification.)

p. 158 (Whereupon, Plaintiffs' Exhibits 37 to 41 inclusive, as received in evidence are made a part hereof.)

p. 160 Q. By Senator Reed: Mrs. Reeves, I am referring to one of the newspaper articles where Mr. Perlstein announced the International would send out emissaries over the trade territory of these companies to contact your customers. Do you remember whether or not the threat was carried out? A. I did.

Q. And how extensively—how did you learn it?

A. I learned it through the letters and long distance telephone calls from our old customers and through our salesmen.

p. 161 Q. About how many reports have you had from customers who have been called upon, and who were complaining or alarmed about this crusade?

A. I would judge at least a couple of hundred.

Q. (By Senator Reed) Has that condition ever existed ever since—up to the time the restraining order was issued?

A. Did that condition exist? Yes.

p. 162 Q. And since the restraining order, has that condition existed also?

A. Yes.

Q. In what parts of the country particularly was this crusade carried on? What states?

A. It was carried on in Michigan, Louisiana, the New England States particularly, where there are—

Q. (Interrupting) How about the southern states?

A. The southern states. Texas and so forth.

Q. During the time this has gone on, has it damaged your business particularly with accounts? A. Yes.

p. 165 Q. Do you know of accounts that have been lost to the company on the alleged statement of the customer that it is because of these attacks that have been made?

[fol. 5263] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. Yes.

Q. Now, can you name a few of the accounts?

A. R. H. Stearns, Boston, Massachusetts; D. H. Holmes, in New Orleans are two. Some small accounts, I can't recall right now in Michigan that passed up our line.

Q. This account in Boston, how long had you had that? A. Over ten years.

Q. What was their annual purchase general?

A. Well, not less than twenty-five to thirty-five thousand dollars a year.

Q. How about the account in New Orleans? How long had you had that account there?

A. Approximately the same time.

Q. That is ten years or more?

A. I am not definite on that.

Q. In New Orleans anyway?

A. In New Orleans, yes.

Q. What was your annual sales for that company? A. Approximately the same.

Q. $25,000.00 per year? A. Approximately.
Q. And you say there were a number of smaller accounts you do not recall? A. Yes.
[fol. 5264] p. 193 Q. When did Mr. Baty become superintendent of the plant?
A. June, 1935.
Q. Prior to that time if there was any person to be discharged, except when you let out numbers of them, what was the method of investigating and finding out whether they should be dismissed and who did that?
A. We would check up on the record of the girl, and we would discuss it with the instructor to see if that girl were capable of doing any other type of work than the one she was doing at that particular time. We would try her in other sections to see if she could—give her other type of work to see if she were capable of doing a job in some other part of the factory. If it were impossible, we would discuss the matter with Mr. Atchison, Mrs. Wherry and myself and we would come to a decision.
Q. If there was anyone who complained they were not being treated fairly in a department, what was the custom with regard to sending them to some other department to see if they could get along there?
A. We would change them and try to give them a chance in every other department that we could.
p. 194 Q. Now since Baty came in, has he had charge of the matter of discharging any person where it is deemed necessary to discharge him?
A. Yes, sir.
Q. Did your company, to your knowledge, or any officer of the company, to your knowledge, or any superior of the company, to your knowledge make any contribution directly or indirectly to the plant union?
p. 195 A. They did not.

Q. Did any officer or executive of the company to your knowledge use any influence to cause the organization of the plant union?

A. They did not.

Q. Has the company contributed in any way to the support of the plant union given financial aid or other aid to your knowledge to the plant union?

A. They have not.

Q. Did Mr. Tyler represent your company in any way?

A. Not to my knowledge.

p. 230 Q. In 1937 did Mrs. Nichols fix the prices in the manner you have detailed?

A. Yes.

Q. She is still doing it?

[fol. 5265] A. Yes, along with extra help. I will say, Miss Todd checks all prices now, and her committee.

Q. After Mrs. Nichols?

A. I believe at the time they are made.

p. 769 Q. I will hand you a book now entitled "Folding Record" and ask you whether or not that is a production record of the Donnelly Garment Company and the dates which the entries record?

A. It is our folding record, December 3, 1936 to January 27, 1937.

Q. I see on the first one of these, it covers from November 15, 1935 to January 9, 1936, that is correct isn't it, Mrs. Reeves?

p. 770 A. Yes.

Q. And I think you testified upon yesterday that those books were not retained by the Donnelly Garment Company year by year?

A. I did not testify on this, Mr. Walsh.

Q. Have you any books of that kind? I thought you testified that you had none of that kind for 1935 excepting this one, of course?

A. I imagine they would not have, that is in another department than mine.

Q. Didn't you testify upon yesterday that the production record, when I asked you about

them, were not kept for any length of time? I wish you would tell me just for what length of time they are kept?

A. I do not imagine for over two years at the most.

Q. Have you 1935?

A. No, I am sure we would not have.

Q. What became of the records for 1935?

A. They are burned up, aren't they?

Q. I don't know, I never was in the shop until the other day.

A. Pardon me; I believe they are destroyed.

Q. Did you have anything to do with destroying them?

A. No.

p. 771 Q. Who does the destroying of the records when you are through with them?

[fol. 5266] A. I think the janitors.

Q. When you were production manager who turned them over to the janitors for destruction?

A. We do it in a routine way.

Q. However you do it, who turns it over to them?

A. Well, the payroll girl who would turn it over to them and those books and anything that—

Q. (Interrupting) I am just speaking of these books. Who attend to the destroying of these books?

A. The payroll girl or the file girl, after a certain length of time.

Q. Can you tell us when you were production manager what that length of time was before your turned them over for destruction?

A. Oh, I don't think we ever kept them over two years.

Q. Have you any, to your knowledge, back of 1935? Was that a regular custom to destroy them to burn them?

A. Yes, we do not keep any records after that.

Q. You do not keep any records at all?

A. Not of that character.

Q. Have you a record into which this is copied,

p. 772 that is a permanent record showing the

amount of your manufactured product and the income that you derived therefrom?

A. Well not in that detail. I really don't know what the accounting department keeps. I would not know.

Q. Was there any order made at any particular time for the destruction of your records?

A. Well, I imagine the department head knows it; for instance in my own particular job there are some particular records I don't bother keeping over six months.

Q. We will keep to these production records. When those production records were destroyed did you give the order to destroy them?

A. I have in the past.

Q. I mean when you were in the production department?

[fol. 5267] A. Yes.

Q. And to whom did you give that order?

A. Well, the payroll girl; it was just generally understood; I don't believe there was ever an order. It is just a question of an accumulation of a lot of papers and you cannot keep all that stuff.

p. 773 Q. When was any order given that you can recall now to destroy any production records, general or specific, prior to 1936?

A. I would have to answer you generally on that, I could not be specific about it.

Q. I will ask you whether or not you ever gave any order, generally or specific, to destroy production records such as the ones that have been produced here and marked for identification which you have examined?

A. Yes.

Q. When did you give that order?

A. Well, the first time I did it was when I was on the payroll myself.

Q. I am asking you when?

A. That was in 1922 and 1923.

Q. And what was your position then?

A. I was payroll clerk.

Q. You were what?
A. Payroll clerk.
Q. To whom did you give that order.
A. I just told the janitors to take them away and burn them.
Q. Have you ever given any orders since 1922?
A. Well, I have given a blanket order like the person who was on the payroll, I would say "Well, keep those things for a certain length of time and then destroy them".
Q. Tell me the next order you gave and tell me just what you said to the girl, in substance?
A. Well, I believe she came and said "How long shall we keep these" and I said "Oh, well, keep them about two years or about a year and a half" or whatever it happened to be.
Q. Do you remember the exact time you told the girl to keep them?
[fol. 5268] p. 774 A. No, I don't.
Q. Were your orders carried out all the time?
A. I don't know.
Q. Then you may have them for 1935 and 1934 down there?
A. Well, now, I didn't have anything to do with this in 1937 and 1936, 1936, 1937, and 1938, so I don't know.
Q. How about 1934?
A. Well, I don't know; I don't imagine we have anything left like that.
Q. I asked you about it to get it definite and you correct me if I am not correct, and you said they were not there and they have been destroyed, is that correct?
A. That is correct, I am positive.
Q. That is true?
A. Yes.
Q. Are the production records for 1934 still down there?
A. No.
Q. Are the records for 1933 still down there?

A. No. You are still talking about that folding book?

Q. I am talking about these folding records.

p. 775 A. That is right, yes.

Q. Are the records there for 1938?

A. No.

Q. What are your peak months, madam?

I think March and April, they are two peak months, and May; March, April and May.

Q. Give us your peak months, your peak seasons please?

A. Well, that varies. I would say that those are really our peak seasons. Sometimes it depends on the amount of orders we have and sometimes it happens that January is a peak month.

Q. How about September?

[fol. 5269] A. September generally is not.

Q. How about October?

A. No.

Q. So the only ones you call peak months are what?

A. Oh, August sometimes is a peak month and sometimes December, sometimes not very much, and sometimes January and most generally March, April and May.

Q. Do you have a peak month for the winter season, what you call the winter season?

A. That would be August.

PHONE, VICTOR 9585

PLAINTIFF'S
32

KANSAS CITY JOINT BOARD

LOCALS NO. 114, 115, 118

International Ladies' Garment Workers' Union

AFFILIATED WITH AMERICAN FEDERATION OF LABOR

1022 BALTIMORE AVENUE

KANSAS CITY, MO.

March 9, 1937.

Donnelly Garment Company
1828 Walnut Street
Kansas City, Missouri

Gentlemen:

The Kansas City members of the International Ladies' Garment Workers' Union feel compelled to place before you the following grievances that should be adjusted immediately.

Fifteen members of our Union were discharged by your firm because of their affiliations with our organization. Their case was up before the National Labor Relations Board. During the period the hearings took place the NRA was declared unconstitutional by the Supreme Court of the United States and the Government could proceed no further. The discharged workers have not as yet been returned to work by your firm.

The Dress Industry, in which your firm is engaged, is highly unionized throughout the country. Every producer of dresses is in contractual relations with our Union. The 150,000 workers employed in this industry are enjoying a 5-day, 35-hour working week and a $22.05 per week minimum wage scale for operators and reasonable, fair minimum scales for finishers, pressers, cutters, et cetera. Piece workers, who compose the majority of workers in your shop as well as in the industry, are enjoying the right, through committees selected by them, of having an equal voice with the management in each shop in determining the piece rates for each garment or operation of a garment.

The workers in the industry enjoy the freedom and right of organization. Collective bargaining has been established as a permanent institution. These are the conditions and wage scales in the industry.

In your shop the minimum wage scale for operators is between $12.50 and $15.00 per week

The wage scales for finishers, pressers and cutters are at least 30% lower than those that exist in the industry,

The hours of work in your shop are 40 and more per week

Your workers are denied the right of joining a labor organisation, and those who do, are immediately discharged. Your workers are denied the privileges of genuine collective bargaining. The piece workers in your shop have no voice as to what the piece rates should be as they are set exclusively by representatives of your firm.

The conditions and wages under which your employees are working not only deprives them of the privileges and opportunities enjoyed by the workers in this industry, but endangers their general work standards and wage scales. Your firm has undue and unjustified advantages over your competitors. The Union believes in "Fair Competition", but it does not consider competition fair when it is gained solely at the expense of the workers.

Under your system of production the worker is compelled to invest extraordinary effort, but the reward that follows is very meager in proportion to the efforts invested. Under modern methods of production such treatment of workers is not only wrong from the humane point of view, but also destructive from the economical point of view. In comparison with other shops in the industry which produce the same type of garment the production in your shop is about 30% higher while the earnings of the workers are about 30% lower.

We, therefore, believe that a conference between our Union and your firm, for an adjustment of these grievances, should take place immediately. The Union has named a committee which stands ready to meet a similar committee named by your firm.

May we respectfully request that you advise us before the end of this week as to when and where it would be convenient for you to meet our Conference Committee.

Our aim is industrial peace. We believe in intelligent co-operation between employer and employee. Such cooperation is essential for the welfare of all factors in industry, including the consuming public and community at large. Peace and harmony prevails in the major part of the Dress Industry and we are eager to extend this cooperation to include your firm. Let us join hands to avoid industrial conflict.

Respectfully yours,

Kansas City Joint Board
INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Wave Tobin

By Wave Tobin, Manager

Meyer Perlstein

Approved by: Meyer Perlstein, Regional Director
International Ladies' Garment Workers' Union

MP.

We Do Not Patronize THE "NELLY DON" DRESS

PLAINTIFF'S

5272 NRA-J

3811

TO THE CONSUMING PUBLIC:

The Donnelly Garment Company of Kansas City, Missouri, producers of the "Nelly Don" dress, are on the unfair list of organized labor. Therefore, we appeal to the consuming public to HELP US BY NOT BUYING, AND BY NOT OFFERING FOR SALE "NELLY DON" DRESSES until we establish in the shop of the Donnelly Garment Company the rights and privileges, wage scales, and hours of work that prevail in every shop in the dress industry throughout the country.

The workers of the Donnelly Garment Company are compelled to work long hours while their wage scale is far below that which prevails everywhere else in the dress industry. The speed-up system is such that most of the 1300 workers employed by this firm are in a state of exhaustion and fatigue. Many of them must have constant medical attention because of the nervous strain imposed upon them by this system. Numerous workers suffer complete nervous breakdowns.

On the next page of this booklet we reproduce a copy of a letter which was sent to the Donnelly Garment Company. The firm has not replied to this letter, but has instead, organized a company union which has been named the "Donnelly Garment Worker's Union." The Company has also more firmly entrenched in their shop the Spy System which they established long ago. The Spy System is under the direct supervision of a notorious strike-breaking detective agency, through which every worker is spied upon. Those who dare to complain of conditions, or join a labor organization, or express a favorable opinion of a union, are immediately discharged.

We appeal to you to help us establish in this shop, conditions and wages that befit civilized human beings. WE APPEAL TO YOU NOT TO PURCHASE THE "NELLY DON" DRESS.

Kansas City Joint Board,

INTERNATIONAL LADIES' GARMENT WORKERS' UNION

Executive Office:
1022 Baltimore Avenue,
Kansas City, Missouri

March 9, 1937

Donnelly Garment Company
1828 Walnut Street
Kansas City, Missouri
Gentlemen:

The Kansas City members of the International Ladies' Garment Workers' Union feel compelled to place before you the following grievances that should be adjusted immediately.

Fifteen members of our Union were discharged by your firm because of their affiliations with our organization. Their case was up before the National Labor Relations Board. During the period the hearings took place the NRA was declared unconstitutional by the Supreme Court of the United States and the Government could proceed no further. The discharged workers have not as yet been returned to work by your firm.

The Dress Industry, in which your firm is engaged, is highly unionized throughout the country. Nearly every producer of dresses is in contractual relations with our Union. The 150,000 Union workers employed in this industry are enjoying a 5-day, 35-hour working week and a $22.05 per week minimum wage scale for operators, and reasonable, fair minimum scales for finishers, pressers, cutters, et cetera. Piece workers, who compose the majority of workers in your shop as well as in the industry, are enjoying the right, through committees selected by them, of having an equal voice with the management in each shop in determining the piece rates for each garment or operation on a garment.

The workers in most of the industry enjoy the freedom and rights of organization. Collective bargaining has been established as a permanent institution. These are the conditions and wage scales in the organized industry.

However, in your shop the minimum wage scale for operators is between $12.50 and $15.00 per week.

The wage scales for finishers, pressers and cutters are at least 30 per cent lower than those that exist in the industry.

The hours of work in your shop are 40 and more per week.

Your workers are denied the right of joining a labor organization, and those who do, are immediately discharged. Your workers are denied the privileges of genuine collective bargaining. The piece workers in your shop have no voice as to what the piece rates should be as they are set exclusively by representatives of your firm.

1 31

The conditions and wages under which your employees are working not only deprive them of the privileges and opportunities enjoyed by the workers in this industry, but endanger their general work standards and wage scales. Your firm has undue and unjustified advantages over your competitors. The Union believes in "Fair Competition," but it does not consider competition fair when it is gained solely at the expense of the workers.

Under your system of production, workers are compelled to invest extraordinary effort, but the reward that follows is very meager in proportion to the efforts invested. Under modern methods of production such treatment of workers is not only wrong from the humane point of view, but also destructive from the economical point of view. In comparison with other shops in the industry which produce the same type of garment the production in your shop is about 30 per cent higher while the earnings of the workers are about 30 per cent lower.

We, therefore, believe that a conference between our Union and your firm, for an adjustment of these grievances, should take place immediately. The Union has named a committee which stands ready to meet a similar committee named by your firm.

May we respectfully request that you advise us before the end of this week as to when and where it would be convenient for you to meet our Conference Committee.

Our aim is industrial peace. We believe in intelligent co-operation between employer and employee. Such co-operation is essential for the welfare of all factors in industry, including the consuming public and community at large. Peace and harmony prevail in the major part of the Dress Industry and we are eager to extend this co-operation to include your firm. Let us join hands to avoid industrial conflict.

Respectfully yours,

Kansas City Joint Board
INTERNATIONAL LADIES' GARMENT WORKERS' UNION

By Wave Tobin, Manager

Approved by: Meyer Perlstein, Regional Director,
International Ladies' Garment Workers' Union
MP

We Do Not Patronize THE "NELLY DON" DRESS

5276

1191

TO THE CONSUMING PUBLIC:

The Donnelly Garment Company of Kansas City, Missouri, producer of the "Nelly Don" dresses, does not employ members of the International Ladies' Garment Workers' Union, the only national union whose members work in the manufacture of women's garments.

Since 1934 representatives of the International Ladies' Garment Workers' Union have attempted to induce the officials of the Donnelly Company to meet the representatives of the Union for the purpose of reaching an agreement which would be satisfactory and beneficial to both sides. The Donnelly Company has ignored our requests and refused to even give us a hearing.

In 1934 a number of the operators employed by the Donnelly Company joined the International Ladies' Garment Workers' Union and formed their own local. Many of these girls had been employed by the Donnelly Garment Company for years, but as soon as it became known that they were members of the Union fault was found with their work and they were let out on one trumped-up excuse or another.

In April, 1937, two of the Donnelly operators who announced their membership in the International Union were assaulted at the Donnelly plant and sent home by the officials of that company. They have never been able to secure employment there since.

In March, 1937, representatives of the International Ladies' Garment Workers' Union addressed a letter to the Donnelly Company, complaining, among other things, about the discharge of employes because of their membership in the International Union, and asking the company to appoint a committee to meet with a like committee representing the Union. The request was ignored and shortly thereafter what is known as the Donnelly Workers Company Union was organized. The International Ladies' Garment Workers' Union has filed a complaint, now pending before the National Labor Relations Board, charging that the Donnelly Company was guilty of unfair labor practices in dominating the formation of the company union and all of its activities.

The Donnelly Garment Company claims to be a cotton shop. From its own production records it appears that the average price of all garments manufactured by that company is in excess of thirty-six dollars per dozen. We insist that under this showing the Donnelly Garment Company should be classified as a dress shop, that it should pay the same wage scale to its operators and that they should not be required to work more than thirty-five hours per week. Their failure to observe either the wage or hour scale amounts to unfair competition.

Because of the facts stated above we appeal to the buying public not to purchase "Nelly Don" dresses.

HELP US BY NOT PATRONIZING THE DONNELLY GARMENT COMPANY.

JOINT BOARD KANSAS CITY
Locals Nos. 114, 115, 118, 119, 270, 274
International Ladies' Garment Workers' Union

Executive Offices:
1022 Baltimore Ave.
Kansas City, Mo.

5277

1193

[fol. 5278] Extracts from Testimony of NELL QUINLAN REED Given in the "Judge Miller Case"
(Pages 2502 to 2510)

NELL QUINLAN REED.

p. 2502 Called as a witness on behalf of the Plaintiffs, having been duly sworn, in rebuttal, was examined and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. Just state your name please?
A. Nell Quinlan Reed.
Q. Mrs. Reed, you have been ill during the greater part of this trial?

Objection—immaterial

A. Yes, I have.
Q. You had to undergo an operation before the trial began?

Objection—immaterial

A. I did February 24th, and my recuperation was delayed by an embollism.
Q. And you are still suffering from that operation?

Objection—immaterial

A. Some, yes.
p. 2503 Q. Mrs. Reed, there has been testimony offered in this case that on March 18th, 1937 you made a speech to the employees of the Donnelly Garment Company? A. Yes.
Q. In which you said there would not be any union in the Donnelly plant and that neither Dubinsky nor any other "sky" could come in and tell you how to run your business. Did you make such a statement?
p. 2504 Q. Did you make such a statement?
A. I did not make any such statement.
Q. Were you invited to that meeting by the employees?

Objection—immaterial

A. Yes.

[fol. 5279] p. 2504 Mr. Walsh: I object to that as entirely immaterial.

The Court: Sustained.

Mr. Walsh: I ask the answer be stricken out. The answer was so low I did not hear it at all so I ask it be stricken out.

The Court: Strike it out. I do not see that it is material who invited her there. She said she was there but she did not make that statement.

Q. Mrs. Reed, what, in substance, did you say with reference to the International Union or Dubinsky?

Objection and motion to strike—voluntary answer not responsive, immaterial.

p. 2505 A. At that time, it was about the time that the strikes were going on in Kansas City and there was so much violence—

Mr. Walsh: (interrupting) One minute. I object to that and ask it be stricken out as not being responsive.

The Court: Yes, that part of it.

The Witness: May I say, your Honor, that my employees were very much worried about the stories that were going around that the union people were coming on us and have the same kind of strike that they had—

Objection and motion to strike—voluntary answer not responsive, immaterial.

Q. What did you say, if anything, with reference to the International Union or Dubinsky?

p. 2506 A. I said that whatever they did about joining a union it was not my affair but that I would

not be coerced into forcing them to join the Dubinsky Union and that I would do everything I possibly could to protect them if they attacked us and I said that we were going to have busses, we were trying to make arrangements with the Street Railway Company to bring our people to work in busses and that if anything happened we would call on the police to give them protection and further than that we would, if necessary our attorneys would go into court for protection but I did not say that they could not and should not join any union?

Q. Mrs. Reed did you or any of the executives of the Donnelly Garment Company to your knowledge have anything to do with the employment of Mr. Tyler or Mr. Gossett as attorneys for the Interveners?

A. I absolutely had nothing to do with his employment.

[fol. 5280] p. 2507—Q. Mrs. Reed, did you or any executive of the Donnelly Garment Company have anything to do with the organization of the Donnelly Garment Company Union?

Mr. Walsh: Object to that as argument and being not proper rebuttal.

The Court: Overruled.

A. No.

Q. Have you in any manner undertaken to control the activities of the Donnelly Garment Company Union?

A. I have not.

Q. Have you ever contributed financially to the Donnelly Garment Company Union?

A. No, I have not.

p. 2508 Q. Will you explain, Mrs. Reed, just what occurred prior to the first contract that was entered into between the Donnelly Garment Company and the Donnelly Garment Workers' Union as to negotiations?

p. 2509 A. Well, our attorneys discussed the contract, the making of the contract with the attorney of the union and we had several meetings discussing what would go into the contract and eventually we had a contract that suited both parties. Mr. Tyler insisted upon the minimum of $16.50 and I had been paying a minimum of $15.00. I think that $16.50 for an absolute minimum for beginners and bundle boys and so forth is a little high but that
p. 2510 was the last thing we had to finish up on and so I thought there were not very many getting any lower than that anyhow so I finally agreed to that and we signed the contract.

[fol. 5281] Deposition of WAVE TOBIN, pp. 326-352.

By Mr. Hogsett:

Q. Please state your name, residence and occupation.

A. My name is Wave Tobin; I am 42 years old; I am living at the Aladdin Hotel. I am manager of the Kansas City Joint Board of the International Ladies Garment Workers.

Q. Now, what is the date of your first connection with the International Ladies Garment Workers Union? A. July, 1933.

Q. By whom were you then employed for the Union and in what capacity?

A. I was employed by the St. Louis Joint Board and I worked in the office as a financial secretary.

Q. By what person were you employed?

A. Mr. Ben Gilbert.

Q. What was his position?

A. He was manager of the St. Louis Joint Board.

Q. How long did you continue in that particular position?

A. Until the fall of 1934.

Q. Do you remember the month?

A. No, I don't. I think it was about October, but I am not positive.

Q. Then what change was made in your position?
A. I started working for the Regional Director of this territory.
Q. And by that Regional Director you mean whom? A. Mr. Meyer Perlstein.
Q. And what was his position as Regional Director; what did that mean?
A. It means that he supervises the offices in this territory.
Q. For whom?
A. For the International Ladies Garment Workers.
Q. He is a direct representative of the International Parent Union?
A. I couldn't say how he is classed.
Q. Well, what is your understanding from your years of employment, as to his position?
A. Well my understanding was—

Mr. Frank P. Walsh: That is a conclusion, but we don't care. Yes, let us admit he is a direct representative.

Mr. Hogsett: I understood that was a fact and [fol. 5282] that you would not deny that.

Mr. Frank P. Walsh: Yes, that is what I understand.

Q. When you became manager of the Kansas City Joint Board and up to the present time, by whom has your salary been paid?
A. By the International Office.
Q. Tell the exact manner in which you have received your checks; I suppose they are checks are they? A. Yes.

Objection—immaterial.

Q. Just describe the manner in which your pay checks arrive.
A. They are mailed personally to me.
Q. From New York?

Objection—immaterial.

A. Yes.

Q. Are the checks drawn on a New York bank?

Objection—immaterial.

A. Yes.

Q. In which bank the International has its account? A. Yes.

Objection—immaterial.

Q. And the checks which you receive while manager of the Kansas City Joint Board are checks drawn by the International on its bank account and signed by an officer of the International? A. Yes.

Objection—immaterial.

Q. In point of fact, who most frequently signs your pay checks during your service as Manager of the Kansas City Joint Board?

Objection—immaterial.

A. I think they are signed more often by Frederick Umhey, the General Head.

Q. What person for the International do you have contact with?

A. Mr. Perlstein, Regional Director.

Objection—immaterial.

Q. In what form is your contact had with Mr. Perlstein, and has it been had during the year and a half you have been manager of the Kansas City Joint Board?

Objection—immaterial.

A. Usually by telephone.

Q. Long distance telephone?

Objection—immaterial.

A. Yes.

Q. Or local telephone if you are in the same town?

A. Yes.

Objection—immaterial.

Q. How long has Mr. Dubinsky been the president of the International Union?
A. Well, I am not positive that I could answer that correctly.
Q. Roughly, how long have you known he was President?
A. Since I have come into the organization, in 1933.

[fol. 5283] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. He at all times since then has been President?
A. Yes.
Q. Do you know the residence of these various officers and members of the Executive Committee of the Union? A. No, I don't.
Q. Do you know some of them?
A. Well, I have records of them in the office, but I wouldn't remember them.
Q. Does your memory carry the information?
A. No.
Q. Where does Mr. Dubinsky live?
A. I know he lives in New York City.
Q. Where does Mr. Antonini, Vice President, live?
A. That would be a guess. I presume in New York.
Q. And Mr. Umhey lives where?
A. That would also be a guess. I presume in New York.
Q. Where does Mr. Katovsky live?
A. Mr. Katovsky is the Manager of the Cleveland Joint Board, I believe.
Q. Probably lives in Cleveland you mean?
A. Yes.
Q. Mr. Biotis, where does he live?
A. He is manager of the Chicago Joint Board.
Q. Presumably lives there? A. Yes.
Q. Miss Rose Pesotta, what is her residence?
A. I don't know where she lives.
Q. Mr. Israel Feinberg?

A. He is the Vice President on the West Coast, lives somewhere in California.
Q. Mr. Salvatore Ninfo?
A. I don't know where he lives.
Q. Mr. Elias Resiberg?
A. I don't know his residence.
Q. Mr. Philip Kramer?
A. Mr. Phillip Kramer is the Manager of the Boston Joint Board; I presume he lives in Boston.
Q. Mr. George Rubin?
A. I don't know where Mr. Rubin lives.
Q. Mr. Isidore Nagler?
A. He is the President of the Cloak Joint Board in New York; I presume he lives in New York.
Q. Mr. Joseph Breslaw?
A. He is President of the Dress Joint Board in New York.
Q. Mr. Julius Hockman?
A. That was a mistake. Mr. Hochman is President of the Dress Joint Board. I don't know where Mr. Breslaw lives.
Q. Mr. Bisilio Disti?
A. I don't know Mr. Disti.
Q. Mr. Louis Levy?
A. I don't know his residence.
Q. Mr. Charles Kreindler?
A. I don't know his residence.
Q. Mr. Harry Wander? A. I don't know.
Q. Mr. Max Cohen?
A. I don't know Mr. Cohen's residence.
Q. Mr. Sam Perlmutter?
A. I don't know Mr. Perlmutter.
Q. Mr. Jacob J. Heller?
A. I don't know.
Q. Mr. Charles S. Zimmerman?
A. Mr. Zimmerman is manager of Local 22 in New York, so I presume he lives in New York.
Q. Mr. Meyer Perlstein?
A. Mr. Meyer Perlstein's residence is in New York.
Q. His occupation is Regional Director, but I think once you said Southwest Regional Director. Am I correct about that?

A. We call this territory the Southwest Region.

Q. I may have gathered that somewhere else. I didn't know whether you said that or not. In fact, he is the Southwest Regional Director?

A. They call this territory the Southwest.

[fol. 5284] Q. Now, Mr. Max D. Danish?

A. Mr. Danish is Editor of our paper, "Justice", so I presume he lives in New York.

Objection—immaterial.

Q. How many offices has the International Union, parent union, over the country?

A. I couldn't answer that.

Q. How many have you visited?

A. I have visited the St. Louis, Minneapolis, Alton, Illinois, Kansas City, Dallas, San Antonio, the New York office, of course, Chicago office; I think that is all.

Q. Who prepared the copy for these two advertisements?

A. I don't know.

Objection—immaterial.

Q. Where did you get it to deliver it to the papers? A. It was mailed to me.

Objection—immaterial.

Q. From where?

A. From the New York office.

Objection—immaterial.

Q. So that out of the New York head office of the International Union came advertising copy to be published in the Kansas City papers reciting that the Kansas City office of the International Union was at 1022 Baltimore? Please answer that with "yes" or "no" if you can. A. I have answered it.

Objection—immaterial.

Mr. Frank Walsh: Answer it again. Mr. Hogsett wants you to answer it.

Q. Is that true or not?

Mr. Walsh: Let an admission be made on the record that it is true. I suppose it is. The lady says so, and it appears on there.

Objection—immaterial.

Q. You admit that, don't you?
A. I will admit that.

Objection—immaterial.

Q. Who paid for this advertising?

Objection—immaterial.

A. New York office.
Q. Just describe how, by check I suppose?
A. By check.

Objection—immaterial.

[fol. 5285] Q. Who is the person in charge of that office, the one having most authority in that office? I take it it is you?
A. Myself as manager.
Q. How long have you been the person in charge of the office at 1022 Baltimore Avenue?
A. Since April, 1936.
Q. Ever since you became Manager you have been the person in authority and in charge of that office? A. That is right.
Q. Now, there is some reference in the petition here in the bill in equity to some employees who were sent out by the International over the trade territory of the plaintiff, Donnelly Garment Company, and I think their names are given in the bill, Jane Palmer and other people that you perhaps remember. Now, in what office or out of what office do those six young women work or have they been working? Objection—immaterial
A. They worked—three of them worked out—wait a minute; let me see. Jane Palmer worked for the Kansas City Joint Board. The

other two girls were workers in the shop, and one girl was from Houston, Texas.

Q. I think there were six referred to. Were there in fact six? A. I only know of four.

Objection—immaterial

Q. Now, when were those four or six, as the case may be, persons employed to do this work of traveling over the trade territory and contacting the Donnelly customers; do you remember the date? Objection—immaterial.

A. I don't remember the date; it was the early part of this summer but I don't remember the date.

Q. Could you give the month? A. I don't know whether it was May or June. Objection —immaterial

Q. Of 1937, is that your recollection? A. Yes.

Mr. Frank Walsh: What? Objection—immaterial.

A. I don't remember the date that these girls started to work.

Q. By whom were these persons employed and instructed as to their duties? A. They were employed by Mr. Perlstein, the Southwest Regional Director.

Objection—immaterial

[fol. 5286] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. Now, will you please name the four traveling representatives who did this work of contacting the Donnelly customers?

A. Jane Palmer, Esther Smith, Mary Jane Miller. The other girl's name, I don't think just now.

Q. Are you now an organizer for the International Ladies Garment Workers Union?

A. I am not.

Q. Have you been an organizer for the International during the past year? A. I have not.

Q. When was the last time that you were an organizer for the International Union?

A. Prior to April, 1936.

Q. Have you seen the report of the General Executive Board for 1937 convention?

A. I have.

Q. Now, don't you know that on Page 236 of that report appears this sentence: "Our organizing staff, Mr. Meyer Perlstein, Ben Gilbert, Frank Rother, Doris Prisler, Artie Price, Wave Tobin, Marie Lebson, Jack Spry, Jane Walker Palmer, Ellen Fry, Abraham Berkowitz"—don't you know that, that you are listed in a report by the General Executive Board of the International Union as a part of the organizing staff in Missouri?

A. I did not know that.

Q. All right, now, do you recall whether you remember the page or not—I will give you the page so you can find it later—that on page 91 of that report this appears: "Ably assisting Brother Perlstein in Kansas City is Sister Wave Tobin, former Secretary of St. Louis Joint Board, who has been practically in charge of the organization". Do you remember that?

A. I don't remember the exact wording. I know there was something.

Q. How can you explain that the General Executive Board reports Sister Wave Tobin as practically in charge of organization, when, as you have just testified, you weren't an organizer and hadn't been an organizer for the International Union for a year and a half? Now, can you explain that?

A. Yes, I can explain it.

[fol. 5287] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. I wish you would do so, please. A. The Kansas City Joint Board and the locals of

Kansas City are a part—are members of the International Ladies Garment Workers Union, and part of my duties here as manager of the Union is to organize non-union shops.

Q. Now, how frequently is Mr. Perlstein in the Kansas City office at 1022 Baltimore?

A. Well, his visits here are irregular. Sometimes he will come every two weeks; sometimes it is a month.

Q. Where does he spend his time when in Kansas City, I mean with respect to an office?

A. Well, he stops at the Muehlbach Hotel. He comes in and out of the office.

Q. Does he have a desk there? A. No.

Q. What desk does he use when he is visiting the Kansas City office?

A. He might use any one of them.

Q. He dictates letters from there?

A. At times.

Q. Doesn't the International transact any business from any other office than 1022 Baltimore Avenue? A. No, not that I know of.

Q. Now, I show you a clipping from the Kansas City Journal-Post of March 6, 1937, purporting to report a speech by Mr. Dubinsky at the Municipal Theatre. Will you kindly glance that over just to bring the facts back to your mind. (Witness complies). Do you recall the matters referred to in that item?

A. I recall the meeting and President Dubinsky's speech, yes.

Q. Were you there? A. Yes.

Q. Did he say the things that are reported, attributed to him in this article? Did he say them in substance?

A. In substance, yes.

[fol. 5288] Q. Did you arrange for the reporter to be present at that meeting?

A. We invited them.

Objection—immaterial

Q. Now, when you say "we", do you mean that you did?

A. Yes, as a manager of the Joint Board we arranged the meeting and notified the papers.

Objection—immaterial

Q. And did you yourself do the telephoning to the reporters?

A. I imagine that I did. I usually did.

Objection—immaterial

Q. Now, at whose request or suggestion did you have the reporters present at the meeting?

A. The Kansas City Joint Board, we arranged the meeting.

Objection—immaterial

Q. Did President Dubinsky ask—did you notify the press to be present? A. No.

Objection—immaterial

Q. Did pelstein ask that? A. No, because they took it for granted that the office here would do that.

Objection—immaterial

Q. You were supposed to know that without being told by them?

A. That is right.

Objection—immaterial

Q. Now, I show you the letter which appears to bear your signature, written to the Donnelly Garment Company, of March 9, 1937. Mr. Perlstein and you signed that, I believe. Do you remember the letter, Mrs. Tobin?

A. Yes.

Q. Who dictated the letter? A. Mr. Perlstein.

Q. And where did he dictate it and have it typed?

A. I think that was dictated in the Kansas City office. I know I was present when we talked it over, and I believe that it was in the office.

[fol. 5289] Q. Who suggested the writing of the letter?

A. Well, I don't think it was a suggestion. It was just a part of the plans that had been laid out for the organization of the Donnelly Workers.

Q. And Perlstein dictated the letter and you signed it?

A. I said I was present and that we talked it over, that he did the actual dictating, but that we were both there.

Q. Exactly. A. We talked over the contents of the letter.

Q. It was his dictation? A. Yes.

Q. And you signed it? A. That is right.

Q. And then he wrote on it, "Approved by Meyer Perlstein", is that right?

A. When I say that it was his dictation, I mean that he dictated the letter, but it was not—the letter was discussed, what was put in it was discussed between the two of us and he did the actual dictating.

Q. And then you signed it as the nominal signer and writer of the letter, and he endorsed on it, "Approved by" him. You see it, don't you?

A. I see it.

Q. Now, since he was the man that actually did the dictating, why did he merely appear—ostensibly appear as merely approving it? Why didn't he sign it?

A. The letter was gotten up by both of us. The letter was discussed by both of us. He dictates better than I do; possibly that is why he dictated the letter.

Q. Now, you gave copies of the letter to the newspapers to be published as a news item that same day, did you?

A. I believe that we did, yes.

Objection—immaterial

Q. And at what hour did you type the letter and sign it? A. Oh, I couldn't remember that.

Objection—immaterial

[fol. 5290] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. All right, within how many minutes did you have copies in the hands of the Kansas City Journal-Post and the Kansas City Star or Times? A. I don't remember that.

Q. Well, if was the same day; you know that, don't you?

A. I don't even remember that. It might have been the same day. It might have been the next day. I don't remember.

Q. Well, you sought to give publicity to the letter immediately, didn't you?

A. Not exactly to the letter, to our efforts to organize the Donnelly Workers, yes.

Q. You sought to give publicity to the letter by giving copies and seeking to get the papers to run them as news items, didn't you?

A. It was just a part of the publicity that we wanted.

Q. Did you or did you not seek to get these papers to publish that letter as an advertisement on the day it was written or the day after?

A. I don't remember.

Q. May you have done that?

A. I know that we did try and were successful in getting a 'vertising in the papers.

Q. Later on, yes, but didn't you on that day or the next day try to get it run as an ad?

A. I don't remember.

Q. You hadn't even given the Donnelly Garment Company time to answer the letter when you were endeavoring to get this publicity, had you? A. I don't remember.

Q. You have once or twice said that this letter was a part of a plan and that the obtaining

of publicity was a part of a plan. When did that plan to organize the Donnelly Garment Company workers begin?

A. That I couldn't say.

Q. How long before March 9th, the date of the letter?

A. Well, I would say years before.

[fol. 5291] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. How many years before?

A. Well, since the organization of the dressmakers started in this part of the country and that was in 1933.

Q. The second paragraph of the letter of March 9th speaks of the dress distributing as highly unionized throughout the country, every producer of dresses is in contractual relations with your Union and that the 150,000 workers employed in the industry are enjoying a five day, 35 hour working week and a $22.05 per week minimum wage scale for operators, and reasonable, fair minimum scales for finishers, cutters, etc. What knowledge do you have with respect to those alleged facts?

A. Well I am familiar with the agreements in the silk dress shops in St. Louis. I know that that is the scales that are paid. I am familiar with the agreements in Minneapolis, Minnesota, in the silk dress shops. I know that is what they are paid.

Q. These figures or these alleged facts stated in this letter then apply only to the silk dress shops? A. That is right.

Q. Do you know of any shop in Kansas City where these wages and terms of employment applied at the time you wrote this letter?

A. There is only two small silk dress shops in Kansas City, or was at that time, and they employed very few people and one shop makes a very cheap dress; the other shop we

have an agreement with, and those wages apply in that shop.

Q. What is the name of that?

A. Marlene Dress Company.

Q. Any other shop in Kansas City where these terms, wages and conditions described here in this paragraph (indicating) apply?

A. That is the only silk dress shop in Kansas City.

Q. Do you know what proportion of the Donnelly Garment Company is silk dress and what proportion is some other kind of dress?

A. I don't know the exact proportion, no.

Q. Do you know it roughly? A. No.

Q. What is the scale on cotton goods, the Union scale? A. $13.00.

[fol. 5292] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. Minimum? A. Yes.

Q. How many hours a week? A. Forty.

Q. And how many days in a week?

A. Five days.

Q. What is the Union scale on wool garments?

A. Wool dresses is the same as silk.

Q. Now, you say in this letter further down that in your shop (the Donnelly shop) the minimum wage scale of operators is between $12.50 and $15.00 per week; the wage scales for finishers, pressers and cutters are at least 30% lower than exist in the industry; the hours of work in your shop are 40 and more per week. What knowledge, if any, do you have as to those alleged facts?

A. What the girls that worked in the shop—that work in the shop, tell us.

Q. When did they tell you and who ever told you that?

A. Well, they told me at various times.

Q. Now, I show you a pamphlet on the face of which is written, "We do not patronize the

Nellie Don Dress". On the third page, third and fourth pages, the so called "demand letter" of March 9th—

And on the second page is, "Notice to the Consuming Public". Will you kindly glance at that, Mrs. Tobin? Do you remember the pamphlet? (Witness complies.)

A. Yes, I remember the pamphlet.

Q. Who composed the pamphlet, who got it up?

A. It was by Mr. Perlstein and myself.

Q. Where? A. I think that it was in the Kansas City office.

Q. When? A. I don't remember the date.

Q. How many copies were made?

A. I don't remember that.

Q. What was the manner of distribution?

A. They were mailed and given out by the girls that—

Q. That what? A. That went out on the road.

[fol. 5293] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. Your Union has made contracts, you say, with other garment companies here. Will you give the wage scale and hours of employment, the days of employment per week and any other relevant facts dealing with wages, terms and conditions of employment prescribed in those contracts? I mean by that contracts made by your Union with other garment manufacturers in Kansas City or in this territory, within the last year.

A. We have contracts with cloak manufacturers, cotton dress manufacturers and one firm that makes part cotton and part silk, and with three underwear factories, so different wage scales apply to different shops.

Q. Will you give those as best you can?

A. Well, that is asking me to remember a whole lot.

Q. Well, of course, I can't ask the impossible, Mrs. Tobin, but if you do remember, give me your best recollection.

A. I know the wage scale in the cotton shop is the same as it was set up under the NRA, which is $13.00 a week and 40 hour week. In the cloak shops the minimums are 62¢ an hour and the hours are 35. $13.00 is also the minimum in the cotton shops.

Q. How do you classify the Donnelly Garment Company?

A. As a part cotton and part silk shop.

Q. Do you have these contracts at your office, copies of them? A. Yes.

Q. Will you produce them at the hearing tomorrow and at the hearing on the 15th.

Mr. Frank Walsh: I will produce them. You don't have to ask her about them.

Q. Now, Mrs. Tobin, you have referred to the publication of "Justice". I have here issues of March 1, 1937, March 15, 1937, April 1, 1937, May 1, 1937, June 1, 1937, June 15, 1937, and July 1, 1937. Do you identify all of those as copies of the publication as the official organ of the International Ladies Garment Workers Union? A. Yes.

Q. Now, how wide a circulation does that publication have?

A. It is mailed to each member and it is—

[fol. 5294] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. (Interrupting) That would be 230,000, I think you said a while ago?

A. Approximately. That may not be the exact figures.

Q. Now, there is a regular department there appearing in almost every issue, if not every issue, devoted to the Southwest, activities of the southwest region? A. Yes.

Q. Is that right? A. Yes.

Q. [What] is edited by Mr. Perlstein usually?

A. Yes, sir. It is in the form of a letter from Mr. Perlstein.

Q. For the past year, who has been in charge of attempting to organize the Donnelly Garment Workers in your Union?

A. Kansas City Joint Board, with the aid and assistance of the Regional Director.

Q. Mr. Perlstein. Who had charge of similar activities with respect to the Gernes Garment Company, Gordon Company and the Missouri Garment Company?

A. Kansas City Joint Board.

Q. And Mr. Perlstein?

A. Mr. Perlstein advised them in organization work here in Kansas City.

Q. Now, were the methods used in the attempt to organize and in the organization of the Gernes, Gordon and Missouri companies, the normal, routine, activities used in organization work? A. Yes.

Q. Were those methods the methods that you plan to use in your efforts to organize the Donnelly workers?

A. I don't think I understand what you mean by "methods".

Q. Well, whatever you did in the organization work. I am not familiar with that and you are.

A. Calling on the girls at their homes.

[fol. 5295] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. Well, everything that you did in the attempt to organize and in the organization of the Gernes, the Gordon and the Missouri plants, is it your plan and intention to use the same methods in the attempt to unionize the Donnelly plant?

A. We called on the girls in their homes; we went to the plants and talked to them; we held meetings with them at the office. All those things we intended to do in the organization of the Donnelly plant, yes.

Q. In general, without going into the detail, in general do you plan and did you plan to use the same methods of organization in the attempt to unionize the Donnelly plant as were used and followed in the attempt to organize and in the unionization of the Gernes, Gordon and Missouri plants?

A. The plan of calling on the girls, of meeting them at their place of work, and talking to them, of holding meetings with them is the plan that we used in organizing Missouri, Gernes and Gordon's and we intended to use the same plan in organizing Donnelly workers.

Q. If there are any differences in the plan of campaign used in the unionization of the Gernes, Gordon and Missouri plants and the plan of campaign which you intended and still intend to follow in the attempt to unionize the Donnelly plant, please state what the differences are.

A. Well, in the Donnelly campaign they intended to use more publicity.

Q. That is one difference? A. They wanted to get the message to the people that buy the dresses.

Q. That is one difference. Are there any other differences?

A. None that I know of.

Q. Who had charge of the strike activities in connection with the Gernes, Gordon and Missouri strikes?

A. I had charge of the picket lines.

Q. And what is meant by the picket line?

A. They are the girls that walk up and down in front of the place with banners and girls out in front of the place trying to talk to the girls who want to go in and work.

[fol. 5296] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. Did you have charge of the picket line at each of these strikes, the Gernes, Gordon and Missouri?

A. The Gernes, Gordon and Missouri was one strike.

Q. Well, the different plants? A. Yes.

Q. I am using it in the sense of three different plants. A. Yes.

Q. You had charge of the picket line at each of those three plants? A. Yes.

Q. How many pickets did you have at each plant?

A. They varied. I don't know.

Q. Was there any violence? A. Yes, there was some.

Q. If the Donnelly Garment Company tomorrow were organized and taken over lock, stock and barrel by your Union, what dues would each worker pay? A. The dues of the workers are determined by the workers themselves.

Q. On the average what do they run? A. In Kansas City on the average they run thirty five cents a week.

Q. Thirty five cents a week dues, so each worker would pay $18.20 a year dues, is that right?

A. Is that how much that is? That is right.

Q. And if there are 1300 workers $24,660 a year, wouldn't it, isn't that right? A. Just what do you mean these figures are?

Q. That would be the amount of dues that you would get if the Donnelly plant went over lock, stock and barrel to your organization?

A. Well, I wouldn't know that, because I am not sure there is 1300 workers there.

[fol. 5297] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. I am assuming. A. And I wouldn't be sure what the dues would be. I say the dues in Kansas City are thirty five cents.

Q. Dues are just part of it, aren't they? Aren't there fines and assessments? A. There may be fines, there may be assessments, but—

Q. (Interrupting) How much per member on the average is received from each member in

Kansas City who joins your Union, aside from dues, in the way of fines, assessments and whatever it is that they pay each year?

A. The amount is so very small.

Q. Well, about how much? A. And fines are the exception, certainly not the rule. I don't know.

Q. How much? A. I would say 99 out of 100 members do not pay anything.

Q. What about assessments? A. We have two International assessments.

Q. Within the year you paid an assessment for the Loyalists in Spain, didn't you? A. Oh, no.

Q. Do you deny that? A. I deny we paid an assessment.

Q. What was it? A. It was a voluntary contribution. There is a difference between assessment—

Q. (Interrupting) That was for the so called Loyalists in Spain. How much? A. It was the Spanish Red Cross.

Q. How much did that run? A. In other cities I think you have the figures there; in Kansas City there was none. There was nothing collected from the Kansas City members.

Q. All right. Now, that assessment was how much did you say?

A. I said it was not an assessment.

[fol. 5298] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. What are those assessments, how much per member per year?

A. One of them is one dollar a year and it is a death benefit assessment.

Q. What is the other one? A. And the other is one dollar a year and it is for making contributions to other labor organizations in the work of the labor movement as a whole.

Q. Is any publicity given to the salaries of the officers of the International Union? Do you know what they get? A. No, I don't.

[fol. 5299] p. 407 EFFIE BALL, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination.

[Mr.] Mr. Ingraham:

Q. Please state your name? A. Effie Ball.
Q. Where are you employed, Miss Ball?
A. The Donnelly Garment Company.
Q. How long have you been employed at the Donnelly Garment Company?
A. A year, last January.
Q. In 1937 where did you work?
A. At the Missouri Garment Company.
Q. What was your position with that company?
A. Designer.
Q. Do you recall, during the months of March and April, 1937 that there was a strike at the Missouri Garment Company?

Objection is made to all questions and answers following by Mr. Ingraham from pages 407 to 412 inclusive of the Judge Miller record for the reason that said questions and answers are immaterial.

A. Yes, I do.
Q. At the time the strike was called, do you know how many employees of the Missouri Garment Company belonged to the International Ladies Garment Workers Union?
A. I don't know exactly, very few. I would say two or three.
Q. Up to the time of the strike was everything peaceful? A. Yes, sir.
Q. Could the employees go to and from work without any difficulty? A. Yes, sir.

p. 408 Q. Now, will you just tell the court what occurred after the strike was called?

A. The first morning that we came down, there was a crowd in front of the building, we were unable to get in at the front entrance at all. The picketers were out in front. Several who tried to get in then had their clothing torn and did not get in. We went around to the back from there, stayed across the street in a cafe for a while until the trouble was over a bit, and then got in, and after that we always went to the back entrance. For a while, the
[fol. 5300] policemen formed a line on each side of a single door, which was the back entrance. We would try to come from our cars through that line and get in the entrance, but that being so narrow couldn't very many of us get in at a time, so they used the freight elevator, used the same system with police on each side. They would reach over the heads of the policemen, striking us with their purses, pulling our hair, kicking between the policemen's legs and kicking us.

Q. State whether or not at times the union people would break through the police lines?

A. Yes, they would quite often. Then they would just—several of them or one person—would beat them, tear their hair, tear their clothing. I had the collar torn off my coat.

Q. Did you yourself at any time begin or start fighting with these union people?

p. 409 A. No, I did not.

Q. Did you ever see any employees that were trying to get into work or trying to get out to their cars commence the fight with the union people? A. No, I did not?

Q. You did not?

A. No sir.

Q. State whether or not the union workers used profane and vile language towards the employees?

A. They did. Very poor language.

Q. Did you at any time see any police officers knocked down on the ground?

A. Yes, sir, I did.

Q. Who knocked them down?
A. I wouldn't say exactly which side it was, but it was in the scuffle they were knocked down.
Q. Did the people that were working there attack the policemen at any time?
[fol. 5301] A. No.
Q. Did the union people attack the police officers?
A. They would try and pull them away so that they could get to us.
Q. Did you see Wave Tobin at the strike?
A. I did.
Q. Is Wave Tobin in the court room?
A. Yes, she is.
Q. What did Wave Tobin appear to be doing at the strike?
A. Most of the time she stayed across the street, or out close to the curb. Often she would call a group of girls over and talk to them, and they would come back and resume their fight with us.
Q. Where was your office in connection with the rear entrance to the building?
A. Where I worked was directly above the rear entrance. I had two windows in my room, and they were directly above the back entrance of the building.
Q. Did you at times look out the window during the progress of the strike?
A. As soon as we got inside we went to the window to watch the others get in.
Q. Did the union workers shout at you employees in the windows? A. Yes, they did.
Q. Did these union workers at any time make any statements regarding the Donnelly Garment Company?
A. We were told several times this was merely small. As soon as they finished with the smaller factories, they were going down to Donnelly's.
Q. When did you learn the strike was over?

[fol. 5302] A. One morning we came down, there was no picket line. After we got inside, our employer called us together and told us he had signed.

Q. What effect did that have on the employees?

A. Most everyone was very angry.

Q. Did the employer make any statements about
p. 411 the employees being required to join the union?

A. All of the help, except I believe was the office help, and the designers were forced to join the union.

Q. And the employees as you stated resented that? A. Yes they did.

Q. Did you at any time see Wave Tobin strike at employees. A. I did.

Q. Just describe her?

A. One evening, as we were coming out, we came out through the freight elevator, usually about four abreast, and my friends and I happened to be on the outside; as we passed her, she reached out and struck my friend.

Q. You stated you now work at the Donnelly Garment Company? A. Yes, sir.

Q. Will you tell the Court how the wages and working conditions in The Donnelly Garment Company compare with the wages and working conditions at the Missouri Company?

A. The wages and working conditions and general atmosphere are far above any other place I have worked.

Q. After you employees signed up in the union, did you remain in the employ of the company for several months?

A. I did. I left in June.

Q. Was there any change in wages or working conditions after your employer signed up
p. 412 with the union? A. No, sir.

Mr. Ingraham: That is all

Mr. Walh: That is all

[fol. 5303] Cross-Examination.

p. 412 By Mr. Tyler:

Q. Miss Ball, you say your employer, at your plant where you worked before going to Donnelly's, said one morning when the picket line had been called off that he had signed up with the union. Had he ever said anything before as to whether he would sign up with the Union?

Objection—immaterial.

A. No, sir.

Q. He hadn't said anything about that at all?

Objection—immaterial.

A. No, sir.

Q. When did you go to work at the Donnelly Company?

A. A year ago last January.

Q. You were not present at the plant when the Donnelly Garment Workers' Union was organized? A. No, sir.

Q. Are you a member of that union?

A. I am.

Q. Did you join of your own free will?

Objection—immaterial.

A. I did.

Q. You know of anyone in that plant who to your knowledge, ever complained that he or she was forced or any pressure was applied on that person to join that union?

p. 413 A. I have never heard of it.

Q. You have never heard of such an incident?

A. No.

(Witness Excused)

[fol. 5304] p. 414 Raymond Smith called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. State your name please?
A. Raymond Smith.
Q. Mr. Smith, where are you employed.
A. The Donnelly Garment Company.
Q. How long have you been employed at the Donnelly Garment Company?
A. Approximately ten years.
Q. In what capacity were you employed?
A. Machinist.
Q. Do you recall, in the latter part of March and the first part of April, 1937 that there was a strike at the Gernes Garment Company, the Missouri Garment Company and the Gordon Manufacturing Company?

Objection—immaterial.

A. I do.
Q. Did you at any time during that strike go up near the plants?

Objection—immaterial.

A. Yes, sir.
Q. Will you just tell the Court what you saw?

Objection—immaterial.

A. Well, seen the union people or pickets, and they were on the west side of Walnut between 26th and 27th, they would try to keep the people from coming into the plant. The police would form their lines and as the people would get out of the car and come in, the pickets would rush the lines, the union
p. 415 people would rush the line, break through the lines and tear the people's clothes, hit them with their pocketbooks, pulling their hair, kicking.
Q. Mr. Smith, did you see Wave Tobin up there at the time you were there?

Objection—immaterial.

A. I did.
Q. Where was Miss Tobin?

Objection—immaterial.

A. She was out pretty well past the middle of the street the first time I seen Miss Tobin.
Q. Did you hear Miss Tobin make any remarks with reference to the Donnelly Garment Company?

Objection—immaterial.

A. I did.
[fol. 5305] Q. What was the occasion for the remark?

Objection—immaterial.

A. Well, there was an elderly lady got out of the car, and started through the lines. She was jerked out of the lines and drug down on the sidewalk,—oh, I would say ten or fifteen feet, she was beaten, her hair was pulled, she was pretty roughed up, and somebody out in the crowd of bystanders said, "Isn't it awful, the way they are treating that old lady"? Miss Tobin turned around and said, "You haven't seen anything. Wait until we go down to Donnelly's Garment Company".
Q. Was there agitation among the Donnelly Garment Workers during this strike up at these other plants?

Objection—immaterial.

A. Yes, sir. —
Q. What, if you know, was the cause of that agitation?

Objection—immaterial.

A. Well, they had made their threats that they
p. 416 were coming after us next, and our operators and all of us were pretty upset about it and mad.

Mr. Ingraham: That is all.

Cross-Examination.

By Mr. Tyler:

Q. Mr. Smith, are you a member of the Donnelly Garment Workers Union?

A. I am.

Q. Did anybody exert any pressure on you to join or not to join that union?

Objection—immaterial.

A. They absolutely did not.

Q. Did you ever see an incident in the factory or not to join that union?

A. They absolutely did not.

Q. Did you ever see any incident in the factory or around there indicating that any employee was being bribed or promised something by the employer to join that union?

A. No sir.

Q. Or threatened if they did not join that union?

A. No, sir.

[fol. 5306] Q. Were you present when the Donnelly Garment Workers Union was organized?

A. I was out of town at that time.

Q. Did you ever see any influence, any outside influence except the individuals—well, exerted in connection with that union?

A. There was none.

Redirect Examination.

By Mr. Ingraham:

p. 417 Q. Was somebody with you up at this strike you described?

Objection—immaterial.

A. Yes, sir. Mr. Lyle Jeters.

(Witness Excused)

[fol. 5307] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

p. 418 Lyle Jeters called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Just state your name please?
A. Lyle Jeters.
Q. Where are you employed, Mr. Jeters?
A. Donnelly Garment Company.
Q. How long have you been employed at the Donnelly Garment Company?
A. Eleven years.
Q. In what capacity? A. Machinist.
Q. Mr. Jeters, do you recall in the latter part of March and the first part of April, 1937 that there was a strike at the Gernes, Gordon and Missouri Garment plants? A. I do.
Q. Did you during that strike go up near the plants? A. Yes, sir.
Q. Did you go more than once?
A. Three or four mornings.
Q. Will you just state very briefly what you saw?
A. Well, I would get up there around seven thirty or a quarter of eight in the morning, and these workers would come to work in cabs or cars, and they would get out of the cars, there would be a bunch of officers lined up on each side of the doorway. When they would get out of the car, to start into the

p. 419 building the pickets and union help on the

outside would rush in and grab these folks, strike them with pocketbooks, kick them, pull their clothing and hair and maul them up before the officers could get them into the building.

Q. Did you see Wave Tobin there? A. I did.
Q. Is Wave Tobin in the court room?
A. Right there (indicating.)
Q. Did the union workers use profane and vile language toward the employees of the company? A. Yes, sir.

[fol. 5308] Q. Did you hear Wave Tobin make any remarks about the Donnelly Garment Company?

Objection—immaterial.

A. I did.
Q. What was the occasion?

Objection—immaterial.

A. One morning, an elderly lady was starting into the building, before she could get into the building, some of these girls broke through the officers, they grabbed her, drug her down the street and beat her up. Miss Tobin was standing over there close to the east curb. Some of the people standing with me said isn't it awful the way they are beating that lady up. Wave Tobin said "That isn't half what they are going to do when they get down to Donnelly's."

Cross-Examination.

By Mr. Tyler:
Q. Are you a member of the Donnelly Garment Workers Union? A. Yes, sir.
Q. Did you join of your own free will or not?

Objection—immaterial.

A. I did.

Q. Did anybody connected with the management of that company having any right to fire or hire employees ever exert any influence or anything of that kind in connection with membership in that union?

Objection—immaterial.

A. They did not.

Q. Were you present when the union was organized, Mr. Jeters? A. Yes, sir.

Q. Do you remember when it was?

A. April 27th, 1937, I believe.

Q. Where was the meeting held?

A. On the second floor, the Corrigan Building, 1822 Walnut.

Q. The same building the Donnelly Company occupied?

[fol. 5309] A. That is right.

Q. Was or wasn't it a fact that the second floor at that time was leased by the Donnelly Garment Company? A. It was not.

Q. What time was that meeting held?

A. After work.

Q. About what time in the afternoon, do you remember?

A. I would say four forty-five or five o'clock.

Q. Were any officials of the company who had the right to employ or discharge help present at that meeting?

A. I didn't see any of them.

p. 421 Q. Just tell the Court briefly what happened at that meeting?

A. Well, all the employees of the Donnelly Garment Company who were not officials of any kind came down to the second floor.

p. 425 A. Miss Todd was at that meeting. She said she had talked to some lawyers. Under the factory act, the employees of the Donnelly Garment Company had a right to form their own labor organization, so she appointed a committee of five, I believe it was, to leave

the room and go out and appoint seven or eight other officers,—I mean just nominate them—to nominate eight or nine officers to bring the names back of these officers, so the rest of the people, the whole body could vote on it. So the nominating committee went out and brought these names back and voted on
p. 426 them. Each one was voted in one hundred per cent. We got our own lawyers, and Mr. Tyler and others I believe. We have meetings about every month.

Q. Was there or was there not any vote taken about whether or not the employees wanted to form their own labor union?

A. Yes, sir.

Q. What was the result?

A. I think everyone voted to form their own labor union.

Q. Were there or were there not cards passed around for those who cared to join or sign?

A. There were.

[fol. 5310] Q. Were those cards taken up, do you know?

A. Yes, sir.

Q. In whose custody were they placed when they were taken up if you know?

A. After they were collected?

Q. Yes.

A. Miss Rose Todd's, I believe.

(Witness Excused)

[fol. 5311] Ruby Rickett, called as a witness on behalf
p. 440 of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Just state your name please?

A. Ruby Rickett.

Q. Where are you employed, Miss Rickett?

A. The Donnelly Garment Company.
Q. How long have you been employed at the Donnelly Garment Company?
A. Nine years.
Q. In what capacity are you employed, are you an operator? A. An operator.
Q. Have you always been an operator since you have been employed at the Donnelly Garment Company? A. I have.
Q. Miss Rickett, I am going to ask you if you have ever known of any kind of a system employed by the Donnelly Garment Company that would require the girls to speed up in their work to keep up with other employees?

Objection—immaterial.

A. No.
Q. Have you ever known of any spy system?

Objection—immaterial.

A. No.
Q. Have you ever known of any caste system?

Objection—immaterial.

A. No.
p. 441 Q. Do all the employees come in the same entrance?

Objection—immaterial.

A. They do.
Q. And that entrance is used by officers and executives of the company?

Objection—immaterial.

A. Yes.
Q. Were the elevators used by officers, executives and employees?

Objection—immaterial.

A. Yes, sir.

Q. Miss Rickett, would you mind stating what your earnings were for the last week that you have been paid for?

Objection—immaterial.

A. This last week?

Q. Yes.

Objection—immaterial.

[fol. 5312] A. $52.95.

Q. Just repeat that please?

Objection—immaterial.

A. $52.95.

Q. I will hand you Exhibit 30 and ask you if you signed that document? A. I did.

Q. Did you sign that voluntarily?

A. Absolutely.

Q. Who asked you to sign it.

A. Inez Warren.

Q. What did she say to you if you recall?

A. She said if you want to sign it, sign it.

Q. I will read the heading of this document: "We, the undersigned, as members of the Donnelly Garment Company, wish to make it known we are positively happy and contended with the positions we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed". When that document

p. 442 — was passed around the factory, did you see any officer or executive ask any of the employees to sign it? A. No.

Q. Did you see any employees object to signing it at all? A. No, I didn't.

Q. Does that explain your feeling toward the company? A. Absolutely.

Q. Does it express your feelings toward any outside labor organization?

A. What do you mean?
Q. You state here "We refuse to acknowledge any union labor organization".
[fol. 5313] A. Absolutely.
Q. During the time that you worked for the Donnelly Garment Company, have you been treated fairly?

Objection—immaterial.

A. Sure have.
Q. Will you state if you can recall any privileges which the company has extended to its employees—to shorten this—I will ask you if the company has provided for hospitalization?

Objection—immaterial.

A. Hospitalization, recreation room, everything is very sanitary.
Q. Has the company provided for group insurance?

Objection—immaterial.

A. Yes.
Q. Vacations with pay?

Objection—immaterial.

A. Yes.
Q. How much of a vacation do you get with pay?

Objection—immaterial.

A. Two weeks.
p. 443 Q. Does the company provide maids and janitors to keep the floors in sanitary condition?

Objection—immaterial.

A. Yes.

Q. Do you have plenty of light in the floor that you work upon?

Objection—immaterial.

A. Yes.

Cross-Examination.

By Mr. Tyler:

Q. Miss Rickett, you remember the organization of the Donnelly Garment Workers Union?

A. I wasn't there at the time it was organized.

Q. I am asking you if you remember of it?

A. Oh, yes.

Q. Did anyone exert any pressure, or inducement, or threats in connection with your joining that union, or did you join of your own free will?

Objection—immaterial.

[fol. 5314] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. My own free will.

Q. Do you know of anyone down there who ever claimed that he or she was the subject of any influence or pressure, or promises, or threats in connection with joining that union?

A. I do not.

p. 450 Redirect Examination.

By Mr. Ingraham:

Q. Miss Rickett, did the company announce that there was an emergency in regard to production and ask whether or not the employees wanted to work additional hours above forty?

A. Yes.

Q. Did the employees ask to be allowed to work additional time above forty hours?

A. Yes, we voted on it.

Q. You voted in favor of it?

A. In favor of it.

Q. Are you paid time and a half for all the time above forty hours?

A. Yes.

Q. In regard to the speed of your machine, is there a pedal that governs the speed, and the employee can operate the machine faster by pushing down farther on the pedal?

A. Yes.

p. 454 Q. And the operator controls the speed?

A. Yes.

p. 457 Q. You mean, do you not Miss Rickett, you got a guarantee of thirty five cents in addition to your guarantee of sixty-four cents an hour?

A. That is the way we are paid. Sixty-four cents
p. 455 is my guarantee. We get overtime, that is half of that, time and a half. If I made sixty four cents an hour, I would get ninety seven cents, something like that, see, for that each hour.

[fol. 5315] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

Q. If you sew a number of pieces, whatever you are doing at that time, on the piece work price, you would earn in excess of the sixty-four cents? Do you make more than the sixty four cents?

A. If we make more, we get it.

Q. Yes, that is it.

A. Sure, we get it.

Q. And when it comes to figuring time and a half, is it not a fact that the amount you have made for an hour, is then increased by one half, and that is what is called time and a half?

A. I don't know just how that is fixed.

Q. If you show a sufficient number of piece work, so that you would make eighty cents an hour, and you were doing that all over time would you receive in addition to the eighty cents, forty cents which would be one half of what

you earned for the hour under your straight pay? A. Yes.

[fol. 5316] Objection is made to all the questions and answers and all the exhibits identified by George Cauthen—immaterial.

p. 463 GEORGE CAUTHEN called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Depping:

Q. What is your name please?
A. George Cauthen.
Q. Where do you live, Mr. Cauthen?
A. Oklahoma City.
Q. What are you doing there at the present time?
A. I am newspaper photographer, on the Daily Oklahoman.
Q. Have you been a newspaper photographer in Kansas City?
A. Yes, sir.
Q. With what paper? A. The Journal-Post.
Q. From when to when were you with the Journal-Post?
A. I was with the Journal-Post for thirteen years, 1925 to 1937.
Q. After you left the Journal-Post where did you go?
A. I was employed by the police department. A police photographer.
Q. While you were employed by the Journal-Post, did you in March, 1937 take some pictures for the Journal-Post of some activities down around the Gernes, Gordon, Missouri Garment Companies' plants?
A. I did, yes.

(Photographs marked Plaintiffs' Exhibits 59 to 76, inclusive, for identification).

p. 464 Mr. Depping: I will hand you Exhibits 59 to 76 inclusive, and ask you to state what they are. I will state for the record, these are pictures contained in Volume 1 of the transcript in the District Court of the United States for the Western Division of the Western District of Missouri, volume is entitled, "Statement of evidence in conformity with Equity Rule 75." These are pictures your Honor, produced at the three-judge hearing.

[fol. 5317] Q. Will you state whether or not those are pictures you took in March, 1937 at the place before mentioned? A. Yes, sir.

Q. Just look at each picture.

Mr. Depping: The exhibits are 59 to 76 inclusive.

Q. I now hand you the exhibits No. 59 to 76 inclusive and ask you whether or not these are photographs you took during the month of March, 1937 in the vicinity of the Gordon Brothers, Gernes and Missouri Garment Company of activities there during the so-called strike of the International Ladies' Garment Workers' Union?

A. Yes. Do you want me to identify them now? They are the pictures I made.

Q. They are the pictures. We now offer the pictures in evidence.

p. 465 Q. Referring to Exhibit 59.

A. No. 59 was made at the rear of the Gordon Brothers Garment Company up there.

Q. When?

A. Made it March, 1937. That is taken during the month of March, 1937, shows clashes with police and hair pulling.

Q. I refer to Exhibit No. 60.

A. No. 60 shows clashes with the police.

Q. Where was that taken?

A. Made at the rear of Gordon Brothers.

Q. Let me ask you this—were all these pictures taken during the month of March?

A. Yes.
Q. Go ahead and describe them.
A. No. 60 shows pictures of the police clashing.

[fol. 5318] The Court: Where were they made?
A. At the rear of Gordon Brothers.
A. Most of them were. I will designate that as I go along. Picture No. 61 shows police putting a woman in the patrol wagon. That was made in the rear of the Gordon Brothers Garment Company in March. Another picture No. 62 shows Miss Tobin and a group of workers.

p. 466 Q. Do you know whether they were workers—you don't know who they were?
A. I don't know who the were. I couldn't say they were workers, but anyway its the picture of Miss Tobin made in the rear of Gordon Brothers Garment Company.
Q. Are there other people on the picture?
A. There are other people, women and men in it, yes, sir. No. 63 picture shows police and women clashing, made in the rear of Gordon Brothers Garment Company in March, 1937. Picture No. 64 made in the rear of Gordon Brothers Garment Company shows two women and a policeman on the ground. This was also made in March, 1937.
Q. Where was it made?
A. In the rear of the Gordon Brothers Garment Company.
Q. Is the rear, the place where the people were trying to enter to go to work?
A. That is true. No. 65 shows a policeman and a woman, this woman is evidently being helped out of the car or put into a taxi cab. I can't quite get it. I made the picture. It was also made in the rear of Gordon Brothers Garment Company in March, 1937.
Q. No. 66.
A. No. 66 shows a group of people, workers, in front of the building, that is.
Q. Where?
A. That is on the—that would be the McGee Street side, I believe. Yes, the McGee Street

side of the Gordon Brothers Garment Company. This was also made in March, 1937.

p. 467 Q. What was it?

[fol. 5319] A. This was also made in March, 1937, a picture showing the group.

• • •

A. Yes, sir, the crowd. No. 67—four or five women asleep on cots in the lobby of the building, the Gordon Brothers Garment Company. This was made in March, 1937; and No. 68—a group of women sitting in the lobby of the Gordon Brothers Garment Company building; No. 69—a group of women sitting in front of the door inside the lobby of the Gordon Brothers Garment Company. This was also made in March, 1937. No. 70, a group of people in front of Gordon Brothers Garment Company building on Grand Avenue. That is No. 70. That was made in March, 1937.

No. 71—officers and police officers restraining three or four women in this picture. That is No. 71. That was made in the rear of the Gordon Brothers Garment plant, and was also made in March, 1937.

No. 72—a woman being put in the patrol wagon by a policeman. That was made in the rear of Gordon Brothers Garment Company in March, 1937. Women and Police clashing. That is No. 73, made in the rear of Gordon Brothers Garment Company in March, 1937.

No. 74, a woman pulling another girl's hair. That was also made in March, 1937 in front

p. 468 of the Gordon Brothers Garment Company;

No. 75, a group of women made in front of the Gordon Brothers—no, this was made out in front of the Gordon Brothers Garment Company. That is No. 75.

Q. McGee Street?

A. Yes, sir. Grand Avenue that would be.

No. 76, a picture showing two officers holding a woman, who is pulling another girl's hair. There are two women in the picture. That was made in the rear of Gordon Brothers Garment Company also in March, 1937.

Mr. Depping: We now offer in evidence Exhibits 59 to 76 inclusive. (Exhibits 59 to 76 inclusive, are received in evidence and made a part of the record.)

Q. Now, Mr. Cauthen, in addition to these pictures you took, did you see other acts of violence in March, 1937?

A. I saw hair pulling, and frequent clashes with the police.

Q. Did you see police officers down on the ground?

A. Yes, sir, I did.

Plaintiffs' Exhibit 59. 1241

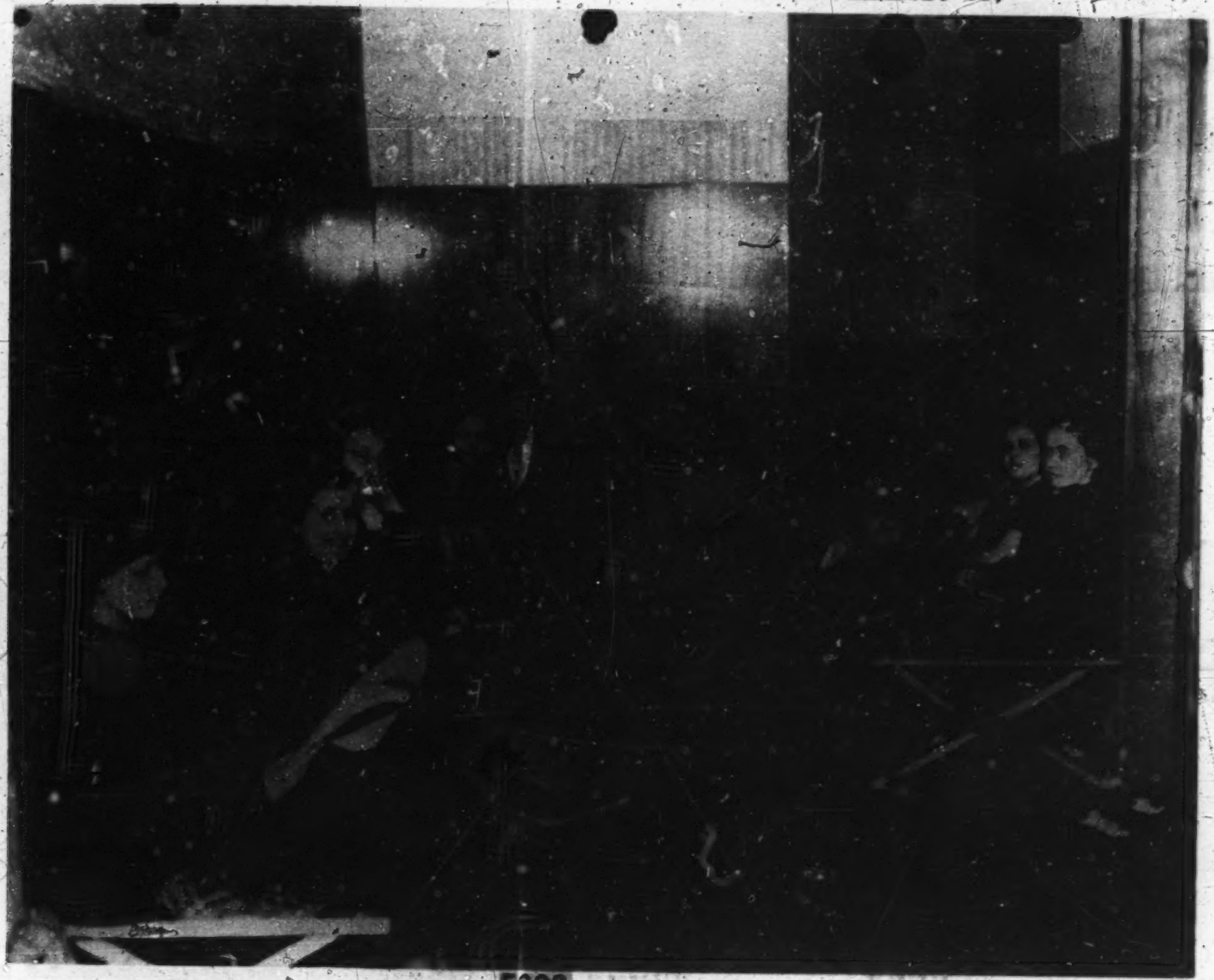
5320

Plaintiffs' Exhibit 61.

Plaintiffs' Exhibit 63.

Plaintiffs' Exhibit 64.

Plaintiffs' Exhibit 65, 1253



5326

Plaintiffs' Exhibit 66.

5327

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306-562

Plaintiffs' Exhibit 69.

5330

Plaintiffs' Exhibit 70.

Plaintiffs' Exhibit 71.

5332

Plaintiffs' Exhibit 72.

5333

Plaintiffs' Exhibit 73.

1269

5334

Plaintiffs' Exhibit 74.

Plaintiffs' Exhibit 75.

Plaintiffs' Exhibit 76.

5337

[fol. 5338] Objection is made to all questions and answers contained on this and the following 10 pages to and including the following: "Q. You are about two feet from him, aren't you, or three or four, we will say? A. Some space," for the reason that said questions and answers are immaterial.

Cross Examination of Ellen Fry.

By Mr. Hogsett:

Q. Miss Fry, all of the complaints that you have detailed in your direct examination took place as far back as July, 1934 and prior to that, didn't they?

A. It started from July, yes—from the time I was laid off, July 24—from July, 1931.

Q. I didn't hear you?

A. From July 1931 to 1934.

Q. And everything you said took place within that interval? A. Yes.

Q. Long prior to March 9, 1937?

A. I was only stating from July, 1931 to 1934.

Q. Now, you made an affidavit, did you not, in this case on the 31st day of August, 1937 for use on the Motion to Quash Service. Do you remember that affidavit that you made for Mr. Walsh? A. Yes, sir.

Q. In that affidavit you said you were employed as an organizer for the International Ladies' Garment Workers' Union, is that right?

A. Yes, sir.

Q. When did you go to work as an organizer?

A. I called on some girls—

Q. (Interrupting) The date, please, is all I am asking you? A. What?

Q. When did you go to work as an organizer for the International Ladies' Garment Workers' Union? A. I don't recall.

Q. You mean you cannot even approximate it?

A. I don't recall the [dated] I went to work, no, sir.

Q. Well, it was as far back as 1933, was it?

A. No, sir.

Q. When did you begin to draw a salary as an organizer, a paid organizer?

A. Well, I could not tell you just exactly when.

[fol. 5339] Q. I do not mean to pin you to any exact time but approximately when did you begin to draw a salary as an organizer from the International, the month or the year or even the decade, if you can give it?

A. Well, let me see if I can recall; I believe it was in January, 1937.

Q. Well, in your affidavit just referred to, you say that you were employed in August, 1936?

A. Maybe it was 1936.

Q. Yes, that is what you said then but in your N. R. A. testimony which was delivered on February 26, 1935, apparently from the transcript you said at that time you were an organizer? A. Not a paid organizer.

Q. I will read you what you said under examination by Mr. Rucker: (Reading) "Q. What is the name of the union by which you are employed? A. The Ladies' International Garment Workers' Union. Q. And where are its offices? A. 813 Walnut. Q. In what capacity are you employed? A. I have been going out calling on girls. Q. Have you any title? A. Organizing. Q. [Your] are an organizer? A. Yes." You testified that way? A. Yes; not a paid organizer.

Q. All right; you were, however, an organizer?

A. I was doing organization work and I told them that I was an organizer; not a paid organizer.

Q. You get your expenses, of course?

A. Expenses.

Q. When did you become a paid, salaried organizer?

A. Well, I was thinking that it was in January and I could be wrong of 1936 and 1937; I am not positive of the dates.

Q. Which is your best judgment of the time; just give us that and I will pass on?

A. I would say 1936.

Q. Now, you worked with Wave Tobin as a paid organizer in unionizing various garment shops in Kansas City including the Missouri, Gernes, the Gordon Manufacturing Company and Stern-Slegman-Prins Coat Manufacturing Company, didn't you?

A. Yes, sir.

Q. So you were present at the Gernes, Gordon and Missouri strikes, if you want to call it a strike, weren't you? A. Yes, sir.

[fol. 5340] Q. Just what did you do there?

A. I just stood and looked at the girls and the policemen.

Q. Did you do anything else? A. No.

Q. What were the girls and the policemen doing?

A. Well, all I seen them doing they was going and coming back and forwards to work and there was a scuffle there a few times, that the girls going in would start.

Q. What were you paid for the work you were doing as a paid organizer at the time of the Gernes-Gordon-Missouri strike—I will use that word?

A. I was paid to go out calling on girls.

Q. How much were you paid as an organizer, what was your salary? A. Twenty-five.

Q. What? A. A month.

Q. A month? A. A. week.

Q. Which was it? A. Week.

Q. You are sure of that? A. Yes, sir.

Q. Did you get expenses in addition to that?

A. No, sir.

Q. Just twenty-five a week which would be a little over $100.00 a month.

A. Yes, that's right.

Q. Now, all you did at this Gernes-Gordon and Missouri riot or trouble or whatever there was there was just stand and look, is that right?

A. Well, I was not there all the time; I was out calling on girls part of the time.

Q. How much of the time were you present at that strike? A. Well, I could not say.

[fol. 5341] Q. Give us an approximation, if you please?

A. You mean during the entire time.

Q. No, I understand, you were just there when they were going in and coming out as I understand. Did you see these workers, these girls just trying to go to work with bolts of any kind of metal in their hands [assulting] these union girls.

A. All I [was] was some scuffling.

Q. Did you see any of the girls trying to get in to go to work with razor blades fastened in their shoes, kicking the union girls with them?

A. I said I only saw scuffling.

Q. You now say you were just there watching. When you made this affidavit did you say this "In all of the above named shops"—meaning these that [—] name, those four Gordon, Gernes, Missouri and Stern-Slegman-Prins—"strikes were called by the Kansas City Joint Board and all of the establishments were picketed. The picketing and other activities in connection with said strikes were under the direction and supervision of Wave Tobin and I did such work as I was directed to do by Wave Tobin." You said that, didn't you?

A. The work that I did was calling on girls.

Q. I have heard you say that now, but here you were talking about strikes and doing such work as you were directed to do by Wave Tobin; that is what you said then wasn't it?

A. I don't recall saying that.

Q. Now, you were one of the persons against whom the Gernes, Gordon and Missouri Companies got an injunction because of your acts of violence in this strike, weren't you?

A. No, sir.

Q. While you were there just watching, did you see the [policement] lined up in two lines so that the employees desiring to work would

have protection as they would run from the cab that brought them to the door of the building? Did you see that happen?

A. I said I saw some scuffling there [amongst] them.

Q. I did not [seen] any of them running. I saw some of the girls walking between the [policemens] to the door.

Q. Tell us if you know why the police found it necessary to form two lines for the protection of the workers?

A. There was a group of [policemens] on each side of the door talking with the girls and they would go through the line and as they—and also talking to the union girls.

Q. Is that all they were doing, just talking?

A. I never did see them, as you say, with razor blades in their feet.

Q. I didn't ask you that this time. I did a while ago. Is that all the policemen did, just talk?

A. No, as I say there was some scuffling and pushing [amoung] them; maybe the girls as
[fol. 5342] they came through the lines would push one of these union girls or push a policeman against the union girls and that would start a scuffle.

Q. That is the girls you think that started the pushing were those that were trying to go to work, that is what you think?

A. That is what I saw.

Q. That is the way you saw it? A. Yes, sir.

Q. And the policemen were there to keep the girls, trying to go to work, from injuring the union girls; is that what you really mean to say? A. How is that?

Q. Do you really mean to tell this Court that the police were there to protect these union girls against these girls that were trying to get into that building to work? Is that what you mean?

A. I don't get what you are driving at. I told you that the girls going to work would come into work and walk through the line that the

policemen made, had one on each side and a lot of them. The time I saw them they would start pushing these union girls when the union girls would try to talk to them and the police—they would get into the scuffle.

Q. That is all you saw.

A. That is all I saw.

Q. Did you, by the way, see or were you a party to a sit-down group that took possession of the door way and lobby of this building for sixty hours? A. I was there.

Q. You were there? A. Yes.

Q. Were you among those present in the sit-down group? A. Yes.

Q. Who brought the cots in for you to sleep on at nights? A. I wasn't there that night.

Q. That night: it was several nights, sixty hours?

A. I wasn't in there, I didn't see that.

Q. Who brought the cots whether you were there or not?

A. I couldn't tell you, I didn't know.

[fol. 5343] Q. You and the others of this union absolutely took possession of that building, the entrance to that building so that nobody could get in or out except by walking over you, that is true, isn't it?

A. The girls took possession of the building.

Q. Well, you were one of them?

A. I was only there two hours.

Q. But whether you were there two hours or the sixty hours, the union girls took possession of that lobby so that people could get neither in nor out without walking over them?

A. That is the union girls?

Q. Will you answer that yes or no?

A. The union girls were inside the lobby.

Q. I am going to get an answer if I can with all respect to you. Did the union girls take possession of that lobby so that people trying to get in or out during sixty hours had to walk over these girls? Yes or no to that?

A. The union girls went in the lobby of the building.
Q. Would you mind answering the question?
A. I don't—well, they were in the people.

The Court: No. Do you understand that question?

The Witness: I don't know what he means by possession.

Q. Oh you don't understand that. I will use a different word, I will use a less complicated word. Did the union girls move into that lobby and occupy the space so full for sixty hours that people desiring to get in or out had to walk over them? A. Yes, sir.
Q. You understood that better than the word "possession"? A. I didn't understand.

Cross Examination. (Resumed)

By Mr. Hogsett:

Q. Miss Fry, you spoke of an incident when Miss Rose Todd was timing an operation and you complained to her about the way she did it; do you recall that circumstance?
A. Yes, sir.
Q. I don't remember when it was that that incident occurred. When was it?
A. That was in the spring of 1934.
Q. Do you remember the month? A. No.
[fol. 5344] Q. Do you remember the month? A. No.
Q. How many things did you complain about in direct testimony, do you recall?
A. You mean to go over each one of them again?
Q. No, how many? I lost count and I wanted to know how many you complained of, was it six, ten, fifteen, twenty?
A. Well, I would have to go over the testimony to tell.
Q. I don't care to have you do that, if you don't remember. I [thoughts] perhaps you could. Was there anything at all in the wages, hours, or working conditions at the Donnelly plant which met with your approval?

A. We had good work.
Q. Anything else?
A. And we had, after the forty hour week came in under the NRA, there were not such long hours.
Q. Anything else?
A. You say before the NRA.
Q. Any time at all; was there [every] anything that the Donnelly Company did at all during your three years of employment which really met with your approval?
A. Yes; they were very nice to me until they found out I joined the union.
Q. That is three. Anything else?
A. That is all I can recall at present.
Q. Those are all the things that you can recall that really met with your approval; is that right? A. I believe so.
Q. Now, did you know or don't you know that you were reported by Mrs. White—who was Mrs. White, by the way? A. My instructor.
Q. Reported by Mrs. White as a chronic complainer? A. No, I didn't.
Q. You didn't know that? A. No, sir.
[fol. 5345] Q. Well, were you a chronic complainer?
A. I would not say I was.
Q. But in the three years that you worked there you only found three things which really met with your approval, didn't you?
A. That is about all I could recall.
Q. I will not wait for you to spend any more time on that. As a matter of fact, you were employed seven times in the three years, in the period that you worked there and you were laid off on four occasions for inefficiency, weren't you? A. No, sir.
Q. And weren't you taken back after each of those times on condition that you would improve your work? A. No, sir.
Q. You say that didn't happen? A. No, sir.
Q. Now, you were laid off the last time in July, 1934 along with 165 other employees as a part of a general reduction in the force?

A. When I was laid off I was taking my vacation, the whole section took their [facation] and at the end of the two weeks we was told then to report back to work.

Q. Well, do you recall that you testified at the NRA hearing just as I have stated here, that you were laid off July, 1934 along with 165 other people and that they were reducing the force?

A. I recall of reading that and saying that we were laid off in July.

Q. But you also said the rest that I asked you, did you not?

A. And there were others laid off too.

Q. Yes, I know but as a part of a general reduction of the force due to bad business or what not; you know that, don't you?

A. There were some laid off.

Q. Well, 165 were laid off, weren't they?

A. I didn't count them.

Q. Now, you spoke in direct examination of the death of a person whose first name was Lottie and you gave the impression that she died from overwork; that was your purpose in narrating that? A. No.

[fol. 5346] Q. Well, now, you as a matter of fact know, don't you, that the item that you read in the paper recording her death recited that she had burned to death accidentally? You know that perfectly well, don't you?

A. I don't recall just exactly the item in the paper, but as I said that we had talked about her condition and she said that the work was killing her, that she had not made her quota for five weeks and this was her last week and I missed her the next morning and it was in the night's paper that I noticed her death.

Q. And you noticed her death was from an accidental burning, didn't you? A. No.

Q. Why you know perfectly well that that item recorded her burning to death, don't you?

A. No.

Q. Don't you know that?

A. I said I [din't] recall that she died from that burn, as you say.

Q. What burn? A. The burn you spoke about.

Q. Did you happen to know that that lady, Lottie Conroy's daughter, Rosemary Conroy is now working for the Donnelly Garment Company? A. No.

Q. You didn't know that? A. No, sir.

Q. Did you say this morning that you were or were not present when the injunction order was read at the Gernes, Gordon and Missouri riot? A. I was there that morning.

Q. You were there that morning?

A. Yes, sir.

Q. Now, what did you say on that subject this morning, didn't you deny that?

A. No, you asked me if I was served with an injunction.

Q. I also asked you that, yes, but I asked if you were present and [din't] you deny it?

A. In the court room. I understood you to say in the court room.

Q. No, Madam, let us not be confused or please don't confuse me. I asked you this morning if you were present when the sheriff read the

[fol. 5347] injunction to the rioters at the Gernes door and didn't you deny it?

A. I didn't understand you.

Q. Well, did you deny it?

A. I said I had not understood it that way.

Q. As a matter of fact, you were present as shown by this picture were you not? Aren't you in the picture? Wait, I will identify it if I can. It is Exhibit 62. Do [your] see yourself in that picture as the sheriff was reading the process? A. Yes.

Q. You are about two feet from him, aren't you, or three or four, we will say?

A. Some space.

Further Cross Examination.

By Mr. Tyler:

Q. Miss Fry, what was the last time you were in the Donnelly plant?

A. The date I could not give you but it was—

Q. (Interrupting) Could you give me the year?

A. The year or the date I could not give to you, but it was two weeks, about two weeks after we went back after our vacation. You see, the two weeks vacation came and we went back for our jobs as it was customary to do.

Q. What year would that be?

A. That was in 1934.

Q. Now you spoke in your direct testimony of working on Sundays and other times outside of regular working hours. Were you given your choice as to whether you would work at those [time] or were you forced to work at these times?

A. They told me to come in in the morning.

Q. Well, you mean they ordered you to work without giving you any choice about whether you could or would work or not?

A. Well, now, may I explain in my way?

Q. Answer it, then explain.

A. They told me they were behind in this piping and unless I could come in on Sunday and catch up, why someone else would have to take the machine.

Q. Take the machine for that day or permanently? A. Permanently.

[fol. 5348] Q. Who told you that?

A. My instructor then was Pearl; I don't recall her last name.

Q. What was the rest of her name? Do you remember the rest of her name?

A. No, I don't.

Q. Was that the customary way with you, to tell you that you must come in and work on Sundays?

A. I only recall of working three Sundays then and then two other times, just part of the Sunday.

Q. Was that the customary way that you were told that you would lose your job if you did not work Sunday?

A. They just told me that once and afterwards I never said anything because I was afraid I would lose my machine.

Q. Were you given your choice at any time about whether you would work Sundays or not?

A. You mean asked me whether I would prefer staying home or working?

Q. Yes, given your choice? A. No.

Q. Or tell you you could work or not as you pleased? A. No.

Q. You were never given that opportunity?

A. No sir.

Q. As a matter of fact, did you have any desire to make the extra money you could make by working over time or not?

A. I didn't understand your question.

Q. Did you have any desire to make the extra money you could make by working over time?

A. Well, we—

Q. (Interrupting) You, personally?

A. Me? Why, I—of course, in working over time we would make more money and in that way we would have more money to spend.

Q. And did you desire to make that extra money? A. Yes.

Q. And you preferred to make that extra money rather than not to work, or not?

[fol. 5349] A. I would rather not have to work such long hours.

Q. I am talking about these Sundays, the times you did work. Did you prefer to make the extra money or did you prefer not to work?

A. No, sir.

Q. Now, at the time that you checked Miss Todd as she was timing a garment, what was your reason for checking her?

A. I wanted to find out how long she timed us because I saw her working that clock up and down and I knew how long it took her to make the bundle and I knew how long it would take me to make the bundle working as as hard as we could work.

Q. What was your reason for doing it? Were you planning on making a complaint or had somebody suggested that you time her or what was your reason?

A. No, sir; I wanted a raise on that work so we could make our quota.

Q. Did anybody else time her that you know of?

A. No.

Q. Recalling your attention to the incidents at the Gordon, Gernes and Missouri strikes, the girls that came to go to work there generally came one or two at a time, didn't they?

A. Yes, sir

Objection is made to all questions and answers on the remainder of this page because the questions and answers are immaterial.

Q. And the union girls had a good sized crowd down there, didn't they?

A. There was quite a few of them there.

Q. About how many?

A. I never counted them; there was quite a few.

Q. Were the girls who came to work start, what you call the scuffle?

A. No, some—they would talk to them, they would off and talk to them and as you say I said that some of them went in peacefully and did not offer to scuffle with the girls, push them around.

Q. Do you remember whether you said this morning that the girls who came to work started the trouble? Did you say that or didn't you?

A. I said there was some trouble out there, some scuffling.

Q. Do you remember whether you said that the girls who came to work started that trouble?

A. I said they were scuffling; I said this was the girls out there would come to work and the other girls would talk to them and there was some scuffling went on there.

Q. Let us try it once more. Do you remember whether you said this morning that the girls who came to work would start the trouble?

[fol. 5350] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. Yes, sir.

Q. Well what did you see that justifies you in saying that these girls who came to work one or two at a time started the trouble?

A. I said they talked to the girls.

Q. No, I am not asking you what you said now. I am asking you what you saw that makes you say that the girls coming to work started the trouble?

A. They would be talking to the girls and the girls would push the girls around, that is all I could say; I don't know how they started.

Q. I don't know what you mean by the girls would push the girls around. Tell me who pushed who around?

A. I couldn't say.

Q. In your actions down there did anyone direct you as to what you should do? A. In what?

Q. In your actions down there around the Gordon and Gernes plant during the strike, if you call it that, did anyone direct you about what you should do? A. No.

Q. The answer was no. A. No.

Q. You decided yourself, of your own volition, that you would go down there and do whatever you did, is that correct? A. Yes, sir.

Q. Did anybody suggest to you what you should do? A. No, sir.

Q. You just made up your mind yourself that you would go down to that plant and do whatever you did down there? A. Yes, sir.

Q. What were you there for?

A. Looking at the girls.
Q. Merely curiosity? A. Seeing what went on.
Q. Just curiosity? A. Curiosity.

[fol. 5351] Further Cross Examination.

By Mr. Tyler:

Q. When was the last time you were in the Donnelly factory? A. June, 1935.
Q. You have never been in the plant since June, 1935. A. No.
Q. And you have stated in your examination that there was no complaint about the price fixing methods in the union plants where you have worked; that is correct, isn't it?
A. I don't understand what you mean.
Q. The employees do not complain about the method of fixing prices on piece work in the union plants in which you have worked; that is true, is it? A. That is what I said, yes.
Q. At the time you were working in the Donnelly plant, did you complain about the method by which piece work prices were fixed there?
A. Well, we talked to our instructors if we figured the price was too low—
The way I answered it would be the only way I would know how to answer it.
Q. It is all right, if you can't answer it, but do you understand the question? It is whether you made complaint about the method of fixing piece work prices?
A. I don't know how to answer it. Either I don't understand it, or—
Q. (Interrupting) Can you remember whether you did or did not complain about the method of fixing piece work prices in the Donnelly plant when you worked there?
A. Only what I talked to my instructor.
Q. I believe you said a little while ago that you had never made any complaints while you worked at the Donnelly plant, didn't you? Do you remember that, or not?

A. No, I don't remember that.

Q. What was the trouble with the building or the plant at which you worked on the 26th and Grand, had it gone unpainted for a long time?

A. It wasn't as desirable a building as the other. We had no machinist there; and quarters were more cramped.

Q. Do you know who Ted Kirland is?

A. I don't remember the name.

Q. You don't remember whether he was a machinist with the Donnelly Garment Company, or not?

[fol. 5352]

A. No, when they sent a machinist to our building they always sent Mr. Ellis. Whenever a machine would break down, they would call over to the main building for a machinist.

Q. You never saw Mr. Kirland there?

A. I probably know his face, but I can't remember his name.

Q. Was the building over there dirty?

A. It wasn't as desirable as the big building.

Q. The big building was desirable.

A. It was clean.

Q. Well, was it a desirable place to work in?

A. That is the best I can answer you, that it was clean and sanitary.

Q. Would you still like to work there?

A. I have a very good job now, at the time.

Q. Well, can you answer the question as to whether you would still like to work there or not?

A. The Witness: Your Honor, I believe that is the only way I can answer that.

Q. All right. Isn't it a fact that garment workers in general in Kansas City regard the Donnelly plant as the most desirable place in town to have a job; isn't that the plain fact of common knowledge? You can answer that yes or no, I think.

A. I couldn't answer for anybody but myself.

[fol. 5353] Objection is made to all questions and answers of Gordon I. Gordon for the reason that said questions and answers are immaterial.

GORDON I. GORDON

p. 530 Called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Depping:

Q. State your name please?
A. Gordon I. Gordon.
Q. Where do you live, Mr. Gordon?
A. Memphis, Tennessee.
Q. What is your profession? A. Lawyer.
Q. How long have you been practicing your profession? A. Ten years.
Q. Where? A. Memphis, Tennessee.
Q. Did you represent the Nona-Lee Dress Company of Memphis, Tennessee during the year 1937? A. I did.
Q. Concerning some dealings with Mr. Meyer Perlstein and the International Ladies' Garment Workers' Union? A. I did.
Q. Did you carry on negotiations with the International Ladies' Garment Workers' Union with reference to a threatened strike?
A. I did.
Q. With whom were these negotiations carried on as representatives of the International Ladies' Garment Workers' Union?
A. Meyer Perlstein, Myrtle Zappone, Ida Sledge.
Q. Did you talk to all three at once?
p. 531 A. I did.
Q. And Mrs. Zappone and Miss Sledge as representatives of the union in Mr. Perlstein's presence? A. Yes.
[fol. 5354] p. 531 Q. Tell when the negotiations started? What led up to them, and what the negotiations were?

A. The first conference I had with the union representatives was, to the best of my recollection, about March 15, 1937. That was a preliminary conference with Myrtle Zappone and Ida Sledge. Mr. Perlstein, hadn't come to Memphis, Tennessee at that time. They gave me some idea of the terms of the contracts that the union proposed but it was all quite indefinite. I wanted to know from Miss Sledge and Mrs. Zappone, whom they represented in this proposed contract. They claimed to represent the employees. They of course did not represent the employer. I I represented the Nona-Lee Dress Company. I then asked them if they represented a majority of those employees, and they stated that they did. Then as for proof of that representation, realizing it might be deemed prejudicial to the employees they represented, if their names were disclosed, I indicated that I was willing they give their names to their own attorney, and later on advise me whether or not they represented the majority, and it would be acceptable to me. They accepted that proposition and advised me that John Shea was their attorney. I advised Mr. Shea of the understanding I had had with Mrs.
p. 532 Zappone and Miss Sledge. I was never furnished, however, with any figures or facts or any proof, by Mr. Shea or anyone else as to whether or not this majority of employees was represented, as had been indicated to me. My next conference was with Mr. Perlstein, Mrs. Zappone, and Miss Sledge, on Saturday, March 20, 1937. That was my first meeting with Mr. Perlstein. He came to my office, and after introducing himself, asked me if I was ready to sign a contract. I told him no contract had been submitted to me for consideration, let alone signature. He then began discussing the contract that was to be signed in the interest of proceeding log-

ically, I asked him to produce the piece of paper that he wanted signed, or his version of the contract. He seemed to take quite a bit of offense at being asked for the production of a contract but, after finding that we couldn't go forward without such a paper, he proceeded, with my assistance, to put on paper his version of the contract. After I finally got the terms he considered necessary, I told him that was the first time—as it was—that I knew of the contract he wanted signed; and that I would be glad to submit that contract to the directors of the Nona-Lee Dress Company, and girls; that some of the directors were non-residents, that in my opinion it would require at least ten days to get them together and get a decision as to whether or not they would enter into a contract with him.

Q. What date?

p. 533 A. March 20th. He indicated that was fair. He would like to know on the next day, Sunday, whether or not he would be willing to wait. During that same conversation, I proposed to him the question of whether or not he represented a majority of the employees, stating to him what understanding Mrs. Zappone and

[fol. 5355] I had had, but that I still had not been furnished with any proof. Mr. Perlstein's reply to me was "I will furnish you with proof. On Monday morning, I will have a strike at the Nona-Lee Dress Company." I told him if that was the way he did business, as far as I was concerned, negotiations were at an end, he could call a strike that day. Mrs. Zappone and others present with him calmed him down a good deal. He seemed to be willing to restrict that proposition, and discuss the matter further, and see if a contract could be reached. He left my office, as I say, with a promise to 'phone me as to whether or not he would wait until April 1st. I did not hear from Mr. Perlstein any more. About Monday

or Tuesday, of the following week, Mrs. Zappone and Miss Sledge called me, stating Mr. Perlstein had been compelled to leave town without calling me. Their instructions were they had to have an answer by the 24th.

Q. What date was that?

A. On the 22nd or 23rd of March.

Q. Were some of the directors of the company out of town?

A. Yes, sir, as were also one or more of the officers that were traveling on the road.

p. 534 Q. Go Ahead.

A. I again explained to them the utter impossibility of giving them an answer within so short a time, and told them all I could do was submit the matter in due course, if they chose to wait. If they did not choose to wait, they could do as they saw fit. Mrs. Zappone told me I could expect a strike at the Nona-Lee plant any day. That ended all conferences between union representatives and myself for the Nona-Lee.

Q. Did Mrs. Shea, whom Mrs. Zappone and Miss Sledge stated was their lawyer, ever furnish you with any information regarding the number of persons that the International Union represented?

A. They did not.

Q. Did Mr. Perlstein ever furnish you with that information? A. He did not.

Q. And after this thing was all cleared up, did Mr. Perlstein ever tell you about what percentage he represented when he was talking to you in your office?

[fol. 5356] A. Yes, he did. As a matter of fact, he admitted it on the day of violence in the Nona-Lee plant, March 25, 1937 that not a single employee of the Nona-Lee Dress Company was a member of the union. I had myself verified that fact, without his admission because, following his statement to me, and in order to determine whether or not the union

p. 535

was the proper agency to deal with on behalf of the employees, I myself conveyed his information to the Nona-Lee officers, and at their request, I appeared at the Nona-Lee plant, and explained the negotiations with Mr. Perlstein. At that point, I also advised them of his statement that he represented a majority, advising them that as far as my clients were concerned, it was immaterial whether they belonged to a union or not, but that it was necessary we know whether or not they were members of the union in order to know whether or not to deal with that union as their representatives, and requested them to answer certain questions on paper, outside of our presence, to the effect whether or not they were members of a union; whether or not the International Ladies' Garment Workers' Union represented them; whether they wanted the Nona-Lee Dress Company, to deal with that union as their representatives. The employees unanimously answered in writing, over their signatures, they were not members of that union or any other. That union did not represent them; they did not wish that union to be dealt with as their representatives. They also, at their own volition, wholly uninfluenced by me, or the Nona-Lee Dress Company, unanimously signed a petition addressed to the mayor of the City of Memphis asking they be not intimidated or compelled to join that union; that they could solve their own problems; that they had their own shop committee, perfectly capable of dealing with their employer, and settling

p. 536

their problem; that this union was not acquainted with their problems in the plant and were not capable of dealing with them as effectively as they would themselves; so all the proof I could gather was only corroborated by Mr. Perlstein's own admission that he didn't have any employees of the Nona-Lee

Dress Company, on March 25th, 1937, the first day of the violence.

Q. Was a so-called strike called? A. It was.

Q. Was that date March 25th, 1937? A. Yes, sir.

Q. Did any of the employees of the Nona-Lee Dress Company participate in that so-called strike? A. They did not.

Q. Who was in charge of the demonstration?

[fol. 5357] A. Myrtle Zappone, and Ida Sledge. Myrtle Zappone, on that day was arrested for participation in that violence, taking an assumed name of Laura Savell; I prosecuted her under that name, and she was convicted in the city court of Memphis, Tennessee along with nine other members.

Q. Did those convictions stop the violence?

A. They did not.

Q. Did the conviction of Mrs. Zappone keep her away from the scene?

A. It did not and in that connection—

p. 537 A. I was going to say as a means of remedy to stop the violence, in addition to the prosecutions there was—

Q. Did you have something you wanted to add to your answer?

A. My statement was, on March 25th, 1937, on the afternoon of that day following the first scrimmage, I procured an interlocutory injunction in the Chancery Court of Shelby County, Tennessee.

Q. What date was that?

A. March 25th, 1937.

Q. The first day of the violence?

A. It was. I might state here for purposes of objection, if any, that the entire record of the proceeding in that Nona-Lee Dress Company case in Chancery Court of Shelby County has, by agreement between counsel, been made a part of the record in this case, including the original bill, interlocutory injunction, answer of the defendants and all other matters of record in that case. That record is a part of this record.

Q. All right. State whether or not the people who were in charge of the demonstration, and the so-called striking at the Nona-Lee Dress Company you have referred to were, the same persons with whom you had been negotiating with in the presence of Mr. Perlstein?

p. 538 A. That is right.

Q. You stated, I believe, you obtained an injunction against violence?

[fol. 5358] A. I did.

Q. Who were the defendants?

A. The International Ladies' Garment Workers' Union Local #267, I believe, a branch of that union. Meyer Perlstein, Myrtle Zappone, Ida Sledge, Dixie Middleton, president of the union, and all other agents and members of the union.

Q. Was personal service had?

A. It was. I say, it wasn't on all of the defendants. I am not certain at this time it was had on Meyer Perlstein, though I was advised that the injunction had been obtained.

Q. Who did you advise?

A. The union, Mrs. Zappone, and all other persons connected therewith.

Q. Now, describe what acts of violence were perpetrated by representatives of the International Ladies' Garment Workers' Union to your own knowledge after you obtained this injunction?

A. Well, I, personally after I obtained the injunction, I personally saw no acts of violence while they were being perpetrated. I prosecuted members of the union at various and sundry times after the issuance of that injunction. On account of that violence somewhere between thirty and fifty members of the union.

p. 539 Q. What acts of violence?

A. Assault and battery, disorderly conduct, breach of the peace, threatened breach of the peace.

Q. What specific things were they charged with?

A. Throwing red pepper in the eyes of the Nona-Lee employees; they had torn off their garments, pulled hair, and beat them; waylaid them at night, all of that was true, and flagrant violation of the injunction which was similar to, and which is of course part of this record as I say, which enjoined them from any and all acts of violence, or molestation of any kind.

Q. On the first morning of the violence, did you see Ida Sledge anywhere?

A. Yes, I was advised early in the morning of March 25th, the expected difficulty had taken place. I passed in the vicinity of the plant on my way to the office, and on that morning
[fol. 5359] drove up there, and I saw the Nona-Lee cohorts lined up to come into their plant at some little distance and the union crowds, quite a large gathering.

Q. About how many people were there?

A. I should judge, from just a casual view of them, three to five hundred people.

Q. All right.

A. As I drove slowly along, I noticed Miss Sledge at the head of one of the phalanxes, make some remark to the effect of "Come on, girls. Let's get them;" began rushing toward
p. 540 the marching Nona-Lee employees who were coming toward the entrance to the plant, presumably to go to work, and knowing that it would be necessary that I be at the office prepared for action, I didn't tarry there, I just went on to the office.

Q. Did these prosecutions of members of the union you have referred to stop their acts of violence?

A. No. It increased very rapidly.

Q. Were they convicted?

A. Yes. They were.

Q. Did the injunction you obtained stop the acts of violence of members of the union?

A. Not at all. This pepper throwing incident—one of the serious outbursts—took place in

the vicinity of the plant after the injunction was issued, and the defendants fully notified thereof.

Q. Did you and your client finally give up and sign the contract with the union?

A. Out of pure exhaustion and necessity.

Q. When was that contract signed?

A. Approximately April 15, 1937 according to my present recollection.

Q. State what was the only point in the contract, if any, Mr. Perlstein insisted on?

A. Closed shop clause.

Q. Was that all he insisted on?

[fol. 5360] p. 541 A. Substantially, yes. Just briefly, what took place, his version of the contract was wholly unacceptable when we found that it was impossible to carry on in the face of this violence and opposition, intimidation, coercion, and as I say, out of sheer necessity, we realized we would either have to shut down and go out of business or deal with the union. Even though, against the insistence of the employees we finally sat in a conference with them. I had drawn a proposed draft of a contract. After the preamble, my recollection is, the first clause dealt with the open or closed phase of the shop. My version was to give the employee the right to decide for herself whether or not she should be a member of the union. That is, to make no discrimination at all between union and non-union members, to give each one freedom of choice. When I undertook to read that contract in the presence of Mr. Perlstein, Mrs. Zappone and Miss Sledge, and a number of others interested in the matter, Mr. Perlstein stopped me very emphatically, when I had completed reading that first paragraph with reference to the freedom of choice phase of it, and stated, it was wholly unnecessary to read any further; their negotiations were at an end, and the strike as he termed it, which was not a strike at all—would be resumed. It was only after

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considerable persuasion on the part of Reverend Alfred Loring Clark, and my own humble insistence that I be permitted to read the rest of the contract, that he sat in the room
p. 542 and permitted me to read to the end of the contract. His proposition being, the closed shop part of the contract be immediately carried on or going forward at that time.

Q. In whose favor?

A. The operators with certain exceptions should all be required to become members of the union within thirty days after the execution of the contract.

Q. What union?

A. The International Ladies' Garment Workers' Union. The contract finally signed by the International Ladies' Garment Workers' Union, by Meyer Perlstein, regional director, and by their own branch of that same union, #267. He also signed on its behalf.

Getting back to his insistence, the language of the contract, outside of the closed shop phase of it, really didn't alter the existing status of relationship between the employees and employers only making explicit in the contract what had already existed between them, except in certain minor details.

Q. Was there any change made in rates of pay, hours, or working conditions?

A. To answer that question, I might say first, no change whatsoever in hours. As to wages, there was no real change as to wages. As a matter of fact, as it developed, this plant had been in Memphis only two years. The wages
[fol. 5361] p. 543 had been constantly increased as operators became skilled and experienced. Originally, of course, they were chosen from inexperienced operators. The record showed wages were constantly on the increase prior to the difficulty with the union; that normally, they would continue at the plant became established there, and the operators more skilled and experienced, but there was no change at

all in the wages, by and large; as a matter of fact, my information is that the wages were really less than they would have been had not the contract been issued.

Q. All right. Were the employees then forced to join the International Union to hold their jobs?

A. That was the requirement of the contract.

Q. A moment ago you referred to Ida Sledge saying "Come on. Let's get them." State whether or not she was leading an attack at that time upon employees who were going to work?

A. She was.

Q. After this contract was all signed and all over, what if anything did Meyer Perlstein say to you about the number of employees in your client's plant that belonged to his union on March 25th when the so-called strike was called?

A. He admitted he had no employees. As a matter of fact, as a prelude to that conversation —after the contract was made, and modus vivendi reestablished, there was some banquet, I believe arranged. At Mr. Perlstein's earnest
p. 544 insistence, and as a gesture of good-will, the officers of the Nona-Lee requested my attendance, and I did attend. There was a spirit of good-will on the surface, and possibly deeper than that. There was a good deal of conversation one way or the other—I had some conversation with Mr. Perlstein I know on that occasion probably, and probably on another in which I took issue with his program of violence; that I voiced the opinion it was really detrimental to the labor's cause. Mr. Perlstein's position was you could not win strikes without violence, that violence was a necessary concomitant of a strike.

Q. Were you discussing the violence that had occurred there in Memphis that you have described and for which you obtained convictions of union members?

A. Yes. That is what it grew out of.
Q. In that conversation were you discussing violence with respect to tearing clothes off of women and pushing of women?
[fol. 5362] A. That was part of the violence.
Q. That you were discussing?
A. That is true.
Q. What did he say about that?
A. I made no specific reference to that, he simply made a general statement that you could not win a strike without violence. I think he did advert to several—

[fol. 5363] MRS. INEZ WARREN.

pp. 312-316 inc.

Q. What is your name?
A. Mrs. Inez Warren.
Q. How long have you lived in Kansas City?
A. Twelve years.
Q. Are you married and do you have a family?
A. Yes.
Q. Are you now working for the Donnelly Garment Company? A. No.
Q. How long since you worked for them?
A. Two years.
Q. You quit voluntarily? A. Yes.
Q. What has been your work at the Donnelly Garment Company?
A. I worked on practically every floor of the building in four or five different departments.
Q. At what kind of work?
A. Beginning in the pressing department, hand sewing department. In the office, and several departments that I can't think of at present.
Q. How many years altogether did you work there? A. Six, I believe.
Q. Did you ever know of any spy system down there? A. Never heard of it.

Objection—immaterial.

Q. Was there any speed-up system down there, by which a girl was compelled to do a particular amount of work?

A. I never heard of that.

Objection—immaterial.

Q. On March 2, 1937, did you have anything to do with the composition or circulating of these sheets which I hand you, and which are marked Exhibit 30? A. Yes.

Q. What was the occasion for getting that paper up, what caused you to do it?

A. The feeling among the employees. Mrs. Sprofera and I knew they didn't want any outside interference from this particular union organization, because we were perfectly satisfied, and being treated fairly, and we knew personally, in our contacts with so many other workers, they felt the same way we felt; we would like Mrs. Reed—we knew she would like to know that we felt this way.

Q. You said this particular organization. You didn't want anything to do with that. What organization is that?

A. We meant the International Ladies' Garment Workers' Union in particular.

[fol. 5364] Q. Had you seen a newspaper article that came out just about three or four days before this March 2 meeting, in which it was stated " 'We are going to send a letter to the Donnelly Company within a week, suggesting a conference to establish collective bargaining on the question of wages and working hours', Mr. Perlstein said. 'If the firm refuses, we'll go to the consuming public of the country and advise buyers of the wages and hours prevailing there now' ".

And which contains the further statement that: "Part of the union's campaign, directed against the Donnelly Garment Company will be to send six women to cities and towns where its garments are sold, advising

retailers and labor organizations', Mr. Perlstein said.

And further quoting Mr. Perlstein " 'Within a year, we will have it completely organized', Mr. Perlstein said 'and as soon as we have enough members, we'll call a strike. This will be in addition to carrying our side to the consumers.' " Have you seen that article that contained those statements?

Objection—immaterial.

A. Yes.

Q. What was the effect on the employees?

A. It made them all furious. That is the only word that I could express it.

Objection—immaterial.

Q. So you and Mrs. Sprofera composed this document? A. Yes.

Q. And did you take it around and hand it to the workers? A. Personally, yes.

Q. Did you and Mrs. Sprofera go together most of the time. A. Yes, sir.

Q. Were you directed to circulate this paper by any of the bosses or superiors there?

A. Absolutely not.

Q. Did any of them have anything to do with this, or any knowledge of it?

A. No, not until after we had circulated it.

Q. When you had circulated this petition or statement, what did you say to the operators when you passed it around?

A. We said we would like to have them read this petition, and if they felt as we did about it, we would like to have their signatures. If not, It was O. K. And nobody would know whether they signed it or not.

[fol. 5365] Q. There is one paper here—was there one paper of these papers circulated by Pauline Shartzer? A. Yes, sir.

Q. In what department did she work? A. The 10th floor among the office help, 9th floor among the designers.

Q. How did she come to circulate it there? Did you ask her to?

A. No. She wished to do it, because the people on those floors themselves wished their names on this particular petition. They were anxious to have it known they felt the same way, although they were not the operators particularly involved, that we were concerned with passing the petitions among.

Q. Can you pick out of these sheets the one that Miss Shartzer circulated? A. I will try, judging from the handwriting, the last two.

(Witness examined Exhibit 30).

Q. The last two are numbered at the top 13 and 14. As to the rest of the signatures, did you see them signed? And know that these are the genuine signatures of the employees there, that they purport to be. A. Yes, sir.

Q. When you got these papers signed,—oh, by the way, was Pauline Shartzer's paper among those you took out to show Mrs. Reed?

A. Not that particular day.

Q. All the rest, you took to Mrs. Reed?

A. The same day they were signed.

Q. Did she know anything about them until you came there?

A. No, she was very surprised.

[fol. 5366] MRS. PAULINE SHARTZER
pp. 317-320 inc.

Q. Your name is Mrs. Pauline Shartzer?

A. Pauline Shartzer.

Q. Are you married? A. Yes, sir, I am.

Q. Have you a family? A. No sir.

Q. Where do you live? A. 3620 Mersington.

Q. Kansas City? A. Kansas City, Missouri.

Q. How long have you worked for the Donnelly Garment Company?

A. Twelve years, the first of July.

Q. In what capacities? A. Started out as power machine operator, marked dresses;

places to sew buttons on the front of dresses; errand girl in the design department, and in the production department, and last, I have been in the accounting department.

Q. How many years did you say? A. It will be twelve years the first of July.

Q. Did you ever know anything or hear anything about a spy system down there? A. No, sir.

Objection—immaterial

Q. Was there any such system? A. Not that I ever heard of.

Objection—immaterial

Q. Was there any system that is called a "speed up system", whereby one girl has to work at a certain degree of speed to keep up with the other girls. A. Not that I know of.

Objection—immaterial

Q. You worked on machines? A. Yes, sir.

Objection—immaterial

Q. Did you have any such system there?
A. No, sir.

Objection—immaterial

Q. Could you run your machine as fast or as slow as you wanted to?
A. Yes, sir.

Objection—immaterial

Q. Did you see the article in the Kansas City Times on February 26th, in which it is stated that Mrs. Dubinsky would arrive the next
[fol. 5367] week to attend a dinner at the Hotel Muehlbach of union officials and officers of the Liberty Frocks, Inc., and the Stern-Slegaman Prins Company; and went on to say, quoting Mr. Perlstein, that "the minimum wage in this section for women making silk dresses is $22.05 working a 5 day week. He said the Donnelly Garment Company employees re-

ceive a minimum of $15 weekly, and that they are working 45 hours weekly now".

And then proceeded to say: "Part of the union's campaign directed against the Donnelly Garment Company will be to send six women to cities and towns where its garments are sold, 'advising retailers and labor organizations,' Mr. Perlstein said. Miss Palmer will have charge of this squad of field workers. The union claims only twenty-five members among the Donnelly workers, but the officials said 'hundreds of others are related to union members'. 'Within a year, we will have it completely organized', Mr. Perlstein said. 'As soon as we have enough members, we'll call a strike. This will be in addition to carrying our side to the consumers' ". Do you remember that article?

A. Yes, I do.

Q. Was it discussed down there at the plant among the employees?

A. Very much so.

Objection—immaterial

Q. What was the effect among the employees?

Objection—immaterial.

A. They were all very disturbed and very disgusted.

Q. Did you have anything to do with circulating any of these petitions that are marked Exhibit 30?

A. Yes, I did.

Q. Will you pick out the one you circulated?

A. I circulated page No. 11, 12, 13 and 14. I am sorry, I didn't circulate 14.

Q. What numbers did you circulate.

A. 11, 12 and 13.

Q. How did you come to get those sheets? Did you ask for them, say you wanted to circulate them?

A. In the first place, we had discussed it on the 10th floor, the office of the plant. I went to the 9th, in some of my work, and someone asked me if I had seen this petition. I asked them what it was, and I copied it as soon as I could, and compared my copy with Mrs. Sprofera, and in that way I had a copy of what was written up.

Q. What did you do?

A. I took it to the 10th floor and the 9th floor, and anyone we missed on the 9th floor, I asked them to sign them if they cared to.

[fol. 5368] Q. Were these papers signed voluntarily.

A. They were.

Q. Those papers which you circulated contain the signatures, the real signatures of the workers there in the plant?

A. Absolutely.

Q. And of the office force so far as those who signed, [if] there is any distinction between workers and office workers?

A. Yes, sir.

Q. You are still working there?

A. I am.

[fol. 5369] MRS. MARY SPROFERA

p. 294 Q. What is your name?

A. Mary Sprofera.

Q. Are you married? A. Yes, sir.

Q. Where do you live, you and your husband?

A. 5013 Troost.

Q. How long have you resided in Kansas City?

A. All my life.

Q. How long have you worked for the Donnelly Garment Company? A. Fifteen years.

Q. On March 2, 1937, what was your work?

A. Order filling in the shipping department.

Q. Order filling in the shipping department?

A. Yes, sir.

Q. Prior to March 2, 1937, had you known of charges having been filed against the Donnelly Garment Company before the NRA

Labor Board and of some hearings having been held? Had you learned of that fact. That is in 1934? A. No, sir.

Q. Three years before March 3rd? A. No, sir.

Q. Had you heard of those things? I don't mean details—but do you remember having heard in 1934 that there were some hearings at that time? A. No, sir.

Q. You don't remember?

A. No, not to my knowledge.

Q. I hand you a paper here that is marked Exhibit 29 and which contains a purported newspaper account of certain statements that have been made with reference to the company, and the employees down there, and I will ask you if, at about that time, you saw or knew of these articles. I will thank you to look at it. That was published, I believe, February 26th, 1937? A. Yes.

Objection—Immaterial

Q. Have you refreshed your recollection from this so that you can remember what is in it?

A. No, not exactly.

Objection—Immaterial

Q. When that article appeared in the papers, was there some discussion between you and other employees of the plant in regard to it?

A. Yes, sir.

Objection—Immaterial

Q. Now, you may state what occurred between you and any of the members of the plant with reference to what ought to be done. Who did you talk with particularly about doing something about it?

A. Mrs. Inez Warren, a girl that helped me to pass those petitions.

[fol. 5370] Q. What was her job at that plant?

A. An order filler in the shipping department also.

Q. What did you girls conclude to do?

A. Pass these petitions around and have people pledge their loyalty and find out how they felt about working conditions and salaries, and everything pertaining to the Donnelly Garment Company.

Q. Who wrote the petition?

A. I did and Miss Warren.

Q. In whose handwriting are these documents which I hold in my hand. That is the caption of them, the heading? A. Who wrote these?

Q. Yes.

A. I did and Miss Warren, and Miss Shartzer. She came down and copied them by more or less what we had wrote.

Q. Who was with you when you composed the first one? A. Miss Warren.

Q. You and she composed it together, and you did the writing? A. Yes, sir.

Senator Reed: I read the caption on sheet 1, and a similar caption appears on each of these other sheets: "We, the undersigned, as members of the Donnelly Garment Company wish to make if known we are positively happy and contented with the positions which we hold with the organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed."

Q. When you had written the headings, what was done with the papers?

A. We took them up. Mrs. Warren and I took them up. We went up on the 8th floor where the operators were first. We would tell the operators to read these cards and petitions, and sign if they wanted to. They positively were under no obligations to sign,—and in a way, to show they did not want to join any particular union, which at that time was the International Ladies' Garment Workers' Union, and if they were satisfied with the working conditions there, and did not want

to make a change, and they signed of their own free will.

[fol. 5371] Q. When they were passed around, to whom were they passed? Were they passed to anybody except the workers at the plant?

A. No one but the workers themselves. No one else.

Q. Did anybody tell you to do this?

A. No, sir.

Q. No boss, no person in authority in the plant told you to do this?

A. No one knew about it.

Q. Look at the signatures that appear on—one moment. Did you even present them to the instructors for signatures?

A. No, sir. I did not. I did not take it up with my department heads or officials, or anyone.

Q. Are the signatures on sheet 1 signatures which you secured, if you can look at them and see if you could tell?

A. They are signatures of the operators and inspectors, I imagine. But that is all, and of operators.

Q. Of operators? A. Yes, sir.

Q. Those are the genuine signatures?

A. Yes, sir.

Q. Look at sheet 2. I am asking you if you got the signatures that are on sheet 2, or somebody else got them. Perhaps you can tell.

A. I got these.

Q. Look at sheet 3 and see if you secured the signatures on that sheet. Is it marked 3, Mr. Ingraham?

(Mr. Ingraham) Yes.

A. I couldn't tell about these, Mr. Reed, because Miss Warren had some of these sheets. I had some. But I am trying to read the names by seeing the girls themselves but I can't say I [pssed] this one particular one.

Q. You either got them or Miss Warren got them?

Q. Examine No. 4. That has the same caption as the other, doesn't it? A. Yes, sir.

[fol. 5372] Q. What do you say now as to whether you circulated page 4?

A. Yes, I did pass page four.

Q. Are the signatures there all genuine signatures? A. Yes, sir.

Q. Of the parties. A. Yes, sir.

Q. Secured in the same manner as you have already described. A. Yes.

Q. Examine sheet 5. Look at the names and see if you secured the signatures to 5, and if not who did?

A. I don't know who got them—I did.

Q. You got them? A. Yes, sir.

Q. Under the same circumstances and conditions that you have already described?

A. Yes, sir.

Q. Is that right? A. Right.

Q. Examine 6. Did you write the caption to that or is it in someone else's handwriting?

A. No, that is my own.

Q. Did you secure the signatures to 6?

A. Yes, sir.

Q. And under the circumstances and conditions that you have already described as to the others? A. Yes, sir.

Q. That is, you passed it and it was signed voluntarily? A. Yes, sir.

Q. And these are genuine signatures?

A. Yes, sir.

Q. Look at 7 and see if you passed that around; or if not who did?

A. No, I don't believe I can—

Q. (interrupting) If it was not by you, it was by Mrs. Warren, wasn't it?

A. Either by her or by me. That is the way we did that.

Q. Look at page 8 and see if you passed that around and if you can tell me in what department the signers of that worked. I have called attention to page 8 in my question.

A. It seems like it is some of the operators and some of the porters.

Q. Porters? A. Yes.

Q. They were all workers? A. Oh, yes.
Q. The signatures there are the genuine signatures? A. Yes.
Q. Look at page 9. What are the employments of the four or five people who signed, and I am handing you page 9 of Exhibit 30.
A. There's a porter's name here and also one of the inspectors.
[fol. 5373] Q. But the rest of them are employees?
A. Oh, yes.
Q. Those are genuine signatures?
A. Yes, sir.
Q. Look at page 10 of this exhibit and see if you can tell us who circulated that petition?
A. I did.
Q. You did? A. Yes, sir.
Q. And under the same circumstances you have already described? A. Yes.
Q. Are these genuine signatures?
A. Yes, sir. The girls signed them themselves.
Q. Look at page 11 and see whether you circulated that petition or paper?
A. No, I did not pass this one.
Q. Who did pass it?
A. I believe Miss Pauline Shartzer.
Q. What is Pauline Shartzer's position?
A. She works up in the cost accounting department, I believe, up in the office.
Q. Up in the office. So you can't say that you saw those signatures made? A. No.
Q. Look at No. 12 and see whether you circulated that petition?
A. No, I didn't pass this one.
Q. That was done by whom?
A. I imagine, Pauline Shartzer, on the 10th floor, there are names on there that are on the 10th floor, and we didn't go up to the 10th floor.
Q. Look at 13 and see if you circulated 13. If not, say if you know who did circulate it?
A. Yes, I passed this one.
Q. You circulated that? A. Yes, sir.
Q. Under the same conditions as the others that you testified about. A. Yes, sir.

Q. And these are genuine signatures?
A. Yes, sir.
Q. That is, these that I have called attention to were all circulated in one day on March 2. The ones I have called attention to?
A. Yes, sir.
Q. Now, I call your attention to No. 14 which bears the date of March 5th. Who circulated that?
A. I think Inez Warren and I did, and these are the names of the instructors that wanted to sign after Mrs. Reed made the statement
[fol. 5374] she would like to have all the signatures to put in the corner stone of her new building. That is the only reason why the instructors wanted to sign.
Q. When you ladies circulated these petitions on the 2nd, did you do it of your own free will without any interference or suggestion?
A. Yes sir.
Q. Very well. When you got these papers signed, now, with the exception of one of March 5th, what did you do with them?
A. The day that I got these?
Q. Yes.
A. After we were finished work that day, Mrs. Warren and I went downstairs and my husband met me. We went out to Mrs. Reed and presented her with these petitions, and she was very much pleased, and she didn't know we was coming, because she was out in the garden.

p. 306

[fol. 5389] Objection is made to all questions and answers of Velma Dowdy and all exhibits attached hereto for the reason that said questions and answers and exhibits are immaterial.

p. 561 VELMA DOWDY, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Depping:

Q. State your name please? A. Velma Dowdy.
Q. What is your age? A. Thirty-four.
Q. Where do you live?
A. In Memphis, Tennessee.
Q. Are you married? A. Yes.
Q. What is your husband's name?
A. Tom Dowdy.
Q. What does he do?
A. He works for the Arkansas Power & Light Company as an electrician.
Q. During the month of March, 1937 were you employed by the Tri-State Manufacturing Company in Memphis, Tennessee? A. Yes.
Q. What does that company make?
A. Dresses.
Q. What was your employment?
A. Seamstress.
Q. What was that? A. Seamstress.
Q. Do you recall that there was a demonstration by The International Ladies' Garment Workers' Union at the Tri-State Manufacturing Company about the 8th of March, 1937?
A. Yes.
Q. Who apparently was in charge of this demon-
p. 562 stration? A. Mrs. Zappone.
Q. Who is she, do you know?
A. She was the leader of the union at that time, working for Perlstein.
Q. When you went to work on the morning of March 8th, state whether or not there was a large crowd of people congregated around the building?
[fol. 5390] A. Not very many.
Q. Did the crowd increase as the day went on?
A. Yes.
Q. Did you leave the building during the day?
A. No.
Q. Why not? A. Afraid to.
Q. Now, did you leave the plant that evening?
A. Yes.

Q. Did anything unusual happen to you as you left the plant of the Tri-State Manufacturing Company on the afternoon of March 8th, 1937?

A. Yes.

Q. Just tell the Court frankly what happened?

A. I went out of the factory as usual. When I got outside a lot of girls grabbed me, almost stripped me naked, if it hadn't been for the policemen.

Q. Who were these girls? A. Union girls.

p. 563 Q. How do you know that?

A. They were in the picket line when I went to work that morning. They didn't work that day.

Q. Did you recognize any of them?

A. Yes.

Q. I will hand you a picture which has been marked Plaintiffs' Exhibit No. 81 and ask you to state what that is?

A. That is my picture.

Q. After they had torn your clothes?

A. All but my coat almost.

Q. They took everything off but your coat?

A. Almost.

Q. What remained on you?

[fol. 5391] A. The sleeves and dress, my brassiere and step-ins.

Q. We offer in evidence Plaintiffs' Exhibit No. 81.

(Plaintiffs' Exhibit 81 is received in evidence and made a part hereof.)

Q. Was that picture taken by newspaper photographers? A. Yes.

Q. Was is published throughout the country in different papers and magazines? A. Yes.

Q. During the day there, were you girls who were inside the plant, threatened by the union people who were on the outside about what would happen to you if you came out? A. Yes.

p. 564 Q. What was said to you by the union people?

A. They asked us how we thought we were going to get out. They were going to tear our clothes off, and all that.

Q. They said they were going to tear your clothes? A. Off.

Q. What kind of language, did you hear used there by different people. Just state the character of it? A. It was bad.

Q. After your clothes were torn off of you, as you described, did you then stay away from work? A. For a while.

Q. Did that humiliate you? A. Sure.

Q. Now, let me have these exhibits. I now hand you Plaintiffs' Exhibit No. 80 and direct your attention to the picture at the top of the page on the left hand side and ask you to state what that is a picture of?

A. A picture of Louise McKinney. She worked that day. The girls grabbed her, the policeman is trying to protect her from those girls.

Q. Is Louise McKinney the one being attacked?

[fol. 5392] A. Sure she is.

Q. State whether or not she was an employee of the Tri-State Manufacturing Company at that time? A. Sure.

p. 565 Q. Do you recognize any girls in the picture who are attacking Louise McKinney?

A. One.

Q. What is her name? A. Dixie Middleton.

Q. Is she the one where the cross is? A. Yes.

Q. State what position, if any, she held with the International Ladies' Garment Worker's Union at the time of that attack?

A. She was president.

Q. State whether or not during this demonstration, clothes were stripped and torn from other girls by the union people?

A. Yes.

Q. Where do you work now?

A. Tri-State Dress Manufacturing Company.

Q. The same place? A. The same place.

Q. When did you go back to work?

A. About six or seven weeks ago.
Q. State whether or not you were forced to join the International Union?
A. Sure, I was. I had to.
Q. Why did you have to?
A. They wouldn't let me work unless I did.
Q. State whether or not wages or working conditions are any better at the present time at the plant of the Tri-State Manufacturing Company than they were before?
[fol. 5393] p. 566 A. It is worse.
Q. Do you make any more money now than you did before this demonstration and before you became a member of the International Union?
A. Not as much.
Q. What dues and assessments do you have to pay to the International Union?
A. Thirty-five cents a week; $1.00 every month for a new book; fifty cents for every meeting you miss.
Q. How often are the meetings?
A. Twice a month.
Q. Do you have to pay any assessment or initiation fee to join? A. $3.50.

Exhibit 1 to affidavit of Velma Dawley 3-21-37

Sunday News
Page Seventeen

Exhibit 1 to affidavit of Flora Stetsch New-York Sunday News -

5394

Disrobed by force. Caught in the middle of a fight between women garment workers and strike pickers outside a dress company plant in Memphis, Tenn., this woman was shorn of almost all her clothes before police could rescue her. The

[fol. 5396] (N. R. A.—J. M. C. Exhibit 5.)

Extracts from testimony of DAVID DUBINSKY, called as a witness on behalf of the defendants.

Direct Examination

By Mr. Walsh:

p. 2157 Q. Your name, please?
A. David Dubinsky.
Q. And your age?
A. Forty-seven.
Q. Where do you reside, please?
A. 201 West Sixteenth Street, New York City.
Q. How long have you lived in New York City?
A. Since 1911.
Q. What is your occupation, please?
A. President of the International Ladies' Garment Workers' Union, and Secretary-Treasurer.

* * *

p. 2197 Q. In 1933 did you or did you not receive a communication from the Women's Trade Union League?
A. Yes, I did.
Q. A letter?
A. Yes.
Q. Please produce it.
A. May I say it is a letter together with a report of the United States Department of Labor, Womens' Bureau, Washington, with an analysis and with a clipping of a newspaper that I received at that time.
Q. The letter first, please.
A. (Witness hands paper to counsel.)

p. 2198 Mr. Walsh: I will now read this Defendants' Exhibit A-36:

[fol. 5397] (Defendants' Exhibit A-36.)

"Stenographers, Typists, Bookkeepers and Assistants Union No. 14268 of the American Federation of Labor.

Affiliated with Central Labor Union and Missouri State Federation of Labor.

Kansas City, Mo.
June 21, 1933.

"David Dubinsky, International Secretary International Ladies' Garment Workers' Union, 3 West Sixteenth St., New York City, N. Y.

"Dear Sir and Brother:

"April 16 The Womens' Trade Union League of this city started a campaign against sweatshop conditions here, a vigorous protest against the low wages, unsanitary conditions, overtime, etc., principally in the garment industry.

p. 2199

"The Chamber of Commerce, true to form, was highly insulted, emphatically denied that these conditions existed, and at that time told me the needle trades industry covered between ten and fifteen thousand workers, in seventy-six factories, with Kansas City ranking second in the house dress industry.

"I wrote Miss Elizabeth Christman, National Secretary of the League, around the first of May, asking her what we should do about organizing these women. Miss Christman replied she would write you, telling you of conditions here, and suggested I also write you. About that time the club women, several thousand strong, endorsed our sweatshop campaign one hundred per cent and sent dozens of wires to Mary Anderson asking the Womens' Bureau to send investigators here to make a wage survey. Miss Anderson sent her crew of workers for a survey of the garment industry about the middle of May. Their survey, wages only, was completed ten days ago, covering 39 factories, 3759 workers; 1752 of them in factories making cotton dresses for women and children; 844 of them in factories making women's coats; 844 workers in the overall and work clothes factories (practical-

ly all of these belong to the United Garment Workers, the only ones in the garment industry organized here);—"

You may explain that, if you will Mr. Dubinsky. That is not your organization, it is another organization in the garment trade?

[fol. 5398]

A. Yes.

Q. I will continue reading:

"180 in the millinery houses; 95 making lingerie, robes and silk dresses; 411 in factories where gloves, underwear and miscellaneous garments are made. 51% of the 3759 made less than $10 per week, practically all of these being in the cotton dress group.

"My object in writing you, Mr. Dubinsky, is to ask if your Organization will be able to send an organizer here to institute a local union of women workers under your jurisdiction. The Women's Trade Union League and Local Labor Movement, with which I am also identified as secretary of the Stenographers' Union and delegate to the Central Labor Union, will cooperate one hundred per cent with your representative, I can assure you.

p. 2200

"We know that organization is the only salvation for these workers.

"I shall appreciate an early reply advising what your organization will be able to do.

"Thanking you for giving this your prompt attention, I am,

"Cordially yours,

(Signed) MARION BURNS,
"President, Women's
Trade Union League.

"402 Carmen's Bldg.
"Kansas City, Mo."

[fol. 5399] Extracts from Testimony of MEYER PERLSTEIN called as a witness on behalf of the defendants.

Direct Examination.

By Mr. Walsh:

p. 1842 Q. State your name, please.
A. Meyer Perlstein.
Q. Where do you reside, Mr. Perlstein?
A. New York City.
Q. Give the particular address.
A. 12303 Holland Avenue, Bronx, New York.
Q. What position do you hold with the International Ladies' Garment Workers Union?
A. I am the Regional Director of the Southwestern District of the International Ladies' Garment Workers Union.

• • •

p. 1860 Q. When did you first come to Kansas City?
A. I came to Kansas City in July, 1934.
Q. What was your designation then?
A. My designation was to help—
Q. (Interrupting) July, 1934? A. Yes.

• • •

p. 1861 A. My duties in this city were first to help those local union that were already established here, to help the members improve their conditions and also direct the activities for the organization of those that were not organized yet.
Q. How many were organized when you came here?
A. We had several hundred organized.
Q. And were they in separate locals or all in one local?
A. We had three different locals.
Q. What were they?
[fol. 5400] A. One local consisted of cloak makers, another local consisted of cutters and another local of dressmakers.

• • •

p. 1867 Q. Have you visited the Donnelly Garment Company?

A. I visited the Donnelly Garment Company recently, during this trial.

* * *

p. 1869 Q. Did you observe the workings of the machines? Were the sections apparently all at work in operation upon the machines at the time we were there?

A. I have visited—

Q. (Interrupting) Were they all working?

A. I did observe.

Q. You did observe? A. Yes.

Q. And you went through the aisles did you?

A. I went through the aisles; I stopped at almost every section, I observed the speed.

Q. I was going to ask you that. How does the speed, from your experience, compare with the speed in other manufacturing establishments that you know of?

A. It was, according to my opinion, it is the speediest shop that I ever had visited. I have

p. 1870 never seen people work as hard as they do in that particular shop, particularly in certain sections of that shop.

Q. Mention the sections?

A. The special machine operators, the pressers,

[fol. 5401] I have never seen pressers working as hard and as fast and as speedy as the pressers and special machine operators in that shop have worked.

Q. We will come back, if we may, to your first coming to Kansas City. When did you communicate, after you came here, with the Donnelly Garment Company?

A. I sent them a letter in connection with complaints that a number of girls brought to me, girls that were working for the Donnelly Garment Company and who claimed that they were discharged because of union activities.

Q. Do you remember the date of that letter?

A. I don't remember the exact date.
Q. Have you made a search for a copy of that letter?
A. I have made a search for the original copy but I could not find it.

Mr. Walsh: Have you gentlemen a copy of that, Mr. Hogsett?

Mr. Hogsett: You have not identified any letter up to now.

Q. What was the date that you wrote that letter?
p. 1871 A. I don't remember exactly the date.
Q. Can you approximate the date?

Senator Reed: Mr. Walsh, any letter that we have from this gentleman, if you can in some way tell us what it is we will produce it.

Mr. Walsh: Very good, I will try to. Pardon me, I spoke without giving the description, it was my fault.

A. It was either at the end of July or sometime in the early part of August, 1934.
Q. And to whom was the letter addressed?
[fol. 5402] A. To the Donnelly Garment Company.
p. 1872 Q. This letter of July 18th, 1934, will you please state the contents of it?
A. The contents of the letter was that I am advising them that a number of girls complained to me that they were discharged because of their union activities and I asked them for a conference to take up and try to adjust this complaint.
Q. Did you receive any reply to that letter?
A. I received a telephone call.
p. 1873 Q. And from whom did you receive the telephone call? Who was the person that said he or she was at the other end of the 'phone?
A. When I came into my office there was a call for me from Mrs. Reeves.
Q. And what did you do in response to that call?

A. I called back and I made an appointment for eleven o'clock the same morning. Later on when I found that I cannot keep that appointment I called back and wanted to delay it for a later hour. Then Mrs. Reeves asked me "What do you intend to take up, what do you intend to discuss".

Q. Pardon me. Did you tell her who you were and who you represented?

A. I told her my name and that I am the one that wrote the letter and she asked me, "What is the appointment for, what do you intend to discuss." I told her that I intend to discuss the complaint filed with me by the several girls that claimed they were discharged because of their union activities, claimed they were discriminated against. Then Mrs. Reeves told me "We don't discriminate and these girls were not discharged because of their union activities but because of the seasonal lay-off." I told Mrs. Reeves that these girls were working there for several years and never during that period were they laid off for such a long period and they insist they
[fol. 5403] were discharged because of their union activities.

p. 1874 Q. And what was Mrs. Reeves' reply?

A. Mrs. Reeves' reply was "There is no use wasting time, we don't discriminate."

Q. Did you make any other offer to call upon her? Did you make an offer at that time to call upon her?

A. No. If you will pardon me to qualify my remarks, I advised some of the girls to call her up personally and possibly try to get their positions back individually.

* * *

p. 1878 Q. Now, I will show you a letter addressed to the Donnelly Garment Company of date, January 25, 1935, and state whether that is a copy of the letter that you sent to the Donnelly Garment Company.

A. Yes, it is.

Mr. Walsh: I want to put this in evidence.

(Mr. Walsh read Defendants' Exhibit C into the record.)

(Defendants' Exhibit C.)

"Kansas City, Missouri, January 25, 1935.

"Donnelly Garment Company,
1828 Walnut Street,

Kansas City, Missouri

Gentlemen:

As the accredited representative of the International Ladies Garment Workers Union, which represents 225,000 workers and is the third largest union in the American Federation of Labor and as the accredited representative of the Donnelly Garment Workers Local No. 124 of that union, we take the privilege of addressing this letter to you.

Last year, with the birth of the new deal, a number of the workers in your shop began to apply for membership in the above men-
[fol. 5404] tioned organization. Various groups of your workers constantly applied for membership and finally our International granted them a charter.

"Following their organization, these members have experienced a decided change in the attitude and action of your executives toward them. They complain that they have been unfairly propagandized to abandon their union; given veiled threats of discharge should they fail to do so; discriminated against; isolated from other workers by transfer to a separate building and transferred to other than their usual type of work; so that their earning power has been materially reduced; and workers of proved efficiency and long experience in your employ have

been discharged without cause. That these complaints are not vague and imagined is evidenced by the fact that they have taken
p. 1879 definite form in cases pending before the Regional Labor Board. That they are not without merit is evidenced by the fact that your executives have interposed every artifice and technicality to delay a full and fair hearing and that the cases still pend.

"There is voiced feeling among these workers that the special concessions made to your firm by certain administrators of the National Recovery Administration have resulted in great benefit to you at the expense of and without corresponding benefit to the workers. The Administration undoubtedly, in permitting you to manufacture a higher priced garment, acted upon a belief that the workers would benefit by this concession proportionately; but the contrary has proved to be the fact.

"Let us at this point assure you that it is not the purpose of our union either to disrupt or run business. Our activities are predicated upon the principle of co-operation between employer and employee for the fair and mutual benefit and profit of all. All we ask is for an opportunity, through our organization, to present and submit labor's views, and to work out peaceable and equitably the problems of uniform and adequate wage scales, protection for the experienced workers, the determination of piece-work rates and all other problems jointly affecting your organization and our members.

"We desire to accomplish these ends peaceable. There should be no need to resort to methods resulting in cessation of work and economic loss in order that the workers may
[fol. 5405] in 1935 gain that equality in his inalienable rights in the economy of the nation which he in 1776 obtained politically.

"Surely the founders of your firm are fair enough to concede that we have reached a state in our civilization where the workers, through his labor union, must be recognized as having a voice in industry and the conditions of his employment.

p. 1880 "We address this letter to you in the sincere hope that it will form the basis for co-operation between the members of our union in your employ and your firm. The success of industry depends upon such co-operation. We stand ready to do our part toward creating the machinery for a mutually co-operative relationship.

"Through your prompt response to this communication there can be averted the necessity for a more direct drawing of the issues and the possible precipitation of industrial turmoil. The power for peaceful action is in your hands and we trust you will pursue this course.

Most sincerely yours,

"International Ladies Garment Workers Union
By Meyer Perlstein, Special Rep.

"Donnelly Garment Workers Union No. 124
By—Virginia Stroup, President"

(Whereupon Defendants' Exhibit C is received in evidence and made a part hereof.)

Q. (By Mr. Walsh) Upon December 6, 1934, did you file a complaint against the Donnelly Garment Company on behalf of the International Ladies' Garment Workers Union?

A. I did.

Q. I will ask you to look at this paper which I hand you and state whether that is the complaint you filed?

[fol. 5406] A. Yes, I did.

(Defendants' Exhibit "-28, Complaint, page 473, Vol. 2, Statement of the Evidence, marked for identification.)

(Mr. Walsh read Defendants' Exhibit A-28 into the record.)

(Defendants' Exhibit A-28.)

p. 1881

"National Labor Relations Board
Regional Office Twelfth
District, Scarritt Bldg.
Kansas City, Missouri.

"International Ladies Garment Workers' Union
v.
"Donnelly Garment Company, Kansas City, Mo.

"Complaint

"Comes now the International Ladies Garment Workers Union, for and in behalf of

Thelma Owens,
Mayme Tubbesing,
Tillie Shirley,
Ellen Fry,
Gladys Ruchardson,
Lou Perkins,
Lillian Rutherford,
Goenn Brook,

"and states that said women are members of International Ladies Garment Workers' Union; that each of them was employed by Donnelly Garment Company and discharged or laid off because of their activity in organizing a local union from the employees of the Donnelly Garment Company, because of their declarations that they intended to become members of the International Ladies Garment Workers' Union and because of said membership in said Union, in violation of Section 7A of the National Industrial Recovery Act.

"Wherefore, said International Ladies Garment Workers' Union, for and in behalf of each of said women, asks for an order of

the National Labor Relations Board compelling the said Donnelly Garment Company to reinstate each and all of said women to their former positions, with full pay for the time
[fol. 5407] during which they have been illegally discharged and laid off.

p. 1882 "INTERNATIONAL LADIES GARMENT WORKERS' UNION

By (A) Meyer Perlstein.' "

* * *

p. 1909 Q. Now, after the NRA was declared unconstitutional did you or did you not remain here and conduct activities in the effort to organize these girls?

A. We continued conducting activities.

Q. Who did you have here in charge of the Joint board?

A. Mrs. Wave Tobin, who was named as the manager of our local organizations in this city.

Q. And when was Mrs. Tobin engaged by you, about what date? Did you engage her?

A. I did.

Q. And about what date was she engaged?

A. I could not remember exactly the date.

Q. Could you make a fair estimate of it?

A. I believe it was in 1936.

Q. And under your direction what did Mrs. Tobin do, if anything, down to the time you wrote this letter?

A. She followed the normal process.

Q. Which was what?

A. To talk to the workers, to send out committees, to encourage them, to explain to them the aims of the union and so forth.

* * *

p. 1925 Q. I will get you to state whether or not you addressed a letter of which this Defendants' Exhibit I is a copy, to the Donnelly Garment
[fol. 5408] Company?

A. I did.

Q. On or about the date given, July 23, 1935, is that correct?

A. Yes, sir.

p. 1926 Mr. Walsh: I want to offer this Defendants' Exhibit I.

(Which Defendants' Exhibit I is in words and figures as follows, to-wit:)

(Defendants' Exhibit I.)

"July 23, 1935.

"Donnelly Garment Co.,
1828 Walnut St.,
Kansas City, Missouri.

"Gentlemen:

"The following members of our union have complained to us that they have been discriminated against and discharged because of their union affiliation and activity. We have made a thorough investigation of their complaints, have found them to be true, and respectfully submit that their discharge and discrimination was unlawful.

"We, therefore, request you to have these workers reinstated to their former positions and reimburse them for the loss of pay they have been caused to suffer by being illegally discharged.

"Ellen Fry	Thelma Owens
Glynn Brooks	Lillian Rutherford
Tillie Shirley	Lou Perkins
Pauline Lutz	Gladys Eldridge
Mamie Tubbesing	Virginia Stroup
Lillian Wales	Frances Reidel
Nore McKee	Loretta Sisson
Ollie Thompson	Minnie Liles
Clara Enloe	Edith Alexander

"Sincerely yours,

Kansas City Joint Board,
International Ladies Garment
Workers Union.

[fol. 5409] "By- Evelyn Swanson
K. C. Joint Board, secy.

"By- Meyer Perlstein
I.L.G.W.U. representative."

• • •

(Witness Excused.)

[fol. 5410] Extracts From Testimony of THELMA OWEN, called as a witness on behalf of Defendants.

Direct Examination.

By Mr. Walsh:

p. 1605 Q. Your name is Thelma Owen, I believe?
A. Yes.
Q. And what is your age?
A. Thirty-six.
Q. Did you ever work for the Donnelly Garment Company?
A. I did.
Q. When did you start to work for that company?
A. August 3, 1924.
Q. And how long did you work for that company?
A. Until 1927 I was laid off for five weeks.
Q. And at the end of the five weeks were you called back to work?
A. Yes, I was.
Q. And how long did you work then?
A. Until 1927 in November.
Q. And you were off then for some months?
A. Yes, close to a year.
Q. When, if at any time, did you go back to work at the Donnelly Garment Company?
A. The latter part of 1932.
Q. And you worked then continuously did you until what time?
A. June, 1934.
p. 1606 Q. Did you join the International Ladies' Garment Workers' Union?
A. I did.

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p. 1606 Q. And upon what date?
A. November 30, 1934.

* * *

p. 1609 A. Then I went to the union office and I stated
p. 1610 my troubles to Mr. Perlstein and I asked Mr. Perlstein if there wasn't something he could do to get our jobs back and he said "Well, I will advise you to call Mrs. Reeves again." I called her again and she said "There isn't anything for you."
Q. Did you speak to her in person after that?
A. I did.
Q. How soon after this telephone conversation that you have narrated?
[fol. 5411] A. Well, I think it was the same day. I went to gather my things up.
Q. What things did you have there?
A. Uniforms, scissors, shoes. She left word at the employment office if I came in to send me to her office.
Q. And were you sent to her office? A. I did.
Q. And did you have a conversation with her?
A. Yes.
Q. What did she say if anything with reference to a call from Mr. Perlstein's office?
A. She shook her finger in my face and she said "Thelma Owen, why did you call from that old foreigner's office, Merle Perlstein; we could have got together and threshed this thing out.
Q. And what was your answer to that?
A. I told her that I was there and that was the reason I called from there.
p. 1611 Q. Did you know how she knew you were at Mr. Perlstein's office? A. I do not.
Q. Did you state when you called her up you were calling from Mr. Perlstein's office.
A. I did not.

[fol. 5412] p. 1509 Extracts From Testimony of LILLIAN WALES, called as a witness on behalf of Defendants.

Direct Examination.

By Mr. Walsh:

Q. Please state your name to the Court?
A. Lillian Wales.
Q. And where do you reside, Miss Wales?
A. 711 Cleveland.
Q. Is that in Kansas City, Missouri?
A. Kansas City, Missouri.
Q. How long have you lived in Kansas City?
A. About twenty years.
Q. And what is your occupation at the present time?
A. I am a special operator at Carl Mann Coat Company.
Q. At what factory? A. Carl Mann.
Q. How long have you worked there?
A. It will be a year in June.
Q. Did you ever work for the Donnelly Garment Company? A. Yes, sir.
Q. I believe I will have you state here what your experience has been as a garment operator, from the time you started up until the present time?
A. Before I went to the Donnelly Garment Company I was a special operator at the Kansas City Custom Garment Company; I worked
p. 1510 there approximately two years and then I went to the Donnelly Garment Company, as well as I can remember in the fall of 1931.
Q. And how long did you work there?
A. I worked there until June, 1935.
Q. And what part of the work did you do at the Donnelly Garment Company, what operation?
A. I was a straight needle girl. When I first went there I was given a little bit of everything to do and later became a joiner.
Q. How long did you work there as a joiner?
[fol. 5413] A. Well I could not say exactly; approximately two years.

Q. I will ask you to state whether or not you had a conversation with Mrs. Allison in the winter of 1934 respecting the International Ladies' Garment Workers' Union?

A. Yes, sir; she spoke to our group in our section. At that time I was working on the 8th floor.

Q. Had you received or had you not received one of the circulars or bulletins sent out about meetings? A. Yes.

Q. What was the occasion of your conversation with Mrs. Allison at that time?

A. There were some girls carrying educational signs and Clara Finnell was a thread girl on that floor at that time and she came up to the section and said something to Mrs. Allison about it and she said that what we should do was go down those elevators and tramp those people down.

p. 1511 Q. What people were they talking about?

A. The girls that were carrying those educational banners.

Q. What did it say on these banners?

A. I couldn't remember, I don't remember and Mrs. Allison said if anybody joined the union that we would not be working for the Donnelly Garment Company.

Q. Were these presumably union girls that were down there? A. Yes, sir.

Q. I wish you would give me all of their conversation, and pitch your voice so we can all hear you; give me the whole conversation that you had with Mrs. Allison?

A. Mrs. Allison said at that time, she spoke to the group of us and she said that anybody that joined the union would not be working for Mrs. Donnelly.

[fol. 5414] Q. When was that?

A. Well, I could not rightfully say when that was; it was before I joined the union however; it was in the month of December.

Q. December of what year?

A. Of 1934.

Q. Did you have a conversation in the early part of January or I will ask you first did you join the International Ladies' Garment Workers' Union? A. I did.

* * * *

p. 1512 Q. Do you recall the date on which you had a conversation subsequently with Mrs. Hyde?

A. Yes; I joined the union the 8th of January and before that they had been at this building at 26th and Walnut and it was on the 21st day of January as near as I can remember the instructor that had charge of the section at that time, Mrs. Allison being transferred during that period of time—came to me and she said that Mrs. Hyde wanted to see me downstairs and I told her, I said "What? I have been expecting that" and she said that she hated to lose me.

Q. Who said that? A. The instructor.

Q. Who was the instructor? What was her name?

A. I know but I cannot remember, right now I cannot remember.

Q. Was she an instructor at the time?

A. Lola was her name; I cannot remember her last name; she had just been there a small period of time.

p. 1513 Q. She had what?

[fol. 5415] A. She had just been there from the time that Mrs. Allison had been transferred to the 26th and Walnut Building.

Q. What was it she said?

A. Well, she told me Mrs. Hyde wanted to see me, she said she certainly hated to lose me because I was a good operator and I told her I had been expecting it so I took my scissors and thread and things and went down to the employment office on 7.

Q. And who did you meet down there?

A. Mrs. Hyde and she told me Mrs. Allison needed another girl over at the other building.

Q. Where was that building?
A. The building at 26th and Walnut.
Q. And whom did you meet after you got over there?
A. Mrs. Allison.
Q. What was Mrs. Allison's position?
A. She was an instructor.
Q. And did she give you a machine to work on when you got over there?
A. Well, she was talking to someone else and she told me to wait and she would give me a machine, which she did.
Q. Now, at the time she did that did she say anything to you or not about joining the union?
A. She told me when I first went over there the first day I went over there that I could not expect to come over from the big building and
p. 1514 get joining because she already had her joiners and Mary Copowycz talked to me, too; she was a thread girl at that time and she said, she came over and she asked me what made me ever join the union. I told her because I wanted to and she said that Frances and I was the only ones in the union that she cared anything about and she asked me
[fol. 5416] what I thought I could get out of the union, what I expected out of it; that there were not any unions any more and the first time I did something they didn't like they would kick me out and that is all she said to me at that time and Mrs. Allison talked to me later.
Q. How much later?
A. I cannot rightfully remember; it seems to me it was the following Monday.
Q. And what did she say to you?
A. Well, she said she would like to give me a whipping and I asked her for why and she said because I joined the union. She said she thought it was terrible we had joined the union, to take our money and give it to the

dirty foreigners to sit around when they could not offer us anything. She asked me if I had not always been treated fair with the Donnelly Company and she told me as long as I would continue to behave myself I would have had a job with the Donnelly Company, as long as there was such a firm but she said that I could not expect to get the same kind of work and all that I had had. She said—

p. 1515 she also told me there was not any unions any more and that if I lost my job there that I could not get a job any place else in town.

Q. State whether or not she said anything about Frances Riedel joining the union?

A. Yes, she said that Frances and I—she was surprised that we had but she was not surprised at Virginia Stroup; that she was the type and she said that the reason that Flossie and I had stayed there like we had was because she liked us and felt sorry for Flossie—Flossie Walton, I don't know why.

* * *

p. 1523 Q. Where do you work now.

A. Carl Mann Coat Shop.

Q. Is that a union shop?

A. Yes, sir.

[fol. 5417] Q. Is there or is there not, in that shop, a price committee appointed among the employees themselves who do the work?

* * *

p. 1526 Q. I wish you would answer that, please, Miss Wales.

A. Yes. There is a price committee elected by the girls. When prices are settled among the workers, there has to be present the head of the union, the shop Chair Lady, the price committee and the employer himself, and the prices have to be settled in accordance with what the girls think are right for them.

Q. Is there or is there not, usually if not always, an agreement as to what the prices shall be on the particular class of garments?

A. You mean between the price committee—?
Q. Between the price committee and the employer, is it usually agreed upon?
A. Yes, sir.

* * * *

Cross Examination

By Mr. Hogsett:
p. 1527 Q. Well, all right. You left in what period of 1935?
A. In the month of June, 1935.

* * * * * *

Q. You joined the union on what date?
A. January 8, 1935.
Q. You continued to work at the Donnelly Company until June, 1935?
[fol. 5418] p. 1528 A. Yes, sir.
Q. I believe you said. And at that time, there was a general lay-off, wasn't there?
A. I was sent to the 2609 Walnut Building. I don't remember the date when that was laid off, that building was laid off. We talked to Miss Hyde. She said she would have to do us like she did the others. She would have to lay us off. We asked her when she thought she would have work for us. She said she didn't know, maybe next season. We called her up. She said, no, she didn't have anything just then, that she would call us when they did.
Q. Did you get the question that I asked you?
A. I think so.
Q. What is the answer to it?
A. That building was laid off, yes.
Q. You were laid off at the same time as how many other employees, both union and non-union?
A. Well, I couldn't say, because I don't know how many girls there was in that section. It consisted of one section. I can't remember if it was just a few or not.

Q. A normal section is 40 people plus the instructors, is that right?
A. That is right.

(Witness Excused)

[fol. 5419] Extracts From Testimony of FRANCES RIEDEL, called as a witness on behalf of Defendants.

Direct Examination.

p. 1467 By Mr. Walsh:
Q. Your name is Frances Riedel.
A. Frances Riedel.
Q. And where do you reside, Miss Riedel?
A. 1207 Reynolds.
Q. Is that in Kansas City, Kansas or Kansas City, Missouri?
A. That is in Kansas City, Kansas.
Q. And how long have you lived there, approximately? A. Two years.
Q. Were you born in this neighborhood?
A. I was born in Kansas City, Kansas.
Q. What is your occupation?
A. None at present.
Q. What has been your occupation for the past few years?
A. Sewing machine operator.
Q. As a sewing machine operator, please state what shops you worked in?
A. I have worked at the Missouri and the Liberty and Donnelly's and Lindall Coat shop and Bracken Tie Company.
Q. How long did you work for the Donnelly Company? A. Three years and a half.
Q. When did you go to work there?
A. In the year 1931.
Q. Were you working there in the years 1933 and 1934? A. Yes, sir.
p. 1468 Q. And what was the character of your work?
A. Straight sewing, straight needle girl.
Q. What sort of machines did you work on, if they had any particular designation?

A. Well, I did do sheering and binding, not very much but when they were busy I did them.

Q. When did you leave the employ of the Donnelly Garment Company? A. 1935.

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Q. Did you at one time join the International Ladies' Garment Workers' Union?

A. Yes, I did.

[fol. 5420] Q. And when did you join that union?

A. In October, 1934.

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p. 1469 Q. Subsequent to joining that union did you have a talk with Mrs. Reeves about joining the union?

A. Yes. I was called up to Mrs. Reeves' office.

Q. And how long was it after you joined the union?

A. Well, I was called up to Mrs. Reeves' Office December 12th; right around December 12th.

p. 1470 Q. Around December 12, 1934?

A. Yes.

Q. Had you said anything to anyone up to that time at the shop about having joined the union?

A. Yes; Grace Gnotta asked me if I had joined the union.

Q. Who was Grace Gnotta?

A. She was my instructor at the time.

Q. And what did you say to her?

A. Grace Gnotta asked me if I belonged to the union and I told her yes, I did.

Q. Was it subsequent to that that you had this conversation with Mrs. Reeves?

A. Yes, it was the same day.

Q. I will get you to state that conversation, what Mrs. Reeves said to you and what you said to her?

A. Mrs. Reeves asked me if I belonged to the Union and I told her yes.

[fol. 5421] Q. Now I will ask you one question before I go any further. Was this Grace Gnotta pres-

ent at the time when you talked to Mrs. Reeves?

A. Yes; Grace Gnotta took me up to Mrs. Reeves' office.

• • •

p. 1472 Q. Was there any other girl called up at the same time you were there?

A. Virginia was called just a few seconds before I went up.

Q. Virginia who? A. Virginia Stroup.

Q. Was Virginia Stroup there at the same time they had this talk with you?

A. Yes, sir, she was.

Q. Did you hear what Mrs. Reeves said to Miss Stroup, if anything?

A. Yes; she told Virginia that Grace Gnotta had kept her through sympathy, because she felt sorry for her.

Q. And what did Miss Stroup say in answer to that, if anything?

A. I don't remember what answer Virginia Stroup did say.

Q. Did you hear any conversation right after that between Mrs. Reeves and Ella Mae Hyde?

A. Yes. Mrs. Reeves told Ella Mae Hyde that her job was to watch Virginia Stroup and Frances Riedel—myself—the times that we [sent] to the wash room and how long we spent there.

p. 1473 Q. That was the retiring room for the girls?

A. Yes, sir.

[fol. 5422] Q. Did she say anything else about the union while you were there and any relationship that Mrs. Gnotta had to anyone belonging to the union?

A. Yes; she said that Mrs. Gnotta had been listening to us talk union and she wasn't going to listen to it any more because if we girls didn't make our $15.00 we would get laid off.

• • •

Q. Did she say anything else to you with reference to what you should do, if you had difficulties and to whom you should go?
A. I believe Mr. Dewey Atchison did.
Q. What did he say?
A. He asked us why we didn't bring our difficulties to him instead of taking them to a bunch of foreigners.
Q. What was your answer to that?
A. We told him that we had took our difficulties to our instructor many a time about our prices on certain garments that we made but that it didn't do any good.

• • •

p. 1474 Q. Did you subsequently, a day or two afterwards, after that, have a talk with this same Mrs. Gnotta that took you up there?
A. Yes; the following day, I believe, Mrs. Gnotta came and talked to me.
Q. What did she say?
A. She tried to persuade me not to join.
Q. What did she say? Just give us the substance of what she said as you recollect it?
A. Well, she asked me not to go to any more union meetings; she referred to the girls in our union as the scum from Donnellys; she said it was nothing but the scum from Donnellys that had started this union and that [fol. 5423] she did not [thini] I belonged to them and she asked me—it was around Christmas time and we were exchanging Christmas gifts and she asked me if I wouldn't consider giving her a Christmas present and tell her that I didn't belong to the union any more; that I wouldn't go to any more of their meetings.

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p. 1476 Q. Did you have a talk with any of your other instructors after you got over to that place?
A. Yes, I had a talk with Mrs. Allison.
Q. Who was Mrs. Allison?
A. She was my instructor at 26th and Walnut.

Q. Will you please state the substance of the [conservation] that you had with Mrs. Allison? A. Yes.

p. 1477 Q. What was it? First, what Mrs. Allison said to you and what you said to her?

A. Mrs. Allison came to me and asked me if I would tell her something she would like to know and I told her I sure would, I would tell her anything about myself that she would care to know and she told me it wasn't about myself, that she wanted to know if Lillian Wales belonged to the union.

The Court: What?

The Witness: If Lillian Wales had joined our union.

Q. And what did you say in answer to that question that was asked you by Mrs. Allison?

A. I asked Miss Allison why she didn't ask Lillian if she belonged to the union.

Q. And what did she say?

A. She said that she would but she never seen Lillian; she was over on 18th and Walnut.

[fol. 5424] Q. Did she say anything further to you in that conversation about your joining—first, did you say anything to her when she asked you about Lillian Wales joining the union?

A. Yes; she said that she didn't think I would be ashamed to tell her of any girl that belonged to our organization.

Q. By your organization she meant what?

A. The union, and I told her that we were not ashamed but very proud to have Lillian Wales in our union.

Q. Then what did she say to you, if anything, with respect to that?

p. 1478 A. She said that she didn't think that I would have joined the Union if it hadn't been for Virginia Stroup and I told her that I thought I had a mind of my own; I didn't ask Virginia, and I felt if I belonged to the union

it was because I, myself, had wanted to join it.

Q. Did she say anything further to you?

A. Yes; Lillian Wales and I had started in a beauty course, taking a beauty course and she told me that we needed our jobs to go ahead with our beauty course and that if we joined it that we would lose our job and would not be able to continue with our beauty course.

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p. 1480 Q. What happened to you subsequent to that? How long did you remain working at that place at 26th and Walnut?

A. Well, they closed down the building and laid us all off.

Q. How soon after this talk which you had with Mrs. Allison?

A. Well, it was—I had that talk with Mrs. Allison, I believe in January and in June we were laid off.

Q. Did you remain at that other shop during all the time down to June when you were laid off?

[fol. 5425] A. I was at 26th and Walnut when I was laid off, and up until I joined the union and had the talk with Mrs. Reeves I worked at 18th and Walnut.

Q. Did you remain at 26th and Walnut all the time up to the time that you were laid off?

A. Yes, sir.

p. 1481 Q. How long were you laid off?

A. I never got back.

Q. Did you ever try to get back?

A. Yes. For three months I called Miss Hyde,—Ella Mae Hyde,—she was the one we always called in for employment or when we went back to work.

Q. When you were laid off was there anything said to you about coming back again and working for the company or not?

A. Yes; when we were laid off they closed down that whole building.
Q. And how many people were in that building?
A. I really couldn't say.
Q. Could you approximate the number? Was there as many as 100 or 50 or how many?
A. Well, I really couldn't say.
Q. You couldn't estimate it?
A. No, I am afraid I couldn't.
Q. What floor were you on in that building?
A. I don't remember whether it was the third—the third, I believe.
Q. How many sections were there in the building?
A. There was one section in the building.
[fol. 5426] Q. How many machines in the section?
A. I couldn't say that either.
Q. Could you approximate the number? Could you estimate it?
A. I am afraid I couldn't.
p. 1842 Q. Who did you first talk to about coming back to work there?
A. To Mrs. Allison when we were laid off. No, I believe I went to Miss Hyde and got my check and I asked her when I should come back to work and she said that I could call in, in two weeks; that is when we usually took our two weeks vacation.
Q. Did this include your vacation time,—this lay-off?
A. Yes, I believe so.
Q. Did you call Miss Hyde afterwards?
A. After my two weeks was up I called in to Miss Hyde.
Q. Yes, and did you talk to her over the telephone or talk to her personally?
A. Well, I called her on the telephone because I didn't have the car fare to go down there.
Q. And what did she say to you?
A. She said that they didn't have any work for me.

Cross Examination.

By Mr. Hogsett:

p. 1496 Q. In this group that was laid off when you were laid off, how many were in that group?

A. I can't say altogether; I think about twelve or fifteen.

Q. And the whole group was laid off at one time?

A. Yes.

[fol. 5427] Q. It was a whole section, as a matter of fact, was it not?

A. Yes.

p. 1497 Q. It wasn't a picking out of you or just one or two girls; it was a laying off of the whole section?

A. Yes, but they replaced a lot of girls over at the other building when they closed down this building, too.

Q. Would you just as soon answer the question. It was a lay off of a whole section, is that right?

A. Yes, sir.

Q. And that section included how many people?

A. I couldn't say.

Q. Roughly? A section is at least forty, isn't it?

A. Yes.

Q. Well, then, it was at least forty people that were laid off at the same time?

A. Yes.

Q. And most of those were non-union employes?

A. Yes, but that is what I am trying to tell you.

Q. You see you are arguing with me again and all I asked you was the simple question, whether most of them were non-union employes.

A. I am sorry.

Q. How many non-union employes were there in that group?

A. I couldn't say that either, because I don't remember.

[fol. 5428] Q. How many union employes were in that forty group?

A. I just got through saying I think there were twelve; I couldn't say for sure, twelve or fifteen.

(Witness excused).

[fol. 5429] (N.R.A.—J.M.C Exhibit 6.)

Date 7-6-39—Witness.....

Objection and motion to strike of respondent and intervenor to the testimony of David Dubinsky, et al., offered by the board from the "Judge Miller Case."

Respondent and intervenor severally object to all and every part of the testimony offered herein by the Board, referred to as the "Judge Miller Case" testimony, being portions of the testimony taken before Judge Miller in the District Court of the United States for the Western Division of the Western District of Missouri, in the case entitled Donnelly Garment Company, et al., vs. International Ladies' Garment Workers' Union, No. 2924, to wit: all the testimony of David Dubinsky, Meyer Perlstein, Thelma Owen, Lillian Wales, Frances Riedel, and contained in N.R.A. and J.M.C. Exhibit 5-A to GG, at pages 1 to 33 inclusive, and object to each and every question and answer therein set forth, and move that the testimony of each of said witnesses and that each and every of said questions and the answers thereto be excluded and stricken and not considered as evidence in this proceeding (this objection and motion going to each question and answer separately as well as to the testimony of each of said witnesses as a whole) for each and all of the following reasons, to wit:

That said testimony deals with and refers to matters which purport to have existed or occurred prior to July 5, 1935, and said testimony and each and every question and answer thereof is immaterial and irrelevant to any issue in this proceeding and deals with matters purporting to have existed or occurred prior to the enactment of the National Labor Relations Act; that the conditions, acts and conver-

sations testified to by said witnesses, if they existed or oc-
[fol. 5430] curred, were lawful at the time they existed or occurred, and the fact, if it is a fact, that such things existed or occurred or that respondent or any of its representatives may have done or said or authorized any of such things, at the times referred to, or when same were lawful, carries no imputation and does not tend to prove that the respondent (or intervenor), or any one representing either of them, would violate or has violated the National Labor Relations Act after its enactment, or that they would or did commit, authorize, or do, after the enactment of said Act, any of the acts or unfair labor practices alleged in the complaint herein, and such testimony is therefore conjectural, speculative and irrelevant as to any issue in this proceeding; and for the further reason that there is no showing that the persons testifying or referred to in said testimony had authority to bind or speak for respondent (or intervenor) at said times, or if they had such authority at said times, there is no showing that such authority continued after the enactment of the National Labor Relations Act or that respondent handled or managed its business or the various departments thereof in the same way or by the same division of authority after the enactment of said Act as it did at the times said testimony was given or that what was said by said witnesses applies to conditions in respondent's business or the methods of handling same since the enactment of said Act and hence said testimony is too remote, is not binding upon respondent or intervenor, is immaterial, irrelevant, conjectural, and without probative value as to any of the matters here in issue; that there is no charge in the complaint of any discrimination by respondent against said witnesses or the persons referred to [fol. 5431] in said testimony; that said testimony is hearsay and states conclusions; that the Donnelly Garment Workers' Union was not then in existence or even contemplated and said testimony can have no bearing on the question of whether said union was formed, dominated or maintained by respondent or whether it represents the free will and choice of respondent's employees as their bargaining agency; that said testimony does not tend to prove or disprove any issue in this proceeding, and, if received, would require extended testimony on the part of respondent and intervener to refute such irrelevant and immaterial

testimony, all of which would needlessly encumber the record; that for each and all of said reasons, the reception or consideration of said testimony in this proceeding would be improper, illegal and prejudicial to respondent and intervenor.

Objection is overruled and the motion to strike is denied.

Dated: July 5, 1939.

JAMES C. BATTEN,
Trial Examiner.

Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

[fol. 5433] (N.R.A.—J.M.C. Exhibit 8.)

Date 7-19-39—Witness.....

Intervenor's Offer of Evidence from Record of Injunction Suit Before Judge Miller.

United States of America

Before the National Labor Relations Board.

Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union,
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. XVII-C-371.

Comes now the Intervenor, Donnelly Garment Workers' Union, pursuant to the stipulation heretofore filed in this cause, and offers the testimony of the following named witnesses, as the same was taken and appears in the transcript of proceedings in the case before the Honorable Andrew Miller, United States District Judge, entitled "In the District Court of the United States, for the Western Di-

vision of the Western District of Missouri—Donnelly Garment Company, et al., vs. International Ladies' Garment Workers' Union, et al., Donnelly Garment Workers' Union, Intervenors, case No. 2924". True copies of said testimony, marked Exhibits (a) to (m) are attached hereto and made a part hereof.

Exhibit (a), testimony of Fred B. Brown
Exhibit (b), testimony of Effie Weigand
Exhibit (c), testimony of Eleanor Swigart
Exhibit (d), testimony of Maud Fisher
Exhibit (e), testimony of Velma Wooley
Exhibit (f), testimony of Walter Higgins
Exhibit (g), testimony of Ora Wachtel
Exhibit (h), testimony of Anna Reece
Exhibit (i), testimony of Harold Boyd.
[fol. 5434] Exhibit (j), testimony of Emily F. Miles
Exhibit (k), testimony of Eunice Corum.
Exhibit (l), testimony of Alma Murphy.
Exhibit (m), testimony of Cameron Herold.

Intervener offers said testimony in proof of the matters therein testified to by said witnesses, with the same force and effect as though said witnesses were personally present, sworn and so testified in the instant proceeding. Should said testimony or any part thereof be excluded, Intervener offers to produce each of said witnesses in person and to prove by each such witness all matters as to which the testimony of such witness is so excluded.

GOSSETT, ELLIS, DIETRICH & TYLER,
Attorneys for Intervenor.

Received copy 19th July, 1939.

DANIEL J. LEARY,
CLIF LANGSDALE,
REED & INGRAHAM
For Donnelly Garment Co.

See Rulings of the Trial Examiner, Bd's Exh. 1-SSSSS.

J. C. BATTEN,
Trial Examiner.

[fol. 5435] Exhibit (a)

FRED B. BROWN, called as a witness on behalf of the Intervener, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tyler:

p. 1087 Q. Will you state your name, please?
A. Fred B. Brown.
Q. You are connected with the Donnelly Garment Company? A. Yes, sir.
Q. In what capacity? A. Cutter.
Q. How long have you been with them, Mr. Brown?
A. Nineteen years and eight months.
Q. Did you have any personal knowledge of a labor situation existing involving some violations at the Gordon, Gernes, and Missouri Garment Companies in Kansas City in March 1937?

Objection—immaterial.

A. Yes, sir, I saw some of it.
Q. Did you see any of the events that happened at that place?

Objection—immaterial.

A. Yes, sir.
Q. How did you happen to see them?

Objection—Immaterial.

A. On my way to work one or two mornings—I had read about it in the paper and I had seen pictures of the girls having mix-ups over there, so I was naturally curious, so I stopped by two mornings.

Q. Tell the Court what you saw the first morning down there?

Objection—Immaterial.

A. I was standing across the street. There seemed to be picket lines, twenty-five or thirty girls walking around in a circle around in front of the opening to this door. Once in a while two or three girls would come down the street and try to gain entrance to the building, and just as they would start in the building these pickets would all rush towards her and all it seemed to me like pull in different directions on her clothes, pull her hair; they would pull her coat off her, and throw her hat out in the street, and after she was down on the pavement they would kick her.

p. 1088

Q. Was anybody with you on either of these occasions?

Objection—Immaterial.

[fol. 5436] p. 1088 A. No, sir, I was alone.

Q. Did you or did you not see anyone in the crowd of pickets around the plant whom you knew to be connected with the International Ladies' Garment Workers' Union?

Objection—Immaterial.

A. Yes, sir, I did.

Q. Who was it?

Objection—Immaterial.

A. A fellow by the name of William Shannon.

Q. How do you know he was connected with the International?

Objection—Immaterial.

A. Because previously he had called on some of the boys to try to get them to join the Union.

The Court: The International Union?

The Witness: Yes.

Q. Did you hear Bill Shannon say anything about the present difficulties in connection with the Donnelly plant?

Objection—Immaterial.

A. Yes, sir, I did.
Q. What was it?
A. I was across the street standing there looking at the mix-up across the street, and he came back across the street and he saw me standing
p. 1089 there. He knew me personally because he had previously worked at the Donnelly Garment Company. He said, "We are coming down to organize you cutters next, down at the Donnelly."
Q. Did you hear any further statement by any of the pickets of that general nature?

Objection—Immaterial.

A. No, I don't think I did.
Q. Did you see any instance in which the police would pick up any of these people causing disturbances?

Objection—Immaterial.

A. Yes, sir.
Q. What would happen that you saw?

Objection—Immaterial.

[fol. 5437] p. 1089 A. Well, when they would have a fight or anything like that, the police would gather up certain girls that were doing most of the fighting and they would put them in the patrol wagon. They would stand there until they would get some in the patrol wagon and then drive down the street. While I was standing there I could see the girls they had taken away walk back up. They had taken them two or three blocks away and let them out of the patrol wagon.
Q. Did you see that happen more than once?

Objection—Immaterial.

A. Yes, sir, I saw it both mornings I was there.
Q. Do you remember any newspaper advertisement that was generall talked about at the Donnelly plant about that time?

Objection—Immaterial.

A. Yes, sir.
Q. What did it say in substance?

Objection—Immaterial, incompetent, hearsay, not best evidence.

A. It said they were organizing the smaller places in order to get ready for Donnellys, they were coming down and get Donnellys and show them the same way that they did
p.1090 these smaller ones.
Q. What effect, if any, did those police and those newspaper advertisements have on the employees at the Donnelly plant?

Objection—Immaterial and incompetent.

A. Naturally it upset the whole plant.
Q. Did they take any action as the result of that?

Objection—Immaterial and incompetent.

A. I think they did, yes.
Q. What was it?

Objection—Immaterial and incompetent.

A. A committee of three persons, they went down to talk to attorneys to see if there was any way they could get an injunction to prevent them from harming us.
Q. Do you remember the publication in the newspapers of the Supreme Court's action on the United States Labor Relations Act?
A. Yes, sir.
Q. Before that time had anybody so far as you know ever had any idea of forming a labor union of their own there?
A. No, sir.
Q. When was the first time that idea was suggested, to the best of your knowledge?

[fol. 5438] p. 1090 A. After the Supreme Court had declared the Wagner Act constitutional.

Q. Do you recall any statement in the newspaper about Sylvia Hull going to Atlantic City to represent the Donnelly employees at a convention of the International Ladies' Garment Workers' Union?

A. Yes, sir, I read it in the newspaper.

Q. Did you ever attend or hear of any meeting at which Sylvia Hull was selected or author-

p. 1091 ized to represent the Donnelly employees in an International Union?

A. No, sir.

Q. Did that have any effect on the employees, to the best of your knowledge and belief?

Objection—Immaterial and incompetent.

A. Yes, it excited them because they had never authorized anyone to act in their behalf, and they didn't know what had happened.

Q. Do you recall the occasion of the meeting of employees at which the Donnelly Garment Workers' Union was organized?

A. Yes, sir.

Q. Were you present?

A. Yes, sir.

Q. Can you give the date of that meeting?

A. It was the 23rd of April, 1937.

Q. Where was the meeting held?

A. On the second floor of the Corrigan Building.

Q. Was that second floor at that time leased or rented or controlled by the Donnelly Garment Company?

A. No, sir.

Q. Who did control it or lease it, do you know?

[fol. 5439] p. 1091 A. The Corrigan estate.

Q. Do you know whether the Donnelly Garment Workers' Union made any arrangements with the Corrigan estate for the right to use the building for this meeting?

A. Yes.

Q. Who made those arrangements?

A. Hobart Atherton.

Q. Tell the court what happened at that meeting you have referred to.

A. A notice came around that there was going to be a meeting after work, after four-thirty, on the second floor, and everybody, of course, was excited at that time and they were naturally anxious to attend, so they had most of the factory there—probably some in the office that weren't there as they don't quit work until five o'clock. Miss Todd presided at this meeting. When the meeting was called to order she told them that Mr. Tyler was there to explain different things about organizing a union. She first took a vote as to whether this union should be formed. Of course, it was passed unanimously.

Q. You say "Of course, it was passed unanimously." What do you mean by that?

A. Because everybody was anxious to form their own union; they were eager to vote for this union because it—

Objection and move to strike—not responsive.

Q. Well, isn't it a fact that a lot of them had not yet heard that a union was being considered?

A. No, that is right.

Q. What were they anxious about?

A. To get protection.

Q. Go ahead.

A. Mr. Tyler got up and talked to the whole organization and he read some by-laws.

Q. Were there any votes taken?

[fol. 5440] p. 1092 A. Yes, there were votes taken as to whether the union should be formed, and that also was by unanimous vote. After they voted to form the union she was authorized to appoint a nominating committee that would go out and present to the people for

p. 1093 nomination—I mean, to appoint a nominating committee and this nominating committee was to go out and pick several people from the organization to represent different departments and to be official representatives

of their union. And when they were out Miss Todd passed around cards that had on them, "We hereby wish to be the charter members of the Donnelly Garment Workers' Union." She asked them to sign these cards and to take their time and think about it and not to hurry about it. While they were out Mr. Tyler read the by-laws that he had prepared for this meeting.

Q. Do you remember whether I said anything about whether you should adopt these by-laws or not?

A. No, you didn't say we should; you said we should think about it and consider it before adopting them.

Q. Did I say to the people in that meeting, "I am telling you to organize this union and you better organize it?" or did I say to them, "This is your own problem and you should use your own judgment about it?"

A. You said it was our own problem, that we weren't forced to do that.

Q. Do you remember whether I read any part of the Wagner Act to the meeting down there?

A. Yes, I think I remember that.

Q. Mr. Brown, were you selected for any special duty at that meeting?

A. Yes, sir.

Q. What was it?

A. I was on one of the first committees; I was
p. 1094 chairman of one of the first groups.

Q. What do you mean by "chairman"?

[fol. 5441] p. 1094 A. They have group chai nen they call them of the union, of our union.

Q. Why is that term applied to them?

A. Well, because they were chosen from each department and there was a kind of a chairman, and there were nine of them chosen. We tried to choose them to represent each department in the building.

Q. Thereafter were you selected for any additional duty in connection with the union?

A. Yes, sir.
Q. What was it?
A. A week later we had a meeting of the chairmen and I was appointed treasurer of the Donnelly Garment Workers' Union.
Q. How long did you act as treasurer?
A. One year.
Q. What sources of income or money did the Donnelly Garment Workers' Union have?
A. We had our dues and we would give parties and dances and carnivals and we raised money that way. We also had one assessment of One Dollar during the time I was treasurer.
Q. Did the Donnelly Garment Workers' Union have any other source of income to your knowledge?
A. Not to my knowledge.
Q. Did they ever get a cent directly or indirectly from their employers?
A. Not one cent.
Q. How much were the dues?
A. Twenty-five cents a month.
Q. How much was the assessment?
[fol. 5442] p. 1095 A. One Dollar.
Q. How much did it cost an employee to belong to the Donnelly Garment Workers' Union the first year.

Objection—immaterial.

A. It cost them $4.00 the first year.
Q. Did you hear the testimony of Velma Dowdy from this stand concerning what she paid as dues to the International Ladies' Garment Workers' Union in Memphis, Tennessee?

Objection—immaterial.

A. Yes, sir.
Q. Have you figured out how much the employees of the Donnelly plant saved by having their own union over the minimum they would have to spend as a member of the International?

Objection—immaterial.

A. I have.
Q. How much?

Objection—immaterial.

A. Close to $31,000.00 the first year.
Q. Is there any reason to think they might have saved more than that?

Objection—immaterial.

A. Yes.
Q. What is it?

Objection—immaterial.

A. Our rate of pay is much higher than the rate of pay in these other factories, and naturally they would force us to pay more dues; and also we are not reequired to pay a fine when we miss a meeting, and they were.
Q. State to the Court in general what the items of expense of the Donnelly Garment Workers' Union were while you were treasurer? I don't mean the exact amounts, but tell what you spent money for?
A. We paid our attorney; we paid for the printing of the briefs of these trials; we paid the rent on our hall where we held our meetings; we paid the rent when we would have to use it
[fol. 5443] for a party, we would pay the hall rent there, and we paid our chairman her salary, and also the salary of the secretary, and also the
p. 1096 salary of the treasurer.
Q. Did you mention any printing expense?
A. The printing of the briefs; we paid for the printing of the briefs for all the trials.
Q. You mean the briefs of the Donnelly Garment Workers' Union?
A. Yes.
Q. How often does the union hold its meetings?
A. We are scheduled to hold a meeting once a month, the second Tuesday in the month.
Q. How often do you hold them?

A. We hold them every month. It isn't often we miss a month.
Q. Are they well attended?
A. Yes.
Q. Generally have people standing up at them?
A. Yes.
Q. How often does the executive committee of these group chairmen hold meetings?
A. When I was included in the group chairmen we held meetings twice a month. Sometimes if the occasion arose we held meetings oftener.
Q. What do you do at those meetings?
A. We take up the complaints that have been given to us during the time since the last meeting we had; we decide what to do to raise our expense money, and also to arrange for all the parties we have, and things like that.

[fol. 5444] p. 1097 Q. Do you or do you not have suggestions from members of the union to that committee?
A. Yes.
Q. Frequently or seldom?
A. Well, very frequently.
Q. Were you present when the working agreement between Donnelly Garment Workers' Union and the employers was entered into?
A. Yes, sir.
Q. Do you remember the date of that?
A. Well, I think it was April 27—I don't know the exact date on it.
Q. Do you remember about how long after the union was organized that working agreement was presented to the employers?
A. It was about a month after.
Q. Where was that presented and that working agreement made?
A. In Mrs. Reed's office.
Q. Who were present?
A. The entire first committee and Mrs. Reed, Mr. Green, Mr. Baty, Mr. Keyes, Mr. Ingraham, Miss Todd, Mamie Riddle, Jack Mc-

Conaughey, Hobart Atherton, Charlotte Casey.

Q. Was I present?

A. Yes, sir, Mr. Tyler was present.

Q. Tell the Court what was done at that meeting.

[fol. 5445] p. 1097 A. They gave this working agreement to Mrs. Reed and her associates and she asked to read it over and would let us know later on what they would do about it.

Q. What did they do about it?

A. They took it and took it into consideration, and at two o'clock they called us together again, and that is when the agreement was signed.

The Court: We will recess now until two o'clock.

(Whereupon, the court stood at recess until 2:00 p. m.)

Thursday, April 6, 1939.
2 p. m.

(Pursuant to recess, Court reconvened and the trial resumed.)

Fred V. Brown resumed the stand and further testified as follows:

Direct Examination.

By Mr. Tyler:

Q. Mr. Brown, state whether you saw any pickets in the entry way of the building at the Gernes, Gordon and Missouri plants.

Objection—immaterial.

A. Yes, sir.

Q. What were they doing?

Objection—immaterial.

A. Well, I drove by there one night or several nights and I saw them; they had cots and they were lying in the lobby of the building, right in front of the door; they were sleeping there at nights.

Q. I believe you testified that you were present when the working agreement was presented by the committee of the Donnelly Garment Workers' Union to Mrs. Reed?

A. Yes, sir.

Q. Were you or were you not present when the wage agreement was presented to Mrs. Reed?

[fol. 5446] A. I was.

Q. Can you remember what date that was?

A. June 22nd.

Q. And where was that?

A. That was in Mr. Tyler's office.

Q. Who was present at that time?

p. 1100 A. Well, there was Mrs. Reed, Miss Francis, that is Mrs. Reed's secretary, and Mr. Baty and then the members from the committee was Miss Todd, Miss Green, Mr. Hobart Atherton and myself.

Q. Was any substantial amount of work done on that wage agreement before it was presented?

A. Yes, there was.

Q. How much discussion was had before it was signed, if you remember?

A. Well, it seems to me as well as I can remember that there was quite a bit that afternoon and beforehand, too, before we went up there.

Q. Did the employees of Donnelly Garment Company get any benefits from the working agreement and the wage agreement executed with Mrs. Reed, that they did not have before that?

A. Yes, they did.

Q. State some of them?

A. Well, there was a substantial rise in the absolute minimum all over the plant. In several different departments—well, there was just a lot of wages raised right after the agreement was signed.

[fol. 5447] p. 1100 Q. Do you think of any other benefits?

A. Well, I cannot think.

Q. Anything done about vacations or holidays?

A. Yes, we were given five days of holiday vacation, that is we were allowed Decoration Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas and those holidays that were allowed in the contract.

Q. Do you mean that you got paid for those holidays?

A. Paid for those holidays, yes sir.

Q. What about vacations? Any change made about vacations?

A. Yes. Before the operators were allowed one week's vacation with pay and after the agreement was signed two weeks with pay.

Q. Do you know any individuals whose pay was actually increased as a result of that contract and wage agreement?

A. Yes, my own.

Q. Has your work on that committee been in good faith in an effort to protect and increase the advantages of the employees or has it been a mere sham and make-shift?

Objection—immaterial.

A. No, sir, it has been to protect and to benefit the employees as well as I could.

Q. If Mrs. Reed or anybody connected with the ownership of that plant should urge or ask you to endeavor to dissolve the Donnelly Garment Workers' Union would you do so?

Objection—immaterial.

A. I would not.

Q. Why not?

Objection—immaterial.

[fol. 5448] A. Although I respect Mrs. Reed very much, I do not feel that we could do the employees that way; we feel obligated for all the employees in the building and also for my own position.

Mr. Tyler: That is all.

Mr. Walsh: No questions.

(Witness excused).

[fol. 5449] p. 1171 Exhibit (b)

At 10 a. m. Friday, April 7, 1939.

(Pursuant to recess Court reconvened and the trial resumed.)

Mrs. Effie Weigand called as a witness on behalf of the Interveners, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tyler:

Q. State your name please.
A. Mrs. Effie Weigand.
Q. You are a widow?
A. Yes, I am.
Q. You have four children?
A. I do.
Q. And you have been the support of that family for how long?
A. For a period of a little over six years.
Q. By whom are you employed?
A. I am employed by the Donnelly Garment Company.
Q. How long have you been employed by that Company?
A. A little over two years.
Q. Tell the Court for whom you worked before you worked for the Donnelly Company?
A. Before I worked for the Donnelly Company, I worked for Morris-Caplan at 9th and Broadway, maker of coats and dresses, and the Burlington Overall Company.
Q. How long, about, did you work for Morris Caplan?
A. About two years.

Q. Who did you work for before you worked for Morris Caplan?

[fol. 5450] p. 1171 A. For the Burlington Overall Company.

p. 1172 Q. About how long did you work for them?

A. Approximately one year.

Q. And who did you work for before that.

A. For a Miller Company in St. Joseph, Missouri.

Q. About how long?

A. Well, I was there just off and on. Working steady, I was there about a year.

Q. What did they manufacture.

A. They manufactured overalls and jackets, and suede jackets, suede cloth, men's garments.

Q. And who did you work for before that, Mrs. Weigand?

A. Well, there was a period of seven years that I was at home. The only outside work I did, I was a substitute rural letter carrier in northwestern Iowa.

Q. Before that, had you worked for anyone in the clothing industry?

A. Yes, I have worked there. I began working about 26 years ago. Well, no, 27 years ago; I worked for Smith McCord in Kansas City; for the Donnelly Company; John S. Brittain Company in St. Joseph; The Richardon Company, the Tootle-Campbell.

Q. Mrs. Weigand, tell the Court how working conditions in the Donnelly Plant compare with working conditions generally in these other places in which you have been employed.

Objection—immaterial.

A. Working conditons in the Donnelly Garment Company are far superior to any conditions I have ever known anywhere that I have ever worked.

p. 1173 Q. Do you know about what you could earn in other Garment factories, from your past experience, over a number of years?

Objection—immaterial.

A. Yes.

Q. Just tell the Court what difference it makes to you personally to work for the Donnelly Company rather than other garment companies?

Objection—immaterial.

[fol. 5451] p. 1173 A. Well—other companies, the work has been so uncertain. My wages—I never have received a guarantee at any of these places. Even though I did at different times belong to a union, I was never given a guarantee. I never could average over $13.00 a week, the year round. I never have been able to.

Since being with the Donnelly Garment Company, I have averaged $22.50. My guarantee is $22.50, and I have received from that up to, I believe $39.78. And the difference has provided all of the necessary things. It's provided me a home with a higher standard of living for my children; made it possible for me, since I have been with the Donnelly Garment Company, it has made it possible for me to regain ground I lost while out of work. The difference in my guarantee with the Donnelly Garment Company and what I would ordinarily receive at $13.00 a week, I believe will pay my entire monthly budget for my home, the note on my home, my coal, my lights, my bus fare, the insurance on my household goods on my home. And I believe I mentioned my coal for the winter; in fact in my interpretation, everything except the clothing and food necessary for my children, my family.

p. 1174 Q. And your past experience leads you to believe, based on that experience, what you would actually get, in fact, if you worked for other garment companies, would have been either $13.00 or less. Is that correct?

Objection—immaterial.

A. My past experience makes me feel very sure of that, that I would receive no more.

Q. What are you receiving at the Donnelly Company?

Objection—immaterial.

A. I am receiving a guarantee for $22.50 for 40 hours' work.

Q. What are you actually making?

Objection—immaterial.

A. When we have plenty of work, where there is given all we can do, I average around $25.00 a week; and overtime gives me at the rate, approximately, at the Donnelly Garment Company, around up as high as $39.78.

Q. Dropping out of consideration any differences in the pay you get at the Donnelly Plant, and that you would get elsewhere, I want you to turn your attention to the matter of membership in unions. Do you know about what you would have to pay if you were a member of the International Ladies' Garment Workers' Union?

Objection—immaterial.

A. Yes. I am judging—from the statements made in this Court by Velma Dowdy.

Q. Tell the Court what difference it means to you personally to belong to the Donnelly Garment Workers' Union, rather than the International Ladies' Garment Workers' Union?

Objection—immaterial.

[fol. 5452] p. 1175 A. The first year, the difference, of course, is the fees, which is very important to me since I am the sole support of my family—the dues that I would have to pay the International. I would have to pay a difference of $30.00 for the first year. There would be that much difference in what I would pay

the International and what I paid the Donnelly Garment Workers' Union.

Q. Tell the Court how you figure out that difference.

Objection—immaterial.

A. Well, I judged by Velma Dowdy's testimony, and I took from what I actually paid to the Donnelly Garment Company, figured it up for the year; and the difference in that pays my hospitalization for myself.

Q. You said the difference in what I paid the Donnelly Garment Company. Do you mean the Donnelly Garment Workers' Union?

Objection—immaterial.

A. The Donnelly Garment Workers' Union.

Q. All right.

Objection—immaterial.

A. The difference pays the hospitalization for one year for myself and two children; and pays for one year my sick benefit, which I have used two years, needed to use on two different occasions. It pays my death benefit for $1,000.00 for one year. I receive all that protection for that $30.00, I would ordinarily pay the International Union.

Q. Did you ever have sick benefit protection before you were with the Donnelly Company.

Objection—immaterial.

A. Never in my life before.

p. 1176 Q. Did you ever see any spy system at the Donnelly Company's?

Objection—immaterial.

A. Absolutely not.

Q. Did you ever see any caste system down there?

Objection—immaterial.

A. Never.

Q. Did you ever see any evidence of any pressure put upon employees as to whether they should join any union or stay out of any union?

Objection—immaterial.

[fol. 5453] p. 1176 A. Never been discussed that I ever heard by the company, or anyone concerning the company.

Q. What is your personal preference as to whether you would prefer to belong to the Donnelly Garment Workers' Union or the International Ladies Garment Workers' Union?

Objection—immaterial.

A. My preference is that I would rather belong to the Donnelly Garment Workers' Union.

Q. You have told us, I think, what difference it makes to you financially. Have you any other reason for that preference?

Objection—immaterial.

A. Well, a woman in my position, there is hardly time in a week, hardly enough evenings in a week to take care of all the needs of the family, after spending your day making a living. I am only required to attend meetings one evening a month, and that is immediately after working hours, very convenient for us. I ordinarily would have to miss one meeting which the International has, for they have two meetings a month. For that meeting I missed, I would have to pay a fine of fifty cents.

And I would never be called on strike. My time is taken all up by my family, and neces-
p. 1177 sarily, it's a big problem, and it requires all of the strength and nervous energy I have; and I have no fear whatever of being called out on strike.

Q. What about your feeling of satisfaction with the methods of one organization as against the methods of another?

A. Well, I am not in the least in sympathy with the International methods.

Q. What have you to say of their methods?

Objection—immaterial.

A. While working at the Caplan plant, I have sat in the window during lunch hour and seen a great number of women attacked, knocked to the ground, to be picked up and put in an ambulance and attended by an intern. I have also seen several women attack a man, seen them rolling and fighting in the street, and I feel that is not right for a woman that is trying to set an example to a family.

Q. Have you ever seen the Donnelly Garment Workers' Union use any such methods?

Objection—immaterial.

A. There would be no such methods permitted.

(Witness excused.)

[fol. 5454] Exhibit (c)

Mrs. Eleanor Swigart called as a witness on behalf of the interveners, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tyler:

p. 1178 Q. State your name. A. Eleanor Swigart.

Q. You are the same person as Eleanor Duett, are you not? A. That is right.

Q. That used to be your name? A. Yes.

Q. Where are you employed, Mrs. Swigart?

A. The Donnelly Garment Company.

Q. How long have you been with that company?

A. Well, I have been there approximately seven years. I was working at Gernes two years out of that time, however.

Q. I think you better talk louder.
A. I worked at Donnelly's for about seven years, and out of that seven years, I spent about two years at the Gernes Garment Company.
Q. In Kansas City, Missouri? A. Yes.
Q. About what were the dates of your employment at the Gernes Garment Company?
A. Well, I left Gernes the 26th of April, or the 25th of April.
Q. What year?
A. 1937. I was there two years prior to that date.
p. 1179 Q. During your time at the Gernes Garment Company, were there any labor troubles in connection with that company?

Objection—immaterial.

A. Yes, there was.
Q. Did you have any personal experience with strikers or people who were endeavoring to disrupt the freedom of walking to and from employment of the employees there?

Objection—immaterial.

A. I did.
Q. Tell the Court what it was.

Objection—immaterial.

A. Well, the International Ladies Garment Workers' Union called a strike at the Missouri, Gernes and Gordon companies, and they were all situated in the same building at 26th and Grand. The fighting was so terrific, girls were knocked down, hats torn off heads, purses snatched. It was so bad, I got in the habit of waiting on the corner of 27th and Walnut before going in. If I waited up there until about nine o'clock, by that time a number of pickets would have been taken away in patrol wagons. One particular morning, I was up there, and it was around, I would say, quarter of nine, and three girls

[fol. 5455] approached me from the rear. I didn't know they were there. I heard someone say: "Get that girl. She is from Donnelly's". About that time, someone grabbed me, whirled me around, hit me in the face, and told me "to get the hell home, and stay there, if I knew what was good for me". I was kicked. I was hurt pretty badly. I would have liked to hit back, but I didn't. The girls were not allowed to hit pickets back. If they did, they were taken to the patrol wagon in the streets, the same as the pickets were.

p. 1180 The reason we used the rear entrance, the pickets had taken their position in the lobby on Grand Avenue. They were in there two or three days and nights, took cots in there, and stayed there all the time. If they went out, they had to stay out, so they stayed in. They didn't have access to rest rooms, so they were finally asked to move out by the Board of Health.

If the girls were successful in getting in, they had to worry about how they were going to get out. It was really pathetic to see girls go all to pieces after they had gained entrance. Some would become completely hysterical and have to be put to bed, and others were so nervous, some weren't even allowed to come to work.

About the time for us to leave, there was usually a large group of pickets and sympathizers standing outside. It was always said they were going to have enforcements from the Chevrolet plant, and other plants, and there would be a large group of men out there. My knees used to buckle when I started home, because I was afraid I might collapse on the street when I was going home. I was hurt pretty bad, it was my leg that was hurt pretty bad when I was kicked. I had to go to a doctor, and after

I had seen him, to take a cab to the factory. I couldn't find a taxicab driver that would take me to 26th and Grant. The pickets had been sprinkling tacks on the street, breaking taxicab windows, so that they were not al-
p. 1181 lowed to take us up there.

Q. How long did that injury bother you that you spoke of?

Objection—immaterial.

A. It bothered me for about six weeks, the bruise was infected on the inside. Mr. Gernes asked all of us girls to be sure and come to work every morning, that it was really necessary if we intended to win this battle with the International Ladies' Garment Workers Union. The girls would come in. They were risking their lives, I would say, because they could have had permanent injuries. After they had all had clothes torn off them, been hit and hurt, some had hair pulled out in pieces as large as a nickel; after they had gone all through that, and stood by their employer, he signed with the International without even consulting the girls.

We came in one morning and were allowed to come in the front entrance. One of the pickets said to me, "You might just as well have signed up with me anyway, because we'll be working with you soon." And I went upstairs and cried because I didn't want to belong to the International Ladies' Garment Workers' Union.

Q. How about the employees as a whole, did they want to join the International?

Objection—immaterial and incompetent.

[fol. 5456] A. No. Women don't usually work unless they feel they need the money, and if they don't have another job in view, naturally
p.1182 they have to take those things, but I don't

believe the majority of the girls wanted to join the union.

Q. Do you now belong to the Donnelly Garment Workers' Union?

A. Yes, I do.

Q. Do you belong to that union of your own free will and accord or in some way was any pressure exerted on you to join?

Objection—immaterial.

A. It was not. I was very eager to join the union.

Q. Tell the Court what Mr. Gernes said to his employees when he finally signed up?

Objection—immaterial.

A. He stated he had signed up with them, but we didn't have to picket, we were exempt from that; we didn't have to meet with the same group of girls; we could have our own private meetings—in fact, it was a special charter for the Gernes Garment Company.

Q. What had he said before that about whether he was going to sign with the International?

Objection—immaterial.

A. He said he would not sign with them if the girls would stick by him and come to work every morning. He said possibly we could beat them and we wouldn't have to sign.

Q. In other words he said, if you will stick by us, I will stick by you.

Objection—immaterial.

A. Yes, he did. If any of us were hurt, if we were injured, we got medical attention.

Q. Did you see any movement among the employees who wanted to join the International before Mr. Gernes signed up?

Objection—immaterial.

p. 1183 A. No, I really didn't.

Q. To the best of your knowledge, it was against the wishes of substantially, or actually, all of them?

Objection—immaterial and incompetent.

A. Yes, it was, because when I was going back over to Donnelly's, there was girl after girl that asked me to please mention what they did in the way of working on machines, and so on, to see if they could be used at the Donnelly Garment Company.

Q. Is it a fact that practically all the girls there would like to get in the Donnelly plant if they could?

Objection—immaterial and incompetent.

A. I believe they would because they could make much more money, and it is a much cleaner plant.

[fol. 5457] Exhibit (d)

Mrs. Maud Fisher called as a witness on behalf of the Interveners, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tyler:

p. 1184 Q. State your name, Miss Fisher?

A. Maud Fisher.

Q. Is it Miss or Mrs.? A. Mrs., I am a widow.

Q. Where are you employed, Mrs. Fisher?

A. The Donnelly Garment Company.

Q. How long have you been employed at that company?

A. Eighteen years.

Q. In what capacity are you now employed there? What do you do down there?

A. Operator.

Q. How long have you been an operator?

A. Eighteen years.

Q. Do you know Thelma Owen?

A. Yes, sir.

Q. Is she a member of the International Ladies' Garment Workers' Union?
A. Yes, sir.
Q. How do you know that?
A. She told me she was, and she also picketed with them in front of our plant.
Q. Do you remember any conversation that you had with Thelma Owen in the spring of 1937, about labor disputes and the Donnelly plant?
A. I do.
Q. About what was the date of that conversation?
A. Along about the first of April, as well as I can remember.
p. 1185 Q. Of what year?
A. 1937.
Q. Was it or was it not during the time that the trouble was going on at the Gernes plant?
A. During that time.
Q. Who was with you? Were any of them in the company?
[fol. 5458] A. Velma Woolley.
Q. Where did that conversation take place?
A. 13th and Troost.
Q. Kansas City, Missouri? A. Yes.
Q. Tell the Court what Thelma Owen said in that conversation:

Objection—immaterial.

A. She said: "We have always been good friends. I am going to give you a little tip. You better not drive your car Monday morning, because we will all be there, Fords, Cheviies, all be there, and we are going to upset all the cars, cut the tires off, and beat you up. And we are going to give Mrs. Donnelly one big 'go-around'. We are going to take Mrs. Wherry for a one way ride, and also Ella May Hyde. Mrs. White, she is my meat alone. I am taking her alone. You get good salaries, but you will have to sign up with us anyway. We are going to sign up the Donnelly Garment Company.

Q. Did she say whether she and employees of The Donnelly Company at the time said they wanted to join the International, whether the situation was different in other plants?

Objection—immaterial.

A. Better. She agreed it was.

p. 1186 Q. Who were these people she mentioned? She mentioned Mrs. Donnelly?

Objection—immaterial.

A. Yes.

Q. Who is that? A. Our employer.

Q. Mrs. Reed? A. Yes, Mrs. Reed.

Q. Who is Mrs. White?

Objection—immaterial.

A. She was our instructor.

Q. And you mentioned Ella May Hyde?

Objection—immaterial.

A. She is over the employment office.

Q. At the Donnelly Garment Company?

Objection—immaterial.

A. Yes.

Q. Did she say anything else in that conversation or have you repeated substantially the entire conversation?

Objection—immaterial.

A. Well, I believe that is the best of my knowledge.

Q. Did she say whether wages and working conditions were all right at the Donnelly plant?

Objection—immaterial.

[fol. 5459] A. Yes, she said they were.

Q. Mrs. Fisher, you have worked down at that plant a good many years?

A. I was taught to sew there, and I have never worked nowhere else.

Q. What about health conditions down there?

Objection—immaterial.

A. 100%.

Q. Did you ever have a breakdown from working there?

Objection—immaterial.

A. No, I never have had. I have worked there in such ease and enjoyment. I didn't realize like our troubles were outside. It told the girls last night, I just really relaxed and enjoyed myself.

p. 1187 I never dreamed of any trouble.

Q. Did you ever see any signs there of nervous breakdowns from overwork?

Objection—immaterial.

A. I didn't, no. We have one round of pleasure with our work all the time.

Q. Did you ever see any caste system down there?

Objection—immaterial.

A. No, sir.

Q. Did you ever see any speed up system?

Objection—immaterial.

A. No, sir.

Q. Did you or did you not join the Donnelly Garment Workers' Union of your own free will and accord?

Objection—immaterial.

A. I did.

Q. Do you know of anyone or any instance in which anyone was put under any pressure about that union in any way?

Objection—immaterial.

A. No, sir.

[fol. 5460] Exhibit (e).

MRS. VELMA WOOLLEY called as a witness on behalf of the Interveners, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tyler:

p. 1188 Q. Will you state your name please, so the Court and everybody can hear it?
A. Velma Wooley.
Q. Miss or Mrs. A. Mrs.
Q. Where are you employed, Mrs. Wooley?
A. At the Bonnelly Garment Company.
Q. How long have you been employed there?
A. About ten years.
Q. In what capacity?
A. I am an operator.
Q. How long have you been an operator?
A. Ever since I have been there.
Q. Do you know Thelma Owens?
A. Yes, I did.
Q. Do you know whether she is a member of the International Ladies Garment Workers' Union? A. She is.
Q How do you know that?
A. She told us she was.
Q. Did you ever know of her doing any work for that union, picketing? A. Yes.
Q. Did you have any conversation with her in the spring of 1937? A. Yes.

p. 1189 Q. About what was the date of that conversation?
A. Well, it was in April. I am not positive of the date.
Q. And where was it?
A. 13th and Troost.
Q. Was it or was it not during the time that violence was occurring down around the Gordon, Gernes and Missouri Garment factories?

Objection—immaterial.

[fol. 5461] A. No, sir.

Q. Who was with you at the time of that conversation? A. Miss Fisher.
Q. The lady who has just finished testifying?
A. Yes.
Q. Was anyone else present except Mrs. Fisher, Thelma Owen, and yourself?
A. No.
Q. Will you tell the Court what Thelma Owen said in that conversation in connection with the Donnelly plant or in reference to the Donnelly plant?

Objection—immaterial.

A. Well, Miss Owen said she was going to give us a little warning. The following morning they were going to be down at the Donnelly plant, they were going to treat us worse than they had treated the other garment companies. She stated the busses would not do us any good. She also stated the busses would not do us any good. They would be upset. There would not be a car left on the the lot, that the tires would be cut. And she also stated that they were going to take Mrs. Donnelly, Mrs. Reed, "for a ride"; she said they were going to take Miss Hyde, Ella May Hyde—and Mrs. Wherry for a one way ride. And she said Miss White was her meat, she wanted to have her all to herself. That is about all the conversation.

p. 1190

Q. Who is Mrs. White?

Objection—immaterial.

A. Miss White is an instructor at the Donnelly Garment Company.
Q. Who is Ella May Hyde?

Objection—immaterial.

A. She is in the employment office at the Donnelly Garment Company.
Q. And was at that time?

Objection—immaterial.

A. Yes.
Q. Who is Mrs. Wherry?

Objection—immaterial.

A. Mrs. Wherry, at that time, was employed at the Donnelly Garment Company.
Q. Have you repeated substantially all of that conversation you can remember?

Objection—immaterial.

[fol. 5462] A. Yes.
Q. Did you hear any statements or rumors about boycotting the Donnelly product, what they manufacture?

Objection—immaterial.

A. Yes. Just talk is all.
Q. What was said?

Objection—immaterial.

A. Well, I really just overheard conversations is all. I don't remember them well enough to repeat them.
Q. Would you remember who said them?

Objection—immaterial.

A. No, I wouldn't. It was just general conversation I heard.
Q. What was the general attitude of mind of the employees at the Donnelly plant during the disturbances down at the Gordon and Gernes plants?

Objection—immaterial and incompetent.

A. Well, they really were frightened and didn't
p. 1191 want that to happen to us.
Q. Did you join the Donnelly Garment Workers' Union?
A. Yes.
Q. What was your reason for joining?
A. Well, to afford ourselves protection from an outside union.
Q. What outside union?

A. The International Ladies Garment Workers' Union.

Q. Was that your actual genuine choice for yourself, or were you influenced by some pressure from somewhere to join the Donnelly Garment Workers' Union?

Objection—immaterial.

A. It was my own choice. There was no pressure whatsoever from anyone.

Q. Did you ever hear of any speed up system at the Donnelly plant?

Objection—immaterial.

A. No, I didn't.

Q. Any caste system?

Objection—immaterial.

[fol. 5463] A. No.

Q. Has your health ever broken down from working down there?

Objection—immaterial.

A. No, it hasn't.

Q. Have you ever seen any of the girls fainting and breaking down from being driven by hard and rapid work down there?

Objection—immaterial.

A. No, I haven't.

Q. What is the general condition as to working conditions in that plant?

Objection—immaterial.

A. Very good.

[fol. 5464] Exhibit (f)

WALTER HIGGINS called as a witness on behalf of the Interveners, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tyler:

p. 1192 Q. State your name, please.
A. Walter Higgins.
Q. Where are you employed?
A. Donnelly Garment Company.
Q. Kansas City, Missouri? A. That is right.
Q. In what connection? A. Mechanic.
Q. How long have you been employed there?
A. Well, a little over five years now.
Q. Always as a mechanic, during that time?
A. Yes, sir.
Q. Where were you employed before you were employed at the Donnelly plant?
A. Well, I was employed for a good many years by the McKee Manufacturing Company, Fort Scott.
Q. Fort Scott, Kansas? A. Yes.
Q. In what capacity there?
A. Just as I left there, I had been superintendent of the factory for about fifteen years. Previous to that time, I was a mechanic.
Q. Can you compare working conditions in that factory with working conditions in the Donnelly plant?

Objection—immaterial.

A. Yes, sir.
Q. Please do so.

Objection—immaterial.

A. Conditions in the McKee factory were pretty good, I thought; but conditions in the Donnelly factory are much better than that.
p. 1193 Q. Did you see any incident connected with the picketing around the Gordon and Gernes plants in the spring of 1937?

Objection—immaterial.

A. Yes, sir.

Q. Tell the Court what it was.

Objection—immaterial.

A. Well, I live south of the factory, and it is necessary for me to ride the street car within a block of the Gordon, Garnes factories. From the street car every morning, I could see a crowd of people around the entrance there, and two or three police cars. But as that line was a block away from the street car line entrance, I couldn't see exactly what was going on. But every day there was some disturbance going on or the police wouldn't be there.

Q. Did you ever get over closer to the door than that?

Objection—immaterial.

[fol. 5465] A. No, sir.

Q. Tell the Court about how long they were used.

A. I don't remember the exact date the bus service was put in operation at Donnelly's, but it was about the middle of March during the time this disturbance was going on. I think that continued up until May some time. I don't remember just what the dates were.

Q. For what purpose were they used?

Objection—immaterial.

A. These busses were picking up our employees
p. 1194 at outlying points, and bringing them into the factory and unloading at the rear entrance. That was to protect our employees from any attack, about which we were getting threats daily.

Q. Did a great number of employees use them or only very few?

Objection—immaterial.

A. Yes, sir. They were nearly always loaded when they came in.

Q. What was the general reaction among the employees out there at the plant to the news of these difficulties down at the Gernes-Gordon Plants?

Objection—immaterial.

A. Naturally, they were very much disturbed, and greatly excited over those affairs; and as we had been getting reports that that was going to be done to us only in a much greater manner, we began to feel that we should have some protection of some kind. So we began to cast around to see what could be done, and I don't know who suggested the injunction, but the Gernes people were getting an injunction or had gotten an injunction. Naturally, that was brought up, so a number of people from our organization called on an attorney to see if we couldn't get an injunction. And that was done.

Q. Do you know whether any particular choice was made of people who would go to see the attorneys, or what just happened?

p. 1195 A. No, I don't think so. Objection and motion to strike the following: "As I say, they were all excited and grasping at any suggestion that might be made for self-protection,"—not responsive. (As I say, they were all excited and grasping at any suggestion that might be made for self-protection,) and the ones who were more popular naturally would be the ones that would take the responsibility. So I had not been there very long, but these others who had been there a number of years and were acquainted with more people, carried that suggestion.

Q. What else did the Donnelly employees do, if anything, as a result of the stories they were hearing?

Objection—immaterial and incompetent.

A. Well, as I say, they consulted this attorney, or some attorneys about an injunction for

their protection, and along about that time, the Wagner Act was being talked of, and along in April, the Supreme Court declared the Wagner Act valid. Then, these attorneys
[fol. 5466] that our people had talked to, talked to us in regard to the Wagner Act, and thought it would be a good idea if we organized our own union under the Wagner Act, and they thought that would put us in a much stronger position, as we would be under the Federal law then.

Q. Did you see any item in the paper in reference to Sylvia Hull, shortly before or about that time?

Objection—immaterial and incompetent.

A. Yes, about that time.

Q. What was the substance of that article?

Objection—immaterial and incompetent.

A. As I remember it, that Sylvia Hull was elected or appointed by somebody or some organization to represent the Donnelly Garment
p. 1196 Company at a convention to be held at Atlantic City. We didn't have any organization. I couldn't figure out just who elected her, and I don't think anybody else did.

Q. Did you ever hear of any meeting of any group of employees of the Donnelly plant, where they elected Sylvia Hull?

A. Never did.

Q. What effect did that news item have on the employees?

Objection—immaterial and incompetent.

A. That just set it all off.

Q. Why?

Objection—immaterial and incompetent.

A. Everybody was up in arms about it, wanted to know who was giving orders for our representation by the International. Naturally, that brought everything to a head, that we must

do something to protect ourselves in these jobs that we had.

Q. Why protect these jobs? Did you have any reason to believe you might lose your jobs?

Objection—immaterial and incompetent.

A. No, not necessarily that, but the jobs at the Donnelly Garment Company are jobs everybody tries to get, due to the wages and working conditions and congeniality of the people you work with there. No, we didn't want to lose those jobs, and we didn't want those conditions changed by any outside force.

Q. Had you or had you not heard any threats of boycotting the Donnelly product?

Objection—immaterial.

A. Yes, I had heard that talked some.

Q. Would or would not a successful boycott of the Donnelly product, in your mind, have any
p. 1197 effect on the employees holding their jobs?

Objection—immaterial and incompetent.

[fol. 5467] A. Absolutely.

Q. What explanation have you of that?

Objection—immaterial and incompetent.

A. I think it would boycott our product to such an extent, it would cut down our distribution, cut down our production, and some of us or all of us would be out of work.

Q. Do you know of any group of employees going to the police department about that time?

Objection—immaterial.

A. I have heard that.

Q. You were not a member of that group?

Objection—immaterial.

A. I don't know who they were. I knew it was done.

Q. Do you remember the meeting at which the Donnelly Garment Workers' Union was organized?

A. Yes, sir.

Q. What was the date of that?
A. April 27, 1937.
Q. Where was it held?
A. On the second floor of the Corrigan Building, 1828 Walnut.
Q. The same building the Donnelly Garment Company uses?
A. Yes, sir.
Q. Did or did not the Donnelly Garment Company at that time lease the room in which the organization meeting was held?
A. No, sir.
Q. What day did that meeting occur?
A. That was some time after 4:30; after our working hours anyway. Of course, our working hours are staggered a few minutes at a time.

p. 1198 Q. What?

[fol. 5468] p. 1198 A. Staggered. Some get off at four o'clock. In ten minutes, another bunch comes off. At 4:30, they are all off.

Q. Tell the Court the actual incidents that happened at that meeting.
A. We were notified this meeting was to be held. Naturally, excitement was running pretty high. We were going to be there and see if something could be done. We all went down to this meeting. Miss Todd presided. She talked a few minutes to us, told us one of those attorneys was there and would talk to us. Then she introduced Mr. Tyler. Mr. Tyler talked to us some, I believe he mentioned the injunction. Then he brought up the subject of the Wagner Act which had been declared valid, that is the time he said he thought we could organize our own union, under the Wagner Act, and be in a much stronger position. So, following that talk, the union was organized in an orderly manner, as it should be, and that, I would say, was the birth of the Donnelly Garment Workers' Union.

1336pp

Q. What else happened at that meeting? Were any votes taken?

A. Oh, yes.

Q. What were they?

A. As I say, it was organized in an orderly manner. The first vote taken was should we have a union or should we not have a union. The
p. 1199 vote was unanimous that we should have a union. Then we voted on the name of it. That was unanimous.

Q. Do you remember who suggested that name?

A. No, sir, I don't Mr. Tyler. I don't know whether it was Mr. Tyler or whether it was suggested from the floor. It might have been.

Q. Were any cards passed around?

A. Yes, sir.

Q. What were those cards about?

A. The cards stated that "I desire to become a member of the Donnelly Garment Workers Union"—something to that effect, and there was a line at the bottom where you could sign. When the cards were passed out, we were told not to sign them right at that time; Mr. Tyler was going to read some by-laws on the subject of a union, and then we could make up our minds whether we desired to become a member of this union, or whether we did not want to. That was left up to our own free will.

[fol. 5469] Q. Were the cards collected?

A. Yes, sir.

Q. By whom?

A. A number of the boys from the cutting room.

Q. Was the result announced.

A. I think it was in the next two or three days, I have forgotten how much time elapsed.

Q. What was that result?

A. I would say it was unanimous. There was 1,300 and some signatures there.

Q. How many employees were there at the plant at that time?

A. About 1335 or 1340.

p. 1200 Q. What about the balance who did not sign cards at the first meeting?

A. Some of them were out sick. Some of the men were out sick, and some of the men were on the road, or some other reason. In an organization that size, somebody might be out.

Q. Was Mrs. Reed present at that meeting?

A. No, sir.

Q. Has Mrs. Reed ever been present at a meeting of the Donnelly Garment Workers Union to your knowledge?

A. No, sir.

Q. She probably addressed the employees at other times, is that correct?

A. Oh, yes. She has talked to us.

Q. But you never saw her at any meeting of the Donnelly Garment Workers' Union.

A. No, sir, that is right.

[fol. 5470] Q. Was anybody there with the right to employ or discharge employees, so far as you saw? A. No, sir.

Q. Did you hear of any effort to force people to join that union? A. No, sir.

Q. Was the question of whether they wanted to form a union or not left up to their judgment, was that the understanding you got?

A. I think that was clear to everybody, Mr. Tyler.

Q. Do you remember who were elected as a committee of employees to represent the members of the union at that meeting?

p. 1201 A. Well, I could probably name some of them. There was Hobart Atherton, Rose Todd, Miss Casey, Marjorie Green. I believe that is about all I can remember now.

Q. You were not elected were you?

A. No, sir.

Q. Have you ever held an office in connection with the Donnelly Garment Workers' Union?

A. I do now.

Q. What office?

A. I represent the mechanical department.

Q. On what?

A. Just as—we call them a "chairman".

Q. You are a member of the Executive Committee as representing that department?
A. That is right.
Q. And when did you take that office?
A. Last May, I believe.

[fol. 5471] Q. Have you or have you not endeavored to exercise your best judgment in endeavoring to secure for the employees such benefits as you feel they are entitled to in that office?
A. Yes, sir.
Q. Tell the Court what you have done in connection with the membership on that board?
A. We have our executive committee meetings twice a month on the first and third Tuesday. At those meetings which are not so very long, sometimes, anything that comes up in the factory that should be attended to, that should be straightened out by our union is taken up, talked about, and taken through those chan-

p. 1202 nels; and party that is supposed to be talked to is taken up with, and those differences are straightened out.

We also have parties and dances. Those things come up at those meetings, just as a regular executive meeting, the business of any organization body.

Q. Have you paid any attention to the financial condition of the Donnelly Garment Workers' Union?
A. Yes, sir.
Q. What are their sources of income?
A. Dues, 25c a month per person; and early in the organization we had an assessment, and we had one the other day; we give parties and dances, carnivals, such things as that. Anything that can be made a profit on legally or in the right manner.
Q. Did you ever get as much as a dime from any of your employers by way of contribution?
A. No, sir.
Q. What are the principal items of expense?

A. The officers—I mean by that, the chairman and secretary and treasurer get a nominal sum. We pay our hall rent. We have to hire chairs to take care of our meetings. We pay that, and expenses of these parties and dances and such items as that.

Q. Legal expenses?

A. Oh, yes.

Q. Printing expense? A. Yes, sir.

[fol. 5472] Q. Rent for the room?

A. Yes, sir.

p. 1203 Q. Who fixes the piece prices in the Donnelly plant?

A. We have a department where Mrs. Nichols and Mrs. Spallito, or is it Miss Spallito, I don't know which is correct, go over these garments and fix the piece work rates. Then they are handed to Miss Todd, who is familiar with that kind of work from past ex-

p. 1204 perience and she passes on it. If there is any difference afterwards, it is taken up with our committee, and the affair straightened out, and everybody is satisfied.

Q. Has your committee given actual consideration to that situation?

A. Yes, sir.

Q. What would you say as to whether the rights of the employees were being protected by these people who handle this work?

A. I think all parties were satisfied with the result.

Q. Do you have any knowledge of an affidavit circulated at the plant during the last two weeks? A. Yes, sir.

Q. Did you sign it? A. I did.

Q. Did you sign it as an expression of your actual belief, or did you sign it under any pressure of any kind?

Objection—immaterial.

A. No. It was my own free will, to sign or not to sign, which I chose to do.

Q. Did you see anybody put under any pressure or inducement to sign it?

Objection—immaterial.

A. No, sir.

Q. State to the Court what your experience indicates as to the general conditions at the Donnelly plant as to health?

Objection—immaterial.

[fol. 5473] A. I don't believe the conditions at the Donnelly plant as to health could be improved. We have good light. The building is situated so we have good air. That is, there are no large buildings around us. We have maid and
p. 1205 porter service continuously. That is, they take care of the wash rooms, keep the floors clean. We have, of course, medical service right there. Two nurses are on duty all the time with the necessary hospital equipment. So I don't believe that they could be improved upon.

Q. How about hot water?

Objection—immaterial.

A. At all times.

Q. What kind of mechanical equipment do you have with which to work down there?

Objection—immaterial.

A. We have sewing machines of various types, on various operations—I mean the operations—as most people know a sewing machine is a machine with one needle, sewing a straight row of stitching. We have special machines also that do special kind of work.

Q. What is the condition of the equipment you have to work with as to whether it is good or bad?

Objection—immaterial.

A. It must be in first class shape at all times.

Q. What kind of material is furnished you with which to work?

Objection—immaterial.

A. The best we can buy.

Q. Did you ever hear of anybody being put under any pressure or inducement from the employers, or anybody representing the employers, to take any part in the Donnelly Garment Workers' Union?

Objection—immaterial.

A. No, sir.

Q. Did you ever know of anybody being discriminated against down there by reason of any union connection?

A. No, sir.

p. 1206 Q. If Mrs. Reed or somebody representing the employer were to try to bring any pressure on you to dissolve that union, what would your response be?

Objection—immaterial.

A. In all due respect to Mrs. Reed, I couldn't do that. I have an obligation with my fellow workers that I have to observe too.

[fol. 5474] Exhibit (g)

ORA WACHTEL called as a witness on behalf of the Interveners, having been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Patton:

p. 1207 Q. State your name, please. A. Ora Wachtel.

Q. Where do you live, Mrs. Wachtel?

A. 2312 East 11th.

Q. That is in Kansas City, Missouri?

A. Yes, sir.

Q. And what is your occupation?

A. I work for the Donnelly Garment Company.

Q. How long have you been with them?

A. Eleven years.
Q. What work do you do there?
A. Through the busy season I assist on the floor; in slack season I am an operator.
Q. Were you with the Donnelly Garment Company in March, 1937? A. Yes, sir.
Q. How far is the Donnelly plant from the plants of the Gordon, Gernes, and Missouri Garment Companies?

Objection—immaterial.

A. I should say seven or eight blocks; I don't know just how far.
Q. Did you see any excitement up there in the street?

Objection—immaterial.

A. I did not.
Q. You did not see anything?

Objection—immaterial.

A. No, sir.
Q. Did you hear any talk in the plant in March, 1937 and thereafter about strike trouble at those plants?

Objection—immaterial and incompetent.

A. Yes, there was lots of trouble.

Objection and motion to strike—not responsive.

p. 1208 Q. What did you hear?

Objection—immaterial and incompetent.

A. That those plants were—that trouble they were having over there, and that they were going to organize the Donnelly Garment Company.
Q. Did you read anything in the papers about labor trouble at those plants?

Objection—immaterial and incompetent.

A. Yes, sir.
Q. What did you read?

Objection—immaterial and incompetent.

A. Well, just the fight they were having over there; there were pictures and pieces in the
[fol. 5475] paper about the fight they were having over there, and the patrol wagon, and such things as that going on.

Q. Tell the court in your own words what the effect of that was upon the employees at the Donnelly plant.

Objection—immaterial and incompetent.

A. It caused a lot of excitement and confusion down there; everyone was worried.

Q. Do you know of anything that the employees did as the result of the rumors, what they read in the newspapers? Do you remember whether they had any meetings?

Objection—immaterial and incompetent.

A. Yes, they had meetings.

Q. What was the first meeting you recall?

A. In March there was a meeting.

Q. And what did they discuss at that meeting?

A. What kind of protection we could get and if there could be an injunction.

Q. Did they agree upon anything at that time to do?

A. No, they didn't.

Q. Nothing was agreed on? A. No.

Q. Do you know whether Mrs. Reed was invited to speak at that meeting?

A. I think she was, yes.

Q. Did she have anything to say?

A. Yes, she talked.

Q. With respect as to whether she would do what she could to protect the girls?

A. Yes, she said she would do everything she could to protect us and that she would not be scared into forcing her employees into joining anything they did not want to join.

[fol. 5476] Q. Did she tell you you were free to do anything you wanted to do? A. She did.

Q. You remember that she said that?
A. She did.
Q. How long before the union was organized did this meeting take place?
A. About six weeks.
Q. Now, you say that the meeting came to no agreement as to what could be or should be done?
A. No, I don't think so.
Q. Did you know anything about anybody going to see Director Higgins of the Police Department?

Objection—immaterial.

A. I heard talk of it; I didn't know anything about it myself.
Q. Did you see anything in the paper about it?
A. Yes, I read the piece in the paper.
Q. Did you learn anything from the newspapers about Mr. Perlstein or in any other way?
A. Just this piece in the paper that he was coming to Kansas City to establish his office and organize the Donnelly Garment Company.
Q. Did you see that in the paper?
A. I did.
p. 1210 Q. Do you know about what time that appeared in the paper?
A. Well, that was along the last of April or the first of March; I mean the last of March or the first of April. I beg your pardon.
Q. Did you know anything about any employees going to see any lawyers?
[fol. 5477] A. I heard talk of that, yes.
Q. Did you see anything in the paper about Sylvia Hull? A. Yes.
Q. Describe what was said in the paper.

Objection—immaterial and incompetent.

A. Well, it said that she was elected to represent the Donnelly employees at the convention.
Q. Did that increase the uneasiness among the Donnelly employees?

Objection—immaterial and incompetent.

A. Yes, a whole lot.
Q. Do you recall whether they held a meeting sometime after that?
A. Yes, there was a meeting.
Q. How long after that?
A. Well, about, I should say within a week.
Q. Do you remember the date?
A. The meeting was held the 27th day of April.
Q. Were you there? A. Yes.
Q. How many employees would you say were there, roughly?
A. Well, I should say we were all there.
Q. And did you see anybody representing the management of either the Donnelly Garment Company or the Donnelly Sales Company there? A. No, I did not.
p. 1211 Q. You did not see Mrs. Reed there?
A. No, sir.
Q. Tell us now in your own words what happened at that meeting?
[fol. 5478] A. Well, a group or committee had been to the lawyers and had the lawyer come talk to us that day. Miss Todd, she was in charge of the meeting and she got up and talked and explained to us that she had the lawyer there to tell us what we could do. The lawyer got up and talked to us and explained to us the Wagner Act which had become a law, and told us we could have our own employees' union under the Wagner Act, and then we voted that we have a union. Everybody voted yes. There was no "Nos". And then there was a nominating committee appointed by Miss Todd and instructed to select a chairman for each division in the factory, and they were voted and elected.
Q. What was said, if anything, with reference to a name for your organization?
A. I don't know who suggested the name but it was suggested and voted.
Q. And how was the vote on that, if you recall?

A. Everybody voted yes.

Q. Do you remember whether they were any cards passed? A. Yes, sir.

Q. Do you recall what was on the cards?

A. Something to the effect that we agreed to become charter members of the Donnelly Garment Workers' Union and abide by its by-laws.

Q. Do you recall anything that was said in connection with handing out those cards?

A. Well, we were instructed to take our time and make up our minds, to make up our minds as we pleased on that; to wait until the next day and take them home and talk to anyone we wanted to talk to about it, and take our time, to make up our minds before we signed that card.

Q. Was anything said one way or the other to the effect that you were free to join or not join, just as you saw fit?

A. Sir, sir, there was.

Q. Just tell what was said.

[fol. 5479] p. 1212 A. Just said there was no one forcing us to do this; it was of our own free will, if we wanted to sign that cards we could do that of our own free will.

Q. Did Mr. Tyler say anything about whether or not you were at liberty to do as you pleased about forming a union or joining it?

A. He did; he said he was there to explain the law to us.

Q. Did he make it clear that you were at liberty to do just as you pleased on his recommendation? A. Yes.

Q. Were you named as a member of the executive committee? A. No, I was not.

Q. Have you ever been a member of the executive committee? A. No.

Q. What is your minimum wage, for the employees in your group?

Objection—immaterial.

A. When I work on the floor I receive $30.00 a week.

Q. Is that the minimum or is that the average earnings that you make.

Objection—immaterial.

A. That is my wage.

Q. You sometimes do time work, do you?

Objection—immaterial.

p. 1213 A. Well, that is time work; that is my time work wage.

Q. You sometimes work as an operator, do you?

A. Yes, sir.

Q. And what wage group are you in? What is the minimum wage for operators?

A. $25.60.

Q. Do you average more than that?

A. Very often, yes.

[fol. 5480] Q. Did you talk with anybody who was interested in the picketing at the other plants?

Objection—immaterial.

A. No, I did not.

Q. Did you talk with any member of the ILGWU, that is the International Union, at any time?

A. Yes, they called me.

Objection and motion to strike—no identification as to person or time.

Q. Do you remember whether anything was ever said to you about a closed shop at the Donnelly plant by anybody in the International Union?

Objection—immaterial.

A. Yes.

Q. Just tell what was said.

Objection—immaterial.

A. Well, they called on me and told me that they were going to organize Donnelly's and everyone would have to belong to the union, the International Union.

Objection and motion to strike—no identification as to person or time.

Q. What does ur husband do, Mrs. Wachtel?

Objection—immaterial.

A. At that time my husband was running a store, a grocery.

Q. What kind of a store?

Objection—immaterial.

A. A grocery store.

Q. Whereabouts?

Objection—immaterial.

A. In Fairmount.

Q. That is a suburban town to Kansas City, Missouri?

Objection—immaterial.

A. Yes, sir.

Q. Was anything said about your husband's business in any way?

Objection—immaterial and incompetent and no identification as to person or time.

p. 1214 A. Yes, they asked me if we did not have quite a few Ford and Chevrolet employees trading with us in our store, and I told we did and they wanted to know if I knew that they could boycott our store through those employees.

Objection and motion to strike—no identification as to person or time.

[fol. 5481] Q. What was the object in telling you those things, as you understood it?

Objection—immaterial and incompetent and no identification as to person or time.

A. Well, I presume they wanted to scare me.

Q. Scare you into doing what?

Objection—immaterial and incompetent and no identification as to person or time.

A. Joining their union.
Q. Now, Mrs. Wachtel, how long have you been in the Donnelly plant?
A. Eleven years.
Q. In all the time you have been there do you know of or have you heard of any act or word by Mrs. Reed or anybody in managerial position down there tending to discourage anybody from joining a union or encouraging them to join any union? A. No, sir.
Q. You never heard of any pressure being put upon anybody with respect to union matters, have you? A. No, sir.
Q. Do you ever know of anybody being discriminated against because they were a member of a union? A. Never.
Q. You joined the Donnelly Garment Workers' Union, did you? A. Yes, sir, I did.
Q. And you did that freely and voluntarily?

Objection—immaterial and self-serving.

A. Freely and voluntarily.
Q. Have you had any occasion to regret that act?

Objection—immaterial and self-serving.

A. I have not.
Q. Do you prefer that union over the International?

Objection—immaterial and self-serving.

A. Well, yes; I do.
Q. What reasons have you?

Objection—immaterial and self-serving.

A. Well, I can make more money with Donnelly's than I can with the International shop; the
[fol. 5482] conditions are good and we are satisfied,—I am satisfied.
Q. I don't recall, did you say whether you had worked at any other shop?
A. No, I have not.

Q. What is the general condition as to the health of the women that work at the Donnelly plant?

Objection—immaterial.

A. I should say good.
Q. Are they happy?

Objection—immaterial and incompetent.

A. They appear to be, yes sir.
Q. Do you know of any of them having nervous breakdowns?
A. I do not.

Objection—immaterial.

Q. Have you ever heard of any woman there having a nervous breakdown?

Objection—immaterial.

A. I never did.
Q. Do you know what the speed up system is?

Objection—immaterial.

A. Yes.
Q. Is there any speedup system at the Donnelly plant?

Objection—immaterial.

A. There is not.
Q. Have you ever heard of a caste system down there?

Objection—immaterial.

A. Never.

[fol. 5483] Exhibit (h)

ANNA REECE, called as a witness on behalf of the Interveners, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Patten:
Q. Your name is Anna Reece? A. Yes.
Q. You live where?

A. 2616 East 9th, Kansas City, Missouri.
Q. And what do you do?
A. I am an operator at the Donnelly Garment Company.
Q. How long have you been there?
A. Almost 12 years.
Q. Have you ever worked at any other garment plant?
A. No, I never worked at any other garment place.
Q. Do you recall the labor trouble involving garment plants in Kansas City in March, 1937?

p. 1225 Objection—immaterial and incompetent.

A. Yes, I do.
Q. Did you see any of it yourself?

Objection—immaterial and incompetent.

A. No, I was never over there.
Q. What all did you learn about it?

Objection—immaterial and incompetent.

A. Well, just through newspaper items and from the talk around the plant that there was fights, and riding the buses with girls who were in the picket line over there, and hearing them talk.

[fol. 5484] p. 1225 Q. What, for instance, did you hear said?

Objection—immaterial and incompetent.

A. Well, there was one little girl that was working over there that I had known before she went over there to work, and she was forced to go in the picket line, I knew, against her own will. She told me that she was frightened to death but she was getting $1.00 a day for doing that and she had to do it, she had two little children and she had no way to get anything else to do.

Objection and motion to strike—no identification of person or time.

Q. She was actually in the picket line?

Objection—immaterial and incompetent.

A. Absolutely.

Q. Did you hear that anything had been said with reference to the Donnelly plant?

Objection—immaterial and incompetent.

A. I beg your pardon?

Q. Did you hear any threats or talk among the workers at the Donnelly plant?

A. Yes, that was common talk. No one ever threatened me, Objection and motion to strike the following: "but we went down there each morning expecting to be molested,"—not responsive. (but we went down there each morning expecting to be molested.)

Q. Did you know the name of the organization that was sponsoring or conducting these strikes of these other plants?

Objection—immaterial and incompetent.

A. Yes, the International.

Q. Do you know the rest of the name?

Objection—immaterial and incompetent.

p. 1226 A. The International Ladies' Garment Workers' Union.

Q. Did you read the papers at that time?

Objection—immaterial and incompetent.

A. Yes, I did.

Q. Did you learn the name of any man in authority in that union there from reading the papers?

Objection—immaterial and incompetent.

A. Mr. Perlstein.

Q. What did you see in the papers about Mr. Perlstein?

Objection—immaterial and incompetent.

A. Well, along in the early part of the year, that was about the first, when we first became uneasy, we saw that he had to come to Kansas City and set up an office I believe here with

[fol. 5485] p. 1226 the idea that he was going to organize the Donnelly Garment Company, and later

after he had them organized he was going to call a strike.

Q. What effect did the newspaper items and the talk about what was happening at the other plants have upon the other employes?

Objection—immaterial and incompetent.

A. Naturally, it upset them greatly; nothing else was talked about morning, noon and night, and even when we were trying to work it kept the girls very uneasy.

Q. Was there any spirit of fear?

Objection—immaterial and incompetent.

A. I was afraid; I don't know whether anyone else was. Yes, we were afraid of being molested.

Q. Did you hear any talk about whether or not you could protect yourselves?

Objection—immaterial and incompetent.

A. I don't think I know just what you mean.

Q. Did you hear any talk as to whether or not the Donnelly Garment workers could attempt to protect themselves?

Objection—immaterial and incompetent.

A. Well, we were asked not to fight; they tried to protect us by getting the buses. Is that what you mean?

p. 1227 Q. No, I mean among the employes, did they talk about what they might do to protect themselves from similar trouble?

Objection—immaterial and incompetent.

A. Well, we knew that some people in the factory had gone to interview the police to see whether or not we could get protection. In fact I went to see some of them myself. I believe it was along in April we went down and interviewed the Chief of Police and told him just how we were trying to get back and forth to work and get in and out of our place of business, and I will admit we were rather skeptical whether we would get some protec-

tion or not, although he did promise us that he would give us protection.

Objection, motion to strike—not responsive.

Q. Did you know of any number of people in the Donnelly plant who were in sympathy with the cause of the International.

Objection—immaterial.

A. No, I didn't.

Q. You did not hear of any?

Objection—immaterial and incompetent.

A. No.

Q. Do you know whether any meetings were held among the Donnelly employes?

[fol. 5486] p. 1227 A. Yes, there were meetings held; I cannot remember just exactly where, but I think probably around the middle of March I think is the first meeting that we had.

Q. And what was discussed at that meeting?

A. Protection was the big idea among all the employes, how we were going to be able to go back and forth to work, like we had always done, and also an injunction, I think; there was some talk of an injunction I think, but there was really nothing done at the meeting.

p. 1228 It was an open meeting of employes and employes were all asked to talk and express there views about what they thought they would like to have done and what could be done, but as I remember there was nothing definite done at that meeting.

Q. Was there any leadership from that meeting, leadership of the employes that you know of?

A. No.

Q. Did anybody act as a leader at that meeting?

A. Miss Todd was chairman of the meeting, yes.

Q. Did she tell you anything she was going to do?

A. Well, I don't remember exactly at that meeting that she did, but I do know that she with some other people had gone down to interview some law firm; I didn't know just who.

Q. Did you read that Sylvia Hull news item in the newspaper?

Objection—immaterial and incompetent.

A. Yes, I did.

Q. What effect did that have with respect to the excitement in the plant?

Objection—immaterial and incompetent.

A. It sort of came out of a clear sky, we read it in the paper one morning and I think everyone was rather as I was, they didn't even suspect such a thing.

Q. Was there another meeting held either before or after that time.

A. Yes, there was another meeting the 27th of April when we organized our union.

Q. That was the meeting at which the Donnelly Garment Workers' Union was organized?

[fol. 5487] p. 1228 A. Yes, it was.

Q. Now, tell us briefly what you remember of that meeting.

A. Well, I remember that Miss Todd was in charge of the meeting and that Mr. Tyler,

p. 1229 who was a member of the firm that had been engaged was there, and he explained the Wagner Act to us and told us that now we could go ahead and form our employes' union which would be probably a safe thing if we cared to do it, but it was left entirely up to the employes to do as they chose and after him explaining that Miss Todd outlined a form so we could have our representatives for the union. I think she appointed five people who left the room and were to bring back the names of nine people who were to act as group chairmen to represent the whole factory after our union was formed and while they were out Mr. Tyler read a set of by-laws which had been drawn up for the approval, if the union was formed.

Q. Did you join the union? A. Yes, I did.

Q. Are you still a member? A. I am.

Q. Would you like to join any other union?

Objection—immaterial and self-serving.

A. I certainly would not.

Q. Did you hear any talk among the employes of the possibility that the Donnelly products might be boycotted by the International?

Objection—immaterial and incompetent.

A. Yes, I heard that (and it disturbed the people greatly because we knew that if that was done it could hurt our production and naturally that is what we look forward to, the more production we have the more work we have or better work we have, and we were very anxious that that not take place, because it was bound to hurt production.)

Objection and motion to strike—not responsive.

Q. Did you ever hear or know of anything or anyone in authority at the Donnelly plant
p. 1230 ever saying or doing anything that would indicate that they objected to labor unions?

A. No.

Q. Did you ever hear of anybody being discriminated against because they were a member of a labor union?

A. No, I did not.

Q. What are the working conditions at the plant
[fol. 5488] with respect to the comfort of the women?

p. 1230 Objection—immaterial.

A. Well, I think that they could not be better. We have a clean, sanitary place to work; we have good wash rooms, we have maid service, janitor service, two registered nurses in charge, we have lighting and ventilation, and the chairs,—we have adjustable chairs to sit on at our machines; we have Venetian blinds at the windows.

Q. Plenty of air at all times?

Objection—immaterial.

A. Plenty of air; we have fans in the summer, and the heat in the winter is always good, and hot and cold water.

Q. Could you suggest any way it could be improved?

Objection—immaterial.

A. I think I could not. I do not know of anything; it is almost as comfortable as home.

Q. Has it been that way as long as you can recall?

Objection—immaterial.

A. Yes, the 12 years I have been there.

Q. You know nothing about any speed-up system, do you, or do you not?

Objection—immaterial.

A. I do not; our work is brought to us and left in a box by the side of us and we do it as we come to it, and lay it behind us when we are
p. 1231 through and it is taken away; wherever it goes, we pay no attention to that either, and there is no set amount to be there for us at any time.

Mr. Patten: That is all.

(Witness excused).

(Thereupon Court stood at recess until 2:00 o'clock p. m.)

[fol. 5489] Exhibit (i)

Friday, April 7, 1939
2:00 p. m.

(Pursuant to recess, Court reconvened and the trial resumed.)

Harold Boyd, called as a witness on behalf of the Interveners, having been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Patten:

p. 1232 Q. State your name, please.

A. Harold Boyd.

Q. Where do you live?

A. 3003 Parallel, Kansas City, Kansas.

Q. What is your occupation?
A. I am a cutter.
Q. Cutter in a garment factory? A. Yes, sir.
Q. How long have you been a cutter, garment cutter?
A. As a cutter for the last thirty years.
Q. By whom are you employed?
A. Approximately the last seven years I have been employed by the Donnelly Garment Company. I worked for the Miller Manufacturing Company when they were here; The Burham-Munger-Root plant and the Pyke Manufacturing Company of Salt Lake City.
Q. You are a cutter now for the Donnelly Garment Company. A. I am.
Q. Did you see anything of the labor troubles at other garment plants in the spring of 1937?

Objection—immaterial.

p. 1233 A. I did not.
Q. You were at the Donnelly plant during that time or a portion of it, were you?

Objection—immaterial.

A. I was.
Q. Did you read the newspapers?

Objection—immaterial.

A. I did.
Q. Did you hear the talk among the employes of the Donnelly Company?

Objection—immaterial and incompetent.

A. Regarding the labor trouble?
Q. Yes.

Objection—immaterial and incompetent.

A. Yes, I did.
[fol. 5490] Q. Tell in your own words what you read and what you heard and what the state of mind was among the employees in the plant?

Objection—immaterial and incompetent.

A. Well, we read of the strike down there and the picketing and rioting and what protection they might be getting down there and it just naturally threw the whole plant into a frame of mind down there that they just didn't know what to expect from the reports we got and naturally we wanted to get some way, some protection.

Q. Do you know what was done looking towards getting protection?

Objection—immaterial.

A. Well, they had that meeting down there, although I was not there at the time; I was on my vacation.

Objection, move to strike—not responsive.

Q. What meeting was that?

Objection—immaterial and incompetent.

A. When they formed this employes union.

Q. Let us go back before that a little bit. Did you hear any threats made against the Donnelly plant?

Objection—immaterial and incompetent.

p. 1234 A. Just hearsay.

Q. Did you read anything in the paper about the Donnelly plant in connection with this labor disturbance?

Objection—immaterial and incompetent.

A. Well, there was an article that Mr. Perlstein was starting an office here, that he was going to organize them and all that; that is as far as it got.

Q. Did you know anything about a committee going to see Director Higgins?

Objection—immaterial and incompetent.

A. I remember when they went, although I didn't go.

Q. What was the general opinion among the Donnelly workers with respect to the International Ladies' Garment Workers' Union?

Objection—immaterial and incompetent.

A. They did not want them in there.
Q. You say you were not there at the time of organization meeting?
A. No, I was on my vacation.
Q. Did you see an article in the paper that concerned Sylvia Hull?

Objection—immaterial and incompetent.

[fol. 5491] p. 1234 A. I did.
Q. About when was that?

Objection—immaterial and incompetent.

A. That was in the spring of 1937, along around the middle of April, the 22nd I believe.
Q. Was that before you had gone on your vacation?

Objection—immaterial and incompetent.

A. Just before, the week before.
Q. What did that article say?

Objection—immaterial and incompetent.

A. It stated she had been chosen as a delegate
p. 1235 to the National Convention of the International Ladies' Garment Workers' Union to represent the employees of the Donnelly Garment Company.
Q. Did that article have any effect on the employes at the plant?

Objection—immaterial and incompetent.

A. It created quite a bit of unrest down there.
Q. Did you see in connection with this excitement any reports that the International might contemplate a boycott of the Donnelly product?

Objection—immaterial and incompetent.

A. Just hearsay is all; I heard no direct comment on it.

Q. But you heard the employes talking about it, did you?

Objection—immaterial and incompetent.

A. I did.

Q. Now, Mr. Boyd, did you join the Donnelly Garment Workers' Union?

A. I did when I came back from my vacation.

Q. Did you join as your voluntary act?

Objection—immaterial and self-serving.

A. Of my own accord.

Q. If you had it to do over again would you join any other union.

Objection—immaterial and self-serving.

A. If the plant was that way that would just depend but as far as Donnellys are concerned I would not.

[fol. 5492] Q. Have you any belief or have you heard anything said that would indicate to your mind that Mrs. Reed or any of the Donnelly management is opposed to any labor union?

A. No, I have not.

Q. Have you at all times understood while you were there, if you have thought about it at all, that you were free to join or not join any labor union as you wished?

p. 1236

A. That's right.

Q. You said you had been in a number of other garment plants as a garment cutter over a period of thirty years, I think?

A. Yes.

Q. How does the wage scale in the Donnelly plant compare with other plants in which you have worked?

Objection—immaterial and incompetent.

A. Considerably higher.

Mr. Patten: That is all, Mr. Boyd.

Mr. Walsh: That is all.

(Witness Excused).

[fol. 5493] Exhibit (j)

EMILY F. MILES, called as a witness on behalf of the Interveners, having been duly sworn, was examined, testified as follows:

Direct Examination.

By Mr. Tyler:

p. 1257 Q. Will you state your name, please, Miss Miles?

A. Emily Miles.

Q. You are a public stenographer?

A. Yes, sir.

Q. And have been in Kansas City for a number of years.

A. That is correct.

Q. Were you the official stenographer on the occasion of the trial of the case of Donnelly Garment Company versus International Ladies' Garment Workers' Union in which the Donnelly Garment Workers Union was intervener in the United States District Court on the occasion of the three judge trial?

A. I do not know as you can call it official reporter; Judge Otis, before whom the case originally appeared, appointed me under Rule 30 to act as his official. Then when the matter came up before the three-judge court I continued to act under that appointment.

Q. And did you take a stenographic record of the opening addresses made at that trial?

A. I did.

Q. Do you have that record with you?

A. I have my office copy.

p. 1258 Q. This document is your office copy of the stenographic notes taken at that trial?

A. Yes, sir.

Q. I will show you page 57 and the first part of page 58 between the small red check marks. Is that a correct copy of a part of the opening address of Mr. Tyler at that trial?

A. Yes.

Q. Will you read that to the Court, Miss Miles?

Objection—immaterial and self-serving.

A. This is the paragraph: "If this Court should deem it proper, I am going to make an offer on behalf of this union, if there is any doubt that this union represents the overwhelming, genuine desire of these employees to be left alone by these outside unions and to make their own bargains through their own committee with their employer, we will agree that this Court name a Master today or tomorrow who will go down there and hold an election just as promptly as he can under such circumstances as to make it certain that each employee can express his true opinion without any fear that it will ever be known, or without any fear of any reprisal, and if that election does not overwhelmingly establish their desire to operate their own union, then I know nothing about understanding the people I deal with."

[fol. 5494]

p. 1259

Objection and motion to strike—immaterial and self-serving.

[fol. 5495] Exhibit (k)

Eunice Corum, called as a witness on behalf of the Interveners' having been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tyler:

p. 1263 Q. State you name please?
A. Eunice Corum.
Q. It is Miss or Mrs.? A. Mrs.
Q. Where are you employed?
A. At the Donnelly Garment Company.
Q. Kansas City, Missouri? A. Yes, sir.
Q. How long have you been employed there?
A. I have been employed there six years altogether; I was out four years and back to now.

Q. What other garment plants in Kansas City, if any, have you been employed at?

A. At the Gernes Garment Company.

Q. At what time was your employment at the Gernes Garment Company?

A. Well, I have been back here two years which was 1937; from 1933 to 1937.

Q. Were you or were you not employed at the Gernes Garment Company during the spring of 1937 when the labor troubles were going on at that plant?

Objection—immaterial.

A. I was.

Q. Did you have any personal experiences in connection with that labor trouble?

Objection—immaterial.

A. Yes, sir.

p. 1264 Q. Tell the Court what they were?

Objection—immaterial.

A. Well, we went down on the 17th day of March, 1937 as usual to go to work; when we got there we could not get in the front door, there were pickets around there; we stood around in the cold; we tried to get Mr. Gernes down there and he did finally come and some way by persuasion or somehow he got us in the building that day and then when we went out that night there were pickets out there and they let us go on without harming us in any way and the next morning when we came back it was the same thing only worse; it continued that way and we drove cars there, —I drove my own car but I was warned that I better not drive it, that I would not have any tires left and the windows would be broken and I quit driving my car, and Mr.

[fol. 5496] Gernes insisted that we come in, if we did not get in before two or three o'clock he wanted us to be in the building. Well, we would meet at the Union Station or anywhere around and

we would call a taxi, get in there, get up to the building; we had to go in then at the back entrance through the freight elevator and when we would drive up there of course there would be more than one in the car; we would try to go together and the police would get out there and they would open the door and they would just let one come out at a time so we might be able to run through and when they would say "Jump" we would jump and start to run and I have seen the girls
p. 1265 caught and knocked down, their hats lost and their purses thrown over in the street and kicked and go in upstairs and when they would finally get in they were bleeding and just so nervous it would be hours before they could go to work. I got by fairly well for three or four days and then they caught me one morning and when they grabbed me the police grabbed me and in such a way he held my hands down to my body and they got me by the hair of my head and my hat and they beat me over the shoulders and over the head and stepped on my feet and I never did get my hat and the next day I wasn't able to go to work, I was black and blue all over my shoulders, and my head and I was a nervous wreck. I went down the next day and got in. As I say he asked us to come in if we didn't get in before two or three o'clock it would be all right, just so we got in. We got in and he was trying to keep his plant open; it seemed as though he was uptown negotiating with these other folks, signing us up in this union so we went on like that for a day or two and every evening he would be back before going out time and he would say "well, I talked with Mrs. Tobin today and Mrs. Perlstein and I think it is going to be all right, they are not so much interested in us as they are these other two; however, I think we are going to come out all right;" and that went on for a day or two more. On the next day

I went into work and the last morning it was so bad I don't believe any of the girls got
p. 1266 in the building at all; there were girls had big nuts and bolts in their hands—I saw this, I saw one woman knocked completely out on the sidewalk and they had to take her to the hospital and I didn't try to get in any more; I just felt that I would wait until it was over for I did not feel I could take any more of it. I went to the country for a day or two while this was on and when I came back I saw in the paper that he had signed up so when I went back to work they told me that I belonged to the union. Well, I knew that I had not signed up and I did not feel like I belonged to it so I went to Mr. Gernes and I told him that I did not want to belong to it and how had he done that; that I felt like I was capable of joining or staying out of the union if I didn't want to go into it but he joined us in so I told him I was going to quit, gave him notice that I was quitting that Friday. Well, he insisted that I stay. He said "Now, we are going to have more business, times will be better, we are not going to have to do this; we have got some sort of a special session that we won't have to strike, go out on the street and carry on;" but I quit and he said "Well, there is no use of your going to the Donnelly Garment
[fol. 5497] Company because I was just up to their office with Mr. Perlstein and the lawyer and we have got"—I think he said $250,000.00 to fight Donnellys "and we are going to organize them." So I quit. I quit there the 17th day of April and came to work at Donnellys
p. 1267 on the 19th day of April.

Q. About how many pickets were there around the plant during the days of the trouble you have spoken of?

Objection—immaterial.

A. Of a morning I could not just judge when they were so thick that we could not get

through and then they would get away a little bit around noon time and after and then in the evening they would be reenforced and in the evening there were lots of men there from these other plants.

Q. So you know anything about whether taxi drivers would or would not refuse to carry people down to that place of business?

Objection—immaterial.

A. I stopped two taxi cabs one morning to take me up there; they wanted to know where I was going and I said to 2617 Grand Avenue and they said "We are not going up there."

Q. What is your preference, Mrs. Corum, as to whether you belong to the Donnelly Garment Workers' Union or the International Ladies' Garment Workers' Union?

Objection—immaterial.

A. Well, I prefer this union because I—

Q. (Interrupting) What union do you mean by this union?

Objection—immaterial.

A. I mean the Donnelly Garment Workers' Union.

Q. Tell the Court why?

Objection—immaterial and self-serving.

A. Because of the peace of mind, the satisfaction of knowing that if I have any complaint or anything to make it is taken care of right there in the building; there is no question about whether they raise my wages; they
p. 1268 have raised them twice without asking and I prefer it because if I cannot get a raise in wages I would not have to go out on the street and fight or join up and come uptown and somebody fix my wages for me up here that does not know anything about it. We have women down there that have been op-

erators that fixes our wages and I am perfectly content in that and happy in it.

Q. I think I forgot to ask you whether or not the pickets around the Gernes plant during this disturbance made any statement as to their intentions in regard to the Donnelly plant?

[fol. 5498] A. We heard it as we came in and out all the time; "When we get these smaller places organized then we are all going over to the Donnelly Garment Company and organize them, put pickets around there."

Q. That was the pickets that you heard make those statements?

Objection—immaterial and incompetent.

A. Yes, sir.

Q. Do I understand that they were made frequently and many times?

Objection—immaterial and incompetent.

A. It was the talk, sure, all the talk.

Q. Did these pickets make that statement or statements like it many times?

Objection—immaterial and incompetent.

A. Yes, sir.

[fol. 5499] Exhibit (l)

ALMA MURPHY, called as a witness on behalf of the Interveners, having been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Tyler:

p. 1269 Q. Will you state your name, please?

A. My name is Mrs. Alma Murphy.

Q. Where are you employed Mrs. Murphy?

A. By the Donnelly Garment Company.

Q. How long have you been with them?

A. A little over three years.

Q. And what capacity are you employed there?

A. Well, I am a straight sewer.

Q. Do you know Fern Sigler?
A. Not personally but I know her by sight.
Q. Do you know Miss Palmer?
A. I know her by sight; I saw her once.
Q. Did they ever call on you?

Objection—no identification as to time.

A. Yes, they called on me one evening.
Q. If they said anything about boycotting of the Donnelly plant tell the Court what they said?

Objection—immaterial and no time fixed.

A. They said that if—

The Court: (Interrupting) Who are they?

Q. Do you know whether Fern Sigler and Miss Palmer have any connection with the International Ladies' Garment Workers' Union?

p. 1270 A. Well, the evening that Miss Palmer and Mrs. Sigler called I did not let them in the first evening and the second time they called about a week later Fern Sigler and her husband, Mrs. Palmer was not with her the second time, and they told me that if I did not join their union that the Donnelly Garment goods, dresses, would be boycotted.

Objection and motion to strike—not responsive.

Mr. Tyler: Both of those ladies are defendants in this case, if the Court please.

The Court: That is what I wanted to know.

[fol. 5500] Q. What did they say about picketing, if anything?

Objection—immaterial and incompetent and no time fixed.

A. They asked me what I would do when I was pointed out as one of the girls that had boohed Sylvia Hull, what I would do when I walked out of the factory with about 500 pickets around me.
Q. What did they say about the possibility of you losing your job?

Objection—immaterial and incompetent and no time fixed.

A. They said if I didn't join their union I would be out of work and that if I really loved Nelly Don I would join their union.

Q. Are you a member of the Donnelly Garment Workers' Union?

A. Yes, sir.

Q. Did you join it of your own free will?

Objection—immaterial and self-serving.

A. Yes, I did.

Q. Do you prefer for yourself to belong to the Donnelly Garment Workers' Union?

A. Absolutely.

p. 1271 Q. Wait until I finish,—or the International Ladies' Garment Workers' Union?

Objection—immaterial and self-serving.

A. I do.

Q. You prefer to belong to which one?

Objection—immaterial and self-serving.

A. I prefer the Donnelly Garment Workers' Union.

Q. Tell the Court why?

Objection—immaterial and self-serving.

A. Well, we have good working conditions, we have good prices and privileges that they don't have at the other factories.

Mr. Tyler: That is all, thank you.

Mr. Walsh: That is all.

(Witness excused).

[fol. 5501] Exhibit (m)

Cameron Herold, called as a witness on behalf of the Interveners, having been duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Patton:

p. 1275 Q. State your name please?

A. Cameron Herold.

Q. Where do you live? A. 2600 Paseo.
Q. Kansas City, Missouri?
A. Kansas City, Missouri.
Q. What is your occupation?
A. I am in the filing department at the Donnelly Garment Company.
Q. How long have you been there?
A. A little over two years; about two years and four months.
Q. What did you do before that?
A. I was in school.
Q. Where did you go to school?
A. Westport High School, and Junior College.
Q. Were you working in the spring of 1937?
A. I was.
Q. Did you pass the plant where the Missouri, Gordon and Gernes Garment Companies were located on your way to and from your work?

Objection—immaterial.

A. Several mornings.
Q. And what did you see?

Objection—immaterial.

A. On the Oak Street entrance there were several pickets and there were a line of officers, two lines of officers that formed an aisle leading from the back door of the garment com-
p. 1276 panies there and girls would drive up in cabs or cars and one would run up at a time and try and get through and the girls would start kicking and shoving the officers and they acted like, well, they weren't civilized the way they acted. They would tear on their hair and they would kick them and they would pull them and then on one morning there were about 150 or 200 pickets in front of the Grand Avenue entrance; they had closed up the back entrance and I was standing across the street; (there were about 25 girls there that said that they worked in the company, Gernes and Gordon and they said that the policemen had told them that they could not guarantee

them any protection if they crossed the street and tried to get in.)

Objection, motion to strike—not responsive.

Q. Did you report what you had seen down at the Donnelly plant to the other employees?
A. I did, yes, sir.
Q. And did you hear any talk down there?

Objection—immaterial and incompetent.

[fol. 5502] A. Very much; they were all excited and well, just talked of what they would do if they would come down to Donnellys.
Q. Did you see anyone in the picket lines that you knew?

Objection—immaterial.

A. No, I didn't.
Q. Did you hear any threats made up there of any kind?

Objection—immaterial and incompetent and no identification of person or time.

A. I heard it a couple of times.
Q. What did you hear?

Objection—immaterial and incompetent and no identification of person or time.

A. That this is a sample of what Donnelly will get.
p. 1277 Q. Did you report that to your fellow employees?

Objection—immaterial and incompetent and no identification of person or time.

A. Yes.
Q. Did you read the newspapers during this period that the strike trouble was on?

Objection—immaterial.

A. I did.
Q. Did you see anything in the newspaper that was of interest to the Donnelly employees?

Objection—immaterial and incompetent.

A. I saw an article, I don't know what date it was, stating that the union at their meeting in Atlantic City had appropriated so many hundred thousand dollars to organize the Donnelly Garment Company.

Q. Do you remember any meeting of the Donnelly Garment Workers Union?

A. I do.

Q. Describe that meeting? How many meetings were there during this period that you can recall?

A. The first meeting was about the middle of March.

Q. And what was the subject of discussion at that meeting, if you recall?

[fol. 5503] A. Well, the general topic down at the Donnelly Garment Company was how and what they would do if they came down there and the people wanted to get together and find out or try to make some arrangement so they could do something and they went down to the meeting on the second floor.

Q. Did you hear an injunction talked about?

A. Yes, there was an injunction talked about.

Q. Did the meeting decide upon any plan of organized action?

p. 1278 A. No, they did not.

Q. What is the next thing you recall in connection with the strike or threatened strike at the Donnelly plant?

Objection—immaterial and incompetent.

A. We were given buses to ride to work on.

Q. And was that before or after the meeting you have just spoken of?

Objection—immaterial and incompetent.

A. After the meeting.

Q. Do you recall any other meetings?

A. The formation of the union.

Q. Do you recall anything that happened before or after the formation of the union with re-

spect to a newspaper report that you had a representative in the International organization?

A. I heard of it, I didn't read it.

Q. Did you know the sentiment of the employees at the Donnelly plant with respect to the International Ladies' Garment Workers' Union?

Objection—immaterial and incompetent.

A. I did.

Q. What was that sentiment?

Objection—immaterial and incompetent.

A. Not very high.

Q. Did you know anybody down there that wanted to become a member of that union?

Objection—immaterial and incompetent.

[fol. 5504] A. No, sir.

Q. Did you attend the organization meeting of the Donnelly Garment Workers' Union?

A. I did.

Q. And that was held I believe it has already been testified several times, about the 27th of April?

A. The 27th of April.

p. 1279 Q. Tell in your own words what happened there?

A. Mr. Tyler was introduced and by that time a committee had gone to him or some people asking him if they could get an injunction or for any way that they could be protected. Well, Mr. Tyler told us that the Wagner Act had been declared valid and his suggestion was we form a union of our own; that if we had 51 or over 51 percent of the employees that wanted to become members that the union would be valid under the law.

Q. Did you take any votes?

A. We voted on the name by standing vote.

Q. Was that vote all in favor or who suggested the name, do you recall?

A. They decided on Donnelly Garment Workers' Union; I don't know.

Q. Did you vote on whether the employees wanted a union? A. Yes.
Q. And how was that taken? A. All yes.
Q. Do you recall any white cards or any other cards?
A. There were cards passed out; I helped pass them out to the employees and they asked or stated on the card that they would like to become a member of the Donnelly Company Union.

[fol. 5505 Q. Was anything said to the meeting with respect of signing those cards, and if so what was it?
A. They signed them if they wanted to, if they wanted to become a member.

p. 1280 Q. Did you hear that said? A. I did.
Q. Did you sign one? A. I did.
Q. Was that your free and voluntary act?

Objection—immaterial and self-serving.

A. Yes, sir.
Q. Are you still a member?
A. Yes, sir.
Q. Have you ever been a member of the executive committee? A. No, sir.
Q. In all the time that you have been at the Donnelly plant did you ever hear or see or know of any act or word by the employers, Mrs. Reed or any of the officers of the company or anybody with authority to hire and discharge which would indicate that they did not approve of employees joining unions?
A. No.
Q. As between the Donnelly Garment Workers' Union and the International Ladies' Garment Workers' Union would you have any preference as to which one you would care to belong to?

Objection—immaterial.

A. Yes, sir.
Q. What would be your reason for that preference?

Objection—immaterial and self-serving.

A. I would most certainly take the Donnelly Garment Workers' Union. The International, their ways of trying to induce members into the union are unAmerican and I would not join it.

Mr. Tyler: That is all.

Mr. Walsh: That is all.

(Witness excused).

(N.R.A.—J.M.C. Exhibit 9.)

[fol. 5506] Extracts From Testimony of SYLVIA HULL, called as a witness on behalf of the defendants.

Direct Examination.

By Mr. Walsh:

p. 1737 Q. What is your name, please?
A. Sylvia Hull.
Q. And what is your age?
A. Thirty-two years old.
Q. Are you married or single? A. Married.
Q. Where do you reside? A. 3020 Poplar.
Q. How long have you lived at that place?
A. I think about five years.
Q. How long have you lived in Kansas City, Missouri? A. A little more than ten years.
Q. Where did you come from here?
A. We came from Flint, Michigan.
Q. Did you ever work for the Donnelly Garment Company? A. Yes, sir.
Q. During what period, please? For what length of time?
A. I was employed there for a period of eight years.
Q. What was the date of your employment, a original employment?
A. I started in the spring of 1929 and then I stayed there until the 23rd of April, 1937.
Q. Were you off at any time in the year 1933?
A. Yes, sir.
p. 1738 Q. For what period of time?
A. I was off seven months.

Q. And what was the date again please of your final separation from the Donnelly Garment Company? A. The 23rd of April, 1937.

* * *

p. 1739 Q. Did you join the International Ladies' Garment Workers' Union at any time?

A. Yes, sir.

Q. At what time did you join that union, Mrs. Hull? A. The 23rd of March, 1934.

Q. And where did you join?

[fol. 5507] A. At my home.

Q. And who was present when you joined?

A. Miss Jane Palmer.

Q. Any person else?

A. My husband was there and I don't remember whether there was anyone else there or not.

Q. Thereafter did you attend a meeting of the union? A. No. sir.

Q. Did you meet with a committee of the union prior to the Atlantic City convention?

Respondent moves to strike the second answer below because it was stricken by the court (see p. 1740)—Denied J.C.B.

p. 1740 A. Well, I met with Mr. Perlstein and Miss Palmer and we had just been told—I had been told by Miss Palmer when I joined the union that we —

Senator Reed: (Interrupting) That is not responsive to any question.

The Court: I cannot tell.

A. I had been told at that time that we could not have union meetings because she said that before when they tried to organize the company sent out spies to report on the girls who attended the meeting so therefore we had no union meetings.

Q. Did you or did you not ask that your membership be kept secret?

A. I did.

Q. Did you afterwards attend the convention at Atlantic City? A. I did.

p. 1741 Q. Did you attend a meeting of the International Ladies' Garment Workers' Union at Atlantic City?

[fol. 5508] A. Yes, sir.

Q. At that time, prior to your going to Atlantic City was it made known in any way or discovered in any way that you were a member of the International?

A. Yes, sir.

Q. Was there any comment, did you have any experience at the Donnelly plant prior to going to Atlantic City? A. Yes, sir.

Q. State what that experience was?

A. Well, I was called down to the Muehlebach Hotel and I talked to Mr. Perlstein there; he asked me if I would like to go as a delegate to the convention to represent our girls in the union and at that time I had not thought much about it and I did not decide that night but the next day my husband called Mr. Perlstein and told him I had decided that I would go. Then that night in the Journal-Post there was an announcement that I would go to the convention as a delegate.

Q. Did you meet with the girls of any other union before you went down there or did you first meet with them when you went down there?

A. I don't understand what you mean.

Q. Were there other ladies that belonged to the union at that time, the International Ladies' Garment Workers' Union?

p. 1742 A. I only knew one girl at that time that was a member.

Q. From Donnelly's?

A. Yes, sir.

Q. But were there other girls belonging to the union that attended the meeting at Atlantic City?

[fol. 5509] A. Yes, sir.

Senator Reed: Does Mr. Walsh mean that belonged to this union that this lady belonged to or belonged to other unions?

Mr. Walsh: Belonged to the International Ladies' Garment Workers' Union, were there other ladies outside of the Donnelly shop?

A. Yes, sir.
Q. And did you meet with them?
A. Yes, sir.
Q. I will ask you to look at Interveners' Exhibit No. 8 and state whether or not that is the article that you saw in the Journal-Post?
A. I believe it is.
Q. Now, how long prior to the meeting at Atlantic City did this notice appear in the Journal-Post?
A. Well, I think the notice was in the paper the 22nd of April, the best I remember but I did not think there was as much in it as there is in that.
Q. This seems to be March 24, 1937.
A. Then that could not be the one because as I remember it, in this note it stated that I had been selected to go to the convention.

p. 1743 Mr. Hogsett: Didn't you inadvertently misstate that Mr. Walsh? Wasn't it April?

Mr. Walsh: 4-22. That would be April.

Q. Now, after that announcement was made was there anything said to you at the shop about it?

Respondent objects to question as calling for hearsay.—Denied J.C.B.

A. Yes, sir.
Q. How soon was it after the announcement was made?

Respondent objects to question and moves to strike answer as hearsay, immaterial, not binding on respondent.—Denied J.C.B.

[fol. 5610] A. The announcement was made, as I remember on the 22nd of April. Then the next morning I went into work, and when I got to the shop I showed my pass at the door; we had to have a pass to get in and I showed that to the man at the door and he didn't ask me any questions or anything, just let me go on in. Then I went up on the elevator to the 7th floor and I changed my clothes there on the 7th floor and I could hear girls talking around in the shop at that time and there was one girl—she came up and she said "What is this I see in the paper about you", so I didn't say anything, I just laughed about it and she said well, that she was afraid for me to go in there because she didn't know what the girls would do to me.

Q. To go in where?

Respondent makes same objection — Denied— J. C. B.

A. On to my floor to work.

Q. Did you go in anyway?

A. Yes, sir.

Q. And did you go to work?

A. Yes, sir.

Q. How long did you work there that day before there was anything further said about your membership in the union?

Respondent makes same objection. — Denied— J. C. B.

p. 1744 A. Well, they turned the power on and I started working in my section; then just a little while after that there was a group of girls came over and they started talking about the union.

Q. Were you running your machine at the time?

Respondent makes same objection. — Denied— J. C. B.

A. Yes, sir.

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Volume V

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 30, 1946

CERTIORARI GRANTED APRIL 22, 1946

VOLUME V.

RECORD.

United States Circuit Court of Appeals

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vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 475, Orig.

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ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

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Q. And who was in charge of your section as instructress?

Respondent makes same objection and motion and for further reason that it calls for conclusion of the witness. Denied—J. C. B.

A. Mrs. Allison and Pearl; I think her name was Hendricks.

Q. Were they or were they not in there at the time these girls came up?

Respondent makes same objection. — Denied— J. C. B.

A. Yes, sir.

[fol. 5511] Q. Just state what occurred when these girls came up, when these parties that you mentioned were there?

A. May I correct one of those names there. Her name was Rose; I always had those names mixed; it was Rose instead of Pearl.

Senator Reed: Rose Hendricks?

The Witness: Yes, sir.

Q. I wish you would detail in your own way what took place there at that time, how many girls were in the group?

Respondent objects as calling for hearsay, and immaterial, and not binding on respondent what the employees may have done. Denied J. C. B.

A. After I started working these girls came over there and there was some from the special section and I don't know just where all they came from but I do remember that Mary Pointer from the special section was in the group and they came and started talking to me.

Q. First I wish you would let us know how many girls were in that group, Mrs. Hull, would you say?

Respondent makes the same objection.—Denied J. C. B.

p. 1745 A. Of course I could not give the exact amount but I would say probably fifteen girls.

Q. Was the power on at the time and were you working at your machine?

Respondent objects as immaterial.—Denied J.C.B.

A. Yes, sir.

Q. You may proceed and just tell what was said?

Respondent objects to the question as calling for hearsay, not binding on respondent what the employees said or did, immaterial, self-serving.—Denied J. C. B.

A. Well, they started talking about me joining the union.

Q. Try to give the names as well as you can please; who started to talk to you about joining the union?

Respondent makes the same objection.—Denied J. C. B.

A. As well as I can remember Mary Poynter started talking about it.

Mr. Hogsett: Was she an operator may I ask?

The Witness: Yes, sir.

Q. What did she say?

Respondent makes the same objection, and moves that the answer be stricken.—Denied J.C.B.

[fol. 5512] Respondent objects to each of the questions on this page for the same reasons and moves that the answers be stricken for said reasons. —Denied J.C.B.

A. She said "They say that you don't have to work but," she said, "We do" and she said, "They say that under the Wagner Act you can belong to the union but we say that you can't" and I don't remember the other things that was said. Then that group went on away.

Q. Have you detailed all that was said at that time?
A. Well, there were so many things I could not remember everything.
Q. Was there more than one of the girls that said anything?
A. Yes, sir, I think there was.
Q. Well, how many would you say had something to say?
p. 1746 A. Well, there were several of the girls that were talking and all talking at the same time more or less.
Q. How long were they there?
A. I don't know just exactly how long they were there but I went ahead with my work and after they had talked about the union then they went on off.
Q. I wish you would state if you can anything else that they said about the union?
A. Well, they said that if I wanted to work for $13.00 a week to go over to Gordon's and work.
Q. Anything else?
A. I don't remember anything right at that time.
Q. After that group left did any others come?
A. Yes, sir.
Q. Was the power still on?
A. Yes, sir.
Q. What time did the others come?

[fol. 5513] Respondent objects to each of the questions on this page and moves that they be stricken as calling for hearsay, not binding on respondent, immaterial and irrelevant, self-serving. —Denied J.C.B.

A. Well, just shortly after that.
Q. How many were in that group?
A. I would say approximately the same amount; there were a group of girls, I don't know just how many but several girls.
Q. Was your instructor there?
A. Yes, sir.

Q. The same one or somebody else?
A. Mrs. Allison was there.
Q. State all you remember that those girls said to you on the second visit?
A. Well, after they came back they asked me for my Loyalty League button.
p. 1747 Q. What was your Loyalty League Pin?

Respondent moves that that part of answer "as well as I can remember to keep the girls from joining the union" be stricken because it was stricken out by the court (see p. 1747).—Denied J.C.B.

A. The Loyalty League was an organization that was organized in there about the time of the hearing of the NRA as well as I can remember to keep the girls from joining the union.
Q. What time was it with reference to the time that a number of girls had joined the union and there was a proceeding going on before the NRA?
A. As near as I can remember it was along about that time.
Q. They formed then a group, do I understand in the shop and called it what?
A. The Loyalty League.
Q. The Nelly Don Loyalty League?
[fol. 5514] A. I don't remember anything other than the Loyalty League; that is what we referred to.
Q. Was there or was there not a document passed through at that time for the girls to sign to join this Loyalty League? Were you a member of this Loyalty League?
A. Yes, sir.
Q. Just describe the circumstances under which you joined?
A. Well, I remember at that time that there were some girls talked to us during the lunch hour and then they passed out cards and we joined the Loyalty League.

p. 1748 Q. Did anyone make a speech at that time, anyone of the girls or anyone of the management at the time you joined the Loyalty League?

A. The girls talked at that time but I don't remember the conversation.

Q. Now, on the occasion of the second visit of these girls—first state whether or not they were the same girls or other girls?

Respondent objects to question and moves to strike answer as calling for hearsay, not binding on respondent what the employees did or said, immaterial and irrelevant, self-serving, conclusion. —Denied J.C.B.

A. Some were the same girls and some were other girls.

Q. Were the girls who called upon you first members of your own section?

Respondent makes same objection and motion. —Denied J.C.B.

A. No, sir.

Q. Or in your group?

Respondent makes same objection and motion. —Denied J.C.B.

A. No, sir.

Q. Do you know where they came from?

Respondent makes same objection and motion. —Denied J.C.B.

A. Part of those girls were from the special section and I don't know where the others were from.

Respondent makes same objection and motion. —Denied J.C.B.

[fol. 5515] Respondent objects to each question on this page and moves to strike the answers thereto as calling for hearsay, not binding on respondent what the employees did or said, immaterial and irrelevant, self-serving and as calling for conclusions.—Denied J.C.B.

Q. On the occasion of the second visit please state what took place. First, who was there on the occasion of the second visit?

A. As near as I can remember Mary Poynter was in that group and Jenny Brown and then there was other girls there that I don't remember their names.

Q. Just describe their conduct when they came the second time?

A. Well, they would come over and they were talking very loud and singing and when they came back one of the girls, I believe it was Mary Jamison asked me for my Loyalty League pin.

Q. Did you have your pin on?

p. 1749 A. No, I had it in my purse.

Q. Just go ahead and tell the whole story; what did you do about it?

A. I told the girls they could have it if they gave me back my thirty-five cents.

Q. Did they charge you thirty-five cents for the Loyalty League pin?

A. Yes, sir.

Q. Did you give them the Loyalty pin?

A. They went away and then they came back with the thirty-five cents and I told the girls I had decided to keep my pin.

Q. And did you or did you not give it to them?

A. I did not give it to them then.

Q. Were there other girls working in your immediate neighborhood at that time?

[fol. 5516] Respondent makes the same objection and motion to each question and answer on this page as is set forth at the top of the preceding page. —Denied J.C.B.

A. Yes, sir.

Q. I wish you would describe the conduct of the girls; did they sit still or did they walk around or did they talk softly or did they talk loudly; give us a good description?

A. The girls were walking around in groups, even in the other sections and I saw some girls

standing on the inspector's tables and they were talking loud. Of course I could not understand what was said in the other sections but I could hear the voices.

Q. During this second visit was your instructor there during all of the time that these girls were milling around and doing this talking?

A. As far as I know she was.

p. 1750 Q. Did any of the girls or did anyone there have the notice that was in the paper with reference to your action?

A. Yes, sir; some of the girls, I don't remember just who it was but I think it was Hazel was one girl came over to my machine and she had this clipping and she asked me what it meant and I said well, it just didn't mean anything, so I went ahead with my work and then after that these girls that had been there before, after my Loyalty League pin, they came back and they had the pin and they had it wrapped in toilet paper, put it on my machine and demanded that I give them the pin and I did.

Q. Was it the pin they had wrapped in the toilet paper or the money?

A. The money.

Q. At that time I will get you to state whether or not your instructor was present?

A. I think Mrs. Allison was present all the time.

Q. Did she say anything to the crowd or order them to go back to work or anything of that kind?

[fol. 5517] Respondent objects to each question on this page and moves to strike the answers thereto as calling for hearsay, not binding on respondent what the employees did or said, immaterial and irrelevant, calls for and states conclusions, the answers are self-serving and not responsive to the questions.—Denied J.C.B.

A. Not that I know of.

Q. After this demonstration did you ask to see anyone, any officer of the company?

A. Yes, sir.

Q. Who did you ask for?
A. I asked the girls where Mrs. Wherry was.
Q. What position did she hold at that time?
A. I think her position was—she was next in charge over all the instructors, fore lady.

p. 1751 Q. Did Mrs. Wherry come?
A. No, sir.
Q. Did any person appear in answer to your call?
A. Yes, sir; these girls came back and I believe it was Hazel and a girl named Pearl, I think was her name, they came back and told me that Mrs. Wherry said she could not come because she was not a member of the Loyalty League.
Q. Did she say anything about anyone else coming?
A. Yes, she said that Miss Todd would come.
Q. That was Miss Rose Todd?
A. Miss Rose Todd.
Q. What was Rose Todd's position with the company at that time?
A. I don't know what Miss Todd did then.
Q. Did Miss Todd appear?

[fol. 5518] Respondent makes the same objections and motions as to each of the questions and answers on this page as [it] set forth at the top of the preceding page and because the answers are speculative.—Denied J.C.B.

A. No, sir.
Q. Was there anything said to you after these people came back, that you asked to go and ask Mrs. Wherry to come?
A. Yes, sir, they asked me to get up and make a speech.
Q. Who asked you to get up and make a speech?
A. I don't remember just who.
Q. Was there more than one?
A. I don't remember that; I just remember someone asked me to get up and make a speech.
Q. At any time during the demonstration was the power shut off?
A. Yes, sir, it was.

Q. Did you see who shut it off?
A. I believe it was Hazel that shut the power off.
p. 1752 Q. State whether or not they continued to urge you to make a speech after the power was shut off?
A. I don't remember.
Q. How long was the power shut off?
A. After the power was shut off I told these girls that I would not make a speech but I would go to the office.
Q. How long was the power shut off? If you remember?
A. I don't know; I left.
Q. Were there any threats made against you at that time?
Q. I will ask you whether or not there were any threats made?
A. Yes, sir.

[fol. 5519] Respondent makes the same objection and motion as to each of the questions and answers on this page as is set forth at the top of the preceding page.—Denied J.C.B.

Q. Please state what was said?
A. Well, the girls told me that if they caught me—when I first refused to give the girls my Loyalty pin they told me that if they caught me with the pin on they would tear my clothes off. They also threatened to throw me out of the window and I was seated with my back to the window and it was only about two or two and a half feet and someone came along and opened the window and they threatened to throw me out.
Q. Did any groups come back after the second group left?
p. 1753 A. Yes, sir.
Q. Was there any person with them other than the operators at that time?
A. Yes, sir.
Q. Who came with them?
A. Mrs. Bogard was with the group.

Q. What was her position?

A. Well, I think she was head over the dividing section; I am not certain what she did.

Q. How many times did she come to your machine that day?

A. I saw her twice in the aisle across from my machine.

Q. State whether or not there were any persons with her, any other girls with her on the two occasions?

A. Yes, sir, there was other girls with Mrs. Bogard and she pointed me out and said "That's her".

Q. Were there any other girls came there during the day from any other department?

A. There was girls from the 9th floor, from the sample or designing room, I don't know just what they have there.

[fol. 5520] Respondent makes the same objection and motion as to each of the questions and answers on this page as are set forth and referred to at the top of the preceding page.—Denied J.C.B.

Q. Was there or was there not an instructor present at the time they came?

A. As far as I remember Mrs. Allison was there all the time.

Q. With all these disturbances?

A. Yes, sir.

Q. At any time did Mrs. Allison or anyone else that was present ask those girls to go back to their work and leave you alone?

A. Not that I heard.

p. 1754 Q. Now, when the power was shut off you say, did you or did you not go back to the office floor?

A. I did.

Q. What floor was that on?

A. The 7th floor.

Q. Did you go alone or did any of the crowd accompany you?

A. No, sir, I was not alone and when I said I would go to the office some of the girls said

they would go along to see what I had to say and there was a large group of girls that followed me down on the 7th floor.

Q. Describe first what sort of an office is on the 7th floor?

A. That is the employment office.

Q. And what was present at that time?

A. Mrs. Hyde was not in her office at that time; there was another girl there who assists her.

[fol. 5521]. Respondent makes the same objection and motion as to each of the questions and answers on this page as are set forth and referred to at the top of the preceding page.—Denied J.C.B.

Q. And what position did she hold there?

A. She was then assistant or stenographer for Mrs. Hyde.

Q. Sometime afterwards did or did not Mrs. Hyde come on?

A. Yes, sir.

Q. Was there anyone with her?

A. Yes, I think Miss Todd was with Mrs. Hyde when she came in at that time; there were several came in about the same time.

Q. And what did Mrs. Hyde say to you, if anything?

A. She said "Remember, now, that you are making the statement because you want to".

p. 1755 Q. And what did you say, if anything?

A. I don't remember.

Q. What did Mrs. Hyde say then? Just proceed and tell what was done.

A. Well, Mrs. Hyde asked me about the article in the paper and asked me if that was true and I told her yes, that I was going to the convention but that I did not know about a strike that was mentioned.

Q. And what did she say, if anything?

A. She said "Well, you might have known that that would go along with the other".

Q. Would go along with what?

A. With the other. I don't know what she meant.

Q. Did you make any further statement to her, that is about any other persons that were going to the convention or anything of that sort?

[fol. 5522] Respondent makes the same objection and motion as to each of the questions and answers on this page as are set forth and referred to at the top of the preceding page.—Denied J.C.B.

A. Yes, sir. I told her that there was other representatives going from this territory to the convention.

Q. Did Miss Todd say anything about that convention?

A. Yes, Miss Todd, she asked me what was the number of my local.

Q. And what did you say?

A. I told her that I could not say. Then I was asked how many members we had.

Q. And what did you say?

A. I told her that I could not be exact but I was told there was a good number of members in the shop.

p. 1756 Q. Was there anybody else there at that time that you recall at the office that took part in this proceeding?

A. Yes, Miss Strickland was there and she said that she would just like to ask a question.

Q. Who was Miss Strickland? What position did she hold?

A. I don't know just what position Miss Strickland does hold.

Q. Was Mrs. Hyde or Miss Todd there at that time?

A. Yes, sir.

Q. Please state just what Miss Strickland said and what you said?

A. Well, Miss Strickland said that she would just like to know what union promised that they didn't promise and I told her that they promised shorter hours and more wages.

Q. More wages for what?
A. For the work we were doing.

[fol. 5523] Respondent makes the same objection and motion as to each of the questions and answers on this page as are set forth and referred to at the top of the preceding page.—Denied J.C.B.

Q. Did she say anything other than that?
A. She said well us girls make more than $13.00 a week in here and I told her that the cotton dresses did not determine the wages but the price the dresses sold for.
Q. And where did you get that information?
A. Well, after I had joined the union I was told then that that was the way they settled prices,—
p. 1757 Q. I will follow that, who told you that?
A. I think Miss Palmer told me that that was the way they settled prices in the union shops.
Q. And what if anything did Miss Strickland say with respect to that?
A. I don't remember just what she said but I told her at the time that one thing that our girls worked so hard in there and after a few years that we were worn out.
Q. Did Mrs. Hyde have anything to say in that discussion?
A. She said, well, she said, "You have been here eight years, do you feel like you are worn out", and I told her well, that she knew that I had been sick and I said that last fall I had to take three months off and take a rest; then after I came back I told her that I felt good and I thought I could do the work all right but they started working us 45 and 53 hours a week and that was too long.
Q. Did Mrs. Hyde make any answer to that?
A. She said that they had the right to work longer hours in their busy season.
Q. Was there anything said about any difference in your pay checks after you came back?

[fol. 5524] Respondent makes the same objection and motion as to each of the questions and answers on this page as are set forth and referred to at the top of the preceding page.—Denied J.C.B.

p. 1758 A. Yes. I told her that at the time when they had passed a petition through the section they asked us to sign this petition that we were perfectly satisfied with wages and hours in the company and happy to be an employee there, then I did not want to sign that and after that—

Q. (Interrupting) Did you finally sign it?

A. I finally signed it.

Q. Who presented it to you?

A. A girl; I think her name is Mary Spofero.

Q. Just state what she said when she handed the paper to you about being happy and satisfied and so on?

A. Well, she came down through the section and had this petition and she asked us to read it over and then she said it was not compulsory that we sign the petition and I read it over and it said that we were satisfied with hours and conditions in the factory and I was not satisfied with the hours and I told her that I did not think that I would sign the petition.

Q. And what did the lady say to you?

Respondent further moves to strike that portion of the following answer reading, "So, we had talked among the other employees that if we did not sign this petition we would lose our jobs" because stricken by court.—Denied J.C.B.

A. She didn't say anything then but a few mornings after that she called—there was one other girl that did not sign it in our section and she called us down on the 7th floor to the nurse's room and she told us then, she said "Now, I will take you girls' name off this list because" [said] said, "we just want girls

there that are perfectly loyal to Mrs. Reed" and she said "You girls are not entirely satisfied". So, we had talked among the other
p. 1759 employees that if we did not sign this petition we would lose our jobs.

Q. Just state what you said and what the other girl said in conversation with reference to signing this document that was handed to you?

p. 1760 A. Well, after she came through the first time and we did not sign, this other girl and I, then we decided that if we did not sign that that we—

[fol. 5525] Respondent makes the same objection and motion as to each of the questions and answers on this page as are set forth and referred to at the top of the preceding page.—Denied J.C.B.

Q. (Interrupting) What was said; don't say "we decided"; just say what was said?

A. We just talked to each other.

Q. What did you say?

A. I don't remember the exact words but the substance—

Q. (Interrupting) Not exact words but the substance of what you said?

A. The substance of it was if we did not sign the petition we would lose our jobs. Then this same girl came back through the section a few days later and she said "I think I missed you girls when I came through the other day" and I told her no, that she didn't miss me but I said that I would sign the petition then and I told her that the reason I did not sign it was because we were working 53 hours a week and that I thought that was too much but I signed it at that time. Then she called us down to the nurse's room.

Q. How did she call you?

A. Well, as near as I remember the instructor—they have a telephone in each section and the

instructor told us to go down. Anyway we were called down.

Q. Do you recall any further conversation upon this occasion when Mrs. Hyde was present? Did anything else happen in this conversation in the nurse's room?

p. 1761

A. Yes; she called us down there and told us that she intended to take our names off and we insisted that she leave the names on in order to hold our jobs and she said no, that she would not do that, so she did take our names off and I told her then that that was too long to work and she said well, that she didn't have any say as to the hours they worked and she said well, we would just forget about that.

Q. I will take you now back to the conversation that was had. Did you find any difference in the work after this conversation which you had about signing this document?

[fol. 5526] Respondent makes the same objection and motion as to each of the questions and answers on this page as are set forth and referred to at the top of the preceding page—Denied J.C.B.

A. Yes, sir.

Q. What happened, if anything?

A. Well, my check just about that had been $31.00, then the next week it was $25.00 and the next week it was $17.00 because I didn't have enough work.

Q. Did you do all the work that was offered you to do? A. Yes, sir.

Q. And did you do it with the same swiftness?

A. Yes, sir.

Q. Now, then coming back to the conversation with Mrs. Hyde and the others that you have spoken of, what did Mrs. Hyde say, if anything to you about leaving or coming back or anything of that sort? After the conversation what did Mrs. Hyde say to you, if anything?

p. 1762

A. Well, she told me that I would have to go home and I told her that I did not want to

quit but that I would go home for that day and so she said well, that I would have to go home and then she took my identification pass and I asked her how would I get back in the factory without that and she said well, that she would come down and let me in if I still had a job.

Q. Have you ever been called back to go to work there?

A. No, sir. I gave her my telephone number, the telephone next door and I have never been called.

Q. I will ask you to state to the Court whether or not during the entire eight years of your employment there was ever any complaint about the character of your work or anything else while you were in that factory?

A. They never complained to me about it.

Q. Were you laid off or were you not laid off during the seasonal lay-offs during those years?

[fol. 5527] A. No, sir; just a few days at a time when the section would be off.

Mr. Walsh: You may take the witness.

(Thereupon Court stood at recess until two o'clock P. M.)

[fol. 5528] Monday, April 17, 1939
2:00 P. M.

(Pursuant to recess, Court reconvened and the trial resumed.)

p. 1763 SYLVIA HULL resumed the stand and further testified as follows:

Cross Examination

By Mr. Hogsett:

* * *

p. 1767 Q. That forty cents is not important enough to spend any time on. Now, you named about

three or maybe four weeks that you worked 53 hours? A. Yes, sir.

Q. Was it three or four?

A. I named four weeks.

Q. And the rest of the time you worked at what?

A. From 40 to 45 hours.

Q. You spoke this morning of a drop in your pay check on some occasion from $31.29 down to some lower figure. Do you remember that? A. Yes, sir.

Q. What was that drop and what was the significance of it; I don't recall?

A. At that time that was when they had circulated this petition through the factory.

Q. Oh, yes. Now, I remember. And you gave the Court or sought to give the Court the impression that because you asked to have your name taken off—

A. (Interrupting) I didn't ask to have my name taken off.

[fol. 5529] Q. Well, because your name was taken off, the fact is it was taken off?

p. 1768 A. It was taken off.

Q. You sought to give the Court the impression that there was an immediate drop in your wages, didn't you; that was the plain implication? A. That was the fact.

Q. And yet immediately following that drop to $17.34 your wages ran as follows: $21.71; $22.39; $25.85; $25.61; $29.92; $22.62. Now, why didn't you tell the Court that?

A. I think I can explain that.

Q. The question is, why didn't you tell the Court that instead of leaving the implication that the Company was taking revenge on you?

A. I simply gave the facts, as I made those checks.

Q. You gave part of the facts, yes, but have you any reason why you didn't just tell the Court frankly why your wages dropped?

A. May I explain?

Q. I say have you any reason why you didn't tell the Court that there was just one week that your wages dropped?

A. No, sir. May I explain that?

Q. Yes, ma'am.

A. After this had occurred about the signing of the petition and our names had been taken off then Mrs. Hyde called me down to the office and she talked to me about the hours, so I told her then that I did not belong to the union and at that time I did not and so she told me that I was to go back to work after
p. 1769 I had assured her that I did not belong to the union, that I was to go back to work and she said that that would be forgotten. Then
[fol. 5530] my work was given to me and my checks came back up.

Q. How many hours did you work when you got $17.34?

A. I think 45 hours.

Q. How many hours did you work when you got $21.71 the next week? A. 45.

Q. And the next week $22.39? A. 45.

Q. And the next week $25.85? A. 45.

Q. And the next week $25.61? A. 45.

Q. And the next week $29.92? A. 53 hours.

Q. And the next week $26.62?

A. I only had four days; that was 36 hours.

Q. What was the day you went to see Mrs. Hyde?

A. I don't remember that date. It was a few days after the episode of the petition and she called me down there but it was before I joined the union.

Q. Was anyone else there?

A. There was not anyone else in the office at the time.

Q. This petition of March 2nd that you signed and you have told the details about why your

name was eliminated, and the only objection
[fol. 5531] that you voiced was to the hours, is that right?

A. That is all I voiced but I did not feel as that petition read.

p. 1770 Q. Well, at least you voiced but one objection?

A. I did.

Q. And that was to the hours?

A. Yes, sir.

Q. Had you ever complained to any superior about the hours and if so to whom?

A. I don't remember that I complained to the instructor.

Q. Please give me again the date when you joined the International?

A. The 23rd of March, 1937.

• • •

p. 1789 A. I don't know what the others make.

Q. Now, when you left here on April 23rd, did you want to come back to the Donnelly Company and work there?

A. I had worked there eight years, naturally I wanted to keep my job.

p. 1790 Q. The answer is then you wanted to go back and work at that same place, is that right?

A. Yes, sir.

• • •

[fol. 5532] p. 1791 Q. Anything else?

Denied J. C. B. Respondent objects to this question and moves that the answer be stricken as hearsay, not binding on respondent, what was said or done by the employees, immaterial and irrelevant, self-serving.

A Well, at this meeting that I spoke of they asked the girls to report to them any one whom they knew joined the union.

Q. Who told you that?

p. 1792 A. It was said in this meeting when—

Q. (Interrupting) What meeting?

A. When they read the letter from the I. L. G. W. U. demanding that their members be put back to work.

Q. Who said that?

Respondent moves to strike the following answer and all the preceding answers on this page for the reasons above given and because it does not appear who made the statements referred to and the answers are speculative and of no probative value.

Denied J. C. B.

A. I don't remember exactly who said that; there was different speakers and I can't remember just who said some of the things.

p. 1797 Q. Now, you told this convention down at Atlantic City that a majority—pardon me, I don't want to misstate this,—a majority of the girls in the factory must quit working. That would mean at least 650 wouldn't it would have to quit working after a few years, fading out before the gruelling task of that job. Now, I want you to name one that ever did?

A. Well, I had a nervous-breakdown myself and had to stay off for seven months.

Q. All right, that's one. Now, name anybody else?

A. I can't just name the girls who were off but during the time I heard frequent reports of girls who had had nervous breakdowns.

Q. Name any of them?

[fol. 5533] A. I can't recall their names right now.

Q. Can you name one?

A. Just myself.

Q. You came right back to work and did the same job again after your rest, didn't you?

A. I was off seven months.

Q. When was that, by the way?

A. It was from June I believe 1933 to January, 1934.

Q. You came right back and did the same job again?

A. Yes, sir.

p. 1798 Q. And stayed there four years more?

A. No, I wasn't there four years more, I don't think.

Q. Three: Senator Reed suggested four; I did not follow it in my mind. You stayed three years more?

A. I had to stay off another time for three months for the same reason.

Q. Is your case the only one you can name to support this statement that half, or I believe you say a majority of the workers have to quit and never can come back?

A. I know other girls who have had nervous breakdowns but I can't recall their names.

Q. You can't recall even the name of one, can you?

A. No, sir.

* * *

[fol. 5534] Redirect Examination.

By Mr. Walsh:

Q. You spoke of a meeting, that you were called downstairs to attend after the receipt of a letter from Mr. Perlstein in March, 1937, did you not? A. Yes, sir.

Q. You were asked who spoke at that meeting and you gave some things that were said. As a matter of fact, who spoke to the management at that meeting?

p. 1810 A. Well, the letter was read from the International Union to the Donnelly Garment Company and they asked that their members be put back to work.

Q. Who?

A. I don't remember exactly who read that letter but it was read in the meeting.

Q. Who all attended that meeting, how many employees attended that meeting?

A. Well, I couldn't say as to everybody but I think everyone was there.

Q. Was it held in a large room?

A. Yes, sir.

Q. Was there a large number present, of the employees? A. Yes, sir.

Q. I will confine you to anything that Mrs. Reed said at that meeting; did she make a speech?

A. Yes, sir, after they read this letter then Mrs. Reed made a speech and I remember one thing that she said about the union, she said that there would not be any union in the Donnelly plant and that neither Dubinsky nor any other "sky" could come in and tell her how to run her business.

Mr. Walsh: That is all.

* * *

(Witness Excused.)

[fol. 5537] (N. R. A.—J. M. C. Exhibit 13.)

Date 7/6/39— Witness

Extracts from Testimony of GERTRUDE GASSERT, called as a witness on behalf of Interveners.

Direct Examination.

By Mr. Patton:

p. 866 Q. Your name, please.
A. Gertrude Gassert.
Q. Tell us where you live?
A. 1326 East Armour, the Alexandria Apartments.
Q. In Kansas City, Missouri?
A. Yes, sir.
Q. What is your job?
A. I am in the accounting department.
Q. Of the Donnelly Garment Company?
A. Yes, sir.
Q. How long have you been employed there?
A. About two years and two and one-half months.

• • •

p. 869 Q. What happened at the organization meeting?
A. As I remember, Miss Todd presided at that meeting and everybody had been wondering if something couldn't be done in order that we could protect our jobs and she told us that a committee had been to see attorneys and that one of the attorneys was there present at that meeting and that he would talk to us and tell us what we were allowed to do according to the law, in order to protect ourselves.

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[fol. 5538] Extracts From Testimony of MARJORY GREEN, called as a witness on behalf of Interveners.

Direct Examination.

By Mr. Tyler:

p. 745 Q. Will you state your name, Miss Green, please?
A. Marjory Green.
Q. Where are you employed?
A. Donnelly Garment Company.
Q. Kansas City, Missouri?
A. Yes, sir.
Q. In what capacity?
A. I am a stenographer.
Q. How long have you been with that company?
A. About six years.
Q. Miss Green, I show you a document marked intervener's Exhibit No. 2 and ask you if you had anything to do with the obtaining of the affidavit, the signatures to the affidavit, to that document?
A. Yes, I did.
Q. Were you or were you not present at the time of the signing of those signatures?
A. I was present the entire time.
Q. Of all of the signatures?
A. Of all of them, yes, sir.
Q. Were they actually sworn to before the notary publics whose names appear?
A. Yes, sir.

p. 746 Q. Describe to the Court the circumstances under which those affidavits were taken, Miss Green?

A. The employees or members of the union rather, were asked to come to the first floor on their lunch hours, and I believe it was stated in the notice, explained a little bit what this affidavit was, and after they had assembled there it was either read to them if it was a large group or if it was just a small group they read it themselves, and they were told very plainly and it was made very clear to them that it was an affidavit and that only members of the union could sign it, and if they wished to sign it after reading it they could, but if they did not care to they were not to be forced to.

* * *

p. 748 Q. Were you present at the meeting at which
[fol. 5539] the Donnelly Garment Workers' Union was organized?

A. Yes, sir.

Q. What date was that held.

A. That was April 27, 1937.

p. 749 Q. Tell the Court what happened at that meeting.

A. Well, Miss Todd acted as chairman of that meeting and she explained a little bit to us about what it was about, and Mr. Tyler, who we had previously hired as our attorney was there and he would explain to us what we could do in the way of protection, and Mr. Tyler did talk to us and he explained that since the Wagner Act had become constitu-

tional that we were legally entitled to form our own employees' union; that it was just as legal and just as valid as any other labor union and he was not trying to force us to do anything against our wishes but he believed we would get the protection we needed in this way, and he thought we could handle our own collective bargaining for ourselves through our representative and it would give us the protection that we wanted.

p. 750 Q. Was any vote taken?

A. Yes; the first vote taken was as to whether or not we should form our own plant union. That vote was made in the form of a motion and was seconded and carried, that we do form our own employees' union. Then the next vote, the name Donnelly Garment Workers' Union was voted on and that was carried and at that time or after that a motion was made that Miss Todd appoint a nominating committee of five people who would retire from the room of nine people who would act as officers of the executive committee, and that motion was made and carried and they retired from the room, and they were reminded of the different departments, to be sure to remember in making their selection,—the operators and the mechanics and the various departments, and while they were out of the room a card—well, first the card was read to them as a group and then these cards were later passed out among the employees, and this card read, as I remember, "I hereby agree to become a charter member of the Donnelly Garment Workers' Union", and the point was stressed very emphatically that they did not have to sign these cards; [fol. 5540] if they wanted to read it and think it over, and take all the time they needed, and in the meantime while they were thinking it over we would ask Mr. Tyler to read a set of by-laws which he had drawn up for our use, and if they wanted longer than that to think it over,

that was all right, and in the meantime then Mr. Tyler read the set of by-laws which he had drawn up and had all ready at this meeting, and he suggested that if these by-laws p. 751 would do at all that we adopt them and later they could be amended at our leisure, by a majority vote, and these by-laws the motion was made and carried that they be accepted as read. By that time the nominating committee had come back into the room and they submitted this group of nine people who were to act as officers of our union, and Miss Todd asked if there were any other names from the floor, or any objections to the names submitted, and there were none, and these people were voted on and carried. They were voted on as a group and carried, that they would act as our officers of our union, and just before the close of the meeting the cards which we had passed out were collected.

Q. Who counted those cards, if they were counted?

A. Miss Todd and I counted them the following morning.

Q. How many people had signed cards indicating a desire to become charter members of the Donnelly Garment Workers' Union?

A. 1303, I believe.

Q. How many employees did the companies have at that time?

A. About 1333 or 1335.

Q. Were those who did not sign cards at the original meeting later taken into the union, or not?

A. Yes, sir, they were given an opportunity when they returned to work; some were out on account of illness and then our salesmen were out on the road and when they returned they were given the opportunity of signing.

• • •

(Witness excused)

[fol. 5541] Extracts From Testimony Of Mrs. Lynn Davis, called as a witness on behalf of the interveners.

Direct Examination.

By Mr. Patton:

p. 833 Q. State your name, Mrs. Davis.
A. Lynn Davis.
Q. You live where?
A. 4517 Wornall.
Q. In Kansas City, Missouri?
A. Yes.
Q. What is your occupation?
A. I am an operator.
Q. You mean by that an operator of sewing machine?
A. Yes, sir.
Q. In a garment factory?
A. Donnelly Garment Company.
Q. How long have you been with the Donnelly Garment Company?
A. Ten years.

• • •

p. 836 Q. Will you say that any definite action was taken after that notice appeared in the paper?
A. Well, there was a meeting called or there was some employees that went to see a lawyer and to see what we could do about forming a union of our own.
Q. Did you go to see a lawyer?
A. No, I didn't.
Q. How did you know that some of them had gone to see a lawyer?
A. Just hearing it in conversation at the plant.
p. 837 Q. Now, you say there was a meeting called?
A. Yes, there was.
Q. Do you recall about the date of that meeting?
A. That meeting was the 27th of April.

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[fol. 5542] Q. What was said at that meeting, as well as you can remember?
A. Well, Miss Todd had charge of the meeting and she told us that they had gone to see these

lawyers and that she had asked Mr. Tyler to come down and talk to us.

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(Witness Excused.)

[fol. 5543] Extracts From Testimony Of Ora Wachtel, called as a witness on behalf of Interveners.

Direct Examination.

By Mr. Patton:

p. 824 Q. State your name, please.
A. Ora Wachtel.
Q. Where do you live, Mrs. Wachtel?
A. 2312 East 11th.
Q. And what is your occupation?
A. I work for the Donnelly Garment Company.
Q. How long have you been with them?
A. Eleven years.
Q. What work do you do there?
A. Through the busy season I assist on the floor, in slack season I am an operator.

• • • •

p. 828 Q. Tell us now in your own words what happened at that meeting?
A. Well, a group or committee had been to the lawyers and had the lawyer come talk to us that day. Miss Todd, she was in charge of the meeting and she got up and talked and explained to us that she had the lawyer there to tell us what we could do. The lawyer got up and talked to us and explained to us the Wagner Act which had become a law, and told us we could have our own employees' union under the Wagner Act, and then we voted that we have a union. Everybody voted yes. There was no nos. And then there was a nominating committee appointed by Miss Todd and instructed to select a chairman for each division in the factory, and they were voted and elected.
Q. What was said, if anything, with reference to a name for your organization?

A. I don't know who suggested the name but it was suggested and voted.

Q. And how was the vote on that, if you recall?

[fol. 5544] A. Everybody voted yes.

Q. Do you remember whether there were any cards passed?

A. Yes, sir.

Q. Do you recall what was on the cards?

A. Something to the effect that we agreed to become charter members of the Donnelly Garment Workers' Union and abide by its by-laws.

Q. Do you recall anything that was said in connection with handing out those cards?

A. Well, we were instructed to take our time and make up our minds, to make up our minds as

p. 829 we pleased on that; to wait until the next day and take them home and talk to anyone we wanted to talk to about it, and take our time, to make up our minds before we signed that card.

Q. Was anything said one way or the other to the effect that you were free to join or not join, just as you saw fit?

A. Yes, sir, there was.

Q. Just tell what was said.

A. Just said there was no one forcing us to do this—it was of our own free will, if we wanted to sign that card we could do that of our own free will.

Q. Did Mr. Tyler say anything about whether or not you were at liberty to do as you pleased about forming a union or joining it?

A. He did; he said he was there to explain the law to us.

Q. Did he make it clear that you were at liberty to do just as you pleased on his recommendation?

A. Yes.

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[fol. 5545] Extracts From Testimony Of Mrs. Velma Woolley, called as a witness on behalf of the interveners.

Direct Examination.

By Mr. Tyler:

p. 805 Q. Will you state your name please, so the Court and everybody can hear it?
A. Velma Woolley.
Q. Miss or Mrs.?
A. Mrs.
Q. Where are you employed, Mrs. Woolley?
A. At the Donnelly Garment Company.
Q. How long have you been employed there?
A. About ten years.
Q. In what capacity?
A. I am an operator.
Q. How long have you been an operator?
A. Ever since I have been there.

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p. 808 Q. Did you join the Donnelly Garment Workers' Union?
A. Yes.
Q. What was your reason for joining?
A. Well, to afford ourselves protection from an outside union.
Q. What outside union?
A. The ILGWU.

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(Witness Excused.)

[fol. 5546] Extracts From Testimony Of Jack Mc Conaughey, called as a witness on behalf of the interveners.

Direct Examination.

By Mr. Tyler:

p. 776 Q. State your name to the Court.
A. Jack McConaughey.
Q. And you are connected with the Donnelly Garment Company?
A. Yes, sir.
Q. In what capacity, Mr. McConaughey?

A. I am in the accounting department. Up until the last month I was in the mechanical department; the last month I have been transferred to the accounting department.

Q. What do you do in the accounting department?

A. At the present time I am working on social security report for the first of the year.

Q. How long have you been in the employ of the Donnelly Garment Company?

A. It will be nine years in July.

Q. And have you held any other job down there except the two you mentioned?

A. Yes, sir; I started in as a bundle boy and from there I was transferred to the service department, and then I became a mechanic, and recently I have been transferred to the accounting department.

* * *

p. 779 Q. Do you remember any meeting of employees at which a plant union was organized?

A. Yes, sir, I do.

p. 780 Q. What was the date of it?

A. It was April 27, 1937.

* * *

Q. What kind of notice was given of that meeting?

A. Well, I have a house phone, one of our interdepartmental phones in our department, and I was called by the telephone operator to the effect that there would be a meeting and would I please inform the people in my department of that fact, and I did.

Q. Who was it called you, do you know?

[fol. 5547] A. It was Miss Mertel, the telephone operator.

Q. Who attended that meeting in general—not the names.

A. All the employees—well, there was a mass meeting of employees; there were not any executives or anything of that sort; we were merely interested in our employees at that time, and I would say there were around 1300 people there.

p. 781 Q. What was the date of this meeting?
A. April 27th.

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(Witness Excused.)

[fol. 5548] Extracts From Testimony Of FRED B. BROWN, called as witness on behalf of Intervener.

Direct Examination.

By Mr. Tyler:

p. 703 Q. Will you state your name, please?
A. Fred B. Brown.
Q. You are connected with the Donnelly Garment Company.
A. Yes, sir.
Q. In what capacity?
A. Cutter.
Q. How long have you been with them, Mr. Brown?
A. Nineteen years and eight months.

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p. 706 Q. Do you remember the publication in the newspapers of the Supreme Court's action on the United States Labor Relations Act?
A. Yes, sir.
Q. Before that time had anybody so far as you know ever had any idea of forming a labor union of their own there?
A. No, sir.
Q. When was the first time that idea was suggested, to the best of your knowledge.
A. After the Supreme Court had declared the Wagner Act constitutional.

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p. 713 Q. Do you remember about how long after the union was organized that working agreement was presented to the employers?
A. It was about a month after.
Q. Where was that presented and that working agreement made?
A. In Mrs. Reed's office.
[fol. 5549] Q. Who was present?

A. The entire first committee and Mrs. Reed, Mr. Green, Mr. Batey, Mr. Keyes, Mr. Ingraham, Miss Todd, Mamie Riddle, Jack McConaughey, Hobart Atherton, Charlotte Casey.
Q. Was I present?
A. Yes, sir, Mr. Tyler was present.
Q. Tell the Court what was done at that meeting.
A. They gave this working agreement to Mrs. Reed and her associates and she asked to read it over and would let us know later on what they would do about it.
Q. What did they do about it?
A. They took it and took it into consideration,
p. 714 and at two o'clock they called us together again, and that is when the agreement was signed.

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[fol. 5550] Extracts From Testimony Of HOBART ATHERTON, called as a witness on behalf of the Interveners.

Direct Examination.

By Mr. Tyler:
p. 718 Q. State your name?
A. Hobart Atherton.
Q. Are you connected with the Donnelly Garment Company?
A. I am.
Q. In what capacity?
A. I am employed in the maintenance department.
Q. How long have you been with that company?
A. Approximately six years.

• • •

p. 720 Q. Did anything happen in April which threw a possible new light on the situation?
A. Yes.
Q. What was it?
A. April 12th in the editions of the Kansas City Star there were enormous head lines stating that the Wagner Act had been declared constitutional, that we, as employees, had a right to
p. 721 self-organization and that it was his opinion

he would be much better able to give us the protection we wanted if we did have a labor organization.

* * *

p. 731 Q. Were you present when that working agreement was presented to the Donnelly Garment Company?

A. I was.

Q. Where was that done?

A. That was done in Mrs. Reed's office on the 10th floor of the building.

Q. Who was present?

A. Present at that meeting were Mrs. Reed, Mr. Green, Mr. Baty, Mr. Ingraham and Mr. Keyes, representing the Donnelly Garment [fol. 5551] Company and the Donnelly Garment Sales Company. Representing the Donnelly Garment Workers' Union were Miss Todd, Mrs. Ormsby, Mrs. Casey, Miss Green, Mr. McConaughy, Mr. Brown, Mrs. Richards, myself and Mr. Tyler.

Q. What happened at that meeting?

A. The contract was presented to the parties, the employers, and was discussed at some length. They said that they would like time to discuss it among themselves and on the whole the terms that we asked and the working contract as we had presented it was acceptable to them but they might want to make some changes in phraseology to clarify the contract. We were asked to leave it with them and they would return later that afternoon with their answer. About two o'clock that afternoon we met again with the representative of the Donnelly Garment Company and the Donnelly Garment Sales Company and were told that the contract was acceptable and it was then signed by representatives of both companies and by the executive committee of the Donnelly Garment Workers' Union.

* * *

(Witness Excused.)

[fol. 5552] Extracts From Testimony of MABEL RIGGS, called as a witness on behalf of the interveners.

Direct Examination.

By Mr. Tyler:

p. 757 Q. Will you state your name?
A. Mabel Riggs.
Q. Are you employed by the Donnelly Garment Company?
A. I am.
Q. How long have you been employed by them, Mrs. Riggs?
A. A little more than nine and one-half years.
Q. In what capacity?
A. I work in the pattern department; that is a part of the designing department.

• • •

p. 761 Q. Do you recall the meeting at which the Donnelly Garment Workers' Union was organized?
A. I do.
Q. What was the date of it?
A. You mean the organization meeting?
Q. The organization, the date the union was organized.
A. That was April 27, 1937.

• • •

p. 763 Q. Who presided at that meeting?
A. Miss Todd.
Q. Tell the Court what happened at that meeting, just as you remember it.
A. Miss Todd called the meeting to order and said, "I know that you are anxious to know what progress we have been making", or something to that effect, "in taking measures to defend ourselves against this calamity which has been happening to our friends down in the other part of town," or something to that effect, and I think she told us at that meeting again, or probably she had told us before but I just knew it before, that we had

[fol. 5553] employed an attorney and he would speak to us later in the meeting. There was other things—I mean there was a continued conversation, I mean continued statement of various things. People were—

Q. A little louder, please.

A. People were assembling. I am trying to think and I am not thinking out loud, either. Something was said I think in the course of the meeting, about our being able to form our own union because it was now the Wagner Act had passed the Supreme Court and they declared it valid and we could form a union of our own; this would give us a little more protection, or rather do more things for us than the injunction which we had been trying
p. 764 to obtain. A motion I think was made at this time that—I was not in the room all the time; a motion was made that we form our own independent union. It was seconded and carried. Then a name was proposed, I mean we must have a name for it of course, and I think the name Donnelly Garment Workers' Union was proposed. It was voted upon and carried unanimously. Then I believe Miss Todd asked that she be given the power to appoint a committee—a nominating committee to propose the names of chairmen for certain or all departments and she did, that was voted on, I think, and she was given that privilege and she appointed a committee.

Q. Do you remember who that committee was, Mrs. Riggs?

A. The committee was Lyle Jeters, Cordelia Porter, Mrs. Moore, Carl Crawford and I.

* * *

p. 770 Q. Did you remember the circulation of a petition on or about March 2nd, 1937, in which the employers assured Mrs. Reed they did not want any outside domination?

A. I do remember that.

Q. Did you sign it?

A. I did.

[fol. 5554] p. 771—Q. Do you have any knowledge of an affidavit circulated in the plant or which employees at the plant were given an opportunity to make about two weeks ago?

A. Yes, I remember that.

Q. Did you make that affidavit?

A. I did.

• • •

Q. Describe to the Court the way in which that affidavit was made in your presence, how was it done?

A. It was, to begin at the beginning, I read an I. D. M. that was sent to our department.

Q. What does I. D. M. mean?

A. That is the notice sent around; I think it was typewritten on pink paper, regular I. D. M. paper, and signed—I don't think it was signed, just saying we would be given an opportunity to sign the affidavit that day at noon.

Q. Did you know what affidavit it meant?

A. I did. I don't think—I don't know how I knew, but I did.

• • •

(Witness Excused.)

[fol. 5555] (N. R. A. — J. M. C. Exhibit 14.)

Date 7/6/39 — Witness .....

Objection Of Respondent To Testimony Of Gertrude Gassert, Et Al., Offered By The Board From The "Judge Miller Testimony."

Respondent objects to the testimony offered by the Board of extracts from the testimony of Gertrude Gassert, Marjory Green, Mrs. Lynn Davis, Ora Wachtel, Mrs. Velma Woolley, Jack McConaughey, Fred B. Brown, Hobart Atherton and Mabel Riggs, taken before Judge Miller in the District Court of the United States for the Western Division of the Western District of Missouri, in the case entitled Donnelly Garment Company, et al., vs. International Ladies' Garment Workers' Union, et al., No. 2924, which testimony is contained in N. R. A. & J. M. C. Exhibit 11-A to R at pages 1 to 18 inclusive, and to each and every question and answer thereof, as immaterial, irrelevant and not binding on respondent as to any of the issues herein for the reason that respondent had nothing to do with the formation of the Donnelly Garment Workers' Union or with its meetings and under the National Labor Relations Act, respondent's employees had a right to form their own union and choose representatives for purposes of collective bargaining, and respondent should not be held responsible for what the employees did in those respects, and said testimony relates to those matters and does not tend to prove any charge against respondent contained in the Complaint herein. Respondent further objects on the ground that said testimony is hearsay.

Objection is overruled and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings.

Dated: July 5, 1939. James C. Batten, Trial Examiner.

Further: It is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects.

[fol. 5659] (N. R. A.—J. M. C. Exhibit 17.)

N. R. A. Hearing.

p. 92 TILLIE F. SHIRLEY, witness

p. 93
Q. (By Mr. Rucker) Your name is Tillie Shirley?
A. Yes.
Q. Were you recently employed by the Donnelly Garment Company?
A. Yes, sir.
Q. How long did you work for them?
A. Just about 3 years.
Q. When did you go to work, if you recall?
A. Well, I think it was in January or February of 1931.
Q. 1931?
A. Yes.
Q. When were you laid off?
A. October 4, 1934.
Q. During the time which had elapsed from your first employment until the time you were laid

off, were you laid off intermittently and for short periods?

A. Only when the section was laid off for a week or two at a time.

Q. Did you get any vacations during the time you worked there?

A. Two years a vacation.

Q. With pay?

A. Yes.

Q. Do you recall the terms of vacation pay?

A. Well, the first one I do not. I think the last one was $15.

Q. No, the terms, I mean, What entitled you to your vacation?

A. Well, for going to work steady and not losing out more than 11 days in a year.

Q. Not more than 11 days in the year?

A. Yes.

Q. And of the three years you worked there, two of those years you received a vacation with pay?

[fol. 5560] p. 93 A. Yes.

Q. So you lost less than 11 days each year?

A. Yes, sir.

Q. Do you recall now just how many days you did lose?

A. Well, I think last year's was 8 days.

Q. And the year before do you recall?

p. 94 A. I don't remember.

Q. Now, when did you actually join the union? When were you taken in?

A. Last May.

Q. May 1934?
A. Yes.
Q. Well, do you mean you were actually taken in then, or did you sign an application then?
A. Well, I signed the application in May.
Q. Signed the application in May?
A. Yes, sir.
Q. Now, when were you finally taken into the union, if you know?
A. I think early in October.
Q. October 1934?
A. Yes.
Q. That was after you were discharged?
A. Yes, sir.
Q. All right. Now, had you talked about union activities there among the girls?
A. Yes, sir.
Q. Had you let it be known that you intended to join the union and had made an application?
A. Yes, sir.
Q. Did you suggest to other employees that the union would be a splendid organization for them?
A. Yes, sir.
Q. Now, did you ever have any complaint of any kind with any of your superiors down there?
A. I never had; no, sir.
[fol. 5561] p. 95 Q. Did you make your code?
A. Well, most always.
Q. How many times would you say you failed to make it?
A. Well, I don't remember just exactly.
Q. Do you know of any employees who have been there as long as you had been there who have been laid off permanently who were not either members of the union or persons who were openly saying that they were going to join the union?
A. No.

p. 113 The Witness. I know I went to see Ella Mae Hyde as to why they hadn't called me back.

Q. (By Dir. Pratt) When did you do that?

A. About 2½ months after I was laid off.
Q. During the month of December 1934?
A. Yes, it was sometime in December, I think.

Mr. Reed. I didn't get that question.

Dir. Pratt. She just stated she went to see Ella Mae Hyde 2½ months after she was laid off as to why they hadn't called her back. Now go ahead.

The Witness. And I asked her if they had anything against me or if I had done anything wrong as to why I wasn't called back to work; and she said, "Positively no", they hadn't nothing against me at all. And I asked her if my work had been satisfactory and all, and she said it had, that it had been very satisfactory. And she promised me she would call me back, and asked me if I changed my address to let her know, but up to this day I haven't heard from her.

[fol. 5562] N.R.A. Hearing LILLIAN RUTHERFORD—Witness

(By Mr. Rucker.)

p. 115 Q. Your name is Lillian Rutherford?
A. Yes, sir.
Q. How long were you employed at the Donnelly Garment Company?
A. I started there in the spring of 1925.

p. 117 Q. (By Mr. Rucker) Now, when you went back to work in March 1931, for what period of time were you employed?
A. Well, up until I was laid off in July.
Q. July when?
A. Well, around the 10th, I think it was.
Q. 1934? A. Yes, sir.

p. 119 Q. Now, who was your instructor?
A. Mrs. White.
Q. Did you have any talk with Mrs. White about your average and as to whether or not your work was satisfactory a short while before you were laid off?

A. Yes, sir.
Q. Did she make any complaint of any kind to you with reference to the character of your work? A. No, sir.
Q. Now, did you ever make over what is known as the code price there? A. Yes, sir.
Q. Now, was there any policy of the company with reference to making a change in price if the operators generally made over the code price? A. Yes, sir.
p. 122 Q. Now, what I want to know is when you became interested in the formation of a union among the Donnelly employees.
p. 122 A. Well, I have always been in favor of it, and when I heard of it, why, I was more in favor of it because I was in hopes that we would have a union shop.
[fol. 5563 p. 122 Q. Now, when was that? That's what I want to know.
A. Last spring.
Q. That's the spring of 1934? A. Yes, sir.
Q. In other words, the spring before you were laid off in July? A. Yes, sir.
Q. Now, during the time after you became interested in the spring of 1934 in forming a union among the employees of the Donnelly Company and until the time you were laid off, did you talk unionism during the noon hour and among your coemployees?
A. Yes, sir.
Q. Did you ever sign an application card to become a member of the union? A. Yes, sir.
Q. Do you remember when you signed that card?
A. In November.
p. 123 Q. You didn't sign the card until you actually joined, then?
A. No, sir.
Q. Did you know the fact that they were talking about forming a union? A. Yes, sir.
Q. How did it happen that you didn't sign a card prior to that time?
A. Well, we were just waiting to get our charter.
Q. How many did it take? Do you know?

A. No, I don't.
Q. You don't know that. Did you have to have a certain number before you could get a charter? A. Well, I think so.
Q. Is that what you were told? A. Yes, sir.
Q. But you don't remember the number? A. No.
Q. Now, were you ever complimented by any of your instructors on the character of your work?

[fol. 5564] p. 123 A. Yes, sir.
Q. Now, after you were laid off, did you go back to the factory to talk to anybody about your reemployment?
A. I went back to be employed.
Q. What's that? A. Yes, sir.

p. 124 Q. To whom did you talk?
A. To Mrs. Wherry and to Ella Mae.
Q. Ella Mae whom? A. Hyde.
Q. Was her name Guerrant at one time?
A. Yes, sir.
Q. What conversation did you have with either of these ladies?
A. Well, I asked for work, and they said that they was shutting down the section and they couldn't take any on, but said they would later, that it wouldn't be very long. And then I went back, and Ella Mae Guerrant tried to place me, and I was there an hour, waiting for her to place me, and she couldn't find a machine, so she told me to call in Wednesday. And I called in, and she tried to place me then, and she couldn't, and she said, "Call in Thursday."

And I called in, and I also asked them if they had anything against me; if they intended to hire me back or if they didn't intend to hire me back, because I didn't want to be bothering them in calling them up; and they said nothing at all. So then I called in Thursday, and Ella Mae said she would advise me to get employment some place else. And I said, "Well, that's kind of hard to do. When

you tell them you have been to a place 9 years, they will wonder why you are not there."

[fol. 5565] N. R. A. Hearing MRS. REEVES' testimony

p. 285 Q. Now, Virginia Stroup did call upon you to take up the question of Pauline Lutz's discharge, didn't she?

A. Yes, she did, on company time.

Q. She called on you on company time?

A. Yes.

p. 288 A. When she left here, we have a rule of the Donnelly Garment Company that we ask all of our girls to wear white uniforms. Monday morning when she came to work after the Labor meeting she came down here, the hearing was set for ten o'clock Monday morning and it was postponed and she came in at noon and she refused to change her suit. She had on a brown suit and she would not change her suit. That is just one thing. She had repair work brought back to her and her instructor reported to me that she had to insist upon Virginia fixing her own repair work.

I have been over there and Virginia has talked to me repeatedly about this Pauline Lutz and I have refused to discuss it with her and she has not been very nice in her attitude at all.

Q. You expect to discharge her on account of it?

A. Well, if Virginia continues her present actions I am afraid that the Donnelly Garment Company will be forced to discharge her on account of her insubordination.

Q. But you said her work was satisfactory?

A. I have not. I said that Virginia was not a very good operator. I think that Virginia can do good work if she wants to and if she keeps her mind on her work, which she has not been doing recently.

[fol. 5566] N. R. A. Hearing LOU PERKINS witness

p. 713 Q. (By Mr. Rucker) State your name, please.
A. Lou Perkins.
Q. How old are you?
A. 50.
Q. How long did you work for the Donnelly Garment Company?
A. Well, I worked for the Donnelly Garment Company about 18 months steady, is the longest I worked there steady.

p. 715 Q. (By Mr. Rucker) Now, did you become interested in union activities down there?
A. Yes, sir; I talked union.
Q. When?
A. Well, last spring when I was working there.
Q. Did you go out to some of these meetings they have been talking about?
A. I didn't go to any of the meetings.
Q. Did the girls talk to you about them?
A. Well, Kate Jenkins talked to me about the meetings.

p. 716 Q. Who else talked union to you?
A. Well, Thelma.
Q. Thelma Owen?
A. Yes.
Q. Anybody else that you can recall:
A. I don't recall, but there was several.
Q. There were several whose names you do not recall?
A. Yes.
Q. Now, had you ever had any trouble with any of your instructors?
A. No, sir; I never did.
Q. As I understand it, you joined the union in October after you were laid off?
A. Yes, sir.
Q. Were you ever questioned about your union
[fol. 5567] connections by any officer of the company down there?
A. Well, last spring we had to fill out applications, and on the blank the question was asked where we had worked during our lay-off there.

And I had worked at Mary Dean's, and that was during the strike at Mary Dean's that I was called up to Mrs. Reeves' office. And I don't remember just the conversation, but she wanted to know when I had worked at Mary Dean's, and said Dean Jones had called and said they were taking all of their girls.

Q. What did she ask you about your work at Mary Dean's? Did she ask if you belonged to the union when you worked for Mary Dean's?

A. I don't remember.

Q. Did she ask if you went out on strike?

A. Yes; she wanted to know if I was out on the strike at Dean's.

Q. (By Mr. Rucker) Now, you make that in your statement. Can you give the Board any more detailed information?

A. She just wanted to know if I was out on that strike, because he had called in and said they were taking their old girls, and she wanted to find out if I was one of them, but I wasn't.

Q. Now, tell the Board whether your work was made harder for you after you began talking favorably about the union.

A. Well, they didn't call me back to work, but I went back. It was either in July or August. But they took me back, but they didn't give me no steady machine. They just put me from one section to another and gave me different work all the time, you know, and that made it harder for me.

Q. Did you have difficulty making your code.

p. 718 A. Oh, yes; I couldn't make my code doing that.

Q. You couldn't make it that way?

A. No.

Q. Let me get this straight. I don't get it right. You worked for Dean's, and there was a strike. Now, when was that strike?

A. That was in last March.

Q. (By Dir. Pratt) That strike was February 7. Now, were you employed at the Mary Dean Company at the time that strike was on?

A. No.

Q. You were not there?

A. No, I wasn't there.

p. 720 [fol. 5568] Q. And you went back to work, and the only thing you have to complain about here is that you say they changed your work?

A. Yes, they did in July, and finally let me out and didn't give me any work at all.

Q. They let a lot of people out at the time you were let out?

A. I don't know about that particular time. Sometimes there was.

Q. Well, you know there was a shortage of work that summer and a great many people were let out?

A. That was in 1934?

Q. Yes.

A. Yes.

Q. You knew that, didn't you?

A. Well, I know when they shut down the section that I was working in, why, there was a lot let out at that time. But when they let me out the last time, I don't know about that.

Q. There were some other sections closed at that time, weren't there?

A. No.

Q. Wasn't that the way you understood it?

A. Not in July, no.

Q. (By Dir. Pratt) Did they close your section in July, when you were let out?

A. No.

Q. The last time you were there, you were just one laid out of the section?

A. Yes. From one section to another.

Q. (By Mr. Reed) But other sections were closed down, weren't they?

A. No.

Q. You don't remember?

A. No, sir.

p. 722 Q. (By Dir. Pratt) You were the only one laid off out of your section the last time, is that right?

A. I wasn't put in any particular section. I was just changed from one section to another; not given any steady machine.

[fol. 5569] Judge Miller Testimony Rose Todd—Direct

p. 1036 Q. Will you state your name, please?

A. Rose Todd, 3401 Central, Kansas City, Missouri.

Mr. Walsh: I desire to object this time to the introduction of any testimony respecting the formation of the Donnelly Garment Workers' Union on the ground it is incompetent, irrelevant and immaterial in this case, and on the ground that the only forum in which this matter can be litigated or decided is before the National Labor Relations Board, and that the District Court, this Court, has no authority in a case of this character to make any finding whatsoever under the rulings of the Courts of this country.

p. 1038 Q. In what capacity did you work for the Gernes Garment Company?

A. Not in the capacity for which I was employed. I did work there part of the time for several weeks, or probably I should say a few weeks, in taking charge of their plant, and then I was a salesman on the road, representative for them following that period.

p. 1065 Q. I will give them to you and you state the departments they represent as I name them. Rose Todd?

A. Just a general person through the production department, the department I am connected with.

Q. By the way, please describe the work you were doing then for the Donnelly Garment Company; what was the nature of it?

A. I was helping in the department where we make our first models; you might say assisting the person in charge of that department, the sewing of our first models, the first dresses that are made.

p. 1084 Q. I will ask you, Miss Todd, to cast your mind back to the occasion of the first meeting of the Donnelly Garment Workers' Union in which you said that the telephone was used to give notice of the meeting. In giving that notice, whom did you call to the telephone, any particular grade of instructor or assistant?

A. No. In using our house telephone system in that manner, we have what we call floor girls or thread girls in each department. It is absolutely her duty to answer the 'phone and convey any message that might be given. That was what was done. The telephone operator called and said there would be a meeting on the second floor after work for the employees.

[fol. 5570] N.R.A.

p 1113 Dir. Pratt. Mr. Rucker, the attorney for the complainant union, has requested the opportunity of offering certain rebuttal testimony at a later session.

The Board has determined, in view of the fact that this hearing has consumed many days and many pages of testimony, to permit Mr. Rucker to furnish it a statement of what testimony he desires to offer.

The Board will read the record, and if, after considering the testimony already given, it feels it desirable to have the additional rebuttal testimony proposed to be offered by Mr. Rucker, an opportunity will be given for such testimony to be offered. If it does not see fit or think desirable to have such testi-

mony offered, there will be no further hearing, and the close of the testimony today will mark the close of this case.

Ample notice will be given to all parties if any further session is felt necessary.

Mr. Reed. Of course, it must be understood, along with that, that if Mr. Rucker offers any further testimony we will have the right to surrebuttal.

Chairman Birkhead. I think that that's agreeable, yes.

p. 1114 Mr. Rucker. I have no desire to keep out any testimony.

Chairman Birkhead. We want the record to be complete in every way.

Mr. Reed. Well, it is not complete and will not be complete until such thing as Mr. Rucker contemplates is taken up.

And we will be given notice, of course, whether the case is to go on further and what time that the Board determines that the case is closed.

And we would like to have one thing further: We would like to have a copy of this statement that has been made here.

Mr. Rucker. I expect to give you a copy of the statement.

Mr. Reed. A copy of this order that is being made now. We would like to have a copy of it.

Mr. Rucker. I expect, as a matter of course and routine, to mail it to your office.

Mr. Ingraham. I want to offer also the order of the codes of fair competition for the Donnelly Garment Company.

Mr. Reed. Both of them must go in, the original order and the modified order, because they are not clear unless they are both in.

Mr. Ingraham. I don't have the other one here now.

Mr. Rucker. It is understood both orders are in. If you haven't got them here now, bring them in later.

(The order presented by Mr. Ingraham at that time was marked "Respondent's Exhibit No. 25" and received in evidence.)

(Whereupon, at 12:20 a. m., Saturday, May 25, 1935, the hearing in the above-entitled matter was closed.)

[fol. 5571] Judge Miller testimony

MRS. REEVES—Redirect.

p. 55 Q. (By Senator Reed) Before reading formally this exhibit, I want to return to a matter I overlooked for a moment. You testified, Mrs. Reeves, the company undertook to fix the piece work prices so that an ordinary operator could make $20.00 a week; a competent operator $25.00 a week and from that up. Now, how are the prices fixed on the particular pieces of work, so that the operator can receive the compensations? How are they fixed?

p. 56 A. After a garment is designed, that particular garment is analyzed very thoroughly by Mrs. Nichols, who was a former piece work operator; Josephine Spallito, a former piece work operator; Rose Todd, a former piece work operator. Prices are then discussed with the operator, and also the instructor, and everything is taken into consideration—that some material is harder to handle and so forth;

priced in such a way that an efficient operator can make from $25.00 to $50.00 a week; a less efficient operator $20.00 to $25.00.

Q. If there is any employee who thinks the price is too low, what redress does she have?

A. She discusses it with people who set prices,—Miss Todd, Mrs. Nichols, or her instructor, and the thing is gone into very thoroughly.

p. 60 Q. (By Senator Reed) Who has complete charge of the making of the piece rates after the report is made by this committee?

A. Mrs. Nichols.

p. 115 Q. Before the lay-off was made—I am speaking now of the general lay-off of this character, are these—is any investigation made outside of their record that they have made with the company?

A. Well, we consult with different people, the different instructors who have worked with the operators to see if they are adaptable, and can be changed, or if there is any possibility of using them on other machines and we have gone into it very thoroughly.

Q. When you let out this approximately 124 in July, I believe you said 115,—when you let them out did you take into consideration anything except the lack of work and the other considerations you have just mentioned?

Mr. Walsh: I would like to object to that. If my memory serves me this witness said the decisions as to who would be let out were made by a committee.

Senator Reed: She didn't say exactly that.

(Last question read by the reporter).

A. That was the only thing we could take into consideration.

p. 292 Q. Do I understand that these notices about the greater number of hours would be put on a bulletin board in writing?

A. Either that, or sent through the sections on the I. D. M.

Q. The I, D. M. What is that?

A. Inter departmental memo.

[fol. 5579] In Judge Miller's Court.

CLIF LANGSDALE—witness.

p. 2403 Q. Will you kindly point out to the Court as briefly as you can, now, what was said at that conference that is not stated in Plaintiff's Exhibit No. 112?

A. I will do my best, but the transcript is so far short of what was said at that conference that it will be difficult. You will note that this transcript is about twenty-nine pages, as I recall it. This conference lasted about three hours. Most public stenographers have told me—

Senator Reed: Wait a minute—

A. (continuing) It is my knowledge that most conferences of this character will consume forty pages an hour, at least. Here are twenty-nine pages which purport to cover three hours; so in that respect it is far short of covering the whole conference. There were many things said there that afternoon that are not recorded in this transcript and many things that purport to have been recorded that were not said as they are here set out.

Q. First let me ask you this, Mr. Langsdale, had you been advised before you went to Senator Reed's home or did you become aware after you got there during any of the three or four hours that this conference lasted that there was a stenographer seated in the breakfast room taking down a transcript or a purported transcript of what was being said?

p. 2404 A. Certainly not. I was in another lawyer's home and I did not expect that kind of a thing to be done to me.

Q. Just go ahead and detail the deficiency in that transcript.

A. I might state, generally, that I went there for the sole purpose of seeing whether or not—

Senator Reed: I object to that as not responsive to the question.

A. I stated generally in the conference that I was there for the purpose of seeing if we could arrive at the settlement of the controversy that was then pending before the Labor Board. I did not have authority to talk settlement of the injunction suit. Mr. Perlstein is the one who gave me the authority to go to the conference at all and with the specific limitation that we talk—I won't say the specific limitation, but the only thing we had in mind was to talk about settling the charges we had filed against the Donnelly Company before the Labor Board.

p. 2405 A. At any rate, when we got there I stated to the Senator and others present—in the first place, I didn't expect to find Mr. Tyler there.

Senator Reed: Who?

A. Mr. Tyler, representing the company union. I objected to his presence in the conference at the very outset. I told the Senator I did not come out there to confer with any representative of a company union, and that I did not want to take any part in a conference in which Mr. Tyler was present. I stated this was a company union and the International would not deal in any manner, shape, or form with a company union. The Senator said, "How do you know it is a company union, Clif?" I said, "Senator,"—and this is not in the transcript—"I did not come out here to argue that matter with you. I have been in this business a long time and I know a company union when I see one, just like you know a [fol. 5580] p. 2405 [Sheperd] dog when you see one." That part

is left out. A number of times during the conference the Senator recalled the statement about the Shepherd dog. At no place in this transcript do I find any reference to it.

p. 2406 Here is a statement on the second page of this transcript in which I say, "Nothing in what I OK'd that said anything about any speed-up system", referring to the letter that I did OK to be used in contacting the customers. I said nothing about any speed-up system. This transcript has me saying, "Personally I wouldn't approve it." I think what I said was that personally I did not approve of their saying anything about the speed-up system in their contact with the customers. I told the Senator that I from my long experience representing labor unions and in view of Judge Collet's order did not want them saying anything to the customers that was in any way controversial, and it was controversial as to whether or not they had a speed-up system.

p. 2407 Q. Was anything said out there, Mr. Langsdale, that day about turning the matter over to Mr. Hogsett to settle, and if there was state whether or not it appears in that transcript?

A. Yes, there was something said about that and it does not appear in the transcript. Towards the end of the conference the Senator kept pressing me to tell him what facts I had from which I drew the conclusion that this was a company-dominated union. I said to the Senator, "The personal [equasion] enters into this with you, Senator. It is your wife's business and I think the personal [equasion] ought to enter into it. But I can't tell you all of the things your wife did to dominate this union, to keep them from joining the International. If you will turn this matter over to Mr. Hogsett, he and I can get together quickly on it, if you will give him carte blanche. The Senator said he would not give anybody carte

blanche. Mr. Hogsett spoke up and said he wouldn't take it on that basis. There is nothing of that in here.

Q. Did that conversation last for some little time?

A. Not much longer than it has taken me to tell it here.

Q. There is nothing with reference to that matter in this transcript?

A. Not a thing. On another page, what has been marked Page 4 on my transcript here, Mr. Reed says, "But you are thinking about this from the standpoint of your case down here that you are threatening to file charges—or they have been filed. But any settlement of those matters would be an innocuous thing that would not bring peace if these other matters remained to be threshed out." That recalls to my mind the fact that at one stage of the conference the Senator said he might agree to disestablish this union and post the notices required by the Labor Board, although he did not think they had done anything that required it; he said they had not dominated this company union and it was not an illegal union under the Wagner Act, but, nevertheless, to settle the matter he might agree to that if we would agree to some settlement of this injunction suit. That came in about where this statement was made: "But any settlement of those matters would be an innocuous thing that would not bring peace if these other matters remained to be threshed out." Then the transcript continues, "Now the object in having Mr. Langsdale here", this is Senator Reed supposed to be talking, "I take it, is to cover these matters. Now if we could [fol. 5581] p. 2408 satisfy the International and satisfy ourselves at the same time so that we should wipe the slate and we could then say if we make certain concessions here which we don't think we ought to make in the interests of

peace, we want peace." The transcript then has me say, "I am here to get your idea as to what you think this settlement should be." I am sure in that connection I said "this settlement of the labor controversy." I did not leave it as they have it so that it could be interpreted as though I was talking about the whole matter.

p. 2409 On what I have marked as Page 5 of the transcript they quote me as saying, "There are a lot of things they did that I advised them particularly not to do." I have no recollection of saying anything like that. If I did say it, what I meant was they had a lot of things in this letter they brought to me which they wanted to use in contacting the customers which I advised them not to put in the letter.

Q. With reference to the use of the controversial matters?

A. Yes. I advised them to leave out all statements as to wages, the health of the employees, as all of those matters were highly controversial. I did not think there [out] to be any letter which would be circulated among the customers in view not only of Judge Collet's order but in view of the possibility of an order in any other court.

On Page 10 they quote me as saying, "I say to you now that we agree with you that this company has no speed up system and we [out] to quit saying that you pay lower wages." What I said in that connection was that we ought not to put that in a letter that would be circulated among the customers. I never said this company did not have a speed-up system, and I never said they did have. I did not say anything to Senator Reed about the wages paid by the Donnelly Company except I did say to him that the union claimed they were conducting a silk shop and that

their wage scale should be based upon a silk shop and not a cotton shop.

p. 2410 On Page 13 of my transcript this is what I find, "Mr. Reed: I forgot to mention that you charge us with maintaining a spy system and having a most notorious spy in the country, that is the substance of the charge." And they quote me as saying, "I have no facts in mind now that lead me to believe there is any truth in that." If I said that it was that I had no facts in mind which led me to believe that they had this notorious spy in their employ, and I meant A. A. Ahner. I have never found where they had Ahner in their employ. I did not mean to say that I had no facts which showed they had a spy system, because I had many facts which showed that.

On Page 19 they have me quoted as saying, "I don't agree to submit to what I may think a proper union is. I came out here prepared to settle all of these problems." If I said that I connected it with problems concerning the Labor Board matter, because anyone who can read the next sentence knows that is what I said. I say, "First, we are not going to deal with Mr. Tyler. Second, we have charges filed before the Board that certain people have been discharged because of union activities. If they lost wages because thereof, that ought to be settled."

p. 2411 On Page 24 they quote me as saying, "I can conceive it is very reasonable to me that a large majority wouldn't want to join the International. I'm not asking that you put them in there. I believe sincerely that a large majority of your people don't want it." I said something to that effect, but I did say the reason they didn't want it was because they had been thoroughly intimidated, and there had been such a campaign of vilification of the union that I didn't believe his people

would join the International Ladies' Garment Workers' Union. Mr. Tyler is here quoted as saying, "Do you believe they want to belong to their own union?" and I follow that up by saying, "I don't think they have a darn thing to do with it." That was along the line of my conversation in connection with the other answer that is not quoted.

p. 2412

[fol. 5582] p. 2412 Further on on that page, Mr. Hogsett said, "Let me ask you, Clif, how do you suggest that if you could just move the pawn on the board of chess, how would you suggest that these employees register their choice?" Then I am quoted as saying, "I don't care about their choice." I know I did not say anything like that. I may have said I didn't care how they registered their choice, but I did not say I didn't care about their choice because it is their choice I have been fighting for for years. Then Mr. Hogsett is quoted again, "What is your position? What is your suggestion as to the machinery, the mechanics, the method as to the registration of the choice of these people." That followed my statement evidently that I did not care about the method of choice.

p. 2413

On the next page Mr. Hogsett says, "But you suggest that we must exercise some sort of coercion to force the disbandment of this employees' union," and they quote me as saying, "Without that you try this case out. Now what do you want?" Of course, I did not say that; I didn't say coercing these people out of their union. What I very likely said was that there would have to be some reasonable or legal choice; or I may have said they would have to disband this union because I was thoroughly convinced that it was a company union, a company-dominated union in violation of the Wagner Act.

They kept following up that suggestion about how I would suggest they register their

desires. They have Mr. Hogsett saying, "Would you like the employees to register their choice?" and me to say, "The registration already engaged in is not permitted under the law", and Mr. Ingraham to say, "What future registration would satisfy?", and then they have me quoted: "Well, we both expect to be honest about it. We want a free and unhampered opportunity to try to organize the employees of the factory. Between you and me no free and unhampered opportunity would prevail down there," and that was the burden of my answer, "Between you and me no free and unhampered opportunity would prevail down there, but theoretically that is what we want." I recall that I told them why there would be no free and unhampered opportunity down there, because of the formation of this union and the way the organization of the other union was discouraged. Further on they quote me as saying, "Without any hampering at all or any influence at all. Speaking frankly here I don't think you have any reason to fear the International Ladies' Garment Workers' Union. They think they have some opportunity and they think they may succeed. I don't think they could. That's my opinion just within these four walls." I said something very much like that. That was my opinion, not that they couldn't organize them if they were free to organize them unhampered, but because of their then attitude, because of the organization of this company union, and the things that had been done to keep them out of the International, I didn't think they had a chance.

Senator Reed: I have been very patient about this. The question asked the witness was to point out the discrepancies or omissions in this document.

The Witness: That is what I am doing.

Senator Reed: Now he is indulging in saying, "if I said that, then I said something else, and if I didn't say it, I meant something else."

A. I did say I didn't think we had much chance to organize these people, and that was my opinion. I am not an organizer; I am a lawyer, and I said to Mr. Reed that Mr. Perlstein and others did not agree with me. I said,
p. 2414 "They think they have a chance and they have the right under the law to exercise that chance."

[fol. 5583] p. 2415 Those are the principal matters I find in this transcript, according to my recollection.

[fol. 5584] — N.R.A. — J.M.C. Exhibit 17 (Defendant's Surrebuttal)

United States Of America

Before The National Labor Relations Board
Seventeenth Region

In The Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract

Case No. XVII-C.371

Respondent's Offer Of Evidence
In Sur-Rebuttal, From Record
In The Judge Miller Case

Comes now respondent and offers in the above proceeding the testimony attached hereto as sur-rebuttal to the testimony offered by the Board and I.L.G.W.U. in their Exhibit "NRA-JMC Exhibit 17" and particularly in rebuttal of the testimony of Clif Langsdale contained in said exhibit, the attached evidence being a photostatic copy of the stenographic transcript introduced in the Judge Miller

case as Exhibit No. 112 and referred to in Mr. Langsdale's testimony.

REED & INGRAHAM
Attorneys for Respondent

Exh. 17. See page 3106 of Record. J. C. Batten, Trial Examiner.

(No Number Assigned.)

Received Copy.

DANIEL J. LEARY,
Atty. for 17th Region

CLIF LANGSDALE
Atty. for I.L.G.W.U.

FRANK E. TYLER,
Atty. for Intervener

[fol. 5585] (Plaintiff's Exhibit No. 112.)

Meeting at Mr. Reed's home, 5236 Cherry Street, Kansas City, Mo. on January 20, 1939, at 3:00 P. M.

Mr. Reed: Now let's see, Ingraham, Mr. Hogsett and myself are here representing the Donnelly Companies, Tyler is here representing the Donnelly Garment Workers' Union and, Cliff, you represent—

Mr. Langsdale: I represent the International Ladies' Garment Workers' Union.

Mr. Reed: How about the Joint Board?

Mr. Langsdale: I represent them all, that is, for this particular conference.

Mr. Reed: And Mr. Broderick and Mr. Watson are here representing the Labor Board.

Mr. Reed: Now suppose if we get anywhere, we want to settle this whole thing.

Mr. Langsdale: That is the way I feel about it, I want to dispose of this whole thing.

Mr. Reed: Now, Cliff, you people have made a number of charges and complaints against us and I would like to

talk it over with you. Now one thing that they charge is that we have a speed up system down there.

Mr. Langsdale: That is hardly a part of this conference.

Mr. Reed: It has to be a part of this general settlement. If we get to an agreement, we don't want you to come around next week or next month and say we didn't pass on that.

Mr. Langsdale: We have certain charges filed before the Labor Board. Speed-up system has nothing to do with that. We charge that you have a company dominated union, you discharged a number of employees because they belonged to the International Ladies Garment Workers' [fol. 5586] Union. Whether you have a speed up system or not has nothing to do with it.

Mr. Reed: We might thrash that thing out and then all these charges that are being made—you people are out making a boycott—how can we accomplish anything here by just talking about one or two matters that you may have lodged with the Board?

Mr. Langsdale: Tell me, Senator, are they now charging in the campaign that you have a speed up system, or was that before you got your injunction?

Mr. Reed: They are doing it now.

Mr. Langsdale: They brought to me a letter which they wanted to send out. I deleted parts, but the letter said that you didn't employ legitimate labor union people; that your union was a company union and not an appropriate union under the Labor Act to bargain collectively. Nothing in what I OK'd that said anything about any speed up system. Personally I wouldn't approve of it.

Mr. Reed: But whether they are or not, they are the things you have charged. I think Mr. Broderick will agree with me that we ought to settle everything and wipe this slate clean and have all this trouble ended.

Mr. Broderick: I think that if we are able to reach definite conclusions on the charges now before the Board that that might be the first step in reaching a settlement of the whole picture. We are concerned only with the charges we have.

[fol. 5587] Mr. Reed: Haven't you charges outside those Mr. Langsdale mentioned?

Mr. Broderick: Now, that is all. Violations of Section 8, 13 of the Act.

Mr. Ingraham: When we had a talk the other day I thought one of you gentlemen said "Certainly, I don't blame the Donnelly Garment Company for not agreeing to a settlement of this matter unless everything is settled." My recollection is that Mr. Watson said "I am willing to ask that Mr. Perlstein and Mr. Dubinsky be present".

Mr. Broderick: We have no authority in the wide world to say anything about the injunction.

Mr. Watson: I think it would be helpful to settle everything at one time. So far as my being able to tell Mr. Perlstein or Mr. Dubinsky—I couldn't do that.

Mr. Reed: But you are thinking about this from the standpoint of your case down here that you are threatening to file charges—or they have been filed. But any settlement of those matters would be an innocuous thing that would not bring peace if these other matters remained to be thrashed out. Now the object in having Mr. Langsdale here, I take it, is to cover these matters. Now if we could satisfy the International and satisfy ourselves at the same time so that we should wipe the slate and we could then say if we make certain concessions here which we don't think we ought to make in the interests of peace, we want peace.

[fol. 5588] Mr. Langsdale: I am here to get your idea as to what you think this settlement should be.

Mr. Reed: I'm here to find out what you want.

Mr. Reed: Let's take these things up just for a moment. They have charged hundreds of times, publicly and to our customers and they are continuing to charge that we have a speed up system that breaks down the health, destroys the nervous energies of these girls. Now I don't believe, Cliff, that you would make a charge of that kind if you didn't believe it to be true.

Mr. Langsdale: Now, Senator, I said to you that I didn't approve of any literature that contained that charge. I'm not going to mention here the charges you make that the International Ladies Garment Workers Union is a bunch of racketeers, I'm not going to bring that up here. I don't consider that a part of it.

Mr. Reed: These charges that may have been made by our people in this controversy are not a matter that can be settled here. But you charge that speed up system. Now that is absolutely impossible. The way the work is done it isn't like a fresh machine, you feed the bundles in at one end, each fellow is forced to do his work. The way the work is done down there, a girl sits down to her machine and calls for her bundle, the boy brings it, she works that bundle through. Nobody is waiting for her. When she finishes, she takes her card, puts down on the card how much she has done and then she calls for another bundle. At night she fills that card out, keeps one copy and hands [fol. 5589] the other in.

Mr. Langsdale: There are a lot of things they did that I advised them particularly not to do.

Mr. Reed: Let me spend a minute on the caste system. That office is perhaps unique. There is one entrance; Mrs. Reed, the president of the company, all of the officers and all of the employees use the same entrance and elevators. They associate together, there's a club out here that Mrs. Reed set apart for the employees, they go out there and have their dances. I don't know what is meant unless you mean that the colored folks, janitors, maids, etc. They are all satisfied. I was talking to Mrs. Reed the other day, and she said you couldn't get one of them to quit. Now, that is the so called caste system. Well they say that the girls break down and have nervous prostration and that they are in hospitals, etc. Their health record down there is so good that the insurance company who sells them health insurance, one half of which is paid by the company, turned back this year $6,000 of premiums that had been paid in.

They say that we pay lower wages than are paid in the industry, thirty per cent lower.

Mr. Broderick: I have this thought to suggest before you go on. You have mentioned the caste system, and the

speed up system and the wages. Do you feel that you should get the answers to those questions before we can dispose of this matter?

[fol. 5590] Mr. Reed: Yes, I think if we are going to consider the concessions which you will demand we want to know that if we do make the concessions, we can get to a ground where our difficulties will be settled.

Mr. Langsdale: So far as the speed up system charge being made, it is over my advice. I never heard of the caste system. So far as the wages are concerned, I don't need to tell you that the International classes you as a silk shop. Now that is all there is to it.

Mr. Reed: But right here in this town were made contracts for cotton workers way below our scale for years, and in what you call the silk shops their wages are way below the Donnelly Company.

Mr. Broderick: Listen will you do this Senator? If the union would stop referring to the Donnelly Company as the place where the speed up system is employed, where they pay lower wages than elsewhere, stop referring to the caste system, those items which you have mentioned, breaking down their health, would you be willing to comply with the things we are here for?

Mr. Reed: While we are on the question of health, a considerable number of employees down there have worked ever since the plant started—they have an organization of women down there who have worked there for over fifteen years—

Mr. Broderick: I'm not challenging that.

[fol. 5591] Mr. Reed: You get all this stuff—a part of a plan which has worked as great a detriment to this company as they can make it.

If we are going to talk about us making concessions I want to know that we are going to settle this thing. I am in the humor, I'm always in the humor, to get along peaceably and I have nothing against unions. Cliff here knows that for years I fought for the unions. I suppose I could

dig up fifty resolutions that labor organizations have sent me thanking me for favors. I have no axe to grind with labor unions.

(Mr. Langsdale said something about speaking for Senator Reed in 1922)

Mr. Reed: Now if we can consider these charges that I can satisfy you are absolutely without foundation then we would have approached a point where we can begin to consider the things that these people are disputing about.

Mr. Broderick: What I would like to get from you, Senator, is this: I would like to have a list of all the things you complain about since they seem to be a prerequisite to any agreement. I have no authority to speak for the union. Mr. Langsdale will consider them. I do feel that we should cover something definite fast. We can't go back and forth like a football. If they would stop doing these things, would you do the things I'm asking for.

Mr. Reed: If we are going to be hailed before the Labor Board and have to go on with this litigation we might just as well give the thing up. But if there is a hope of working [fol. 5592] out a solution we are willing to sit here and talk about it. There is another party to be considered, Mr. Tyler here, representing the Donnelly Union.

Mr. Langsdale: At the outset, of course I'm here and with all due respect to your situation, Senator, I'm representing a legitimate labor union, some 300,000 members over the country. Before I agree to anything, Mr. Tyler would have to drop out of the picture because that union would have to be disbanded, because in my own mind I know that it is not an appropriate union under the Wagner Act, but we can reach no agreement that doesn't have that.

We have had certain women discharged because of union activities. Under the charges filed before the Labor Board, they should be reinstated. If there is any back pay they are entitled to, that would have to be paid.

We don't intend to deal with any company union under any conditions and I am thoroughly beyond any doubt convinced that the union Frank represents is not a union such as was contemplated by the Wagner Act.

Mr. Reed: Let me assume for this one statement that Frank's union is not a good faith union. What business is that of anybody's but the members of that union?

Mr. Langsdale: It is the business of the United States Government and the Labor Board.

Mr. Reed: Suppose they are getting along all right, they have organized and are satisfied, nobody complains?

Mr. Langsdale: It is the business of the International Ladies Garment Workers' Union.

[fol. 5593] Mr. Reed: How is it the business of the International—they want to organize these people themselves?

Mr. Langsdale: It can't exist if they are going to recognize company unions, and the Congress of the United States said—

Mr. Reed: I've read the law but I don't think anybody knows just what the law is. I thought it was unconstitutional—still do, except that the Supreme Court said it was and I have to abide by their decision.

Mr. Reed: You're speaking now for the International and here's a group of people organized and getting along. You simply want to break up that union as a preliminary to anything else?

Mr. Langsdale: When we reach a pact containing a number of conditions that must be one.

Mr. Tyler: I don't see how, without violation of my duty and stultification of myself, I could consent to any such condition. I see no ground to be denominated a company union. I would defy the facts as I know them.

Mr. Langsdale: I am thoroughly convinced in my own mind that it is a company union. I'm not casting any stones at Frank here but he is known around town as a union [bating lawer]. He has a right to be in any kind of business he wants to be. He organized the Safeway Stores union which is a company union and which we think we will disestablish. Now there is no doubt in my mind at all that Frank is a specialist when it comes to organizing company unions.

I say to you now that we agree with you that this company has no speed up system, and we ought to quit saying [fol. 5594] that you pay lower wages, but we won't agree to anything that doesn't contain in that same agreement that this union known as the Donnelly Garment Workers Union is disestablished.

Mr. Hogsett: Isn't it true, Clif, that the only Court—the three judge court—that heard the case, held it to be a valid union, wasn't that true?

Mr. Langsdale: Nevertheless, I am not going to argue that with you. I have been in a good many more of these proceedings than you have Bill and than the Senator has but I know a company union when I see it and I know that this is a company union and we won't make any agreement that hasn't that as a condition in it.

Mr. Tyler: If these employees disband and later organize the employees of the plant, you want this deal to provide that these employees will never establish a union of their own?

Clif, it should satisfy you that they are unanimous in their desire to have their own union.

Mr. Langsdale: You never organize unions for—

Mr. Tyler: Only when employees come to me and tell me they are coming to me on their own motion.

Mr. Langsdale: Frank, you can't convince me that Rose Todd came to your office simply because she looked up your name in the directory.

Mr. Reed: Your position, as I understand it, is that a plant union is to be disbanded and these people must disband and then if tomorrow, or next week, of their own motion, they organize a union you say that shouldn't be either. In any event you are going to consider it a company union.

[fol. 5595] Mr. Langsdale: It is difficult for me to think that a [lepard] can change its spots. We arrive at an agreement that the Donnelly Garment Company shouldn't sign a closed shop agreement.

Mr. Reed: While you sign them every day.

Mr. Langsdale: But we represent the International.

Mr. Hogsett: Just assume now a hypothetical case—that the employees, one hundred per cent do want to join their own union and not this international union. Do you say that that is impossible?

Mr. Langsdale: Now, I don't say it's impossible but I view it with suspicion especially in view of the precedent circumstances in the organization of this union. Let me cite a case to show you my point of view. Before the old NRA, Emery Bird Thayer discharged five old wrappers they said they were discharging them for inefficiency. A fellow had been with them for 19 years. John Harding tried the case. A. Ahner, who is the chief strike breaking agent of the country, represented the company. (Here I didn't get what Mr. Langsdale said about the trial, etc. LB).

Mr. Langsdale: Now the situation isn't as bad as that, but you have got here, I am going to call a spade a spade. You have Mr. Tyler here who represents company unions. Rose Todd found his office some way or other. This International Union can exist without the Donnelly Workers Union. We are not going to go back on their principle or cast aside any of their code just to make peace with the Donnellys and one of their cardinal principles is that they will not any time or anywhere recognize what they know to be a company union.

[fol. 5596] Mr. Tyler: We don't ask—

Mr. Reed: It is a strange position for a man of your intelligence Cliff—if a man is the counsel for employees in a plant the fact that afterwards other employees in other plants come to him and ask him to represent them shows that the first one to come to him was a company union, a company dominated union.

Mr. Langsdale: They go to Mr. Tyler because he had successfully organized a company union with the Donnelly people. The Grace Company went to Mr. Tyler and Mr. Tyler steered away from them. He sent them to a friend of his.

Mr. Reed: Don't that happen every day? I remember trying a notorious patent case. I don't know why Tyler's

employment by this Union is any worse curse on him than your employment by the Union.

Mr. Reed: Now I understand Clif's position perfectly.

Mr. Langsdale: I am standing on the Wagner Act. It says that workers shall have the right to bargain collectively and to select representatives of their own choosing, which I say the Donnelly Union does not.

Mr. Reed: Why do you say that?

Mr. Langsdale: I'm going to argue that before the Court.

Mr. Reed: I forgot to mention that you charge us with maintaining a spy system and having a most notorious spy in the country, that is the substance of the charge.

Mr. Langsdale: I have no facts in mind now that lead me to believe there is any truth in that.

[fol. 5597] Mr. Broderick: Mr. Tyler is convinced in his mind that that is not a company dominated union. He is ready to fight it out. These charges now pending include the charge that that is a company dominated union, and the discharge of ten or twelve people. Any disposition of this case would require that that union would have to go out.

Mr. Reed: Why?

Mr. Broderick: Because we have proof enough to warrant that.

Mr. Langsdale: You put in your own evidence an affidavit that Rose Todd said "I would expect to be fired if I joined the Union".

Mr. Ingraham: That is not what it was Clif. What Rose said was that she wouldn't feel that she could work in a place where 1300 people were against the International.

Mr. Langsdale: We do not depend on that affidavit to make our case.

Mr. Reed: What is the use of us going to trial before you?

Mr. Broderick: I am not going to try the case. I am merely telling you. I don't hear the evidence.

Mr. Langsdale: You are asking him what he thinks of this case.

Mr. Broderick: I'm telling him that is why I would ask that you withdraw your recognition of the employees union because I consider it a company union.

Mr. Ingraham: If they would reorganize?

Mr. Broderick: If after this proceeding is over, they reorganized and there was an absence of charges that it was a company dominated union, there would be nothing in the world a court could do about it. The Act expressly provides that it may have such an organization and the only requirement is that it be not company dominated.

[fol. 5598] How can we say it would be all right until we have tried it?

Mr. Ingraham: Cliff says it just wouldn't.

Mr. Langsdale: There are plant unions that are not company unions. I had a group come to me from Luzier's. There are groups that really genuinely want to organize a plant union. I think they are foolish nevertheless there are that kind of organizations, but I don't think the Donnelly Garment Company are that type.

Mr. Broderick: I don't see how we can say that six months from now. (I didn't hear the rest of that statement) (everybody talking at once but I did get the last part of it—) that there be no interference with the choice of the workers and if there is no interference

Mr. Ingraham: Would the board hold an election

Mr. Broderick: Would they

Mr. Ingraham: Yes

Mr. Broderick: The Board has always held an election—it depends on the circumstances of the petition. These charges of course contemplate no election.

Mr. Reed: Don't the board rule that an employer couldn't ask for an election.

Mr. Langsdale: I don't think that is strictly correct.

Mr. Broderick: We don't accept petitions from employers only where two rival unions each claim to represent a majority.

Mr. Langsdale: In that kind of a case I think an employer should have the right to demand an election. As a member of the American Bar Association Labor Committee I recommended that change. Where the board contends [fol. 5599] that neither of [of] the unions is company dominated, they can hold an election, because the board doesn't recognize a company dominated union as an appropriate union to represent the employees.

Mr. Reed: Of course the board can't prejudge a union.

Mr. Langsdale: No the board can't.

Mr. Broderick: The board doesn't try to prejudge. On the filing of the petition, the board investigates the petition and in a few cases elections have been held for employers. In New York there were seven petitions for elections asked by employers. Four instances, elections were held and in three there weren't. All in the course of a year.

Mr. Hogsett: I thought I had read in the first annual report of the National Labor Relations Board a ruling in the nature of a regulation under which the duties of the National Labor Relations Board only to employees are defined.

Mr. Reed: About these girls. Is that part of your charges that we discharged ten or eleven girls?

Mr. Langsdale: You remember Senator that we just got about through with that case when the act was declared unconstitutional?

Mr. Reed: Yes, I remember. There were 300 people let out because of a slump in business. When business revived and at that time there may have been one that belonged to the union. Now they called back in regular reinstatement for calling back to work—they called back 120 I think of these people and in the 120 there were 7 of these people that were complaining called back—more percentage of those who belonged to the union or threatened to belong [fol. 5600] to the union, than there were of the others. The company didn't know anything about any of them

belonging to the union. The evidence we took down there before the Board pretty clearly showed that those girls with the exception of one of them had joined the union after they were laid off and they were no longer in the company's employ.

Mr. Langsdale: That is your conclusion.

Mr. Reed: I have a right to draw a conclusion when I hear the evidence and know it.

Mr. Broderick: Will you grant that I have the same right? If I can show that this is a company dominated union—

Mr. Reed: That is what you charge—you'll have to prove it.

Mr. Broderick: I don't think we will ever get anywhere. Find something to hang our hats on. Now what will you do? I am interested solely in the [charged] filed by the Board, but we will have to agree to certain definite things.

Mr. Reed: How can I agree with a man who says you have to disband. We didn't have anything to do with it. I'm saying that this is a bargain made at arm's length. If it hadn't been we wouldn't have conceded $16.50 to bundle boys. We had to come to Mr. Tyler's terms.

Mr. Tyler: I don't see how the Senator can dissolve it without their consent.

Mr. Broderick: He doesn't need their consent. What I would do if I were in the Senator's position—the order doesn't run against the union, it runs against the company.

Mr. Reed: They could sue us on our good contract.

[fol. 5601] Mr. Broderick: They can if they have a good contract.

Mr. Reed: It is a good contract. If you try that in Court Mr. Tyler would sue us and we would have to go to Court. Now what kind of defense could we make. We signed a contract and we signed it on the theory that we were dealing with a legitimate organization. We couldn't go into that Court and say that that organization was an illegal and illegitimate one.

Mr. Tyler: 97, 98 and 99% of the employees want to belong to their own union and don't want to belong to any other.

Mr. Langsdale: Now Senator I am not so gullible that I believe you can not persuade Mr. Tyler to persuade his clients to disestablish this union. We have disestablished a number of them.

Mr. Ingraham: Here is the most insurmountable thing, Clif, if I understand you right. If we make an agreement we have to make an agreement with those employees down there never to organize.

Mr. Broderick: He couldn't mean that.

Mr. Langsdale: I don't agree to submit to what I may think is not a proper union. I came out here prepared to settle all of our problems.

Mr. Hogsett: What are your demands.

Mr. Langsdale: First, we are not going to deal with Mr. Tyler. Second, we have charges filed before the Board that certain people were discharged because of union activities. If they lost wages because thereof, that ought to be settled.

Mr. Hogsett: How?

[fol. 5602] Mr. Langsdale: Upon the basis of the facts we have filed. Maybe you and I Bill could settle it.

Mr. Hogsett: If you and I were settling a damage suit, I would say how much do you want?

Mr. Broderick: He wants you to disestablish the Donnelly Garment Workers Union. Offer to reinstate those employees who were discharged with no loss of seniority or any other rights they previously enjoyed.

Mr. Reed: There are no seniority rights in that plant at all.

Mr. Langsdale: In other words, reinstate them under the same circumstances they worked before.

Mr. Broderick: Also to notify all the workers down at the plant that the union has been disestablished by posting a notice that the employees have the right of self-organiza-

tion, to bargain collectively through representatives of their own choosing, and I think that covers it, and adjust this back pay.

Mr. Langsdale: Jane Palmer, who filed these charges, said it wouldn't amount to much. Before coming out here, I telephoned Jane about this and she said it amounted to about $5,000. I am willing to submit evidence on that. It might not be $30.00. Broderick was under the impression that Jane had told him it didn't amount to anything. So Jane now has it way beyond what Broderick understood.

Mr. Reed: Have they been unemployed all this time?

Mr. Langsdale: [Now] they have had other jobs.

Mr. Reed: Working for you, aren't they?

Mr. Langsdale: No some of them have been working on other jobs, maybe not as good as they had. I've told you [fol. 5603] what we want, you tell me what you want so far as the injunction is concerned.

Mr. Reed: We want a permanent injunction and that is what we are going to get—that is what we are going to try to get—I am never sure about such things.

Mr. Langsdale: I thought we were going to settle things today.

Mr. Reed: That is what I thought, but you laid down here what seems to me to be an impossible situation. You say we have to do that. That is a good deal like saying to a fellow you concede that I am the owner of this property as an original proposition and then we will talk about some details as to right of compensation.

Mr. Broderick: I think the Senator knows what his obligations are to a majority, but we challenge the majority.

Mr. Reed: Mr. Broderick, how can you say that in view of the fact that all of the employees on their own motion, without Mrs. Reed knowing anything about it, circulated a paper in which they said in substance they wanted nothing to do with the CIO; that they were satisfied and pleased with their employment and highly complimentary. They did that in advance on their own motion, and the Court of Appeals has said commenting on that that under

those circumstances to have tried to do anything, would have amounted to nothing. I'm telling you that there will be no truthful person who can be found that will say it is not just as I told you.

Mr. Hogsett: In other words, doesn't that destroy—

Mr. Langsdale: I have always respected the Senator. I'm not going to say that I don't believe that he believes what he is saying, but I am in my own mind convinced that [fol. 5604] this is a company dominated union and I can't agree to any concession beyond that.

Mr. Reed: Now that was caused, Mr. Broderick, among these employees by the fact that Mr. Dubinsky and others said that they were going to force the unionization of these employees. That was their protest and notice—After that the Wagner Act which all of us thought unconstitutional was passed. After that the Supreme Court upheld the Wagner Act. Now the Wagner Act specifically provided that these people, as much as though they named them, had the right to organize their own union and to keep it free from interference on the outside, and they did it. Now all of this I know through Mr. Tyler as he expressed himself in Court. Naturally I've heard it in many other ways. So in order to protect themselves they go to Mr. Tyler. Now is there anything remarkable about it? Strikes were going on. Minorities of employees had sit down strikes. They had a lot of ruffians along the street to beat them up and naturally these people wanted protection.

Mr. Ingraham: Let me interrupt Senator—I think I got a telephone call from Gossett. It was Gossett, not Tyler, who I first learned was representing the employees.

Langsdale: (Goes on a tirade about Gossett)

Mr. Reed: You told me something about Gossett that I never heard. I want to say this about Al Gossett. Al Gossett is my friend—

Mr. Langsdale: He's mine too.

Mr. Reed: (continuing) Al Gossett has always been one of the fairest men I ever knew in all my life.

[fol. 5605] Mr. Langsdale: He is my friend too. He probably is as good a friend of mine as he is of yours. Just because he doesn't believe in my philosophy—

Mr. Reed: I hope he don't. I think your philosophy is wrong.

Mr. Langsdale: I'm not going to say, Senator, that I think yours is.

Mr. Broderick: Is it your position, Senator, that you couldn't propose that the Donnelly Workers Union disband.

Mr. Reed: I don't see how we can unless Mr. Tyler consents to the dissolution.

Mr. Broderick: Would you?

Tyler: Consent to the dissolution? No.

Mr. Broderick: I think that is the meat of the thing.

Mr. Ingraham: Would you if they could reorganize?

Mr. Tyler: I have offered several times to hold an election.

Mr. Langsdale: Do you think that was a genuine offer Frank?

Mr. Tyler: Yes, I made it in open Court.

Mr. Langsdale: I have been in this business quite a while.

Mr. Broderick: I don't say that this group has no right to say that this group has no right to say what the employees are going to do.

Mr. Langsdale: I can conceive it is very reasonable to me that a large majority wouldn't want to join the International. I'm not asking that you put them in there. I believe sincerely that a large majority of your people don't want it.

Mr. Tyler: Do you believe they want to belong to their own union?

Mr. Langsdale: I don't think they have a darn thing to do with it.

[fol. 5607] Mr. Langsdale: Let me ask you this Senator, I came out here to settle difficulties, but if you are going to set up an absolute obstacle that we can't control—

Mr. Reed: Would you agree, Mr. Langsdale, that these gentlemen should go down there and have a meeting and an election and determine whether or not they wanted to belong to this union.

Mr. Langsdale: Now that wouldn't mean a thing.

Mr. Hogsett: Let me ask you this, Clif, how do you suggest that if you could just move the pawn on the board of chess, how would you suggest that these employees register their choice?

Mr. Langsdale: I don't care about their choice.

Mr. Hogsett: What is your position. What is your suggestion as to the machinery, the mechanics, the method as to the registration of the choice of these people. How in hell do you suggest that they register?

Mr. Langsdale: The law provides that they shall be left alone by the employer. They shall exercise no influence over them whatever.

Mr. Hogsett: But you suggest that we must exercise some sort of coercion to force the disbandment of this employees' union.

Mr. Langsdale: Without that you try this case out. Now what do you want?

Mr. Hogsett: A permanent injunction as prayed in the bill as Point I for the plaintiffs, You want the disestablishment of the Donnelly Garment Workers Union and the reinstatement of six or seven employees. Would you concede a permanent injunction as prayed in the bill?

Mr. Langsdale: Do you mean as allowed by Collett?

[fol. 5608] Mr. Hogsett: Will you concede a permanent injunction as prayed in the plaintiffs' bill?

Mr. Langsdale: You mean that our people should not do the things that the Norris-La Guardia Act says cannot be enjoined?

Mr. Hogsett: No.

Mr. Langsdale: You have an order made by Collet, you want more than that?

Mr. Hogsett: Yes. I think the Collet order is less than we want. (Reading from the prayer of the Bill)—that is what we want.

Mr. Langsdale: Now Bob it is not only unreasonable it is inconceivable. You also realize that this case comes within the Norris-La Guardia Act. If we should arrive at an agreement I probably would advise my clients that they didn't have any right—

Mr. Hogsett: To conduct secondary boycotts?

Mr. Langsdale: I'm not so sure about that.

Mr. Hogsett: Lowe v. Lawlor is authority for that.

Mr. Langsdale: That is twenty years old.

Mr. Hogsett: It is still the law.

Mr. Langsdale: Have you read the recent state decisions in New York?

Mr. Hogsett: We get the same service you do and somebody in my office reads everyone that has any connection with the Donnelly case.

Mr. Langsdale: Here is what I have in mind. If we could agree that the company union could be disestablished then maybe we could agree on something, but we will not deal with this company union at all.

[fol. 5609] Mr. Hogsett: Would you like the employees to register their choice?

Mr. Langsdale: The registration already engaged in is not permitted under the law.

Mr. Ingraham: What future registration would satisfy?

Mr. Langsdale: Well, we both expect to be honest about it. We want a free and unhampered opportunity to try to organize the employees of the factory. Between you and me no free and unhampered opportunity would prevail down there, but theoretically that is what we want.

Mr. Watson: If everybody exercised a due respect for the Act—

Mr. Broderick: What rights do you claim?

Mr. Hogsett: I was trying to boil this down to get the high points stated. I don't know how the Point could ever be brought out without violation of contract and good faith.

Mr. Watson: Do you want to try it out?

Mr. Broderick: I think it can be done.

Mr. Hogsett: Over the protest of these people?

Mr. Broderick: The members down there have the right under the law, to organize without the interference by the employers. Clif stated his position—

Mr. Langsdale: Without any hampering at all or any influence at all. Speaking frankly here, I don't think you have any reason to fear the International Ladies Garment Workers Union. They think they have some opportunity and they think they may succeed. I don't think they could. That's my opinion just within these four walls. But they have a theoretical right, whether that right means anything, I personally don't think they have a chance.

[fol. 5610] Mr. Reed: What is the sense in industrial [warefare] when you sit here frankly—and it is to your credit that you admit that you can't gain anything.

Mr. Langsdale: I said it is my opinion that they can't gain anything—not the Union's.

Mr. Langsdale: Before I start anything Frank you have to drop out of the picture.

Mr. Reed: You people are out here to bring about as much as you can industrial peace. Now you are asked to enter into a long trial. To do what? To dissolve the union that Mr. Langsdale says will never come into his union.

Mr. Langsdale: I'm merely offering an opinion.

Mr. Reed: This is his opinion. You have always conceded, I think, that you couldn't get anywhere by violence.

Mr. Langsdale: Are you insinuating that I am in favor of any violence?

Mr. Reed: I am saying your clients are.

Mr. Reed: You gentlemen are supposed to be doing something that is going to get somewhere. Now if Mr. Langsdale's position was that if this union was dissolved immediately or in the near future, these people could be incorporated in his union, then there might be some use in dissolving this union. But he says I just want you to bust up a union of people who do not want to join the International. When we are through—if we bust it up—these people can go the next day and can organize another and they are going to organize another one because they want to do it. Now isn't it an absurd thing for the employees of the Federal government to come down here and where [fol. 5611] a company has fine conditions, good working hours and wages, and have a payroll here and ask to bust up a perfectly legitimate union? Now if you came in here and you examined into that factory and you found that there were bad conditions there, that these charges were true, and then you had found a company union, then these conditions could be relieved through some sort of an organization. Now we have business to attend to, we have to keep that business running to keep these people employed and I'm saying to you that I would have gotten Mrs. Reed out of that business five years ago if it hadn't been that she said I can't turn these people out. Now if the business were seriously interfered with I would tell her to quit. That is the fact. If it wasn't for one thing, she says there have been women there for twenty years, supported families, sent their children through school. Now that it is a good place to work is shown by the facts. Now are you going to say to us we are going to go down there now and coerce these people into submitting to a breach of their contract, and the next day they can hold another meeting and organize another union.

You made a statement that you want us to put the sign up in the place. I am willing to do that—you put that

thing up there to tell these people they have the right to organize.

Mr. Broderick: It may sound, the conclusions may sound, ridiculous. I can't help that. What I'm asking you is this: If we don't dispose of them this week we will have to go to trial.

[fol. 5612] Mr. Reed: Do you not remember when the question came up whether they could organize a union the next day and Mr. Fee said no, at least thirty days ought to intervene.

Mr. Broderick: If these people want to have their own organization they could do it. Tyler said he would go back there to them and recommend to them that they disestablish themselves.

Mr. Tyler: If we could reorganize immediately and be free of any further trouble.

Mr. Ingraham: Do you remember one of you said if that happens, if the union filed charges we would ignore them?

Mr Broderick: We couldn't ignore them. We would investigate them and if the charges had foundation in fact we would proceed as we are here. Mr. Tyler asked me how to proceed with the new union and I said "If I could tell you what to do I would not only be famous I would be rich".

Mr. Langsdale: Without casting any reflections on Frank, if I find Ahner in a union, I would know it was not intended to be a good faith union. When I find Frank I don't and I won't have confidence in it.

Mr. Tyler: What I said was that if it would settle this whole thing I would be willing to go back to my people and recommend they dissolve the union provided they could organize another union and that the Board would stand back of it.

Mr. Reed: There was talk here that day that the Board could not guard us against molestation in the future and the statement was made that if this thing was done under the auspices of the Board, that the Board could take care of that situation, that the board would have the right under [fol. 5613] those circumstances, and in that talk we talked about dissolving the union.

Mr. Broderick: You people were about an inch apart.

Mr. Hogsett: In your capacity as mediator here, now if you will take over the job of seeing that these employees can register under your supervision their choice as between the International Ladies Garment Workers Union and an employees union—if you object to this particular one, then some other employees union which may be better—and if they choose the employees union, as they would 100% against Clif's organization, and if you certify that as the bargaining agent of all the employees, what happens?

Mr. Broderick: Assume that happens. That organization comes in. They file a petition. We investigate the organization. There are only certain ways that those questions may arise. If it is devoid of any employer interference or domination there is nothing we can do about that.

Mr. Hogsett: I'm not undertaking to have you speak for anyone except yourself. But can't you in your official capacity arrange now to conduct an impartial election?

Mr. Broderick: Let me tell you Mr. Tyler. You go back and recommend to them that they disestablish the union. Tell them that Mr. Broderick of the Labor Board thinks that we are a company dominated union. We don't think we are but he says we are.

[fol. 5614] Mr. Langsdale: You people never had the slightest idea that your employees needed a union until after the Supreme Court invalidated the NRA. You rush in within a few days thereafter, get Miss Todd to organize these people.

Mr. Broderick: We won't send a copy of the charges to the Garment Workers Union.

Mr. Reed: Why?

Mr. Broderick: Because the Pacific Greyhound case says they are not necessary.

Mr. Reed: Why would a hearing be refused to these 1300 people whose organization is being directly attacked. Why would anybody refuse it?

Mr. Broderick: Oh, I would mail him a copy. I do not think his clients would be entitled to be heard.

Mr. Reed: Why not?

Mr. Broderick: Because the charges are against the company, not against the union. (Everybody then talked at once about judges refusing to hear testmiony, etc. at Labor hearings, and I couldn't get it).

Mr. Langsdale: I am perfectly anxious to settle both of these cases. We wouldn't be getting anywhere Senator. What my people want, regardless of my opinion, they have a right under the law to organize every employee.

Mr. Reed: Don't every other person have that right?

Mr. Langsdale: Yes.

Mr. Broderick: Are you willing to reduce what you want to writing and I will reduce what I want to writing?

[fol. 5615] Mr. Broderick: I came out here fully thinking that we could agree, but we can't.

Mr. Reed: What would you have to have before you would be ready to consider this case closed if we do the same?

Mr. Langsdale: I'm the third party.

Mr. Broderick: I assumed your position would be the same as ours.

Mr. Langsdale: Not necessarily.

Mr. Broderick: Will you post notices, will you disestablish the union, will you reinstate the eight or ten people.

(No answer).

Mr. Broderick: If you will write me your provisions, I will make you mine concurrently, Mr. Langsdale will make his, in writing. I understand the Senator wants this boycott stopped.

Mr. Reed: Well we are going to stop it pretty quick.

Mr. Broderick: Can we agree now on a time for meeting. Bob I will call you.

[fol. 5616] (N. R. A.—J. M. C. Exhibit 3.)

p. 833 MARGUERITE KEYES called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hogsett:

Q. Please state your name to the Court?
A. Marguerite Keyes.
Q. Where do you reside?
A. Hickman Mills, Missouri.
Q. You are a married lady? A. Yes.
Q. Were you formerly employed by the Donnelly Garment Company and the Donnelly Garment Sales Company? A. Yes.
Q. In what capacity?
A. I had charge of their accounting department.
Q. For how long were you in their employ?
A. Twelve years.
Q. When did you begin in their employ?
A. In the spring of 1926.
Q. When did you leave their employ?
A. March 31, 1938.

Q. You were married at that time, were you?

A. Yes.

Q. Mrs. Keyes, as a part of your duties while in the employ of these companies did you have charge of the payroll records of those companies? A. Yes.

Q. Did you at the request of counsel for the plaintiffs produce the payroll record of the plaintiff companies for the last week preceding the date of the so-called polite letter of March 9, 1937 from the International?

A. I did.

p. 834 Q. I hand you Plaintiff's Exhibit 109 and ask if you identify that as the payroll that was produced? A. I do.

Q. When was the end of the payroll week last preceding March 9, 1937?

A. March 5, 1937.

Q. Mrs. Keyes, I should have amended that question to read, the payroll of the piece work operators. That is what you produced?

A. Yes. Mr. Hogsett, I said March 5th. Which one is this, the 9th.

Q. The letter was dated the 9th and this is the week ending March 5th.

p. 835 Q. Now, Mrs. Keyes, did you at our request at the time of the three judge hearing, which began November 1, 1937, have prepared a tabulation showing the average weekly earnings on a 40 hour basis of all piece work operators in that plant for the entire year from

[fol. 5617] the week ending October 30, 1936 to the week beginning October 22, 1937? A. I did.

Q. I hand you Plaintiffs' Exhibit 110 and ask you if that is the tabulation to which you have just referred, made by you and under your supervision?

[fol. 5619] Operators Who Work Part Time On Merchandise Selling For $45.00 Per Dozen And Below, And The Other Part Of The Time On Merchandise Selling Above $45.00 Per Dozen

Average Earnings Of Piece Work Operators From Week Ending October 30, 1936 To October 22, 1937

Name	Total Hours Worked	Total Money Paid	(On 40 hour basis) Average Hourly Rate	Average Weekly Earnings
Soderstrand, Mable	214.00	108.56	.5073	20.29
Spahr, Anna	1602.50	863.64	.5388	21.55
Spalitto, Josephine	1137.30	715.40	.6286	25.14
Stears, Fannie	1993.50	1248.43	.6261	25.04
Storm, Minnie	2098.10	1206.86	.5752	23.01
Sutolovick, Katherine	2063.40	982.23	.4759	19.04
Tattershall, Edna	2052.50	980.41	.4776	19.10
Toler, Jewell	2042.00	1137.22	.5569	22.28
Uptegrove, Leta	2078.10	1102.60	.5306	21.22
Uto, Pearl	2048.25	1250.05	.6104	24.42
Voorhies, Emma	2082.05	1419.70	.6819	27.28
Vining, Edna	2040.50	1183.97	.5801	23.20
Wachtel, Orra	2037.10	1224.25	.601	24.04
Waers, Virginia	230.00	115.13	.5006	20.02
Wainscott, Sadie	2044.05	1011.08	.4947	19.79
Weigand, Effie	1517.25	820.81	.5411	21.64
Weilert, Bessie	1993.45	1123.86	.5636	22.54
Welch, Ruby	2057.20	1007.20	.4896	19.58
Wigton, Beulah	1061.50	555.14	.5227	20.91
Wilkey, Lucille	2002.45	1025.89	.5122	20.49
Williamson, Elsie	1509.30	756.20	.5008	20.03
Wood, Mary	2074.50	989.37	.4768	19.07
Wycoff, Lucy	2102.20	1088.43	.5178	20.71
Wypyhoski, Anna	1995.55	994.10	.498	19.92

[fol. 5620] Operators Who Work On Special Machines Whether They Work Exclusively On Low Priced Merchandise Or Part Time On Higher Priced Merchandise

Average Earnings Of Piece Work Operators From Week Ending October 30, 1936 To October 22, 1937

Name	Total Hours Worked	Total Money Paid	(On 40 hour basis) Average Hourly Rate	Average Weekly Earnings
Anderson, Bernice	2075.45	1384.13	.6667	26.67
Baldwin, Ruth Ellen	2058.50	1089.06	.5289	21.16
Barton, Ida	1982.30	945.73	.4771	19.08
Bennett, Violet	2121.20	1369.50	.6456	25.82

Blackwood, Corinne	2152.45	1162.72	.5403	21.61
Bond, Beulah	2111.05	1330.60	.6303	25.21
Bracy, Mable	1983.55	1349.65	.6803	27.21
Bradshaw, Hazel	2034.10	1303.05	.6406	25.62
Broker, Louise	2091.00	1281.29	.6127	24.51
Carlson, Lena	2005.55	1702.49	.8491	33.96
Carriger, Cledafay	752.25	369.53	.4910	19.64
Chaney, Opal	2055.25	1119.51	.5448	21.79
Chapman, Josephine	2059.30	1523.10	.7397	29.59
Chowning, Hassie	2139.40	1284.62	.6006	24.02
Clark, Bessie	2025.25	1246.95	.6158	24.63
Clayton, Rubie	820.55	461.93	.5626	22.50
Close, Ella	2056.15	1052.74	.5120	20.48
Colley, Nellie	2086.00	1076.31	.5160	20.64
Cooney, Olive	2148.10	1356.60	.6316	25.26
Copenhaver, Geneva	1838.05	958.10	.5213	20.85
Davis, Betty	2136.00	1114.67	.5218	20.87
Davis, Emma	1709.00	1018.47	.5959	23.84
Davis, Jessica	2120.25	1397.09	.6590	26.36
Dial, Helen	1999.30	1201.03	.6008	24.03
Dobbs, Opal	2068.10	1407.20	.6805	27.22
Dora, Gertrude	2104.20	1157.89	.5503	22.01
Douglas, Pearl	2079.20	1182.09	.5685	22.74
Elston, Alpha	1654.05	1106.49	.6690	26.76
Ely, Nettie	2140.20	1561.50	.7297	29.19
Fase, Beatrice	1856.05	1217.13	.6558	26.23
Farmer, Anna	2042.15	1122.98	.5499	22.00
Feiser, Elsie	2176.50	1304.80	.5994	23.98
Fisher, Zella	1948.25	1335.34	.6855	27.42
[fol. 5621] Fitzwater, Cora	2022.10	1189.84	.5884	23.54
Foster, Ethel	2123.10	1363.21	.6421	25.68
Geer, Edna	2081.10	1203.93	.5783	23.13
Gilardi, Nina	2143.55	1960.95	.9150	36.60
Gordon, Lulu	2129.00	1057.21	.4966	19.86
Green, Beulah	1815.05	1042.04	.5741	22.96
Griggs, Clarice	1361.10	775.31	.5697	22.79
Halcro, Mary	2151.50	1193.33	.5606	22.42
Haight, Elizabeth	1382.20	866.58	.6270	25.08
Harcum, Mae	2065.50	1053.18	.5100	20.40
Hawks, William	2212.15	1849.67	.8362	33.45
Henry, Leila	2029.50	905.69	.4464	17.86
Herring, Lora	1498.10	787.27	.5255	21.02
Higgins, Hazel	2054.15	1063.28	.5176	20.70
Hines, Mary	1544.05	969.23	.6277	25.11
Hoffsett, Gallilea	2035.20	1176.53	.5781	23.12
Holloway, Elsie	2168.05	1694.72	.7816	31.26
Holloway, Oma	1487.00	849.38	.5712	22.85
Hollyday, Agnes	2082.35	851.92	.4092	16.37
Hurdle, Beulah	2068.10	1177.38	.5693	22.77
Hurley, Anna	2039.55	1091.51	.5351	21.40
Hutchinson, Agnes	2071.45	1158.02	.5591	22.36
James, Lutie	2064.40	1019.03	.4937	19.75

Johnson, Bertie	656.40	534.64	.8150	32.60
Johnston, Irma	1817.00	1089.84	.5998	23.99
Jones, Elmer	1882.30	1252.99	.6658	26.63
Kennedy, Ruby	2107.55	1623.34	.7705	30.82
Kile, Wilma	1982.30	1060.83	.5352	21.41
Koefood, Opal	1396.00	602.15	.4313	17.25
Lassister, Catherine	1534.10	816.12	.5320	21.28
Lawrence, Lottie	1602.15	1115.35	.6962	27.85
Leavell, Martha	2037.55	1143.10	.5609	22.44
Leeda, Nola	2171.55	1269.91	.5847	23.39
[fol. 5622] Light, Beulah	2181.45	1385.26	.6351	25.40
Loftin, Eleanor	897.40	483.25	.5387	21.55
Logan, Pearl	1988.25	1270.57	.6391	25.56
Lubben, Lillian	2102.30	1298.44	.6177	24.71
Maggio, Alice	1364.50	568.57	.4168	16.67
Maifreda, Mary	2141.55	1468.62	.6856	27.42
Maxwell, Georgia Lee	2020.40	1030.23	.5100	20.40
McCaulley, Lucy	1659.10	1045.83	.6303	25.21
McClanahan, Roberta	1257.50	618.77	.4919	19.68
McCurry, Etta Mae	2150.15	1159.26	.5391	21.56
McKee, Daisy	1415.45	1047.52	.7403	29.61
Mead, Dorothy	2121.55	1473.58	.6944	27.78
Miller, Ruth Chaney	2062.20	1166.04	.5655	22.62
Moore, Florence	2070.55	1343.82	.6490	25.96
Ocshier, Dorothy	1322.05	690.64	.5224	20.90
Oliver, Tressie	1999.05	1066.77	.5336	21.34
Orten, Lucille	1254.50	533.31	.4252	17.01
Osborn, Rose	2098.00	1327.08	.6325	25.30
Page, Mabel	1829.10	1091.20	.5966	23.86
Pardum, Grace	1887.00	939.02	.4976	19.90
Perry, Ann	1881.50	1004.14	.5335	21.34
Pitts, May	2128.40	1050.39	.4936	19.74
Plummer, Laura	2147.05	1250.87	.5826	23.30
Quinn, Myrtle	2139.05	1429.75	.6684	26.74
Reece, Anna	2014.35	980.42	.4868	19.47
Reece, Mildred	1178.40	601.97	.5110	20.44
Rhodes, Alice	192.40	83.34	.4340	17.36
Riddle, Mary	2000.15	883.55	.4417	17.67
Roberts, Daisy	1974.35	913.12	.4626	18.50
Robeson, Mary	2165.45	1335.10	.6167	24.67
Robinson, Beatrice	2057.15	1053.02	.5119	20.48
Royce, Laura Lee	2122.55	1240.24	.5844	23.38
Rudd, Mattie	1936.20	984.42	.5085	20.34
Sams, Leona	2040.45	1017.00	.4983	19.93
Self, Mary	1532.15	1006.55	.6570	26.28
[fol. 5623] Shoptaw, Opal	2034.15	1060.88	.5216	20.86
Smith, Nina	2066.30	1279.39	.6192	24.77
Spielbusch, Mable	1829.40	1043.55	.5706	22.82
Stark, Ada Lee	1771.25	1012.58	.5717	22.87
Stark, Dale	1971.10	1217.32	.6176	24.70
Steger, Brooksey	2037.45	1578.73	.7750	31.00
Stevens, Lela	1874.00	994.83	.5308	21.23

Stufflebean, Opal	2035.45	1415.43	.6955	27.82
Stone, Elizabeth	1937.30	1042.94	.5384	21.54
Taber, Sara	2103.35	1080.59	.5138	20.55
Taylor, Violet	1691.45	958.60	.5668	22.67
Thabon, Lillian	2064.35	1230.05	.5960	23.84
Thornton, Blanche	2049.35	1021.26	.4984	19.94
Velghe, Rose	2141.30	1498.19	.6998	27.99
Virgo, Ann	2041.50	1093.31	.5354	21.42
Warth, Mary	1982.00	1167.15	.5889	23.56
Waller, Elza	1994.55	984.38	.4934	19.74
Webb, Amelia	1296.00	642.92	.4960	19.84
Wilde, Altha	2081.55	926.09	.4443	17.77
Wilson, Martha	1592.05	824.91	.5182	20.73
Winters, Susan	2036.35	1414.10	.6945	27.78
Wixted, Gertrude	2104.15	1111.74	.5284	21.14
Wolfskill, Jewell	1859.00	1116.45	.6006	24.02
Wright, Carrie	2030.20	1025.64	.5052	20.21
Yates, Augusta	2108.20	1562.34	.7411	29.64
Yoder, Shirley	1868.00	791.82	.4239	16.96
Zimmerman, Etta	2018.15	1233.18	.6111	24.44

[fol. 5624]

Pinkers

Average Earnings Of Piece Work Operators From Week Ending October 30, 1936 To October 22, 1937

Name	Total Hours Worked	Total Money Paid	Average Hourly Rate (On 40 hour basis)	Average Weekly Earnings
Pinkers				
Brewer, Hylda	2088.20	1165.82	.5583	22.33
Brown, Jennie	1793.20	1279.55	.7136	28.54
Carpenter, Ethel	1858.20	1097.41	.5906	23.62
Chandler, Kathryn	2073.50	1422.71	.6863	27.45
Dauben, Gertrude	2061.55	1130.47	.5482	21.93
Davidson, Augusta	2018.25	1081.56	.5360	21.44
Dean, Edith	2034.35	1383.49	.6802	27.21
Eastman, Ruth	2107.55	1415.90	.6716	26.86
Ehrhardt, Lena	2077.30	1667.95	.8029	32.12
Ereth, Christine	1942.15	1371.93	.7064	28.26
Hall, Lois	2103.35	1337.55	.6359	25.44
Harralson, Julia	2085.25	1424.57	.6832	27.33
Klein, Bertha	2059.25	1250.11	.6071	24.28
Koll, Edith	1987.45	1015.70	.5111	20.44
Little, Edwina	1957.50	1127.63	.5761	23.04
Molle, Anna	2071.10	1207.43	.5830	23.32
Prine, Nell	2086.20	1426.20	.6836	27.34
Richardson, Gertrude	2021.05	1166.10	.5770	23.08

Riddle, Mamie	2053.55	1421.25	.6921	27.68
Riegel, Ethel	2075.50	1583.45	.7629	30.52
Robinson, Louise	2092.40	1360.67	.6503	26.01
Rush, Irene	2078.40	1303.09	.6270	25.08
Schneider, Ethel	2066.00	1262.17	.6109	24.44
Stevenson, Alta	1359.00	664.41	.4889	19.56
Stites, Nellie	2119.00	1350.54	.6373	25.49
Van Gordon, Mary	1895.55	1051.84	.5549	22.20
Walton, Helen	2037.15	1260.75	.6189	24.76

[fol. 5625] Examiners

Average Earnings Of Piece Work Operators From Week Ending October 30, 1936, to October 22, 1937

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Hourly Rate	Average Weekly Earnings
Eighth Floor Examiners				
Balding, Stella	1969.30	1048.44	.5322	21.29
Baldwin, Katherine	2009.10	1092.27	.5437	21.75
Brown, Flora	1977.20	1047.60	.53	21.20
Campbell, Elizabeth	831.00	423.78	.51	20.40
Compton, Marie	2022.45	1118.20	.5527	22.11
Hardin, Mary Alice	2002.20	1091.76	.5453	21.81
Headlee, Lillie	2020.40	1061.39	.5252	21.01
Lockwood, Fannie	2037.35	1052.50	.5164	20.66
Mace, Loretta	1969.30	1046.83	.5317	21.27
Rimmer, Idella	2022.00	1130.34	.559	22.36
Shick, Billie	2061.55	970.79	.4708	18.83
Stover, Evelyn	2045.15	1161.32	.5679	22.72
Vickers, Minnie	2001.15	1058.03	.5288	21.15
Walker, Rada	2020.45	1100.18	.5444	21.78
West, Nettie	1995.30	1148.57	.5754	23.02
Winburne, Bernice	2023.40	1136.57	.5615	22.46
Balance of Examiners				
Davis, Nevora	1438.20	645.89	.4492	17.97
Bartow, Nellie	1996.50	963.72	.4826	19.30
Burns, Mary	2002.55	994.59	.4966	19.86
Corder, Nattie	1699.05	699.84	.4119	16.48
Duck, Harriett	677.40	284.04	.4189	16.76
Farrell, Katherine	1914.30	826.37	.4315	17.26
Fuller, Hattie	2012.55	882.24	.4383	17.53
Gillham, Delcie	1527.35	684.45	.4479	17.92
Gosnell, Emma	1999.30	965.50	.4828	19.31
Harley, Frances	2075.05	943.16	.4545	18.18

Helm, Florence	1963.55	919.53	.4682	18.73
Kelling, Erma	1906.55	877.49	.4601	18.40
Lester, Gladys	2006.05	968.21	.4827	19.31
McClelland, Mary	1072.30	498.64	.4647	18.59
Vest, Helen	1672.05	787.06	.4707	18.83
Watson, June	1818.20	803.17	.4418	17.67
Webb, Glenda	1932.10	895.69	.4636	18.54

[fol. 5626] Average Earnings Of Piece Work Operators From Week Ending October 30, 1936 To October 22, 1937

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Hourly Rate	Average Weekly Earnings
	Section 61 (Hand Ironers)			
Albano, Marie	1149.40	474.65	.4127	16.51
Arvin, Julia	1969.05	990.01	.5028	20.11
Bankson, Katherine	1221.15	504.28	.413	16.52
Bartles, Nina	2072.15	1155.90	.5579	22.32
Beil, Olive	1730.00	825.46	.4771	19.08
Belcher, Florence	2081.15	1117.83	.5371	21.48
Blain, Roberta	2078.50	930.36	.4475	17.90
Bonen, Florence	2116.50	1109.96	.5243	20.97
Bonnel, Ruth	2005.30	945.20	.4712	18.85
Bozler, Gloria	1778.25	938.29	.5277	21.11
Bottoms, Cyrea	252.40	107.50	.4249	17.00
Broylez, Eva	2106.30	1051.02	.4988	19.95
Budelovich, Anne	2025.45	842.71	.4159	16.64
Budelovich, Mary	2097.35	977.51	.4659	18.64
Callowick, Iris	2037.50	898.61	.4409	17.64
Callowick, Rose	2075.30	1096.57	.5284	21.14
Campbell, Myrtle	1104.20	476.09	.4312	17.25
Churchill, Irene	1203.20	516.40	.4293	17.17
Clark, Olive	2081.10	986.95	.4743	18.97
Coles, Sadie	1971.10	977.24	.4958	19.83
Collins, Dorris	1643.40	800.79	.4871	19.48
Cooper, Leona	2022.30	868.39	.4295	17.18
Enlow, Hazel	2064.40	949.17	.4596	18.38
Etherton, Bury	2072.35	1203.63	.5806	23.22
Fostich, Mary	1873.00	934.90	.4991	19.96
Fostich, Millie	2111.30	1210.74	.5733	22.93
Frohock, Lillian	2131.55	1123.37	.5269	21.08
Ganz, Louise	2089.00	1162.62	.5565	22.26
Gorman, Anna	242.15	146.92	.6071	24.28
Gorsuch, Tyra	2071.50	1069.75	.5163	20.65
Greeley, Rose Lee	2100.50	1040.36	.4952	19.81
Hamilton, Martha	1941.00	864.55	.4454	17.82

[fol. 5627] Harp, Lucille	922.25	426.74	.4628	18.51
Hayhurst, Beulah	1875.30	846.11	.451	18.04
Heidbrink, Edith	2013.00	1147.44	.57	22.80
Herndon, Freda	2061.45	1309.65	.6351	25.40
Hopp, Olive	2093.35	1197.20	.5717	22.87
Hoyle, Audrey	1569.45	719.02	.458	18.32
Hrencher, Sarah	1474.20	614.71	.417	16.68
Irby, Virginia	985.30	421.69	.4278	17.11
Jones, McWayne	2044.20	1027.58	.5027	20.11
Jones, Verna	1390.20	673.98	.4849	19.40
Kalinich, Bessie	2113.10	1139.41	.5392	21.57
Lowder, Nona	1722.45	1159.97	.6732	26.93
Lumpe, Minnie	2054.30	890.24	.4332	17.33
Maxwell, Bessie	1944.20	933.72	.4803	19.21
McCoy, Cecil	2023.35	1597.30	.7892	31.57
McCray, Alice	2072.50	967.89	.4669	18.68
Mille, Ethel	1895.40	1010.45	.5329	21.32
Miller, Nell	1899.20	1005.10	.5293	21.17
Mowry, Avis	2031.25	1078.91	.5312	21.25
Newkirk, Ruth	2072.55	1054.29	.5085	20.34
Nicoll, Bertha	1007.40	426.56	.4232	16.93
Nold, Catherine	2048.55	885.43	.4321	17.28
Pallanich, Martha	2129.30	1002.00	.4704	18.82
Pembleton, Evelyn	2090.15	1297.43	.6208	24.83
Phipps, Elsie	2107.35	1019.50	.4836	19.34
Richards, Anna	2058.55	1310.63	.6365	25.46
Ridley, Mabel	2004.00	965.89	.482	19.28
Roscoe, Ethel	2077.40	1230.62	.5922	23.69
Rose, Mary	2015.55	1182.40	.5865	23.46
Schroder, Doris	2054.00	1379.27	.6715	26.86
Shawhan, Florence	2027.50	1162.35	.5731	22.92
Shulsky, Margaret	2096.25	1370.85	.6537	26.15
Smith, Cecile	1510.35	921.19	.6096	24.38
Snapp, Theresa	904.25	462.78	.5119	20.48
Stange, Lorene	1918.30	813.20	.4238	16.95
[fol. 5628] Stewart, Myrtle	1993.25	1058.74	.5313	21.25
Stillwell, Carolyn	2092.00	1118.99	.5349	21.40
Stockton, Lucille	2062.55	906.41	.4394	17.58
Taylor, Bessie	2061.25	1027.58	.4986	19.94
Taylor, Nellie	1292.05	628.34	.4863	19.45
Toenebalhn, Lillian	1984.25	1112.78	.5609	22.44
Tucker, Marjorie	946.15	406.22	.4294	17.18
Vincent, Margaret	2062.40	1207.93	.5855	23.42
Voorhies, Edith	2095.55	1085.89	.5181	20.72
Waye, Martha	2085.05	1436.30	.6889	27.56
Weeks, Mamie	1719.15	1058.47	.6157	24.63
Welch, Anita	2076.45	1153.59	.5554	22.22

Section 61 (Folders)

Campbell, Grace	2009.55	1037.29	.5161	20.64
Clark, Helen	1347.45	576.53	.4277	17.11
Donahue, Catharine	1933.25	897.73	.4644	18.58

Downing, Eleanor	1763.35	825.30	.4678	18.71
Elliott, Georgia	2001.15	956.49	.4780	19.12
Glavenich, Sophia	1980.30	1065.71	.5382	21.52
Harrison, Della	1967.05	1332.14	.6772	27.09
Howard, Jewell	1527.05	824.21	.5398	21.59
Lake, Effie	1998.40	1253.77	.6275	25.10
Llywelyn, Nellie	1902.40	1146.42	.6027	24.11
McCormick, Mildred	1872.10	1041.52	.5563	22.25
Owens, Ruby	1805.30	862.68	.4779	19.12
Shinpaugh, Mary	2035.50	1145.12	.5627	22.51
Truders, Katherine	1937.10	1037.46	.5356	21.42

Section 61 (Miscellaneous)

Beal, Ruth	2087.40	985.97	.4724	18.90
Boothe, Irene	2042.30	1093.31	.5354	21.42
Broadus, Ruth	2034.55	879.65	.4325	17.30
Catalina, Mary	2118.40	1005.25	.4746	18.98
Caven, Violet	2084.55	932.35	.4474	17.90
Craig, Dessa	2045.40	1251.16	.6118	24.47
[fol. 5629] Dee, Helen	1823.40	778.10	.4268	17.07
Dougan, Lorena	2120.55	1001.93	.4724	18.90
Edwards, Margaret	1787.50	916.21	.5124	20.50
Emerson, Thelma	2027.30	951.71	.4695	18.78
Farrell, Sylvia	1017.15	495.81	.4875	19.50
Freeman, Paula	2073.40	1162.32	.5607	22.43
Gorman, Rose	1837.40	1204.00	.6554	26.22
Harris, Ethel	449.25	214.00	.4766	19.06
Harrison, Verna	2047.10	1075.28	.5253	21.01
Kalick, Anna	2009.20	902.21	.4491	17.96
Kever, Sophie	1999.00	1066.54	.5335	21.34
Kuchko, Katherine	2036.25	1158.15	.5688	22.75
Lamon, Mary	1945.45	1116.51	.5737	22.95
McCord, Leona	1132.45	501.80	.4433	17.73
McConkey, Doris	1313.15	678.78	.5170	20.68
Morris, Magdalen	2012.40	915.85	.4552	18.21
Morris, Ruth	1551.50	794.65	.5123	20.49
Mudd, Anna	1905.10	830.82	.4361	17.44
Patrick, Opal	1861.15	858.41	.4613	18.45
Porter, Frances	298.45	131.44	.4411	17.64
Redman, Glennette	1911.40	866.13	.4532	18.13
Redman, Gretha	1601.35	694.60	.4339	17.36
Reardon, Helen	1973.55	865.67	.4388	17.55
Shane, Christine	2088.05	915.17	.4383	17.53
Stewart, Nina	489.40	203.86	.4169	16.68
White, Murpha	1850.20	775.50	.4192	16.77

[fol. 5630] Miscellaneous Piece Workers

Average Earnings Of Piece Work Operators From Week Ending October 30, 1936 To October 22, 1937

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Hourly Rate	Average Weekly Earnings
	Section 811			
Albright, Elayne	1370.20	613.48	.4477	17.91
Allbaugh, DeSylvia	1621.40	1054.66	.6503	26.01
Allison, Verna	1772.30	794.23	.4482	17.93
Baggerly, Alice	1397.30	552.08	.3952	15.81
Benge, Leonora	2036.05	981.25	.4820	19.28
Boyer, Hazel	1855.40	1095.26	.5904	23.62
Caton, Alice	1329.55	586.82	.4416	17.66
Davis, Edna	1950.50	1101.11	.5647	22.59
Dick, Bernice	1865.00	869.88	.4664	18.66
Dunagan, Josephine	2024.40	1319.99	.6522	26.09
Fries, Jennie May	1965.20	905.42	.460[illegible]	18.43
Hays, Helen	1383.00	664.63	.480[illegible]	19.22
Heacock, Harriet	1739.55	778.20	.4475	17.90
Jones, Ethel	1879.40	994.25	.5291	21.16
Krepps, Lena	1743.50	942.18	.5406	21.62
Lawson, Edith	1973.35	993.17	.5034	20.14
Loar, Gertrude	1687.35	769.78	.4563	18.25
McCabe, Wilma	1378.25	557.12	.4043	16.17
Moore, Anna	1958.10	1050.94	.5367	21.47
Perew, Eva Lee	1986.05	915.05	.4607	18.43
Phelps, Clare	1964.55	912.21	.4645	18.58
Rehzin, Neva	2006.00	962.12	.4796	19.18
Richards, Lillian	1517.20	839.28	.5532	22.13
Rudy, Bessie	2171.45	1385.19	.6380	25.52
Rust, Jake	1969.35	1039.62	.5280	21.12
Schutte, Mary	1893.45	831.40	.4392	17.57
Troutman, Edna	185.30	84.64	.4575	18.30
Warren, Emma	1868.15	889.58	.4759	19.04
Wilson, Edith	2049.15	1092.57	.5332	21.33

[fol. 5631] 23 sheets P-16 Plaintiff's Exhibit No. 110 AMF

Employees Including Beginners Who Work Exclusively On Merchandise Selling Wholesale For $45.00 Per Dozen And Below

Average Earnings Of Piece Work Operators From Week Ending October 30, 1936 To October 22, 1937

(on 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Hourly Rate*	Average Weekly Earnings
	Section 516			
Boan, Nellie	1390.10	610.75	.4394	17.58
Bray, Jessie	2074.55	926.82	.4468	17.87
Bybee, Mary	1989.45	909.93	.4573	18.29
Canaday, Lena	1972.20	913.90	.4634	18.54
Cawthorn, Sinie	2010.20	797.37	.3967	15.87
Chancellor, Beulah	2055.30	927.31	.4512	18.05
Crum, Lindie	2071.45	964.61	.4657	18.63
Ducoulombier, Margaret	2091.40	1018.58	.4870	19.48
Frye, Dorothy	2052.55	989.67	.4822	19.29
Garrett, Louise	2068.00	1014.35	.4905	19.62
Gates, Alice	2042.00	960.59	.4704	18.82
Greenwood, Dorothy	2024.20	1094.47	.5407	21.63
Gustin, Mary Ann	2083.50	1010.97	.4852	19.41
Hadley, Elsie	1332.00	629.33	.4725	18.90
Harper, Nell	2058.05	941.39	.4574	18.30
Hartman, Anna	2040.45	1004.58	.4923	19.69
Hatfield, Opal	485.00	218.38	.4503	18.01
Holt, Velma	2050.45	909.67	.4436	17.74
Hunter, Johanna	2080.15	979.68	.471	18.84
Jones, Hazel	1908.50	973.21	.5099	20.40
Kelly, Etha	2089.30	988.50	.4731	18.92
Leibold, Edith	1360.15	623.45	.4584	18.34
Lentz, Florence	1477.50	698.45	.4727	18.91
Maxfield, Opal	1983.35	979.00	.4936	19.74
Molle, Teresa	2068.50	1170.07	.5657	22.63
Morrow, Ruby	2012.20	959.55	.4769	19.08
Osborne, Hazel	1907.55	899.34	.4715	18.86
Page, Merle	1945.55	896.74	.4609	18.44
Ransdall, Irene	1278.05	530.40	.415	16.60
Salva, Gladys	1987.50	925.91	.4659	18.64
Shiner, Grace	1295.40	558.44	.4311	17.24
Tolliver, Lena	2058.05	952.97	.463	18.52
Vaught, Artie	2060.50	989.73	.4803	19.21
[fol. 5632] Vernon, Cora	2058.30	961.47	.4671	18.68
Vogliardo, Anna	2083.00	1030.79	.4949	19.80
Wallace, Juanita	1337.10	592.37	.443	17.72
White, Mary	1707.30	791.86	.4638	18.55
Wilson, Helen	1797.20	919.29	.5115	20.46
Wittman, Irene	1498.20	705.94	.4712	18.85

Section 517

Akeman, Ruth	1536.45	745.25	.485	19.40
Bartell, Mamie	1953.15	1331.82	.6819	27.28
Bodine, Katherine	1546.25	615.60	.3981	15.92
Broken, Margaret	1969.20	907.28	.4607	18.43
Brown, Mary	1328.45	630.26	.4744	18.98
Cox, Pearl	2024.30	934.40	.4616	18.46
Cress, Jennie	1990.10	943.60	.4741	18.96
Crewes, Anna	1353.55	676.90	.5001	20.00
Dockery, Mary	1713.40	765.17	.4465	17.86
Doughty, Leone	1768.35	772.96	.4371	17.48
Farrell, Grace	733.30	304.99	.4159	16.64
Fleeger, Bernice	1992.55	823.26	.4132	16.53
Getz, Helen	1534.25	653.57	.4260	17.04
Gill, Dorothy	1982.20	836.73	.4221	16.88
Gleason, Virginia	2020.40	934.31	.4624	18.50
Gulick, Sophie	2098.40	938.52	.4473	17.89
Gunderman, Helen	2012.10	963.51	.4789	19.16
Harrison, Mildred	2052.25	889.96	.4337	17.35
Hayward, Irene	2023.55	1023.30	.5057	20.23
Head, Deal	1483.15	689.52	.4649	18.58
Horvat, Katherine	1711.25	861.30	.5033	20.13
Kellogg, Hazel	1598.05	650.90	.4073	16.29
Kelso, Madge	1944.15	863.72	.4443	17.77
Kirk, Jean	1395.40	619.41	.4439	17.76
Lafferty, Bertie	1454.55	654.88	.4502	18.01
Lewis, Lorean	1868.20	939.14	.5027	20.11
[fol. 5633] Melton, Fannie	1248.40	576.19	.4618	18.47
Newnham, Bertha	1844.10	860.77	.4668	18.67
Patrick, Nell	1993.40	924.36	.4637	18.55
Pitcock, Cora	2065.45	967.97	.4638	18.55
Pollock, Martha	1965.15	831.83	.4233	16.93
Rawlings, Edna	1519.25	677.19	.4458	17.83
Rogers, Mary	1617.35	722.21	.4465	17.86
Sebastian, Dorothy	1376.40	666.18	.4840	19.36
Shields, Pearl	276.50	136.19	.4925	19.70
Sites, Mary	2003.00	928.22	.4634	18.54
Stark, Ruby	2061.45	981.60	.4762	19.05
Taylor, Margaret	1962.60	943.26	.4806	19.22
Underwood, Winnie	2024.45	954.77	.4716	18.86
Vidrickson, Ruby	1410.30	644.46	.4570	18.28
Wagy, Alice	1817.50	787.88	.4336	17.34
Walker, Mary	2060.05	884.64	.4358	17.43
Willey, Juanita	1985.10	996.81	.5021	20.08
Wilson, Blanche	981.00	410.81	.4188	16.75
Wright, Elsie	2034.10	970.32	.4770	19.08

Section 519

Alexander, Edith	1686.10	831.83	.4933	19.73
Basham, Ida	2010.00	903.55	.4495	17.98
Bechtel, Audrey	2069.40	1135.36	.5486	21.94
Bennett, Pearl	2028.05	858.68	.4234	16.94
Bettis, Ethel	2031.20	1059.73	.5217	20.87
Bogan, Ethel	1869.50	961.62	.5142	20.57
Clayburg, Susie	1777.35	803.04	.4517	18.07
Cox, Opal	2001.35	1102.36	.5506	22.02
Caudell, Hattie	2121.35	1005.78	.474	18.96
Davidson, Ruth	1186.45	627.10	.5283	21.13
Delaney, Sallie	2076.30	982.36	.4729	18.92
Donovan, Hazel	2021.25	930.21	.4602	18.41
Dull, Ora	2164.00	1070.91	.4949	19.80
[fol. 5634] Flynn, Edna	2009.25	960.91	.4783	19.13
Freed, Alice	1817.10	946.34	.5208	20.83
Frye, Opal Kelly	2052.60	1029.39	.5017	20.07
Hays, Hazel	1964.10	1108.23	.5643	22.57
Helms, Vivian	1545.20	711.40	.4605	18.42
Jester, Augusta	1896.45	1289.07	.6798	27.19
Jonas, Anna	1995.00	966.77	.4846	19.38
Kent, Cassie	1473.25	631.98	.429	17.16
Kline, Margaret	2028.40	1025.20	.5053	20.21
Lago, Ruby	2047.30	1110.51	.5422	21.69
Leavell, Dorothy	1988.20	919.73	.4626	18.50
Lobdell, Bernice	1579.10	798.51	.5057	20.23
Miller, Aleta	2069.45	1104.45	.5335	21.34
Moore, Flora	1991.00	816.90	.4103	16.41
Moore, Lucinda	2093.55	1290.00	.616	24.64
Schroder, Helen	1900.00	899.43	.4734	18.94
Skinner, Jean	419.05	179.66	.4288	17.15
Smith, Josephine	153.20	66.74	.4362	17.45
South, Dimple	2040.00	1077.22	.528	21.12
Sprouse, Mary	1885.45	922.19	.489	19.56
Stepp, Nell	1992.45	910.48	.4568	18.27
Straight, Lillian	2063.00	873.78	.4235	16.94
Swisher, Blanche	1677.30	961.15	.5728	22.91
Tyler, Elva	1945.40	834.47	.4288	17.15
Toler, Pearl	1958.25	847.30	.4327	17.31
Ward, Lucille	1976.45	910.22	.4606	18.42
Willis, Myrtle	2054.00	956.71	.4658	18.63

[fol. 5635] Employees Including Beginners Who Work Exclusively On Merchandise Selling Wholesale For $45.00 Per Dozen And Below

Average Earnings Of Piece Work Operators From Week Ending October 30, 1936 To October 22, 1937

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Hourly Rate	Average Weekly Earnings
Section 521				
Adams, Gertrude	1961.20	878.88	.4482	17.93
Atkins, Caroline	2018.40	853.22	.4226	16.90
Beals, Hulda	1966.25	977.92	.4974	19.90
Berry, Grace	1686.25	723.60	.4292	17.17
Beverburg, Ruth	1287.05	558.06	.4336	17.34
Boatka, Valeria	1984.35	993.55	.5005	20.02
Buck, Gladys	2044.55	1024.49	.501	20.04
Cannon, Mollie	968.30	417.51	.4309	17.24
Cansler, Rena	1199.00	508.60	.4242	16.97
Clements, Dorothy	2009.20	849.82	.423	16.92
Collins, Nina	1450.55	595.72	.4108	16.43
Cummings, Anna	1978.30	832.96	.4211	16.84
Dye, Elizabeth	189.35	83.88	.4438	17.75
Eubanks, Elizabeth	1976.30	852.84	.4316	17.26
Gage, Minnie	2005.50	924.32	.4610	18.44
Gilliland, Bessie	1429.20	596.56	.4175	16.70
Glaszczak, Frances	1932.25	799.19	.4137	16.55
Hanner, Versie	1982.20	1057.07	.5333	21.33
Herlong, Louise	2016.30	901.64	.4472	17.89
Hinckley, Ethel	1432.00	594.80	.4154	16.62
Holder, Buttone	1598.35	659.58	.4128	16.51
Holder, Dora	1889.10	869.26	.4602	18.41
Hosey, Gladys	71.35	29.48	.4094	16.38
Howe, Kathryn	1782.35	768.58	.4313	17.25
Jackson, Rhoda	1995.00	888.60	.4454	17.82
Johnson, Myrtle	1949.50	846.97	.4343	17.37
Kitchen, Ruby	1960.20	895.03	.4566	18.26
Lewis, Evelyn	1375.00	576.75	.4195	16.78
May Dixie	1326.25	556.94	.4200	16.80
McBee, Mae	1937.30	845.00	.4362	17.45
McClurg, Carrie	2011.35	923.68	.4593	18.37
McLaughlin, Chloe	1991.45	906.91	.4555	18.22
McNeil, Zola	1968.30	835.89	.4247	16.99
[fol. 5636] Meinke, Inez	1951.50	821.80	.4210	16.84
Merriott, Velma	1998.35	835.73	.4183	16.73
Shaw, Emma	2037.20	1020.73	.5011	20.04
Speaker, Gladys	1980.50	920.24	.4648	18.59
Tillery, Irene	1655.50	713.25	.4310	17.24
Underwood, Kathleen	1896.35	799.19	.4215	16.86

Verhulst, Mary	1346.05	626.07	.4651	18.60
White, Ida	1984.30	939.00	.4733	18.93
Wilson, Betty	1389.55	585.47	.4215	16.86
Wilson, Gladys	2021.45	930.96	.4606	18.42

Section 523

Allen, Minnie	1976.00	939.19	.4753	19.01
Benus, Blanche	1329.20	617.14	.4647	18.59
Brian, Carrie	2055.40	1005.70	.4893	19.57
Briner, Gladys	1939.35	1086.47	.5603	22.41
Erwin, Cora	2037.25	957.83	.4702	18.81
Farrell, Jennie	1990.00	1279.96	.6431	25.72
Fauloner, Lena	1877.10	1067.47	.5687	22.75
Fisher, Emily	1516.25	860.83	.5678	22.71
Foster, Georgia	2016.55	1155.20	.5727	22.91
Gfeller, Beth	1320.45	554.49	.4198	16.79
Hicks, Edith	1971.50	1029.33	.522	20.88
Jackson, Matilda	1993.30	992.33	.4977	19.91
Kendall, Agnes	1993.05	1117.42	.5607	22.43
Pfeil, Mary	1840.30	808.75	.4393	17.57
Rice, Carrie	2022.30	1070.59	.5295	21.18
Roberts, Myrtle	1972.00	979.22	.4966	19.86
Scott, Carrie	2024.50	1081.40	.534	21.36
Smith, Lorraine	2036.10	1477.05	.7255	29.02
Snell, Violet	2011.45	1027.75	.5108	20.43
Stacy, Marjorie	1270.50	582.91	.4586	18.34
Wisdom, Audrey	2014.45	1108.29	.55	22.00
Woolley, Velma	1977.40	1079.68	.5458	21.81

[fol. 5637] Employees Including Beginners Who Work Exclusively On Merchandise Selling Wholesale For $45.00 Per Dozen And Below

Average Earnings Of Piece Work Operators From Week Ending October 30, 1936 To October 22, 1937

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Hourly Rate	Average Weekly Earnings
		Section 531		
Adams, Margaret	2103.00	1599.20	.7604	30.42
Alley, Ruby	1093.55	529.57	.4841	19.36
Ball, Nell	1921.15	870.84	.4533	18.13
Barrett, Elizabeth	2041.30	1309.33	.6412	25.65
Bowerso[illegible], Mona	1907.15	971.95	.5097	20.39
Brown, Lela	2018.20	1305.76	.6471	25.88
Carr, Irene	1590.25	777.05	.4887	19.55
Chambliss, Virgie	1534.55	1034.87	.6742	26.97

Fry, Lillian	2081.25	1289.83	.6198	24.79
Howard, Margaret	2025.25	1126.08	.5561	22.24
Inbody, Dorothy	1969.45	1189.31	.6037	24.15
Jacob, Bess	2108.30	1108.37	.5255	21.02
Kelly, Jessie	2106.30	1202.28	.5706	22.82
Mueller, Iva	2129.00	1070.48	.5028	20.11
Nokes, Ellen	2049.30	1063.39	.5187	20.75
Redona, Estelle	496.30	237.84	.4786	19.14
Rencoske, Elizabeth	1963.05	1057.13	.5385	21.54
Rickett, Donna	1636.50	809.67	.4949	19.80
Rothgeb, Estel	2136.45	1268.24	.5937	23.75
Saunders, Ardath	1944.20	907.88	.4670	18.68
Slankard, Ruby	2002.15	1222.96	.6109	24.44
Smith, Elsie	2067.60	1077.44	.5210	20.84
Steward, Mary	2009.25	831.59	.4139	16.56
Tebbe, Mildred	1022.25	433.11	.4238	16.95
Walters, Lydia	1978.40	1007.19	.5092	20.37
Womacks, Nettie	1527.55	662.81	.4338	17.35
[fol. 5638]				
Anderson, Gladys	1841.20	905.71	.4919	19.68
Apperson, Amy	2033.45	1283.66	.6312	25.25
Atkinson, Catherine	1527.40	729.49	.4775	19.10
Atkinson, Florence	2096.00	1351.60	.6448	25.79
Austin, Gladys	1999.40	1003.41	.5018	20.07
Barnes, Lois	2035.55	1137.06	.5585	22.34
Beal, Jane	2037.45	1019.14	.5001	20.00
Biewner, Ethel	1271.15	620.01	.4877	19.51
Bilyeu, Helen	2047.15	1205.33	.5888	23.55
Bingman, Ethel	2086.20	1053.36	.5049	20.20
Black, Pearl	2073.50	1141.95	.5506	22.02
Boan, Bessie	2061.25	1081.79	.5248	20.99
Bodie, Lydia	1912.10	898.38	.4698	18.79
Boor, Helen	2035.45	1040.76	.5112	20.45
Bozworth, Pearl	2086.10	928.65	.4451	17.80
Brands, Gladys	2007.25	994.39	.4954	19.82
Brooks, Mildred	2083.50	1118.03	.5366	21.46
Brown, Ora	1246.30	698.64	.5605	22.42
Bryant, Bernice	2058.55	1279.80	.6216	24.86
Bryson, Virginia	2018.25	1130.04	.5599	22.40
Burch, Mildred	2024.20	960.36	.4745	18.98
Burns, Patricia	2040.05	1035.67	.5077	20.31
Cahall, Marie	2022.05	1207.91	.5974	23.90
Cameron, Edith	1885.35	937.77	.4972	19.89
Campbell, Rose	1809.50	918.46	.5074	20.30
Carlson, Mamie	2026.05	1038.21	.5124	20.50
Clark, Sue	2050.55	1160.18	.5657	22.63
Cline, Lela	2043.25	986.45	.4828	19.31
Copenhaver, Maude	2092.20	1288.89	.6161	24.64
Corum, Eunice	1680.20	546.93	.5064	20.26
Cotten, Nora	2008.00	1102.72	.5492	21.97
Cox, Mary	2049.40	1040.84	.5077	20.31
Cozad, Eva	1933.00	1053.88	.5452	21.81
Dare, Virginia	1936.10	982.91	.5077	20.31

[fol. 5639] Davidson, Ina	229.15	114.62	.5005	20.02
Davis, Lynn	2090.45	1311.23	.6271	25.08
Dheanens, Betty	1500.10	841.06	.5607	22.43
Dietz, Dorothy	1991.45	1015.53	.5098	20.39
Donnelly, Helen	1778.15	909.86	.5117	20.47
Doyle, Gertrude	2084.00	1283.86	.6161	24.64
Dunlap, Grace	2099.40	1143.47	.5445	21.78
Engle, Inez	2093.10	1125.47	.5377	21.51
Evans, Lucy	2022.30	958.35	.4737	18.95
Everly, Mary	2039.30	956.79	.4692	18.77
Fain, Carrie	1382.45	682.48	.4937	19.75
Fields, Pearl	2012.00	1114.02	.5537	22.15
Fowler, Eva	2066.50	1181.26	.5716	22.86
Gardner, Elva	2085.35	1335.01	.6402	25.61
Gordon, Viola	2050.30	1349.40	.6581	26.32
Griffith, Betty	2016.25	996.48	.4942	19.77
Griffith, Polly	2037.55	1120.63	.5500	22.00
Haase, Martha	2041.35	1001.06	.4904	19.62
Hall, Pearl	2068.40	1022.34	.4943	19.77
Halliday, Opal	2083.30	1073.74	.5154	20.62
Hamilton, Grace	2049.00	1034.41	.5048	20.19
Hansen, Emma	485.10	252.84	.5212	20.85
Hanson, Laura	1766.25	892.17	.5051	20.20
Harbison, Beulah	2050.00	1101.34	.5372	21.49
Hardman, Hazel	2052.30	1034.38	.5040	20.16
Hardsaw, Katherine	2062.05	1126.52	.5463	21.85
Harris, Emma	2079.35	1130.83	.5438	21.75
Hemme, Zella	2050.05	987.48	.4815	19.26
Hershey, Tessie	2039.10	1007.27	.4940	19.76
Hills, Laura	2023.45	1073.53	.5305	21.22
Hinkle, Alta	2048.05	1074.95	.5248	20.99
Hogan, Pearl	2044.10	1386.69	.6784	27.14
Horak, Dessie	2122.15	1346.94	.6347	25.39
Horde, Mildred	1900.10	922.87	.4857	19.43
[fol. 5640] Howard, Adaline	2109.05	1109.43	.5260	21.04
Huffaker, Thelma	2091.20	1042.34	.4984	19.94
Hull, Bernice	1875.05	956.37	.5098	20.39
Hundley, Cordia	2022.55	1097.79	.5428	21.71
Hunter, Margaret	2024.00	1072.94	.5297	21.19
Ihle, Millie	2049.45	982.02	.4792	19.17
Ingold, May	2087.00	1003.74	.4809	19.24
Jamison, Marie	1418.45	955.06	.6733	26.93
Jewett, Ola	2009.30	990.61	.4930	19.72
Johnson, Lorene	1911.00	1046.86	.5478	21.91
Johnson, Nora	2047.30	1067.31	.5212	20.85
Jones, Mynie	2021.05	1228.71	.6080	24.32
Kahmann, Margaret	2076.00	1023.83	.4932	19.73
Kammer, Pauline	2017.20	957.81	.4748	18.99
Keidel, Myrtle	1346.50	678.21	.5037	20.15
Kesinger, Lois	1988.05	1097.80	.5522	22.09
Kilby, Daisy	1998.00	1025.31	.5132	20.53
Knight, Patricia	2037.40	965.74	.4740	18.96

Knox, Wilma	1658.45	808.64	.4876	19.50
Kruger, Mary	2017.40	1021.44	.5063	20.25
Kuhn, Martha	2075.15	1085.39	.523	20.92
Lantz, Ola	346.15	185.02	.5345	21.38
Leger, Margaret	2068.40	1275.49	.6167	24.67
Liberman, Eva	2046.50	1148.33	.5611	22.44
Lilly, Thelma	1976.25	976.95	.4943	19.77
Litten, Iris	2049.00	1157.17	.5647	22.59
Livesay, Edith	2086.00	1235.07	.5921	23.68
Mahoney, Roma	1603.55	802.89	.5007	20.03
Martin, Blanche	2050.50	1154.73	.5631	22.52
Mattox, Dora	2074.20	1136.91	.5492	21.97
Mauk, Ida	2043.05	1253.21	.6134	24.54
Maxwell, Ethel	2044.40	1031.99	.5048	20.19
McBride, Ruth	2004.25	979.97	.4889	19.56
McKown, Esther [fol. 5641]	2052.10	1059.47	.5163	20.65
McQuiston, Naomi	2041.50	1041.81	.5103	20.41
Meuwissen, Florence	2026.45	1208.58	.5964	23.86
Miller, Tibitha	1992.20	1089.74	.547	21.88
Moore, Leona	2027.00	977.86	.4824	19.30
Mumford, Boyd	1976.55	1181.98	.598	23.92
Murphy, Alma	2008.20	1186.19	.5907	23.63
Murray, Ann	2068.50	1009.13	.4879	19.52
Myers, Fern	2037.05	1158.58	.5688	22.75
Nichols, Josephine	2012.30	1060.13	.5268	21.07
Nichols, Louise	1970.05	1014.55	.515	20.60
Noll, Ruth	2075.05	1262.04	.6082	24.33
Ormsby, Sallie	2078.05	1117.63	.5378	21.51
Otis, Dolly	2073.15	1303.85	.6289	25.16
Pavich, Angeline	1473.30	726.91	.4934	19.74
Perkins, Beulah	1812.10	880.59	.4859	19.44
Perry, Laura	2089.35	1029.73	.4928	19.71
Phillips, Lydia	2009.40	1228.72	.6115	24.46
Plattner, Regina	1618.20	835.95	.5166	20.66
Plummer, Bessie	1116.55	542.52	.4859	19.44
Proctor, May	2067.35	1248.97	.6041	24.16
Putman, Ruth	1363.35	697.57	.5117	20.47
Raines, Cora	2055.50	1092.39	.5314	21.26
Raines, Emilea	2013.30	1199.78	.5959	23.84
Renner, Orpha	2045.25	1086.81	.5314	21.26
Richardson, Marie	2046.25	1033.71	.5052	20.21
Richardson, Opal	2090.05	1002.90	.4798	19.19
Riggs, Dorothy	2034.40	1123.69	.5523	22.09
Ross, Irene	2079.00	1101.63	.5299	21.20
Rudd, Gladys	1508.55	742.00	.4917	19.67
Sauke, Sarah Idella	2088.30	1304.24	.6243	24.97
Schweiger, Freda	1636.40	773.88	.4727	18.91
Shearer, Edith	2090.10	1331.57	.6371	25.48
Shipman, Elsie	2045.10	1345.68	.658	26.32
Simmons, Opal	2064.10	1260.50	.6107	24.43

[fol. 5642] Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
	Section 519		
Bechtel, Audrey	1867.45	1110.52	23.78
Bettis, Ethel	1822.30	1048.84	23.02
Bogan, Ethel	1716.10	1009.50	23.53
Clayburg, Susie	1874.35	1083.78	23.12
Cox, Opal	1759.55	1144.92	26.02
Modrell, Maudia	1676.15	1008.66	24.07
Frye, Opal Kelly	1793.25	1017.80	22.70
Helms, Vivian	1916.00	1182.49	24.69
Jester, Augusta	1051.00	796.47	30.31
Lobdell, Bernice	1966.40	1112.90	22.64
Miller, Aleta	1952.10	1208.95	24.77
Moore, Flora	1801.25	1089.13	24.18
Moore, Lucinda	1660.05	1028.28	24.78
South, Dimple	1918.35	1123.33	23.42
Swisher, Blanche	1822.15	1026.15	22.52
Ward, Lucille	1916.15	1083.53	22.62
Alexander, Edith	1926.30	1041.44	21.62
Caudell, Battie	1910.50	979.93	20.51
Davidson, Ruth	1847.00	998.57	21.62
Donovan, Hazel	1887.40	1003.66	21.27
Dull, Ora	1900.10	1025.10	21.58
Flynn, Edna	1903.45	1058.72	22.24
Freed, Alice	1695.55	923.09	21.77
Hays, Hazel	1336.50	768.96	23.01
Jonas, Anna	1884.00	1042.33	22.13
Kline, Margaret	1902.05	1026.19	21.58
Lago, Ruby	1864.20	1018.98	21.86
Leavell, Dorothy	1710.35	934.43	21.85
Schroder, Helen	376.00	196.77	20.93
[fol. 5643] Smith, Josephine	1662.55	877.61	21.11
Sprouse, Mary	1906.50	1054.03	22.11
Stepp, Nell	1460.55	802.76	21.98
Tyler, Elva	1861.10	975.34	20.96
Toler, Pearl	1851.10	999.48	21.60
Willis, Myrtle	1896.30	973.36	20.53
Everette, Ethel	1392.05	738.19	21.21
McDonald, Oma	1251.10	660.09	21.10
Basham, Ida	1879.20	920.14	19.58
Bennett, Pearl	1896.15	920.18	19.41
Delaney, Sallie	1916.40	948.93	19.80
Kent, Cassie	1872.10	883.13	18.87
Skinner, Jean	384.00	169.93	17.70

Straight, Lillian	320.00	145.99	18.25
Engle, Charlottie	1402.15	673.24	19.20
Kaberline, Augusta	1445.25	706.23	19.54
Toler, Estelle	1326.20	583.67	17.60

[fol. 5644] **Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938**

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
Section 521			
Buck, Gladys	1864.05	1108.28	23.78
Herlong, Louise	1833.25	1048.43	22.87
McLaughlin, Chloe	1697.40	964.20	22.72
Shaw, Emma	1792.50	1012.90	22.60
Verhulst, Mary	1946.10	1146.32	23.56
Fromholtz, Elizabeth	1264.15	740.87	23.44
Adams, Gertrude	1760.30	883.04	20.06
Beals, Hulda	1923.25	1041.62	21.66
Boatka, Valeria	1862.35	979.90	21.04
Gage, Minnie	1876.50	994.36	21.19
Holder, Dora	1825.15	951.87	20.86
Kitchen, Ruby	1909.35	987.48	20.68
McClurg, Carrie	1764.30	913.72	20.71
Belan, Anne	1502.25	798.01	21.24
Speaker, Gladys	1856.05	981.37	21.15
White, Ida	1844.10	1004.35	21.78
Wilson, Gladys	1808.50	961.74	21.27
Lowe, Mildred	825.20	415.73	20.15
King, Venita	679.00	347.02	20.44
Coates, Bessie	304.20	158.04	20.77
Atkins, Caroline	1863.35	873.82	18.76
Berry, Grace	1807.55	837.07	18.52
Gannon, Mollie	1119.20	501.10	17.91
Cansler, Rena	1525.50	711.76	18.66
Clements, Dorothy	1790.00	856.99	19.15
Collins, Nina	1828.05	850.31	18.60
Cummings, Anna	1828.10	828.17	18.12
Dye, Elizabeth	1493.15	680.63	18.23
Eubanks, Elizabeth	1800.20	822.63	18.28
Gilliland, Bessie	1809.15	877.71	19.40
Glasgczak, Frances	1286.10	585.54	18.21
Kinckley, Ethel	1553.20	695.83	17.92
Holder, Buttone	1850.35	887.81	19.19
[fol. 5645] Hosey, Gladys	1243.40	580.02	18.66
Howe, Kathryn	1462.05	720.18	19.70

Jackson, Rhoda	1851.50	888.38	19.19
Lewis, Evelyn	1484.40	668.24	18.00
May Dixie	1844.25	867.60	18.81
McBee, Mae	349.00	157.62	18.06
McNeil, Zola	1840.25	876.91	19.06
Meinke, Inez	1777.10	808.97	18.21
Merriott, Velma	1753.10	796.57	18.18
Tillery, Irene	1834.05	895.03	19.52
Wilson, Betty	1025.15	522.17	20.37
Coles, Goldie	663.40	312.16	18.81
Fountain, Anna	1232.20	618.91	19.61
Hendrix, Grace	1177.30	588.03	19.98
Sinnett, Marjorie	956.00	454.13	19.00
Snare, Mildred	1244.35	603.28	19.39
Yount, Emma	718.30	339.26	18.89
Frits, Lora	744.35	337.39	18.12
McDermott, Erma	64.40	29.66	18.34
Beverburg, Ruth	326.40	146.81	17.97
Hanner, Versie	1299.45	809.05	24.90
Johnson, Myrtle	1783.55	793.54	17.79
Underwood, Kathleen	859.35	370.60	17.24
Briscoe, Grace	961.30	396.54	16.50
Box, Dorothy	971.10	418.46	17.98
Coats, Ruth	904.35	316.72	17.98
Kavanaugh, Maurine	744.00	326.03	17.53
Mercier, Mary Louise	920.50	413.38	17.96
Jaskinis, Marie	1414.50	623.10	17.62
Stiles, Bessie	715.00	319.18	17.86
Gray, Nova	713.05	302.70	16.98
Kramer, Esther	869.05	361.78	16.65
Weber, Lucille	556.55	229.69	16.50
[fol. 5646] Beals, Merle	190.00	78.35	16.50
Haven, Mabel	191.15	78.88	16.50
English, Sarah Greer	107.30	44.32	16.50
King, Lois	692.55	296.46	17.11
Williams, Grace	567.40	234.19	16.50
Diebold, Helen	388.25	163.61	16.85
Hamby, Iola	838.50	308.69	19.02
Joy, Laura	823.45	346.53	16.83
Kinne, Mary	1194.00	522.25	17.50
Lee, Inez	900.25	391.39	17.39
Morlang, Edna	1721.40	797.13	18.52
Shepherd, Anna	857.50	361.23	16.84
Scammahorn, Della	912.25	409.36	17.95
Vernor, Eva	964.20	408.62	16.95

[fol. 5647] Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
Section 523			
Brian, Carrie	1880.20	1065.53	22.67
Farrell, Jennie	1879.30	1298.43	27.63
Fauloner, Lena	1769.00	1069.27	24.18
Fisher, Emily	1852.25	1182.37	25.53
Foster, Georgia	1581.10	1114.82	23.70
Kendall, Agnes	1897.30	1099.57	23.18
Pfeil, Mary	1851.15	1074.68	23.22
Scott, Carrie	1844.45	1038.25	22.51
Smith, Lorraine	1824.15	1429.31	31.34
Wisdom, Audrey	1799.30	1081.89	24.05
Woolley, Velma	1498.45	989.69	26.41
Campbell, Iva	1154.55	687.12	23.80
Allen, Minnie	1853.30	964.94	20.82
Benus, Blanche	1830.15	964.41	21.08
Briner, Gladys	1668.55	930.92	22.31
Erwin, Cora	1907.20	986.14	20.68
Hicks, Edith	1890.05	987.62	20.90
Jackson, Matilda	1897.45	1022.48	21.55
Rice, Carrie	1819.25	990.19	21.77
Roberts, Myrtle	1290.05	685.68	21.26
Snell, Violet	1751.20	962.84	21.99
Stacy, Marjorie	1807.45	903.71	20.00
Grier, Carolyn	814.10	437.30	21.48
Welty, Lorene	744.55	407.34	21.87
Jones, Jewell	638.05	280.07	17.56
Comers, Sadie	740.45	348.87	18.84
Brazeal, Angie	1052.05	474.96	18.06
Gravino, Lena	922.05	405.98	17.61
Greaves, Gertrude	755.10	328.96	17.42
Meyers, Loretta	1013.15	455.66	17.99
Phillips, Bess	623.15	279.66	17.95
Gfeller, Beth	1749.45	840.07	19.20
[fol. 5648] Bellman, Peggy	363.35	154.96	17.05
Bullock, Nannie Lee	925.05	389.43	16.84
Brooks, Virginia	295.30	124.12	16.80
Apprill, Doris	440.30	182.49	16.57
Hermanson, Montie	130.30	54.81	16.80
Hillbrand, Laura	223.20	93.89	16.82
Hoegler, Hazel	106.00	43.72	16.50
Hovis, Pansy	716.50	321.09	17.92
Kelley, Madoline	354.50	146.30	16.50
Angold, Helen	147.10	60.72	16.50

Beck, Vera	370.50	157.46	17.00
Benton, Julia	348.50	143.90	16.51
Draine, Margaret	338.00	139.38	16.50
Guerera, Clara	165.45	68.37	16.50
Gourley, Ethel	180.25	74.41	16.50
Knauer, Helen	398.20	164.26	16.50
Kelly, Katherine	539.45	223.02	16.53
Keeney, Leona	777.35	327.37	16.84
Lewis, Beatrice	391.05	162.27	16.60
Merritt, Christine	541.00	239.84	17.73
Mauldin, Letha	354.25	146.20	16.50
McLelland, Lillian	349.30	144.17	16.50
Palmer, Myrtle	390.20	160.99	16.50
Pease, Clema	406.00	167.46	16.50
Payton, Margaret	390.15	160.95	16.50
Plunk, Mabel	308.30	127.24	16.50
Shaw, Rena J.	150.45	62.79	16.66
Stearns, Emma Lou	380.15	156.84	16.50
Thrift, Bessie	380.10	156.87	16.50
Thieman, Regina	399.20	164.68	16.50
Walton, Blanche	312.40	128.97	16.50
Waldman, Genevieve	344.00	141.88	16.50
Zawadny, Josephine	192.00	80.12	16.69
Williams, Edith	404.00	166.65	16.50
[fol. 5649] Beatty, Imogene	755.30	329.45	17.44
Callahan, Josephine	251.30	106.35	16.92
Ellis, Anna	413.30	196.24	18.98
Parks, June	1075.50	451.82	16.80
Rigdon, Keturah	253.50	122.73	19.34
Siskey, Dorothy	397.30	168.93	17.00
Zawaske, Frances	1046.30	465.40	17.79
Long, Ciara	943.30	437.86	18.56
Ranney, Mary Katherine	841.40	375.10	17.82
Christian, Hazel	616.45	328.42	21.30
Comstock, Ellen	659.30	398.15	24.15
Fisk, Minnie	562.	336.70	23.96
Pflumm, Catherine	103.	66.92	25.99
Smith, Dorothy	517.25	250.54	19.36
Ward, Gladys	350.10	183.44	20.95
Atkinson, Allene Farris	637.10	265.70	16.68
Badger, Verl	588.25	275.57	18.73
Marrs, Marguerite	143.30	68.98	19.22
Muehlberger, Carolyn Copowycz	769.45	326.86	16.98
Ireland, Carrie	559.20	230.66	16.50
Robinson, Ethelyn	919.30	507.31	22.07
Rabuse, Kate	841.50	391.73	18.61
Rockhold, Lavaughn	495.00	273.33	22.09
Stucker, Louise	546.10	237.81	17.42
Scaggs, Ola	347.15	146.03	16.82
Smith, Filice	715.40	303.30	16.95
Uzzell, Ruby	493.50	203.72	16.50
Newbey, Eva	118.45	49.58	16.69

Turner, Ruth	363.20	163.23	17.97
Allen, Margaret	321.35	159.25	19.81
Brown, Myrtle	512.45	214.29	16.72
Biggs, Margaret	456.10	198.36	17.39
Cooper, Mary Lou	449.05	185.17	16.50
Cook, Mary Sue	254.15	104.86	16.50
Cook, Mary	492.25	203.15	16.50
Cook, Lena	496.35	219.44	17.68
[fol. 5650] Christian, Minnie	358.30	153.08	17.08
Chouckas, Eva	570.	235.12	16.50
Carroll, Marie	535.40	220.92	16.50
Evans, Marie	1120.50	607.61	21.68
Edwards, Ruth	537.45	221.78	16.50
Lassiter, Marvie	103.45	42.80	16.50
Mannino, Frances	161.	66.99	16.64
Milby, Cleal	195.	82.35	16.89
Miller, Velma	350.25	153.09	17.48
Mueller, Clair	291.30	121.36	16.65
Payne, Anna	542.30	228.77	16.87
Patton, Luella	565.30	233.26	16.50
Reed, Verna	873.35	378.32	17.32
Richardson, Etta	539.50	222.59	16.50
Sampsel, Wilma	572.	235.95	16.50
Scovill, Hazel Edie	512.30	226.58	17.68
Stahl, Catherine	540.35	222.97	16.50
Taylor, Birdie	225.00	94.26	16.76
Turner, Margaret	1298.45	552.11	17.00
Turk, Louise	553.40	251.06	18.14
Vidmar, Agnes	510.	210.33	16.50
Leist, Faye	479.25	203.82	17.00
Throckmorton, Helen	227.00	100.25	17.66
Laird, Helen	199.05	86.89	17.46
Foster, Mildred	190.55	84.72	17.75
Franklin, Edna	167.50	93.61	22.30
Pierce, Frances	188.45	82.25	17.42
Haskins, Alma	1119.45	618.20	22.08
Hutchison, Mary	666.10	310.81	18.66
Reiman, Alee	1131.10	661.11	23.38
Skinner, Jean	623.10	276.37	17.74
Cook, Hazel	165.	68.90	16.70
Dishong, Margaret	486.45	244.72	20.11
DuPage, Mary	1256.	541.55	17.25
Geary, Vivian	275.30	116.69	16.94
Grossman, Goldie	1013.10	435.59	17.20
Hale, Violet	539.15	227.84	16.90
[fol. 5651] Cunningham, Veta	426.15	191.39	17.96
Cleveland, Anna	318.50	171.34	21.49
Davis, Lena	460.40	191.18	16.60
Diesko, Mary Agnes	918.10	430.85	18.76
Dodig, Daisy	420.00	173.23	16.50
Durham, Edna	159.40	65.86	16.50
Eggleson, Maude	419.40	174.18	16.60

Etzel, Margaret	421.00	173.67	16.50
Frank, Juanita	182.00	76.39	16.79
Fraser, Ann	538.15	227.26	16.89
Gold, Evelyn	195.15	82.57	16.92
Gehrke, Minnie	476.05	196.99	16.55
Gould, Oral	487.00	200.88	16.50
Heine, Katherine	202.05	83.35	16.50
Jones, Etta	378.45	162.16	17.12
Knapp, Evelyn	364.30	150.30	16.50
Lockwood, Ellen	464.55	198.93	17.12
Lane, Jessie	498.55	210.84	16.90
Marquis, Ethel	431.10	177.83	16.50
Mallett, Rosamond	330.55	137.99	16.68
Melton, Frances	454.40	273.96	24.10
Matheny, Edna	467.30	192.83	16.50
Parsons, Neva	419.40	173.92	16.58
Netherton, Eva	487.00	210.56	17.30
Rush, Alice	455.15	188.26	16.54
Shreve, Estella	216.55	89.50	16.50
Short, Peggy	462.30	194.24	16.80
Sharp, Helen	460.30	192.56	16.73
Seigler, Mary	234.00	96.49	16.50
Sprague, Katheryn	843.00	380.29	18.04
Straube, Grace	421.20	173.74	16.50
Taddicker, Alma	195.40	80.74	16.50
Sutulovich, Mary	742.15	329.59	17.76
Walz, Catherine	442.15	182.43	16.50
[fol. 5652], Johnson, Fathe	267.15	112.04	16.77
Juelich, Opal	311.35	137.72	17.68
Kester, Lucy	171.45	72.82	16.95
Martin, Raydene	333.	140.26	16.85
Mitchell, Margaret	442.35	200.53	18.12
Murkin, Winifred	143.45	60.90	16.94
Parmenter, Loretta	1662.50	758.91	18.26
Rawdon, Nesa Miller	614.35	288.05	18.75
Stodgell, Martha	85.45	35.32	16.53
Stewart, Elizabeth	1460.05	759.14	20.80
Suess, Inez	489.00	213.25	17.44
Winningham, Virginia	349.40	149.21	17.07
Burns, Nell	708.10	350.58	19.80
Coulter, Dewey	514.40	299.08	23.24
Pack, Jenniebell	212.30	91.74	17.27
Pool, Maurine	634.50	319.52	20.13
Reynolds, Zora	373.25	196.04	21.00
Visek, Mary	652.20	279.18	17.12
Winfrey, Lillian	431.30	178.00	16.50
Weddle, Lillian	482.15	178.25	16.50

[fol. 5653] Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
Eighth Floor Examiners			
Balding, Stella	1887.05	1099.74	23.31
Baldwin, Katherine	1963.15	1118.79	22.80
Brown, Flora	1879.40	1075.85	22.90
Campbell, Elizabeth	1647.15	925.48	22.47
Compton, Marie	1965.35	1113.98	22.67
Hardin, Mary Alice	1939.05	1104.22	22.78
Headlee, Lillie	332.00	178.88	21.55
Lockwood, Fannie	1921.35	1080.81	22.50
Mace, Loretta	1884.35	1067.24	22.65
Rumer, Idella	1951.45	1131.10	23.18
Shick, Billie	383.45	199.88	20.84
Stover, Evelyn	1908.05	1119.13	23.46
Vickers, Minnie	1836.05	1044.63	22.76
Walker, Rada	1912.50	1140.00	23.84
West, Nettie	1939.25	1113.58	22.97
Winburne, Bernice	1931.45	1125.77	23.3b
Balance of Examiners			
Davis, Nevora	2018.05	968.14	19.19
Bartow, Nellie	1917.55	975.82	20.35
Burns, Mary	1931.20	963.88	19.96
Corder, Hattie	1915.	950.09	19.84
Duck, Harriett	1919.30	849.88	17.71
Farrell, Katherine	1934.55	959.19	19.83
Fulier, Hattie	1862.20	915.91	19.67
Gillham, Delcie	1930.15	942.89	19.54
Gosnell, Emma	1932.40	989.02	20.47
Harley, Frances	1924.20	1017.20	21.14
Helm, Florence	1910.20	941.92	19.72
Kelling, Erma	1850.30	958.12	20.71
Lester, Gladys	1950.30	968.44	19.86
McClelland, Mary	1534.50	756.24	19.71
Vest, Helen	1912.10	1025.56	21.45
Watson, June	1675.25	867.62	20.72
Webb, Glenda	1563.15	805.13	20.60
[fol. 5654] McKinney, Stella	1719.10	990.88	23.06
Taylor, Flora	1802.05	1077.07	23.91
York, Cordia	1348.45	734.30	21.78
Jessup, Ruth	1441.55	762.47	21.15
Hinson, Agnes	1211.00	580.74	19.18
Bandel, Gladys McCoy	1233.05	538.91	17.48
Broman, Lucy	771.00	476.85	24.74
Sneddon, Mary	441.55	254.05	22.99

[fol. 5655] Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938

(On 40 hours basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
	Section 811		
Albright, Elayne	192.45	84.63	17.56
Allbaugh, DeSylvia	1822.30	1170.37	25.68
Allison, Verna	1537.25	779.38	20.28
Baggerly, Alice	1891.00	835.05	17.66
Benge, Leonora	1889.15	991.58	21.00
Boyer, Hazel	1553.50	1069.96	27.67
Caton, Alice	1659.30	746.19	17.98
Davis, Edna	1346.00	803.34	23.87
Dick, Bernice	1509.35	788.47	20.89
Dunagan, Josephine	1857.45	979.58	21.09
Friez, Jennie May	1850.00	920.06	19.89
Hays, Helen	1417.45	719.60	20.30
Heacock, Harriet	921.55	431.25	18.71
Jones, Ethel	1825.10	906.41	19.86
Krepps, Lena	1526.10	1008.28	26.43
Lawson, Edith	1210.10	631.10	20.86
Loar, Gertrude	1876.20	901.46	19.22
McCabe, Wilma	329.00	147.07	17.88
Moore, Anna	1616.00	868.55	21.50
Perew, Eva Lee	1707.35	887.24	20.78
Phelps, Clare	1888.45	954.01	20.20
Reazin, Neva	1767.45	849.26	19.22
Richards, Lillian	2060.15	1245.81	24.19
Rudy, Bessie	2116.30	1470.31	27.79
Rust, Jake	1806.55	1047.10	23.18
Schutte, Mary	1546.00	850.03	21.99
Troutman, Edna	1347.25	665.53	19.76
Warren, Emma	1837.15	989.82	21.55
Wilson, Edith	2116.30	1400.61	26.48
Avice, Charlotte	1855.55	859.71	18.53
Colley, Laura	2053.55	1372.34	26.73
Edwards, Anna	1234.15	544.82	17.66
Kempton, Grace	1607.40	754.45	18.77
Stevens, May	1703.45	896.56	21.05
Vogts, Aileen	1923.15	939.51	19.54
[fol. 5656] Craddock, Nell	1337.25	596.36	17.83
Gravina, Marie	902.10	396.72	17.59
Hisle, Reba	1169.15	499.87	17.10
Horrocks, Lorene	873.50	491.46	22.50
Kelley, Beulah	1141.05	488.30	17.12
Lennon, Agnes	1178.00	505.27	17.16
Pritchett, Louise	1013.35	453.37	17.80
Thieme, Johanna	1306.10	562.51	17.22
Vanderhoof, Lena	1461.20	653.79	17.90
Witten, Nora	930.35	388.02	16.68

[fol. 5657] Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
Section 61 Hand Ironers			
Arvin, Julia	1724.20	1113.49	25.83
Bartles, Nona	1837.20	1180.99	25.71
Bone[illegible], Florence	1981.15	1369.48	27.65
Bosler, [illegible]oria	1805.05	1201.59	26.62
Broyles, Eva	1871.55	1294.32	27.66
Etherton, Bury	1948.30	1392.57	28.58
Fostick, Millie	1879.55	1256.78	26.74
Ganz, Louise	1967.55	1314.24	26.71
Gorman, Anna	1889.30	1240.42	26.26
Edwards, Verna	1698.50	1114.41	26.24
Herndon, Freda	1922.50	1456.16	30.29
Hopp, Olive	1896.40	1324.24	27.98
Jones, McWayne	1804.20	1212.89	26.89
Lowder, Nona	1832.00	1530.19	33.41
McCoy, Cecil	1539.35	1439.09	37.39
Miller, Nell	1907.00	1495.65	31.37
Pembleton, Evelyn	1866.55	1451.82	31.10
Richards, Anna	1888.00	1512.91	32.05
Rose, Mary	1867.40	1325.90	28.40
Schroder, Doris	1421.30	1159.33	32.62
Shawhan, Florence	1893.45	1221.08	25.79
Shulsky, Margaret	1794.10	1613.54	35.97
Smith, Cecile	1825.15	1262.50	27.67
Vincent, Margaret	1575.35	1098.00	27.88
Voorhies, Edith	1914.40	1339.00	27.97
Waye, Martha	1840.25	1486.03	32.30
Weeks, Mamie	1850.45	1336.71	28.89
Welch, Anita	1805.50	1197.30	26.52
Beil, Olive	1403.05	799.41	22.79
Belcher, Florence	1945.35	1205.24	24.78
Bonnel, Ruth	1870.35	1173.04	25.08
Callowick, Iris	1899.55	1210.91	25.49
Callowick, Rose	1690.35	1064.93	25.20
[fol. 5658] Coles, Sadie	1791.35	1013.02	22.62
Collins, Dorris	1963.25	1170.53	23.84
Enlow, Hazel	1971.45	1152.88	23.38
Fostich, Mary	1906.05	1088.07	22.83
Frohock, Lillian	1995.05	1219.80	24.46
Gorsuch, Tyra	1763.25	1081.02	24.52
Greeley, Rose Lee	1839.50	1041.45	22.64
Hamilton, Martha	1927.40	1139.30	23.64
Harp, Lucille	1864.05	1073.58	23.04

Heidbrink, Edith	1708.50	1123.23	24.98
Hoyle, Audrey	1950.05	1163.87	23.87
Jones, Verna	1885.55	1185.51	25.15
Maxwell, Bessie	1629.35	967.97	23.76
McCray, Alice	1971.15	1114.80	22.62
Mills, Ethel	1851.50	1055.86	22.81
Mowry, Avis	1894.00	1210.86	25.57
Newkirk, Ruth	1901.00	1164.44	24.50
Phipps, Elsie	1914.20	1214.45	25.38
Ridley, Mabel	1866.20	1114.40	23.88
Roscoe, Ethel	1867.05	1188.35	25.46
Stewart, Myrtle	1898.50	1150.55	24.24
Stillwell, Carolyn	1999.00	1176.40	23.54
Taylor, Bessie	1747.30	1092.35	25.00
Taylor, Nellie	1898.55	1122.21	23.64
Toenebalhn, Lillian	1852.15	1095.35	23.66
Bowman, Beulah	1344.05	835.67	24.87
Albano, Marie	1267.00	586.87	18.53
Blain, Roberta	1847.25	988.68	21.41
Bottoms, Cyrea	1957.30	918.34	18.77
Budelovich, Anne	1870.10	990.16	21.18
Budeloyich, Mary	1947.40	1091.40	22.42
Campbell, Myrtle	1878.45	1015.29	21.62
Churchill, Irene	1570.40	859.91	21.90
[fol. 5659] Clark, Olive	1880.25	1055.94	22.46
Cooper, Leona	1980.40	1041.80	21.04
Hayhurst, Beulah	1981.25	1062.39	21.45
Hrencher, Sarah	1961.40	895.75	18.26
Irby, Virginia	1861.10	840.96	18.07
Kalinich, Bessie	1880.20	1005.97	21.40
Lumpe, Minnie	1819.10	972.92	21.39
Nicoll, Bertha	1871.05	997.16	21.32
Nold, Catherine	1917.20	891.37	18.60
Pallanich, Martha	1905.30	979.65	20.56
Snapp, Theresa	1679.35	865.84	20.62
Stange, Lorene	1863.55	815.74	17.50
Stockton, Lucille	1915.10	1054.80	22.03
Tucker, Marjorie	1667.10	916.66	19.64
Wise, Belle	1843.00	1137.92	24.70
Burton, Ellen	1108.40	574.71	20.74
Crawford, Mary Lee	1415.50	720.02	20.34
Herring, Helen	1325.25	647.43	19.54
King, Margaret	1347.40	661.49	19.64
Stubbs, Clara	1424.30	715.32	20.09

Section 61 (Folders)

Harrison, Della	1824.25	1414.90	31.02
Lake, Effie	1808.35	1233.18	27.27
Llywelyn, Nellie	1751.55	1218.69	27.82
Clark, Helen	1839.30	1064.56	23.15
Glavenich, Sophia	1865.50	1146.75	24.58

Howard, Jewell	1692.40	1079.05	25.50
McCormick, Mildred	1645.20	950.69	23.11
Shinpaugh, Mary	1853.05	1164.66	25.14
Campbell, Grace	1721.10	1047.82	24.35
Donahue, Catharine	1796.10	850.52	18.94
Downing, Eleanor	1720.20	866.98	20.16
Elliott, Georgia	1472.00	779.64	21.18
[fol. 5660] Owens, Ruby	1862.20	1045.12	22.45
Truders, Katherine	1785.00	1000.67	22.42

Section 61 (Miscellaneous)

Gorman, Rose	1878.20	1333.84	28.40
Simmers, Dorothy	1387.40	948.39	27.35
Freeman, Paula	1982.00	1199.65	24.21
Kever, Sophie	1516.10	923.85	24.37
Kuchko, Katherine	1934.35	1131.94	23.40
McConkey, Doris	1869.30	1068.69	22.86
Morris, Ruth	1826.05	1055.76	23.13
Beal, Ruth	1171.00	613.72	20.96
Boothe, Irene	2217.25	1092.07	19.70
Broadus, Ruth	1899.20	1026.14	21.61
Catalina, Mary	2026.30	1002.44	19.79
Caven, Violet	2018.50	999.69	19.80
Craig, Dessa	384.35	204.69	21.29
Dee, Helen	1896.40	890.71	18.78
Dougan, Lorena	1990.15	1071.66	21.54
Edwards, Margaret	1062.40	497.55	18.73
Emerson, Thelma	1882.25	933.91	19.84
Farrell, Sylvia	1214.25	627.06	20.65
Harris, Ethel	1924.25	874.29	18.17
Harrison, Verna	1993.55	1088.68	21.84
Kalick, Anna	1961.20	955.07	19.48
Lamon, Mary	1813.25	1005.76	22.18
McCord, Leona	1151.25	584.14	20.29
Morris, Magdalen	1139.35	573.13	20.12
Mudd, Anna	1581.55	830.02	20.99
Patrick, Opal	239.15	111.45	18.63
Porter, Frances	1860.25	880.28	18.93
Redman, Glennette	1978.10	974.66	19.71
Redman, Gretha	2011.00	974.10	19.38
[fol. 5661] Reardon, Helen	2014.35	952.70	18.92
Shane, Christine	2006.10	991.18	19.76
Stewart, Nina	1860.35	1011.16	21.74
White, Murpha	1810.30	861.38	19.03
Johnson, Belva	1561.30	811.49	20.79

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[fol. 5662] Plaintiff's Exhibit No. 111 AMF

Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
Anderson, Bernice	2016.30	1484.31	29.44
Bennett, Violet	2015.40	1449.78	28.77
Bond, Beulah	2018.55	1442.79	28.58
Bracy, Mable	1889.45	1338.94	28.34
Bradshaw, Hazel	1212.40	870.82	28.72
Broker, Louise	1963.15	1493.07	30.42
Carlson, Lena	1944.50	1949.87	40.10—
Chapman, Josephine	1949.	1535.41	31.51
Chowning, Hassie	2036.50	1518.63	29.82
Clark, Bessie	1923.10	1336.78	27.80
Clayton, Rubie	1760.05	1157.86	26.31
Cooney, Olive	1978.30	1430.61	28.92
Davis, Betty	2005.45	1505.53	30.02
Davis, Jessica	1812.20	1374.60	30.34
Dobbs, Opal	1987.30	1579.21	31.78
Dora, Gertrude	2017.50	1526.48	30.26
Douglas, Pearl	2002.40	1361.74	27.20
Elston, Alpha	1613.	1134.88	28.14
Ely, Nettie	2022.45	1566.51	30.98
Fase, Beatrice	1893.40	1475.47	31.17
Feiser, Elsie	1919.30	1333.14	27.78
Fisher, Zella	1813.50	1359.00	29.97
Fitzwater, Cora	1936.00	1456.10	30.08
Foster, Ethel	1969.15	1403.90	28.52
Geer, Edna	1942.25	1359.61	28.00
Gilardi, Nina	2023.20	2050.52	40.54—
Green, Beulah	1633.20	1085.74	26.59
Griggs, Claris	1659.55	1179.60	28.42
Haight, Elizabeth	1416.45	987.54	27.88
Hawks, William	1895.50	1261.04	26.61
Hoffsett, Gallilea	1809.05	1193.18	26.38
Holloway, Elsie	1828.55	1594.20	33.34
Hurdle, Beulah	1964.00	1271.76	25.90
Johnson, Bertie	1851.30	1405.28	34.04
Kennedy, Ruby	1981.50	1837.97	37.10
Lassister, Catherine	1025.45	676.17	26.37
[fol. 5663] Lawrence, Lottie	1938.00	1685.99	34.80
Leavell, Martha	1860.10	1214.83	26.12
Leeda, Nola	1939.25	1277.50	26.35
Light, Beulah	1953.45	1479.66	30.29
Logan, Pearl	1906.25	1413.44	29.66
Lubben, Lillian	1803.50	1257.05	27.88
Maifreda, Mary	2029.45	1843.65	36.33

McCaulley, Lucy	2077.05	1432.08	27.58
McKee, Daisy	1702.45	1380.60	32.43
Mead, Dorothy	1978.	1674.69	33.87
Miller, Ruth Chaney	1661.15	1129.07	27.19
Moore, Florence	2038.05	1544.92	30.32
Osborn, Rose	1953.45	1443.56	29.56
Pitts, May	2007.10	1360.81	27.12
Plummer, Laura	1842.10	1368.42	29.71
Quinn, Myrtle	1994.50	1539.64	30.87
Robeson, Mary	1875.30	1324.45	28.25
Self, Mary	1857.10	1376.26	29.64
Smith, Nina	1960.25	1568.33	32.00
Spielbusch, Mable	1716.40	1149.97	26.80
Stark, Ada Lee	1707.55	1205.81	28.24
Stark, Dale	1816.35	1271.64	28.00
Steger, Brooksey	1877.15	1534.91	32.70
Stevens, Lola	1919.55	1317.95	27.46
Stufflebean, Opal	1894.10	1500.56	31.69
Stone, Elizabeth	1880.35	1233.50	26.23
Trabon, Lillian	2005.35	1368.44	27.29
Velghe, Rose	2084.10	1562.95	30.00
Warth, Mary	1768.45	1193.10	26.98
Wilson, Martha	1985.10	1416.56	28.54
Winters, Susan	1919.50	1465.29	30.58
Wolfskill, Jewell	1911.05	1318.94	27.60
Yates, Augusta	2075.25	1789.45	34.49
Zimmerman, Etta	1965.30	1486.07	30.24
Flannery, Della	1641.10	1232.96	30.05
Baldwin, Ruth Ellen	1895.55	1175.57	24.80
[fol. 5664] Strandt, Ruth	1475.40	885.23	24.00
Barton, Ida	1864.45	1012.09	21.71
Carriger, Cledafay	1206.30	547.77	18.16
Andrus, Iva	1954.30	1083.95	22.18
Gordon, Lulu	1982.20	1091.81	22.03
Harcum, Mae	1870.45	1025.52	21.93
Henry, Lelia	1974.50	969.48	19.64
Hines, Mary	1654.30	814.19	19.68
Hollyday, Agnes	1258.00	614.49	19.54
Koefoed, Opal	2034.30	1102.25	21.67
Maggio, Alice	1770.30	861.27	19.46
Oliver, Tressie	1858.50	996.80	21.45
Orten, Lucille	1961.15	842.60	17.18
Page, Mabel	1166.15	543.57	18.64
Perry, Ann	1825.50	971.81	21.29
Reece, Anna	1809.30	993.80	21.97
Rhodes, Alice	1023.35	459.86	17.97
Riddle, Mary	1899.20	950.71	20.02
Roberts, Daisy	1683.15	875.82	20.81
Taylor, Violet	1934.15	1049.84	21.71
Virgo, Ann	1998.05	1108.09	22.18
Webb, Amelia	1906.10	961.28	20.17
Wixted, Gertrude	1706.25	937.79	21.98

Yoder, Shirley	1543.15	824.63	21.37
Davis, Mildred	1498.10	762.41	20.36
Hill, Della	728.55	311.73	17.10
McLain, Mable	1557.10	851.11	21.86
Andsley, Cerese	1254.	581.22	18.54
Holloway, Marie	1248.05	573.25	18.37
Lewis, Dorothy	1370.55	698.92	20.39
Stewart, Annette	1208.15	678.70	22.47
Thomas, Mary Jo	1415.25	617.83	17.46
[fol. 5665] Blackwood, Corinne	1989.25	1212.03	25.00
Chaney, Opal	1924.20	1196.69	24.88
Close, Ella	1955.15	1214.82	24.85
Colley, Nellie	1995.35	1139.81	22.85
Copenhaver, Geneva	1794	1071.68	23.90
Davis, Emma	1754.15	1003.12	22.87
Dial, Helen	1809.45	1124.64	24.86
Farmer, Anna	1821.55	1057.81	23.22
Halcro, Mary	2027.30	1280.37	25.26
Herring, Lora	1292.45	741.08	22.93
Higgins, Hazel	1899.45	1176.36	24.77
Holloway, Oma	1818.25	1024.17	22.53
Hurley, Anna	1838.45	1112.48	24.20
Hutchinson, Agnes	1924.45	1215.06	25.25
James, Lutie	1991.45	1133.05	22.76
Johnston, Irma	1915.00	1208.97	25.25
Jones, Elmer	1602.55	925.63	23.10
Loftin, Eleanor	1287	803.46	24.97
Maxwell, Georgia, Lee	2007.45	1136.63	22.64
McClanahan, Roberta	1750.15	985.66	22.53
McCurry, Etta Mae	1439.15	847.78	23.56
Ocshier, Dorothy	1778.05	1098.59	24.71
Pardun, Grace	1873.50	1169.22	24.96
Reese, Mildred	1501.	856.74	22.83
Robinson, Beatrice	1953.50	1190.96	24.38
Royce, Laura Lee	1988.20	1261.69	25.38
Rudd, Mattie	1309.25	739.53	22.59
Sams, Leona	1910.35	1083.39	22.68
Shoptaw, Opal	1959.15	1166.43	23.81
Taber, Sara	1910.55	1132.81	23.71
Thornton, Blanche	1981.40	1196.51	24.15
Waller, Elva	1860.35	1100.18	23.65
Wilde, Altha	1935.15	1158.42	23.94
Wright, Carrie	1897.15	1120.22	23.62
Phipps, Ruby	1553.20	878.87	22.63
Miles, Josephine	1429.55	852.57	23.85
Norris, Pearl	1281.45	755.85	23.58
[fol. 5666] Anderson, Gladys	1909.50	1240.69	25.99
Apperson, Amy	1943.25	1371.87	28.24
Atkinson, Florence	1958.55	1435.73	29.32
Barnes, Lois	1933.10	1318.30	27.28
Bilyou, Helen	1292.25	925.70	28.65
Bingman, Ethel	1965.05	1302.65	26.52

Black, Pearl	1967.15	1286.29	26.15
Bryant, Bernice	383.25	257.94	26.92
Bryson, Virginia	1952.55	1304.83	26.73
Cahall, Marie	1865.30	1308.81	28.07
Clark, Sue	1950.00	1344.15	27.57
Copenhaver, Maude	1959.50	1514.94	30.92
Davis, Lynn	1967.45	1382.46	28.10
Dheanens, Betty	1286.45	889.79	27.66
Donnelly, Helen	1873.25	1226.90	26.20
Doyle, Gertrude	1711.30	1179.88	27.58
Dunlap, Grace	1919.45	1265.97	26.38
Engle, Inez	1944.35	1347.43	27.72
Fields, Pearl	1863.30	1208.15	25.93
Fowler, Eva	1968.05	1351.06	27.46
Gardner, Elva	1878.45	1355.31	28.86
Gordon, Viola	1285.15	934.67	29.09
Griffith, Polly	1978.30	1302.51	26.34
Hansen, Emma	1924.15	1277.83	26.56
Hardsaw, Katherine	1971.40	1349.00	27.37
Hogan, Pearl	1922.40	1561.76	32.49
Horak, Dessie	1937.25	1403.75	28.98
Bailey, Adaline	391.15	260.43	26.62
Jamison, Marie	1947.50	1395.88	28.66
Jones, Mynie	1922.10	1319.66	27.46
Lantz, Ola	1986.00	1340.61	27.00
Leger, Margaret	1439.25	1020.68	28.36
Liberman, Eva	1906.15	1299.89	27.28
Litten, Iris	1882.40	1277.38	27.14
Livesay, Edith	1667.25	1148.80	27.56
Mattox, Dora	1969.05	1263.56	25.67
[fol. 6667] Meuwissen, Florence	1939.20	1348.99	27.82
Miller, Tibitha	1903.25	1228.30	25.82
Mumford, Boyd	1856.30	1302.22	28.06
Murphy, Alma	1886.20	1280.22	27.15
Nichols, Josephine	1953.35	1277.88	26.17
Noll, Ruth	1902.20	1324.01	27.84
Otis, Dolly	1795.55	1259.63	28.06
Phillips, Lydia	1924.55	1401.12	29.12
Proctoer, May	1919.55	1348.41	28.10
Rickett, Ruby	1807.50	1341.98	29.70
Sauke, Sarah Idella	1931.45	1382.56	30.70
Shearer, Edith	1991.45	1414.71	28.33
Shipman, Elsie	1959.05	1448.77	29.58
Spahr, Anna	1947.05	1255.57	25.80
Stears, Fannie	1870.35	1256.36	26.87
Storm, Minnie	390.25	262.93	26.94
Uptegrove, Leta	1939.20	1246.10	25.70
Uto, Pearl	1955.30	1365.71	27.94
Voorhies, Emma	1898.25	1367.81	28.82
Vining, Edna	1278.50	934.06	29.22
Wachtel, Orra	359.45	262.55	29.19
Maddox, Mildred	1440.20	963.41	26.76

Selvey, Verla	878.00	563.26	25.66
Austin, Gladys	1878.20	1060.32	22.58
Beal, Jane	1913.40	1162.79	24.31
Biewner, Ethel	1623.05	946.13	23.32
Boor, Helen	1913.25	1135.06	23.73
Bosworth, Pearl	1954.30	1180.56	24.16
Brands, Gladys	1765.05	1090.88	24.71
Brooks, Mildred	1938.00	1204.37	24.86
Brown, Ora	1644.30	959.33	23.34
Burch, Mildred	1941.45	1099.06	22.64
Carrell, Patricia	1889.15	1152.94	24.41
Cameron, Edith	1951.00	1208.42	24.78
[fol. 5668] Campbell, Rose	1762.05	1086.47	24.66
Carlson, Mamie	1223.30	756.55	24.74
Corum, Eunice	1934.45	1148.93	23.76
Cotten, Nora	1951.20	1225.99	25.13
Cox, Mary	1903.20	1194.41	25.10
Rockford, Eva	1891.05	1196.36	25.30
Dare, Virginia	1931.30	1193.19	24.71
Davidson, Ina	1974.45	1141.61	23.12
Dietz, Dorothy	1890.45	1115.27	23.59
Evans, Lucy	1973.40	1118.83	22.68
Fain, Carrie	1949.50	1217.75	24.98
Hall, Pearl	1926.35	1167.33	24.24
Halliday, Opal	1886.15	1139.82	24.17
Hamilton, Grace	1956.25	1160.87	23.74
Hanson, Laura	1932.00	1190.92	24.66
Harbison, Beulah	1723.45	1055.53	24.49
Hardman, Hazel	1950.35	1116.37	22.89
Harris, Emma	1970.20	1174.40	23.84
Hemme, Zella	1858.10	1101.33	23.71
Hills, Laura	1786.25	1122.18	25.13
Hinkle, Alta	1907.30	1103.94	23.15
Hull, Bernice	1893.10	1077.58	22.77
Hundley, Cordia	1563.15	904.03	23.13
Hunter, Margaret	1900.55	1102.82	23.21
Ingold, May	1959.00	1159.19	23.67
Johnson, Lorene	1909.45	1195.30	25.04
Johnson, Nora	1962.25	1210.22	24.67
Kesinger, Lois	1838.55	1175.69	25.57
Kilby, Daisy	1886.30	1087.78	23.06
Kuck, Wilma	1871.20	1054.70	22.54
Kruger, Mary	1937.40	1164.31	24.04
Kuhn, Martha	1936.00	1201.47	24.82
Martin, Blanche	1911.35	1167.93	24.44
Mauk, Ida	1877.00	1200.24	25.58
[fol. 5669] Lowes, Ruth	1940.30	1150.62	23.72
McQuiston, Naomi	1937.25	1155.39	23.86
Murray, Ann	1956.00	1131.33	23.14
Myers, Fern	1945.35	1188.54	24.44
Ormsby, Sallie	1942.10	1132.45	23.32
Perry, Laura	1741.30	1016.00	23.34

Plattner, Regina	1886.15	1125.36	23.86
Putnan, Ruth	1916.30	1085.23	22.65
Raines, Cora	1933.15	1104.24	22.85
Raines, Emilea	356.00	219.01	24.61
Renner, Orpha	1891.15	1145.60	24.23
Richardson, Marie	1921.50	1207.10	25.13
Richardson, Opal	1940.25	1135.22	23.40
Ross, Irene	1962.25	1199.45	24.45
Rudd, Gladys	1448.10	815.64	22.53
Schweiger, Ffeda	1821.25	1044.22	22.93
Simmons, Opal	1970.05	1242.62	25.23
Steger, Gladys	1752.50	1060.08	24.20
Sutolovick, Katherine	1869.10	1113.09	23.84
Toler, Jewell	1908.55	1075.84	22.61
Waers, Virginia	1946.25	1107.05	22.75
Weigand, Effie	1774.35	1093.93	24.66
Weilert, Bessie	1595.15	987.43	24.76
Wilkey, Lucille	1836.20	1115.96	24.31
Williamson, Elsie	1901.20	1079.90	22.72
Wycoff, Lucy	1943.15	1113.44	22.92
Forster, Mable	1431.40	845.49	23.62
Atchison, Catherine	1904.10	1013.05	21.28
Boan, Bessie	1956.30	1081.23	22.11
Bodie, Lydia	1406.45	759.59	21.60
Cline, Lela	1930.55	1039.71	21.54
Everly, Mary	1294.15	694.64	21.47
Griffith, Betty	1887.20	1015.27	21.52
Haase, Martha	1974.40	1076.10	21.80
[fol. 5670] Hershey, Tessie	1873.45	1010.05	21.56
Horde, Mildred	1831.35	947.12	20.68
Huffaker, Thelma	80.00	43.90	21.95
Ihle, Millie	1909.10	1024.63	21.47
Jewett, Ola	1888.10	1026.45	21.74
Kahmann, Margaret	1929.45	1076.99	22.32
Kammer, Pauline	1941.15	1012.49	20.86
Keidel, Myrtle	1377.05	709.08	20.60
Knight, Patricia	1904.30	1020.45	21.43
Lilly, Thelma	375.30	199.72	21.28
Mahoney, Roma	1816.55	979.03	21.55
Maxwell, Ethel	1817.40	957.71	21.08
McKown, Esther	1202.30	673.72	22.41
Moore, Leona	1809.25	984.92	21.78
Nichols, Louise	375.45	196.45	20.93
Pavich, Angeline	1654.06	989.73	23.93
Perkins, Beulah	1871.10	1008.60	21.56
Plummer, Bessie	763.05	392.43	20.57
Sosenski, Anna	1696.30	940.39	22.18
Soderstrand, Mable	1837.20	972.79	21.18
Tattershall, Edna	1904.05	1045.60	21.96
Wainscott, Sadie	1808.35	973.11	21.52
Welch, Ruby	1947.25	1054.86	21.67
Wigton, Beulah	383.25	196.71	20.52

Wood, Mary	1941.45	1071.09	22.06
Wynyhoski, Anna	1893.50	1041.55	22.00
Armistrong, Martha	1724.05	917.01	21.28
Bellman, Naomi	383.35	209.60	21.86
Greer, Grace	1178.15	641.42	21.78
Cook, Bertha	1542.35	853.05	22.12
Dawson, Bessie	1653.40	898.48	21.73
Statler, Rhonda	772.20	412.89	21.38
Winner, Bessie	1027.10	527.89	20.55
Williams, Ruby	1450.00	762.82	21.04
Shumate, Helen	907.00	496.57	21.90

[fol. 5671] Average Earnings Of Piece Work Operators From Week Ending October 23, 1937 To October 21, 1938

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
	Pinkers		
Brewer, Hylda	1808.10	1082.52	23.95
Brown, Jennie	1799.35	1351.93	30.05
Carpenter, Ethel	1982.45	1355.85	27.35
Chandler, Kathryn	1880.10	1404.65	29.88
Dauben, Gertrude	1925.10	1191.49	24.76
Davidson, Augusta	1978.40	1119.45	22.63
Dean, Edith	1928.35	1365.09	28.31
Eastman, Ruth	1904.20	1477.42	31.03
Ehrhardt, Lena	1961.55	1564.29	31.89
Ereth, Christine	1852.30	1469.66	31.73
Hall, Lois	1934.40	1391.49	28.77
Harralson, Julia	1637.25	1199.04	29.29
Klein, Bertha	1961.05	1163.47	23.73
Koll, Edith	1899.15	1199.19	25.26
Little, Edwina	1612.40	1035.39	25.68
Molle, Anna	2008.20	1366.24	27.21
Prine, Nell	1877.50	1459.21	31.08
Richardson, Gertrude	1663.35	1103.60	26.54
Riddle, Mamie	1927.00	1428.19	29.64
Riegel, Ethel	1710.40	1425.34	33.33
Robinson, Louise	1268.55	923.54	29.11
Rush, Irene	1882.40	1487.52	31.60
Schneider, Ethel	1570.00	1083.83	27.61
Stevenson, Alta	1445.25	798.91	22.11
Stites, Nellie	1951.20	1373.17	28.15
Van Gordon, Mary	1793.15	1080.84	24.11
Walton, Helen	1907.55	1357.78	28.47
Hyde, Mary	1855.10	1470.48	31.70

[fol. 5672] Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
	Section 531		
Adams, Margaret	1857.15	1531.00	32.97
Alley, Ruby	676.55	370.24	21.88
Ball, Nell	1848.10	1003.94	21.73
Barrett, Elizabeth	1836.55	1302.71	28.37
Bowersox, Mona	1276.30	715.24	22.41
Brown, Lela	1784.20	1156.35	25.92
Carr, Irene	1830.50	959.46	20.96
Chambliss, Virgie	1768.30	1228.44	27.78
Fry, Lillian	1848.35	1289.75	27.91
Howard, Margaret	1997.05	1343.21	26.90
Inbody, Dorothy	1806.25	1138.47	25.21
Jacob, Bess	1936.40	1452.44	30.00
Kelly, Jessie	1841.25	1271.36	27.62
Mueller, Iva	1863.10	1050.67	22.56
Nokes, Ellen	1831.40	1011.30	22.08
Redona, Estelle	1826.35	1080.40	23.66
Rencoske, Elizabeth	1771.40	1092.33	24.66
Rickett, Donna	1609.05	895.16	22.25
Rothgeb, Estel	779.20	487.63	25.03
Saunders, Ardath	1769.00	883.63	19.98
Slankard, Ruby	1828.30	1144.34	25.03
Smith, Elsie	1815.05	1003.46	22.11
Steward, Mary	1822.50	835.17	18.33
Tebbe, Mildred	1838.00	932.68	20.30
Walters, Lydia	1267.30	668.69	21 10
Womacks, Nettie	1851.20	894.51	19.33
Carroll, Catherine	1713.35	983.95	22.97
Cox, Flora	912.15	562.36	24.66
Kellogg, Catherine	1185.50	612.63	20.66
Elgin, Velma	800.10	396.62	19.82
Wilkins, Myrtle	1166.00	699.43	24.00
Smith, Opha	1297.45	886.72	27.33

[fol. 5673] Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings (On 40 hour basis)
	Section 516		
Campbell, Martha	1688.40	990.05	23.45
Curry, Edna	1240.50	546.52	17.62
Boan, Nellie	1932.05	1059.34	21.93
Bray, Jessie	1879.00	936.22	19.93
Bybee, Mary	1754.05	929.74	21.20
Canaday, Lena	1680.50	946.13	22.51
Cawthorn, Sinie	1815.00	820.25	18.08
O'Brien, Mary Lee	1823.25	993.22	21.79
Crum, Lindie	1897.55	1009.87	21.28
Ducoulombier, Margaret	1963.15	1102.82	22.47
Frye, Dorothy	1929.45	1025.22	21.25
Garrett, Louise	1947.10	1095.68	22.51
Gatel, Alice	1852.45	1007.86	21.76
Greenwood, Dorothy	361.00	218.48	24.21
Gustin, Mary Ann	1925.15	1125.59	23.38
Hadley, Elsie	1563.05	764.43	19.56
Harper, Nell	1930.40	1012.90	20.98
Hartman, Anna	1921.45	1051.49	21.88
Hatfield, Opal	1347.05	632.84	18.79
Holt, Velma	1908.05	954.66	20.01
Hunter, Johanna	1922.35	1022.25	21.27
Jones, Hazel	1510.50	873.73	23.13
Kelly, Etha	1894.25	1001.25	21.14
Leibold, Edith	1908.40	909.53	19.06
Lentz, Florence	1526.20	723.21	18.95
Maxfield, Opal	1885.05	1071.23	22.73
Molle, Teresa	1848.25	1108.71	23.99
Morrow, Ruby	1859.55	1048.95	22.56
Osborne, Hazel	1844.20	1004.41	21.78
Page, Mable	1831.55	896.91	19.58
Ransdall, Irene	1908.25	899.62	18.86
Salva, Gladys	1822.00	935.89	20.54
Shiner, Grace	1909.25	976.36	20.45
[fol. 5674] Tolliver, Lena	1901.25	1011.68	21.28
Vaught, Artie	1914.25	1018.87	21.29
Vernon, Cora	1913.35	1041.80	21.77
Vogliardo, Anna	1954.00	1093.90	22.39
Wallace, Juanita	1862.30	992.63	21.32
White, Mary	1868.45	1010.99	21.64
Wilson, Helen	1743.25	1058.96	24.30
Wittman, Irene	1924.40	946.77	19.68
Crieme, Mary	456.00	273.08	23.96
Galey, Margaret	1567.45	905.78	23.11
Perry, Dorothy	1479.20	810.01	21.90

[fol. 5675] Average Earnings Of Piece Work Operators From Week Ending October 29, 1937 To October 21, 1938

(On 40 hour basis)

Name	Total Hours Worked	Total Money Paid	Average Weekly Earnings
	Section 517		
Akeman, Ruth	1761.25	976.46	22.18
Bartell, Mamie	1774.25	1332.10	30.03
Bodine, Katherine	1847.25	832.30	18.02
Broker, Margaret	1868.05	965.92	20.68
Brown, Mary	1852.15	980.64	21.37
Cox, Pearl	1820.25	1087.77	22.80
Cress, Jennie	1886.55	1029.64	21.83
Crewes, Anna	1891.25	994.29	21.03
Dockery, Mary	1882.30	932.53	19.81
Doughty, Leone	1682.50	865.72	20.58
Farrell, Grace	1556.30	804.92	20.68
Fleeger, Bernice	1853.50	822.50	17.75
Getz, Helen	1913.05	937.13	19.60
Gill, Dorothy	1883.20	920.53	19.55
Gleason, Virginia	1891.25	1138.71	24.08
Gulick, Sophie	1865.25	1043.04	22.37
Gunderman, Helen	1866.30	1078.83	23.12
Harrison, Mildred	1898.55	955.95	20.14
Hayward, Irene	1499.15	871.74	23.26
Head, Deal	1930.10	1135.32	23.52
Horvat, Katherine	1883.05	1219.73	25.91
Kellogg, Hazel	1750.40	824.21	18.83
Kelso, Madge	1816.50	906.28	19.95
Kirk, Jean	1891.45	1051.66	22.24
Lafferty, Bertie	1921.55	1059.76	22.06
Lewis, Lorean	1730.25	1012.78	23.41
Russell, Gladys	1774.40	830.17	18.71
Melton, Fannie	1431.25	851.11	23.78
Newnham, Bertha	1855.35	920.30	19.84
Patrick, Nell	1460.40	742.09	20.32
Pitcock, Cora	1871.05	993.15	21.23
Pollock, Martha	1917.15	884.29	18.45
Rawlings, Edna	1855.30	973.73	20.99
[fol. 5676] Rogers, Mary	1841.50	910.52	19.77
Sebastian, Dorothy	1544.40	877.74	22.73
Shields, Pearl	1878.05	935.61	19.93
Sites, Mary	1803.15	966.43	21.44
Stark, Ruby	1888.45	1054.10	22.32
Taylor, Margaret	1742.15	964.53	22.14
Underwood, Winnie	1836.30	1007.62	21.95
Vidrickson, Ruby	1675.20	820.18	19.58
Wagy, Alice	1810.25	871.75	19.26

Walker, Mary	1863.45	953.89	20.47
Willey, Juanita	1827.15	980.36	21.46
Wilson, Blanche	1533.50	721.24	18.81
Wright, Elsie	1941.15	1086.27	22.38
Jones, Alliene	1491.55	754.61	20.23
Watson, Bertha	1429.50	729.50	20.41

[fol. 5677] Objection is made to all questions and answers of Flora Ruden and all exhibits attached hereto for the reason that said questions and answers and exhibits are immaterial.

p. 553 FLORA RUDEN called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Depping:

Q. Is your name Flora Ruden? A. Yes.
Q. Where do you live?
A. Memphis, Tennessee.
Q. What is your age? A. Twenty-eight.
Q. Are you married? A. Yes.
Q. What is your husband's name?
A. Roland Ruden.
Q. Do you live with him in Memphis? A. Yes.
Q. What does your husband do?
A. He is in the rug cleaning business.
Q. On March 8th, 1937, were you employed by the Tri-State Manufacturing Company of Memphis, Tennessee?
A. Yes, sir.
Q. What did that company manufacture?
A. Ladies wash dresses.
Q. On March 8th, 1937, did you arrive at the plant to go to work?
A. Yes.
Q. When you got there, tell the Court what was going on outside the plant?
A. There was a picket line in front of the building.
Q. Do you know who was there in charge of the
p. 554 pickets and the demonstration?
A. Mrs. Myrtle Zappone, and Miss Ida Sledge were in charge of these girls.
Q. State whether or not the crowd increased or decreased as the day went on?
A. The crowd increased as the day went on.
Q. How large had the crowd become by the time you wanted to go home?
A. It's almost impossible to state the exact amount. There were people standing in the streets and on the sidewalks, every available standing room was filled.

Q. Did you attempt to leave the place to go home?

A. Yes.

Q. Was someone escorting you out of the plant to protect you?

[fol. 5678] A. One of our employees, Sam Klein.

Q. What does he do in the place?

A. He was a cutter.

Q. What happened to you when you tried to leave the plant?

A. We started down the street, and he was attacked.

Q. Who was?

A. Sam Klein.

Q. Who by?

A. By the union group. He was beaten, kicked, and scratched, clothes torn. I proceeded on down the street, and as I came into the filling station grounds which was a short distance from our factory, I was attacked from the rear by the girls of this union group.

p. 555 Q. How did you know they were girls of the International Union group?

A. These were the girls who were in front of our place picketing during the day. They were also employed at the factory before the picket line.

Q. State whether or not Sam Klein was knocked down to the ground?

A. Yes, he was. He [—] knocked down to the ground, kicked, beaten, his clothes torn, scratched.

Q. Was he kicked while he was on the ground?

A. Yes.

Q. Had he been out of the building before that day?

A. He had gone out during the lunch hour, in an attempt to bring lunch back into the girls there.

Q. State what happened to him, if you know?

A. Yes, I saw from the window of the factory.

Q. What happened?

A. The food was knocked from his hands, as well as the drinks, and he was attacked. There was scratching and fighting.

[fol. 5679] (Newspaper articles marked Plaintiffs' Exhibits 78 to 80 for identification).

Q. State whether or not you saw other people attacked by this mob you have described?

A. Yes, quite a few girls employed in the factory went out for their lunch hour. They too were

p. 556 attacked and their food destroyed.

Q. What was done?

A. They were scratched, their hair pulled, their clothes were torn.

Q. All right. I now hand you Plaintiffs' Exhibit No. 78 directing your attention to the picture, the top picture on the left hand side as you face the paper and ask you to state what that is.

A. That is a picture of Sam Klein as he escorted me to the car.

Q. Did you see this attack?

A. Yes, I did.

Q. What position is Sam Klein in in that picture?

A. On the ground.

Q. Did you see him there on the ground?

A. Yes, I did.

Q. Now, I direct your attention to the picture on the right hand side at the top and ask you to state what that is.

A. That happened in the filling station that evening, the patrol came and took some of the girls away, the union girls were doing all the attacking.

Q. Now, I will ask you to state what the bottom picture is?

A. That happened during the lunch hour when Sam Klein went out for his lunch and to bring our lunches in to us. These girls attacked him then.

Q. Did you see the things happen that are de-

p. 557 picted in those pictures?

A. Yes.

Q. Did you see Sam Klein attacked as depicted in this bottom picture?

[fol. 5680] A. I did.

Q. State whether or not Sam Klein did the attacking or someone from the outside attacked him?

A. They attacked him.

Q. We offer in evidence Plaintiffs' Exhibit 78. Now, Mrs. Ruden you stated that you were attacked.

Q. Mrs. Ruden, you stated a moment ago, you were attacked at a filling station. It has been called to my attention that I didn't ask what happened to you. What happened to you?

A. Some of my clothes were torn. I was scratched and beaten by these girls.

Q. Do you know the girls?

A. Yes, they were girls in the union group that had been in the picket line, that had been employed by us.

Q. State whether or not the aggressors were the employees of the Tri-State Manufacturing Garment Company, or whether they were the picketers and union people on the outside?

A. They were picketers and union people also, the employees these girls, that had worked for the Tri-State, were in the picket line, as well as others.

Q. I hand you Plaintiffs' Exhibit No. 79 and ask you to state what the picture at the top of

p. 558 the page shows.

A. Sam Klein, evidently trying to protect himself and get away from this attack that happened during the lunch hours.

Q. I call your attention to the second picture. What does that depict?

A. That is of the girls that were employed at the Tri-State, out on their lunch hour.

Q. What are they trying to do?

A. Protect themselves. They are being attacked here.

Q. What is the bottom picture?
A. Sam Klein being attacked by these women.
Q. All right. We offer in evidence Plaintiffs' Exhibit 79. I now hand you Plaintiffs' Exhibit 80 and direct your attention to the picture at the top of the page on the left hand side as you face the paper and will ask you to state what that is?

[fol. 5681] A. That is one of the Tri-State employees going home at the closing hour, that was attacked by these girls, and policemen evidently trying to assist her.
Q. Do you recognize anyone of the girls in that picture who is doing the attacking?
A. This girl is Dixie Middleton.
Q. I will ask you to put an X on Dixie Middleton's picture. Have you placed an X on Dixie Middleton's picture? A. Yes.

p. 559 Q. What is she doing there?
A. Attacking this girl.
Q. Who was Dixie Middleton at that time?
A. She was in the picket line, and she was also the president of the International Local they had in Memphis at that time.
Q. Dixie Middleton, who is doing the attacking there, at the time this picture was taken, was president of the Local at Memphis of the International Ladies' Garment Workers' Union. Is that correct?
A. That is.
Q. Do you recognize any other girl in that picture?
A. No. Their backs are turned. I can't recognize them.

Mr. Depping: We offer in evidence Plaintiffs' Exhibit No. 80. I might say for the record, these last three exhibits, we are just offering the pictures referred to, and not any of the printed matter. There is just one picture on this.

We also offer in evidence from Plaintiffs' Exhibit No. 80, the date line on the paper

which is the Press-Scimiter of Memphis, Tennessee, and the date being Tuesday, March 9, 1937; we also offer in evidence the date line from Exhibit No. 79 which is the Press-Scimiter of Memphis, Tennessee, dated Tuesday, March 9, 1937; and from Exhibit 78, we offer in evidence also from the Commercial Appeal of Memphis, Tennessee, the date line,
p. 560 Which is Tuesday morning, March 9th, 1937.

(Plaintiffs' Exhibits 78 to 80, inclusive, were received in evidence and made a part hereof.)

Q. Were the police there while these attacks were going on? A. Yes, they were.

Q. Did they prevent the attacks and violence?

[fol. 5682] A. They did not prevent it, attempted to protect people being attacked. There were so many and so much disturbance they couldn't possibly help them all.

Plaintiff

Ex. 78

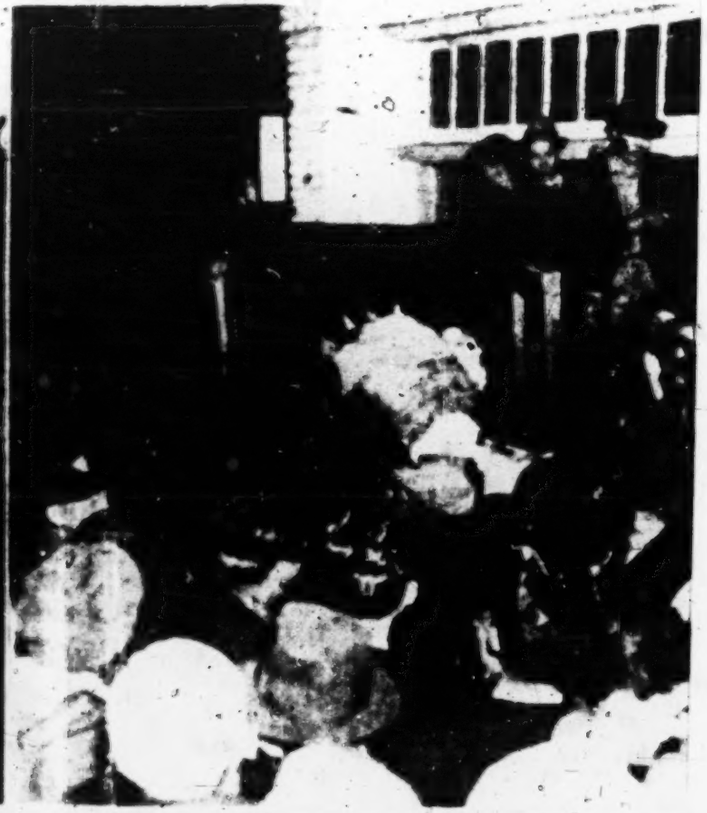
PAGES 1 TO 24

THE COMMERCIAL APPEA

MEMPHIS, TENN., TUESDAY MORNING, MARCH 9, 1937

Exhibit Z

Violence Flares When Garment Workers Picket Dress Factory



Washington Merry-Go-Round

By DREW PEARSON and ROBERT S. ALLEN

HOLC'S Delinquents Peak of Foreclosures Spain Explained Votes Guessed

WASHINGTON, March 8.—The job of collecting the three billion dollars worth of mortgages which the HOLC has advanced to homeowners has put bearded, hard-working John H. Fahey in a tough spot.

Up until last June, Chairman Fahey and his board were happy and entranced. No dead cats came their way. They were paying out money, asking upon almost no one to pay it back.

Day of Reckoning

But now repayment day has come and the Home Owners Loan Corporation, with 15 years to collect its $3,000,000,000 of mortgages, has become the greatest liquidating agency in Washington.

Mr. Fahey got his first deluge of dead cats when he appeared before the House appropriations committee and was accused of enforcing a Scrooge-like foreclosure policy.

ing a moratorium foreclosure policy.

"Instead of turning people out in the streets," congressmen criticized, "why not declare a one-year holiday on foreclosures? Increasing prosperity will enable a lot of owners to pay up their mortgage interest by that time."

Firm For Foreclosure

But Mr. Fahey stood by his guns, insisted that HOLC could not do honest without risk of losing the government's $2,000,000,000 investment. Once HOLC started delaying mortgage payments, he pointed out, every homeowner would expect it.

He cited figures estimating that there would be only 100,000 foreclosures by July 1, 1936. On the face of it, this is a large figure. However, placed alongside the figure of 1,000,000 HOLC loans made, it shows up as but 10 per cent.

Sixteen foreclosures out of each 100 loans made is not bad, says Mr. Fahey, since it must be borne in mind that the HOLC co ld only lend to homeowners in financial distress—the exact opposite of the policy of private mortgage lenders.

Foreclosures Hit Peak

Mr. Fahey also claims that this is the peak year for foreclosures. From now on they will decline. The experience of all mortgage lenders shows that loans going sour do so within the first three years. After a man has held his home three years he is usually able to keep it permanently.

From 1933 to last July, the HOLC foreclosed on only 20,000 homes. [illegible] the total will go

SCHOOLS TO SUSPEND FOR SUMMER MAY 31

Board of Education Votes on Vacation Period

Memphis city schools will suspend for summer vacation May 31, it was decided last night at a meeting of the board of education, Ernest Ball, superintendent of schools, said. A Cotton Carnival holiday May 14 and a two-day Easter vacation March 25 and 26 also were voted.

John Gunn, former railroad man, was selected to succeed John S. Heffernan as custodian at Peabody High School. Mr. Heffernan, who died yesterday of influenza, had been connected with the schools for 28 years.

Cut School Schedule

The board decided to make up time lost by some of the schools during the recent flood emergency by eliminating certain outside activities and the "rainy day" schedule, and concentration on fundamental subjects, Mr. Ball said.

Permission to attend the national meeting of the Association for Childhood Education, to be held at San Antonio from March 29 to April 3, was granted the following teachers: Miss Margaret Johnson, Miss [illegible]

Cottonseed Oil Tax Hit By Browning

NASHVILLE, March 5.—(AP)—Governor Browning said tonight he sees little for students strike to do "except retaliate" if the Legislature passes a pending bill to tax cottonseed oil products.

Students protesters have been asked by committees of interests to send protests to the Iowa governor. Some estimated oil mill owners said the Iowa proposal would result in a virtual embargo against their products.

"I don't see anything for us to do except retaliate," Browning said. "By placing out-state Iowa products and putting a ban on it that will prevent its being sold here. That, it seems to me, is the only way to stop such things."

EIGHT JURORS NAMED IN ROADHOUSE SLAYING

Additional Venire Called for Covington Trial

Special to The Commercial Appeal

COVINGTON, Tenn., March 5.—Eight jurors were selected today out of a venire of 100 for the trial of John T. and Leonard Richardson, brothers, a negro, Augusta Wil[illegible]

Plaintiffs' Exhibit 78.

Ex. 78

CIAL APPEAL

5683

PAGES 13 TO 24

Y MORNING, MARCH 9, 1937

Exhibit "78" to Bill

Workers Picket Dress Factory Here

BROWNING WILL SEEK REFUND ON STATE DEBT

Parley Planned With New York Bondholders

HOPES TO CUT INTEREST

Appropriation Bill Will Give State "Balanced Budget" Is Prediction of Governor Browning

From The Commercial Appeal Nashville Bureau

BY W. L. DURHAM, JR.

NASHVILLE, March 8.—Hoping to work out a refinancing plan whereby the state's $8,600,000 annual debt fund can be reduced a third, Governor Browning will confer with Tennessee's fiscal agent and principal bondholders in New York Monday, he said today.

Accompanied by Senate Speaker Byron Pope, House Speaker Walter M. Haynes, Treasurer Grover H. Keeton and Walter Stokes, commissioner of finance and taxation, the governor will leave for New York Saturday.

Details Not Revealed

Although he would not reveal the details of his refinancing plan, Governor Browning said he hopes to be able to refund a large part of the state's $129,000,000 bonded in-

To do a census on unemployment now, without reference to all the subjects in dispute, appears to many students of the problem as placing the cart before the horse.

In the Senate there is a move toward the latter approach. A resolution has been offered authorizing the President to appoint a commission to study unemployment and relief. It is sufficiently broad to utilize the various agencies now delving into facts, figures and other characteristics of the relief load.

If the nation is to benefit by its past mistakes and accomplishments in relief giving, the results to date must be shaken down by experts.

To chart a new course simply on the statistics of a census would place the administration in much the same position as it was in 1933 when the 1930 tabulations of employment and unemployment were used as a base.

Necessity for Study

Howard B. Meyers and John N. Webb of the WPA Division of Social Research sum up the necessity for a study—more than a census—when they say:

"Most studies of unemployment do not attempt to report the employability of those out of work, altho this should be the most important inference to be drawn.

"It is generally assumed that the definition of a gainful worker as a person who is usually employed at an occupation yielding an income, is sufficient indication of his employability.

"This assumption is incorrect in most cases. The fact that a person usually was employed prior to the loss of his last job is no basis for assuming that he can or will return to gainful work as employment increases. In many cases the loss of the job indicated that he was no longer employable according to the standards of that particular industry.

"This fact indicates that the employability of the unemployed cannot be determined with any confidence from the worker's own opinion of his chances in returning to his former job."

Face Important Decision

Now after nearly four years, the administration is up against an important decision. It must decide what it is going to do about those persons who are not getting back into private employment despite a definite upturn in all lines of business and industry. It is pledged to give support, but what kind?

The work philosophy has prevailed for all who are rated as employable without much regard to the degree of their employability. Opposing this policy is a demand for a return to the dole, state and locally financed or with the federal

BANDWICHES AND DRINKS FLY AS A MESSENGER CARRYING FOOD IS WAYLAID

here, we can convince the bondholders they will be protected, come back here in special session and take care of these other propositions. We can also arrange to do away with tolls of bridges. But this refinancing program must be carried out first."

Ellis of Bentonville charged Milum's move to have the bill amended was part of a "well-planned scheme to kill this bill."

Milum said the bill provided for transfer to the new refinancing account the balance on hand in the bond refunding fund. He said this amounted to more than $380,000, and if the money was taken away the refunding board would have no funds to pay expenses.

"I know that you are killing the present bond refunding board and I don't want to do it," the Harrison senator exclaimed.

Extra Officer

Barney and Thompson asserted that the bill would not take all of the funds to the credit of the bond refunding board, but only that portion of those funds allocated to the payment of contractors' claims, the period for payment of which has expired.

To Morrell's objection that the bill would authorize employment of a disbursing officer when such a position could be filled by the state treasurer without additional cost, Thompson replied:

"I can bring you assurances from the governor and the board of finance that the comptroller, who is a member of that board, will per as the disbursing officer and that no new employe will be added."

Morrell said the bill would be unconstitutional because it did not set out specifically the amounts to be paid in salaries and expenses under the refinancing program. Thompson said a lump sum was appropriated for this purpose because "we don't know what the expense is going to be."

FATHER GETS CUSTODY OF ADOPTED CHILD

A fight for the custody of an adopted child ended yesterday when Chancellor Bejach, sitting by interchange for Probate Judge Bates, gave the boy, Charles Edison Sutherland, 7, to the father, George H. Sutherland, 629 N. Fourth.

Chancellor Bejach overruled the plea of the boy's mother, Mrs. Nellie Lee Sutherland. Altho Mr. and Mrs. Sutherland still live at the same address, a separation is imminent, Mr. Sutherland said in filing the petition for custody.

The child was adopted four years ago when the couple was living in Tipton County, Tennessee. Mr. Sutherland is a disabled war veteran.

"EVERY CHILD IN TOWN" FACES QUIZ IN SLAYING

Officials Seek More Details in Girl's Death

By Universal Service

WINDSOR, Vermont, March 8.—Every child in this town will be questioned in connection with the murder of little Beverly Ann Page, authorities announced late today. They believe the five-year-old boy who "confessed" the torture and drowning of the girl has not told the complete story of the crime.

When the identity of the slayer of the four-year-old golden-haired child is established, State's Attorney Alban Parker said today, a formal charge of murder will be lodged against him, regardless of his age.

May Reduce Boy

Mrs. Parker said:

"If we establish, by our investigation, that the little boy who has admitted the crime is the actual slayer of Beverly Ann, we will charge him with murder and bring him into juvenile court. His fate will be determined by the court

[redacted] remaining plan, Governor Browning said he hopes to be able to refund a large part of the state's $129,000,000 bonded indebtedness at lower interest rates. The state, he said, now has several issues outstanding which are drawing six per cent. These he hopes to refund at from 4 to 4½ per cent.

Also the governor is working on a plan whereby changes could be made in sinking funds accounts that would allow the state to save considerable interest charges by retiring bonds as rapidly as funds accumulate. At present sinking funds are kept on deposit in banks at 2 per cent interest while the bonds the funds are designated to retire draw from 4½ to 6 per cent.

Balanced Budget

During the 60-day legislative recess, the governor will study the debt refunding plan and the general appropriation bill. The latter will be the first order of business to come before the Legislature when it re-convenes.

Governor Browning said the appropriation bill will be drawn to meet revenues in prospect, and that the state's budget will be "absolutely balanced for the first time in 14 years."

"I think it is essential that we balance the budget," he declared. "We have normal times now, and this is the first step toward straightening the state's financial tangle."

He said social security and the enlarged school program will call for increased expenditures during his administration, but added that administrative expenses would be "materially decreased."

The governor said he [redacted]

Plaintiffs' Exhibit

Jobless Census Not Best Means of Determining

WHY NOT HAVE U. S. SERVICE MAKE SURVEY?

Employment Agency Equipped To Get Data Needed Besides Figures

By ROBERT R. BROWN
Press-Scimitar Staff Writer

WASHINGTON, March 9—An insistent demand for an unemployment census has been heard since 1934. Proponents declare that the administration is working in the dark and that efforts to offset the curse of dependency have been hampered by a lack of facts.

What the nation needs, these supporters say, is a tabulation of those without jobs showing how many there are, how long they have been out of work, what industries they come from and what work they are fitted to do.

THIS BUSINESS OF RELIEF

There is little doubt that such a survey would be helpful, but without the additional information as to the causes of unemployment the effects of it on the social and economic structure, and the possibilities of definite methods to conduct it, the census would prove sadly inadequate.

Cart Before Horse

To do a census on unemployment now, without reference to all the subjects in dispute, appears to many students of the problem as placing the cart before the horse.

In the Senate there is a move

Lively Scene for the Singing Policeman

—Press-Scimitar Staff Photos.

The "Singing Policeman"—George Hughes—had his hands full in yesterday evening's strike disorders at the Tri-State Drum Manufacturing Co. Here he's attempting to stop strikers on a drum-destroying mission. They nearly stripped one 28-year-old relative of the plant managers before police could free her.

DEATH CLAIMS J. S. HEFFERNAN

Veteran Engineer Contracted Fatal Ailment During Flood Work

Back in the nineties, John S. Heffernan, then a steamboat engineer, had helped in the placing of mats along river banks during one of the worst of the Mississippi floods.

In 1927, while a steam engineer at Tech High, situated in the old building near Captain Bayou, he had worked strenuously in keeping flood waters out of the school.

Aided Refugees

Death came to him yesterday, a man of 77, who had been doing 24-hour flood duty at Peabody School. His death was the indirect result of overwork with flood refugees.

Mr. Heffernan was replacing desks and straightening the school after the flood refugees had gone from the building when he contracted influenza three weeks ago. Other complications developed and he was taken to St. Joseph's Hospital, where he died.

Memphis and its growth had always been a source of pride to Mr. Heffernan, who was born near the river on North Main. The son of the late John T. Heffernan, who, as city carpenter, had laid the first board walks of the city, he was baptized at St. Peter's Church.

During the Civil War, the family lived on Dunlap—and the young boy who wanted to help the South tried to persuade the Confederate cavalry camped next door to take him as drummer boy. Then, during the yellow fever epidemics, he refugeed from the city twice.

...ss on on these measures. If the refinancing program provided for in this bill is carried thru, we can convince the bondholders they will be protected, come back here in special session and take care of these other propositions. We can also arrange to do away with tolls of bridges. But this refinancing program must be carried out first."

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The child was adopted four years ago when the couple was living in Tipton County, Tennessee. Mr. Sutherland is a disabled war vet-...

Labor's Non-Partisan League yesterday ayung support to President Roosevelt's judiciary program. At the same time, Senate opponents charged high administration officials with "propagandist activities" in behalf of the court plan.

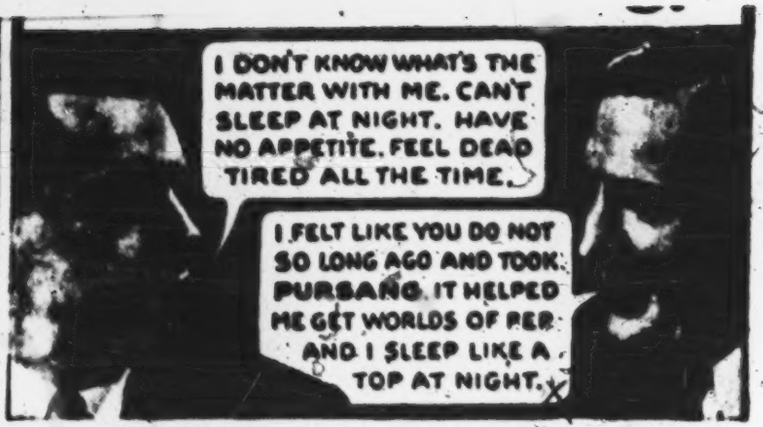
The farm group announced its support of the court program after conferring with Mr. Roosevelt. They declared "agriculture's greatest progress has been thwarted by the Supreme Court."

This pronouncement came as Labor's Non-Partisan League, created last year to support President Roosevelt's re-election, voted unanimously at an assembly of 600 labor leaders to give the judiciary program full backing.

President Roosevelt had called the labor group and farm representatives to the White House for judiciary discussions this morning. He will speak directly on the court question in a radio "fireside chat" tomorrow night.

Majority Leader Joseph T. Robinson charged in the Senate that "chain letters" and women's clubs were being used in what he termed an "unfair" campaign against the court reorganization plan. He made the statement after charges that the administration was using every propaganda method at its command.

Airplanes are forbidden by air regulations to fly over federal and state prisons at an altitude of less than 1000 feet.



TODAY, thousands of men, women and children who were tired, listless, nervous—appetites poor—because of pale weak blood, are brimming with strength and energy as a result of the aid given them by Pursang.

For this scientific tonic preparation contains, in properly balanced and readily assimilated form, such elements as organic copper and iron.

Pursang acts to stimulate the appetite and build rich, red blood even in cases of simple anemia. When this condition is relieved, nervousness disappears. Energy and strength usually return. You feel like a new person.

If you aren't up to par—if you constantly feel dragged out, give Pursang a complete chance to assist nature in building up your strength and energy as it has for so many people. Get Pursang from your druggist today on our money back guarantee.

Pursang Laxative Pills are acknowledged the modern treatment for constipation. Purely vegetable, they give thorough bowel cleansing without griping.

Advertised Over WMC WREC

Grateful Man Says: *My doctor ordered me to take a tonic—and prescribed Pursang. Since taking I have improved rapidly—lost that very tired feeling, and am my old self again."*

Mr. A. W., Fairfield, Conn.

FREE!

10 GENUINE SILEX COFFEE MAKERS AND TRAYS to the FIRST 10 Customers Who Buy One of These Famous

MAGIC CHEF

Plaintiffs' E...

persons who are not getting back into private employment despite a definite upturn in all lines of business and industry. It is pledged to give support, but what kind?

The work philosophy has prevailed for all who are rated as employable without much regard to the degree of their employability. Opposing this policy is a demand for a return to the dole, state and locally financed or with the federal government contributing, as it does under the Social Security Act.

To go blindly into either form of assistance on a permanent basis can rightfully be termed unsocial and uneconomic. All theories, plans and policies should have a day in court, with an impartial commission sitting by to separate the wheat from the chaff.

A careful study of the situation might easily develop the fact that an unemployment census would be unnecessary if the nation were to strengthen and expand its system of employment exchanges. England, faced with about the same problems as have prevailed in this country, tried many schemes, but finally settled down to the exchange as the lone agency for determining unemployment administration.

Machinery Set Up

The United States Employment Service is already functioning. Last year it made a million and one-half private placements, in addition to registering all persons certified for WPA jobs. When the unemployment insurance system begins to function, thru co-operation with state employment agencies, it will gather additional data.

Rather than spend 30 million on an unemployment census, a commission might advocate that the money be diverted into the employment service where all workers in to those where shortages exist, and above all other advantages the exchange would be in position to fill private vacancies with a degree of certainty that the man selected for the job was qualified.

Such a plan is not untried in this country. The oldest employment exchange, at Cincinnati, is now working along similar lines, drawing funds from outside sources to add tests of efficiency to its regular services. It is in a limited way, is exploring the possibilities of vocational training for the young and re-training for the old unemployed persons in its files.

Until we as a nation know more about the underlying causes of unemployment, coupled with a knowledge of the people who are displaced, there will be a continued and unnecessary drain on our human and financial resources.

The trial and error policy of the past four years must be molded

GIRL STRIKERS BLOCKED EVERYONE TRYING TO GET FOOD IN TO THE WORKERS

loss of the boy's mother, Mrs. Evelyn Lee Sutherland. Altho Mr. and Mrs. Sutherland still live at the same address, a separation is imminent, Mr. Sutherland said in filing the petition for custody.

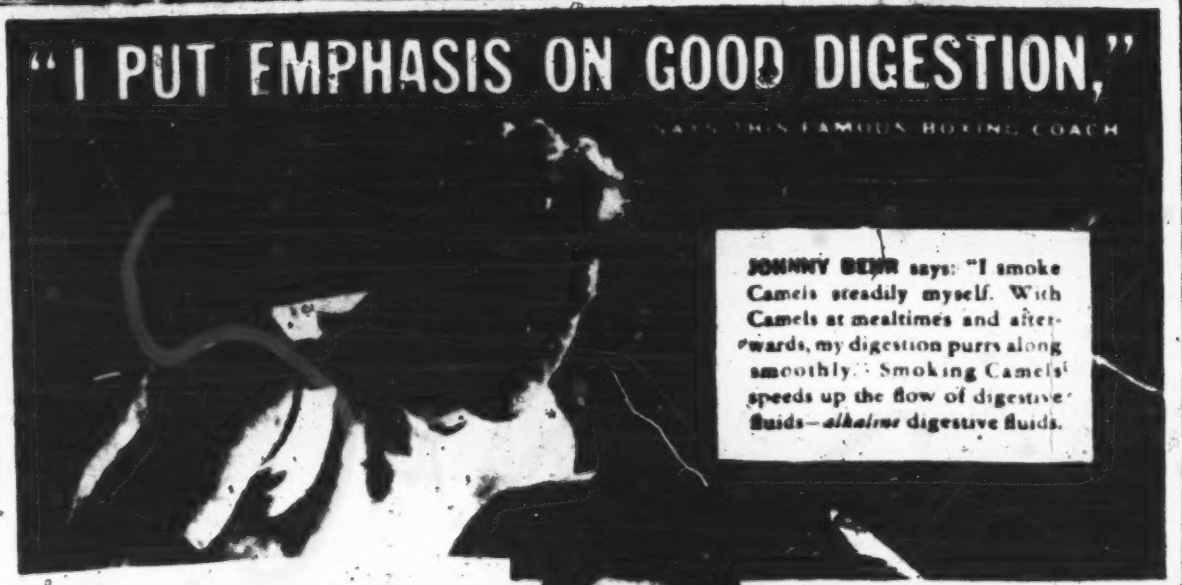
The child was adopted four years ago when the couple was living in Tipton County, Tennessee. Mr. Sutherland is a disabled war veteran.

MODERN WOMEN

MIDOL FOR FEMALE periodic pain due to cold, nervousness, exposure or similar causes. Children from 6 to 12 years, ½ dose. Tablets, reliable and give Quick Relief. Sold by all druggists for over 25 years. Adv.

"THE DIAMOND BRAND"

"I PUT EMPHASIS ON GOOD DIGESTION," SAYS THIS FAMOUS BOXING COACH



JOHNNY DEJOH says: "I smoke Camels steadily myself. With Camels at mealtimes and afterwards, my digestion purrs along smoothly. Smoking Camels speeds up the flow of digestive fluids—*alkaline* digestive fluids.

FOOD EDITOR (left), Dorothy Malone, says: "The smart new touch is to have Camels on the table from hors d'oeuvres through dessert. I find that Camels add a world of pleasure to eating."

In the Senate there is a move toward the latter approach. A resolution has been offered authorizing the President to appoint a commission to study unemployment and relief. It is sufficiently broad to utilize the various agencies now delving into facts, figures and other characteristics of the relief load.

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"It is generally assumed that the definition of a gainful worker as a person who is usually employed at an occupation yielding an income is sufficient indication of his employ-

They nearly stripped one se-y

Other methods proved unavailing, so Patrolman Hughes grabbed a water hose to drive back a curious throng surrounding a filling station on W. Iowa, where strikers had two workers "holed up." Note the grim expression. It soon faded into a smile as the crowd retreated before the water. But they came right back and a squad car had to remove the cornered workers to avoid trouble.

C. P. RITTELMEYER, FATHER OF NUN, DIES

Victim of Pneumonia; Former Building Contractor

Charles Peter Rittelmeyer, retired Memphis building contractor, and father of Sister Theophane, beloved nun and well-known garden enthusiast of St. Agnes Academy, died of pneumonia yesterday afternoon at St. Joseph's Hospital. He was 80.

Mr. Rittelmeyer, who came to Memphis in 1910 from Jackson, Miss., retired in 1928. He had been in ill health for some time.

Born in Holly Springs, Miss., he moved to Jackson as a young man and conducted a confectionery there. He married the late Genevieve Clark, a granddaughter of Charles Samuel Clark, governor of Mississippi during the Civil War.

Besides his daughter, he leaves three grandchildren, Charles William and Gilbert Lobat Rittelmeyer, and Mrs. Marie Murray, Memphis.

ged from the city twice.

Former Railroader

First working in railroad shops, he later went on the river, serving as engineer with almost all of the famous packets for 28 years. Twenty-six years ago he became a steam engineer with the city schools, working at Tech High before going with Peabody.

He was a lifelong communicant of St. Peter's, was a Knights of Columbus and a charter member of both the Marine Engineers Beneficial Association and International Order of Steamboat and Operating Engineers.

He leaves his wife, Mrs. Catherine Lory Heffernan; a son, John Lory Heffernan; two grandsons, Thomas Lory and Bobbie Lee Heffernan. His seven nephews will be pallbearers.

Funeral cortege will leave Collins Funeral Home at 7:30 a.m. tomorrow for St. Peter's, where mass will be said at 9 a.m. Burial will be in Calvary Cemetery.

MRS. ELLIE H. MOSS DIES WITH PNEUMONIA

Mrs. Ellie Haynie Moss, active worker in Bellevue Baptist Church, and wife of the late R. Jesse Moss,

Who Buy One of These Famous

MAGIC CHEF

(America's Finest)

GAS RANGES

ANY TIME THIS WEEK—OFFER EFFECTIVE TODAY

With These Advanced and Exclusive MAGIC CHEF Features Revolutionizing Modern Cooking!

DIVIDED COOKING TOP, readily removable, provides more space for cooking vessels.

SWING-OUT BROILER—Opening the door swings the broiler with contents out and away from the hot flame, convenient height lets you stand comfortably erect.

NEW HIGH-SPEED OVEN—New principle High-Speed Semi-Direct-Action Oven, with exclusive "Cross-Fire" Burner, bakes and cooks faster with less gas consumption.

"SKYSCRAPER CONSTRUCTION"—A radical reversal of ordinary range construction—a strong steel interior frame supports the removable outer-porcelain enamel parts.

SPECIAL

We Will Give You As Much As

$12.50

For Your Old Range on This New Magic Chef!

Above illustrated Magic Chef with FREE Silex Coffee Maker and Tray is YOURS for only—

$5 CASH

$3.65 PER MONTH

Liberal Trade-In Allowance on All Models

OPEN EVENINGS UNTIL 9 O'CLOCK

Look for the LOBATH RED WHEEL before you buy YOUR GAS RANGE

STRATTON-WARREN SALES CO.

843 Union **Phone 2-1123**

Plaintiffs' Exhibit 79.

1421

ntiffs' Exhibit 80.

568

ng Employables in Nation

'TERRIFIC HAPPINESS,' SAYS MARY

Two larks couldn't look any happier than Mary Astor and Manuel Del Campo, in this picture of the bride and groom in Miss Astor's Toluca Lake home at their first reunion since their elopement Feb. 18. Del Campo had just returned from Mexico.

Miss Astor invited movie colony friends in for ice cream and cake to meet her third husband. They were "terrifically happy," they said.

The male residents of many Philippine provincial towns were conscripted without pay to save coconut trees and rice, corn and sugar crops from locust hordes.

"If It Comes From O. K.— It MUST BE O. K."

O. K. MARKET

Quality Foods and Fast, Courteous Service

SPECIALS TODAY AND WEDNESDAY

BEEF LIVER . . . Lb. 18c
ROUND STEAKS Lb. 33c
BACON Sliced Lb. 33c
JEWEL SHORTENING 1-Lb Carton 15c 1-Lb Barrel 69c
MILK Carnation Milk—Pet 3 Large Cans 20c
BUTTER Brookfield Lb. 39c
EGGS Good Large Doz. 25c
SALT Jefferson Island 3 Boxes 10c
TOMATO JUICE Welch's—Gallon Can .21c
MARSHMALLOWS 1-Lb Box 15c
COFFEE Breakfast Cup—Lb 17½c
JELL-O Assorted Flavors Pkg 5c

FAST FREE DELIVERY

O. K. MARKETS

No. 1—1061 Madison . . 1-1223
No. 2—600 Linden . . . 6-8969
No. 3—257 S. Cleveland. 1-8163
No. 4—1092 Madison . . . 7-6869

their first reunion since their elopement Feb. 18. Del Campo had just returned from Mexico.

TUNICA MERCHANT DIES AFTER STROKE

R. L. Whittington Was Former Cashier of Bank

R. L. Whittington, planter and organizer of the Whittington Feed & Flour Co. of Tunica, Miss., died of a heart ailment at 8:30 p.m. yesterday at his home in Tunica. He was 65.

Mr. Whittington went to Tunica in 1904 as railroad agent and later was cashier of the Bank of Tunica. From 1914 to 1934, he engaged in farming, and in 1924 he organized the feed and flour company. He was a member of Tunica Baptist Church and was a Mason and a Shriner.

He leaves his wife, Mrs. Mattie Mae Whittington; a son, A. K. Whittington, Tunica; two daughters, Mrs. O. F. Caperton, New York City, and Mrs. W. H. Maynard, Jackson, Miss.; four sisters, Mrs. O. P. Elliott, Greenwood, Miss.; Mrs. Ada Whiteside, Dallas, Texas; Mrs. Junie Crawford, Hickory Flat, Miss., and Mrs. Jim Coltharp, Myrtle,

Plaint
5685

Jobless Census Not Best Means of Determining Empl

WHY NOT HAVE U. S. JOBLESS MAKE SURVEY?

Unless More Than a Count Of Jobless Is Obtained, Census Is Useless

By ROBERT S. BROWN
Press-Scimitar Staff Writer

WASHINGTON, March 9.—An insistent demand for an unemployment census has been heard since 1934. Proponents declare that the administration is working in the dark and that efforts to offset the curse of dependency have been hampered by a lack of facts.

What the nation needs, these supporters say, is a tabulation of those without jobs, showing how many there are, how long they have been out of work, what industries they come from and what work they are fitted to do.

THIS BUSINESS OF RELIEF

There is little doubt that such a survey would be helpful, but without the additional information as to the causes of unemployment the effects of it on the social and economic structure, and the possibilities of definite methods to conduct it the census would prove sadly inadequate.

Census technique must be exceedingly simple. It can go no further than supply answers to stated questions. It takes time, so much that in the rapidly shifting picture of American production it might well be out of date before completed. It costs money, the price of the currently contemplated tabulation being placed at 20 million dollars.

Cart Before Horse

To do a census on unemployment now, without reference to all the subjects in dispute, appears to

Girl Pickets in Action Yesterday at Plant

ONE WORKER WAS SLIGHTLY INJURED IN YESTERDAY'S SCUFFLE

REFINANCE PLAN PASSES DESPITE THREAT OF VETO

Bailey Friends Warn That Bill in Its Present Form Is Unacceptable

By Associated Press

LITTLE ROCK, Ark., March 9.—Warned by an administration leader that Gov. Carl E. Bailey probably would veto four bills intended to aid bondholders and land owners, the Arkansas Senate yesterday passed a measure appropriating $150,000,000 for refinancing highway, bridge and road improvement district refunding bonds.

Jones and Harrell led an unsuccessful fight to amend the bill, during which they asserted it would eliminate activities of the present road refunding board, provide for employment of an unnecessary official and be held unconstitutional if tested in court.

Attorney of Texarkana, describing their objections a "a tempest in a teapot," denied the bill would upset the present refunding board's activities, and added:

Veto Predicted

"There has been strong representations made to the governor that the Harris-Boyer bridge bill, the Pigue-Dillon bill to aid improvement districts in Pulaski County, the Kinney bill to reduce automobile licenses and the Milum bill to reduce the gasoline tax will violate the 1934 refunding act.

"It is likely that the governor will have to veto all of these measures. If the refinancing program provided for in this bill is carried out, we can convince the bondholders they will be protected, come back here in special session and take care of these other measures."

ON ELECTION BOARD

ROBERT JOHNSON

Robert Johnson of Elizabethton is the new Republican on the Tennessee Election Commission. Abe Waldauer of Memphis and Reed Shelp of Nashville are the other two members. Mr. Johnson was elected when the Legislature tossed aside the choice of J. Will Taylor, East Tennessee Republican.

LABOR AND FARMERS INDORSE COURT BILL

Leaders Pledge Support After White House Conference

By United Press

WASHINGTON, March 9.—Fifteen Midwest farm leaders and Labor's Non-Partisan League yesterday gave support to President Roosevelt's judiciary program. At the same time, Senate opponents charged high administration officials

ing Employables in Nation

ON ELECTION BOARD

ROBERT JOHNSON

Robert Johnson of Elizabethton is the new Republican on the Tennessee Election Commission. Abe Waldauer of Memphis and Reed Sharp of Nashville are the other two members. Mr. Johnson was elected when the Legislature tossed aside the choice of J. Will Taylor, East Tennessee Republican.

LABOR AND FARMERS INDORSE COURT BILL

Leaders Pledge Support After White House Conference

By United Press

WASHINGTON, March 9.—Fifteen Midwest farm leaders and Labor's Non-Partisan League yesterday ayung support to President Roosevelt's judiciary program. At the same time, Senate opponents charged high administration officials with "propagandist activities" in behalf of the court plan.

The farm group announced its support of the court program after conferring with Mr. Roosevelt. They declared "agriculture's greatest progress has been thwarted by the Supreme Court."

EXCUSE ORIGINAL, X-RAY SPOILS IT

By United Press

PEABODY, Mass., March 9.—Teachers at Wallis School had to admit that the excuse 13-year-old Mustafa Trod gave for not staying after school was original.

Mustafa told Principal Joseph Gilmore that he wouldn't be able to stay after school as punishment for chewing gum in class because he accidentally swallowed a pen point.

Gilmore called an ambulance and the boy was taken to a hospital. X-ray plates were made of his throat, lungs and stomach, but no pen point was discovered.

DYNAMITE REPLACES AX, 'CHOPPER HURT

By United Press

WEBSTERVILLE, Vt., March 9.—Ray Gallant, 43-year-old quarry worker, won't substitute dynamite for an ax the next time he wants firewood.

Gallant was experimenting with dynamite, believing it would be easier to blast the wood to bits than to chop it with an ax.

A charge exploded prematurely and he was taken to a hospital with nose and eye injuries.

DIESEL TRUCKS POPULAR

By SCIENCE SERVICE

BERLIN, March 8.—An official count of Diesel-powered vehicles in Germany shows that 10.8 per cent of all trucks are Diesel propelled.

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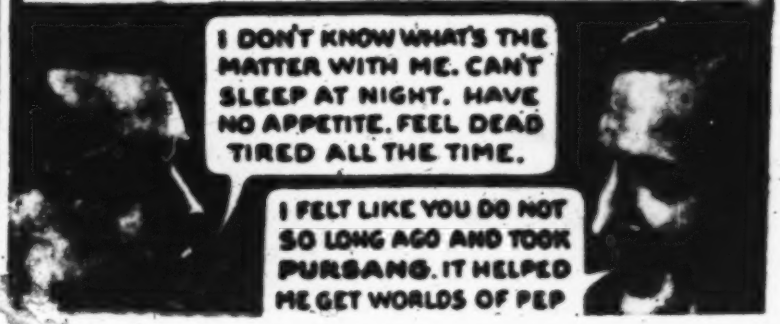

[fol. 5686] p. 602 NELLY STITES called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. Just state your name, please?
A. Nelly Stites.
Q. Where do you reside, Mrs. Stites?
A. 2423 Kensington.
Q. Kansas City, Missouri?
A. Kansas City, Missouri.
Q. Are you married, Mrs. Stites? A. Yes, sir.
Q. Have you any children?
A. I have two children.
Q. Where are you employed?
A. Donnelly Garment Company.
Q. How long have you been employed at the Donnelly Garment Company?
A. A little over six years.
Q. In what capacity are you employed?
A. I am an operator.
Q. During the time that you have been employed at the Donnelly Garment Company have you been treated fairly in regard to wages, hours and working conditions?

Objection—immaterial.

A. It couldn't have been better.
Q. Do you know of any employees that have complained about the hours, wages and working conditions at the Donnelly plant?

Objection—immaterial.

A. No, I haven't.
Q. Have you at any time been forced to work at at speed in which you would become exhausted at the close of the working period during the day?

Objection—immaterial.

A. No, sir. That is entirely up to yourself how fast you want to work.

Q. Are the machines adjusted so you have to work at any fixed speed?

Objection—immaterial.

A. No, sir. The machines run on the same order of driving a car. Naturally, the more you push on the treadle the faster it goes, and that is up to you.

Q. And that is true in regard to all the machines that are used by operators?

Objection—immaterial.

A. Yes, sir, it is.

Q. Have you ever seen any employees at the Donnelly Garment Company physically exhausted from their work?

Objection—immaterial.

A. No, sir.

Q. In performing your work are you required to keep up with any other operator?

Objection—immaterial.

[fol. 5687] p. 603 A. No.

Q. Just explain to the court how you work?

Objection—immaterial.

A. Well, our work is brought to us to our machine, and it is up to us to put out that work the way that we want to, that is the time. There is nobody sets any time for you to get a certain amount of work done. When you have finished this bundle it is taken away and others is brought to you but there is no set time when to start nor when to finish it.

Q. And you don't know where the bundle goes?

Objection—immaterial.

A. No, I don't.

p. 604 Q. Do you know of any speed-up system that is in use in the Donnelly Garment Company?

Objection—immaterial.

A. No, sir.
Q. Do you know of any spy system?

Objection—immaterial.

A. No, I don't.
Q. Do you know of any caste system?

Objection—immaterial.

A. No.
Q. Just state to the Court whether or not all the employees use the same entrance, the same elevators?

Objection—immaterial.

A. Why, yes; the operators, the office help, any of the executives, we all ride the same elevator. Well, it is just like one family.
Q. You all use the same cafeteria?

Objection—immaterial.

A. Yes, sir, we do.
Q. I hand you Plaintiffs' Exhibit 30 and ask you whether or not you signed one of these cards?
A. I did.
Q. Did you sign of your own free will?
A. I did.
Q. Did any instructor or superior or anybody in any superior position ask you to sign this card?
[fol. 5688] A. No, they didn't.
Q. Did you see any officer, executive or instructor ask any employee to sign this card?
A. No, sir.
Q. Just state, Mrs. Stites, how this card was given to you?
A. Well, that card was handed to me by the girl that sets next to me and I picked it up and read it and I did not question who had written it or anything. That was my feeling toward it so I signed it.
p. 604a Q. This document has a heading which reads "We, the undersigned, as members of the Donnelly Garment Company wish to make it

known we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed". Was that your sentiment at the time?

A. Yes, sir, and it is my sentiment now.

Q. Where it has the statement that "We refuse to acknowledge any union labor organization" who did you have in mind in regard to that when you signed that?

A. Well, we had heard rumors that the strikers over at the other garment companies were coming over to our place of business next and they told us they were going to get us and we wanted to express our sentiment to our employer how we felt about our working conditions and that we were perfectly happy and we did not want any interference from someone else.

Q. Did you mean by that, somebody on the outside?

Objection and motion to strike the answer—not responsive.

A. On the outside.

Q. Well, state whether or not you meant some outside labor organization?

p. 605 A. We did mean some outside labor organization.

Q. Did any officer, executive or person in the position of hiring or firing ever make any statement to you in regard to union labor?

A. Nobody, no sir.

[fol. 5689] Q. Did you ever hear any statements made by any officer, executive or person in the position to hire or fire, that in any way disclosed that the company had any interest in whether or not you joined or didn't join any labor organization?

A. No, sir.

Q. You stated you were an operator, Mrs. Stites?

A. Yes, sir.

Q. Would you please state what you earn per week?

A. Well, just what do you mean? Approximately?

Q. Approximately, yes.

A. Well, I earn all the way from $25.60 to $46.00.

Q. Will you state what your wage guarantee is per week? A. $25.60.

Cross Examination

By Mr. Tyler:

Q. Mrs. Stites, are you a member of the Donnelly Garment Workers Union. A. Yes.

Q. Did you join of your own free will and accord?

Objection—immaterial.

A. I did.

p. 606 Q. Do you know of any instance or any time, Mrs. Stites, when your employer or any of the people who hire and fire down there threatened any employee or promised any employee anything or ever hinted to any employee what they should do about the Donnelly Garment Workers Union?

A. No, sir.

p. 612 Q. At the time you signed Exhibit 30 which you referred to there had been no talk in the shop at all about organizing any union of your own, had there? A. No, sir.

Q. State whether or not at the time you signed Exhibit 30 there had been or had not been any talk around the Donnelly plant about organizing a plant Union?

A. No; we had never discussed a union at all when that was signed.

Objection is made to all questions and answers and offers of exhibits of the testimony of John B. Bachofer contained in pages 1 to 18 inclusive herein (pages 716 to 815 Judge Miller record) and pages 1, 2 and 3 following herein (Judge Miller testimony 848, 852 inclusive) and all ex-

hibits attached hereto for the reason that said testimony and said exhibits are immaterial.

[fol. 5690] JOHN B. BACHOFER

p. 716 called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hogsett:

Q. State your name please, to the Court?

A. John B. Bachofer.

Q. Where do you reside, Mr. Bachofer?

A. At 6441 Holmes, Kansas City, Missouri.

Q. What is your occupation?

A. I am a certified public accountant.

Q. How long have you been a certified public accountant?

A. Since January, 1934.

Q. Are you a member of any national association of your profession?

A. I am a member of the American Institute of Accountants and the National Association of Cost Accountants.

Q. What, if any connection do you have with the plaintiff companies?

A. I am acting as comptroller.

Q. And how long have you had that connection with them?

A. For about a year.

Q. Now I hand you what has been identified in this record as Plaintiffs' Exhibits 34 and 35,

p. 717 being the plaintiffs' contracts with their employes and ask if you have examined those contracts and made a comparison of them with contracts between the International and certain manufacturers?

A. Yes.

Q. Now, I hand you what has been furnished to us by Mr. Walsh as copies of the International's contracts with these companies, Bieberman Brothers, Ginsberg & Sons, Inc., Practical Frocks, Inc., Gernes Garment Com-

pany, Gordon Manufacturing Company, Missouri Garment Company, Liberty Frocks, Inc., and Mayfair Manufacturing Company, and will ask whether you have made a comparison and an analysis of the terms of the Donnelly contract with their employes as compared with each of these eight contracts that you hold in your hand?

(1)

[fol. 5691] A. I have.

Mr. Bachofer Recalled

p. 778 By Mr. Hogsett:

Q. Mr. Bachofer, to bring back to mind the testimony that you gave on Saturday, you testified that you were a certified public accountant and that you had made a comparison as between the Donnelly Garment Company and Donnelly Sales Company's contracts with their employees and the contracts represented by the copies in Exhibit 99 being 8 contracts between the International and 8 other companies. Do you remember that?

A. Yes, sir.

p. 779 Q. Now, you say you have made a comparison of the rates of pay, wages, hours and other conditions of employment in the Donnelly contract and the same matters in each of these 8 contracts in Plaintiffs' Exhibit 99, is that right?

A. Yes, sir.

Q. Have you embraced the result of that comparative analysis in written form?

A. Yes, sir.

(Document marked Plaintiffs' Exhibit 105 for identification).

Q. I hand you Plaintiffs' Exhibit 105 and ask you if you identify that as the written statement of that comparative analysis?

p. 780

A. Yes, sir.

Q. I notice this exhibit seems to be an original affidavit. This, in fact, was your affidavit used before the three judge hearing of this Court?

A. Yes.

p. 781 Q. Now, Mr. Bachofer, I wish you would take this analysis and read the material parts to the Court.

p. 784 Q. (By Mr. Hogsett) Now, Mr. Bachofer, will you kindly read to the Court this Exhibit 105 and I suggest that in the interest of saving time, although I offer the entire exhibit, you omit that part on the first and perhaps the second page which merely describes these contracts because they are already before the Court. I suggest that you begin with the words "In connection with the summary of these contracts."

(2)

[fol. 5692] A. (Reading) "In connection with the summary of these contracts as given below, it is to be observed that the contracts are not uniform in their classification of labor, and for that reason I have adopted a classification which, in my opinion, most nearly fits all the contracts and makes comparison possible. In this summary, labor has been classified as follows: Cutters, Markers, Spreaders, Piece Workers, Week Workers, Apprentices."

Q. Now, at this time you are dealing with the general subject of cutters?

p. 785 A. That's right.

Q. And are comparing eight or nine contracts with reference to the wages provided for that class of labor, until you tell us something different?

A. That's right.

Q. Go ahead.

A. (Reading) "Cutters. The Donnelly Contract specifies minimum weekly wages of $42.50 for 'A' Class Machine Cutters.

"The Missouri Contract states that 'wages for Cutters and Spreaders shall be not less than the wages received by them at present.'

"The Gordon Contract states that 'the wages for Cutters shall be not less than the wages received by them at present.'

"The Liberty Contract states that 'the wages for Cutters shall be not less than the wages received by them at present.'

"The Gernes Contract states that 'the scale for Cutters shall be determined with relation to the rate and scale in general effect in the industry as applied to local conditions and circumstances.'

"The Mayfair Contract states that 'the Cutters shall receive an increase of not less than ten per cent (10%) beginning June 30, 1937, above the wages they receive at present.'

"The Practical Frocks Contracts stipulates
p. 786 those cutters receiving $25.00 per week are to receive a $3.00 increase; those receiving $22.00 per week are to receive a $3.00 increase; those receiving less than $22.00 per week are to receive a $2.00 increase.

"The number of employees falling into these different classifications and the base wages are not given.

"The Ginsberg Contract stipulates actual weekly wages of from below seventeen ($17.00) dollars to twenty-three ($23.00) dollars and above.

(3)

[fol. 5693] "The Biberman Contract stipulates minimum weekly wages of thirty-five ($35.00) dollars for 1937 and thirty-eight ($38.00) dollars beginning January 1, 1938. The Donnelly rate is $42.50 per week.

"It will be noted that the Missouri, Gordon, and Liberty Contracts merely provide that the cutters shall not receive 'less than the wages received at present.' What these wages are is not disclosed except as they may be in part

reflected by the wages paid to other employees.

"The Gernes Contract provides that the scale shall be determined in relation to the rate and scale in general effect in the industry as applied to local conditions and circumstances. What this scale is cannot be determined from the contract.

"The Mayfair Contract provides for a ten per cent increase above 'the wages they receive at present.' What these wages are is not
p. 787 disclosed except as they may be in part reflected by the wages paid to other employees.

"The Gernes Contract provides that the scale shall be determined in relation to the rate and scale in general effect in the industry as applied to local conditions and circumstances. What this scale is cannot be determined from the contract.

"The Mayfair Contract provides for a ten per cent increase above 'the wages they receive at present.' What these wages are is not disclosed except as they may be reflected in wages paid other employees.

"As stated, the Practical Frocks Contract stipulates 'those cutters receiving $25.00 per week are to receive a $3.00 increase; those receiving $22.00 per week are to receive a $3.00 increase; those receiving less than $22.00 per week are to receive a $2.00 increase.' From this it appears that an actual weekly wage of $28.00 is provided for some of the cutters; an actual weekly wage of $25.00 is provided for some of the cutters; [an actual weekly wage of $25.00 is provided for some of the cutters;] and an increase of $2.00 is to go to those receiving less than $22.00 per week. The number of persons affected by these raises cannot be ascertained from the contract and the number who may be receiving less than $22.00 is

not given; neither are their then present
p. 788 wages given but it clearly appears that the highest wages paid are $28.60 and from that they grade down to an unknown amount.

"The Ginsberg Contract as stated stipulates that cutters who have been receiving $19.00 per week and above shall receive an increase of $4.00; cutters receiving between $15.00 and $19.00, an increase of $3.00; cutters receiving below $15.00 per week, an increase of $2.00, but here again the number of cutters falling within the respective classifications is not given, but it is apparent that some of the cutters employed receive $15.00 per week; that other cutters had been receiving between $15.00 and $19.00, and that other cutters had been receiving $19.00 per week.

(4)

There may also have been cutters who have
[fol. 5694] been receiving more than $19.00, but how many there are is not disclosed. But the contract clearly indicates that some of the cutters had been receiving below $15.00, but how much they received is not shown, and hence their present wages cannot be ascertained.

"As stated, the Biberman Contract stipulates a minimum weekly wage for cutters of $35.00 for 1937, and $38.00 for 1938."

Mr. Hogsett: Now, you have finished with the subject of cutters in all of these eight or nine contracts?

A. Yes, sir, that is right.

p. 789 Q. By Mr. Hogsett: Mr. Bachofer, at the noon recess you had finished dealing with the wages of cutters in all of the nine contracts, is that right?

A. That's right.

Q. Now, is it not a fact, summing up what you said, that the $42.50 for the cutters in the Donnelly plant is in excess of the minimum

or wages fixed in any one of the eight contracts?

A. That is right, insofar as those wages are shown in those contracts.

Q. Go ahead with the next subject of your analysis?

A. The next subject is markers (Reading) "The Donnelly, Missouri, Gordon, Liberty, Gernes, Mayfair, Practical Frocks, and Ginsberg Contracts do not specify a distinct wage rate for workers of this classification.

"The Biberman Contract stipulates minimum weekly wages of forty dollars and fifty cents ($40.50) for 1937, and forty-three dollars and fifty cents ($43.50) beginning January 1, 1938."

p. 890 Q. Now, that is the sum and substance of all you find in any of the contracts on the subject of markers?

A. That's right.

Q. In other words, to sum that up, there is only one contract, The Biberman Contract that mentions any such group or classification of labor?

A. That is right.

Q. Go ahead with the next subject.

(5)

[fol. 5695] A. Spreaders or Stretchers (Reading) "The Donnelly Contract stipulates a minimum weekly wage of thirty-three ($33.00) dollars to Stretchers.

"The Gernes, Mayfair, Practical Frocks and Ginsberg Contracts do not specify wages paid to Spreaders or Stretchers.

"The Missouri Contract states that the wages for Spreaders shall be not less than the wages received by them at present. What their present wages are is not disclosed.

"The Gordon Contract states that 'the present male spreaders in the cutting department

shall be paid at the rate of twenty dollars per week beginning July 1, 1937.'

"The Liberty Contract states that girl spreaders in the Cutting Department are to receive one dollar and fifty cents ($1.50) increase above the wages received by them at present. What their present wages are is not disclosed.

"The Biberman Contract stipulates minimum weekly wages of twenty-four dollars and thirty cents ($24.30) for 1937, and twenty-
p. 791 seven dollars and thirty cents ($27.30) beginning January 1, 1938."

Q. Now, that covers the subject of spreaders or stretchers in all of the contracts as far as that subject is dealt with?

A. Yes.

Q. Now, I will ask you whether the Donnelly minimum weekly wage of $33.00 to Stretchers is in excess of the wages in any one of the eight contracts which you are comparing, where there is any reference at all to wages in those contracts?

A. Yes.

Q. Go ahead with the next subject.

A. Piece Workers (Reading) "The Donnelly Contract stipulates the following minimum weekly wages for piece workers:

Note: In the following classification of minimum weekly wages paid to piece workers under the Donnelly Contract, groups are defined as follows: Group 1 workers are those who work a portion of their time on garments selling above $45.00 per dozen, and work the remainder of their time on garments selling at $45.00 per dozen and below; Group 2 workers are those who work on garments selling at $45.00 per dozen and below; Group 3 workers are those who work exclusively on lower price cotton garments.)" I might add that here follows the tabulation that shows the amounts

guaranteed as a minimum weekly wage to these various people and it is in tabulated form.

p. 792

Q. You mean guaranteed by the Donnelly Contract?

(6)

[fol. 5696] A. By the Donnelly Contract. (Reading)

"Operators

40% of	Group	1	operators	$25.00
30% of	"	1	"	22.50
30% of	"	1	"	20.00
40% of	"	2	"	20.00
30% of	"	2	"	18.00
30% of	"	2	"	16.50
40% of	"	3	"	18.00
60% of	"	3	"	16.50

Machine Pressers $30.00

Hand Ironers

40% of	Group	1	Hand Ironers	$25.60
30% of	"	1	" "	22.50
30% of	"	1	" "	20.00
40% of	"	2	" "	20.00
30% of	"	2	" "	18.00
30% of	"	2	" "	16.50
40% of	"	3	" "	18.00
60% of	"	3	" "	16.50

Folders

40% of	Group	1	Folders	20.00
60% of	"	1	"	18.00
40% of	"	2	"	18.00
60% of	"	2	"	16.50

Miscellaneous Piece Workers—(Includes belt-turners, workers in Notion Department button hand-sewers, etc., not included above.)

50%	are	guaranteed	a	minimum	of	18.00
50%	"	"	"	"	"	16.50

"The above wages under the Donnelly Contract are minimum wages."

Q. That is the minimum wage?

p. 793 Q. These operators of all classes, and hand ironers and machine pressers and folders are all piece workers with these respective guaranteed minimums?

A. Piece workers include the Notion Department, button hand-sewers, and so forth. (Reading) "The Missouri Contract states that the piece rates for piece workers shall be set at a basis whereby not less than seventy per cent (70%) of the non-apprentice female workers in the different departments of the shop shall be able to earn not less per week than thirteen ($13.00) dollars.

(7)

[fol. 5697] "Elsewhere in the contract provision is made for a minimum weekly wage of thirteen ($13.00) dollars per week for a female worker of 'normal speed and ability.' Therefore, thirty per cent (30%) of the piece workers under the Missouri Contract have no minimum wage if they are not of 'normal speed and ability.'

"The Gordon Contract states that the piece rates for piece workers shall be set at a basis whereby not less than seventy per cent (70%) of the non-apprentice female workers in their Kansas City plant shall be able to earn per week not less than thirteen ($13.00) dollars.

p. 794 "Elsewhere in the contract provision is made for a minimum wage of thirteen ($13.00) dollars per week for a female worker of 'normal speed and ability'. Therefore, thirty per cent (30%) of the piece workers have no minimum weekly wage if they are not of 'normal speed and ability.'

"Special provision is made that in the Richmond, Missouri, plant that the minimum weekly wage of a female worker of 'normal

speed and ability' shall be $11.00. Another clause provides that 'the piece rate for piece workers shall be set at a basis whereby not less than sixty per cent (60%) of the non-apprentices shall be not less than six ($6.00) dollars per week for a girl for the first six weeks of her apprenticeship.'

"The Liberty Contract states that piece rates for piece workers shall be set at a basis whereby a worker of 'average speed and ability' in the Kansas City plant shall be able to earn per week not less than $13.00.

"Piece rates in the Lexington, Missouri, factory 'shall be the same as those set for piece workers in the Kansas City factory and the workers shall be paid in accordance with their productive ability.' Workers, therefore, who are not of 'average speed and ability' do not have a minimum weekly wage at Kansas City and workers at Lexington, Missouri, have no minimum wage.

"The Gernes Contract states (paragraph 8) 'the wages scale for female workers in the employ of the employer shall be not less than $13.00 per week for a worker of normal efficiency and ability.' This does not guarantee $13.00 a week, but is merely a wage scale where a person of 'normal speed and ability' can earn that amount. The contract further recites 'the present prices for piece workers shall remain intact and shall be based on a basis that not less than 75% of the workers in the different departments of the shop shall be able to earn not less than $13.00 per week per capita.' In establishing this base rate for piece workers so that 75% of them may be able to earn not less than $13.00 per week per capita, there is a further provision that the base rate for piece workers shall be determined with relation to the rate in general

p. 795

effect in the industry as applied to local conditions and circumstances.

(8)

[fol. 5698] "The Mayfair Contract states that the piece rates for piece workers shall be set at a basis whereby not less than seventy-five per cent (75%) of the female workers in the different departments of the shop shall be able to earn not less than thirteen ($13.00) dollars per week. Elsewhere in the contract it states that thirteen ($13.00) dollars per week shall be the minimum wage for female workers of 'average speed and ability.' Therefore, twenty-five per cent (25%) of the piece workers, if they are not of 'average speed and ability', do not have a minimum weekly wage.

"It will be noted that the Donnelly Contract provides an absolute minimum of $16.50 per
p. 796 week for all of its employees. Upon the other hand, the above contracts—namely, Missouri, Gordon, Liberty, Gernes, and Mayfair—only provide that rates shall be so fixed that a worker of normal speed and ability in Kansas City can earn $13.00 per week, and workers in the plants outside of Kansas City can earn $11.00 per week—that is to say, the worker of average speed and ability is to receive what she earns. Whether they earn more than $13.00 per week or less than $13.00 per week, their earnings are measured by the amount of work done and at the scale fixed. If their earnings fall below $13.00 then there is no provision that they shall be paid $13.00. There is, therefore, no guaranteed minimum to workers of normal speed and ability as individual workers.

"Moreover, in the Gordon and Missouri contracts it is stipulated that the rates shall be so fixed that 70% of the non-apprentice females shall be able to earn not less than $13.00. In the Gernes and Mayfair contracts the stipulation is that the rates shall be so

fixed that not less than 75% of the female
p. 797 workers shall be able to earn not less than $13.00 per week.

"Manifestly, therefore, it is contemplated from 25% to 30% of the employees in the plants named will not be able to earn $13.00. If I am correct in this conclusion, there is then no real minimum guarantee to any individual employees in the plants last above named.

"The foregoing contracts are all with Kansas City concerns.

"Practical Frocks, Inc., is located in Elizabeth, New Jersey. The characteristic of the Practical Frocks contract is that it merely provides for an increase of wages above those then received but in no case states the wage rates in effect at the time the contract was made. As has been previously pointed out, in the cutting department the provision is that there are to be certain raises above the prices paid which seems to indicate that there were some cutters who received less than $22.00 per week. The contract provides that week workers earning less than $10.00 per week shall receive an increase of $1.50 per week. All other week workers earning above $10.00 per week shall receive an increase of $1.00 per week. What the wages were then is not disclosed, but it is evident that some of the workers were receiving less than $10.00.

(9)

[fol. 5699] "As to piece workers, the provision is that they shall receive an increase of ten per cent on the piece rates existing in the shops of June 14, 1937. What these piece rates were is not disclosed. No minimum is guaranteed.

"Some indirect light may be thrown upon the probable piece work prices by considering the fact that the contract shows that there were evidently workers who had been earning less

p. 798 than $10.00 per week, as is shown by the provision that workers earning less than $10.00 per week were to have a raise of $1.50 per week, and the further fact that there must have been cutters who received less than $22.00 per week, for it is provided that cutters receiving less than that amount were to receive an increase of $2.00 per week.

"The Ginsberg contract does not specify any definite actual or minimum wage to be paid to piece workers. It merely states that 'all piece workers shall receive an increase of fifteen per cent (15%) on all piece rates existing in the shop as of March 16, 1937' and 'if any worker earns eight ($8.00) dollars per week or less on such rates, then twenty per cent (20%) instead of fifteen per cent (15%) shall be added to their weekly earnings.' What these previous earnings were is not disclosed, but attention is called to the fact that some of the workers must have been receiving less than $8.00 per week because the provision appears that 'such workers shall receive an increase of 20% instead of 15%'.

"The Biberman contract does not specify a definite minimum rate of pay for piece workers. It states that 'the employer agrees to increase all piece work wages by ten per cent (10%) as of February 1, 1937, and to make an additional increase of five per cent (5%) on January 1, 1938, for all persons employed as "front makers." All other operators shall
p. 799 also be entitled to the additional five per cent (5%) increase as of January 1, 1938; if their earnings are less than the earnings of the front makers.'

"What the wages for these piece workers were, which were to be increased by the percentages above stated, is not disclosed. However, where the Biberman contract does set out specific wages, as in cutters and

spreaders, the minimum wage scale is below the wage scale of the Donnelly Company."

Q. You have dealt now with the provisions for piece workers in all of these nine contracts, have you not?

A. Yes, sir.

Q. Do you find a single one of the eight contracts in Exhibit 99 which has provisions for wages as high as those in the Donnelly Contract?

(10)

[fol. 5700] A. No, sir.

Q. Proceed with the next subject.

A. (Reading) "Week Workers. The Donnelly Contract specifies minimum weekly wages for the following week workers:

Group 1 Examiners		$21.00		
Group 1 Dividers		22.50		
Group 2 Dividers		20.00		
Group 1 Mechanics		42.50		
Group 2 Mechanics		40.00		
Mechanics' Helpers		25.00		
Work Distributors	From	20.00	to	25.00
Janitors and Maids—				
Experienced		18.00		
Bundle Boys		16.50	to	18.00
Group 2 Examiners		18.00		

p. 800 "The Missouri contract states that thirteen ($13.00) dollars per week shall be the minimum weekly wage for a female worker of 'normal speed and ability' and excludes all employees who are not actually engaged in the making of garments.

"The Gordon contract states that thirteen ($13.00) dollars per week shall be the minimum weekly wage for a female worker of 'normal speed and ability' and it excludes employees not actually engaged in making garments.

"The Liberty contract states that thirteen ($13.00) dollars per week shall be the mini-

mum wage for a female worker of 'average speed and ability'.

"The Gernes contract states that thirteen ($13.00) dollars per week shall be the wage scale for female workers of 'normal efficency and ability' and it excludes employees who are not actually engaged in making garments.

"The Mayfair contract states that thirteen ($13.00) dollars per week shall be the minimum wage for a female worker of 'average speed and ability'.

"The Practical Frocks contract, after stipulating wages for the Cutting Department, states: 'All other week workers earning less than ten ($10.00) dollars per week shall receive an increase of one dollar and fifty cents ($1.50) per week. All other week workers earning about ten ($10.00) dollars per week shall receive an increase of one ($1.00) dollar per week'. This contract, therefore, states no minimum for these week workers.

p. 801

"The Ginsberg contract does not specify definite actual or minimum wages to be paid week workers except such as are governed by 'All other week workers except cutters, for whom increases were provided above, shall receive an increase of twenty per cent (20%) on their salaries as of March 16, 1937, if such salaries were eight ($8.00) dollars or less, and an increase of fifteen per cent (15%) if their salaries were above eight ($8.00) dollars per week.'

(11)

[fol. 5761] "The Biberman contract specifies that fourteen ($14.00) dollars shall be the minimum weekly wage to go in effect on January 1, 1938, except that those workers who are receiving less than fourteen ($14.00) dollars per week shall receive an immediate increase of one dollar ($1.00) per week and a further increase equal to one-fourth (¼) of the dif-

ference between the existing wage and the fourteen ($14.00) dollar wage every three months thereafter, so that such workers shall thus be brought up to a minimum wage of fourteen ($14.00) dollars per week within a year after the date of the signing of the contract."

Q. You have now dealt in full with all the provisions of the nine contracts respecting week workers, have you?

A. Yes, sir.

p. 802 Q. I will ask you whether or not the guaranteed minimums for week workers in the Donnelly Contract exceeds those in any one of the eight contracts in Plaintiffs' Exhibit 99?

A. It does.

Q. Proceed with the next subject.

A. Apprentices, (Reading) "Under the Donnelly contract, apprentices are guaranteed a minimum weekly wage during the full term of their apprenticeship as follows:

Beginner Operators	$16.50
Beginner Hand Ironers	16.50
Beginner Folders	16.50
Apprentice Stretchers	18.00
Beginner Dividers	18.00
Mechanic's Apprentices	18.00
Beginners in all lines of work in plant or office	16.50

"Thereafter they are guaranteed the above minimums or in excess thereof depending on their ability and type of work.

"Under the Missouri, Gordon, Liberty, Gernes and Mayfair contracts, apprentices are to receive wages varying from no minimum to ten dollars and forty cents ($10.40) per week for the first six weeks of their apprenticeship, and thereafter they are paid on the piece rate basis in accordance with their production and ability.

"Minimum apprentice wages in the various contracts under consideration may be summarized as follows:

Donnelly Contract	$16.50 to $18.00
Missouri Contract	7.75
Gordon Contract (Kansas City factory)	7.75
p. 803 Gordon Contract (Richmond, Mo. factory)	6.00

(12)

[fol. 5702]

Liberty Contract (Kansas City factory)	No special provisions.
Liberty Contract (Lexington, Missouri factory)	6.75
Gernes Contract	10.40
Mayfair Contract	8.75
Practical Frocks Contract	No special provisions as to wages during apprenticeship.
Ginsberg Contract	No special provisions as to wages during apprenticeship.
Biberman Contract	No special provisions as to wages during apprenticeship.

"The foregoing statements were arrived at by me from a careful study of the documents referred to and the conclusions I have set forth, are, in my opinion, true and correct."

Q. That is a summary of the eight contracts as compared with the Donnelly Contract?

A. Yes, sir.

Q. You have covered every classification of workers in all the contracts, have you not?

A. In as far as they are comparable, from data in the contracts themselves.

Q. Do you find a single classification of the workers in any other contracts where the provisions made in the International's contract

with its factory is as good as the provisions
p. 804 made in the Donnelly Contract? Do you find it true in one single instance?

A. Not in these contracts.

Q. So far we have been dealing with eight factories which are, according to the record, producers of house frocks and wash dresses. Now, I hand you what Mr. Walsh has furnished to us as a duplicate of his contract with the Marlene Dress Company and ask you if you identify that and whether you compared that contract, of a so-called silk shop, with the Donnelly Contracts, Plaintiffs' Exhibits 34 and 35? A. I did.

p. 805 Q. Did you reduce to writing the result of your analysis of this Marlene Dress Company Contract and the comparison of that Contract with the Donnelly Contract?

(13)

[fol. 5703] A. Yes, sir.

(Contract marked Plaintiffs' Exhibit 107 for identification).

Q. I show you a document which the reporter has marked Plaintiffs' Exhibit 107 and ask you if that is that written instrument of your analysis? A. Yes, sir.

Q. You may now omit the purely formal part
p. 806 and read that exhibit. I suggest you read beginning with the paragraph "I have prepared and am submitting", and so forth. The rest of that is purely formal.

A. (Reading) "I have prepared and am submitting a comparison of the rates of pay under the Donnelly and Marlene Contracts. The results of my comparisons of wage rates, as shown in these two contracts, are set out below insofar as, in my opinion, a comparison of the wage rates of the various classes of workers specified in these contracts is possible from data within the contracts themselves."

Q. We can save some time there because in the previous exhibit you have stated that ma-

terial very fully and I suggest you skip that part referring to the Donnelly Contract because the Court has just heard it, not over twenty minutes ago.

A. (Reading) "The Marlene Contract stipulates rates of pay which shall be the basis upon which piece rates shall be established for operators and pressers, and it also stipulates rates of pay for week workers. In stipulating these rates of pay the Marlene Contract states that they are not to go into effect until 'the close of the current season, but in no case beyond June 30, 1937,' There is a further stipulation regarding these rates that 'during those months in which the firm is engaged exclusively in the production of cotton dresses, the minimum wage scales of $14.00 shall prevail."

p. 807 "In arriving at a comparison between these two contracts, it is to be observed, first, that the wages set out in the Donnelly Contract are minimum wages throughout, and that the wages set out in the Marlene contract are "rates of pay"; second, that apparently only a portion of the employees of the Marlene Dress Company are covered or protected by the contract of that company. For instance, in the Marlene Contract, after reciting the various rates of pay, there is a provision that 'arrangements for subnormal producers shall be established to exempt them from the above scales.'

(14)

[fol. 5704] "Third, that the Marlene Contract does not specify the grade of garments upon which the different classes of operators work. However, it is to be assumed that the Marlene Dress Company produces a better grade of garments and a cheaper grade of cotton garments because of the differentiation in the wage scale paid to operators under Para-

graph 7 of their contract, and for the further reason that there is a special provision in Paragraph 7-D of the contract which reads as follows: 'During those months in which the firm is engaged exclusively in the production of cotton dresses, the minimum wage scale of $14.00 shall prevail.'

"Fourth, The Donnelly Contract classifies its operators in detail, and under Group 1 operators it includes those who work a portion of the time on garments selling above $45.00 per dozen and work the remainder of their time on garments selling at $45.00 per dozen and below, and states that 40% of these operators shall receive one minimum wage, that 30% shall receive another minimum wage, and that the remainder shall be guaranteed a different minimum wage. This contract also contains a clause to the effect that approximately 40% of the operators of this group could perform all the sewing on garments selling above $45.00 per dozen.

p. 808

"For that reason, therefore, and for the purpose of comparison, I have compared the rates of pay of 40% of Group 1 Operators under the Donnelly contract with the rates of pay of 'operators' under Paragraph 7 of the Marlene Contract, and I have compared the rates of pay for the two 30% groups under Group 1 operators with the rate of pay for the 'low-range' operators under the Marlene Contract.

"In accordance with the foregoing observations, the following is my summary of this comparison: Operators.

"40% of Group 1 operators under the Donnelly Contract are guaranteed a minimum wage of 64¢ per hour, as compared with a rate of pay of 52½¢ per hour under the Marlene contract. 30% of Group 1 operators

under the Donnelly Contract are guaranteed a minimum wage of 56¼¢ per hour, as compared a rate of pay of 40¢ per hour under the Marlene Contract. 30% of Group 1 operators under the Donnelly Contract are guaranteed a minimum wage of 50¢ per hour, as compared
p. 809 with a rate of pay of 40¢ per hour under the Marlene Contract.

"For the purpose of a further comparison, by averaging the above rates, we find that the average hourly rate guaranteed to Group 1 operators under the Donnelly contract is 57.475¢ as compared with not a minimum wage but an average rate of pay of 45¢ per hour under the Marlene Contract."

Q. That is all now on the subject of operators?
A. Yes, sir.
Q. Go ahead with the next subject.

(15)

[fol. 5705] A. (Reading) "Pressers. Under the Donnelly Contract machine pressers are to be paid at the rate of 75c per hour. A comparable wage under the Marlene Contract is the rate of 70c per hour for men pressers.

"The Donnelly Contract recites that under the heading of 'Group 1 Hand Ironers' there shall be included those who work a portion of the time on garments selling above $45.00 per dozen, and work the remainder of their time on garments selling at $45.00 per dozen and below. It is further specified that the piece work rates shall be the same for all Hand Ironers in this group and are so fixed that at least 40% of the hand ironers shall receive an average minimum of not less than 64c per hour, and that at least 30% shall receive an average minimum of not less than 5[illegible]c per hour, and that the remainder shall receive an average minimum of not less than
p. 810 50c per hour.

"Comparing these rates with those for women pressers under the Marlene Contract, we arrive at the following conclusion: 40% of Group 1 hand ironers under the Donnelly Contract receive an average minimum of not less than 64c per hour, as compared with a rate of pay of 50c per hour under the Marlene Contract. 30% of Group 1 hand ironers under the Donnelly Contract receive an average minimum of not less than 56¼c per hour, as compared with a rate of pay of 50c per hour under the Marlene Contract. 30% of Group 1 hand ironers receive an average minimum of not less than 50c per hour, as compared with a rate of 50c per hour under the Marlene Contract. Cutters: Under the Donnelly Contract A class machine cutters shall receive a minimum of $42.50 per week of 40 hours. In terms of an hourly wage this represents a guaranteed minimum of $1.0625. Under the Marlene Contract top skill cutters receive a rate of pay of $31.50 per 35 hour week. Reduced to an hourly rate of pay, this represents wages at the rate of 90c per hour.

"Under the Donnelly Contract all cutters get $1.0625 per hour whereas the Marlene Contract specifies a rate of pay for second cutters of $25.00 per week, which represents 71.4c per hour. The Marlene Contract does not specify what type of work second cutters perform, but if they perform the same work as
p. 811 that performed by A class machine cutters under the Donnelly Contract, then there is guaranteed under the Donnelly Contract a minimum wage of one dollar six and one-fourth cents ($1.0625) per hour, as compared with a rate of pay under the Marlene Contract of seventy-one and one-fourth cents ($1.0625) per hour, as compared with a rate of pay under the Marlene Contract of seventy-one and four-tenths cents (71.4c) per hour.

Finishers: The Marlene Contract stipulates a rate of pay of $14.00 per week for finishers. Converted to an hourly basis, this means pay at the rate of 40c per hour. The Donnelly Contract does not specify a rate of pay for finishers.

(16)

[fol. 5706] "Assuming, however, that by finishers is [mean] piece workers, such as belt turners, workers in the notion department, button hand, sewers, etc., as is specified under the caption of 'Miscellaneous Piece Workers' under the Donnelly Contract, then the guaranteed minimum rate of pay for this type of work under the Donnelly Contract is 45c per hour for 50% of such piece workers, and 41¼c per hour for the remaining 50%.

"Again comparing the two contracts on this basis, under the Donnelly Contract 50% of such workers are guaranteed a minimum of 45c per hour, as compared with a rate of pay of 40c per hour under the Marlene Contract, and the other 50% are guaranteed an absolute minimum of 41¼c per hour, as compared with a rate of pay of 40c per hour under the Marlene Contract.

p. 812 Examiners: The Donnelly Contract specifies that Group 1 examiners shall include those to whom silks, woolens, and cottons selling above $45.00 per dozen are regularly assigned for examination, and under the Donnelly Contract such examiners are guaranteed an average minimum of not less than 52½c per hour. Under the Marlene Contract examiners receive a rate of pay of $14.00 per week, which, converted into an hourly rate, represents pay at the rate of 40c per hour. Therefore, examiners working upon better grade of garments receive a guaranteed average minimum of 52½c per hour under the Donnelly Contract, as compared with a rate of pay of 40c per hour under the Marlene Contract.

"The Donnelly Contract classes as Group 2 examiners those who work on cottons, linens, etc., selling at $45.00 per dozen and below, and guarantees them an average minimum of not less than 45c per hour. Assuming that some of the examiners under the Marlene Contract do work on cottons, linens, etc., selling at $45.00 per dozen and below, they receive, like the other examiners, a rate of pay of 40c per hour.

Special Machine Operators

"The Marlene Contract stipulates a rate of pay of $14.00 per week for special machine operators. Converted to an hourly rate of pay, this represents payment at the rate of
p. 813 40c per hour.

"The Donnelly Contract does not specify any operators as special operators or any separate rate of pay for special operators. Therefore, it is to be assumed that work similar to that performed by special operators under the Marlene Contract is performed by regular operators under the Donnelly Contract, and for the purposes of comparison they are here compared with Group 1 operators under the Donnelly Contract, as enumerated above. Such comparison is, therefore, as follows:

(17)

[fol. 5707] "40% of Group 1 operators under the Donnelly Contract receive an average minimum of not less than 64c per hour, as compared with a rate of pay of special machine operators under the Marlene Contract of 40c per hour. 30% of Group 1 operators under the Donnelly Contract receive an average minimum of not less than 56¼c per hour, as compared with a rate of pay under the Marlene Contract of 40c per hour; and the remaining 30% of Group 1 operators receive an average minimum of not less than 50c per hour, as

compared with a rate of pay under the Marlene Contract of 40c per hour. Converting these last-named comparisons into average hourly rates, Group 1 operators under the Donnelly Contract are guaranteed an average minimum hourly rate of 57.475c as compared with the hourly rate of 40c per hour for special operators under the Marlene Contract.

p. 814

Subnormal Producers

"As has been heretofore observed, the Marlene Contract contains a provision to the effect that 'arrangements for sub-normal producers shall be established to exempt them from the above scales.' What these arrangements are is not shown in the contract, but it is apparent that subnormal producers do not have any minimum wage whatsoever under the Marlene Contract.

"Under the Donnelly Contract, however, all workers irrespective of their efficiency or ability are guaranteed minimum wages, ranging from $16.50 per week upward, or hourly rates of from 41¼c per hour upward. This is in excess of wages payable to many of the workers of normal efficiency and ability under the Marlene Contract.

"Moreover, under the Donnelly Contract apprentices are guaranteed an absolute minimum of $16.50 per week, or 41¼c per hour. This likewise is in excess of the hourly wage paid to many workers of normal productivity under the Marlene Contract.

"The foregoing statements were arrived at by me from a careful study of the documents referred to and the conclusions I have set forth are, in my opinion, true and correct."

Q. Now, have you completed your analysis and comparison of the Marlene Contract with the Donnelly Contract?

p. 815 A. Yes, sir.

Q. Do you find in the Marlene Contract covering operations in the silk shop, a single instance in which the wages provided for any class of workers is as high as those guaranteed in the Donnelly Contract?

[fol. 5708] A. There is only one single instance where the wages reached the same figure per hour.

Q. That is, not any better. What is that, I did not catch it but name it? Well, if it is going to take time, there is one instance where they pay as much as Donnelly, is that right?

A. For a portion of their group, that is 30% of ours would get as much or the same as their minimum.

Q. Is there any instance in which the silk shop employees under the Marlene Contract get any more than Donnelly?

A. No, sir.

Q. And only one instance where they get as much?

A. That's right.

(18)

[fol. 5709] JOHN B. BACHOFER, recalled, having been previously sworn, further testified as follows:

Redirect Examination

p. 848 By Mr. Hogsett:

Q. On yesterday, Mr. Bachofer, we introduced the tabulation made by Mrs. Keyes for the year ending October, 1937, just ahead of the three judge trial. Do you recall that?

A. Yes, sir.

Q. Did you at our request prepare a tabulation showing average earnings of piece work operators for the next year after that on a 40 hour basis?

A. Yes, sir. (Tabulation marked Plaintiffs' Exhibit 111 for identification)

Q. It this Exhibit 111 that tabulation?
A. Yes, sir.
p. 849 Q. You have this tabulation prepared in four columns have you not, first giving the name of the piece work operator, then the total hours worked in that year? A. Yes.
Q. Now, then the total money paid in that year and then the average weekly earnings on the 40 hour basis, is that right? A. Yes, sir.
Q. Now, I notice here at random that these wages on an average for the year run in such amounts as this: $29.44; $28.77; $28.58; $30.42; $40.10; $27.00; $26.31; $27.20; $40.54. Do I correctly understand that that means that these piece work operators averaged and received that amount of money per week for that year.
A. Yes, sir; that means that they averaged that much; their average earnings on a 40 hour basis were that.
Q. I see that this operator, Nina Galardi, who earned $40.54 worked 2023 hours. How much is that, how many weeks is that?
A. 2023 hours would represent approximately 51 weeks.
Q. So that operator worked not a full year but 51 weeks of the year and earned on the average $40.54, that is what your statement means?
A. That is right.
Q. Now, that is illustrative of the way the whole thing is prepared, is it now? A. Yes, sir.

(1)

[fol. 5710] Recross Examination

By Mr. Walsh:
p. 850 Q. Now, Mr. Bachofer, I will ask you to look at Plaintiffs' Exhibit 109 and tell me again what that is, please?
A. That is a payroll record of March 5th, 1937.
Q. And does that have on it the name—just tell us what that has on it?
A. Well, it has the employees' names and their number and the hours worked and their gross

earnings and deductions for Social Security taxes and insurance and miscellaneous deductions and the net amount paid.

Q. I will have you look at Plaintiffs' Exhibit 110 and ask you what that is?

A. This says "[Employers] including beginners who work exclusively on merchandise selling wholesale for $45.00 per dozen and below, average earnings of piece work operators for week ending October 30, 1936 to October 22, 1937, on 40 hour basis, name, hours worked, money paid, average hourly rate and average weekly earnings."

Q. Does that exhibit there, that schedule, show all of the names of the employees and the same matters beginning with hours worked as this one, Exhibit 109 does?

A. I could not tell without checking one against the other, Mr. Walsh.

p. 851 Q. Is it supposed to do that? As I understand it, that is one month that is included in this year. A. This is one week.

Q. A week, yes. That is one week that is included in this year. A. Yes.

Q. Is it one week of 1937, that is in Exhibit 109 and is included or supposed to be included in Plaintiffs' Exhibit 110 which takes in the full year?

A. Well, I would assume that every name on this, granted this is a piece work payroll, went in here.

Q. Isn't it a piece work payroll? Look at it and tell us exactly what it is.

A. Mr. Walsh, as far as I can tell, it looks like the piece work payroll. It was a record that was kept before my time down there and that is as far as I can tell.

Q. Did you make this one up? (Referring to Exhibit 110) A. No, sir.

p. 852 Q. Was it made under your supervision?

A. No, sir.

[fol. 5711] Q. Who was the individual who made that up?

(2)

A. Mrs. Keyes.
Q. Who is the individual who made this up?
Q. I am now showing you Exhibit 109. Who is the individual that made that up, if you know?
A. I wouldn't know.

(3)

Objections made to all questions and answers contained on pages 1 to 50 inclusive herein and to all exhibits attached hereto for the reason that said questions and answers and exhibits are immaterial to the issues in this proceeding.

[fol. 5765] Cross Examination of MEYER PERLSTEIN

By Senator Reed:

p. 1938 Q. Tell us again what your territory was?
A. Kansas City, Dallas, Texas, San Antonio. I had Minneapolis and St. Paul, the Twin Cities. There were other cities where shops were located, but I could not visit those cities until a later date.
Q. Your territory embraced what states?
A. The State of Missouri, the State of Texas, the State of Tennessee, the State of Mississippi, and the State of Minnesota.
Q. Your headquarters, however, during all of this period was at St. Louis?
A. It was.
p. 1939 Q. Now, you came to Kansas City at what time in 1934?
A. It must have been in July, 1934.
Q. Where did you stop when you were here?
p. 1940 A. I believe my first stop was at the Baltimore Hotel.
Q. Was there a union office here at that time when you came?
A. It was.
Q. Where was it?
A. It was on Walnut Street; 813 Walnut Street.
Q. Who was in charge there?
A. As far as the local—

Q. No; who was in charge of that office?
A. Abraham Plotkin.
Q. How many people were there employed there?
A. Two.
Q. Who?
A. There was a certain young lady that was secretary.
Q. Who was the certain young lady?

(1)

[fol. 5766] A. I don't remember her name at this time.
Q. Just two of them there?
A. Yes.
Q. And did you make that your headquarters while you were here?
A. I did.
Q. You conducted correspondence from there?
A. I did.
Q. And you generally started to look into the labor situation in Kansas City?
A. I did.
Q. How much of your time did you spend in Kansas City in 1934?
A. I know that a good portion of my time was spent here in this city; I don't know exactly.
Q. A good portion, did you say, of your time?
A. Yes.
p. 1941 Q. Very well. When you weren't in Kansas City where were you?
A. Either in St. Louis or possibly in another city.
Q. In what other city?
A. I believe at the ~~end of 1934, I~~ believe I visited Dallas; possibly visited San Antonio, Texas; I don't remember exactly but I believe I did.
Q. Any other towns that you visited?
A. During that period?
Q. Yes, the rest of the year, from July, 1934 to January, 1935.
A. I visited the Twin Cities.
Q. What?
A. Minneapolis and St. Paul.
Q. Yes?

A. That is about all, I believe, during the first period, during the first year.

Q. Now, in 1935, where were you engaged with your work?

(2)

[fol. 5767] A. In several cities.

Q. Well, tell us the cities?

A. The same cities as in 1934, possibly in addition to—I am not sure if I visited Dallas during 1934 or not but I am sure I was there in 1935.

Q. Yes. You were in St. Louis also in 1935?

A. Yes.

Q. Spending about two days a week there ordinarily?

A. Approximately; either two days a week or two days in two weeks; it depended entirely as to how busy I were in the other cities.

Q. During the year 1936 where were you engaged?

A. In the same cities.

p. 1942 Q. Yes. Well, you were in other cities, too, weren't you?

A. Possibly I was, but I wouldn't—

Q. Were you in Memphis, Tennessee?

A. In 1936?

Q. 1936.

A. No, I wasn't.

Q. In 1937 you were there.

A. I believe I was.

Q. Yes, and then you were back in Kansas City also in 1937?

A. I made it very quick; I used to fly.

Q. Very well. That just means you covered more territory?

A. Yes.

Q. You were in Minneapolis and St. Paul in 1936 and 1937?

A. Yes.

Q. And in a general way you had charge of all of the union activities in these cities that you have named?

A. I was in charge of all the activities in connection with the International Ladies' Garment Workers' Union.

(3)

[fol. 5768] Perlstein - Cross

p. 1945 Q. And your expenses and the expenses of your assistants during 1934 all came from the International headquarters?

A. It did.

Q. In 1935 how many assistants did you have?

A. Approximately the same number

Q. Is it true that the salaries of these assistants and the expenses of these assistants during 1935 were paid by the International?

A. It is a fact.

Q. Is the same thing true now for your assistants and your expenses during the year 1937?

A. It is a fact.

p. 1947 Q. And you make it your headquarters and do your business from there right along, don't you?

A. I do when I am here.

Q. Look at this newspaper, Dated Tuesday, June 8, 1937, this advertisement. You prepared that advertisement, didn't you?

A. This, I sent the material to Mr. Dannish in New York and he wrote it.

Q. And when he wrote it he sent it back to you, didn't he?

A. He did sent it back to me, yes.

Q. And you caused it to be put in the newspapers, didn't you?

A. I did.

Q. And it is signed "International Ladies' Garment Workers' Union; National office 3 West 16th Street, New York City; Kansas City office 1022 Baltimore Avenue; isn't it?

p. 1948

(1)

[fol. 5769] p. 1948 A. It is but—

Q. Well now, it is, isn't it?

A. Yes.

Q. And you put it in the newspaper, that is right?

A. I did.
Q. And it was prepared by who, did you say, in New York?
A. By Mr. Max Darnish.
Q. Is he in the general headquarters down there?
A. He is.
Q. What is his position?
A. He is the editor of the "Justice" and also the head of the publicity department.
p. 1954 Q. Mr. Perlstein, you were in court when Mr. Hogsett introduced some telegrams from Dallas, Texas.
A. I was.
Q. You sent those telegrams?
A. Some of them was surely sent by me; I did not look them over, all.
Q. Some of them were surely sent by you. There was not anybody down there authorized to put your name on telegrams, was there?
A. Sometimes the secretary.
Q. The secretary did it with your authority?
A. Yes, I gave her.
Q. Attached to the transcript of the testimony in the case of Morton Davis versus the International are these telegrams which I have been referring to. I want to call your attention to telegram dated March 20, 1935 addressed to Sander Genis, 345 Loeb Arcade Building, Minneapolis, which reads as follows:

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[fol. 5770] "Received your letter, also letter written to me by Schatz. Am sorry I have delayed answer. Stop. I will positively make Minneapolis either Sunday of this week or Monday of next week. We will then take full final action. In the meantime please proceed in getting a better hold on the shop. Meyer Perlstein." It is endorsed "Charge to International Ladies' Garment Workers' Union, 912½ Main Street, Dallas, Texas, main office 1111 Main Street, Dallas, Texas," with the numbers on it. You sent that telegram, didn't you?

p. 1955

A. I did.

Q. Now, I call your attention to telegram dated March 19th, 1 P.M. "David Dubinsky, President, International Ladies' Garment Workers' Union, 3 West 16th Street, New York City, New York. Manufacturers have [bought] all our contempt cases to court, so court is busy with them the last couple of days. Our girls have made perfect witnesses. Stop. Things in court look more or less favorable. There are possibilities that Morton Davis who secured first temporary injunction should not get a permanent one. Meyer Perlstein. Charge to International Ladies' Garment Workers' Union, 912½ Main Street, Dallas, Texas." You sent that, didn't you.

A. I did.

Q. Another telegram, 1935 dated March 19th, 12 P.M.: "David Dubinsky, International Ladies' Garment Workers' Union, 3 West 16th Street New York City. If you have not as yet mailed check to Dallas for strike benefit and strike expenses will please do so at once air mail special delivery. Meyer Perlstein. Charge International Ladies' Garment Workers Union." You sent that telegram, didn't you?

p. 1956

(3)

A. I did.

Q. Another one bearing the same date as those that have preceded; "Mr. David Dubinsky, International Ladies' Garment Workers' Union, 3 West 16th Street, New York City. The hearing of one of the five temporary injunction against us in Dallas was completed today. The judge gave our lawyer all the breaks but decided the case in favor of the manufacturers. Stop. There are four other temporary injunctions pending. Intend to proceed to try them. Want to keep the manufacturers busy in court. The publicity we get out of these injunction hearings gradually awaken more public opinion in our favor,

that is, if public opinion is worth anything. Stop. In St. Louis four of our main people in the conduct of the strike, two men and two women were arrested yesterday and kept for twenty hours. They were kept under the state law which allows the police that length of time for investigation. They were let free Tuesday without any charge filed. The other side is looking to frame up something. Meyer Perlstein. Night letter, charge to Garment Workers." You sent that, didn't you?

[fol. 5771] A. I did.

Q. Another telegram dated March 21, 1935, 9 A.M., main office 1011 Main Street, Dallas, Texas "Ray Owens, International Ladies' Garment Workers' Union, 813 Walnut Street, Kansas City Missouri. Received your letter today. Sending you check for $100.00.

p. 1957 Meyer Perlstein. Charge to International." You sent that telegram?

A. I did.

Q. Who was this Ray Owens?

A. He was the business agent of the union.

Q. Where?

A. In Kansas City.

Q. You sent him the money, did you?

A. Yes.

Q. Where did you get the money?

A. From my revolving fund.

Q. Another telegram, March 21, 1935 "Ray Owens, International Ladies' Garment Workers' Union, 813 Walnut Street, Kansas City, Missouri. Proceed with Duncan hearing. If the other girl wants to do the right thing good and well. Take care of her after the hearing but not before. Meyer Perlstein. Charge International." You sent that telegram, did you?

A. I did.

Q. Who was Duncan? Was there any Duncan hearing?

A. That was a case that we had before the National Labor Relations Board under the NRA against the Stern-Slegman-Prins Company.

Q. And you say in this telegram, I will read it again, "Proceed with the Duncan hearing. If the other girl wants to do the right thing good and well. Take care of her after the hearing but not before." What was the right thing you wanted her to do?

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[fol. 5772] p. 1958 A. We intended to expel her from the union.

Q. All right. I read another telegram "April 2, 1935. Miss Hannah Haskell, 3 West 16th Street, New York City, New York. Please advise the financial department not to forget to send out the regular weekly checks that you are sending to Dallas for the payment of strike benefits. Stop. These strike benefit is paid on Friday of each week. Meyer Perl-

p. 1959 stein, Charge to the International Ladies' Garment Workers' Union." You sent that telegram?

A. I did.

Q. Another telegram dated April 4, 1935 "Ben Goldberg, International Ladies' Garment Workers' Union, 703 North 16th Street, St. Louis, Missouri. Please get touch Dr. Threinman or Cohen and wire if hearing will take place Kansas City Saturday, Meyer Perlstein." You sent that telegram?

A. I did.

Q. Who is Dr. Threinman or Cohen?

A. I believe that had to do with a hearing before the Code Authorities; I don't remember exactly but that is my impression.

Q. You don't remember anything more about them than that?

A. I do not.

Q. Was this Cohen a Dr. Cohen or just Cohen?

A. Cohen, I believe; he was the enforcement officer for the Cloak and Suit Code Authorities.

Q. Cloak and Suit?

A. Yes, sir.

Q. All right, I will read the next telegram:

"Dallas, Texas, April 5, 1935, Mr. Ben Gilbert, 703 North 16th Street, St. Louis, Missouri. Intended to make St. Louis Monday but it will be impossible. Stop. I was cited here for contempt of court and will have to appear in court Monday. Stop. I am leaving for Kansas City tonight and will be back here Monday. Stop. Would want you and Morrey to come to see me in Kansas City Sunday morning or late Saturday night. Please deposit additional $100.00 to my revolving fund. Meyer Perlstein." You sent that telegram, did you?

p. 1960

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[fol. 5773] A. I did.

Q. Another telegram "Dallas, Texas, April 5, Miss Hannah Haskell, 3 West 16th Street, New York City, New York." This is from Dallas, Texas "29 strikers were cited for contempt yesterday. Sentence and possibly hearing will be imposed Monday. Stop. Edith Phillips was also cited for contempt yesterday. Sentence or hearing in her case may be imposed Monday. Stop. I finally had to leave my hotel room this morning and citation papers were served. I was brought before the judge and put under bond to appear Monday for contempt proceedings against me. Stop. When I came out of my hotel room this morning I had also a Federal [imigration] officer waiting for me to question me. Stop. I am leaving tonight for Kansas City; will be back for court proceedings here Monday. Signed Meyer Perlstein." You sent that telegram, didn't you? A. I did.

p. 1961

Q. Now, this Edith Phillips referred to is the Edith Phillips that you said was your assistant in St. Louis?

A. She was an organizer.

Q. Working out of the office where you made your headquarters in St. Louis?

A. Yes, she did.

Q. So Edith Phillips went to Dallas from St. Louis? A. Yes.

p. 1962 Q. She was arrested there in Dallas?

A. She was cited for contempt, at least papers were served upon her.

Q. Cited for contempt of court for violating an injunction in Dallas?

A. And she was not convicted.

Q. You were, though? A. I was.

Q. Now, I will read another telegram: "Dallas, Texas, April 8th. Miss Hannah Haskell, 3 West 16th Street New York City. My case, also Phillips and 29—" I withdraw that last question. This telegram of April 5th which I just read you, you say "I finally had to leave my room this morning." What were you hiding in your room for?

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[fol. 5774] A. I wasn't hiding.

Q. Well, what did you mean when you say you had to leave it?

A. I had to leave it because they wanted to serve papers on me and I opened the door and I left the room and they served it on me.

p. 1963 Q. Very well, let the telegram stand as it is. Now the next telegram is April 8th, 1935 "Miss Hannah Haskell, 3 West 16th Street, New York City, New York. My case, also Phillips and 29 strikers cited for contempt postponed until Wednesday afternoon because union lawyer out of town. Stop. If you have not mailed the check please wire money." You sent that telegram? A. I did.

Q. I will read the next one "May 23, 1935, David Dubinsky, president, 3 West 16th Street, New York City, New York. Saw Lorch St. Louis. Wouldn't do anything. Does not want union. Stop. Myself, committee of state and city federation leaders saw mayor yesterday. Promised to take up matter with city council tomorrow. Stop. President Central Labor Union and one of our men visited most of

p. 1964

councilmen today." The word here is "Beniment", sentiment, that is what it must be. "sentiment more or less favorable for some action tomorrow. Stop. Manufacturers bringing pressure on counsel not to interfere. Stop. Please wire money today for strike benefits." You sent that telegram, didn't you?

A. I did.

Q. It is signed Perlstein and all of these are marked "Charge to International Ladies' Garment Workers' Union.". I read another telegram "Dallas, May 25, 1935. Main office 1011 Main Street, Dallas, Texas. David Dubinsky, president 3 West 16th Street, New York City. Thousand to eleven hundred dollars per week is minimum they need here to continue. Stop. From this amount strike benefits, special relief, lawyer fees, luncheons to the strikers and strike expenses. Stop. Money received yesterday not sufficient. Please send today additional $250.00. Stop. City mayor turn matter over yesterday to city attorney for legal advice. Signed Perlstein. Charge to International Ladies' Garment Workers' Union." You sent that telegram?

A. I did.

Q. The next telegram is May 24th. It seems to be out of order. The telegram reads "Dallas, Texas, May 24, 1935. Artie Wilson, International Ladies'' Garment Workers' Union, 703 North 16th Street, St. Louis, Missouri. Tell members of Local 182 they have no reason to be upset. Stop. If Joint Board will not cover expense of delegate, International will. Stop. Please tell Margaret or Doris to

p. 1965

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[fol. 5775] give you money for the delegate. I will cover the amount given to you. Stop. Mailing signed check. Stop. Please tell Morrey received his letter. Let him go ahead. Regards." You sent that telegram? A. I did.

p. 1966 Q. I will read another telegram "Dallas, May 25, 1935, Sol Goldberg, International Ladies'

Garment Workers' Union, 813 Walnut Street, Kansas City, Missouri. Am leaving for Kansas City tonight. Believe June 5 all right for meeting." You sent that telegram?

p. 1967

A. Let us hear the balance of it.

Q. Signed Perlstein. A. I did.

Q. Who was Sol Goldberg?

A. He was a secretary here in 1935.

Q. Secretary of what?

A. Of the Kansas City locals.

Q. I will read another telegram "June 12, 1935, Dallas, Texas. Doris Kling, International Ladies' Garment Workers' Union, 703 North 16th Street, St. Louis. Please send at once air mail to Dallas union office list of International locals throughout the country. Signed Perlstein." You sent that telegram?

A. I did.

Q. Another telegram, "Main office 1011 Main Street, Dallas, Texas, June 12, 1938 Sam Schatz, International Ladies' Garment Workers' Union, 813 Walnut Street, Kansas City, Missouri. Advised yesterday Emily that you turn over neckwear local to Richard of the Amalgameted. They properly belong to this organization. Any expense attached with strike or local must be covered by Amalgameted. Give them all the moral assistance possibly can. Stop. Will stay in Dallas Hotel Adolphus couple of days. Advise developments. Perlstein." You sent that telegram, Did you? A. I did.

Q. Another telegram, July 8th "Sander Genis,

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[fol. 5776] 'International Ladies' Garment Workers'

p. 1968 Union, Lumber Exchange Building, Minneapolis, Minnesota." It reads "Do not intend to give Solomon any arbitration. Stop. Therefore don't consider it and try [intilligently] to ignore his request for arbitration. Stop. He must accept the same agreement and the same wages and hours the workers are receiving in

Chicago or Cleveland. Stop. It would not hurt if the strike would last a couple of weeks. Stop. Don't settle with him unless you consult me first. Stop. Have wired President Dubinsky to wire you $200.00. In the meantime you could ask our local to lay out the money and I will take care of same. Stop. Please see that there should be active picketing. Meyer Perlstein." You sent that telegram didn't you? A. I did.

Q. Now, was there a strike going on in Minneapolis at this time? A. Yes.

Q. That was a strike of your garment workers union? A. Yes, a cloak shop.

Q. Very well, but it was the International Ladies' Garment Workers' Union that was putting on the strike? A. Yes.

Q. And who was Solomon?

A. Solomon was the owner of that cloak shop.

Q. And Solomon wanted arbitration, did he?

p. 1969 A. He wanted to arbitrate.

Q. Well, he wanted arbitration, did he?

A. He did. May I explain why?

The Court: Just answer the questions now and your counsel will give you all the opportunity.

Q. He wanted arbitration and you were not going to give it to him, that is right, isn't it?

A. Yes, but there is an explanation with it.

Q. Yes, and then you said "It would not hurt if the strike would last a couple of weeks". You said that, didn't you?

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[fol. 5777] A. I did; there is an explanation also for that.

Q. A man wanted to arbitrate and you would not arbitrate but you wanted the strike to continue a couple of weeks longer anyway, that is the import of this telegram isn't it, that is what you wanted?

p. 1970

A. In this case, yes.

A. There are three cloak shops in Minneapolis. One of them is the Solomon Cloak Shop and for several years the Solomon Cloak Shop refused to pay the Code wages and we had several complaints against him with the Code Authorities and finally when the Code was declared unconstitutional the workers have organized, they have joined the union and have demanded to the employer the code
p. 1971 wages and hours, the same wages and hours that prevailed in the cloak industry. There are about thirty-five thousand people employed in the cloak industry who were receiving the same wages and the same hours as established by the code. Mr. Solomon said that he will not pay the wages paid by all the manufacturers; what he wants is to arbitrate if he [shoulc] or he should not, so I advised Mr. Genis to tell him that this wage scale is established for the industry and no individual manufacturer can demand the payment of lower wages or the union can afford to refer something that has been established in the industry, to arbitration because whatever the arbitrator may have decided in this case would have affected the wages of thirty-five thousand workers employed in the other shops.

Q. That is all the explanation you want to make?

A. In connection with the arbitration.

Q. What was the reason you wanted the strike to last two weeks longer then instead of having it settled?

p. 1972 A. (Continuing) And before we are making another agreement we want him to know that the workers will not stand for broken promises and we thought by them stopping for another week or two it will do a whole lot of good to establish better relations in the future.

Q. That is you were going to punish him and make him be good?

A. In this case some disciplinary action would do him a lot of good.

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[fol. 5778] p. 1974 Q. Now, I will read another telegram: "July 8th, 1935. Edith Phillips, 703 North 16th Street, St. Louis, Missouri. Please find out if Tobin sent the required letter to Ely-Walker. Stop. Am wondering why I did not receive the copy. Stop. Also wire of any developments there may be. Stop. How are the strike activities. Stop. Advise. Meyer Perlstein." You sent that telegram, didn't you? A. I did.

p. 1975 Q. Well, I will read another telegram, July 29, 1935 from Dallas, Texas: "Sol Goldberg, International Ladies' Garment Workers' Union, 813 Walnut Street, Kansas City, Missouri. Girl from Prins shall be taken in for $25.00. Stop. This girl should be put to work immediately to help us unionize that shop. Stop. At present we are engaged to win Stern-Slegman-Prins' shop and every worker that was loyal to this firm should be won over by the union to help us in that fight. Stop. After the shops have been unionized

p. 1976 and cloak trade as a whole will be union trade, then the time will be opportune to punish heavily those that betray the union. Regards. Perlstein." You sent that telegram?

A. I did.

p. 1978 Q. Now, in Kansas City did your union make any kind of agreement that did not have a closed shop provision in it?

A. We did not.

p. 1983 Q. Now you say that "after the shops have been unionized and the cloak trade as a whole will be union then the time will be opportune to punish heavily those who betray the union." What do you mean by that?

A. I mean discipline them.

p. 1986 Q. Well, I won't ask it further if you didn't get it. I will read another telegram. "Dallas, Texas, July 29th. Ben Gilbert, International

Ladies' Garment Workers' Union, 703 North 16th Street, St. Louis, Missouri. Reference your wire, you should make special arrangements to get cutters, Cardais Cloak Company. Don't stop at any expense. Handle it yourself but act at once. Meyer Perlstein." Who sent that telegram? A. I did.

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[fol. 5779] p. 1992 Q. I will proceed with the telegrams. Telegram of July 29, 1935, from Dallas, Texas, addressed to Hannah Haskell, 3 West 16th St., New York City: "Strikers waiting in office for strike benefit. Please wire money at once. Stop. Please send two hundred copies Justices Houston, Texas." It is signed "Meyer Perlstein". You sent that telegram, did you? A. I did.

Q. The next telegram I read is one sent from Dallas, Texas, July 30, 1935, addressed to David Dubinsky, care International Ladies' Garment Workers' Union, 116½ E. Prairie, Decatur, Illinois, and it reads: "Am still wrangling manufacturers do not want the power of commission to safeguard discrimination to extend to workers that may join union in future. Stop. They want to limit power of commission to strikers only. Stop. The number of strikers that they object that is supposed to be left to the commission is also larger than originally stated. Stop. Cotton dress manufacturers are the main obstacle in way. Stop. At any rate doing my best to get through with it if possible will know about tomorrow. Meyer Perlstein." You sent that telegram? A. Yes.

p. 1993 Q. The next telegram is one dated August 1st, 1935, from Dallas, Texas, addressed to Hannah Haskell, care International Ladies' Garment Workers' Union, 3 West 16th Street, New York City, and it reads: "Am still hanging around here hagling still uncertain if I will be able to get through with it or not hope I may. Stop. Will know definitely about

it tomorrow. Stop. St. Louis did not receive Forest City strike check. Please take care of same. Urgent. Meyer Perlstein." You sent that telegram? A. I did.

Q. And when I say "you", of course I mean the International. I will read another telegram under date of August 2, 1935, and sent from Dallas, Texas, to David Dubinsky, "Pres." it is here, 3 West 16th Street, New York City: "All negotiations ended yesterday impossible to get any understanding with them. Stop. Intended to leave today but decided before leaving to see another manufacturer who is getting together again the group for tomorrow in another attempt for some adjustment. Stop. Believe if not adjusted tomorrow the strike should continue. The silk dresses ex-
p. 1994 pect big season. Will have to come to some terms. Stop. Please have them send strike benefit in time. Meyer Perlstein." You sent that telegram? A. Yes, I did.

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[fol. 5780] p. 1996 Q. The next telegram is dated August 6, 1935, and it is from Dallas, Texas, addressed to Sol Goldberg, International Ladies' Garment Workers' Union, 813 Walnut Street, Kansas City, Missouri: "We cannot grant any southern wage scales. Stop. The only thing you could do is write in the agreement that prices must be settled by a committee selected by the union and the employer and that no operator in the shop can be paid less than fifteen seventy five no more than thirty-five hours work per week. Stop. I am leaving for St. Louis Wednesday. Meyer Perlstein." You sent that telegram, did you?

A. I did.

p. 1997 Q. The next telegram is dated August 6th, 1935, and it was sent from Dallas, Texas, to David Dubinsky, President, 3 West 16th Street, New York, New York: "Finally had conference yesterday with Lorch. Promised to let me know today final decision. Stop. Called and advised

me that manufacturers want ten more days to decide. Claim they are now busy with market week and cannot give it the necessary attention. Stop. Seems they want to drag me along in order to have peace while market week is on. Stop. Told him if he will want me he will find me in St, Louis. Stop. I told him in the meantime the strike activities will begin again. Stop. Governor's commission supposed to come together in Austin next week to make recommendations to the Governor. Stop. Season begins and we have no other recourse but continue strike. Meyer Perlstein." You sent that telegram?

A. I did.

Q. I think it speaks for itself. The next telegram is dated August 7, 1935, at Dallas, Texas, addressed to Ben Gilbert, International Ladies' Garment Workers' Union, 703 North 16th Street, St. Louis, Missouri: "Am stuck here again the chief of police is trying to settle strike. There was a riot today.

p. 1998 Twenty-Eight arrested. Perlstein." You sent that telegram did you? A. I did.

Q. Another telegram of August 7, 1935, from Dallas, addressed to Max Dannish, 3 West 16th Street, New York City: "Reference Kansas City Cloak agreement there is an understanding on wages and conditions of employment they are the same as prevailed under the code. Stop. The signing of the agreement will take place as soon as I have an opportunity to make Kansas City. Meyer Perlstein." You sent that telegram?

A. I did.

Q. The next telegram is dated August 7, 1935, from Dallas, Texas, and addressed to David Dubinsky, President, 3 W. 16th St., New York

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[fol. 5781] p. 1999 City: "I was supposed to leave this morning. A riot took place at Lorch's. Twenty eight girls arrested. It was the sensation of the day. The newspapers have the

front pages full of pictures and headlines. Stop. The Chief of police who was told by high authorities to adopt extraordinary measures thought he may try to bring it to an end and we had a conference today in his office. Lorch was there. We are to have another conference tomorrow. Stop. I don't know what we will accomplish but that is the situation. God help me. Meyer Perlstein." You sent that telegram, didn't you? A. Yes.

p. 2001 Q. I will read another telegram, dated August 13, 1935, and addressed to Ben Gilbert, 703 North 16th Street, St. Louis, Missouri: "They have cited me for contempt. Stop. My case comes up Friday. Stop. You will have to take charge of the situation in St. Louis until my return. Stop. Tell Schatz how to go about his business. Meyer Perlstein." You sent that telegram?

A. I did.

p. 2002 Q. I will read another telegram, dated August 9, 1935, from Dallas to Ben Gilbert, International Ladies' Garment Workers' Union, 703 North 16th Street, St. Louis, Missouri: "Please have two hundred dollars deposited my revolving fund. Will return it Monday. Intend to leave for St. Louis tomorrow." That is signed "Perlstein". You sent that telegram, didn't you? A. I did.

Q. I will read another telegram, dated August 9, 1935, addressed to Miss Hannah Haskel, 3 West 16th Street, New York City: "Received encouraging wire from President Dubinsky. Stop. Needed this encouragement very badly. I was at my edge. Stop. I want to thank him from the bottom of my heart. Stop. No one that did not go through what I went through during the last few weeks could have the slightest imagination what it means conducting a strike in Dallas or having anything to do with the type of employers we have here. Stop. Will have to continue the strike for some weeks. Letter

with details follows. Please have the strike benefit wired Saturday morning. Meyer Perlstein." In the light of that telegram do you say you weren't conducting that strike?

p. 2003 A. I wasn't conducting that strike.

Q. All right. You sent this telegram, anyway, didn't you? A. Yes, I did.

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[fol. .5782] p. 2003 Q. I read another telegram of August 9, 1935, from Dallas to Ann Markiewicz, Savoy Hotel, Alton, Illinois: "Hope to be in St. Louis tomorrow or Monday. Stop. Advise workers to stick to their union. Have meetings with them and explain what company unionism is. Stop. Tell them not to be afraid for discharge. The union will protect them. Meyer Perlstein."

p. 2004 Q. I will read another telegram of August 12 from Dallas, that is 1935, addressed to David Dubinsky, President: "Am stopped leaving Dallas by court order. Stop. Twenty eight strikers participating Wednesday's picketing cited for contempt. Stop. Case coming up court tomorrow. Stop. Must have at once addition four hundred dollars for lawyers. Meyer Perlstein." You sent that telegram, did you?

A. I did.

p. 2005 Q. Mr. Perlstein, I call your attention to a telegram dated August 13, 1935, addressed to David Dubinsky, 3 West 16th Street, New York City, which reads as follows: "Four of the cited for contempt strikers did not [put] up any defense and were sentenced three days jail and twenty-five dollars fine each. Stop. The case of the others comes up Friday. Stop. They have served me with contempt of court warrant this morning accusing me of everything under the sun. Stop. They are using my Governor's Commission testimony to connect me inciting violence and contempt of the injunction. Stop. Case comes up Friday morning. Stop. They are also trying get

an indictment against me for inciting a riot which is a grave offense in Texas. Stop. They want to get me either in jail or out of town. Stop. Will have to have money to pay fines about three hundred fifty dollars. Meyer Perlstein." You sent that telegram?

A. I did.

Q. Well, you were tried for contempt; were you not, by the judge?

p. 2006 A. I was.

Q. And the charge was for conspiring among other things to strip—strike that out. I want to get this in the record right. This telegram that I have just read refers to a proceeding in Court and a restraining order. The complaint among other things recited "That on April 9, 1935, about 5 P. M. Eva Hernandez, a non-striking employee of plaintiff, left this plaintiff's establishment after completing the day's work proceeding toward her home; that between Poydras and Murphy Streets on Elm Street in Dallas, Virginia Monk and Charlotte Duncan, members of the defendant unions in this cause, and both and each of them unlawfully knowingly and willfully attacked the said Eva Hernandez from her back; that the said Virginia Monk and Charlotte Duncan

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[fol. 5783] and both and each of them unlawfully, knowingly and willfully tore the clothes of the said Eva Hernandez and exposed her person upon a busy public street to her shame; that the said acts of the said Virginia Monk and Charlotte Duncan were a personal injury, interfering with, hindering and stopping the said Evan Hernandez."

It further recites: "That Meyer Perlstein conspired with each and all of the persons committing the acts set forth in Article 3 hereof, to commit the same; that such conspiracy obstructed and interfered with this plaintiff in the free and unrestrained control and oper-

p. 2007

ation of its plant, factory, property and the operation of its business, and was in violation of the temporary injunction issued by this Honorable Court, and in derogation and in contempt of this Court; that as such conspirator, Meyer Perlstein was responsible for the unlawful acts of this co-conspirators, and must answer to this Court therefor.

"That Meyer Perlstein incited the actors who committed the acts set forth in Article 3 hereof, to commit the same, in that he taught them that strike is war; that being Russian he taught them the Russian Philosophy; that examples of his teaching of war and revolution and Russian philosophy, are the following statements made in the presence of members of the defendant unions, the names of such members being to this plaintiff unknown, but known to Meyer Perlstein, at the hearing before the Commission appointed by the Governor, in Dallas, on or about July 10, 1935.

"'I believe that if the Government ever dares to do what the manufacturers are doing, I will tell my sons to take up arms against the Government.

"'The time will come when they (meaning plaintiff's non-striking employees) will become members of the union and they will be on the streets picketing, fighting for better living.

"'After all, revolution does not change habits—it is revolution that lays the foundation for a healthier, normal evolutionary process."

p. 2008

I read further: "That the said teachings of Meyer Perlstein, after the issuance of the temporary injunction, by him, were unlawfully, knowingly and wilfully done; that said teachings have caused lawful members of the union to become unlawful in committing the

acts set forth in Article 3 hereof, and made them irresponsive to the law of the land; that the said teachings of Meyer Perlstein to each of the members of the union are a violations of the temporary injunction issued herein, and in contempt of the dignity of this Honorable Court."

"That Meyer Perlstein has protected, aided and assisted these members of the defendant unions herein who committed the acts set out in Paragraph 3 hereof, in that prior to and after the acts and each of them afore set forth, the said Meyer Perlstein paid and recommended that the International Ladies Garment Union pay $6.00 per week to each of said members committing the said acts unlawfully, in that he retained and paid and—or recommended that the International Ladies Garment Union pay attorneys to defend one perpetrators of the said acts; that after the commission of the said acts described in subsection 'O' of Paragraph 3, to-wit: On August 8, 1935, the said Meyer Perlstein increased the said payments and—or recommended to International Ladies Garment Union that the

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[fol. 5784] p. 2009 said payments should be increased so that all of those described in Article 3 hereof, as unlawfully violating this injunction, received thereafter $7.00 per week, instead of $6.00 per week; that the said Meyer Perlstein was expressly enjoined from protecting, aiding and assisting any person or persons in violating the injunction herein, and his actions in this paragraph set forth are a knowing, wilful and unlawful violation thereof, and in contempt of this Honorable Court."

Now, there are others. "That Meyer Perlstein, as the officer of International Ladies Garment Union, in control of this said strike, was under a legal duty to discipline members

of the defendant unions who violated the terms of the temporary injunction herein; that he has disciplined none of the members of the defendant unions who committed the acts described in Article 3 hereof; nor has he assisted in procuring or procured the arrest of any of said members; that on the contrary, instead of aligning himself upon the side of law and order, he has made no effort to see that the law of the land be kept; that these said omissions were knowing, wilful and unlawful, and were a violation of the injunction herein, and in contempt of the dignity of this Honorable Court.

That Meyer Perlstein, at the hearing before p. 2010 the Texas Commission, appointed by the Governor of this state, did threaten, in the presence of Lester Lorch, who is this plaintiff's spokeman in dealing with the strikers, on or about July 10, 1935, as follows:

"'The workers will have to adopt the same measures as they adopted in San Francisco, and there will be a calamity.'"

"'The workers here may decide to take drastic action to teach these open shoppers the same lesson that the San Francisco workers have taught to their open-shoppers, and the workers in other states have taught to others.

"'All the trades may be forced to make a joint move. We do not want it, we will try to fight it, but if the people here are driven to desperation they will have to adopt desperate measures;' that the statements were unlawful, knowing and wilful, in violation of the temporary injunction herein, were a threat of a general strike, with violence and blood shed as the probable outcome, and in contempt of the dignity of this Honorable Court.

That on or about July 25, 1935, Meyer Perlstein did state, over the telephone, at

about 8:30 P. M. to Lester Lorch, who is the spokesman of this plaintiff for dealing with the strikers, as follows:

p. 2011 'Don't say that I did not warn you—be sure and take care of yourself.'

The said statement was an unlawful, knowing and wilful threat, in violation of the temporary injunction herein, and in contempt of the dignity of this Honorable Court.

Wherefore, premises considered, this plaintiff prays that Meyer Perlstein be cited to appear herein to show cause why he should not be adjudged in contempt of Court for the acts herein set forth, and that upon a trial hereof the said Meyer Perlstein be punished for contempt in such manner as may be proper."

Now, that is part of the complaint that was filed against you, wasn't it?

(17)

[fol. 5785] A. Yes, sir.

Q. Now, you appeared at a hearing on this contempt proceeding, did you not?

A. I did.

Q. And these telegrams that I have been reading were offered in evidence upon that proceeding?

A. They were.

p. 2012 Q. Now, I want to read this from the judgment of the court:

"The said plaintiff having appeared in this court at 9 o'clock A. M. on the 14th day of September, 1935, and announced ready for trial, and the defendant Meyer Perlstein having appeared on said day and hour both in person and by attorneys and announced ready for trial to show cause why said defendant should not be held in contempt of this Court as prayed in plaintiff's second amended original motion; and the court, after hearing

the evidence and the argument of counsel and being fully advised in the premises on this the said 30th day of September, 1935, finds that the said temporary injunction hereinbefore described was in full force and effect from March 25, 1935, continuously until August 22, 1935; and that the said Meyer Perlstein was duly cited therein and had knowledge thereof; and that the said Meyer Perlstein has violated the aforesaid temporary injunction in that:

p. 2013 "It is therefore the opinion of this Court that the said defendant Meyer Perlstein is guilty of contempt of this court and is in contempt of this Court.

p. 2014 It is, therefore, Ordered, Adjudged and Decreed that the said defendant Meyer Perlstein, be, and he is hereby, adjudged in contempt of Court, and he is hereby punished by being fined $100.00 and costs of this proceeding and further by being sentenced to the Dallas County jail from 10 A. M. September 30, 1935, until 10 A. M. October 3rd, 1935, and thereafter until said fine of $100.00 and costs are paid.

It is therefore ordered, adjudged and decreed by the Court that the State of Texas do have and recover of and from the defendant Meyer Perlstein, the said fine of $100.00 and all costs of this proceeding for which let execution issue.

It is further ordered, adjudged, and decreed that capias shall forthwith issue herein commanding the Sheriff to arrest the said defendant Meyer Perlstein and place him in the County Jail of Dallas County, Texas, and there safely keep him in prison until 10 o'clock A. M. October 3rd, 1935, this order being issued September 30, 1935, at 10 o'clock A. M. in the presence of the Sheriff and the

defendant hereinbefore named, and there safely keep him thereafter until such time as this said fine of $100.00 and costs shall be paid. Signed Towne Young, Judge."

(18)

[fol. 5786] Now, that was the decree that was entered against you, wasn't it?

A. That was the decision of the Court, yes.

p. 2015 Q. You undertook to get a writ of habeas corpus from the Supreme Court of Texas?

A. We did.

Q. And that was refused?

A. Yes.

Q. And you were incarcerated in the jail in accordance with this decree?

A. I was.

Q. And paid the fine.

A. I did.

p. 2016 Q. Mr. Perlstein, I show you Exhibit 84-A and ask you if that is your picture looking through the bars of the jail. A. It is.

Q. Did you make a report to the union on the Dallas strike? A. I did.

Q. And after that report was received did the Executive committee of your union make a printed report of the convention?

A. They did.

Q. Do you recognize this book, Exhibit 85, as that report? A. It is.

Q. I want to read from page 92 under the heading "Dallas", "Dallas is a considerable center for silk and cotton dresses. There are also several underwear and uniform shops located in that city, employing, all told, about 2,000 workers.

In February, 1935, the union served notice on fifteen Dallas dress manufacturers that they would have to increase wages and shorten work hours if a strike were to be averted. The Dallas group of employers, organized in an anti-union association which

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[fol. 5787] was receiving help from the open shop organizations in vigorously opposing all trade union organization in that city, refused to deal with the union. Their reply to the union's call was an inauguration of a system of dismissal of workers suspected of union
p. 2017 activity, tightening the reign of intimidation in the shops. On March 7, after the dressmakers employed in the shop of the Merton-Davis Company struck for reinstatement of several of their fellow workers dismissed for union activity, the dressmakers of all the other shops walked out in their support. The Dallas dress strike which lasted from March to November, 1935, will occupy a place of honor in the annals of our union."

Was that report made after you had told the union what had been going on in Dallas?

A. Yes.

Q. And after they knew of the circumstance of your conviction, you had reported all that, hadn't you? A. I did.

Q. And the fine that was paid by you, the money was furnished by the International? A. Yes.

Q. And the fees for your lawyers in the defense of these cases down there was paid by the International?

A. Was paid by the International.

Q. All the expenses of Dallas were paid by the International?

A. All the expenses of what?

Q. Of this whole strike and all this litigation?

A. The greatest portion was paid by them.

p. 2018 Q. And how much did you say you had expended down there on that one strike?

A. I don't remember; there is a statement there.

Q. How is that? A. I don't remember exactly.

(20)

[fol. 5788] Q. Didn't you make the statement that you thought it was about $30,000.00? I would like to get through with this quickly if we can. A. Approximately.

Q. Approximately $30,000.00. Now, I want to read you just three more telegrams, they are short: "August 13, 1935, Sam Goldberg, 813 Walnut Street, Kansas City, Missouri. Am cited here for contempt. Stop. Must appear in court Friday. Please see that the work should be attended to. Stop. Give may regards to Garfinkel. Please tell him to attend to the work. Will see him soon. Meyer Perlstein."

Q. You sent that telegram anyway? A. I did.

Q. The next telegram is August 16, 1935 addressed to Morris Weiss, International Ladies' Garment Workers' Union, 703 North 16th Street, St. Louis, Missouri: "Take committee of shop and see Schminke. Find out" - - I think it should be, it is written our

p. 2019 - - - "Why shop is closed and what he is doing. Stop. Send somebody to investigate Benneterre. Stop. My contempt case postponed for tomorrow morning. Perlstein." You sent that telegram, didn't you?

A. Yes, sir.

p. 2020 Q. Another telegram, August 16, 1935; Sam Schatz, International Ladies' Garment Workers' Union, 703 North 16th Street, St. Louis, Missouri. Advise members cotton locals that the situation in the shops of Ely-Walker is being watched by the International. We are gathering the necessary information and proper action will be taken at the proper time. Stop. Please advise them that the International stood by them and always will stand by them. Expect to be in St. Louis early next week. Meyer Perlstein." You sent that telegram? A. I did.

p. 2022 Q. In the same hearing did you make this statement "I believe that if the Government ever dares to do what the manufacturers are doing I will tell my sons to take up arms against the Government."

p. 2023. Q. Did you make that statement, that is all I want to know, did you make it? A. I did.

(21)

[fol. 5789] p. 2026. Q. I hand you Exhibit 92 which is a photograph and ask you if you recognize the lady whose picture appears there?

A. I do.

Q. Who is it? A. Dora Smith.

p. 2035 Q. Look at Exhibit 61 and see if you saw that
p. 2036 picture in the paper?

A. I did see it outside of Memphis, in another city.

Q. Wasn't this picture published widely in papers all over the country?

A. I saw it in a paper.

Q. This picture that I have just shown you is from a New York newspaper, isn't it?

A. Yes, the New York Sunday News.

p. 2037 Q. Yes, after the picture. Now, there was a strike in the Gernes Garment Company of Kansas City in 1937, wasn't there?

A. There was.

Q. You knew about that? A. I did.

Q. You were here? A. I was.

Q. And the strikers carried on until finally the doorways, the stairways leading into that factory were occupied by sit-down strikers?

A. They were.

(22)

[fol. 5790] p. 2039. Q. Now, it was after that that you made an agreement with the Gernes people?

A. Yes.

Q. The end of this violence. All right. How long did this strike last?

A. Three or four weeks.

Q. You continued the strike for how many weeks?

A. For several weeks.

Q. And when you settled with Mr. Gernes it was conditioned that his employees should join the union? A. It was.

Q. Well, you did tell this court didn't you "no one could call a strike if the workers in the shop are not members of the union"?

p. 2040 A. Well, that is not the policy of the union. What I meant to say was that my own policy, to advise the locals, to guide the locals.

Q. I am talking about what the strike was called for at Gernes?

A. For improvement of conditions.

Q. And what else?

A. Shorter hours.

Q. Yes; what else?

A. The right of collective bargaining.

Q. What else?

(23)

A. The right to set prices on the garments, on piece work garments,—rates.

Q. What else?

[fol. 5791] A. That no worker should be discharged without a just cause.

Q. What else?

A. And if a complaint arises, that if there is no
p. 2041 agreement between the employer and the representative of the union it should be submitted to arbitration.

Q. Didn't you make a condition that his shop should be unionized? A. Yes.

Q. It should be unionized and when you made your contract, you made your contract for a closed shop didn't you? A. I did.

p. 2042 Q. And you follow the policy always of never having a strike unless you have membership in the plant?

p. 2043 A. It depends entirely on the existing conditions in every individual situation.

Q. That is to say your own policy gives way to different situations at different times?

A. As a method to be pursued.

Q. Let's see what you mean, "The method to be pursued",—that while your policy is never to call a strike unless you have employes there, that the organization does have strikes when they have no employes?

A. The organization does have a right to call strikes.

Q. Well, do they have them?

A. Possibly have but not that I know of, but they have a right to have it.

p. 2044 Q. You are a frequent contributor to Justice, aren't you. A. Yes, sir.

Q. That is the official organ of the International, isn't it? A. It is.

Q. And who is the editor?

(24)

[fol. 5792] A. Max Dannish.

Q. And who is the secretary and treasurer?

A. The International Ladies' Garment Workers' Union.

Q. But what individual?

A. I believe it is —

Q. What position does Dubinsky hold?

A. President of the International Ladies' Garment Workers Union and general secretary and treasurer.

Q. Well, to make this as short as we can, David Dubinsky is president of this publication, isn' he? A. Yes.

Q. And general secretary and treasurer?

A. He is.

Q. And Max Dannish is editor? A. Yes.

Q. You are a frequent contributor? A. I am.

Q. In the issue of October 15, 1937, there is an article by you is there not?

A. May I see it?

Q. Yes, sir. A. Yes.

p. 2045 Q. And in that article you made this statement, did you not: "The Gernes Garment Company in Kansas City is the only shop that manufactures children's dresses. It is known as one of the finest shops in the country. When the agreement was signed with them several months ago, our local of these workers was

(25)

[fol 5793] organized as Local 288. None of the workers in the shop was a member of the Union prior to the organization of the local and the entire procedure and methods of unionism were strange to most of them." You made that statement in that article? A. I did.

Q. And you made a contract with the Gernes people and an entirely different contract with the Gordon Company?

p. 2046 A. In certain respects; minor changes.

Q. They are two different contracts aren't they, between two different concerns and the union?

A. Yes; two individual contracts.

Q. You know, do you not, that during the progress of that strike that you brought in people from the outside who were not members of the Gernes Company or its employes?

A. I did.

p. 2047 Q. If there were no members of the Gernes Company who were members of your union when that strike started, who was it that started the picketing of that company?

A. The Gordon Brothers and the Missouri.

Q. So this company was picketed by outside people and their employes were unanimously protesting against it, weren't they?

A. They were picketed by the Gordon Brothers strikers, who considered that shop a part of their shop.

Q. How many of the actual employes of Gordon were on strike? A. I believe about fifty.

Q. How many did they have working for them?

A. At that time when the strike was called?

Q. Well, about how many?

(26)

[fol. 5794] A. I imagine about 100 to 125.

Q. Now, I show you Justice of the issue of April 1, 1937, and I refer to page 8. You made this statement, didn't you, in an article that you

p. 2048 wrote and had published:

"Our new Union shops in Kansas City have already established themselves. All the workers in these shops have already joined the Union and the shops are beginning to function as well organized shops where union conditions, union hours and union treatment prevail.

Some of the workers, particularly in the shop of the Liberty Dress Co., where 250 girls are employed, have already tasted the picket line. Peculiar how quickly the girls joining our Union get imbued with its fighting spirit! For years and years we had tried to organize the Liberty Frock. It is only three weeks since an agreement was signed with the firm and these girls are already on the picket line organizing others! Yes, over 200 girls strong from the Liberty Frock were on the picket line in the Gordon Mfg. Co. strike last week and everyone who saw them was wondering at how quickly they had acquired their knowledge. They certainly have given a good account of themselves!"

Now, the Liberty Frock was entirely separate and distinct from the Gordon Company wasn't it?

A. It was.

Q. And from the Gernes Company?

A. It was, but they were members of the same union.

p. 2049 Q. But the girls from Liberty Frock, 200 of them, came over to engage in this strike at the Gernes Company where you did not have a single employee in that company?

A. They came to engage in helping the pickets in the three shops.

Q. The three shops were all in one building, weren't they?

A. Yes.

Q. You had 200 outside pickets?

A. The 200 didn't come at the same time; they were,—during that week, two hundred.

Q. All right. I will read a little further from this same article:

"On March 17, the workers of three shops, the Gordon Manufacturing Company, a cotton dress shop where about 225 people are employed; the Gernes Mfg. Co., a children's dress shop, where about 200 people are em-

ployed; and the Missouri Garment Co., where about 200 cotton dressmakers are employed, went out on strike."

(27)

[fol. 5795] Now, it wasn't true that the 200 people in the Gernes Company went out on a strike was it?

A. The union people went out on strike.

Q. Well, there wasn't any union people in the Gernes Company at that time as you have just shown.

p. 2050 Q. Now, you had a sit-down strike there didn't you?

A. The girls did have a sit down strike.

Q. I will read you this, so we can get it in the record clearly: "Fifty of the Gordon Mfg. girls, all members of the Union, occupied the front hallway. These three shops are located in one building. The girls blockaded the front door so that those who intended to become strike-breakers could not get in. These 50 girls were on the stairway for 60 hours, blocking the front door. Their families
p. 2051 brought them cots and blankets and for two nights they slept on the stairway. Finally the Health Department of the city began to make arrangements to move the strikers because of sanitary conditions, and they vacated."

That was true, wasn't it, that the sit-down strikers were in there? A. Yes.

Q. You knew about that?

A. I did.

Q. You said this in your article, didn't you: "Finally the Health Department of the city began to make arrangements to move the
p. 2052 strikers because of sanitary conditions and they vacated". You said that in your article didn't you? A. I did say it.

Q. Was it true or false? Was it true or false?

A. I believe it was false; they were ready.

(28)

[fol. 5796] p. 2053 Q. And in the same article you made this statement didn't you, referring now to the Gernes, the Gordon and the Missouri: "These three firms will soon have union shops; if not they will never again manufacture dresses." You made that statement, didn't you?

A. I believe I did.

Q. And you proposed to carry out that threat, didn't you?

A. I proposed to keep the strike until the shops will become union shops.

Q. And unless they yielded you were not going to permit them to ever again engage in the manufacture of dresses, that is what you meant, isn't it?

A. That is not what I meant.

Q. What did you mean?

A. I meant that the workers will refuse producing dresses until the strike will be settled.

Q. But there could be other workers.

A. Well, it was up to the employer to engage them but these workers will not work on these dresses.

p. 2054 Q. You didn't say these workers. You said "these firms will never again manufacture dresses." Did you say that?

A. That is what it says in the paper; I didn't.

Q. Didn't you write this article that appears in the paper?

A. Yes, but the editor blue pencils my articles some times.

Q. It starts out: "Drive in Southwest sweeps on. By Meyer Perlstein, ILGWU Regional Director." Do you say now that that was changed in the office?

A. That was corrected by the editor.

Q. And you did say it?

(29)

[fol. 5797] p. 2054 A. I did say the substance of it; not word for it.

Q. Is that what you intended to do to the Donnelly Garment Company? A. No.

Q. What were you going to do, now, to them?
A. Try to organize them.
Q. And if you didn't organize them what were you going to do? A. Try again.
Q. And then what? A. I never give up.

p. 2055 Q. I am reading now from the Justice of May 1, 1937, article by Meyer Perlstein, ILGWU, Regional Director. There is a lot of it but I come to the headline, Kansas City, Missouri: "Prior to 1933, our Union had hardly any organization in Kansas City. As reported to the Chicago [conventioned], we succeeded in 1933, in organizing a few of the smaller cloak and dress shops, forming our first local, No. 114, in August of that year.

The Union, however, kept constantly at its task, driving ahead with greater or lesser efforts at times, for the unionization of the local market. During 1934 and 1935 some headway was made by the organization of

p. 2056 a few more of the smaller shops though it still failed to make a dent in the big factories.

The real break in the Kansas City situation came towards the end of 1936, growing out of a strike which the Union conducted against the Stern-Slegman-Prins Co. during July and August of that year. The drive against Stern-Slegman-Prins actually had begun a year prior to that, when in June, 1935, the Kansas City Joint Board began its activity to unionize the workers of the Stern-Slegman-Prins firm. Shortly thereafter, the Missouri State Federation of Labor, in convention, placed this company on its unfair list.

The heroic conduct of our Kansas City workers on the picket line during the fall of 1936 and the publicity campaign which followed it obviously had the right effect for shortly thereafter the Kansas City Joint Board succeeded after several months of negotiations

in reaching an agreement with the firm on the basis of a complete union shop"••

Now, this heroic conduct that you speak of

p. 2057 Q. What was heroic then?

(30)

[fol. 5798] A. Girls were working all day and going out evenings visiting non-union girls.

Q. That is what you called the heroic conduct?

A. Yes. I subscribe to every word in that article.

Q. Was that heroic, to violate the law so that the police officers had to take them down?

A. I don't know that they have violated the law.

p. 2058 Q. Now I continue this article:

"The Stern-Slegman-Prins settlement created a deep impression throughout the women's garment markets in the Middle West. The first immediate effect of the Stern-Slegman-Prins settlement was the signing of an agreement with the second largest cotton garment firm in Kansas City, the Liberty Garment Company on February 23, a firm employing 450 workers in two shops in Missouri." You had a strike there too, didn't you?

Q. "This firm became also the first union label cotton dress factory in Kansas City."

"The immediate result of this settlement was an agreement with the second largest cloak shop in Kansas City, the Brand and Puritz Company. The next agreements signed in Kansas City were with the Marlene Dress Company, a silk dress shop employing about 100 workers and the Caplan Garment Company, a cotton dress shop employing about

p. 2059 100 people, which were followed by strikes in three large shops, the Gordon Bros. Manufacturing Company, a cotton dress shop employing over 200 people in Kansas City and about 150 people in Richmond, Missouri, the Missouri Garment Company, a cotton dress shop employing over 200 people, with whom the Union had had several battles and lost,

and the Gernes Garment Company, a children's and juniors' dress shop employing over 200 workers. Agreements were also signed with those firms.

"The membership in the Union in Kansas City, which totaled about 175 members before the conclusion of the agreement with Stern-Slegman-Prins has now grown to 2200 members. Sister Wave Tobin, former secretary of the St. Louis Joint Board, has been in Kansas City for a year and a half as manager of the Joint Board.

The Union is now concentrating on organizing the few remaining [shall] shops while preparing to organize a drive to unionize the Donnelly Garment Co., the shops owned by former Senator James Reed, and employing about 1500 workers."

Is that true or is that not true?

p. 2060 A. It is true.

(31)

[fol 5799] p. 2062 Q. Now, I call your attention to an article by yourself on page 11 of the issue of Justice of September 15, 1938:

"Our publicity campaign in the Donnelly Garment and Forest City situations has brought us face to face with the problem of making the consuming public realize the difficulties of the men and women who produce the garments they buy.

In this campaign to win public confidence and sympathy we come face to face with the retailers, the men between the manufacturers and the buying public. Very few of these retailers, particularly the larger ones, will voluntarily take the initiative to help us. With them it is the immediate money consideration that governs their actions. A good many of them do not care where and under what conditions the garments they sell are

produced as long as they can sell them at a good profit. In many cases where storekeepers have expressed a sympathetic view, it was not because they were anxious to help us, but because their customers happened to be women with a definite sympathy for the ex-
p. 2063 ploited workers.

Organizing Liberal, Labor Pressure.

Our problem, therefore, is to bring before the sympathetic public the actual facts as to why this campaign against the two firms is being conducted and why and how their cooperative effort can help us and what they should do in order to bring the necessary pressure on the retailers from whom they buy to stop selling the unfair garments. The problem before our road committees, as they visit towns or cities on their itineraries, is to visit not only the retailers but also representatives of labor organizations, of social and political groups and with individual liberal-minded citizens in every community to spread information and to organize pressure on the retailers long after these committees have left that locality.

It is a tiresome and nerve-wracking but worthwhile task. Organizing public opinion is a very slow process. Definite constructive results will be forthcoming later but, at first, we must have a lot of [patiences], the patience of pioneers to slowly and gradually build up that great force known as public opinion.

Picketing unfriendly stores: In the campaign we are conducting against the Forest City Manufacturing Company and the Donnelly Garment Company, we are confronted also
p. 2064 with some retailers who lend a deaf ear to all appeals made in behalf of workers. In such cases we advise the public of the attitude of these firms through pickets in front of

their stores, that they refuse to give up selling the unfair garments. And so we are picketing at present a large department store in St. Louis, the Scruggs, Vandervoort & Barnet Company. There are fourteen pickets in front of this store daily carrying signs appealing to the public not to buy dresses that carry the Forest City Label."

You wrote that article, didn't you?

(32)

[fol. 5800] A. I did.

Q. And the statements in there as to what you were doing about picketing and so forth are true? A. Are true.

Q. You heard read here, did you not, an interview with yourself that was printed in the Kansas City Times of February 26, 1937?

A. I remember giving an interview but not word for word as stated here. It was not a written statement.

Q. No, but you gave that interview in substance and effect; didn't you? A. Certainly.

Q. In that interview you stated "We are going to send a letter to the Donnelly Garment Company within the week suggesting a conference

p. 2065 to establish collective bargaining on the question of wages and working hours. If the firm refuses, we will go to the consuming public of the country and advise buyers of the wages and hours prevailing there now." You made that statement, didn't you? A. I did.

Q. "The Regional Union Director who will remain in Kansas City, to supervise the organization campaign said the minimum wage in this section for women making silk dresses is $22.05 working a five day week. He said that Donnelly Company employes receive a minimum of $15.00 weekly and that they were working 45 hours a week." What company here engaged in making women's silk dresses had a minimum wage scale of $22.05?

A. They were supposed to have.

Q. I didn't say suppose to. What company had it? You made a statement here that they had. What company had it?

A. No company at present—

p. 2066 Q. Then this statement you gave to the press in that respect was untrue, wasn't it? Answer yes or no?

A. My answer is yes, I did say it.

(33)

[fol. 5801] p. 2071 Q. In the interview that you gave on February 26th you made the statement that part of the union's campaign directed against the Donnelly Garment Company "Will be to send six women to cities and

p. 2072 towns where its garments are sold." Did you send out those six women?

A. I did, four of them.

Q. What?

A. Four women were sent out.

Q. Who were the four women?

A. One of them was Jane Palmer, Esther Smith, Mary Jane Miller, and Grace Bullard.

Q. Is Jane Palmer the young lady that has been sitting here back of Mr. Walsh most of the time?

A. Yes.

Q. She lives in Kansas City?

A. Yes.

Q. Where did you get Esther Smith?

A. She is a Kansas City girl.

Q. And Mary Jane Miller?

A. She is a Houston girl.

Q. And Grace Bullard?

A. She is a Kansas City girl.

Q. Did any one of these people ever work in the Donnelly plant to your knowledge?

A. Not to my knowledge; they may have.

Q. You don't know of it?

(34)

[fol. 5802] A. No.

Q. Where did you send Jane Palmer and Esther Smith?

A. Jane Palmer and Esther Smith went to the east end of the section of the country.

Q. Whereabouts?

A. I think the record is in my office, but I know that they went and visited Kentucky and I

p. 2073 believe they visited possibly parts of Ohio and Illinois. I don't know exactly at present what section they visited, but I know it was the eastern section.

Q. When you say they visited those states, you mean they visited the customers of the Donnelly Garment Company wherever they were in those states?

A. Yes.

Q. And endeavored to reach them all, didn't they?

A. Yes.

Q. Where did Mary Jane Miller and Grace Bullard go?

A. They went to the southern section of the country.

Q. In what states?

A. I believe they were in Texas. I believe they were in Florida, and maybe one or two states more; I don't have the record with me.

Q. You endeavored to cover all of the southern states where the Donnelly Company was selling goods?

A. Yes.

Q. And they visited according to your understanding all of the customers of the Donnelly Garment Company in those southern states?

A. Not all, but a great many.

Q. Did they go to Mississippi?

A. I am not sure if they did or not.

Q. Did you afterwards get any recruits to this group of ladies that were out on the same business?

(35)

[fol. 5803] p. 2074 A. I didn't get the question.

Q. Did you afterwards get any additions to these four people?

A. They were out on the road for a while and then they wanted to come back, and other girls were sent out in their places.

Q. Who did you send.

A. A certain young lady by the name of Vance Brisk; and there was another young lady by the name of Ruby Talbott.

Q. Any others?

A. There were two other but I don't recollect their names at the present time. I will be glad to give them to you later.

Q. Was there a Doris Whilhite?

A. There was a Doris Wilhite, yes.

Q. Who was the other?

A. I do not recollect.

Q. Where did Vance Brisk come from, where did you get her?

A. She is a St. Louis girl.

Q. Had she been working down there in St. Louis in the strikes?

A. She worked in the shops.

Q. But was she engaged in the strikes there when they were going on?

A. She was not.

Q. Ruby Talbott, where did you get her?

A. She is a St. Louis girl.

Q. And Doris Wilhite?

p. 2075 A. A Kansas City girl.

Q. Did these girls travel in pairs or did they go out singly?

(36)

[fol. 5804] A. In pairs.

Q. Who went out with Vance Brisk?

A. I believe Ruby Talbott.

Q. Where did you send those two girls?

A. These girls—the original four that I sent out returned and they took up the same territory.

Q. Then what territory would Vance Brisk and Ruby Talbott have taken, the eastern or southern?

A. The eastern.

Q. And Doris Wilhite and this other lady whose name you can't remember went into the southern territory, did they?

A. Part of the southern territory and part of the midwest.

Q. When they went into the midwest, what states did they cover?

A. It covered Missouri—I will be glad to furnish a list of the territories visited, but I don't recollect them at the present time, each territory that the groups visited.

Q. You can only remember Missouri at the present moment?

A. I believe they were in Illinois, part of Illinois.

Q. Michigan?

A. I believe they were in Michigan.

Q. Minnesota?

A. Yes, they reached as far as Pennsylvania.

p. 2076 Q. It was your intention to cover the whole forty-eight states?

A. Yes.

Q. Every place that the Donnelly Garment Company sold goods?

A. Yes.

Q. Who went to New York?

(37)

[fol. 5805] A. I personally visited New York.

Q. Who did you visit in New York?

A. In connection with the Donnelly Garment matter?

Q. Yes.

A. I didn't visit any store in New York in connection with the Donnelly Garment Company. I misunderstood your question.

Q. But who did go to New York in connection with the Donnelly business?

A. I didn't send anyone to New York.

Q. Do you know whether anybody went?

A. They may have.

Q. You didn't send them?

A. Not as far as I know.
Q. Who went to Massachusetts?
A. Possibly some of these girls I mentioned did go up to Massachusetts.
Q. But you did not?
A. They possibly did. I am almost sure that they did. I know Massachusetts, Boston, was visited, but I don't know by which group.
Q. Do you have any record which will show?
A. I have a record in my St. Louis office.
p. 2077 Q. Were there any other persons that you sent out besides those you have already named?
A. There was an additional girl that we had in Minneapolis, Minnesota?
Q. Who was that?

(38)

[fol. 5806] p. 2077 A. I could give you her name later. I do not remember her name now.
Q. Now, who was it that instructed these girls, trained them?
A. I did talk to them personally.
Q. You did it personally?
A. Yes.
Q. Who was in charge of this squad of girls?
A. I personally directed them, and some of my workers possibly talked to them.
Q. In this interview which you gave on February 26th you said, didn't you: "Part of the union's campaign directed against the Donnelly Garment Company will be to send six women to cities where these garments are sold, advising retailers and labor organizations. Miss Palmer will be in charge of this squad of field workers." Did she have charge of them?
A. At the time when the announcement was made, we intended to put her in charge, but I decided to take personal charge of it.
Q. You further stated, "The union claims only twenty-five members among the Donnelly workers, but hundreds of others are related to union members." You said that, didn't you?

p. 2078 A. May I see it, Senator; I want to look at it.
Q. Do you remember whether you said it or not?
A. I believe I did.
Q. Would you say yes or no?
A. I believe I did.
Q. And you also stated in that interview, following just what I read you, "within a year we will have it completely organized and as soon as we have enough members we will call a strike. This will be in addition to carrying our side to the consumers." You made that statement, didn't you?
A. I did.
Q. On May 26th, you gave this interview, didn't you?

(39)

[fol. 5807] A. Will you permit me to look at it; I don't know if I did or not.
Q. I will get it to you in time. "We will open with an advertising campaign through newspapers and radio against the patronage of garments manufactured in the Donnelly plant. Six girls are now in training to travel from coast to coast, visiting storekeepers handling the Donnelly garments, urging them to stop handling the Donnelly product. If the store
p. 2079 operators refuse to comply, their stores will be picketed. As the membership of our union in the Donnelly plant increases, a strike will be called. In such case, additional money will be required and we are ready to spend $250,000.00 to accomplish our goal, and that amount is ready. There are two organizers working in the plant at the present time." The language which I read you is your interview? A. It is partly mine.
Q. It is set up here in quotations.
A. The quotations there are not correct; it is not the way I gave it.
Q. Did you say this, "We will open with an advertising campaign through newspapers and radio against the patronage of garments manufactured in the Donnelly plant?"

A. I did say that.

Q. Did you say "six girls now are undergoing training to travel from coast to coast visiting storekeepers handling the Donnelly garments urging them to stop handling the Donnelly garment product;" Did you say that?

A. I did.

Q. Did you say this, "As the membership of our
p. 2080 union in the Donnelly plant increases, a strike will be called. In such case, an additional amount of money will be required, and we are ready to spend $250,000.00 to accomplish our goal, and that amount is ready"; did you say that? A. I did.

p. 2082 Q. I call your attention to Exhibit No. 36 which is the first of these circulars that you sent out. How many of those did you have printed?

A. To begin with, about 5,000.

Q. Well, to begin with. How many did you afterwards have printed?

(40)

[fol. 5808] A. An additional five or ten thousand.

p. 2083 Q. Is that the total that you had printed?

A. Approximately between ten and fifteen thousand.

Q. How did you distribute them?

A. The committees took them out on the road, and they were also sent through the mail.

Q. Who sent them through the mail?

A. We had a girl in the office that used to send them through the mail.

Q. In what office.

A. In the St. Louis office.

Q. Who directed them to send them out?

A. I did.

Q. Were they instructed to give these to the customers of the Donnelly Company?

A. They were advised to use their judgment, to give it to anybody they would feel it was advisable to.

p. 2084 Q. They were furnished to show to the customers of the company, were they not?

A. Yes.
Q. Were they also instructed to circularize the towns? A. Yes.
Q. You know they did that, don't you? A. Yes.
Q. In the town of Alexandria, a small town, they had distributed something over 2,000, hadn't they?
A. I don't know how many they distributed, but I believe they were in that town.

(41)

[fol. 5809] Q. Generally speaking, when they went through these towns and cities, these girls would visit the stores, wouldn't they, that were customers of the Donnelly Company?
A. They would.
Q. They were also instructed, were they not, to visit civic societies and labor organizations?
A. They were.
Q. They did that, too, did they not?
A. I believe they did.
Q. And they were also instructed to circularize the towns?
A. Not necessarily; they were advised that whenever it is necessary to give that circular, they do so.
Q. Whenever they thought it was necessary to circularize the town, to go ahead and do it?
A. Certain organizations in town.
p. 2085 Q. You paid the bills, didn't you?
A. I paid all their expenses.
Q. When did they quit distributing or sending out this exhibit 36; give me the date, if you can?
A. I am sorry, I can't; the only thing I know, I stopped them and called them back from the road as soon as the injunction was issued against us.
Q. How long did you keep them here?
A. Until the injunction was modified by Judge Collet.
Q. And when the injunction was modified by Judge Collet, you got out the second circular?
A. Yes.

Q. Did you tell the Court that these women weren't out on the road at any time between July 5, 1937, the date of the restraining order and July 18th, 1938, the date of the restraining order's modification, the date the restraining order was modified?

(42)

[fol. 5810] A. They were out but not in connection with the Donnelly Garment Company.

p. 2086 Q. Did you withdraw them on July 5, or immediately thereafter this circular, Exhibit 36?

A. I did, I told them to discontinue the circular.

Q. Did you take up these circulars?

A. Did I do what?

Q. Did you take them away from the girls, those that had them?

A. They were supposed to deliver everyone of them back to the office.

p. 2087 Q. Now, on July 18 Judge Collet modified the restraining order and continued it in force, you remember that, don't you? A. Yes.

Q. And then you got out the second circular, which is marked Exhibit 98, didn't you?

A. May I look at it?

Q. Oh, yes, if you don't know what it is (handing paper to witness)

A. I want to be sure; yes.

Q. The principal modification that Judge Collet made of his first restraining order was that you must confine yourselves to the truth, wasn't it? A. Yes.

p. 2088 Q. You had a right, now, under the modified injunction to tell the truth; that is right, isn't it?

A. Whatever they advised me, I followed their advice.

Q. I assume that they advised you that under the modified injunction you had a right to tell the truth?

(43)

[fol. 5811] A. Naturally.

Q. So that you withdrew in the second circular a very large number of the statements in the first circular, because they weren't true?

A. I withdrew the first circular—first of all, I was not sure if we have a right to send circulars. Then I consulted our lawyers and they advised me they believe I have the right, and then I told them that the injunction was modified and I don't want to do anything that might put me in contempt of court. I suggested to them that they write at least partially the circular that we have a right to send out, and they did.

Q. And you went over it with them?

A. Yes.

Q. And in this second circular you left out nearly all of the statements you made in the first circular, didn't you?

A. I did leave out certain things.

p. 2089 Q. Well, you left the statements out because your attorneys told you under the modified restraining order you musn't send out anything except what you did send out in the second circular? A. Yes, that is true.

p. 2090 Q. How much money was paid in salaries and expenses to this group of girls that were out on the road?

A. They were paid $25.00 per week salary and all expenses for hotel and meals and carefare.

Q. I asked you how much money you paid them?

A. Do you mean the amount?

Q. Yes.

A. I don't know, exactly.

Q. Can you approximate the amount?

A. Possibly $1,000.00 or $1500.00; I don't know exactly the amount. It might possibly have been $2,000.00; I am just guessing.

Q. Have you got them still on the road at the present time?

(44)

[fol. 5812] A. No.

Q. When did you withdraw them the last time?

A. Several months ago.

Q. Since the first of the year have they been out?

A. No, they were out after the first of the year.

Q. After January 1st, 1939?

A. I believe sometime either in February or in March of this year.

Q. When did you actually call them in?

p. 2091 A. I would be glad to give you the date, but I don't remember.

Q. Weren't they out working on the road until substantially the beginning of this trial?

A. No.

Q. About a month ago?

A. Possibly a month or six weeks ago, either in February or March; I don't exactly know the date. Possibly it was at the end of January, but I don't remember the date.

p. 2097 Q. Now what were your instructions from Mr. Dubinsky before you came here, about lining up the Donnelly Plant with the International?

A. His instructions to me were that, first of all, I should investigate conditions, what the conditions in the plant are; how many hours the workers are working; what are the wages they are receiving; how the piece rates are set; if a worker has the right to join a labor organization voluntarily, and so forth. And he told me that, after the investigation had

p. 2098 been made, and if conditions are not what they should be in comparison to the other shops, to talk to the workers; explain what is doing in other shops; explain conditions of industry; conduct an additional campaign; and see, too, that the workers as well as the employers, as well as the public at large, ascertain the aims and aspirations of our organization, and so forth.

Q. Well, were you or were you not instructed to line the Donnelly Plant up with the International before you came here, if you could?

(45)

[fol. 5813] A. Yes.

Q. That was regardless of these other facts, was it not, you were frankly instructed to get the Donnelly employees lined up with the International, if you could, were you not?

A. Yes.

Q. When you came here, how many employees of the Donnelly Plant were you able to get to make complaints about affairs down there?

A. Three or four made complaints to me then.

p. 2099 Q. What were the names of the employees from whom you did get complaints?

A. I don't remember all of them. I remember one, Ellen Fry. Another one I remember is Thelma Owens. I don't remember the names of the others.

Q. Those are all the names you remember?

A. At this time.

Q. You have referred in your testimony to your interview of May 25, 1937, with certain newspaper reporters. I will show you the copy of it from the transcript of the record in the 3-Judge Case.

A. Yes, I did.

Q. You gave that interview?

A. Yes.

Q. And in that interview, you and Miss Tobin said that a strike would be necessary at the Donnelly plant, did you not?

A. I did. That was part of the interview.

Q. In giving that statement, did you give any consideration of any kind to what the wishes of the employees at the Donnelly Plant would be, or were, about a strike?

p. 2100 A. Positively.

(46)

[fol. 5814] p. 2101 Q. I believe I asked you for the names of the members in the plant?

A. I do not remember them.

p. 2103 Q. I will show you a certain advertisement, which has been introduced in evidence. This is a copy from the 3-Judge Court which was published in the Kansas City Journal Post on June 8, 1937. You had a part in preparing and authorizing that advertisement, did you not?

Q. Did you, or did you not, have a part in preparing and authorizing that advertisement?

A. I did.

Q. That says in part, does it not—I am reading here at the top—"And as practical business people you, we take it for granted, realize that whatever your feelings for the moment may be, you will eventually have to carry on collective dealings with the International Ladies' Garment Workers' Union, which cannot, should not, and will not permit one individual employer to segregate himself from the rest of the industry in matters of work conditions and other fundamentals of employment." That is included, is it not?

A. Yes.

p. 2106 Q. Who asked Sylvia Hull to go to the convention of the International at Atlantic City?

A. I did.

Q. Did anyone else?

A. There was some people present when I talk to her.

Q. Who were they?

A. I believe Jane Palmer was there.

Q. Any one else?

A. I don't remember. There may have been, or there may not have been.

p. 2107 Q. She was to represent the Donnelly Workers, was she not? A. Yes.

(47)

[fol. 5815] p. 2109 Q. How many of the Gernes employees went out on strike?

A. Several.

Q. Give the number to the best of your knowledge?

p. 2110 A. I know several, but I don't know their names, and don't know exactly the number.

Q. Answer as to whether you know there was less than a majority?

A. Not of the Gernes Plant. The majority of the Gernes Plant did not walk out.

Further Cross Examination

By Mr. Tyler:

p. 2115 Q. Mr. Perlstein, if I correctly understood you this morning, you do not admit that the

methods used by the International at the Gordon, Gernes and Missouri Companies were illegal, is that correct?

A. That is correct.

Q. And I believe you stated yesterday that you never give up, didn't you?

A. Yes.

Q. Then we may reasonably expect that these same methods used by the International at the Gordon, Gernes and Missouri strike, whatever they were, will be continued down at the Donnelly plant unless this Court grants a permanent injunction, is that true?

A. Yes.

p. 2116 Q. I call your attention to a statement in the circular labeled 'We do not patronize the Nelly Don Dress" as follows: "On the next page of this booklet we reproduce a copy of a letter which was sent the Donnelly Garment Company. The firm has not replied to this letter but has instead organized a company union which has been named the Donnelly Garment Workers' Union." You knew that statement was in this document when it was prepared, did you?

A. Yes, sir. May I see that document?

(48)

[fol. 5816] p. 2118 Q. Now, I show you Plaintiffs' Exhibit 98. Do you remember when the document I just showed you was [publishes],—I am referring to Plaintiffs' Exhibit 36. Do you remember when that was sent out?

p. 2119 A. It was sent out prior to the issuance of the injunction.

Q. Now, I show you Plaintiffs' Exhibit 98 and call your attention to the statement "The International Ladies' Garment Workers' Union has filed a complaint now pending before the National Labor Relations Board charging that the Donnelly Company was guilty of unfair labor practices in dominating the formation of a company union and all of

its activities." When was this sent out, referring to Exhibit 98?

A. That was sent out after the injunction was modified.

Q. Why did you modify it to comply with the injunction?

A. In order to obey the law; right or wrong I want to obey the law.

p. 2126 Q. Do you recognize the right of these employees to organize a labor union if they do it of their own free will, without coercion?

A. Yes, sir.

Q. And they have the same right, if they represent fifty-one per cent or more, to bargain for them as the International does?

A. I do.

Q. So there could be no other labor union, if it is a minority, outside of the International, with any right to bargain, is that right?

A. If they do it voluntarily, without any coercion, we have a right to do it.

Q. Then the Donnelly people would have a right to do it if it was voluntary and without

p. 2127 coercion, wouldn't they?

A. Yes, sir.

Q. You never offered to negotiate with the Donnelly Garment Workers' Union, did you?

A. I can't hear you.

Q. You never offered to negotiate with the Donnelly Garment Workers' Union?

A. I did not.

Q. But you never negotiated or tried to deal with the Donnelly Garment Workers' Union, did you?

(49)

[fol. 5817] A. No.

Q. You are not willing to make any agreement with them unless they will first dissolve this Donnelly Garment Workers' Union, is that correct?

A. Yes.

(50)

DONNELLY WORKER WILL BE SENT TO UNION CONVENTION

Garment Organization Seeking Support for Strike at Plant.

Sylvia Hull, an employe of the Donnelly Garment company, has been named a delegate from Kansas City to the International Ladies' Garment Workers' union biennial convention May 3 at Atlantic City, Meyer Peristein, regional director, announced Thursday.

The Donnelly worker, according to Peristein, was one of a committee from that garment company who appeared Wednesday night before a joint group representing various Kansas City locals and requested representation at the national convention.

Peristein said the Donnelly committee desired one of their number to appear at the convention and ask the international body to indorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours and improved conditions. The Kansas City joint committee, Peristein asserted, agreed to pay all expenses of the Donnelly delegate.

Other delegates from Kansas City are [redacted] and Alice Vincent, [redacted] employes of the Hart-Shaffner-Marx company, and Miss Wave Dale, business representative of the Kansas City local.

Peristein said the executive committee of the various local unions in Kansas City would meet Thursday afternoon to consider a resolution calling on the national organization to appropriate funds to carry on a strike at the Donnely plant.

The delegates from this section will meet April 30 in St. Louis to go to Atlantic City by special train. Peristein will be a delegate from St. Louis. The convention will last two weeks.

Through Missouri Across to Baltimore

By Meyer Perlstein
Southwest Regional Director

New Contract For Old Firm

The agreement we signed several months ago with the Kansas Dry Goods Co., covering two of their cotton dress shops in St. Louis, was up for discussion at a conference held last week.

The Kansas Dry Goods Company is known as one of the top cut-rate concerns in the country. The manufacture of dresses is only a small portion of the business, and they employ only a few hundred employees in their dress shops. Ours, however, was the first union agreement they ever signed. After that they signed also an agreement with the Amalgamated Clothing Workers, covering certain shirt factories, but our agreement, provides for the predominant union shop.

At this conference the Kansas executives and several lawyers tried to digest the paragraph pertaining to the predominant union shop. They seemed to be wondering how far the present trend of unionism which compelled them to sign this agreement would reach. Some of them insisted that it was my obligation, when I discussed that paragraph with them, to explain to them how I meant it to be carried out in the future. We had before us the task of teaching an old-time, conservative firm the modern trends of labor relations.

To Attend Or Not to Attend?

Local 248, which consists of fourteen workers, is but a few months old. The majority of the members are young women, whom unionism and attending meetings are new. Most of them receive the fact that unionism does reduce hours and increase wages, but why unionism should compel them to attend meetings is something many of them cannot grasp.

The main question was also discussed at the meeting of Local 248, which consists of the workers of Lovenbaum's, a large cotton dress factory. After a long discussion, they also decided that every member of the local must attend at least one meeting a month.

Women Leaders In Kansas City, Mo.

I had a really enjoyable evening recently when I attended a meeting of Local 111 in Kansas City. This local consists of workers in the four smaller cloak shops in that city who have had agreements with the ILGWU since 1933. The girls of this local union also covered the convention floor in Kansas City for the celebration of the end of the industry. They love their Union and look upon themselves as the veterans of the garment strike in Kansas City.

There were around a hundred girls at the meeting, and it was conducted in a most orderly and parliamentary manner. The credit for the fine manner of conducting the local meetings is naturally due to the president of the local, Miss Edyth Stearns, who makes the most outstanding chairman of any local under the jurisdiction of the Southwestern Regional Office. This young lady has acquired her knowledge partly through union activity, and partly through membership in church and social organizations in which she was active.

Due credit must also be given to the four shop-chairladies of these four shops, Anna Kreid, of the Fashion-Beth Garment Company, who is also president of the Kansas City Joint Board; Ethel Cotton, who is the chairman of the Louis Wolfson shop; Louise Smith, chairlady of the LaVerne shop, and Mrs. Shorts of the Eppy Coat Co. These chairladies have had their hands in the battle to unionize the rest of the industry and are looking them at present to make the advantage of this local educational and enjoyable. It was really a pleasure to see how intelligently questions were discussed.

F. C. Children's Dress Local

The Kansas City is the only cloak that manufactures children's dresses. It is known as one of the finest shops in the country. When the agreement was signed with them several months ago, our local of these workers was organized, which is known as Local 111. Some of the workers in the shop were a member of the Union prior to the organization of the local and the entire procedure and methods of [illegible] to be present at their meeting and enjoyed a pleasant evening. The officers of the local, as well as the officers of the shop, have made wonderful progress.

The activities of this local are gradually being expanded. Educational and social activities are next on the program and a good many of the girls in the shop have joined the different classes that have recently been organized, and the organization is growing in beauty and strength.

They Are In Union Shop Now

Scene of Meeting of Workers Employed in Pioneer Cloak Company of Baltimore, Md., On September 24, When Charter Was Presented to Them.

A Fiesta in San Antonio, Texas

A real trade union fiesta was held last week for the first time in the history of San Antonio. The fiesta was arranged by our Union for the workers of the Shirley Frocks Company of San Antonio to celebrate the establishment of the first strictly union shop in the garment industry in San Antonio.

Mexican music, Mexican songs, Mexican dishes, and Mexican entertainers were graciously displayed at this fiesta. Congressman Henry Gonzalez of San Antonio was the main speaker and he delivered one of his enthusiastic speeches. Mr. Levine of the Shirley Frocks Co. and many other American and Mexican speakers, including our Governor Taylor, delivered talks and everybody in the city appeared himself freely, stating that in his opinion there seemed to be no task that was impossible for the ILGWU. They marveled at the vitality of our organization in overcoming the insurmountable obstacles in a city like San Antonio and making a fiesta of this type possible. It was the first real trade union victory for the Mexican workers.

Old and Young in Baltimore, Md.

On Friday, September 24, I installed the local that consists of the workers of the Pioneer Cloak Company. The installation took place at a special celebration arranged for that purpose in connection with a dance that followed the installation. Every worker employed in the shop and a good many others were present. All the prominent Baltimore trade union men connected with the ILGWU were also present by special arrangement, and the celebration lasted until the small hours of the morning.

On Saturday evening, September 25, I had the pleasure of installing [illegible] Local 248. This local consists of workers employed by the Kansas Dry Goods Co., operating two of their cotton dress shops in St. Louis, and by the Lovenbaum & Co. factory, which has just been organized. The installation took place in the Jefferson Hotel, and was followed by a dance. Many of the workers brought their friends and relatives to the affair, and a very pleasant evening was enjoyed by all.

In the Middle West

A BRIEF SURVEY
By Morris Bialis, V.P.

Big Shops Sign Contracts

From Milwaukee comes the news, through Ben Dubish, manager of our local organization in that city, that he has just signed union agreements for situation heads and dress in six of the largest ready-to-wear Milwaukee stores.

They are: Rosenberg's, Frisch's, The Grand, Grunt's, Silver & Gordon, and Boston. Negotiations with other stores are now on and the prospects for signing them up are quite good. The agreements call for minimum wage scales; a 5 per cent increase for those who receive less than $20 per week; a 3 per cent increase for those who get above $20; pay for all holidays that the stores observe, and time and a half for overtime.

The CIO State Meet

The Wisconsin State Industrial Union Council of the CIO held a conference in Milwaukee from September 30 to October 2. 300 delegates, representing 35,000 members, were present. The ILGWU was represented by 13 delegates from Milwaukee, Racine and La Crosse.

B. Ben Dubish writes, was a very successful convention. One of our delegates, Mary Dubrosky, was the only woman who spoke at the convention and she got a fine reception. Moreover Dubish was elected as one of the 11 vice-presidents elected by the State body. The convention also passed a strong resolution to cooperate with our strike at La Crosse.

[illegible] point here however there was no room for them in the large Red Carriage Hall which has a seating capacity of about 1,200.

Of course this problem will have to be and soon if we have to build our own building. Until then, committees of the local are covering every nook and corner of the town to find a suitable meeting space. Knowing Local 248 as I do, I am certain that their committees will find some hall that will be spacious and comfortable for the entire membership to meet in.

The Sterling-Baltimore Campaign

News of importance for the entire cotton dress industry is contained in the developments connected with the plants of the Sterling-Baltimore Corporation.

This firm is among the giants of the industry, controlling and owning as it does twenty-two cotton garment factories throughout the United States. The firm makes every conceivable item in the cotton garment industry from cotton pajamas, shirts, work-clothes, to dress items in which the ILGWU is directly concerned, cotton dresses. All cotton dresses are made in their two plants in Huntington, W. Va., and in Kokomo, Ind.

Through the active assistance of the CIO in Huntington, W. Va. and in Kokomo, a start was made in getting interested groups together who to have appealed to Sterling Head. [illegible] was, ILGWU organizer in Logansport, O., and to our Chicago office, for aid in completing organization. Our office assigned

...ew summer camp, now.

I had a really enjoyable evening recently when I attended a meeting of Local 116 in Kansas City. This local consists of workers in the four smaller retail shops in that city who have had agree-

ment and social activities are next on the program and a good many of the girls in the shop have joined the different classes that have recently been organized, and the organization is growing in beauty and strength.

ILGWU Unit In Kokomo, Ind.

Operator Charlotte Austin Presents Charter of Local 703 to Shop Employed by Bellevue Company in That City—Plan Re-duced Unemployment For Long Time.

played in the shop and a good many guests were present. All the other Baltimore locals were represented by special committees, and the celebration lasted until the small hours of the morning.

On Saturday evening, September 28, I had the pleasure of installing the local that consists of the workers of the Louis Hoover Corporation, who are employed in the three shops that the firm operates in Baltimore. A good many members of Local 6 of Baltimore, who are working at present for Louis Hoover, had to be transferred to this new local, a good many of them union veterans. Gray haired men, many of them members of our Union for the past quarter of a century, and young girls who were just stepping into the movement were there.

At a meeting of this type we could not avoid throwing the old days of our organization. There were tears in the eyes of the veterans when we talked to one another the struggles and sacrifices of all those years. The youngsters were equally listening and there was applause after applause.

The Executive Boards of these locals are now being organized and the machinery of all the locals has been geared up for debates, study circles,

of our delegates, Mary Dubrouski, was the only woman who spoke at the convention and she got a fine reception. Manager Spindel was elected as one of the 11 vice-presidents elected by the State body. The convention also passed a strong resolution to cooperate with our strike in La Crosse.

Chicago Dressmakers, Local 100

The Executive Board of Local 100 is a real congress of labor. It is fully aware of the fact that the destiny of its 4,000 members, and perhaps another 10,000 souls who depend upon them, rests upon it.

At the weekly meetings of the board, discussions as to how to better the conditions of the workers are always on the order of the day. Great respect is given to the new price settlement system that the Union has lately inaugurated and many chairladies are visiting the Executive Board meeting to familiarize themselves with that new system and with the various functions of the organization.

The meetings of Local 100 are very well attended and it is not an exaggeration to say that from 25 to 30 hundred members come to a meeting—and only the other day, on a visit to a meeting of the board, I saw hundreds of members

Through the active assistance of the CIO in Huntington, W. Va., and in Kokomo, a start was made in getting interested groups together, who in turn appealed to Brother Dubinsky, ILGWU organizer in Cincinnati, O., and to our Chicago office for aid in completing organization. Our office assigned Abbel Rechtzeit of Milwaukee to help Brother Solomon conduct the campaign in Huntington and Sister Ida Austin was assigned to carry on an active campaign in Kokomo.

Both offices report excellent progress. Huntington is almost completely organized, and Kokomo is rapidly getting into shape. At first, the company fought our Union with an effort to bring in a company union, but several hearings before the National Labor Relations Board in Cincinnati, in which Brothers David Solomon and Abraham Flexter attended in behalf of the ILGWU, resulted, at least for the time being, in establishing friendly relations with Mr. Hoch, first vice-president of the company. In the meantime sufficient organization work has been done to justify the Union in calling upon the company officials to discuss the negotiations to be started.

In Kokomo, the workers already have been chartered by the ILGWU as Local 703.

Justice

June 15, 1937

By Meyer Pe[redacted]
ILGWU Se[redacted]

In Kansas [redacted]
City.

The dre[redacted] and [redacted] Nelly Garment Company continues to be the sensation of the day and promises to become more dramatic as the drive continues. Many outside elements have entered the field, such as detective agencies, some of them the most notorious agencies in the country, as well as the "protective council" of the anti-union industrialists in the city. This latter group has entered the field to help the Donnelly Garment Company. The campaign we are conducting is a three-fold one. First, to unionize the workers in the shop; second, the wide publicity campaign, and, third, personal contact with retailers that sell, and with the public that buys, the Nelly Don Dress.

This week two groups of our girls have left for the road to visit every town over 10,000 where the Nelly Don Dress is being sold. The first group left last Saturday. A young lady by the name of Jane Palmer, who was formerly a practicing attorney in Kansas City and has for the last six months been connected with our Union, is in charge, accompanied by Esther Smith, a member of Local 115 in Kansas City, who on the picket line has developed an intelligent initiative and knowledge to be entrusted with this important work. These two will visit the Middle West and Eastern section of the country. Another group, headed by Miss Mary Jane Miller, manager of Local 114, Houston, Texas, accompanied by Grace Bullard, a member who recently joined our ranks in Kansas City and had the privilege of being a delegate to our convention, will visit the South. Retailers, labor [redacted] Nelly Don Dress. [redacted] Depot of the Nelly Don Dress, Houston, Texas

Alteration workers in large department stores in Houston are striking. A group in one of the largest stores has recently joined our Union and a local will soon be established for them. With the beginning of the Fall season, demands for shorter hours and an increase in wages will be presented to the large retail stores.

Things are rolling smoothly in Local 214, Houston. While the manager, Mary Jane Miller, is on the road in connection with the publicity campaign against Donnelly Garment, Sol Goldberg of Kansas City will be temporarily in charge.

5820

1517

Justice

May 1, 1937

By Meyer Perlstein,
ILGWU Regional Director

Kansas City, Missouri

Prior to 1933 our Union had hardly any organization in Kansas City. As reported to the Chicago convention, we succeeded, in 1933, in organizing a few of the smaller cloak and dress shops, forming our first local, No. 114, in August of that year.

The Union, however, [illegible] steadily at its task, [illegible] with greater or lesser [illegible] times, for the unionization of the local market. During 1934 and 1935, some headway was made by the organization of a few more of the smaller shops though it still failed to make a dent in the big factories.

The real break in the Kansas City situation came towards the end of 1936, growing out of a strike which the Union conducted against the Stern-Siegman-Prins Co., during July and August of that year. The drive against Stern-Siegman-Prins actually had begun a year prior to that, when in June, 1935, the Kansas City Joint Board began its activity to unionize the workers of the Stern-Siegman-Prins firm. Shortly thereafter, the Missouri State Federation of Labor, in convention, placed this company on its unfair list.

The heroic conduct of our Kansas City workers on the picket line during the Fall of 1936 and the publicity campaign which followed it obviously had the right effect for shortly thereafter the Kansas City Joint Board succeeded after several months of negotiations in reaching an agreement with the firm on the basis of a [illegible] which established [illegible] and wage conditions in the factory in North Kansas City and established normal trade union relations between the workers and the firm. The Stern-Siegman-Prins settlement created a deep impression throughout the women's garment markets in the Middle West. The first immediate effect of the Stern-Siegman-Prins settlement was the signing of an agreement, with the second largest cotton garment firm in Kansas City, the Liberty Garment Company, on February 23, a firm employing 450 workers in two shops in Missouri. This firm became also the first union label cotton dress factory in Kansas City.

The immediate result of this settlement was an agreement with the second largest cloak shop in Kansas City, the Brand and Purits Company. The next agreements signed in Kansas City were with the Marlene Dress Company, a silk dress shop employing about 100 workers, and the Caplan Garment Company, a cotton dress shop employing 100 people, which were followed by strikes in three large shops - the Gordon Bros. Manufacturing Company, a cotton dress shop employing over 200 people in Kansas City and about 150 people in Richmond, Missouri, the Missouri Garment Company, a cotton dress shop employing over 200 people, with whom the Union had had several battles and lost, and the Gernes Garment Co., a children's and juniors' dress shop employing over 200 workers. Agreements were also signed with these firms.

The membership in the Union in Kansas City, which totaled about 175 members before the conclusion of the agreement with Stern-Siegman-Prins, has now grown to 2,200 members. Sister Wave Tobin, former secretary of the St. Louis Joint Board, has been in Kansas City for a year and a half as manager of the Joint Board.

The Union is now concentrating on organizing the few remaining small shops while preparing to organize a drive to unionize the Donnelly Garment Co., the shops owned by former Senator James Reed, and employing about 1,500 workers.

Despite the storm and stress of organization life which our Kansas City locals have had to endure

Justice
March 15 1937

Movement Begun To Organize Nelly Donnelly Firm in Kansas City

Dubinsky Says He Will Deal With Ex-Senator Reed As A Maker of Dresses.

Sidney Dubinsky, president of the ILGWU, on Saturday, March 6, officially launched a movement to organize the Donnelly Garment Company, controlled by Mrs. James A. Reed.

Dubinsky, speaking before more than 700 members of the Union in Kansas City, Mo., in the Little Theatre of the Municipal Auditorium, emphasized the need for organizing all Kansas City garment factories, including the Donnelly concern.

"Mr. Reed said many harsh things about me during the recent political campaign," Dubinsky said, "but all that is past and I shall deal with him only as a maker of dresses. He shall be treated with consideration during our movement to organize his workers, regardless of the stand he takes."

Refers To Campaign

Discussing the report that employees of the Donnelly Company signed a pledge of allegiance to their employers, Dubinsky said:

"In the presidential campaign Mr Reed called me a Bolshevik and said many other uncomplimentary things about me. You would imagine that I had long whiskers, a pocket crammed with bombs and did nothing else but wave a red flag.

"The Bolshevik charge is old stuff. Non-union employers always call their employees such names when they ask for a raise in pay."

Defends Court Plan

Dubinsky also defended the President's plan for reorganizing the United States Supreme Court, asserting the opponents were the same group who opposed Roosevelt's reelection.

"The election November 3 should be considered a mandate by the people for the changes proposed by Mr. Roosevelt since they voted for him knowing that he would do whatever was possible to help them."

Dubinsky said that Reed would receive a polite letter within a few days inviting him to confer with Kansas City labor leaders about signing a union contract.

"If he refuses to meet with us, we shall start our campaign," President Dubinsky said. "It may take a long time to organize the Donnelly company plant, but, we will win out in the end, as all the 250,000 members of our organization are behind us."

Installs Officers

At the conclusion of the meeting President Dubinsky installed officers in the new local Union which was chartered at the Stern-Bleeman-Prins Company when that concern signed a Union contract.

The officers are Omar Rose, president; Ethel Foster, vice-president; Ana Herrig, secretary-treasurer, and Joe Easton, sergeant at-arms.

5822

...Drive in Southwest Sweeps On...

By Meyer Perlstein
ILGWU Regional Director

...new non-Union shops in Kansas City have already established themselves. All the workers in these shops have already joined the Union and the shops are beginning to function as well organized shops where union conditions, union hours, and union treatment prevail.

Seven of the workers participating in the drive of the Liberty Dress Co., where 250 girls are employed have already tasted the perfect life. Practically all the girls joining our Union got into hand with the fighting spirit. For years and years we had tried to organize the Liberty Frock. It is only fifteen weeks since an agreement was signed with the firm and these girls are already on the perfect line organizing others.

Ten more girls strong from the Liberty Frock were on the picket line in the Gordon Mfg. Co. strike last week and everyone who saw them was wondering at how quickly they had acquired their knowledge. They certainly have given a good account of themselves.

Strike in Kansas City

On March 11, the workers of three shops, the Gordon Mfg. Co., a cotton dress shop where about 225 people are employed; the Carmen Mfg. Co., a children's dress shop, where about 100 people are employed; and the Missouri Garment Co., where about 200 cotton dressmakers are employed, went out on strike.

Fifty of the Gordon Mfg. girls, all members of the Union, were filling the front hallway. These three shops are located in one building. The girls stationed the front door so that those who intended to become strikebreakers could not get in. Those 50 girls were on the stairway for 24 hours, behind the front door. They therefore brought their own meals, blankets and for two nights they slept on the stairway. Finally the Health Department of the city forced to make arrangements to move the strikers because of sanitary conditions, and they succeeded.

These three firms will soon have union shops if not, they will never again manufacture dresses. The Gordon Mfg. Co. also has a shop in Richmond, Mo., a mining district. The girls in Richmond are already on the picket lines, thus proving to this Mr. Gordon that they also are entitled to a living wage.

Dorothy Garment Co. Kansas City

One old friend, Jim Reed, former United States Senator from Missouri, will also soon have a Union shop.

The Fabels too are resolved ...

...reply to the letter is recently sent to the firm, but there is a move on among the workers in the Dorothy shop for unionization. A committee of girls have recently joined the Union. Mrs. Dorothy, Jim Reed's wife, made last week a speech to the 1,200 workers they employ, pleading with them not to "listen to the agitators."

For some reason or other, the Reeds figured out that the strike in their shop would be called on Wednesday, March 17. That morning the shop was surrounded by the entire Kansas City police department. We never had, of course, any intention of calling a strike on that day. It only shows that Mrs. Reed feels that the Union is coming, that the work conditions in the Dorothy shop will also have to be put up a basis that will enable the workers to enjoy the rights which a strong organization can give them.

They work in that shop over 50 hours per week. They [illegible] ...ers under 18 in the department while only 10% of skilled operators. The operators average [illegible] ...n such that only 60% [illegible] ...hest. Their entire family shattered to do that. This [illegible] ...ers in that shop [illegible] ...The latest piece of information ...ed out was that 200 [illegible] ...girls who are 200 [illegible] ...

...Mfg. Co. in Memphis was declared on March 15.

I held several conferences with the firm before the strike was called. They were held at the office of the firm's attorneys, who let on that they could do what the Union what they did under the N.R.A. or, perhaps one thing or the something else. The firm ...used to concede the Union shop in the belief that the girls, as they stated, "who were being organized by them as children," would never go on strike.

They really were treated as "children." They worked 47½ hours per week for $8 or $9 wages. But the surprise the firm got on the morning of the strike was, probably, something they did not expect. Everyone of their workers walked out; they cleared out of the shop 100 per cent.

And now that they are on strike, these girls with happy smiles on their faces, are giving a good account of themselves. The enthusiasm they display is really unbelievable. The City Mayor of Kansas City, together with a group of city officials, has now brought about a truce between the Union and the firm to save the way for whatever negotiations. The union is that the ...ers is to close the shop ...manufacturing, and that the Union ...ers return their ...pending ...to are on the lookout for further ...

Dallas Picket Line As Hectic As Ever

...Dallas Girls At Th...

K. C. ILGWU Strikers Hold Lobby

...Girls Group of Strikers Gordon, of the Gordon Dress Mfg. Co., Missouri Garment Co., and Queen Garment Co., All Three of Kansas City, Mo., and Located in the Same Building, Occupy the Lobby Floor at 2017 Grand Avenue, Forming a Picket Fence at the Entrance

...strike against the Dallas ...

...from 35 to 37. The dispute was ...about before the firm for on the ...ment of wages and for collective ...negotiations. The firm's attorneys ...advised me that he would not give ...an immediate reply because ...some of the members of the firm ...are on the Coast for a vacation.

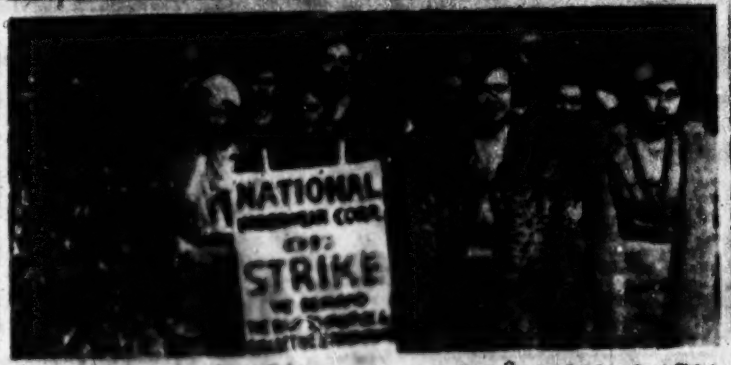
...ing about the shop of the ...ers, very few could be induced ...the line to go to work for them ...Paschal, Florida, when the firm ...ew that the members of their ...ers could get to Dallas, they be...an to talk about moving their ...ers from Paschal to Pensacola, ...On March 15, a conference was held at the Hotel Stevens in St. ...ouis, Mo., at which conference ...James Dees, the Mayor of Pensa...cola, a group of the members ...of the Chamber of Commerce of ...Pensacola, together with Mr. ...Nelson, Superintendent of the ...Gulf Mine Workers, and myself, ...as representative of the I.L.G.W.U., were present.

The matter of coming to an ...agreement with our Union was discussed. This was the first time ...that the Stevens Dress firm met us ...and for several hours different ...matters were discussed. A preliminary arrangement reached at ...the end of this meeting was that I ...was to draw up an agreement, ...and it is the first and that they ...would let me know within a week ...or ten days whether they would ...sign the agreement.

Talk Ch...

Now our work is continuing ...towards the establishment of high...er wages and collective bargaining ...in one of the largest unorganized ...dress in the country, where men ...and women people are employed, ...and that is the Montgomery Ward ...Company Co.

Society Women Picket St. Louis Underwear Shop



5823

1523

K.C. Star 5/25/32

Meyer Perlstein, Organizer, Opens Headquarters Here

Meyer Perlstein of St. Louis, southwest regional director of the International Ladies Garment Workers' Union, opened headquarters at 1022 Baltimore avenue today to organize, he says, the Donnelly Garment company.

"We will open with an advertising campaign through newspapers and radio against the patronage of garments manufactured in the Donnelly plant," Perlstein said. "Six girls now are undergoing training to travel from coast to coast visiting store keepers handling the Donnelly garments urging them to stop handling the Kansas City product. If the store operators refuse to comply their stores will be picketed.

"As the membership of our union in the Donnelly plant increases, a strike will be called. In such a case additional money will be required and we are ready to spend $250,000 to accomplish our goal, and that amount is ready."

There are two organizers working the plant at the present time, Miss Wave Tobin, manager of the local union, said, and this number will be increased to fourteen, she said, to build up the membership of the I. L. G. W. union in the Donnelly plant. Both Miss Tobin and Perlstein said a strike would be necessary.

THE DALLAS JOURNAL

5826

DALLAS, TEXAS, TUESDAY, OCTOBER 1, 1935

Injuction to Prevent Trinity Cal

Supreme Court Refuses Habeas Writ

Meyer Peristein, representative of the International Ladies' Garment Workers' Union, Tuesday was serving the second day of his three-day jail sentence for contempt of court for his participation in the disorders some weeks ago in connection with the local garment workers' strike. Before Peristein can be released from jail he must also pay a fine of $100.

The picture shows the union representative behind the bars of his cell door just before he learned that the Supreme Court had refused to permit his release on a writ of habeas corpus.

[fol. 5829] (Plaintiff's Exhibit 71.)

Affidavit.

State of Missouri,
City of St. Louis—ss.:

Before me, the undersigned Notary Public, personally appeared James J. Milligan, who on his oath states:

I am a practicing attorney in the City of St. Louis, Missouri; that during the year 1935 I was engaged as Special Prosecutor in the two St. Louis City Courts and the two St. Louis Courts of Criminal Correction in connection with the prosecution of charges against persons involved in the strike of the International Ladies' Garment Workers' Union against the Forest City Manufacturing Company. The defendants in these cases were defended by attorneys employed by the International Ladies' Garment Workers' Union, and that Union supplied bail bonds for such defendants.

The charges in these cases were principally for violations of St. Louis City Ordinance 1471, covering disturbers of the peace, and St. Louis City Ordinance 1472, covering egg-throwing.

The following is a list of a few of the convictions obtained in the City Courts:

Defendant	Date of Offense. 1935	Date of Trial 1935.	Penalty Assessed	Court
Pearl England	March 12	Mar. 20	$25. & costs	City Ct. #1
" "	March 12	" "	"	"
" "	Mar. 14	Mar. 20	$25. & costs.	City Ct. #2
" "	Mar. 26	Apr. 4	$25. & costs.	"
" "	Apr. 5	Apr. 17	$25. & costs.	"
" "	Apr. 12	Apr. 18	$50. & costs.	City Ct. #1
Hester Vance	Feb. 26	Apr. 4	$50. & costs.	City Ct. #2
" "	Mar. 14	Mar. 20	$25. & costs.	"
" "	Mar. 14	Mar. 20	$25. & costs.	"
" "	Mar. 15	Apr. 4	$25. & costs.	"
" "	Apr. 5	Apr. 17	"	City Ct. #1
" "	" "	" "	"	"
Virginia Price	Mar. 1	Mar. 20	$25. & costs.	"
"	Mar. 22	Apr. 4	$10. & costs	City Ct. #2
Lena Meyers	Mar. 26	Apr. 4	$25. & costs.	"
" "	Mar. 28	" "	$90. & costs,	"
" "	" "	" "	$100. & costs. & 30 days,	"

[fol. 5830]

Dorris Smith	Mar. 12	Mar. 20	$25. & costs	City Court #1
" "	" "	" "	" " "	" " "
" "	" 28	Apr. 4	$100. & costs & 30 days	" " #2
" "	" "	" "	$90. & costs	" " "
" "	" 29	" 17	$25. & costs	" " #1
Rachael Koontz	" 22	" 4	$25. & costs	" " #2
" "	" 22	" 4	$25. & costs	" " "
" "	" 29	" 17	$50. & costs	" " #1
" "	Apr. 1	" 17	$10. & costs	" " #2
" "	" 12	" 18	$100. & costs	" " #1
Mary Sullivan	Mar. 14	Mar. 20	$25. & costs	" " #2
Mary Temming	Feb. 8	Apr. 11	$100. & costs	" " #1
Artie Wilson	" 11	" 4	$25. & costs	" " #2
Walter Muthe	Dec. 12/34	" 4	$50. & costs	" " "
Celia Cervinski		" "	$10. & costs	" " "
Irene Page		" "	$10. & costs	" " "
Sarah Reiss		" "	$25. & costs	" " #1
Estelle Foster		" 11	$250. & costs	" " "
Dorothy DeVeydt		May 10	$10. & costs	" " #2
" "		" "	" " "	" " "
" "		" "	$25. & costs	" " "
Helen Dorris		" "	$10. & costs	" " "
" "		" "	" " "	" " "
Catherine Betts		" "	" " "	" " "
" "		" "	" " "	" " "
Dorothy Wagner		" "	$25. " "	" " #1
Helen Harris		June 6	$10. & costs	" " #2
" "		" "	$10. & costs	" " "
Dorothy DeVeydt		" "	$50. & costs	" " #1

The following is a list of a few of the convictions rendered in the City Courts, which were sustained on appeal in Division No. 2 of the St. Louis Court of Criminal Correction:

Cases Tried On May 2, 1935, in
St. Louis Court Of Criminal Correction,
Div. #2, And Disposition

Name of Defendant.	Disposition.	Original Fine	Final Disposition.
Rachael Koontz	Sustained	$10. & costs	Paid $10. & costs.
Rachael Koontz	Sustained	$100. & costs	Paid $10. & costs
Rachael Koontz	Sustained	$50. & costs	Paid $10. & costs
Rachael Koontz	Sustained	$25. & costs	Paid $10. & costs
Rachael Koontz	Sustained	$25. & costs	Paid $10. & costs
Doris Smith	Sustained	$25. & costs	Paid $25. & costs
Doris Smith	Sustained	$25. & costs	Paid $25. & costs.
Doris Smith	Sustained	$100. & costs	Stayed on good behavior
Doris Smith	Sustained	$90. & costs	Stayed on good behavior (Workhouse sentence)
Doris Smith	Sustained	$25. & costs	Stayed on good behavior
Hester Vance	Sustained	$25. & costs	Stayed on good behavior
Hester Vance	Sustained	$50. & costs	Stayed on good behavior
Hester Vance	Sustained	$25. & costs	Paid $25. & costs.
Hester Vance	Sustained	$25. & costs	Paid $25. & costs
Hester Vance	Sustained	$25. & costs	Stayed on good behavior
Pearl England	Sustained	$25. & costs	Stayed on good behavior
[fol. 5831]			
Pearl England	Sustained	$25. & costs	Paid $25. & costs.
Pearl England	Sustained	$25. & costs	Stayed on good behavior
Pearl England	Sustained	$25. & costs	Paid $25. & costs
Pearl England	Sustained	$50. & costs	Stayed on good behavior
Lena Meyers	Sustained	$90. & costs	Paid $10. & costs
Virginia Price	Cont'd to May 16,	$25. & costs	(sustained May 16)
Virginia Price	Cont'd to May 16,	$10. & costs	(Sustained May 16)
Artie Wilson	Sustained	$25. & costs	Stayed on good behavior
Marie Sullivan	Cont'd to May 16,	$25. & costs,	(sustained May 16)
Estelle Foster	Sustained	Motion for new trial Set for May 23rd.	

The evidence in some of these cases of peace disturbances showed that the police were present and on duty at the time of the assault, but were unable to intercede in time to prevent the assaults. The facts adduced in these trials of peace disturbance range from the use of vile language to bodily assaults and injuries, stripping of clothing, throwing acid, beating and kicking employees of the Forest City

Manufacturing Company who continued to work after the strike was called by the International Ladies' Garment Workers' Union.

JAMES J. MILLIGAN.

Subscribed and sworn to before me this 27 day of October, 1937. My commission expires December 17, 1937.

JENNIE R. FRAME.
Notary Public.

[fol. 5832] Cross-Examination of Mr. Dubinsky.

p. 2214 By Mr. Hogsett:

p. 2227 Q. What position does Meyer Perlstein hold, and did he hold in 1937?

A. Regional Director.

Q. Southwest Regional Director?

A. Southwest Regional Director.

p. 2228 Q. What were his duties? What jobs did you tell him specifically that you wanted him to [attent] to?

A. General supervisor of this territory; supervise the local unions, advise them in their actions, guide them, help them in their organizational activities, help them on all matters where he could be of value and assistance to them.

p. 2229 Q. You felt that you had a reasonably accurate picture of what Mr. Perlstein was doing?

A. I had a reasonably fair picture of what he was doing.

p. 2233 Q. I will show you something that might jog your memory. I hand you Plaintiffs' Exhibit 28A, being your announcement to the Associated Press in Washington, on November 9, 1936, and ask if that refreshes your memory as to who it was that determined upon the drive to organize the Donnelly Garment Company?

A. This indicates that the General Executive Board authorized it.

p. 2234 Q. Was the Donnelly Garment Company drive specifically authorized by the General Executive Board?

A. Yes; it was authorized by convention subsequently.

Q. I am sticking, for the present, to November 9, 1936, in Washington, D. C. and I would like a direct answer: Was the drive to organize the Donnelly Garment Company specifically authorized by the General Executive Board at its meeting on that day and in that city?

A. Yes.

p. 2236 Q. Now, all of these drives that I have mentioned were purely local matters except the drive on the Donnelly Garment Company and the drive on the St. Louis companies; those had the attention of yourself and the General Executive Board, is that right?

A. Those that you have mentioned?

Q. Yes. A. You are right.

Q. Now, Mr. Dubinsky, who had charge of the carrying out of the drive to organize the Donnelly Garment Company?

[fol. 5833] A. Meyer Perlstein and Wave Tobin.

p. 2238 Q. Now, in the drive on the Donnelly Garment Company who laid out the particular plan of campaign there? A. Meyer Perlstein.

Q. Your Lieutenant? A. Yes.

p. 2247 Q. Now, in case all of the [employers] of a plant, 100 percent who have their own union, and through that union they enter into a collective agreement with their employer, and they are entirely satisfied with their wages, hours and working conditions and representation, is it the International's policy to let those employes alone or do you attempt to take them into your union, nevertheless?

Objection—immaterial

A. We attempt to take them into our union, nevertheless.

Q. That is to say, you claim the right,—not only claim it but act on it, act on the claim that you have a right to organize [employers] who are already organized and who unanimously say they are satisfied and have no grievances.

That is what your answer amounts to doesn't it?

Objection—immaterial

A. Yes.

p. 2248 Q. Now, take another case. The case of a garment plant where all the employees in that plant have formed their own union and where the International does not have a single employee as a member, is it the policy of the International to let those employees alone with their organization they have already got or do you attempt, nevertheless, to take them into your union?

Objection—immaterial

A. We will make attempts to take them into our union.

p. 2250 Q. Do you recall, referring to the Gernes Garment Company, I mentioned reading an article in Justice of April 1, 1937, where your regional director, Perlstein, said, referring to the Gernes, the Gordon and the Missouri Garment Companies "These three firms will soon have union shops. If not they will never again manufacture dresses?" Did you read that?

Objection—immaterial

A. I think I did.

Q. To bring it back to your mind clearly I show it to you. Do you see it there in the article by Meyer Perlstein under date of April 1, 1937, referring to the strikes in Kansas City and specifically to the Gordon, Missouri and Gernes Companies this language: "These three firms will soon have union shops. If not, they will never again manufacture dresses." Do you now remember reading that?

Objection—immaterial

A. I now remember not having read it.

Q. Your memory has improved since I showed it to you?

Objection—immaterial

[fol. 5834] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. Because I heard it here at the court and thought that I read it but now when I observe it in the paper I remember distinctly not having read it. Still and all I am ready to go into it.

Q. Do you recognize that statement?

A. Not in the language that it has been written.

Q. Do you endorse it with any qualifications?

A. Yes.

p. 2251 Q. And this paper under its banner, as a part of its banner says that it is the official organ of your union? A. Yes, it is.

p. 2254 Q. I will withdraw the question and put another one. In case 100 per cent of the employes protest against your intervention you go right along and attempt to organize them nevertheless, don't you? A. Yes.

p. 2255 Q. Before you ordained the beginning of that drive had you personally ever been in the Donnelly plant or had you ever talked with any employes of that plant? A. No.

Q. To the best of your knowledge had Mr. Luigi Antonini ever visited the plant or talked with any of its employees?

A. To my knowledge, no.

Q. Or had Mr. Abraham Katovsky ever?

A. To my knowledge, no.

p. 2256 Q. Or had Mr. Morris Biotis?

A. To my knowledge, no.

Q. Or had Mrs. Rose Pesotta?

A. To my knowledge, no.

Q. Or had Mr. Israel Feinberg?

A. To my knowledge, no.

Q. Or had Mr. Salvatori Ninfo?

A. To my knowledge, no.

Q. Or had Mr. Basilio Disti?

[fol. 5835] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. To my knowledge, no.

Q. Or had Mr. Max Cohen or Mr. Louis Levy, or any other member of the general executive board? A. To my knowledge, no.

p. 2257 Q. I show you exhibit 29, which is a newspaper item in the Kansas City Times, I think, of February 26, 1937, and ask you to glance it over. A. Yes I have read it.

Q. Now that you have read it do you approve what he says there; do you regard it as an accurate statement of the plans and policies of the International at the time he made the statement?

A. Providing you go item by item, generally so.

p. 2258 Q. I am asking you only whether you approve of what Mr. Perlstein is there represented as having said?

A. I will have to go over it item by item.

Q. It is rather important. I wish you would take the time to do that.

A. "Meyer Perlstein of St. Louis, regional director of the union, said that the International headquarters had appropriated a large sum to be spent in the drive seeking recognition of the I.L.G.W.U., as the collective bargaining agent in the Donnelly Garment Company." For the campaign of organizing the dress industry or the non-union shops, in substance he is right.

Q. Pass to the next statement attributed to Mr. Perlstein, either in quote marks or otherwise?

A. "We are going to send a letter to the Donnelly Garment Company within the week suggesting a conference to establish collective bargaining on the questions of wages and working hours." I agree with him on that.

Q. Continue.

p. 2259 A. "If the firm refused, we'll go to the consuming public of the country and advise buyers of the wages and hours prevailing there now." I agree with that.

Q. Take the next statement attributed to him.

A. "The regional union director, who will remain in Kansas City to supervise the organization campaign, said the minimum wage in this section for women making silk dresses is $22.05, working a five-day week. He said the Donnelly Garment Company employees receive a minimum of $15.00 weekly, and that they are working forty-five hours weekly now." Substantially right.

Q. Take the next.

[Vol. 5836] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. "Mr. Perlstein announced that Miss Jane Walker Palmer, 4040 Bellefontaine Avenue, a graduate of the Kansas City School of Law in 1932, started work yesterday organizing an educational campaign for members of the union." I suppose those arrangements he made and so stated. "After-work classes in music, art, economics, public speaking, trade unionism, parliamentary law, and dramatics will be offered the members. The board of education will be asked to furnish teachers, Mr. Perlstein said." I find no objection to that. "The campaign lines. Part of the union's campaign directed against the Donnelly Garment Company will be to send six women to cities and towns where its garments are sold 'advising retailers and labor organizations', Mr. Perlstein said. Miss Palmer will have charge of this squad of field workers."

p. 2260 I find no objection to that.

Q. You knew that was part of the plan and it had your full approval?

A. I knew that he contemplated it.

Q. And it had the full approval of yourself and of the general executive board?

A. There was no objection on my part.

Q. And that is true of the general executive board?

A. Until ratified by the general executive board, because between sessions I am to exercise my own judgment.

Q. Take the next paragraph.

A. "'Within a year we'll have it completely organized', Mr. Perlstein said, 'As soon as we have enough members, we'll call a strike. This will be in addition to carrying our side to the consumers'". I have no objection.

Q. Do you now, speaking as president of the union, say that was a proper statement for Perlstein to make for your union at that time?

p. 2261 A. I would have added the words "Subject to the approval of the general executive board."

Q. Other than that do you approve of what he said?

A. Other than that I do approve.

p. 2262 Q. Now, on March 5, 1937, you made a speech here at Kansas City, didn't you, about your plan to organize the Donnelly employees?

A. Yes, I did.

Q. I show you Exhibit 31 and ask you to glance it over and see whether it correctly quotes you, with substantial accuracy.

A. As I recall, this was not the report of the meeting held, but it was rather an interview the following day.

Q. I gathered that it was a report of the meeting, but whatever it is is it substantially accurate, is it a substantially accurate account of what you said?

[fol. 5837] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. Yes.

Q. In that connection you will note that you apparently learned and made comment upon the fact that the employees of the Donnelly plant had signed a pledge of allegiance to their employer?

A. Yes.

p. 2264 Q. Don't you know that the Pledge of Allegiance was not all that this document contained, but that it also said, 'We refuse to acknowledge or be represented by any labor organization?

A. I didn't know it at that time, but I know it now.

Q. That wouldn't have made any difference if you had known that?

A. Not much, frankly.

Q. In other words, the attitude of the employees, speaking with perfect frankness and candor, was a matter of utterly no importance to you?

A. Based on my knowledge and experience under the circumstances that these things happened, it did not.

p. 2266 Q. The record shows that on May 25 Mr. Perlstein gave out another announcement to the Kansas City Star, which I will now show you

p. 2267 and ask you to glance that over.

A. Yes, I have read it.

Q. Did you see the item at the time or substantially at the time it appeared?

A. No.

Q. Was it reported to you at the time or at about the time it appeared?

A. I don't remember it having been reported to me.

Q. As you now read it do you approve it as a correct statement of the then plans of the International for the organization of the Donnelly plant?

A. No.

Q. In what respect is it not an accurate statement of the plan?

A. "'We will open with an advertising campaign through newspapers and radio against the patronage of garments manufactured in the Donnelly plant' Perlstein said." I agree with that. "'Six girls now are undergoing training to travel from coast to coast visiting storekeepers handling the Donnelly garments urging them to stop handling the Kansas City produce.'" I could not agree. If he had said "The Donnelly product", I would have agreed.

Q. Is it not apparent that is what it means?

[fol. 5838] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. It is apparent.

Q. But "the Kansas City product" in the connection in which those words are used obviously means the Donnelly product?

A. Yes.

Q. Then you do approve that?

A. Yes.

p. 2274 Q. Mr. Dubinsky, yesterday you said that even though all the employees in a plant are already organized in their own union and have said they do not want to join your union or be represented by it, it is your policy nevertheless to attempt to organize them. You recall that?

A. Yes, I recall that answer.

Q. In such a case do you seek a closed shop contract with the employer?

A. If we can get it.

Q. And if you get a closed shop contract, under those conditions it means that the employees will have to join your union to hold their jobs?

A. In those cases we do not expect the firm to discharge the workers.

Q. Well, what is a closed shop contract, if it does not mean that they either must be members or must become members of your union?

p. 2275 A. A closed shop contract would mean that all workers who are employed are to be engaged by a firm to be members of the union.

p. 2276 Q. I will eliminate the word "common". If in the conditions that I have put to you this morning you get a closed shop contract with the term in it, then the employees must join your union or lose their jobs, is that right?

A. If that condition should be obtained from the employer, he should have agreed to sign such a contract, that would be the requirements of the contract.

Q. And the employees would have to join whether they wanted to or not, or lose their job?

A. If this would have been the requirements of the contract.

Q. We will start again. If the contract requires them to join, that is, the contract between the employer and your union, then the employees, whether they like it or not have to join or lose their jobs?

A. Exactly, if this is the requirement of the contract.

p. 2279 Q. Now, referring to the article given out by Mr. Perlstein on May 25, 1937 you recall the article had an item in it as follows: "As the membership of our union in the Donnelly plant increases, a strike will be called. In such a case additional money will be required and we are ready to stand $250,000.00 to accomplish our goal, and that amount is ready." You recall that in the item?

[fol. 5839] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I recall that.

Q. Was that a true statement or false statement, the $250,000.00 had been appropriated for the Donnelly drive?

A. It was not appropriated, $250,000.00 for the Donnelly fight at that time.

Q. Did you later?

A. No.

Q. Well, the statement was just without foundation altogether, was it?

A. What period was it the statement appeared? Was it after our convention?

Q. The exact date is May 25, 1937.

A. Well, by that time we had the decision of the convention, $100,000.00 appropriated.

Q. I am speaking about a quarter of a million dollars, Mr. Dubinsky, the exact language is "In such a case additional money"—that is in the event of a strike—"We'll be required

and we are ready to spend $250,000.00 to accomplish our goal and that amount is ready."

A. If it referred to Nell Donnelly Company it was not correct; if it referred to the cotton
p. 2280 garment industry or the dress industry it was correct.

Q. This refers only to the Donnelly plant?

A. Then it was not correct.

Q. Then it is a false statement?

A. It was not correct.

Q. Now, I show you a full page advertisement inserted by your union in the Kansas City Star or Times and the Kansas City Journal-Post on June 9th and June 8th respectively and ask you to hold one copy of it while I keep the other. Do you recall the insertion of those ads by your union?

A. Very definitely so.

p. 2281 Q. I notice at one place in that ad which is addressed to the management of the Donnelly Company you say this "And as practical business people you, we take it for granted, realize that whatever your feelings for the moment may be you will eventually have to carry on collective dealings with the International Ladies' Garment Workers' Union which cannot, should not and will not permit one individual employer to segregate itself from the rest of the industry in matters of work conditions and other fundamentals of employment." Now, that represented your view at that time did it, and the view of your General Executive Board?

[fol. 5840] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. It represented my view at that time, it represents my views today.

p. 2283 Q. Now, will you give me your attention to the lower part of the second column of the ad: "It still lies within your choice to avoid a conflict which may prove as costly as it appears futile at this stage to all sides involved in it. Your readiness to meet us in this endeavor in a spirit of industrial statesmanship rather than in that of guerrilla warfare will be applauded by every constructive factor in the dress industry and by industry in general the country over." That represented your views at the time the ad was written?

A. Yes.

Q. Whose particular choice of language was the use of the word "guerrilla warfare?" Was that Mr. Dannich's or yourself?

A. That is Mr. Dannich's.

Q. But you approved it?

A. I thought it fits into the situation.

Q. I say you approved it?

A. I said I approved the entire ad. The entire ad was submitted [for] me for approval so I approved it.

p. 2288 Q. Did you ever tell Perlstein that you were opposed to violence?

A. I don't think so.

p. 2289 Q. Did you ever tell Wave Tobin that you were opposed to violence?

A. I don't think so.

Q. Did you ever tell Merle Zappone of your Texas organizing staff that you were opposed to violence?

A. I don't think so.

Q. Did you ever tell Edith Phillip of your St. Louis organizing staff that you were opposed to violence?

A. I don't think so.

p. 2300 Q. Let me have Justice, Exhibit 45-2, April 1, 1937. Will you look at page 8 and see whether you see an item there regarding that fact that "Over 200 girls strong from the Liberty Frock were on the picket line in the Gordon Manufacturing Company strike last week and

everyone who saw them was wondering at how quickly they had acquired their knowledge. They certainly have given a good account of themselves." Do you see that?

[fol. 5841] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. Yes.

Q. Now, under the constitution, page 38, the General Executive Board is given power, at the bottom of Section 2, Article 7: "Whenever any branch of the trade is involved in a strike or lockout, the General Executive Board shall have the power to order a strike in such other branches as it may deem necessary in order to assist the members on strike." Is that right? A. That is the constitution.

p. 2303 Q. You did not say you were opposed to it did you? Well, I will refresh your memory "Mr. Dubinsky, what is the policy of your organization with reference say first to sit-down strikes?

A. We do not favor sit-down strikes.

Q. Do you or do you not condemn them?

A. We had no occasion." That was your evidence yesterday?

A. Yes.

p. 2304 Q. Now, when did you reach the frame of mind where you say you do not favor the sit-down strike? When did that first become a part of your belief?

A. It would be hard for me to tell.

Q. Do you remember any particular change in your mental process on that subject when you reached a conclusion that "From now on I am against it"?

A. I remember when the first sit-down strike took place in the auto industry, when it was considered by some labor leaders as an industrial weapon for establishing collective

bargaining and conditions for workers. There were differences of opinion within labor circles whether it is a legitimate weapon, legal and effective.

p. 2305 Q. And which side were you on?

A. I was of those that believed that it is a legitimate one.

Q. That is you thought it was all right?

A. I thought it was all right; I doubted whether it is effective.

Q. But legally you thought it was perfectly all right?

[fol. 5842] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. Legally I thought it was all right.

Q. For strikers to walk in on a plant and take possession of it and keep it as long as they wanted to; that struck you as perfectly legal? A. It struck me legal.

p. 2311 Q. You know and knew at that time that the charge on which he was convicted was that of having conspired to have a woman worker stripped naked in the public streets of Dallas, Texas, you knew that?

A. Yes. You refer to the charge?

Q. I am referring to the charge and the conviction? A. Yes.

Q. Yet, in your report to the Atlantic City convention of 1937 you said "The Dallas dress strike which lasted from March until November, 1935 will occupy a place of honor in the annals of our union." You said that?

p. 2312 A. If it is in the report we said it.

Q. Well, you signed the report didn't you?

A. Oh, yes.

p. 2314 Q. Mr. Dubinsky it has been shown that Exhibit 36 was distributed by your union. Did you know anything about it,—that is the pamphlet you have heard reference to?

A. I know in a general way that such pamphlets have been distributed.

Q. Did you approve the get-up of it or make it, the contents?

A. Now, it was not submitted to me for approval.

Q. Was the March 9th letter ever submitted to you for approval?

A. No, it was not.

Q. Did you know about that also? A. Yes.

Q. You paid the distributors of this pamphlet who traveled over the country talking to Donnelly customers and civic clubs and labor unions? A. Yes.

Q. You paid all their expenses and for their services?

[fol. 5843] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. Yes.

p. 2334 Q. Now, coming to the contracts, I hand you Exhibit 99 which contains your copies of contracts with Biberman and Ginsburg. I want to ask you some questions about those contracts. A. May I get the original copy?

Q. Certainly. I just want to make two or three comparisons. I give you the provisions for cutters in the Donnelly contract. The Donnelly contract specified a minimum weekly wage of $42.50 for A-class machine cutters. I want you to look at the Ginsberg contract and the Biberman contract and see if you find a provision there equal to or as good as the Donnelly provision for cutters?

A. This contract is not Biberman's; this is Missouri.

Q. It contains eight contracts, Mr. Dubinsky. Perhaps I should help you, Mr. Dubinsky, by finding that.

A. Please.

Q. Let's get the connection again. I have read the substance of the Donnelly provision for cutters, $42.50. What does the Ginsberg contract provide for cutters?

A. This agreement was made on the 4th day of May, 1937.

Q. 1937? A. Yes.

p. 2358 Further Cross-Examination

By Mr. Tyler:

Q. Your organization encourages friendliness and cooperation between the employer and the employee, does it not?

p. 2359 A. Yes.

Q. So that the mere fact, if it was a fact that a group of employees had some feeling of appreciation or friendship to the employer would not, of itself, make it impossible for them at the same time to organize a good faith labor union, would it?

A. Yes, what they term a good faith labor union.

Q. You say a feeling of appreciation by the employee to the employer would make it impossible to organize a good faith union?

A. No, it would not make it impossible.

Q. You knew about the bulletin No. 36 "We do not patronize the Nelly Don dress" which has been shown to you, sent out by the International Ladies' Garment Workers' Union at the time it was sent, did you?

[fol. 5844] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I stated already once before that I did not see the bulletin but I had a general knowledge of it.

Q. Did you have a knowledge of this claim made in it "The firm has not replied to this letter but it is understood it has organized a company union which has been named the Donnelly Garment Workers' Union."

A. I did not have the knowledge that it is exactly as it is in this letter; I had a general

p. 2360 knowledge about it.

p. 2361 Q. And don't you know as a matter of fact that this protest against union domination made on March 2nd was against your union and had no reference whatever to a union of their own? Don't you know that?

A. It meant any union.

Ex. 28-a

GARMENT WORKERS' DRIVE.

Funds Set Aside for Unionization of Entire Industry.

(By the Associated Press.)

WASHINGTON, Nov. 9.—An immediate nation-wide drive to unionize an estimated 90,000 unorganized clothing workers was ordered today by the executive board of the International Ladies' Garment Workers' Union.

In deciding on a vigorous effort to extend its influence into new fields, the board voted an appropriation of ¼ million dollars and pledged "all its material resources." David Dubinsky, president of the union, was authorized to utilize his entire present staff in the drive and to employ fifty additional organizers.

Deferred until tomorrow was consideration by the board of its future relationship with John L. Lewis's committee for industrial organization.

Dubinsky said the ladies' garment workers now has a membership of 225,000 and about 4 million dollars in its treasury. About $130,000 was spent in helping finance President Roosevelt's campaign for re-election.

He said the organization drive would open with establishment of offices in St. Louis, Kansas City, Pennsylvania and Upper New York.

Dubinsky asserted the St. Louis office would have suffered for Missouri except that the union "wants to give Jim Reed a break." He explained that the wife of James A. Reed, former Democratic senator from Missouri who supported Governor Landon in the campaign this year, is the founder and principal stockholder of a factory in Kansas City.

The Kansas City office of the drive will concentrate on unionizing employees in the Donnelly Garment Company, which Dubinsky says is largely owned by Mrs. Reed.

OF COLUMBIA: ss

I John W. Henderson, being duly sworn upon my oath state:

That on or about November 9, 1936, in Washington, D. C., I interviewed David Dubinsky, and the attached Associated Press report is an account of that interview which was published by various Associated Press member newspapers.

The report may have been edited in minor details after I wrote it, but to the best of my recollection the form in which it appears in the attached newspaper clipping is a true report of the substance of Mr. Dubinsky's statements as I understood them.

DATED: this 3rd day of September, 1937

John W. Henderson

Subscribed and sworn to before me this 3rd day of September, 1937.

Wm. E. Brown
Notary Public in and for the
District of Columbia

My Commission Expires January 15, 1940

Ex. 232

[fol. 5851] SYLVIA HULL

Resumed the stand and further testified as follows:

Cross-Examination

p. 1763 Q. Mrs. Hull, you worked for the Donnelly Garment Company about eight years, didn't you?
A. Yes, sir.
Q. Would you please help me remember the date you began. I forget that?
A. As near as I can remember it was in February or March, 1929.
Q. Speaking generally of your employment down there would you say that you got along all right and made pretty good wages?

Objection—immaterial

A. Well part of the time I did and part of the time I didn't.
Q. That would be true of the company's business would it not; part of the time it might be good and part of the time it might not?

Objection—immaterial.

A. Not altogether; sometimes we had better prices than we did other times.
Q. Of course the operations that you were working on would differ from time to time?

Objection—immaterial

A. Yes, sir.
Q. And that would just be a normal thing, wouldn't it, for the prices to range upward or downward according to the character of the operation?

Objection—immaterial

p. 1764 A. Well, at different times the operations were priced higher than they were at other times.
Q. There must have been some reason for that, wasn't there?

Objection—immaterial

A. Well, I think there was.
Q. What was it, if you know?

Objection—immaterial

A. Well, to be exact about it, some time I remember when our prices were raised was during that NRA, and before that and it was at the time when the girls were in court and our prices were raised then.
Q. And were they raised at other times, too, than that?

Objection—immaterial

A. Some other times but usually—
Q. (Interrupting) But you just happen to remember those when the NRA hearings were?

Objection—immaterial

[fol. 5852] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I do remember that time.
Q. But it is a fact that they were raised and lowered and raised and lowered during the eight years that you worked there, isn't that right, depending upon the change in the operations, the change in the styles, the change in the materials, the change in the difficulty of doing the job; now frankly, isn't that true?
A. Sometimes our prices were better than others.
Q. We will pass that. Now, would you say that your wages for the first months or we will say the whole time of 1937 that you were there would be fair cross-section of your wages generally? A. No, sir.
p. 1765 Q. Let me read you your wages for that period of time and ask you if you recall that these were about the wages that you drew from the period January to the time you left. For the week ending January 8th, 1937 $16.63; January 16th, $12.43; I will omit the dates here-

after because they run straight along: $17.22; $22.73; $22.38; $27.34; $29.05; $31.29; $25.90; $17.34; $21.71; $22.39; $25.85; $25.61; $29.92; $22.62. Does that sound right to you?

A. Well I have a copy of my own wages here, if you don't mind if I look it over.

Q. Look and see. How, by the way did you happen to keep it?

A. The company gave me a little book here in 1937 to keep the record in.

Q. All right, check with what I have which has been handed to me as taken from the payroll. You say the company gave you what?

A. They gave us this litle book when the old age assistance—old age benefit came in and this was taken out; they gave us this to keep a record in.

Q. All right, now read what you have. Who wrote it down in the book by the way?

A. I did.

Q. It is not anything the company wrote?

A. No, sir. Do you want me to start the first there in January?

Q. Yes, the week ending January 8th.

[fol. 5853] Objection is made to all questions and answers contained on this page to and including: "Q. $22.62? A. Yes, sir; $22.92 is what I have. I had the 22 because that was the last check that I got and it was sent me through the mail for the last four days," for the reason that said questions and answers are immaterial.

p. 1766 A. The first one is $16.63.

Q. That checks.

A. I did not put the next one down.

Q. That was $12.45, apparently not a full week or at least that is what the amount is. Does your book show you were there that week?

A. It does not show that I was there that week but I just failed to put it down.

Q. Anyway our figure is $12.43. Go ahead.

A. The next one that I have is $12.43.

Q. Go ahead, there is a confusion there.
A. $22.73.
Q. Now, you skipped one of $17.22 and then we have $22.73. Let us look at this together without taking the time to go over it in detail. $22.73, you find that? A. Yes, sir.
Q. And then $22.38?
A. I did not put that one down.
Q. Now, the next week we have is $27.34?
A. That is right, 53 hours.
Q. The next is $29.05? A. Yes, sir, 53 hours.
Q. And the next is $31.29? A. Yes, sir, 53 hours.
Q. And the next is $25.90? A. Yes, sir.
Q. $17.34? A. Yes, sir, 45 hours.
p. 1767 Q. $21.71? A. Yes, sir.
Q. $22.39? A. Yes, sir.
Q. $25.85? A. Yes, sir.
Q. $29.92? A. Yes, sir.
Q. $22.62? A. Yes, sir, $22.92 is what I have.

I had the 22 because that was the last check that I got and it was sent me through the mail for the last four days.

p. 1770 Q. Please give me again the date when you joined the International?
A. The 23d of March, 1937.
Q. And you joined at the solicitation of Miss Jane Palmer, the lady here? A. Yes, sir.
Q. What inducements, I mean by that what did she say to you that induced you to join? Did she tell you about how badly you were being treated and how the union would raise your wages for you?
A. No, sir. The reason that I joined the union—
[fol. 5854] Q. (Interrupting) No, if you will just answer the question, what did she say?
A. I don't remember exactly the conversation.
Q. Where was it that she said to you or induced you to join? A. At my home.
Q. And how many times had she been there?
A. I think that was the first time that she had been in my home.
Q. And you signed immediately?

A. I signed that evening.

p. 1771 Q. You asked Miss Palmer to have your membership kept secret? A. Yes, sir.

Q. Was that request made at the time you signed the application? A. Yes, sir.

p. 1772 Q. Did you later make that same request of Mr. Perlstein? A. No, sir.

Q. You spoke also, you mentioned one other girl who was a member. Who was that?

A. The girl that I knew was Fern Sigler.

Q. And when did she join? A. I can't say.

Q. When, with relation to your date of joining? Before or after?

A. All I know is she came to my house the day before I was fired, she came with Miss Palmer to my house and that is the first I knew that she was a union member.

Q. The first you knew then was on April 22nd?

[fol. 5855] A. Yes, sir.

Q. Now, when were you requested to become a delegate at the Atlantic City convention?

Objection—immaterial

A. On April 21st.

Q. And by Mr. Perlstein, as you mentioned?

Objection—immaterial

A. Yes, sir.

Q. And where did you have your talk with him?

Objection—immaterial

A. At the Muehlebach Hotel.

Q. Did he send for you to come down there?

Objection—immaterial

A. Miss Palmer asked me to come.

Q. And did anyone go with you?

Objection—immaterial

A. My husband went.

Q. Was anyone present besides yourself, Mr. Perlstein and your husband?

Objection—immaterial

A. Miss Palmer was there.
Q. And where did you meet, you four?

Objection—immaterial

p. 1773 A. We met in one of the rooms in the hotel, I don't remember that room.
Q. And how long were you there?

Objection—immaterial

A. I was there quite some time because—
Q. (Interrupting) I just asked the time; about how long?

Objection—immaterial

A. Well, I couldn't say exactly.
Q. Several hours?

Objection—immaterial

A. No, about an hour I would say.
Q. Were you to receive pay for attending the convention?

Objection—immaterial

[fol. 5856] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. My expenses were to be paid.
Q. And how much were you given as expense money?
A. I don't remember exactly how much that expense was; the same was given to all the delegates who went from Kansas City.
Q. Roughly, approximate the expense given you?
A. Well, I just don't remember.
Q. Even within $100.00 could you not recall it? I don't try to pin you to an exact amount, that is not my purpose at all.
p. 1774 Q. Can you give the amount?
A. No, I don't remember the exact amount.
Q. All right; about how much?

A. Well, we were gone almost three weeks and naturally the expenses were rather high and I am sure it was more than $100.00 that was allowed for the expense but I don't know the exact amount.

Q. I have understood you to say that. About how much? Was it $300.00, $500.00?

A. No sir; some over $100.00 but I don't recall how much.

Q. You did not at once agree to go to this convention, did you?

A. No, sir.

Q. And you wanted to talk it over or think it over?

A. Yes, sir.

Q. And your husband it was who the next day called up Mr. Perlstein and said you would go?

A. Yes, sir.

Q. Did your husband go with you?

[fol. 5857] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. No, sir.

Q. Now, the next evening after that report or the same evening perhaps, this article appeared in the Kansas City Journal-Post, given out by Mr. Perlstein?

A. There was an article in the Post.

Q. Is that it?

A. I have read that but it seemed to me like there was more here than there was in that; I am not sure.

p. 1775 Q. In any case this article reads—I will not read it all. "Sylvia Hull, an employee of the Donnelly Garment Company has been named a delegate from Kansas City to the convention of the International Ladies' Garment Workers' Union at Atlantic City, Meyer Perlstein Regional Director announced Thursday. The Donnelly worker, according to Perlstein, was one of a committee from that garment com-

pany who appeared Wednesday night before a joint group representing various Kansas City locals and requested representation at the national convention". Was the last statement in that article that I have just read true or false?

A. Will you read that again.

Q. I will read the part I have reference to: "The Donnelly worker according to Perlstein was one of a committee from that garment company who appeared Wednesday night before a joint group representing various Kansas City locals and requested representation at the national convention". Was that statement true or false?

A. There was one other girl, Fern was there at the hotel that night; she was not in the room where we were but she was there.

Q. Downstairs?

A. No, sir, she was waiting out in the hall.

Q. She did not appear as a member of any committee?

A. I don't know what took place after I left.

Q. She stayed in the Hall?

p. 1776 A. She was not in there when I was.

Q. I will take it [apart] at a time. Was any committee and if so please name the individuals who composed it.

[fol. 5858] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. There was the four only when I talked to Mr. Perlstein.

Q. Mrs. Hull, you apparently did not understand the question. Was there a committee from the Donnelly Garment Company that appeared before Mr. Perlstein and Miss Palmer?

A. I don't know. There was not when I was there.

Q. Have you ever heard of any such committee?

A. I never discussed that.

Q. Have you ever heard of any such committee?

A. I don't know what they had there.
Q. Wasn't that paragraph that I have just read you twice false in its entirety? Was there a word of truth in it that Mr. Perlstein—
A. (Interrupting) I don't know what took place that evening; I wasn't there all the time.
Q. During the time you were there, I will put it?
A. During the time I was there there was only four of us in the room.
Q. And nobody purporting to be a committee from the Donnelly Workers was there?
p. 1777 Q. Was there anybody purporting to be a committee from the Donnelly Garment Company, please answer that yes or no?
A. Miss Palmer and Mr. Perlstein represented the members there.
Q. Mrs. Hull, was there any other Donnelly employee in that room except you?
A. No, sir.
Q. Now, did even you, if it could be said by any stretch of the imagination that you were a committee, did you request representation at the national convention or did Perlstein ask you to go as a delegate.

[fol. 5859] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I was asked to represent our members.
Q. All right. Then was there any request by any Donnelly worker for representation at the national convention? A. I don't know.
Q. Was there while you were there?
A. Not while I was there.
Q. All right. Now that is that paragraph. Next is this "Perlstein said that the Donnelly committee desired one of their number to appear at the convention and asked the International body to endorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours and improved conditions". Was there one word of truth in that statement by Mr.

Perlstein, any part of it true? If so, what was? A. Will you repeat that question?

p. 1778 Q. All right: Perlstein said that the Donnelly committee desired one of their number to appear at the convention and asked the International body to endorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours and improved conditions". Now, my question is, was any part of that sentence true?

A. I don't know; these others may have requested that of Mr. Perlstein.

Q. There was nobody else there but you from the Donnelly Company?

A. There was a girl there from the Donnelly Company but she was not in the room when I was there.

Q. All right, you were there for an hour and all the time that was spent was in relation to your appearing as a delegate, is that right?

A. Yes.

Q. Now, during that hour when that subject was being discussed did anything happen such as stated in the sentence last read from this announcement by Mr. Perlstein?

A. I don't know.

Q. You don't know. Could it be that your memory has failed on that subject?

[fol. 5860] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I don't understand exactly what you mean.

Q. I will let you read it with me, Mrs. Hull: "Perlstein said that the Donnelly committee desired one of their number to appear at the convention and asked the International body to endorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours and improved conditions". Now, did anything like that happen? A. Not while I was in there.

Q. That is what I am talking about. Did you ever hear of that happening anywhere, as this delegate now that is going down to this convention to sponsor this strike against this company, did you ever hear that that happened anywhere and if so I will ask you where?

A. I did not.

Q. You never heard of that happening, did you?

A. It could have happened, though.

Q. Pardon me, did you ever hear of it?

A. I did not, no.

Q. You are the delegate?

A. I did not.

Q. You never did. Now, Mrs. Hull, you know this article, when you read it, was false, didn't you? You have demonstrated that here.

A. No sir, I didn't know it was false.

Q. You didn't know it was false?

A. They had other members in the factory besides me.

Q. All right, had you, as a delegate, any interest in knowing whether this so-called uprising of Donnelly employees and a demand for a strike was true?

[fol. 5861] p. 1780 A. I supposed it was.

Objection—immaterial.

Q. You did?

Objection—immaterial.

A. Yes, sir.

Q. Did you ever ask anybody whether it was true.

Objection—immaterial

A. It was only the day before that appeared in the paper.

Q. Now, the next day, this article having appeared the night before, the employees, apparently incensed, had this demonstration

that you have described in your direct testimony, is that right? A. Yes, sir.

Q. They made it very plain to you the reason for that, did they not, was your assumption, according to this article, of authority to represent them when you didn't have that authority; that is what they were incensed about, wasn't it?

A. I don't think so.

Q. Didn't they tell you plainly "where did you get the authority to represent us and have a strike called in this plant"?

A. No, sir; they asked me what that meant in the papers

Q. And by the way, in direct testimony you said it didn't mean a thing?

A. Yes, sir.

Q. You thought it didn't mean a thing that you were going down there, according to this article, to sponsor a strike in that plant?

A. I merely told the girls that because they were threatening to throw me out the window.

p. 1781 Q. When you went to that convention did you think you represented The Donnelly employees?

Objection—immaterial.

A. Yes, sir.

Q. Who?

Objection—immaterial.

[fol. 5862] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. The girls in the union.

Q. Well you and Fern Sigler you mean?

A. Yes, sir; I was told there were other girls in.

Q. Who were the other girls?

A. I don't know.

p. 1782 Q. Do you understand what I am asking you, whether you understood you represented any Donnelly employees when you went to Atlantic City?

A. Yes, sir, I thought I did.
Q. Now, whom did you think you represented?
A. The members of the ILGWU.
Q. Can you name any one employee that you thought you represented?
A. Well I remember Fern Sigler.
Q. Is she the only Donnelly employee that you thought you represented? A. No, sir.
Q. Can you name any others?
A. At that time she was the only member I knew.
Q. Then you could not name any others that you thought you represented except yourself and Fern Sigler?
A. I was told we had other members in the factory.
Q. Mrs. Hull, would you please be so kind, can you name anybody else, or could you when you went to Atlantic City to advocate this strike, could you name a single employee that you thought you represented except Fern Sigler?

[fol. 5863] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. Our names were kept secret because we were afraid we would lose our jobs.
p. 1783 Q. Anyway, you go down to Atlantic City; you were not here when the Donnelly Garment Workers' Union was organized were you; you were not at the plant?
A. No, sir.
Q. When did you leave for Atlantic City?
A. I don't remember the exact late we left.
Q. The convention opened May 3rd according to this article?
p. 1784 A. We left sometimes before that.
Q. A couple of days before that, and who went with you?
A. In our delegation we met at St. Louis and I don't remember how many delegates were there.

Q. Or their names?
A. Well, I could remember some, who went from Kansas City.
Q. Any from the Donnelly plant? I judge not but I ask that question?
A. No, sir, I was the only one.
Q. How long were you away from Kansas City in all?
A. I don't remember exactly; I think it was almost three weeks.
Q. How long were you in the convention?
A. Two weeks.
Q. Where were you the rest of the time?
A. On the trip back and forth and then we went to New York for a day.
Q. For pleasure, just a side trip to New York?
A. Yes, sir.
Q. Were your expenses paid to New York by the International?
[fol. 5864] A. I spent part of my own money on the trip.

Objection—immaterial.

Q. When you returned did you ever call the plant or stop in at the plant?
A. No, sir; when they sent me home they told me that they would call me when they wanted me.
p. 1785 Q. The answer is no, you never called the plant for work, is that right?
A. No.
Q. Did you ever call them at all?
A. No, sir.
Q. From the day you left on April 23, 1937, to this time have you ever applied at the Donnelly Company for reemployment? A. No, sir.
Q. And what have you been doing since then?
A. Well, that summer I was at home and then I believe it was in September I started working in the Quality Hill Dress Factory and I am still employed there.
Q. You have been in the one place ever since then? A. Yes, sir.

Q. I think my recollection is you said in the three judge hearing that you got that employment two weeks after you left. Am I wrong about that?

A. You are; it was in September, I think.

Q. Have you done any organization work for the International, calling on girls?

A. I called on some girls after I got back from the convention.

Q. When did you begin your organization work, calling on girls?

A. Shortly after I came from the convention.

Q. About how long, just roughly approximate it?

[fol. 5865] A. Probably four or five days.

Q. And how long did you continue that work?

p. 1786 A. Well, I did not continue that very long because it was along toward the last of May when I got back.

Q. Just without a long statement, how long did you continue the organization work?

A. Well, probably about four weeks.

Q. And were you paid for your services?

A. When I joined I was told that if—

Q. (Interrupting) Mrs. Hull, the question is very simple, when you did this four weeks of organization work were you paid for your services?

A. Well, during that time I had to have money for my expenses and I was paid.

Q. How much were you paid?

A. $20.00 a week.

Q. And how many weeks did you draw pay from the International as an organizer?

A. I never drew pay as an organizer.

Q. In whatever capacity, whatever term you think should be used or stated as your employment?

A. My pay was from the time I was fired at Donnelly's until I went on the other job.

Q. Oh, then from April 23rd, 1937 you continued to draw $20.00 a week until September?

A. Yes, sir.

Q. Were you promised that when you joined the International?

A. I knew when I joined that I would probably lose my job for it had been told us.

Q. You apparently did not hear the question I imagine; I may have put it so clumsily that

[fol. 5866] p. 1787 you did not understand it but it was, I thought, clear. Would you please read it?

(Last question read by the reporter)

A. I was promised in case I lost my job that I would be paid the time I lost.

Q. And the amount was agreed on?

A. No, sir.

Q. What was said about the amount, if anything?

A. There wasn't anything said about the amount.

Q. Who made the agreement to pay you for any month that you might be out of work? Miss Palmer of Mr. Perlstein?

A. I think Miss Palmer.

Q. You think so? A. Yes, sir.

Q. Are you sure? A. Yes, I think she did.

Q. Now, it was either Miss Palmer or Mr. Perlstein, you are sure of that? A. Yes, sir.

Q. Now, during this time you worked as an organizer you called on a great many Donnelly employees trying to get them to join the International?

Objection—immaterial.

A. I called on some; I don't know how many.

Q. How many, fifty, one hundred, five hundred, two hundred or what?

Objection—immaterial.

p. 1788 A. Probably thirty five.

Q. And you told them how badly they were treated and how the union could do this and that for them, of course?

Objection—immaterial.

[fol. 5867] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I told them that I thought the union would help them.

Q. How many joined in response to your solicitation? A. I don't remember.

Q. You don't remember any, do you?

A. I don't remember.

Q. As a matter of fact none, isn't that true?

A. I wouldn't say that.

Q. Now, as a matter of fact, Mrs. Hull, you know, don't you, that the Donnelly plant in its physical equipment and facilities for the comfort of employees is the best garment plant anywhere that you know anything about; don't you admit that? A. In some ways, yes.

Q. Well, in the ways I have specified is it not? It is a model plant, known as such in the industry; won't you admit that?

A. Well, not in every way, I don't agree with you.

Q. In what way do you not agree with me?

A. Well, one reason I don't agree is because we had such long hours while I was there.

Q. I haven't gotten to the hours, I have asked about the plant, the physical equipment and facilities for the comfort of the employees, just that. I will take it up one at a time. Was it not, in that respect, the best plant that you know anything about?

p. 1789 A. I think so.

Q. Do you know of any other garment plant in Kansas City that was paying wages as high as the Donnelly Company? If so I will get you to name it?

A. I did not know what other factories were paying but I was told they had a higher rate of pay than they did.

Q. You were told that down at Atlantic City, I understand, as will later develop but I am speaking of what you know. Do you know of any other plants in Kansas City that paid wages as high as the Donnelly Garment Company? If so, which plant?

[fol. 5868] A. Well, I only worked in the one factory; I could not say about the others; I don't know.

Objection—immaterial

Q. But you have been acting in union work and from any source of knowledge you have, can you name another garment plant in Kansas City that pays wages as high as the Donnelly Company?

Objection—immaterial

A. I understand the coat factories pay higher.
Q. We are talking about ladies' garment factories. Can you name a single plant in that industry that pays wages as high as the Donnelly Company? If so let us hear it and pass on?

Objection—immaterial

A. I don't know what the others make.
p. 1790 Q. You get good wages at Quality Hill, don't you? A. We have fair wages there.
p. 1791 Q. But not as good as Donnelly's?
A. Yes, sir, I think they do, for the hours.
Q. Are you satisfied there?
A. Well, I don't know.
Q. You don't know. All right. Now, at convention—Senator Reed reminds me of one point. You have mentioned the spy system. Do you know of any spy system?
A. We had clubs when we were ——
Q. (Interrupting) The answer is first yes or no?
A. Yes, sir.
Q. Do you know of a spy system? A. Yes, sir.
Q. Now, tell us all about it?
A. We had clubs in the Donnelly factory and when we would go out on our parties they always sent some of the supervision along with us, so if anything was said about the union that it could be reported.
Q. Can you name any spies?
[fol. 5869] A. Well, I considered that the instructors were sent for that purpose.
Q. That was your judgment about it?
A. That's what I thought.

p. 1792 Q. You introduced a resolution, didn't you, at the convention?

Objection—immaterial

A. Yes, sir.
Q. Do you remember that? Who prepared it?

Objection—immaterial

A. I don't know.
Q. Well, who handed it to you?

Objection—immaterial

A. Mr. Perlstein.
Q. You did not have anything to do with writing it, did you; it was handed to you tailor made or prepared, is that right?

Objection—immaterial

A. Yes, sir.
Q. And at the same time he handed you a speech to deliver, didn't he?

Objection—immaterial

A. No, sir.
Q. You did read a speech there?

Objection—immaterial

A. I did.
Who wrote that?

Objection—immaterial

A. I don't know.
Q. Well, that, too, was handed to you?

Objection—immaterial

A. I was not used to speaking before so many people so I asked Mr. Perlstein if he would help me to write a speech.
Q. Well, he wrote both the resolution and the speech?

Objection—immaterial

p. 1793 A. I don't know.
Q. Didn't you just say so?

Objection—immaterial

[fol. 5870] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I did not; I said I didn't know.
Q. I am sorry; I don't want to be unfair but I thought you said that he handed you the resolution?
A. He handed me the resolution but I don't know who wrote it.
Q. But he did write the speech?
A. I don't know.
Q. You surely said that a second ago.
A. I said that I asked [me] to assist me in writing this speech and I was not in the hotel at the time so someone, from the facts I had given them, wrote the speech and then later I read it.
Q. So you were handed a resolution by Perlstein and a speech by Perlstein?
A. No, sir, not by Perlstein.
Q. Who handed it to you?
A. Someone sent it to my room.
Q. Among other things in the resolution did you resolve as follows—propose this resolution: "Resolved that this convention instruct the incoming GEB"—I suppose that is the general executive board—"to give the joint board of Kansas City the necessary financial support which it may require in the further conduct of this organization campaign, and be it further resolved that the incoming GEB lend its moral assistance to the publicity campaign which the Kansas City Joint Board is about to undertake in order to advise the
p. 1794 buying public of America of the conditions that exist in the Donnelly Garment Company, and be it still further resolved that the incoming GEB be instructed to give all financial assistance to the joint board of Kansas City in the event that it will be compelled to order a strike against the Donnelly Garment

Company for the enforcement of the 35 hour week, for the minimum wage scales that prevail in the silk and wool dress industries, for the establishment of genuine collective bargaining and for the abolition of the company union, spy and caste system which prevails in the Donnelly Garment Company". That was your resolution, wasn't it? A. I think so.

Q. Have you any doubt about it? Isn't it familiar to you?

[fol. 5871] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. It has been two years ago.

Q. I am reading from page 234 of the report of that convention? A. I think that's it.

Q. Now, in your speech or in the speech—I won't say your speech—in the speech that you read among other things you said this, did you not, "I find that the wages paid by the Donnelly Garment Company are at least forty per cent lower than the workers in the other shops are earning". That was part of your speech, wasn't it?

A. Yes, sir, and I talked to a girl from New York who told me that she made $60.00 a week.

p. 1795 Q. You also said this "And what is worse than anything else is the inhuman speed up which the company has developed in its factory. As a result of this speed up system the majority of the girls in the factory must quit working after a few years because their nerves become overstrained and they break down. In many instances these workers are not able to return to work". You said that, too, didn't you, in the speech that was written for you? A. Well—

Q. (Interrupting) First, did you say that?

A. I don't know. When—

Q. (Interrupting) Just a minute, I want to get an answer to that question if I may. Read right there, please. A. I see what is there.

Q. Pardon me, let us have an answer.
A. Oh, I don't know whether I read that or not.
Q. Did you read this speech, as reported in this official report?
A. If you will permit me to explain to you, when I read this over I crossed out some of the things there and then when I gave it to the girl she may have put all of those things in.
p. 1796 Q. That is pure speculation, isn't it? As a matter of fact, this meeting was stenographically reported just like this trial is and what you said there is what appears here, isn't that right?
A. No, sir.
Q. Why, they have got "applause" in here. You did not have "Applause" in your written speech, did you?

[fol. 5872] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I don't know.
Q. Do you seriously mean to say that somebody who writes this speech for you, had a parenthesis at the end and "applause"? You don't mean that surely, do you?
A. I don't know.
Q. Well, is it your best recollection that in that speech, handed to you, you said what is written in that bracketed portion that I just last read?
A. I know the girls are nervous in that factory.
Q. I wonder why it is I cannot—I think it may be my fault but did you make part of that speech, did you include that in that speech? Did you say that?
A. I don't remember; I suppose I did.
Q. All right, you suppose you did. Now, I want to ask you, you say here that a majority of the girls broke down, they had to quit working for a few years because their nerves were over-strained. That would mean at least 650 girls, wouldn't it? That would

have to fall by the wayside like wheat before the reaper?

p. 1797 A. They have new faces in there all the time.

p. 1798 Q. Now, we will pass to something else. The next thing you say, not the next thing but skipping along you say that Senator Reed owns this factory?

A. I thought Mr. Reed did own the factory.

Q. Who, do you really mean that?

A. Well, he was—

Q. (Interrupting) You knew Mrs. Reed founded this business in her own home?

A. He is the husband of—

Q. (Interrupting) Mrs. Donnelly founded this business back in 1919; didn't you know that?

A. I didn't know when she started the business.

[fol. 5873] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

p. 1799 Q. Now, you say here also "I joined the union several months ago." The writer of this speech didn't know that you had just joined it six weeks ago?

A. That was just merely said "several months ago".

Q. But the fact is that the writer assumed you had joined several months ago, and didn't know that you had just joined about six weeks before?

A. I don't know what he knew.

Q. Now, you say further in the speech "I kept my membership in the union secret because I knew that I was being watched and spied on by the detectives employed by the firm. Every worker in the shop is spied on and followed inside and outside the factory". Now, that is the first time in your testimony that the word detective has been mentioned at all, isn't it; you have spoken of detectives before? A. They had detectives there.

Q. Pardon me, you have not spoken of detectives? A. I don't know.

Q. Well, have you?

A. I don't know whether I have or not.
Q. You have no way of jogging your memory?
A. I don't know.
Q. In the statement which you gave Mr. Walsh from which he was obviously reading as he was examining you, did you ever mention detectives? A. I don't think so.
Q. No, and you didn't in your testimony, did you, Mrs. Hull? A. I don't think so.
Q. But you told this convention or purported to tell them that the company had a detective agency following the employees both inside and outside the factory. Why, you knew that was one hundred per cent false, didn't you.

[fol. 5874] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. No, sir. There has been someone at my own home and I know that they have been there at least six different times.
Q. Well, what of it? What does that prove?
A. It proves they were following me.
Q. Who? How do you know it proves that? If someone knocks at your door and you are not there what does that prove as to where they came from?
A. It was not knocking at my door.
Q. What do you mean then?
A. I mean after I joined the union and went to the convention at least six different times I know someone was there and they brought old soiled underwear, someone's underwear and left it on my porch and on my front steps, on the garage door and they also left a note there one time.
Q. What fantastic—what does that prove as to who they were?
A. They were the only enemies I have.
p. 1801 Q. That is after you left this company's service?
A. Yes, sir.
Q. And after you had gone to the convention?

A. Yes, sir, after I joined the union.
Q. But at the convention how could you foresee when you were talking about detectives, how could you forsee that people were going to come to your house and leave some dirty underwear on the front porch? Can you think of any answer to that?
A. (No answer)
Q. Well, we have been waiting a few minutes. Have you any answer to that?
A. No, sir.
Q. If you think of any later I would be glad to hear it. Now, you say in the resolution which was handed to you for introduction, you speak of caste system and up to now in your evidence that is the first time that that has been mentioned, has it not?

[fol. 5875] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I didn't mention everything—
Q. What did you mean by caste system?
A. Some were considered better than the operator.
Q. By who?
A. I suppose by the higher ups in the factory.
Q. Go ahead, describe the so called caste system in its minute details?
A. The instructors, when I left there, they had a special place that they had their lunch, they didn't eat their lunch with us; also the office workers, they had their own special tables where they ate.
Q. All in the same cafeteria?
A. Yes, sir.
Q. How big is the cafeteria?
A. Well, it is quite large; I don't know.
Q. I don't know myself; you tell us. As big as this court room?
A. Well, I think it is as large as this.
Q. And what you mean now by the caste system is that the office people who worked together

and of course were acquainted would sit down when they would get their tray—they would go around the ring and get their food and just go to the same table?

A. Yes, sir.

Q. And then the instructors would sit at the same table—I don't suppose they could sit at the same table, one table, you don't mean that, do you?

A. No, sir; I mean the instructors had a little room to themselves where they had their lunches.

Q. Now, is that all? Is that the caste system in full detail?

[fol. 5876] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

p. 1803 A. Yes, sir.

Q. That these people ate at different tables in the cafeteria, is that right?

A. Yes, sir.

Q. Now, as a [mater] of fact, didn't they have parties and dances among the Donnelly employees and haven't they had for several years, attended by everybody from Mrs. Reed to the bundle boys?

A. I don't know; I never attended these.

Q. You know they had them, though and you were invited; you were perfectly welcome to attend them; you knew that?

A. Well, I never attended those dances.

Q. Would you go that far, did they have them?

A. They did have them.

Q. Did they have Christmas parties—Mrs. Reed?

A. Yes.

Q. Every year for how many years has she given Christmas parties for all the employees?

A. I don't know.

Q. Well, about how many?

A. I couldn't say how many.

Q. Ever since you have been there?

A. Well, I remember I think two.

Q. As a matter of fact you know they were annual events and have been for years, don't you? Please let us have an answer.

A. I don't know that they have had them every year.

p. 1804 Q. Were you at any of those?

A. I have been.

Q. How many have you attended?

[fo] 5877] Objection is made to all questions and answers on this page because the questions and answers are immaterial.

A. I have attended two.

Q. And you knew that Mrs. Reed would give presents to the children of the employees, and would, from her ranch, bring turkeys down and give them, you knew that?

A. Yes, sir.

Q. And did that to everybody indiscriminately, high and low in the scale of service, you knew that?

A. Yes, sir.

Q. And that is the plant you say had a caste system that you said at Atlantic City had this caste system, is that right?

A. Yes, sir.

Mr. Hogsett: That is all

Further Cross Examination

By Mr. Tyler:

Q. I don't want to go over anything that they have gone over with you but I do not believe this question has specifically been answered. Did anyone else at all, anyone except Mr. Perlstein and Miss Palmer ask you to go to Atlantic City representing the Donnelly employees?

A. Not that I recall

Q. The Quality Hill Shop is a union shop, isn't it?

A. Yes, sir.

Q. And that was your next employment after leaving the Donnelly shop?

A. Yes, sir.

Q. It has been suggested here that it is difficult for girls who leave the Donnelly shop because they sympathize with the International to get jobs in the other shops where the International has contracts. Did you find that other shops in town where the International had closed shop contracts would not let Donnelly girls who left the Donnelly plant on account of sympathy with the International, get a job there?

A. I don't know. I never applied for work any place only Quality Hill.

Q. You never found it to be true that other shops would not allow Donnelly girls to get a job did you?

[fol. 5878] p. 1805 A. This was a union shop and I did not know about the others.

Q. So far as you know there was no prejudice against you because you had been in the Donnelly plant?

Objection—immaterial

A. No, sir, this is a union shop, Quality Hill is.

Q. And naturally they would favor girls who had been let out of the Donnelly shop on account of sympathizing with the International, wouldn't they?

Objection—immaterial

A. No, I don't think so.

Q. Well, at least they would not be prejudiced against girls who belonged to the same union that their own closed shop was with, would they?

Objection—immaterial

A. They had no prejudice, no.

p. 1806 Q. You said in your direct testimony that the girls said in this disturbance that arose the

day you came to work after the newspaper article about your going to Atlantic City, the girls said that if they caught you with the Loyalty League pin they would tear your clothes off?

A. Yes, sir.

Q. What girls said that?

A. I don't know who said that; there was a group of girls there and they were threatening me and someone said that.

Q. Just someone or many of them?

A. Well, I don't know whether more than one said it or not.

Q. You testified originally that they said that, didn't you?

A. Someone said that; I don't know whether more than one.

Q. I asked you if you said in your direct examination that they said they would tear your clothes off?

A. I may have said that.

Q. What?

[fol. 5879] A. I think so.

Q. Do you know Marie Jamison?

A. Yes, sir.

Q. One of your best friends, isn't she?

A. No, sir.

Q. Is she the one that said she would tear your clothes off?

A. I don't remember who said they would tear my clothes off.

Q. I will ask you if you did not, in your affidavit filed in the trial of this cause before the three judge court say "Mamie Jamison, a worker in the special section left and came back with thirty five cents and demanded my pin. I told her I had changed my mind and intended to keep it. She said 'you had better not let us catch you with it on or we will tear your clothes off' ". Did you so testify or did your affidavit include that sentence?

p. 1807

A. She may have been the one; I don't know.

Q. Did your affidavit include that statement?
A. I think so.
Q. Do you remember now whether she said that or not?
A. At that time my memory was fresh and if that is what I said then, then it is true now.
Q. And you did not say that anyone else said it at that time, did you?
A. I don't think so.
Q. And you don't now claim that anyone else said it do you?
A. If I said Marie Jamison was the one that said it then she is the one; I have forgotten; it has been some time ago.

[fol. 5880] p. 1810 Recross-Examination

By Mr. Hogsett:
Q. Mr. Tyler asked you if you wanted to go back to the Donnelly plant and you said you would under union conditions?
A. Yes, sir.
Q. I suppose you mean the International Union conditions?
A. Yes, sir.
Q. And unless the International Union had the closed shop contract you don't want to go back?
A. I want to go back if they have shorter hours and better wages.
Q. The question is unless the International has a closed shop contract with the Donnelly Garment Company you don't want to go back, do you? Can you answer that?
A. Well, I don't know.
Q. You don't know?
A. No sir.

Mr. Hogsett: That is all.

Mr. Walsh: That is all.

JOURNAL-POST.

DONNELLY WORKER WILL BE SENT TO UNION CONVENTION

Garment Organization Seeking Support for Strike at Plant.

Sylvia Hull, an employe of the Donnelly Garment company, has been named a delegate from Kansas City to the International Ladies' Garment Workers' union biennial convention May 3 at Atlantic City, Meyer Peristein, regional director, announced Thursday.

The Donnelly worker, according to Peristein, was one of a committee from that garment company who appeared Wednesday night before a joint group representing various Kansas City locals and requested representation at the national convention.

Peristein said the Donnelly committee desired one of their number to appear at the convention and ask the international body to indorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours and improved conditions. The Kansas City joint committee, Peristein asserted, agreed to pay all expenses of the Donnelly delegate.

Other delegates from Kansas City are

Cinderella Robinson and Grace Pollard, members of local No. 226 [illegible] employes of the [illegible] company; Lodie [illegible], local No. 215, employed at the [illegible] Laverne [illegible], Alma Revel, local No. 114, employed by the Fashionshop Garment company; Arleen Gaither, local No. 118, employed by the Gordon, Mayhere Manufacturing company; Ory Thornton and Annie Vaughan, local No. 200, employes of the Stern-Stagman-Prins company, and Miss Wave Tobin, business representative of the Kansas City locals.

Peristein said the executive committee of the various local unions in Kansas City would meet Thursday afternoon to consider a resolution calling on the national organization to appropriate funds to carry on a strike at the Donnely plant.

The delegates from this section will meet April 30 in St. Louis to go to Atlantic City by special train. Peristein will be a delegate from St. Louis. The convention will last two

[fol. 5881-a] Objection is made to all questions and answers of W. B. Rosenfield for the reason that said questions and answers are immaterial.

W. B. ROSENFIELD called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Depping:

p. 506 Q. State your name please?
A. W. B. Rosenfield.
Q. Where do you live?
A. Memphis, Tennessee.
Q. What is your profession. A. Attorney.
Q. How long have you been practicing your profession? A. Since July 15, 1915.
Q. Where? A. In Memphis.
Q. Are you a member of the various Bar associations, from the American Bar Association on down? A. Yes.
Q. Did you represent the Kuhn Manufacturing Company of Memphis in a controversy with the union? A. Yes.
Q. What does the Kuhn Manufacturing Company make?
A. It is not in business at the present time. At the time that I represented them, they were manufacturers of ladies' dresses, cotton dresses principally.

p. 507 Q. Did the International Ladies Garment Workers' Union conduct the campaign to organize the Kuhn Manufacturing Company for that union? A. Yes.
Q. You knew, of your own knowledge, who was in charge of that campaign?
A. Yes, I did.
Q. Who was it?
A. Meyer Perlstein, who at the time I think, was regional director of the union, with headquarters in St. Louis. Mrs. Zappone, who was an organizer of the union, and Miss Ida Sledge, who became associated with the union as an

organizer, when it sought to enter Memphis and unionize the trade in Memphis.

Q. What did the representatives of your union, do in their attempt to unionize into their union the Kuhn Manufacturing Company?

[fol. 5882] A. Well, I had numerous conferences with Mr. Perlstein, at which other persons were present, and following those conferences and our inability to agree upon any satisfactory terms, the strike resulted.

Q. Just state what it was Mr. Perlstein said he wanted?

A. Mr. Perlstein told me, at the initial conference that it was the desire of his union to unionize those girls who were working in the trade in Memphis, that the wages that were paid at one of the plants in Memphis, were inadequate, and that working conditions were not satisfactory. However, he did not make that complaint with respect to the client whom I represented.

Q. State what complaint, if any, Mr. Perlstein made to you about your client, the Kuhn Manufacturing Company? A. Only one.

Q. What was that?

A. My recollection is that we were working, or rather the plant was [wroking fourty] four hours a week, and he insisted that girls in the industry should not work more than forty hours a week, and eight hours a day.

Q. Was there anything else?

A. Nothing else at all.

Q. What if anything was said about Mr. Perlstein with reference to a closed shop?

A. It was discussed, Mr. Perlstein always started and ended with the demand that there be a closed shop agreement, and that if we would agree to enter into a closed shop agreement, that we could write our own terms, with respect to the other clauses to be incorporated in the agreement. He did insist that one class of employees should get a wage increase of

p. 509

ten per cent, but he would never discuss a contract except upon the theory that it be a closed shop contract.

Q. For his union? A. For his union.

Q. Will you fix a date about when these conversations with Mr. Perlstein started?

A. March 10, 1937 was the date upon which I first conferred with him at the request of my client.

[fol. 5883] Q. Were there any indications by Mr. Perlstein as to what would ensue if the closed shop contract with the International was not signed by your client?

A. He stated definitely we would meet with trouble in the form of a strike if we did not sign a closed shop agreement.

Q. Did he make any reference in that conversation to what occurred in other strikes in Memphis by the International?

A. Yes. We knew what had happened. He stated the same things were bound to happen if he called a strike at the plant of the Kuhn Manufacturing Company.

Q. Briefly, what thing had happened at those other places, that he referred to?

p. 510 Q. Will you tell what you know of your own knowledge that happened at these other places that Mr. Perlstein referred to?

A. There were numerous fights, acts of violence.

Mr. Walsh: Q. Were you present at these Mr. Rosenfield?

A. I saw them, yes, some of them.

Mr. Depping: (Resumed questioning)

A. Assemblage of large crowds of union sympathizers, and fights in the several places of business of the firms engaged in that line of business and elsewhere in the city.

Q. Do you know of your own knowledge if any clothing had been stripped from women at those places? A. Yes.

Q. Had that happened? A. Yes.

Q. Just to go back for a minute—you mentioned he wanted a closed shop contract. What do you mean by that?

A. That the firm might not employ as workers—and excepted from workers were the officers of the firm of course, the designer, and one or two other employees—but outside of those, that all workers in the shop must be union employees and members of the International Ladies Garment Workers Union Association, and that none other but members of the union could be employed at the place of business.

[fol. 5884] p. 511 Q. State whether or not during these conversations with Mr. Perlstein if he ever told you [now] many employees of the Kuhn Manufacturing Company, if any, belonged to his union? A. No.

Q. Did he ever tell you who the employees of the Kuhn Manufacturing Company were that he was representing?

A. He stated, he represented a majority of the employees, but he never established the fact to me.

Q. During these preliminary negotiations with Mr. Perlstein, do you, of your own knowledge, know whether a majority of the employees of the Kuhn Manufacturing Company belonged to his union? A. They did not.

Q. Did he later ever make a statement to you regarding a membership in his union of the employees of the Kuhn Manufacturing Company during these negotiations?

A. I don't know that I understand your question exactly.

Q. Well, I will re-state it. Did he at any time ever state to you whether or not he had a majority of the employees of the Kuhn Manufacturing Company in his union?

p. 512 A. He stated that he did; and we were perfectly willing to bargain with him, whether he represented a majority or not, because we had

nothing that we were unwilling to negotiate about.

Q. State what the real point of difference was?

A. The closed shop demand.

Q. Was a so called strike called by the International Union?

A. Yes. It was more than a strike.

Q. Did acts of violence on the part of the International Union occur? A. Yes.

Q. Just describe to the Court what you know occurred of your own knowledge of acts of violence during that so-called strike by the International. Just tell what happened.

[fol. 5885] A. I think it was on March 22nd, 1937, that the strike was called. On that morning, we anticipated the strike, and at the request of the officers of my client, I accompanied them to their place of business. Upon arrival, we saw large numbers of people surrounding the building in which their plant was located, some of whom I recognized, and some of whom I did not. Among those who were present were Mrs. Zappone and Ida Sledge, whom I have mentioned previously in my testimony as being members and the organizers of the union. And when the employees who wanted to come to work started toward the building, they were prevented p. 513 from doing so by the large number of so called union members and sympathizers and the picket line which was in control of the union and its representatives, and naturally the women who were accosted, resisted, and they were slapped and their hair pulled, and clothing torn from them to some extent, hats pulled off, or things of that nature, and in order to prevent greater violence, we closed the plant.

Q. All right. Now, in this, whatever violence that occurred there, that you saw, state whether or not the employees who were trying to go to work were the aggressors?

A. No.

Q. You closed the plant? A. Yes.

Q. Did you obtain an injunction against violence on the part of the International Union?

A. No. We applied for and obtained an injunction before we opened the plant to resume operations, and the morning we attempted to resume operations was that upon which the strike occurred, that is violence occurred.

Q. Prior to that time, had you been threatened with a strike and violence?

A. Yes, and for that reason, I was unwilling to advise my clients to resume operations unless they obtained an injunction to prevent violence.

Q. Did you obtain the injunction?

p. 514 A. Yes.

Q. Did you open up the plant? A. Yes.

[fol. 5886] Q. And after you had obtained an injunction against violence by the International Union, and had opened up the plant, what happened of your own knowledge?

A. The things I have detailed as having occurred I think on the morning of March 22, 1937—the assemblage of the crowd, the acts of violence, the demand of those who were members of the union and the organizers, those loyal employees who didn't want to become members of the union not going to work—fights, general confusion, and virtual riot, that led me to advise my client to discontinue operations. We had quite a number of employees who wanted to work, and who didn't want to be members of the union. To protect them, and rather than commit themselves to [humilitation] and mistreatment, we closed down.

Q. After you obtained the injunction?

A. Correct.

Q. What court?

A. Chancery Court of Shelby County, Tennessee, the Court of Equity Jurisdiction.

Q. Service was had on union officials, members of the union, and their representatives?

A. Service was had upon the union, Perlstein, Mrs. Zappone, and as is customary in equity proceedings of that sort, all members of the union through their hands and all other persons.

Q. All right. Do you of your own knowledge know if the International Ladies Garment Workers Union at about the same time you had referred to, conducted campaigns against other garment companies in Memphis in an attempt to unionize the employees of the plants into the International Union?

A. Prior to that time I have referred to and about the same time, they attempted to unionize two other plants.

Q. What two plants?

A. Tri-State Manufacturing Company and Nona Lee—I think it is—dress company.

Q. State briefly to the Court what that violence consisted of that you have observed?

[fol. 5887] A. I think it was about the 23d or 24th of March that a strike was called by the union at the Nona-Lee Dress Company. I happened to have passed their place of business on my way to work that morning, and when I passed, I noticed virtually a mob assembled about and surrounding their place of business on Court street in Memphis. The employees sought to enter the building, and the union organizers, members, and sympathizers attempting to prevent them from doing so. I happened to see all of that on my way to work.

p. 516

Q. What happened when they attempted to do so?

A. Well—it was almost like two armies meeting in a tug of war. Those who wanted to get in and go to work were prevented from doing so by being pulled and assaulted, accosted and some of them got in and some of them couldn't get in.

Q. Were any of them injured? A. Yes.

Q. Were those that wanted to get in to work, the aggressors? A. No.

Q. Did anything unusual in the way of violence occur on March 25th that you recall?

A. If that is the date, the strike at the Nona-Lee was called, what I have just stated, was on that date. I don't remember whether it was the 23d, 24th or 25th, but about that time, the date the strike occurred; and for thirty six or forty eight hours—I don't know what happened continuously when I wasn't there, but every time I did pass by or look at the place, there would be quite a number of people there. Those employees who got into the building stayed in, and had their food sent in, or someone provided food for them over night. They slept in the building, and stayed in there, I know the following day, and possibly the day after that, to keep from coming out and getting in a fight.

p. 517 Q. The employees stayed at the building over night? A. Yes.

Q. State whether or not you saw employees of the Nona-Lee Dress Company forced into union headquarters? A. Yes.

Q. Describe that to the Court?

[fol. 5888] A. My office is on the corner of 3rd and Court in Memphis, and the union headquarters at that time was right across the street from my office. The Nona-Lee girls, leaving work, some of them would come up to the corner of 3rd and Court to catch the street car. As they did, they would be accosted by other girls and ushered up the stairs to the union headquarters. Some of them didn't want to go, but sufficient force was exercised to force them up. I watched it with some little amusement, because I was interested in the two manufacturing companies and our negotiations were going on at that time. All I had to do was to go to the window, look down in the street, and see what was going

on, and knowing the time the girls would get off from work, I could see those acts.

Q. Did you and your clients finally give up and sign with the International? A. Yes.

Q. Then what happened?

A. We liquidated.

Q. You liquidated the business? A. Yes.

Q. Why?

p. 518 A. It was impossible to continue operations profitably as my clients concluded. They had lost a great deal of money during the strike. During the time we were operating under the union contract, there were quite a number of companies registered. My clients though, were not justified, and rather than to be burdened with that sort of trouble, they decided to liquidate and go out of business, which they did.

Q. How did the contracts you negotiated with the International Union compare with what was being paid to the employees before you made the contract?

A. No raise whatsoever. The work was on a piece rate basis, and the same wages prevailed during the time we operated under the union contract. When I say "we" I mean my client. I use that form of expression. I had no financial interest in my client's business.

Q. How long did you operate under the contract with the International before business was liquidated?

A. I think about three months, two and a half months. As a matter of fact, when the contract was signed we signed it in order to

[fol. 5889] cover the merchandise on hand, and I had in mind at that time that the firm was going to liquidate and I incorporated in the contract a clause that, despite the obligation to employ union members, that the firm might nevertheless liquidate at any time it chose so to do; and that clause was incorporated in the

p. 519 contract at the time, because we did not

want to be in a position where the union would go into a court of equity and insist we stay in business for a year to conform and comply with the contract.

Q. Now, Mr. Rosenfield, will you state whether or not at any time after this contract was signed with the International, you had a conversation with Mr. Perlstein, the southwest regional director of the International Union, with respect to violence and strikes?

A. Yes.

Q. Give details of that conversation and the circumstances?

A. After the three contracts had been signed by the three firms in Memphis, the union wanted to have a "good-will" dinner to which all members of the union and the employers were invited. The lawyers who had represented the three firms were likewise invited to that dinner. I went with Mr. Kuhn, at his request. The firm had signed the contract and we wanted to comply with it in good faith, and to do everything possible to instill a good spirit, and I accompanied him and advised him to go. Mr. Perlstein at that time told me that he wanted to organize a plant at Forest City, Arkansas. The proprietor of which, or the manager was named Ed Ash. My relations with Mr. Perlstein had not been particularly unpleasant. We simply didn't agree. At his request, I telephoned Mr. Ash on long distance to make an engagement for Mr. Perlstein to see Mr. Ash. Purely as an act of courtesy, and while I was waiting —I believe it was while I was waiting to [complet] that telephone call,—I discussed with Mr. Perlstein the various acts of violence that had occurred in Memphis. I took the position that if the union wanted to unionize certain employees in the industry that it could be done by education and persuasion rather than by acts of violence and force, and threats, and coercion. I took particular

offense at the union's activity at times that the employer could not protect himself or itself. The union always strikes during the busiest season and likewise, I took offense in the discussion, or rather argued that violence was not necessary, and I told him I didn't see how the union expected to get along with employers after the various acts of violence to force them to sign a closed shop agreement. Mr. Perlstein said those things were just necessary incidents to a strike, and resulting, they had to occur; otherwise, they couldn't whip the employer into line and force him to sign a closed shop agreement.

Q. In that conversation state whether or not Mr. Perlstein at any time denied the acts of violence you attributed to the International Union?

[fol. 5890] p. 521 A. No. He never denied it, rather laughed about it. He didn't attempt to conceal that the union supported those things.

[fol. 5891] Objection is made to all questions and answers and offers of exhibits of the testimony of Robert J. Ingraham contained in pages 1 to 5 herein and attached exhibits for the reason that said testimony and said exhibits are immaterial.

ROBERT J. INGRAHAM

p. 965 called as a witness on behalf of the plaintiffs, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hogsett:

Q. Will you state your name to the Court?

A. Robert J. Ingraham

Q. You are a member of this Bar?

A. I am
Q. And coun[illegible] for the plaintiffs?
A. I am.
Q. And a partner of Senator Reed?
A. I am.
Q. You have been counsel for plaintiffs throughout this litigation and for many years prior thereto, have you not?
A. That is true.
Q. Mr. Ingraham, I will ask you whether during the months of January and February, 1939, any conferences were held between counsel for plaintiffs and counsel for defendants and counsel for intervener in the effort to settle this controversy? Yes or no.
A. Yes.
Q. You may state the dates of those conferences.
A. The first date was January 20, 1939; the next date was February 4th.
Q. State the time and place of each conference.
A. There was a confer[illegible]ce on January 20, 1939 at Senator Reed's home; there was a conference February 4, 1939 at the offices of the National Labor Relations Board; there was a conference last Saturday, April 1, 1939, at the office of Senator Reed.

p. 966

Q. Now, at these conferences were negotiations had between the parties in the effort to settle the controversy?
A. There were.
Q. You may state in what manner the conference of January 20, 1939 at Senator Reed's home originated; how it came about.

[fol. 5892]

A. There had been several conferences with the Regional Director of the National Labor Relations Board with the representatives of the Donnelly Company and the attorney for the Donnelly Garment Workers' Union. At the last of those conferences Mr. Paul Broderick, the Regional Director of the National Labor Relations Board suggested or made a proposal of settlement which he assured us would be satisfactory with the union.

Mr. Broderick proposed a settlement which he assured us was satisfactory with the International Union. We did not know whether
p. 967 or not that was the case, and in the second place we felt that the proposal was very unfair. A short time after that conference, which I think was in the early part of January, Mr. Broderick asked a conference with Senator Reed and that was arranged for January 20th. A day or two before that date Mr. Broderick called me and asked if it would be agreeable to bring Mr. Clif Langsdale, who was the attorney for the union, and I stated it would be agreeable. I might say that Mr. Langsdale has been the attorney for the International Union for a number of years and he appeared in this case up until the hearing before Your Honor.

Q. He was one of counsel for the International?

A. For the defendants.

Q. In other words, for the defendants, plural, all of them?

A. That is right. Then we held this conference at Senator Reed's house on January 20th, as I say, at the request of Mr. Broderick.

Q. And what was his position, precisely?

A. Mr. Broderick, as I understand, is acting Regional Director for the National Labor Relations Board. Mr. Broderick's position has been all along that it is part of his duties to bring about industrial peace and that he wanted to see if it could be accomplished in this case.

Q. Now, at the conference at Senator Reed's home, you say that negotiations were had be-
p. 968 tween the parties in the effort to settle the controversy?

A. Yes; practically every alleged controversy in dispute was discussed pro and con.

Q. Was a stenographic report made of those negotiations?

A. There was.

p. 992 Q. Mr. Ingraham, following the conference of January 20th, and pursuant to the suggestion made that the plaintiffs put their position in writing in the form of a letter, was that done?

A. That was done.

Q. On what date was the letter written, and delivered?

A. February 4, 1939. Can I explain what occurred prior to that?

Q. Yes.

[fol. 5893] A. Mr. Broderick called me a few days prior to February 4th and asked if that date would be satisfactory, and he said that we would meet at the National Labor Relations Board Offices at 2:00 p. m. on Saturday, and I told him that that would be satisfactory and that we would have our letter in the form that he would understand it and he said at that time why he wanted the date fixed was because the

p. 993 International wanted to have Mr. Perlstein present, so we then met at that time.

Q. And was that letter delivered to Mr. Langsdale and Mr. Jerome Walsh on that date?

A. It was.

Q. Is Plaintiffs' Exhibit 113, the letter of February 4th delivered to Mr. Langsdale and Mr. Jerome Walsh on February 4th?

A. It is. I would like to make another explanation of what happened before this letter, in addition to what I have said.

Q. Very good.

A. After the meeting of January 20th I met Jerome Walsh and we discussed the possibility of a settlement. Mr. Walsh said that he felt there might be a possibility of arriving at some settlement and suggested that we get together. We got together at lunch; Mr. Walsh called me and invited me to lunch. At that time he stated that he felt if we would put in writing a form of decree that would be satisfactory to us that it would expedite any settlement, so I told him that we would try to do that and he said he was leaving town

to be gone for several days and on his return he would get in touch with me. Well, when he
p. 994 returned, which as I remember, and I am sure about it, it was February 3rd, he called me and asked me if he could have the form of decree. I explained to him that Mr. Broderick had already arranged for a meeting on February 4th, the next afternoon, and that we had not completed the form of the decree and I suggested that we all meet according to our understanding with Mr. Broderick. So he said that was satisfactory and I understood him to say when he called me that he wanted the decree because of Mr. Umhey—

But in any event Mr. Walsh said that the next afternoon was satisfactory. The morning of February 4th Mr. Langsdale called Mr. Hogsett and I was in Mr. Hogsett's office and Mr. Langsdale asked if he could have, at once, the proposed draft of decree. We sent that over to his office at once and then later, at 2:00 o'clock, we met at the Labor Board offices for this conference. Mr. Hogsett and myself represented the Donnelly Companies, Mr. Tyler was present representing the Donnelly Garment Workers' Union, Mr. Broderick represented the Labor Board. Mr. Langsdale, Mr. Walsh and Mr. Rucker came into the room and we delivered our letter to them, and they in turn turned over their letter to us. I
p. 995 think Mr. Tyler at that time delivered a letter stating his position. Mr. Langsdale just glances at our letter and said that he did not care to waste any further time and with that Mr. Langsdale, Mr. Rucker and Mr. Walsh walked out of the room. Now, do you want me to read the letter?

p. 998 Q. Before lunch you read Plaintiffs' Exhibit 113, which was our letter to Messrs. Walsh and Langsdale, and since lunch you have read the decree submitted with it. Was that our

proposition submitted to these people in response to request?

A. That is right.

Q. I think you said that on an occasion when we met in the National Labor Board's office on February 4 Mr. Langsdale made some comment which you repeated and handed to me a letter?

A. Yes.

Q. You have had that marked as Plaintiffs' Exhibit 115?

[fol. 5894] A. Yes.

p. 1000 Q. Was an answer to that letter from Messrs. Walsh and Langsdale written?

A. There was.

Q. That letter was signed was it?

A. Yes, and that letter was dated February 17th.

Q. Was that letter answered by Messrs. Walsh and Langsdale?

A. Yes, it was, on February 18th.

Q. Do you have the answer?

A. I have the answer.

Q. Please have it identified.

p. 1003 Q. Now, at the opening of this trial, as the record shows, his Honor, Judge Miller made some reference to the possibility of a settlement of this matter. Following that did Mr. Walsh write a letter to the plaintiff, Donnelly Garment Company of March 29th?

A. That's right.

Q. Now, did Mr. Walsh write us a letter or the plaintiffs a letter on March 29th?

A. He did.

Q. Will you please have that marked.

Q. Now, in line with that letter was a conference between counsel for the various parties held on April 1, 1939 at Senator Reed's office?

A. Yes, but let me explain about this letter. This letter was received on March 29th. We advised counsel that afternoon that we would be willing to meet with them after the adjournment of court that day. That day first was

p. 1004 agreeable but when we got to our office Mr.

Walsh called and said that he had an appointment and he could not meet that day but would meet the following day or the next day so a conference was arranged for one o'clock Saturday, April 1st.

Q. Now, was a stenographic record made of that conference?

A. Yes, there was.

Q. I hand you Plaintiffs' Exhibit 119 and ask you if that is the stenographic record of that conference?

A. Yes.

Q. And whether it is correct?

[fol. 5895] A. Yes, I have read this.

Q. Now, following that meeting of the first of April and in line with the promise which we made to Mr. Walsh was a counter proposal made? A. There was.

Q. Have the plaintiffs or their counsel had any reply to that letter? A. We have not.

Redirect Examination.

p. 1027 By Mr. Hogsett:

Q. In the cross-examination Mr. Walsh asked you whether you had ever had any conference as requested by the International in this letter of March 9, 1937, the so-called polite letter? You said you had not and that you had not replied to that letter. Now I ask you why?

A. Well, at the time we received that letter the union did not claim to represent a single employee in our plant. A week before we

p. 1028 received the letter all the employees had delivered to Mrs. Reed the March 2nd document which is in evidence where the employees stated that they refused to have anything to do with an outside union and for the further reason that every complaint that the union made in that letter was taken to be absolutely false. We had tried out for months the question of the discharge of the 15 girls.

Q. Before the NRA?

A. Before the NRA. At the time the Labor Board delivered their complaint to us charging that we had discharged 15 girls we had reemployed 8 of the 15. That left 7. The evidence in that hearing disclosed that at the time the 7 were laid off only one of those girls belonged to the International Union. I am speaking now of their own testimony in that case. The remaining six testified in that hearing that they joined the International after they had been laid off by the Donnelly Company and we showed in that case that there was a very large, substantial lay-off in the summer of 1934 when these girls were laid off; There were 300 girls laid off at that time and that when business picked up we called back girls to work and by December we had called back some, I think 180 girls and of that number 8 of them were members of this union and we did not know at the time that they were members of the union, that any of them were members of the union or not members of the union and the one girl that claimed that she was a member of the union at the time she was laid off said nobody knew it; she testified in that hearing that no official of the company or nobody connected with the company knew that she was a member of the International.

[fol. 5896] "Plaintiff's Exhibit No. 113 A M F.

"February 4, 1939.

"To Paul F. Broderick, Acting Regional Director
National Labor Relations Board,

To Clif Langsdale, Esq., and Jerome Walsh, Esq., representing the International Ladies' Garment Workers' Union,

To Frank E. Tyler, Esq., representing the Donnelly Garment Workers Union.

Gentlemen:

This letter is written in compliance with the suggestions made by Mr. Broderick, acting regional director of the

National Labor Relations Board on January 20, 1939, to the effect that the parties participating in the negotiations that day held should state their several positions in writing with respect to the controversies between the Donnelly Garment Companies and the International Ladies' Garment Workers' Union and the National Labor Relations Board.

In order to accurately state our position, it seems proper to refer to what preceded the conference of January 20th. The meeting above referred to was preceded by several previous negotiations between the representatives of the National Labor Relations Board, the Donnelly Companies and the Donnelly Garment Workers' Union. At these previous meetings, no direct representative of the International Ladies Garment Workers' Union was present, and the question was raised as to the authority or ability of the representatives of the National Labor Relations Board to come to any understanding or agreement of adjustment or settlement which would be binding upon the ILGWU and insure a peaceful and permanent settlement of the controversies between the Donnelly Companies and the ILGWU. [fol. 5897] Accordingly, at the request of Mr. Broderick, at the last meeting Mr. Langsdale was brought into the negotiations as the representative of the ILGWU and the Kansas City Joint Board of the ILGWU.

At that meeting (January 20, 1939) the Donnelly Companies took the position that they had in no manner violated any law of the United States; that they had been guilty of no unfair labor practice; that the accusations made against them by the ILGWU, the Kansas City Joint Board of the ILGWU and the representatives of these last named organizations were groundless; that, nevertheless, the company was willing to endeavor, through negotiations, to arrive at a peaceful settlement and adjustment of all controversies including the above mentioned charges and all other accusations brought against them of unfair treatment of employees, of the maintenance of a spy system, of a caste system, of a speed up system of long hours, of low wages, and of discrimination against certain employees on account of affiliations with the ILGWU and the right of the ILGWU and the Kansas City Joint Board to indulge in any of the oppressive or unlawful acts com-

plained of in the action then pending in the United States District Court at Kansas City.

Mr. Langsdale stated that the settlement should include all matters of controversy and that he was authorized to negotiate on behalf of the ILGWU and the Kansas City Joint Board with reference to such a settlement, but emphatically stated that he would not agree to any settlement of the existing controversies unless, as a prerequisite, the companies would agree to disestablish the Donnelly Garment Workers' Union, to cancel their contracts with the last named union and to refuse to deal or bargain with any future plant labor organization formed by their workers.

Mr. Langsdale further stated that it was a part of the fixed policy of the International never to recognize a plant union and that the Union would never recognize the validity of a plant labor organization of the employees of the Donnelly Company. At said conference, it was even suggested by Mr. Langsdale that Mr. Tyler should withdraw.

[fol. 5898] Mr. Tyler, representing the Donnelly Garment Workers' Union, took the position that his client was a valid and legal labor organization created in compliance with Section 7 of the National Labor Relations Act and that in its organization and maintenance there was no violation of Section 8 of said Act, and that it had a valid and subsisting contract with the Donnelly Companies with relation to hours, wages, and all conditions of employment. That 100% of the employees of said Donnelly Companies were (and are) members of said union and through their representatives parties to said contract, and that said Donnelly Garment Workers' Union would stand firmly upon its rights and resist any attempt on the part of the employers, the National Labor Relations Board or the ILGWU to displace it as the proper bargaining agent for the employees of said companies, and that it would submit to no cancellation or abrogation of its contract. That said contract was a valuable contract and was a better contract than was held by any employees of similar companies in Kansas City.

The representatives of the National Labor Relations Board stated in substance that charges had been filed with

the Board. The full nature and extent of the charges was not disclosed but it was stated that unless a settlement was made between the ILGWU and the Donnelly Garment Companies, the Board would charge that the Donnelly Garment Workers Union was an illegal organization; that it was organized by or was dominated by the employers, and (2) that certain employees were discharged because of affiliation with the ILGWU and that the Donnelly Garment Company had refused to reinstate them on account of said affiliations and that back pay to these employees might or would be assessed. This was said notwithstanding the fact that the companies had never been given an opportunity to produce evidence to show Mr. Broderick that the charges were unfounded and thus avoid the necessity of a formal hearing and trial, and this right to produce evidence, the companies insisted, ought in justice to be given to them. As we understood Mr. Broderick, he stood firmly on the position that unless we acceded to Mr. Langsdale's position and disestablished the union, charges would be filed as aforesaid.

The above, we believe, is a fair statement of the substance of the negotiations. Mr. Broderick requested that the parties to the conference put in writing their positions with a view to the future meeting to discuss the positions taken.

[fol. 5899] The position of the Donnelly Companies is:

1. That the companies have not interfered with, restrained or coerced any employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

2. That the companies have not dominated or interfered with the formation or administration of any labor organization and particularly the Donnelly Garment Workers' Union or contributed financial or other support to it or any other labor organization.

3. That the Donnelly Companies are not guilty of discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

4. That all of the companies' employees notified the companies in writing that they would not join the International or be represented by it for the purpose of collective bargaining. That all said employees formed, organized and are maintaining, a union known as Donnelly Garment Workers' Union and have unanimously chosen their representatives for the purpose of collective bargaining.

5. That the companies know of no fact or facts that would justify it in refusing to recognize for the purpose of collective bargaining the representatives of all its employees.

6. That the companies would be guilty of violation of subsection 5 of Section 8 of the National Labor Relations Act in the event it refused to bargain collectively with the said representatives so chosen.

7. That the representatives of the Labor Board and the representative of the International have stated that the International does not have a majority of employees in the Donnelly plant and it is not even contended that they have any substantial minority.

8. That the companies, after their employees have chosen their exclusive bargaining representatives, are forbidden by Section 9 (a) of the National Labor Relations Act to [fol. 5900] bargain collectively with any one else.

9. In compliance with the law, the companies entered into a valid and binding contract with the representatives chosen by their employees covering all terms and conditions of employment and representation for the purpose of collective bargaining which said contract cannot be abrogated without the full consent of the said Donnelly Garment Workers' Union. The [the] companies cannot disestablish the Donnelly Garment Workers' Union without violating Section 7, sub-sections 1, 2 and 5 of Section 8, and Section 9. (a) of the National Labor Relations Act.

10. That any settlement providing that the companies would refuse to permit their employees to organize a plant labor union of their own choice or provide that the company would not deal with or contract with any plant labor union organized by a majority of their employees would be violative of the law.

11. That any attempt on the part of the companies to compel or induce any of its employees to join the International would likewise be violative of the law.

Unless the International recedes from its position as expressed by Mr. Langsdale it would [see] to be very difficult, if not impossible, to come to any understanding and agreement which will embrace a settlement of the existing controversies. Nevertheless, we stand ready to further negotiate and if possible to arrive at some common ground which will bring about a peaceful adjustment within the law of all existing controversies.

We stand ready:

First, to place placards on bulletin boards in the factory stating the substance of Section 7 of the National Labor Relations Act, and

Second, to arbitrate the matter of placing on a preferred list for reemployment the ten girls who claim to be entitled to reinstatement, provided:

(a) A final decree be entered in the case of Donnelly Garment Company, et al v. ' .ternational Ladies' Garment Workers' Union, et al, No. 2924, now pending in the United [fol. 5901] States District Court for the Western Division of the Western District, in substantially the form hereto attached; and that appropriate findings of fact and conclusions of law in support thereof be filed as the basis for such decree. (Inasmuch as any final decree necessarily must dispose of all the parties to the suit and of all of the issues raised by all the pleadings filed therein, we have requested Mr. Tyler, representing the Interveners, to collaborate with us in drafting the attached form of decree, and he has done so.)

(b) That the International Ladies' Garment Workers' Union, the Kansas City Joint Board, withdraw all charges pending before the National Labor Relations Board, and treat the same as finally settled and disposed of.

We think it is regrettable that we are in substance and effect told that we must violate the National Labor Relations Act and deny to our employees the rights secured to them under said law or we will be put to the expense and

trouble of a trial before the Labor Board on charges which we feel are absolutely without merit and totally groundless.

Very truly yours,

JAMES A. REED,
WILLIAM. S. HOGSETT,
ROBERT J. INGRAHAM.

[fol. 5902] "Plaintiff's Exhibit No. 115 A M F

"CLIF. LANGSDALE
Lawyer
921-24 Scarritt Bldg.
Telephone Victor 9880
Kansas City, Missouri

February 4th, 1939.

"Mr. William S. Hogsett,
Grand Avenue Temple,
City.

Dear Bill:-

We have received a copy of Final Decree which you propose shall be entered as a settlement of the controversies and labor dispute now existing between the Donnelly Garment Company and International Ladies' Garment Workers' Union.

Some days ago, I was informed by Mr. Paul Broerick, Regional Director of this district for the National Labor Relations Board, that Senator Reed desired a conference with reference to the charges filed by the International Ladies' Garment Workers' Union before the National Labor Relations Board against the Donnelly Garment Company. That conference was had. At the conference, Senator Reed suggested that if the Labor Board matter should be settled, the injunction suit which it has been judicially determined involves a labor dispute, should be settled also. I informed Senator Reed that I had no authority to represent the International Ladies' Garment Workers' Union in the settlement of the labor dispute, but that I

would be glad to carry any of his ideas back to the proper officials of that union. I find that the officials of the Union are genuinely anxious to make every reasonable effort to settle all controversies and labor disputes now existing between the Union and the Donnelly Garment Company. Your proposed "Final Decree" which you offer as such settlement, is so unreasonable as to lead us to believe that those whom you represent do not have any such genuine desire.

Senator Reed was informed at that conference that any settlement agreement would have to contain an article to the effect that the Donnelly Garment Worker's Company [fol. 5903] and the International Ladies' Garment Worker's Union, that end can be accomplished upon the following basis:

1. The Donnelly Garment Company must consent that a decree be entered in the United States Circuit Court of Appeals for the Eighth Circuit disestablishing the Donnelly Garment Worker's Union as an agency for collective bargaining and the representation of its workers.

2. Those employees, members of the International Ladies' Garment Worker's Union who were discharged and discriminated against because of their activities in behalf of that union, must be offered reinstatement with back pay.

3. The case of Donnelly Garment Company, et al, against International Ladies' Garment Worker's Union, et al, No. 2924, now pending in the District Court of the United States for the Western Division of the Western District of Missouri, must be dismissed at plaintiff's cost.

If the above three articles are agreed to by the Donnelly Garment Company, the International Ladies' Garment Worker's Union agrees:

First: To cease all activities of every kind and character which tend to keep anyone from purchasing any of the products of the Donnelly Garment Company, so long as the Donnelly Garment Company does not recognize any plant union as the bargaining representative of its employees.

Second: The International Ladies' Garment Worker's Union will agree that it will continue its efforts to or-

ganize the workers of the Donnelly Garment Company by peaceful and lawful methods.

If you cannot agree to the above proposition, the International Ladies' Garment Worker's Union proposes to submit all controversies and disputes now existing to arbitration.

Very truly yours,

CLIF LANGSDALE,
JEROME WALSH.
Attorneys for International Ladies' Garment Worker's Union.

"O. K.

(Signed) MEYER PERLSTEIN
Regional Director."

[fol. 5904] "Plaintiff's Exhibit No. 116 A M F.

"February 17, 1939.

"Mr. Clif Langsdale,
Mr. Jerome Walsh,
Attorneys for International Ladies'
Garment Workers' Union,
Kansas City, Missouri.

Gentlemen:

Answering your letter of February 4th, we desire to advise you distinctly that our clients have at all times reaffirmed, and do now reaffirm, the position taken by them in their amended bill of complaint in the pending suit—that for all the reasons there alleged any effort to settle the alleged dispute with your clients by negotiations, mediation or arbitration is not required.

In order to correct some of the misstatements contained in your letter, we call attention to the following facts:

A conference was held on January 20th between representatives of the Donnelly Companies, the Donnelly Garment Workers' Union, the International Union, and the Labor Board, in the hope that in such a conference we might convince your clients and the Labor Board of the justice of our position and thereby bring about peace. Mr. Langsdale, at the conference, stated that he was authorized

to appear for and represent the International and the Kansas City joint Board. The respective parties presented their various contentions, as stated in our letter of February 4th.

After a long discussion Mr. Broderick suggested that the meeting be adjourned, and that the parties should put in writing their various contentions and proposals, and that at the adjourned meeting these writings should be simultaneously interchanged, to the end that, the points of difference being thus outlined, they could be further discussed at the adjourned meeting.

After the meeting of January 20th was adjourned, Mr. Walsh, one of the attorneys for the International, had [fol. 5905] several talks with Mr. Ingraham relative to the various matters in controversy.

One of the matters which had been discussed in the conference was as to the form of the decree embodying a permanent injunction to be entered in the suit now pending in the District Court. Mr. Walsh stated that the discussion would be expedited if we would submit a draft of decree which the Companies would accept. He further stated that he would be out of town for several days, and upon his return would communicate with Mr. Ingraham.

Prior to Mr. Walsh's return Mr. Broderick arranged that the adjourned conference should be held February 4th.

On February 3rd Mr. Walsh advised Mr. Ingraham that Mr. Umhey, Vice President of the International, was here and requested a copy of the proposed decree for their consideration. We were also informed that Mr. Perlstein was here.

Mr. Ingraham informed Mr. Walsh that the draft of decree was not in final form, and that as Mr. Broderick had arranged a conference for the next day, February 4th, the draft of the decree would be at that time delivered.

On the morning of February 4th and prior to the hour arranged for the adjourned meeting, Mr. Langsdale requested Mr. Hogsett to furnish the form of decree as soon as possible. And, accordingly, the form was delivered to Mr. Langsdale and Mr. Walsh some hours before the adjourned meeting was to be held.

At the adjourned meeting we presented the form of decree and accompanied it with a letter setting forth our contentions and proposals in accordance with the previous arrangement. We were fully prepared and intended to continue the discussions and to see if possibly an agreement could be arrived at.

At the meeting, which lasted only a few minutes, Mr. Langsdale and Mr. Walsh delivered to us their letter of February 4th and, without waiting to discuss it or to discuss any of the proposals which we had submitted and were prepared to discuss, withdrew, Mr. Langsdale remarking that "he did not propose to waste further time". Having deliberately broken off these negotiations, you suggest arbitration.

[fol. 5906] "It is our clients' position that they have made every reasonable effort to settle the controversy with your clients by negotiation, that such effort failed solely through your clients' fault, and that our clients are not required by any law or by any rule of fair dealing to also attempt to settle the controversy by arbitration.

The pending injunction suit embodies practically all the facts in controversy and is ready for trial. In this trial you can obtain every right which could be granted you in an arbitration, except possibly an order for reinstatement with back pay of certain employees in the event the court should find that your charge that they were wrongfully discharged is true; and as to these matters or any other matter which could not be covered by the decree of the Court, and which we have the power to arbitrate. We will stipulate that the judge as arbitrator shall have jurisdiction to determine such matters and to enter a decree of the Court covering the same. Moreover, we are ready to go forward in such manner at once. In other

words, we will agree that as to all matters of controversy which are not strictly within the jurisdiction of the Court in the pending suit the Judge shall sit as an arbitrator and shall have jurisdiction as an arbitrator over all questions which could properly be submitted to a board of arbitration and that his decision as an arbitrator shall be embodied in a decree with the right of appeal reserved to each party. Such a procedure would give the parties the benefits of the right of subpoena, inspection, and other remedies which are essential in a hearing of these matters.

Of course, we cannot commit the Donnelly Garment Workers' Union as to whether they are willing to submit the question of the validity of their union or the validity of their contract with our clients, but our clients can and do agree to submit the same in so far as they may be authorized by law to submit it to arbitration.

If your proposal to arbitrate is made for the purpose of obtaining further delay in a hearing of the pending suit, we will say now that we will oppose the same. Any postponement is unfair and grossly injurious to our clients, when your clients continue their attacks. Your clients have been persistently violating the restraining order, [fol. 5907] and the means to which they might resort if the restraining order were annulled may be easily imagined.

We are willing to continue the negotiations or to discuss with you the matter of an arbitration if a conference can be arranged tomorrow or at a very early date.

Yours very truly,

REED & INGRAHAM
WILLIAM S. HOGSETT
Attorneys for
Donnelly Garment Company
Donnelly Garment Sales Company

"LB"

[fol. 5908] "Plaintiff's Exhibit No. 117 AMF

Clif. Langsdale, Lawyer
921-24 Scarritt Bldg.
Telephone Victor 9880
Kansas City, Missouri
February 18th, 1939

"Messrs. Reed and Ingraham,
Mr. William S. Hogsett,
Attorneys for the Donnelly Garment Company,
City.

Gentlemen:—

We have your letter of February 17th, which we assume you mean to be in reply to our letter of February 4th, in which we offered to arbitrate all of the differences existing between the Donnelly Garment Company and the International Ladies' Garment Worker's Union.

Your letter is in the same spirit that your client's attitude to the International has always been.

Your letter is so full of factual inaccuracies that it seems to us that if we ever meet again, we should have a stenographer present.

For instance, you state that Mr. Walsh on February 3rd advised Mr. Ingraham that Mr. Umhey vice-president of the International Ladies Garment Worker's Union was in Kansas City, and requested a copy of your proposed decree. Mr. Umhey was no closer to Kansas City than Eighth Avenue in New York.

Again you state that Mr. Langsdale, at a meeting at Senator Reed's home on January 20th, stated that he was authorized to appear for and represent the International and the Kansas City Joint Board, when, as a matter of fact, Mr. Langsdale went to that meeting solely for the purpose of discussing the Labor Board proceeding, and specifically stated that if any settlement should be made of the injunction suit, he would have to get authority from his clients to negotiate such settlement.

It appears to us that there is only one thing to do in view of your uncompromising attitude and your insistence [fol. 5909] upon conditions that are not even permitted

by law, that is proceed to trial with the injunction suit in the Federal Court, and with the charge against the Donnelly Garment Company of fostering an unlawful company union and discharging members of the International Ladies' Garment Worker's Union because of their activities in behalf of said Union before the Labor Board.

We are, however, still ready to submit the entire controversy to arbitration.

Very truly yours,

CLIF LANGSDALE."

CL:GK"

[fol. 5910] "Plaintiff's Exhibit No. 118 A M F

"Law Offices
Frank P. Walsh
and
Jerome Walsh

Thomas R. Lawler

Washington Office
930 Shoreham Building

Bryant Building
Kansas City, Missouri

"March 29th, 1929.

"Donnelly Garment Company,
1828 Walnut,
Kansas City, Missouri.

Gentlemen:

This is to advise that we still stand ready to follow the suggestion of Judge Miller to attempt to settle the labor dispute and other matters involved in the pending litigation.

You will recall that on the afternoon of March 21st, 1939, shortly after Judge Miller made his suggestion, Mr. Frank P. Walsh telephoned Mr. Hogsett advising of our willingness to meet, discuss and, if possible, adjust and settle all of the disputes and differences between the parties. Aside from the announcement made by Mr. Hogsett in open court on the following morning, we have had no word from you. We would be glad to hear from you on the subject.

Should efforts at negotiation or settlement be unavailing, we again offer to submit the matters to arbitration.

Very truly yours,

FRANK P. WALSH

Attorney for International Ladies' Garment Workers' Union."

cc—Messrs. Reed & Ingraham
Telephone Building

Mr. William S. Hogsett,
Grand Avenue Temple Building
Kansas City, Missouri.

[fol. 5911] "Plaintiff's Exhibit No. 120 A M F

"April 3, 1939

"Messrs. Frank P. Walsh and
Jerome Walsh, representing International
Ladies' Garment Workers' Union, Kansas
City Joint Board, et al.,
Kansas City, Missouri.

Dear Sirs:

Before the trial of this case there were negotiations between the parties looking to a settlement. These negotiations were broken off by your clients or their representatives. As a final word in those negotiations, we offered to arbitrate all differences which are at issue in this case as we more fully set forth in Paragraph 2 of our proposition. Your proposition now comes after the plaintiffs have practically introduced their entire case and after they have gone to great expense in carrying forward this trial and in bringing witnesses from long distances. However, we have this to say regarding your proposition of April 1, 1939:

1. There are three parties to this present controversy;

(1) the employers, whom we represent;

(2) the employees, represented by Mr. Tyler; and

(3) the International Ladies' Garment Workers' Union, Kansas City Joint Board, and numerous defendants, represented by yourselves.

Your proposition entirely ignores the employees, and it must be manifest that no agreement can be made which will be of validity or force unless the employees are a party thereto, and their rights have been considered and determined. Clearly this is true for the following, among other, reasons:

[fol. 5912] (a) The workers in the plant, prior to the beginning of the present suit, unanimously served notice upon the employers that they were satisfied with their wages and working conditions and in substance stated that they repudiated interference by any outside union.

(b) The law gives to the workers in the Donnelly plant the right to organize and they have voluntarily organized the Donnelly Garment Workers' Union for their bargaining representative, all of the employees being members thereof. Said union has entered into a contract with the employers covering all terms and conditions of employment, including representation. The contract is being observed by both parties.

The employers are without legal right and have no desire to breach that contract or to make any agreement which would ignore the terms thereof. Indeed, if they were to do so they would subject themselves to the heavy penalties prescribed by law.

2. Under your proposal, for a period of three years the right of the employers and the employees to deal freely under the terms of the contract referred to would be destroyed.

3. You make no proposition to repudiate, contradict or retract the false statements and charges made and broadcast throughout the country by your clients, and which have caused incalculable damage to the companies and their business.

4. You fail to propose that an injunction shall be issued in the cause now pending to protect the companies against the perpetration or continuance of any of the wrongful acts set forth in our amended bill of complaint. On the other hand, you now propose a new

tribunal to hear the issues in the cause now pending after we have presented to the Court approximately our entire case and have produced at great effort and expense witnesses in open court who reside at far distances from Kansas City. Manifestly to require a
[fol. 5913] new trial before a different tribunal would be unfair and costly to plaintiffs and the decision of the tribunal suggested could not give the plaintiffs the protection of an injunction of the Federal Court.

5. You fail to make any provision or proposition to compensate the companies for the heavy damages you have already occasioned for the perpetration of which your clients are liable.

For these reasons, we are unable to accept the proposal which you have made. However, in a sincere effort to settle the controversy between us, we submit to you the following counter proposal:

1. That a final decree be entered in the pending suit in substantially the form submitted to you with our letter of February 4, 1939; and that appropriate findings of fact and conclusions of law in support thereof be filed as the basis for such decree.

2. That as to all matters of controversy between us which are not strictly within the jurisdiction of the court in the pending suit, and as to which we have the power to arbitrate, his Honor, Judge Miller shall sit as an arbitrator and shall have jurisdiction as an arbitrator over all questions which could properly be submitted to a board of arbitration, and that his decision as an arbitrator shall be binding.

3. That all claims by the companies for damages caused by the wrongful acts of your clients up to this date be released.

We hope that this proposal will meet with your favorable consideration and approval. We shall be glad to hear from you further.

Yours very truly,

Attorneys for Donnelly Garment Company, Donnelly Garment Sales Company."

[fol. 5914] (Part of N. R. A.—J. M. C. Exhibit 3.)

In the District Court of the United States for the Western Division of the Western District of Missouri.

Objection is made to the findings of fact, conclusions of law and judgment contained herein for the reason that said findings of fact, conclusions of law and judgment are immaterial and are not binding upon the examiner or the Board.

Donnelly Garment Company, a corporation, and Donnelly Garment Sales Company, a corporation, Plaintiffs,
No. 2924 vs.
International Ladies' Garment Workers' Union, an unincorporated association, et al., Defendants,

Donnelly Garment Workers' Union, an unincorporated association, et al., Interveners.

Findings of Fact.

The court makes and files in the record of this cause the following findings of fact:

1. Plaintiff Donnelly Garment Company, a corporation organized under the laws of the state of Missouri, is engaged in the manufacture and sale of ladies' house dresses and wash frocks under the trade name of "Nelly Don." Plaintiff Donnelly Garment Sales Company, a corporation organized under the laws of the state of Missouri, is engaged exclusively in the sale and distribution of ladies' house dresses and wash frocks manufactured by the Donnelly Garment Company under its trade name "Nelly Don." Plaintiffs are and were, during the times complained of, engaged in interstate trade and commerce, bringing raw materials from outside the state of Missouri and manufacturing the same in the state of Missouri, and selling over [fol. 5915] 80 per cent of the finished product outside the state of Missouri.

2. The defendant, International Ladies' Garment Workers' Union (hereinafter referred to as International),

is an unincorporated association composed of members, many of whom reside in the Western Division of the Western District of Missouri; and the individual defendants are officers, members of the Executive Board, members, agents or servants of said International.

3. The interveners are members of the Executive Committee of the Donnelly Garment Workers' Union, an unincorporated association, formed and administered by all of the employees of plaintiffs, exclusive of officers, executives and persons with authority to employ or discharge.

4. On March 2, 1937, about three or four days after the International had publicly announced in the Kansas City press its intention to organize the plant of the Donnelly Garment Company, 1183 of plaintiffs' employees (being all but three of the then employees, excluding those with authority to hire or discharge) in a writing delivered to plaintiffs refused to acknowledge or accept the International as their representative.

5. On March 9, 1937, the International mailed to the Donnelly Garment Company a letter asserting certain alleged "grievances" pertaining to wages, hours and working conditions in the Donnelly Garment Company plant. The statements of fact in said letter, upon which the alleged "grievances" were based, were false and fraudulent statements, known by the writers of the letter to be false when the letter was written; and the purported "griev- [fol. 5916] ances" therein were not stated in good faith, but were stated fraudulently for the purpose of making it ostensibly appear to plaintiffs' customers, the consuming public and the courts that there was some basis for said "grievances", when in fact there was no basis therefor. Said letter did not represent a bona fide attempt by the International to negotiate or adjust a labor dispute, but was merely part of a scheme by the International to organize plaintiffs' employees as members of the International. No bona fide demand concerning "terms and conditions of employment" or concerning "the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employ-

ment," was being made by any of the defendants upon plaintiffs in said letter, or at the time this suit was filed.

6. Shortly after the Supreme Court of the United States sustained the validity of the National Labor Relations Act, and on April 27, 1937, one hundred per cent of plaintiffs' employees (other than officers, executives and those with authority to hire or discharge) voluntarily formed and became members of the Donnelly Garment Workers' Union, and unanimously designated and selected the nine members of the Executive Committee of said union as their sole representatives for the purposes of collective bargaining with plaintiffs in respect to rates of pay, wages, hours of employment and all other conditions of employment, and all matters for their mutual aid and protection. Said empolyees have at all times freely administered and maintained said union. At the time of the formation of said union and at all times since, none of said employees have been or are members of the defendant International.

[fol. 591.7] 7. On May 27, 1937, after negotiations between plaintiffs and the Executive Committee of the Donnelly Garment Workers' Union, a written contract was made and entered into between plaintiffs and the Donnelly Garment Workers' Union, which was supplemented thereafter on June 22, 1937, by a supplemental contract between the same parties, which contracts provided for wages, rates of pay, hours of employment and all other conditions of employment. Said contracts provided that plaintiffs were bound to and did recognize the Donnelly Garment Workers' Union as the sole bargaining agency on behalf of all of their said employees. Said contracts were and are satisfactory to all parties thereto, and the same have been at all times since and are now recognized by the parties as in full force and effect. By the aforesaid negotiations and contracts all matters of agreement between plaintiffs and their employees concerning terms and conditions of employment, and concerning the association and representation of plaintiffs' employees in negotiating, fixing, maintaining, changing and seeking to arrange terms and con-

ditions of employment, were fully fixed, established, settled and determined; and at all times since the making of said contracts there has been and is now no controversy or dispute of any kind between plaintiffs and any of their employees concerning any of those matters. At all said times, and up to the time this suit was filed, and ever since, complete harmony has prevailed between plaintiffs and their employees, and all parties to the contracts were and are satisfied therewith. The terms and conditions of said contracts are more favorable to the employees than the terms and conditions contained in any contract between the International and any manufacturer of house dresses [fol. 5918] and wash frocks introduced in evidence in this cause.

8. Plaintiff Donnelly Garment Company is and has been continuously since its incorporation a manufacturer of house dresses and wash frocks (so-called "cotton garments") and is classified in the industry as such, and is not classified as a "ready-to-wear" manufacturer (so-called "silk dress" manufacturer). According to the established custom in the industry the rates of pay of piece work operators in the "ready-to-wear" industry (so-called "silk dress" industry) do not apply to the rates of pay of piece work operators in the "house dress and wash frock" industry (so-called "cotton garments" industry).

9. At all times which are material in this case the wages actually paid by plaintiffs to their employees for various kinds of work were, and are now, in excess of wages paid to similar employees for the same or similar kinds of work by other manufacturers of ladies' garments operating under any of the contracts with the International which are in evidence, whether said manufacturers were engaged in the ready-to-wear industry or in the house dress and wash frock industry.

10. Notwithstanding the entirely harmonious relations between plaintiffs and their employees, the International, its officers, the General Executive Board, and its Southwest Regional Director, Meyer Perlstein, several months prior to the institution of this suit, entered into a combination and conspiracy for the sole and only purpose of com-

pelling plaintiffs' employees to join the International and accept the International as their exclusive bargaining agent for the purposes of collective bargaining.

[fol. 5919] 11. Pursuant to said combination and conspiracy, and in carrying forward the same, the International, its officers, General Executive Board, agents and members have threatened to and have in fact caused to be published and circulated among plaintiffs' customers and the consuming public false statements regarding wages, rates of pay, hours of labor and working conditions in plaintiffs' plant, and have attempted to induce said customers and the consuming public to boycott plaintiffs' goods, and have threatened plaintiffs' customers with a secondary boycott of their places of business and with picketing of the same upon refusal by such customers to discontinue purchasing or selling plaintiffs' merchandise.

12. Pursuant to said combination and conspiracy and in carrying forward the same, the International, its officers, General Executive Board, agents and members have threatened or caused to be threatened the use of physical violence against plaintiffs' employees for the purpose of intimidation of plaintiffs and their employees.

13. The International, its chief officers and General Executive Board, and its Southwest Regional Director, Meyer Perlstein, have authorized, ratified, confirmed or approved the use of assaults, physical violence and threats thereof, and publication of false statements, and the use and threats of a secondary boycott, as means of destroying the business of garment manufacturers, including plaintiffs, unless they recognize the International as the exclusive bargaining agent for their employees, and compel their employees to join the International.

[fol. 5920] 14. The acts and threats of defendants, by this court found to have been established by the evidence, and by this court found to be unlawful, were acts and threats in pursuance of a combination and conspiracy on the part of the International, its chief executive officers, its General Executive Board, its Southwest Regional Director (Meyer Perlstein), its Kansas City Manager (Wave Tobin), and its agents, Jane Palmer, Esther Smith, Grace

Bullard, Mary Jane Miller and others, the object and purpose of which combination and conspiracy was to injure and destroy plaintiffs' business (and thereby to restrain, burden, obstruct, interrupt and destroy plaintiffs' interstate trade and commerce), as a means of coercing plaintiffs to require their employees to join the International and to accept the International as their sole bargaining representative in respect to rates of pay, wages, hours of employment and other conditions of employment.

15. The acts and threats of defendants which are found by this court to have been established by the evidence, and which are by this court declared to be unlawful, will, unless enjoined, materially burden, obstruct, interrupt and destroy plaintiffs' interstate trade and commerce, causing immediate and irreparable loss and damage to each of the plaintiffs far in excess of $3000.00.

16. The defendants' unlawful acts hereinabove described have been threatened and will be committeed unless restrained, and have been committed and will be continued unless restrained; and substantial and irreparable [fol. 5921] injury to plaintiffs' property will follow; and as to each item of relief prayed for and granted, greater injury will be inflicted upon plaintiffs and interveners by the denial of relief than will be inflicted upon defendants by the granting of relief; and plaintiffs and interveners have no adequate remedy at law; and the public officers charged with the duty to protect plaintiffs' property are unable and unwilling to furnish adequate protection.

17. After plaintiffs received from 1183 of their employees on March 2, 1937, the employees' protest against any acknowledgment or dealing with the International as the representative of said employees, and after the aforesaid negotiations and the making of the aforesaid contracts with their employees, and before the time this suit was begun, plaintiffs definitely determined that they could not attempt to compel or influence any of their employees against their will and free choice to become members of or to be represented by the International, and could not negotiate, mediate or arbitrate any demand by defendants

for the abrogation of plaintiffs' contracts with their employees, or for the nullification of their employees' rights of self-organization and collective bargaining through representatives of their own choosing.

18. At no time after the plaintiffs on March 2, 1937, were notified by their employees of their refusal to accept the defendant union as a bargaining agent, was there anything which the plaintiffs or interveners could reasonably have offered to the defendants by way of compromise or settlement of the dispute which had arisen; and any settlement between plaintiffs or interveners and defendants of any alleged controversy or alleged dispute between plain-
[fol. 5922] tiffs or interveners and defendants, or of any demand by defendants upon plaintiffs, was at all times after March 2, 1937, utterly impossible; and any attempt at such a settlement by plaintiffs, or interveners, either by negotiation or with the aid of any available governmental machinery of mediation or by voluntary arbitration, would have been and was at all said times, entirely and obviously useless and unreasonable.

19. In conferences which occurred on January 20, 1939, February 4, 1939, and April 1, 1939, between duly authorized representatives of the plaintiffs, defendants and interveners, and in the letters which passed between the parties shortly following each of said conferences, plaintiffs and interveners did in fact make every reasonable effort to settle the dispute with defendants by negotiation, and with the aid of available governmental machinery of mediation (that is, through representatives of the National Labor Relations Board) and through voluntary arbitration; and the failure to settle such dispute was not due to any fault or unreasonable attitude or position taken by plaintiffs or interveners.

20. Plaintiffs and interveners have not failed to make every reasonable effort to settle the dispute with defendants either by negotiation or with the aid of any available governmental machinery of mediation or by voluntary arbitration.

21. Due and personal notice of this hearing has been duly given by plaintiffs and interveners (although this

court has not directed or required the giving of any such notice) to all known persons against whom relief is sought, and also to the chief of those public officials of the county [fol. 5923] and city within which the unlawful acts have been threatened or committed, charged with the duty to protect plaintiffs' property.

22. There has been clear proof of actual participation in, or actual authorization of, the acts to be enjoined, or ratification of such acts, by the defendants after actual knowledge thereof.

23. Plaintiffs did not at any time discriminate against their employees on account of affiliations with defendant International; and at and long before the time this suit was filed the plaintiffs' employees unanimously were protesting against any interference in their affairs by the International, and the International was not the representative of any of said employees for the purposes of collective bargaining or otherwise.

ANDREW MILLER,
United States District Judge.

[fol. 5924] (Part of N. R. A.—J. M. C. Exhibit 3.)

In the District Court of the United States for the Western Division of the Western District of Missouri.

Donnelly Garment Company, a corporation, and Donnelly Garment Sales Company, a corporation, Plaintiffs,
No. 2924 vs.
International Ladies' Garment Workers' Union, an unincorporated association, et al., Defendants,

Donnelly Garment Workers' Union, an unincorporated association, et al., Interveners.

Conclusions of Law.

The court now files in the record of this cause the following conclusions of law:

1. This court has jurisdiction of this suit because it is a suit of a civil nature in equity wherein the matter in

controversy exceeds, exclusive of interest and costs, the sum and value of $3000.00, and which arises under the Anti-trust Laws of the United States (15 U. S. Code, Secs. 1, 26).

2. The fact that on August 8, 1938, the International Ladies' Garment Workers' Union filed charges against the plaintiff Donnelly Garment Company with the National Labor Relations Board, and that on April 7, 1939, a complaint was filed against said company by said Board, does not in any way affect the jurisdiction of this court in this suit.

[fol. 5925] 3. Section 8 of the Norris-LaGuardia Act (29 U. S. Code, Sec. 108) is not to be construed so as to require of plaintiffs or intereveners a mere idle ceremony; and the court having found as a fact that any settlement between plaintiffs and defendants or between interveners and defendants of the controversies between them was impossible, and that any attempt at such a settlement, by negotiation, mediation or arbitration, would have been useless, such an attempt was not required of plaintiffs or interveners as a condition precedent to the plaintiffs' or interveners' right to injunctive relief.

4. Section 8 of the Norris-LaGuardia Act (29 U. S. Code, Sec. 108) did not require any effort on plaintiffs' or interveners' part to settle the dispute with defendants where such an effort would have been unreasonable; and the court having found as a fact that any attempt by plaintiffs or interveners to settle the controversy with defendants by negotiation, governmental mediation or arbitration, would have been unreasonable, such an attempt was not required of plaintiffs or interveners as a condition precedent to plaintiffs' or interveners' right to injunctive relief herein.

5. The plaintiffs and interveners have not in any respect failed to comply with any obligation imposed upon them by any law involved in the labor dispute in question. (This suit involves or grows out of a labor dispute.)

6. The publication and circulation by the International Ladies' Garment Workers' Union of false statements of fact regarding plaintiffs' treatment of their employees, for the purpose of injuring plaintiffs' business, was unlawful, and constituted a fraud upon plaintiffs.

[fol. 5926] 7. The International's threat to cause secondary boycotts of plaintiffs' customers and to picket such customers' places of business, unless such customers would cease buying plaintiffs' products, was unlawful.

8. The International's threats to use physical violence and acts of terrorism and intimidation against plaintiffs' employees, as a means of coercing plaintiffs to require their employees to join the International and accept the International as the representative of such employees for purposes of collective bargaining, was unlawful.

9. The wrongful acts and threats of the defendants, found to have been established by the evidence, constitute a restraint upon plaintiffs' interstate trade and commerce, in violation of the Anti-trust laws (15 U. S. Code, Sec. 1).

10. Plaintiffs and interveners respectively have no adequate remedy at law; and are respectively entitled to a permanent injunction against the defendants, their officers, agents, servants, employees, representatives and members, and all persons acting under the authority, direction, or control of defendants, or any of them, permanently enjoining them from any and all acts of fraud or violence or threats thereof complained of in the complaint and petition of intervention; and from conducting, threatening, instigating, or causing or attempting to conduct, threaten or instigate a secondary boycott or picketing of any of plaintiffs' customers, or of any of the places of business of plaintiffs' customers.

ANDREW MILLER,
United States District Judge.

[fol. 5927] (Part of N. R. A.—J. M. C. Exhibit 3.

In the District Court of the United States for the Western Division of the Western District of Missouri.

Donnelly Garment Company, a corporation, and Donnelly Garment Sales Company, a corporation, Plaintiffs,
No. 2924. vs. In Equity.
International Ladies' Garment Workers' Union, an unincorporated association, et al., Defendants,

Donnelly Garment Workers' Union, an unincorporated association, et al., Interveners.

Judgment.

Now on this 27th day of April, 1939, again come all of the parties in this suit, by their attorneys of record, and this cause having heretofore come on for trial before the court upon plaintiffs' amended complaint, defendants' answer thereto, interveners' petition of intervention, and defendants' answer thereto; and the court having heard the evidence of the parties in the form of the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of plaintiffs' verified amended complaint and interveners' verified petition of intervention; and now the court, being fully advised in the premises, doth now find that unlawful acts have been threatened and will be committed by defendants unless restrained, and have been committed and will [fol. 5928] be continued by defendants unless restrained; that substantial and irreparable injury to the property of plaintiffs and to the property of interveners will follow; that as to each item of relief prayed for by plaintiffs and interveners respectively, and as to each item of relief granted, said parties respectively, greater injury will be inflicted upon plaintiffs and interveners, respectively, by the denial of relief than will be inflicted upon defendants by the granting of relief; and that plaintiffs and interveners respectively have no adequate remedy at law; and that the public officers charged with the duty to protect the property of plaintiffs and interveners respectively are unable and unwilling to furnish adequate protection; and that due and personal notice of this hearing has been duly

given to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed, who are charged with the duty to protect the property of plaintiffs and interveners respectively; and that the plaintiffs and interveners respectively have not failed to comply with any obligation imposed by law which is involved in the labor dispute in question, and have not failed to make every reasonable effort to settle such dispute, either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration; and that there has been clear proof of actual participation in, or actual authorization of, the acts hereinafter enjoined, by the defendants, or of ratification of such acts by the defendants after actual knowledge thereof; and that issuance of a permanent injunction as prayed by plaintiffs and interveners respectively and as hereinafter granted, is necessary to prevent immediate and irreparable injury to plaintiffs and interveners, respec-
[fol. 5929] tively, by reason of threatened loss and damage to plaintiffs and interveners and each of them, from violation by defendants of the Anti-Trust Laws of the United States, and from unlawful acts and threatened attempts by defendants to destroy the rights of plaintiffs and interveners respectively;

And as the basis of this decree, the court makes and files in the record of this cause, prior to the issuance of the injunction hereinafter granted, findings of fact and conclusions of law, which constitute the grounds of the court's action herein;

And the court further finds that the injunction hereinafter granted includes only a prohibition of such specific acts as are expressly complained of in plaintiffs' amended bill of complaint and in interveners' intervening petition, respectively, and as are expressly included in said findings of fact made and filed by the court as aforesaid.

Wherefore, It Is Now by the Court Considered, Ordered, Adjudged and Decreed, that the defendants International Ladies' Garment Workers' Union, an unincorporated association, David Dubinsky, president of said association,

and David Dubinsky, individually, Luigi Antonini, first vice president of said association, Frederick F. Umhey, executve secretary of said association, and Abraham W. Katovsky, Morris Biotis, Rose Pesotta, Israel Feinberg, Salvatore Ninfo, Elias Reisberg, Philip Kramer, George Rubin, Isidore Nagler, Joseph Breslaw, Julius Hochman, Bisilio Desti, Louis Levy, Charles Kreindler, Harry Wander, Max Cohen, Samuel Perlmutter, Jacob J. Heller, Harry Greenberg and Charles S. Zimmerman, members of the general executive board and Luigi Antonini, Frederick F. Umhey, Abraham W. Katovsky, Morris Biotis, Rose Pesotta, Israel Feinberg, Salvatore Ninfo, Elias Reisberg, Philip Kramer, George Rubin, Isidore Nagler, Joseph Breslaw, Julius Hochman, Bisilio Desti, Louis [fol. 5930] Levy, Charles Kreindler, Harry Wander, Max Cohen, Samuel Perlmutter, Jacob J. Heller, Harry Greenberg and Charles S. Zimmerman, individually, Meyer Perlstein, Southwest Regional Director of said association and Meyer Pearlstein, individually, Max D. Danish, editor of the publication "Justice" and Max D. Danish, individually, Wave Tobin, manager of Kansas City Joint Board of International Ladies' Garment Workers' Union, Wave Tobin, agent of International Ladies' Garment Workers' Union, and Wave Tobin, individually, Kansas City Joint Board of International Ladies' Garment Workers' Union, Locals, 114, 115, 118, Jane Palmer, Esther Smith, Mary Jane Miller, Grace Bullard, Cinderella Robinson, Louise Smith, Ora Thornton, Annis Vaughan, Jack Spry, Etta Lepp, Lola Royer, Bertha Powers, Anna Zupka, Ruth Thompson, Grace Isgriggs, Della Jackson, Margaret Clements, Arlene Gaither, Velma Roseberry, Charlotte Carter, June Adams, Leta Meadon, Jo Nichols, Wanda Harrell, Mary Cornet, Ruth Davis, Mabel Jordan, Rosalie Poole, M. Smith, M. Fugina, I. Burke, S. Lallier, V. Hendrick, P. Tindle, H. Mixels, F. Bennet, P. Austin, D. Dunning, N. Schaefer, E. Blankenship, R. Vest, M. Wallace, R. Love, G. Chinnery, A. James, Y. Boettcher, G. Knepp, John Doe, Jennie Roe, Hazel Roe, Helen Boe, Richard Roe, June Adams, Mary Ashlock, Pearl Austin, Mary Adams, Pauline Axton, Jean Amoroso, Shelby Anderson, Anna Bost, Helen Barnes, Genevieve Barnes, Babe Bonocoiso, Ike Burke, Yvette Boettcher, Frankie Bennett, Ray Bowlin,

Harry Bell, Lena Condi, Bill Copaken, Gertrude Chinnery, Velma Cox, Mildred Dale, Della Dunning, May Dalton, Mary Deisz, Johnnie Day, Cecie Fizell, Betty Firestone, Gertie Farmer, Mary Fugina, Mary Flowers, Barney Glass, Anna Gann, Elsie Garrett, Anna Glorioso, Jenny Givens, Georgia Gill, Thurby Harriman, Tillie Harrison, [fol. 5931] Velma Hedrick, Dorothy Halley, Tillie Harriman, Gladys Hindman, Margaret Hanson, Anna Halpein, Maude Jackson, Mary Johnson, Anna James, May Jackson, Mary Jones, Bennie Kwiatek, Anna Koval, Gladys Knepp, Birdie Koontz, Irene Liggett, Stella Lafallier, Frank Levene, Cleo Low, Eva Lee, Nellie Mezzacoso, Pearl McKitterick, Loma McMillian, Henryette Mikels, Hubert McGhee, Tony Mange, Belle Maxey, Maude McCowan, Angelie Moley, Helen May, Esther Miller, Mildred McCabe, Mary McCain, Uni Nepote, Lily Provenzo, Nora Pulver, Hazel Poole, Esther Smith, Clara Seaton, Nadine Scott, Minnie Smith, Lucy Lee Skrivin, Evelyn Swanson, Grace Switzer, Pearl Tindle, Letha Triby, Anna Talperin, Rose Talperin, Ruth Vest, Lola Walters, Faye Wilbarn, May Wallace, R. Williamson, May Wall, Mildred Moore, Ethel Engle, Jessie Kuhl, Jessie Mills, Mildred McCabe, Henrietta Berry, and all other members of said union (who are too numerous to mention), and each of them, and their officers, agents, servants, employees and representatives, and each of them, and all persons acting under the authority, direction or control of defendants or any of them, be and they are now by the court permanently and perpetually enjoined:

1. From engaging in any act of fraud or violence, or in any threat thereof, at or near the premises of plaintiffs' place of business at 1828 Walnut Street, Kansas City, Missouri, or at any other place or places whatsoever, in anywise calculated or tending to interfere with, disturb or injure any officer, agent, employee or customer of plaintiffs, or the business of plaintiffs or any of plaintiffs' customers.

2. From doing any act or acts of fraud or violence or making any threats thereof, calculated or tending to [fol. 5932] injure or interfere with the businesses of plaintiffs, or to injure or interfere with the businesses of plain-

tiffs' customers on account of said customers dealing in or handling plaintiffs' products, or calculated or tending to interfere in any way with trade or commerce between plaintiffs and their customers, or to interfere with or molest any employee of plaintiffs or any person or persons making delivery of goods or parcels to or from plaintiffs' place of business or to or from plaintiffs' customers.

3. From interfering in any way, involving fraud or violence or threats thereof, with the contracts existing between the plaintiffs and the Donnelly Garment Workers' Union, or with any contracts which plaintiffs and said Donnelly Garment Workers' Union may hereafter negotiate or make, or with the due performance of said contracts by any party thereto.

4. From attempting, by fraud or violence or threats thereof, to compel or induce any of the employees of plaintiffs to withdraw or resign from the voluntary association of employees designated as Donnelly Garment Workers' Union; and from attempting, by fraud or violence or threats thereof, to compel or induce any of said employees, to join the International Ladies' Garment Workers' Union or any subdivision or local unit thereof.

5. From announcing, charging, publishing, circulating or causing to be announced, charged, published or circulated, any knowingly false and fraudulent statements regarding wages, hours of labor, or working conditions in plaintiffs' plant, or regarding their labor policies, or the ability of plaintiffs to fill orders for merchandise.

[fol. 5933] 6. From conducting, threatening, instigating, or causing or attempting to conduct, threaten or instigate a secondary boycott or picketing of any of plaintiffs' customers or of any of the places of business of plaintiffs' customers.

7. From notifying or requesting plaintiffs' customers or members of the public, by or on the strength of knowingly false and fraudulent statements, or by or with violence or threats thereof, not to patronize plaintiffs or purchase plaintiffs' products or merchandise; and from interfering or attempting to interfere in any manner, in-

volving fraud or violence or threats thereof, with the business of the customers of plaintiffs, wheresoever situated; and from boycotting any of said customers or picketing their places of business because of their buying, selling, handling or dealing in plaintiffs' products; and from issuing or distributing circulars or written or printed matter, and from making or uttering verbal statements, containing any knowingly false and fraudulent statements calculated or tending to injuriously affect the business of plaintiffs or their said customers; and from issuing any knowingly false and fraudulent written or verbal statements calculated or tending to prevent any person or persons from purchasing the goods produced or sold by plaintiffs; and from doing any other act or thing whatsoever, involving fraud or violence or threats thereof, calculated or tending to interfere with the business dealings of plaintiffs or their customers.

And now it is by the court further considered, ordered, adjudged and decreed that all injunction bonds given by plaintiffs or interveners in this cause be and the same are [fol. 5934] now released and discharged, and that all liability thereon be and the same is now ended.

And now it is by the court further considered, ordered, adjudged and decreed that the plaintiffs and interveners respectively have and recover of and from the defendants their costs herein.

ANDREW MILLER,
United States District Judge

[fol. 5935] (Certificates of Clerk and Judge to Findings of Fact, Conclusions of Law and Judgment.)

United States of America
Western District of Missouri—ss.:

I, A. L. Arnold, Clerk of the United States District Court in and for the Western District of Missouri, do hereby certify that the annexed and foregoing is a true and correct copy of the original Findings of Fact, Conclusions of Law, and Judgment in case No. 2924—Donnelly

Garment Company, et al, v. International Ladies' Garment Workers' Union, et al, Donnelly Garment Workers' Union, Interveners, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Kansas City, Missouri, this 21st day of June, A. D. 1939.

(Seal)

A. L. ARNOLD,
Clerk U. S. District Court.

[fol. 5936] United States of America, Set:

I, Merrill E. Otis, Judge of the District Court of the United States for the Western District of Missouri, do hereby certify that A. L. Arnold, whose name is subscribed to the preceding exemplification, is the Clerk of the said District Court, duly appointed and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to said exemplification is the seal of the said District Court, and that the attestation thereof is in due form of law.

Dated this 21st day of June, A. D. 1939.

MERRILL E. OTIS,
United States District Judge.

United States of America, Set:

I, A. L. Arnold, Clerk of the District Court of the United States for the Western District of Missouri, do hereby certify that the Honorable Merrill E. Otis, whose name is subscribed to the preceding certificate, is a Judge of the District Court of the United States for the Western District of Missouri, duly appointed and sworn, and that the signature of said Judge to said certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at office in Kansas City, in said District, this 21st day of June, A. D. 1939.

A. L. ARNOLD,
Clerk U. S. District Court.

[fol. 5937] (Part of N. R. A.—J. M. C. Exhibit 3.)

United States of America

Before the National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
Case No. XVII-C-371
and
Donnelly Garment Workers' Union, Party to the Contract.

Stipulation

The attached testimony of Lillian Rutherford, consisting of three (3) pages, taken from the Judge Miller Case transcript, was served upon the parties at the time of the filing herein by respondent of NRA-JMC Exhibit 3 but apparently was inadvertently omitted from said Exhibit 3 filed in this cause with the reporter.

It is hereby stipulated by all the parties hereto that the attached testimony of Lillian Rutherford may be filed with and become a part of said NRA-JMC Exhibit 3.

DANIEL J. LEARY
Attorney, Seventeenth Region,
National Labor Relations Board.

CLIF LANGSDALE
JANE WALKER PALMER
Attorneys for International
Ladies' Garment Workers' Union.

GOSSETT, ELLIS, DIETRICH & TYLER,
Attorneys for Intervenor,
Donnelly Garment Workers' Union.

REED & INGRAHAM
Attorneys for Respondent.

[fol. 5938] Cross Examination of Lillian Rutherford

By Mr. Hogsett:

Q. Mrs. Rutherford, you say you made an application when you first entered the employ of the Donnelly Company in which you gave your entire history?

A. Yes, sir.

Q. That is the way they do down there isn't it,—they employ their people with care, try to get people they know something about, is that right?

A. They did me.

Q. Well, that was routine; it wasn't true only with you was it? It was a blank you filled out wasn't it,—I mean a printed blank?

A. At the time I went to Donnelly's I didn't fill any blank out; they asked me questions.

Q. But in any case they do that with every person that enters the service of that company don't they and have for years? Do you know or not?

A. Well, they did me; I presume they do.

Q. You told them you had worked in a union shop?

A. Yes.

Q. Tell them where?

A. Yes.

Q. You told the truth?

A. Yes.

Q. They hired you nevertheless?

A. Yes, sir.

Q. It didn't make any difference, did it? It didn't apparently make any difference to them, did it, that you had worked in a union shop?

A. They hired me.

Q. And when you left in 1934 you went out along with a hundred and sixty or seventy other people who were laid off at that same time, is that right?

A. There were sections closed down when they laid me off.

Q. Your section would be only forty people; I am inquiring about a hundred and sixty or

seventy. There were, in fact, that many that were laid off at that same time and you just happened to be in that draw, isn't that true?

A. I was the out of our section that was laid off; I don't know anything about the other sections.

[fol. 5939] Q. Now, you say that you had signed an application to join the union when?

A. In the spring.

Q. Of what year?

A. 1934.

Q. Now you testified on that same subject before the NRA Board—at page 122, Mr. Walsh—did you testify as follows on the question of when you signed your application,—the precise point: "Q. Did you ever sign an application card to become a member of the union? A. Yes, sir. Q. Do you remember when you signed that card? A. In November. Q. You didn't sign the card until you actually joined then? A. No, sir." Did you give those answers.

A. I don't remember.

Q. I will show you the transcript, it may refresh your memory. See that; "did you ever sign an application card to become a member of the union? A. Yes sir. Q. Do you remember when you signed that card? A. In November. Q. You didn't sign the card until you actually joined then? A. No, sir." Do you see that there?

A. Yes.

Q. Now, to prove that you were correct about it I show you your application and ask you if you identify it?

A. Yes, that is my application.

Q. Pardon me, this is your application, isn't it?

A. Yes, sir, it is.

Q. So you did not sign this application until about four months after you left the Donnelly Garment Company?

A. No.

Q. This is right, isn't it.

A. Right.

Q. Now, you have enumerated a good many grievances that you had there at the Donnelly Company. In spite of that, in spite of all the trouble, all that treatment that you now complain about, as a matter of fact you wanted to go back to work there, didn't you?

A. Yes.

Q. After you left Donnelly's you got a job at once at Gernes Garment Company?

A. Yes.

Q. And there your guarantee was only $13.00 while at Donnelly's it was $15.00; that is right too, isn't it?

A. Yes.

[fol. 5940] Q. And in spite of the bad treatment you got at Donnelly's, you wanted to go back to work there and so swore at the time of this hearing, didn't you?

The Court: What do you mean by "this hearing"?

Q. This NRA Labor Board hearing where you testified.

A. May I tell you why I wanted to be back.

Q. I just wanted to know if you have an answer, if you did so testify?

A. Yes. May I tell you why I wanted to go back? Because when we got let out at Donnelly's and tried to get another job we had to tell where we had worked and they wouldn't have us.

Q. You just got through saying that you got a job at Gernes'—

A. And when they found out we were Donnelly girls they laid us off.

Q. "Us". Who do you mean by "us"?

A. The girls that were there.

Q. Who was "us"?

A. Thelma Owen.

Q. This lady who testified just a few minutes ago?

A. Yes.

[fol. 5942] (I.L.G.W.U. Exhibit 2.)

The employees of the Donnelly Garment Company hereby associate themselves under the name of the "Nelly Don Loyalty League."

We protest against and will resist all attempts of out side interference with the business of said company, or with our relations to the company as employees.

We recognize the fact that for many years this company has paid wages far in advance of the wages paid in similar factories. That our working conditions are good; that we have had practically continuous employment throughout the year which is almost unknown in this line of industry; that we have had generous and fair treatment from Nelly Don (Mrs. Reed), President of the company, and we repose our confidence in her rather than in professional agitators who are sent here to create discontentment among the employees of the company.

1937

SHEET NO 841 today (same agency)
RATING CREDIT LIMIT NAME Donnelly Garment Co
BUSINESS Mrs Fitzgerald Mr Blair ACCOUNT NO
1828 Walnut

DATE	ITEMS	FOLIO	DEBITS	DATE	ITEMS	FOLIO	CREDITS
Feb 13	50 Acme	1148	400	Jan 29			400
Feb 24	48 Acme #2	1251	192	Mar 11			192
Mar 9	50 Acme #2	1329	400				
Mar 9	100 Acme #2	1335	800	Mar 20			1200
Mar 14	1200 Chairs	1497	2400				2535
Mar 19	1 Chair Short		135	Apr 10			
June 28	1200 Chairs	1934	2400	May 5			2400
Apr 30	65 Acme #2	1954	520	May 8			520
May 12	1200 —	2118	2400	6-20			2400
June 7	945 Chairs	2130	665	June 8			665
June 8	65 Acme #2	2150	520	6-22			520
July 22	250 Chairs	2932	500				
July 22	750 Chairs	2929	1500				
July 22	150 Chairs	2935	300	Aug 17			230
July 31	50 Acme	2973	400	Aug 12			400
Oct 8	929 Chairs	3555	6633	Oct 29			665
Oct 12	65 Acme #2	3725	530	Nov 6			408
Oct 25	50 Acme #2	3892	408	Nov 11			530
Nov 19	595 Chairs	4252	1214	Dec 2			1214
Dec 7	500 Acme	30	1026	Dec 11			1026
Dec 8	75 Acme #2	2	523				
Dec 9	50 Acme #2	50	102	Dec 21			642
Dec 18	1500 Chairs Adult	4346	1636	1-3-38			1636
12-23	24 Acme 6-6	231	477				

Lyon E+H

Rollaway Loyalty Luggage

Rollaway Loyalty Luggage

Made by Irving-Pitt Division Wilson-Jones Co.

Donnelly Garment Co Chicago

Donnelly Garment Co Chicago

6503 2 13016

6503 2 13019

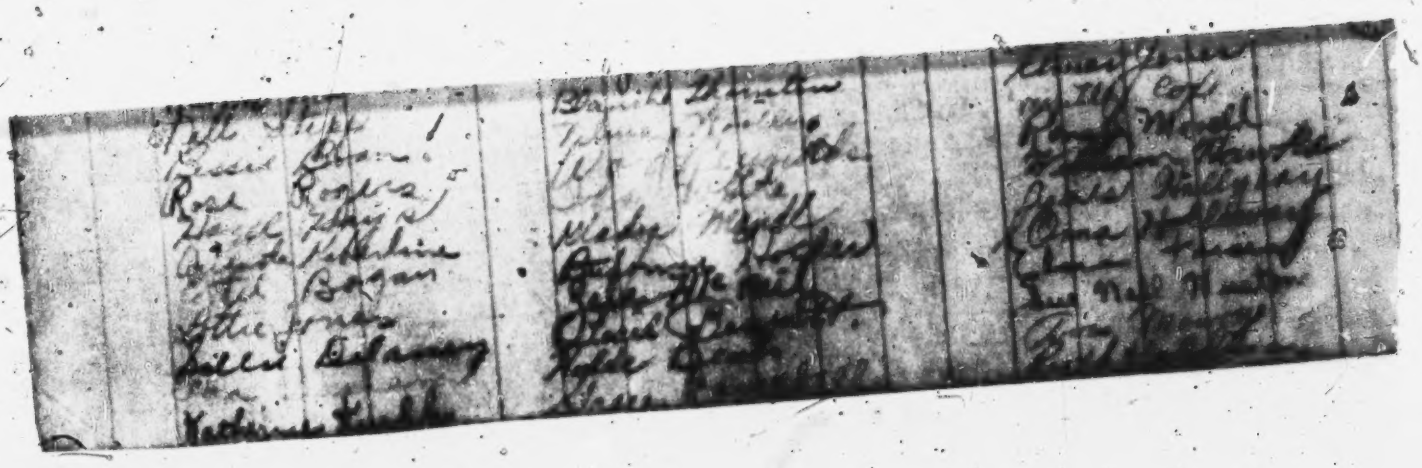
Ex. 30

We the undersigned, as members of the Donnelly Garment Co. wish to make it known we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any union labor organization We are thankful for the real humanitarian interest extended by our employer, Mrs Reed.

Grace Dunlap
Ina Clark
Minnie Stein
Nora Cotter
Walter Randell
Alma Murphy
Mary Butler
Cora Yates
Lucia Crum
Jessie Sm
Agnes Ke
Johanna Kaufe
Mary Ann Smith
Stella Nelson
Ella Keller
Viola Price
Emma Krenzke
Faith Kenne
Virginia Ellis
Dena Wood
Martha Lobach
Mary Walter
Helen Yet
Andrew Burkett
Nannie McDonald
Pearl Stipp
Lucile Glenn

Margaret Hunter
Antonia Hunter
Pearl Cox
Dorothy Smith
Ethel Mann
Blanche Lundeen
Grace Carlson
Pearl Mitchell
Ethel Mitchell
Ina Williams
Dorothy Roberts
Blanche Dalbert
Pearl Hanna
Lee Ann
Pearl Clark Wood
Mary Ann Smith
Ella Gray
Esther Wagner
Nellie Collins
Miranda Davis
Ethel Cooney
Pearl Ogard
Cora Fetzwater
Annie Bu
Ella Clara
Bertha Hiett
Rose Ruff
Ruth Farmer
Annie Price
Mary Robert
Blanche Hunter
Helen Pickering

Ethel M. Hammond
Mary Cummings
Pearl Fabe
Anna Mae
Ethel Lewis
Pearl Lewis
Ella Cole
Margaret Pearl
Lee Lewis
Lulu
Edna
Mildred
Elizabeth
Lyle Lee
Eva Lee Lewis
Grace
A Berger
Edna Dare
Anna Mae
Ethel Lewis
Pearl Lewis
Ella Cole
Pearl Lewis
Ethel Pearl
Elizabeth Hamilton
Ella Mae McCann
Elmer Jones
Mildred Cox



7.

We the undersigned as members of the Donnelly Garment Co wish to make it known we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any union organization We are thankful for the real humanitarian interest extended by our employer Mrs Reed.

Margaret Howard
Alpha Wilde
Mary Ivanitis
Mary Fitz
Betty Davis
Mildred Mayo
Mary Bell
Angela Brandon
Alice Higgins
Blanche Burgess
Myrtle Hall
Bonnie Moore
Cora Crain
Irene Hammond
Minnie Bartell
Fern Ligler
Bessie Hilliard
Valeria Boothe
Kathryn Wilson
Minnie Sage
Dora G. Holder
Mary Humphrey
Lizzie Berry
Ruth Jeffs
Ursula Davis
Katherine Farrell
June Watson
Myrtle Fogelson
Helen Best
Faye Frost
Virginia Morris

Bernice Anderson
Lydia Fay
Lelia Henry
Margaret Calvert
Helen Mansfield
Rose Christian
Barbara Brooks
Christina Graham
Lauren Colley
Ada Anderson
Mary Catalano
Ruth Beal
Magdalene Bridges
Violet Cowen
Gloria Booker
Dorothy Mendenhall
Bessie Collins
Lydia Lange
Pearl Lee
Burch Haywood
Bessie Maxwell
Lena Scott
Lena Cooper
Opal Pittard
Dorothy Pemberger
Elsie Atkins
Thelma Shainline
Eva Bennett
Nelly Taylor
Millard Joyce
Edith Hollingsworth
Thyra Kelley
Virginia Allen

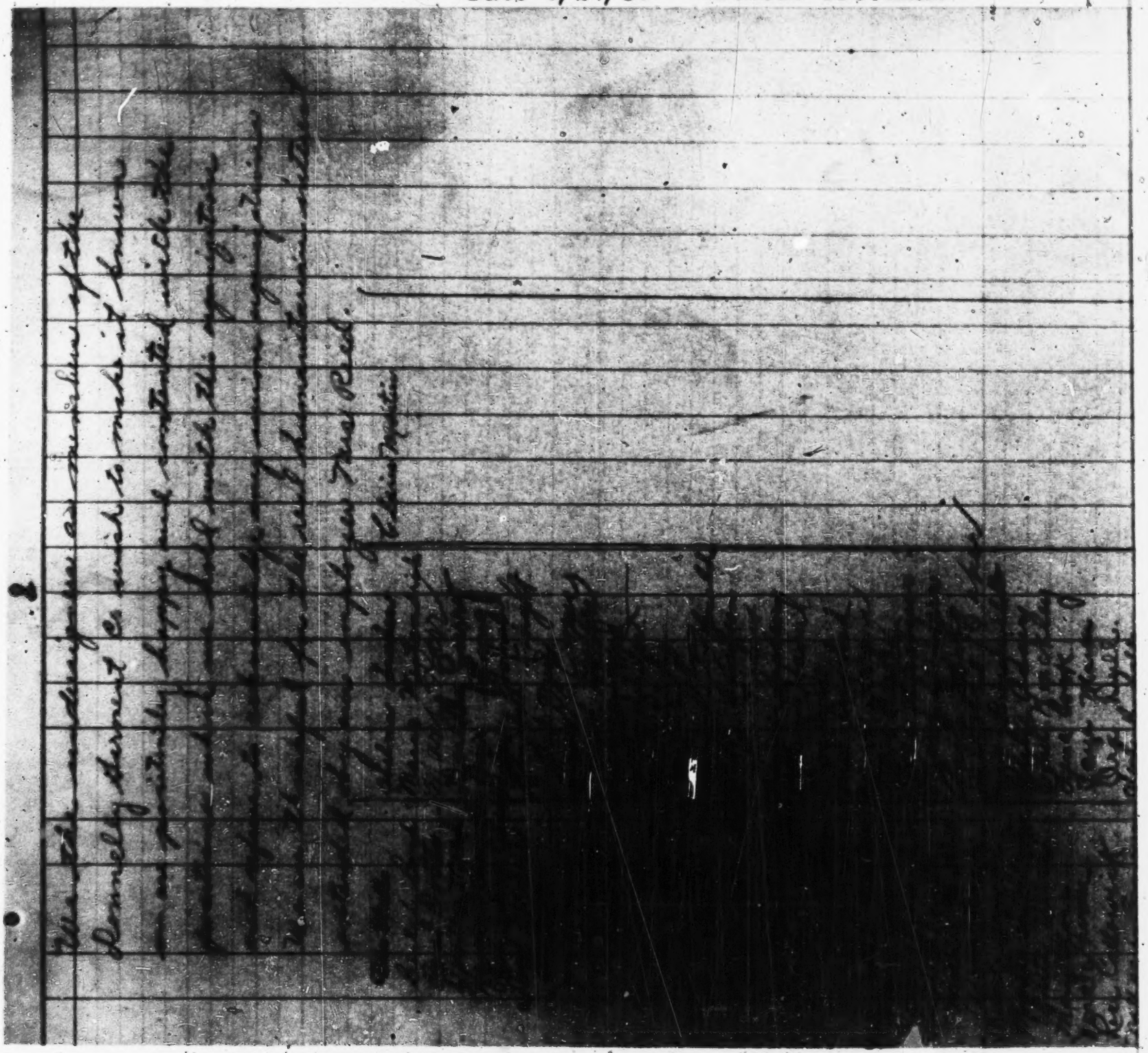
Ellen Gay
Lorene Stanley
Eulah Carter
Yvonne Wright
Charlotte Casey
Vivian Bailey
Mary Hall
Irene Wilkins
Jennie Olsen
F. J. Pope
Thelma Andrews
Albert Lemelle
Harold Boyd
Elmo Gaston
Eugene Fallin
Gilbert Knapp
Ila Hampton
Nancy Bevak
Josie Bayless
Jessie Sims
Carrie Ireland
Alma Kreps
Virginia Vassar
Mary Cooper
Edith Litfield
Nina Collins
Jean Sink
Genie Pitzer
Beth Keller
Mary Mitchell
Ethel Mae Dee

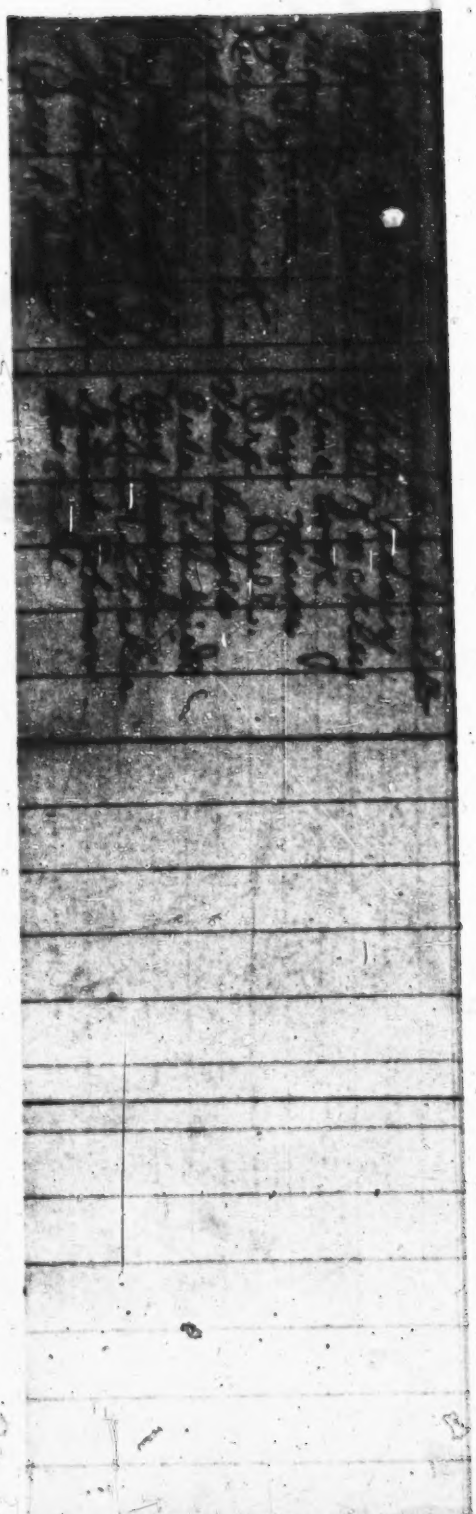
(I.L.G.W.U. Exhibit 10-G)
Date 6/27/39 - Witness Greenham

5967

1

(I.L.G.W.U. Exhibit 10-B)
Date 6/27/39 - Witness Greenhan.





We, the undersigned, as members of the Donnelly Garment Co. wish to make it known we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs Reed

Nova Stevenson	Julia Hanrahan	826 So. Harvard K.C.K.
Elizabeth Young	Mamie Riddle	H 133 C 17th St K.C.Mo
Katherine Rupert - 4024 Prospect	Myrtle Brewer	3229 Cypress
Grace Campbell 3015 Vine	Gertrude Crosby	4304 Chestnut
Vesta Mixon - 3927 Myrtle	Christine Erath	Overland Park Kans
Mary Murdock - 7121 Oak Grove	Daisy McKee	Hickman Mills, Mo.
Lucy Wasson 4114 E 11th	Anna Hunter	
Mary Eckhart 2425 Main St.	Dyman Whitten	5210 E 29 Ter.
Grace Stephens - 1709 E Gregory	Pearl Fennell	3809 Jackson K.C.Mo
Dorothy Grady - 515 Hardy K.C.Mo	Gertie Miller	
Emma Goodman 912 Oak K.C.Mo.	Louise Archold	469 N. Montgall Ave
Nell Bell 6026 6126 Holmes	Hazel Fowler	5426 E. Fairfield St
Irma Hart 8716 Indiana K.C.Mo.	Hattie Hayes	632 So. 10th K.C.K.
Ora Mueller 1719 Thornton K.C.Mo	Margaret Martin	2830 Wabash K.C.Mo.
Blanche Anderson 3423 Wabash Ave. K.C.Mo	Katherine Dunn	
Grace Davis 2542 College K.C.Mo	Mary Hyde	306 Bellefontaine
Mabel Spielhoff	Lucile Davis	4317 Wornall
Estella Foree	Ora Fowler	Platte City, Mo. Rt 2
Celia Eaton	Evelyn Wright	2541 Virginia Ave K.C.Mo
Josephine Nichols	Helen Kennedy	4201 Indiana
Adelia Skinner	Jessie Crandall	5207 Mary Ln Kansas City Kans
Opal Cotton 1021 Sandusky Kans	Iva Cozad	4746 Rogers Ave Kansas City Kans
Lizzie Reynolds 910 W 7th	Lita Waggoner	1317 South Main Independence Mo
Flora Weir 1400 Woodland, Indp.	Lucile Wilkinson	325 Little Blue Court K.C.Mo
Emma Hansen	Lula Haynes	921 W 13th K.C. Mo.
Ethel Crawford 337 Quincy Ave K.C.K.	Ruby Collette	Golden Oaks Kansas City Kans
Ina Kennedy	Millie Barlow	Merriam Kans
Eva Gibbons	Jeannie Richmond	1838 Jefferson K.C.Mo.
Emilie Reinert 1 E 11th K.C.K.	Rose Marie Galaty	3720 Flora
Ethel Engel 4116 Oak K.C.Mo	Audrey Burns	525 So. Lexington
Nell Crowder 6011 E 15th St.	Estella Killing	429 N. Crescent
	Leona Wyllie	3131 Hagendobe
	Ethel Lester	
	Mary Kosta	3217 Jackson K.C.

(I.L.G.W.U. Exhibit 10-C)
Date 6/27/39 - Witness Greenhan.

1627

We, the undersigned, as members of the Donnelly Garment Co. wish to make it known we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any union labor organization.

We are thankful for the real humanitarian interest extended by our employer Mr. Reed.

(I.L.G.W.U. Exhibit 10-D)
Date 6/27/39 - Witness Greenhan.

5964

1629

We the undersigned, are members of the Donnelly Garment Co. Wish to make it known we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the sanitation interest extended by our employer, Mrs Reed.

We the undersigned, are members of the Donnelly Garment Co wish to make it known we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employers. Mrs Reed.

8

We, the undersigneres an Members of the Donnelly Garment Company. Wish to make it known we are positively happy and contented with the position which we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs Reed.

James Lee Camp
Roland E. Fraser
Maria Mizell
Mae Fike
Mary Neil
Myrtle Rheinheimer
Dorothy L. Otte
Hazel Shuttleworth
Ruth Wood
Robert McMahan
Cledaley Carriger
Mary Jones
Reuel Slattery

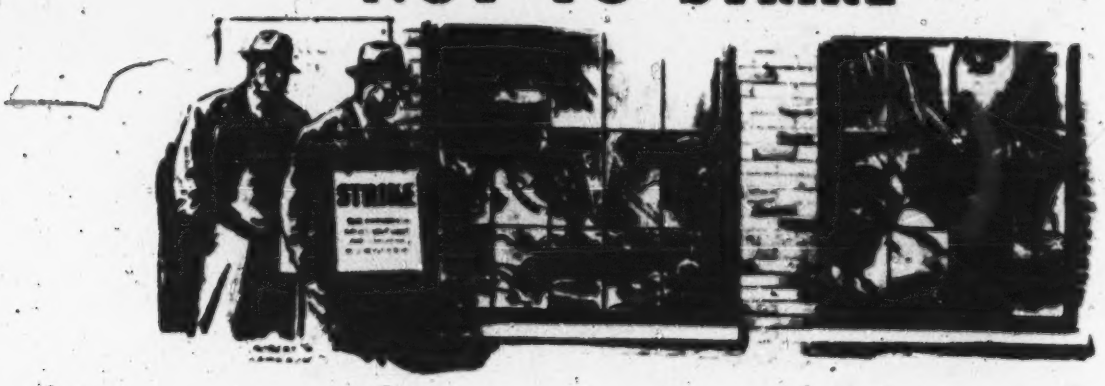
Kenneth Peck
Frances Morrison
Pauline Pollard
Frances Dumit
Emma Warren
Verna Jones
Sarah Fincher
Dejo Collquist
Sylvia Farrell
Margaret Edmonds
A B Shands
R. D. Scott
Della Rice

(I.L.G.W.U. Exhibit 10-H)
Date 6/27/39 - Witness Greenhan.

FEBRUARY 16, 1935 **Liberty** VOL. 11, NO. 7

BERNARR MACFADDEN, PUBLISHER FULTON OURSLER, EDITOR WM. MAURICE FLYNN, MANAGING EDITOR
WALLACE H. CAMPBELL, ART EDITOR WILLIAM C. LENGEL, ASSOCIATE EDITOR

PROTECTION IN THE RIGHT NOT TO STRIKE



IN organization there is strength. Scattered units, no matter how numerous, rarely secure proper consideration.

Labor unions have demanded and have secured the right to strike. In fact there is nothing in the Constitution which prevents one man, or any number of men, from leaving their jobs.

Legislators desiring to cater to the votes of the workers are inclined to favor them at every opportunity. But it is about time for lawmakers everywhere to give some consideration to workers who are not organized. Their constitutional rights should be defended. If workers want to strike, they have that right. But their right not to strike should be considered just as sacred as the right to strike. And their inalienable rights as citizens of this country should be properly respected.

We have heard, for example, of strikes where considerably more than 50 per cent of the workers did not want to go on strike but through intimidation were compelled to join the strikers. To have maintained their right not to strike, to have continued on the job, would probably have meant personal injury more or less serious in character.

The question of wages will always be a source of troublesome and serious debate. Only a certain percentage of the gross receipts of a business can be used for wages. When such a percentage is continuously exceeded, bankruptcy can be the only result and every worker in the establishment automatically loses his job.

There may be excuses for strikes during normal times; but when every business executive is straining to his utmost to maintain his business and pay his bills, a strike at this time only invites disaster to both workers and owners.

Every citizen is supposed to be entitled to police and legal protection essential to maintain his inalienable rights, and whether one is rich or poor should make no difference before the law. If the rights of those who did not want to strike had been properly protected, and if labor agitators—who often earn their living by creating hate and resentment between the workers and employers—had been properly restrained, many costly and violent strikes would never have occurred.

When we see pickets walking up and down in front of a reputable business organization, carrying sandwich boards with derogatory statements in reference to the owners, we often wonder what would happen in a reverse situation. Suppose the proprietors of the business should picket the homes of the strikers, with sandwich boards expressing their criticisms. We all know that such pickets would soon be in the hospital, if they managed to survive. And yet, if the owners are to be granted the same privileges as the workers, they should be allowed to publicize their grievances.

In presenting this viewpoint we are not favoring capital. We are simply asking for a fair deal for workers, union or nonunion, and also a fair deal for owners of business organizations which have been honestly and fairly conducted. Quarrels between capital and labor are not unlike wars between nations in their results.

They often bring disaster to both winners and losers, as was so dramatically exemplified in the World War.

The rigid wage scales which the unions tried to maintain during the depression sent thousands of substantial business organizations into bankruptcy and added millions to the unemployment list. Had the white-collar employees been unionized, and had they tried to maintain similar rigid wage scales, nearly every business would have been bankrupt. It was only the ability properly to reduce wages that saved almost the entire business world from financial ruin.

—BERNARR MACFADDEN.

5984

(I.L.G.W.U. Exhibit 19.)

We, the undersigned as members of the Donnelly Garment Co wish to make it known that we are happy and contented with the positions that we hold with this organization and refuse to acknowledge any union labor organization.

We are thankful for the real humanitarian interest extended to us by our employer Mr. Reich.

Catherine Donahue
Georgia Elliott
Hazel Hall
Nellie Gillham
Lucille Brannan
Nellie A. Hill

(I.L.G.W.U. Exhibit 10-I) 1639
Date 6/27/39 - Witness Greenhan.

We, the undersigned, as members of the Donnelly Garment Co. wish to make it known we are painfully happy and contented with the positions which we hold with this organization and refuse to acknowledge any Union, labor organization.

We are thankful for the real humanitarian interest extended by our employer Mrs Reed.

(I.L.G.W.U. Exhibit 10-J)
Date 6/27/39 - Witness Greenhan.

We the undersigners, as Members of the Donnelly Garment Co, wish to make it known we are positively happy and contented with the position worked we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed:-

Pauline Hartman
Opha Belt
Ellen Hughes
Catherine L. Barker
Gertrude Barnett
Grace McCoester
Beverly McClelland
Brigitte Fitzgerald O'Brien
Betty Beal
Dorothy Stratton
Eleanor Lowing
John J. Lang
Willo Osborne
Jane Smith
Ruth Wilson
Hallie Abendshein
Nettie Barnett
Elsa Brandt
Ethel MacKendrick Bondurant
Helen Robinson
Mary Myers
Ann Miller
Helma McInnis
Elizabeth Nebbe
Lauretta Langsing
Claire LaBrash
Elenor Vineyard

Sam Sparks.
Martha Stevenson
Ruth Alexander
Anna Stuart
Mary M. Bailey
Lucy Hall
Mae Fuller
Beatrice Lightmore
Bertha R. Estes
Rachael Pretzman
Mary Butterfield
Mary Risley
Lucille Briggs
Mildred Thorn
Ellen Swope
Cecile Allemand
Jane Daugherty
Margaret Hunter
Helen Hohl
Bernadine McCauley
Fredia Candle
Marjorie Dean
Mildred Coates
Agnes Stahl

Winfield Phillips
Gladys Maulding
Bonnie Noyes
Virginia J. Hagan
Mary E. Miller
Rose Hyde Hagan
Ella Bonig Green
Margaret Glover
Cora Vaughn
Katherine Rappert
Norma Duncan.
Elva Hill
Nell Beaty
Marjorie Florence
Dorothea Dankenbring
Evelyn L. Cook
Rose V. Todd.
Nell H. Hagg
Effie Canfield
Ora Gordon
Jane Dilfino
Mary Stevenson
Belle Moore
Lillie Bishop
Lucille Seaton

5971

(I.L.G.W.U. Exhibit 10-K)
Date 6/27/39 - Witness Greenhan.

1(

12

March 2, 1937

We the undersigned, as Members of the Donnelly Garment Co. wish to Make it Known we are positively happy and contented with the position which we hold with this organization and refuse to acknowledge any Union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed. -

Helmer N. Jensen
Mary Comey
Della Dick
Edna Canon
Pauline Dlautzer
Ella Mae Snyder
Kathleen A. Boyd
Herbert Hutchins
Alice Bloxget
J. B. Bozell
Regina Stearman
Ruth Anderson
Rea Russell
Carriger & Cochran
Arthur Foster
Martha Seay
Ida Hoyland
Rose O'Leary
Amy Lou Westerfield
Helen Hansen
Jack McGaughey
Ted. Kirkland
Marvin Reed

Anna Thiel
Dora Penny
Stephen Hightshoe
Elsie Reading
Dessie Rutherford
Lavina McCance
Nellie Kent
Dean Pyatt
C. L. Corbin
W. E. Baker
Edward O'Meachan
Frances M. Keith
Lavina Pinkerton
Gertrude Cain

(I.L.G.W.U. Exhibit 10-L)
Date 6/27/39. - Witness Greenhan

5972

PLAINTIFF'S

We the undersigned, as Members of the Donnelly Garment Company wish to make it known we are perfectly happy and contented with the position which we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer. Mrs. Reed.

Beulah Perkins
Mabel Eaves
Alice Wagg
Grace Green
Dorothy Keets
Viola Hargrove
Florence Lentz
Mary Randle
Helen Wilson
Mary Brown
Eva James
Helen Lee
Elmer Downing
Martha Redmond
Wardell Swenson
Eugene Yale
L. C. Haney
Calvin Bentz
Phineas Peterson
Elizabeth Goodman
Mae Bettag
Angie Bixby
Wm. Dana
Pedar Smeltzer
Edythe M. Hughes
Ercel M. Keenan

(I.L.G.W.U. Exhibit 10-M)
Date 6/27/39 - Witness Greenhan.

5973

March 5, 1932

We the undersigned, as Members of the Donnelly Garment Company, wish to Make it Known that we are Positively Happy and Contented with the position which we hold with this organization and Refuse to acknowledge any union labor organization. We are thankful for the Real Humanitarian interest extended by our employer, Mr. Reed

Ella Dorsey
Carrie Chramtt
Grace Davis
Lola Keene
Nellie Sipes
Mary Patton
Mame Grainger
Lena Allnoll
Cora Hendricks
Ada Young
Flora Fitzwilly
Emma Beeler
Anna Bechtel
Mary Mullen
Grace Grotts
Vera Marshall
Lillian White
Rosella Cook
Pauline Mundt
Ruth Hoge
Ruth Dorsey
Pearl Atkinson
Jessie Cody
Ada Wolf
Flora Willis
Mary Bogert
Lula Woodall
Edna Jennings

Anna Wherry
Lena Tykeson
Mollie Smith
Ida Zeller
Hebert Feinstein
Heath Cowan
Nora Hensley
Carrie Wright
John Fiorello.

(I.L.G.W.U. Exhibit 10-N)
Date 6/27/39 - Witness Greenhan.

5974

CLERK'S COPY.

Volume VI

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 55

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 30, 1940

CERTIORARI GRANTED APRIL 22, 1940

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

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45B, Check for $63.88, dated April 1, 1937	7067	4205
45C, Check for $77.62, dated April 16, 1937	7068	4207
45D, Check for $83.19, dated April 30, 1937	7069	4209
47, Letter signed by Bessie Weilert addressed "To whom it may concern" July 15, 1937	7071	4211
49A to 49E, Checks, Donnelly Garment Company to Bessie Weilert	7073	4213
49A, Check for $25.40, dated June 13, 1937	7073	4213
49B, Check for $21.20, dated May 20, 1937	7074	4215
49C, Check for $27.64, dated May 6, 1937	7075	4217
49D, Check for $26.34, dated April 8, 1937	7076	4219
49E, Check for $25.05, dated March 25, 1937	7077	4221
51A to 51G, Checks, Donnelly Garment Company to Opal Chaney	7079	4223
51A, Check for $27.63, dated April 29, 1937	7079	4223
51B, Check for $25.43, dated April 22, 1937	7080	4225
51C, Check for $27.47, dated April 15, 1937	7081	4227
51D, Check for $22.51, dated April 8, 1937	7082	4229
51E, Check for $24.38, dated April 1, 1937	7083	4231
51F, Check for $18.78, dated March 25, 1937	7084	4233

	Original	Print
51G, Check for $18.95, dated May 6, 1937	7085	4235
52A to 52H, Checks, Donnelly Garment Company to Anna Reece	7087	4237
52A, Check for $15.06, dated March 11, 1937	7087	4237
52B, Check for $15.50, dated March 18, 1937	7088	4239
52C, Check for $17.75, dated March 25, 1937	7089	4241
52D, Check for $20.84, dated April 1, 1937	7090	4243
52E, Check for $19.63, dated April 8, 1937	7091	4245
52F, Check for $18.13, dated April 22, 1937	7092	4247
52G, Check for $24.25, dated April 29, 1937	7093	4249
52H, Check for $18.93, dated May 6, 1937	7094	4251
53A to 53H, Checks, Donnelly Garment Company to Agnes Hutchinson	7096	4253
53A, Check for $19.23, dated March 18, 1937	7096	4253
53B, Check for $22.71, dated March 25, 1937	7097	4255
53C, Check for $22.40, dated April 1, 1937	7098	4257
53D, Check for $23.31, dated April 8, 1937	7099	4259
53E, Check for $28.77, dated April 15, 1937	7100	4261
53F, Check for $32.24, dated April 22, 1937	7101	4263
53G, Check for $30.00, dated April 29, 1937	7102	4265
53H, Check for $26.06, dated May 6, 1937	7103	4267
54A to 54I, Checks, Donnelly Garment Company to Iris Litten	7105	4269
54A, Check for $23.62, dated March 11, 1937	7105	4269
54B, Check for $25.59, dated March 18, 1937	7106	4271
54C, Check for $24.73, dated March 25, 1937	7107	4273
54D, Check for $24.37, dated April 1, 1937	7108	4275
54E, Check for $25.77, dated April 8, 1937	7109	4277
54F, Check for $26.44, dated April 15, 1937	7110	4279
54G, Check for $24.62, dated April 22, 1937	7111	4281
54H, Check for $33.31, dated April 29, 1937	7112	4283
54I, Check for $25.09, dated May 6, 1937	7113	4285
55A to 55H, Checks, Donnelly Garment Company to Flora Fries	7115	4287
55A, Check for $26.88, dated March 18, 1937	7115	4287
55B, Check for $27.10, dated March 25, 1937	7116	4289
55C, Check for $23.31, dated April 1, 1937	7117	4291
55D, Check for $25.74, dated April 8, 1937	7118	4293
55E, Check for $24.94, dated April 15, 1937	7119	4295
55F, Check for $32.59, dated April 22, 1937	7119	4297
55G, Check for $34.22, dated April 29, 1937	7120	4299
55H, Check for $29.9[illegible], dated May 6, 1937	7121	4301
56A to 56I, Checks, Donnelly Garment Company to Lillie Reynolds	7123	4303
56A, Check for $22.35, dated March 11, 1937	7123	4303
56B, Check for $27.15, dated March 25, 1937	7124	4305
56C, Check for $22.21, dated March 18, 1937	7125	4307
56D, Check for $22.44, dated April 1, 1937	7126	4309
56E, Check for $27.61, dated April 8, 1937	7127	4311
56F, Check for $23.42, dated April 15, 1937	7128	4313
56G, Check for $30.57, dated April 22, 1937	7129	4315
56H, Check for $33.34, dated April 29, 1937	7130	4317
56I, Check for $27.58, dated May 6, 1937	7131	4319
57, Tabulation relative to Comparative Earnings of Piece Work Operators—First Six Months—1937 and 1938	7131	4321

XU

[fol. 5991] Respondent's Exhibit 2 (Rejected).

United States of America
Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union,
Party to the Contract.

Case No. XVII-C-371.

Stipulation.

It is hereby stipulated by the parties to this proceeding that the attached photostat copies of respondent's Exhibit 2 (rejected) may be substituted for respondent's Exhibit 2 (Contracts between various garment companies and International Ladies' Garment Workers' Union).

DANIEL J. LEARY
Attorney, Seventeenth Region, National Labor Relations Board.

CLIF LANGSDALE
JANE WALKER PALMER
Attorneys for International Ladies' Garment Workers' Union.

FRANK E. TYLER
Attorneys for Intervenor Donnelly Garment Workers' Union.

REED & INGRAHAM
Attorneys for Respondent.

[fol. 5992] (Part of Respondent's Exhibit 2—Rejected)

State of Missouri,
County of Jackson—ss.:

This agreement made this twelfth day of April, 1937, by and between the Missouri Garment Company, Incorporated, a corporation with its principal office in Kansas City, Missouri, hereinafter called the "Employer" and the Joint Board of the Kansas City locals, and the International Ladies' Garment Workers' Union, hereinafter called the "Union."

Witnesseth:

Whereas, the parties hereto desire to establish a standard of conditions under which the workers employed by the said Employer, shall be employed during the term of this Agreement, and

Whereas, the parties hereto desire to cooperate in establishing conditions in the industry which will tend to secure the workers a living wage and fair and reasonable conditions of labor, and to provide methods for the fair and peaceful adjustment of all disputes which may arise between them so as to secure uninterrupted operation and general stabilization of the industry, to the honor and dignity of all parties concerned, as well as to the general welfare of the community at large, and

Whereas, both parties recognize that it is due to the consuming public whose patronage supports the industry as well as to the existence of the industry in Kansas City and all activities, decisions and arrangements growing out of this Agreement shall be based on the principles of true efficiency and the necessity for the lowest unit cost of production possible under the wage scales determined by this Agreement.

Now, Therefore, in consideration of the mutual promises and obligations assumed, the parties hereto agree as follows:

1. All the workers who are now on strike and who were in the employ of the Employer on the 17th day of March, 1937, shall be reinstated by the Employer within two (2)

weeks from the signing of this Agreement without discrimination.

1. (a) The term "workers" used herein is understood to mean manufacturing employees; that is, employees who are actually engaged in the making of garments.

[fol. 5993] This Agreement is not intended to cover any employees or officers who are not actually engaged in the making of garments and does not include officers, executives, designers, assistant designers, superintendents, foremen, forewomen, office employees, or any employee engaged in the shipping department. Such employees or officers do not come under this Contract.

2. The Employer agrees to employ none but members in good standing of the International Ladies' Garment Workers' Union. The Employer agrees that he will not have in his employ three (3) weeks after the date of the signing of this Agreement any worker who was in its employ on March 17th, 1937, and who is not at said time a member of the Union. In case the Employer is in need of additional workers he shall apply for such workers to the Union. Should the Union be unable to supply the Employer with the required competent workers suitable and acceptable to the Employer, the Employer shall have the right to employ non-union workers and after a trial period of four (4) weeks, no such worker shall remain in the employ of the Employer unless he or she shall have become a member in good standing of the Union.

3. The employer agrees to divide the work of the several departments equally and equitably among all the regular employees in such departments of the shop. No worker shall be discriminated against. The seasonal employees that are hired for seasonal employment may be laid off when and as their services are no longer needed. The employer reserves the right to discharge any employee at any time for just cause.

4. The working week shall consist of forty (40) hours per week divided into the first five (5) days of the week. During busy periods or when necessary on special work when overtime is deemed necessary by the Employer, such overtime work at regular prices shall be permitted, but

there shall be no abuse of this right of overtime by the Employer.

5. Thirteen Dollars per week shall be the minimum weekly wage for a female worker of normal speed and ability.

[fol. 5994] 5. (a) The piece rates for piece workers shall be set at a basis whereby not less than 70% of the non-apprentice female workers in the different departments of the shop shall be able to earn not less than Thirteen Dollars per week.

5. (b) The wages for cutters and spreaders shall be not less than the wages received by them at present.

5. (c) The wage scale for Apprentices shall be not less than $7.75 per week for a girl for the first six weeks of her apprenticeship. After that period they shall work on the piece rate basis and be paid in accordance with their production.

6. No workers shall be called in for less than one-half a day's work.

7. The piece rates for piece workers shall be agreed upon mutually by the Employer and a committee of not less than three and not more than five, selected by and from the the employees of the shop, known as the Shop Committee. Such committee shall be elected by the workers from their own membership and no person shall be eligible for election to such committee who has not been an employee of the Missouri Garment Company, Incorporated for at least one year next prior to election. The prices so set shall be fair and equitable. This price committee and the Employer shall meet weekly after working hours for the adjustment of all prices.

8. One member of the Shop Committee shall be its chairman, who shall represent the shop committee in all matters of any grievances that may arise in the shop between the Employer and the workers. Any matter of grievance which cannot thus be speedily adjusted shall be considered by the Employer and the Shop Committee as a whole.

9. There shall be no strikes, sit downs, stoppages or lockouts during the life of this contract.

10. The Union and the Employer agree to fully cooperate with one another in order to promote greater efficiency and productivity in the shop of the Employer.

[fol. 5995] 11. Any and all complaints that may arise in the shop of the Employer between the workers and Employer or between the Union and the Employer shall at the first instance be taken up outside of working hours for adjustment between the Shop Committee and the Employer. In case no adjustment is reached, the matter in dispute shall be taken up for adjustment between an accredited representative of the Union and a representative of the Employer. In case no agreement is reached, either of the parties, the Employer or the Union, shall have a right to refer the question in dispute to arbitration.

The arbitrator shall be selected jointly by Employer and an accredited representative of the Union within 48 hours from the time either of the parties shall notify the other party that such arbitration is to take place.

In case the employer and an accredited representative of the Union shall fail to agree on an arbitrator within 48 hours, after such notice, either of the parties, the Union or the Employer, shall have the right to call on the District Representative of the National Labor Relations Board to name the arbitrator.

The decision of any arbitrator so agreed upon and selected shall be final and binding on all parties.

The cost of such arbitration proceedings shall be borne equally by the Employer and the Union.

12. In all cases where strikes may occur in other shops the workers in the employ of the Missouri Garment Company, Incorporated, shall not be compelled or encouraged to participate in any of the strike activities.

13. This contract shall be binding upon the parties and their successors in interest for the period from July 1, 1937 to and including June 30, 1939, and the parties represent that they are authorized by their respective boards to enter into this agreement.

[fol. 5996] In witness whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this twelfth day of April, 1937.

MISSOURI GARMENT COMPANY, INCORPORATED
By S. M. Feinberg, President.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION
By Meyer Perlstein, Regional Director

Witnessed:
Wave Tobin
Isadore Rich

[fol. 5997] (Part of Respondent's Exhibit 2 Rejected.)

This agreement made this seventh day of April 1937 by and between the Gernes Garment Company, a corporation of Missouri, hereinafter referred to as the "Employer" or the "Company" and the International Ladies' Garment Workers' Union, an unincorporated association, hereinafter referred to as the "Union" or the I.L.G.W.U.

Witnesseth:

Whereas, the parties hereto desire to establish a standard of conditions under which the workers employed by the said Employer shall be employed during the term of this Agreement, and

Whereas, the parties hereto desire to cooperate in establishing conditions in the industry which will tend to secure the workers fair and reasonable conditions of labor and wages and to provide methods for the fair and peaceful adjustment of all disputes which may arise between them so as to secure uninterrupted operation and general stabilization of the industry, to the honor and dignity of all parties concerned, as well as to the general welfare of the community at large, and

Whereas, this agreement is entered into upon a basis of good faith on the part of all parties hereto,

Now, therefore, in consideration of the mutual promises and obligations assumed, the parties hereto agree as follows:

1. The International Ladies' Garment Workers' Union agrees to the establishment in the City of Kansas City of a separate Local for the workers employed in the shops of the Gernes Garment Company. The said Local shall be under the direct supervision of the General Executive Board of the I.L.G.W.U. and shall be identified as Local No. ——

1.(a) The term "workers" used herein is understood to mean manufacturing employees; that is employees who are actually engaged in the making [—] garments.

This agreement is not intended to cover any employees or officers who are not actually engaged in the making of garments and does not include officers, executives, de- [fol. 5998] signers, superintendents, foremen, forewomen, office employees, or any employee engaged in the shipping department. Such employees or officers do not come under this contract.

1. (b) Under approved safeguards, the workers of the Gernes Garment Company shall become and remain members in good standing of the I.L.G.W.U. through the said Local during the term of this Agreement.

1. (c) All manufacturing employees of the Company who have membership in Locals of the I.L.G.W.U., other than the separate local to be established in Kansas City, Missouri, shall become members of said separate local.

2. The parties hereto agree that the "time standards" and methods which have been previously established and approved in the Gernes Garment Company shall be continued.

3. (a) Where changes in the methods shall be deemed necessary by the Employer, such changes shall be subject to agreement with the Union.

3. (b) Where changes in conditions occur affecting previously established standards, new time standards shall be established by time studies.

3. (c) Check studies shall be taken where the workers feel that piece prices are not satisfactory. Such check studies shall be subject to the approval of the Committee of Workers of the respective departments.

3. (d) Instructions by the Company to the workers shall be issued when necessary on every new style and on each operation.

3. (e) It is agreed that any matter relating to any change in the then existing wage scale or rate of pay shall be taken up and considered by the Company and representatives of the Union in accordance with the procedure provided in this agreement and that such matters shall be taken up at a period between the 25th day of October and the 1st day of November annually during the life of this contract and that the wage scale or rate of pay thereby determined shall be the scale and rate which shall apply from November 1st of the year when considered until November 1st of the [fol. 5999] succeeding year. The present wage scale as outlined in this contract shall remain in force and unchanged until November 1, 1938.

In the event the parties are unable to otherwise agree as to any matter relating to said scale or wages, either party hereto may refer any dispute to arbitration and the determination of the arbitrator when reached shall be effective as of November 1st of the year in which the dispute arose, and thereafter as herein provided.

4. The Gernes Garment Company at all times herein mentioned is considered and regarded as a manufacturer of girls, junior high and sub-deb dresses.

5. During slack periods the available work in the different departments of the shop shall be divided on the same equitable basis as it is being done at present.

6. No worker shall be called in for less than one-half a day's work.

7. The parties hereto agree to observe a working week of forty (40) hours, and said hours to be divided among the first five (5) working days of the week. When overtime is deemed necessary by the employer such overtime work shall be permissible with the consent of the Shop Committee, overtime work to be paid for on the basis of regular wage scales and rate of pay.

8. The wage scale for female workers in the employ of the employer shall be not less than $13.00 per week for a worker of normal efficiency and ability. The present prices for the piece workers shall remain intact and shall be based on a basis that not less than 75% of the workers in the different departments of the shop shall be able to earn not less than $13.00 per week per capita. Female employees classed as "beginners" shall receive for their services not less than $10.40 per week. The classification of "beginner" shall not extend as to any one worker longer than a period of six consecutive weeks. If after said period [fol. 6000] such worker shall be employed by the company she shall be classified on the same basis as the other workers.

9. The base rate for piece workers and the scale for cutters shall be determined with relation to the rate and scale in general effect in the industry as applied to local conditions and circumstances.

10. In all cases where strikes occur in other shops, that the workers in the employ of the Gernes Garment Company shall not be compelled to participate in any of the strike activities unless the majority of their local union decides to do so.

11. The Company shall have the right to discharge any worker for just cause.

12. The workers shall be represented by a Shop Committee consisting of not less than three (3) nor more than five (5) members. Such committee shall be elected by the workers from their own membership and no person shall

be eligible for election to such committee who has not been an employee of the Gernes Garment Company for at least one year next prior to election. The Chairman of this committee shall be the Shop Chairman.

13. Any dispute which may arise between the parties shall, in the first instance, be taken up outside of working hours for adjustment by the Employer and the Shop Committee. In the event of failure to reach a satisfactory adjustment by this method the disputed matter shall then be taken up between the Employer and the accredited representative of the General Executive Board of the I.L.G.W.U. Finally, in the event of failure to reach a satisfactory adjustment by these methods, the dispute shall be submitted for arbitration. Either the Company or an accredited representative of the General Executive Board of the I.L.G.W.U. may call on the arbitrator for the arbitration of disputes, said arbitrator to be selected by the parties hereto on or before July 1, 1937. The cost of arbitration shall be borne equally by the Employer and the Union.

14. The parties hereto agree that there shall be no strikes, sit downs, lockouts, or stoppages during the life of this Agreement for any cause whatsoever.

[fol. 6001] 15. This Agreement shall become effective the 1st day of July, 1937, and shall continue in force and effect until the last day of June, 1940, and shall be renewed from year to year thereafter unless at least thirty (30) days before the expiration of the terms, written notice is given by one party to the other terminating this Agreement, in which event the desired changes or modifications by the party seeking to terminate this Agreement will be made the subject of immediate negotiation between the parties.

16. This Agreement shall be binding upon the parties and their successors in interests, and the parties represent that they were authorized by their respective boards to enter into this Agreement.

In witness whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this 7th day of April, 1937.

GERNES GARMENT COMPANY,
By A. B. Gernes, Pres.

INTERNATIONAL LADIES'
GARMENT WORKERS' UNION,
By Meyer Perlstein,
Regional Director.

By Dayid Dubinsky,
President.

Witnessed
Hugh L. Thomas
Wave Tobin

[fol. 6002] (Part of Respondent's Exhibit 2—Rejected.)

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

This Contract made and entered into this ninth day of April 1937 by and between the Mayfair Manufacturing Company, a corporation located at 909-911 Broadway, Kansas City, Missouri, Camille Azar, an individual doing business at 1000 Broadway as the Camille Azar Company, and Theo Azar an individual, doing business at 1000 Broadway as the Camille Azar Company, and Theo Azar an individual doing business at 905 Broadway, as the Theo Azar Company, hereinafter called the "Employers" and the Joint Board of the Kansas City Locals, and the International Ladies' Garment Workers' Union, hereinafter called the "Union".

Witnesseth:

For and in consideration of the mutual efforts of the parties hereto to establish and maintain harmonious and satisfactory relations with respect to employment, wages, and working conditions in the plants of the Employers, the parties to this contract hereby agree as follows:

1. The employers agree to perform all of the provisions hereof, and observe all rulings and injunctions of the Arbitrator hereunder.

2. The Union in turn agrees for and on behalf of itself, the Joint Board, locals and individual members thereof, to perform each and every provision hereof, and to stand responsible for the performance of its members and each of them, both as to the provisions hereof and the rulings and injunctions hereunder as rendered by the Arbitrator hereafter provided.

3. The Employers agree to employ none but members in good standing of the International Ladies' Garment Workers' Union. All the employees at present in the employ of the Employers shall in a period of two weeks from the date of signing this agreement become members in good standing of the Union. In case the Employers are in need of additional workers they shall apply for such workers to the Union. Should the Union be unable to supply the Employers with the required workers, the Em- [fol. 6003] ployers shall have the right to look for them elsewhere and after a trial period of three weeks if they remain in the employ of the Employers, they shall become members in good standing of the Union.

4. The Employers agree to divide the work equally and equitably among all the workers in the different departments of their shops. No worker shall be discriminated against and no workers shall be discharged unjustly.

5. The working week shall consist of forty (40) hours per week divided into the first five (5) working days of the week. During busy periods, when overtime work is necessary such overtime work shall be permitted, at the same rates of pay, but there shall be no abuse of this right of overtime work by the Employers.

6. Thirteen Dollars per week shall be the minimum wage for a female worker of average speed and ability.

6. (a) The piece rates for piece workers shall be set at a basis whereby not less than 75% of the female workers in the different departments of the shop shall be able to earn not less than Thirteen Dollars per week.

6. (b) The wage scale for female apprentices shall be not less than $8.75 per week, for the first six consecutive weeks of her apprenticeship. After that period they shall work on the piece rate basis and be paid in accordance with their production.

7. The cutters shall receive an increase of not less than ten percent (10%) beginning June 30th 1937, above the wages they receive at present.

8. The piece rates for piece workers shall be agreed upon mutually by each of the Employers and a committee of not less than three and not more than five, selected by the Union from the Employees of each shop. The prices so set shall be fair and equitable. This price committee and the Employers shall meet weekly after working hours for the adjustment of piece rates. This section shall become effective June 30th 1937.

[fol. 6004] 9. There shall be in each shop of the Employers a Shop Chairman selected by the Union of the workers of each employer to adjust all grievances that may arise in the shop between the Employer and the workers.

10. There shall be no strikes, stoppages or lockouts during the life of this contract.

11. The Union and the Employers agree to fully cooperate with one another in order to promote greater efficiency and productivity in the shops of the Employers.

12. Any and all complaints that may arise in any of these shops of the Employers between the Workers and any of these Employers or between the Union and any of these Employers shall at the first instance be taken up for adjustment between the Shop Chairman and the Employer. In case no adjustment is reached, the matter in dispute shall be taken up for adjustment between an accredited representative of the Union, and each Employer. In case no agreement is reached, either of the Employers or the Union, shall have the right to refer the question in dispute to arbitration.

The arbitrator shall be selected jointly by each Employer and an accredited representative of the Union within

48 hours from the time either of the parties will notify the other party that such arbitration is to take place.

In case any of these Employers and an accredited representative of the Union fail to agree on an arbitrator within 48 hours, either of the parties, the Union or any of these Employers, shall have the right to call on the District Representative of the National Labor Relations Board to name the arbitrator.

The decision of such arbitrator shall be final and binding on all parties.

The cost of such arbitration proceedings shall be borne equally by each Employer and the Union.

[fol. 6005] 13. This contract shall be binding upon the parties and their successors in interest for two years from the date of this contract, and the parties represent that they were authorized by their respective boards to enter into this agreement.

In Witness Whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this ninth day of April, 1937.

MAYFAIR MANUFACTURING COMPANY
By.....(Pres.) signed

CAMILLE AZAR COMPANY
By.....

THEO AZAR COMPANY
By Theo. Azar

INTERNATIONAL LADIES' GARMENT WORKERS' UNION
By Meyer Perlstein
Regional Director

13. In all cases where strikes may occur in other shops the workers in the employ of the Employers shall not be compelled or encouraged to participate in any of the strike activities.

[fol. 6006] (Part of Respondent's Exhibit 2—Rejected.)

STATE OF MISSOURI)
) ss
COUNTY OF JACKSON)

This agreement made this eighth day of April, 1937 by and between the Gordon Brothers Manufacturing Company, a corporation with its principal office in Kansas City, Missouri, and a branch factory located in Richmond, Missouri, hereinafter called the "Employer" and the Joint Board of the Kansas City Locals, and the International Ladies' Garment Workers' Union, hereinafter called the "Union."

Witnesseth:—

Whereas, the parties hereto desire to establish a standard of conditions under which the workers employed by the said Employer, shall be employed during the term of this Agreement, and

Whereas, the parties hereto desire to cooperate in establishing conditions in the industry which will tend to secure the workers a living wage and fair and reasonable conditions of labor, and to provide methods for the fair and peaceful adjustment of all disputes which may arise between them so as to secure uninterrupted operation and general stabiliation of the industry, to the honor and dignity of all parties concerned, as well as to the general welfare of the community at large, and

Whereas, both parties recognize that it is due to the consuming publich whose patronage supports the industry as well as to the existence of the industry in Kansas City that all activities, decisions and arrangements growing out of this Agreement shall be based on the principles of true efficiency and the necessity for the lowest unit cost of production possible under the wage scales determined by this agreement.

Now, Therefore, in consideration of the mutual promises and obligations assumed, the parties hereto agree as follows:

1. All the workers employed by the Employer prior to the present strike shall be reinstated by the Employer

within two weeks from the signing of this Agreement without discrimination.

1. (a) The term "workers" used herein is understood to mean manufacturing employees; this is employees who are actually engaged in the making of garments.

[fol. 6007] The Agreement is not entended to cover any employees or officers who are not actually engaged in the making of garments and does not include, officers, executives, designers, assistant designers, superintendents, foremen, forewomen, office employees, or any employee engaged in the shipping department. Such employees or officers do not come under this Contract.

2. The Employer agrees to employ none but members in good standing of the International Ladies' Garment Workers' Union, all of the present employees of the Employer shall be given the opportunity to become members in good standing of the Union, at all times within a period of three (3) weeks from the date of signing this agreement. In case the Employer is in need of additional workers he shall apply for such workers to the Union. Should the Union be unable to supply the Employer with the required competent workers suitable and acceptable, to the Employer, the Employer shall have the right to employ non-union workers and after a trial period of four (4) weeks if such workers remain in the employ of the Employer they shall become members in good standing of the Union.

3. The Employer agrees to divide the work of the several departments equally and equitably among all the regular employees in such departments of the shop. No worker shall be discriminated against. The seasonal employees that are hired for seasonal employment can be laid off when and as their services are no longer needed. The Employer reserves the right to discharge any employee at any time for just cause.

4. The working week shall consist of forty (40) hours per weeks divided into the first five (5) working days of the week. During busy periods or when necessary on special work when overtime is deemed necessary by the Employer, such overtime work at regular prices shall be permitted, but there shall be no abuse of this right of overtime by the Employer.

5. Thirteen Dollars per week shall be the minimum weekly wage for a female worker of normal speed and ability.

[fol. 6008] 5. (a) The piece rates for piece workers shall be set at a basis whereby not less than 70% of the non-apprentice female workers in the different departments of the shop shall be able to earn not less than Thirteen ($13.00) Dollars per week.

5. (b) The wages for cutters shall be not less than the wages received by them at present, the present male spreaders in the cutting department shall be paid at the rate of Twenty-Dollars per week beginning July first 1937.

5. (c) The wage scale for Apprentices shall be not less than $7.75 per week for a girl for the first six weeks of her apprenticeship. After that period they shall work at the piece rate basis and be paid in accordance with their production.

6. The following special provisions of this paragraph apply only to all workers at the branch factory operated by the Employer, at Richmond, Missouri. The minimum weekly wage for a female worker of normal speed and ability shall be Eleven Dollars per week. The piece rate for piece workers shall be set at a basis whereby not less than 60% of the non-apprentices shall be not less than Six Dollars per week for a girl for the first six weeks of her apprenticeship. After that period they shall work on the piece rate basis and be paid in accordance with their production.

7. No workers shall be called in for less than one-half a day's work.

8. The piece rates for piece workers shall be agreed upon mutually by the Employer and a committee of not less than three and not more than five, selected by and from the employees of the shop, known as the Shop Committee. Such committee shall be elected by the workers from their own membership and no person shall be eligible for election to such committee who has not been an employee [fol. 6009] of the Gordon Brothers Manufacturing Company for at least one year next prior to election. The prices

so set shall be fair and equitable. This price committee and the Employer shall meet weekly after working hours for the adjustment of all prices.

9. One member of the Shop Committee shall be its chairman, who shall represent the shop committee in all matters of any grievances that may arise in the shop between the Employer and the workers, any matter of grievance which cannot thus be speedily adjusted shall be considered by the employer and the Shop Committee as a whole.

10. There shall be no strikes, sit down, stoppages or lockouts during the life of this contract.

11. The Union and the Employer agree to fully cooperate with one another in order to promote greater efficiency and productivity in the shop of the Employer.

12. Any and all complaints that may arise in the shop of the Employer between the workers and the Employer or between the Union and the Employer shall at the first instance be taken up outside of working hours for adjustment between the Shop Committee and the Employer. In case no adjustment is reached, the matter in dispute shall be taken up for adjustment between an accredited representative of the Union and a representative of the Employer. In case no agreement is reached, either of the parties, the Employer or the Union, shall have a right to refer the question in dispute to arbitration.

The arbitrator shall be selected jointly by Employer and an accredited representative of the Union within 48 hours from the time either of the parties will notify the other party that such arbitration is to take place.

In case the Employer and an accredited representative of the Union fail to agree on an arbitrator within 48 hours, after such notice, either of the parties, the Union or the Employer, shall have the right to call on the District Representative of the National Labor Relations Board to name the arbitrator.

[fol. 6010] The decision of any arbitrator so agreed upon and selected shall be final and binding on all parties.

The cost of such arbitration proceedings shall be borne equally by the Employer and the Union.

13. In all cases where strikes may occur in other shops the workers in the employ of the Gordon Brothers Manufacturing Company, shall not be compelled or encouraged to participate in any of the strike activities.

14. This contract shall be binding upon the parties and their successors in interest for the period from July 1, 1937 to July 1, 1939, and the parties represent that they are authorized by their respective boards to enter into this agreement.

In Witness Whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this eighth day of April, 1937.

GORDON BROTHERS
MANUFACTURING COMPANY

Witnessed

....

....

INTERNATIONAL LADIES'
GARMENT WORKERS UNION

By .....
Regional Director

[fol. 6011] (Part of Respondent's Exhibit 2—Rejected.)

State of Missouri,
County of Jackson.

This Contract made and entered into this twenty-third day of February, 1937, by and between the Liberty Frocks Company, Incorporated, a corporation with its principal office located in Kansas City, Missouri, and a branch factory in Lexington, Missouri, hereinafter called the "Employer" and the Joint Board of the Kansas City locals and the International Ladies' Garment Workers' Union, hereinafter called the "Union".

Witnesseth:

For and in consideration of the mutual efforts of the parties hereto to establish and maintain harmonious and satisfactory relations with respect to employment, wages and working conditions in the plants of the Employer, the parties to this contract hereby agree as follows:

1. The Employer agrees to employ none but members in good standing of the International Ladies' Garment Workers' Union. All the employees at present in the employ of the Employer shall in a period of two weeks from the date of signing this agreement become members in good standing of the Union. In case the Employer is in need of additional workers he shall apply for such workers to the Union. Should the Union be unable to supply the Employer with the required workers, the Employer shall have the right to look for them elsewhere and, after a trial period of two weeks if they remain in the employ of the Employer, they shall become members in good standing of the Union.

2. The Employer agrees to divide the work equally and equitably among all the workers in the different departments of the shop. No worker shall be discriminated against and no worker shall be discharged unjustly.

3. The working week shall consist of forty (40) hours per week divided into the first five (5) working days of the week. During busy periods, when over-time work is necessary, such over-time work shall be permitted, but there shall be no abuse of this right of over-time by the Employer.

4. Thirteen Dollars per week shall be the minimum wage for a female worker of average speed and ability.

[fol. 6012] 5. (a) The piece rate for piece workers shall be set at a basis whereby a worker of average speed and ability shall be able to earn not less than $13.00 per week.

5. (b) Workers of sub-normal productivity shall receive the same piece rates the rest of the workers receive and be paid in accordance with their productive ability.

5. (c) The wages for Cutters shall be not less than the wages received by them at present, Girl Spreaders in Cutting Department to receive $1.50 increase above the wages received by them at present.

5. (d) Piece rates for the piece workers in the Lexington, Missouri, factory shall be the same as those set for the piece workers in the Kansas City factory and the workers shall be paid in accordance with their productive ability.

5. (e) The wage scale for Apprentices in the Lexington, Missouri, factory shall be not less than $6.75 per week for a girl for the first six weeks of her apprenticeship. After that period they shall work on the piece rate basis and be paid in accordance with their production.

6. The piece rates for piece workers shall be agreed upon mutually by a committee of not less than three and not more than five, selected by and from the employees of the shop, and the Employer. The prices so set shall be fair and equitable and be based on the productive ability of the average worker. This price committee and the Employer shall meet weekly for the adjustment of all prices.

7. There shall be in the shop of the Employer a Shop Chairman selected by the Union of the workers of the Employer to adjust all grievances that may arise in the shop between the Employer and the workers.

8. There shall be no strikes, stoppages or lockouts during the life of this contract.

9. The Union and the Employer agree to fully cooperate with one another in order to promote greater efficiency and productivity in the shop of the Employer.

[fol. 6013] 10. The Employer agrees that for ninety (90) days from date of this contract all garments produced by the Employer shall bear the Union Label, and that thereafter the use of Union Label shall be optional with the Employer. This Union Label is owned and controlled by the International Ladies' Garment Workers' Union and the Employer shall purchase this Label from this Union at a price of $1.00 per thousand Labels. The Label shall be under the control, in the shop of the Employer, of a Label custodian named by the Union. The International Ladies' Garment Workers' Union obligates itself to widely publicize the garment produced by the Employer bearing the Union Label.

11. Any and all complaints that may arise in the shop of the Employer between the workers and the Employer or between the Union and the Employer shall at the first in-

stance be taken up for adjustment between the Shop Chairman and the Employer. In case no adjustment is reached, the matter in dispute shall be taken up for adjustment between an accredited representative of the Union and a representative of the Employer. In case no agreement is reached, either of the parties, the Employer or the Union, shall have a right to refer the question in dispute to arbitration.

The arbitrator shall be selected jointly by Employer and an accredited representative of the Union within 48 hours from the time either of the parties will notify the other party that such arbitration is to take place.

In case the employer and an accredited representative of the Union fail to agree on an arbitrator within 48 hours, either of the parties, the Union or the Employer, shall have the right to call on the District Representative of the National Labor Relations Board to name the arbitrator.

The decision of such arbitrator shall be final and binding on all parties.

The cost of such arbitration proceedings shall be borne equally by the Employer and the Union.

[fol. 6014] 12. This contract shall be binding upon the parties and their successors in interests for one year from the date of this contract, and the parties represent that they were authorized by their respective boards to enter into this agreement.

In Witness Whereof, the parties hereto have caused the signatures affixed hereto by their respective officers this twenty-third day of February, 1937.

LIBERTY FROCKS COMPANY, INCORPORATED,
By A. B. Passman, Pres.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION.
By Meyer Perlstein,
Regional Director.

Witnessed:
Floyd E. Jacobs
Wave Tobin

[fol. 6056] (Stipulation relating to Intervener's Exhibit 20—Rejected)

United States of America

Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union,
Party to the Contract

Case No. C-1382. (XVII-C-371)

It is hereby stipulated by and between Donnelly Garment Company, by R. J. Ingraham; Donnelly Garment Workers' Union, by Frank E. Tyler; International Ladies Garment Workers' Union, by Clif Langsdale; and Marion A. Prowell, attorney, National Labor Relations Board, Seventeenth Region, as follows:

Photostatic copies composed of thirty-seven (37) pages of petitions, introduced in the above-styled matter as Intervener's Rejected Exhibit No. 20-A to 20-KK, inclusive, having been lost, it is hereby stipulated and agreed that the photostatic copies attached hereto composed of thirty-seven (37) pages are true and correct copies of Intervener's Rejected Exhibit No. 20-A to 20-KK, inclusive, referred to on pages 3044 to 3046 of Volume 26 of July 14, 1939, of the transcript of the above-styled matter heard at Kansas City, Missouri.

It is further stipulated and agreed that the thirty-seven (37) pages of the attached are true and correct photostatic copies of the documents originally introduced as Intervener's Rejected Exhibit No. 20-A to 20-KK, inclusive.

[fol. 6057] It is further stipulated and agreed that the thirty-seven (37) pages of photostatic copies attached hereto shall be, and hereby are, by agreement of the parties, substituted for Intervener's Rejected Exhibit No. 20-A to 20-KK, inclusive, which has been lost.

It is further mutually understood and agreed that this stipulation and the attached photostatic copies shall be forwarded to the National Labor Relations Board, Washington, D. C., to be included in and made a part of the transcript and the exhibits in the above-styled matter.

Dated this first day of July, 1940, at Kansas City, Missouri.

DONNELLY GARMENT COMPANY,
By R. J. Ingraham,
Its counsel

DONNELLY GARMENT WORKER'S UNION,
By Frank E. Tyler,
Its counsel

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,
By Clif Langsdale,
Its counsel

MARION A. PROWELL,
Attorney
N.L.R.B., 17th Region.

STATE OF MISSOURI
ss.
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Employees Farmers Company of the Donnelly Garment Sales Company.

Florence Atkinson	Anna L. Wolle
Cordie Hundley	Mary Proctor
Lorene Robinson	Louise Perry
Grace Gries	Ada Vesting
Lucinda Moore	Vida Gordon
Pearl Black	Amy Apperson
Inez Engle	Marie Cahall
Effie McLaughlin	Nellie Stites
Lucy Evans	Regina Blattner
[illegible]	Lois Hall
Lutie James	Emma Hansen
Ola Culpepper	Idella Remmel
Minnie Dickens	Jane Beal
Marie Patton	Mary Alice Hardin
Lorene Johnson	Bertie Lafferty
Ethel Carpenter	Eva Andrus

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 14 1941

Horace B. Powell
Notary Public in and for said county and state.

6058

Intervener's Exhibit 20 - Rejected.

1677

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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Donnelly Garment Company or the Donnelly Garment Sales Company.

Dorothy Greenwood	Kathryn Chandler
Eva Rochford	Nellie M. Cox
Lyssa Davis	Edith Sweeny
Roberta McClanahan	Elizabeth Nelson
Naomi Carlson	Fern Myers
Margaret Howard	Katherine Hurst
Gertrude Richardson	Kate McKinney
Nina Gibaldi	Beatrice Fane
Irma Eckhardt	Amelia Webb
Audrey Bechtel	Minnie Jones
Susan Waiters	Edna Rawlings
Fannie Stearns	Ruby Sraders
Ethel Riegel	Irene Rose
Jeannie Browne	Gladys Rudd
Della Flannery	Anna Fox Spahr
Bernice Pinkerton	Elsie A. Wright

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 17, 1941

Horace B. Powell
Notary Public in and for said county and state.

6059

Intervener's Exhibit 20 - Rejected.

1679

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Anna Reese	Ora Lee Hall
Lela Stevens	Irene Rush
Edith Dean	Lena Carlson
Nell Trine	Emma Shaw
Augusta Yates	Angie Brazel
Patricia Cannell	Isabelle Davis
Ruth Lowe	Etta Zimmerman
Lattie Lawrence	Pearl Logan
Lyda Phillips	Bessie Clark
Virginia Waers	Bessie Coates
Ann Murray	Lyle Gordon
Mattie Bracy	Lola Skeens
Emma Hurley	Mable Forster
Flora Taylor	Orpha Renner
Leona Lamm	Ruth Hayes
Grace Hamilton	Ora Brown

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state.

6060

Intervener's Exhibit 20 - Rejected.

1681

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Pauline Hartman
Oma McDonald
Florence Powell
Jean Collins
Margaret Lucas
Amy Lou Westerfield
Helen Olson
Cecilia Winterscheidt
David Green
Robert Livesay
Della Willis
Vesta Olson
Katherine Ruppert
Virginia L. Harper
Eleanor Ludwig
Maxine Green

Sam Sparks
Mary Esposito
William Pierce
Hazel Stuart
Ruth Alexander
Lula Waddell
Louise Eger
Mary Hancock
Marita Sanden
Gilbert Kenoyer
Helen Murdock
Gustus Anderson
Geo. W. Oppegaard
Harry E. Edwards
W. S. Riley
W. J. Stehle

Subscribed and sworn to before me this 6th day of June, 1939.

My commission expires July 14 1941

Horace B. Powell
Notary Public in and for said county and state.

Intervenor's Exhibit 20 - Rejected.

6061

168

7.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

J. L. Boozell	Rhoda Jackson
Edna Fraser	Beulah Bunch
Vera Scott	Mary Margaret Giffith
Al Stark	Betty J Barbee
Elizabeth Safford	Eva Hise
Virginia Pethrell	Zelma Humphrey
Carl Crawford	Elayne Albright
Helen Parks	Alice Scott
Dora Perry	Earle Cox
Odell DeCamille	Hassie Browning
Mary Cafaro	Grace Sampsell
A B Charlie	Jean Kerr
Lois Barger	Maxine Bartell
Eula Smith	Loren Lewis
Lena Allison	James Van Camp
Mary Myers	Mary Schuette

Subscribed and sworn to before me this 6th day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state.

6062

Intervener's Exhibit 20 - Rejected.

168

8

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Lyrne L. Owens
Mabel Spilthaus
Winnie Fisk
Helen Herring
Nellie Lhymelow
Osra Wachtel
Cora Fitzwater
Rose O'Leary
Dorothy Oesterle
Mae Jameson
Beulah Hurdle
Margaret Diehong
Eleanor Downey
Theresa McCarthy
Randall Brockman
Earl W Cooler

William L Frederick
Ellen O'Brien
Yolanda Frazier
Ann Miller
Lessie Cragg
Ella Hamilton
Marjorie Reese
Kathryn Tyndall
Kenneth Smith
Karlyne Anspach
Sarah Perry
Era Fowler
Elizabeth Bettes
Benjamin Maxwell
Walter Morris
Katherine Bello

Subscribed and sworn to before me this 6th day of June. 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state.

6063

Intervener's Exhibit 20 - Rejected.

1687

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Ruby Williams
Etta Dorsey
Gladys Bandel
Jeanne Parker
Dollian Haughbout
Edith Nickum
Lucian Richards
Vera Kinder
Bertha Cook
Kathaleen Dengel
Harley N. Ferguson
Garnet Hoffman
Rae Bryan
Martha Gray
LaVaughn McMillen
Katherine Hamel

Sam Griggs
Ada Wolfe
Edward Cook
Elizabeth Campbell
Emilia Vance
Minnie Horne
Dorothy Riggs
Ruth Cowap
Bertha Estes
Carmen A. Cochran
Mabel Bayless
Irene Scott
Margaret Lucas
Clara Finnell
Kathryn Hawk
Dorothy Perry

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 14, 1941

Vera B. Powell
Notary Public in and for said county and state.

6064

Intervener's Exhibit 20 - Rejected.

16

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

coercion, persuasion or pressure of any [illegible] the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Marie Albano	Dorothy Lewis
Ruth Morris	Mary Lemon
Roberta Blasie	Billie Slick
Ethel Harris	Jessie Farrell
Mary Rose	Opal Halliday
Pearl Henry	Grace McGatta
Delphine Babbitt	Nora K. Witten
E. J. Fife	Earl Martindale
Mr Walter Brady	Stuart Hill
Jennie Swanson	Wm Bierling
Clara Phelps	Donald W Tydd
Katheryn Rosen	J M Carpenter Jr
John T. Fuller	Carrie Brian
Ola Lant	Mary Kobeco
Florence Newvissen	Hazel Akers
Bernice Anderson	Cora Erwin

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14 1941

Horace B. Powell

Notary Public in and for said county and state.

6065

Intervener's Exhibit 20 - Rejected.

1691

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Leona Cooper	Otta Crawford
Mary Shinpaugh	Murpha White
Christine Stuart	Lucile Tirrell
Mary Clark	Jewell Howard
Nell M Miller	Dolla Harrison
Clara Stubbs	Helen Reardon
Mary Budelock	Thelma Emerson
Myrtle Hamilton	Lorene Dougan
Rose Lee Bradley	Carolyn Stidham
Elsie Jennings	Ruth E. Pilcox
Minnie Batman	Ione Gorman
Mabe Ridley	Frances Dumit
Verna Harrison	Grace Davis
Anna Kalich	Freda Smeltzer
Sarah Hrencher	Nelly N Legg
Helen Shultz	Edith Shaver

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14 1941

Horace B. Powell
Notary Public in and for said county and state.

Intervener's Exhibit 20 - Rejected.

6066

1693

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Effie Canfield	Violette Bennett
Mary Georges	Lorraine Smith
Lesley Meyers	Audrey Wrsdour
Ruby Taggart	Edith Hicks
Bess Phillips	Emma Hargus
Annette Stewart	Gladys Binns
Jo Chapman	Alice Maggio
Blanche Bennett	Dora Appell
Gladys Lester	Mae Flusche
Nellie Barlow	Teresa Fike
Carrie Beach	Ina Campbell
Rhoda Jackson	Daisy DeVault
Carrie Scott	Rose Campbell
Agnes Kendall	Dimple South
Minnie Allen	Gertrude Wigfield
Rosie Velyke	Hazel Bradshaw

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 17 1941

Horace B. Powell

Notary Public in and for said county and state.

6067

Intervener's Exhibit 20 - Rejected.

1693

13

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Nora Lawder
Beulah Haywood
Ellen Curtal
Nina Stewart
Robt. W Combe Jr.
Anna Richards
Gloria Schrader
Ruth Jenkins
Louise Sanz
Alice McCray
Ann Mowry
Edith Williamson
Marjorie Tucker
Odelia Smith
Julia Arvin
Sophie Glavenik

Elsie Phipps
Helen Lee
Seal McCoy
Georgia Elliott
Cyril Bettens
Frances Porter
Lena Berry
Edna Robinson
Helen Clarke
Mamie Weeks
Alice Baggerly
Gene Mayberry
Emma Gadnell
Mary Burns
Ula Crawford
Mary Brault

Subscribed and sworn to before me this 2nd day of June 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state.

Intervener's Exhibit 20 - Rejected.

6909

1697

14

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Gula Henden	Edith Voorhees
Anna Harvat	Zona Hayes
Alma Beil	Evelyn Pendleton
Ruby Etherton	Pauline Freeman
Grace Campbell	Olive Palmer
Irene Churchill	Margaret Young
Willie Rigby	Effie Lake
Beryl Olinger	Mary Testicle
Audrey Hoyle	Bertha Nicoll
Eva Broyles	Myrtle Stewart
Bessie Taylor	Belle Wise
Olive Hoff	Verna Jones
Florence Bowen	Iris Callowick
Bessie Kalinich	Lucille Stockton
Lillian Frohock	Beulah Bowmen
Anita Nolet	Florence Lippold

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14 1941

Horace B. Powell

Notary Public in and for said county and state.

6069

Intervener's Exhibit 20 - Rejected.

1699

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Mary Hamburg	Gretha Reiman
Lay Brandes	Ruth Bennett
Martha Gallamick	Tera Pittman
Father Johnson	Rose Callowick
Rose Hendricks	Nina Bartles
Blanche Taylor	Florence Belcher
Bertie Johnson	Ethel Mills
Nellie Starr	Margaret Kling
Ethel Holloway	Lucille Hess
Margaret Shubby	Hazel Enslow
Gleria Beadles	Violet Cavens
Martha Hayes	Mary Lu Crawford
Glennetta Robinson	Doris Collins
Ruby Brayles	Myrtle Campbell
Lillian Barger	Dixie Maxwell
Ruth Broaders	Willow Keyser

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace P. Powell

Notary Public in and for said county and state.

6070

Intervener's Exhibit 20 - Rejected.

170

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Mildred Brooks	Lucille Wilkey
Pearl Fields	Marie Compton
Gladys Austin	Lena Conaday
Alta Stevenson	Nellie Goss
Katherine Lytulowyk	Beulah Harbison
Ruby Welch	Mrs. Hazel Jones
Maud Eyhalet	Virginia Dare
Iris Litten	Ollie Reiman
Flora Davis	Daisy Kelby
Rada Walker	Opal Richardson
Boyd Mumford	Margaret Logan
Virginia Bryan	Fannie Lockwood
Irma Sanflitt	Mabel McLain
Betty Okaenaf	Lena Hyman
Dermont Hull	Evelyn Stover
Helen Shumate	Helen Boal

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 4, 1941

Notary Public in and for said county and state.

Intervener's Exhibit 20 - Rejected.

6071

1703

TE OF MISSOURI
ss
NTY OF JACKSON

We, the undersigned employes of the Donnelly Garment mpany and the Donnelly Garment Sales Company of Kansas City, ssouri, below the rank of officer or any position carrying with the right to employ or discharge, again reassert under oath that is our free, voluntary and considered wish and choice to belong the Donnelly Garment Workers' Union and not to the International dies' Garment Workers' Union or any other union. We understand at there is in some quarters a disposition to question the fact at membership in our own union is our own voluntary choice, and erefore for the purpose of establishing that fact to the satisction of the Labor Board, the public, the International Ladies' rment Workers' Union, and any and all others who may be interested, hereby repeat the previous demands for an election and do ourelves specifically request that a fair and secret election of emloyes be held for the purpose of allowing us to designate our choice labor unions and representatives for the purpose of collective gaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or promise of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Betty M. Hill
Josephine Small
Carrie Wright
Mary Davidson
Opal Stufflebeam
Martha Lyman
Emma L. Groben
Hylda Brewer
Augusta Davidson
Radie Brands
Una Mattox
Dolly Otis
Naomi McQuiston
Ruth Eastman
Dessie Neal
Alta Hinkle

Lois M. King
Pearl Strandt
Goldie Coles
Violet Taylor
Agnes Hutchinson
Edna Shipman
Opal Chaney
Beulah Verhagen
Zella Fosher
Emma Harris
Augusta Peters
Helen Bilyeu
Betty Griffith
Bertha Dobson
Mary Ann Gustin
Kathryn Baldwin

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 14, 1941

Horace B. Powell

6072

Intervener's Exhibit 20 - Rejected.

1

18

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Nellie Biggs	Helen Walton
Pearl Rogan	Mary Hyde
Martha Karoff	Lucille Norman
Pearl Hall	Lorette Mace
Sallie Ormsby	Martha Haase
Beulah Light	Ina Davidson
Mamie Dickenson	Elsie Williamson
Maudie Mobell	May Sargood
Opal Neal	Stella Baldwin
Edith Kall	Stella Wojciechowski
Mary Brown	Anna Lasenski
Jane Garrett	Alma Murphy
Ruth Putnam	Laura Field
Ethel Bingman	Nora Cotten
Grace Dunlap	Virginia Helms
Sarah Lauck	Mildred Burch

Subscribed and sworn to before me this 3rd day of May, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state

6073

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

James Henson
Clara Loath
Regina Hiemen
Helen Vest
Frances Harley
Jack Kennedy
Adam McDonald
John Ferretto
Marjorie Bennett
Edwina Jones
Evelyn Muehlberger
Lucile Hebert
Hattie Corder
Mary Vesely
Hattie Fincher
Mary Visecek

Margaret Draine
Catherine Stahl
Velma Merrill
Merle Page
Mary Bogert
Thelma Lockett
Irene Thibbits
Virginia Henningham
Mildred Snyder
Helen Linde
Bertha Finch
Goldie Grossman
Rebe Siegel
Mary E. DePaepe
Helen Hays
Edna Curry

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state.

6074

Intervener's Exhibit 20 - Rejected.

170

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Eleanor Sargent	Edna Geer
Gertrude Dora	Agnes Keelday
Beulah Swan	Charlotte Clary
Betty Davis	Lora Herring
Catherine Lassiter	Ettamae McCurry
Nina Smith	Jane J. Bodewell
Mabel Gruver	Loretta Armstrong
Mary Ward	Dessa Craig
Jessee Warfield	Blanche Eakes
Ollie Conway	Heath Cowan
Ruby Clayton	Earl F. Lakeyard
Jessica Davis	Virginia Hite
Alpha Elston	Eileen Gay
Clarice Martin	Mildred Tebbe
Corinne Blackwood	Dixie May
Laura Plummer	Doris McConkey

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14 1941

Grace B. Powell
Notary Public in and for said county and state.

6075

Intervener's Exhibit 20 - Rejected.

17

STATE OF MISSOURI
ss
COUNTY OF JACKSON

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Bessie Winner	Jessie Mudd
Ruby Rickett	Lyla Close
Ruby Lacy	Pearl Borowick
Dorothy Sharp	Verna Bryant
Opal Noland	Margaret Hunter
Bessie Bowers	Wilma Knox
Vesta Derahey	Katherine Hardman
Lucy Cox	Virginia Gleason
Helen Donnelly	Ella Gardner
Hazel Hardman	[redacted]
Anna Wyzgoski	[redacted]
Nora Johnson	Lois Fessinger
Bessie Weibert	Edith Cameron
Jewel Tolle	Sadie Wemhoff
Cora Ramsey	Blanche Shelton
Hazel Huggins	Harriet Duck

Subscribed and sworn to before me this 31st day of May, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said

6076

Intervener's Exhibit 20 - Rejected.

171

STATE OF MISSOURI
ss
COUNTY OF JACKSON

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Georgia Ward	Mary Hall
Dorothy Easter	Mary Andrews
Wilma Kile	Ruth Anderson
Ruth Ellen Baldwin	Robert T. Crist
Ella Close	Edith Wilson
Elizabeth Trombolt	Lucille Aston
Louise Broden	Marie Lupino
Geneva Copenhaver	Mildred Foster
Ruth E. Davidson	Mary Sadden
Maude Copenhaver	Mary McClellan
Pearl Morris	Beulah Kelley
Catherine Alleman	Frances McAnally
Bess Jacob	Mary Sue Cook
M E Briggs	Rhoda Kaulk
Doris Emig	Mabel Hagen
Hinton Noland	Alice Caton

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said

6077

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI
ss
COUNTY OF JACKSON

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coercion, persuasion or pressure of any sort, and that arriant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Louise Pinkerton — Lucille Turner
[illegible] — Sally Bott
Nora Widhamer — Linda Price
Mellie Smith — Frances M. Kirk
Burdie Baker — Lula Nichols
Effie Hamer — Nannie Barger
Lela Brown — Henderson Case
Eva Mueller — Lucille Seibles
Bob Kirk — Ellen Purcell
Bill Hatfield — Rita Jean Day
Lloyd Logan — Jacqueline Markell
Cameron Harold — Stella Hamilton
Jules DeCuir — Mrs. Brooks Brent
Paul E. Sterne — Ben James
Ray S. Bell — Linda Martindale
Helen Nolan — Clifton Berry

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state.

Intervener's Exhibit 20 - Rejected.

6078

17

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Mary Dick
Edith L. Difolda
Mary Pitts
Ethel Lathrop
Ruth Vasey
Gladys Steger
Lucy McCulley
Helen Dix
Martha Wilson
Emma Jarman
Margaret E. Turner
Marie Westendick
Jessie Bowers
Ted Durbin
Rhea Byars
Harold Boyd

Ronald Morell
Sara Tobey
Bessie Rinker
Helen Sharp
Grayce Cooper
Edna Morlang
Martha Stidwell
Ethel Maxwell
Frank Cope
Ida White
Grace Berry
Bessie L. Wilds
Raymond T. Bunell
Kathryn Bateman
Frances Endsley
Helen Angold

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said

6079

Intervener's Exhibit 20 - Rejected.

1

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Bessie Davis	Della Lemmakow
Hanna Tolsma	Jak Rush
Inez Meisel	Nettie Barnett
Cassie McClung	Ruth Wilson
Ann Berry	Fred Ellis
Flora G. Holden	Opal Norfleet
Mary Lou Kinne	Marie Halloway
Flora Cox	Ethel Hays
Lorna Berge	Dorothy Allen
Gabrielle Avise	Harry Keegan
Grace Briscoe	Rose Todd
Nina Collins	Helen Atkinson
Anna Cummings	Mary Meisel
Myrtle Johnson	Ruby Hall
Irene Williams	Dorothy Roberts
Flora Moore	Nancy T. Beach

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 19, 1941

Grace B. Powell
Notary Public in and for said county and state.

6080

Intervener's Exhibit 20 - Rejected.

1

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any kind, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Victoria Rigdon	Margaret Estel
Hilda Fisher	Hattie Crandell
Gladys Speaker	Dorothy Clements
Anna Belasco	Gertrude Adams
Nolan Mahon	Glenn Bingman
Emma Davis	Mary Mercier
Shirley Yoder	Ford Vernon
Doug Dotson	Eva Lee Pearce
Christine Merritt	Anna Moore
Opal Gowed	Robert L. Roberts
Lena Vanderhoof	A. D. Scott
Grace Hendrix	Hazel Tellock
Katheryn Sprague	Jessie Beck
Jennie Fries	Charles Whittier
Augusta Kabeline	Adah Wagner
Marie Jenkins	Mandel Roberts

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state.

6081

Intervener's Exhibit 20 - Rejected.

172

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any [illegible], the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Mildred Kulsinger	Edna Davis
Lora Fritz	Grace Kempston
Esmie McDermott	Laura Colley
Madge Nelson	Gertrude Lobar
Leona Brunk	Madge Cole
Agnes Lessgren	Verna Reed
Elizabeth Eubanks	Neva Reagin
Eulah Carter	Dessa Tuttle
Myrtle Cox	Edna Mae Young
Edna Jones	Ted Kirkland
Valeria Bostic	Roger Hall
Ethel Buckley	A. A. Wren
Ethelyn Robinson	Amy Sterling Lamar
DeLphia Allbaugh	Lalueta Lamping
Bessie Neisinger	Clara LaBrash
Edna Frontman	Lucille Briggs

Subscribed and sworn to before me this 1st day of June, 1939.

My commission expires July 17, 1941

Horace B. Powell

Notary Public in and for said county and state.

6082

Intervener's Exhibit 20 - Rejected.

17

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Vera Marshall
Elmer McKee
Diana Rutherford
Tyle Juter
Gertrude Gossett
Opal Reynolds
Florence Strickland
Ellen Hughes
Jack McConaughey
Lena Tyler
Otis Bennett
Harold Adams
Esmond Voorhies

Subscribed and sworn to before me this 3rd day of June, 1939.

My commission expires July 14 1941

Grace B. Powell
Notary Public in and for said county and state.

6083

Intervener's Exhibit 20 - Rejected.

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion or pressure of any [illegible] the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

George Hallis
Anna Budelewich
Samuel B Reese
Lena Carpenter
Mary Emrick
Louise Lehman
Catherine Nield
Faydene Gidney
Freda Schweiger
Betty Clifford
Phineas Peterson
Nell Cracraft
Thelma McKinney
Roswell Jackson
Sherman Clapp
Lydia E Burns

Catherine McCarty
K V Brown
Mildred Marie
Regina Stearman
Martha Klapmeyer
Nola Tiede
Helen Swope
Don E Neil
E J Donnelly Jr
Sarah Ellen Talley
Ruth Austin
Helmer N Jensen
Jessie McFadden
Opha Babb
Elvira Batson Kleburg
Hiram Richmond

Subscribed and sworn to before me this 3rd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said

Intervener's Exhibit 20 - Rejected.

6084

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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R. - - McD.

the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Pearcy McClellan	Grace McKernan
Grace Stephens	Opal Dumsky
Hallie Abercrombie	Edith Dean
J. K. White	Roland Frost
Gessie Collins	Georgia Bailey
Lucille Evans	Elsa Smith
Marion Price	Catharine Atchison
Marie Ashley	Elizabeth Gardener
Exeter Bybee	Ivetta Dixon
Pauline Harper	Bertha Klaus
Margaret Madsen	Nell Beaty
Verdae Rainey	Rosetta Cook
Christine Erekth	Katie Schleicher
Josie Harralson	Lena Lewis
Marion Riddle	James R. Dunn
Dora Falkenbach	Verna Allison

Subscribed and sworn to before me this 3rd day of June, 1939.

My commission expires July 17, 1941

Horace B Powell

Notary Public in and for said county and state.

6085

Intervener's Exhibit 20 - Rejected.

1731

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Beatrice Robinson	Mary O'Neil
Myrtle Quinn	Beth Steele
Neala Lyons	Irene Hornbeck
Pearl Atkinson	Butonne Hadley
Lillian Lubben	Mary Jo Thomas
Irene Randell	Opal Dobbs
Georgia Foster	Zola McNeil
Opal Sheppard	Carrie Fain
Teresa Priddy	Norma Simmons
Ann King	Laura Lee Joyce
Dellie Gillham	Melissa Harvey
Katherine Kelly	Lillian White
Dana Wise	Mary Halers
Nettie Ely	Mary Dockery
Opal Strawbridge	Pauline Hammons
Pearl Douglas	Irma Lile

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell

Notary Public in and for said county and state.

6086

Intervener's Exhibit 20 - Rejected.

1733

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Pearl Davis	Flossie Masoman
Dale Bennett	Edna Cain
Jeanne Osgood	Lena Stevens
Pearl Glisser	Mable M. Rigg
Leslie Lowe	Gertrude Greaves
Lena Simon	Catherine Corgan
Ruth Hastead	Betty Chrisman
Lydia Yonda	Dorothy DeLange
Fern E Funderer	Margie Stacy
Carolyn Grue	Lynn Helm
Peggy Hill	Charles Canby
Cecil Fisher	Matilda Jackson
Sadie Comer	Violet Snell
Margaret Daley	Florence Helm
Grace Skinner	Elizabeth Dye
Irene Hittman	Velma Woolley

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14 1941

Horace B. Powell

Notary Public in and for said county and state.

6087

Intervener's Exhibit 20 - Rejected.

1735

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Nevra Hanson	Arleen Voyto
Mable Soderstrand	Dorothy Litzenberg
William Negley	Evelyn Lewis
Killberg Lead	Thelma Silly
Mary Crume	Mary Riddle
Martha Pollock	Artie Vaught
Ceva Vaughan	Myrtle Reidel
Jimmie Jones	Nannie Lee Bullock
Maizie Rudd	Nell Wheeler
Pearl Shields	Linnie Crum
Anna Crume	Florence Lentz
Alyene Shantz	Florence Rose
Helen Wilson	Berda Watson
Anna Wyland	Jean Kirk
Josephine Dunigan	Dorothy Mead
Vera Pitcock	Blanche Thornton

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14 1941

Horace B. Powell
Notary Public in and for said county and state.

6088

Intervener's Exhibit 20 - Rejected.

1737

STATE OF MISSOURI

ss

COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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coercion, persuasion, or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Edith Alexander	Nell Ball
Pearl Tabor	Gertrude Doyle
Ora Dull	Cathrine Kellogg
Ida Basham	Winnie Underwood
Grace Williams	Lena Krepps
Sybil Gulick	Wilma Slater
Katherine Bodine	Donna Risher
Mary Krause	Margaret Adams
Dale Stark	Gallilee Haffetter
Wyn Chandler	Josie Kelly
Virginia Vason	Irene Watson
Minnie Gage	Mary Stewart
Ida Mauk	Eunice Casseel
Caroline Atkins	Myrtle Willey
Carrie Adams	Nell Patrick
Hazel Boyd	Juanita Willey

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell

Notary Public in and for said county and state.

6089

6089

Intervener's Exhibit 20 - Rejected. 1739

STATE OF MISSOURI

COUNTY OF JACKSON ss

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Ethel Brewer	Mildred Reese
Adelaide Bailey	Walter Higgins
Idene Carr	Mary Wilhite
Lillian Fay	Ora Gordon
Ellen Nokes	Barbara Eckert
Nettie Womacks	Evelyn L. Cook
Pearl Hayes	Dorothy Tilroy
Lucile Ward	Ruby Stanford
Alleine Jones	Judith Saunders
Helen Hauser	Corrine Robinson
Mary Steven	Ona Lee Nicely
Maurine Kavanaugh	W. E. Weavering
Myrtle Wilkins	Mildred Love
Nellie Colley	Floyd Donovan
Regah Stanford	Leona Moore
Lorrie Eaby	Clyde B. Davidson

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state.

6090

Intervener's Exhibit 20 - Rejected.

174

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Nora Gray	Dorothy Gill
Bertha Nettingham	Bessie Gilliland
Bessie Dawson	Ruby Vedrickson
Fannie Melton	Lucile Doughty
Margaret M. Edwards	Anna Hoppelman
Clara Long	Ivy Nell Hunton
Grace Terrell	Elva Walter
Gladys Silva	Virginia Irby
Helen Sunderman	Mary White
Mary Rogers	Ruby Kennedy
Alice Gates	Lucile Bond
Margaret Brehm	Margaret Taylor
Mary Walker	Millie Dell
Lela Rambo	Margaret Rahmann
Rose Carothers	Etha Kelley
Edna Bienert	Dorothy Fugh

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Grace R. Powell
Notary Public in and for said county and state.

6091

6091

Intervener's Exhibit 20 - Rejected.

1743

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Nora Stevenson	Mary Sites
Venita King	Cassie Kent
Pearl Uto	Reynia Tolbell
Ruth Noll	Mary Everly
Anna Fountain	Juanita Wallace
Emma Warren	Blanche Gilmore
Louise Pritchett	Hattie Leavell
Ethel Mae Kolwick Bouhuel	Alice Murphy
Josephine Spratt	Edel Pittillo
Dorothea Frankenberg	Lillian Travon
Irene Hayward	Emma Yount
Effie Weigand	Elizabeth Barrett
Thirle Beals	Ola Jewett
Felice Smith	Pearl Boden
Ethel Everett	Ethel Bettis
Esther Kramer	Annie Jonas

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Horace B. Powell
Notary Public in and for said county and state.

6092

Intervener's Exhibit 20 - Rejected.

1745

STATE OF MISSOURI
ss.
COUNTY OF JACKSON

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the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Mary Hutchinson	Gerta Anderson
Ruth Lisle	Dorothy Box
Jeanne Shearer	Elizabeth Stewart
Freda Caudle	Debbie Galveston
Florence Stalter	Esmae Kelling
Alcey Miller	Glenda Hudd
Verle Selby	Katherine Fawell
Anna Tatman	Ethel Bogan
Josephine Miles	Gladys Russell
Mildred Harrison	Mary Lou
Mary Kruger	Jessie Bray
Margaret Buccalombies	Mary Lee O'Brien
Cora Vernon	Elizabeth Reneau
Ruth Akerman	Opal Mayfield
Hazel Johnson	Opal Cox
Lucy Williams	Pearl Bennett

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expires July 14, 1941

Notary Public in and for said county and state.

6093

Intervener's Exhibit 20 - Rejected.

174

STATE OF MISSOURI
ss
COUNTY OF JACKSON

We, the undersigned employes of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employes be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employe shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion or pressure of any sort, and that affiant at the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

the time of making this statement is a bona fide employe of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Helen Metz
Ruth Costa
Lucie M. Stevens.
Nell Harper
Johnnie Hunter
Velma Hoff
Opie Smith
Edna Flynn
Mary Coy
Velma Lee Elgin
Ella Fleming Boyer
Edythe M. Hughes
Mildred Hale
Margaret Kline
Alice Freed
Sallie Downey.

Rose Lemke
Louise Hedberg
Opal Engle
Ethel Jones
Ruby Powell
Jennie Cross
Elva Tyler
Blanche Lewis
Lucie Clayburg
Priscilla Kelley
Rose Mahon
Ruby Feldkamp
Zella Nemmo
Mildred Snare.
Edna Tatterhall
Hulda Beals.

Subscribed and sworn to before me this 2nd day of June, 1939.

My commission expire's July 14 1941.

Horace B. Powell
Notary Public in and for said county and state.

6094

Intervener's Exhibit 20 - Rejected.

1749

[fol. 6099] (Board's Exhibit 1-SSSS.)

United States Of America

Before The National Labor Relations Board
Seventeenth Region

In The Matter Of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union,
Party To The Contract

Case No. XVII—C—371

Rulings Of The Trial Examiner

1. In this statement of rulings, the Donnelly Garment Company is referred to as the respondent; Donnelly Garment Workers' Union as the intervener; and the International Ladies' Garment Workers Union as the Union.

2. On July 15, 1939, the hearing in the above entitled matter closed for the taking of oral testimony. In the record of June 15 (pages 3098 to 3116), certain exhibit numbers were reserved for the submission of offers of proof, testimony to be offered from the National Recovery Administration case and Judge Miller Federal Injunction case, and other matters. All matters having been submitted and made a part of the record, the undersigned makes the following rulings thereon:

(a) Board Exhibit 28, by stipulation a true and accurate reflection of the facts and figures of all of the respondent's time-workers' pay-roll records to whom it purports to refer for the period April 15, 1937 to July 15, 1937, will be received in evidence. (Board Exhibit 1-uuuu is respondent's objection to Board Exhibit 28).

(b) Board Exhibit 1-tttt is a motion to amend the amended complaint. The motion is denied. (Board Exhibit 1-uuuu is the respondent's objection to the motion to amend the amended complaint). Board Exhibit 30-e, a [fol. 6100]. motion to amend the offer of proof, provid-

ing the motion to amend the amended complaint is granted (Board Exhibit 30) by inserting a paragraph, is denied. (Board Exhibit 1-uuuu is the respondent's objection to the motion to amend the offer of proof.)

(c) Stipulation of the parties making no objection to Board's motion to conform the amended complaint to the proof. Motion is granted. The stipulation is hereby made a part of the record and designated as Board Exhibit 1-vvvv.

(d) Stipulation of the parties providing for the filing of an offer of proof by respondent. The stipulation is hereby received and made a part of the record and designated as Board Exhibit 1-wwww. The offer of proof attached to the stipulation is hereby made a part of the record and designated as Board Exhibit 1-xxxx. The offer is refused.

(e) Rulings of the Trial Examiner, Board Exhibit 1-yyy, paragraph 6, reserved ruling on the Union's motion (Board Exhibit 1-qqq) to strike certain parts of respondent's answer and requested respondent to file offer of proof with respect to the motion to strike. The motion to strike is granted.

(f) Rulings of the Trial Examiner, Board Exhibit 1-yyy, paragraph 7, requested the respondent to submit offers of proof on Parts A and B of respondent's answer (Board Exhibit 1-jjj). The respondent stated in the record that no offer of proof would be made on Part A of the answer. The request for dismissal of complaint in Part A of the answer is denied. The offer of proof submitted by the respondent on Part B of the answer is refused. (Board Exhibit 1-nnnn.)

(g) Respondent's offer of proof, Board Exhibit 1-jjjj, was submitted because of a definite ruling of the Trial Examiner as to the admissibility of certain evidence, and in so far as the offer contemplates matters barred by the ruling, it is refused.

(h) Respondent's offer of proof, Board Exhibit 1-oooo, was submitted because of a definite ruling by the Trial Examiner as to the admissibility of certain evidence, and

in so far as the offer contemplates matters barred by the [fol. 6101] ruling, it is refused.

(i) Intervener's offer of proof, Board Exhibit 1-rrrr, was submitted because of definite rulings by the Trial Examiner as to the admissibility of certain evidence, and in so far as the offer contemplates matters barred by the ruling, it is refused.

(j) Board's objections to NRA-JMC Exhibit 3, are endorsed on the exhibit. The objections are overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(k) Board's objections to NRA-JMC Exhibit 8, are endorsed on the exhibit. The objections are overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(l) Respondent's objections, Board Exhibit 1-uuuu, Part 4, to Board's and Union's NRA-JMC Exhibit 17, is overruled. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(m) Respondent's offer of evidence (NRA-JMC Board Exhibit 17) from the record in the Judge Miller Federal Injunction proceeding is received without objection. Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects.

(3.) Board Exhibit 1-ssss was reserved for the "Rulings of the Trial Examiner" and Board Exhibit 1-ssss is hereby made a part of the record.

(4.) You are further advised that the hearing in this matter is closed. Dated: August 14, 1939.

JAMES C. BATTEN
Trial Examiner

[fol. 6175] (Statement of Exceptions of Intervener, Donnelly Garment Workers' Union, to Trial Examiner's Intermediate Report.)

United States of America

Before the National Labor Relations Board

Seventeenth Region

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Workers' Union, Party to the Contract

Case No. XVII-C-371

Intervener, Donnelly Garment Workers' Union (referred to in the intermediate report as the Independent), objects and excepts to the Trial Examiner's intermediate report, to the proceedings, rulings, findings, conclusions, recommendations, and other matters appearing in the record of this cause in the particulars and for the reasons hereinafter stated:

1. To the bias and prejudice of the Trial Examiner against the respondent and intervener, evidenced by:

(a) His denial of intervener's petitions for an investigation and certification of representatives (Board's Ex. 1-MMM, 1-NNN, 1-OOO and 1-XXX), and motion for continuance praying that an election be held by the Labor Board to determine the desires and choice of intervener's members as to employee representation and union affiliation.

(b) His refusal to receive and consider relevant and competent testimony of numerous witnesses offered by intervener concerning numerous matters important to the case of respondent and intervener and particularly showing such witnesses' freedom in the choice of their bargain-
[fol. 6176] ing representatives and union affiliation, and freedom from employer domination in making such choice.

(c) His preconceived and unjustified assumption that witnesses offered by respondent and intervener were sub-

ject to domination and in fear of their employers, and that they would give false testimony because of such (assumed) domination and fear.

(d) His complete disregard of the overwhelming testimony offered by respondent and intervener.

(e) His refusal to receive and consider evidence showing a principal cause of the organization of the Donnelly Garment Workers' Union, namely, the fear and dislike of the International Ladies' Garment Workers' Union by respondent's employees, which fear and dislike were engendered by acts and threats of fraud, intimidation and violence done by said International Ladies' Garment Workers Union and operating to terrify and coerce garment workers and their employers in Kansas City.

(f) His numerous findings of facts and drawing of inferences and conclusions unwarranted by and in disregard of the evidence.

(g) His unjustified characterization of witnesses of respondent and intervener as unworthy of belief.

(h) His refusal to consider the testimony received, or to hear or consider the testimony of scores of witnesses offered by respondent and intervener, the effect of which testimony, either that received or that offered and not received, if considered, would have been to compel findings contrary to those of the Examiner, including, among others, the following findings:

(h1) That the petition circulated by three employees on March 2, 1937, was not inspired by or in any way promoted by Respondent nor by the Donnelly Loyalty League.

[fol. 6177] (h2) That the meeting of March 18, 1937, was not a Donnelly Loyalty League meeting nor in any way inspired or promoted by respondent or the Donnelly Loyalty League, but was a voluntary and spontaneous reaction of respondent's employees to the campaign of threats, violence and intimidation then being waged in Kansas City by International Ladies' Garment Workers' Union, such employees meeting to discuss ways and means of protecting themselves from violence and coercion; that said meeting was not dominated by persons representing the re-

spondent; that the appearance of Mrs. Reed at said meeting was not planned but occurred in response to a request from an operator from the floor of the meeting; that Mrs. Reed did not say anything to proscribe or discourage membership of respondent's employees in the International Ladies' Garment Workers' Union but on the contrary Mrs. Reed reminded said employees of their freedom of action in union activities and of the respondent's policy of non-interference.

(h3) That three employees did call upon Frank E. Tyler, an attorney of Kansas City, Missouri, on March 27, 1937, and subsequently, for the purpose of discussing protection of respondent's employees from the activities of the International Ladies' Garment Workers' Union; that their discussion with said attorney concerned the possibility of securing an injunction; that said attorney asked for a retainer of $500.00; that a meeting of employees was held on or about March 30, 1937, for the purpose of discussing the raising of money to pay the retainer fee; that the organization of the Donnelly Garment Workers' Union was not discussed with said attorney until after the date [fol. 6178] (April 12, 1937) of the decision of the Supreme Court of the United States sustaining the constitutionality of the Wagner Act; that said meeting was not a meeting of the Donnelly Loyalty League; that said employees in consulting said attorney and calling said meeting were not inspired, controlled or directed in any way by respondent but acted upon their own responsibility spontaneously and through a desire solely to secure legal advice and assistance in order to protect themselves and fellow employees from violence then being employed by International Ladies' Garment Workers' Union in Kansas City.

(h4) That the organization of the Donnelly Garment Workers' Union and its subsequent existence was not and has not been coerced, inspired, promoted, induced, financed, aided, abetted, dominated, interfered with or influenced by either the respondent or the Donnelly Loyalty League or anyone acting in their behalf.

2. Intervener objects and excepts to the following rulings, findings, conclusions and recommendations in the intermediate report for the reasons stated:

3. To the ruling of the Trial Examiner contained in the third paragraph on page 3 of said amended overruling the motions of intervener and respondent to dismiss the amended complaint, and to the denial of respondent in motions to dismiss certain paragraphs of the amended complaint.

4. To the finding in paragraph 4 thereof that the Donnelly Garment Workers' Union admits to membership all the employees of respondent, for the reason that such finding is without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence.

[fol. 6179] 5. To the finding in paragraph 5 thereof that Rose Todd is a supervisory employee, for the reason that such finding is without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

6. To the finding in paragraph 5 thereof that "other supervisory employees of respondent" (except Mrs. Reeves) attended the meeting referred to, for the reason that such finding is without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

7. To the finding contained in paragraph 8 thereof that the activities of the Donnelly Loyalty League, outside of occasional social affairs, coincided with efforts of the Union to organize respondent's employees, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

8. To the findings contained in paragraph 9 thereof that all executives and supervisory employees were members of the Donnelly Loyalty League and that the League remained in nebulous form to be called into use when the occasion required, for the reason that said findings are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, immaterial, and irrelevant, and are not binding upon either the respondent or intervener if true.

9. To the findings contained in paragraph 10 thereof that Herbert Mutchler and Rose Todd are supervisory employees of the respondent, such findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, said findings being arbitrary,

unjust, false and unfounded, springing from the bias and prejudice of the Trial Examiner against respondent and intervener, and not binding upon respondent and intervener.

[fol. 6180] 10. To the findings contained in paragraph 11 thereof that the respondent supported the Loyalty League and that a Loyalty petition was prepared by representatives of the League, and as a part of its plan, such findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and springing from the bias and prejudice of the Trial Examiner.

11. To all of the findings contained in paragraphs 5, 6, 7, 8, 9, 10 and 11 thereof for the reason that said findings are unjustified, immaterial and irrelevant and have no tendency and are incompetent to prove any charge in the complaint of unfair labor practices by the respondent or illegality affecting the Donnelly Garment Workers' Union, and could, if true, in no respect bind or affect intervener or respondent.

12. To the findings contained in paragraph 12 thereof for the reason that said findings are unjustified, in disregard of the evidence, immaterial, prejudicial, not binding upon either intervener or respondent, and do not tend to prove the issues charged in the complaint.

13. To the findings contained in paragraph 13 thereof that a committee circulated the loyalty petition, said finding and all other findings in said paragraph being unjustified, in disregard of the evidence, prejudicial, not binding upon intervener or respondent, not tending to prove the issues charged in the complaint and concerning matters ruled by the Trial Examiner to be beyond the scope of the evidence.

14. To the finding contained in paragraph 13 thereof that there is a large number of inconsistencies in the testimony of respondent's witnesses, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and springing from the [fol. 6181] bias and prejudice of the Trial Examiner.

15. To the finding in paragraph 14 thereof that the meeting of March 18, 1937, was a Loyalty League Meeting, which finding is wholly unjustified, is contrary to the evidence of all witnesses offered by respondent and intervener and contrary to the proffered evidence (refused or not considered by the Examiner) of scores of witnesses whose names are listed in offers of proof filed by respondent and intervener.

16. Intervener further excepts to the findings contained in paragraph 14 thereof that the meeting of March 18th was a Loyalty League meeting, that it was called by officers of the Loyalty League and the respondent's facilities and the instructors were used to give notice thereof, for the further reason that such purported facts are not shown by the testimony or any reasonable inference therefrom to have been with the knowledge and procurement of the respondent or by its authority, or under its influence, and for said reasons none of said purported facts are binding upon the respondent or upon the intervener and do not tend to prove the charges made in the complaint.

17. To the findings and inferences expressed in paragraph 15 thereof to the effect that the meeting was held on company property, that chairs for the meeting were ordered by the Donnelly Loyalty League, that supervisory employees attended the meeting, that Mrs. Reed had advance notice of the meeting, that Mrs. Reed was prepared for the invitation to speak at the meeting, that the management of respondent called the meeting and used the offices of the Donnelly Loyalty League for such purpose, such findings being unjustified, without foundation in the evidence, contrary to and in disregard of the positive testimony and to the testimony of several hundred witnesses [fol. 6182] proffered by respondent and intervener and refused by the Trial Examiner, such findings evidencing the Trial Examiner's prejudicial belief that all witnesses produced by respondent and intervener committed perjury and all that they offered to produce would commit perjury.

18. To the findings in paragraph 16 thereof to the effect that Mrs. Reed indicated to the employees that she was opposed to outside unions or to the International Ladies' Garment Workers' Union, that Mrs. Reed said she would

not permit any union to force her employees to join a labor organization, that the employees should not consider an outside union, that the meeting of March 18th laid the ground-work for the formation of the Donnelly Garment Workers' Union, all of such findings being without foundation in the evidence, unjustified and contrary to the positive and overwhelming testimony offered by respondent and intervener and to the testimony of several hundred employees whom respondent and intervener offered to produce, whose testimony the Trial Examiner refused to hear, such action and findings being necessarily based upon the belief by the Trial Examiner that all of said witnesses testified falsely or would testify falsely if given the opportunity, such findings further evidencing the Trial Examiner's bias and prejudice.

19. To the findings in paragraph 17 thereof that the witness, Mrs. Greenhaw, was a disinterested party and a witness worthy of belief, that her testimony was given in a straightforward and unhesitating manner, and that the testimony of respondent's witnesses with respect to the calling of the meeting and circumstances varied substantially, such findings being unreasonable, unjustified and contrary to the evidence, particularly to the admissions of the witness, Greenhaw, that she held a grudge against respondent and was secretly, as an employee of respondent, [fol. 6183] attempting to aid the International Ladies' Garment Workers' Union while it was engaged in unlawful and fraudulent conduct with the publicly announced purpose of ruining respondent's business.

20. To the findings contained in paragraph 18 thereof that an increase of salaries of Donnelly employees was connected with an activity of the International Ladies' Garment Workers' Union and that meetings of the Donnelly Loyalty League and action of the respondent was always tied with some activity of the International Ladies' Garment Workers' Union, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, springing from the bias and prejudice of the Trial Examiner, and not binding upon the intervener.

21. Intervener further excepts to the findings referred to in paragraphs 17 and 18 hereof for the reason that said findings are not binding upon intervener and do not justify the further inference and finding that intervener was organized as a result thereof or that respondent's employees were, by reason thereof, controlled or influenced and deprived of their freedom of action and choice in organizing intervener union.

22. Intervener further excepts to the findings referred to in paragraphs 17 and 18 thereof for the reason that said findings, considering the overwhelming, substantial evidence, demonstrate the inability or unwillingness of the Trial Examiner to consider the evidence judicially and reach conclusions necessitated by the evidence, and establish that intervener was denied due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

23. To the findings of paragraph 19 thereof that there [fol. 6184] was a substantial amount of conflicting testimony concerning the meeting of March 30, 1937, that Mr. Smith's testimony cannot be accepted, that his recollection of the meeting and the testimony of all of respondent's witnesses was hazy, such findings being unreasonable, unjustified, contrary to and without foundation in the evidence, and to the evidence offered and refused, and arrived at in disregard of the evidence, immaterial and irrelevant, and not binding upon the intervener or respondent, such findings further evidencing the bias and prejudice of the Trial Examiner and his inability or unwillingness to reach conclusions necessitated by the evidence.

24. To the findings contained in paragraph 20 thereof that the meeting of about March 30, 1937, was never held, that the date of the latter part of March or the first part of April for said meeting was used falsely, that the $500.00 paid to attorneys was paid in behalf of the Donnelly Loyalty League and that the same was paid for the formation of the Donnelly Garment Workers' Union, such findings being unfounded in the evidence, unjustified, contrary to the evidence, in disregard of the evidence, springing from bias and prejudice of the Trial Examiner, immaterial and irrelevant, and not affecting the legality of intervener nor binding upon the respondent.

25. To the finding contained in paragraph 21 thereof that if it had been planned to collect the funds for an attorneys' retainer on March 30th a loan would have been unnecessary, or if so, Todd would have reported the loan, said finding being on its face purely argumentative, based upon assumptions not justified by the evidence, being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, immaterial and irrelevant [fol. 6185] and not binding upon intervener or respondent.

26. To the findings contained in paragraph 22 thereof that the employment of attorneys and the raising of funds were for the purpose of organizing the Donnelly Garment Workers' Union, that the Donnelly Garment Workers' Union and its formation and organization are inseparably tied up with the Donnelly Loyalty League, such findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence, springing from the bias and prejudice of the Trial Examiner, such findings further not binding either intervener or respondent because of the absence of evidence showing their responsibility therefor.

27. To the findings contained in paragraph 23 thereof that the incident of April 23, 1937, involving Sylvia Hull demonstrates respondent's opposition to the organization of a union in its plant, and demonstrates the activity of the Loyalty League, that respondent erroneously (the Trial Examiner implies) attributes the incident to an article in a Kansas City paper, said findings being without foundaton in the evidence, unjustified, contrary to and in disregard of the evidence, springing from the bias and prejudice of the Trial Examiner, and are irrelevant and immaterial to establish any illegality affecting intervener.

28. To the finding contained in paragraph 23 thereof to the effect that the employees engaged in the Sylvia Hull incident were never disciplined, said finding erroneously assuming that respondent had any right or duty to discipline employees in the premises.

29. To the findings contained in paragraph 24 thereof and the inferences (implied by the Trial Examiner) therefrom that respondent by the acts found interfered with,

[fol. 6186] coerced, discriminated against or restrained its employees in the exercise of rights guaranteed to them by the Wagner Act, or violated the Wagner Act in any respect, and that respondent by the acts found dominated or interfered with, restrained, coerced, supported or otherwise affected with illegality the organization and existence of intervener union, being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

30. To the findings contained in paragraph 25 thereof that Mrs. Allison, the instructor, and Rose Hendricks, her assistant, and Pearl Collins were supervisory employees and had authority and power and were under a duty to control employees in the premises or to reprimand them, such findings being without foundation or justification in the evidence, contrary thereto and in disregard thereof, and erroneously assuming that said employees had any duty or right to discipline in the premises.

31. To the finding contained in paragraph 26 thereof that the demonstrating employees were not disciplined in any way, such finding assuming a right, power and duty on the part of the employer to discipline in the premises, such assumptions being without foundation in law and without foundation in and contrary to the evidence.

32. To the findings contained in paragraph 27 thereof that the Donnelly Loyalty League received support and encouragement from the respondent and its agents that it was active only on occasions when necessary to call the employees' attention to some activity of the International Ladies' Garment Workers' Union, and that it laid the proper foundation for the formation of the Donnelly Garment Workers' Union, for the reason that said findings are without foundation in the evidence, unwarranted by [fol. 6187] and in contradiction of and in disregard of the evidence, and are not binding upon intervener or respondent.

33. To the finding contained in paragraph 28 thereof that respondent organized and dominated the Donnelly Loyalty League and that such activities had interfered with, coerced and restrained its employees in the exercise of rights granted to them in Section 7 of the Wagner Act,

such findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence, and not binding upon the intervener.

34. To the finding contained in paragraph 29 thereof that witness Cameron Herold was unable to distinguish between an employee meeting on March 18th and the organization meeting on April 27th, the said finding being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence.

35. To the finding in paragraph 30 thereof that witness Mrs. Lynn Davis and other employees were unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers' Union, that Mrs. Davis and other employees were of the opinion the employees had consulted attorneys to organize a union and not to secure an injunction, said findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence, and springing from the bias and prejudice of the Trial Examiner.

36. To the finding contained in paragraph 31 thereof that Rose Todd testified that she had an interview with Attorney Tyler on April 13, 1937, about an injunction, and to the finding that Tyler was originally employed for the purpose of organizing an independent union, said findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence.

[fol. 6188] 37. To the findings in paragraph 32 thereof that the testimony of Rose Todd and Hobart Atherton conflict as to why the meeting of April 27, 1937, was called, and that Rose Todd's testimony indicates that the meeting just happened, said findings being without foundation in the evidence, unjustified, in contradiction of and in disregard of the evidence.

38. To the findings contained in paragraph 33 thereof that Rose Todd is a supervisory employee and as such is the directing influence in the Donnelly Garment Workers' Union, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

39. To the findings and inferences contained in paragraph 34 thereof because the said findings and inferences are unjustified by the evidence and pertain to matters that are irrelevant, immaterial and inconsequential, not shown by the evidence to have been done by authority or with the knowledge of respondent, and do not tend to prove any violation of law by respondent or any illegality affecting intervener.

40. To the finding contained in paragraph 35 thereof that Rose Todd is a supervisory employee, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

41. To the findings contained in paragraph 36 thereof that Nellie Stites and other employees were unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers' Union, and that the chairs for the April 27th meeting were ordered by the Donnelly Loyalty League, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

[fol. 6189] 42. To the findings contained in paragraph 37 thereof, for the reason that the same, as stated by the Trial Examiner, do not fairly or with necessary completeness reflect the occurrences at said meeting as disclosed by the evidence, but give an incomplete, biased and prejudicial view thereof.

43. To the findings contained in paragraph 38 thereof that Miss Todd dictated the name of the Donnelly Garment Workers' Union, and to the further fact that the quotations embodied in said findings are selections of portions of the remarks of the persons quoted, other portions being ignored, thus changing the effect of the remarks made by said persons, such findings being unjustified and in disregard of the evidence.

44. To the findings contained in paragraph 39 thereof, with respect to the appointment of the nominating committee, its representation of the employees of the plant, the preparation and adoption of the requirement that officers

of the union must have been employed for one year, for the reason that said findings do not fairly and completely reflect the evidence with respect to such matters, are unjustified, in disregard of the evidence and prejudicial.

45. To the findings contained in paragraph 40 thereof, that the employees were unable to distinguish between the Donnelly Loyalty League and the Donnelly Garment Workers' Union, because they were not familiar with the by-laws, of the method of electing officers of the union, and that one employee testified that the officers were elected at the meeting April 27, 1937, said findings being without foundation in the evidence, unjustified, contrary thereto and in disregard of the evidence.

46. To the findings contained in paragraph 42 thereof that there was a great deal of conflicting testimony with [fol. 6190] respect to the meeting of May 25, 1937, that Mrs. Greenhaw prepared minutes of this meeting, that the latter part of the meeting was conducted as a Donnelly Loyalty League meeting, that Mrs. Greenhaw's minutes and testimony as to the meeting were correct, that her testimony is credible, that the testimony of respondent's and intervener's witnesses with respect to the meeting are not consistent with the minutes of the Donnelly Garment Workers' Union or with the chronology of events which preceded and following the meeting of May 25, 1937, said findings being without foundation in the credible evidence, unjustified, contrary to and in disregard of the overwhelming evidence received and that offered and refused by the Trial Examiner.

47. To the findings contained in paragraph 43 thereof that the minutes of the meeting of May 27th as written by Mrs. Greenhaw are correct, and that Marjorie Green testified she changed the minutes of the meeting of April 27th, said findings being without foundation in the credible evidence, unjustified, contrary to and in disregard of the overwhelming evidence, and springing from the bias and prejudice of the Trial Examiner.

48. To the findings contained in paragraph 44 thereof that the Donnelly Loyalty League was organized by the executives of respondent acting through supervisory employees, that it was organized in an effort to prevent the

unionization of the Donnelly Garment Company by the International Ladies' Garment Workers' Union, that Rose Todd and Hobart Atherton are supervisory employees, that the Donnelly Loyalty League was inseparably tied up in the financing, organization, formation and administration of the Donnelly Garment Workers' Union, that respondent's executives were responsible for the organization of the Donnelly Loyalty League, that respondent's executives were responsible for the organization of the Donnelly [fol. 6191] Garment Workers' Union, that the respondent organized, formed, sponsored, dominated and supports the Donnelly Loyalty League, that the respondent organized, formed, sponsored, dominated and supports the Donnelly Garment Workers' Union, all of said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, springing from the bias and prejudice of the Trial Examiner, and in making said findings the Trial Examiner has deprived intervener of a fair and impartial trial, deprived intervener's members of the rights guaranteed to them by Section 7 of the National Labor Relations Act, and of due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

49. To the findings contained in paragraph 45 thereof that a relationship of supporting, sponsoring and dominating has been exercised by the respondent over the Donnelly Loyalty League and the Donnelly Garment Workers' Union, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and springing from the bias and prejudice of the Trial Examiner, and being insufficient in law and fact to bind intervener or affect its legality or the legality of its contracts.

50. To the finding contained in paragraph 46 thereof that Martha Gray is a supervisory employee, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and being insufficient in law and fact to bind respondent or intervener, or to affect intervener's legality or the legality of its contracts.

51. To the finding contained in paragraph 47 thereof that all the plant employees were familiar with the fact that executives and supervisory officers were members of the Donnelly Loyalty League, said finding being without foundation in the evidence, unjustified, contrary to and in [fol. 6192] disregard of the evidence, and being insufficient in law and fact to bind respondent or intervener, or to affect intervener's legality or the legality of its contracts.

52. To the findings contained in paragraph 48 thereof that an instructor is in charge of forty operators, that a second girl in each section is an assistant instructor, that Rose Todd has not been assigned to any particular department since her re-employment, "being directly responsible to Mr. Batty, the plant superintendent", and to the inference intended to be drawn from the quoted finding that Todd is a special or close assistant to the plant supervisor and therefore in a supervisory position, for the reason that said findings and inference intended to be drawn therefrom as to Todd's work and position are based upon incomplete and distorted statements of the evidence, are without foundation in the evidence, unjustified, contrary thereto and in disregard of the evidence, and are insufficient in law and fact to bind respondent or intervener or to affect intervener's legality as a bona fide union or the legality of its contracts.

53. To the findings contained in paragraph 49 thereof as to Todd's duties and the inference intended to be drawn therefrom that Todd is a supervisory employee, for the reason that said findings are incomplete, insufficient and distorted statements of the evidence, and are unjustified and in disregard of the evidence and said inference is without foundation in the evidence, contrary to and in disregard of the evidence, and is insufficient in law and fact to bind intervener or respondent or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

54. To the findings contained in paragraph 50 thereof and the inference intended to be drawn therefrom that Todd is a supervisory employee for the reason that said [fol. 6193] findings are incomplete, insufficient and distorted statements of the evidence, and are unjustified and

in disregard of the evidence, and said inference is without foundation in the evidence, contrary to and in disregard of the evidence, and is insufficient in law and fact to bind intervener or respondent or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

55. To the findings contained in paragraph 51 thereof that Rose Todd succeeded to a part of the duties of Mrs. Wherry, an assistant plant superintendent or general instructor, and that Rose Todd is one step above the instructors in their relationship to the plant superintendent, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, the inference therefrom that Rose Todd is a supervisory employee being unjustified, contrary and in disregard of the evidence, and said findings and intended inference being insufficient in law and fact to bind respondent or intervener, or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

56. To the findings contained in paragraph 52 thereof that Rose Todd is a supervisory employee, that her dual capacity as a supervisory employee and president of intervener accounts for the fact that she has a desk on the 7th floor, that she transacted union business at her desk during working hours, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and being insufficient in law and fact to bind respondent or intervener, or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

57. To the findings contained in paragraph 53 thereof for the reason that said findings are without foundation in [fol. 6194] the evidence, unjustified, contrary to and in disregard of the evidence, are irrelevant, immaterial and inconsequential, and are insufficient in law and fact to bind respondent or intervener, or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

58. To the findings contained in paragraph 54 thereof that Hobart Atherton is a supervisory employee, that he performs the duties of a supervisor, that he

performs the duties of a supervisor in the mechanical department, that he was indefinite about receiving phone calls for repairs, that he transmits instructions to employees of the mechanical department, that his explanation of his work creates an impossible situation, such findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and being insufficient in fact and law to bind respondent or intervener, or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

59. To the findings contained in paragraph 55 thereof that Mrs. Nichols and Ted Scoles are supervisory employees, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and being insufficient in fact and law to bind respondent or intervener, or to affect the legality of intervener's existence as a bona fide union or the legality of its contracts.

60. To the findings contained in paragraph 56 thereof that Pauline Hartman is in a position analagous to that of a supervisory employee, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, being a product of the bias and prejudice of the Trial Examiner, evidencing clearly the apparent desire of the Trial Examiner to strain the evidence for findings adverse to respondent and intervener, [fol. 6195] said findings and the inferences, if any, intended to be drawn therefrom being unjustified and insufficient in fact and law to bind intervener or respondent or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

61. To the finding contained in paragraph 57 thereof that Jack McConaughey formerly was in charge of the service or mechanical section, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

62. To the finding contained in paragraph 58 thereof that Marvin Price is a supervisory employee, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and such finding beng insufficient in law and fact to bind intervener

or respondent or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

63. To the findings contained in paragraph 58 thereof that sewing instructors are supervisory employees and that their membership in the Donnelly Garment Workers' Union sufficiently indicates to the machine operators that it is advisable for them also to belong to the Donnelly Garment Workers' Union, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and springing from the bias and prejudice of the Trial Examiner, and such findings being insufficient in law and fact to bind intervener or respondent or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

64. To the findings contained in paragraph 60 thereof that Mrs. Reeves testified that "Competent instructors teach the operators the particular operations to be performed by them and constantly supervise the same", that instructors were left off the Loyalty petition until their [fol. 6196] signatures were requested by Mrs. Reed, that the quoted remarks of Hobart Atherton indicated a doubt that the instructors should be admitted to full membership in the union, and to the statement quoted in the testimony of May Fike, for the reason that same are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, are incompetent and insufficient recitals of the evidence, give a warped and biased view of the evidence, do not support or justify the conclusions and inferences drawn and intended to be drawn therefrom, and such findings, conclusions and inferences are insufficient in law and fact to bind intervener or respondent or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

65. To the findings contained in paragraph 61 thereof that the testimony of respondent's and intervener's witnesses show the instructors to be supervisors, and that the instructors' supervisory authority is shown by the fact that when work is slack the instructors decide who shall take a day off and in what order the operators will take off their time, for the reason that said findings are without foundation in the evidence, unjustified, contrary to and

in disregard of the evidence and the recitals of the evidence in said paragraph contained, and incomplete and insufficient, give a warped and biased view thereof, do not support or justify the conclusions drawn and intended to be drawn therefrom, and such findings and conclusions are insufficient in fact and law to bind intervenef or respondent or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.'

66. To the evidence referred to in paragraphs 60, 61 and 62 thereof, and the conclusions and inferences intend- [fol. 6197] ed to be drawn therefrom, for the reason that same is not the whole evidence, that said evidence fairly considered, or considered with all the evidence does not support or justify the conclusion and inference that instructors are supervisory employees, that said evidence is insufficient in law and fact to bind intervener or respondent, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

67. To the findings, inferences and conclusions contained in and implied in paragraphs 60, 61, 62 and 63 thereof that instructors are supervisors, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and are insufficient in fact and law to bind intervener or respondent, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

68. To the findings, inferences and conclusions contained in paragraph 63 thereof that examiners and inspectors are supervisory employees, said findings, inferences and conclusions being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, being a product of the bias and prejudice of the Trial Examiner, evidencing clearly the apparent desire of the Trial Examiner to strain the evidence for findings adverse to intervener and respondent, said findings, inferences and conclusions that examiners and inspectors are in a position analogous to supervisory employees being insufficient in fact and law to bind intervener or respondent, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

69. To the evidence quoted in paragraphs 64, 65, 66 and 68 of the Trial Examiner's intermediate report, for the reason that same is not the whole evidence, that said evi- [fol. 6198] dence fairly considered, or considered with all the evidence, does not support or justify the conclusion that instructors have been supervisory employees at any time material to the charges made in the complaint, that said evidence is insufficient in fact and law to bind intervener or respondent or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

70. To the finding contained in paragraph 68 thereof that the change in June 1935 was not in accordance with Mrs. Reed's testimony, quoted in said paragraph, of May 1935, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

71. To the findings contained in paragraph 69 thereof that the operator knew nothing of the change in authority of sewing instructors effected in June 1935, and that they looked upon the instructors in the same way at the time of the organization of Donnelly Garment Workers' Union as they did prior to June 1935, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and insufficient in law and fact to bind intervener or respondent, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

72 To the finding contained in paragraphs 69 and 70 thereof to the effect that the action of sewing instructors in becoming members of the union demonstrates the relationship of the respondent to the Donnelly Garment Workers' Union, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and such finding is insufficient in law and fact to bind intervener or respondent, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

[fol. 6199] 73. To the findings contained in paragraphs 71 and 72 thereof to the effect that the matters therein enumerated establish a relationship between the respondent and the Donnelly Garment Workers' Union, such findings

being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and based upon incidents which are trivial, inconsequential and immaterial, not shown to have been done with the knowledge or authority of respondent, and insufficient in law and fact to bind respondent or intervener, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

74. To the findings contained in paragraph 72 thereof that the intervener had no office or meeting place except in respondent's plant, and that intervener used respondent's typewriters, desks, ditto machine, safe and bulletin boards, for the reason that said findings are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, the evidence showing that intervener paid rent for the use of the meeting room and for the further reason that the matters referred to are of a trivial, inconsequential and immaterial nature, not shown to have been done without knowledge or authority of respondent, and are insufficient in law and fact to bind respondent or intervener, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

75. To the findings contained in paragraph 73 thereof to the effect that an inseparable relationship existed between the respondent and the Donnelly Garment Workers' Union, that it was conclusive to the employees, that such inseparable relationship is evidenced by the actions of supervisory employees, the leadership of supervisory employees in the Donnelly Loyalty League and the Donnelly Garment Workers' Union, and the use of respondent's [fol. 6200] building, equipment and supplies, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

[fol. 6201] 76. Intervener further excepts to the conclusions and inferences drawn and intended to be drawn, if any, by the Trial Examiner from the fact of the membership of Martha Grey, Herbert Mutchler, Rose Todd, Hobart Atherton, Mrs. Nichols, Pauline Hartman, Ted Scoles, Jack McConaughey, Marvin Price and the instructors, inspectors and examiners and other alleged supervisory employees in

the Donnelly Loyalty League or the Donnelly Garment Workers' Union, the said conclusions and inferences being that by such membership and activities, if any, said persons represent the respondent, or are believed by other employees to represent the respondent and are coercive influences upon other employees and rob such employees of their freedom of action and cause them to support and belong to said organizations. Such conclusions and inferences and others of similar import, if intended to be drawn by the Trial Examiner, are not drawn definitely but are merely hinted at and intervener objects and excepts to the same for the reason that they are wholly without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and are insufficient in law and fact to bind respondent or intervener, or to affect intervener's existence as a bona fide and lawful union, or the legality of its contracts.

77. To the finding contained in paragraph 73 thereof that acquiescence of Mrs. Reed and Rose Todd to a closed shop contract constituted a reversal of the positions taken by them at the meeting of March 18, 1937, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and springing from the bias and prejudice of the Trial Examiner.

78. To the findings contained in paragraph 74 thereof that Rose Todd's testimony as to a meeting of April 28, [fol. 6202] 1937, with Mrs. Reed is indefinite and contradictory and that no careful check was made of the thirteen hundred signatures and cards, the same being unjustified from the evidence, contrary thereto, irrelevant and immaterial and not tending to prove any issue in the case.

79. To the findings contained in paragraph 75 thereof that on April 23rd Rose Todd stated to Fern Sigler: "We are going to run an open shop as long as the majority feels that way. The majority is going to rule as always.", and that on May 11th she advised a meeting of the Donnelly Garment Workers' Union that "anybody coming to work for us will join the union immediately. If there is any doubt in their minds about whether or not they want to join our union, then there is some doubt in their minds as to whether or not they want to work here.", said findings

being irrelevant and immaterial and not tending to prove any charge in the complaint.

80. To the findings contained in paragraph 76 thereof that the reversal of Mrs. Reed's and Miss Todd's viewpoint on the closed shop "can only be explained by the conclusion that having organized and dominated the Independent the respondent intended to insure its future control of this organization", said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and of the provisions of the National Labor Relations Act, Section 9(a).

81. To the evidence quoted in paragraphs 77 and 78, and the inferences and conclusions, if any, intended to be drawn therefrom, for the reason that same is not the whole evidence, that by the separation of said evidence from other evidence pertaining to said subjects, same is warped, distorted and unfair, and unjustified meaning given thereto, that said evidence fairly considered, or considered with all the evidence does not support or justify any inference [fol. 6203] that intervener's contracts are illegal, or other inferences intended by the Trial Examiner, and are insufficient in law and fact to affect intervener's existence as a lawful and bona fide labor union, or the legality of its contracts.

82. To the findings contained in paragraph 79 thereof that Mr. Baty's testimony as to the discussion at the meeting of May 27, 1937, is in conflict with the weight of the testimony and should be given no weight, and that his entire testimony is at variance with the facts established by the record, are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and spring from the bias and prejudice of the Trial Examiner.

83. To the refusal, as stated in paragraph 80 thereof, of the Trial Examiner to consider the testimony with respect to the provisions of the supplemental agreement, said testimony being competent, relevant and material to establish the genuineness and legality of intervener union as an independent bargaining agency free from coercion, domination or sponsorship by the respondent.

84. To the finding contained in paragraph 80 thereof that the Donnelly Garment Workers' Union was and is sponsored, dominated and supported by respondent, such finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and springing from the bias and prejudice of the Trial Examiner.

85. To the finding contained in paragraph 81 thereof to the effect that the contract entered into between intervener and respondent is void and of no force and effect, said finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence, and springs from the bias and prejudice of the Trial Examiner.

[fol. 6204] 86. To the findings contained in paragraph 82 thereof to the effect that a check-off system was instituted without authority from the membership or group chairman, that Rose Todd and Jack McConaughey were unable to satisfactorily explain any plan to check the amount received, said findings being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and springing from the bias and prejudice of the Trial Examiner.

87. Intervener excepts to the finding in paragraph 84 thereof to the effect that an instructor and assistant instructor were present during the time of the demonstration against Sylvia Hull and to the inference and conclusion intended to be drawn therefrom for the reason that the evidence does not show that said persons or the respondent had any ability, right, duty or authority to prevent said incident, or to reprimand or discipline those responsible therefore, or if such power, duty and authority existed in such instructor and assistant, that their failure to exercise same is insufficient in law and fact to bind respondent or intervener or to prove any charge in the complaint or to affect intervener's existence as a bona fide and lawful labor union, and the legality of its contracts.

88. To the finding contained in paragraph 87 thereof that Sylvia Hull was excluded from the plant by respondent because of her membership or activities in behalf of the International Ladies' Garment Workers' Union, said

finding being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

89. To the finding and conclusion contained in paragraph 88 thereof that the alleged exclusion of Hull from [fol. 6205] respondent's plant was an unfair labor practice, for the reason that said finding is without support in the law and the evidence, contrary to the law and the evidence, unjustified under the law and the evidence, and in disregard of the evidence, and for the reason that said finding and conclusion are insufficient in fact and law to bind respondent or intervener, or to affect intervener's existence as a bona fide and lawful labor union, and the legality of its contracts.

90. To the finding contained in paragraph 89 thereof that Fern Sigler was excluded from the plant of the respondent for the reason that said finding is without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

[fol. 6206] Exceptions to "Conclusions and Recommendations"

91. Intervener further objects and excepts to the following conclusions and recommendations appearing under the subject, "Conclusions and Recommendations", in the Trial Examiner's intermediate report.

92. To the finding and conclusion that respondent has dominated and interfered with the formation and administration of the Donnelly Garment Workers' Union, has contributed support to it and that respondent has engaged in unfair labor practices within the meaning of Section 8 (2) of the National Labor Relations Act, said finding and conclusion being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

93. To the finding and conclusion contained in paragraph 2 thereof that respondent discriminated in regard to the tenure of employment of Sylvia Hull, that thereby respondent discouraged membership in the International Ladies' Garment Workers' Union and that thereby respondent has engaged and is engaged in unfair labor practices within the meaning of Section 8 (3) of said act, said finding and conclusion being without foundation in the

evidence, unjustified, contrary to and in disregard of the law and the evidence.

94. To the findings and conclusions contained in paragraph 3 thereof that respondent has and now is interfering with, restraining and coercing its employees in their exercise of the rights guaranteed by Section 7 of the act, and that respondent has and is engaged in unfair labor practices within the meaning of Section 8 (1) of the act, said findings and conclusions being without foundation in the evidence, unjustified, contrary to and in disregard of the law and the evidence.

95. Intervener further objects and excepts to the follow- [fol. 6207] ing recommendations contained in the Trial Examiner's intermediate report appearing therein under the subject entitled, "Conclusions and Recommendations".

96. To the recommendation contained in paragraph 1 (a) for the reason that said recommendation assumes that respondent is dominating or interfering with the formation or administration of the Donnelly Garment Workers' Union or any other labor organization of its employees, and contributing support thereto or to any other labor organization, such assumptions being without foundation in the evidence, unjustified, contrary to and in disregard of the law and the evidence.

97. To the recommendation contained in paragraph 1 (b) for the reason that same assumes that respondent is discouraging membership in the International Ladies' Garment Workers' Union or any other labor organization of its employees by discriminating in regard to their hire or tenure of employment or any term or condition of their employment, such assumptions being without foundation in the evidence, unjustified, contrary thereto and in disregard of the law and the evidence.

98. To the recommendations contained in paragraph 1 (c):

That respondent cease and desist from recognizing the Donnelly Garment Workers' Union as the representative of its employees for the purpose of dealing with respondent with respect to grievances, labor disputes, wages, rates

of pay, hours of employment and conditions of employment,

and in paragraph 1 (e):

That respondent cease and desist from giving effect to its contract with the Donnelly Garment Workers' Union and to any modification, continuation, supplement, extension, or renewal thereof,

and in paragraph 1 (f):

That respondent cease and desist from giving effect to any agreement for the deduction or collection of dues from the wages of its employees in behalf of the Donnelly Garment Workers' Union.

[fol. 6208] for the reason that all of such recommendations are predicated upon findings of fact and law which are without foundation in the evidence, unjustified, contrary to and in disregard of the evidence and said recommendations deprive intervener of rights guaranteed to it and its members under Section 7 of the National Labor Relations Act. Said recommendations further deprive and threaten to deprive intervener's members of their liberty, freedom of association and their property right in their contracts with respondent, all of same being predicated upon a trial in which intervener was denied due process of law within the meaning of the Fifth Amendment to the Constitution of the United States, by reason of the bias and prejudice of the Trial Examiner and many errors unfair and prejudicial to the intervener, to which exception is elsewhere taken.

99. To the recommendation contained in paragraph 1 (g) for the reason that same assumes that respondent is engaged in interfering with, restraining or coercing its employees in the particulars and respects and in the matters set forth in said paragraph, said assumption being without foundation in the evidence, unjustified, contrary thereto and in disregard of the law and the evidence.

100. To the recommendation contained in paragraph 2 (a) thereof that respondent withdraw all recognition from the Donnelly Garment Workers' Union as representative of its employees for the purpose of dealing with resp

ent concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work; and completely disestablish all relations with the Donnelly Garment Workers' Union as such representative, such recommendation being erroneous and prejudicial to intervener for all of the reasons stated in paragraph 98 hereof.

[fol. 6209] 101. To the recommendation contained in paragraph 2 (b) that respondent notify all its employees that they are free to join or assist any labor organization (meaning thereby any organization other than intervener) for the purpose of collective bargaining with the respondent, such recommendation being erroneous and prejudicial as to intervener for all of the reasons stated in paragraph 98 hereof.

102. To the recommendation contained in paragraphs 2 (c) and (d) thereof that respondent post notices to the effect set forth in said paragraph 2 (c), and report as directed in paragraph 2 (d), the said recommendations and requirements in all particulars in said paragraphs 2 (c) and 2 (d) being erroneous and prejudicial to intervener for all of the reasons set forth in paragraph 98 hereof.

103. To the recommendation contained in the next to the last paragraph of said intermediate report on page 41 thereof that the respondent communicate with the National Labor Relations Board its willingness to comply with the recommendations of the Trial Examiner and that the matter be referred to the National Labor Relations Board in the absence of such communication, such recommendation being erroneous and prejudicial to the intervener for all of the reasons set forth in paragraph 98 hereof.

104. Intervener excepts to the intermediate report, the findings, conclusions and recommendations therein contained, for the failure or inability of the Trial Examiner to judicially consider, follow and abide by the plain and overwhelming import of the evidence in all essential matters.

105. To failure of the Board and of the Trial Examiner to investigate, by holding a secret election or otherwise, and the refusal of the Trial Examiner to hear the evidence

[fol. 6210] of intervener's members, to determine the true desires of intervener's members as to their choice of representation for collective bargaining and union affiliation and their freedom from employer interference, restraint, coercion and domination in making such choice.

Exceptions to Rulings and Errors Appearing in Transcript of Record

Intervener further objects and excepts to the following rulings and errors of the Trial Examiner:

106. To the ruling (Tr. p. 130) denying intervener's motion (Board's Ex. 1-LLL) to dismiss the complaint, for the reasons in said motion stated, said ruling operating to deprive intervener's members of rights guaranteed to them by the National Labor Relations Act and of due process of law as guaranteed to them by the Fifth Amendment to the Constitution of the United States.

107. To the ruling (Tr. p. 130, 194) denying intervener's application for an election and for a continuance (Board's Ex. 1-MMM); to the ruling (Tr. p. 130, 194) denying intervener's petitions for investigation and certification of representatives (Board's Ex. 1-NNN and 1-OOO;) and to the ruling (Tr. P. 130, 194) denying intervener's motion for a continuance (Board's Ex. 1-XXX) to permit an election to be held to determine the free will choice of intervener's members as to their bargaining representatives and union affiliation, said rulings being erroneous for the reasons set forth in said application, petitions and motion for continuance, and for the reasons set forth in the argument of intervener's counsel appearing in the transcript of the record at pages 185 to 194, inclusive, said rulings operating to deprive intervener's members of rights guaranteed to them by Section 7 of the National Labor Relations Act and of due process of law as guaranteed to them [fol. 6211] by the Fifth Amendment to the Constitution of the United States.

108. To the ruling contained in Board's Ex. 1-YYY denying intervener's motion (Board's Ex. 1-WWW) to make the amended complaint (Board's Ex. 1-RRR) more definite and certain in the particulars set forth in paragraphs (1), (2) and (3) of said motion, by reason of which inter-

vener was deprived of due process of law within the meaning of the Fifth Amendment to the Constitution of the United States.

109. To the ruling contained in Board's Ex. 1-YYY, paragraph 7, denying the petition contained in part C. of respondent's answer (Board's Ex. 1-JJJ), for an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, said ruling operating to deprive intervener's members of rights guaranteed to them by Section 7 of the National Labor Relations Act and to deprive them of due process of law guaranteed to them by the Fifth Amendment to the Constitution of the United States.

110. Intervener excepts to the ruling of the Trial Examiner (Tr. p. 273 overruling intervener's objection to the receipt of evidence concerning the Donnelly Loyalty League, said objection and overruling order reading as follows:

"Mr. Tyler: Just a moment, Mr. Examiner. I object to any testimony or questions in regard to the Donnelly Loyalty League, for the reason it is purely a social organization that has no connection whatever with the matters involved in this case or with the Donnelly Garment Workers' Union.

"Trial Examiner Batten: Of course, Mr. Tyler, they allege it is a labor organization, and I presume the only way I could determine that is to get some facts that will enable me to do it. So, I will overrule the objection."

[fol. 6212] 111. To the ruling of the Trial Examiner (Tr. p. 306) receiving Board's Exhibit 2 in evidence over intervener's objection, said objection and ruling reading:

"Mr. Tyler: The intervener desires to object to it on the ground that nothing done or said by the Athletic Association would be binding on the Donnelly Garment Workers' Union or any of their members; also, that it is incompetent, irrelevant and immaterial.

"Trial Examiner Batten: Well, of course, at this stage in the proceeding, it is pretty difficult for me to determine what, if anything, has any relevancy. So I will receive it

subject to the connection with later testimony. In other words, the first day this hearing starts, I certainly can't tell what relevancy anything has.

(The document heretofore marked as 'Board's Exhibit No. 2' was received in evidence.)

"Mr. Leary: I suggest, Mr. Examiner, it will all be connected up."

112. To the ruling of the Trial Examiner (Tr. p. 321) overruling intervener's objection to questions as to Loyalty League, said objection and ruling reading as follows:

"Q. (By Mr. Leary) What were the matters that were discussed at these Loyalty League meetings?

"Mr. Tyler. Just a minute. Mr. Examiner, I wish to renew my objection to questions as to the Loyalty League, the method by which it did business, where it held meetings, and the way it carried on its affairs, because it has no connection with the Donnelly Garment Workers' Union and because it has no bearing on the issues tried in this case.

"Trial Examiner Batten: He may testify as to what was discussed at any meeting he attended. To that extent I will overrule the objection. As I said this morning, there is an allegation here that it is a labor organization, and I presume the only way we can determine that is to get the evidence."

113. To the bias and prejudice of the Trial Examiner toward intervener by his remarks and his refusal to consider the evidence of Rose Todd in regard to what occurred at a meeting between the executive committee of intervener and its attorney and Mrs. Reed and the executives of re- [fol. 6213] spondent (Tr. pp. 554-559), the record with respect thereto reading:

"Q. You remember there was a great deal of discussion, do you?

A. I certainly do.

Q. Do you remember any matters that you discussed?

A. Yes, each step of that thing was discussed, Mr. Leary, in detail.

Q. Now will you explain any bargaining that went on between yourself and the company?

Mr. Lane: Now, if the Examiner please, I submit that calls for a conclusion and I think the witness said there was a great deal of discussion pro and con, back and forth, about the terms, and that constitutes a part of it.

Trial Examiner Batten: Well, of course, I will agree with you this far: that there is some difference of opinion as to what bargaining is. I think if the witness will tell, the unfortunate part about it, Mr. Lane, is that the witness just can't tell us what the discussion was.

Now, she said there was a lot of discussion. That doesn't mean anything. Now, if she could remember what, as usually is done in these matters, she could tell what she said, what Mrs. Reed said, what the other members said, but she can't remember what anybody said. So I can't accept her statement that there was any discussion, when she can't remember anything, even if it was 2 years ago.

The Witness: Mr. Batten—

Q. (By Mr. Leary) You may state, Miss Witness, any discussion that took place.

A. I did say, or try to say, that each step of this agreement was discussed.

Trial Examiner Batten: But, Miss Todd, there is the point where I would like to ask you a question. Now, that doesn't mean anything unless you can tell in substance, at least, what you said and what Mrs. Reed said, who was another very important party to this transaction, or what the attorneys said. You can't tell us anything about it.

A. Well, I don't know, Mr. Batten. This agreement was primarily drawn up by the Donnelly Garment Workers' Union with the assistance of our attorneys, and we would naturally have been presenting this to her as it was written.

Q. (By Trial Examiner Batten) I know all that, but, Miss Todd, my point is this: that if I attended the meeting, at which I entered into a contract, and I were to enter the [fol. 6214] organization, even if it were two years ago, a matter of wages and working conditions, I would have some idea about what took place at the meeting. At least, I

would remember what I did and what I said. Now, you don't seem to have any recollection of it.

A. Well, I certainly will never forget that meeting. Now, as to going in and telling—I seem to be in this position: that if I say I said such-and-such a thing on that day, then I am to be asked something about this, and if—I couldn't word a thing that I said on that day like that now.

Q. Miss Todd, I am asking you, in substance, what did you say, if anything?

A. That this was what we had prepared, not this particular paper, but a similar paper, and we would want to offer it to her for her consideration.

Q. Well, now, just—

A. (Interrupting) And these are the things that were demanded—

Q. (Interrupting) Just a moment. Are you the one that offered her the paper?

A. I don't think that I did. I think—

Q. (Interrupting) Who did?

A. I think Mr. Tyler did.

Q. Well, are you sure that you didn't?

A. Yes, I am quite certain that Mr. Tyler read this to Mrs. Reed. I know I am right about that.

Q. Now, at any point in this conference, did you say anything at any time?

A. Yes, Mr. Batten. I had a great deal to do with the conversation. It was a general discussion of the people that were there.

Q. Well, now, tell me now some of the things that you said.

A. Well, I just don't know how to tell you any further than that; discussing each point of this contract is what went on, at that meeting. I don't know how to tell you any different.

Q. Did you discuss each point?

A. I don't know that I discussed each one, but I took an active part.

Q. Did you discuss any one of the points that you recall? [fol. 6215] A. I surely did. I think I probably discussed,—I think I probably should say, then, that I particularly discussed with her these piecework guarantees. Now, there were operators there, and they may have said something too. No doubt they did.

Q. Now, Miss Todd, "may"—of course, "may" anything. I don't want what may have happened or what might have happened. If you don't know anything about this meeting, just tell me you don't remember anything about it, and we will let it go.

A. I just told you, Mr. Batten, that I could never forget that meeting the longest day I live.

Mr. Ingraham: Just a moment—

Q. (By Trial Examiner Batten, interrupting) Tell me what you remember about it.

A. I don't seem to know how to tell it.

Mr. Ingraham: If your Honor please, I want to except to your remarks. This witness hasn't said she knows nothing about this meeting. She said they discussed every single point.

Trial Examiner Batten: I said as to specific things that transpired at the meeting. Now, when she says she discussed everything, Mr. Ingraham, surely you don't think that means anything from the standpoint of evidence, do you?

Mr. Ingraham: I certainly think when she says they discussed every point, that that is about as far as anybody can go. You mean that she is to tell some conversation?

Trial Examiner Batten: No, but I think that a person who attended one of these bargaining meetings, if that is all she can tell about it, I think she has a very, very faint recollection of what happened, not sufficient to accept in any way, in any form, as evidence of anything.

Mr. Ingraham: I except to your Honor's remarks.

Trial Examiner Batten: You may except, but I am saying that I don't think it amounts to anything.

Mr. Tyler: The intervener wishes to except, also, and calls your Honor's attention to the fact that this meeting occurred more than two years ago, attended by many people, that the results of it were principalized in written form, which is the summary of the witness' memory of what was done; that there is no provision or

presumption that she doesn't remember conversations connected with it, any further than that, that her evidence is, you say, worthless.

If the court will recall, she has testified that these demands were submitted as demands of the union.

[fol. 6216] Trial Examiner Batten: Well, of course, my only position about this witness is this: that either she has an extremely poor memory or else she doesn't want to remember some of these things. Now, you may take exceptions to that, because that is clearly, Mr. Tyler, my impression thus far of this witness' testimony, and I think, as the Examiner in this hearing, I have a perfect right to express such an opinion, and instead of expressing it in my report, I express it now so you may take the necessary exceptions to it.

Mr. Ingraham: Respondent excepts to the remark.

Mr. Tyler: The intervener excepts.

Mr. Ingraham: As highly prejudicial.

Trial Examiner Batten: Well, if it is incorrect I think it is, Mr. Ingraham.

Mr. Ingraham: I think it is incorrect.

Mr. Stottle: Mr. Examiner, I doubt if anyone present could state what question Mr. Leary last asked, and that occurred less than an hour ago.

Trial Examiner Batten: Mr. Stottle, I think the record will clearly indicate what everybody's position is, what questions were asked and what the answers are. Of course if it is prejudicial, the record will bear it out."

114. To the error of the Trial Examiner toward intervener and respondent evidenced by his remarks and his refusal to receive testimony concerning rumors and threats of violence toward employees of the Donnelly Garment Company, said evidence being offered to show the effect thereon upon said employees and being competent, relevant and material for that purpose, the evidence and error complained of reading (Tr. pg. 838-839):

Q. What was the purpose of chartering buses?

A. The purpose was to give the employees protection in coming to and from work that apparently was needed.

Q. (By Trial Examiner Batten) You say "apparently". What do you mean by "apparently"?

A. Because of all of these threats and rumors.

Q. Were you ever threatened individually by anybody?

A. Not any one person, Mr. Batten.

Q. Did anybody ever threaten you personally?

A. Not personally, no sir.

[fol. 6217] Q. Then, all you know about it is what you heard, is that right?

A. That is right.

Q. (By Mr. Stottle) Miss Todd, you had read in the paper what was going on at the other garment company plants, had you not?

A. The papers were full of it, and I could see what was going on at Twenty-Sixth and Grand as I came to and from work.

Mr. Langsdale: I object to that as not material, and if it is material we want to be permitted to show that when A. A. Ahner hired strikebreakers it was to prevent most of the violence she claims she saw.

Trial Examiner Batten: [Ware] not going to try out the newspaper in this case and have all of those articles brought in, and then have the reporters brought in and prove that it is true or not true. If there were threats and violence, bring the people in here that were threatened, and the people violence was done to, and let them testify.

I will sustain the objection as far as that part of it goes. We are not going to try out all of those matters."

115. To the refusal of the Trial Examiner (Tr. pp. 865-867) to receive and consider evidence of Wage scales provided in contracts of the International Ladies' Garment Workers' Union in similar industries in the Kansas City territory for the purpose of comparison with higher wage scales obtained by intervener in its contract with respondent, the said evidence being material and competent to show that intervener is a bona fide union and its contracts are the result of genuine bargaining, the record with respect thereto reading in part as follows:

"Mr. Lane: Mr. Examiner, may I state the intervener's position in connection with this matter?

Trial Examiner Batten: Yes.

Mr. Lane: It has been asserted here by Mr. Langsdale from time to time that he expects to offer evidence to establish that the intervener union is merely a sham union, that it is not in fact and under the law a representative of the employees. Now, in that connection the intervener asserts that the establishment of the results that [fol. 6218] were obtained in the contract which was entered into is an important point to be considered in determining the bona fideness of the intervener union, and in connection with determining the results that were obtained by that contract the prices and the minimum wages guaranteed by other garment concerns, the same industry, in the same community, is a point to be taken into consideration, so that a comparison of those figures will at least tend to show one of the results obtained by this contract.

Whether that result was obtained by collective bargaining or not would have to be determined from some other means. But the comparison of the prices is an important factor to determine the result obtained by this union in the contract, and I submit it is therefore proper, and we will expect to offer evidence to show that the minimum wage guarantee obtained in our contract was substantially in excess of that obtained in other garment industries.

Trial Examiner Batten: I presume it would be well now to settle this question so that everyone will know, as I have done once or twice already, what my position is.

I want you to be prepared for it, although the evidence is not submitted. I can tell you now, Mr. Lane, I do not propose to go into that matter. The only reason I tell you that is this, that you may be making your preparation and preparing an offer of proof. I want to advise the attorneys now that I am not going to try this case by comparison with other plants in this town or in other towns. It is not material to the issues in this case.

I think the material thing is, as I told Mr. Ingraham, whether there were negotiations, whether there was collective bargaining, and whether it was arrived at freely by

a representative of the employees and the management. If so, it wouldn't make any difference what the employees of the Donnelly Company were getting, whether $5 minimum or half as much as any other plant in town. The employees, if they are free to bargain and contract, can contract and bargain for anything they want, so you do not have to compare it, Mr. Lane, with somebody else's plant."

116. To the ruling of the Trial Examiner (Tr. pp. 907-916) refusing to receive and consider evidence of violence, newspaper reports and other reports and rumors of violence at other plants perpetrated by International Ladies' Garment Workers' Union and reports of threats of impending violence by International Ladies' Garment Workers' Union toward interveners' members, and evidence of fraudulent conduct with respect to intervener's members, said evidence being competent and material evidence show-
[fol. 6219] ing a principal motive and producing cause for the organization of intervener union, the record with respect thereto reading in part as follows:

"Q. Had the employees before that time manifested resentment against the action of the International Ladies' Garment Workers' Union? A. Very definitely.

Q. In what ways?

A. One way was, we had been to talk to Mr. Gossett and Mr. Tyler previous to that time.

Q. And had been to the police prior to that time?

A. And had been to the police. There had been a meeting of the employees, discussing what they could do in the way of protecting themselves against the actual physical attacks that were being threatened.

Trial Examiner Batten: Just a minute, Miss Todd.

Q. (By Trial Examiner Batten) Did anybody physically attack you? A. Not personally.

Q. (By Mr. Tyler) Had you or had you not seen notices in the papers of physical violence at the Gerney plant?

Mr. Langsdale: I object to that as immaterial and not proving any issue in this case, as to what occurred at the Gerney plant.

Mr. Tyler: I submit what is endeavored to be shown here is whether these people of their own volition desired

to form their own labor union, and in so doing they are entitled to give reasons for taking that action. If the actions are probable they are persuasive; if they are not probable they are not persuasive. But they are entitled to give such reasons as they say they had to stay out of the International and join the Donnelly Garment Workers' Union, and if they did understand violence was being exerted by the International, that might well be a reason—whether it was true or not, if they so understood, that might well be a reason for their choice, and they are entitled to show good faith for their choice by citing their reasons.

Mr. Langsdale: That speech might be proper at some other stage of the proceedings.

Trial Examiner Batten: We will forget about speeches. I will sustain the objection. As I said yesterday, I am not going into all of these rumors. If you have any evidence of anyone who was threatened personally, they may come up and testify to it personally and I will receive that [fol. 6220] testimony, but I am not in this hearing going into all of the rumors that fly around during an organization campaign of unions.

Mr. Tyler: It is not the truth of the violence I am establishing. It is merely the reason these people had for staying out of the International and forming their own union.

Trial Examiner Batten: I don't think it is material for the purpose for which you have offered it.

Mr. Tyler: All right.

Q. (By Mr. Tyler) Had there been picketing of the Donnelly plant by the International before the incident to which you referred? A. There had been.

Q. On about what date did the International picket the Donnelly Garment plant?

A. That has been done a good many times, as far back as December, 1934, and I think again in the early part—January or February of 1935. And there has been some other picketing since that time with—they had thrown pamphlets and circulars.

Q. Did you see this picketing you speak of yourself?

A. Yes, sir.

Q. Did you see any of the banners or signs the pickets carried? A. Yes, sir.

Q. Do you remember what they said on them?

Trial Examiner Batten: Just a moment, Mr. Tyler. I do not intend to receive any of that, either, unless it is something which was unlawful or illegal. If these pickets picketed this plant in the way in which they are permitted to under the law and there was nothing unlawful about it which amounted to actual coercion, I do not intend to go into all of those matters.

Mr. Tyler: I expect to show, if the Court please, that these signs contained untruthful statements, and that that had some effect on the choice these people made."

. . . . . .

At page 911:

"Mr. Tyler: I wish to say, we will show at a later period the acts of violence by the complainant in this case, and the threats that had been applied to these interveners, but I don't make my offer of evidence on that ground.

I submit to Your Honor that in showing what their real choice of labor unions was they have a right to refer [fol. 6221] to any conduct, lawful or unlawful, of the International to show why they didn't want to join it. That is the vital crux. If the International had a habit of wearing red neckties and they didn't like red neckties and they didn't want to join the union for that reason, I submit they have a right to give their reasons for preferring their own union.

Trial Examiner Batten: As I say, I do not propose to go into it with this witness, and if that is your theory on this particular matter you may submit it as an offer of proof.

. . . . . .

At page 913:

"Mr. Tyler: I wish to make an offer of proof.

Intervener offers to prove by this witness that for months before the organization of the Donnelly Garment

Workers' Union the employees had seen numerous accounts of violence by the International against employees of other garment plants in Kansas City and had, many of them, seen such violence with their own eyes, and had, many of them if not all, heard reports of such violence, that they were in a state of almost hysteria from constantly overheard statements that the same tactics were to be applied to the employees at the Donnelly Garment Company, and that this was a reason which affected them in their choice as to forming their own union or joining the International or staying out of all unions.

Mr. Langsdale: May I ask Mr. Tyler a question about that offer?

Trial Examiner Batten: If an attorney makes an offer of proof—

Mr. Langsdale: (Interrupting) I want to know how to make my objection to it.

Mr. Tyler, is this offer of proof in connection with your effort to have this witness explain what she said as to the Fern Sigler incident?

Mr. Tyler: Partially.

Mr. Langsdale: Then, I object to it on the ground that it has no bearing whatever on the meaning of this witness' statement at the Sigler hearing.

Trial Examiner Batten: What is the balance of your reason?

Mr. Tyler: I submit it does, because she is saying of what she was apprehensive. She is entitled to say the feeling of these employees was such that it would be very uncomfortable for her to join the union, and to say why the feeling of the employees was that way.

She is also entitled to testify along that line for the purpose of showing reasons for the forming of the Donnelly Garment Workers' Union.

[fol. 6222] Mr. Leary: I object to the offer of proof, Mr. Examiner.

Trial Examiner Batten: The offer is denied.

117. To the bias and prejudice of the Trial Examiner against intervener manifested by his unreasonable argument with witness Rose Todd, appearing at pages 947-949 of the Transcript of Record with respect thereto, reading:

"A. Well, there were more complaints, I didn't say there were not. There might be more.

I think we have a pretty good contract, and I don't think to just ask for something unreasonable—We do try to ask for the thing that is right and the thing we think we are entitled to, and try to get it.

Q. (By Trial Examiner Batten) But what has that to do with why you didn't get more complaints?

A. I think if we have already established a good setup in our salaries and piecework prices we are not apt to have as many as if we just had a very small guarantee.

Q. In other words, you think that would indicate the majority of the employees are very well satisfied?

A. In most instances—in a great many instances. I don't know whether that is just the word I should use. But, on the whole, we have a good contract. We have higher guarantees than they have around town.

Q. Does that stop anybody from wanting more?

A. It doesn't but it does make us not want to be unreasonable and ask for something we couldn't possibly get. We have already created a condition by our contract whereby we have more than similar industries in Kansas City.

Q. Do you think, on that basis you should forever be satisfied, then, as long as you are one jump ahead of somebody else?

A. I don't think we would forever be satisfied, no, sir.

Q. Then, how much has that to do with it?

A. We have worked out an agreement there that is above the average in Kansas City, and in doing that we are not possibly creating a thing that makes somebody want something more, more, more, that is unreasonable.

Q. Suppose all of the other shops in Kansas City beginning the first of next month reduced their wages 50 per cent, do you think you should agree to reduce yours 25 percent so you do not get too far away from them?

[fol. 6223] A. I don't think we would.

Q. Then, what relationship is there between them? Isn't it a question of what you produce and how your plant operates, and so forth, that should govern what you get?

A. It does. We have always, Mr. Batten, had good wages at the Donnelly Garment Company. We did get some decided increases in our contract—

Q. (Interrupting) Just a moment. I want you to tell me what you mean by "good." How do you determine what is good?

A. I think in a community where—

Q. (Interrupting) Let's forget all about the community. You are putting this entirely on a basis of comparison. Outside of that paint, what point do you mean by "good?"

A. They are away above the average—

Q. (Interrupting) I say, let's forget all about comparisons. On any other basis are they good?

Mr. Tyler: If the Examiner please, I submit she cannot give an opinion as to whether the wages are good without in some way comparing them with others.

Trial Examiner Batten: Then, she should say so. I am asking her if on any other basis outside of comparison they are good. I am trying to find out if that is the only basis for determing if they are good.

A. No. I think the contract and the salaries the employees receive will speak for themselves, aside from anything else. We know that they are good.

118. The refusal of the Trial Examiner (Tr. p. 981) to receive and consider evidence as to comparative cost of membership in the International Ladies' Garment Workers' Union based on the testimony of Velma Dowdy (Respondent's N.R.A. J.M.C. Exhibit 3, at page 566) and the cost of membership in the Donnelly Garment Workers' Union, said evidence being competent, relevant and material to show a reason for the preference of intervener's members for the intervening union rather than the International Ladies' Garment Workers' Union, the record showing such refusal at pages 981 to 983:

Q. Miss Todd, did you hear the testimony of Velma [fol. 6224] Dowdy in the injunction suit tried before Judge Miller?

A. Yes, sir.

Q. Have you had occasion to use the figures she testified that she paid to the International Ladies' Garment Workers' Union as a member of that union for a period of a year—

Mr. Langsdale (Interrupting) Just a minute. I object to that as immaterial.

Mr. Tyler: Let me finish my question.

Mr. Langsdale: Then, you have the witness wait until I make my objection.

Mr. Tyler: I will. Please don't answer until Mr. Langsdale makes his objection.

Q. (By Mr. Tyler)—the figures she testified she paid to the International Ladies' Garment Workers' Union as a member of that union with the figures which the members of the Donnelly Garment Workers' Union paid to their union, each for a period of one year?

Now, don't answer yet.

Mr. Langsdale: I object to that as immaterial. It doesn't tend to prove or disprove any issues in this case. It involves a lot of collateral issues which will greatly prolong this hearing, as we should be entitled to show what we do with that money and why we need it.

Trial Examiner Batten: I am not concerned with what you should be entitled to show. What is your objection to this question? That is the thing I am concerned with.

Mr. Langsdale: I object for the further reason it is incompetent and irrelevant what she heard someone testify to in some other court. We are about to enter into a stipulation, I hope, and then if they want to produce that testimony the Examiner will have an opportunity to rule on it.

Trial Examiner Batten: I now rule it absolutely immaterial and irrelevant to this hearing. I do not intend to have a comparison between the International Ladies' Garment Workers' and the Donnelly Garment Workers' Unions. The International Ladies' Garment Workers'

Union is not on trial here, neither is the Donnelly Garment Workers Union. It is the respondent who is here answering to charges of unfair labor practices. That is the thing we are going to try. If you have any further testimony of any kind pertaining to this matter you can present it in the form of an offer of proof, but I do not intend to receive it."

[fol. 6225] 119. To the refusal of the Trial Examiner to receive and consider the evidence referred to in the offers of proof set forth in that portion of the record quoted below, being quoted from pages 1000 to 1004 inclusive of the Transcript, said evidence so offered having to do with the desire and repeated efforts of intervener's members and intervener to obtain and submit to and abide by an election conducted by the Labor Board and by the Trial Examiner and in Federal Court litigation with the International Ladies' Garment Workers' Union, to determine the free will desire and choice of intervener's members as to bargaining representatives and labor union affiliation, which said evidence is relevant, material and competent for the purpose offered, and the failure of the Trial Examiner to receive and consider such evidence operated to deprive intervener and its members of rights guaranteed to them by Section 7 of the National Labor Relations Act and of their liberty, freedom of association and property rights within the meaning of the due process clause of the Fifth Amendment to the Constitution of the United States:

Q. Did the Donnelly Garment Workers' Union ever petition the National Labor Relations Board to hold an election of employees?

A. Yes, Sir.

Mr. Leary: I object to that, Mr. Examiner, and move the answer be stricken. I think if there is any petition they might have filed, it would be the best evidence.

Trial Examiner Batten: Well, of course, I think that it is immaterial whether they have or haven't, so far as this hearing is concerned. What is the—how is it material to these issues, Mr. Tyler?

Mr. Tyler: I wish to show that they have at all times been willing to have such an election and have so expressed

themselves, and have been confident of their ability to win such an election; that they have petitioned the Board for it, and that the suggestion which has appeared somewhere, I believe—I may be wrong about that—that they didn't petition until very late, has a very sound reason, that [fol. 6226] it doesn't in any way discredit their statement that they can prove their choice by an election.

Trial Examiner Batten: Mr. Tyler, I don't see it has anything to do with this hearing at all. Any matter connected with the petition or anything with relation to it.

Mr. Tyler: Then, I wish to make an offer of proof.

Trial Examiner Batten: You may make an offer of proof.

Mr. Tyler: I offer to prove by this witness that the Donnelly Garment Workers' Union has filed two petitions with the National Labor Relations Board for an election of the employees as to bargaining representatives and labor unions, both recently, before the beginning of this hearing; that the reason they did not file any such petition earlier was because they had a contract with their employer and were operating satisfactorily under it through representatives of their own choosing, and they felt that their situation was satisfactory and that if any outsider disputed the claim that they were being represented by representatives of their own choice, it was devolved upon such outsider to ask for such an election to change the status quo. Also, that the union on several occasions authorized their attorney to agree to submit to an election of the employees and abide by the result, and that that was done in the record and the three-judge court hearing and again during the hearing before Judge Miller.

Mr. Langsdale: The International Ladies' Garment Workers' Union object to the offer for the reason that the matters related in the offer have no bearing whatever upon any of the issues in this proceeding, and for the further reason that if they should have, that this isn't the proper way to make the offer, because the petitions themselves are the best evidence of the contents, and his statement that they have petitioned the Board is a mere legal conclusion.

Trial Examiner Batten: Mr. Tyler,—well, no, I don't know as—I thought I wanted to ask you a question, there. Of course,—I think that I will. Of course, you know that any request to the three-judge court or Judge Miller is of no force and effect, don't you?

Mr. Tyler: I don't concede that, your Honor.

Trial Examiner Batten: I mean, as far as the Wagner Act is concerned, you concede that it is not?

Mr. Tyler: I concede that the Wagner Act does not authorize Judge Miller to hold an election. I concede that.

Trial Examiner Batten: That is what I meant.

[fol. 6227] Mr. Tyler: But I would insist very respectfully, but very earnestly, that what we are trying to find out here is what these employees really want of their own free will and this is some evidence of it. Now, it may be they are dominated in that, or somebody ordered them to do that, but I submit that I have a right to show that they are eager to have an election and they are willing to have it, whether it is under the Wagner Act or otherwise, and agree to abide by the results.

Mr. Foster: Mr. Examiner, I might point out that in counsel's offer of proof, he purely demonstrated it would be impossible to have an election or any certification, due to the fact that by his own statement, he shows clearly that there is no question concerning representation which is a prerequisite for any hearing in a representation case. By his own statement, he indicated clearly that there was no question of representation among the employees at the Donnelly Garment Company. There is no contention on the part of any other organization that they represent a majority. The contract exists now, so, independent of this case, his filing the petition would have no standing before the National Labor Relations Board, in my opinion.

Mr. Tyler: Well, does Mr. Foster agree there is no contention by the International Ladies' Garment Workers' Union that they have a right to represent the employees?

Mr. Foster: I didn't state that. I stated there was no contention on the part of any other organization that they represented a majority.

Trial Examiner Batten: I think Mr. Foster's position is, Mr. Tyler, that as far as this hearing is concerned, or I presume, you are also taking in as far as any petition is filed?

Mr. Foster: That is right.

Trial Examiner Batten: That there is no question of representation, that is, nobody is disputing—

Mr. Tyler (Interrupting): That the Donnelly Garment Workers' Union is a proper representative of these employees?

Trial Examiner Batten: (Continuing)—is disputing the matter, so there is no question of representation at the present time; at least, there certainly isn't any such question in this hearing.

Mr. Tyler: Well, do I understand that it is conceded that the Donnelly Garment Workers' Union and their committee is a proper representative of the employees for bargaining purposes?

Trial Examiner Batten: Mr. Tyler, nothing is conceded except there is no question of representation. To have a question of representation, there must be somebody who is disputing a fact, and nobody, as far as I can see, [fol. 6228] is disputing any fact.

Mr. Tyler: Very well; your Honor understands my position."

120. To the ruling of the Trial Examiner (Tr. pp. 1267-1268) receiving in evidence and considering Board's Exhibit 14, being the Loyalty League pledge, and overruling intervener's and respondent's objections thereto, the same being incompetent, irrelevant and immaterial and not binding upon respondent and intervener, the objections and ruling reading as follows:

"Mr. Lane: I object to Exhibit No. 14 for the reason that it has not been properly identified. There has been no showing as to where it originated, how it originated, or who was responsible for getting it up, and for that reason it could be in no way binding here on anybody.

Trial Examiner Batten: It will be received.

Mr. Ingraham: Respondent makes the same objection, and the further objection that it is immaterial to any issue in this case.

Trial Examiner Batten: It is received."

121. To the ruling of the Trial Examiner (Tr. p. 1268 and subsequent) receiving in evidence and considering testimony with reference to the Donnelly Loyalty League and overruling intervener's and respondent's continuing objections thereto, said testimony being immaterial, irrelevant, incompetent and not binding upon intervener and respondent, the evidence received, objections and rulings appearing in the following portions of the transcript:

At page 1268:

Q. Do you know whether or not your instructor was present when those documents came through your section?

A. She was in the section, yes, sir.

Q. Do you know whether or not she said anything at the time?

A. She said we should sign and pass that to the next girls, if I remember right.

[fol. 6229] Mr. Ingraham: Mr. Examiner, I move the answer be stricken out as not binding on respondent, what the instructor said.

Trial Examiner Batten: Objection overruled. By overruling the objection I am not saying it is binding, but I am overruling the objection.

Mr. Stottle: We further object because it is not identified as to what instructor said that.

Trial Examiner Batten: She may proceed."

* * * * * * * * * *

At page 1269:

"Q. About this time, in February, 1935, or thereabouts, did you have occasion to go to Mrs. Reeves' office with any other girls?

Mr. Lane: Mr. Examiner, intervener objects to this and all similar questions with respect to the formation of the Nelly Don Loyalty League for the reason that it was long

prior to the formation of the Donnelly Garment Workers' Union. There is no connection between the two organizations, and this testimony could in no way be binding on the intervener here; and for the further reason it is anterior to the matters inquired about under the complaint here, and for that reason it is immaterial.

Trial Examiner Batten: You are not representing the Loyalty League, are you, Mr. Lane?

Mr. Lane: I am representing the intervener, and I make the objection on behalf of the intervener for the reason that what happened then does not in any way bind the intervener and does not prove any of the issues brought by this complaint.

Trial Examiner Batten: Of course, it is hard for me to tell now whether it does or doesn't. Objection overruled.

Mr. Ingraham: Respondent objects to the question for the reason that it relates to matters prior to the passage of the National Labor Relations Act.

Trial Examiner Batten: Objection overruled.

Mr. Leary: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. If I remember right, we were called up there to Mrs. Reeves' office, ten at a time.

Q. Who sent you to Mrs. Reeves' office?

A. The instructor.

[fol. 6236] Mr. Ingraham: Your Honor, may my objection go to all of these matters?

Trial Examiner Batten: Yes, you may have a continuing objection. Mr. Lane, do you wish to have the same?

Mr. Lane: I ask that I have an objection to all of these things.

Trial Examiner Batten: That is, prior to the time you stated in your objection, is that it?

Mr. Lane: Yes."

And continuing thereafter through pages 1271, 1272, 1273, 1274 and ending with the following answer on page 1275:

"Oh, when—during '34 and '35, up until this other organization was formed, they had meetings."

[fol. 6231] 122. To the action and ruling of the Trial Examiner in admitting and considering the testimony of May Fike as to what papers the instructor in her section saw passed around, and overruling the objections of intervener and respondent thereto, said testimony being incompetent, irrelevant and immaterial and not binding on intervener or respondent, said testimony, objections and rulings complained of reading (Tr. pp. 1288-1289):

"Q. Now, Mrs. Fike, do you know whether or not the instructor can see any papers that pass down the table which the girls read and sign?

A. There is never no papers come into that section that she don't know about it before the girls get them, and—

Mr. Lane: I move to strike the answer as not responsive.

Trial Examiner Batten: Let her finish.

Mr. Lane: I thought she had finished.

Trial Examiner Batten: She was saying something else there.

Q. (By Trial Examiner Batten) What were you saying?

A. She is notified of what comes into that section before the girls get it. Sometimes she personally brings it to us. At that time it was started up at the other end of the machine.

Q. (By Mr. Leary) Can she see—

Mr. Lane: (Interrupting). Just a moment. If the witness has now finished her answer, I move that it be stricken for the reason that it is not responsive.

Trial Examiner Batten: It may stand.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: Objection overruled.

Mr. Lane: I object to it further for the reason that it calls for a conclusion on the part of the witness.

Trial Examiner Batten: Objection overruled.

123. To the action and ruling of the Trial Examiner in admitting and considering the testimony of May Fike with respect to conversations and actions of Fern Sigler over [fol. 6232] the objections of intervener and respondent, and in overruling the motions of intervener and respondent to strike the same, said testimony being heresay, self-serving, not binding upon intervener or respondent, incompetent, irrelevant and immaterial, the said testimony, objections, motions and rulings reading (Tr. pp. 1292-1294):

"Q. What, if anything, did Fern Sigler say to you about the union button?

Mr. Ingraham: I object to that as heresay.

Trial Examiner Batten: You may answer.

A. She told me that she had on her pin that morning and that she was going to wear it into the shop, and I told her she had better not or she would lose her job.

She said, well, she was going to wear it anyway. And I said, "Well, I will lose mine too." And she said, well, she didn't think I would—I don't remember her exact words, but something to that effect.

She told me to go on up and not stay with her at all, so I went upstairs. Her locker wasn't in the same place mine was. That is the last I talked to her until the evening of the 23d.

Mr. Ingraham: I move that the answer be stricken out—I object to the part of the answer that relates to what Fern Sigler said; and I move that the balance of the answer be stricken out as self serving.

Mr. Lane: Intervener makes the same objection and the same motion to strike.

Trial Examiner Batten: Objection overruled—

Mr. Leary: (Interrupting): Now, I submit this is outside of the scope of the intervener's interest.

Trial Examiner Batten: Just a minute. (Continuing)—and the motion to strike is denied.

Mr. Leary: Whose motion to strike is denied?

Trial Examiner Batten: Mr. Ingraham's motion to strike.

Mr. Lane: Was there a ruling on my motion?

Trial Examiner Batten: Yes, I said overruled. Mr. Leary, did you start to say something when I interrupted?

[fol. 6233] 124. To the action and ruling of the Trial Examiner in receiving and considering the testimony of May Fike hereinafter quoted, with respect to the Fern Sigler incident, and in overruling intervener's and respondent's motion to strike the same, said testimony being incompetent, irrelevant, and immaterial and insufficient to bind intervener or respondent, such testimony, motion and ruling reading (Tr. pp. 1305-1307):

"Q. Now, can you identify any of the individuals that you heard say any of those things, Mrs. Fike?

A. Well, of course they were all hollering. I couldn't describe now which ones did say which.

Trial Examiner Batten: That is all.

Mr. Lane: Intervener renews the motion to strike this testimony for the reason that the persons alleged to have made such remarks have not been identified.

Trial Examiner Batten: The motion is denied.

Mr. Ingraham: Respondent makes the same motion.

Trial Examiner Batten: The motion is denied.

* * * * * *

At Page 1306:

"Q. Have you told the Examiner all of the things that you heard said to Fern Sigler by this crowd of girls?

A. They told her she couldn't belong to the International Union and work in their shop.

Mr. Lane: Intervener makes the same objection that has been heretofore made.

Trial Examiner Batten: The objection heretofore made?

Mr. Lane: To this same line of testimony. I made an objection to the nature of it, and I am renewing it now.

Trial Examiner Batten: Objection overruled.

Mr. Lane: In order not to burden the record, may I have a continuing objection?

Trial Examiner Batten: You mean as to this incident of April 23rd?

Mr. Lane: Yes sir.

Mr. Ingraham: Respondent moves to strike the answer [fol. 6234] out for the reason that it calls for hearsay testimony, and for the further reason that anything the employees said is not binding on the respondent.

Trial Examiner Batten: Motion denied.

Mr. Ingraham: And, Your Honor, may I have a continuing objection to this incident?

Trial Examiner Batten: Yes, to this incident."

125. To the action and ruling of the Trial Examiner in receiving and considering, and denying intervener's motion to strike the following testimony of May Fike with respect to the instructors and the Fern Sigler demonstration, the said testimony being the conclusion of the witness, incompetent, irrelevant and immaterial and not sufficient to bind intervener or respondent, the said testimony, motion and ruling reading (Tr. p. 1309):

"Q. Do you know whether or not the instructors made any effort to stop the second or third demonstration?
A. No, sir, they didn't.

Mr. Lane: I move to strike that out as a conclusion. She may state what she observed but not the conclusion that they made no effort.

Trial Examiner Batten: It may stand as it is."

126. To the action and ruling of the Trial Examiner in receiving and considering, and in denying intervener's and respondent's motions to strike testimony of May Fike with respect to the Fern Sigler incident hereinafter quoted, said testimony being hearsay, the persons making threats not being identified, not shown to have acted with the knowledge or authority of respondent, being insufficient to bind respondent or intervener, incompetent, irrelevant

and immaterial, said testimony, motions and rulings reading (Tr. pp. 1310-1313):

"Q. Did you hear any threats made to Fern Sigler?

A. The last bunch that came in there threatened to throw her out of the window. They said they didn't want her in there, and kept hollering at her to go home, that she couldn't work with them and belong to that union—to our union—the International Ladies' Garment Workers' Union, and kept suggesting they throw her out of the window.

[fol. 6235] Mr. Ingraham: I move that the answer be stricken out for the reason that it calls for hearsay testimony, not binding on the respondent; and for the further reason, the witness has not identified a single individual in this third group, and has not identified anyone as making the remarks she has just stated.

Trial Examiner Batten: I will deny it as to the second reason. As to the third reason, the matter of identification, Mr. Leary, I think you should further identify this group.

. . . . . .

Q. (By Mr. Leary) Are you able to name any persons in the third group?

A. Ethel Carpenter was in all of them, and Mary Sprofera—I don't remember the names of all of them. I really knew more than that, but I don't remember the names of all of them. There was—I can't think of her first name, her last name is Hayward—

Q. Do you know where this person named Hayward worked?

A. I believe she either worked on the seventh or eighth floor, I don't remember which.

Q. Was she an operator?

A. Yes, sir.

Q. Can you name any other persons who were in any of the groups?

A. I don't believe I remember the names of them.

. . . . . .

Q. (By Trial Examiner Batten) Can you identify any of the people in the third group who said any particular thing, Mrs. Fike?

A. Well, Ether Carpenter and Mary Sprofera told her they didn't want her in there. I am not sure about who said "Throw her out the window." I think that was Mary Sprofera, but I am not sure about it.

Mr. Shepard: I ask that her answer about throwing the girl out the window be stricken out for the reason that she is not sure who said it.

Trial Examiner Batten: Motion denied."

127. To the action of the Trial Examiner in receiving and considering any and all testimony of May Fike concerning the Fern Sigler incident, appearing in the transcript from pages 1291 to 1323, inclusive, for the reason that the identity of the participants was not shown; the authority of such persons, operators or instructors, to [fol. 6236] bind respondent or intervener was not shown; no knowledge, duty or power of the respondent to prevent or control the action of the employees in the premises was shown, all of same being incompetent, irrelevant and immaterial for the reasons stated in the objections appearing therein and being insufficient in other respects to bind the respondent or intervener, and no inference can be drawn that respondent or anyone in its behalf, or with its knowledge or authority thereby encouraged or discouraged membership in any union, or induced or aided the organization of intervener union.

128. To the action and ruling of the Trial Examiner in refusing to receive testimony offered by intervener with respect to the talk and excitement among the Donnelly employees with respect to the violence and commotion perpetrated by International Ladies' Garment Workers Union and other garment plants in Kansas City, and threats, reports and rumors of similar violence toward the employees of the Donnelly Garment Company, all of said evidence being competent, relevant and material to prove its effect upon the Donnelly employees, and the state of mind created among them, and to show the state of mind, fear and hysteria among said employees that was a principal cause for their action in forming their own union, the objections to said evidence and the rulings thereon appearing at pages 1416-1425 (and elsewhere throughout the transcript) in the following language:

"Q. And wasn't it common talk around the Donnelly plant that there was a great deal of commotion out there around those Missouri, Gernes and Gordon plants?

Mr. Langsdale: I object to that as immaterial; wouldn't tend to prove or disprove any issue in this case, and opens up a new avenue for testimony. I think the Examiner has ruled that line out up to now.

* * * * * * *

Mr. Lane: This question I have asked was what she [fol. 6237] heard about the Donnelly plant as to what was going on.

Trial Examiner Batten: Well, Mr. Lane, I would like to have your reaction on this: supposing, for the sake of argument, that there was a lot of this going on. Certainly, the respondent can't be charged with—I mean by that, unless the respondent or one of its agents passed on this information for the purpose of discouraging membership in this union, then it doesn't make any difference how much the employees may have heard.

* * * * * * *

Mr. Lane: The purpose of my making this offer, or asking this question and similar questions, is to refute the charge that has been made here by counsel for the International and Board that this union we represent is a sham union, and my purpose is to show that atmosphere that surrounded the employees at that time, and their reaction; and attitude, as having some bearing upon why they took the action they did take on the part of the union.

Trial Examiner Batten: Mr. Lane, I will make the same ruling in that I did once before. That is this: if there were any actual threats or actual violence at this plant, that in any way can be chargeable to the respondent, I certainly want to receive it.

Now, I am not going into this organizational campaign that took in the City of Kansas City. Now, I am not going all over that again, and if you want to, you may make as complete an offer of proof on that, and, after all, that may be probably the best way to present the whole problem of this campaign that was going on by the union here in

Kansas City, but I can say now that I am not going to receive it in this hearing.

At page 1419:

Trial Examiner Batten: As I remember it. Well, now, I am going to take that position very definitely with respect to the intervener on this entire campaign that went on here in Kansas City, and I think we can just as well determine now that you shall prepare a complete offer of proof on it, because I don't intend to receive it.

Mr. Tyler.

Mr. Tyler: May I understand the Examiner's ruling? Do I understand that you decline to permit us to show that the employees of the plant, as one of their reasons for choosing their own union, were affected by both fear of the campaign carried on by the International Ladies' Garment Workers' Union at nearby shops, threats that it should be able to be applied to the Donnelly employees, and dislike of those methods, you decline to let us show those things as establishing one of the reasons why these employees decided to, of their own free will, form their own union? Is that correct?

[fol. 6238] Trial Examiner Batten: Mr. Tyler, not quite that broad. I said that if any threats were made against these Donnelly employees, or any violence there, I even question how material that may be, but I will receive that, but on the other, on your whole idea there that that was one of the reasons for the organization of a Donnelly Garment Workers' Union, and a valid reason, I want an offer of proof submitted on it.

* * * * * *

At page 1422:

Mr. Langsdale: I want to understand the Examiner's ruling on this particular matter. I have understood up to now you have permitted both respondent and the intervener to show threats made to any of the employees but not to go into disturbances that may have occurred at Gerney's or Gordon's, or anything of that sort.

Trial Examiner Batten: That is correct. I want to eliminate everything by this offer of proof except direct threats and direct violence. I think I asked Miss Todd on several occasions, "Did anybody threaten you? Did anybody ever commit any violence as far as you were concerned?" I will receive that in this hearing; I don't want that in the form of an offer of proof.

* * * * * *

At page 1424:

Mr. Lane: I want to make this further observation with respect to the question I asked:

I desire to show the attitude or state of mind of the employees, whether that attitude was created by rumor or by ideas of terrorism, which may or may not be true, nevertheless it is the state of mind which I want to show, and to show further that that state of mind actuated to cause them to want to form their own union, and that would go to the bona fideness of their union and would be a good reason for the formation of their union, whether founded upon fact or not.

Trial Examiner Batten: I agree with you, Mr. Lane. And, even if founded upon information which was absolutely false, if it is relevant to these issues—I mean, the truth or falsity of these things is not in issue.

Mr. Lane: That was the purpose of my question, to show that fact.

Trial Examiner Batten: And that matter, of course, will be included in this offer of proof."

[fol. 6239] 129. To the ruling of the Trial Examiner receiving in evidence International Ladies' Garment Workers' Union Exhibits Nos. 4, 5, 6 and 7, over objections of respondent and intervener, being purported ledger sheets of the Kansas City Chair Rental Company, for the reasons stated in the objections, said objections and ruling being as follows (Tr. pp. 1459-1460):

"Mr. Langsdale: We offer Exhibits 4, 5, 6 and 7 in evidence:

Mr. Stottle: Respondent objects on the ground that they are not the best evidence, and that the witness personally didn't make the entries; that there is no showing that any person authorized by the Donnelly Garment Company ordered any particular item on the list; that it is not binding on the respondent and constitutes hearsay, and is wholly immaterial to the issues.

Mr. Langsdale: Of course, they are taken from the regular records used and maintained in the business of this witness, and are material for whatever they prove.

Trial Examiner Batten: Mr. Patten.

Mr. Patten: Intervener objects for the reason that how the Chair Rental Company may have kept the books is a matter wholly beyond the control of the Donnelly Garment Workers' Union, or the respondent, for that matter. There is no showing here, either the respondent or the intervening union directed these accounts to be mixed up and kept on one ledger sheet.

Trial Examiner Batten: The objections are overruled. They will be received."

130. To the action and ruling of the Trial Examiner in receiving and considering, over the objections of respondent and intervener, International Ladies' Garment Workers' Union Exhibits 8-A to 8-GG, purporting to be deposit slips of Kansas City Chair Rental Company, same being offered to prove from notations on said slips made by said Chair Company that respondent had paid chair rental bills of intervener, said exhibits being wholly incompetent, irrelevant and immaterial, not shown to have been made with knowledge or authority of anyone connected with respond-[fol. 6240] ent and wholly insufficient to bind either respondent or intervener, for the reasons stated in the objections, the objections and ruling reading (Tr. pp. 1478-1480):

"Mr. Langsdale: I offer International Ladies' Garment Workers' Union Exhibits Nos. 8-A to 8-GG, inclusive.

Mr. Stottle: The respondent objects to the introduction of these exhibits for all the reasons that we have heretofore

urged, including the fact that they are not the best evidence; that there is no showing by this witness—

. . . . . .

Mr. Stottle: Well that is one of the objections, that it is not the best evidence and hasn't any sufficient relation to this to have any probative effect or tend to prove or disprove any of the issues in this case. Furthermore, we object that the items on here were not made by this particular witness, and not shown to have been made by any person that would bind the respondent or the intervener, even bind this company; that it constitutes hearsay testimony and is so mixed up with other records and so mixed up between the parties here, charges to one and payment by another, that it is wholly impossible to be separated.

Trial Examiner Batten: That doesn't indicate that on these slips, does it?

Mr. Stottle: But the testimony taken together with these slips indicates that.

. . . . . .

Mr. Stottle: Mr. Examiner, we wish to add, also, that it is not made from—it doesn't constitute the original entry made in this company. It is about 3 or 4 degrees off from that. The original records, entries, would be the best evidence.

Trial Examiner Batten: If there is no further objection, they will be received.

Mr. Patten: Intervener makes the same objection as the respondent.

Trial Examiner Batten: They will be received."

131. To the ruling of the Trial Examiner overruling respondent's motion to strike the evidence of witness Milton Slotkin and all exhibits from the records of the Kansas City Chair Rental Company, for the reasons stated in said motion, the motion and ruling reading (Tr. pp. 1483-1485):

"Mr. Stottle: Mr. Examiner, Respondent now renews its motion to strike out all of the evidence of this witness, including the exhibits introduced while he has been on the

[fol. 6241] stand, for the reason that there hasn't been any showing that would make them probative evidence in this case. The items are all lumped together under one account, when the witness has stated that some of them might have been for other accounts. The deposit slips are all lumped together and there is nothing here that would enable the Examiner to give any credence to the statements because they are so mixed up and were kept in such a way that they don't show the true facts, and for the further objection that we have already made, it is not the best evidence, and not the original record entries, and not binding on the respondent.

Trial Examiner Batten: The motion to strike is denied."

132. To the action and ruling of the Trial Examiner in receiving and considering testimony of witness Greenhaw with respect to Board's Exhibit No. 17, and receiving and considering said Exhibit 17 over the objections of respondent and intervener, the said testimony and objections reading (Tr. pp. 1598-1600):

"Q. I show you what has been marked for identification as Board's exhibit No. 17 and ask you to state briefly what that document is.

A. It was a record of the amount of letters written by the department that day, and who dictated them, and who wrote them. A few were written by the girls themselves; that is, form letters or letters that were of a similar nature; some of the girls, of course, would transpose those themselves."

* * * * * * *

At page 1599:

"Mr. Ingraham: Respondent objects to the introduction of Board's exhibit No. 17 for the reason that it is immaterial and irrelevant to any issue in this case. And, respondent moves that the witness' testimony be stricken out for the same reason.

Mr. Lane: Intervener makes the same objection and motion.

Trial Examiner Batten: Mr. Leary, what have you to say?

Mr. Leary: I believe there has been testimony regarding the membership of Miss Alexander and Miss Nobles in the Donnelly Garment Workers' Union, Mr. Examiner, and I believe this goes to show these persons were of a supervisory nature. There is no better proof in the world than to have this daily check-off; it is somewhat like an efficiency system the company uses to check up on the work done by even the stenographers in the office daily, all handled by the persons Alexander and Nobles.

[fol. 6242] Trial Examiner Batten: It will be received."

133. To the ruling of the Trial Examiner receiving and considering in evidence Board's exhibit No. 18, being the purported minutes of witness Greenhaw, over the objections of respondent and intervener, for the reason that id document was not sufficiently identified and no showing was made that the document had been in the custody of the witness before the time of trial, the said objections and ruling reading (Tr. p. 1613):

"Mr. Ingraham: I object to the introduction of Board's exhibit 18 for the reason that it purports to be a copy of some minutes, and the original would be the best evidence.

Mr. Langsdale: Of course, they have produced what they say is the original, and these minutes that we have had photostated I told the Examiner we proposed to show they "doctored" those minutes, and now we have what she says is a carbon copy of the minutes she turned over to Marjorie Green, and Marjorie Green produces what she says is the original.

Mr. Lane: Intervener objects to it on the ground that it is not identified.

Mr. Leary: In what particular?

Mr. Lane: It purports to be some copy of an original instrument which is supposed to be in existence.

Trial Examiner Batten: It will be received."

134. To the action and rulings of the Trial Examiner in receiving and considering the following testimony of witness Greenhaw over objections of intervener and respondent and in overruling motions of intervener and respondent

to strike said testimony, the said testimony, objections and rulings reading (Tr. 1619-1624):

"Q. (By Mr. Leary) During the months of March and April and May, 1937, Mrs. Greenhaw, did you note anything unusual in the conduct of Miss Rose Todd while she was on the tenth floor?

Mr. Lane: That is objected to as calling for a conclusion.

[fol. 6243] Trial Examiner Batten: You may answer.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: Overruled."

. . . . . .

At page 1620:

Trial Examiner Batten (interrupting): Well, now, you can just say "yes" or "no" to that question, whether you did.

A. Yes.

Q. (By Mr. Leary) What was it that you noticed, Mrs. Greenhaw?

Mr. Ingraham: I make the same objection.

Trial Examiner Batten: Same ruling.

Mr. Lane: Intervener makes the same objection.

A. I noticed that she was more than usually active in contact with the executives of the company.

Mr. Lane: I move to strike the answer out as a mere conclusion of the witness.

Trial Examiner Batten: It may stand.

Mr. Ingraham: Same objection. Respondent makes the same objection—the same motion to strike.

Trial Examiner Batten: Motion denied.

. . . . . .

At page 1622:

"Q. (By Mr. Leary) Did this occasion when you saw the representative group of employees with Miss Todd to

the tenth floor occur after the meeting when the Donnelly Garment Workers' was formed—Donnelly Garment Workers' Union was formed?

Mr. Patten: Just a moment, please, I don't believe she has testified she saw a group of employees with Miss Todd. The question assumes she has so testified.

Mr. Leary: I submit her testimony was that it was a representative group from the employees all over the plant.

Q. (By Trial Examiner Batten) Was Miss Todd with this group?

A. I couldn't testify as to that, but I remember the occasion because it was rather unusual for people from the factory to be brought up on the tenth floor.

[fol. 6244] Q. Now, do you remember about when this was?

—A. I remember, because a meeting took place the same day.

Q. Well, what meeting?

A. I am assuming it was the meeting—

Q. (Interrupting) Well, tell me what occurred at the meeting that you say occurred the same day.

A. There was a committee was announced, who would represent the employees as—I don't remember how they were designated, but they were to be union representatives among the employe[illegible]

Q. (By Mr. Leary) Was it before that meeting, Mrs. Greenhaw, that you saw this group of employees up on the tenth floor?

A. Yes.

Q. In Mrs. Reed's office?

A. Yes.

Mr. Lane: I move to strike it out for the reason that the time is not fixed.

Trial Examiner Batten: It may stand."

[fol. 6245] 135. To the rulings and action of the Trial Examiner in refusing to except the testimony of intervener's members that they were not dominated and that they did form the intervener union of their own free will, and in denying the respondent's motion, based upon said

ruling, to dismiss the complaint that intervener is a dominated union, the said action and rulings being necessarily predicated upon the Trial Examiner's belief that each and all of said witnesses would testify falsely, the effect of said action and ruling being to deprive respondent and intervener of the opportunity to introduce competent, relevant and material testimony to disprove the charges made in the complaint and show the true wishes of intervener's members as to bargaining representation and union affiliation, and serving to deprive intervener and respondent of a fair and impartial trial, of the rights guaranteed to intervener's members under Section 7 of the National Labor Relations Act, and of their freedom of association and property rights in their contracts with respondent within the meaning of the Fifth Amendment of the Constitution of the United States, the said action, exceptions thereto, motion and ruling thereon reading (Tr. pp. 1655-1656):

"Mr. Ingraham: Well, your Honor, do I understand that you are not going to allow witnesses to take the stand and testify that they were not dominated and that they did form this union of their own free will?

Trial Examiner Batten: That is exactly what I mean.

Mr. Ingraham: Of course, respondent excepts to the ruling.

Trial Examiner Batten: Well, I assume that the intervener will, too.

Mr. Langsdale: You have nothing to except to.

Mr. Lane: Yes, we do. We assume we have an exception.

[fol. 6246] Trial Examiner Batten: Well, I want to make it very clear at this time to everybody, while I am not attempting to rule on the matter the point, as I said once before, if you want to bring some witnesses up here and offer it, I want you to do it. In other words, I don't want the respondent's attorney, or the intervener's attorney, to fail to do something that you think you should do to protect your record, but I do think I ought to tell you just exactly what my position is.

I am not going to receive it, and—

Mr. Stottle (interrupting): Mr. Examiner, don't you think you should make a ruling now striking out the charge that it is a dominated union, if you are not going to permit us—

Trial Examiner Batten (interrupting): Do you want to make that motion?

Mr. Ingraham: Yes.

Mr. Langsdale: It appears to me this is my offer; not yours.

Trial Examiner Batten: I say, does Mr. Stottle want to make that motion now? If so, he may do so.

Mr. Stottle: Well, in view of the Examiner's statement as to his position on the matter, the respondent does move that the charge in the complaint that the union is a dominated union should be dismissed.

Trial Examiner Batten: Motion denied.

136. To the action and ruling of the Trial Examiner in overruling the objections of respondent and intervener to the following leading and suggestive questions, and in receiving and considering the answers of the witness Greenhaw thereto, said questions, objections and answers reading (Tr. pp. 1661-1666):

"Q. Now, Mrs. Greenhaw, let me ask you with reference to the meeting of April 27, 1937, which was the meeting at which the Donnelly Garment Workers' Union was formed, if you heard Miss Todd say anything at that meeting about the—

Mr. Ingraham (interrupting): I object—

Q. (By Mr. Langsdale, continuing)—officers of the Loyalty League meeting the night before and deciding the only thing to be done was to form this union?

Mr. Ingraham: I move the question be—I object to the question for the reason that it is leading and suggestive and an improper way to examine this witness. He can ask [fol. 6247] the witness what Miss Todd said, but I don't think it is proper for him to read from what purports to be some statement, and then ask if she heard that.

Mr. Langsdale: It seems to me it—

Mr. Patten (interrupting): The intervener makes the same objection.

Mr. Langsdale: The Examiner has many times said the attorney is responsible for the form in which he asks his questions.

Trial Examiner Batten: Well, I still say that is true, and, of course, if the attorney wants to ask a question such as this, why, of course, it will have to be weighed. If it has any value, it will receive it, and if it hasn't, of course, it won't.

Mr. Langsdale: I am willing to take that chance.

Trial Examiner Batten: I think under my ruling that is your privilege.

Mr. Langsdale: Will you read the question, please, Mr. Reporter.

(Whereupon, the question was read by the reporter.)

Mr. Lane: Mr. Examiner, the intervener further objects for the reason that that question was asked by counsel for the International Ladies' Garment Workers' Union by reference to some statement which, from his previous statement, was made by this witness in the presence of some stenographer, outside of the presence of anybody representing the Donnelly Garment Workers' Union. The statement itself is hearsay and in no sense binding upon the intervener, and for that reason is an improper document to be used to refresh this witness' memory. The question itself calls for hearsay and cannot be binding on the intervener.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: You may proceed.

Mr. Langsdale: Read the question, please.

(Thereupon the last question was read by the reporter.)

A. She did make such a statement.

* * * * * *

At page 1665:

Q. (By Mr. Langsdale) Mrs. Greenhaw, referring to the meeting of March 18, you identified that meeting as the one at which the letter from the International Ladies' Garment Workers' Union was read, and at which meeting Mrs. Nelly Don Reed spoke. I will ask you if at that meeting Mrs. Reed stated she would close her shop before she would permit it to be unionized.

Mr. Ingraham: I object to the question for the same rea- [fol. 6248] son that I have objected to the previous question that Mr. Langsdale asked when he was reading from this document that he has in his hand.

Mr. Lane: Intervener makes the same objection.

Trial Examiner Batten: I will overrule the objection.

A. Mrs. Reed did state she would close her factory before she would permit it to be unionized.

Q. (By Mr. Langsdale) Did Mrs. Reed state at that meeting that she would make plans to protect the employees from the union?

Mr. Ingraham: Same objection.

Trial Examiner Batten: Objection overruled.

A. I don't remember the exact words, but it was definitely stated that the employees would be protected against the union, the union's activities."

137. To the action and ruling of the Trial Examiner in denying the motions of respondent and intervener to strike the testimony hereinafter quoted of witness Greenhaw and in receiving and considering said evidence, the same being not responsive to the questions and stating conclusions not founded upon any fact testified to by the witness, and too vague and indefinite to be binding upon either respondent or intervener, said testimony, objections and motions to strike reading (Tr. pp. 1681-1682):

"Q. Now, who are some of the other department heads that were engaging in coercion?

A. Of course, that is a hard thing to answer.

Q. Well, you are testifying now. Just give the names, please, Mrs. Greenhaw, of these people that were engaging in coercion.

A. Because it was a general feeling—
Q. (interrupting) I am not—just answer—

Trial Examiner Batten (interrupting): Just a minute. Let her finish.

Mr. Ingraham: I object to it as not responsive.

Trial Examiner Batten: Don't stop her. Let her say what she wanted to. We have had witnesses here before and, certainly, no one stopped them yet when they wanted to explain an answer, or talk.

[fol. 6249] Mr. Ingraham: If your Honor please, I don't object if she will answer and then explain.

Trial Examiner Batten: Well, let her answer. We can't tell, Mr. Ingraham, until she gets through.

Q. (By Trial Examiner Batten) What were you saying?

A. Well, I have worked in a number of other places, you know, and then when I went to work there there was a very different atmosphere and a different attitude among the employees and toward them, and there was a feeling that they were held very closely in line at all times by the officials of the company, and I am sure that for years the company had been building up that sort of a thing.

Mr. Ingraham: Now, I move the answer be stricken out. It is not responsive.

Mr. Lane: The intervener moves it be stricken out as stating a conclusion, not founded upon any fact testified to by the witness.

Trial Examiner Batten: It may stand.

Q. (By Mr. Ingraham) I again ask my question: Will you name the department heads that were engaging in coercion?

A. I am sure that you couldn't have worked there and be a department head if you hadn't."

138. To the action and rulings of the Trial Examiner in overruling the objections and motion to strike of intervener to the following leading and suggestive questions, and in receiving and considering the answers of the witness Greenhaw thereto, said questions being a continua-

tion of the questions excepted to in intervener's exception No. 136, the attorney for the International Ladies' Garment Workers' Union putting the answers squarely in the witness' mouth, and concerning facts as to which the witness' previous testimony showed that her memory could not have been refreshed, said questions, objections, answers, motion and ruling reading (Tr. pp. 1712-1714):

"Q. (By Mr. Langsdale) Mrs. Greenhaw, Mr. Ingraham asked you before the recess about your testimony that a group of employees visited Mrs. Reed's office on certain occasions. During the recess did you examine the statement that you gave to Mr. Walsh?

A. Yes.

[fol. 6258] Q. Did that refresh your memory?

A. Yes.

Q. Will you tell me who was in the group that went into Mrs. Reed's office on that morning?

A. There were some whose names I didn't know, but I recall that three whom I knew were Mr. Fred Brown, and I think Mr. Atherton was one, and Miss Todd.

Mr. Lane: Now, intervener objects and moves to strike that out for the reason that has been heretofore stated with respect to that type of examination and question, and for the further reason no date has been fixed.

Mr. Langsdale: I will get to that.

Trial Examiner Batten: You may proceed.

Q. (By Mr. Langsdale) Did this statement refresh your memory as to when you saw Miss Rose Todd, Mr. Fred Brown, and Mr. Hobart Atherton going into Mrs. Reed's office?

A. It was at the time of the formation of the union, I believe.

Mr. Lane: Just a moment. I object to that and move that it be stricken for the reason that she has stated in response to my questions that she has no recollection of the time when the union was formed.

Mr. Langsdale: I submit her recollection has been refreshed since reading this statement.

Mr. Lane: She has not read that since I examined her.

Trial Examiner Batten: She may answer the question. Or, has it been answered?

The Reporter: It has been answered.

Q. (By Mr. Langsdale) Let me ask you, in the statement you gave to Mr. Walsh you stated:

"Either on the day or the day before the suggestion was first made that there should be a company union organized I saw a group of seven or eight employees going into Mrs. Reed's office." Is that right?

A. Yes.

Mr. Lane: Now, Mr. Examiner, may I have a continuing objection to all questions asked by counsel for the International with respect to the statement he holds in his hand, and questions where he reads from the statement, on the grounds I have heretofore stated?

Trial Examiner Batten: Yes, you may have a continuing objection.

* * * * * *

Q. (By Mr. Langsdale) Then, you also state: "I saw [fol. 6251] a group of seven or eight employees going to Mrs. Reed's office. They were in there at least an hour, and among the group I distinctly recall Rose Todd, Fred Brown, and Hobart Atherton, all of whom took an open and active part in urging the employees to form a company union, all of whom were subsequently selected as officers of the union."

You made that statement, did you not?

A. Yes.
Q. That was in the fall of 1937?
A. That is right."

139. To the ruling of the Trial Examiner receiving in evidence Trial Examiner's Exhibit 1, being a memorandum from which the question excepted to in Intervener's exceptions Nos. 136 and 138 were read, and in overruling intervener's and respondent's objection thereto, the record with respect to such actions and rulings reading (Tr. pp. 1714-1719):

" * * Of course, I want that marked as an exhibit. It has always been my practice, whenever an attorney examines a witness from a memorandum or statement they have previously made, to ask to have that made a part of the record.

* * * * * *

Mr. Langsdale: I have only a copy here, Mr. Examiner, Shall I identify it and offer it?

Trial Examiner Batten: I think you had better have it marked as Trial Examiner's exhibit No. 1, and it will be received only in so far as you have asked these questions from it. In other words, I am not receiving the entire thing.

(Thereupon the document above referred to, having been marked "Trial Examiner's Exhibit No. 1" was received in evidence.)

Mr. Lane: Intervener objects to the document for the reason that it is not identified, and for the reason that it has been stated by counsel to be a mere copy, when there is apparently an original in existence; and for the further reason it is inadmissable for any purpose, the intervener not having been present when any statements contained therein were made; and for the further reason that they are self-serving and hearsay. Intervener objects to its being received for any purpose.

Trial Examiner Batten: It is received for whatever it purports to be.

Mr. Lane: Intervener further objects on the ground that it is highly prejudicial and improper to permit a memorandum of that kind to be used to refresh the recollection of a witness who has testified she has no independent rec- [fol. 6252] ollection of the matter. I say it is prejudicially erroneous to permit it to be used for that purpose.

* * * * * *

At Page 1717:

Mr. Stottle: Mr. Examiner, the respondent objects to the Examiner's Exhibit No. 1 for the reason that it is not taken under oath, not testified to under oath, that the witness who is purported to have signed it is here on the stand

now, and her own testimony should be the testimony of this witness, and not any statement that she may have prepared at some prior time. It is not even signed by the witness, and is—purports to be a carbon copy of some statement which she may have signed.

Trial Examiner Batten: May I see it a moment?

Mr. Stottle: We also object that it is just immaterial and improper for any purpose whatsoever.

Mr. Langsdale: I submit that the witness's memory can be refreshed from a diary, or any other memorandum that the witness may have.

Q. (By Trial Examiner Batten) Mrs. Greenhaw, will you look this over and tell me whether or not that is a statement that you made, and if so, when?

A. Yes, this is a statement I made.

Mr. Langsdale: Read it through, will you, Mrs. Greenhaw, so you can testify from all of it.

Mr. Lane: I object to the Examiner's question for the reason that this document is not the best evidence, and whether this witness can, by reading it, refresh her recollection or not, could not supply the defect; it does not cure the defect that this is not the best evidence.

Trial Examiner Batten: The objection is overruled. I am merely trying to get into the record whatever it is. I don't know what it is, but whatever it is, she apparently testified from it, and as such, she is entitled to, whether it is an affidavit or a memorandum or whatever it is, and I merely want it in the record so that it will show what it was that refreshed her memory.

Mr. Stottle: The respondent adds to its objection that it would be prejudicial to have it in the record, the whole document, which—only a portion of it is purportedly received, because whoever reads the record to ascertain those portions must necessarily read the whole document.

Trial Examiner Batten: Mr. Stottle, do you mean by that that it has always been a practice to cut part of something out which is introduced for a certain purpose, and that you never introduce the whole of anything?

[fol. 6253] Mr. Stottle: No, I don't mean that. I just say that it would be necessary for anyone, in reviewing the record, yourself or anyone else, to read this whole document in order to read the portions that you are admitting, and that it would be prejudicial to the respondent to have a document in there which is not the testimony of this witness.

Trial Examiner Batten: Well, the objection is overruled.

* * * * * *

Continuing at page 1720:

Trial Examiner Batten: It will be received.

(The document heretofore marked as "Trial Examiner's Exhibit No. 1" was received in evidence.)

Trial Examiner Batten: It is not received as evidence; merely as a memorandum that was used for that purpose."

140. To the action and ruling of the Trial Examiner in overruling the motions of respondent and intervener to strike the following testimony of the witness Greenhaw, and in receiving and considering such testimony, the testimony, motion and ruling reading (Tr. pp. 1729-1730):

"Q. (By Mr. Langsdale) Did any incident occur while you were there in which Mr. or Mrs. Keyes was engaged that in your opinion was coercion?

A. There were so many incidents that I can hardly recall them.

Q. Can you recall any one?

A. There was hardly a day—

Mr. Shepard (Interrupting): Your Honor, I ask that these answers be stricken.

Mr. Leary: Why?

Trial Examiner Batten: I will not strike them.

Mr. Stottle: They are so general, Your Honor—

Trial Examiner Batten: But, Mr. Stottle, if you will just look back toward the beginning of this hearing you will find plenty of answers that are general. I am not going to start now—

Mr. Lane: (Interrupting) Intervener objects on the ground that it is not responsive to the question, and it is not a statement of any facts.

Trial Examiner Batten: Mr. Lane, do you mean an attorney who is not asking a question can object on the [fol. 6254] ground that it is not responsive? Are you, the attorney who does not ask the question, going to object that it is not responsive?

Mr. Lane: I think if the witness gives an answer to Mr. Langsdale's question that I think is not responsive, I have a right to object, and I do object.

Trial Examiner Batten: Objection overruled.

Mr. Stottle: Respondent objects on the ground that it calls for a conclusion. There was no definition of the word "coercion", and the answer she made was that it was of a general nature and did not state the facts, which you stated she should do.

Trial Examiner Batten: Objection overruled.

Mr. Langsdale: Read the question."

141. To the action and ruling of the Trial Examiner in overruling intervener's objection, and in receiving and considering the following testimony of the witness Greenhaw, the question, objection and answer reading (Tr. pp. 1733-1734):

"Q. (By Mr. Langsdale) Did you ever hear Mr. Keyes talk to the employees about loyalty to the company?

A. Yes.

Mr. Lane: That is objected to as leading.

Trial Examiner Batten: Now, Mr. Lane, you know my ruling on leading questions; I have made it so many times. You may have a continuing objection to leading questions.

Mr. Lane: The Board, of course, will not know what I consider leading questions unless I make my objection.

Trial Examiner Batten: Of course, I thought it would save all of these interruptions.

Mr. Lane: Mr. Examiner, I would be very glad not to make that objection at all if there were any way of making it known what I regard as leading questions but unless I make my objection, I don't see how the Board or anybody else can tell what I regard as leading questions."

[fol. 6255] 142. To the action and rulings of the Trial Examiner in overruling the objections of Intervener and Respondent to all testimony in regard to the Loyalty League, for the reasons stated in the objections hereinafter quoted and for the further reason that all testimony offered is insufficient to bind respondent or intervener. Said exception is taken to the following testimony of the witness Hartman and as a continuing exception to all other testimony pertaining to the Loyalty League even if the same be not herein quoted (Tr. p. 1769 and succeeding pages):

"Q. Showing you your bank statement for the month of March 1937, is [—] not a fact that a deposit of $1,000 was made on March 30, 1937? A. That is right.

Mr. Stottle: Just a moment, Mr. Examiner, respondent objects to this question, and all questions relating to the Loyalty League, on the ground that it is immaterial. We understand the allegation in the complaint that there is a connection, but there has been no testimony indicating that the Loyalty League has anything to do with the Donnelly Garment Workers' Union. It is merely a social organization, and the Donnelly Garment Workers' Union is a separate organization.

We think it is encumbering the record to go into these activities of the Loyalty League.

We haven't objected a great deal to this, but we think the matter should be presented to the Examiner, and that we should have a continuing objection to any testimony regarding the Loyalty League.

Trial Examiner Batten: Well, you may have a continuing objection. As I recall it, you have, on about three occasions objected to it at the beginning of the hearing, and I at this time will make the same ruling I have in the past. I will overrule the objection, but you may have a continuing objection.

Mr. Stottle: And also on the ground it is not binding on the respondent, anything this witness may say, as well as being immaterial to the issues.

Trial Examiner Batten: That may be incorporated.

Mr. Patten: Intervener makes the same objection, and adds to it the testimony as to what may have happened in the Loyalty League prior to the organization of the union is immaterial and irrelevant.

[fol. 6256] Trial Examiner Batten: Overruled. You desire a continuing objection, Mr. Patten?

Mr. Patten: I do.

Q. (By Mr. Leary) Your testimony is, is it not, Miss Hartman, that in March, March 30th, you deposited $1,000?
A. Yes, sir.
Q. In the name of the Nelly Don Loyalty League?
A. Yes, sir.
Q. Now, where did that $1,000 come from?
A. Miss Rose Todd handled that entirely. She came to me and told me that a few employees had been talking to her—
Q. (Interrupting) No, I don't mean that. Where did the $1,000 come from, do you know?
A. I don't understand your question.
Q. Where did the Nelly Don Loyalty League obtain the $1,000 in order to deposit it in a checking account?
A. I am telling you that now. May I explain?
Q. Well, do you know where they got it?
A. Well, it was borrowed under the Loyalty League name.
Q. It was borrowed from the First National Bank?
A. That is right.
Q. Was an application for a loan of $1,000 to the First National Bank made?
A. That is right.
Q. And was a note given to the union in the amount of $1,000?
A. To the union?
Q. I beg your pardon. Was a note given to the bank by the union in the amount of $1,000?
A. No, not by the union.

Q. I beg your pardon. By the Loyalty League?
A. Yes.
Q. And do you have that note?
A. Yes, I do.
[fol. 6257] Q. May I see it, please?

(Whereupon, the document above referred to was handed by the witness to Mr. Leary)

Q. (Continuing) Do you have any objection, Miss Hartman, to our offering this note at this time for the record, and then having it photostated and withdrawn so that the original may be returned to you for your records?
A. Yes, sir.
Q. I show you, Miss Hartman, what has been marked for identification as Board's Exhibit 19, and ask you to state whether or not that is the note taken from the official records of the Nelly Don Loyalty League that you just referred to in your testimony?
A. That is right.

(Thereupon, the document above referred to was marked as "Board's Exhibit No. 19" for identification.)

Mr. Leary: Board offers its Exhibit 19.

Mr. Stottle: Respondent objects to the exhibit for the grounds already stated, that it is immaterial to the issues here, and also that it is not binding on the respondent in any way.

Trial Examiner Batten: Well, I assume that your continuing objection applies to the note as well.

Mr. Stottle: Well, I thought it might, but I wasn't sure that it would.

Mr. Patten: The intervener desires its continuing objection to apply to the note.

Trial Examiner Batten: It will be received; subject to those objections.

(The document heretofore marked as "Board's Exhibit No. 19" was received in evidence.)

And continuing to page 1793:

"Mr. Langsdale: We offer these checks which have been identified as Board's exhibits Nos. 21-A to 21-O, inclusive.

Mr. Stottle: Respondent makes its continuing objection to these exhibits.

Trial Examiner Batten: You may have a continuing objection.

[fol. 6258] Mr. Lane: We make our general objection.

Trial Examiner Batten: That is, the same continuing objection you have made?

Mr. Lane: Yes.

Trial Examiner Batten: I will reserve decision on the offer.

Q. (By Mr. Langsdale) Miss Hartman, I hand you this sheet of paper which has been marked by Board's exhibit No. 22, which purports to be a record of an account kept in the First National Bank.

A. That is right.

(Thereupon the statement above referred to was marked for identification "Board's Exhibit No. 22.")

And continuing to page 1802

* * * * * *

And including the ruling of the Trial Examiner receiving in evidence Board's Exhibits 20, 21, 22, 23, 24 and 25 (Tr. p. 1841-1842):

"Mr. Leary: Mr. Examiner, we have had prepared from the bank statements which were used during the testimony of Miss Hartman in regard to the Nelly Don Loyalty League this morning, the exhibit for which Board's Exhibit No. 20 was reserved. I now offer that exhibit.

* * * * * *

"Mr. Stottle: Mr. Examiner, that is subject to our continuing objection as to materiality as to the Loyalty League matter.

Trial Examiner Batten: It will be received subject to the objections of the respondent and the intervener, both, that is, your continuing objections.

(The document heretofore marked as "Board's Exhibit No. 20" was received in evidence.)

Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis, and Board's Exhibit 25, in which I reserved a decision, will be received on the same basis, subject to the same objections."

And including the ruling of the Trial Examiner receiving in evidence Board's Exhibits 22, 23, 24-A, 24-B and 24-C, [fol. 6259] [said] said offer, renewed objections of respondent and intervener reading (Tr. pp. 1856-1858):

"Mr. Leary: Board offers Exhibits 23 and 24-A, 24-B, 24C."

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"Mr. Stottle: Respondent makes its continuing objection to any of those exhibits that refer to the Loyalty League matters, and also, we haven't as yet had an opportunity to check the correctness of the figures.

Trial Examiner Batten: Well, of course, I might say this: that any exhibits which are received, of course, are received subject to correction if there are figures or dates that are found to be incorrect.

Mr. Stottle: Then, our continuing objection was as to the materiality of that Loyalty League evidence.

Mr. Tyler: Intervener renews its objection to any evidence in connection with the Loyalty League on the ground that it is purely a social organization, having no connection with the Donnelly Garment Workers' Union, and that any of its actions would not in any way be binding on the intervener, and that it is immaterial and irrelevant to any issue in this case.

Trial Examiner Batten: Well, they will be received.

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At page 1858:

"Mr. Leary: Board offers what purports to be Miss Hartman's memoranda of the Loyalty League and special account maintained at the First National Bank, identified as Board's Exhibit 22. I will have this photostated, and ask permission to insert the photostat.

Trial Examiner Batten: It will be received subject to the same objections by respondent and intervener as to Board's Exhibits 23 and 24."

143. To the action and ruling of the Trial Examiner refusing to admit in evidence respondent's Exhibit 2, being copies of contracts of the International Ladies' Garment Workers' Union with other garment manufacturers in Kansas City, Missouri, for the purpose of showing by comparison of provisions therein similar to provisions in the intervener's contracts, that intervener's contracts were the result of bargaining, containing provisions more advantageous to intervener, said Exhibit 2 being competent, relevant and material for said purpose, the offer, objec-[fol. 6260] tions and ruling reading (Tr. p. 1828-1829):

"Q. I will hand you respondent's exhibit No. 2 and ask you if these are photostatic copies of contracts which the International has with other garment manufacturers in Kansas City.

A. There are two contracts here, one for the Liberty, and one for the Mayfair, which were the contracts negotiated in 1937, but have since been renewed with exchanges. The others are the contracts that are in force now.

Q. What are the names of the other companies?

A. Missouri, Gernes, and Gordon.

Mr. Ingraham: Respondent offers in evidence exhibit No. 2.

Mr. Leary: Now, I object to that, Mr. Examiner, as being entirely incompetent, immaterial, and irrelevant. It has no bearing on the issues in this matter that we are trying now.

Mr. Ingraham: Mr. Examiner, counsel for the Board and counsel for the International have called the Examiner's attention to various provisions in the Donnelly Garment contract with the Donnelly Garment Workers' Union. I want to show that similar provisions are in the contracts that the International makes with other garment manufacturers.

Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the exhibit for the reason that the only purpose of offering the contract with the Donnelly Garment Workers' Union and the Donnelly Garment

Company and the only purpose of calling attention to any provisions thereof was upon the question of whether or not there was bargaining as provided by the Wagner Act. The provisions of these contracts are in no way material. The comparison between these and the contracts between the Donnelly Garment Workers' Union and the Donnelly Garment Company are in no way material. The only question is, were the contracts made with the Donnelly Garment Workers' Union and the Donnelly Garment Company the result of collective bargaining by a free and independent union, as provided by the Wagner Act and the National Labor Relations Act?

And continuing on page 1830:

Trial Examiner Batten: Mr. Leary, do you agree with Mr. Langsdale that the only purpose of the Donnelly contracts and the questions with respect to them was for the purpose of showing what negotiations were conducted, and that is all?

Mr. Leary: That is it, yes.

Trial Examiner Batten: Of course, if that testimony is limited, as you say it is, I will reject the offer of these contracts, because any comparison of the contracts would be unnecessary."

[fol. 6261] 144. To the action and ruling of the Trial Examiner excluding the following question with reference to prices and minimum wages for piece workers in the Gernes Garment Company—International Ladies' Garment Workers' Union contract (Respondent's Ex. 2) said question being competent, relevant and material to show by comparison that intervener's contracts were obtained by genuine bargaining, the said offer and ruling reading (Tr. p. 1831):

"Q. (By Mr. Ingraham) I will ask you if that contract did not contain the provision that "Present prices for piece workers shall remain intact and shall be based on a basis that not less than 75 per cent of the workers in the different departments of the shop shall be able to earn not less than $15 per week capita."?

Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the question for all of the rea-

sons heretofore stated as objections to the offer of the contract itself.

Trial Examiner Batten: Sustained."

145. To the action and ruling of the Trial Examiner receiving in evidence Board's Exhibits Nos. 29A and 29B over the objection of respondent and intervener, the offer, objections and ruling reading (Tr. pp. 1845-1846):

"Mr. Leary: Mr. Examiner, I offer for the record what has been marked for identification as Board's Exhibit 29-A and 29-B, which is a computation of the salaries received by certain individuals who are officers of the Donnelly Garment Workers' Union, such computations of these persons' salaries being from January 15, 1937 to and including December 31, 1938.

* * * * * *

At page 1846:

"Trial Examiner Batten: You want to proceed with your objection, Mr. Stottle?

Mr. Stottle: Yes. Respondent wants to object to the materiality of this, assuming that it is correct.

Mr. Tyler: Intervener makes the same objection. It has no tendency to prove or disprove any issues in this case.

Trial Examiner Batten: It will be received."

[fol. 6262] 146. To the action and ruling of the Trial Examiner overruling respondent's and intervener's objections and motions to strike (NRA-JMC Ex. 2A, B and C) Board's N.R.A. testimony contained in Board's Offer of Proof (NRA-JMC Ex. 1A-BBBB), being the testimony of witnesses Ellen Fry, Thelma Owen, Glynn Brooks, Mamie Tubbesing, Elizabeth Gates Reeves, Lillian Wales, Frances Riedel, Pauline Lutz, Virginia Stroup, Dewey Atchison, Gladys Elledge Richardson, R. L. Blume, Meyer Perlstein, Lillian White, Marie Patton, Bessie Niemeyer, Ella Mae Guerrant Hyde, Mrs. James A. Reed, taken in the case styled "International Ladies' Garment Workers' Union, complainant, vs. Donnelly Garment Company, respondent", No. 160, before the N.R.A. Regional Labor Board, Twelfth District, and receiving and considering said evidence, the

said testimony, objections and motions to strike being incorporated herein by reference. The ruling complained of is further excepted to by intervener because of indefiniteness and uncertainty, making it impossible for intervener to determine what evidence is accepted and what excluded, said ruling reading (Tr. pp. 1861-1863):

"The objection is overruled and the motion to strike is denied, and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections.

I want to say that proviso is attached to all of the rulings and will be hereafter attached to all of the testimony by the intervener, for the reason that in reading over the testimony I notice there have been some questions included that refer to the so-called loyalty pledge which was signed by all of the employees, or refers to some other matters which during the course of the proceedings I have stated I would not entertain evidence on.

I didn't want any of the attorneys to think that because there were a few questions in there involving some of those matters that I was in any way reversing my rulings on those subjects.

Mr. Ingraham: Are you receiving in evidence the testimony of the different named individuals that testified in [fol. 6263] the N.R.A. case with regard to their discharge and these matters they testified to in the N.R.A. proceedings?

Trial Examiner Batten: I am receiving it in accordance with this ruling, the testimony in exhibit No. 1, subject to that proviso which I stated.

Mr. Ingraham: I don't understand what you are ruling out and what you are leaving in.

Trial Examiner Batten: I think if you take this and read it, Mr. Ingraham, you will understand just what I am receiving.

I have gone through the evidence and read it carefully and I find in some instances indirect references to some of the matters which I have said I would not receive evi-

dence upon, and I just want to make it clear that I am not reversing my rulings in opening up those two or three subjects for receipt of further testimony.

If there is any question about it after you go over it I will be very glad to clarify it.

Mr. Ingraham: Of course it will be necessary to go over that before we proceed with [out] evidence."

147. To the action and ruling of the Trial Examiner in overruling respondent's and intervener's objections and motions to strike (NRA-JMC Ex. 6A, B and C) Board's Judge Miller case testimony contained in Board's offer of proof (NRA-JMC Ex. 5A-5GG, consisting of 33 pages), exception here being taken to each and every ruling adverse to respondent or intervener made by the Trial Examiner throughout said exhibit, and in receiving and considering said evidence, the said testimony, objections and motions to strike being incorporated herein by reference. The ruling complained of is further excepted to by intervener because of indefiniteness and uncertainty, making it impossible for intervener to determine what evidence is accepted and what excluded, said ruling reading (Tr. P. 1864):

"N. R. A.-Judge Miller case exhibit No. 5-A to 5-GG is certain testimony offered by the Board from the Judge Miller case, consisting of 33 pages.

Exhibit No. 6-A, b and C, the objections and motions to strike, of the respondent and intervener.

Exhibit No. 5-A to 5-GG, the objection to such testimony is overruled, and the motion to strike is denied; and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings [fol. 6264] heretofore made with reference to the introduction of evidence upon certain subjects."

148. To the action and ruling of the Trial Examiner in overruling respondent's and intervener's objections and motions to strike Board's Judge Miller case testimony contained in Board's offer of proof (NRA-JMC Ex. 9A to 9CC) the objections of the respondent appearing to certain questions throughout the testimony of 29 pages, and the intervener's objections and motion to strike being a sep-

arate document (NRA-JMC Ex. 10A), exception here being taken to each and every ruling adverse to respondent or intervener made by the Trial Examiner throughout said exhibit, and in receiving and considering said evidence, the said testimony, objections and motion to strike being incorporated herein by reference. The ruling complained of is further excepted to by intervener because of indefiniteness and uncertainty, making it impossible for intervener to determine what evidence is accepted and what excluded, said ruling reading (Tr. p. 1865):

"9-A to 9-CC is certain testimony from the Judge Miller case, offered by the Board, being the testimony of Sylvia Hull.

In the case of Exhibit 9-A to 9-CC, the respondent has indicated on the exhibit objections to certain questions through the entire testimony of 29 pages. The intervener objects to all of the testimony.

The rulings of the Trial Examiner are indicated on the various pages where the individual objections of the respondent appear, and as to the intervener's objection, the objection is overruled and the motion to strike is denied and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects. The objections being marked 10A, consisting of one sheet, and the rulings entered thereon."

[fol. 6265] 149. To the action and rulings of the Trial Examiner in denying the motions of respondent to dismiss (Board's C 1-FFFF, and 1-GGGG) made at the close of the Board's and International Ladies' Garment Workers' Union case, for all the reasons stated in said motions, which are incorporated herein by reference, and for all the reasons stated orally and appearing in the transcript at pp. 1873-1891, the said motions having been made and offered (Tr. pp. 1872-1873-1874) as follows:

"Mr. Stottle: Mr. Examiner, respondent desires to file its motion to dismiss the complaint in its entirety.

Trial Examiner Batten: That will be marked Board's exhibit No. 1-FFFF.

(Thereupon the motion above referred to was marked for identification "Board's Exhibit No. 1-FFFF.")

Mr. Stottle: The grounds of the motion, Mr. Examiner, are that there has been no substantial evidence in the record to support any of the charges. In some instances there has been some evidence but it has been of a conjectural and speculative nature that would not be sufficient to constitute a case against the respondent.

* * * * * * *

At page 1874:

Mr. Stottle: Mr. Examiner, we have another motion to dismiss that goes to each of the paragraphs separately.

Trial Examiner Batten: The first is a general motion and this is a specific motion.

Mr. Stottle: To practically all of the paragraphs, yes, but not every one of them. We will submit it at this time if you will give me a number.

Trial Examiner Batten: That will be Board's exhibit No. 1-GGGG.

(Thereupon the motion above referred to was marked for identification "Board's Exhibit No. 1-GGGG."

Trial Examiner Batten: Mr. Stottle, do you want to make a statement with respect to the motion?

Mr. Stottle: Yes, I would like to.

Respondent is not making this motion to dismiss as a formal matter, either the one to the case as a whole or these to the second paragraph, but really thinks there has not been sufficient evidence to support a report by the Trial Examiner finding the respondent is guilty of any [fol. 6266] of the charges alleged, or any judgment against the respondent in this proceeding.

But, irrespective of the motion as a whole, as to the second paragraphs, respondent desires to call attention to certain ones of them."

and having been denied (except as to subparagraphs d, g, g-l, k, i, n, o and p of the amended complain) in the third paragraph of page 3 of the Intermediate Report.

150. To the action and rulings of the Trial Examiner in denying the Intervener's demurrer to the evidence of the Board and International Ladies' Garment Workers' Union, and Intervener's motion to dismiss the complaint, both made orally at the close of the evidence offered by the Board and the International Ladies' Garment Workers' Union, for the reasons stated therein, the said demurrer and motion reading (Tr. p. 1873):

"Mr. Tyler: If the court please, the intervener wishes at this point to demur to the evidence of the Board and the International Ladies' Garment Workers' Union and move to dismiss the complaint on the grounds that the evidence introduced, if taken as true, would not be sufficient upon which to base any finding which would affect the rights of the intervener; it would be insufficient to base an order on just establishing the Donnelly Garment Workers' Union as bargaining representatives; it would be insufficient to base an order upon which would in any way cancel or affect the contract which the Donnelly Garment Workers' Union have with their employers, or their contract rights; it would be insufficient in any way to use as a basis for any decree, order or judgment affecting the rights and interests of the intervener.

. . . . . .

and continuing at Tr. pp. 1890-1891:

Trial Examiner Batten (interrupting): Mr. Tyler, I think you said you had some motions to make orally.

Mr. Tyler: Yes. If the Court please, I wish to amplify the motion of the intervener heretofore made to dismiss by adding as a basis for that motion that no evidentiary basis for any finding that the union was organized by the company or is company dominated has been laid, and that therefore no finding could be made, because no evidence has been submitted as a basis;

That no basis has been laid for any finding that the company coerced or intimidated or influenced any em-[fol. 6267] ployee in joining the Donnelly Garment Workers' Union;

And that no basis has been laid for any possible finding that the company contributed, directly or indirectly, fi-

nancial aid or other aid to the Donnelly Garment Workers' Union;

No basis has been laid that the union is not a bona fide labor union, with all of the rights guaranteed such union under the Wagner Act;

And that no basis has been laid for any finding that the union is not a free will choice of the majority of the employees and is not entitled to representation of all of the employees in collective bargaining.

Trial Examiner Batten: Those additional reasons, I presume you call them, Mr. Tyler—

Mr. Tyler: Yes.

Trial Examiner Batten: (Continuing)—will be considered in connection with the disposition of the motion."

and having been denied in the third paragraph of page 3 of the Intermediate Report.

151. To the action and rulings of the Trial Examiner in permitting the Board and the International Ladies' Garment Workers' Union to enter into the trial and attempt to prove the allegations of the complaint without affirmatively showing by direct affirmative evidence by witnesses and testimony produced by them, a prima facia case justifying the filing of the charges and the issuing of the complaint, and in permitting the Board and the International Ladies' Garment Workers' Union to proceed by attempting to secure evidence justifying said complaint and charge by entering at the trial upon a fishing expedition against respondent and intervener, subjecting respondent's employees and intervener's members to prolonged, minute and exhaustive cross examination, first by the Board's counsel and then by the counsel for the International Ladies' Garment Workers' Union, and in refusing to hold the Board and the International Ladies' Garment Workers' Union to be bound by testimony adverse to them given by said witnesses upon the erroneous and [fol. 6268] prejudicial assumption that all such adverse testimony would be false and all favorable testimony true, the filing of such charge and issuing of such complaint without substantial evidence, and the method of procedure

permitted in the attempt to secure the same, amounting to a persecution of respondent and intervener and a denial of due process of law guaranteed by the Fifth Amendment to the Constitution of the United States. Intervener excepts thereto and to the rulings of the Trial Examiner overruling the objections of respondent and intervener at Tr. pp. 227-229:

"Mr. Tyler: If the Examiner please, I object to the leading form and cross-examination form of the questions and ask that proper form of direct examination be followed by the Board.

Trial Examiner Batten: He may proceed. I think I said on the opening day, Mr. Tyler, that I am not going to try to tell the attorneys how to ask their questions. You may proceed, and if you testify for the witness, why, it simply means that no weight can be given to the testimony, that is all, so you attorneys will have to assume the responsibility for the method in which you proceed on that. You may proceed.

Mr. Langsdale: May I suggest at this time, because this matter will come up, in view of the Examiner's thought about it, that this witness can certainly be classed as an adverse witness, and leading questions are always permissible in that character of witness.

Trial Examiner Batten: Mr. Langsdale, in my hearings I don't class any of the witnesses any way. I mean, after all, we are not bound by the rules of evidence and why be bound by any technical proceeding of the court. We are interested in getting all the facts we can get, and it is immaterial to me whether it is an adverse witness or your witness or the respondent's witness. If we get the information we need here, that is the thing we are interested in.

Mr. Langsdale: I wish to make my point, and I won't go back to it. The vice of a leading question is that when you have your own witness on the stand and put the answer in her mouth and she says "Yes, sir" or "No", then the Examiner has a right to, and should have a right to disregard that, but if an adverse witness is on the stand and gives an adverse answer, it goes to the credibility of the witness, which is on a different basis.

Trial Examiner Batten: We will proceed on the basis I have just explained.

[fol. 6269] and at 488-490:

"Q. And who is Mrs. Nichols?

A. She works in the production department.

Q. Is that Lulu Nichols?

A. Yes, sir.

Q. Or Beulah Nichols?

A. Lulu.

Q. And is she an efficiency expert or does she work with time study or wage rates?

A. She is not an efficiency expert that I know of.

Q. Does her work consist of addressing and fixing piecework prices?

A. Yes, sir."

Mr. Lane: If your Honor please, I object to the leading nature of all these questions. I think he should let the witness testify to those things instead of framing the answers in his questions.

Trial Examiner Batten: Well, I don't know as I will interfere with it. You attorneys will have to assume the responsibility; if you ask her questions and answer them at the same time, then they don't mean anything.

Mr. Ingraham: Well, your Honor, I object because I understood counsel to say he was going to examine this witness about minutes. Now, he is apparently putting this witness on to examine her about everything in connection with the case, and I don't think it is proper for the Board to take our witnesses and put them on the witness stand. I think they should first, at least, put on their case, the witnesses that they have. This is no more than cross-examination.

* * * * * *

Mr. Foster: Mr. Examiner, I believe I have the privilege of finding out who this witness is and what her duties are.

* * * * * *

Mr. Shepard: If your Honor please, this witness certainly couldn't testify to the duties of Mrs. Nichols.

Trial Examiner Batten: Of course, I assume that unless a witness is shown to be qualified to testify about a matter they testify about, even if they do answer, probably it doesn't mean anything.

Mr. Ingraham: But inquiring about this witness' duties, I can't see how he is getting into that, about asking about Mrs. Nichols.

Trial Examiner Batten: Well, he may proceed. This witness said she worked for Mrs. Nichols."

[fol. 6270] And at 491-492:

"Q. Were there any other stenographers on the committee?

A. I don't believe so.

Q. Now, how did it happen that you were a member of this committee?

A. I was elected.

Q. And who elected you?

A. I was elected at a meeting.

Mr. Tyler: If the court please, I object to that. He is not laying any basis for these meetings, for the examination as to these minutes, which is the purpose for which he has called this witness out of turn. If he puts on witnesses, and cross-examines them by leading questions, I have no objection, providing he abides by the regular rules that he certifies the truthfulness of those answers, which is the circumstances of his proceeding. If he is putting this witness on solely for the purpose of examining as to the minutes, I submit what he is asking now is not any necessary or proper basis for that.

Mr. Foster: Mr. Examiner, I submit the Board is not bound by any of the answers of this witness. She is a hostile witness.

Trial Examiner Batten: Now, Just a moment. I said once in this hearing I am not going to try to determine what kind of witnesses there are. The thing the Board is primarily interested in are the facts. It don't make any difference to the Board or to the Examiner where we get the facts, and we want all the facts, whether they come from the Board or the union or the intervener or the re-

spondent. I am not going to try to distinguish between witnesses."

and at 650-654:

"Mr. Lane: Now, if the Examiner pleases, before Mr. Langsdale begins any examination of this witness, I desire to object to counsel for the International Ladies Garment Workers' Union being permitted to interrogate this witness or to cross-examine this witness, for the reason that counsel for that organization, the claimant in this case, have during the entire progress of this hearing sat across the counsel table from the attorneys for the Board, have continuously and constantly consulted with the attorneys for the Board, have been in numerous conferences with them, have passed notes back and forth across the counsel table, have participated in directing the course of the examination made by the Board's counsel of this witness, to permit counsel for the International Ladies' Garment Workers' Union, which has shown itself to be so identified with the Board in this case, it being the complaining party, as to have a unity of interest and to be essentially the same as the Board in this case, for the purposes of prosecuting this case. To permit counsel to interrogate this witness at this time would permit a double [fol. 6274] cross-examination by the same parties of this witness. This witness has, over our objection, been subjected to what we consider cross-examination for pretty nearly three days, and to now permit counsel for the International Ladies' Garment Workers' Union to take over examination [as] this point, and further cross-examine, or to cross-examine this witness at all, would be unfair to this witness, would be illegal examination and—

Trial Examiner Batten: (Interrupting): Now, just a moment. Whenever you say a thing is illegal, I want you to tell me why. I mean, I can't accept that.

Mr. Lane: On the ground that it is so far a departure from the rules of procedure and progress which obtain in courts of law, and which should obtain in administrative tribunals as to be a negation of the rules of fair play, as to deprive the intervener in this case of due process.

. . . . . .

At page 654:

I don't think there is anything to this argument, in any form or fashion. I am requesting all of you to cooperate with each other in every way possible to expedite the case.

I think it is very clear the rules permit a party to call witnesses, examine them, cross-examine them, and take part in the proceedings.

Mr. Langsdale, you may proceed."

And at 686-688:

"Trial Examiner Batten: Mr. Langsdale, I just can't see that we are going to have to go all over these meetings and these matters again.

Mr. Langsdale: Well, if it pleases the Examiner, I am not going to spend a lot of time on it, but I think that it is necessary for me to conduct this examination the way I think it ought to be conducted, at least, refer to some of those things very briefly to bring out what I have in mind.

Trial Examiner Batten: I have no objection to you examining this witness on matters that were not covered in the examination by Mr. Leary. I have no objection to you asking one or two questions leading up to it, but I must say now that I don't propose in this hearing that we are going to have to go through all of these matters twice. So, I am asking you—

Mr. Langsdale (Interrupting): I don't propose to attempt to do that, but if the Examiner—as the Examiner, of course, knows, that sometimes it is necessary to pick up a link here and there to get the point you have in mind.

Trial Examiner Batten: I have no objection to your asking a question or two of that sort.

[fol. 6272] Mr. Langsdale: That is the sort this one is.

Trial Examiner Batten: I will appreciate it if you will confine it to that.

Q. (By Mr. Langsdale) Well, did you get hold of Mr. Batty and go down to where Fern Sigler was?

A. Yes, sir.

Q. And she was told to go to the office?

A. Yes, sir, she was asked to come to the office.
Q. And you and Mr. Batty went up to the office?
A. Yes, sir.
Q. Now, again, at that time you were the President of the Loyalty League?
A. Yes, sir.
Q. Did you do that as President of the Loyalty League?
A. I did not.
Q. In what capacity did you assume calling Mr. Batty, and go down to see Fern Sigler?

Mr. Lane: That is objected to, if your Honor please, as repetition. That has been gone over thoroughly.

Mr. Langsdale: I don't think it has been gone over as thoroughly as I want to make it.

* * * * * * *

At page 688:

Trial Examiner Batten: You may answer.

A. In what capacity, please,—I am sorry—
Q. (By Trial Examiner Batten, interrupting) Yes, in what capacity did you call Mr Batty to go down to see Mrs.—what is her name?
A. Fern Sigler. No, no capacity especially; just as an employee.
Q. (By Mr. Langsdale) It was just a "happen so" was it?
A. Yes, sir.
Q. Just like it was a "happen-so" that you took charge of the meeting on March 18th?"

[fol. 6273] 152. To the actions and rulings of the Trial Examiner in refusing to receive and consider respondent's Exhibit 6, being a newspaper article from the Kansas City Star dated February 26, 1937, for the purpose of showing the actual motive and intent created by the circumstances to which the exhibit had reference in the minds of intervener's members that led to the organization of the Donnelly Garment Workers' Union, the record with reference thereto reading as follows (Tr. pp. 1907-1911):

"Q. (By Mr. Ingraham) Mrs. Reeves, I hand you Respondent's Exhibit 6, which is a newspaper article appear-

ing in the Kansas City Star, February 26, 1937, setting out statements by Meyer Purlstein and Waye Tobin, and ask you if you have read that article.

A. I did.

Mr. Ingraham: The respondent offers in evidence Exhibit 6.

* * * * * * * * * *

At page 1909:

"Mr. Ingraham: Well, I will prove as to the truth of this statement from the Judge Miller testimony; but I would like to examine this witness in regard to whether or not she read this and what occurred. As far as the facts being true, I will prove that by the Judge Miller evidence.

* * * * * * * * * *

At page 1910:

"Mr. Tyler: If the court please, the intervener will also wish to use it on the ground that we are trying motives here, and inner intent, and you can't adequately try a question of that kind without showing the situation, to show what things would affect their intent, or their actual motive. There is no other way to get at motive and intent without showing the surrounding circumstances and things that would influence it.

Trial Examiner Batten: Do you expect me to be able to determine people's inner feelings?

Mr. Tyler: I think Your Honor is going to have to determine what the motive was, and you have got to base it on surrounding influences that would—

Trial Examiner Batten (Interrupting): I am perfectly willing that you should have a reasonable amount of background as the Board had in the NRA proceeding. They showed it almost entirely by transcript of that testimony. Now, if this means calling a large number of witnesses for that purpose, I don't want to have the background, as I [fol. 6274] have said so many times in this case, become the picture.

Mr. Ingraham: I don't think it will result in that.

Trial Examiner Batten: Well, if you want to offer it on that basis, I will receive it on that basis, that you offer it for, Mr. Ingraham, but not for the purpose which Mr. Tyler stated that he expected to use it for."

153. To the action and ruling of the Examiner in excluding respondent's exhibit No. 10, being an article in "Justice", a newspaper published by the International Ladies' Garment Workers' Union, and therefore properly admissible as an admission (Tr. p. 2076-2077):

"Q. I hand you respondent's exhibit No. 10 and ask you to state what publication that is.

A. It is "Justice", published by the International Ladies' Garment Workers' Union.

(Thereupon the publication above referred to was marked for identification "Respondent's Exhibit No. 10.")

Mr. Ingraham: I offer in evidence respondent's exhibit No. 10, the report of Sylvia Hull's speech.

Trial Examiner Batten: What date is that?

Mr. Langsdale: June 1, 1937.

Trial Examiner Batten: Mr. Ingraham, what is the purpose of this, if you care to disclose it? Is it to show the situation as it existed? It is not to prove the truth or untruth of anything in there, is it?

Mr. Ingraham: Yes, indeed. This is the official paper of the International.

At page 2077:

Trial Examiner Batten: I certainly won't receive it to prove anything, an article in a newspaper.

Mr. Ingraham: Even though it is published by the International?

Trial Examiner Batten: I don't care whom it is published by.

Mr. Ingraham: Wouldn't that be considered as an admission?

[fol. 6275] Trial Examiner Batten: I don't believe in trying any of these hearings on newspapers, trade papers, or anything of that kind. If you want to offer it on the

same basis you offered the other newspaper articles, I will receive it on that basis.

Mr. Ingraham: I offer it, of course, for all purposes.

Trial Examiner Batten: I am saying I will not receive it for all purposes. But if you want to offer it on the same basis as exhibits Nos. 6 and 7, although it restricts your general offer, I will receive it on that basis, on the basis of respondent's exhibits Nos. 6 and 7, and then you may have your exception."

154. To the action and ruling of the Examiner in allowing a question to stand implying without any evidence in the record to support it that the employees hid the fact of the organization meeting of April 27, 1937, from Mr. Baty (Tr. p. 2294-2295):

"Q. Was there any reason that you knew of why the employees or anyone else should hide it from you that they were going to form a union that night?

A. There was no reason why they would hide it.

Q. But either they did hide it or you just never found it out?

A. I wasn't interested in it in any way.

Mr. Lane: Now, the intervener objects to that for the reason it is argumentative. There is no testimony here that anything was hid from him. He testified that he didn't know it, and the question that it was hid from him is argumentative and not proper cross-examination.

Trial Examiner Batten: Read the question.

(Whereupon, the last question was read by the reporter.)

Trial Examiner Batten: Is that the question?

Mr. Lane: Yes, and the previous question contains an expression that they hid it from him.

Trial Examiner Batten: It may stand.

[fol. 6276] 155. To the action and ruling of the Trial Examiner in sustaining the objections and in refusing to receive and consider the following competent, relevant and material testimony offered by intervener, and similar testimony offered by respondent, of strikes, violence, of the subject of conversations, the effect upon and state of mind

of the employees of the Donnelly Garment Company produced thereby, as an important and moving cause leading them to employ attorneys and to the organization of the Donnelly Garment Workers' Union, and to disprove the allegations of the complaint of domination by respondent, the offers, objections and rulings reading (Tr. pp. 2500-2506):

"Q. (By Mr. Tyler) Mr. Atherton, was the subject of disturbances at the Missouri, Gordon and Gernes plants before March 18, 1937, a subject of common discussion among the employees at the Donnelly Garment plant?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler) What was the state of mind of the employees of the Donnelly Garment Company in regard to conditions at the Missouri, Gordon and Gernes plants before March 18, 1937?

Mr. Leary: I object to that as being without a foundation, that this witness knows what the state of mind of the employees at the plant was; and immaterial, also.

Trial Examiner Batten: Well, I will sustain it on the ground it is immaterial.

Mr. Tyler: I offer to prove by this witness that the subject of the violence at the Missouri, Gordon and Gernes plants before March 18, 1937, was one of almost continual conversation by the employees of the Donnelly Garment Company plant, and the Donnelly Garment Sales Company, and that the condition of the employees' minds at that plant was one almost bordering on hysteria and continued to increase in intensity as the strikes went on at the Gordon, Gernes and Missouri plants, and that that was one of the main causes of their employing attorneys, and later on was one of the impelling reasons for them to organize their own labor union.

Mr. Leary: I will object to the offer on the same grounds.

[fol. 6277] Trial Examiner Batten: The offer is refused.

Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the offer upon the ground that it

includes, a part of it, to permit this witness to pass upon the mental attitude of other employees, and he has shown no knowledge, laid no foundation to show that he is capable of passing on the mental attitude of those employees.

Mr. Tyler: The record shows that this witness was employed at the plant; that his duties caused him to circulate about the plant, and I submit that any employee in such circumstances is competent to tell what the subjects of discussion were which were uppermost, and what the general attitude of employees was.

Trial Examiner Batten: Well, of course, I assume—I don't know—I wasn't here, but I assume that probably there was so much talk in the plant that it even interfered with production. In fact, I have never seen a case yet where two unions, or one union, in conducting an intensive organizational campaign that it doesn't affect production in the plant. I mean, it just goes without saying that it is a part of it. You can't separate it, so I don't suppose there is any argument but what in this plant and all the rest of the plants, if it was all material to this hearing, the production was reduced.

Now, my point on this is this: that if the respondent, or any of its officers formed this union or assisted in forming it, or after it was formed they sponsored it or in any way assisted it, even if you were to prove that all the 1,350 employees in here were ready to shoot the next International Ladies' Garment Workers' Union member which they met, it still wouldn't detract one ounce from the fact that the respondent had either formed, sponsored or dominated the union, and even though you were to definitely prove that and permit it on the record, if the Board hasn't proved that this union was either formed, sponsored or is now dominated by this company, the respondent is not guilty of an unfair labor practice, irrespective of what the employees do, because they can do whatever they please, I mean, within reasonable limits, and I thought I ought to make this statement just in explanation of my ruling.

Mr. Tyler: If the Examiner please, I intend to make no point as to reduction of production by these difficulties. I do say that there is no more important fact, and no fact approaching in importance the fact of what caused the em-

ployees of this company to form their own union. The Board is claiming that it was domination or fear or bribery, or some such influence by the employer.

I submit that the employees asserting that they formed the plant [—] of their own free will, will, in establishing that fact, have the right to refer to the causes which influenced them in making that choice, and undertake to show by this witness that one of the causes was not the employer [fol. 6278] domination, but was fear and dislike of what the International was doing in its campaign to organize garment workers in Kansas City.

I take it I have an exception to your Honor's ruling without—

Trial Examiner Batten (interrupting): Well, of course, you have an automatic exception.

Mr. Stottle: And, Mr. Examiner, you will recall that Mr. Ingraham asked similar questions as to violence down at the Gordon and Gernes plant, and whether it increased, and your Honor sustained the objection to those questions. Our position also is that that would show a motive or a reason for the formation of this union, and would tend to show that it was not company domination.

Trial Examiner Batten: Well, you may have an objection and I will make the same ruling, Mr. Stottle.

Mr. Stottle: Mr. Ingraham didn't make an offer of proof. When he comes back, I will ask him if he desires to enter it, or let the question go.

Trial Examiner Batten: Let him decide when he comes back, and I will determine it, and I would make the same ruling, and I would say the same to the respondent. It isn't a question of whether these people had a motive to organize the union. The only question is, did the respondent have anything to do with it, and if they didn't, they can have any motive they please.

Mr. Shepard: Respondent makes the same offer of proof, and takes exception to your ruling."

[fol. 6279] 156. To the action and ruling of the Examiner in overruling the objections and motions to strike of re-

spondent and intervener to the Board's offer (Board's Exhibit 30) of NRA testimony (Tr. p. 2552):

"Trial Examiner Batten: Now, on the matter of Board's Exhibit 1-IIII, which is the objection and motion of the respondent and the intervener to the Board's offer, which is marked "Board's Exhibit 30", the objections are overruled and the motion to strike is denied, which means; Mr. Leary, that the NRA testimony which was in the offer will be accepted, and you will have one witness ready for presentation of her testimony, strictly limited to the point in your offer."

157. To the action of the Examiner in holding, stating and declaring that the testimony of employees on the witness stand as to what their choice of unions is, is no indication of the truth of such statement, because other employees and representatives of the Company were in the room at the time and such declaration and statement shows that the Examiner failed to give such competent, relevant and material testimony any weight in his findings and opinions (Tr. p. 2611):

"Trial Examiner Batten (interrupting): Well, I don't think that is any indication, to put these witnesses up on the stand in a hearing of this kind, in a "C" case, in front of all the other employees and representatives of the company, and ask them, "Is this your free choice?". I mean it may possibly have some remote bearing, but I don't think it has sufficient that we should spend the time necessary to listen to 1300 employees get on the witness stand and testify to that point.

Now, if that is your idea, you may make an offer of testimony with respect to these 1305 employees, or whatever it is, but certainly, we are not going to determine that in this hearing on that basis, at least.

Mr. Tyler: Could I ask you if the Examiner holds that there is any presumption that these people are being dominated by somebody in the court room in this matter, or any presumption that they would commit perjury?

Trial Examiner Batten: I didn't even intimate such a thing.

Mr. Tyler: I understood you to say that their testimony, as to what they wished, would be either of no value or extremely little value.

At page 2612:

[fol. 6280] Trial Examiner Batten: I didn't say any such thing, I don't think.

Mr. Tyler: I misunderstood you, then.

Trial Examiner Batten: The record will state what I said in my remarks.

Mr. Stottle: Well, Mr. Examiner, don't you think we should have the testimony of this witness with the persons that you have referred to excluded from the court room?

Trial Examiner Batten: No, I don't think it is of any value in the issues in this case, to parade these people on the stand. Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter."

158. To the action and ruling of the Examiner in excluding testimony of witness Stites that no threat was made to her by the management in connection with joining the Donnelly Garment Workers' Union and in indicating and declaring that though ninety-five percent of the employees voluntarily joined a union of their own free will absolutely, yet evidence of such fact would not establish it as the bargaining agency of the employees (Tr. pp. 2620-2623):

"Q. Was there any threat made to you by the management or anyone representing the management that if you didn't join this Donnelly Garment Workers' Union or organize a plant union of your own that you might lose your job, or make membership in that union a condition of employment?

A. No.

Trial Examiner Batten: Did you finish your offer, Mr. Stottle?

Mr. Stottle: Well, if Your Honor is going to let her testify on these matters, I think I need not make it.

Trial Examiner Batten: Well, I am not. I ruled it out, and it is still out. I have no intention of changing my ruling whatsoever.

Mr. Stottle: May I inquire, Mr. Examiner, if we will be permitted to ask other witnesses, employees down there, whether they were dominated, as we have of this witness, by the officers of the Donnelly Garment Company?

Trial Examiner Batten: Let me ask you: Isn't it possible that 1,200 employees might come in here and testify honestly that they were not coerced, and you might have two that would come in and say they were, if the 1,200 [fol. 6281] said No, and the two said Yes, the 1,200 wouldn't prove that the two were wrong, would they? In other words, you might have 1,200 that were not, and you might have two that were? Isn't that true?

Mr. Stottle: It is possible.

Trial Examiner Batten: The 1,200 that were not would not disprove that the two were; isn't that correct?

Mr. Stottle: I think in that case it would be.

Mr. Tyler: I think in that case the Donnelly Garment Workers' Union would still be the overwhelming choice of the majority.

Trial Examiner Batten: I am talking now about the question of coercion. You might have one who was coerced, and you might have every other employee who was not. That would not prove that the one was not coerced, would it?

Mr. Stottle: But, as Mr. Tyler said, it would disprove, in my mind at least, that the Donnelly Garment Company coerced the formation of the union.

Trial Examiner Batten: It is not a question of whether they coerced the formation of it. It is a question of whether they sponsored it or dominated it.

Mr. Tyler: Intervener wishes to suggest in that case there would be no basis laid for a decision that it was dissolving, displacing, or in any way interfering with the rights of this union.

Trial Examiner Batten: Mr. Tyler, let me ask you: Isn't it possible to have 95 percent of the employees in a company voluntarily join a union of their own free will,

absolutely, and yet have it sponsored or assisted by a company?

Mr. Tyler: I think that is conceivable, although it would be so exceedingly improbable it would be very improbable that any such finding could be made in that case that the rights of 95 percent to their own union and their own contract could be dissolved, under the law, because some one or two or more had been coerced.

Trial Examiner Batten: I am not talking about coercion. I say, isn't it possible for a company to form a so-called company union and support it, and yet have 95 percent of the employees join it of their own free will without any coercion on the part of the company.

Mr. Tyler: I think that is theoretically possible, but in a situation where the union has continued to operate for a period of over two years, and where no substantial testimony of any kind is offered by the persons upon whom the burden of proving that devolves, after two years for gathering it, and unlimited funds for gathering it, I submit no possible basis for that kind of a decision has been laid in this case.

Trial Examiner Batten: I am not ruling on this case. I am just asking you, isn't that possible?

[fol. 6282] Mr. Tyler: I think, theoretically, that is possible.

Trial Examiner Batten: And there is one further question I would like to ask in connection with your remark. I don't know whether you meant to imply it or not, but is it your thought that if, an independent union having been formed by a company or assisted by a company—admitting that to be true in the beginning—is it your idea that over a period of time that independent organization can purge itself of the control or the domination which it started out?

My Tyler: I will be glad to answer Your Honor's question. Let me begin by making it clear, I do not for one moment admit there was any fault or domination in the formation of this union—

Trial Examiner Batten (Interrupting): You do not need to answer it at all if you were not implying that in your answer to my former question.

Mr. Tyler: I want to answer it. I don't think there is any evidence in this case of domination of this union, or formation of it, by the company. But, if that had been true, I still believe the law to be—if that had been true and, nevertheless, at the present time the union actually represents the free will choice of the members, what Your Honor calls purging would have taken place and the employees would have the right to continue to operate that union and bargain for it. I believe that to be the law."

[fol. 6283] 159. To the action and ruling of the Trial Examiner in excluding evidence of witness Stites, that she had talked to people who told her that they had met with violence at the Gordon and Gernes plants (Tr. p. 2650-2651):

"Q. (By Mr. Tyler) You talked to people who told you they had met with violence at the Gordon and Gernes plants?

Trial Examiner Batten: Now, I think I have indicated all through this hearing that I am not going into those matters, Mr. Tyler.

Mr. Tyler: Then, intervener joins in the same offer of proof on this matter just offered by the respondent.

Trial Examiner Batten: You mean page 5, Mr. Tyler? That is the page that applies to this matter.

Mr. Tyler: Yes.

Trial Examiner Batten: With reference to the offer on page 5, it will be refused.

Mr. Tyler: And also, repeat the offer of proof which intervener made on the same subject heretofore.

Trial Examiner Batten: The offer is refused. In order to identify that, the respondent's offer of proof has been marked 1-JJJJ, and you are now referring to the fifth page of that?

Mr. Tyler: Yes, sir.

(Thereupon the offer of proof above referred to was marked "Board's Exhibit No. 1-JJJJ.")

160. To the action and ruling of the Trial Examiner in excluding testimony of Mrs. Davis as to Mrs. Reed's talk at the meeting of March 18th, and further evidence concerning the meeting of March 18th (Tr. pp. 2675-2677):

"Q. Did you attend a meeting of employees on March 18, 1937?

A. I did.

Mr. Stottle: Mr. Examiner, you indicated to me that you didn't want us to continue with that line of testimony.

Trial Examiner Batten: Yes, I think unless some testimony appears later in the proceedings with respect to the March 18th meeting, I see no need of continuing to have [fol. 6284] these people testify about that meeting.

Mr. Stottle: Well, I will ask the question and you can exclude it if you want to, and then that would raise the issue.

Q. (By Mr. Stottle) Mrs. Davis, did you hear any statement made at the March 18th meeting by Mrs. Reed or anyone else that she wanted the names of the Donnelly Garment Company employees reported to her or reported to the management of any employees who belonged to the International Ladies' Garment Workers' Union?

Mr. Leary: I object to that as cumulative.

Trial Examiner Batten: Sustained.

Q. (By Mr. Stottle) Did you hear Mrs. Reed state that she would never let the International Union into her plant?

Mr. Leary: Same objection.

Trial Examiner Batten: Sustained.

Mr. Stottle: Mr. Examiner, we haven't prepared an offer of proof on that point, but we will prepare an offer of proof as to this witness and other witnesses on that subject.

Trial Examiner Batten: Well, I would suggest, Mr. Tyler, that you prepare it. Then you may offer it and as I arranged in the other instance, you may attach a list of people if you want to, and it will not be necessary to bring all those people here in order to make your offer."

161. To the action and ruling of the Trial Examiner to the effect that the state of mind, apprehension and fear of the employees at the Donnelly plant, caused by the violence committed by the International Ladies' Garment Workers' Union at the Gordon and Gernes plants, was not admissible in evidence as showing one of the motivating causes of forming a union of their own and thereby rebutting the Board's claim that such union was formed by domination or coercion of the employer. (Tr. p. 2712)

"Trial Examiner Batten: Mr. Patten, on this question, which has come up frequently, I think about the first week, in fact, Mr. Tyler brought it up; this question of the mental attitude of these people, due to the organizational campaign of the International Ladies' Garment Workers' Union, and all that that goes along with it. I think I should tell you now that if there is any further testimony of that kind, you can put it in in an offer of proof, because I don't [fol. 6285] think it is material to the issues here, and I think I told Mr. Tyler one day when he spoke about it, said that he felt that it was a motive or would be one motive, that would explain the organization of the independent union, and I think at that time I disagreed with Mr. Tyler. So if you have any further evidence in that line, you will submit it in an offer of proof, and if you care to, of course, you may submit another witness and ask those questions, to make your record. If you don't care to do that, you may submit it without offering another witness."

162. To the action and ruling of the Trial Examiner in refusing to hear further evidence as to the meeting of April 27, 1937 (Tr. p. 2766):

"Trial Examiner Batten: Mr. Stottle, if you have finished your questions about the April 27 meeting, I don't care to listen to any further witnesses on it, unless it is something that has not yet been covered by the previous witnesses."

[fol. 6286] 163. To the action and ruling of the Trial Examiner in overruling intervener's motion, made at the close of the respondent's case, to sustain the demurrer and dismiss the complaint, being a renewal of the demurrer and motion to dismiss made at the close of the Board's case, the same being overruled in the third paragraph on page 3 of the intermediate report, the renewal reading (Tr. p. 2813):

"Mr. Tyler: If the Examiner please, at the close of the respondent's case, intervener renews its motion to dismiss and the demurrer to the evidence of the complainant which was offered at the close of complainant's case.

Trial Examiner Batten: I will reserve a decision, Mr. Tyler, on that motion."

164. To the action and ruling of the Trial Examiner in refusing to receive and consider additional competent, relevant and material testimony by witnesses personally present at the trial and placed on the witness stand by intervener, and their testimony offered by intervener with respect to the meeting of March 18, 1937, the said refusal being prejudicial error in view of the fact the Trial Examiner's report showed that he refused to believe the evidence of any witness offered by respondent and intervener on material points with respect to such meeting. In view of such disbelief by the Trial Examiner it was material and extremely prejudicial error on his part to exclude any witness that respondent or intervener offered to produce and would have produced but for such ruling to be personally present and testify from the witness stand under the eyes of the Trial Examiner and such error was not cured by offering to receive such testimony in an offer of proof since the Examiner's findings and conclusions show he refused to believe the evidence so proffered in written offers of proof by witnesses whom he did not see and hear. The ruling excepted to in the case of the witness Jack McConaughey appears at Transcript page 2832 and [fol. 6287] reads as follows:

"Q. What happened at that meeting?

Trial Examiner Batten: Now, Mr. Tyler, as far as this March 18 meeting is concerned, there is no need of any

more witnesses testifying to it, unless you have something you want to go into that has not already been covered.

Mr. Tyler: All right. I will cover that by an offer of proof, unless I find some item which I believe has not been touched upon."

165. To the action and ruling of the Trial Examiner in refusing to receive the competent, relevant and material testimony of witness Jack McConaughey proffered by intervener, said witness being personally present and on the witness stand with respect to negotiations culminating in Board's Exhibit No. 6, being the articles of agreement between the Donnelly Garment Workers' Union and the Donnelly Garment Company, said evidence being offered to prove that said contract was the result of genuine bargaining between intervener and respondent, it appearing from the findings, conclusions and recommendations of the Trial Examiner that he refused to believe the evidence of any witness proffered by intervener or respondent with respect to such bargaining. It was material and highly prejudicial error to refuse to receive all testimony that intervener or respondent chose to offer by witnesses personally present under the eyes of the examiner to establish that the said contract was the result of genuine bargaining, thereby disproving the allegations of the complaint in, establishing that intervener was free from the domination of respondent. Such error is not cured by the offer of the Trial Examiner to receive in writing the testimony of witnesses whom he did not allow to be presented and testify on the witness stand. The offer and refusal of the Trial Examiner in the case of witness Jack McConaughey appears in [fol. 6288] the following language at Transcript pp. 2833-2837:

"Q. (By Mr. Tyler) I hand you Board's exhibit No. 6, being the articles of agreement between the Donnelly Garment Workers' Union and the Donnelly Garment Company and the Donnelly Garment Sales Company, and ask you what matters were discussed in those negotiations between the union and the companies on May 26, 1937.

Trial Examiner Batten: Mr. Tyler, I want to make the same ruling on this that I just made on the other. There have been two members of this executive committee testify

in detail about this, and either two or three of the respondent's witnesses. So, unless you are going to cover matters that have not thus far been covered, I don't want to go into it with this witness. Now, if there is anything else, anything new, I want you to cover it with this witness, but Miss Todd and Mr. Atherton, both of whom were at this meeting, testified quite extensively about these negotiations—and Mr. Baty, and I believe Mrs. Reeves. So, unless there is something new, I think it is cumulative.

Mr. Tyler: Your Honor has stated it is regarded by you as a matter of substantial importance as to whether there were real negotiations. I think the number of witnesses who were present and who recall matters of discussion or argument tends to establish genuine negotiations.

If Your Honor regards that fact as definitely established I will not offer further evidence on that point. If you do not consider it as definitely established, I certainly think I should go into it.

Trial Examiner Batten: You do not expect me to answer that question, do you?

Mr. Tyler: Well—

Trial Examiner Batten: As Trial Examiner of this case, do you expect me to answer that question now?

Mr. Tyler: I have no expectation one way or the other, but I do think that unless Your Honor feels that is definitely established, I should be allowed to present the evidence by the persons who were present at those negotiations.

Trial Examiner Batten: You may present it by an offer of proof.

Mr. Stottle: Mr. Examiner, respondent would say, in that connection, that your statement that unless some new matters were to be gone into—it could hardly be determined what the witness would testify to unless he is permitted to answer the questions and state what did occur.

Trial Examiner Batten: Mr. Stottle, I presume Mr. Tyler has interviewed this witness as to his testimony, and gone over it thoroughly, as every attorney should before [fol. 6289] examining his witness, so that he should be

able to judge that. I can't. I am simply saying, if there is anything this witness can testify to about these negotiations that will add to the information in this record, certainly the Examiner wants it and the Board wants it. If it is simply a matter of repeating what at least four other witnesses have testified to, I don't think it is necessary.

Mr. Stottle: Respondent desires to show in an offer of proof that the witness is excluded from testifying, for the reason you have indicated, that is an important matter; and, for the reasons Mr. Tyler has stated.

Trial Examiner Batten: I think it is an exceedingly important matter. I agree with you on that.

Mr. Stottle: What is the ruling on the objection to this witness being excluded from testifying on it?

Trial Examiner Batten: I will reserve my decision.

Mr. Tyler: For the present the ruling is, this witness is not allowed to go into the negotiations of May 27, 1937?

Trial Examiner Batten: Excepting in so far as he testifies to matters that have not yet been covered.

Q. (By Mr. Tyler) Do you know, Mr. McConaughey, as to what matters have been described in this hearing as being covered by the negotiations of May 27?

A. I wasn't present at the time of the testimony of any other witnesses in this courtroom on that subject, so I don't know exactly what has been covered.

Q. Has anybody told you fully, in detail, as to what has been covered by the other witnesses?

A. No, sir.

Q. Were you present at any negotiations of June 21 or June 22, 1937?

Mr. Stottle: Just a moment. Mr. Examiner, in view of the witness' last two responses, respondent renews its objection to his being excluded from testifying, because it is apparent that no one could determine now whether he has any new matters or not.

Trial Examiner Batten: Mr. Stottle, you have been present every day of this hearing, haven't you?

Mr. Stottle: Yes.

Trial Examiner Batten: And you, Mr. Tyler?

Mr. Tyler: I have been absent a day or two.

[fol. 6290] Trial Examiner Batten: But you have had Mr. Patten or Mr. Lane, or someone, representing you every day of this hearing, have you not?

Mr. Tyler: Yes.

Mr. Stottle: But, Mr. Examiner, I have never discussed with Mr. McConaughey one word as to what his negotiations were—

Trial Examiner Batten: I want the record to show that while the witnesses have not been here all of the time, the attorneys have been."

166. To the action and ruling of the Trial Examiner in excluding and refusing to receive and consider the testimony of witness Jack McConaughey in response to the questions hereinafter quoted, the evidence sought to be elicited being competent, relevant and material to show the fact that employees of respondent had reasonable cause to believe that threats were being made against them and the attitude of mind caused thereby, all showing a true, vital and moving cause leading them to consult attorneys as to means of protection and leading and causing ultimately the organization of intervener, tending to disprove allegations of the complaint.

Intervener further excepts to the prejudicial error shown by the Trial Examiner's comments with respect to the testimony excluded to the effect that he did not consider such evidence material, thereby showing that in reaching his findings and conclusions and recommendations he excluded from consideration all testimony offered by respondent and intervener showing that fear and the desire for protection motivated the action of respondent's employees in forming their union, thereby disproving the contention that the union was organized, dominated and sponsored by respondent.

The refusal to hear the testimony excluded is prejudicial error and not cured by an offer to receive testimony in the form of written offers of proof for all reasons stated in [fol. 6291] the previous two exceptions Nos. 164 and 165,

and for the further reason that the comments of the Trial Examiner show his mind closed on the subject and that the reception of further testimony thereon would be of no avail.

The questions, objections, comments of the Trial Examiner, motion to strike and ruling sustaining the same with respect to witness McConaughey, read (Tr. pp. 2838-2841):

"Q. Did you hear of any threats that the same proceedings would be taken as to employees of the Donnelly companies as were being taken against employees at the Gernes, Gordon and Missouri plants?

Mr. Leary: I object to that as immaterial.

Trial Examiner Batten: Objection sustained.

Q. (By Mr. Tyler) What was the attitude of mind of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company during March, 1937, in regard to the possible action of the International Ladies' Garment Workers' Union against them.

A. Everyone felt that—I talked to numbers of them on my job in the service department at that time—I talked to hundreds of people every day, and they were all expressing concern over the happenings that were taking place all over town, and many of them told me of having heard directly from people they knew there, or else overheard people who were in the line of strikers, that we were going to be the next on the list, which naturally caused an agitated state of mind throughout the plant and no one could pursue his job with a great deal of peace of mind, because he didn't know at what time he was going to be kept from coming into the building himself.

Trial Examiner Batten: Mr. Tyler, I think I have indicated previously on this matter of violence and this situation in Kansas City that I didn't think it was material, and therefore asked the respondent to make an offer of proof.

And I think yesterday I indicated, on this attitude of mind of the employees as a result of this situation, that I didn't consider it material.

Therefore, I will ask that you prepare an offer of proof on it, because I don't think the respondent can be held responsible for a situation that is a matter of employees' organization by unions and matters of that kind.

I think I have stated before, I don't think it is material to the issue as to whether or not the respondent formed this union, dominates it, or sponsors it. Therefore, I would ask that you prepare an offer of proof on that question.

[fol. 6292] Mr. Tyler: I wanted to make it clear I wasn't waiving my point heretofore made on that matter. Hereafter, then, I will offer a written offer of proof on that point, without endeavoring to go into it with individual witnesses.

Trial Examiner Batten: Yes. And I want to say, as I said to Mr. Ingraham yesterday, the offer of proof which you make will have the same force and effect as though you had presented the witness here and offered it that way.

Mr. Langsdale: What about this answer he just made to the last question? Does that stand, so that it will be the subject of cross-examination?

Trial Examiner Batten: I permitted the questions to be asked up to the point where I could tell what it was all about. I thought Mr. Tyler was going into that subject matter.

Mr. Langsdale: There is one phase of the answer I want to cross-examine on if the answer stands.

Trial Examiner Batten. Of course, I do not expect to have cross-examination on a matter which I have asked for an offer of proof on and stated that I don't consider it to be material. Therefore, I wouldn't consider the witness' answer or the question material.

Mr. Tyler: If the Examiner has already ruled that it is, in his opinion, incompetent and not admissible, and therefore when I offer this written proof I may expect you to make the same ruling, I would see no ground for cross-examination.

Trial Examiner Batten: I don't believe I said it was incompetent. I don't think I used that term.

Mr. Tyler: No.

Trial Examiner Batten: But any offers of proof the parties offer, Mr. Tyler, when they are offered I intend to make a ruling, as I stated at the beginning of this hearing, that will be served on all of the parties. You cannot assume that I will make the same ruling, because I might change my mind and want to hear all of that testimony.

Mr. Langsdale: I move to strike the answer of the witness to the last question.

Trial Examiner Batten: It may be stricken."

[fol. 6293] 167. To the action of the Trial Examiner in refusing to hear witnesses on behalf of intervener, who would testify on the witness stand under the eyes of the Trial Examiner, on the subject of freedom from domination and the exercise of the witnesses free will and choice in the matter of bargaining representatives and union affiliation on the subject of the meeting of April 27, on the subject of the meeting between March 27 and April 5, it being material and prejudicial error on the part of the Trial Examiner to refuse to hear any and all evidence of witnesses personally present and testifying on said subjects in view of the fact that the Trial Examiner's findings, conclusions and recommendations show that he did not believe the testimony that he did hear and did not believe the testimony offered in written offers of proof of witnesses who were not permitted to testify, and whose testimony might have been sufficient to overcome the belief of the Trial Examiner that the witnesses he did hear testified falsely, and to change his findings and conclusions on the points involved. The consideration of the testimony proferred by intervener and respondent on such subjects, if the same was considered, would not cure the error excepted to since the Trial Examiner refused to believe the evidence of any and all witnesses in behalf of respondent and intervener, whether the same was given on the witness stand or merely offered in the offer of proof of absent and excluded witnesses. The action and rulings, and exceptions thereto, of the Trial Examiner

so excluding and refusing to hear additional competent, relevant and material testimony on such subjects appears in the following portion of the record (Tr. 2857-2859):

"Trial Examiner Batten: Mr. Tyler, on the three matters this witness has testified to, one being the last question you just asked, of his own free will, if you call a witness [fol. 6294] for some other purpose—I don't know as there is any objection to asking that question, although I don't consider it material to ask a witness that on the stand. From the respondent yesterday I asked for an offer of proof on that, so I don't want you to think that by passing the matter up—In other words, if you contemplate calling 1,200 employees and asking them that question, it is an entirely different matter.

On the meeting of April 27, which this witness testified to unless you have witnesses that can add something to what has already been testified to, I don't want you to offer any further witnesses on it. You may make it in an offer of proof.

As to the March 27 to April 5 meeting, I permitted this witness to testify, because I thought perhaps he would be able to definitely place the date. Now, unless other witnesses have something to add to the testimony we have already received on this meeting, you may make an offer of proof as to that.

Mr. Tyler: I understand, then, as to any testimony regarding the April 27 meeting, unless I have some item about it hitherto not touched upon it is your ruling that I need not ask succeeding witnesses those questions, but to make an offer of proof on it?

Trial Examiner Batten: You do not need to present another witness for the purpose of having the witness sworn and ask the question and then have the witness stopped. You may make your offer the same as if the witnesses were here and sworn.

Mr. Tyler: And the same ruling as to the meeting held about the last of March or first of April?

Trial Examiner Batten: As to any offer of proof you make.

Mr. Tyler: And as to the other matter, the free will of the witnesses, of course Your Honor understands my position, that that is as much a fact as his indigestion or whether he has a broken leg, and the best way to get that is to ask him about it.

Trial Examiner Batten: You say it is an objective like a broken leg. I can see a broken leg, but I can't see this witness' mental reaction to that question.

Mr. Tyler: The best way you can is to hear him testify about it. As to that question, shall I put that in an offer of proof?

Trial Examiner Batten: If you intend, as Mr. Ingraham indicated to me that he did, calling a very large number of witnesses to testify to that point, I say you had better submit it in the form of an offer of proof. If you submit witnesses on other matters and you incidentally ask them that question, I have no objection, although I still don't consider it material, for the reasons I have previously stated in the record, but I wouldn't have any objection to it."

[fol. 6295] 168. To the action and ruling of the Trial Examiner excluding testimony of threats of violence against employees of the Donnelly Company if they did not join the International as evidence of one cause of the formation of the Donnelly Garment Workers' Union (Tr. p. 2996):

"Mr. Patten: Mr. Examiner, the intervener offers to prove by this witness, and others, that threats were made in their presence in connection with physical acts of violence, which they personally witnessed, to the effect that these acts of violence were only circumstances to show what would be done to the Donnelly Garment Company employees when the International Ladies' Garment Workers' Union started its drive to organize the Donnelly plant.

Trial Examiner Batten: And the other witnesses' testimony would be substantially the same as this testimony?

Mr. Patten: And that those threats were made in connection with the International Ladies' Garment Workers'

Union. The other witnesses' testimony would be substantially the same or similar to that we have offered—that this witness has testified to and Your Honor has ordered stricken.

Trial Examiner Batten: The offer is refused."

169. To the action of the Trial Examiner in refusing to receive in evidence the affidavits of 1165 individual employees of the Donnelly Garment Company as to their free choice and preference of the Donnelly Garment Workers' Union and their desire that the National Labor Relations Board hold an election to prove that fact as filed with the National Labor Relations Board on June 7, 1939, as evidence of such free-will choice of the Donnelly Garment Workers Union and in response to the Examiner's ruling that offer of proof might be made of the testimony of individual employees as to their voluntary membership in such union by choice. (Tr. pp. 3041-3042 and 3045):

"Mr. Tyler: It is admitted by attorneys for the Board, the International Ladies' Garment Workers' Union, the respondent, and the intervener, that Arch S. Welch, if present in court, would testify that the 37 photographs which I now hand the stenographer are photographs taken [fol. 6296] by him on the afternoon of Friday, July 9, 1937, of 37 sheets of paper, each containing an affidavit signed by a number of individuals and acknowledged before a notary public, the whole bound together under a cover which was stamped indicating that it had been filed with the National Labor Relations Board on June 7, 1939; and that he made photographs of such sheets of paper bound together under that exhibit stamp; and that these photographs are photographs of each page, and nothing else, and that there are no alterations, substractions, additions, or changes.

I now offer in evidence the exhibit, which I will ask the stenographer to mark intervener's exhibit No. 18, lettering it from A to whatever that results in.

(Thereupon the photographs above referred to were marked for identification "Intervener's Exhibit No. 20-A to 20KK, inclusive.")

Mr. Tyler: That is an affidavit for an election.

Trial Examiner Batten: You are offering these?

Mr. Tyler: Yes, sir.

Trial Examiner Batten: Any objection?

Mr. Leary: I don't understand the purpose of the offer.

Mr. Tyler: It goes to the choice and free will of these employees of the Donnelly Garment Company and as to whether they were dominated by their employer or not in forming the Donnelly Garment Workers' Union.

Mr. Leary: I submit, Mr. Examiner, that is an improper way of trying to show such testimony. There is no showing that the witnesses are not available.

Trial Examiner Batten: I don't suppose that the witnesses are available, because I did advise the respondent and the intervener I didn't want them to call all of the employees down here and ask them the very questions that are in these exhibits. I presume that is why the witnesses are not here.

* * * * * * *

At page 3045:

"Trial Examiner Batten: It is refused now as an offer of proof."

170. To the action of the Trial Examiner in refusing to strike out the testimony of Mrs. Gray as to a meeting [fol. 6297] concerning which no evidence was offered as to any connection with the Donnelly Garment Workers' Union or the Donnelly Garment Company or that anything said or done thereat could in any way bind either organization: (Tr. 3062)

"Mr. Tyler: I would like to move to strike out all of the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray, on the ground that there is no evidence that she was acting on behalf of the Donnelly Garment Workers' Union or the Donnelly Garment Company, and that nothing said or done at that meeting could in any way bind the respondent or the intervener.

Trial Examiner Batten: The motion is denied."

171. To the ruling and action of the Trial Examiner in refusing to receive competent, relevant and material evidence proferred by intervener as to the reasons why the members of intervener union prefer it as their bargaining representative to any other union they know about, and to give their reasons for such preference, the said testimony so excluded being competent, relevant and material to show that intervener's members do genuinely, of their own free will, prefer intervener union, and that their membership therein is not the result of domination, coercion or influence of the employer. The error in refusing to hear, except and consider said testimony from witnesses testifying in the presence and hearing of the Trial Examiner is not cured by the Trial Examiner's offer to receive a written offer of proof as to what the testimony of absent and unseen witnesses would be upon said subjects for the reason that the findings, conclusions and recommendations of the Trial Examiner indicate that he did not believe or consider relevant and material the testimony on such subjects offered by intervener and respondent, and under such circumstances his refusal to receive and hear further witnesses whose testimony might have changed his mind, [fol. 6298] was prejudicial error against respondent and intervener.

Intervener further excepts to the error of the Trial Examiner indicated in his statement in the material hereinafter quoted that the evidence of witnesses testifying upon said subject would be immaterial and worthless, and to his error in assuming, as is necessarily implied from his statement hereinafter quoted, that all witnesses proferred upon said subject would commit perjury, and to his error in assuming and prejudging, as shown by said statement, that the witnesses offered by intervener and respondent were in fear of the management of the company, and in assuming that the testimony would be worthless because of such assumed fear.

The rulings referred to excluding such testimony, and the objections of the intervener thereto, appear in the following extract from the record (Tr. 2922-2924):

"Q. Do you personally prefer the Donnelly Garment Workers' Union as your bargaining representative to any other union you know about?

A. Yes, sir, I certainly do.

Q. What are your reasons for preferring the Donnelly Garment Workers' Union?

A. Well, in the first place—

Trial Examiner Batten (Interrupting): Mr. Tyler, I don't think it is material what her reasons are. She has a perfect right, as an employee of this company, to select any union she wants.

Mr. Tyler: I submit, one of the questions involved here is whether she does prefer it or whether the company is so dominating her that she has to belong to it.

Trial Examiner Batten: You mean by that, you contemplate calling all of the employees to testify to this question?

Mr. Tyler: I contemplate calling a large number.

Trial Examiner Batten: I can tell you now, I do not intend to listen to them.

[fol. 6299] Mr. Tyler: Well, on the present question—

Trial Examiner Batten (Interrupting): She may answer this. I just don't think you should call these employees and put them on the stand and say, "Now, is this the union you want?" And so on, and so forth. This is no place to determine what the employees want. An election is the place to determine that. The thing we are trying to determine in this hearing is, did this company have anything to do with forming this union, or sponsoring it? That is the question we are trying to determine.

Mr. Tyler: We are not, also, endeavoring to determine whether the employer is now dominating it or dominating these employees?

Trial Examiner Batten: Yes, but you couldn't determine it by having these girls get up on the stand and testify here, in front of the management. The place to determine that is by secret election, where they can vote and no one know how they vote. If you have a large number of wit-

nesses to offer on that, you may make an offer of proof, because I don't intend to sit here and let you call all of these girls up here to testify whether they want this union to represent them.

Mr. Tyler: Does that ruling go into effect immediately preceeding this witness?

Trial Examiner Batten: That is right.

Mr. Tyler: You may answer.

A. In the first place, we are able to be independent and manage our own affairs. We think we understand the needs of our plant better than anybody outside can understand them. What affects somebody in New York or Los Angeles doesn't affect us here.

And not only that, it is much more economical.

It gives us the right to bargain with our employer rather than through someone else."

172. To the action and ruling of the Trial Examiner in refusing to receive and consider the testimony of Effie Weigand, a witness produced by the intervener, to the effect that she had heard the testimony of Velma Dowdy in the trial of the injunction suit between respondent, intervener and the International Ladies' Garment Workers' Union before Judge Miller; that a portion of that testimony concerned dues, assessments, fines and costs which the said Velma Dowdy was required to pay as a condition of her membership in the International Ladies' Garment Workers' Union, that the said testimony so heard was one [fol. 6300] of the reasons for said witness Weigand's preference for the Donnelly Garment Workers' Union over any other union and, all of said testimony being competent, relevant and material to show that the respondent's employees were not motivated by fear or favoritism of their employer, but by their own free will choice founded upon the consideration of financial saving. The reception of said evidence by the Trial Examiner did not cure the error in excluding the testimony by this witness and other witnesses, it appearing from the Trial Examin-

er's findings, conclusions and recommendations that the evidence received on said subject was disbelieved or considered insufficient to overcome the Trial Examiner's finding that intervener was a dominated union and did not represent the free will choice of said employees.

Intervener further excepts to the error manifested by the Trial Examiner in his statement with respect to the evidence referred to that he did not consider it material to the issues.

The offer of said evidence, the rulings of the Trial Examiner and objections thereto; appear in the following portion of the record. (Tr. 2939-2944):

"Q. Did you ever hear Velma Dowdy testify in that case?

A. Yes, I did.

Q. Did her testimony have any affect upon your choice as to what union you wanted to belong to?

Mr. Langsdale: I object to that as immaterial and not tending to prove or disprove any issue in this case. In the Miller case this witness testified how much dues were paid by the International Ladies' Garment Workers' Union, and I suppose that is what you want her to testify to here.

Mr. Tyler: That is what I am leading up to.

Mr. Langsdale: And I say it is immaterial to this case, the difference between the dues paid by the International Ladies' Garment Workers' Union and the dues paid by the Donnelly Garment Workers' Union.

[fol. 6301] Trial Examiner Batten: If that is the purpose, I want to ask you, Mr. Tyler, how you think it is material. As I have previously stated, the employees can select their own union, one where the dues are nothing, or one where they are $10 a week. The Board has nothing to do with the union the employees select. As long as that union is not dominated or influenced by the company, the employees have a right to select any union they want to select, and pay any dues they want to pay.

Mr. Tyler: I agree with you. And I think that is the purpose of the Wagner Act, to do that.

Trial Examiner Batten: That is the only prime purpose.

Mr. Tyler: My theory is, it must be determined whether these employees are operating the Donnelly Garment Workers' Union out of either fear or favoritism of their employer, or whether they are doing it by their own wish. And, in order to show they are doing it by their own choice, they should be allowed to state the reasons for that choice, and whether those reasons are probable or improbable should throw some light on whether they are telling the truth.

If this witness testifies she saves a substantial amount of money by belonging to this union over which she would be forced to pay if she belonged to the International Ladies' Garment Workers' Union—

Trial Examiner Batten (Interrupting): She wouldn't be forced to pay it unless she joined it, would she?

Mr. Tyler: No, but it has been shown that the International Ladies' Garment Workers' Union wanted to organize these people.

Trial Examiner Batten: That is not in this case. Wouldn't it be possible to have a union which was absolutely dominated by the employer, and they, not knowing it, would freely join it and pay their dues?

Mr. Tyler: No, I don't think that is possible. If the employees, in their own minds, desired to belong to that union, their reason might be bad, and they might be even deceived by the employer, yet they have a right to that union.

Q. They have a right to the union, but the union hasn't any right to represent the employees if it is formed by the employer, sponsored by the employer, or dominated by the employer.

Mr. Tyler: I submit, the reason for the employees choosing this union is the most vital kind of evidence as to whether the company does dominate it or not.

Mr. Langsdale: The objection I want to make to this testimony—This witness testified she joined the Donnelly Garment Workers' Union in 1937, April 27, I assume. She didn't hear the Dowdy testimony until 1939, so manifestly,

[fol. 6302] it couldn't have had any effect on her joining a union.

Trial Examiner Batten: I don't think it is material to the issues in this case. I think this lady has a personal right to join any union she wants to join, and if she prefers the Donnelly Garment Workers' Union she doesn't have to give the Labor Board or anybody else any reason for joining it. She doesn't have to show the Labor Board she has a reason. She may join it because the first name of it starts with a D and the last word in the name starts with a U.

Mr. Tyler: I agree, she doesn't have to give the Labor Board any reason, but I submit she has a right to give a reason in sustaining that it was her own free choice.

Trial Examiner Batten: Nobody is questioning Mrs. Weigand's reason for joining this union.

Mr. Tyler: The Board is questioning the reason for the majority of employees joining this union.

Trial Examiner Batten: No the Labor Board is not questioning her reason for joining this union.

Mr. Tyler: Is it questioning that of any employee whatever?

Trial Examiner Batten: We are not interested in the reason for joining.

Mr. Tyler: But we are interested in the reason the great bulk of them have for joining, are we not?

Trial Examiner Batten: I don't think so.

Mr. Tyler: I have not included this lady's testimony in the offer of proof in the Judge Miller case.

Trial Examiner Batten: We are interested in it to this extent, whether or not she knows whether any executive or officer of this company influenced her to join it, or whether she was told by any such person to join it, or if she knows of any officer of the company who helps operate it or helped form it.

Mr. Tyler: I will ask her those questions but before doing so, I understand Your Honor excludes her answer-

ing the questions as to the effect the testimony of Velma Dowdy had on her?

Trial Examiner Batten: Yes.

Mr. Tyler: I offer to prove, this witness, if permitted to testify, would testify as follows:—I am going to read her testimony in the Judge Miller case.

* * * * * * *

At page 2944:

Trial Examiner Batten: Mr. Tyler said he is offering it to show the financial difference.

[fol. 6303] Mr. Langsdale: As to the amount of dues.

Trial Examiner Batten: Is that it?

Mr. Tyler: For her reason for the choice of this union.

Trial Examiner Batten: I think, on that basis, Mr. Tyler, it would be better if you make a written offer, and then we will know what you are offering. You undoubtedly have several other witnesses on this same matter you contemplate using?

Mr. Tyler: I will prepare a written offer, and I will include this witness in that offer."

173. To the action and ruling of the Trial Examiner in excluding the evidence of witness Mabel Riggs and all other witnesses proferred by intervener on the subject of her free will and freedom from domination in joining intervener union, said evidence being competent, relevant and material to prove said union to be the free will, said union to have been organized and maintained without promotion, domination, interference or assistance of the respondent, but as the genuine free will choice of the employees, the exclusion of said evidence being prejudicial error against respondent and intervener and for all of the reasons set forth in intervener's exception No. 167 hereinabove. The portion of the record excluding said evidence and refusing to receive any further evidence on said subject, and the objections of intervener thereto appear in the following portion of the record (Tr. pp. 2964-2965):

"Q. You belong to that association by your own free will and accord?

A. I do.

Trial Examiner Batten: Now, Mr. Tyler, I don't want to have to, with every witness you put on— That is on the list I asked you to make an offer of proof on. I don't want to have to be in the position of having to say, as you put these witnesses on, "No, that is included in your offer of proof." I like to assume the attorneys know, if I call for an offer of proof, as the respondent's attorneys did—they furnished the offer of proof, and then they didn't try to go any farther with it. That amply protects your interests, it seems to me.

* * * * * *

[fol. 6304] At page 2965:

Mr. Tyler: Is your ruling now that the question, ". . . of your own free will and accord?" shall be included only in the offer of proof?

Trial Examiner Batten: I think it is better if it is, Mr. Tyler."

174. To the denial of due process of law to intervener and respondent involved in the matters excepted to in exceptions Nos. 164, 165, 166, 167, 168, 169 and 171 hereinabove stated, the errors in said exceptions complained of, for all of the reasons stated in said exceptions, having operated to deprive intervener's members of a fair hearing and of their freedom of association and property rights and contract guaranteed by the Fifth Amendment of the Constitution of the United States.

175. To the action and ruling of the Trial Examiner in permitting the Board and the International Ladies' Garment Workers' Union to cross-examine witness Mabel Riggs on the subject to which the Trial Examiner had refused to receive further evidence in behalf of respondent and intervener, the said error, objections and rulings thereon appearing in the following portion of the record, (Tr. 2966-2969):

"Q. Who is the supervisor in that department?

A. The head of the department is Miss Spilsbury.

Q. Who was the supervisor there in 1937?

A. Miss Spilsbury—Well, I don't know. We always call her the head of the department. I suppose you mean by that, supervisor.

Q. Did you have anyone you called supervisor in April, 1937?

Mr. Tyler: Did I understand the Examiner to rule he would restrict the cross-examination to any new matters brought up?

Trial Examiner Batten: Yes. I said I was requesting that.

[fol. 6305] Mr. Tyler: Then, I object—

Mr. Langsdale: (Interrupting): Here is a witness that has not been available to me yet. This is something I think is important.

Trial Examiner Batten: The thing is this—and it is very certain: I am not going to ask for offers of proof from the respondent and the intervener, and then permit the Board's or the union's attorney to cross-examine these witnesses on everything they please. We have to have some sort of understanding on this, or I am not going to attempt to make any restrictions at all. I don't think it is fair for me to ask the respondent to make offers of proof on these matters—

Mr. Langsdale (Interrupting): I don't think this matter—

Trial Examiner Batten (Interrupting): Let me finish.—and ask the intervener to make offers of proof on many matters, and then turn these witnesses over to the Board's or the union's attorney for cross-examination on anything they want to cross-examine them on. I do not consider that fair at all.

Mr. Langsdale: If I have something that in my mind is important and has not been gone into before, you mean I am foreclosed?

Trial Examiner Batten: I didn't say that.

Mr. Leary: Is it your position, Mr. Examiner, that we are foreclosed only on the matters you are requiring offers of proof on?

Trial Examiner Batten: Yes.

* * * * * * *

At page 2968:

Trial Examiner Batten: As I understand it, the purpose of this is to show the relationship of the person that is in the department who was over this lady, and so forth. I think I understand your purpose.

Now, of course, you have placed me in an exceedingly embarrassing position in this way, I hesitate to say to any attorney who is cross-examining the witness, and can't say, as you well know, that I want you to make an offer of proof on the matter you propose to examine this witness about. I think all of you attorneys know that when it comes to cross-examination I cannot say to any attorney, "Make an offer of proof." I can only say this—I am not going to stop you, Mr. Langsdale. You may proceed."

[fol. 6306] 176. To the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS, par. 2, subparagraph (a)) receiving in evidence Board's Exhibit 28, said exhibit being a statement reflecting the facts and figures of respondent's time-workers' payroll records as to certain employees for the period from April 15, 1937, to July 15, 1937, said exhibit being irrelevant and immaterial to prove any issue in the case, so limited in the period covered as to be prejudicial to intervener and respondent, opening up collateral issues, the facts disclosed being insufficient and too speculative to prove any charge of the complaint, and not binding upon respondent or intervener.

Intervener further excepts to the ruling in said paragraph overruling respondent's objection to Board's Exhibit 28.

177. Intervener excepts to the action and ruling of the Trial Examiner contained in paragraph 2, subparagraph (g) of Board's Exhibit 1-SSSS, refusing to receive and consider certain proffered evidence in respondent's offer of proof (Board's Ex. 1-JJJJ) because the said ruling is

indefinite and uncertain and it is impossible to tell what portions of said evidence in said offer were received and what portions were barred.

Intervener further excepts to the ruling of the Trial Examiner on paragraph 1 of intervener's motion to clarify the ruling in said paragraph (g) of Exhibit 1-SSSS, which said motion was filed with the Board on September 8, 1939.

178. To the action and ruling of the Trial Examiner contained in paragraph 2 (h) of Board's Exhibit 1-SSSS, refusing to receive and consider certain unspecified evidence in respondent's offer of proof, Board's Exhibit 1-OOOO, it being impossible to determine from said ruling what portions of said proof were excluded and what portions received.

[fol. 6307] Intervener further excepts to the ruling of the Trial Examiner overruling paragraph 2 of the intervener's motion to clarify rulings filed September 8, 1939, said motion to clarify being directed to paragraph 2 (h) of Board's Exhibit 1-SSSS.

179. To the action and ruling of the Trial Examiner contained in Board's Exhibit 1-SSSS, subparagraph (i) of paragraph 2, refusing to receive and consider portions of evidence contained in intervener's offer of proof (Board's Ex. 1-RRRR), said ruling, because of indefiniteness and uncertainty, making it impossible to determine what portions of said evidence were received and what excluded.

Intervener further excepts to the Trial Examiner's ruling denying paragraph 3 of intervener's motion to clarify rulings with respect to said ruling referred to in the previous paragraph.

180. Intervener excepts to the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS, par. 2 (j)), excluding unspecified portions of the evidence proffered in respondent's exhibit (NRA-JMC Ex. 3), said ruling making it impossible to determine what portions of evidence so proffered were received and what portions excluded.

Intervener further excepts to the ruling of the Trial Examiner on paragraph 4 of intervener's motion to clari-

fy, filed September 8, 1939, with respect to the ruling complained of in the preceding paragraph.

181. Intervener excepts to the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS, par. 2 (k)), excluding unspecified portions of intervener's exhibit (NRA-JMC Ex. 8), it being impossible to determine from said ruling what portions of said proffered testimony were [fol. 6308] accepted and what portions rejected.

Intervener further excepts to the ruling of the Trial Examiner overruling intervener's motion to clarify paragraph 5, filed September 8, 1939, with respect to the ruling complained of in the previous paragraph.

182. Intervener excepts to the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS, par. 2 (l)), overruling respondent's objection (Board's Ex. 1-UUUU, par. 4); to Board's and Union's NRA-JMC Ex. 17, and accepting portions or all of said testimony, it being impossible to determine from said rulings whether all, or if not all what part of said proffered testimony was received.

Intervener further excepts to the action and ruling of the Trial Examiner overruling paragraph 6 of intervener's motion to clarify, filed September 8, 1939, with respect to the ruling complained of in the previous paragraph.

183. Intervener excepts to the action and ruling of the Trial Examiner (Board's Ex. 1-SSSS par. 2 (m)), it being impossible to determine from said ruling for what purpose the evidence referred to was accepted and for what purpose the same was excluded.

Intervener further excepts to the ruling of the Trial Examiner denying paragraph 7 of intervener's motion to clarify, filed September 8, 1939, with respect to the ruling referred to in the preceding paragraph.

184. Intervener excepts to the action and ruling of the Trial Examiner denying paragraph 8, 9, 10, 11 and 12 of intervener's motion to clarify, filed September 8, 1939.

Wherefore, intervener prays the Board that its except-
[fol. 6309] tions be sustained, the intermediate report be disapproved and the complaint dismissed.

Respectfully submitted,

GOSSETT ELLIS, DIETRICH TYLER
FRANK E. TYLER
THOMAS J. PATTEN
LUCIAN LANE

Attorneys for Intervener,
Donnelly Garment Workers' Union

[fol. 6310] (Statement of Exceptions of Respondent to Trial Examiner's Intermediate Report.

United States of America

Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company, Respondent,
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract,
Intervener

Case No. C-1382. (XVII-C-371)

Comes now the above named respondent and, reserving the right to file such further objections and exceptions as it may be lawfully entitled to make or save, objects and excepts to the Intermediate Report and to the findings, inferences, conclusions and recommendations contained therein, to the rulings of the Trial Examiner made during and after the hearing, and to the conduct of the proceedings, as follows:

* * * * * *

[fol. 6315] 15.

Respondent excepts to the ruling of the Examiner contained in Paragraph 2 of Board's Exhibit No. 1-YYY, over-

ruling respondent's motion, Exhibit No. 1-SSS, to dismiss the complaint as amended.

16.

Respondent excepts to the ruling of the Examiner con-
[fol. 6316] tained in Paragraph 3 of Board's Exhibit No. 1-YYY, overruling respondent's motion, Exhibit No. 1-TTT, to strike from the complaint as amended, Paragraph 5, subparagraph C.

17.

Respondent excepts to the ruling of the Examiner contained in Paragraph 5 of Board's Exhibit No. 1-YYY, overruling respondent's motion, Exhibit No. 1-VVV, to make the complaint as amended more definite and certain in each and all of the respects specified in said ruling.

18.

Respondent excepts to the ruling of the Examiner contained in Paragraph 6 of Board's Exhibit No. 1-YYY, ordering respondent to submit a written statement of the evidence it would offer to prove the parts of the Answer set forth in the motion to strike of the International Ladies' Garment Workers' Union, Exhibit No. 1-QQQ.

19.

Respondent excepts to the ruling of the Examiner contained in Paragraph 7 of Board's Exhibit No. 1-YYY, denying and refusing to consider respondent's petition for investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, part C of respondent's Answer, Exhibit No. 1-JJJ.

[fol. 6317] 20.

Respondent excepts to the ruling and action of the Trial Examiner (Transcript of Record, p. 130) denying respondent's motion (Exhibit 1-PPP) to dismiss the amended complaint and in denying the intervener's motion to dismiss (Exhibit 1-LLL).

21.

Respondent excepts to the ruling and action of the Trial Examiner (Transcript of Record, p. 214) in denying re-

spondent's motion (Exhibit 1-AAAA) to strike portions of Paragraph 11 of the amended complaint, which was denied as to all parts except subparagraphs (o) and (p).

22.

Respondent excepts to the ruling and action of the Trial Examiner (Transcript of Record, pp. 130, 131, 194) denying intervener's applications for an election and continuance.

23.

Respondent excepts to the ruling and action of the Trial Examiner, Transcript of Record, p. 194) in refusing to consider the petitions for investigation and certification (Exhibits 1-NNN and 1-OOO) filed by intervener herein.

24.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (a) of Board's Exhibit 1-SSSS receiving in evidence Board's Exhibit 28, for [fol. 6318] the reason that said exhibit and evidence is irrelevant and immaterial to any issue herein and does not tend to prove any charge in the complaint; for the further reason that said exhibit is incomplete and covers only a period of three months' time and does not include earnings of piece workers, bundle boys, etc.

25.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (d) of Board's Exhibit 1-SSSS refusing respondent's offer of proof (Exhibit 1-XXXX).

26.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (e) of Board's Exhibit 1-SSSS sustaining motion (Exhibit 1-QQQ) of the International Ladies' Garment Workers' Union to strike certain parts of respondent's answer.

27.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (f) of Board's Exhibit

1-SSSS refusing the respondent's offer of proof (Exhibit 1-NNNN) as to Part B of the Answer.

28.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (g) of Board's Exhibit 1-SSSS refusing respondent's offer of proof (Exhibit 1-JJJJ).

[fol. 6319]

29.

Respondent excepts to the ruling and action of the Trial Examiner set forth in Paragraph 2 (h) of Board's Exhibit 1-SSSS refusing respondent's offer of proof (Exhibit 1-OOOO).

30.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (i) of Board's Exhibit 1-SSSS refusing intervener's offer of proof (Exhibit 1-RRRR).

31.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (f) of Board's Exhibit 1-SSSS, denying Respondent's request in Part A of its Answer for dismissal of the Complaint.

32.

Respondent excepts to the failure and refusal of the Trial Examiner to accept or consider Respondent's Offer of Proof (Board's Exhibit 1-QQQQ) as to paragraph 2, Section A, of Respondent's Answer.

33.

Respondent excepts to the failure and refusal of the Trial Examiner to sustain each and all the defenses and grounds for dismissal of the Complaint set forth in Part A of Respondent's Answer herein.

34.

Respondent excepts to the failure and refusal of the Trial [fol. 6320] Examiner to sustain each and all the defenses and grounds for dismissal of the Complaint set forth in Part B of respondent's Answer herein.

35.

Respondent excepts to the statement of the Trial Examiner in paragraph 2 (f) of Board's Exhibit 1-SSSS that the respondent stated in the record that no offer of proof would be made on Part A of the Answer, for the reason that said statement overlooks respondent's offer of proof (Board's Exhibit 1-QQQQ) as to part A of its Answer.

36.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (j) of Board's Exhibit 1-SSSS in so far as the effect or consideration of the evidence contained in respondent's NRA-JMC Exhibit 3 is limited by the following language in said ruling: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects".

(a) Respondent further excepts to said part of said ruling because the same is so vague and uncertain as not to apprize respondent as to what parts of the evidence in said NRA-JMC Exhibit 3 the Trial Examiner by said ruling considers or excludes or refuses to consider. Respondent is thereby de[illegible]ed and has been denied a fair and impartial [fol. 6321] hearing herein and due process of law, as guaranteed by the Fifth Amendment to the Constitution of the United States.

(b) Respondent further excepts to said quoted part of said ruling of the Trial Examiner in so far as same constitutes a rejection, refusal or failure to consider any part of the testimony of Elizabeth Reeves contained in said NRA-JMC Exhibit 3 upon any of the issues or "subjects" referred to in said ruling. (Respondent is unable to make this exception more specific because of the vagueness and uncertainty of said ruling of the Trial Examiner).

(c) Respondent further excepts to said quoted part of said ruling of the Trial Examiner in so far as same constitutes a rejection, refusal or failure to consider any part of the testimony of witnesses Bachofer, Reeves, Keyes, Stites, Rosenfield, Gordon, Ruden, Dowdy, Kilby, Sprofera, Ball, Jeters, Rickett, Cauthen, Smith, Redish, Shartzer,

Warren, Ingraham, Hull, Perlstein, Fry, Dubinsky, Tobin, Mrs. Reed, Allison, Atchison, Wales, Owen, Rutherford, Reidel, Lutz, Patton, Neimoyer, Perkins, Richards, Stroup, White, or any of them, contained in said NRA-JMC Exhibit 3 upon any of the issues or "subjects" referred to in said ruling. (Respondent is unable to make this exception more specific because of the vagueness and uncertainty of said ruling of the Trial Examiner.)

[fol. 6322] 37.

Respondent excepts to the ruling and action of the Trial Examiner set forth in Paragraph 2 (k) of Board's Exhibit 1-SSSS in so far as the effect or consideration of the evidence contained in NRA-JMC Exhibit 8 is limited by the following language in said ruling: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects".

(a) Respondent further excepts to said part of said ruling because the same is so vague and uncertain as not to apprize respondent as to what parts of the evidence in said NRA-JMC Exhibit 8 the Trial Examiner by said ruling considers or excludes or refuses to consider. Respondent is thereby denied and has been denied a fair and impartial hearing herein and due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States.

(b) Respondent further excepts to said quoted part of said ruling of the Trial Examiner in so far as same constitutes a rejection, refusal or failure to consider any part of the testimony of any of the witnesses contained in said NRA-JMC Exhibit 8 upon any of the issues or "subjects" referred to in said ruling. (Respondent is unable to make this exception more specific because of the vagueness and uncertainty of said ruling of the Trial Examiner.)

[fol. 6323] 38.

Respondent excepts to the ruling and action of the Trial Examiner set forth in paragraph 2 (l) of Board's Exhibit 1-SSSS overruling respondent's objections (Board's Ex-

hibit 1-UUUU, part 4) to Board's and Union's NRA-JMC Exhibit 17.

39.

Respondent excepts to the ruling and action of the Trial Examiner contained in paragraph 2 (m) of Board's Exhibit 1-SSSS in so far as the effect or consideration of the evidence contained in respondent's NRA-JMC Exhibit 17 is limited by the following language in said ruling: "Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects".

(a) Respondent further excepts to said quoted part of said ruling because the same is so vague and uncertain as not to apprize respondent as to what parts of the evidence in said NRA-JMC Exhibit 17 the Trial Examiner by said ruling considers or excludes or refuses to consider. Respondent is thereby denied and has been denied a fair and impartial hearing herein and due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States.

(b) Respondent further excepts to said quoted part of said ruling of the Trial Examiner in so far as same constitutes a rejection, refusal or failure to consider any part of the testimony of any of the witnesses contained in said NRA-JMC Exhibit 17 upon any of the issues or "subjects" [fol. 6324] referred to in said ruling. (Respondent is unable to make this exception more specific because of the vagueness and uncertainty of said ruling of the Trial Examiner.)

Respondent further excepts to said rulings of the Trial Examiner contained in paragraphs 2 (j), 2 (k), and 2 (m) of Board's Exhibit 1-SSSS, because the Trial Examiner's conclusions and findings in the Intermediate Report show that he failed and refused to consider material evidence favorable to respondent contained in said NRA-JMC Exhibits.

Respondent makes this exception on the ground that all of the NRA, Loyalty League, or other testimony concern-

ing conditions or events existing or occurring prior to the effective date of the National Labor Relations Act is irrelevant and immaterial and does not tend to prove that respondent, after the enactment of the National Labor Relations Act, did any act prohibited by the Act and that therefore none of such evidence should have been received or considered, but that (without waiving said objection) if such evidence offered by the Board or the International Ladies' Garment Workers' Union is received or considered, then such evidence offered by respondent should be received and considered.

40.

Respondent excepts to the action and ruling of the Trial Examiner on October 2, 1939, denying motion of respond-
[fol. 6325] ent herein, entitled "Motion to Clarify Rulings of Trial Examiner" filed with the Trial Examiner on or about September 6, 1939; and severally excepts to the denial of each and every the several motions and requests for clarification set forth in said Motion.

Respondent also excepts to the ruling and action of the Trial Examiner denying a like Motion for Clarification filed by Intervener herein.

41.

Respondent excepts to the ruling and action of the Trial Examiner, on October 2, 1939, denying Motion of Respondent herein, filed with the Trial Examiner on or about September 12, 1939, for leave to file herein and make a part of the record, a certain petition for investigation and certification of representatives (which respondent had attempted to file with the National Labor Relations Board), and copy of the letter of the Acting Regional Director for the Seventeenth Region to Donnelly Garment Company, dated September 8, 1939, refusing to file and docket said petition.

* * * * * * *

[fol. 6426] 168.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 3 of the Amended Complaint (Board's Exhibit 1-

KKKK) because none of the allegations therein contained is proved or supported by the evidence.

169.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of the following allegation in Paragraph 4 of the Amended Complaint (Board's Exhibit 1-KKKK): "* * * and its predecessor, Donnelly Loyalty League", is a "labor organization", because said allegation is not proved or supported by the evidence and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

[fol. 6427]

170.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 5 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

171.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 5 (a) of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

172.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 5 (b) of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

173.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal [fol. 6428] of Paragraph 5 (c) of the Amended Complaint (Board Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and be-

cause said allegations relate to or are based upon matters purporting to have existed or occurred prior to the effective date of the National Labor Relations Act, which were then not unlawful and from which no inference of unlawful conduct by respondent after the enactment of said Act may be drawn.

174.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 5 (d) of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because closed shop agreements are specifically authorized by Section 8 (3) of the National Labor Relations Act.

175.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 6 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the [fol. 6429] National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

176.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 7 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

177.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of

Paragraph 8 of the Amended Complaint (Board's Exhibit 1-KKKK).

178.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 9 of the Amended Complaint (Board's Exhibit 1-KKKK).

179.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 10 of the Amended Complaint (Board's Exhibit 1-KKKK).

[fol. 6430] 180.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.

181.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (a) of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence.

182.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (b) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegation therein contained is not proved or supported by the evidence, and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

183.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (c) of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence, and

said allegations do not charge or tend to charge any viola-
[fol. 6431] tion of the National Labor Relations Act.

184.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (e) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegation therein contained is not proved or supported by the evidence, and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

185.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (f) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegation therein contained is not proved or supported by the evidence, and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

186.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (l) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegations therein contained are not proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act.

187.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (m) of the Amended Complaint (Board's Exhibit 1-KKKK) because none of the allegations therein [fol. 6432] contained is proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act.

188.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (q) of the Amended Complaint (Board's

Exhibit 1-KKKK) because none of the allegations therein contained is proved or supported by the evidence, and said allegations do not charge or tend to charge any violation of the National Labor Relations Act.

189.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 11 (r) of the Amended Complaint (Board's Exhibit 1-KKKK) because the allegation therein contained is not proved or supported by the evidence, and said allegation does not charge or tend to charge any violation of the National Labor Relations Act.

190.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of the last paragraph in Paragraph 11 of the Amended Complaint (Board's Exhibit 1-KKKK) because said allegations are vague and indefinite and constitute the conclusion of the pleader and are in no way supported by the evidence.

[fol. 6433]

191.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 12 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegations do not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

192.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 13 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence.

193.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of

Paragraph 14 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegation does not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

[fol. 6434]

194.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 15 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegation does not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

195.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 16 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegation does not charge or tend to charge any violation of the National Labor Relations Act, and because said allegations relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

196.

Respondent excepts to the failure and refusal of the Trial Examiner to dismiss and/or recommend dismissal of Paragraph 17 of the Amended Complaint (Board's Exhibit 1-KKKK), because none of the allegations therein contained is proved or supported by the evidence, said allegation does not charge or tend to charge any violation of the National Labor Relations Act, and because said allega-

[fol. 6435]

tions relate to the closed shop contract which is specifically authorized by the National Labor Relations Act.

197.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Page 130 of the transcript of the record denying respondent's and intervener's Motions to Dismiss the Complaint.

198.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Pages 130, 131 of the transcript of the record denying the application for an election made by the intervener, Donnelly Garment Workers' Union, and refusing to entertain in this proceeding a petition for an election.

199.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Page 194 of the transcript of the record denying the motion of the intervener, Donnelly Garment Workers' Union, for a continuance of this proceeding for the purpose of the Board's holding an election to determine the representatives of the majority of the employees of respondent and until the results of such election are known.

200.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Page 214 of the transcript of the [fol. 6436] record denying, except as to paragraphs (o) and (p), respondent's Motion (Exhibit 1-ZZZ) to Strike Portions of the Complaint as set forth in said Motion.

201.

Respondent excepts to the ruling and comment of the Trial Examiner set forth on Page 228 of the transcript of the record that he was "not bound by the rules of evidence and why be bound by any technical proceedings of the Court", and to his comment on Page 229, to wit, "We will proceed on the basis I have just explained".

202.

Respondent excepts to the ruling and action of the Trial Examiner overruling objection to testimony regarding the Donnelly Loyalty League and admitting testimony concerning same, which ruling and action is set forth in the

following excerpt from the transcript of the record, Pages 272, 273:

"Q. Are you still a member of the Loyalty League?

"A. Yes, sir.

"Mr. Tyler: Just a moment, Mr. Examiner. I object to any testimony or questions in regard to the Donnelly Loyalty League, for the reason it is purely a social organization that has no connection whatever with the matters involved in this case or with the Donnelly Garment Workers Union.

"Trial Examiner Batten: Of course, Mr. Tyler, they allege it is a labor organization, and I presume the only way I could determine that is to get some facts that will enable me to do it. So, I will overrule the objection."

[fol. 6437] 203.

4. Respondent excepts to the ruling and action of the Trial Examiner admitting in evidence Board's Exhibit 2 over the objection of respondent and intervener, which ruling and action are set forth in the transcript of the record at pages 305, 306, as follows:

"Mr. Leary: Board offers its Exhibit 2.

"Mr. Ingraham: I object for the reason that there has been no showing that the Donnelly Company Athletic Club —what is the name of this? The N.D.A.A. represents the company in any shape, way, shape or form, and nothing that it publishes in any way is binding upon the respondent.

"Trial Examiner Batten: Well, you are offering it in its entirety?

"Mr. Leary: I am, Mr. Examiner; yes, sir.

"Mr. Tyler: The intervener desires to object to it on the ground that nothing done or said by the Athletic Association would be binding on the Donnelly Garment Workers' Union or any of their members; also, that it is incompetent, irrelevant and immaterial.

"Trial Examiner Batten: Well, of course, at this stage in the proceeding, it is pretty difficult for me to determine what, if anything, has any relevancy. So I will receive it

subject to the connection with later testimony. In other words, the first day this hearing starts, I certainly can't tell what relevancy anything has.

(The document heretofore marked as 'Board's Exhibit No. 2' was received in evidence.)"

204.

Respondent excepts to the ruling and action of the Trial Examiner set forth on Page 360 of the transcript of the record as follows:

[fol. 6438] Q. Your memory is a complete blank on this matter of a stenographer and how she was obtained and who she was and so forth?

Mr. Tyler: Well, I object to that as repetition and argument with his witness. She said she doesn't remember. I object to the method of cross-examination and browbeating of this witness.

"Trial Examiner Batten: Now, Mr. Tyler, there is no browbeating or even indication of it thus far, not even a semblance of it thus far. I think Mr. Leary has been very gentlemanly, and that is what I expect all counsel to be in this hearing. Now, I am here for some purposes and if it got to the point in this hearing where anybody attempts to browbeat a witness, I will see that they are amply protected.

"Mr. Tyler: I submit that repeating the question with emphasis after she once answered it amounts to improper cross-examination, and it is not proper at this time.

"Trial Examiner Batten: You may answer".

205.

Respondent excepts to the ruling and action of the Trial Examiner striking of the answer of witness Rose Todd as set forth in the transcript of the record at Pages 428, 429, 430, as follows:

"Q. Well, did you know on April 22d that Fern Sigler was in the union?

"A. Mr. Leary, I am not clear on the date of that.

"Q. Well, that would be the day before this meeting.

"A. In the evening; possibly that night.

"Q. April 22d?

"A. It was either the 22d or the 23d. I don't know which it was. Whatever date that you say will have to stand, because I couldn't remember the date. It was the first time that I knew anything about Sylvia Hull. I didn't know anything about Fern Sigler until this morning. So, what,—in that conversation there, I don't think I am referring to Fern at the time. It was just a general discussion of different people, about their feeling toward people that belonged to the International Union. As you [fol. 6439] will remember, that feeling was created by the disturbance that was going on around town, and particularly up at 26th and Grand.

"Mr. Leary: I move, Mr. Examiner, that be stricken as not responsive.

"Mr. Leary: Let the whole answer be stricken.

"Trial Examiner Batten: The entire answer may be stricken,*****."

206.

Respondent excepts to the ruling and action of the Trial Examiner overruling objection of respondent and intervener to the cross-examination by Mr. Langsdale, attorney for the International Ladies' Garment Workers' Union, of witnesses in this proceeding, which objections and ruling are set forth at pages 514, 515 of the transcript of the record as follows:

"Mr. Lane: Mr. Examiner, prior to Mr. Langsdale's cross-examination, I renew my objection as to his right to cross-examine this witness on the ground that he is taking the position adversary to that of the Board, which he, being counsel for the International Ladies' Garment Workers' Union, which is the claimant in this case.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: The objections are overruled.

"Mr. Langsdale: Shall I proceed?

"Trial Examiner Batten: Yes, sir."

Respondent excepts the rulings, action and comments of the trial examiner concerning the witness Rose Todd and her testimony appearing on Pages 557 to 559 of the transcript of the record for the reason that same show the bias and prejudice of the Trial Examiner against the [fol. 6440] respondent, and show his failure and refusal to consider testimony favorable to respondent and show that respondent was denied a fair and impartial hearing herein by the Trial Examiner and for the reason that the Trial Examiner was thereby attempting to intimidate and confuse the witness and inject into the record a highly prejudicial conclusion and statement concerning the said witness for the purpose of misleading the Labor Board and any Court that might review the evidence, and for the reason that said bias and prejudice of the Trial Examiner were and are highly prejudicial to respondent in that same were carried forward into, and permeate, the findings of fact, conclusions and recommendations of the Trial Examiner which comments and action of the Trial Examiner are set forth in the following excerpts from the record (pp. 557, 558, 559), to wit:

"Q. Did you discuss any one of the points that you recall?

"A. I surely did. I think I probably discussed—I think I probably should say, then, that I particularly discussed with her these piecework guarantees. Now, there were operators there, and they may have said something, too. No doubt they did.

"Q. Now, Miss Todd, 'may'—of course, 'may' anything. I don't want what may have happened or what might have happened. If you don't know anything about this meeting, just tell me you don't remember anything about it, and we will let it go.

"A. I just told you, Mr. Batten, that I could never forget that meeting the longest day I live.

"Mr. Ingraham: If your Honor please, I want to except to your remarks. This witness hasn't said she knows nothing about this meeting. She said they discussed every single point.

[fol. 6441] "Trial Examiner Batten: I said as to specific things that transpired at the meeting. Now, when she says

she discussed everything, Mr. Ingraham, surely you don't think that means anything from the standpoint of evidence, do you?

"Mr. Ingraham: I certainly think when she says they discussed every point, that that is about as far as anybody can go. You mean that she is to tell some conversation?

"Trial Examiner Batten: No, but I think that a person who attended one of these bargaining meetings, if that is all she can tell about it, I think she has a very, very faint recollection of what happened, not sufficient to accept in any way, in any form, as evidence of anything.

"Mr. Ingraham: I except to Your Honor's remarks.

"Trial Examiner Batten: You may except, but I am saying that I don't think it amounts to anything.

"Mr. Tyler: The intervener wishes to except, also, and calls your Honor's attention to the fact that this meeting occurred more than two years ago, attended by many people, that the results of it were principalized (crystallized) in written form, which is the summary of the witness' memory of what was done; that there is no provision or presumption that she doesn't remember conversations connected with it, any further than that, that her evidence is, you say, worthless.

If the court will recall, she has testified that these demands were submitted as demands of the union.

"Trial Examiner Batten: Well, of course, my only position about this witness is this: that either she has an extremely poor memory or else she doesn't want to remember some of these things. Now, you may take exceptions to that, because that is clearly, Mr. Tyler, my impression thus far of this witness' testimony, and I think, as the Examiner in this hearing, I have a perfect right to express such an opinion, and instead of expressing it in my report, I express it now so you may take the necessary exceptions to it.

"Mr. Ingraham: Respondent excepts to the remark.

"Mr. Tyler: The intervener excepts.

"Mr. Ingraham: As highly prejudicial.

"Trial Examiner Batten: Well, if it is incorrect, I think it is, Mr. Ingraham.

[fol. 6442] "Mr. Ingraham: I think it is incorrect.

"Mr. Stottle: Mr. Examiner, I doubt if anyone present could state what question Mr. Leary last asked, and that occurred less than an hour ago.

208.

Respondent excepts to the ruling and action of the Trial Examiner appearing on Pages 640, 641 of the transcript of the record, overruling respondent's objections to the witness being permitted to interpret a written contract and permitting the witness to give her interpretation of said contract, which said objections and rulings are disclosed by the following excerpts from the record, to wit:

"Q. Let us take in this same person with the $18 guarantee, who worked during certain weeks only 20 hours, but who during those 20 hours of work earned only $9, or rather $8.50, on a piecework basis. What would be the person's pay check for that week.

A. I am not very good at mathematics.

"Mr. Stottle: The respondent doesn't object to the witness telling what she can about that, but we do object to a witness trying to interpret a written contract, which is here in evidence, and ***** allow those interpretations of a written contract to be deemed as binding on the respondent. We don't believe that is proper.

"Trial Examiner Batten: Well, don't you think, Mr. Stottle, a person who is a party to the contract has a right to give their idea of how it should be interpreted; whether it is binding, I am not passing on that, but surely the person who signed it ought to be in a position to say what they think about it.

"Mr. Leary: I will withdraw the questio., if Mr. Stottle will point that portion out in the contract to me.

"Mr. Stottle: I say, there is a written contract that provides, that all of that is provided about the guarantee:

[fol. 6443] "Mr. Leary: Will you point that particular part out to me now?

Trial Examiner Batten: The witness may answer the question. I have said she is qualified as a party to this contract to give her idea of what it is.

209.

Respondent excepts to the ruling and action of the Trial Examiner permitting the International Ladies' Garment Workers' Union to cross-examine the Board's witnesses and other witnesses over the objection of the respondent and the intervener appearing on Page 650 through Page 654 of the transcript of the record, which objections and rulings are disclosed by the following excerpt from the transcript, to wit:-

"Mr. Lane: Now, if the Examiner pleases, before Mr. Langsdale begins any examination of this witness, I desire to object to counsel for the International Ladies Garment Workers' Union being permitted to interrogate this witness or to cross examine this witness, for the reason that counsel for that organization, the claimant in this case, having during the entire progress of this hearing sat across the counsel table from the attorneys for the Board, have continuously and constantly consulted with the attorneys for the Board, have been in numerous conferences with them, have passed notes back and forth across the counsel table, have participated in directing the course of the examination made by the Board's counsel of this witness, to permit counsel for the International Ladies' Garment Workers' Union, which has shown itself to be so identified with the Board in this case, it being the complaining party, as to have a unity of interest and to be essentially the same as the Board in this case, for purposes of prosecuting this case. To permit counsel to interrogate this witness at this time would permit a double cross-examination by the same parties of this witness. This witness has, over our objection, been subjected to what we consider cross-examination for pretty nearly three days, and to now permit counsel for the International Ladies' Garment Workers' Union to take over examination at this point, and further cross-examine, or to cross-examine this witness at all, would be unfair to this witness, would be illegal examination, and—

[fol. 6444] "Trial Examiner Batten (interrupting): Now, just a moment. Whenever you say a thing is illegal, I want you to tell me why. I mean, I can't accept that.

"Mr. Lane: On the ground that it is so far a departure from the rules of procedure and progress which obtain in courts of law, and which should obtain in administrative tribunals as to be a negation of the rules of fair play, as to deprive the intervener in this case of due process.

"Mr. Stottle: Respondent makes the same objection.

* * * * * *

"Trial Examiner Batten: I think it is very clear the rules permit a party to call witnesses, examine them, cross-examine them, and take part in the proceedings.

Mr. Langsdale, you may proceed."

210.

Respondent excepts to the ruling and action of the Trial Examiner in permitting Mr. Langsdale, as counsel for the International Union, to read into the record and interrogate the witness concerning a purported affidavit of Mrs. Reed given in another proceeding, over the objection of the Intervener and the Respondent as disclosed by the transcript of the record, pages 674 through 680, and from the following excerpts therefrom, to wit:

"Q. Let me ask you if you have read or heard read the affidavit filed in that suit, signed by Nell Quinlan Reed, dated November 5, 1937, in which she stated, 'In the first place, a group of employees—

"Mr. Lane (Interrupting): Just a moment. I am objecting, of course, to his reading the affidavit made in that trial as not being proper cross-examination of this witness and an improper way of trying to get that into this record.

"Q. (Mr. Langsdale) Have you heard this part of Mrs. Reed's affidavit read:—

"Mr. Lane (Interrupting): Just a minute. The witness' testimony, as I understand it, is she has not read or heard read any portion of that affidavit.

[fol. 6445] "Trial Examiner Batten: Mr. Lane, there is no objection to asking her if she has? You don't mean this has anything to do with the evidence, because an attorney reads it in here? I suppose if you got up and read this whole case in here, line by line, then when you got through you asked the witness if she had ever heard it read before —It doesn't mean anything when the attorney reads it.

"Mr. Lane: I object to it.

"Trial Examiner Batten: You may proceed.

"Q. (Mr. Langsdale) Let me ask you if you heard read in that lawsuit this part of Mrs. Reed's affidavit: "In the first place, a group of employees on or about March 18, 1937, came to my office and told me that all of the employees were going to meet and discuss ways and means to protect themselves against any assaults or acts of violence on the part of the International Ladies' Garment Workers' Union.'

"A. I did not know that.

"Mr. Ingraham: Well, if your Honor please, Mr. Langsdale asked this witness if she had read or heard read, rather, Mrs. Reed's affidavit, and then he proceeded to read from that affidavit, and he is still referring to some record and I think the inference is that he is still reading from an affidavit of Mrs. Reed, which would be confusing to the witness, when, in fact, he is not reading from Mrs. Reed's affidavit.

211.

Respondent excepts to the rulings and action of the Trial Examiner in overruling respondent's objection on Page 696 (697) of the transcript of the record to the examination by Mr. Langsdale of the witness upon matters gone into in chief by the Board's counsel and as to why the witness said certain things in the Exhibit referred to in the objection and to the Examiner's permitting the International Union to proceed as a separate and independent party in this proceeding, which rulings and action appear

in the following excerpts from the transcript of the record, Pages 696 (697), 698, 700, 703:

[fol. 6446] "Mr. Stottle: Mr. Examiner, respondent objects to this whole line of testimony on this exhibit for the reason that Mr. Leary went through the same exhibit and asked the same questions, and it is repetition, for one thing; and, for another thing, the transcript speaks for itself. As to why she said a certain thing or didn't say it is immaterial to any issue in the case. I believe the examiner in his own statements made some such remarks as that when this was gone into before.

"Trial Examiner Batten: I presume you are referring to this entire line of questioning, are you not?

"Mr. Stottle: As to this exhibit, yes.

"Trial Examiner Batten: I am going to sustain the objection unless you take the position that you are an entirely independent and separate party to this action, Mr. Langsdale. If you are, then I will permit you to proceed as an entirely separate and independent party.

"Mr. Langsdale: I have taken that position, and I take it now.

"Mr. Stottle: Mr. Examiner, we object to his being accorded the right to take that position.

"Trial Examiner Batten: I am not according it. The rules so provide. The International Ladies' Garment Workers' Union is mentioned in this complaint. And if that is Mr. Langsdale's position, he may proceed as a separate and independent party and assume the responsibility for the conduct of his case independent of the Board's attorneys.

"Mr. Ingraham: If the Examiner please, if Mr. Langsdale is representing a separate party he should also apprise all other parties of the position he takes, and all other parties should have pleadings setting forth his position.

"Trial Examiner Batten: I am not going to complicate this question I have raised by the matter of pleadings. I will permit you to raise it when I get my point settled.

"Mr. Lane: We do not agree with your Honor's position. Our position is, if the Examiner please, this witness is produced by the Board, and that the I.L.G.W.U., by rule 5, is made a party to the proceeding, the complaint being filed in the name of the Board, and that in attempting to cross-examine this witness Mr. Langsdale is in effect attempting to cross-examine his own witness.

"There is not anything in rule 25 which gives the Board or Mr. Langsdale the right to cross-examine his own witness."

[fol. 6447] 212.

Respondent excepts to the rulings and action of the Trial Examiner in permitting counsel for the International Union to examine and cross-examine the witness, Rose Todd, concerning matters already gone into in chief by the Board's Counsel which repetition and examination appears in the transcript beginning at Page 730 and extending through Page 742, over the repeated objections of the respondent and the intervener appearing on said pages.

213.

Respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpts from the transcript of the record, Pages 743, 744, to wit:

"Q. Now, despite the fact that you said on the 23d day of April that 'we're going to run an open shop', you presided at a meeting four days later where the Donnelly Garment Workers' Union was formed?

"Mr. Lane: Mr. Examiner, I object to that for the reason the question omits certain important additions made in the statement as shown by the transcript. The full statement attributed to Miss Todd being 'We're going to run an open shop as long as the majority feels that way. The majority is going to rule, as always.'

"Mr. Langsdale: Well, now I object to his incorporating anything in my question. I have a right to take such parts of the statement as I desire to examine her about and not use her self-serving—

"Trial Examiner Batten (interrupting): Read the question, please.

"(Whereupon, the question was read by the reporter).

"Trial Examiner Batten: You may answer."

[fol. 6448] 214.

Respondent excepts to the ruling and action of the Trial Examiner overruling the objection of respondent to the question as set forth in the following excerpt from the transcript of the record, Page 750, to wit:

"Q. If you should have some person who had had years of experience in negotiating contracts with garment companies similar to yours who should go to work for the Donnelly Garment Company and you should want them to represent you, even though they had only been there a week—

"Mr. Stottle (Interrupting): Respondent objects to the question as being wholly argumentative and speculative as to what might happen in the future and what might happen.

"Trial Examiner Batten: If you will permit him to finish the question, Mr. Stottle.

"Mr. Stottle: I did wait a while.

"Q. (By Mr. Langsdale)—would you think you should be limited in your right to employ that person or any one else to represent you?

"Mr. Stottle: Now, Mr. Examiner, we renew the objection.

"Trial Examiner Batten: You may answer.

215.

Respondent excepts to the ruling and action of the Trial Examiner in permitting counsel for the International Union to examine the witness concerning her interpretation of a written contract over the objection of the respondent and the intervenor and requiring the witness to testify to said matters, as shown by excerpts from the transcript of the record, Pages 754, 759, 760, 761, 762:

[fol. 6448-a] "Mr. Stottle: Mr. Examiner, the contract speaks for itself, whatever it may say, and we object to asking the witness to interpret something that is perfectly plain in whatever it says. If it wasn't plain I don't believe this witness would have the right to interpret a written contract.

* * * * * *

"Q. (By Mr. Langsdale) Miss Todd, paragraph 11 of the working agreement entered into on May 27, 1937,

* * * * * *

'The employer agrees that the individual who may be chosen as general chairman of the union shall be entitled to spend the necessary time on the affairs of the union and to continue her employment with the company at the proportionate rate of pay hitherto received by the company in the time thereafter given to the company.'

"Will you tell me why you as a member of this contracting committee submitted to paragraph 11, placing a limitation upon the activities of the representatives of that union as paragraph 11 does limit them?

"Trial Examiner Batten: You mean as it does or if it does?

"Mr. Langsdale: As it does.

"Mr. Patten: Mr. Examiner, intervener objects to the question, adopting for that purpose the objection heretofore made by Mr. Stottle, and sustained, and the objection made by Mr. Lane; and further—

* * * * * *

"Mr. Patten: * * * We further object because the question assumes, as other questions have assumed, that this committee submitted to it. There is no evidence whatever that they submitted to anything. For that reason we ask that the question be excluded.

"Trial Examiner Batten: Objection sustained.

"Mr. Langsdale: The union makes an offer to prove that this witness, if permitted to answer the question, would testify she intentionally desired to limit the activi-

ties of the representatives of the union for the purpose of crippling that representation, and, in addition to that, the further motive was developed by propaganda indulged in by the management of this company against union representation and the necessity therefor.

* * * * * *

[fol. 6448-b] "Trial Examiner Batten: Of course, if this witness will answer as you have just said, I will permit you to ask the question, because you have said if she is permitted to testify she would testify in a certain way. On the basis of that you certainly can proceed.

"Mr. Patten: If the Examiner please, I suggest that Mr. Langsdale agree to be bound by the witness' answer. Otherwise his offer is improper.

* * * * * *

"Q. (By Mr. Langsdale) Now, then, will you say why you did submit to the limitation of paragraph 11 upon the activities of the representatives of the Donnelly Garment Workers' Union?

* * * * * *

"A. There are no limitations on the committee of the Donnelly Garment Workers' Union.

They all take an active interest. They all have time at noon or after work, the same as I have, and you will find continuously through these minutes where they have done a lot of work and taken an active interest in it. I couldn't dominate those people if I wanted to.

"Mr. Langsdale: I move that the answer be stricken out as not responsive.

The question was, why did she submit to paragraph 11, which puts a limitation upon the activities of the members?

"Mr. Stottle: Mr. Examiner, respondent objects in that the offer of proof is not being made, and asks that it be stricken.

"Trial Examiner Batten: It may stand."

[fol. 6449] 216.

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's objection and permitting the witness Rose Todd to testify to her interpretation of written by-laws and contract as disclosed by the following excerpts from the transcript of the record, Pages 774, 775, to-wit:

"Q. But under your by-laws, in your contract, no one can continue to work for the Donnelly Garment Company who joins the International Ladies' Garment Workers' Union; is that correct?

"Mr. Stottle: Just a moment. Mr. Examiner, we object to this question for the reason, as we have several times, this just involves an interpretation of the by-laws and contract. If this witness gave an answer, your Honor wouldn't feel bound by it, if you thought the contract meant something else, and what is the materiality of having her answer something that wouldn't bind you and bind Mr. Langsdale and not bind the respondent. It possibly might be binding on the intervener, I don't know that it would be, with a written contract made by the intervener.

"Mr. Langsdale: The question is provoked by the long answer of this witness that anyone could join any organization anyone wanted to with the Donnelly Garment Company, and of course, this is very plainly written that cannot be done.

"Trial Examiner Batten: I think it isn't so much a question of interpretation of the contract. It is a question of this witness on the basis of her volunteering a statement that anybody can join anything they please.

"Q. (By Trial Examiner Batten): Now, the question, Miss Todd, is this, or at least, my question: How can a person join any union they please under the restrictions in these contracts?"

217.

Respondent excepts to the ruling and action of the Trial Examiner as disclosed by the following excerpts from the transcript of the record, Pages 784, 785, 786, 787, to-wit:

[fol. 6450] "Q. But who passed upon who belonged to that classification, group 1 operators, performing their work efficiently?

"A. Who passed on this, at this time?

"Q. Yes, under this contract.

"Mr. Stottle: If the Examiner please, respondent objects to the question as to who passed upon it. There is nothing to indicate the question has ever arisen as to whether the operator was efficient or otherwise.

"Trial Examiner Batten: Of course Miss Todd is reading this. Apparently someone has to pass on it if the question arises. I think the witness should testify who. The statement is there, as Mr. Langsdale has read it—I haven't read it.

It seems to me that this witness should state that. That apparently is the sum and substance of the paragraph.

"Mr. Stottle: How could the witness state who passed on something if it never has been passed upon?

"Q. (By Trial Examiner Batten) Miss Todd, in those classifications, where it states "who efficiently performs . . .' who would determine that efficient performance?

"Mr. Stottle: Mr. Examiner, I think we should make our objection to your own question, also—

"Trial Examiner Batten (Interrupting): You are perfectly free to.

"Mr. Stottle: —for the reason that you are asking the witness to interpret a provision of the contract which does not say who is to, and you are asking her to say who is to do something that is not provided for.

"Trial Examiner Batten: That is why I cannot possibly determine it myself by reading the contract, it does not say who it is.

"Mr. Stottle: There are lots of things that contract has not mentioned; that is one of them. If it isn't stated in the contract it is not a part of the contract.

"Trial Examiner Batten: As far as the Examiner is concerned, I would like to know what this witness, who was a

party to the contract, representing this organization, says as to who performs efficiently.

"Q. (By Trial Examiner Batten) Who determines that?

* * * * * * *

[fol. 6451] "Trial Examiner Batton: Your objection is overruled. I didn't say so, but by the following question I asked I supposed it was understood.

"Mr. Stottle: Mr. Examiner, may respondent have a continuing objection to this kind of questioning as asks for an interpretation of provisions of the contract?

"Trial Examiner Batten: I prefer that you not have if, because I don't know that I am going to make the same ruling on all of the questions that may be asked. I would prefer that you make your objections, Mr. Stottle, as the questions are asked; that is, on this matter."

218.

Respondent excepts to the ruling and action of the Trial Examiner in admitting evidence not subject to further identification of ILGWU Exhibit 2 over the objection of the respondent, as disclosed by the excerpts from the transcript of the record, Pages 821, 822, to wit:

"Mr. Stottle: Mr. Examiner, respondent objects to the introduction of this exhibit at this time because there hasn't been any identification that would show that it has any materiality on the case.

"Mr. Langsdale: Well, now, there are two objections in one. You object to it once because it isn't identified and another because it isn't material.

"Mr. Stottle: Yes. I am making both of them, neither identified properly or material if it were identified properly.

"Mr. Langsdale: Well, I think it has been sufficiently identified and certainly it is material.

"Trial Examiner Batten: Well, I don't see; I will receive it subject to further identification. I don't think this witness' statement, Mr. Langsdale, is sufficient to receive it without qualification. * * *

"I said I would receive it subject to further identification".

[fol. 6452] 219.

Respondent excepts to the ruling and action of the Trial Examiner in excluding competent and material evidence offered by respondent through the witness Rose Todd concerning the threats of the International Ladies' Garment Workers' Union against the respondent's employees and the violence of the strikes and other activities of the I.L.G.W.U. at other garment factories for the purpose of showing the effect of said activities upon the respondent's employees as being a motivating cause for the formation of the Donnelly Garment Workers' Union, and as disproving the allegations in the amended complaint that respondent dominated said Donnelly Garment Workers' Union or caused its formation.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner in the following excerpts from the transcript of the record, Page 839, to wit:

"Q. (By Mr. Stottle) Miss Todd, you had read in the paper what was going on at the other garment company plants, had you not?

"A. The papers were full of it, and I could see what was going on at Twenty-Sixth and Grand as I came to and from work.

"Mr. Langsdale: I object to that as not material, and if it is material we want to be permitted to show that when A. A. Ahner hired strikebreakers it was to prevent most of the violence she claims she saw.

"Trial Examiner Batten: We are not going to try out the newspaper in this case and have all of those articles brought in, and then have the reporters brought in and prove that it is true or not true. If there were threats and violence, bring the people in here that were threatened, and the people violence was done to, and let them testify.

"I will sustain the objection as far as that part of it goes. We are not going to try out all of those matters."

[fol. 6453] 220.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit the respondent to show the provisions contained in working agreements between the International Union and other garment manufacturing companies in Kansas City, Missouri, as tending to show the bona fides of the negotiations between respondent and intervenor as to the bargaining contracts between respondent and intervener, and as tending to refute testimony offered by the Board and the International Union that said contracts between respondent and intervener were not bona fide and did not show genuine bargaining.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner as shown by the following excerpts from the transcript of the record, Pages 857, 858, 862, 864, 865, 866, to wit:

"Q. (By Mr. Stoetle) Miss Todd, do you know what the minimum wage provision is in the Gernes, Gordon, and other contracts—* * * in this city with the International Ladies' Garment Workers' Union?

"Mr. Leary: Let the record show my objection, Mr. Examiner.

"Trial Examiner Batten: What is your objection?

"Mr. Leary: On the ground it is incompetent, irrelevant and immaterial.

"Mr. Langsdale: The union wants to further object upon the ground it is immaterial and doesn't bear upon any of the issues before the Examiner unless we want to go into all of those contracts and show where they started from, how they built them up, and even go into some of them as early as 1933 to show that they were then getting $3 and $4 a week, and the union came along and built them up to their present contract. That hasn't any bearing upon whether or not this is a company dominated union or any of the charges in the complaint.

[fol. 6454] "Mr. Ingraham: If your Honor please, Mr. Langsdale asked this witness in regard to the terms and conditions of the contract which she negotiated with the company, and his questions were directed at showing that

the contract was not a good contract for the employees. Now, I think we have a right to come in and show that it is a far better contract for the employees than any contract that the International has entered into with any other garment company in this part of the [county]. It is competent for that purpose.

* * * * * * * * * *

"The point has been raised that Miss Todd and other members of the committee didn't really negotiate.

"Here is a company that has been paying good wages, here is a company that treats its employees fairly, here is a company that does not try to beat down the wages. These employees come in and say they want to bargain collectively and want to enter into a written contract.

"The company enters into a written contract, and in doing that, because it doesn't get into a fight with the employees, and because it doesn't haggle, and because they do arrive at a fair kind of a contract and the employees have better wages than are contained in any of these other contracts. I think that is very conclusive evidence that this union is properly representing the employees.

* * * * * * * * * *

"Mr. Ingraham: I certainly think, Your Honor, that since Mr. Langsdale has gone into the question of the negotiations, and he said, 'Now, do you think this was good for your people? Do you think that provision was good for the members of your union?' I think in view of that examination of this witness we are certainly entitled to show just what contract was obtained, and of course it will show that the company gave up a great deal. The company signed a contract ———

"Trial Examiner Batten (Interrupting): Mr. Ingraham, you may go ahead on the basis you are now talking just as fully as you desire. In fact, I want you to show the negotiations, the bargaining, and the process that was gone through in arriving at it. You may go into that as fully as you care to, but I am not going to go into this matter from the standpoint of comparison with other companies here or any other place.

"Mr. Lane: It has been asserted here by Mr. Langsdale from time to time that he expects to offer evidence to establish that the intervener union is merely a sham union, that it is not in fact and under the law a representative of the employees. Now, in that connection the intervener [fol. 6455] asserts that the establishment of the results that were obtained in the contract which was entered into is an important point to be considered in determining the bona fideness of the intervener union, and in connection with determining the results that were obtained by that contract the prices and the minimum wages guaranteed by other garment concerns, the same industry, in the same community, is a point to be taken into consideration, so that a comparison of those figures will at least tend to show one of the results obtained by this contract.

"Trial Examiner Batten: I presume it would be well now to settle this question so that everyone will know, as I have done once or twice already, what my position is.

"I want you to be prepared for it, although the evidence is not submitted. I can tell you now, Mr. Lane, I do not propose to go into that matter. The only reason I tell you that is this, that you may be making your preparation and preparing an offer of proof. I want to advise the attorneys now that I am not going to try this case by comparison with other plants in this town or in other towns. It is not material to the issues in this case."

221.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining the motion of the Board's attorney and striking answers of the witness Rose Todd as shown by the following excerpts from the transcript of the record, pages 872, 873, to-wit:

"Q. Miss Todd, it is alleged in the complaint that the company caused a violent demonstration against Fern Sigler and others as a means of causing the employees either to join the Donnelly Garment Workers Union or to refrain from joining the International Union. I hand you here a paper which is marked Respondent's Exhibit No. 1, and will ask you if that is one of the notices in the newspapers that you have referred to that caused the incident at the plant that you testified about?

(Thereupon, the newspaper clipping above referred to was marked "Respondent's Exhibit No. 1" for identification.)

"Mr. Langsdale: I object to that as an improper question. She is merely handed the document and asked to identify it, and he tacks onto that question, 'Was it some-[fol. 6456] thing that caused the incident about Fern Sigler at the plant'.

"Q. (By Trial Examiner Batten) Have you seen that before, or read it? A. Yes.

"Q. At the time it was in the paper, is that it?

"A. Yes, sir. That is very definitely what caused that disturbance that morning.

"Mr. Leary: What was that?

"The Witness: That article in the paper, Sylvia saying she was going to represent the employees—

"Mr. Leary: I move that the witness' statement be stricken out. I asked the reporter what the witness' answer was.

(Thereupon the last answer was read by the reporter.)

"Mr. Leary: I move that it be stricken as not responsive.

"The Witness: Why, yes, it is, Mr. Leary, isn't it?

"Mr. Leary: I said I move that the last statement of the witness be stricken as not responsive.

"Trial Examiner Batten: It will be stricken."

And in refusing to admit respondent's Exhibit No. 1 for the purpose of showing that the matters recited in said exhibit were the cause of the alleged demonstration against Fern Sigler on April 23, 1937 which ruling and action appear on Pages 873 through 878 of the transcript of the record.

222.

Respondent further excepts to the ruling and action of the Trial Examiner in refusing to permit the witness Rose Todd to answer the following question appearing on Page 874 of the transcript of the record, to wit:

"Q. And is that, the printing of that article in the paper and the seeing of it by the employees, is that what caused the demonstration against Fern Sigler on the morning of April 23d?".

and in refusing to permit the witness Rose Todd to testify that the matters in the paper referred to in said question, [fol. 6457] to-wit, respondent's Exhibit No. 1, was the cause of the demonstration against Fern Sigler on April 23, 1937.

223.

Respondent excepts to the ruling and action of the Trial Examiner sustaining the objection of the International Ladies' Garment Workers' Union to a portion of the answer of the witness Rose Todd set forth on Page 887 of the transcript of the record, as shown by the following excerpts from the transcript of the record, Pages 886, 887, 888, to-wit:

"Q. Miss Todd, there has been some question raised here as to whether there was real bargaining between your union and the company with regard to your union contracts. I will ask you to state if there were any provisions in the contracts that were favorable to the company, did you feel that they were more than offset by the provisions which you obtained favorable to the union?

"A. Yes, we felt like that is a good contract. We have certain things that we had to give—

"Mr. Langsdale (interrupting): I object to this part of the answer as voluntary and not responsive. Her answer to the question was 'Yes'.

"Trial Examiner Batten: I will sustain the objection.

224.

Respondent excepts to the ruling and action of the Trial Examiner excluding evidence of the witness Rose Todd concerning violence and activities at other garment plants in Kansas City, which rulings are set forth in the following excerpts from the transcript of the record, Pages 908, 909, to-wit:

"Q. (By Mr. Tyler) Had you or had you not seen notices in the papers of physical violence at the Gernes plant?

[fol. 6458] "Mr. Langsdale: I object to that as immaterial and not proving any issue in this case, as to what occurred at the Gernes plant.

"Mr. Tyler: I submit what is endeavored to be shown here is whether these people of their own volition desired to form their own labor union, and in so doing they are entitled to give reasons for taking that action. If the actions are probable they are persuasive; if they are not probable they are not persuasive. But they are entitled to give such reasons as they say they had to stay out of the International and join the Donnelly Garment Workers' Union, and if they did understand violence was being exerted by the International, that might well be a reason—whether it was true or not, if they so understood, that might well be a reason for their choice, and they are entitled to show good faith for their choice by citing their reasons.

"Mr. Langsdale: That speech might be proper at some other stage of the proceedings.

"Trial Examiner Batten: We will forget about speeches. I will sustain the objection. As I said yesterday, I am not going into all of these rumors. If you have any evidence of anyone who was threatened personally, they may come up and testify to it personally and I will receive that testimony, but I am not in this hearing going into all of the rumors that fly around during an organizational campaign of unions.

"Mr. Tyler: It is not the truth of the violence I am establishing. It is merely the reason these people had for staying out of the International and forming their own union.

"Trial Examiner Batten: I don't think it is material for the purpose for which you have offered it."

225.

Respondent excepts to the ruling and action of the Trial Examiner in excluding similar evidence, which rulings and action are set forth in the transcript of the record at Pages 910, 911, 913, to-wit:

"Q. Did you see any of the banners or signs the pickets carried? A. Yes, sir.

Q. Do you remember what they said on them?

[fol. 6459] "Trial Examiner Batten: Just a moment, Mr. Tyler. I do not intend to receive any of that, either, unless it is something which was unlawful or illegal. If these pickets picketed this plant in the way in which they are permitted to under the law and there was nothing unlawful about it which amounted to actual coercion, I do not intend to go into all of those matters.

"Mr. Tyler: I expect to show, if the Court please, that these signs contained untruthful statements, and that that had some effect on the choice these people made.

"Trial Examiner Batten: I would suggest you embody that all in an offer of proof.

"Mr. Tyler: I submit to your Honor that in showing what their real choice of labor unions was they have a right to refer to any conduct, lawful or unlawful, of the International to show why they didn't want to join it. That is the vital crux. If the International had a habit of wearing red neckties and they didn't like red neckties and they didn't want to join the union for that reason, I submit they have a right to give their reasons for preferring their own union.

"Trial Examiner Batten: As I say, I do not propose to go into it with this witness, and if that is your theory on this particular matter you may submit it as an offer of proof.

"Mr. Stottle: Mr. Examiner, you have stated every party has an exception without asking for it?

"Trial Examiner Batten: That is right.

"Mr. Stottle: In order that it might be clear, would the respondent be granted an exception to a question asked by the intervener when it is overruled?

"Trial Examiner Batten: All parties receive exceptions to all adverse rulings.

"Mr. Stottle: You might not deem it adverse to us.

"Trial Examiner Batten: I am not going to pass on that. If the parties deem it adverse you may have the exception. In other words, I do not intend to go through the record and determine whether it is adverse to certain parties or not.

"Mr. Stottle: I am not objecting to the intervener—I asked if I would have an exception to the Examiner's [fol. 6460] ruling, even though the ruling was made to a question asked by the Intervener.

"Trial Examiner Batten: I would say yes.

"Mr. Langsdale: Even if he does not make an objection?

"Trial Examiner Batten: Yes, if it is adverse."

226.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to receive evidence concerning the violence and activities of the International Union at other garment factories in Kansas City and the effect thereof upon the employees of respondent and in refusing to accept the offer of proof made thereon by the intervener at Pages 913, 914, 916 of the transcript of the record, as follows, to wit:

"Mr. Tyler: I wish to make an offer of proof.

"Intervener offers to prove by this witness that for months before the organization of the Donnelly Garment Workers' Union the employees had seen numerous accounts of violence by the International against employees of other garment plants in Kansas City and had, many of them, seen such violence with their own eyes, and had, many of them if not all, heard reports of such violence, that they were in a state of almost hysteria from constantly overheard statements that the same tactics were to be applied to the employees at the Donnelly Garment Company, and that this was a reason which affected them in their choice as to forming their own union or joining the International or staying out of all unions.

"Mr. Leary: I object to the offer of proof, Mr. Examiner.

"Trial Examiner Batten: The offer is denied."

227.

Respondent excepts to the comments of the Trial Examiner on Pages 956, 957, of the transcript of the record with reference to the minutes of the Donnelly Garment Workers' Union because such comments show the bias and prejudice of the Trial Examiner and his intention to disregard the [fol. 6461] minutes as evidence in this proceeding, in so far as same are favorable to respondent.

228.

Respondent excepts to the rulings and action of the Trial Examiner in striking the answers of the witness Rose Todd as shown by the following excerpts from the transcript of the record, Pages 966, 967 as follows, to wit:

"Q. (By Trial Examiner Batten): Now, what was the situation before the contract?

"A. The situation before had been that the employer had the right to increase or reduce his working force, but this contract gives the union also the right to interfere if he feels so—if we feel that someone is being allowed to go unnecessarily.

"Q. You mean because of the union activity?

"A. Well, no, not necessarily that. We certainly would do that if they were being let go because of union activity, but if they were being let go and we felt it was not right, the union still has the right to go to the employer and see if these people couldn't be retained.

"Mr. Langsdale: Now, I object to that answer and ask that it be stricken out as an explanation for paragraph 14; because there isn't anything in paragraph 14 upon which to base that statement or conclusion, not anything. That says, 'The employer shall have the right to discharge.'

"Trial Examiner Batten: I was just getting ready to ask another question or two, but in view of your motion I will have it stricken. I was going into that some more. You may proceed."

229.

Respondent excepts to the ruling and action of the Trial Examiner and his comments upon the testimony of the witness Rose Todd as shown by the following excerpts from the transcript of the record at Page 970, to wit:

[fol. 6462] "* * * This Group 1 operators gives these operators a much higher guarantee than they had ever been guaranteed before. Forty per cent of them receiving—

"Mr. Langsdale (Interrupting): Now, I object to that answer as a conclusion upon the part of the witness. The evidence ought to be as to what the increase is.

"Mr. Tyler: I think it is desirable that she should give the figures as she knows them, but I think that if she can say as a fact that the figures are higher, she is entitled to state that, even if she can't give the figures.

"Trial Examiner Batten: I don't think it means a thing in the way she answered, much higher. If she doesn't know, let's get somebody here that does. I mean, there is no use trying to have a witness answer questions that they can't answer. Now, surely there is somebody in the organization or with the respondent who could very definitely state, Mr. Tyler."

220

Respondent excepts to the ruling and action of the Trial Examiner excluding and refusing to hear or consider evidence comparing the wages and other working conditions provided for in the contract between the respondent and Donnelly Garment Workers' Union in comparison with like wages and conditions existing under contracts between the International Ladies' Garment Workers' Union and other garment manufacturing companies in and about Kansas City, Missouri.

In connection with the foregoing exception, respondent excepts to the rulings, comments and action of the Trial Examiner as set forth in the following excerpts from the transcript of the record at Pages 981, 982, 983, to wit:

"Q. Miss Todd, did you hear the testimony of Velma Dowdy in the injunction suit tried before Judge Miller?

"A. Yes, sir.

[fol. 6463] "Q. Have you had occasion to use the figures she testified that she paid to the International Ladies' Garment Workers' Union as a member of that union for a period of a year—* * * the figures she testified she paid to the International Ladies' Garment Workers' Union as a

member of that union with the figures which the members of the Donnelly Garment Workers' Union paid to their union, each for a period of one year?

"Now, don't answer yet.

"Mr. Langsdale: I object to that as immaterial. It doesn't tend to prove or disprove any issues in this case. It involves a lot of collateral issues which will greatly prolong this hearing, as we should be entitled to show what we do with that money and why we need it.

"Trial Examiner Batten: I now rule it is absolutely immaterial and irrelevant to this hearing. I do not intend to have a comparison between the International Ladies' Garment Workers' and the Donnelly Garment Workers' Unions. The International Ladies' Garment Workers' Union is not on trial here, neither is the Donnelly Garment Workers' Union. It is the respondent who is here answering to charges of unfair labor practices. That is the thing we are going to try. If you have any further testimony of any kind pertaining to this matter you can present it in the form of an offer of proof, but I do not intend to receive it."

231.

Respondent excepts to the ruling and action of the Trial Examiner refusing to hear or consider evidence concerning the application of the Donnelly Garment Workers' Union that the Labor Board hold an election by respondent's employees as to the bargaining agency or union which they desired to represent them.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpts from the transcript of the record at Pages 1000, 1001, to wit:

[fol. 6464] "Q. Did the Donnelly Garment Workers' Union ever petition the National Labor Relations Board to hold an election of employees?

"A. Yes, sir.

"Mr. Leary: I object to that, Mr. Examiner, and move the answer be stricken. I think if there is any petition they might have filed, it would be the best evidence.

"Trial Examiner Batten: Well, of course, I think that it is immaterial whether they have or haven't, so far as this hearing is concerned. ****

"Trial Examiner Batten: Mr. Tyler, I don't see it has anything to do with this hearing at all. Any matter connected with the petition or anything with relation to it.

"Mr. Tyler: Then, I wish to make an offer of proof.

"Trial Examiner Batten: You may make an offer of proof.

"Mr. Tyler: I offer to prove by this witness that the Donnelly Garment Workers' Union has filed two petitions with the National Labor Relations Board for an election of the employees as to bargaining representatives and labor unions, both recently, before the beginning of this hearing; that the reason they did not file any such petition earlier was because they had a contract with their employer and were operating satisfactorily under it through representatives of their own choosing, and they felt that their situation was satisfactory and that if any outsider disputed the claim that they were being represented by representatives of their own choice, it was devolved upon such outsider to ask for such an election to change the status quo. Also, that the union on several occasions authorized their attorney to agree to submit to an election of the employees and abide by the result, and that that was done in the record and the three-judge court hearing and again during the hearing before Judge Miller."

232.

Respondent excepts to the ruling and action of the Trial Examiner striking portion of the answer of the witness Rose Todd as set forth in the following excerpts from the transcript of the record at Page 1018, to wit:

[fol. 6465] "Q. Have any request been made by the union from the company for permission to use those bulletin boards?

"A. No, sir. Anybody uses them, and we have just used them.

"Mr. Leary: I move to strike all except the first two words of her answer as not responsive.

"Trial Examiner Batten: It may be stricken."

233.

Respondent excepts to the ruling, action and comments of the Trial Examiner upon testimony of the witness Rose Todd as shown by the following excerpts from the transcript of the record, Pages 1018, 1019, to wit:

"Q. (By Mr. Tyler): Now, at the time you received what I believe you have testified to as the only raise you have had from the company, is it or is it not a fact that a large number of employees received raises at the same time?

"A. It is a fact.

"Mr. Langsdale: I object to this constant leading of this witness, his own witness, his own client, and I suggest that the payroll is the best evidence of that. How does this woman know what was on everybody's envelope or everybody's check?

"Q. (By Mr. Tyler) She has not testified to everybody's envelope or everybody's check.

"Trial Examiner Batten: Mr. Langsdale, I think your objection goes to the weight that may be given this testimony. If that remains as it now stands, without any cooperation, or anything of the kind, certainly the Examiner nor the Board could give a great deal of weight to it."

234.

Respondent excepts to the ruling and action of the Trial Examiner striking a portion of the answer of the witness Rose Todd as set forth in the following excerpt from the transcript of the record, Page 1037, to wit:

[fol. 6466] "Q. Had you prior to March 18, 1937, ever been required to show an identification card in order to gain admittance to the plant?

A. No, sir, I don't recall any need for one before that.

"Mr. Langsdale: I ask that the latter part of the answer be stricken out as not responsive, and voluntary.

"Trial Examiner Batten: It may be stricken."

Respondent excepts to the ruling and action of the Trial Examiner in admitting evidence and exhibits concerning the Nelly Don Country Club, which testimony and exhibits are set forth and referred to on Pages 1158 to 1167 of the transcript of the record, for the reason that same are wholly immaterial to any of the issues herein.

In connection with the foregoing exception, respondent excepts to the ruling, action and comments of the Trial Examiner in admitting the testimony and refusing to sustain respondent's and intervener's objections, as set forth in the following excerpts from the transcript of the record at Pages 1158, 1159, 1160, 1161, 1163, to wit:

"Q. Is there another association, I mean different from any of those that have up to now been mentioned, to which you pay $2 a year dues?

"Mr. Stottle. Mr. Examiner, respondent objects to getting into still additional organizations, if there are any. Certainly the respondent has a right to provide a country club for its employees if they want to, and let them pay so much a month. There is no showing that it is done for the Donnelly Garment Workers' Union.

"Trial Examiner Batten: I don't suppose there is any argument that the respondent could furnish the employees a country club for nothing if they wanted to."

[fol. 6467] "Mr. Stottle. And of course it would not be material to these issues.

"Trial Examiner Batten. I can't determine whether it is material or not until I find out about this matter of these rentals Mr. Langsdale is inquiring about.

"Mr. Langsdale. Read the question, please.

(Thereupon the last question was read by the reporter)

"A. I haven't mentioned all of the ones there are.

"Q. (By Mr. Langsdale) To whom do you pay this $2 a year?

"A. I think that card says "Nelly Don Country Club."

"Q. I hand you this card which has been marked International Ladies' Garment Workers' Union's Exhibit No.

3 and ask you state what it is—not what is on it, but what it is.

"A. It is a membership card of the club out there.

(Thereupon the card above referred to was marked "International Ladies' Garment Workers' Union's Exhibit No. 3")

"Mr. Langsdale: I offer Exhibit No. 3.

"Mr. Stottle: Respondent objects on the ground that it is wholly immaterial to any of the issues in this case.

"Trial Examiner Batten: Thus far I don't see that it has any bearing.

"Mr. Langsdale: I want to ask some questions about it.

"Trial Examiner Batten: You may proceed.

"Mr. Lane: Intervener objects to International's Exhibit No. 3 for the reason that it is not material—it is not within any of the pleadings in this case, and for the reason that it opens up ramifications that are wholly outside of any proper inquiry in this investigation.

"Trial Examiner Batten: You may proceed until I can determine. And if when he completes t is matter, Mr. Lane, if it is not connected up with the issues in any way you may make a motion to have it stricken and it will be stricken.

"Well, has the membership, the club membership, anything to do with whether or not members of the Loyalty League have the privilege of going to the club house to a Loyalty League party?

"Mr. Stottle: Respondent objects to that as being speculative as to whether there was a Loyalty League party [fol. 6468] or what Loyalty League party, wholly immaterial or any issues. It has been testified heretofore that the employees of the Donnelly Garment Company, a great many of them, belong to the Loyalty League, that a great many of them belong to the Donnelly Garment Workers' Union, that a great many of them belong to this club business, a great many of them belong to the Athletic Association. If anything is done down there that involves employees, there is bound to be certain overlapping."

Respondent excepts to the ruling and action of the Trial Examiner in permitting counsel for the International Union to prove his offer of proof by the witness Rose Todd and in doing so to ask the questions to which the Examiner had sustained objections, and in failing and refusing to strike said offer of proof when it appeared that the International Union was unable to prove such offer by the witness, as appears from the transcript of the record, Pages 1189 to 1193.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner referred to in the foregoing exception as same further appear in the following excerpts from the transcript of the record, Pages 1189, 1192, 1193, to wit:

"Mr. Langsdale: All right, I offer to prove that, and also offer to prove that she examined all of this data during working hours, and that sometimes it amounted to 1,300 different employees or thereabouts, and that it took, many, many hours of the company's time to make the examination. That is the offer of proof I make.

"Trial Examiner Batten: Well, I will permit you to prove that by this witness.

"Mr. Stottle: Mr. Examiner, the respondent, if Mr. Langsdale is finished with that offer of proof, moves that [fol. 6469] the latter part be stricken from the record as not made in good faith, because he hasn't asked the witness to go ahead and state that she spent hundreds of hours, or whatever this offer of proof was, on this matter.

"Mr. Langsdale: Well, I—

"Mr. Stottle (interrupting): It was just—it is not fair to have it appear in the record that he made an offer of proof by this witness—

"Trial Examiner Batten: Well, Mr. Stottle, I think—I think that Mr. Langsdale's offer of proof, and the questioning of the witness subsequent thereto speaks for itself."

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's objection and receiving evidence as shown by the following excerpts from the transcript of the record, Pages 1196, 1197, to wit:

"Q. I note that in January, 1938, Fred Brown got another raise, from $97 to $108.54 every two weeks. Do you know whether or not that is a fact?

"A. No, Mr. Langsdale, I don't.

"Mr. Stottle: Mr. Examiner, respondent objects to this evidence as being immaterial, what different employees, of which there are 1,200 or 1,300 down there—what raises in pay they may have received. The answers have all been in the negative and there is probably no evidence on it as yet, but it seems to me it is immaterial.

"Trial Examiner Batten: Mr. Stottle, in the first place, I don't suppose she knows about these matters. And, in the second place, I cannot tell now whether it is material or whether it isn't. If Mr. Langsdale has the records and that is what they show—

"Mr. Langsdale (interrupting): We will bring them in, but I think I have a right to inquire whether or not the president of the union knew about these matters.

"Trial Examiner Batten: I am not telling you to discontinue.

[fol. 6470]

Respondent excepts to the ruling and action of the Trial Examiner as set forth on Page 1199 of the Transcript of the record, to wit:

"Do you know whether or not Mr. McConaughey's change from the mechanical department to the bookkeeping department was because he was a member of your board of chairmen?

"Mr. Lane: I object to that as calling for a conclusion of the witness.

"Trial Examiner Batten: Well, I presume the president of the organization, Mr. Lane, ought to know or not

know. As far as she knows, she may state whether that was the reason."

239.

Respondent excepts to the ruling and action of the Trial Examiner in permitting the witness Rose Todd to testify to her interpretation of the written contract between respondent and the Donnelly Garment Workers' Union over the objection of the respondent, which objection and the ruling of the Examiner thereon is set forth in the following excerpts from the transcript of the record, Pages 1203, 1204, to wit:

"Q. Now, are those percentages invariable? Are they fixed or do they vary?

"Mr. Stottle: Mr. Examiner, I make the objection that the written contract provides concerning that, and it is binding, and that this is asking the witness to interpret the contract.

"Trial Examiner Batten (interrupting): Well, if it is applied to this question, I have no objection. I would overrule the objection."

[fol. 6471] 240.

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's motion to strike answer of the witness May Fike, which answer, motion and ruling are set forth in the following excerpts from the transcript of the record, Pages 1256, 1257, to wit:

"Q. Who would tell you to lay off when your vacation was coming?

"A. Well, I don't remember how we knew our vacation was coming. I suppose our instructor would tell us when it came time for our vacation or when our vacation time was up.

"Mr. Ingraham: I move that the answer be stricken. She 'supposes' that that was done.

"Trial Examiner Batten: I will permit it to stand. I have permitted a lot of others to stand that were apparently supposing or thinking. It may stand for whatever value it has."

241.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence over the objections of the respondent and intervener Board's Exhibit No. 14, purporting to be the pledge signed for the Loyalty League which objection and the rulings of the Trial Examiner thereon appear in the following excerpts from the transcript of the record, Pages 1267, 1268, to wit:

"Mr. Lane. I object to exhibit No. 14 for the reason that it has not been properly indentified. There has been no showing as to where it originated, how it originated, or who was responsible for getting it up, and for that reason it could be in no way binding here on anybody.

"Trial Examiner Batten. It will be received.

"Mr. Ingraham. Respondent makes the same objection, and the further objection that it is immaterial to any issue in this case."

[fol. 6472] "Trial Examiner Batten. It is received."

242.

Respondent excepts to the ruling and action of the Trial Examiner overruling the objections of the respondent to testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Page 1269, to wit:

"Q. Do you know whether or not she said anything at the time?

"A. She said we should sign and pass that to the next girl, if I remember right.

"Mr. Ingraham. Mr. Examiner, I move the answer be stricken out as not binding on respondent, what the instructor said.

"Trial Examiner Batten. Objection overruled. By overruling the objection I am not saying it is binding, but I am overruling the objection.

"Mr. Stottle. We further object because it is not identified as to what instructor said that.

"Trial Examiner Batten: She may proceed."

243.

Respondent excepts to the rulings and action of the Trial Examiner in overruling the objections of respondent and intervener and receiving testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Pages 1269, 1270, 1271.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner in failing to sustain the objections to the testimony above referred to and the continuing objection of the respondent and intervener to said line of testimony, and further excepts to the action of the Trial Examiner in permitting [fol. 6473] said witness to continue to testify to said matters.

244.

Respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpt from the transcript of the record, Pages 1288, 1289, to wit:

"Q. Now, Mrs. Fike, do you know whether or not the instructor can see any papers that pass down the table which the girls read and sign?

"A. There is never no papers come into that section that she don't know about it before the girls get them, and—

"Mr. Lane. I move to strike the answer as not responsive.

"Trial Examiner Batten. Let her finish.

"Mr. Lane. I thought she had finished.

"Trial Examiner Batten. She was saying something else there.

"Q. (By Trial Examiner Batten). What were you saying?

"A. She is notified of what comes into that section before the girls get it. Sometimes she personally brings it to us. At that time it was started up at the other end of the machine.

"Q. (By Mr. Leary) Can she see—

"Mr. Lane. (Interrupting) Just a moment. If the witness has now finished her answer, I move that it be stricken for the reason that it is not responsive.

"Trial Examiner Batten. It may stand.

"Mr. Ingraham. Respondent makes the same objection.

"Trial Examiner Batten. Objection overruled.

"Mr. Lane. I object to it further for the reason that it calls for a conclusion on the part of the witness.

"Trial Examiner Batten. Objection overruled."

245.

Respondent excepts to the rulings and action of the Trial Examiner in overruling respondent's and intervener's [fol. 6474] motions to strike testimony of the witness May Fike as set forth in the following excerpts from the transcript of the record, Pages 1292, 1293 to wit:

"Q. What, if anything, did Fern Sigler say to you about the union button?

"Mr. Ingraham: I object to that as hearsay.

"Trial Examiner Batten. You may answer.

"A. She told me that she had on her pin that morning and that she was going to wear it into the shop, and I told her she had better not or she would lose her job.

"She said, well, she was going to wear it anyway. And I said, "Well, I will lose mine too'. And she said, well, she didn't think I would—I don't remember her exact words, but something to that effect.

"She told me to go on up and not stay with her at all, so I went upstairs. Her locker wasn't in the same place mine was. That is the last I talked to her until the evening of the 23d.

"Mr. Ingraham: I move that the answer be stricken out—I object to the part of the answer that relates to what Fern Sigler said; and I move that the balance of the answer be stricken out as self-serving.

"Mr. Lane: Intervener makes the same objection and the same motion to strike.

"Trial Examiner Batten: Objection overruled— ***** and the motion to strike is denied."

246.

Respondent excepts to the rulings and actions of the Trial Examiner admitting the evidence of the witness May Fike and refusing to strike same upon motions of respondent and intervener concerning remarks alleged to have been made by a group of employees to Fern Sigler on April 23, 1937, for the reason that the witness was unable to state who made the alleged remarks, which objections, motions and rulings appear on Pages 1296, 1297, 1298, [fol. 6475] 1299, of the transcript of the record.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpts from the transcript of the record, Pages 1305, 1306, 1307, to wit:

"Q. Now, can you identify any of the individuals that you heard say any of those things, Mrs. Fike?

"A. Well, of course they were all hollering. I couldn't describe now which ones did say which.

"Trial Examiner Batten: That is all.

"Mr. Lane: Intervener renews the motion to strike this testimony for the reason that the persons alleged to have made such remarks have not been identified.

"Trial Examiner Batten: The motion is denied.

"Mr. Ingraham: Respondent makes the same motion.

"Trial Examiner Batten: The motion is denied.

"Q. Have you told the Examiner all of the things that you heard said to Fern Sigler by this crowd of girls?

"A. They told her she couldn't belong to the International Union and work in their shop.

"Mr. Lane: Intervener makes the same objection that has been heretofore made.

"Trial Examiner Batten: The objection heretofore made.

"Mr. Lane: To this same line of testimony. I made an objection to the nature of it, and I am renewing it now.

"Trial Examiner Batten: Objection overruled.

"Mr. Lane: In order not to burden the record, may I have a continuing objection?

"Trial Examiner Batten: You mean as to this incident of April 23?

"Mr. Lane: Yes, sir.

"Mr. Ingraham: Respondent moves to strike the answer out for the reason that it calls for hearsay testimony; and for the further reason that anything the employees said is not binding on the respondent.

[fol. 6476] "Trial Examiner Batten: Motion denied.

"Mr. Ingraham: And, Your Honor, may I have a continuing objection to this incident?

"Trial Examiner Batten: Yes, to this incident."

247.

Respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpt from the transcript of the record, Page 1309, to wit:

"Q. Do you know whether or not the instructors made any effort to stop the second or third demonstration?

"A. No, sir, they didn't.

"Mr. Lane. I move to strike that out as a conclusion. She may state what she observed but not the conclusion that they made no effort.

"Trial Examiner Batten: It may stand as it is."

248.

Respondent excepts to the ruling and action of the Trial Examiner set forth in the following excerpts from the transcript of the record, Pages 1310, 1311, 1312, to wit:

"Q. Did you hear any threats made to Fern Sigler?

"A. The last bunch that came in there threatened to throw her out of the window. They said they didn't want her in there, and kept hollering at her to go home, that she

couldn't work with them and belong to that union—to our union—the International Ladies' Garment Workers' Union, and kept suggesting they throw her out of the window.

"Mr. Ingraham. I move that the answer be stricken out for the reason that it calls for hearsay testimony, not binding on the respondent; and for the further reason, the witness has not identified a single individual in this third group, and has not identified anyone as making the remarks she has just stated.

[fol. 6477] "Trial Examiner Batten: I will deny it as to the second reason. As to the third reason, the matter of identification, Mr. Leary, I think you should further identify this group.

. . . . . .

"Trial Examiner Batten: The third objection, Mr. Ingraham, is overruled."

249.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to strike the answer of the witness May Fike and denying the motion of respondent therefor as set forth in the following excerpts from the transcript of the record, Pages 1312, 1313, to-wit:

"Q. (By Trial Examiner Batten) Can you identify any of the people in the third group who said any particular thing, Mrs. Fike?

"A. Well, Ethel Carpenter and Mary Sprofera told her they didn't want her in there. I am not sure about who said 'throw her out the window'. I think that was Mary Sprofera, but I am not sure about it.

"Mr. Shepard: I ask that her answer about throwing the girl out the window be stricken out for the reason that she is not sure who said it.

"Trial Examiner Batten: Motion denied."

250.

Respondent excepts to the ruling and action of the Trial Examiner in permitting the witness May Fike to testify

to the conversations and incident relating to Fern Sigler on April 23, 1937 and in overruling respondent's and intervener's various objections thereto, including the continuing objections to said testimony, some of which objections and rulings appear on Pages 1319, 1320 of the transcript of the record as follows, to-wit:

[fol. 6478] "Mr. Ingraham (interrupting): Now, just a minute. Your Honor, is my objection standing that it is hearsay and not binding?

"Trial Examiner Batten: Well, I understood both Mr. Lane and Mr. Ingraham had a continuing objection to the incident of April 23, 1937.

"Mr. Ingraham: That is all—this, yes.

"Trial Examiner Batten: I mean, concerning all of this incident.

"Mr. Shepard: If your Honor please, I object to all of this as being absolutely irrelevant and immaterial, doesn't tend to prove anything in the case as to what these other operators have told her what they would do if Fern Sigler were her sister.

"Trial Examiner Batten: Well, you may proceed. I think we should have the whole story about these instances, irrespective of who said it."

251.

Respondent excepts to the ruling and action of the Trial Examiner overruling the objections and motions of the respondent and intervener as set forth in the following excerpt from the transcript of the record, Page 1355, to-wit:

"Q. Did you consider that second floor company property? A. Yes, sir.

"Mr. Lane: That is objected to as calling for a conclusion on the part of the witness.

"Trial Examiner Batten: Well, I think, Mr. Leary, it certainly calls for a conclusion. If you want to let it stand, however, as it is, I will overrule the objection.

"Mr. Ingraham: Respondent moves that all statements as to what Pearl Atchison said be stricken out as not binding on respondent.

"Trial Examiner Batten: Denied. I think the objection goes primarily to the weight that can be given such testimony."

[fol. 6479] 252.

Respondent excepts to the rulings and actions of the Trial Examiner in permitting the witness May Fike to read the minutes of the Donnelly Garment Workers' Union meeting of April 27, 1937, prior to the examination of said witness by counsel for the International Ladies' Garment Workers' Union, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1341, 1342, 1343, 1344, 1345, to-wit:

"Q. Now, I show you, Mrs. Fike, what have been identified as Board's Exhibits Nos. 8-1 to 8-11 inclusive, which purport to be notes on a meeting held April 27, 1937, and ask you to read those notes or minutes and, at the conclusion of your reading them will you state to the Examiner whether the things related in those minutes actually happened, to the best of your recollection?

"Mr. Ingraham: Now, Your Honor, I submit that is highly improper procedure for an examination. He can ask this witness what took place at this meeting, or what she heard, but to hand her minutes and have her read the minutes and refresh her memory or put some ideas into her head, and then have her answer the question Yes or No about the minutes I say is improper.

"Mr. Shepard: Further, Your Honor, there has been no showing that the witness' memory needs to be refreshed. She says she attended that meeting. She should be questioned from her memory of that meeting.

"Mr. Lane: Intervener desires to object on the ground it is an illegal and improper method of examination.

"Trial Examiner Batten: Well, now, as I stated, if Mr. Leary wants to proceed this way, you may go ahead and read it and answer the question.

"Mr. Leary: Now, I will withdraw the question.

"Q. (By Mr. Leary) Who presided at that meeting, Mrs. Fike? A. Rose Todd.

[fol. 6480] "Mr. Tyler: I would like to ask if the witness has finished reading the minutes.

"The Witness: I haven't finished looking through them.

"Mr. Tyler (interrupting): I think the record ought to show—

* * * * * * *

"Mr. Tyler: I objected, that the record will show that Mr. Leary has handed the witness what purports to be, and I presume is, copies of the minutes of the first meeting, and asked her to read it, and then tell him whether that expresses what happened, and then after waiting long enough for her to almost read all of them, he then withdraws the question and presents another question as to what happened. Now, that destroys the possibility of ruling on whether it is a proper method of examination to ask her to read the minutes first, and then ask her what happened.

"Trial Examiner Batten: Well, Mr. Tyler, I have already ruled that as far as the Examiner is concerned, Mr. Leary's question was proper. I said it was not improper and I overruled the objection and permitted him to proceed in that manner if he wanted to, and he chose to withdraw the question, which he has a perfect right to do."

253.

Respondent excepts to the rulings and action of the Trial Examiner overruling the objections of the respondent and the intervener to Mr. Langsdale, as counsel for the International Union, being permitted to cross-examine the Board's witness, May Fike, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1359, 1360, to-wit:

"Trial Examiner Batten: Go ahead, Mr. Langsdale.

"Mr. Lane: Before Mr. Langsdale begins his examination, I desire to renew the objection I made at the time he began his examination of Miss Todd. I don't want to burden the record by being compelled to make that objection with respect to every witness' examination, but I do renew it here so the record is clear that I am not waiving that objection.

"Trial Examiner Batten: Just what was that objection?

[fol. 6481] "Mr. Lane: I objected to his examination of Miss Todd for the reason that his position as counsel for the International is one in unity with interest of that of the Board, and in view of that fact, he should not be permitted to have a separate examination of the witness the Board produces, separate from that of the Board itself.

"Trial Examiner Batten: Supposing that you be allowed a continuing objection.

"Mr. Lane: I would like the record to show that that objection will continue throughout the trial as to the witnesses the Board produces.

"Trial Examiner Batten: On that matter—and I will make the same ruling.

"Mr. Shepard: Your Honor, may the record show that the respondent makes the same objection and requests the same objection throughout the trial?

"Trial Examiner Batten: You may have the same objection and the same ruling, and a continuing objection."

254.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining the objection of Mr. Langsdale to the witness May Fike testifying concerning the activities around the Missouri, Gernes and Gordon Garment Companies, and a discussion thereof around the Donnelly plant around April, 1937, as set forth in the following excerpts from the transcript of the record, Pages 1416, 1417, 1418, 1419, 1420, 1422, 1424, 1425, to-wit:

"Q. And wasn't it common talk around the Donnelly plant that there was a great deal of commotion out there around those Missouri, Gernes and Gordon plants?

"Mr. Langsdale: I object to that as immaterial; wouldn't tend to prove or disprove any issue in this case, and opens up a new avenue for testimony. I think the Examiner has ruled that line out up to now.

[fol. 6482] "Mr. Lane: The purpose of my making this offer, or asking this question and similar questions, is to

refute the charge that has been made here by counsel for the International and Board that this union we represent is a sham union, and my purpose is to show that atmosphere that surrounded the employees at that time, and their reaction and attitude, as having some bearing upon why they took the action they did take on the part of the union.

"Trial Examiner Batten: Mr. Lane, I will make the same ruling that I did once before. That is this: if there were any actual threats or actual violence at this plant, that in any way can be chargeable to the respondent, I certainly want to receive it.

"Now I am not going into this organizational campaign that took in the city of Kansas City. Now, I am not going all over that again, and if you want to, you may make as complete an offer of proof on that, and, after all, that may be probably the best way to present that whole problem of this campaign that was going on by the Union here in Kansas City, but I can say now that I am not going to receive it in this hearing.

* * * * * *

"Trial Examiner Batten: As I remember it. Well, now, I am going to take that position very definitely with respect to the intervener on this entire campaign that went on here in Kansas City, and I think we can just as well determine now that you shall prepare a complete offer of proof on it, because I don't intend to receive it.

"Mr. Tyler: May I understand the Examiner's ruling? Do I understand that you decline to permit us to show that the employees of the plant, as one of their reasons for choosing their own union, were affected by both fear of the campaign carried on by the International Ladies' Garment Workers' Union at nearby shops, threats that it should be able to be applied to the Donnelly employees, and dislike of those methods, you decline to let us show those things as establishing one of the reasons why these employees decided to, of their own free will, form their own union? Is that correct?

"Trial Examiner Batten: Mr. Tyler, not quite that broad. I said that if any threats were made against these

Donnelly employees, or any violence there, I even question how material that may be, but I will receive that, but on the other, on your whole idea there that that was one of the reasons for the organization of the Donnelly Garment Workers' Union, and a valid reason, I want an offer of proof submitted on it.

[fol. 6483] "Mr. Langsdale: I want to understand the Examiner's ruling on this particular matter. I have understood up to now you have permitted both respondent and the intervener to show threats made to any of the employees but not to go into disturbances that may have occurred at Gerney's or Gordon's, or anything of that sort.

"Trial Examiner Batten: That is correct. I want to eliminate everything by this offer of proof except direct threats and direct violence. I think I asked Miss Todd on several occasions, 'Did anybody threaten you? Did anybody ever commit any violence as far as you were concerned?' I will receive that in this hearings, I don't want that in the form of an offer of proof.

"Mr. Lane: I want to make this further observation with respect to the question I asked:

I desire to show the attitude or state of mind of the employees, whether that attitude was created by rumor or by ideas of terrorism, which may or may not be true, nevertheless it is the state of mind which I want to show; and to show further that that state of mind actuated to cause them to want to form their own union, and that would go to the bona fideness of their union and would be a good reason for the formation of their union, whether founded upon fact or not.

"Trial Examiner Batten: I agree with you, Mr. Lane. And, even if founded upon information which was absolutely false, if it is relevant to these issues—I mean, the truth or falsity of these things is not in issue.

"Mr. Lane: That was the purpose of my question, to show that fact.

"Trial Examiner Batten: And that matter, of course, will be included in this offer of proof.

Respondent excepts to the rulings and action of the Trial Examiner in admitting evidence of the witness Slotkin over the objections of the respondent as shown by the following excerpts from the transcript of the record, Pages 1437, 1438, 1439, to wit:

[fol. 6484] "Q. Now, I wonder, Mr. Slotkin, if you would turn to your books and state for the record the date, and the number of chairs delivered since 1935.

. . . . . .

"Mr. Stottle: Mr. Examiner, the respondent objects to this upon the ground that it is immaterial as the way the question reads. Certainly, the company has a right to order chairs, and I don't see that it would have any tendency to prove or disprove any issue in this case, unless it is identified as certain times and places that would give it some relevancy.

"Trial Examiner Batten: Well, of course, I presume after we get the record of deliveries we can determine whether or not it has any relevancy or whether it has anything to do with this hearing. I will overrule the objection. You may state.

. . . . . .

"Q. (By Trial Examiner Batten, interrupting) You mean, those are the original sheets, or those are copies?

"A. No, these are the original sheets from my ledger, as far back as I could go.

"Mr. Stottle: Mr. Examiner, we object on the ground those are not the books of original entries, but his original entries have been transferred to these sheets, and, further, on the ground that the entries there have not been shown to have been made by this particular witness.

. . . . . .

"Q. (Interrupting) Pardon me, Mr. Slotkin. Can you tell who ordered those chairs?

"A. I can't tell you that at all. I have no invoices going back to this particular year. The only record I have is from 1938, August, until now, when I had a regular system installed by an auditor.

"Mr. Stottle: Now, Mr. Examiner, the respondent objects further on the ground there is no showing as to who ordered the chairs that he is purporting to testify about.

"Trial Examiner Batten: Well, he can read into the record what this ledger sheet shows. Now, if there are any further questions, Mr. Foster, I would suggest that you wait until he has read into the record just what this ledger sheet shows."

[fol. 6485] 256.

Respondent excepts to the rulings and action of the Trial Examiner in admitting the testimony of the witness Slotkin concerning chairs furnished by that company and in permitting said witness to testify concerning the account books and records of that company relative to chairs furnished and in admitting said accounts, ledger sheets and records as exhibits in this proceeding over the repeated objections of the respondent and intervener for the reason that said evidence is and was incompetent, irrelevant and immaterial to the issues herein, and because their was no showing as to what person or company ordered the chairs referred to in said testimony or paid for same, and because the records and entries testified from were not the original entries and there was not sufficient identification to show the authenticity of such entries or by whom same were made, and because said testimony and said entries and records did not constitute the best evidence, and because it affirmatively appeared that the witness did not know what person, union or company was chargeable with ordering the chairs referred to, and because it appeared from said witness's testimony that the entries concerning chairs ordered by the Donnelly Garment Workers' Union and chairs ordered by the Donnelly Garment Company and chairs if any ordered by the Donnelly Loyalty League and by the Nelly Don Athletic Association and any other chairs furnished to the address of respondent in the Corrigan Building were all entered under the same general account and no proper or sufficient [fol. 6486] designation made therein to show which of said organizations ordered or paid for the chairs referred to, for each and all of which reasons said testimony is not binding upon the respondent and is prejudicial to re-

spondent and does not support the findings, conclusions or recommendations of the Trial Examiner and does not constitute proper or competent evidence upon which the Trial Examiner or the Board should base findings or conclusions or any order against respondent.

In connection with the foregoing exception, respondent excepts to the findings, conclusions and recommendations of the Trial Examiner contained in the Intermediate Report for the reason that same are based in part upon the incompetent and indefinite evidence of the witness Slotkin.

257.

Respondent excepts to the rulings and action of the Trial Examiner in admitting the evidence of the witness Slotkin over the repeated and continued objections of the respondent which objections were directed to the whole line of testimony of said witness and which objections and rulings of the Trial Examiner are set forth in the following excerpts from the transcript of the record, Pages 1444, 1449, 1450, 1458, 1459, 1460, 1475, 1476, 1478, 1479, 1480, to wit.

"Mr. Stottle: Mr. Examiner, may it be understood our objection continues to all of this testimony, on the same ground, the witness did not make the entries, doesn't know who ordered the chairs—

"Trial Examiner Batten: You may have a continuing objection, Mr. Stottle.

. . . . . .

[fol. 6487] "Q. I wonder if you would read whatever information is on those deposit slips pertaining to the Donnelly Garment Company or the Donnelly Garment Workers' Union?

"A. All the way through?

"Mr. Stottle: Do I understand, Mr. Examiner, our objection continues as to this testimony, also?

"Trial Examiner Batten: Yes, it may.

. . . . . .

"Mr. Foster: I want to find out, if I can, who paid for these invoices for the use of these chairs; if there is anything on those deposit slips tending to show that, I want it read into the record.

"Mr. Stottle: Well, we add to our objection that this would not be the best evidence of whether the Donnelly Garment Company or the Donnelly Garment Workers' Union paid for them, as to what they might have written on the deposit slips.

"Trial Examiner Batten: Well, of course, I can't tell until I see what he is going to read, Mr. Stottle.

* * * * * *

"Mr. Patten: I want to make a further objection and ask a qualifying question, that is, a preliminary question.

"Q. (By Mr. Patten) Mr. Slotkin, did you prepare the deposit slips yourself?

"A. Well, a few of them when the girl happened not to be at work or on vacation.

"Q. Is the person present who prepared the deposit slips?

"A. No, sir.

"Q. Is she still in the employ of your company?

"A. Well, part of these were prepared before she ever came to work at our company.

"Mr. Patten: Now, the intervener, Donnelly Garment Workers' Union, objects to the reading or introduction of these deposit slips for the reason that they are not the best evidence. Mr. Slotkin did not prepare them himself, and what somebody, some absent person unknown to [fol. 6888] this intervener may have put on there is not binding on this intervener.

"Trial Examiner Batten: The objection is overruled. (p. 1451)

* * * * * * * * *

"Trial Examiner Batten: Mr. Langsdale?

Cross-Examination

"Q. (By Mr. Langsdale) Mr. Slotkin, I hand you these pages which have been marked 'I.L.G.W.U. Exhibits 4, 5, 6 and 7' and ask you to state just what they are.

"A. They are the ledger sheets taken from the accounts receivable ledger.

. . . . . .

"Mr. Langsdale: We offer Exhibits 4, 5, 6 and 7 in evidence.

"Mr. Stottle: Respondent objects on the ground that they are not the best evidence, and that the witness personally didn't make the entries; that there is no showing that any person authorized by the Donnelly Garment Company ordered any particular item on the list; that it is not binding on the respondent and constitutes hearsay, and is wholly immaterial to the issues.

"Mr. Langsdale: Of course, they are taken from the regular records used and maintained in the business of this witness, and are material for whatever they prove.

"Trial Examiner Batten: Mr. Patten.

"Mr. Patten: Intervener objects for the reason that how the Chair Rental Company may have kept the books is a matter wholly beyond the control of the Donnelly Garment Workers' Union, or the respondent, for that matter. There is no showing here, either the respondent or the intervening union directed these accounts to be mixed up and kept on one ledger sheet.

"Trial Examiner Batten: The objections are overruled. They will be received.

. . . . . .

"Q. Let me have those deposit slips you testified from

(The deposit slips referred to were handed by the witness to Mr. Langsdale.)

"A. Those are the ones I testified to.

[fol. 6489] "Mr. Langsdale: Will you mark these as exhibits, please?

"Trial Examiner Batten: I would suggest that you mark those exhibit No. 8, 8-A, B, C, and so forth.

(Thereupon the deposit slips above referred to were marked 'I.L.G.W.U. Exhibits Nos. 8-A to 8-GG, inclusive.')

. . . . . .

"Mr. Langsdale: I offer International Ladies' Garment Workers' Union Exhibits Nos. 8-A to 8-GG, inclusive.

"Mr. Stottle: The respondent objects to the introduction of these exhibits for all the reasons that we have heretofore urged, including the fact that they are not the best evidence; that there is no showing by this witness—

"Trial Examiner Batten (interrupting): Now, just a minute, on that point. What would be the best evidence?

"Mr. Stottle: The best evidence I would say, or some of the best evidence, would be an invoice that had been sent to these different persons and the payment of this. This is just a deposit slip in the bank.

"Trial Examiner Batten: You mean the payment—you mean the check it was paid with?

"Mr. Stottle: Well, an invoice that it had been paid with. This is not even the check. It is just a notation on a bank slip.

"Trial Examiner Batten: That is true, but I assume that what we are trying to do here is get a complete record. I presume we will have to take it in part.

"Mr. Stottle: Well, that is one of the objections, that it is not the best evidence and hasn't any sufficient relation to this to have any probative effect or tend to prove or disprove any of the issues in this case. Furthermore, we object that the items on here were not made by this particular witness, and not shown to have been made by any person that would bind the respondent or the intervener, even bind this company; that it constitutes hearsay testimony and is so mixed up with other records and so mixed up between the parties here, charges to one and payment by another, that it is wholly impossible to be separated.

[fol. 6490] "Trial Examiner Batten: That doesn't indicate that on these slips, does it?

"Mr. Stottle: But the testimony taken together with these slips indicates that.

* * * * * *

"Mr. Stottle: Mr. Examiner, we wish to add, also, that it is not made from—it doesn't constitute the original entry made in this company. It is about 3 or 4 degrees off from that. The original records, entries, would be the best evidence.

"Trial Examiner Batten: If there is no further objection, they will be received.

"Mr. Patten: Intervener makes the same objection as the respondent.

"Trial Examiner Batten: They will be received."

258.

In connection with the foregoing exception of the respondent, respondent excepts to the rulings and action of the Trial Examiner in overruling the motion of the respondent to strike the evidence of the witness Slotkin, which motion and ruling are set forth in the transcript of the record, Pages 1483, 1484, as follows, to wit:

"Mr. Langsdale: I think that is all.

"Trial Examiner Batten: Mr. Stottle.

"Mr. Stottle: Mr. Examiner, Respondent now renews its motion to strike out all of the evidence of this witness, including the exhibits introduced while he has been on the stand, for the reason that there hasn't been any showing that would make them probative evidence in this case. The items are all lumped together under one account, when the witness has stated that some of them might have been for other accounts. The deposit slips are all lumped together and there is nothing here that would enable the Examiner to give any credence to the statements because they are [fol. 6491] so mixed up and were kept in such a way that they don't show the true facts, and for the further objection that we have already made, it is not the best evidence, and not the original record entries, and not binding on the respondent.

"Trial Examiner Batten: The motion to strike is denied."

259.

Respondent excepts to the rulings and action of the Trial Examiner in overruling respondent's motion to strike I. L. G. W. U. Exhibits 4, 5, 6, and 7, which motion and rulings are set forth in the following excerpts from the transcript of the record, Pages 1489, 1490, 1491, to wit:

"Q. Isn't it a fact that these ledger sheets, I. L. G. W. U. Exhibits Nos. 4, 5, 6, and 7, were made up from those invoices or from other records of your company?

"A. They were supposed to have been made up from the invoices.

"Q. (By Trial Examiner Batten) When you have a person call in for some chairs you immediately write out an order, is that it?

"A. Yes, sir.

"Q. Is that written out in triplicate, duplicate, or—

"A. In triplicate.

"Q. Then it is from that record that the entries are made on this sheet, is that right?

"A. That is right.

"Q. Then, you do have an invoice down there for each one of these items?

"A. I don't know, for all of them. You see, our records were destroyed, a lot of them, when I came to work there. After a year I managed to get myself lined up so I could install a regular system.

[fol. 6492] "Q. You mean, up to a year ago you had no regular invoice records?

"A. Nothing I could go to like I can now.

"Q. Have you anything—

"A. I might have some old invoices, a few of them, pertaining to those ledger sheets, and I might not.

"Q. What records were destroyed?

"A. The invoices. You see, they are all mixed up.

"Q. You say you destroyed the invoice records?

"A. They were destroyed. I didn't destroy them myself.

"Q. Someone representing your company destroyed them?

"A. Yes.

"Q. In other words, then, you do not have the invoices or the carbons for these invoices running back over a year ago?

"A. No, sir.

"Mr. Stottle. Mr. Examiner, respondent now renews its objection to strike I. L. G. W. U. exhibits Nos. 4, 5, 6, and 7 for the reason that they are not the original entries but are made up from some other records which were not the original entries.

"Trial Examiner Batten: I think I denied the same motion awhile ago.

"Mr. Stottle: I understand, Mr. Examiner, but this fact has been brought out since then.

"Trial Examiner Batten: You certainly wouldn't expect him to produce invoices that had been destroyed, would you?

"Mr. Stottle: No. But he says these are not the original entries.

"Trial Examiner Batten: Well, that would go to the weight to be given to these.

[fol. 6493] "Mr. Stottle: May I explain the point is, those original entries might have had Donnelly Garment Workers' Union on the invoice. If we had those it would show who was the person who ordered them.

"Trial Examiner Batten: But, Mr Stottle, they are destroyed. If the record is destroyed it is impossible to get it."

260.

Respondent excepts to the rulings and action of the Trial Examiner in permitting the witness Slotkin to testify concerning Board's Exhibits Nos. 16-A to 16-E inclusive and in admitting said Exhibits 16-A to 16-E in evidence over the objections of the respondent, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1508, 1512, 1513, 1514, to wit:

"Redirect Examination

"Q. (By Mr. Foster) Mr. Slotkin, I hand you what has been marked for the purpose of identification as Board's exhibits Nos. 16-A to E, inclusive, and ask you what these are.

"A. They are invoices made out to the Donnelly Garment Company.

(Thereupon the invoices referred to above were marked 'Board's Exhibits Nos. 16-A to 16-E, inclusive'.)

"Q. Are they carbon copies of invoices that were sent to the Donnelly Garment Company or the Donnelly Garment Workers' Union?

"A. They are supposed to be. They are carbon copies.

"Q. What do you mean by 'They are supposed to be'? Are they or are they not?

"Mr. Stottle: Mr. Examiner, respondent objects to this as not proper redirect examination. It should have been gone into in chief.

"Trial Examiner Batten: You may proceed.

* * * * * *

[fol. 6494] "Mr. Foster: Then, the Board will offer in evidence at this time what has been marked for identification Board's exhibits Nos. 16-A to 16-E, inclusive.

* * * * * *

"Mr. Stottle: Well, Mr. Examiner, the respondent objects to the introduction of Exhibits 16-A to 16-E, for the reason that they are testified to be carbon copies of Intervener's Exhibits 11 and others, whereas, an examination of Intervener's Exhibit 11 shows that they are written in ink and that this is not a carbon copy of it.

* * * * * *

"Mr. Stottle: Well, the objection is that it is purportedly testified that these are carbon copies of Intervener's Exhibits and an inspection of it will show they are not carbon copies at all of this, because the handwriting is entirely different. This is in ink and it doesn't show through on the same wording that is on the alleged carbon copy

at all, and for the further reason they haven't been identified in such a way as to make them admissible, or to show they are original records.

"Mr. Tyler: The intervener objects on the ground the witness ought to be allowed to examine the original rather than what is alleged to be a carbon copy before he is asked to testify whether they are carbon copies or not.

"Trial Examiner Batten: Well, the witness has already testified these are carbon copies, which he has taken out of his office, and if there are any discrepancies I presume this would be the place to explain them, if there is any explaining to do. They will be received."

261.

Respondent excepts to the ruling and action of the Trial Examiner in failing and refusing to sustain respondent's motion to strike answer of the witness Mrs. Greenhaw as set forth in the following excerpt from the transcript of the record, Page 1596, to wit:

"Q. Did Miss Alexander have an assistant?
"A. Yes.
"Q. Who was that?
[fol. 6495] "A. Miss Elizabeth Nobles, who, I think, would be called her assistant.

"Mr. Ingraham: I move the answer be stricken out, as the witness says she thinks Miss Nobles would be an assistant.

"Trial Examiner Batten: Well, I presume on cross-examination Mr. Ingraham, you may go into that and see whether there is any basis for the statement. I hardly think at this stage that I would strike out or sustain an objection when the witness says she has an opinion, because I think we have had quite a few of them thus far.

"You may proceed, Mr. Leary."

262.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 17 over the objection of the respondent which objection and ruling are set forth in the following excerpts

from the transcripts of the record, Pages 1598, 1599, 1600, to wit:

"Q. I show you what has been marked for identification as Board's Exhibit No. 17 and ask you to state briefly what that document is.

"A. It was a record of the amount of letters written by the department that day, and who dictated them, and who wrote them. A few were written by the girls themselves; that is, form letters or letters that were of a similar nature; some of the girls, of course, would transpose those themselves.

* * * * * *

"Mr. Leary: The Board offers its exhibit No 17.

* * * * * *

"Mr. Ingraham: Respondent objects to the introduction of Board's exhibit No. 17 for the reason that it is immaterial and irrelevant to any issue in this case. And, respondent moves that the witness' testimony be stricken out for the same reason.

"Mr. Lane: Intervener makes the same objection and motion.

"Trial Examiner Batten: Mr. Leary, what have you to say?

[fol. 6496] "Mr. Leary: I believe there has been testimony regarding the membership of Miss Alexander and Miss Nobles in the Donnelly Garment Workers' Union Mr. Examiner, and I believe this goes to show these persons were of a supervisory nature. There is no better proof in the world than to have this daily check-off; it is somewhat like an efficiency system the company uses to check up on the work done by even the stenographers in the office daily, all handled by the persons Alexander and Nobles.

"Trial Examiner Batten: It will be received."

263.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence and refusing to strike answer of the witness Mrs. Greenhaw as set forth in the

following excepts from the transcript of the record, Page 1603, to wit:

"Q. Now, with reference to this meeting where Mrs. Reed talked to the employees, I ask you to state in what manner you were advised that the meeting would be held?

"A. I think we were informed by the head of our department.

"Mr. Ingraham: I move the answer be stricken out as speculative.

"Trial Examiner Batten: It may stand."

264.

Respondents excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 18 also referred to as Board's Exhibits 18-A to 18-J inclusive, over the objections of the respondent and intervener; which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1610, 1611, 1613, to wit:

[fol. 6497] "Q. I show you what has been marked as Board's Exhibit 18, Mrs. Greenhaw, and ask you to state briefly what that is.

"A. This is a copy of the minutes of the meeting of the Donnelly Garment Workers' Union on May 25, 1937.

* * * * * *

"(Thereupon, the documents above referred to were marked as 'Board's Exhibits Nos. 18-A to 18-J, inclusive' for identification.)

* * * * * * *

"Mr. Leary: The Board offers its Exhibit 18-A to 18-J.

* * * * * * *

"Mr. Ingraham: I object to the introduction of Board's exhibit 18 for the reason that it purports to be a copy of some minutes, and the original would be the best evidence.

"Mr. Langsdale: Of course, they have produced what they say is the original, and these minutes that we have had photostated I told the Examiner we proposed to show they 'doctored' those minutes, and now we have what

she says is a carbon copy of the minutes she turned over to Marjorie Green, and Marjorie Green produces what she says is the original.

"Mr. Lane: Intervener objects to it on the ground that it is not identified.

"Mr. Leary: In what particular?

"Mr. Lane: It purports to be some copy of an original instrument which is supposed to be in existence.

"Trial Examiner Batten: It will be received.

265.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence and refusing to strike upon motions of the respondent answers of the witness Mrs. Greenhaw as set forth in the following excerpts from the transcript of the record, Pages 1615, 1616, to wit:

"Q. Do you know what Mr. Marvin Price's work was?

"A. Yes.

[fol. 6498] "Q. Will you please state what it was?

"A. I think he was called custodian, and I believe he was in charge of the ordering of materials of all sorts for that building.

"Mr. Ingraham: I move that the answer be stricken out as a conclusion of the witness.

"Trial Examiner Batten: It may stand.

"Q. (By Mr. Leary) And when you say 'materials for the building' do you distinguish in your answer from other materials that are ordered in the operation of the business?

"A. Yes. He had no connection with the ordering of piece goods and that sort of thing.

"Mr. Ingraham: I move that the answer be stricken out as a conclusion of the witness.

"Trial Examiner Batten: It may stand."

266.

Respondent excepts to the rulings and action of the Trial Examiner in admitting testimony of the witness Mrs.

Greenhaw and in overruling the objections and motions to strike of the respondent and intervener thereto as set forth in the following excerpts from the transcript of the record, Pages 1619, 1620, to wit:

"Q. (By Mr. Leary) During the months of March and April and May, 1937, Mrs. Greenhaw, did you note anything unusual in the conduct of Miss Rose Todd while she was on the tenth floor?

"Mr. Lane: That is objected to as calling for a conclusion.

"Trial Examiner Batten: You may answer.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: Overruled.

. . . . . .

[fol. 6499] "Trial Examiner Batten (interrupting): Well, now, you can just say 'yes' or 'no' to that question, whether you did.

"A. Yes.

"Q. (By Mr. Leary) What was it that you noticed, Mrs. Greenhaw?

"Mr. Ingraham: I make the same objection.

"Trial Examiner Batten: Same ruling.

"Mr. Lane: Intervener makes the same objection.

"A. I noticed that she was more than usually active in contact with the executives of the company.

"Mr. Lane: I move to strike the answer out as a mere conclusion of the witness.

"Trial Examiner Batten: It may stand.

"Mr. Ingraham: Same objection. Respondent makes the same objection—the same motion to strike.

"Trial Examiner Batten: Motion denied."

267.

Respondent excepts to the rulings and action of the Trial Examiner admitting in evidence testimony of the witness Mrs. Greenhaw as set forth in the following ex-

cerpts from the transcript of the record, Pages 1622, 1623, 1624, to wit:

"Q. (By Mr. Leary) Did this occasion when you saw the representative group of employees with Miss Todd to the tenth floor occur after the meeting when the Donnelly Garment Workers' was formed—Donnelly Garment Workers' Union was formed?

"Mr. Patten: Just a moment, please. I don't believe she has testified she saw a group of employees with Miss Todd. The question assumes she has so testified.

"Mr. Leary: I submit her testimony was that it was a representative group from the employees all over the plant.

[fol. 6500]. "Q. (By Trial Examiner Batten) Was Miss Todd with this group?

"A. I couldn't testify as to that, but I remember the occasion because it was rather unusual for people from the factory to be brought up on the tenth floor.

"Q. Now, do you remember about when this was?

"A. I remember, because a meeting took place the same day.

"Q. Well, what meeting?

"A. I am assuming it was the meeting—

"Q. (Interrupting) Well, tell me what occurred at the meeting that you say occurred the same day.

"A. There was, a committee was announced, who would represent the employees as—I don't remember how they were designated, but they were to be union representatives among the employees.

"Q. (By Mr. Leary) Was it before that meeting, Mrs. Greenhaw, that you saw this group of employees up on the tenth floor?

"A. Yes.

"Q. In Mrs. Reed's office? "A. Yes.

"Mr. Lane: I move to strike it out for the reason that the time is not fixed.

"Trial Examiner Batten: It may stand."

268.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence testimony of the witness Mrs. Greenhaw over the objections of the respondent and intervenor, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1624, 1625, to wit:

[fol. 6501] "Q. Did you have occasion to talk with Mr. Green some time in March or April, 1937?

"A. Yes.

"Q. Do you remember any particular conversation that you had with him?

"A. We had a short discussion of the strike that was being held at Gordon's at that time.

"Q. And what, if anything, was said by Mr. Green—

"Mr. Ingraham (interrupting): I object. It calls for hearsay—

"Mr. Leary (interrupting): Wait until I finish my question, please.

"Q. (By Mr. Leary) What, if anything, was said by Mr. Green at that time with regard to the strike at Gordon's?

"Mr. Ingraham: I object. It calls for hearsay testimony.

"Trial Examiner Batten: Well, I will overrule the objection as to hearsay, but the thing I am concerned about, I don't want to get into all these other strikes. Now, she may answer the question and then I will determine whether or not it may be stricken.

"Mr. Lane: Intervener makes the same objection, that it is hearsay.

"Trial Examiner Batten: Same ruling."

269.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence and permitting the witness Mrs. Greenhaw to answer question over respondent's objections as set forth in the following excerpt from the transcript of the record, Page 1641, to wit:

[fol. 6502] "Q. When you first went to work for the Donnelly Company you stated that you were in the returns department. Who was your superior in that department?

"Mr. Ingraham: I object to that as repetition.

"Mr Langsdale: She hasn't stated that.

"Mr. Ingraham: It calls for a conclusion of the witness.

"Trial Examiner Batten: I didn't make any note of it—You may answer. I don't think she mentioned anybody."

270.

Respondent excepts to the rulings, comments and action of the Trial Examiner announcing his purpose and refusal to permit testimony of respondent's employees to the effect that they selected the Donnelly Garment Workers' Union of their own free will or to tell the circumstances under which they signed petition marked I. L. G. W. U. exhibits Nos. 11-A to 11-MM inclusive, and in refusing to admit said exhibits in evidence, and in stating and announcing that the Trial Examiner would not allow respondent's employees to take the stand and testify that they were not dominated and that they did form the Donnelly Garment Workers' Union of their own free will, over the objections of the respondent and intervener, and in overruling respondent's motion to strike from the complaint and dismiss the charge that the Donnelly Garment Workers' Union is a dominated union, which rulings, comments, objections and motions are set forth in the following excerpts from the transcript of the record, Pages 1651, 1652, 1653, 1654, 1655 and 1656, to wit:

[fol. 6503] "Q. (By Mr. Langsdale) Mrs. Greenhaw, I show you a document which has been marked I. L. G. W. U. exhibit No. 11-A to No. 11-MM, inclusive, and call your attention to the first page and ask you if you ever saw that document before.

"A. Yes, I have seen it.

"Q. That is a document that purports to have been signed on the 8th day of July, 1937.

I call your attention to that page of the document which has been marked I. L. G. W. U. exhibit No. 11-H and ask you if you find a photostat of your signature on there.

"A. Yes, I do

* * * * * * *

"Q. This document reads—

"Trial Examiner Batten (Interrupting) Now, are you going to offer it?

"Mr. Langsdale: Yes, I am. Is re any objection?

"Mr. Ingraham: No.

"Trial Examiner Batten: Just a minute. I may have. "Is that an affidavit signed by all of the Donnelly Garment Company employees that they want the Donnelly Garment Workers' Union?

"Mr. Langsdale: You can read it better than I can tell you. (Handing I. L. G. W. U. exhibit No. 11-A to 11-MM, inclusive, to Trial Examiner Batten.)

"Trial Examiner Batten: I certainly will not receive it.

"Mr. Langsdale: On what ground do you object to it?

"Trial Examiner Batten. I won't receive it, at least if it is offered for any purpose to show that these people have selected this union, that it is their free selection, or anything of that kind. I positively won't receive it for that purpose.

* * * * * * *

"Mr. Langsdale: I am offering it for the purpose of showing under what circumstances this witness was induced to sign this document, which states that 'Each of us formed our own union and selected our own representatives.'

[fol. 6504] "Trial Examiner Batten: I won't receive it for that purpose, because I am not going to have 1,200 employees come up here and tell me the circumstances under which they signed this petition; and it wouldn't mean anything if they did.

"Mr. Langsdale: Then, are you going to permit them to cross-examine her with reference to her signature on there?

"Trial Examiner Batten: I certainly am not.

"Mr. Langsdale: I have no object in offering it except—

"Trial Examiner Batten (Interrupting). Well, Mr. Langsdale, my position on this situation is just this—and I have had it come up in about six cases where I have been presented either with a petition or with membership cards of a large number of employees in a plant, stating that they joined of their own free will, and so forth. Now, I don't consider that testimony, if it were given, of any value when they are put up here on the stand and testify under oath, with the respondent, and in some cases, the foreman and the superintendent present. It might result in coercion, and it might not.

"There is only one way to determine this question of majority, and that is by an election, which is not involved in this hearing. I am not going to have a parade of witnesses here on this stand testifying, and for that reason I will not accept it.

"Now, I am making that as a very definite statement now, so that all of you, if you have any offer to make on this particular matter, may prepare your offer and I will receive it at any time before the close of the hearing, but I want it thoroughly understood that I am not going into this matter.

"Mr. Ingraham: Well, your Honor, do I understand that you are not going to allow witnesses to take the stand and testify that they were not dominated and that they did form this union of their own free will?

"Trial Examiner Batten: That is exactly what I mean.

"Mr. Ingraham: Of course, respondent excepts to the ruling.

"Trial Examiner Batten: Well, I assume that the intervener will, too.

[fol. 6505] "Mr. Langsdale: You have nothing to except to.

"Mr. Lane: Yes, we do. We assume we have an exception.

"Trial Examiner Batten: Well, I want to make it very clear at this time to everybody, while I am not attempting to rule on the matter the point, as I said once before, if you want to bring some witnesses up here and offer it, I want you to do it. In other words, I don't want the respondent's attorney, or the intervener's attorney, to fail to do something that you think you should do to protect your record, but I do think I ought to tell you just exactly what my position is.

"I am not going to receive it, and—

"Mr. Stottle (interrupting): Mr. Examiner, don't you think you should make a ruling now striking out the charge that it is a dominated union, if you are not going to permit us—

"Trial Examiner Batten (interrupting): Do you want to make that motion?

"Mr. Ingraham: Yes.

"Mr. Langsdale: It appears to me this is my offer; not yours.

"Trial Examiner Batter: I say, does Mr. Stottle want to make that motion now? If so, he may do so.

"Mr. Stottle: Well, in view of the Examiner's statement as to his position on the matter, the respondent does move that the charge in the complaint that the union is a dominated union should be dismissed.

"Trial Examiner Batten: Motion denied."

271.

Respondent excepts to the rulings and action of the Trial Examiner in permitting the witness Mrs. Greenhaw to answer questions and admitting in evidence the testimony of said witness over the objections of the respondent and intervener as set forth in the following excerpts from the transcript of the record, Pages 1661, 1662, and 1664, to wit: [fol. 6506] "Q. Now, Mrs. Greenhaw, let me ask you with reference to the meeting of April 27, 1937, which was

the meeting at which the Donnelly Garment Workers' Union was formed, if you heard Miss Todd say anything at that meeting about the—officers of the Loyalty League meeting the night before and deciding the only thing to be done was to form this union?

"Mr. Ingraham: I move the question be—I object to the question for the reason that it is leading and suggestive and an improper way to examine this witness. He can ask the witness what Miss Todd said, but I don't think it is proper for him to read from what purports to be some statement, and then ask if she heard that.

"Mr. Langsdale: It seems to me it—

"Mr. Patten (interrupting): The intervener makes the same objection.

"Mr. Langsdale: The Examiner has many times said the attorney is responsible for the form in which he asks his questions.

"Trial Examiner Batten: Well, I still say that is true, and, of course, if the attorney wants to ask a question such as this, why, of course, it will have to be weighed. If it has any value, it will receive it, and if it hasn't, of course, it won't.

"Mr. Langsdale: I am willing to take that chance.

Trial Examiner Batten: I think under my ruling that is your privilege.

* * * * * *

"Mr. Lane: Mr. Examiner, the intervener further objects for the reason that that question was asked by counsel for the International Ladies' Garment Workers' Union by reference to some statement which, from his previous statement, was made by this witness in the presence of some stenographer, outside of the presence of anybody representing the Donnelly Garment Workers' Union. The statement itself is hearsay and in no sense binding upon the intervener, and for that reason is an improper document to be used to refresh this witness' memory. The question itself calls for hearsay and cannot be binding on the intervener.

"Mr. Ingraham: Respondent makes the same objection.

[fol. 6507] "Trial Examiner Batten: You may proceed.

"Mr. Langsdale: Read the question, please.

"(Thereupon the last question was read by the reporter.)

"A. She did make such a statement."

272.

Respondent excepts to the rulings and action of the Trial Examiner in permitting the witness Mrs. Greenhaw to answer questions, and admitting in evidence her testimony in response thereto, over the objections of the respondent and intervener, as set forth in the following excerpts from the transcript of the record, Pages 1665, 1666, to wit:

"Q. (By Mr. Langsdale) Mrs. Greenhaw, referring to the meeting of March 18, you identified that meeting as the one at which the letter from the International Ladies' Garment Workers' Union was read, and at which meeting Mrs. Nelly Don Reed spoke. I will ask you if at that meeting Mrs. Reed stated that she would close her shop before she would permit it to be unionized.

"Mr. Ingraham: I object to the question for the same reason that I have objected to the previous question that Mr. Langsdale asked when he was reading from this document that he has in his hand.

"Mr. Lane: Intervener makes the same objection.

"Trial Examiner Batten. I will overrule the objection.

"A. Mrs. Reed did state she would close her factory before she would permit it to be unionized.

"Q. (By Mr. Langsdale) Did Mrs. Reed state at that meeting that she would make plans to protect the employees from the union?

"Mr. Ingraham. Same objection.

[fol. 6508] "Trial Examiner Batten: Objection overruled.

"A. I don't remember the exact words, but it was definitely stated that the employees would be protected against the union, the union's activities."

273.

Respondent excepts to the rulings, comments and action of the Trial Examiner as set forth in the following excerpts from the transcript of the record, Pages 1673, 1674, to wit:

"Q. Do you recall at that time the International was conducting a strike at the Gernes, Gordon, and Missouri Garment Companies?

"Trial Examiner Batten: Now, is this just for the purpose of establishing a time?

"Mr. Ingraham: I think, in view of this witness' testimony as to what was said by Mrs. Reed at this March 18th meeting, that we have the right to show what was going on.

"Trial Examiner Batten: Well, I don't propose to go into it, Mr. Ingraham. I have said before that on that matter, in the first place, supposing that Mrs. Reed did say that, supposing that Mrs. Reed got up and said other things about it, I still can't see, as I asked you this morning, why you should be permitted to show it, whether it is true or untrue. The thing is, did Mrs. Reed get up in this meeting and make certain statements. Are the statements she made—are they of such a nature that they intimidate, coerce or restrain the employee. It isn't a question of whether they are true or not. They may be true and they may still have the same effect. I still can't see by your explanation this morning how it can be material. The only thing is, what did Mrs. Reed say at this meeting.

"Mr. Ingraham: Well, your Honor, it is our theory that we are entitled to show what the situation was, and the purpose, or one of the purposes of the March 18th meeting, and that Mrs. Reed did make a speech, and the reason she had for making the speech:"

Respondent excepts to the rulings, action and comments of the Trial Examiner and to the bias and prejudice of the Trial Examiner against respondent indicated thereby, as set forth in the following excerpts from the transcript of the record, Pages 1681, 1682, to wit:

"Q. Now, who are some of the other department heads that were engaging in coercion?

"A. Of course, that is a hard thing to answer.

"Q. Well, you are testifying now. Just give the names, please, Mrs. Greenhaw, of these people that were engaging in coercion.

"A. Because it was a general feeling—

"Q. (Interrupting) I am not—just answer—

"Trial Examiner Batten (interrupting): Just a minute. Let her finish.

"Mr. Ingraham: I object to it as not responsive.

"Trial Examiner Batten: Don't stop her. Let her say what she wanted to. We have had witnesses here before and, certainly, no one stopped them yet when they wanted to explain an answer, or talk.

"Mr. Ingraham: If your Honor please, I don't object if she will answer and then explain.

"Trial Examiner Batten: Well, let her answer. We can't tell, Mr. Ingraham, until she gets through.

"Q. (By Trial Examiner Batten) What were you saying?

"A. Well, I have worked in a number of other places, you know, and then when I went to work there there was a very different atmosphere and a different attitude among the employees and toward them, and there was a feeling that they were held very closely in line at all times [fol. 6510] by the officials of the company, and I am sure that for years the company had been building up that sort of a thing.

"Mr. Ingraham: Now, I move the answer be stricken out. It is not responsive.

"Mr. Lane: The intervener moves it be stricken out as stating a conclusion, not founded upon any fact testified to by the witness.

"Trial Examiner Batten: It may stand."

275.

Respondent excepts to the rulings and action of the Trial Examiner in receiving and admitting in evidence and into the record the document referred to as Examiner's Exhibit No. 1, and to the Examiner's comments upon same, and in permitting the witness Mrs. Greenhaw to testify from and refresh her memory from said document and admitting such testimony herein, which rulings, action and comments are set forth in the following excerpts from the transcript of the record, Pages 1713, 1714, 1715, 1716, 1717, 1718, 1719, to wit:

"Q. (By Mr. Langsdale) Let me ask you, in the statement you gave to Mr. Walsh you stated:

'Either on the day or the day before the suggestion was first made that there should be a company union organized I saw a group of seven or eight employees going into Mrs. Reed's office.' Is that right?

"A. Yes.

"Mr. Lane: Now, Mr. Examiner, may I have a continuing objection to all questions asked by counsel for the International with respect to the statement he holds in his hand, and questions where he reads from the statement, on the grounds I have heretofore stated?

[fol. 6511] "Trial Examiner Batten: Yes, you may have a continuing objection.

"Of course, I want that marked as an exhibit. It has always been my practice, whenever an attorney examines a witness from a memorandum or statement they have previously made, to ask to have that made a part of the record.

* * * * * *

"Mr. Langsdale: I have only a copy here, Mr. Examiner. Shall I identify it and offer it?

"Trial Examiner Batten: I think you had better have it marked as Trial Examiner's exhibit No. 1, and it will

be received only in so far as you have asked these questions from it. In other words, I am not receiving the entire thing.

* * * * * * *

"Mr. Lane: Intervener objects to the document for the reason that it is not identified, and for the reason that it has been stated by counsel to be a mere copy, when there is apparently an original in existence; and for the further reason it is inadmissible for any purpose, the intervener not having been present when any statements contained therein were made; and for the further reason that they are self-serving and hearsay. Intervener objects to its being received for any purpose.

"Trial Examiner Batten: It is received for whatever it purports to be.

"Mr. Lane: Intervener further objects on the ground that it is highly prejudicial and improper to permit a memorandum of that kind to be used to refresh the recollection of a witness who has testified she has no independent recollection of the matter. I say it is prejudicially erroneous to permit it to be used for that purpose.

* * * * * * *

"Trial Examiner Batten: Objection overruled.

* * * * * *

"Mr. Stottle: Mr. Examiner, the respondent objects to the Examiner's Exhibit No. 1 for the reason that it is not taken under oath, not testified to under oath, that the witness who is purported to have signed it is here on the stand now, and her own testimony should be the testimony of this witness, and not any statement that she may have prepared at some prior time. It is not even signed by the witness, and is—purports to be a carbon [fol. 6512] copy of some statement which she may have signed.

* * * * * * *

"Mr. Stottle: We also object that it is just immaterial and improper for any purpose whatsoever.

* * * * * * *

"Q. (By Trial Examiner Batten) Mrs. Greenhaw, will you look this over and tell me whether or not that is a statement that you made, and if so, when?

"A. Yes, this is a statement I made.

"Mr. Langsdale: Read it through, will you, Mrs. Greenhaw, so you can testify from all of it.

"Mr. Lane: **** I object to the Examiner's question for the reason that this document is not the best evidence, and whether this witness can, by reading it, refresh her recollection or not, could not supply the defect; it does not cure the defect that this is not the best evidence.

"Trial Examiner Batten: The objection is overruled. I am merely trying to get into the record whatever it is. I don't know what it is, but whatever it is, she apparently testified from it, and as such, she is entitled to, whether it is an affidavit or a memorandum or whatever it is, and I merely want it in the record so that it will show what it was that refreshed her memory.

"Mr. Stottle: The respondent adds to its objection that it would be prejudicial to have it in the record, the whole document, which—only a portion of it is purportedly received, because whoever reads the record to ascertain those portions must necessarily read the whole document.

"Trial Examiner Batten: Mr. Stottle, do you mean by that that it has always been a practice to cut part of something out which is introduced for a certain purpose, and that you never introduce the whole of anything?

"Mr. Stottle: No, I don't mean that. I just say that it would be necessary for anyone, in reviewing the record, yourself, or anyone else, to read this whole document in order to read the portions that you are admitting, and that it would be prejudicial to the respondent to have a document in there which is not the testimony of this witness.

"Trial Examiner Batten: Well, the objection is overruled."

[fol. 6513] In connection with the foregoing exception, respondent excepts to the receipt of the document referred to as Trial Examiner's Exhibit No. 1 and to the

testimony received concerning same and based upon same from the witness Mrs. Greenhaw, for the reason that same wrongfully and erroneously injected into the mind of the Trial Examiner prejudice against respondent, which prejudice and bias later manifested itself in the Trial Examiner's findings, conclusions and recommendations in the Intermediate Report.

276.

Respondent excepts to the rulings, action and comments of the Trial Examiner in refusing to strike answers of the witness Mrs. Greenhaw and in overruling respondent's and intervener's objections to the questions propounded to said witness, as set forth in the following excerpts from the transcript of the record, Pages 1729, 1730, to wit:

"Q. (By Mr. Langsdale) Did any incident occur while you were there in which Mr. or Mrs. Keyes was engaged that in your opinion was coercion?

"A. There were so many incidents that I can hardly recall them.

"Q. Can you recall any one?

"A. There was hardly a day—

"Mr. Shepard (Interrupting): Your Honor, I ask that these answers be stricken.

"Mr. Leary: Why?

"Trial Examiner Batten: I will not strike them.

[fol. 6514] "Mr. Stottle: They are so general, Your Honor—

"Trial Examiner Batten: But, Mr. Stottle, if you will just look back toward the beginning of this hearing you will find plenty of answers that are general. I am not going to start now—

"Mr. Lane (Interrupting): Intervener objects on the ground that it is not responsive to the question, and it is not a statement of any facts.

"Trial Examiner Batten: Mr. Lane, do you mean an attorney who is not asking a question can object on the ground that it is not responsive? Are you, the attorney

who does not ask the question, going to object that it is not responsive?

"Mr. Lane: I think if the witness gives an answer to Mr. Langsdale's question that I think is not responsive, I have a right to object, and I do object.

"Trial Examiner Batten: Objection overruled.

"Mr. Stottle: Respondent objects on the ground that it calls for a conclusion. There was no definition of the word 'coo[illegible]ion', and the answer she made was that it was of a general nature and did not state the facts, which you stated she should do.

"Trial Examiner Batten: Objection overruled."

277.

Respondent excepts to the rulings, action and comment of the Trial Examiner as set forth in the following excerpts from the transcript of the record, Pages 1733, 1734, to wit:

"Q. (By Mr. Langsdale) Did you ever hear Mr. Keyes talk to the employees about loyalty to the company?

"A. Yes.

"Mr. Lane: That is objected to as leading.

"Trial Examiner Batten: Now, Mr. Lane, you know my ruling on leading questions; I have made it so many times. You may have a continuing objection to leading questions.

"Mr. Lane: The Board, of course, will not know what I consider leading questions unless I make my objection.

[fol. 6515] "Trial Examiner Batten: Of course, I thought it would save all of these interruptions.

"Mr. Lane: Mr. Examiner, I would be very glad not to make that objection at all if there were any way of making it known what I regard as leading questions, but unless I make my objection I don't see how the Board or anybody else can tell what I regard as leading questions.

"Mr. Langsdale: The Board is supposed to have some intelligence.

"Trial Examiner Batten: I presume the persons who have to pass on this will know what weight should be given a question, irrespective of whether you think it is leading or not. If the Examiner and the Board feel it is the attorney who is doing the testifying, no weight will be given to it."

278.

In connection with the foregoing exception, respondent excepts to the rulings and action of the Trial Examiner throughout the hearing in permitting counsel for the Board and International Ladies' Garment Workers' Union to ask leading questions and place the answers desired in the mouth of the witness, and stating and announcing that testimony in response to such questions would not be given weight, and thereafter in the findings of fact, conclusions and recommendations, the Trial Examiner based same upon the testimony so elicited.

279.

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's objection as set forth in the following excerpt from the transcript of the record, Page 1742, to wit:

[fol. 6516] "'Q. Prior to 1933 was there any minimum wage scale at the Donnelly plant?'

"Mr. Stottle: Respondent objects to that question as being immaterial and relating to a time so remote as not to have any bearing on this issue here.

"Trial Examiner Batten: As to the remoteness, the objection is overruled."

280.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence testimony concerning the Loyalty League and in overruling objections of the respondent and intervener thereto, and in overruling continuing objections of respondent and intervener to all testimony concerning the Loyalty League and permitting the witnesses to continue to testify thereto, which objections and rulings are set forth in the following excerpts

from the transcript of the record, Pages 1769, 1770, 1771, to wit:

"Q. Showing you your bank statement for the month of March, 1937, is it not a fact that a deposit of $1,000 was made on March 30, 1937?

"A. That is right.

"Mr. Stottle: Just a moment. Mr. Examiner, respondent objects to this question, and all questions relating to the Loyalty League, on the ground that it is immaterial. We understand the allegation in the complaint that there is a connection, but there has been no testimony indicating that the Loyalty League has anything to do with the Donnelly Garment Workers' Union. It is merely a social organization, and the Donnelly Garment Workers' Union is a separate organization.

"We think it is encumbering the record to go into these activities of the Loyalty League.

"We haven't objected a great deal to this, but we think the matter should be presented to the Examiner, and that we should have a continuing objection to any testimony regarding the Loyalty League.

[fol. 6517] "Trial Examiner Batten: Well, you may have a continuing objection. As I recall it, you have, on about three occasions objected to it at the beginning of the hearing, and I at this time will make the same ruling I have in the past. I will overrule the objection, but you may have a continuing objection.

"Mr. Stottle: And also on the ground it is not binding on the respondent, anything this witness may say, as well as being immaterial to the issues.

"Trial Examiner Batten: That may be incorporated.

"Mr. Patten: Intervener makes the same objection, and adds to it the testimony as to what may have happened in the Loyalty League prior to the organization of the union is immaterial and irrelevant.

"Trial Examiner Batten: Overruled. You desire to continuing objection, Mr. Patten?

"Mr. Patten: I do."

281.

In connection with the foregoing exception, respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence throughout the hearing over the objections and continuing objections allowed to respondent and intervener of testimony of the various witnesses concerning the Loyalty League and in failing and refusing to exclude said testimony and in taking said testimony into consideration in the findings of fact, conclusions and recommendations of the Trial Examiner and in refusing to strike same from the record, for the reason that the evidence shows that the Loyalty League, as such, had no part in the formation or administration of the Donnelly Garment Workers' Union and did not assist it in any way, and for the further reason that the evidence shows that the respondent did not participate in the formation or ad-[fol. 6518] ministration of the Loyalty League and did not act through it in any way, and for the further reason that the evidence affirmatively shows that the Loyalty League's activities were purely of a social character and that all evidence concerning the Loyalty League is immaterial to any of the issues involved in this proceeding and should not have been taken into consideration by the Trial Examiner in making his findings of fact, conclusions or recommendations set forth in the Intermediate Report.

282.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 19 and in overruling respondent's objections thereto as set forth in the following excerpts from the transcript of the record, Pages ~~1773~~, 1774, to wit:

"Q. I show you, Miss Hartman, what has been marked for identification as Board's Exhibit 19, and ask you to state whether or not that is the note taken from the official records of the Nelly Don Loyalty League that you just referred to in your testimony?

"A. That is right.

"Mr. Leary: Board offers its Exhibit 19.

"Mr. Stottle: Respondent objects to the exhibit for the grounds already stated, that it is immaterial to the issues

here, and also that it is not binding on the respondent in any way.

"Trial Examiner Batten: Well, I assume that your continuing objection applies to the note as well.

[fol. 6519] "Mr. Stottle: Well, I thought it might, but I wasn't sure that it would.

"Mr. Patten: The intervener desires its continuing objection to apply to the note.

"Trial Examiner Batten: It will be received, subject to those objections."

283.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibits Nos. 21-A to 21-O inclusive, and in overruling respondent's and intervener's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 1793 and 1842, to wit:

"Mr. Langsdale: We offer these checks which have been identified as Board's exhibits Nos. 21-A to 21-O, inclusive.

"Mr. Stottle: Respondent makes its continuing objection to these exhibits.

"Trial Examiner Batten: You may have a continuing objection.

"Mr. Lane: We make our general objection.

"Trial Examiner Batten: That is, the same continuing objection you have made?

"Mr. Lane: Yes.

"Trial Examiner Batten: I will reserve decision on the offer.

* * * * * *

"Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis; and Board's Exhibit 25, in which I reserved a decision, will be received on the same basis, subject to the same objections."

[fol. 6520] 284.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 25 and in overruling the objections of the respondent thereto as set forth in the following excerpts from the transcript of the record, Pages 1800, 1801, 1809 and 1842, to wit:

"Q. Now, I hand you this, what has been marked as Board's Exhibit 25, and ask you to state what it is, if you know.

"A. That is a statement from the First National Bank, the balance of our loan plus the interest.

* * * * * * *

"Mr. Langsdale: The Board offers its Exhibit 25.

"Mr. Stottle: Respondent makes the same continuing objection to this exhibit.

* * * * * * *

"Trial Examiner Batten: On Board's Exhibit 25, I will reserve my decision.

* * * * * * *

"Trial Examiner Batten: Board's Exhibit 21, in which I reserved a decision, will be received on the same basis, and Board's Exhibit 25, in which I reserve a decision, will be received on the same basis, subject to the same objections."

285.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 26 and in overruling respondent's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 1807, 1808, to wit:

"Q. I show you what has been marked for identification Board's exhibit No. 26 and ask you to state briefly what that is.

"A. A list of the dates of meetings, the first one beginning May 11, 1937, and ending with April 5, 1938.

* * * * * * *

[fol. 6521] "Mr. Leary: The Board offers its exhibit No. 26.

"Mr. Stottle: Respondent objects that it is immaterial and does not seem to throw any light upon the issues in this case.

"Mr. Patten: Intervener has no objection

"Trial Examiner Batten: It will be received."

286.

Respondent excepts to the rulings and action of the Trial Examiner in rejecting and refusing to receive in evidence Respondent's Exhibit No. 2 and in sustaining the objections of the Board and I. L. G. W. U. thereto, and further excepts to the rulings, comments and action of the Trial Examiner relative to the exclusion of said exhibit and similar testimony as set forth in the following excerpts from the transcript of the record, Pages 1828, 1829, 1830, to wit:

"Cross-Examination

"Q. (By Mr. Ingraham) Mrs. Tobin, you are familiar with the contracts the International has made with garment companies located in Kansas City?

"A. I am.

"Q. I will hand you respondent's exhibit No. 2 and ask you if these are photostatic copies of contracts which the International has with other garment manufacturers in Kansas City.

"A. There are two contracts here, one for the Liberty, and one for the Mayfair, which were the contracts negotiated in 1937, but have since been renewed with exchanges. The others are the contracts that are in force now.

"Q. What are the names of the other companies?

"A. Missouri, Gernes, and Gordon.

"Mr. Ingraham: Respondent offers in evidence exhibit No. 2.

[fol. 6522] "Mr. Leary: Now, I object to that, Mr. Examiner, as being entirely incompetent, immaterial, and

irrelevant. It has no bearing on the issues in this matter that we are trying now.

"Mr. Ingraham: Mr. Examiner, counsel for the Board and counsel for the International have called the Examiner's attention to various provisions in the Donnelly Garment contract with the Donnelly Garment Workers' Union. I want to show that similar provisions are in the contracts that the International makes with other garment manufacturers.

"Mr. Langsdale: The International Ladies' Garment Workers' Union objects to the exhibit for the reason that the only purpose of offering the contract with the Donnelly Garment Workers' Union and the Donnelly Garment Company and the only purpose of calling attention to any provisions thereof was upon the question of whether or not there was bargaining as provided by the Wagner Act. The provisions of these contracts are in no way material. The comparison between these and the contracts between the Donnelly Garment Workers' Union and the Donnelly Garment Company are in no way material. The only question is, were the contracts made with the Donnelly Garment Workers' Union and the Donnelly Garment Company the result of collective bargaining by a free and independent union, as provided by the Wagner Act and the National Labor Relations Act?

"Trial Examiner Batten: Mr. Leary, do you agree with Mr. Langsdale that the only purpose of the Donnelly contracts and the questions with respect to them was for the purpose of showing what negotiations were conducted, and that is all?

"Mr. Leary: That is it, yes.

"Trial Examiner Batten: Of course, if that testimony is limited, as you say it is, I will reject the offer of these contracts, because any comparison of the contracts would be unnecessary."

287.

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner in refusing to permit the witness Wave Tobin to testify

in response to question asked by counsel for respondent and in sustaining the objection of the I. L. G. W. U. there-
[fol. 6523] to, as set forth in the following excerpts from the transcript of the record, Page 1831, to wit:

"Q. (By Mr. Ingraham) I will ask you if that contract did not contain the provision that 'Present prices for piece workers shall remain intact and shall be based on a basis that not less than 75 per cent of the workers in the different departments of the shop shall be able to earn not less than $15 per week per capita.'?

"Mr. Bringsdale: The International Ladies' Garment Workers' Union objects to the question for all of the reasons heretofore stated as objections to the offer of the contract itself.

"Trial Examiner Batten: Sustained."

288.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence the stipulation set forth on pages 1834 and 1835 of the transcript of the record with reference to the portions of the building at 1828-30 Walnut Street which was leased or occupied by respondent and in overruling respondent's and Intervener's objections thereto, for the reason that while the parties stipulated as to what the facts were, the respondent and intervener objected to said facts being admitted in evidence because same were immaterial to any of the issues herein, which said objections and ruling of the Trial Examiner are set forth in the following excerpts from the transcript of the record, Page 1836, to wit:

"Mr. Tyler: It is agreeable to me, of course, subject to the objection that it is incompetent, immaterial and irrelevant.

[fol. 6524] "Mr. Stottle: Mr. Examiner, respondent also objects that it is immaterial. We are stipulating as to the facts.

"Trial Examiner Batten: When asking you about the stipulation I am not asking you to forego any objection. All you are agreeing to is the facts; whether or not they are relevant is an entirely different matter.

"We will proceed."

289.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 20 and in overruling respondent's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1841, 1842, to wit:

"Mr. Leary: Mr. Examiner, we have had prepared from the bank statements which were used during the testimony of Miss Hartman in regard to the Nelly Don Loyalty League this morning, the exhibit for which Board's Exhibit No. 20 was reserved. I now offer that exhibit.

* * * * * *

"Mr. Stottle: Mr. Examiner, that is subject to our continuing objection as to materiality as to the Loyalty League matter.

"Trial Examiner Batten: It will be received subject to the objections of the respondent and the intervener, both, that is, your continuing objections."

290.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 27 and in overruling respondent's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1843, 1844, 1845, to wit:

[fol. 6525] "Mr. Leary: *** Now, I offer, Mr. Examiner, what has been identified as Board's Exhibit No. 27; a newspaper clipping from the Kansas City Times under date of May 11, 1937. Is it not a fact, Mr. Ingraham, that you agree that the reporter who took this statement, if called to testify, would testify that the statements that were attributed to Senator Reed were made to that reporter by Senator Reed?

"Mr. Ingraham: That is correct. I am not admitting that Senator Reed made the statements, but just that the reporter would so testify.

"Mr. Tyler: The intervener admits that the reporter would so testify, and objects that nothing that Senator Reed said could in any way be binding on the intervener.

"Mr. Ingraham: Respondent makes the same objection.

. . . . . .

"Trial Examiner Batten: Well, it will be received on the basis of the allegations that you have in your complaint. As to what bearing it has on the issues, I think would be a matter for the Examiner to determine."

291.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence Board's Exhibit No. 29-A and 29-B and in overruling respondent's and intervener's objections thereto as set forth in the following excerpts from the transcript of record, Pages 1845, 1846, to wit:

"Mr. Leary: Mr. Examiner, I offer for the record what has been marked for identification as Board's Exhibit 29-A and 29-B, which is a computation of the salaries received by certain individuals who are officers of the Donnelly Garment Workers' Union, such computations of these persons' salaries being from January 15, 1937 to and including December 31, 1938.

. . . . . .

"Mr. Stottle: Yes. Respondent wants to object to the materiality of this, assuming that it is correct.

"Mr. Tyler: Intervener makes the same objection. It has no tendency to prove or disprove any issues in this case.

"Trial Examiner Batten: It will be received."

292.

[fol. 6526] Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence Board's Exhibit 23 and 24-A, 24-B and 24-C and in overruling respondent's and intervener's objections thereto as set forth

in the following excerpts from the transcript of the record, Pages 1856, 1857, to wit:

"Mr. Leary: Board offers Exhibits 23 and 24-A, 24-B, 24-C.

"Trial Examiner Batten: Board's Exhibits 23 and 24 were those accounts; 23 was the special fund account of the Donnelly Loyalty League and 24 was the general fund account.

"Mr. Stottle: Respondent makes its continuing objection to any of those exhibits that refer to the Loyalty League matters, and also, we haven't as yet had an opportunity to check the correctness of the figures.

"Trial Examiner Batten: Well, of course, I might say this: that any exhibits which are received, of course, are received subject to correction if there are figures or dates that are found to be incorrect.

"Mr. Stottle: Then, our continuing objection was as to the materiality of that Loyalty League evidence.

"Mr. Tyler: Intervener renews its objection to any evidence in connection with the Loyalty League on the ground that it is purely a social organization, having no connection with the Donnelly Garment Workers' Union, and that any of its actions would not in any way be binding on the intervener, and that it is immaterial and irrelevant to any issue in this case.

"Trial Examiner Batten: Well, they will be received."

293.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 22 over the objections of the respondent and intervener as set forth in the following excerpts from the [fol. 6527] Transcript of the record, Page 1858, to wit:

"Mr. Leary: Board offers what purports to be Miss Hartman's memoranda of the Loyalty League and special account maintained at the First National Bank, identified as Board's Exhibit 22. I will have this photostated, and ask permission to insert the photostat.

"Trial Examiner Batten: It will be received subject to the same objections by respondent and intervener as to Board's Exhibits 23 and 24."

294.

Respondent excepts to the rulings and action of the Trial Examiner in failing and refusing to exclude Board's Exhibit No. 30 and in failing and refusing to sustain respondent's and intervener's objections thereto as set forth in the following excerpts from the transcript of the record, Pages 1858 and 1859, and in later accepting the N.R.A. testimony contained in said Board's Exhibit 30 and permitting the Board to offer evidence under said offer of proof (Transcript of Record, Page 2552):

"Mr. Leary: Yes, I have several matters. I have the offer of proof that I desire to make at this time, in connection with certain sub-sections of paragraph 11.

"Trial Examiner Batten: That will be marked Board's Exhibit 30.

. . . . . .

"Mr. Ingraham: Well, the respondent objects to the exhibit 30 for the reason it is immaterial and irrelevant to any issue in this case, and refers to matters that occurred prior to the passage of the Wagner Act.

"Mr. Tyler: Intervener makes the same objection.

"Trial Examiner Batten: I will reserve the decision on it."

[fol. 6528]

295.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence testimony taken in the so-called N. R. A.-Judge Miller cases, and excepts separately and severally to the admission in evidence of each and every part of such testimony offered by the Board or by the I. L. G. W. U., and excepts in particular to the admission in evidence of N.R.A.-Judge Miller case Exhibit No. 1-A to 1-BBBB, and to the Examiner's ruling and action in overruling the several objections to said testimony and the several motions to strike said testimony made by the respondent and intervener (and contained in N.R.A.-Judge

Miller case Exhibit No. 2-A, 2-B and 2-C), as set forth in the following excerpts from the transcript of the record, Pages 1861, 1862, to wit:

"Trial Examiner Batten: In accordance with the stipulation, which is marked Board's exhibit No. 1-DDDD, the Board has served upon all of the parties certain testimony taken from the N. R. A. proceeding and the so-called Judge Miller case.

* * * * * * *

"The first exhibit, N. R. A.-Judge Miller case exhibit No. 1-A to BBBB is certain testimony which is offered by the Board from the N. R. A. proceedings and it consists of 80 pages.

"N. R. A.-Judge Miller case exhibit No. 2-A, B, and C are the objections and motions of the respondent and intervener to strike the N. R. A. testimony offered by the Board. That is exhibit No. 1-A to BBBB, containing 80 pages, and the following ruling is made, endorsed on exhibit 2-A, B, and C, on sheet 2-C:—

* * * * * * *

"Trial Examiner Batten: *** The objection is overruled and the motion to strike is denied, and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections."

[fol. 6529] 296.

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's and intervener's objections and motions to strike the testimony contained in N. R. A.-Judge Miller case Exhibit No. 1-A to 1-BBBB and to the following limitation included in said ruling; to wit: "**** and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain objections (subjects)", which ruling is set forth on Pages 1861-2 of the record, and further excepts to the failure and refusal of the Trial Examiner to clarify said ruling and designate

what parts of said testimony were being received and what parts were being excluded by the above quoted ruling over the objections of respondent, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1862, 1863, to wit:

"Mr. Ingraham: I don't understand what you are ruling out and what you are leaving in.

"Trial Examiner Batten: I think if you take this and read it, Mr. Ingraham, you will understand just what I am receiving.

* * * * * * *

"If there is any question about it after you go over it, I will be very glad to clarify it."

In connection with the foregoing exception, respondent calls attention to the fact that the Trial Examiner later refused to clarify the above quoted ruling and overruled respondent's motion therefor.

[fol. 6530] 297.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence N. R. A.-Judge Miller case Exhibit 5-A to 5-GG inclusive, and in overruling respondent's and intervener's objections thereto and motions to strike same (as contained in N. R. A.-Judge Miller case Exhibit 6-A, 6-B and 6-C), as set forth in the following excerpts from the transcript of the record, Page 1864, to wit:

"Trial Examiner Batten: ***** N. R. A.-Judge Miller case exhibit No. 5-A to 5-GG is certain testimony offered by the Board from the Judge Miller case, consisting of 33 pages.

"Exhibit No. 6-A, B and C, the objections and motions to strike, of the respondent and intervener.

"Exhibit No. 5-A to 5-GG, the objection to such testimony is overruled, and the motion to strike is denied; and the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain subjects."

298.

In connection with the foregoing exception, respondent excepts to the limitation contained in the ruling and action of the Trial Examiner that "the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse the rulings heretofore made with reference to the introduction of evidence upon certain subjects", for the reason that said ruling and limitation renders it vague and indefinite what portions of the testimony referred to the Examiner intended to and did receive or exclude and what portions of said testimony the Examiner considered in arriving at his findings of fact, [fol. 6531] conclusions and recommendations, and respondent makes this exception to each and every ruling of the Trial Examiner to which said above quoted limitation was appended.

299.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence N. R. A.-Judge Miller case Exhibit 9-A to 9-CC inclusive, and in overruling the objections of the respondent and intervener thereto, and in denying the motions to strike said testimony of the respondent and intervener, and further excepts to the limitations contained in said ruling, as set forth in the following excerpts from the transcript of the record, Page 1865, to wit:

"Trial Examiner Batten: *** 9-A to 9-CC is certain testimony from the Judge Miller case, offered by the Board, being the testimony of Sylvia Hull.

"In the case of Exhibit 9-A to 9-CC, the respondent has indicated on the exhibit objections to certain questions through the entire testimony of 29 pages. The intervener objects to all of the testimony.

"The rulings of the Trial Examiner are indicated on the various pages where the individual objections of the respondent appear, and as to the intervener's objection, the objection is overruled and the motion to strike is denied and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings or to reverse rulings heretofore made with respect to the introduction

of evidence upon certain subjects. The objections being marked 10-A, consisting of one sheet, and the rulings entered thereon."

300.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence N. R. A.-Judge Miller case Exhibits 13-A to 13-R inclusive, and in overruling the objections of the respondent thereto (contained in Ex-[fol. 6532] hibit 14), and further excepts to the limitation included in said ruling, as set forth in the following excerpt from the transcript of the record, Page 1866, to wit:

"Trial Examiner Batten: • • • NRA-Judge Miller Case Exhibits 13-A to 13-R, consisting of 18 pages, is certain testimony from the Judge Miller case offered by the Board.

"Exhibit 14 is the objections by the respondent to 13-A to 13-R, and the following ruling:

"Objection is overruled and acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings, and, further, it is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects."

301.

Respondent excepts to the ruling of the Trial Examiner sustaining the Board's motion of June 21 to amend the complaint, which ruling is set forth on page 1870 of the transcript of the record.

302.

Respondent excepts to the ruling and action of the Trial Examiner set forth on page 1870 of the transcript of the record permitting the Board to present the witness referred to in Board's exhibit No. 30.

303.

Respondent excepts to the rulings and action of the Trial Examiner in failing and refusing to sustain or rule upon respondent's motion to dismiss the Complaint in its en-

tirety (Board's Exhibit 1-FFFF) submitted at the close of the Board's case (Page 1872), and in failing and refusing to sustain or rule upon the oral demurrer or motion to [fol. 6533] dismiss of the intervener made at the close of the Board's case (Page 1873), and further excepts to the ruling and action of the Trial Examiner in requiring respondent to proceed with its case prior to a ruling upon its said motion to dismiss, as set forth in the following excerpts from the transcript of the record, Pages 1872, 1873, 1889, 1890, 1891, to wit:

"Mr. Stottle: Mr. Examiner, respondent desires to file its motion to dismiss the complaint in its entirety.

"Trial Examiner Batten: That will be marked Board's exhibit No. 1-FFFF.

Mr. Stottle: The grounds of the motion, Mr. Examiner, are that there has been no substantial evidence in the record to support any of the charges. In some instances there has been some evidence but it has been of a conjectural and speculative nature that would not be sufficient to constitute a case against the respondent.

"Mr. Tyler: If the court please, the intervener wishes at this point to demur to the evidence of the Board and the International Ladies' Garment Workers' Union and move to dismiss the complaint on the grounds that the evidence introduced, if taken as true, would not be sufficient upon which to base any finding which would affect the rights of the intervener; it would be insufficient to base an order on just establishing the Donnelly Garment Workers' Union as bargaining representatives; it would be insufficient to base an order upon which would in any way cancel or affect the contract which the Donnelly Garment Workers' Union have with their employers, or their contract rights; it would be insufficient in any way to use as a basis for any degree, order, or judgment affecting the rights and interests of the intervener.

* * * * * * *

Mr. Stottle: * * * Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

[fol. 6534] "Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in.

* * * * * *

"Mr. Tyler: Yes. If the Court please, I wish to amplify the motion of the intervener heretofore made to dismiss by adding as a basis for that motion that no evidentiary basis for any finding that the union was organized by the company or is company dominated has been laid, and that therefore no finding could be made, because no evidence has been submitted as a basis;

"That no basis has been laid for any finding that the company coerced or intimidated or influenced any employee in joining the Donnelly Garment Workers' Union;

"And that no basis has been laid for any possible finding that the company contributed, directly or indirectly, financial aid or other aid to the Donnelly Garment Workers' Union;

"No basis has been laid that the union is not a bona-fide labor union, with all of the rights guaranteed such union under the Wagner Act;

"And that no basis has been laid for any finding that the union is not a free will choice of the majority of the employees and is not entitled to representation of all of the employees in collective bargaining.

"Trial Examiner Batten: Those additional reasons, I presume you call them, Mr. Tyler— * * * will be considered in connection with the disposition of the motion."

304.

Respondent excepts to the rulings and action of the Trial Examiner in failing to sustain or rule upon respondent's motion to dismiss each of the separate paragraphs of the Complaint which motion was marked Board's Exhibit 1-GGGG and was made and filed at the close of the Board's case (Page 1874) (and argued at Pages 1874 to 1889 inclusive), and further excepts to the ruling and action of the Trial Examiner in requiring respondent to proceed with its case and evidence prior to a ruling upon said motion,

[fol. 6535] as set forth in the following excerpts from the transcript of the record, Pages 1874, 1889, to wit:

"Mr. Stottle: Mr. Examiner, we have another motion to dismiss that goes to each of the paragraphs separately.

"Trial Examiner Batten: The first is a general motion, and this is a specific motion.

"Mr. Stottle: To practically all of the paragraphs, yes, but not every one of them. We will submit it at this time if you will give me a number.

"Trial Examiner Batten: That will be Board's exhibit No. 1-GGGG.

* * * * * *

"Mr. Stottle: * * * Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

"Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in."

305.

Respondent excepts to the rulings and action of the Trial Examiner in failing and refusing to strike from the record all the evidence upon each and all of the various paragraphs of the Complaint and in failing and refusing to sustain respondent's motions therefor, contained and set forth at the bottom of respondent's motion to dismiss, and in requiring respondent to proceed with its case and evidence prior to a ruling upon said motion to strike, as set forth in the following excerpts from the transcript of the record, Page 1889, to wit:

"Mr. Stottle: Then, at the bottom of our motion we have moved that the Examiner strike from the record all evidence upon the various paragraphs which the Examiner does dismiss.

* * * * * *

[fol. 6536] "Mr. Stottle: The motion goes to striking all evidence on the other paragraphs that you may dismiss, as well as (s).

"Trial Examiner Batten: I will reserve decision on that.

* * * * * *

"Mr. Stottle: * * * Of course, Mr. Examiner, we would like to have a ruling on these matters so that we might know—

"Trial Examiner Batten: I will tell you now, I am not going to rule on them today or tomorrow; I may not even rule on them until all of the evidence is in."

In connection with the foregoing exception, respondent excepts to the ruling and action of the Trial Examiner in later failing and refusing to sustain respondent's said motion to strike all the evidence introduced under each and all of the paragraphs of the Complaint and in permitting said evidence to remain in the record, and further excepts to the action of the Trial Examiner in taking said evidence into consideration in his findings of fact, conclusions and recommendations set forth in the Intermediate Report.

306.

Respondent excepts to the ruling and action of the Trial Examiner in failing and refusing to clarify his rulings upon the N. R. A.-Judge Miller case testimony and in denying respondent's request for such clarification, as set forth in the following excerpts from the transcript of the record, Pages 1891, 1892, to wit:

[fol. 6537] "Trial Examiner Batten: * * * Mr. Stottle, you have something further?

"Mr. Stottle: This has reference, Mr. Examiner, to your ruling made this morning on the N. R. A. and Judge Miller case testimony submitted by the Board.

"In substance the ruling was the same on all of them, and reads: '. . . the acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings. It is not the purpose in accepting the testimony to reverse any rulings heretofore made with respect to the introduction of evidence upon certain subjects.'

"Of course we are somewhat in a dilemma to understand just what we are required to meet there.

"Trial Examiner Batten: I would say, Mr. Stottle, if there is the least doubt in your mind, you submit your evidence and then I will tell you whether it is material or not.

"Mr. Stottle: You mentioned that there are certain subjects you do not want to go into. If you could just tell us what subjects you mean—

"Trial Examiner Batten: I think the record is clear on that. If it is not, I will clear it up as we go along."

307.

Respondent excepts to the rulings and action of the Trial Examiner in limiting and excluding evidence offered by the respondent as set forth on Pages 1903 and 1904 of the transcript of the record, and further excepts to the ruling and comment of the Trial Examiner therein set forth to the effect that the testimony in N. R. A.-Judge Miller case Exhibits Nos. 1 to 16, with reference to the discharge of certain employees (except Tubbesing, Fry and Brooks) should be stricken, and in thereafter considering said testimony so stated to be stricken, and basing his findings of fact, conclusions and recommendations thereon, for the reason that said rulings and action of the Trial Examiner were highly misleading, unfair and prejudicial to respond-[fol. 6538]-ent, and in preventing respondent from putting in evidence concerning the matters stated by the Trial Examiner to be stricken by the said witness then on the stand, to wit, Mrs. Elizabeth Reeves, and by other witnesses which respondent might have called if said misleading ruling had not been made, as set forth in the following excerpts from the transcript of the record, Pages 1903, 1904, to wit:

"Q. I will ask you, Mrs. Reeves, if among the 300 employees that were laid off there was Ellen Fry, Tillie Shirlie, Pauling Lutz, Mamie Tubbesing, Thelma Owen, Glynn Brooks, Nora McKee, Olive Thompson—

"Trial Examiner Batten (Interrupting): Now, are we interested in that entire list?

"Mr. Ingraham: Your Honor, the next question I intend to ask Mrs. Reeves is whether or not over half of these people were called back to work.

"Trial Examiner Batten: Oh, well, then, I thought perhaps you—

"Mr. Langsdale: If he is permitted to ask that we certainly want to disprove it on rebuttal.

"Trial Examiner Batten: You go ahead and make your objections and I will pass upon the objections when they are made.

"Mr. Ingraham: That is just what I don't understand. I understood Mr. Langsdale and the Board have offered evidence regarding these people, and their offers have been received.

"Mr. Leary: Not regarding all of the persons you have named. I suggest you read Board's exhibit No. 30 and note that it includes only three names.

"Mr. Igraham: But you submitted evidence on more than those three people, and the evidence has been received, as I understand it. You submitted evidence on about ten of them.

"Trial Examiner Batten: You mean in some of those other exhibits this morning?

"Mr. Ingraham: Yes.

[fol. 6539] "Trial Examiner Batten: Of course if there is other evidence there with respect to their discharge it should be stricken out, shouldn't it, Mr. Leary?

"Mr. Leary: If it is limited strictly to their discharge, yes, but as to discriminatory remarks, and so forth, made to these persons, I don't think it should be stricken.

"Trial Examiner Batten: I will say now, if there is any such testimony, Mr. Ingraham, in the exhibit, it certainly wasn't my intention that any of that testimony should remain in there with respect to the discharge of these people except those three, and in the N. R. A.-Judge Miller case exhibits Nos. 1 to 16 if there is any testimony of that nature it may be stricken, with respect to the discharge of all of the persons except—what were those three, Mr. Leary?

"Mr. Leary: Tubbesing, Fry, and Brooks."

Respondent excepts to the rulings and action of the Trial Examiner in refusing to admit in evidence Respondent's Exhibit No. 6 for the purposes for which same was offered by respondent and in limiting its admission in evidence, as set forth in the following excerpts from the transcript of the record, Pages 1907, 1908, 1909, 1910, 1911, to wit:

"Q. (By Mr. Ingraham) Mrs. Reeves, I hand you Respondent's Exhibit 6, which is a newspaper article appearing in the Kansas City Star, February 26, 1937, setting out statements by Meyer Purlstein and Wave Tobin, and ask you if you have read that article:

"A. I did.

"Mr. Ingraham: The respondent offers in evidence Exhibit 6.

* * * * * *

"Trial Examiner Batten: For what purpose?

"Mr. Ingraham: For the purpose of showing the situation at this time, and I will offer other articles up until April 23d, when Sylvia Hull and May Fike had their difficulty at the plant.

* * * * * *

[fol. 6540] "Trial Examiner Batten: Well, I might say that I don't like trying these Labor Board cases in the newspapers.

"Mr. Ingraham: Well, Mr. Leary offered a long article of Senator Reed's, and it set out the background and the history, and I am showing our side of this background. Now, I am asking this witness—

"Trial Examiner Batten: Well, is this all contained in the Judge Miller testimony?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Well, then, I will say you had better submit it as a transcript from that.

"Mr. Ingraham: Well, I will prove as to the truth of this statement from the Judge Miller testimony, but I would like to examine this witness in regard to whether

or not she read this and what occurred. As far as the facts being true, I will prove that by the Judge Miller evidence.

. . . . . .

"Mr. Ingraham: I am setting it up for the purpose of showing the situation.

"Trial Examiner Batten: The general situation?

"Mr. Ingraham: At that time.

"Trial Examiner Batten: You mean, background?

"Mr. Ingraham: That is right.

"Mr. Tyler: If the court please, the intervener will also wish to use it on the ground that we are trying motives here, and inner intent, and you can't adequately try a question of that kind without showing the situation, to show what things would affect their intent, or their actual motive. There is no other way to get at motive and intent without showing the surrounding circumstances and things that would influence it.

"Trial Examiner Batten: Do you expect me to be able to determine people's inner feelings?

"Mr. Tyler: I think Your Honor is going to have to determine what the motive was, and you have got to base it on surrounding influence that would—

[fol. 6541] "Trial Examiner Batten (Interrupting): I am perfectly willing that you should have a reasonable amount of background as the Board had in the NRA proceeding. They showed it almost entirely by transcript of that testimony. Now, if this means calling a large number of witnesses for that purpose, I don't want to have the background, as I have said so many times in this case, become the picture.

"Mr. Ingraham: I don't think it will result in that.

"Trial Examiner Batten: Well, if you want to offer it on that basis, I will receive it on that basis, that you offer it for, Mr. Ingraham, but not for the purpose which Mr. Tyler stated that he expected to use it for."

309.

Respondent excepts to the rulings, action and comment of the Trial Examiner concerning Respondent's Exhibit No. 7, and to the failure and refusal of the Trial Examiner to give consideration to said exhibit, and to his comments that said exhibit "doesn't prove anything", as set forth in the following excerpts from the transcript of the record, Page 1917, to wit:

"Trial Examiner Batten: On the basis I received the other one, and this one, it doesn't open up anything, because I am not receiving it to show the truth or the untruth of any statements in the article, merely as an article from the newspaper for whatever it is worth.

"Mr. Langsdale: If it is worth anything, it is worth rebutting.

"Trial Examiner Batten: I say, there is nothing to rebut if it doesn't prove anything. If it doesn't prove the truth or the untruth of any statement contained in it, I don't think it opens up anything.

"Mr. Leary: For all of your reasons, I don't think it should be admitted, Mr. Examiner.

"Trial Examiner Batten: Well, I am admitting it, Mr. Leary, as I told Mr. Ingraham, and he is offering it for the purpose of showing the background of what was occurring about that time, and on that basis I will receive it."

[fol. 6542] 310.

Respondent excepts to the rulings and action of the Trial Examiner in failing and refusing to admit in evidence Respondent's Exhibits 8-A and 8-B for the purposes for which same were offered by respondent and stated by counsel for intervener, and in refusing to consider same for such purposes or upon such issues, and in limiting the purposes for which same were admitted, as set forth in the following excerpts from the transcript of the record, Pages 1918, 1919, 1920, to wit:

"Mr. Ingraham: Well, then respondent offers Exhibits 8-A and 8-B.

. . . . . .

"Mr. Langsdale: Now, I assume that this letter is admitted that it will be admitted as one of the newspaper articles, not as a matter in controversy that we have a right to prove was true, or they would have a right to prove was false, unless the matters are within the issues as have been defined by this complaint and by the Examiner? This letter goes into a great many matters that are not before the Examiner here, and if they are going to try to offer—set up an automaton and knock him down, we want to be permitted to prop him up again.

"Mr. Ingraham: Well, if Your Honor please, the Board and Mr. Langsdale have offered evidence that Mrs. Reed read this letter to a meeting, and they have brought the letter into issue.

"Mr. Langsdale: We didn't read the contents.

* * * * * * * * *

"Trial Examiner Batten: Well, of course, I don't propose to try the truth or the untruth of any of the statements in the letter.

"Mr. Langsdale: That is all I want to know.

[fol. 6543] "Trial Examiner Batten: I think I said at one stage in this case that, granting that everything that was said in the answer were true, it still wouldn't answer the charge of an unfair labor practice. In other words, everything that is said might be true and still there would be an unfair labor practice. I will receive it on the same basis that I received the others, and for the additional reason that it is the letter referred to in the meeting of March 18, 1937, which has been testified to here, I think by two or three different people.

* * * * * * * * *

"Mr. Tyler: Well, I ask your Honor to receive it also on the ground that it would throw some light on the question of whether these employees were dominated by their employer and forced to form a labor union, or whether this letter and the effect it had on them was not a cause of their forming a labor union.

"Trial Examiner Batten: Well, I will reserve my decision on that, Mr. Tyler, because I assume that you will want to go over a good many of these and make an offer all together. Wouldn't you prefer to do that, without waiving any of your rights?"

311.

Respondent excepts to the rulings and action of the Trial Examiner in admitting evidence referred to as the "N. R. A. Testimony" offered by the Board and I. L. G. W. U. at various times and in various forms during the hearing, and over the continuing objections of the respondent and intervener, which objections and rulings are set forth in the following excerpts from the transcript of the record, Pages 1978, 1979, to wit:

"Mr. Stottle: Mr. Examiner, respondent, of course, objects to this N. R. A. testimony as being immaterial because it related to matters long before the organization of the Donnelly Garment Workers' Union and before the passage of the National Labor Relations Act, and we would object to these questions on the same basis that we have to the N. R. A. testimony.

[fol. 6544] "Trial Examiner Batten: Mr. Stottle, I don't know whether the record is clear or that it is understood, but, as I recall, you made a continuing objection to all testimony that refers to a time prior to the passage of the Wagner Act. And, if I am not mistaken, Mr. Tyler, you joined in that objection.

"Mr. Tyler: I intended to.

"Trial Examiner Batten: I think the record is quite clear.

"Mr. Stottle: May it be understood, if it isn't clear our objection is made?

"Trial Examiner Batten: If it isn't clear, it is understood that you have an objection; and Mr. Tyler, also.

312.

Respondent excepts to the rulings, comments and action of the Trial Examiner in refusing to permit respondent or intervener to introduce evidence relating to a compari-

son of the contracts between respondent and intervener union with contracts made between the I.L.G.W.U. and other garment manufacturing companies in Kansas City and vicinity, and in refusing to permit testimony as to the terms and conditions contained in such contracts between the I.L.G.W.U. and other garment companies in Kansas City and vicinity, which rulings and comments are set forth in the following excerpts from the transcripts of the record, Pages 2033, 2034, 2035, to wit:

"A. **** Then the vacation schedule came up, and while I, individually, of course, learning this from Mrs. Reed when I came out here nearly 7 years ago, believed in vacations, inasmuch as this clause is the only kind that I know of in the needle work industry contract, I wasn't sure that the company should bind itself to give vacations with pay, which prior to that time had been optional and in the discretion of the management.

[fol. 6545] "Trial Examiner Batten: Now, just a moment, Mr. Keyes. Mr. Keyes, volunteering that statement there, I thought that we had the understanding that—I mean, I advised you, rather—I don't know as you all agree with me—that I didn't want to get into a comparison of this contract with other contracts, and I limited the Board's testimony the other day, when I asked them the direct question, if all the questions which they asked applied only to how the contract was negotiated.

"Now this, of course, being up—Mr. Keyes volunteering this statement that no needle contract has such a phrase any place, you are beginning to compare the contracts.

"The important thing with this contract, and with this union, is not what is in this contract. The important thing is, did the union, in good faith, and the respondent, sit down and negotiate a contract?

"Now, a union can negotiate any terms they see fit in a contract. So, the only question here is, did Mr. Tyler and the committee representing the Donnelly Garment Workers' Union negotiate in good faith, did the respondent negotiate in good faith? And, having arrived at an agreement, they put it in writing and signed it. Therefore,

Mr. Keyes' statement about this particular paragraph in comparing it with some other contract, I don't consider that it should be accepted, in accordance with my prior ruling. Therefore, I won't receive it.

"Mr. Tyler: Your Honor has in mind that the intervener asserts that comparison with other contracts is valid and admissible evidence to show the genuine negotiation of this contract and the genuineness of the desires of the employees to negotiate in this matter, and have their own union, and we except to your ruling that comparisons are not proper.

"Trial Examiner Batten: Yes, I understand your position, Mr. Tyler, and I only say in answer to that, this: that the Donnelly Garment Workers' Union or the International Ladies' Garment Workers' Union or any other union can negotiate any contract they want. I mean, they could go out here and negotiate a contract for less wages, less salaries, no vacations, and abominable conditions, if the union wanted to do it. So I say that I am not concerned about comparison of these contracts. I am concerned about, did they actually negotiate, and agree on these things, and when they agreed, sign the contracts; and, of course, as I understand it, that is the matter, Mr. Tyler, which you except to?

"Mr. Tyler: Yes.

"Mr. Ingraham: Respondent excepts."

[fol. 6546] 313.

Respondent excepts to the rulings and action of the Trial Examiner in sustaining objections to the testimony offered by respondent, as set forth in the following excerpts from the transcript of the record, Pages 2071, 2072, to wit:

"Q. Did Fern Sigler leave after that conversation?

"A. She left. I think it was some 30 minutes, or something like that, after she got to the office.

"Q. State whether or not she then performed services for the International Ladies' Garment Workers' Union?

Mr. Langsdale: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Ingraham) Do you know whether or not she called on the customers of the Donnelly Garment Company in Kansas City?

"Mr. Langsdale: I object to that as immaterial. This is not an 8 (3) case.

"Trial Examiner Batten: Sustained."

314.

Respondent excepts to the rulings and action of the Trial Examiner in denying to respondent the right to examine witness with respect to Sylvia Hull's being in Atlantic City, and to the Examiner's comments that said testimony was not material, and to his action in striking same from the record, as set forth in the following excerpts from the transcript of the record, Pages 2073, 2074, to wit:

[fol. 6547] "Q. Did you later learn that Sylvia Hull was in Atlantic City attending the International Ladies' Garment Workers' Union convention?

"A. I did.

"Q. Was there a newspaper article in the papers regarding that?

"A. There was.

"Q. (By Trial Examiner Batten) You mean, she was there at the time these calls were made?

"A. No: She was there after the calls were made trying to locate her.

"Trial Examiner Batten: Then, I don't see what that has to do with it. I don't think it has anything to do with it if it was after these calls were made.

"Mr. Ingraham: If Your Honor please, I want to show that we not only called but later learned she was in Atlantic City, and therefore there wouldn't have been any use to call, if she was there.

"Trial Examiner Batten: I don't think that is material at all. The testimony about her being in Atlantic City, if it was after your attempts to call, may be stricken out."

Respondent excepts to the rulings and action of the Trial Examiner in refusing to admit in evidence Respondent's Exhibit No. 10 for all purposes as offered by respondent and in limiting its admission in evidence, and in ruling and stating that the Examiner would receive same "for just what they are worth as newspaper articles and that is all", as set forth in the following excerpts from the transcript of the record, Pages 2076, 2077; 2078, to wit:

[fol. 6548] "Q. I hand you respondent's exhibit No. 10 and ask you to state what publication that is.

"A. It is 'Justice,' published by the International Ladies' Garment Workers' Union.

"Mr. Ingraham: I offer in evidence respondent's exhibit No. 10, the report of Sylvia Hull's speech.

"Trial Examiner Batten: What date is that?

"Mr. Langsdale: June 1 1937.

"Trial Examiner Batten: Mr. Ingraham, what is the purpose of this, if you care to disclose it? Is it to show the situation as it existed? It is not to prove the truth or untruth of anything in there, is it?

"Mr. Ingraham: Yes, indeed. This is the official paper of the International.

"Trial Examiner Batten: I certainly won't receive it to prove anything, an article in a newspaper.

"Mr. Ingraham: Even though it is published by the International?

"Trial Examiner Batten: I don't care who it is published by.

"Mr. Ingraham: Wouldn't that be considered as an admission?

"Trial Examiner Batten: I don't believe in trying any of these hearings on newspapers, trade papers, or anything of that kind. If you want to offer it on the same basis you offered the other newspaper articles, I will receive it on that basis.

"Mr. Ingraham: I offer it, of course, for all purposes.

"Trial Examiner Batten: I am saying I will not receive it for all purposes. But if you want to offer it on the same basis as exhibits Nos. 6 and 7, although it restricts your general offer, I will receive it on that basis, on the basis of respondent's exhibits Nos. 6 and 7, and then you may have your exception.

"Mr. Ingraham: I am still offering it for all purposes, and you are not allowing it to be received for all purposes?

[fol. 6549] "Trial Examiner Batten: That is correct. But my question still is, do you want me to receive it on the same basis I did receive exhibits Nos. 6 and 7, having refused to receive it for general purposes?

"Mr. Ingraham: Oh, yes.

"Mr. Stottle: Mr. Examiner, may it not also be received to show that she said these things, even though the things she did say were not true?

"Trial Examiner Batten: Mr. Stottle, I assume this article is in the same class as the other two, it speaks for itself.

"Mr. Stottle: You let Senator Reed's statement in to show that he said certain things, didn't you?

"Trial Examiner Batten: It was stated, in connection with that, that if the reporter were here he would testify Senator Reed said those things. I will receive it on that basis, although that is not Mr. Ingraham's offer. I am not going to receive these newspaper articles as proving or disproving anything that is said in them. I will receive them for just what they are worth as newspaper articles, and that is all."

316.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit the witness Baty to answer the question, "Did you do all you could to stop the demonstration", referring to the alleged demonstration at the Donnelly plant on April 23, 1937, as set forth in the following excerpts from the transcript of the record, Page 2153, to wit:

"Q. (By Mr. Ingraham) Was any other official of the company there at the time?

"A. There was not.

"Q. Did you do all you could to stop the demonstration?

"Mr. Langsdale: Now, just a moment. I still think that his answer should be based upon the question as to whether or not he knows. The fact that no other executive was there at the time doesn't show that it wasn't planned the night before or the night before that.

[fol. 6550] "Trial Examiner Batten: It may stand for whatever value it has. What was the last question?

"(Whereupon, the last question was read by the reporter.)

"Trial Examiner Batten: That certainly is repetition. You went into quite some detail yesterday about what he did when he went up on the floor with these different girls, and sent the others back, and so forth. Of course, if you want him to just categorically deny everything that is in the complaint, just read it to him and then I have no objection to him denying it, Mr. Ingraham."

317.

Respondent excepts to the ruling and action of the Trial Examiner in receiving testimony concerning I. L. G. W. U. exhibit No. 17 over the objections of the respondent as shown on Pages 2306 to 2310, inclusive, of the transcript of the record, and in considering said evidence in arriving at his findings of fact, conclusions and recommendations contained in the Intermediate Report.

318.

Respondent excepts to the ruling and action of the Trial Examiner in admitting in evidence Board's Exhibit No. 30 and in overruling respondent's and intervener's objections thereto and their motions to reject said offer of proof, and to the Examiner's ruling and action in accepting said offer of proof and the N. R. A. testimony in said offer, and in permitting witness to testify under said offer of proof, as set forth in the following excerpts from the transcript of the record, Pages 2367, 2368 and 2552, to wit:

[fol. 6551] "Mr. Stottle: Mr. Examiner, the Board has filed an exhibit, marked 30, which is an offer of proof concerning Ellen Fry, Glynn Brooks, and Mamie Tubbesing. The respondent has prepared an objection and motion to reject that offer of proof, which we now wish to present to you.

"I might say that this objection was made in the name of the respondent only but that this morning Mr. Tyler, representing the intervener, has added a clause at the bottom stating that he joins in the objection and motion, and that appears upon the paper which we are presenting.

"Trial Examiner Batten: This will be marked Board's exhibit No. 1-HHHH. I will take the original with me.

"Mr. Tyler: I wish to state I have gone over this paper and considered it, and wish to join in it, as indicated by the signature at the bottom.

"Trial Examiner Batten: It will be taken under advisement.

* * * * * * * * * *

"Trial Examiner Batten: Now, on the matter of the Board's Exhibit 1-IIII, which is the objection and motion of the respondent and the intervener to the Board's offer, which is marked 'Board's Exhibit 30', the objections are overruled and the motion to strike is denied, which means, Mr. Leary, that the NRA testimony which was in the offer will be accepted, and you will have one witness ready for presentation of her testimony, strictly limited to the point in your offer."

319.

Respondent excepts to the rulings, comment and action of the Trial Examiner in refusing to permit respondent to call and examine witnesses concerning the circulation and signing of the petition of March 2, 1937, and in limiting the number of witnesses which might be called to testify concerning same and in requiring respondent to make an offer of proof thereon as to other witnesses, as set forth in the following excerpts from the transcript of the record, Pages 2457, 2458, to wit:

[fol. 6552] "Q. Did you sign the petition that was circulated March 2d?

"A. I did.

"Q. Did any officer of the company ask you to sign that petition?

"A. No.

"Trial Examiner Batten: Well, now, Mr. Ingraham, do I understand that you intend to call a large number of individual employees?

"Mr. Ingraham: Yes, your Honor.

"Trial Examiner Batten: To testify?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Well, now, of course, I don't propose to have a large number called to testify to this point. You may call a reasonable number, and use your own judgment as to what is reasonable.

"Mr. Ingraham: All right, your Honor.

"Trial Examiner Batten: And make an offer of proof on the entire balance, if you want to, but I am not going to listen to all of them, but you use your own judgment as to what you think is a reasonable number, and at that time I think we can probably determine what will be done."

320.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining objection to the following question asked by respondent of the witness Atherton, as shown in the following excerpts from the transcript of the record, Page 2463, to wit:

"Q. Mr. Atherton, did you witness any violence at the Missouri, Gernes, or Gordon plants during the month of March, 1937?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained."

[fol. 6553] 321.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining the Board's objection to question

asked by respondent of the witness Atherton, as set forth in the following excerpts from the transcript of the record, Pages 2466, 2467, to wit:

"Mr. Langsdale: Is that the March 18th meeting?

"Mr. Ingraham: March 18th.

Q. (By Mr. Ingraham) Did the employees take any action at that meeting?

"A. They did not.

"Q. Did the violence at the Missouri, Gernes and Gordon plants increase from that date on?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained."

322

Respondent excepts to the rulings, action and comments of the Trial Examiner in sustaining objections of the Board and I. L. G. W. U. to question asked of the witness Atherton by counsel for the intervener on Page 2500 of the record, and in refusing the offer of proof made by counsel for the intervener on Page 2501 of the record, concerning the disturbances at the Missouri, Gordon and Gernes factories prior to March 18, 1937, and to the question asked of said witness by counsel for intervener on Page 2501 of the record as to the state of mind of employees of the Donnelly Garment Company in regard to said conditions at the Missouri, Gordon and Gernes plants, [fol. 6554] and to the comments of the Trial Examiner concerning said matters, and to the ruling and action of the Trial Examiner in making the same ruling upon respondent's objection to said ruling and to respondent's offer of proof on said matters, as set forth in the following excerpts from the transcript of the record, Pages 2500, 2501, 2502, 2503, 2504, 2505, 2506, to wit:

"Q. (By Mr. Tyler) Mr. Atherton, was the subject of disturbances at the Missouri, Gordon and Gernes plants before March 18, 1937, a subject of common discussion among the employees at the Donnelly Garment plant?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Tyler) What was the state of mind of the employees of the Donnelly Garment Company in regard to conditions at the Missouri, Gordon and Gernes plants before March 18, 1937?

"Mr. Leary: I object to that as being without a foundation, that this witness knows what the state of mind of the employees at the plant was; and immaterial, also.

"Trial Examiner Batten: Well, I will sustain it on the ground it is immaterial.

"Mr. Tyler: I offer to prove by this witness that the subject of the violence at the Missouri, Gordon and Gernes plants before March 18, 1937, was one of almost continual conversation by the employees of the Donnelly Garment Company plant, and the Donnelly Garment Sales Company, and that the condition of the employees' minds at that plant was one almost bordering on hysteria and continued to increase in intensity as the strikes went on at the Gordon, Gernes and Missouri plants, and that that was one of the main causes of their employing attorneys, and later on was one of the impelling reasons for them to organize their own labor union.

"Mr. Leary: I will object to the offer on the same grounds.

[fol. 6555] "Trial Examiner Batten: The offer is refused.

"Mr. Langsdale: The International Ladies Garment Workers' Union objects to the offer upon the ground that it includes, a part of it, to permit this witness to pass upon the mental attitude of other employees, and he has shown no knowledge, laid no foundation to show that he is capable of passing on the mental attitude of those employees.

"Mr. Tyler: The record shows that this witness was employed at the plant; that his duties caused him to circulate about the plant, and I submit that any employee in such circumstances is competent to tell what the subjects of discussion were which were uppermost, and what the general attitude of employees was.

"Trial Examiner Batten: Well, of course, I assume—I don't know—I wasn't here, but I assume that probably there was so much talk in the plant that it even interfered with production. In fact, I have never seen a case yet where two unions, or one union, is conducting an intensive organizational campaign that it doesn't affect production in the plant. I mean, it just goes without saying that it is a part of it. You can't separate it, so I don't suppose there is any argument but what in this plant and all the rest of the plants, if it was all material to this hearing, the production was reduced.

"Now, my point on this is this: that if the respondent, or any of its officers formed this union or assisted in forming it, or after it was formed they sponsored it or in any way assisted it, even if you were to prove that all the 1,350 employees in here were ready to shoot the next International Ladies' Garment Workers' Union member which they met, it still wouldn't detract one ounce from the fact that the respondent had either formed, sponsored or dominated the union, and even though you were to definitely prove that and permit it on the record, if the Board hasn't proved that this union was either formed, sponsored or is now dominated by this company, the respondent is not guilty of an unfair labor practice, irrespective of what the employees do, because they can do whatever they please, I mean, within reasonable limits, and I thought I ought to make that statement just in explanation of my ruling.

"Mr. Tyler: If the Examiner please, I intend to make no point as to reduction of production by these difficulties. I do say that there is no more important fact, and no fact approaching in importance the fact of what caused the employees of this company to form their own union. The Board is claiming that it was domination or fear or bribery, or some such influence by the employer.

[fol. 6556] "I submit that the employees asserting that they formed the plant of their own free will, will, in establishing that fact, have the right to refer to the causes which influenced them in making that choice, and undertake to show by this witness that one of the causes was not the employer domination, but was fear and dislike of what

the International was doing in its campaign to organize garment workers in Kansas City.

"I take it I have an exception to your Honor's ruling without—

"Trial Examiner Batten (interrupting): Well, of course, you have an automatic exception.

"Mr. Stottle: And, Mr. Examiner, you will recall that Mr. Ingraham asked similar questions as to violence down at the Gordon and Gernes plant, and whether it increased, and your Honor sustained the objection to those questions. Our position also is that that would show a motive or a reason for the formation of this union, and would tend to show that it was not company domination.

"Trial Examiner Batten: Well, you may have an objection and I will make the same ruling, Mr. Stottle.

"Mr. Stottle: Mr. Ingraham didn't make an offer of proof. When he comes back, I will ask him if he desires to enter it, or let the question go.

"Trial Examiner Batten: Let him decide when he comes back, and I will determine it, and I would make the same ruling, and I would say the same to the respondent. It isn't a question of whether these people had a motive to organize the union. The only question is, did the respondent have anything to do with it, and if they didn't they can have any motive they please.

* * * * * *

Mr. Shepard: Respondent makes the same offer of proof, and takes exception to your ruling."

323.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit testimony offered by intervener concerning the visit of employees of respondent [fol. 6557] to Chief Higgins of the police force or to call and examine witnesses with reference thereto, as set forth in the following excerpts from the transcript of the record, Pages 2523, 2524, to wit:

"Q. Was there any particular incident that you know of that brought about the visit of the employees to Chief Higgins of the police force?

"A. Yes; the rumored threats that we would be next on the list—

"Trial Examiner Batten: Now, just a moment. I think that is covered entirely by the offer of proof that I have asked for, Mr. Tyler.

"Mr. Tyler: Very well.

"Trial Examiner Batten: I mean, in those paragraphs which Mr. Langsdale has asked to have stricken, as I recall it, those matters are covered.

"Mr. Tyler: Your Honor rules this witness cannot testify as to the visit of the employees to Chief Higgins and what it was for?

"Trial Examiner Batten: I have merely said, when I receive those offers of proof, which includes this matter, I will then determine how much, if any, of that we will take testimony upon."

324.

Respondent excepts to the ruling and action of the Trial Examiner overruling respondent's objection to questions asked the witness Atherton by Mr. Langsdale, as set forth in the following excerpts from the transcript of the record, Pages 2572, 2573, to wit:

"Q. (By Mr. Langsdale) I will ask you if you heard Mrs. Reed make this statement this is contained in the affidavit on page 861:

" 'In the first place, a group of employees on or about March 18, 1937, came to my office and told me that all of the employees were going to meet to discuss ways and means to protect themselves'.

"And then skipping—

[fol. 6558] "Mr. Ingraham (Interrupting): I object to Mr. Langsdale skipping. If he is going to read from this affidavit, he ought to read it so it is connected up.

"Mr. Langsdale: I am merely asking this witness if he heard this statement made.

"Trial Examiner Batten: Well, I think that thus far in the hearing, there have been many instances where a witness has been asked whether they heard a certain thing, and, certainly, they haven't read the entire affidavit or the entire testimony, either.

"Q. (By Mr. Langsdale) Skipping down to the last sentence of that paragraph, taking it up with that sentence, in which she says:

"' * * * I went to the meeting and told them that the Company's attorneys would consider what legal steps might be advisable in the event the union carried out its threats.'

"Did you hear Mrs. Reed make that statement?"

325

Respondent excepts to the ruling and action of the Trial Examiner in failing and refusing to sustain respondent's objection to question asked the witness Atherton, as set forth in the following excerpts from the transcript of the record, Pages 2573, 2574, to wit:

"Q. Now, you have been here in the court room waiting to testify how long, Mr. Atherton?

"Mr. Ingraham: I object to that. It is immaterial to any issue in this case. He has a perfect right to be in the court room.

* * * * * *

"Trial Examiner Batten: You may proceed, and I will determine whether it has anything to do with it."

326.

[fol. 6559] Respondent excepts to the ruling and action and comments of the Trial Examiner refusing to permit respondent to produce further witnesses or testimony concerning the March 18 meeting and forcing respondent to make offers of proof as to other witnesses concerning same, as set forth in the following excerpts from the transcript of the record, Page 2607, to wit:

"Trial Examiner Batten: Mr. Stottle, I will permit this witness to testify, but I certainly don't intend to listen

to any more witnesses of what occurred at the March 18th meeting, because thus far in the record, there is apparently no dispute. I mean, there is no use of going on with an unlimited number of witnesses telling about a meeting. So if there is any further witness to be offered on the March 18th meeting, it will have to be in the form of an offer of proof.

"Mr. Stottle: Mr. Examiner, of course, the respondent's position is that if that matter is controverted, we are entitled to show by any number of witnesses as to what did happen.

"Trial Examiner Batten: Well,—

"Mr. Stottle (Interrupting) And we are willing to make an offer of proof as to this witness, or succeeding witnesses.

"Trial Examiner Batten: I say, you may proceed with this witness, but I am telling you now that if you had in mind offering any further witnesses about this March 18th meeting, I don't propose to go into it.

"Mr. Stottle: Well, in view of your Honor's ruling, we will make offers of proof as to other witnesses."

327.

Respondent excepts to the ruling and action of the Trial Examiner sustaining objections to question asked the witness Nellie Stites, and to the comments, rulings and action of the Trial Examiner refusing to permit respondent to introduce testimony that the Donnelly Garment [fol. 6560] Workers' Union and its executive committee represent the free choice of respondent's employees as their bargaining agency concerning wages, hours and working conditions in the Donnelly plant and requiring respondent to submit offers of proof concerning said matter, as set forth in the following excerpts from the transcript of the record, Pages 2610, 2611, 2612, to wit:

"Q. Does that union, the Donnelly Garment Workers' Union, and its bargaining committee represent your free choice in that matter?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Mr. Stottle: What was the ruling, Mr. Examiner?

"Trial Examiner Batten: Sustained.

"Mr. Stottle: Well, Mr. Examiner, we are charged with preventing the employees from exercising their free will in the choice of bargaining representatives. That is one of these three complaints or charges in the complaint, and we submit that one of the best ways of finding out whether a person did a thing of their own free will is to ask that person whether they did, and it is our purpose to ask this witness, and as many other witnesses—

"Trial Examiner Batten (interrupting): Well, I don't think that is any indication, to put these witnesses up on the stand in a hearing of this kind, in a "C" case, in front of all the other employees and representatives of the company, and ask them, 'Is this your free choice?'. I mean it may possibly have some remote bearing, but I don't think it has sufficient that we should spend the time necessary to listen to 1300 employees get on the witness stand and testify to that point.

"Now, if that is your idea, you may make an offer of testimony with respect to these 1305 employees, or whatever it is, but certainly, we are not going to determine that in this hearing on that basis, at least.

[fol. 6561] "Mr. Tyler: Could I ask you if the Examiner holds that there is any presumption that these people are being dominated by somebody in the court room in this matter, or any presumption that they would commit perjury?

"Trial Examiner Batten: I didn't even intimate such a thing.

"Mr. Tyler: I understood you to say that their testimony, as to what they wished, would be either of no value or extremely little value.

"Trial Examiner Batten: I didn't say any such thing, I don't think.

"Mr. Tyler: I misunderstood you, then.

"Trial Examiner Batten: The record will state what I said in my remarks.

"Mr. Stottle: Well, Mr. Examiner, don't you think we should have the testimony of this witness with the persons that you have referred to excluded from the court room?

"Trial Examiner Batten: No, I don't think it is of any value in the issues in this case, to parade these people on the stand. Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter."

328.

Respondent excepts to the rulings, action and comments of the Trial Examiner sustaining objection to question asked the witness Mrs. Stites, and refusing to permit respondent to introduce evidence concerning strikes and disturbances caused by the I.L.G.W.U. at the Gordon, Gernes and other garment factories in Kansas City and the effect thereof upon the employees of respondent and requiring respondent to make offers of proof concerning said matters, as set forth in the following excerpts from the transcript of the record, Pages 2612, 2613, to wit:

[fol. 6562] "Q. (By Mr. Stottle) Mrs. Stites, had you heard of the strikes and disturbances down at the Gordon and Gernes plants at about that time in March and April, 1937?

"Mr. Leary: I object to that for the reason that it is immaterial.

"Trial Examiner Batten: Sustained.

"Mr. Stottle: Well, Mr. Examiner, we want to go into that matter to show that it did affect the employees and that that was one of the reasons why they formed his union, as tending to show that it was not due to the domination of the Donnelly Garment Company.

"Trial Examiner Batten: I think, Mr. Stottle, that I don't need to make any statement with respect to that ruling, because I have indicated on several occasions in this hearing just what my position is about that matter.

You may make such offer as in your opinion is necessary to protect the interests of your client."

329.

Respondent excepts to the rulings, action and comments of the Trial Examiner made while the witness Nellie Stites was on the stand, as set forth in the following excerpts from the transcript of the record, Pages 2615, 2616, 2617, to wit:

"Mr. Stottle: Mr. Examiner, as to the two matters which you have excluded his witness from testifying to, respondent desires to make this offer of proof:

"Respondent offers to prove by this witness that if permitted to answer appropriate questions, she would testify that at or prior to the time of the organization of the Donnelly Garment Workers' Union on April 27, 1937, there was no coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon her by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives or supervisory officials, or anyone representing the management, to cause or influence her, or which did cause or influence her to join or support the Donnelly Garment Workers' Union.

"Trial Examiner Batten: Well, now, that is with respect to what ruling? The one on the meeting of March 18th?

[fol. 6563] "Mr. Stottle: No, as with respect to the ruling that she joined this of her own free will, if your Honor will permit her to testify that she did, and other witnesses to testify on the question of whether she did join of her own free will, of course, we would prefer to call the witnesses.

"Trial Examiner Batten: 'Well, what do you mean, reverse my ruling? Is that what you mean?

"Mr. Stottle: Well, I thought you were intimating that I was making a different offer of proof.

"Trial Examiner Batten: Well, I do think it is different than even my ruling. You say to this witness 'You join of your own free will.' Now, [you] offer is to show that the respondent in no way coerced or intimidated this witness. I don't think that is quite the same thing, do you?

"Mr. Stottle: Well, I will ask the question.

"Trial Examiner Batten: I say, do you think it is the same?

"Mr. Stottle: I do think so. If she joined of her own free will, I don't think she was coerced by the Donnelly Garment Company.

"Trial Examiner Batten: Well, of course, if you think it is the same thing, and that is what you mean by what you just said, then I will reject the offer.

"Mr. Stottle: Well, I would rather ask the question and have your Honor rule it out or let it in.

"Trial Examiner Batten: I don't care to pass upon it. If you think it is the same thing, I will reject that part of the offer."

330.

Respondent excepts to the ruling and action of the Trial Examiner in striking the answer of the witness Nellie Stites to the question asked, as set forth in the following excerpts from the transcript of the record, Page 2617, to wit:

[fol. 6564] "Q. (By Mr. Stottle) Well, Mrs. Stites, I will ask you whether at the time of the organization of the Donnelly Garment Workers' Union, on April 27th, or prior thereto, there was any coercion, intimidation, pressure or suggestion of any kind, directly or indirectly, brought to bear upon you by the management of the Donnelly Garment Company or the Donnelly Garment Sales Company through any of its officers, executives, or anyone representing the management, to cause or influence you, or which did cause or influence you to join or support the Donnelly Garment Workers' Union?

"A. None.

"Trial Examiner Batten: Well, now just a minute. .. The answer may be stricken."

331.

Respondent excepts to the rulings, action and comments of the Trial Examiner refusing to permit the witness Nellie

Stites to testify concerning the domination of the Donnelly Garment Workers' Union by the respondent and concerning coercion upon or interference with the respondent's employees concerning their free choice of a union or bargaining agency and requiring respondent to make offers of proof concerning said matters and when respondent proceeded to make offers of proof thereon, stating and ruling that such offers are outside said matters and in requiring as a condition precedent to the making of such offers of proof that the respondent prepare "appropriate questions", as appears in the transcript of the record, Pages 2620 to 2631, and in later rejecting the offers of proof made by respondent and joined in by intervener (Page 2652) as to said witness Nellie Stites and as to other witnesses.

[fol. 6565] 332.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit respondent to ask the witness Nellie Stites questions regarding strikes and disturbances at other garment plants and in refusing the offer of proof made by respondent concerning said matters as to said witness Nellie Stites contained on Page 5 of Board's Exhibit No. 1-JJJJ, as set forth in the following excerpts from the transcript of the record, Pages 2637, 2638, to wit:

"Q. Mrs. Stites, I will ask you to state whether you knew or heard of strikes—

"Trial Examiner Batten (interrupting): Now, Mr. Stottle,—that finishes that offer?

"Mr. Stottle: That finishes that part of it.

"Trial Examiner Batten: Well, I don't think it is at all necessary for her to answer any questions about the strikes and trouble in the other plant, because that, if you have an offer ready on that, I can pass on that one now.

"Mr. Stottle: Well, it is the last page of what I have given you.

"Trial Examiner Batten: It is all in one, is it?

"Mr. Stottle: I put it all together as an offer of proof by this witness.

"Trial Examiner Batten: * * * Now, as to the last page, which is page 5, of the offer of proof on the Gernes and Gordon factories, and that other matter, that offer, as in accordance with my rulings, several rulings during the hearing, is refused."

[fol. 6566] 333.

Respondent excepts to the rulings and action of the Trial Examiner in striking out the answers of the witness Nellie Stites made in response to questions asked her by counsel for the intervener, as set forth in the following excerpts from the transcript of the record, Pages 2648, 2649, 2650, to wit:

"Q. Did you have knowledge of the disturbances down at the Gordon, Gernes, and Missouri Plants in the spring of 1937?

"A. Yes, sir, I did.

"Q. What was the effect on the Donnelly Garment Company employees of these disturbances at the Gordon, Gernes and Missouri plants in the spring of 1937?

"Mr. Langsdale: I object to that as immaterial.

"Trial Examiner Batten: You may ask your questions, but then I will ask you to present an offer of proof.

"Mr. Tyler: We will be very glad to join in the offer of proof, if the Examiner doesn't want to hear that.

"Trial Examiner Batten: I didn't overlook that you were asking the questions, but I thought, in order to have the record indicate it, your question and the answer could go in, but then I intended to ask for an offer of proof.

"Mr. Tyler: Your Honor rules that she may answer this question?

"Trial Examiner Batten: Yes.

"Mr. Langsdale: The International Ladies' Garment Workers' Union wants to object on the ground that it calls for a conclusion of the witness and is invading the province of the Examiner, without any basis for showing that this witness knew what the effect was upon any other employee than herself.

"Mr. Tyler: I think it is a matter of fact which one constantly in a plant can testify to, as to the general attitude in the plant as to certain things—if she knows.

[fol. 6567] "Trial Examiner Batten: Well, if she knows, that is always different.

"Mr. Langsdale: He didn't put that in his other questions.

"Trial Examiner Batten: You may answer.

"A. We had been reading all of these articles in the paper about the strikes over there—

"Mr. Langsdale (Interrupting): I object to that and ask that it be stricken as not responsive.

"Trial Examiner Batten: You may answer.

"A. (Continuing) —and we had talked to a lot of the girls, and a lot of them had been talked to by people who worked over at these other plants, and of course we were told that they were coming over to our plant—the expression they used was 'to get us next.' And there was quite a bit of fighting over there, and tearing of clothes off. Naturally, we felt we needed some protection of some kind.

"Mr. Langsdale: I ask that all of that part of the answer about what had been going on over there be stricken out as not responsive to the question.

"Trial Examiner Batten: It may be stricken."

334.

Respondent excepts to the rulings and action of the Trial Examiner in refusing to permit the witness Nellie Stites to answer question propounded by counsel for the intervener and in refusing the offer of proof made by intervener thereon and in sustaining objection to subsequent question asked said witness, as set forth in the following excerpts from the transcript of the record, Pages 2650, 2651, to wit:

"Q. (By Mr. Tyler) You talked to people who told you they had met with violence at the Gordon and Gernes plants?

"Trial Examiner Batten: Now, I think I have indicated all through this hearing that I am not going into those matters, Mr. Tyler.

[fol. 6568] "Mr. Tyler: Then, intervener joins in the same offer of proof on this matter just offered by the respondent.

"Trial Examiner Batten: You mean page 5, Mr. Tyler? That is the page that applies to this matter.

"Mr. Tyler: Yes.

"Trial Examiner Batten: With reference to the offer on page 5, it will be refused.

"Mr. Tyler: And also, repeat the offer of proof which intervener made on the same subject heretofore.

"Trial Examiner Batten: The offer is refused. In order to identify that, the respondent's offer of proof has been marked 1-JJJJ, and you are now referring to the fifth page of that?

"Mr. Tyler: Yes, sir.

"Q. (By Mr. Tyler) Mrs. Stites, did any officer of the company, or representative of officers of the company, tell you about these things you have said you heard about, or did you hear them from other people?

"Mr. Langsdale: I object to that as immaterial.

"Trial Examiner Batten: Objection sustained."

335.

Respondent excepts to the rulings and action of the Trial Examiner in sustaining objections to questions asked the witness Mrs. Lynn Davis by counsel for respondent, as set forth in the following excerpts from the transcript of the record, Page 2676, to wit:

"Q. (By Mr. Stottle) Mrs. Davis, did you hear any statement made at the March 18th meeting by Mrs. Reed or anyone else that she wanted the names of the Donnelly Garment Company employees reported to her or reported to the management of any employees who belonged to the International Ladies' Garment Workers' Union?

"Mr. Leary: I object to that as cumulative.

[fol. 6569] "Trial Examiner Batten: Sustained.

"Q. (By Mr. Stottle) Did you hear Mrs. Reed state that she would never let the International Union into her plant?

"Mr. Leary: Same objection.

"Trial Examiner Batten: Sustained."

336.

Respondent excepts to the rulings and action of the Trial Examiner in sustaining objections to question asked the witness Mrs. Martin by counsel for intervener and striking the answer made thereto, as set forth in the following excerpts from the transcript of the record, Pages 2702, 2703, to wit:

"Q. (By Mr. Patten) Have you ever heard any employee complain that they didn't want to join the Donnelly Garment Workers' Union?

"A. No, sir.

"Mr. Leary: I object to that as calling for hearsay, and also, that it is immaterial.

"Mr. Patten: I asked what she heard.

"Trial Examiner Batten: I will sustain the objection. It is immaterial, and I will overrule the matter of hearsay.

"Mr. Leary: I move the answer be stricken.

"Trial Examiner Batten: It may be stricken."

337.

Respondent excepts to the rulings and action of the Trial Examiner in sustaining objections to questions asked Mrs. Martin by counsel for intervener, as set forth in the following excerpts from the transcript of the record, Pages 2703, 2704, to wit:

[fol. 6570] "Q. Do you know of any employee that is dissatisfied with the committee of the Donnelly Garment Workers' Union as their bargaining agent?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"The witness: May I answer that question?

"Trial Examiner Batten: No.

Q. (By Mr. Patten) Are you afraid of the International Ladies' Garment Workers' Union?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Sustained.

"Q. (By Mr. Patten) Were you afraid of that union in the spring of 1937?

"Mr. Leary: Same objection.

"Trial Examiner Batten: Same ruling."

388.

Respondent excepts to the ruling, action and comments of the Trial Examiner as set forth in the following excerpt from the transcript of the record, Page 2712, to wit:

"Trial Examiner Batten: Mr. Patten, on this question, which has come up frequently, I think about the first week, in fact, Mr. Tyler brought it up; this question of the mental attitude of these people, due to the organizational campaign of the International Ladies' Garment Workers' Union, and all that that goes along with it. I think I should tell you now that if there is any further testimony of that kind, you can put it in in an offer of proof, because I don't think it is material to the issues here, and I think I told Mr. Tyler one day when he spoke about it, said that he felt that it was a motive or would be one motive, that would explain the organization of the independent union, and I think at that time I disagreed with Mr. Tyler. So if you have any further evidence in that line, you will submit it in an offer of proof, and if you care to, of course, you may submit another witness and ask those questions, to make your record. If you don't care to do that, you may submit it without offering another witness."

[fol. 6571] 339.

Respondent excepts to the rulings, action and comments of the Trial Examiner refusing to permit respondent to

offer further witnesses concerning the meeting of April 27, 1937, and requiring respondent to submit offers of proof thereon, as set forth in the following excerpts from the transcript of the record, Pages 2731 and 2766, to wit:

"Trial Examiner Batten: Mr. Stottle, I think after this witness covers the meeting of April 27, unless there are some new matters, I will not hear from any further witnesses about it, because I think there has been sufficient testimony about that meeting. As I said in other instances, you might call another witness and ask the questions and show that the witness was not permitted to answer, or you may submit your offer of proof as though the witnesses were here and present.

* * * * * * * * *

"Trial Examiner Batten: Mr. Stottle, if you have finished your questions about the April 27 meeting, I don't care to listen to any further witnesses on it, unless it is something that has not yet been covered by the previous witnesses."

340.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence I. L. G. W. U. Exhibit No. 16 over the objections of respondent and intervener, as set forth in the following excerpts from the transcript of the record, Pages 2771, 2772, to wit:

"Mr. Stottle: Mr. Examiner, respondent is not objecting to the lack of identification, but respondent does object that it does not tend to prove or disprove any issue in the case and would therefore be immaterial.

* * * * * * * * *

[fol. 6572] "Mr. Tyler: We have no objection to the offer of the picture, but we do object if the picture is offered with the inference that it is of the meeting of April 27, because the context shows it refers to a meeting of May 11.

* * * * * * * * *

"Trial Examiner Batten: It will be received for whatever value it has."

341.

Respondent excepts to the ruling and action of the Trial Examiner in overruling respondent's motion to strike out answers of the witness Glynn Brooks Yarnell, as set forth in the following excerpts from the transcript of the record, Page 2809, to wit:

"A. I told her I had been informed that the old Donnelly girls, that is, the union girls were being reinstated, and I told her I would like to come back to work if that was true.

"She said, 'Glynn, we have a lot of old girls out we would have to place before we place you.'

"I said, 'Well, I would like to work if there is any chance for me to.'

"She said, 'If you do we will not recognize your union. You will have to join ours.'

"I said that was all right, I didn't expect her to.

"Mr. Ingraham: I move that the answer be stricken out. It goes beyond the allegations of the complaint.

"Trial Examiner Batten: Objection overruled."

342.

Respondent excepts to the ruling and action of the Trial Examiner in failing and refusing to sustain motion to dismiss and demurrer to the evidence made by intervener at the close of respondent's case (Page 2813 of transcript of record) and in later overruling said motion and demurrer.

[fol. 6573]

343.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit intervener to offer further witnesses or testimony concerning the meeting of March 18, 1937, as set forth in the following excerpt from the transcript of the record, Page 2822, to wit:

"Trial Examiner Batten: Now, Mr. Tyler, as far as this March 18 meeting is concerned, there is no need of any more witnesses testifying to it, unless you have something you want to go into that has not already been covered."

Respondent excepts to the ruling, action and comments of the Trial Examiner refusing to permit intervener to offer further witnesses or testimony concerning the negotiations between the Donnelly Garment Workers' Union and respondent concerning the contract of May 27, 1937, and to the Examiner's action, ruling and comments that further witnesses will not be permitted on said subject unless they can testify to new matters, and the Examiner's refusal to permit the offering and questioning of witnesses upon said matter to determine whether such witnesses can testify as to matters not theretofore covered by other witnesses, and in overruling respondent's objections thereto, as set forth in the following excerpts from the transcript of the record, Pages 2833, 2834, 2835, 2836, 2837, to wit:

[fol. 6574] "Q. (By Mr. Tyler) I hand you Board's exhibit No. 6, being the articles of agreement between the Donnelly Garment Workers' Union and the Donnelly Garment Company and the Donnelly Garment Sales Company, and ask you what matters were discussed in those negotiations between the union and the companies on May 26, 1937.

"Trial Examiner Batten: Mr. Tyler, I want to make the same ruling on this that I just made on the other. There have been two members of this executive committee testify in detail about this, and either two or three of the respondent's witnesses. So, unless you are going to cover matters that have not thus far been covered, I don't want to go into it with this witness. Now, if there is anything else, anything new, I want you to cover it with this witness, but Miss Todd and Mr. Atherton, both of whom were at this meeting, testified quite extensively about these negotiations—and Mr. Baty, and I believe Mrs. Reeves. So, unless there is something new, I think it is cumulative.

. . . . . .

"Mr. Stottle: Mr. Examiner, respondent would say, in that connection, that your statement that unless some new matters were to be gone into—it could hardly be determined what the witness would testify to unless he is permitted to answer the questions and state what did occur.

"Trial Examiner Batten: Mr. Stottle, I presume Mr. Tyler has interviewed this witness as to his testimony, and gone over it thoroughly, as every attorney should before examining his witness, so that he should be able to judge that. I can't. I am simply saying, if there is anything this witness can testify to about these negotiations that will add to the information in this record, certainly the Examiner wants it and the Board wants it. If it is simply a matter of repeating what at least four other witnesses have testified to, I don't think it is necessary.

"Mr. Stottle: Respondent desires to show in an offer of proof that the witness is excluded from testifying, for the reason you have indicated, that is an important matter; and, for the reasons Mr. Tyler has stated.

"Trial Examiner Batten: I think it is an exceedingly important matter. I agree with you on that.

"Mr. Stottle: What is the ruling on the objection to this witness being excluded from testifying on it?

"Trial Examiner Batten: I will reserve my decision.

[fol. 6575] "Mr. Tyler: For the present the ruling is, this witness is not allowed to go into the negotiations of May 27, 1937?

"Trial Examiner Batten: Excepting in so far as he testifies to matters that have not yet been covered.

"Q. (By Mr. Tyler) Do you know, Mr. McConaughey, as to what matters have been described in this hearing as being covered by the negotiations of May 27?

"A. I wasn't present at the time of the testimony of any other witnesses in this courtroom on that subject, so I don't know exactly what has been covered.

"Q. Has anybody told you fully, in detail, as to what has been covered by the other witnesses?

"A. No, sir.

"Q. Were you present at any negotiations of June 21 or June 22, 1937?

"Mr. Stottle: Just a moment. Mr. Examiner, in view of the witness' last two responses, respondent renews its objection to his being excluded from testifying, because it is

apparent that no one could determine now whether he has any new matters or not.

"Trial Examiner Batten: Mr. Stottle, you have been present every day of this hearing, haven't you?

"Mr. Stottle: Yes.

"Trial Examiner Batten: And you, Mr. Tyler?

"Mr. Tyler: I have been absent a day or two.

"Trial Examiner Batten: But you have had Mr. Patten or Mr. Lane, or someone, representing you every day of this hearing, have you not?

"Mr. Tyler: Yes.

"Mr. Stottle: But, Mr. Examiner, I have never discussed with Mr. McConaughey one word as to what his negotiations were—

"Trial Examiner Batten: I want the record to show that while the witnesses have not been here all of the time, the attorneys have been."

[fol. 6576] 345.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining the objection of the Board to questions and answers of the witness Jack McConaughey, as set forth in the following excerpts from the transcript of the record, Page 2838, to wit:

"Q. Were you familiar with the principal subjects of discussion among the employees of the two companies during the months of March and April, 1937?

"A. Yes, sir.

"Q. What were the principal subjects of discussion?

"A. Strikes at the Gernes plant, and what we might be able to do to protect ourselves from the apparent danger that was due us in a short while.

"Q. Did you hear of any threats that the same proceedings would be taken as to employees of the Donnelly companies as were being taken against employees at the Gernes, Gordon and Missouri plants?

"Mr. Leary: I object to that as immaterial.

"Trial Examiner Batten: Objection sustained."

346.

Respondent excepts to the rulings, action and comments of the Trial Examiner refusing to permit evidence concerning strikes and violence at other garment plants in Kansas City and the effect thereof upon respondent's employees, and in striking the answer of the witness Jack McConaughey, as set forth in the following excerpts from the transcript of the record, Pages 2838, 2839, 2840, 2841, 2843, to wit:

"Q. (By Mr. Tyler) What was the attitude of mind of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company during March, 1937, in regard to the possible action of the International Ladies' Garment Workers' Union against them.

[fol. 6577] "A. Everyone felt that—I talked to numbers of them on my job in the service department at that time—I talked to hundreds of people every day, and they were all expressing concern over the happenings that were taking place all over town, and many of them told me of having heard directly from people they knew there, or else overheard people who were in the line of strikers, that we were going to be the next on the list, which naturally caused an agitated state of mind throughout the plant and no one could pursue his job with a great deal of peace of mind, because he didn't know at what time he was going to be kept from coming into the building himself.

"Trial Examiner Batten: Mr. Tyler, I think I have indicated previously on this matter of violence and this situation in Kansas City that I didn't think it was material, and therefore asked the respondent to make an offer of proof.

"And I think yesterday I indicated, on this attitude of mind of the employees as a result of this situation, that I didn't consider it material.

"Therefore, I will ask that you prepare an offer of proof on it, because I don't think the respondent can be held responsible for a situation that is a matter of employees' organization by unions and matters of that kind.

"I think I have stated before, I don't think it is material to the issue as to whether or not the respondent formed this union, dominates it, or sponsors it. Therefore, I would ask that you prepare an offer of proof on that question.

"Mr. Tyler: I wanted to make it clear I wasn't waiving my point heretofore made on that matter. Hereafter, then, I will offer a written offer of proof on that point, without endeavoring to go into it with individual witnesses.

* * * * * * *

"Mr. Langsdale: What about this answer he just made to the last question? Does that stand, so that it will be the subject of cross-examination?

* * * * * * *

"Trial Examiner Batten: Of course, I do not expect to have cross-examination on a matter which I have asked for an offer of proof on and stated that I don't consider it to be material. Therefore, I wouldn't consider the witness' answer, or the question, material.

* * * * * * *

[fol. 3578] "Mr. Langsdale: I move to strike the answer of the witness to the last question.

"Trial Examiner Batten: It may be stricken.

* * * * * * *

"Mr. Stottle: Respondent does except to the striking of this answer."

347.

Respondent excepts to the ruling, action and comments of the Trial Examiner refusing to permit further witnesses or testimony on the question of interference with the free will of respondent's employees in regard to their labor union affiliations and in regard to the meeting of April 27, 1937, and in regard to the meeting of approximately March 27 to April 5, 1937, and in commenting that evidence on said matters is not deemed material by the Trial Examiner, for the reason that such comments show the bias and prejudice of the Trial Examiner and show that he did not intend to consider such evidence and that

he did not consider such evidence in arriving at his findings of fact, conclusions and recommendations, and for the further reason that said rulings deprived the respondent and intervener of material and competent evidence and of a fair trial upon the charges contained in the Complaint, which rulings, action and comments are set forth in the following excerpts from the transcript of the record, Pages 2857, 2858, 2859, to wit:

"Q. Do you know of any employee in the plant ever complaining that pressure was brought on him or her with regard to his or her affiliation with any labor union?

"A. No, sir.

[fol. 6579] "Mr. Tyler: That is all.

"Trial Examiner Batten: Mr. Tyler, on the three matters this witness has testified to, one being the last question you just asked, of his own free will, if you call a witness for some other purpose—I don't know as there is any objection to asking that question, although I don't consider it material to ask a witness that on the stand. From the respondent yesterday I asked for an offer of proof on that, so I don't want you to think that by passing the matter up—In other words, if you contemplate calling 1,200 employees and asking them that question, it is an entirely different matter.

"On the meeting of April 27, which this witness testified to, unless you have witnesses that can add something to what has already been testified to, I don't want you to offer any further witnesses on it. You may make it in an offer of proof.

"As to the March 27 to April 5 meeting, I permitted this witness to testify, because I thought perhaps he would be able to definitely place the date. Now, unless other witnesses have something to add to the testimony we have already received on this meeting, you may make an offer of proof as to that.

. . . . . .

"Mr. Tyler: And as to the other matter, the free will of the witnesses, of course Your Honor understands my position, that that is as much a fact as his indigestion or

whether he has a broken leg, and the best way to get that is to ask him about it.

* * * * * *

"Trial Examiner Batten: If you intend, as Mr. Ingraham indicated to me that he did, calling a very large number of witnesses to testify to that point, I say you had better submit it in the form of an offer of proof. If you submit witnesses on other matters and you incidentally ask them that question, I have no objection, although I still don't consider it material, for the reasons I have previously stated in the record, but I wouldn't have any objection to it."

348.

Respondent excepts to the ruling and action of the Trial Examiner overruling the objections of respondent and intervener to question asked the witness by Mr. Langsdale on cross-examination, as set forth in the following excerpt from the transcript of the record, Page 2864, to wit:

[fol. 6580] "Q. (By Mr. Langsdale) Did you know at the Judge Miller hearing the position of the International Ladies' Garment Workers' Union was that Judge Miller of the District Court had no right to pass upon whether or not the Donnelly Garment Workers' Union was legally formed, and for that reason defendants put in no testimony tending to show it was legally formed?

"Mr. Tyler: I object to the question as calling for a conclusion of law by this witness.

"Mr. Stottle: Respondent makes the same objection.

"Trial Examiner Batten: He may testify, if he knows."

349.

Respondent excepts to the rulings, action and comments of the Trial Examiner refusing to permit the offer of further witnesses or testimony upon the question of domination of respondent's employees in regard to their union affiliations, as set forth in the following excerpts from the transcript of the record, Pages 2922, 2923, 2924, to wit:

"Q. What are your reasons for preferring the Donnelly Garment Workers' Union?

"A. Well, in the first place—

"Trial Examiner Batten (Interrupting): Mr. Tyler, I don't think it is material what her reasons are. She has a perfect right, as an employee of this company, to select any union she wants.

"Mr. Tyler: I submit, one of the questions involved here is whether she does prefer it or whether the company is so dominating her that she has to belong to it.

"Trial Examiner Batten: You mean by that, you contemplate calling all of the employees to testify to this question?

"Mr. Tyler: I contemplate calling a large number.

"Trial Examiner Batten: I can tell you now, I do not intend to listen to them.

[fol. 6581] "Mr. Tyler: Well, on the present question—

"Trial Examiner Batten (Interrupting): She may answer this. I just don't think you should call these employees and put them on the stand and say, 'Now, is this the union you want?' And so on, and so forth. This is no place to determine what the employees want. An election is the place to determine that. The thing we are trying to determine in this hearing is, did this company have anything to do with forming this union, or sponsoring it? That is the question we are trying to determine.

"Mr. Tyler: We are not, also, endeavoring to determine whether the employer is now dominating it or dominating these employees?

"Trial Examiner Batten: Yes, but you couldn't determine it by having these girls get up on the stand and testify here, in front of the management. The place to determine that is by a secret election, where they can vote and no one know how they vote. If you have a large number of witnesses to offer on that, you may make an offer of proof, because I don't intend to sit here and let you call all of these girls up here to testify whether they want this union to represent them.

"Mr. Tyler: Does that ruling go into effect immediately preceding this witness?

"Trial Examiner Batten: That is right."

350.

Respondent excepts to the ruling, action and comments of the Trial Examiner refusing to permit the witness Mrs. Weigand to answer questions propounded to her by counsel for intervener, and in sustaining objections of counsel for the I. L. G. W. U. thereto, and in ruling and announcing that such evidence is not material to the issues in this case, and in refusing to receive further testimony from said witness or other witnesses upon said matters, as set forth in the following excerpts from the transcript of the record, Pages 2939, 2940, 2941, 2942, 2943, to wit:

[fol. 6582] "Q. Did you ever hear Velma Dowdy testify in that case?

"A. Yes, I did.

"Q. Did her testimony have any effect upon your choice as to what union you wanted to belong to?

"Mr. Langsdale: I object to that as immaterial and not tending to prove or disprove any issue in this case. In the Miller case this witness testified how much dues were paid by the International Ladies' Garment Workers' Union, and I suppose that is what you want her to testify to here.

"Mr. Tyler: That is what I am leading up to.

"Mr. Langsdale: And I say it is immaterial to this case, the difference between the dues paid by the International Ladies' Garment Workers' Union and the dues paid by the Donnelly Garment Workers' Union.

"Trial Examiner Batten: If that is the purpose, I want to ask you, Mr. Tyler, how you think it is material. As I have previously stated, the employees can select their own union, one where the dues are nothing, or one where they are $10 a week. The Board has nothing to do with the union the employees select. As long as that union is not dominated or influenced by the company, the em-

ployees have a right to select any union they want to select, and pay any dues they want to pay.

* * * * * *

"Mr. Tyler: My theory is, it must be determined whether these employees are operating the Donnelly Garment Workers' Union out of either fear or favoritism of their employer, or whether they are doing it by their own wish. And, in order to show they are doing it by their own choice, they should be allowed to state the reasons for that choice, and whether those reasons are probable or improbable should throw some light on whether they are telling the truth.

"If this witness testifies she saves a substantial amount of money by belonging to this union over which she would be forced to pay if she belonged to the International Ladies' Garment Workers' Union—

"Trial Examiner Batten (Interrupting): She wouldn't be forced to pay it unless she joined it, would she?

"Mr. Tyler: No, but it has been shown that the International Ladies' Garment Workers' Union wanted to organize these people.

[fol. 6583] "Trial Examiner Batten: That is not in this case. Wouldn't it be possible to have a union which was absolutely dominated by the employer, and they, not knowing it, would freely join it and pay their dues?

* * * * * *

"Mr. Tyler: I submit, the reason for the employees choosing this union is the most vital kind of evidence as to whether the company does dominate it or not.

* * * * * *

"Trial Examiner Batten: I don't think it is material to the issues in this case. I think this lady has a personal right to join any union she wants to join, and if she prefers the Donnelly Garment Workers' Union she doesn't have to give the Labor Board or anybody else any reason for joining it. She doesn't have to show the Labor Board she has a reason. She may join it because the first name of it starts with a D and the last word in the name starts with a U.

"Mr. Tyler: I agree, she doesn't have to give the Labor Board any reason, but I submit she has a right to give a reason in sustaining that it was her own free choice.

* * * * * * *

"Trial Examiner Batten: We are not interested in the reason for joining.

* * * * * * *

"Mr. Tyler: I will ask her those questions but before doing so, I understand Your Honor excludes her answering the questions as to the effect the testimony of Velma Dowdy had on her?

"Trial Examiner Batten: Yes."

351.

Respondent excepts to the rulings and action of the Trial Examiner in excluding evidence by the witness Lyle Jeter concerning violence to employees at other garment companies in Kansas City and threats that similar violence would be done at the Donnelly plant and as to the effect thereof upon the respondent's employees and further excepts to the comments of the Trial Examiner concerning the materiality of such evidence, and to his action [fol. 6584] and rulings in sustaining objections thereto, and in striking answers given, and refusing intervener's offer of proof thereon, as set forth in the following excerpts from the transcript of the record, Pages 2993, 2994, 2995, 2996, 2997, to wit:

"A. One morning I was standing up there and Miss Tobin went back and forth across the street—I was standing in front of the plants—and an elderly lady started in the building and five or six ladies jumped on her and beat her up—

"Trial Examiner Batten (Interrupting): Tell me how you were threatened.

"Mr. Langsdale: I move that that part, the last part of his answer be stricken.

"Trial Examiner Batten: It may be stricken. Tell me how you were threatened.

"A. I have to tell a little bit about this first part, if I may.

"Q. (By Trial Examiner Batten) Did somebody threaten you personally?

"A. Tnreatened the Donnelly Garment Company.

"Q. Tell me what they said, and who it was.

"A. As this old lady got up and started in the building somebody said, 'Isn't that awful, the way they are treating her?' And Miss Tobin said, 'That's just a sample of what we are going to do down at Donnelly's.'

"Q. (By Mr. Patten) Did you report that at the plant?

"A. I talked it over with the employees.

"Q. Mr. Jeter, did you take any part in the meeting at which the Donnelly Garment Workers' Union was organized?

"A. I did.

"Trial Examiner Batten: Now, Mr. Patten—

"Mr. Patten (Interrupting): This is a point that has not been covered.

[fol. 6585] "Trial Examiner Batten: The point you have finished covering, I don't think that is material to this case.

"Mr. Patten: I understood you had said if we had cases involving actual threats to persons employed by the Donnelly Garment Company we could put that in.

"Trial Examiner Batten: Yes, if you have any actual threats of violence committed as to any employee of the Donnelly Garment Company, that should be in here. I don't think this sort of testimony has anything to do with it.

"Mr. Patten: That was a personal threat. He was an employee of the Donnelly Garment Company, standing around and heard this remark.

"Trial Examiner Batten: I do not consider that as a personal threat to him. That is something that may have occurred a thousand times. If somebody personally threatened this man, or something of that sort, I think that testimony would be relevant.

"Mr. Langsdale: Is this answer to be stricken then, so that it is not subject to cross-examination or rebuttal?

"Trial Examiner Batten: I want to hear the attorneys first.

"Q. (By Mr. Patten) Mr. Jeter, did you interpret that as a threat to the employees of the Donnelly Garment Company?

"Mr. Leary: I object to that as calling for a conclusion.

"Trial Examiner Batten: Objection sustained.

"Mr. Patten: The only thing lacking, apparently, under your definition of a threat, was for them to address him personally and say, 'You, Mr. Jeter, are going to be—'

"Trial Examiner Batten (Interrupting): Now, Mr. Patten, if a Donnelly employee was threatened personally, or any violence committed, I will receive that testimony. The fact that this man happened to be down there where something was going on and heard some remarks—I think there were some remarks like that in the paper, too, but I don't consider that matter an issue in this case. I think that is a matter between the employees. I don't see how the company can be held responsible for that situation.

[fol. 6586] "Mr. Patten: It shows the circumstances leading up to the formation of this union. If we can show the circumstances, that the union was inspired by the employees and did not rise out of the action of the company—In so far as we show these circumstances which motivated them we negative the contention of the Board and the International.

"Trial Examiner Batten: That might be possible, remotely. It may be stricken. I am not going to receive that type of testimony on that question.

"Mr. Patten: Mr. Examiner, the intervener offers to prove by this witness, and others, that threats were made in their presence in connection with physical acts of violence, which they personally witnessed, to the effect that those acts of violence were only circumstances to show what would be done to the Donnelly Garment Company employees when the International Ladies' Garment Workers' Union started its drive to organize the Donnelly plant.

"Trial Examiner Batten: And the other witnesses' testimony would be substantially the same as this testimony?

"Mr. Patten: And that those threats were made in connection with the International Ladies' Garment Workers' Union. The other witnesses' testimony would be substantially the same or similar to that we have offered—that this witness has testified to and Your Honor has ordered stricken.

"Trial Examiner Batten: The offer is refused.

"Mr. Stottle: Respondent excepts to the striking of the answer and to the refusal of the offer."

352.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining objection to and striking answer of the witness Lyle Jeter, as set forth in the following excerpt from the transcript of the record, Page 2998, to wit:

"A. Miss Todd said as she called the names of the ones to be on the nominating committee, to stand up, and she called my name.

"Q. Were you surprised or not when that happened?

"Mr. Leary: Oh, I object to that as immaterial.

[fol. 6587] "Trial Examiner Batten: Sustained.

"Mr. Leary: And I move that the answer be stricken.

"Trial Examiner Batten: It may be stricken."

353.

Respondent excepts to the rulings and action of the Trial Examiner in refusing to admit in evidence Intervener's Exhibit No. 20-A to 20-KK inclusive (also referred to as Intervener's Exhibit No. 18), and in refusing same as an offer of proof, as set forth in the following excerpts from the transcript of the record, Pages 3042, 3044, 3045, to wit:

"(Mr. Tyler) I now offer in evidence the exhibit, which I will ask the stenographer to mark intervener's exhibit No. 18, lettering it from A to whatever that results in.

"(Thereupon the photographs above referred to were marked for identification 'Intervener's Exhibit No. 20-A to 20-KK, inclusive.')

"Mr. Tyler: That is an affidavit for an election.

"Trial Examiner Batten: You are offering these?

"Mr. Tyler: Yes, sir.

* * * * * * * * * *

"Trial Examiner Batten: It will not be received. You may incorporate it in the offers of proof if you want to.

"Mr. Ingraham: We have made an offer—

"Trial Examiner Batten (Interrupting): I say, this is refused, and if any of the parties want to incorporate the material in an offer of proof, you may do so.

"Mr. Tyler: Very well.

* * * * * * * * * *

"Trial Examiner Batten: It is refused now as an offer of proof."

[fol. 6588] 354.

Respondent excepts to the rulings and action of the Trial Examiner in admitting in evidence I. L. G. W. U. Exhibit No. 19 over the objections of the respondent and intervener, as set forth in the following excerpts from the transcript of the record, Pages 3057, 3058, 3059, 3060, 3061, 3062, to wit:

"Mr. Langsdale: I offer from the February 16th issue of the Liberty magazine the only editorial in that magazine. I do not offer anything except the one-page editorial.

"Mr. Ingraham: We object. It is immaterial to any issue in this case. There is no showing that this is the editorial referred to.

* * * * * * * * * *

"Mr. Tyler: We object. There is no showing this is the editorial that was read.

* * * * * * * * * *

"Mr. Lane: There is no showing who wrote this article, Board's exhibit No. 2, or that it was accurate.

* * * * * * * * * *

"Mr. Tyler: There is no evidence that the Donnelly Garment Workers' Union or the Nelly Don Loyalty League had anything to do with that publication, regardless of who got it out.

"Trial Examiner Batten: Of course, there is the allegation in here, I believe, that the Loyalty League is a labor organization—in the complaint.

"It will be received for whatever value it has.

"(Thereupon the editorial above referred to was marked for identification 'I.L.G.W.U. Exhibit No. 19,' and received in evidence.)

* * * * * * * * * *

"Mr. Langsdale: * * * I offer I. L. G. W. U. exhibit No. 19.

"Mr. Shepard: Respondent is making the same objection previously made.

"Trial Examiner Batten: Subject to the objection both parties have made, it is received."

[fol. 6589] 355.

Respondent excepts to the ruling and action of the Trial Examiner in denying the motion of intervener to strike out all the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray, as set forth in the following excerpt from the transcript of the record, Page 3062, to wit:

"Mr. Tyler: I would like to move to strike out all of the rebuttal testimony offered by Mr. Langsdale from Mrs. Gray, on the ground that there is no evidence that she was acting on behalf of the Donnelly Garment Workers' Union or the Donnelly Garment Company, and that nothing said or done at that meeting could in any way bind the respondent or the intervener.

"Trial Examiner Batten: The motion is denied."

356.

Respondent excepts to the ruling and action of the Trial Examiner in overruling the motion of respondent to strike Board's Exhibit No. 18 (18-A to 18-J) as set forth in the following excerpt from the transcript of the record, Page 3068, to wit:

"Mr. Ingraham: I move to strike exhibit No. 18. There has been no showing that the exhibit was in the possession of the Witness Greenhaw up to the time that she testified, and it now appears it has been in the possession of other parties, who have not appeared and testified it is the document which Elsa Grahajn Greenhaw transcribed.

"Mr. Langsdale: Of course Elsa Graham Greenhaw had the exhibit in her hands when she testified, and said this was the carbon of the minutes she took and turned over to Mr. Walsh's office.

"Trial Examiner Batten: Objection overruled."

[fol. 6590] 357.

Respondent excepts to the ruling and action of the Trial Examiner in denying respondent's motion to strike the answers of the witness Bucker set forth on Pages 3069 and 3070 of the transcript of the record.

358.

Respondent excepts to the ruling and action of the Trial Examiner in overruling the objections of respondent and intervener to question asked the witness Mrs. Fike and in permitting her to answ same, as set forth in the following excerpts from the transcript of the record, Pages 3077, 3078, to wit:

"Q. Was there ever any change, as far as you knew; in the duties of the instructors at the Donnelly Garment Company plant from the time you went to work there in 1926 or 1927 up to the time you left there in May, 1937?

* * * * * *

"Mr. Tyler: I object that she is not in a position to testify to what the duties were of the instructors at the Donnelly Garment Company plant.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: She may answer. Objection overruled."

359.

Respondent excepts to the ruling and action of the Trial Examiner in overruling objection of intervener to question asked the witness Mrs. Fike and permitting her to answer same, as set forth in the following excerpts from the transcript of the record, Page 3084, to wit:

"Q. (By Mr. Langsdale) Was there any change, as far as you observed, in the authority of the instructors from the time you went to work there in 1933 until you left on March 8, 1937?

[fol. 6591] "A. No, sir.

"Mr. Tyler: I object that this witness cannot tell by observation whether there was any change in the authority of the instructors.

"Trial Examiner Batten: I presume she is answering us to what she knows."

360.

Respondent excepts to the action of the Trial Examiner in failing and refusing to sustain respondent's motion to dismiss the entire compiaint and also its motion to dismiss each and all of the paragraphs of the complaint which motions were renewed at the close of the case, and also excepts to the action of the Trial Examiner in failing and refusing to sustain intervener's motion to dismiss the complaint which motion was renewed at the close of the case, which motions appear in the transcript of the record at Pages 3102, 3103, as follows, to wit:

"Mr. Stottle: Mr. Examiner, we desire to renew our motion to dismiss, which I think was marked Board's Exhibit No. 1-FFFF, and related to the whole complaint; and, also, renew our motion to dismiss each and all of the paragraphs in the complaint, which is Board's Exhibit No. 1-GGGG.

* * * * * *

"Mr. Tyler: Intervener renews its motion to dismiss as heretofore filed."

. . . . . .

[fol. 6594] 366.

Respondent excepts to the failure and refusal [to] the Trial Examiner to accept respondent's and intervener's offers of proof or evidence and each of same, to wit: Board's Exhibits Nos. 1-JJJJ, 1-OOOO, 1-QQQQ, 1-RRRR, and the various other offers of proof made during the hearing, excepting thereto severally and separately as to each and every part of such offers and as to each and every witness therein named, and further excepts to the Trial Examiner's failure and refusal to permit the respondent and intervener to produce witnesses and intro-[fol. 6595] duce testimony in accordance with such several offers of proof and to his failure and refusal to consider said offered evidence in making his findings of fact, conclusions and recommendations set forth in the Intermediate Report:

367.

Respondent excepts to the rulings and action of the Trial Examiner in refusing to permit respondent to introduce evidence upon the conspiracy and other matters set forth in Section B of Respondent's Answer including evidence of violence to employees of other garment companies caused by the International Ladies' Garment Workers' Union and threats that similar violence and tactics would be used upon respondent's employees, and that such facts were the motivating cause for the formation by respondent's employees of the Donnelly Garment Workers' Union, as their voluntary action and not as the result of any domination, interference, influence or assistance by or on the part of respondent.

368.

Respondent excepts to the failure and refusal of the Trial Examiner to consider and/or give effect to the findings of fact, conclusions and decree of the District Court of the United States for the Western Division of the Western District of Missouri, made and rendered (by Judge Andrew Miller) in Case No. 2924 entitled "Donnelly Gar-

ment Company, et al., vs. International Ladies' Garment Workers' Union, et al.," and offered in evidence by respondent in this proceeding.

* * * * * * *

[fol. 6596] 371.

Respondent excepts to the Trial Examiner's failure and refusal to strike the evidence introduced by the Board upon each of the paragraphs of the Complaint, as moved by the respondent at the close of the Board's case (Board's Exhibit No. 1-GGGG) and renewed by respondent at the close of the entire case (Transcript of Record, Page 3102).

[fol. 6597] 372.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence and considering the testimony offered by the Board and/or International Ladies' Garment Workers' Union from the transcript of the evidence taken before the NRA Regional Labor Board, Twelfth District, Case No. 160, styled "International Ladies' Garment Workers' Union, Complainant, vs. Donnelly Garment Company, Respondent", and the several excerpts therefrom, hereby excepting separately and severally to the testimony and each and every part thereof or excerpt therefrom of each and every witness, so offered, including Ellen Fry, Thelma Owen, Glynn Brooks, Mamie Tubbesing, Elizabeth Gates Reeves, Lillian Wales, Frances Riedel, Pauline Lutz, Virginia Stroup, Dewey Atchison, Gladys Ellege Richardson, R. L. Blume, Meyer Perlstein, Lillian White, Marie Patton, Bessie Neimoyer, Ella Mae Guerrant Hyde, Mrs. James A. Reed, contained in N.R.A.-J.M.C. Exhibit Nos. 1-A to 1-BBBB inclusive, pages 1 to 80, and including Tillie Shirley, Lillian Rutherford, Elizabeth Reeves, Lou Perkins and Thelma Owen contained in N.R.A.-J.M.C. Exhibit No. 17.

373.

Respondent excepts to the ruling and action of the Trial Examiner in overruling the objections and denying the motion to strike of respondent and intervener (said objection and motion being N.R.A.-J.M.C. Exhibit Nos. 2-A to [fol. 6598] 2-C inclusive), which objections and motion were

directed to the testimony contained in N.R.A.-J.M.C. Exhibit Nos. 1-A to 1-BBBB inclusive.

374.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence and considering the testimony offered by the Board and/or International Ladies' Garment Workers' Union from the transcript of the evidence taken before Judge Andrew Miller in Case No. 2924, in the District Court of the United States for the Western Division of the Western District of Missouri, entitled "Donnelly Garment Company, et al., vs. International Ladies' Garment Workers' Union, et al., Donnelly Garment Workers' Union, Intervener", and the several excerpts therefrom, hereby excepting severally and separately as to the testimony and each and every part thereof or excerpt therefrom of each and every witness, so offered, including David Dubinsky, Meyer Perlstein, Thelma Owen, Lillian Wales and Frances Riedel, contained in N.R.A.-J.M.C. Exhibit Nos. 5-A to 5-GG inclusive, Pages 1 to 22, and Sylvia Hull contained in N.R.A.-J.M.C. Exhibit Nos. 7-A to 7-CC inclusive.

375.

Respondent excepts to the ruling and action of the Trial Examiner in overruling the objection and denying the motion to strike of respondent and intervener (said objections and motion being N.R.A.-J.M.C. Exhibit 6-A to 6-C inclusive), which objections and motion were directed to the testimony contained in N.R.A.-J.M.C. Exhibit Nos. 5-A to 5-GG inclusive.

[fol. 6599] 376.

Respondent excepts to the rulings and action of the Trial Examiner in overruling the several objections made by respondent and/or intervener to the testimony and excerpts thereof from the old N.R.A. Case No. 160 and the Judge Miller Case No. 2924, which said objections and rulings were made or endorsed upon the exhibits containing said offered testimony.

377.

Respondent excepts to the rulings and action of the Trial Examiner in receiving in evidence N.R.A.-J.M.C. Exhibits

Nos. 9-A to 9-CC inclusive, and in overruling respondent's and intervener's objections thereto, including each of those endorsed on the exhibits and those contained in N.R.A.-J.M.C. Exhibit No. 10-A.

378.

Respondent excepts to the rulings and action of the Trial Examiner in overruling respondent's objections (N.R.A.-J.M.C. Exhibit No. 14) to N.R.A.-J.M.C. Exhibits Nos. 13-A to 13-R inclusive.

379.

Respondent excepts to the Intermediate Report and to the several findings, conclusions and recommendations of the Trial Examiner therein, for the reason that same thwart and violate the prime purposes and provisions of the National Labor Relations Act (to wit: that employees have the right to bargain with their employer through representatives of their own choosing and that employers are re-[fol. 6600] quired to deal exclusively with such representatives of a majority of their employees), in that the evidence clearly and overwhelmingly shows that the Donnelly Garment Workers' Union and its executive committee was at all times the free choice of a majority (in fact 100%) of respondent's employees as their bargaining agency and by reason of which the contracts of May 27 and June 22, 1937, between respondent and that union were valid, and the findings, conclusions and recommendations of the Trial Examiner being contrary thereto are, and any order of the Board in accordance therewith would be, in contravention of the National Labor Relations Act and illegal.

Wherefore respondent prays that its exceptions be sustained and the Complaint dismissed.

Respectfully submitted,

JAMES A. REED
R. J. INGRAHAM
BURR S. STOTTLE
JAMES J. SHEPARD, JR.
REED & INGRAHAM
Attorneys for Respondent
Donnelly Garment Company.

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Volume VII

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WOEKERS' UNION, PETITIONER,

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 29, 1946
CERTIORARI GRANTED APRIL 29, 1946

VOLUME VII.

RECORD.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 12,641.

United States Circuit Court of Appeals

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INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

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United States of America

Before the National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers Union
and
Donnelly Garment Workers Union, Party to the Contract.

Case No. C-1382.

District Court Room,
U. S. Courthouse,
Post Office,
Kansas City, Missouri.

July 6, 1942.

The above entitled matter came on for further hearing pursuant to notice, at 10:00 a.m.

Before:

James C. Batten, Trial Examiner.

Appearances:

Ruth Weyand, Shoreham Building, Washington, D. C., appearing for the National Labor Relations Board.

James A. Reed, R. J. Ingraham, James J. Shepard, Jr., and Burr S. Stottle, 1900 Telephone Building, Kansas City, Missouri, appearing for the Donnelly Garment Company.

Frank E. Tyler and Lucian Lane, 1008 Dwight Building, Kansas City, Missouri, appearing for the Donnelly Garment Workers' Union.

[fol. 3118] Cliff Langsdale, 922 Scarritt Building, Kansas City, Missouri, appearing for the International Ladies' Garment Workers Union.

[fol. 3121] Proceedings.

Trial Examiner Batten: I think we will proceed.

[fol. 3122] Miss Weyand: I would like to introduce first, as Board's Exhibit 1-YYYY, the order of the Board, dated April 21, 1942, vacating the decision and order, reopening record, referring proceedings to Regional Director, and directing further hearing. I take it there is no objection.

As Board's Exhibit 1-ZZZZ I would like to introduce the notice of further hearing.

As Board's Exhibit 1-AAAAA I would like to introduce the affidavit as to service and proof of service upon the Donnelly Garment Company, through Reed and Ingraham, its attorneys; upon the International Ladies' Garment Workers Union, through Mr. Cliff Langsdale, its attorney; upon Donnelly Garment Workers Union, through Mr. Frank Tyler, its attorney; as Board's Exhibit 1-BBBBB I would like to introduce the order designating Trial Examiner.

[fol. 3137] Trial Examiner Batten: All right. Now, I think we are ready to proceed.

I think the record should indicate that Mr. Hoggsett is appearing for the Respondent, who did not appear in the prior proceedings.

Are there any motions?

Miss Weyand: Before we proceed, I wish to call to the Trial Examiner's attention a motion which has just been

filed with the Regional Director, and which the Regional Director feels should be referred to the Trial Examiner, because the Trial Examiner has taken jurisdiction of this case. The Regional Director feels he has no further jurisdiction to act on this motion, which is the application for the designation of another Trial Examiner, and an affidavit of prejudice. I move that it be referred to the Board for action. I think that such matters, as I understand it, should be decided by the Board itself.

* * * * * *

[fol. 3138] Mr. Tyler: If the Court please, may I ask whether that paper has been given an exhibit number, or what the filing mark is?

Trial Examiner Batten: It has not as yet.

* * * * * *

Mr. Tyler: Has it been marked filed?

Trial Examiner Batten: It is filed. It has been presented to me, and copies will be sent to the docket clerk. The number will be Board's Exhibit 1-CCCCC, if you want to refer to it. Just a moment, Senator Reed.

[fol. 3139] (Thereupon the document above referred to was marked as "Board's Exhibit No. 1-CCCCC," for identification.)

Mr. Tyler: If the Court please, the Intervener would like to join in the application for a different Trial Examiner and suggest to Your Honor that after the vigorous and repeated statements of Your Honor as to the weight and lack of weight of the evidence which you are now asked to consider, you naturally have not the fair, open and impartial mind to which the Interveners are entitled.

Trial Examiner Batten: I understand you are joining in the motion, based upon the statements in the affidavit?

Mr. Tyler: That is correct.

* * * * * *

Mr. Reed: Miss Weyand made some statement at the beginning of this session I was absolutely unable to hear, and I am going to ask the reporter to please read me that.

(Record read by the reporter.)

Miss Weyand: I moved that it be referred to the National Labor Relations Board for action. It was my position that an application for the designation of another Trial Examiner, as I understand the law, should not be passed on by the Trial Examiner himself, but should be referred to the three members of the Board in Washington, or a quorum thereof, to act upon.

[fol. 3140] Mr. Reed: That was your motion?

Miss Weyand: Yes.

Mr. Reed: That was what I wanted to understand.

Trial Examiner Batten: Well, do I understand, Senator Reed and Mr. Tyler, that it is also your desire that this matter be referred to the Board? Do you concur in this motion?

Mr. Reed: We do.

Mr. Tyler: We do, Your Honor.

* * * * * * *

[fol. 3143] Mr. Reed: I want it entered of record.

Trial Examiner Batten: Well, I will receive it as Board's Exhibit 1-CCCCC, which makes it a part of Board's Exhibit 1, which contains all of the pleadings, motions, and formal papers.

* * * * * * *

[fol. 3144] (The document heretofore marked "Board's Exhibit No. 1-CCCCC," for identification, was received in evidence.)

* * * * * * *

[fol. 3146] Trial Examiner Batten: This morning I was presented with an application that I presume was directed to the Board, for the designation of another Trial Examiner, which was filed by the Respondent, and a motion by the Board's counsel that the matter be referred to the Board. The matter was concurred in by the Respondent and the Intervener, and opposed by the Union. It is customary when affidavits of this type are submitted, either

to the Court or to the Trial Examiner, that the person to whom they are presented passes upon them, but in view of the history of this matter, and the fact that the Court at least has passed on some of these matters, I assume that is not a statement of fact, however. I have concluded that I will concur in the request of those three parties, that this matter be referred to the Board for determination. However, that reference is with the understanding that the hearing may be reconvened upon 48 hours' notice to the parties. Now, is there anything further that counsel has to say?

* * * * * *

[fol. 3147] Mr. Reporter, will you see there is prepared today a copy of the record thus far, including the exhibits which have been received at this hearing and the motion of the Respondent, that they are forwarded to the Board today by air mail?

Now, is there anything further? If not, then we will adjourn, subject to 48 hours' notice.

* * * * * *

[fol. 3151] Trial Examiner Batten; I think we are ready to proceed.

* * * * * *

Miss Weyand: Board's Exhibit No. 1-DDDDD, notice of hearing before the board for oral argument on the application for another Trial Examiner; Board's Exhibit No. 1-EEEEE, the application for continuance filed by the respondent; Board's Exhibit No. 1-FFFFF, the answer of the International Ladies' Garment Workers Union in opposition to the application for continuance; and Board's Exhibit No. 1-GGGGG, the order of the board, dated July 28, 1942, denying the applications for continuance and for a new Trial Examiner.

* * * * * *

[fol. 3152] (Thereupon the documents above referred to, previously marked for identification "Board's Exhibits Nos. 1-DDDDD to 1-GGGGG, inclusive, and 1-HHHHH to 1-PPPPP, inclusive," were received in evidence.)

* * * * * *

[fol. 3155] Mr. Ingraham: Respondent desires to file written exceptions to the rulings of the board on the application for designation of a new Trial Examiner and on the application for continuance. I would like to have the exceptions identified and put in the record.

Trial Examiner Batten: That will be No. 1-QQQQQ.

* * * * * *

[fol. 3156] Is there any objection to the receipt of Board's Exhibit No. 1-QQQQQ, being exceptions of the respondent to the denial of the application for designation of another Trial Examiner and denial of its application for continuance?

If not, it will be received.

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* * * * * *

[fol. 3162] Proceedings.

Trial Examiner Batten: Are you ready to proceed?

Mr. Hogsett: Mr. Examiner, may we have an understanding now as to whether the Board will offer any further evidence?

Trial Examiner Batten: Well, I presume the Board's attorney had better answer that question. Miss Weyand?

Miss Weyand: I do not know definitely whether we will or not. I took it, if the respondent should adduce evidence which needed rebutting, I expected to put on rebuttal evidence. What evidence I put on would be purely rebuttal in nature to what is put on by the company.

Trial Examiner Batten: Mr. Langsdale, I presume we had better have, also, a statement from you.

Mr. Langsdale: My thought is the same as Miss Weyand's. We are here to meet whatever they bring in. If they bring in nothing, we have nothing.

Mr. Hogsett: That is all I wanted to know.

Mr. Lane: I have now written exceptions of the intervener, Donnelly Garment Workers Union, to the orders of

the Board made on July 28th, with respect to the application for the designation of another Trial Examiner, and with respect to the application for continuance.

The Board's order filed yesterday was Exhibit No. 1-GGGGG.

Trial Examiner Batten: This will be Board's Exhibit No. 1-RRRRR.

[fol. 3163] Is there any objection to the receipt of the exceptions by the intervener?

Mr. Ingraham: No objection.

Trial Examiner Batten: It will be received.

(Thereupon the exceptions above referred to was marked for identification "Board's Exhibit No. 1-RRRRR" and received in evidence.)

[fol. 3164] NELL QUINLAN REED, called as a witness by and on behalf of respondent Donnelly Garment Company, was sworn and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. Please state your name?

A. Nell Quinlan Reed.

Q. Where do you live, Mrs. Reed?

A. I live in Kansas City, Mo.

Q. Are you an official of the Donnelly Garment Company?

A. I am the President of the Donnelly Garment Company.

Q. Are you the founder of that business? A. I am.

Q. Did you personally manage the production of that business for many years? A. I did.

Q. Can you tell approximately when that period was?

A. I founded the business in 1916 and—well, I have always managed the business, and for probably the first 15 or 18 years I was very directly in the factory. That has been my biggest responsibility.

Q. And since that time you have, of course, kept in touch with and are acquainted with what was going on in the factory? A. I have.

Q. Mrs. Reed, are you familiar with the customs and practices in the garment industry generally? A. I am.

[fol. 3165] Miss Weyand: Mr. Trial Examiner, I understand we are here for the purpose of adducing evidence under certain offers. Offhand, I am unable to identify the offer under which Mrs. Reed's testimony is being adduced. I would like to have counsel for the company point out that offer, if I might ask for that.

Trial Examiner Batten: Of course, I may not understand this matter. You say "under certain offers." What do you mean by that, under certain offers of proof?

Miss Weyand: Yes. The Court directed that the Board take testimony which had been offered by the company and which they urged upon the Court as having been improperly denied. As I understand this hearing, it is limited to receiving such evidence. I do not at the immediate moment say Mrs. Reed's evidence does not come under any such offer. I am asking, however, that it be pointed out which offer her testimony comes under.

Trial Examiner Batten: Of course, I assume, had Mrs. Reed been here before, she undoubtedly would have testified, as the head of this company, concerning it in general. I do not believe that, with the first witness, and particularly the president of the company, I am going to restrict the testimony, Miss Weyand, at this time.

By Mr. Ingraham:

Q. Mrs. Reed, do you recall there was a previous hearing in this case? A. I do.

[fol. 3166] Q. What was the condition of your health at that time?

A. My health was in very bad condition at that time.

By Mr. Ingraham:

Q. Mrs. Reed, why did you not testify at the last hearing?

A. Because I was too ill. My doctor insisted that I go [fol. 3167] away and sent with me a trained nurse, who was in attendance the entire summer.

Q. Otherwise, you would have been here and testified?

A. Indeed, I would have.

Q. You desired to testify? A. I did.

Q. Mrs. Reed, there has been testimony offered in the record in this case regarding the Loyalty League. Were you a member of that organization? A. I was not.

Q. When did you first learn that there was such an organization as that?

A. I don't remember exactly. I had no contact with the organization. No one ever officially notified me of such an organization.

Q. Did you ever suggest or request of any employee of the Donnelly Garment Company that he or she should form such an organization?

A. I did not. My remembrance now is that it was formed shortly after the N. R. A. hearing, when there was a great deal of discussion in the papers and in the churches about sweatshop conditions in Kansas City.

Mr. Langsdale: If the Examiner please, I am wondering if any of the people in the room are witnesses. If they are, the International Ladies' Garment Workers Union would [fol. 3168] like to have a ruling enforced against the presence of other witnesses in the courtroom.

Mr. Hogsett: Mr. Examiner, I think it is a little late for that request to come. This case was fully heard, 3,000 pages of oral testimony were taken, and no such request was made by any party. Mr. Langsdale's witnesses were then present in the courtroom, and it is out of line, coming at this point.

I make that point.

I make the further point, if Your Honor is interested, it is the practice in the United States Courts here not to enforce that rule, because it slows up the production of proof. When a witness is excused and you are ready for him, then you have to hunt him, and the judges, as a matter of expediency, have discarded that rule.

Trial Examiner Batten: Mr. Tyler?

Mr. Tyler: I join in Mr. Hogsett's position. I think this case is the same as that heard in 1939, and at that time that rule was not in force, and I think it too late to enforce the rule now. I submit it would be improper to enforce the rule at the time when the company and the intervener expect to put on their testimony, when it has not been enforced heretofore.

Mr. Langsdale: If it please the Examiner, I do not recall whether we had the rule in force during the last hearing or not.

* * * * * * *

[fol. 3170] Trial Examiner Batten: I am going to follow the practice I have always followed in these hearings. When the matter is brought up as an issue at the beginning of the hearing, and determined at that time, I have on one or two occasions enforced such a rule, but I do not propose to do so now.

* * * * * * *

Mr. Ingraham: State whether or not at that time any union was making charges against the Donnelly Garment Company.

A. Yes. The I. L. G. W. U. was sending out leaflets [fol 3171] and giving newspaper interviews, intimating that we had a sweatshop and that working conditions were very bad in our place. They also had representatives at some church meetings to spread the false idea that we had a sweatshop and very bad conditions in our place.

[fol. 3172] By Mr. Ingraham:

Q. Mrs. Reed, did you at any time suggest to any employee that they should or should not join the Loyalty League? A. I did not.

Q. Did you at any time ever suggest to the Loyalty League or any of its officers or members that the Loyalty League should influence employees of the Donnelly Garment Company, so they would not join the ILGWU?

A. I did not.

Q. Did you ever hear of such a thing being done by anybody representing the management? A. I did not.

Q. Did you ever know of any inference that the Loyalty League did influence any employees against joining the ILGWU? A. I did not.

Q. Did you ever suggest or request the Loyalty League, it officers or members to cause the Donnelly Garment Workers' Union to be organized? A. I did not.

Q. Did you ever hear of anything like that being done by any representative of the management? A. No.

Q. Did you ever attend any meeting of the Loyalty League? A. No.

Q. Now what dealings did you have with the Loyalty League?

[fol. 3173] A. I absolutely had no dealings whatever.

Q. Did you ever discuss any matters concerning wages or conditions of employment with the representatives of the Loyalty League?

A. I absolutely had no contact or discussion with them on any subject, with the Loyalty League.

Q. What did you understand that the Loyalty League did do?

A. In a general way, I understood they wanted to refute the charges that had been made about the conditions in our plant.

Q. By whom?

A. Well, by the ILGWU and by other people here. There were a number—it was sort of a movement in the city against sweatshops, and I believe that our girls resented the fact that we were put in the same class as these other shops that were paying $2.00 and $3.00 a week wages, and had very bad conditions.

Q. What wages were being paid in the Donnelly shop at that time?

A. I testified in a three-judge court to the effect that my work prices were still based upon the price I had made back in the war days, when the very highest wages were paid that were ever being paid in this country, and Mr. Walsh made the point didn't I ever raise, hadn't I raised wages since that time, and I explained to him I had never lowered wages since the high wages paid in the old war [fol. 3174] days. At that time my piece rates were based on a good average operator making $25.00 a week. We then worked forty-six and a quarter hours a week.

Trial Examiner Batten: Mr. Ingraham, pardon me for the interruption. Have you finished, Mrs. Reed?

A. No, I haven't. We then worked forty-six and a quarter hours a week, but that now we were working our regular week, working forty hours, and that the improvement in my management and the installation of new or modern machinery made it possible in most cases for the same people that made $25.00 a week, the same class of workers to make the $25.00 a week, and in the instances where they couldn't, I have increased the week's work prices, so that a good, average operator in my plant has always been able to make $25.00 a week; and if she was an unusual operator, unusual along the same line of work, they often made $35.00 a week, and we put into evidence pay rolls that show some of the girls were making $50.00.

Now, we had operators that were slower, and perhaps didn't have the urge to turn out so much work or the skill to do it, and they made less than $25.00. I had established, a great many years ago, I think probably in 1919—I am not sure as to the exact year—a minimum of $15.00 a week, but I expected an operator to make more than that. My piece rates were based, were on a basis where a good operator should make more than that.

[fol. 3175] Trial Examiner Batten: I was going to suggest, Mr. Ingraham, your question, "What were you paying at that time," what time?

Mr. Ingraham: During the spring of 1935, when the I.L.G.W.U. made these charges.

A. Well, it's hard to say, just saying what I was paying, because the majority of our employees are on a piece rate. They make various wages.

By Trial Examiner Batten:

Q. Can you tell us about what the average was, the average operator would make?

A. Well, they make — as I said, a good, average operator makes $25.00 a week. For a very short time, and I don't remember the exact time, but I remember it was sometime previous to the N.R.A., I had reduced the piece rate, 10 per cent, but that was not kept into effect, I don't think even one season.

Q. Well, then, your answer would be, in substance, that the average operator would make about $25.00 a week, is that right?

A. My piece rates were based on an average operator making $25.00 a week.

By Mr. Ingraham:

Q. Mrs. Reed, you have mentioned the N.R.A. hearing. Will you explain what occurred with reference to certain girls that had made charges to the N.R.A. Board?

A. Well, we received a letter from the N.R.A. Board, that was the N.L.R.B. Board, wasn't it?

Q. Yes.

[fol. 3176] A. Yes.

By Trial Examiner Batten:

Q. What was that, N.L.R.B.?

A. Well, the N.R.A.B., the N.R.A. Labor Board, wasn't it?

Mr. Langsdale: Pardon me just a moment. I don't know whether I understood the Examiner or not, regarding you were not going to restrict this testimony in regard to hearsay testimony.

Trial Examiner Batten: Mr. Langsdale, I don't believe I would get technical at this time, this early in the hearing; I don't believe I would get technical now.

Mr. Langsdale: It is evident that the testimony is entirely from hearsay, and I don't know what your ruling will be. I want to know what the Examiner's rulings are. I don't want to be bobbing up here all the time.

Trial Examiner Batten: I would suggest this to all counsel. Any of you who feel the time has arrived that you should make an objection, you should do it. I think that is what your client is paying you for. I don't intend, with this witness, who is the president of the company, to restrict her. Certainly not at the present time. I feel that she is entitled to some lattitude.

Mr. Langsdale: I thought I understood you to make that ruling with reference to the Court of Appeals order, that they should not be restricted on what the Court of Appeals said should be taken.

[fol. 3177] Trial Examiner Batten: I don't think I said that.

Mr. Langsdale: What I said is, I understood, I certainly didn't understand you to say that the witness was to give hearsay testimony and conclusions.

Trial Examiner Batten: You are objecting on this ground, hearsay?

Mr. Langsdale: I don't want to be objecting, if the Examiner has got his own ruling, that he has already made up his mind to make.

Trial Examiner Batten: Mr. Langsdale, you don't expect me to anticipate the testimony and rule upon it, do you? I suggest we proceed, and if you have an objection to a line of questioning, you make your objection and I will rule upon it. Do you recall the question?

A. About the — will you please phrase it again?

Trial Examiner Batten: Read the question.

(Question read by the reporter.)

A. We received a letter from the N.R.A. Board, saying that 15 girls had been laid off, and I believe they charged that they had been laid off because of their union activities. Now, before the letter was received by me, eight of these girls had been called back to work. We had, in that summer — I needn't go into reasons — been compelled to lay off 300 people, and sometime during the fall we had called back — I don't remember whether it was 112 or [fol. 3178] perhaps not more than 150; we hadn't called back half of them. I think 112 in that number of the 300 girls had been called back.

By Mr. Ingraham:

Q. Mrs. Reed, you said that you didn't have to — there was no use going into it. Now, why the lay-off occurred, I wish you would state the reason for laying off the 300 employees.

A. Well, back in '31, when the depression was pretty bad, we had the usual extra run of spring orders, and at that time there were so many people out of work, that it was reported to me hundreds of women came to our place

and were turned away every day, and Mrs. Reeves asked me if I wouldn't put some extra machines, and rent an outside place where they could give employment to some of these people. She knew we had more orders than we could possibly fill with our regular factory. As a matter of fact, my entire experience in the spring of the year — I have never been able to fill all my orders in the spring, and I have had to work awfully hard to keep my plant going during the fall of the year.

The way, I usually did, was just let the orders go in the spring, only keeping my plant large enough to keep it going the year around, but this year the pressure was so great to give employment to people, that we finally opened another outside room at the time. I felt that it was to be a great burden on Mrs. Reeves and her assistant to do that, but they seemed to be entirely willing to do it. As a [fol. 3179] matter of fact, Mrs. Reeves had already been out looking for a building, and Mr. Shukert had said he had an unrented building he would let us have, and simply pay rent as we used it, in other words, if we were only able to use it for a month, we wouldn't have to do anything except pay him rent for the time that we used it; so I opened that plant and employed a hundred extra women. That fall we had a rather unusually good business, and by our own girls sharing the work with the newcomers, we were able to keep most of them going during the entire year.

The next spring we had another great number of spring orders and we did the same thing. We put on another hundred machines, and some of those machines I had rented and some of them I had accumulated by having replaced them with special machines or perhaps more up-to-date machines, so in the spring of 1933 we did the same thing all of the time, my old employees sharing the work in the fall. That is, some of them that were able to and had a husband working, or someone else working in the family, they might take off a few extra weeks, and some of them would take off a few days each, so that by sharing the work, they gave everybody some work to do. Now, in the summer of '34, I had a great many trips to Washington, in regard to the N.R.A. It was the classification

they had in mind for my plant, and it would throw practically half of my people out of work.

I spent a great deal of time in Washington. At that [fol. 3180] time I was doing quite a lot of designing myself, and working on the line, and I think that the work suffered. Anyhow, we had a very great slump in our business, so that we had much less fall business than we had had for a long time. There was nothing to do but to lay off this large number of people, which we did.

Now, as soon as we were able to get more business, we started putting them back to work, and as I said before, we put back over a hundred, maybe 125, I don't remember the exact number, but in that number we had put back eight of these 15 that they said had been laid off on account of their union activities. Well, inasmuch as not half of all of the girls had been put back to work,—now I suppose I am showing a conclusion, when I feel that certainly demonstrated that we had no idea of putting anybody back on account of their union activities. I didn't know whether they belonged to a union or didn't, until we got this letter saying these girls had joined, and we didn't get the letter until after eight of them had been put back to work.

Q. Mr. Reed, will you explain what you meant by saying that the N.R.A. would classify you so that half of your — might classify you so that part of your people might be laid off?

Trial Examiner Batten: Well, Mr. Ingraham —

Mr. Ingraham: She mentioned this classification, and I [fol. 3181] thought you wouldn't understand what she meant by that. She said the N.R.A. would classify — might classify the business so that half of the people would be forced to be laid off, and I just want her to answer the question, if she can answer it.

Trial Examiner Batten: You may tell us.

A. They were planning to make a classification that anyone who made merchandise that sold for over — well, they had different amounts at different times — over $2.95 retail price, one time, or sold it for more than $3.95 another time, then they went over $5.95 at the last time.

Now, Mr. Batten, in my field I make a very high class garment; I use unusually good material. I think we make a good garment. We sometimes get a little more money for it. There was a great deal of discussion and a great deal of — well, they had many hearings, how they would classify different people of the dress industry. Now, if they had put me in a classification where I couldn't make anything for or above $5.95, that would probably cut off a great part of my business for the following fall, which was the most important business to keep my plan of year around work.

Trial Examiner Batten: The point is, then, Mrs. Reed, they wanted to classify your plant in such a way that it would have meant the closing down of part of your operations?

A. A great part of it, Mr. Batten. May I say this: this was discussed in meetings with General Johnson. Gen- [fol. 3182] eral Johnson finally sent his administrator and two accountants into my plant, and they spent a week in Kansas City investigating my operation, and they reported to General Johnson that the conditions, the rates of pay and everything in my plant warranted him in making a special code for me which General Johnson did.

Trial Examiner Batten: Mr. Ingraham, do you think we have answered that question?

Mr. Ingraham: Yes, I do. That answers what I wanted.

By Mr. Ingraham:

Q. Mrs. Reed, did you know that any of the 15 girls belonged to the I.L.G.W.U.?

A. I did not, until I got the letter from the Union.

Q. Did you care whether they belonged to the I.L.G.W.U.?

A. I did not and do not.

Q. What was the policy of the company with reference to joining or not joining a labor union?

A. Its policy was that anybody could belong to any union they wanted to. That was their own personal affair.

Q. Had the company employed members of a union?

A. All during my career in business, we had employed, at different times, people who belonged to different unions, and there was never any questions asked, and I think many of them worked there for many years belonging to different unions.

Q. Mrs. Reed, I want to next call your attention to a petition circulated by employees and presented to you. [fol. 3183] When did you learn about that petition?

A. When the two young ladies brought it to my home on the evening of March 2nd.

Q. 1937?

A. Yes.

Q. Had you ever heard of that petition before?

A. I had not.

Q. Did you ask any employee or anyone else to circulate or cause to be circulated such a petition?

A. I did not.

Q. Did the Loyalty League have anything to do with the circulation of the petition to your knowledge?

A. Not to my knowledge, it hadn't.

Q. Did anybody ever say to you the Loyalty League was circulating that petition?

A. They did not.

Q. I want to ask you if you read this newspaper article which is Respondent's Exhibit No. 6?

A. Yes, I read that.

Q. When was that in the paper, with reference to this petition?

A. Well, that was about a week before, this was February 26, 1937.

Q. There had been a previous article in the paper in connection with the union campaign against the Donnelly Company?

A. Yes.

[fol. 3184] Q. When was that?

A. In November, 1936, David Dubinsky gave out an interview, I believe, in Washington, where he was coming out to organize the Middle West, and he was particularly going to give Jim Reed a break.

Q. Was that in the Kansas City paper?

A. Yes.

Q. Will you state what took place when the two girls brought the petition out to your house — strike that, please.

Who were the girls, Mrs. Reed, that brought the petition out?

A. Mary Sprofera, I believe.

Q. Who else?

A. And Inez Warren.

Q. What positions did they hold in the Donnelly Company, if you know?

A. They were in the shipping department.

Q. In what capacity?

A. They filed orders, assembled orders in the shipping department.

Q. Did they have any position of authority?

A. No.

Q. With the company?

A. No.

Q. Now, will you just state what took place when they [fol. 3185] came out to the house?

A. They came in and had a paper all rolled up and handed it to me, and I opened it, and they said, "Mrs. Reed, we want you to know how we feel down at the plant," and I opened it up, I opened the petition, and I saw this little heading and I was greatly pleased. They said that I had been very nice to them, and they were thankful for the humane treatment I had given them, and naturally I was quite delighted that a number of my employees would take the trouble to let me know it, especially when so many unpleasant things were being said about me, and untrue things.

Q. Mrs. Reed, did you ask the girls who had signed the petition, or who had not signed the petition?

A. Mr. Ingraham, I did not. Those girls only stayed three or four minutes. They had a car waiting for them outside, and I didn't [illegible] them to discuss it. I simply looked at it, and there were a thousand or more names, and I wouldn't be able to know which names were there or which weren't.

Q. Did you ever cause a check to be made to see who had signed the petition and who had not signed it?

A., I did not.

Q. Did you make any further statement to the girls about the petition?

A. I read it and I did say that I was so pleased that I would put it in the cornerstone of the building we were con- [fol. 3186] templating putting up at that time.

Q. Did you request the girls to obtain the signatures of any other employees that had not signed the petition?

A. I did not.

Q. Did you intend, through any statement that you had made to them, to convey the idea that they should go back and get other employees who had not signed the petition?

A. I did not, I had no idea what names were on there. There were just a number of names, the list had names mostly written in pencil, and I didn't know who was on and who wasn't on. They only stayed a few minutes.

Q. Mrs. Reed, there has been reference made in cross-examination in this hearing, to a photograph in the paper, in connection with the girls coming out to your house. Will you explain about that?

[fol. 3187] A. These petitions were rather bulky. I placed them on my living room table, and Roy Roberts came out—

Q. Who was Roy Roberts?

A. He was from the Kansas City Star.

Q. Is he the editor?

A. He is the editor of the Kansas City Star. He came out to talk to Mr. Reed about something else—I don't remember what, but before he left he saw these petitions on the table and remarked about them.

He said, "Why, these are front-page news. Can't we have them in the Star?"

I said, "I don't see any reason why you shouldn't."

He said, "Well, then, I will send a reporter to get pictures, and I would like to have the girls there handing them to you."

I said, "All right."

I don't remember whether it was the next day, or the next day or two, they came out, and the reporter and the photographer took pictures of the girls handing me those petitions.

Q. Did you have the girls come out?

A. Oh, no, I didn't ask them to come out.

Q. How did they happen to be there?

A. I don't remember exactly. I know that Mr. Roberts asked to have them out there, and I said that I would—that it was all right.

[fol. 3188] Q. Mrs. Reed, did you ask that any other employees who had not signed the petitions do so?

A. I did not.

Q. After you received that petition, what was the effect of it on you, with respect to any dealings with the I. L. G. W. U.?

A. When the girls first handed me that petition, I particularly noted they had said they had appreciated my kind treatment, and I was very much delighted with that. Then, I, naturally, that evening looked them over and read the whole thing, the statement, more carefully, and I found they stated in that that they didn't want to have anything to do with any outside union. I felt that when that group of employees, which looked like it was practically all of them, had sent me a statement saying that they didn't want to have anything to do with an outside union, that that was notice to me that I wasn't to get them involved in any outside union and force them into any contracts that a union might try to make me do.

Q. Previous to this time, Mrs. Reed, had there been strikes in Kansas City, with reference to garment companies?

A. Yes. There had been several strikes, and a great deal in the newspaper about them. And particularly about that time there was a very bad strike just a few blocks from our place, the Gernes, Missouri, and Gordon companies here, in a building a very few blocks away from our building.

Q. Had there been other strikes previous to that?

[fol. 3189] A. Yes. There had been strikes over on Broadway. Some of them, the newspapers had said, a great deal of violence had attended. They showed pic-

tures of the police and pickets apparently fighting each other.

Q. State whether or not employers had signed up with the I. L. G. W. U. and forced their employees to join the I. L. G. W. U.

* * * * * * *

[fol. 3190] Trial Examiner Batten: Do you know of your own knowledge that they had?

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Mr. Hogsett: May I say, Mr. Examiner, in this case there is inherently involved the attitude of the employer in this whole subject matter, and thereby and for that reason it becomes competent to show the understanding of the witness, who is president of the employer. In other [fol. 3191] words, the situation is different with this witness, with respect to this class of proof, than it would be with another witness. The mental attitude of the employer is a factor here, and this is the executive head of the employer.

* * * * * * *

Trial Examiner Batten: Of course, I assume from what Mrs. Reed has said, that that, in substance, was the testimony—that you had heard that that was the practice?

The Witness: Mr. Gernes told me, and Mr. Brand told me. Mr. Brand told me that the union boycotted his merchandise—

Trial Examiner Batten: Now, Mrs. Reed, just a moment. I do not want to get into the whole subject matter.

The Witness: But I believed Mr. Brand, when he told me that. I didn't see any reason why he should have told me otherwise.

[fol. 3192] Trial Examiner Batten: Just a moment, Mrs. Reed.

Will you restate your question, Mr. Ingraham?

By Mr. Ingraham:

Q. Did you understand, Mrs. Reed, that employers had signed up with the I. L. G. W. U. and caused their employees

to become members of that union when they didn't want to? Just answer Yes or No.

A. I did understand that.

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[fol. 3193] By Mr. Ingraham:

Q. Did you base your opinion upon information you had received from Mr. Brand and Mr. Gernes? A. I did.

Q. And others? A. Yes.

Q. Mrs. Reed, I want to next direct your attention to a meeting of employees on about March 18, 1937. Did you go to that meeting? A. I did.

Q. How did you learn of such a meeting?

A. A small group of employees came to my office and told me the employees were having a meeting on the second floor to discuss and determine what, if anything, they could do to protect themselves if the I. L. G. W. U. moved in on them like they were on the Gernes, Gordon, and Missouri garment companies, and wouldn't I come down and talk to them and see if I could tell them anything the company was going to do, because they were in a very excited and very bad state of mind. They were frightened about what might happen to them.

I went with that little group down to the meeting.

* * * * * * *

Q. I will hand you Respondent's Exhibit No. 16, which [fol. 3194] is the front page of the Kansas City Times of the morning of March 18, 1937, and ask you if you saw the pictures that are on the front page of that paper?

A. I did.

* * * * * * *

By Mr. Ingraham:

Q. Did you see the pictures on the front page of that paper? A. I did.

Q. And did you read the article on the back of the front page? A. I did.

Q. Had there been other articles in the newspapers about the strikes at the Gernes, Gordon, and Missouri plants? A. Yes.

Mr. Ingraham: Respondent offers in evidence Exhibit No. 16.

* * * * * * *

[fol. 3195] Miss Weyand: If it is offered solely for the purpose of showing what Mrs. Reed saw and read, and what her state of mind was at the time, I have no objection. If it is offered for the proof of the facts that are stated therein, I do object.

Mr. Ingraham: I am limiting it to what Mrs. Reed saw and read in the paper, and what the effect of it was on her state of mind.

Trial Examiner Batten: If there is no objection, it will be received for that purpose.

(Thereupon the portion of newspaper above referred to, previously marked for identification, "Respondent's Exhibit No. 16, Witness Reed," was received in evidence.)

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[fol. 3196] By Mr. Ingraham:

Q. Did you have any other knowledge, Mrs. Reed, of the strikes going on at Gernes, Gordon, and Missouri, than what you read in the paper?

A. I heard all of our people discussing them. In going up and down on the elevator there was nothing else talked of. They were constantly asking me how soon I thought they would come. The general conversation at the Donnelly Garment Company was constantly about these strikes up there.

* * * * * *

[fol. 3197] Mr. Ingraham: Mrs. Reed, did it come to your knowledge that threats had been made that the I. L. G. W. U. was moving in on the Donnelly Garment Company next?

A. The knowledge of those threats did come to me. Also, that they were—

* * * * * *

By Mr. Ingraham:

Q. Mrs. Reed, were those threats the general subject of conversation at the Donnelly Garment plant among the employees? A. They were.

[fol. 3198] Q. And what was the effect of this activity of the I. L. G. W. U. on the employees?

A. They were frightened.

Q. Well, on yourself?

A. On me? I don't like to admit that I was frightened, but I was very much upset. I had a friend in St. Louis, a very dear friend, who is a designer there, and they had torn her clothes off, and she had to spend a day in the back alley hiding.

* * * * * * *

By Mr. Ingraham:

Q. Mrs. Reed, did you understand that the I. L. G. [fol. 3199] W. U. tore the clothes off of the executives and employees of the company that they were attacking?

A. Yes.

Q. And were you apprehensive that that might be done at the Donnelly plant? A. I was.

Q. Did you have information of a specific case of where that was done? A. I did.

Q. And that was a personal friend of yours? A. Yes.

Q. What was that?

A. The woman who was designer for Ely-Walker, Mrs. Moody, told me, herself, of the experience she had when she tried to go to work. She had nothing to do with the union, she was merely a designer at Ely-Walker's, and when she tried to go into the plant they pulled her clothes off, all of them, to such an extent that she had to go into a back alley and hide until clothes were brought to her.

Miss Weyand: I would like to ask if this evidence is limited to what she understood, and not that such things did occur.

Mr. Hogsett: It is so understood.

Trial Examiner Batten: That is true of this line of questioning, Mr. Hogsett?

[fol. 3200] Mr. Hogsett. Yes. I think that is a fair request of Board's counsel, and that is the way it is.

By Mr. Ingraham:

Q. Did you understand employees of a company in Memphis, Tenn., had had their clothes stripped off of them in a strike of the I. L. G. W. U.?

A. I did.

Trial Examiner Batten. Now, just a moment, Mr. Ingraham. I want to ask you with respect to the court's decision covering the matter of the union's actions in Kansas City—I wonder if you feel that included the actions all over. I rather gathered from reading this that—

Mr. Hogsett. May I make a general observation on that point?

Trial Examiner Batten. Yes.

Mr. Hogsett. I revert and return to the suggestion I made to Your Honor awhile ago, that this case inherently involves the attitude of two groups, one, the employer—the management of the employer, and second, the employees. Now, any facts within the knowledge of either at the time in question, I submit to you, is relevant. Why? Because knowledge of facts, or supposed facts, characterize and give weight to the attitude of those groups.

Now, I will come directly to the point—

Trial Examiner Batten: Well, Mr. Hogsett, I am not disagreeing with your position. I am merely asking Mr. Ingraham—

[fol. 3201] Mr. Hogsett. I am coming to that right now, because it hooks up with this.

Now, if the employer had knowledge of the customary incidents, to use an euphonistic phrase, of the I. L. G. W. U.'s drives, whether those incidents occurred in Kansas City, in Memphis, in St. Louis, in Dallas, or in Minneapolis, or at any other place, I submit that it is relevant. If there is a characteristic set of circumstances accompanying this I. L. G. W. U. regular drive, whether it occurred in latitude Kansas City, or latitude Memphis, or latitude Dallas, or latitude Minneapolis, it is a factor of some value in characterizing the attitude of the employer.

Miss Weyand: Mr. Trial Examiner, I would like to express a disagreement with the position that we are concerned with the attitude of the employer. We are concerned with the objective acts which the employer does which affects its employees.

It is the Board's position in this case that, while the Circuit Court of Appeals has directed that certain evidence

which was offered relating to how and why the employees formed the Donnelly Garment Workers' Union should be in this record, nevertheless the Board believes that insofar as that evidence relates to the mental attitude of the employer, as expressed through subjective evidence, it is immaterial.

The Board, in ordering this hearing, in compliance with the court's remand, is going to allow to be put into the [fol. 3202] record the evidence which the Circuit Court of Appeals has directed. Nevertheless, the Board feels that that evidence, insofar as it concerns attitude, subjective testimony of employees of how and why they felt about something, rather than what they did, is immaterial, for various reasons which I will state later. But in talking about the attitude, I did not want any acquiescence in Mr. Hogsett's statement that the attitude of the employer or employees is believed by the Board to be relevant.

I am, however, willing at this time to have Mrs. Reed continue with the expression of her attitude, reflecting the reasons for what she did.

Mr. Reed: Are we to understand the Board has already prejudged this evidence the court has said shall come in, and instructed their counsel not to give it any consideration, except this limited one? Is that what we are to understand in this hearing?

Miss Weyand: I am stating, as counsel for the Board, in the prosecuting, if you may so term it, capacity of the Board, I wish to make the record that the Board feels that the attitude of the employees is immaterial and that such evidence of subjective attitude is not relevant. However, the Board has agreed to comply with the remand of the court.

The court itself did not state specifically in its opinion or, I believe, by any implication, that the Board must [fol. 3203] necessarily give any large weight. It did say the Board must receive this evidence so that the court could review it.

As to the subjective evidence, the Board, in its prosecuting function, wants it stated in the record that this evidence is not material.

Mr. Reed: I am glad to have that statement, and I want the record to show what counsel has said, and of course it will, which amounts to a declaration that, while the Court of Appeals said they must receive this evidence, they do not propose to consider it and give it weight.

Miss Weyand: I do not acquiesce in Senator Reed's statement.

Trial Examiner Batten: I think the record is very clear on the matter, and that will end it.

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[fol. 3204] By Mr. Ingraham:

Q. And did you understand that the same thing had been done in other places?

A. I did.

Q. Where, Mrs. Reed?

A. In Dallas and St. Louis.

Q. What else did they do besides stripping clothes off, as you understood?

A. They threw red pepper in the girls' eyes and put razor blades in the toes of their shoes and kicked the girls on the shins.

Q. What was the condition in Kansas City at the Gernes, Gordon, and Missouri plants at, on or about March 18, 1937?

* * * * * *

Mr. Ingraham: With reference to the strikes that were going on.

A. They were at about the worst. The I. L. G. W. U. pickets had taken possession of the hallways and put cots in there to sleep on, and there were constant fights. The girls would go to work in taxicabs, and they were met and handled.

By Mr. Ingraham:

Q. What did they describe the taking possession of the hallways as?

[fol. 3205] A. As a sit-down strike.

Q. How long did they stay in the building, if you know?

A. They stayed in there several days, until the health authorities forced them to move out on account of sanitary conditions.

Q. What effect did those matters have on you, Mrs. Reed?

A. Well, I had been informed and believed that they were going to try to do the same thing to us. We had a similar lobby in our building. I felt so strongly about it, I went down to see the chief of police to see if I couldn't do something to keep that same thing from happening to us, and he didn't give me very much satisfaction. He asked me if there was a way our girls could come and be unloaded on our own property. He said that was a help. But the situation had gotten out of his hand, where they just came up to the sidewalk and had to pass over the sidewalk going into the building. So he suggested that we might rent buses, which we did, from the street railway company. We had buses meet our girls in different parts of the city. We had a private dock in back of the building where we unloaded our girls. And we locked our doors and no one could come in except through a ticket which we gave out to our employees. And we had three or four watchmen in the lobby. It was so bad that I had night and day watchmen at my home, because I had been informed that they were going to "take me for a ride."

[fol. 3206] By Trial Examiner Batten:

Q. Over how long a period of time, Mrs. Reed, did this go on, approximately?

A. Well, it went on, this very bad condition, for a few weeks.

Q. Was that the period during which you had the buses you mentioned?

A. Yes. We kept our buses going for, I think, three or four months.

By Mr. Ingraham:

Q. How long did you have watchmen at your home?

A. I had watchmen at my home until after we got a temporary injunction against the I. L. G. W. U.

Q. What date was that, do you recall?

A. I don't recall that date.

Mr. Hogsett: May it be agreed that that was July 5, 1937? The record so shows.

The Witness: I believe we had them a little longer than that, but—

Mr. Hogsett: Mr. Langsdale, you know that, don't you?

Mr. Langsdale: I think that is the date the temporary restraining order was issued, July 5, 1937.

Miss Weyand: It is subject to check.

Trial Examiner Batten: It may be understood, if it is found to be incorrect on checking, it may be cleared up.

By Mr. Ingraham:

Q. Mrs. Reed, getting back to the meeting of March [fol. 3207] 18th, did you know in advance of when you were requested to go to that meeting, that the meeting was to be held?

A. I did not. I had been down town shopping with Miss Frances during the afternoon. We were leaving for a short vacation in Florida that night.

Q. Why were you going to Florida, Mrs. Reed?

A. I was going for a very much needed rest.

Q. When did you return to the plant that afternoon?

A. Well, it was quite late in the afternoon. I don't remember whether— It wasn't before 4:30; sometime about that time, probably. I simply stopped in on the way home to see if anything very special had come up that I should take care of before I left.

Q. What occurred, Mrs. Reed, when you did get to your office?

A. I went directly to my office, and in a very few minutes a small group of employees came and asked me if I wouldn't go to this meeting they were having, where they were going to discuss ways and means of protecting themselves against the violence of the I. L. G. W. U.

By Trial Examiner Batten:

Q. Who were in this group, Mrs. Reed?

A. Mr. Batten, I don't know. You know, there are 1,300 people down there, and I don't remember specifically. [fol. 3208] Q. Do you remember any of them?

A. At this moment I don't remember any of them specifically. It seems to me that— Well, I don't remember, right this minute. There were three or four of them. I didn't particularly pay attention, except I simply went down immediately to the meeting. They asked me if I wouldn't tell them—

By Mr. Ingraham:

Q. Mrs. Reed, just a minute. Did they tell you why they wanted you to go to the meeting?

A. Yes. They wanted me to tell these employees what, if anything, we were going to do to help protect them.

Q. Did you then go to the meeting?

A. I did.

Q. Did you take anybody with you to the meeting?

A. I took Miss Frances, my secretary.

Q. Where is your office, Mrs. Reed, in the building?

A. It is in the northwest corner, on the 10th floor.

Q. Do you recall where this meeting was held?

A. Yes. It was on the second floor.

Q. Did the company at that time rent the second floor?

A. No.

Q. What occurred, Mrs. Reed, when you got to the meeting?

A. Someone introduced me, or said they didn't have to introduce me, and said Mrs. Reed would say something to the meeting. I don't remember exactly what they said. I know, as soon as I got there I was given the floor. They [fol. 3209] asked me to discuss or tell them what I was going to do.

Q. Did you make any remarks, Mrs. Reed?

A. I did.

Q. Did you make any statement to the effect that you would close your shop if it was unionized?

A. I did not.

Q. Did you make a remark to the effect that you would not let Dubinsky tell you how to run your business?

A. I did not.

Q. I will show you Respondent's Exhibit No. 12, and—

A. I think that question was, I said, "Dubinsky or any other buttinsky could not tell me what to do."

Q. Did you say that?

A. I did say something to the effect that "Dubinsky or any other buttinsky could not tell me what to do." I don't remember the exact text of it.

Q. Will you look at Respondent's Exhibit No. 12 and see if that refreshes your memory about what you said?

(Witness refers to Respondent's Exhibit No. 12)

A. This is what I said. (Referring to Respondent's Exhibit No. 12)

Q. Did you make any other remarks—

Mr. Langsdale: Pardon me. Is that—

Mr. Ingraham: That is the transcript of Mrs. Reed's speech that Mrs. Strine testified about.

By Mr. Ingraham:

Q. Mrs. Reed, you mentioned in that speech something [fol. 3210] about buses. What was the situation with respect to that?

A. Well, at that time we were negotiating with the street car company to employ buses so that the girls could come to work in the buses, so that they wouldn't have to cross over the sidewalk in getting into the building. The buses were unloaded at our docks in back of the building, on our property.

Q. Did you make any other remarks that are contained in Respondent's Exhibit No. 12 at that meeting?

A. From what I see here (indicating Respondent's Exhibit No. 12), this is what I said; this is the context of it.

Trial Examiner Batten: You had better look it over carefully, Mrs. Reed, if you haven't. The question is, did you say anything other than contained in that document?

The Witness: No. This is just what I said.

Mr. Ingraham: Read it carefully, Mrs. Reed.

The Witness: All right. (Reading Respondent's Exhibit No. 12.)

Mr Batten, this is exactly what I said at that meeting (indicating Respondent's Exhibit No. 12).

By Mr. Ingraham:

Q. Mrs. Reed, a minute ago you stated that you did say something about Dubinsky not telling you what to do, or something to that effect. What were your exact words?

A. My exact words—I will read them, right here (indicating Respondent's Exhibit No. 12). You can't remem- [fol. 3211] ber exact words for five years.

(Reading from Respondent's Exhibit No. 12.) "Many of you have been here for a number of years, and you know you have never been asked whether or not you belonged to a union. The company has not discriminated against anyone on that account, and Mr. Dubinsky is not going to make me discriminate against employees because they did not belong to his union."

I still believe that and feel that way.

Q. Mrs. Reed, in that meeting did you read a letter from the I. L. G. W. U. to the company?

A. I did not.

Q. Was there a letter read while you were at that meeting?

A. Not in my presence; not that I heard or knew anything about.

Q. Had the I. L. G. W. U. on or about that time handed out circulars at the plant containing the letter that the I. L. G. W. U. had sent to the company?

A. They did.

[fol. 3212] Q. But, so far as you reading any letter or hearing any letter read, that did not occur?

A. It did not occur and I am sure it did not occur. I certainly would not have been putting over any of Dubinsky's propaganda.

Trial Examiner Batten: You mean at the meeting?

A. At that meeting there would have been no occasion for me to send out his letter. He did it himself later, in several hundred thousands of them, I understand.

Mr. Ingraham: You are referring to circulars he distributed to your customers?

A. He had a circular made of the letter, copy of the letter he sent to me, he had that made and distributed to my employees, shortly after the letter came to me; I don't remember what date. I also know that he tried to put it in the newspaper and they wouldn't put it in.

Mr. Langsdale: I ask that that be stricken out as hearsay.

Trial Examiner Batten: It may be stricken.

By Mr. Ingraham:

Q. Later, did he try distributing a copy of that letter to your customers?

A. He did.

Q. Was that circular, was there on the front page of the circular that was distributed to your customers the language, "We do not patronize Nelly Donnelly?"

[fol. 3213] A. Yes.

Q. We are looking for this exhibit. I think we offered it, and I am sure we did, but we are looking. While we are looking for that circular, I would like, Mrs. Reed, for you to state what you did say, with reference to employees joining or not joining a union. Now, I am referring to that March 18th.

A. Didn't I just read this?

Q. I don't think that you covered everything that you did say when you read it.

A. Do you want me to read the entire paragraph again?

Trial Examiner Batten: All right.

A. "Many of you have been here for a number of years, and you know you have never been asked whether or not you belong to a union. The company has not discriminated against anyone on that account, and Mr. Dubinsky is not going to make me discriminate against employees because they would not belong to his union. If you want to belong, that is your own business, and it is up to you to decide. I will say that neither Dubinsky or any other buttinsky is going to intimidate me or the company into forcing you to join the International Union against your will." Those are still my sentiments.

By Mr. Ingraham:

Q. Mrs. Reed, how long were you at that meeting?

A. Just long enough to talk; as soon as I finished this [fol. 3214] little talk I left. I suppose probably not over 10 minutes.

Q. Did you leave the city that evening?

A. Yes, I went to Florida that night.

Q. How long were you in Florida, approximately how long were you in Florida?

A. I would say a little over two weeks.

Q. Did you have any knowledge, Mrs. Reed,—strike that—

When did you first learn that the employees had organized a union?

A. Miss Todd came to my office,—let me see, I think toward the end of April, the very end of April.

Q. What took place when Miss Todd came to your office?

A. And told me that the employees had formed a union and she wanted to make an appointment with me to meet with their committee so that they could arrange to make a contract.

Q. Now, just a minute. Do you recall how soon, or when, Miss Todd stated the employees had organized this union?

A. My remembrance is it was April 27th.

Q. How long before she had this talk with you did she say they organized?

A. A day or so, probably the very next morning, I am sure it was.

Q. Did she make any reference to how many employees were in the union?

A. She told me that they had unanimously voted to [fol. 3215] form the union, and she brought a great number of cards with her to show me they were signed, and she said they had a majority, although I remember, I believe, she said they had a unanimous vote on it.

Q. Did she request you to check the cards?

A. She did, and I turned them over to Miss Frances to check.

Q. And as I understood you to testify, she asked if you would meet with the committee?

A. Yes.

Q. About how long after that was it, before you met with the committee?

A. Well, it was several days.

Q. What occurred at that meeting?

A. Well, this group came up and Miss Todd introduced them to me; most of them I didn't know except having seen them in the elevator, and so I asked them if they wouldn't, each one of them, tell me a little about themselves and how long they had been there, and what department they worked in, and what they did and what they had

done before they came to our place. I felt, if I were going to have to have dealings with them, I would like to know them a little bit. That was the first thing that was done; and then we began. She said they wanted a contract and wanted to talk over with me having this contract, that the girls there felt that they could have a union of their own that would do more for them than any outside union.

[fol. 3216] Anyhow, they had had their meeting, and voted to have one, and they had been informed by their lawyer that was their right, that this Wagner Act had been declared constitutional, and earlier they had discussed something about getting an injunction to protect them from having sit-down strikes in our building, and being kept from coming to work. As they worked along with him, this Wagner Act had been made constitutional; then he had advised them the sensible thing to do was form their own union, and they were of the opinion they could form a union. There were things very nice down there, but there were a number of things they had had as a matter of privilege for a number of years, and if anything happened to me, they didn't know whether they would have them or not. The first thing they wanted, was to make sure of some of these things, as a matter of privilege, as part of the contract. So that, if anything happened to me, they would be assured of having them. We had a sick insurance, and I had paid half of it, and they had had paid vacations over a period of 25 years, and of course that was a very unusual thing in a garment industry or in any industry where workers had paid vacations, and particularly piece workers. So they said that the first thing they wanted to do was to make sure they were going to have these privileges, and they were going to be made into rights. Then they seemed to feel it was very important to keep from having unpleasant quarrels, and so forth; they should have [fol. 3217] a closed shop. I always had a little feeling that I wanted to be able to employ anybody that I wanted to, and there was a little discussion about whether I give up that right and they were very insistent they have a closed shop, because if they didn't have, they would probably be having upsets, more or less, and I said well, I would discuss that with Mr. Reed and Mr. Ingraham, and as a matter of fact, we were just talking back and forth about

these paid vacations and sick insurance and paid holidays, and the closed shop, all in a rather general way. I didn't commit myself, but I said, well, for them to get together with their lawyer and get up a contract, and then I would have my lawyers, and we would all discuss it; and we would see what could be done,

Q. Mrs. Reed, do you recall making any remark about industrial peace?

A. Well, I suppose I had been reading that Wagner Act, like everybody else had, and emphasized the fact that closed shops brought on or made for—I don't remember the words of it—anyhow, they made for industrial peace, and I probably did make a remark of that kind.

Trial Examiner Batten: You felt that from reading it or is that some advice you had received, that the Wagner Act meant that, Mrs. Reed?

A. Well, there was a great deal of discussion, whether the Wagner Act was constitutional or not. After it was [fol. 3218] declared constitutional, it was a law.

By Mr. Ingraham:

Q. Mrs. Reed, prior to this time do you recall, or prior to the time the plant union was organized, had there been any discussion down at the plant, demonstrations with respect to the girls?

A. Yes, there was a couple of girls that came down one morning with I.L.G.W.U. buttons on, the more I have heard about it the bigger the buttons got; but they must have been a good size, and the girls in the section refused to work there with these two girls.

Q. You were not there that day?

A. No, I was not there.

Q. When did you learn about these demonstrations?

A. Oh, very shortly after it happened, they reported it to me.

Q. And were instructions given, Mrs. Reed, about getting in touch with these girls, these two girls that wore the I.L.G.W.U. buttons?

A. My understanding was that our girls refused to work while they were there, and Mr. Baty was anxious to avoid any unpleasantness.

* * * * * *

By Mr. Ingraham:

Q. Yes, did you give any instructions about calling [fol. 3219] these girls back?

A. I said that they should be called back to work when things quieted down a little bit.

Q. And do you know whether or not an attempt was made to get in touch with Sylvia Hull?

A. I was informed by our personnel director she had attempted to call and get in touch with both of those girls.

* * * * * * *

Mr. Ingraham: Mrs. Reed, did Donnelly Garment or [fol. 3220] anybody representing the management have anything to do with the demonstration that took place on April 23rd, in connection with Sylvia Hull?

* * * * * * *

A. So far as I know, no one in the management had anything to do with that.

Q. Did you state the attitude of the company with respect to whether or not employees would be discriminated against or discharged because they belonged or did not belong to a union at that time?

A. I emphatically stated in my talk to a group of the employees that it was their affair whether they belonged or whether they did not belong to the union.

Q. Now, Mrs. Reed, I asked you about the meeting at which the employees had formed a union, which occurred about April 27th, 1937. Did you or anybody representing the management, to your knowledge, ever suggest to any person that the employees should form a plant union?

A. To my knowledge they did not.

Q. Did you ever hear of anybody representing the management suggesting or influencing any employees in any way?

[fol. 3224] A. I have not.

Q. Do you know of any contributions that have been made by the company to the Donnelly Workers' Union?

A. I do not.

Q. Did you have anything to do with the employment of Mr. Tyler as attorney for the Donnelly Workers' Union?

A. I had nothing to do with the employing of Mr. Tyler.

Q. Has the company, to your knowledge, ever paid Mr. Tyler any money for his employment for the Donnelly Garment Workers? A. It has not.

* * * * * * *

[fol. 3223] By Mr. Ingraham:

Q. Mrs. Reed, you have stated that you met with the group chairman of the Donnelly Garment Workers' Union a week or so after it was organized. Now, when was the next time that you met with the representatives of the Donnelly Garment Workers Union?

A. It was May 27th.

Q. How did you happen to meet with them on that day? [fol. 3224] A. I was told that they had a contract, and that they had been working on a contract, and had gotten something up that they wanted to discuss with me, and wanted to have a meeting with me.

Q. Let me go back to another matter, just a minute. After the meeting of May 6th, with the group chairman, what occurred? What did you do with reference to their request for further meetings and considerations of a contract which they said they would present?

A. Well, I took this matter up with you, and with Mr. Reed, and discussed with you about the terms of the contract and what we were going to do.

Q. What did you expect them to ask for, just from your talk?

A. Well, I know that they were quite stirred up about the incident of these girls wearing a big button down to work, and making trouble, and they were determined to have a closed shop, and I discussed with you and Mr. Reed about whether that was legal, to have a closed shop agreement.

Q. Did you ask that we look up the law? A. I did.

Q. Getting back, then, to the meeting of May 27th, who representing the Donnelly Garment Workers' Union, requested a conference, if you recall?

A. Well I think Mr. Tyler did.

Q. Do you recall when the meeting took place, what [fol. 3225] time of day?

A. Well, I believe it was in the morning, started in the morning.

Q. What place? A. At my office.

Q. Who was there?

A. Mr. Tyler and Miss Todd and their committee, Mr. Reed and you and Mr. Green, and Mr. Baty, and I believe Mr. Keyes was there.

By Trial Examiner Batten:

Q. Do you recall the other people on the committee, Mrs. Reed?

A. Fred Brown and Jack McConaughey, and Mamie Riddle. Let me see. I have to think of each department, who was representing them. That will help me to remember. The dividers were represented by Miss Sprofira, and I don't remember the other members of the committee right now.

Q. Did the cutters have a representative?

A. Fred Brown would have represented the cutters, and Jack McConaughey the mechanics, and I believe Mamie Riddle the pressers. I don't remember the others.

Q. Do you remember how many were there?

A. I think two or three more.

By Mr. Ingraham:

Q. What occurred at that meeting, Mrs. Reed?

A. Well, Mr. Tyler made a little speech about the union [fol. 3226] and what they wanted in their contract, and read as a document—it was a contract, draft of a contract. Then there was an oral discussion of these privileges becoming rights, and in the discussion with the committee—before I had felt that I should have to make those duties, or put them in a contract, I didn't think they had the right to ask them of me, because they cost me a lot of money, and conditions were pretty uncertain then, and I didn't intend to necessarily withdraw them, but I didn't feel like I wanted to make them a part of the contract. That was brought up and discussed between ourselves then.

Q. What are you referring to as privileges, Mrs. Reed?

A. The vacations with pay and holidays with pay, and my paying part of their sick insurance, group insurance; that was discussed and some of the committee felt very strongly that they should have that. They should have them written in the contract so if anything should happen to me they then would be in no danger of their losing that. They felt, so they said, making this contract, that they shouldn't lose anything they already had, and they ought to be able to get some more things.

Q. Well, what other points were discussed, so far as you recall? A. Well, the minimum wage there.

Q. Did you have an objection to that?

[fol. 3227] A. Well, not to $15 a week. That is what I had been paying.

Q. Did you object to putting it into a contract?

A. Well, I felt that an actual minimum for everybody that I would have to pay, when the minimum in the trade generally was only $13 a week, and I didn't feel that I should have to make $15 the minimum.

Q. An obligation. You had paid that minimum?

A. Yes. I had paid it always, but I didn't know what new restrictions might come up in running the plant and it is a different thing to be doing something from day to day, or sign a two-year contract that you are going to do it.

Q. Mrs. Reed, what was discussed with regard to the closed shop?

A. Well, the closed shop, there was quite a lot of discussion about that. The committee felt that they should have a closed shop, and I thought if we were going to have a union at all, we possibly would be better off in having a closed shop. I didn't want a closed shop in the sense that I didn't have anything to do with employing people, and the contract that we made with the union gives me the privilege, doesn't restrict me from employing anyone I want to. If they work there, I don't remember how many weeks, but a few weeks, they have to join the Donnelly Workers' Union, but the union doesn't select the employees, and I felt at least I had some choice in the matter of selecting my own employees. If I could employ them [fol. 3228] myself, and then the Union—later they could join the Union.

Q. Mrs. Reed, when Mr. Tyler finished reading his proposed contract, and the discussions were finished about it, what did you do then? Did you request Mr. Tyler to do anything?

A. I didn't feel that I ought to sign a contract that was as important as that just right off, with simply listening to someone talk about it, and I suggested that Mr. Reed and Mr. Ingraham and myself take the draft that they had made, or contract they had made, and go to Mr. Reed's office, and let us look it over, and we would meet with Mr.

Tyler and his committee later in the afternoon, and that is what we did.

We went to Mr. Reed's office, and spent several hours in going over this contract.

Mr. Ingraham: Will you identify this document, please, and mark it?

(Thereupon the document above referred to was marked as "Respondent's Exhibit 17, Witness Reed," for identification.)

Mr. Ingraham: Mr. Reed, I hand you Respondent's Exhibit 17, and ask you to state what part of this document you meant was the proposal of Mr. Tyler?

Mr. Langsdale: Just a moment. Is that a document which was offered in the last hearing?

Mr. Ingraham: No, this is a new document.

[fol. 3229] Mr. Langsdale: You did offer the contract and it was finally accepted in the last hearing?

Mr. Ingraham: We offered the contract that was finally entered into. I don't recall any proposed contract, unless Mr. Tyler offered it. We didn't offer i

Mr. Langsdale: This is something that we know nothing about up to now, nothing has ever been said about it.

Mr. Ingraham: That's right, I don't mean just that. We haven't offered this before, Mr. Langsdale. This was the draft of a contract that Mr. Tyler presented us with. There has been testimony about what took place at this first meeting, and that a proposed contract was presented.

Mr. Langsdale: You never produced this before.

Mr. Ingraham: No, that's right.

Mr. Hogsett: This particular paper has not heretofore been produced. It has the original work sheets attached to it, and that set of papers has never been produced.

Mr. Langsdale: Now, I object to the offer of it, as it is beyond the scope of this hearing. The contract was entered into and negotiations that took place with reference to that contract were testified to, and testified to fully, and for a number of days, and is is something that has not

been mentioned up to now. Miss Todd and Mr. Brown and the others talked about what they proposed, and what Mrs. Reed said, and it was finally accepted and nothing said about any such document as this until now, and I [fol. 3230] object to it for the reason it isn't within the scope of the hearing as ordered by the Circuit Court of Appeals, and entirely something new, and something that has been gone into fully with the exception of this document which is now produced, three years after the other hearing had been had.

Mr. Ingraham: Mr. Langsdale, at the previous hearing, we offered the contract and it was our theory that when we offered the contract it showed the terms of the contract and the testimony and we had a discussion of those terms, and that was all; that was sufficient, but the Board in its decision seems to think that the negotiations were very important, and at that time it was you that wanted to go into it; and you wanted to know what each person said. Now, we have the principal party from our side here to testify what took place, just in line with what you wanted at the last trial.

[fol. 3231] Mr. Langsdale: We had Mr. Tyler here before, and we had Miss Todd, and all of the people who were supposed to have participated in that, and all of the negotiations that took place were gone into fully.

My position is that this is an afterthought, and I object to it as not being within the scope of the hearing as ordered by the Court of Appeals.

Mr. Hogsett: I might say, because of the very nature of the thing, Miss Todd or Mr. Tyler could not have known or testified to what Senator Reed did in the presence of this witness in interlining, adding to, changing, and in other ways modifying the Tyler draft. Here now, for the first time, with a witness competent to testify to it, is the respondent able to give that to you. We are here with the original document Mr. Tyler gave the company, and this witness, if permitted, will identify this as such, and will identify the interlineations, of which there are many, in that draft, as being in the handwriting of Senator Reed. I submit, nothing could possibly be more competent than this.

* * * * * *

[fol. 3233] Trial Examiner Batten: I don't think we need spend any further time on it, except I don't want to exclude other counsel. Have any other counsel anything to say with respect to this? If not, you may proceed, Mr. Ingraham.

By Mr. Ingraham:

Q. Will you state what pages in that document were presented by Mr. Tyler?

A. Pages 1, 2, and 3 were submitted, but the crossing-out and interlining and all of the pencil corrections were made by Mr. Reed.

Q. Well, Mrs. Reed, the pages you are referring to, are they in black type?

A. Yes.

Q. I don't believe you went clear through the document.

Trial Examiner Batten: Now, just a moment, Mr. Ingra-
[fol. 3234] ham. I notice some slips on the front of that.

Mr. Ingraham: That's right.

Trial Examiner Batten: I would suggest that you have the reporter mark it— It is Exhibit No. 17. She had better mark it 17-A, B, C, and so forth, and then have the witness tell us what pages she is referring to.

Mr. Ingraham: That is right.

(Thereupon the document previously marked for identification "Respondent's Exhibit No. 17, Witness Reed," was remarked "Respondent's Exhibit No. 17-A to 17-J, inclusive, Witness Reed.")

By Mr. Ingraham:

Q. Mrs. Reed, I hand you Exhibit No. 17-A through J, inclusive, and ask you to state which particular exhibits were submitted by Mr. Tyler.

A. 17-D, 17-E, 17-F, and 17-J.

Q. Now, do you recognize who wrote 17-A?

A. Yes. I wrote that, 17-A, and I wrote 17-B, in pencil writing.

Q. Who wrote 17-C?

A. Mr. Reed dictated that and interlined corrections. 17-G Mr. Reed also dictated, and wrote in pencil corrections. 17-H Mr. Reed dictated. 17-I, pencil writing, I wrote.

Miss Weyand: I believe there are some interlineations on D, E, F, and J.

Mr. Hogsett: The Tyler draft, in other words, was [fol. 3235] interlined.

By Mr. Ingraham:

Q. I will ask you if there are any interlineations on 17-D, and if so, who made them?

A. There are interlineations on 17-D, and they are made by Mr. Reed, in his own handwriting.

Q. Are some lines scratched out?

A. Yes; Mr. Reed also did that.

Q. That is 17—

Mr. Reed: Read what the interlineation is and what is stricken out, so that the record will show.

Mr. Ingraham: Will you read the paragraph marked "Paragraph 1," and read the way it was as presented and with the interlineation?

Trial Examiner Batten: May I see it?

Mr. Ingraham: Yes, certainly. (Handing exhibit to the Trial Examiner.)

Trial Examiner Batten: Perhaps the Senator would like to have it read in, but it is very obvious what it is. You didn't strike it out sufficiently so that it is unreadable, Senator. Unless you want that entire matter read—

Mr. Reed: This is all I want. I want the record to be clear as to what that document was when it came under my hand and what I did to it. I thought the best way to do would be to read the words that I added and the words that I struck out in that paragraph. Mr. Ingraham asked her to [fol. 3236] read it as Mr. Tyler submitted it, and then to read it as I corrected it.

Trial Examiner Batten: Will you look at it, Senator? It appears to be entirely clear. However, I have no objection. Do you care to look at it?

(Thereupon Exhibit No. 17-A to 17-J, inclusive, was handed to Mr. Reed by Mr. Ingraham.)

Mr. Reed: Now, Mr. Batten, I want this to show in the record, that I interlined those particular words (indicat-

ing on exhibit), and those particular words (indicating on exhibit), and that I struck this out (indicating on exhibit), and said "See slip X," and then what slip X is.

Trial Examiner Batten: Well, we will have Mr. Ingraham proceed.

Mr. Reed: Otherwise it would be bungled up.

Mr. Ingraham: Could I shorten it by this:

By Mr. Ingraham:

Q. Mrs. Reed, every word that is scratched out on Exhibit No. 17-D, was that done by Mr. Reed?

A. Yes, it was. I remember very distinctly that it was.

Q. And the interlineations of new words, were they put in there by Mr. Reed?

A. They were put in by Mr. Reed, in his own handwriting. Where he says, "See slip"—we have the slip.

By Trial Examiner Batten:

Q. The slip is now marked as Respondent's Exhibit—what, Mrs. Reed?

A. Exhibit 17-A.

[fol. 3237] Q. Exhibit 17-A, then, refers to that notation on 17-D?

A. I will see if it does. (Referring to exhibit.)

Yes. The slip, 17-A, refers to the notation "See slip" on 17-D.

By Mr. Ingraham:

Q. I wish you would look at those slips, Mrs. Reed, and see which—

A. That one (indicating) belongs there (indicating). I will see where the other one belongs. (Looking through exhibit.)

The 17-B slip was not incorporated any place. My remembrance is we did not put it in.

Q. Why wasn't it put in, Mrs. Reed?

A. Mr. Reed didn't think it ought to be put in. It was a notation I made.

Q. Was there any objection made in discussing it with the representatives of the union?

A. There was some discussion about everything being absolutely fair.

Mr. Batten, may I just tell you what this slip is?

Trial Examiner Batten: Yes.

The Witness: You will know what it is, but so that we will have it here,— I said, "Nothing in this contract shall prohibit Donnelly Garment Company or Donnelly Garment Sales Company from making money allowances, bonuses, or extra vacations to any employees, the same as heretofore." I was at that time, and still am, giving the Pio-
[fol. 3238] neers— They have a Pioneers Club that the employees organized, where they have been at our place over 15 years, and I have given them 3-weeks' vacation instead of 2 weeks.

By Mr. Ingraham:

Q. How long have you done that, Mrs. Reed?

A. Ever since it was organized. It was organized a number of years ago.

Q. Long before this contract was drawn up?

A. Oh, yes, long before this.

By Trial Examiner Batten:

Q. So, the purpose of your making that was to retain that; is that right?

A. Yes. I had a plan in my manufacturing that, if an operator fell down a lot in her work, in her earnings, I would make up to her a certain amount of that. Very often it wasn't her own fault, or it was new work, or bad cutting, or for different reasons. Now, the $15.00 a week didn't always take care of that, because sometimes the girl who was in the habit of making $30.00 a week might fall down to $20.00, and then I felt that I ought to do something for her. I had done it through the years, and I hated to give up some of these things—

Q. In other words, you wanted to retain some of these special privileges?

A. Yes.

Q. And you wrote this for the purpose of incorporating it in the contract?

[fol. 3239] A. Yes. And I think Mr. Reed thought it was very foolish. Anyway, I didn't put it in. But this was a part of what we were writing, and when we found this document, this was with it, and to have it complete we have it in here.

I do not want to be understood that I made those allowances because I favored any particular person. It was a policy I had that—

Trial Examiner Batten: Well, I don't think there is any charge of that kind here.

The Witness: Well, when you have piece-workers to deal with, sometimes you have things like that.

By Mr. Ingraham:

Q. Now, Mrs. Reed, Respondent's Exhibit No. 17-C, will you state where that went into the Tyler contract?

A. Well, that would go in the first part, 17-D.

Q. Did it take the place of the paragraph marked "Paragraph 1" in Respondent's Exhibit No. 17-D?

A. Yes.

Q. Will you state what change was made?

A. The main change was that it took into consideration both the Donnelly Garment Sales Company and the Donnelly Garment Company. That was the particular point in the paragraph. 17-C took the place of part 1 in 17-D.

Q. Mrs. Reed, beginning with the paragraph marked [fol. 3240] (4) on Respondent's Exhibit No. 17-D, and continuing over on Respondent's Exhibit No. 17-E, were changes made in that paragraph?

. . . . . .

A. Yes, there were changes made in that.

By Mr. Ingraham:

Q. What were they? Read the paragraph as Mr. Tyler presented it, and then read it with the changes that Mr. Reed made.

A. (Reading) "The employer recognizes the election—" This is as Mr. Tyler had it: "The employer recognizes the election of a committee to represent the union by the union and agrees to negotiate and deal with such committee in regard to conditions of employees and all matters properly within the jurisdiction of such committee."

Now, Mr. Reed changed that to read:

"The employer recognizes the election of a committee of the union to represent it and agrees to further negotiate

and deal with such committee in regard to the working conditions, wages, and hours of labor of employees, and all other matters properly within the jurisdiction of such committee."

Q. Do you recall, Mrs. Reed, whether I made a suggested further change in that paragraph?

A. I remember your making the suggestion that any-[fol. 3241] one on that committee would have to have worked at the company a year before they would go on the committee—before they be elected on the committee.

Q. Now, take the paragraph marked "(7)" of Respondent's Exhibit 17-E. Will you read what changes were made in that paragraph?

A. As was written by Mr. Tyler, No. (7), "Complaints And Grievances: Any employee considering himself or herself unjustly disciplined or unjustly treated shall have the right to present such matter to the committee elected to handle the affairs of this union, and such committee by a majority vote may elect to take the matter in question up with the employer for the purpose of securing redress for any proper grievance or injustice which the committee may believe to exist. Nothing in this agreement, however, shall prevent any employee from taking up any matter of dissatisfaction directly with his or her immediate superior, in substitution for or in addition to, presenting such complaint to the committee representing the union."

Now, Mr. Reed changed this to read—No. (7):

"Complaints And Grievances: Any employee considering himself or herself unjustly disciplined or unjustly treated shall have the right to present such matter to the duly authorized committee of this union, and such committee by a majority vote may elect to take the matter in-[fol. 3242] question up with the employer for the purpose of securing redress for any proper grievance or injustice which the committee may believe to exist. Nothing in this agreement, however, shall prevent any employee from taking up any matter of dissatisfaction directly with his or her immediate superior or the managerial officers of the

company, in substitution for or in addition to, presenting such complaint to the committee representing the union."

Mr. Reed inserted ". . . or the managerial officers of the company . . ."

Q. Now, in referring to paragraph (9) on Respondent's Exhibit No. 17-E, how is that paragraph marked?

A. That paragraph is marked out.

Q. How about the next—

Mr. Reed. What is the paragraph that is marked out?

The Witness: "Closed shop."

By Mr. Ingraham:

Q. The continuation of that paragraph (9), contained on Exhibit No. 17-F, is that marked out?

A. That is also marked out.

Q. Who marked it out?

A. Mr. Reed did.

Q. Were you present when Mr. Reed discussed the matter with me and we decided upon what we would do when we conferred with Mr. Tyler?

A. I was.

[fol. 3243] Q. Were we then to sit down and discuss the closed shop provision with Mr. Tyler?

A. Yes.

Mr. Ingraham: To shorten this I am only referring to the paragraphs that have considerable changes made in them.

Q. Now, calling your attention to paragraph (12) on Respondent's Exhibit No. 17-F, how is that paragraph marked?

A. That is also scratched out.

Q. By whom?

A. By Mr. Reed.

Mr. Reed: What does it refer to?

A. Strikes. That paragraph ends on Exhibit No. 17-J, and that is also scratched out.

By Mr. Ingraham:

Q. Now, what was inserted in place of paragraph (12), and by whom?

A. By Mr. Reed. He dictated paragraph (12) with regard to strikes.

Q. Read that, Mrs. Reed, as changed by Mr. Reed.

A. (Reading) "Strikes, lockouts, and arbitration." That is the way he headed it, instead of just "Strikes." "The union agrees that it will not call or instigate or support any strikes during the period of any wage scale adopted in conformity with or in furtherance of this contract, and the employer agrees that so long as the union faithfully keeps its part of this contract there will be no [fol. 3244] lockout of employees by the company.

"It is further agreed that in the event the union and the employer are unable to agree with reference to any matter of dispute, that the question in dispute shall be submitted to a board of arbitration, one to be chosen by the union, one by the employer, and the third by the two above referred to, and if the two cannot agree as to the third arbitrator, then such third member shall be chosen by a judge of the United States District Court for this district. And it is further agreed between the parties that during the time of such negotiations or such arbitration there shall be neither a strike nor a lockout, and the parties hereto agree to accept and abide by any decision made by a majority of such board of arbitrators."

Q. Did Mr. Tyler's proposal contain any provision for arbitration?

A. No, it did not. That is what Mr. Reed thought was very necessary to have in there.

[fol. 3245] By Mr. Ingraham:

Q. That paragraph contained Respondent's Exhibit 17-H, dictated by Mr. Reed?

A. It was.

Q. What does it relate to, Mrs. Reed?

A. To the right to reduce the number of employees in accordance with the judgment as to business requirements, and discharge any employees whose services are unsatisfactory to the company for any reason, which the employer shall deem sufficient.

Q. Did Mr. Tyler have anything to do with that?

A. No.

Q. Did he have anything like that?

A. My remembrance is he hadn't.

Q. Mrs. Reed, the papers with the blue ribbon on them were written in Senator Reed's office, were they not?

A. They were.

Q. And the papers with black ribbon were the papers that Mr. Tyler presented?

A. Yes.

Q. What changes were made on 17-J?

A. Well, they are in regard to vacations, No. 13 was scratched out; do you want me to read this notation?

Q. Yes, 17-I, yes.

A. "Vacations and employees after six months' consecutive employment at regular pay shall be entitled to one [fol. 3246] week's paid vacation, and after two years of such, same shall have two weeks vacation with pay each year."

Q. In whose handwriting is that 17-I?

A. Mine.

Q. Mrs. Reed, how long did Senator and you and myself go over this proposed contract of Mr. Tyler's?

A. Well, the greater part of the day after we had met with Mr. Tyler and the committee in the morning, and we went to Mr. Reed's office and had lunch, that is, we worked a while and then we had lunch, and we kept on going until late in the afternoon, and then we met with Mr. Tyler. I don't remember, but I know it was late in the afternoon, because we didn't get home until very late that evening.

* * * * * * *

[fol. 3247] Q. And were these proposed changes then discussed with Mr. Tyler?

A. Very much, yes, each one of them were.

Q. And did Mr. Tyler disagree about certain changes in the language that were proposed?

A. He did.

Q. And finally did we agree on a form of contract that was then written up?

A. Yes, we did.

Trial Examiner Batten: I don't remember, Mr. Ingraham. Was the contract prepared that day, and signed, or was it later?

Mr. Ingraham: Yes, it was prepared late that afternoon and signed.

By Mr. Ingraham:

Q. Now, Mrs. Reed, you refer to being at Senator Reed's office and having lunch. Was lunch sent in that day?

A. Yes.

Q. And we continued working on this draft of contract?

A. Yes.

Mr. Ingraham: Well, I now offer in evidence Respondent's Exhibit 17-A, B, C, D, E, F, G, I, and J.

Trial Examiner Batten: There is no objection. It will be received.

[fol. 3248] (The documents heretofore marked "Respondent's Exhibits 17-A to J inclusive, Witness Reed," for identification, were received in evidence.)

By Mr. Ingraham:

Q. I think this question has been answered, but I am going to ask it again, Mrs. Reed. Were all the changes that were made on Respondent's Exhibit 17-D and J, — wait a minute — D, E, F and J, made by Mr. Reed?

A. They were all made by Mr. Reed in my presence, in his handwriting, and the dictation on these was all made by Mr. Reed, and corrected.

Q. Who wrote the writing on Respondent's Exhibits A and B, 17-A and B?

A. I did.

Q. Who wrote the writing on Respondent's Exhibit 17-I?

A. I did.

Q. And who dictated Respondent's Exhibit 17-C?

Trial Examiner Batten: Mr. Ingraham, I have no objection to going over that, but I have a note in which I made a notation after you made the same question on each one of those exhibits.

Mr. Ingraham: This finishes it.

By Mr. Ingraham:

Q. Who did dictate the writing that is on 17-C, G, and H?

A. Mr. Reed.

Q. And the pencil notations that were made were made by whom?

A. By me.

[fol. 3249] Q. No, on the last 17-C, G and H?

A. Pencil notations, by Mr. Reed.

Q. Mrs. Reed, after this, or after the agreement was entered into with the union on May 27th, 1937, what next was done in connection with the working agreement?

A. Well —

Q. (Interrupting) Or wage agreement, I mean.

A. This first contract did not include any provision for wage scales, wages other than a minimum, and so during the following month there were discussions and meetings and thinking about what those scales would be, because they told us this was just an agreement with the union, and they wanted a scale of wages and more detailed contract, which would be worked out a little later.

Trial Examiner Batten: As I recall, Mr. Ingraham, wasn't there introduced in the prior hearing a supplemental contract?

Mr. Ingraham: Yes. That is what Mrs. Reed is referring to.

By Mr. Ingraham:

Q. Was there a meeting with Mr. Tyler in connection with that?

A. Yes.

Q. Who was present in addition to Mr. Tyler at those meetings?

A. Well, usually Miss Todd and usually the committee.

Q. Do you recall where most of those meetings were held?

[fol. 3250] A. Well, in Mr. Tyler's office. I know I went over to his office several times.

Q. And have you been requested to go there by the committee? A. I have been.

Q. Mrs. Reed, in connection with this contract, dated May 27th, 1937, and the supplemental contract that was entered into on June 22nd, was the union pushing the making of those contracts?

A. Yes, they were. They wanted to get the contracts made, and get something definite settled about them.

Q. Was there a controversy about what the minimum would be in the supplemental agreement?

A. Yes. I had a minimum of $15 a week for a number of years, and Mr. Tyler and some of his committee wanted an actual minimum of $16.50, and I thought at the time and under the circumstances, what other contracts had as minimums, that that $16.50 was a little high for a bundle boy and beginners, and everybody, and I didn't want to give it. That was one of the last things I did, and I remember Mr. Reed saying, "Go ahead: You have to give up something in these contracts, whenever you make an agreement, and let's get it finished up," and I said, "All right".

Q. Was there considerable work on the various classifications that was contained in this supplemental agreement? A. Yes.

[fol. 3251] By Mr. Ingraham:

Q. Mrs. Reed, I will hand you Board's Exhibit 7, and ask you to state if that was a supplemental contract that was entered into between the Donnelly Garment Company and the Donnelly Workers' Union?

A. That is the wage agreement.

Q. Mrs. Reed, I notice that it provides for various classifications? A. Yes.

Q. And each classification has a sub-division with minimums? A. Yes.

Q. How much time was spent in arriving at the different classifications as provided for?

A. They were worked on every day after the 27th until the 22nd, when the agreement was signed.

Q. 22nd of what month?

A. June; and in between that time a very great amount of time was spent to get those classifications.

Q. Did you have various people working at the plant on getting the figures that would be necessary for you to have before these classifications would be made?

[fol. 3252] A. Yes.

Q. Then on June 22nd—strike that.

Prior to the time that the contract was actually executed, had these various classifications been taken up and discussed with Mr. Tyler and the union committee?

A. They had.

Q. Do you have any idea how many meetings were held in connection with this contract?

A. Well, I had so many meetings with so many different people making up this contract I couldn't tell you about, there was hardly a day that went by that I didn't have some sort of a meeting with either Miss Todd or with Mr. Tyler, or with the committe, or some of them altogether; sometimes, Miss Todd herself would come up and get notations as the work progressed.

Q. By the way, Mrs. Reed, referring back to the date of the formation of the Donnelly Garment Workers' Union, which was April 27th, 1937, do you recall the meeting with any group of employees on the morning of the day the Union was formed, or a few days preceding, having a meeting with these employees in your private office?

A. I don't remember of just before the union was formed.

Q. There has been testimony in the record that before the union was formed that a group of employees—

A. (Interrupting) Came in my office?

[fol. 3253] Q. (Continuing) Came in your office?

A. No, there was no group of employees that came up there a few days before the union was formed.

Q. Or on the morning of the day the union was formed?

A. No, there was not.

Q. Did you discuss the formation of the union with any employee of the plant? A. I did not.

Q. Mrs. Reed, is there a check-off agreement with the Donnelly Garment Workers' Union at the present time?

A. At the present time the dues are, I believe, collected by the company.

Q. Do you know who authorized the company to pay the dues of the individuals to the union?

A. Well, I know that they brought signed cards to us saying the girls had asked to have that, their dues to be paid taken out of their pay just like their half of the insurance, because they said it was so much trouble to pay their dues to the union, to have the change; and so they

asked us to do that, to pay that; but the girls themselves signed cards requesting that we do that.

Q. Do you know whether or not Mr. Ingraham refused to agree to a check-off system unless the individual employees requested the company to deduct their dues?

A. I know he did and it was not deducted in the first [fol. 3254] place, and there were two reasons we didn't want to do it, so much work and so much bother, and Mr. Ingraham then did not approve of it, and said we had no right to do it unless the particular person asked them to have it done. I think we didn't do it the first few months. That is my remembrance.

Q. Mrs. Reed, what has been the situation with the Donnelly Garment Company, with respect to permitting employees to use the telephone?

A. They have always used the telephone and still do.

Q. Have you made any changes since the union, the Donnelly Workers' Union, was organized, with respect to the use of the telephone? A. No.

Q. What has been the custom of the company with respect to permitting the employees to use the equipment of the company after working hours?

A. Well, we have always been generous along that line. We have never made any rule that there was no equipment to be used, and it has always been understood, so long as they didn't abuse it, they could use anything that would be convenient to them.

Q. What has occurred with respect to permitting employees to use sewing machines?

A. They used our sewing machines for a great number of years, until this wage and hour law has made it so [fol. 3255] important, that you have to have to pay overtime for someone doing some work on their own; we allowed the girls to stay a little while and sometimes they made dresses for their children, and some of them made dresses for themselves.

By Trial Examiner Batten:

Q. You can't do that now?

A. No. You see, now, if your card shows a person has worked any longer hours—

Q. They might punch the card out and come back to the machine?

A. My understanding is it is our responsibility to get them out of the building, and I am just saying what I am told is the law on this, and so we make our girls go down into the lobby and wait for their rides now, because the men that have come to check us up have said that if the girls are in the building it is our responsibility.

Naturally we have, or are now in the last year or so, since we have learned what the attitude of the Wage and Hour people is, about it, we have gotten a little tighter about it. We still allow people to use the telephone. If a girl uses a typewriter, a stenographer uses a typewriter to write her own letters, and she does it in working hours, we don't have any system of finding out whether she does, and we never made it a point to forbid her to do it. See, we have grown from a very small business and a very personal basis, and people doing favors back and forth, and I have been closely associated with that business myself, [fol. 3256] and I have found little imposition from any employees, so they have grown up, sort of, with a feeling that it didn't hurt me any for them to use the machines, and I wouldn't mind if they did.

Q. You feel then, the law has made you change?

A. I feel the law has made it so that I have to be sure I won't have to pay over-time.

Q. For making their own dresses? A. Yes.

By Mr. Ingraham:

Q. Mrs. Reed, isn't it true the Wage and Hour people advised you that on rest periods the girls—

A. (Interrupting) I would have to pay over-time.

Q. (Continuing) If they had to work over-time, over the eight hours, even if they weren't working, you would have to pay over-time?

Trial Examiner Batten: Is there any issue on that particular point?

Mr. Ingraham: No.

A. I am just saying there has been a change made, and we are just a little more careful that people don't stay in the building after hours now.

By Mr. Ingraham:

Q. Mrs. Reed, what has been the custom in permitting employees to pass notes through the sections?

A. They have always done it.

Q. That has always been true, carrying notes from one [fol. 3257] section to the other by bundle boys?

A. Yes, if the boy was going that way. Nobody ever said that they shouldn't have done it.

Q. Do you have any knowledge of the Donnelly Garment Workers' Union sending notices through the plant by bundle boys, or through the sections?

A. It didn't come to my attention.

Q. Have you paid any attention, or required the employees to stop using, say, a typewriter, after working hours, writing something personal for themselves?

A. No.

Q. If the Donnelly Garment Workers' Union sent notices by a bundle boy, or used the telephone, was that anything different than the employees had been doing for a number of years? A. It was not.

* * * * * * *

Q. Mrs. Reed, what has been the custom with respect to permitting time workers to take off time?

A. Until the Wage and Hour law forced us to put in time clocks, we didn't have time clocks for week workers. We expected them to do their work, and if a girl wanted to have her hair done early in the morning, and she had a little extra work to do after hours, that delayed her, she did it, and it was understood that it was a privilege, and it [fol. 3258] wasn't done so much that it discommoded anybody. If a girl was going to be off a couple of hours in the morning, she would be sure that no one was being discommoded by her absence, and that she wasn't holding up any work that was expected of her, and to take an extra half hour off at lunch or be off half a day was not anything out of the ordinary. As far as I know, no one was ever docked for it, that is the ordinary term.

Q. Mrs. Reed, have the employees been permitted to use the bulletin board for notices?

A. As long as we have had bulletin boards, at least, the Athletic Association and some groups, they have had a little organization in each section, had a little organization of their own, and they would have dinners and meetings at different times, and they used that bulletin board for that.

Q. Was that prior to the time the Donnelly Garment Workers' Union was formed?

A. Yes, as long as we had had bulletin boards, and I don't know how long we had them, about 15 years, I think.

Q. Mrs. Reed, was Rose Todd an employee who had any authority to speak for the management? A. She did not.

[fol. 3259] Q. Do you recall what work she was doing when she was last employed by the company?

A. Yes. She went into the different sections to see if they had sufficient thread and findings to complete their bundles, if there had been any errors made in sending down the proper amount of findings, so that the merchandise could go out promptly. That was her real job. Anything she found they were wanting in the section, she would go back to the notions department or thread department and send it down.

Q. She is not working for the company now, is she?

A. No.

Q. Do you recall her leaving the company 8 or 10 years ago? A. Yes.

Q. Do you recall her coming back to work for the company? A. Yes.

Q. Do you recall what position she held when she came back? A. Well, she just did odd jobs.

Q. Was she willing to come back and take any kind of work? A. Yes.

Q. Was there work for her in her old job when she came back?

A. No. Someone had been put in her place.

Q. Was she told she would have to take what was there? A. Yes.

By Trial Examiner Batten:

Q. What was her old job?

A. She had assisted in making piecework prices.

[fol. 3260] Q. When she was there the first time?

A. Yes.

By Mr. Ingraham:

Q. Do you recall how long she was gone?

A. I think two or three years. I am not sure.

Q. Was that approximately back in 1932, or—

A. She came back along in 1932 or 1933.

Q. Did she come back at lower wages?

A. Yes, she did.

Q. Do you recall how much lower?

A. She came back at $25.00 a week. I don't recall what she got when she left; something like $40.00, I believe.

Q. Now, Mrs. Reed, when Rose came back did she have any ability with respect to hiring or firing or disciplining any employees? A. Absolutely none whatever.

Q. Was there anybody over whom she was boss in any way? A. No.

Q. This work you say she did, findings work, did she have assistance in doing that?

A. She did it herself. She went all through the plant, because here and there the work would be held up because the right colored thread didn't come down, or there should have been 100 yards of pleating and maybe only 90 yards came, and the operators and the instructor would be busy, and they would throw it aside, and sometimes whole cuts of [fol. 3261] work would be held up for some small thing, and it wouldn't always be reported promptly, so her job was to go through and see if there was any work piling up that needed something to put it through, and then she would go back and get that or report it to the girl who sent out the findings. She had no one assisting her. She was in no place of responsibility, except to see that these trimmings and findings would be sent down to the section so that the work could go on through.

Trial Examiner Batten: Who was her boss, Mrs. Reed?

A. Mr. Baty had charge of the factory, so she was under Mr. Baty.

By Mr. Ingraham:

Q. Did you ever discuss with Rose Todd the formation of the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you ever have any discussion with Miss Todd with reference to the Loyalty League?

A. I did not.

Q. What position did Hobart Atherton hold with the company in 1937?

A. He was in the maintenance department.

Q. What is that department?

A. Well, it is the maintenance department. They take care of the machinery and repair it, and if there are cutting tables to be cleaned or scraped or put in order, the maintenance department has that.

[fol. 3262] Q. Did he have any authority to speak for the management in connection with anything?

A. He did not. He was actually a worker in the department, doing the work himself, part of it; there were other workers in the department.

Q. Was he a boss in the department? A. He was not.

Q. Did you ever suggest or request Mr. Atherton to form or to become a member of the Donnelly Garment Workers' Union? A. I did not.

Q. Did you ever ask him to influence any employees to join that union? A. I did not.

Q. Did you ever suggest or ask that he influence any employee against joining the I. L. G. W. U.? A. I did not.

Q. Mrs. Reed, after you had taken over the management of the business, who was in charge of the production end of the business?

. . . . . .

A. Mrs. Reeves had been my general assistant and eventually took over practically the complete management [fol. 3263] of the plant. She also was assisting me with the merchandising, and when I took over the complete management of the business in 1932, Mrs. Reeves more of the responsibility of the merchandising fell on her.

Q. What do you mean by "merchandising," Mrs. Reed?

A. Well, I mean by "merchandising"—it isn't only buying merchandise. As a matter of fact, she doesn't do so much buying. You plan and see that you have enough merchandise to take care of your orders, and not too much. We have a New York office where the real purchasing is done.

By Trial Examiner Batten:

Q. Do you mean planning?

A. No. The purchasing is done in New York,—

Q. I mean, Mrs. Reeves.

A. Yes, it would be planning of the merchandising and how much we need.

By Mr. Ingraham:

Q. Will you briefly describe the different departments? You have mentioned planning. What did the planning consist of?

A. I don't know what you mean, Mr. Ingraham.

Q. Is there a designing department? A. Oh, yes.

Trial Examiner Batten: You are speaking of now, or as of that time?

Mr. Ingraham: As of that time.

The Witness: As of what time?

[fol. 3264] Mr. Ingraham: When Mrs. Reeves was in charge of production and merchandising both.

A. Well, the business is run with a designing department, and the planning department, as far as the planning of the merchandise, the production of the merchandise—

Q. Let me put it this way, Mrs. Reed: What are the various steps that take place in making a dress from the raw material, up to the finished garment?

A. The merchandise is bought in the New York office and is selected after consultation with the head designer and myself, when I was available, and the head of the New York Office, and also Mrs. Reeves, and then the model is designed in the designing department and the patterns are made. One perfect pattern, supposedly— A perfect pattern is made, size 14, from which the samples are made.

Then, we have a production planning department that takes the garment and works out the best way of producing that in volume, down to the detail of just what operation comes first, and the sequence of the operations, and very often notes of how to do that operation.

Then, in the pattern department the perfect pattern is made for a size 14, from which the samples are made. Then, that pattern is made as a basis to grade up to larger sizes, some of them 44, and some of them down to size 10. Those patterns are made, they are marked in, and the [fol. 3265] perforations, we call it, is made, and that goes to the cutting department.

Now, with Mrs. Reeves, in the merchandising department, the orders are assembled, and each day a report

comes as to what particular models are selling, and how many.

We do not cut just the orders. We often start production even before our men go on the road. So, by consultation we decide on which numbers we are going to sell enough quantity of to start production on. That work was *originally done by myself, and* Mrs. Reeves assisted me in it.

The cutting cards then go from this merchandise planning department—Mrs. Reeve's department—the cutting cards go to the cutting department, showing how many dozens they want cut of a certain number, and of what sizes and what colors, and then that merchandise is divided and bundled right in the cutting department, at least on the same floor. Then it is taken by what we call bundle boys, in big baskets, to the sewing floors.

Q. Are directions sent along, Mrs. Reed, for sewing?

A. From the planning department—that is run in connection with the designing and pattern department, on the same floor—the complete directions are sent to the sewing department, and a factory sample of the garment. These directions are typewritten and sent to the instructor for the models she is going to make in her section.

Q. Do those instructions tell the operator just how the [fol. 3266] garment is to be made?

A. Yes. The instructions have typewritten what is in an operation. Perhaps the pockets are to be made first, and they will come in separate bundles; and perhaps the sleeves will be in separate bundles, because they have some special work on them. This instruction to the instructor is very definite and very complete, as to just how the garment is to be put together, telling her how is the best way to put it together. We have worked that out before it goes to the factory.

Then, if there is anything new, anything that is not the same thing the girl has done before, the instructor sits down at the machine and she sews a few of whatever the operation is. She sews that, for the girls to see how it is done. Of course, there are some operations that the instructor does not sit down and sew, because it is the same thing on every garment—a side seam, for instance; practically every garment that goes through has the same kind

of seams in it. Or maybe hemming; if it is the same kind of a hem you use on 99 percent of the garments, the instructor does not sit down and show the operator how to hem, she knows how to do that herself. But on all of the new points on the garment, the instructor sits at the machine and shows the operator how to do it.

Q. When Mrs. Reeves took charge of the factory, how long did she continue in that position?

A. Well, until 1935.

[fol. 3267] Q. What was the reason then for making a change?

A. Well, by 1935 our business had grown and my responsibilities had grown in managing the business, and I felt that Mrs. Reeves's entire time should be given to the merchandising, so I turned over to Mr. Baty the management of the plant—

By Trial Examiner Batten:

Q. By "the plant," you mean the manufacturing and production? A. Yes.

Q. Does that include the maintenance work also, or—

A. Yes, that included, in a general way, the maintenance.

Q. I mean, it included everything in the so-called plant; is that what you mean? A. Yes.

Q. Where there was any manufacturing done, or shipping—

A. No, not shipping. The shipping is run from the office.

Q. Separately?

A. Yes. The shipping is always managed from the office.

[fol. 3268] Mr. Ingraham: Mrs. Reed, when Mr. Baty became production manager, were any changes made in the authority given instructors?

A. Yes.

By Mr. Ingraham:

Q. What was the reason?

[fol. 3269] A. I had sat through all of the testimony in the N. R. A., and if was charged time and again that the instructors had favorites and discriminated, and it occurred to me that if I would put the authority in one person who would not be in such close contact with the operators, it would be better. This was the first time in the history of my business that I had anyone in charge of the plant that didn't have numerous other jobs to do—other responsibilities. Originally, I had been in charge of my plant myself. I had done all of my own buying, designing, and some selling, and a great many other things, and, naturally, only had limited time to spend in the plant. Then, when Mrs. Reeves assisted me and eventually took over the production management, she was in the same position. She had to manage the plant, but she also had this merchandising to do. So when I thought she had too much to do I gave her the merchandising and gave Mr. Baty the plant to run, with nothing else to do, and I expected him to spend his time in the plant. He had already been in there as Mrs. Reeves's assistant for some time. We had a very good system of cards—of keeping records of the operators, their work, and I felt very sure that he could take that over, and we would relieve the instructors of responsibility they had had of settling differences and acting on their own in anything that came up with the operators that they had had in the past. One reason was, Mrs. Reeves didn't have time to settle them herself. And they [fol. 3270] had, naturally, taken on a certain amount of authority, both with my running the plant and Mrs. Reeves's running the plant.

When I talked with Mr. Baty about running it, we discussed these charges that had been made in the N. R. A. about the instructors not being fair to this one and that one, and I felt he could take it over. And as far as the work was concerned, the instructor would still sit down and show a girl how to do her operation, if she needed to. She would still know what kind of work she would give to the different operators. As far as putting the work through, it seemed that that would be a very possible thing to do.

So, when I put Mr. Baty in there, whether it was a wise thing or the right thing, I did give him the whole authority

and expected him to take care of any differences that came up about the instructors, and to relieve the instructors of the authority that had caused the discussion in the N. R. A. case.

Q. Mrs. Reed, what authority did an instructor have when Elizabeth Reeves was in charge of the plant?

A. I think Mrs. Reeves consulted with— I think an instructor would say whether or not, if work was low, a girl would be laid off, or whether she would be transferred to another section.

Q. Was she consulted in connection with discharging? [fol. 3271] A. Yes, she was. She was consulted at that time.

Q. Mrs. Reed, was that authority taken away when Mr. Baty was put in charge of the plant?

A. Yes, it was.

Q. How many employees were there in the factory that were under Mr. Baty when he first went in?

A. Well, when he took that over in July—I think he took it over in July, 1935—he had approximately 500 people, maybe a few more.

Q. Were some of those people time-workers?

A. Yes, some of them were time-workers, but the majority of them were pieceworkers.

Q. Is there a substantial number of people that do time-work and assist the pieceworkers?

A. In our plant we have almost as many time-workers as we have pieceworkers. The way we achieve maximum production on style items in dresses is by a great deal of service work being done, a great deal of planning—everything is ready for the operator when she gets it; it is cut properly, and everything is ready. So we only have about half of our operating force.

Q. What did an instructor do after Mr. Baty took over the plant?

A. Well, as far as turning her work out, she still did her instructing. She showed a girl how to do the work. [fol. 3272] She gave the work out to the operator, but when there was any difference of opinion—any operator that wasn't willing to do just what she was told by the instructor, she would wait until Mr. Baty came to settle

it, or else she would let the girl pick out what kind of work she did want to do.

Q. Did the instructor have any authority over the girls, to give them orders?

A. No. Mr. Baty took that himself.

Q. Did the instructor under Mr. Baty have anything to do with the hiring, the disciplining, or the discharging of operators?

A. No, nothing whatever.

Q. Did the instructors have any authority to represent or speak for the management in any way?

A. No.

Q. Mrs. Reed, when Mr. Baty went in, how many floors in the building were used for sewing?

A. I believe all of the sewing was done on two floors, perhaps a little on a third floor. When he first went in all of the sewing was done on two floors.

Q. Did the business increase after Mr. Baty went in?

A. Yes. We had an increase in 1936 over 1935 of something like $800,000, and it kept increasing right along, and of course we put on more employees. We put the sewing on more different floors, and later we took over [fol. 3273] more of the building, until we had the entire 10 floors and the basement. We spread out the sewing very much, until the sewing was done—in 1940 the sewing was being done on five different floors.

[fol. 3274] Q. Did the company put in more sewing machines?

A. Yes.

Q. Were more employees hired to do something?

A. Yes, sir.

Q. Did that result in requiring a change to be made in Mr. Baty's duties?

A. Yes. The plan we had for Mr. Baty was more or less to settle every little dispute or settle everything that came up with the operators. In settling most of them, it resulted in the fact that we couldn't get the work in very good shape. Of course, the volume of business and the number of floors increased, and it was a great deal more than when he first took it over, than we had in 1940; when I

made a check-up on it we had as manufacturing employees over 300 more.

By Trial Examiner Batten:

Q. 300 more than when?

A. Than when Mr. Baty took over the plant; and those 300 more would naturally be new employees, and would require more supervision than one even who had been there a great many years, and besides that, in a women's organization, there is always quite a little turn-over in a natural way. There were probably another hundred new employees in that time.

By Mr. Ingraham:

Q. Now, what did you do in 1940, with reference to a change?

A. I had a meeting with the instructors; I first had a discussion with Mr. Baty, because we were having a great [fol. 3275] many complaints from our trade that our merchandise was not being delivered promptly. It was delivered in small amounts, where they didn't even get enough in at once to advertise it, and they were very dissatisfied; and so I had a meeting with the instructors, and before that I had talked to Mr. Baty and he said that the thing had simply gotten to such a point that he couldn't handle it this way, the way I had wanted him to do it. Now, I must explain that during the — practically the entire year of 1939, I was away from my business, ill, most of the time very ill. I had two operations, and I think that at the time in that year, I spent at the plant only a few days at a time, and those few days I worked with my designing department on our models, on the designing, and so I had gotten out of touch with the plant, and the main thing that came to me in 1940 was the complaint about the work not going out. So Mr. Baty simply said it had gotten too big to handle, with all these new floors, and he had to be all over the floors, and when he took this over, a head cutter that had completely ran his cutting department and nobody ever bothered about it, in the meantime that man had died and we had to have an assistant in there that was not experienced and didn't get along with his cutters. That department required some of

his time, and he said that the instructors were all discouraged, and they didn't seem to be able to get their work through. I had a meeting then, in my office, of the [fol. 3276] instructors, and I read to them some of the data that had been furnished me by Mr. Bachofer, who has charge of my accounts, and showing where there were certain models that had been in the section for five weeks before they were cut, and some that had been in four weeks. I showed that to these instructors, and I said, "You know, we won't have any trade, people don't come from the east and from the west to buy my goods because they like me. We have to fill these orders promptly, and better, or we can't continue." The reason they gave, one particularly spoke up and said, "Well, Mrs. Reed, you want to hold us to a responsibility, and we no longer have any authority. The girls don't think they have to do anything we tell them to do, and perhaps there will be only one or two girls in a section that will not be willing to do the work that we assign to them to do. That upsets the entire section, and we have work piled up here, and it comes to a certain operation, the girl that ought to do that operation, she won't do it; then I have to call Mr. Baty, or she will say, 'I will see if Mr. Baty says I have to do that,' and Mr. Baty may be any place in the building. If I have to wait for him, I usually end up by letting her go and giving her something else to do. There is work to come through, and perhaps putting someone to do that work that is a little more agreeable, and perhaps can't do it nearly so well, or so much of it; so we can't run our section if we don't [fol. 3277] have the authority to say, 'Now, this work is here, and this is what you have got to get out and get through,' and the person that we think ought to do it should do it."

Well, after all, I was running the business. I might be criticized, but I had to run the business, and I had to get my work out, so I said, "Well, you simply have the authority you need to get this work through," and then someone suggested whether they could have that authority and belong to that union, and I said, "That is between you and the union, but I know that you have got to get your work out, or we simply won't have any trade," and that was in,

I think, in December, 1940. I didn't hear any complaints from the operators, and I think they liked it better. There was less confusion, apparently; I know that I got better work and quicker work, and more of it.

By Trial Examiner Batten:

Q. That has been in operation since then?

A. Since December, 1940.

* * * * * *

[fol. 3282] By Mr. Ingraham:

Q. Mrs. Reed, the Board in its decision found that certain employees that were members of the Donnelly Garment Workers' Union were supervisory employees. I want to inquire about some of these people.

Will you state what the position was that Mrs. Lena Tyhurst held in 1937?

A. Mrs. Tyhurst was general examiner; that is, she went through the plant and had a general job to do, seeing that the quality of work was up to standard.

Q. Did Mrs. Tyhurst have any authority to represent the management?

[fol. 3283] A. Mrs. Tyhurst had no authority to represent the management.

Q. She had a specific job to do?

A. She had a specific job to do, herself.

Q. Did she have any authority to hire, discipline, or discharge any employee?

A. She did not.

Q. Mrs. Reed, will you state what the position of Marvin Price was in 1937?

A. His work was maintenance—what we call the maintenance man.

Q. What did he do?

A. Well, he helped to keep the machinery in good shape. If we gave a fashion show, he would help to put up the runways, and generally keep the equipment in good shape.

Q. Did he look after any maintenance of the building that was necessary?

A. Yes, what the building company didn't do. We have certain service from the building company.

Q. Did he have any authority to represent the management?

A. None whatever.

Q. Did he have any authority to hire, discipline, or discharge employees?

A. He did not.

Q. Was he head of any department?

A. He was not.

[fol. 3284] Q. Mrs. Reed, will you describe the position occupied by Mrs. Martha Gray?

A. We have a little outlet store where, I think I stated yesterday, we originally disposed of our remnants and odd buttons and trimmings to our own employees, and as the business grew and there was a larger amount of them, we set aside a room for that. Still the employees were able to buy all of them, and eventually the business grew to such an extent that the leftovers became such a volume that I opened a little shop on the first floor to which we admitted the public as well.

By Trial Examiner Batten:

Q. About when was that, Mrs. Reed?

A. When we took over the full building, about 1939. When we eventually opened the shop to the public it was in 1939.

I am getting ahead of my story, but this little shop, the purpose of it was to dispose of remnants and odds and ends. In that we had several women doing the work, and Mrs. Gray was one of these women who disposed of the articles put in there. She did the selling herself, as well as the others. The merchandise that came into the outlet store was all marked at the price at which it was to be sold.

The other employees that did the selling were employed —Mrs. Gray had nothing to say about who was employed, what wages were paid, how many people she had, or anything about it. She was simply there as one of the women who waited on trade and helped to sell the merchandise.

[fol. 3285] By Mr. Ingraham:

Q. Did Mrs. Gray have any authority to represent or speak for the management?

A. Absolutely none.

Q. Did the company ever hold Mrs. Gray out as a representative of the company?

A. They did not.

Q. Did Mrs. Gray have any authority to hire, discipline, or discharge any employee?

A. She did not.

Mr. Langsdale: Just a minute. What was that question, did the company ever hold Mrs. Gray out—as what?

Mr. Ingraham: As a representative of the company.

The Witness: Now, Mr. Batten, if you will allow me, I would like to explain about Mrs. Gray and that little store and what happened, and it will cover, really, a number of other people there.

Trial Examiner Batten: I would suggest, Mrs. Reed, that you follow Mr. Ingraham's line of questioning, rather than ask my consent. I have no objection, when you are through, if you want to make a statement, to your making the statement.

The Witness: When I read the findings I felt that there was quite a misunderstanding of the way my business was run, by the people who made the findings. There are so many things in that, and, really, the way the business is run is certainly misunderstood.

. . . . . .

[fol. 3286] By Mr. Ingraham:

Q. Mrs. Reed, will you explain the growth of the store and what changes, if any, were made in the store?

A. As I said yesterday, practically the entire year of 1939 I was away from the business because of illness. In the early part of 1940 I pretty much got back into my old management, and I found that our expenses had increased a great deal, and our trade wasn't very well satisfied; our deliveries were not good, and the management needed a great deal of consideration.

Mr. Bachofer at that time had taken entire charge of all of the records and cost accounting and accounts, and had been getting up data for me so that I could get myself

back into the business and understand what was going on. He very strongly recommended a budget system. In fact, he had it all worked out for my approval, and went over with me the expenses—for instance, in this store, how much it cost us to sell our merchandise, and in all of the departments he showed me how much more it was costing than it should, and how the expense had crept up because he felt that there was not enough personal management and personal responsibility.

[fol. 3287] So, after some discussion and planning, and going over this budget, I consented to have the budget system put in our place.

Now, I had been in business for 23 years and I had never had a buget system. Of course, the business had grown very gradually, and I had felt I could take care of the expenditures and watch them, they hadn't gotten away from me. But that year, 1939, was the first time I was really out of my plant entirely since I had started it.

So I adopted that budget system. I started with the store, because it was the least of the departments. It was merchandise we had to dispose of and didn't expect to make any money on.

Mr. Bachofer felt if Mrs. Gray knew how much it cost to sell the goods, and if she would spend less time personally selling and a little more time in managing the people in there, that she could do a very much better job than by just everybody down there selling, with no real head in the store. So he took up with her, as he did with these other departments—showed them how much money they had spent and asked them to consider and see if they couldn't do a better job and take the responsibility that we would give them, and we would get better results and it would be very much better all around.

In that particular instance, I am informed by Mr. Bachofer, they disposed of more merchandise, with fewer people, after they had that system.

[fol. 3288] By Mr. Ingraham:

Q. Do you recall about when it was that Mr. Bachofer recommended to you that a change be made?

A. I very well recall. We complete our year October 31st, and it was after the figures were all in in November, 1940, that he brought this up with me. I think we put it into effect something like sometime in December, 1940, perhaps; I don't remember the exact week. It was either November or December of 1940.

Q. At that time did you then give Mrs. Gray, or authorize her, that she had authority that she had not had before?

A. We did instruct her to spend the time necessary in planning the work that these other women that were in the store — what work they did, and to try to make an attempt to put some management into the place.

Q. Did Mr. Bachofer recommend at that time changes be made in other departments?

A. He did.

Q. What departments and what changes?

A. Well, we put this same budget system all through our plant. In our advertising and promotion department, and I remember very well, in the mechanical department, when he showed me where the facts were that no one felt the responsibility about parts, and the expense of this mechanical department, it made the company expense; it kept going up, and he didn't feel we were getting the results that we should have; so we put in Mr. Jeters, in [fol. 3289] charge of that. He was told how much his expenses had been, and it was discussed with him, what he could do about reducing those expenses, and increasing the efficiency of the department.

Q. What changes were made — strike that.

Prior to this time, with Mr. Jeters, did he have any authority to represent the management?

A. He had no authority whatever.

Q. And had the company, at any time, to your knowledge, held Mr. Jeters out as a representative of the company?

A. We had not.

Q. Mr. Jeters, did he have any authority to hire, discipline and discharge any employees?

A. No.

Q. Now, at this time, what authority was given Mr. Jeters?

A. Well, he was held responsible for the expenses of his department, which would involve the quality and the work that the men did, and whether they kept on the job, and responsibility for other people besides himself, and anything that came into his department.

By Trial Examiner Batten:

Q. Mrs. Reed, did Mr. Jeters, since this time, have any authority to hire or discharge employees?

A. No. We don't give our department heads authority to discharge or employ people.

[fol. 3290] By Mr. Ingraham:

Q. If he wanted to discipline some person, would he have authority to do that?

A. He would have to recommend that perhaps we couldn't use someone.

By Trial Examiner Batten:

Q. To whom would he recommend it?

A. To Mr. Batt particularly, or if I was there he might come to me.

By Mr. Ingraham:

Q. Now, Mrs. Reed, was there any change in the cutting department?

A. Yes, the same thing was really put into effect in the cutting department. We had a man in the cutting department when Mrs. Reeves was in charge of the plant, that had been there so many years, and was so well liked by his men, and he was such an efficient man, generally that was one department we all forgot. We didn't have anything really — there was practically no management outside of Herb Fountain, what he thought of.

Q. What position did he occupy, Mrs. Reed?

A. Well, I would say he was head cutter.

Q. Did he have any authority to hire, discipline or discharge employees?

A. No, he didn't.

Q. Was he held by the management as a representative with authority to speak for its management?

[fol. 3291] A. No.

By Trial Examiner Batten:

Q. Well, he is the person in November or December you made responsible for the department?

A. No, he died and another man took his place, Mr. Batten.

Q. Who, in November or December, took charge of the department?

A. Ted Scoles was put in charge of the cutting department.

By Mr. Ingraham:

Q. Now, did Mr. Scoles, after he was put in charge of the cutting department, have any authority to speak for the management?

A. He had — the only authority he had was, he had authority to run his department. He had responsibility to run his department, and he had to see that these men did their work, and the cutting department had gotten into a rather — gotten to be a rather expensive department.

Q. When you say he had responsibility, do you mean responsibility to get the work out?

A. Yes.

Q. Did he have any authority to hire or discipline or discharge employees?

A. No, he did not. He could recommend, now, after we put in the budget system, we really tried to hold one person responsible for the expenses of the department, and for the efficient running of the department. There was a general complaint [illegible]t Mr. Baty had taken charge of everything, and the people that were heading the departments had no authority and they couldn't get their [fol. 3292] people to pay any attention to them, and it hurt their getting the work through, and it was a general complaint along that line, and that was one of them, in the cutting department as well as the others.

Q. Mrs. Reed, was any change made in the pattern department?

A. Yes, the same thing held true there. Mrs. Strickland had been making what we call the correct pattern, we make one correct pattern, size 14, and for a number of years that has been Mrs. Strickland's particular job,

to make this one correct pattern, and it took practically all of her time to do that. She would make that pattern, and of course it would be shown, the garment would be shown to either Mrs. Spilsbury, my head designer, or myself, or both of us, and she spent almost her entire time on these correct patterns.

Then we had other people who would make the patterns, do the grading, we called it; and sometimes we would bring cutters up from the cutting department in the heavy season, and we needed a great deal of it done, and they take this size 14 pattern, and we had a regular plan that we would make larger sizes or make the smaller sizes, but that size 14 pattern was made entirely by Mrs. Strickland, and it took practically all of her time.

Q. Mrs. Strickland, prior to this change in 1940, had charge of the pattern making?

A. She did not.

[fol. 3293], Q. Did she have any authority to represent the management?

A. She had no authority to represent the management. I never discussed with her the wages paid to anyone in the department, or whether they got a raise, or anything about the management of the department.

Q. Did you ever discuss with Mrs. Strickland who should be employed in that department? A. I did not.

Q. After this change was made in 1940, what responsibility was placed upon Mrs. Strickland?

A. Well, Mr. Bachofer had reports made from her department showing how long it took to make patterns and how long it took to have them graded, and our patterns were not coming through as quickly as we thought they should, or as they should have come through, to keep work going in the plant, and to get our orders out promptly, and so Mr. Bachofer went over with Mrs. Strickland, not only the expense of making the patterns but the fact that the delay in getting those patterns into the plant kept our operators from having work to do, and kept us from filling our orders promptly and made us have a lot of close-outs, and particularly dissatisfied our customers.

Now, we told, and Mr. Bachofer told her that we wanted her to spend less time in making these size 14 perfect pat-

terns and more time in managing the work, and helping the other girls to turn the work out more quickly; and so [fol. 3294] we made it so that Mrs. Strickland only made the very most difficult size 14 patterns, and had other people also make the perfect size 14 patterns.

Q. Mrs. Reed, was—strike that.

Did Pauline Hartman, prior to this change in 1940, have any authority to speak for the management?

A. She did not.

Q. Where did she work, Mrs. Reed?

A. In the accounting department.

Q. Did she, prior to this change, have any authority over any other employees? A. She did not.

Q. Did she have any authority to hire, discipline or discharge any employees? A. She did not.

Q. After this change was made, was any new responsibility placed upon Mrs. Hartman?

A. Yes. Mr. Bachofer gave her a certain group of workers to supervise, and see that the work got out. We got to a point in our office, I think we had 140 people doing office work, and that is a very high figure, and Mr. Bachofer divided the responsibility among a number of several people there to see that we should get our work out with fewer people.

By Trial Examiner Batten:

Q. What department did she have?

A. It is the accounting or bookkeeping, all of that work [fol. 3295] to me is bookkeeping; it is something about the books, probably the pay roll. It is something about office work; I don't know the detailed part that she does there.

Q. Mrs. Reed, did Harlan Justice, prior to this time when the change was made, have any authority to represent the management? A. He did not.

Q. Did he have any authority over any other employees? A. No.

Q. Did he have any authority to hire, discipline or discharge employees? A. No.

Q. After this change was made, what did he do?

A. Well, he was in charge with the—

Q. Tabulating?

A. Yes, tabulating department. I couldn't think of the term they used for those machines. We have a great many of these automatic machines that assemble our orders and do a lot of our accounting work, and we formerly had that tabulating department merely to assemble our orders, and it was rather a simple thing for just everyone to do; and when we got into the better managing of the office, we put more work into that tabulating department.

I know that we put some of our accounting to be done in that tabulating department, and it put a great deal more [fol. 3296] work and a much larger amount of management into it. Also, those machines were very expensive, and we wanted to make more use of the number of machines we had; so when Mr. Bachofer and I both thought that if we had someone spending some time planning and thinking about that, the person who was right in the department, that they would be able to do a better job than the whole department answering to one man.

Q. What did you do then, after this change was made?

A. I don't understand what you mean.

Q. What responsibilities were given to Mr. Justice?

A. Well, he took charge of that, assigned the work, and spent some of his time planning and thinking about the work and what should be done.

Q. Has he any authority now to hire, discipline or discharge employees?

A. He does not hire or discharge employees. He can recommend people for raises and he can, on the other hand—it is his responsibility, if he has a person in the place, that isn't doing a good job, to report them. Formerly, I think, he thought that if they didn't, it wasn't any of his business.

Q. Who would he report them to? A. Mr. Bachofer.

By Trial Examiner Batten:

Q. Mrs. Reed, formerly, you think, he thought—do you know what he thought formerly?

A. I know what the actual situation was.

[fol. 3297] Q. Mrs. Reed, I am not asking you what you thought.

A. I am just being polite, Mr. Batten.

Q. I am simply asking you if you know what he thought before.

A. I know the result, I know what the result was.

Q. My question is still, do you know what he thought? Did he ever tell you what he thought? A. Yes.

Q. Then that is the answer. A. All right.

Mr. Ingraham: What did he tell you, Mrs. Reed?

A. Well, no one had ever told him that it was his responsibility to see that other people in the department did their work and did it well and promptly, and didn't loaf on the job. I want to say, when I make that statement I have to say this, that I ran a business, personalized business, and I don't expect them to loaf.

Trial Examiner Batten: The question Mr. Ingraham asked you was, what did he tell you?

A. That is what he did tell me. I don't like to have the idea when we are discussing loafing on the job,—I didn't expect people to loaf on the job, and when I think about the business myself, I did run it for a great many years without supervisors in it, and I was always surprised when anybody said anybody loafed on the job. I feel very strongly about that.

[fol. 3298] By Mr. Ingraham:

Q. Mrs. Reed, prior to the time that this change was made, had you felt that it was unnecessary to place authority in various depar ments, and create what you might call supervisors or bosses in those departments?

A. I didn't think it was necessary, I hadn't thought it was.

Q. And have you run the business without having bosses, in these various departments? A. I did.

Q. And it was a successful business? A. Yes.

Q. Mrs. Reed, what department is Helen Houser in?

A. She is in the merchandising department.

Q. Is the merchandising department—does it include the planning department?

A. The planning for—the cutting part of the planning.

Q. Well, what do you know—what work did Helen Houser do?

A. In that department, what we call the merchandising department, the orders, or the tabulating department turned over to the merchandising department the list of the sales in sizes, and colors, and quantities; and while we did do a certain amount of manufacturing ahead of any orders, before our salesmen go on the road, after the orders begin to come in, that planning that cutting then is done according to the orders, and that is the department that Mrs. Houser is in, and she has pretty much charge of that part of it.

[fol. 3299] By Trial Examiner Batten:

Q. Something was said, Mrs. Reed, about a planning department. Do you have an over-all planning department, and this is part of that?

A. No. We plan how the garments are to be made and how they go through the plant. The production planning is done on the ninth floor, in a different department. This is the department Mrs. Reeves heads, where the merchandising is done, and the merchandise planning is done.

Of course, all of those departments interlace, to a certain extent, but Miss Houser does not plan how a garment is to be made; she plans as to merchandise.

By Mr. Ingraham:

Q. You mean, getting the orders filled?

A. Yes. Having the proper merchandise cut so that it will be made and ready to fill the order—so that the orders will be ready to be filled.

Q. Now, prior to the change that you mentioned, did Miss Houser have any authority to speak for the management? A. No.

Q. Did she have any authority over any other employees? A. No.

Q. Did she have any authority to hire or recommend someone be hired, or disciplined, or discharge employees?

A. No, she simply had responsibility for her own work.

Q. After this change was made, what responsibility was given to Miss Houser?

[fol. 3300] A. She has responsibility for all of the work that is done in her particular line. She has other people that assist her in doing it, and she is responsble for the whole amount of work going through, and for the efficiency

of the people that are assisting her in doing that work. Before that, she was simply one of the workers, and if the work didn't go through properly it wasn't her business to say anything about it. She simply did her own work, and if the girl beside her wasn't doing her work, it was Mrs. Reeves's job to [redacted] that she did it.

I think that is the best way I can explain it.

By Trial Examiner Batten:

Q. Do I understand Miss Houser is now responsible to Mrs. Reeves?

A. She heads up to Mrs. Reeves, yes.

Q. Then, Mrs. Reeves has several sections or departments; is that it?

A. She has her work divided in several sections, yes.

Q. And this Miss Houser is one of the persons in charge of activities, under Mrs. Reeves; is that right? A. Yes.

By Mr. Ingraham:

Q. Mrs. Reed, what is the work of Betty Belter?

A. She has one of the activities in Mrs. Reeves's department. Just exactly the work she does, I don't know.

Q. Is it in notions?

[fol. 3301] A. Yes, it is. I remember now that it is.

Q. Did she, prior to the time this change was made, have any authority over any other employees?

A. She did not.

Q. Did she have any authority to speak for the management?

A. No.

Q. What is the notions department?

A. Well, it is the thread, snaps, hooks and eyes—all of the little things, extra things, that go into a dress besides the material.

Q. Did Miss Belter ever have any authority prior to the time this change was made to discipline any employees?

A. No.

Q. Has she ever had, up to the present time, authority to hire or discharge employees?

A. No.

Q. Has she had any authority to speak for the management?

A. No.

Q. After the change was made, what responsibility was placed on Miss Belter?

A. The same as in these other groups. We have a business, and one person does a certain job, and it grows, and then you get two people to do that. It grows some more, and you get three or four people. But you always have one— At the time this one person had the job heading up, they didn't have so many people under them, so they could see pretty much what these different people did. But then, when you get several in the same department, you may have two or three good workers, and you may have one or two that probably are not very competent, maybe some of them just are not very industrious, and one worker doesn't tell on another.

[fol. 3302]

If this one worker that has no responsibility of getting that work out is just one of a dozen, or six or eight, that are doing the work, and then they run and tell the boss that so-and-so isn't doing their work, that's something one doesn't expect, and they don't do it. But if that one person has eight or nine people whose responsibility it is to turn out a certain amount of work and they have one or two in the place who are not cooperating, are not efficient, or can't, for any reason, do the work, if they report that to the head of the department, the top person in the department, no one thinks of that as being informing or telling. That is a part of their job, and it is recognized as a part of their job, and they take that responsibility, and very often there is no telling to be done, because if a group knows that this person has the responsibility of that small number of people getting that work out, it usually goes along without any trouble.

Q. Mrs. Reed, who is head of the designing department?

A. Miss Buelah Spilsbury.

Q. Prior to the time this change was made did Hilda Fitzgerald work in that department?

[fol. 3303]

A. Yes.

Q. What was her work?

A. She was a designer.

Q. Did she have any authority to speak for or represent the management?

A. None whatever.

Q. Did she have any authority over any other designers?

A. Absolutely none.

Q. Did she have any authority to hire, discipline, or discharge any other designer?

A. She had nothing to do with that.

Q. Since the change was made what position does Mrs. Fitzgerald occupy?

A. Mrs. Fitzgerald is still a designer. She is now, part of the time, in New York. Mrs. Fitzgerald is a professional woman, a designer, and, really, she has been given more authority to assist Mrs. Spilsbury. She is in New York part of the time, and she does assist Mrs. Spilsbury.

Q. When she is in Kansas City?

A. Yes.

By Trial Examiner Batten:

Q. Was her responsibility or authority changed any as a result of this reorganization?

I think that was your question, was it not, Mr. Ingraham?

Mr. Ingraham: Yes.

[Vol. 3304] A. Not to the extent that some of the others were.

Q. To what extent, if any, Mrs. Reed?

A. She has been made an assistant to Mrs. Spilsbury.

By Mr. Ingraham:

Q. Has she any authority at the present time to discharge, discipline, or hire any employees?

A. No, she hasn't.

Q. In what department does Fred Brown work?

A. In the cutting department.

Q. What is Fred Brown's present position?

A. I would say he is head cutter.

Q. When did he become head cutter?

A. Sometime last fall.

Q. Has he any authority to speak for the management?

A. No, not any more than that he does have the authority—he has the responsibility to see that the men

his department do their work and do it efficiently and promptly and well.

Q. Does he have any authority to hire or discharge employees?

A. Our heads of departments do not hire or discharge people. He can recommend people for raises, in that he has the definite responsibility of the expense and getting the work out of the department. He naturally would have the authority to discuss who is in his department and recommend men for an increase in wages, or say that there [fol. 3305] was someone there who wasn't doing his work properly.

Q. Prior to the time he became head cutter, did he have any authority to represent the management in any way?

A. None whatever.

Q. What was his job?

A. Cutter.

Q. Did he have any authority to employ, discipline, or discharge employees?

A. He did not.

Q. Did he have any authority over any employees?

A. No.

Trial Examiner Batten: Are you going to start with some other individual now?

Mr. Ingraham: Yes.

Trial Examiner Batten: Then, we will recess for 10 minutes.

(Thereupon a 10-minute recess was taken.)

Trial Examiner Batten: We will proceed.

By Mr. Ingraham:

Q. Mrs. Reed, what work does Mrs. Bogart do?

A. She is in the dividing department.

Q. In 1937, did Mrs. Bogart have any authority to speak for the management?

A. She did not.

Q. Has she ever had any authority to speak for the management?

[fol. 3306] A. No.

Q. Has Mrs. Bogart any authority to hire or discharge employees?

Trial Examiner Batten: I assume the last two questions are all inclusive of that?

Mr. Ingraham: Yes. I understood Mrs. Reed to testify she was an instructor, or— What was her position?

The Witness: She was in the dividing department. I suppose you would call it instructor in the dividing department.

Trial Examiner Batten: I just didn't want any mistake about your last two questions, Mr. Ingraham.

Mr. Ingraham: Yes, that is correct.

By Mr. Ingraham:

Q. Mrs. Reed, when Herbert Mutchler worked at the Donnelly Garment Company, did he have any authority to represent the management?

A. He did not.

Q. Did he have any authority over other employees?

A. He did not.

Q. Did he have any authority to hire, discipline, or discharge employees?

A. No, he did not.

Q. What did he do?

A. Well, he went through the plant checking garments, as they went through, to help have the work go through [fol. 3367] promptly, and to see that there was nothing missing in bundles, and so forth. He did some clerical work.

Q. Has there been any change made with respect to other employees, so that they have been given any authority to speak for the management, or to hire, discipline, or discharge other employees, other than those you have mentioned?

A. Outside of what I call my real executives, no one has any authority to discharge or employ people in our place.

Trial Examiner Batten: Well, I think Mrs. Reed testified yesterady that the instructors in this reorganization— You are including those within the specifically named persons?

Mr. Ingraham: Yes.

The Witness: I didn't testify they had authority to employ and discharge.

Trial Examiner Batten: No, I didn't state, Mrs. Reed, what you testified about. I simply want it understood that they are included in this reorganization plan you discussed.

The Witness: Yes.

By Mr. Ingraham:

Q. Mrs. Reed, in 1937 was Mrs. Nichols in charge of setting piecework rates?

A. Yes. She set them.

Q. Were those rates subject to review?

A. Those rates—in the first place, they were based on rates that had been set after years of experience in the plant, and her rates were all made on this basis rate—they [fol. 3308] were all based on that.

You said, were they subject to review? Any piecework we have is subject to review by every operator in the place, every operator that works on it.

Q. Did Mrs. Nichols consult with other people?

A. Yes, she did consult with other people. She consulted with the instructor. She consulted sometimes with the piecework operators; she would call them up if there was some new change she wasn't absolutely sure about, that we hadn't been making over and over again, on which there was an accepted piecework rate.

After— What time are you talking about?

Q. 1937.

A. Well, after the Donnelly Garment Workers' Union was formed, the piece rates were all turned over to Miss Todd to check and see whether they were all right, and she O. K.'d those before they were put in in the factory.

Q. Mrs. Reed, would you briefly explain the method used in setting piecework prices, and state how long you would use that method?

A. Well, over a period of years we arrived at a basic rate on a great many operations.

For a number of years, Mr. Batten, I was in the plant myself, and I had time taken, and I was very intimately associated with the operators who were doing the work; I [fol. 3309] could watch their working. And I sometimes would get very skilled operators who could do the work very fast, and I learned a great deal from them. By certain mutual consent we set up a standard based on the fact that an ordinarily good operator could make $25.00 a week, and that these piece rates would be based on that figure. So when I put new work in the plant, from my experience I would put a price on it that would make this $25.00 a week. I had a number of operators that, under ordinary circumstances, would make $25.00 every week. Under certain little better circumstances they made more, and under other circumstances they might make a little less, but it was generally understood they could make $25.00 a week on anything that was priced all right, unless conditions were very unusual one way or the other. So when I would put new work in the plant, being there myself, I would watch and see how they got along, and if I had to pay a little more—if the operators were not doing so well, either we would work out together, myself with the girl doing the work, a better or easier way of doing it, or I would raise the price.

Now, I was in my plant and in very close association with the pieceworkers for at least 10 years. The first years that I had piecework was during the war, when rates and people's wages were very high. My piece rates, the basis of them, was formed at that time. We were work-[fol. 3310] ing then 46-1/4 hours a week. I have never had any regular working hours more than 46-1/4 hours a week. That was back in 1918, 1919, and 1920.

Now, I was fortunate in being able to sell my merchandise very readily, and I had a very quick growth through the years, so that I didn't ever feel the necessity of reducing those high war-time wages. I didn't go up and down with depressions, because I didn't have any depression.

Trial Examiner Batten: Mr. Ingraham, what has that to do with setting the rate? That was as I understood your question.

Mr. Ingraham: I asked her to explain what method has been used, and she is explaining what they did do down there, and the reasons for it.

Trial Examiner Batten: Is that the method of arriving at it? If it is, I am perfectly willing that she should proceed, if that is part of the method.

The Witness: That is part of the method. That is the way those piece rates were founded or made.

Trial Examiner Batten: Well, you may proceed. Pardon me for interrupting you. Do you remember where you stopped?

Read the last part of the answer, please.

(Thereupon the last two sentences of the last answer were read by the reporter.)

A. (Continuing) So we have in our place a basis of [fol. 3311] piece rates that was arrived at by experience and by working with the individual operator who did the work.

Now, as the time went on and I had shorter hours, and had, I felt, improved my management, and bought new, more efficient machinery, that $25.00 a week as a basis remained as the standard from which to work on pieces.

When we went on 40 hours a week, there were a few adjustments to make, and we had to raise prices on certain things to maintain this $25.00-a-week standard.

By Mr. Ingraham:

Q. Were there certain operations that you had a rather stable price for?

A. Yes. Hemming a garment, side-seaming a garment, and many operations that do not change from season to season.

Q. Now, will you explain, Mrs. Reed, just when a piece rate price is put on a garment, and then explain what occurs after that?

A. The piece rate is put on the garment when we make the samples, and I pay double price for having samples made. It is newer work, and it is smaller bundles, and sometimes it is a little "velvet" to the person making it. But it is understood when that sample is made that the piece rate is double on there.

Now, while the samples are being made—and they are made in the factory—we do not have special sample makers, except perhaps with an unusual garment that we figure we will have to do some working out on, we might have [fol. 3312] that done specially. Our regular samples are made in the plant, by the regular operators, and the operators themselves and the instructor, as their samples are being made, consider or think, now, is that going to be the right price? And immediately, if the girl who makes that particular part of the sample thinks that is underpaid, she reports it to the instructor, and sometimes, I think—or I know she does—she goes directly to Mrs. Nichols and says, "I don't think your price is right."

Then, they talk it over, and sometimes the operator will show Mrs. Nichols where Mrs. Nichols' plan to have it made is not the easiest and best way to make it. The operator will say, "Well, if you will let me make it in this manner, your price is right, but if I have to do it just the way you say to do it, it isn't high enough."

And, of course, if it doesn't interfere with the quality of it, we take the suggestion.

Q. Then, what occurs after that? What I mean to say, are the garments then sent in to the factory to be made? [fol. 3313] A. And there were stickers and prices on them.

Q. Sometimes changes were made then?

A. Sometimes changes were made, if the plant is delayed and an operator can't make her way, and she thinks she ought to make changes, or sometimes we may change the operation. We try to keep the operation as efficient as we can.

Q. Are complaints made to Mr. Baty at that time?

A. Yes.

Q. And sometimes made to you? A. Yes.

Q. Mrs. Reed, did Mrs. Nichols ever have any authority to speak for the management? A. No.

Q. What was her particular job?

A. Working on piece rates.

Q. Did Mrs. Nichols ever have any authority to employ or discharge or discipline any other employees?

A. No.

Q. Did anybody else work with Mrs. Nichols on piece rates? A. Yes.

Q. And what you have testified about Mrs. Nichols, is that true about Mrs. Spalito? A. Yes.

Q. Who is that?

A. Josephine Spalito helps Mrs. Nichols work on piece [fol. 3314] rates.

Q. Mrs. Reed, I don't know whether I finished my question, in regard to Marvin Price. What is he doing now? A. He is a salesman.

Q. When did he become a salesman, do you recall?

A. I don't remember exactly, but he has done some selling for possibly a year and a half or so. We usually, for a longer time than that, we give the boys a chance to go out and sell for a few weeks where there is an opening.

Q. Mrs. Reed, the Board stated in its Decision and Order found that the company had an anti-union attitude prior to the time of the Wagner Act came into effect in July of 1935. Is that true or not. A. It is not.

Q. Will you state whether or not the company employed union people prior to that time?

A. All through the years I was in business I constantly employed union people belonging to different craft unions. I was on the friendliest terms with union people.

As a matter of fact, two different men at different times had been president of the Carpenter's Union, and had worked for me, and I was on the friendliest terms. This first man, Mr. Kerr, died a number of years ago, and left a family. I took his boy and girl to work for me.

I gave them jobs. They were just out of school, and [fol. 3315] neither one of them skilled in any way, and I helped his family for a long time. I had no obligation other than the fact that he had worked for me, and I felt a very friendly interest and a great sympathy for his family.

He was the president of the Carpenter's Union, and later on I had many different men working for me that belonged to the Painter's Union, and the Carpenter's Union, and I had cutters come to my place that belonged to a union, before they came, through the years.

I have had many operators that come to work for me that worked, had worked in overall factories, and as far

as I know, all of the overall factories in Kansas City are organized. Whenever I employed an operator from an overall factory, I would naturally know that she belonged to the union.

I personally employed a number of those years ago, and as a matter of fact, whenever we have an opportunity to employ an operator from an overall factory, we have always done it. They are usually good.

Q. Did you have any opposition to the I.L.G.W.U. as a labor union? A. I did not.

Q. What did you object to?

A. I objected to their spreading falsehoods about me and ruining my reputation.

[fol. 3316] Q. Were there any other reasons you had?

A. I didn't like their method of organizing, with all of the violence they permitted.

Mr. Ingraham: Mr. Examiner, it is Respondent's present position, as it was at the previous hearing, we object to all matters that the Board has charged us with doing, that occurred prior to the Wagner Act. For that reason, we can't be convicted as it was not illegal at the time, and it is too remote in point of time. However, the Board did submit a large amount of testimony from the old N.R.A. labor case.

If we go into that testimony, it is going to take a long time to try this case. The time the N.R.A. case was tried, I think, witnesses were put on the stand for three or four months.

Now, most of the evidence that the Labor Board at that time submitted, has been put in this case, and after the start of the last hearing, I understood you to say that you were not going to let this background, as it was described, as that evidence was described, become the case, and that you felt it was going to be limited to the testimony of one witness, for, say, half an hour. Now, the evidence the Board did submit would require us to produce a large number of witnesses.

Trial Examiner Batten: What evidence are you referring to?

[fol. 3317] Mr. Ingraham: I am referring to the evidence—

Trial Examiner Batten: (Interrupting) From the old N.R.A. case?

Mr. Ingraham: Yes, the old N.R.A. case. They have submitted testimony of witnesses who testified that "X" said this to them, and "Y" said this to them.

Trial Examiner Batten: Out of the old record?

Mr. Ingraham: Yes.

Trial Examiner Batten: Did you present a defense in the old record?

Mr. Ingraham: We did present somewhat of a defense when the case was finally opened.

Trial Examiner Batten: All I can say, if there is anything you think you should do, as attorney for the Respondent, I suggest you do it.

Mr. Ingraham: I would like to know if we are charged with the background, as to whether or not the facts are true or not.

Trial Examiner Batten: All I can say is that I am here to receive any testimony that you have to offer, under the rulings of the Eighth Circuit Court. You may offer any testimony that you have, and when it is offered, if I don't believe that it is within the ruling of the Court, I shall rule upon it. I shall not rule in advance on any testimony.

Mr. Ingraham: It is then your present position that [fol. 3318] testimony involving the matters that occurred prior to the Wagner Act may be gone into, and if you change your mind—

Trial Examiner Batten: That is not my position. If you have any testimony to offer, in line with the ruling of the Eighth Circuit Court, I will suggest that you, as the Respondent's attorney, present it in the testimony as offered here, and the witnesses, and if I am called upon to rule whether it is within the ruling of the Eighth Circuit, I shall do so at that time.

We are here under the ruling of the Eighth Circuit Court, and you know that as well as I do, what the Eighth

Circuit includes. Perhaps you know better, because I wasn't present at any of the oral arguments of the Eighth Circuit. Now, I am simply saying that if there is any testimony that you believe should be offered under the ruling of the Eighth Circuit, then it is your duty, as attorney for the Respondent, to present it.

Mr. Ingraham: That, of course, requires that we call the witnesses and present this evidence. I thought that you had announced before that you weren't going to consider the testimony that would consume more than 30 minutes.

Trial Examiner Batten: Irrespective of what I said—

Mr. Ingraham: (Interrupting) You are going to do it?

Trial Examiner Batten: I am not going to rule on the matter at all. I don't intend to rule on any matter in [fol. 3319] advance. The Eighth Circuit has rendered a decision and remanded the case for further testimony.

Now you, as attorney for the Respondent, must decide what you think you want to present under that ruling. Now, when that testimony is offered in Court by witnesses, if there is an objection and I am called upon to rule, I shall rule, but I shall not rule in advance on any matter.

Mr. Ingraham: Well, we will have to prepare to present any further matters in connection with the N.R.A.

Trial Examiner Batten: All I would say, Mr. Ingraham, you are the attorney for the Respondent, and you prepare your case the way you think it should be prepared on any matters you think should be covered in this hearing.

* * * * * * *

Mr. Ingraham: Mrs. Reed, I hand you Respondent's Exhibit 18, and ask you if you read the articles contained on that page, that is the front page of the Kansas City Journal-Post for Wednesday, March 17th, 1937?

Trial Examiner Batten: What is that date?

Mr. Ingraham: March 17th, 1937, entitled "Kansas City Garment Union Crews Sit in Lobby".

A. Yes, I read that.

[fol. 3320] Trial Examiner Batten: Mr. Ingraham, might I ask you this: I notice you have several volumes of newspapers. Was it your intention to ask Mrs. Reed about each one of those articles?

Mr. Ingraham: Yes.

Trial Examiner Batten: Might I suggest this, if it is agreeable to counsel: Counsel might look over all of those various articles, and they may be willing to stipulate that Mrs. Reed did read those, so it will be unnecessary for Mrs. Reed to read all of them. I would say, Mr. Stottle, you know, that there are perhaps 35 or 40 articles, and it seems to me the attorneys might save some time by proceeding on that basis.

. . . . . .

[fol. 3321] Mr. Hogsett: May I suggest, offhand, a stipulation: That in the year 1937, at the time, certain articles were published in the newspapers. There were two major newspapers in Kansas City. One, the Kansas City Star and Times, the Star an evening paper, the Times a morning paper; and the other the Kansas City Journal-Post, an evening paper; that each was a paper of large circulation, and read generally throughout Kansas City; that in these papers, during the month of March and possibly April, certain articles appeared pertaining to efforts of the International Ladies Garment Workers' Union, to organize certain garment plants, and those articles are as follows: And let it be introduced, and everybody will [fol. 3322] admit that, I am sure.

Mr. Langsdale: I think if Mrs. Reed is asked that, that her answer will be yes, that she read them.

Mr. Hogsett: These articles were published, and whether they were read is another thing.

Mr. Langsdale: She would answer yes, if she was asked if she read them.

Mr. Hogsett: That hasn't been brought in yet, the question of Mrs. Reed's reading them.

Mr. Langsdale: That statement by itself means nothing.

Trial Examiner Batten: Well, we will proceed with the testimony.

Mr. Langsdale: Just a moment. I don't want the Examiner to think—Mr. Hogsett's statement falls short of making it competent in any way. However, I will admit what Mr. Hogsett says, and further, if Mrs. Reed should be asked if she read these articles, her answer would be yes.

Mr. Hogsett: Now, Miss Weyand, do you admit that?

Miss Weyand: I take it, so far as you haven't introduced the articles as exhibits, the statement will be admitted.

Mr. Hogsett: Plus Mr. Langsdale adding to it that if Mrs. Reed is examined especially about each article, she will answer that she had read them.

Miss Weyand: Yes.

Mr. Hogsett: How about you, Mr. Tyler?

[fol. 3323] Mr. Tyler: I would like to have the stenographer read your stipulation again.

(Record read by the reporter.)

Mr. Tyler: Yes, I agree.

Mr. Hogsett: You will also agree to what Mr. Langsdale said, that if Mrs. Reed will look at these exhibits, she will testify that she read them?

Mr. Tyler: I agree.

Miss Weyand: As the reporter read that last, about agreeing that they be introduced, I did not agree that they would be introduced as true, but I will agree, for the purpose of Mrs. Reed reading them, and that those articles did appear in those papers, as Mr. Langsdale said.

Mr. Hogsett: And Mr. Tyler?

Mr. Tyler: Yes.

Mr. Reed: That is a large circulation, I think you should say Kansas City and throughout the West.

Mr. Hogsett: I think they will admit that too, will you not?

Mr. Langsdale: Yes.

Mr. Tyler: Yes.

[fol. 3325] Trial Examiner Batten: We will proceed.

As I understand it, the exhibits have been marked from 18 to 38, inclusive.

(Thereupon the newspaper extracts above referred to were marked for identification "Respondent's Exhibits Nos. 18 to 38, inclusive, Witness Reed.")

Trial Examiner Batten: I presume this is the type of exhibit which, Mr. Ingraham, after it is photostated, you desire to withdraw the originals and substitute the photostats?

Mr. Ingraham: That is correct.

Trial Examiner Batten: Is there any objection?

Miss Weyand: No.

Trial Examiner Batten: Mr. Tyler?

Mr. Tyler: No.

Trial Examiner Batten: Is there any objection, Mr. Langsdale?

Mr. Langsdale: None.

Trial Examiner Batten: I presume, under the stipulation, I should indicate that respondent's exhibits Nos. 18 to 38, inclusive, are received—of course, with the stipulation of the parties.

Mr. Ingraham: Yes, sir.

[fol. 3326] (Thereupon the newspaper extracts referred to above, previously marked for identification "Respondent's Exhibits Nos. 18 to 38, inclusive, Witness Reed," were received in evidence.)

* * * * * *

Mr. Ingraham: Mrs. Reed, it has been stipulated that you read certain newspaper articles that appeared in the Kansas City papers during the months of March and April. I will ask you if you read the article that appeared in the Kansas City Post on March 17, 1937, and what was the effect of that article on you?

A. Well, that article, as I remember it, told about the strike at the Gernes, Gordon, and Missouri plants, and details about the violence that was going on there, and it was very disturbing—

Mr. Langsdale: Just a moment. I object to the words "details about the violence that was going on there" as hearsay, and purporting to be the ultimate fact, rather than just what she read.

Mr. Hogsett: We will eliminate the word "the."

Mr. Langsdale: Withdraw "violence."

Trial Examiner Batten: It will stand. I think the article will show whether or not it bears out her characterization of it.

* * * * * * *

[fol. 3328] By Mr. Ingrahanr:

Q. Mrs. Reed, at the time you made the speech on March 18th to the employees, had you, at that time, read in the papers about the strikes at Gernes's and Gordon's?

A. I had.

Q. In addition to the newspaper articles, respondent's exhibits 18 and 19, did you read other articles in the paper?

A. I read all of the papers that were published in Kansas City, probably not all of the editions, although I read several of the editions. I read everything I could get hold of, every paper that came out, and I read the articles about the strike, because I was very much interested in what was going on.

Q. Mrs. Reed, I understood you to state that you left on the evening of March 18th for Florida?

[fol. 3329] A. I did.

Q. Did you read the Kansas City papers in Florida?

A. I did. The clippings were sent me, and I also had the papers that I read in Florida.

Q. Mrs. Reed, what was the apparent effect of the newspaper articles that were appearing in the paper, that you could observe, on the employees?

Mr. Langsdale: Prior to March 18th, or while she was in Florida?

Mr. Ingraham: Prior to this meeting of March 18th.

A. They were very much excited. They were disturbed, and I would say some of them were frightened. Some of them told me I was to be "taken for a ride"—

Miss Weyand: I object to this, unless she identifies the persons who told her and the instances of what the objective fact was, if there was excitement of certain girls. I think it should be more definite, rather than conclusion as to unidentified persons.

Trial Examiner Batten: I have no objection. I think it is proper for her to testify as she has, but when she states that specific persons talked to her about the matter, she should, if possible, name the persons, and what was said. Otherwise, that testimony might not have the weight that it would if the people were identified and the conversation stated by this witness.

[fol. 3330] The Witness: Everybody I came in contact with at the company talked to me about the violence.

By Trail Examiner Batten:

Q. Mrs. Reed, can you name any of these people, or what they said or told you?

A. Right at this instance, I can't specifically remember.

. . . . . .

By Trial Examiner Batten:

Q. Do you mean Mamie Tubessing told someone who told you?

A. Yes, that they were going to "take me for a ride."

. . . . . .

[fol. 3331] The Witness: I know the name, but it has slipped my mind at the present time.

. . . . . .

Mr. Ingraham: That is all for the present.

. . . . . .

[fol. 3332] Mr. Ingraham: I do want to reserve the right to recall Mrs. Reed if we think there is anything material she should add to what she has testified.

Trial Examiner Batten: You may recall any witness, Mr. Ingraham, if it becomes necessary.

We will proceed with Mr. Tyler, then; and following Mr. Tyler, Miss Weyand and Mr. Langsdale.

Cross-Examination

By Mr. Tyler:

Q. Mrs. Reed, did you ever directly or indirectly authorize Rose Todd to give orders to anyone in connection with the operation of the company's business?

A. I did not.

Q. Did you ever directly or indirectly authorize her to give orders or pass on wishes or preferences of the company to employees as to any labor relations they might have?

A. I did not.

Q. Did any other officer or executive of the company, to your knowledge, ever direct or authorize Rose Todd to pass on such alleged preferences of the company or orders of the company?

A. To my knowledge, they did not.

[fol. 3333] Q. Did any employee of the company ever say or intimate to you that that employee had the understanding that Rose Todd was authorized to express the wishes of the company?

A. No.

Q. Did you ever hear of any rumor or understanding among the employees that Rose Todd was understood to be authorized to pass on wishes or orders of the company?

A. No.

Q. As far as you know, there was never such rumor or understanding at the plant?

A. Nothing of that kind ever came to me.

Q. Did you ever hear of Rose Todd, without any right, assuming before the employees the right to speak for the management?

A. I did not.

Q. If anything of that kind occurred, it never came to your ears; is that correct?

A. That is true.

Q. I believe you testified this morning that Rose Todd was employed in connection with fixing piecework prices by the company before she left your employ, back in 1930 or 1931?

A. Yes.

Q. I will ask you whether after she came back to your employment in 1933, or thereabouts, she was ever employed by the company to take part in fixing piecework prices?

[fol. 3334] A. No.

Q. If, as a fact, she did take part in fixing piecework prices after her return, she was doing it for somebody else and not for the company; is that correct?

A. After the Donnelly Garment Workers' Union was formed, she, representing the union, O. K.'d the prices, or disputed them, with Mrs. Nichols, who made the prices.

Q. But at the time she was doing that, was she being paid by the company for any work in fixing piecework rates?

A. She was not.

Q. Were the employees bound by the system in operation in your plant to abide by piecework prices that were fixed by this committee of which Rose Todd was one member?

A. To my knowledge, the operators in our company have never felt bound to any piecework prices that were set, without any recourse. They always have felt—they not only have felt that, but they have exercised the privilege of discussing it personally with the one who was making the piecework prices, or with Mr. Baty or Mrs. Reeves or myself, whichever one happened to be there and they felt might do the most for them at the time.

Q. Has it been frequently or infrequently that the employees have protested against piecework prices, as fixed by this committee, with you or with Mr. Baty?

A. I would say rather frequently at times. It goes along a long time, and there is really very little done, and probably there are new materials come in, and some un-

[fol. 3335] usual styles come in, and then the operators find the changes upset their earnings, and immediately

they start to see people who will do something to change it.

Q. Have they made those protests through committees or chairmen of the Donnelly Garment Workers' Union?

A. My understanding is that when the Donnelly Garment Workers' Union was first started, they organized a committee that passed on prices and looked over prices, and that is a very big part of what they look after, is the piecework prices.

Q. Would you say that such a committee of the Donnelly Garment Workers' Union dealt with you or Mr. Baty or Mrs. Reeves frequently during, say, the first year after the organization of the union?

A. Yes. I think probably not as much the very first year, because the scale of wages and prices were pretty much gone into when the union was formed, but, as time went on, they were more and more. I know that in the beginning they didn't come about as frequently, they went to Mr. Baty; and then, as time went along, sometimes they would come to me, and I know that sometimes they went to him. In the last couple of years, since the year I was out of there entirely, 1939, after that they have come to me more frequently, because, I suppose, they have a little more trouble with the prices.

Q. Can you recall any of the subjects that this committee took up with you, say, in the first year or two after the union was formed?

[fol. 3336] A. So far back, it is difficult to place these specific things. I know, in the pressing department and folding department, there were some little dissatisfactions, and I made some changes in the arrangement there, in the way of the work, the way it would be handled.

Then there were piece rates. In a style business, where there are six lines of new styles coming out every year, there is always a certain amount of adjustment that has to be made, and to me it would be a rather routine thing, because those questions had always come up.

Now, they came up in a way that afterwards, where the union would come — Miss Todd, every so often, came to me, and many times we could settle it right there, be-

cause both of us understood the manufacturing and the prices, and Miss Todd had worked in the pricing department, and understood making piece rates, and of course, I had managed my factory myself for so many years, and I had worked on it so many years, on establishing piece rates, that we both understood, and very often Miss Todd could settle a thing right there, without going — without having to go any further.

She would say, "I don't think we are paying enough for a certain operation, as the material is hard to handle; it is more sheer than you had in this line before." Well, I would understand that, and I think they did overlook that. On the other hand, she might say that we had a lot of [fol. 3337] zippers, getting the price rates on zippers, and my contention all the time was, our method wasn't so good that I was paying enough on the zippers, if we could ever get them to the girls in the right way, and if they were handled, and the girl learned to do them right, we would raise the price sometimes, and we sometimes went all along the line, up and down, on zippers, and eventually, after several years, we got a very satisfactory price, where the girls could make very good money.

I remember that was one of the things that was constantly brought up, and when you sew a zipper in one kind of material, it is a little harder than it is in another kind, and it took us a long time to get that price adjusted and this, very often, came up.

Q. Did or did not Miss Todd make a definite demand as to certain individual girls who claimed they were underpaid or discriminated against in some way?

A. They made — let me see if I remember. The particular time that the under-arm seamers — they made some changes in the price, because we had some less expensive material, and what seemed easier, an easier kind of material to make.

At that time, Miss Todd brought her whole committee, and I think some of the under-arm seamers, to Mr. Baty's office, and then they didn't seem to be satisfied, so they asked me to come over, and I discussed that in Mr. Baty's

[fol. 3338] office, and the proposition of that underarming was presented to me, and I felt the committee was right.

I called for Mrs. Nichols to come up and hear what they had to say, and I instructed her to adjust that work as they suggested that it be done.

Q. Weren't there dozens and perhaps hundreds of girls that, through the committee, presented some sort of grievance about their situation?

A. They did.

Q. And naturally you can't remember all of the individual details there, with an agreement, is that correct?

A. Yes.

Q. Now, how did these disputes come out? Did you have your way, or did the committee always have its way?

A. Well, when I felt that the price was actually too low, and the girl convinced me it was, and through my experience thought, I pretty well ought to know, and they convinced me it was, that the price was too low, I would raise the price.

There were times when I thought the reason that they weren't making as much as they thought they ought to make, was because of the — either the management, or they weren't handling the work right, and sometimes I felt that the planning department hadn't done a good job as they should, and in those cases I would tell the girls, "Well, I will correct that, and I think you will do all right."

[fol. 3339] I had an attitude of being sensible, and I believe the committee wanted what was right.

Q. The complaints that were had were not decided always in favor of one side or another?

A. No, they were not.

Q. Has that custom of presenting complaints by the committee or certain ones of the committee, continued up until the present time?

A. It has. As a matter of fact, it got to a point where so much of my time was given to that that I simply didn't have the time, with all of my other duties in the business,

so I, last fall, appointed a committee to meet with the union committee, with the understanding that if my committee and the union committee couldn't come to an agreement, then I would come in and see what I could do, and that committee—they have worked back and forth, and only in one instance have they called me in.

Q. Do you recall any substantial complaint or demand made by the committee of the union, say within the last year?

A. Well, they asked for an increase in the wages. They asked for a flat 10 percent increase in the wages. I met with the committee and discussed that, and I told them that I thought that a flat 10 percent increase was not a fair thing to do, I felt that there were some people there, perhaps, that ought to have a little more, and I have thought some [fol. 3340] of the other classes of workers shouldn't have as much of an increase, and then there were a few people that I felt really shouldn't have any increase, that I felt their pay was already comparatively higher than the others.

Q. Was there more than one meeting in connection with that demand for increased wages?

A. Yes, there were several meetings on that.

Q. What was the net result of those meetings?

A. Well, the increase was granted, to a few, 5 percent, and an increase of 7-1/2 and an increase of 10 percent. There were a few that did not get an increase, but the representative of the girls that were sewing the shirring, we call them the shirr girls, they admitted that they were well paid, and they said they were not asking for a raise.

Of course, as to the 10 percent, if it went through, it would have been all right.

* * * * * *

Mr. Tyler: Within the last year or year and a half, I am just asking you to state any continuances of these com- [fol. 3341] plaints that occurred during the last year or year and a half?

By Trial Examiner Batten:

Q. The incident you are telling about, approximately, when did that occur, the negotiations about the increase?

A. Time goes on for me. That would be very difficult for me, to set a time.

Q. I don't mean the day. Was it this year or last year?

A. Well, it was this year.

By Mr. Tyler:

Q. When the demand first came from the union committee, as to increases in wages, when was that?

A. I don't remember the exact date, Mr. Tyler. I am under the impression it was early in the spring. It might have been last fall.

Q. Do you recall any negotiations with committees of the union with regard to adjusting the prices on certain piece-work operations, where the union complained the work had been made harder without the prices being raised in proportion?

A. I remember the collar girls felt their prices were not as high as they ought to be. They said that we were very particular about our collars, and they should be given a raise. As a matter of fact, we had a couple of meetings on these increases, with the collar girls. I believe they had been given a 7-1/2 percent raise, and they wanted 10, and they made a pretty good case for that 10 percent, and it was given to them.

[fol. 3342] Q. And were there or were there not other negotiations by union committees with officials other than yourself?

A. Yes.

Q. Mr. Baty or Mrs. Reeves or somebody else?

A. Yes, that is my understanding.

Q. Did that occur when you were away from the factory?

A. It was my understanding that it did, often.

Q. Do you recall any reason why the disputes arose with the committee of the union and the executives, as to pay on Decoration Day?

A. Well, that was one time when the committee called me in, because I didn't agree with the union representatives on that. I thought they misinterpreted the line in the contract. We were to pay for holidays, we had always paid for certain holidays, when they came in a working week, but I had never paid for a holiday when it came on a Saturday or Sunday, but someone had read in the contract.

they were to be paid for holidays. I don't remember just exactly how that line goes.

So they asked to be paid for Decoration Day as an extra day, and Decoration Day came on Saturday.

Q. Were there negotiations on that point?

A. Yes, there were.

Q. What was your position on that point?

A. Well, my position was that I thought they were wrong.

[fol. 3343] Q. How was the matter settled?

A. Well, I paid them.

Q. Did the committee take the position of insistence on that demand?

A. Yes, they did.

Q. Did that also apply to other holidays during the same year?

A. They thought—the 4th of July, fell on Saturday and they felt they should be paid for Saturday.

Q. How much did that decision cost the company, Mrs. Reed?

A. Well, the two days—I haven't the figures exactly, but I know not less than $12,000, and probably $14,000.

Q. What representation was made to you, if any representation was made to you, back in 1937, as to the number of your employees who belonged to the International Ladies Garment Workers' Union?

A. I don't know what you mean, Mr. Tyler.

Q. Did anybody come to you and say, "We understood, or it is a fact that the International Ladies Garment Workers' Union have such-and-such a number of members in your plant," were you given to understand that the International Ladies Garment Workers' Union had a certain or any number of employees belonging to the International Ladies Garment Workers Union in your plant?

A. I don't remember that I had any direct notice; there [fol. 3344] were a lot of claims about the I.L.G.W.U., they sometimes said they had a hundred.

Q. Did any representative of the I.L.G.W.U. say they had a hundred members or any other number?

A. There were a lot of loose statements, how many I don't know.

Trial Examiner Batten: The question is, did any representative ever come to you and make a claim as to the number of people in your plant belonged to the union?

A. No representative of the I.L.G.W.U., ever came to me about anything.

. . . . . .

By Mr. Tyler:

Q. Did any information ever reach you, either through the International or anyone else, as to the International claiming a substantial membership in your plant?

[fol. 3345] A. I read in the paper that a couple of girls had given out their views, and they were going down to represent the employees in the Donnelly Garment Company at the convention of the I.L.G.W.U.

Q. Mrs. Reed, after the change in the method of administration, I believe in December, 1940, did you know whether any members of the union withdrew from the union? Was any word sent to your office?

A. Oh, yes, the instructors withdrew from the union, and probably some other people who had been given responsibility in their departments.

Q. Do you know of any case where employees withdrew from the union and have ever been promoted to positions of greater authority?

A. Yes.

Q. Could you name any now?

A. Well—

Mr. Langsdale: Mr. Examiner, don't you think he ought to fix a time as to these withdrawals?

By Trial Examiner Bellman:

Q. You may tell us, if you can, about the withdrawals, and fix the time.

A. I remember Jack McConaughey being promoted, I am sure he would have withdrawn from the union.

Q. Did you know as a matter of fact he did withdraw, or do you know?

[fol. 3346] A. Yes, I know that he did. Yes, I know he did withdraw.

By Mr. Tyler:

Q. Do you recall any others at the present time?

A. Well, Mr. Jeters withdrew.

Q. And Dewey Atchison? A. Yes.

Q. In the normal course of business, a notice from the union that such-and-such a person had resigned from the union, would that come to your desk or would it go somewhere else, to Mr. Baty or somewhere else?

A. Well, it would eventually come to my desk in all probability.

Q. Now, Mrs. Reed, I can shorten my question without impropriety, I asked you about whether anybody in connection with the company, to your knowledge, ever passed out the word or allowed it to be passed out, that Rose Todd in some way represented the company. I will ask you the same as to Hobart Atherton.

A. To my knowledge they never did.

Q. How about Mrs. Gray? A. The same reply.

Q. How about Fred Brown? A. The same.

Q. And Mrs. Tyhurst?

A. The same reply to Mrs. Tyhurst.

Q. Do you know of any employee in the plant who was a [fol. 3347] member of this union, concerning whom word came out from anybody connected with the management that that employee had some authority to direct the employees or express the wishes of the company to the employees as to their labor connections? A. I do not.

* * * * * * *

By Mr. Tyler:

Q. Was there confidential relationship between yourself and Rose Todd? A. There was not.

Q. Or between any officials of the company and Rose Todd, so far as you know?

A. So far as I know, there was not.

Q. Will you state what the duties of Rose Todd were, as she was employed by the company?

Trial Examiner Batten: You mean at what time?

Mr. Tyler: In 1937.

A. I have already stated that, what she had to do. Do you want me to restate it?

By Mr. Tyler:

Q. Yes, I would like to have you restate it.

A. She went from section to section to see what notions and what would be needed to complete the garments that [fol. 3348] were being held up, that didn't go through in a routine way, and then she would see that whatever was needed would be sent down there. She did that herself personally. She had no department doing it.

As a matter of fact, the department that was responsible for doing it didn't. Also, seeing that it was performed perfectly, or sometimes it might be they were short of a certain material, and sent down what they had, and in the course of the work they didn't always send enough, so the result was the work would pile up in the section, and most of the time there was plenty of work there, new work to come in, and the instructor simply gave the new work to the girls with the idea that they would get those out later.

They would call up and find them, and Rose Todd went through to see that these things were supplied. That was her only duty.

Q. Did you, or any member of the management, so far as your knowledge goes, ever ask for or suggest to Rose Todd that she call a meeting of the employees?

A. I did not, and to my knowledge, no one else of the management did.

Q. In your direct testimony, you said that Mrs. Tyhurst saw that the work was up to standard. I recall words "completely up to standard", I can't recall the rest of the sentence. Will you explain Mrs. Tyhurst's—whether she [fol. 3349] set the standard? A. Oh, no.

Q. Or merely looked to the work, to see if it was done the way it was required?

A. We have a standard quality for our work. We try to turn out a very high class work, and our method of production, it is a mass production, and it is difficult to maintain a standard of quality. There are so many things that can happen to the merchandise as it goes through the plant. Now, Mrs. Tyhurst constantly watches to see that it goes through and is made right. Sometimes work comes down and we cut a hundred dozen at a time, and there would be—a cutter will have made a little error, and there will be a notch out of place, so when the operator goes to sew it up, she has trouble with it. Well, perhaps she

just lets it go on through, and sometimes the examiner asks Mrs. Tyhurst to see whether she thinks it is all right, or what they should do about it, and sometimes the instructor will, and sometimes Mrs. Tyhurst will say, well, "We will just have to rip that all out, as it is not right, and I will see that it doesn't come down that way any more again.

She will go up to the pattern department, and say, "You will have to be a little more careful on this pattern. Perhaps we will put some more notches in, or we will furnish a gauge to the operator. She can't put this through with [fol. 3350] out a little more instructions or help in the marking of the garment." Now, she picks up all of those kinds of things.

Q. In regard to the occasion on which the photograph was made of two girls handing you the petition of March 2nd, did I correctly understand your testimony to be that the girls came back a second time for the purpose of having their picture taken? A. Yes, they did.

Q. And that was on account of the suggestions of Mr. Roberts, that it was front-page news?

A. That is true.

Q. Do you recall the girls—did you ask them to come back for the purpose of having their picture taken?

A. I did not.

Q. That was a matter of a few minutes of being in the house, long enough to have their pictures taken?

A. That is all.

Q. Was Mr. Baty present on one of the two occasions when those two girls were out to the house? A. Yes.

Q. But not at the other?

A. I don't remember him being there when the pictures were taken. He was there when they brought the petition to me. We had been working on plans for our new building, and I had been home ill with a cold, and Mr. Baty had been out working with me on these plans [fol. 3351] practically the entire day.

Q. On the occasion of the second conference on May 27th, Mrs. Reed, the day the contract was signed, the contract, the occasion in the afternoon, do you recall whether, at that final meeting, changes in the proposed contract were suggested by either side?

A. Yes, there was.

Q. And thereafter a final draft was drawn? A. Yes.

Q. Do you remember whether it included the changes asked for by both sides? A. It did.

Q. Do you recall what changes those were, at the present time?

A. Well, I think I went into that pretty much yesterday.

Q. Do you recall any argument about the words, "those who are employed" changed to "those who are retained", in connection with the requirement they join the union by a certain date?

A. I wanted to have people work a certain length of time, so that I would know they were satisfied before I would have any union telling me I had to keep somebody because they wanted to belong to the union. I wanted a reasonable length of time for them to be tried out, so we would want to know whether we wanted the employees, before we had any complications with the union.

[fol. 3352] I remember that very well, because I wanted to employ and select my own employees always.

Q. Do you remember whether there was any statement of whether that same provision was common in union contracts?

A. It was. It was discussed, and I said it was.

Q. Do you remember the union representatives made any comment on the desirability, from their standpoint, of having employees familiar with the actual conditions in this plant?

A. Yes, they felt they wanted them to know whether they wanted to work there or not.

[fol. 3353] By Mr. Tyler:

Q. What was the first information you had, if you can remember, Mrs. Reed, of demand for $16.50 a minimum for employees of the union? How did that reach you?

A. It reached me through you.

Q. Do you remember when?

A. I do not remember exactly, I do not know just the incident. I know it was in one of your conferences, to get

it finished, the wages and other conditions in the contract.

Q. Was there considerable resistance against that, or not?

A. I still think that I shouldn't have been forced to put a $16.50 actual minimum in that contract, but you will remember when we finished writing the contract, we finally settled on all the other things, and I still didn't think that was right; and Mr. Reed said, "Oh, it is late, and you are all set with everything else, and there are not many making less than that anyhow, so why don't you do it?" And I said, "All right," and we finally contracted that.

* * * * * * *

[fol. 3354] Miss Weyand: Mrs. Reed, I would like to have you state, if you will, just what your actual duties and authorities around the plant were, from January, 1935 down to date.

A. My actual duties and authorities?

* * * * * * *

[fol. 3355] Q. Taking the date, January, 1935, who was the person immediately under you? Was there any one person immediately under you?

A. I suppose Mr. Keyes, he was the person immediately under me.

Q. What was Mr. Keyes position?

A. He actually was sales manager, but he had the title of general manager.

Q. And how did you and he divide duties amongst yourselves? A. We didn't divide our duties.

Q. What did you do and what did he do?

A. He had the salesmen, the salesmen came directly under Mr. Keyes, but he had no authority to discharge any of them.

Q. Where was that authority vested? A. In myself.

Q. Who else came directly under Mr. Keyes?

[fol. 3356] A. Well, his secretary.

Q. You mean his personal secretary? A. Yes.

Q. Anyone else? A. Outside of the salesmen.

Q. He had no direct authority over any of the other executives? A. No.

Q. Did he have any indirect authority over them?

A. There was probably a difference of opinion, what authority he did have.

Q. As president of the company, what authority did you intend and express to him that he should have?

A. I expected him to produce the sales for the company.

Q. Did he have any authority over production of the company, or was his field limited to sales?

A. His field was limited to sales, I would say; I don't know how he could have much authority over production, because he knew actually nothing about it.

Q. Were there other persons under you whom you directed, under you besides Mr. Keyes? A. Yes.

Q. Who else was directly under you?

A. Mrs. Reeves.

Q. What was Mrs. Reeves' position?

[fol. 3357] A. Merchandise manager.

Q. We are talking of January, 1935, now?

A. January, 1935?

Q. Yes?

A. She was production manager, and general assistant to me in most of my activities.

Q. Now, did that position of hers continue to date, or has it changed since January, 1935?

A. It changed in July. Mr. Baty took over the management of the p. at.

Q. In July, 1935, you are talking about now?

A. Yes, and Mrs. Reeves took over the general merchandising; some of my duties she took over as her own.

[fol. 3358] Q. Was anyone else immediately under you in January 1935?

A. Mr. Baty.

Q. What was his position in January 1935?

A. Mr. Baty was under Mrs. Reeves, really. I keep thinking of it being after 1935, the change.

Q. What was Mr. Baty's position under Mrs. Reeves?

A. He was assistant to her in the plant.

Q. Was Mr. Baty your nephew?

A. He is the husband of my niece.

Q. What is your niece's name?

A. Catherine Baty.

Q. What were Mrs. Reeves's duties as production manager in January 1935?

A. It was her duty to see that the merchandise was produced.

Q. Who did she have directly under her, what sections of the plant and what supervisory officials?

A. She had under her Mr. Baty and the instructors.

Q. Was there anyone between the instructors and Mrs. Reeves at that time?

A. Not directly between Mrs. Reeves and the instructors. Mrs. Reeves had the instructors up in her office practically daily, discussing—a great many of her orders were directly to the instructors.

Q. Did Mrs. Reeves have under her any other depart-
[fol. 3359] ments of the plant, other than the sewing sections, with which the instructors, I understand, were associated?

Mr. Reed: This is limited to January 1935?

Miss Weyand: Yes.

A. The cutting department—I would say everything that had anything to do with production.

By Miss Weyand:

Q. Would that include shipping?

A. No. The shipping department has never been under the production end of the business.

Q. What was it under?

A. It has always been under the sales division.

Q. Would that be under Mr. Keyes?

A. Yes, it would be.

Q. Where was the maintenance department located, with reference to Mr. Keyes, Mrs. Reeves, or someone else?

A. The what?

Q. The maintenance department.

A. Mrs. Reeves.

Q. Where was the accounting and office department?

A. On the 10th floor. And that department at that time was under— Let me see. In 1935, I believe it was under Mrs. Keyes, the accounting department.

Q. Was Mrs. Keyes directly responsible to you?

A. Yes.

Q. Did Mrs. Reeves hire the employees, or have any [fol. 3360] thing to do with the hiring of the employees in the departments which were under her?

A. The clerical employees, I am sure she would advise with Mrs. Hyde on. Mrs. Hyde was our personnel director. She has always done all of the employing.

Q. Would she consult with Mrs. Reeves with reference to the employment of persons in the departments under Mrs. Reeves?

A. I say she would, yes.

Q. Who did the discharging in the departments under Mrs. Reeves?

A. I would say Mrs. Hyde would.

Q. And how would Mrs. Hyde know who to discharge?

A. It would be discussed with Mrs. Reeves. I don't know whether there were ever any discharges made there. We discharge very few people in our place. We change them around a great deal. Mrs. Reeves might say, "I have someone in my department that I don't think can do the work," and then our practice is to change them to some other department.

Q. Who would determine whether she should be given a chance in another department?

A. Whoever was in the other department.

Q. Who would determine that she should have a change made?

A. Mr. Reeves probably would.

Q. Did the instructors play any part in making that decision in January 1935?

[fol. 3361] A. Yes. The instructors would come to Mrs. Reeves and say, "I can't get along with this girl," or something, and suggest a change.

Q. Who determined when girls should have raises in January 1935?

A. Well, most of those raises were brought up with me. Mrs. Reeves would probably bring up some, and Mr. Keyes would— Mr. Keyes might give a stenographer, a $2.50 or $5.00 raise without discussing it with me, but no very large raise without discussing it with me.

Q. Would the instructor be consulted in connection with raises?

A. The instructor would have pieceworkers. She wouldn't have time workers working under her.

Q. I understood you to say in your direct examination that on occasions you made up the amount of the normal average earnings of an employee during a week when their piece rates did not bring them up to the amount that had been their usual average. It that correct?

A. That is correct.

Q. Who would make the determination that a given girl would be given such a bonus, as I believe you called it?

A. For a good many years I did that myself, and Mrs. Reeves was the person who did that later, and after that Mr. Baty did.

[fol. 3362] Q. Speaking of January 1935, would Mrs. Reeves consult with the instructor in determining that?

A. She would probably ask the instructor why the girl didn't make what was her average.

Q. Was that a regular procedure in your plant?

A. Yes. From the first time that I had any piecework operators, someone—in the early days, for a good many years, myself—would look over the piecework cards every week, because we have always felt a strong responsibility about our pieceworkers making their regular average.

Q. In January 1935, who looked over the cards weekly; or were they looked over weekly?

A. They were looked over weekly. Mrs. Reeves did. Now, she may have had some help with it, but that was her responsibility.

Q. Was it the practice of Mrs. Reeves to consult regularly with the instructors a few days before payday to determine which girl should be given more than her piecework rates indicated?

A. As I said before, she would ask the instructors why this girl had fallen down, with the idea that the instructor would tell her perhaps the mechanic didn't come in time to fix her machine, she had to wait an hour or two hours, or that the work the girl was doing then wasn't her regular kind of work, and she didn't do it so well, she would ask [fol. 3363] the instructor to come and tell her the reason why that girl fell down.

Q. Was that done previous to each payday?

A. Yes. Sometimes, if Mrs. Reeves wouldn't be satisfied with what the instructor said, she would call the individual girl up there herself. I know that was my prac-

tice when I looked over the cards and a girl's earnings had varied a great deal; I would want to find out from her, herself.

Q. Did Mrs. Reeves have anyone else to assist her in her work, aside from Mr. Baty, and the instructors?

A. There were other people in the plant. There were the instructors, there were the girls on the floor, and there is a general instructor—she had a general instructor.

Q. Who was the general instructor?

A. Mrs. Wherry.

Q. Was that her title in January 1935?

A. I would say it was. We never were very definite about titles for people. Sometimes they just assumed them, themselves. But that would be what I would say she was.

Q. Did you carry them on your pay roll with given titles?

A. Not that I know of.

Q. Where did Mrs. Lena Tyhurst fit into the picture in January 1935?

A. Mrs. Tyhurst originally was an instructor. I don't know whether she was still an instructor then, or whether she was doing the work she is doing now.

[fol. 3364] Q. You would not be able to recall what time she graduated from an instructor to her present position, and whether there were any intervening steps?

A. Well, I don't remember. I've always thought of Mrs. Tyhurst as being a person who knew just how good the work ought to be done, and I don't remember.

Q. You wouldn't know whether she did that in January of 1935?

A. I really wouldn't, Miss Weyand.

Q. What would the earliest period be that you would know that she was doing that work?

A. Well, I know definitely that she was doing it in the fall of 1939, that I charged her with the responsibility of really getting the work through, and told her that she would have the authority that she had to have to get it through.

By Trial Examiner Batten:

Q. Was that in the fall of 1939 or 1940?

A. 1940. That's right. In 1939, I wasn't there. It

was in the fall of 1940, when I came in and did a great deal of organizing. That was the time Mr. Keyes got out.

Q. Was she doing her present work at the time of the prior hearing? I think that was in the summer of 1939.

A. When Mr. Baty took over the plant, when I gave him complete authority in the plant, he made some changes in his method of manufacture, and I didn't completely follow that through.

[fol. 3365] Q. Then, you couldn't say when, if there was any change?

A. No, I couldn't.

By Miss Weyand:

Q. Was Mr. Bachofer with you at that time, January 1935?

A. I don't remember the year Mr. Bachofer came. It would be easy to find out, but I don't remember.

Q. When he came, what was his first position with the company?

A. Mr. Bachofer is a certified accountant.

Q. You don't have any idea when he first began working for the company?

Mr. Hogsett: Can't we ascertain that—

Mr. Langsdale: I think she is entitled to test her memory now.

Mr. Hogsett: I thought you really wanted to know the date, rather than testing her memory.

Miss Weyand: No, I want to know how closely she was associated with it.

By Miss Weyand:

Q. Who was Mr. Howard?

A. Mr. Howard is our New York manager—manager of our New York office.

Q. How long has he been with the company?

A. About, I would say, around 15 years.

Q. Was he head of the New York office in January 1935?

A. He was.

[fol. 3366] Q. What was Buelah Spilsbury's position in January 1935?

A. Head of the designing department.

Q. What was Ted Scoles's position at that time?

A. In 1935 he was a cutter.

Q. And the head of the cutting department at that time was who?

A. The head cutter was Herbert Fountain.

Q. Did you call him an instructor?

A. I call him a head cutter.

Q. Was his relation to the cutters under him in any way different from the relationship of the instructors to the girls in the sewing department?

A. Well, a head cutter—

Q. I am speaking of January 1935.

A. Yes. A head cutter has more or less of a defined position in the industry. I have employed a number of experienced cutters, and they, naturally, follow the standard ways of the cutting department.

Now, the instructors, that is an institution that I put into the business myself. I don't believe that outside of Kansas City there are any plants run with instructors.

So, I wouldn't say that a head cutter— He might do about the same thing, but you employ skilled cutters in a cutting department.

Now, in a sewing section, in Kansas City, anyway,— [fol. 3367] we don't have a great many skilled sewers. In the Donnelly Garment Company, particularly, we have trained a great many of our own operators. I set up the system and worked that out in my own plant, to serve my own purpose, and to turn out my merchandise as I wanted it turned out. I started in doing mass production on style merchandise, and that field wasn't very well developed when I started it, so the instructor is a person of more or less my own institution.

Q. Would you, then, state what the duties, responsibility and authority of the head cutter were in January 1935?

A. The work would come down to the cutting department and he would tell what cutters to do which cutting. Some of the very particuar cutting he would do himself, some of the trimmings. He was a very fine cutter.

Q. How many employees did he have under him?

A. I don't know exactly. Perhaps a couple of dozen.

My business has grown so gradually through all of the years that it is very difficult for me to say how many people we had in any one department at a certain time.

Q. Were they on piece-work or time-work?

A. On time-work.

Q. If a raise were given to any of them, what part did he play in the determination of who should receive the raise and the amount of the raise?

A. Very little.

[fol. 3368] Q. Who determined that?

A. Well, probably in 1935 I determined a great deal of it myself.

Q. How would you know which one of the cutters should receive a raise?

A. Most of them had worked under me for a great many years. I had managed the cutting department when I was managing the plant. As a matter of fact, I did my own cutting, with a cutting machine, a year or two, when I first had the plant.

Q. How much of the time were you present around the cutting room to determine who did skillful cutting and how much work he did a day, around January 1935?

A. I wasn't in the cutting department very much, but I had established a general price for cutters, and the general policy in the business was, if people stayed a long time, they were supposed to improve as they stayed. So, every so often we would decide, after we would have a very good year, that we could give some raises, Mrs. Reeves and myself, and we would probably consult with Mr. Fountain. We would say such and such a person had been there a good while and, as far as our experience with that person was concerned, he had been a very good worker. Mrs. Reeves was in and out of the cutting department a lot, and she, in a general way, knew the type of cutting this particular person did. So, if there was no complaint about the person's being indolent, or that sort of thing, in the work, we would decide to give him the raise.

[fol. 3369] Q. Where would the complaint of indolence have come from?

A. Probably from Mr. Fountain. I think that is a regulation thing for a head cutter. I have read some contracts of the I. L. G. W. U.'s, and they say, "Nothing in this con-

tract will prejudice a head cutter in the union by attending to his business"—words to that effect.

Q. Would Mr. Fountain also recommend who would be kept during a slack season and who would be laid off?

A. That would be a matter in which he would be in consultation. We had very few slack seasons.

Q. I failed to ask you, with regard to instructors, if they recommended who would be retained during slack seasons and who laid off?

A. Sometimes it would be that someone would—they would say such and such a woman had a husband who made good wages, and it wouldn't hurt her to take a few weeks off, and say, "Some other person is completely dependent on their wages and I think we should try to keep them, if we can." Sometimes we would have a certain kind of work, and an operator wouldn't be able to do that kind of work at all, so, even though we might want to keep her on, we would have to lay her off, because there wouldn't be anything she could do.

Q. You would know from the instructor which kind of work she could do?

A. There were so many of the people at that time that [fol. 3[illegible]] I knew myself what they could do, and Mrs. Reeves did from our general information, that we didn't depend entirely—

Q. How many girls did you have at that time?

A. I would say—

Q. This is January 1935.

A. In the plant there were probably 500.

Q. And you and Mrs. Reeves knew them well enough that you would know in each given case, as a general rule, whether the girl could do the operation which you intended her to do?

A. Not every one of them.

Q. What percentage of the time would you and Mrs. Reeves know, as to Mary Smith, or any other given girl—

A. There wouldn't be any— There would be a certain group of them there would be no question about, because there was lots of work to be done, and in any of these lay-offs the whole group wouldn't be in question.

Q. When individual names did come in question, how often—half of the time—would you and Mrs. Reeves know who the girl was and what she could do?

A. I couldn't tell you whether it would be half of the time or not.

Q. Have you any general notion as to how often it would be your knowledge, or how often you would call the instructor for that knowledge?

A. No, I haven't, not in a definite sense.

[fol. 3371] Q. You would have to call the instructor in a great many cases?

A. Yes.

Q. What was Marvin Price's position in January 1935?

A. He was in the maintenance department.

Q. How many other persons were in the maintenance department?

A. Oh, I don't know. There were several. Marvin usually bought supplies, janitor supplies, and small things that were used in the maintenance department.

Q. When you say "several," would it be six, or twelve, or twenty—

A. Do you mean janitors?

Q. In your maintenance department, in which Marvin Price worked. A. In 1935, we didn't have these departments so well set out. As I said before, this business grew up sort of like Topsy. When we needed more people, we put them on, and when a bright boy would come out with initiative and be willing to take responsibility, they would help, and that is the way the whole thing grew. It just got to be a big business without any—I didn't consciously departmentize the place to any great extent.

Q. When a machine needed repairing, who was notified?

A. Well, we had a machine shop there and—

[fol. 3372] Q. Was that part of the maintenance department which Marvin Price was connected with, or was he in a separate division?

A. That was in the mechanical—just where they had a cage, they call it, where they keep the parts of the sewing machines, and we usually had a boy answer the phone, and if the machine was out of order, they were called, and whoever answered the phone—if the belt was broken, or something had happened to the belt, this boy who answered the phone was supposed to know who to send to have the repairing done.

Q. Was that part of the maintenance department?

A. That would be part of a maintenance department.

Q. Was Marvin Price associated with that machine shop in 1935?

A. Marvin was a mechanic, and originally he had done repairing of machinery, and then he had been there when there were not very many, and he had done a lot of everything. He was a very skilled mechanic. I think there were times when they called on him to help fix the machines.

Q. Was there anyone at that time in this maintenance department who had the position that would be analogous in any way to an instructor or a head cutter?

A. I would say not.

Q. Who determined their lay-offs or raises in pay?

A. Well, the ones that made higher wages, most of them, I gave most of the raises myself. You may think it queer, but I did.

[fol. 3373] Q. Did you know what work they did?

A. I know, for instance, Lyle Jeters was a very clever mechanic, and I came in close contact with him in my designing. There would be a new idea that we wanted to put on a garment, and I would call him in to see if he couldn't make an attachment to put that through so we could sell our garment at a low price. He seemed to be very clever.

I looked over—I think perhaps 1939 was the only year when I haven't ever so often looked over our pay roll cards to see how much people were doing and how they were getting along. I had certain contacts with them, just in the natural running of the business, in the designing and getting up the line, with the mechanics, asking them to do certain things, and sometimes the younger boys would come up and ask for a raise. He might come to Mrs. Reeves, and Mrs. Reeves would think he was a bright boy, and he would tell her what he was doing.

We didn't run our plant like they do the army. Mr. Keyes tried to do that, but it was pretty bad, the effect he got there.

Q. Did he establish anyone as a supervisor in charge of the machine or maintenance department?

A. If he did, he did it without any authority and without my knowledge. The one thing I had an understanding with Mr. Keyes about when he came to work for me was

[fol. 3374] that I was running my own business, and I asked Mr. Keyes to not misunderstand me. When I gave him the title of general manager, I thought probably it would be a good thing to have a general manager there, but I didn't want him to misunderstand me, I was going to run my own business; I wanted him to get sales for me, and that was his big job, but he couldn't employ a salesman without my O. K.'ing it, he couldn't discharge a salesman without my O. K.'ing it, or he couldn't discharge anybody without my O. K.'ing it. That was a very definite understanding I had with Mr. Keyes, and it turned out to be very fortunate for me that I had that understanding. With my knowledge, Mr. Keyes never discharged anybody.

Q. Did you later ever hear of his doing it, or was it done without your knowledge at the time it was done?

A. At the present time I don't remember of his ever having discharged anybody.

Q. Did you know of his ever appointing anyone as supervisor of the machine or building maintenance department, or giving them a title?

A. If he did it, he did it without my consent or authority.

Q. Have you heard since that he did such a thing?

A. No, I haven't. You told me today he did, but that is the first I heard of it.

Q. I didn't say he did. I just asked—

A. If he did, I never heard of it.

[fol. 3375] Q. Was Ella Brown working for the Donnelly Garment Company in 1935? A. Yes.

Q. What was her position at that time?

A. Secretary to Mrs. Spilsbury.

Q. What were her duties as secretary to Mrs. Spilsbury? A. Regular secretarial duties, I would say.

Q. She was a personal secretary? A. Yes.

Q. She did not help design? A. No.

Q. What was Florence Strickland's position in 1935?

A. She was a pattern maker. She made the patterns for the size 14's I testified to this morning.

Q. How many other pattern makers were there?

A. Oh, regularly, probably three or four, maybe five, but they were graders, mostly. Then, we had graders come up from the cutting department, but they were not pattern makers. As a regular pattern maker, outside of

the designers, I question if there was any other pattern maker.

Q. But there were other people who did assist in making patterns?

A. They did the grading of patterns, of the sizes. After Mrs. Strickland made a correct size 14, then there were other people there that did the grading.

[fol 3376] Q. Besides the four or five who did that regularly, there were a number of others, from time to time, who would do that; is that correct?

A. Not any great number. Probably two or three from the cutting department.

Q. Was there anyone in the pattern department who held a position similar to instructor or head cutter?

A. No.

Q. Who determined if a girl should be laid off for a slack period in the pattern department?

A. We didn't lay off anybody in the pattern department for slack periods.

Q. Who determined whether or not a girl should receive a raise? A. I did.

Q. Would Mrs. Reeves also be involved in that determination?

A. Not to any great extent, not in the pattern department. That pattern department was run in connection with the designing department, and our designers make patterns for their own garments. Our designers also assist in the grading.

Q. Was Rose O'Leary working for the company at that time? A. She was.

Q. What was her position?

A. Keeping track of orders for Mrs. Reeves.

Q. Did she have anyone to assist her?

[fol. 3377] A. I don't believe she did in 1935.

Q. What was Dewey Atchison's position in 1935?

A. Well, Dewey had— Let me see. January, 1935, Dewey, I think, at that time, was working very closely with Mrs. Reeves on the amount of labor that was on garments and how was the best way to put them through the plant.

Q. Was he her assistant? Did he have the title of assistant? A. I didn't give him the title of assistant.

Q. Did he bear that title around the plant, so far as you know?

A. Not as far as I know. He had specific duties to do. Dewey has always worked with the cost of labor and the amount of work that goes on a dress, and that sort of thing.

Q. What was Lena Tyhurst's position in January, 1935?

A. I think I told you I couldn't just place her position right now.

Q. I'm sorry. I didn't realize I had asked you about that.

Did these positions you have described continue in effect until July of 1935, substantially?

A. Yes, I would say so.

Q. You don't remember any one of them changing before July of 1935? A. No.

Q. How many of them were affected by the changes you [fol. 3378] have related occurred in July, 1935?

A. The people that were in the plant that worked under Mr. Baty?

Q. Yes. All of those were affected?

A. Well, I asked Mr. Baty to take over the responsibility of settling things with the workers themselves. I thought perhaps that would be a better way to run the plant. He had had nothing else to do but be in the plant.

Q. What title did he assume in July 1935?

A. I suppose, production manager. I have paid so little attention to what kind of titles people have down there that, to pin me down on it, I really don't know.

Q. You described Mrs. Reeves as production manager in January 1935. Then, as I understand, he took over that position. Is that correct? A. Yes.

Q. What did Mrs. Reeves's position then become?

A. Merchandise manager.

Q. Did Mr. Baty have under his supervision the departments which you have described as being under Mrs. Reeves's supervision prior to the time he took over?

A. With regard to the plant and production, yes.

Q. That included the cutting department and all of the sewing departments? A. That is right.

[fol. 3379] Q. What other departments, if any, would that include? A. The pressing department.

Q. I have failed to ask you about the pressing department. Did that have an instructor? A. Yes.

Q. And that instructor's authority from January 1, 1935, to July 1, 1935, was similar to the description you have given of the instructors' in the sewing departments?

A. That is right.

Q. I believe on direct you testified that Mr. Baty made a change in the instructors' authority and duties. Would you describe that, if that is true, and what the change was?

A. Well, the change was especially in the authority over the girls that worked under them.

Q. Can you be specific and state what changes were made?

A. Well, it had been— the differences that would come up about whether a girl wanted to do a certain type of work, the operator sometimes wouldn't want to do it, and the instructor didn't feel free to say that that was the thing for her to do, and she would call Mr. Baty, or if she didn't call Mr. Baty, the operator probably would. If there was to be a transferring of one girl from one section to another, Mr. Baty decided that.

Q. Did he confer with the instructor in deciding that?

A. He might, but he didn't have to.

[fol. 3380] Q. Do you know what his practice in that regard was?

A. I think he conferred mostly with the girl and decided what she wanted to do.

Q. Did the practice of the instructor meeting with the production manager weekly prior to pay date to determine the bonus continue after Mr. Baty became production manager?

A. Not generally.

Q. Would you deny that the instructors, after July 1935, continued to meet with the production manager weekly to go over the time cards of the girls' to determine whether they should receive a bonus in the event their piece rate pay for the week did not come up to their average rate of pay?

Do you understand the question?

A. I understand the question. I don't know to what extent that was changed, but it is my understanding that to a great extent that was changed.

Q. What is the extent of your knowledge about it; that is, what is your knowledge based on?

A. My knowledge is based on the authority that I gave Mr. Baty, and also on the information that I have received from the instructors themselves, and some of the operators, that it wasn't working and that they would like to have—even the girls, themselves, would like to have the instructors be able to settle things with them. They thought that, at least after the plant had grown some, Mr. [fol. 3381] Baty was not available enough to understand their problems, and the operators preferred to settle those things with the instructors. And I very definitely know it from the instructors, feeling that they couldn't do their work as efficiently or with as little effort as they could if they had had authority to settle things with the operators as they went along.

Q. Did Mr. Baty or any of the instructors tell you that the instructors did not meet with him when he went over the time cards weekly? A. They did not.

Q. You did continue to give them the same type of bonus when a girl was unable to make her average, did you?

A. They continued to give a bonus, but my belief and information is that Mr. Baty did more just raising the price of the garment.

Q. Was it your understanding that a girl was to be paid only for what she made, if her machine broke down, or she was given a style which she had not previously worked on, or a more difficult style, which resulted in a smaller total amount of pay she would receive?

A. No. My understanding is that the instructors were asked to send in a notice of how much time a girl lost, or Mr. Baty informed himself by constantly going through the plant and seeing what was happening.

Q. Could Mr. Baty be going through the plant on such [fol. 3382] visits to determine as to each of the 500 girls why their total pay as showed on the time cards, figured by piece rates, was less than their average?

A. I am sure there was never a time when the whole 50 girls fell down on their piece rates.

Q. I was referring to any given girl out of the 500.

A. In all probability, he would have heard about it long before the end of the week was up.

Q. Isn't it true in your business that very often a girl makes less than her usual average, due to difficulty in handling a new style, or some machine breaking down?

A. I wouldn't say that they often do, no. I don't think they do often. I think it is an unusual thing.

Q. As I recall, you wanted to put a provision in the contract which was being negotiated, to allow you to continue your practice of pay, with respect to the matters I have been referring to?

A. That was because there wasn't so much of it.

Q. Will you describe the number of instances which would come under that provision you proposed in the contract? A. I wouldn't be able to describe that.

Q. I believe when you were testifying on direct you mentioned the two I have been referring to, that is, the new style which a girl might not be able to make as much money on when it first came through, because she wasn't used to [fol. 3383] dealing with it, or the breaking down of the machine.

A. A number of our styles have many operations that are the same operation, time after time. For instance, we have a little shirring on almost any dress, and in my shirring department rarely any girl makes less than $25.00, and many of them make $40.00 and $50.00 every week. Then, there are the hemmers, the same way, and the girl who sews the sideseams. There are many operations where it doesn't make any difference from one year to the next what happens, but it's just like if you have a child who is thrown out of the window, even if it is only one child out of a million, it is your child, and it is important; and as to the operators, if the other 999 girls in the factory made their amount and that one girl fell down, it might mean a lot to her that week.

Q. My specific question was—which I do not think you have answered yet—what other course of events, other than the new style and the breaking down of a machine, might account for a girl's making less than her average, which would be covered by the provision you wished to put into the contract?

A. Right at this moment I don't think of any other.

Q. Those were the two you had in mind?

A. More particularly, the new style. We have an unusually good set of mechanics, and I have some very

high-class equipment, and it has always been my practice to furnish first-class equipment in the plant.

[fol. 3384] Q. You stated, I believe—correct me if I am not correct—that Mr. Baty would take care of a girl's falling down by raising the piecework prices. Would that be correct?

A. Sometimes.

Q. Would that occur when it was a new style and the girl was making a lower amount of pay for the week because she was just getting on to that new style?

A. Yes.

Q. You mean he would then raise the piece rate on it, even though he thought that after she became more experienced at handling it she could make her average with the piece rate originally set?

A. I think he did that sometimes.

Q. What would then occur? Would the piece rate be lowered as she became more skilled at handling that style?

A. Very often not. She just made that much more money.

Q. Would the instructor act as intermediary between the operator and Mr. Baty in informing him if a girl had difficulty with making her normal daily average on a new style?

A. Probably so. Sometimes she would. But he was right there in the section, and probably the easiest thing to do would be to ask the operator.

Q. What were the changes made in December of 1940?

. . . . . .

[fol. 3385] A. In what department do you mean, Miss Weyand?

By Miss Weyand:

Q. I understood your testimony on direct was that as the result of a budget plan you made extensive changes in the matter of the organization of your business and the responsibility vested in various persons who it is claimed lacked supervisory authority prior thereto. Is that correct, that you did testify to that?

A. I did, yes.

Q. I want to know the extent and nature of the changes.

[fol. 3386] A. I think I already testified to that in direct examination.

Q. I think you can be more specific, if you will, please. Was there any change in the general set-up between July, 1935, and December, 1940, in regard to the amount of supervisory authority?

A. There was.

Q. What were those changes?

A. We set up the budget system for the first time.

Q. Prior to the setting up of the budget system, were there any changes?

A. I believe that — you mean just the month or two? This didn't happen all in one day.

Q. Was the picture you have given me of the managerial situation as worked out by Mr. Baty in July of 1935, in general, continued in effect until your budget plan came into operation?

A. Yes, in that November or December, I don't remember exactly the date, those changes were made.

Q. You are certain it was in November or December of 1940, though?

A. Yes, I am certain of that.

Q. It was not earlier?

A. No.

Q. Would it be fair to state that your changes in [fol. 3387] November or December of 1940 reinstated, substantially, the situation that existed between January and July of 1935?

A. That is a very broad statement, and I say that would probably not be entirely fair. Mr. Baty was still managing the plant, and I merely instructed the instructors to take enough authority to get their work through more efficiently than they had done in the last few years. They were still under Mr. Baty.

Q. Was that the only change made as a result of the budget?

A. Oh, no. The instructors really had nothing to do with the budget. There are no budgets on individual sections.

Q. I understand, when you were describing it, you attributed the resignation of the instructors from the Donnelly Garment Workers' Union to the institution of the budget plan?

A. You misunderstood it, then. I don't believe that I put that in the record.

Q. The record will show what you said, but I got that impression, and I would like to have you clear it up, if you could explain it to me.

A. The instructors had nothing to do with the cost of maintaining their sections, and I didn't intend that they should be included in any way as having a responsibility in the budget system. It merely — the general reorganizing of the management of the business was in connection [fol. 3388] with putting in a budget system. The main reason that I changed it, gave the instructors more authority, was that I didn't want the work to pile up in the sections, and the instructors felt that the operaters felt they didn't have to do anything that Mr. Baty didn't tell them to do, when they didn't want to do it.

Of course, if all of them took a notion that they didn't want to do anything that Mr. Baty didn't tell them to do, it is a fact that we couldn't have gone on at all. Naturally, there were a few in a section, but at the same time, the instructors felt that they ought to be able to say to a girl, "Now, this work has to be done, and has to be through, and you must do this particular operation," and then they could have the work through in an orderly fashion, and wouldn't pile up, and stay in the section a long time.

I never heard any complaint from any operator after the instructors were told that they could say that to the girls and they could settle their own small things in the section, without calling Mr. Baty.

Q. Had they been able to do that prior to July, 1935?

A. Yes.

Q. So the authority which you vested in the instructors in November or December of 1940, was the same as the authority they had held prior —

A. I did not say that. That is your own conclusion.

. . . . . .

[fol. 3389] A. No, that same authority was not given back.

By Miss Weyand:

Q. What was the difference?

A. Well, one difference was Mr. Baty was running the plant.

Q. What difference did it make if Mr. Baty was running the plant rather than Mrs. Reeves, in reference to the instructors' duties?

A. Mr. Baty felt that there were a number of these things that he could handle himself, and handle them better.

Q. What were those, specifically?

A. Well, one of the things, I think, was the complaint about the piece work prices.

Q. Prior to July, 1935, those were made to instructors, weren't they?

A. The complaints would be made to instructors, yes.

Q. From July, 1935, until November of 1940, they were not made to instructors, is that correct?

A. Well, I can't say no complaint would be made to an instructor, but Mr. Baty did more to settle those complaints, I am sure, than Mrs. Reeves did.

Q. And that manner of settling complaints was not changed in November of 1940.

A. That didn't came up. The instructor didn't say [fol. 3390] that she had to settle the piece work prices to run her section. The main thing that the instructors said to me, several of them did, was that they wanted the authority to say to a girl that she must do the work that the instructor assigned to her.

Q. Is that the only change that was made enlarging the authority and duties of the instructors in November of 1940?

A. The instructors thought that was a great change.

Q. Is that the only one, is my question.

A. I don't know whether there were any others. That was the main change.

Q. Then there were no other changes as far as you know?

A. I don't remember whether there was.

Q. Did that change, in your mind, require that the instructors resign from the Donnelly Garment Workers' Union?

A. I had no opinion on that. I still don't have any opinion on that. I feel that is something between the instructors and the union.

Q. Immediately after you gave those instructors that enlarged authority, you received resignation notices, that all of the instructors had resigned from the Donnelly Garment Workers' Union, is that correct?

A. The notice was sent to the company, and sometime along the line it came to my attention.

Q. That was subsequent to the time that you vested this enlarged authority in them?

[fol. 3391] A. Yes.

Q. Do you recall how long subsequent to your notice to the instructors they had this authority?

A. I do not.

Q. Do you have any idea whether it was a month or six weeks to two months or more or less time?

A. I don't remember; because I didn't attach any importance to it. The information came to me, just like a lot of things come to my attention or to my desk, that have happened.

Q. Were you given a written notice?

A. I personally was not. I am inclined to think the accounting department got the notice to quit deducting the dues from the instructors' pay.

Q. Do you know whether that notice was in the form of a letter from the instructors individually, or from the Donnelly Garment Workers' Union?

A. I don't remember that. I remember that, of hearing that a notice had come from the union that the instructors had resigned, or perhaps they asked them to resign. I don't know, because I really didn't feel that was anything that I had any responsibility about, and I had so many things to do, I didn't think anything about it.

Q. After you determined to change the authority of the instructors, what manner of notice did you use, in telling the instructors that they had an enlarged authority?

[fol. 3392] A. I had a meeting with the instructors in my office, with Mr. Baty.

Q. Do you remember the date on which that meeting was held?

A. Not the exact date.

Q. Would you know the month?

A. I know that it was in — sometime in November or December.

Q. Of 1940?

A. Of 1940, yes, after I had a number of reports from Mr. Bachofer.

Q. Did the company — the Donnelly Garment Workers' Union, take any part in the presentation of a complaint which you said you had received from the girls as to the unsatisfactory nature of the instructors' authority, prior to December of 1940?

A. I don't quite get your question, Miss Weyand.

Q. I understood that your change in the authority of the instructors resulted from complaints from the girls and from the instructors, is that correct?

A. My main reason for making that change was that my complaints were from my customers, that they weren't getting their merchandise on time. They were getting — they were not getting sufficient shipments, and they didn't have enough on hand at one time to advertise the line. That was the main thing that made me think about it. The merchandise was not coming through in time.

[fol. 3393] Q. Didn't you also receive a statement from girls that they preferred to have the instructors' authority enlarged?

A. That was after it happened.

Q. I see. What method was taken of notifying the girls that this change had been made in the authority of the instructors?

A. I don't know. I simply told the instructor that she did have the authority to say what work a girl should do, and I suppose each instructor used h . own way of telling the girls, because I didn't hear about it any more. The main thing I got was much better results. I got no complaints, but immediately got better results in my manufacturing.

Q. Was the authority of your head cutter affected at all by either the change in July, 1935, or the change in November or December of 1940?

A. The head cutter, the change there was based on the budget. He was told that the expenses in the cutting department had grown very high, and he was expected to spend more time and have more authority in directing his

work, so we would get better results, and that was based on the budget.

Q. I take it, in that regard, you are speaking of November or December, 1940?

A. Yes.

Q. Was there a change in the head cutter, in July of 1935, analogous to the change in the instructors?

[fol. 3394] A. Yes.

Q. Can you state specifically how that worked out in relation to the head cutter? You have indicated his authority was always somewhat different from the instructors.

A. In that particular instance, I don't think that there was very much change. I don't think that Mr. Fountain had ever held himself up as a real boss. He worked right along with the men. He seemed to get along with them so well. I don't think there was anything in the cutting department that the cutters thought they had a boss.

Q. What authority did the head cutter assume after November or December of 1940?

A. I don't know. He was supposed to do a better job of getting the work out.

Q. Could he recommend the discharge of a person who, he felt, was inefficient?

A. Yes, he could.

Q. Had he been able to do that previously?

A. I hadn't heard of him doing it.

Q. What disciplinary measures could he take after November, 1940, other than recommending discharge?

A. When you use that term, disciplinary or discipline, it is a word that is so seldom used, if ever used, in our place. It is hard for me to answer your question. You have thoroughly skilled cutters, making $10 and $15 a week more than they can make any place else in town, and [fol. 3395] working the year around, and some of them have not lost a day in 20 years, and you can't discipline those men, you can't discipline that kind of man, and mainly that is what it is made up of.

Q. That is the same situation which you have described in the section, that work piled up and was not gotten out, or did that just apply to the cutting department?

A. I think the main thing in the cutting department was the expense had piled up. I hadn't heard anything about the work. I think it was mainly the expense.

Q. What authority did you give the head cutter that would reduce the expenses?

A. Well, I know that I didn't—Mr. Bachofer discussed the expenses always with the different department heads; I didn't discuss it with them in the cutting department. I know one part of the expense was a great deal of overtime. I think it was suggested that they either employ more cutters so they could work at regular time, or manage the work better, so that it wouldn't—the cutting wouldn't be so expensive.

Q. Was the enlarged authority you gave the head cutter related to managing the work more efficiently?

A. He was, I think, to get the work out more efficiently, without so much expense. I don't know—I don't believe I remember the details of how he was to do it. I don't believe the details were discussed. I didn't discuss that with him.

[fol. 3396] Q. Was he given authority to say or do anything in regard to the employees that he felt was necessary, in reference to reducing the expenses or getting the work out more quickly?

A. I didn't talk to Mr. Scoles, so I don't know.

Q. What was his reason for the expense going up so much in the department? When did Mr. Scoles become head cutter?

A. When Mr. Fountain died.

Q. Do you know the date, approximately?

A. No, I don't remember the date.

Q. Do you have any idea what the date was?

A. No, but it could be easily found out. I don't remember, but a few years ago.

Q. And then Mr. Scoles succeeded Mr. Fountain directly?

A. Yes.

Q. Did Mr. Scoles, after November of 1940, receive authority to recommend increases in the wages of the cutters?

A. We had a very definite scale of wages set up in our contract for cutters.

Q. Was that scale set up so that a cutter could not, without a change in the contract, receive an increase in pay?

A. No.

Q. Did cutters receive increases in pay from time to time during the period of the contract?

A. Yes, but those were given by Mr. Baty, and usually in consultation with myself.

[fol. 3397] Q. And the enlarged authority which you gave to Mr. Scoles, to be responsible for the expenses and production department, did not include the authority to recommend increases?

A. There would be no reason why he shouldn't have recommended increases if he had wanted to.

Q. Did he?

A. I don't remember that he did.

Q. How many persons were in the cutting department, by November, 1940?

A. I would say from 12 to 14 cutters.

Q. Did the personnel of the cutting department still consist of persons you knew personally?

A. No.

Q. Did you continue to visit the cutting department sufficiently to be acquainted with the activities of the cutters?

A. I discussed their skill and activities with Mr. Baty.

Q. Did you make personal observations in regard to their skill, by noticing the men themselves and seeing them work?

A. No.

Q. I believe you testified that in July of— January of 1935, you did have considerable personal acquaintance through observation and visits to the cutting department?

A. Yes.

Q. Will you tell me when you ceased to have such visits [fol. 3398] and such personal knowledge?

A. Well, I was in the N.R.A. hearing in the spring of 1935, which took a great deal of my time, and then we had several hearings in this injunction suit in '37, and I was ill in the year of 1939; but I have, in that time—I have been constantly in contact with Mr. Baty, and have discussed with him the personnel of the whole plant, and with Mrs. Reeves, who had been very close to these people, and I haven't felt that I have been completely out of touch with it.

Q. I notice a difference in your testimony as to January, 1935, how close you were, and it seemed you were less close in November of 1940. I wondered if there was a

given period when there was a break, or whether it was a gradual lessening, and I want to get straight what your notions are, what your testimony would be, that the change took place and when it took place, and is it correct to state it was a gradual lessening of personal attention to the cutting department, because of the various events of illness and so on, which you have described?

A. As my business has grown, I naturally couldn't give the personal attention to each department that I formerly did, when I had a small business and actually managed it myself.

Q. Did that enlargement of the business reflect itself in any managerial change other than the November or December of 1940 change?

[fol. 3399] A. Well, I don't quite understand your question. I don't know. I don't know what you are getting at.

Q. You stated that this budget was put in because it had grown so large you had to have a readjustment of the business, and it seems to me that is quite a major change, what you have described, and I was wondering if there had been a major change resulting from your inattention of perhaps a smaller nature than this one, any change due to your getting away from your business, as it got larger between 1935 and 1940. Do you understand the question?

A. I still don't know what you are getting at, because I haven't lost track of that business in all of these years; even when I [will] ill a certain amount of it was kept before me.

Q. Did the fact that it grew large result in your establishing more departments and delegating more authority to other people?

A. The fact it grew large, and the fact it seemed to require—for a great many years I ran the business myself, and it got pretty large, and I seemed to have gotten along very well.

Q. I think perhaps you can answer my question by following through from January, 1935, down to 1940, with the specific departments. Who did Mr. Baty have directly under him, in January, 1937?

[fol. 3400] A. He had the sewing department and the cutting department, and the pressing department.

Q. Did he have any other persons to assist him in managing those departments?

A: In those departments they had specific duties of getting work through.

Q. Who did he have to assist him other than the managing personnel?

A. Other than the managing personnel?

Q. Yes.,

A. Mrs. Hyde really has assisted Mr. Baty very considerably since he went into the plant, in managing the personnel.

Q. Was Mr. Baty directly under you in the same manner Mrs. Reeves was directly under you?

A. He was.

Q. Did Mr. Baty continue until the present time to be directly under you?

A. He is.

Q. Has Mrs. Hyde's position changed at all since January, 1935?

A. She was personnel director then, and she is still personnel director. I don't believe it has. I don't know that it changed. She is personnel director, and I know she has assisted Mr. Baty very considerably in the personnel work, more than she had with Mrs. Reeves.

[fol. 3401] Q. Has Beulah Spilsbury's position changed since January, 1935?

A. I believe not.

Q. Does she hold the same position she did in January, 1935?

A. Well, I would say she did.

Q. Does she draw the same salary, or do you know that?

A. I can't remember the exact time I gave the raises. They haven't had very many raises. The executives haven't since the depression. There has been one increase, but I don't remember whether it was before or after 1935. It wasn't very far away, but the increases were given by me.

Q. Do you know what the increase—what her salary was before the increase?

Mr. Reed: We object to that as being immaterial.

Trial Examiner Batten: You may answer.

A. I don't have to tell the salary of my head designer.

By Miss Weyand:

Q. Was it before or was it after—

A. I do know that I employed her myself and made arrangements with her what her salary was to be, and I made all the arrangements on her salary myself. Miss Spilsbury has never been under anybody else's direction but my own.

Q. Has she made over $200 a month continuously?

A. She has.

Q. Has there been any change in Marvin Price's position since January, 1935?

[fol. 3402] A. Yes, he is salesman now.

Q. When did he become a salesman?

A. Well, he has done part-time selling, I would say, for about two years.

Q. What was he before he became salesman?

A. He worked in the maintenance department.

Q. Was his job continuously the same since January, 1935, in the maintenance department?

[fol. 3403] A. I would say he came under the same proposition that the instructors did when I turned the plant over to Mr. Baty to run. I gave Mr. Baty charge of the maintenance, as well as the cutting, and other departments.

Q. Had Mr. Price previous to that time been in charge, in any manner, of the maintenance department?

A. I didn't consider him so.

Q. How did you happen to select him as the supervisor?

A. I didn't say I selected him as a supervisor.

Q. You said when the budget system went into effect he was given charge of the maintenance department.

A. That did happen there. The maintenance department, like some of the others, had gotten at loose ends because they didn't have a person responsible.

Q. And he was then placed in charge of the maintenance department?

A. Yes.

Q. Was he given the title of supervisor of the maintenance department?

A. I suppose you would say that. He was given the responsibility of seeing that the maintenance department was better pulled together and got along better.

Q. Had he done anything in the nature of supervising

prior to the institution of your budget plan in November or December of 1940?

[fol. 3404] A. I believe not.

Q. He had never done any supervising before?

A. He had purchased supplies for the janitors and he had done work that he was asked to do.

Q. Had anyone been in charge of the maintenance department prior to the institution of the budget system?

A. No one person had been held accountable for the real management of the department.

Q. Was there any one person who took the lead in saying which man went to which department, or did which work, or—

A. To a great extent, when the call was made it would be made for a painter, or someone to do certain work, and the person getting the call would know that a certain person was to do that. If they wanted some buttons painted, or some painting done, they would call one boy; or if they wanted a runway for the style show set up, they would call somebody else. It was really pretty much a thing of everybody having their own work and going ahead and doing it.

Now, that all happened because we started so small, and it only took one person to do it, and pretty soon it took two or three, and they were just added on.

If one person was there longer, or had more initiative than others, he might lead off in what there was to do, but the responsibility of how much money was spent in the department, and the actual managing of it was not settled [fol. 3405] until this budget system went in in 1940.

Q. Had Marvin Price's activities in the maintenance department been those of gradually growing into a position of being in charge of it?

A. I didn't feel that they had.

Q. There had been no one else who you could say was in any manner in charge of the maintenance department, except Mr. Baty probably, previous to the budget system?

A. There was maintenance in the mechanical department. It was pretty loosely run.

Q. Did Florence Strickland's position change at all between January 1935 and the present time?

A. Yes.

Q. What changes occurred in Florence Strickland's position?

A. When we put in the budget system we had the same situation in the cost of making patterns. Up until that time Mrs. Strickland spent practically her entire time making what we call correct patterns, doing pattern work.

The patterns in our institution, and the designs, are very closely associated. I don't believe that any other plant that I know of has their designers make their patterns, or at least grade them, but that is part of my idea of the way to run a dress business, so I have more designers in my designing department than most people have, but I expect them to make patterns and expect them to help [fol. 3406] grade patterns, also.

Now, originally the designers were able to do practically all of the grading, except what Mrs. Strickland did herself. Mrs. Strickland helped to make the original patterns.

As a matter of fact, originally I made my own patterns and did a lot of that work personally. I still pass on a great many of the patterns and the fitting of our garments.

So, the patterns and designing in the Donnelly Garment Company are very closely related.

Now, Mrs. Spilsbury had charge of the designing department, and Mrs. Strickland came directly under Mrs. Spilsbury's supervision, and anyone else making patterns.

Then, as in all of these other places, we found that, with the increase in business, the increase in the size of our plant, we rather loosely—if we needed some more help, we simply employed some more help, and we didn't feel that they were always being used to the best advantage. Mrs. Spilsbury was always busy with her designing, and, while she was interested in and gave some attention to the patterns, she didn't have time to spend a lot of time in personal direction. So Mr. Bachofer suggested to me, in getting up this budget system, that we separate the designing expense and the pattern expense and hold Mrs. Strickland responsible for the expense of getting out the patterns, particularly the pattern grading and making one correct pattern, and that is what happened.

[fol. 3407] Q. Was there any change in Mrs. Strickland's duties between January of 1935 and November or December of 1940?

A. Yes. She was given charge of the pattern department.

Q. When did that occur?

A. In, I think, December of 1940.

Q. My question was, was there a change in her duties prior to that time?

A. Yes, her duties were changed.

Q. Prior to this—

A. No. Her duties were changed in 1940.

Q. My question was, was there any change in the duties as you described them in 1935, up until the change you have described occurred in November or December, 1940; was there a change in the intervening period, or did her duties remain the same?

A. Mrs. Strickland was making patterns in 1935.

Q. Did she continue to make patterns up until the time the budget system went into effect?

A. She did. I think she did less grading, but she had more patterns to make.

Q. What other changes occurred than that she did less grading and had more patterns to make? Were there any other changes?

A. I don't remember—

Q. What was the growth of the pattern making depart-
[fol. 3408] ment during that period? Could you describe that?

A. There was a steady growth of the number of people who came into the pattern department.

Q. How many were in it in 1936, approximately?

A. I would say a half dozen, besides the designer.

Q. How many in 1937?

A. I couldn't say exactly each year how many were there. In 1937 I was in the pattern department, and there were just enough people to make the patterns. Mrs. Strickland did some of the grading herself. And then later on we would bring boys up from the cutting department to help grade. The designer would do some grading. It would be according to how quickly we finished the line.

Q. Did Mrs. Strickland have charge or direction of that work in any respect between 1935 and 1940?

A. I didn't expect her to. I didn't give her authority to or expect her to have any responsibility, any more than to make good patterns.

Q. Who directed or told these various people who came from various departments to this department to make or grade patterns what they were to do?

A. Dewey Atchison and myself worked out a plan of grading, and we had that set out in a form so that the person could take it and go along with that line of work.

Q. Who would tell the given persons which of the pat-
[fol. 3409] terns they were to do?

A. Well, Mrs. Reeves would send to the department the numbers that she wanted graded first, and Mrs. Spilsbury would tell Mrs. Strickland the certain ones she wanted her to grade that were more difficult. We had more or less of a set rule that the designers would grade their own patterns, and it was pretty well established that certain people would do certain work, and when the men came up from the cutting department to do grading, the work was so ostensibly there to be done that there was very little to say about who should do it.

Q. The men just picked the patterns themselves they wanted to grade, and graded them, without anybody saying, "This is the pattern you are to grade."?

A. Back in 1935, I believe Dewey was helping us some with the grading, and I think Mrs. Spilsbury was really doing a great deal of the managing all of the way through.

Q. Between 1935 and 1940, did anyone other than Mrs. Spilsbury direct these boys who came in which patterns they were to grade?

A. Mrs. Strickland probably would say, "These patterns are here. Mrs. Reeves has sent word down that she wants number so-and-so, and I have the correct pattern made of that." And as soon as she would finish a correct pattern she would give it to somebody who didn't have
[fol. 3410] anything else to do; and then, when they had a lot of work ahead, she would give it to somebody else.

. . . . . .

[fol. 3414] By Miss Weyand:

Q. Does Miss Spilsbury report direct to you, or is she under Mr. Baty or some other person?

A. Miss Spilsbury, I would say, reports to me.

Q. She is not in any of these divisions you mentioned yesterday?

A. She would not be under Mr. Baty.

Q. Would there be any person she would be under, aside from yourself?

A. I have never thought of her being under anyone besides myself.

Q. Has that been true continuously from January 1935 to the present time?

A. It has.

Q. Is Miss Spilsbury's department or section or group of workers divided into subdivisions today?

A. At the present time it is.

Q. What are those subdivisions?

[fol. 3415] A. The pattern department, at the present time— She has the pattern department and she has a small office that serves the materials that she uses for designing sample pieces and furnishes the merchandise department with specifications for what goes into a garment, the colors that are used, and the trimmings for each individual garment.

Q. Would you have a name to describe Miss Spilsbury's division of the plant by?

A. We have always called it the designing department, but the designing department and the pattern department, as I explained yesterday, have always been run right together. I believe it is called the designing and pattern department—I'm not sure.

Q. Does Miss Spilsbury have direction over the pattern division of that department?

A. She does.

Q. What do you call this section which you have referred to as an office, which has to do with materials, as you were just describing? Do you have a name for that?

A. I have never thought of any special name for it, except it was a little office force that Miss Spilsbury needed to carry on her work.

Q. Does Miss Spilsbury have anyone under her other than designing, patterns, and this office force?

A. I don't recall at present. I can't think of any other [fol. 3416] direction she may have. If you will tell me what you are thinking of, I could tell you whether or not she does have.

Q. I was just wondering if that covered the complete group of workers she had under her. That was all I was interested in finding out.

A. Miss Spilsbury has charge of getting out the line of merchandise, and whatever help she needs to get that out she has.

Q. Is there anyone under Miss Spilsbury who has a supervisory position, in regard to the designing department, today?

A. If you take the designing— We have put Mrs. Strickland in charge of the correct pattern and having the grading done. She is now given responsibility for having that done.

Q. Is her position regarded as supervisory?

A. It is, at the present time.

Q. Does she have any title or name by which you describe her?

A. Well, perhaps you think I am very amiss about bestowing titles, but I have never thought it was necessary for people to have titles to do work.

Q. Well, you have something you call them?

A. I just call Mrs. Strickland, I would say, the head pattern maker. But under our new budget system Mrs. Strickland now is held responsible for the expense of turning out the pattern, for all of the grading, and for the— [fol. 3417] well, for all of the grading, anyhow.

Q. She would not be in charge of the designers, would she?

A. No.

Q. Those remain under Miss Spilsbury directly, do they?

A. They do. And Mrs. Strickland also remains under Miss Spilsbury.

Q. Is there anyone responsible for the designers, speaking in terms of your budget system of responsibility —anyone that is in charge of the designers, besides the group that is under Mrs. Strickland?

A. The designers are a great deal like pieceworkers; they work a great deal on their own.

By Trial Examiner Batten:

Q. Well, is there anyone there, Mrs. Reed, that you consider, for instance, as a head designer under Mrs. Strickland?

A. No.

Q. In other words, the designing section comes directly under Mrs. Strickland; is that it?

A. Yes.

Q. Without any person intervening?

A. There is no one that has any charge of the designers who would discharge or hire or—

Q. Is there anyone else besides Miss Spilsbury who would give them any direction?

A. Miss Spilsbury might use any of a half dozen peo- [fol. 3418] ple to carry messages to the designers, and say, "I want this done." We have two models that constantly work with the designers and with Miss Spilsbury, and of course I work with Miss Spilsbury a great deal of the time, when we are getting up new lines, and I am just as apt to tell a model to say to a designer— The designer sends the new model of the dress in on the live model to have Miss Spilsbury and I look at it to see if we like it. I am apt to say to the model, "Go back and tell the designer she designed that, that she has a very nice model but I think her collar is too wide, or the pockets are too high, and I think the model would be improved by taking the collar off and putting one on. Will you have her do that and then let me see the model?"

Miss Spilsbury might say that to the model, or we might say that to anyone who happened to be in the office at the time. Sometimes we call the designer in, if the change is enough.

By Miss Weyand:

Q. Is there anyone whose duties are regarded as including the duty of assigning work among the designers, other than Miss Spilsbury?

A. There is Diana Rutherford, who helps Miss Spilsbury in many ways. If I want to see the models—Miss Spilsbury may have gone over the models with the designers while I was doing other work, and at a certain time in the afternoon she would want me to see all of them [fol. 3419] at the same time. Diana Rutherford does a great deal of that sort of thing in helping Miss Spilsbury.

Q. Is she an assistant to Miss Spilsbury?

A. I would say she does assist Miss Spilsbury.

Q. Is there any person intermediate between Miss Spilsbury and this office force which you have described?

A. At the present time Mrs. Brown is.

Q. How do you describe Mrs. Brown's position? If you don't want to call it title, what is she known as around the place?

A. I know that she directs the work of the little office force that takes care of Miss Spilsbury's merchandise for designing and making the specifications that go to the merchandise department.

Q. Does this office have any name? I am having difficulty when I refer to it of having any short way of expressing what I am talking about.

A. I'm very sorry, but— We do not seem to have any trouble in our place of—

Q. Do you call it the designing department office?

A. It could be called that.

Q. What do you call it?

A. I don't call it anything.

Q. If you send someone from your office over there, where do you tell them to go?

A. To the designing department.

[fol. 3420] Q. And if you wanted to refer, not to the whole designing department, but this office division—

A. If I send them down for a specification on a garment that was made, they would know to go to the office for it. If I send them for a model I want to see, they would go—If I sent for a model and it was a model that a specific designer was working on, I would say, "Go to this designer's booth and get that model for me."

Q. Did this office and the designing and pattern division all exist in January of 1935?

A. Yes.

Q. What was the situation in 1935 as to the management of the persons who worked in Miss Spilsbury's division?

A. My remembrance is that Miss Spilsbury managed it herself. It wasn't as large as it is now.

[fol. 3421] Q. With reference to the spring of 1937, say April, 1937, was Florence Strickland at that time just one of the employees in the designing and pattern department, without any differentiation in her functionings from the other employees in the designing and pattern department?

A. She was—she was an expert pattern maker.

Q. Was she the highest paid pattern maker at that time? A. Yes, and most expert.

Q. But aside from that, her duties were in no way differentiated from those of the other employees in the designing and pattern department?

A. She was considered the real pattern maker, the one that we depended upon to make the correct pattern for our samples, and my remembrance is that anyone else in the pattern department did routine grading work.

Q. Did she direct the work of the persons who did routine grading work?

A. Well, I think there was possibly no directing done. Those graders were trained to do the work, and as I said yesterday, the process of grading, the way to do it, had been something that had been worked out so it was entirely routine work.

Q. Would she assign the work to the persons who did the routine grading?

A. What assignments would be necessary, Mrs. Strick- [fol. 3422] land got a list from Mrs. Reeves, what patterns she wanted, so Mrs. Strickland would be sure to get those correct patterns made first, and as Mrs. Strickland had a correct pattern made, then, the grader who was available, was out of work, would take each of those patterns and grade it.

There was very little direction given.

Q. Who would tell the grader about the pattern he was to do next? A. Mrs. Strickland would.

Q. If the grader was in question as to any details of making the pattern, whom would he inquire of as to the proper method of making the pattern?

A. He probably would to Mrs. Strickland, she was acknowledged as the expert pattern maker.

Q. If a pattern maker made an error in making the pattern, who would tell him of the error and direct him to correct it?

A. Well, in our plant we have a lot of direct contact, and in all probability Mrs. Tyhurst would come up and complain and she would go right to the person that did the grading and say, "You have left off a punch or a notch," or something like that.

Q. Did Mrs. Strickland look over the patterns before they went out to the departments to see if they were correctly made?

[fol. 3423] A. No.

Q. If there was to be a lay-off during a slack season, would Mrs. Strickland determine which of the graders would be laid off?

A. No. We had a certain number of graders that we keep in the department all of the time, and we would borrow from Mr. Baty people from, perhaps, the cutting department or some other place, where a girl had worked in the pattern department, and we never had to have any kind of conferences or any worry about what we would do with a grader.

When the big part of the grading was done, because Mr. Baty was always after us to give back this girl, because by the time we were through grading, the factory was into their big production, and they needed back all of the help they had loaned us.

Q. Who would determine whether the pattern department could spare the girl to go on, the cutter to go back to their other departments?

A. It was determined by whether the work was finished or not.

Q. I suppose it must necessarily have been some girls went back before others? A. Yes.

Q. Who would determine which girls would go back?

A. Mr. Baty would, and very often the girl who would go back first would be the one he wanted first, the one he [fol. 3424] needed first.

Q. Would he consult with Mrs. Strickland as to whether Mrs. Strickland wanted that girl to remain, making patterns, or to have her go back to another job?

A. He probably did. He would come up and say, "I want such and such a girl," and he would—he might—he would be just as apt to go to the girl himself as he would to Mrs. Strickland, and say, "When are you going to finish the pattern, and how are you getting along, and how much work do you think is to be done here," and he would be very apt to look down the list of the patterns, and the list was there.

The girl would finish her pattern and that would be checked off, and he would very probably go to the girl that he wanted back in the plant himself, and say, "Aren't you going to be able to come down pretty soon?" And she would say, "Well, I have two or three more sizes; nearly everything is done, and I am sure I can go as soon as I finish this pattern."

Q. Were these lists made up at the beginning of the season, with the girls' names opposite the pattern she was to grade?

A. No. There were no specific patterns given to the girl in the grading, except the designers; it was understood the designer, each designer would grade her own model, as far as she could, and some designers had more models, and maybe one designer would help with the one that had more models.

Q. How could a grader look at a list, then, and tell [fol. 3425] whether she would be called on to work on any of the patterns left on the list or not?

Mr. Reed: That is objected to as assuming what has not been testified to, there was a list.

Trial Examiner Batten: Well, I think Mrs. Reed referred to a list, the list that Mr. Baty might look at.

A. Yes. Miss Spilsbury—Mrs. Reeves was really the person that checked on how many patterns were coming through the factory, because she was dependent on those patterns coming through to get her cutting done, so Mrs. Reeves would be the person that would have a list, and from that time she would send it down to when she would —as the patterns came through they would be sent to the cutting department, and they would report from there that they had gotten certain patterns, and she would know that she could make cuttings.

Q. I believe you testified that in determining whether a girl was available to return to her department, the girl could go to the list herself, and say to Mr. Baty—

A. (Interrupting) If the list happened to be down there at the time. Mrs. Reeves usually kept that list, and at different times would come down to the department herself to see how they were getting along, and check on what patterns were being made, and how long it would take to get them made.

Q. Assuming there were six girls from other depart-
[fol. 3426] ments working on grading, and Mr. Baty came to one of them and said, "I would like to have you back," could that one girl, by herself, without consulting Mrs. Strickland, determine whether she would be available to go back to the other department?

A. In the first place, we never had six girls, we never had that many girls from other departments.

Q. How many did you have?

A. I would say, sometimes one or two or three.

Q. And assuming you have three, two or three, could you answer the question I stated before, or would you like to have it restated?

A. They would discuss with Mrs. Strickland about the work.

Q. Whether she would be available to go back to the other department, or whether it was done, that is what you mean when you say "about the work"?

A. You can take it that way.

Q. Is that what you meant?

A. I don't know exactly how they would do it. We loaned people back and forth, and I think that it would be a matter of how many patterns were made. It would be based on the fact if there were two or more patterns to be made, and Mr. Baty would give up the idea of having this girl go back, rather than whether Mrs. Strickland wanted her to or not. It was a matter of getting out the work.

Q. Now was the work to be done by the girls that re-
mained, if any of the three girls or two girls should be [fol. 3427] released? A. It probably would.

Q. And this was the situation, as you have described, as I understand it, of April, 1937, is that correct?

A. Mrs. Strickland was the chief pattern maker as of 1937, but she actually had no authority to hire anyone or to discharge anyone. She was not consulted about raises, and she was not consulted about who was to be put in her department. She had no managerial authority whatsoever. She was what I think the union usually called —the I.L.G.W.U. called a head pattern maker, and in the A.F.L. trade, they have head carpenters, and they do a certain amount of directing work; but she had no authority over an individual person in the pattern department.

Q. Were all persons who worked in the pattern department, either permanently or by transfer from other sections, paid on a time basis? A. Yes.

Q. Was the grading of a pattern so entirely routine that anyone who had ever graded patterns could grade one pattern as well as another?

A. Well, we always had a few patterns that were a little more difficult to grade. It was always understood that the designer that designed the garment would grade those herself.

Q. If Mr. Baty, at the beginning of a season, when the [fol. 3428] grading was to be done, had available a group of persons capable of grading larger than the number needed in the pattern department, would he consult with Mrs. Strickland as to which of the available girls should be assigned to the pattern department?

A. I don't know that a case like that would ever come up. I know that he always consulted with Miss Spilsbury about who would do grading.

Q. But he did not consult with Mrs. Strickland about who would do grading?

A. I don't know that he did.

Q. What was Mrs. Strickland's salary in 1935?

A. I don't remember exactly what it was.

Q. Do you know whether it has changed since 1935?

A. I think she has gotten at least one raise.

Q. Do you know what her present salary is now?

A. I believe it is $80.00 a week. That is not unusual for an expert pattern maker. As a matter of fact, I do some of the pattern making myself. I think it is very important in my business. And all of the original patterns were made by myself, the standard ones; that is the valuable part of our good will.

Q. When did Hilda Fitzgerald begin to work for your firm?

A. I employed Hilda Fitzgerald in Paris, first, I think, in 1926; I am not sure.

[fol. 3429] Q. What was her job in January, 1935?

A. She was designer and assistant to Miss Spilsbury.

Q. Did she have supervisory duties in 1935?

A. She was supposed to pass on garments that came back from the factory. I have a system in my plant where

I make my samples, and then, when my merchandise goes through the factory, one size of every model comes back to the designing department, and that is looked over and passed upon, to see if the routine in the factory has been able to carry out our idea, what the dress should look like. That is our system of mass production. I feel that it has to be checked up, to see whether they really can turn out the model that we make.

By Trial Examiner Batten:

Q. Do these come back?

A. They come back to the designing department, one garment of each size.

Q. Do they come back to — what was this young lady's name, Hilda Fitzgerald?

A. For some time, Hilda Fitzgerald took that duty off of Miss Spilsbury. Of course, it is so important that in most of them, Miss Spilsbury sees them herself, and I see some of them, and if they don't look to suit Miss Spilsbury, she calls me in to look at them, to see what I think of them, and if there is anything that I can do about making them look better.

[fol. 3430] By Miss Weyand:

Q. Does Hilda Fitzgerald have any person working under her to whom she gives directions?

A. She does not.

Q. Does she, at the present time, have any supervisory duties?

A. Hilda Fitzgerald at the present time is a professional worker, I would say; designer and stylist, and she had no department.

Q. Does she have any supervisory duties?

A. Not that I know of. I know she does not, but she is a professional woman.

Q. Was Lena Tyhurst directly under you in 1935?

A. No, she was directly — she was under Mrs. Reeves in 1935.

Q. Did she then come under Mr. Baty when he began producing merchandise in July of '35?

A. She did.

Q. And she has been continuously under him to date?

A. She has.

Q. I did not understand just exactly what she did, from your description yesterday, the statement she was to see if work was up to standard. Could you give me an idea what that involved?

[fol. 3431] A. It seems to me the statement speaks for itself.

Trial Examiner Batten: The question is, Mrs. Reed, can you give any better idea of what she did in the plant?

A. In the production of high quality style merchandise, a great deal of care—perhaps watchfulness is a better term—must be used to insure the garment being finished up at a standard that we have set for ourselves. So we have had certain people that constantly check that work, look over that work, and see as it rolls through the plant—If you could see my plant, with the mass of garments going through, and then know the result we finally get, you would know that a great deal of watchfulness and care are exercised in that production.

By Miss Weyand:

Q. Does she check on the methods of production in each of the various divisions which are under Mr. Baty?

A. I think that would be a very big task.

Q. Does she?

A. No, she doesn't.

Q. What parts of the plant which are under Mr. Baty does she check up on?

A. She doesn't check up on the plant. She does check up on the merchandise.

Q. How does she go about checking up on the merchandise?

A. She looks it over.

[fol. 3432] Q. As it is being done?

A. Yes.

Q. Does she look over the work that is being done in the cutting department as it is being done?

A. No. Just in the sewing department.

Q. Would that include the dividing department?

A. No.

Q. The bundling department?

A. No.

Q. The pressing department?

A. If there was complaint about the pressing coming through badly, she might go into the pressing department and look at the merchandise. She might go into the pressing department. She would go into the pressing department if there was complaint about the general quality of the pressing.

By Trial Examiner Batten:

Q. The pressing department, is that where the garments go finally from the sewing?

A. Yes.

By Miss Weyand:

Q. Do you have a separate inspection section?

A. We have had a separate examining—I think is the proper name for that—section.

Q. Have you had that continuously since 1935?

A. I don't remember the exact date that was changed. Formerly we had the examiners on the same floor and near [fol. 3433] the machines, and we have gone back to that system. I don't know whether all of the examiners have been put back to be near the machines, but most of them have, and our purpose is to do that.

Q. In January 1935, were the inspectors distributed three or four to each section of operators?

A. In 1935 the examiners were—my remembrance is that they were three or four to a section.

Q. And that is the present method in general?

A. It has been changed back to that.

Q. There was a period between 1935 and the present time in which the examiners or inspectors were removed from the sewing section and put in a section by themselves?

A. Yes.

Q. While that section was in operation Mrs. Tyhurst checked over the work there done, did she?

A. Mrs. Tyhurst didn't do so much checking over the work when it was finished. She checked the work while it was in progress, to keep these things from happening to it. After the work is finished, then it is each examiner's responsibility as to the quality of the garment she examines.

Q. Would Mrs. Tyhurst have any supervision over the examiners, to see that they examined the garment properly?

A. No.

Q. Did she have any duties at all in relation to the examiners?

[fol. 3434] A. Certainly her work was to see that the garment was going through in such a way that when it got to the examiners there wouldn't be any serious thing the matter with it. The examiner, when they were in the large group together, took the work back herself. That was one reason I changed them back, the examiners complained about having to go so far to carry the work back to the operator. I have always held an examiner very responsible for the work she examined.

Q. What relationship existed between Mrs. Tyhurst and the instructors with reference to Mrs. Tyhurst's checking the manner in which work was done in the various sewing sections?

A. The work Mrs. Tyhurst was supposed to do was to go through the plant constantly and see that the quality of the work as it was moving along was up to our standard. Just what she would say, I don't know, but I do know that she would talk to the girl doing the work herself, and if the girl would say, "Well, that's too hard to make, I can't do it any better."— Mrs. Tyhurst was a very excellent operator; she had worked on a machine for a number of years herself, and did very fine work, and was very clever in how to handle it, and she probably would give the girl an idea of what to do. Then, she might find the sleeves were not being set in right, that the notches or the punches or the guide that was put on the sleeve wouldn't be right, so she would go to the pattern department and say, "Your punches are not right," or she might suggest they put in [fol. 3435] another punch or another mark so that it would be helpful in getting the work through.

Q. What would she do if she found the girl stated she was doing the work in the manner in which the instructor's instructions required the work to be done?

A. She might go up to Mrs. Nichols and discuss with her whether she thought that was the wisest way to have the instructions made, and suggest that they be changed.

Q. Would she check with the instructor to see if the girl's interpretation of the instructions was correct?

A. I don't believe she would spend the time doing that. The thing that would impress her would be the fact of

whether the work was being done to the best advantage, and she would be very direct about trying to get the work done right.

You know, there is a tremendous amount of work to be done there, and we do not spend a lot of time, like they do in the army, going from one person to another, and another. We have no rules about having to go to certain superiors in our place, where this person might have her feelings hurt because we said, "You ought to do this," or "You ought to do it some other way."

Mrs. Tyhurst, as I understand her duties, she is to be helpful in getting a good quality of work through the factory promptly. So she would be very direct in trying to help the girl.

[fol. 3436] Q. Could she tell the girl to do the operation in a different manner than the girl had been doing prior thereto?

A. She could suggest that. The girl is on piecework, and what that girl is trying to do is make as much money as possible, and I am sure that if she thought the suggestion was good she would have no hesitancy in doing it.

Q. Would Mrs. Tyhurst tell the instructor of her suggestion to the girl to do the work in a different manner than the girl had been previously doing?

A. She might, but it wouldn't be obligatory for her to do it.

Q. What would happen if she failed to tell the instructor, and the instructor came up to the girl and said, "Here, you are not doing this the way the instructions said to do it and the way I told you to do it."?

Mr. Reed: I object to that as calling for supposition and being clear outside of the issues of the case.

Trial Examiner Batten: What was the question?

Miss Weyand: I will ask the reporter to read it.

(Thereupon the last question was read by the reporter.)

Mr. Reed: Now, I made an objection and I would like to have a ruling on it.

Trial Examiner Batten: I will overrule the objection. You may answer the question.

A. The girl would probably say, "I am getting along [fol. 3437] better this way." And the instructor would be so glad that the work was going through, that there would be nothing further about it.

By Miss Weyand:

Q. So, the instructor does not have the duty to see that the girl conforms to the instructions, and the girl is free to depart from the instructions if someone advises her she could do it better some other way; is that correct?

A. There is no rigid rule in our place that someone does something just because somebody else tells them to do it that way. We have always had a policy that if an operator can do an operation in an easier, quicker manner, she can do it. Now, who made the suggestion to her to do that isn't important.

Q. She has no duty to follow Mrs. Tyhurst's suggestions if she doesn't think it will improve her work?

A. Well, for a number of years she didn't have.

* * * * * * *

By Miss Weyand:

Q. Was Mrs. Tyhurst considered as having higher authority than the instructors?

[fol. 3438] A. Mrs. Tyhurst was doing an entirely different job than the instructors.

Q. If a girl did not know whether the instructions she received from the instructor or the instructions she received from Mrs. Tyhurst would be more efficient in handling the work, which was she expected to follow?

A. The fact is, she would follow what she thought was the best way to do it.

Q. And if she was unable to determine in her own mind which was the better way to do it, how would she resolve the difficulty?

A. Well, I never heard of an operator that couldn't make up her mind which would be the best way. She would try it out. It would all get back to the fact that she had already tried out the way the instructor had told her, and if Mrs. Tyhurst would make a suggestion to her, she

would try that out, and the result would be fact, so there would be no reason to resolve it in any way.

Q. Would Mrs. Tyhurst's suggestions always be directed only to the more rapid method of achieving an operation, or would they sometimes be directed to achieving a result which would produce a better garment but perhaps not by as rapid a method for the girl to get the operation done?

Mr. Hogsett: I submit the question is so involved as to hardly be intelligible; and even if it were intelligible, [fol. 3439] so that an answer could be made one way or the other, it would not throw any light on the issues.

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: Do you understand the question, Mrs. Reed?

The Witness: Well, it is pretty involved.

Trial Examiner Batten: Well, if you don't understand it, say so. You are the person who has to answer it, and you are the person to determine whether you understand it or not.

The Witness: I don't know whether you said I had to answer it or not.

Trial Examiner Batten: I said, you are the person to determine whether you understand the question or not. I don't want you to answer a question which you do not understand.

The Witness: Will you please read it again?

Trial Examiner Batten: I think, in substance, the question is, did Mrs. Tyhurst also make suggestions as to changes in the method? Is that it?

Miss Weyand: No.

Trial Examiner Batten: Perhaps I misunderstood the question.

Mr. Hogsett: I certainly lost it.

Miss Weyand: I will restate the question. Perhaps I [fol. 3440] might explain my thought.

Mrs. Reed's previous answers have assumed that the suggestions which Mrs. Tyhurst would make would be directed to achieving a more rapid performance of the operation—

Trial Examiner Batten: I understand her testimony this far to be that Mrs. Tyhurst was to see that the quality of the work, as well, which goes through the plant, was proper.

The Witness: Not only the quality as well, but that was the main object in having Mrs. Tyhurst go through the plant, was to watch the work as it went through the factory, to see that our standard was being maintained.

By Miss Weyand:

Q. You assumed in answering my question before about whether a girl would follow Mrs. Tyhurst's suggestions or the instructor's suggestions, that the girl would necessarily follow that method which she thought was the more rapid method to get the operation done, so she could make a higher amount of pay for the day.

A. But every operator understands that a certain standard of workmanship must be maintained and, naturally, she wants to do it as fast as she can. There is really, with a skilled operator, very little quarrel between speed and quality.

Q. Suppose Mrs. Tyhurst's suggestion to a given girl is that a method should be followed which Mrs. Tyhurst thinks will make a better garment, but which concededly [fol. 3441] will be a slower method for the girl to make the operation she is doing; would the girl then be allowed to make up her own mind as to whether she wishes to follow the suggestion of Mrs. Tyhurst or the suggestion from the instructor?

A. Over a period of years, if the operator felt that a suggestion made to her by Mrs. Tyhurst would slow up her work and she would make less money, I am very sure she would immediately call Mr. Baty and say that an adjustment should be made in the price.

* * * * * *

[fol. 3443] Q. Did the right of a girl to decide whether she would follow the instructor's directions or the direc-

tions given by Mrs. Tyhurst, include authority to decide which method would achieve a better garment?

A. The operators know that they are expected to maintain a certain standard of quality.

Q. You are finished with your answer?

A. Will you please read that question?

(Question was read by the reporter.)

A. I will let my answer stand.

Trial Examiner Batten: I presume—if I am not correct will you please call my attention to it—but I presume that the question is, if a written instruction or the instructions require a garment to be made a certain way in accordance with the instructions, I presume, a plan which was sent down from your planning department, and then if Mrs. Tyhurst should come into that sewing section and she should suggest a change to the operator not in accordance with your planning department, and it affected quality, if the operator still would have the right to decide which of the methods she would follow in making the garment. I don't know.

A. I don't believe that is exactly the question Miss Weyand asked.

Miss Weyand: That is the question.

Trial Examiner Batten: If that is the question, if you [fol. 3444] understand my question, Mrs. Reed, you may answer.

A. The operators have always understood that the work they turned in had to come up to a certain standard. Now, when Mr. Baty went into the plant and assumed complete authority over the personnel in the sewing division and operators, they did not feel it necessary to do what either Mrs. Tyhurst or the instructors told them to do.

Miss Weyand: Then your answer would be she would decide for herself whether she wanted to follow the method given her by Mrs. Tyhurst, or given to her by someone else, or some other method that she wanted to follow, without regard to the fact that she had other instructions?

A. I don't know what you are getting at.

Trial Examiner Batten: I think what you are trying to get at, when that situation existed in the plant that you just described, that is, Mr. Baty was responsible for the entire production, the sewing section, and the instructions suggested one method, and Mrs. Tyhurst should come through the section and suggest another, the operator then decided for herself which method she would use, is that correct?

Miss Weyand: No, the question was—

A. (Interrupting) Well, I don't know what you mean.

Miss Weyand: Even if that did not occur, would the operator be free to—.

Trial Examiner Batten: Miss Weyand, I don't under- [fol. 3445] stand it then, myself. I am afraid I'd better quit.

Mr. Hogsett: May I make a general observation?

We have sat here for hours, listening to hypothetical questions that are not predicated on any facts. In other words, Miss Weyand is working out questions with geometrical precision, and has spun out of that geometrical precision a psychological vacuum, and has predicated her questions on that theory of hypothetical assumptions; and I submit it doesn't get us any place. That technicality of interrogation, in character, is objectionable, and not founded upon anything that is known to exist, I submit.

Trial Examiner Batten: Well, I don't believe I will sustain your objection. As I previously stated, Mrs. Reed is the president of the company, and thus far I have permitted, I think, somewhat more latitude with Mrs. Reed than I perhaps would have with oth witnesses, in view of the fact she is the president of the company. I will permit Miss Weyand to proceed, but I want to be sure that the witness understands the question.

So, Miss Weyand, will you proceed, please?

By Miss Weyand:

Q. Getting away, for a moment, from the situation in which Mrs. Tyhurst comes into the section and suggests a different method of operation, was the girl free to depart

from the instructions given her by her instructor, whenever the girl felt like it?

[fol. 3446] A. From the time Mr. Baty took the plant over she was; and I am sure she felt that she was; and while we have tied ends up so in our management problem—we have given more responsibility and more authority to our instructors and to Mrs. Tyhurst, still I want to say that we have a number of skilled operators that have—some of them have been in my place for over 20 years, and the instructors and Mrs. Tyhurst and Mr. Baty, and anyone in the plant would recognize that perhaps they would be able to work out a better way of doing their particular job than anyone else.

So, even though we have tied up ends in our management in the plant, we still have a great many operators who know best how to proceed with their work, although we may have instructors that would have a slightly different idea, and the operators might suggest that certain lines of work be changed, that they could do it better, and more of it.

Q. When you say that you have a great many skilled operators, have you classified them so that both the company and the girls know which operators have that authority and which do not?

A. Well, that expression—I was going to say—

Trial Examiner Batten: Just a moment. Do you know, do you have your operators classified within the sewing section as to their skill?

[fol. 3447] A. No, they are classified as to the type of work they do.

By Trial Examiner Batten:

Q. And does that, in turn, have a relation to their skill? The most skillful do certain things, and the less skillful do other things?

A. No, not necessarily. Certain ones are more skilled on certain specific things; particularly a woman that has run a special hemming machine for 10 years would probably be the best judge of how to put a hem in a garment.

Q. Yes, I understand that. In the hemming section—you have a hemming section?

A. No. We formerly had a hemming section, but we now have most of our hemmers in the section with the other workers.

Q. Well, you do not, then, make any classifications of your operators by skill, is that right, which is known to the instructors and to the operators?

A. We have certain operators that do certain parts of the garment, usually.

Q. My question is, do you take all the operators in one section, irrespective of what they do, and do you make any sort of a classification as to their skill, as to whether they are excellent operators, very good, good or unsatisfactory operators?

A. The rate of pay—they are all paid on the same piece [fol. 3448] rate basis, but the amount of pay they are able to draw would show how fast they are.

Q. And how efficient?

A. But the quality of the work—they are all supposed to turn out the same quality of work.

Q. Well, then, to the extent the operator is permitted to use her own judgment on these garments, do you give that authority to all, irrespective of their skill?

A. Well, anyone that—any operator that has been doing the same kind of work for a long time, would be more or less recognized as knowing how to do that kind of work. Now, if there is new work—

Q. (Interrupting) Just a moment. Would she have authority—assuming some of them do, they all have the same amount of authority to use their own judgment in the making of a garment?

A. I think authority is a poor word to use, Mr. Batten.

Q. I admit it is, but I find your testimony—

A. (Interrupting) I don't say they had authority.

Q. Just a moment, please. Let me try to explain myself. If I understood your testimony correctly, some of the operators use their own judgment at times?

A. Yes.

Q. As to the making of a garment? A. Certainly.

[fol. 3449] Q. Now, my question goes to all of the operators that work on the garment. Do they have that right to use their own judgment?

A. It would revolve around the fact of whether they know how to make that garment, and know how to do the operation.

Q. In other words, if you consider their judgment good, is that what you mean?

A. We never had any discussion about a girl wanting to do that in an operation; when she didn't know how to do it she would call the instructor. They are all eager to be shown.

Q. Let's assume they all know how to do it; some are fast and some are slow, which they are, I presume, isn't that right? A. Yes.

Q. Do they all have the authority to use their own judgment as to making that garment within certain limits?

A. I would say, if they all knew how to do every operation that came to them, we wouldn't need any instructors to show them how.

Q. You say all of the operators, except those which are not familiar with the operations, have that privilege?

A. That would be better, yes; I would say that.

Q. That would approximate the situation? A. Yes.

[fol. 3450] Trial Examiner Batten: Now, I think there was another part to your question, Miss Weyand, if you want to proceed with it.

Miss Weyand: I would like to take a couple of minutes to think, if you don't mind taking the time. If you don't mind, I would like to follow a bit further the line you have been conducting.

Trial Examiner Batten: I just suggested there was another part to your question that was not answered. I might suggest on your questions, it seems to me that some of them are sort of double-barreled. I mean by that they almost require two answers, and therefore the witness must think of the first question and the second question; I think if you will proceed by asking the question which lays the foundation for the question which you really want to ask, perhaps it would assist the witness.

By Miss Weyand:

Q. If a girl is new in your plant, but becomes familiar with one given operation, can she immediately, after becoming familiar with that operation, change the method of doing it?

A. If she finds a better way to do it, if she thinks of a better way to do it, yes, she can.

Q. Then Mrs. Tyhurst's duties, in reference to seeing that the goods are up to quality, consist entirely of making suggestions to the operator, don't they?

[fol. 3451] A. No.

Q. What else do her duties consist of?

A. I have said several different times that Mrs. Tyhurst goes through the plant, she looks at the garments, and some of them have only one or two or three operations finished on them, and she sees if it looks all right and she passes it on to another as she goes through, and the operators will say to her, "I can't get these collars straight, I don't have enough marking to go by," and the operator will show her the work and that the collar—it is too hard to do the way it is.

Sometimes the operator will say, "If you had just one more notch, Mrs. Tyhurst, I could do this fine," so Mrs. Tyhurst goes up to the pattern section and says that we want another notch in this, or to the cutting department, usually; they put a notch in with their notching machine, and maybe they will say that along toward the finish of a garment, and perhaps eight or ten operators have worked on it, and they say that "The sleeves, the shirring is too tight in these sleeves, and it is too hard for me to put the sleeve in right, and takes too much time," and in that case, Mrs. Tyhurst will look at the ticket and see who did that shirring, and in all probability she will go over to a certain girl that did that shirring and say, "Those sleeves you are sending over to a certain section are too [fol. 3452] tight," and then that operator will check up with her gauge, and she may say, "The gauge I have is too short, that I am not doing them according to the gauge."

She might say, "Well, the tension of my machine is a little too tight; I am sorry, but I will get them better," and Mrs. Tyhurst will depend upon this girl getting them better. Perhaps the one that made the complaint will be allowed a certain amount on the dozen.

By Trial Examiner Batten:

Q. Who will make the allowances?

A. That allowance, at the present time, is made by the instructor.

Q. Well, how was it made before?

A. Well, those things, before, were just—I am afraid they would let it go along, and Mr. Baty would see the card at the end of the week.

Q. Suppose the machine you indicated the operator or Mrs. Tyhurst said needed adjusting, and Mrs. Tyhurst can't adjust it, who does?

A. The mechanic would be called.

Q. Who would call him?

A. Well, probably the instructor, maybe Mrs. Tyhurst or the instructor; if the instructor was busy, Mrs. Tyhurst would probably call him.

Q. Either Mrs. Tyhurst or the instructor would call and say, "We have a machine up here, and will you send [fol. 3453] someone up here or come up here and see what is the matter with it"? A. That's right.

By Miss Weyand:

Q. Taking the illustration you just gave, with reference to cutting of an extra notch, could the person who Mrs. Tyhurst directed to cut the extra notch decide it should not be cut?

A. Well, that goes back to a question of fact. If it should be cut there would be no argument about it.

Q. Do they have to take Mrs. Tyhurst's word for it, that it should be cut?

Trial Examiner Batten: I presume Mrs. Tyhurst saw there should be a notch, and she would see that the notch would be put in there?

A. That's right.

Miss Weyand: And a person would have to cut it and could not refuse to obey her?

A. The word obey is so foreign.

Q. Mrs. Tyhurst has control of the section?

Trial Examiner Batten: I presume what Mrs. Tyhurst would do would be to call up the section that would put in the extra notch, whether it was the pattern department or the cutters, and say, "We can't make these dresses unless you put another notch in the collar, because the operator can't put the collar in, properly. Now, it is necessary that we have another notch."

[fol. 3454] A. There would be no authority.

Q. Just a moment. As a result, either the cutting department or the pattern department would put another notch, and then the instructions would come down to the instructor properly?

A. We don't do it that close. We just tell them.

Q. If you are going to make a change in a design, everybody along the line would have to know about it?

A. We have a perforated pattern, and that notch is put in that pattern, and thereafter that notch stays in that pattern.

Miss Weyand: So Mrs. Tylurst has the authority to speak for the company in saying the notch should be put in? A. When you talk about authority—

Mr. Hogsett: (Interrupting). It seems to me that is carrying this question of authority to an absurdity. Now, a truck driver might be driving a truck, and another assistant on the truck might say, "You have got a flat tire, you'd better stop." Would anybody say the assistant had authority to speak for the company, because he ordered the truck to stop? In other words, we reach a point beyond all reason.

Trial Examiner Batten: Of course, I think the important point is the statement which Miss Weyand made yesterday, I believe, along with other matters, what was actually done in this plant.

[fol. 3455] Mr. Hogsett: I agree.

Trial Examiner Batten: Now, it seems to me the way to show what was done would be in the daily and ordinary operation of this plant. Now, you might call a person a foreman, when he is not a foreman, and you might call him a superintendent when he is not a superintendent; I think that is as far as I am concerned, and I think as far as the Board is concerned, with what actually took place in this plant at these various times.

Now, it seems to me some of these questions Miss Weyand has asked are hypothetical, and it seems there is no showing here that many of these things, which have been asked Mrs. Reed and answered, have ever occurred.

Mr. Hogsett: That is exactly the point.

Trial Examiner Batten: But I will say again, I am not going to attempt to tell any of the attorneys how to ask their questions. Thus far, with Mrs. Reed, I feel I have been very lenient with all of counsel, and I intend to pursue that policy until we are through with this witness, because she is the president of the company, and unfortunately was unable to testify in the prior hearing.

Now, on that basis, Miss Weyand, you may proceed. Now, what was the question?

A. Mr. Batten, may I try to throw a little light on this thing we are doing?

[fol. 3456] Trial Examiner Batten: I would suggest, Mrs. Reed, if you understood the question, that you answer the questions, and then I think we will get along.

A. Well, I will make a note of something then, when I get back.

Trial Examiner Batten: I think when Miss Weyand gets through, if your counsel wants to clarify these points, he can ask you questions regarding them.

I told you yesterday, when you get through with your testimony, if you want to make a statement, you may do so, the witness may do so.

Mr. Hogsett: Well, it is just a matter of her making a note now.

Mr. Reed: I submit if the witness wants, at this time, to make a statement to clarify any answer she has made, she has a right to do it.

Trial Examiner Batten: There is a question pending and I would like to clear that up first.

Will you read the question, Miss Reporter?

(Question was read by the reporter.)

Trial Examiner Batten: Did she have authority? I presume you are talking about the same period of time, the instructions that she gave about the notches.

A. I would say that Mrs. Tyhurst wouldn't need any authority to ask someone in the cutting department to put [fol. 3457] in a notch on a pattern, that in anybody's opinion would help the work along.

Miss Weyand: What would happen if one of the sewing operators decided that extra notch should be cut; if you want to discuss the facts, what occurred in the plant?

Mr. Reed: We have gone over that a few times.

Trial Examiner Batten: What did you say, Senator?

Mr. Reed: We have gone over that two or three times.

Trial Examiner Batten: Well, I presume an operator would make a suggestion to her instructor that if there was a notch it would work better.

A. That is exactly the point.

Trial Examiner Batten: And probably that person would suggest to Mrs. Tyhurst, or to the pattern department, "If you put another notch in, we can do a better job"?

A. It is just about as definite as that.

By Miss Weyand:

Q. What is done if Mrs. Tyhurst notices that the sequence of operation in a given section in the plant is not the most efficient? What does she do, and what do other people do with it?

A. She would do different things. She might go up to Mrs. Nichols and say, "I think the way your instructions read to have that work go through the plant is not the best way."

Q. What other things must she do?

[fol. 3458] A. She might go to the mechanic and say, the tension on some machine is too tight, and the stitches are too long. Different things could come up.

Q. I was speaking of sequence of operation.

A. If the sequence of operation—she didn't think that the sequence was most efficient, she might discuss it with Mr. Baty, or she might just go to the planning department herself, and I think it would be changed.

Q. Does she ever speak to the instructors to change it?

Mr. Reed: I object to that, if the Examiner please; it is purely hypothetical.

Trial Examiner Batten: Well, Senator, I don't think it is hypothetical.

Trial Examiner Batten: Does she ever speak to the instructor to change the sequence in the section? That is the question, as I understand it.

A. If the sequence was changed, the instructions would have to be changed, so she would go to the planning department to make that suggestion.

By Miss Weyand:

Q. Does she ever make suggestions which can be carried out without going to the planning department, but which would involve the instructors issuing new directions to the girls?

[fol. 3459] A. That is not the setup that we have. She has no—

Trial Examiner Batten: The question is, Mrs. Reed, as far as you know, did she ever do that?

A. Not as far as I know has she ever done that, under our setup. The work is planned in the planning department, and the instructor is supposed to carry out those plans.

By Miss Weyand:

Q. Does the planning department determine the sequence in which a given section works on style or colors?

A. The sequence of working on styles and colors comes from the merchandising division, the instruction as to which styles and which colors to put through first.

Q. Do they issue written instructions specifying the order in which each given style goes through each section?

A. Yes.

Q. And they do the same for color of goods?

A. Yes.

Q. If Mrs. Tyhurst should notice that inefficiency was arising due to the sequence in which styles were given a girl or in which color of materials were given a girl, would she go to the merchandising department, or does she have another method of correcting that inefficiency?

A. Mrs. Tyhurst does not have that particular thing under her management.

Q. Who does?

A. Mr. Baty would be the person that would be called [fol. 3460] upon to say the work sent through, the colors, and so forth, wasn't the efficient way to put it through, unless some one would just go up to the merchandising department, and I question if they would do that. They would go to Mr. Baty.

* * * * * *

[fol. 3462] By Miss Weyand:

Q. Turning now to Mrs. Martha Gray, was she just one of the salesladies in the retail store from 1935 until November 1940?

A. She was.

Q. Were her functions or duties differentiated in any respect from the other salesladies' in that retail store during that period?

A. She turned in the cash, I believe, every night.

Q. Was that the only respect in which her duties differed from those of the other salesladies'?

A. As far as I know, it was.

Q. What is the extent of your information on the subject?

A. I have been in the store a number of times, and I employed Mrs. Gray, or suggested the employment.

[fol. 3463] Q. Is the retail store directly under your supervision, or is there some intermediary between you and Mrs. Gray?

A. Originally the retail store was under my direction.

Q. When did it cease to be?

A. Well, when Mrs. Reeves relieved me of many other duties. I can't state the exact month or the exact time, because a number of my duties Mrs. Reeves had been assisting me on she took over, and I don't—

Trial Examiner Batten: Can you tell us the year, Mrs. Reed?

A. I couldn't tell the exact year—possibly 1935. It was quite some time ago.

By Miss Weyand:

Q. Did the retail store continue to be under Mrs. Reeves's direction after Mr. Baty succeeded Mrs. Reeves in July of 1935?

A. I believe it did. The retail store was run in such an automatic way that there wasn't so much attention paid to it, except simply to send the left-over remnants and materials to the store to be disposed of.

Q. Do you know how many salesladies were employed in the store in April of 1937?

A. Not exactly.

Q. Could you give us an estimate, to the best of your knowledge?

A. Perhaps four or six.

[fol. 3464] Q. Would you say that there were not more than six?

A. I wouldn't say that. There were not many more than that.

Q. And as far as you know, Mrs. Gray was no different from any other [other] salesladies in the plant, except that she turned in the amount of cash?

A. I know that she sold merchandise right along with the others.

Q. You know of no other difference between her and any of the others there employed, except her turning in the cash at night?

A. I do not.

Q. What was Mrs. Gray's salary in 1935?

A. I'm not sure, but I think perhaps $35.00 a week.

Q. Has her salary changed to date?

A. Yes.

Q. What is her present salary?

A. I'm not sure. It is somewhat more. I'm not sure how much it is.

Q. Do you know when the change in salary occurred?

A. I'm not sure.

Q. Would you provide that information for us?

A. I will speak to my attorneys at noon and see.

Mr. Hogsett: Is that not in the record?

Trial Examiner Batten: Up to the summer of 1939, I believe all of these rates are in. I believe there is a copy of the pay roll in the record.

[fol. 3465] Mr. Hogsett: Yes.

Trial Examiner Batten: I would suggest, Miss Weyand, if there is a list of these people and you want their salary status since the summer of 1939, that you make out the list and take it up with Mr. Hogsett or Mr. Ingraham and see whether or not the respondent is willing to furnish it, and under what circumstances, and then I will talk with you attorneys about the matter.

Miss Weyand: I would like to continue to ask Mrs. Reed the questions, and at the end of that questioning provide a complete list of those which I desire.

By Miss Weyand:

Q. What was Lulu Nichols's position in January, 1935?

A. She fixed the piece rates.

Q. Has there been any change in her position since 1935 to date?

A. Her activities were included in this budget system, so that she is at the present time held responsible for the expenses of her activities.

Q. Does she have a department?

A. She is in the planning department; she is one of them. At the present time she, as I said, is held responsible, to a certain extent, for the expenses of her activities.

Q. What expenses is she held responsible for?

A. All of the expenses that would be in it.

[fol. 3466] Q. Will you describe what those are?

Trial Examiner Batten: In connection with what, Mrs. Reed? You mean the price setting?

The Witness: In her instance it would be how much help she required to do it. That would be the main expense.

Trial Examiner Batten: That is her section in the planning, is the price setting; is that it?

The Witness: Yes.

By Miss Weyand:

Q. How many persons does she have in that section?

A. Well, from one to three, or perhaps more than that; maybe four.

Q. Speaking of January 1935, were the prices which she set reviewed by any person in the plant prior to their issuance to the girls?

Mr. Reed: You are speaking of prior to 1935?

Miss Weyand: January of 1935.

A. In the fixing of prices Mrs. Nichols has always had the privilege of discussing and getting help from any source she felt could give her help. I know that Mrs. Nichols—I held her to account to not allow the designing department in any way to influence her in making a lower price so that a model could be put into a certain price range that they might want to do.

Trial Examiner Batten: Mrs. Reed, I think the question [fol. 3467] implies this—I'm not sure—that after Mrs. Nichols sets the price, does that then automatically go to someone else for their approval before it goes into operation?

Is that correct?

Miss Weyand: That is correct.

The Witness: In January 1935, I don't believe it did.

By Miss Weyand:

Q. In the usual, ordinary routine case in January 1935, did Mrs. Nichols consult with someone else before setting a piece rate price? A. Yes.

Q. Whom did she consult with?

A. Sometimes she consulted with piece rate operators, sometimes with instructors, and sometimes with me.

Q. Could you give us any estimate of the percentage of instances in which she consulted with you?

A. In 1935 I would say she consulted with me rather frequently. Her desk is right on the same floor, within 20 feet of Miss Spilsbury's office, and when I am in the plant, although I have an office on the 10th floor, I spend the greater part of my time in Miss Spilsbury's office, and I would be available and in very close contact.

Q. Would you describe what prices are set on the usual garment?

Trial Examiner Batten: You mean the different items of price?

[fol. 3468] Miss Weyand: Well, one for the collar, one for the shoulder seam, one for the darts, and one for the under arm seam,—

Trial Examiner Batten: In other words, on the ordinary dress, before it goes out to the sewing room, you have a schedule. Tell us what that schedule contains.

The Witness: Mr. Batten, from time to time we change that somewhat. Sometimes we have a theory that we want to have every little operation broken up, and we go so far that way that we decide it is better to have several of them together.

Trial Examiner Batten: Just tell us in general the different operations on a dress you set a price on. I presume for every operator who performs a different operation, there has to be a price on it; is that right?

The Witness: Yes.

Trial Examiner Batten: Tell us, in general, then, the—

The Witness: There is the making pockets, making sleeves, setting pockets, sewing shoulder seams, setting collars, putting in darts, or shirring in the blouse, setting sleeves, sewing seams in skirts, sewing pleats in skirts, if there are pleats in the skirt, putting pockets in the skirts, if there are pockets in the skirts, sewing the skirt and blouse together, hemming skirts, and making belts.

By Miss Weyand:

Q. Is a separate price set per dozen for each of the operations you have named?

[fol. 3469] A. Sometimes— For instance, on a collar, a girl may do some other small operation at the same time that seems too small to have a separate operator handle.

Trial Examiner Batten: Whatever number of operations you break it down into, whether it is 5 or 50, on each one of the items you set a price per dozen?

The Witness: That is right.

By Miss Weyand:

Q. Do you have a standard price set for most of those operations that go through each style, or do you set for each style a specific price?

A. We have what we call a basic price for each operation. Then if the material is more difficult to handle, there is an increase put on that price. If a skirt has a number

of gores in it and is very wide, or a number of pleats, and the hem is a much longer hem and more difficult to put in, naturally there is a higher price paid for that. On every operation there is a variation in price according to the type of material used, that is, whether it is difficult to handle or not, and the complications arising from the new design.

Q. Then, it is the practice for the instructions for each garment to be accompanied by a specific set price for each of the operations on that style and goods of garments?

A. That is true. When a girl starts to work on any garment at the Donnelly Garment Company she knows exactly what she is to be paid for that operation, and she knows it right at the time she starts to operate it, not [fol. 3470] at the end of the week.

Q. How is she notified of that?

A. She has a ticket that has on it the price per dozen.

Q. Mrs. Nichols fixes the price for each one of these operations separately for each style and quality of goods; is that correct?

A. That is true.

Q. I asked you this question before, but I would like to get it clear, in view of what we have gone over now:

How large a percentage of the instances in which Mrs. Nichols sets these prices does she consult with you before setting the price?

A. She does not consult with me very often now, because we have a very good basis of setting the prices. She does sometimes.

Q. How often did she consult with you in 1935?

A. More often.

Q. How often, would you say? Was it still very, very rarely?

A. Not rarely at all. I have always been very interested in the piecework prices that were set.

Q. Would it be when there was a new style that was more difficult?

A. Yes.

Q. But if it was a routine style, she would not consult [fol. 3471] with you on it?

A. Yes.

Q. What are the duties of Josephine Spalito?

A. She helps Mrs. Nichols.

Q. I'm sorry. I meant to ask you Mrs. Nichols's salary in 1935, if you know it.

A. I do not.

Q. Do you know it at the present time?

A. No.

Q. Do you know if there have been changes between?

A. I am sure there have been.

Q. Will you furnish that, please? I will furnish the list.

Is Josephine Spalito just one of numerous girls, or two or three girls, I believe you said, who help Mrs. Nichols, or does she hold a position somewhat as assistant to Mrs. Nichols, above the other girls who assist?

A. I believe she is more experienced than the other girls who help Mrs. Nichols.

Q. Does she ever set prices without consulting Mrs. Nichols?

A. Not to my knowledge.

Q. Does she supervise the other girls who assist Mrs. Nichols?

A. There are so few of them that—

Q. Does she have a supervisory position of any sort?

A. I wouldn't say she has. No, she doesn't have.

Q. Do you know what her salary was in 1935?

[fol. 3472] A. I don't remember.

Q. Do you know her present salary?

A. I don't believe Josephine was with us in 1935.

Q. Do you know when she came with you?

A. I don't remember exactly.

Q. Do you know whether she has had increases in salary since she has been with you?

A. I would think so.

Q. Has she been assistant to Mrs. Nichols ever since she has been with you?

A. I didn't say she was assistant to Mrs. Nichols.

Q. Has she done the duties you have described ever since—

A. She assembles information on the garments that are to be priced.

Q. She has done that continuously since she joined the staff of the company?

A. I don't believe she did immediately.

Q. Do you have any idea when she began doing that?

A. I couldn't say the exact date.

Q. Would it be 1935, 1936, or 1937?

A. I couldn't say exactly which year.

Q. Was it prior to 1938?

A. I would say so.

Q. But you do not know how much prior to 1938?

A. No.

[fol. 3473] Q. Would you say whether it was prior to 1937, or do you know that?

A. I believe it was.

Q. You believe it was prior to 1937?

A. Yes.

Q. When did Fred Brown become head cutter?

A. Last fall.

Q. What was his position before he became head cutter?

A. He was a cutter.

Q. Was he in any way differentiated from the other cutters in the cutting department prior to the time he became head cutter?

A. I believe he helped to lay out patterns, and, having been there for a long time, he was considered an unusually good cutter.

Q. Was he an assistant head cutter?

A. He probably assisted the head cutter.

Q. Do you ordinarily have such a thing as an assistant head cutter, a job known as that?

A. I never created that job.

Q. Do you know whether or not there is a job in the plant known as assistant head cutter?

Trial Examiner Batten: You mean now, or at any time?

Miss Weyand: Whether there is now or ever has been.

A. I believe there is now.

[fol. 3474] Q. Do you know when that job began?

A. I believe Fred Brown was made an assistant head cutter at the end of 1940—toward the end of 1940.

Q. Would you be able to fix the date more definitely than that?

A. Well, I would fix the date as sometime early in November.

Q. Was it part of the budget plan you have described?

A. It was.

Q. Did he perform different duties prior to the budget plan from those he performed subsequent to the budget plan?

A. He had more definite duties and responsibilities.

Q. Would you describe the difference that was made in his duties as a result of the budget plan?

A. He was made to share the responsibility with Mr. Scoles as to managing the work, so that there would be less expense in the cutting department.

. . . . . .

[fol. 3475] By Miss Weyand:

Q. Prior to November 1940, did you have an assistant head cutter?

A. I don't remember that we did have.

[fol. 3476] Q. At no time at which you were familiar with the operations of the cutting room prior to November of 1940 did you know of an assistant head cutter?

A. Not definitely, no.

Q. What was Ted Scoles's position in January of 1935?

Mr. Reed: That has been gone into, if Your Honor please, these identical questions.

Trial Examiner Batten: I am sure I couldn't say, Senator.

Will you answer the question, Mrs. Reed?

A. He was in the cutting department.

By Miss Weyand:

Q. Was he just one of the cutters in there, with no differentiation in his duties from the other cutters'?

A. I don't remember exactly.

Q. What was Fred Brown's position in January 1935?

A. He was a cutter.

Q. Was there any differentiation in his job from that of any other cutter?

A. Not to my knowledge.

Q. What was Ted Scoles's position in April 1937?
A. He was a cutter in the cutting department.
Q. Was there any differentiation in his function from that of other cutters' as of that date?
A. I know he did a great deal of cutting.
[fol. 3477] Q. Do you know whether there was any differentiation in his functions? A. I do not.
Q. Was he the highest-paid cutter outside of the head cutter?
A. He was considered the highest-skilled cutter in the cutting department.
Q. Did he receive the highest pay outside of the head cutter? A. Naturally he would.
Q. He did, did he? A. Yes.
Q. What was Fred Brown's position in April 1937?
A. He was a cutter in the cutting department.
Q. Was there any differentiation in his function from the other cutters' in the cutting department?
A. Not that I am familiar with.
Q. Do you know how his salary compared with the salaries of the other cutters' as of April 1937?
A. It was probably somewhat higher, because he had been there a much longer time.
Q. When Ted Scoles became head cutter was Fred Brown the highest paid of the other cutters remaining in the cutting department?
A. My remembrance is that he was.
Q. Did he assist Ted Scoles in managing the cutting department? A. Not to my knowledge.
[fol. 3478] Q. Who was the head cutter at the time Fred Brown became assistant head cutter?
A. I didn't say Fred Brown became assistant head cutter.
Q. He never became assistant head cutter?
A. He may have, but I didn't make him assistant head cutter.
Q. Not even in November of 1940, when your budget system was put in?
A. In 1940 Fred Brown was put in charge of the— Let me see. In 1940— No. Ted Scoles was in charge of the cutting department—he was put in charge of the cutting department in 1940, when the budget system was put in.

Q. And Fred Brown was at that time made assistant head cutter, was he?

A. I didn't have anything to do with it if he was.

Q. Do you know whether he was or not?

A. I really don't know whether he was or not.

Q. Do you know Fred Brown's salary in January of 1935? A. Not exactly.

Q. Do you know his present salary? A. Not exactly.

Q. Do you know whether there has been a change in salary during that period? A. I know there has.

* * * * * * *

[fol. 3479] Miss Weyand: What was Jack McConaughey's position in January 1935?

Mr. Reed: I submit, if Your Honor please, every one of these questions have been asked before.

Trial Examiner Batten: I do not recall any questions, Senator, about this particular individual. I may be mistaken, but I don't recall any.

A. In January 1935, I believe he was in the mechanics department—in the parts department of the machinists' section.

By Miss Weyand:

Q. What were his duties in January of 1935?

A. Clerical work in that department.

Q. Will you describe the clerical work which he did in that department?

[fol. 3480] A. As far as I understand it, he gave out parts and took care of them. Of course Mrs. Reeves was managing the plant in 1935 to a great extent, and I didn't have a personal knowledge of what every single person did in the plant, or how they spent their entire time.

Q. Do you have a term or name which describes the job which Jack McConaughey held in January of 1935?

A. I don't remember it. I don't call it to mind.

Q. Was he called a clerk?

A. I still repeat that we do not define people and jobs down there. If we speak of Jack McConaughey, anyone in connection with that department would know what he did. We speak of people down there by their names. We have, perhaps, a rather personal way of talking. I usually, in-

stead of saying "the designing department,"—very often we say "Miss Spilsbury's department," or "where Miss so-and-so works." As soon as a person takes over a position there, they are more or less identified with that particular job, and anyone is much more apt to call their names than to call any specified title or way of speaking of them.

Q. Are you able to state whether or not Jack McConaughey was a clerk in January 1935?

A. My impression is that Jack McConaughey was for some time in what is called "the cage," and that is where the parts are kept for the repairing of machines, and so forth. Now, whether he was exactly in that department [fol. 3481] in 1935, I am not sure.

Q. Was he a mechanic?

A. He may have done a very few mechanical things. I don't believe he was a mechanic. He is not, to my knowledge, a mechanic.

Q. Would his duties consist simply of providing parts to persons when a call was made for a given part?

A. It is my impression that that was at least most of his duties. That would be my impression of what he did.

Q. Did he assign persons who were to install the parts when he provided the part that was called for?

A. In the sense of managing the repair of the equipment or machines, he did not. When a call came to Jack, he would simply relay that a belt was to be fixed on a buttonhole machine, or perhaps an embroidery machine, or a hemstitching machine, or single-needle machine.

The mechanics, to some extent, are like doctors, they specialize on certain kinds of machinery. The man who was especially good at fixing a buttonhole machine would naturally be called to do that particular work.

[fol. 3482] Q. You say he would be called to do that work, who would call him?

A. He would be asked to take the call by Mr. McConaughey, I suppose; that is my impression of what the work was.

Q. What is Jack McConaughey's present position?

A. He is in charge of the maintenance department; we have made a great many changes in the last few months, and have established a regular maintenance department, and Mr. McConaughey is now in charge of that.

Q. When did he become in charge of the maintenance department?

A. It is very recent, very recently.

Trial Examiner Batten: Was it this year? A. Yes.

Miss Weyand: 1942, is that correct? A. Yes.

Q. Was someone in charge of the maintenance department prior to the time Mr. McConaughey took it over in 1942?

A. No. Our maintenance department has been rather at loose ends for quite some time, and we finally decided that there should be a head to the maintenance department, and we selected Mr. McConaughey, because he had had experience in the parts department, and had understood taking care of them and putting them out, and for some time he has been keeping a record of the parts.

[fol. 3483] Since the warting, those parts have become very valuable, and a great many of them cannot be replaced; they are frozen; and we felt that we haven't probably been as particular about taking care of them as we should, and so we have set up a maintenance department.

Now, Mr. McConaughey is responsible for the parts, and for seeing that none of them are lost, and they are very well taken care of.

By Trial Examiner Batten:

Q. Just what do you include in that department, that he has, Mrs. Reed, what does it take in?

A. I haven't gone into the real details of it.

Q. Well, does it take in janitor work, some of this work that Mr. Price used to do, or is it strictly limited to maintenance on machinery, or does it include maintenance of the building, also?

A. Well, part of the maintenance of the building is taken care of by the people who own the building.

Q. The part that they do not take care of?

A. The part we do—my understanding is, all of that maintenance was to be put in one department, and Mr. McConaughey was to take the responsibility for it.

By Miss Weyand:

Q. Is Mr. McConaughey under or responsible to Mr. Price? A. He is not.

[fol. 3484] Q. Who is Mr. McConaughey under?

A. He would be under Mr. Baty now, but of course he would work in close touch with Mr. Bachofer, because the work he is doing involves a great deal of expense.

Q. Will you state Mr. Bachofer's present position?

A. I would say he was controller. He has complete charge of all of the records and cost accounting.

By Trial Examiner Batten:

Q. Well, is Mr. Bachofer an official of the Donnelly Garment Company, or Donnelly Sales, I don't remember the difference, or is he an officer in both?

A. I don't know whether you call the controller—he is not an officer of the corporation of either one.

Q. Either one? A. No.

Q. He is an employee in this budget, by the Donnelly Garment Company and Donnelly Sales Company?

A. Both of them.

Q. Both of them? A. Yes.

By Miss Weyand:

Q. Does Jack McConaughey have any persons under him whose work he directs?

A. At the present time I feel that he has.

Q. Do you know how many persons he has at the present time under him?

[fol. 3485] A. I do not.

Q. Prior to 1942 what difference was there between Jack McConaughey's duties and his present duties?

A. Well, for—

Mr. Reed: (Interrupting) I submit that question has been answered and the details given in each instance. It has been asked what were his duties at a certain time, and what they were at another time. Now it is asked, to state the differences.

Trial Examiner Batten: Well, the witness may state what the difference is, in her opinion.

Mr. Reed: Well, I object to this interminable repetition.

Trial Examiner Batten: She may tell us what she considers to be the difference.

A. Mr. McConaughey has been in two or three different positions in the last several years, since he first came to our place.

By Miss Weyand:

Q. Can you state them chronologically, with approximate dates? A. I can not.

Q. Will you state such positions as you can recall, and indicate, as best you can, the time when he held those positions?

A. I know that he was in the parts department, and [fol. 3486] received calls for parts and calls for mechanics, and I know that he kept track, and kept an inventory of machinery and parts for a while.

Q. Are those the only positions that you recall his having held? A. Yes.

Q. Did he have persons to assist him in his work in any of those positions? A. No.

Q. Did he have persons to whom he gave instructions, or to whom he assigned work, in those other positions?

A. No.

Q. Do you know what his salary was in January of 1935? A. I do not.

Q. Do you know what his present salary is?

A. I do not.

. . . . . .

[fol. 3489] By Miss Weyand:

Q. What were the duties of Dewey Atchison, what was his position in 1935?

A. For 1935?

Q. Yes.

A. I believe that Dewey Atchison, in 1935, was assisting in the merchandising plant.

Mr. Hogsett: Mr. Examiner, I heard you say a little bit ago, and I was glad to see you say, you wanted to avoid duplication. Now, I positively know that the subject matter of Dewey Atchison's duties, what he did, was made the subject of the most exhaustive inquiry at the 1939 hearing, and I know that, because for the last two weeks I have spent most of my time reading this record, and it is fresh. The whole thing was gone over again and again, with witness after witness, and surely that ought to be enough, at least up to 1939. I am suggesting, in the interest of saving time on a person of that category, whose duties were fully explored, that counsel consider taking only the changes from

'39 to date, and then, by putting the two together, we will have the whole picture as to that person, and it will be fully disclosed. I don't want to forego any rational examination.

If the purpose is merely to test Mrs. Reed's memory, which seems a futile thing to do, if that is proper, all this is [fol. 3490] proper enough. If the purpose is really to get at what duties Atchison had, then I venture to offer the suggestion that the Board's counsel take it from '39 to date, rather than going over the same ground again and again.

Mr. Reed: It has been gone over in this hearing.

Trial Examiner Batten: Mr. Hogsett, one of the things that have been troubling me all of this week, and I don't know how we are going to settle that, and I am afraid is going to raise from time to time, that is, just what did the Eighth Circuit intend, when it suggested further testimony in this case. Now, I might say that I have given that a lot of thought, and I have read the decision over, well, I venture to say 25 times anyway, and underlined various parts of it, and I presume all of counsel have done the same things.

It already has come up in this hearing two or three times, and I feel like suggesting two or three times that all counsel give some thought to that matter, and I am not sure that time won't be saved by all of us, if we were to have a conference of counsel, and see whether or not there is any common ground at all, or any agreement on any one point, as to what the Eighth Circuit intended. Now, I can understand, if we do not arrive at some kind of an understanding, or I do not take the responsibility for placing a limit somewhere [fol. 3491] on it, we are apt to not only try this matter all over again, you might say, from the beginning, but try over several other matters that weren't at issue in the last hearing. I am making these remarks now, because I want all counsel to give some thought to it, and I had in mind, when we finish with Mrs. Reed, conferring with all counsel about that matter.

Mr. Hogsett: That will be very helpful.

Trial Examiner Batten: All I can say about the situation now, Mr. Hogsett, what I believe I said Tuesday, when Mrs. Reed was testifying, and yesterday and this morning,

that is, that I don't feel that I should attempt to limit the testimony of Mrs. Reed, because of her position with the company, and because of the fact that she did not testify in the prior hearing.

Now, I don't want counsel to feel that because I have been, at least what I consider to be extremely liberal with Mrs. Reed, that I intend to follow the same practice with witnesses hereafter, unless they are witnesses of importance. I mean by that, officials of the company who did not testify in the prior hearing.

Now, on the basis of that statement, I am not going to limit Miss Weyand, but I will say this: I might be mistaken, but I have a recollection that this morning, Miss Weyand, you went into, to some extent, the matter of [fol. 3492] Dewey Atchison's duties. I may be mistaken, but my recollection is that you did; but you may proceed with your examination.

Miss Weyand: I believe there is a question pending. Read it, please.

(Question read by the reporter.)

A. Miss Weyand, by 1935 Mrs. Reeves had taken over the management of the plant, and I don't pretend to know every single thing that everybody did at that time. From time to time, Mrs. Reeves consulted with me on the policy and people; to some extent, I am familiar with them, but I made no pretense of knowing what everybody did, how much every mechanic made, and how much every cutter made, I make no claim.

If you are trying to say that I am non compos mentis in regard to that plant, maybe I am. I have been able to keep my people working for a good many years, when most other plants have not. You may not think that I have a good memory or good mind, and want to prove it.

By Miss Weyand:

Q. Can you say what Dewey Atchison's duties were in January, 1935?

A. I say that I can't state exactly what they were.

Q. Will you state, as far as you understand, what they were after he was under Mrs. Reeves' direction?

A. I will state that.

Q. Did he have persons working under him?

[fol. 3498] A. Not to my knowledge.

Q. Could you state further the type of work that he did?

A. I stated that I make no pretense of keeping track of what everybody in the plant did.

Q. Was he in charge of timing piece rates, timing work to piece rates, to produce piece rates?

A. He may have done some piece rate timing at different times; I don't know that of my own knowledge, what he did in 1935.

Q. Do you know, to your own knowledge, whether he has done any of that work since 1935?

A. I do not.

Q. What is Dewey Atchison's present position?

[fol. 3494] A. He has ideas about manufacturing and—I don't know what his present title is. If we have a new method of production, we discuss that with him—Mr. Baty discusses it with him, and probably Mrs. Reeves, if it has anything to do with her getting work into the plant.

Q. Does he have persons working under him at the present time?

A. He has at the present time.

Q. Is there some name by which you designate the group that works under him?

A. There is no name by which I designate them.

Q. Can you describe what their duties are?

A. They work on plans of putting the work through the plant more efficiently, trying to devise methods of production, and so forth.

Q. Is the work his group does generally known as industrial engineering work?

A. I never conferred that title upon Mr. Atchison.

Trial Examiner Batten: Do you know what an industrial engineer is, Mrs. Reed?

A. Yes, I know what an industrial engineer is. I have employed some of them.

Q. The only reason I asked you was, I have heard so many different descriptions of that title—

A. I am under the impression that an industrial en-
[fol. 3495] gineer has certain training, like a certified accountant. While Dewey is a very clever young man and has had a lot of experience, I don't believe he has studied any course of industrial engineering.

Q. Well, to dispose of the matter, you do not call him an industrial engineer, or consider him one?

A. I have employed industrial engineers and—

Q. The question is, Mrs. Reed, do you consider him an industrial engineer?

A. I don't know what difference it makes whether I do or not.

Q. Let's assume it doesn't make any difference.

A. I don't see that it does.

Q. Let's assume it doesn't. Do you consider him an industrial engineer?

A. He and I have never agreed that he is an industrial engineer.

Q. Do you consider him one?

A. I have never thought of it before. I have thought of industrial engineers as people outside who sign up and consider themselves as industrial engineers to—

Q. Do I get it from your answer, then, you do not consider him an industrial engineer?

A. I do not consider him an industrial engineer. That is no reflection on him, however.

[fol. 3496] By Miss Weyand:

Q. Is his work that of establishing efficiency methods within the plant?

A. He makes suggestions, and some of them are taken and some of them are not.

Q. What difference is there between his work and the work which Mrs. Tyhurst does?

A. Well, Mr. Atchison is not held responsible for the quality of the work as it is put through production.

Q. What is he held responsible for?

A. I don't know whether you can say a person is held responsible for ideas or not. He furnishes some ideas about production and makes a study of the efficient way for a garment to go through the plant and makes suggestions about how to handle it.

Q. Is he in the planning department?

A. He is often consulted in the planning department.

Q. But he is not a member of the planning department?

A. I would say he was a member of the planning department, if you put it that way.

Q. Does he work on plans for given styles or dresses regularly, as each style comes up?

A. Very often I call him into the designing room myself, if I have an unusual design or an unusual thing to be done, and ask him if he has any suggestion of a better way to do it than the way it seems we are going to have to do it.

[fol. 3497] Q. Is his job primarily concerned with the manner in which each given style is made in the plant, or is he concerned more with general methods? Is his work directed to each specific style, or does he make plans as to the general mode of operation followed?

A. Well, if you make plans on the general— After all, it is an individual garment that is made. I would say he makes suggestions both ways.

Q. Is his work primarily one or the other?

A. Sometimes it is perhaps one and sometimes perhaps the other. If we are putting a new line into the plant, it is more on the individual garment. Then, if he has a little extra time, he is perhaps working on some idea he might have, or some suggestion he might want to make about our planning generally.

Q. Does his work deal with the organization of the plant as contrasted with the sequence and manner of operations on a given garment?

A. I don't understand your question, Miss Weyand.

Trial Examiner Batten: Will you read the question?

(Thereupon the last question was read by the reporter.)

The Witness: The question doesn't make sense to me.

Trial Examiner Batten: What does "organization" have to do with "sequence"? I don't understand the distinction between the words "organization" and "sequence."

[fol. 3498] Miss Weyand: I will go into what I had in mind in asking that that question be answered.

By Miss Weyand:

Q. Will you describe how a section of sewing operators in your plant works?

A. Now, what do you mean, specifically?

Q. Are there two methods, in the garment industry, of making a dress; one, having a skilled operator make substantially a complete dress, and the other, having a section of approximately 40 girls, each specializing on one operation, making a dress?

A. Answering your question, there are two general methods of sewing. One of them is that an operator makes an entire dress, and she is supposed to be a skilled dressmaker. The other is where a section—each operator makes just one section of a garment. Now, that sectional sewing is what is used in my plant.

Q. Does the sectional method of sewing require less skill on the part of an operator than the other method?

A. As a dressmaker, it would. In the other method, a woman would have to be a skilled dressmaker to know how to put a whole garment together. In the sectional plan a woman could be taught to do just a certain part of the garment.

Q. Is there a term which covers the other method? You call yours the sectional method. Is there a name for the other method?

[fol. 3499] A. I would say dressmaking.

Q. One is a dressmaking system and the other a sectional system? Would that be the correct way to refer to it?

A. Yes.

Q. Does your sectional system require a larger degree of planning on the part of the management than the dressmaking system?

A. Yes.

Q. Did you devise the sectional system?

A. No.

Trial Examiner Batten: Just a moment. You mean, did Mrs. Reed herself originate the idea?

The Witness: Oh, no. The sectional system has been used in the overall, work clothing, and children's clothing industry for several years.

Trial Examiner Batten: I think with Ford's system, and other mass production systems in general, there is the breaking down of a trade into its component parts. I presume it is the same theory, is it not?

The Witness: Yes. The same thing has been done in overall plants and children's garment plants for many years.

By Miss Weyand:

Q. The reason I asked was because you stated yesterday in your statement that the institution of instructor was something new in your plant.

A. You misunderstood me, or probably took in more [fol. 3500] than I intended that you should.

Q. Could you clarify what seems to be my misunderstanding in that regard?

A. I meant that I started the system of having so many machines, with an instructor to show the girls how to do the work. And particularly, I had— In my own specific instance, I just have 40 machines, and in other plants, they may have 30, 50, or any other group, under an instructor.

Q. Does Dewey Atchison's work concern itself with the method of organization, that is, how many girls you have in a section, or whether the examiners, of whom we spoke this morning, shall be in a separate section or in a section together with the sewing girls?

A. I would say that Mr. Baty really has charge of that. He discusses the plans and ideas with Mr. Atchison.

Q. The plans that Mr. Atchison deals with are plans in that field, primarily, are they, rather than plans on each specific dress from day to day, as you plan the instructions for this dress?

A. Miss Weyand, I couldn't tell you just exactly what duties Mr. Atchison has from day to day because he is not under my direct authority. I don't know. I do not feel that it is necessary for me to know just exactly what Dewey does from day to day, whether he spends this much time on this, and that much time on that—I don't pretend to know that.

[fol. 3501] Q. You could not say whether his field is generally planning as to organization and structure of plant operations as opposed to getting up the instructions on a given style?

A. No, I wouldn't say it is. He helps on both.

Q. How many persons does he have assisting him at the present time?

A. I don't know.

Q. What changes have occurred in his work in recent years? Do you know of any?

A. I know that Dewey came in under this budget system, trying to pin down individual people for responsibility to help to get down the expenses and keep them down.

Q. Had he been working in that general field prior to the institution of the budget system?

A. He was working in that field. I would say he was. As I said before, he was working for a number of years with Mrs. Reeves, and for a number of years with Mr. Baty.

. . . . . .

[fol. 3502] By Miss Weyand:

Q. What were Hobart Atherton's duties in January of 1935?

Mr. Hogsett: Objected to as repetition.

Trial Examiner Batten: Hasn't that been covered, Miss Weyand?

Miss Weyand: I have not asked about him.

Trial Examiner Batten: Well, I haven't been making [fol. 3503] notes of these names.

Mr. Reed: Now, Mr. Examiner, if you will permit me,—I made a list of the persons that were inquired about; I have it here before me, and he was inquired about.

Miss Weyand: I will concede I inquired about Mr. Atherton, and I am very sorry.

Mr. Reed: She inquired also about Miss Spilsbury, Mrs. Gray, Jeters, Strickland, Justus, Tyhurst, Scoles, Hartmann, Hauser, Belter, Fitzgerald, Fred Brown, Dewey Atchison, Mutchler, Nichols, and Ely.

Miss Weyand: I have inquired only about certain of those as to 1935, and I wish to bring them up to date. I did make an error about Mr. Atherton. I will watch that and try not to do it again.

. . . . . .

[fol. 3504] By Miss Weyand:

Q. Was Cecile Ealy employed by the Donnelly Garment Company, in January of 1935?

A. Yes.

Q. What was her position?

. . . . . .

A. I don't remember what her position was in 1935.

By Miss Weyand:

Q. What is her present position?

A. I believe assistant to Mr. Baty.

Q. When did she become assistant to Mr. Baty?

A. In 1940, and toward the end of 1940.

Q. Was that in connection with the reorganizing you have described?

A. It was.

Q. And what were her duties prior to that time?

A. Mr. Baty was in charge of the plant, and I don't know exactly what her duties were.

. . . . . .

By Miss Weyand:

Q. Does Cecile Ealy now hold a supervisory position?

A. I would say that she does not.

Q. Is her position in any way intermediary between the [fol. 3505] instructors and Mr. Baty?

A. I can't say exactly what her duties are. I know she assists Mr. Baty in his work. Now, just what she does do, I don't know.

Q. You can't state anything further about her work, except what you have just stated?

A. No.

Q. What is Mrs. Bogart's present position?

A. She is in the dividing department.

Q. Does she hold a supervisory position?

A. I would say she does not.

Q. Does she — is she instructor of the dividing department?

A. She is the person that directs the way the work is done in that department.

Q. Could you state what the work in that department is?

A. It is dividing. We probably have 100 dozen garments in one cutting, and in the dividing department, they put it into bundles, whatever size bundles are called for on the cutting card; they are separated into bundles, perhaps two dozen.

By Trial Examiner Batten:

Q. And do they route the bundles to the section?

A. Yes, and then the bundles are taken in baskets by what we call bundle boys, to the sections.

[fol. 3506] By Miss Weyand:

Q. How many employees does she have, to whom she gives directions?

A. In that dividing department there, I don't know exactly how many in numbers. Mr. Baty has general charge of that, and he has as many in there as he needs.

Q. Could you approximate, at all, the number?

A. I suppose eight or ten.

Q. And has she been in charge of that department continuously since January, 1935?

A. I wouldn't say that she was in charge of that department; she was considered as instructor, and would have—the same thing would apply to her as all the others, applied to all the other instructors. Mr. Baty took that department over, and that section.

Q. She was an instructor in January, 1935, was she?

A. She was in a similar situation as an instructor.

Q. She has continued in that department without a change except those changes which occurred as to instructors in July, 1935, and then again at the time of reorganization in November of 1940, has she?

A. Will you state that question again? This late in the afternoon it is hard for me to get it.

. . . . . .

A. I am not absolutely sure about Mrs. Bogard, be-
[fol. 3507] cause there were so few people required to do the dividing. I don't know exactly what her situation was.

By Trial Examiner Batten:

Q. When Mr. Baty was put in charge of the plant, she was under Mr. Baty? A. Yes.

Q. Were there any changes made at that time in her duties or responsibilities?

A. Mr. Baty was instructed to take over the entire responsibility in the plant.

Q. Well, was this it, the same change?

A. If she had responsibility that he felt—

Q. He should take, he took it? A. Yes.

Q. Do you know whether he did take any of her responsibility, do you know of your own knowledge?

A. From my understanding with Mr. Baty, he did.

Q. In November or December, when you put in the budget system, did that apply to Mrs. Bogart's section, the dividing section?

A. I would—I don't remember exactly, because I didn't personally interview everybody on this budget system.

Q. You don't know whether the dividing section was put under the budget or not?

A. I know that these sections were not put under the budget; I explained that yesterday. The instructors didn't [fol. 3508] go under a budget.

Q. Do you know whether there was any change made in November or December, in Mrs. Bogart's section?

A. Mrs. Bogart would have had the same responsibility put on her again that the instructors had.

By Miss Weyand:

Q. Was Lyle Jeters employed in the company in 1935?

A. He was.

Q. What was his position?

A. I think he was a mechanic.

Q. Did he have any supervisory duties in the mechanical department prior to December of 1940?

Mr. Ingraham: Just a minute. Didn't you inquire about this person, Lyle Jeters, yesterday? I think you did.

Miss Weyand: I don't have any record that I did. I looked over the record, and I don't have any record that I did.

Mr. Reed: Yes, I have it, and also have the answer. Something was said about him being in the notion department.

Trial Examiner Batten: It is a matter of a question or two. Let's proceed. It will take less time, if you are not certain.

By Miss Weyand:

Q. Did he have any supervisory duties prior to December, 1940? A. He did not.

[fol. 3509] Q. Was he working in the mechanical department, in any different position from that of any of the other employees of the mechanical department, prior to December, 1940? A. He is an expert mechanic.

Q. Did he direct the work of the other mechanics, if any, in regard to prior to December, 1940?

A. Not to my knowledge.

Q. Do you have sufficient acquaintance with the mechanical department prior to December, 1940, to know whether or not he did direct the work of the other employees therein?

A. My information and understanding is, and I believe that I was familiar with it enough to know, he did not have.

Q. Have you personally participated in all general decisions pertaining to labor relations matters in your plant during the period of 1935 to the present time?

A. That is a pretty big order.

Trial Examiner Batten: Do you mean whenever a general policy, labor policy, is confronted, she participated?

Miss Weyand: Has she participated in the decisions each time there has been a change in that period?

A. I don't know what you mean, change of labor policy, in that period.

By Miss Weyand:

Q. Whenever a problem comes up, do the other persons consult with you, when it affects labor relations?

[fol. 3510] A. Since 1935?

Q. Yes.

A. My understanding is that no one, in my company, would do anything that affected labor relations without discussing it with me.

Q. Are you acquainted with the manner in which the pay roll is kept? A. In a general way.

Q. On Board's Exhibit 28-A, being pay roll for the period of April 16th to April 30th, 1937, I notice that a general heading entitled "Buying Record" is there. Could you tell me what that heading means? I will be glad to show you the exhibit. I direct your attention to Exhibit 28-J and 28-K. Will you explain to me what the term "Buying Record" means.

A. I can't see what relationship that has with labor relations.

Trial Examiner Batten: The question is, and the only question to you, do you know what that term means?

A. Mrs. Reeves keeps certain buying records.

Trial Examiner Batten: Is that what it refers to?

A. It says "Buying Records" and the different—two girls' names.

By Miss Weyand:

Q. It is continued on the next page, and appears to be a subdivision, and there is the Receiving Department, [fol. 3511] and the Buttonhole Department, and the pay roll is broken down?

A. Without examining this further, I don't exactly know what you want. I might say that it may have something to do with cost accounting.

Q. Examine it as much as you wish, to determine what that means. I would suggest that you look through some 10 or 12 pages preceding, and some 30 or 40 pages thereafter, if you want to get a general picture of what that exhibit is. A. I would like to.

Q. Take your time.

A. You said about 12 pages before?

Q. The whole exhibit, I suggested.

A. You don't mean for me to read this whole thing?

Q. Here it is. Take a glance so you will know what you are dealing with. It is right here, and after reading the stipulation, if you will glance through the next 68 pages, it will be very evident to you what they contain.

A. It says they contain the pay roll of the time workers.

Q. That is correct. A. All right.

Q. You will see they are broken down to departments on this first page, 28-A. You have a Cutting Department,

and following that are the names of the time employees in the cutting department?

[fol. 3512] A. Yes, I see Ted Scoles and Ben James, and a number of cutters.

Q. And 28-B continues the cutting department, and then you will find the dividing department following that?

A. Yes. In the dividing department is Mary Bogart, Mary Hull and Edna Curry—

Q. I don't think you need to read them.

A. And here are the instructors and floorladies. I think at this time I should make the remark that floorladies in our plant are not the same as a floorlady, generally speaking, in another factory. These are the women that do this work, are merely on the floor, on the section, and give out work, and have nothing to do with the direction of the work.

By Trial Examiner Batten:

Q. Mrs. Reed, you notice the pay roll is divided into departments, is that true? There is a section of pay roll headed up by a name of some kind?

A. That is, I believe, for the purpose of knowing where to charge—

Q. Irrespective of the purpose, you notice that is done?

A. That is done for cost accounting purposes.

Q. Irrespective of that, it shows that on the exhibit?

A. Yes.

Q. Now, the question is, what does the heading mean, that Miss Weyand referred to, what was the name?

Miss Weyand: "Buying Record".

[fol. 3513] Trial Examiner Batten: What does that mean, when that heads a section, when there is a section under that heading?

A. Well, in Mrs. Reeves' department, I don't know why she separated "Buying Record" with two girls working on it.

By Miss Weyand:

Q. I think you are mistaken about the two girls. It went over on the next page, and contained more names.

A. Well, the pressing and folding department,—let's see. And the buttonhole department, Stella Willis is listed and Harold Etherton is in the hand sewing department,

and Francis Morrison. You can't take this list literally, because I see "Hand Sewing Department, Francis Morrison," and down in the next line was H. J. Etherton, T. G. Boozell, and he is down in the lobby on the first floor, and they have them here in the hand sewing department. I think they would strenuously object to being classified that way.

Q. I wasn't in the case before, and I see a stipulation on the exhibit that is what your pay roll records show.

Mr. Langsdale: The record was prepared by Mr. Ingraham, and I suggest if it is incorrect he take it back and correct it.

Trial Examiner Batten: Well, let's get back to the question. The question is, what does "Buying Record" mean to you?

[fol. 3514] A. Did she ask me to look this whole thing over?

Mr. Hogsett: They want the definition of two words.

A. They say this is absolutely correct.

Trial Examiner Batten: No one said it was correct or incorrect. The only question to you is, what does "Buying Record" mean to you. Does it mean anything? If it doesn't mean anything to you, well, that is the answer.

A. I see Jack McConaughey is in the clerical and maintenance department.

Mr. Hogsett: To speed it up, is there any objection to calling the head of the accounting department?

A. The point is, we can clear it up very easily, Mr. Hogsett. The same thing has happened to be put in here about Mr. Etherton and Mr. Boozell, in these departments, that has happened to the buying record, with two girls in here. They have Herb Fountain, and there are a great number of names here.

By Trial Examiner Batten:

Q. Those people don't come under that sub-heading, is that your position, on the other page? The only point, Mrs. Reed, if you don't know—

A. Well, I don't know. I didn't make up the pay roll.

Q. If you don't know what it is, Mrs. Reed, that is the answer.

A. Well, I really don't know.

Q. All right, that's the answer.

[fol. 3515] Mr. Reed: We will undertake to have somebody who does know.

By Miss Weyand:

Q. Could you tell me who determines how the pay roll is set up, in reference to departments?

A. I believe Mr. Bachofer does that.

Q. You give him no directions whatsoever as to that?

A. I haven't recently.

Q. Did you in 1937?

A. No.

Q. Did you ever have occasion to examine the pay roll to see how it was kept?

A. The only time I carefully examined the pay roll was in our injunction suit, when I looked over the piece-workers' pay roll. I have no occasion to check pay rolls. I depend on the people who get them up to get them up correctly.

Q. Did you ever give any directions as to whether the head of the department was to be carried on the pay roll in the same department with the other time-workers in that department?

A. Miss Weyand, I have never given any directions about office work. That is one thing I have done very little about.

Q. Do you know what has been the practice as to carrying the head of the department on the same pay roll sheet with the other time-workers in the department?

[fol. 3516] A. No, I really don't know.

Q. If you went to the pay roll to examine the record of the head of the department, where would you look for it?

A. I would never go to a pay roll to examine the record of a head of a department.

Q. What was your remnants department?

A. I didn't know there was a remnants department.

Q. Referring to Board's exhibit No. 28-BBB, will you look at the names of the employees listed under "Remnants Department" and see if you can tell me what those employees do?

A. I really couldn't, Miss Weyand.

Q. Are you acquainted with the names of the girls that appear there?

A. Some of them.

Q. Do you know whether they do, or did on this date (indicating on Board's exhibit No. 28-BBB), which is July 1937?

A. It doesn't say "Remnants Department" here. It says "Dividing Department."

Q. Right here (indicating)—

A. Oh, excuse me. I didn't look at the top there. The remnants have been handled in various ways. At times they were folded in the factory, and my recollection is that very often, if we are a little short of work, we have a certain group of—oh, an operator, or anybody—we would keep them busy by folding remnants. Now, that is done [fol. 3517] either in the plant, or it may be done in the store. I don't know. It's an awfully big job, folding remnants, but I never heard of a remnants department.

Q. Is that what these girls (indicating on exhibit) did at that time?

A. I don't know. I am not acquainted with that. I think different girls folded remnants at times. I don't think there were specialists in remnant folding.

Trial Examiner Batten: In other words, you do not recall any of those names, Mrs. Reed, in 1937?

A. No.

By Miss Weyand:

Q. This continues on Board's exhibit No. 28-CCC.

A. I am not familiar with those names.

Q. I notice there is also a further name in that department, on Board's exhibit No. 28-DDD, Molly Smith. Are you acquainted with her?

Mr. Hossett: Mr. Examiner, I object to this line of inquiry as absolutely pointless. Now, I make that objection seriously. It doesn't tend, even in the remotest degree, to prove that the Donnelly Garment Company sponsored, dominated, coerced, or otherwise influenced the formation of the employees into a union, or to prove or even bear upon any allegation in the complaint. What a given girl did in folding remnants hasn't a thing in the world to do with anything we are here to try.

[fol. 3518] I think the Board should have just as broad latitude as Your Honor has wisely given us in the direct examination of Mrs. Reed, for the reasons you have stated, but there ought to be a limit here somewhere. If we are going into the picayune matter of a girl folding remnants, what in the world has that to do with anything we are here to try?

I submit, I think Your Honor ought to intervene.

Trial Examiner Batten: Miss Weyand, what have you to say about that?

Miss Weyand: I think the purpose of my examination will become evident as I proceed. I prefer not to state it at this time.

Trial Examiner Batten: If I will excuse the witness, do you care to state your purpose?

Miss Weyand: I would rather you rule on each question as I put it.

Trial Examiner Batten: I don't care to rule on each question—

Miss Weyand: I might say, there will be no further examination of the type I have just given. I am proceeding to a question which is not of that type.

Trial Examiner Batten: You mean this question you have asked?

Miss Weyand: She has completed that question, and I was proceeding to ask another question.

[fol. 3519] Trial Examiner Batten: You may proceed.

Miss Weyand: Will you look at Board's exhibit No. 28-KKK, under the heading "Retail Store," and state to me whether those were the saleslaadies in the retail store on the date there specified, being July 1, 1937, to July 15, 1937?

Mr. Hogsett: Objected to as immaterial and not tending to prove anything in this case.

Trial Examiner Batten: I will overrule the objection. She may tell us if those were the people in that department at that time.

A. I am not entirely familiar with the people in that department in the store. I really couldn't say.

By Miss Weyand:

Q. Have you read over the names there appearing?

A. I have. There are some of them I know were in the store.

Q. Will you identify which ones you know were in the store?

A. Rose Murray and Camilla Cochran.

Q. You don't know further than that?

A. No.

Q. Do you see Martha Gray's name there?

A. No.

Q. How do you explain the absence of her name from the pay roll?

A. I didn't have a thing in the world to do with getting [fol. 3520] up the pay roll. They keep the pay rolls down there in order to make it easy to keep the cost accounting, so if they charge a certain percentage or certain people to one set of cost accounting records, they will do so. I am not familiar with how they get up a pay roll. I will have to admit that the ways of cost accounting are complete mysteries to me. I have never attempted to go into it. I have never had anything to do with getting up a pay roll or telling anybody how it should be gotten up, or had anything to do with the cost accounting at our place.

Q. Did Martha Gray's duties from July 1 to July 15, 1937, differ from the salesladies' you identify as having known on this pay roll?

A. I know of one practice. She may have been on vacation and, for some strange reason, at our place when a person is on vacation they are not on the pay roll at that time.

Trial Examiner Batten: The question, Mrs. Reed, is, were Mrs. Gray's duties at that time different than the duties of the girls you have identified here?

The Witness: They get the pay, very often, before they go, or get it before they come back, but at that specific time they wouldn't be on the pay roll.

Trial Examiner Batten: The question, Mrs. Reed, is, were Mrs. Gray's duties at that time any different than the duties of the two girls' you have identified as working in [fol. 3521] the retail store? Whether she was on vacation or whether she wasn't, were her duties any different than these two girls' in the retail store?

The Witness: I don't know that they were. However, I wouldn't be able to say what Mr. Bachofer did in getting up his pay roll.

Trial Examiner Batten: I didn't ask you anything about the pay roll.

The Witness: I am just saying, the fact that their names are not on the pay roll in this specific place would be something I couldn't explain.

By Miss Weyand:

Q. Your best explanation would be that she was probably on vacation?

A. I didn't say that was my best explanation. I said when people were on vacation, I noticed they were not—

Q. Would you expect to find her name amongst those?

Trial Examiner Batten: "Amongst those"?

A. I am telling you, I wouldn't know where to expect to find anybody's name on my pay roll.

Trial Examiner Batten: What do you mean, "amongst those"?

Miss Weyand: Under the heading "Retail Store," with the girls' names she saw there and knew as girls in the retail store.

The Witness: I still say that the getting up of a pay [fol. 3522] roll that is worked out in connection with the cost accounting is something I have never had anything to do with, and I don't know why they put certain names in certain places.

Miss Weyand: Do you know of any reason—

Trial Examiner Batten: Just a moment, Miss Weyand.

Irrespective of who makes up the pay roll, or where they put names, would you expect to find Mrs. Gray's name

on the pay roll in the same place you would find the other girls who were working in the store?

The Witness: Unless there were some reason for its not being there, I would.

By Miss Weyand:

Q. What reason might there be for not placing it there?

A. I don't know. I have explained I don't know anything about how they get up a pay roll or why they put certain names in certain places.

Q. Was there anything in her duties which would lead you to think that a cost accountant might reasonably place her in a department different from which he placed the other girls you noticed there?

Mr. Hogsett: Objected to as basing speculation upon speculation and nothing at all of any value.

Trial Examiner Batten: The objection is sustained.

By Miss Weyand:

Q. Will you look at Board's exhibit No. 28-NNN and tell me whether or not you notice Martha Gray's name [fol. 3523] there? A. It is.

Q. You will notice, that is the same pay roll period?

A. It is.

Q. Can you explain why Martha Gray's name appears on that page of the pay roll and not with the other saleslgirls'?

A. Now that I see other names there, I can understand that the cost accountant might decide to charge a certain percentage of the cost of selling the goods direct to the buying, because here (indicating on exhibit) is a girl that I know would be directly charged to buying, and that would be my explanation of having her under "Buying Records."

Q. Will you look at the other names under "Buying Records" and explain why they should be charged to "Buying Records"? Herb Fountain is the first name.

A. He was cutting up the material, and in the cost accounting we have a charge that is added on to the cost of material that takes in—I don't know how much or what. The only reason I would say there, they might have put that into the cost of material.

Q. Is there any reason why Herb Fountain should be selected rather than another cutter?

A. I wouldn't know.

Q. Is there any reason why Martha Gray should have been selected rather than one of the other salesladies?

[fol. 3524] A. I wouldn't know.

Q. Would there be a reason why Florence Strickland's name should appear on there rather than among the other designers'? A. I wouldn't know why.

Q. Would there be a reason why Ella Mae Hyde, the personnel manager, should be charged to the buying records?

A. I said I don't know how they get up the buying records, and I don't know how they get up the pay roll. I don't know how they arrive at what they charge to what.

Q. You will notice this "Buying Records" section from July 1 to July 15, 1937, contains in large measure a collection of the names which we have been talking about. Will you look that over and notice?

A. I can understand why Ella Brown would be charged to the buying records, and Katie Schleicher.

Q. You will notice that the "Buying Records" contains some of the names we have been talking about today. Elizabeth Belter, would that be Betty Belter? A. Yes.

Q. Harlan Justus? Also, Herb Fountain—

A. He works on assembling the orders, doing record work for them.

Q. Anna Wherry?

A. I am saying I don't really know why any names are any place on this record. I am not competent to say, [fol. 3525] because I don't know. I have had nothing to do with telling them where to put what. We have a cost accounting system, and we have a pay roll arrangement, and apparently people are paid. That is one part of the business I haven't gotten into.

Q. You looked over all of the names in that department so you would know—

A. I don't remember all of the names. Maybe you think I am perfectly stupid, but I couldn't remember them 5 minutes.

Q. I want to ask you whether—

Trial Examiner Batten: Just a minute, Miss Weyand.

The question is, whether you looked over the names on there, Mrs. Reed?

The Witness: I didn't look over every name.

Trial Examiner Batten: I would suggest, then—You want Mrs. Reed to look over all of those names there, do you?

The Witness: If I do, I won't be able to tell you 3 minutes after—

By Miss Weyand:

Q. I want to ask you if you see any reason why that group of people should have been grouped in a department separate from the others; if in looking through them you see any common denominator among those people.

A. Miss Weyand, I am telling you, I don't understand how they get up a pay roll.

Q. Is there any common denominator among those persons, as you look them over—

[fol. 3526] A. I still say I don't understand—

Trial Examiner Batten: Miss Weyand, the witness has stated she doesn't know why, and unless there is some further question, I would say that that is sufficient.

Miss Weyand: I wanted to have the record show that the witness by looking at the names could not see any common denominator amongst them which would be a clue to her of why they should be grouped together.

The Witness: I still say—

Trial Examiner Batten: Just a minute, Mrs. Reed.

Of course, the witness having said she doesn't know why they are there—

Miss Weyand: —and having looked at them, she still doesn't know why they are there. Is that true?

The Witness: I still say I have nothing to do with the pay roll and I wouldn't know why they are there.

By Miss Weyand:

Q. Has your company had occasion to furnish the Wage and Hour Board a statement of the supervisory personnel of your company? A. Yes.

Q. Were you acquainted with the preparation of the material which was submitted to the Wage and Hour Board? A. In a general way.

Q. Do you know the signature of Alex Green when you see it? A. I believe I would.

[fol. 3527] Miss Weyand: I will ask the reporter to mark this as Board's Exhibit No. 32.

(Thereupon the information report above referred to was marked for identification "Board's Exhibit No. 32, Witness Reed.")

Trial Examiner Batten: We will take a recess of 10 minutes.

(Thereupon a 10-minute recess was taken.)

Trial Examiner Batten: We will proceed.

By Miss Weyand:

Q. I hand you Board's exhibit No. 32 for identification and ask you if you recognize the signature thereon as the true and correct signature of Alex Green? A. Yes.

Q. Is he vice president of the Donnelly Garment Company at the present time? A. Yes.

Q. Was he vice president in 1940? A. Yes.

Q. Will you look at the exhibit and tell me if you are acquainted with that document?

A. The filing of the document was discussed with me. I don't remember that I ever just saw the document after it was completed.

Q. You participated in the preparation of the document through discussion with the persons who actually typed it up, did you?

[fol. 3528] A. I did.

Q. Does it represent a correct statement of the supervisory force of your company in November and December of 1940? A. I would say that it does.

Q. Did the supervisory status there shown exist at your plant prior to November or December of 1940?

A. Will you please ask the question again?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. This is made up as of October 30, 1940. I would say it was very close to November or December of 1940.

[fol. 3529] Miss Weyand: Had that supervisory status changed at your plant at any time prior to November 1, 1940?

A. This document you mentioned is dated October 30th.

Trial Examiner Batten: I think the question was, prior to October 30th, the date of the document, prior to October 30th, 1940.

A. I would say that this was the time that we decided that we were going to put in the supervisory arrangement, the budget arrangement, at that time.

Miss Weyand: Did that supervisory status there presented, exist in operation at your plant, prior to October 30th, 1940?

A. It did not.

Miss Weyand: I offer this exhibit in evidence, Exhibit 32.

Trial Examiner Batten: Any objections? There being no objection, it will be received.

(The document heretofore marked, "Board's Exhibit No. 32, Witness Reed," for identification, was received in evidence.)

[—] May I see it?

A. Yes. I would like to see it myself, again, please. What did you say?

Trial Examiner Batten: I said, Mrs. Reed, if there was no objection, it would be received.

[fol. 3530] Trial Examiner Batten: I don't hear an objection.

Miss Weyand: I would like the reporter to mark the pages thereof, on the front of the first page, 32-A, 32-B on the back of the first page, and 32-C on the front page of the inner sheet, and 32-D on the back of the form sheet, and 32-E on the attached information.

A. May I see that, please.

Trial Examiner Batten: Is there any objection to marking these sheets like that? Miss Reporter, will you mark this, please? That will be A, B, C, D and E.

(Thereupon the documents above referred to were marked "Board's Exhibits 32-A to E inclusive, Witness Reed," for identification, and received in evidence.)

Miss Weyand: I am going to ask leave that this exhibit be withdrawn and photostatic copies substituted, and in that connection I would like to have counsel, after looking at the documents and ascertaining the facts stipulate that the documents, I mean on the face thereof they bear the stamp of the Wage and Hour Division, showing the document was received at 9:30 o'clock in the morning, October 31st, 1940, since such stamps usually do not photograph well—

Trial Examiner Batten: I suggest that you have the photostats made, and when the photostat is available, then you may ask to withdraw it, and substitute the photostat, and I will determine if the photostats are such that you [fol. 3531] should be permitted to withdraw it. I wouldn't want to now.

Miss Weyand: Usually photostatic copies cover all written material, and do not cover the stamp.

A. I would like to have permission to read this, inasmuch as I haven't read it before. I would like to take the time now to read it, inasmuch as I have been asked the question about it.

Trial Examiner Batten: Are you going to ask any further questions?

Miss Weyand: No.

A. My answer may not have been correct, in the light of reading this.

By Trial Examiner Batten:

Q. What answer, Mrs. Reed?

A. That I made there. I would like to have that read.

Trial Examiner Batten: Go ahead and read it.

A. Could I make this remark? My remembrance is there was — at first there was a blank to be filled out, and we filled that out, asking for an exemption from the Wage and Hour Division, on certain executives and salesmen and designers, and this is a later one. I don't know whether that question was that this was the only one.

Trial Examiner Batten: Miss Reporter, will you read the question and answer?

(Question and answer were read by the reporter.)

By Miss Weyand:

Q. My question was: Does Board's Exhibit 32-A [fol. 3532] through E, purporting to show the executives and administrative capacity of the persons thereon listed, represent a situation which existed in your plant at any time prior to October 30th, 1940?

A. I am going to have to say that I think this paper will speak for itself.

By Trial Examiner Batten:

Q. The question is this —

A. (Interrupting) I don't know of my own knowledge just what day certain things happened in the budget system. I don't remember the identical day.

Q. Permit me to finish, please, —

A. (Interrupting) I just say — I will have to say that I don't know of my own knowledge.

By Miss Weyand:

Q. Who could tell us whether that administrative and executive set-up, as shown on Exhibit 32, was in effect at the plant at any time prior to October 30th, 1940?

A. Probably Mr. Bachofer. These things are all discussed with me, but the details of making out the Wage and Hour — filling out a blank, I have nothing to do with it, and the general policy of who I consider exempt or who I know was considered exempt from that Law, while it would be discussed with me, these sort of papers are so complicated I don't like to pass on them.

By Trial Examiner Batten:

Q. The only question was: Who, in your organization, [fol. 3533] could testify and answer that question?

A. I would say Mr. Bachofer.

Miss Weyand: I believe the witness' last answer has indicated she was thinking somewhat in the terms of who knew about getting up this document. She has testified the entire day on whether or not various individuals were listed here or held certain supervisory positions. I would like to have her indicate, without regard to who got up this document, whether or not the names of the individuals here listed, and the supervisory title and the status here stated as belonging to those individuals in the plant, existed in the plant prior to October 30th, 1940. It may be that she would like to take them one by one, and say as to this one, it did exist before October 30th, 1940, and take that one, and say it did not. It is a list of the people we have been discussing.

A. I couldn't possibly put my finger on the exact date. In a business the size of mine, I don't pretend — I don't make any attempt to keep track of the exact time a certain thing happened. Mr. Bachofer brings up with me specific things.

By Trial Examiner Batten:

Q. Can you take the list, the first name on it was what?

A. Myself.

Q. You had a supervisory authority prior to October [fol. 3534] 30th, did you not?

A. Yes.

Q. What is the second name?

A. Lee Baty.

Q. Mr. Baty also did?

A. Yes.

Q. What is the third name?

A. John Bachofer.

Q. And he did?

A. Yes.

Q. And the next name?

A. Mr. Howard.

Q. And the next one?

A. Mrs. Reeves, she did, and Miss Spilsbury did.

Q. And the next one?

A. And Mrs. Hyde did.

Q. And the next one?

A. Now, Ted Scoles, Marvin Price, Lyle Jeter, Ella Brown, Florence Strickland, Martha Gray, Rose O'Leary, Pauline Hartman, Harlan Justus, Helen Hauser, Betty Belter, Dewey Atkinson, Mildred Francis, Hilda Fitzgerald, Fred Brown, Cecile Ealy, Lena Tyhurst, Katie Schleicher, Lula Nichols, it would not be at all possible for me to say on just what date or what day they were given supervisory powers.

Q. Could you say what month?

A. I know that it was around the time, as I said yester- [fol. 3535] day, in early November or December, I know that.

By Miss Weyand:

Q. That is of 1940?

A. Of 1940, I know the year, I know it was toward the end of the year, and I know it was later than October 1st, but I couldn't, if my life depended on it, I couldn't tell you.

By Trial Examiner Batten:

Q. And prior to that time—

A. I couldn't tell you that if my life depended on it.

Q. Just a minute, please, until I finish my question and maybe you can answer it. Prior to that time, whenever it was, November or December or the last day of October, prior to the period you made these changes, what was the status of those people you just read off, the last group?

A. I would say prior to October 1st, to my knowledge, they would not have supervisory powers. I think Mrs. Hyde probably has been acknowledged as an assistant to Mr. Baty and Nellie Kraft and Yolanda Prosperi and Gertrude Cain are designers.

By Miss Weyand:

Q. Who would be able to say whether or not those persons had supervisory authority prior to November 1st, 1940?

A. I think I have already told you, Mr. Bachofer probably would.

Q. How many sewing sections do you have in your plant to date?

[fol. 3536] A. I don't know exactly.

Q. Approximately?

A. Well, I hardly know. Approximately, Miss Weyand, we put in some sections making shorts for the government, and I couldn't say.

Q. Does your plant, in recent years, usually have 10, 20, 30 or 40?

A. I don't know.

Q. Do you know the names of the instructors of the various sections?

A. Some of them.

Q. Would you name those that you can think of at the moment?

A. Well, it is Marie Patton.

Q. Could you indicate the section?

A. No, it has a queer number connected with the company's accounting; I don't remember the name of the section.

Q. All right. Proceed with the naming of the others.

A. Grace Gnotta; I have a little brain fag. If I saw the list I would know their names, but it is hard to recall them now.

Q. Those are the only instructors whose names you can recall at the present time?

A. Well, it is queer; I would know all of their names if I could see it written down, or practically all of them.

[fol. 3537] By Trial Examiner Batten:

Q. Are they the only two that you recall now?

Mr. Ingraham: Do you want to know the names for some purpose?

Miss Weyand: Yes, I would like to know the names.

Mr. Ingraham: I will get the list for you.

Miss Weyand: I would like the record to show that Mrs. Reed only remembered two, however.

Trial Examiner Batten: Do you want that list now?

Miss Weyand: If it would be convenient for me to have it.

Mr. Ingraham: This isn't a complete list, but those are most of them.

Miss Weyand: I would prefer to wait until you can furnish me with the complete list.

Mr. Ingraham: All right.

Miss Weyand: Will you have that at the opening of the hearing tomorrow morning?

Mr. Ingraham: Yes.

By Miss Weyand:

Q. When did you first meet Rose Todd?

A. A great many years ago.

Q. Do you remember the date?

A. I do not.

Q. Could you give the approximate date?

A. It seems it was a number of years ago, I couldn't give you the approximate date.

[fol. 3538] Q. Was it before 1920?

A. No.

Q. Was it before 1925?

A. I don't think it was. It might have been.

Q. Was it in 1926?

A. It was as early as that, I would say.

Q. Do you remember the occasion upon which you met her?

A. Yes.

Q. Will you please state it?

A. I met her in her capacity as a trained nurse.

Q. How extensive was your acquaintance with her as a trained nurse?

A. She waited on me, possibly twice, in a doctor's office.

Q. Was your acquaintance more extensive than that?

A. It was not.

Q. After those two occasions, on which she waited upon you, when was the next occasion that you saw Rose Todd?

A. On one of those occasions she told me she was tired of nursing, and asked if I wouldn't give her a job? She knew who I was, and knew I had a business. I had never seen her before or had no personal acquaintance with her,

until I met her in the doctor's office, and I am sure it was probably twice that she waited on me, maybe five minutes at a time, or ten minutes at a time.

Q. I don't believe you have answered the question, when [fol. 3539] you next saw her, after those two occasions.

A. I don't remember. She asked me if I wouldn't give her a job, and I told her to come down to the plant and see if we had anything she wanted to do, and I would consider it.

Q. You still haven't answered the question, when was the next occasion you saw her?

A. I don't remember.

Q. Did she come to the plant after that?

A. Yes.

Q. Had you seen her between the time she came to the plant and the two occasions you saw her in the doctor's office?

A. I don't remember.

By Trial Examiner Batten:

Q. Do you remember, Mrs. Reed, approximately how long a time it was before?

A. I really don't, Mr. Batten. I placed no — I made no effort to charge my mind with it.

By Miss Weyand:

Q. Did she come to you when she decided to apply to the Donnelly Garment Company for a job?

A. I don't even remember that, Miss Weyand. She might have. I did quite a little of the employing back at that time. I am not sure, though; I don't remember that I personally employed her.

Q. Do you know the date upon which, or the approximate date she was employed by the Donnelly Garment Company?

A. I do not.

[fol. 3540] Q. You could give no approximation at all?

A. No. I probably employed several hundred people within a few years, and I wouldn't know.

Q. Was it prior to 1927?

A. I would say that it was.

Q. Do you know what work she was employed to do, at the time that you first employed her?

A. My remembrance is she went on a sewing machine.

Q. Do you know how long she stayed on a sewing machine?

A. Not exactly.

Q. What did she do after she got off the sewing machine?

A. My remembrance is she worked on the floor for a while, and then later sometime she became an instructor, I believe.

Q. Would you know the approximate date she became an instructor?

A. I would not.

Q. When was the first time that you opened up a branch department in St. Joseph?

A. I don't remember.

[fol. 3541] A. I don't remember the exact date.

Q. Could you give us an approximation?

A. Oh, it was perhaps sometime from 1925 to 1927, but I wouldn't be able to say in what year.

Q. Did you continuously have a department in St. Joseph from the time you opened it until the present time?

A. No.

Q. Could you give us some indication of what period you did have a department in St. Joseph?

A. I really don't remember. I know that we did have.

Q. Were those periods just during rush season, or would you have a department there that would continue over a continuous period of several years?

A. It was put in there in rush seasons. I don't even remember how long it continued.

Q. Do you know whether it ever continued a whole year at a time?

A. I don't remember right now.

Q. Do you know whether Rose Todd was an instructor in St. Joseph around the year 1927?

A. She may have been.

Q. Do you know?

A. I know we sent two or three different instructors to St. Joseph and none of them liked it.

Q. Was she one of the girls sent there?

[fol. 3542] A. She could have been, but I don't remember definitely that she was.

Q. Could you describe at all the situation of your St. Joseph department? When you got busy at a certain time of the year, did you hire a building up there and ship some machines up there, or would you rent them, or how did you handle your St. Joseph department?

A. We rented a building from one of the companies up there, and my remembrance is they had some machines in it that we rented along with the building.

Q. Would you rerent it each year for the busy season, or did you have a practice with regard to the St. Joseph department?

A. It's so long ago that I don't remember—

Trial Examiner Batten: Well, do you remember, Mrs. Reed, if you had a lease on it for a period of a year, or was it a matter of months, or—

A. I think we rented it from month to month.

By Miss Weyand:

Q. What was the last date on which you had a department in St. Joseph?

A. I don't remember.

Q. Have you had a department up there since 1937?

A. I am very sure we have not. I know that.

Q. Between the years 1925 and 1927, did you have a department up there for a short period each year?

[fol. 3543] A. That is 15 to 17 years ago, and it would be very difficult for me to remember all of the things that happened to my business back in 1925 and 1927. I don't remember the details of that plant at all. I remember we rented the building, and I have a slight remembrance that there were some machines in it.

Trial Examiner Batten: Did you operate it for more than one season, Mrs. Reed?

A. I think we did, perhaps several seasons.

By Miss Weyand:

Q. You couldn't say whether it was three or eight seasons?

A. I really couldn't, Miss Weyand, it was so long ago.

Q. Who was in charge of that department, could you say, at the particular times it was there?

Mr. Hogsett: With what epoch are we now dealing, back in the '20's?

Miss Weyand: I wanted to know if she knew who was in charge of it at any time she had the department up there.

A. I know that the St. Joseph plant was run from Kansas City, and we did all of the cutting here and —

By Trial Examiner Batten:

Q. Did you have a person in charge of St. Joseph, Mrs. Reed?

A. We sent an instructor up there to instruct the operators, but we didn't pretend to have a manager of a plant in St. Joseph.

Q. But whoever the person was, or whatever you called [fol. 3544] them, the person who was at St. Joseph was responsible, were they not, for the work that was done in St. Joseph?

A. Just the same as simply a section in Kansas City. The work was all cut and the same instructions went up there. There was no merchandise sold from that plant. There was no merchandise designed up there. There was nothing done in that plant except to sew on the machines, and the very simplest, least expensive garments in our line were made in that plant.

By Miss Weyand:

Q. Do you know what was the largest number of girls you ever employed in St. Joseph at one time?

A. I do not.

Q. Do you have any idea?

A. Not any very definite idea.

Q. Could you give us an approximation?

A. I really couldn't.

Mr. Hogsett: If it please the Examiner, I object as wholly pointless. We have again run into a line of questions that haven't any bearing on this case at all. It might be of interest if someone were writing a history of the Donnelly Garment Company, but it hasn't anything to do with whether his company dominated, sponsored, or coerced the formation of the employees' union, which is the issue here to try. It is far afield.

Miss Weyand: I do not intend to pursue this line of questioning further.

[fol. 3545] Mr. Hogsett: She always says that, and then—

Trial Examiner Batten: In view of Miss Weyand's statement that she does not intend to pursue it any further—

Mr. Hogsett: —there is nothing you can do about it.

Trial Examiner Batten: —that will dispose of the matter.

Miss Weyand: I do not intend to preclude myself from asking a couple of questions or so about the St. Joseph plant at the time Rose Todd went up there, in the spring of 1937, to establish a branch or allow the employees at St. Joseph to become members of the Donnelly Garment Workers' Union.

The Witness: Rose Todd did not go to St. Joseph—

Trial Examiner Batten: Just a moment.

The Witness: —to establish a branch of the Donnelly Garment Workers' Union.

Trial Examiner Batten: Just a moment, Mrs. Reed. You were not asked a question.

The Witness: But she made the statement.

Trial Examiner Batten: Now, let's not get into these controversies in the record, Mrs. Reed. Any statement the attorneys make in the record is not evidence. Unless the attorneys are under oath, their statements are not a matter of evidence, and I do not want to get into any controversy about their statements. They will each have to assume their own responsibility for them.

[fol. 3546] I didn't assume, Miss Weyand, that when you said you didn't intend to pursue that further, you were precluded from asking any further questions if, in your opinion, it was necessary.

Miss Weyand: I meant that I would not pursue that line of questioning any further in this connection, but I may revert to a question about the St. Joseph plant at a later time

in connection with the sequence of events pertaining to the Donnelly Garment Workers' Union.

* * * * * *

[fol. 3550] Miss Weyand: Mr. Trial Examiner, I have a statement I would like to make.

Last night, in withdrawing Board's exhibit 32-A, B, C, D, and E, to have it photostated in accordance with our agreement, I discovered that Board's exhibit 32-E, the attachment thereto, had been inadvertently inserted by myself in Board's exhibit 32-A, B, C, and D. Board's exhibit 32-E should have been inserted in a document which I would now like to have the court reporter identify as Board's exhibit No. 33.

(Therefore the document above referred to was marked for identification "Board's Exhibit No. 33.").

Mr. Tyler: If the Court please, that statement went so rapidly I am afraid I didn't get it all.

Trial Examiner Batten: Read it, please.

(Thereupon the statement by Miss Weyand was read by the reporter.)

Mr. Reed: Before that is done, I would like to clarify this a little.

[fol. 3550a] You say you inserted 32-E yourself?

Miss Weyand: 32-E was furnished me by the Wages and Hours Division and inserted physically between the pages 32-B and 32-C. I caused it to be stapled to exhibit 32. It wasn't stapled at the time I received it, but was physically [fol. 3551] lying between the two documents.

Mr. Reed: They furnished you the Wages and Hours department furnished you 32-E unattached?

Miss Weyand: Unattached, but physically lying between the sheets 32-E and C.

Mr. Reed: At the same time they furnished you another report which you are now referring to?

Miss Weyand: They did not furnish that report to me until this morning.

Mr. Reed: When did you discover this mistake?

Miss Weyand: I discovered this mistake after the close of the hearing yesterday.

Mr. Reed: And you sought all of the time to make Mrs. Reed say that this long list of names on 32-E was delivered to the Wages and Hours Division on the date of the 10th month and 30th day, 1940.

Miss Weyand: I think the record will speak for itself as to what I tried to make Mrs. Reed state.

Mr. Reed: Very well. And you were very particular about that, because you wanted to have the "Received" stamp on here—the right to add it after—added to the photostats after they were made. That was your last request, wasn't it?

Miss Weyand: The record will show what I stated.

Mr. Reed: Wasn't that your last request?

Miss Weyand: I have no statement to make, except that [fol. 3552] the record will show what occurred.

Mr. Reed: Are you afraid to make any statement about it?

Trial Examiner Batten: Senator, if counsel doesn't care to make a statement about it, she doesn't have to. She says the record will show what was done. I assume any counsel can ask other counsel questions which, if they care to answer, they may do.

Mr. Reed: I ask to put her on the witness stand right now.

Miss Weyand: I refuse to take the witness stand.

Mr. Reed: We ask that Miss Weyand be sworn as a witness in this case.

Trial Examiner Batten: I have no authority to require her to take the witness stand, Senator.

Mr. Reed: You haven't any authority to require anybody to take the witness stand?

Trial Examiner Batten: I have not. I think you are familiar with that, Senator. I have no authority, as a

trial examiner, to make that requirement. I think you are familiar with that. I have authority, upon proper request, to issue subpoenaes.

Now, even to enforce that, the Board has to go to the Federal District Court, Senator.

Mr. Reed: Very well. Now, I would like to see the last paper that counsel says now she wants to use.

[fol. 3553] Miss Weyand: I wish the other exhibit to remain in the record and to be used for purposes—

Trial Examiner Batten: Well, do you have the one that was marked Board's exhibit No. 33?

Miss Weyand: I gave it to Senator Reed.

Mr. Reed: Is this it (indicating exhibit)?

Now, to clarify this in the record, Exhibit No. 32— These marks on here are so small I can't find them. 32-C—32-E is the document which was shown to Mrs. Reed yesterday and about which she was examined at length.

Trial Examiner Batten: May I see it just a second, Senator?

Mr. Reed: Let me finish my sentence and I will hand it to you.

Trial Examiner Batten: Miss Weyand said something about it being stapled. It is not now stapled, is it?

Mr. Reed: No. I am coming to that.

32-E is a typewritten paper which was nailed on to 32-C and appeared between 32-C and— Where are these numbers?

Trial Examiner Batten: Between D and C, I believe, Senator.

Mr. Reed: Between 32-C and— (Looking at sheets in exhibit.)

Trial Examiner Batten: B and C, Senator.

Mr. Reed: It isn't marked B.

[fol. 3554] Trial Examiner Batten: Miss Reporter, will you assist the Senator, please, and indicate what those pages are?

(Thereupon a colloquy between Mr. Reed, Miss Weyand, and the reporter ensued.)

Mr. Reed: Give me the last thing I said.

(Thereupon the statement by Mr. Reed was read as follows: "No, I am coming to that.

"32-E is a typewritten paper which was nailed on to 32-C and appeared between 32-C and—. Where are these numbers?")

Trial Examiner Batten: In view of this difficulty, in which the marks do not appear here, let me warn all counsel here now, when you take out any exhibits for photostating, do not take them unless the reporter's stamp appears thereon and they are marked so that you can tell just what you have when you take out an exhibit. And, Miss Reporter, I don't want you to give out any exhibits until the stamp has been placed on them.

Mr. Reed: Will you give me the last thing I said in my statement?

(Thereupon the statement by Senator Reed, as read above, was reread by the reporter.)

Mr. Reed: Now, let me make that statement over again.

As this document appeared yesterday, and as it was used and introduced, 32 purports to be a report made by the Donnelly Company to the Wages and Hours Division, [fol. 3555] dated 10th month, 30th day, 1940, and bears the stamp "Received October 31, 1940. W. and H. Division, Kansas City."

The first sheet is marked 32-A and is followed by sheet 32-B, and also 32-C. Between 32-A and 32-C, attached with fasteners, is a typewritten sheet, the heading of which reads "Pursuant to your request of December 29, persons coming within the provision of the second part of paragraph 6 of the questionnaire as of December 20, 1940, are as follows:" —and there follows a long list of names, giving the executive, administrative, and professional employees.

So it is perfectly manifest, on careful examination, that this sheet, exhibit 32-E, was inserted in a document bear-

ing an earlier date and that it is not a part of that document. Nevertheless, it was attached to that document and brought in here and introduced in evidence, and the witness was examined at length in regard to it.

Now, I understand it is admitted that this report, this sheet, exhibit 32-E, does not belong in the document, No. 32, at all, but it is asserted that it belongs in a document now marked exhibit No. 33, which bears the date of the 12th month and 20th day, 1940, which is the document which probably had attached to it 32-E.

Trial Examiner Batten: Does it indicate, Senator, that—33, does it indicate that there was an attachment to it? Does it show staple marks?

[fol. 3556] Mr. Reed: No. Wait a minute.

Yes, there are staple marks on 32-E.

Trial Examiner Batten: No. 33. Does it indicate any staple marks?

Mr. Reed: Pardon me. Your question was—

Trial Examiner Batten: Does exhibit 33 indicate any staple marks, indicating that at one time it did have an attachment to it?

Mr. Reed: Yes, there are staple marks on that.

Trial Examiner Batten: On 33?

Mr. Reed: Yes. And evidently a sheet was torn off—the staples were not withdrawn.

I show the paper to the Examiner. (Handing exhibit to Trial Examiner Batten.)

Trial Examiner Batten: It was stapled along the side? This (indicating) is exhibit 33?

Mr. Reed: Yes.

Trial Examiner Batten: Does 32-E show any staple marks along the side?

Mr. Reed: Yes. Right here (indicating). You can see where they went through this document into it.

And 32-E bears, in the upper left-hand corner, the staple marks that would fit exactly into the staple marks appear-

ing on 33-C, so that it is perfectly evident that it was attached to 33-C and was taken off of 33-C, and then appears [fol. 3557] the staple marks by which it was attached to the other document.

Trial Examiner Batten: 33?

Mr. Reed: Yes.

Miss Weyand: I think I can furnish a third and fourth document that will complete the explanation of the staple marks.

Mr. Reed: Will you read my statement?

(Thereupon the statement by Mr. Reed, appearing on lines 20 to 25 of page 3556, and lines 1 and 2 of page 3557, was read by the reporter.)

Mr. Reed: I haven't been able to follow that, so I will make my statement again, if you will indulge me.

32-C, which is the instrument dated December 20, and which is the sheet that is now in controversy, was evidently attached—appeared here as attached to exhibit 32 at the place I have heretofore indicated.

Mr. Hogsett: That is E—

(Thereupon Mr. Hogsett spoke to Mr. Reed in an aside.)

Mr. Langsdale: I suggest that Mr. Hogsett's remarks be made audibly.

Mr. Reed: He said I was mistaken when I read C for E. It is very badly written. That is the confidential communication that you are entitled to.

Mr. Langsdale: I am entitled to have all communica- [fol. 3558] tions made by you and Mr. Hogsett, or anybody else.

Trial Examiner Batten: Just a moment. Senator, let's proceed with your statement.

Mr. Reed: Exhibit 32-E, which I have heretofore referred to as C, because the letter is not clear, is the document that was attached to 32 when that document was introduced in evidence. It bears in its upper left-hand corner distinctly the marks of a paper fastener, the kind that is

driven through sheets of paper. Those identical marks appear on exhibit 32, in the upper left-hand corner of the third page—

Trial Examiner Batten: 33, that is, Senator.

Mr. Reed: Exhibit 33, in the upper left-hand corner; and also appear in exhibit 32-C, in the upper left-hand corner. So that this document, exhibit 32-E, was manifestly at one time attached to what is now handed here and marked exhibit 33, and which it is now said it belonged to. So that it must have been torn loose from that sheet and transferred over into a report, 32.

I want to make that statement, and I want those facts to be in the record.

Mr. Langsdale: Is it made under oath, Senator?

Mr. Reed: I am showing it.

Mr. Langsdale: You said "facts."

Mr. Reed: I am showing it to the Examiner, showing him the physical document, which is the facts, so that he [fol. 3559] may know it.

Mr. Hogsett: I move to strike from the record all cross-examination by counsel for the Labor Board pertaining to Board's exhibit 32-A, B, C, D, and E, because the same and every part thereof was based upon an exhibit which is garbled, and, therefore, the entire purport of the cross-examination could not be otherwise than misleading.

Miss Weyand: Mr. Trial Examiner, before you rule on this motion, I would like to put the other two documents to which I have referred in the record, and explain further how the inadvertence occurred.

Mr. Reed: You might explain how you got the document.

Miss Weyand: I will.

Trial Examiner Batten: Just a moment, Senator, please, until I make my statement; then, you may have your say again, if you care to.

Miss Weyand, what bearing would the other two documents have upon Mr. Hogsett's motion? In other words,

his motion is to strike all of the cross-examination of Mrs. Reed which pertains to Board's exhibit No. 32. Now, what possible bearing can any other exhibits have upon that, or even Board's exhibit No. 33? In other words, if she was shown Board's exhibit No. 32 and cross-examined upon the basis of it, what difference would it make how many more exhibits may be introduced? That is the point.

[fol. 3560] Now, I have no objection, after this, for you to put in any number of exhibits you care to put in and make any statement you care to make, or any other attorney cares to make, but what does it have to do with the motion? That is my point.

[fol. 3561] Miss Weyand: I would like to state what it has to do with the motion. Before you rule on the motion, without regard to whether these documents are first put in,

I would like to state why the motion should be denied.

Trial Examiner Batten: First, let's dispose of the matter, whether or not it is necessary to have any further documents; after determining that, then, if you want to make a statement on the motion, and a statement with respect to Senator Reed's statement, I will permit you to do so.

Let's first dispose of this, before we decide, any further documents are necessary.

Miss Weyand: The further documents will show, taken together with my statement, that my examination of Mrs. Reed was conducted in entirely good faith upon my part.

Trial Examiner Batten: Just a moment, Miss Weyand. I am not questioning your good faith.

Miss Weyand: My good faith is one thing, and another thing, the second thing, is to show that the documents from which Mrs. Reed was cross-examined, constituted two separate documents, each of which is entirely legible, and not garbled, and could probably be the basis of examination of Mrs. Reed.

Trial Examiner Batten: You mean as two different documents?

[fol. 3562] Miss Weyand: I mean when I asked Mrs. Reed, whether certain matters appearing on Board's Exhibit 32

represented the status of supervisors for 19—in December of 1940, that she could fairly answer, from looking at Exhibit 32, whether or not that did represent the supervisors, and, further, it will show when examined, in connection with the record of what transpired yesterday, that during my repeated questioning of Mrs. Reed, as to whether or not the supervisory status existed before November or December of 1940, I had in my hand a copy which had been furnished to me several weeks ago by the Wages and Hours Division, with the understanding that I might obtain the original thereof.

During the course of the present hearing, with this copy in my possession, which is a copy of Board's Exhibit 33, I determined that it would be desirable to present the original of that document; so, in the courtroom, I communicated with somebody, one of the attorneys from the Labor Board, and asked him to take this copy which I had in my hand of Board's Exhibit 33, and obtain for me the original thereof, from the Wages and Hours Division.

He returned some few hours later, with a document which he handed to me, and said it had been furnished to him by the Wages and Hours Division, as the original of the copy [fol. 3563] which I had been working with for some time, being the copy of Board's Exhibit 33. I then, without examining the original other than to determine that it bore the signature of Alex Green, presented to Mrs. Reed the document which this Labor Board's attorney had obtained for me from the Wages and Hours Division.

Now, it is true, when I presented that to Mrs. Reed, in identifying the document, I did read from the face of that, certain dates that were inconsistent with the dates on the copy I had been using to prepare the case, copy of Board's Exhibit 33, and I did not, at the time, recognize the difference in the dates. As my questioning will show, I continuously asked Mrs. Reed whether or not the supervisory status there reflected that of November or December of 1940, and whether the supervisory status there represented had existed prior to December of 1940.

You may recall that the Trial Examiner, after some difficulty on my part, suggested that I ask the question whether the supervisory status existed before October

30th of 1940. At that point, for the first time, I put that question in that fashion, having not prepared that case with that in mind, and thinking purely of the question whether the supervisory status existed in November, 1940, I was interested in having Mrs. Reed testify solely as to whether or not the supervisory status existed in December of 1940, and I was making no attempt and never [fol. 3564] had in mind any implication might be drawn that the status represented in the exhibit did not exist at the time the exhibit was furnished to the Wages and Hours Division, and I agree that the evidence which was placed in the record shall not be considered for the purpose of showing that exhibit failed to present a correct statement of the supervisory status at the time the exhibit in question was furnished to the Wages and Hours Division.

I would like, therefore, to identify these two documents, and I will also show what was stapled, which documents, and will further state that I had never known that Board's Exhibit 32-E had ever been stapled in Board's Exhibit 33, and had never seen Exhibit 33, that is, the original of it, until it was furnished to me in the courtroom, and I had worked purely from the copy of Board's Exhibit 33, and had not recognized that Board's Exhibits 32-A, B, C, D and E were not an original of the copy, which I had been working from.

Trial Examiner Batten: My question to you, now, Miss Weyand, is, assuming what you say is true, is there any reason why all of the testimony this witness has given, in respect to Board's Exhibit 32, should not be stricken?

Miss Weyand: Yes, there is, because her testimony as to Board's Exhibit 32-E stands alone, without regard to when that document was furnished the Wages and Hours [fol. 3565] Division. She said—there are certain names, and I said, referring to those names, did they represent the supervisors in November or December of 1940, and she said they did.

Trial Examiner Batten: Well, I will say that I believe all of the witness' testimony in regard to Exhibit 32 should be very definitely stricken.

Now, when I make that statement, I don't want any of you to think that is my ruling. I am simply telling you what I think.

Mr. Reed: I don't want to get away from this question I am interested in. I am reading from the transcript.

Trial Examiner Batten: Will you permit Mr. Langsdale to talk? He has been standing there and hasn't had an opportunity to, and with respect to this, I would like to take you in turn.

Mr. Reed: I was taking this up with Miss Weyand, and on this matter I have my own controversy, and I would like to finish that. It would only take me just a minute.

Trial Examiner Batten: I know. Mr. Hogsett made his motion, and I think Mr. Langsdale is entitled to make a statement, and I also think Mr. Tyler should.

Mr. Reed: But you are getting away from the subject matter. I have to submit, of course, to the rule.

Trial Examiner Batten: No, I have a motion I have to dispose of. I have to hear you all; if you will permit [fol. 3566] Mr. Langsdale, now.

Mr. Reed: Miss Weyand made a statement in regard to the matter.

Mr. Langsdale: Well, I would just as soon wait.

Trial Examiner Batten: No, I don't want you to. I want to proceed.

Mr. Reed: Well, I want to be permitted to make a statement.

Trial Examiner Batten: Well, Mr. Langsdale said he is willing to let you proceed.

I am trying to say that I didn't want to change the method I usually follow, to give everybody an opportunity.

Mr. Reed: Now, Miss Weyand, when you heard her statement in regard to her examination being confined to December, now, I read from the record of yesterday, page 3531, there are a lot of things, but I have run into this one question:

"Question (By Miss Weyand): My question was: Does Board's Exhibit 32-A through E, purporting to show the executives and administrative capacity of the persons thereon listed, represent a situation which existed in your

plant at any time prior to October 30th, 1940?" Now, that was her question.

Trial Examiner Batten: What is the answer?

Mr. Reed: The answer is, "I am going to have to say that I think this paper will speak for itself." Then that [fol. 3567] was followed by a list of questions, the purport of which—they appear in the record, so I need not read them at this time.

There was an effort being made here, after showing the witness a paper dated in October, to get the witness to admit two alleged facts: that these changes were made prior to October, or during the month of October, instead of being made, as shown, on the 20th of December, and even that, I understand,—this is outside of the record—they were not actually put into effect for some 10 days. Now, the whole point of this matter is that Miss Weyand was trying to show that they remained in the union, a number of people who had authority conferred on them in October, and to prove that by this document, which was being used for a false purpose—to prove it by that document, when, as a matter of fact, she or somebody else misplaced this sheet containing the names of the people who were listed with the Wage and Hour Division.

Trial Examiner Batten: Well, Senator, might I ask this question—

Mr. Reed: (Interrupting) Now, I want to ask Miss Weyand if she did not detach this Exhibit 32 herself?

Trial Examiner Batten: Senator, I would like to ask you a question.

Mr. Reed: Ask me a question? All right.

[fol. 3568] Miss Weyand: Well, in answer to the Senator's question, I would be glad to answer that I did not.

Mr. Reed: Who did?

Miss Weyand: I do not know.

Trial Examiner Batten: I was going to ask you if counsel for the Respondent did not look at this document. I admit that I did, and I admit that I did not notice that 32

had a different date on [redacted] than the document—I was wondering if any of us had been carefully looking at it yesterday.

Now, I still feel, and I will permit you to make your statement, but I still feel all of this witness' testimony with respect to 32 should be stricken.

Now, let me state why; then, Mr. Langsdale, you can talk. I say this without any regard to whose mistake it was, whether it was intentional, or unintentional. It seems to me the witness' testimony with respect to the exhibit, which the Board's counsel admits is incorrect and on which a serious mistake has been made, the testimony can be of no value.

Now, as far as I am personally concerned, I don't think that I would want to rely on this witness' testimony with respect to it, even though I had not heard her testify.

Now, Mr. Langsdale.

Mr. Langsdale: If it please the Examiner, it is per- [fol. 3569] fectly apparent Miss Weyand didn't intentionally transpose any part of the document. She is the one that comes in here and calls the Examiner's attention to it, this morning.

Now, I noticed yesterday, when I read it over, and I consulted with Miss Weyand after the hearing, and I called her attention to the fact it referred to some communications of December 29th and was dated December 20th, and it seemed to be amazing to her it was true.

I read it very carefully, and I assume Mrs. Reed did, but the fact is, Mrs. Reed was so indefinite and so evasive, that there couldn't have possibly been any harm done by this document.

Trial Examiner Batten: Mr. Langsdale, assuming what you say is true—

Mr. Langsdale: (Interrupting) If you will let me finish, I won't be long.

Now, what I want to call to the Examiner's attention is: the desire of counsel is to hop on an occasion and claim that the attorney for the Board has done something crooked

and underhanded, and something she evidently had no intention whatsoever of doing.

That is the thing that I want to reply to. It is perfectly apparent Miss Weyand had no such intention whatsoever, and didn't know how these documents got misplaced. I want to call your attention to the fact, in Exhibits 32-A, [fol. 3570] B and C, under the sixth paragraph, entitled "Employees", "The statement of the total number of employees whom your firm considers exempt from provisions of the Act, (refer to Employers' Digest) includes salesmen, 49," without giving any list of them at all; and the other document, on which they are making such a mountain out of a molehill, "Pursuant to your request of December 29th," evidently the Wage and Hour Division was wanting them to say who these 49 people were, "Pursuant to your request of December 29th, the persons coming within the provision of the second part of paragraph 6, of the questionnaire as at December 20, 1940 are as follows: which refers to "The total number of employees whom your firm considered exempt from the provisions of the A t," that is the second paragraph of 6; so it says, "Pursuant to your request of December 29th, the persons coming within the provision of the second part of paragraph 6, of the questionnaire as at December, 1940, are as follows:" and evidently giving the information which they failed to give when they filed A, B and C.

Trial Examiner Batten: 32-A, B and C?

Mrs. Reed: It doesn't ask for that in the blank.

Mr. Langsdale: You spent three days testifying; now, if you will, please, let me talk.

Mr. Reed: Now, listen. Suppose you talk to the Examiner.

Mr. Langsdale: Yes, and suppose you talk to the Examiner too.

[fol. 3571] Trial Examiner Batten: All right. Let's get along with the matter under consideration, and, Mrs. Reed, unless you are asked a question, please permit the lawyers to handle this matter.

Mr. Langsdale: Now, the point I am trying to make is that they are trying to make a mountain out of a molehill. It means nothing whatsoever, how this article got in the wrong place, ina much as Mrs. Reed said she read it, and testified to it. It means nothing, and it is perfectly evident they are trying to give the information that they failed to give in 32-A, B and C. Now, it doesn't make the slightest bit of difference in this lawsuit whether they began October 31st or December 20th, 1940.

Our contention is, they are, and have been from the very inception of this Donnelly Workers' Union, executives, and we hope to prove that before we are through, but it doesn't make the slightest bit of difference whether it was October 31st or December 20th.

My point is, Mrs. Reed didn't answer anything definitely. My thought is, if there is any complaint about the testimony of yesterday, with reference to this inserted document, she should be permitted to go through her testimony, and make any changes that she says she would have made, had she noticed that the document was dated December 29th. But in the abundance of caution, I would say the Examiner is [fol. 3572] right; it ought to be stricken out, and let the examination be gone over again, if they think they are going to gain anything by that.

But I do resent, as a member of the Bar, the insinuations these counsel are attempting to place on Miss Weyand, who comes out here from Washington to represent the government. There isn't any possible ground for any suspicion or hint that she has done anything in this case that wasn't purely a mistake, and the mistake hasn't amounted to anything, because she got nothing out of Mrs. Reed, definitely, with reference to the dates, and if she wants to change her testimony, let her look over her answers and change them.

As I said, in an abundance of caution, I would like to see you sustain the motion, so these gentlemen will not take it up in the Court of Appeals, and yip.

Mr. Reed: Well, now—

Trial Examiner Batten: (Interrupting) Pardon me, Senator. Mr. Tyler.

Mr. Tyler: I want to add a word. It is obvious from the discussion at the time Mrs. Reed was cross-examined on Exhibit 32, and the inserts there, she had before her what she must have supposed was a government exhibit, in the same condition it was actually filed with the government.

Now, being faced with what is apparently a fact, her conclusion as to her memory will necessarily be affected [fol. 3573] by what she had thought that document to be, a fact of record, which was no fault of hers; but basing her answers in cross-examination on that, necessarily believing that was a government record, which now proves to have been a mistake, naturally her answers are not to be considered as proper cross-examination, because based on an error of fact beyond her power.

I move all her cross-examination, as to Exhibit 32-A through E be stricken from the record. The purpose of—the listing for the purpose of the Wage and Hour Division, of supervisory employees, has no bearing whether these employees are supervisors in sense, rather than the employees under the Labor Law.

Trial Examiner Batten: Mr. Tyler, would you mind not opening up a second motion yet? Don't complicate the matter. We now have, under consideration, an entirely different subject matter.

Mr. Tyler: I ask leave to renew—

Trial Examiner Batten: If you will do that, until we get one matter at a time disposed of, I will appreciate it. Senator?

Mr. Reed: To the polite implication of Mr. Langsdale, that we go into the Court of Appeals and howl, I make no reply. It is the usual courtesy he shows in cases.

This document, Exhibit 32-E, was attached to 32-A, and [fol. 3574] 32-A, as I have stated, bears the date of the 10th month and 30th day, 1940. 32-E has the heading, "Pursuant to your request of December 29th, the persons coming within the provision of the second part of paragraph 6 of the questionnaire of December 20th," and then follows

a long list of names. Now, that document was attached to something, and disattached by somebody, as is shown by the mark in the upper, left-hand corner.

Somebody took that document from another paper, and when we come to the other paper, and it is handed up here as 33, Exhibit 33, the exact marks are found in 33 that appeared in 32-E, in the upper, left-hand corner.

Now, it is either Miss Weyand, or somebody down in that office, who tore this paper out of 33, where it belonged, and put it over into 32, where it did not belong.

Trial Examiner Batten: When you say "that office", what do you mean?

Mr. Reed: I mean the office of the—what do you call these things—Wage and Hour, either somebody there, or Miss Weyand, detached this sheet, 32-E, or it was afterwards detached and then somebody had to nail it down and make it part of 32, and then, when I came here this morning, seeing Miss Weyand in the hall, I asked her for the exhibit, and her reply was that it was in the hands of the reporter.

[fol. 3575] When I get it from the reporter, 32 has been detached by somebody.

Now, I want to know who detached it.

Trial Examiner Batten: Now, I think Miss Weyand made a statement.

Miss Weyand: I did not detach it.

Mr. Reed: Did you have somebody attach it?

Trial Examiner Batten: Just a moment. I will try to assist you to get it straightened out. I thought I understood you to say that 32-E you detached.

Miss Weyand: I stated I attached it.

Mr. Reed: Since it stands admitted Miss Weyand herself inserted in 32, Exhibit 32, this sheet, 32-E, and nailed it down and made it a part of it—

Miss Weyand: I did not insert the original. It came to me physically between the two sheets, not physically attached.

Trial Examiner Batten: Miss Weyand stated twice she did attach it to 32.

Mr. Reed: Well, she says she attached it. She says now it lay between the two sheets and she nailed it down.

Trial Examiner Batten: That is what she said, Senator, in the first place, as I recall it.

Mr. Reed: I simply want the facts to be perfectly plain, so nobody can ever mistake it, that Miss Weyand nailed [fol. 3576] or tacked or fastened, whatever term it should be described, this sheet in 32, and up to that time it had been a loose sheet. She says when it came to her, it was a loose sheet.

Now, that brings us to this: either Miss Weyand did this, or over in the department, somebody over there tore this sheet out of 33 and handed it to Miss Weyand, and if they did that, I want to know that fact.

Trial Examiner Batten: May I see 33? Well, I can tell you now I am not going to conduct an investigation of the Wage and Hour Department.

Mr. Reed: I know that, I know that you are not, and it probably needs one.

Trial Examiner Batten: I am not going to do it.

Have you anything further, Senator?

Mr. Reed: I think not.

[fol. 3577] Mr. Hogsett: Would the Examiner rule on my motion?

Trial Examiner Batten: I intend to, yes, after everyone has had their say, and I assume you have now.

I will strike the testimony with regard to exhibit 32-E.

Mr. Hogsett: I believe I made it broader than that. I think I said all cross-examination pertaining to 32-A, B, C, D, and E.

Trial Examiner Batten: Yes, you did. And when I say I will strike all testimony with regard to 32-E, that covers any questions, Mr. Hogsett, which relate to the exhibit in its entirety. If there are any questions which

relate to 32-A and do not incorporate within the meaning of the question the entire exhibit, they will stand.

Now, I think there can be very little doubt in anybody's mind as to what my ruling is. When you review that cross-examination of all counsel, if there is a question which you are doubtful about, whether it is in or out, you may bring it to my attention. And I will say now that between now and Monday Morning I shall read that testimony, and if I consider that there is any part of it that is doubtful, I will attempt Monday to clarify it.

Mr. Hogsett: That is satisfactory.

Trial Examiner Batten: Now, are we ready to proceed?

Mrs. Reed: Could we have a little recess?

Trial Examiner Batten: Yes. We will take a 10-minute recess.

[fol. 3578] (Thereupon a 10-minute recess was taken.)

Trial Examiner Batten: I think I should have the record indicate that I have not passed upon Mr. Tyler's motion.

I had intended, Mr. Tyler, that my ruling which I directed principally to Mr. Hogsett would be applicable to your motion also.

Mr. Tyler: You are referring to my motion to strike all cross-examination as to 32?

Trial Examiner Batten: I am referring to the motion that you did not withdraw. In other words, I am not passing upon the motion which you withdrew at my request.

Now, I want to further state that I am going to reserve the right—and I want that clear—that when I read over this record between now and Monday morning, to include within my allowance of the motion to strike, any further parts which I think are not included in my ruling.

Now, I also want to further state this with respect to my ruling, that I did not intend by my ruling—and I think all counsel understand that clearly—to pass upon the issue which Mr. Langsdale referred to, whether or not Board's

counsel intentionally attached this document or whether there is any implication of any kind with respect to Miss Weyand. I want to say that my ruling does not imply any determination of that question or any implication that you, Miss Weyand, were amiss in your duty as an attorney in this matter.

[fol. 3579] Now, I am not saying that I will not pass upon such matter if, in my opinion, I think it is necessary at any stage in this proceeding, or in an intermediate report, if I write one. The way the record now stands, I am inclined to feel that there is no such issue for me, as the Examiner, to determine. Now, I am not saying there isn't; I am saying that is my feeling at the present time. I wanted to make that clear to everybody.

Now, on that basis, Miss Weyand, I believe I stopped you awhile ago from offering two additional exhibits. I believe we are now at a point in the proceeding where you, as Board's counsel, may proceed.

Miss Weyand: I don't believe I care, at this time, to offer the two exhibits, unless somebody would like to have them put in.

The problem is, one of them is a copy which I stated I used, and I am glad to have that put in the record. I am at a loss however, to identify, other than by my own statement, that that is the copy I used, or to have someone from the Wages and Hours Division state that that is the copy they supplied me. I am considerably at a loss as to whether there is any point to putting it in after—

Trial Examiner Batten: Miss Weyand, I would say the same thing to you I said to Mr. Ingraham day before yesterday: You, as an attorney, will have to proceed in the [fol. 3580] way you think you should proceed. The matter is now in your hands, as far as the hearing proceeding is concerned.

Miss Weyand: I will ask the reporter to mark this document as Board's exhibit 34-A, B, C, D, and E.

(Thereupon the document above referred to was marked for identification "Board's Exhibit No. 34-A, B, C, D, and E.")

The Witness: May I see that?

Miss Weyand: I did not intend to ask you any questions about it at the present time. You are welcome to look at it, if you want to see it. (Handing Board's Exhibit 34-A to E, inclusive, to the witness.)

I would like to state for the record that this is the copy of Board's exhibit 33 which was furnished to me by the Wages and Hours Division several weeks ago. I do not intend to ask further questions—or any questions, I should say, pertaining thereto, until I have presented Board's Exhibit No. 33 as an exhibit in the case.

Mr. Hogsett: You have heretofore indicated, Miss Weyand, that exhibit 34-A was your copy of—what exhibit?

Miss Weyand: Board's exhibit 34-A, B, C, D, and E, is a copy which was furnished to me by the Wages and Hours Division.

Mr. Hogsett: As a copy of what?

Miss Weyand: They did not state what it was a copy of [fol. 3581] when they furnished it to me. It was the copy which I handed to a Board attorney when I asked that the original thereof be produced.

Mr. Hogsett: They each bear the same date, but of course you know, do you not, that they are not copies—34-A, B, C, and so forth, are not copies of Board's exhibit No. 33?

Miss Weyand: I do not care to pursue the matter further until I have had Board's exhibit No. 35 identified and presented in the record.

Trial Examiner Batten: They are just marked for identification.

We will proceed.

Miss Weyand: I would also like to have marked Board's exhibit No. 35-A, B, C, D, and E.

(Thereupon the document above referred to was marked for identification "Board's Exhibit No. 35-A, B, C, D, and E.")

Mr. Hogsett: Now, may I compare that with exhibit No. 33?

Miss Weyand: Yes. (Handing Board's Exhibit No. 35-A to E, inclusive, to Mr. Hogsett.)

Trial Examiner Batten: Are those (indicating documents on counsel table) the photostats of those newspaper articles?

Mr. Tyler: Yes, Your Honor.

By Miss Weyand:

Q. I hand you Board's exhibit No. 33 for identification, and ask if the signature thereon is the signature of Alex Green?

[fol. 3582] A. The signature appears to me to be that of Alex Green.

Miss Weyand: I would like to ask counsel for the respondent to examine these exhibits, which purport to be originals, Board's exhibit No. 32-A, B, C, and D, and Board's exhibit No. 33. Before offering them in evidence, I would like to have counsel for the respondent check those exhibits with their records and inform me as to whether their records do show that such information was furnished the Wages and Hours Division, and whether this is the information which was furnished.

Trial Examiner Batten: That pertains to what exhibit, Miss Weyand?

Miss Weyand: Board's exhibit No. 32-A, B, C, and D, Board's exhibit No. 33, and Board's exhibit No. 32-E, and it will pertain also to Board's exhibit No. 35-A, B, C, D, and E.

Trial Examiner Batten: How about 34-A to E?

Miss Weyand: That is not an original. I will leave that in the record just for what it is worth. It is what I had originally and—

Trial Examiner Batten: Then, what you want counsel to check is Board's exhibits Nos. 32, 33, and 35, and determine whether or not those are the original documents which they forwarded to the Wages and Hours Division; is that right?

[fol. 3583] Miss Weyand: That is right. And I would also like to have them determine if Board's exhibit No. 32-E was furnished to the Wages and Hours Division at the time and in connection with the presentation of Board's exhibit No. 33.

Mr. Hogsett: Miss Weyand, that last couldn't be true, could it, because 33 is dated December 20, and 32-E is dated sometime after December 20.

Trial Examiner Batten: I think she said, submitted in connection with it.

Mr. Hogsett: She also said, "at the same time."

Trial Examiner Batten: Oh, "at the same time"?

Mr. Hogsett: She had that in there.

Miss Weyand: Then, could you furnish me the information of when it was submitted and the document with which it was submitted?

Mr. Hogsett: Very well.

Miss Weyand: I would also like to have you furnish me any other documents that would make these complete, if there is anything lacking in these documents, so we will know what you did furnish to the Wages and Hours Division on the occasion on which you apparently furnished them these documents, or whatever it turns out you did furnish them, if you didn't furnish them these documents.

Trial Examiner Batten: What you mean, Miss Weyand, is this, if when this document (indicating) was sent to the [fol. 3584] Wages and Hours Division there were other documents sent in addition to those which have been marked 32, 33, 34, and 35—that they produce any other documents which were sent at that time?

Miss Weyand: Yes. And if it should happen that they do not find that the attached information is the correct sheet, will they furnish me the sheet which was furnished, so that we can have an agreement here as to what the company did furnish. It has never been my intent or desire to have anything in the record that they did not furnish, and I regret that yesterday I did not give counsel an opportunity to check with their records before examin-

ing at all. I will not examine Mrs. Reed on it until we have that agreement as to what the documents were that were furnished.

Trial Examiner Batten: Will you check, then, on 32, 33, and 35?

Mr. Hogsett: Yes. I think you had better leave the original exhibits there in one place.

Miss Weyand: I have photostats of the documents, and I also have the originals.

Trial Examiner Batten: I would suggest that you furnish Mr. Hogsett the originals, as long as you have the photostats, because I think the originals are better than the photostats.

Miss Weyand: I should be very glad to do that.

Mr. Hogsett: The intelligent way to go about this is [fol. 3585] to show all of this material to the man who signed it, and he will tell us the facts, and we will then come back here and report to you.

Mr. Langsdale: I would like to ask at this time if the stenographic record shows recesses?

Trial Examiner Batten: Yes, it does.

Mr. Langsdale: I would like for the record also to show that yesterday, immediately after exhibits 32-A, B, C, and D were identified, the Examiner declared a recess, and that document was given over to counsel for the respondent to examine during that recess, which they did.

Mr. Ingraham: I would like the record to show, as soon as, or practically immediately after it was given over to us, Mr. Langsdale asked me for the document, and I gave it to him, and he kept it the rest of the afternoon.

Mr. Langsdale: Now, Mr. Ingraham, your memory is very faulty. You asked me to see it, and I handed it back to you.

Mr. Ingraham: But how long did you keep it, Mr. Langsdale?

Trial Examiner Batten: Just a moment.

Mr. Langsdale: If there is going to be any controversy about it between counsel, I will not insist. My recollection is, I did ask to see it, and then I gave it back to you.

Mr. Ingraham: How long did you keep it?

Trial Examiner Batten: Now, I do not intend to try [fol. 3586] out that issue. You have both made your statement and—

Mr. Langsdale: I thought that would be an uncontroverted statement. If Mr. Ingraham objects, I will withdraw my statement. I have a right to have it in the record, but—

Trial Examiner Batten: Now, that it is settled, Mr. Langsdale, let's proceed.

Miss Weyand: I would like to ask counsel for respondent if they have at this time the list of instructors which they agreed to furnish.

Mr. Ingraham: As of what time?

Miss Weyand: The present day.

(Thereupon a document was handed to Miss Weyand by Mr. Ingraham.)

Miss Weyand: I would like to have this marked as Board's exhibit No. 36 for identification.

(Thereupon the document above referred to was marked for identification "Board's Exhibit No. 36.")

By Miss Weyand:

Q. Will you please read over Board's exhibit No. 36 for identification?

(Witness complies.)

A. I have read it.

Q. Do you know whether those are the persons who are now instructors in your plant?

A. To the best of my knowledge, they are.

Q. Who would be able to tell me whether, in fact, they [fol. 3587] are, or how could I ascertain that?

A. I will say that they are.

Q. Does that include only the sewing sections, or are there instructors there of other sections of the plant?

A. No. There are instructors of other sections.

Q. Will you point out which are instructors of other than the sewing sections?

A. Mary Bogart—

Q. Would you indicate in which section she is?

A. The dividing section. And Lena Miller would be an instructor in pressing.

Q. Are those the only two that are not instructors in the sewing sections?

A. Mollie Smith would be an instructor in the notions section, and Lulu Waddell, in folding, and Stella Willis is in the button and buttonhole.

I believe that covers it.

Q. Do you know the floors on which the instructors in the sewing sections are located?

A. We have had so many changes that it would be very difficult, Miss Weyand, for me to say now which instructor is on which floor. I know that some of them have not been changed. On that particular floor, on that particular floor Marie Patton and Grace Gnotta, but we have changed different instructors to different floors.

[fol. 3588] In the last year and a half we have made so many changes with respect to the setup of the plant and the method of manufacture and the situation of the sections, that I wouldn't be able to say just on which floors each of them is. I could find out easily, if you want to know it.

Q. Do you know how long each of those girls has been an instructor?

A. Not for sure.

Q. Could you give some approximation?

A. Some of them have been there a long time; a few of them a shorter time. I happen to remember Margie Stacy has been recently made an instructor, because I suggested that she be made an instructor.

Q. Do you know when she was made an instructor?

A. I don't remember the date, but it was in the last several months.

Q. Could you indicate which of them were instructors in 1935?

A. That would be something we could find out. I wouldn't know exactly which ones, no. I know that Lena Miller is another person who has been made an instructor in,—well, within the last two years, because I also suggested that she be made an instructor.

Q. Would you know which ones were instructors prior to 1937?

A. Most of them have been. I couldn't just exactly say each name.

[fol. 3589] Miss Weyand: I offer Board's exhibit No. 36 for identification.

Mr. Ingraham: No objection.

Trial Examiner Batten: It will be received.

Mr. Langsdale: Pardon me, Miss Weyand. Would you say, for identification, or for the proof of what it purports to show?

Miss Weyand: For what it shows, taken together with Mrs. Reed's testimony.

Trial Examiner Batten: As I understand it, that is a list of instructors furnished by the respondent?

Mr. Hogsett: That is right; and identified as such by the witness.

Trial Examiner Batten: It is received.

(Thereupon the list of instructors above referred to, previously marked for identification "Board's Exhibit No. 36," was received in evidence.)

By Miss Weyand:

Q. If an employee is late to work, or absent, and desires to call in, to whom does she call?

A. To Mrs. Hyde.

Q. If a girl desires to use a telephone during working hours, does she have to have permission from someone?

A. She doesn't, as far as my knowledge is concerned.

[fol. 3590] By Miss Weyand:

Q. I understand you have a hospital with your plant, is that correct?

A. I have,—I have two trained nurses and some beds, and what we call a hospital, but I don't think a doctor would call it a hospital.

By Trial Examiner Batten:

Q. Is it a First Aid department?

A. Yes.

By Miss Weyand:

Q. Does that exist to serve your employees, where they are injured or ill during working hours?

A. It does.

Q. Does it also serve the employees who are ill and away from working several days?

A. It is the duty of one of the nurses to call on an employee who is away, to see if she is taken care of, or just as a matter of interest.

Q. When a girl is absent from work for illness, do you have a procedure of making a record on a leave slip?

A. We have sick insurance, so naturally there would have to be some definite record made, when a girl is away on account of illness.

Q. Could you describe who makes the record?

A. I assume that one of the trained nurses does.

Q. Is the record okayed by the instructor?

A. I don't know what you mean.

[fol. 3591-92] Q. In many plants they have leave slips. Do you have some such thing as a leave slip?

A. I don't know what the details are, how that is handled in our place.

Q. Do your employees have credits for the purpose of purchasing dresses in your retail store, is that a cash transaction?

Mr. Hogsett: I can't see the remotest connection between that. I really have no objection, but I can't see it is at all relevant. I object to it, to save time.

Trial Examiner Batten: You may tell us.

A. I don't know how it is handled.

By Trial Examiner Batten:

Q. You don't know whether the store does a cash business or credit business?

A. I know the store, with any outsiders, does a cash business, but whether they charge a garment for the girls, I don't know. At one time we did, I know.

By Miss Weyand:

Q. Who delivers the pay checks to the girls in the sewing section?

A. I really don't know. I suppose the person who makes them out. I don't know that exact detail.

Q. Do you know the manner in which time cards for the girls are kept?

A. I know we have made some changes in the way the time cards are kept in the last — within the last year.

[fol. 3593] Q. Isn't it true there are quite elaborate card systems on each girl and her work?

[fol. 3594] A. There has been, I don't know whether at the present time. Well, I am sure there is a record of the girls' work kept. Now, I don't know how elaborate a one that is, though.

Q. Does the instrucfor participate in making entries on that record?

A. The instructor would keep track with the girl, and perhaps the girl would keep track of it herself, if she does any time work, so that she will be paid for that in addition to what she earns from piece rates at the end of the week.

Q. Does the instructor make any record of the amount of piece work a girl has done daily or weekly?

A. I don't know, Miss Weyand, the detail of how that— how those records are kept. We change them at different times. I really don't know how they are kept.

Q. Are the girls paid for time during which a machine has broken down, and they thereby lost piece work?

A. That has always been my policy.

Q. Do you have a rule of how much is paid per hour, or half an hour, during the period the machine is down?

A. My understanding is that, at the present time, the instructors have an agreement with the operator, because sometimes the operators are making more money than their guarantee, and I believe they try to arrange to pay them [fol. 3595] according to the amount of time. If it is the

amount of money that they actually lost, of course, if they are making less than the guarantee, they are paid by the guarantee.

Trial Examiner Batten: You mean if she loses an hour's time, she would be paid approximately what she would have been paid if her machine had continued to operate?

A. That's the idea, Mr. Batten.

By Miss Weyand:

Q. Who keeps track of the amount of time of a given girl if her machine is broken down?

A. I don't know whether the instructor or the girl keep track of that, but they have an agreement on how much time it is.

Q. Who brings repair work to the girls?

A. The examiner.

Mr. Reed: Will you read that last question? I couldn't hear it.

(Last question read by the reporter.)

By Miss Weyand:

Q. Do you have a credit union at your plant?

A. We do.

Q. Do you know whether someone is required to place an authorization of the company on each loan which is granted to a girl?

A. I don't know anything about how they run the credit union; I only participated in it, in the very early stages [fol. 3596] of getting it in there. I think there are regular rules and regulations, that these credit unions work under, and they are used all through the country.

It is my understanding, I know I did make a statement to the first committee, that I wanted them to realize that when they were loaning money, they were really loaning workers' money, so they should be very careful.

My remembrance is I was informed there were rules governing those associations, that protected the people who invested in them, and of course the investors are the workers themselves; and they said I need not fear about that.

That is the only remembrance I have of any connection I had with this union.

Trial Examiner Batten: You mean the credit union?

A. Yes, the credit union.

Miss Weyand: Then you do not know whether or not, each time a loan is made by the credit union, someone in the company must make a statement that the girl is employed by the company?

A. I do not know that. That may be a rule of the organization, but I don't know it.

Trial Examiner Batten: Well, what is the relevancy of this credit union? My understanding is, it all goes under state and federal laws, the regulations.

[fol. 3597] Miss Weyand: It is my understanding that is normally checked with the employer.

Trial Examiner Batten: That is, to insert it on the pay roll?

Miss Weyand: Have some further certification, it is usually done by a form.

Trial Examiner Batten: Oh, I see. My point is, there isn't any charge here that there has been any discrimination, as far as the operation of the credit union is concerned.

Miss Weyand: No, that is not the purpose. I was directing it to the line of testimony, what the instructors' duties were, if the instructors were in a position of authority to certify for the company the girl was employed.

A. I know nothing about the working of the credit union of our place.

By Miss Weyand:

Q. What factors are taken into consideration in promoting an operator to become a thread or floor girl?

A. Mr. Baty usually does that. I have had a few contacts with girls; Margie Stacy was an operator, and one day I wanted a model, and we didn't have a model avail-

able, a regular model available, and somebody said, "There is a nice looking little girl on a machine downstairs," and that she could wear a size 14, so we sent her up, and she was a very nice looking girl, and seemed to be alert and bright. [fol. 3598] I asked her a little about her former experience, and about her work, and so Mr. Baty, in a discussion with me about the factory, said that he needed another instructor, and I said, "Why don't you try Margie Stacy, she seems to be a bright and alert girl," and I see her name on the list of instructors, so I suppose that he did.

Q. Could you indicate what factors in her experience impressed you with her qualifications for being an instructor?

Mr. Reed: I think that is a ridiculous waste of time.

Trial Examiner Batten: Is that an objection, Senator?

Mr. Reed: I object. It is a ridiculous waste of time.

A. I don't remember the exact experience; she had been an operator for several years, and the main thing, to me, was she seemed to be alert and bright, and a nice looking girl.

Now, that was why I recommended her. I was also told that she was a good operator, and when I called her up a couple of times again, to use her as a model, I liked her as a model, and someone said, "Well, she is a pretty expensive girl to use as a model, that girl makes good money," and that was another reason that I would have suggested she be an instructor, if she was a good, fast operator.

Miss Weyand: Could you describe the duties of Rose [fol. 3599] Todd, in January of 1935?

Trial Examiner Batten: Before we start on this line of questioning, I think we will recess a few minutes. Mr. Hogsett, I want to see you—I don't mean just you—and Mr. Ingraham.

(Recess was accordingly taken.)

Trial Examiner Batten: We will proceed.

By Miss Weyand:

Q. What were Rose Todd's Duties in January of 1935?

A. I wouldn't be able to state definitely what her duties were in 1935; Mrs. Reeves was running the plant, and Miss Todd was working under Mrs. Reeves.

Q. What did Rose Todd do?

A. What did she do? I think I testified yesterday that she had done several things; she had been a floor girl.

Trial Examiner Batten: This was '35?

A. In '35.

Trial Examiner Batten: I assume that is what you are asking?

Miss Weyand: That is what I was asking, yes.

A. I am not exactly sure. She probably was a floor girl. I know she was a floor girl for a while, but I don't know in just what year she was. Miss Todd did receive different things to do.

By Miss Weyand:

Q. Was she instructor, subsequent to January, 1935?

[fol. 3600] A. I am not sure that Miss Todd was instructor. She was on the floor. Whether she was really an instructor or not, she was on the floor and gave out work, I know that. I am not sure that she was ever instructor in a section herself.

Q. When you say you do not know that she was an instructor, in a section herself, do you mean to say she never served as instructor in any section at any time subsequent to January, 1935?

A. I know that instructors in a section—usually there is an instructor and floor girl, and we have had, at different times, special machines, and sometimes we have had a group of special machines, and we might have just one person giving out the work, because the work didn't originate in that section, they simply did a special machine operation for some other section.

My remembrance is at one time Rose Todd was in one of these special sections, but I am not sure whether she was considered an instructor or not.

Q. What were her duties when she was in the special section?

A. Well, one of the duties would be to give out the thread and the work, and the special machine work would come directly from another section, and probably the instructor from another section would bring that work over, and put it on the box or the so-called "horse" of the opera-
[fol. 3601] tor that was to do that work.

I know, in our special section, that at different times, when we didn't have many people working in them, we attempted to get along without an instructor, without that expense.

Now, whether she was in that situation, I am not sure. I don't remember; I don't know.

Q. You said one of her duties was to give out work. What were her other duties?

A. In that situation, it would be to give out work that another instructor gave her. I don't know whether she would give it out, but she would give out thread and trimmings, or whatever was used in that section, that was necessary to get the work out.

Q. Did she have other duties than to give out the thread?

A. I couldn't say for sure. I am not entirely informed on that.

Q. Did this special section receive instructions similar to the instructions sent down to the sewing department?

A. I don't know; the method of that might have been changed. It was changed at different times, according to whether we had a great abundance of a certain kind of work to get out, or whether we were simply trying a new method, and we have had our special machines. We have tried having them in the section, and we have tried having them in a group together, and we have tried having some of them in the sections and some in a group, and then, I [fol. 3602] believe, we tried having all special machines—having a special machine section, but, when those different changes were made—

By Trial Examiner Batten:

Q. Of course, that isn't the question, when they were made. The question is if, during the time, Mrs. Reed, your special machines were in the sewing section, naturally, there would be written instructions.

A. At that time, I know Miss Todd was not in charge of the special machines.

Q. I am not talking about Miss Todd, I am simply saying that when the special machine was in the sewing section, the instructions which came down would include the use of the special machine, would they not?

A. Yes.

Q. Now, the question is, when you had a section which included only special machines, did they also receive from the planning department, some sort of instructions on the work they should do in that section, if you know?

A. I don't know for sure. The special machine section has always been simply doing one specific thing to a garment. That was very definite, and the instructions on that might have come right along with the instructions how to make the garment, but I don't know for sure.

By Miss Weyand:

Q. Who would show the girls in the special section how to do their work?

[fol. 3603] A. The special sections — when we first put up a special section, everybody that went into that section already knew how to do the work. It was like a double stitcher, and she had probably learned to do the work at some time in the regular section.

Q. Did you ever hire girls for work in the special section who were not previously trained?

A. Not if we can help it.

Q. Do you ever hire them?

A. I don't know.

Q. What machines are in the special section?

A. Well, at the present moment I couldn't tell you what machines are in the special sections. I know a good many special machines are in the regular sections right now.

By Trial Examiner Batten:

Q. But when you had a special section, what machines were in it?

A. Well, when the machines were all put in the special section, I can't recall what they would be, exactly.

Q. Is the machine special, or the work that is special?

A. No, it is the machine that is special, that is made to do one kind of work; for instance, you have a section, and there is a double stitching machine, then all of the double stitchers from a group are in that section, and that would be done on those double stitching machines.

By Miss Weyand:

Q. In addition to the double stitching machine, what [fol. 3604] other machines were in the special section?

A. We had a section where overcasting was done.

Q. What other operations were done in the special section?

A. At various times, hemstitching.

Q. Anything else?

A. Embroidery work, but I believe the embroidery machines would be in a separate section.

By Trial Examiner Batten:

Q. You mean a separate section of just embroidery machines?

A. Yes.

By Miss Weyand:

Q. What other special machines are there, in addition to the ones you have named?

A. Many other special machines we have used in the past 25 years; outside of the double stitching machine I don't know of any one that we used continuously for 25 years.

Q. Have you ever trained a girl in your plant to run a special machine?

A. I wouldn't know that of my own knowledge, although I am sure that —

Mr. Reed: Did you mean personally?

Miss Weyand: No.

By Miss Weyand:

Q. Was there ever a girl trained in the plant, by anyone, to learn to operate a special machine?

A. In the past number of years, I wouldn't know that of my own knowledge.

[fol. 3605] Q. Have you been informed such was the fact?

A. I have never inquired.

Q. Was it ever stated to you whether such had occurred?

A. No.

Q. Do you have a special section today?

A. We have put most of our special machines back in the section, and I don't know the status of the special section today, exactly.

Q. In addition to the duties which you have described, which Rose Todd at various times performed, what other duties did she perform?

Trial Examiner Batten: You mean in 1935?

A. In all of the years she has been there?

By Miss Weyand:

Q. Since 1935.

Trial Examiner Batten: Since.

A. Since 1935, Mrs. Reeves and later Mr. Baty took pretty much complete responsibility for managing the plant, and I would not be informed as to just what her duties were.

By Miss Weyand:

Q. Do you know who she was responsible to?

A. To Mr. Baty and Mrs. Reeves, at different times they were in charge of the plant.

Q. Well, was there ever, since January of 1935, any intermediary between Rose Todd and the production management?

A. I would not know that.

[fol. 3606] Q. Turning now to April 1937, was Rose Todd assigned to any department of the plant?

A. I testified about three times that she went through the plant supplying notions or thread, or whatever supplies might be missing to complete cuts.

Trial Examiner Batten: Mrs. Reed, the question is, was she assigned to any department? Was she assigned to any definite department or section in April of 1937?

The Witness: No, her job was just to go through the plant from one section to another.

Trial Examiner Batten: In other words, she was not a part of any sewing section or department of the plant or the business; is that right?

The Witness: She was a part of all of them. She simply went from one place to another, and when there was something missing, she would find out what it was, and then she would go to the notions department, if it was to get more thread, or—

Trial Examiner Batten: I understood you to say she was directly responsible to Mr. Baty. Is that right?

The Witness: I said I didn't know, Mr. Batten. I said Mr. Baty had charge of the plant, and just exactly how he was running it, as to the details, I don't know.

By Miss Weyand:

Q. Who informed her when a section was lacking in some material?

A. My understanding was that she just went from one section to another to see.

[fol. 3607] Q. Of whom did she inquire in a section?

A. She might— I think if some of the girls saw her coming, they would probably ask her why they couldn't have more green thread, or whoever needed the material would be just as apt to ask her for it as anyone.

Mr. Langsdale: Pardon me.

Will you read that answer?

(Thereupon the last answer was read by the reporter.)

Mr. Langsdale: I move that the answer be stricken as based upon supposition and speculation, without any knowledge on the part of the witness.

Trial Examiner Batten: It may stand.

By Trial Examiner Batten:

Q. Do you know, Mrs. Reed, as a matter of fact, just what the procedure was in the plant?

A. I know that I was having a great deal of difficulty having my work come through promptly. We always were having a hard time filling the orders.

Q. My question to you was—

A. May I explain?

Q. Just a moment.

A. My—

Q. Just a moment, Mrs. Reed. My question was, whether or not you know the procedure in the production part of the plant? Do you know the procedure?

A. I know I told Mr. Baty that we would have to have somebody in the plant going through to check up the work. [fol. 3608] Q. You told him that. But do you know what procedure Mr. Baty outlined to take care of the thing you wanted corrected? Did you know that?

A. Not in a definite way.

Trial Examiner Batten: That was my only question, whether you knew just exactly the procedure Mr. Baty put in.

The Witness: No.

Mr. Langsdale: I renew my motion to strike.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. I hand you Board's exhibit 28-A, being the stipulated pay roll of time-workers. Can you tell me offhand which heading Rose Todd is located under on your pay roll?

Mr. Reed: What is the pending question, please?

Trial Examiner Batten: What heading Rose Todd's name appears under on the pay roll, Board's exhibit No. 28, Senator.

Miss Weyand: Exhibit No. 28-A through—

Trial Examiner Batten: All of 28. I don't know how many pages there are; I think there are 50 or 60—something like that.

Miss Weyand: Sixty-eight.

Mr. Reed: I submit, if her name appears in this document, counsel might call attention to the place, and if it does appear under a particular heading of the pay roll, that [fol. 3609] is the best evidence.

Trial Examiner Batten: I see no objection to Mrs. Reed's telling us where it appears, Senator.

A. She is under the heading of "Designing-Sewing."

By Miss Weyand:

Q. You are referring to Board's exhibit No. 28-H, being the pay roll for April 16, 1937, to April 30, 1937?

A. She may have worked up there for a little while. She was an operator and sewer. These names here (indicating)—

Trial Examiner Batten: Just a moment, Mrs. Reed. The question was— I will have the reporter read you the question. Perhaps you have forgotten it.

Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: Will you just answer that?

The Witness: I am, but I think it would only be fair to let me say she might have worked up there. She might have been—

Miss Weyand: I would like to have Mrs. Reed explain.

Trial Examiner Batten: She may explain, but—

The Witness: I would like—

Trial Examiner Batten: Just a moment, Mrs. Reed. I thought you had forgotten the question.

The Witness: No.

A. I don't know—I know that these girls do sewing for the designers and do extra sewing. Now, Rose Todd could [fol. 3610] sew on a machine. She may have been sewing on a machine there.

By Miss Weyand:

Q. Do you know whether she did that from April 16, 1937, to April 30, 193[illegible]

A. I don't know. I recognize names of girls here who did sewing. Frieda Smeltzer did sewing, and Pearl Doyle did sewing up there.

Q. That is the period, is it not, in which you described her duties generally as keeping the sections supplied with materials?

A. I also said Mr. Baty was running the plant and I didn't know exactly what every person in that plant was

doing every day. Now, we very often, in the designing department, need extra help, and it would be possible to have asked for her to come up and help in that sewing—

Trial Examiner Batten: Well, Mrs. Reed—

A. (Continuing) We very often do that, particularly in that department.

Trial Examiner Batten: If I could make a suggestion which I think might be helpful to you,— If you do not know of your own knowledge the answers to these questions, then I think it is proper for you to say that you do not have the information upon which to base an answer.

The Witness: But, Mr. Batten,—

Trial Examiner Batten: Rather than tell us all of the possibilities.

[fol. 3611] Now, you do not have to follow my suggestion, Mrs. Reed. I am simply saying that, after all of this conversation which you and I have had— I thought you just said a moment ago you didn't know all of the details of the plant.

The Witness: I don't.

Trial Examiner Batten: Then, if you do not know, Mrs. Reed, I don't think I would attempt to answer the questions.

The Witness: I do know that Ceva Vaughn sews on a machine in the designing department, and I know that Ann Scott does, and that Norma Duncan does. I know a number of these girls sew on power machines in the designing department, and Rose Todd's name is with them. I say Rose Todd did know how to sew on a machine, and there might be a possibility that she was borrowed for a week or two weeks and was up there.

Trial Examiner Batten: I agree with you, Mrs. Reed, that there is that possibility. I could say, myself, that there is that possibility. My only point was, I was trying to be helpful to you, was all.

[fol. 3612] Miss Weyand: Mrs. Reed, I would like to have you look at Board's exhibit No. 28, for the pay roll

period of May 1 to May 15, 1937, at the page on which the designing section is set forth, and tell me if you see Rose Todd's name there?

Just take your time and see if you find "Designing" and if not, if you find "Rose Todd" at any other place on that exhibit.

[fol. 3613] A. I don't find it.

I would like to call the Examiner's attention to the fact that I was puzzled about this pay roll list yesterday, and last night I looked up to see why these queer headings would be on certain pages, and I saw the original pay roll that was put in evidence, and apparently when this was copied the pages were not followed. Now, when—

Trial Examiner Batten: Well, do you have the original pay roll?

A. Yes. We brought it down.

Trial Examiner Batten: I would suggest that you make the original pay roll available, then.

The Witness: Well, not for this date here (indicating), but—

Trial Examiner Batten: When that pay roll was furnished before, wasn't that supposed to be—

Mr. Ingraham: We brought in the original pay rolls.

Trial Examiner Batten: And wasn't this supposed to be a copy of it?

Mr. Ingraham: Yes. I do not have any recollection of [fol. 3614] making a copy of those pay rolls. We brought the original pay rolls in.

Trial Examiner Batten: Whoever made them, they were marked as an exhibit and were received on the assumption that they were a copy of the pay roll. Now, are they a copy or aren't they, Mr. Ingraham?

Mr. Ingraham: They are a copy, as far as the names and wages are concerned.

I think this is what actually happened: I was asked by the Board's counsel to produce the pay rolls for their inspection, and I brought up the pay rolls, including the ones for the particular exhibits that you were inquiring about yesterday, and the Board took those pay rolls—

The Witness: The pages were mixed.

Trial Examiner Batten: Do you mean the Board inserted these titles?

Mr. Ingraham: No. But the pages got mixed up.

The Witness: A title would be carried over to the next page, and the wrong page would be there.

Trial Examiner Batten: I would suggest that the original pay rolls be marked and photostats be provided.

Mr. Langsdale: If the Examiner please, I object to that change from the record as it now exists, until we look at the record and see what actually happened.

Trial Examiner Batten: I am not accepting them, Mr. Langsdale.

[fol. 3615] Mr. Langsdale: My own recollection is, we asked them to produce the pay rolls, and they brought in the typewritten lists, which were copied into the record. I don't remember our ever having the original pay rolls.

Trial Examiner Batten: Well, it can be checked and—

Mr. Langsdale: The record should show how those got in there.

Mr. Ingraham: I was asked to produce these pay roll records, and I did produce them, and the next thing that appears is this stipulation.

Trial Examiner Batten: Mr. Ingraham, you signed the stipulation, didn't you?

Mr. Ingraham: Yes.

Trial Examiner Batten: Then, it seems to me, if there is anything wrong with it, it is up to you folks to check it up—

Mr. Ingraham: We will produce the pay roll records.

Mr. Langsdale: I don't agree with that. I want to rely upon what they did produce in 1939.

Trial Examiner Batten: You may rely completely, Mr. Langsdale, upon what is in the record, unless it is changed. Unless what is now in the record is corrected, it will remain, and any counsel may use it.

Now, the question still is, Mrs. Reed, do you find Rose Todd's name on that pay roll?

[fol. 3616] A. I do not.

Mr. Reed: There was an explanation undertaken here and partially given, I think.

The Witness: It seems to me—

Mr. Ingraham: We are talking about different things, Mrs. Reed.

Trial Examiner Batten: Mrs. Reed injected the question as to whether this pay roll record is correct. There is a question pending—

The Witness: The pages are not in proper order.

Trial Examiner Batten: Just a minute, Mrs. Reed. That hasn't anything to do with the question. The question is, whether Miss Todd's name is on Board's exhibit No. 28. Now, if you want, your attorneys may now proceed to the matter you are explaining. Let's clear up one thing at a time; that is all I am trying to do. If it isn't correct, permit your counsel and other counsel to clear it up. You are the witness, Mrs. Reed.

The Witness: Well, I have to be on my guard about unfair practices.

Trial Examiner Batten: Now, Mrs. Reed, I want to say now you do not have to be.

The Witness: I do. I fear that I must be.

Trial Examiner Batten: I say now you do not have to be, because if I feel that anybody in this hearing room [fol. 3617-3618] is taking unfair advantage of you, or anyone else, I will do everything I can to protect you—

The Witness: But, Mr. Batten, you may not understand it.

Trial Examiner Batten: Just a moment. —and every other witness, Mrs. Reed. I don't think, this far in the hearing, I would concede for one moment that any counsel participating in this hearing has been unfair.

The Witness: But, Mr. Batten, the copy that was showed me yesterday, the wrong pages were put—one page would be in the wrong place, and then it shows that a heading was on a certain page, and when copied they were carried over and the wrong pages went along.

Trial Examiner Batten: I would suggest, then, you have Mr. Ingraham straighten it out. He was counsel for you and he signed the stipulation. If it is incorrect, then it is up to counsel, it seems to me, to make the corrections, and not the witness.

The Witness: I don't know who made the copy, but—

Trial Examiner Batten: Well, I don't either, Mrs. Reed.

We will proceed.

Miss Weyand: Will you look at Board's exhibit No. 28-U and see if you see Rose Todd's name on that page?

A. I do.

Mr. Reed: What page?

[fol. 3619] Trial Examiner Batten: 28-U.

Mr. Reed: That isn't the page number, is it?

Miss Weyand: The page number in the Circuit Court of Appeals record is 4767.

A. I see Rose Todd's name.

By Miss Weyand:

Q. Will you state the department under which she is listed?

A. On this page she is listed under "Hand Sewing Department."

Q. Why was she placed under "Hand Sewing" for the two-weeks' period from May 1 to May 15, 1937?

A. I don't know whether she was placed under that or not. I don't know whether that is still a part of the pay roll being mixed up and the headings being mixed up in the copying or not.

By Trial Examiner Batten:

Q. Well, as far as that exhibit is concerned, that is where her name appears, isn't it?

A. As far as this exhibit is concerned, it is, but—

Q. Whether it is correct or not, you don't know? Is that what you mean?

A. I don't know whether it is or not.

[fol. 3620] By Miss Weyand:

Q. Was she working in the hand sewing department from May 1st to May 15th, 1937?

A. I do not know.

Q. Can you explain any reason why she might have been placed in that section of your pay roll record for that period?

A. No.

Q. Will you look at the next pay roll period, being the period from May 15th to May 30th, 1937, and tell me if you see Rose Todd's name thereon and what department she appears therein?

A. I have found it. It is in the hand sewing department again.

Mr. Reed: What page?

A. Page 4773.

By Miss Weyand:

Q. Was Rose Todd working in the hand sewing department from May 15th to May 31st, 1937?

A. I do not know.

Q. Do you know why, or do you have any reason why that should be put under that heading on the pay roll?

A. I do not. The pay roll was so mixed up yesterday, there might not have been any reason at all.

Trial Examiner Batten: If she were in that section on the original pay roll would you know why?

A. If she were in that section on the pay roll, it was [fol. 3621] because she was doing hand sewing.

By Miss Weyand:

Q. Will you look at the next pay roll period, and tell me what department Rose Todd appears in? I suggest that you look at page 4783.

A. In that it is button and buttonhole department.

Q. Was Rose Todd working in the button and buttonhole department from June 1st to June 15th, 1937?

A. I don't know. I don't know where Rose Todd was working in the plant, actually doing the work, on every specific day. I still say that this pay roll is mixed up.

Q. If her name appears on the original pay roll in the button and buttonhole section, from the period of June 1st to June 15th, 1937, can you explain why it so appears there?

A. I couldn't explain, except the person making up the pay roll thought she was working there. I don't make up the pay roll, and I don't look over the pay roll.

Q. There would be no other reason for putting her in the pay roll classification of button and buttonhole department, except her working in the section?

A. Surely not.

Q. By "working in the section" you mean working as operator in that section, or instructor or thread girl in that section?

A. I don't know. I wouldn't know, I don't know what she was doing on any specific day in the plant.

[fol. 3622] Q. Unless Rose Todd worked there from June 1st to June 15th, 1937, as operator or thread girl or instructor in the button and buttonhole section, would her name appear on that department on your pay roll?

A. That is an awfully long sentence.

Trial Examiner Batten: The question is: if she worked some other place, would she be carried on the pay roll of that section?

A. I don't think so.

By Miss Weyand:

Q. Would you know of any reason why she might be carried on that pay roll, even though she might be working somewhere else?

A. I don't know of any reason why they would make up a pay roll that was incorrect.

Q. Will you look at page 4791, in the same exhibit, and tell me what department Rose Todd was in, on June 15th to June 30th, 1937?

A. I don't know what department she was working in, but the heading of this page, 4791, is button and buttonhole department, and Rose Todd's name appears on there.

Q. Would your answer with respect to that be the same, with respect to the statement you made as to the period of June 1st, 1937, to June 15th, 1937?

A. Still is, this pay roll is mixed up, the pages that were copied were not copied in the right sequence.

[fol. 3623] By Trial Examiner Batten:

Q. The question is, if her name appears under that section, would that indicate she was working in that section at that time?

A. If there wasn't any error in making up the pay roll.

Q. If it does appear?

A. There would be no reason to put that on our pay roll, put a person in a section where they were not working.

Q. Where they were not working?

A. No, our pay roll is gotten up in an automatic way; at this time there are about 35 or 40 people working on it, and certainly there would be no instructions to put anybody where they wouldn't belong.

By Miss Weyand:

Q. Would you look at 4805, and tell me in what department Rose Todd's name appears for the period of July 1st to July 15th, 1937?

A. Will you repeat the question?

Q. It is the same question. What department does Rose Todd's name appear there listed?

A. The heading of this list says, "Receiving department, piece goods, continued, period ending 7-1 and 7-15-37," and it gives the employees names, and Rose Todd's is on that list.

Q. Was Rose Todd working in the receiving department, from July 1st to July 15th, 1937?

A. Not to my knowledge.

[fol. 3624] Q. Do you know of any reason why Rose

Todd's name should be placed under that department on your pay roll for that period, if it was so placed?

A. I still say it was an error in copying the pay roll. It is an error. She is at the top of the page of the receiving department, piece goods, and the other employees under that.

Trial Examiner Batten: Now, Mrs. Reed, assuming that is correct, would there be any reason for her being there in that department?

A. I know of no reason why she should be.

Trial Examiner Batten: Mr. Ingraham, do you have all of these pay rolls?

Mr. Ingraham: Yes, we do.

Trial Examiner Batten: Well, rather than have this question come up, have you checked these pay rolls against these exhibits?

Mr. Ingraham: I have not.

Trial Examiner Batten: You signed it as attorney, and stipulated it?

Mr. Ingraham: Yes.

Trial Examiner Batten: Is it your opinion it is incorrect, or hasn't been properly put in the record?

Mr. Ingraham: I am advised, evidently sheets that were loose leaf sheets, probably a few got misplaced and put in [fol. 3625] ahead of some other sheets, when this exhibit was made up.

Now, I don't recall who made up the exhibit.

Trial Examiner Batten: Didn't you, as attorney, check it before you signed the stipulation?

Mr. Ingraham: I don't think we did check it. The Board took this, as my recollection of this, came over and got these actual pay roll sheets, and I think I had them in court for their inspection, and this is a receipt that I find in our files, that they got the records, dated July 17th, 1939.

Trial Examiner Batten: Irrespective of that, I think I will recess now, and Mrs. Reed and you can take these pay

rolls and take these exhibits and sit down here at this table, and I want you to go through every one of those pay rolls, and tell me what errors you find. I want it done now.

There is no use proceeding with questions when—

A. (Interrupting) That is founded on mistakes.

Trial Examiner Batten: Whether it is or whether it is not, I want you and Mr. Ingraham to sit down here now and check every one of those pay rolls and mark down any errors you find.

Mr. Langsdale: Don't you mean the differences, instead of errors? I don't concede—

Trial Examiner Batten: (Interrupting) I mean in line, if there are pages misplaced or anything, you will make notes of it, and I want it done now.

[fol. 3626] We will recess while it is done.

Mr. Ingraham: Well, we will have to send down and get these pay rolls. We only have the—

A. (Interrupting) One week.

Mr. Ingraham: We have two weeks. We have the complete two weeks on which Mrs. Reed was examined yesterday.

Trial Examiner Batten: How long would it take to get the pay rolls down here?

Mr. Ingraham: Probably some of those are in the basement.

A. Yes, probably some are in the basement. You can show Mr. Batten what happened on that one.

Trial Examiner Batten: No, I want a complete statement on the whole thing; how long would it take to get the pay rolls down here?

Mr. Ingraham: I can't tell you. It probably would be quicker if we would go down to the plant.

Trial Examiner Batten: I want it here. I don't want you to go down there. I want it done here.

Mr. Ingraham: I don't know—these pay rolls were evidently made up by weeks, and mixed up between March 1st and July 31st, and the Board picked up whatever they wanted to pick up.

Trial Examiner Batten: No, they asked you for pay rolls for certain periods.

[fol. 3627] Mr. Ingraham: That is what they took.

Trial Examiner Batten: I recall they called for certain pay rolls, and you brought them in.

Mr. Ingraham: I did, and it was evidently a period of March 1st to July 31st.

Trial Examiner Batten: Did you find any error except this one page?

Mr. Ingraham: That is just on the period of April 1st to April 15th, that she is referring to. That came up yesterday, and we got the pay rolls for that period.

Trial Examiner Batten: Well, I understood Mrs. Reed to imply there were errors in all of these.

Mr. Ingraham: She is only talking about April 1st to April 15th.

Trial Examiner Batten: No, she has gone down to June now.

Mr. Ingraham: Miss Weyand is asking for specific pay rolls, other than the pay roll we sent up to the company for, yesterday. There are other periods in this exhibit.

Trial Examiner Batten: She is now asking about the last two weeks in June.

Mr. Reed: I think I can explain this, if Your Honor will permit.

Trial Examiner Batten: Well, do you think I would not?

Mr. Reed: Well, cut off some attempted explanation, [fol. 3628] and please let me explain this.

Trial Examiner Batten: I am sorry —

Mr. Reed: (Interrupting) There came up the question as to the title of — what was that title?

Mr. Ingraham: Buying records.

Mr. Reed: Buying record. There was a good deal of controversy about it, and attention was called to the fact that names appeared in certain places, and Mrs. Reed was on the stand and was puzzled, evidently, by it. She said some of those names were out of place, and she couldn't see why they were on this list; so last evening we got the original record, and checked it, and we found out what had happened was that a certain title was there, and then a page had been misplaced in this copy, so that it did not truly reflect who was in that department.

We haven't challenged the entire record yet.

Trial Examiner Batten: Well, Mrs. Reed has.

Mr. Reed: I think not.

Trial Examiner Batten: Just a moment ago she said that she couldn't say that this was correct, there might be pages misplaced, and that was concerning a June pay roll.

Mr. Reed: I know this: that other mistakes were made, and she was asked to take that document and say whether that is absolutely correct, and she raised the question that she couldn't positively do that, because there were already [fol. 3629] mistakes having been found.

Trial Examiner Batten: Of course, if Mrs. Reed is willing to testify, assuming this is correct, that she has no explanation of Rose Todd being there, I don't presume there would be any objection to that. Her answer has always been that this is incorrect, and that she can't testify, and we couldn't proceed with the hearing on that basis.

May I see the pay roll? Show me what —

Miss Weyand: I would like it to appear on the record, what those mistakes were about the buying record.

Mr. Ingraham: Here is the buying record these girls followed, and in that department —

Trial Examiner Batten: Well, doesn't that follow?

Mr. Ingraham: No. No, this exhibit in the record, this page was put, evidently, in ahead of this page (indicating). Now, here is Herb Fountain.

Miss Weyand: Does Herb Fountain appear on your buying record of June 1st to June 30th?

Mr. Ingraham: Under — let's see.

Trial Examiner Batten: Under Audit No. 4688 and 4625.

Mr. Ingraham: That one page has been dropped out.

Miss Weyand: Will you examine the record and see if Herb Fountain does not appear on the buying record of July 31st, 1937?

Mr. Langsdale: I assume that you are talking about [fol. 3630] the records made in 1939?

Miss Weyand: Yes, and stipulated to and produced by the Respondent, and it appears on the face of the record that there is no substantial difference in the personnel of the buying record, from July 1st to July 15th, 1937, by a change of pages, because of the fact that the same personnel could n't change for every two weeks' period, throughout the period from April 1st, 1937, to July 31st, 1937, and that page couldn't have gotten out each two weeks.

Mr. Ingraham: Miss Weyand, I was requested to bring in the pay roll for each two weeks' period, and it may be whoever was gathering up this information got out of place on this one, or pulled one out of place, this sheet, for each period.

Trial Examiner Batten: Of course, it doesn't hardly seem like that would occur.

Mr. Ingraham: That is evidently what happened. These people on this pay roll, that follow the three girls that are on the bottom of this one sheet — and these three girls are Lulu Courtney, Hilda Richmond and Mary Stratton — then these girls on this next page are in that department, there is no question about them being in that department, and they aren't in the accounting department; and there is Margaret Quinn, Jane Daugherty, Freda Cordell, Jane Wilkins and Lyda Burns, and however it hap-

[fol. 3631] pened, I produced these records, and they are loose-leaf pages.

Trial Examiner Batten: Well, I think in view of Miss Weyand's statement, that it appears consistently through July in the present record, which we believed to have been correct, Mr. Ingraham, if you want to change those, you may stipulate later, when the time comes to correct it.

Miss Weyand: I would like to have Mr. Ingraham at this time take the copy I have been showing to Mrs. Reed, and compare it with the copy he has in the courtroom, or did have yesterday.

Do you have it now?

Mr. Ingraham: I have this one, April 1st to 15th.

Miss Weyand: I am asking for the Circuit Court record, including these record pages from 4744 through 4810, and tell me if they coincide with the record pages which have been in the copy of your Circuit Court record.

Mr. Ingraham: Well, I suppose that the copy that the Board sent me of the record of it in the Circuit Court, compares with that record. It is a copy the Board made up and sent to me, and I suppose you have the original of that record.

Miss Weyand: You used that record throughout the preparation of the brief in the Circuit Court case, without noticing any errors therein.

Mr. Ingraham: That's true, Miss Weyand, and the [fol. 3632] Board, as I recall, never challenged the division of the people in the pay roll, there never was any question raised.

Trial Examiner Batten: Well, we will proceed on the assumption it is correct, until otherwise shown.

Mr. Langsdale: Mr. Examiner, Mr. Ingraham has just brought in such a small portion of what he says is the original record that is agreed on and stipulated, and introduced in the U. S. trial. Now then, if there is to be any further bringing in of loose leaves, I would suggest to the Examiner now that he commission some representative of the National Labor Relations Board, and some

counsel or someone else, to go down to that plant now and get it, and dig out these original records. Certainly I am not going to be satisfied if, tomorrow morning, they come in here with some loose leaves.

I would like to see some representative of the Labor Board see where they get them, and see if they are there now, and not tomorrow morning or the day after, or any other time.

Mr. Ingraham: Mr. Langsdale, we produced the record the last time, that the Labor Board asked for, and I brought them in, and I have a receipt in my pocket.

Trial Examiner Batten: Well, now, just a minute. I just said we are going to proceed on the basis this record is correct. Now, if the parties who contend it is not, may [fol. 3633] or may not have an opportunity to present it in this hearing, I am not going back, I don't think, now, on this record, and revise it from page 1 up to 3200, whatever it is, including all of the numerous exhibits.

[fol. 3634] Mr. Langsdale: My point is this, Mr. Examiner: If there is going to be any contention that the records they bring in here are the originals, I think it would be well to send someone representing the National Labor Relations Board down there this afternoon to see where they get them and how they get them and whether or not these are people who have been there any length of time.

Trial Examiner Batten: I don't think so, Mr. Langsdale, because I think the burden is entirely on Mr. Ingraham's shoulders. He signed this stipulation and agreed to this. It is in the record and has been used since—what is it now? —since July 1939.

If it isn't correct, I think the burden is on you, Mr. Ingraham, to produce whatever is necessary to show that it is incorrect. You agreed to the stipulation.

Mr. Ingraham: I agreed to the stipulation but—

Trial Examiner Batten: Now, on that basis, as I said awhile ago, we are going to proceed on the assumption that this is correct.

Mr. Langsdale: I say, if they are going to come in later with a lot of—

The Witness: I didn't say this was incorrect. I said it was incorrect in the way it is put together. Sometimes the heading is carried over and sometimes refers to the employees on the next page, when it shouldn't.

[fol. 3635] Mr. Ingraham: I didn't make up this exhibit. I produced the pay rolls and Mr. Leary took the pay rolls and checked them.

Trial Examiner Batten: Whether you prepared them or not, you were the attorney who signed the stipulation.

Mr. Ingraham: Yes. The Board had these pay rolls before them—

Trial Examiner Batten: Therefore, you must assume the responsibility of entering into the stipulation.

The Witness: We didn't know the Board would do a thing like that until this morning.

Trial Examiner Batten: If you find it is incorrect, check it up and— The burden is on you.

Mr. Ingraham: I will, if necessary, bring the pay rolls in.

The Witness: We didn't know the Board puts papers in the wrong place—

Trial Examiner Batten: Just minute, Mrs. Reed.

The Witness: They admitted this morning they did, and that has been done right here.

Trial Examiner Batten: Mrs. Reed, I think it would be better if you would permit your counsel to represent you.

We will proceed.

Miss Weyand: Could I have the last question and answer read?

(Thereupon the last question was read by the reporter [fol. 3636] as follows:

"Q. Do you know of any reason why Rose Todd's name should be placed under that department on your pay roll for that period, if it is so placed?")

A. I do not.

By Miss Weyand:

Q. What was Rose Todd doing during the week of July 1 to July 15, 1937?

A. I do not know.

Q. Looking at Board's exhibit No. 28-HHH, being record page 4804, what was Ed Corbin doing during the week of July 1, 1937, to July 15, 1937?

A. What was the date?

Q. The pay roll date July 1, 1937, to July 15, 1937.

A. I don't know what he was doing then. He was hired as one of the watchmen we got when there was so much violence going on by the I. L. G. W. U.

Q. Why should a watchman be placed in the receiving department?

A. I have no direction over making up this pay roll and I don't know why the person making the pay roll up would do that.

Q. It is true that he appears there above Rose Todd's name in the receiving department?

A. I do not see Rose Todd's name here.

Q. Preceding her's, on the page—

[fol. 3637] A. The next page, saying, "Receiving Department (Continued)," has the name "Rose Todd."

Q. Proceeding backwards among the persons in the receiving department, piece goods, the same exhibit and page number, the next name is Robert Eckart. What was Robert Eckart doing during the week of July 1, 1937, to July 15, 1937?

A. I don't know.

Q. Will you notice the salary which is placed opposite his name?

A. Yes.

Q. Will you state the amount?

A. $112.50

Mr. Langsdale: For the two-weeks period?

Miss Weyand: Yes. That is what is indicated.

A. I would assume that is it.

By Miss Weyand:

Q. Do you see anyone in that department who received a higher salary?

Trial Examiner Batten: Than Eckart?

Miss Weyand: Yes.

A. Not according to this page.

By Miss Weyand:

Q. Will you look through the preceding 10 pages of this exhibit, being the preceding pages covering the pay roll period July 1, 1937, to July 15, 1937, and tell me how many employees and who made a higher amount of pay for that pay roll period than Robert Eckart?

[fol. 3638] Mr. Reed: Now, if Your Honor please, those documents, under your ruling, are accepted here as correct by you. The documents speak for themselves. Now, what is the use of going through and having the witness say that she sees a name on there that is that? It just simply is a consumption of time.

Trial Examiner Batten: I don't see the purpose of it. If the document speaks for itself, and there are four or five names on there of people that received more, do you intend to ask the witness, then, what they did?

Miss Weyand: I intend to ask her if she knows what they did.

Trial Examiner Batten: Then, under those conditions, Senator, I would permit Mrs. Reed to go through it and locate any names that were receiving more than Eckart. That would be the only way for Miss Weyand to determine, I presume, what these people do, unless Miss Weyand took the document and went through it—

Mr. Reed: Miss Weyand could take it, if she wanted to, and ask what each of these individuals did and the difference between them, or state what it does tell with reference to their wages. There is no use going through this thing and having the witness—

Miss Weyand: The document will show that there are a very few persons on the exhibit that received more than $112.50.

[fol. 3639] Trial Examiner Batten: Why wouldn't it save time, Miss Weyand, if you merely asked about those individuals? You have already gone through it? You already know who they are, don't you?

Miss Weyand: I do.

Trial Examiner Batten: Then, it would save time if you would just ask her.

By Miss Weyand:

Q. The first employee who received more than Robert Eckart, who appears on this two-weeks' pay roll period, is Ted Scoles; is that correct?

A. That is correct.

Q. He is listed as receiving—

A. —$119.17.

Q. And you are fully cognizant of the duties that Ted Scoles was performing at that time?

A. I was not.

Q. You have described here what Ted Scoles's duties in general were and that you knew who he was, haven't you?

A. I have described what they could have been. He was under Mr. Baty's direction. Just what he was doing, I don't know. I have no way of actually knowing.

Q. You will notice that there is no one else on page 4796 that receives over $100?

A. I notice that.

Q. You notice that there is no one on page 4797—

[fol. 3640] Mr. Reed: I say again, the instrument will show, itself. It is here in evidence.

By Miss Weyand (Continuing):

Q. —down to Robert Eckart, on page 4804, who received over $100 for that two-weeks' period?

A. No one listed on this received more than $100 except those two.

Q. Following Robert Eckart, there is no one else on record page 4804 who received more than $100; is that correct?

A. That is right.

Mr. Reed: I insist, if Your Honor please, those papers will speak for themselves.

Trial Examiner Batten: I thought you were going to ask her about the people who received more.

Miss Weyand: Well, if there is anyone— We have discussed Ted Scoles and—

Trial Examiner Batten: You are now turning the pages, and saying, "There is no one on this page?"

Miss Weyand: I want to show that the witness is aware of what this pay roll record of the time workers shows when she answers the questions which I intend to ask her in reference to the few workers who received more than $100.

Mr. Reed: She can ask that without going through this pay roll.

Trial Examiner Batten: Proceed.

[fol. 3641] Miss Weyand: She has stated before she was unacquainted with the exact salaries of many of the employees at this period, as I recall, and I want her to have in mind exactly who was receiving more than $100, for this line of questioning.

By Miss Weyand:

Q. There is no one on page 4805?

A. No.

Q. 4806?

A. No.

Q. On 4807 there is one person receiving more. Who is that person?

A. Oscar Steinborn.

Q. Does it appear on the face at all why he received more than $106?

A. They mention there is some overtime.

Q. Noticing the number of hours listed, 100 hours—

A. That couldn't all have been overtime.

Q. That would probably—or would you know what that is? Would that be his total normal time plus overtime, or would you know what that 100 hours meant?

A. I really have never had anything to do with getting up a pay roll.

Q. Do you know Mr. Oscar Steinborn?

A. I know he is one of our cutters.

Q. I notice there he is listed under "Designing-Patterns."

A. He is one of the ones that probably at times comes [fol. 3642] up to do grading work.

Q. How long has he been working for the company?

A. I don't know.

Q. Is he an old employee?

A. Not as old as some.

Q. Was he working at the plant prior to January 1, 1935?

A. I don't know.

Q. Do you know Mr. Steinborn personally?

A. I know him to speak to him when I see him, yes.

Q. And you know what he does around the plant generally?

A. I really don't. I have seen him in meetings I have had with cutters.

Q. Does he do cutting work?

A. I classify him in my own mind as a cutter.

Q. What does he do?

A. I don't know, to be absolutely sure.

Q. There is no other person on page 4807?

A. No.

Q. 4808?

A. No.

Q. On page 4809 we have a whole row of persons, this being the buying records department.

Mr. Reed: The what?

Miss Weyand: The buying records department.

Mr. Reed: Of course, I can't hear counsel if she stands [fol. 3643] right over the witness and between me and the witness.

Miss Weyand: I am very sorry. I will try and speak louder. If you do not understand me on any occasion, just ask me and I will repeat what I said. I am thoroughly sorry if I do not always make myself plain.

By Miss Weyand:

Q. Do you see the name of any employee on that page with whose duties at that general period you were not acquainted?

A. I see a number of employees that did their work under the direction of Mr. Baty. Some of them are designers.

Q. Will you name specifically which ones, instead of saying "some" when you refer to them?

A. Lillian Marrs was a designer; Yolanda Haines was a designer; Nellie Kraft was a designer; Gertrude Cain,

a designer; Florence Strickland, pattern maker; Marvin Price would be in the maintenance department; Ella Mae Hyde was the personnel director; Lulu Nichols works on piece rates; Katie Schleicher works on making the original cost cards; she does that work herself.

The designers and Florence Strickland, Lulu Nichols, and Katie Schleicher all work on the 9th floor, and on that floor I am more familiar with what these workers actually do.

Marvin Price, Lena Tyhurst, Anna Wherry, and Herb Fountain all worked entirely in the plant and under Mr. Baty's direction, and I would not be able to tell what their [fol. 3644] duties were from day to day and what their activities were in the production of the merchandise.

Q. The next page, 4810, there are two persons who make over $100. Are you acquainted with those two persons and their duties?

A. Derrien Riley is in our New York office, and Pauline Hartman is in the accounting division. I don't know what they actually do. Neither one of them have ever been under me directly.

Q. On page 4811 there is no one making over $100?

A. No.

Q. On page 4812 there is no one making over $100?

A. No.

Q. I believe of the persons making over $100—I want you to correct me if this is not correct—Robert Eckart is the only person whose position and duties you do not know?

A. Well, the ones I have gone over there, I told you I don't actually know what their duties are from day to day.

Q. You do not know who they are at all? A. Yes.

Q Do you know who Robert Eckart is?

A. It comes back to me now— I believe he was one of the men we employed as a watchman at the time we had to close our lobby because we were afraid of pickets coming in and sitting down in the lobby. That is my remembrance.

[fol. 3645] Q. Do you know Barbara Eckart?

A. I know—

Mr. Langsdale: Pardon me. Let me get that date. July 1 to July 15?

Miss Weyand: That is the date at which he appears on the pay roll at $112, which we were discussing.

Mr. Langsdale: That was after the injunction was issued against any picketing.

The Witness: I said I believed he was a watchman we employed in the building. He was a watchman we employed in the building for a while.

Trial Examiner Batten: The question now is, do you know who Barbara Eckart is? Is that correct, Miss Weyand?

Miss Weyand: Yes.

A. I know Barbara Eckart works at our place.

By Miss Weyand:

Q. Do you know how long she worked at your place?

A. I really don't know. I believe, quite some time.

Q. Was she working there prior to January 1, 1935?

A. I would say that she was. That would be my remembrance.

Q. Is she Robert Eckart's wife? A. I don't know.

Q. Looking at page 4786, do you see Robert Eckart's name thereon? A. I do.

[fol. 3646] Q. What department is he there listed under?

Mr. Hogsett: Objected to because the document is the best evidence.

Trial Examiner Batten: You may tell us.

A. The heading on that page says "Accounting Department (Continued)."

By Miss Weyand:

Q. Was Mr. Robert Eckart ever in the accounting department, to your knowledge?

A. Not to my knowledge.

Q. Do you know of any reason why he should be listed on the pay roll, assuming he was so listed, in the accounting department? A. I do not.

Mr. Langsdale: Would you mind calling attention to the date, Miss Weyand?

Miss Weyand: This is the pay roll. June 1 to June 15, 1937.

By Miss Weyand:

Q. That is correct, isn't it, Mrs. Reed?

A. Yes, that is what is on the page here.

Q. Calling your attention to page 4794, do you see Robert Eckart's name thereon? A. Yes.

Q. You notice he is again listed in the accounting department, do you?

A. I notice that the heading at the top of the page says [fol. 3647] "Accounting Department (Continued)."

Q. And that is the pay roll period June 16 to June 30, 1937; is that correct?

A. That is correct.

Q. Was Mr. Eckart in the accounting department at that time? A. Not to my knowledge.

Q. Do you know of any reason why his salary should have been carried under the heading of "Accounting Department," if it was so carried, at that time?

A. I do not.

Q. In January 1935, did your employees have any organizations limited to employees of the plant?

A. I don't know much about the organizations. They had a number of organizations in the plant as far back as I can remember.

Q. What organizations did they have in January 1935?

A. I don't believe I could remember them. I just never bothered about their organizations.

Q. Do you remember the name of a single organization which they had in January, 1935?

A. They had an athletic association for a great many years.

Q. Was it in existence in January, 1935?

A. I am very sure it was.

Q. Was there any other organization of your employees in January of 1935?

[fol. 3648] A. I am not definitely sure about the date. I am not very good at remembering dates. I don't know exactly.

Q. Can you state whether there was or was not any other organization in January of 1935 than the athletic association?

A. There was a—what do they call themselves? Pioneers. We have had the group of Pioneers for a number of years, I believe.

Q. What kind of an organization is that?

A. That is a group of the employees who have been employed at my place 15 years or over.

Q. Did you have any organization at your plant in January, 1935, in addition to the athletic association and the Pioneers?

A. I have never had any organization at my plant of employees.

Q. Did any organization of employees exist at your plant, other than the Pioneers and the athletic association, in January of 1935?

A. When you put that date of January, 1935 in, I can't be awfully sure, Miss Weyand, of any others.

Q. Do you know the name of any other that you know did exist at that time?

A. To say just what existed in 1935, right at this moment I can't recall definitely. I know the athletic association has been there for a great many years, so I could say I know that was there in 1935. And I know the Pioneers were organized then. But what other ones were organized—you see, that's seven years ago—I might not be sure.

* * * * * *

[fol. 3650] By Miss Weyand:

Q. Mrs. Reed, I show you Board's Exhibit No. 2, which is record pages 4361 to 4364 inclusive, of the Circuit Court of Appeals record in this case. I would like to have you read this sufficiently to tell me if you ever saw or read it before.

A. I know that I never have seen this copy or original document before.

Q. That includes all four pages there, does it not?

A. I haven't read the others; I have read this front page, and I know I have not seen this copy or read this [fol. 3651] copy, nor have I ever read anything with this information in it. The same is true of pages 4362 and the same is true of 4363. The same is true of 4364.

Q. Do I understand your testimony to be that you have never read those four pages, nor the articles therein contained, prior to your reading them here on the witness stand here, today?

A. You may understand that, because that is a fact.

Mr. Langsdale: Pardon me. Is that Board's Exhibit 2?

Miss Weyand: Yes.

By Miss Weyand:

Q. Did you know, prior to today, that the Athletic Association published a news letter, news sheet?

A. I don't remember the Athletic Association publishing a news sheet.

Q. Did you ever hear of their issuing anything of the sort that purports to be?

A. I know I have never seen any of those papers until I read them today, and never read what was in them.

By Trial Examiner Batten:

Q. Do you know they issued one, some sort of a bulletin?

A. I have some faint remembrance that the Athletic Association may have gotten out some sort of a bulletin, but I have no remembrance what it was; but I do know from the context, what is in these pages, I have never read them before, because there are certain things I know [fol. 3652] if I had ever seen I would have remembered, and I know that I have never seen those papers before.

Q. Did the Donnelly Garment Company furnish the Athletic Association facilities for the printing of notices or other matters which it might wish to issue?

A. Not to my knowledge.

Q. Calling your attention to the left-hand column on Board's Exhibit 2, page 4362 of the Circuit Court of Appeals record,—

A. (Interrupting) Which column do you mean?

A. This column. Will you state whether or not you know of the existence of the clubs therein named?

A. I do not know of the existence of those clubs, and I didn't know that they ever existed.

Q. Did you ever hear of a Twilight Club, prior to reading that today? A. I did not.

Mr. Hogsett: What possible difference would it make if she did or did not? I object; it is immaterial.

Trial Examiner Batten: I overrule the objection; the answer is necessary.

By Miss Weyand:

Q. Was there a T.N.T. Club?

A. I never heard of it.

Q. Was there a Wanee Club?

A. If there was, it existed without my knowledge.

[fol. 3653] Q. Directing your attention to the second column, was there a Whiz Bang Club?

A. I never heard of it before.

Q. Was there a Three Star Club?

A. I never heard of it.

By Trial Examiner Batten:

Q. Did you ever hear of any of those listed there?

A. No. They are entirely new names. I never heard of them.

By Miss Weyand:

Q. Directing your attention to the fourth column, which pertains to the Loyalty League, will you read that article, and state which of the facts or statements therein made had come to your attention prior to your reading thereof today?

Mr. Reed: That is not a fair question.

Trial Examiner Batten: Well, why don't you ask the witness, Miss Weyand, whether any of these particular matters ever came to her attention? I think that would save time, rather than having her read it and then let her pick them out.

By Miss Weyand:

Q. Did 900 persons join the Loyalty League in February of 1935?

A. If they did, I haven't any knowledge of it. I have no way of knowing that 900 people joined the Loyalty League.

Q. Do you know how many people joined the Loyalty League?

[fol. 3654] A. I do not.

Q. At any time?

A. I do not.

Q. Do you know whether a majority of your employees at any time were members of the Loyalty League?

A. I do not.

Q. Were you ever informed that a majority of your employees were members of the Loyalty League?

A. I was not.

Q. Did a group of your employees meet at the home of Mrs. Gray on February 5, 1935, to discuss forming a league?

A. I have no knowledge of that meeting.

Q. Was a mass meeting of your employees held February 8th for the purpose of forming a Loyalty League?

A. I do not know.

Q. Did each of your departments have a representative in the Loyalty League?

A. I have no knowledge of anything about the formation or the organization of the Loyalty League.

Q. I don't think you answered the question.

Miss Weyand: Will you read the question, please?

(Question was read by the reporter.)

A. I do not know. I was never so informed.

By Miss Weyand:

Q. Was Herbert Mutchler a chairman at one time, of the Loyalty League?

[fol. 3655] A. I really do not know.

Q. Did the Loyalty League have a Loyalty pin?

A. I don't know.

Q. Did the Loyalty League have any sort of a pin?

A. I don't know. I seem to have some remembrance of a discussion about a pin, but I wouldn't know. I wouldn't have any actual knowledge.

Q. Did you ever seen an employee wear a pin which bore the word Loyalty?

A. Right at this instant I don't remember.

Q. Do you recall ever seeing such a pin?

A. I recall having seen some sort of a pin, but just at the instant I don't recall it to mind.

Q. In recalling some sort of a pin, do you have reference to a pin of an organization of your employees, that was worn by employees?

A. My employees often wear many pins.

Q. This recollection that you speak of, can you be more specific what you recall about a pin?

A. The Pioneers wear a pin.

Q. What other pins are worn around the plant?

A. I don't specifically recall.

Q. Do you recall any pin other than a Pioneer pin being worn around the plant?

A. I don't recall definitely. I have a faint recollection [fol. 3656] of a pin, but I can't remember the form or really much about it.

Q. The pin of which you have a recollection, is the one of some organization of your employees?

A. I don't call to mind in a definite way a pin. I have heard discussions of a Loyalty pin, or a pin with the name Loyalty on it, but I don't remember that it was ever brought to my particular attention.

Q. Was such a pin sold to employees around the plant?

A. Not to my knowledge.

Mr. Hogsett: If the Examiner please, I object to this line of questioning as being wholly immaterial, and not having the remotest infinitesimal value, whether proving the Donnelly Garment Company dominated a garment union. It has not even a faint tendency to prove that. We are all sitting here, wasting the time of the government, and every individual in this room, to no purpose at all, listening to such examination.

I know that Your Honor, and I think I might say that it is commendable—I know that you have been liberal in the examination in chief and in cross of this witness, for the reason, I think, that was commendable and a proper thing to do, but there must be a limit.

Mr. Langsdale: Of course, I am sure that the Examiner is not going to be impressed by the constant use of superla-

[fol. 3657] tives and words like infinitesimal, and all that language that Mr. Hogsett is using. It is unfortunate that he was not here when this other testimony was given, that everybody wore a Loyalty button, and everybody belonged to it, except Mrs. Reed and Mr. Baty, everybody over the entire plant. It was organized for keeping the I.L.G.W.U. out, and the Board so found, and it has been admitted by counsel that was the reason.

For him to get up and say that it is immaterial, in all charity I say that was due to the fact that he wasn't here, and doesn't know what the record says about the Loyalty League.

For Mrs. Reed, who was claiming to be in close touch with this factory, to swear that she didn't know that 900 people were wearing that Loyalty badge around over her plant, day in and day out, to me, is some of the most important testimony that we have had in here.

. . . . . .

[fol. 3658] Trial Examiner Batten: Well, I am going to pursue the same policy I have consistently followed, unless I feel that it is entirely beyond any matter which we covered in the original hearing, and there was a great deal of testimony in the first hearing concerning the Donnelly Loyalty League. I will permit you to continue, Miss Weyand.

. . . . . .

By Miss Weyand:

Q. When did you first hear of the Loyalty League?

A. I don't remember.

Q. When you heard of it, had it been in existence for a month?

[fol. 3659] A. I don't know, Miss Weyand. To me it was just another club of the people down there, and they had been having clubs of all different sizes and names, and I just can't really remember; I didn't pay any great amount of attention to it. They had a pin — if they had a pin it must have been a rather small one. I don't remember it being made, or anyone coming up showing me their pin. I don't say that they didn't wear them, but I say right at the present moment I don't have in my mind a picture of a Loyalty pin, with Loyalty on it.

Q. Can you give us an approximation, in terms of days, weeks or months, that the Loyalty League had been in existence when you first heard of it?

A. I really can't.

Q. You have no idea whether it was a year later?

A. Oh, I probably heard of it sooner than that.

By Trial Examiner Batten:

Q. Do you know when you first heard of it?

A. No, I really don't, Mr. Batten. At times, down at that place, I have been so pressed, when I have left there at six or seven o'clock I hardly know my own name, and I would not be bothering about little organizations that my employees have.

By Miss Weyand:

Q. Did your employees ever have an organization prior to the Loyalty League, that embraced all of the employees [fol. 3660] of your plant?

A. I do not know.

Q. Did the Loyalty League hold meetings in the building in which your plant was located?

A. I don't know. In 1935 I didn't rent all of the floors in this building.

By Trial Examiner Batten:

Q. The question is, do you know whether they held meetings in the building?

A. I don't know.

Q. The building in its entirety?

A. I don't know whether it was floors that I didn't rent.

Q. I presume the entire building, whether you rented it or not?

A. I don't know where the Loyalty League held their meetings.

By Miss Weyand:

Q. Did they ever hold a meeting in the building in which your plant was located, so far as you know?

A. I don't know, to my own knowledge.

Q. Did you ever hear of it?

A. In a general way, I have heard it discussed, but I don't know of my own knowledge that they held a meeting in that building.

Q. Has your knowledge been sufficient upon which to form a belief as to whether meetings were held or not [fol. 3661] held in the building in which your plant was located?

A. No.

Q. What information did you receive, which you have referred to, in saying you had some knowledge but not enough to form a belief?

A. I didn't say I had some knowledge.

By Trial Examiner Batten:

Q. What information did you have about it, Mrs. Reed?

A. Oh, I don't know. I remember some place I heard it discussed. Really, Mr. Batten, I couldn't say where I heard they had their meetings.

Q. Could you say what you heard?

A. I couldn't even say that. I have a vague idea, but I don't even know whether they held it there or if they were charged with holding it there. I have no information or definite belief in my own mind whether they did or not.

By Miss Weyand:

Q. Prior to March 18th, 1937, was there ever a meeting of all of the employees of your plant, held in the building in which your plant is located?

A. There was one or two political meetings held there. Miss Perkins spoke in a vacant room in my building, to my employees, both in '32 and '28.

Q. In addition to those two meetings, were there other meetings of your employees in your plant?

A. I don't remember specifically. We used to have style [fol. 3662] shows, and whenever I had room enough, I always invited all my employees to see the new style show to the salesmen, and I believe a few times we had the room so that everybody could come.

Q. Aside from those instances, were there ever meetings of all your employees in the plant?

A. Not to my knowledge; I don't know.

Q. At these style shows were there speeches made to your employees? A. No.

Q. Did you ever speak to your employees at the style show?

A. I didn't ever speak to my employees especially. At style shows I usually had a number of buyers from dif-

ferent parts of the country, and I had my salesmen, and I used to make a little talk, I didn't call it a speech.

Q. Did your talk on any occasion include labor matters?

A. No.

Q. Did Senator Reed ever speak at these meetings?

A. No.

Q. He never spoke at any of the style shows at which your employees were present, in your plant.

A. No. When you mention it now, when I was asked by some candidate to make a political speech at noon to my employees, I said I would be willing to do it, if we could [fol. 3663] invite some one from both parties. I don't remember who asked me to have their candidate speak, but I know that there were candidates from each party, and I believe that the one speaking for the Democrats asked that Mr. Reed introduce them, and I have some remembrance that he did that.

Q. Did he make any remarks pertaining to labor relations, in his introduction?

A. I am sure that he did not.

Q. How were these meetings called?

Trial Examiner Batten: Which meetings.

Miss Weyand: The style shows and political meetings to which she has referred.

A. Of my own knowledge I don't know.

By Miss Weyand:

Q. How were the employees notified of the meetings?

A. I just said that I do not know of my own knowledge.

Q. I am sorry. I didn't know that notified might include called. I thought there might be a difference in your mind, between notifying and calling. I didn't mean to ask you the same thing you answered.

All of the meetings you have described were called by the management, were they not?

A. I would say that the meetings were called—I would say that on the style shows, when I had the style shows and where I had room, I invited the people in the plant to [fol. 3664] come. Nobody had to come, but they were invited to come and see the style show, and the same way with the political meetings. No one had to come, but they were invited to.

By Trial Examiner Batten:

Q. I presume the management, whoever that is, probably made the arrangements for the political meeting? I mean by that you at least advised the candidates and the style show, of course, the company organized and planned both of those types of meetings?

A. But no one was told they had to come to a style show.

Q. No, I didn't mean to imply that.

By Miss Weyand:

Q. Did these meetings occur during working hours?

A. The meeting for Miss Perkins occurred during working hours.

[fol. 3665] Q. On the latter occasion, or the first occasion, or both?

A. Both occasions, as I remember it.

Q. Did any of the other meetings occur during working hours?

A. The style shows—I don't remember what time we had the style show, but it would seem like it would be partially during working hours.

Q. Were the employees docked in their pay for attending the meeting you have described?

A. For a good many years there was no time-worker docked for any time they lost in my plant.

Q. Were they docked for these meetings?

A. Not with my knowledge or consent.

Q. Was any arrangement made to pay the pieceworkers the average rate of pay or some other pay for the time they spent at these meetings?

A. I know the two times they spent at the meetings to listen to Miss Perkins they were paid.

Q. Were they paid on any other occasions?

A. I don't remember that they were.

Q. On the two occasions on which you remember they were paid, was a record kept of who attended the meetings, and just those girls paid, or—.

A. Well, in those two instances—

Mr. Reed: Now, it does seem to me that this is very far [fol. 3666] afield. Miss Perkins came here, did I understand, in 1932—

The Witness: Yes, she was the Labor Commissioner in New York State, and I thought my girls would like to hear her talk. I had met her and thought she was an attractive, clever woman, and—

Trial Examiner Batten: Was she Labor Commissioner of the State of New York, Mrs. Reed? She was head of the Board of Public Welfare, wasn't she?

The Witness: Well, didn't Al Smith have something to do with—

Trial Examiner Batten: I don't know. But she was head of the Board of Public Welfare.

But, do you know, Mrs. Reed, if records were kept on those occasions of who attended and whether they were docked in pay for it?

The Witness: Not of my own knowledge. My impression is that everybody went, and then at the end of the week—We never have checked things awfully tight down there, not until the Wage and Hour Law came along.

Trial Examiner Batten: It wasn't your intent, anyway, that they should be docked for that?

The Witness: No.

By Miss Weyand:

Q. Was any meeting called by the employees, in which the management did not participate, held in your plant prior to March 18, 1937?

[fol. 3667] A. I don't know. If the management didn't participate in it, I wouldn't be asked, and I wouldn't know of my own knowledge.

Q. The question is, did you know?

Mr. Reed: I submit, that is answered.

Trial Examiner Batten: Well, do you know of any such meeting, Mrs. Reed?

The Witness: Not of my own knowledge.

By Miss Weyand:

Q. Have you been informed there were such meetings?

A. Not in such a way that I could swear there were.

Q. In what way have you been informed?

A. Oh, in hearsay.

Q. What did you hear in that regard?

A. I couldn't state exactly what I heard.

Q. Could you give us the general substance of what you heard?

A. No, I couldn't. I have the general impression that it is said there was a meeting of employees in the same building that we occupy. My impression is, they held the meeting on a floor that we were not renting at the time.

Q. Do you know the approximate date of this meeting which you heard about?

A. It would be in the spring of 1937.

Q. Prior to March 18, 1937?

[fol. 3668] A. No. After that.

Q. Did you hear of any meetings prior to March 18, 1937?

A. I have no clear understanding of that, of any meetings held before that.

Q. What understanding do you have?

A. I have no understanding of it.

Q. I wish to show you I. L. G. W. U.'s exhibit No. 10, being pages 5961 to 5974, inclusive, of the Circuit Court of Appeals record.

(Addressing the Trial Examiner) Do you wish to see what I am showing her?

Trial Examiner Batten: No. I will look at it later.

Q. (Continuing) I wish to direct your attention specifically to the last page thereof, being record page 5974. You will notice it bears the date March 5, 1937.

A. I do.

Q. Was that page ever presented to you?

A. I don't remember.

Q. Will you look at the other pages and state whether they were presented to you?

Trial Examiner Batten: What is that, that petition?

The Witness: Yes. I am going to examine all of these papers that come to me now very carefully. (Looking through pages indicated above.) I want to be sure there hasn't been anything funny slipped in here. (Continuing [fol. 3669] examination of pages above indicated.)

Q. You have examined pages 5961 to 5973, inclusive, and acquainted yourself sufficiently therewith to state to me whether those were the pages presented to you on March 2, 1937?

A. They look like the pages that were presented to me—photostatic copies of them.

Q. Could you tell, as to each page, whether it was or was not presented to you?

A. If someone wanted to take them out of the record and recopy them, it probably could be done. I couldn't tell you that every single name on here is just as it was. I don't remember every name and every girl's signature. I couldn't identify it t that extent. I would have to have confidence that it was put in here in good faith—

Trial Examiner Batten: As far as you can tell, it appears to be photostats of the petition you received; is that correct?

A. As far as I can tell, it appears to be a photostatic copy of the petition that was received by me, yes.

By Miss Weyand:

Q. Did you ever see page 5974 before?

A. I don't remember.

Q. Did you know that some girls signed a page after the other pages were presented to you?

A. It is my understanding they did.

[fol. 3670] Q. What information did you have on that subject?

A. Merely an understanding. I don't know exactly how I arrived at it.

By Trial Examiner Batten:

Q. What was your information, Mrs. Reed, about it?

A. Well, I simply— If you ask me now— This happened back in 1937, five years ago. I don't know how I arrived at it.

Q. Did you know there were some girls that signed later?

A. Yes, I have heard of it. But I don't remember how these other names were handed to me, if they were.

Q. Well, do you remember anything about it, any of the details at all?

A. I remember in hearing our cases discussed that this was discussed, but I don't remember the details about it, Mr. Batten.

Miss Weyand: Did you, at the time, know that some girls signed subsequent to the other girls?

Mr. Hogsett: That has been answered within the last 10 minutes three times—at least three—I think maybe four.

Miss Weyand: I want to refer to prior to the arising of the Labor Board hearing and the discussion thereof which her last answer dealt with. I want to know whether she heard of it prior to that discussion.

By Trial Examiner Batten:

Q. I think you said in answer to me, Mrs. Reed, that in [fol. 3671] the discussion of these cases you heard something about it?

A. Yes.

Q. Prior to the time any of these cases started, do you recall whether you heard about a number of girls signing it after March 2?

A. I recall hearing about it, but for me to place a time, Mr. Batten, of just when I heard about it and who told me, I can't do that.

By Miss Weyand:

Q. Did you ever receive a sheet of that nature subsequent to the presentation of the main bulk of the petition?

A. At this instant I don't remember specifically, although the sheet must have come to me, because it is here with these other sheets. Now, when and just who presented it to me, I don't remember.

Q. Will you read it over and see, after reading over the names thereon and the substance thereof, whether you remember receiving that?

A. Well, I said that I don't remember the specific time that I received it or the circumstances under which I received it.

Q. Did you see that sheet?

A. I saw this sheet, yes.

Q. Was the time at which you saw that sheet sometime [fol. 3672] in the spring of 1937?

A. I would say it was.

Q. Can you state in any general terms the nature of the duties of the persons whose names appear on that sheet?

Mr. Reed: What sheet?

Miss Weyand: The last sheet we are discussing, dated March 5, 5974.

A. Most of them are instructors. There is one man from the cutting department whose name I recognize, John Ferretti. Heath Cowan would not be an instructor. Is that Jennie Mudd (indicating on sheet)?

Miss Weyand: Jessie Mudd, I believe, is the name.

The Witness: I don't remember Jessie Mudd ever having been an instructor.

By Miss Weyand:

Q. Did you give instructions to Anna Wherry, Lena Tyhurst, or any of the other persons whose names appear on that sheet, as to the attitude they should take in regard to labor organizations?

A. I did not.

Q. Did you issue any instructions to your supervisory personnel as to whether they should be neutral in labor matters?

A. I did in the discussions with Mrs. Reeves and Mrs. Hyde say that we should be absolutely neutral, and if a girl wanted to join a union, that was her own affair, and we [fol. 3673] were to keep completely out of it.

Q. Did you give such instructions to Anna Wherry?

A. Mrs. Reeves would have given instructions to her, probably.

Trial Examiner Batten: The question is, did you?

The Witness: I don't remember specifically ever giving any kind of instructions to Mrs. Wherry about her attitude or about the union. I don't remember ever discussing any union activities with Mrs. Wherry.

By Miss Weyand:

Q. Did it ever come to your attention that Mrs. Wherry or Lena Tyhurst had ever expressed themselves as opposed to a union? A. It did not.

* * * * * * *

Miss Weyand: I will withdraw the question and ask [fol. 3674] another question.

By Miss Weyand:

Q. Did it ever come to your attention that any supervisory person expressed an antiunion attitude?

A. Not that I can remember of, ever.

* * * * * * * *

Q. Did you ever hear of Herb Fountain making any statement of an antiunion character? A. No.

Q. Did you ever criticize Anna Wherry, Lena Tyhurst, or Herb Fountain for having signed the statement which appears at the top of page 5974?

A. I have already said I don't recall of my own knowledge of this being put in my hand.

* * * * * *

[fol. 3676] By Miss Weyand:

Q. Did you consider that petition notice to you that the employees in your plant who signed the petition did not want you to deal with any union?

A. With any outside union, is the way I really felt about it. At that time the only union that was on the horizon was the I. L. G. W. U., and it was an outside union.

Q. Did you have any reason, other than the fact that the only union then on the horizon was the I. L. G. W. U., to assume that this notice referred to the I. L. G. W. U., rather than it meant that the employees did not want to [fol. 3677] deal with any union of any kind?

A. At that particular time Mr. Perlstein and Mr. Dubinsky were making statements in the newspapers about how they were going to force me to sign a contract. They appropriated $100,000 to use to force me to organize my plant, and they had said they were going to start to boycott my goods, and I had every reason to believe that my employees feared that I might acquiesce and sign a con-

tract that would force them to join that union, because that had been the practice. That had happened in Kansas City and many other places.

Q. You did not feel that this statement referred to any other union that might come along except the I. L. G. W. U. union? A. I did not.

[fol. 3678] Miss Weyand: Were any instructions ever issued from your plant to the instructors, directing them to maintain a neutral attitude in labor matters?

Mr. Reed: I object to that, because it is no employer's business to issue instructions to its employees that they must be neutral. The employees have the right to contend for the union they prefer and to battle the question out between themselves, and the employer has no right to interfere and demand that they shall stand neutral. That certainly is the position occupied by the I. L. G. W. U. They claim the right to fight amongst themselves or all who oppose them and to get out with clubs and razor blades and red pepper and attack people who don't belong to their union. What duty is there, anywhere, to go around amongst the employees and instruct them "You must be neutral."

What duty is there, anywhere, to go around amongst the employees and instruct them, "You must be neutral"?

Trial Examiner Batten: Mrs. Reed, have you ever issued any instructions to instructors that they were to be neutral in this union matter?

A. I never issued any instructions, no.

Miss Weyand: Did anyone else in the plant issue such instructions?

Trial Examiner Batten: As far as you know.

A. Not to my knowledge.

Trial Examiner Batten: As far as you know, no one ever did? A. No.

Miss Weyand: Did you ever issue a statement to the [fol. 3679] employees in your plant, that you did not care whether or no they joined a labor organization?

* * * * * *

A. I made a statement something to that effect at one time in a meeting.

By Miss Weyand:

Q. What meeting are you referring to?

A. A meeting on March 18th.

Q. Did you take any steps to make certain that notice came to all of the employees?

A. I made a statement to that effect, to a large meeting of my employees.

By Trial Examiner Batten:

Q. Outside of making the statement at the meeting, did you take any further steps thereafter in that matter, Mrs. Reed?

A. They all heard what I said.

Q. Everybody at the meeting heard you?

A. Yes, heard what I said.

Miss Weyand: Were there employees employed in your plant who were not present at that meeting?

Trial Examiner Batten: I don't presume you know, do you? A. No, I don't know.

By Miss Weyand:

Q. Do you know whether a majority of your employees were present at that meeting?

[fol. 3680] A. No, I do not know how many, but a great many.

Q. Did the employees in the office force attend that meeting?

A. I don't know which employees attended that meeting, Miss Weyand.

Q. Were there employees in the plant who continued to work while that meeting was being held?

A. I don't know that. My remembrance is, that meeting was very late in the afternoon, because I remember very specifically that I was going to Florida that night, and I was downtown with Miss Frances, shopping, in the afternoon, and I simply stopped in the afternoon to see if anything of any great importance had come up or any mail had come in of special importance, and the meeting must have been at five o'clock, when I got down there.

Q. Were the employees present there at the meeting wearing uniforms?

A. A number of them were. I don't remember specifically how they were dressed. My plant employees do [were] white uniforms.

By Trial Examiner Batten:

Q. You thought some of them were wearing uniforms?

A. If this hadn't come to my attention, I don't think I would have thought about it. I didn't think about it.

Q. Is that your recollection?

[fol. 3681] A. I don't remember.

Q. Then, Mrs. Reed, when you are asked these questions and you don't remember, say you don't remember.

A. The first thing I was thinking of, naturally, Mr. Batten, my plant employees do wear white uniforms, and, it being time to go home in the evening, some of them may have changed or they may not.

At the time I wasn't thinking how they were dressed, so I don't remember whether they were wearing uniforms or not.

Q. I would suggest that you give some thought to these questions, because after all that is the reason you are here, to answer these questions.

A. I have been on the stand about five hours, and I am tired.

Q. Irrespective of that, I would suggest that you give thought to these questions, and take your time.

A. All right. Thank you.

Q. And don't proceed to make an answer, and then make the statement later that you don't remember. I would think about the question first.

A. Well, thank you very much.

* * * * * * *

By Miss Weyand:

Q. Do instructors in your plant wear uniforms?

[fol. 3682] A. They wear white dresses.

Q. Is the uniform in your plant something other than just a white dress?

A. In the last few years, that is the case. Originally I had a specific uniform, and the styles changed, and the girls didn't want to wear that, because it became old-fashioned, so I said, "Wear anything that you want to, just so it is white."

By Trial Examiner Batten:

Q. That is, the operators could make their own choice, as long as it was white? A. As long as it was white.

Q. And it doesn't follow one absolute uniform?

A. Originally the operators wore a specific uniform, and the instructors wore a different uniform, and at the present time they all wear white dresses, of any style that they want to.

* * * * * *

[fol. 3686] Proceedings.

Trial Examiner Batten: The hearing will be in order. I think we will proceed. I want to say that I have reviewed the record of, I believe, August 6th was the date that Board's Exhibit 32-A, B, C, D and E was introduced, and after reviewing that record, I see no need of changing the ruling which I made with respect to it, unless counsel feel that further consideration should be given my decision at that time.

In other words, at that time I struck out everything pertaining to Board's Exhibit 32-E, and those questions which related to an application of any of those pages.

I might say it was my intention to strike out all that testimony except the received exhibits and the identification of Mr. Green's signature. I think, in substance, that covers my ruling. If there is any question about it later, you may review that and then let me know whether or not you think that clarifies it sufficiently.

* * * * * *

[fol. 3688] Miss Weyand: I would like to ask if counsel for the company have secured the accurate pay roll at this time, and will state what, if any, corrections they desire to make in Board's exhibit No. 28. I hesitate to go ahead examining the witness unless there is some agreement that we can assume it is correct.

Trial Examiner Batten. Miss Weyand, I said we will proceed on the assumption that it is correct. It is in the record, and it was stipulated, and unless some action is taken by one of the parties to make a motion or take some step to correct it, we will proceed on the assumption that the record is correct.

Mr. Langsdale: Mr. Examiner, it appears to me, if they have in mind taking any steps to change it, they ought to do it right away, instead of waiting two or three days, until after the examination has taken place on the one that is assumed to be correct, and then having Miss Weyand [fol. 3689] go back over the other one.

Trial Examiner Batten: I am not going to initiate any action to change the record. The record stands. It has gone through the hearing, it has gone through the Board, and it has gone through the Court, and as far as I am concerned, I will accept the record as it is.

Mr. Langsdale: But, representing the I. L. G. W. U., I am saying they shouldn't wait until Miss Weyand is through with her examination and then come out and say the examination isn't correct.

* * * * * * *

By Miss Weyand:

Q. Do you know how long the meeting of March 18, 1937, had been in progress when you first learned of it?

A. I do not.

Q. Who told you there was such a meeting?

A. There was a small group of employees came to my office and told me there was a meeting in progress.

Q. Was Frances Strine in your office when they came?

A. Mrs. Strine is my secretary, and she may not have been in my office. She probably was near.

Q. When employees desire to see you, do they first go to your secretary and arrange an appointment or ask to be allowed to see you?

[fol. 3690] A. Generally speaking.

Q. Is that the usual procedure?

A. It is the usual procedure, but there is no strict rule to that effect.

Q. Can they walk into your office without first making an appointment and receiving permission from your secretary? A. They could.

Q. Do they?

A. On occasions I have someone come into my office.

Q. How frequently has that occurred since January, 1935?

A. I couldn't say how frequently. Perhaps someone might be on the 10th floor and in going by my office, if my office door was open and they had something they wanted to say to me, they might just step in and say it.

* * * * * * *

Miss Weyand: Is the door to your office one that leads into an outer reception office, or is it directly connected [fol. 3691] with the main part of the building?

Mr. Reed: Now, Mr. Examiner, I have to object. This is a mere consumption of time. What difference does it make where her office door leads, or how many minutes it is open during a period of six or seven years? I can't see the reason for questions of this character.

Trial Examiner Batten: Well, Senator, as I have indicated before, I am not going to attempt to limit the examination at this point in any way. Whether it is material or not, I presume will appear. I don't suppose I can ask any of counsel on preliminary or introductory questions just the purpose.

I will permit you to proceed, Miss Weyand.

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A. There are two doors in my office. One of them is on the main aisle in the office and one of them is a side door, where there isn't an enclosed room, but about the amount of space of an ordinary enclosed room, where Miss Frances's desk is.

By Miss Weyand:

Q. Do you remember what arrangement you made to [fol. 3692] take Miss Frances to the meeting of March 18, 1937?

A. I don't remember exactly what I said, but I indicated to her—I asked her to come along and take notes of what I would say.

Q. Where did she sit at the meeting?

A. I don't know exactly where she sat.

Q. Was it on the platform in front or down amongst the audience?

A. I don't recall exactly. I am pretty sure it wasn't on the platform, but it must have been very nearby.

Q. Did you direct her to take down merely the remarks you made, or all of the remarks made at the meeting?

A. Remarks I made.

Q. Who introduced you to the meeting?

A. My remembrance is that Miss Todd said I did not need an introduction, or something to that effect. There was no speech made, that I remember of.

Q. Was Miss Todd presiding at the meeting?

A. To the extent that she said I didn't need an introduction, or—I think she said something along that line. That would be as far as I know, because there were no other—nothing else. There was no one else spoke while I was there. As soon as I came in there I went up to the platform, and Miss Todd then made whatever remarks she made—I don't remember—and then I started talking. [fol. 3693] Q. Was Miss Todd on the platform when you arrived?

A. I don't remember for sure, but she probably was. I couldn't say she wasn't.

Q. Were the audience in their seats, or did it appear that the meeting had not yet begun?

A. I can't remember exactly. There were a number of people already there, but to say whether the meeting had already begun, I don't know.

Q. You say a number of people were already there. Could you give us some estimate of whether there were 100, 500, or 1,000?

A. I couldn't estimate it, but it seemed like—the room seemed to be about full.

Q. How large a room was it?

A. Our rooms down there are—I think there's approximately—There is a gross square footage of 10,000 feet, but—

By Trial Examiner Batten:

Q. You mean on the floor?

A. I mean on the floor, but elevators and lobbies, and all of that, are off of them.

Q. Was this meeting held in a room in which— The entire floor was one large room, is that it, outside of the elevator shafts, and so forth?

A. I am not absolutely sure. It seems to me there was some small partition, partitioning a part of it off. It was a good sized room.

Q. It is your recollection that at least the largest part [fol. 3694] of the floor was the room in which the meeting was held? A. Yes.

By Miss Weyand:

Q. Did it appear to you that substantially all of your employees were present?

A. It appeared to me that a great many of them were.

Q. Were you at the plant on the morning of April 23, 1937? A. The morning of April 23?

Q. That is the morning on which it was alleged the Sylvia Hull and Fern Sigler incident occurred. Were you present that morning?

A. It isn't my practice to go to the office early in the morning. Miss Frances comes to my house first and we dispose of correspondence that may come to my home, and then she discusses with me about appointments, or a number of things of that kind, so we usually don't go to the office until about 11 o'clock.

Trial Examiner Batten: Well, Mrs. Reed, do you recall whether you were or were not at the plant on that morning?

A. I don't remember, but I'm sure I wasn't there at the time the incident occurred.

By Miss Weyand:

Q. Did you learn of the incident immediately upon your arrival at the plant?

A. I don't remember the exact moment that I learned of it, but I probably learned of it sometime that day.

[fol 3695] Q. Who informed you of the incident?

A. I presume Mr. Baty did, but I don't remember for sure.

Q. What information were you given at that time of the occurrence?

A. All I remember is that in a general way I knew that the operators in some section refused to work while these two girls were there. They said they wouldn't work with them.

Q. Did you take any steps to investigate the exact incident which occurred?

A. By the time it came to me, the whole thing was over with. Mr. Baty told me what they had done and said that these girls—I don't remember which one of them—said

that the best thing to do would be to go home, and Mr. Baty said that that was a good thing to do, that the whole thing would probably quiet down in a few days, and I didn't have any idea that there was anything else to do about it.

Trial Examiner Batten: The question was, Mrs. Reed, did you make any investigation of it yourself after Mr. Baty reported the incident to you?

A. After the incident was reported to me I made no further investigation.

Miss Weyand: Did you give any directions that the girls should be contacted and assured protection to remain in the plant and work?

A. Mr. Baty was in charge of the plant, and I didn't feel that it was necessary for me to go into that incident at all.

[fol. 3696] Trial Examiner Batten: The question is, Mrs. Reed, did you? Did you do anything about it?

The Witness: But I say I didn't feel any reason for it.

Trial Examiner Batten: Let's assume that you felt that way, did you do anything about it?

The Witness: I did not.

[fol. 3697] By Miss Weyand:

Q. Were you in the plant on the afternoon of April 27, 1937?

A. I probably was. I was there every working day until I was ill, and I probably was there.

Q. Did you know, during the time that the meeting of the employees which took place that afternoon was in progress; that it was going on?

A. I did not.

Trial Examiner Batten: Did you know that any meeting of your employees was taking place that afternoon?

A. I did not.

By Miss Weyand:

Q. When did you first learn that such a meeting had been held?

A. When Rose Todd came to see me, I think the next day, but very shortly afterwards.

Q. What did she say to you?

A. That the employees had had a meeting, and had voted unanimously to form a union of their own, and had elected a committee to represent them; and she asked me if I would meet with that committee.

Q. Did you have the cards which she brought to you counted?

A. I asked Miss Frances to look them over and to have them checked. Miss Todd said that the union had been formed by a unanimous vote, and I merely said that, "Well, Miss Frances will check these," or something to [fol. 3698] that effect. I don't remember exactly what I said.

Q. Did Miss Frances report to you how many cards she received?

A. I don't remember that it was ever reported to me just how many cards were received.

Q. Was an approximate number given you?

A. I don't remember any number being given me at all. I do know that — I remember now that I discussed this with Mr. Baty, probably the following day or very shortly after that. It may have been the same day, I don't remember exactly, but between his report and Miss Frances' there seemed to be no question in their minds there was at least a big majority, so I didn't follow through to have the exact number counted.

Q. When you say there was no doubt in your mind there was a big majority, you mean a large majority, saying they signed the cards which had been presented?

A. Yes.

Q. Did you have further conversation with Rose Todd or a committee of the union, prior to the presentation of the draft contract?

A. Yes.

Q. When did the conference occur, subsequent to Rose Todd's visit with you about the formation of the union?

A. I don't remember the exact day or date, but it was [fol. 3699] probably several days after that.

Q. Was that the meeting you had with the committee you have described?

A. Yes.

Q. Were there further conferences prior to the presentation to you of the draft contract?

A. There were.

Q. How many were there?

A. I couldn't say how many, Miss Weyand, five years ago, but I know there were conferences after that.

Q. Were there formal conferences of which minutes were taken, and some of them informal?

A. I have done so few things formally in my business that I don't know what you consider formal, and what you would consider informal.

Q. Did the committee come in and state to you they were calling upon you as a committee of the Donnelly Workers' Union?

A. After the first day this committee came to talk to me, it would have been after Miss Todd had made arrangements for them to come at a certain time, and I don't remember whether or not there was any formal statement made, but it wouldn't be necessary, because the appointment would have been made. They would have arrived at a certain time, and I would have known it was this com- [fol. 3700] mittee that had come to confer with me.

Q. They called upon you as a committee of the Donnelly Workers' Union on those occasions?

A. Yes.

Q. What did you discuss at the meetings, between the first meeting you had with the committee and the presentation of the draft contract?

A. It would be impossible for me to repeat the details, or just what was said, or who said what, at a meeting that took place five years ago.

Q. Do you remember the subject matter discussed at the meetings?

A. I remember those things — I remember about those meetings, I felt that somebody must have been talking to this committee about something was going to happen to me, or I was going to die, because it seemed to me the main thing in their minds was they wanted to be sure to get written down all of the privileges they had, because something might happen to me.

I am just saying one thing, that made a great impression on me, because of course it affected me, and I didn't know

whether someone had some inside information about something that was going to happen to me, that I didn't have, and it gave me a very queer feeling, I know that.

Q. Do you have any notion as to whether these con-
[fol. 3701] ferences occurred every other day, or once a week, or how many there were?

A. I don't have, Miss Weyand. I have so many conferences with individuals and groups in my business, and just to say how many conferences I had with this union committee, in a certain length of time, I couldn't say that.

Q. Do you have any recollection as to whether it was on one or two occasions, or whether they were of almost daily occurrence in those few days?

A. They weren't daily, I know that, but I would say there were several. A few, not many.

Q. Would you give any number that one could estimate it?

A. I really couldn't.

Q. Were minutes kept of these conferences?

A. I don't even know. Probably some notes were kept, but just for you to ask me now to give that information, I didn't pay a lot of attention to whether there were or not.

Q. If such notes were taken, would they be in your file at the present time?

A. They wouldn't be in my file; we didn't take any notes of it.

Q. You did not have a stenographer present to take notes on behalf of the company?

A. I did not.

Q. Did you have any notes preserved, which you kept?
[fol. 3702] A. Not of these conferences with the committee.

Q. Do you have any notes or records, pertaining to any conferences between the first occasion upon which the committee called upon you and the date upon which the draft of the contract was presented?

A. I know that whenever we had the lawyers present, and they worked on drafts — but I am saying when I talked to the committee without any lawyers, I don't remember that I had any stenographic notes made of the discussions. That remains in my mind, they were very informal, and more or less the committee telling me what they wanted.

Q. If you kept records back that far, would they still be in existence, if you had those notes taken? Could you check your records to see if they do exist, or would they be destroyed?

Trial Examiner Batten: I thought you said you didn't keep any notes.

A. I don't remember of having kept any notes at all of these informal meetings, when I met with the committee without lawyers being present. Whenever we had the lawyers present, it seemed to me they were always drawing up papers.

By Trial Examiner Batten:

Q. I thought you said a moment ago that you didn't keep any notes, or don't you remember?

A. I said that we didn't keep any notes when the law-

[fol. 3703] yers were not there.

Q. I mean when the lawyers were not there.

A. I have no remembrance of keeping any notes.

Q. Then there may be some?

A. My remembrance is I didn't.

Trial Examiner Batten: Well, you may proceed, please.

By Miss Weyand:

Q. I would like for you to state if there were such, would they have been destroyed by now, or is it your practice to retain all such records?

A. I don't have anything to do with the files or when they are cleaned out. There is a practice down there that some files are kept for six months, and other files for a year, but those files are cleaned out, without asking me about them.

Q. Then you do not know whether or not the files that would have these minutes or notes, if any were made or not, were in existence at the present time?

A. I do not. I have nothing to do with the files being cleaned out.

Mr. Reed: I object to that. It is rather unfair. The witness has said that she doesn't know of any notes being taken.

Trial Examiner Batten: She says she doesn't remember of any, Senator.

Mr. Reed: Very well. She has asked "if there were [fol. 3704] such", when there is no evidence there were any.

Trial Examiner Batten: There isn't any evidence there were or weren't.

Mr. Reed: I think there is evidence there weren't.

Trial Examiner Batten: As far as this witness is concerned, she has not said that there was not, and she doesn't recall any. I think it is a proper question, if there were any, whether they would be in the file or whether it is the practice to destroy them, if she knows.

Miss Weyand: I would like to ask that the company have those files checked, and if some such notes and minutes exist, they will produce them.

A. All right.

Miss Weyand: Did the Reporter get the statement that the company would?

By Miss Weyand:

Q. Were lawyers present at any of the meetings prior to May 27, 1937?

A. Well, I discussed this contract, the making up, with my lawyer several times prior to that.

Q. Were your lawyers present in any conference that you had with the committee of the union prior to May 27, 1937?

A. It seems to me there was a conference the day before that, and then we had one on the 27th. I am not entirely clear on that, but it seems to me there was.

Q. Was May 26th the first day upon which it is possible [fol. 3705] that lawyers were present, as far as you recall?

A. As far as I recall, that was the first time the committee and all the lawyers got together.

Q. Did Mr. Tyler appear on that occasion as attorney for the committee?

A. He did.

Q. Had you conferred, received letters or otherwise had any communication with Mr. Tyler, prior to his presence at that conference?

A. I had not.

Q. Did the Donnelly Garment Company or you, personally, ever employ the lawyers of Gossett, Ellis, Dietrich and Tyler?

A. Many years ago, Mr. Donnelly employed Mr. Dietrich of that firm for some personal business. I don't remember their handling anything else.

Trial Examiner Batten: That isn't the question. The question is whether you or the Donnelly Garment Company ever employed them.

A. I never had, and I don't remember that the Donnelly Garment Company had.

Miss Weyand: Is it possible that the Donnelly Garment Company could have employed that firm or any member thereof, and you not know of it, or not remember of it?

Trial Examiner Batten: Well now, just a minute. What [fol. 3706] period of time are you talking about?

Miss Weyand: Well, I am talking about any time.

Trial Examiner Batten: Well, supposing the company had employed their firm, fifteen, or ten years ago, or twenty years ago, how is that material to this case?

Miss Weyand: It is only material if we can show it continues down to the very certain date the employees had known they had been working for the company.

Trial Examiner Batten: Let's start with the present, instead of starting back so many years, and coming forward. I don't think there is any reason to go into that, unless there is some reasonable showing that such examination can bring forth something that is material.

Am I supposed to answer a question?

Miss Weyand: I believe I will have to state a new question, as I take the Examiner's attitude to this line of questioning.

Trial Examiner Batten: I want you to understand this, Miss Weyand, as well as the other attorneys, and I think the others do. I frequently make the matter in the form of

a suggestion. Now, if you don't agree with the suggestions I make, I just don't want you to accept something I say, necessarily; if you don't agree with me, say so. We will proceed.

Miss Weyand: I should like to have the company pro-[fol. 3707] duce a statement of any cases or any matters in which law firm of Gossett, Ellis, Dietrich and Tyler, or any of the members thereof, were employed by the Donnelly Garment Company, subsequent to the year of 1930. The record will indicate you have undertaken to do so.

Mr. Ingraham: Yes.

Mr. Langsdale: If the Examiner please, while he is at it, I would like for him to produce a record of any employment of A. N. Gossett or anyone connected with the organization, by the Donnelly Company down to date. Now, when Miss Todd—how she happened to go to Mr. Gossett, she said that she had met him in some hospital or something of that sort. It is my belief A. N. Gossett represented this corporation, and Mrs. Donnelly and Paul Donnelly, for a number of years prior to the time when Senator Reed commenced to represent them. My information was, about 1928, Mr. Gossett was their lawyer; I may be wrong, but I do know of some matters on which he represented them, and I think that has some bearing on this, why this girl, who was described as the handyman of the Donnelly Garment Company, went to Mr. Gossett. She went to Mr. Gossett, and he was busy, and sent her to Mr. Tyler. It may not be conclusive, but I think it has some bearing on the matter, so if they are going to get the record of Gossett's employment, I want it all. I expect to inquire about it all.

[fol. 3708] Trial Examiner Batten: Well, I can't see, unless there is some showing in recent years, Mr. Langsdale, where it is at all material. It seems to me that if every attorney may be called upon in the future to show his connections with any client he may have had, and from that you would draw what?

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[fol. 3709] By Miss Weyand:

Q You signed the contract, I believe, that the Donnelly Company entered into with the Donnelly Garment Work-

ers' Union? I wonder if you can tell me what time of day that contract was signed?

A. I think it was pretty late in the evening.

Q. Could you be more definite? What do you mean by "pretty late in the evening"? As I recall, here in Missouri, afternoon is referred to as evening.

A. Oh, I don't know. I would say probably around six o'clock, between six and seven.

Q. How soon after the execution of the contract of May 27 did negotiations begin, looking to the preparation of a supplemental contract bearing wage rates?

A. Just as soon as we were able. We had an understanding that a contract embracing wage rates would be entered into later, and that all the information the committee needed for that would be furnished promptly, as promptly as we could.

Q. Was that understanding, that a supplement bearing wage rates would be entered into, prior to the execution of [fol. 3710] the May 27 contract?

A. Yes, they wanted one thing, they wanted to have—they were willing to take a $15.00 minimum, at least for the present, and they wanted an $18.00 minimum for people that worked on merchandise that sold above $45.00 a dozen wholesale, and I had been all through those different minimums with the N.R.A., and I didn't want to differentiate, because it was so difficult to say when anyone was working on one price goods and when they were on another, and I didn't feel, right at that time, that I wanted to sign that; and so we cut that out. It was with the understanding that the wage rates would be gone into. That was another point, that I, myself, might not be there to give them the allowances I had been giving them for the 20-odd years, or nearly 20 years.

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[fol. 3711] By Trial Examiner Batten:

Q. When you talk about a $15.00 minimum, is that a discussion that took place in the May 27 conference?

A. That is my remembrance.

Q. When you discussed the $16.50, was that in the May 27 conference?

A. That was a later conference, no, when we made the wage agreement.

Q. When you talked about the $16.50, that is during the time you were arriving at the wage scale and classification, is that what you mean?

A. Yes.

Miss Weyand: When did the committee first raise the request for a $16.50 minimum?

A. My remembrance of that was, at a conference on the contract that included the scale of wages.

. . . . . .

By Trial Examiner Batten:

Q. You may answer the question. When did the committee first raise the question of a $16.50 minimum?

A. My remembrance is it was at the conference we had in setting the scale of wages.

By Miss Weyand:

Q. When did that conference occur?

A. Well, that was late in June. I don't remember [fol. 3712] the exact date.

Q. Do you mean late in May or late in June? As I recall the supplement was signed June 22, so that answer wouldn't make sense.

A. The supplement was signed June 22nd.

Q. And you mean it was raised just shortly before June 22?

A. As a matter of fact, I believe that the question of the $16.50 minimum was raised the day we signed that supplement.

Q. I am sorry. When you say late in June, I thought it would be later than June 22. Then your recollection is that the $16.50 request was not made much earlier than June 22nd, and perhaps not until June 22, is that correct?

A. It could be. I know I didn't think I should have to pay an actual minimum of $16.50, when contracts were made all around in this territory, with scale of wages of $13.00 a week, where people paid 40 to 60 percent of the $13.00 a week.

Q. Is it your best recollection that the $16.50 request was not made until June 22, or thereabouts?

A. I don't remember thinking about it seriously, until then. I know then it was the last thing that hadn't been

settled, and Mr. Reed said, "Oh, go ahead and sign it. Let's finish this thing up," or something to that effect.

Q. Whether you thought seriously about it or not, did the committee make that request June 22?

A. I don't recall whether they did or not. There had [fol. 3713] been so many requests and so many discussions of different amounts, and we finally, on that last day, had gotten together on our scales, and the only reason that I particularly remember it is, at that time, it was the last thing, in my mind, that we hadn't cleared up.

Q. Were there drafts of the supplemental agreement prepared prior to June 22?

A. I don't remember exactly what was prepared, but I know that whenever the committee and our lawyers got together, they would write up drafts and check them over, and change them. I left so much of the writing of the contract to the lawyers, that I really don't remember very distinctly what they did do. The substance was always—I was always consulted about the substance, but the actual writing of the contract, I didn't dictate or have anything to do with that.

[fol. 3714] Q. Did you participate in the conferences personally? A. I did.

Q. Did the company or the Donnelly Garment Workers' Union prepare the first draft of the supplemental agreement of June 22?

A. My remembrance is that Mr. Tyler presented the first draft.

Q. Did he present that draft sometime prior to June 22, or was it on June 22 itself?

Mr. Reed: Which contract, now, are we speaking of?

Trial Examiner Batten: The supplemental contract, Senator.

A. I don't know whether any other drafts had been presented. I can't remember for sure, because there was so much work going on all of the time about the contracts, but I do know that Mr. Tyler did make a little speech and say that he had a draft of the supplemental contract, and it was read and looked over and discussed.

Miss Weyand: What date are you referring to now?

A. I don't know the exact date.

By Trial Examiner Batten:

Q. Was it the day it was signed?

A. I can't, Miss Weyand, say what thing was done on just what day. After all, that was five years ago, and—

Q. My question was, Mrs. Reed, was this discussion you ha[d] just been telling us about in the talk about Mr. [fol. 3715] Tyler and his draft, was that the day you signed the contract? Irrespective of the date, do you remember if that was the day you signed it?

A. I don't remember.

By Miss Weyand:

Q. Was it the day before you signed it?

A. I can't place exact dates or days when each draft would have been presented.

Q. Were there several drafts presented?

A. I don't know whether there were several drafts presented. I know that we did a lot of talking, and it seems to me then the attorneys would do some dictating. I really sat in and discussed general points that went into these contracts, but the actual working them up, I didn't do anything about them. I probably just relaxed and let the attorneys work on them. I don't recall making drafts and just exactly what was done.

I very definitely recall the part Mr. Reed had in this contract, the last contract, and that was on the arbitration.

I don't believe in the draft that Mr. Tyler presented there was any clause about arbitration.

Trial Examiner Batten: Are you talking about the supplemental contract?

A. Yes. I remember that being discussed and Mr. Reed's saying that any kind of a contract, a union contract,—that there should be a means of arbitration if there should come up any dispute, and he suggested, if we couldn't agree, that we would have a district judge appoint an arbitrator.

[fol. 3716] By Miss Weyand:

Q. Did you have some sort of a written draft of the contract to work with prior to June 29?

A. I don't remember a written draft. I remember that it was taken up with me at different times about the classification of the employees; in what form, I don't recall.

Q. How soon after May 27 was the first conference between the lawyers on this supplemental agreement?

A. I wouldn't be able to say, Miss Weyand.

Q. When was the first conference between yourself and the committee on this supplemental contract?

A. I don't even remember that exactly.

Q. You did have numerous conferences, however, between yourself and the committee?

A. We did have different conferences, yes.

Q. On different dates? A. Yes.

Q. Who, for the company, secured or worked up the information in regard to pay rates and classifications.

A. Mr. Baty and Mrs. Hyde were the ones, I remember, that did that.

Q. Do you recall whether they typed out classifications and rates and handed it to the committee of the Donnelly Garment Workers' Union?

A. Miss Weyand, I don't know what they did. While this contract and all of this work was going on I tried to [fol. 3717] give attention to the important parts, but in the meantime I was bringing up a new line and I had many things to do in my business. I was attending to my business right along. So, on the contract I depended a great deal on Mr. Baty and Mrs. Hyde on the detail, and on my lawyers for writing up the contract. I didn't feel the complete responsibility. I didn't do all of the work that was to be done on it. I felt that the lawyers, on the one hand, in writing the contract, and Mr. Baty and Mrs. Hyde, on the other hand, could take a great deal of the work off of me of making a contract.

Q. Could you give us any statement of the extent to which you personally participated in these negotiations?

Mr. Reed: Mr. Examiner, don't you think that has been fully gone over?

Trial Examiner Batten: Well, the witness may answer that—to what extent you personally participated, Mrs. Reed.

A. I felt that I kept in touch with the—

By Trial Examiner Batten:

Q. Well, did you meet with the committee and the representatives of the management every time they met; do you know? A. I am sure that I didn't.

Q. Did you participate, on any occasions, in meetings between the management and the union committee in which there was a discussion of all of these different classifications and rates?

A. I know that that discussion came up at some meeting [fol. 3718] that I attended with them.

Q. Did it come up, Mrs. Reed, in general, or did you participate in the discussion of all of these various detailed rates and classifications with the committee?

A. No, I didn't participate in all of those detailed rates.

By Miss Weyand:

Q. Did you go over all of the detailed rates before Mr. Baty or Mrs. Hyde submitted them to the committee?

A. To say whether I went over every one of them, I am not absolutely sure, but I know that Mr. Baty would come and see me with some figures and say, "Now, I am furnishing these to the committee."

Q. Did you authorize Mr. Baty to take it upon himself to furnish figures to the committee without your first having checked them over and approving them?

A. I did, because those figures were a matter of fact. I expected him to furnish what was accurate, and it was facts that he was dealing with.

Q. Did you spend a good deal of time studying the rates and classifications to determine what amount you could pay for which classification?

Trial Examiner Batten: Well, of course, the witness testified, Miss Weyand, that she didn't approve or didn't discuss all of these individual classifications and rates, and the witness further testified that she delegated some of [fol. 3719] that responsibility to Mr. Baty, and she has further testified, as I recall it, that she did not go into it in that detail.

Is that right?

The Witness: I recall that the work of getting the figures and all of that was turned over to Mr. Baty.

Trial Examiner Batten: Just a moment, Mrs. Reed.

Will you read my remark? And then you tell me if I recall it correctly or whether it was incorrect. If it is incorrect, tell me in what respect.

(Thereupon the above statement by the Trial Examiner was read by the reporter.)

Trial Examiner Batten: Now, is that correct, or am I incorrect?

The Witness: Well, I think that is reasonably correct. I don't recall to just what extent I went into any detail. I do know that I relied a great deal on Mr. Baty's handling that. After all, he had been managing the plant and was familiar with that kind of work.

Trial Examiner Batten: Will you refer back to Miss Weyand's question, please, and read it?

(Thereupon the question above referred to was read by the reporter as follows:

"Did you spend a good deal of time studying the rates and classifications to determine what amount you could pay for which classification?")

[fol. 3720] Trial Examiner Batten: You may answer.

A. I don't remember how much time I spent. My remembrance is that I relied mostly on Mr. Baty for that.

Miss Weyand: Was there any problem raised in connection with the supplemental agreement to which you devoted any large amount of time?

A. I don't recall right now. If I would see the supplemental agreement, I might recall.

. . . . . .

Miss Weyand: I have secured my copy of Board's exhibit No. 7, which appears at pages 4382 to 4394, inclusive, of the Circuit Court of Appeals record.

. . . . . .

[fol. 3721] Trial Examiner Batten: I think the easiest way to straighten that out is, when you refer to a record in the Circuit Court, you simply say "Circuit Court record page so and so."

. . . . . .

[fol. 3722] A. Miss Weyand, I don't exactly understand what you mean by your question on just what part I did any work on in this contract. Is that the question?

Miss Weyand: You had testified that you didn't spend a great deal of time on the job of details and classifications. [fol. 3723] I just wondered if there was anything in regard to the contract that you did spend a great deal of time upon.

A. Everything in the contract was discussed with me. Every part of the contract I was familiar with and it was discussed with me.

Trial Examiner Batten: Is there any particular part of it that you spent a great deal of time on, more so than others—any particular part of it?

A. The rates of pay would probably have taken more of my time, because each of those classifications were at some time or other brought to my attention.

[fol. 3724] Miss Weyand: You say "probably": Did they? A. Well, they were, yes.

Trial Examiner Batten: Well now, just a moment.

A. Oh, I am so tired, Mr. Batten, I am sorry.

Miss Weyand: I think, if the witness is feeling too tired, if she can't answer the questions without difficulty, proper steps should be taken that no further examination be given until she feels like she can answer fairly and honestly. I do not intend to impose upon the witness. I don't want the record to show that she is continuing to answer questions when she is so tired.

Trial Examiner Batten: I think if Mrs. Reed doesn't care to continue she will state that she does not.

A. I will continue. I simply read this contract, and for about an hour, ago a contract just written in St. Louis and our wages are so much higher and everything so much better, I admit that it disturbed me somewhat. And I am being grilled on a situation where the results are so much greater to the employees.

Mr. Langsdale: I move that speech be stricken out as in no way material to any issues in this case; any other con-

tract hasn't anything to do with this case. It is not responsive to any question.

Trial Examiner Batten: It may stand. It is not in answer to any question.

[fol. 3725] By Miss Weyand:

Q. Was there any discussion of any check-off of dues in connection with the May 27 contract?

A. I don't remember that there was. There was a discussion of a closed shop all along the line. I had run an open shop for nearly 20 years, and I don't like the idea of—

Trial Examiner Batten: Mrs. Reed, the question was, was there any discussion about a check-off. That is the question.

A. I don't remember that there was. As a matter of fact, my remembrance—I have no recollection of any discussion of a check-off. I can't, right this instant—I know that I at first didn't want a closed shop.

By Miss Weyand:

Q. Did the Donnelly Garment Workers' Union ever request you to give them a check-off provision in a contract?

A. I don't recall that they did.

Q. What was the first recollection you have of a discussion of a check-off arrangement?

A. I think Mr. Baty—that the union wanted a check-off, because it made so much trouble for the girls to have just the exact change to pay their dues. I remember discussing that with Mr. Reed and Mr. Ingraham, and they said that I had no authority to take any money out of a person's pay, unless the individual requested it themselves.

Q. Do you remember the approximate date upon which [fol. 3726] the discussions first arose?

A. I do not.

Q. Would it be subsequent to the June 22, 1937, supplemental agreement?

A. I am not sure, Miss Weyand.

Q. What arrangements did the Donnelly Garment Workers' Union make with the company to check off dues?

Mr. Reed: That is, assuming that the company did, and the witness just said that it was an individual transaction with the individual members.

Trial Examiner Batten: Well, she may state whether or not there was any arrangement between the company and the union on the check-off of dues.

A. I didn't make any arrangement myself, and I have no knowledge. I wouldn't be able to say.

By Miss Weyand:

Q. Who did make the arrangement, if you know?

A. I assume that Mr. Baty would have.

Q. Do you know what the practice in regard to checking off dues is?

Trial Examiner Batten: You mean in this plant?

Miss Weyand: Yes.

A. Of my own knowledge I really don't.

By Miss Weyand:

Q. Do you know whether all of the employees have authorized that their dues be checked off?

[fol. 3727] A. All of the employees don't belong to the union.

Q. Whether all of the employees who are eligible for and do belong to the union have authorized it?

A. I am sure they would, because our attorneys advised us we should have individual requests to that effect.

Q. You do check off dues of all of the employees who are members of the Donnelly Garment Workers' Union?

A. I understand that there is what is called in union circles a check-off system; I am not sure of my own knowledge. I am not familiar with how it works.

Q. Do you know whether there are any employees who are members of the Donnelly Garment Workers' Union, whose dues are not checked off by the company?

A. I do not.

Q. Has there been a renewal of the May 27 contract?

A. Well, it is the same; if there isn't a renewal, it is continuous. I am not sure what the arrangement is. The contract is still in force, except that we have had an increase in wages in the last few months.

Q. When did this increase in wages occur?

A. Sometime this spring.

Q. Could you fix the date more definitely?

A. I am sorry but I can't.

Q. Is the May 27, 1937, contract still in force and effect?

A. That would be my remembrance, with the addition of [fol. 3728] the increase in wages. There may be some others, I don't know whether there is any clarification or anything more or not. In general that contract is still in force, at least the wages and hours and so forth, with the addition of new increases of this spring.

Q. That is, the May 27 contract as supplemented by the June 22 contract, is still in force?

A. Yes.

Q. Do you know whether there were negotiations at the expiration of the first two-years' period of the contract?

A. Yes, there were some discussions.

Q. Do you know what discussions took place?

A. No. That was when I was ill, and I don't—I wasn't in on that, that I remember or recall.

Q. Do you know whether there are other written documents which state changes or clarifications of the May 27 contract?

A. It seems to me there is another short document, I believe that was written in '39, I am not sure. But in '39 I was so ill most of that year that I don't remember having had anything to do with it. It might have been discussed with me, but I didn't have much to do with it, if anything.

Q. To determine the contract under which the company and the Donnelly Garment Workers' Union are today operating, what document do you have to look to?

A. Well, I would—if something came up where I per- [fol. 3729] sonally had to look at the contract, I would immediately get in touch with Mr. Ingraham, and have him get any document. I don't have them in my possession.

Miss Weyand: I would like to ask if the company would supply such supplements and clarifications to the May 27, 1937, contract, any supplements thereto, so we may determine what contract is in existence today, between the Donnelly Garment Company and the Donnelly Garment Workers' Union.

Mr. Ingraham: Very well.

Trial Examiner Batten: You are still secretary of the company?

Mr. Ingraham: Yes.

By Miss Weyand:

Q. Does the Donnelly Garment Company afford desk space to the Donnelly Garment Workers' Union?

A. Not that I know of.

Q. Does the president of the Donnelly Garment Workers' Union have assigned to her a desk at which she is authorized to conduct business on behalf of the Donnelly Garment Workers' Union?

A. Not that I know of.

Q. Does the Donnelly Garment Workers' Union distribute announcements of its meetings through the plant during working hours?

A. Not to my knowledge.

Q. Has it ever done so?

[fol. 3730] A. Not to my personal knowledge.

Q. What information do you have on the subject?

A. Oh, I have heard in a general way that they were accused of doing that, if you want to use that word.

Q. Did you ever investigate to determine whether or not it was done?

A. No.

Q. In reference to the question as to whether the Donnelly Garment Workers, or the president thereof, was afforded a desk, will you answer that question in reference to the entire period from April 27, 1937, to date?

A. It would be the same, to my knowledge.

Q. Do you know whether the Donnelly Garment Workers' Union uses mimeograph machines, typewriters or other facilities belonging to the Donnelly Garment Company?

A. Not to my personal knowledge.

Q. Do you know whether they have ever done so?

A. I don't know. I know that employees have used typewriters and sewing machines, and any equipment that we have down there, at different times.

Q. Do you know whether employees have used equipment in connection with the Donnelly Garment Workers' Union matter?

A. Not to my knowledge.

Q. Do you have any information on the subject?

A. Only what I have gathered from accusations made [fol. 3731] against the union.

Q. Did you ever investigate whether there was any truth to those accusations?

A. No. It never made any difference to me whether any of the employees used any equipment. They have done it for 25 years, whenever they wanted to. I have known it. They know that I know it, and I haven't ever done anything about it.

Q. Has the Donnelly Garment Company ever been called upon to discharge any employee because he failed to maintain his membership in the Donnelly Garment Workers' Union?

A. Yes.

Q. Will you state which employees that is true of?

A. There were two employees, and right at the moment I happen to remember the name of May Stevens; I don't remember the other name.

Q. Will you state what occurred in that connection?

A. My information is that these two young women informed the union, the Donnelly Garment Workers' Union, that they preferred to belong to the I.L.G.W.U., and inasmuch as the Donnelly Garment Workers' Union had a closed shop contract with me, they served notice that in order to—for me to live up to the agreement with them that I had—that these young women should be dismissed, and their employment should cease with us.

[fol. 3732] Trial Examiner Batten: Miss Weyand, what has that to do with this proceeding?

Miss Weyand: Well, this proceeding is concerned with whether or not the Donnelly Garment Workers' Union is company dominated.

Trial Examiner Batten: You mean since the last hearing?

Miss Weyand: The questions which counsel for the company put, brought the situation at the plant down to date.

Trial Examiner Batten: Well, assuming that it did, I still say, with respect to the questions the company's counsel asked, and you asked, too—with respect to the questions that the Respondent asked on direct, and you have asked on cross, I have been wondering for a long time whether we are going to try out all of the issues that have arisen in this matter since the last hearing. I thought

we were here for the purpose of taking certain testimony which was proper, and which, at the last hearing, I rejected. Now, are we here for that purpose, or are we not?

Miss Weyand: I haven't had it clear. I thought that I was sent out here from Washington to deal with that, but the direct examination of the witness did deal with matters subsequent to the last hearing. The offer of the company, while it was written and made in 1939, did speak in terms of whether or not the employees had joined and continued to hold their membership in the Donnelly Garment Work-[fol. 3733] ers' Union of their own free will.

Trial Examiner Batten: What do you think, Mr. Ingraham?

Mr. Ingraham: I think that the hearing is limited to the charges that are in the Board's complaint, and whatever questions were asked, we were merely bringing out all of the facts in connection with various employees, without in any way, of course, enlarging the charges in the complaint.

Trial Examiner Batten: That isn't what I asked Miss Weyand. Do you think we have anything to do with anything that transpired since the last hearing?

Mr. Ingraham: I don't think that the Respondent can be convicted of any matter outside of the charges in the complaint.

Trial Examiner Batten: Are we interested—is it your idea in this hearing we are going to take all of the testimony from the time of the last hearing down to date on everything that has happened in that intervening period?

Mr. Ingraham: No.

Trial Examiner Batten: Mr. Langsdale, what do you think?

Mr. Langsdale: As I thought, I have very clearly stated in the beginning, I think that all this hearing was supposed to be was to take testimony which you had ruled to be [fol. 3734] immaterial and had ruled out at the other hearing, but you have placed no limitation whatever on counsel for the Respondent. The first 30 minutes that Mrs. Reed talked was about the budget she made in 1940, and there has been a lot of testimony about that.

As a representative of the I.L.G.W.U., am I not to be permitted to respond to any of that, because it happened in 1940, if it did happen at all?

Trial Examiner Batten: Are you asking me? I was asking you a question.

Mr. Langsdale: That seems to be your question. I would like to limit it to what the Court of Appeals said it was to be limited to, that was certain offers of proof which Respondent made, and which you refused to accept, which the Court of Appeals says you refused to accept on the ground that it was immaterial or incompetent, or for some other reason. But nearly all of this hearing has been about things that happened since that time, and are we to sit idly by and let it go unchallenged?

Trial Examiner Batten: Well, I don't think that you should, Mr. Langsdale; I don't think I asked you to.

Mr. Langsdale: You asked me if I thought we had a right to go into anything that happened since the last hearing, and I say the only reason I think we have that right is that the Respondent has done it up to now. We [fol. 3735] either have to do it, or sit idly by or let it go as true.

Trial Examiner Batten: Well, Mr. Tyler, what do you think about it?

Mr. Tyler: Well, Mr. Examiner, I believe in an examination of the charges as of the time they were made, and since incomplete evidence was taken at the first hearing, the evidence which was omitted at that time should be included. I do not think this is a continuing charge, in which the complainant may select any day in five years, and have a hearing on any day in five years.

Trial Examiner Batten: That is true, but my question to you is, on the basis of the Court sending it back to the Board, If you would take the testimony which was offered at that time, would it include these matters that have occurred subsequent to the hearing in July?

Mr. Tyler: I think not.

Trial Examiner Batten: Well, I am inclined to think not, too.

Mr. Langsdale: I wonder if counsel and the Examiner would be willing to strike everything that has been testified to by Mrs. Reed since the last hearing. If so, there wouldn't be anything that we will have to respond to.

Miss Weyand: Mr. Trial Examiner, I agree that noth-[fol. 3736] ing subsequent to the last hearing should be taken; however, I notice a decision of the Circuit Court of Appeals, I believe it was the Goodyear case, recently came down, in which the Court refused to enforce an order disestablishing a dominated union on the ground that several years had elapsed since the last event concerning which there was evidence on the record. If counsel for the company and counsel for the intervening union are willing to agree they would not urge upon the Court the absence of evidence concerning events since the last hearing, I should be very glad to limit it to that period.

Trial Examiner Batten: But my further question to you on that is, we are here on an order of the Board, which I take it very definitely limits my power, very definitely because it says in the Board's order, "It is further ordered that the record be reopened and further hearing be held for the purpose of taking additional evidence, in accordance with the said opinion and decree of the aforesaid court." If that doesn't limit me in my authority to receive evidence, I would like to have someone explain to me how much latitude I have.

Miss Weyand: It seems there may be no limitation in the Circuit Court's order and therefore may be no limitation to the Board's order. It is a matter of, what did the Circuit Court mean?

[fol. 3737] Trial Examiner Batten: Well, I don't mind saying to you, I think the Circuit Court definitely limited us, and I think so more today, I am more convinced of it today than when we had this conference off the record, that this hearing should be limited to receiving testimony that was offered at the last hearing and rejected, and nothing more.

Mr. Langsdale: That has been my contention from the first 30 minutes of this hearing.

Trial Examiner Batten: But I didn't mean to inject this at this point. I told all counsel that I am going to proceed with Mrs. Reed, I didn't limit the Respondent, and as soon as we are through with Mrs. Reed, I can tell you all that we are going to very definitely decide this question, and I simply injected the question to you at this time, Miss Weyand, because I am inclined to believe that is going to be the limitation I shall put upon it, and I don't mind telling all counsel, if I do put that limitation upon it, I intend to strike out all of the testimony thus far received, that is not limited to that.

Mr. Langsdale: It appears to me, Mr. Examiner, these gentlemen here are so insistent now that the testimony be limited to the scope which you have defined, that is, the testimony which you refused to accept in 1939, they ought to be willing to consent that everything else be stricken out, and then we will know what we have to date in the [fol. 3738] way of witnesses.

Trial Examiner Batten: Well, we will proceed with this witness. I think I have, perhaps, again expressed my views about what authority I think I have in this hearing, and I think Miss Weyand has conceded that under the Board's order of further hearing I am limited to the Circuit Court's decision, which means that I then have to decide what the Circuit Court meant, and when the proper time comes I shall tell you all what I think the Circuit Court meant. Another reason that I raised that, was this: I thought that you were leading into a subject matter which might bring up a question of further discriminatory discharges, and raise a new issue in this hearing, which would mean additional testimony, rebuttal testimony, and so forth.

Now, I tell you frankly, that is the reason I asked you. I don't want to find myself in the position where I have let any counsel examine a witness on certain matters, and then be confronted with a motion to amend the complaint to include other issues, other than those before me.

Miss Weyand: I have no intention to make any such motion, and I have quite definitely made up my mind not to make any such motion. I assume any other unfair labor

practices, the Board would have no jurisdiction over them until the union would file charges and a new complaint issue thereon, and until that occurs we cannot decide any-[fol. 3739] thing about whether there should be a hearing or it should be held concurrently with this hearing.

I think I am prepared to state that I have no intention whatsoever, I do not think it would be proper under the remand, to include any other complaint. I do feel, however, I should say that the Board— I believe that the Board's order, based on the present complaint, should properly cover the returning of dues checked off.

I also think, under the present complaint, and under the remand, it would be proper for the Board, if the evidence introduced in this hearing should disclose that the domination of this union has resulted in the loss of further sums of money to these employees, to include the return to them of those further sums of money.

Aside from those matters, I feel there is nothing.

Trial Examiner Batten: Well, on what theory would you proceed on that? You are not presenting an affirmative matter by the Board. Does the Board, in this hearing, have any affirmative position at all?

Miss Weyand: The Board in this matter has no affirmative position. However, if the evidence brought out on the offer of proof and the testimony introduced in rebuttal thereto discloses that broader relief should be granted than has been granted in the first order, it is my position that the Board would be entitled to enter a broader [fol. 3740] order than the order it entered into on the previous decision. I feel that in fairness to counsel for the company, I should state that is my position at the present time, if the Board's order is to be entered upon the evidence taken on the remand it does not have to be limited to the order entered in the previous decision.

However, it would have to be an order limited to the issue raised by the complaint which is now on file, and I do not intend to ask that be amended.

Trial Examiner Batten: Well, of course, the Board having set it aside, its order and decision, I presume the Respondent and the Intervenor or Union are all aware of

the fact that in a new Board order and decision, it may be as broad as the complaint, whether that would be any more broad than the one it did issue. Of course, that is a difficult question, and I am not concerned with it.

Well, we will proceed with Mrs. Reed.

Mr. Langsdale: The question I raised with the Examiner is, whether or not we would have a right to bring in witnesses to meet all of the testimony given by Mrs. Reed, that was not limited to what the Court of Appeals said.

Trial Examiner Batten: I don't believe I would worry about that, until we are through with Mrs. Reed, at which time I am going —

Mr. Langsdale: (Interrupting) Well, it worries me. [fol. 3741] I can't get away from it. I have to get witnesses.

Trial Examiner Batten: I am going to attempt to set my limitations with the Court's order for further hearing. If there is anything in Mrs. Reed's testimony which I feel is inconsistent with that ruling, naturally it will be stricken. So we will proceed on that basis.

Miss Weyand: I would like to make a further remark. In connection with the suggestions I made, and which grows in my mind, due to the action of the Fifth Circuit Court of Appeals in the Goodyear case, I think it is necessary that the Board bring down to date the evidence on a dominated union. However, I do think we should consider, whether or not the Circuit Court of Appeals or the Board so intended, when we are having a hearing and witnesses are on the stand, we could easily, without very much greater effort, bring the events down to date.

Trial Examiner Batten: Miss Weyand, as far as I am concerned, you are going to be limited to the Board's order. I don't intend to go beyond it.

Miss Weyand: I do not know whether the Board does or does not decide this matter.

Trial Examiner Batten: I am pretty well convinced that it does. If any counsel intends to go beyond that Board's order, as it refers to the Circuit Court's decision,

I can tell you now that it is going to be with authority from [fol. 3742] the Board and with instructions to me that I do so. So we will proceed.

* * * * * * *

[fol. 3743] By Miss Weyand:

Q. Did the Donnelly Garment Workers' Union give the company a written notice that it desired the company to discharge these two girls?

A. That is my remembrance.

Mr. Reed: Wait a minute. We object to that. That is opening up exactly the question the Commissioner has ruled out.

Trial Examiner Batten: I didn't rule it out, Senator.

Mr. Reed: If you didn't rule it out—

Trial Examiner Batten: I have been trying to arrive at some sort of a limitation. I said we will proceed with Mrs. Reed. I do not intend, Senator, as I previously stated, to attempt to limit the matter at this time. When Mrs. Reed is through, I am more than convinced we have to work out some sort of a limitation on this thing.

Mr. Reed: This is something we didn't go into at all. It raises the question, if it raises anything, whether or not these girls were properly discharged.

[fol. 3744] Miss Weyand: The company did go into the resignation of various persons, Jack McConaughey and Lyle Jeter, that happened in 1939, 1940, and 1941.

Mr. Reed: If the company went into the question of Jack McConaughey and somebody else who resigned from the union, that has nothing to do with the discharge of these two girls. There is no connection between them.

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter as follows:

"Did the Donnelly Garment Workers' Union give the company a written notice that it desired the company to discharge these two girls?")

Trial Examiner Batten: You may tell us. Do you know whether you received a written notice, Mrs. Reed?

A. My information is that we did receive a written notice.

By Miss Weyand:

Q. Did you then discharge these girls because they had failed to maintain their membership in the Donnelly Garment Workers' Union?

A. I didn't, myself, discharge them. My understanding is that they were discharged.

Q. Were there other instances besides these two girls where discharges took place as the result of a request of the Donnelly Garment Workers' Union?

A. Not to my knowledge.

* * * * * * *

[fol. 3745] Q. Did the union negotiate with the company in respect to piece rates as they were set on each style of garment?

A. No. My remembrance is that we agreed, in a general way, that the way the piece rates had been set would be the same, because it had resulted in the operators making more money than was being paid in any other similar dress company, and the union had no objection to our getting up the piece rates as we had gotten them—as we had worked them out before, on the same basis.

Mr. Langsdale: I move that that answer be stricken as not responsive to the question.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. Did the company submit piece rates to some representative of the Donnelly Garment Workers' Union?

A. My understanding is that on each new line that was made up, as the piece rates were made they were submitted to the president of the union for her O. K., or if she didn't [fol. 3746-3747] O. K. them, for suggestions. They couldn't go into effect until the president of the union had O. K.'d them.

Q. Do you know just what procedure was followed in submitting the piece rates to the president of the union for her O. K.?

A. No, I don't know.

Q. Who acted for the company in submitting those piece rates to the president of the union?

A. Mr. Baty would have had the general responsibility.

Q. Did he take each piece rate as it came up and submit it to Rose Todd and ask her if she would O. K. it?

A. Of my own knowledge, I don't know how they worked it out, but I think they would have the piece rates on perhaps the greater part of the line before it would be O. K.'d. I don't think they would take one at a time. We get the line into the plant rather promptly.

Q. Did Rose Todd have with her certain other persons who acted as a committee of the union to O. K. piece rates, or did she just, as president, O. K. them?

A. It is my understanding that she had some sort of a piece rate committee, with one girl from each type of work that was done.

Q. When did this system of having one girl from each type of work assist Rose Todd begin?

A. Of my own knowledge, I don't really know.

Q. Was that the practice from the very first?

[fol. 3748] A. I don't know. The responsibility of dealing with the union on their piece rates was in Mr. Baty's hands.

Q. Did Lulu Nichols participate in negotiating with Rose Todd in reference to the piece rates?

A. Lulu Nichols got up the piece rates. Of my own knowledge, I couldn't tell you just how they did, Miss Weyand.

Q. Do you know what the present practice in regard to piece rate negotiations is?

A. No more than, in a general way, that the committee and the president meet with Mr. Baty and whoever else he wants to be there, and they check over the rates, and if there is any dissatisfaction or they are not in agreement, they get together on it.

Miss Weyand: I would like to ask at this time if the company has checked the wage and hour reports and is prepared to state to us whether the ones introduced for identification were correct, or if they were not correct, if they can supply us with the correct material.

Mr. Ingraham: Miss Weyand, the photostats that you gave me were loose pages, and I couldn't check, because I didn't have those pages properly hooked together; and also, there were no reporter's marks to indicate what exhibits they were on the photostats.

Miss Weyand: Will you check those with the court reporter?

[fol. 3749] Mr. Ingraham: If I could get a— Do you still have the originals?

Miss Weyand: I gave them to you in the courtroom.

Mr. Langsdale: The exhibit designation is on the back of each page of the photostat on the copy that Miss Weyand furnished me. I assume that the same is true of the others.

Mr. Reed: I still ask the question, if I may, where are the originals?

Mr. Ingraham: Miss Weyand, Friday night, when Mr. Batten called us back here, I left the original and you gave me the photostatic copies.

Miss Weyand: I did not take the originals, but, as I understand, the reporter did.

Trial Examiner Batten: I suggested that the reporter take them, after you had the photostats, and I asked you if the photostats were satisfactory; so, naturally, the reporter kept the originals.

Mr. Ingraham: So the reporter has the originals?

Trial Examiner Batten. Yes.

Mr. Ingraham: I can check with the originals, then.

Trial Examiner Batten When, Mr. Ingraham?

Mr. Ingraham: Is it all right for me to take the originals tonight?

Trial Examiner Batten: It is all right with me, if you want to give a receipt to the court reporter.

[fol. 3750] Mr. Ingraham: I will give a receipt to the court reporter. My photostats that I had didn't have any exhibit mark on them, and I am sure there wasn't anything on the back.

Miss Weyand: I think you are correct, that there wasn't.

Mr. Ingraham: The pages were all loose.

Trial Examiner Batten: Miss Reporter, do you have those pages marked, the originals?

The Reporter: Yes.

Trial Examiner Batten: Then, you may take the originals, Mr. Ingraham.

Miss Weyand: I have learned from the Wages and Hours Division that we may retain the originals, so that there will be no necessity for substituting the photostats, and the originals may remain in the record.

Trial Examiner Batten: I think I have indicated before that counsel should not take these exhibits to be photostated unless there is a mark on there indicating the exhibit.

Miss Weyand: I had these photostats made prior to introducing the documents even for identification, with the intent that we could all discuss them in the courtroom better if there was a copy in the hands of each counsel in the case.

Trial Examiner Batten: Well, let's proceed.

You will have those in the morning, Mr. Ingraham?

Mr. Ingraham: Yes.

By Miss Weyand:

Q. Will you state what position Hobart Atherton holds with the Donnelly Garment Company?

[fol. 3751] A. He is in the maintenance department.

Q. Does his position bear a title or term or description?

A. No.

Q. What does Mr. Atherton do in the maintenance department?

A. Of my own knowledge, I don't know exactly what he does. One of the things I have, myself, seen him do is to help put up runways for style shows.

Q. Do you have any information as to what he does do?

A. I really don't know exactly what he does do.

Q. Do you know what he has done at any time since January 1935?

A. In a general way, I know that he is in what we call the maintenance department.

Q. Do you know anything further about Mr. Atherton's duties since January 1935?

A. I have seen him numerous times sitting down in the lobby at the front door, relieving our door man.

Q. Do you know anything further of what he has done or has done since January 1935?

A. I really don't, Miss Weyand.

Q. If I recollect correctly, you stated that the Donnelly Garment Company had recently established a committee to deal on behalf of the company with the Donnelly Garment Workers' Union; is that correct?

A. Yes. I established that committee.

[fol. 3752] Q. Who are the members of that committee?

A. Mrs. Reeves, Mr. Baty, Mrs. Strine, Mr. Green, and Mr. Bachofer.

Q. Are you a member of that committee?

A. No.

Q. When was that committee established?

A. Sometime last winter.

Q. Do you know the procedure which that committee followed in its negotiations with the Donnelly Garment Workers' Union?

A. I do not, of my own knowledge.

Q. Have you any information on the subject?

A. Not any more than when the president of the union has a complaint filed with her and she wants to talk to this committee, she makes an appointment, and I believe that her—I don't know whether her whole committee always meets with them or not, but she asks for an appointment and they meet with her.

Q. Prior to the establishment of this committee, who, on behalf of the company, was authorized to deal with the Donnelly Garment Workers' Union?

A. Mr. Baty. And if they asked to deal with me directly, I would do so.

Q. Was the increase which you spoke of, describing it as, in some instances, 5 percent, 7-1/2 percent, 10 percent, or 12 percent, an increase in the minimum guarantee of the various operators'?

[fol. 3753] A. No. That was an increase in the piece rates and to the week workers.

Q. Did the pieceworkers receive any increase at that time?

A. They received an increase in their piece rates.

Q. It was an increase in the piece rates, as to the pieceworkers, and an increase in the time rates, as to the timeworkers?

A. That is right.

Q. Was this increase included in a written contract with the Donnelly Garment Workers' Union?

A. I think it was just handled through letters.

Q. Did these letters merely state that the increase would be granted, or did they provide that, as a term of employment, that the increase should be in effect for a period of time?

A. My remembrance was, the increase was granted, and we wrote a letter to the union that that had been granted.

Q. Would you provide us a copy of the letter which you wrote to the union granting the increase?

The Witness: Will you do that, Bob?

The increase was agreed upon, and I haven't heard that they didn't get it. I am sure I would have heard, if they didn't.

Q. Did you make any agreement that such increase would be in effect for the remainder of the contract term?

A. I, myself, took it for granted that that would be the situation. I sat in on most of those conferences, and I [fol. 3754] didn't put any term on when they would run out. I just had the feeling that that was an increase in their wages; and I didn't stipulate that they wouldn't have them permanently. As far as I am concerned, that is the wage rates in the place there.

Q. Do you have records of the various disputes which have been taken up by the Donnelly Garment Workers' Union with the company?

A. Not of my own knowledge. I don't know whether there are any or not.

Miss Weyand: I would like to ask counsel to furnish them, but I would be very glad to make that subject to the limitation, if it is ultimately put in effect, I do not intend to question Mrs. Reed about them, but if there is no limitation I would like the records furnished to date.

Trial Examiner Batten: You mean all records of various grievances handled?

Miss Weyand: If they keep records of grievances and disputes at the Donnelly Garment Company.

Trial Examiner Batten: Suppose we had them, are they particularly material to the issues in this case?

Miss Weyand: Yes, I think they are. It will show in many instances who purported to speak on behalf of the company and, I presume, who purported to speak on behalf of the workers.

Trial Examiner Batten: You mean, that is the purpose of the question?

[fol. 3755] Miss Weyand: Yes, that is the purpose of the question.

Trial Examiner Batten: Well, will you see if there are any of those in the files, Mr. Ingraham?

Mr. Ingraham: Yes.

By Miss Weyand:

Q. Do you know the date on which Jack McConaughey withdrew from the Donnelly Garment Workers' Union?

A. I do not.

Q. Do you know the date on which Lyle Jeter withdrew?

A. I haven't any knowledge of the details of when these people withdrew from the union.

Q. Is that true also as respects Dewey Atchison?

A. Yes.

Miss Weyand: I believe that is all of the cross-examination I have, subject, however, to permission to direct some cross-examination to Mrs. Reed at the time we have an agreement as to what the proper wage and hour reports are.

Trial Examiner Batten: I understand, then, you are passing the witness, except for examination with respect to Board's exhibits 32, 33, 34, and 35?

Miss Weyand: That is correct.

Trial Examiner Batten: That, I believe, covers them all.

Miss Weyand: Yes.

Trial Examiner Batten: Yes, that covers them all, Board's exhibits 32 to 35, inclusive.

Miss Weyand: And any other documents which may be introduced, if those should not prove to be the accurate [fol. 3756] wage and hour reports.

* * * * * *

[fol. 3758] By Mr. Langsdale:

Q. Mrs. Reed, I believe that you testified that when the membership cards were given to you by Miss Todd, that Mrs. Strine counted them?

A. I didn't say that she counted them, I said I turned them over to her to check them. Miss Todd said that the employees had unanimously voted to form their own union.

Q. All I asked you was did you turn them over to Mrs. Strine to count.

A. I said—

Trial Examiner Batten: Just a moment. Will you read the question, please, the original question?

(Question read by the reporter.)

Trial Examiner Batten: Do you know whether she counted them or not?

A. I don't know whether she counted them or not.

By Mr. Langsdale:

Q. Did you examine them yourself?

A. Only casually; I didn't attempt to count them, what proportions were there.

Q. Did you look at them for the purpose of seeing who had joined this union?

A. No. I asked Mrs. Strine to check them over, and she could probably get Mr. Baty's help.

Q. Did you observe a card signed by Dewey Atchison?

A. I don't remember any particular name on them; as a matter of fact, I don't remember exactly the cards at all.

[fol. 3759] Q. Did you learn that Dewey Atchison had signed a card and became a member of that union?

A. I did not.

Q. Did you ever learn that?

A. I did not.

Q. You then don't know who did join the union and who did not, do you; Mrs. Reed?

A. I don't know every single person that did. I was informed that all of the working employees joined the union.

Q. Was Mr. Atchison at that time assistant factory manager?

A. He never had that title, to my knowledge.

Q. Didn't he perform the duties of assistant factory manager?

A. He assisted Mrs. Reeves in planning what garments should be cut so that there would be an equal distribution of the work in the plant, in that he would make up a chart and show how many units of single needle work there was, and how many units of double needle work, and all the things on the line, and they would make a cutting card, and she would use that information, and she wouldn't put more work in the plant of a specific kind, or on a specific kind of machine, more than that specific kind of machine could handle.

Q. Did he perform the duties of assistant factory manager?

A. He never did. Dewey Atchison was never assistant factory manager.

[fol. 3760] Q. Who was your factory manager in 1935, in the N.R.A. hearing? A. Mrs. Reeves.

Q. Did she have an assistant?

A. Not to my knowledge.

Q. What were Dewey Atchison's duties at that time?

A. Dewey Atchison has always been an individual worker in the plant. I advised with him many times how we would work out a pattern, and he has helped me make patterns. He has gone over the line with me to see if we couldn't improve operations, and he would work with Mr. Baty to give suggestions on how certain types of operations would go through the plant, and make it easier. He worked with Mrs. Reeves along that line.

Q. Did he ever have any authority to hire or fire anybody? A. No.

Q. Did he ever have any duty to pass upon who should be fired or who should not be fired, or who should be laid off, or anything of that sort?

A. At one time, the way we used to work, about whether an employe would be laid off, he worked with us on that.

But as to Dewey in that regard, it was more whether we had a certain amount of work, or if we would have, for instance, a lot of double stitching, if we were going to [fol. 3761] have a lot of double stitching on our line, we would be informed and we wouldn't lay off any double stitchers. As far as him having personal power over anybody's job, I never felt that way about it.

Q. Wasn't he one who, in the employment of the company, had to pass on whether or not a sewing girl operator remained in the employment or was laid off?

A. Oh, no, he simply kept us informed about whether we would have enough of a certain type of work for the amount of machines. We would have, for instance, 25 or 30 embroidery machines going, and it would be his job to keep us informed whether, according to our records, we would have enough embroidery work for 25 machines, or maybe only 15.

Q. And then he never did have anything to do with passing on who should be discharged or laid off, and who didn't?

A. Just from what I said, Mr. Langsdale, he kept us informed about the work that was coming through, and he knew the type of machines we had in the plant, and how many we had.

Q. Now, you attended the N.R.A. hearing, didn't you?

A. I did.

Q. That was in 1935? A. I believe so.

Q. And were you there during all of the hearing?

A. I think I was, most of the time, anyhow.

[fol. 3762] Q. Were you there when Mrs. Reeves testified? A. Most of the time.

Q. Let me ask you if you heard her give this testimony, which appears in Exhibit 1 of the N.R.A. hearing, page 307. This is by Elizabeth Reeves: (Reading)

"Answer: Nobody is let out of the Donnelly Garment Company unless four people pass on it. After we decide that we have to lay off a certain group or number of people, we go over our records with the instructor, and she makes the recommendation because she is in close

touch with the operator, and knows the type of work that the operator does and whether she is efficient, obedient and co-operative and reliable."

Was that true in the N.R.A. hearing?

Mr. Reed: I object to that, because he is reading somebody else's testimony given in another case, and that is an improper method of examination, if I know anything about it.

Mr. Langsdale: I am asking if that was the condition.

Trial Examiner Batten: You may tell us if that was the situation at that time.

A. He is reading from a record there, and Mrs. Reeves apparently made that statement, if that record is a true record.

[fol. 3763] Trial Examiner Batten: He is not asking you whether Mrs. Reeves' testimony is true, but whether that situation at that time was correct.

A. I don't exactly know what she means, but I do know that Dewey, in that committee, was to tell us how much work was to be done, and—

Mr. Langsdale: Now, Mrs. Reed—

Mr. Reed: (Interrupting) I insist the witness should be allowed to answer.

Trial Examiner Batten: Just a moment. I want to be certain that the witness has not forgotten the question.

Mr. Reed: The witness was answering the question and was interrupted.

Trial Examiner Batten: Will you read the question, please?

(Question read by the reporter.)

A. Can I answer one question at a time?

By Mr. Langsdale:

Q. I am asking you now, Mrs. Reed, if this was the true condition at the time of the N.R.A. hearing.

A. Will you please read what the testimony is?

Q. (Reading) "Nobody is let out of the Donnelly Garment Company unless four people pass on it." Is that true?

A. I know that four people were consulted on it.

Q. (Reading) "And after we decide that we have to [fol. 3764] lay off a certain group or number of people, we go over our records with the instructor, and she makes the recommendation, because she is in close touch with the operator, and knows the type of work the operator does and whether she is efficient, obedient, and co-operative and reliable." Is that true at that time?

A. That part of it—you see, Mrs. Reeves was running it; I don't know. Mrs. Reeves was running the plant, and she said that is what she did. Now, just for me to know that was exactly what they did, I don't know. I do know that we had four people getting together in a consultation before we laid anybody off.

Q. Do you say that is or is not true, what has been stated by Mrs. Reeves, about the duties of the instructor?

A. I know that the instructor, from one angle, would have something to do with who was laid off.

Q. "And after the instructor makes that selection, it is checked by Mrs. Wherry, who is in charge of our factory, who knows what is going on in every section of the place, and Mrs. Wherry might make a suggestion that, well, possibly we wouldn't be able to use that girl in the section, and we might be able to transfer her into another section. That is gone into very thoroughly." Was that true at that time?

A. Mrs. Wherry was never made a manager of the factory by me. I don't know if she was considered to be a manager.

[fol. 3765] Q. You said it wasn't true?

A. No, Mrs. Reeves was manager of the plant, and Mrs. Reeves had a great many other duties, and she relied on Mrs. Wherry to a great extent, to a greater extent than I had realized, when I heard the testimony in the N.R.A. case.

Trial Examiner Batten: It is five o'clock.

Mr. Langsdale: I would like to ask one more question.

Mr. Langsdale: "Then, that group of people are taken up with Mr. Atchison, and Mr. Atchison discusses with them very thoroughly, he sees what they have made and he knows the reason that happened, he has listed each week on pay roll cards with the instructor, and Mrs. Wherry," was that true?

Mr. Reed: I insist, if Your Honor please, this witness ought to be asked direct questions, and not have things read.

Trial Examiner Batten: The question is not whether Mrs. Reeves' testimony is true, but was that the true situation in the plant at the time, if this witness knows.

Mr. Reed: I object to that method of examination.

Trial Examiner Batten: I will overrule the objection.

Mr. Reed: As incompetent, and immaterial.

Trial Examiner Batten: Do you know if that was the method?

[fol. 3766] A. Mrs. Reeves was in charge of the plant, and I of my own knowledge don't know exactly.

By Mr. Langsdale:

Q. The question was, was Mr. Atchison, one of his duties, as I related to you, "Then that group of people are taken up with Mr. Atchison, and Mr. Atchison discusses with them very thoroughly, he sees what they have made, and he knows the reason what has happened, and he listed each week on the pay roll cards with the instructor, and Mrs. Wherry," was that true or not?

A. Of my own knowledge I do not know.

Q. You didn't know Mr. Atchison was performing those duties at the time of the N.R.A. hearing in 1935?

A. I don't know exactly what duties he was performing.

Q. Did you ever hear it from Mrs. Reeves or anyone else, that he was performing those duties?

A. I was really under the impression that Mrs. Reeves went over those cards with the instructors themselves.

Q. You never heard that Mrs. Reeves went over those people, four people went over them, and one person being Atchison?

A. My general knowledge is there were four people that went over them.

Q. Well, who were the four?

A. Well, one of them was Dewey, and the instructor, and I believe Mrs. Reeves and Mrs. Wherry.

Q. Right.

[fol. 3775] Q. And Mrs. Reeves was your production manager at that time, was she not? A. Yes.

Q. And reading further from the same testimony—

Mr. Reed: (Interrupting) Just for the record, we object to the testimony with reference to what happened in [fol. 3776] 1935 and prior thereto, as entirely remote. It does not throw any light, it does not furnish a background for this case.

Trial Examiner Batten: Well, you may have a continuing objection to each question.

Mr. Reed: All right.

Trial Examiner Batten: That is, with respect to the 1935 situation.

By Mr. Laugsdale:

Q. Let me ask you if this method was employed in the Donnelly Garment Company plant in 1935, at the time Mrs. Reeves testified in the N.R.A. hearing: "We treat our people like individuals, and decide certain things they can do, and we classify them, and so forth, and after that is done it is brought up to me for final O.K. I go into all the reasons and whys and wherefores, then if we all four agree that this group of people should be laid off, we lay them off." Was that method employed, to your knowledge, in 1935?

A. I would have to say that, to my own knowledge, I couldn't say just what they did. Mrs. Reeves was the production manager, and handling all those points at that time.

Q. Well, you have no information at all that that was [fol. 3777] not true, have you?

A. No.

Q. Let me read further, and ask you if you know of your own knowledge anything about this incident: "Like I repeated in the case of Thelma Owens, I had overruled the instructor, Mrs. Wherry, and Mr. Atchison, just about a month before she was finally laid off, and then it was brought up again to me, with her past record; I have to agree, because I expect certain things of those instructors." Do you know anything about the Thelma Owens incident, personally?

A. Not of my own knowledge, I do not.

Q. Then, referring to the instructors, "They have to get out a certain quantity of work in order to make our factory efficient, and I certainly expect them to get out quality as well. I cannot expect them to keep people in their section that won't co-operate and won't help them to maintain the quality and standard of our work, so sometimes we did come along and say, 'Well, maybe we can put this girl in another section, and maybe she can get along a lot better.'" Was that the method employed, to your knowledge, in 1935?

A. I would just have to say the total management of the plant was—I couldn't say of my own knowledge.

Q. Let me ask you, Mrs. Reed, if the operators were [fol. 3778] required to be efficient, obedient, co-operative and reliable?

A. I never made that rule myself.

Q. Did Mrs. Reeves make it?

A. She may have, she was managing the plant.

Q. Was that without your consent?

A. I don't believe that those specific things were discussed with me.

Q. Mrs. Reed, I believe you have said in this trial that you got along in your plant with a minimum of supervision, that is, you don't have many supervisors, bosses. Is that so?

A. I don't think we have a lot of bosses in our plant.

Q. How do you compare with other plants, of which you have knowledge?

A. I don't know. I know that I recently had an industrial engineer in there that told me that he thought that the fact that I had more intelligent employees made it more difficult for the industrial engineer, because he was used to having people do what they were told, because they were

told to do it. But he said that down in my plant people had to have explained to them why they should do it.

Q. Let's get back, not to now, Mrs. Reed, but to 1935. How would you say your factory compared with other factories, as to supervision and the number of supervisors [fol. 3779] per person, if you know?

A. I think that our work has always had more careful examining and more thought on the product.

Q. Well, then, that requires you to have a large number of supervisors and heads of departments, did it not?

A. It is according to what you would call a supervisor and head of department; you might have people directing certain work, and have more examiners than they have in other plants, and we had a lot more planning, is my information.

Q. Didn't you call those people supervisors?

A. Well, I don't know that you would call them supervisors. It is according to what you mean by supervisor.

Q. What do you mean by supervisors?

A. Well, I think it is a rather broad term.

Q. Well, do you agree with the definition of a supervisor being one who had the right to direct someone else's work?

A. Yes, I would say that.

Q. Now—

Trial Examiner Batten: Mr. Langsdale, just a moment.

[fol. 3780] Q. Mrs. Reed, let me ask you if you didn't testify as follows at the N. R. A. hearing, page 1074 of that hearing:—

Mr. Ingraham: Is that in this record of the circuit court?

Mr. Langsdale: Yes.

Q. (Continuing) "A. Now, in our plant I think that we have more supervision and more executives than—I know I have—more than are usually in a plant of this kind."

Did you make that answer?

A. If it is in that hearing, I must have.

Q. What do you say it is, Mrs. Reed?

A. I certainly know I felt that we have more planning, more supervising of our merchandise.

Q. More supervision and more executives?

A. Probably so. I have a larger plant than is usual in this business.

Q. Did you make this answer in that hearing, at page 1077 of the record of that hearing:

"Now, in my plant I have 40 operators, 40 machines, under this one supervisor with an assistant. One of them is in charge of quality and the other quantity."

Did you make that answer?

A. I must have, if it is in that hearing.

Q. Which one was in charge of quality?

A. I am not absolutely sure that we always had—that [fol. 3781] that was an invariable rule.

Q. Well, did you mean, Mrs. Reed, by that answer that you gave in the N. R. A. hearing—

Mr. Reed: Let her finish her answer.

Mr. Langsdale: I thought she had, Senator.

A. That was seven years ago, and the point that was being reached there has gotten a little hazy in my mind, Mr. Langsdale.

Q. Well, if you can, I want you to tell the Examiner which one of the supervisors had charge of quality at the time you gave this testimony.

A. I really don't remember. We have tried out so many different ways of production, in our methods of production, that I don't believe that a particular method was carried along, and I can't right now remember whether the instructor or the floor girl was charged with the quality or the quantity.

Q. What is the difference, or what was the difference at that time, between an instructor and a floor girl?

A. The instructor planned the work—what work each operator should do, and the floor girl would give out the work or furnish the thread—perhaps do more of the carrying of the work from one operator to another.

Q. Is the floor girl sometimes called thread girl?

A. Yes.

Q. So that the two people you had in mind when you [fol. 3782] said one was in charge of quality and the other

quantity were the instructor and the thread girl or floor girl? A. Yes.

Q. And right now you can't say which one had charge of quality and which one had charge of quantity?

A. I would say we would have given the responsibility of the—

Q. —quantity?

A. Yes. I believe that would be— You see, it's seven years ago, and I don't remember just what point was being brought out. We have constantly had the problem of turning out mass production and maintaining quality, and the instructor would be the one that would decide which work each—know what work each operator was capable of doing, and she would be saying what work she would do—directing the work through.

Then, the floor girl—I believe it comes back to me now—we thought as long as she was in the section she could be watching the quality of the work as it went along.

I am not absolutely sure, Mr. Langsdale, because that's seven years ago and it isn't a plan that has always been in effect, or I don't think it has been in effect for some time, at least not to my own knowledge.

Q. Let's refer back to some of Mrs. Reeves's testimony and see if that can help you:

"I expect certain things of those instructors. They have to get out a certain quantity of work in order to make [fol. 3783] our factory efficient, and I certainly expect them to get out quality."

A. Well, that would be consistent with just what I have said.

Q. Now, you at that time were in pretty close touch, were you not, with the instructors?

A. Well, at that particular time, it was after we had had two or three years of depression, Mr. Langsdale, and I was devoting an awful lot of my time to trying to design merchandise that would sell. I put in at Christmas time new lines of silk pajamas that retailed for $25.00 apiece. I did most of that designing myself, and I also directed the selling of that, because our regular trade didn't want to buy it. So I had a couple of special salesmen, particularly one very

bright girl, and we sold those to people on Michigan Avenue and on Fifth Avenue in New York. We got about $300,000 worth of business out of them and kept our girls working.

Q. The question was, did you keep in pretty close touch with these instructors at that time, in 1935?

A. I think a great deal of that testimony was about, not just what happened in 1935, but what happened several years previous to that time.

Q. I am not now referring to any testimony, but asking you if you kept in touch with the instructors at the time of the N. R. A. hearing.

A. No, I wasn't in such close touch with them. But at [fol. 3784] that time Mrs. Reeves had taken over the entire management of the plant, and for several years before that.

Q. I will ask you if you recall giving this answer, at page 1107 of the record:

"Q. And I suppose your instructors are more or less under your personal supervision?

"A. Yes. I come in contact with them all the time,"

Did you make that answer then?

A. I probably did.

Q. Was that true?

A. Well, I certainly would be in touch with the instructors, but I didn't direct their work, Mr. Langsdale, at that time. I have always tried to keep in touch with my plant as much as I could. Sometimes I would be in touch with them as much as four months, and then I might not see several of them for a few months.

Q. Well, you wanted to see that they were efficient operators and were good instructors?

A. The instructors were not operators at that time.

Q. I mean, good instructors.

Mr. Reed: I don't know what that last question means.

Trial Examiner Batten: I think the question was, you wanted to see that they were good instructors? Is that right, Mr. Langsdale?

Mr. Langsdale: Yes.

[fol. 3785] A. I don't understand your point.

By Mr. Langsdale:

Q. Well, efficient instructors.

A. Of course, I wanted to have the most efficient instructors I could possibly have, always.

Q. Is that what you meant by saying you came in contact with them all of the time?

A. I would be in contact with them as often as I could.

Q. Now, Mrs. Reed, I believe you have stated that you turned the management of the factory or the plant over to Mr. Baty? A. Yes.

Q. In the summer of 1935? A. Yes.

Q. In July or June; do you remember which?

A. I think it was in July. I don't remember. June or July.

Q. Now, how long had Mr. Baty, at that time, been with your company? A. Oh, I think a couple of years.

Q. It had been that long?

A. I am not sure just when he came. Maybe a shorter time than that.

Q. Could it have been as short a time as six months?

A. It could have been, yes.

Q. What was Mr. Baty's employment before he went with your plant?

A. He was employed by the M-K-T-Railroad Company. [fol. 3786] Q. In that capacity?

A. I don't know the exact capacity. He had been with them for a number of years and I felt that he had a pretty good job—something in the maintenance work, keeping track of the maintenance work.

Q. Was it mechanical or clerical? What kind of a job was it, if you know?

A. He was in what the railroad would term the clerical department.

Q. Did you investigate his previous employment to see whether or not it in any way fitted him to be manager of your plant?

A. Well, Mr. Langsdale, I have had an awful lot of criticism as to how I run my business, but I have run it for 25 years and I have made a pretty good success of it.

Q. I am asking you if you made any investigation of Mr. Baty's past experience to see whether or not it fitted him to be the manager of your plant?

A. I talked to Mr. Baty about coming into my plant and discussed many general things with him. And I felt at the time I talked to Mr. Baty about coming in there—I knew Mrs. Reeves was working too hard, and I would like to have some relief for her. I didn't have anybody in my business that I felt I could turn that job over to, and I asked Mr. Baty to come up and to come into the plant and to work in any capacity that he was asked to do, to learn the management of the plant, and told him that [fol. 3787] eventually I expected he would be able to take it over.

Q. Mr. Baty is a relative of yours?

A. He is the husband of my niece.

Q. Do you know how many employees there were in the Donnelly Garment plant—Donnelly Garment Company and Donnelly Garment Sales Company, in 1935, at the time of the N. R. A. hearing?

A. Oh, anywhere from 800 to 1,000, I think. I don't know exactly.

Q. Did that number gradually increase as the years went on?

A. Yes.

Q. In 1935, did it exceed 1,000?

A. I wouldn't say that it did; I don't believe that it did.

Mr. Reed: Are you inquiring about the total number of employees in the company or the number in the plant?

Mr. Langsdale: The total number of employees in the company.

The Witness: I answered the question.

Mr. Langsdale: Will you read the question?

(Thereupon the last question and answer were read by the reporter.)

By Mr. Langsdale:

Q. Did it exceed 1,000 in 1936?

A. I am sure that we had a growth in 1936.

Q. Well, if your judgment is that the number was 800 to 1,000 in 1935, what would be your judgment as to the num- [fol. 3788] ber in 1936?

A. Mr. Langsdale, I have never made it a point to count how many people we had. When we had more business, if it was my judgment to put on more machines, I would do it, and then we would just employ more people—

Q. I am just asking you for your best judgment, Mrs. Reed, as to the maximum number of employees you had in 1936, if you have any judgment on that matter.

A. I have no exact information I could give you. I know the business increased in 1936 over 1935.

Q. Can you give me an approximate number?

A. I really can't.

Q. Did it increase in 1937 over 1936?

A. Yes.

Q. Can you give me an approximate number of the employees of the Donnelly Garment Company and the Donnelly Garment Sales Company in 1937?

A. My remembrance is that— Well, there were 1,300. Now, I am trying to remember what year that was in. That was in 1937, I believe, that the figure is in my mind that we had 1,300 employees.

Q. Did it increase in 1938, the number?

A. Not to any extent, I believe.

Q. It remained about the same?

A. Yes.

[fol. 3789] Q. And in 1939, did the number increase, decrease, or remain about the same?

Mr. Reed: We can supply those figures, approximately. That might save some time.

A. I think—

Trial Examiner Batten: You may proceed, Mrs. Reed.

A. There hasn't been a great many more people. In 1940, I know we had an increase in sales, but we tried to do a little better management job and have not had to increase our number of employees.

Q. Did you decrease them?

A. The office employees I decreased.

Q. When?

A. Well, I don't remember the exact time. In 1940 we had, I believe, 140 people that were doing office work, and some time ago the figure that I got—I won't say that that is exact—was that there were only 95. But I didn't dis-

charge any of those people, Mr. Langsdale. I remember very well going over it with Mr. Bachofer, and we felt we had too many people in the office, but I gave him instructions that nobody was to be discharged. On the other hand, I gave very definite instructions that there was no new person to be employed that wasn't direct labor and that we would ask some of the people doing clerical work—we thought there were too many doing that—I would ask some of them to learn stenography or to learn how to run [fol. 3790] our tabulating machines, or learn some other work, and they would be given first preference on any new jobs that came up. Of course, when you have a lot of women working for you, you always know a certain number of them are going to quit and be married or will leave because their husbands move away, or for different reasons, and when anybody quit a job it was agreed that before we would hire a new person to fill it, we would have to find out, in the first place, whether the job needed anybody at all, and then, if it did, if there was somebody in our organization to take it. So that when we cut our office force from 140 to 95, we did not discharge anyone. I believe we had one or two girls who had seen how much money the girls made in the factory and they said they would rather go down there and work.

Q. Now, Mrs. Reed may I conclude from that answer that the number of employees in 1940 was about the same as in 1939?

A. I would say probably so.

Q. So between 1935 and 1940, it was almost the same, except—

A. In 1935?

Q. In 1935 you said you had about 1,300?

A. I think I said about 800 or 1,000.

Q. The 1,300 figure was reached in 1937, then, was it?

A. I believe that was about the time.

Q. Was that the top figure?

A. Around 1,300 or 1,350, I believe, was about the top. [fol. 3791] Q. And that was in 1937?

A. Well, Mr. Langsdale, I think those figures are in our case. Just at this instant, for me to say that was in 1937 or 1939, I am not absolutely sure. That may have been in 1939, the 1,300.

Q. When the 1,300 figure was reached, that has been the top, has it?

A. I believe I saw some place a list of 1,350.

Q. Do you recall the testimony was that 13 hundred and something signed cards to join the Donnelly Garment Workers' Union?

A. No, I don't remember that.

Q. Would you say that is about right?

A. Well, no, because— I don't recall. 1,357?

Q. Thirteen hundred and something. I don't remember, myself, but something over 1,300.

A. No, I don't remember anybody ever telling me that over 1,300 people had joined the union.

Q. Well, isn't it true that over 1,300 people did join the union?

A. I don't know.

Q. Isn't it true that not over six or eight people employed by the Donnelly Garment Company remained out of the union?

A. Mr. Langsdale, I never had anything brought up with me about the eligibility of people joining the union, [fol. 3792] or who joined the union, or who did not—no one ever asked me about that.

Q. The question is, do you know that all but six or eight people employed by the Donnelly Garment Company and the Donnelly Garment Sales Company joined this Donnelly Garment Workers' Union?

A. No, I do not know that.

Q. Do you say it isn't true?

Mr. Reed: Now, wait a minute. The witness has said she had nothing to do with the organization.

Trial Examiner Batten: Of course, if she doesn't know, I presume she couldn't say whether it is true or untrue.

By Mr. Langsdale:

Q. You have no information that it is untrue, do you?

Mr. Reed: I object to that.

Trial Examiner Batten: She may state that, whether she has such information or not.

A. I have no information on that.

By Mr. Langsdale:

Q. As to who and how many belonged to the Donnelly Garment Workers' Union?

A. I say it was never discussed with me about who was eligible to belong or who would join. Any of that part, in any connection with the union, Mr. Langsdale, was never discussed with me.

Q. Now, Mrs. Reed, on March 18, 1937, you were on [fol. 3793] your way to Florida, were you?

A. I left Kansas City that night.

Q. How long did you remain in Florida?

A. A little over two weeks.

Q. What part of Florida?

A. Sarasota.

Q. Were you there for a vacation?

A. I was, for a rest.

Q. You stayed a little over two weeks?

A. Yes.

Q. Could you be more definite than that? How much over two weeks?

A. I couldn't say exactly.

Q. Now, in this transcript that was produced in evidence, which it has been testified was taken of your speech by Mrs. Frances Strine, is a statement that you had been negotiating with the street car company for buses?

A. Yes.

Q. When did you start that negotiation?

A. I didn't personally do that negotiating, Mr. Langsdale.

Q. How long had it been going on, to your knowledge?

A. I couldn't say now.

Q. Well, have you any judgment at all as to how many days or weeks or months any negotiations had been going on by anybody for the Donnelly Garment Company to have [fol. 3794] buses to haul your employees to and from work?

A. I couldn't tell you how long those negotiations were going on.

Q. Had it been as much as a month?

A. I say, of my own knowledge, I really haven't any idea.

Q. How did you know it had been going on at all when you made that speech? From whom did you get the information?

A. From Mr. Green and Mr. Bachofer.

Q. That they had been negotiating with the Kansas City Public Service Company for buses?

A. I don't know whether they are— Mr. Keyes may have. Some one of the executives there was doing the negotiating.

Q. When did you get the information with reference to the time you spoke to this meeting on March 18?

A. I really couldn't tell you now.

Q. Did you get it that day?

A. I say I couldn't tell you, Mr. Langsdale. I can't remember just what information came to me which day.

Q. You have no information at all, then?

A. I have not.

[fol. 3795] By Mr. Langsdale:

Q. When did you establish some watchmen at your home, with reference to the 18th of March, 1937?

A. I believe it was that spring when there was so much violence going on, so much threatening going on.

Q. Was it before you went to Florida, or after you came back? A. I don't remember exactly.

Q. Do you have any recollection at all?

A. I really haven't any recollection exactly.

Q. And do you know the names of any of the watchmen that you had out there?

A. I know that Mr. Corbin was out there.

Q. Who else was out there?

A. I don't know the names of the others.

Q. Who is Mr. Corbin?

A. He is still a watchman in my plant.

Q. How long has he been a watchman in your plant?

A. Since he was watching out at my house.

Q. Is he still there? A. He is still there, yes.

Q. You employed him for that particular occasion, did you, and kept him? A. That is right.

Q. Has he any other duties, except those of a watchman?

A. I don't know. He may take care of certain—part [fol. 3796] of the cleaning up of some of the offices. I don't know; there is a possible chance that he has.

Q. A big part of what? Cleaning?

A. Yes, but at one time—oh, I remember years ago, the night we had—we had a night watchman in our plant for a great many years, and one night watchman, just one night watchman in the plant, and I have a slight remembrance that this night watchman cleaned or took care of two or three private offices that we have, but I don't know whether they still do that.

Q. Well, then, was he somewhat of a janitor?

A. No, we called him a night watchman.

Q. Why did you pay him as much salary as you did?

A. Mr. Corbin?

Q. Yes.

A. I suppose that that was what we were expected to pay him. They worked 12 hours, and I think we sort of paid them by the hour.

Q. Where did you get him?

A. I didn't personally employ those watchmen. My remembrance is that there was some discussion with the police department for recommendations.

Q. Did you get him through the Pinkerton Detective Agency? A. Not that I know of.

[fol. 3797] Q. Who is Mr. Eckert?

A. Mr. Eckert is another man that was employed as a watchman.

Q. What were his other duties?

A. My remembrance of Mr. Eckert was that he was always a watchman. He was one of the ones employed to stay in the lobby and watch while all the violence was going on.

Q. Well, when did you first employ him?

A. Sometime in that spring. Now, Mr. Eckert, I recall, had, years before, been employed by us to watch our pay roll when we used to pay by cash. We had a little pay roll girl go through the plant, and we had two guards to go along with her; and then there were so many pay roll holdups, we decided even though we had guards someone might be shot, so we decided to pay by check, and then we didn't have the guards any more.

Q. Well, when did you first employ Mr. Eckert, if you know?

A. Well, it was back when we were in the Coca Cola Building, because that was when we paid by cash.

* * * * * *

[fol. 3798] By Mr. Langsdale:

Q. And he has been with you ever since? A. Oh, no.

Q. Mr. Eckert? A. No.

Q. Is he employed by you now?

A. Not to my knowledge.

Q. He was employed in 1937, was he not?

A. That was when he was employed to watch, in 1937; I don't think he has worked for us—

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[fol. 3799] By Mr. Langsdale:

Q. He was not continuously employed from 1937 up until now?

A. No, not up until now; I don't want any misunderstanding about that.

Q. I want you to give your answer.

A. Because, Mr. Eckert, I know, was employed by the Pinkerton Detective Agency, but he never worked for us as a detective, he worked for us as a guard for our pay roll.

Q. Well, why did you pay him over $200.00 a month to just act as a guard?

A. I don't know that we did pay him over $200.00 a month. I don't know how much we paid him, but I know we paid by the hour, and those men worked, I think, 12 hours. I don't think a detective has to be paid more than a guard, anyhow, do they? I never heard of it.

Q. The amount of their wages is governed by the character of their work, isn't it?

A. I don't know anything about detectives. I never hired one in my life.

Q. You got Mr. Eckert through the Pinkerton Detective Agency?

A. Originally we hired him as a guard, through the Pinkerton Detective Agency.

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[fol. 3800] Mr. Langsdale: Now, the record pay roll offered in this hearing shows that in 1937 Mr. Eckert was paid $225.00 a month.

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[fol. 3801] Mr. Langsdale: That is the particular pay roll period from July 1st, 1937, to July 15th, 1937, and shows Mr. Eckert was paid $112.50 for that particular period; that would be $225 a month, would it not?

A. Well, I didn't know until this minute he was paid that much; I don't know why he was paid that much; I didn't make the arrangements with him.

By Mr. Langsdale:

Q. You didn't employ him? A. I did not.

Q. Wouldn't it occur to you that, just for a salary, that is some salary?

A. Except they may have put in a lot of hours, and they had to pay overtime for it.

* * * * * *

[fol. 3803] Q. Mrs. Reed, you have testified you told Mr. Baty to take away from the instructors any authority they had as supervisors, or to correct or direct the oper-[fol. 3804] ators, because it had been charged in the N.R.A. hearing that those instructors played favorites, and treated some of the girls better than others, is that correct?

A. I didn't tell him to take any directing away they could do.

Q. But any authority to criticize or—

A. (Interrupting) I did. I told him that I had been surprised while I was listening to something in the N.R.A. hearing, that these criticisms had been made; I didn't say that I thought they were unfair; I didn't think Mrs. Wherry was unfair to the girls.

Q. You deny that any of your instructors had been unfair to any of the operators, in the N.R.A. hearing, don't you?

A. I still think they were not unfair; I think it was not a fair charge, but the charge had been made, and I thought it would be a good idea for him to take the authority himself. He would have nothing else to do but be in the plant; originally when I was running the plant, I had other things to do, and while she was running the plant, she had many other things to do, and now he would have nothing else to do, and certainly when these little differences came up, it wouldn't be better for him to settle them, and then there would be the charge that these instructors, or Mrs. Wherry, or someone else was playing favorites.

[fol. 3805] Q. Well, you didn't believe any of these charges, did you? A. No, I didn't.

Q. Nevertheless, you changed the entire system in your plant as to the authority of instructors?

A. I don't believe there is any reason for me to be in this Courtroom today, but I am here; sometimes we have to stand it, whether it is right or is not, if some people think certain things.

Q. But when you made the change, you weren't in any Courtroom, were you?

A. I was not, but I had been in what was like a Courtroom, I had been in a room in the hearing, where I was questioned, where I heard our instructors questioned as if they were criminals.

Q. And despite the fact that you didn't believe it, you acted upon those charges by taking the authority away from the instructors?

A. As a matter of protection to the instructors. At the time the N.R.A. hearing was over, my instructors and Mrs. Wherry were in a very unhappy and nervous condition, and I thought if there was to be any protection, I would say, "Now, Mr. Baty, you go in there and take charge of that plant."

Q. So, on account of that condition of nervousness, jitters, you just took all authority away from them?

[fol. 3806] A. I told Mr. Baty to take the responsibility away from them.

Q. Why did you do that, Mrs. Reed?

A. I just thought that would protect them.

Q. Protect whom? A. From criticism.

Q. The instructors? A. The instructors.

Q. From whose criticism?

A. From the criticism we were having at the time from the I.L.G.W.U.

Q. And because the I.L.G.W.U. was criticizing your instructors, you took all the authority away from them, is that correct?

A. I took the—I told the I.L.G.W.U.—now, wait a minute, let—

. . . . . .

A. That is the reason I took it away from them.

By Mr. Langsdale:

Q. What was the reason?

A. I expect to protect them from criticism.

Q. From whom? A. From anybody.

Q. Well, who besides the I.L.G.W.U.?

[fol. 3807] A. I didn't know at the time but what other girls in the place may be criticizing them.

Q. Did you have any reason except the criticism from the I.L.G.W.U. to take the authority away from those instructors, in July of 1935?

A. I thought maybe it would be a little better set-up in the plant.

Q. In what way?

A. Well, the authority would be in one person, and there would be less chance of dissatisfaction.

Q. Dissatisfaction with whom?

A. Between the girls.

Q. And so, then, you did believe that there was dissatisfaction among your operators, about the conduct of your instructors?

A. I don't believe that the instructors were unfair; if I had believed that, I would have discharged the instructors.

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[fol. 3812] Q. Now, up to the time of that N.R.A. hearing, you were perfectly satisfied with the system that was being used in the Donnelly Garment Company plant, as to your instructors?

A. Mr. Langsdale, I have never been perfectly satisfied with anything that was done in the Donnelly Garment Company; I always thought we should do it better.

Q. Well, but you hadn't made any change in it for a number of years?

A. No, it had just gone along for a number of years.

Q. And your system was as Mrs. Reeves testified in that hearing, up to the time of that hearing, wasn't it?

A. She had been running the plant for several years, and that was the way she was running it.

Q. Yes. Now, you said that in 1940, in November or December, you went back to that system?

A. I didn't say I went back to that system. I found that it was not practical to have the instructors feel that

they had no responsibility at all; as for the operators, I think they went to an extreme in just turning the entire responsibility over to Mr. Baty.

[fol. 3813] Q. So, finding the system you had put into operation in July, 1935, was not working, you went back to the system that you had before you put that change in?

A. I just answered that question, and said I didn't just go back—I didn't say we were going to go back to the system that was here prior to 1935.

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By Mr. Langsdale:

Q. You did give the instructors, in the winter of 1940, the authority to run their sections and get the work out, didn't you?

A. I told them they had to take the responsibility of getting the work through the plant, through their section, and they told me then that if that was the case, they would have to be given the authority to say to the girl that she must do certain work.

Q. Well, you gave them that authority then, did you?

A. I told them what authority would be required would be given to them, and I would talk it over with Mr. Baty and see what we would think they would have to do.

[fol. 3814] Q. And the authority was given to them, was it?

A. Well, you say the authority was given to them; what do you mean by "the authority"?

Q. The authority they demanded or wanted.

A. The authority to say what work each girl should do was given to them, although from a practical standpoint down there, yet, if a girl does not want to do the work that the instructor tells her to do, she can, and I believe at times does, call Mr. Baty, to see if she has to do it.

Q. Do you know of any instance at all when any girl ever refused to do what the instructor told her to do, and Mr. Baty was called in?

A. I haven't gone into the details to that extent.

Q. Can you give us just one instance, one girl, one time?

A. No. I know this, Mr. Langsdale, that I had reports of work staying—one cut of work staying in a section as long as five weeks.

Q. I am not asking you that. I am asking you—

A. (Interrupting) Well, I am explaining, that cut would stay in there five weeks, and when I asked why that stayed that long, then the instructor would say, "Well, I can't get anyone to do operation No. 7, and there was plenty other work to do; there was other work she wanted to do and we just kept putting new work in, plenty of work to work on."

Mr. Langsdale: Mrs. Reed—

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[fol. 3815] By Trial Examiner Batten:

Q. Mrs. Reed, the question is, can you give us the name of one girl or one incident where a girl refused to do work directed by an instructor; do you personally know of one incident?

A. I haven't any personal knowledge of the exact people or whether that exact thing would come up, except in a general way, and I don't know whether a girl would absolutely refuse, but I believe that a lot of times an instructor simply took the easiest way, and if the girl didn't want to do it, and there was other work there she did want to do, she did that work.

Q. Mrs. Reed, your answer is, then, that you can't give us one incident by naming a girl or time or place or section or instructor, is that right?

A. I would have no knowledge of that myself, I didn't go into it to that extent.

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[fol. 3816] By Mr. Langsdale:

Q. Now, Mrs. Reed, I think you testified that the first knowledge you had of a petition signed by a large number of employees, which has been called the Loyalty petition, was when it was brought out to your home by two girls?

A. I never heard the petition that was brought to my home called "the Loyalty petition." This is the first time I have heard that.

Q. You didn't know that was the term that was used to describe it all through the other hearing?

A. I did not.

Q. You know what petition I am referring to, do you not?

A. The petition that was brought to my home, I know what it was, yes.

Q. And you know it was signed by several people?

A. A large group. I didn't know how many.

Q. Do you know how they got those signatures?

A. I do not. My impression, gained from the two girls who brought the petition to my home, was that they had circulated the petition, but nobody ever told me just how they did it or any of the details about it.

[fol. 3817] Q. Where did you learn that they had circulated that petition?

A. At my home, when they brought it out to me.

Q. Where did they circulate it?

A. I don't know where they circulated it. The petition had the names of people in my plant on it.

Q. Did you make any inquiry as to where they had circulated it? A. I did not.

Q. When did they circulate it?

A. I wasn't told, but my impression was that they did it the day they brought it out.

Q. Now, that had about 1,000 signatures. Was it your impression that they did that in one day, these two girls?

A. I didn't inquire, Mr. Langsdale.

Q. Did you learn they had gone from machine to machine and had the girls sign this petition?

A. I never inquired how they got it.

Q. Did you know they did that during working hours?

A. I just didn't inquire about that petition, how or when they got it signed. They brought it out to me on the evening of March 2nd.

Q. Did you learn that three girls had refused to sign it?

A. No.

Q. Did you hear that Sylvia Hull was one of those who refused to sign it?

[fol. 3818] A. The girls didn't tell me anyone had refused to sign it.

Q. Did you ever learn that three girls refused to sign it, at any time?

A. I don't know when I learned it, whether it was in some of these cases, or when. I have some recollection that some girls did refuse to sign it.

Q. Did you learn that one of them was Sylvia Hull?

A. My impression is that she was one of them.

Q. Did you learn the names of the other two?

A. I am not [not] absolutely sure. It seems to me it was Fern Sigler and May Fike. I am not absolutely sure.

Q. Did you learn that, after refusing to sign this petition, Sylvia Hull then did sign it? A. No.

Q. And that Ella Mae Hyde had erased her name from it?

A. No. I don't know the details of that petition.

Q. Did you ever hear that Ella Mae Hyde assumed the authority to take her name off that petition?

A. No, not of my own knowledge.

Q. Did you ever learn it at all, from any source?

Mr. Ingraham: She stated she didn't.

Mr. Langsdale: She said, not of her own knowledge.

By Mr. Langsdale:

Q. I am asking you if you ever learned from any source that Ella Mae Hyde took Sylvia Hull's name off the petition after she had signed it?

[fol. 3819] A. No. I have some faint recollection that someone told her to take it off, or that she took it off herself, but I couldn't say who told her, or whether she took it off herself, or—

Q. Your information on that is very hazy, is it?

A. It is.

Q. Did you say to these girls that you wanted them to go back and get names of employees who had not signed it?

A. I did not, Mr. Langsdale.

Q. Did you say that to anybody at all? A. I did not.

Q. Who were the girls who came to your house?

A. Mary Sprofera and Inez—I can't think of her name. Her name escapes me at the moment. I know it, but—

Mr. Ingraham: Inez Warren.

A. Inez Warren, that's right. Just for the instant the name escaped my memory.

By Mr. Langsdale:

Q. You never did tell Mrs. Warren or the young woman who was with her that you wanted them to go back and get the names of any person or persons who had not signed that petition? A. I did not.

Q. Do you know how they happened to do it?

A. I do not.

Q. Did you learn they did get another petition on the 5th of March?

[fol. 3820] A. I learned that another petition, another page, was gotten up later.

Q. And you don't know why that was done?

A. No.

Q. You had nothing to do with it?

A. I had nothing to do with it, Mr. Langsdale.

Q. You say that it happened that Roy Roberts was out at your home? A. Yes.

Q. When these girls came out?

A. No, they were not there.

Q. After they had left, I believe? A. Yes.

Q. And he suggested that it might be front page news?

A. That is what he said.

Q. And told you he would like to have them come out again so that he could have a photographer there?

A. Yes.

Q. How did they get there again?

A. I don't remember.

Q. How did you convey that information to them?

A. I don't remember.

Q. Did you do it at all? A. No, I didn't.

Q. Who did?

[fol. 3821] A. I don't know whether Mr. Roberts did or—

Q. You didn't give Mr. Roberts —

Mr. Reed: Let her finish the answer.

A. (Continuing) —or whether I told Miss Frances that Mr. Roberts wanted them to come out. I didn't do it myself.

By Mr. Langsdale:

Q. But, at any rate, you got the information to the girls that Mr. Roberts wanted them?

A. I didn't say I got the information to the girls.

Q. Well, did you?

A. I said I didn't know whether Mr. Roberts called there or whether someone, through me, called there. I know that they did come out and that the Star had a photographer and, I believe, a reporter— I'm not sure—there.

Q. And you don't know how or through whom the girls got the information that they were wanted out there again?

A. I don't remember.

Q. Were you in the garden when the girls came out the first time, or were you talking to Mr. Baty in the house?

A. My remembrance is that Mr. Baty and I had been working that day on the building we intended building.

Q. Your recollection is that you were not out in the garden when the girls got there? A. Not that evening.

Q. I mean when the girls got out there with this petition.

A. I may have been the next day when they came out. [fol. 3822] I am not sure.

Q. My question is confined to the time the girls arrived at your home first with the petition.

A. I couldn't have been when they came the first time, because it was in the evening.

Q. Then, you were not in the garden?

A. Not the first time they came.

Q. Do you know who gave the girls authority to go through the plant, from machine to machine, and have these employees sign?

A. I don't know that they were ever given the authority.

Q. Do you think they just did it on their own, without any suggestion from anyone in authority?

A. It would be the perfectly natural thing for them to do in the Donnelly Garment Company.

Q. Would you think that is true?

A. I would think it is very possible, knowing the way the Donnelly Garment Company is run.

Q. Two or three girls just took some petitions and went from machine to machine and had them signed, without any of the management knowing anything about it?

A. I wouldn't say without anybody knowing anything about it, but I would say it would be perfectly possible for two girls to take a petition and start out, without asking anybody about it, and having it signed in the plant.

[fol. 3823] Q. What was Inez Warren's job?

A. My remembrance is she was in the shipping department.

Q. What did she do in the shipping department?

A. Helped assemble orders.

Q. Who was head of the shipping department at that time? A. Mr. Keyes.

Q. Would she have to get Mr. Keyes' permission to leave her place of employment and go through the plant getting names on the petition?

A. Knowing my people down there, I am sure they wouldn't feel they had to get permission—

Q. Well, would she, Mrs. Reed, if you know?

A. There was no rule to that effect.

Q. And who was the other girl? A. Mary Sprofera.

Q. Was she in the shipping department, too?

A. Yes.

Q. And there was a third girl, was there—Shawder? Do you have a girl by that name?

A. Pauline Shartzer, I believe.

Q. Shartzer? A. Yes.

Q. What did she do?

A. She had something to do with getting some of the petitions signed, because she came out with them the [fol. 3824] next day for the picture. She wasn't with them the night they brought it out.

Q. What was her employment at the plant?

A. A pay roll clerk.

Q. Was her place of employment on the same floor with the other two girls? A. No.

Q. What floor was her place of employment on?

A. I am sure she was on the tenth floor.

Q. What was the place of employment of the other two girls?

A. In the shipping department.

Q. What floor?

A. I don't know whether the shipping department was on the fifth or fourth floor then. We have moved it now. Either the fifth or the fourth floor.

Q. Do you know how these two shipping department girls got together with Pauline Shartzer on the petition job? A. No, I do not.

Q. You have never heard? A. No.

Q. Who was head of the department Pauline Shartzer worked in? A. What date would that be?

Q. March 2, 1937.

A. Well, I would say that Mrs. Keyes was in charge of the office.

[fol. 3825] Q. Would it have been necessary for Pauline Shartzer to get Mrs. Keyes's permission to leave her place of employment long enough to get 1,000 names on these petitions? A. I merely say—

Q. I am asking you about this girl.

A. From my information of the way the Donnelly Garment Company was and is run, a girl wouldn't hesitate to get up and go out to get some petitions signed.

Q. Would she have the right to go out a whole day to do it?

A. Well, if— I wasn't running the department there—

Q. Would you have approved of her going around and getting these petitions signed and taking a whole day?

* * * * * * *

Mr. Reed: There is no evidence that she took a day.

Mr. Langsdale: I am going to assume it would have taken a day to get 1,000 names signed.

Mr. Langsdale: On that assumption, would you have approved of that?

* * * * * * *

[fol. 3826] A. I know we had week workers that would go out and have their hair done and—

* * * * * * *

Mr. Langsdale: Would you have approved of these three girls taking the time necessary to go through the [fol. 3827] plant to get 1,000 names on that petition?

A. I don't know what I would have approved if something would have come up to me at the time and I would have passed on it, Mr. Langsdale. I don't know whether I would or not.

* * * * * * *

By Mr. Langsdale:

Q. Did you ever disapprove of their taking the time necessary to get these petitions signed?

A. I don't know what good it would have done.

Q. Did you ever?

A. It was never brought up for me to decide. A lot of things go on down at the place that I never decide whether I approve or disapprove of.

Q. Did you ever disapprove of it?

A. I said the decision was never brought to me.

Q. That wasn't the question. Did you ever approve [fol. 3828] it or disapprove it, Mrs. Reed?

Trial Examiner Batten: Did you take any action at all with respect to this petition after you received it?

A. No.

* * * * * *

[fol. 3835] Q. You testified in the Judge Miller hearing, didn't you? A. At the very end of the case.

Q. But you did testify?

A. At the very end of the case, yes.

Q. And you knew that witnesses had testified in that hearing that in the March 18th speech you had said you would close your plant before you would have a union in there, didn't you?

A. Well, I am under the impression that they testified to that.

Q. Well now, you did not tell Judge Miller you had Mrs. Strine there to take down your speech, did you?

A. I did not. Mr. Walsh would hardly let me answer a question. He said it was immaterial, and all of the other legal phrases. Every time I started to say anything about that speech Mr. Walsh would object.

Q. Were you asked by your attorneys if Mrs. Strine [fol. 3836] had been there and taken down your speech?

A. No.

Q. So Mr. Walsh didn't object to that question, did he?

A. Mr. Walsh objected to practically everything I said, and I was very ostensibly ill, and Judge Miller kept saying he didn't need any more testimony, and nobody seemed to want to allow me to testify.

Q. You didn't testify to that, did you?

A. I wasn't asked about it.

Q. You were not asked by your own counsel whether or not you had had Mrs. Strine take down what you actually said at that meeting?

A. I don't know what he intended to ask me. I know Mr. Walsh kept objecting and objecting and—

Trial Examiner Batten: The question is, Mrs. Reed, did your attorneys ask you that question?

Mr. Reed: The record is the best evidence of that.

Trial Examiner Batten: Do you remember whether they did ask you that question?

A. No. But I say, Mr. Walsh kept constantly objecting, and finally Judge Miller stopped the questioning.

By Mr. Langsdale:

Q. Now, had you had it in your mind to tell Judge Miller about that Strine incident?

A. Mr. Langsdale, I was so ill when I was down there that I really didn't have any great amount of things in mind.

[fol. 3837] Q. Mrs. Strine wasn't ill at that time, was she?

A. I don't remember that she was.

Q. Did Mrs. Strine tell Judge Miller anything about being at that meeting and taking down your speech?

A. Mr. Langsdale, I was seriously ill all during that hearing and wasn't in court, and I wasn't consulted about the trial or the evidence they put in. I wasn't in consultation with the lawyers on any day while they were hearing that case. The only connection I had with the Miller case was the last day, when I went down to testify. There were one or two points the lawyers felt they wanted me to come in and testify on.

* * * * * * *

[fol. 3839] By Mr. Langsdale:

Q. Now, this article is dated February 26th, 1937. It is entitled, "Reopen a Garment Feud, Union Plants to Seek Donnelly Company Recognition. Regional Director says the International Headquarters will give Financial Backing to Campaign." When you read that article, did you talk to Mr. Baty after you read it?

A. I don't remember. I read so many articles, and I talked to so many different people.

Q. Well, did Mr. Baty ever put in any pay increases without talking to you about it?

[fol. 3840] A. Oh, not very many.

Q. Did you know that on the next morning after this article came out, that Mr. Baty went down to the plant and put in a large number of pay increases?

A. If he did, I don't see that it would have any connection with that article.

Q. I am just asking you, if you know, whether or not he did.

A. Well, you say after he read that article he went down and did it?

Mr. Langsdale: Wait a minute. Will you read me my question?

Trial Examiner Batten: Will you read the question, please.

(Question read by the reporter.)

Mr. Langsdale: Did you know that?

A. I knew that 1936 was the first good year we had after the depression started, and that in the spring we would very naturally, as soon as we knew we were going to have our spring business come on, we would naturally give raises, that is about the time we usually do, in February or March.

By Trial Examiner Batten:

Q. Mrs. Reed, the question is, do you know the next day after this article appeared in the paper, that Mr. Baty did put in a large number of increases, in the plant; do you know that fact?

[fol. 3841] A. I don't [—] that was the next day after that article was in the paper, that a number of increases were put in, because any increases that were discussed with me were not discussed in any connection whatever, in any way, with Mr. Dubinsky.

By Mr. Langsdale:

Q. You don't know that he did?

A. I don't know what date the raises were put into effect.

Q. But if he did put in a large number, he would have to talk with you about it?

A. Generally a large number, he would talk with me, and it would probably take a week or longer, but I know that he did not put in raises a day after that was in the paper. He couldn't have possibly gone over them with me, because when we put in raises, we would take a whole group that he would select, and we would discuss them, so it would have taken longer than that. I never knew of him

putting in a number of pay increases without discussing them with me, Mr. Langsdale.

* * * * * * *

[fol. 3847] Trial Examiner Batten: I think, if you are going to start on another subject matter, Mr. Langsdale, I was going to have Mr. Ingraham to make his statement with respect to those exhibits he has checked up now, so that you will know through the noon hour, Miss Weyand, the status of them. So, Mr. Ingraham, will you —

Mr. Ingraham: (Interrupting) I thought Mr. Langsdale was about through.

Trial Examiner Batten: Well, whether or not he is through, I want to be sure this is taken care of before lunch.

Mr. Ingraham: With regard to Board's Exhibit 32-A, B, C, D and E.

Trial Examiner Batten: You don't need to stay here, if you don't care to, Mrs. Reed.

The Witness: Thank you.

Mr. Ingraham: I wish to state that 32-A, B, C, and D is a separate document. It was mailed to the Wage and Hour Division by Respondent, on or about October 30, 1940. Exhibit 32-E is a separate document that was not attached to Exhibit 32-A, B, C and D, and was not filed until after December 29, 1940. Exhibit 33 is a document that was filed by Respondent company on December 20, 1940. At that date there was no schedule or any attached [fol. 3848] document to Exhibit 33.

These Exhibits are the Board's Exhibits.

Board's Exhibits 35-A, B, C and D is a document that was filed with the Wage and Hour Division on December 20th, 1940, by the Donnelly Garment Sales Company. Board's Exhibit 35-E is a separate document that was not attached to Board's Exhibit 35-A, B, C and D, and was not filed until after December 29, 1940, by the Donnelly Garment Sales Company.

Board's Exhibit 34-A, B, C and D, purports to be a copy of Board's Exhibit 33. It is on a different form, but had practically the same information that was in Board's Exhibit 33. Now, Board's Exhibit 34-E is a copy, a separate document, and was not attached to — or is a separate document and purports to be a copy of Board's Exhibit 32-E.

Now, I want to make it clear that Board's Exhibit 32-E and the copy of that exhibit, which is Board's Exhibit 34-E, was not a part of any of those other exhibits, and was not filed until December 29, 1940.

Trial Examiner Batten: Well, was it, Mr. Ingraham, filed separately at the request of the Wage and Hour Division?

Mr. Ingraham: That is correct.

Trial Examiner Batten: And I think Miss Weyand asked if you had any correspondence on it. You have the letter — I mean, did the Wage and Hour Division request you in writing to furnish them?

[fol. 3849] Mr. Ingraham: No, I don't know of any letter. My understanding is that in December a representative of the Wage and Hour Division was checking, and was personally down at the plant and made this request, that this additional information be furnished.

Trial Examiner Batten: Then, was it mailed in?

Mr. Ingraham: Then it was mailed in.

Trial Examiner Batten: Was it covered by a letter?

Mr. Ingraham: No, it was not covered by a letter.

Trial Examiner Batten: It was just mailed in as shown there, as 32-E?

Mr. Ingraham: That is correct.

Trial Examiner Batten: Now, I think the record ought to show, before we go much further, that 32-A to E has been received, and 33, 34 and 35 are merely marked for identification, so don't any of you get mixed up; in other words, 32-A to E has been received, 33, 34 and 35 accord-

ing to my records have been marked for identification only. I didn't want anyone reviewing the record to get the impression, Mr. Ingraham, that these exhibits had all been received.

Mr. Reed: I beg pardon for interrupting, but my recollection is that Miss Weyand, particularly about 34, that is the copy, said that she offered it for whatever it is worth, and I think she offered the other exhibits.

[fol. 3850] Miss Weyand: I did not offer any of the exhibits following 35-A, B, C and D in evidence. I offered —

Mr. Langsdale: (Interrupting) 32, you mean?

Miss Weyand: 32-A, B, C, D and E, that is correct. I presented Board's Exhibits 33, 34 and 35, and had them marked for identification only, and in connection with 34 I was having it identified merely as the document which I had received from the Wage and Hour Division, and knew nothing further than that they had given it to me as a copy of some original document, which they purported to have in their possession.

Trial Examiner Batten: Well, I think we can proceed.

Miss Weyand: I would like to ask a further question.

Trial Examiner Batten: You hadn't finished, had you?

Mr. Ingraham: Yes, I had.

Mr. Langsdale: Let me ask you this question, Bob. Are you saying 35-E is the same document as 32-E?

Mr. Ingraham: No.

Mr. Langsdale: I thought you did.

Mr. Ingraham: No.

Mr. Langsdale: 35-E purports to be a list of executives of the Donnelly Garment Sales Company, whereas 32-E purports to be a list of executives of the Donnelly Garment Company.

Trial Examiner Batten: 33-E is another list.

Mr. Ingraham: 34-E.

Trial Examiner Batten: 34-E is another list, Mr. Langs-
[fol. 3851] dale.

Mr. Tyler: 32-A to E, do I understand, has been received? Does that mean inclusive to 32-E?

Trial Examiner Batten: Yes.

Miss Weyand: They have been received in evidence.

Trial Examiner Batten: That's right.

Mr. Reed: 32-E does not belong in that document.

Mr. Langsdale: That has been gone over several times.

Trial Examiner Batten: Now, is that the information that you desire, Miss Weyand, on these exhibits?

Miss Weyand: Well, I wanted the further information of whether 32-E constituted a statement of the employees referred to in paragraph numbered in Roman numerals, VI, on Board's Exhibit 33-C for identification.

Mr. Ingraham: Well, now, Miss Weyand, are you offering 33 and 34?

Miss Weyand: No, I wanted to get straight first what relation there was, if any, between 32-E and the statement on 33-C, that the company had 29 employees, whom the firm considered exempt from the provisions of the Act, and I wanted to ask a similar question with respect to whether or not —

Trial Examiner Batten: Let us take one at a time.

Miss Weyand: Well, it is the same sort of question, it is a parallel.

Trial Examiner Batten: I know, but let's don't get
[fol. 3852] too many in here at once.

Mr. Ingraham: I don't understand the purpose of asking a lot of questions and getting a lot of testimony in the record if Miss Weyand isn't going to offer these in evidence. I think she should offer them in evidence, and then ask me the questions.

Trial Examiner Batten: I don't think, Mr. Ingraham, I shall tell Miss Weyand to offer them. I don't think I

would tell you if you had an exhibit marked for identification.

Mr. Langsdale: I'll offer them the first thing this afternoon, if you want them in.

Mr. Ingraham: We want them in.

Miss Weyand: I don't prefer to offer them until I know the circumstances under which they were furnished and what they purport to represent, and I have not yet learned whether 32-E is considered to be and was furnished as a statement of who the 29 employees referred to on Board's Exhibit 33-C were.

Trial Examiner Batten: Well, as I understand it, and if I am not correct, Mr. Ingraham, you correct me —

Mr. Ingraham: Yes.

Trial Examiner Batten: 32-E was furnished, was it not, in connection with 33?

Mr. Ingraham: That is correct.

Trial Examiner Batten: And is that the list referred [fol. 3853] to in 33-C?

Mr. Langsdale: 32-C.

Mr. Ingraham: That is my understanding, Mr. Batten.

Mr. Langsdale: Don't you mean 32-C?

Trial Examiner Batten: No, 33-C.

Mr. Ingraham: 32-E at the top states, "Pursuant to your request of December 29th, the persons coming within the provision of the second part of paragraph six in the questionnaire as at December 20th, 1940, are as follows," and it is my understanding that this is a list of the people that —

Trial Examiner Batten: (Interrupting) Are referred to on 33-C.

Mr. Ingraham: That's right. I'll check them again.

Trial Examiner Batten: In other words, if that is not correct, you will let us know?

Mr. Ingraham: That is right.

Miss Weyand: Then, I want to know if Board's Exhibit 35-E for identification was a list of persons whom the firm considered as being exempt from the provisions of the Act, as set forth in 35-C, the Donnelly Sales Company, as distinguished from the Donnelly Garment Company —

Trial Examiner Batten: In other words, 35-E, is that the list which is referred to in 35-C, in the body of the instrument?

Mr. Ingraham: Yes, that is my understanding.

[fol. 3854] Miss Weyand: And you will check that so I can have it definitely stated?

Mr. Ingraham: Yes.

Miss Weyand: Will counsel for the company agree with that identification, that your statements in the record will be sufficient, or will we be required to call some official in that company who participated in furnishing these documents, to identify them as the documents furnished?

Mr. Ingraham: Well, if there is any question about my statement, I would rather have you call the person who prepared the documents.

Miss Weyand: I am willing to rely on your statement that it is true, if counsel for the company is not going to insist there be any further identification, and not going to raise any question as to the validity or identity or the purpose of those documents. If counsel for the company are going to question further —

Trial Examiner Batten: Of course, the whole question, Mr. Ingraham, is this. You have told us what they are and the circumstances under which they were furnished, and unless you notify us otherwise, 33-E and 35-E are in accordance with the statements you made?

Mr. Ingraham: Yes.

Trial Examiner Batten: Now, the only question is, may that statement of yours be accepted without any question [fol. 3855] on the part of the Respondent, or do you prefer that the person who made out these documents come up here and testify to something you have told us?

Mr. Reed: I think when counsel stands up here and makes a statement of fact, it becomes binding, and if it is agreed to by counsel of the other side it becomes a binding fact in the case. However, we can produce the man who carried on these negotiations, and made these papers, and in view of the fact there seems to be a mix-up here, some difference, I think we had better have him.

Trial Examiner Batten: Well, it is immaterial to me.

Mr. Langsdale: I am willing to accept Mr. Ingraham's statement.

Trial Examiner Batten: Do you accept it?

Miss Weyand: Yes, I accept it.

Trial Examiner Batten: Well, all right. If your statement is accepted with respect to it, then it stands, and if any of the parties want to call anybody else, I am not trying to say you can't have further testimony.

Mr. Langsdale: Let me ask Mr. Ingraham this, if he knows, was any list furnished of the 49 executives described in the second paragraph of Paragraph six?

Miss Weyand: In Board's Exhibit 32-C?

Mr. Langsdale: Of Board's Exhibit 32-C. It says there were 49 employees whom your firm considers exempt from [fol. 3856] the provisions of the Act. Did you ever furnish the Wage and Hour Administration a list of those 49?

Mr. Ingraham: Mr. Langsdale, I understand that 32-A, B, C and D was filed as a consolidated return for both Donnelly Garment Company and Donnelly Garment Sales Company.

Mr. Langsdale: It doesn't say so.

Mr. Ingraham: Well, it was; and the Wage and Hour Department wanted the companies separated, and came down and asked that separate returns be filed, and that was the reason that on December 20th, 1940, two new returns were filed, one for the Garment Company and one for the Sales Company, and they broke down these exempt employees, and placed them in the respective companies.

Trial Examiner Batten: Well, I don't think there is anything further on this. We will adjourn until two o'clock.

Mr. Ingraham: Well, is Miss Weyand offering these in evidence?

Trial Examiner Batten: Are you offering them now, Miss Weyand?

Miss Weyand: Yes, I offer them now in evidence.

Trial Examiner Batten: Well, is there any objection to the reception of 33, 34 and 35?

Miss Weyand: I don't offer 34. I offer 33 and 35.

Trial Examiner Batten: Well, if there is no objection, 33 and 35 will be received.

[fol. 3857] (The documents heretofore marked "Board's Exhibits Nos. 33 and 35, Witness Reed," for identification, were received in evidence.)

Mr. Ingraham: The Respondent would like to offer 34.

Trial Examiner Batten: Any objections?

Mr. Langsdale: What is it?

Miss Weyand: My copy.

Trial Examiner Batten: If there is no objection, it will be received. It is the copy which Miss Weyand had marked and from which she worked, Mr. Langsdale. Is there any objection, Mr. Langsdale?

Mr. Langsdale: Not from me, if Miss Weyand has no objection.

Trial Examiner Batten: It will be received.

(The document heretofore marked "Board's Exhibit No. 34, Witness Reed," for identification, was received in evidence.)

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[fol. 3858] Miss Weyand: I think that, since the respondent introduced as their exhibit the document which I had previously had marked as Board's exhibit No. 34 for

identification, they should have it marked with a respondent's exhibit number.

Trial Examiner Batten: Oh, I don't think that is necessary. The record will show that they offered it. It doesn't make a great deal of difference to me who puts the facts in the record, as long as we get them.

* * * * * * *

[fol. 3859] Mr. Langsdale: Mrs. Reed, are you familiar with the handwriting of Lee Baty? A. Yes.

Q. I hand you a photostatic copy of Board's exhibit No. 31-A, and call your attention to the name "Lena Tyhurst."

* * * * * * *

[fol. 3860] By Mr. Langsdale:

(Handing document above referred to to the witness.) I call your attention to the name Lena Tyhurst, Mrs. Reed, which is right here (indicating).

A. That is right.

Q. Is that in Mr. Baty's handwriting?

A. I would say it is.

Q. You see what follows the name, over in the next column? A. Yes.

Q. What is it?

A. "Assistant factory manager."

Q. And the date of that is June 1—

A. —June 1, 1937. That was, I believe, before Mr. Baty took entire charge of the factory.

Q. Nevertheless, it is in his handwriting, isn't it?

A. He was assistant to Mrs. Reeves at that time. Mr. Baty was assistant to Mrs. Reeves for six months, but he was working in the plant for two years before he took over the job as manager of the plant.

[fol. 3861] Q. It was as Mrs. Reeves's assistant, then, that he wrote this, "Lena Tyhurst, assistant factory manager"? A. I would say so.

Q. At any rate, it is in his handwriting?

A. Yes, and he was her assistant at that time in the factory.

Q. I call your attention to the name "C. Marvin Price."

A. Yes.

Q. That is in Mr. Baty's handwriting? A. Yes.
Q. What follows that?
A. "Head machinist," "Head mechanic," I guess.
Q. "Head mechanic"? A. Yes.
Q. That is on the same document? This is Board's exhibit No. 31-A? A. That is right.
Q. I call your attention to the name "Ortense Root."
A. "Sample department head."
Q. That is in his handwriting?
A. Yes, it is, but Mrs. Reeves was managing the plant at that time.
Q. I call your attention to the name "Anna Price."

. . . . . .

[fol. 3862] By Mr. Langsdale:
Q. You see that name there, do you, Mrs. Reed?
A. Yes.
Q. What follows that?
A. It says "shipping clerk head."
Q. You have no information, have you, that Lena Tyhurst was not the assistant factory manager on June 1, 1937? A. I have no—

Mr. Ingraham: Now, just a minute. I object to Mr. Langsdale's questioning the witness from a paper that Mr. Baty prepared, and he testified in respect to the preparation of the paper, and how he happened to put these names after the respective people, and Mrs. Reed didn't have anything to do with the preparation of it and doesn't know—obviously can't know anything about why the certain [fol. 3863] titles are after these people's names.

. . . . . .

Mr. Langsdale: I asked you if you have any information that Lena Tyhurst was not in the position that she is described as here in the handwriting of Lee Baty on June 1, 1937?

[fol. 3864] A. Mr. Langsdale, I have said over and over and over again here that while Mrs. Reeves and Mr. Baty were managing the factory I had no knowledge of my own of the details of how they did it and what they called the people who are in the plant.

. . . . . .

Trial Examiner Batten: The question is this: Do you have any information that Lena Tyhurst was not assistant factory manager on this date as described on this document by Mr. Baty?

A. I have no information, of my own knowledge, of what she was called on that date.

By Mr. Langsdale:

Q. Have you any information at all from any source that C. Marvin Price was not the head mechanic on June 1, 1937? A. The answer would be the same.

[fol. 3865] Q. Have you any information of any kind or character that Ortense Root was not the sample department head on June 1, 1937?

A. My answer would be the same in regard to Ortense Root.

Q. Have you any information that Anna Price was not the shipping clerk head on June 1, 1937?

A. I have no that information. I never made up a pay roll, I never checked over a pay roll, and I never checked over any working papers Mrs. Reeves or Mr. Baty had in regard to these people.

Q. I will hand you a copy of Board's exhibit No. 27, Mrs. Reed, and ask you if in your readings you came across that article?

[fol. 3866] By Mr. Langsdale:

Q. You read it, apparently?

A. I would say that I have, I did.

Q. It is an article in the Kansas City Times of May 11, 1937, and purports to quote a speech made of Senator Reed, or an interview.

Mr. Reed: Are you offering it?

Mr. Langsdale: No, it has been offered in evidence.

By Mr. Langsdale:

Q. This particular part, Mr. Reed said, "It's a pretty tough proposition to be called on to answer any screed emanating from David Dubinsky. He has the nerve to talk about Americanism, although he was born in Russia and has only been in this country a few years." Did you read that? A. Yes.

Q. Did you call your employees' attention to it?
A. I did not.
Q. Did you make any similar statement yourself?
A. I did not.
Q. Mr. Reed was then your attorney? A. He was.

* * * * * *

[fol. 3869] Q. "One question—" this is quoting again [fol. 3870] from the interview—"one question that will have to be settled is whether the people of Kansas City can run their own business and the 1,300 employees of the Donnelly Garment company can maintain their own union, or whether they are to be disrupted and destroyed by a man born in a foreign country and now living hundreds of miles away from Kansas City." Do you share that opinion?

Mr. Reed: If Your Honor please, I have no objection, as far as I am concerned, if this article goes in there.

Mr. Langsdale: It is already in.

Mr. Reed: Very well; the question is as to whether she shared an opinion I expressed, and has nothing whatever to do with this case, or the charges here filed.

Trial Examiner Batten: Well, she may at least tell us whether she shares those views.

By Mr. Langsdale:

Q. Do you think it made any difference whether Dubinsky was born in Russia? A. No.

Q. Did you agree with Senator Reed, because he was born in Russia he ought to stay away from the Donnelly Garment Company's plant?

A. I have no feeling about whether he was born in Russia, or Turkey, or where he was born.

Q. Now, let's see if you remember this, quoting from the interview: "The employees of this company aren't only satisfied but on their own motion some months ago organized a Loyalty League to resist the activities of Mr. [fol. 3871] Dubinsky and his crowd, and substantially all the employees became members of that association." Is that true?

A. I said of my own knowledge I didn't know a lot about the organization of the Loyalty League, Mr. Reed was giving that interview, I didn't give it.

Q. Well, did you tell him it was not true, or disapprove of it?

A. I didn't discuss that interview. Mr. Reed isn't in the habit of asking me about what he said in an interview.

Q. Was it true, as far as you knew, at the time he made the statement?

A. Mr. Langsdale, I have said, and it is really absolutely true, of my own knowledge I knew very little about what the Loyalty League was doing at the time it was organized, and around that time I was very pressed with other duties.

Q. Well, you read that, this interview, at the time it appeared in the Kansas City Times, on the 11th of May, 1937, didn't you?

A. What difference would it make? I read a number of interviews, I read a lot of things in the paper.

Q. Well, have you read this interview in which your chief counsel said that some months ago the employees of this company organized a Loyalty League to resist the activities of Mr. Dubinsky and his crowd? Did you ask him [fol. 3872] where he got that information?

Mr. Reed: Ask me?

Mr. Langsdale: Yes.

Mr. Reed: I think that is about the limit.

Mr. Langsdale: Did you make any investigation to see whether or not it was true?

Trial Examiner Batten: Just a moment. What is the objection, Senator? I mean, to the question; whether she discussed it—read the question, please.

(Question was read by the reporter.)

Mr. Reed: I submit that that question probably never was asked before in a court of justice, to ask a man's wife where she got—state her opinion, whether she shares in her husband's opinion.

Trial Examiner Batten: Well, of course, perhaps I might not be qualified to speak about that, but I have

heard of wives asking their husbands where they got information; whether they would on matters of this kind, Senator, I don't know.

A. Well, I'll settle it by saying I did not.

By Mr. Langsdale:

Q. Did you make any investigation of the truthfulness of that statement at all?

A. I am not in the habit of checking up on Mr. Reed's interviews.

Q. Then, you just assumed it was true, did you? [fol. 3873] A. I didn't assume anything, I just read it; I don't remember any particular reaction to it.

Q. Did you make any investigation to see whether or not the Loyalty League was organized to resist the activities of Mr. Dubinsky and his crowd?

A. Well, I didn't; if they had, it probably would have been their own business.

Q. You didn't investigate it?

A. I did not investigate; I don't investigate what my employees are doing about Mr. Dubinsky.

Q. Then, this excerpt from the interview, I note that Dubinsky states that he would not get a graduate of Bolshevism to teach him a lesson in Americanism. Did you read that? A. I read that article.

Q. Did you permit your employees to think that Mr. Dubinsky was a Bolshevist or Communist?

A. I don't know whether my employees read that or not; it certainly is not my responsibility to check up on what my employees read and believe or don't believe.

Q. Did you check up on that statement that Mr. Dubinsky was a Bolshevist? A. I did not.

Q. Now, Mrs. Reed, you have already identified the originals of Exhibits 32-A, B, C, D and E, of which those [fol. 3874] are photostats?

Mr. Reed: She identified the signature of Alec C. Green on those documents. The statement that she identified or passed on the document is incorrect.

Mr. Langsdale: Well, will you, for the Senator's benefit, read the question?

Trial Examiner Batten: Read the question, please.

(Question was read by the reporter.)

Trial Examiner Batten: Well, I think all that testimony was stricken out, was it not, except—

Mr. Langsdale: (Interrupting) The identification.

Trial Examiner Batten: (Continuing)—the identification and the signature.

A. They look like the photostats.

Mr. Langsdale: What ones? The ones that you saw the other day?

A. Of A, B, C—let's see who they are.

Trial Examiner Batten: Well, the original is here, is it not, Mr. Reporter? Here is the original 32-A, B, C, D, and E.

By Mr. Langsdale:

Q. Maybe you had better look at this. I withdraw, for your examination, the photostats, and hand you the original exhibit, Board's Exhibit 32-A, B, C, D and E, and ask you if you saw those exhibits the other day when they were handed to you by Miss Weyand?

[fol. 3875] A. I did, but this insert (indicating) is still in the wrong place.

Q. Well, that isn't the question. You saw them, didn't you? A. Yes.

Q. All right. You may just hold them and I will use these. Now, you were asked by Miss Weyand, this question with reference to this exhibit, 32-A, B, C, D and E:

"Question: Will you look at the exhibit, and tell me if you are acquainted with that document?"

And you answered:

"Answer: The filing of the document was discussed with me, I don't remember whether I just ever saw the document after it was completed."

A. That's right.

Q. You did look at it then, when she handed it to you?

A. Yes.

Q. And then you were asked this question:

"Question: You participated in the preparation of the document through discussion with the persons who actually typed it up, did you?

"Answer: I did."

[—] Is that true?

A. Not the person who typed it up, but the one who had it typed up.

[fol. 3876] Q. Well, the reporter has it here, "The person who actually typed it up."

A. I am sure I wouldn't have said that, because I didn't have anything to do with having it typed up.

Q. Do you think that answer, then, should be changed so it would read—

A. That would be correct, because I didn't have anything to do with the person who typed this up.

Q. Then, that would be some stenographer?

A. I would think a stenographer for Mr. Bachofer.

Q. Then, you were asked this question:

"Question: Does it represent a correct statement of the supervisory force of your company in November and December, 1940?

"Answer: I would say that it does."

Did you make that answer?

A. If it is in the record, I probably did.

Q. Well, anything wrong with that answer?

A. I think that this heading here directly tells what time this—

Q. (Interrupting) I am asking you if there is anything wrong with your answer to the question, "Does it represent a correct statement of the supervisory force of your company in November and December of 1940?

"Answer: I would say that it does."

[fol. 3877] A. Well, I think Miss Weyand put that answer in my mouth, is what I would say.

Q. Well; do you want to change the answer?

A. Well, certainly; I think this paper here has a heading telling when it refers to. I don't know why she wanted to put in November and December, but the heading here is very expressive of just what it purports to be.

Trial Examiner Batten: The question to you is, do you want to change this answer.

A. I say, it would be correct to leave it, as the heading of this insert specifies, that is the correct time.

By Mr. Langsdale:

Q. Well, does Exhibit 32-E represent a correct statement of the supervisory force of your company in November and December, 1940?

A. It simply says it would be the 20th—of my own knowledge I wouldn't know just what date this—whether it was in November and December—however, when a responsible person from my plant comes out and makes a statement and says it was December 20th, then I say it was December 20th.

Q. Were you looking at the statement when you answered the question?

A. I don't know whether I was or not.

Q. Well, it very plainly—

A. (Interrupting) I was confused by this date in front of me, being October 30th, these papers all being put [fol. 3878] together incorrectly confused me, Mr. Langsdale.

By Trial Examiner Batten:

Q. Mrs. Reed, the question was, were you looking at the date on top of Board's 32-E when you answered this question.

A. I may have been looking at the date, October 30th.

By Mr. Langsdale:

Q. You were asked this specific question:

"Question: Does it represent a correct statement of the supervisory force of your company in November and December, 1940."

And you said:

"Answer: I would say that it does."

Now, did you make that answer without looking at the statement?

A. I probably did.

Q. You think you did?

A. I don't know, but I know I was confused by these statements being put together in the wrong dates; this October 30th was — it was all something that came from the Government Board, and I was confused.

Q. Well, do you know whether you were looking at the statement when you answered the question as to whether or not it correctly represented your supervisory force?

A. I don't know whether I was or not.

Q. Is there anything about your answer that you would [fol. 3879] say is wrong?

A. I would say that the best answer on that would be to take this paper, that is made out by a reliable person, and sent in to a Government — oh, I don't know what they call them.

Mr. Reed: Department.

A. (Continuing) — department, as an actual fact, that it would be better than my memory.

By Mr. Langsdale:

Q. Well, is there anything wrong with your answer, that that list correctly represents your supervisory force for November and December, 1940?

A. I would say that this paper — this date would be more accurate in the way of telling it than just from my memory, because I didn't make these papers up; I didn't keep in mind a certain date; I have people down there, and it is their job to do it.

Q. Now, Mrs. Reed, I am going to keep asking the question until I get a direct answer, unless the Examiner tells me to desist. Does that list represent correctly your supervisory force for November and December, 1940?

Mr. Reed: I submit that the statement itself shows to the contrary. It is dated December 20th, the slip is, and it is made as of December 29th, if I remember right.

Trial Examiner Batten: Just a moment. I don't see anything inconsistent about the question, and the question [fol. 3880] to the witness is, does that list represent a correct list of the supervisory force during November and December, 1940, in the plant, if this witness knows, without any reference to this exhibit, Senator.

A. Well, of my own knowledge of an exact date, I wouldn't know.

By Mr. Langsdale:

Q. Well, why did you say you did know? You said, "I would say that it does."

A. Well, she hands me a paper here dated October 30th, and it is a very legal looking paper, and signed by people from my company that I have confidence in their honesty and integrity, and I also think a Government Board would have their papers straight, and I say the way this was handed to me confused me, and an answer was put in my mouth. With me looking at this December 20th, and then looking back here at this October 30th, I was confused.

Q. But, Mrs. Reed, you weren't asked that question. You were asked if that list is a correct statement of your supervisory force in November and December, 1940, and you said that you would say that it does. Now, did the way she handed that document to you mislead you into making a false answer?

A. It did — not a false answer, but an incorrect answer. I wouldn't make a false answer that I know of, Mr. Langsdale, any place.

[fol. 3881] Q. Then, your answer was based entirely upon that October 30th date, you say, and not from any information you yourself have, is that right?

A. That is right, I was confused by those two dates.

Q. And you don't have any information except what you saw on that document, is that correct?

A. I had no specific information. These changes that were made were all discussed with me, but I didn't personally put them into effect, and I don't know on just which date they were put into effect, Mr. Langsdale.

Q. Well, let me ask you this, was Nell Quinlan Reed president of the company in November and December, 1940?

A. I was.

Q. Was Lee Baty factory manager at that time?

A. He was.

Q. Was John B. Bachofer Controller at that time?

A. Yes, sir.

Q. Was Mr. C. W. Howard head of the New York Office at that time?

A. He was.

Mr. Ingraham: What date is that?

Trial Examiner Batten: It isn't making any reference to the exhibit, as I understand it.

Mr. Langsdale: No.

By Mr. Langsdale:

Q. Was Elizabeth Reeves merchandise manager in [fol. 3882] November and December, 1940?

A. Yes.

Q. Was Beulah Spilsbury chief of designing department?

A. Yes.

Q. Was Ella Mae Hyde personnel manager in Noyember and December, 1940?

A. Yes.

Q. Was Ted Scoles supervisor, cutting department?

A. Now, he is one of the ones that the change was made on this December 20th.

Q. Now, Mrs. Reed, are you now willing to swear he wasn't supervisor of the cutting department in November and December, 1940?

A. I would swear that a supervisor, as we meant it in this instrument, he was not a supervisor in November, 1940, as we meant it in this instrument.

Q. I am not talking about as you meant it in that instrument. Was he supervisor of the cutting department in November and December, 1940?

A. Well, I say as we meant it in that instrument.

Q. How do you know what was meant in that instrument? You didn't get it up.

A. No, I didn't, but I know those supervision jobs were put into effect after we got our budget system up.

Q. You had a budget system long before that document [fol. 3883] was handed to you?

A. Yes.

Q. You had a budget system long before you talked to Mr. Bachofer, wherein you detailed the persons who were supervisors?

A. I didn't get that question.

By Trial Examiner Batten:

Q. Mrs. Reed, in this hearing several days before you ever saw Board's Exhibit 32, you told us that Mr. Bachofer had prepared some sort of a budget and called your attention to the fact some departments were loosely run.

A. That is right.

Q. Now, I think that is Mr. Langsdale's question.

By Mr. Langsdale:

Q. Didn't you say that was done in the latter part of November or the first part of December, 1940?

A. He discussed the budget with me.

Q. Didn't you say that was when you made the change?

A. No.

Q. You didn't say that in this hearing before you were shown that document?

A. I said I discussed the budget with Mr. Bachofer, but I didn't say when Mr. Bachofer put the budget into effect.

Q. Let's get you right. You say you didn't say you made the changes in the latter part of November, or the [fol. 3884] early part of December, 1940?

A. I wouldn't be able to say, because I didn't make them personally.

Q. Do you know when they were made?

A. I don't know exactly when they were made.

Q. Was Marvin Price the supervisor of the building maintenance in November and December, 1940?

A. No.

Q. Why do you say he was not?

A. Because I know that the first group of people that we had that were supervisors, or executives, which were asked for as exempted from the Wage and Hour Act merely included the top executives and the salesmen, and people that were considered professional people, and I believe that number was 49.

Q. Well, aren't these among the 49?

A. Some of them are.

Q. Aren't they all among the 49?

A. No.

Q. Which ones aren't among the 49?

A. Ted Scoles, Marvin Price, Lyle Jeter, Ella Brown, Florence Strickland, Martha Gray, Rose O'Leary, Pauline

Hartman, Harlan Justus, Helen Hauser, Betty Belter — I am not sure about Hilda — no, I am sure about Hilda.

Q. What about Dewey Atchison, assistant factory manager?

[fol. 3885] Mr. Reed: Let her answer the question.

Mr. Langsdale: She is skipping those names, Senator.

A. The first time that I, of my own knowledge, knew that Dewey was having any managerial work was when we began to put in some line production, and it was his own idea, and I said that we ought to hold him responsible for it.

By Mr. Langsdale:

Q. Well, was he one of the 49, Dewey Atchison?

A. I don't know. He hasn't been considered down there, more in the — he would be classed professional, because he has always been a special worker.

Q. Well, you never did class him in the class of a professional executive, did you?

A. Well, Dewey is one of these people who are difficult to classify, he has been an individual worker there for a good many years, until we got this line system going; to my knowledge, now, until we got to doing some special — certain special kind of work in there, to my knowledge, I didn't hold him responsible for any really managing job.

Q. Well, was Dewey Atchison assistant factory manager in November and December of 1940?

A. I don't know exactly when he was put in as assistant to the factory manager, but it may have been —

Q. (Interrupting) You saw the pay roll which Mr. [fol. 3886] Baty described him as assistant manager in December, 1937?

A. That was Mrs. Reeves, and he was assisting Mrs. Reeves, and I didn't know until I saw that, that he was called assistant factory manager.

Q. As long ago as June, 1937, he was described by Mr. Baty as assistant factory manager, wasn't he?

A. Well, that would be in June, 1935, that he was being —

Q. (Interrupting) 1937.

A. I thought that paper was dated June, 1935.

Q. Do you want to see it again?

[fol. 3887] Q. You say the date here is June 1, 1937, Mrs. Reed? (Handing Board's exhibit No. 6 to the witness.)

A. Is Dewey's name on there as factory manager?

Q. Dewey Atchison— I don't believe it is. I think that is one on me.

A. I think you will find that paper was dated June 1935, when Mrs. Reeves was in charge of the plant, Mr. Langsdale.

Trial Examiner Batten: Board's exhibit No. 6, that was— a photostatic copy, I believe.

Mr. Langsdale: I don't believe his name is on this list.

(Addressing Miss Weyand) You take the list and see if it is there. (Handing Board's exhibit No. 6 to Miss Weyand.)

By Mr. Langsdale:

Q. But in 1935 he was assistant to the factory manager, was he not?

A. Mrs. Reeves called him that, but not to my knowledge. I had no personal knowledge of it.

Q. Well, he was one of the "big 4" who were meeting to see who should be fired and who kept working?

A. He has always been consulted on the kind of work to put through, what kind of machines to use, how many machines we had, and how much work we had from our orders for those machines, Mr. Langsdale.

Q. And to see who should be fired and who should be kept working?

A. Well, his—

[fol. 3888] Q. Now, wasn't that his duty in June 1937?

A. Wait, now,— Let me tell you. I know what Dewey has done. He has worked for me for a long time. We have depended on Dewey for information about the machinery we have to do certain work. He has also, at different times, compiled from our orders how much work of certain types we had, so that we could match it up with machines. But Dewey's help has always been from ideas instead of any managing responsibility.

By Trial Examiner Batten:

Q. Well, I thought this morning, in that old N. R. A. record—wasn't he one of the four that were mentioned as passing upon the people?

A. I am saying they would get his opinion and— The reason they would get his opinion, Mr. Batten, was to see how much—if we had a lot of double-stitching to do, he would be the one to know it and—

Q. Irrespective of what they got his opinion on, he was one of the four, was he not, Mrs. Reed?

A. But his opinion was always on the work.

Q. Whatever his opinion was on, he was one of the four mentioned by Mrs. Reeves, wasn't he, when she said they always got the opinion of these four people before they did anything?

A. That is right. But I am trying to say, Mr. Batten, the reason his opinion would be worth something was because of his knowledge of how much of a specific kind of work we had to get through and how many machines we [fol. 3889] had to do it with, and from that point of view.

Q. Well, of course, I didn't ask you why he is there.

A. I think you ought to let me explain.

Q. Mrs. Reed, I have no objection to your explaining. My only question to you was, was he one of the four mentioned this morning?

A. But it seems to me you ought to let me explain. It wasn't that he had personal control over the woman who was on the job, but he could tell us how much work we had of a certain type that this woman could do. We didn't lay off any double-stitchers if we had—

Q. Mrs. Reed, I think you have explained that several times.

A. But it comes back all of the time, Mr. Batten, and it would seem that Dewey had control of managing the plant.

Q. No, we are not interested in managing the plant. We are interested in what these people did.

A. I am trying to explain it to you.

Q. Well, Mrs. Reed, you have already explained it several times. In fact, I think it was explained to Mr. Ingraham on direct examination and to Miss Weyand on cross-examination.

A. Well, Mr. Langsdale seems to want to know about it again.

Mr. Langsdale: I just don't want you to be confused about it, Mrs. Reed.

The Witness: I am not confused about Dewey. You are the one that is confused about Dewey.

[fol. 3890] By Mr. Langsdale:

Q. Didn't Mrs. Reeves testify:

"Nobody is let out of the Donnelly Garment Company unless four people pass on it."

Would you say that is true?

A. That was my general knowledge.

Q. Would you say this is true:

"Then that group of people are taken up with Mr. Atchison and Mr. Atchison discusses them very thoroughly and he sees what they have made and he knows the reasons about what happened each week because he analyzes each week our pay roll cards with the instructor and Mrs. Wherry."?

A. That wasn't my testimony, was it, Mr. Langsdale?

Q. I asked you if that was true. That was Mrs. Reeves's testimony.

A. I told you Mrs. Reeves was running the plant, and as to all of the details, I don't keep track of them. Now, she testified in that case that that was the way she handled it. She was in charge of the plant, and it was all right with me if that was the way she handled it.

Q. I asked you if it is true that that was the way she handled it?

A. Well, of my own knowledge, I don't know, because I didn't check up on her about it.

Q. Did you have any information at all that what Mrs. Reeves said was the system down there wasn't the system?

A. If she said it was the system she had there, I would [fol. 3891] say she would tell the truth about it.

Q. Mildred Francis was assistant to the president in November and December 1940, was she not?

A. Well, she—

Q. If she ever has been?

A. Well, she is.

Q. She is your secretary, isn't she?

A. She has been my secretary and now I consider her my assistant. She is doing many things for me. She has taken over certain things to do for me.

Q. Was Hilda Fitzgerald the chief of the designing department in November and December 1940?

A. She is head designer.

Q. She is described here (indicating exhibit) as "assistant to Chief of Designing." Is that correct or not?

A. That would be correct. Miss Spilsbury is the chief of the designing department.

Q. Was Fred Brown, in November and December, assistant to the cutting supervisor?

A. I know that these supervisory jobs were definitely put in effect on December 20, as it says here (indicating exhibit), because Mr. Bachofer told me that they were.

Q. Do you, then, say Hilda Fitzgerald was not assistant to the chief of the designing department in November and December 1940?

[fol. 3892] A. Well, no, I wouldn't say that.

Q. Do you say Fred Brown was not assistant to the cutting supervisor in November and December 1940?

A. I would say he was made that on December 20, because I have before me a paper that Mr. Bachofer got up, and it says he was made that on December 20.

Q. I don't think it says that, Mrs. Reed. It doesn't say you were made president on that date, does it?

A. No.

Q. It says—

A. Well, I know, of my own knowledge, in working with Mr. Bachofer, when he got up the budget system, we were going to put these people in a responsible position, and I know that before this budget system was put into effect Fred Brown was not considered in any supervisory capacity.

Q. Is there anything on that document that tells you when this budget system went into effect?

A. Well, the understanding I had with—

Q. I am asking you the specific question, is there anything on that document that says anything about any budget system?

A. This doesn't say anything about the budget system, but I know this budget system was to go into effect at the

time this report was to be made to the Wages and Hours Division.

Q. Why do you pick on December 20 for the other executives, when you have been president for many years? [fol. 3893] A. Because I know I have been president for many years, and I know these supervisors were not considered supervisory until this budget system was put into effect.

Q. But you were telling this to the Wages and Hours administration, that you were president as of December 20, 1940?

A. They asked for a tabulation of the people that covered the form that was turned in to them December 20.

Q. That's it.

A. And this form included all of the executives who had always been executives, and also included the people to whom we had given supervisory powers under our budget system.

Q. Had Cecile Ealy been the assistant to the factory manager in November and December 1940?

A. No. She came in under the budget system.

Q. What budget system?

A. The budget system we put in our plant.

Q. And she wasn't assistant to the factory manager in November and December 1940?

A. I don't know what date exactly—

Q. That is what I am asking you. You haven't produced any budget records here. Why do you pick on December 20 as being the date the budget system went into effect?

A. Because Mr. Bachofer makes the statement here, asking that certain people be exempt from the wage and hour law on December 20, and I take it he would have asked [fol. 3894] for that exemption at the time he would get his budget system going.

Q. And that would include Nell Quinlan Reed, Lee Baty, and John B. Bachofer—

A. It doesn't say in here that we formerly made a statement. On that first statement that was made, the Wages and Hours didn't ask us for a statement of who was on there. That first one was made of the Donnelly Garment Company and the Donnelly Garment Sales Company, and then, when they asked for the second one, they asked us

that, after we turned that first one in. My understanding is—now, this is what Mr. Bachofer told me—they asked for a statement of separate—to have the Donnelly Garment Company and the Donnelly Garment Sales Company make separate returns, and then when they were turned in they asked him for a list of who was covered on that. We were never asked for a list covering October 30—

Q. Do you know why they wanted a list of your supervisory employees?

A. I don't know. Maybe the Labor Board wanted them. I don't know.

By Trial Examiner Batten:

Q. Well, Mrs. Reed, what do you mean by that remark, "maybe the Labor Board wanted them"? What do you mean by that? You knew this was not going to the Labor Board, didn't you?

A. I certainly didn't have any idea. I thought whenever we turned in a paper—

[fol. 3895] Q. Just a moment, Mrs. Reed, please.

A. Can't I say that—

Q. Just a moment. My question to you was, you knew this was not going to the Labor Board, didn't you?

A. I had no idea it was. I didn't know the boards exchanged papers.

Q. Then, why did you say, "maybe the Labor Board wanted it"?

A. Oh, I was just making a facetious remark, Mr. Examiner. I apologize.

Mr. Stottle: Mr. Examiner, it has reached the Labor Board.

Trial Examiner Batten: Yes, but that does not justify the comment that at the time maybe the Labor Board wanted it. I think Mrs. Reed realizes that that perhaps was a side remark, and I think she has very nicely and very womanly, in a ladylike manner, disposed of it, Mr. Stottle, and I do not care to continue it any further.

* * * * * *

(Thereupon the last question was read by the reporter as follows:

"Do you know why they wanted a list of your supervisory employees?")

[fol. 3896] A. I don't exactly know why they did. I suppose that was a part of their procedure, but I don't know.

Q. You have no notion at all? Did any one of your attorneys tell you why they had any right to demand it?

A. There was a law passed that certain regulations of workers—

Trial Examiner Batten: Are you familiar with the wage and hour law, Mrs. Reed, yourself?

A. I am not familiar with it enough to discuss it.

By Mr. Langsdale:

Q. Well, paragraph 6 of this form contained on exhibit No. 32-C has this statement, "Total number of employees whom your firm considers exempt from provisions of the Act."

Did you know why they were exempt from the provisions of the act, the people that you listed as executives?

A. I had a general understanding that certain people were exempt if they had certain supervisory duties, but, Mr. Langsdale, I never analyzed the Act, or never—

Q. Exempt from what, Mrs. Reed, do you know?

Mr. Reed: Let her answer.

A. Exempt from the Act, from the workings of the Act, or whatever—

By Mr. Langsdale:

Q. Of course your supervisory employees were paid much more than the minimum scale provided by the Act?

A. Everybody in my place was paid much more than the minimum—

[fol. 3897] Q. So, from what provision would these executives be exempt—

Trial Examiner Batten: Mr. Langsdale, just a minute, please.

Read the answer this far, please.

(Thereupon the last answer was read by the reporter.)

A. (Continuing) —required by that Act.

By Mr. Langsdale:

Q. From what provision of the Act did you understand these executives would be exempt?

A. I didn't analyze the Act myself, Mr. Langsdale.

Q. Well, Mrs. Reed, Ted Scoles, you say, became a supervisor of the cutting department when? Have you any personal knowledge as to just when he became supervisor of the cutting department?

A. The only personal knowledge I have is the understanding I had with Mr. Bachofer in putting in the budget system. Now, when we put that budget system in, I didn't go into anything about the Wages and Hours Act. The budget system was put in to improve the workings of our business.

Q. Do you know when Ted Scoles became supervisor of the cutting department?

A. I do not, of my own knowledge.

Q. Ted Scoles is not with you now, you say?

A. He is not.

Q. When did he leave your employ?

A. I think, last fall.

[fol. 3898] Q. Do you know where Ted Scoles is?

A. No.

Q. Have you any idea?

A. I have not, of my own knowledge. I have heard that he is in Chicago.

Q. Do you know what his salary was on December 20, 1940?

A. I don't know the exact amount. It was maybe $70 or $75, or somewhere around there.

Q. Had he had an increase within the year prior to December 20, 1940?

A. I really don't know.

Q. You have no information at all about that?

A. I don't recollect the increases for people in the plant. Mr. Baty would bring a list up that he would recommend, and he would go over them and give me reasons at the time, and if we agreed on those raises I didn't do anything more about them; he would put them into effect.

Q. Do you have any recollection of Mr. Baty talking to you about any increase in Ted Scoles's salary within a year prior to December 20, 1940?

A. I don't remember that now, Mr. Langsdale.

Q. Have you any recollection at all with reference to that matter?

A. Within what time?

Q. A year prior to December 20, 1940.

A. I don't remember any discussion about it.

[fol. 3899] Q. Now, I am sorry, but I have forgotten what your recollection is as to Ted Scoles' salary on December 20th, 1940.

A. I said that I didn't actually recollect what it was.

Q. Did you say you had some thought about it?

A. I think that wouldn't be very far off from $75 a week, either under or over.

Q. Well, this pay roll record introduced into the hearing in 1939 showed that Ted Scoles was getting a bi-monthly salary of $119.17.

Mr. Ingraham: What page is that?

Mr. Langsdale: That is on page 4745.

By Mr. Langsdale:

Q. $119.17, that would be about $238.34 a month. Was that ever increased after April 30, 1937?

A. I am inclined to think that it was.

Q. Do you know when?

A. I do not.

Q. Have you any recollection at all as to how much it was increased?

A. I really don't know, Mr. Langsdale.

Q. Can you give me any information as to why his salary would be the odd sum of $238.34?

A. Because it would be based on a weekly basis, and then when they put it bi-monthly, it would make it in an odd amount.

Q. You have no definite recollection that his salary was [fol. 3900] ever increased after the 30th of April, 1937?

Mr. Reed: I object to that as repetition. It has been gone over three or four times.

Trial Examiner Batten: The question now is whether Mrs. Reed has any definite knowledge. I understood her prior answer to indicate she was under the impression she didn't know when, but would you be able to recall the amount, is that it?

A. Well, hardly anybody was there three years without a raise.

By Mr. Langsdale:

Q. Do you know definitely who received any increases after the 30th of April, 1937?

A. Well, Mr. Langsdale, these increases in salaries would be taken up with me at a certain time by someone like Mr. Baty or Mrs. Reeves or Mr. Bachofer, and at the time we would go over it and settle it, and then I dismissed it from my mind.

I didn't tell the persons they were to get a raise, I didn't tell the persons in charge of the pay roll to give the raise. The one that came to me about it would put it into effect, so I just dismissed those things from my mind, and I really don't remember just when a raise was given, and particularly to a specific person.

Q. Well, then, is your answer that you don't know whether he ever received a raise after April 30th, 1937?

[fol. 3901] A. Well, of my own knowledge of giving him a raise at a specific time after that date, I don't know.

Q. Marvin Price, do you know what his salary was on the 20th day of December, 1940?

A. I would say around $70.

Q. Well, had he received any raise for the one year next preceding December 20th, 1940?

A. I have no remembrance of a specific time or a specific raise, of my own knowledge.

Q. Do you know whether or not he had been raised since April 30, 1937?

A. I don't remember specifically.

Q. Lyle Jeter, do you know his salary December 20th, 1940?

A. Not exactly. I know that Lyle has gotten more raises comparatively, because he came there later, and he came in as just an ordinary mechanic, and he showed he was a very good mechanic, and did some very clever things, and I know that he was raised rather often.

Now, just specifically when and how much I couldn't tell you.

Q. Well, have you any recollection as to whether or not he was raised within the one year next preceding the 20th of December, 1940? A. No.

Q. Ella Brown, do you know her salary on December [fol. 3902] 20th, 1940? A. Not exactly.

Q. Do you know whether she had received any raise in salary for the one year next preceding December 20th, 1940?

A. Not of my own knowledge, at that particular time.

Q. Florence Strickland, do you know her salary on December 20th, 1940? A. Approximately.

Q. What? A. $80.

Q. Had she received any increase in salary for the year next preceding December 20, 1940? A. I don't believe so.

Q. Has she received any increase since that time?

A. I am not sure. I don't know.

Q. Martha Gray, do you know what her salary was on December 20th, 1940? A. Around $40 a week.

Q. Had she received any increase prior to that—one year prior to that?

A. I don't know, Mr. Langsdale.

Q. Has she received any increase since that time?

A. I am not absolutely sure.

Q. Rose O'Leary, do you know what her salary was December 20th, 1940?

[fol. 3903] A. I am not absolutely sure what it was.

Q. Do you know whether she had received any increase for the year next preceding December 20, 1940? A. No.

Q. You mean you don't know, or she didn't?

A. I don't know about a particular date, about a particular person, when they received—

Q. (Interrupting) I am just asking you, if you do know.

Mr. Reed: Let her answer.

Mr. Langsdale: Isn't she through, Senator?

Mr. Reed: She was not.

Trial Examiner Batten: Have you completed your answer, Mrs. Reed?

A. Well, I hadn't quite completed it. I think Mr. Langsdale,—

Trial Examiner Batten: (Interrupting) Well, will you read it thus far, please?

Mr. Langsdale: I thought you were through.

(Answer read by the reporter.)

Trial Examiner Batten: Will you complete your answer? A. When they received an increase.

By Mr. Langsdale:

Q. Well, then, you don't know whether she received an increase during the year next preceding December 20, 1940? A. I do not.

[fol. 3904] Q. And you don't know whether she has received any increase since that time? A. Not for sure.

Q. Pauline Hartman, do you know what her salary was on December 20, 1940? A. Not exactly.

Q. Can you approximate it?

A. I would say around $50.

Q. $50 a week? A. Yes.

Q. Had she received any increase during the year next preceding December 20, 1940?

A. I don't know, Mr. Langsdale.

Q. And has she received any since that time?

A. I will tell you I don't keep track of those raises.

Q. I understand your answer—

A. (Interrupting) The total of them.

Q. I understand your answer, Mrs. Reed. I want to ask you that with reference to these persons, I'll group them and ask you if your answer will be the same about these people, and we can save time, if it would. I want you to tell me whether or not any of these people have received an increase during the year next preceding December 20, 1940: Harlan Justus, Helen Hauser, Betty [fol. 3905] Belter, Dewey Atchison, Mildred Francis, Hilda Fitzgerald, Fred Brown, Cecile Ealy, Lena Tyhurst, Katie Schleicher, Lula Nichols, Nellie Kraft, Yolanda Prosperi, Gertrude Cain:

A. I don't know whether they received any raises prior to the year next preceding; I am sure they have received raises since that time.

Q. Well, will you tell me the one or more in the list there that have?

A. I couldn't tell you which, but of all these people you mentioned, I know that some of them have received raises since 1940, since December, 1940.

Q. But you have no information of any one of them having been raised in salary for the year next preceding December 20, 1940?

A. No, we hadn't had a very good year, and I wouldn't think there would be very many raises then.

Q. Now, Mildred Francis, do you know whether or not she was a member of the union, the Donnelly Garment Workers' Union?

A. I don't know. I don't think she was.

Q. I have no recollection about it myself; that is the reason I didn't ask about her. Taking all these names I have read you from Exhibit 32-E, can you tell any one of them that has been raised any time since January 1st, 1940, we will say?

[fol. 3906] A. I think most of them have, because our production has increased, and our business has been more profitable, and I am very sure practically all of them have had some increase.

Q. When?

A. Oh, different times, as their department improved, and as our business improved.

Q. Well, your recollection is that none of them received any increase during the year 1940?

A. That would be my recollection.

Q. Now, these people are your supervisors, as shown by this list, some of them at any rate. Had you ever paid Ted Scoles any overtime?

A. I would certainly think that he would be paid overtime.

Q. When? A. If he worked overtime.

Q. In 1940? A. I would say so.

Q. Well, do you know? A. I don't know.

Q. Your supervisors get paid for overtime, the same as your other employees?

A. The people in responsible positions, and who have a responsibility of their departments, are not paid overtime; their compensation is supposed to be in their salary.

Q. Well, wasn't Ted Scoles in a responsible position in [fol. 3907] December, 1940?

A. He was put in a responsible position at that time.

Q. Well, did he get overtime after that?

A. I would say that he didn't.

Q. Do you know whether or not he did?

A. I am sure that he didn't.

Q. Did he receive any overtime prior to that?

A. If he worked I would say he would.

Q. Have you any knowledge of it? A. I haven't.

Q. Marvin Price, Lyle Jeter, Ella Brown, Florence Strickland, Martha Gray, Rose O'Leary, Pauline Hartman, Harlan Justus, Helen Hauser, Betty Belter, Dewey Atchison, Mildred Francis, Hilda Fitzgerald, Fred Brown, Cecile Ealy, Lena Tyhurst, Katie Schleicher, Lula Nichols, Nellie Kraft, Yolanda Prosperi, Gertrude Cain, do you know whether those people were paid overtime in any part of the year 1940?

A. I am sure Mildred Francis was not paid any overtime, and I don't believe Dewey Atchison was. I don't know whether these people worked any overtime. I don't keep the time.

Q. Well, do you know, Mrs. Reed, whether any of them was paid any overtime during the year 1940?

A. I don't know; Mr. Bachofer would certainly know. I have nothing to do with seeing who was paid overtime.

By Trial Examiner Batten:

Q. Mrs. Reed, as a matter of fact, you wouldn't know [fol. 3908] if they were?

A. No, I wouldn't know if they were being paid overtime.

Q. In other words, your answer to the question is you don't know, isn't that right? A. Yes, it is.

Mr. Langsdale: Now, what I am getting at, Mrs. Reed, is this: if you don't know when this overtime was filled out, and you say you consulted with the man who made it out, that the reason for disclosing to the Wage and Hour Administration the names of those whom you were claiming to be supervisors was so that they would be exempt from the provisions of the Wage and Hour Act?

A. I wouldn't say that.

* * * * * *

Mr. Langsdale: Did you know when this list of executives was given to the Wage and Hour Commission by

[fol. 3909] Mr. Green, or by whoever it was, that gave it to the Wage and Hour Commission for the Donnelly Garment Company, that it was being given to the Wage and Hour Commission, so that the Wage and Hour Commission would know that they were executives, and you wouldn't have to pay them overtime?

A. Will you read that question again, it is so long.

By Trial Examiner Batten:

Q. Well, Mrs. Reed, did you know when this list was prepared and sent in that it was for the purpose of exempting these people from overtime payments?

A. I don't remember that this list was discussed with me, that it was for the purpose of not paying overtime; I thought it was in compliance with the law that the Wage and Hour people put out, and then you have to comply with that law, except that if you have certain employees that are in certain positions, they don't come under that law, and the Wage and Hour department sends blanks to fill in; and I think they say something about complying with it, and then how many people that we consider didn't come under that law.

Q. Then you didn't realize at the time, Mrs. Reed, that by preparing this list and sending it in, it would remove those people from the operation of the law? You understood that, did you?

A. I don't remember that this was discussed with me, with any great detail.

[fol. 3910] Q. Well, whether it was or not, my question to you was, did you know at the time the list was made and sent in that by sending it in, these people would not be subject to the Wage and Hour Act? Did you know that?

A. I don't right now recall that I had anything to do with sending in that form.

Q. Well, let's assume that you didn't. I understood your testimony to be that you were consulted about it, were you not?

A. I would be consulted; Mr. Bachofer would probably say, "I am filling out a form and sending it in, and asking these people be exempted from the Wage and Hour Law—", yes, I would be consulted on that.

Q. Then, my question to you is, did you know that by sending in a list—not this list, but sending in any list of

supervisors, that it removed them from the operation of the law, did you know that?

A. Well, I will say I did.

Q. Well, I don't want you to say it if you didn't.

A. Well, it is sort of one of those things, I didn't bother very much about it.

Mr. Langsdale: Well, Mrs. Reed, let's get onto something maybe a little simpler. This form that your company furnished the Wage and Hour Administration on December 20th states there were 1090 people in the employ [fol. 3911] of the Donnelly Garment Company.

Trial Examiner Batten: Will you get the original and refer to the number of the Exhibit, Mr. Langsdale, please? I believe that is Exhibit 34 or 35, one of the other.

Mr. Langsdale: That is 32-C.

Trial Examiner Batten: 32-C. You are still using 32?

Mr. Langsdale: Yes.

Trial Examiner Batten: It should be right here.

(Here Mr. Langsdale hands Board's Exhibit 32-C, original, to witness.)

By Mr. Langsdale:

Q. Will you turn to Board's Exhibit 32-C? How many people does 32-C show here on the pay roll of the Donnelly Garment Company, on October 30, 1940? A. 1090.

Q. Now, do you know whether that included those in the employ of the Sales Company or not?

A. My information is that it does—or did, rather.

Q. That is, the 1090 is the total number of employees on the pay roll of both companies?

A. Apparently that is true.

Trial Examiner Batten: Well, I think Mr. Ingraham said it was true, was it not?

Mr. Ingraham: That was my information.

By Mr. Langsdale:

Q. Pardon me. I notice in 35-C, which is the return for the Sales Company, there are 117 employees. Would [fol. 3912] the 1090 include that 117 in your opinion, Mrs. Reed?

A. Well, in October it was probably a low time, we don't employ new people usually until we begin building up our force in December, and usually people leave, and we don't reemploy new people in the fall, because that is the time we have the least amount of business and we try to give our old employees all the work there is, so in October that would probably be a low number of employees, so including that 117— I couldn't say that that exact number of persons would be included. There may be some of that 117 that would be new employees, but my understanding is that this first form would include the Donnelly Garment Sales Company and the Donnelly Garment Company.

Q. Well, now, maybe you are confused, and it seems to me to be some little confusion here. 32-D shows a total number of employees of 1100.

A. It says approximately 1100.

Q. Yes. Well—.

A. (Interrupting) This might be—you see, there is 1090 there, and on the other place they use the word "approximately", and I suppose they used the figure 1100 instead of 1090.

Q. Now, looking at that same paragraph on 32-C, it says, "Total number of employees whom your firm considers exempt from the provisions of the Act. (Refer to Employers' Digest)", and then they have written in there [fol. 3913] "Includes salesmen" 49. A. Yes.

Q. At that time you didn't furnish a list to the Wage and Hour Administration, did you?

A. I didn't furnish this at all, this was gotten up in my office.

Q. Well, did anyone for your company furnish the list on October 30th, 1940, of the 49?

A. My understanding is they didn't ask for a list, and there are no blanks on here, telling you to fill in a list. They filled out what they were asked to do, Mr. Langsdale.

Trial Examiner Batten: Then, so far as you know, Mrs. Reed, no list was furnished at that time?

A. That is as far as I know, there was not any furnished. There is no place on this bank to put a list. I don't see a request for a list.

By Mr. Langsdale:

Q. Well, do you know personally whether or not, after you furnished this document without giving the list of the 49 employees, whom you considered exempt, that the Wage and Hour Administration requested that you furnish that list?

A. I have never heard that they requested them to be furnished a list of these 49.

Q. Do you know who the 49 were?

A. I don't know exactly who they were. We have 27 or [fol. 3914] 29 salesmen; I can furnish you a list of them, Mr. Langsdale, but I couldn't tell you that exactly.

Q. There are only 29 on the Donnelly Garment Company 32-E as of December 20th. Do you know who the other 20 were, if this 29 is part of the 49?

A. I don't know what part the 29 were of the 49.

Q. You can furnish the list of people? A. Yes.

Q. That is, who were meant by the 49?

A. That's right.

Q. Where can you get that?

A. I can get it at my office.

Q. From whom? A. Mr. Bachofer.

Q. Up to now, the list of that 49 has never been furnished to the Wage and Hour Administration, so far as you know?

A. So far as I know they have never asked for it.

Q. Well, if you will look at this paragraph on 32-E, at the top of the page, it reads, "Pursuant to your request of December 29th, the persons coming within the provision of the second part of Paragraph 6 of the questionnaire as at December 26, 1940, are as follows:" Now, the second part of Paragraph 6, "Total number of employees whom your firm considers exempt from the provisions of the Act," and you say 49?

[fol. 3915] A. But that was dated October 30th, that first one, and here it says, "Pursuant to your request of December 29th."

Q. Yes, but you didn't furnish them on October 30th.

A. They didn't ask for it.

Q. How do you know?

A. Well, I know they would have furnished it if they had been asked.

Q. Mrs. Reed, do you know, yourself, they didn't ask for it?

A. I have been informed by Mr. Bachofer they didn't ask for it.

Q. Was that what they were asking for on December 29th?

A. No. The man, as I understand it, came down some time late in the month, and I don't know whether we had turned in these December 20 ones or not, but they wanted,—the Wage and Hour people wanted our returns separately, but I don't know when they made that request.

Q. Well, you do know, from reading these documents and from talking with Mr. Bachofer on October 30th, you filled out this form, 32-C, and stated you had 49 people exempt?

A. That's right, including 29 salesmen.

Q. And you do know, on this document filled out in December, it says this, "Pursuant to your request of December 29th, the persons coming within the provisions of [fol. 3916] the second part of Paragraph 6 of the questionnaire as at December 20, 1940, are as follows"?

A. Yes.

Q. Now, you didn't fill out any other form like 32-C on December 20th, did you? Mr. Bachofer didn't either, did he?

A. I don't get what you are talking about, Mr. Langsdale.

Q. What I am talking about is this, have you got it from Mr. Bachofer or anyone else that 32-E was simply to complete 32-C and give the Administration the information that was not given to them on October 30th?

A. No. It says very plainly it is pursuant to "your request of December 29th."

Q. I understand that.

A. "Within the provision of the second part of paragraph 6 of the questionnaire as at December 20th." So he certainly would have understood it was the December 20th questionnaire that they were asking for this detailed information about.

Q. Now, the second part of Paragraph 6 is where you see "49" without giving the names, isn't it?

A. They didn't ask for the names, Mr. Langsdale.

Q. Do you know why they did ask for the names on December 29th and didn't ask for them on October 30th?

A. I do not; furthermore, I was under the impression [fol. 3917] that all these documents that you put in — given to one division of the Government, was confidential.

Q. Why were you under that impression?

A. I was under that impression. I thought this information asked for is confidential. Mr. Bachofer brings different things to me, and says they are supposed to turn those in, I wouldn't want everyone to know about my business.

Q. Did you mind the Labor Board knowing about this document?

A. Well, I didn't mind it, but I think it is rather strange.

Q. Would the document have been any different if you had known it was going to be produced here in evidence?

A. No.

Q. And do you think the company was injured any by the Labor Board getting the document you filled in for the Wage and Hour Board?

A. No, I do not; it just seemed queer to me.

Q. Does it seem queer to you that one department of the Government might co-operate with another department?

A. I thought when the Government was asking for so much information about your business they kept it confidential.

Q. And wouldn't violate your confidence by letting another department of the Government, which is charging you with violating the law, have the information that might [fol. 3918] be valuable to that department?

A. My understanding has been that you fill out papers, to go to one department of the Government, giving information about your business, that it is kept confidential.

Q. As far as that is concerned, it could be hidden from another department?

A. Well, I don't know as you would hide things, but it is confidential.

Q. There is nothing confidential about this, is there, 32-E?

A. I don't think there is anything confidential, but I just think it is strange.

Q. You would rather the Labor Board wouldn't have gotten it?

A. No, I think it is perfectly all right, if they wanted it. I want this Board to know everything possible about my business; I think if they do know it all, I wouldn't have any trouble, Mr. Langsdale.

Miss Weyand: I don't know whether it is proper for the record to show for the witness' information, but the National Labor Relations Act does make provisions for the Labor Board to secure information from other government agencies.

Trial Examiner Batten: I don't think we need to spend any time on that. May I say this, Mrs. Reed --

Mr. Langsdale: (Interrupting) What I wanted to [fol. 3919] know was Mrs. Reed's idea about it.

Trial Examiner Batten: I think that all the attorneys know, of course, and realize that all the different Government departments co-operate unless they have a provision which prohibits, makes secret, you might say, as some laws have, information received by those departments.

By Mr. Langsdale:

Q. Now, let me get back to your testimony about this Exhibit E.

Trial Examiner Batten: Just a minute. If you are going to ask her some more about the exhibits, I wanted to look at them, Mr. Langsdale.

By Mr. Langsdale:

Q. Now, the last answer you made that I have referred to on this examination is as follows:

"Question: Does it (referring to 32-E) represent a correct statement of the supervisory force of your company in November and December, 1940," and your answer is,

"Answer: I would say that it does."

(Colloquy)

"Answer: This is made up as of October 30, 1940, I would say it was close to November or December, 1940."

Did you make that answer?

Mr. Ingraham: What page is that?

Mr. Langsdale: 3538.

A. I still say the improper inserting of the list in that October 30th document confused me as to the dates at [fol. 3920] the time.

By Mr. Langsdale:

Q. Mrs. Reed, your answer here was that it was. You say this was made up as of October 30th, 1940?

A. I would say it was very close.

Q. November or December, 1940, did you make that answer?

A. I apparently did.

Q. Was that true?

A. I wasn't sure about what time it was.

Q. Well, you weren't saying then that it was October 30th, were you? You said it was November or December.

A. I know we had discussions about this budget system in November or December, but it turned out to be that it was December before it was put into effect.

Q. Well, you did make this answer at that time?

A. I did.

Q. "I would say it was very close to November or December, 1940"?

A. Yes.

Q. And you believed that when you made that answer?

A. Well, I say it turned out to be December; that is probably as close as I can get to it.

Q. Again, let me ask you if, long prior to the introduction of 32-C you didn't state the change in status occurred in November or December, 1940?

[fol. 3921] A. I said we discussed it at that time.

Q. What did you do besides discussing it?

A. Well, I know that one thing came up, that putting some of these new arrangements into effect was a matter of whether Mr. Baty could go on the hunt; we usually go up to Michigan and hunt the last two weeks in November, and we have a place up there, and Mr. Baty has been in the habit of going, and he told me if he changed the responsibility of these instructors before he left, he couldn't go on the hunt, because he wanted to be there himself when this additional authority was given to the instructors, and so

I said, "Well, I think you'd better come along on the hunt, there isn't any heavy manufacturing now, and as a matter of fact, I had rather be here myself when this additional authority is given, so if there is any question about it, we will both be here," and I know that I left for the hunt about the 10th of November, and I wouldn't have gotten back until after the 1st of December.

Q. Now, the number of employees in December, 1940, was about 1090?

A. I believe it was in October, Mr. Langsdale.

Q. October 30th, 1940?

A. Yes.

Q. Did that increase or decrease in December?

A. I would be inclined to say it increased.

[fol. 3922] Q. How much?

A. I don't know.

Q. Have you any idea how much it increased?

A. No, I really haven't.

[fol. 3923] Q. As much as 100?

A. It could.

Q. Do you think it would?

A. I hardly think it would.

Q. Would 50 be closer?

A. Of my own knowledge, I don't know, but I know that usually we begin to employ new people and get our force up beginning somewhat in December.

Q. At any rate, it was 2 or 3 hundred fewer than in May 1937?

A. May 1937 would be at the height of the season, and this time in October would be at the very lowest point, in my opinion.

Q. In May 1940, how many employees would you say you had?

A. I don't know exactly. Somewhere around 1,200, I suppose, or 1,300.

Q. About the same as 1937?

A. There might have been some more.

Q. When did you go on this hunt?

A. I don't know the exact day, but we asked our guests to be there on the 13th—

Q. The 13th of what?

A. Of November. —and I tried to be up there a day or two before, and it takes a day and a night to get there.

Q. Now, you had discussed this budget matter prior to that, had you?

[fol. 3924] A. Yes.

Q. As early as October?

A. I don't remember that I discussed the budget matter. I discussed the budget matter, but I didn't do anything very definite about it.

Q. Mr. Bachofer was the one who brought that to your attention, wasn't he?

A. Yes.

Q. And suggested that you make these changes?

A. Yes.

Q. Where were you when he made that suggestion to you?

A. I probably was in my office.

Q. Is it your recollection that you were in your office?

A. I don't remember exactly, but I would think it was in my office.

Q. Do you remember who was there when you made the suggestion, besides you and Mr. Bachofer?

A. About the budget system?

Q. Yes.

A. My remembrance now would be, when he first talked to me about it I don't remember that anybody else was there.

Q. Did you have more than one talk about it?

A. Yes, we had numerous talks about it.

Q. Who was present at any time besides you and Mr. Bachofer?

[fol. 3925] A. I don't remember that anybody was.

Q. Ever?

A. I don't specifically remember.

Q. How did he bring the matter to your attention?

A. Well, he often comes into my office to discuss with me the different situations of the business. This budget system had been suggested to me before, but I didn't—

Q. By whom?

Mr. Reed: Let her answer.

A. Oh, I don't remember. Perhaps by Mr. Bachofer. I think when he first came to our place he thought we ought to have a budget system.

By Mr. Langsdale:

Q. But this is the budget system out of which grew a change in the authority given to certain people in your plant?

A. Yes.

Q. Now, did you and he just sit down and talk it over by yourselves?

A. The budget system we did, yes. He presented me with the idea, and I would say that he persuaded me that that would be the thing to be done.

Q. Did he do it in writing or orally?

A. No. Just talked to me about it.

Q. He never did present you with any written document suggesting who should be made supervisors who were not supervisors before?

[fol. 3926] A. I don't remember whether he had any written documents. I know that he went down the line, more or less, of different departments, and said he thought the expenses in these departments were too high, and that if we would hold some specific person responsible and more people that were right on the job were responsible, that we would be able to reduce the overhead.

For instance, Miss Spilsbury was in charge of all patterns and designing, and then she had a little office that took care of the purchases of the materials she used in the designing department, and in that little office they made up this information for the merchandise department and they got up original costs. There were many activities, and Miss Spilsbury was in general charge, but she was away a great deal of the time, and Mr. Bachofer thought if we would put certain specific people in charge of smaller activities, that those people would feel responsible and do a better job.

Q. But he never did give you any written report on Ted Scoles, Marvin Price, Lyle Jeter, Ella Brown, Florence Strickland, Martha Gray, Rose O'Leary, Pauline Hartman, Harlan Justus, Helen Houser, Betty Belter, Dewey Atchison, Hilda Fitzgerald, Fred Brown, Cecile Ealy, Lena Tyhurst, Katie Schleicher, Lulu Nichols, Nellie Kraft, Yolanda Prosperi, or Gertrude Cain?

A. Now, will you please read your question? I was distracted by all of those names.

Mr. Langsdale: Read the question, please.

[fol. 3927], (Thereupon the last question was read by the reporter.)

Q. —as to why they should be given supervisory authority which they didn't have prior to that time?

A. No.

Q. Did he give you any written authority as to why he thought all of these instructors should be given back some of the authority they had prior to the time Mr. Baty took it away from them in July of 1935?

A. Mr. Langsdale, there would be no point of his writing a lot of stuff if he had me there to talk to.

Q. I am asking you, did he?

A. I don't remember that he ever did.

Q. What do you call Mr. Bachofer down there, his title?

A. I suppose, comptroller.

Q. Doesn't he make reports to you?

A. He reports to me verbally. He brings along, sometimes, a certain list of expenses, and he will say that a certain department has cost so much last month, or our expenses are so much.

By Trial Examiner Batten:

Q. Mrs. Reed, as a matter of fact, he makes regular reports to you, doesn't he, on income and outgo? If he is a comptroller, doesn't he make you regular financial reports?

A. He doesn't make me regular—oh, reports like I used to get. A long time ago we had an accounting firm—[fol. 3928] Q. My point is, doesn't he make you a regular report on the financial status of the company, as a comptroller?

A. You may think it is queer, but he doesn't. I go over with him certain records that he has and—

By Mr. Langsdale:

Q. You mean he doesn't give you any—

Mr. Reed: Let her answer.

Mr. Langsdale: Pardon me, Senator. I thought she had finished.

Trial Examiner Batten: Read the question and answer.

(Thereupon the last question by Trial Examiner Batten, and the answer, were read by the reporter.)

A. He brings records into my office and shows me the progress we are making, or certain records that he has, but to just file records with me, he doesn't do that; he keeps everything himself. I don't get a financial—

By Mr. Langsdale:

Q. Are there any stockholders?

Mr. Reed: Now, let her answer.

Trial Examiner Batten: Had you finished, Mrs. Reed?

A. The thing that you are talking about may be the same thing. I mean he doesn't turn over to me anything. He has them, but I let him keep them and take care of them.

By Trial Examiner Batten:

Q. Mrs. Reed, I didn't mean, do you file them in your office? What I meant was, at regular intervals he makes you a report, does he not? You will go into his office or he will come into your office and he will point out to you [fol. 3929] the financial status of the company?

A. Yes, he does that.

Q. At more or less regular intervals?

A. Yes, he does that.

. . . . . .

By Mr. Langsdale:

Q. You are a majority stockholder?

A. Yes.

Q. Doesn't the comptroller make out financial reports for the benefit of the stockholders, showing the income and [fol. 3930] the disbursements?

A. I know that he makes out statements of the income and disbursements and how much money we make, and regular statements, yes.

Q. He has charge of the pay roll statements, doesn't he?

A. Yes. He has general charge of all of the accounting.

Q. Now, your discussion about this budget system you have been talking about was just oral between you and Mr. Bachofer?

A. Mr. Bachofer was supposed to make up a budget for each of his departments, and then he would go over these with either the person then in charge or the ones that were given charge of a certain activity; he would show them how much that activity had cost last year and how much—he discussed with them whether they thought that was too much, or if he thought it was too much, if they thought they could do it for less.

Q. Did he furnish you any written statement as to these changes in authority that you are talking about?

A. I don't remember. He may have. I didn't pay a lot of attention to them, if he did.

Q. What is your best recollection, that he did or did not?

A. I just don't recollect at all, Mr. Langsdale.

Q. So that all you are able to give the Examiner is your statement that you and Mr. Bachofer talked it over?

A. Well, Mr. Bachofer may have more about it, but, Mr. Langsdale, you must remember that I do a great deal [fol. 3931] of personal designing and a lot of work in getting up my line, and I discuss the merchandise, and I discuss the management. That would be something I would expect Mr. Bachofer to do. As a matter of fact, I think one reason I never put in a budget system was that I didn't want to bother doing it myself. He told me that he would personally discuss and talk this over with each of these people, so that I wouldn't have to do anything about it.

Q. You mean he would go and talk it over personally with each of the instructors?

A. Not with the instructors. The instructors' difference in status wasn't in connection with the budget. It just came up at that particular time because we were trying to improve our management, and the whole thing went along together.

Q. Then, the status of the instructors had nothing to do with this budget system you have been talking about?

A. Except that it was planned about the same time.

Q. I thought you said something about the instructor being held responsible for the expense of the particular section of which she was instructor.

A. I am sure I said she was not.

Q. Is it true that the instructor was held responsible for the quantity and quality of work that the section turned out?

A. Yes. But that wouldn't mean for the expense of the section. She had nothing to do with making piece rates and—

Q. But don't you think that the quantity and quality [fol. 3932] of the work turned out by a section has something to do with the cost of getting it out?

A. Certainly it has, but we have no budget system to control that.

Q. Now, commencing on page 3529 of the transcript—:

By Miss Weyand:

"Q. Had that supervisory status changed at your plant at any time prior to November 1, 1940?

"A. This document you mentioned is dated October 30th."

A. I say, Mr. Langsdale, I was very much confused by that paper, and the difference in dates, and the wrong paper being inserted in the wrong form.

Q. But there is nothing wrong about that answer, is there?

"This document you mentioned is dated October 30th."?

A. I don't think there is anything wrong with it.

By Trial Examiner Batten:

"Q. I think the question was, prior to October 30th, the date of the document, prior to October 30th, 1940.

"A. I would say that this was the time that we decided that we were going to put in the supervisory arrangement, the budget arrangement, at that time.

By Miss Weyand:

"Q. Did that supervisory status there presented, exist in operation at your plant, prior to October 30th, 1940?

"A. It did not."

There is nothing wrong about that answer, is there?

[fol. 3933] A. No.

Q. Then:

"Miss Weyand: I offer this exhibit in evidence, Exhibit 32.

"Trial Examiner Batten: Any objections? There being no objection, it will be received.

"(The document heretofore marked, 'Board's Exhibit No. 32, Witness Reed,' for identification, was received in evidence.)

"May I see it?

"A. Yes. I would like to see it myself, again, please. What did you say?

"Q. (By Trial Examiner Batten) I said, Mrs. Reed, if there is no objection, it would be received.

"Trial Examiner Batten: I don't hear an objection.

"Miss Weyand: I would like the reporter to mark the pages thereof, on the front of the first page, 32-A, 32-B, on the back of the first page, and 32-C on the front page of inner sheet, and 32-D on the back of the form sheet, and 32-E on the attached information."

Mr. Reed: What page is that?

Mr. Langsdale: 3530.

Q. (Continuing) Then:

"A. May I see that, please?

"Trial Examiner Batten: Is there any objection to marking these sheets like that? Miss Reporter, will you [fol. 3934] mark this, please? That will be A, B, C, D and E.

"(Thereupon the documents above referred to were marked 'Board's Exhibits 32-A to E, inclusive, Witness Reed,' for identification, and received in evidence.)

"Miss Weyand: I am going to ask leave that this exhibit be withdrawn and photostatic copies substituted, and in that connection I would like to have counsel, after looking at the documents and ascertaining the facts stipulate

that the documents, I mean on the face thereof they bear the stamp of the Wage and Hour Division, showing the document was received at 9:30 o'clock in the morning, October 31st, 1940, since such stamps usually do not photograph well—

"Trial Examiner Batten: I suggest that you have the photostats made, and when the photostat is available, then you may ask to withdraw it, and substitute the photostat, and I will determine if the photostats are such that you should be permitted to withdraw it. I wouldn't want to now.

"Miss Weyand: Usually photostatic copies cover all written material, and do not cover the stamp."

Mr. Reed: Is this a question?

Mr. Langsdale: I am getting down to it.

Q. (Continuing) Then there is the answer:

"A. I would like to have permission to read this, inasmuch as I haven't read it before. I would like to take the time now to read it, inasmuch as I have been asked the [fol. 3935] question about it."

Do you remember making that answer?

A. I remember being very much confused.

Q. Do you remember you took the document and read it? A. I took the document and read parts of it.

Q. Is there anything concealed about the three lines at the top of Exhibit No. 32-E?

A. No. That is what's confused me, that this paper would be inserted, and not only inserted, but attached to a blank of October 30.

Q. Of course, that didn't confuse you, because you didn't know anything about why it was inserted, did you?

Mr. Reed: Now, that is mere argument and not a question at all.

Mr. Langsdale: Did you? Did you know why it was inserted then?

Mr. Reed: How could she know why it was inserted, when Miss Weyand says she inserted it?

Trial Examiner Batten: All she has to do is to say she did or didn't, Senator.

A. No, I don't know why it was inserted in the wrong place.

Mr. Langsdale: Did you know it was inserted in the wrong place when you made the answer:

"I would like to have permission to read this, inasmuch as I haven't read it before. I would like to take the time [fol. 3936] now to read it, inasmuch as I have been asked the question about it?"

Were you confused when you gave that answer?

A. I felt that there was something wrong about that document being attached to an October 30 form, and I didn't know why it should be.

Q. Why did you think there was something wrong about it, Mrs. Reed?

A. Because the form was dated October 30, and this document was dated December 29th, and Miss Weyand seemed to be so anxious for me to say that that insert would be dated the same as the October 30. She was so particular about the dates and constantly asking about the dates, and she wanted it stipulated that that did belong on that date, even though she was going to have it photostated; and, as a matter of fact, the thing that showed on that photostat was the date, more than anything else.

By Trial Examiner Batten:

Q. Mrs. Reed, when you gave that answer did you know that the document was dated October 30 and the insert dated December 29?

A. I couldn't make it out, Mr. Batten.

Q. Just a moment, now. I gathered from what you just said that you observed at that time, at the time that you gave this answer, that there was a discrepancy in the dates. Did you?

A. No, I didn't clearly understand. I might be stupid, [fol. 3937] but I didn't clearly understand.

Q. It doesn't make any difference to me, Mrs. Reed, whether you understood or not. When you gave the an-

swer, did you notice that one document was dated October 30 and the other December 29?

A. It didn't come to my consciousness entirely. I just couldn't understand why Miss Weyand was so anxious to get a date of October 30 on it.

Q. My question to you still is, not what Miss Weyand wanted, my question is, when you gave the answer what was there about the document that confused you?—not Miss Weyand's questions to you. What was there, if anything, in the document that was not clear to you?

A. The questions she asked me were what confused me.

Q. I am not talking about Miss Weyand's questions. What was there in the document, after you looked it over carefully, that confused you?—not Miss Weyand's questioning.

A. It just didn't seem consistent.

Q. What didn't? A. The dates.

Q. Then, you did observe that there was a difference in the dates?

A. It didn't just dawn on me that there was another form that that should be in.

Q. Well, whether it did or did not, you did notice that [fol. 3938] there was a difference in the dates, did you, Mrs. Reed, when you read it carefully?

A. Well, I say that the whole thing frightened me, because it seemed inconsistent, and I couldn't understand why Miss Weyand wanted to pin a date down that wasn't consistent with the insert.

Q. What wasn't consistent? A. The date.

Q. What date? A. October 31.

Q. Wasn't consistent with what? A. The insert.

Q. What was the date on that?

A. It was dated December 29. But I didn't notice that until after she started talking and asking for a stipulation that that document was received in that office on the 31st, and then I thought that was queer, that she should ask for a stipulation that this document was received in the office of the wage and hour people on October 31, when the insert was dated December 29.

Q. But you testified before—

A. That was after my testimony was given. I didn't ask to see that until after she had talked about the stipulation.

Q. Now, just a moment, Mrs. Reed, please. I can't keep up with you.

[fol. 3939] When you gave the answer which Mr. Langsdale read, at that time you observed a discrepancy in the dates, did you not?

A. I don't remember that I did. I remember specifically the time I thought about the dates was when Miss Weyand asked the attorneys to stipulate that this whole document, 32—and she made it so plain—32-A, B, C, D, and E, was received in the wage and hour office on October 31.

Q. That was prior to the answer which Mr. Langsdale read, was it not?

A. I don't think so. I think it was the last thing.

Trial Examiner Batten: Will you permit the witness to read it?

Mr. Langsdale: Here is what Miss Weyand said, that she refers to:

"I am going to ask leave that this exhibit be withdrawn and photostatic copies substituted, and in that connection I would like to have counsel, after looking at the documents and ascertaining the facts—"

The Witness: No. That is incorrect reporting—ask that the lawyers stipulate. That isn't correct there.

Mr. Langsdale: Will you permit me to read it, Mrs. Reed?

The Witness: I know that isn't correct.

Trial Examiner Batten: Will you read it as it is?

The Witness: That has been corrected.

[fol. 3940] Trial Examiner Batten: It has not been corrected, Mrs. Reed. That is the record until it is corrected.

The Witness: It is incorrect.

Mr. Langsdale: Will you permit me to read it?

The Witness: All right.

Mr. Langsdale: On page 3530 appears the following:

"Miss Weyand: I am going to ask leave that this exhibit be withdrawn and photostatic copies substituted, and

in that connection I would like to have counsel, after looking at the documents and ascertaining the facts stipulate that the documents, I mean on the face thereof they bear the stamp of the Wage and Hour Division, showing the document was received at 9:30 o'clock in the morning, October 31st, 1940, since such stamps usually do not photograph well—"

Mr. Langsdale: Now, that is what you have in mind when you say she wanted a stipulation, is it not, Mrs. Reed?

A. Yes. She wanted to stipulate that the whole thing was received on October 31.

. . . . . .

[fol. 3947] Mr. Ingraham: Just a minute. Mr. Langsdale, have you left your line of questioning on Exhibits 32, 33, 34 and 35?

Mr. Langsdale: At least temporarily.

Mr. Ingraham: Has the Examiner changed his ruling? I understood the other day you announced you were striking out Mrs. Reed's testimony in regard to Exhibit No. 32. Now, since then, Mr. Langsdale has spent considerable time inquiring into that testimony, and the Examiner himself inquired from Mrs. Reed about that matter.

If that testimony was stricken out, I would like to know the purpose of that inquiry.

Trial Examiner Batten: Well, Mr. Langsdale may tell you if he desires.

Mr. Langsdale: After you had struck out the cross-examination that had been made prior to the discovery that had been made by Miss Weyand of the true situation [fol. 3948] with reference to 32-E, that has nothing whatever to do with my right to cross-examine her about the same exhibit.

Mr. Ingraham: Well, the testimony was not stricken out prior to Miss Weyand's discovery. The testimony was stricken out just yesterday or the day before.

Mr. Langsdale: What did I say, Mr. Reporter?

Trial Examiner Batten: You mean subsequent?

Mr. Langsdale: Subsequent. I should have said after her discovery. I didn't mean to say prior.

Mr. Ingraham: If Mr. Langsdale and the Board and the Examiner intend to inquire, and they have already inquired in this matter, Respondent wishes to withdraw its motion to strike.

Trial Examiner Batten: Well, I will take it under advisement.

Mr. Langsdale: Will counsel state why he is withdrawing the motion to strike?

Mr. Ingraham: Because the Examiner and you, Mr. Langsdale, have gone into matters that were stricken. You have cross-examined from the testimony that Mrs. Reed gave, you read that testimony into the record, although the Examiner announced two or three days ago that that testimony had been stricken.

Mr. Langsdale: Was it your contention on the ruling that it precluded me from cross-examining Mrs. Reed?

[fol. 3949] Mr. Ingraham: I suppose the Examiner's purpose in striking it out was because he felt it was immaterial to the issues in the case, I don't know. He didn't announce his purpose.

Trial Examiner Batten: Well, I'll take the matter under advisement and dispose of it. It is presumed that it does not preclude any other counsel from cross-examining this witness from 32-E.

Mr. Ingraham: Does that mean it is proper for counsel to take up what you have stricken from the record, and ask questions on it?

Mr. Langsdale: On cross-examination I have a right to ask her any questions about anything.

Trial Examiner Batten: The question, Mr. Ingraham, is should you read into the record the testimony I have stricken?

Mr. Ingraham: Well, for that matter, if you intend to go into it, Respondent wishes to withdraw its motion.

Trial Examiner Batten: Well, I said I would take it under advisement.

Mr. Langsdale: I just want to say one further thing in that connection. My own conception for the reason of the ruling of the Examiner, was that the counsel for the Respondent were insisting that Mrs. Reed had been misled by [fol. 3950] the intermingling of these exhibits, and the cross-examination should be stricken.

Mr. Ingraham: We certainly do think the witness was misled.

Mr. Langsdale: You aren't inferring that I misled the witness?

Mr. Ingraham: No, not at the time you were cross-examining Mrs. Reed.

Trial Examiner Batten: Well, of course, I still feel, as far as Board's Exhibit No. 32 is concerned, except for its receipt in evidence, the testimony and even the remarks with respect to it, perhaps, should be stricken. I will take it under advisement, but if I strike your testimony, I am inclined to believe I should strike the whole matter before the receipt of the exhibit, and then if you want it to be reoffered—

Mr. Ingraham: That sort of a ruling is highly unfair.

Trial Examiner Batten: Well, I haven't ruled yet.

Mr. Ingraham: That is certainly why it is unfair, because Mrs. Reed is examined about those matters apparently on a fishing expedition, and if something isn't disclosed helpful to you, then her testimony and everything in connection with it will be stricken out.

Trial Examiner Batten: Mr. Ingraham, you are the man who made the motion.

Mr. Ingraham: We made the motion at the time.

[fol. 3951] Trial Examiner Batten: Now, it is not material to me, if you counsel here all agree that you want to go into the matter, I have no objections. If you are undecided what you want to do, well—

Mr. Ingraham: (Interrupting) I don't think it is fair for Mrs. Reed to be examined at length about a certain matter, and then, apparently, if nothing is developed helpful to the Board, then it is going to be stricken out.

Trial Examiner Batten: Just a minute. Who said if there is nothing helpful it is going to be stricken out?

Mr. Ingraham: Well, what is the purpose of examining Mrs. Reed, both counsel for the Board and—

Trial Examiner Batten: Mr. Langsdale will have to tell you that. I can't tell you his purpose.

Mr. Ingraham: Mr. Langsdale got up in Court, and he agreed that the testimony should be stricken, and he said that he was doing that out of an abundance of caution. Now, he spends considerable time inquiring into it.

Trial Examiner Batten: What is your desire? I suggested I would go over the matter, Mr. Ingraham, and take under advisement your suggestion to withdraw. Now, do you prefer that to having me straighten the matter out?

Mr. Ingraham: Yes.

Trial Examiner Batten: And strike it?

Mr. Ingraham: I would rather have our motion with-[fol. 3952] drawn, and the evidence left in the record.

Trial Examiner Batten: Is there any objection, Mr. Langsdale?

Mr. Langsdale: Not a bit. I think, as a matter of fact, although I was not going to urge it, a motion from the Board's counsel or the I.L.G.W.U., to reinstate the testimony would be in order after Mrs. Reed's testimony yesterday afternoon in which she plainly showed that she was not misled, that she read that sentence at the top of Board's Exhibit 32-E before she made her answer.

Trial Examiner Batten: Miss Weyand, what is your position? Do you have any objection to withdrawing the motion to strike, and reinstating the testimony?

Miss Weyand: I have no objection at all.

Trial Examiner Batten: Mr. Tyler, what is your position?

Mr. Tyler: No objection.

Trial Examiner Batten: Well, as soon as you are all agreed, I will allow your motion.

Mr. Ingraham: All right.

Trial Examiner Batten: The motion to strike is withdrawn and I will reinstate the testimony.

. . . . . .

[fol. 3957] Q. Now, when you testified about the Mamie Tubessing conversation, you were unable to give us the name of the girl who told you that. Can you now give us the name of the girl who told you that?

A. My remembrance is— I remember the girl's name. Just at that time I couldn't remember it. It was Maude Fisher.

Q. You say Maude Fisher is the one who told you that?

A. Maude Fisher is the one who told that she had met—I believe it was Thelma Owen, rather than Mamie Tubessing. She told several people down there. She told Mrs. Reeves, I believe.

Q. Did she tell you that?

A. I don't remember that Maude told me that herself. I know that some of the girls did talk to me about this [fol. 3958] violence, and they understood that they were going to "take me for a ride."

. . . . . .

[fol. 3974] Mr. Langsdale: Was Exhibit No. 35 offered and received in evidence?

Mr. Ingraham: Yes.

Trial Examiner Batten: Yes. Up to and including 36, in fact, all of the exhibits that have been marked, those offered have been received, I believe, Respondent's as well as Board's.

Mr. Ingraham: That is my understanding. May it be understood that the exhibits offered by Respondent, which I think were Exhibits 17 to 38 inclusive, have been offered?

Trial Examiner Batten: 16 to 38 inclusive.

Mr. Ingraham: 16 to 38 inclusive have been offered and received in evidence?

Trial Examiner Batten: Well, of course, my records indicate they have been.

Mr. Ingraham: That is my recollection. I was not sure whether I offered each individual newspaper; I had them identified.

Trial Examiner Batten: Well, your news articles were 18 to 38; they were all received.

* * * * * *

[fol. 3975] By Mr. Langsdale:

Q. Mrs. Reed, in answer to one of Miss Weyand's questions as to whether or not, after Mr. Baty became your production manager, prior to December, 1940, the instructors had met with Mr. Baty to discuss the operators; my recollection is that your answer was, "Not generally". Is that your recollection of your answer?

A. I really don't know how Mr. Baty — what his operations were. I am under the impression the meetings which Mrs. Reeves had with the instructors was not kept up; she constantly had meetings with the instructors. Of course, she was not in the plant like Mr. Baty.

Q. What do you mean by "not generally"?

A. Just what I said.

Q. Just occasionally?

A. I probably should have elaborated a little more. Just as I have said now, Mrs. Reeves used to have the instructors meet with her very regularly.

Q. Once a week?

A. I don't know how often she did, exactly, but being on the same floor, I saw them when they came on the office floor, and I don't believe that those meetings were kept up like she had them, because Mr. Baty was right [fol. 3976] on the floor, and went into the sections; I don't believe he ran it that way. It is not my understanding he ran the plant like Mrs. Reeves did; as a matter of fact, it is my definite recollection he didn't.

Q. You said "not generally", or "not regularly". Do you mean once in a while, or as often as Mrs. Reeves met with them?

A. It is rather a broad term. I certainly knew he hadn't been meeting with them regularly; now, whether he met with them, of my own knowledge I don't know.

Q. Do your employees generally wear uniforms?

A. They wear —

Q. (Interrupting) Or white dresses?
A. They wear white dresses.

* * * * * *

[fol. 3977] By Mr. Langsdale:
Q. Did your executives and supervisors wear uniforms, ever?
A. My understanding is that everybody in the plant, all the women in the plant, wear uniforms or white dresses.
Q. Mrs. Reeves didn't, did she?
A. Mrs. Reeves was not in the plant, Mr. Langsdale; her office was on the tenth floor.
Q. Did Rose Todd wear a uniform?
A. I don't know; I suppose she did.

* * * * * *

[fol. 3978] Q. You don't know whether she wore a uniform or not?
A. I do not. The girls on the 9th floor, except those that sew on the machines, all the time, don't wear uniforms or don't wear white dresses; those people in the pattern department don't, their work being done on the 9th floor.

* * * * * *

[fol. 3979] Q. I don't recall that you have been asked the duties of W. G. Weaverling, in 1937, at the Donnelly Garment Company's plant?
A. I think that we called Mr. Weaverling the doorman, but he stays in the lobby all the time, and takes care of packages for the girls.
Q. How long had he been employed by the Donnelly Garment Company in April, 1937?
A. I don't know exactly. It was sometime after the [fol. 3980] depression, because he had had a much better job, and he came to our place and wanted some sort of a job.
Q. And he is there yet?
A. He is there yet.
Q. Do you class him as a watchman?
A. I wouldn't class him as a watchman, he is a doorman.
Q. T. G. Boozell, what are his duties?
A. He is a watchman.
Q. Where does he watch?

A. Well, these men relieve one another. I don't know exactly the details on their watching; I know that Boozell is there, and Ed Corbin is there.

Q. And Eckert is there?

A. I don't believe Eckert is there. I don't believe he has been there for some time.

Q. Mr. Boozell, I see, in April, 1937, received a salary of $150 a month. Now, for that $150 was he doing anything except just standing around watching?

A. Not to my knowledge. You see, I don't know whether — those men worked long hours, and a number of days — and I believe they worked 12 hours a day watching, or whatever you can call watching, whether it is working or not; to my knowledge all they did is watch.

Q. All of those watchmen watch 12 hours a day?

A. I believe they do.

[fol. 3981] Q. Mr. Weaverling got $108 a month, whereas Boozell got $150 a month?

A. Well, Mr. Weaverling only works 8 hours a day.

Q. I see. Do you know whether Mr. Boozell worked 12 or not?

A. I am not sure; I am under that impression.

Q. On what do you base that impression?

A. Well, I know at one time he did; now, whether he continued to do that or not, I don't know. It has been the practice of watchmen, generally, to work 12 hours, I believe.

By Trial Examiner Batten:

Q. You mean Weaverling, is that the man?

A. No, no, Mr. Weaverling is a door man.

Q. No, no, I want to ask a question about him, Weaverling; is that the man, is that the name, Weaverling?

A. Yes, Weaverling.

Q. Well, as I understand it, he worked days, is that right?

A. Yes. He may work 9 hours, I don't know. He doesn't work as long.

Q. My only point is, distinguishing between the two. Did he work days and the other man nights, or what was the difference?

A. The difference was he simply sits down at a sort of [fol. 3982] an information desk, and if someone comes in

and they want to go to the advertising department or something like that, he tells them where to go. He is really an information man.

Now, in addition to that, when the girls buy merchandise, the packages are left with him, and he takes care of them for them, and he is really an information man and a lobby — in the lobby there, you know what I mean.

Q. Yes, I understand. But the thing I don't understand, Mrs. Reed, did all three of these men work days?

Mr. Langsdale: Four of them, Mr. Examiner.

A. I think they change about.

By Trial Examiner Batten:

Q. Oh, they were on shifts?

A. Well, we have — I am not absolutely sure, except it seems to me I see one of them when I come in and out, and it seems to me we have a watchman there day and night. We may have, I really believe we have. I am not sure of it.

Q. Do you know, in 1937, if these men all worked days, or did some of them work days and some of them nights, outside of the door man?

A. Outside of the door man?

Q. Outside of the door man.

A. The door man is always there. Mr. Weaverling does a little clerical work there.

Q. That is the part I didn't understand.

[fol. 3983] A. Mr. Weaverling was a bank cashier before he took that job there.

By Mr. Langsdale:

Q. Do I understand you don't know just what Mr. Boozell did in his duties as a watchman?

A. I don't know what he did as duties of a watchman. I expected him to watch the building.

Q. To whom was he responsible at the plant?

A. Well, I would say probably to Mr. Baty.

* * * * * * *

[fol. 3990] Mr. Ingraham: Well, I would like to adjourn until 2 o'clock, in order to go over the cross-examination

and see what points we do want to redirect examine Mrs. Reed on.

Trial Examiner Batten: There has been so little this morning, Mr. Ingraham, I don't think I would be warranted at all in adjourning until 2 o'clock.

Mr. Ingraham: Well, there have been four or five days, I believe, of cross-examination.

Trial Examiner Batten: That is correct.

Mr. Ingraham: Would it be all right to withdraw Mrs. Reed and put another witness on, in order that we can save time?

Trial Examiner Batten: Yes. Will you then have Mrs. Reed come back on at 2 o'clock?

Mr. Ingraham: Yes, or later, as soon as we finish with the next witness.

Trial Examiner Batten: Well, I don't want to agree to that, Mr. Ingraham. That might be days, and I think from Mrs. Reed's standpoint, as well as the arrangement of the hearing, it is well to dispose of Mrs. Reed as soon as possible. Now, I am willing, if you want to put on another [fol. 3991] witness and let Mrs. Reed go until in the morning, to do that, but I think we ought to dispose of her.

Mr. Ingraham: That is all right.

Trial Examiner Batten: Mrs. Reed, you may be excused, then, until tomorrow morning at 10 o'clock.

(Witness temporarily excused.)

* * * * * *

Wave Tobin, a witness called by and on behalf of respondent Donnelly Garment Company, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. Will you state your name, please?

A. Wave Tobin.

[fol. 3992] Q. Where do you live, Miss Tobin?

A. 1016 Locust, the Drake Hotel.

Q. Are you employed? A. Yes, I am.

Q. What is your occupation?

A. I am the Manager of the Kansas City Joint Board of the International Ladies' Garment Workers' Union.

Q. Will you state what the Kansas City Joint Board consists of? A. It is made up—

Mr. Langsdale: It seems to me that is repetition. Miss Tobin testified to that before.

Trial Examiner Batten: Well, I don't remember. It will only take a moment. She may answer.

A. It is made up of elected representatives of the different locals of the International Ladies' Garment Workers' Union here in Kansas City.

By Mr. Ingraham:

Q. Does the Joint Board enter into contracts with other garment companies in Kansas City?

A. With the garment companies in Kansas City, yes.

Q. Do you have charge of that particular business of the Joint Board? A. Of negotiating contracts?

Q. Yes. A. No.

[fol. 3993] Q. What do you have charge of?

A. I have charge of the shops that are under contract with the International Ladies' Garment Workers' Union. I take up the complaints and hold local meetings.

Q. You are familiar with the contracts that have been entered into between the Joint Board and the various shops? A. Yes.

Q. Now, what shops come under the Kansas City Joint Board in Kansas City?

A. You mean, the names of the different shops?

Q. Yes.

A. Well, there are about 25 or 26. I don't think I could call them off from memory.

Q. Can you name the ones that you remember?

A. Stern-Slegman Prins Company, Brand & Puritz, Louis Walter & Company, Fashion Belt Garment Company, Maurice Coat Company, Styline Garment Company— I am trying to name them by groups. That is of the coat shops. How many have I named?

Mr. Shepard: Five, I believe.

A. (Continuing) Carl Mann, Rosewin Coat Company, and Morgan-Rice.

Marlene Dress Company, Lee's Dresses, Quality Hill, Betty Lou, Gordon Bros., Gernes, Liberty, Mayfair, Azars Braburn,— I am sure there are more, but I can't re-
[fol. 3994] member, unless you would want to read the list back to me, and then I might be able to think of some more.

By Mr. Ingraham:

Q. Would you, at noon, make out a complete list?

A. Yes.

Q. Now, are employees in these various shops in separate locals, or in one local?

A. They are grouped. Cloak locals, silk dress locals, cotton locals, sportswear, and one children's local.

Q. Who belongs to the locals? I mean by that—

Trial Examiner Batten: You mean, who is eligible to belong; is that it, Mr. Ingraham?

Mr. Ingraham: No, I wasn't asking her that yet.

By Mr. Ingraham:

Q. I understood, Miss Robin, that Gernes have a separate local.

A. That is our children's and misses' dress local.

Q. Are there any other shops that have their own particular local?

A. Yes, the Stern-Slegman Prins shop, which is in North Kansas City, and Brand & Puritz.

Q. Is there any difference in who is eligible for membership in the respective locals?

A. I don't think I understand your question, Mr. Ingraham.

Q. I mean, these shops that have their own locals; do you have the same eligibility requirements in those shops as you do in the locals that take in more than one shop?
[fol. 3995-3996] A. Yes.

Q. They are all the same? A. Yes.

Miss Weyand: Mr. Trial Examiner, I would at this time like to raise the question of the limitation of this

hearing to the offer of proof. As I recall it, there is no offer of proof which covers Miss Tobin's testimony, at least I am unable to call to mind any offer within the terms of which her present testimony might be included.

As I understand, we are limited to the remand, and I would like to object to the further questioning of Miss Tobin unless counsel for the company can identify it as coming within one of the offers previously made and which the circuit court directed the Board to take evidence upon.

Trial Examiner Batten: Where would this come, Mr. Ingraham, under the proffers of proof?

Mr. Ingraham: Our offers of proof were offers made on behalf of employees. However, Mrs. Reed was permitted to testify on the principle, as I understood it, that she was head of the company and wasn't able to testify before. Now, certain issues have been raised, and Miss Tobin is in charge of the I. L. G. W. U. activities in Kansas City, and there are just a few matters that we want to ask her about.

Trial Examiner Batten: You mean matters that were raised in Mrs. Reed's testimony? Is that what you mean?

[fol. 3997] Mr. Ingraham: Yes.

Trial Examiner Batten: Well, do you mean by that, Mr. Ingraham, that any matters that were raised in Mrs. Reed's testimony, then all of the parties would have the right to call witnesses with respect to that testimony? In other words, I would like to have a general idea of how wide this thing is going to be.

Mr. Ingraham: I don't like at this time to state what my purpose is.

Trial Examiner Batten: No, I am not asking you your purpose. I merely asked you if you feel, with respect to Mrs. Reed's testimony—not this witness's testimony—that all of the matters that were brought out in her testimony, all of the parties are now at liberty to call witnesses to either corroborate that testimony or to deny that testimony?

Mr. Ingraham: Well, it is my view that unless the Examiner limits the scope of the hearing—and, as I under-

stand, he has not definitely ruled on that yet—that if the testimony is not limited, if respondent desires to corroborate Mrs. Reed's testimony, and it is material, that the respondent would have that right.

Trial Examiner Batten: Well, I am not denying you that right; neither am I saying you have that right. My only question is, whether because I was liberal with Mrs. Reed's testimony, in view of her inability to be here at the [fol. 3998] last hearing, it opens up her testimony for all of the parties—I am speaking not only of the respondent but of all of the parties—to either corroborate her testimony or to call witnesses for the purpose of explaining it or denying it. That is the point I am concerned about, Mr. Ingraham.

Mr. Ingraham: If there is testimony Mrs. Reed has given that is material, I would think the other parties would have the right to present any evidence they wanted to present on that.

Trial Examiner Batten: Well, of course, that, in substance, means that any of the parties would be able to call such witnesses, because you would proceed on the assumption, Mr. Ingraham, I presume, that all of the testimony she has given is material or it wouldn't be in here.

Mr. Ingraham: I think that on cross-examination there have been matters brought out that are not material, but we didn't object. We permitted counsel for the Board and counsel for the intervener to pursue that line of questioning.

Mr. Langsdale: Generous of you.

Mr. Tyler: If Your Honor please, the only point of these questions so far is as to membership of various unions in the local board and contracts. Now, if I recall correctly, that subject was opened up and an offer of proof was made in the previous hearing. So that is well within the purview of this hearing, whether the hearing is going [fol. 3999] to be further opened up or not.

Trial Examiner Batten: But, Mr. Tyler, that offer of proof was not included, was it, within the statement of the circuit court when it said the offer of proof with re-

spect to these 1,200 employees—that was not part of that offer of proof, was it?

Mr. Tyler: I think so. I think that obviously is part of the consideration which governed these employees of the Donnelly Garment Company in their choice of a union, and that is one of the subjects which the Circuit Court of Appeals said should be received and evidence bearing on it accepted and considered.

Trial Examiner Batten: Then, I presume that raises the question, doesn't it, Mr. Tyler, of whether such testimony then shouldn't be through the 1,200 employees? Don't you, from reading the decision, feel that the court limited the testimony to these 1,200 employees?

Mr. Tyler: If Your Honor means, limited the testimony to solely these 1,200 employees, I do not agree. I think the 1,200 employees are entitled to testify, by the ruling of the Circuit Court of Appeals, and also corroborative evidence tending to show why they formed the union should be admitted, even though it does not come out of the mouths of these 1,200 employees. I think why they formed the union is one of the subjects the Circuit Court of Appeals said ought to be received in evidence, and I [fol. 4000] do not believe it is limited to coming solely out of their mouths.

Miss Weyand: Mr. Trial Examiner, I think the discussion of Mr. Tyler's has suggested that he believes Miss Tobin should be heard here on the contracts, because the employees may have joined the Donnelly Garment Workers' Union by reason of their information about these contracts.

You will recall, a parallel problem arose in dealing with Mrs. Reed's reading of the newspapers. At that time counsel for the company stated that they desired to show Mrs. Reed's attitude, and they offered the newspaper articles, not to show the truth of the facts therein recited, but merely as showing the basis upon which Mrs. Reed formed her attitude.

I think the same view should be taken as to the contracts. If the employees desire to state here that they formed or joined the Donnelly Garment Workers' Union because of

some understanding they had as to the nature of these contracts, I believe that under the court order that is permissible.

However, I do not believe that opens up an investigation by the National Labor Relations Board of whether their understanding of those contracts was accurate or inaccurate. It, therefore, is immaterial whether or not these contracts do exist and what their terms are.

For that reason, I believe that the line of inquiry which [fol. 4001] the company seems to be opening up in the questions which they have directed to Miss Tobin is not within any offer. If the company still believes that it is, I would like to have them produce the offer and relate it specifically, rather than talking in vague generalities about offers which were made.

I have here before me the offer on 1,200 witnesses, and I find no reference to the contracts. I do find reference to the employees' understanding of the violence which was alleged to be taking place at certain of these factories prior to the time and around the time they formed the Donnelly Garment Workers' Union, and I had assumed and so interpreted the court's opinion to mean that the employees could get on the stand and state their understanding of those facts and the relation it had to the action they took in forming or joining the Donnelly Garment Workers' Union. I felt it did not open up the question of whether that violence occurred.

On a separate offer which was urged upon the circuit court, the failure of the Trial Examiner to try the issue of conspiracy and violence, the court ruled:

"We are of the opinion that the Trial Examiner did not err in confining the issues to those which were tendered by the complaint filed by the Board. We are satisfied that the Board was not required to try the International for alleged conspiracy, nor to try the charge that the Board had conspired or colluded with the International."

Taking that statement by the court in the light of the [fol. 4002] issues tendered by the petition for review, the answer thereto, and the motions made in that court, the

briefs thereon, and the oral argument, it seems to me clear beyond any doubt that the circuit court did not intend that we try the contracts which the I. L. G. W. U. may have with other concerns, or any violence in which the I. L. G. W. U. may or may not have engaged at the time in question.

Mr. Tyler: Mr. Examiner, I do not concede there is any obligation on the people who sign an affidavit to state that "We hereby include reference to all of the evidence which may develop to support our position." Certainly that is not the case.

When these employees say, "We offer to prove why we joined the Donnelly Garment Workers' Union," the position of the Circuit Court of Appeals is obviously that any information that rationally indicates that or disproves that is accepted.

Trial Examiner Batten: I believe I would agree with you on the statement you have just made, as I understand it. In substance, it is this, is it not, Mr. Tyler, that these 1,200 people acted because of certain things which they, in their own minds, knew or heard or read, and they have a right to testify in this hearing to the things which motivated them in joining the union or in organizing the union?

Now, that, it seems to me, is true, Mr. Tyler. But it doesn't seem to me that that is the question in issue here now.

[fol. 4003] Mr. Tyler: Your Honor, let me go farther.

Trial Examiner Batten: Yes.

Mr. Tyler: Their testimony was, throughout the case, that they thought their contract was a better contract than the International's. Now, undoubtedly they should be able to show that, as the comparison they made on which they based a choice, which they say they voluntarily made.

Now, it would be an extraordinary ruling to say that you could compare your contract and reach a conclusion, but we won't let such a contract or the facts of such a contract in evidence. We are not offering to show whether it was good or bad, but we are saying, "Here are certain contracts. The employees say they learned about these contracts." Now, if they learned about these contracts,

what was really in the contracts is important as to whether it is probable that they felt that their contract was better.

Trial Examiner Batten: I will go along with you on the latter part of your statement, this far, that if these employees joined the Donnelly Garment Workers' Union because they felt they had a better contract, that issue, of course, can only arise with the number of employees who joined the union after the contract was signed, and it wasn't signed until May 22. But—

Mr. Tyler: I do not agree with you.

Trial Examiner Batten: But even assuming it was [fol. 4004] signed before, Mr. Tyler, I have no objection to these people testifying that was one of the reasons—

Mr. Tyler: If they thought they could get a better contract than the one in existence, that would be a valid reason.

Trial Examiner Batten: Yes. I have no objection to that. But I can't see yet where—

Mr. Tyler: After learning what opinion they formed about these contracts, is it not important what the contracts were?

Trial Examiner Batten: It is important what information they had upon which they arrived at their decision.

Mr. Tyler: And the probability of their having the information is influenced by what were the effects of these contracts.

Trial Examiner Batten: I think it is important, also, to know what information they had. I say, "what information they had"—not what information was available in somebody's office, Mr. Tyler. What information did these people have upon which they acted?

Mr. Tyler: And what information they had is made either probable or improbable by what the facts were. There were many people in town who knew about these contracts. Now, whether a thing is true or not, there is some showing of probability about where you get that information. If I am informed that a building is on the north side of the

[fol. 4005] river, the fact does have some bearing on the probability of whether I got that information or was influenced by it.

Trial Examiner Batten: Let us say a person joined the Donnelly Garment Workers' Union because he felt that the contract which the Donnelly Garment Workers' Union had would be better than the contract which the International had. Now, the question which arises is not, what is in the International contract? The question that arises is whether or not that person knew what was in the International contract, and what was the basis of that decision.

Now, supposing that the fact was that the International contract was much less desirable, but this individual didn't know that, or the facts concerning the contract, the rates of pay or the hours or conditions of employment, how could that possibly have any effect on that individual's mind in joining one or the other union?

Mr. Tyler: In this way, Your Honor: If Your Honor is going to pass on whether these people really did get that information, and you are also going to pass on whether that was a probable reason for their joining the Donnelly Garment Workers' Union, is it persuasive or is it ridiculous? The facts as to what the contracts were are certainly persuasive as to whether these people really got information and whether the information was correct and whether they were persuaded by it. If some statement gets out that the International is working for $1.00 a week, I [fol. 4006] don't think Your Honor would consider that is persuasive, and I don't think you would consider they got that, if you know what is in the contract. But the facts bear on the possibility of these people getting information about it, and whether that information persuaded them. To try that in a vacuum, without anything to show what that claim was based on—

Trial Examiner Batten: Let me inject this, Mr. Tyler: It seems to me the way to proceed in this hearing is to take the testimony first which I rejected; in other words, the testimony of these, 1,200 people. Now, it seems to me that that is the first thing that ought to be done.

Now, if that raises some of these points that you have mentioned, Mr. Tyler, it seems to me that that is the time to receive that testimony.

I am inclined to feel that, as Examiner, I have a perfect right to discuss the order of proof, and I am inclined to believe that we should receive first the testimony which the Circuit Court of Appeals said I should have received.

Now, what is wrong with proceeding in that manner?

Miss Weyand: Mr. Trial Examiner, in line with that fact, I wish to point out, as far as my acquaintance with the case goes, the Board and counsel for the Board have regarded it immaterial how grossly erroneous the opinions of the employees may have been in regard to violence or in [fol. 4007] regard to other contracts. It has been the Board's position that the objective acts done by the company at its plant resulted in the employees joining the union, that those acts constituted unfair labor practices, and that it was immaterial what the employees thought or how misled they were. Now, I will not state that if the employees should go on and show statements of fact that were highly improbable, that we might not at that time say we would like to show how improbable those facts are.

It is my opinion that there will be no necessity on my part to challenge any statement of an employee as to his belief about the undesirable nature of the International Ladies' Garment Workers' Union or the undesirable character of the contracts which the International Ladies' Garment Workers' Union enters into. It is my position that it is immaterial how bad he thought the International Ladies' Garment Workers' Union was, or how undesirable he thought its contracts were.

Of course, I cannot tell until I have heard the testimony of the employees' to what extent the testimony may look so exaggerated that it might become necessary to question whether he really believed that or not, but from all of the testimony in the record so far there is no indication to me that any such issue should arise.

I, therefore, think that Trial Examiner Batten's suggestion that it is a matter not in issue at the present time [fol. 4008] and would only be an issue if I should chal-

lenge the statement of belief which an employee made—that is, if I should challenge whether or not he really believed that. Not until I challenge that is there an issue as to whether the employee reasonably believed what he stated he did.

For that reason, I think the line of questioning now opened up should not be pursued at this time.

[fol. 4009] Mr. Tyler: I submit that this suggestion must be made at this time, and that Your Honor should again clarify his position after that.

Trial Examiner Batten: I can thoroughly agree with you on that, Mr. Tyler.

Mr. Tyler: The position of the Board is that it is not important what these employees think.

Mr. Langsdale: I don't think she said that.

Mr. Tyler: The record will show what she said.

Mr. Langsdale: I am sure she didn't.

Trial Examiner Batten: Irrespective, the record will show what Miss Weyand said, and what Mr. Tyler said. Let's let the attorneys make their statements.

Mr. Tyler: The position of the Board is that it is not important as to what the employees think, or their mistaken ideas, as the Board would classify them; that is a position that doesn't agree with the opinion of the Circuit Court of Appeals, which says that obviously their reasons for taking an action which means what they think is important evidence in this case, and should be taken and weighed.

The position of the Board, if Miss Weyand correctly states it, is that the whole purpose of this Act is to be simply reversed. Instead of enabling the employees to choose the things they desire to choose, the position of the [fol. 4010] Board is that that makes no difference, and some technical action by the employers could reverse the entire purpose of the Act.

I think that is a complete distortion of the whole purpose of this hearing, and that the Circuit Court of Appeals recognized that in directing that the testimony of these

employees as to their choice, which means what they think whether they were right or not—

Trial Examiner Batten: I agree with you.

Mr. Tyler: (Continuing) —should be weighed.

Trial Examiner Batten: Should be weighed, that we should take the testimony of these employees as to what they thought, what motivated them in doing the things they did. I agree with you on that.

Mr. Tyler: And also as to whether that is probably true or untrue.

Trial Examiner Batten: On that, I may even go that far and say that that might be true if I had received the testimony of the 1200 employees. In other words, it does seem to me that that is the primary purpose for which the Court sent it back, to take the testimony of these people, what they thought, why they did these things.

Now, it seems to me the logical way to do is to take their testimony.

Now, it may bring up some testimony which appears to [fol. 4011] be logical, and so forth, which may or may not make it necessary to go further into that matter, but it seems to me we are reversing the process and taking the testimony by starting down at the end, rather than at the beginning, when the Court said the testimony of these 1200 people should have been received.

Mr. Tyler: Is Your Honor making it solely a matter of order, but admitting that inasmuch as these contracts were not as good as the employees believed they could get, that makes it more probable the employees are telling the truth when they say they think they are getting a better contract?

Trial Examiner Batten: I am saying this: The testimony which the Court said I should have taken first it is easy to tell then whether additional testimony is necessary. I mean, in other words, aren't we anticipating something that may or may not be necessary?

Mr. Tyler: Of course, Your Honor is the sole judge as to the proper order of the procedure, but I submit you are hardly going to be able to take the testimony of all the

employees, solely on the point of what they thought, and exclude all other evidence. We have before us, ready to be produced, part of the admissible evidence, and it seems to me as long as it is here and ready to be produced, it should not be postponed; as to the matter of the testimony of the employees, it should be taken.

[fol. 4012] Mr. Ingraham: Miss Weyand jumped to a conclusion that the scope of my examination was for a certain purpose. I have an entirely different purpose in inquiring of Miss Tobin about certain matters. As I ask these questions, I will disclose my purpose. I don't want to do that until I ask the questions. It will be very brief, and we can finish by 12.30, if I am just permitted to go ahead.

Trial Examiner Batten: Well, of course, I think you would agree with me, Mr. Ingraham, that whether someone was trying to anticipate your purpose, no one has asked you your purpose and I don't intend to, but I think you agree with me and Mr. Tyler and Mr. Langsdale and Miss Weyand, that the issue we have been discussing is one which I do have to decide shortly.

Mr. Ingraham: Sooner or later.

Trial Examiner Batten: It doesn't seem to me to be later now. I am not talking with respect to these issues. I have no objection, if you want to finish with Miss Tobin, but that was one reason why I wanted to proceed with Mrs. Reed at 2 o'clock, because I thought we could dispose of Mrs. Reed, so she could get back to her business, and not have to be around here any longer; and then, before we take on another witness, I will have to decide that question; that is one of my purposes. Mr. Langsdale?

Mr. Langsdale: Of course, I am interested in this issue. [fol. 4013] I happen to represent this witness as counsel, and I am not going to permit her to introduce any contracts here for the edification of the front row, and have them go out and testify they knew all about these matters after hearing them paraded on the witness stand; for one reason, I don't want the witnesses in the Courtroom so they can be educated. Now, there are a couple of reasons why this is utterly immaterial, this line of examination.

Mr. Ingraham: I haven't started yet, Mr. Langsdale.

Mr. Langsdale: Well, you are asking about the contracts of the I.L.G.W.U., and it has no employer here.

Mr. Ingraham: I asked her about the contracts.

Mr. Langsdale: In the first place I am not putting the I.L.G.W.U. up against the Donnelly Garment Workers' Union or what they believe about the two unions; I don't concede that is the issue, that they might prefer some other unions, that they might not want any union at all. The issue here is whether or not the Donnelly Garment Workers' Union was organized, financed and dominated by the Donnelly Garment Company, not whether they wanted to join the I.L.G.W.U.

Mr. Tyler, in his argument, says that one balance of the scales is the I.L.G.W.U., and the other balance of the scales is the Donnelly Garment Company union contract. What difference does that make? Does he say the I.L.G.W.U. contract is better than the Donnelly Garment Workers' [fol. 4014] Union contract, that the people ought to join the I.L.G.W.U.? It isn't here, that is not the case; that is not the question. The I.L.G.W.U. is not on trial here at all.

The issue is not whether or not these people joined the Donnelly Garment Workers' Union, or joined the I.L.G.W.U. On top of that, what difference does it make what these people thought? What is actually in these contracts is not material. I concede this order to be so broad that if one of these girls comes forward and says she has a bad dream about the I.L.G.W.U. and in favor of the Donnelly Garment Workers' Union, and she acted on that dream, she had a right to do it. It doesn't make any difference whether it was true or false; and if they come in here and say they heard certain things about the I.L.G.W.U. contract that aren't true, would it be proper for us to come in and introduce the contracts and prove they weren't true?

As a matter of fact, if they did hear something about the I.L.G.W.U. contracts, and did believe them, and that honestly caused them to join the Donnelly Garment Workers' Union, if that is material, we couldn't come in and say they are wrong, that our contracts aren't that way at all.

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Volume VIII

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 20, 1946
CERTIORARI GRANTED APRIL 22, 1946

Nos. 786 - 787

VOLUME VIII.

RECORD.

FILED
JAN 29 1946
CHARLES ELMORE CROPLEY
CLERK

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 12,641.

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FILED AUGUST 5, 1943.

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The Examiner would have a right to say that doesn't make any difference, she believed it honestly, and that is why she joined the Donnelly Garment Workers' Union. [fol. 4015] So, there are a number of reasons why these contracts aren't material or proper in this case.

Trial Examiner Batten: Of course, in view of Mr. Ingraham's statement—

Mr. Langsdale: (Interrupting) I am not going to allow these witnesses to bring the contracts in here unless they are made to.

Trial Examiner Batten: You may proceed, Mr. Ingraham. It may be the very matter we are discussing wouldn't be raised by the testimony, although I think you will all agree with me it has to be decided on.

Mr. Tyler: I think I should be allowed to meet Mr. Langsdale's statements, please. I suggest, which does Mr. Langsdale prefer working for, out of two employments, the fact one pays him $5,000 for some amount of work, that the other pays him $200, which he prefers to work for?

Mr. Langsdale: I might not even have the chance to get the $5,000 client. Is that any reason why I should have to take the $200 client? That is not the issue here.

Mr. Tyler: I would say, what would be your choice is the issue.

Trial Examiner Batten: Yes, I would say the only difference is this, Mr. Langsdale knows he would get $5,000 from one and $200 from the other. I say that is immaterial here. What the 1200 employees knew in their mind when [fol. 4016] they made their own decision, not what is on file in someone's office.

Mr. Tyler: And whether they knew it is certainly material, whether it is a fact or the wildest uncertain dream.

Trial Examiner Batten: No, I think it depends primarily on what they knew. Let's assume it is false, but they didn't know it was false—

Mr. Tyler: (Interrupting) Yes, but the fact it is false lessens the possibility they heard it or believed it.

Trial Examiner Batten: Let's proceed, Mr. Ingraham.

Mr. Ingraham: Miss Tobin, in how many shops that you have named are there head pattern makers?

Mr. Langsdale: I object. That is immaterial, doesn't tend to prove or disprove any issue in this case. We are not trying the I.L.G.W.U. here or their contract, and how many pattern heads they have hasn't anything to do with it, whether or not the pattern department in the Donnelly Garment Company influenced or coerced the other employees to get into the Donnelly Garment Workers' Union.

Trial Examiner Batten: I don't think that has anything to do with the contract. It has to do with this question, with the function, what was the head pattern—.

Mr. Ingraham: (Interrupting) Yes.

Trial Examiner Batten: Yes, I think it is material [fol. 4017] in this case.

Mr. Langsdale: In what way?.

Trial Examiner Batten: I don't care to go into it.

Mr. Langsdale: I object to it. I suppose his next question is whether or not that head pattern maker belongs to the I.L.G.W.U., and I think that is immaterial.

Trial Examiner Batten: I don't know what his next question is. You may tell us. Read the question.

A. Please.

(Last question read by the reporter.)

A. I would be handicapped, because out of the 29 shops, I don't remember just which ones I named, but we don't have head pattern makers, we have a head cutter in the larger shops, and two of those would be the Stern and Prins shop and the Brand and Puritz shop.

By Mr. Ingraham:

Q. At how many shops you have named do you have instructors?

A. I believe there are instructors in all of the shops.

Q. Now, Miss Tobin, are instructors that are in these various shops members of your Locals?

Mr. Langsdale: I object to that as immaterial. It doesn't tend to prove or disprove any issue in this case. It doesn't state whether or not the Donnelly Garment Company influenced the employees of that shop to join the Donnelly Garment Workers' Union. What the custom is [fol. 4018] in the other shops has no bearing on that issue.

Trial Examiner Batten: You may tell us.

A. They are not.

By Mr. Ingraham:

Q. They are not members of the I.L.G.W.U?

A. That is right.

Q. Now, can you give me the names of the instructors, at the present time, in Marguerite Keyes, Inc.?

Mr. Langsdale: That is objected to as immaterial, doesn't tend to prove or disprove any issue in this case. This is his witness, he puts her on the stand and vouches for her testimony. I suppose now he wants to know whether she is telling the truth or not.

Trial Examiner Batten: Just a moment. I am not interested in whose witness she is.

Mr. Langsdale: I am.

Trial Examiner Batten: I am not, and I am only concerned about this, and I intend to follow this rule. Whoever puts the witness on the stand may proceed with the witness; we are interested in getting the facts. If it becomes obvious the witness is adverse, even to the person who puts the witness on, I will allow more latitude in the examination; that is the matter that interests me. I don't intend to hold out whose witness it is.

Mr. Langsdale: That is the rule.

Trial Examiner Batten: That is the rule to the point [fol. 4019] where we will have to get into a discussion about whose witness and whether the witness is adverse and whether you are trying to impeach your own witness, I am not going into all that.

Mr. Langsdale: Well, I will submit, as far as this woman is concerned, your rule is correct, but I don't think they ought to be permitted to build up a strong defense and knock it down.

Trial Examiner Batten: Was there a question? Yes. Do you know the names of the instructors?

A. No, I don't. I may know some of them, if I saw the name or if I saw the girl, but I can't remember the names of the instructors.

By Mr. Ingraham:

Q. Is May Stevens a member of the I.L.G.W.U.?

A. I believe that she is, I am not sure.

Q. Has she been acting as instructor at the Marguerite Keyes shop?

A. I think she was made an instructor about two weeks ago.

Q. And she is still a member of your union?

A. If there has not been a meeting since she was made an instructor, she is.

Q. So if there hasn't been a meeting, she is still a member? A. Yes.

[fol. 4020] Q. Now, you answered, in answer to a previous question, there were head cutters that belonged to the I.L.G.W.U. In what shops are those head cutters employed? A. I said that?

Q. Yes, you said there weren't any head pattern makers, but there were several head cutters in the larger shops.

Mr. Langsdale: Well, I don't think she said they belonged to the union.

By Mr. Ingraham:

Q. Well, do they belong to the union?

A. Head cutters do not belong to the union.

Q. What cutters do?

A. Cutters who do productive work, who do actual cutting.

Q. If a cutter does actual work part of the time, and then the balance of the time directs other cutters in their work, would that person be eligible for membership in your union?

Mr. Langsdale: Of course, that is not material to any issue in this case.

Trial Examiner Batten: Well, she can tell us.

Mr. Langsdale: Are we comparing the unions here?

Trial Examiner Batten: She may tell us.

A. I don't know of any of our shops where the work is done that way.

By Mr. Ingraham:

Q. How is it done?

A. In some very small shops— I mean in the shops where they have one or two cutters, there is no head cut-
[fol. 4021] ters; there is possibly one of the cutters who does the productive work, takes care of the cutting tickets and decides what work has to be cut throughout the day, but there is no head cutter.

Q. Now, the cutter that does that kind of work, is he qualified for membership in your union?

A. Any worker that does productive work that actually works on the garment, is eligible for membership.

Q. Even though part of their work does consist in directing others in what has to be cut and the tickets, as you stated, in making the tickets?

A. As I stated, yes, his work isn't directing others, because it is in the small shops where there are only one or two cutters, or possibly three.

Mr. Langsdale: Just a moment. I suppose I have a continuing objection to this line of questioning?

Trial Examiner Batten: Yes.

By Mr. Ingraham:

Q. Miss Tobin, in the small shops where there are only one or two cutters, doesn't one cutter direct the work that is done?

A. As far as handling the cutting tickets, I presume it is done that way.

Q. What do you mean, handling the cutting tickets?

A. The tickets are given to them by the employer, that such and such a style is to be cut that day.

[fol. 4022] Q. And then he directs the others according to those tickets?

A. That I wouldn't know. I am not familiar with it. I don't take care of the cutters. Mr. White does that.

Q. Now, Miss Tobin, in the plants where they employ instructors, what work does the instructor do?

A. She teaches the people on new styles, gives out work, watches the quality of the work, trains new girls, recommends whether they should be kept or laid off, tells the firm when they need new people, tells them when they have too many people and wants somebody to be laid off.

Q. Now, it is your testimony that the instructors in these shops, that have contracts with the I.L.G.W.U., aren't members of the I.L.G.W.U.?

A. I think that I am safe in saying that all of our contracts say that the supervisors can't belong to the union.

Q. I am not talking about your contracts; what are the facts? A. That is the fact.

Q. And you are sure about that?

A. In some of the shops where they may not have an instructor, they sometimes take one of the girls from the machine, and make her an instructor. It is also understood when they do that, that those girls are to take a withdrawal card, or give up their rights in the union, they immediately [fol. 4023] cease attending union meetings, and then they either take out a withdrawal card or give up their active rights in the union.

They sometimes remain members to keep their insurance up, but they don't attend meetings, and they have no rights and no protection in the union.

Q. Now, when you mentioned withdrawal, that doesn't mean resigning from the union? A. Yes.

Q. It does? A. It does.

Trial Examiner Batten: Now, just a moment. There is a difference, Miss Tobin, between withdrawing and resigning, is there not? I mean that when a [persons] resigns from the union, they sever all connection, don't they?

A. That's right.

By Trial Examiner Batten:

Q. Now, if a person withdraws from the union, as many unions do when a person becames a foreman or a supervisor, they will be able to keep up their insurance and pay on death benefits? A. That's right.

Q. But they don't have any vote?
A. That's right.
Q. They don't attend meetings? A. That's right.
[fol. 4024] Q. They don't have a right to act as a negotiator?
A. That's right.
Q. Or handle any grievances?
A. That's right.
Q. So there is a difference between withdrawing and resigning, is there not?
A. Yes.

Mr. Ingraham: I am looking for an exhibit, Mr. Examiner.

By Mr. Ingraham:
Q. While I am waiting for this exhibit, Miss Tobin, when you describe the duties of the instructors, in plants with which you have contact, did you state that they had authority to discharge?
A. To recommend discharge.
Q. To recommend discharge?
A. Yes.
Q. And did you state they had authority to employ?
A. They have authority to employ. I know in some shops they interview the girls for employment; in others, the girls are sent to their sections, and they pass on whether they are capable.

Mr. Ingraham: I haven't got the papers here that I wanted to inquire into.

Trial Examiner Batten: Well, I thought you only had two or three questions, Mr. Ingraham. Now, you see, we have to go over until two o'clock with this witness, and [fol. 4025] at two o'clock I had intended to make my ruling on this entire matter. Now, how much longer, roughly?

Mr. Ingraham: I would say not to exceed 15 minutes, at the most.

Mr. Langsdale: Of course, I am going to have a right to cross-examine her, and I am not going to put a limit on it, unless the Examiner puts a limit on it.

Trial Examiner Batten: I am going to make my ruling at two o'clock with respect to what testimony I am going to receive, and in what order I will receive it. So, from that point on, at least, you will understand the order in which the proof is going to be submitted.

Well, we will adjourn until two o'clock.

I don't mean by that I am going to dispose of this witness. I have started with this witness, and I intend to finish with this witness.

. . . . . .

[fol. 4026] By Trial Examiner Batten:

Q. Miss Witness, are you familiar with the fact that 2 o'clock was the time?

A. Yes, I was, and I am very sorry, I couldn't get a cab.

Trial Examiner Batten: You may proceed with this witness.

By Mr. Ingraham:

Q. Miss Tobin, you stated there were certain shops that you considered larger shops and certain shops that were smaller shops. Will you give the names of the larger shops that you have reference to?

A. Stern-Slegman and Prins; Brand and Puritz, Gordon, Gernes and Liberty, I would say are our larger shops.

Q. And did those larger shops have separate locals in each shop?

A. No.

Q. Will you give the shops that did have separate locals in those larger shops?

A. Stern-Slegman and Prins; Gernes, Brand & Puritz.

Q. Now, will you tell me the time that the I.L.G.W.U. entered into a contract with Stern-Slegman Prins?

Mr. Langsdale: I object to that as immaterial. It [fol. 4027] doesn't tend to prove or disprove any issue in the case.

Trial Examiner Batten: You may tell us, if you know.

A. I believe that it was in January or February of 1937, I am not real sure.

By Mr. Ingraham:

Q. Will you give me the same information with regard to Brand and Puritz?

A. It was a week or two following the Stern-Slegman Prins agreement.

Q. Now, can you give me the names of the presidents of the locals at Stern-Slegman Prins, since 1937, or since the contract was entered into?

• • • • • •

[fol. 4028] A. Well, I think I can recall most of them.

By Trial Examiner Batten:

Q. Tell us, if you recall.

A. What name did you ask me?

By Mr. Ingraham:

Q. Well, Stern-Slegman and Prins.

A. Homer Ross is the president of the local at this time, and I believe that he has been reelected each time since.

Q. Now, Brand and Puritz?

A. Brand and Puritz — I believe the first president was Lloyd Brown, and Carl Brower is the president at this time; and Ethel Carpenter was president one term, and there may have been another one, but that is all I can recall.

Q. Well, Brown was the first president, then Carpenter?

A. No, I would not say that they followed each other; I believe Brown and then Gertie Reel, then Carpenter, then Brower.

Q. Now, Homer Ross, what was his job at Stern-Slegman?

A. I think he is a marker; he is in the cutting department.

Q. What was the job of Lloyd Brown?

Mr. Langsdale: What time are you talking about?

Mr. Ingraham: When he was president.

A. When he was president, he was supervising the cut-
[fol. 4029] ting room at Brand and Puritz.

Q. Did he have charge of the cutting at Brand and Puritz?

A. I know that he had something to do with it. I don't know whether there was a man over him or not, that I can't say; he is no longer a member of the union, he took a withdrawal several years ago.

Q. But at the time he was president, he was in charge of the cutting?

A. I know that he had something to do with the management of the cutting room, but whether he is in charge of it, or somebody over him I don't know.

Q. Now, who passed on the qualifications of these people for membership in your union?

A. They were taken in at the time the agreement was signed, and at that time the Board hadn't been set up, and didn't function and didn't pass on the qualifications; at the present time the executive boards pass on them.

Q. Now, that was in 1937?

A. Right.

Q. Isn't it a fact, Miss Tobin, that in 1937 all the employees were taken into the union after this contract was signed in these respective shops?

A. No, that is not a fact.

Q. Well, who passed on their qualifications?

A. At that time I told you there was nobody passed on [fol. 4030] their qualifications until the executive boards were set up, and now the executive boards pass on the qualifications.

Q. When was the executive board set up?

A. The year following the signing of the agreement.

Q. Now, during that time, is it not a fact that instructors were taken into the union?

Miss Weyand: I object to the question as not material to the issues in this case.

Trial Examiner Batten: You may tell us.

A. Instructors were not taken into the union.

By Mr. Ingraham:

Q. Do you recall a rule that your union adopted that instructors could remain in the union, but wouldn't be given the right to vote?

A. That doesn't cover the complete ruling. They could remain in the union, but they were not permitted to attend union meetings, and they had no right to vote, and they

had no protection from the union; in other words, if they accepted the job as an instructor, and were discharged for one reason or the other, they had no union protection.

Q. And they could remain members of your union?

A. They could remain members of our union, with that qualification.

Q. And that did occur with a lot of instructors, they did remain members of your union?

A. Not a lot of them, Mr. Ingraham.

[fol. 4031] Q. But a great number?

A. No, not a great number, a very few.

Q. How many?

A. Well, I don't know the exact number, but I know that it wouldn't be more than five or six.

Q. How many more than five or six? Well, would you say 50?

A. 50?

Q. Yes.

A. No.

Mr. Langsdale: She said it wouldn't be more than five or six.

By Mr. Ingraham:

Q. Oh, not more than five or six; I thought you said over five or six.

A. That's right.

Q. Now, you classify cutters into top cutters or head cutters?

A. No, we don't classify them.

Q. Does your union?

A. I mean, it would depend on the work they were doing in the shop.

Q. Well, do you have such people as head cutters and top cutters?

A. In some of the larger shops, they do have head cutters.

By Trial Examiner Batten:

Q. Well, does the union have a classification of cut-

[fol. 4032] ters?

A. It is divided into two classifications, cutters and spreaders.

Q. Well, do you have any classifications within those two general classifications?

A. Well, they would be cutters and spreaders, but there is no classification known in the union as head cutters.

By Mr. Langsdale:

Q. Let me ask you if you have this sort of a classification, head cutters who were members of the union, but nevertheless exercised duties in their directory capacities, over other cutters, without becoming subject to censure or discipline by the union, providing that such head cutters do not violate the provisions of the contract; head cutters who are members of the union, who shall not be allowed to cut except original samples only?

Miss Weyand: I object to that as immaterial to the issues of this case.

Trial Examiner Batten: You may tell us.

A. We don't have that in Kansas City contracts.

By Mr. Ingraham:

Q. Do you know of that provision being in the I.L.G.W.U. contracts?

A. No.

Q. Do you have cutters known as top cutters?

A. No, we don't.

Q. In Kansas City?

[fol. 4033] A. We don't classify them that way.

Q. How do you classify them?

A. Just cutters, choppers and spreaders, and in some of the larger shops they have markers.

Q. And in some of the larger shops is there a cutter that gives directions and orders?

A. In the larger shops there is a man that gives the directions

Q. Is he a cutter?

A. He doesn't do prodpctive work.

Q. Have you any man like that, that does productive work and gives orders in addition?

A. Not in the larger shops. As I explained this morning, in some of the smaller shops.

Q. Now, you consider Brand and Puritz a larger shop in Kansas City?

A. That's right.

Q. Now, what did Brown do?

A. Well, Mr. Ingraham, I know at the time the contract was signed there was one cutter who had joined the union before the contract was signed, his name was Henry Dellick, and he was asked to take a withdrawal card, because he does supervise the cutting room—I mean he has charge of the cutting room at Brand and Puritz. Brown, it is my understanding, did some productive work at that time.

[fol. 4034] There was more or less of a dispute about it, for some time, and then after a year or so he was asked to take a withdrawal from the union, and he did.

Q. Do you know whether or not Brown was president of the I.L.G.W.U. Local for more than one year?

A. I think that he was, but I don't remember the exact time.

Q. And you elected your officers each year, don't you?

A. No, every two years.

Q. Then, did he serve two terms as president?

A. No, he didn't serve two terms, two full terms, I am sure, but I don't remember how long he served.

Q. Are you sure he was not reelected after his first term?

A. I am not sure of that.

Q. Did Brown voluntarily resign or ask to resign from the union?

A. I don't remember just how it happened. I know at the last there was some discussion about it for some time, and I don't know whether it was because the board asked him to or whether he finally decided it was the thing to do, I don't remember.

Q. Do you recall a number of instructors that had been members of the I.L.G.W.U. asking to resign from the union?

A. No, I don't.

Q. Do you recall any controversy about that?

[fol. 4035] A. No, I don't.

* * * * * *

[fol. 4039] Mr. Ingraham: Mr. Langsdale states for the record that he is instructing the witness not to produce the

contract. Now, I would like to know if the witness is willing to bring in the Brand and Puritz contract.

Trial Examiner Batten: The witness may indicate whether she is willing or not.

Mr. Langsdale: There is a way to determine whether or not it is material, and that is by subpoena duces tecum.

Trial Examiner Batten: I say the witness may indicate whether she is willing or not.

A. I would like to ask which contract you are asking for.

By Mr. Ingraham:

Q. I would like all the contracts for Brand and Puritz.

A. I can't bring you in the 1937 or 1939 contracts; I could bring you the present contract; but after a contract is renewed it is taken out of our files.

Q. Where is it?

A. I think it may be in the St. Louis files, in Mr. Peristein's office.

Q. Could you communicate with his office and get the two contracts which you refer to, which are not in your files?

[fol. 4040] Trial Examiner Batten: Wouldn't the company have them?

Mr. Ingraham: I don't know.

By Mr. Ingraham:

Q. Do you know what happens to the company's copies?

A. No.

Trial Examiner Batten: I would suggest, Mr. Ingraham, you find out whether or not the company has them in their file, rather than go through all this. I am not passing upon whether they are relevant or not, I am merely suggesting that that is a method.

Mr. Langsdale: My position is that I would not—I don't want to be put in the position of consenting that this is material, or should be produced. If we have it, and he gets out a subpoena duces tecum for it, then we will produce it, and argue the admissibility of it then.

Mr. Reed: That is strange talk about a subpoena duces tecum, when they have been demanding our contracts and our records, and they have been produced without any subpoenaes.

Trial Examiner Batten: May I say this, Senator: Maybe they have been demanding or requesting them, whichever you want to say, but I am not instructing you to produce this, but I will say that everything I have suggested to Mr. Ingraham to produce, he has brought in here, so far as that is concerned. There is no question about it, the record will support that position.

[fol. 4041] Mr. Reed: Perhaps you will now do the same thing with reference to the prosecution that you did with the defense, you will request these people to bring in this document.

Trial Examiner Batten: When the proper time comes, Senator, I will treat you the same as I treated the other people. I still want this witness to answer this question, as to her willingness to produce this document. You were looking at me, Senator, I thought you were directing your remark at me.

Mr. Reed: It was objected to the other day because I looked at Mr. Langsdale.

Trial Examiner Batten: Well, but if you are making a remark, if you look at the person to whom you are addressing your remark,—I can't tell—

Mr. Reed: I was looking at the Examiner in a perfectly proper way, in order to get his ruling, but I did say, in reply to Mr. Langsdale, that it is a strange thing for them to set up the proposition that we should have a subpoena duces tecum served by us.

Trial Examiner Batten: I am trying to agree with you. Your client has been very fair in producing these documents.

Mr. Reed: I am not criticizing you in the least.

Mr. Langsdale: I don't want to be misunderstood on this question. If the Examiner should request this witness

to bring them in, we will bring them in, but I don't want [fol. 4042] to voluntarily admit they are relevant; she will bring in anything you ask us to bring in.

Trial Examiner Batten: Will you bring them in? What is it you want?

Mr. Ingraham: The 1937 and 1939 Brand and Puritz contracts.

A. It may take me a day or two.

Mr. Langsdale: My only point was that by bringing them in, we might be admitting their admissibility, which I don't want to do. If you will request it—I assume you will rule on that when the point is raised.

Trial Examiner Batten: I don't think there is any admission, Mr. Langsdale.

By Mr. Ingraham:

Q. Miss Tobin, are examiners or inspectors employed in the shops with which the International has contracts in Kansas City?

A. Yes.

Q. Is that term "inspector" or "examiner" the same? Does it have the same meaning?

A. Yes, it has the same meaning.

Q. Now, are examiners or inspectors eligible for membership in the I.L.G.W.U.?

A. Yes.

Q. Do the shops that you have referred to employ floor girls, floor ladies?

A. I don't think I understand what you mean by floor girls.

[fol. 4043] Trial Examiner Batten: Or thread girls.

By Mr. Ingraham:

Q. Or thread girls.

A. Some shops do.

Q. Do those terms mean the same kind of work?

A. You would have to repeat that.

Q. Well, a floor girl or a thread girl?

A. No, they do not.

Q. What do you understand is meant by a worker that is described as a floor girl?

A. We don't use that term.

Q. What do you mean by a thread girl?

A. Well, we don't use the term "thread girl" either.

Q. What term do you use?

A. I don't know what we use; possibly floor girl would come nearer describing it. They are girls that—

Q. (Interrupting) And what—

Mr. Langsdale: (Interrupting) Let her finish her answer.

A. They are girls that bring thread and recuts and so forth to the girls.

By Mr. Ingraham:

Q. And bring in supplies that might be needed by the operators?

A. That's right.

Q. Now, are those workers eligible for membership in the I.L.G.W.U.?

[fol. 4044] Miss Weyand: I object to the question; however, I hesitate to keep stating an objection unless the Trial Examiner desires me to state it to each question; if he has ruled he is going to allow this kind of questioning, I would like —

Trial Examiner Batten: (Interrupting) Well, you may have a continuing objection. You may tell us, are they eligible for membership in the union.

A. It may be in some cases. In other cases the executive board decides on who is eligible, and it depends upon the work they were doing in the shop.

By Mr. Ingraham:

Q. Now, what work would they be doing when you would classify them as being eligible?

A. Productive work; I mean if they handle the work, any productive work in the plant.

Q. What do you mean "handle"?

A. Well, we have girls that do turning and marking that we call floor girls, that is productive work. I can't recall any one shop where a girl's only duty is to bring

thread or to bring recuts; I mean they do that and a number of other things.

Q. But you do consider carrying recuts and threads as productive work?

A. Well, we have never had to decide that, because the people that do that do other work like turning belts, turn-
[fol. 4045] ing collars, marking off pockets, and that sort of work.

Q. Well, people that carry thread and bring cuts, would you classify those workers as being ineligible for membership in your union?

Miss Weyand: I object to that as purely speculative. She says they did not have any specific instance in which that has arisen.

Trial Examiner Batten: Of course, I don't think this is the first speculative question we have had thus far in the hearing. I think you may answer.

A. It would depend entirely upon what they were doing. I mean, we didn't have people that do just that work, and, as I said before, the executive boards decide who were eligible. Each local has their own by-laws, and the people that want to come into the union have to go before the executive board, and at that time they are questioned as to what they do on the job, and if they decide the work is productive work, they would be eligible for the union.

By Mr. Ingraham:

Q. Well, now, what floor girls has this executive board classified as being ineligible for membership in your union?

A. Now, that would be those in a supervisory capacity.

Q. What would the person or employee be doing that would classify them as a floor girl, and yet be in a supervisory position?

[fol. 4046] A. Well, if they were in a position in any way to have authority over the girls, then they wouldn't be admitted to the union.

Q. What do you mean by authority over the girls?

A. I mean if the girl's job was in any way affected by those people.

Q. You mean if they had the authority to fire?

A. Or to hire or to make recommendations for hiring or firing.

Q. If they don't have that authority, they would be eligible for membership in the I.L.G.W.U.?

A. No. If they have anything to say about the division of the work, they would not be eligible for membership in the union.

Q. With that exception, they would then be eligible?

A. If they had no authority to hire or fire, or no authority over the working conditions, as to whether the girl gets good work or bad work, or the division of the work, then they would be eligible to join the union.

Q. You stated that certain employees that do directing are members of the I.L.G.W.U., and are eligible for membership, this morning. That is what I understood you to say? A. No, I don't think I stated that.

Q. Well, what did you say?

A. I said in the small shops where there were one or [fol. 4047] two cutters, and the cutter does productive work; he might do a certain amount of directing as far as taking the orders from the employer and seeing what they are going to cut today, but he cuts along with the other cutters right along.

Q. If a man does cutting and does have some directory authority, or directing authority, he is eligible then for membership in your union?

A. To the extent that I stated in my answer.

Q. Now, in a large shop, if a man does productive work and has some directing authority, is he eligible for membership in your union?

A. Well, in the larger shops they are not set up that way. They have a head cutter and a man who is in charge of the cutting room, and directs the work.

Q. Now, do you know what the position of Brown was in Brand and Puritz in 1937?

A. I stated in 1937 that I believed that Brown did do some directing in the cutting room; I know that he was taken into the union at that time, and that Hank Dellick was asked to take a withdrawal because he was in charge of the cutting room.

Q. Did Hank Dellick continue to work for Brand and Puritz after the contract was signed?

A. Yes; he is working for them at the present time.

Q. Has he been over Brown at any time?

[fol. 4048] A. Well, that was a matter that was in dispute. I don't know what their difficulty was, or whether Dellick is over him or just how it is set up.

Q. At the time the contract was made with Brand and Puritz, were you in charge of the organization campaign, as you call it, for the I.L.G.W.U., in that shop?

A. I was assisting in it.

Q. You knew at that time the position of Brown, did you not? A. No, I did not.

Q. Well, did Brown assist you in that organizational campaign? A. He did not.

Q. You are sure of that? A. Positive.

Q. Do you know whether or not he solicited employees to join the I.L.G.W.U.?

A. I know that he did not.

Q. But you do know that he joined the I.L.G.W.U., and was elected the first president? A. Yes.

Q. And afterwards he served for two years?

A. I don't know the length of time that he served. I know that he served for some time.

Q. Now, Miss Tobin, there has been reference in this [fol. 4049] case to strikes at 26th and Grand, in the spring of 1937. Were your in charge of the strikers in the Missouri Garment Company plants?

Mr. Langsdale: Just a moment—

Miss Weyand: (Interrupting) I object to that question as not within the scope of the remand of the Circuit Court of Appeals. It was urged that error had been committed by the Trial Examiner and the Board in excluding evidence of violence in other plants. The Circuit Court's position, taken in connection with the issues there presented, clearly indicates that the Court believed the Board and the Trial Examiner properly limited the issues and properly refused to try the question of whether or not violence had taken place by the I.L.G.W.U. at other plants in Kansas City.

It is true that the offer of proof as to 1200 employees, relating to their state of mind and motives for forming and joining the Donnelly Garment Workers' Union, did include their understanding of the nature and type of violence then occurring.

However, as I stated this morning, I believe the issue to be purely whether or not these employees were motivated by an understanding of some violence, and no question is raised at the present time in the case as to whether or not the violence did take place. That could only become an issue, if it could become one at all, if employees did [fol. 4050] allege such an understanding as a motive, and the Board should contest the honesty of the employee's statement of his understanding.

The Board, so far, hasn't contested or raised any issue that any employee who stated that he heard of violence hadn't so heard of violence.

* * * * * *

[fol. 4051] Trial Examiner Batten: I say to you, is this an introductory question opening up the question of violence through this witness?

Mr. Ingraham: We made an offer of proof by the employees on the facts involved in the so-called strikes at 26th [fol. 4052] and Grand, and I was briefly going to inquire of Miss Tobin who had charge of the strikes up there and if it was the I. L. G. W. U. and what went on.

Trial Examiner Batten: Then that raises again, doesn't it, the thing we discussed this morning, proving the fact, and is it the fact that you want to prove, or is the important thing in the court's decision the frame of mind of the employees and what they thought?

Mr. Ingraham: One of the reasons we have for showing what did occur is a remark that I believe you made at the last trial to the effect that it is more or less usual for violence—that is not correct, but you did say that—you described what we call violence as the usual organizational activities.

Trial Examiner Batten: Well, Mr. Ingraham, I presume that all of my sins should plague me, and they undoubtedly will, at least through this hearing, but my question still is, is this introductory to raising this entire question of violence through this witness?

Mr. Ingraham: I think that we have a right to show by this witness what the facts were up there, so that—

Trial Examiner Batten: As to violence, yes.

Mr. Ingraham: —so that there will not be any question but what this violence did occur.

Trial Examiner Batten: Then, I will say I am going [fol. 4053] to rule that it is immaterial, to this extent: I am now going to direct the order of proof to this extent, I am going to direct that we first receive the testimony of the 1,200 witnesses, if they testify to material evidence that was ordered by the court, in accordance with the order of the court remanding the case.

Now, I think I said, and, if I am not mistaken, Mr. Hogsett—and you check this with him and call it to his attention in the record—agreed with me to this extent, as to Mrs. Reed—I said on at least three occasions I felt Mrs. Reed should testify about any and all facts, because, unfortunately, she could not be here in July 1939, and I would not attempt to limit Mrs. Reed's testimony.

I said, further, that as to any other executive officer of the company or any other person who couldn't be here at the last hearing, I would apply the same rule.

Now, Miss Tobin was here at the last hearing.

I am going to direct that order of proof at this time. And I am further going to do this— I am not going to make a ruling at this time on how extensive the Circuit Court of Appeals' ruling goes, because I want to give further consideration to it. Now, I am going to spend the rest of the afternoon listening to any argument which counsel have on my ruling that we will proceed with the 1,200 witnesses, as the court stated that testimony should [fol. 4054] be received. I will listen to any arguments there are with respect to how much the Circuit Court wanted included in this. Now, I will listen to any arguments there are.

Mr. Ingraham: Before Miss Tobin is excused, and before making any offer of proof, I have just one other question.

Trial Examiner Batten: Well, she has not answered the last one, has she?

Mr. Ingraham: No. I understood you to state that you were going to have us make an offer of proof.

Trial Examiner Batten: Yes, I want an offer of proof on that, as far as this witness is concerned; not a general offer of proof, Mr. Ingraham.

Mr. Ingraham: Yes.

By Mr. Ingraham:

Q. Miss Tobin, who is the chairlady at the Marguerite Keyes shop at the present time?

Mr. Langsdale: Now, just a moment. The Marguerite Keyes shop wasn't in existence in July 1939, as I understand it—not until sometime later.

Mr. Ingraham: I am asking her, at the present time.

Trial Examiner Batten: Is that in connection with your other question, Mr. Ingraham?

Mr. Ingraham: What other question?

Trial Examiner Batten: Your question concerning violence.

Mr. Ingraham: Oh, no.

Mr. Tyler: Mr. Examiner, before you leave that point, I [fol. 4055] think I am entitled to insert an objection to the ruling as I think it is.

Trial Examiner Batten: What do you think it is?

Mr. Tyler: I think you have directed that this witness not go further into the question of violence at this time. I wish to except to it for the reason that the issue here is not as has been stated by Mr. Langsdale, of the employees stating what they thought was the violence. It will be stated whether they thought there was violence and the circumstances were such as to make it seem probable that that would have persuaded them to form their own union. Now, if the violence was real, then there is more probability that that was a weighty reason with them.

This witness can testify and has been asked whether the violence was real. It doesn't follow that that would open up a trial as to what caused the violence, but the fact and

the connection of the violence with the International Ladies' Garment Workers' Union is competent evidence, showing that these employees had that as a valid and probably truthful reason for wanting to form their own union.

Trial Examiner Batten: Mr. Tyler, if I conveyed the idea that I was not going to finish this witness's testimony, I certainly didn't intend to. I am still convinced, more than ever, that the thing I must do is to make a ruling on the order of the proof; and, secondly, on how extensive the [fol. 4056] remand is. And until I do that, I think all counsel in this case are as much at a loss as I am to plan their case. So, I think that you, as counsel for these parties, are entitled to have some kind of a ruling from me.

Mr. Tyler: I understood Your Honor to say you were going to hear from the 1,200 employees as to their motives before going into it with this witness.

Trial Examiner Batten: Yes, that is what I stated as to the order of proof, but I didn't intend to say I did not intend to go farther with this witness's testimony.

Mr. Tyler: Has Your Honor passed on whether evidence of violence is admissible yet?

Trial Examiner Batten: I have not.

Mr. Ingraham: May the witness answer the question I have just asked, so that we can go ahead and present any argument we have on this legal point?

Trial Examiner Batten: I prefer that you present your arguments now, Mr. Ingraham. That was my request.

Mr. Reed: I want to say first, that the order of proof in a case is in the hands of the counsel who proffer the proof. If they do it in an improper way, it is then for a court or an examiner to rule on the evidence as it is offered. But no court has the authority to tell counsel the order in which they shall introduce proof. I don't think I am mistaken about that.

[fol. 4057] So, I say we propose to exercise our right to offer our proof in the manner which seems to us is best and proper. If the Examiner sees fit to exclude it, we can only save our exception at that time.

Now, in regard to this witness, you have stated that you did not propose to make any rule or follow any rule with regard to who brought in a witness—that you might bring in a witness and you might ask them questions like you would on cross-examination—

Trial Examiner Batten: If they become adverse to you, Senator.

Mr. Reed: Yes. Now, we have the right to show the interest of this witness. That is what we are trying to show, her employment for a number of years by the prosecuting force in this hearing. We have the right to show her interest and to show that by her acts. And if we had no other ground than that, we have the right to ask this question and to have it answered now, and not two weeks from now, or some other time when we may reach it.

I insist we have the right to ask this lady if she was here when those strikes occurred and to ask her if she did not take part in them, and to ask her if she did not have direction of the violence that took place, and to show her photograph here—her picture in the pictures that display the riotous conduct of these strikers. That for the purpose [fol. 4058] of showing her interest, if nothing else.

Then, this evidence is competent for another reason. Of course, it cannot be that in a strike of this kind, violence of this kind, where there were hundreds and perhaps thousands of people concerned—we could not be expected to show by every one of the witnesses that we may put on here that they saw the strike. Some of them saw parts of it. But if we offer the person that was conducting the strike, who knows all about it, and prove the fact that the strike took place and the kind of strike it was, that it was given publicity through the papers and the employees hear of it and know it—the air is full of it, the air is full of danger for them, and that is a reason why they would want to organize a union of their own, to be protected against this violence, that is clearly within the decision of the Circuit Court of Appeals.

Now, here is what they said:— Mr. Hogsett called attention to it very graphically.

"At the hearing before the Trial Examiner, the petitioners proffered the evidence of the employees of the Donnelly Company, some 1200 in number, to show how and why they formed the Donnelly Garment Workers' Union, to show that no influence was brought to bear upon them by the employer either in the formation or administration of the union, to show how and why they organized the union."

One of the whys is that this riotous conduct was going [fol. 4059] on, these brutal abuses were being visited upon girls going to work, that the threats had been made that the same thing would be done to the Donnelly Garment workers, so that they were intimidated into riding there in busses or riding there in streetcars, all of that forms a part of this picture.

The only question, then, is, was the violence here? Not what reasons they had for it. We do not have to go into that. But was the violence here? Was the danger here? Was the threat here? Those things we have the right to go into.

Now, here is the lady who conducted the strike. We want to ask her a few brief questions about it.

Now, if Your Honor undertakes to take this case out of the hands of the attorneys and tell us how we shall introduce our evidence and the order of it, all I can say is that we will have to do as we did before, save our exceptions.

Trial Examiner Batten: Senator, might I ask you this question: Do you agree with me to this extent, that it is advisable for me to determine, at least in my own mind, and make some sort of a ruling as to what I think the Circuit Court intended us to cover? Do you agree with me that we have to determine some sort of a yardstick?

Mr. Reed: I say we stand here upon this decision of the Circuit Court of Appeals. I have my opinion about it, and it isn't the same as the opinion that you have expressed, if I understood your expressions or interpreted [fol. 4060] them properly, so that all we can do— We are hailed here to the bar and charged with violating a

law. We don't think we violated any law. You have held that we did. And the Circuit Court of Appeals said there was certain evidence that had been excluded which must be received and considered.

Trial Examiner Batten: Well, then, isn't it necessary for me to determine what evidence I think ought to be received?

Mr. Reed: It is necessary for you to determine what you are going to receive, but we propose to offer our evidence.

Trial Examiner Batten: Yes. I am not telling you not to. I simply wanted to know if you agreed with me that it is up to me, as the Examiner, to decide that question. Now, I have discussed it on several occasions, and I want to say that I have given a lot of thought to it, and I intend to give some more. I further want to say that I intend to adjourn this hearing until next Wednesday morning at 10 o'clock, while I am attempting to decide just what the Circuit Court intended when it sent that decision back.

Mr. Ingraham: Won't you let us finish with the question that is asked this witness?

Trial Examiner Batten: Now, if there is any further argument about that question, I want to hear it now.

Mr. Langsdale: If the Examiner please, the fiery speech just made by the Senator is one reason why you should [fol. 4061] determine the order of proof. He lines the front row up with his future witnesses and wants to educate them about what he wants them to testify about, and—

Mr. Reed: I object to that as an indecent statement.

Mr. Langsdale: I say, I think that is the motive. Now, he can take that or leave it, as he sees fit. He has made that kind of a speech every time he gets the chance before these girls.

Mr. Reed: Now,—

Trial Examiner Batten: Senator, let Mr. Langsdale complete his statement, and then you may talk again.

Mr. Langsdale: I say he has no right to line his witnesses up on the front row to educate them on these things.

Every chance he has had he has made that kind of a speech, which we say isn't true, and I think the record will show it isn't true.

Mr. Ingraham: Now, the record will show Senator Reed has not made that speech before.

Trial Examiner Batten: Now, Mr. Ingraham, the record will speak for itself. Will you permit Mr. Langsdale to finish?

Mr. Langsdale: The speech is similar to the one, without any possible truth in it, that he made to the Times reporter that Mr. Dubinsky was a Bolshevist and a Communist. I think he knew that wasn't true when he said it.

[fol. 4062] One of my reasons for thinking that this witness's testimony should be deferred until the Circuit Court of Appeals' ruling is followed, is to prevent their dragging testimony out of witnesses here, with their witnesses sitting on the front row, to come on later and say, like Edgar Bergen and Charlie McCarthy, "Yes," "Yes," "Yes." "That is what happened." We had that before, when they signed everything that was stuck in front of them.

I say we should follow the procedure the court said we should follow.

(Reading from Circuit Court of Appeals order.)

"At the hearing before the Trial Examiner, the petitioners proffered the evidence of the employees of the Donnelly Company, some 1200 in number, to show how and why they formed the Donnelly Garment Workers' Union, . . ."

The Examiner said it wasn't material, and the Circuit Court of Appeals said it was material, and this case should come back and that evidence should be accepted.

(Continuing reading) ". . . to show that no influence was brought to bear upon them by the employer either in the formation or administration of the union, to show what the President of the Company had said to them at the mass meeting in the spring of 1937, to show that their freedom to organize and to choose their own representatives for

the purposes of collective bargaining had not been inter-
[fol. 4063] fered with by their employer, and to show that their union, both in its formation and administration, was exclusively controlled and supported by them. The Trial Examiner refused to receive this evidence. He permitted the petitioners to make formal offers of proof.

"The Trial Examiner seems to have confused the admissibility of this proffered testimony with his estimate of its weight and sufficiency and of the probable credibility of the witnesses who were to be called upon to give it."

That is what the court said, that the Examiner should not confuse the weight of the evidence with its admissibility, but nowhere in this opinion has the Circuit Court of Appeals said the Examiner should take anything but the testimony of the 1,200 proffered witnesses.

I say they know that is the rule of the court, and I say again that this Examiner should not permit them to put on this witness to prove the ultimate fact of these strikes. That isn't the issue. The issue is, did these employees believe that there were strikes out there, which caused them to join the Donnelly Garment Workers' Union?

They want to prove the ultimate facts, in the presence of these witnesses that they have lined up here to testify when Miss Tobin gets off the stand, and certainly, if for no other reason, the Examiner should exercise his discretion and govern the offer of proof.

Mr. Reed: I am not going to reply at length to that. [fol. 4064] There is a class of gentlemen who say things in court they don't dare say outside of court.

Mr. Langsdale: Senator, you don't think I would be afraid to say anything to you anywhere, do you?

Trial Examiner Batten: Mr. Langsdale, now, will you not interrupt?

Mr. Reed: Very definitely I think so. But I am not going to pursue an unpleasant thing of that kind.

These witnesses who are here are called here because we have not known at what moment they might have to take the stand. What I have said here is no new information to these witnesses, I take it.

The only question is, here is a lady who knows the facts, and Mr. Langsdale knows very well that if she answers this question which has been asked her, she would have to say that she was in charge of the strike, or at least a part of the strike.

Now, I have said all I want to say on the point.

Trial Examiner Batten: I would like to say this, Senator: As far as the witnesses who are here are concerned, they are here because I refused to sustain a motion to exclude them. I didn't see any reason for it at that time, and I don't see any now.

I am only interested in whether or not there is anything further counsel want to say with respect to their view as to [fol. 4065] what the Circuit Court intended.

Mr. Tyler, do you have anything to say?

Mr. Tyler: I would like to suggest two thoughts to Your Honor in that connection.

I take it that all of us agree that in any kind of a lawsuit or prosecution the facts charged, whether civil, criminal, or prosecution before the Labor Board, we are to try what was alleged in the complaint. Therefore, we are trying what was alleged in the complaint, which refers to what happened in 1937. And when the Court of Appeals said certain evidence was wrongfully excluded, it referred to events as to 1937. Why did these people form their union in 1937, and not in 1942? I think it is obvious, and I do not believe there would be dispute that that is what the Court of Appeals directed us to try: What were the facts in 1937?

However, I think it is true, and I think Miss Weyand very generously suggested it was true to Your Honor the other day, that the law is that the successful, efficient, aggressive operation of a plant union over a period of years is evidence that it was founded by the true wish of those who founded it at the time it was founded. And events which happened after the time charged may throw light on the events at the time the charge refers to. That we do not intend to waive.

[fol. 4066] Trial Examiner Batten: It is your position that the matter should be brought down to date?

Mr. Tyler: On certain things that throw light—

Trial Examiner Batten: I mean, as far as the issues are concerned, we should take testimony from the time of July 1939 down to today?

Mr. Tyler: Only where the events today or at July 1939 throw light on the facts in July 1937—not as to whether the labor abuses covered this year, or last year, or 1939, but as to facts that throw light on what happened in 1937, I think it is admissible. Of course, we cannot try questions of whether labor abuses occurred with Johnny Jones, or in some other connection that is not alleged in 1937 at all. There is no need for that. But I think that where Your Honor finds that an event now a fact does throw light, under reasonable interpretation, on the facts existing in 1937, then in that case such evidence should be admitted. And the particular kind that I respectfully insist does do that is the successful, vigorous operation of a plant union for a period of five years, since the time the charges were made.

Trial Examiner Batten: Anything further?

Miss Weyand: I would like to make a couple of further remarks directed to the violence issue.

I feel that under the court remand there is no issue of violence before the Trial Examiner at present.

[fol. 4067] As I understand the arguments of counsel for the Donnelly Garment Workers' Union and counsel for the company, they suggest three bases on which they think violence evidence is material. The first of those bases was suggested by Mr. Tyler this morning in his statement, that whether or not violence did exist would be material to a determination of whether or not the employees reasonably acted because of a knowledge of violence.

I do not believe that issue is at present before the Trial Examiner or before the Board. That issue will arise only in the event the employees come in here and make a statement that they acted by reason of the knowledge of certain

violence and the Board states it doubts that they really felt that way.

Until the Board raises an issue as to the credibility and weight of the employees' statements of the violence which they understood to exist, that issue does not exist in the case.

I cannot state, until I hear the evidence of these employees, whether or not I shall be glad to say we are willing to take their statements that they knew this violence was occurring as a statement of their state of mind and not challenge it; that is, if they describe their state of mind as one believing that the I. L. G. W. U. tore clothes off of any nonunion girl at any time they met her on the [fol. 4068] street, I am not saying at this time I am willing to accept that that was the state of mind of all of these girls. Possibly after hearing the evidence I might concede they did believe that actually about the I. L. G. W. U., but until that evidence is in and until I state the position that I am willing to take a girl's statement on their state of mind as a true statement of their state of mind, no issue of violence exists, for that reason.

That is under Mr. Tyler's theory this morning as to the materiality of violence.

The second reason set forth as to why evidence of violence might be material at the present time was stated by the Senator. He said he wished this evidence for the purpose of disclosing the interest of the witness on the stand.

I do not believe that that is a proper method of disclosing the interest of the witness. He could show the interest of the witness through her prior employment. He put her on the stand, and if he now wishes to state he doesn't want the testimony she gave as to the supervisory capacities or practices of the I. L. G. W. U. given much weight in this hearing, we will be glad to hear that he doesn't care to have the witness he put on for that purpose believed to any large extent. However, he should not be allowed to drag into the record in this case an issue which has been ruled out of the case, purely on the basis of showing the interest of a witness. I am certain the law will [fol. 4069] sustain me that that is not a proper method

of showing the interest of a witness produced by counsel for the company himself, if counsel wishes to impeach the witness's testimony or the credibility of the witness.

The third reason which has been advanced as to why evidence of violence should be taken is that the fact of the existence of the violence would show why the employees wished to organize the union. That is just a backhanded way of getting to Mr. Tyler's point, a method of trying to avoid delaying the introduction of violence evidence until the issue arises. He says the issue has already arisen, because if there was violence the employees must have understood there was violence and, therefore, must have acted from that reason.

Now, that does not follow. The fact that it existed does not mean they must have understood or that they must have acted from that reason.

The issue of violence does not arise until you show they acted from that reason and understood it; then, if I challenge the understanding they had, the issue might arise as to whether that violence actually existed.

The remarks I directed to Mr. Tyler's theory dispose of the reason I think that is not a valid ground for presenting the evidence of violence at this time.

I do not think it is a matter of order of proof. I think the Trial Examiner, within certain limited discretion, can [fol. 4070] direct the order of proof, but I think this is a much broader matter. It is the matter of the issue of violence not being in the case at this time. Therefore, there is no question of order of proof involved. I, therefore, submit, at the present time no evidence of violence should be taken. If the issue I have mentioned or any other issue later arises in the case that would make evidence of violence material, I will be glad to state my position at that time.

Trial Examiner Batten: Miss Weyand, let me ask you this: You say you do not think it is a matter of order of proof. I said this morning I think we are all agreed on one thing the circuit court did say, that the evidence of the 1,200 employees should have been received, and then

it says later on, "If it becomes cumulative," but we certainly are all agreed that the circuit court said I should have received the offer of testimony of the 1,200 employees. Now, I assume we are all agreed on that. How much farther we may agree is a different thing, and that was my reason for saying, if I direct an order of proof that we take the testimony of the 1,200 employees, or the offer of it, at least, we have the one thing out of the way, have we not, which the Court of Appeals said should have been received?

Miss Weyand: I think there is nothing wrong with the Trial Examiner's reasoning that way. However, I think there is a broader basis for excluding the taking of testi- [fol. 4071] mony of violence at the present time, and that is the absence of any issue that necessitates the taking of any evidence of violence.

Trial Examiner Batten: Of course, I did not want to limit it to just the matter of violence. There undoubtedly will be many other subject matters besides violence.

Miss Weyand: Did you wish us to discuss those other subject matters at the present time?

Trial Examiner Batten: No. But I wanted you to know I wasn't placing it entirely on the matter of violence.

Miss Weyand: I was directing my remarks solely to the violence matter.

Mr. Tyler: If the Trial Examiner please, I cannot agree with Miss Weyand. She suggests that the question of "why?" does not arise unless the Board disputes it. The Court of Appeals said the question of why they formed this union is sent back to be received by the evidence of the respondent and the intervener, not wait to see whether the Board disputes it or not, but the burden is on them to proceed. Now, why they formed the union involves the fact of violence and reasonable evidence that they had occasion to actually be frightened by the violence. That evidence the Circuit Court of Appeals said we should present.

Trial Examiner Batten: I agree with you, Mr. Tyler, because I think you have the thing first in your remark [fol. 4072] that I think should come first, and that is the

testimony of these employees and the question of the reasonableness of it.

Mr. Tyler: I don't think the court said the testimony of the employees is first, before other evidence that shows they so believed.

Trial Examiner Batten: I don't think they said that.

Mr. Tyler: But I think it is up to the Board to either admit that these employees did have that belief, or to allow them to go ahead and present the evidence showing that it is true, because the court sent this back to the Board to hear that evidence of why they formed the union.

* * * * * *

[fol. 4077] Proceedings

Trial Examiner Batten: I think we are ready to proceed. In line with my suggestion when we adjourned I went into the matter of the order of proof in the hearing, and with respect to the procedure which we will follow.

First, I am going to receive the testimony of the employees referred to in the Circuit Court's decision, and on that basis we are ready to proceed.

* * * * * *

[fol. 4078] Mr. Reed: I confess I am not sure that I comprehend the ruling. Your Honor states that you will receive testimony of the employees on the matters that were referred to in the offers of proof. Do we understand that is all the testimony you are going to permit?

Trial Examiner Batten: No, I think I stated that is the testimony which I intend to receive first, Senator. In other words, I believe the Circuit Court, in that one matter at least, was specific, and they said I should receive the testimony of the 1200 employees in accordance with the offers of proof. Now, that much of the decision is definite, and I think in line with the Court's decision, that is the testimony which I should receive first, and accordingly I am directing that order of proof.

* * * * * *

Mr. Reed: We are in the middle of the examination of Wave Tobin. We insist respectfully that we are entitled

to proceed with that witness, and I call attention to the Examiner's ruling, which, as I understand it, is that he proposes now to regulate the order of proof, and to direct the Respondent how they shall put in their case. That, we [fol. 4079] think, deprives us of our right under the law, and that it is bad practice in any event.

Now, I call attention to this clause in the opinion —

. . . . . .

Mr. Reed: (Reading) "The attitude of this Court toward the conduct of hearings by a trial examiner, we think, has been entirely consistent. In Cupples Co. Manufacturers v. National Labor Relations Board, 8 Cir., 106 F. 2d 100, 113, we made the suggestion that if a trial examiner would 'within reasonable limits, permit each of the parties to the proceeding before him to prove his own case, in his own way, by his own counsel,' charges of lack of due process for failure to accord a full and fair hearing could readily be avoided." Citing the Pittsburgh Plate Glass Company vs. National Labor Relations Board, "—we expressed the opinion that the practice which should be followed by a trial examiner in taking evidence and ruling upon objections to evidence is that which applies to special masters in equity proceedings, and 'that the record should contain all evidence offered by any party in interest, except such as is palpably incompetent ***.' We think that [fol. 4080] experience has demonstrated that in a trial or hearing where no jury is present, more time is ordinarily lost in listening to arguments as to the admissibility of evidence and in considering offers of proof than would be consumed in taking the evidence proffered, and that, even if the trier of facts, by making close rulings upon the admissibility of evidence, does save himself some time, that saving will be more than offset by the time consumed by the reviewing court in considering the propriety of his rulings and by the consequent delay in the final determination of the controversy. One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received, and, since he will base his findings upon the evidence which he regards as competent, material and convincing, he cannot be injured by the presence in the record of testimony which he does not consider competent or material.

Lawyers and judges frequently differ as to the admissibility of the evidence, and it occasionally happens that a reviewing court regards as admissible evidence which was rejected by the judge, special master, or trial examiner. If the record on review contains not only all evidence which was clearly admissible, but also all evidence of doubtful admissibility, the court which is called upon to review the case can usually make an end of it, whereas if evidence was [fol. 4081] excluded which that court regards as having been admissible, a new trial or rehearing cannot be avoided. We say this in the hope of preventing a repetition of what occurred in the case now before us, and to obviate any misunderstanding as to what the attitude of this Court is with respect to the taking of evidence in a hearing before a special master or a trial examiner."

"One of the most important safeguards of the rights of litigants and the minimal constitutional requirement, in proceedings before an administrative agency vested with discretion, is that it cannot rightly exclude from consideration facts and circumstances relevant to its inquiry which upon due consideration may be of persuasive weight in the exercise of its discretion."

Now, going back to the first clause, or nearly the first that I read, with regard to the Cupples Company Manufacturers' case, "we made the suggestion that if a trial examiner would 'within reasonable limits, permit each of the parties to the proceeding before him to prove his own case, in his own way, by his own counsel,'" now, we insist that in the orderly procedure, we have a witness on the stand, testifying to matters that are pertinent to the issues in this case, and that to deprive us of the right to finish that examination and to go on and put our case in, in our own way, is a denial of our rights under the law, [fol. 4082] and so we ask we be permitted to proceed.

Trial Examiner Batten: Anything further? Well, of course, we understood Mr. Ingraham wanted to postpone the finishing of Mrs. Reed's testimony. I notice she is not here this morning.

Mr. Ingraham: No, Miss Tobin was on the stand.

Trial Examiner Batten: Well, I know, but you said, Mr. Ingraham, that the following morning you would be ready to proceed with Mrs. Reed, and on that basis I permitted Miss Tobin to take the stand for the balance of that day.

Mr. Ingraham: At the time that I said that, I didn't know that you were going to adjourn in the middle of Miss Tobin's testimony.

Trial Examiner Batten: Well, of course, irrespective of whether I did or didn't, you intended to be ready the next morning with Mrs. Reed, and finish with her, did you not?

Mr. Ingraham: Well, I didn't expect Miss Tobin would get off the stand. I thought we would finish with Miss Tobin.

Trial Examiner Batten: What made you think that when I told you, Mr. Ingraham, I wanted to continue at 2 o'clock with Mrs. Reed, and you asked until the following morning and I gave it to you. What made you think we would continue with Miss Tobin?

[fol. 4083] Mr. Ingraham: I didn't suppose Miss Tobin's testimony would be interrupted. When you have a witness on the stand, you usually complete the testimony. In regard to Mrs. Reed, I want to have my redirect examination when counsel for the Board and counsel for the Union state they have finished their cross-examination.

Trial Examiner Batten: Well, of course, I stated that they had completed, and the record will indicate that; unless, of course, counsel wants to recall witness, which privilege you all have.

. . . . . .

Mr. Tyler: My objection, Your Honor, to interrupting the cross-examination of Miss Tobin is already in the record as of the last day. It seems to me that it is improper to interrupt the presentation of the case by a party to the case, and arbitrarily say, "We will not proceed as you propose to proceed, but we will now proceed on

certain evidence that the Court of Appeals requires to be taken, but which that Court does not say will be taken first."

It seems to me improper to break off any orderly procedure of presentation and say, "From now on we will proceed to take this kind of evidence first." I think that objection is in the record as of the last day of our hearing.

[fol. 4085] Miss Weyand: I think it is proper for the Trial Examiner at this time to rule that we do not proceed with Miss Tobin unless counsel for the company would indicate where her testimony or any questions they might ask would be within the terms of the remand. As [fol. 4086] I recall, I objected from the very first questions which were directed to Miss Tobin, on the ground they were neither within the terms of the remand nor material to any issue in this case.

The excerpt which Senator Reed read from the opinion of the Circuit Court of Appeals must be read in the light of the later statement of the Circuit Court of Appeals, that the Trial Examiner did not err in confining the issues to those which were tendered by the complaint filed by the Board.

Therefore, the statement that counsel for the company should be allowed to try their case in their own way, and put on whatever evidence they chose clearly was not intended as the broad statement it first appears to be. The Court does uphold the Board and the Trial Examiner in certain exclusions, the exclusion of the testimony of Miss Wave Tobin which has been offered here; that is within the ruling of the Court, upholding such exclusions.

I therefore respectfully submit that the Trial Examiner is entirely proper in refusing to allow the counsel for the company to continue questioning Miss Tobin, unless counsel for the company should indicate that he will not follow the two lines of questioning opened up on Friday, but wishes to put her on the stand or continue with her on the stand for the purpose which is related to the issues of the case.

[fol. 4087] Mr. Reed: First, as to the point the Examiner raises that Mrs. Reed's testimony was to be taken up the next morning, I think if you will give that a little consideration you will arrive at a different conclusion. Mrs. Reed was cross-examined at great length and finally the Board's attorney and the I. L. G. W. U. attorney said they had no more questions to ask at that time, but clearly indicated that they might have other questions to ask. They did not close their cross-examination absolutely. There was some colloquy about it, and we insisted that they should either close their examination definitely or that we would not go into redirect examination, that we were entitled before going into redirect examination to know that the cross-examination was ended.

Now, it was at that point, with the witness excused as far as the cross-examiners were concerned, that Mrs. Reed left the stand.

We say now we do not want to put Mrs. Reed on the stand for redirect examination and then have the whole matter opened up again by further questions on cross-examination.

We then put Miss Tobin on the stand, summarily, stating I believe, that it probably would be a brief examination. We could not tell definitely, of course. And as the examination proceeded it became evident that other questions were pertinent.

Now, we insist and we propose, on our part—of course, [fol. 4088] we cannot do it if the Examiner refuses to go on with the examination of Miss Tobin, and when we ask questions that are outside the issues of this case, the proper objections can be made, but we are not required to tell counsel what we intend to prove by this witness.

Trial Examiner Batten: I think I stated the last day we met, Senator, that I did not intend to require it, as far as Miss Tobin was concerned.

We are ready to proceed in accordance with my ruling. We will proceed with the employees, in line with the offers of proof which were made and in line with the circuit court's opinion.

Mr. Ingraham: Respondent excepts to your ruling. We will have to get the employees up here.

* * * * * * *

(Thereupon, pursuant to adjournment, the hearing was resumed at 2 p. m. and the following proceedings were had:)

Trial Examiner Batten: We will proceed.

Mr. Ingraham: I would like to call Wave Tobin to the stand.

Trial Examiner Batten: I think I ruled on that this [fol. 4089] morning, Mr. Ingraham.

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Mr. Ingraham: Do I understand the ruling this morning is limiting the testimony to the testimony of Donnelly employees?

Trial Examiner Batten: I don't think that was the ruling, Mr. Ingraham. You may read the record in the morning. I said I would receive first the testimony of the employees referred to by the circuit court in the offers of proof which I rejected.

Mr. Ingraham: Now, we have made other offers of proof besides the offers of proof of the employees. There are other offers of proof that were made at the last hearing besides those made on behalf of the employees.

Trial Examiner Batten: Yes, I think that is right.

Mr. Ingraham: Now, are we to be limited to the evidence that is covered in the offers of proof of employees?

Trial Examiner Batten: You are to be limited now to the 1,200 employees referred to by the court—why and how—the offers of proof made on behalf of those 1,200 em- [fol. 4090] ployees. That is the matter which I will hear first.

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Mr. Ingraham: I want to call the Examiner's attention to the last paragraph in respondent's last answer. It is Board's exhibit No. 1-LLLL.

Mr. Langsdale: What exhibit is that?

Mr. Ingraham: Board's exhibit No. 1-LLLL. Page 3441 of the record.

"Respondent further states"—I am reading from the answer—"that during all of the times mentioned in paragraph 11 of the Board's complaint the International Union, [fol. 4091] its officers, agents, and members were engaged in the said unlawful conspiracy against respondent set forth in section (B) of this answer and the matters set forth in said section (B) of this answer are by reference made a part specifically of respondent's answer to Paragraph 11 as though set out in haec verbae."

Now, section (B) of respondent's answer was stricken out. Paragraph 11 of the Board's complaint remained in the complaint, and our answer to it remained in our answer; it wasn't stricken out.

Now, respondent offered to prove those facts which are in answer to paragraph 11 by the following witnesses: Nell Quinlan Reed, Elizabeth Reeves, R. J. Ingraham, John Bachofer, Marguerite Keyes, Inez Warren, Pauline Shartzer, Mary Sprofera, Nelly Stites, Ruby Rickett, Lyle Jeter, Raymond Smith, Effie Hall, George Couthen, Flora Ruden, W. D. Rosenfield, Gordon I. Gordon, Velma Dowdy, Meyer Perlstein, David Dubinsky, Wave Tobin, Sylvia Hull, and Ellen Fry.

That offer was rejected.

. . . . . .

Trial Examiner Batten: You mean subdivision B of your answer?

Mr. Ingraham: Yes. Now, in order to proceed we feel that Wave Tobin's testimony is essential and that under [fol. 4092] the offers of proof we have a right at this time to examine her.

I would like to file an offer of proof.

. . . . . .

[fol. 4093] Trial Examiner Batten: This will be Board's exhibit No. 1-SSSSS.

(Thereupon the offer of proof above referred to was marked "Board's exhibit No. 1-SSSSS" for identification.)

Trial Examiner Batten: Is there any objection to the receipt of Board's exhibit No. 1-SSSSS, an offer of proof and protest against the ruling the Examiner made this morning?

If not, it will be received.

. . . . . .

Trial Examiner Batten: I will reserve my decision and ruling on it.

. . . . . .

[fol. 4095] Mr. Reed: I want to call attention to this situation which has arisen:

We are contending that Wave Tobin continue on the witness stand and that her testimony should be heard before other testimony is called for. That is the situation.

Now, the Examiner rules that he will not rule at this time and directs us to go forward with other witnesses; he is going to reserve his decision. If the decision is not made at this time, then the effect of it will be that we will go on and hear these other witnesses and we don't have a ruling. I think we are entitled to a ruling now, so that we will know how to proceed.

Trial Examiner Batten: Senator, I ruled this morning that I was first going to hear the 1,200 witnesses which the court referred to and which offers of proof I rejected, and I have not changed that ruling.

Mr. Reed: You have not changed that ruling, but we have now filed a paper here and we ask a ruling on it, and you say you will reserve that ruling. Of course, if you make the ruling after the damage, as we think, is done, that will do us no good if you then decide it in our favor.

Now, I don't think I will be able to change your mind, but I want to make this observation, that in the orderly procedure in courts of justice—and I have been there a [fol. 4096] good many years—and as said by the Court of

Appeals here in its quotation from another eminent authority, it is the right of a litigant, through its counsel, to put its evidence in in the order it sees fit, and the only question is whether the evidence is competent. The order of proof rests with the person proffering the proof.

Now, this proceeding that we are now talking about I have never seen in any court, at any time, where a judge undertook to say in what order you shall put on your testimony.

We offer it, and if it is incompetent, of course you can rule it out, but you cannot tell us, under any rule of law that I ever heard of, the order in which we shall proceed with our defense in this case.

Trial Examiner Batten: Senator, the only difference I see is that this is a remand, and I am making an effort to comply with the desire of the circuit court, and for that reason I made the ruling.

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[fol. 4099] Oma Lee Cooper, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Mr. Ingraham: Will you please state your name?

A. Oma Lee Cooper.

Mr. Langsdale: Spell the first name.

[fol. 4100] A. O-m-a (Spelling).

By Mr. Ingraham:

Q. Are you employed, Mrs. Cooper? A. Yes.

Q. Where? A. The Donnelly Garment Company.

Q. When did you start working for the Donnelly Garment Company? A. January 9, 1936.

Q. And in what position do you work there?

A. I am an operator.

Q. On a sewing machine? A. Yes.

* * * * * * *

[fol. 4101] A. My married name was Holloway.

* * * * * * *

[fol. 4102] By Mr. Ingraham:

Q. Mrs. Cooper, were you employed at the Donnelly Garment Company in the month of April, 1937?

A. I was.

Q. Do you recall attending a meeting the latter part of that month, a meeting of Donnelly employees?

A. Yes, I did.

Q. Was that meeting on or about April 27th, 1937?

A. Well, it was along the last of April, I don't remember the date.

Q. What occurred at that meeting?

A. Well, it was a meeting where Mr. Tyler came down and told us he had looked up the law, and we could form our own union if we wanted to, and a vote was taken whether or not we should form our own union.

Q. Now, prior to this time what had been occurring in Kansas City in other garment plants?

A. A lot of strikes and violence, and things like that.

Q. Where was this meeting held?

A. On the second floor of the building.

Q. When was it held?

A. Well, it was after working hours. I don't remember just the time.

Q. Were a large number of employees there?

A. Well, I believe most of them were there. I know the floor was crowded.

[fol. 4103] Q. Did any officer, executive or anyone that you thought was representing the management talk to you about the meeting?

A. No. The girls, some of them that I ate with, told me in the lunch room there was to be a meeting and to be sure I attended that night, and told me to tell the other girls that I saw, so that is what I done.

Q. Now, did you vote at that meeting?

A. Yes, I did; I voted orally and then by a card that they gave us. They said if we didn't want to make up our minds then whether or not we wanted to join the union, we could put our name on there later.

Q. What, if anything, had been discussed with reference to any union at that particular meeting?

A. I don't understand you.

Q. Well, had anybody discussed the formation of a union with you?

A. Well, yes, we all discussed it there. The girls got up and offered their opinion as to whether or not we should form our own union, and Mr. Tyler said he found out that if we wanted a union we were within the law to form our own union, but we didn't have to without we wanted to.

Q. Now, did you say you voted in favor of forming the union? A. I certainly did.

Q. What were your reasons, Mrs. Cooper, for voting in [fol. 4104] favor of forming your own union, the Donnelly Garment Workers' Union?

A. One reason was I didn't want to join any union that would resort to violence to get women to join our union; I thought there would be other ways to present it to us without pulling hair.

Q. Whom were you referring to?

A. The International Ladies' Garment Workers' Union.

Q. Was there any other reason that you had for voting in favor of the Donnelly Garment Workers' Union?

A. Yes, we thought since we were in the factory and knew how it was run, we thought we were more capable of running our union than some outsider. We knew then if they didn't live up to the contract it was within our own power to make them live up to it, and we wouldn't have to go to some outsider to have it done.

Q. Now, prior to that meeting, had anyone, any officer, executive, or anyone representing the management suggested to you or suggested to anybody else in your presence that the employees form a union?

A. No, no executive of the company ever talked to me or ever said anything in my hearing about any union at all, whether we should or should not join any union.

Q. Did anybody that you thought was representing the management say anything to you?

[fol. 4105] A. No, they didn't.

Q. Now, was this a Loyalty League meeting?

A. No, it was not. We weren't discussing any dances or parties, or anything.

Q. Did anybody ask you to come to the meeting because it was a Loyalty League meeting?

A. They certainly did not.

Q. Was anything connected with the Loyalty League discussed at the meeting? A. There was not.

Q. You referred to certain strikes going on at other plants. I hand you Respondent's Exhibit No. 16 and ask you if you read or saw the pictures in the March 18, 1937, edition of the Kansas City Times, and read the article on the following page that was in that edition of the Times?

A. I certainly did.

Q. What effect did that article have upon you, Mrs. Cooper?

A. Well, it made me mad to think that things like that could happen in this city. We hadn't been used to seeing things like that at all. We just didn't like it, that was all, and we were afraid maybe every night we went home from work, or every night we would go out, they would be standing around in front of our building ready to tear our clothes off, or something.

Q. Did you say threats were made against the Donnelly [fol. 4106] employees?

A. Yes, we heard them every day.

Q. What was the nature of the threats?

A. They said we were going to be next, and it wasn't anything to what we were going to get.

Q. I'll hand you Respondent's Exhibit No. 18, which is the front page of the March 17, 1937, edition of the Kansas City Journal-Post and ask you if you noticed that article in the paper? I am referring to the article in regard to the garment strikes.

. . . . . .

A. I read the article.

Mr. Ingraham: What was going on at the time of those other strikes?

. . . . . .

[fol. 4107] A. They were having strikes and hair pulling and refusing to let women that wanted to go to work, refusing to let them go to work.

By Mr. Ingraham:

Q. Did they have any sit-down strikes?

A. I think the papers said there were some sitting in the halls; I don't remember of any incidents where they sat down in the factories; I don't remember everything I read.

Q. Now, this article that you just referred to was dated March 17. I'll hand you Respondent's Exhibit 19, which is the second page, part of the second page of the Journal-Post for March 18, 1937, and ask you if you saw and read that article.

A. I think I read this one.

Q. That was dated March 18, 1937?

A. I am sure I read that one.

Q. Now, was there any meeting of employees held on or about that date?

A. Yes, we had a meeting.

Mr. Langsdale: What date is that?

A. The employees were all worried and everything; I believe they did call a meeting about the 18th of March. I know it was one of the first weeks in March, the first part of March.

Q. What caused the employees to call a meeting?

A. Well, they were worried and nervous and they wanted to talk it over with someone to see what they [fol. 4108] could do about this.

Q. Had these newspaper articles come to the attention of the employees?

A. Yes; several of them brought them to work with them and when we hadn't read them, of course, they showed them to each other, and they talked about it, and they were all really upset and nervous.

Q. Was there anything else reported besides what was in the newspapers?

A. Yes, some of the girls said the union had been out to their house and had been threatening them, trying to make them join the union, and they had heard a lot of other people come from up there say that they were making threats against our company.

Q. Had any of the employees said they had seen any violence at these other strikes?

A. Yes, several of them had, you know, had come on past there to come to work, quite a few of them, in fact, I think.

Q. Now, do you recall where this meeting of March 18th was held?

A. It was held on the second floor in the building.

Q. Do you recall what time of day?

A. Well, it was after working hours. I don't remember just what time the working hours were. It was after four or five, anyway, I know, it was after we quit work.

[fol. 4109] Q. How did you happen to go to that meeting?

A. Well, we had been talking about it all week, and we all decided on that special date to have the meeting.

Q. Did any of the employees at that meeting talk about what might be done to protect the employees?

A. Yes, there were several discussions about that, and some of them went out and got Mrs. Reed to come in and speak to the girls to see what the company was going to do; they demanded that we find someone to seek legal counsel to see what we could do to protect ourselves.

Q. Do you recall who was requested to seek legal counsel?

A. Miss Todd was one of them. I don't remember any of the others, but I know there were several more that went with her.

Q. Well, do you recall whether Mrs. Reed came to the meeting?

A. Yes, I do.

Q. What did Mrs. Reed do after she got to the meeting?

A. Well, she went up on the platform, they cleared a space for her, and she went up on the platform and made a speech.

Q. Did Mrs. Reed say that she was going to close her plant if it was unionized?

A. No, she didn't.

Q. Did Mrs. Reed say that she was not going to allow Dubinsky tell her how to run her business?

A. No, she didn't. She said she wasn't going to let [fol. 4110] Dubinsky force her into any union that they didn't want to belong to.

Q. Was Mrs. Reed at the meeting very long?

A. Oh, about 10 minutes, I judge, or 15, not any longer than that.

Q. Did Mrs. Reed read a letter at that meeting?

A. She did not.

Q. Was that meeting a Loyalty League meeting?

A. It was not.

Q. Did you go to that meeting because you were a member of the Loyalty League?

A. I did not.

Q. Why did you go to the meeting?

A. I went for the same reasons the others did, that I was anxious to find out what we were going to do, what we could do to protect ourselves.

Q. To protect yourselves against what?

A. The violence that was occurring at these other plants in Kansas City.

Q. Who was committing that violence?

A. The International Ladies' Garment Workers' Union was.

Q. Now, was anything discussed at that meeting with regard to the employees forming a union of their own?

A. No, the union was not discussed at all at that meeting. The only thing that was discussed in regard to anything [fol. 4111] legal was getting a lawyer or going to see someone about what we could do legally to protect ourselves, and get advice on what we should do.

Q. Did someone suggest that lawyers might be able to bring an injunction suit?

A. Yes, I believe it was suggested.

Q. Now, did anyone representing the management suggest to you that you go to those meetings?

A. No, they didn't. It was just the girls themselves, the operators; my section was the one that told me.

Q. Did you have any discussion or hear any discussion between an official or executive or anyone representing the management that the employees should hold such a meeting?

A. No, sir, I didn't.

Q. Now, was anything said about buses bringing the employees to work?

A. Well, Mrs. Reed said she would see if she could arrange for some kind of buses or something, to take the girls a part of the way home, and bring them to work, and that was later done. It was not elaborated on, but, you know, she said that she would try to have something done to bring the girls to work.

Mr. Reed: Was that done?

A. Yes, it was.

By Mr. Ingraham:

Q. And that was later done, was it not?

[fol. 4112] A. Yes, sometime the following week or within the next day or two, I think it was.

Mr. Langsdale: What was later done?

By Trial Examiner Batten:

Q. Did they get the buses?

A. Yes.

By Mr. Ingraham:

Q. Do you know whether Rose Todd or any other employees did consult lawyers?

A. Yes, they did.

Q. When next did you hear anything about that?

A. Well, another meeting was called, I believe it was called by Miss Todd, to tell us she had seen a lawyer, and that they wanted a $500.00 retainer fee, before they would have anything to do with the case, and the amount of money was taken up there, and what was not, they took it up the next day, 50c each for all the employees; part of it was taken up there that night and the ones that had it gave it then and the rest of it was given the next day.

Q. Did you attend that meeting as a member of the Loyalty League?

A. I did not.

Q. Was it a Loyalty League meeting?

A. It was not.

Q. Did you make the contribution of 50c to the Loyalty League?

A. I did not. I made that to pay the lawyer.

[fol. 4113] Q. Was the lawyer to represent the Loyalty League or the employees?

A. The employees.

Q. Now, at any of these meetings that you have described did your instructors request you to attend the meetings?

A. No, they did not.

Q. Did they discuss with you about the meetings?

A. No, they didn't.

Q. Did your instructors herd all the girls in your section down to any of those meetings and tell them to stay together so they could go back to work?

A. They did not, because it was after working hours. We didn't have to go back to work. Most of us were dressed. Some of the girls that got off later came down in their aprons, but I know most of the girls in my section were dressed.

Q. I hand you Respondent's Exhibit 19 — no, I have shown you that exhibit — I hand you Respondent's Exhibit No. 20, which is the front page of the Journal-Post for March 22, 1937, and ask you if you recall seeing that article.

A. I read the article.

. . . . . .

By Mr. Ingraham:

Q. I'll hand you Respondent's Exhibit No. 21 and ask [fol. 4114] you if you read the article in that edition of the Kansas City Journal-Post?

A. I think I read this one, I am not sure. The girls always brought them up to work. I didn't take the Post myself, but most of the articles that run in the Post the girls that do take it, they brought them down to work and we read and discussed the articles.

Q. Why did you read them?

A. We were interested, after all, we worked in a garment factory too, we were very much interested, because we never knew what would happen in our place.

Q. I'll hand you Respondent's Exhibit 22 and ask you if you read the article that appears on the front page of the Journal-Post for March 25, 1937.

A. I read that one.

[fol. 4115] Q. I will hand you respondent's exhibit No. 23 and ask you if you read that article, appearing in the Kansas City Journal-Post, March 27, 1937?

. . . . . .

A. I read that one, too.

Q. I hand you respondent's exhibit No. 24 and ask you if you read that article that appeared in the March 31 edition of the Journal-Post?

. . . . . .

A. I read that one.

* * * * * * *

By Mr. Ingraham:

Q. I hand you respondent's exhibit 25 and ask you if you recall reading that article, dated March 19, 1937, of the Kansas City Times.

* * * * * * *

A. I read this article.

[fol. 4116] Q. I will ask you if you read respondent's exhibit 26, which is an article in the Kansas City Times of March 23, 1937.

* * * * * *

A. I read this one, too.

Q. I will ask you if you read respondent's exhibit 27, which is the front page of the Kansas City Star for March 17, 1937.

* * * * * *

A. I read the article.

Q. I will ask you if you read respondent's exhibit 28, which is an article appearing in the Kansas City Star for March 22, 1937.

* * * * * *

A. I read this one.

Q. I will ask you if you read respondent's exhibit 29, which is an article in the Kansas City Star of March 25, 1937.

* * * * * *

A. I read the article.

Q. What was your interest in reading these articles, Mrs. Cooper?

A. I think it is only natural that we would be interested in them, since we were working in a garment fac-
[fol. 4117] tory. We were afraid they were going to come down and do the same thing to us. They had made threats against the company and us, and naturally we were interested.

Q. Were these articles the subject of conversation at the plant among the employees?

A. They certainly were. They were all brought down to work and the ones who hadn't read them would read them before they went to work or at their lunch hour. The girls were so upset they wanted to—you know—talk it over with each other.

Q. I will hand you respondent's exhibit 30, which is an article in the Kansas City Star of March 30, 1937, and ask you if you read that article.

* * * * * * *

A. I read this one.

Q. I will ask you if you read respondent's exhibit No. 31, which is an article appearing in the Journal-Post for April 5, 1937.

* * * * * * *

[fol. 4118] A. I read that one, too.

By Mr. Ingraham:

Q. I will ask you if you recall reading the article in the Journal-Post for April 6, 1937, which is respondent's exhibit No. 32.

* * * * * * *

A. I read it.

Q. I will ask you if you recall reading respondent's exhibit 33, which is an article in the Kansas City Journal-Post for April 7, 1937.

* * * * * * *

[fol. 4119] A. I think I read that one.

Trial Examiner Batten: You say you think you did?

A. I think I did, I am not sure; I read most of them.

By Mr. Ingraham:

Q. What effect did the reading of these articles have on your state of mind with reference to the I.L.G.W.U.?

A. Well, it made me absolutely sure I didn't want any part of it, and I didn't want to have anything to do with anybody that had such ideas about organization as that, coming out and tearing hair and tearing women's clothes off of them, and I didn't think that was the right way to organize anything; I thought if you wanted to join the union

that was your privilege, but I didn't think someone had to beat it into you that you had to join. I thought this was a free country, and that you were supposed to be allowed to do things you wanted to, and not let some other company come in and tell you what you had to do, and get your clothes torn off, or something like that.

Q. What was the effect of the reading of these articles on other employees at the time, so far as you could observe?

A. Well, they all felt the same way I did. They thought it was absolutely ridiculous. It was talked of over the plant what we would do in case they came down to our place, and, you know, they all felt—they all knew they didn't want any part of it.

[fol. 4120] Q. I hand you Respondent's Exhibit No. 34 and ask you if you recall reading this article that appeared in the Kansas City Journal-Post on April 10, 1937, which is entitled, "Garment Unions Get Closed Shop in Three More Plants".

* * * * * *

A. I read this article.

Mr. Ingraham: What effect did that article have on you?

A. Well, we just compared what they were asking for and what we already had. They were asking for—they signed their agreement for $13.00 a week minimum for 40 hours a week, and the lowest price paid in our factory was already $15 for 40 hours a week.

* * * * * *

Mr. Ingraham: I'll hand you Respondent's Exhibit 35, which is an article in the Kansas City Journal-Post for April 22, 1937, and ask you if you read that article.

* * * * * *

[fol. 4121] A. Well, I read this article.

Mr. Ingraham: Well, what effect did that have on you?

A. Well, I was surprised, because we hadn't even elected a delegate at all for any convention, let alone one for the International Ladies' Garment Workers' Union, because to our knowledge we didn't have any members in there, at least I hadn't heard of any at that time.

Mr. Reed: She said she didn't have any members in there: What was that?

A. In our plant, in the Donnelly Garment Company.

Mr. Reed: Didn't have any members in what?

A. In the International Ladies' Garment Workers' Union.

Mr. Ingraham: Did that have anything to do with your deciding to vote in favor of forming the Donnelly Garment Workers' Union?

[fol. 4122] A. Well, yes, it did. I decided for myself it would be a good thing if we had our own union, then somebody couldn't get up and say they were elected as our delegate to conventions. We knew that if we had our own union, we would have something to say about who should be our delegates and who shouldn't be.

* * * * * * *

[fol. 4123] By Mr. Ingraham:

Q. Mrs. Cooper, had you or any other employees, to your knowledge, selected Sylvia Hull as your representative to go to the International convention and ask for a strike in the Donnelly plant?

A. I know I didn't, and I didn't hear of any other girls in the plant that did. I didn't even know her.

Q. What was the effect on other employees, so far as you could observe, of that article?

A. They were indignant, that anyone would take it on themselves to say that they were our representative when there hadn't been anyone at all chosen.

Q. Did you want a strike in the Donnelly plant?

A. I certainly did not. We have never had any reason to strike.

Q. Were your wages higher than those paid in garment plants that had contracts with the I. L. G. W. U.?

A. They certainly were. We had a $15 minimum, and most of us doubled that most every week—sometimes a lot more than that.

Q. I will hand you respondent's exhibit No. 36, which is an article in the Kansas City Star of April 7, 1937, and ask you if you read that article.

* * * * * * *

[fol. 4124] A. I read this article.

Q. I hand you respondent's exhibit 37, which is an article in the Kansas City Star, April 8, 1937, and ask you if you read that article.

A. I read this article, too.

By Mr. Ingraham:

Q. State whether or not there were discussions among the employees of the Donnelly plant at that time that the violence engaged in by the International forced the Gernes, Missouri, and Gordon companies to sign up with the International.

A. Yes. We discussed it very freely in the plant.

Q. Was that the opinion of the employees, that those companies were forced to sign up?

A. That is right, it was. Some of the girls knew the other girls and they said they didn't join it because they wanted to but because they had to in order to hold their jobs.

[fol. 4125] Mr. Ingraham: I will hand you respondent's exhibit 38, which is an article appearing in the Kansas City Star, April 12, 1937, and ask you if you recall reading that article.

A. I read the article.

By Mr. Ingraham:

Q. Did Mr. Tyler, at the meeting where the union was formed, discuss the Wagner Act?

A. He did. He said he had studied the Wagner Act and we could form our own union if we wanted to—select our own representatives, and all the rest of it.

Q. I will hand you respondent's exhibit 6 in the Circuit Court of Appeals record, page 4864, and ask you if you remember reading this article, which appeared in the Kan-
[fol. 4126] sas City Press on February 26, 1937.

A. I read the article.

[fol. 4127] Mr. Ingraham: Did you read the next page? It is on two pages.

* * * * * * *

A. I read it.

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By Mr. Ingraham:

Q. After this article appeared in the Kansas City Press on February 26, 1937, announcing—the heading of the article was "Reopen A Garment Feud, Union plans to seek Donnelly Company's Recognition." What, if anything, did the employees do several days after that?

A. Well, one thing they done was to get up a petition to present to Mrs. Reed to tell her that we didn't want her to sign with the union, that we didn't want anything to do with it; we knew those things they were saying about the company were not true and we were loyal to her.

Q. Do you know who circulated the petition?

A. Mary Sprofera and Inez Warren brought it up on the eighth floor where I was working. They brought it up there and it was passed among the girls in the section. Then, the girl on the end of the section got up and took it over to the next section. That is the way it got over the eighth floor.

* * * * * * *

[fol. 4130] Q. Did the petition that you signed on March 2, 1937, have the same language that appears at the top of the first page of I. L. G. W. U.'s exhibit No. 10?

A. Yes; to my recollection, that is the exact words.

Q. Where did you sign this petition?

A. At my machine.

Q. Did any official, executive, or representative of the management request you to sign the petition?

[fol. 4131] A. No, they didn't. I don't think they even knew it was in there. If they did, they didn't say anything. It was brought up on the floor by those two girls, Inez Warren and Mary Sprofera, and when it got to the end of the section the girl at the end of the section got up and took it over to the other section, and it went over the floor that way. And I think someone took it down to another floor.

Q. Did the instructor ask you to sign the petition?

A. No, she didn't.

Q. Why did you sign the petition?

A. Because we wanted her to know that we were contented with our working conditions and the way she treated us, and we also appreciated the fact that we had higher wages than any other garment factory in Kansas City, and we didn't want her to sign with any outside union—International Ladies' Garment Workers' Union.

Q. You, as I understand, stated that the petition was handed from girl to girl in your section?

A. It was.

Q. Will you state whether or not it is a common practice for employees to pass papers through the section from girl to girl?

A. It certainly is.

Q. What is generally the purpose of sending anything through the section?

[fol. 4132] A. It could be most anything, from a house to rent, riders wanted, eggs for sale,— A certain girl has chickens she sells every week up there, and if she has any extra ones she sends a note through that she has so many chickens, at so much a pound, and sends it through the plant. Another girl might have a room to rent. And at Christmas time some of the girls have cards to sell. One girl, every Christmas, sells shelled walnuts by the quart up there. There is always those notices sent through the factory and no one ever says anything about it.

Q. Has that been the case during the entire period since you worked for the Donnelly Company?

A. It has.

Q. When notes are sent through, do the instructors necessarily know that they are going through?

A. There's a lot of them goes through that they don't know about.

Q. Have you noticed notices on the bulletin board that referred to some private interest of an employee?

A. Just the other day I saw one on there that said someone wanted five passengers from a certain point to the factory at a certain time in the morning. And I saw one the other day where a girl had a house for rent. You can see them on there any time you want to look at the bulletin board—all kinds of messages on there—someone lost their

glasses, and one day I saw one where they had a Boy Scout [fol. 4133] belt for sale.

Q. Do you know whether or not notes have been sent by individual employees to some other employee on a different floor by a bundle boy?

A. I send them all of the time down to my sister. She works on two.

Q. Did you ever send any notes that had any reference to any union activities?

A. I never did.

Q. These notices on the bulletin board, have they had any reference to—I mean the individual notice that some employee puts up on the bulletin board, do they generally refer to any union activity?

A. No. I don't believe I ever saw one at all that did. They used to post notices on there of the union meetings, but I think they usually have those in the elevator now, or down the hall.

Q. Did you gain the impression from anyone at the Donnelly plant that this March 2 petition was being circulated at the request of or on behalf of the management?

A. No, I didn't. It was a voluntary movement by the girls themselves.

Q. Did you ever hear anybody say that Mrs. Reed wanted the petition circulated?

A. No. I always understood she didn't know anything about it.

[fol. 4134] Q. That is, prior to the time it was delivered to her?

A. That is what I mean.

Q. Did you feel that if you failed to sign the March 2 petition that you would be in any way discriminated against or penalized by the company?

A. No, I didn't.

Q. Did you sign it of your own free will?

A. I certainly did, because that was my feeling about the matter.

Q. Did any instructor or any representative of the management ask you to sign it?

A. They did not.

Q. Was there any coercion, suggestion, or influence of any kind brought to bear on you by the management or any

body that you felt was speaking for the management to cause or induce you to sign the petition?

A. Why, no.

Q. Did the statement express your sentiment?

A. It certainly did.

Q. Did you understand or hear from any source that the petition was being circulated by the Loyalty League?

A. No, I didn't.

Q. Was there anything said about the Loyalty League when the petition was handed to you?

A. There wasn't anything said at all. The girl just [fol. 4135] handed it to me, and I read it and signed it.

Q. And what did you do with it?

A. Passed it to the girl sitting next to me, or probably across the board from me.

Q. Now, did you belong to the Loyalty League?

A. Yes, I did.

Q. I will hand you respondent's exhibit No. 40 and ask you to state what that is.

A. That is a Nelly Don Loyalty pin.

* * * * * *

Q. Is the word "Loyalty" written at any place on that pin?

A. No, but that is what the "L" stands for.

Q. But the word itself is not written on it?

A. No.

Mr. Langsdale: May I see it?

(Thereupon respondent's exhibit No. 40 was handed to Mr. Langsdale by Mr. Ingraham.)

Mr. Ingraham: I offer in evidence respondent's exhibit No. 40.

Trial Examiner Batten: No objection? It will be received.

* * * * * *

[fol. 4136] By Mr. Ingraham:

Q. I believe you stated you were a member of the Loyalty League?

A. Yes, I was.

Q. What were the activities of the Loyalty League?

A. It was a social organization. We organized dances, some few plays, and things like that, and picnics.

Q. Did you pay any dues?

A. No. When they had a dance they sold tickets; or for any social activities they had, they sold tickets in the factory to take care of the cost.

Q. Did you ever hear that the Loyalty League was a union organization?

A. No, I didn't.

Q. Did you ever know or hear that the Loyalty League represented the employees, concerning their terms and conditions of employment?

A. No. That wasn't the understanding they gave me when I joined.

Q. Did you ever hear of the Loyalty League doing anything like that?

A. No, I didn't.

Q. Did you ever know of its having any dealings at all [fol. 4137] with the management?

A. No, I didn't.

Q. Did you gain the impression from any source or did you understand that the Loyalty League had anything to do with the formation of the Donnelly Garment Workers' Union?

A. No, I didn't. It was never mentioned.

Q. Did the fact that Rose Todd was president of the Loyalty League and presided at the March 18 meeting make you feel that the March 18 meeting was a Loyalty League meeting?

A. No, it didn't. The girls asked Miss Todd to seek this legal advice for us.

[fol. 4138] By Mr. Ingraham:

Q. With reference to Mrs. Reed's speech at the March 18 meeting, did she make any statement as to the employees joining or not joining any union?

* * * * * * *

A. She said they could join if they wanted to, she didn't have anything to say about whether or not they joined a union.

* * * * * *

By Mr. Ingraham:

Q. Did you feel that the March 18 meeting was an anti-union meeting that had anything to do with whether or not you had the right to join a union or did not have the right?

A. No.

Q. Did you feel that you could not express your independent views at that meeting if you wanted to?

A. No, I didn't.

Q. Now, did the fact that Rose Todd presided at the April 27 meeting, when the Donnelly Garment Workers' Union was formed, influence you into believing it was a Loyalty League meeting?

A. No, we knew if was not a Loyalty League meeting.

[fol. 4139] Q. What kind of a meeting was it?

A. It was just a mass meeting of the employees.

Q. And you weren't there because you were a member of the Loyalty League?

A. No, we were not.

Q. Was there any coercion or pressure brought on you by the Loyalty League or its officers to cause you to join the Donnelly Garment Workers' Union?

A. No, there was not.

. . . . . .

[fol. 4140] Q. Did you regard Rose Todd as a boss or a supervisory employee?

A. No, Rose didn't have any supervisory position as far as I know; none of the girls even thought she did.

By Trial Examiner Batten:

Q. Of course, the question was what you thought.

A. No, I didn't think she did.

By Mr. Ingraham:

Q. Did you have the feeling that she was representing the management in any activities that she was engaged in, with regard to the Donnelly Garment Workers' Union?

A. No, I didn't.

Q. Did you consider that whatever she said about the unions was the views of the Donnelly Garment Company?

A. No, I didn't.

Q. Did you feel any compulsion or coercion in your choice of a union as a result of anything that Rose Todd [fol. 4141] did or said?

A. No, I didn't.

Q. Did you feel free to differ with Rose Todd any time you wanted to?

A. Why, certainly; that is what the Wagner Act says, that we could make our own choice.

Q. What time did you state you went to work for the Donnelly Garment Company?

A. January 9, 1936.

Q. Who was in charge of the factory at that time?

A. Lee Baty.

Q. Is he still in charge of the factory?

A. Yes.

Q. Did the instructors, any instructor under whom you worked ever exercise any authority of hiring or firing or disciplining girls?

Miss Weyand: I object to the question as not within the scope of the offer of proof upon which we have the remand.

Trial Examiner Batten: Well, is it, Mr. Ingraham?

Mr. Ingraham: Yes, I think it is.

Trial Examiner Batten: Which offer of proof?

Mr. Ingraham: Well, I'll get the offer out.

Trial Examiner Batten: Well, I think we had better keep them out where they will be handy. Do you have that, [fol. 4142] Miss Weyand?

Miss Weyand: I have all the offers here. There are a number of offers. You can look over the ones I have, if you have that in mind, what you want to see.

Trial Examiner Batten: Yes.

Miss Weyand: This is the main one.

Trial Examiner Batten: Well, I am not so sure that this does not cover it, Miss Weyand. For instance, there are several places in here which state that these people would testify that neither directly nor indirectly did anyone representing the management have anything to do with the formation of the Donnelly Garment Workers' Union calculated or intended to influence the membership of the company employees.

Miss Weyand: Does that raise the question as to whether these persons can give their opinion of the status of anyone in the plant including the instructors?

Trial Examiner Batten: Well, I wouldn't say an employee who is in a sewing section can give her opinion about the general manager or Mrs. Reed or the office manager, but I do think that an operator who works in a section under an instructor, a specific instructor, that she certainly is in a position to say what she thinks her relationship to that instructor is.

Miss Weyand: Well, I don't think the offer opens any question of the opinion of the witness as to the instructors' [fol. 4143] supervisory authority. I think the record has already been made on that and I did not understand the terms of the offer to be directed towards whether or not the instructor was a supervisor. As I understand the offer, it is worded that neither anyone representing the management nor any instructor did this, that or the other thing, only the instructor doing the thing was in question. It is my view the offer does not open up the question as to whether or not the instructor was or was not a person who spoke on behalf of the management, within the terms of the Wagner Act.

Trial Examiner Batten: If they offer to prove no one connected with the management, directly or indirectly, had anything to do with the formation of the Donnelly Garment Workers' Union —

Miss Weyand: (Interrupting) They also offer to prove no instructor did it, in both sentences there, so I don't think the offer is opened up as to whether the instructor was, in the opinion of this witness, a representative of the management.

Trial Examiner Batten: Well, you are assuming, then, that question is a closed matter, is that it?

Miss Weyand: I am assuming that is not to be covered by the remand, that this offer was not directed at it, and that the Court did not intend to open that up by this remand.

Trial Examiner Batten: Well, then, my question to you [fol. 4144] is, if that is the case, doesn't that put the Respondent in a position where the Respondent, in questioning the employees, then, could only say, "Did that instructor belong to the Donnelly Garment Workers' Union, or did your instructor have anything to do with its organization"?

Miss Weyand: That is correct.

Trial Examiner Batten: And the question as to whether or not the instructor is a supervisor, that is a closed issue, is that your position?

Miss Weyand: That is my position.

Trial Examiner Batten: Mr. Ingraham, what have you to say, if anything?

Mr. Ingraham: Of course, we have the right to go into the matters that come within these offers of proof, and repeatedly in the offers of proof, we recite that instructors, not supervisory employees, did not influence these people.

Trial Examiner Batten: I don't find that. Where is that in the offer of proof?

Mr. Ingraham: Look at page 3460.

Trial Examiner Batten: Well, I don't have that page, but I happen to see it on page 3466. What page did you say it was?

Mr. Ingraham: 3460 in my record.

. . . . . .

[fol. 4150] Trial Examiner Batten: I think last night when we adjourned you had asked this witness a question, "Did any instructor under whom you worked ever exercise any authority of hiring or firing or disciplining girls?" I presume you meant by that question as far as this witness knows, her experience in that regard.

Mr. Ingraham: That's right.

By Trial Examiner Batten:

Q. You may tell us.

A. No, I never saw them exercise any authority over any girl at any time.

Q. Well, you mean —

A. (Interrupting) Or hire or fire.

Q. You mean from the time you started to work down to today, is that what you mean?

A. Yes, down to today.

. . . . . .

[fol. 4151] By Mr. Ingraham: —

Q. Mrs. Cooper, from the time that you became employed with the Donnelly Company until August of 1939, did you at any time consider an instructor your boss?

A. No, I understood when I went there — I was told that the instructor was not the boss, that their job was to instruct, and that is all I ever saw any of them do.

Q. By "instruct" what do you mean?

A. They sit down at the machine and show the girl how to work, and if the girl does not understand it, why, she explains to them just how the work is done, and sees that it is done right, and also she brings them their work and their samples, and things like that.

. . . . . .

Q. Have the telephones been used, to your knowledge, by the employees?

A. They are always used by the employees, they always have been since I have been in the employ of the company.

Q. And the company has placed no limitation on the use of the telephones?

[fol. 4152] A. No, they haven't.

Q. Now, do you know whether or not it is a fact that employees have at times used sewing machines to sew on their own dresses?

A. I know that they have, because I have [saw] them do it, they have even used company trims and thread and buttons to go on them.

Q. That was true before the union, the Donnelly Garment Workers' Union, was formed?

A. It was.

Q. And the use of the telephones?

A. It was.

Q. That occurred prior to the time the Donnelly Garment Workers' Union was formed?

A. It was.

Q. Will you state whether or not you joined the Donnelly Garment Workers' Union of your own free will?

A. I did.

Miss Weyand: I would like to make a statement in connection with that question. While we are here to take such evidence under the remand of the Court, it is my position that the question is one which should not properly be directed to the witness. I am, of course, acquiescing in the Circuit Court of Appeals ruling we do take such evidence, but I would like to make a statement for the record, of my position on that question.

[fol. 4153] I think such questions are improper in a Labor Board hearing, in the first place because they violate the principle of a secret election stated in Section 9 of the Act. The Congressional intent there expressed was clearly that employees should not be required to disclose in the presence of their employers or any representatives of the employers or in the presence of anyone else, if they did not so desire, whether or not they favored one union over another union.

To ask an employee who is still employed by the employer, in the presence of employer's representatives, whether or not she favors a given union, violates the principles of secret elections. I think the question is improper for a second reason, that is because the Board's inquiry in a Labor Board case is whether or not the employer interfered, restrained or coerced employees. The Congressional intent is clear that that inquiry is directed to whether or not the employer did certain acts, which normally and reasonably have the effect of interfering with, restraining or coercing.

It is not the Board's job to inquire whether or not the restraint, interference or coercion actually had that effect on any given employee. The Board is not required to look into the minds of the employees and see if any one or more employees are actually interfered with, restrained or coerced.

The Courts have repeatedly held that espionage, even [fol. 4154] though unknown to any of the employees, con-

stituted interference within the meaning of the Act and has held immaterial that no employee knew he was being spied upon, and it was held immaterial that the employer had not used the information that he received through the espionage for the purpose of depriving the employees of other rights in the Act.

There is a third reason why I think the question is improper in a Labor Board hearing, and that is that the proof, if we can assume it is proof, that any employee was not interfered with, restrained or coerced, has no weight or bearing upon whether or not any other employee was restrained, interfered with or coerced. That is a general proposition, that negative evidence does not establish the absence of affirmative evidence in other instances.

It is the Labor Board's duty only to show the acts of the employer are the type that interfered with, restrained or coerced; that if in this case, where the prior evidence shows the employer has interfered with, restrained and coerced certain employees, the fact they may provide many witnesses who think they were not interfered with, restrained or coerced has no bearing on whether other employees were interfered with, restrained or coerced.

For a fourth reason, I think the question is improper because of the unreliability of introspective inquiries. By reason of the very nature of the subject matter, the [fol. 4155] employees who have been the subject of unfair labor practices really become so interfered with or dominated that they do not know their own minds, even assuming they were able to speak in the presence of the employer freely. It is our position they cannot speak freely in the presence of their employer, and if they have been, for long years, under the interference, restraint and coercion of their employer, their state of mind is one which they cannot provide a fair introspective account of their own state of mind, because the domination, interference and restraint which the Act presupposes goes to the coloring of the employee's point of view, so he cannot look into his own mind and state what his position would have been if he hadn't been subject to this economic power which has been exercised over him unfairly by the employer.

For those four reasons it is my position that the line of inquiry here directed to whether or not an employee believes that he joined the Donnelly Garment Workers' Union of his own free will isn't a proper line of inquiry.

I am aware that the Court has directed us to take that testimony, and I will not object further in this hearing, but I do wish the record to show my position on this line of questions.

Trial Examiner Batten: You may have a continuing objection to this type of question. Mr. Tyler.

[fol. 4156] Mr. Tyler: I think it proper at this time for the Intervenor to state its position on that line of testimony.

Miss Weyand has suggested that it displaces and takes the place of the proper method of inquiry, which is a secret election. I wish to call the Examiner's attention to the fact that the Donnelly Garment Workers' Union has appealed and still appeals for a secret election, and that they have been denied this right for a period of five years, and that we submit we should have a secret election as the proper method of determining the will of the employees, which is just as capable, being really secret, of determining any other issues now, as it would be after this case had ended, no matter when it is in the future.

We are being denied the right of secret election, and now the Board says a secret election is the way to determine, but "you are denied that method and we now deny you the method of proper testimony," thereby completely eliminating the possibility of these employees making known what their desire is, which refers to the matter of testimony being in the presence of representatives of the employers, which I need not comment on, because it has been specifically covered by the Court of Appeals' opinion.

She then suggests what seems to me to be a remarkable idea, that introspective evidence is not of great value, because the employees do not know their own minds, and that [fol. 4157] the Board presupposes that they were dominated.

Now, the law is not, if the Court please, that these employees reach a correct conclusion or not that they reach a conclusion, even though using arguments which are wrong and incorrect. The only requirement of the Act is they reach their own conclusion.

Now, to say they didn't know their own minds is to say that the Board knows what is good for them better than they do themselves, and the law is they should reach the Board's conclusion and not their own.

I submit that the highest possible evidence of a man's motive or his state of mind is what he says himself; he does know what conclusion he reaches, even though he may have used incorrect arguments in reaching them; and that the attitude of the Board is clearly indicated in this case that "we will decide for these people, and they don't have enough brains to decide for themselves and that they don't know their own minds," which is a flat violation of this Act.

Not only is the testimony of these employees' intent admissible, but it is the highest evidence of what that motive, that influence and that choice is.

Trial Examiner Batten: Anything further?

Mr. Reed: I just want to ask — I tried to ask it before Mr. Tyler reached the floor — now, if you will give [fol. 4158] us a secret election, since you say these people are afraid to testify in the presence of their employers or their associates, will you now give us a secret election? And I challenge the Board to that.

Miss Weyand: I would like to state the Board's position with reference to a secret election for the record.

The Board's position has consistently been, and was upheld by the Courts in this regard, that a secret election cannot be fairly conducted if an employer's unfair labor practices have not been corrected or dissipated.

Mr. Reed: Well, you assume there are unfair labor practices, therefore you assume you can't have an election; therefore you get an election if the Board wants it and not as a matter of right, and the Board's position is, "We have prejudged you, you are guilty of unfair labor prac-

tices, and therefore we won't give you a chance to have an election or give the employees a chance to have an election to determine what their wishes are."

That is the fine logic we have in this case, and it runs throughout it.

* * * * * *

[fol. 4160] By Mr. Ingraham:

Q. Mrs. Cooper, do you feel free to testify in this hearing?

A. I asked to testify in this hearing.

Q. Just a moment. Do you feel free to testify to your honest views in open court?

A. Of course I do.

Q. Do you feel any restraint because representatives of the Management are present in court?

A. No, I don't.

Q. Has their presence in any way influenced you in any testimony that you have given?

[fol. 4161] A. They certainly have not.

* * * * * *

Cross-Examination.

By Mr. Tyler:

Q. Mrs. Cooper, would you mind turning your chair a little way? I have a few questions.

Mrs. Cooper, I believe you stated that you started to work with the Donnelly Garment Company in January 1936?

A. I did.

Q. How soon after you started work there did you become acquainted with Rose Todd?

A. Oh, I don't exactly remember. She used to come into the section all the time and bring thread and stuff to match up the material so she could order it. I knew who she was, but I never was really well acquainted with Rose, not as a personal friend, she was not a personal friend of mine.

Q. Have you talked with her on occasions?

A. I did after she became president of our union.

Q. Did you know what her job was?

A. I never knew what they called Rose, but I knew the kind of work she done.

Q. What did she do?

A. She came in the section and she looked up thread and things to match, thread and trims to match the work that they had in the section so it could be ordered, so that when the cuts of work went through that the thread and [fol. 4162] notions would be there for them to use.

Q. Did you ever regard her as one of the executives or bosses of the company?

A. No, I didn't.

Q. Did she ever tell you that she had authority to speak for the company about labor relations of the employees?

A. She did not.

Q. Did you ever hear her tell anyone else that?

A. I did not.

Q. Did you ever hear anybody in the factory say that Rose Todd represents the employers about labor matters?

A. I did not.

Q. Did you ever hear any rumor through the factory that Rose Todd was either the open or the secret representative of the employers?

A. I did not.

Q. Do you know Hobart Atherton?

A. I knew who he was but I never knew him.

Q. Did you ever hear he had authority to represent the employers about labor policies?

A. I did not.

Q. Now, to shorten it, Mrs. Cooper, was there any member of the Donnelly Garment Workers' Union, or any person who became a member of the Donnelly Garment Workers' Union, that you understood represented the employer or had authority to speak for the employer on [fol. 4163] labor relations?

A. There was not.

Q. Did you know, in 1937, girls or women who worked in other garment plants in Kansas City outside of the Donnelly plant?

A. I didn't know the names of some; some I used to ride to work with on the street cars, and I have talked to several of those.

Q. Did you ever hear from them what wages they were getting in their plants?

A. Well, I had several of them tell me that if the Donnelly girls joined the I.L.G.W.U. union they were crazy, because the I.L.G.W.U. were not living up to their contracts; their contracts called for one wage while they were being paid another.

Q. Did these conversations—

Trial Examiner Batten: (Interrupting) Mr. Tyler, do you think that testimony, without any identification at all, is of any great weight?

Mr. Tyler: I certainly do, Your Honor. I submit that information, regardless of where it comes from, reaches these employees about other conditions, may tend to show why they preferred to have their own union.

Trial Examiner Batten: Yes, I agree with you on that. I am asking you whether you think it is of great weight as [fol. 4164] compared with the identification of the source of information.

Mr. Tyler: I think it is of greater weight than the source of information. I think what these employees believed, as I believe Your Honor stated the other day, is really more important than where it came from.

Trial Examiner Batten: Well, I still think that, I still agree with you on that, Mr. Tyler.

* * * * * * *

[fol. 4166] Q. Did these conversations have any effect on your choice of labor union at all?

A. It certainly did.

[fol. 4167] Q. Mrs. Cooper, have you ever been a member of the executive committee of the Donnelly Garment Workers' Union? A. No, I haven't.

Q. Have you voted for members of that committee?

A. I have.

Q. In spite of the fact that you have never been on the committee, do you have any knowledge of any complaints handled by the Donnelly Garment Workers' Union with the employers?

A. I do. I went up with a bunch of girls one day.

Q. State what was done.

A. The price of the work we thought wasn't as good as it should be. It didn't compare with the prices the girls

in the tucking section were getting. We were on the embroidery machine and the embroidery machine was a harder machine to run that the tuckers were, and we didn't think it was fair that the prices on the embroidery should be lower than the prices on the tucking, so we called Lorraine Smith, our president, and had her make an appointment with Mr. Baty, and we went up to Mr. Baty's office and presented our views, and the prices were adjusted on some and on others it was not.

Miss Weyand: I object to the question and ask to have the answer stricken because, at least the latter part of it, as to Lorraine Smith as president of the union, referred to a date subsequent to the last hearing. I believe we are confined, under the offer, to events occurring prior to August, 1939.

[fol. 4168] As I recall, Rose Todd was president of the union continuously prior to that date.

The witness' answer would show she is referring to matters occurring thereafter, and I would like to have the answer stricken for that reason.

Mr. Tyler: I do not understand Your Honor's ruling to be that absolutely nothing occurring since the last hearing will be permitted in evidence. I understand that is the general rule, but where some event since 1935 reasonably throws light on the condition before that time, Your Honor will consider whether it is admissible.

I submit that the law is that the effective operation of a plant union down to the present day is admissible evidence on the matter of whether it has been since its inception an actual bona fide labor union. I submit that the evidence as to the actions of this group of people as a labor union down to today is admissible in this hearing on the question of whether they actually formed or operated that union themselves in 1937.

[fol. 4169] Mr. Tyler: The International is saying, suppose you did form it of your own free will and accord; it became subject to domination thereafter. We intend to show it was operated for the benefit of the employees thereafter.

Trial Examiner Batten: Doesn't that mean the Board [fol. 4170] would then have to show, in rebuttal of that testimony, that since the last hearing down to today it is still a dominated organization?

Mr. Tyler: I take it, it is on the Board to introduce evidence, if they have it, to show that the union is under domination, to show that its formation was dominated. If they show the union is dominated today, that is some evidence that it was created under domination. I think those things connect.

Trial Examiner Batten: What is the position of respondent on this matter?

Mr. Langsdale: The I. L. G. W. U. would be happy to accept that challenge and show it is dominated down to today and has been from the beginning.

Trial Examiner Batten: Mr. Ingraham, what is the respondent's position on that matter?

Mr. Ingraham: We have requested that the Examiner determine the scope of the hearing. I think that is a matter for the Examiner to decide, whether it is going to take in matters that occurred after the trial in 1939. Our position is that the complaint that is filed here and the answers make up the issues in the case, and that the evidence should be confined to the issues.

Trial Examiner Batten: We will all agree on that. But are the matters which have occurred since the last hearing [fol. 4171] down to today—is it necessary to receive those to determine the issues?

Mr. Ingraham: I really don't think that it is necessary. The Board has made certain specific charges, and I don't think that matters down to the present date are material to those charges.

However, so far as the International's challenge is concerned, we can meet that evidence. We are merely waiting for Your Honor to rule.

Trial Examiner Batten: I think, as far as that challenge is concerned, if the International feels that way about it, there is a perfectly proper way of bringing that to issue, and that is by filing some more charges.

I am going to rule now, as far as the testimony with respect to the offers of proof is concerned, we are not going into matters which occurred subsequent to the last hearing. The remand certainly could not possibly have contemplated those matters, and the offers of proof certainly could not have contemplated those matters.

On the basis of that ruling I, naturally, would strike this answer, with respect to this witness.

Mr. Reed: Are we, then, to understand that the case here is to be tried solely on the conditions existing at the time the charges were filed, before the time of the last hearing?

[fol. 4172] Trial Examiner Batten: That is correct.

Mr. Reed: That goes for everything in the case?

Trial Examiner Batten: That is correct. In other words, we are not going to try the issue from the time of the last hearing down to today. The circuit court would not have and could not have had that situation in mind, and certainly the offers of proof could not have contemplated it.

Now, that means, of course, that I shall have to go over the testimony thus far. If I recall correctly, there is some testimony covering matters subsequent to the last hearing.

Mr. Tyler: I desire to call Your Honor's attention to the fact that the offer of proof of intervener's states that not only did they organize this union of their own free will, but that they have operated it since. That is a continuing thing. And I think that the Court of Appeals did not mean in the remand to limit this hearing to the exact words or the exact incidents set forth before, but to a kind of evidence, and that this is within the kind of evidence.

[fol. 4173] Mr. Tyler: Very well. I do not know that this particular question has arisen before in this hearing and I ask that we be given a continuing exception to this line of testimony, if that is not already in the record.

Trial Examiner Batten: You will be allowed a continuing objection, Mr. Tyler.

[fol. 4174] Mr. Tyler. Please insert ". . . to the Master's ruling on this line of testimony."

. . . . . .

Mr. Langsdale: I want to state the position of the I. L. G. W. U., to make it clear on this. We are ready now to go ahead down to date with our evidence, if the Examiner thinks we should. I believe the Examiner's ruling is correct, under the remand, but I would like to see the Examiner let the bars down, because we are thoroughly prepared to show acts of domination right up to yesterday, if necessary. That is our position.

[fol. 4175] I say that, however, with the further statement that I think the Examiner's ruling is a correct one.

I made that objection during the testimony of Mrs. Reed. She testified to things down to date. Now, will we have to go through that testimony and ask that certain portions of it be stricken, or will it be taken as stricken where it violates the ruling just made?

Trial Examiner Batten: I intended to go through the testimony. I might say that I have no apologies to make for permitting Mrs. Reed the latitude I did. If I were doing it all over again, I think I would do the same thing. And I think I said at the time that if there were any other person of, I would say, comparative importance who was unable to testify in the prior hearing, I would, I think, follow the same procedure. But I think I stated when I made my ruling that I intended to go over the testimony thus far.

Mr. Langsdale: I am not in any way infimating a criticism of the Examiner for permitting Mrs. Reed to so testify, but I think under this ruling a large part of her testimony should be stricken.

Trial Examiner Batten: I intend to go over it, and I will advise with all counsel after I have.

. . . . . .

[fol. 4176] Mr. Tyler: Mrs. Cooper, did you happen to know of any complaints handled through the Donnelly Garment Workers' Union or its committees before 1939;

that is, within a year and a half after the union was formed—within two years after the union was formed?

Mr. Langsdale: What is the date upon which we will close the evidence, the last day of the hearing?

Trial Examiner Batten: That is correct. I believe it was July 15. Do you have it, Miss Weyand?

Miss Weyand: Yes. July 15 is the correct date.

Trial Examiner Batten: From April 27, 1937, to July 15, 1939—a little over two years.

A. I can't think of any specific instance where any of the girls I work with actually went up with a complaint prior to that time. I heard of several of them, but I didn't know the actual details of it.

By Mr. Tyler:

Q. You did not have personal knowledge of it?

A. No.

[fol. 4177] Q. But you heard that numerous complaints were handled through the union; is that correct?

A. That is right.

Q. Did you ever see Mrs. Reed or Mr. Baty or Mrs. Reeves at a meeting of the Donnelly Garment Workers' Union between and including the date of its formation up until July, 1939?

A. I don't remember ever seeing them there.

Q. Did you ever see anyone at the meeting of the Donnelly Garment Workers' Union who you understood had authority from the employer in connection with labor relations or was in any way a supervisor or boss?

A. I did not.

Q. In the meeting of April 27, 1937, was or was not a statement made that the employees had the right to do exactly as they pleased about forming a labor union or not forming one?

A. It was made by you, yourself, Mr. Tyler.

Q. By anybody else?

A. By Rose Todd, too.

Q. Did you see any evidence of any coercion or threat or oppression about forming a labor union there?

A. I did not.

Q. Did you see any evidence of denying anyone present the right to speak his or her own mind without any punishment being threatened for it?

A. I did not.

[fol. 4178] Q. Will you state, as far as your memory goes, just what happened in that meeting of April 27—what you remember of it?

A. I don't remember all of the details, but I remember that you came down and told us we could form our own union, under the law, if we wanted to, and that the vote was taken and the girls voted to form their own union, and the committee was voted on to go out and bring back some names of the chairmen, and things, for the first union committee, and then they were voted on. Then, they passed out cards for the girls to sign if they wanted to join the union.

Q. Do you remember whether there was or was not any offer made to let anyone who didn't want to make up their mind then and there take further time and decide whether they wanted to join or not?

A. They said they could sign or not, whichever they chose; the cards would not have to be in until the next evening.

Q. How long did the meeting last?

A. It was several hours. I don't remember. I know I was awfully late getting home.

Q. What is the fact, Mrs. Cooper, according to your best knowledge, as to whether these employees acted of their own free will or whether they were coerced into forming the union?

. . . . . .

[fol. 4180] A. I never heard any of them make any complaints about being coerced, or anything. They all seemed to be acting from an urge within themselves to form this union. They all seemed very anxious, all of them I talked to. Of course, what they really thought, I can't say, but that was my opinion.

. . . . . .

By Miss Weyand:

Q. Did you ever work in another garment factory before you began working at the Donnelly Garment Company?

A. I did.

Q. When did you start working in garment factories?

A. Sixteen years ago.

Q. What garment factory did you start working in?

A. The Kansas City Embroidery Works.

Q. How long did you work at the Kansas City Embroidery Works?

A. About 7 months, I believe.

Q. Where did you go from the Kansas City Embroidery Works?

A. Brooke Curtain & Embroidery Company, 2609 Walnut.

Q. How long did you work for the Brooke Curtain & Embroidery Company?

A. I worked there about two years before I was married; then, I went back after my first son was born and worked there for approximately a year.

Q. Could you fix the date on which you went back?

[fol. 4181] A. No, I couldn't. It was in 1931.

Q. And where did you go after working there?

A. To the Liberty Garment Company.

Q. How long did you work at the Liberty Garment Company?

A. It wasn't very long. I believe it was about 6 or 8 months, something like that.

Q. That was in 1933, was it, or 1932?

A. I don't remember. It was just a few months. I went over there when we were out of work at Brooke's; I went over there and worked a few months. I don't remember how long it was.

Q. Did you return to Brooke's after that?

A. Yes.

Q. How long did you continue to work at Brooke's?

. . . . . .

[fol. 4182] A. I can't remember. I know my second son was born in 1932. I went over to Donnelly's and worked there a few months before he was born, and then I [fol. 4183] went back over to Donnelly's and worked when he was 8 months old. That would have been the latter part

of 1932. No. It was the first of 1933. I worked there a few months, and then I quit and went back to Brooke's.

By Miss Weyand:

Q. Was that the first occasion upon which you had ever worked at Donnelly Garment Company?

A. Yes, it was.

Q. Then did you continue to work at Brooke's continuously until you went to Donnelly's in January of 1936 or—

A. At one time I was laid off and I went over to the Liberty and worked over there until they got some more work, and then I went back to Brooke's and worked there until I went to Donnelly's in 1936.

. . . . . .

Q. Thank you. How did you come to get your job at Donnelly's in January 1936?

A. I was laid off at Brooke's and I came over there and asked for work.

[fol. 4184] Q. Whom did you speak to at Donnelly's?

A. Mrs. Hyde.

. . . . . .

[fol. 4186] Q. Do you remember the conversation which occurred when you asked Mrs. Hyde for a job at the Donnelly Garment Company in January 1936?

A. Most of it.

Q. Will you please state it?

A. I had asked—I had put in my application first and she came and told me to come in.

Q. When did you put in your application?

A. About two days before I was hired.

Q. And that was in January 1936, was it?

A. Yes. She called me and left word with my brother-in-law to have me come over and see her, and I went over to see her, and she understood that I was an embroidery girl, and I told her that I was; and she wanted to know who I worked for, and I told her I worked for Mrs. Dorsey.

[fol. 4187] Q. When you mentioned Mrs. Dorsey, is that the instructor at Donnelly's whom you had worked for previously?

A. Yes, I worked for her two weeks in December—now, wait a minute and I'll tell you—in the last part of November or December, 1931.

Q. I interrupted your statement of the conversation with Mrs. Hyde; would you continue it?

A. She said the work wouldn't be steady, that she only had a few weeks' work, that it was on the embroidery machine. She wouldn't promise me it would be steady; so when I ran out of work they gave me another machine, so I started working there on different machines outside of the embroidery machine.

Q. Had you worked on other machines than the embroidery machine prior to January, 1936?

A. Yes, when I worked at the Liberty Garment, I ran a straight needle machine.

Q. Did you receive higher pay for operating the embroidery machine than for the other machines on which you worked at Liberty?

A. At the Liberty?

Q. Is it generally higher pay on embroidery machines?

A. Yes, it is.

Q. And the embroidery machine is your specialty, is that correct?

[fol. 4188] A. Yes.

Q. And was down to August 1939, is that correct?

A. That is correct.

Q. Was there more to the conversation with Mrs. Hyde than you have stated?

A. Not that I remember.

Q. Did she then hire you?

A. Yes, she did.

Q. When did you start work?

A. The same day.

Q. What section did you get into?

A. Etta Dorsey's section, No. 415 I believe it was.

Q. What floor was that on?

A. I believe it was on 8, where it is now.

Q. Have you been on the 8th floor continuously?

A. No, I worked all over the factory since I been there.

Q. What machines did you operate in Etta Dorsey's section in January 1936?

A. The embroidery machine.

Q. Was Etta Dorsey's section composed entirely of embroidery machines?

A. No; it was a special section; we had tuckers, arm tuckers, and a few air line tuckers, and I believe she had a few double stitchers at that time.

* * * * * *

[fol. 4189] By Miss Weyand:

Q. Was an instructor regarded as a boss at any of the plants at which you had worked prior to coming to the Donnelly Garment Company in January, 1936?

A. Well, I know when I went to work at the Liberty, I went and seen Lena Cross. She put me to work at the Liberty; she told me to come in, and she was my floorlady and instructor at the time I went to work there.

Q. She hired you, did she?

A. She did. Whether she spoke to the management about that, I don't know; but she told me to come in and I [fol. 4190] went in and went to work, I went directly to her for the job.

Q. She was regarded as a boss at the Liberty Garment Company?

A. She was floorlady and instructor, so I suppose she would be the boss.

Q. Was she usually called "instructor" at the Liberty?

A. I don't remember, Miss Weyand, whether they called her the instructor or not.

Q. Did they have instructors at the Liberty, other persons who were called instructors?

A. They had one or two women, but I didn't know them. You see, I knew Lena personally.

Q. Did you have sections at the Liberty?

A. No, they didn't have the special work we do at Donnelly's, and it was not near as large a place, and all of them who worked there—some of the women brought bundles and others done different things.

Q. Did you have instructors at any of the other plants at which you worked other than Donnelly's?

A. Yes, we had an instructor at Brooks—it was later changed to W. H. Beaumont and Son; I worked there when it was under that name.

Q. Who was the instructor you were referring to at Brooks?

A. Martha—I know her name as well as I do mine—Martha—she worked on the machine with me for years be-

[fol. 4191] fore she was instructor—Lauber, L-a-u-b-e-r (Spelling)

Q. Did you regard Martha Lauber as a boss at Brooks?

A. Yes, I did.

Q. Was there a thread girl at Brooks? A. No.

Q. Were there thread girls at any of the other plants at which you worked prior to Donnelly?

A. Not in the same way we have them at Donnelly's. There was girls that wound thread at Brooks, it had to be wound off of the comb onto the spools, and they called them thread girls, but their sole job was to take care of the needs of the operators.

* * * * * *

[fol. 4193] Trial Examiner Batten: We will proceed.

By Miss Weyand:

Q. When you went to work at the Donnelly Garment Company in January of 1936, were you given any instructions, written or oral, as to the authority of the supervisors, what rules you were expected to follow, or your duties as an operator? A. I don't believe I was.

Q. How did you start to work; do you remember? Did Mrs. Hyde take you down to a section? A. She did.

Q. Did she introduce you to Mrs. Dorsey?

A. I already knew Mrs. Dorsey, and when I went up there she said, "Yes, I remember her. She has already worked for me."

Q. And then you started to work? A. Yes.

Q. And no one told you what rules you were to follow or whose directions you had to follow, or anything?

A. One or the other, either Mrs. Dorsey or Mrs. Hyde, told me Mr. Baty was in charge of the factory, but I can't remember now which one of them it was.

Q. And that was in January of 1936, when you went to work there? A. Yes.

Q. Did they tell you anything further about your duties?

A. No. They just showed me how to do the work—Mrs. [fol. 4194] Dorsey did, and she came around and looked at it, and that was all there was to it.

Q. Did they introduce you to Mr. Baty? A. No.

Q. When did you meet Mr. Baty?

A. Oh, I saw him there all of the time. They told me who he was, but I never was introduced to him.

* * * * * *

[fol. 4196] Q. Were you given any instructions, oral or written, or any rules of conduct, which stated what your duties as an operator were between January, 1936 and July, 1937?

* * * * * * *

[fol. 4198] A. Miss Weyand, I can't remember ever working in a place where they did, when you went to work, give you any instructions along that line.

* * * * * *

Q. Were you ever told what the duties of the instructors were?

A. One of the instructors told me one time, what they told her.

Q. Who was that instructor? A. Grace Davis.

Q. Was she an instructor? A. She is now.

Q. Was she at the time she told you? A. Yes.

Q. When did she tell you?

A. It has been around a year and a half.

Mr. Reed: That is after—

Miss Weyand: That is correct, and I am abandoning that line of questioning.

By Miss Weyand:

Q. I will ask you if you ever received any such information prior to July 15, 1939. A. No.

Q. So you never, prior to July 15, 1939, were told by [fol. 4199] anybody at Donnelly's what the authority and duties of an instructor were?

A. No. I never asked anybody anything about that, and no one ever told me.

Q. Were you ever told what the duties or authority of Lena Tyhurst were prior to July 15, 1939?

A. Nobody ever told me what she was supposed to do, but I know what she done in relation to the work I do.

Q. What did she do?

A. She comes around and inspects your work, especially on new work which is going through, to see that the

work is going through all right; and if she doesn't think it is all right, she will take the part you have and the parts all over the factory and have one dress made up to see if there is any doubt about whether it is all right or not. If some girl changes her work, Lena inspects it to see whether or not it comes up to qualifications.

* * * * * *

[fol. 4200] Q. What section were you working in in March and April of 1937?

A. I was working in 415, on the embroidery machine.

Q. Who was the instructor?

A. I don't remember now. They change those around. [fol. 4201] Sometimes Grace Davis, sometimes Kathryn Rosen, and sometimes Etta Dorsey. I don't remember at that time which one of them had that section.

Q. Do you remember any instructor under which you worked during the months of March or April of 1937?

A. I believe Mrs. Dorsey still had the section at that time.

Q. Did you work under Mrs. Dorsey throughout the months of March and April, 1937?

A. I would say that I did.

Q. Who was the thread girl in that section at that time?

A. I don't believe we had one. I don't remember that we did.

Q. When did you join the Loyalty League?

A. The first part of 1936.

Q. Do you remember the occasion upon which you joined?

A. The president of the Loyalty League sent me a notice that I was eligible for membership if I wanted to join the Loyalty League.

Q. Who was the president of the Loyalty League?

A. I don't remember now who it was.

Q. Where did you receive the notice?

A. It was brought to my machine.

Q. Was that during working hours? A. Yes.

Q. What did the notice state?

A. That I was— It said, "You are now eligible for [fol. 4202] membership in the Nelly Don Loyalty League."

Q. Was it a printed notice?

A. I don't remember, Miss Weyand, whether it was or not.

Q. Who brought it to your machine?

A. I think the instructor did.

Q. Who was the instructor at that time?

A. I believe, Mrs. Dorsey.

Q. What did you do after you received the notice?

A. I went to the desk of the president. But I still can't remember who it was.

Q. Where was the desk located?

A. I don't remember, Miss Weyand. I wasn't very interested. I had two small children, and I didn't go in much for social affairs, dances, and such things. I wasn't very much interested.

Q. The president did have a desk in the plant somewhere?

A. Either they had one or they were using someone else's.

Q. What occurred when you got to the desk?

A. I told whoever it was that I wanted to join the Loyalty League.

Q. And what did she say?

A. I couldn't remember the exact words, Miss Weyand, but I know I got a Loyalty pin.

Q. Was it a man or woman who was president?

A. I think it was Herbert Mutchler, but I won't swear [fol. 4203] that it was.

Q. Did you get the pin on the first occasion on which you called at the desk?

A. No. I ordered the pin and it was later brought to me—sent up through the section. I suppose the instructor brought it to me.

Q. Did you sign any card or pledge when you went to the desk? A. I don't remember that I did.

Q. Do you remember signing anything on that occasion?

A. I might have, but at this time I don't remember.

Q. Did you receive any membership card?

A. I don't think they issued membership cards.

Q. Could you tell me what the number that appears at the bottom of the Loyalty League pin stands for? There is a number on the pin you produced yesterday—12 hundred and something, I believe.

A. That is your number. The pin as it is issued—each one is given a number. My particular number was 1022.

Q. Did that represent you were the ten hundred twenty-second member who had joined the Loyalty League?

A. I believe that is right.

Q. Do employees keep their pins when they cease to work for the company?

A. I imagine they do. They pay for them.

. . . . . .

[fol. 4207] Q. Could you give me the names of the girls who were working near you in March, 1937?

A. I know a lot of girls that worked in the same section with me at that time.

Q. Will you please name the ones you know—you knew at that time or were friendly with, the names of those you knew?

A. Emma Davis, Ann Perry, Mary Maifreda, Elsie Holloway, Beulah Green—Those were the ones I knew the best.

Q. Do you know the names of the girls who worked on either side of you the first part of March, 1937?

A. No, I couldn't remember that far back who worked any certain places.

Q. Do you remember the names of any other girls in that section in the early part of March, 1937, other than Perry, Maifreda, Davis, Elsie Holloway, Beulah Green?

A. Yes, Dorothy Osshier, Mable Spielbusch, Claris Martin, Catherine Pflumm—I believe that is most of them.

. . . . . .

[fol. 4208] Q. Do you remember what time of day the Loyalty petition which you were looking at yesterday was circulated through the 8th floor?

A. I believe it was in the morning.

[fol. 4209] Q. Had you heard about such a petition before it was brought to your attention?

A. No, I didn't. Some of the other girls in my section had heard about it, and talked it over, but I hadn't heard anything at all about it until it was brought to my machine.

Q. How did you know they had talked it over?

A. They told me they had discussed it with some of the other girls.

Q. But they had not mentioned it to you until the petition came?

A. That's right.

Q. Where were you working in your section? Were you at the end of the row or in the middle of the row?

A. I was in the middle of the row on the northwest side of the building on the 8th floor.

Q. What section was immediately adjoining your section?

A. Well, ours was No. 415—it must have been 414.

Q. Who was the instructor in 414 at that time?

A. I believe Mary Copowycz was.

Q. Do you remember whether the petition was passed through your section before it was passed through the other section, or the other way around?

A. I don't remember but—

Q. (Interrupting) You do remember it was passed?

Mr. Reed: Let the witness finish the answer.

[fol. 4210] Miss Weyand: I am sorry.

By Miss Weyand:

Q. Had you completed your answer?

A. I am trying to remember—I believe it started in the east end of 415; I am sure it did, because it was next to the door, and I remember seeing one of the girls at the end of the other—you see, there are two rows of machines in our section, and I remember one of the girls at the end of that row took it to the other section so it must have come to ours first.

Q. And then one of the girls in your section took it over to 414, is that correct?

A. That's right.

Q. Do you remember who that girl was?

A. No, I can't. They were doing different work than what I did; there were tuckers and double stitchers over on that row and I didn't know all those girls well that was in the other section.

Q. Who was the thread girl in Mary Copowycz's section?

A. I don't remember whether she even had one or not.

Q. Do you know what section the petition went through before it came to your section?

A. No, I don't.

Q. Do you remember how many sheets were in the petition when it was passed to you?

A. No, I don't.

[fol. 4211] Q. Was it more than one sheet that came to your hands?

A. I don't think it was, Miss Weyand.

Q. Do you remember whether there were other sheets passed around at the same time you were signing on the sheet which you signed on?

A. I wouldn't know that either, but I don't believe there was on the 8th floor, because I know that several different sections signed on this same petition that I had.

Q. Did the girl on the right of you sign, and then you sign and then the girl on the left of you, on the same sheet, and the same sheet pass down the row?

A. It did.

Q. You mentioned that Mary Sprofera and some other girl came on the 8th floor with the petition. Do you remember what they did, specifically?

A. They took it to one of the girls in the other end of 415—I don't remember how come I was up there, but I saw them bringing the thing up, and they gave it to the girls, but what they said I don't know; they didn't give it to me first, they just brought it up to the section and then left it. I can't tell you what they said, because I wasn't over there, but I saw the two girls up there.

Q. The two girls you saw up there were whom?

A. Inez Warren and Mary Sprofera.

Q. And do you know the name of the girl to whom they [fol. 4212] gave it?

A. No, I don't; she was on the other end of the row.

Q. Were there any men in your section at that time?

A. No.

Q. Do you know Ada Wolfe?

A. Yes, I do.

Q. Do you know what her job was in 1937?

A. No, I don't.

Q. Was she ever a thread girl or an instructor?

A. Oh, she is an instructor now, and I believe she has always been. I don't know for sure because I never worked for her.

Q. You think she was always an instructor?

A. I believe she was.

Q. During the whole time you worked at the plant?

A. I won't say for sure she was, because I never actually worked for Ada, and I don't know.

Q. Did she work on the 8th floor?

A. No, I believe she was either on the 6th or 7th.

Q. Was she an ordinary operator during the entire time which you were employed by the company?

A. I don't know, Miss Weyand; I don't think she was.

Q. Was she ever a thread girl?

A. I don't know that either. I would know if I had worked close to her, you know, in her section, I would have [fol. 4213] known, but if she was anything but an instructor I don't know.

Q. Do you know Lillian Lubben?

A. No, I don't.

Q. Do you know Gertrude Martin?

A. No, I don't.

Q. Do you know Lillian Scott?

A. Lillian Scott? I don't know; I knew a girl, I believe —I believe her name was Lillian Scott, she isn't there any more.

Q. Was she in your section in 1937?

A. No; I believe she worked for Ada; she was a snap girl or something.

Q. Do you know Etta Mae McCurry?

A. Yes.

Mr. Ingraham: I want to ask Miss Weyand if these people are instructors or any persons named in the offers of proof.

Miss Weyand: Most of the people whose names I have read were named in the offers of proof.

Mr. Ingraham: As making the offers of proof?

Miss Weyand: As witnesses whom you offered.

A. I know Etta Mae McCurry.

By Miss Weyand:

Q. Was she in your section?

A. No, she was in Mollie Smith's section.

Q. Where was Mollie Smith's section in 1937?

[fol. 4214] A. I believe it was on 6.

Q. Do you know Elmer Jones?

A. I do know Elmer Jones,—I did know Elmer Jones when he worked there.

Q. What was his job?

A. Making buttons and buckles.

Q. Was he in your section?

A. When I worked for Mollie he was.

Q. And what floor was that?

A. That was still on 6.

Q. Did he ever work on the 8th floor with you?

A. Not when I was there he didn't.

Q. Do you know Myrtle Cox?

A. Yes; not personally, I know who she is.

Q. Did she work in your section?

A. No.

Q. Where did she work?

A. She worked part time for Mollie too.

Q. Do you know where she worked in March 1937?

A. No, I don't.

Q. Do you know whether she was working on the 8th floor?

A. No, I don't.

Q. Do you know Ronald Morrell?

A. Yes.

Q. Where did he work?

[fol. 4215] A. For Mollie Smith.

Q. Did he ever work in your section?

A. No, only when I worked for Mollie.

Q. Did he work on the 8th floor?

A. No, that was 6.

Q. Do you know William Hawks?

A. Yes.

Q. What did he do?

A. He made buckles and buttons too.

Q. That was on the 6th floor, in Mollie Smith's section?

A. Yes.

Q. Is it possible you were working in Mollie Smith's section in 1937 when the petition was circulated through the plant?

A. No, it is not, because I clearly remember I was on 8.

Q. Do you know Agnes Hollyday?

A. Yes, but she isn't there now.

Q. What section did she work in?

Trial Examiner Batten: You mean at that time?

Miss Weyand: When she knew her.

A. Agnes Holliday worked out of the notions department, I believe; I know she came into Mollie's and brought stuff there for the girls to work on, you know, the parts of buckles and things; I believe she worked out of the notions department.

By Miss Weyand:

Q. Did she work in your section at any time?

[fol. 4216] A. No.

Q. Did she ever work on the 8th floor?

A. Not that I know of.

Q. Do you know where she was working in April '37?

A. No, I don't. The only time I ever knew her she was working in the notions department.

Q. Do you know Elsie Feiser?

A. Yes.

Q. Who was she?

A. She worked for Mollie Smith.

Q. Did she ever work in your section on the 8th floor?

A. No.

Q. Do you know Sue Nell Huston?

A. No.

Q. Do you know Avis Mowry?

A. No, I don't.

Q. Do you know Ruth Holdman?

A. No, I don't.

Mr. Reed: I would like to ask the object of this examination, where it is leading to, what issue in this trial it affects, whether this young lady knew these various parties.

Miss Weyand: I will state at this time those are the names which appear preceding and following what seems to [fol. 4217] me to be this young lady's signature on the Loyalty pledge. I will ask her to identify her signature.

By Miss Weyand:

Q. Is that your signature, the 1, 2, 3, 5th, signature from the bottom in the 3rd column of the Loyalty pledge, is that your signature?

A. It certainly is.

Q. Do you know how those people came to sign before and after your name when it was passed through your section, which you said it was?

Miss Weyand: That is page 5961 of the exhibit which was admitted in the record, if she cares to look at this exhibit, a photostat of the same document.

A. Sure.

Miss Weyand: Only this has the Labor Board Exhibit on it before it was photostated.

Mr. Stottle: What was that page number?

Miss Weyand: 5961. I would like to have this pause shown in the record, in time, if it could be indicated.

Mr. Ingraham: Don't you want the witness to consider her answer?

Miss Weyand: Sure, I want her to consider as long as she desires before she answers the question.

A. I still can't remember being in that section when I signed it.

By Miss Weyand:

Q. And you remember that you were on the 8th floor [fol. 4218] when you signed it?

A. I still think I was on the 8th floor when I signed it.

Q. It was passed from one girl to another on the 8th floor, and you saw Mary Sprofera and the other girl bring it to the 8th floor section?

A. I certainly did, I saw them bring it to the 8th floor.

Q. Do you need to study that further?

A. Is this the document that was photographed for Mrs. Reed, that was taken out and presented to Mrs. Reed?

Mr. Ingraham: Yes.

A. I still can't remember being in Mary Sprofera's section — I must have been working down there, but I am positive — I still don't know how come those names on each side of mine, because I am positive I was working on the 8th floor.

By Miss Weyand:

Q. Were you working on the 8th floor at the time of the meeting of March 18th, at which Mrs. Reed spoke?

A. I think I was.

Q. You stated that prior to that meeting you heard a discussion in the lunch room that there was going to be a meeting, is that correct?

A. That is correct.

Q. Do you remember whom you heard discussing that in the lunch room?

A. That was the girls I ate with, but I don't remember [fol. 4219] now who they were.

Q. Whom did you usually eat lunch with, any given girl?

A. No, it depended on where I was working.

Q. Were they girls from the section in which you were working?

A. Yes, they were girls from the section in which I was working.

Q. Do you remember whether they were girls from the 8th floor section that you discussed this with prior to the March 18th meeting?

A. No, I don't.

Q. I believe you stated that for some time prior to the March 18th meeting you had been discussing the newspaper articles and bringing clippings down; is that correct?

A. That is correct.

Q. Did you bring clippings down?

A. No, I didn't. I didn't take the Post; I read them in the Star, but some of the other girls did bring the clippings down.

Q. Did you subscribe to the Star?

A. Yes.

Q. Do you remember any girl who brought any clipping down?

A. Well, I remember Elsie Holloway used to bring the Post clippings down.

Q. Do you remember she brought any clippings down from the Post prior to the meeting at which Mrs. Reed spoke?

[fol. 4220] A. That has been so long ago I can't give you any given time on it, but it was during the time of that publicity that was in the papers during those weeks.

Q. And was that before the time Mrs. Reed spoke?

A. Part of it was.

Q. How much of it was?

Mr. Reed: Well, the dates are on the papers in evidence, and would be the best way to fix the dates.

Miss Weyand: This young lady testified she had been discussing them a week before the articles appeared. I would like to have her be more specific. The answers she gave to the questions that counsel for company asked are so vague I don't believe they were worth anything. I asked her how much discussion, who it was with and what about, and I would like to have her state that.

Trial Examiner Batten: Do you recall the question?

A. Yes, you asked — read the question again, please.

Miss Weyand: Read the question again, please.

Trial Examiner Batten: Will you please read the question?

(Last question read by the reporter.)

Mr. Reed: How much of what?

Trial Examiner Batten: How many of those clippings were brought down and discussed prior to the meeting of March 18th?

A. Well, all of them that came out in the Post were brought down by these girls about that time; I think there [fol. 4221] was a week or two, something like that, maybe longer than that; I can't remember that long.

By Miss Weyand:

Q. But you had been discussing the strikes, you think, for several weeks before Mrs. Reed's speech?

A. Oh, it wasn't a great number of weeks.

Q. Could you give us the best recollection you have of how many weeks it was?

A. During the first part of March.

Q. Do you think it was from early March until March 18th?

A. Well, I know we discussed all that came out in the papers at all times, before Mrs. Reed spoke and after.

. . . . . .

[fol. 4223] Q. How many girls were excited or upset before the March 18th speech, in your opinion?

A. All of them I talked to were.

Q. How many days before had they been excited or upset?

A. Ever since the articles started appearing in the papers.

Q. Was that a week, in your estimation, or ten days?

Mr. Reed: I submit this has been gone over two or three times in the last few minutes.

Miss Weyand: She hasn't given me a definite answer as to how much time this had been going on prior to the March 18th speech, and I would like a definite estimate from her as to how long this had been going on.

Trial Examiner Batten: I think she has testified ever since the articles, and she testified they were from the [fol. 4224] first part of March to the date of the meeting.

By Miss Weyand:

Q. Is that correct, is it your recollection that it was from those articles down to the date of the meeting?

A. Yes, that is my recollection; I could be wrong.

Q. It is your definite recollection that for a considerable number of days prior to the March 18th meeting, the girls were agitated, excited, and upset?

A. That's right.

Q. Are you certain it was as long as a week before?

A. I am certain it was, yes.

Q. When did you first hear that there was going to be a meeting of the employees on March 18th?

A. Did you say when or where?

Q. When?

A. It was that day. That was the first day it had been discussed in my hearing.

Q. It was at lunch that it was first discussed?
A. Yes, that was the first I heard of it.
Q. What did you hear at lunch about the meeting?
A. I heard the employees wanted a meeting, and that they had agreed to meet on the second floor after work.

. . . . . .

[fol. 4240] Q. Now, for the meeting of April 27—that is the date the Donnelly Garment Workers' Union was formed—isn't it a fact that the employees went down in sections so as to stagger the use of the elevators?
A. They went down when they got off from work, and they get off at different times, so they probably didn't all go down at once.
Q. They went down in sections, didn't they? Didn't your section all go down at one time?
A. No. Some of the girls dressed and some of them didn't; it just depended on whether they wanted to get out in a hurry after the meeting.
Q. Some of them did what?
A. Some of them dressed, and some of them went down in their aprons. It was past working hours, and some of them dressed and some didn't.

. . . . . .

[fol. 4241] Q. Now, isn't it your recollection that the employees did go in sections, so that they wouldn't crowd these two elevators, to the meeting of April 27?
A. That isn't my recollection.
Q. It is your recollection—
A. —that they just went on down like they do in going home. The meeting was late enough that the sections that got off later than we did, or later than other parts of the building, could attend, too.
Q. Have you any definite recollection as to when that meeting was held?
[fol. 4242] A. No. After working hours.

. . . . . .

[fol. 4243] By Mr. Langsdale:
Q. At any rate, you knew that Miss Todd was president of the Loyalty League, didn't you?
A. Yes.

Q. And you knew that she presided at this meeting of April 27th, didn't you?

[fol. 4244] A. Yes, I did.

Q. I believe you stated Mrs. Reed did not read a letter from the I.L.G.W.U. at the meeting of March 18, is that your recollection?

A. That is my recollection.

Q. Did you hear the letter read at that meeting?

A. I believe one of the girls read part of one of the pamphlets that the girls had handed her out in front of the building.

Q. Do you know who that was that read the letter?

A. No, I don't.

Q. When you speak of "one of the pamphlets," the pamphlet contained the letter, didn't it?

A. Yes.

Q. But you know it was not Mrs. Reed that read the letter?

A. I know Mrs. Reed didn't read the letter; she was not there over 15 minutes, and I believe it was less than 15 minutes.

Q. And did you attend most of the meetings of the Donnelly Garment Workers' Union?

A. I wouldn't say that I did most of them.

* * * * * *

[fol. 4245] Q. I believe you stated that you never heard Mrs. Reed make a speech at any meeting of the employees, except that meeting of March 18?

A. That's right, that is the only time I have ever heard her speak.

Q. Mrs. Cooper, do you know how many days you have been here in the courtroom when testimony was going on, before you went on the witness stand?

Mr. Reed: Do you know how many days the case has been running, off-hand?

Mr. Langsdale: I am just asking her. I can tell you.

Mr. Reed: You can beat me.

A. I couldn't say exactly, because I was up here some parts of days.

By Mr. Langsdale:

Q. You were here during Mrs. Reed's testimony, or part of it?

A. Part of it.

Q. How many days were you here while Mrs. Reed was testifying?

* * * * * *

[fol. 4246] By Mr. Langsdale:

Q. Were you here all the time she was testifying?

A. No, I was not; just part of the time.

Q. Have any executives of the Donnelly Garment Company been back in the audience with you while you have been here listening to Mrs. Reed's testimony?

A. Mrs. Reeves has been here.

Q. Mrs. Reeves has been here during all your testimony, hasn't she?

A. Yes.

Q. Do you know what her position is with the Donnelly Garment Company?

A. She is the merchandising manager, something along that line, anyway.

Q. Do you know of any occasion at all, from the time you went to work for the Donnelly Garment Company up to July, 1937, when anybody passed any paper around through the machines in the factory, except on March 17, 1937?

A. I couldn't recall any special papers; it has always been the practice since I have been there.

* * * * * *

[fol. 4247] Q. Now, how many telephones did they have down at the Donnelly Garment Company, if you know?

A. Well, they have one in the lobby on the first floor, one on the 7th floor, and there is one on the 2nd floor, there is now; the 2nd floor was vacant at that time.

Q. Well, at that time they had one where? On the first floor in the lobby?

A. Yes.

Q. And one on the 7th floor?

A. Yes.

Q. Now, was it the practice for any of the employees, any time they wanted to, to go and use those phones?

A. It certainly was.

Q. Did you ever see a line waiting?

A. Yes, every day.

Q. A long line of employees waiting to use the telephones?

A. Yes, every day.

* * * * * *

[fol. 4248] Q. Now, you stated that you understood Mrs. Reed didn't know anything about the March 2nd petition. What was the basis of your understanding to that effect?

A. Well, if someone was going to sign a petition like that and hand it to someone else, they certainly wouldn't go to that person, and tell them before that, that they were going to do that.

Q. Is that all you base your understanding on?

A. Well, yes, I guess it is.

Q. Now, you say that the Loyalty League was purely a social organization. Did it have anything at all to do with the Donnelly Garment Workers' Union?

A. No, it didn't.

* * * * * *

[fol. 4252] By Mr. Langsdale:

Q. Do you remember reading in the Kansas City Times, [fol. 4253] on May 11, 1937, an interview by Senator Reed, and particularly this part of the interview, "The employees of this company aren't only satisfied, but on their own motion some months ago organized a Loyalty League to resist the activities of Mr. Dubinsky and his crowd." Do you remember reading that?

A. I remember that.

Q. Then you did have some information the Loyalty League was organized to resist Dubinsky and his crowd, didn't you?

A. After all, Mrs. Reed does run the Donnelly Garment Company.

* * * * * *

A. That was all the information, the only thing I had ever heard to that effect was in the paper.

* * * * * *

[fol. 4271] HAZEL SAUCKE, a witness called by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

Mr. Ingraham: Will you please state your name?

A. Hazel Saucke.

* * * * * *

[fol. 4272] By Mr. Ingraham:

Q. Where do you reside, Mrs. Saucke?

A. Turner, Kans.

Q. Where are you employed?

A. At the Donnelly Garment Company.

Q. How long have you been employed at the Donnelly Garment Company?

A. Well, I started there in January of 1928, and then I moved away for a short period, and then came back. I am in my fifteenth year there.

Q. When you first went to work at the Donnelly Garment Company what kind of work did you do?

A. On a needle machine; just an operator.

Q. Just a straight sewing operator?

A. Yes, sir.

* * * * * *

[fol. 4273] By Mr. Ingraham:

Q. Have you ever worked on any special machine?

A. No, sir.

Q. You have always done straight sewing?

A. Yes, sir.

Q. Now, were you employed by the Donnelly Garment Company in March and April 1937?

A. Yes, sir.

Q. Do you recall attending a meeting of employees on April 27, 1937?

A. Yes, sir.

Q. Do you recall when that meeting was held?

A. After working hours.

Q. Do you recall where it was held?

A. On the second floor of the building, I think.

Q. How did you learn that there was going to be such a meeting?

A. Well, it was just passed on to me from the other operators. They were all talking about wanting a meeting, or something, and it was just passed to me.

Q. When you went to the meeting was anyone presiding or did anyone act as chairman, if you recall?

A. Yes. I think Rose Todd was. No. Let's see. Yes, [fol. 4274] she was the one.

. . . . . .

By Mr. Ingraham:

Q. Did you see Mr. Tyler at the meeting?

A. Yes, sir.

Q. Prior to that meeting had you read in the papers reports of strikes that were going on in other garment plants in Kansas City?

A. I had.

Q. Now, did Mr. Tyler make any remarks at that meeting? Did he make a speech or say anything?

A. Yes. He told us that we had a right to form our own union if we wanted to, under, as I understood, the Wagner Act—that we had a perfect right to form our own independent union, if we wished, or we could join any union, that we had that right of our own.

Q. Was a vote taken on forming a union or not?

A. Yes.

Q. Was the vote in favor of forming a union?

A. Yes, it was.

Q. Were any cards passed out for the people that wanted to sign to do so?

A. Yes, there was.

Q. Mrs. Saucke, did you vote in favor of forming a union?

A. Yes.

[fol. 4275] Q. Was that the Donnelly Garment Workers' Union? A. It was.

Q. Why did you vote in favor of forming the Donnelly Garment Workers' Union?

A. Well, just recently there had been strikes called here in Kansas City, and they were rioting and fighting and trying to force people to join the International Ladies' Garment Workers' Union, whether they wanted to or not; they were being beaten into submission and made join, and I didn't see why we should do such a thing. I didn't see

any reason for joining that union, it had nothing to offer us, and it was a class of people—the way they were acting, I didn't care to be classed as one of them.

Q. Now, did you know of your personal knowledge of any of the rioting and violence that was going on at the Missouri, Gernes, and Gordon plants?

A. Yes, sir. I passed there every morning during that trouble and I saw the trouble.

Q. What did you see?

A. Fighting and running and screaming and arms flying. I saw the police wagon backed up there, too—twice I saw that, two different mornings when I came to work. And it certainly changed my mind, if I had ever had it made up to any other thing, that I didn't want to join that kind of a union.

Q. Did any other employees tell you that they had seen [fol. 4276] the violence in these strikes? A. Yes.

Q. Did you hear any reports at the plant that the International intended to use the same violence against the Donnelly employees? A. I did.

* * * * * *

By Mr. Ingraham:

Q. Did you hear any reports about what the International was going to do at the Donnelly plant?

A. Yes, I did.

Q. What were the reports?

A. Well, that our place was to be the next place attacked, and that what they were giving those girls up there wasn't anything to what they were going to give us, that they were going to use worse tactics of some kind, if possible, to make us join them.

Q. Were there articles in the newspapers at the time about the violence at those strikes?

[fol. 4277] A. There was.

Q. Did you read those articles?

A. I think I read everything that came out in the paper; I tried to.

Q. I will hand you Respondent's exhibit No. 18 and ask you if you recall reading the article in the Journal-Post of March 18, 1937.

* * * * * *

A. Yes, I read that.

Mr. Ingraham: I hand you Respondent's exhibit No. 19 and ask you if you read that article that appeared in the Journal-Post on March 18, 1937.

. . . . . .

[fol. 4278] A. Yes, I read it.

Q. I hand you Respondent's Exhibit 27, and ask you if you recall reading the article in the Kansas City Star of March 17, 1937, entitled "The Sitters Block Their Door."

. . . . . .

A. Yes, I read that.

By Mr. Ingraham:

Q. Miss Saucke, what effect did these articles have on you?

A. Well, it put fear in me for one thing, when I saw what we were headed for, if they weren't stopped some way. There was just going to be a fight and I never had taken part in anything like that, and I certainly didn't want to, and I was disgusted to think that American people would get so low as to fight that way and try to prevent honest working people from making a living, and compel you to join something you didn't want to; even though those people weren't paid good, they were going to be compelled to join a union that they couldn't pay dues in, perhaps, and I certainly didn't think we needed any union like that at that time.

Q. What, if anything, did the employees do on or about March 18?

A. Well, we were all just talking and worrying about what was going to take place and wondering what we could do.

Q. Did you hold a meeting?

[fol. 4279] A. Yes. We kept talking about why couldn't we hold a meeting and do something and see what we could do, because we didn't want trouble like that, we never had had any trouble.

Q. So that a meeting—or did you hold a meeting?

A. Yes, about that time.

Q. Where was the meeting held?

A. I think on the second floor, second or third. It was an empty floor.

Q. And what time during the day?

A. After working hours in the evening.

Q. Now, do you recall what was discussed at the meeting?

A. Well, we just wanted to know what we could do to protect ourselves, and someone suggested that we would like to hear from Mrs. Reed, to see what her views on it were. We just didn't know where we were at or anything, so someone suggested that we get her, and she came finally and talked to us a short time.

Q. Do you recall whether or not Mrs. Reed made a statement that she would close the shop if it was unionized?

A. I never heard her make that statement.

Q. Did you hear her make a statement that she wouldn't permit Dubinsky to tell her how to run her business?

A. I did not.

Q. Did Mrs. Reed say anything with reference to whether or not the employees could join or could not join a union?

* * * * * *

[fol. 4280] A. She said they were free to join any union they wished.

By Mr. Ingraham:

Q. Do you know whether or not any action was taken by the employees at that meeting with regard to consulting attorneys? A. Yes, there was.

Q. What was that?

A. Well, we chose a committee to interview some lawyer, to see what we could do; we appointed a committee, rather we voted on it.

Q. Do you recall who was on the committee?

A. Rose Todd was one, and I believe Sallie Ormsby—there were three. I don't remember the third.

Q. Did you observe that other employees were excited and wrought up about the strikes at the other plants?

A. Very much so, I did.

Q. Now, Mrs. Saucke, did any representative of the Management, or any officer or official of the company request you or suggest to you that you go to that meeting?

A. No, sir.

Q. Did you go to that meeting of your own free will?

A. I did.

Q. Did you have any feeling that if you didn't go to the [fol. 4281] meeting you might be fired? A. No, sir.

Q. Did you hear that any representative of the Management had ever suggested to any other employee that he or she go to that meeting? A. No, sir.

Q. Now, did the strikes continue on after this March 18 meeting, the strikes at the other plants? A. Yes.

Q. I hand you Respondent's Exhibit 20, which is the front page of the Journal-Post for March 26, 1937, and ask you if you read the article that is entitled, "Violence Marks the Garment Strikes"?

A. Yes, I read that.

Q. Did you read the continuation of that article that is in Respondent's Exhibit No. 20? A. Yes, I read that.

Q. I hand you Respondent's Exhibit 21, which is the front page of the Journal-Post for March 23, 1937, and ask you if you read that article that is entitled, "New Disturbance Nets Arrests in Garment Strike"?

A. Yes, I read it.

Q. Now, during this time were there conversations around the plant with regard to these strikes?

A. There was.

[fol. 4282] Q. What effect did the strikes have on the employees?

A. Well, in fact, it cut down on our production quite a bit, we never knew from day to day whether we would be attacked as we went out of the building, or whether we would be able to get to work the next day without being attacked. We were being threatened all the time.

Q. Were these articles in the paper discussed by the employees? A. They were.

Q. I'll hand you Respondent's Exhibit 22, which is the front page of the Journal-Post for March 25, 1937, entitled, "Battle Royal is Resumed at Door of Plant," and ask you if you read that article.

A. I couldn't swear that I read that one. I just don't recall it.

Q. I hand you Respondent's Exhibit 24, and ask you if you recall reading the article that appears in the Journal-Post for March 31st, 1937, entitled, "Injunction Stops Hair Pulling in Garment Strike".

A. Yes, I have read that.

By Mr. Ingraham:

Q. Does that article refer to an injunction of Gernes, Gordon and Missouri Garment Companies, that they were trying to get?

[fol. 4283] A. It does.

Q. I'll hand you Respondent's Exhibit 26, which is an article appearing in the Kansas City Times of March 23, 1937, and ask you if you recall reading that article?

A. Yes, I think I read that.

Q. Well, I'll hand you Respondent's Exhibit 28, which is an article appearing in the Kansas City Star of March 22, 1937, and ask you if you recall reading that article.

A. I read that.

Q. I'll hand you Respondent's Exhibit 29, article appearing in the Kansas City Star for March 25, 1937, entitled, "The Hair Pulling Grows", do you recall reading that article? A. Yes, I do.

Q. I hand you Respondent's Exhibit 30, article appearing in the Kansas City Star for March 30, 1937, and ask you if you read this article; it is entitled, "A Curb on Pickets".

. . . . . .

A. Yes, I read that.

By Mr. Ingraham:

Q. I'll hand you Respondent's Exhibit 31, which is the front page of the Kansas City Journal-Post for April 5, 1937, and ask you if you read the article which has [fol. 4284] a banner at the top of the page, entitled, "Twenty Women Strikers are Cited"?

A. Yes, I did.

Q. I will ask you if you read the article appearing in the Kansas City Journal-Post for April 6, 1937, entitled, "Strikers Again Bar Three Garment Plants"? This was Respondent's Exhibit 32.

. . . . . .

A. I did.

By Mr. Ingraham:

Q. I'll hand you Respondent's Exhibit 33, and ask you if you read the article appearing in the Kansas City

Journal-Post of April 7, 1937, entitled, "Higgins Clears Non-Strikers Way to Plant".

A. Yes, I have read that.

Q. I'll hand you Respondent's Exhibit 34, which is an article in the Journal-Post of April 10, 1937, entitled, "Garment Unions Get Closed Shops in Three more Plants," and ask you if you read that article.

A. I think I read that.

Q. Were these articles widely read by the employees of the Donnelly plant? A. I think they were.

[fol. 4285] Q. Did you hear a discussion of the articles by other employees? A. Yes, sir.

Q. What effect did these articles have on the employees at the Donnelly plant?

A. Well, it made them nervous, and it made them angry and disgusted, and it made them—well, determined not to be whipped into submission of doing something we didn't want to do; the longer it went the more determined we were not to be one of them.

Q. Going back to the meeting of March 18, where Mrs. Reed spoke, did you understand that that was a Loyalty League meeting? A. No, sir.

Q. State whether or not you heard any discussion at the plant by any employees that that was a Loyalty League meeting? A. I did not.

Q. Did the fact that Rose Todd was active in arranging for the meeting lead you to believe it was a Loyalty League meeting? A. No.

Q. Did the fact that Rose presided or spoke at the meeting lead you to believe it was a Loyalty League meeting? A. No, sir.

Q. Did any representative of the Management ever dis-

[fol. 4286] cuss with you or discuss with any other employee in your presence the calling of any such a meeting? A. No, sir.

Q. Did you ever hear it said that the management wanted the meeting held? A. No, sir.

[fol. 4287] Q. Did you feel free to express your views at the March 18 meeting, if you wanted to say anything?

A. I did.

. . . . . .

Q. Now, after that meeting of March 18 were lawyers employed? A. They were.

Q. Did you know how the employees arranged for the payment of a retainer fee for the lawyers?

A. Someone mentioned at the meeting for each one to contribute 50 cents to get the money.

Q. Did they hold a meeting for that purpose?

A. Yes.

[fol. 4288] By Trial Examiner Batten:

Q. Which meeting did you mean?

A. The meeting we held—the meeting after the one at which Mrs. Reed spoke. The other meeting was held—

Q. When was the other meeting?

A. Sometime after March 18, about a week or—I don't know just when.

[fol. 4290-4291] By Mr. Ingraham:

Q. Do you recall how much was contributed by the employees at this meeting to pay the lawyers?

A. I don't know how much was contributed at that meeting. There was some contributed. But we voted to each contribute 50 cents.

Q. Some was contributed right at the time?

A. At that meeting.

By Trial Examiner Batten:

Q. You are referring to what you call "the second meeting"?

A. That is right.

By Mr. Ingraham:

Q. Did any representative of the management request or suggest that you go to the meeting of April 27?

[fol. 4292] A. No, sir.

Q. Had any representative of the management prior to that meeting ever suggested in your presence, to you or to any other employees, that the Donnelly employees form a union?

A. No, sir.

Q. Did you feel any pressure was being brought to bear by the management to force you or cause you to vote in favor of forming a union?

A. No, sir.

Q. Did you feel that if you didn't go to that meeting you would be penalized by the management?

A. No, sir.

Q. Did the fact that Rose Todd presided at that meeting influence you in believing that the company was back of the meeting?

A. No, sir.

Q. The fact that Rose Todd was active at this meeting, did that make you believe that it was a Loyalty League meeting?

A. It did not.

Q. Did you believe that the meeting of March 18 or the meeting some 10 days later or this April 27 meeting was a Loyalty meeting?

A. No, sir.

Q. State whether or not you voted in favor of forming the Donnelly Garment Workers' Union of your own free will.

[fol. 4293] A. I did.

Q. Were you a member of the Loyalty League?

A. I was.

Q. Will you state what the activities of that organization were?

A. As far as I knew, it was just social, just for having dances and getting up good times.

Q. Did you ever hear that the Loyalty League was a labor organization?

A. No.

Q. Did you ever know that the Loyalty League had represented the employees in connection with terms and conditions of employment?

A. No.

Q. Did you pay any dues in the Loyalty League?

A. No, sir.

Q. Did anybody representing the management suggest that you join the Loyalty League?

A. No, sir.

Q. Did you feel that if you didn't join the Loyalty League you would be penalized by the company?

A. No, sir.

* * * * * *

[fol. 4294] By Mr. Ingraham:

Q. State whether or not you consider the Donnelly Garment Workers' Union as the successor to the Loyalty League.

A. Repeat that question, please.

Q. State whether or not you consider the Donnelly Garment Workers' Union the successor of the Loyalty League.

A. I do not.

Q. Is the Loyalty League still in existence?

A. It is.

Q. Do you recall a petition being circulated among the employees on or about March 2, 1937?

. . . . . .

A. Yes. I remember a petition sometime that spring; I couldn't say just what date.

. . . . . .

Miss Weyand. Mr. Trial Examiner, I would like to have Mr. Ingraham point out where the Loyalty petition comes within the terms of the offer.

. . . . . .

[fol. 4295] Mr. Lane. The Board urges that the Donnelly Garment Workers' Union was formed with domination by the company. The circuit court says we have a right to show by the employees that they were not dominated.

. . . . . .

[fol. 4297] Mr. Reed: I just want to remark, witnesses here have been cross-examined with respect to the circulation of this petition—I call it—that was handed to Mrs. Reed afterward. They have been examined here, and cross-examined about it at length—

. . . . . .

Trial Examiner Batten: Who was cross-examined? I thought you mentioned a name.

Mr. Ingraham: Mrs. Cooper.

Trial Examiner Batten: But that was not for any purpose except credibility. That was obvious to everybody,

I think, because afterwards she was simply asked about the names on there and whether it passed through, and then Miss Weyand examined her very carefully about the names preceding and following. It must have been obvious to everybody that that was merely a matter of credibility.

Mr. Reed: It is obvious to me the other way, that what they were trying to show, to susfain their charge, was that this paper was circulated by the instructors and that the people signed under some species of duress which they charge or imagine.

. . . . . .

[fol. 4302] Trial Examiner Batten: The hearing will be in order. I think we are ready to proceed. Let's see, we have a witness, Mrs. Saucke. I think last evening, when we adjourned, there was a matter pending — just be seated, please — concerning the petition which had been circulated. Let's see, that was I.L.G.W.U. Exhibit No. 1 — what was the number of that?

Mr. Langsdale: Ten.

Mr. Ingraham: Ten.

Trial Examiner Batten: Ten. The question is whether or not the examination on that comes within the offers of proof. Mr. Ingraham, have you checked that matter?

Mr. Ingraham: I think that it comes within the offers of proof. It comes within the general language of the offers, the purport of the offers. I know that it is within the issues. The complaint charges that the document was circulated, as I recall it.

Trial Examiner Batten: Well, have you looked over those offers of proof?

Mr. Ingraham: Well, I couldn't find any definite place where the specific — where the document is mentioned.

Trial Examiner Batten: Mr. Tyler, did you get over those?

Mr. Tyler: Mr. Lane did.

. . . . . .

[fol. 4303] Mr. Lane: Well, there was not in our offers of proof any specific reference to the March 2nd document, but certainly in the language of our offer there is room for the introduction of any testimony which tends to show whether or not, on March 27 there had been created an atmosphere of domination by the employer.

* * * * * *

[fol. 4304] Now, it is claimed by the Board here the circulation of this March 2nd document was an evidence of interference. We desire to show, by the testimony of these employees that it was not, and within the scope of the remand I think it is proper to be able to show that.

Trial Examiner Batten: Miss Weyand, is that correct, the Board takes the position it was an act of interference and dominance which carried forward into the formation of the Donnelly Garment Workers' Union?

Miss Weyand: Yes, I think that is correct, but taking Mr. Lane's argument would mean that we retry every act of interference, restraint and coercion. Their offer was directed to merely showing that certain acts alleged by the Board hadn't interfered with these employees they listed and the nature of the March 18th meeting and the April 27th meeting, to show what the nature of the meetings were; and having regard to the language of this offer and its specificity, I do not believe it was the intent of the Court to let each of these witnesses retry each issue of interference, restraint or coercion which has been raised in the case. I think we are limited to trying here the — [fol. 4305] I probably shouldn't say trying — to listen to the evidence offered for the specific facts for which the witness is offered, and not for any other facts which happened to be in the case.

Trial Examiner Batten: Well, don't the offers include matters with relation to the Loyalty League?

Miss Weyand: They do contain matters with relation to the Loyalty League, however it has been the company's contention that the circulation of this petition was not an act of the Loyalty League, and —

Trial Examiner Batten: (Interrupting) Doesn't the Board take the position it was?

Miss Weyand: No, the Board, as far as I know, hasn't taken the position it was. They do take the position that it was a part of the whole stream of activities, of which the Loyalty League was one and the Loyalty petition was another, which were instituted by the employer for the purpose of interfering, restraining and coercing its employees, but the Board, as far as I am aware, hasn't taken the position the Loyalty petition itself was a Loyalty League activity.

* * * * * *

[fol. 4308] Trial Examiner Batten: Well, you may proceed with your questioning, Mr. Ingraham.

* * * * * *

[fol. 4309] By Mr. Ingraham:

Q. Mrs. Saucke, I was inquiring about a petition that was circulated among the Donnelly employees on March 2, 1937. (Handing petition to witness.) I will ask you if you recall whether or not you read that petition and signed it.

This petition is I. L. G. W. U. exhibit No. 10.

Trial Examiner Batten: Page 5961, circuit court record; isn't that right?

Mr. Ingraham: That is right.

A. Yes.

By Mr. Ingraham:

Q. You remember that?

A. I do.

Q. Do you remember reading an article in the Kansas City paper on February 26, 1937, that was entitled "Reopen a Garment Feud," respondent's exhibit No. 6?

Trial Examiner Batten: What page?

Mr. Ingraham: Circuit court page 4864.

By Mr. Ingraham:

Q. I hand you the exhibit and ask you if you will read it and state whether or not you recall having read it before.

* * * * * *

[fol. 4310] A. I read that.

Q. Did that article have anything to do with your signing the March 2 petition?

A. Yes, it did.

Q. Did anybody representing the management of the company suggest or request that you sign the March 2 petition?

[fol. 4311] A. No, sir.

Q. Did you ever hear any discussion among the employees that the management wanted the employees to sign the petition?

A. No, sir.

Q. Did you feel that you would be fired if you didn't sign the petition?

A. No, sir.

Q. Did you hear any talk at the plant that an employee would be penalized in any way if he or she did not sign the petition?

A. I did not.

Q. Did your instructor ask you to sign the petition?

A. No, sir.

Q. Who presented the petition to you, if you recall?

A. I wouldn't know which one of the two girls that brought the petition onto the floor handed it to me, but one of them handed it to me. Personally, I didn't know those two girls, only by their face. I knew they were employees.

Q. Were they employed in your section?

A. No, sir.

By Trial Examiner Batten:

Q. Did you since find out who the two girls were, Mrs. Saucke?

A. Why, yes.

Q. Who were they?

A. One's first name was Inez, and the other one was Mary Sprofera.

[fol. 4312] Q. But you don't recall which one brought it to you?

A. No, I don't.

By Mr. Ingraham:

Q. Do you recall anything they said when they presented the petition to you?

A. I do.

Q. In substance, what was said?

A. She asked me to read it carefully and, if I felt that way, to sign it and hand it back. So, I did. I read it carefully and signed it and handed it back to her.

Q. Where were you when you signed it?

A. At my machine, working.

Q. Did the Loyalty League, to your knowledge, have anything to do with the circulation of that petition?

A. No, sir.

Q. Did you think that the Loyalty League was circulating the petition?

A. No.

Q. I hand you Board's exhibit No. 27, which is an article that appeared in the Kansas City Times for May 11, 1937, and ask you to read that article and—

Trial Examiner Batten: Circuit court record?

* * * * * * *

By Mr. Ingraham:

Q. (Continuing)—and ask you to state whether or not you recall reading that.

* * * * * * *

[fol. 4313] A. I read that.

Q. Did the remarks attributed to Senator Reed in that article cause you or influence you in any way in remaining a member of the Donnelly Garment Workers' Union?

A. He was only stating what I had already made up my mind to from previous articles and things I had known of that Mr. Dubinsky had been doing. My mind was already made up that I didn't want to be run by his tribe.

Q. What things are you referring to, Mrs. Saucke?

A. Their violence and the way they had of getting members into their union, and their lies that they told on us—called us a sweatshop and said we were underpaid. It absolutely wasn't so, and I resented it and resented it very much. That was the way they went at the public, was by telling these lies, and it certainly made a big impression on me that it wasn't the kind of people I wanted to associate with.

I saw with my own eyes and from the articles I read in every day's paper for a few weeks in Kansas City about

how they were beating and whipping and intimidating the workers at these plants at Twenty-sixth and Grand to get them to join.

I am sure I can absolutely say there never was a Donnelly operator injured at our plant or intimidated in any [fol. 4314] way to make them join our union; not a one ever had their clothes tore or their hair pulled, or scratched and hurt. We were all glad to join our own union, while the other people were whipped into submission by brutality.

Q. The March 2 petition that you signed, did you sign that of your own free will?

A. I did.

Q. What caused you to sign that?

A. Well, they had been circulating lies about us having such a sweatshop. They even said we girls went out of there with our heads hanging on our chests, that we were so overworked. I knew that wasn't true, I had been there too long, and it certainly made me mad, and I wanted Mrs. Reed or the company to know that we were satisfied with our working conditions, because these lies were being circulated everywhere.

Q. Do you recall an N. R. A. hearing in 1935?

A. I think I remember something about that.

Q. Do you recall at that time what the International was—what charges they were making about the working conditions at the Donnelly plant?

A. I think I do.

Trial Examiner Batten: Mr. Ingraham, is that in the offer of proof, the N. R. A. hearing?

Mr. Ingraham: No. But the Examiner and the Labor Board laid great stress on the events that occurred prior [fol. 4315] to the effective date—

Trial Examiner Batten: I do not intend to go into that on these offers of proof.

Mr. Ingraham: Well, I will have to except to Your Honor's ruling.

Trial Examiner Batten: You may do so.

Mr. Ingraham: That is all.

Trial Examiner Batten: I think I stated pretty clearly, Mr. Ingraham, on these employees, I want to confine it first to these offers of proof. That is the thing that the circuit court clearly indicated I should have taken. Now, I am not making a ruling, as I said before, at this time that I will not take anything else, but I am going to take first the things the circuit court clearly indicated I should have received, and that is my reason for it.

Mr. Ingraham: At this time do you want me to make an offer of proof on these matters that I was going into?

Trial Examiner Batten: Of course, I don't know that it is necessary to make an offer of proof. If you want to, you can. I haven't excluded it.

Mr. Ingraham: You have not excluded that testimony?

Trial Examiner Batten: No.

Mr. Reed: How, then, are we to try this case if—

Trial Examiner Batten: Well, Senator, you are going to proceed, I hope, as I indicated yesterday, and I thought [fol. 4316] everybody understood, and take first the employees, in accordance with the offer of proof, which the court said I should have accepted.

Now, that is the plan we are going to follow.

Mr. Reed: I seem to be unfortunate. Every time I try to make a statement you interrupt me. I would like to make a statement for the record.

How are we to try this case if the Examiner undertakes to direct us as to what testimony we shall offer first and not tell us what other testimony will be received, but withholds his decision until we have put our witnesses upon the stand and examined them, within the limitations that he has fixed; then, after that is all done, he may open up the case and try many other things.

Now, I simply protest that that method is unfair and I except to the ruling of the Examiner.

Trial Examiner Batten: I understood, Senator, you excepted to it yesterday. You stated, however, that if I intended to pursue that policy, you would comply with it.

Mr. Reed: We are forced to comply with it. I didn't state I would voluntarily comply with it.

* * * * * * *

[fol. 4318] Cross-Examination.

By Mr. Lane:

Q. Mrs. Saucke, I'll hand you Board's Exhibit No. 38 in this case, which is a portion of the Kansas City Star for Monday, April 12, 1937, containing the headline, "Wagner Act is Upheld", and I will ask you to look at that article and state whether or not you read that in the paper on that date or about that time.

A. I did.

Q. What effect did this article have on your mind, with reference to the question of forming a union of employees of the Donnelly Company?

A. Well, it gave me confidence that we had the right to go ahead and form a union of our own liking rather than have to join the International Union.

Q. In direct examination you stated you attended the meeting of March 18?

A. I did.

Q. And at that meeting there was some discussion about the matter of the employees employing counsel?

A. There was.

Q. What was said at that meeting with reference to [fol. 4319] employing counsel?

A. Well, we didn't know what we could do for ourselves, and we had to have a lawyer to see what the law was, to see what steps could be taken for protection.

Q. Was anything said at that meeting about employing counsel to form a union?

A. No.

Q. When was the first time you gave any consideration to the matter of forming a union of your own?

A. Well, April 27. That day was the day we formed our union.

Q. Had you, prior to that time, come to any conclusion yourself, as to the matter of forming a union?

A. Yes, I had been thinking for several days we should do something like that.

Q. When, with respect to this article of April 12, did you begin to consider the matter of forming a union; was it after or before?

A. After.

Q. Did you discuss the matter of the formation of a union with any other employees in the plant prior to the meeting of April 27, 1937?

A. Yes, I did.

Q. Was that a matter that, from your own knowledge, was generally discussed around the plant among the employees?

[fol. 4320] A. Well, around the little clique that I was with, we were discussing it.

Q. Can you name any persons with whom you discussed that matter?

A. Yes, I think I can.

Q. Will you name them, please?

A. Pearl Fields was one.

Q. What position did Pearl Fields have?

A. She was an operator.

Q. Was there anybody else?

A. Pearl Black, and there was another one I was talking to at the same time—well, I can give her first name, Inez; I don't know her last name.

Q. Did you have any information prior to the time you went to the meeting of April 27, as to what was going to be discussed or taken up at that meeting?

A. No, sir.

Q. How was it that you got notice of the meeting of April 27?

A. Well, it was just talked around through the factory that we were to hold a meeting, and that our lawyer would speak to us.

Q. Yes. Did you have in mind taking up, yourself, at that meeting, the matter of the formation of a union?

[fol. 4321] A. No. I wanted to listen to see what the lawyer could tell us.

Q. Where were you when you got notice of that meeting?

A. Well, at my machine.

Q. And what time of day was it the meeting was held?

A. After work.

Q. Did you go there to that meeting in your uniform, or did you dress before you went to the meeting?

A. I was in my uniform.

Q. What time of day was the meeting held; can you fix the hour?

A. I think about 4:30 or a quarter of 5, something like that; I think about 4:30.

Q. Were you ordered by your instructor to attend that meeting?

A. I was not.

Q. So far as you know were any girls ordered by instructors to attend that meeting of April 27?

A. No, sir.

Q. Did you ever hear Mrs. Reed or Mrs. Reeves or Mr. Green or Mr. Baty or anyone of the executives of the company, suggest to you or to anybody else in your presence, that the union of Donnelly employees should be formed?

A. No, sir.

Q. Did you ever hear any of those persons offer any inducements or make any threats if the union of the Don-

[fol. 4322] nelly employees was not formed?

A. No, sir.

Q. Did any of those persons ever say to you or suggest to you that you should stay out of the International Ladies' Garment Workers' Union?

A. No, sir.

Q. Did you vote at that meeting of April 27 to form the union?

A. I did.

Q. When you voted did you do so, in your own opinion, acting on your own free will and without any coercion or suggestion or domination on the part of the management or anybody representing the management?

A. I did.

Q. Were you acquainted with Rose Todd?

A. Just slightly.

Q. How long had you known Miss Todd?

A. Well, I can't really say when I began to notice her going around with work, a year or more.

Q. Prior to April, 1937?

A. Yes.

Q. Will you describe what you observed Miss Todd doing in the plant?

A. Well, she was just a kind of a handy woman, as I looked at her, seeing about thread, and if a bundle was lost I have known her hunting certain bundles for a fast [fol. 4323] order, or something; I don't know what you would call her.

Q. Did Rose Todd ever say to you that she represented the management of the company in connection with its relations to its employees?

A. No, sir.

Q. Did you ever get the impression that Rose Todd represented the management in any capacity?

A. No, sir.

Q. Did she ever hold herself out as speaking for the management in connection with the formation of a union, or anything having to do with the union?

A. No, sir.

Q. Did you know Hobart Atherton?

A. Who?

Q. Hobart Atherton.

A. I just knew him when I saw him was all.

Q. Do you know what position he occupied?

A. No, sir.

Q. Did he ever say anything to you that indicated to you that he was a boss or that he was a supervisor or that he was speaking for the management in connection with the Donnelly Garment Workers' Union?

A. No, sir.

Q. Miss Baucke, I'll hand you Respondent's Exhibit No. 35 in this case, which has an item from the Kansas [fol. 4324] City Journal-Post on April 22, 1937, and ask you to read that, please. It is entitled, "Donnelly Worker will be sent to Union Convention."

* * * * * * *

By Mr. Lane:

Q. Did you read that article at the time it appeared, or about that time, Mrs. Saucke?

A. I did.

Q. What effect did that article have on your mind with respect to the formation of the Donnelly Garment Workers' Union?

A. Well, it made me all the more determined that we needed some kind of an organization to make our own rules.

She put herself up, this Sylvia Hull, as a representative of our company, to go to this Dubinsky convention that they were holding back at Atlanta, and I didn't know anything [fol. 4325] about the convention; I didn't suppose the rest did. She took it upon herself to represent us, I suppose. We didn't know anything about anyone wanting to be elected.

Q. So far as you know, the Donnelly employees hadn't elected Sylvia Hull to represent them at the convention?

A. Absolutely not.

Q. And state what influence that had on you with respect to whether or not you would form your own union?

A. Well, I made up my mind it was time we formed one.

Q. Were there any officers of the company or any executives or anybody you regarded as a supervisory employee present at the meeting of April 27, 1937?

. . . . . .

A. No, there was not.

By Mr. Lane:

Q. Did you ever hear of any influence being brought to bear or any inducements being offered by anybody representing the management, upon any employees, to either form or join the Donnelly Garment Workers' Union?

A. I did not.

Q. Mrs. Saucke, were you in the Donnelly plant on the morning of April 23, 1937, as far as you remember?

[fol. 4326] A. I was.

Q. That is the day following the announcement in the Kansas City Journal that Sylvia Hull was to attend the convention? A. I was.

Q. Did you see anything occur in the plant that morning? A. Yes, I did.

Q. Where were you? A. When?

Q. Early in the morning.

A. Well, I went straight to my machine after timing in.

Q. What did you observe?

A. Well, I turned first to see if the girl, whom I thought was Sylvia Hull, was at her machine in the next section, and she was. That is about the first thing I did.

Q. Did you hear any conversation occurring at her machine? A. I did.

Q. Did you hear anybody make any threats to Sylvia Hull? A. No.

Q. How long did that occurrence last?

A. About 40 minutes, I think.

Trial Examiner Batten: Didn't that matter come up with the prior witness? I think you, Miss Weyand, on cross-examination brought up that matter, did you not?

Miss Weyand: I did.

Trial Examiner Batten: Was that upon the basis of it [fol. 4327] being in the offer of proof?

Miss Weyand: My cross-examination was on the basis of the company having introduced the newspaper article, having the witness read it and state the effect of that newspaper article upon her mind. I then cross-examined her as to what effect she noticed in the plant.

* * * * * * *

Trial Examiner Batten: Well, do I take it by your position that you are agreeing at least to some degree with Mr. Tyler's position, that it is not only what they thought but whether or not the incidents actually occurred, and whether it was reasonable for a person to be excited, and so forth?

* * * * * * *

Now, if you go into the question of cross-examination of what actually did occur and whether or not the thing which occurred reasonably would cause these people to take the action they did, then aren't you following out Mr. Tyler's original position, and that is that not only what their frame [fol. 4328] of mind was, but whether or not their frame of mind was based upon a reasonable assumption.

Miss Weyand: On direct, Mrs. Cooper had testified that after reading this article the girls generally and she also reacted in a certain way.

Trial Examiner Batten: Yes.

Miss Weyand: I was cross-examining her to find out what specific indications of that reaction there was, if she saw the girls do things which would warrant her to testify to that description of them, that is, if she saw they

were upset, or said or did anything that would show they were upset or influenced.

[fol. 4329] Trial Examiner Batten: If that is the case, how did this Sylvia Hull incident arise? You could have conducted that without reference to this incident.

Miss Weyand: She said on direct examination that she read the newspaper article about Sylvia Hull, and that the next day, in the plant, she discovered other employees had read the same article, and that they felt that the girl and the union were usurping authority which the Donnelly Garment workers had never given, in announcing Sylvia Hull was a representative of the Donnelly Garment Workers. So I asked her, what did the girls say the next morning, that showed that they felt Sylvia Hull was usurping authority.

Trial Examiner Batten: Yes, but didn't you also say, didn't you use the incident the next day with respect to Sylvia Hull? Didn't you ask that?

Miss Weyand: Yes, I did, but she began denying, on cross-examination, she had seen anything happen, but on direct examination she had characterized the way all the girls felt, and what they did.

[fol. 4330] Trial Examiner Batten: (Interrupting) Miss Weyand, I can't help but feel your cross-examination with regard to that incident certainly raises the question as to whether or not these individuals are justified in the generalization which they make, and there is only one way to determine that and that is by exactly what happened, whether it is true or untrue.

Miss Weyand: I wasn't going into that.

Trial Examiner Batten: I know you weren't, but my point is, you opened that up. Now, how far you go with it, of course, is a matter of degree.

Miss Weyand: On cross-examination I am entitled to impeach the source of the knowledge of the reaction; that was what I was doing in that cross-examination.

Trial Examiner Batten: Well, of course, if that was your only purpose, you didn't indicate it. Well, we will recess until 25 minutes until 12.

* * * * * *

[fol. 4331] Trial Examiner Batten: Another question that arose in my mind is this, Miss Weyand: I think you took the position that unless the Board questioned the mental reactions of these employees, which it did not intend to do, the issue would not arise as to whether or not it, in fact, was true.

I think I ought to have you clarify again the Board's position. Maybe I misunderstood it. In other words, if your first position with respect to these matters, these newspaper articles and the reaction which these employees had to it, was that you felt it wasn't material to the issues in this case but that the circuit court had indicated that it felt we should receive the testimony?

Now, it seems to me that you went on to explain that. When Mr. Tyler raised the point he did, about the truth of it, you said the only time that would become an issue would be if the Board questioned the attitude of these employees and went into that matter; then it would become an issue, whether or not it, in fact, was true, and whether there was a substantial basis for their opinion.

Now, it seems to me that we had better get this thing [fol. 4332] straightened out before we go any farther, because it certainly is not clear in my mind.

Miss Weyand: I made the statement that you referred to, in connection with my answer to certain remarks by Mr. Tyler in regard solely to the violence issue and the contract issue.

Trial Examiner Batten: Yes, as it affected the employees.

Miss Weyand: I said that the Board so far found no reason to question the employees' statements of the state of their understanding about violence which occurred at other garment plants or their state of mind about the terms which were included in contracts which the International

Ladies' Garment Workers' Union entered into with other garment companies.

I did not intend by that statement to mean that I might not later, after hearing testimony more exaggerated than any in the record, raise a question as to their state of mind in respect to the violence or the contracts. I have not yet done it, at the present time.

Trial Examiner Batten: At that point let me ask you this question: It seems to me that you did with the prior witness—

Miss Weyand: No. That was not violence—

Trial Examiner Batten:

* * * * * *

It seems to me you did—irrespective of your purpose, it seems to me you did, because you examined the witness as to whether or not there was a proper foundation for her general statement of all of the people being excited; and [fol. 4333] so forth. Now, if you do that, you do it, irrespective of the statement of your purpose—unless the purpose is stated—for the purpose of either discrediting the testimony or generalization of it or to show that there was, in fact, no basis for her opinion.

Miss Weyand: I think you have misunderstood the remarks I was directing. I was trying to limit my statement to the fact that I did not as yet question certain states of mind, states of mind pertaining to the terms of other contracts or pertaining to the violence.

I have never indicated in this record, and I have no intention of indicating at this time that I do not intend to go into the state of mind of the employees' with respect to whether or not the Donnelly Garment Company did acts which led the employees to believe they were not free to join the International Ladies' Garment Workers' Union or were required to join the Donnelly Garment Workers' Union.

I believe, in the Sylvia Hull connection, that it is entirely proper cross-examination for me to inquire, when

on direct the company inquired of the witness as they did of Mrs. Cooper, what the effect of hearing that Sylvia Hull was going to a convention—

Trial Examiner Batten: You don't understand me, Miss Weyand. I am not taking the position that you had no right to. That is not my position. All I am saying is that it does appear to me to be inconsistent with some of your [fol. 4334] prior statements and that it does bring up the question as to whether or not we are going to go behind the beliefs and opinions of these employees. That is my point; not that you didn't have a perfect right to. But isn't it in line with Mr. Tyler's statement at the beginning? I think at the time I, in substance, agreed with him that the first matter is, What is the opinion of the employees? And that is the thing we should determine first, before we get to the question of whether or not there was a basis for that opinion.

Now, I don't know whether I make myself clear, but— And maybe we are getting into metaphysics here.

Miss Weyand: My remarks as to the beliefs I did not find it necessary then to challenge went to the beliefs of violence and contracts; not to beliefs of interference by the company.

Trial Examiner Batten: How was this interference by the company: I mean, the fact that these people were very excited, and so forth? Only upon your assumption that the Sylvia Hull matter was company-inspired.

Miss Weyand: That has been the Board's position, that if it wasn't company-inspired, at least the company failed to take the steps it should have to protect the girls in their right to belong to an outside union. The courts have repeatedly dealt with eviction of employees and said that it is the duty of an employer to afford a girl protection so that she may work in the plant and at the same time be a [fol. 4335] member of any union she wishes to be a member of.

Trial Examiner Batten: That is true. But you are proceeding on the assumption that it was. Now, that is one of the things that will have to be determined as a result of the evidence in the hearing, as to whether it was or was.

not. And when you cross-examined this witness with respect to the Sylvia Hull incident, you were not cross-examining her, were you, to prove or disprove the company's connection with the incident?

Miss Weyand: My cross-examination of Mrs. Cooper was directed solely to a remark she made on direct—

Trial Examiner Batten: Just a moment. I want my question answered. Your cross-examination with respect to the Sylvia Hull matter was not for the purpose of proving or disproving the company's connection with the incident, was it, as far as Mrs. Cooper was concerned?

Miss Weyand: I should say that if my cross-examination had brought out a connection of the company with the incident, the Board would be entitled to rely on it in its decision.

Trial Examiner Batten: My question was, it was not your purpose in the examination, was it— That wasn't your purpose?— As I understood your purpose you stated a few moments ago.

Miss Weyand: My purpose was directed at credibility, but I don't believe that when I direct a question at credibility which is a proper question to direct at credi- [fol. 4336] bility I am to be barred from taking the answer and saying I wish to use it for something else if the answer developed into a statement of a connection of the company with the incident.

Trial Examiner Batten: But, Miss Weyand, there is the very thing that gets us into some of our difficulties. Now, I asked you yesterday if certain questioning was directed to credibility, and you said, "Yes." Now, I believe that in line with your statement you, then, would be barred from using that for any other purpose except credibility.

It is impossible for me as the Examiner in the hearing to use any sort of a yardstick by which I will accept or reject testimony except upon the basis of what counsel tell me. Now, if I accept it for one purpose, I do not believe it is accepted for all purposes, particularly on credibility, biased interest, and so forth, because you have a much

larger leeway under those purposes than you otherwise would, that I would not be willing to accept it for those purposes.

To get back to my question of a moment ago, your examination of this witness yesterday on cross with respect to the Sylvia Hull incident, as I gathered, was not for the purpose of proving or disproving that the company had anything to do with it.

Miss Weyand: That is correct. And I do not intend to make any claim that it should be used for any other purpose.

Trial Examiner Batten: But if it was not for that [fol. 4337] purpose but was for the purpose of showing that the witness lacked knowledge on the facts upon which she relied to generalize about the situation in the plant, then are you not questioning her opinion by showing there was no basis for it?

Miss Weyand: I am questioning her opinion and I was yesterday questioning her opinion. I do not mean to state, if I ask that question in the future I may not have a broader purpose—

Trial Examiner Batten: I am not asking you as to the future. If you were not questioning the factual basis of her opinion, then don't you bring up the very point that Mr. Tyler stated, that in addition to the opinion of these employees you want to determine whether or not, in fact, there was a basis for their opinion?

Miss Weyand: Just a minute. I think you are mistaken as to the basis of what opinion I was examining on. I was examining as to the basis of her opinion that the other girls were indignant. You will find her characterization of that on pages 4121 to 4123; that is the transcript of the present record.

Trial Examiner Batten: Whether it was her opinion or her opinion of the opinion of 1,200 other people, you questioned it, didn't you?

Miss Weyand: I questioned her opinion of the opinion of other people as she gave it. I have a right to ask her

what the basis of her opinion of the opinion of other people is.

[fol. 4338] Trial Examiner Batten: Miss Weyand, don't misunderstand me. I say you have the right. I am simply trying to clarify this matter so that I may at least attempt to apply the same yardstick to all of the evidence which I receive here. If you believe that that generalization of what all of the other employees thought had, in fact, no basis, I am not saying you do not have a perfect right to determine it by cross-examination. But if you do take that position, then it seems to me that does raise the whole general question as to whether or not any of this testimony about opinion and what they thought—whether there was, in fact, a basis for it. If not, where would you draw the line?

Miss Weyand: I would draw the line at the questions which I think are outside the issues in this case; that is, the contracts and the violence, which are outside the issues of this case as long as the Board says it is willing to take the employees' statements as to these matters at their face value. I do not say I would be willing as to every employee that comes in, but I have had no occasion up to this time to question the witnesses as to the violence or contracts. I do feel that the basis of their opinions, when the basis they are talking about is the opinion of other employees, must be inquired into.

[fol. 4339] Mr. Langsdale: Mr. Examiner, it seems to me there is an objection to this line of testimony being indulged in by Mr. Lane as to what actually happened in the Sylvia Hull demonstration. That was all gone into by witnesses, pro and con, at the last hearing, and no question was excluded.

Now, the only thing that is pertinent under the remand, in my opinion, is, "Did the Sylvia Hull demonstration affect your mind in any way that had anything to do with your joining the Donnelly Garment Workers' Union?" I don't see how it could have, but— My point is, they haven't any right now to retry the incident of the Sylvia Hull demonstration, because that was gone into without objection and without any exclusion whatever, and they can-

not come along now and by a raft of witnesses bolster up their version of what happened in that demonstration. If they do, why, we will come along with a few witnesses.

Trial Examiner Batten: You mean by your statement, then, the only question to this witness is, Did this witness see it or participate in it—

Mr. Langsdale: —or hear about it—

Trial Examiner Batten: —and if so, what effect did it have upon her?

Mr. Langsdale: Yes. But not what happened, because that was gone into.

[fol. 4340] Mr. Tyler: Mr. Examiner, I want to submit that this subject of examination is proper wholly without regard to the purpose and intent of Miss Weyand's cross-examina-
[fol. 4341] tion, because Your Honor is going to have to weigh whether this witness is telling the truth when she says the incident affected her. If her mere answer were sufficient, this lawsuit would be over, because it is in the record, the statement and the proffer of statements of 1,200 employees as to what the fact was as to their choice, against which is only the statement of one discharged employee that she had a general feeling to the contrary, and another, that she was discharged.

If the answers themselves were sufficient—and I think they are—this case is determined, because it is inconceivable that a majority of 1,200 witnesses are either perjurers or don't know what they are talking about. But I realize that that viewpoint is overruled. Therefore, it becomes necessary for these witnesses to go farther than saying, "My belief was so and so." They must show facts making it reasonably probable that that is true.

Now, Your Honor is going to decide whether those facts are reasonably probable. If this witness said, "I believed the International was going to force us all to move to a plant in St. Joseph, Mo.", Your Honor would say, "That reason is absurd. They couldn't have had that reason." So Your Honor must weigh these reasons.

[fol. 4348]. Mr. Langsdale: Now, if the Examiner please, I am not clear in my mind whether I think you should admit or not the details of the Sylvia Hulf demonstration, but the fallacy in the Senator's argument and all of the reading of questions and answers that he did is shown in his last statement, where he stated if she had said she saw the incident, then what would the next question have been. But Miss Weyand never got that far. Now, my thought is that she had a right to find out whether she saw it or not or heard about it or not, before she could claim whether it had any impression on her whatever. But to go into all of the details is something she didn't do, although the Senator says that would have been the next question.

[fol. 4349] Trial Examiner Batten: There is no claim, Mr. Langsdale, that the incident had any effect on the witness.

Mr. Langsdale: Then, it isn't material from any angle, is it?

Trial Examiner Batten: That is what I had in mind a while ago when I said to Mr. Tyler, supposing this witness saw this incident, what effect would that incident have upon her. She read the newspaper article, it is true. She has testified that did have an effect upon her. And I asked Mr. Tyler, assuming she saw this incident, what effect did it have upon her?

Mr. Langsdale: I can't possibly see how it could have affected her one way or the other as to joining or not joining the Donnelly Garment Workers' Union or staying out of the I. L. G. W. U.

Trial Examiner Batten: You may proceed with your next question.

Mr. Lane: Now, Mr. Examiner, that matter is broader than Mr. Langsdale seeks to make it. Mr. Langsdale said awhile ago in his opinion we were foreclosed from inquiring into the facts of the incident, because the Board has made its finding on that and it was inquired into at the other hearing.

Trial Examiner Batten: I can clarify that by saying [fol. 4350] the Board has not made any findings and the

Trial Examiner has not made any findings. The Board's order and decision was set aside, so there isn't any Board's order and decision.

Mr. Lane: In our offer of proof we offered to show that the employees had no knowledge of any instance where the employer or any representative of the employer intimidated, coerced, or influenced any employee in the matter of joining one union or staying out of any other labor union. It is, therefore, pertinent to inquire as to whether or not in connection with this incident there was any pressure exerted on these employees.

Trial Examiner Batten: For what?

Mr. Lane: To join one union or stay out of another.

Trial Examiner Batten: Yes, I will go along with you on that. But whether or not the employer exerted any pressure to exclude these people from the plant I don't think is material under these offers. Yes, whether the employer in this incident exerted any pressure on the employees to join or not join the Donnelly Garment Workers' Union.

Mr. Langsdale: Or to stay out of any other union.

Trial Examiner Batten: Or to stay out of any other union, yes. I think I could agree with you on that.

By Mr. Lane:

Q. When you got into the plant on the morning of April 23, what was your state of mind, after having read this account in the newspaper the preceeding day, as to whether [fol. 4351] you were upset or disturbed by that article or by Fern Sigler's presence there or not?

A. I was very much upset.

Q. Did you talk to Fern Sigler?

A. No.

Q. I do not mean Fern Sigler. I mean Sylvia Hull.

A. I did.

Q. What did you say to her?

A. As I remember it, the first thing I said to her—I asked her if she really had gone and put herself up as a representative of our company. I couldn't believe that she had done it.

Q. Did you get any answer from her?

A. I did not.

Q. I will ask you to state what you observed as to the attitude and reactions of the other employees who were in the vicinity of Sylvia Hull when you were there.

A. Well, they were just like myself, they were greatly upset and astonished at her.

Q. What did you observe that gave you that opinion?

A. Well, there was none of us felt like working; we were in such a state of mind. And we kept asking her questions and she wouldn't answer but a very few.

Q. Did you go anywhere when Sylvia Hull left the floor you were then on?

A. I did.

[fol. 4352] Q. Where did you go?

A. I went down on the seventh floor, to Mrs. Hyde's desk.

Q. Did Mrs. Hyde say anything to you?

A. She did.

Q. What did she say?

A. She asked me to please go back to my machine.

Q. And what did you do?

A. Well, I still wanted to go down and see who the other girl was. I didn't know the other girl. But she asked me repeatedly to go back to my machine and go to work, and I went.

Trial Examiner Batten: Now, you see, Mr. Lane, what this leads into. You are leading into trying out the whole issue.

Mr. Lane: I think I am entitled to.

Trial Examiner Batten: You mean, as to the—

Mr. Lane: I am entitled to show whether or not there was anything in connection with that incident that showed whether the company was endeavoring to influence these employees.

Trial Examiner Batten: Influence them in what, to join or not join the union?

Mr. Lane: To join one union or stay out of any other union.

Trial Examiner Batten: How could it influence this [fol. 4353] employee, the fact that Mrs. Hyde tried to get her to go back to work?

Mr. Lane: It has been stated here that the company did nothing whatsoever about it and condoned the action of these employees. Therefore, it is proper—

Trial Examiner Batten: Will you show me where there is any such contention as that, as far as Mrs. Hyde's or any other person's direction to this woman to go back to work is concerned?

Mr. Lane: I am saying it was the Board's contention in the previous hearing.

Trial Examiner Batten: Where in the previous hearing?

Mr. Stottle: The Board made that finding, Your Honor.

Trial Examiner Batten: Where is the finding? Made the finding that the company condoned this for the purpose of encouraging membership in the Donnelly Garment Workers' Union?

Mr. Stottle: That is right. Or against joining the International.

Trial Examiner Batten: Well, let's have it, if that is the case.

[fol. 4354] Trial Examiner Batten: The question here is how and why the Donnelly Garment Workers' Union was organized under the offers of proof.

Mr. Lane: It is more than that.

Trial Examiner Batten: Just a minute, until I finish. It is more than that. In accordance with the offers of proof, they cover those matters rather specifically. My point is, how is the fact Mrs. Hyde told this employee to go back to work — has it influenced her in joining or not joining the Donnelly Garment Workers' Union.

Mr. Lane: Now, Your Honor makes repeated reference to the offers of proof and the Board's offers of proof. I find nothing in the opinion which confines the Intervener or the Donnelly Garment Workers' Union or the respond-

ent to specific offers of proof. The opinion says the evidence of the employees was to be taken, whether they were dominated or coerced.

Trial Examiner Batten: Of course, Mr. Lane, I am referring to my ruling that we are first going to take the testimony of the employees, in line with the offers of proof. Of course, if you concede this is in accordance with the offers of proof, it is not in accordance with my ruling.

* * * * * *

[fol. 4355] Mr. Reed: The difficulty is we are trying to do the impossible, we are trying to separate evidence which bears upon the whole case and limit it to bear upon one feature of the case, and that feature of the case is an essential part of the case itself, so that our difficulty arises from that attempt to first try one particular question.

Now, you can't try that question, you can't try the very question here, without introducing evidence as to what took place. This lady saw it, and everything that took place there was dragged into this case by both sides before.

Now, this witness is asked how she felt, what her state of mind was; she saw this difficulty. What took place at that time would affect her mind, and what took place at that time would do something else; it would be a factor in arriving at any other conclusion whether the company was guilty of unfair labor practice by not going in and protecting these people.

Trial Examiner Batten: Well, of course, Senator, that is not because of the order of proof, and it is not because of the issues in the case. The difficulties that we are running into is that we are trying to explore the minds of people.

[fol. 4356] Mr. Reed: Yes.

Trial Examiner Batten: Now, I don't care whether it is a Labor Board hearing or what kind of a lawsuit it is, when you attempt to do as we are doing here, explore peoples' mental reactions and their opinions —

Mr. Reed: That is shown by what they do, isn't it?

Trial Examiner Batten: But you get into serious difficulty. I feel that is what the Circuit Court wanted done;

within the limits of our ability, I am going to comply with the Circuit Court's decision. I have made my ruling we are going to proceed in that manner. If I am wrong, Senator, we probably will be back here again.

Mr. Reed: I think we will.

Trial Examiner Batten: Well, I hope I live to be here; I have enjoyed it very much thus far, but I made the ruling, and that is the ruling which we are going to follow.

* * * * * *

Mr. Lane: In connection with this, on page 18, the Board says: "Without deciding whether the Respondent was responsible for originating and inciting these anti-[fol. 4357] ILGWU demonstrations, we are convinced that the Respondent condoned, approved, and encouraged them. In the first place, the Respondent made no sincere efforts to check the demonstrators. During the demonstrations, instructors and some other supervisory officials stood by and made no effort to take steps which might have been effective in terminating the demonstrations," and so forth in that paragraph.

* * * * * *

Mr. Lane: And to get our offer of proof, as we have read here, and I will read it again, "That they (the employees) have not been influenced by any threats, coercion or pressure of their employers, or any representative of said employers, and that they have no knowledge of any instance in which the employer or any representatives of the employer have exerted pressure, intimidation, coercion or any other influence upon the undersigned or any other [fol. 4358] employees to join the Donnelly Garment Workers' Union or to stay out of any other labor union."

Now, I say, therefore, it is competent for us to show in this whole instance there was no condoning on the part of the company, and as far as the attitude of the employees of the company was concerned, the company ordered them to go back to work.

Trial Examiner Batten: I agree with you. The first part you read, it might be interference and coercion. Whether or not it would have any effect on this employee's

mind or attitude, I think, is an entirely different question. I still don't believe that answers my question, Mr. Lane.

Mr. Lane: Well, the Board has taken the position, apparently —

Trial Examiner Batten: (Interrupting) The Board hasn't taken any position. The Board has set aside its decision and order, there is no decision and order in existence, so that can't be used as stating what the Board's decision is.

Mr. Reed: Well, is there a record in existence that is a part of this hearing?

Trial Examiner Batten: Well, I would assume so, Senator. At least we started with page 3000 and something, so I assume something precedes it.

Mr. Reed: Well, the record is here, whether the Board did or didn't make a finding — we know it did make a finding. [fol. 4359] We know this point adverse to us was in the minds of the Court, and this case has been sent back here, and the Board is ordered to set aside its judgment and decisio and we are here now, prepared to try the issues in this case.

Trial Examiner Batten: That is the very point I am glad you mentioned, Senator. I have felt that way for some time, that the position of the Respondent is that on every point I passed, the Board made an adverse finding in its prior decision and order; that means the Respondent can now come in here in a further hearing for a specific hearing, and attempt to disprove all the adverse findings brought.

Mr. Reed: And that, not because of the adverse finding, but because we are entitled to put in this evidence, and the adverse findings simply go to this fact, that it is apparent that the Board has in its mind the importance of this question, and that their opinion was that we were guilty under this particular phase of the charge. Now, we come back to try it. We have the old record here and we have the right to meet every contention that is made. That contention is made by the Board today, although it set aside its findings, and the record is there, and it is here

now, undertaking to say that on that record made, which is now, as I understand, a part of this hearing, certain deductions we have drawn, and it drew them. Now, we come in and want to show the facts in this case; and to shut us off from that —

[fol. 4360] Trial Examiner Batten: (Interrupting) Of course, Senator, I can't agree with you that you are coming in here to show the facts; you are coming in here to show the facts on the basis of the remand of the Circuit Court.

Mr. Reed: I understand that, and you and I differ on that radically, on what the remand is, and we object to the ruling that has been made, to the effect that we are confined here to our offers of proof, and then we make the further point that our offers of proof are broad enough to cover every contention that we have thus far made in this case; and that we have the right now, under the offers of proof, to meet every issue in this case; and we object and except to any rulings to the contrary.

Trial Examiner Batten: Well, of course, I think the record is pretty clear, Senator, that you have excepted to all of these rulings.

* * * * * * *

[fol. 4361] Miss Weyand: I wanted to make a statement in connection with the discussion we were having, pertaining to the Sylvia Hull incident. There were some statements made here with reference to the Board's position that I don't acquiesce in.

Trial Examiner Batten: Well, is it necessary to continue it?

Miss Weyand: I wanted to make a statement in the record to clear up the Board's position, if I may. The complaint, of course, alleged that the Respondent discouraged membership in the I.L.G.W.U. by discharging Sylvia Hull, and it also alleged the incident in regard to Fern Sigler. It is my position that any of the matters alleged in the complaint are matters which the Board maintains as its position for the purpose of trying this case. I agree with the Trial Examiner, of course, that the Board's orders have been set aside, and we look to the complaint to see what the matters are that the Board is

[fol. 4362] trying the Respondent for. That is all I wanted to say, except to indicate we do feel the Sylvia Hull and Fern Sigler incidents were very, very responsible and closely connected incidents in making the employees feel that when the Donnelly Garment Workers' Union was formed, they were not free to join a union of their own which, as I say, is very, very closely connected to restraint, interference and coercion in the circumstances under which the employees joined the Donnelly Garment Workers' Union.

Trial Examiner Batten: Well, I think I told you to proceed, Mr. Lane.

By Mr. Lane:

Q. Mrs. Saucke, I think you said in your direct examination that your resentment of Sylvia Hull claiming that she was to represent the Donnelly employees was such that you did not want to go on working while she was there in your section.

A. That's right.

. . . . . .

[fol. 4364] By Mr. Lane:

Q. Mrs. Saucke, was anything said by other employees in your hearing in the section in which Sylvia Hull was, with respect to working while she was there, and if so, state what was said.

. . . . . .

[fol. 4365] A. Yes, they did, a lot of them.

. . . . . .

By Mr. Lane:

Q. Will you state, Mrs. Saucke, what was said by anybody in the section?

Trial Examiner Batten: Well, I'll object to that question and sustain my own objection. If this questioning indicates this witness can't identify what anybody said — I mean the names of anybody — then I would say the proper foundation is laid for your last question.

By Mr. Lane:

Q. Was anything said by any person whom you recognized as being one of the Donnelly employees, in that section?

. . . . . .

[fol. 4366] A. Well, this girl that I have in mind that was talking to me, she didn't belong in that section.

By Trial Examiner Batten:

Q. Well, was she an employee of the Company, do you know?

A. She was an operator.

By Mr. Lane:

Q. Are you able to state the names of any persons you talked with?

A. I can name this girl.

Q. What was her name?

A. Christine Ereth.

Q. Are you able to name any others?

A. Ethel Riegel, Gertrude Dauben.

. . . . . .

By Mr. Lane:

Q. Are there any others you can name?

A. There were lots of others, but those were the main ones I remember distinctly of talking to.

Q. Well, did you talk with others in that vicinity that morning?

A. Yes.

Q. Now state what was said by these other employees, as to their continuing work while Sylvia Hull was in that section.

. . . . . .

[fol. 4367] By Mr. Lane:

Q. All right. Mrs. Saucke, tell us everything you can remember that was said by any employees in that section.

A. Well, they were all so upset about it, and several of them said, "Well, we just can't work, we can't set ourselves to work."

. . . . . .

A. Ethel Riegel told me as long as Sylvia was staying, she couldn't and wouldn't go back to work, I remember that; and I said the same thing.

By Mr. Lane:

Q. Can you think of any other remarks that were made that morning?

A. Yes, I was talking to her, and I asked her as long as she had joined the International, why she didn't go over to their sweat shops and work, and she didn't answer. She did [fol. 4368] later on, when we were standing talking to her, make the statement that had she known we girls had felt toward her as we were showing how we felt, that she would not have done it. We asked her what right she had to appoint herself to represent we operators, when we had had no vote whatsoever as to sending anybody. In fact, we didn't even know there was a convention; we weren't interested. She didn't answer that.

Q. Well now, will you describe what you observed take place around Sylvia Hull's section?

A. She was sitting on the south side of her row with her back to the windows, and the girls came in between those two rows in the aisle, and we were talking to her; some of them sang a song or two, and others just kept firing one question after another, asking her why she did it. That was the main demonstration.

Q. Did you hear any threats made to her?

A. No.

* * * * * *

[fol. 4369] By Mr. Lane:

Q. Well, will you describe the conduct of the employees?

A. Well, they were all excited and wrought up and disgusted with her.

Q. Did you see any violence there?

A. None whatsoever.

Q. Did anybody push her or shove her?

A. She was not touched.

Q. How long were you down on the 7th floor?

A. At what time?

Q. When you went down to the 7th floor after this incident?

A. Oh, just a few minutes. I wouldn't say over three or four minutes.

* * * * * *

By Miss Weyand:

Q. You work on the 8th floor, don't you, Mrs. Saucke?

A. I do.

Q. You are a pocket girl, aren't you, Mrs. Saucke?

A. Most of the time.

. . . . . .

[fol. 4374] By Miss Weyand:

Q. Were you working at the Donnelly Company when the Loyalty League was organized?

A. I was.

Q. Did you participate in the formation of the Loyalty League?

A. I was one of their first members—one of their charter members.

Q. When did you join?

A. I believe it was in 1935.

. . . . . .

[fol. 4375] Q. Did you know of any activity or arrangements for the formation of the Loyalty League that were taken preceding the time you signed the card?

A. Yes. We had a mass meeting, as I remember it.

Q. Did you attend that mass meeting?

A. I did.

Q. Where was that mass meeting held?

A. I couldn't say what floor, but it was an empty floor.

Q. It was in the Corrigan Building, was it?

A. It was.

Q. At what time of day was that meeting held?

A. I can't say.

. . . . . .

[fol 4378] Q. When was the next meeting that you recall?

A. I don't know how soon, but the next meeting that I remember of, we held a meeting to decide on a pin.

Q. Was that a mass meeting of the employees?

A. Yes.

Q. Where was that held?

A. On one of the empty floors, I don't know which.

Q. You are referring to the Corrigan Building?

A. I am.

Q. What time of day was that meeting held?

A. I couldn't say.

Q. Who presided at that meeting?

A. I believe, Mrs. Gray, but I'm not positive.

Q. Was anything else taken up at that meeting other than choosing a pin?

A. The design of the pin.

Q. Were there any other subjects discussed at that meeting?

A. I don't remember.

. . . . . .

[4383] Q. Did you regard the meeting of March 18 as a Loyalty League meeting?

A. What year are you talking about?

Q. 1937. The meeting at which Mrs. Reed spoke.

A. I do not.

Q. How did you distinguish it from a Loyalty League meeting?

A. Well, it wasn't called any kind of a particular meeting, only just a mass meeting, to all go down to this empty room and talk and discuss what action we were going to take to protect ourselves from this violence outside.

. . . . . .

Q. Did the Loyalty League continue to exist after the organization of the Donnelly Garment Workers' Union?

A. Yes.

[4384] Q. How long did the Loyalty League continue to exist after the organization of the Donnelly Garment Workers' Union?

A. It still is in existence.

. . . . . .

[fol. 4385] Q. Are you certain that the Loyalty League has held any affair since April 27, 1937?

A. No, I'm not certain.

Q. Have you ever attended a meeting of the Loyalty League since April 27, 1937?

A. I don't remember.

Q. Who have been the officers of the Loyalty League since April 27, 1937?

A. Well, the president that we appointed after our union—our first president of the Loyalty League after that was Thelma Huffaker.

Q. Are you certain that she was not elected until the Donnelly Garment Workers' Union had been formed?

A. What was that?

Q. Are you certain that Thelma Huffaker was not chosen as president of the Loyalty League prior to April 27, 1937?

A. Well, it was after, as I remember.

Q. Do you remember how long after it was?

A. No.

Q. Was it a month?

A. I don't remember.

[fol. 4390] Q. Will you state the first meeting of the Donnelly Garment Workers' Union at which you recall speaking?

A. I can't do that.

Q. Did you take any part in making a speech, a motion, or other statements, at the first meeting of the Donnelly Garment Workers' Union?

A. I can't say whether it was at the first one or not.

Q. What is the first time you recall making a motion at a Donnelly Garment Workers' Union meeting?

A. I can't say. I have made suggestions lots of times.

Q. Yesterday in answer to a question by Mr. Ingraham with reference to the March 18 meeting, you started to say that you spoke at a meeting and then said, "No, it wasn't the March 18 meeting." Do you recall that?

A. Yes.

Q. What did you have reference to on that occasion?

A. I had reference to the meeting we were discussing, how to raise the money for our lawyer; and, if I remember right, I suggested that we all contribute a dollar, but it was talked over and others suggested 50 cents would be enough. That is what I was referring to.

Q. Was that the first meeting at which you discussed the matter of raising the lawyer's fee?

A. As I remember it, it was. That was the second meeting we held.

[fol. 4391] Q. What was the date of that meeting?

A. It was sometime after that meeting of March 18. I couldn't say what date.

Q. Did you at any subsequent meeting also make a similar motion?

A. I couldn't say.

Q. Did you ever get up at any other meeting and discuss what size the contributions for the lawyer's fee should be?

A. I have no idea what a lawyer should be paid.

Q. Did you ever get up at any other meeting and make a suggestion as to the amount the employees of the Donnelly Garment Workers' Union should each contribute to Mr. Tyler's fee?

A. I did that once.

Q. Only once?

A. That I remember.

Q. You are not certain that it wasn't more than once?

A. I am not certain.

Q. But you are certain it was at the second meeting of the Donnelly Garment Workers' Union?

Mr. Stottle. Now, if Your Honor please, that is embodying something the witness did not testify to.

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter.)

Mr. Stottle. She says it occurred shortly after March [fol. 4392] 18, and the Donnelly Garment Workers' Union was not organized until in April.

Trial Examiner Batten: You mean the meeting—

By Miss Weyand:

Q. When you speak of the second meeting, what do you mean by the word "second"?

A. That was the meeting we held to see about raising $500 fo. a retainer's fee for our lawyer.

Q. Was there a third meeting?

A. The next meeting that I remember of was the meeting when Mr. Tyler spoke to us, the first time I ever saw him.

Q. What was the next meeting after that?

A. After the one where Mr. Tyler spoke?

Q. Yes.

A. I couldn't say.

Q. Did you nominate any of the officers at the meeting at which Mr. Tyler spoke?

A. I don't remember.

Q. Did you make a motion at that meeting as to how the voting on the officers should be conducted?

A. I don't remember.

Q. Did you ever inquire at any meeting how many members the Donnelly Garment Workers' Union had?

A. I may have, but I don't remember.

[fol. 4393] Q. Did you ever run for office in the Donnelly Garment Workers' Union?

A. My name, at one election, was put on the board. We had two groups of names to vote on. I think it was for vice-president or something. I don't remember.

Q. Were you elected?

A. No.

Q. Do you remember what the vote was against you?

A. No.

* * * * * *

By Miss Weyand:

Q. Do you remember what year you ran for this office?

A. No, I couldn't say.

Q. Do you know who nominated you?

A. No.

Q. Was it an individual who stood up in the meeting and nominated you?

[fol. 4394] A. We had a nominating committee.

Q. Do you know how that nominating committee was chosen?

A. By a vote of the union members.

Q. How many members of the nominating committee which nominated you did you nominate?

A. I don't remember nominating any.

Q. How many did you second the nomination of?

A. I don't remember.

Q. Did your second the nomination of any?

A. I don't remember.

Q. You can't tell us whether you did or didn't?

A. No.

Q. Did you have any part in choosing the nominating committee that nominated you?

A. We all have a part.

Q. What part did you have?

A. A voting p t.

Q. Did you have any part other than the voting part?

A. We all have the right to nominate anyone we want for that committee.

Q. Did you nominate anyone?

A. I don't remember.

Q. You may have done it and you may not, you don't remember one way or the other?

A. That is quite a while back, and I have attended [fol. 4395] quite a few meetings, and I don't remember.

Q. Had you known you were going to be nominated before your name was placed on the blackboard?

A. I had not.

Q. How was the vote conducted on your election?

A. A standing vote.

Q. Were the people who stood up counted?

A. Approximately they were.

Q. Who did the counting?

A. I presume Rose Todd, she was in charge of the meeting.

Q. Was there a dispute after Rose Todd announced the result?

A. Not that I ever heard.

Q. Did they have to ask someone at the meeting their opinion as to whether the majority voted for one side or the other?

A. I don't remember.

Q. Didn't an instructor announce the side on which you weren't running had the most votes?

A. How was that?

Q. Did an instructor announce at the meeting that in her opinion the side on which your name did not appear had the most votes?

A. I don't remember that.

Q. Was the vote close?

A. No, I don't think it was.

. . . . . .

[fol. 4396] By Miss Weyand:

Q. Your recollection is they did not have to call on any of the instructors present to tell which side had the most votes?

A. I don't remember that.

Q. You don't remember that Stella Willis got up and said that in her opinion the other side had more votes than you had?

A. I don't remember that.

Q. Were you interested in being elected?

A. Not particularly.

* * * * * *

[fol. 4397] Q. How many nominating committees were there?

A. There were two, if I remember right.

Q. And what did each nominating committee do?

A. As I remember it, they chose the rows of officers; we had two rows; each committee chose one side, and then it was put on a board and we were to see it and vote on it, which side we wanted. That is the way I remember it at that time.

* * * * * *

[fol. 4399] Q. Do you know Mildred Mattox?

A. I know her when I see her.

Q. Where does she work?

A. Well, I haven't seen her for several years, so I can't say; I don't think she works for us, but I wouldn't say for sure.

Q. Do you know where she worked during the first two years of the existence of the Donnelly Garment Workers' Union?

A. No, I couldn't say.

Q. Did you know her personally?

A. No.

Q. Had you ever visited in her home?

A. Never have.

Q. Did you know what her character was?

A. No.

* * * * * *

[fol. 4416] Q. Are you certain that the meeting at which you made a suggestion as to the amount which you thought each employee should contribute to Mr. Tyler's fee occurred in March of 1937 rather than March of 1938?

A. Yes.

Q. Did you also make a suggestion in March of 1938?

A. I don't remember.

Q. Did you ever make a suggestion that you thought a dollar would be an appropriate amount for each employee to contribute?

A. I think I did that at that second meeting, when we were talking about raising the $500.

Q. And you are certain that occurred in 1937?

A. I am pretty sure it was.

Q. There is no chance that it could have been a year later?

A. We were raising the $500 that year, 1937.

Q. Didn't you raise a similar amount in 1938?

A. I don't remember.

Q. And you didn't make a suggestion about raising the amount in March of 1938? A. I don't remember.

Q. Is it possible that you could be mistaken about the year? A. I don't think so.

Q. Is there anything that fixes it in your mind as 1937 rather than 1938?

A. We had to raise our first $500. We didn't have any money.

[fol. 4417] Q. You did raise amounts subsequent to the first $500, didn't you?

A. Along about—at that second meeting of 1937.

Q. But you also at later meetings raised $500 or $1,000 at different times, didn't you?

A. I don't remember that.

Q. You had no part in figuring out how those could be raised, as far as you can recall? A. How's that?

Q. You had no part in figuring out how any subsequent sums other than this first $500 could be raised?

A. I don't remember.

Q. Is it possible that it could have occurred and you do not recall it?

A. Anything could have occurred, I guess, but I don't remember it.

* * * * * * *

Q. What time of day did this second meeting occur?

A. After work, in the evening.

Q. Do you recall any meeting subsequent to the second [fol. 4418] meeting of which you speak at which the manner of raising fees for Mr. Tyler was discussed? A. No.

Q. Did you ever contribute anything other than the original 50 cents to Mr. Tyler's fees; that is, other than

your regular dues? Did you ever make any other special contribution. A. I may have, but I don't remember.

Q. I am going to ask you to look at the minutes of the meeting of the Donnelly Garment Workers' Union for Tuesday, March 8, 1938, being Board's exhibit No. 8-69, which appears in the Circuit Court of Appeals record at page 4463, and ask that you direct your attention specifically to page 4464, which is Board's exhibit No. 8-70.

A. What year was that?

Q. 1938.

* * * * * * *

[fol. 4420] Q. The question was, did you attend that meeting? A. I think I did.

Q. Is that the incident you were referring to?

A. It is not.

Q. You made it on the second occasion, did you?

A. I evidently did. That refreshes my memory to that incident.

Q. And this was not the matter you were referring to before?

A. No, but this does refresh my memory, and I did that.

* * * * * *

Miss Weyand: I would like to have the witness examine Board's Exhibit No. 8-75, being the minutes of a meeting of the Donnelly Garment Workers' Union for Tuesday, April 5th, 1938, which appears in the record of the Circuit Court of Appeals, at page 4469, and I ask that the witness direct her attention particularly to page 4473 and tell me if she was present at that meeting, and if the events which she is listed as participating in occurred as there recorded.

* * * * * *

[fol. 4421] A. I was there.

Miss Weyand: And did you participate in the nomination of Mildred Mattox? A. Yes, I did.

Mr. Lane: If the Examiner please, the Intervener Donnelly Garment Workers' Union objects to that question; whether this witness, Mrs. Saucke, participated in the nomination of Mildred Mattox in April, 1938, as a member

of a nominating committee, whether this witness acted wisely or unwisely in so participating, or whether this witness was casually or intimately acquainted with Mildred Mattox doesn't throw any light whatever on the issues of this proceeding, it is entirely irrelevant and immaterial, doesn't even approach the issue we are here to try out, and I object to it for that reason.

Trial Examiner Batten: We will proceed.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: Overruled.

[fol. 4422] By Miss Weyand:

Q. And you participated as shown in these minutes, is that correct? A. I guess I did.

Q. Will you look at the minutes of the meeting of the Donnelly Garment Workers' Union for Tuesday, April 26, 1938, being Board's Exhibit 8-82, which appears at page 4476 of the Circuit Court of Appeals record, directing your particular attention to pages 4479 to 4481, and tell me whether you attended that meeting.

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[fol. 4424] By Miss Weyand:

Q. Did you attend that meeting? A. I did.

Q. Is that the meeting at which they voted on whether you should be a member of the committee?

A. It is. I wouldn't swear to that date, though. I don't remember what date that happened.

[fol. 4425] By Miss Weyand:

Q. This is the meeting at which that occurred? The matters you read portray the events which occurred in that connection? A. It looks familiar to me.

Q. I notice the name of Stella Willis appearing here as making several statements. Could you tell me who Stella Willis is? A. I don't know her.

Q. You don't know Stella Willis?

A. I don't remember knowing her.

Q. You have not known anyone by the name of Stella Willis? A. The name sounds familiar.

Q. Who is the instructor of the button and buttonhole section?

Mr. Reed: When?

Miss Weyand: At the present time.

Mr. Reed: That is immaterial. It is outside the issues as they have been drawn here. A. I don't know.

Miss Weyand: You state you don't know.

Mr. Reed: Wait a minute.

Miss Weyand: Well, it is my understanding that Stella Willis is now the instructor of the button and buttonhole section, and I am asking this witness—

Trial Examiner Batten: She doesn't have to answer [fol. 4426] what position she has now, because it wouldn't make any difference as far as the issues in this case are concerned, as to 1939.

Miss Weyand: She said she didn't know who Stella Willis was and I just wanted the record to show how completely ignorant she was on what goes on there at the Donnelly Garment Company.

Mr. Lane: I object to the comment and move that it be stricken.

Trial Examiner Batten: Just a minute. I have said it wouldn't make any difference here, and she doesn't have to answer.

By Miss Weyand.

Q. Do you know who was the instructor of the button and buttonhole section in 1937, 1938, and 1939?

A. I do not, because that was on another floor and I never worked in that section. I wasn't interested in it.

Q. I notice here (referring to minutes) that Rose Todd called on a person by the name of Lola Skeens for her opinion. Do you know who Lola Skeens was? A. Yes.

Q. Who was Lola Skeens at the time of this meeting in April, 1938? A. She was an instructor.

Q. Was she your instructor at that time? A. 1938?

Q. Yes.

[fol. 4427] A. In 1937 and 1938 there were several changes in the instructors in the sections that I was in. Sometime during that time Lola Skeens was my instructor,

but I couldn't say that it was at this time. She was my instructor for about six months.

Q. Has this refreshed your recollection as to whether Rose Todd called upon Lola Skeens for her opinion as to which of the tickets had the majority vote?

A. No. I don't remember that part of it at all.

Mr. Langsdale: That was April 25, 1938, Miss Weyand?

Miss Weyand: The April 26, 1938, meeting.

Trial Examiner Batten: That is 8-82, if you have them marked, Mr. Langsdale.

Miss Weyand: I am going to ask the witness to read the notes of the meeting held April 27, 1937, being Board's exhibit No. 8-1, appearing in the Circuit Court of Appeals record at page 4395, asking her to direct her attention particularly to page 4404.

. . . . . .

[fol. 4433] Miss Weyand: The question which was pending when we recessed on Friday was whether or not the witness attended the meeting on April 27, 1937. I was asking her to read Board's Exhibit No. 8-1, appearing in the Circuit Court of Appeals record at page 4395, asking her to direct her attention particularly to page 4404. Do you care to look at it further this morning?

. . . . . .

A. What was the question?

By Miss Weyand:

Q. You attended that meeting, did you? A. I did.

Q. Did you make the motion that the officers be voted on [fol. 4434] as a group?

. . . . . .

A. I don't just remember; according to that report, I did, and I suppose I did; but I don't just recall doing so.

By Miss Weyand:

Q. Did you know the meeting was going to be held for the purpose of electing officers prior to the time you got to the meeting? A. No.

Q. You notice on page 4395, which is the first page of that minutes, that the second sentence there appearing, by Rose Todd, was, "I sincerely hope this meeting is going to be as enthusiastic as our last one was." Do you know what meeting she referred to by "our last one"?

A. I imagine it was that meeting we held where we were discussing the money to be raised for our lawyer.

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[fol. 4435] Q. Who presided at the meeting described there as enthusiastic? A. The one previous to this?

Q. Yes. A. I imagine Rose Todd.

Q. Do you remember who presided? A. Yes.

Q. Was it Rose Todd?

A. As I remember, it was Rose Todd.

Q. What else occurred at that meeting?

A. I don't remember.

Q. You will notice on the same page of the same minutes, that the next sentence Rose Todd begins, "As Chairman of Committee of Employees". Do you know what Committee of Employees she was speaking of?

A. Yes, I think I do.

Q. What committee is that?

A. Well, March 18 we held a meeting and appointed a committee to see about getting a lawyer.

[fol. 4436] Q. And you think that was the one?

A. I think that was it.

Q. That is your understanding of it?

A. That is my remembering.

Q. How was that committee appointed at the March 18 meeting?

A. As I remember it, different people suggested names; now, that is my recollection.

Q. Do you remember what names were suggested?

A. Rose was one, I think; Sallie Ormsby—I am not positive about that.

Q. Were those names voted on, or how were they made the committee?

A. I think they were just—a motion was made and their names suggested, and it was seconded—I am not positive.

Q. Was there anyone named who was not appointed on that committee? A. I don't remember.

Q. Do you remember what the size of the sum was you were going to raise at the second meeting? A. $500.

Q. How many employees attended that meeting, do you know? A. What was the question?

Q. How many employees attended that meeting?

A. I didn't count them.

Q. Was it a mass meeting of all the employees of the [fol. 4437] Donnelly Garment Company?

A. It was supposed to be.

Q. Where was it held?

A. I think on the second floor.

Q. How many employees did the company have at that time?

A. I don't know, but I think around 12 or 13 hundred.

Q. Were you raising money for anything besides the $500 for a fee for a lawyer?

A. That was the main thing.

Q. What was the other thing?

A. I didn't say there was any other thing.

Q. Well, was there? A. I don't remember.

Q. That is the only thing you remember?

A. That was the main thing that we were discussing, to raise that money.

Q. Did you expect to raise money for something other than the $500 for the lawyer?

A. I don't remember, but it stands to reason we would need other money for incidentals; I don't remember anything else was discussed.

Q. Did you contemplate that each employee would contribute his share? A. I certainly did.

Q. Then, if you had made the suggestion that each em- [fol. 4438] ployee contribute $1, you would have raised $1200, wouldn't you? A. Yes.

Q. What did you expect to do with the other $700?

A. Well, I expected we would have expenses; the lawyer certainly wouldn't go on representing us for that $500.

Q. What did you expect the lawyer to continue doing for you?

A. Watching the law and advising us what we should do and explaining the law to us that we couldn't understand.

Q. I would like to have you look at the minutes of a meeting I showed you the other day, for April 15, 1938, which is Board's Exhibit 8-75, directing your attention par-

ticularly to page 4473 of the Circuit Court of Appeals record, and I would like to have you look at the names which appear at the bottom of that page and the top of page 4474 of the Circuit Court of Appeals record, and tell me which of those names you recognize as persons who were instructors or thread girls in 1937 and 1938.

A. Shall I read them out as I recognize them?

Q. Yes, and state what their position was.

A. A motion was made by Fred Ellis that we elect two committees of 5 members each. I remember Fred Ellis.

Q. I want the names of the instructors and thread girls.

A. Jessie Mudd was a thread girl, I think, at that time. Nellie Biggs, Claris Martin.

[fol. 4439] Q. Was she an instructor or thread girl?

A. I don't know. I never worked under her.

Q. But she was one or the other?

A. She wasn't on my floor, so I couldn't say, but I think she was. I don't know for sure. Edna Rawlings.

Mr. Ingraham: Excuse me. Didn't she mention two names?

Mr. Langsdale: She didn't say what Nellie Biggs was.

Mr. Ingraham: You read out Nellie Biggs? A. Yes.

By Mr. Ingraham:

Q. Did you say who she was?

A. She was a thread girl. Edna Rawlings has been a thread girl, but whether she was at that time or not, I do not know. Here is Rose Todd, she wasn't in a section as a thread girl, but she had something to do about matching thread, but she isn't what an operator would call a thread girl, she didn't have anything to do with the operators. Now, on that list I have named, do you want me—

By Miss Weyand:

Q. (Interrupting) As you look back there, you did not name Rose Hendricks.

A. I did not see that name. It isn't here, or I didn't read—I was just reading the names underscored. Rose Hendricks was a thread girl in 1937, the spring of 1937. She was in 412.

Trial Examiner Batten: She was what, Mrs. Saucke?

A. In Section 412. That is all I recognize as thread girls.

[fol. 4440] By Miss Weyand:

Q. Do you know Hilda Richmond? A. Who?

Q. Hilda Richmond; her name appears there as one of the names. A. I don't remember the name.

Q. That is the name I am referring to, the fourth line from the bottom of the page on 4473.

A. Oh, let's see, I do.

Mr. Reed: Are those the minutes of the 1938 meeting?

Miss Weyand: Yes, they are.

Mr. Reed: This is not 1937 meeting, this is 1938 meeting?

Miss Weyand: That is correct.

By Miss Weyand:

Q. Did you start to say something about—

A. (Interrupting) There is a Hilda who was an operator, there was a year or two ago, that I know, but whether that is her last name or not, I don't know. I know many operators only by their first names.

Q. This girl appears on the pay roll for 1937 under the title of "Buying Records". A. Of what?

Q. Of "Buying Records", it is a pay roll budget arrangement. You wouldn't know that person? A. No.

Q. Do you know who Veda Hoyland was? Her name [fol. 4441] appears on the second line from the bottom on page 4473 of the Circuit Court of Appeals record. A. No.

Q. You told us, I believe, on Friday, you attended meetings regularly, of the Donnelly Union, through 1939. Is that correct? A. Pretty regularly.

Q. Were there a great many people that got up and made motions and statements whose position with the company you did not know? A. I don't think so.

Q. You think you know what position most everyone held who made a motion?

A. Not every one, but a good many.

Q. That would be especially true of those who made motions at repeated meetings, would it be?

A. Not always.

Q. And if you heard someone make a motion or a statement at five or six meetings, would you find out who she was?

A. Had she made a motion that I questioned or didn't understand, I might have whispered to the next girl and asked who she was, but I don't think I did.

Q. You didn't find out, then, who people were that got up and made statements and motions repeatedly at meetings?

Mr. Reed: Now, she hasn't said that, and it isn't shown they made them repeatedly at the meetings. That is an assumption. The witness has very candidly answered the [fol. 4442] questions.

Trial Examiner Batten: I presume the question is those whom she did not know, did she make inquiries about.

Mr. Reed: That is not the question.

Trial Examiner Batten: Well, I am changing the question, Senator.

A. I wish she would repeat it again.

Trial Examiner Batten: Well, here is the question. Those whom you did not know, who regularly made motions or talks at the meetings, did you inquire as to who they were or what they did?

A. Had there been anyone I didn't know that made regular talks and motions and kept it up meeting after meeting, I certainly would have, but that never happened, to my knowledge.

Miss Weyand: I would like to have you look at the following pages on this record: first, the meeting of December 7, 1937, which is Board's Exhibit 8-50, and begin at record page 4444 of the Circuit Court of Appeals record, directing your attention particularly to page 4447 of the Circuit Court of Appeals Record.

Mr. Reed: That is a meeting of what date, please?

Miss Weyand: December 7, 1937.

Trial Examiner Batten: Mr. Ingraham, you have a copy of that which you can be reading while the witness is reading.

[fol. 4443] Mr. Ingraham: I want, if necessary, to make an objection.

Trial Examiner Batten: Mrs. Saucke, after looking at it, and before you give an answer, permit Mr. Ingraham or Mr. Lane, or any of counsel who desires, to make an objection.

A. What page was it you called my particular attention to?

By Miss Weyand:

Q. 4447.

Mr. Ingraham: Better read all that exhibit.

A. Yes, I am going to.

Mr. Langsdale: What exhibit is it?

Miss Weyand: It is Board's Exhibit 8-50, that is where it begins.

[fol. 4444] By Miss Weyand:

Q. You have read those minutes, have you, Mrs. Saucke?

A. I have.

Q. Do your remember attending that meeting?

(No answer.)

Trial Examiner Batten: Unless there is an objection, Mrs. Saucke, you may answer.

The Witness: I didn't understand you.

Trial Examiner Batten: I say, there is apparently no objection, so you may answer.

The Witness: What year was that?

Miss Weyand: December 7, 1937. Examine the minutes as much as you want to, to determine whether you recollect being present at that meeting.

A. I remember the first part of this meeting but I don't remember the latter part.

By Miss Weyand:

Q. How far do you remember?

A. Well, I remember about stating that the bill might be 35 hundred or 4 thousand. I remember her saying that.

Q. That is Rose Todd's statement on page 4445 of the Circuit Court of Appeals record?

A. Yes.

Q. How much further do you remember?

Mr. Reed: The question was, whether she remembered being at the meeting.

[fol. 4445] Miss Weyand: Correct. And she said she remembered being at part of the meeting, and I wondered how much she remembered.

A. I remembered that much, and it's possible that I got up and left the meeting before it was over. Sometimes I did that, if it was necessary to get home sooner.

By Miss Weyand:

Q. You do not recall hearing Stella Willis make the suggestion which appears at Circuit Court of Appeals record page 4447?

A. No, I do not.

Q. You do not know who Stella Willis is?

A. Yes, I do know who she is, and I could have described her looks to you the other day, after you told me what she did. I knew her by face, but I didn't recognize the name.

Q. Was she quite active at meetings in getting up and making suggestions and motions?

A. I can't say she was.

Q. She would get up about every other meeting and make a statement of some sort.

A. I wouldn't say that.

Q. What is her position now, since you remember who Stella Willis is?

A. She has something to do with the buttonhole and button section downstairs. I don't even know what floor it is on.

Q. Do you know at this time she was the highest paid instructor the company had, making over $200 a month?

[fol. 4446] A. I never inquired as to the salary of my instructors or any other instructor. I didn't know how much they made.

Q. Do you know how long Stella Willis had been with the company as an instructor?

A. I do not.

Q. You just knew she had something to do with the button and buttonhole section; is that correct?

A. Yes.

Q. I want to direct your attention to Board's exhibit 8-69, being the minutes for March 8, 1938, which begins at page 4463 of the Circuit Court of Appeals record, directing your attention particularly to page 4467 of the Circuit Court of Appeals record.

A. 4467?

Q. Yes.

Trial Examiner Batten: Of course, that is the one you previously read, Mrs. Saucke. I presume you recognize that.

The Witness: Yes, I recognize the date of it.

(Thereupon the specified portion of Board's exhibit 8-69 was read by the witness.)

The Witness: What was your question?

By Miss Weyand:

Q. Did you attend that meeting?

A. I think I did.

Q. Do you recall Stella Willis getting up and making the suggestion which appears in the minutes at page 4467 [fol. 4447] of the Circuit Court of Appeals record?

A. I don't just recall that.

Q. Will you look at the minutes of the meeting of April 26, 1938, being Board's exhibit 8-82, beginning at page 4476 of the Circuit Court of Appeals record, directing your attention particularly to pages 4477 and 4481?

Mr. Reed: What is the date of this meeting?

Miss Weyand: April 26, 1938.

Trial Examiner Batten: I believe that is the one you read Friday, is it not, Mrs. Saucke?

Miss Weyand: Yes, she examined that Friday, but I would like for her to examine it further.

Trial Examiner Batten: I have no objection to her taking all of the time she wants.

Mr. Reed: Will you please read me the pending question?

Miss Weyand: I just asked her to examine—

Mr. Reed: I am asking the reporter to please read the pending question. I didn't understand you.

Miss Weyand: I just asked her to examine the minutes of that date. I will state a question first, if you prefer.

Mr. Reed: No. I just wanted it straight for the record.

(Thereupon the specified portion of Board's exhibit 8-82 was read by the witness.)

The Witness: Now, what was your question?

By Miss Weyand:

Q. Were you present at that meeting?

[fol. 4448] A. I was.

Q. Do you remember Stella Willis making the suggestion which is recorded on page 4477?

Mr. Reed: That is the sentence, if I understand this—:

"Stella Willis: I think it would be very nice and it wouldn't take very long."

Miss Weyand: Yes.

A. No, I do not.

By Miss Weyand:

Q. Directing your attention now to page 4481, do you now recall her having stated her opinion as to which ticket won?

A. No, I do not.

Q. Will you please look at the minutes of the meeting of January 16, 1939, being Board's exhibit 8-138, which starts in the Circuit Court of Appeals record at page 4532, directing your attention particularly to pages 4536 and 4537?

A. Now, what were the numbers you directed my attention to?

Q. 4536 and 4537.

(Thereupon the specified portion of Board's exhibit 8-138 was read by the witness.)

A. I have read it.

Q. Do you recall attending that meeting?

A. I think I was there.

Q. Do you remember Stella Willis making the suggestions which appear on 4536 and 4537?

[fol. 4449] A. I remember there were suggestions like that made, but I don't remember who made them.

Q. Will you please look at the minutes of the meeting of February 10, 1939, being Board's exhibit 8-145, which begins at page 4538 of the Circuit Court of Appeals record, directing your attention particularly to page 4541 of the Circuit Court of Appeals record?

Trial Examiner Batten: 4539?

Miss Weyand: Yes.

Mr. Reed: What is the date of the meeting?

Miss Weyand: February 10, 1939.

Mr. Ingraham: It is February 7.

Miss Weyand: That may be correct.

Mr. Langsdale: It is February 10 here (indicating). Written up on February 10, I guess.

Miss Weyand: Yes. February 7 is the date. And it should be the meeting of January 10 before— The meeting which I described as a meeting of January 16, 1939, the minutes were written up on January 16, 1939, but the meeting occurred on January 10.

Trial Examiner Batten: This is 8-145?

Miss Weyand: I was speaking of the preceding exhibit.

Now, coming to Board's exhibit 8-145, that is the minutes of the meeting of February 7, 1939, which were written up on February 10, 1939.

[fol. 4450] Trial Examiner Batten: The one you want the witness to look at is 8-145?

Miss Weyand: That is correct. I have mentioned the dates on which the minutes were written up rather than the date on which the meeting occurred. I have been correct all of the way through on the Board's exhibit number.

(Thereupon the specified portion of Board's exhibit No. 8-145 was read by the witness.)

[fol. 4451] Q. Do you recall what—had you finished?

A. Yes:

Q. Do you recall attending that meeting?

A. I think I do.

Q. Do you recall that Stella Willis asked the question which appears on page 4541?

A. I can't say that I remember that.

Q. Does reading over this series of minutes refresh your recollection that Stella Willis was present at most of the meetings and usually got up and said something?

A. Well, it is there in black and white that she did.

Q. Do you recall now?

A. I wasn't paying much attention as to who—how many times any one person got up. We were free to get up and say what we pleased at any time.

Q. And you did not regard Stella Willis as a person who had a very high salary and who had been in a supervisory position with the company for a very long time?

* * * * * * *

[fol. 4453] A. I didn't know her salary but now you have told me, I don't consider it as a very big salary; we operators make that much during rush time, but I don't consider that an extra high salary.

By Miss Weyand:

Q. And as regards her occupying a supervisory position?

A. I don't know that she ever held a supervisory position. She is connected in that section in some way; I never was on the floor in that section where she works.

Q. You never investigated the exact status of those persons who got up in those meetings and made suggestions?

A. No. She was an employee of the company in a white uniform. She was one of us.

Q. Did Rose Todd wear a uniform in 1937 and 1938?

A. I don't remember that.

Q. Did you notice at the time of the nominations, April 5th, 1938, which is the nomination which you identified five persons who participated in the nomination as thread girls; did you notice that five thread girls got up and participated in that nomination at the time?

Mr. Reed: What meeting is that?

Miss Weyand: April 5, 1938.

Mr. Reed: That is the one the witness was examined about a minute ago?

Miss Weyand: Yes.

[fol. 4454] Mr. Reed: And said she didn't know?

Trial Examiner Batten: That is the one where she identified certain people listed in the minutes, Senator.

Miss Weyand: I will be glad to have her look at these minutes again, if it will help her to answer the question.

Miss Weyand: Those were the minutes introduced as Board's Exhibit 8-75, and the nomination to which I refer appears as pages 4473 and 4474 of the Circuit Court of Appeals record. The question is whether, at the time it occurred, you noticed there were five thread girls in succession got up and either made or seconded nominations.

Mr. Reed: That is assuming they were thread girls.

Miss Weyand: She has already testified they were.

Mr. Reed: Five?

Miss Weyand: Yes.

Mr. Reed: I didn't hear her. All right.

A. Now, what was your question?

By Miss Weyand:

Q. Did you at the time the meeting occurred notice that five thread girls got up in succession and either nominated or seconded nominations?

A. I never considered it in that way. I never noticed it. It wouldn't have made any difference if I had. They were all employees; I expect they had the same fear of being beat up as we did, by the International.

Q. Do you know anything about the way it happened [fol. 4455] at this election? A. What year?

Q. 1938, that the two tickets brought in each had Rose Todd for president on each ticket, Jack McConaughey for treasurer on each ticket, and Margaret Green for secretary on each ticket?

Mr. Reed: I object to that as immaterial; whether the witness noticed it, or didn't notice it, is purely immaterial in this case.

Miss Weyand: She was a candidate on one of the tickets for vice president, and I think she would be a good person to explain.

Mr. Ingraham: I didn't know there was a vice presidential candidate.

Trial Examiner Batten: Do you know anything about it?

A. I had nothing to do in making up those tickets, didn't know who was on those tickets until they were placed on the board in front of me.

By Miss Weyand:

Q. And you didn't later learn how that happened?

A. I didn't even inquire.

Q. You don't to this day know how that happened?

A. You mean how those names—

Mr. Reed: (Interrupting), She has already said she was not present, that she didn't know how the lists were [fol. 4456] made up. Now she is asked if she didn't know how that happened; I object to it.

Miss Weyand: She indicated at that time—

Trial Examiner Batten: The question is whether she ever found out it occurred.

Mr. Reed: Then it would be hearsay.

Mr. Langsdale: That is not a question from the testimony in this case.

Trial Examiner Batten: Did you ever find out, Mrs. Saucke?

A. I never tried to find out.

By Trial Examiner Batten:

Q. Then, you didn't find out? A. I didn't ask.

Q. Then, if you didn't ask, you didn't find out, did you? A. No, I guess I didn't.

By Miss Weyand:

Q. No one ever told you? A. Told me what?

Q. How it happened? A. How what happened?

Q. That the same officers, with the exception of your name for vice president, appeared on each of the two tickets? A. Nobody told me, because I didn't ask.

Q. Are you aware that the same thing happened the next year, that the president on each ticket was the same, and the treasurer on each ticket was the same, and the sec-[fol. 4457] retary on each ticket was the same, the only difference was in the name of the vice president?

A. Yes, I am aware of that.

Q. Do you know how it happened that that was true the next year?

A. Well, now, this was 1939 you are talking about, isn't it?

A. 1939 would have been the next year.

A. 1938?

Q. 1938 was the year you ran for vice president and the tickets were the same, and in April, 1939, the same thing happened again. It is 1939 I am asking you about now.

A. I am not aware why it was, unless everybody seemed to be perfectly satisfied with the way Rose Todd was conducting our union. I know I was.

Q. Do you know why they nominated two nominating tickets if they were entirely satisfied?

Mr. Reed: Give us the question.

Trial Examiner Batten: Read the question, please.

(Last question was read by the reporter.)

Trial Examiner Batten: Restate your question.

Miss Weyand: Do you know why, if they were entirely satisfied with Rose Todd and the other officers, the union selected two nominating committees and directed they bring in two tickets?

[fol. 4458] Mr. Lane: I object to the question for the reason it deals entirely in the realm of speculation.

Trial Examiner Batten: No, she is asking this witness if she knows why.

Mr. Lane: Well, that is speculative and it is immaterial in any event.

Trial Examiner Batten: You may tell us, if you know.

A. Well, as I remember it, we had these two committees to form two lists for these elections, in case the majority of the operators, the employees, wanted a change, they had a right to go to those committees that was on their floor and representing them, and tell them that they would like a change. Well, everybody, to my knowledge, wanted to keep Rose Todd, and whatever officers, the main ones; they understood our union, they had been with it when it first started, they understood it better than I would, and why not keep her? She was successful. We had those two groups to choose those two lists, to give the employees a chance to make a change if they so wished.

By Miss Weyand:

Q. Were the instructors present at the meeting of April 27, 1937? A. I believe they were.

Q. Do you remember seeing any of the instructors present at that meeting?

A. No, I do not, so I say I just think they were there, I [fol. 4459] think we all went down; but I am not positive.

Q. Did some of the girls wear their uniforms to that meeting or only part of them?

A. Everybody that was around me had their uniforms on; there were some that were dressed.

Q. Returning now to the Sylvia Hull incident on the morning of April 23, 1937, did you tell Sylvia Hull she would have to leave before you would go to work?

A. I don't believe that I directed it to her.

Q. Do you remember making that statement?

A. I remember saying that I couldn't work while she was sitting over there among us.

Q. Whom did you make that statement to?

A. I think I made that to Ethel Riegel and Christine Eretz, I believe. I am pretty sure I did.

* * * * * * *

[fol. 4460] By Miss Weyand:

Q. Still referring to the same incident pertaining to Sylvia Hull, did you hear any other girl tell Sylvia Hull that she could not work until Sylvia Hull left?

A. Repeat that, please.

Q. Did you hear any other girl tell Sylvia Hull that she, the other girl, could not work until Sylvia Hull left?

A. That was the general talk, that they couldn't work until she left.

* * * * * * *

Trial Examiner Batten: Did you hear any other girl say that to Sylvia Hull?

A. Yes. That was the talk between us.

By Miss Weyand:

Q. Did they direct any such remarks to Sylvia Hull? [fol. 4461] A. Yes.

Q. Do you know how many girls went to Sylvia Hull and expressed that idea to her? A. Several.

Q. Did girls come from other floors of the plant to the eighth floor to speak or to look at Sylvia Hull?

A. I couldn't say.

Q. Did girls from your floor go down to the sixth floor to see Fern Sigler?

A. I didn't. I don't know about the rest.

Q. How did you happen to go to the seventh floor to ask Mrs. Hyde if you could go to the sixth floor?

A. When Sylvia got up to leave her machine I followed right behind her—three or four feet behind her, to see where she went. That's how I come to go to the seventh floor.

Q. How did you know there was a girl on the sixth floor wearing a pin?

A. It was generally discussed up there that there was another one just like Sylvia's.

Q. How did you come to ask Mrs. Hyde if you could go to the sixth floor.

A. I didn't ask her. I said I was going.

Q. What songs did the girls sing?

A. The only one I remember was, "Hail, hail, the gang's all here."

[fol. 4462] Q. Did Sylvia Hull try to keep on working while the girls were gathered around her?

A. A little while.

Q. Was the power shut off so Sylvia Hull could not continue working?

A. I don't remember.

Q. Did you lose pay for the time you spent at Sylvia Hull's machine?

A. I certainly did.

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[fol. 4466] Cross-Examination
(By Mr. Langsdale)

By Mr. Langsdale:

Q. How close were you to Sylvia Hull on the 23rd of April when this demonstration occurred?

A. Well, I believe our table would be about the width of this (indicating). She sat on the south side and most of the time I was on this aisle (indicating); I imagine that's about 4 feet.

Q. Did you demand that Sylvia Hull turn over her Loyalty League pin?

A. I was one that said something about it.

Q. Why?

A. I didn't feel she was a fit person to wear it.

Q. Why?

A. For the stand she had taken against our company.

Q. What stand?

A. Putting herself up as an appointed representative of our employees to represent us at the International Ladies' Garment Workers' Union, at the convention at Atlantic City.

Q. What did you think that had to do with the Loyalty League pin?

A. Well, it had a lot, in my estimation.

Q. Well, what?

A. I felt that she was very disloyal to we operators.

Q. And you didn't think she had any right to belong to [fol. 4467] the Loyalty League and the International Ladies' Garment Workers' at the same time; was that it?

A. No, I didn't.

Q. Now, were you one of those who demanded that she make a speech?

A. No. To my recollection, I don't remember that.

Q. Did you hear anyone demand that she make a speech?

A. If I remember right, there was someone asked her to get up and explain her actions. I couldn't say who did it, though.

Q. Did she give her Loyalty League pin to you?

A. She laid it on the table.

Q. And what was said about it by her, by you, or anyone else that you heard?

A. When someone demanded it she said she paid 35 cents for it, and I said—someone said—I don't know who said—"Give her her money."

Q. Did they do that?

A. Someone did.

Q. How did they tender it to her, if you know?

A. Just handed it across the table to her.

Q. Wrapped up?

A. I don't remember.

. . . . . .

[fol. 4470] Q. You said something about the meeting of March 30—the time hasn't been fixed definitely, but some people said it was March 30—at which a motion was made for everybody to contribute 50 cents to Mr. Tyler's fee. Who made that motion; do you know?

A. Since reading these reports, I see that motion was made more than once. I hadn't remembered it.

Q. Could you be mistaken about that motion being made at all at any meeting after March 18 and before the organization—.

A. I made a motion at the meeting following March 18 to raise money. I couldn't say I made the motion; I suggested we take up a dollar collection. And then the motion was made—I don't know whether I made it or someone else made it—to cut it to 50 cents for each person to contribute.

Q. Did you give 50 cents on that occasion, at the meeting after March 18?

A. I did.

Q. To whom did you give that money?

A. Some girl in our section.

Q. What girl?

A. I said "some girl." I don't recall her name.

Q. How did you happen to pick on the girl to give it to as the one to give it to?

[fol. 4471] A. I don't know, unless it was just someone who was capable of going ahead.

Q. Just one of these spontaneous sort of girls?

A. Well, in an organization you will have people who are more capable than others.

Q. Who was the capable girl you gave the money to in your section?

A. I said I didn't remember.

Q. Was she also the Loyalty League representative in your section?

A. I don't remember.

Q. Do you know whether she was or not?

A. I do not.

Q. Where was she when you gave her your 50 cents?

A. In the section.

Q. The next day?

A. The next day.

Q. You didn't contribute any money, then, that night, the night of the meeting?

A. I didn't. Some did, but I did not.

Q. Did Rose Todd say that you could give the 50 cents to your representative the next day?

A. I don't remember that.

Q. Do you say she didn't say that?

A. I don't remember hearing it.

[fol. 4472] Q. Did you have anyone who was described as the representative except a representative of the Loyalty League at that time?

Mr. Reed: She hasn't said it was a representative of the Loyalty League she was giving this money to.

Mr. Langsdale: I am asking the question, Senator.

Mr. Reed: I am objecting because it is a misquotation of the evidence.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: I don't think it is quoting the evidence. The question is, was there anyone in the section as a representative other than a representative of the Loyalty League?

Mr. Reed: What date is this?

Mr. Langsdale: This is that meeting that they say was held the latter part of March, 1937.

By Mr. Langsdale:

Q. Now, will you answer the question?

A. I don't remember that we had any other representative, because our union was not formed at that time.

Q. No. But you did have an officer in your section, of the Loyalty League, known as the representative, didn't you?

A. I presume we did.

Q. Do you know who the representative in your section [fol. 4473] was at the time you say you had this meeting to collect the money?

A. I do not.

Q. Did the same girl collect money from others in your section?

A. I don't think this girl I paid to, whoever she was, collected the money. We just went down to the end of the section and were just giving our money over.

Q. Why did you go down to her?

A. Well, whoever it was, someone just started her taking the money.

Q. So you all just spontaneously went down to the same girl?

A. We were glad to.

[fol. 4474] Q. What did Rose Todd say on the night of the 30th of March, or whenever it was, about the $500 for Mr. Tyler?

A. I don't get the meaning of your question.

Q. Well, do you remember what she said about needing $500 to pay Mr. Tyler?

A. Well, she said that that was what it would take; we [fol. 4475] had to raise that much money as a retaining fee.

Q. Where did she say she got that information?

A. What?

Q. Where did she say she got the information?

A. Where did she get it?

Q. Yes.

A. I couldn't say.

Q. When did she say Mr. Tyler wanted his money?

A. Well, I don't just remember, but I took it that we had to have that money before he would be bothered looking up the law and take our case.

Q. So Rose Todd told you, to get the money for Mr. Tyler, you would have to take up some money that night

to raise $500, or make arrangements to take it up; is that right?

A. No. The meeting was open for suggestions. We had to have the money right away, because the quicker we got our lawyer, the quicker we could get to doing something to protect ourselves from this violence that was going on and that we were being threatened with, and we talked about how we could raise the money and we came to the conclusion to raise 50 cents each. Some of the girls threw the money upon the platform. And as I remember, it was said—I don't know whether she said it but I think she did—that we could pay it the next day, bring it down to her.

. . . . . .

[fol. 4476] Q. Did Rose Todd mention any other method she had of getting the $500?

A. No, to my recollection she didn't.

Q. She said it had to be raised among you girls or Mr. Tyler couldn't be paid; is that it?

A. I don't say it was just in those words, but that was the general supposition, that he wanted $500 before he would start.

Q. And you didn't learn of any other method she had of getting the money, on that night?

A. We thought that was the quickest and easiest.

Q. Did you learn of any other method she had?

A. I don't remember.

Q. Did you learn that that very day, before that meeting, she had been to the First National Bank and borrowed $1,000 in the name of the Loyalty League to pay Mr. Tyler?

A. I don't know about that.

Q. Rose Todd didn't tell you at that meeting at which you say you raised 50 cents per person that she already had the money in the bank?

A. I don't remember.

[fol. 4478] Did Rose Todd or anyone else tell you they paid Mr. Tyler $500 to organize a union, to write up the working agreement?

A. Will you state that question again?

Trial Examiner Batten: Will you read the question, please?

(Last question was read by the reporter.)

Mr. Reed: I object to that as calling for hearsay evidence.

Trial Examiner Batten: You may answer.

A. I don't remember.

Mr. Langsdale: You mean she didn't tell you that, or [fol. 4479] you just don't remember?

A. I don't remember that she told us.

[fol. 4480] Mr. Langsdale: Let me ask you if you ever heard of this question and answer given by Rose Todd at that meeting:

"Question: I understand people are saying we paid Mr. Tyler $500 to organize our union."

and Rose Todd answered: "As you know, and as we have explained quite thoroughly, we paid Mr. Tyler $500 retainer fee, he helped us write up our by-laws and working agreement and advises and helps when we need it."

Did you hear that in that meeting?

[fol. 4481] A. It was generally discussed that our lawyer had been paid.

By Mr. Langsdale:

Q. $500 for writing up the by-laws?

A. As a retainer fee.

Q. And writing up the agreement and the by-laws?

A. I couldn't say that was what he was paid for, he was paid to represent us, and let us proceed the way we wanted to do.

Q. When did you think he had been paid some money?

A. I couldn't say, but evidently I thought he was paid [fol. 4482] or he wouldn't have come down.

Q. Did you think the 50¢ you gave him on March 30 was to be given him, as Miss Todd said, $500?

A. That is the way I understood it.

Q. And you understood that from what occurred at a meeting about March 30, the first meeting after March 18?

* * * * * * *

[fol. 4484] Trial Examiner Batten: Mrs. Saucke did you understand the question, or do you want it read again.

Mr. Reed: I submit no one can understand it.

A. I didn't.

Trial Examiner Batten: Would you like to have it read?

A. I would.

* * * * * * *

[fol. 4486] A. I think I answered that that was rather mixed up, it seemed to me, it is not clear.

Trial Examiner Batten: Do you mean by that you don't understand it clearly?

Mr. Langsdale: May I withdraw it and approach it in a different way?

Trial Examiner Batten: You may restate it.

By Mr. Langsdale:

Q. You testified sometime near March 30 that you, with other employees, voted to raise the sum of $500 by contributing 50¢ each, did you not? A. I did.

Q. Were you told there that $500 was to be spent for a lawyer for drawing up a contract and by-laws, the night you raised it? A. As I remember, we were not.

Q. What were you told?

A. As a retainer fee for our lawyer.

Q. And what was he to do? A. Represent us.

Q. Now, I'll ask you if Miss Todd explained at the meeting of March 30, or anyone else explained at the meeting of March 30, or the meeting you talked about as being the first meeting after March 18, that the money was to be spent this way: "As you know and as we have explained quite thoroughly, we paid Mr. Tyler $500 retainer fee; he [fol. 4487] helped us write up our by-laws and working agreement, and will advise us and help us when we need it"? A. Now, what was your question to that?

(Last question was read by the reporter.)

Mr. Stottle: Mr. Examiner, that is objectionable, because it refers to by-laws that didn't exist on March 30th, it couldn't possibly have happened.

Trial Examiner Batten: The only question, it seems to me, is whether Rose Todd at the meeting at which they raised the money, whether she had explained it was to be paid as an attorney fee for drawing up the by-laws and working agreement. Now, that is the question.

By Mr. Langsdale:

Q. Did she?

A. To my recollection, I didn't hear it.

Q. Did she tell you what Mr. Tyler was to do for the $500?

Mr. Reed: I submit that has been answered a half a dozen times. The witness said Mr. Tyler was to represent them.

Trial Examiner Batten: Was there anything further said by Rose Todd, except that Mr. Tyler was to represent you? A. That is all I can remember.

By Mr. Langsdale:

Q. Did anyone else say what he was to do in representing you? A. When?

[fol. 4488] Q. At the meeting when you voted the 50¢?

A. I don't remember.

Q. Did you ever learn from Rose Todd that she had paid $500 retainer fee, and for that $500 he had written up the by-laws and working agreement?

A. I did not. State that question again.

Mr. Ingraham: She answered it.

By Mr. Langsdale:

Q. Now, did you ever learn from Miss Todd or the treasurer or from anyone else what Mr. Tyler did for the $500?

A. As I understood it, it was his retainer fee, that he took that money in payment, that he would represent us and see what could be done.

Q. Whom do you mean, "us"? A. We employees.

Q. And you learned he had been paid $500 for—

A. (Interrupting) With his presence coming there I supposed he had received it.

Q. When he came where?

A. To the factory, to our first meeting that he spoke, the day we organized our union.

Q. Now then, I understand you to say, then, that when he came to the meeting of April 27 and organized your union, you assumed he had been paid the $500 or he wouldn't be there? A. I did.

[fol. 4489] Q. To whom did you talk before you took the witness stand about a meeting of March 18 at which a committee was appointed to visit attorneys?

Mr. Ingraham: I object to that.

Mr. Langsdale: I'll reframe the question. I withdraw the question as you have it, and will restate it.

Mr. Langsdale: To whom did you talk, if anybody, about a motion at the meeting of March 18, creating a committee of three to call on attorneys, before you took the witness stand in this trial?

A. Nobody that I know of.

Mr. Ingraham: I object to that as immaterial.

Trial Examiner Batten: Well, she said nobody.

Mr. Langsdale: You didn't talk to anybody?

A. Not that I remember of.

Q. Before you took the witness stand, did you talk to any counsel here about what your testimony was going to be?

Mr. Ingraham: I make the same objection.

Trial Examiner Batten: Well, you may state whether you did or not.

A. Well, may I have the question just before this last one? Read that again. I am not quite clear on it.

(Question asked for was read by the reporter.)

A. Nobody.

Mr. Langsdale: Didn't you talk to any of the attorneys?

[fol. 4490] A. You had a question just following that.

Trial Examiner Batten: Now, read the next question, please.

(Question asked for was read by the reporter.)

Mr. Lane: Mr. Examiner, I submit after reading his question it is not understandable, did she at March 18th or preceding that meeting talk about any such a motion, or has she since that time talked about a motion having been made. I can't understand the question.

Mr. Langsdale: You haven't been listening, then. The question was, did she talk about anyone having made such a motion on March 18th, at that meeting, before she took the witness stand in this trial.

Mr. Lane: All right.

Mr. Langsdale: Now, she said nobody.

Mr. Langsdale: Now, I am asking you if you talked to any of the attorneys.

A. Now, this next question, please.

Trial Examiner Batten: The question is, did you talk to any of the attorneys.

Mr. Langsdale: About that matter.

Mr. Stottle: Is that confined to a time prior to July 15, 1939.

Trial Examiner Batten: Would you consider it objec-[fol. 4491] tionable if it was subsequent, on a question of this kind?

Mr. Stottle: I thought Your Honor was ruling out everything.

Trial Examiner Batten: I am asking you, would you consider it objectionable to ask the witness whether she talked to an attorney about this matter without any reference as to time? Would you consider it objectionable in the light of my ruling?

Mr. Stottle: I would, if you are ruling out everything after July 15th, 1939.

Trial Examiner Batten: Well, I wouldn't on a question of this kind, if the question is the type of question I consider it to be.

A. Repeat the question, now, again.

Trial Examiner Batten: Did you talk to any attorneys about the matters you are testifying about here, that is, the meeting of March 18th, prior to getting on the stand?

A. Yes.

By Mr. Langsdale:

Q. You were here the day this hearing opened, were you not, Mrs. Saucke?

A. I don't know whether it was the day it opened or not.

Trial Examiner Batten: Which day do you consider it opened, Mr. Langsdale?

Mr. Langsdale: The day Mrs. Reed commenced to testify.

A. I don't know whether it was the first of her testi-[fol. 4492] mony when I came in or not.

By Mr. Langsdale:

Q. Well, you heard her testify, at least in part, didn't you?

A. I did.

Q. Did you attend this trial every day it has been held since you first appeared here?

A. No.

Mr. Ingraham: I object to that line of questioning, it is immaterial to any issue in this case.

Trial Examiner Batten: Well, in view of my ruling refusing to exclude them, I don't think we need to spend any time on it.

By Mr. Langsdale:

Q. Well, you heard Mrs. Reed's testimony, a part of it, didn't you?

A. I couldn't hear three-fourths of what she said.

Q. You did hear some of it?

A. A little of it.

Q. Now, what I am trying to ask you, is whether or not, since this trial started, you have talked to your attorneys about what your testimony was going to be.

Mr. Reed: She hasn't got any attorneys.

By Mr. Langsdale:

Q. Well, have you talked to the husband of the president of the company since this trial started?

A. Not about this trial.

Q. Did you talk to him about other matters?

[fol. 4493] A. Well, this morning I mentioned the weather.

Q. Have you talked to Mr. Ingraham about what your testimony was going to be in this trial?

A. I couldn't put it just that way. I talked to Mr. Ingraham.

Q. Well, did he ask you about anything that occurred down there at the Donnelly plant during March and April of '37?

A. He asked me what I could remember.

Q. And you told him?

A. I told him all I could remember.

Q. Now then, did you tell him about this motion that you say was passed in the March 18 meeting, creating a committee to call on the attorneys?

A. What was that?

Trial Examiner Batten: Will you read the question, please?

(Last question was read by the reporter.)

A. I don't remember.

Trial Examiner Batten: I might say I hope all the witnesses talked to their attorneys before they testify. It might expedite this hearing.

Mr. Langsdale: Of course she should, and she has a perfect right to.

Trial Examiner Batten: I understand. Mr. Langsdale, I made that remark with the thought it would help the hearing.

[fol. 4494] Mr. Ingraham: I would have asked the witnesses about the newspaper articles and showed them the

photostatic copies, but in view of Mr. Langsdale's remarks the other day, I just let the witness take the stand, and showed the exhibits in the case.

By Mr. Langsdale:

Q. These exhibits you had, when they were handed to you by Mr. Ingraham, did you have any of those in your scrap book?

A. I don't believe I have. You can check those this afternoon, when I bring my book.

Trial Examiner Batten: Mr. Ingraham, I'll say now, if you want to have any other witnesses that you intend to call, to look at those before they do take the stand, I'll appreciate it, and certainly I'll indicate in the record clearly that it is proper for you to do so.

Mr. Ingraham: Well, it was the typical objection Mr. Langsdale has made in this case, so I would rather let the witness take the stand and read the exhibit.

Trial Examiner Batten: Very well. It is entirely proper for you to have them go over those.

Mr. Langsdale: Well, there will be no objection from me, and I told Mr. Ingraham this morning if he wants to conduct a school, and say, "Have you all read them," I will not even open my mouth.

Mr. Ingraham: I wouldn't have to conduct a school.

[fol. 4495] Mr. Langsdale: I didn't mean there was anything improper here. I meant to let them all read the articles.

By Mr. Langsdale:

Q. Had you ever heard of Mr. Gossett and Mr. Tyler, before Mr. Tyler appeared at the meeting on April 27, 1937?

A. I don't believe I had.

Q. Now, you said that you personally saw some violence at these three places, at the Missouri, Gordon and Gernes factories, did you not, in your testimony?

A. I did.

Q. Where were those factories located?

A. At 26th and Grand.

Q. And how did you happen to see this violence?

A. Coming on the street car down the Main Street cut, you look down that 27th Street cut, that is where the trouble was, the front of the building. The papers stated most of the trouble was in the back of the building, it was bad enough in front.

Q. What did you see in front?

A. Milling around and fighting, and I saw the police wagon.

Q. And you are telling the Examiner you saw milling and fighting out in front of that building?

A. I did.

Q. Coming down on the street car?

A. I did.

[fol. 4496] Q. You didn't ride the buses then, did you?

A. Well, maybe it was a bus at that time; I was in a car or bus, coming to work down Main.

Q. I mean, did the Donnelly Garment Company provide buses for some of the employees to come to the factory in the mornings while these strikes were going on?

A. They did.

Q. And did you ride in any bus so provided by the Donnelly Garment Company?

A. I did.

Q. Now, was that while you were on those buses that you passed the scene of this strike?

A. I think I was on a street car.

Q. Well, you said you saw them every day?

A. No, I didn't say every day.

Q. Well, how many days did you see the things you claimed to have seen?

A. I don't remember how many days.

Q. Was it more than one?

A. Yes.

Q. How many days did you ride in a bus provided by the company?

A. About six weeks.

Q. And did they drive right along where you could see these fights?

[fol. 4497] A. I am not positive, but I think I was on a street car when I saw it.

Q. When you say you go down the Main Street cut, you mean you went down Main Street to the Union Station?

A. I got on the bus at 31st and Main, rode right down Main Street past the Union Station.

Q. Where were these strikes going on?

A. On that 27th Street cut in front of this building.

Q. How far was that from the street car tracks?

A. Oh, I expect about a half of a small block. Those blocks aren't true blocks in there, but they are cut in angles, if I remember right.

Q. Do you know where the Gordon-Gernes building was at that time?

A. I think I do.

Q. Where?

A. Well, the address, I think, gives it 26 something Grand.

Q. Yes. Now then, you were going down Main Street, weren't you?

A. I was.

Q. Between Main and Grand is another street, Walnut, isn't it?

A. It isn't cut through.

Q. But Grand is 300 — or 200 east of Main, isn't it?

A. First is Main, then Walnut, then Grand. Walnut [fol. 4498] isn't cut through out there, it comes on an angle, those streets aren't straight.

Q. How far would you say the Gernes Building was from the street car tracks?

A. I couldn't say in feet, but I was close enough to see what was going on.

Q. You don't mean it was half a block away, do you?

A. As I said, those blocks there are cut in angles, they are not true blocks, and Walnut isn't cut through there. If I remember right, they are peculiar, those streets, even Main doesn't run straight.

Q. Isn't there a building on the corner of 27th and Main — 26th and Main, on the southwest corner?

A. The southwest corner on Main?

Q. The southeast corner.

A. Yes, there is a building there.

Q. Well, you didn't see through that building, did you, as you rode along on the street car?

A. No. I seen right down that street.

Q. You had to get past that building before you could see down that street?

A. Here (indicating) comes Main Street; right here is an automobile building (indicating), I had to look past that; right here (indicating) is the front entrance, if I remember right, of those garment workers' building, and [fol. 4499] there is where this trouble was, and I was told it wasn't anything to what was going on at the back.

Q. What route did the buses, the Donnelly Garment Company provided for your transportation, take downtown?

A. I got on it at 31st and Main, rode right down Main Street to 19th and Main, then we turned on Walnut into our alley.

Q. Then you took the same route the street car takes, didn't you?

A. There are two street cars there, one goes down past that Gordon building where the garment companies are.

Q. One went down through the cut on Main Street?

A. That's right.

Q. The other street car goes around northeast and goes down Grand Avenue? A. It does.

Q. Is that the route you took in the street car?

A. I said we come down to 19th and Main.

Q. Then, you had an opportunity to see this trouble from the bus, the same as you would from the street car?

A. That's right.

Q. And did the bus stop long enough to let you see what was going on over there?

A. It never did when I was on it, so I think yet I was on the street car when it happened.

Q. How many times did you see it?

A. I couldn't say definitely.

* * * * * *

[fol. 4515] MARY WARTH, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. Will you state your name, please?

A. Mary Warth.

Q. Where do you reside?

A. At 126 West 82nd Terrace, in Jackson County, Missouri.

Q. Where are you employed?

A. At the Donnelly Garment Company, 1828 Walnut Street.

Mr. Langsdale: I am sorry, what is her name?

* * * * * * *

[fol. 4516] A. W-a-r-t-h (Spelling).

By Mr. Ingraham:

Q. How long have you been employed at the Donnelly Garment Company?

A. I went there on the first day of April, 1935.

Q. In what capacity are you employed?

A. I am a machine operator.

Q. Do you do any special kind of work, on special machines?

A. Yes, I have worked mostly on special machines.

Q. What kind of machines?

A. Hemstitching, double stitching, air line tucking, scalloping, I don't remember the others.

Q. You were employed at the Donnelly plant during the months of March and April, 1937? A. I was.

Q. Are you a member of the Donnelly Garment Workers' Union? A. Yes, I am a charter member.

Q. What do you mean, "charter member"?

A. Well, I was there at the organization of the union.

Q. Do you recall when that occurred?

A. On April 27th, 1937.

Q. Do you recall where that meeting took place?

A. Well, it was either on the second or third floor of [fol. 4517] the building, I couldn't be sure which; they were both unoccupied at that time, and I don't remember which floor it was on.

Q. Do you remember the time of day that the meeting occurred?

A. It was after working hours in the afternoon.

Q. Did anybody representing the management ask you to attend that meeting? A. No, they didn't.

Q. Had any officer, executive, or anyone representing the management ever discussed with you the holding of such a meeting? A. No.

Q. How did you happen to go to the meeting?

A. Well, there was some girl in the section, we had been talking about it, naturally, for several days, some girl in the section said we were going to have a meeting after working hours that evening, to decide what should be done about protecting ourselves against the violence that was going on at some of the other garment factories at that time.

Q. Now, what had been going on at the plants you referred to?

A. Well, they were having a strike out there, and quite a lot of violence.

Q. Had you personally seen any violence?

[fol. 4518] A. Yes, I had.

Q. What did you see?

A. Well, at that time I was riding the Main Street cars, and I came by there every morning on my way to work on Main Street, on the Country Club car, and I saw the fighting, hair pulling, kicking and so on, and I knew a girl personally who was in it, and she had told me she had the sleeve of her coat torn out one morning going to work. She wore her hair tightly wrapped around, with a little beret to keep from having it pulled out.

Q. What effect did that violence at that strike have upon you?

A. Well, I was just about afraid to try to go to work or go home.

Q. Was there a general discussion at the plant of the violence that was going on at this strike?

A. Well, I think that was just about the only thing that was talked about in those days amongst the operators.

Q. So far as you could observe, what was the effect upon the operators and other employees, of that violence?

A. Well, they were all afraid of bodily harm, I think; and a great many of them were really afraid to come to work.

Trial Examiner Batten: Just a minute. Will you try to keep your voice up, so everyone here can hear you, please?

A. I'll try to.

[fol. 4519] By Mr. Ingraham:

Q. What do you mean by your last answer, that they were afraid of bodily harm?

A. Well, we had read in the paper a lot about the violence at the other plants, and how they had had their clothes torn and hair pulled, and we naturally didn't want that to happen to us.

Q. Will you state whether or not—or state why you thought that might happen to you?

A. Well, we had heard by word of mouth and also had read in the paper, where we were really the main objective in their trying to organize the garment workers in Kansas City, and that these other factories were merely a stepping-stone to get to us, to increase their membership to the extent they thought they could organize the Donnelly plant.

Q. State whether or not any threats had been made against the Donnelly employees.

A. Yes, we heard there had been, and this girl that I knew told us that they were going to try to organize us after they had organized those other places, and after they had been organized she told us she hoped we would never be foolish enough to sign up with them; that was after she had become a member herself, not through her own choice, but she had to, to hold her job.

Q. You said that there had been articles in the papers about the strikes at the other plants. I'll hand you Re- [fol. 4520] spondent's Exhibit 16, and ask you if you recall seeing the pictures that appeared in the edition of the Kansas City Times for March 18, 1937.

A. Yes, I remember seeing those pictures.

Q. I hand you Respondent's Exhibit 18, and ask you if you recall reading the article that appeared in the Kansas City Journal-Post for March 17, 1937, entitled "Kansas City Garment Union Crews Sit in Lobby"?

A. I don't think I read that article; we didn't subscribe to the Journal-Post, and I didn't read all the articles that were in those papers.

Q. Do you recall whether or not other employees at the plant had these articles, and they were generally discussed?

A. Yes, they were; I read some of them, but I didn't read them all.

Q. I will hand you Respondent's Exhibit 27 and ask you if you recall reading the article that appeared in the Kansas City Star on March 17, 1937, entitled "Sitters Block a Door".

* * * * * *

{fol. 4522} A. I remember it.

By Mr. Ingraham:

Q. What effect did that article have on you and on other employees, so far as you could observe?

A. Well, of course, we were all very much upset about the reading of the article, because we were afraid that the same indignities would be practiced on us. No one contemplates with any very great joy having their clothes torn from them on the street and their hair pulled.

Q. State whether or not about that time any action was taken by the employees.

A. Yes. We had talked for a day or two very seriously about what could be done in respect to something to protect ourselves, and on, I believe it was the day following that article, there was a mass meeting called of the employees in the building.

Q. This article is dated March 17. Was the mass meeting the following day, on the 18th?

A. As I remember, it was.

{fol. 4523} Q. Do you recall who called the mass meeting?

A. I don't remember that it was any one person. It seemed to be just sort of spontaneous. I know that in our particular section we were talking about it, and one of the girls at noon made the remark that, I believe, there were some girls—I don't remember what section she said they were from—told her to pass the word along that there was going to be a meeting of all of the employees that evening on either the second or third floor, I don't recall which.

Q. Did you understand that that was to be a meeting of the Loyalty League?

A. No. I did not. I don't believe there was anything said about the Loyalty League in connection with the meeting; I don't remember it, if there was.

Q. Did Rose Todd preside at the meeting, if you recall?

A. Yes, I think she did; not altogether, but she was on the platform, I know.

Q. Did the fact that Rose Todd took part in presiding at the meeting or the activities of the meeting indicate to you that it was a meeting of the Loyalty League?

A. No, it did not. Rose Todd was a person who was all over the factory, more or less, at different times. She was very well acquainted with most of the employees, I think, and she was a sort of a natural leader, everyone liked her, and I think perhaps they just sort of chose her [fol. 4524] as a temporary chairman. That would be my idea.

Q. Do you recall what did occur at that meeting?

A. Not everything. I remember that Miss Todd spoke—

* * * * * * *

A. (Continuing)—and I believe Hobart Atherton made a talk, and later someone brought Mrs. Reed in and she talked to us for a few minutes.

By Mr. Ingraham:

Q. Do you recall how it happened that Mrs. Reed came to the meeting?

A. I think someone went for her, as near as I can remember.

Q. Will you state whether or not there had been any suggestion made by any employee at the meeting that Mrs. Reed be requested to come to the meeting?

A. I don't remember about that.

Q. Now, when Mrs. Reed came to the meeting did she make a talk? A. Yes, she did, a short talk.

Q. Now, a witness—possibly two witnesses for the Board testified in this case that Mrs. Reed stated that she would close her plant if it was unionized. I will ask you to state whether or not you heard Mrs. Reed make such a statement.

[fol. 4525] A. I did not.

Q. It has also been testified by one or the other of the Board's witnesses who testified about this meeting that Mrs. Reed stated that she would not let Dubinsky tell her how to run her business. I will ask you to state whether or not you heard Mrs. Reed make any remark like that.

A. Well, if I remember right, she said she wouldn't let Dubinsky force her to enter into a contract that was distasteful to her employees, or something to that effect. In other words, she wouldn't—I understood it that she wouldn't force us to join a union against our wishes—she wouldn't let anyone force her to do that.

Q. Now, do you recall any action taken by the employees at that meeting with respect to obtaining protection?

A. Yes. I don't remember who made the suggestion, but it was suggested that we seek legal aid to see what could be done to protect us from the violence that was being practiced on employees of other garment factories, and I think there was a committee appointed to attend to that, but I don't remember who was on the committee.

Q. Mrs. Warth, did any officer, executive, or anybody that was representing the management request you or suggest to you that you attend this meeting?

A. No, they did not. In fact, I didn't discuss the meeting with anyone except the operators in my section, and in [fol. 4526] the lunchroom at the lunch hour we discussed it. But as far as I know, anyone whom I knew to be an executive of the company never mentioned it to me.

Q. Did your instructor at that time request you or order you to go to the meeting?

A. No, she did not.

Q. Did you ever hear discussed at the plant that the instructors or the employees that had authority to represent the management were directing and ordering employees to go to that meeting?

A. No, I never heard anything about that.

* * * * * * *

Q. State whether or not the violence continued at the Gernes, Gordon, and Missouri plants after the meeting of March 18.

A. Well, I think it did, as near as I can remember.

Q. I will hand you respondent's exhibit No. 20 and ask you if you recall reading the article that appeared in the [fol. 4527] Kansas City Journal-Post on March 22, 1937.

Trial Examiner Batten: Mr. Ingraham, I understood the witness to say they didn't take the Journal-Post. Of course, you may show it to her, but—

The Witness: We didn't take it, but some of the girls brought some of the copies down there and I read some of them, but not in their entirety.

By Mr. Ingraham:

Q. Will you look at this exhibit and see if you recall reading the article that has the heading across the top of the paper, "Violence Marks Garment Strike."

* * * * * *

A. I don't believe I read that.

Q. Do you recall reading the article that appeared in the Kansas City Times on March 23, 1937, which is respondent's exhibit No. 26? It is entitled "Sue To Quiet Strikers."

A. Yes, I read that article.

Q. I will hand you respondent's exhibit No. 28, which is an article that appeared in the Kansas City Star on March 22, 1937, and ask you if you read that article. It is entitled "Fail To Stop Workers."

A. Yes, I read that article.

Q. What was the effect of that article and the previous article I have called your attention to on you?

A. Well, it made me very determined that something [fol. 4528] should be done about the violence. I just wondered when I would pass there on the streetcar where our law was, that they would allow such things to go on—such practices as that against women and girls who were going out and trying to make a living.

Q. State whether or not you observed that the other employees at the Donnelly plant were reading these same articles and that the articles were the subject of conversation at the plant? A. Yes, they were.

Q. What was the effect of these articles, so far as you could observe, on the other employees?

A. Well, they all felt about the same as I did. They were very much afraid. In fact, some of them were so scared they asked for a leave of absence to stay away from work for a time.

Q. I will hand you respondent's exhibit No. 29 and ask you if you recall reading this article that appeared in the Kansas City Star on March 25, 1937. It is entitled "The Hair Pulling Grows."

* * * * * *

[fol. 4529] A. Yes, I read that.

By Mr. Ingraham:

A. Did you read most of the articles that appeared in the Star and Times?

A. I think I read all of them, yes.

Q. Why did you read them?

A. Well, I was very much concerned about what was going on.

Q. I'll hand you Respondent's Exhibit 30, which is an article that appeared in the Kansas City Star for March 30, 1937, and ask you if you read that article.

A. Yes, I read the article.

Q. Now, I believe you stated a few minutes ago that at the meeting of March 18 a committee was designated to see what could be done to protect the employees; is that correct?

A. Yes.

Q. Will you state what occurred in connection with that designation of the committee? Did you ever hear of anything the committee did?

* * * * * * *

A. They consulted with Mr. Tyler, I believe, had a talk [fol. 4530] with him to find out what we could do, legally, take legal steps to protect us from the strikers and violence.

Q. Did anything occur later that resulted in a meeting being held?

A. Yes.

Q. Will you explain about that?

A. We had another meeting, a mass meeting, of all the employees, in the latter part of March, as I remember, at which meeting we were informed that the committee had consulted with Mr. Tyler and he requested a retainer fee, and I believe someone asked for a suggestion as to how we should raise the money, as I remember it. The suggestion was made by subscription, I think, of 50c, which was taken; some of the employees paid it at the meeting, and some paid the following day.

Q. Now, did any officer, executive, or any person that you thought was representing the management ask you to attend this meeting that you have just referred to?

A. No, they didn't.

Q. Did anybody suggest to you, representing the management, that you contribute 50c?

A. No, no one representing the management.

Q. At what time of day was this meeting held?

A. It was held after work in the afternoon.

Q. And do you know where it was held?

[fol. 4531] A. Either on the second or third floor of the building.

Q. Did your instructor suggest or request that you go to that meeting?

A. No, she did not.

Q. Did you go to that meeting thinking it was a Loyalty League meeting?

A. No, I didn't.

Q. Was it a Loyalty League meeting?

A. No, there was nothing said about the Loyalty League at that meeting, as I remember; I don't think the word was mentioned.

Q. Was the fact that Rose Todd took part in the meeting any indication to you that it was a Loyalty League meeting?

A. No, it was not.

Q. Did you contribute 50c?

A. I think I gave mine the next morning.

Q. Well, do you know who you gave that to the next morning?

A. Some girl in the next section, I don't recall who it was.

Q. Did you make this contribution to that girl as a contribution to the Loyalty League?

A. Definitely not.

Q. Are you a member of the Loyalty League?

A. I am.

Q. Will you state, so far as you know, what the activities of the Loyalty League were?

[fol. 4532] A. Well, I think the main thing, my understanding was that it was to promote good fellowship among the employees, a sort of a social organization to have little get-togethers and dances, and card parties and such things, a sort of entertainment organization.

Q. Did anybody tell you that you had to join the Loyalty League?

A. Oh, No.

Q. Did you hear anything at any time said at the plant, that unless you joined the Loyalty League and took part

in the Loyalty League activities, that you would be penalized by the company?

A. I never heard of any such a thing.

Q. Now, did Mrs. Reed, at the meeting of March 18, say anything that indicated to you that you weren't free to join any labor organization you wanted to join?

A. I think, if I remember right, she said we were at liberty to join any organization that we wanted to join, if it was our desire.

Q. Have you heard any expression on the part of any official, executive or any person that you thought represented the management, to the effect that you would be penalized by the company if you joined any labor organization that you chose?

A. No, I did not.

Q. I will ask you if you recall reading in the paper, in [fol. 4533] the Kansas City Star for April 12, 1937, the article entitled "Wagner Act Upheld," which is Respondent's Exhibit 38?

A. Yes, I read the article.

Q. I will ask you if you read an article in the paper stating that Sylvia Hull had been selected to represent the Donnelly employees, at the International Convention, and that they called a strike?

A. Yes, I read the article.

Q. Do you recall whether that was in the Kansas City Star, Times, or the Journal-Post?

A. It was in the Kansas City Star — in the Times.

* * * * * * *

[fol. 4534] By Mr. Ingraham:

Q. I will hand you Respondent's Exhibit 35, and ask [fol. 4535] you if you recall reading the article that appears in the Journal-Post for April 22, 1937, entitled, "Donnelly Worker will be Sent to Union Convention."

* * * * * *

A. I don't believe this is the article I read. I read an article about Sylvia Hull going to a convention, but I still think it was in either the Star or Times.

By Mr. Ingraham:

Q. Well, I'll ask you to state whether or not —

A. (Interrupting) That was practically the same wording though, I think.

Q. I'll ask you to state whether or not the articles that did appear in the papers at that time were generally discussed by the employees of the Donnelly plant.

A. Very generally.

Q. What was the effect of those articles on the employees?

A. Well, it just kept them all so upset that they could hardly work. They were afraid that those strikers would come down there and start on us any morning; every morning, when we would get there, we looked around anxiously to see if they were there.

Q. I am referring now to the articles that referred to Sylvia Hull. What effect did those articles have on the employees and on you?

A. I know what effect it had on me. It made me very [fol. 4536] indignant, because, to my knowledge, no one had ever been selected to attend the convention from the Donnelly plant. While I didn't know Sylvia Hull, I was sure we hadn't selected anybody to represent us at any labor convention.

Q. State whether or not, to your knowledge, the employees had selected anybody to go to the International Convention, and ask support for the strike at the Donnelly plant?

A. No, not to my knowledge.

Q. Were you in favor of a strike being called at the Donnelly plant?

A. No, I was not.

Q. At that time, April 22 or 23, 1937, on what floor were you working?

A. I was on the 6th floor.

Q. On the 6th floor?

A. Yes.

Q. Did anything occur the morning of April 23, 1937, that you recall, any disturbance of any kind?

A. That was the morning after this article was in the paper, I believe. I think I read that in the Star the night before; and there was some girl on our floor that the girls gathered around at her machine, and I know that I started over there, several girls from our section started over there to her section and our instructor told us to go back to our machines, that she believed if she were in our place

[fol. 4537] she would go back to her machine. We left the scene and about the time we left there, Mr. Baty arrived, and he requested us to go back to the machines, to continue with our work. I never did get very close to the girl. I didn't know the girl at that time, but I understood it was Fern Sigler; I knew her by sight but not by name.

Q. Did you hear Mr. Baty say anything to Fern Sigler?

A. No, I did not.

Q. Did she leave the floor?

A. I think she did later, later in the morning. I wouldn't say for sure, but I am under the impression that she did.

Q. In your section, was the power turned off?

A. No, it was not.

By Trial Examiner Batten:

Q. What was the number of your section?

A. 524.

Q. 524?

A. Yes.

By Mr. Ingraham:

Q. Do you recall whether or not May Fike worked in that section?

A. No, she didn't.

Q. Did you hear any girls threatening Fern Sigler?

A. No, I didn't hear anything that was said to her. I know there were girls talking with her, but I don't know what they said.

[fol. 4538] Q. Do you know whether or not the power was left on in the various sections on the 6th floor at that time?

A. Well, it was on in our section, and I couldn't say about the others.

Q. Well, when the power is on in your section, can you hear people talking in other sections, hear what they say?

A. Well, I couldn't, no.

Q. Does the power make considerable noise?

A. No, the power itself doesn't make much noise, but as I recall it, some girls didn't stop their machines.

Q. With the machines on there is noise?

A. Yes.

Q. With that noise going on, is it difficult to hear anything that is said in any section?

A. Very difficult.

Q. Will you state what effect the articles that had reference to violence, and the article that had reference to Sylvia Hull and Fern Sigler had on you?

A. Well, about Sylvia Hull representing us at the convention, it sort of outraged me. I thought it was very presumptious on her part to go there and represent us, when she hadn't been selected to do so.

Q. Did you hear any girls in your section say they did not want to work as long as Sylvia or Fern remained at work?

A. I don't believe I did, she was over several sec-
[for. 4539] tions from us.

Q. What caused you to vote in favor of the Donnelly Garment Workers' Union?

A. Well, I felt it was the best thing to protect ourselves, if we could form our own union; we had been led to believe that would stop the trouble.

Q. But who led you to believe that, what do you mean by that?

A. Well, the newspaper articles about the Wagner Act, first Mr. Tyler told us about that, and then I read in the paper where the Supreme Court had held it constitutional; he told us under the Wagner Act we had the right to organize our own union, and we felt that was the best way to protect ourselves against the violence of the other union.

[fol. 4540] Q. Now, the Board in its decision and order found that the Donnelly Garment Workers' Union was caused to be organized by acts of the company. Can you state anything that any official, executive, or anybody you thought represented the company, did that led you or led any employees to believe that the company had anything to do with the organization of the Donnelly Garment Workers' Union?

A. No. I think they would have had a pretty hard time stopping us from organizing it, had they tried.

Q. Did you join the Donnelly Garment Workers' Union of your own free will?

A. I did.

Q. Do you know of any pressure or any suggestion that was made by any official or any executive or anybody representing the management to cause you or cause any

other employees to believe that you would be discriminated against or penalized if you did not join the Donnelly Garment Workers' Union when it was formed?

A. Absolutely not.

Q. Did the Loyalty League have anything to do with the formation of the Donnelly Garment Workers' Union, to your knowledge?

* * * * * *

[fol. 4541] A. It wasn't mentioned, to my knowledge.

By Mr. Ingraham:

Q. Is it a fact that the Loyalty League had anything to do with the formation of the Donnelly Garment Workers' Union?

* * * * * *

A. Not to my knowledge. They had nothing to do with it.

By Mr. Ingraham:

Q. State whether or not you considered Rose Todd a representative of the management.

A. No, I did not.

Q. Did you consider Rose Todd any sort of a boss or supervisor at the plant?

A. No, I didn't consider her so.

Q. Did you ever know of any joint meetings being held by the Donnelly Garment Workers' Union and the Loyalty League?

[fol. 4542] A. No, I didn't know of any.

Q. Do you recall any meetings being held where the Donnelly Garment Workers' Union would have a meeting and it would be immediately followed by a Loyalty League meeting?

A. I don't remember any.

Q. Did you consider that whatever Rose Todd said about unions represented the company's views?

A. I did not.

Q. Did you consider that Rose Todd was representing the company in any activities that she may have engaged in in connection with the Loyalty League?

A. I did not.

Q. Will you state whether or not the presence of or activities of Rose Todd in connection with the March 18

meeting or the meeting the latter part of March or the meeting of April 27 caused you to feel any compulsion to join the Donnelly Garment Workers' Union?

A. It did not.

* * * * * *

[fol. 4543] By Mr. Ingraham:

Q. Will you state whether or not you signed a petition on or about March 2, 1937? A. I did.

Q. How did you happen to sign that petition?

A. You mean how was it presented to me?

Q. Yes.

A. Well, in the section, it was brought to me at my machine in the section.

* * * * * *

[fol. 4544] By Mr. Ingraham:

Q. Was that the language—I'll hand you I.L.G.W.U. Exhibit No. 10, which appears at 5961 of the Circuit Court record, and ask you if the language at the top of that page was on the petition that you signed.

A. To the nearest of my recollection that is exactly what I signed.

Q. Now, what occurred when you signed that petition?

A. There were, as well as I can remember, there were two girls that came through our section with those petitions, I know that there was at least one, that came to my machine and asked me to read that, which I did, and after I had read it, she said, "Do you want to sign it," and I said, "I certainly do."

Q. Do you know who that girl was?

A. I didn't know who it was at the time, but I asked some of the girls sitting near me, and they told me it was Mary Sprofera.

Q. Did anybody representing the management ask you to sign that petition?

[fol. 4545] A. Nobody said anything to me about it, except this one girl that brought it to me and asked me if I wanted to sign it.

Q. Did you believe that this petition was circulated by the Loyalty League? A. No, I did not.

Q. Did you feel that if you did not sign this petition you would be penalized in some way by the company?

A. No, I did not.

Q. Why did you want to sign it?

A. I wanted to sign it because it expressed my opinion as to how I felt toward Mrs. Reed and the company at that time, and I wanted her to know how I felt toward her.

Q. Going back to the—after you signed the petition, do you recall what was done with it?

A. I handed it back to the girl who handed it to me.

Q. Now, who was that girl? A. Mary Sprofera.

Q. And do you recall what she did?

A. I believe that the girl right across from me signed it, and we were on the end of our row in our section, and then I think she went over to the next section with the petition, and went through that section with it. To the nearest of my recollection that is what happened.

Q. Now, I want to direct your attention to a meeting on [fol. 4546] March 18th. Will you state whether or not Mrs. Reed read a letter from the I. L. G. W. U. to the company?

A. No, I didn't think Mrs. Reed read any letter.

Q. Do you recall whether or not circulars had been handed out by the I. L. G. W. U.? A. Yes, they had.

Q. About that time? A. Yes.

Q. Do you recall whether or not there were some of those circulars at the meeting?

A. I imagine there were several. I think I had one.

(Thereupon the document above referred to was marked for identification as "Respondent's Exhibit No. 41, Witness Warth," for identification.)

Mr. Ingraham: I will hand you Respondent's Exhibit 41, and ask you if that is the kind of a circular that was circulated by the I. L. G. W. U. at that time.

. . . . . .

A. Yes, I read that, that is the same we had handed to us down there at the door.

Trial Examiner Batten: What was that last remark?

A. The same circular that was handed us down there in front of the building.

. . . . . .

[fol. 4547] Mr. Ingraham: Do you recall anyone reading from the circulars at that meeting?

A. No, I don't recall that letter being read, however, it had just been given us the evening before, I think, and it might have been read, but I know it is very familiar to me.

Mr. Ingraham: Respondent offers in evidence its exhibit No. 41.

Trial Examiner Batten: If there is no objection, it will be received.

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[fol. 4548] Cross-Examination

By Mr. Lane:

Q. Mrs. Warth, what did you observe Rose Todd doing around the Donnelly plant?

A. Well, I really didn't pay a whole lot of attention to what she did. You know, she was all over the building at various times.

Q. Did she come to your section occasionally?

A. Yes, she came to our section.

Q. What did she do when she was in your section?

A. Well, I think she was usually looking up a lost bundle of work, or trying to match up some kind of thread, and things of that sort.

Q. Was there anything Rose Todd did in her employment with the company, that led you to believe that she was a supervisor or a boss over any other employees?

A. No, there was not.

Q. Was there anything she ever did that gave you the impression that she was entitled to speak for the company on the matter of labor relations between the company and the employees? A. No, there was not.

Q. Did you know Hobart Atherton in 1937?

A. I knew him when I saw him, yes.

Q. What was his position with the company, so far as you observed his activities?

[fol. 4549] A. Well, I really didn't know. I wasn't in a position to know what his position was.

Q. Did you know Sallie Ormsby? A. No, I did not.

Q. Did Mrs. Reed or any of the other executives of the company ever say anything in your presence about

Rose Todd, or Hobart Atherton, or Sallie Ormsby, that gave you the impression that they represented the management in connection with labor matters?

A. No, nobody ever gave me that impression.

Q. Did you get the idea when those three persons were appointed a committee to consult the lawyers, at this meeting of March 18th, that in doing so, they were to speak for the employer or the management, or were they to represent the employees?

A. Well, they were to represent the employees, I distinctly understood that.

Q. Had anybody, so far as you know, ever suggested to you or in your presence, or any other employees, that the employees hire lawyers to consult with about protecting themselves?

* * * * * * *

[fol. 4550] A. No, they did not.

Q. How long have you been a member of the Loyalty League?

A. I think I joined it after I had been an employee about three or four months.

Q. Did the Loyalty League, so far as you know, ever consult with the management about wages or hours or conditional terms of employment?

A. Not so far as I know.

Q. Did you ever get the idea that the Loyalty League was in any sense a labor union?

A. No, I did not.

Q. You may now state what the Loyalty League did so far as your observation of it was concerned during the time you have been a member.

A. Well, during the time I have been a member, all the Loyalty League has ever done is to promote good fellowship among the employees and sponsor dances and card parties and social functions.

[fol. 4551] Q. I think you stated on direct examination that you read the article appearing in the Kansas City paper on April 12, stating that the Wagner Act had been declared constitutional by the Supreme Court?

A. Yes, I read that article.

Q. Had you prior to that date ever given consideration, yourself, to the question of whether the employees should form a union of their own?

A. No, I had never thought anything about it prior to that date.

Q. Was anything said at the meeting of March 18 or the meeting held about March 30 about the formation by the employees of their own labor union?

A. I don't recollect that there was anything said about forming a union at either of those meetings.

Q. Were any instructions given at the meeting of March 18 to this committee that was appointed to consult with a lawyer about consulting with that lawyer with respect to forming a union? A. No, there was not.

Q. What was discussed at that meeting as to the purpose of consulting a lawyer?

* * * * * * *

A. We wanted to see what we could do about protecting [fol. 4552] ourselves. I think there was something said about we might be able to get an injunction, or something of the sort, but we felt that we should have legal advice so that we would know what could be done.

Q. At the meeting at the end of March was anything said in connection with raising this $500 attorney's fee, about that fee applying upon services in the formation of a union? A. There was not, to my knowledge.

Q. Did you personally give any thought to the matter of forming a union of the Donnelly employees prior to April 27?

A. I personally had thought something about it after I had read this article about the Wagner Act, but it hadn't been generally discussed. In fact, I don't remember hearing anyone say anything about forming a union prior to that meeting.

Q. How did you get notice of that April 27 meeting?

A. I think some girl in the section told us that we were going to have another meeting.

Q. Was anything said by any of the other employees as to what was to be discussed at that meeting?

A. I don't remember.

Q. Did you attend that meeting of April 27 in your uniform, or did you dress before you went to the meeting?

A. I don't remember that. Some were in their uniforms and some were in their street clothes. It just depended on what time they were dismissed.

[fol. 4553] Q. Were you ordered or instructed by your instructor to go to that meeting?

A. I was not.

Q. Were the girls in your section supposed to go in a body together to that meeting?

A. No.

Q. Was there anything said by the girls in your section that they should stay together because they were supposed to come back to the section and go to work after the meeting was over?

A. No, there wasn't.

Q. What is your best recollection as to the time of day when that meeting was held?

A. To the best of my knowledge, I would say around 5 o'clock or 5:15, somewhere in there; anywhere from 4:45 to 5:15, but I wouldn't say the exact minute.

Q. What is your best recollection as to the time consumed in holding that meeting?

A. I don't remember that exactly, but I should say around an hour and a half.

Q. Now, will you state what was done at that meeting?

A. Miss Todd opened the meeting and talked to us for a while and told us that Mr. Tyler was there and wanted to talk to us.

Q. Did she tell you who Mr. Tyler was?

[fol. 4554] A. Well, I suppose she did. I think she told us he was our attorney; I knew he was, and I suppose everyone else did.

Mr. Tyler told us it was perfectly within the law, if we wanted to organize our own union, to do so. And he sort of interpreted the Wagner Act for us. And I believe somebody made a motion about it—I'm not sure; but, anyway, I know we all voted on forming our own union.

Q. Did you cast a vote in that connection?

A. Yes, I did.

Q. Did you vote to form the union of the Donnelly employees?

A. Yes, I did.

Q. Will you state now what reasons you had in your own mind for voting affirmatively to form an employees' union?

A. Well, I didn't feel it was necessary that we have a union at the Donnelly plant, but I thought if we were forced to have one, which seemed to be the only solution, that we were just as capable of taking care of our own affairs as outsiders. And I still think so. In fact, I think we know better what we want than any outsider. And I think everyone else felt pretty much the same as I did about it.

Q. Had Mrs. Reed ever intimated or suggested to you or to any other employee, as far as you know, that the employees should form a union of their own?

A. Mrs. Reeves?

Q. Mrs. Reed.

[fol. 4555] A. No, sir. Mrs. Reed was never mentioned in connection with the union, to my knowledge.

Q. I say, did she ever mention to you, or, as far as you know, any other employee, that the employees should form a union of their own?

A. No.

Q. Did Mrs. Reeves, Mr. Green, Mr. Baty, or anybody else representing the management, ever make any such suggestion?

A. No, they did not.

Q. Did you understand in your own mind at this meeting of April 27 and did you have the feeling yourself that whatever action you were taking was the action of the employees themselves?

A. I did.

Q. Did you feel under any restraint created by the management to vote one way or the other at that meeting?

A. I did not.

Q. Did you feel that your were being dominated or controlled or persuaded by the company to take the action that was taken there?

A. I knew I wasn't.

Q. Did you regard yourself as acting in that meeting in the formation of this union of your own free will and making your own deliberate choice?

A. Absolutely.

[fol. 4556] Q. I wish you would state what else occurred at that organization meeting.

A. Well, after we voted to form the union Miss Todd appointed a committee to leave the floor and nominate who were to be our first officers—I believe it was nine people, if I remember correctly—which they did. I don't remember how long it took them. When they returned and presented the names, we voted on them. Then I believe Mr. Tyler told us that he would or had drafted some bylaws that we could either accept or reject—that if they were acceptable, all right, and if they were not, he would change them.

Q. Have you ever served on any of the executive committees of the union, Mrs. Warth, since its formation?

A. No, I have not.

Q. Have you attended union meetings since its formation?

A. I think, most of them.

Q. In April of 1937 state what the instructors did, so far as the operators in your section were concerned.

A. They just showed us how to do the work. They brought the work to us and took it away when it was completed.

Q. Did you regard an instructor as a supervisor or as a boss?

A. No, I did not.

Q. Did you regard the instructor as a person who was entitled to speak for the management in connection with labor matters?

A. Oh, no.

[fol. 4557] Q. Did you think the instructor had authority to hire or fire the operators in the section?

A. I didn't think so.

Q. Is the Loyalty League still in existence?

A. Yes, it is.

Q. Are you still a member of it?

A. Yes, I am.

Q. What are the activities of the Loyalty League since April 1937 as compared to what they were before?

A. Just the same, so far as I know.

Q. Did you ever regard the Donnelly Garment Workers' Union as being a successor to or a continuation or outgrowth of the Loyalty League?

A. No, I didn't.

Q. In the meetings of the Donnelly Garment Workers' Union from April 1937 down to July 15, 1939, will you state generally how frequently those meetings were held?

A. I think we had one meeting each month.

Q. Will you state in general what the attendance of the employees was at those meetings?

A. We usually had a pretty good crowd.

Q. And by that you mean how many, approximately?

A. I would say a majority, at least.

Q. State what matters in general were discussed and taken up at the union meetings following the organization meeting.

[fol. 4558] A. Well, they took up any complaints that any of the operators or anyone had to make in those meetings.

Q. Was that a fairly frequent occurrence?

A. Fairly so, I would say.

Q. What other matters were discussed at your union meetings?

A. Well, we discussed dances and carnivals.

Q. Did you discuss in any of your union meetings the matter of contracts between the union and the company?

A. Well, I think our contracts are made for a two-year period and of course prior to that annual renewal of the contract there is quite a little bit of discussion in the meetings preceding that.

Q. Did you from the time of the formation of the union down to July 15, 1939, feel that in the handling of the affairs of the Donnelly Garment Workers' Union you and the other employees were acting of your own volition, without any control or domination on the part of the company?

A. Absolutely.

Q. Or without any pressure or persuasion to take any particular action?

A. Yes, sir, absolutely.

. . . . . .

[fol. 4560] Q. Who was your next instructor?

A. I believe, Vera Marshall. I was then in hand sewing, for a short time.

Q. What date did you go into hand sewing?

A. I believe it was in December, 1935.

Q. What were you doing in Etta Dorsey's section?
A. Hemstitching.
Q. Who was the thread girl in Vera Marshall's section?
A. I don't remember whether there was one.
Q. How long did you continue in that section?
A. Just for a short time.
Q. Who was your next instructor?
A. I believe, Kathryn Rosen.
Q. Who was her thread girl?
A. I don't remember who was her thread girl at that time.
Q. What were you doing in that section?
A. Hemstitching.
Q. What floor was that on?
A. That was on the seventh floor, I believe, for a short time.
Q. Do you remember the dates on which you were in those sections?
A. No, I do not.
Q. Who was your next instructor?
A. I think, Carrie Abrams.
[fol. 4561] Q. Who was the thread girl in that section?
A. I think, Kathryn— I'm not sure about that. I'm not sure who was Carrie's thread girl at that time.
Q. Do you have any idea of the dates on which you were in Carrie Abrams' section?
A. No, I don't.
Q. Who was your next instructor?
A. Kathryn Rosen.
Q. Do you know who the thread girl there was?
A. I believe, Grace Davis.
Q. Does this bring us down to March or April of 1937?
A. Yes. That was in the early spring of 1937.
Q. Were you in Kathryn Rosen's section throughout March and April of 1937?
A. Yes, I was.
Q. Was Grace Davis the thread girl in that section throughout those two months?
A. I couldn't say as to that. She was there part of the time and Claris Martin was there part of the time, but I don't remember which girl was there in that period.
Q. What was that section number at that time?

A. 524.

Q. How did you come to join the Loyalty League?

A. Some girl came to my machine and asked me if I would like to join.

[fol. 4562] Q. Did she have a membership card for you?

A. Yes, she did. I signed the card and purchased a button from her.

Q. Did she have the pin with her?

A. Yes, she did.

Q. What was the number of your pin; do you know?

A. 1042.

Q. And that was sometime in the spring of 1935, was it?

A. Yes, it was.

Q. Did you attend any meetings of the Loyalty League?

A. Yes.

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[fol. 4563] Q. Do you know any of the officers of the Loyalty League during that period?

A. What period was that?

Q. From the time you went to work; up until March 18, 1937.

A. Rose Todd was president of the Loyalty League in the early part of 1937.

Q. Do you know of any other officers at any time during that period?

A. No, I don't.

* * * * * * *

Q. If an instructor was absent from work for an hour or a day, who would take her place?

A. Well, if they were absent for a day there was usually another instructor sent in to the section. If she was absent for a few hours, as a general rule, nobody replaced [here]. She usually saw to it that each girl had enough work to last until she returned.

[fol. 4564] Q. Who gives out your checks, since you have been receiving checks? A. Our pay checks?

Q. Yes. A. Our instructor.

* * * * * * *

[fol. 4565] Q. Who was the girl that you mentioned as a special friend of yours who had her sleeve torn out?

A. No, I didn't say she was a special friend of mine. I said she was an acquaintance of mine.

Q. Do you know her name? A. Yes.

Q. Will you please state it?

A. Well, for very obvious reasons, Miss Weyand, I don't want to tell the girl's name.

Q. I would like to have you state it.

Mr. Reed: I didn't hear the last question.

Trial Examiner Batten: She said she would like to have her state the girl's name.

Mr. Reed: If this girl is working for another union and made these remarks to the witness, manifestly it would be unfair to that girl to have this fact made known, so that she might be thoroughly disciplined by the union she belongs to, if they saw fit to discipline her.

My understanding of the attitude here throughout is that those matters which would cause trouble to anyone and are not necessary in this case would not be gone into.

Trial Examiner Batten: Don't you consider this necessary, Senator?

Mr. Reed: I do not. Necessary for her to tell the [fol. 4566] name of a girl whose sleeve was torn?

Mr. Langsdale: How are we going to meet the testimony, then?

Mr. Reed: We are in a position where we cannot bring these people in who belong to the other union. The fact about the matter is, it has been claimed throughout this whole litigation at various times that the I. L. G. W. U. had members working for the company; and as often as that has come up, there has been a flat refusal to tell their names. There is a flat refusal to disclose to us the names of the persons who filed these charges against us, and all of this—

Trial Examiner Batten: Senator, it is very obvious who filed the charges. They had to sign the charge, and that is a part of the complaint.

Mr. Ingraham: Jane Palmer signed them.

Mr. Reed: Jane Palmer signed them as attorney.

Trial Examiner Batten: Of course, that brings up the question again of these witnesses testifying about matters they saw or heard or in their own minds thought, going to attempt to verify or prove or disprove all of those matters. Of course, if we are going into those matters, it is perfectly proper for this lady to tell us who it was. In other words, I see no reason of any kind why she should not disclose it.

Mr. Reed: I have tried to give you the reason, and I [fol. 4567] again call attention to the fact that throughout, in court or any other place—in any hearing, there has been a flat refusal to tell the names of the persons who worked for the Donnelly Garment Company who belonged to the I. L. G. W. U.

Trial Examiner Batten: I don't know of any instance in this hearing so far, Senator, where there has been any such refusal.

Mr. Reed. Didn't it occur earlier in this hearing?

Trial Examiner Batten: Not that I recall, because it has not been an issue in this hearing, as to who belonged or who didn't belong, that I recall.

By Trial Examiner Batten:

Q. Mrs. Warth, what is your reason for not wanting to disclose it?

A. This girl still works in the same factory where she was working at that time and she is a member of the I. L. G. W. U., and for that reason I do not want to give her name. I have known her over a period of years and I have no reason to doubt her honesty and integrity.

Q. You say, because she belongs to that union. That does not appear to me to be a reason why you should not want to disclose it.

A. It does to me. Don't you think she might be discriminated against?

Trial Examiner Batten: Well, I don't think that is a matter for you to determine, whether she would be discriminated against or not.

[fol. 4572] Trial Examiner Batten: Miss Weyand, do you agree with Mr. Langsdale that the witness having testified about what was told her, it now raises the issue about whether or not, in fact, the girl did tell her that?

Miss Weyand: I think it does. That is always a matter raised in credibility.

Trial Examiner Batten: Is this for the purpose of credibility?

Mr. Langsdale: It couldn't be for anything else.

Miss Weyand: I don't see how it could.

Trial Examiner Batten: I am asking you if it is.

[fol. 4573] Miss Weyand: Yes.

Trial Examiner Batten: If it is for the purpose of credibility, I will ask the witness to disclose the name.

Mr. Reed: Do the counsel on the other side now say that they are going to test this lady's credibility by bringing in the witness, and do they vouch for the fact that that witness will contradict this witness?

Trial Examiner Batten: That is not what I asked them. I asked Miss Weyand if it was a matter of credibility, and she said it was. I asked her, entirely so? And she said yes. Upon her statement, the witness may disclose the name of the person.

Mr. Reed: Then, I want to get my position clear here. When a witness testifies that some person told them something, and you are laying the foundation for a contradiction, you must show or state that you propose to produce a witness who will testify that, at substantially that time and place which has been asked about of the witness who is to be impeached, that you expect to prove by that witness that she did not make the statement, then you have qualified to impeach the witness; otherwise, you have not.

Trial Examiner Batten: I don't believe I agree with you at all, Senator, because, supposing you were testing a matter of credibility and the witness agreed with you; after you had made your offer of proof to bring someone in to show that what you expected the witness to say was [fol. 4574] untrue—I don't think that precedes a question on a matter of credibility.

Mr. Reed: Are we, then, to understand that this question is to be asked, although limited to impeachment purposes, and that we can follow and show that this young lady, if she should come in and deny this, the fact back of it, or show, if she didn't deny it, that she spoke the truth?

Trial Examiner Batten: I am making no ruling of any kind, Senator, except to this witness, that she may disclose the name of the person.

Mr. Reed: That's the trouble.

Trial Examiner Batten: That isn't the trouble. If you believe you have the right to present such testimony, Senator, you present it, and at the time it is presented I will rule upon it.

Mr. Reed: I am going to say to the witness that she has the right to withhold this name, if she wants to.

The Witness: I think I will stand on that right, then.

Trial Examiner Batten: All right. You may do so, and I shall strike your testimony with respect to this incident which was given on direct examination—

Mr. Lane: Intervener excepts to the ruling of the Examiner.

Trial Examiner Batten: —in accordance with the Board's rules.

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{fol. 4575} Mr. Lane: I think, further, Mr. Examiner, it is obviously improper for the Examiner to permit counsel to go into evidence on the mere assertion that the purpose is to attack the credibility of the witness on things the Examiner excludes on direct approach. If it is going in at all, it should go in so that it can be verified properly. But to go in the back door—

Trial Examiner Batten: Now, Mr. Lane, that is the very thing I told the Senator I wasn't ruling upon. I am not going to anticipate a matter. You know as well as I do that the attorney who wants to attack the credibility or bias or interest of the witness, it gives them almost unlimited latitude.

Mr. Lane: It doesn't permit testimony to be introduced through one door that cannot go through another door.

Trial Examiner Batten: When I limit it to that purpose only, as I discussed with Miss Weyand the other day—and I think I made myself clear at that time—when I accept testimony for credibility, interest, or bias, it is not to be used for any other purpose. I think the record is clear on what I stated at that time.

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[fol. 4580] Q. I am going to ask the witness to look at I. L. G. W. U. exhibit No. 10, directing her attention to the Circuit Court of Appeals page 5970, and I'll ask her if the eighth name there appearing is her signature.

[fol. 4581] A. Yes, it is.

Q. Will you just continue to hold that a minute? I want to ask you about some of those names. Do you know the name that appears at the head of that column? It seems to be Mary Robeson.

A. Mary Robeson, R-o-b-e-s-o-n (Spelling)?

Q. Yes. Do you know her? A. Yes, I do.

Q. Did she work in your section at that time?

A. Yes, she did work in my section at that time.

Q. And the next girl, Vivian Laughman, is that the way it would be pronounced?

A. I don't know that girl.

Q. The next is Audrey Hoyle?

A. I don't know her either.

Q. The next name, Elizabeth Lawson?

A. No, I don't know her.

Q. The next name, Anna Farmer?

A. Yes, I know Anna Farmer.

Q. And she worked in your section at that time, did she? A. Yes.

Q. Ruth Ellen Baldwin?

A. Yes, I know her.

Q. And she worked in your section?

A. Yes, she did.

[fol. 4582] Q. And the next name is Ruth Davidson, of whom you have spoken? A. That's right.

Q. Then appears your name, then Catherine Lasister?

A. Yes, she sat right across the board.

Q. In your same section? A. Yes.

Q. And then Lorraine Smith?

A. Lorraine Smith was in the next section over. Lorraine and I were on the end of our rows in our sections.

Q. And then Carrie Scott?

A. Well, there is a lady in that section that they call Scottie, I don't know her name.

Q. And then Gladys Riner?

A. I don't know her, I wasn't familiar with the girls in the next row; I knew a few of them.

Q. Did you know Lena Hicks? A. No.

Q. Alta Stevenson? A. No, I didn't.

Q. Maude Fisher? A. I knew her when I see her.

Q. And she was in the next section?

A. She was in the next section, yes.

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[fol. 4583] Q. When did you learn that the committee which had been appointed at the March 18 meeting had consulted Mr. Tyler?

A. I think at the following meeting, I believe, was the first I knew of it.

Q. And by the following meeting, which meeting do you refer to?

A. The meeting during the last of March.

Q. What was stated at that time about the committee seeing Mr. Tyler?

A. Why, Miss Todd said the committee had called upon this law firm, and talked with Mr. Tyler about our case, and reported what he had said about he would be glad to handle the case for us, for a certain fee.

Q. Did you wear your uniform to that meeting?

A. I don't remember; I probably did, because I think, as I remember, we were working 9 hours then, and that would make us get off rather late, and I imagine I went right down with my uniform on.

Q. Did you have chairs at that meeting?

A. Which one?

[fol. 4584] Q. The meeting you are now referring to?

A. The meeting the last of March?

Q. Yes.

A. I don't remember that. I know that I stood; I think there were chairs there, but I stood.

Q. Do you remember how many others stood up?

A. Well, there were a great many standing all around the floor, I remember; I can't say how many.

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[fol. 4590] Q. Do you know what the system of the union was in passing on piece rates?

A. You mean in what way they handled it?

Q. Yes.

A. Well, in our section, if we weren't satisfied with the price of piece work, we took it up with our section representative, and she went to the general chairman.

Q. Who was your section representative?

A. Or sometimes she went directly to Mr. Baty.

Q. Who was your section representative?

A. At what time?

Q. Prior to July 15, 1939?

A. Well, I don't remember. We had a different one each year, as I remember, and I don't remember who they were.

Q. Did you have any section representatives prior to July 15, 1939?

A. Yes, we have had them, I think, ever since we have had our union.

Q. How were they chosen?

A. They were chosen by the girls of the section.

Q. Was that done at a meeting of the Donnelly Garment Workers' Union?

A. No, it was done at a meeting of the girls in the section.

Q. Do you know whether that was provided for in the [fol. 4591] constitution and by-laws of the Donnelly Garment Workers' Union? A. I don't remember.

Q. But you are certain that practice has continued since the very beginning of the Donnelly Garment Workers' Union?

A. No, I am not certain; I think it has, but I can't say for sure.

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[fol. 4595] By Miss Weyand:

Q. Did you know that the Donnelly Garment Workers' Union during 1937 and 1938 had a committee which [fol. 4596] was composed of Rose Todd, Lula Nichols,

Josephine Spalito, which adjusted the piece rates on behalf of the Donnelly Garment Workers' Union?

A. No, I did not.

Q. You never heard of such a committee?

A. No, I didn't.

Miss Weyand: That is all the questions I have.

Trial Examiner Batten: Mr. Langsdale?

By Mr. Langsdale:

Q. Did you know Mrs. Nichols?

A. I do know a Mrs. Nichols.

Q. Did you know her in the year prior to July 15, 1939?

A. Yes, I knew who she was.

Q. Do you know what she was doing there?

A. No, I did not.

Q. Did you have any idea what her duties were for the Donnelly Garment Company? A. No, I don't.

Q. You never did hear nor understand that she was fixing piece rate prices?

A. I have heard that she did, yes.

Q. From the time you went to work there down to July 15, 1939? A. What was the question?

(Last question was read by the reporter.)

A. Yes.

[fol. 4597] By Mr. Langsdale:

Q. But you never did know that she was on a committee of the Donnelly Garment Workers' Union for that purpose? A. No, I did not.

Q. For whom did you assume she was fixing piece prices?

A. I didn't assume because I didn't know.

Q. You hadn't any thought about it at all?

A. No, I did not.

Q. I believe you have stated that the subject of the meeting, the subject of the conversation at the meeting of March 18 was with reference to what the employees could do to protect themselves against the violence from the I. L. G. W. U., as you understood it to be, up at 26th and Grand, is that correct? A. That's right.

Q. That meeting was on the afternoon of March 18, was it? A. That's right.

Q. Did you know that that strike had only started the day before?

A. As I remember it, that strike started on the 14th.

Q. What did you say?

A. As I remembered it, the strike started on the 14th.

Q. Well, what do you base your recollection on?

A. Well, the 14th of March happens to be my birthday.

Q. Yes.

[fol. 4598] A. And that is the reason I remembered it.

Q. But these newspaper articles shown you by Mr. Ingraham, have you noted they start on the 17th?

A. Yes, I noticed it.

Q. You hadn't seen any newspaper articles prior to March 17th?

A. No, I had only seen the actions down at the place.

Q. Now, have you any other facts or circumstances in your memory which tell you that strike started before the 17th of March, 1937?

A. Only what I saw as I was passing there.

Q. Now, you are stating that you saw crowds and pickets in front of the Gordon, Gernes and Missouri, as early as the 14th of March? A. No, I didn't say that.

Q. Well, what did you say?

A. Well, I said that the strikes started on that day, as I remember.

Q. Well, what do you mean by that? What was done that you know of?

A. Well, they were being picketed on that date, I think.

Q. Did you see any crowds or masses or violence, or anything of that sort?

A. I saw those crowds out there for several days.

Q. But how long before the meeting of March 18th, is [fol. 4599] what I am trying to get you to testify to.

A. I wouldn t say just how many days, but I know it was several days before that.

Q. It started before the 17th of March, is that your recollection?

A. I think I remembered it started around the 14th.

Q. Well, are you sure of that?

A. I am not absolutely sure, no.

Q. Now, did you say that Mrs. Reed didn't read the letter that had been sent by the I. L. G. W. U.?

A. No, she did not.

Q. Who did read it?

A. I don't believe that it was even read.

Q. You don't believe that it was read? A. No.

Q. You say it was not read?

A. I didn't say it was not read; I said I didn't believe that it was read. I know that I had read the letter myself, but whether anyone read it at that meeting or not, I could not state positively whether they did or they did not.

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Q. You testified nobody called the meeting of March 18th and it was just a spontaneous outpouring of em-
[fol. 4600] ployees into the second floor?

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A. I don't remember how I testified about that, but I do know that the word was just passed around in the section that there was going to be a mass meeting of employees.

Mr. Langsdale: Who gave you the word?

A. Some of the girls in the section, I don't remember who it was.

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[fol. 4603] By Mr. Langsdale:

Q. Can you tell us definitely the date upon which employees voted to raise 50c apiece to take care of Mr. Tyler's fee?

A. No, I cannot.

Q. It has been five years, hasn't it, and more? It was in 1937, wasn't it?

A. As I remember it, it was.

Q. Have you had anything or anyone to refresh your
[fol. 4604] memory about the date of that meeting, prior to the time you took the witness stand at this hearing?

A. Well, it was being talked around, yes, it was, the date; the girls were all discussing those dates.

Q. No, I am not talking about that. Now, before you took the witness stand in this hearing, 5 years having elapsed since that meeting, and more, hasn't it? Before you took the witness stand, what, if anything, or who, if anyone, has refreshed your memory before you got on the

witness stand here? You said the meeting was the latter part of March, 1937?

A. Well, I think we were talking about those dates when we were talking with Mr. Ingraham.

Q. When?

A. A few days ago, I don't remember just what date it was.

Q. Well, did anyone suggest to you the meeting in the latter part of March, 1937?

A. I remembered that.

Q. That is what I am trying to get at. How do you remember?

A. I remember very distinctly all those things happening, and I know our meetings were along about that time.

Q. Well, is there any milestone in your memory that tells you whether that meeting was March, April or May, 1937?

A. Why, yes, I know it was in March.

[fol. 4605] Q. Well, what is it?

A. Either the last of March or the first of April.

Q. Well, why do you know that?

A. Because I remember the date of the first meeting, and that was some time after that.

Q. Well, what is there in the whole picture that tells you it was not April or May instead of March?

A. I didn't say, it could have been the first of April.

Q. Well, could it have been in May?

A. No, it could not.

Q. Why?

A. Well, because our union was formed on the 27th of April, and it was before that.

Q. Now, you say it was before that meeting?

A. Yes, sir.

Q. You say you paid your 50c to someone in your section?

A. Yes, I did.

Q. To whom did you pay it?

A. I do not know.

Q. Well, where did you pay it?

A. In the section.

Q. Well, where was this person?

A. She was in the section.

Q. Well, did you have to leave your machine to do it?

A. No.

[fol. 4606] Q. Did she come around your machine and collect it?

A. I think she collected it during lunch hour.

Q. Where?

A. In the section.

Q. Well, do you know where? Where is that section, where was it then?

A. 524 on the sixth floor, right in front of the door.

Q. And how many square feet would you say a section covers?

A. Well, I haven't the slightest idea.

Q. How long was the section? Maybe you can tell us that. Was it 20 feet long?

A. Well, it goes practically half-way through the building, east and west.

Q. What part of that section was this person in, that you paid your money to?

A. I don't know, because I don't know who it was.

Q. Do you know what that person did for the Donnelly Garment Company at that time?

A. She was a machine operator, an operator in our section.

Q. How do you remember that?

A. Because we always paid those things to one of the operators in the section.

Q. What do you mean, "always"?

A. Well, any kind of a collection, we had someone in the section so designated to make it to.

* * * * * *

[fol. 4607] Q. Was the person to whom you gave this 50c known as the Loyalty League representative at that time?

A. I don't know that, I don't remember who it was. I don't even know whether we had a Loyalty League representative at that time in the section.

Q. Did you know who the officers of the Loyalty League were? I don't mean their names, but what officers they had, by title?

A. No, I do not.

Q. Did you know that each section had some person known as their representative in the Loyalty League?

A. Well, I think most of the sections did, yes.

Q. Yes, and your section did also, didn't it?

A. I imagine we did.

Q. And was this girl that person?

A. I do not know.

Q. Now, in answer to Mr. Ingraham's question, you [fol. 4608] said your instructor didn't suggest that you go to the March 30 meeting, is that correct, or this meeting the latter part of March?

A. Our instructor didn't suggest we go to any meeting.

Q. Well, why do you say that?

A. Because I know she didn't.

[fol. 4610] Q. Your thought was that the Loyalty League was just a social organization?

A. That's right.

Q. Did you ever think that it was organized for the purpose of in any way impeding the activities of the I. L. G. W. U. or officers of the I. L. G. W. U.?

A. No, I did not.

[fol. 4621] By Mr. Langsdale:

Q. Let me ask you if at the meeting at which the 50 cents was collected you heard Miss Todd say this:

"I think that is a grand spirit to show. May I hear a motion, then, to the effect that each member of the Loyalty League donate 50 cents to take care of any indebtedness we have."?

A. No, I don't remember her saying it.

By Mr. Langsdale:

Q. You testified you signed what has been called here "the Loyalty petition" on March 2, when it was brought to your machine by some one of the employees?

A. Yes, I did.

[fol. 4622] Q. You recall that testimony?

A. Yes.

Q. And that you signed this petition which was written as follows:

"We, the undersigned, as members of the Donnelly Garment Company, wish to make it known we are positively happy and contented with the position which we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer Mrs. Reed."

Now, I think you said you signed that because that was the way you felt about it?

A. That is right.

Q. Did you feel that way about the statement "refuse to acknowledge any union labor organization"?

A. That is right.

Q. You felt that way, did you, on April 27, 1937?

A. Well, I think that was said because of the statement that we had read in the paper.

Q. What statement? This was March 2.

A. Yes.

. . . . . .

[fol. 4623] By Mr. Langsdale:

Q. On March 2, 1937, were you opposed to all labor unions?

A. Not necessarily, no.

Q. Then, did you feel that you would refuse to acknowledge any union labor organization?

. . . . . .

[fol. 4624] A. Well, I don't remember how I felt about that. I don't think I felt I would refuse to acknowledge any union organization.

By Mr. Langsdale:

Q. What did you mean, then, when you answered Mr. Ingraham's question that that petition expressed your opinion as to how you felt?

A. Well, I don't think it is right to force anybody to join a union or anything else against their will.

. . . . . .

Trial Examiner Batten: Just a moment, Mr. Langsdale.

The question to you was, What did you mean when you said in answer to Mr. Ingraham's question that that expressed your opinion and how you felt?

A. Well, I think I had reference to the way I felt [fol. 4625] toward Mrs. Reed and the company in general. I appreciated my position there and I appreciated the way I was being treated, and I appreciated the way the plant was running, and the sanitary conditions, and everything about the working conditions there. That was what I meant in that answer.

By Mr. Langsdale:

Q. Did you also mean that this petition expressed your opinion as to how you felt, in these words of the petition, "refuse to acknowledge any union labor organization"?

A. Well, refuse to acknowledge any one that was purported to be in there at that time.

• • • • • • •

[fol. 4626] By Mr. Langsdale:

Q. At the time you signed this petition on March 2, 1937, did you have any reservation in your own mind about signing it that wasn't expressed in the petition?

A. I don't remember whether I did or not.

Q. And you don't know whether you at that time wanted to say that you "refuse to acknowledge any union labor organization" or not?

[fol. 4627] A. I said that I wanted to refuse to acknowledge any union labor organization that was rumored to be existing in part in the plant at that time.

Q. Of course, this was long before the violence that you testified to?

A. Yes, I know.

Q. But that is what you meant when you signed this petition?

A. That is right.

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[fol. 4631) Redirect Examination.

Q. (By Mr. Ingraham): I will hand you respondent's exhibit No. 6, appearing in the Circuit Court of Appeals record at page 4864 and page 4865, and ask you if you

recall reading this article that appeared in the Kansas City Times for February 2, 1937.

* * * * * * *

A. Yes, I read the article.

By Mr. Ingraham:

Q. Did you read in that article the statement, "The union—meaning the I. L. G. W. U.—claims only 25 mem- [fol. 4632) bers among the Donnelly workers but officials said hundreds of others are related to union members." Do you recall that in that article? A. Yes.

Q. Then, do you recall this statement:

"'Within a year we will have it completely organized,' Perlstein said. 'As soon as we have enough members we will call a strike. This will be in addition to carrying our side to the customs.'"

A. I read that.

Q. Now, you have been asked by Mr. Langsdale what you meant by the statement in the March 2 petition that you would not "acknowledge any union labor organization." What did you refer to when you signed that petition as to a labor organization?

A. The assertion that they were "in there" made in this statement by Mr. Perlstein.

Q. Who do you mean by "they"? A. Mr. Perlstein.

Q. The I. L. G. W. U. union? A. Yes.

Q Now, did that article have anything to do with causing you to sign the petition of March 2? A. Yes, it did.

Q. Why did you want Mrs. Reed to know how you felt [fol. 4633] about the I. L. G. W. U.?

A. Well, I felt like she was being accused of a lot of things that were not so, and I felt rather outraged at those accusations, and then I thought maybe she might think her employees might think some of those things, and I didn't want her to feel that I felt that way.

Q. Did you want Mrs. Reed to know that you did not want to acknowledge the I. L. G. W. U.? A. Yes, I did.

Q. Was this article that appeared on February 26, 1937, discussed among the employees at the plant?

A. Very much.

Q. Will you state whether or not the employees wanted Mrs. Reed to understand that they did not want to acknowledge the I. L. G. W. U.?

A. That was my understanding.

Q. Was that from what you heard other employees say? A. Yes.

Q. I will ask you if you recall reading in that article this paragraph:

"'Part of the union's campaign directed against the Donnelly Garment Workers' Union will be to send six women to cities and towns where its garments are sold, advising retailers and labor organizations,' Mr. Perlstein said. 'Miss Palmer will have charge of this squad of fellow workers.'"

[fol. 4634] A. Yes, I remember that.

Q. Now, what did you understand was meant by "advising retailers and labor organizations"?

* * * * * * * *

By Trial Examiner Batten:

Q. What interpretation did you place upon it, Mrs. Warth?

A. Well, I thought it meant a sort of a boycott to the business.

By Mr. Ingraham:

Q. And what reaction did you have to that statement [fol. 4635] in the paper?

A. I was very indignant about it, because I had always regarded Mrs. Reed as a fair employer, and I didn't think it was right that she should be persecuted that way?

Q. Did you think it might affect your job?

A. Well, naturally it would affect our jobs, if they ruined her business. That was the natural conclusion.

Q. Did you hear a discussion among other employees of that part of the article? A. Yes, I did.

Q. And what was the effect on the other employees with respect to the sending out of these emissaries?

A. I think they all felt very much as I did.

* * * * * * *

[fol. 4638] Q. Now, you stated, I believe, on direct examination that at the meeting of March 18 a committee was named to see what could be done to give protection to the employees, is that correct? A. That's right.

Q. And did you testify that this committee was instructed to consult attorneys? A. Yes.

Q. I believe in answer to a question on cross-examination, you stated that Mr. Tyler—that you learned that Mr. Tyler had been consulted to represent the employees. Now, will you state what Mr. Tyler was to do in representing the employees?

A. I think I stated that he was to advise us as to what we could do, what could be done to protect us from the violence being practiced at the other plants, in the way of an injunction, or something of the sort, a restraining order.

Q. And when you stated on cross-examination that Mr. Tyler was to handle your case, that was what you referred to? A. That's right.

* * * * * *

[fol. 4639) Recross-Examination.

By Mr. Lane:

Q. Mrs. Warth, I hand you Board's Exhibit No. 8-21, which appears at page 4415 of the Circuit Court record, being the minutes of the meeting of Donnelly Garment Workers' Union on May 25, 1937, and ask you to please read those. A. Yes, I went to the meeting.

Q. What time of day was that meeting held?

A. I imagine around five o'clock, not over 5:15.

Q. Was there ever any time when a union meeting, a meeting of the Donnelly Garment Workers' Union was held during working hours? A. No, there was not.

Q. Was there ever a meeting of the Donnelly Garment Workers' Union that was immediately followed by a meeting of the Loyalty League? A. Not to my knowledge.

Q. Or was there ever any time when the Donnelly Union meeting was preceded by a meeting of the Loyalty League?

A. Not to my knowledge.

* * * * * *

[fol. 4640] Q. (By Mr. Lane): Now, I'll hand you Board's Exhibit No. 18-A, appearing at page 4709 of the Circuit Court of Appeals record, and ask you to read that, please.

* * * * * *

[fol. 4643] A. I don't remember any such meeting as that.

* * * * * *

By Mr. Lane:

Q. Did you ever attend a meeting of the Donnelly Garment Workers' Union that began at 3:45 in the afternoon?

A. No, I did not. I didn't know they ever had one that started at that time in the afternoon.

Q. Did you know Elsie Graham Greenhaw? A. No.

Q. Did you know Marjorie Green? A. Yes.

Q. Did Marjorie Green have an office in the Donnelly Garment Workers' Union in May 1937?

A. She was secretary.

Q. Did you see Marjorie Green at substantially all of the meetings of the Donnelly Garment Workers' Union that you attended?

A. I don't remember of any where she wasn't present.

Q. Did you see her taking minutes of the meetings?

A. Yes, I did.

Q. Did you know Elsie Graham Greenhaw by sight?

A. No, I didn't.

[fol. 4644] Q. Was the meeting of the Donnelly Garment Workers' Union on May 25, 1937, followed by a meeting of the Loyalty League?

A. I never heard of it, if it was.

Q. So far as you know, did any meeting of the Loyalty League ever occur such as purported to be recorded in these purported minutes which I have shown you which are claimed to have been kept by Elsie Graham Greenhaw?

A. I never heard of it.

Q. Was anything said at the meeting of May 25 of the Donnelly Garment Workers' Union about raising money for the Loyalty League?

A. There never was anything said at any union meeting that I attended about the Loyalty League.

* * * * * *

[fol. 4645] Q. Now, when the strike started in March at the Gernes, Gordon, and Missouri plants, did you understand at that time from your discussion with other em-

ployees that that was part of a campaign of the International Ladies' Garment Workers' Union?

. . . . . .

[fol. 4649] A. Yes, that was my understanding.

. . . . . .

[fol. 4653] Q. (By Miss Weyand): I believe you testified in answer to questions on redirect, that you heard discussed at the plant that the I. L. G. W. U. was going to send out emissaries to start a boycott. Do you remember who you heard discuss that matter?

A. The girls in the section, I think.

. . . . . .

[fol. 4656] Q. Before lunch you read the minutes of a meeting in which Rose Todd made a statement about renewing the contract, which was the minutes of the meeting of February 7, 1939. Do you remember anything else that was discussed at that meeting? A. No, I don't right now.

Q. Do you remember whether very much of that meeting was given over to the discussion of the renewal of the contract? A. I don't remember.

Q. Do you remember Rose Todd saying at that meeting, "I think our chief concern at the present time in the way of any activity is our carnival"?

A. I don't remember that she said it in just those words.

Q. Do you remember that was the chief subject of conversation there at that meeting? A. No, I don't.

Q. In looking over the minutes and reading them this morning, did you discover that that was, as recorded in the minutes, the chief topic of conversation at that meeting?

A. I noticed there was quite a lot of discussion about it, yes.

Q. Did you notice how the question of contract renewal happened to come up in that meeting?

[fol. 4657] A. No, I didn't.

Q. And you didn't notice in reading over the minutes how the question of the contract to be renewed was raised at that meeting? A. No, I don't remember.

Q. Do you remember whether there was any more in the minutes about the renewal of the contract in the section Mr. Ingraham read to you when you said you recalled it?

A. I don't believe there was.

[fol. 4660] Q. I would like to have you look over these minutes again and state for me, after reading them, if you recall the method in which the question of contract renewal was raised.

Mr. Ingraham: What is the date of those minutes?

A. February 10th.

Trial Examiner Batten: What page is it?

Miss Weyand: February 7, 1939, they are written up on February 10th.

Trial Examiner Batten: What page, Miss Weyand?

Miss Weyand: This is Board's Exhibit No. 8-145, which appears in the Circuit Court of Appeals record at page 4539.

Mr. Ingraham: I didn't hear the question. What was the question?

Miss Weyand: If that refreshed her recollection, and if she could, after reading it, state how the contract renewal question came about. A. What was the question?

[fol. 4661] Miss Weyand: Do you want the question read to you? A. Yes.

Miss Weyand: Mr. Reporter, will you please read the question?

(Last question was read by the reporter.)

A. Well, I recall it from these minutes.

By Miss Weyand:

Q. But you have no independent recollection?

A. I don't remember that, no.

Q. Even after reading the minutes it doesn't refresh your recollection? A. No, it does not.

Q. All you know is what appears on the minutes?

A. I know I was at the meeting because evidently I heard it.

Q. When Mr. Ingraham read you two paragraphs from those minutes, the ones immediately following Stella Willis' name there, did you have an independent recollection of hearing those statements made by Rose Todd at that meeting? A. What statement was that?

Q. This morning, Mr. Ingraham read you this paragraph on record page 4541, and you stated you remembered that occurring. Now, I wanted to get it clear whether your recollection was an independent recollection which had been refreshed by reading those minutes, or whether you just saw it there and it must have happened because that is what it says. Can you tell us which it was?

[fol. 4662] A. I didn't remember just how she worded that, but I knew she did say that our contract expired.

Q. You knew she said it had at a meeting in February, 1939? A. What was that?

Q. You knew she made that statement in a meeting in February, 1939?

A. Well, I remember being at the meeting where she made this statement.

Q. Do you remember what date that meeting was?

A. Well, I suppose according to this it must have been on this date.

Q. Do you remember at how many meetings she made such a statement? A. No, I don't.

Q. Do you think she made it more than once or just once? A. Well, I couldn't answer that.

Q. You just recall at some meeting you did hear her make that statement, but you have no idea whether it was once or more than once, you have no idea when that meeting occurred?

A. Of course, our contract has expired more than once.

Q. And have you renewed it more than once?

A. I think we have renewed it each time it expired.

Q. Do you remember that coming up in that meeting?

A. Not specifically, no.

[fol. 4663] Q. You are just saying that by what you know of the course of events, is that correct?

A. That's correct.

Q. Do you have an independent recollection she did make a statement about the renewal at some meeting, or

do you just state that because it happened in the course of events?

A. Yes, I have an independent recollection she did say something about the renewal of the contract at some meeting.

Q. Do you notice from reading the minutes the subject matter discussed at this meeting other than the renewal of the contract? A. The carnival.

Q. Was there anything else discussed at the meeting until Stella Willis raised the question of the renewal of the contract? A. I believe not.

Q. And she raised that at the end of the meeting, did she?

A. Well, I don't remember what part of the meeting.

Q. Do you remember this statement being made by Rose Todd at any meeting, "As you will remember, we organized our union on April 27, 1937, and on May 27, 1937, our working agreement was signed. This agreement was to run for two years; also our wage agreement comes up for renewal on June 22nd, so please keep these things in mind. No doubt during the last two years we have all learned a great deal [fol. 4664] about unions, I know I have, there must have been a few things you have thought of, something that might be well to have changed in our agreement with the company, so bear that in mind, so if you have any suggestions or you hear anyone commenting on it, and they have any suggestions to make, please make them to me or to some member of the committee. On the whole I think it has worked out very well, but I have a few minor changes in mind that should be made, and I know some of you have, and different people have mentioned them to me from time to time."

Do you recall that statement occurring?

A. I remember of her making remarks about having some changes in the contract.

Q. Do you remember that statement as I read it to you?

A. Well, I wouldn't say that I did, until my memory was refreshed.

Q. Did you recognize that as the same statement Mr. Ingraham read to you this morning and you said you remembered that being made?

A. Well, I suppose it is the same statement.

Q. When Mr. Ingraham asked you if you remembered it being made, did you know what he was reading had been made? A. I don't get the question.

Q. When Mr. Ingraham read this statement to you this morning and asked you if you remembered that statement [fol. 4665] having been made, did you remember that it had been made?

A. I did, after I read the minutes of that meeting.

Q. But you wouldn't know it aside from reading the minutes and seeing it was there?

A. I wouldn't remember it specifically, no.

Q. You have no independent recollection of any such statements, aside from the fact you read them in these minutes? A. No, not positively.

Q. When you say "not positively," what recollection do you have?

A. Well, I mean I know those things transpired, but I don't remember at just what meeting or just in what wording they were put.

Q. Do you know whether there was any further discussion of a renewal of the contract up until the time the contract was renewed? A. No, I do not.

Q. Do you have any idea about what date the contract was renewed? A. No, I have not.

Q. You wouldn't know whether it was March, April, May or June of 1939?

A. Well, I suppose it was on the date when it expired.

Q. But you don't know one way or the other?

A. No, I don't.

[fol. 4666] Q. You have nothing that would make you recall?

A. Well, I never was on any of those committees, and the committees were the ones who negotiated the contracts. Of course, it was always up to a vote of the union for them to be accepted, but the committees were the ones who attended to all of those things, the board of chairmen.

Q. Are you certain you voted on that renewal?

A. I really am not very certain of anything right now, but I think I did.

Q. But you don't have a recollection one way or the other on it?

A. Well, we voted on various things at different times, and I think we always voted on those contracts, but I am not sure. Of course, I did miss a few meetings too.

Q. How many contracts did you have to vote on, do you have any idea? A. No, I don't.

Q. Do you think it was more than one?

A. I don't know whether it was changed the second year—I mean the first contract—was changed or not. I imagine it was some, it might not have been; it may stand as it was to start with.

Q. You don't know at all? A. No, I don't.

Q. I am going to ask the witness to look at Board's [fol. 4667] Exhibit No. 10, which appears in the record of the Circuit Court of Appeals at pages 4695 to 4696 and ask her if, after looking at that document, her recollection is refreshed as to what changes were made in the contract.

Mr. Ingraham: May I see that?

Miss Weyand: Yes.

[fol. 4668] The Witness: What was the question, please?

By Miss Weyand:

Q. If after reading that you have your memory refreshed and now know what the extent of the changes were which were made in the contract?

A. No; I still don't remember that.

Q. You don't remember anything about that?

A. No, I don't.

Q. Do you remember how the nominating committees were chosen in 1939?

Mr. Reed. Now, if Your Honor please, I am going to renew my objection that this is not recross-examination.

Miss Weyand: This all appears in the minutes that Mr. Ingraham read excerpts from, and I want to see what her recollection of those meetings is.

Mr. Reed: All right. There's no use trying to stop you, anyway.

Trial Examiner Batten: Well, isn't that true, Senator, that if that is part of the minutes which Mr. Ingraham had the witness read, it is a matter which is subject to cross-examination?

Mr. Reed: Yes, if he read those particular articles.

The Witness: May I have the question read, please?

Miss Weyand: Miss Reporter, will you read the question to the witness, please?

(Thereupon the last question was read by the reporter [fol. 4669] as follows:

"Do you remember how the nominating committees were chosen in 1939?")

Mr. Langsdale: That is 8-154.

A. I don't remember, but I believe they were—I just don't remember what they were.

Mr. Reed: What is the exhibit you are referring to, please?

Trial Examiner Batten: What page is that on?

Miss Weyand: It is on page 4544. It occurs at page 4545, which is in the minutes of the meeting of March 14, 1939, from which the respondent read the witness excerpts after having her read through the entire minutes and state that she was present at the meeting.

By Miss Weyand:

Q. Do you have any recollection at all as to how the nominating committees were chosen in 1939?

A. I don't remember.

Q. You don't remember at all?

A. No.

Q. Do you remember reading about that this morning?

A. Yes, I remember reading about it.

Q. But you don't remember what it said at all? You don't remember the names of the persons who made the motions, or what they suggested?

(No answer.)

[fol. 4670] Q. You have no recollection of that?

A. No, I haven't.

Q. You have no recollection of whether they were going to elect the nominating committees or have Rose Todd appoint the nominating committees?

A. I think they were going to be elected.

Q. Are you at all certain of that?

A. No, I am not.

Q. You wouldn't know one way or the other?

A. I don't think Rose Todd appointed those nominating committees.

Q. But you don't remember whether it appeared in the minutes that they decided to elect them or have them appointed?

A. Are you talking about the committee or the chairmen?

Q. It was the nominating committee I was talking about, preparatory to your annual election you held in April of each year; and I am inquiring about 1939.

A. To my recollection, Rose Todd did not appoint the nominating committees.

Q. Did someone else appoint them?

A. I think they were appointed in open meeting. They were named and voted on, if I remember correctly.

Q. And you think that occurred in 1939?

A. I think it did.

Q. But you do not have any recollection of whether it [fol. 4671] did or not?

A. No, I don't.

Q. And you don't know whether it appeared in the minutes you read this morning of March 14 how they decided to select the nominating committees?

A. I don't remember.

Q. Do you have any independent recollection of the meeting of May 25, 1937?

A. I read those minutes this morning but I don't believe I have any independent recollection of that meeting, except that I know the meeting was called after working hours, in the afternoon.

Q. Why do you say that—

Mr. Reed: Please let her finish.

A. They all were.

By Miss Weyand:

Q. That is the reason you say that one was, because they all were?

A. Yes. I attended the meeting, and I know I never attended one unless it was held after working hours.

Q. What time did you get through work?

A. Either at 4:10 or 5:10. At that time of the year I imagine we were working 9 hours in our section, and that would make it 5:10.

Q. When you say you imagine— Do you have any independent recollection on it?

[fol. 4672] A. No.

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[fol. 4674] Q. Do you remember at how many meetings you raised money for Mr. Tyler's fee?

A. The original fee?

Q. For any fees for Mr. Tyler at any time prior to July 15, 1939.

A. The only meeting I recall where we raised funds was the meeting at the last of March.

Q. That is the only time you recall ever raising any money for Mr. Tyler's fees?

A. Of raising money at the meeting, yes. I know we voted once on a special assessment.

Q. At another time?

A. Yes. I don't know whether it was more than once or not, but I do remember one time we voted on a special assessment.

Q. Do you remember at how many meetings you discussed the question of raising money for Mr. Tyler's fee?

A. No, I don't.

Q. Did it occur quite regularly at meetings?

A. I don't think so. It might have.

Q. How many meetings can you now place where [—] [fol. 4675] was discussed?

A. I couldn't say, Miss Weyand.

Q. You have no idea?

A. No.

Q. Do you remember the one the last part of March, 1937?

A. Where we took the money at the meeting, yes; I remember that because that was the only one where there was a collection taken, to my knowledge.

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[fol. 4676] By Miss Weyand:

Q. How many times do you remember assessments being made to raise funds for Mr. Tyler's fee?

A. Special assessments?

Q. Yes.

A. I remember one.

Q. And what was that amount?

[fol. 4677] A. It was $1.00.

Q. That is the only one you remember?

A. That is the only one I remember.

Q. If I told you there was an assessment of $2.00 a member in 1939, would you know whether that statement was accurate or inaccurate?

A. I wouldn't want to say. To my knowledge, I would say it was inaccurate.

Q. You do not have a recollection that in 1937 there was 50 cents apiece raised, and in 1938 there was $1.00 apiece raised, and in 1939 there was $2.00 apiece raised?

A. No. I remember the dollar, but I have forgotten the others, if they were raised.

Mr. Ingraham: Are you referring to what the union raised?

Miss Weyand: What the employees raised for Mr. Tyler's fees.

By Miss Weyand:

Q. How do you happen to recall the dollar assessment? Is there anything special that fixes that in your mind?

A. Yes, there is. I collected it in our section.

Q. Where did you collect that, at the machines?

A. I don't remember. I think I collected it on the lunch hour.

Q. Did you give each girl a receipt?

A. Yes, I did.

. . . . . .

[fol. 4678] Miss Weyand: I would like to have the witness read the minutes of the meeting of April 4, 1939, being Board's exhibit 8-153, beginning in the Circuit Court of Appeals' record at page 4546, directing her attention particularly to page 4553.

. . . . . .

[fol. 4680] By Miss Weyand:

Q. Did you attend that meeting?

A. Yes, I did.

Q. Does that refresh your recollection about the assessment of $2.00 a person?

A. Yes, it does.

Q. And you now remember this was $2.00 assessed?

A. I remember, yes.

Q. Do you know who this Harry Grogan is who participated in the motion to assess $2.00 a member?

A. No, I don't know.

Q. You don't know who he was?

A. No.

Q. You have an independent recollection now, after reading this, that $2.00 was assessed at that meeting?

A. Yes, I do remember it. I remember now the girl in our section that collected the money for that, too.

Q. Do you know her name?

A. Alpha Elsten.

Q. Do you happen to remember that occurred in April, 1939, or do you just remember the $2.00 collection?

A. I just remember the $2.00 collection, I don't remember the date.

Q. She gave you receipts?

A. Yes.

. . . . . .

[fol. 4684] Q. You stated on redirect examination by Mr. Ingraham that you understood that at the meeting at which each agreed to contribute 50c, that the money was to be paid to Mr. Tyler as a fee to prosecute an injunction suit?

A. Something to that effect.

Q. And did you ever give Rose Todd or anyone else your consent that it be paid to him for anything else?

A. No, I did not.

Q. Did you ever hear that it had been paid to him to get up the by-laws and write the working agreement and give other advice to the Donnelly Garment Workers' Union?

A. No, I did not.

. . . . . .

[fol. 4685] Q. Now, you stated that never, at any Donnelly Garment Workers' meeting did you ever hear the Loyalty League mentioned, did you?

A. Will you please recite that again?

Trial Examiner Batten: Will you read the question, please?

(Last question was read by the reporter.)

A. Well, I don't remember. It probably was mentioned, because a lot of times if the Loyalty League was giving a dance or card party or any kind of entertainment, it would only be natural that we should have it announced at our union meeting, that they were giving it, they would expect all of us to do our part.

[fol. 4686] Q. Then, your recollection on whether or not it was ever mentioned is not clear, is that right?

A. No, it is not.

Q. It may have been mentioned?

A. It may have been mentioned, but I don't remember.

Q. Yes, and it may have been mentioned at the meeting of May 25, 1937?

A. It might have been.

Q. Now, you said that you saw Marjorie Green taking notes at meetings, did you?

A. I did.

Q. Well, you don't mean to tell the Examiner that she was present at every meeting of the Donnelly Garment Workers' Union and took the notes?

A. Well, to my knowledge she was present at every meeting the first two years; I think she was secretary, and I don't remember of any meetings where she was absent.

Q. Well, did you know of her going on a vacation at any time and letting someone else take the minutes?

A. No, I didn't.

Q. Well, you say that didn't happen?

A. No, I wouldn't say that it didn't happen, but I don't remember of being at any meeting where Marjorie Green was absent.

Q. It could be that you did get away from your work on [fol. 4687] May 25, 1937, at 4:10, could it?

A. Yes, it could be.

By Mr. Langsdale:

Q. And it could be that the meeting was going on when you got there?

A. I don't believe that a meeting was ever going on at that particular time of day.

Q. Well, I am not asking you that. Do you know whether you arrived at the meeting of May 25, before the meeting started?

A. I don't know but I was usually there before they started.

. . . . . .

[fol. 4689] By Mr. Ingraham:

Q. Very well; you recall Miss Weyand inquiring if the employees had raised $1, sometime?

A. Yes, I do.

Q. Now, I wish you would state whether or not, when you answered that they did, that you meant to say that the $1 was raised at the meeting of the employees in the latter part of March 1937?

[fol. 4690] A. No, I didn't mean that.

Mr. Ingraham: I wanted to clear that up.

Trial Examiner Batten: As a matter of fact, I don't think the record indicates that at all.

. . . . . .

Mr. Langsdale: The $2 that Miss Weyand inquired about, that was raised at the meeting of April 4, 1939.

Miss Weyand: There was $1 in 1938 and $2 in 1939.

Trial Examiner Batten: I think the record is very clear.

. . . . . .

[fol. 4691] Recross-Examination

By Mr. Lane:

Q. The $1 collected, mentioned by Miss Weyand, in 1938, and the $2 mentioned by Miss Weyand in 1939, were assessments made by the union on its members and paid by the members of the union to the union for union purposes, was it?

A. That's right.

Trial Examiner Batten: Well, certainly if it was not clear, it ought to be now. As a matter of fact, I think it

was before. Miss Weyand even started to ask her questions about the 50c, the $1 and $2; it is not only here by witnesses but it is a matter of record in minutes and written documents.

Mr. Lane: It was intimated that it referred to the employees and did not refer to the union.

. . . . . .

[fol. 4692] Trial Examiner Batten. Mr. Ingraham?

Mr. Ingraham: I would like the record to show that Wave Tobin is present in court and has been present at every session since she was on the stand, and respondent again asks the right to continue its examination of her.

Trial Examiner Batten: Has Mrs. Reed been in court since we started up again, Mr. Ingraham?

Mr. Ingraham: No, she has not.

Trial Examiner Batten: Well, I think I can verify the fact for you that, as far as I recall, Miss Tobin has been here every day.

We will proceed.

Mr. Ingraham: And my request to be permitted to continue my examination of her will be denied?

Trial Examiner Batten: We will proceed in line with the ruling which I have previously made, Mr. Ingraham.

. . . . . .

Lois Barnes, a witness called by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Batten: Will you give us your name?

The Witness: Lois Barnes.

By Mr. Ingraham:

Q. Where do you live, Mrs. Barnes?

[fol. 4693] A. 3752 Wabash.

. . . . . .

By Mr. Ingraham:

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed at the Donnelly Garment Company?

A. Ten and a half years.

Q. In what capacity are you employed?

A. Operator.

Q. Do you do any special kind of sewing?

A. I do straight needle and binding.

* * * * * * *

By Mr. Ingraham:

Q. Were you employed and working at the Donnelly Garment Company in the spring of 1937?

A. I was.

Q. Are you a member of the Donnelly Garment Workers' Union?

A. Yes, I am.

Q. Do you recall when you became a member?

[fol. 4694] A. I became a member when the union was formed.

Q. Were you at the meeting at which the union was formed?

A. Yes, I was.

Q. Will you state approximately when that meeting was held? Do you recall?

A. The last of April.

By Trial Examiner Batten:

Q. What year, Mrs. Barnes?

A. 1937.

By Mr. Ingraham:

Q. Now, prior to that time had there been any violence going on in Kansas City at other garment plants?

A. Yes, there had.

Q. Had you read articles in the paper about that violence?

A. Yes, I read quite a number of articles about it.

Q. I have shown you respondent's exhibits Nos. 18 through 34, and respondent's exhibits 36 and 37—

* * * * * * *

By Mr. Ingraham:

Q. Have you read all of those articles?

A. I read all of them in the Star but not all in the Journal-Post.

Q. Will you pick out the articles that you did read and state what exhibit it is?

* * * * * * *

[fol. 4695] By Mr. Ingraham:

Q. As you go through call off the ones that you have read.

A. The ones I did read?

Q. Yes.

A. (Looking through exhibits.) Exhibit 19, exhibit 20, exhibit 21, exhibit 24,— You mean, just in the Journal-Post?

Q. No. In the Star and Times, too.

A. Exhibit 25, 26, 27, 28, 29, 30, 31, 33, 34, 35—

Mr. Langsdale: Just a moment. 35?

Mr. Ingraham: Omit 35. I think I asked you about 18 to 34, inclusive.

Trial Examiner Batten: And 36 and 37.

Mr. Ingraham: That is right.

A. (Continuing) —36, and 37.

By Mr. Ingraham:

Q. State what effect these articles had on you.

A. They worried me very much.

* * * * * * *

[fol. 4696] By Mr. Ingraham:

Q. Had you any personal knowledge of the violence going on at Twenty-sixth and Grand at this time?

A. I didn't see it.

Q. You did not see it?

A. No, I did not.

Q. Was the violence discussed generally among the employees at the Donnelly plant?

A. It was. It was discussed very generally, and there was a lot of excitement at the time.

Q. And were these newspaper articles read by the employees, so far as you could observe?

A. Yes, they were.

Q. And what, in your opinion, was the effect on the [fol. 4697] other employees at the plant of the violence going on at the other strikes?

A. They were afraid the same thing would happen to them, and they didn't want any of that sort of violence down in front of our plant.

Q. Had any threats been made?

A. I think some had been made along in January.

By Mr. Langsdale:

Q. Of what year?

A. That same year.

By Mr. Ingraham:

Q. Did you understand that the International was going to use the same sort of violence against the Donnelly employees?

A. That was what we understood. In fact, I think they stated that that wasn't anything to what we would get when they got around to us.

Q. Did you consider that the strikes at the other plants were preliminary to the violence that was going to be used against the Donnelly employees?

* * * * * *

[fol. 4698] A. Yes, I did. We had heard they were going to organize us, but I don't believe anyone was excited until they really started on those other places, and then we began to realize what they meant.

By Mr. Ingraham:

Q. Now, will you please state what caused you to vote in favor of forming the Donnelly Garment Workers' Union?

A. I didn't want to be a party to that sort of an organization. That was my main reason.

Q. What sort of an organization are you referring to?

A. The I. L. G. W. U. I didn't want to be identified with people that had no more principle about them than to go out and cause disturbances and riots and molest people who were trying to work, and force them to join something they had no interest in whatever and didn't need.

Q. Did that cause you to vote in favor of joining the Donnelly Garment Workers' Union?

A. It did. Also I had never had any trouble at the Donnelly Garment Company. I was completely satisfied [fol. 4699] with the working conditions there and I didn't think we needed any interference.

Q. What time of day did the meeting take place in which the Donnelly Garment Workers' Union was organized?

A. I can't say exactly. I think it was around 5 o'clock.

Q. Was it after your working hours? A. It was.

Q. Do you know where the meeting was held?

A. I believe, on the second floor. It was a vacant floor at that time.

Q. Did any executive or officer of the company or anybody you thought represented the company discuss with you about holding such a meeting?

A. I never discussed it with anyone except the girls I worked with.

Q. Did any officer or executive of the company or anybody you thought represented the company ask or suggest that you attend that meeting? A. No, they did not.

Q. Did any officer, executive, or any person you thought represented the management ever suggest to you that the Donnelly Garment Workers' Union or any other union be organized? A. No.

Q. Did you hear any discussion among the employees that the company wanted the employees to organize the Donnelly Garment Workers' Union?

[fol. 4700] A. No, I never heard anything about what the company wanted.

Q. Do you recall who presided at that meeting?

A. The April 27 meeting?

Q. Yes.

A. I think it was Rose Todd.

Q. Do you recall whether or not Mr. Tyler was present at that meeting? A. Yes, Mr. Tyler was present.

Q. Did the employees take a vote on whether or not they would organize a union? A. They did.

Q. Will you state briefly what took place at the meeting?

A. Rose Todd told us there had been a committee—No, that wasn't that meeting. She said Mr. Tyler was there, that they had consulted with him, and—

* * * * * *

A. (Continuing) —Mr. Tyler was there to talk to us and tell us what our rights were within the law and to advise us as to what we could do.

By Mr. Ingraham:

Q. Were cards passed out to be signed by employees if they wanted to join the Donnelly Garment Workers' Union?

[fol. 4701] A. Yes, they were passed out. I think most of the boys, the basket boys, and different employees there handed out the cards, and they said—or Rose Todd said we could sign the cards then or we could turn them in later; she wanted us to think it over before we signed them.

Q. Did you sign a card? A. Yes.

Q. Did you vote in favor of organizing the Donnelly Garment Workers' Union? A. Yes, I did.

Q. Did you join the Donnelly Garment Workers' Union of your own free will? A. I did.

Q. Have you continued to belong to the Donnelly Garment Workers' Union of your own free will? A. I have.

* * * * * *

By Mr. Ingraham:

Q. I will ask you if you felt that if you did not join the Donnelly Garment Workers' Union the company would penalize you? A. No, I did not.

[fol. 4702] Q. Was there any suggestion or pressure brought to bear on you or any other employee by anybody representing the company in order that you would join the Donnelly Garment Workers' Union?

A. Not to my knowledge.

Q. I will hand you respondent's exhibit 16 and ask you if you recall seeing the pictures that are at the bottom of the front page of the Kansas City Times on March 18, 1937.

* * * * * *

A. Yes, I saw that.

By Mr. Ingraham:

Q. I believe you stated that you did read the article that is contained in respondent's exhibit No. 27, which appeared in the Kansas City Star on March 17, 1937? The article is entitled "Sitters Block the Door." A. Yes, I did.

Q. Did you see the picture that appears on that exhibit? A. Yes, I saw the picture.

Q. Now, at the time referred to in these two exhibits, March 17 and 18, 1937, what effect did the sit-down strike [fol. 4703] at Gernes, Gordon, and Missouri have on you?

A. It made me frightened, for one thing. I know I watched every morning for them to be down in front of our door, and my husband drove me to work every day.

Q. Now, state whether or not a meeting of employees was held about that time.

A. About the time of this violence?

Q. This sit-down strike on March 17 and 18.

A. Yes, there was.

Q. Where was that meeting held?

A. On the second floor, I believe.

Q. Was that meeting held after working hours?

A. Yes.

Q. How did you learn that there was to be such a meeting?

A. It was a matter of general knowledge. It was passed around like word is when everybody is supposed to know something. It was passed from one floor to another and from one girl to another. Of course, everybody was expecting something, because they wanted to do something to protect themselves.

Q. Had there been a general discussion among the employees prior to the time of this meeting that they wanted to do something to protect themselves?

A. Yes, it was generally discussed, and I imagine, from the time—oh, from the first of the year there was a little [fol. 4704] discussion about it.

Q. Will you state who presided at that meeting of employees on March 18?

A. I think Rose Todd was asked to preside at that meeting.

Q. Did you consider that meeting a Loyalty League meeting?

A. No. I knew it wasn't a Loyalty League meeting.

Q. How did you know it wasn't a Loyalty League meeting?

A. Because we were going to see what could be done to protect ourselves from the I. L. G. W. U.

Q. Was anything said with respect to Mrs. Reed coming to the meeting?

A. Well, after we were at the meeting someone wanted her to come down and speak to us.

Q. Did she come down? A. Yes, she did.

Q. Did you hear Mrs. Reed make the statement that if the plant was unionized she would close it, or something to that effect? A. I don't remember that.

Q. Did you hear Mrs. Reed say that she would not let Dubinsky tell her how to run her business?

A. No, I don't remember it.

Q. Did Mrs. Reed make any statement with respect to whether or not employees could join or not join a labor organization?

A. She said that they had a right to make up their own [fol. 4705] mind whether they would or would not join any labor organization.

Q. Did she say anything with respect to forcing employees to join or not join a union?

A. She didn't say anything about forcing anyone to do anything.

Q. Did she make any statement with respect to Dubinsky that you recall?

A. Well, it seems to me I read that in the paper, but whether she said it, I don't know.

Q. Now, did your instructor tell you to go to that meeting? A. No, she did not.

Q. Did anybody representing the management request or suggest that you attend that meeting? A. No.

Q. Did anybody representing the management discuss with you that meeting prior to the time it was held?

A. No, they did not.

Q. Did you go to that meeting of your own free will?

A. Yes, I did.

Q. Did you feel any pressure on the part of the company that if you did not attend that meeting you would be penalized? A. No, indeed.

[fol. 4706] Q. Now, was there anything said at that meeting about appointing a committee?

A. Which meeting?

Q. March 18.

A. Yes, there was a committee appointed to see a lawyer and find out what steps we could take to protect ourselves against violence.

Q. Will you state whether or not there was any discussion about bringing an injunction suit?

A. I don't know whether it was discussed at that meeting or not.

Q. Do you know who was on the committee?

A. That went—

Q. (Interrupting) That went to employ lawyers?

A. No; I believe there were three, but I don't remember who they were.

Q. Did you know whether or not the committee ever reported back to the employees?

A. I don't remember any certain word, but the outcome of that was the meeting the last of March, to hear what they had found out from the attorneys.

Q. Was that a meeting of employees? A. Yes.

Q. Do you know what time of day that meeting took place? A. I imagine it was around 5.

[fol. 4707] Q. Was it during working hours?

A. No, it was not.

Q. Do you know what place in the building the meeting was held?

A. On the second floor, I believe.

Q. Now, will you state what was done at that meeting?

A. I think some of us expected that the attorney would be there, but Miss Todd told us that before anyone would take a case like that, that they required a retainer fee, which is customary, I think, and that after we had raised money enough to retain an attorney, then we would get definite information; so, I think there was a motion made — well, there was a discussion on how to raise the money, for it, and they even discussed candy sales, but they overruled that, and decided a donation would be simpler and easier, and everybody would share equally in the expenses.

Q. Do you know the amount of the contribution that was agreed upon?

A. Yes, it was 50c.

Q. Did you give 50c?

A. I did.

Q. When did you give it?

A. I think I gave it the next day. Some of the girls were so enthusiastic they threw their money on the platform, but Miss Todd said not to do that because there was

[fol. 4708] no way of checking who had given, and that

they wanted to be sure that the girls who paid would have their names down and wouldn't be asked again.

Q. Did anybody representing the company discuss that meeting with you?

A. No, they did not.

Q. Did anybody representing the company suggest or ask you to attend that meeting?

A. No, they didn't.

Q. Did your instructor direct you to attend the meeting?

A. No, she didn't.

Q. Did anything occur that led you to believe that the company would penalize you if you did not attend the meeting and make a contribution?

A. No, there was no fear of that, no fear of anything down there, and there never has been.

. . . . . .

[fol. 4709] By Mr. Ingraham:

Q. Have you had any fear that the company would penalize you for anything you did in connection with any labor matters?

A. No.

Mr. Langsdale: Wait a minute. Are you confining that up to July 15, 1939?

Mr. Ingraham: Yes, up to the middle of July, 1939.

Trial Examiner Batten: Of course, I presume I should say again that perhaps I am assuming too much; but I am assuming that the attorneys are complying with that —

Mr. Ingraham: (Interrupting) Unless otherwise —

Trial Examiner Batten: (Interrupting) Unless otherwise. Of course, I am not recommending that you go along too long in asking questions of the witnesses without referring to it.

Mr. Langsdale: Just so long as it is understood we don't have to meet any time after that, then I won't have any objection.

Trial Examiner Batten: Of course, as far as I am concerned, that is understood.

Mr. Ingraham: Well, that is my intention.

Mr. Langsdale: I thought it was what you said.

Mr. Ingraham: Yes.

Mr. Reed: For the sake of clarity, we want it understood, we must stop at July, 1939, that we are not afraid [fol. 4710] to go beyond that. We are stopping at that point because that is the ruling of the commissioner.

* * * * * *

Trial Examiner Batten: But my understanding is that the position of the Respondent is that we should not try out the issues from July 15, 1939, down to today.

Mr. Reed: That is perhaps true because, by Your [fol. 4711] Honor's ruling, which I think was a correct ruling, the issues that are to be tried here are to be confined to the charges which were made.

* * * * * *

By Mr. Ingraham:

Q. Mrs. Barnes, did you consider the meeting the last of March, when the money was raised to pay the lawyer, a Loyalty League meeting?

A. No, I didn't.

Q. Did you consider the meeting where the Donnelly Garment Union was organized a Loyalty League meeting?

A. No, I didn't.

Q. Did you consider the meeting of March 18 a Loyalty League meeting?

A. No.

Q. Did the fact that Rose Todd took an active part in those various meetings lead you to believe that they were Loyalty League meetings?

A. No, that never entered my mind.

Q. Are you a member of the Loyalty League?

A. Yes, I am.

Q. Will you state what activities the Loyalty League has had, to your knowledge?

A. They have sponsored dances and card parties, and we have had carnivals — I don't know whether the Athletic

[fol. 4712] Association sponsored those or whether it was the Loyalty League, but they were purely social, we just had a good time.

Q. Did you feel that the company would penalize you if you did not belong to a Loyalty League?

A. No.

Q. Was the Loyalty League a social organization?

A. Yes, that was my understanding.

Q. Did you have any dues?

A. I didn't pay any dues.

Q. Did you ever hear of anybody paying any dues in this Loyalty League?

A. I never heard of anyone paying dues.

Q. Did you ever hear of the Loyalty League helping you or any other employees in connection with labor matters?

A. No, I never did.

Q. Did you ever authorize anyone connected with the Loyalty League to have the Loyalty League act for you in labor matters?

A. No, I never did.

Q. Did you understand that the Loyalty League was sponsored by the company?

A. I don't think it was sponsored by the company.

Q. Who was it sponsored by?

A. I think it was an organization of employees.

Q. Are there other organizations down at the plant that [fol. 4713] employees have besides the Loyalty League?

A. The Donnelly Garment Workers' Union.

Q. Well, aside from the Donnelly Garment Workers' Union, are there social organizations at the plant, and athletic organizations?

A. There is an athletic organization, although I don't know much about it. It is run by the employees, and they also, in some sections, have clubs that they have organized themselves.

Q. Are the sectional clubs social organizations?

A. Yes.

Q. Now, did you ever understand or question the impression in any way that the Loyalty League was promoting the formation of the Donnelly Garment Workers' Union?

A. No, I never had that impression.

Q. Did you ever understand or question the impression that the Loyalty League — no, that the Donnelly Garment Workers' Union was a successor to the Loyalty League?

A. No, that is a different organization altogether.

Q. Is there any connection, except that employees belong to both organizations? Is there any connection between the Donnelly Garment Workers' Union and the Loyalty League?

A. No, not to my knowledge.

Q. Did any instructor order you to go or attend the meeting of March 18?

[fol. 4714] A. No, she didn't.

Q. Did any instructor order you to attend the meeting in the latter part of March, when a contribution was made for lawyers?

A. She did not.

Q. Did any instructor order you to go to the meeting of April 27?

A. She did not.

* * * * * *

By Mr. Ingraham:

Q. I'll hand you Respondent's Exhibit No. 6, and ask you if you recall reading this article that appeared in the Kansas City Times, as of February 26, 1937.

* * * * * *

[fol. 4714a] By Mr. Ingraham:

Q. There is a second page to that. Did you read that article?

A. Yes, I read it.

* * * * * *

[fol. 4715] By Mr. Ingraham:

Q. What effect, if any, did this article have on your joining the I. L. G. W. U. or not joining the I. L. G. W. U.?

A. Well, I didn't like their practices as far as their organizational activities were concerned, and them going out and trying to knock another person's business in order to get members for themselves.

Q. Do you recall reading the part of the article that states, "Part of the union's campaign directed against the Donnelly Garment Company will be to send six women to cities and towns where its garments are sold, advising re-

tailers and labor organizations, Mr. Perlstein said. Miss Palmer will have charge of this squad of field workers."

A. Yes, we discussed it.

Q. Did you also read this sentence, this paragraph, "The union claims only 25 members in the Donnelly workers, but officials expect hundreds of others are related to union members. Within a year we will have it completely organized, Mr. Perlstein said, and as soon as we have enough members, we will call a strike. This will be in addition to carrying our side to the consumers." Do you remember reading that particular article?

A. Yes, we were afraid of — we knew that would be the first thing they would do, call a strike, since they thought [fol. 4716] they could.

Q. Now, do you recall shortly after that article appeared in the paper that a petition was circulated among the employees of the Donnelly Company.

A. Yes.

Q. Directed to Mrs. Reed?

A. Yes, I do.

Q. I will hand you I. L. G. W. U. Exhibit No. 10, and ask you if you recall the writing that appears at the top of the page as the same writing that was on the page that you signed.

. . . . . .

By Mr. Ingraham:

Q. Did you sign such a petition?

A. Yes, I did.

Q. Did the article that you have just testified about, that appeared on February 26, 1937, have anything to do with your desire to sign this petition?

A. Yes, I think that was what motivated me in signing it.

Q. Do you recall in this petition it stated that, "You refused to acknowledge any union labor organization"?

A. I do.

[fol. 4717] Q. What organization were you referring to?

. . . . . .

A. I knew what I was signing. Of course, I think it was uppermost in everyone's mind, it was in mine, the idea of joining the I. L. G. W. U. didn't appeal to us, but I don't think we cared about any organization coming in and telling us what we should do.

Q. Now, did you want Mrs. Reed to know that at that time? A. Yes, I did.

Q. Was the I. L. G. W. U. the only organization that was trying to organize you at that time?

A. As far as I know.

Q. Now, who asked you to sign this petition, if you recall?

A. There were two girls came up with it, Mary Sprofera, I believe it is, and Inez Warren, and I don't remember which one asked me, but they were together, and they handed it to me.

Trial Examiner Batten: What section were you in then, Mrs. Barnes?

[fol. 4718] A. In 414.

Trial Examiner Batten: That is on what floor?

A. Eighth floor.

By Mr. Ingraham:

Q. Do you recall what they said to you, when they handed you the petition?

A. They asked me if I would read that and sign it if I cared to.

[fol. 4719] Q. Did you want Mrs. Reed to know how you felt about refusing to acknowledge the I. L. G. W. U.?

A. Well, I wanted— I suppose I might say I wanted her to know, and I think we all wanted each other to know, too.

Q. Did anybody representing the management discuss with you the signing of this petition?

A. No, they did not.

Q. Did you understand or believe that you would be penalized by the company if you did not sign the petition?

A. No, I didn't.

Q. Did your instructor ask you to sign the petition?

A. She did not.

Q. Did you discuss the signing of this petition with your instructor? A. No, I [did].

Q. Did you hear your instructor tell anybody to sign the petition?

A. No, I didn't. I don't think they knew that it was going around.

Q. Who do you mean, "they"?

A. Any of the instructors or— A lot of people didn't know it was going around until it was handed to them.

Q. Did you sign the petition of your own free will?

A. Yes, I did.

Q. Did it express your sentiment uninfluenced by any- [fol. 4720] thing that the management did?

A. It expressed my sentiments very deeply.

Q. Did you ever hear that the petition was circulated by the Loyalty League? A. No.

Q. Was anything said to you about the Loyalty League when the petition was presented to you?

A. The Loyalty League was never mentioned.

Q. I hand you respondent's exhibit No. 7 and ask you if you recall reading this article that appeared in the Kansas City Journal-Post for March 6, 1937.

(Thereupon the article referred to in the last question was read by the witness.)

Q. Do you recall reading that article?

A. I believe I did.

Q. Have you ever heard Senator Reed make a speech?

A. Yes.

Q. Did you hear Senator Reed make a speech in 1936; do you recall?

A. I don't recall what year it was.

Q. Did you ever hear Senator Reed say in any political speech anything about Mr. Dubinsky?

A. No, I never did.

Q. Did you know until you saw this article on March 6, 1937, that Mr. Reed had said many harsh things about [fol. 4721] Mr. Dubinsky in the recent political campaign?

A. No, I didn't hear it.

Q. Now, the fact that Mr. Dubinksy stated in a public speech in Kansas City, which was published in the Journal-Post on March 6, 1937, Mr. Reed said many harsh things about him in the recent political campaign, did that have anything to do with influencing you to form the Donnelly Garment Workers' Union?

A. I don't know that it did. My mind was already made up.

Q. Anything that Mr. Reed said had nothing to do with why you did not want to join the I. L. G. W. U.?

A. Nothing that he said made any difference to me.

Q. Did anything that Mr. Reed ever said have anything to do with causing you to favor forming the Donnelly Garment Workers' Union?

A. No. He wasn't responsible in any way.

* * * * * * *

[fol. 4725] Mr. Ingraham: I will hand you Board's Exhibit 27 and ask you to read that article which appeared in the Kansas City Times on May 11, 1937.

* * * * * * *

By Mr. Ingraham:

Q. Do you recall reading that article?

A. Yes, I read that.

Q. Did anything that was attributed to Mr. Reed in that article influence you in any way in your feelings toward the I. L. G. W. U.?

A. I think my feelings were already formed at that time.

Trial Examiner Batten: Of course, the question to you is, Mrs. Barnes, whether this had any influence upon you.

A. No, I don't believe that it did. I think I already [fol. 4726] had those ideas.

By Mr. Ingraham:

Q. Well, when you say you "think", do you mean that you did or that you don't recall?

A. Well, it wasn't that article. My mind was made up before I read the article.

Q. Now, in this article it states that Mr. Reed said—it is in quotation marks—that the "employees of this company aren't only satisfied but on their own motion some months ago organized a Loyalty League to resist the activities of Mr. Dubinsky and his crowd, and substantially all of the employees voluntarily became members of that organization." Now, as a matter of fact, when had the Loyalty League been organized, if you recall?

A. The Loyalty League was organized in 1935.

Q. And this article was on May 11, 1937, so it was more than a few months?

A. Yes, it was several months.

Q. I will hand you respondent's exhibit 42, which is an article that appeared in the Kansas City Times for November 10, 1936, and ask you if you recall reading that article.

* * * * * * *

A. Yes, I read that.

* * * * * * *

[fol. 4727] By Mr. Ingraham:

Q. Do you recall this article purported to state that Mr. Dubinsky said that the organization drive would open with establishment of offices in St. Louis, Kansas City and Pennsylvania and upper New York? A. Yes.

Q. Do you recall further it stated that Dubinsky asserted the St. Louis office would have sufficed for Missouri, "except that the union wants to give Jim Reed a break. He explained that the wife of James A. Reed, former Democratic candidate for Senator for Missouri, is the founder and principal stockholder of a factory in Kansas City." Do you recall reading that in the article?

A. Yes, I remember he said he was going to give Jim Reed a break.

Q. Do you further recall that he said, "the Kansas City office of the drive will concentrate on unionizing employees in the Donnelly Garment Company, which Dubinsky said is largely owned by Mrs. Reed." Do you recall reading that? A. Yes.

Q. Now, had there been strikes, to your knowledge, in garment plants in Kansas City prior to this time, November 1936?

A. There had been some in 1936, but I don't know now [fol. 4728] what time.

Q. Do you recall whether there had been any in 1935?

Mr. Langsdale: If the Examiner please, that certainly isn't within the offer of proof.

Trial Examiner Batten: Well, I have my doubts myself, whether it is within the offers of proof. Is it in any offer of proof?

Mr. Ingraham: I think we made an offer of proof to show—I mean that was broad enough to cover this, to show the employees' reasons.

Trial Examiner Batten: Well, let's find out. Of course, if you take the position that the situation in 1936 was such, and it is covered by the offer of proof, that there was no action on their part until 1937—if the offer of proof covers it I have no objections to it, Mr. Ingraham.

Mr. Ingraham: Just a moment. Let me refer to the offers of proof.

Mr. Langsdale: I have here the specific offer with reference to strikes at Gordon, Gernes, and Missouri.

Mr. Ingraham: What page is that?

Mr. Langsdale: On the Intervener's it is on page 2 of their offer and reads as follows:

"The undersigned would also testify under oath if present in Court in this hearing that during the month of March, 1937, the disorders and violence connected with the Gordon, Gernes, and Missouri strikes then being carried on were a subject of common and frequent conversation [fol. 4728a] and comment and discussion by the employees of the Donnelly Companies; that it was commonly reported, and each of the undersigned has heard, that the I. L. G. W. U., or some of the pickets or strikers in those strikes, had committed acts of violence, and that they, or some of them, had claimed that the Donnelly plant was next on the list, or similar words, the substance of which was that the people connected with the strikes, and the violence connected therewith, planned and intended to subject the employees of the Donnelly Companies to similar violence if such employees did not join the International Ladies' Garment Workers' Union; that the undersigned had all seen or heard of articles in the newspapers concerning the strikes at Gordon, Gernes, and Missouri; that as a result of this information the attitude of mind of the undersigned parties, and of the employees of the companies in general, was one of apprehension, uneasiness, and so forth."

Now, that is in intervener's offer of proof. The Respondent's offer of proof, on page 18 thereof, is the following:

"That he was present at a meeting of employees held on March 18, 1937, on the second floor of the Corrigan Building; that said meeting took place after working hours; that said meeting was arranged by Rose Todd and Hobart Atherton; that Miss Rose Todd, an employee of the company, presided at the meeting; that the principal topic discussed at the meeting was the strikes which were then [fol. 4729] occurring at the Missouri, Gernes, and Gordon Garment factories, and the violence and molestation of the employees of such companies by the International Ladies' Garment Workers' Union and the threats that the Donnelly Garment Company 'would be next', and the same things would be done to the employees of the Donnelly Garment Company as were being done at the Missouri, Gernes and Gordon plants, and so forth."

That is the only thing I can find that said anything about strikes in their offer of proof.

Trial Examiner Batten: Mr. Lane, did you look through the offers of proof?

Mr. Lane: I have only looked through my own. I have been following what Mr. Langsdale read from our offer.

Trial Examiner Batten: What is your position on this matter, Mr. Lane?

Mr. Lane: Why, I think it is for the continuing state of mind of the employees, and if that state of mind was induced by acts in 1935 and 1936, I think it is within the purport of the offers, and that we aren't confined to the exact wording or matters stated in the offers. The thing we are trying to find out is whether or not they were under threats and domination on the part of the employer, and if that continued until 1937.

Trial Examiner Batten: What we are trying to do in this hearing is to take the testimony which the Circuit [fol. 4730] Court said I had rejected, therefore the question arises, is it within the offer of proof?

Mr. Lane: Well, the testimony is to be how and why they formed the Donnelly Garment Workers' Union. One of the reasons they did was that in 1935 the International had done certain things which created a state of mind which continued; I think that is competent.

Mr. Langsdale: Those words "how" and "why" don't hold true. Whenever a general thing is followed by a specific thing, there is an old rule that it is governed by that specific thing, and they specifically set out strikes at the Gernes, Gordon, and Missouri plants in 1937; and they went on to allege that, right at that time, these people formed their union.

* * * * * *

Trial Examiner Batten: That is page 6, that is the paragraph we have discussed several times at the hearing [fol. 4731] before the Trial Examiner, when the petitions were offered. Now, the thing about the offers of proof, and so forth, is this, while I think the Circuit Court intended clearly that the employees have a right to testify what influenced them or why they formed this organization, I don't think that means that that should become the primary factor here, and not to the exclusion of the question, did the respondent have anything to do with them. That, after all, is still the principal and main matter, as far as the issues are concerned.

Now, unless the offer covers it, I don't believe that we should go beyond the offers as far as these employees are concerned, and if I were to accept your interpretation, Mr. Lane, then there would be no limit upon it, it would be all inclusive, and I don't believe that is what the Court intended.

Mr. Ingraham: I think that the offers are broad enough to include this testimony. The offers cover the situation as to whether or not the employees joined the union of their own free will.

Trial Examiner Batten: Yes, but here is a matter, there was not even any union in existence at this time, and it was not until months after that the union was organized. Now, on that theory, Mr. Ingraham, you might go back an indefinite period of time and say that there was some-

[fol. 4732] thing which occurred in 1935 or 1930 or 1925, they may have had a strike in 1920 in Kansas City, Missouri, and there was some violence, and therefore they acquire a distaste for unions, so when 1937 came along they still remembered that, and they then decided in 1937 for that reason they didn't want anything to do with the union unless it was their own.

I mean, in other words, where would you suggest that the line be drawn, if it be drawn at all?

Mr. Ingraham: Well, I suggest that the line be drawn to those matters that occurred within a reasonable matter of time before the Union was organized, and not go back to any remote matters.

Trial Examiner Batten: Well, what would you say is reasonable?

Mr. Ingraham: Well, I would say certainly within, say, six months, but the Board went clear back to the N. R. A. days, to matters that occurred in 1934 and 1935.

Trial Examiner Batten: That's right.

Mr. Ingraham: And now, to shut us up and say that the matters that the International did within three or four months prior to the time the Union was organized have no bearing on the case is—

Trial Examiner Batten: (Interrupting) Well, we aren't trying out the N. R. A. case again, we are here for the purpose of taking certain testimony which I rejected. Now, [fol. 4733] the testimony I rejected is covered in offers of proof, and my question to you was where, in the offer of proof, is it covered?

Mr. Ingraham: I don't think the Court intended that it be limited to the offers of proof; however, if you take that view of it, I think that the general purport of the offers of proof would cover this testimony.

The offers of proof go into the factors that entered into the employees doing certain things, and certainly if this witness testifies that she knew of strikes that had occurred in garment plants, and the strikes were instigated by the

International, and that there was violence and she knew when they said there was a strike it meant there was going to be violence—

Trial Examiner Batten: (Interrupting) What about this article? Where does this article say anything about violence or a strike? That is a controversy between Senator Reed and someone else in a political campaign.

Mr. Reed: Oh, no, that is not the purport of that.

Mr. Ingraham: Mr. Perlstein testified—

Trial Examiner Batten: (Interrupting) Now, irrespective of that, my question to you is how does this article say anything about a strike or violence?

Mr. Ingraham: Well, I am going to ask the witness, that is my purpose, if she had known of strikes where the [fol. 4734] Union was attempting to unionize other garment plants in Kansas City, did the Union engage in strikes, was there violence, did she understand when the International said they were going to unionize the Donnelly plant that they meant there would be a strike. Mr. Perlstein, within 30 or 60 days, issued a statement in the press, and said they were going to have a strike, they were starting their campaign against the Donnelly Company, that they would call a strike as soon as they had enough members, that that was their program; there wasn't any question about that.

Trial Examiner Batten: Let me ask you this. You say 6 months is a reasonable period. Do you think it is, Mr. Lane?

Mr. Lane: Our position is we objected to going into any matter which precedes the Wagner Act. The Board overruled us on that, the Board said that as a background the events might show what took place prior.

* * * * * * *

[fol. 4735] Mr. Lane: We offered to show there was no pressure, control, domination, or intimidation on the part of the company.

Trial Examiner Batten: Going back to when?

Mr. Lane: At the time we formed our Union. If the Board is going to show that was created in 1934, we have a right to show why the Board was wrong, and to show that the employees were not under the intimidation, pressure, control, or domination of the company.

Trial Examiner Batten: Is that in the offer of proof? If it is will you show it to me?

Mr. Lane: We offer to show there was no action of pressure, domination, intimidation, or control on the part of the company.

Trial Examiner Batten: Just a moment. Do you consider going back to 1934 is not too remote?

Mr. Lane: We are on the defensive here, we are required to meet the case which the Board presents.

Trial Examiner Batten: You are not here on the defensive, you are here to present certain testimony which the Court said I should receive; that is the purpose of this hearing.

[fol. 4736] Mr. Lane: I mean in the entire case.

Trial Examiner Batten: That is what I want to receive. I want to receive everything which the Court, in its opinion, thought we should receive. Now, I am still asking you where, in the offer of proof, it refers to any such time as 1934 or 1935.

Mr. Lane: Well, let me read this from the offer of proof, which has no limitation as to time.

Mr. Langsdale: What page and what offer of proof?

Mr. Lane: It is in Board's Exhibit No. 1, quadruple R, being the intervener's offer of proof—and I'll have to look at the record to get the Circuit Court of Appeals page.

Mr. Langsdale: I would like to know what page in that offer of proof, which is before me.

Mr. Lane: The third page.

Miss Weyand: It is 3473, I think, in the Circuit Court of Appeals record.

Mr. Lane: That is correct, page 3473: "The undersigned state they are members of the Donnelly Garment Workers' Union, and that they joined said Union and have at all times since remained members thereof solely of their own [fol. 4737] free will, choice and preference, and that they have not been influenced by any threats, coercion or pressure of their employer, or any representative of the employer, and that they have no knowledge of any instance in which the employer or any representatives of the employer have exerted pressure, intimidation, coercion or any other influence upon the undersigned or any other employees to join the Donnelly Garment Workers' Union or to stay out of any other labor union."

Trial Examiner Batten: Now, is this young lady's name on that offer?

Mr. Lane: Yes, it is.

Mr. Langsdale: How does that cover a strike in 1935 or 1936?

Mr. Lane: I haven't finished with my statement. Under the issues which the Board claims were made in this case, the Board has claimed the right to bring forward the testimony as to the company's attitude or conduct back in the N. R. A. days, and they put in a substantial portion of that record for the purpose of showing that the company had been creating an atmosphere of domination.

Trial Examiner Batten: Yes, and Mr. Lane, under the stipulation you also had a right to put in any of that you wanted, and so did the respondent, and I believe you did put in—at least the respondent did—the part of that record which it considered material, so you are not foreclosed on that.

[fol. 4738] Mr. Lane: But, if we are denied the right to have the employees testify in face of the showing the Board made that prior to 1936 they were dominated, controlled, intimidated in their attitude toward the I. L. G. W. U., then we are foreclosed giving evidence meeting the evidence the Board gave. In that kind of testimony we are endeavoring to meet the evidence which the Board has made here, and which the Examiner has permitted the Board to make.

We have a right to show that it was not true.

Trial Examiner Batten: What do you mean, that I permitted the Board to make?

Mr. Lane: I mean you admitted the testimony with regard to the N. R. A. over our objection.

Trial Examiner Batten: Just a moment, Mr. Lane. I don't think the record will bear you out that it was over your objection. When I make this statement about the other hearing, it is purely from remembrance, but my recollection is on that that the respondent and the intervener and the Board—and I think the Union—all stipulated that they could put into the record any of the parts of some of these other hearings which they desired to put in.

Mr. Lane: No, we, at all times, as I recall, objected to anything preceding the enactment of the Wagner Act. We were overruled on that. Now, without waiving that objec- [fol. 4739] tion, I think we did stipulate that so far as putting the matter into testimony was concerned, the former records could be used, but we did not waive our objection to the admissibility of that evidence at all, and that is still my position. It is here, and we've got to meet it, and that is one of the methods by which we proceed to meet it.

. . . . . .

[fol. 4740] Trial Examiner Batten: Miss Weyand?

Miss Weyand: My position is that the evidence sought to be adduced from this witness as to the violence or the strikes of which she had knowledge prior to the Gornes, Gordon, and Missouri plant strikes is not within the terms of the offer and, therefore, not within the terms of the remand.

I do think, under the terms of the offer and the terms of the remand, counsel for the company are entitled to have the witnesses whom they named in the offer make a general denial that at any time they were the subject of interference, restraint, or coercion, but I think, having regard for the rules of evidence and offers, counsel should have named any specific facts in the offer as to which they wish to have the witnesses specifically testify, and I think

their mention of the Gordon, Gernes, and Missouri strikes, [fol. 4741] their specificity with respect to the March 18 meeting, the meeting at the end of March or the first of April, and the April 27 meeting, and the Loyalty League being a social organization, excludes them from going into other matters.

Now, of course, as has been pointed out here, we are not concerned with whether a girl was influenced or not by violence. We are concerned only with whether they were influenced by what the company did. The fact that the girl may have heard of violence at remote times is not within the terms of the offer of proof and not within the issues of this case.

For that reason I do not think the question propounded to the witness is a proper question under the offer.

Trial Examiner Batten: Senator?

Mr. Reed: Now, I beg to be allowed to state my position, if possible, without interruption until I get through.

The Board found (and I read from its finding), under subheading III, "The Unfair Labor Practices:

"A. Events prior to the effective date of the Act.

"The I. L. G. W. U. made its initial efforts to organize employees of the respondent in 1934 when it established a regional office in Kansas City, Missouri, on March 15, 1934, an open meeting of the I. L. G. W. U. was held in Musicians' Hall in Kansas City, to which all employees of the respondent were invited. Few of the operators (i.e., [fol. 4742] production employees paid at piecework rates) attended, but a number of the respondent's officials, supervisors, and instructors were present. Soon after, several of the respondent's employees, including Glynn Brooks Yarnell, who had been an operator in the respondent's plant since December, 1924, made application for membership in the I. L. G. W. U. In June, 1934, Mrs. Yarnell held a dinner at her home attended by 12 or 13 of her fellow employees. At this meeting the girls discussed the advisability of joining the I. L. G. W. U. and of form-

ing a local branch. Glynn Brooks Yarnell was discharged in July, 1934. Within a few months all except one of the girls who had attended the dinner were either laid off or discharged by the respondent.

"On December 6, 1934, the I. L. G. W. U. filed a charge against the respondent under Section 7 (a) of the National Industrial Recovery Act, alleging that 8 operators had been laid off because they had joined the I. L. G. W. U. Before proceedings were completed and a decision issued, the National Industrial Recovery Act was declared unconstitutional by the Supreme Court of the United States.

"The record establishes that the respondent, through its supervisory employees, openly and actively resisted the initial organizational activities of the I. L. G. W. U. In 1934 Mrs. Elizabeth Reeves, who was then production manager, had expressed the opposition of the respondent to the I. L. G. W. U. She made a practice of questioning [fol. 4743] employees concerning their relations with the I. L. G. W. U. She criticized several operators for joining or applying for membership in the I. L. G. W. U. She told various employees that they had been 'listening too much to somebody outside,' that 'Donnelly's don't belong to the union (I. L. G. W. U.) and they never will,' that she had thought they 'had better sense' than to join the I. L. G. W. U., and that they had been misled in doing so. There is abundant testimony, also, that the respondent's instructors, who were in charge of the operators and at that time admittedly had authority to recommend layoffs and dismissals, warned the operators to 'let the International (I. L. G. W. U.) alone' if they expected to keep their jobs. In a conversation with an employee during 1934 Mrs. Allison, an instructor, labeled I. L. G. W. U. leaders 'dirty foreigners,' and Grace Gnotta, also an instructor, referred to those who had joined that organization as the 'scum' of the respondent's employees.

"The dominant and often reiterated note in the respondent's anti-union campaign during this period was a plea to the employees to be loyal to Mrs. Nell Donnelly Reed, president of the respondent. For example, the record reveals that Mrs. Allison, one of the instructors, forbade

a discussion of unionism in the plant, and added: 'You should have more respect for your employer than to talk unionism in here.' Mrs. Martha Gray, in charge of the respondent's outlet store, talked to Virginia Stroup, an [fol. 4744] operator in one of the sewing sections, who had joined the I. L. G. W. U., and reminded her that the firm had been good to her by continuing to employ her during the 'hard months' and that in return Mrs. Stroup owed it to the company to be fairer than to join the I. L. G. W. U. Mrs. Gray also said that she 'would hate to think that old David Dubinsky would come in here and tell Mrs. Donnelly (Reed) what to do.' The testimony of May Fike is undenied that in February, 1935, or thereabouts, while the I. L. G. W. U. drive was being pressed, employees in groups of 10 were sent by their instructors to Mrs. Reeves' office, where Mrs. Reeves talked to them about loyalty to the respondent. Also during this period employees were told that Mrs. Reed had built up the business of the respondent in order to keep them supplied with work and that an outside labor organization should not be allowed to come in to run it.'"

Now, there is more of the same character, dealing with conditions in 1934 and 1935. I think I had better read that."

"On or about December 12, 1934, Mrs. Reeves sent for Virginia Stroup, one of the respondent's employees who had obtained a charter for a local branch of the I. L. G. W. U. Mrs. Stroup told Mrs. Reeves that she was the shop chairman for the I. L. G. W. U. and that it was her duty to determine why employees who were members of the I. L. G. W. U. were laid off. Mrs. Reeves stated that she did not intend to give Mrs. Stroup any information [fol. 4745] and immediately instructed Mrs. Hyde, the respondent's employment manager who was present at the interview, not to release any such information, for 'that is none of Virginia's business.'

"A short time later, when Mrs. Stroup attempted to negotiate with the respondent in regard to a grievance of Pauline Lutz, an employee who was a member of the I. L. G. W. U., the respondent unequivocally refused to deal with Mrs. Stroup. At the conference Mrs. Reeves

criticized Mrs. Stroup's production work, told her that she was wasting too much time away from her machine talking to other employees, and threatened her with dismissal unless she increased her piecework production to a point where it met the minimum wage rate set by the N. R. A. code in effect at that time. The respondent stood firm on its position not to deal with the I. L. G. W. U. and Mrs. Stroup was entirely unsuccessful in adjusting the grievance of Pauline Lutz or of any other of the respondent's employees who were members of the I. L. G. W. U.

"A few weeks later the Kansas City office of the I. L. G. W. U. attempted to open negotiations with the respondent. On January 25, 1935, Meyer Perlstein, regional director of the I. L. G. W. U., and Virginia Stroup joined in addressing a letter to the respondent, stating that the I. L. G. W. U. had granted a charter to a group of the respondent's workers who had applied therefor. The letter asserted that these employees, since joining the I. L. [fol. 4746) G. W. U., had suffered discrimination and had been threatened with discharge unless they should abandon their union affiliation.

"In conclusion, the respondent was requested to grant the I. L. G. W. U. an opportunity to present the views of labor and to adjust peaceably employer-employee differences. The record does not indicate whether or not the respondent made any reply to this letter.

"Within a week or two after the receipt of the I. L. G. W. U.'s letter, the respondent, acting through certain of its supervisory employees, commenced the formation of an organization among its employees to be known as the 'Nelly Don Loyalty League.' Mrs. Martha Gray, in charge of the respondent's outlet store, and Mrs. Strickland, an employee in the pattern-making department, took the lead in forming the League. On February 5, 1935, plans were laid at a meeting at the home of Mrs. Gray, which was attended by approximately 46 employees representing the various divisions of the respondent's factory. Memberships for the League were solicited in the plant during working hours by circulation among the employees of membership pledge cards and a statement which declared that the employees recognized the generous treatment

received from Mrs. Reed, the respondent's president, and would resist the efforts of outside labor organizations to negotiate with the respondent on their behalf.

[fol. 4747] "In contrast to the hostility with which it met the advent of the I. L. G. W. U. in the plant, the respondent not only interposed no obstacles to the organization of the Loyalty League, but also by affirmative assistance facilitated its progress. In some sections of the plant the instructors in charge of the sections assisted with the circulation of these documents and told the employees to sign them. In other areas of the factory Mrs. Gray, accompanied by Mrs. Strickland, distributed the League membership cards. Virginia Stroup, who at that time was president of the local branch of the I. L. G. W. U., was told by Mrs. Strickland, in the presence of Mrs. Gray, whom we find hereinafter to be a supervisory employee of the respondent, that the cards should be signed by the employees in order to protect their jobs, because Mrs. Reed would close the plant before she would allow it to become a union shop. At the same time, Mrs. Stroup was refused a membership card because she belonged to 'another organization.'

"Virtually all of the respondent's supervisors, except Mrs. James A. Reed, president and principal owner, Lee Baty, production superintendent, and perhaps Mrs. Anna Wherry, factory manager, were members of the League. Mrs. Reeves, production manager at that time, Dewey Atchison, her assistant, and Mrs. Ella Mae Hyde, employment manager, were among the supervisory officials who testified that they were members of the League. The mem- [fol. 4748] bership included all instructors and other department heads in the plant. Its first two presidents were supervisory employees of the respondent. Herbert Mutchler, who was no longer in the employ of the respondent at the time of the hearing in this proceeding, was the first president of the League and continued in office until early in 1937. He was succeeded by Rose Todd, who held office until after she was elected General Chairman of the D. G. W. U. in April 1937.

"The League has no constitution or bylaws and no regular meeting dates; nor do its members pay dues. Since its inception it has sponsored a number of social activities,

such as picnics and dances, but as will subsequently appear, its principal energies have been devoted to obstructing and interfering with the efforts of the I. L. G. W. U. to organize the respondent's employees.

"The events recited above convince us that prior to the effective date of the Act the respondent's supervisors expressed to employees the uncompromising hostility of the respondent toward all labor unions and particularly toward the I. L. G. W. U. Employees were made fully aware of their employer's attitude and those who applied for membership or joined the I. L. G. W. U. did so secretly. During this period it was made plain to the employees by their supervisors that loyalty to the respondent meant renunciation of unionism.

[fol. 4749] "In February 1935, when the I. L. G. W. U. requested a conference on behalf of those employees who had joined that organization, the respondent's agents immediately organized the Loyalty League for the purpose of preventing other employees from affiliating with the I. L. G. W. U. The membership and influence of management representatives in the Loyalty League enabled the respondent to foster and organize employee resistance to outside unions."

Now, that carries on, and the Board finds against the company, and finds it against our objection.

There was the question raised as to whether we consented to this. Here is the answer:

"The respondent contends that since the above-related activities took place prior to July 5, 1935, the effective date of the Act, they are entirely irrelevant to the issues in this proceeding and that all evidence thereof should have been excluded. This contention failed to recognize that the Loyalty League continued in existence after the effective date of the Act, and was a useful instrument in the formation of the D. G. W. U., hereinafter discussed. Furthermore, evidence of an employer's attitude and conduct with respect to labor unions for a reasonable period before the effective date of the Act has often been admitted in evidence for the purpose of evaluating the significance of events occurring after such date.

[fol. 4750] "Having been inspired by the respondent and wholly supported by its officials from its inception, we conclude and find that the League was dominated and controlled by the respondent and that prior to the effective date of the Act the respondent used it to prevent its employees from joining the I. L. G. W. U. or any other outside labor organization."

Now, I have taken the time to read that because it is a complete demonstration of one of the major findings in this case. In fact, the major finding is built upon and attempted to be supported by these findings which I have read, all of [the] relating back to the Loyalty League and carrying the activities of the Loyalty League clear down to the time of the organization of the plant union.

Now, I contend that no limitation is placed upon our right to meet those charges. The narrow construction which is sought to be given to the opinion of the court I think is entirely unwarranted.

(Reading) "What the company in the hearing before the Examiner attempted to show by its evidence was that it had not done the things that the Board charged it with doing; that it had recognized, and had accorded to its employees, the rights, guaranteed them by law, freely to organize and to choose representatives for collective bargaining; that the Donnelly Loyalty League was purely a social organization; that the organization of the Donnelly Garment Workers' Union was not an outgrowth of the [fol. 4751] Loyalty League; that the union was an independent labor organization formed by the employees themselves without any suggestion, interference, or assistance from the company; that the speech made by the president of the company to a mass meeting of the employees, shortly before this organization was formed, amounted, in substance, to nothing more than a statement that the company would never compel its employees to join the International or to join any other labor organization against their will; that the employees formed the Donnelly Garment Workers' Union for their own protection in the face of threats by the International to use forceful and unlawful means to compel them to join the International and to compel the company to force them to join that union; that the com-

pany recognized the Donnelly Garment Workers' Union as the exclusive representative of its employees for purposes of collective bargaining and entered into agreements with it on their behalf, not for the purpose of discouraging their joining the International, but because the Donnelly Garment Workers' Union represented all of the company's employees and the company was required by law to recognize that union and to deal with it as the exclusive representative of the employees of the company.

"The petitioner Donnelly Garment Workers' Union, in the hearing before the Examiner, attempted to prove that it was an independent labor organization of all the em-[fol. 4751a] ployees of the Donnelly Company; that the union was organized by and for such employees and was under their exclusive domination and control, and that it at all times had been free from employer domination, interference and support; that the employees believed and had reasonable grounds to believe that the International was resorting to force, violence and threats to compel other employees in other garment plants in Kansas City to join the International and to force their employers to compel them to join it, and was about to attempt to force the employees of the Donnelly Company by the same methods to join the International, and that one of the motives which prompted them to form the Donnelly Garment Workers' Union was self-protection."

Now, I say this, that to say the Board has the right to go back to 1934 and 1935 and to all of the events that happened after that, and to say that we will not be permitted to show that one of the motives or reasons for any employees —I am not limiting myself to those named in the offer of proof—any forcing of any employee or threat to any employee, or threat to the employees generally—that that is in this case, it seems to me absolutely absurd, and to say that the Board can go back 3 or 4 or 5 years and bring in against this present union the facts or the alleged facts here in this report, then we cannot show that there was a reason why these people wanted to organize to protect themselves.

Now, among other things— We trace this down and it is [fol. 4752] all one connected story. Among other things,

Mr. Dubinsky and his associates start in on the proposition to "get the Donnelly Company." It is in evidence that their preliminary step was to get the smaller companies. It is in evidence, or will be, if we are allowed to put it in, that there was violence there, that that was the method they employed, that this young lady and other employees down there expected that violence to be visited upon them, that the threat was actually made that it would be visited upon them, and, therefore, when Mr. Dubinsky comes out and gives this interview, it isn't a political interview at all; it showed his resentment and showed his malice, and showed that his motives were not honest motives, when he said he was "coming out here to give Jim Reed a break," because in the campaign I had criticized his being made a Democratic elector.

I say we are entitled to put this evidence in. We are not limited— There is no rule that limits anybody to the particular witnesses he says he is going to prove a thing by, and the Circuit Court of Appeals' opinion cannot be justly construed to place a limitation of that kind. The fact of the matter is, the last paragraph in this decision clearly shows that it had no such intent.

"We think that the least the Board can do"—the least it can do, in order to cure the defects of its procedure caused by the failure of the Trial Examiner to receive [fol. 4753] admissible evidence—not the evidence of particular individuals but admissible evidence, "is to vacate the order and findings and conclusions upon which it is based, and to accord to the petitioner an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner." That is not the evidence of a particular witness. We have named people we could prove our case by. They didn't limit us to those particular witnesses.

The point is: Was the evidence competent? Not, Will this particular witness testify a certain way? but, Was that character and kind of evidence competent? And I say we have the right to go into it, and I protest any ruling to the contrary.

Now, I am much obliged to the Examiner for his patience.

Trial Examiner Batten: Senator, I just want to say this, that I don't think the issue that is before me now is whether or not all of the testimony should be taken. I think under the ruling I made that I was first going to take the testimony of the employees, in accordance with the offers of proof— Now, that is the question now before me.

Secondly, there is no finding of the Board's. The Board's decision and order has been set aside, so it is not in existence and we cannot operate on the basis that there is any such document before us.

Now, third, Senator, if I recall correctly, in your news [fol. 4754] article, you, yourself, agreed to some extent with the Board, that the Loyalty League was organized for the purpose of combatting the International Ladies' Garment Workers' Union. Now, you stated that to the newspaper yourself.

Mr. Reed: Suppose I did.

Trial Examiner Batten: I am simply stating that if you believe it, Senator, the Board couldn't have gone greatly wrong on it.

. . . . . .

[fol. 4755] Mr. Reed: Will you pardon me at that point?

We are now running into the vice, I think, of— I don't say that disrespectfully of the ruling. You say at the present time we are going to hear only from the witnesses who were named and that you are going to confine the issues to the one question of offers of proof.

Trial Examiner Batten: That is right.

Mr. Reed: But hereafter you will leave it open.

Trial Examiner Batten: I am not ruling upon that matter.

Mr. Reed: So, when we undertake to present our case we are handicapped by a ruling which limits our right to put in evidence on only one phase of the case, when the same witness that we have here could testify as to the other phases, if you hereafter admit them.

Now, we ought to know what is coming into this case, Mr. Examiner. We ought to know now.

Trial Examiner Batten: Senator, I would like to know, myself. If I knew, I could make a ruling, but I don't know, so I can't rule.

Mr. Reed: So we all proceed in the dark.

Trial Examiner Batten. We certainly do.

Mr. Reed: Very well, then. I object to that procedure.

Trial Examiner Batten: Except in accordance with the ruling I have made that we are first going to take the testimony which I rejected in the offers of proof. That is [fol. 4756] the order of proof and we are going to follow that.

I think I agree with Mr. Ingraham, that six months prior is a reasonable time.

Mr. Langsdale: Prior to what?

Trial Examiner Batten: Prior to the organization of the Donnelly Garment Workers' Union. And this comes within that. I see no objection to that. Mr. Ingraham stated he thought six months was a reasonable time, and I am inclined to agree with him, and for that reason I am willing that we proceed with this witness.

Mr. Langsdale: Now, let me say something about what we started out to argue. I didn't object to the offer of this newspaper article at all. The question I objected to was the one propounded to the witness, Did she know of strikes in 1935 and 1936? I objected to that kind of testimony because it is not covered by the offers of proof.

Trial Examiner Batten: My ruling just now— I said that I agree with Mr. Ingraham, that six months is a reasonable time, which means I have no objection to covering a period of six months prior to the organization of the Union, under these offers of proof.

Mr. Langsdale: Now, I want just two minutes to reply to some of these arguments that have been made.

The Senator spent much time reading and referring to what was known as history. You admitted in the last

[fol. 4757] hearing certain testimony with reference to the old N. R. A. hearing and history under the limitation that you made at that time. We all complied with it. The Union and the Board offered testimony from the old N. R. A. hearing, and so did the respondent and the intervener. Then, they offered testimony from the Miller hearing; and so did all of the parties.

Now, they objected to going back to 1934 and the N. R. A. hearing, and you overruled the objection and admitted some of it, with limitations.

They presented that objection to the Circuit Court of Appeals, and the Circuit Court of Appeals did not criticize your procedure in that respect.

They offered certain other testimony, about strikes and newspaper articles, which you refused to receive, and you asked them to preserve their offer in a written offer of proof, which they did. They took those offers of proof to the Circuit Court of Appeals, and the Circuit Court of Appeals said you erroneously refused to admit that character of proof, and all the Circuit Court of Appeals remanded this case for was to take the testimony you had rejected.

You were careful enough to have them write it out in offers of proof, the testimony you rejected. Then the Circuit Court of Appeals carefully examined those offers of proof and said you should receive that testimony, because it was material.

[fol. 4758] Now, that is all we are here for. It doesn't cover anything else.

If we go back to 1935— We all had that opportunity. The Court didn't remand this case to go back to strikes of 1935 and 1936, because the offers of proof said the strikes at Gordon, Gernes, and Missouri plants were in 1937, and the Court of Appeals said that was material.

Now, they want to go back to 1935 and 1936. I would be happy if the order covered that, but it doesn't. They had their chance, and we had our chance, and the Circuit Court of Appeals said nothing against that procedure that was devised by this Examiner. The order said that the

testimony offered, as shown in the offers of proof, was competent and material, and sent it back for that testimony to be taken.

Now, as to this witness not being on the offer of proof—No witness has been presented who is not on the offer of proof. When that is done I think we will all have something to say about it. Personally, I think I agree with the Senator, that the subject matter and not the named witness that would control that.

Trial Examiner Batten: Mr. Ingraham?

Mr. Ingraham: I didn't understand Your Honor's remarks about limiting this to six months. Does that mean that all matters that occurred prior to six months before the plant Union was organized are immaterial?

[fol. 4759] Trial Examiner Batten: I haven't ruled on any of those matters, Mr. Ingraham, and do not intend to at this time. I simply said I thought, in accordance with your statement, the offers of proof, I believe, would cover the situation as it existed on or about April 27 and March 18.

We have already gone back to February in connection with those offers of proof. I think your statement that six months is reasonable, as far as these strikes, and so forth, are concerned—I think that is reasonable, and I think they come within the offer of proof.

Mr. Ingraham: Evidently I didn't make myself clear. I think that all matters that occurred prior to six months before the plant—

Trial Examiner Batten: I am not talking about that. I am talking about the offer of proof.

Mr. Ingraham: But I wouldn't say six months is a proper limitation, if there is any other evidence in this case that goes back beyond six months. If we are going to go back into other matters, certainly I am not saying it is fair to just go back a period of six months in connection with these offers of proof.

Trial Examiner Batten: But you said "a reasonable time," and I asked you, "What do you consider a reasonable time?" and you said, "six months."

. . . . . .

[fol. 4760] Mr. Ingraham: Let me explain. I meant a six-months period would be a reasonable time, and matters back of that, in my opinion, are remote to proving or disproving any issue in this case.

But if you are just going to make the limitation of six months to this particular testimony, in connection with the offers of proof, certainly I do not think that that is a fair ruling. If you are going to go back, in some other evidence, clear to 1934 and 1935, certainly then we should be permitted to go back in connection with the offers of proof.

Trial Examiner Batten: We are not talking about other matters now, Mr. Ingraham.

Mr. Ingraham: Well, I was talking about the whole case.

Trial Examiner Batten: You certainly didn't indicate that to me.

Mr. Ingraham: To make it clear,—

Trial Examiner Batten: Do you still believe that, as [fol. 4761] far as the offer of proof is concerned, without reference to other evidence in the case, that six months is a reasonable time?

Mr. Ingraham: Oh, absolutely not. If the other evidence in this case goes back into the N. R. A. matters, back to 1934 and 1935, certainly I think it is proper to go into those matters in connection with these offers of proof.

Trial Examiner Batten: What do you mean, "if"?

Mr. Ingraham: Well, you say in one breath—that is why I don't understand your ruling—that you agree that six months is fair in connection with the offers of proof, and—

Trial Examiner Batten: No. I said I was inclined to agree with you.

Mr. Ingraham: Yes.

Trial Examiner Batten: But, of course, now that you have changed your mind, Mr. Ingraham—

Mr. Ingraham: I have not changed my mind. I never intended that my remarks would mean that just this particular character of testimony was to be limited to six months. I meant the entire case.

Trial Examiner Batten: We were not talking about the entire case.

Mr. Ingraham: That is what I meant.

Trial Examiner Batten: Just a moment, Mr. Ingraham. We were talking about strikes, violence, and offers of [fol. 4762] proof. There is no other question before me now, except whether it comes within the offer of proof—the question of strikes, violence, acts of the International Ladies' Garment Workers' Union, with respect to these employees, and the effect it had upon their mind. That is the only issue before me. There is nothing else before me and hasn't been. In all of this time we have spent, that is the only point that is before me.

Mr. Ingraham: You probably didn't recall what I said. In referring to this character of testimony and going back to the strikes, I stated that the Board went back to evidence of things that occurred during the N. R. A.

Trial Examiner Batten: Just a moment. You mean, this morning?

Mr. Ingraham: This morning; yes, indeed.

Trial Examiner Batten: Now, we are going to recess while the reporter finds that. We will recess for 15 minutes, and, Miss Reporter, will you go back to the beginning of this discussion when we talked about a reasonable period of time, and have that ready to read?

. . . . . .

[fol. 4763] Mr. Ingraham: Not yet. What did the reporter find with respect to my remarks?

Trial Examiner Batten: Will you read that statement of Mr. Ingraham's remarks, please?

(Thereupon the remarks of Mr. Ingraham, as requested, were read as follows:

"Well, I would say certainly within six months, but the Board went clear back to N. R. A. days, to matters that occurred in 1934 and 1935.")

Trial Examiner Batten: Well, it is very obvious I was mistaken, in your remarks, Mr. Ingraham.

Mr. Ingraham: Well, I felt that I did make a statement like that. It was my recollection on it.

Trial Examiner Batten: I think we are ready to proceed, and I think the offers of proof contemplate the period in or about March 18, 1937, and as to any strikes or matters of that kind which occurred during that period, and I think it is reasonable to go back to — I think the offers contemplated at least a period, I would say, from November on, and any things prior to that I will now rule aren't covered by the offers of proof, and therefore [fol. 4764] shouldn't be presented at this time, in line with my ruling directing the order of proof.

Mr. Lane: Do I understand the Examiner includes the intervener's offer of proof in that ruling?

Trial Examiner Batten: That's right, all offers of proof which the Court referred to in its Circuit Court decision.

Mr. Lane: I think I have made my position plain here, that I by no means agree with anything that Mr. Langsdale said about the Circuit Court's opinion.

Trial Examiner Batten: Just a moment, Mr. Lane. I have made my ruling and I don't want to spend any more time on it. I think everybody has had his say, and of course if the ruling is adverse, you have your exception, Mr. Lane, and I don't believe that I want to spend any more time on it.

Mr. Lane: All I was going to say was in connection with another matter.

Trial Examiner Batten: Well, is there any other matter before us, Mr. Lane? If so —

Mr. Lane: I haven't stated my view with respect to the Circuit Court's opinions. I want the record to show that in the intervener's opinion the Circuit Court of Ap-

peals in the remand intended to limit the matters set out in the offers of proof either by witnesses who could testify on those matters or —.

[fol. 4765] Trial Examiner Batten: (Interrupting) I think that is clear, Mr. Lane, and I am not ruling upon any matter at this time, except the offers of proof, and that is my ruling.

By Mr. Ingraham:

Q. Did you testify that you had read Respondent's Exhibit 42, that appeared in the Kansas City Times, November 10, 1936?

A. Yes, I said I read that.

Mr. Ingraham: Respondent offers in evidence exhibit No. 42.

Trial Examiner Batten: If there is no objection it will be received.

* * * * * * *

By Mr. Ingraham:

Q. Now, when you read in this article that the International Union was going to open a drive in Kansas City, what effect, if any, did that have on you?

A. I read the article, but, of course, I gave it a lot of thought, but I didn't get so excited about it, because I didn't feel they could have organized us.

* * * * * * *

[fol. 4766] By Mr. Ingraham:

Q. Will you state what you thought the article meant when it said the union would open a drive?

* * * * * * *

A. The article did state that they had quite a sum of money behind them to organize us, and I understood they were going to open offices and attempt to do that very thing.

By Mr. Ingraham:

Q. Do what very thing?

A. To try to organize us. I don't know whether I felt that they would start with violence or not, but I felt they

were contemplating calling on members of the Garment Company workers.

Q. Now, was this article discussed, to your knowledge, among the other employees at the plant?

A. Yes, I believe it was discussed among the girls.

Q. Did you observe the effect it had upon the other girls?

A. They seemed to feel that they would never be organized by that union, that they had no interest in it whatever.

Q. Do you recall reading an article on or about April 22, 1937, which appeared in the Kansas City Journal-Post, and the article was entitled, "Donnelly Worker will be [fol. 4767] sent to Union Convention." I hand you respondent's exhibit 35 and ask you if you read that article.

* * * * * * *

A. Yes, I read that.

By Mr. Ingraham:

Q. What effect did that article have upon you?

A. I was very much surprised because we had never authorized anyone to represent us at any convention or in any organization.

Q. Do you recall reading in the article that, "Perlstein said the Donnelly Committee desired one of their members to appear at the convention, and asked the International to endorse and support a strike against their employer." Do you remember reading that?

A. I read that.

Q. What effect, if any, did that statement have on you?

A. I didn't understand her attitude at all, because we had never authorized anyone, we didn't have any group to represent us, and we had never authorized anyone to [fol. 4768] represent us.

Mr. Langsdale: I object to that answer and ask it be stricken out as not responsive to the question or the article, because the article does not say the Donnelly workers has authorized any committee or Sylvia Hull to represent them; it implies she was going there to represent the employees of the I. L. G. W. U.

Trial Examiner Batten: Will you read the question, please, and the answer?

(Thereupon the last question and answer were read by the reporter.)

Trial Examiner Batten: Do you think that is responsive?

Mr. Ingraham: No. I wish the question would be read again.

(Thereupon the last question was read by the reporter.)

* * * * * *

By Mr. Ingraham:

Q. To make it clear, I am referring to that particular statement that referred to a strike.

A. We all knew we didn't want a strike.

Trial Examiner Batten: No; what effect did that have upon you, Mrs. Barnes, when you read that article?

A. Well, I didn't understand why any group, as they call themselves, the Donnelly Committee, how they could go and vote for a strike in our plant, I didn't understand how [fol. 4769] they could do that, they had no authority to do it.

By Mr. Ingraham:

Q. Will you state whether or not that article caused you to be apprehensive?

* * * * * *

A. Well, the strikes that I knew about were not by the employees themselves exactly, at these other places, and I suppose if they wanted to call a strike it would be the I. L. G. W. U. called it and hired their own strikers like they had before.

* * * * * *

[fol. 4770] By Mr. Ingraham:

Q. Did this article have anything to do with you voting in favor of organizing the Donnelly Garment Workers' Union?

A. Yes, it did. They had trouble down there and we didn't want any trouble.

Q. Do you know Rose Todd?

A. Yes.

Q. Did you consider Rose Todd a boss at the plant?

A. No.

Q. Do you know what Rose Todd did, what work she did?

A. She was a matcher of notions, and helped get the work through by seeing that the notions were at the place they should be for the certain type of work.

Q. Now, did the fact that Rose Todd took an active part in the meeting of March 18 and the meeting the latter part of March and the meeting of April 27, cause you to believe that the company wanted the employees to form the Donnelly Garment Workers' Union?

A. No, she was not a representative of the company.

. . . . . .

[fol. 4771] By Mr. Ingraham:

Q. Now, will you state whether or not after Mr. Baty took over the plant in July 1935 and up until July 1939, whether or not the instructors had any authority to hire, discipline, or discharge operators?

A. No, not to my knowledge. I wasn't hired by an instructor and I never expected to be.

Q. Did you ever consider your instructor your boss?

A. No, I haven't. She gives out our work and shows us how to do it.

Q. Were you working at the plant when Mr. Baty took over the job of production manager?

[fol. 4772] A. Yes.

Q. Well, after he took over that job whom did you understand was in authority?

A. Mr. Baty.

Q. And were grievances taken up directly with Mr. Baty?

A. Yes, they were. The girls could go to him at any time if they had any differences to settle.

Q. Was Mr. Baty present practically all of the time in the factory?

A. Yes, he was. I think he continually went through the factory.

Q. What floor did you work on in April, 1937?

A. On the eighth floor.

Q. Do you recall any demonstration on or about April 23, which was the morning after the article appeared in the paper about Sylvia Hull?

A. Yes.

Q. What section did you work in?

A. I worked in 414, and I believe Sylvia worked in 412.

Q. Will you tell what you saw in connection with the demonstration, or whatever you want to call it?

A. Well, I saw girls go over to her and stand around, and I didn't hear what they said, but I think she was humiliated to think the girls were so shocked about what she had done.

Mr. Langsdale: I ask that the last part of the answer [fol. 4773] be stricken out as a conclusion of this witness. She has no possible capacity to give that conclusion.

Trial Examiner Batten: I think obviously she was not there and didn't hear what was said.

By Trial Examiner Batten:

Q. What basis do you have to say that she was humiliated? Did you see her?

A. Yes, I saw her.

Q. How close were you to her?

A. I was in the next section.

Q. Well, how far is that?

A. Well, there was just one row of machines between us.

Q. Was a crowd of girls around there?

A. Well, at various times there would be several girls standing there talking to her.

Q. Well, could you see her?

A. Yes.

Q. You say you think she was humiliated. What did you mean by that?

A. Well, I went over there myself once, but I didn't say anything to her, and she seemed to be ashamed, I don't know, she wouldn't talk.

Q. You are speaking about the time you went over there, that she appeared that way, is that it?

A. Yes.

Trial Examiner Batten: We will let it stand.

[fol. 4774] By Mr. Ingraham:

Q. Did you hear anybody threaten Sylvia Hull in any way? A. No, I didn't hear any threats.

Q. Did you hear anybody say, "Let's throw her out the window?" A. No, I didn't hear that.

Q. Did you hear anybody say, "Let's tear her clothes off?" A. No.

Q. Was the power turned on in your section?

A. The power was on.

Q. Did Sylvia remain at her machine, or did she leave after while?

A. Oh, I don't know how long she stayed. I know that she left, some of the girls said she had left; but I didn't see her when she left.

Q. When you were near Sylvia did you hear anything that she said any time?

A. No, I don't think she said anything. I was over there only a few minutes, and I didn't hear her say anything.

* * * * * *

Q. (By Mr. Ingraham): Do you recall anything said by any employees with regard to Sylvia continuing work at the plant?

[fol. 4775] A. I don't recall what they said about it. I know they were excited. Some of the girls around me went over there, and I went along with them, but I don't remember what was said.

* * * * * * *

Cross-Examination.

Q. (By Mr. Lane): I will hand you Board's Exhibit No. 1 quadruple R, appearing in Circuit Court of Appeals record at page 3471, which is intervener's offer of proof, and ask you to read the text of that offer.

* * * * * * *

Q. (By Mr. Lane): Now, I direct your attention to the third page of signatures attached to that offer, which is page 3476 of the Circuit Court of Appeals record, and ask you to state if the signature in the 11th line on the [fol. 4776] right-hand column is your signature?

A. That's right, it is.

Q. Did you sign that offer of proof in 1939, when this other hearing was going on? A. I believe I did.

* * * * * * *

By Mr. Lane:

Q. Did you read that over before you signed it?

A. Yes.

Q. Did you sign it of your own free will?

A. Yes, I did.

* * * * * * *

By Mr. Lane:

Q. Did you attend the meeting of March 18, 1937?

A. Yes, I did.

Q. State whether or not that meeting, so far as you know, was called by the employees on their own initiative.

[fol. 4777] A. As far as I know, it was.

Q. Do you know of any action, influence or suggestion of the employer or of any representative of the employer in connection with the calling of that meeting?

A. I don't know of any.

Q. Did you hear Mrs. Reed speak at that meeting?

A. Yes, I did.

Q. I will ask you to state whether or not she said to the employees that she would not allow members of the I. L. G. W. U. to work in the Donnelly Company.

* * * * * * *

Q. (By Trial Examiner Batten): Did you hear her say that? A. No, I didn't.

Q. (By Mr. Lane): Did Mrs. Reed say at that meeting that the I. L. G. W. U. would never be allowed in her plant? A. No, she didn't.

* * * * * * *

[fol. 4778] By Mr. Lane:

Q. Did Mrs. Reed say at that meeting she wanted the names of anybody who joined the I. L. G. W. U. reported to her? A. I didn't hear her say it.

Q. I believe you said on direct examination that you personally didn't see any commotion or violence or disorders in connection with the strikes at the Gernes, Gordon and Missouri plants? A. No, I didn't see it.

Q. Were those matters the subject of general conversation about the Donnelly plant?

A. Around the plant?

Q. Yes. A. Yes.

Q. Did you engage in any of those conversations among the girls?

A. Yes, I did. We discussed the newspaper clippings and also about what the other girls had seen.

Q. Was it commonly reported around the plant that actual violence had been committed in connection with those strikes? A. Yes.

[fol. 4779] Q. Was there any conversation or discussion among the employees as to whether threats had been made that the Donnelly plant was the next on the list of the I. L. G. W. U.? A. That was my understanding.

Q. What was the effect of that conversation around the plant, and those discussions, upon your state of mind?

A. The effect on my state of mind?

Q. Yes.

A. Well, I think I was guilty of being as excited as anyone else over those things that were going on out there.

Q. Did you personally fear those things were going to happen to you?

A. Yes, I did. They were bigger than I am and I was afraid.

. . . . . .

Q. (By Mr. Lane): Did you attend the meeting of March 18—I believe you said you did. State whether or not there was any discussion at that meeting about employing counsel?

A. Yes, I think that was the main object, it was to me the main object of the meeting, to see what we could do to protect ourselves, and naturally we would have to have legal counsel to find that out.

[fol. 4780] Trial Examiner Batten: That is with reference to March 18, Mr. Lane?

Mr. Lane: Yes.

By Mr Lane:

Q. State what, if any, connection the discussion and conversations around the plant and your belief with respect to the I. L. G. W. U. and its conduct of these strikes had in connection with your participation in the formation of the Donnelly Garment Workers' Union.

A. I believe the violence was the main factor that brought us all together and made us realize that organization was the only thing for us to do. No one down there wanted to have their clothes torn or have anyone outside to bargain for them, because everyone knew what they wanted, and they were already getting what they wanted; they didn't need to be told what they should have.

Q. Did you attend the meeting of April 27 at which the Donnelly Garment Workers' Union was organized?

A. Yes, I did.

Q. Did you vote to form the Union? A. I did.

Q. Did you cast that vote because it was your own free choice? A. I did.

Q. Did you feel at the time you cast that vote that you were under the domination or control of the company [fol. 4781] in making that decision? A. No, I didn't.

Q. Had there been any act on the part of the company, so far you knew, that persuaded you to take that action or intimidated you into taking that action?

A. No. I was never persuaded to do anything.

Q. Can you think of any act on the part of the company or any supervisor or any part of the management to cause you to take that action you took on April 27?

A. No, I don't recall anything.

Q. Had you ever talked with Mrs. Reed, Mrs. Reeves, or Mr. Baty about forming a union? A. No.

Q. Had you heard anybody representing the management discuss the formation of the Union with any other employees? A. No.

Q. Had any other employees told you they had discussed that matter with the management?

A. No, they hadn't.

Q. Did you attend the meetings of the Donnelly Garment Workers' Union fairly regularly after its formation?

A. I would say fairly regularly.

Q. Had you discussed with any other employees the matter of forming the Union prior to April 27?

A. Well, I don't know whether we discussed forming [fol. 4782] a union. We had read the Wagner Act, but we were not sure about the distinction between interstate commerce and manufacturing.

Q. Was that a matter that was discussed among the employees? A. The Wagner Act was.

Q. What time of day was the meeting of April 27 held?
A. I would say it was around 5 o'clock.
Q. Did you attend that meeting in your uniform or had you dressed?
A. I don't remember. I probably dressed, because I think I was one of the first to get off from work.
Q. At the time of April 27, 1937, what was your working day?
A. If we were not working overtime, it would be about 4:20.
Q. How did you get notice that that meeting was to be held? A. I think it was just generally discussed and passed around—the word was passed around. That is the way we do when we want anything known; we just start it out.
Q. I will hand you Board's exhibit 8-21, appearing in the Circuit Court of Appeals record at page 4415, being the minutes of the Donnelly Garment Workers' meeting of May 25, 1937, and ask you to read those minutes.

(Thereupon the minutes referred to in the last question were read by the witness.)

Q. Did you attend that meeting?
A. Yes, I believe I did.

[fol. 4783] Mr. Langsdale: What was the answer?

The Witness: I did.

* * * * * * *

By Mr. Lane:
Q. Do you know Marjorie Green? A. Yes.
Q. Did she occupy any office in the union in 1937?
A. Yes. I believe she was secretary.
Q. Did you see her at the meetings of the union in May, 1937? A. Yes, I saw her.
Q. What was she doing?
A. She recorded the minutes. That was her job.
Q. Was there ever any time at which a meeting of the Donnelly Garment Workers' Union was immediately followed or immediately preceded by a meeting of the Loyalty League? A. I don't remember any.
Q. Did you at the meeting of May 25, 1937, discuss, in the union meeting, raising any money for the Loyalty League?

A. The union never raised any money for the Loyalty League, that I know of.

Q. Well, did you discuss it at that meeting? A. No.

Q. What time of day did that meeting convene?

[fol. 4784] A. I couldn't give the exact time. It depended on whether we were working 9 hours or not. It was after work.

Q. Was there ever any time in 1937, or any other time, when a meeting of the Donnelly Garment Workers' Union was held before the close of working hours? A. No.

Trial Examiner Batten: You mean, including after July 15, 1939?

Mr. Lane: No. I will make the same agreement other counsel have made: Unless specifically stated in my question, I will limit my questions to before July 15, 1939.

By Mr. Lane:

Q. Did you understand my questions to mean the time preceding July 15, 1939?

A. I thought all of the evidence was.

* * * * * * *

[fol. 4785] Mr. Lane: Mrs. Barnes, did you sign a statement that was circulated in the plant on March 2, 1937?

A. I did.

Mr. Lane: The copy I am looking at is so faint in some places that I may have overlooked Mrs. Barnes' signature.

[fol. 4786] Do you happen to know the page where she signed, Miss Weyand?

Miss Weyand: Yes.

Mr. Lane: Perhaps it would shorten this if you would point it out to me.

Miss Weyand: Column 3, line 5, on page 5378.

Oh, you want the other?

Mr. Lane: Well, I can use that just as well.

Miss Weyand: Page 5964.

Mr. Lane: What was the line number? You said column 3—

Miss Weyand: It is column 3, line 5, on page 5964, beginning "Emma Harris, Mary Kruger, Dolly Otis, Margaret Leger, Lois Barnes,—"

Mr. Lane: Thank you.

Mr. Lane: I will hand you page 5964 of the Circuit Court of Appeals record and ask you to examine that, please.

* * * * * * *

By Mr. Lane:

Q. Directing your attention particularly to the 5th name in the 3rd column, I will ask you to state whether that is your signature. A. Yes, it is.

[fol. 4787] Q. Did you on or about March 2 sign a paper in the plant bearing that material at the top of the page? A. Yes, I did.

Q. Who presented that document to you?

A. There were two girls— I understood they were from the shipping department. Mary—a Mary, and Inez Warren. I believe they handed it to each girl down the row, as I remember it, and asked them to read it.

Q. Was anything said by them, or either of them, to you before you signed it?

A. Yes. They asked us to read it and, if we cared to, to sign it.

Q. Did the statement at the head of that page express your feeling?

A. It did. I wouldn't have signed it if it hadn't.

* * * * * * *

[fol. 4788] Mr. Lane: Mrs. Barnes, I will hand you respondent's exhibit No. 6, which appears at page 4864 of the Circuit Court of Appeals record, which is a copy of an article appearing in a Kansas City newspaper. I will ask you to read that.

* * * * * * *

Trial Examiner Batten: Do you recall having read that before, Mrs. Barnes? A. Yes, I believe I did.

By Mr. Lane:

Q. Do you recall reading this part of the article which was attributed to Mr. Perlstein:

"'Part of the union's campaign directed against the [fol. 4789] Donnelly Garment Workers' Union will be to send six women to cities and towns where its garments are sold, advising retailers and labor organizations,' Mr. Perlstein said. 'Miss Palmer will have charge of this squad of fellow workers. Within a year we will have it completely organized,' Perlstein said, 'As soon as we have enough members we will call a strike. This will be in addition to carrying our side to the customers.'"

Did you read that part of the article when it appeared in the paper? A. Yes, I think I did.

Q. State what effect, if any, that article had upon you in connection with signing this statement of March 2 which was circulated through the plant and which was presented to you by Mary Sprofera or Inez Warren.

A. We didn't like the idea of their sending boycotts out to boycott our goods, and we wanted to prevent that if we could. I think that was one of the reasons that we signed the petition. And also, we didn't want any strikes down there. We wanted to work.

Mr. Langsdale: I ask that the latter part of this answer be stricken out as not responsive, particularly that part of it, "we signed the petition," because she was asked what effect it had upon her.

Trial Examiner Batten: Well, the question was, what [fol. 4790] effect it had upon you, Mrs. Barnes, not "we."

Isn't that correct, Mr. Lane?

Mr. Lane: That is correct.

Trial Examiner Batten: I don't think it is responsive where she refers to "we." That part may be stricken.

By Mr. Lane:

Q. Will you state what effect it had upon you?

A. I thought it was terrible that they should be allowed to boycott our goods. I wanted to work without any interference and I didn't want any strikes, because, naturally, they would be of a violent nature.

Q. Was the content of this item of February 26 discussed generally about the plant, as you observed?

A. Yes, it was.

Q. State what you noted and what was said to you by other employees in the plant in connection with that article.

A. Well, I think that—it was general talk. They didn't want any strikes either, and they thought it was very unfair for the I. L. G. W. U. to attack us in that manner. I believe that is as well as I could state it.

Q. State whether or not this article was in your mind on March 2 at the time you signed that petition.

A. Yes, I believe it was.

* * * * * * *

[fol. 4791] By Miss Weyand:

Q. Did you happen to notice this morning when you were looking at the Loyalty petition whether the names appearing before and after yours were persons who worked in the same section with you in March and April of 1937? A. Some of them were.

Q. I wonder if you could look at this (indicating petition) and indicate just about where the names begin in your section and where they end. Would you know?

A. I don't believe I could remember the whole section.

Q. What names do you notice near your name that were in your section at that time? A. This—

Q. In the 3rd column—

* * * * * * *

[4792] A. Emma Harris, Mary Kruger, Dolly Otis, Margaret Leger, myself, Blanche Martin— I'm not sure I am familiar with these two (indicating) here, but Jane Beal—

By Miss Weyand:

Q. The two you are not familiar with are Ethel Crowther and Mary Wood; is that correct?

A. Yes. I'm not sure about that (indicating)—

Q. You are not sure about which other one?

A. I am not sure they were sitting close to me. I don't know where they were.

* * * * * * *

Q. The first names you read, preceding yours, were all in your section; is that correct?

[fol. 4793] A. Yes. Those are all familiar to me.

Q. And were in your section at that time? A. Yes.

Trial Examiner Batten: That is, the names preceding yours? A. Yes.

. . . . . .

[fol. 4794] A. (Continuing) I was on the end, and it would appear to me that these names started around me there.

By Miss Weyand:

Q. Do you remember who was the instructor of that section at that time?

A. I believe it was Ada Vining, but I'm not positive about it.

Q. Do you know whether you were in Ada Vining's section in March and April of 1937?

A. I was in 414. I'm not sure who was the instructor at that time.

. . . . . .

[fol. 4795] Q. What instructors do you remember having during 1936, 1937, and 1938?

A. Well, taking it in the three-year period, that would probably cover that change. We had Ada Vining, Mrs. Cooke, Mrs. White, and Lola Skeens. If there was any more, I don't remember right now.

. . . . . .

Miss Weyand: I am going to hand the witness Board's exhibit No. 2 and ask her to direct her attention to the second page thereof, which appears in the Circuit Court of Appeals record at page 4362, and ask her to read an article there appearing, entitled "Nine Hundred Join Loyalty League." The article runs over to page 4363 of the Circuit Court of Appeals record.

[fol. 4796] Mr. Reed: What is that?

Miss Weyand: The article appears in the N. D. A. A. (being Nelly Don Athletic Association) News for February, 1935.

Mr. Ingraham: We object to the witness being examined about what appeared in the Nelly Don Athletic Association News. There is no showing that the company had anything to do with the publication or is in any way responsible for anything that appeared in it.

Trial Examiner Batten: Of course, there isn't any question pending yet, Mr. Ingraham.

Mr. Lane: Mr. Examiner, wasn't it your ruling this morning that you were going to confine the examination at this point to matters occurring within a reasonable time prior to April 27, 1937?

Trial Examiner Batten: I say, there isn't any question pending yet to rule upon.

Mr. Lane: She is directing attention to what occurred in 1935.

Mr. Reed: I think if the Examiner will search his recollection, he will remember he refused to let Mr. Lane show the witness an article which lay outside of these limits, or examine about it.

(Thereupon the above-specified article was read by the witness.)

* * * * * *

[fol. 4797] Q. (By Miss Weyand): Did you read that article when it appeared?

Mr. Ingraham: I object to that question as immaterial to any issue in this case.

Trial Examiner Batten: Overruled.

Mr. Lane: Intervener makes the same objection.

Trial Examiner Batten: Overruled.

A. I don't remember whether I read that or not.

By Miss Weyand:

Q. Have you ever read this article before?

A. I don't believe that I read it.

Q. Did you attend the meeting here described as a meeting at which 900 persons were present and cards were passed out for membership in the Loyalty League?

Mr. Ingraham: Now, I object to that question. It is outside the scope of the offers of proof, and the witness has stated that she did not read the article.

Mr. Reed: Outside of the scope of the ruling this morning made.

Trial Examiner Batten: Did you state, Miss Barnes, that you did not read this article?

[fol. 4798] A. I don't remember reading it in that pamphlet, no.

Trial Examiner Batten: Of course, the question now is did she attend the meeting of 900 people, is that right?

Miss Weyand: That is correct.

Trial Examiner Batten: You may answer.

Mr. Lane: I would like to have a continuing objection to showing the witness any article excluded by your ruling this morning. This witness was questioned about something that happened in 1935 and 1936, and the Board has gone back to 1935, and I want to object.

Trial Examiner Batten: Just a moment. You may have a continuing objection.

Mr. Ingraham: The respondent would like to have the same continuing objection.

Trial Examiner Batten: You may have the same continuing objection.

Miss Weyand: I would like to point out that the company's offer at page 3468 does refer to the formation of a Loyalty League and offers these witnesses to prove that they were not asked to join the Loyalty League by any official, and so forth. That is in the company's offer.

Trial Examiner Batten: I grant the continuing objection. You may proceed with your examination.

By Miss Weyand:

Q. Did you answer why you remember attending such a meeting?

[fol. 4799] A. I remember attending one meeting where we chose our pins, and whether that is the same meeting I am not sure.

Q. Is that the first meeting of the Loyalty League you recall attending?

A. I don't know whether it was or not.

Q. Did you attend the meeting at which Herbert Mutchler read an article from the Liberty magazine?

A. I don't remember whether I was at that meeting or not.

By Miss Weyand:

Q. Did you join the Loyalty League?

A. Yes, I joined it.

Q. Where did you join it?

A. What do you mean, where did I join?

Q. Was it at a meeting or was it at your section, or where were you when you joined?

A. Well, I don't remember. I think cards were passed [fol. 4800] out to some, if you wanted to become a member.

Q. Where were those cards passed out, at a meeting or in your section or some place else?

A. I couldn't say, I don't recall.

Q. Do you know who the officers of the Loyalty League were? A. At what time?

Q. Any time?

A. Well, I believe Herbert Mutchler was our first president.

Q. Do you know any other officers?

A. And Rose Todd was president after that.

Q. Do you know any other officers?

A. I believe Thelma Huffaker was president after Rose Todd.

Q. Do you remember any other officers?

A. Well, there is a president now, but I can't remember the name.

Q. Those are the only officers you recall, Herbert Mutchler, Rose Todd and Thelma Huffaker?

A. I believe they are.

Q. Do you recall who presided at the meeting at which you discussed choosing a pin?

A. No, I don't remember who presided.

Q. Do you remember who presided at any meeting of the Loyalty League?

A. Well, I can remember Herbert Mutchler, I believe, but to my recollection we didn't have so very many meet- [fol. 4801] ings, mass meetings, or anything like that.

We weren't required to go, and I probably didn't attend a lot of them.

Q. How many meetings do you recall attending of the Loyalty League?

A. Well, I remember the one where we chose the pins, and that is the reason I remember that, and I can't remember just off-hand what others I attended.

Q. You don't remember any other meeting at all?

A. No, not right now I can't.

Q. I notice this article which you read said—described the meeting of February 8, "Mrs. Gray displayed a drawing of a tentative pin and explained the meaning of the word 'Loyalty', as it pertains to the League purposes."

Mr. Ingraham: Now, I make a further objection to that question for the reason it is not proper cross-examination. Respondent didn't go into that matter direct, it is not in the offers of proof.

Trial Examiner Batten: Overruled.

A. Do you have a question?

By Miss Weyand:

Q. Yes, I read you from this Athletic Association News a statement that Mrs. Gray, at the mass meeting of February 8, made, "displayed a drawing of a tentative pin and explained the meaning of the word 'Loyalty' as if pertains to the League's purposes," and ask you if you recall that in connection with the choosing of the pin.

[fol. 4802] A. I don't know whether we chose our pin then or whether it was just discussed.

Q. Do you remember Mrs. Gray discussing the meaning of the word "Loyalty"?

A. No, I don't remember that.

Q. You don't remember whether this is the meeting you attended or not?

A. That, I guess, is what I remembered, the drawing of the pin. I don't remember whether that was the meeting I was at or not.

Q. But you do recall being in a meeting where there was a drawing of a pin discussed?

A. If I remember, I was.

Q. Do you remember who discussed it at all? A. No.

Q. Do you remember where the meeting was held?

A. I don't remember; it probably said there, but I don't remember the meeting.

Q. I would like to have the witness look at I. L. G. W. U. exhibit No. 19, which appears in the Circuit Court of Appeals record at page 5984, and state whether she ever heard that article read, or read that article?

Mr. Reed: What is the date of it?

Miss Weyand: February 16, 1935.

Mr. Stottle: Mr. Examiner, we renew our objection to [fol. 4803] this question as being outside of the scope of your ruling, as it involves a time of two years before the formation of the Donnelly Garment Workers' Union.

Trial Examiner Batten: Of course, there isn't any question pending. Do you have it there, Mr. Ingraham?

Mr. Ingraham: Yes.

Trial Examiner Batten: May I see it?

Mr. Reed: After that, the further objection that it is immaterial, incompetent, and foreign to the issues.

Mr. Langsdale: The last page of respondent's offer covers the entire existence of the Loyalty League.

Mr. Ingraham: Respondent further objects to anything that is printed in the Liberty Magazine, as not binding on the respondent.

Mr. Lane: The intervener makes the same objection in regard to this article.

Trial Examiner Batten: Just a moment. Is there a question pending, Mr. Reporter?

(Thereupon the last question was read by the reporter as follows:

"I would like to have the witness look at I. L. G. W. U. exhibit No. 19, which appears in the Circuit Court of Appeals record at page 5984, and state whether she ever heard that article read, or read that article?")

Trial Examiner Batten: The objections are all overruled.

[fol. 4804] A. No, I never read it and I don't remember hearing it read.

Q. (By Miss Weyand): I will ask the witness to look at I. L. G. W. U. Exhibit No. 2, which appears in the Circuit Court of Appeals record at 5942.

Trial Examiner Batten: What was that page?

Miss Weyand: 5942.

By Miss Weyand:

Q. And ask the witness if she ever signed such a statement?

A. I don't remember whether I did or not.

Q. Have you ever read that statement before?

A. I couldn't say.

Mr. Reed: Is that statement at the head of the membership of the Loyalty League that you are referring to?

Miss Weyand: Yes.

* * * * * * * *

By Miss Weyand:

Q. Did you ever hear of a petition being circulated at the time the Loyalty League was formed?

A. It seems that I did, but I don't recall just those words, I don't remember whether that is what it was or not.

Q. Do you remember anything that was in the statement that was circulated, and that the girls signed?

A. No, I don't recall—it seems that—I just don't recall [fol. 4805] signing it. I may have, but I don't remember.

Q. Do you know whether, at the time the Loyalty League was formed you felt that you wanted to protest against and resist the attempts of outside interference?

A. Well, that was the expression to each other; loyalty to each other in the plant, in protest against the untruths that had been stated about us.

Q. What untruths are you referring to?

A. Well, I think we had been called a sweat shop.

Q. And that is the only untruth you remember, that you had in mind?

A. Oh, I don't think that was the only one, I think there was more than that.

Q. Do you remember the date on which the Loyalty League was formed?

A. I think it was in—I don't remember the month, but it was in 1935, it was early in the spring, I believe.

[fol. 4813] Q. Did you, prior to July 15, 1939, personally take up any grievances with Mr. Baty?

A. No, I personally did not.

By Miss Weyand:

Q. How often, prior to July 15, 1939, did you speak to Mr. Baty?

A. How often did I speak to him?

Q. Yes, monthly, weekly, daily, hourly, or on what occurrence?

A. Probably daily, I saw him daily I am sure.

Q. Did you ever discuss with him very often?

A. No, I didn't take the time to talk much with him.

Q. Did you ever visit with him?

A. Oh, I think I did once at a party, I believe I danced with him.

Q. What, of your own knowledge, do you know of Rose Todd's job?

A. Just what I stated on direct examination. She had [fol. 4814] something to do with the notions.

Q. What do you actually know about what she has to do?

A. Well, I don't actually know what anybody's job is but mine.

Q. What did you actually see Rose Todd do?

A. I saw her come into the section sometimes to check up on what was needed to go on a certain type of work that we had, I have seen that.

Q. And that is the only thing you ever saw Rose Todd do?

A. I know she was always running here and there, doing little odds and ends, and checking them off, and things of that sort, so I supposed what I saw about it was so.

Q. Did you ever attend any style shows that were mentioned?

A. Oh, yes.

Q. What time of day were those held?

A. Well, we have had style shows at different places, we have had style shows in the evenings and after work, but I don't believe I attended any of them during the day. They have had them during the day.

Q. Had you ever heard Mrs. Reed make a speech before March 18?

A. Yes, I think she has spoken at the style shows.

Q. How often had you heard her speak prior to March 18?

A. Well, it was not very often.

Q. Do you have any idea of how many times?

[fol. 4815] A. No, I couldn't say how many times, because I don't recollect how many style shows I went to; she also spoke at Christmas parties, but I never attended those.

Q. Do you remember the occasion prior to March 18th on which you heard Mrs. Reed speak, the last one prior to March 18?

Mr. Reed: I couldn't hear that question.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. No, I don't remember.

By Miss Weyand:

Q. Do you remember what Mrs. Reed said at any of the meetings, what the topic of her speeches was?

A. Well, it was naturally on the new lines, because that is the topic of conversation at style shows.

Q. Did you ever hear her mention anything pertaining to labor matters prior to March 18, 1937?

A. I don't believe I did.

Q. Did she discuss the bus situation at the March 18 meeting?

A. I don't know whether she discussed that or whether someone else did. I don't remember hearing her say anything about that.

Q. Did you ride buses?

A. I believe that I rode sometimes in the evening, but not in the morning.

[fol. 4816] Q. Do you remember how the committee was chosen at the March 18 meeting, to go and see a lawyer?

A. I don't remember how it was chosen.

Q. Did you know that the committee had gone to see Mr. Tyler prior to the April 27 meeting at which Mr. Tyler appeared?

A. Yes, they were the committee that went, but I don't remember how they were chosen.

Q. When did you first learn they had gone to see Mr. Tyler?

A. I think that was the meeting the last of March.

Q. Did they tell you anything of the discussion they had with Mr. Tyler when they saw him?

A. As I remember they did.

Q. What did they say?

[fol. 4817] A. Well, it was mostly just that he would require a retaining fee before he could go to the trouble of advising us.

Q. Do you remember what was the next meeting after that at which you discussed a retainer fee.

A. After the last of March meeting?

Q. Yes.

A. I think the next meeting was where he came and talked to us.

Q. Did you discuss a retainer fee at that meeting?

A. No, I don't believe so; we had raised our retainer fee at the previous meeting.

. . . . . .

[fol. 4819] Q. When you joined the Donnelly Garment Workers' Union, you stated you expected it to protect you. What did you have in mind by that?

A. Well, I believed that if we had our own union there would be no reasons for any violence, because we would be able to speak for ourselves, and no one else could call a strike in our plant.

[fol. 4820] Q. Do you have any knowledge as to whether the $16.50 minimum included in the Donnelly Garment Workers' Union supplemental contract raised the pay of any girls, or were all the operators getting $16.50 prior to that contract?

A. Prior to the first contract?

Q. Yes.

Trial Examiner Batten: How does that come within this cross-examination?

Miss Weyand: I think it is proper with her understanding of what she thought the Donnelly Garment Workers' Union was going to do.

Trial Examiner Batten: Well, I didn't ask you what you thought. I said, how does it come within this cross-examination?

Miss Weyand: Well, on direct she testified as to her expectations of the Donnelly Garment Workers' Union. I was just going into her understanding of what she thought it was going to do, so I think that is proper cross-examination.

Mr. Ingraham: I submit on direct the respondent did not go into that.

Trial Examiner Batten: Well, of course, I don't know anything that was gone into in that connection, or anything that related to it. Of course, I realize, Miss Weyand, and I presume all counsel here agree with me, that as a general proposition where a witness testifies on a matter [fol. 4821] which might enable the person who has to decide the case to draw an inference, or something of that sort, that, of course, either the Examiner or anyone else conducting a hearing should be very careful not to limit cross-examination on a possible inference which may be drawn, and yet, with that, as with everything else, there has to be a limit some place.

Miss Weyand: On direct she testified that girls were so satisfied with their conditions down there that they didn't want the union to get any advantages. I submit the question is proper cross-examination in view of that direct.

Trial Examiner Batten: Well, I don't think so. I don't think I want to open up that question in connection with those contracts.

Miss Weyand: I also think it is proper cross-examination in view of her identification of meetings along in March, April and May. These also occurred in May and June, and it is proper to have her show her recollection of what was stated at these meetings.

Trial Examiner Batten: That is not the question.

Miss Weyand: Maybe I should rephrase it.

Trial Examiner Batten: Well, I don't know anything about you rephrasing your question, but if you have a question raised, it will be very obvious to you what I am directing my remarks to.

Will you read the question please?

[fol. 4822] Miss Weyand: I'll state a new question.

Trial Examiner Batten: Well, let's have it read.

(Thereupon the last question was read by the reporter, as follows:

"Q. Do you have any knowledge as to whether the $16.50 minimum included in the Donnelly Garment Workers' Union supplemental contract raised the pay of any girls, or were all the operators getting $16.50 prior to that contract?")

Trial Examiner Batten: Well, as I say, I don't care to go into that matter.

Miss Weyand: Here is what it was on direct. She said everybody knew what they wanted and were getting it.

Trial Examiner Batten: I still say I don't want to go into that matter.

Miss Weyand: All right. Can I ask her —

Trial Examiner Batten: (Interrupting) You ask the question, and I'll determine whether or not I think it is proper.

By Miss Weyand:

Q. What did you mean by that statement that everybody knew what they wanted and were getting it?

A. Maybe I didn't express myself. I should have said everybody knew what they didn't want, anyway.

Q. You didn't mean to say they knew what they did want?

A. Well, I think they knew what they did want, too. They did want to keep the I. L. G. W. U. out.

[fol. 4823] Q. And that was all you had in mind when you made that statement, was it?

A. Yes, I think that is what I had in mind.

Q. And when you said, "and were getting it," what did you mean by that?

A. Well, they were taking steps in that direction.

Q. And by those steps you referred to what?

A. To protecting ourselves against outside interference.

Q. By that you mean the formation of the Donnelly Garment Workers' Union, do you, or do you refer to something more than that?

A. I think I had the formation of a union in mind. We knew that is what we should do, after we talked to our attorney.

. . . . . .

By Mr. Langsdale:

Q. Mrs. Barnes, you are now working as an operator?

A. I am.

. . . . . .

[fol. 4824] Q. You have been here a number of days, while this trial has been going on? A. Oh, yes.

Q. Before you took the witness stand? A. Yes.

Q. And you heard the other witnesses testify?

A. Yes, I heard some of them.

Q. You were at the meeting of April 27, when the union was formed? A. I was.

Q. And your vote was taken as to whether or not there should be a union formed?

A. Was there an open statement?

Q. There was a vote taken as to whether or not there should be a union formed.

A. There was a motion made that we form a union.

Q. Yes, and a vote taken on that motion?

A. There was.

Q. Unanimous, wasn't it? A. It was.

[fol. 4825] Q. And then someone said the union was going to be called the Donnelly Garment Workers' Union, and they had the cards all ready to sign, did they not?

A. Nobody signed cards until after that.

Q. I know, but at that meeting you signed the cards, didn't you?

A. I didn't sign my card at that meeting—yes, I did too.

Q. I thought you said you did. But those cards were printed and ready for you?

A. Well, yes, I should say they were.

Q. And the name in the card was Donnelly Garment Workers' Union, wasn't it? A. Yes.

Q. And you took a vote on whether or not that should be the name?

A. I think that was discussed at the meeting in the last of March.

Q. When?

A. At the meeting the last of March.

Q. Oh, you think you discussed it the last of March, that the name should be Donnelly Garment Workers' Union, is that your recollection?

A. Well, I imagine that is right.

Q. Well, I want your best recollection.

[fol. 4826] A. That is my best recollection.

Q. Your best recollection is that this meeting that followed the 18th of March meeting was the first meeting in which you heard it discussed, that the name should be Donnelly Garment Workers' Union?

A. It was mentioned at some time, it was probably that meeting.

Q. Yes. Well, that is your best recollection, is it?

A. I will say that it was.

Q. Who discussed it at that meeting?

A. Well, I am not very clear on it, so I can't say.

Q. Well, was it Rose Todd? A. I couldn't say.

Q. Have you any judgment at all as to who, at the meeting, where this 50c was voted, discussed the name, "Donnelly Garment Workers' Union"?

A. No, I don't recall.

Q. You don't recall who discussed it?

A. I am not sure that it was discussed.

Q. Well, didn't you just get through saying your best judgment was that it was discussed?

A. I said I imagined if it was discussed it was at that meeting.

Q. What do you mean by imagined?

A. If it was definitely discussed prior to the 27th, it was probably—that was probably when it was discussed. [fol. 4827] On the other hand, it might have been the committee who made up the name; in fact, the name was perfectly obvious, of what it would be called.

Q. Now, let's get back to your statement that your best judgment was that you first heard the name discussed at the meeting at which they voted the 50c. Is that your best judgment?

A. I wouldn't say that it was discussed then, or it was not discussed then.

Q. What committee are you talking about, that may have gotten the name up before April 27?

A. The committee that was voted to see Mr. Tyler.

Q. What committee?

A. The committee that went to see Mr. Tyler.

Q. Well, that was Miss Todd, Miss Ormsby and Mr. Atherton, is that correct? A. Miss Todd was one.

Q. Well, had you consulted with that committee any time prior to April 27, when the union was formed?

A. On March 18 meeting, we gave them the authority to go ahead and—

Q. (Interrupting): That is not the question. Had you consulted with the committee at any time prior to April 27, 1937? A. I had not.

[fol. 4828] Q. Do you know anyone who had, with reference to the name "Donnelly Garment Workers' Union"?

A. I don't believe I know anyone personally.

Q. Now, at that meeting there was a motion made that a nominating committee be appointed to—

Mr. Reed (Interrupting): You are speaking now of the meeting of the 27th?

By Mr. Langsdale:

Q. Do you remember that motion? A. I do.

Q. And the vote on that was unanimous, too, wasn't it? Do you remember that? A. Yes.

Q. And do you remember that the vote on the name was unanimous? A. On what name?

Q. Donnelly Garment Workers' Union?

A. Well, I imagine that it was: All the votes they took were unanimous.

Q. Was there anything at all discussed at that meeting, where there was any dissenting of any kind?

A. I don't remember of any; everyone had an opportunity to say what they thought.

Q. But no one thought of saying anything that was opposed to the motions that were made, did anyone?

A. I doubt if they wanted to.

[fol. 4829] Q. Well, I am not asking you that: Did anyone? A. I don't know what they thought.

Q. Well, did anyone say anything against any motion presented?

A. They didn't say anything, they might have thought it.

Q. Now, you remember Mr. Tyler pulled some by-laws out of his pocket that he had already prepared and read them, do you?

A. No, I think he took them out of his brief case.

Q. Oh, out of his brief case, instead of his pocket?

A. Yes.

Q. But he read them?

A. Yes, he read some by-laws.

Q. And then there was a motion that the by-laws be accepted, was there not?

A. Well, I think they were accepted subject to change.

Q. Well, let's see if you remember this motion, "Motion made by Ellen Nokes that we accept the by-laws as they were read; seconded by Virginia White," does that refresh your recollection? A. Yes, I imagine it does.

Q. And then the vote was unanimous, wasn't it?

A. Oh, yes.

Q. No one discussed those by-laws, did they? A. No.

Mr. Reed: Wait a minute. I think counsel ought not [fol. 4830] to try to mislead the witness. If he puts in part of these minutes, he ought to put in the qualifying phrase that it was explained that the by-laws could be changed at any time. Isn't that right in the minutes before you?

* * * * * * *

[fol. 4832] Mr. Reed: Well, I move to strike out the question as misleading and improper for the reason that there is no connection with the other matter called attention to, which counsel did not refer to, although he apparently was reading from the records. This was said, "I suggest to adopt, then, the by-laws, and then leisurely amend them when the majority of you wish them changed. They are drawn as follows:" so that there was in this meeting a statement made that if they adopted them, then they could change them afterwards.

Now, I think Mr. Langsdale, perhaps inadvertently, omitted to call attention to that fact.

Mr. Langsdale: I didn't do it inadvertently. I don't have to read everything that happened at that meeting.

Trial Examiner Batten: Read the question and answer, [fol. 4833] please; there is a motion to strike.

(Thereupon the last question and answer were read by the reporter, as follows:

"Q. No one discussed those by-laws, did they?
"A. No.")

* * * * * *

A. Mr. Examiner, I think before that I was asked if these by-laws were accepted, and I said they were accepted subject to change.

Q. (By Trial Examiner Batten): Well, then, you weren't misled by any questions Mr. Langsdale asked you, were you? A. No, but he didn't read all of it.

* * * * * *

[fol. 4841] Q. Now, you, I believe, said Mary Sprofera and Inez Warren brought the petition of March 2 to your machine and you signed it. A. Is that a question?

Q. Is that correct or not? A. That is right.

Q. How long did these girls pause at your machine, if you know?

[fol. 4842] A. Long enough for me to read the petition.

Q. And to—

A. —and to sign it.

Q. And to recollect and think over the article of February 26?

A. I didn't have to rethink over that article.

Q. You said you did, at the time you signed this petition, in answer to one of Mr. Lane's questions—that you had in mind the article of the 26th of February when you signed this petition of March 2. Did you say that?

A. I had quite a lot of things in mind at that time.

Q. Did you say that—the article of February 26?

Mr. Reed: Say what?

Mr. Langsdale: That she had that article in mind when she signed this so-called "Loyalty petition" on March 2.

Mr. Reed: That doesn't mean she had to stop and think it over, as you put into your question.

Trial Examiner Batten: The question to the witness is, did she have it in mind?

A. I don't know whether I had that article in mind or not.

By Mr. Langsdale:

Q. You answered that you did, in reply to Mr. Lane's question, did you not?

A. I imagine that the results of that article were in my mind.

Q. But right now you don't know whether you had that [fol. 4843] particular article in mind or not, do you?

A. I say, I imagine the results of it were in my mind.

Q. But do you know whether or not you had the article in mind? Not "the results."

A. Probably not the complete article.

Q. Any part of it?

A. As I say, the accumulation of suggestions were in my mind.

. . . . . .

[fol. 4844] Mr. Langsdale: Well, Mr. Lane asked you if when you signed the March 2 petition you had in mind the newspaper article of February 26, and you said "yes." Now, do you mean to stick by that answer, or do you want to modify it?

Mr. Reed: Now, I object to that. That is improper cross-examination. The witness has not changed her testimony in the slightest.

Trial Examiner Batten: The question is, does she want to, Senator? Not that she has.

The witness: No, I do not.

. . . . . .

[fol. 4845] Q. You stated that you didn't think your instructor even knew that that petition was going through the section. On what do you base that statement?

A. I don't believe I said she didn't know that one was going through. There are a lot of things go through that she doesn't know about.

Q. Didn't you say you didn't think the instructor knew that that petition was going through, the petition of March 2? A. I don't know whether she knew it or not.

Q. Well, you have no recollection now at all as to whether she knew it or not; is that correct?

A. I think she was asked to sign it. She knew later, anyway, that it was.

Q. Who was that instructor?

A. At the time I don't know who the instructor was.

* * * * * *

[fol. 4846] Q. Now, in answer to one of Mr. Ingraham's questions you answered you didn't think the instructor knew that the petition was going around. Did you mean that?

A. Well, if she knew it I didn't know that she knew it.

Q. But that isn't— Do you think that answer is the same as "I don't think she knew it,"?

* * * * * *

[fol. 4847] By Mr. Langsdale:

Q. Now then, do you recall answering Mr. Ingraham that you didn't think the instructor knew the petition was going around?

A. Well, I think what I had in mind then was the fact that it was possible that she did not know it, because we send a lot of those things through that they do not know about. It's possible that she didn't, or she could have. I don't know what she knew.

Q. Let me understand you. Do you say this could be true in your section, that two girls would come along with a petition and go from machine to machine and talk to the operators about that petition, asking them to sign or not, as they saw fit, and the instructor would never know that that was happening?

A. An instructor would know what was happening, but maybe she hadn't read the petition.

Q. She would know they were there at the girls' machines with something and getting something signed, wouldn't she?

A. Evidently she would. I have had petitions in my hand and the instructor would ask me what they were and I wouldn't tell her.

* * * * * * *

[fol. 4848] Q. Now then, before 1939, July of 1939, can you name any petition that ever went around in your section when the instructor didn't know about it?

A. I don't recall any specific one. There have been, I imagine.

* * * * * * *

By Mr. Langsdale:

Q. Now, you testified when you were shown Senator Reed's interview published in the Times of May 11, by Mr. Ingraham, as to whether what the Senator said about Mr. Dubinsky in that interview had any effect on your decision with reference to the Donnelly Garment Workers' Union. Do you remember that?

[fol. 4849] A. I do.

Q. Do you remember your answer was, "My feelings were already formed at that time."? A. That is right.

Q. Do you remember that Mrs. Saucke gave that same answer? A. No, I do not.

Q. You sat here and heard Mrs. Saucke testify, didn't you? A. Yes.

Q. And you don't recall that she gave that same answer?

A. I don't recall all of those questions, no.

Q. Did you hear Mary Warth give that same answer?

A. No, I didn't.

Q. Would you say she didn't?

A. I wouldn't say she didn't. I don't remember that she did, though.

Q. You heard her testimony, didn't you? A. Yes.

Q. Was it while you were at Sylvia Hull's machine or near thereto that someone demanded that she give up her Loyalty League pin?

A. No, I don't believe I was there at that time.

Q. Did you hear that that had been done?

A. I heard that that had happened.

Q. Did you hear why they demanded her Loyalty League pin? A. I heard why.

* * * * * * *

[fol. 4851] Trial Examiner Batten: Well, if you understand it, you may answer.

A. She did belong.

By Mr. Langsdale:

Q. Did you think she had no right to belong to the Loyalty League and the I. L. G. W. U. at the same time?

A. As far as I know, she had a right to, although it was really against the policy of the Loyalty League, because we had all pledged our loyalty to each other.

Q. And against any union?

A. Against any outside interference.

* * * * * * *

Q. You said you didn't believe that Rose Todd at any time ever represented the Donnelly Garment Company. Did you know that she made trips to the bank during that period for the Donnelly Garment Company—the First National Bank?

[fol. 4852] A. I wouldn't know when she went to the bank.

Q. I am asking you if you did know.

A. I said I wouldn't know.

* * * * * * *

[fol. 4856] Q. Now, up to that time did you know that the instructors sat in once a week with Mrs. Reeves and some others and discussed the work of the operators?

A. Up to the time that Mr. Baty took over?

Q. Yes.

A. I know they had what they called "going over the cards." I don't know who was there.

Q. Did you know the instructor was there? A. Yes.

Q. Was there any notice sent around or any word given to you when Mr. Baty went there that the instructors would no longer sit in on those conferences?

A. Mr. Baty had a desk on the seventh floor when he took over that job; it was put on the seventh floor, and we

were told that anything that came up that needed to be settled, we could take up with him.

Q. Who told you that?

A. I think one of the girls asked an instructor one day about some prices or something, and she told her to go to Mr. Baty.

. . . . . .

Mr. Langsdale: Can you think of anything else said by anyone else that told you there had been a change in the [fol. 4857] authority of the instructor?

A. All I know is that his desk was there on the seventh floor and he started coming around and seeing about the work, and we were given to understand he was in charge—

. . . . . .

By Mr. Langsdale:

Q. Do you know of any other incident, except the one you stated about some girl saying something to an instructor about prices and the incident of Mr. Baty's [fol. 4858] desk being on the seventh floor, that led you to believe there had been any change in the authority of your your instructor?

A. Well, I do know that Mrs. Reeves hated to give it up, because she said so.

. . . . . .

[fol. 4859] Trial Examiner Batten: This last question, whether there was anything else other than the incident of Mr. Baty's desk being on the seventh floor and the incident of some girl making a statement about the instructor, was there any other incident that caused you to believe there was any change in the system?

[fol. 4860] The Witness: I thought I stated that Mrs. Reeves said she hated to give it up.

Trial Examiner Batten: Outside of that, there was nothing else—

The Witness: Not that I know of.

. . . . . .

[fol. 4862] By Mr. Langsdale:

Q. Now, you said you did get a little peek of Sylvia Hull and you thought she looked ashamed, did you?

A. I did.

. . . . . .

Q. And did you have to look through the crowd to see her?

[fol. 4863] A. Well, no, I went over there once and saw her.

Q. Did you have to make your way through the crowd?

A. Oh, there wasn't a crowd.

Q. How many would you say were around her machine?

A. Oh, at the time I was there, there were probably two or three.

Q. Two or three? A. Yes.

Q. And that was after the demonstration was over, was it not?

A. Well, no. I seen girls going up there by twos and threes and fours just to see her.

Q. Was there any time when as many as fifty girls were around her machine?

A. No, I don't think that many could get around her machine.

Q. Well, in the room there getting as close as they could to her machine?

A. No, I never saw such a crowd as that.

Q. You didn't see that large a crowd? A. No.

Q. You didn't hear Sylvia Hull say anything when you got close to her?

A. No, she didn't say anything when I was close to her.

Q. And you didn't hear anyone say anything to her?

A. The girls said something to her but I don't remem-

[fol. 4864] ber what they said.

Q. What was it about her that influenced you to say you thought she was ashamed? A. She was very nervous.

Q. What else? A. She kept her eyes down.

Q. And what else? A. She wouldn't talk to anyone.

Q. What else? A. Well, I don't know.

Q. Did you know that someone had threatened to throw her out the window? A. No, I didn't know that.

Q. You didn't know that is what made her nervous?

A. No.

Q. Did you learn that someone had threatened to tear her clothes off if she didn't give up her loyalty league pin?

A. No, I didn't hear that.

Q. You don't know whether that is what made her nervous or not? A. No.

[fol. 4871] Redirect Examination.

Q. (By Mr. Ingraham): Mrs. Barnes, after Mr. Baty took charge of the plant did you observe that complaints were taken up with him, complaints of other operators?

A. Yes, they were sent to him.

Mr. Langsdale: What was that answer?

A. They were sent to him.

By Mr. Ingraham:

Q. Prior to the time that Mr. Baty was in charge of the plant did the instructors have authority to settle complaints?

A. Yes, they had the authority to go and see about prices and to make adjustments in the section and things of that sort.

Q. And was the change noticeable immediately after Mr. Baty took over?

A. Yes, it was. The instructor didn't have anything [fol. 4872] to do with those any more, we had to see someone else, Mr. Baty.

Q. Now, you stated, I believe, that at the meeting of—at the meeting the latter part of March, 1937, that you made a contribution of 50c for the purpose of paying a retainer fee to Mr. Tyler? A. That's right.

Q. Now, did you make that contribution to the Loyalty League? A. No, I did not.

Q. Did you make the contribution for any purpose in any way connected with the Loyalty League?

A. No. I thought it was clear that we raised that money simply to retain a lawyer to inform us about our rights under the law to protect ourself.

Q. Did you ever make a contribution to the Loyalty League, that you recall, at any time?

A. Not that I remember.

* * * * * *

[fol. 4875] Recross Examination.

* * * * * *

Q. Mrs. Barnes, state whether or not it was a common practice for employees to send notices or memoranda of one kind or the other through the sections, pertaining to personal matters?

A. Yes, if they wanted to send notes through, they did.

Q. Will you state some of the occasions on which that was done?

A. Well, there were so many occasions. Somebody had a ride for someone in a certain vicinity, and they would send it through the sections or to the floor; if they wanted to take up a collection for flowers for someone, or buy a wedding present, or anything.

[fol. 4876] Q. And did you employees generally refer to those notices as I. D. M.'s?

A. Well, some of them borrowed I. D. M. paper to write them on, that is just paper that was just used in the section for scratch paper.

Q. The employees personally used that paper for any sort of personal notice they wanted to send through the sections?

A. Yes, if they didn't have any of their own, they just went up and got it.

* * * * * *

[fol. 4880] By Miss Weyand:

Q. Well, if you had machine trouble, or something, did you lose the time that you were not working at your usual work because of machine trouble?

A. Well, I believe that was taken care of through the cage, to my understanding. When we put in a call—the calls are all written on a card, the time they are put in, the time they are answered, and in that way they check the cards and see how much time we have lost.

Q. And how are you paid for that, a certain amount an hour, or do you know?

A. Well, for just our regular hourly pay, I suppose; that is my understanding.

* * * * * *

By Miss Weyand:

Q. Well, did they give her an allowance, if the style was hard for her to get onto, and the first week or two she couldn't make her usual allowance?

[fol. 4881] A. Why, yes, I think she is given an allowance.

Q. Who determines whether she is given an allowance? A. Well, I suppose Mr. Baty does.

* * * * * *

[fol. 4887] EDITH DEAN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Please state your name. A. Edith Dean.

Q. What is your address? A. 2523 Lawn.

Q. Kansas City, Missouri?

A. Kansas City, Missouri.

Q. Are you employed?

A. At the Donnelly Garment Company.

Q. How long have you been employed at the Donnelly Garment Company?

A. Eighteen years ago last April.

Q. In what capacity do you work at the Donnelly Garment Company? A. Operator.

Q. Do you do any special kind of sewing?

A. Well, I run a pinker.

Q. How long have you been employed at the Donnelly [fol. 4888] Garment Company?

A. Eighteen years last April.

Q. Were you working there during the months of March and April in 1937, at the Donnelly Garment Company? A. Yes, sir, I was.

Q. Are you a member of the Donnelly Garment Workers' Union? A. Yes, sir, I am.

Q. Did you join that union when it was organized?

A. I did.

Q. Do you recall about when that was?

A. It was the last of April in 1937.

Q. Now, at that time had there been any strikes in other garment plants in Kansas City, Missouri.

A. Yes, sir.

Q. I will hand you respondent's exhibits 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38, and ask you if you recall reading the articles that are contained in those exhibits, and if so, which articles you read.

. . . . . .

[fol. 4889] Q. (By Mr. Ingraham): And you can state the number of the exhibit. That is exhibit 16. In exhibit

16 did you see the pictures that are contained on the front page of the Kansas City Times of March 18, 1937?

A. I did. No. 17 I read; I didn't read 18 or 19 at that time; we didn't take the Post and I didn't read those except at the plant.

. . . . . .

A. I believe I read 20, one of the girls handed it to me. This 21 I don't recall reading at that time, or 22.

. . . . . .

I read this 23. I don't remember that I read 24 at that time.

. . . . . .

A. I don't believe I read 24, I don't remember reading the article at that time.

This 25 I read at that time, it was in the Star—the Times, rather.

And 26, I read that also, and 27, I read that.

. . . . . .

A. Yes. No. 28, I read that also. 29 I read.

. . . . . .

[fol. 4890] And 30, I read that also.

I don't recall reading 31, though.

I don't think I read 32 either, nor 33.

. . . . . .

I believe I read 34 down at the plant, I am not sure about that, but I believe I did at that time.

And 36, I read that.

. . . . . .

A. I read that at the plant. Is that 35?

Q. (By Mr. Ingraham): Yes, that is 35.

A. Well, I read that down to the plant, one of the girls had it there.

I read 37.

. . . . . .

[fol. 4891] And 38, I read most of 38, but I don't believe I read it all at that time, but I read the biggest part of it.

By Mr. Ingraham:

Q. Mrs. Dean, the articles that you recall reading, will you state what effect they had on you?

A. Well, it seemed to me like it was rather terrible that outside people would come in and keep people off of their jobs that they were working on to make their living at.

Q. Will you state whether or not the reading of those articles caused you to feel any nervousness about what might happen to you?

A. Well, it certainly did, yes.

Q. Was there a general discussion at the plant among the employees, of these news articles that were appearing in the Press? A. Yes, sir.

Q. Did you observe what effect the articles had on the other employees at the plant?

A. Well, they were all more or less like myself, they were rather nervous and worried about what might happen to us.

Q. Was there any discussion of those articles among the employees? A. Yes, sir.

Q. Now, I believe you stated that you read—or saw in the Kansas City Times of March 18, the picture that appeared on the bottom of the front page; this is exhibit 16? A. Yes, sir.

[fol. 4892] Q. And you stated that you read the article that appears in the Kansas City Star of March 17?

A. Yes, sir.

Q. Entitled "Sitters Block a Door"? A. Yes, sir.

Trial Examiner Batten: What number is that?

Mr. Ingraham: That is exhibit 27.

By Mr. Ingraham:

Q. Now, at that time, or approximately at that time, on March 18, after these articles had appeared in the paper, did the employees hold meetings?

A. Well, yes, we did.

Q. Will you describe any meetings that you recall that were held?

A. Well, they held one on the 18th of March, I think it was.

Q. Do you recall the purpose of that meeting?

A. Well, to see if we could get some way to protect ourselves against this violence, so we wouldn't be subject to what some of the other plants in the city were being subjected to.

Q. Did any official or executive, or any person that you thought represented the management, discuss with you the holding of such a meeting?

A. No, they never.

Q. Did any official or representative of the management request that a meeting be held?

[fol. 4893] A. Not to my knowledge.

Q. Did you ever hear it said by any employee that the management wanted a meeting to be held?

A. I never did.

Q. Was that meeting a Loyalty League meeting?

A. No.

Q. Did you attend the meeting because you felt that if you didn't go you would be penalized by the management?

A. No.

Q. Did you go to that meeting of your own free will?

A. I did.

Q. Was there a general discussion at the meeting about what steps could be taken to protect yourselves?

A. There was.

Q. Will you state whether or not there was a suggestion made at that meeting that Mrs. Reed be requested to come to the meeting?

A. There was, I think.

Q. Did Mrs. Reed appear at the meeting?

A. Yes, sir.

Q. Did she make some remarks?

A. Yes, sir, she talked to us a few minutes.

Q. Did you hear Mrs. Reed make the statement that if the plant was unionized it would be closed?

A. I did not.

[fol. 4894] Q. Did you hear Mrs. Reed make the remark that she was not going to let Dubinsky tell her how to run her business?

A. I don't think I did, no.

Q. Did Mrs. Reed make any statement with reference to what she thought about whether or not an employee could join or not join a union?

A. Well, she said that she was not going to let Dubinsky force her employees to do anything that they didn't want to do; they could join or they could not, that was up to them, and she was not going to let anybody force them to do any particular thing.

Q. Did she make any statement to the effect that she was not going to let Dubinsky force her to force the employees to join the union against their will?

A. Well, something to that effect, but the exact words, I don't remember; but she was not going to let him force us to join any union against our will.

Q. About how long did Mrs. Reed appear at the meeting?

A. Oh, around ten or fifteen minutes, something like that.

Q. Did you see Mrs. Reed or hear Mrs. Reed read a letter from the I. L. G. W. U.?

A. No, sir.

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[fol. 4895] By Mr. Ingraham:

Q. Now, was there any action taken by the employees with respect to appointing a committee?

A. Yes, there was.

Q. Will you state what occurred with reference to that?

A. Well, we appointed a committee of three to see somebody to find out what we could do to get legal counsel, we didn't know just what we could do to protect ourselves.

Q. Do you recall who was appointed on that committee?

A. Well, there was Rose Todd and Sallie Ormsby and Herbert Atherton, I believe, was the third one, I believe that was his name, Atherton.

Q. Now, did your instructor order you or direct you to attend that meeting?

A. No, sir.

Q. Did any thread girl suggest or order you to attend the meeting?

A. No.

Q. Did any floor lady?

A. No, sir.

Q. And how did you happen to go to the meeting?

A. Well, I first heard of it in the lunch room at noon, that there was going to be a meeting, and then we talked it in our section that afternoon.

Q. You say you heard of it in the lunch room?

A. I heard somebody talk of a meeting in the lunch [fol. 4896] room at noon, the girls talking amongst themselves, the employees.

Q. Do you mean the operators?

A. The operators, yes.

Q. Now, after this meeting of March 18, did you read in the paper of the continuation of the violence at these other plants?

A. Yes, I did.

Q. Did you personally see any of the violence?

A. Well, I never personally seen the violence, but my sister was hurt in it.

* * * * * *

By Mr. Ingraham:

Q. Was she hurt in the strike at 26th and Grand?

A. Yes, sir.

Q. What was your sister doing there at the time?

A. You mean what was her work in the plant?

Q. No, how did she happen to be there?

A. Well, she was going to work; she worked at Gernes.

Q. Was she trying to get in to work?

A. She was trying to get in to work, yes, sir.

Q. Was your sister seriously hurt?

[fol. 4897] A. Well, I don't know whether you would call it so seriously or not, but it was pretty painful.

Q. Did she have to go to the hospital?

A. No, I don't think she went to the hospital, but she was off from work quite a while.

Q. Did your sister — strike that.

Were those injuries that were visited on your sister caused by the I. L. G. W. U. strikers?

Mr. Langsdale: Just a moment. I object to that unless she knows.

A. That is what she said.

Mr. Langsdale: Did she tell you who it was?

A. She didn't know their names, she said it was the union girls.

By Mr. Ingraham:

Q. Did your sister say whether or not these strikers worked at the plant where she worked?

A. She said it was no one she knew, she didn't know any of them.

Q. They were from outside of the plant?

A. She didn't know any of them.

Q. Was there a later meeting after the meeting of March 18 that the employees held in connection with the matters that the committee had been requested to investigate?

A. Yes, sir.

Q. Do you recall about when that meeting was held?

[fol. 4898] A. Yes, as near as I can recall, it was along the last of March, but the date I don't remember.

Q. Did you attend that meeting?

A. I did.

Q. Did anybody representing the management or whom you thought represented the management discuss the holding of that meeting with you?

A. No, sir.

Q. Were you requested or directed to go to that meeting by your instructor?

A. No, sir.

Q. Were you requested to go to that meeting by the thread girl?

A. No, sir.

Q. Or floor lady?

A. No, sir.

* * * * * *

[fol. 4899] By Mr. Ingraham:

Q. I want to go back just a minute to the meeting of March 18. Will you tell the time of day that that meeting was held?

A. Well, as near as I can remember it was around 5 o'clock.

Q. Will you state where the meeting was held?

A. On the second floor, I believe.

Q. Were you through work that day when you went to that meeting?

A. Yes, sir, I was.

Q. Now, going back to the meeting that was held the last of March, will you state what time of day that meeting was held?

A. It was around 5 o'clock.

Q. Will you state where that meeting was held?

A. It was also held on the second floor, I believe.

Q. Now, was that meeting a Loyalty League meeting?

A. No, sir.

Q. Did you ever hear it stated among the employees of the plant that that was the Loyalty League meeting?

A. No, sir.

[fol. 4900] Q. Will you state what occurred at that meeting?

A. Well, we had a report from the committee that went to see about legal advice, what we could do to protect ourselves, and they had seen Mr. Tyler and talked to him.

* * * * * *

A. And they said that he asked a retaining fee of $500, and would like to have suggestions on some way to raise it, or what they thought about it.

By Mr. Ingraham:

Q. Do you know what was done?

A. Well, everybody wanted to just give the money, you know, instead of raising it some other way, they all just wanted to give the money; I did, and somebody suggested $1, but we came down to 50c, and each girl was to give 50c.

Q. When did you give this money?

A. The next morning.

Q. Do you recall whom you gave the money to?

A. I gave it to a girl in our section, but I don't recall what her name was.

Q. Did you make that contribution of 50c to the Loyalty League?

A. No, sir.

[fol. 4901] Q. I will hand you again Respondent's exhibit 23 and I believe you stated you did read that article which appeared on March 27, 1937, in the Journal-Post?

* * * * * *

A. Yes, I read this article.

* * * * *

By Mr. Ingraham:

Q. Did you understand from that article that the garment companies involved in the strike had applied for an injunction?

A. That is the way I understood it.

Q. And was there a general discussion at the plant, at the Donnelly plant?

A. Yes, sir, that is where I read the article.

Q. Was there a general discussion among the employees that an injunction might be obtained to protect you employees?

A. Yes, there was.

. . . . . .

[fol. 4903] By Mr. Ingraham:

Q. Mrs. Dean, at the meeting that you just referred to, the latter part of March, was there a discussion at that meeting about the purpose of employing Mr. Tyler?

A. Well, the way I understood it, we wanted to see what we could do to protect ourselves against the violence that had been going on at these other plants.

Q. And was there a discussion about employing a lawyer to investigate the law, for the purpose of bringing an injunction suit?

A. Well, that was my understanding, that it was part of his remarks.

Q. Now, did you see employees at that meeting make their contributions of 50c apiece?

A. Yes, I seen a few of the girls throw their money up on the platform, or where Miss Todd was standing, who presided; and someone suggested that we wait and take it up in our sections the next day, and each section appointed a girl to give the money to, and I went in and gave mine to the girl the next morning, before I went to work.

. . . . . .

By Mr. Ingraham:

Q. Now, did the fact that Rose Todd presided at that [fol. 4904] meeting lead you to believe that the meeting was sponsored by the company?

A. No, sir.

Q. Did you consider Rose Todd a boss down at the plant? A. No, sir.

Q. Did you believe that Rose Todd spoke for the management in reference to labor matters? A. No, sir.

Q. Did the fact that Rose Todd presided at the meeting lead you to believe it was a Loyalty League meeting?

A. No, sir.

Q. I will ask you to state whether or not Rose Todd took an active part in the meeting of March 18?

A. She did.

Q. Well, did that fact lead you to believe that the meeting was sponsored by the company? A. No, sir.

Q. Did it lead you to believe it was a Loyalty League meeting? A. No, sir.

Q. I believe you stated that you read respondent's Exhibit 38, which appeared in the Kansas City Star of April 12, 1937, and is entitled: "Wagner Act upheld"?

A. I didn't read all of it at that time, but I read the biggest part of it at that time.

[fol. 4905] Q. Do you know whether or not the fact that the Wagner Act had been upheld was discussed by the employees?

A. Well, we discussed it in our section.

Q. Did you hear any discussion at the plant of an article that appeared in the Kansas City papers, on or about April 22nd, which stated that Sylvia Hull was going to the I. L. G. W. U. convention as a representative of the Donnelly employees?

. . . . . .

Q. (By Mr. Ingraham): Was there a general discussion of that article?

[fol. 4906] A. Yes, sir, there was.

. . . . . .

By Mr. Ingraham:

Q. Had you selected Sylvia Hull to represent you and go to an International convention and ask support for a strike at the Donnelly plant? A. I had not.

Q. Did you hear of any employee at the Donnelly plant selecting Sylvia Hull to represent her?

A. I had not.

Q. Did you hear of any employee at the Donnelly plant that wanted a strike called by the International at that plant? A. I had not.

Q. What was the effect of reading this article, on you?

A. Well, it made me rather angry.

Q. What was the effect on other employees, so far as you could observe?

A. The same effect as it had on myself.

Q. I believe you had already stated that on April 27th, you joined the Donnelly Garment Workers' Union?

A. I did.

Q. Now, will you please state what reasons you had for voting to form the Donnelly Garment Workers' Union?

A. Well, I felt like we could do better by ourselves than [fol. 4907] any outsider, and because we knew our own problems, and I felt that someone in the plant representing us with the company could do better than any outsiders would, who didn't know anything about our organization and our work in the plant.

Q. I will ask you to state whether or not the activities of the I. L. G. W. U. had anything to do with your feelings?

A. Well, more or less, yes.

Q. Well, in what respect?

A. Well, I didn't want to be called out on a strike, and I didn't want to go and participate in any violence, I would not have done that.

Q. Did anyone representing the management discuss with you the forming of the Donnelly Garment Workers' Union? A. No, sir.

Q. Did anyone representing the management discuss with any employee, so far as you know, the formation of the Donnelly Garment Workers' Union?

A. Never that I ever knew anything of.

Q. Did you join the Donnelly Garment Workers' Union of your own free will? A. I did.

Q. State whether or not you felt that you would be penalized by the company if you did not join the Donnelly Garment Workers' Union. A. I did not.

[fol. 4908] Q. Will you state whether or not you felt any pressure or any coercion on the part of the management in any respect in connection with whether you joined or did not join any labor organization? A. No.

Q. How did you vote, if you recall, in regard to the formation of the Donnelly Garment Workers' Union? I mean, was there an oral vote or was it written, or what did you do?

A. Well, an oral vote; as far as I remember, it was an oral vote.

Q. Will you state whether or not the employees were unanimous? A. Yes, they were.

Q. Will you state whether or not that was the sincere desire of the employees? A. I believe it was.

* * * * * *

[fol. 4909] By Mr. Ingraham:

Q. Will you state who acted as chairman at that meeting?

A. As far as I remember, Miss Todd did.

Q. Did the fact that Miss Todd acted as chairman lead you to believe that the meeting was sponsored by the company? A. No, sir.

Q. Did the fact that Miss Todd acted as chairman lead you to believe it was a Loyalty League meeting?

A. No, sir.

Q. Did the fact that Rose Todd acted as chairman lead you to believe that she was speaking for the management in any way? A. No, sir.

Q. Do you recall what Rose Todd did, or what her work was at the plant?

A. Well, I never did just exactly know what Rose's work was, for she was at this place and that, was matching thread, and she hunted down this dress and hunted down that dress, and matched thread, or something, but I never did know what her general work was, but she was [fol. 4910] just here and yonder in the plant.

Q. Now, did you attend any of the meetings you referred to, the March 18 meeting, the meeting the last of March, and the meeting on April 27, in your capacity as a member of the Loyalty League? A. No, sir.

Q. Are you a member of the Loyalty League?

A. Yes, sir.

Q. When did you join the Loyalty League?

A. When it was formed, I think it was in 1935.

Q. Did you ever consider the Loyalty League a labor organization? A. No, sir.

Q. Did you ever hear of the Loyalty League dealing with the management in respect to rates of pay or wages, or anything like that. A. No, sir, I never did.

Q. What did it do, the Loyalty League?

A. What did the Loyalty League do?

Q. Yes.

A. Well, as near as I can understand it, it was a social affair; they gave parties. We had a number of clubs around through the sections, and they thought it would be nice to just get them all together as a whole, and have our dances and things together, and kind of get [fol. 4911] the employees to know one another, mingle together.

Q. Did anyone connected with the management ask you to join the Loyalty League? A. No, sir.

Q. Was it a voluntary organization?

A. As far as I know.

Q. Did you pay any dues into the Loyalty League?

A. I never did.

Q. Did you ever hear of the Loyalty League having any activities that were sponsored by the company?

A. The Loyalty League?

Q. Yes.

A. No.

Q. I mean by that did the Loyalty League hold a carnival or a dance at the request of the company, or anything like that?

A. Not that I know of. The only way I know the Loyalty League helped was on the Christmas parties; they would help on the Christmas parties, that is the only recollection I have of that.

Q. Did you understand or gain the impression that the Loyalty League promoted the formation of the Donnelly Garment Workers' Union? A. No, sir.

Q. Did you understand or gain the impression that the [fol. 4912] Loyalty League was the forerunner of the Donnelly Garment Workers' Union?

A. No, sir, I never did.

Q. Did you understand or gain any impression that there was any connection between the Loyalty League and the Donnelly Garment Workers' Union? A. No, sir. [fol. 4913] Q. Do you recall whether or not there were meetings of the Donnelly Garment Workers' Union, then

the meeting would be adjourned and they would hold a meeting of the Loyalty League, or anything like that?

A. There never was, to my knowledge.

Q. Was there any pressure or influence of any kind brought to bear on you by the Loyalty League or its officers to cause you to join the Donnelly Garment Workers' Union? A. No, sir.

Q. Did any instructor or thread girl request or order you to join the Loyalty League?

A. To join the Loyalty League?

Q. Yes.

A. No.

Q. Do you recall when Mr. Baty was made production manager of the plant? A. Yes, sir.

Q. Was that during the summer of 1935?

A. I believe it was.

Q. Will you state whether or not you ever considered an instructor your boss? A. No.

Q. Did you ever consider a thread girl your boss?

A. No, sir.

Q. Now, referring back to the time Mr. Baty took over [fol. 4914] the job of production manager, from that time up to the summer of 1939 I will ask you to state whether or not Mr. Baty took up grievances that the employees might have? A. Yes, he did.

Q. What had been the practice before Mr. Baty became production manager, if you recall?

A. Well, we would talk to our instructor, and then we would talk to Mrs. Reeves.

Q. After Mr. Baty took over how did you learn that he handled grievances?

A. Well, I went down on the seventh floor and seen him at his desk there. I made inquiries as to why he was there and they said he had taken charge of the plant and had taken over part of Mrs. Reeves's duties.

Q. Did you inquire what duties he would handle?

A. Well, the way I understood it—

Trial Examiner Batten: Just a moment. The question was, Did you inquire?

Do you mean, did she inquire of Mr. Baty?

Mr. Ingraham: Or anybody.

A. No, I didn't inquire of Mr. Baty.

By Mr. Ingraham:

Q. Did you learn what duties he was taking over and what he would handle?

A. I understood he was to have charge of the plant.

Q. From whom did you get that information?

[fol. 4915] A. Well, I'm not positive whether I went down to the nurse or not, but I believe that is the way I got it. The hospital was on the seventh floor at that time. I know I went down to the seventh floor for something and, as near as I can remember, that is where I talked about it with someone.

Q. When did this occurrence take place, if you recall?

A. About the nurse?

Q. Yes.

A. I think it was the day Mr. Baty's office was put down there, or the day after. I forget when it was when he first came down there.

Q. I will ask you to state whether or not you observed Mr. Baty handling the complaints personally that had formerly been handled by instructors?

A. I seen the girls go talk to him.

By Trial Examiner Batten:

Q. You did not know specifically what those matters were, did you?

A. No.

Q. So you didn't know whether they were matters that had formerly been handled by instructors or not, did you?

A. Well, not what they were talking about.

Q. In other words, unless you knew what they were talking about, you wouldn't know, would you?

A. No.

By Mr. Ingraham:

Q. Well, was it generally understood among the em-

[fol. 4916] ployees at the plant that after Mr. Baty took over, the instructors would not have authority to handle complaints?

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A. That was my understanding of the situation at the plant at that time.

[fol. 4917] By Mr. Ingraham:

Q. I will ask you to state whether or not after Mr. Baty took over the plant there was any change, to your

knowledge, of the authority of instructors, passing on hiring or laying off or disciplining employees.

A. I don't know as the instructors ever had that authority to hire and fire employees.

By Trial Examiner Batten:

Q. You mean by that, not knowing whether they ever had it, you couldn't say whether there was any change? Is that what you mean?

A. Oh, yes, there was a change—

Q. No. My question to you is, not knowing whether the instructors ever had the right to hire and discharge, you couldn't say whether there was any change?

A. I know they never had the right to hire and discharge.

Q. Well, then, can you say whether there was any change when Mr. Baty went in there?

A. Yes.

Q. As to hiring and firing?

A. Well, as to— I don't know, but—

Q. My question to you was, as Mr. Ingraham's question was, whether there was any change as to hiring and firing.

Mr. Langsdale: I think the question was a little more comprehensive than that.

Trial Examiner Batten: It may have been, but that was the point I was concerned about.

[fol. 4918] Mr. Langsdale: Will you read the question?

Trial Examiner Batten: Which question, the original question?

Mr. Langsdale: Yes, asked by Mr. Ingraham.

(Thereupon the last question by Mr. Ingraham was read by the reporter, as follows:

"I will ask you to state whether or not after Mr. Baty took over the plant there was any change, to your knowledge, of the authority of instructors, passing on hiring or laying off or disciplining employees.")

Mr. Langsdale: " . . . passing on . . . "?

The Reporter: Yes.

Mr. Ingraham: Were you through with your answer?

The Witness: Yes.

By Mr. Ingraham:

Q. Will you state whether or not you ever understood that 3 or 4 people, an instructor, Elizabeth Reeves, and several other people, passed on laying off people when Elizabeth Reeves was in charge of managing the plant?

A. No. I didn't know anything about that.

Q. Will you state whether or not prior to the time Mr. Baty became factory manager there was a custom or rule for the operators to take up complaints with their instructors?

A. That was the custom.

Q. Now, after Mr. Baty became factory manager was [fol. 4919] there a change in that custom?

A. Yes, there was.

Q. Where did you go then?

A. To Mr. Baty.

Q. Was Mr. Baty through the plant frequently?

A. Yes, sir.

Q. Did you ever consider a thread girl a boss?

A. No, sir.

Q. Did you ever take up complaints with thread girls?

A. No, sir.

Q. What did a thread girl do, as far as you could observe?

A. Well, she brought the thread to and from your machine.

Q. I will ask you to read respondent's exhibit No. 6, which appears at page 4864 in the Circuit Court record, which is an article that appeared in the Kansas City Times of February 26, 1937, entitled "Reopen Garment Feud," and ask you if you recall reading that article.

. . . . . .

Q. Do you recall reading that article?

A. I do.

Q. Do you recall reading in this article the stafement:

"'Part of the union's campaign directed against the Donnelly Garment Workers' Union will be to send six women to cities and towns where its garments are sold, ad- [fol. 4920] vising retailers and labor organizations,' Perlstein said. 'Miss Palmer will have charge of this squad of fellow-workers.'"

Do you recall reading that?

A. Yes, sir.
Q. What effect, if any, did that statement have on you?
A. Well, it made me rather angry.

* * * * * * *

By Mr. Ingraham:
Q. Why did it make you angry?
A. Because it was affecting my job, or would affect my job.
Q. Do you remember reading this statement:

"'The union claims only 25 members among the Donnelly workers but officials said hundreds of others were related to union members. Within a year we will have it completely organized,' Perlstein said. 'As soon as we have enough members we will call a strike.'"

Do you remember reading that?

A. Yes.
Q. What effect did that have on you?
A. I didn't think they could call a strike.
Q. Did you later learn, when the strike started at the Gernes plant, that the International would call a strike, even though they had no members?

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[fol. 4921] A. Yes, I did.

By Trial Examiner Batten:
Q. You did learn that later; is that right?
A. Yes.

By Mr. Ingraham:
Q. What was the effect of this article, so far as you could observe, on the other employees at the Donnelly plant?
A. Well, the ones that I talked to felt something like I did about it.
Q. Do you recall signing a petition on March 2, 1937, which petition was directed to Mrs. Reed?
A. Yes, sir.

* * * * * * *

[fol. 4922] Q. I will hand you I. L. G. W. U. Exhibit No. 10, appearing in the Circuit Court of Appeals record at 5961, and ask you if you recall signing a petition that had the writing on it that appears in this exhibit at the top of the page.

A. Yes, I signed it.

* * * * * *

By Mr. Ingraham:

Q. I will ask you to state whether or not the article that appeared in the paper on February 26, 1937, influenced you in any way in signing this petition? Do you want to see that article?

A. No, I think I remember; it was Mr. Perlstein's speech?

Q. Yes.

A. Well, to some extent I would say it did.

Q. Who asked you to sign this petition?

A. Well, it was just passed to my machine by the girl next to me.

Q. Do you know whether or not, or did you know who brought the petition to your section?

A. A girl by the name of Mary Sprofera, I think, and another girl, I don't know what her name was.

Q. Did you have any conversation with those girls?

A. No, I never.

[fol. 4923] Q. Did you have any conversation with anybody about this petition before your signed it?

A. No.

Q. Did you sign this petition of your own free will?

A. I did.

Q. Now, in this petition there is a statement, "and refuse to acknowledge any union labor organization." Do you recall reading that in the petition?

A. Yes, sir.

Q. Did you want Mrs. Reed to know that that was your feelings at the time?

A. Well,—you mean any union organization in the plant?

Q. Well, it said here "and refuse to acknowledge any union labor organization." Will you first explain what you thought that meant?

A. I thought that meant an outside union.

Q. And did you want Mrs. Reed to know that fact?

A. Yes, I did.

Q. And did you at that time think the outside union referred to the I. L. G. W. U.?

A. Yes, I did.

Q. Now, in this statement it is further stated, "The undersigned wish to make it known we are perfectly happy and contented with our positions which we hold with this organization," and there is another statement, "We are thankful for the real humanitarian interest extended by [fol. 4924] our employer, Mrs. Reed." Did you want Mrs. Reed to know that?

A. Yes, sir, I did.

Q. Why did you want her to know that?

A. Because I felt that way about it.

Q. Did the attacks being made by the I. L. G. W. U., which charged that the employees were mistreated, have anything to do with you wanting Mrs. Reed to know that?

A. To a certain extent I think it did.

Q. Did anyone representing the management ask you to sign this petition?

A. No, sir.

Q. Did anyone representing the management discuss this petition with you?

A. No, sir.

Q. Did you believe this petition was circulated by the Loyalty League?

A. No, sir.

Q. Did you ever hear that this petition was circulated by the Loyalty League?

A. No, sir, I never did.

Q. I will hand you respondent's exhibit No. 7, which is an article that appeared in the Journal-Post of March 6, 1937, and ask you to read that, please; and that appears at pages 4865, 4866, and '67 of the Circuit Court of Appeals record.

[fol. 4925] Mr. Ingraham: Do you recall reading that article? A. Never until now.

By Mr. Ingraham:

Q. Did you hear Mr. Reed make any speeches in the Presidential campaign of 1936? A. I did not.

Q. Have you heard Mr. Reed make any speeches at all? A. I never did.

Q. Prior to April 27, 1937, did you ever hear that Mr. Reed said many harsh things about Dubinsky in the previous political campaign?

A. I had heard it, just hearsay, people talking.

Q. Did that influence you in any way in voting in favor of joining the Donnelly Garment Workers' Union?

A. I couldn't say that it did.

Q. I will hand you Board's Exhibit 27, and ask you if you will read that article which appears in the Kansas City Times of May 11, 1937? Did you read that article in the paper? A. I think I did.

Q. That was on May 11, 1937?

A. It was along in there sometime.

[fol. 4926] Q. Did anything that Senator Reed said in that article influence you in any way in remaining a member of the Donnelly Garment Workers' Union?

A. No, sir.

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By Mr. Ingraham:

Q. (Continuing) The morning after the article appeared in the paper on the 22nd of April, in connection with Sylvia Hull going to the International convention. Were you at work the following morning?

A. I read the article at work.

Q. Will you state what effect that had on you?

A. It made me rather angry.

* * * * * * *

Mr. Ingraham: Will you state whether or not you heard any employees state that they did not want to work if Sylvia remained there?

A. Well, there was some talk, but just what they stated, I couldn't say, there was quite a bit of talk, and quite a bit of confusion.

* * * * * * *

[fol. 4927] Cross-Examination

Mr. Lane: Mrs. Dean, I'll hand your Board's Exhibit 1 quadruple B, which is an offer of proof by the intervener, Donnelly Garment Workers' Union, appearing at page 3471 of the Circuit Court of Appeals record.

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[fol. 4928] By Mr. Lane: I'll call your attention to the seventh page of the signatures to that exhibit, which is page 3480 of the Circuit Court of Appeals record, and especially to the name on the nineteenth line from the top of the first column, and ask you to state whether or not that is your signature.

A. It is.

Q. Mrs. Dean, state whether or not the meeting of March 18, 1937, was called by the employees on their own initiative. A. Yes, it was.

Q. Do you know of any action or influence or suggestion of the employer brought to bear on you or any other employee, in connection with calling that meeting?

A. No, I do not.

Q. I believe you stated that the meeting had been in session sometime when Mrs. Reed came down to the meeting? A. Yes, sir.

Q. How long was Mrs. Reed there?

A. Oh, I think around ten or fifteen minutes.

* * * * * * *

Mr. Lane: I'll ask you to state whether or not Mrs. Reed said that she would not allow members of the International Ladies' Garment Workers' Union to work in the Donnelly Company.

[fol. 4929] A. She did not.

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By Mr. Lane:

Q. I'll ask you to state whether or not Mrs. Reed said the I. L. G. W. U. would never be allowed in her plant.

A. I never heard her.

Q. Did Mrs. Reed say that she wanted the names of anyone who joined the I. L. G. W. U. reported to her?

A. I never heard her say that.

Q. Did she say anything that in substance expressed any ideas that she wanted anybody who joined the I. L. G. W. U. reported to her?

Mr. Langsdale: I object to this examination, after having shown the witness the offer of proof, which she signed, having her read it, which contains all of those answers,

and then proceeding to examine her from the document which he has just shown her and which she signed and swore to.

Trial Examiner Batten: You may proceed.

A. What was the question?

(Last question was read by the reporter.)

[fol. 4930] A. I never heard anything to that effect.

By Mr. Ingraham:

Q. I'll ask you to state whether or not—strike that.

You were present throughout the meeting, were you?

A. Yes.

Q. Did you hear everything that Mrs. Reed said, in the talk she made? A. I think I did.

Q. What did Mrs. Reed say with respect to whether the employees could, so far as she was concerned, belong or not belong to any labor organization?

A. As far as she was concerned, we could do as we pleased.

Q. What did Mrs. Reed say, if anything, with respect to whether she would permit anybody to force her to compel her employees to join any labor organization?

A. She said she would not permit Mr. Dubinsky to force her employees to join any organization against their will.

Q. Do you recall when it was your sister was injured in the strikes at the Gernes plant?

A. I don't recall the date, no.

Q. What month was it?

A. It was in March, I think it was in March.

Q. Do you recall when it was with reference to the March 18 meeting?

A. It was after the March 18 meeting, I am sure.

[fol. 4931] Q. But it was in the month of March?

A. Yes.

Q. Was your sister a member of the I. L. G. W. U. at the time those strikes began? A. No, sir.

* * * * * * *

By Mr. Lane:

Q. How long was your sister away from work because of injuries received there?

A. I don't just exactly remember, but it was something around four to six weeks, but I don't exactly remember the exact length of time.

Q. Did she go back to work at the Gernes Garment Company? A. Yes.

Q. Did your sister join the I. L. G. W. U.

A. No, sir.

[fol. 4932] Q. Is she still employed at the Gernes Garment Company? A. Yes, sir.

. . . . . .

By Mr. Lane:

Q. Was anything said at the meeting of March 18, with respect to employing buses to haul the employees of the Donnelly Garment Company to and from work?

A. Yes, there was.

[fol. 4933] Q. And was that done any time after March 18? A. Yes.

Q. How soon after?

A. Well, I don't just exactly remember how soon after, because I never rode one.

Q. Well, now, was the disturbances and the disturbances and disorder and violence connected with those strikes at the Gordon, Gernes, and Missouri plants a matter of common and frequent conversation and discussion among the employees at the plant? A. Yes, they were.

Q. Well, how frequent?

A. Well, almost every day we talked over what happened, what we had heard had happened.

Q. I am asking you to state whether you had any fear that those things might happen at the Donnelly plant?

A. Yes, I did.

Q. What was your observation as to whether or not other employees had the same fear?

A. Well, the ones I talked to seemed to feel that way, that something might happen to us.

Q. Did you hear any threats or statements made that the Donnelly plant was next in line?

A. Yes, I heard that.

Q. Where did you hear it?

[fol. 4934] A. Well, I read it in the papers, for one thing.

Q. Well, where else did you hear it?

A. Well, just general talk.

Q. Did you understand from this interview of Mr. Dubinsky in the Kansas City papers of February 26, that the occurrences at Gordon, Gernes, and Missouri were just a part of a general campaign in which the Donnelly plant was to be involved?

A. Well, that is what I took it to be.

Q. Was your sister injured at the time she was endeavoring to get to work in the morning? A. Yes, sir.

Q. And at what place?

A. At 26th and Grand, at the Gernes Garment Company.

Q. As she was trying to enter the building?

A. As she was trying to get into the building.

Q. Now, since the question has been asked here, would you mind stating your sister's name? A. No, I don't.

Q. Will you state it, please? A. Anna Keel.

Q. Anna Keel? A. Anna Keel.

Q. How do you spell that last name?

A. K-e-e-l (Spelling).

Q. What effect, if any, did all of these occurrences [fol. 4935] there have on your action in connection with employing legal counsel at this meeting, or discussing the employment of counsel, at this meeting of March 18?

A. Well, I thought we ought to have some way to protect ourselves against the violence that was going on, and I didn't know how else to do it unless they would get legal advice.

Q. Did you know who Hobart Atherton was in April '37? A. Well, I did know him about the plant.

Q. What did you observe him doing around the plant?

A. Just one thing and another; I didn't have any particulars or take any particular notice of anything he did.

Q. Did you, from your observation of him, have any impression that he was a representative of the management? A. Well, I didn't think so, no.

Q. Did you know Sallie Ormsby? A. Yes.

Q. What was she? A. An operator.

Q. Did you have any impression that Sallie Ormsby in March and April of 1937 was a representative of management? A. No, sir.

Q. Or had any right to speak for management in connection with labor matters? A. No, sir.

Q. Now, for the purpose of refreshing your recollec-
[fol. 4936] tion, I am going to hand you the minutes of the meeting of April 27, 1937, which is Board's exhibit No. 8-1, beginning on page 4395 of the Circuit Court of Appeals record.

* * * * * * *

By Mr. Lane:

Q. What time of day did that meeting occur, Mrs. Dean? A. Around five o'clock, I would say.

Q. Did you attend the meeting in your uniform, or were you in your street clothes?

A. I have forgotten whether I dressed or not.

Q. Did you sometimes go to the Donnelly Garment Workers' Union meetings in uniform?

A. Sometimes I did, and sometimes I changed.

Q. How long did the meeting last?

A. Well, I don't just remember; I think something like an hour, I don't just exactly remember the length of time.

Q. Did your instructor tell you and all of the other members of your section to stay in a body and go to that meeting together, and come back to your section after it was over and resume work, or did anything of that kind occur? A. Not to my knowledge.

Q. Did you vote at that meeting to form the Donnelly Garment Workers' Union?

[fol. 4937] A. I did.

Q. When you cast that vote were you acting voluntarily?

A. Yes, sir.

Q. Were you doing what you wanted to do, of your own free will? A. Yes, sir.

Q. Were you doing what you wanted to do, of your own free will? A. Yes, sir.

Q. Did you have the feeling at that time that you were being intimidated by anything the company had said or done, in taking that action?

A. No.

Q. Did you have the feeling in your mind that you were under any pressure or duress or intimidation of the company, or any of the company officials, to take that action? A. No, sir.

Q. Was it your own personal preference to form your own plant union, rather than to belong to some outside union or not have any outside union at all?

A. Well, it was my preference to have a company union.

Mr. Langsdale: To have what?

A. To have our inside union.

By Mr. Lane:

Q. Do you have any knowledge of any facts or any instance in which the employer or any representative of [fol. 4938] the employer has exerted any pressure or intimidation or coercion or any other influence upon you or upon any other employees to join the Donnelly Garment Workers' Union, or to stay out of any other labor organization? A. No.

Q. Now, as shown by these minutes, at page 4400 of the Circuit Court of Appeals record, a committee of five people was appointed to act as a nominating committee, and those people were Mrs. Riggs, Lyle Jeter, Clyde Crawford, Cordelia Taylor, and Leona Moore. Did you regard any one of those people as being a supervisor of the company, or being entitled to speak for the company in connection with labor matters? A. No, I did not.

Q. Did you know Fred Brown? A. Yes, sir.

Q. What was his job?

A. Well, he worked in the cutting, but I don't know what he done.

Q. Did you regard him as a supervisor, or as a representative of management?

* * * * * * *

[fol. 4939] A. I can't say that I did, no.

By Mr. Lane:

Q. Did you know Mamie Riddle? A. Yes.

Q. What was her position? A. Operator.

Q. Did you regard her as a supervisor or spokesman for the management? A. No, sir, I didn't.

Q. Did you know Anna Richards?

A. No, I didn't know her.

Q. Did you know Marjorie Green?

A. Well, I seen her.

Q. Did you think Marjorie Green was a supervisor of the company, or boss, or representative of management?
A. No, I didn't consider her that.

* * * * * *

By Mr. Lane:
Q. Did you know Jack McConaughey? A. Yes.
Q. What was Mr. McConaughey's position?
[fol. 4940] A. He worked in the cage.
Q. What do you mean by that?
A. Well, he took the machine calls.
Q. Will you explain a little more what you mean?
A. Well, whenever a machine breaks down, we turn in a call and he wrote it down on the board.
Q. Did you think Jack McConaughey was a supervisor of the company? A. No, I didn't.
Q. Or that he was a boss or a person entitled to represent the management in any labor matters?
A. No, I didn't.
Q. Did you know Charlie Casey?
A. No, I do not know him.

* * * * * *

By Mr. Lane:
Q. Have you discussed with anyone the matter of forming your own plant union, prior to this meeting of April 27?
[fol. 4941] A. Well, we had talked something of it.
Q. And by "we" you mean who?
A. The girls right around me in my section.
Q. And when did you talk about it?
A. Oh, at various times.
Q. And you said that you saw in the paper that article of April 12, stating that the Wagner Act had been held constitutional? A. Yes, I did.
Q. Well, with reference to that date, was it before or after?
A. It was after that date, as near as I can remember.

* * * * * *

[fol. 4942] Mr. Lane: Q. Mrs. Dean, I think you stated on direct examination that you read the article appearing in the Kansas City Journal-Post on April 22,

1937, entitled "Donnelly workers will be sent to Union convention" down at the plant? A. Yes.

* * * * * * *

Mr. Lane: Q. Now, in connection with the strikes that were going on at Gordon, Gernes, Missouri, what was your understanding as to whether or not the pickets and those who were conducting the strikes were employees in those plants?

* * * * * * *

[fol. 4943] A. It was my understanding they wasn't employees of those companies.

By Mr. Lane:

Q. Now, do you recall reading in this Journal-Post article of April 22nd, this portion of the article "Perlstein said the Donnelly committee desired one of their number to appear at the convention and asked the interested body to indorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours and improved conditions." Do you remember reading that part of the article? A. Yes, sir, I do.

Q. When you read that article what was your opinion as to whether the strikes mentioned there was to be a strike only of those employees at Donnelly's who were members of the I. L. G. W. U. or whether it was to be a strike conducted against all employees of the Donnelly [fol. 4944] Garment Company.

* * * * * * *

A. It was my opinion it was to be against all the employees.

By Trial Witness Batten:

Q. You mean not against the company but against the employees?

A. Against all of us, to keep us from getting in to work.

Q. My question was, you mean it was against the employees, not against the company, is that what you meant?

A. Well, if it would keep the employees from getting in to work wouldn't that be against the company, against the employees?

Q. I don't know, I was asking you.
A. That is the way I thought it was.

* * * * * *

Trial Examiner Batten: It may stand.

Mr. Lane: Q. What did you take this article to mean as to whether Sylvia Hull was going to represent at this convention, or was undertaking to represent at [fol. 4945] this convention, only those employees who were members of the I. L. G. W. U. or whether she was going to undertake to represent all employees?

* * * * * *

A. My understanding was she was going to represent all of us.
Q. You mean from reading the article?
A. From reading the article.

* * * * * *

[fol. 4946] By Mr. Lane:
Q. Was this article of April 22nd discussed by you with other employees at the Donnelly plant?
A. Yes, we discussed it.
Q. What was your opinion as to what other employees believed this article to mean from what she said to you in discussing the article with you?

* * * * * *

A. Well, the ones I talked to I think felt the same way as I did. She was representing us, the employees.
Q. Mrs. Dean, I will hand you Board's exhibit 8-21 beginning at page 4415 of the Circuit Court of Appeals record, being the minutes of the meeting of Donnelly Garment Workers' Union of May 25, 1937, but before I ask you a question in that connection, did you, after April 27, 1937, attend the meetings of the Donnelly Garment [fol. 4947] Workers' Union regularly? A. Yes, I did.
Q. I will ask you to read those minutes and state whether or not you attended that meeting.

* * * * * *

By Mr. Lane:

Q. Did you attend that meeting? A. I did.

Q. Was there ever a meeting of Donnelly Garment Workers' Union that was followed immediately by a meeting of the Loyalty League?

A. Not to my knowledge.

Q. Was there ever a meeting of the Donnelly Garment Workers' Union preceding immediately by the Loyalty League? A. Not to my knowledge, there wasn't.

Q. Did you, at this meeting of May 25, 1937, of the Donnelly Garment Workers' Union, discuss the matter of raising money for the Loyalty League? A. No.

Q. What time of day did that meeting of May 25th convene?

A. Well, I should say around five, something around there.

Q. Was it after you had concluded your work for the day? A. Yes, sir.

Q. Was there ever a meeting of the Donnelly Garment Workers' Union in May of 1937 that began at 3:45 P. M.? [fol. 4948] A. Not to my knowledge.

Q. I will hand you Board's exhibit No. 18-A, beginning at page 4709 of the Circuit Court of Appeals record, and ask you to read that exhibit.

Mr. Reed: Please state that number again.

Mr. Lane: The page number is 4709. These are the minutes that Mrs. Greenhaw said she kept.

Trial Examiner Batten: As long as the witness has testified there never was such a meeting, you want to examine her about the contents of this, is that it?

Mr. Lane: I want to examine her specifically with the statement in those Greenhaw minutes. There was a discussion about raising money for the Loyalty League.

Trial Examiner Batten: Can't your direct her to that part of it then?

Mr. Lane: Let me look. There may be other questions I want to ask. I think the only way in which I can clearly ask questions is to have the witness read the minutes of both this report of Mrs. Greenhaw of the minutes of that

meeting and also the purported minutes of the Loyalty League which followed.

By Mr. Lane:

Q. Mrs. Dean, at the meeting of the Donnelly Garment Workers' Union which you attended on May 25, 1937, did Rose Todd say "I want to tell you this is going to be two meetings, the first being a meeting of the Donnelly Gar-
[fol. 4949] ment Workers' Union and after that a meeting of the Loyalty League."?

A. I never heard her say that.

Q. Did Hobart Atherton say at that meeting "There seems to be a little misunderstanding as to why the Loyalty League needs this money," and a little later on "I will explain that to you."?

A. I never heard it.

Q. Was there any discussion at this meeting as to raising money for the Loyalty League?

A. No.

Q. Did you ever attend a Loyalty League meeting at any time at which the matters referred to in Board's exhibit 18-D and following, beginning on page 4712, which you just read in which those matters were discussed. Do you recall reading those minutes?

A. Yes.

Q. Did you ever attend a Loyalty League meeting at which those matters were discussed?

Mr. Langsdale: What matters are you referring to?

Mr. Lane: I am referring to Circuit Court of Appeals 4712, purported minutes of Loyalty meeting kept by Miss Greenhaw?

A. No I never.

Mr. Lane: That is all.

By Miss Weyand:

Q. Did you ever attend a Loyalty League meeting at
[fol. 4950] which carnivals were discussed?

A. Well, I don't remember.

Q. Did you have a lot of carnivals?

A. I can't say that we did, no.

Q. Did you ever have one?

A. That a Loyalty League —

Q. (Interrupting) Yes.

A. I don't remember the Loyalty League having one. I remember the Athletic Association having some.

Q. Did the Donnelly Garment Workers' Union have any carnivals?

A. Not that I can remember of.

Q. Did they ever discuss at their meetings having carnivals?

A. No, not that I can remember of.

Q. Did they ever have carnivals and booths at a dance for the Donnelly Garment Workers' Union?

A. Not at any I was at.

Q. Did you attend many of the dances given by Donnelly Garment Workers' Union?

A. I don't think I attended but one.

Q. Do you remember which one that was?

A. No, I can't say.

Q. But you did attend the meetings of the Donnelly Garment Workers' Union regularly did you?

[fol. 4951] A. Yes, I did, through that period.

Q. Did you usually leave before the meeting was over or did you usually stay throughout the meeting?

A. I most generally waited until it was dismissed.

Q. Were you absent from work due to illness or other reasons from the time the Donnelly Garment Workers' Union was formed until July 15, 1939?

A. No.

Q. You worked steadily during that period except for the time you went on your vacation, did you?

A. I think so.

Q. What time of the year did you take your vacation?

A. Well, most generally in the summer.

Q. Do you remember what month you took it in in 1937?

A. Well, I can't say that I do, No.

Q. What is — was it as early as May?

A. I don't remember.

Q. What do you recall that was discussed at the meeting of May 25, 1937?

A. Well, we was talking about our union and we was talking about raising money, or trying to raise money so we could pay our attorney's fees to go ahead.

Q. Now, you are talking about the meeting of May 25, 1937, are you?

A. May 25th.

[fol. 4952] Q. How do you remember that meeting?

A. Well, we had raised the $500 for Mr. Tyler and these other things that come up and we had to have some way to meet them. We had to have counsel, we had to pay him before we could have him.

Q. When you say these other things that came up, what do you refer to?

A. Well, this outside interference and trying to get an injunction and those things.

Q. When you told Mr. Lane that you did not remember any of the things that were discussed in the pages 4712 through 4718 of the record occurring at any meeting, were you speaking of meetings of the Loyalty League or meetings of the Donnelly Garment Workers' Union?

A. Well, I was speaking of the Donnelly Garment Workers' Union.

Q. I wonder if you would look over these minutes and specify the things therein you don't recall occurring in any meeting of the Donnelly Garment Workers', beginning the middle of page 4712, which is Board's exhibit 18-D, and continuing through page 4718, which is Board's exhibit 18-J.

A. Now, this is in a union?

Q. You said you didn't recall those things occurring. Will you notice the things there and state each of the things you did not notice ever occurring at the Donnelly [fol. 4953] Garment Workers' Union?

Mr. Lane: My question was whether or not this witness ever attended a Loyalty League meeting.

Miss Weyand: I have a right to ask this question.

Mr. Lane: You haven't any right to misdirect her attention.

Trial Examiner Batten: Nobody is misdirecting anybody.

Mr. Lane: Miss Weyand asked it, in attempting to repeat my question —

Miss Weyand: (Interrupting) I asked her which she was referring to that she didn't know occurred — she said —

Trial Examiner Batten: (Interrupting) You understand the question?

A. I don't remember Miss Todd saying "That they were several things came up that the Loyalty League will be interested in, mainly about the sweep stakes" I think some of the people understand it and some do not and a great many people have expressed to us a desire."

Mr. Langsdale: Speak a little louder please.

Trial Examiner Batten: Apparently you are reading it to yourself, Mrs. Dean?

A. Yes, sir. I never did hear of any bills that the Loyalty League ever owed. I never heard anything about a committee going to rent the floor of the building for a carnival and the union meeting I never heard anything of [fol. 4954] Loyalty League representatives meeting with the Athletic Association. I don't say by that that they didn't but I never heard of them. I never heard of Miss Todd asking Hobart to explain any indebtedness of the Loyalty League at a union meeting. I never heard him say that we had any indebtedness from any Loyalty League. I never did hear they had a meeting of the Loyalty League representatives and they were authorized to obtain legal counsel and I never heard that they retained Mr. Tyler. I never heard him say that this, the bill to Mr. Tyler, was the only debt the Loyalty League had which had not been paid.

Mr. Langsdale: Mr. Examiner — have you been taking these notes and answers, Mr. Reporter?

The Reporter: Yes, sir.

Mr. Langsdale: You looked like your hands were in your pockets.

A. I don't remember of ever hearing anyone say this, "I think it is very unjust and thoughtless for someone to say I just work here. I don't know anything about those bills. As I said at the last meeting we haven't any secrets

we all work here. It is everybody's business. There is only one person that doesn't work here, that is Mrs. Reed. She owns the business. Don't feel timid about asking questions, we are just one employee talking to another." I never heard that at a union meeting. I never heard Miss Todd say "The union would have to take care of Mr. Tyler's expenses from now on." In fact I never heard any [fol. 4955] of this said in a union meeting, that I have been reading, if that is what you want to know. I can read it clear through from the start but I never heard it in a union meeting.

By Miss Weyand:

Q. I wish you would go on. Would you read out loud the things you didn't hear said at any meeting? Will you continue to do that?

A. I haven't read much I did hear at a union meeting.

Q. I wish you would continue to read out loud what you didn't hear said at any union meeting that appears there so that the reporter can take it down. Do you remember, Mrs. Dean, where you stopped reading out loud?

Mr. Ingraham: I think Miss Weyand wants you to read out loud everything you didn't hear at a union meeting.

A. I don't exactly remember where I stopped.

Mr. Reed: The reporter will find it for you.

(Thereupon last part of witness' testimony, as requested, was read by the reporter.)

Miss Weyand: That is at the bottom of page 4714.

A. "But the Loyalty League, through the officers of the Loyalty League, assumes this responsibility — this retainer free, but as Mr. Atherton said, it was the only organization the employees had and I felt as long as we had that organization we certainly were privileged to go ahead and do something about it. We had to protect ourselves. We are just beginning in this thing so don't let us [fol. 4956] get rusty. If anybody is interested in joining the union you don't want to let me know. If you are interested you had better keep quiet about it. There has never been any force about belonging to the Loyalty League. Anybody is privileged to belong or not belong,

As far as the union is concerned you don't have to belong to that either. I haven't any doubt about a few who have joined the union, I think in time they will give themselves away about that, but we want to be fair and square."

Mr. Lane: Mrs. Dean, will you please read just a little louder, I can't quite hear you?

A. "Lewis moved each member of the Loyalty League pay 50c to take care of any current indebtedness, seconded by Louie James. I think right here in this meeting we will have each representative to accept this money and keep a close check. This is purely voluntary, if you want to do it all right, if you don't want to do it all right. The sweep stakes, or derby as we call it, we will forget it. This meeting right here takes care of the only thing we are concerned about, that is the derby, and that is taken care of. Our dance we talked of in the last meeting, and we will have a picnic one of these days. We have lots of nice times and they haven't cost anything and I am sure you feel real good about it and so do I. There is one more thing. A great many people haven't carried their iden- [fol. 4957] tification cards. Please bring them. They are getting fussy about us getting in down stairs and I don't blame them. I think we better put it to a vote. All in favor of donating 50c for the Loyalty League indebtedness make it known by the usual sign. Carried. I think one of the boys should come up and tell us what has been done at the picnic grounds. I think everybody would like to know. Will some of the boys come up and tell us what shape the picnic grounds are in, whether we have water or not. While he is coming up I will tell you, last night at our meeting of the Chairman I resigned as President of the Loyalty League and we elected a new President, Thelma Huffaker, in section 411. Fred Brown: The picnic grounds aren't in very good shape right now. We have weeds about knee high and two ovens and three tables now but when the time comes to have a picnic I think we will have another oven or two built and I think we will have to get the boys out and cut those weeds, that is the shape it is right now. Miss Todd: Is there any other business to come before the Loyalty League? If not, you can give your 50c to the representative of your department. If you want to give a dime at a time that

is all right. Now, I want to introduce Miss Huffaker, your new President. Miss Huffaker: Girls and fellow workers, this is quite an honor to me, to the best of my ability I will carry on the best I know how. Miss Todd: If there is no other business the meeting is adjourned."

[fol. 4958] A. "Mr. Atherton: I don't want this meeting to break up without giving Miss Todd a big hand for what she has done. (Applause.)"

"Miss Todd: I appreciate it very much and I will try to do my best."

"Meeting adjourned."

By Miss Weyand:

Q. Now, it is your testimony you never heard any of those things which you read occur at any meeting of the Donnelly Garment Workers' Union, is that correct?

A. At any meeting of the Donnelly Garment Workers' Union that I attended.

Q. That was the Donnelly Garment Workers' Union you are speaking of? A. Yes, ma'am.

Trial Examiner Batten: That she attended.

By Miss Weyand:

Q. Do you remember them occurring at any meeting of the Loyalty League that you attended?

A. Well, several of those things had occurred at Loyalty League meetings, yes. We talked over the picnic grounds and Mr. Brown talked about our picnic grounds.

Q. Do you know when those occurred?

A. Well, I don't just remember, but I think it was along in 1935 or 1936: I don't remember the exact time, but it was at a Loyalty League meeting when we were planning a picnic at Mr. Reed's place out on Reed Road. [fol. 4959] Q. That is Senator Reed's place you are referring to? A. Somewhere out on Reed Road.

Q. That was the Loyalty League meeting?

A. That was the Loyalty League meeting.

Q. Now, when you read the part about paying the retainer fee, and stated that didn't occur at the Donnelly Garment Workers' Union meeting, you meant just in the words there? A. Just that one meeting.

Q. Will you explain what you meant? I don't think I have it clear.

A. As near as I can recall, the meeting of May 25th was the one you were talking about, wasn't it?

Q. Yes.

A. Well, I don't remember of that ever being discussed at the May 25 meeting.

Q. You read certain parts from here, and you said you didn't recall them occurring at any meeting of the Donnelly Garment Workers' Union.

Trial Examiner Batten: Just a minute, that is the difficulty of your question, Miss Weyand. It isn't clear to begin with. I am sure that this witness felt most of the time that what she was saying was that she didn't hear these things mentioned at the May 25 meeting.

Miss Weyand: That is correct.

Trial Examiner Batten: Now you say "not at any union meeting."

[fol. 4960] By Miss Weyand:

Q. When you read them over, you meant at any union meeting, or at the May 25 meeting?

A. At the May 25 meeting or any other union meeting.

Q. That is what I thought you testified to.

Trial Examiner Batten: Well, irrespective of what she testified to, my point was the question in the first instance was not clear, because it wasn't clear to me, but as long as it was clear to the witness, that is sufficient.

Miss Weyand: The record will show I emphasized very clearly what I wanted. I wanted to get her statement out, because she talked in there about the Loyalty League paying a fee.

Trial Examiner Batten: Let's proceed.

Miss Weyand: I wanted to ask her when she made this answer, was it only at a Loyalty League meeting, or at a union meeting? A. I don't get what you mean.

By Miss Weyand:

Q. Look at page 4715. Do you remember what you read off of that page out loud, as not having remembered occurring at any meeting of the Donnelly Garment Workers Union?

A. Of the Loyalty League, about paying him a retainer fee for $500.

Q. Now, you skipped certain things on that page. Do you remember which things you skipped?

A. "I certainly can assure you if we get into court [fol. 4961] with this, as we very likely will, we will probably have to have more money during the year."

Q. And you heard that made at a meeting of the Donnelly Garment Workers' Union, sometime or other?

A. Yes, that was talked of at our meeting sometime or other, but I wouldn't say what meeting.

Q. That is correct. Now, what else was there on there that you skipped?

A. I think this was one of them, "One of these days we are going to work for a closed shop and I think we are going to get it."

Q. And you had heard that discussed at some meeting of the Donnelly Garment Workers' Union?

A. Prior to May 25?

Q. Any time. A. Yes, we had talked of that.

Q. Do you know at what meeting you had talked of that?

A. Well, we talked of it at several meetings, that we asked for a closed shop before our contract was turned in, I believe that is the way it was.

Q. That is your recollection?

A. That is my recollection on it.

Q. Did you attend very many meetings of the Loyalty League? A. Well, I did some.

Q. Do you remember any meeting?

[fol. 4962] A. Not any special one, I couldn't say that I do any special Loyalty League meeting. I attended several, though, but I don't bring any special one to my mind.

Q. When was the first Loyalty League meeting, can you recall?

A. Well, the first Loyalty League meeting I recall was in 1935, I think, when they joined the organization down there to the plant; the Loyalty League is a social affair—we joined our clubs together, each section had a club.

Mr. Lane: Mr. Examiner, may it be understood the intervener, Donnelly Garment Workers' Union, has a continuing objection to inquiring into matters around 1935

or thereabouts? Your ruling was given when the intervener was going into matters except those within a reasonable time prior to April 27, 1937.

Trial Examiner Batten: Well, of course, this question has nothing to do with my ruling, but I'll grant you the continuing objection.

Mr. Lane: Well, she is inquiring of something that occurred in 1935.

Trial Examiner Batten: Yes, concerning the Loyalty League, Mr. Lane.

Mr. Ingraham: It is understood the respondent still maintains its objection to any matters prior to July 5, 1935.

Trial Examiner Batten: I didn't understand it, unless you make it.

Mr. Ingraham: Well, I made an objection at the first [fol. 4963] hearing as to all matters that occurred prior to July 5, 1935.

Trial Examiner Batten: You mean your original objection in the first hearing?

Mr. Ingraham: That is correct.

Trial Examiner Batten: Well, of course, the objection you made at that time, I assume, continues through the entire hearing.

Mr. Ingraham: Well, that will be my understanding of it.

* * * * * *

[fol. 4964] By Miss Weyand:

Q. Did the Loyalty League have representatives in each section? A. Yes, they did.

Q. How were those chosen?

A. Well, I think each section chose their own representative, as near as I can remember.

Q. Did each section hold meetings, at which they chose the representative?

[fol. 4965] A. Well, just around through our section we did.

Q. Did you pass a paper around with the name of every girl on it?

A. We would pass a box around with the name in it, and find out if they wanted that name, and whichever name got the most votes, was the representative.

Q. That was passed around at your machines?

A. At our machines.

Q. Did the Donnelly Garment Workers' Union have representatives in each section? A. Yes, we did.

. . . . . .

Q. How are they chosen?

A. Well, we chose them in the union meetings,—I'll retract that. I don't believe we had a union representative in each section; we had one in the section I was in, but in the other sections I don't know for sure.

. . . . . .

By Miss Weyand:

Q. Did the Donnelly Garment Workers' Union have a pin? A. Yes.

. . . . . .

[fol. 4966] By Miss Weyand:

Q. I hand you the minutes of the meeting of the Donnelly Garment Workers' Union for Wednesday, July 21, 1937, being Board's exhibit No. 8-32, which appears at page 4426 of the Circuit Court of Appeals record—

. . . . . .

[fol. 4967] Miss Weyand: (Continuing) And ask you to examine it sufficiently to tell me whether or not you attended that meeting? I might indicate to the witness, to save time, if she has any definite recollection if she was there or not, I only intended to ask her about a matter on the first page.

A. I heard part of this, but I don't remember hearing all of this. It may have been; I couldn't say it was or it was not.

By Trial Examiner Batten:

Well, do you recall being at that meeting, Mrs. Dean?

A. Yes, when some of these things were discussed I recall that meeting.

By Miss Weyand:

Q. You think you attended that meeting?

A. I believe I did.

Q. The thing I was specifically interested in appears on the first page of the minutes there with reference to buying the pins, "If anyone has not paid for their pins, please get in touch with your representative in your department, and take care of this as soon as possible." Could you tell me what representative Rose Todd referred to there?

A. I judge the representative on our floor there that represented our piece work department, our girl that represented the kind of work we did.

[fol. 4968] Q. How many of those were there in the plant?

A. I don't exactly remember. I know we had one in our section that represented us, but I don't remember about the others.

Q. Who was the person you referred to as representing the under armers? A. Mamie Riddle.

Q. And you don't remember who else represented others than the under armers?

A. I don't know that I do, I may have heard it, but I don't remember.

Q. You stated that following the meeting the latter part of March, 1937, a girl was appointed in your section to take up the 50c, is that correct? A. Well, yes.

Q. Do you remember who was appointed?

A. I can't say, no.

Q. Do you remember how she was appointed?

A. Well, I think we just, amongst ourselves, just decided to give it to that girl. There was no ballot taken, we just asked her to take the money.

Q. Do you remember when you got together and asked her to take the money?

A. I think it was after the union meeting that some of our girls were talking about it, I don't remember exactly how it was.

[fol. 4969] Q. And you think it was the same afternoon or evening the union meeting was held?

A. I kind of believe it was, I am not sure about that.

By Miss Weyand:

Q. Do you have any recollection one way or the other, whether it occurred after the meeting or the next day?

A. I can't say. It must have been after the meeting, because the next morning I went to the girl's machine and gave her my money.

Q. So you knew before work started the next morning and you went to the girl and gave her your money?

A. I don't know whether I knew it in the morning or the night before, when I got home. I don't remember.

Q. Was your section all together after the meeting?

A. I don't believe so.

Q. Have you any way of explaining how you would have a recollection that the girls in your section might have gotten together after the meeting and decided on a girl?

A. Well, as we get off the elevator, we would have to wait to get out the door; we might have been together, some of us, talking, some of us. It might have been in our locker rooms where we change our clothes; I can't say where we talked.

[fol. 4970] Q. Would all the girls in your section have been together on those occasions?

A. I can't say, I don't know; I don't remember when it was that we chose the girl.

Q. But you did know before you went to work the next morning who the girl was.

A. Before I went to my machine.

Q. And you paid her the 50c? A. Yes, I did.

Q. Did she give you a receipt?

A. I can't say if she did or didn't, I don't remember?

Q. Do you usually keep all those receipts?

A. I do not.

Q. You do not? A. I don't.

Q. What section did you work in in March and April of 1937? A. 415.

Q. That is on the eighth floor? A. Eighth floor.

Q. And who was the instructor of that floor at that time? A. I don't just remember.

Q. What instructors did you have along about the spring of 1937?

A. Well, Lola Skeens was in there for a while, and Efta Dorsey was there for a while, and I don't just remember; Rose Henricks had that section for a while, but [fol. 4971] whether in that period or not, I couldn't say.

Q. Were you in the same section with Sarah Saucke at that time? A. No.

Q. I notice your name appears about 13 names before hers on the Loyalty petition. I wonder if you would look at this Loyalty petition, at page 5965—

Mr. Reed: (Interrupting). For my information are you referring to the Loyalty League, or that paper that was sent to Mrs. Reed?

Miss Weyand: The Loyalty petition, the paper that was taken out to Mrs. Reed, the photographs put in the paper of her receiving it in the garden.

A. It is March 2.

By Miss Weyand:

Q. Yes, and ask you if you can identify this as your signature? Now, reporter's stamp is right over yours; I have another photostat which doesn't have that stamp over it, which also appears in the record at page 5379, which you might find it easier to identify your signature from. It is in the second column, the one, two, three, four, five, six, seven, eight, ninth signature from the bottom. A. Yes, that is my signature.

Q. You may note it is the same on both pages, but the reporter's stamp is over it on page 5965. And that [fol. 4972] is your signature? A. Yes.

Q. Can you, by looking at the names, immediately preceding and following yours, tell us which of those girls worked in your section at that time?

A. Yes, Kathryn Chandler is on the end; I worked next to her. Then Jennie Brown worked next to her, and Mary Van Gordon and Lena Richardson.

Mr. Reed: I can't hear you at all.

A. Those (indicating) were the hemmers; I didn't pay much attention to the hemmers.

Mr. Reed: I can't hear you at all.

A. Kathryn Chandler worked on the end and I worked next. Then Jennie Brown, then Mary Van Gordon, Lena Richardson, then Opal Stufflebean and Zella Fisher.

By Miss Weyand:

Q. And those were all in your section?

A. On that side of the row.

Q. Were any of those in the next column in your section? A. They weren't in my section.

Q. Now, are there any names preceding yours, which you read in that list, which were in your section?

A. I believe the girls over on the other row back of me, in my section—I didn't even know their names.

Q. Those are the girls whose names appear above yours?

A. I know from this name (indicating) on down to [fol. 4973] here (indicating).

Q. You mean—

A. (Interrupting) I am referring from Kathryn Chandler to Zella Fisher, those girls worked on my side of the row, but about the others, I couldn't say, I wouldn't know them.

Q. When Mary Sprofera brought this to your section, did she tell you to read it? A. She never gave it to me.

Q. Who gave it to you? A. Kathryn Chandler.

Q. And did you hear anyone tell you to read it?

A. No.

Q. Did you read it? A. I did.

Q. How much did you read of this page, before you signed it?

A. Well, I think I read the headlines of it.

Q. Were there signatures already on it when it was handed to you? A. Yes, there was.

Q. Did you read the signatures on it?

A. No, I didn't.

Q. You didn't look at them at all? A. No, I didn't.

Q. Would you be able to identify some of these signatures for me? The first column on the same page, you [fol. 4974] will notice the signature of Carrie Abrams.—Did you know who she was at that time?

A. Yes, I knew Carrie.

Q. Do you know her very well?

A. At that time I knew her well enough to pass the [fol. 4975] time of day with her, was all, I wasn't any personal friend of hers, I knew her whenever I spoke to her.

* * * * * *

[fol. 4976] Q. Did you know Bessie Neimoyer, whose name appears also in the first column?

A. Neimoyer—well, I can't place her.

Q. You don't know whether there is a thread girl or instructor at the Donnelly Garment Company by the name of Bessie Neimoyer?

A. There is a Miss Neimoyer there, but I don't know what her first name is.

* * * * * *

[fol. 4977] By Miss Weyand:

Q. I notice the name "Helen Little", one, two, three, four, five, six, names above yours in the second column on page 5379 of the record, 5965 of the record, being a loyalty petition. Do you know who Helen Little is?

A. Well, I have seen her down there, I know her when I see her.

Q. Is she an operator on the eighth floor or was she at that time? A. No, she is not an operator.

Q. Do you know what her position with the company was?

A. She had something to do with the notions, but what it was I don't know.

* * * * * *

[fol. 4978] Q. Are higher-priced dresses usually made on the eighth floor? A. Yes.

* * * * * *

[fol. 4979] Mr. Ingraham: I object to anything that requires an answer that refers to matters after July, 1939.

Trial Examiner Batten: Sustained.

Miss Weyand: We are having eighth floor operators here. I would like to show the difference from the general operators. I think the interest of the witness is

important in the case. We have had all eighth floor operators with possibly one exception. I think I can inquire as to that. I will, however, if the Trial Examiner instructs, limit it to the July 15, 1939. Did you have any understanding prior to July 15, 1939, that girls working on higher priced dresses and located on the eighth floor generally had a higher minimum guarantee than other operators? A. Yes.

Q. Was your sister Anna Keel an operator at the Gernes plant in March or April, 1937? A. No.

Q. Was she employed by Gernes' as a supervisory employee in March or April of 1937?

A. Just what her position was called I don't know.

Q. Do you know what she did at Gernes?

[fol. 4980] A. She had charge of the section on inspecting.

Q. Did the Gernes plant sign a closed-shop contract with the International Ladies' Garment Workers' Union, do you know? A. I don't know anything about that.

Q. Do you know your sister never joined the International Ladies Garment Workers' Union, is that correct?

A. Well, she said she didn't.

* * * * * *

(Thereupon, the question was read by the reporter.)

By Miss Weyand:

Q. Is that the sister you were referring to when you said one of your sisters was off four to six weeks from an injury sustained at the Gernes' plant?

A. Which one?

Q. Anna Keel. A. Yes.

[fol. 4981] Q. Prior to July 15, 1939, could you give me any estimate of how long a section worked on a given style on an average before changing to another style?

A. No, I couldn't.

Q. What is the longest period you recall prior to July 15, 1939, that a section worked on a given style?

A. Well, I don't know much about over in the sections but where I worked we handled all the styles.

Q. All the styles?

A. Most all of them, on that floor. I was under-arming.

Q. You were not in a section that made a whole dress but the section that did under-arming?

A. Hemming in that section and under-arming.

Q. I believe you stated you also did pinking? A. Yes.

Q. You used a special machine for pinking and under-arming? A. Yes.

. . . . . .

[fol. 4983] Q. I hand you Board's Exhibit No. 2 which appears at page 4671 of the Circuit Court of Appeals record and ask you to direct your attention to page 4362 and 4363 thereof, particularly the article entitled "Nine Hundred Join Loyalty League". I will ask you if you ever read that before?

Mr. Ingraham: May the Respondent have a continuing objection to this exhibit?

Trial Examiner Batten: Yes.

Mr. Lane: Intervener desires also to object and to have [fol. 4984] a continuing objection. It is outside of the scope of the examination permitted us.

. . . . . .

[fol. 4988] Cross Examination.

By Mr. Langsdale:

Q. Mrs. Dean, were you here when Mrs. Reed testified?

A. No, I wasn't.

Q. Were you here when Mrs. Holloway testified?

A. Part of her testimony.

Q. What did you say? A. Part of it.

Q. You were here when Mrs. Warth testified?

A. Yes.

Q. You were here when Mrs. Saucke testified?

A. I never heard all of it.

Q. You were here part of it? A. Part of it.

Q. You were here when Mrs. Barnes testified?

A. Yes.

Q. Did you have chairs at the March 19th meeting?

A. I don't remember whether we did or not, I don't know.

Q. You don't know whether you stood up or had chairs?

A. It seems to me there was a few chairs, I don't think there was enough, I don't exactly remember whether there was enough or whether there was all chairs.

Q. Did you ever meet in that room before March 18th, any mass meeting? A. I think we did.

[fol. 4989] Q. Did you have chairs?

A. For the Loyalty League meeting we had down there?

Q. Do you know how the chairs were provided?

A. No, I do not.

Q. Do you know who ordered them? A. I do not.

Q. Or from what company they were ordered?

A. I do not.

Q. You did have a Loyalty League meeting in that room, did you? A. I think we did.

Q. You have no recollection as to whether there were chairs in the March 18th meeting?

A. I believe there were some, I can't say positive now because I don't just exactly remember.

Q. What time of day did you first learn that they were to have a meeting on March 18th?

A. I can't say exactly what time of the day it was.

Q. How long before the meeting?

A. I couldn't say that either.

Q. Well, was it just a few minutes before the meeting?

A. I don't know that either.

Q. You don't know the name of the person who told you you were to have a meeting?

A. I think it was the girls in the section talking around,

[fol. 4990] I don't remember how I got word of it.

Q. Was there an I. D. M. passed around?

A. I never seen any.

Q. Well, do you know whether there was one or not?

A. I never seen any.

Q. Well, you have gone to meetings that were announced by an I. D. M. being passed around, have you not? A. For what?

Q. For the Donnelly Garment Company Workers' Union meetings, for instance?

A. If our Union wanted to have a meeting we announced it sometimes that way.

. . . . . .

[fol. 4991] Q. At any rate, you did have these notices with the letters I. D. M. on them passed around at times?

A. I didn't say the I. D. M. was on the notice that was passed around of the union meeting.

Q. Do you know whether they were or not?

A. I don't think they were.

Q. Have you any recollection one way or another?

A. Well, the girls had a habit of going up and getting the paper when they wanted it.

Q. I am not asking that, it may be that is true, have you any recollection as to whether or not the piece of paper known as an "I. D. M." was passed around announcing this meeting of March 18th?

A. Not to my knowledge, no.

Q. What about the meeting of April 27th?

A. I can't remember anything being passed around about the meeting.

Q. You do remember that some of the union meetings were called by passing around I. D. M. notices?

A. I didn't say I. D. M. notices.

* * * * * * *

[fol. 4993] Q. Your sister, Anna Keel, is an instructor in Gernes' is she not?

A. What her position is called in Gernes' I don't know.

Q. Did you ever hear her say it?

A. I never asked her.

Q. Would she tell you without her asking?

A. No, she never said.

Q. Did you ask her about this time she got hurt in the strike?

[fol. 4994] A. I heard she had charge of the inspecting department but was called off there; I don't know.

Q. Did you hear her say she was an instructor?

A. I didn't get that.

Q. Don't you know she is an instructor?

A. I don't know yet.

Q. Don't you know that is the reason she doesn't belong to the I. L. G. W. U., because they don't belong in the Gernes' place. A. I did hear that, yes.

Q. You have another sister there who does belong to the I. L. G. W. U.?

A. I have one there, yes.

Q. What is her name? A. Do I have to tell that?

Q. Of course, you are not telling us any secrets, I want it in the record? What is her name?

By Trial Examiner Batten:

Q. Well, is there any reason why you shouldn't tell us?

A. She belongs to the union.

Q. Well, I say, is there any reason why you shouldn't tell us. A. Not that I know of.

Q. Tell us. A. Ethel McPherson.

[fol. 4995] By Mr. Langsdale:

Q. Is she a married woman? A. Yes, sir.

Q. And so is Mrs. Keel? A. Yes, sir.

Q. And so are you? A. Yes.

Q. What does your sister, Mrs. McPherson, do at Gernes' place?

A. I couldn't tell you her duties, I don't know them.

Q. Is she an operator?

A. I couldn't tell you, I don't know.

* * * * * *

[fol. 4999] Q. Did Miss Todd say this at the meeting at which the fifty cents was voted: "You can give your fifty cents to the representative in your department. If you want to give a dime at a time that is all right."

A. I didn't remember ever hearing her say that.

Q. You didn't hear her say "give the fifty cents to the representative in your department"?

A. What representative?

[fol. 5000] Q. Well, the representative? A. Of what?

Q. I am asking if she said "give it to the representative"?

A. Give it to some girl who we picked to take the money?

Q. Did she tell you—did you understand her to mean to give it to the Loyalty League representative?

A. No, I didn't.

Q. The fifty cents? A. No, I didn't.

* * * * * *

[fol. 5003] By Mr. Langsdale:

Q. Now, you read the article or looked at it that was published in the Kansas City Times or Star of April 12, 1937, containing the account of the Supreme Court of the United States' ruling that the Wagner Act was constitu-

[fol. 5004] tional, did you not? A. Yes, I think so.

Q. Now, I believe you stated that from reading that article you concluded you had a right to form a plant union? A. I didn't say a plant union.

Q. Well, a union?

A. A union, that was my impression, I didn't have no legal—

Q. From reading the article in the April 12th paper?

A. Well, from reading the article on the Wagner Act, that was my impression, that if we wanted one we could. I didn't know for sure.

Q. Can you tell me now what you read in that paper to cause you to conclude that you could form a union?

A. I don't know that I can right off hand.

Q. Could you look at the article again and tell us, you think? A. I might.

* * * * * * *

[fol. 5005] By Mr. Langsdale:

Q. I don't want you to take the time to read this whole article. If you can glance at it and see what there is there that told you, as a layman I might say, not as a lawyer, what there was about the article that told you you could form a union—

A. Why, here is one paragraph that I think—

Q. (Interrupting): What?

A. Employees have a right to organize and select their representatives for lawful purposes as the respondent steel company has to organize and select its own officers and agents.

Q. Now, is that what caused you to think—

A. (Interrupting) I wouldn't say that was all of it, but I think that was a part of it.

Q. That that gave you the right to form a union?

A. I wasn't real sure.

Q. Didn't you know that long before the Wagner Act, you had a right to form a union of your own in that plant? A. Well, I never had thought about it.

Q. Now, let me ask you if this is not what you got from the Wagner Act, not from your reading it, but from what others told you, that for the first time in the law of the [fol. 5006] United States, if you had a plant union or a union within your shop and got a closed shop agreement, that every woman had to belong to it or could be fired?

A. You mean that somebody told me that?
Q. Yes. A. I never heard anybody.
Q. You never heard of a closed shop agreement?
A. Not up to that time, no.

* * * * * *

[fol. 5007] By Mr. Langsdale:
Q. Did you know or did you learn that at that time, if you should form a plant union, get a closed shop agreement, that everyone would have to belong to that union?
A. You mean at the time I read that Act?
Q. Yes. A. April 12?
Q. Yes.
A. Well, I couldn't say that I remember just when.
Q. Did you learn it at the time you voted on the 27th of April to form that plant union, that when you got a closed shop you could keep the I. L. G. W. U. out by firing everybody who joined it?
A. Well, I understood if we had a closed shop that we could keep other unions out, but I didn't hear anything about firing anybody.
Q. Well, of course—did you know that your contract provides that anyone who belongs to any other union must be fired?

* * * * * *

[fol. 5008] Trial Examiner Batten: Well, of course, I don't see it is particularly material to go any further into this matter.

Mr. Langsdale: I am trying to find out what this article of April 12 really told her.

Trial Examiner Batten: Well, is that your only purpose in these questions?

Mr. Langsdale: I am trying—

Trial Examiner Batten (Interrupting): My question to you is, is that the only purpose of these questions to the witness, to find out what she found out about the Wagner Act from reading this article?

Mr. Langsdale: Yes, that is it.

Trial Examiner Batten: Well, if that is your only purpose, you may proceed.

Mr. Reed: I submit she has already answered that direct question, which was asked, what, in the article, called her attention to where there was anything that had to do with the Wagner Act that would show her that they could organize under the Wagner Act. She took the article and read from the article; and she was directed to answer that question.

Mr. Langsdale: That is what you think is a direct answer.

Trial Examiner Batten: You may proceed, Mr. Langsdale.

By Mr. Langsdale:

Q. But I am now asking another question. Did you learn from the Wagner Act that forming a plant union [fol. 5009] and getting a closed shop you could keep the I. L. G. W. U. out by refusing to let any employee belong to it?

A. You mean did I learn that by reading the Wagner Act?

Q. Yes.

A. Well, I can't say that I did.

Q. Or reading anything about the Wagner Act?

A. I can't say whether—

Q. (Interrupting): Well,—

Trial Examiner Batten (Interrupting): Just a minute, Mr. Langsdale; permit the witness to finish.

Q. (By Mr. Langsdale): Did you have anything else to say?

Trial Examiner Batten: Just a moment. Go back to that question and read it, and the answer thus far.

(Thereupon the question requested and answer thus far, were read by the reporter, as follows:

"Q. Or reading anything about the Wagner Act?

"A. I can't say whether—")

Trial Examiner Batten: Now, Mrs. Dean, will you finish your answer, please?

A. I can't say whether I got my impression all from that, because I didn't understand it all, but I did get the impression that we could have a company union and or-

ganization of our own, if we wanted it, but I didn't know how to go about it.

Mr. Ingraham: I called the plant union a company [fol. 5010] union; I didn't think there was anything wrong with it.

Mr. Lane: I want to clear my position—

Trial Examiner Batten (Interrupting): What position?

Mr. Lane: In connection with the objection I made a while ago.

Trial Examiner Batten: Mr. Lane, I ruled on that.

Mr. Lane: I am making it again in connection with this question just asked.

Trial Examiner Batten: Of course, if the question is asked and answered, then an objection is not proper at this time, is it?

Mr. Lane: You have been interrogating the witness yourself, so I didn't have an opportunity to make the objection. Now, my objection is, to the question Mr. Langsdale asked, the last portion of it, with respect to keeping—to preventing any employees from joining the I. L. G. W. U.—now, that is not a provision of the Wagner Act, and I submit counsel should not be permitted to ask that question, that if they get a closed shop they have a right to require all the employees to belong to that union, and the Wagner Act doesn't provide that every employee shall stay out of the I. L. G. W. U.

Mr. Langsdale: Well, I say, Mr. Lane ought to go and read the Wagner Act, and read some of the decisions.

Trial Examiner Batten: Well, if that is an objection, it is overruled, because the question has been put and the [fol. 5011] answer is in the record. So, you proceed, Mr. Langsdale.

Mr. Langsdale: Q. Mrs. Dean, there was a meeting of the Donnelly Garment Workers' Union on May 11, 1937; as far as the record shows that was the first meeting after the organization meeting, April 27. Did you attend that meeting?

A. Well, I attended all of those union meetings, along at that time.

. . . . . .

Mr. Langsdale: Q. Let me ask you if you heard this question asked of Rose Todd, and this answer being given by her: "Question: If an employee comes in are you going to set a time before they have to become a member of the union?

"Answer: Anybody coming to work for us will join the union immediately; if there is any doubt in their minds about whether they want to join our union then there is some doubt in their mind as to whether they want to work here." Did you hear that question and answer?

A. I don't remember anything like that. I don't remember reading much about that.

[fol. 5012] Q. Do you remember the substance of that answer at that meeting? A. No, I can't say that I do.

Q. Let me let you look at the photostatic copy of this meeting, Mrs. Dean—which starts away over here—you don't have to read any more of it than you think you need. Here is the page upon which it occurs, and here is the question and answer (indicating).

A. I don't remember anything about that, much. This meeting was when?

Q. May 11, that is the first meeting after the organization meeting in 1937.

A. I can't say that I remember that.

Q. You did go to the meeting, did you?

A. Well, I went to meetings of the union along then, but I can't exactly remember these statements made here.

Q. Well, did you ever hear Rose Todd say at any place or time that anyone who wants to work for the Donnelly Company would join the union immediately?

A. I can't say that I did, no.

Q. Do you know of any authority given to her by anyone connected with the management, to tell the people at this meeting that "anybody coming to work for us will join the union immediately"? A. No, I don't.

[fol. 5013] Q. "If there is any doubt in their minds about whether or not they want to join our union then there is some doubt as to whether or not they want to work here"?

A. I don't remember anything of that sort.

Q. You never heard her say that?

A. I couldn't say that I did.

Q. Did you ever hear that anyone had given her authority to say that?

A. No, I never. I thought our contract gave them a month's time to work there, that has always been my understanding.

* * * * * * *

By Mr. Langsdale:

Q. I don't just understand that, Mrs. Dean; that contract gave who?

A. Anybody who came to work, a month's time before they made up their mind to become one of us.

Q. I am talking about May 11, 1937. You didn't have any contract then, Mrs. Dean, not until May 27.

A. I don't remember about that meeting.

Q. Do you remember it was May 27 when you got your contract?

A. I know it was along in there sometime, but I can't say the exact date.

Q. Well, don't you know it was after May 11?

A. I couldn't say that.

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[fol. 5019] By Mr. Langsdale:

Q. In answer to one of Mr. Ingraham's questions, or Mr. Lane's question, I forget which one, that it was your [fol. 5020] understanding that Rose Todd was not representing the employer? A. Was not what?

Q. Representing the management or was not a supervisor at any time prior to July 15, 1939?

A. Well, to my knowledge, not that I ever know of. I don't know exactly what her duties were.

Q. What did you base your understanding on? Just that she was not a representative of the management?

A. Well, I seen her around over the company. When I first knew her she worked, I believe, in the button section, I believe that was. I am not sure on a machine. After that I seen her around over the factory. One place match-

ing threads and matching material and hunting dresses up out of bundles that was lost. That is all I ever seen her doing.

Q. So it is what you knew she was doing caused you to arrive at the understanding she was not a representative of the management?

A. Well, I wouldn't call her that.

Q. Well, at any rate, it is what you knew she was doing that caused you to have that understanding, was it? A. Yes.

Q. Now, I believe you stated yesterday that you didn't know at that meeting of May 11, 1937, of the Donnelly Garment Workers' Union, she had said anyone coming to [fol. 5021] work for us would join the union immediately?

A. I don't remember hearing Rose ever say that. I don't say she didn't say it.

* * * * * *

By Mr. Langsdale:

Q. (Interrupting) Did you know Rose Todd had gone to St. Joseph, Missouri, on May 13, 1937, to organize into the Donnelly Garment Workers' Union the employees [fol. 5022] of the Donnelly Garment Company in that plant? A. No, I did not.

Q. Then, did you ever hear that at that meeting, on May 13, 1937, Rose Todd had said that to those assembled employees of the Donnelly Garment Company "The question was asked how much time will be allowed before definitely stating whether or not you will join the union. I think if you are interested in working for the company you will be interested enough to join the plant union."

Mr. Ingraham: Just a minute. Will you read the question? I object to this. She didn't know Rose had gone to St. Joe and obviously couldn't have known anything Rose stated. It calls for hearsay testimony.

Trial Examiner Batten: Of course, this is with reference to a meeting of May 11th, is it?

Mr. Ingraham: No, the 13th, isn't it?

Mr. Langsdale: It is on May 13th, 1937, in St. Joseph, Missouri.

Trial Examiner Batten: Well, of course, the witness said she didn't even know Rose Todd went there. How could she possibly know what Rose Todd said in St. Joe?

Mr. Langsdale: If the Examiner please, it is perfectly harmonious with my question: "When you arrived at your conclusion that Rose Todd was not a representative of the management, did you know this: that this, that and the other—"which to my mind indicates that she was a rep- [fol. 5023] resentative of the management? Now, when she comes forward and says she didn't know she was a representative of the management I think I have a right to inquire whether she knew she did this, that or the other. If she had set out here to form this union I think I would have a right to ask her, if in coming to her own conclusion that Rose Todd was not a representative of the management. If she knew that. What I want to show—that the information is sufficient to come to a conclusion as to whether she was there as a representative of the management or not.

Trial Examiner Batten: Well of course, it is obvious that it didn't include that fact because she didn't even know she went to St. Joseph.

Mr. Langsdale: I know it is. I think it is proper for me to call attention to it when I am interrogating her about what information she had to form any conclusion as to whether or not Rose Todd was a member of it.

Trial Examiner Batten: Well, it might be, Mr. Langsdale, if there were a preliminary question to indicate whether or not the witness knew, anything that Rose Todd said or did in St. Joseph but having said that she didn't even know she went there it doesn't seem to me it is entirely proper.

Mr. Langsdale: I think I could probably avoid the difficulty you seem to think that I am in my not saying any- [fol. 5024] thing about her, asking her whether she knew about the St. Joseph meeting or not and merely asking if she knew she said this in St. Joseph.

Trial Examiner Batten: That is a matter, I presume, for you to determine how you shall ask your questions.

Mr. Langsdale: That shows the way I am asking it is all right. Of course I will abide by your ruling.

Trial Examiner Batten: I have indicated I don't think it is.

Mr. Langsdale: I think when this witness said Rose Todd was not a representative of the management I have a right to call attention—her attention, to things that Rose Todd did that would reasonably point to the fact that she was a representative of the management. That is my purpose.

Trial Examiner Batten: You may proceed.

Mr. Langsdale: Will you read the last question?

Trial Examiner Batten: I am not going to permit the witness to answer the question.

Mr. Langsdale: You said to proceed.

Trial Examiner Batten: I think I indicated I didn't think it was proper.

Mr. Langsdale: I don't want to leave that point without making my purpose perfectly clear to the Examiner. Here they bring along a number of witnesses who say that in their judgment Rose Todd was not a representative of the [fol. 5025] management. Now, I have a right to inquire what they knew about Rose Todd that caused them to form that conclusion—and I have a right to say to these people "Rose Todd did so and so. Did you know that when you formed the conclusion she wasn't representing the management." That is my theory, I think it is a proper theory. Do you still adhere to your ruling in the matter?

Trial Examiner Batten: I haven't changed it, Mr. Langsdale.

Mr. Langsdale: Well, I am not a mind reader, I couldn't tell.

Trial Examiner Batten: I didn't understand that you were.

Mr. Langsdale: I thought you might indicate a change.

By Mr. Langsdale:

Q. Let me ask you, when you formed your conclusion that Rose Todd was not a representative of the manage-

ment you knew that in the office of the management on the 23rd day of April, 1937, in the presence of Mr. Baty, the factory manager, and Ella Mae Hyde, the personnel manager, Rose Todd had said to Fern Sigler, "We are going to run an open shop as long as the majority feels that way, the majority is going to rule as always." Did you hear her say that? A. Did I hear her say that?

Q. Yes. A. No.

Q. Did you hear she had said it? A. No, sir.

[fol. 5026] Q. Then that conversation had nothing to do with you forming your opinion she was not a representative of the management?

Mr. Reed: Manifestly, if she didn't hear it.

Trial Examiner Batten: She answered and said "no".

A. No.

Trial Examiner Batten: Do you want the answer stricken in view of this, Mr. Reed?

Mr. Reed: Oh, no, it isn't important. I didn't know it was going to be answered so quickly.

By Mr. Langsdale:

Q. May I ask you if, when you formed your opinion that Rose Todd was not a representative of the management you knew that on the 23rd day of April, 1937, in the presence of Mr. Baty, the factory manager and Ella Mae Hyde, the personnel manager, Rose Todd had said to Fern Sigler, with reference to the demonstration on that day at Fern Sigler's machine, "We went down stairs and sent those girls back to work and they went back to work." Did you know that? A. If I heard it?

Q. Did you know she said that? A. No.

Trial Examiner Batten: You will have to speak up, Mrs. Dean.

[fol. 5027] A. No, I didn't.

By Mr. Langsdale:

Q. Let me ask you, when you formed your opinion that Rose Todd was not a representative of the management did you know that Rose Todd on the 23rd day of April, 1937, in the office of the management and in the presence of Lee Baty, the factory manager, and Ella Mae Hyde,

the personnel manager, Rose Todd had said to Fern Sigler, "If you want to go home, all right, nobody is going to do any violence against you, you got yourself in it and you can stay in it or get out if you want to get out." Did you know she had said that?

A. I didn't even know she had ever talked to Fern Sigler. I don't know Fern Sigler.

Q. You stated that the Loyalty League was purely a social organization, did you not? A. Yes.

Q. Did you know that it had been formed for the purpose of resisting the activities of Mr. Dubinsky and his crowd? A. No, sir, I didn't.

Q. I think you, yesterday, read this article that appeared in the Kansas City Times on May 11, 1937, marked Board's exhibit 27?

A. I think I read that yesterday.

Q. Do you recall this portion under the heading "Formed their own union"?

[fol. 5028] A. This part here?

Q. Right here, Mrs. Dean (indicating).

Mr. Reed: What is that article from?

Mr. Langsdale: From the Kansas City Times of May 11th.

A. I remember reading that yesterday.

By Mr. Langsdale:

Q. Didn't you say you had read the article when it appeared? A. No, I don't think I did.

Q. Well, I will ask you now if you read the article of May 11th, 1937, in the Kansas City Times, the one that I have just shown you and which is marked Board's exhibit 37, at or about the time it appeared in the paper of May 11, 1937? A. I can't say that I did.

Q. When you had the meeting of April 27th, at which the union was formed, did you have chairs?

A. Well, I don't remember whether we had a lot of chairs or not. It seems like there was a few. I don't remember whether there was a lot of chairs or not.

Q. Did you know that the Loyalty League had paid for the rental of such chairs as were there on April 27, 1937? A. I didn't know anything about it.

Q. You didn't know that? A. No.

Q. You stated that the petition which you signed on March 2, 1937, which stated that you didn't want to acknowledge any outside union; you understood that to mean [fol. 5029] the International Ladies' Garment Workers' Union? A. That is what I took it to be.

* * * * * * *

Q. Did you see any part of the occurrence around Sylvia Hull's machine on April 23, 1937? A. Yes, I did.
Q. What floor was Sylvia Hull working on?
A. The eighth floor.
Q. What floor were you working on?
A. The eighth floor.
Q. Were you in the crowd that was around Sylvia Hull?
[fol. 5030] A. I walked up the aisle past her.

* * * * * * *

[fol. 5031] JESSIE MUDD, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:
Q. Will you please state your name?
A. Jessie Mudd.
Q. Where do you live, Mrs. Mudd?
A. At 7846 Pennsylvania.

* * * * * * *

By Mr. Ingraham:
Q. Are you employed? A. Yes, I am.
Q. Where? A. Donnelly Garment Company.
Q. How long have you been employed at the Donnelly Garment Company?
[fol. 5032] A. For about—it was 11 years ago last March.
Q. When you went to work for the Donnelly Company, in what capacity were you employed?
A. I was hired in the pressing department.
Q. Pressing department? A. Yes, sir.
Q. How long did you work in the pressing department?

A. I worked in the pressing department about—oh, perhaps 3½ years.

Q. What did you do there?

A. Well, the first few days there I pressed, and then after that I did floor work in the pressing department.

Q. Well, what did that consist of?

A. Well, it was buttoning up the dresses and getting them ready to be belted after they were pressed, putting belts in them and matching them with the dresses, and any buttons that had to be put on, in the operation of them, pinned them on and tied the bows.

Q. After you worked in the pressing department, where did you go? A. I inspected.

Q. And how long did you inspect, if you recall?

A. I believe for about a year and a half, maybe 2 years; I don't remember exactly.

Q. Well, can you briefly state where you worked in the [fol. 5033] Donnelly plant, up and until July, 1939?

. . . . . .

A. Then after I left the inspection department, I was put on as a thread girl and worked in section 415 on the eighth floor for a while, and then I believe I worked on the seventh floor after that, in section 517, and then I was later transferred to section 519.

. . . . . .

Q. As a thread girl?

A. Yes; and then in between there, during one season I went back and inspected for a few days when we were stacked up with inspecting, but I was a thread girl from the time I was put on the floor in that capacity, only just a few times I did help on inspecting, when they got stacked up.

By Mr. Ingraham:

Q. Did you work any length of time as a sewing operator?

A. I don't believe before 1939 I did. There was, one fall, that I worked on the machine for just—working on some—well, I was working on returns, just repairing them, for a short time, but it was just repairs, fixing belt loops and small things like that, that anyone could fix.

[fol. 5034] Q. You never worked on any special machines in sewing? A. No.

Q. Now, will you state what you did as a thread girl or floor girl?

. . . . . .

Mr. Ingraham: (Interrupting) Q. Are those terms used interchangeably?

A. Yes, they are one and the same. I think some of the girls might refer to me as a floor girl, and others a thread girl.

. . . . . .

By Mr. Ingraham:

Q. You stated you worked in the pressing department as a floor girl. Were there any other duties that you performed besides the ones that you have mentioned?

A. Well, yes, while I was in there I did work on the— [fol. 5035] now, that floor work down there is piece work, and at times I did time work; and that was after I was there quite a while, and then I took care of damaged dresses, and looked over the repairs. The damaged dresses are what the pressers would keep out of the bundles, may be a fault in them, and they were all folded and put in a separate box, and I used to look over them and make out an order on them.

They were sent to the store. It was just to keep track of them, and then I used to look over the returns sent back to the pressing department; some of them were dresses and just odds and ends of things like that.

Q. Now, did you have any authority to give any instructions to other employees in the pressing department?

A. Oh, no, none whatsoever.

Q. Now, you stated that you worked in the sewing section on the floor. What did you do in that capacity?

A. Well, whenever the operators needed anything like thread or any belt loops or shoulder tapes or waist tapes to go with that work, I would take them the right ones, and the work sent to the section by the notion department, the supplies necessary to go out, and I have to know that the notions are there—there is always a requisition that accompanies them showing what threads have to be used

on what colors, and then I put that thread away in the cabinets that they have there, and mark it, so when it is needed to be given out, I give it out without any delay; [fol. 5036] and if there is any certain kinds of shades of threads needed, I go down to the notion department and see whether that thread has been O. K.'d and whether it is the right thread—well, if a girl needs binding I take that to them, and I also call the notion department if there are any supplies needed.

Q. Are there shades of thread of the same color that would go on the different dresses that are of different shades?

A. It might be, if there is some special work on the dresses. For instance, some tucks or darts stitched on the outside, it might be we have one thread that would be used there, and a trim or maybe it would be a contrasting thread, and there might be other dresses with thread that matches the dress.

Q. Well, is it your job, then, to see the right color of thread is given to the operator?

A. Yes, that is my responsibility, to see that the right thread is given to the operators.

Q. Do you have any directing authority over the operators? A. No.

Q. Do you have any authority of any kind?

A. No, none whatsoever.

Q. Are you consulted at any time about what operators should be employed or laid off? A. No.

Q. Have you ever, at any time, had anything to do with [fol. 5037] that particular thing. A. No, never.

Q. Were you working at the plant in the months of March and April, 1937? A. Yes, I was.

Q. Do you remember the Donnelly Garment Workers' Union? A. Yes, I do.

Q. Do you recall when you joined the union?

A. I joined the union when it was formed.

Q. Do you recall what date it was, approximately?

A. It was April, the latter part of April, 1937.

Q. Did you join the Donnelly Garment Workers' Union of your own free will? A. Yes, I did.

Q. Did anybody representing the management discuss with you the formation of the Donnelly Garment Workers' Union? A. No.

Q. Did anyone representing the management make any suggestions about holding a meeting for the purpose of organizing the plant union? A. Not that I know of.

Q. Now, prior to the time of the formation of the plant union, had you read in the Kansas City newspapers anything in connection with strikes in other garment plants?

A. Yes, I had.

[fol. 5038] Q. I will hand you respondent's exhibits 16 and 18 through 38, and ask you if you will name the articles that you recall reading in the Kansas City Press.

* * * * * *

A. I remember exhibit No. 16, and also 18. No. 19, I am not sure whether I read it at the time, or I just heard it discussed. I believe I read exhibit 20.

* * * * * *

~~A. Exhibit 25, I read it at home.~~

By Trial Examiner Batten:

Q. Well, do you mean then—how about the intervening ones?

A. These other ones were in the Journal, I didn't read them at the time. The ones I named I have read. The others, I might have heard about them at the time but I don't remember reading them.

Q. Well then, I would suggest, Mrs. Mudd, that on each one you indicate as you go along whether you read it or you didn't read it, or whether you heard about it. Don't skip any of them. You are now on 26, are you?

A. Yes. I read exhibit 26 at the time, I think; and exhibit 27, I read that at the time. No. 28, I read that; [fol. 5039] and exhibit 29 and exhibit 30, I read them; and exhibit 31, I saw that at the time.

* * * * * *

A. I don't believe I read 32; exhibit 33, I am not sure whether I read it or heard it talked out at work. I don't remember reading exhibit 34. I read exhibit 35 the next morning after it appeared. I read exhibit 36 and also 37,—that is exhibit 21 (indicating).

* * * * * *

A. And exhibit 38, I read that.

By Mr. Ingraham:

Q. I believe you stated that there were some exhibits you do not recall whether you read them or they were discussed at the plant. What do you mean by that, Mrs. Mudd?

A. Well, at the time—I don't believe we bought the Journal regularly, I don't believe we had it delivered at home; I bought it occasionally when I would be going home, transferring from one street car to another; but some of them I read then, but as to all the Journal articles, [fol. 5040] I don't believe I read all of them, but as a general thing, we did talk over just about everything that appeared in the paper in connection with the union and the strikes that were then occurring in town.

Q. Well, who talked it over?

A. The girls who worked in the section.

Q. Now, what effect did the reading of the articles have upon you?

A. Well, in regard to the union strikes and violence that were going on at the time, I thought they were rather disgusting, to be referred to as—the garment workers, as having them, and I knew all the garment workers were not having them; from the understanding I had it was quite a few professional pickets that were causing these disturbances, and it made the people think the garment workers were not a very upstanding kind of people; I had always been proud of where I worked, and I still am, and I didn't want them to think we were working under such conditions that we needed someone who didn't know about our work to come in and protect us; we didn't need that kind of protection, only against them.

Q. Did you have any personal knowledge of the violence that was going on at the other plants?

A. Just what I read in the newspapers.

Q. What effect, if any, that you could observe, did the articles that appeared in the press have on other em- [fol. 5041] ployees at the plant?

A. They were all pretty well upset and disgusted; they didn't know whether to feel afraid to go to the street car line by themselves or not, whether to have someone to go with them to see they got there, and got to work on time. It seemed at that time if you started out, you didn't get to where you intended to go without being molested.

Q. What do you mean by molested?

A. Well, from what we had read in the paper, some of those girls that attempted to go to work were waylaid before they got there, and before they got home they were apt to be chased and injured.

Q. Did that have anything to do with you voting in favor of the organization of the Donnelly Garment Workers' Union? A. Yes, it did.

Q. Will you state why you voted in favor of organizing a plant union?

A. Well, at that time it seemed as if a union of some sort had to be formed, in order to have the legal protection that we needed to keep from having to join up with the International, for instance.

Q. Did you object to joining the International?

A. Yes, I did. I didn't want to be classed as—I didn't feel like they had anything to offer me, and I didn't want my name amongst ones picketing some other firm that I [fol. 5042] didn't have any grievance against.

Q. Now, at the meeting that your have referred to, of April 27, when the plant union was formed, will you state when that meeting occurred?

A. That meeting was after working hours.

Q. Will you state where it occurred?

A. It was down on one of the lower floors, the second or third floor; I know it was a vacant floor.

Q. Did anyone representing the management request you to go to that meeting? A. No, they didn't.

Q. Did anyone representing the management suggest that you would be penalized if you didn't go to the meeting? A. No.

Q. Did anyone representing the management suggest that you would be penalized if you didn't vote to form a plant union? A. No.

Q. Did the instructor in the section where you were working direct you to go to the meeting?

A. No, she didn't.

Q. Did you direct anybody to go to the meeting, yourself?

A. No, I didn't. I might have talked with a group of girls that said they were going, and I went with them.

Q. Do you recall how you learned that the meeting was going to be held?

[fol. 5043] A. Someone in the section told me about it.

Q. Was the meeting of April 27 a Loyalty League meeting?

A. No.

Q. Did you think that the Loyalty League was promoting the formation of the Donnelly Garment Workers' Union?

A. No, I didn't think it had anything to do with it right then.

Q. Did you ever have any suggestion made to you by anyone that the Loyalty League was a forerunner of the Donnelly Garment Workers' Union?

A. No, I never had that understanding.

Q. Did anyone whom you considered a boss attend that meeting?

A. No, they did not.

Q. Was there anything said or done by anyone that led you to believe that the management was in favor of the formation of the Donnelly Garment Workers' Union?

A. I never heard anything said to that effect.

Q. I believe you stated that you read the article in the paper or heard it discussed at the plant, that Sylvia Hull was going to a convention of the I. L. G. W. to request support for a strike at the Donnelly plant?

A. Yes, I remember that.

Trial Examiner Batten: Will you just speak a little louder, Mrs. Mudd, please, so we can all hear you?

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[fol. 5044] By Mr. Ingraham:

Q. Did that have anything to do with you favoring the formation of the Donnelly Garment Workers' Union?

A. Yes, it did.

Q. Why was that?

A. Well, I felt like if the International was going to appoint someone or have someone appointed in the plant to represent the girls, and the girls not even know anything about it, I thought it was about time for us to take steps in some manner so we could protect ourselves, and keep away from someone representing us or knowing anything about what we had to do with it.

Q. Will you state whether or not the fact that support

of strike was to be requested at the International convention influenced you in any way?

A. Why, yes, I didn't want to lose any work on account of something we didn't even want.

[fol. 5045] Q. State whether or not you understood or believed that a strike meant the same kind of violence that had been engaged in by I. L. G. W. U. at the Gordon, Gernes, Missouri plants?

A. Well, in my own mind I knew if someone told me to go on a strike I wouldn't go on a strike as long as things were like they were. No one had a reason to tell me that. I knew I would personally feel like that. I didn't want to lose any time because somebody else may be far distant—in a far distant city, across the city, or in another city, felt like they should go on a strike.

By Mr. Ingraham:

Q. I want to direct your attention to the article that appeared in the Kansas City papers on March 17th, which is respondent's exhibit 27. Did you see the picture that appeared at the bottom of the front page of the Kansas City Star of March 17th?

A. Yes, I saw that.

Q. Now, I believe you stated that you read that article entitled "Sitters block the door."?

A. Yes, I did.

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By Mr. Ingraham:

Q. I hand you respondent's exhibit 16 and ask you if you recall seeing the picture that appears at the bottom of the front page of the Kansas City Times for March 18th?

[fol. 5046] A. Yes, I saw those.

Q. Now, at that time on or about March 18th did the employees hold a meeting?

A. Yes.

Q. What was the purpose of the meeting, if you recall?

A. Well, I know I was very curious as to what steps we should take, where we stood in the idea of this—well, mob moving in on the garment company or a group, and demanding they stop work and join up with their union—whether or not you want to or not. I didn't feel like waiting until they came to the door to start. I felt if there was

any way to take steps to avoid that I thought we should do that. What we could do, when and how about doing it.

Q. Did the articles I have just called your attention to have anything to do with your reason for attending that meeting?

A. Yes.

Q. How—

A. We didn't know when we might go down and find them in our door, or start down there and not be able to get in the door or get in whole. We didn't know whether we would get in there with our clothes on or parts of them on.

Q. Did you understand that the International intended to start their campaign against the Donnelly Company?

A. That was my understanding.

[fol. 5047] Q. Will you state, so far as you could observe, what effect these articles had on other employees at the plant?

A. I think—

Q. (Interrupting) These articles I have just referred to.

A. I think, as a whole, the girls all felt rather a fear. They did not know whether they were safe or not in coming to work alone, or whether they would have to have someone bring them to work every day and meet them at the door to take them home.

Q. Now, this meeting you have referred to, of March 18th, will you state when that meeting occurred, what time of day?

A. We did it after work.

Q. Will you state where the meeting was held?

A. It was on the second floor, I believe.

Q. Do you recall how you learned of the meeting?

A. I don't know exactly. We had been talking about these articles in the paper at work—it was just the topic of conversation—it seemed like no matter what you started talking about it always got around to that, it was in the uppermost part of our mind. In the course of conversations I learned that the employees were having a meeting that evening after work.

Q. Did anybody representing the company discuss the holding of that meeting with you?

A. No, they did not.

[fol. 5048] Q. Did anybody representing the company request or suggest that you attend that meeting?

A. No.

Q. Did anybody representing the company tell you, or suggest in any way, that the employees would be penalized if they did not attend that meeting?

A. No.

Q. Did the instructor in your section direct you to go to that meeting?

A. No, she did not.

Q. Did you direct or order anybody to go to that meeting?

A. No.

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By Mr. Ingraham:

Q. Did you arrive at the meeting when it opened, if you recall?

A. I am not sure, I don't remember.

Q. Did Rose Todd preside at that meeting?

A. I am not sure she presided, I know she talked at the meeting.

* * * * * *

By Mr. Ingraham:

Q. Was there a general discussion among the employees?

[fol. 5049] A. Yes, that was the purpose of the meeting.

Q. What was the discussion about?

A. About the violence that was then in progress at 26th and Grand, and different employees told what they had heard and seen and what we could do, what we should do and what we could go ahead and do about it.

Q. Will you state whether or not a suggestion was made to ask Mrs. Reed to come to the meeting, and state what the company was going to do?

A. Yes, I believe someone did make a suggestion that they ask Mrs. Reed what the company's stand was on the occurrence.

Q. Did Mrs. Reed come to the meeting?

A. Yes, she did.

Q. Did she make some remarks?

A. She made a speech. She talked to us.

Q. Do you recall whether or not Mrs. Reed made the statement that—made the statement in substance like this "If the plant was unionized it would be closed."?

A. I didn't hear her say that.

Q. Did you hear Mrs. Reed say that she was not going to let Dubinsky tell her how to run her business?

A. No, I didn't hear her say that.

Q. Did Mrs. Reed make any reference as to the rights of the employees to join or not join a labor organization?

A. As nearly as I can remember Mrs. Reed told us that [fol. 5050] we were free then as we always have been to do as we pleased. If we felt like we wanted to join a union we were free to do so.

Q. Do you recall whether or not there was mention made of arrangements that were going on for the using of buses to bring the employees to and from work?

A. Yes, there was something said about the buses at that time.

Q. Did you—or were the buses used after that time, sometime after that?

A. Some time after that they did have the buses.

Q. Do you recall what the reason was for the use of buses?

A. That was so the girls could get to work, and felt like we could get to work better that way. We didn't know whether it was safe to come within a block of work without being stopped, like riding on the buses from a distant point in the city while we could come in large groups like that and we felt like we would be safer.

Q. Do you recall that Mrs. Reed stated that the company was trying to make arrangements for buses?

A. I don't remember whether she said it, I remember it was talked about, I don't remember whether it was she that said it or how it came about.

Q. Did you see or hear Mrs. Reed read a letter from the I. L. G. W. U.?

A. I don't remember ever having—anything about a [fol. 5051] letter being read.

Q. Do you recall a committee being designated at that meeting by the employees? A. Yes.

Q. Will you state what the purpose of designating a committee was?

A. Well, my understanding of that was that the committee would seek legal advice as to what our understanding was under the law as to what we could do to take steps to protect our rights.

Q. Do you recall who was appointed on the committee?

A. I remember Miss Todd and Hobart Atherton was. That is all I remember about who was on it.

Q. Now, after that meeting occurred was there another meeting held by employees prior to the meeting of April 27, 1937? A. Yes, there was.

Q. Do you recall when that meeting occurred?

A. No, I don't know exactly.

Q. Well, was it a week or ten days after your meeting of March 18th?

A. It might have been about a week later, I am not sure.

Q. Where was that meeting held?

A. It was on the lower floor. I think the second or third floor, I don't remember which.

Q. When was the meeting held?

[fol. 5052] A. It was after work.

Q. Did anybody representing the management discuss with you the holding of that meeting? A. No.

Q. Did anyone representing the management request you to go to that meeting? A. No, they did not.

Q. Did anyone representing the management say anything that led you to believe that the company would penalize you if you didn't go to the meeting? A. No.

Q. Did you go to the meeting of your own free will?

A. Yes, I did.

Q. Did you go to the meeting March 18th of your own free will? A. Yes, I certainly did.

Q. What, if anything, occurred at this meeting—the one that occurred after March 18th?

A. Well, that was the meeting where the committee reported to us as to what they had found out when they went to the lawyers.

Q. Do you recall, prior to the time that that meeting was held, that the Gernes, Gordon and Missouri Garment Companies had brought an injunction suit against the strikers at their plants?

[fol. 5053] A. I know there had been injunction suits from some of those plants against the union.

Q. I hand you again respondent's exhibit 26 and ask you if you recall reading about an injunction suit in that article which appeared in the Kansas City Times of March 23rd? A. Yes, I read that.

Q. Was there a general discussion at this meeting that occurred after the meeting of March 18th, of the possibility of bringing an injunction suit?

A. Yes, we talked about applying for an injunction.

Mr. Langsdale: What meeting? March 18th or the one following?

Mr. Ingraham: The one following.

By Mr. Ingraham:

Q. Did the employees take any action at this meeting following the meeting of March 18th?

A. Yes, that is the meeting that Miss Todd told us that we would have to raise some money in order to retain a lawyer, and at that time we voted as to how we would obtain the money.

Q. How was the money obtained?

A. It was suggested we all contribute 50c in order to pay for the retaining fee.

Q. Did you make that contribution? A. Yes, I did.

Q. Did you make that contribution to the Loyalty League? A. No.

[fol. 5054] Q. Did you understand when you made the contribution that it was for any purpose of the Loyalty League? A. No.

Q. Do you recall whether or not other employees made a contribution at that time? A. I believe they did.

Q. How was it made?

A. Some of the girls, I understood later, gave it that night but I gave it to one of the girls in the section.

Q. Do you recall who you gave it to in the section?

A. No, I don't remember which girl it was.

Q. Did you give it to a girl, or to the girl, because she was a representative of the Loyalty League?

A. I don't remember whether or not she was a representative of the Loyalty League.

Trial Examiner Batten: Of course, if you don't remember who you gave it to you wouldn't know, would you? Isn't that right, Mrs. Mudd?

A. Yes, that is, but I don't remember.

By Mr. Ingraham:

Q. Did you intend that the money that you gave be used by—for any activity or purpose of the Loyalty League?

A. That money that we gave at that time was not for the Loyalty League.

[fol. 5055] Q. Did you see girls at the meeting contribute the 50c? A. No, I didn't see them do that.

Q. Did you direct any employee to attend this meeting? A. No, I didn't.

Q. Did your instructor direct you to attend this meeting? A. No.

Q. Did you tell anybody that she should make the contribution of 50c?

A. No, I didn't attempt to tell anyone what they should do.

Q. Did your instructor tell you that you should make a contribution?

A. I don't know that my instructor even talked to me about it.

Q. She didn't tell you to make this contribution?

A. No, she didn't.

Trial Examiner Batten: Mr. Ingraham, you asked this witness if she instructed anybody. Would there be anything wrong if she did? Why do you ask her?

Mr. Ingraham: I asked that in anticipation of the position that Miss Weyand is probably getting around to taking. There isn't any reason under the sun why this woman couldn't say anything about making a contribution, so far as respondent is concerned.

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[fol. 5056] By Mr. Ingraham:

Q. I believe you stated that you read the article that appeared in the Kansas City Star for April 12, 1937, entitled "Wagner Act is upheld?" A. Yes, I read that.

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[fol. 5057] By Mr. Ingraham:

Q. Was that discussed at the meeting of April 27th?

A. I believe it was.

Q. Did Mr. Tyler make a talk at that meeting?

A. Yes, sir.

Q. And, in that talk, did he mention the Wagner Act?

A. I believe he mentioned it.

Q. Were you—or did that have anything to do with you voting in favor of the formation of the Donnelly Garment Workers' Union?

A. Well, I believe it did to the extent that I felt like we just had that much more right. It had been tried by the Supreme Court and they had found it constitutional. I felt like it was a little more assurance that we could exercise our right to do as we pleased, as far as labor organization was concerned.

Q. Were you at the plant on, or about, April 23, 1937?

A. Yes, I was.

Q. What floor did you work on?

A. I believe at that time I worked on the seventh floor.

Q. Do you recall any commotion in connection with Sylvia Hull or Fern Sigler? A. I remember some.

[fol. 5058] Q. Well, did either of those girls work on your floor?

A. No, they didn't.

Q. Well, did you personally see any commotion?

A. I went up there to see what—when I heard that one of the girls that was working there had signed up with the I. L. G. W. U. and was going to a convention, I was curious to see what a girl would look like—well in my own mind, that is silly. They would sign up with the International Garment Workers' Union and not know any better to come on to work and expect the girls to still feel she was one of us.

Q. Did you want to work as long as she was there?

Mr. Langsdale: Which one?

By Mr. Ingraham:

Q. Which girl did you go upstairs to see?

A. I went up to see what Sylvia Hull looked like.

Q. Did you want to work so long as Sylvia Hull remained working there?

A. I felt rather disgusted. I don't know as I felt like I didn't exactly want to work, as long as she was there. I didn't have to work close enough that I knew her.

Q. Did you hear any of the other girls say they didn't want to work as long as she remained there at work?

A. I heard some of the girls in the section say they didn't think she should be allowed to stay there and work.

Q. How long were you on the eighth floor?

[fol. 5059] A. A very few minutes, I just went up to see what she looked like and returned to the section again.

Q. Are you a member of the Loyalty League?

A. Yes, I am.

Q. Do you recall when you joined the Loyalty League?

A. I joined it when they organized it.

Q. Do you recall when that was?

A. I don't know exactly.

Q. Was it several years prior to 1937?

A. I believe it was two or three years before that, I am not sure.

Q. What were the activities of the Loyalty League?

A. The Loyalty League sponsored dances and card parties.

Q. Did you attend any of those?

A. I attended most of them I believe.

Q. Did anyone representing the management ask you to join the Loyalty League?

A. No, they didn't.

Q. Did you feel that if you did not join the Loyalty League that you would be discharged?

A. No, I never gave that a thought.

Q. Did you ever hear anybody say that employees would be penalized by the management if he or she did not join the Loyalty League?

A. No, I never.

[fol. 5060] Q. Did you pay any dues to the Loyalty League?

A. No, I didn't.

Q. Did you ever know of the Loyalty League dealing with the company with respect to wages and terms and conditions of labor?

A. No, I never heard of such a thing.

Q. Do you state that the Loyalty League's activities were—or did you state that the Loyalty League's activities were confined to dances and carnivals?

A. That was the purpose of the Loyalty League, was the social get togethers that they planned for the employees.

Q. Did you ever hear of the Loyalty League engaging in any purpose that had anything to do with representing the employees in connection with the terms or conditions of labor?

A. No.

Q. Did you ever know of a meeting of the Donnelly Garment Workers' Union being held that was followed immediately by a meeting of the Loyalty League?

A. No.

Q. Did you ever hear of a meeting of the Donnelly Garment Workers' Union that was preceded by the meeting of the Loyalty League?

A. No, I didn't.

Q. Is there any connection of any kind between the Don- [fol. 5061] nelly Garment Workers' Union and the Loyalty League?

A. There is none whatsoever, as far as I have ever known of.

Q. Is the Loyalty League still in existence.

A. Yes, it is.

Q. Did the fact that Rose Todd presided at the March 18th meeting and the second meeting held some time the last of March or the meeting of April 27th, lead you to believe that those were meetings of the Loyalty League?

A. No.

Q. Will you state whether or not you considered Rose Todd a supervisory employee?

A. She never has been as long as I have known her.

Q. Did you ever consider her your boss?

A. No.

Q. What did Rose Todd do, so far as you could observe?

A. Well, what time I knew her she would come in the section to see whether or not we were being held up on our work by the lack of any notions or supplies or anything wrong with them, if there was part of the bundle lost or something, it was just to find out why the work wasn't going through as it was needed, and as it had been planned to go through.

Q. Did Rose Todd have any authority to give directions to anybody so far as you could observe?

A. So far as I know, she didn't have.

[fol. 5062] Q. Did you ever hear of Rose Todd having any authority to hire, discipline, or discharge employees?

A. No.

Q. Did you believe that Rose Todd had authority to speak for the management in connection with labor matters?

A. No.

Q. I will hand you respondent's exhibit 6, which appears in the Circuit Court record of 4864, and ask you if you recall reading this article, which appeared in the Kansas City Times of February 26, 1937, entitled "Reopen a garment feud"?

A. I read that.

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By Mr. Ingraham:

Q. What effect did that article have on you?

A. I thought it was rather odd to bring a personal feud into the business. Dubinsky was trying to get back on Mr. Reed and he wasn't connected with the management of the Company. I didn't see why that personal difference should make any difference as far as sending people out to tell their customers we weren't paid enough and our working conditions weren't right, and they couldn't even offer us any suggestion; as far as we knew there wasn't any improvement that they were offering us and I couldn't see why. Then they was going to get a large sum of money to [fol. 5063] organize us. Well, it looked to me like that money could have been used to a better purpose. We didn't want them and we had let them know we didn't want them before. I couldn't see why as far as the other companies were concerned why they should come down there and say our wages weren't high enough, when they didn't have anything to offer as far as wages were concerned, and saying there was 25 members in the company at that time and as soon as they got more they would call a strike down there.

I couldn't see why—they would tell us they would let us go on a strike, how that would help us any. Our salaries

wouldn't have gone on if we were on a strike, as well as losing time at work.

I don't think anybody wanted to do that. We didn't like to have them. I didn't like to have it out in the paper that we were so badly—well, I don't know—they wanted the idea out we weren't being treated right.

I knew in my employment there I had certainly been treated right.

Q. Did you know that you were being paid far in excess of wages that were being paid in plants that had contracts with the I. L. G. W. U. in Kansas City?

A. I felt sure I was making far more than I would in some of these other factories.

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[fol. 5064] Trial Examiner Batten: How is that material? You say did she know. Well, of course, I have no objection to it, she has answered it. Of course, it doesn't mean that we are going into that whole question of whether, in fact, they were. The only question that will raise is whether or not this witness—what her own information is concerning the statement, whether it is supported by anything. I didn't want you to think that raises the whole issue of the truth.

Mr. Ingraham: We still contend that is an issue we are interested to go into and that even under your ruling, that is a factor that these employees have a right to consider.

Trial Examiner Batten: Yes, that is what I just said.

Mr. Ingersdale: I object to the question and ask that it be stricken—the answer—for the reason it isn't covered by their offer of proof and for the reason that if they do open up that subject, to what other union factories are paying in Kansas City, I think I would have the right to show when the I. L. G. W. U. came here and organized those other factories they were working fifty and sixty hours a week for four and five dollars a week, and whatever they were getting at the time of this controversy was two or three times what they had been getting, in the light of that line of testimony. The comparison would amount to nothing.

If we are going into those subjects I would like to go into it that deeply.

Trial Examiner Batten: I am only going into it to the [fol. 5065] extent I indicated. These witnesses have testified what it was that led them to form the organization or why they did it. Now, I am permitting it to that extent and that doesn't mean I am excluding the testimony you indicated, Mr. Ingraham, that you still take the position it is an issue. I am not ruling on that matter now, only with respect to this witness's testimony.

By Mr. Ingraham:

Q. What effect did you observe that this article had on other employees at the plant?

Mr. Langsdale: Is this March 26th?

Mr. Ingraham: February 26th.

A. Well, I think they were all rather disgusted to think we was going to have to fight and defend our rights as workers if we didn't want to join a union, and the time they were reopening the campaign and sounded the way the article read if it was between—on account of the Presidential campaign the year before we didn't see what difference it would make how we worked—regardless of how a political campaign came out.

I think the majority thought—or felt like it was bringing in something that didn't concern us at all. Regardless of what personal feelings between two men, even outside of our own group—

Mr. Ingraham: (Interrupting) Q. Do you recall a petition being circulated a few days after that article ap- [fol. 5066] peared in the press? A. Yes.

Q. I will hand you I. L. G. W. U.'s exhibit 10, page 5974 of the Circuit Court record, and ask you if that appears to be a photostatic copy of the petition that you signed?

[fol. 5067] A. Yes, I remember it.

By Mr. Ingraham:

Q. Did you sign that of your own free will?

A. Yes, I did.

Q. Will you state the circumstances under which you signed that?

A. Well, I don't believe at the time that it was on the floor—I must not have been up there; I don't remember, I didn't see it at that time. I heard about it after it was passed through the floor. Some of the girls asked me if I had seen it, and I hadn't known anything about it, so I asked about it, the next day I asked about it, and then there was one brought to me, and I got to sign it.

Q. Why did you want to sign it?

A. Well, because I felt very much that I wanted Mrs. Reed to know that I certainly was in favor of continuing work, and I was very well satisfied, and I didn't see any necessity of any changes, and I wanted her to know that I fully agreed with the petition, and I wanted to read it, and I wanted to sign it.

Q. Did you want her to know that you felt the working conditions were satisfactory? A. Yes, I did.

Q. There is a statement in that petition to the effect that "The undersigned refuse to acknowledge any labor organization." Did you have any particular labor union in mind that you thought that referred to?

[fol. 5068] A. Well, in my mind, when I signed this I was thinking of the International Ladies' Garment Workers' Union. I didn't know what the petition referred to other than that. That is what I had in mind.

Q. Was there any other union that you knew of, that was attempting to organize the workers at the Donnelly plant at that time?

A. That was the only one I had heard of.

Q. Did anybody representing the management ask you to sign that petition? A. No, they didn't.

Q. Did anybody representing the management lead you to believe that you would be penalized in any way if you failed to sign that petition? A. No, they didn't.

Q. Did anyone representing the management give you any impression that the mangement did not want the employees to join or not join a labor organization?

A. I hadn't heard anything to that effect.

Q. Well, did the article that appeared on page 26, which was respondent's exhibit 6, that you have just referred to, did that have anything to do with your desire to sign the petition that you have just referred to?

A. Yes, it did.

[fol. 5069] Q. Do you recall when Mr. Baty became factory manager? A. I remember it.

Q. Do you recall about when that was?

A. No, I couldn't. I just remember that there was a change made in the management, but I don't remember just when it was.

Q. Do you recall what effect that change had upon the duties of the instructors, do you know anything about that?

A. Well, I knew at that time that the instructors didn't have as much to say about the work, about the girls, what they did and what they didn't do.

Q. Do you know whether or not operators, after this change, had to take up complaints with Mr. Baty rather than with the instructors?

A. I know that that is the way it was handled, that the instructor would tell the girl that—I know whenever I was around the instructor and a girl came up and asked about something, I have heard her tell them to go to Mr. Baty and tell him.

Q. After Mr. Baty was made factory manager, did you see him frequently on your floor at the plant?

A. Yes, he was there a great deal.

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[fol. 5070] By Mr. Ingraham:

Q. When you say frequently, how many times a day and how frequently would Mr. Baty generally be on your floor?

A. Well, you see, his desk was there on the seventh floor, and in going to and from the elevator, I passed his desk, and then he was in around the sections during the day, too, he would make the rounds; I think it was his practice to make the rounds of all the sections. I know he came in our section rather regularly.

Q. Did you understand that Mr. Baty was the one boss in the factory? A. That was my understanding.

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A. The idea was, he was my boss, I didn't feel like anyone else there was my boss.

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[fol. 5071] By Mr. Ingraham:

Q. You understood Mr. Baty was your boss? A. Yes.

Q. Did you understand the instructor in the section where you worked was the boss? A. No.

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Cross-Examination

By Mr. Lane:

Q. Mrs. Mudd, what did you understand the duties of the instructor were in April, 1937?

A. Well, it was their job to show the girl how to do the work.

Q. Did you at that time wear a uniform?

A. Yes, I did.

Q. Did you go to the meeting of April 27, and other Donnelly Garment Workers' Union meetings in your uniform, or did you change to street clothes?

A. I think—at first I believe I always went in my uniform, I think later on I got to changing clothes before I went to the meetings.

Q. Did you say what time of day it was that the meeting [fol. 5072] of April 27, 1937, was held?

A. It was after work.

Q. Do you recall the hour? A. No, I don't.

Q. I believe you stated at that meeting you voted in favor of forming an independent union? A. I did.

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By Mr. Lane:

Q. Had you had any discussion with anybody prior to April 27, or prior to the meeting on April 27, about the formation of a plant union?

[fol. 5073] A. I don't remember of having had.

Q. Did you know Hobart Atherton?

A. Yes, I knew him.

Q. What did you observe him doing around the plant prior to April 27, 1937?

A. I don't know what he did, I just knew him when I saw him.

Q. Had he ever done anything or said anything that gave you the impression that he was a supervisor or a boss, or a person—

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Mr. Lane (Continuing) Held out by the management as being entitled to represent the management or speak for the management on labor matters?

[fol. 5074] A. No, I didn't.

By Mr. Lane:

Q. Do you know Sallie Ormsby?

A. I knew who she was.

Q. Did you know what her job was?

A. I don't know. I had the impression she was an operator, I never knew what she was.

Q. Did you know Ethel Riddle?

A. Yes, I knew Ethel Riddle.

Q. Do you know what her job was? A. Yes.

Q. What was her job? A. Operator.

Q. Did you know Arch Lyle?

A. No, I didn't know him.

Q. Did you know Lena Tyhurst? A. Yes.

Q. What was her job?

A. She was also an operator.

Q. Did you know Mrs. Riggs? A. Yes.

Q. What was her job?

A. I knew she worked up on the ninth floor in the patterns.

[fol. 5075] Q. Did you know Lyle Jeter? A. Yes.

Q. Did you know what his job was?

A. He was a machinist.

Q. Did you know Carl Crawford? A. Yes.

Q. What was his job?

A. I don't know what his job was. I know he worked on the fifth floor.

Trial Examiner Batten: Q. Which floor? A. Fifth.

By Mr. Lane:

Q. Do you know what department?

A. Well, the cutting department is there, but I don't know what he did.

Q. Did you know Cornelia Taylor?

A. No, I didn't know her.

Q. Did you know Leona Moore? A. No.

Q. Did you know Ellen Nokes? A. No.

Q. Did you know Virginia White? A. Yes.
Q. What was her job? A. I don't know.
Q. Did you know Fred Brown?
[fol. 5076] A. I knew who he was.
Q. Do you know what he did? A. No.
Q. Did you know Mamie Riddle? A. Yes.
Q. What was her job? A. She was an operator.
Q. Did you know Anna Richards? A. Yes.
Q. What was her position?
A. She was a presser.
Q. Did you know Marjorie Green? A. Yes.
Q. Do you know what she did? A. No.
Q. Did you know John McConaughey? A. Yes.
Q. What did he do?
A. At that time I don't know whether he was a basket boy or worked in the cage on the eighth floor.
Q. What do you mean by working in the cage?
A. Took machine calls when there was a machine call put in.

By Trial Examiner Batten:
Q. Well, two or three witnesses said something about the cage. What do you mean? Was he working in a cage?
[fol. 5077] A. Well, there is a little room on the eighth floor at the north side of the building, which was enclosed by a wire netting, I guess you would call it, and it is always referred to as a cage. There is a little window to go up to, to tell them what you want.
Q. Well, that is what you mean when you say "cage"?
A. That's right.

By Mr. Lane:
Q. By that you mean if some machine part is broken or missing, or it needs repairing, you report that?
A. You report that you need a machinist.
Q. Did you know Charlie Casey?
A. No, I didn't know him.
Q. Did you know Hazel Saucke? A. No.
Q. Did you know Anna Reece?
A. No, I didn't at that time.
Q. Was there anybody who took any part in the meeting of April 27, that you regarded as being a supervisor or a boss or a manager, or as a person authorized by or held out by the management as anybody authorized to

speak for the management in connection with any labor matters?

A. No, not to my knowledge there was not.

Q. Or any relation to any matters, between the management and the employees? A. No.

[fol. 5078] Q. Did you, when you voted to form the Donnelly Garment Workers' Union, have the feeling in your own mind that you were doing a voluntary act?

A. Yes, I did it of my own free will.

Q. An act that expressed your preference? A. Yes.

Q. Did you, in your mind, have any fear you were under any domination or intimidation or coercion or pressure on the part of the management or anybody representing the management?

A. No, I didn't feel that way.

Q. Did you know of any act or anything said by anybody—any one of the supervisors or superintendents, or Mrs. Reed, or any department heads, that you regarded as indicating pressure or coercion on their part to form a labor union or stay out of any labor union?

A. I didn't hear it discussed by any of them at all.

Q. I will ask you to state whether or not it was your belief and opinion in doing what you did at the April 27th meeting, that you and the other employees were acting together as employees, in doing what you, as employees, preferred to do. A. I was doing as I preferred.

Q. Did you attend the meetings of the Donnelly Garment Workers' Union thereafter fairly regularly?

A. Yes, I did.

Q. I will ask you to look at Board's exhibit 8-12, begin-[fol. 5079] ning on page 4406 of the Circuit Court of Appeals record, being the minutes of a meeting of May 11, 1937.

. . . . . .

By Mr. Lane:

Q. Mrs. Mudd, did you attend that meeting?

A. I believe I did.

Q. Was it your understanding the Donnelly Garment Workers' Union would be independent financially?

A. Yes, that was my understanding.

Q. That any bills, including attorneys' fees, or any services rendered to the Donnelly Garment Workers' Union had to be paid by the union?

A. The union was responsible for all expenses.

Q. Do you know of any financial contribution or any other kind of a contribution that anybody has ever made to the Donnelly Garment Workers' Union?

A. The members is all I know of that ever contributed to the union.

Q. Have all expenses of the union, so far as you know, been paid from the dues, assessments, and other collections from the employees, members of the union?

A. To my knowledge the union has taken care of all of the expenses.

Q. Do you recall whether or not this was said at the [fol. 5080] meeting of May 11? I am referring to page 4409 of the Circuit Court of Appeals record: "Do you realize now that Mr. Tyler is representing the Donnelly Garment Workers' Union and he will have to be paid? I expect a good many of you are wondering what he is going to charge. I talked with him in some detail and I am sure you will feel that he is quite right in the answer he gave me, he doesn't know what his answer will be, because it depends on how much trouble we give him, and how much work he will have to do for us. The union does have to be self-supporting in every detail. Being a thoroughly reliable group of employees, we can take care of our own financial obligations."

A. Yes, I remember that being discussed.

Q. I will ask you to look at the minutes of the meeting of May 25, 1937, beginning on page 4415 of the Circuit Court of Appeals record, and ask you to read those, and state whether you attended that meeting.

* * * * * * *

Mr. Lane: The exhibit number is Board's Exhibit 8-21.

* * * * * * *

Mr. Lane: Did you attend that meeting?

A. Yes, I believe I did.

[fol. 5081] Q. Do you know at what time of day you quit work, on or about May 25, 1937? When was your work over for the day?

A. I don't remember. I imagine it was around 4:30.

Q. Do you know what time of day that meeting was held?

A. I never went to any meetings only after work.

Q. Do you know whether you were there at the beginning of that meeting? A. I feel sure that I was.

Q. Was there ever any union meeting, that you know of, that began at 3:45 in the afternoon? A. No.

Q. Did you discuss at that meeting the matter of the Donnelly Garment Workers' Union raising money to pay a bill of the Loyalty League?

A. No, we took care of union business at the union meetings.

. . . . . .

By Mr. Lane:

Q. Was there ever a union meeting at which you discussed raising money for the Loyalty League? A. No.

Q. Was that meeting followed immediately by a meeting of the Loyalty League?

A. Not that I ever knew of.

Q. Was there ever a time when you knew of a meet- [fol. 5082] ing of the Donnelly Garment Workers' Union being immediately followed or immediately preceded by a meeting of the Loyalty League?

A. Not that I know of.

Q. Did you know Elsie Graham Greenhaw?

A. No, I don't believe I did.

Q. I believe you said you knew Marjorie Green?

A. Yes.

Q. Did she hold any office in the Donnelly Garment Workers' Union?

A. She was our secretary.

Q. Did you see her at the meetings?

A. I think I saw her at most of the meetings.

Q. Did you see her do anything at the meetings?

A. She took notes; she was always up on the platform taking notes.

Q. Is it your recollection she was at the meeting of May 25?

A. I don't remember of anyone else taking notes. If they did I don't remember it.

. . . . . .

[fol. 5084] Q. I will ask you to state whether or not at the meeting of the Donnelly Garment Workers' Union, held on May 25, 1937, Rose Todd said "This meeting has been called very hurriedly. We were to have chairs at 3:30, they were to be here at 3:30 but it takes a few minutes to get them and set them up and it takes a few min-
[fol. 5085] utes to get you all down here. But I didn't know there were none until I came down." Do you recall that at any union meeting that Rose Todd ever made that remark?

A. Not at 3:30 in the afternoon. I never heard her mention anything about ordering chairs.

Q. Did Rose Todd say at the meeting you attended on that day, "I want to tell you this is going to be two meetings. The first being a meeting of the Donnelly Garment Workers' Union and after that a meeting of the Loyalty League."?

A. Not to my knowledge, we never had a meeting of the Loyalty League and the Union together.

Q. Did Rose Todd say that at that meeting?

A. I never heard her.

Q. Were you there at the beginning of that meeting?

A. I am sure I was.

Q. I will ask you to state whether Rose Todd said this at that meeting: "For you people here working I want to advise you to work quietly."?

A. We weren't on the floor where anyone was working. We had those meetings on the vacant floor.

Q. Did Rose Todd, at that meeting, say anything about people working where you were?

A. Not that I know of.

Q. And you say there were no people working in the room where you were holding your meeting?

[fol. 5086] A. We had those meetings on the vacant floor, no.

Q. I will ask you to say whether or not Hobart Atherton made this remark at that union meeting: "There seems to be a little misunderstanding as to why the Loyalty League needs this money," and a little later on "I will explain that to you."?

A. I never heard him make that remark.

Q. Did Rose Todd say this "If there is any business pending of the union, please bring it up now. If there

isn't I want to close this and open it as a Loyalty meeting."? A. No.

Q. Was there a motion made to adjourn the union meeting and immediately open a Loyalty meeting?

A. Not that I heard.

Q. Did you stay through the meeting of May 25th until the end of it?

A. I stayed until the meetings were adjourned.

Trial Examiner Batten: What was that?

A. I stayed at the meeting, when I would go to them, until they were adjourned.

By Mr. Lane:

Q. Did you, at the meeting of May 25th, hear Miss Todd say this: "There have been several things come up that the Loyalty League will be interested in, mainly about this sweep stakes,"?

A. May 25th? I never heard of any sweep stakes in [fol. 5087] May. What sweep stakes we always had the athletic association might have a sweep stakes in conjunction with their golf tournament in the fall, when they would quit playing golf.

Q. Was that discussed at this Athletic Association—discussed at your union meeting of May 25th, 1937?

A. No, they never. I never knew of them holding a sweep stakes in May.

Q. Did you, at your union meeting, discuss a bill of the Loyalty League?

A. I never knew the Loyalty League ever had any bills.

Q. Well, did you discuss it at that union meeting?

A. Not that I remember of.

Q. I will ask you to state whether, at a meeting you attended on May 25th, the union meeting, Hobart Atherton said this "As Miss Todd has already told you, we only have one debt of the Loyalty League. A good many of you seem to be under the impression we have accumulated quite a lot of bills as we run along, but we have only one." Was that matter mentioned or discussed?

A. I don't remember anything said about that.

Q. Was this said at that meeting "You all realize when this agitation first started we didn't have any union started

and it was up to some organization to take the initial step to protect our rights as employees of the Donnelly Garment Company, so the Loyalty League had a meeting of the representatives and were authorized by the representatives to retain legal counsel. We retained Mr. Tyler, [fol. 5088] as you all know, he came down here and talked to us. That debt, the bill of Mr. Tyler's, is the only debt the Loyalty League has which has not been paid, and as Miss Todd told you, that is—", was anything of that kind discussed at the meeting of May 25th?

A. I don't know that the Loyalty League had any debt. The Loyalty League wasn't mentioned at that meeting.

Q. Was there anything said at that meeting that the Loyalty League had a meeting of representatives and retained legal counsel? A. No.

Q. Was anything said at that meeting about the Loyalty League taking the initial step to protect your rights as employees? A. No.

Q. Was there any suggestion or motion made at that meeting to pay 50c per person in order to raise this money for the Loyalty League? A. No, there wasn't.

Q. Will you state what activity the Loyalty League had after the formation of the Donnelly Garment Workers' Union?

A. I don't remember any one particular occasion that we had after that.

Q. Was the Loyalty League still in existence on July 15, 1939? A. Yes, sir.

[fol. 5089] Q. Had its activities, after April 27, 1937, and up to July, 1939, been the same as its activities for the same period preceding April 27th? A. I think it had.

Q. I will hand you respondent's exhibit 7, which appears at page 4865 of the Circuit Court of Appeals record, being an article appearing in the Kansas City Journal-Post on March 6, 1937, and ask you if you read that article?

* * * * * * *

A. I believe I did.

Q. Did you read this portion of the article attributed to Mr. Dubinsky: "Dubinsky said that Reed would receive a polite letter within a few days inviting him to confer with Kansas City labor leaders about signing a union contract. If he refuses to meet with us we will start our

campaign. It may take a long time to organize the Donnelly Company plant but we will win out in the end as all our 240,000 members of our organization are behind us."?
[fol. 5090] A. Yes, I read that.

Q. Now, when the strike controversy was going on at the Gordon, Gernes, Missouri companies in March, state whether or not, in view of the article I have just read to you, you considered those strikes as part of the campaign Mr. Dubinsky mentioned in this article?

A. I thought that was—I thought that is what he had reference to. Strikes of that nature, that is the only way they could even attempt to organize us.

. . . . . .

By Mr. Lane:

Q. I will show you Board's exhibit 27, appearing on page 4743 of the Circuit Court of Appeals record, being an article in the Kansas City Times on May 11, 1937, entitled "Reed assails Dubinsky" and ask you to look at that and state whether you read that article, at about that time? A. I believe I read it.

Q. Did that article have any influence on you—your wish to remain a member of the Donnelly Garment Work-
[fol. 5091] ers' Union or to have the Donnelly Garment Workers' Union as your representative for collective bargaining?

. . . . . .

Trial Examiner Batten: Well, Miss Witness, I don't understand, a while ago you looked at some exhibits Mr. Dubinsky quoted, and I gathered from your answer that you believed what he said, but what Senator Reed apparently said you didn't believe or didn't influence you, and yet you didn't know Mr. Dubinsky and you do know Senator Reed.

A. I don't know Senator Reed any more than I do any other man. I know who he is now from seeing him here and from other gatherings but as far as knowing him, I don't know him. I wasn't influenced by what he said as to whether or not I wanted to belong to the union.

. . . . . .

[fol. 5092] By Mr. Lane:

Q. In this article of March 6, 1937, purporting to be an interview with Mr. Dubinsky in which he is alleged to have said "Mr. Reed said many harsh things about me during the recent political campaign but all that is past and I shall deal with him only as a maker of dresses." Did the fact that appeared and attributed to Mr. Dubinsky influence you any in your decision with respect to forming the Donnelly Garment Workers' Union?

A. Only that he was planning on organizing the place where I worked. Not that he referred to Mr. Reed, because Mr. Reed wasn't a part of the company.

Q. Well, did the fact that he is alleged to have said "Mr. Reed said many harsh things about me" have any influence on you?

A. No, it didn't make any difference to me.

Q. Now, up to July 15, 1939, and I use that date because the Examiner has confined us to that period—

* * * * * * *

[fol. 5094] By Mr. Lane:

Q. Mrs. Mudd, did you, during that period, remain a member of the Donnelly Garment Workers' Union of your own free choice? A. Yes, I did.

Q. Did you know Mrs. Martha Gray in April, 1937?

A. Yes, I believe I did.

Q. Do you know what she did?

A. She worked in the store.

Q. Do you know what work she did there?

A. Well, she was just a clerk to my knowledge.

Q. Were you occasionally in the store?

A. Yes, I went in there from day to day.

Q. Did you see what she was doing?

A. She always just waited on you if you wanted a dress or any material she waited on you for it.

[fol. 5095] Q. Was there anything that Mrs. Gray ever did or anything that she ever said to you that led you to believe that she was a superintendent or supervisor or was being held out by the company as having authority to speak for the company in connection with any labor matters? A. No, I never did think she had.

Q. Did she, so far as you know, have any control over other employees? A. No, not that I know of.

Q. Did anybody ever say anything to you or did you get the impression anywhere she was a supervisory employee? A. No.

Q. Did you know Mrs. Lena Tyhurst? A. Yes.

Q. What was her position in April of 1937?

A. Well, to the best of my knowledge she was one that looked at the work to see if it was all right, or made suggestions about the handling of the work, the quality of the workmanship.

Q. Do you know whether or not she had any control or supervision over any other employees?

A. To my knowledge she didn't have.

Q. Did you have the opinion, or impression, in April of 1937, that Lena Tyhurst was a supervisory employee?

A. No.

Q. That she was being held out by the company as oc-
[fol. 5096] cupying a supervisory status?

A. No, I never thought she did.

Q. And did that continue to be the situation so far as Lena Tyhurst was concerned, down to July, 1939?

A. I believe it was.

Q. Is the same thing true of Mrs. Gray? A. Yes.

Q. Did you know Marvin Price in April of 1937?

A. I knew him when I saw him.

Q. Did you know what he did? A. No, I didn't.

Q. Did he ever do anything in your presence or say anything that led you to believe that he was a supervisory official of the company? A. No.

Q. Did you ever see him exercise any control or authority over any other employees? A. No, I didn't.

Q. Do you know Mrs. Bogart?

A. I knew her when I saw her.

Q. What is her first name, do you know?

A. No, I don't.

Q. Do you know what she did? A. No.

Q. In April of 1937?

[fol. 5097] A. I don't know.

Q. Did you ever see her do anything or hear her say anything that gave you the opinion or impression that she was a supervisor for the company? A. No.

Trial Examiner Batten: Miss Witness, did you say you didn't know her?

A. I knew her when I saw her, but I wasn't acquainted personally with her. I knew who she was when I saw her, that is all.

By Mr. Lane:

Q. Did you know Mrs. Strickland? A. I knew her.

Q. Could you connect up her name with her in April of 1937, so you could identify her?

A. Yes, I believe I was bowling at that time with Mrs. Strickland.

Miss Weyand: I didn't understand that last answer.

A. I think at that time I was bowling on the same team with Mrs. Strickland.

By Mr. Lane:

Q. You know what her position was?

A. No, I don't.

Q. Did she, during working hours or after working hours, on this bowling team you speak of, ever say or do anything to give you the opinion that she was a supervisor of the company? A. No.

[fol. 5098] Q. Did she or anybody else ever say anything to you, or do anything to give you the belief that she was authorized to speak for the management in connection with labor matters? A. No.

Q. Or that she could control the activities of other employees? A. No, she didn't.

Q. Did you know Ted Scoles in April of 1937?

A. I knew him when I saw him.

Q. Do you know where he worked?

A. I had the impression he worked on the fifth floor.

Q. What department? A. The cutting department.

Q. Did you have the opinion at any time from April, 1937, to July, 1939, he was a supervisory employee of the company? A. No, I didn't.

Q. Did you know Herbert Mutchler? A. Yes.

Q. Was he employed by the company in April of 1937?

A. I believe he was.

Q. Do you know what he was doing then?

A. No, I don't know what his duties were.

Q. Do you know what his duties were at any time he was employed there?

A. Well, I think at one time he checked up on—came in, [fol. 5099] I believe he looked up bundles. I don't know what he did. It seems to me that is what he came in the section for occasionally.

Q. Do you know when he left the employment of the company? A. No, I don't know.

Q. Did you ever have the opinion or the impression during the period from April, 1937 to July, 1939, that Herb Mutchler was a supervisory employee? A. No.

Q. Or that he had any control over other employees?

A. No, I didn't.

Mr. Lane: I believe that is all.

[fol. 5100] By Miss Weyand:

Q. I believe you stated you started in as a presser, is that correct? A. That's right.

Q. Do you call it a pressing section or a pressing department, or what is the term you use referring to the group of pressers?

A. I believe it is referred to as the pressing department.

Q. What is the title given the presser in charge of the pressing department? Is it an instructor, or do they have some other name?

A. Well, I don't know as I ever heard any title in connection with the name of the lady down there.

Q. What lady do you refer to? A. Mrs. Waddell.

Q. Has she been in charge of the pressing department ever since you first were acquainted with it?

A. Well, when I worked down there, she was, but whether she is now, or in 1939, I don't know; I left that department after I worked down there for a while.

Q. And she was always referred to as Mrs. Waddell?

A. I always heard her referred to as Mrs. Waddell, I guess she was the instructor.

Q. Did she have someone called the thread girl?

A. While I was down there she did not, that I remember.

Q. Was there anybody who assisted Mrs. Waddell?

A. I don't remember, when I was there, that there was.

[fol. 5101] Q. When you went on the floor in the pressing department, what did you do?

A. I counted the work as it came into the department, and put the belts with it, and later on I put the belts—that work was one job, and later on I did another job of

putting in the belts in the dresses separately and buttoning them up and fastening the plackets, and such as that, in order to get them ready to fold.

* * * * * *

[fol. 5102] Q. In the sewing section, who are paid by piece rate and who by time rate?

A. I am paid by the time.

Q. Do you know whether or not anyone else is?

A. I suppose the instructor is.

Q. Do you know whether anyone else is?

A. I don't know that anyone else is paid by time all the time; of course, I don't have anything to do with how they are paid.

Q. What instructors were you the thread girl to, during the period of 1935 to 1939?

A. I wasn't on the floor in 1935; I believe I went on the floor the early part of 1936. I worked for Mrs. Cook at one time, and I worked at one time for Mary Copowycz, and I worked for Mrs. White.

Mr. Lane: I didn't understand that last name.

A. Mrs. White; and for Clara Finnell; I believe that is all, other than maybe just during vacations. I might [fol. 5103] have relieved or worked for somebody else who might have taken the instructor's place, that I was working with during vacations.

Q. You said you might have relieved somebody. You mean who?

A. Any other floor girl. One vacation, I believe, was the only time I worked in that way, in one of the small sections on the ninth floor, in the place of Frances Dumit.

Q. This morning when you were reading the February 26, 1937, article, you said that at that time you had already let the I. L. G. W. U. know that "We didn't want them in the plant." Were you referring to the Loyalty League when you made that statement?

Mr. Reed: What is that?

Trial Examiner Batten: Will you read the question?

(Thereupon the last question was read by the reporter.)

A. I think that is what I had in mind.

Miss Weyand: Who was your instructor at the time of the March 2nd petition, March 2, 1937?

A. I believe Mrs. Cook.

[fol. 5105] Q. Who brought the petition to you when you signed it?

A. Well, as near as I can remember, I believe Mary Sprofora did; I am not sure whether she brought it to me, or whether I went and hunted it up.

Q. Did you sign it at some meeting at which all the instructors and thread girls were present?

A. I wouldn't remember.

Q. You wouldn't know one way or the other?

A. No, I am afraid not.

Q. Did you notice what names were on the petition when you signed it?

A. I don't remember now. I probably at the time did notice whose names were there.

Q. I wonder if you would look at the names, and tell me whether or not the first eight or nine names are those of instructors, and their respective thread girls, on the eighth floor at that time? Will you read the names out loud?

Trial Examiner Batten: Let's see. What is that exhibit?

[fol. 5106] Miss Weyand: That is L. L. G. W. U. exhibit No. 10, which appears in the Circuit Court of Appeals record at 5974, and they are at 5388.

A. I don't know where these instructors and floor girls worked; I might know who they are, but I don't know as I would know where they worked at that time.

Q. Well, will you read the first eight, and see if those were not instructors and thread girls, who were on the eighth floor at that time?

A. I believe Lola Skeens was on the eighth floor.

Q. And the name following her name?

A. Nellie Biggs, I don't know whether she was an instructor or thread girl at that time. I believe she was a thread girl, but I don't know where she worked.

Q. And what is the next name?

A. Marie Patton was an instructor.

Q. On the eighth floor? A. Yes.

Q. And the next name? A. Marie Grampz.

Q. What was she?

A. Marie was a thread girl, I believe; I don't know whether Marie Grampz was on that floor or not as a thread girl, but I believe she was.

Q. And the next name?

[fol. 5107] A. Lena Allison, I believe at that time she was an instructor on the eighth floor. Rose Henricks, I am not sure about her.

Q. Was she Lena Allison's thread girl at that time?

A. I don't know really.

Q. Was she at any time around that period?

A. I don't know who worked together. Ada Vining was an instructor.

Q. You missed a couple of the first names.

A. Etta Dorsey, she was an instructor too, to the best of my knowledge; I never knew exactly what section she was in, but she had special machines, as a rule, along with other machines in the same section, embroidering and tucking, and such as that. I couldn't say whether she was up on the eighth floor at that time or not. I was on the seventh floor.

Q. Carrie Abrams.

A. Carrie Abrams, I believe she was an instructor at that time?

Q. Was she on the eighth floor?

A. I don't believe so; I don't believe she has been up on the eighth floor as an instructor.

Q. Grace Davis?

A. Grace Davis, I don't know whether at that time I knew Grace Davis.

Q. Do you know whether she was ever the thread girl for Carrie Abrams, or Etta Dorsey?

[fol. 5108] A. Not to my knowledge, I couldn't say either way.

Q. That covers the first eight or nine names. Now, taking the next group of names, do you know on what floor Ada Vining was?

A. Ada Vining, I am under the impression, was on the eighth floor.

Q. As an instructor? A. Yes.

Q. And Clara Finnell?
A. I believe she was an instructor on the eighth floor.
Q. Emma Grober?
A. I believe she was a thread girl.
Q. On the eighth floor?
A. I don't know where she worked.
Q. The next name, Anna Barthol?
A. She was a thread girl at times. Anna Barthol got sick sometime along there; I don't know whether she was on that floor then or not.
Q. She must have been working there the day this was signed, wasn't she?
A. Well, I don't know whether she was on the floor.

Mr. Reed: Please keep your voice up. I can't hear you.

Miss Weyand: I am sorry.

By Miss Weyand:
Q. The next is Mary Snedden.
A. Now, Mary Snedden was a thread girl for a while; [fol. 5109] I don't know at this time whether she is. I knew Mary Snedden as an instructor when I was on that floor, and I know she was up on the floor as a thread girl too for short times, but as to this date, whether she was a thread girl, I couldn't say. I never worked with or close to Mary Snedden.
Q. Do you know who her instructor was when she was a thread girl? A. No, I don't.
Q. Grace Gnotta? A. She was an instructor.
Q. What floor at that time? A. Seventh.
Q. Vera Marshall?
A. Vera Marshall, I believe, was a thread girl.
Q. Was she Grace Gnotta's thread girl?
A. I don't think so.
Q. She was on the seventh floor, wasn't she?
A. I don't remember.
Q. Lillian White.
A. Mrs. White was an instructor.
Q. On the seventh floor? A. I think she was.
Q. And Edna Bienert? A. She was a thread girl.
Q. Was she Mrs. White's thread girl?
[fol. 5110] A. I think perhaps she was.
Q. Rosetta Cook?

A. She was the instructor I was working with at the time I signed the petition.

Q. And your name follows her name, is that correct? That is your signature? A. Yes.

Q. And you were on the seventh floor at that time?

A. Yes, I was.

Q. The next name, Kathryn Rosen?

A. Kathryn Rosen was an instructor, I believe.

Q. And she was on the seventh floor, was she?

A. I don't remember. Kathryn was also an instructor and had special operators.

Q. What about Pearl Collins?

A. I don't know whether Pearl Collins was an instructor or a thread girl then.

Q. She has been both? A. Yes, she has.

Q. Martha Gorman?

A. I am not sure about Martha Gorman; I believe she was a thread girl.

Q. Do you know whether she was on the seventh floor?

A. No, I didn't know Martha very well.

Q. Mary Copowycz?

[fol. 5111] A. I think Mary Copowycz was a thread girl then.

Q. Do you know what floor she was on?

A. No, I don't.

Q. She has been both a thread girl and an instructor around that time?

A. Yes—later than that she was an instructor. I don't know at that time; I believe she was a thread girl then.

Q. Pearl Atchison?

A. I am not sure about Pearl; I never knew Pearl very well. I think she was a thread girl.

Q. Do you know what floor she was on?

A. No, I don't.

Q. Cecile Ealy?

A. I think Cecile was an instructor at that time.

Q. Do you know what floor she was on?

A. No, I don't.

Q. Do you know whether she continued to be an instructor up until July 15, 1939?

A. I think she went up and worked with Mrs. Nichols sometime during that time, as a thread girl; I know her position has changed.

Q. Do you know whether she had any other positions before July 15, 1939?

A. Well, yes, she has had; I don't know just when, but I know that she has something to do with the produc-
[fol. 5112] tion work, getting production out.

Q. Do you know what her work for Mrs. Nichols was?

A. I think she was just an assistant, just worked up there along with the pricing of the work.

Q. Who is Ada Wolfe?

A. I don't know Ada Wolfe. I knew her when I saw her, and that is all the better I knew Ada Wolfe.

Q. Was she an instructor?

A. I don't know; I don't know Ada Wolfe.

Q. Stella Willis?

A. Stella Willis, to my knowledge, was an instructor at that time.

Q. She was on the sixth floor?

A. I believe that is where that section was.

Q. Was Stella Willis an instructor continuously from 1935 down to July 15, 1939?

A. To the best of my knowledge, she was. I never worked with her, but that was always my opinion.

Q. Mary Bogart?

A. If that is Mrs. Bogart, I know she works in the dividing room, if that is her name. I knew a Mrs. Bogart down there, but I didn't know what her first name was, but if that is the same person, she worked in the dividing room.

Q. Is she the instructor in the dividing room?

A. I don't know at that time, I had very little occasion
[fol. 5113] to go to the dividing room.

Q. Was she the instructor of the dividing room any time prior to July 15, 1939? A. Not that I am positive of.

Q. Who was in your own dividing room?

A. I don't know.

By Trial Examiner Batten:

Q. You say "dividing room". What do they do down there?

A. When the work is cut, it is in stacks, and I know they bundle up the work with tickets attached.

Q. Oh, yes, I remember, where they separate it into bundles, with the instructions and sort of schedule it for the different sections.

A. They tie it up with the tickets, so the basket boy can take it to the sections in order to get the work done on it.

By Miss Weyand:

Q. It was located on the fifth floor?

A. I think it was.

Q. And Lulu Waddell?

A. I think she was in the pressing department.

Q. Elma Jennings?

A. She worked as a presser when I was down there.

Q. You don't know whether she ever went on the floor or not? A. No, I don't.

Q. Anna Wherry, at that time what position did she hold?

[fol. 5114] A. She was in charge of production. I don't know exactly what her job was.

Q. Was she ever called factory manager, to your knowledge? A. No.

Q. Do you know what she did?

A. Well, to the best of my knowledge—I never had a whole lot to do with Mrs. Wherry, she never did direct me what to do. I never talked with her a whole lot about the work, but I think when the machines needed to be changed, in order to get in special machines into the sections and take them out, I think she had something to do with that, as to the production work, but I don't know to what extent. I don't know what she did do other than that.

Q. Lena Tyhurst—you mentioned her before?

A. Yes, I have.

Q. And Mollie Smith?

A. Mollie Smith was in the binding department. I don't know what she really did down there. I know I called Mollie Smith for binding whenever I needed binding, that is as far as I know what she was.

Q. Do you know whether Mollie Smith was ever an instructor prior to July 15, 1939?

A. I don't know; I know whenever I needed any binding I called her on the phone.

Q. And you don't remember signing this at any meet-
[fol. 5115] ing with those people? A. No, I don't.

Q. Do you know how it happens there seems to be considerable following in order from the top floors down to the bottom floor? It went from the eighth to the seventh to the sixth to the fifth floors. A. No, I don't.

Q. You don't know how that happened at all?

A. No, that isn't within my knowledge.

Q. You don't know who the girl, who brought it to you, took it to after you signed it?

A. No, I don't remember.

Q. When you were a thread girl in the sewing section, did you have a machine? A. No.

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Q. Did you have a table at which you kept your supplies?

A. I had a table to put my pocketbook in; we have bins for our files.

Q. Where are those bins located with reference to the section?

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[fol. 5116] A. I think, as near as I can remember, they have always been right at the end of the rows of machines.

Miss Weyand: Q. Where is that table on which you put your pocketbook located?

A. It is located at the end of the room.

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By Miss Weyand:

Q. Where is the instructor's desk?

A. There is no such a thing. That table there is where we put our personal pocketbook in our room.

Q. Is that table used for anything else?

A. Just to put work on it to match it up.

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[fol. 5117] Q. Do the girls own their own bobbins?

A. Well, I can't say that they all do; I believe they do, but I am not positive. I don't know for sure.

Q. You don't know of any rules about their buying bobbins when they come to work? A. No, I don't.

Q. You don't know how they acquire their bobbins?

A. No, not positive.

Q. Do you have any idea?

A. I think they put up a deposit on bobbins, but I don't know that they do.

Q. Do you know how much that deposit is?

[fol. 5118] A. No, I don't.

Q. Do you know anything about whether they have to sign something for them?

A. No, I don't know anything about signing, I never seen them sign anything.

Q. What office do they go to, to get those bobbins?

A. They go to the machinist's cage on the eighth floor.

Q. Each of the girls goes up there for her bobbin when she starts to work?

A. I don't know that each of them do. I have seen girls up there getting bobbins, but I don't know whether they all go up and get them when they start working.

Q. Well, when a girl is hired, someone said Mrs. Hyde brings them down to the section. Do they start in without bobbins or do they have to get bobbins?

A. When I was hired there I was in the pressing department, but as far as being hired as an operator, I don't know about that.

Q. How long did you work as a thread girl in the sewing section? A. From 1936, I believe.

Q. And you worked continuously from 1936 to July, 1939, as a thread girl? A. I believe I did.

. . . . . .

[fol. 5119] Q. Now, the thread you gave the girls isn't on a bobbin, is it?

A. No, it is on spools.

[fol. 5120] Q. You never give a bobbin to a girl who didn't have a bobbin? A. Not to my knowledge.

Q. She always had bobbins?

A. So far as I know they always have had.

Q. You don't know where she got them?

A. No, I am not positive. I suppose they get them at the cage.

Q. You don't know, when a new girl comes in to work, how she gets her bobbins?

A. I suppose she goes to the cage to get them, but I don't know that.

Q. How does she know to go to the cage to get them?

A. She has an instructor tell her.

Q. What else does the instructor tell a new girl when she comes there to work?

A. As far as I know, she tells her what time to go to lunch, and gives her the work, and shows her how it has to be done; she shows her samples of what her work is expected to look like when she gets through.

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[fol. 5123] Q. Does more than one section work on a style at the same time?

A. As a general thing I don't believe they do.

Q. One section is assigned one style, and they fill all [fol. 5124] the orders until you cease having orders on that style?

A. As near as I have noticed, I think one section does make one style; I don't know as they always do that. If the work gets low, they might transfer the style to another section in order to help out.

Q. When a new style comes in, are there a good many changes made in the section?

A. I didn't notice it that way.

Q. Do they rearrange the machines at times?

A. Not very often; I haven't seen them change very many machines during the styles.

Q. Are there sometimes differences in the sequence of operations on the different styles?

A. Some dresses have to be made differently than others.

Q. When that happens, when you get a style that is considerably different from the one you were working on preceding that, what is done in that section?

A. Well, I still match up the work and put out the thread.

Q. I am asking you what is done in the section.

A. I don't know as anything particular is done.

Q. Well, the instructor has to show each girl how to do a new style, doesn't she?

A. If it is something different from what she has worked on, she would.

Q. Let's assume the case where there is a difference; [fol. 5125] you can remember a case where there was a difference, can't you?

A. I can remember when a girl's work has been changed, yes.

Q. What happens when you remember changes, when there was a change of sequence of operations, when the machines have to be changed?

A. You don't have to change the machine because one machine is put on one operation and another machine on another operation.

Q. Was there any necessity of changing the machines to meet the sequence of operations for a new style?

A. Not as I know of. We carry the work from one machine to another.

Q. So it doesn't follow from one girl to another, but it sometimes jumps around in the section?

A. That is the way we did the work there at that time, maybe a sleeve girl on one end of the machine and a skirt girl on the other end of the row.

Q. Who carries it?

A. I do, or the instructor, depending on which one gets to it first.

Q. And how many do you carry at a time?

A. How many what?

Q. Pieces of goods. Did you carry a dozen at a time, or individually?

A. Our work is put up in bundles, it isn't made up that way.

[fol. 5126] Q. You don't carry it until she finishes a bundle?

A. If the work is very low, we might carry part of a bundle at a time.

Q. Is there always a given girl going to do the next step in a sequence of operations, or sometimes do three or four girls do the next step?

A. There has to be more than one girl to do the next operation.

Q. When you pick up a bundle to take it over to a girl, how would you pick out the girl to whom you are going to give it?

A. If the girl wasn't on that particular style, I would ask the instructor whom to give it to. Otherwise, I would put it on the table.

Q. You never give it to a girl and decide yourself which girl to give it to?

A. No, that isn't part of my duties, I don't do that at all.

Q. Does it make a difference to the girls which styles they get, or what goods is handed to them to work on?

A. I think the majority of people have their preference as to what kind of work they do.

Q. The majority of people think they can make better money on one job than another?

A. Yes, some girls can handle a certain type of collar easier than another girl can.

Q. If a girl doesn't make her given minimum guarantee for some weeks, isn't she sometimes reduced from her [fol. 5127] minimum guarantee?

A. I don't know anything about that.

Q. And if a girl makes her minimum guarantee for a number of weeks continuously, is she sometimes given a higher minimum guarantee?

A. I don't know how their minimums are determined.

Q. Do you know it to be a fact that the number of weeks a girl makes her minimum guarantee determines whether she moves up or down in the minimum guarantee?

A. I don't know how they guarantee it. I would think a girl would be paid according to her ability and her work.

Q. Do you know if a girl makes her guarantee for, say, 12 weeks—I don't know how long they have to work to make their minimum guarantee—she moves up into the next guarantee? A. No, I don't know that.

Q. You wouldn't know how many weeks she would have to make a minimum guarantee to move up?

A. No, I wouldn't.

Q. You don't know what is the system of the girls in the sections in which you have been a thread girl?

A. No, I certainly do not.

Q. Did an instructor ever tell you when she had gone over the cards and discovered a given girl had fallen down on her minimum guarantee, and her instructor had noticed that she had been doing that for six or seven weeks, has she ever asked you what you thought could

[fol. 5128] be done with the girl so she would make her minimum guarantee?

A. I don't know as an instructor ever asked my advice on that.

Q. Would you, being her thread girl, remember that she asked your advice on a case?

A. I don't believe she ever asked my advice on any occasion.

Q. You don't remember one way or the other?

A. I don't know as I have ever been asked that in a section?

Q. Did the instructor ever discuss with you which girl should be given a certain piece of work?

A. No. The instructor plans her work as to what girl she is going to have do it, in order to keep the girls going.

Q. She never asked your opinion as to which girl could do the work better? A. No.

Q. When an instructor is absent from the section a few hours, who is in charge?

A. There is no one in charge.

Q. Suppose some of this work had to be moved during that time?

A. If an instructor expects to be gone for a few hours, she sees that the girls are started on work that they can continue with while she is gone.

Q. And you never had an occasion arise when that was [fol. 5129] not all taken care of when your instructor left?

A. I don't remember of any specific time that that has happened.

Q. You don't remember an occasion when some girl finished a bundle, and the instructor hadn't told you what girl to give that bundle to?

A. If a girl has already started on a certain type of work, the chances are some more work like that would come up.

Q. Who would give it to her?

A. I would give it to her. It would be the same type of work, no change of work.

Q. Did the instructor leave written instructions to you as to which work to give to which girl when she was absent for hours at a time? A. No.

Q. She just told you what to give them?

A. There wouldn't be any necessity of telling me what to do if she was going to be gone for a short while, for the girls in the section are all on a certain type of work, and we don't change a girl on her work.

Q. During the time the instructor was absent, you handed the work to the girl?

A. Yes, or I would ask Lena Tyhurst or the instructor in the next section.

Q. But you would hand out the work to be done?

[fol. 5130] A. No more than I would if the instructor was there.

Q. While the instructor is there, you do hand out work to be done?

A. If I pick up a bundle of work ready for the next operation I am apt to give the next girl that work.

Q. Did you ever take care of a section for a whole day at a time? A. Not by myself.

Q. What happens if an instructor is gone a day?

A. Any time I have been in a section when an instructor was gone for a day, they would bring someone in the section to take her place.

Q. Do they have a group of alternate instructors that they keep on hand?

A. There is a group of girls up on the ninth floor, capable of being instructors, or that have been instructors, or there is also Lena Tyhurst that can take care of the section.

Q. Do you know the names of any of those girls brought in prior to July 15, 1939, as alternate instructors?

A. I believe Mrs. White, up on the ninth floor.

Q. Were there any people on the ninth floor who didn't work regularly as instructors, who were brought down at times to act as instructors?

A. I don't know as there was anyone in particular.

Q. Do you remember the name of any one person who [fol. 5131] was brought to your section as an instructor, who was regularly acting as an instructor?

A. Before that time I don't remember being with an instructor unless it was one during vacation time.

Q. What is the longest time you remember of an instructor being absent from your section, aside from vacation time, prior to July 15, 1939?

A. I don't believe I ever worked in a section where the instructor was absent other than vacation time before that.

Q. How many hours at a time do you recall her being absent during a day?

Mr. Reed: What was that question?

Trial Examiner Batten: Read the question, please.

(Thereupon, the last question was read by the reporter.)

A. I don't know. The instructors don't leave the sections for any length of time, as a rule, during the day.

By Miss Weyand:

Q. Don't they go up weekly on Tuesday or Wednesday, to go over the time cards with Mr. Baty?

A. That doesn't take hours.

Q. How long does it take?

A. Perhaps they might be gone half an hour or 45 minutes.

Q. You don't remember them being gone over 30 or 45 minutes during the period when they went over the time cards with Mr. Baty?

A. I wouldn't say they are gone longer than that. [fol. 5132] I don't recall them being gone any long length of time.

Q. On those occasions you are always left in charge?

A. I am not in charge; I see the instructor in the next section, or Lena Tyhurst, if something comes up.

Q. Do they come there immediately upon your instructor leaving? A. No.

Q. Doesn't the instructor in the next section have to go up to the office at the same time your instructor goes up?

A. I don't know that they always do that; they might once in a while. I never notice them going up at the same time.

Q. You don't know that they do?

A. No. I thought they went up separately.

Q. It was your understanding each one went up individually? A. That is my understanding on it.

Q. Do you know what day of the week they normally go up?

A. I don't know as they have any set day; it is usually the first part of the week when they get the cards ready.

Q. Did you ever help an instructor get the cards ready?

A. No.

Q. Do you know whether other thread girls helped instructors get the cards ready?

A. As far as I know, the instructor merely goes up there and looks at the cards; I don't know anything about helping get anything ready up there.

[fol. 5133] Q. If a girl has a question, while the instructor is absent, about doing her work, do you always call on the neighboring instructor to come in and answer it?

A. Not always; I sometimes look up Lena.

Q. You always call on Lena?

A. If there is a part of a dress she doesn't understand, I might give her a sample, or take that part of the dress to Lena and find out about it.

Q. You never explained to the girl how she should do it?

A. I never attempted to explain to a girl anything about the work.

Q. And you have never done it?

A. I never have done it.

Q. Did your experience afford you an opportunity, and the knowledge gained from your work, and your abifity, to explain it to the girl?

A. I never had that job, I never had a job of that sort.

Q. Would you know how to explain it to her, however?

A. I wouldn't really attempt to advise as to how anything should be done in the way of sewing.

Q. Did you ever look up the instructions, while the instructor was absent, to see what the instructions said?

A. I don't remember of having done that.

Q. Did you ever read the instructions for a garment?

A. Yes.

[fol. 5134] Q. Do you usually read them when a new style comes down?

A. I read it to see what order the work is to be done in.

Q. Could you describe one of those instruction sheets for me? A. I believe I could.

Q. What are they like?

A. The sheet is about—at the top of the sheet it gives the style number; the next thing is the instructions to the binding department as to whether to make buckles or

buttons; then the next step could be a notice to the notions department as to sending belt loops and waist tapes and shoulder tapes; and then the next instruction could be as to the sleeves, whether there is one pleat on the sleeve or half a dozen, one portion would be just shirred on the sleeves.

Maybe the next operation is to sew a facing on the bottom of the sleeve; the next operation would be to press the sleeve facing, or maybe just shirr it; and then another, each one of our tickets is on the bundle and has a code number on it, and the operations are all in code numbers, and perhaps the skirts have a separate ticket on them, there will be a number designating the skirts and it shows the operations to be done on them.

And that follows through in order, and the same way with the rest of the dress.

Q. Do you know the code numbers or understand them? [fol. 5135] A. I think by working this long, I have a fair understanding what they mean.

Q. Do they change each time you have a new style change?

A. No, not to my knowledge.

Q. The system code remains the same?

A. Yes. For instance, 32 ticket would be the bundle of collars; that is the reason I know whether to put them away; 21 ticket would be the sleeves.

Q. Now, when a new style comes down you have to get acquainted with the sequence of operations from the instructions?

A. That is my usual procedure.

Q. And then you don't have anything new until you hit a new style again; is that correct?

A. That's right.

Q. And for sometimes as long as six weeks at a time you have been on a given style, haven't you?

Mr. Reed: I submit the witness said she couldn't state any definite time.

Trial Examiner Batten: Well, did you ever remember an occasion of as long as six weeks?

A. No. That question came up a while ago. I don't know of any one style in particular that takes that length of time, but it may be, according to the way they are sold, we make them according to the way they are cut.

By Miss Weyand:

Q. Was there ever a time since you have been a thread [fol. 5136] girl, where there was a blackboard, or some kind of a blackboard where there was a number of thousands of dollars' worth of dresses that you had to get up to? A. I never heard of it.

Q. Was there ever a quota ever assigned to the sections?

A. I don't know that there ever was.

Q. Did you ever keep track of the thousands of dresses or the thousands of dollars' worth of dresses you turned out in a day? A. I never heard of it.

Q. You never did?

A. I suppose in the office it would be taken care of.

Q. But you were never informed what your section had done from time to time?

A. I think we got a report from time to time, as we got our work out.

Q. How regularly would you be notified as to whether you were getting your work out or not?

A. That notice would go to the instructor, and as to how often I wouldn't know.

Q. She never informed you whether your section was getting the work out?

A. It may be she would or she might [now].

Trial Examiner Batten: You mean as to the amount?

Miss Weyand: Yes, or whether they were getting their [fol. 5137] work out.

By Miss Weyand:

Q. That is what you understood me to be referring to?

A. That is what I thought. I didn't have anything to do with getting the work out; as far as the quota is concerned, that is up to someone else, I don't know who.

Q. When they made up these instructions, are they mimeographed or just typed, with a lot of carbon copies, or how is it? A. I don't know.

Q. You have seen them?

A. I have seen them, but I don't know how they prepare them.

Q. There is more than one copy prepared, isn't there?

A. They bring one copy to the section.

Q. Does the binding department get one?

A. I don't know. We get an instruction sheet for each one of our styles, but who else they send it to or what type of instructions, I couldn't say.

Q. When you get thread or notions, in any other department, do they have any instructions there that tell them what thread they are to supply you?

A. When I get the thread up to the section, it always has a requisition with it. When I need more thread, I go down and ask for that particular type of thread that I need for the work.

Q. They don't have a record down there of the style or which dress it is to be used for?

[fol. 5138] A. I suppose they keep a record.

Q. Do they have a copy of the instruction sheet so they know the style, and which says section such-and-such is working on such-and-such a style, and working with such-and-such a thread?

A. I imagine that is the only way they keep their thread straight, but I don't have any personal knowledge about it.

Q. Who takes those requisition sheets? Do you carry it yourself to where this thread is kept, or how?

A. The thread is sent to me with that requisition sheet, and when I put that thread away, I put the requisition sheet away for future notice. If I want to refer to that thread requisition, I have that to show that that thread was issued to me for a particular style.

Q. When a new style comes in, is the thread automatically sent to you for the new style?

A. Yes, and all the other things.

Q. It all automatically comes to you?

A. Yes, that is part of the procedures.

Q. And then you don't have to get new thread until that runs out?

A. If I use that thread up, I go after more.

Q. They automatically send you all you need?

A. That's right.

Q. And they automatically send all the other notions [fol. 5139] you need in your department? A. Yes.

Q. How often do you run out of thread?

A. It depends. Sometimes there is machine trouble, and we use up more thread. That is a very hard question to answer as to how often.

Q. Is it a daily occurrence, or a weekly occurrence?

A. I don't know. Sometimes I go down every day for a week, and maybe not for two weeks.

Q. You always go in person, and never send a messenger?

A. Sometimes I send a note and sometimes I call over the phone.

Q. Suppose a girl uses the wrong thread, does that ever occur? A. Well, once in a while it does.

Q. What do you do about it?

A. I go down to the notion department and see if it left there O.K.; if not too badly off shade, it is sent up to the office to see whether it is O.K. for that particular thread on that particular work; if something can be done by taking care of it by stitching the rest of the dress in the same shade of thread, all right; if not, it is ripped out.

Q. The girl rips it out?

A. I do some of that myself. If it is the girl's own fault, I guess she would rip it out, but I don't know whether that [fol. 5140] happens very often.

Q. Is she paid for it, if it is considered her fault?

A. I don't know how that is taken care of. The instructor takes care of anything that comes up like that.

Q. Does the instructor consider it the girl's fault if she has the wrong thread?

A. I think it would be my fault, because I watch it, to see. As I go down the row, I glance to see whether or not the girl is using the thread she should.

Q. If she is not using the right thread, what do you do?

A. I ask her if it is a mistake, if she hasn't put on different thread than I told her to.

Q. And what then?

A. I don't know as there has ever been a disagreement. One of us will look it up; I will get the order out to see for sure whether it is the wrong thread.

Q. Do you handle something else besides threads?

A. Belt loops, waist tapes, shoulder tapes, Nellie Don labels.

Trial Examiner Batten: I think we will recess for 15 minutes.

(Recess was accordingly taken.)

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[fol. 5142] Q. Prior to July 15, 1939, did the company have a switchboard which was connected with telephones located at each section?

A. Yes, all the sections I have worked in has had a telephone.

Q. And that telephone is on a company switchboard, is that correct? A. Yes.

Q. Where is that phone located?

A. It is at the—well, in some sections it is on the wall and in some sections it sets on a table.

Q. The table it sets on is the instructor's table, is that correct? A. I think as a rule it is.

Q. Is there more than one table at a section when you refer to "the table"? Is it one given table?

[fol. 5143] A. It is the table, the instructor's table, that I have reference to.

Q. When that phone rings, who answers it?

A. The instructor or the floor girl in the section.

Q. You use the expression "on the floor of the Donnelly Garment Company," what is your understanding—

A. (Interrupting) What was that question?

(Thereupon last question was read by reporter.)

A. I don't know what you mean, I have used it.

Q. You say you went "on the floor"?

A. I mean when I was assigned as thread girl.

Q. When a girl says someone "went on the floor" does she mean merely she was a thread girl or also a kind of instructor, does it include one or the other or is it limited?

A. Well, I don't know, it would depend upon who the person was, I would think.

By Trial Examiner Batten:

Q. Is there a common word used by everybody which means the same thing?

A. I think that is just an expression, if you are working on the floor, whether there is no one working on the floor in the section, only the instructor and the thread girl

directly in that section. When I said I was put "on the floor" I meant I went in the section as a thread girl.

Q. If a girl becomes an instructor would an operator say she went "on the floor"?

[fol. 5144] A. I suppose she could say it in that way.

That is the practice at Donnelly is it?

A. I don't know that I ever paid particular attention to that.

Q. Do you know whether the ferm "floor lady" means either an instructor or floor girl?

A. I have never heard anyone at Donnelly's referred to as a "floor lady".

Q. You don't use that term?

A. I never have, I have never heard it used down there.

Q. And if I told you the pay roll—or showed you the payroll with that term on it, you wouldn't know what it meant? A. No, I wouldn't.

Q. When you use the term "floor girl" is that used at Donnelly? A. Yes.

Q. Do you mean just a thread girl or could it also be used to mean an instructor?

A. I think that term is usually meant as the person who takes care of the thread, the thread girl, but sometimes referred to as a "floor girl" but it is one and the same thing.

Q. Your understanding is that it does not include instructor? A. Absolutely not.

Q. In other words, floor girl means the same thing as thread girl? A. That is the same term.

[fol. 5145] Q. But on the floor could mean either becoming an instructor or a thread girl, is that correct?

A. I would think it would be.

Q. Coming now to the March 18th meeting, was the committee composed of Rose Todd, Sally Ormsby and Hobart Atherton the only committee chosen at that meeting? A. So far as I remember they were.

Q. Do you have any recollection one way or the other?

A. So far as I can remember, it seems to me like that was the only committee that was appointed. I couldn't remember any others.

Q. Was that committee directed to do anything other than see a lawyer?

A. To my knowledge they were appointed for the purpose of seeking information as to what we could do under the law.

Q. Was that committee appointed before or after Mrs. Reed spoke?

A. I think it was appointed afterwards.

Q. Did Mrs. Reed tell you in her speech that the company laywers were looking into what could be done to protect the girls? A. I don't remember her saying that.

Q. Do you have any impression as to whether she did or not? A. I don't remember.

Q. When the committee reported to you at the next [fol. 5146] meeting, did they tell you they had taken any steps other than to see a lawyer?

A. To the best of my knowledge, the way I remember it, I believe they merely wanted to see a lawyer to see what we could do.

Q. Did they report to you that any committee of employees had taken any other steps to protect the girls?

A. Will you repeat that question?

(Thereupon last question was read by the reporter.)

By Miss Weyand:

Q. Do you remember of any other committee of employees taking any other steps during March to protect the girls.

A. I remember some girls with the petition going to Mrs. Reed to let her have known our opinion, if you could call that a protection, I believe we wanted her to realize in that way that we intended to remain working under the same conditions and the same methods.

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[fol. 5147] Q. All right, do you have a receipt for the fifty cents you paid?

A. I don't have it now, I don't believe. If I ever had one, I don't know.

Q. Do you keep receipts that you usually got for payments to the union?

A. No. I think I have my first union card receipted on it as to our payments; otherwise, it is on my check stubs.

Q. Were some of the assessments for the attorney put on your check stubs?

A. The assessment wasn't put on our check stubs, I donated mine, it wasn't taken out of my check.

Q. Later, others were raising money?

A. I never had it deducted from my check, my pay check.

. . . . . .

[fol. 5148] Q. Did Mrs. Reed at the meeting on March 18th express to you her appreciation for the petition you took out to her?

A. I don't know that she referred to the petition particularly, I know she expressed her appreciation of our loyalty.

Q. Do you recall one way or the other as to whether she mentioned the petition? A. I don't recall.

Q. Do you remember her making any remark directly or indirectly with reference to that petition?

A. No, I don't.

Q. She didn't mention the girls had come out to her home and given it to her a few days before?

A. I don't remember her mentioning it.

Q. I mean a few weeks before. You still don't recall that? A. No, I don't.

Q. Do you recall Mrs. Reed making any mention of the name "Dubinsky" at the meeting on March 18th?

A. I don't remember.

Q. Did you later learn that any committee of employees had taken any other action other than those you mentioned during March or April? A. What do you mean?

[fol. 5149] Q. Well, we know the committee went to see the lawyers and the loyalty petition was circulated and busses were provided. Do you know of any other action during either of those months? I didn't make my question too limited before.

A. I don't recall any particular committee at this time that did anything.

Q. Do you remember any group of employees who did anything to protect the employees?

A. Right now, I don't remember.

Mr. Ingraham: I think counsel should direct the witness' attention to whatever she is referring to, and ask the witness if she recalls whatever it is.

Trial Examiner Batten: Well, I think she has the right to ask the witness whether she recalls anything else, Mr. Ingraham, I don't see anything unfair about that.

Mr. Ingraham: Counsel is referring to something, I suppose.

Trial Examiner Batten: I am sure I don't know, I am not asking the questions but I presume any counsel has the right to determine what the witness knows or recalls without even intimating what it is and then, of course, if the witness doesn't recall matters, I presume if counsel desires to they may refer to specific matters for the purpose of refreshing a witness's recollection.

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[fol. 5150] Q. On some questions this morning you were asked whether any representative of the management did certain things, and you said "no". Who did you understand was meant by the term "representative of the [fol. 5151] management"?

A. I thought Mr. Ingraham was referring to Mr. Baty or perhaps Mrs. Hyde, they were the only ones I would come in contact with that to my knowledge that represented—they were the ones I looked up to that represented the management that I ever came in contact with.

Q. Those are the only persons you thought he had in mind and those are the ones, the only ones you were thinking of? A. Yes.

Q. And no one else? A. No.

Q. Did you know a Fern Sigler?

A. I didn't know her.

Q. Did you go down to the sixth floor to see Fern Sigler?

A. I went down to the door, I didn't go in.

Q. Could you see her from the door?

A. No, I saw there was a few girls over there, I thought I had been away long enough, I went back to the section.

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[fol. 5154] Q. Mr. Lane read you excerpts from certain minutes this morning or this afternoon. As I recall, one of the excerpts which he read was "if there are any people in here working, I would advise you to work very quietly." What did you think that sentence meant? A. I supposed—

Mr. Reed: Wait a moment. She isn't obliged to construe what a sentence meant or means in a document that is produced here or what she understood it to mean when she read it.

Trial Examiner Batten: Well, of course, unless she has some understanding of it, she couldn't reply to it.

Mr. Reed: She could say she did not hear that statement. Now where the witness is asked what is meant by the statement involves a construction of what was meant by a statement in a document of purported minutes of a meeting—

Trial Examiner Batten: She explained it sometime this morning as I recall or this afternoon, she explained what she meant.

Mr. Ingraham: As I understood it she said that those things never were said.

Mr. Langsdale: That is what she said.

Miss Weyand: She also showed she had a certain understanding of that sentence when she made the answer.

Trial Examiner Batten: You mean that was never said?

[fol. 5155] Mr. Langsdale: She said it was never said at the meeting on May 25th.

Miss Weyand: That is right.

Mr. Langsdale: He asked if there was anyone working around there.

Miss Weyand: That is right, I want to ask a question about it.

Trial Examiner Batten: That is a matter of the Greenhaw minutes?

Mr. Lane: That is right.

Mr. Langsdale: She said that it was never made at the meeting of May 25th.

Mr. Ingraham: The witness testified this morning that she never heard that statement made at this meeting.

Trial Examiner Batten: What is your objection, Mr. Lane?

Mr. Lane: I haven't made one yet but I am going to. I think it is a purely hypothetical examination as to what a statement would mean. If the witness had heard it made but the witness' testimony was that she did not hear that statement made.

Trial Examiner Batten: Mr. Lane, would you put that in the same category as the question "what was meant by 'no labor organization' in that petition?" She was asked to explain what that meant to her.

Mr. Lane: The words are there in that petition.

Mr. Reed: She had signed it.

[fol. 5156] Trial Examiner Batten: Supposing they are there. The witness has been asked the meaning of a certain word. Now what is the difference? If she can interpret it as to what it meant to her, why can't she interpret what Miss Weyand asked her or are we going to stop the witnesses from expressing an opinion on conclusions and suppositions and so forth?

Mr. Lane: Words mean something, depending upon the circumstances under which the witness has heard those words spoken or has understood them, but to ask a witness who says she never heard a certain word what they would have meant or what they did mean is just really speculative and hypothetical.

Trial Examiner Batten: Well, she has heard them now in the question, hasn't she? Can't she tell Miss Weyand what they meant to her.

Mr. Reed: Meant to her? When she says she never heard them!

Trial Examiner Batten: She heard them in the question, didn't she, Senator? I will overrule the objection. Mr. Reporter, will you read the witness the question?

Mr. Reed: We object.

(Thereupon the question was read by the reporter.)

A. Well, we were on the floor that was vacant. If we was having a meeting down there, it would be on a vacant floor. I don't see if anyone was working, I don't know—

[fol. 5157] Trial Examiner Batten: Well, what you mean to say is they don't mean anything to you, is that right?

A. It would be a funny thing to say on a vacant floor—

By Miss Weyand:

Q. Do you have any independent recollection of whether that was said or you just say you don't believe it was said because it was a funny thing to say?

A. I don't remember it being said.

Q. You are certain you don't recall that being said?

A. I don't remember it.

Q. You certainly were present at the meeting, the whole meeting? A. I missed very few meetings.

Q. You read the minutes of the May 25th meeting which were the genuine minutes according to your counsel and you said you remembered being at that meeting?

A. Yes.

Q. You are certain you never heard such a remark made at that meeting?

A. I don't remember hearing that remark made.

Q. Do you say you didn't hear that?

A. I said I didn't remember.

Q. Are you just not remembering because you think it would have been a funny remark to have made?

A. I don't remember having heard it.

Q. Suppose I read you the sentence before that remark, [fol. 5158] inflected differently, would you tell me it would now mean something different than you thought the remark made: "That is raising their ante quite a bit in two weeks", referring to the C. I. O. Rose Todd has just read a clipping, about the C. I. O. getting members in the plant, "but I still can't feel they can sign up enough people here to call a strike. Any people in here working, I would advise them to work very quietly." Do you suppose she might have been talking about C. I. O. people working in the plant and not on the floor?

Mr. Reed: I object to that—the assumption that the words were spoken. The witness has said she did not hear those words, and the question is incompetent and immaterial.

Trial Examiner Batten: Well, Senator, even if the witness were to answer something about them, it wouldn't mean nor would it even infer that this was done at the meeting.

Mr. Reed: That is the form of the question as I understand it.

Trial Examiner Batten: Well, it wouldn't to me, I wouldn't even draw an inference if the witness were to explain the entire thing. I wouldn't draw any inference that it necessarily meant it was said at this meeting for it is all in a more or less general form.

Mr. Reed: Or said at any other meeting so that the witness is being examined now about something that nobody up to this time has said took place in this hearing and is asked to construe the language which she never heard.

[fol. 5159] Trial Examiner Batten: She has been asked to construe it as Miss Weyand gives it in her question. If the witness were to answer it, it would have no application to these minutes, the Greenhaw minutes, or to the fact that the witness was present at a meeting where it was said.

Mr. Reed: Then it is clearly incompetent and immaterial.

Trial Examiner Batten: No, it isn't, Senator. That is the reason why I said a moment ago that Miss Weyand had a perfect right to ask the witness what it meant. Now, the witness can explain what it means if she wants to and understands it.

Mr. Lane: Mr. Examiner, I think the question is completely and utterly speculative and hypothetical, but I have no objection to Miss Weyand asking this witness whether Rose Todd ever said anything which implied that Rose Todd was intimating that there were C. I. O. workers in there and that they were working—that she

advised them to work quietly. I would be very glad to have the witness answer that question.

Trial Examiner Batten: We will proceed, is there a question pending, Mr. Reporter?

Reporter: Yes, sir.

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: Will you restate the question, Miss Weyand?

Miss Weyand: I will just read the quotes, I want [fol. 5160] her to now interpret it: "That is raising their ante quite a bit in two weeks, but I still can't feel they can sign up enough people here to call a strike. If there are any people in here working, I would advise you to work very quietly."

Mr. Stottle: May we have, may it be understood our objection still remains?

Trial Examiner Batten: Yes.

A. I don't remember Rose Todd saying that particularly.

Trial Examiner Batten. The question is: What does it mean?

Miss Weyand: Was she referring to people working at something—machines—on that floor or do you think she was referring to C. I. O. members trying to organize people in the plant?

Trial Examiner Batten: You mean assuming she said this, is that it?

Miss Weyand: If I read those two sentences together, would she understand them to refer to the C. I. O. people organizing in the plant rather than to people working on machines on that floor.

Mr. Lane: I certainly object to that as hypothetical. Assuming Rose Todd said this, what would be your interpretation, what she said, assuming she said it, that is not a proper question.

Mr. Reed: I object to it as incompetent and immaterial.

[fol. 5161] Trial Examiner Batten: Well, I don't know. I thought I understood it, but I don't now. I mean it seems to me you are mixing it up, you said a moment ago that Rose Todd said—well, in the question that wasn't in there.

Miss Weyand: If Rose Todd had said these two sentences together instead of just the one sentence Mr. Lane read her which she thought was impossible because she thought it was silly, would she, taking the two sentences together, still say that second sentence meant what Mr. Lane read it to mean.

Mr. Lane: She can't say what Rose Todd might have meant because she wouldn't know Rose Todd's inflection. She would not know Rose Todd put a period and a break after that first portion and proceeded to a new subject or whether Rose Todd was speaking of that whole thing in connection with one subject matter.

Trial Examiner Batten: You might ask the question "Do you still beat your wife?" I presume it would depend somewhat on how you would say it, I don't believe it is a proper question, Miss Weyand. In other words, if the witness answers it, well, what about it? Supposing she said it meant what she said a moment ago or supposing she said "well, no, now that you have put your inflection upon it and so forth and changed it, now that doesn't mean that to me." Supposing she did, I don't see—

Miss Weyand: Mr. Lane read the sentence out of the context, I wanted to read her the two sentences and I will [fol. 5162] now withdraw the latter question and ask if she recalls Rose Todd ever making the two sentences together.

Mr. Reed: The witness has already answered that, it has all been gone over.

Trial Examiner Batten: Do you ever recall their making this statement?

A. I don't remember she ever made that particular statement.

Trial Examiner Batten: Let's proceed.

By Miss Weyand:

Q. Are you sure she didn't say that at the May 25th meeting?

A. I still say I don't remember hearing her say that.

Q. What was discussed at the May 25th meeting?

A. I don't remember exactly what was discussed at the meeting.

Q. Do you have any recollection of that meeting at all, except by looking at the minutes and saying you think you attended all the meetings so you must have been there?

A. I attended most all the meetings, I think I was there, when looking over the minutes they were in line with the way the meetings were usually conducted but as far as what anyone did at any one meeting outside of the raising of our funds and organizing our union, I don't remember anything particular that was taken care of.

Q. Did you think the Elsie Greenhaw minutes were not the right minutes because you didn't recall that sentence I read to you being in there?

[fol. 5163] A. It wasn't that sentence, it was the idea of the Loyalty League being discussed at the union meeting; we never held two meetings like that together at that time of day.

Q. You don't actually remember what occurred at the May 25th meeting at all?

A. I can state I do know we did not discuss the Loyalty League.

Q. Do you know anything that you did discuss at that meeting?

A. I couldn't name anything right now that we did discuss.

Q. Do you know what that meeting was called for?

A. It was called for a union meeting to take care of union business.

Q. You don't remember any business that was brought up there? A. Off hand, I can't say that I do.

Q. Do you know what date the contract of the union was entered into, the first contract?

A. No, it was shortly after we organized, I don't know what date it was.

Q. If I told you it was May 27th—would that refresh your recollection so you would know that was the day?

A. I wouldn't say it was that date in particular, I don't remember the exact date of the contract.

[fol. 5164] Q. Did you ever hear Rose Todd warn C.I.O. members to work quietly in the plant at any meeting?

A. I don't know as I did.

Q. Did you ever hear her make any remark of that general character?

A. I think her remarks were more to the promotion of our union.

Q. Did she ever discuss the matter of I. L. G. W. U. organizers visiting Donnelly employees?

A. I am not sure if was taken up at a meeting.

Q. Do you recall one way or another whether you heard her make any such remarks at a meeting?

A. I don't remember.

Q. Did you attend a meeting of May 11th?

A. If there was a meeting held May 11th, I imagine I attended it.

Q. Do you recall that is one of the meetings which Mr. Lane had you read the minutes—could we agree on that?

Mr. Lane: I think that is correct, yes.

By Miss Weyand:

Q. In those minutes occurs the remark with reference to Tyler: "He will have to be paid." That appears in the Circuit Court of Appeals Record at page 4409, the minutes of May 11, 1937. Do you recall that discussion of the May 11th meeting?

A. That one small expression? How was that used? [fol. 5165] That could have been used in a number of different discussions in that form.

Q. Quote from Page 4409 of the record, "you realize now that Mr. Tyler is representing the Donnelly Garment Workers' Union and he will have to be paid. I expect a good many of you are wondering what he is going to charge." Do you remember that coming up at the May 11th meeting?

A. I remember that was discussed at one of our meetings, about paying Mr. Tyler.

Q. How would you explain such a remark occurring in the minutes of the May 11th meeting if Mr. Tyler had already been paid some fee?

Mr. Ingraham: I don't understand that question, will you repeat the question please?

(Thereupon last question was read by the reporter.)

Mr. Ingraham: Is there any evidence Mr. Tyler had already been paid a fee by the Donnelly Garment Workers' Union?

Miss Weyand: This is proper cross-examination. I don't think you should suggest to the witness the answer.

Trial Examiner Batten: I don't think it is improper at all if the witness doesn't understand the question—the question to the witness was "do you know why this would be brought up in this meeting? It is the last place, isn't it?

Mr. Ingraham: Yes, if he has already been paid.

Trial Examiner Batten: Will you read the question?

(Thereupon last question was read by the reporter.)

[fol. 5166] Trial Examiner Batten: I think the question is poorly stated because it goes on the assumption that if a certain thing is true, how would you explain this? Isn't that right?

Miss Weyand: Yes, she has stated that there was $500 raised for Mr. Tyler. If the employees had given him $500 how would they be coming to this meeting and saying "we will have to pay him some way."

Trial Examiner Batten: Your question wasn't that to the witness.

Miss Weyand: I withdraw it and make my question what I have now stated.

Mr. Ingraham: Will you read the present question, Mr. Reporter?

Trial Examiner Batten: You are going to restate it aren't you?

By Miss Weyand:

Q. If the employees at the Donnelly Garment Company did, as you have testified, raise $500 at the end of March to pay Mr. Tyler, how do you explain that in the minutes of May 11th the two sentences appear: "You realize now that Mr. Tyler is representing the Donnelly Garment Workers' Union and he will have to be paid. I expect a good many of you are wondering what he is going to charge."?

A. Well, the union had agreed to engage Mr. Tyler to represent us on the legal side of the affair and naturally, I would suppose we would have to pay him for his serv-[fol. 5167] ices. We wouldn't expect him to represent us and give us legal advice without having to pay him for it.

Q. Did you think he had already performed all the services that you expected him to perform for the first $500 which you paid him?

A. I didn't know, I hadn't thought about that being limited to any certain amount of performance. My idea was that he was to be engaged until we decided we didn't need him or until the time came that we didn't need his services any longer. Until that time I would naturally expect to be called upon to help pay for it.

Q. Was it ever explained to you at any meeting of the Donnelly Garment Workers' Union how much legal services the first $500 you gave Mr. Tyler covered?

Mr. Lane: Are you talking about $500 paid by the Donnelly Garment Workers' Union?

Trial Examiner Batten: The first $500 I presume was raised in the last meeting of March.

Mr. Lane: Did she ask if it was ever explained in a union meeting?

Trial Examiner Batten: I assume it was explained in a nnion meeting how much service that $500 was to cover.

Mr. Reed: I submit all the evidence there is is a retainer fee.

Trial Examiner Batten: Well, Senator, no matter what it was the question is very simple to this witness. That is [fol. 5168] how much services was he to perform for the $500, if she knows.

Trial Examiner Batten: Do you know, Miss Witness, what he was to perform for the $500?

A. Well I hadn't ever given it a thought as to that, as far as how many hours work or anything like that, what it was to cover; I considered it was a regular retainer fee, I thought it was customary to pay an attorney a retainer fee when he took care of a case you had an interest in. I thought if it was something that was a long drawn out

affair, as other matters came up, that would have to be met at the time they came up.

Miss Weyand: You considered that a long, drawn-out affair, did you?

Mr. Reed: She didn't say that.

Trial Examiner Batten: Now just a moment, Senator, please! When the questions are asked if you have an objection, make an objection and state your reason.

Mr. Reed: Well—

Trial Examiner Batten: Now, just a moment, that wasn't an objection that you just made.

Mr. Reed: I think there is an objection.

Trial Examiner Batten: I can't interpret your meaning, will you state your objection, Senator?

Miss Weyand: I am going to ask the witness to be excused from the room—

[fol. 5169] Trial Examiner Batten: I don't want her excused.

Mr. Reed: Read me the question.

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: I can't see how there could be any objection to that.

Mr. Lane: I have an objection to it on the ground that it is entirely indefinite and it is not at all clear to me. Miss Weyand says—

Trial Examiner Batten: Now, just a moment, please! The reason it is indefinite is because—that is the reason Miss Weyand is asking the witness what she meant by an indefinite statement, I don't want any further discussion of it.

Mr. Lane: I am objecting on the grounds the question is not clear.

Trial Examiner Batten: I will overrule the objection. The witness may tell us what she meant by that statement.

A. Well, I meant I expected this to be a long, drawn-out affair if the I. L. G. W. U. thought they was going to walk in on us and organize without any fight, I certainly expected us to fight it as long as it was necessary for us to fight it.

Q. Do you recall Mr. Tyler at the meeting of April 27th, 1937, making the following remark: I am going to page 4398 of the Circuit Court of Appeals record beginning with the bottom third of the page where Mr. Tyler has referred to the Wagner Act, he goes on "it says employees shall have the right to organize their own [fol. 5170] union. It encourages you to take such actions as I am now recommending. If the Wagner Act, certainly since it has been declared constitutional, is to extend its protection to you, it will by reason of your becoming unionized and fully recognize your rights to form your own union. I do not think this action can or will be considered as any act of unfriendliness to your employer. I believe they recognize your right to take this step and that it isn't an unfriendly act to them. In fact, it is much better for them and for yourselves for you to have your own union with your own representatives, rather than to have a group here trying to represent outsiders from New York, and another group here representing some other outside union, et cetera."

Do you remember that remark?

A. I remember him saying something about the Wagner Act at that meeting.

Q. Do you remember him telling you that it would be much better for the company if you workers formed your own union?

. . . . . .

Trial Examiner Batten: Do you recall that, Miss Witness?

[fol. 5171] A. I don't remember those particular words being said.

By Miss Weyand:

Q. Do you recall that idea being expressed to you by Mr. Tyler?

A. I remember that he was looking into the case on our behalf and he advised us he thought his entire presentation of the law, that it would be to our benefit and the way we was taking our stand as to—if we wanted to join a union of our own organization it was perfectly within the law and we had the Wagner Act to further insure our safety.

Q. Do you recall his telling you that it would be better for the company as well as for yourselves for you to have your own union rather than to have outsiders represent you?

A. I really don't remember him mentioning that part of it.

Q. You don't recall his stating any such idea to you?

A. I don't remember hearing at that time any thing about as to how the company would fare if we joined a union or not.

Q. Did you at any other meeting ever hear Mr. Tyler express to you that action he recommended for you would be better for the company as well as for yourselves?

A. I can't remember him seeming to protect the company in any of the action he proposed for us to take. In my belief, he was looking at it from our viewpoint.

Q. He never told you what he thought the company would think, was the best thing for you to do or what he thought was the best for the company?

[fol. 5172] A. I don't remember him bringing the company into it so much.

Q. I am going to read an excerpt from page 4432 of the Circuit Court of Appeals Record which is from the minutes of July 21st, 1937.

* * * * * *

By Miss Weyand:

Q. "After most careful consideration it is our opinion it would be to your benefit and, incidentally to the company's, to appear in court and as a union file an intervening petition asking that your rights as a union be considered in any decree the court makes. I want you to consider this and I will now turn the meeting back to Miss Todd."

Do you recall hearing Mr. Tyler express such an idea to you at any meeting?

A. I don't remember that but if he did express it in that way, I believe I would interpret his meaning. In my belief, it would be that he meant by intervening would simply strengthen the case to get an injunction; that would be my thought, rather than whether or not it complied with the company's wish, that it would be—that it would strengthen the suit.

Q. You knew the company was wanting to get an injunction, didn't you?

A. I believe I did have that understanding from the newspaper articles.

[fol. 5173] Trial Examiner Batten: Well, supposing the employees also wanted to get one, would there be any objection to their having a common interest to join in it?

Miss Weyand: I am asking her what she recalls.

Trial Examiner Batten: I asked if there would be anything wrong if they happened to have a common interest to join together, would there?

Miss Weyand: I don't think that requires an answer from me, does it?

Trial Examiner Batten: Well, the only answer you could give is the one I would give, that it certainly doesn't. In other words, that is the difficulty, Miss Weyand, with some of these questions. The reason I say what I do about some of them is that, being very familiar with the Board's procedure and Board cases, I think I know perhaps what inferences are sometimes drawn from questions in Labor Board proceedings and where they are not entirely clear I want to make them clear.

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By Miss Weyand:

Q. I believe you testified at the first meeting of the union you recall wearing your uniform, though at later dates or meetings, you didn't? A. I believe I did.

Q. I believe the reason was you stated that you were [fol. 5174] working a lot of overtime at that time.

A. I don't believe I mentioned any overtime in any of my testimony.

Q. Were you working a lot of overtime?

A. I couldn't say whether we were or not, we worked overtime sometimes but at other times, we don't. I don't remember.

Q. You have no recollection of March or April, 1937?

A. No, I can't remember that.

Q. Did you ever go back to work after a meeting?

A. No.

Q. Never at any time did you return to work after a meeting?

A. It was after working hours, I wouldn't have anything to go back to work for.

Q. Do you recall whether during March and April when girls were working overtime they would work overtime during each day of the week or just work overtime certain days of the week and not work overtime other days?

A. Well, I can't remember, that would depend upon what kind of work they were doing and how much there was of it.

Q. Was there any practice at that time with reference to working nine hours a day when you had a lot of work to do or did you just—

A. (Interrupting) If a particular operator's work was holding up the section and causing a delay in the work, it might be she would work overtime.

[fol. 5175] Q. When did the thread girls work overtime?

A. I worked overtime if the section worked overtime.

Q. And if the payroll should indicate that you were working overtime during these weeks, would that mean that all the girls in your section were working overtime or not?

A. No, not necessarily, if the girls didn't want to work overtime they never were required to. A girl always had that privilege when she completed her regular day's work if she didn't want to work overtime she had the privilege of not working any later.

Q. Would you work overtime if just one or two girls in your section were working overtime?

A. I don't know—I don't remember at that time one or two girls working in a section that I worked in.

Q. Would you ever work overtime when none of the girls in your section were working overtime?

A. No, there wouldn't be any object in me working overtime then.

Q. What is the fewest number of girls working that you recall?

A. I don't remember, specifically, when only a few of the girls was working. It seems to me like what time I worked overtime the entire section worked.

Q. Would you be able to tell from looking at the payroll record from the amount you were paid during those [fol. 5176] weeks and tell us how much overtime was being worked, I will show you what the payroll looks like.

A. I have never seen it, I don't know.

Q. Directing the witness' attention to Board's Exhibit No. 28-D being the semi-monthly payroll of time workers for the period of April 16, 1937, to April 30, 1937, which appears at page 4748 of the Circuit Court of Appeals record, I am also going to ask the witness to look at the preceding payroll periods that contain her pay for those semi-monthly periods, being pages 4764, 4772, 4781, 4789 and 4794 and 4801.

Trial Examiner Batten: Do you think she can do that in about six minutes?

Miss Weyand: I think she can glance at the pages and see the amount.

By Miss Weyand:

Q. I will ask her first if she can explain the word "Rate 54.17" which follows her name on page 4748?

A. I suppose that is what my regular pay-check was.

Q. That would be your rate for two weeks?

A. Semi-monthly.

Q. Well—

A. (Interrupting) It wouldn't be for two weeks, it would be from the 1st to the 16th or from the 16th to the 1st.

Q. You notice the check you actually got for that period was $70.42, is that correct? A. That's right.

[fol. 5177] Q. It says twenty-six hours at 62½ cents, is that the overtime? A. I would judge that it is.

Q. Would you have any doubt about that being overtime that you worked those weeks?

A. I don't know what else it could be.

* * * * * *

[fol. 5178] Q. Is that about the amount you recall getting at that time? A. It could be.

Q. And the amount of the check about what you would get if you worked twenty-six hours overtime that week, is that correct?

A. This is semi-monthly, it wouldn't be twenty-six hours in a week.

Q. Twenty-six hours for the two-weekly period, is that correct?

A. Well, if that is the way they kept track of it I suppose so.

Trial Examiner Batten: In other words, if the twenty-six means hours and the other means rate per hour, that would indicate then you were paid for twenty-six hours of time at rate of pay if that is what it means?

A. Yes, sir. That is all I can see it would mean.

* * * * * *

[fol. 5205] By Mr. Langsdale:

Q. Did they have a large meeting on April 27?

A. Yes, they had a large meeting.

Q. Was Lena Tyhurst there?

A. She might have been. I don't recall seeing her.

Q. You know that she became a member of the Donnelly Garment Workers' Union, don't you?

A. I was under that impression. I didn't know it.

Q. Was Mrs. Anna Wherry there?

A. I don't know. I don't remember seeing her.

Q. You don't know whether she was or not? A. No.

[fol. 5206] Q. Was Lee Baty there?

A. I don't remember seeing him.

Q. Do you know whether he was there or not?

A. I don't know.

Q. Was Mrs. Reeves there? A. I don't know.

Q. You don't know whether she was or not?

A. No. I didn't look around particularly to see who was there.

Q. You don't know whether any of those people were there; is that correct?

A. No. I didn't pay any particular attention to whether they were or not.

Q. So when you made this answer to Mr. Ingraham's question, on page 5043:

"Q. Did anyone whom you considered a boss attend that meeting?

"A. No, they did not."

you didn't know whether they did or not, did you?

A. I don't remember seeing them there, and I don't know.

Q. You don't know whether they were there or not?

A. No.

Q. So when you said, "No, they did not," in answer to Mr. Ingraham's question—

A. I believe he said, "Do you know whether they were [fol. 5207] there or not?"

Q. Let me read the question to you again. I don't want you to be under any misapprehension, Mrs. Mudd, about this,—

Mr. Reed: Now, I submit that this lecturing of the witness by counsel ought to be stopped. Let him ask the questions and—

Mr. Langsdale: I submit that the lecturing of counsel by the Senator ought to be stopped.

Trial Examiner Batten: Proceed with your question.

By Mr. Langsdale:

Q. I will read the question again.

"Did anyone whom you considered a boss attend that meeting?

"A. No, they did not."

Now, do you understand that question and answer?

A. Yes, I do.

Q. Now, you say you don't know whether they did or not; is that correct?

A. Yes, that's right. I don't know that they were there.

Q. And you don't know that they were not?

A. I didn't see them.

Q. Did you see Dewey Atchison there? A. No.

Q. Did you see your instructor there?

A. I don't remember.

Q. Who was your instructor at that time?

[fol. 5208] A. I believe, Mrs. Cook.

* * * * * * *

[fol. 5216] Q. Had you known Sylvia Hull prior to April 23? A. I never did know Sylvia Hull.

Q. How did you learn where to go to take a look at her on that date?

A. Well, I heard she worked up on the eighth floor, in section 412.

Q. From whom did you learn that?

A. Some of the girls in the section.

Q. Do you remember who? A. No, I don't.

Trial Examiner Batten: You mean, from the girls in your section?

A. In the section I worked in, yes.

Mr. Langsdale: Did you also go take a look at Fern Sigler?

[fol. 5217] A. No. I didn't go downstairs—I didn't go in downstairs. I—

Q. You went down and looked in?

Mr. Reed: Let her answer, please.

A. (Continuing) I went to the door.

By Mr. Langsdale:

Q. What door? A. On the sixth floor.

Q. What door was it?

A. There was only one door, I believe; right there where the steps are.

Q. That door leads into what?

A. I don't understand what you mean.

Q. Well, was the door opening out of the section?

A. I don't even know just where it was on the sixth floor she worked. I started in there and there were some girls in ahead of me, and I went back to my section.

Q. You said you went to "the door." Now, I am trying to find out what door it was.

A. There is only one door.

Q. Where does that door lead to? A. Into the room.

Q. You went to the door and looked into the room where Fern Sigler was at her machine?

A. I went and looked in on the floor. That is a large floor.

[fol. 5218] Q. Did you see Fern Sigler there?

A. I don't recall seeing her there.

Q. What did you see?

A. There were some girls ahead of me, so I just went on back upstairs.

Q. Any girls from your section ahead of you?

A. I don't remember who they were.

Q. Was there a crowd there that obstructed your view?

A. There were several girls in front of me.

Q. So you couldn't even see Fern Sigler?

A. I believe I said I didn't see her.

Q. Well, after taking a look at Sylvia Hull did you form any impression as to what kind of a girl she was?

A. I wasn't up there thinking about what kind of a girl she was. I wanted to see her, to see if I knew her. I didn't connect her name with any individual I had known and I wanted to see who she was, so I would know her if I saw her again.

Q. Did you make this answer on page 5058:

"A. I went up there to see what—when I heard that one of the girls that was working there had signed up with the I. L. G. W. U. and was going to a convention, I was curious to see what a girl would look like, when in my own mind that is silly."

Now, did you go up to see what that kind of a girl would look like?

[fol. 5290] A. I went up to see who she was and whether or not I knew her.

Q. You said here (indicating transcript), "I was curious to see what a girl would look like . . ."

A. I certainly thought it was a silly thing for anyone to go ahead and do something like that when they had a good job.

Q. Did she look any different from the other girls?

A. I don't know that she did, only it was my notion that it was an awfully silly thing to do.

Q. Therefore, you went down to see what kind of a looking human being would do that?

A. I wanted to see—

Q. Did she look crazy to you?

A. I didn't pass judgment on her.

Q. You did see Sylvia Hull, didn't you?

A. I went up there to see where she worked.

Q. While you were looking at Sylvia Hull, did you hear any conversation?

A. I didn't go up there and stare at her. I simply went up there to see whether or not I knew the girl, and then I went back downstairs.

Q. The question was, while you were looking at Sylvia Hull, did you hear any conversation?

A. I wasn't there long enough to hear anything.

Q. Did you hear any conversation?

[fol. 5220] A. I wasn't there long enough.

Trial Examiner Batten: The question was, Mrs. Mudd, while you were looking at her, did you hear any conversation? A. No.

Mr. Langsdale: And you didn't hear anyone demand her Loyalty League pin? A. No.

Q. Did you learn that had been done?

A. Afterwards I heard she had turned her Loyalty League pin in to someone.

Q. Did you hear that anyone demanded that she do that? A. No.

Q. You didn't hear that?

A. I don't remember hearing it.

Q. I believe you stated you were at the meeting of May 11, 1937. You read the minutes.

A. I believe those are the minutes I read the other day.

Q. And you were at the meeting of May 25?

A. I believe so.

Q. And you were at the meeting of April 27? A. Yes.

Q. Was there anyone taking notes of what was occurring at those meetings?

A. I don't remember noticing anyone in particular. I do remember that Majorie Green was our secretary, but [fol. 5221] as to just what meetings, or whether she took them at every meeting, I'm not sure.

Q. So you don't know whether she was taking the minutes of the organization meeting on April 27 or not?

A. I couldn't say for sure.

Q. And you don't know whether she took the minutes of May 11, 1937, or not?

A. Well, I couldn't say for sure that she did, but I was under the impression that after we organized she did start

taking minutes at all of the meetings from then on, but I don't remember exactly as to when she did.

Q. Have you any kind of a recollection of her taking any minutes on May 11?

Mr. Reed: I submit the question has been answered fully.

Trial Examiner Batten: She may answer, whether she has any recollection of any kind of Miss Green's taking minutes on May 11.

A. I don't remember exactly whether or not she did.

Mr. Langsdale: Have you any recollection of her taking the minutes of May 25?

A. I really don't remember just any particular meetings, as to whether she took the minutes or not. I know she was our secretary, and I remember seeing her taking notes from time to time, but I don't remember at just what particular meetings. It was my impression she took them at all of them.

. . . . . .

[fol. 5222] Mr. Langsdale: But that impression is not based on anything you remember having seen; is that correct?

A. I don't know as it is. I know she was our secretary and I would just think she would take all of them.

Trial Examiner Batten: As a matter of fact, you know that was her job.

A. I know that was her job. She was elected to do it, and I supposed she did it. It was the job she was elected to do.

Mr. Langsdale: The meeting that followed the March 18 meeting—do you know who was there?

. . . . . .

A. I couldn't just name anyone that was there.

. . . . . .

[fol. 5223] Q. Was Mrs. Reeves there?

A. I don't remember. When I went to those meetings I went with the girls in the section. I didn't look around to see who was there other than the ones I went with.

Q. I am asking you if you know.

A. I don't know.

Q. Was Mrs. Wherry there? A. I don't know.

Q. Now, you say you usually went with the girls in the section. What do you mean by that?

A. I mean, the girls I work with. Naturally, you go with the ones you are friends with.

Q. On account of the elevator facilities did you go down by sections?

A. Well, I don't remember exactly. I know we got off from work and went over and got on the elevator and went down.

Q. Do you remember any meetings there where sections went together at a time because of the lack of elevator facilities for everyone to go at once?

A. We have always got off down there at intervals, the whole factory doesn't get off at the same time, so when you get off, naturally you would be going down in that way.

Q. Section by section?

Mr. Reed: She didn't say "section by section."

[fol. 5224] Trial Examiner Batten: The question to the witness was, "Section by section?"

. . . . . .

A. When we would get off, the ones that got off at that time would naturally go on down. The entire floor didn't get off at one time.

Q. You said, "in that way." In what way?

A. In the order you are dismissed from work. When your work is over, that is the order in which you go on home, or to your lockers, or wherever you are going.

. . . . . .

[fol. 5225] (Thereupon the last question by Mr. Langsdale was read by the reporter, as follows:

"Section by section?")

. . . . . .

A. I meant after we got through with our day's work we would go on about our business; we were free to do as we pleased or go where we pleased.

* * * * * *

[fol. 5227] Q. At any of the meetings, April 27, May 11, [fol. 5228] in July or August, or any other time, was it the practice that when your section got through working those in that section who wanted to go to the meeting would go together?

A. No, I couldn't say it was the practice to go as a section like that.

[fol. 5229] Q. In April, 1937, who were the clerks in the store where Mrs. Gray was?

A. Let's see. Well, there was—I didn't know all of them, by their names; one little girl there by the name of Ruth, but I don't know what her last name was.

Q. How many people were in that store?

A. Well, at times there were more than at others. I think probably—I don't remember exactly, but at noon and in the evening, when you would be going out, there would be more in there at that time, sometimes more in there; I think that probably there were three or four.

Q. Can you name any of them except Mrs. Gray?

A. Well, there was that little girl by the name of Ruth.

Q. That is all of her name that you remember?

A. I don't know her last name.

Q. Can you name anybody else, either part of their name or all of it?

A. Well, there was a girl in there by the name of Mary.

Q. Do you know who Mary was?

A. No, I can't think of her last name. I know it, but I just can't think of it; I do know her name.

Q. The only one's name you know is Mrs. Martha Gray?

A. I knew her by the name of Mrs. Gray, I didn't know her first name; there was another, Mrs. Murray.

Q. You didn't call Mrs. Gray by her first name?

[fol. 5230] A. I never did.

Q. But you do call the other girls by their first names?

A. They were younger girls, and Mrs. Gray was a lot older.

Q. And this demonstration around the machine of Sylvia Hull and the demonstration around the machine of

Fern Sigler which occurred on the 23rd of April, 1937, do you remember that? A. Yes, I remember that.

Q. That was just four days before the Donnelly Garment Workers' Union was formed? A. That is correct.

Q. And you learned that both Sylvia Hull and Fern Sigler, their employment was severed on that day, did you not?

A. I learned that they had resigned that day.

Q. Yes, on the 23rd. And you learned that the resignation grew out of the fact that they came to the plant with their I. L. G. W. U. pins on, did you not?

A. It was my understanding that they resigned because the other girls didn't want to work around them, and they just resigned.

Q. But they came to the plant with their I. L. G. W. U. pins on, you knew that, didn't you?

A. Well, I didn't know they wore their pins; that was in the paper about Sylvia, but I didn't hear about the pins.

Q. Didn't you hear that Fern Sigler had her pin on?

A. I don't remember hearing it.

[fol. 5231] Q. Did you learn anything about why the demonstration [—] around Fern Sigler's machine?

A. I didn't hear a whole lot about Fern at that time.

Q. You did hear that she had resigned, as you say, on that day of the demonstration around her machine?

A. Yes.

Q. Now, did you know why that demonstration?

A. The girls didn't want to work around her.

Q. Why?

A. They resented the fact that they had joined the I. L. G. W. U.

Q. I see. So, then, those two girls did leave the plant on the 23rd of April, 1937, because they had joined the I. L. G. W. U. You knew that, didn't you?

A. I heard that they left because the other girls resented them.

Mr. Langsdale: Because they had joined the I. L. G. W. U.?

* * * * * *

A. The rest of the girls around there felt they didn't remain very loyal to the girls, as co-workers. They were members of the Loyalty League, and we pledged our loyalty

[fol. 5232] to one another as co-workers, and these girls went ahead and joined an outside organization. To all intention it seemed like they were representing us, and we didn't care for that representation.

By Mr. Langsdale:

Q. You mean in the Loyalty League you had pledged your word to each other as co-workers?

A. Our loyalty to one another.

Q. And did that loyalty in your mind include not joining the I. L. G. W. U.?

A. At that time I think we had that in our minds, that at the time of this demonstration we also had reference to any other outside interference in our work.

Q. In your mind you felt they shouldn't have belonged to the Loyalty League and the I. L. G. W. U.?

A. I felt that I didn't want to belong to any outside organization; if I had, I wouldn't have felt like I would be a member in good standing of the Loyalty League.

* * * * * *

Mr. Langsdale: Did you think that that demonstration around Fern Sigler's machine and Sylvia Hull's [fol. 5233] machine and their subsequent resignations had anything to do with the formation of the Donnelly Garment Workers' Union, four days later?

A. Well, we already had that—that didn't just come up from that one demonstration. We had already had Miss Todd and Hobart Atherton to go and see what we could do; it was not an afterthought of those girls being members of an outside organization that we didn't care to have any dealings with.

Mr Langsdale: Now, will you read the question, Mr. Reporter, and please try to answer it.

Trial Examiner Batten: Read the question.

(Thereupon the last question was read by the reporter, as follows:

"Did you think that that demonstration around Fern Sigler's machine and Sylvia Hull's machine and their subsequent resignations had anything to do with the formation of the Donnelly Garment Workers' Union, four days later?")

A. You make your questions so long and it is hard to understand.

Trial Examiner Batten: Well, you listen, and if you don't understand, you say so.

Read the question.

(Thereupon, the last question was reread by the reporter.)

Mr. Reed: Now, read the answer, please.

Trial Examiner Batten: Will you read the answer, please?

[fol. 5234] (Thereupon the last answer was read by the reporter, as follows:

"Well, we already had that—that didn't just come up from that one demonstration, we had already had Miss Todd and Hobart Atherton to go and see what we could do; it was not an afterthought of those girls being members of an outside organization that we didn't care to have any dealings with.")

Mr. Langsdale: I insist she answer the question, and if the Senator wants to read the whole record, let him read it.

Trial Examiner Batten: Just a minute. Will you read the answer?

(Thereupon the last answer was reread by the reporter.)

Mr Reed: I submit that is an answer, she says it was not because of this particular act, but there were others.

Trial Examiner Batten: Well, did that have anything to do with it?

A. Why, it probably did have some, a little, maybe, to do with it, but we had already started getting into it.

By Mr. Langsdale:

Q. Now, then, Mrs. Mudd, you have testified that you didn't know anything about the organization of the Donnelly Garment Workers' Union until you went to the meeting on April 27, did you not?

A. I believe that my meaning was that I didn't know we were actually going to join the union that night, form [fol. 5235] a union, but we were going to see what we could do about it, but that was what came about.

Q. Haven't you testified you didn't talk to any person about the formation of a plant union until you got to the meeting of April 27?

A. I don't think I did talk about forming a union. At the time we talked about the things as they were coming up, but as far as talking about organizing a plant union, I don't remember it.

Q. Then, you hadn't already decided to form a plant union before April 27, had you?

A. I don't know as a plant union had been talked of; we were going to see what we could do, but there wasn't anything said about actually forming a plant union.

Q. But you hadn't talked about the forming of a plant union before these demonstrations at the machines of Sylvia Hull and Fern Sigler on the 23rd of April, had you?

A. I don't believe particularly that I had.

* * * * * *

[fol. 5239] Redirect Examination.

By Mr. Ingraham:

Q. Mrs. Mudd, will you state whether or not operators have the right to go up to the table and get a bundle themselves, if they happen to run out and you haven't given them a bundle?

A. Why, yes, they could go up and get a bundle, if they were out of work and needed it.

Q. Does that frequently happen?

A. Yes, I believe it does, quite often.

Q. State whether or not, to your knowledge, from July, 1935, to July, 1939, instructors had any authority to discipline operators in the section.

A. To my knowledge, they didn't have.

Q. During that period of time were the instructors the bosses of the sections in the sense that they could command operators to do certain work and punish them if they didn't?

A. No. It was Mr. Baty that did that. The instructors didn't have anything to do with disciplining the girls.

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Volume IX

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 20, 1946.
CERTIORARI GRANTED APRIL 22, 1946

VOLUME IX.

RECORD.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 12,641.

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49A to 49E, Checks, Donnelly Garment Company to Bessie Weilert	7073	4213
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49B, Check for $21.20, dated May 20, 1937	7074	4215
49C, Check for $27.64, dated May 6, 1937	7075	4217
49D, Check for $26.34, dated April 8, 1937	7076	4219
49E, Check for $25.05, dated March 25, 1937	7077	4221
51A to 51G, Checks, Donnelly Garment Company to Opal Chaney	7079	4223
51A, Check for $27.63, dated April 29, 1937	7079	4223
51B, Check for $25.43, dated April 22, 1937	7080	4225
51C, Check for $27.47, dated April 15, 1937	7081	4227
51D, Check for $22.51, dated April 8, 1937	7082	4229
51E, Check for $21.38, dated April 1, 1937	7083	4231
51F, Check for $15.78, dated March 25, 1937	7084	4233

	Original	Print
51G, Check for $18.95, dated May 6, 1937	7085	4235
52A to 52H, Checks, Donnelly Garment Company to Anna Reece	7087	4237
52A, Check for $15.06, dated March 11, 1937	7087	4237
52B, Check for $15.50, dated March 18, 1937	7088	4239
52C, Check for $17.75, dated March 25, 1937	7089	4241
52D, Check for $20.84, dated April 1, 1937	7090	4243
52E, Check for $19.63, dated April 8, 1937	7091	4245
52F, Check for $18.13, dated April 22, 1937	7092	4247
52G, Check for $24.25, dated April 29, 1937	7093	4249
52H, Check for $18.93, dated May 6, 1937	7094	4251
53A to 53H, Checks, Donnelly Garment Company to Agnes Hutchinson	7096	4253
53A, Check for $19.23, dated March 18, 1937	7096	4253
53B, Check for $22.71, dated March 25, 1937	7097	4255
53C, Check for $22.40, dated April 1, 1937	7098	4257
53D, Check for $23.31, dated April 8, 1937	7099	4259
53E, Check for $28.77, dated April 15, 1937	7100	4261
53F, Check for $32.24, dated April 22, 1937	7101	4263
53G, Check for $30.00, dated April 29, 1937	7102	4265
53H, Check for $26.06, dated May 6, 1937	7103	4267
54A to 54H, Checks, Donnelly Garment Company to Iris Litten	7105	4269
54A, Check for $23.62, dated March 11, 1937	7105	4269
54B, Check for $25.59, dated March 18, 1937	7106	4271
54C, Check for $24.73, dated March 25, 1937	7107	4273
54D, Check for $24.37, dated April 1, 1937	7108	4275
54E, Check for $25.77, dated April 8, 1937	7109	4277
54F, Check for $26.44, dated April 15, 1937	7110	4279
54G, Check for $24.62, dated April 22, 1937	7111	4281
54H, Check for $33.31, dated April 29, 1937	7112	4283
54I, Check for $25.03, dated May 6, 1937	7113	4285
55A to 55H, Checks, Donnelly Garment Company to Flora Fries	7115	4287
55A, Check for $26.88, dated March 18, 1937	7115	4287
55B, Check for $27.10, dated March 25, 1937	7116	4289
55C, Check for $23.31, dated April 1, 1937	7117	4291
55D, Check for $25.74, dated April 8, 1937	7118	4293
55E, Check for $24.94, dated April 15, 1937	7119	4295
55F, Check for $32.59, dated April 22, 1937	7119	4297
55G, Check for $34.22, dated April 29, 1937	7120	4299
55H, Check for $29.97, dated May 6, 1937	7121	4301
56A to 56I, Checks, Donnelly Garment Company to Lillie Reynolds	7123	4303
56A, Check for $22.35, dated March 11, 1937	7123	4303
56B, Check for $27.15, dated March 25, 1937	7124	4305
56C, Check for $22.21, dated March 18, 1937	7125	4307
56D, Check for $22.44, dated April 1, 1937	7126	4309
56E, Check for $27.61, dated April 8, 1937	7127	4311
56F, Check for $23.42, dated April 15, 1937	7128	4313
56G, Check for $30.57, dated April 22, 1937	7129	4315
56H, Check for $33.34, dated April 29, 1937	7130	4317
56I, Check for $27.58, dated May 6, 1937	7131	4319
57, Tabulation relative to Comparative Earnings of Piece Work Operators—First Six Months—1937 and 1938	7131	4321

Q. During that period of time, will you state whether or not an operator who had a complaint about the kind of work she was doing would have that complaint acted upon by Mr. Baty?

A. Yes, she would go to Mr. Baty and he would take care of it.

Q. Did the instructor have any authority, that you [fol. 5240] could observe, to take care of complaints?

A. No, she didn't have.

Q. Now, after the Donnelly Garment Workers' Union was formed, did the union handle complaints for operators?

A. Yes, they went to the union about the complaints then.

* * * * * *

Recross-Examination.

By Mr. Lane:

Q. Mrs. Mudd, was there ever any time when, so far as you know, an instructor said to you and the girls in your section that you were to go to a meeting as a body or as a section and stay together, and when that meeting was over to return to your section and resume work?

A. No, I never heard anybody say anything like that.

Q. Did that ever occur, so far as you know?

A. No, not as far as I know.

* * * * * *

By Miss Weyand:

Q. Did you ever see Mr. Baty discipline a girl?

A. No, I don't know as I ever saw him.

Q. Did you know anything about sewing sections in 1935?

[fol. 5241] A. I never did sew in them. I don't know as I could say I knew anything about them.

Q. Did you have any information as to what any instructor's authority was in 1935 or theretofore?

A. I don't think I did.

* * * * * *

ETHEL RIEGEL, a witness called by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Where do you live, Mrs. Riegel?

A. At the present time I live at 4321 Walnut.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been employed at the Donnelly Garment Company?

[fol. 5242] A. I went there in November, 1928.

Q. In what capacity are you employed?

A. I am a power machine operator.

Q. Do you work on any special machines?

A. Yes, I have run two or three special machines; straight sewers, binder, and pinkers, I think, is classified as a special machine, and double-stitcher. I think that is all of the special machines.

Q. Were you working at the Donnelly Garment Company during the months of March and April, 1937?

A. I was.

Q. Are you a member of the Donnelly Garment Workers' Union? A. I am.

Q. When did you join the Donnelly Garment Workers' Union?

A. When it was first organized, in April, I think, 1937.

Q. Do you recall that that was on or about April 27, 1937? A. Yes, I think that's the date.

Trial Examiner Batten: Q. You joined at the first meeting?

A. The first meeting, where it was organized.

By Mr. Ingraham:

Q. Did anybody representing the management discuss with you prior to that meeting whether or not a union [fol. 5243] should be formed? A. No.

Q. Did any official or executive or anybody representing the management request you to go to that meeting?

A. No.

Q. Did you attend that meeting of your own free will?

A. I did.

Q. Do you recall the time of day that the meeting occurred?

A. Well, as near as I can remember, it was around 5 or 5:10 in the evening, after work. I don't remember. It was between 5 and 5:15, I think.

Q. Do you recall where the meeting was held?

A. It was on the second or third floor, but I wouldn't be positive. It was a vacant floor.

Q. Prior to the meeting had there been any strikes going on at other garment plants in Kansas City?

A. Yes, there had.

Q. Do you recall what plants had strikes?

A. Well, as I remember, it was Gordon, Gernes, and Missouri, I think.

Trial Examiner Batten: Those are three different plants?

Mr. Ingraham: Yes.

Mr. Langsdale: All in one building.

Trial Examiner Batten: The reason, I say that is, we have used those three names here so much, someone might [fol. 5244] get the impression that it is a firm name. I wanted the record to indicate that they are three separate companies.

The Witness: I meant three separate companies.

Trial Examiner Batten: Yes, I know what you meant, but I wanted it clear for someone who might be reading the record.

By Mr. Ingraham:

Q. I will hand you respondent's exhibits 16 and 18, through 38, and ask you if you will state what newspaper articles contained in those exhibits you read.

I believe on the first exhibit, No. 16, there just appears some pictures at the bottom of the front page of the Kansas City Times of March 18. Do you recall seeing those pictures?

A. I remember the picture is this one (indicating)—exhibit 16, is that right?—in the Kansas City Times.

Q. Now, will you please go through these exhibits, beginning with exhibit No. 18, through 38, and state whether or not you read the articles?

A. I don't think I read the ones that appeared in the Post, unless it was just one or two. I didn't take the Post at that time.

. . . . . .

A. I didn't read 18, as I remember.

[fol. 5245] By Mr. Lane:

Q. Did, or did not?

A. Did not.

And I don't remember reading 19, or 20 either, as I recall it.

I don't think I saw the pictures on exhibit 21; I don't remember it.

I didn't read 22 or 23.

I think I heard 24 discussed, but I don't think I read it. I think the girls I worked with—I heard them talking about it. It seems like I remember that.

I think I read 25. I read 26, 27, 28, 29, and 30.

I don't remember reading 31.

I didn't read 32.

I think I heard 33 discussed—talked about—but I don't think I read it.

34, I don't think I read that.

I don't remember reading 36. I might have, but I don't just remember whether I did or not.

Mr. Reed: Is that 36 or 35?

A. I remember this picture on the front, so I believe I did.

Trial Examiner Batten: What is that one, Mrs. Riegel?

. . . . . .

[fol. 5246] A. No. 36.

By Mr. Ingraham:

Q. Did you skip 35, this page (indicating)?

A. Yes, I skipped that. I read that the first thing when I got to work that morning. I remember that one.

I read 37. I remember reading the headlines.

I read part of 38. I don't remember whether I read all of it or not. I don't think I read all of it.

Q. State what effect, if any, the reading of the articles that had reference to the strikes at the Missouri, Gernes, and Gordon plants had on you.

A. Well, to me they were disgusting; and then, also, they made me just a little bit scared that they might come over to our place sometime.

Q. Was there a general discussion of these articles by the employees at the plant?

A. Well, with the ones I worked around, I remember clearly that we did.

Q. What effect, if any, did these articles have on other employees, so far as you could observe?

A. Well, their attitude—the ones who talked to me, they felt just about like I did.

Q. Did you personally see any of the violence at the Gernes, Gordon, and Missouri plants?

A. Well, not over close. I rode down Main Street hill [fol. 5247] there, coming to work, and from work, and I could see crowds over there, but I couldn't distinguish anything or anyone.

Q. Now, at the meeting of April 27 when the union was formed, state whether or not there was any discussion at that meeting of what was going on at these other plants or had been going on, at the Gernes, Gordon, and Missouri plants.

A. Well, yes; that was the way I remember it. It was the general topic—most of it—we talked about. Some had seen them. They talked about different things about it.

Q. Did you vote to form the Donnelly Garment Workers' Union?

A. I made the motion, as I remember it, to form the Donnelly Garment Workers' Union.

Q. Will you state why you voted to form the Donnelly Garment Workers' Union? A. Why I voted?

Q. Yes. What were your reasons at the time, if you recall?

A. Well, I didn't want to belong to the I. L. G. W. U.—didn't have any desire or intention to, and I thought if we had our own plant union we would be a stronger body as a whole, to keep together, and we wouldn't have any such chance of being forced into anything like that—I didn't think they could.

Q. Why didn't you want to belong to the I. L. G. W. U.?

A. Well, I just couldn't see myself belonging to an organization that carried on that violence and had that [fol. 5248] attitude—trying to make people do things they didn't want to. I just couldn't do it, that's all. I didn't believe in it and I didn't want to belong to it.

Q. Did you vote in favor of forming the Donnelly Garment Workers' Union because of any suggestion or discussion on the part of anybody representing the management? A. No, I didn't.

* * * * * * *

By Mr. Ingraham:

Q. Did you have any fear that if you did not vote in favor of forming the Donnelly Garment Workers' Union the company would penalize you in some way?

A. No, I didn't have any fear at all that way.

Q. Did any official, executive, or anyone representing the management discuss, to your knowledge, with any other employees the desirability of forming the Donnelly Garment Workers' Union?

A. I never heard any discussions of that nature, no.

Q. Did you join the Donnelly Garment Workers' Union of your own free will? A. I did.

Q. And have you remained a member, of your own free will? A. I have.

Q. I believe you stated that you read the article that [fol. 5249] appeared in the Kansas City Star on March 17, 1937, which is contained in respondent's exhibit No. 27. The article is entitled "Sitters Block a Door."

A. Yes, I think I stated I did.

Q. And I believe you stated you noticed the pictures that are contained on the front page of the Kansas City Times for March 18. This is respondent's exhibit No. 16 (indicating).

A. Yes, I remember seeing those pictures.

Q. Now, on or about that time was there a meeting of employees held—on or about March 17 or 18?

A. Yes, there was.

Q. Did these articles which had appeared in the paper prior to the time of the meeting have anything to do with the holding of the meeting; do you know?

A. Yes, I think they did. I know I had—

* * * * * * *

A. (Continuing) I know I had seen the articles, and it was my idea that that caused the meeting to be held.

By Mr. Ingraham:

Q. State the purpose of the meeting, if you know.

A. As I remember, it was to see what we could do about securing legal counsel to help us out—to tell us anything that could be done to protect ourselves, as I remember it.

[fol. 5250] Q. Was there a general discussion among the employees about taking some action to protect yourselves from the violence? A. Yes, there was.

Q. Was there a general discussion that the International was going to use the same kind of violence against the Donnelly employees that was being used in the strikes at the Gordon, Gernes, and Missouri plants?

A. Yes. That was discussed, that it would be worse for us, as I got it, than it was at the other plants.

Q. Had other employees at the Donnelly plant personally seen the violence? A. Some of them had.

Q. Had any threats been made against the employees of the Donnelly Company by the I. L. G. W. U.?

A. I think some of them stated they had been threatened. I never was.

Q. Did any officer, executive, or anyone representing the management discuss with you the holding of this meeting?

A. No, not that I ever recall, as long as I was there.

Q. Did you go to the meeting of your own free will?

A. I did.

Q. Did any officer, executive, or anyone representing the management suggest or direct that you go to the meeting? A. No.

Q. Did you feel that you would be penalized by the [fol. 5251] company if you did not go to the meeting?

A. No, I didn't.

Q. Do you recall whether or not Mrs. Reed appeared at that meeting? A. Yes, she did.

Q. Do you recall how she happened to come to the meeting?

A. Well, the way I recall it, someone suggested that Mrs. Reed come down to talk to us, and someone went out after her, and she came back in; I don't know who did it, but I remember seeing her there.

Q. Did Mrs. Reed make a talk? A. Yes, she did.

Q. Did Mrs. Reed say that she would close the plant if it was unionized? A. I didn't hear her say that.

Q. Did Mrs. Reed say she was not going to let Mr. Dubinsky tell her how to run her business?

A. I didn't hear her say that.

Q. Did Mrs. Reed make any statement with reference to employees joining or not joining any labor organization?

A. Well, the way I recall it, she told us we could do as we pleased, but she wouldn't permit Dubinsky to force her employees to join the union or do anything against their will—that we could make up our own minds.

Q. Did she mention anything about busses?

[fol. 5252] A. Yes, busses were discussed. I don't know whether someone asked her about it, but she told us she would try to secure busses. I know it was talked over and busses were provided later, and I rode the busses, but I don't just remember how it came up at that meeting—just what started it.

Q. Did Mrs. Reed read a letter from the union, the I. L. G. W. U., to the company, at the meeting?

A. I don't remember hearing any letter read.

Q. Do you recall whether or not the I. L. G. W. U. had circulated a pamphlet prior to this meeting? Do you have any recollection of that? A. Prior to the meeting?

Q. Yes.

A. Well, I don't recall just whether they had or hadn't at that time.

Q. I will hand you respondent's exhibit No. 41 and ask you if you recall that the I. L. G. W. U. had people in front of the plant handing out circulars like this exhibit.

A. I don't know whether I read that or heard the girls talk about it; I couldn't say positively which. I heard about

it, but I don't remember whether I read the pamphlet or not.

Q. Do you recall that the pamphlet was circulated by the I. L. G. W. U. at the plant, or handed out by the I. L. G. W. U. close to the plant?

A. That particular pamphlet?

[fol. 5253] Q. Yes.

A. Well, I either read it or discussed it, so I guess it was handed out there.

Trial Examiner Batten: The question is, do you remember whether it was handed out there? Was one handed to you?

The Witness: Not that I recall. It wasn't handed directly to me.

By Mr. Ingraham:

Q. Did the employees at the March 18 meeting appoint a committee to investigate what protection they could obtain? A. Yes, they did.

Q. Do you recall who was on the committee?

A. Yes, I do. It was Miss Todd, Hobart Atherton, and Sally Ormsby.

Q. Did you feel that you would be penalized by the management if you did not attend that meeting?

A. No, I didn't.

Q. Now, after the meeting of March 18 and prior to the meeting of April 27, when the union was formed, did the employees hold any meeting?

A. Yes; we had another meeting to hear the report of our committee.

Q. Do you know when that meeting took place?

A. Well, the latter part of March. I don't know what date.

Q. By the way, with reference to the meeting of March [fol. 5254] 18, what time of day was that meeting held?

A. Well, between 5 and 5:15 in the evening, after work.

Q. Do you recall where it was held?

A. Well, the second or third floor; they were both vacant at that time. I don't know. I couldn't say positively which one.

Q. Now, this meeting you have just referred to the latter part of March, do you recall what occurred at that meeting?

A. Well, yes. We had a report of the committee and they said they had seen Mr. Tyler and talked to him and he would require a retainer's fee. And I know it was discussed at that meeting, how would we raise the money for this retainer's fee? I think it was $500. I don't remember all of the discussion about how the money would be raised, but I remember it came up and they said for each to donate 50 cents.

Q. Did you donate 50 cents? A. I did.

Q. Do you recall when you made the donation?

A. I threw mine up on the platform that evening.

Q. Now, the meetings you have mentioned, the March 18 meeting, the meeting the latter part of March, and the meeting on April 27, did you consider those Loyalty League meetings? A. No, I didn't.

Q. Did you attend the meetings thinking that they were Loyalty League meetings?

[fol. 5255] A. No, I didn't.

Q. Did anybody suggest to you or say to you that they were Loyalty League meetings? A. No, they didn't.

Q. Did the fact that Rose Todd presided at these meetings lead you to believe that they were Loyalty League meetings? A. No, it didn't.

Q. Now, the 50-cent donation that you have just mentioned, did you make that donation to the Loyalty League?

A. I made that donation for this retainer's fee.

Q. Did the Loyalty League have anything to do with it? A. No, not anything.

Q. So far as you know?

A. Not as far as I know. I didn't even connect it with the Loyalty League.

[fol. 5256] Q. Did any official or executive or anyone representing the management suggest that you attend the meeting that was held the latter part of March?

A. No, they didn't.

Q. Did you feel that you would be penalized by the management if you did not attend that meeting?

A. No, I never had that feeling.

Q. Are you a member of the Loyalty League?

A. I am.

Q. Did anyone representing the management suggest or direct that you join the Loyalty League?

A. No, they didn't.

Q. Did you join the Loyalty League of your own free will? A. I did.

Q. Do you recall what activities the Loyalty League engaged in?.

A. Well, they had, as I recall, an ice cream social, I know I was on one of the committees to help serve at an ice cream social for the Loyalty League, and I also served as one of their hostesses at one of their dances that they had at the Plaza Hall.

Q. Do you know of any activities that the Loyalty League engaged in that weren't social activities?.

A. No, I don't. I will state that I have attended Loyalty League picnics.

[fol. 5257] Q. Did you pay dues to the Loyalty League?

A. No, I never did.

Q. Did the Loyalty League raise its money to pay for its activities by making charges at the picnics and the dances?

A. I don't know just what you mean.

Q. How did the Loyalty League, if you recall, pay for a dance or a picnic if it gave one?

A. Oh, they sold tickets to the dances.

Q. Did you ever authorize the Loyalty League to represent you in connection with labor matters?

A. No, I didn't.

Q. Did you ever hear of the Loyalty League representing the Donnelly employees in connection with any labor matters? A. No, I didn't.

Q. You never heard of it in any way dealing with the company in respect to wages and hours and conditions of labor?

A. No, I always took the Loyalty League that it was just purely a social organization, and never connected it with anything else, to my knowledge, that I ever knew of.

Q. Did the Loyalty League have anything to do with the formation of the Donnelly Garment Workers' Union?

A. No, it didn't.

Q. Did the Loyalty League hold meetings immediately following the meetings of the Donnelly Garment Workers' Union?

A. No, I never attended such a meeting.

[fol. 5258] Q. Did the Loyalty League ever hold any

meetings immediately preceding the meetings of the Donnelly Garment Workers' Union?

A. No, not to my knowledge.

Q. Did you ever recall of any money being raised at a Donnelly Garment Workers' Union meeting for any purpose of the Loyalty League? A. No, I never did.

Q. Did you ever hear of any business of the Loyalty League being discussed at a Donnelly Garment Workers' Union meeting? A. No, I didn't.

Q. I believe you stated that you read respondent's exhibit 35, which is an article that appeared in the Journal-Post on April 22, 1937, the article entitled "Donnelly Worker will be sent to Union Convention"?

A. Yes, I read that, one of the girls down there had the paper.

Q. What effect, if any, did that article have on you?

A. Well, it really surprised me, and it also made me furious.

Q. Why did it make you furious?

A. Well, I knew Sylvia to speak to her, and knew her as—I never worked right with her, but I have eaten lunch beside her and all, and she didn't seem the type of girl to take action and do anything like that, and besides it made me furious to think she would represent a group, if there was a group in our factory that would take it upon themselves to represent us in any such meeting that the [fol. 5259] paper stated they were going to.

Q. Do you recall seeing in that newspaper article, which is respondent's exhibit 35, the statement: "Perlstein said the Donnelly Committee desired one of their members to appear at the convention and ask the International body to endorse and support a strike against their employer"?

A. Yes, I remember reading that.

Q. Did that statement influence you in your feelings at the time? A. Well, yes, it did.

Q. Did you want a strike called at the Donnelly plant?

A. No, I didn't.

Q. Why didn't you?

A. Well, I was perfectly satisfied there as to my working conditions and the way everything was, and I didn't feel like I would participate in a strike, and I didn't want to have any part in it, and didn't want any of it where I

was working, I didn't want to engage in any such carrying-ons.

Q. State whether or not you feared you might be injured if a strike was called.

A. Well, I didn't know whether I would get in there with all my clothes on or my hair on my head or what would happen to me; from reading the other articles, I didn't know whether I would be in one piece in there or not, if they did strike.

Q. State what effect that article had on other em-
[fol. 5260] ployees so far as you could observe.

* * * * * * *

A. Well, the way they talked, they felt just about like I did. Some of them were afraid, and some of them were indignant, and they were very much concerned, all of them that I talked to.

By Mr. Ingraham:

Q. Did that article influence you in voting in favor of forming the Donnelly Garment Workers' Union at the meeting of April 27th?

A. Well, yes, in a way it did. I felt like if we had our own union, that we would be the ones that would bargain for our company, and for ourselves, that there wouldn't be anybody else have a right to go to some convention and talk in our behalf on those things they didn't know anything about.

Q. What floor were you working on on April 23, 1937, if you recall? A. The eighth floor.

Q. The eighth floor. Was that the floor that Sylvia Hull worked on? A. Yes, it was.

[fol. 5261] Q. Did you work in the same section with Sylvia Hull? A. No, I didn't.

Q. That morning, April 23, 1937, did you see Sylvia Hull?

A. You mean when I saw her, or did I see her?

Q. Did you see her? A. Yes, I did.

Q. Will you state what you observed in connection with any demonstration that took place?

A. Well, the way I recall it, I was in 415; that was in the north end of the building; Sylvia was in 412, that was on the south part of the building and across the building. I would see girls going to and from her machine, some of

them would maybe stop around there, but I never paid a lot of attention. Some girl came—I don't know whether it was from the section or not—but some girl stated, the way I got it, that some of them asked her what she was doing with the Loyalty League pin on if she was representing the I. L. G. W. U., and she made the remark that she would give the Loyalty League pin back if they would give her her 35c.

And that section right over next to our section—we called ourselves the under-armers, we girls that did under-arming in our sections, we girls made up the money, 35c—I don't know where it came from, to give to Sylvia, her money for her pin, and they wrapped the money up and brought it up on our end of the table and wanted to know who would take it over there, and I said, "I will take it over there," and so I took it over there and laid [fol. 5262] it down on her machine in front of her, and I said, "Sylvia, here is the 35c that you wanted for your pin," and she didn't raise up her head, just mumbled something—I don't know what she said, and she laid the pin on her desk and I picked it up and took it back over to the section, and I don't recall just what I did do with the pin, whom I gave it to.

Q. Did you hear anybody threaten Sylvia in any way?

A. Well, I don't recall it if I did.

Q. Did you hear anybody say, "Let's throw her out of the window," or anything like that?

A. No, I don't recall hearing anything like that.

Q. Did you see anybody push Sylvia or strike Sylvia?

A. No, when I went over there, Sylvia was sewing.

Q. State whether or not operators that were on the floor at the time made any remarks to the effect that they weren't going to work so long as Sylvia remained there?

A. Yes, I think I heard that statement.

* * * * *

By Mr. Ingraham:

[fol. 5263] Q. When you stated "you think so", do you mean to say, that you do recall hearing some operators make that statement?

A. Well, I believe I have. I don't remember whether I made it myself, but I might have; but I don't remember whether I did or not, but I could have, I felt like it.

Q. Well, did you hear other operators make a statement to that effect?

A. Well, I just wouldn't be positive how they worded it.

Q. But something was said to that effect?

A. Yes, the girls were just as indignant as I was, and I know we talked the situation over, three or four that went over there when I went, that I worked with.

Q. Did you hear Sylvia make any statement at all?

A. No, I didn't. When I told her that there was her 35c, she tipped her head down and mumbled something, but I couldn't distinguish what she was saying, and I never heard her make another statement; she was talking, but it was low, and I really never did know what she said when I gave her her money.

Q. State whether or not you wanted to work if Sylvia remained there at work?

A. Why, I didn't want to work there with her; I don't think I would have had I been in the section with her.

Trial Examiner Batten: You weren't working in her section?

A. No. There was three sections in a row, and there [fol. 5264] was a section between her section and mine, but she faced me, and I faced that way (indicating); we faced each other, but the length of the building was between us.

By Mr. Ingraham:

Q. I hand you respondent's exhibit No. 6, which appears in the Circuit Court record at 4864, and ask you if you recall reading that article that was contained in the Kansas City Times of February 26, 1937.

A. Yes, I read that.

Q. Do you recall reading the statement: "The union claims only 25 members among the Donnelly workers, but officials said hundreds of others were related to union members. Within a year we will have it completely organized, Mr. Perlstein said, as soon as we have enough members we will call a strike." Do you recall reading that? A. Yes, I do.

Q. And the further statement: "This will be in addition to carrying our side to the consumers." Do you recall reading that? A. Yes, I do.

Q. Well, what effect, if any, did that article have on you?

A. You mean about the I. L. G. W. U. members already in our plant?

Q. Well, the whole article, including the statement there were 25 members in the plant, and as soon as they had enough, they would call a strike?

[fol. 5265] A. Well, I don't really just understand what you mean, what effect it had on me.

Q. Well, did that article have any effect on you with respect to how you felt towards the I. L. G. W. U.?

A. Oh, it sure did, that didn't change—I never did want to belong to any I. L. G. W. U., and that made me worse—made me want to less than ever, or worse than ever, just whichever way you want to put it. I can't just state how I felt about it.

Q. State whether or not other employees at the plant discussed that article.

A. Well, I know the ones that sat around me did.

Q. What effect, if any—so far as you could observe, did this article have on other employees?

A. Well, the way I got it, they felt just about like I did.

Q. Do you recall a petition being circulated a few days after that article appeared in the paper?

A. Well, I recall the petition being circulated, I guess that is when it was.

Q. I hand you—

A. (Interrupting) I remember one being up there.

Q. (Continuing) I. L. G. W. U. exhibit No. 10, that appears in the Circuit Court record beginning at page 5961, and ask you if you recall signing a petition that had the statement at the top of it, that appears in this exhibit. A. Yes, I do.

[fol. 5266] Q. Will you state how you happened to sign that petition?

A. Well, yes, I recall that petition. It was brought up into my section at that time, and I was still in 415, and I remember the two girls bringing it up. There were two rows, and I was on this row (indicating) but I don't remember what time of day, whether it was at lunch time or early in the morning, I couldn't say, but I know we usually gathered at one end—it was either lunch time or in the morning, I can't recall which. We gathered

at one end of the section before time to go to work, to talk, you know, and to discuss things, and we went to our machines, and I remember it coming on the other row, and I went over there when the group was around them; I knew this Mary Sprofera, I didn't know the red-headed girl's name, but I had seen her; and I was over to my end of the row, and I went over to where the whole bunch was reading it, and I know I read it and I signed it over there at that time. I remember that very clearly.

Q. Did you sign the petition of your own free will?

A. Yes, I did.

Q. Did any officer, executive or anyone representing the management discuss with you anything in connection with this petition?

A. No, they didn't with me, I don't remember them saying anything to me; I don't recall anyone—I don't [fol. 5267] remember any executives there when I seen it, just a bunch of we girls, and I just signed it when those girls signed.

Q. Who handed you the petition, if you recall?

A. Well, I can't state whether Mary handed it to me, or whether some girl signed it and handed it to me, who had signed before me. I just wouldn't know. We were all gathered up there together.

Q. Was there anything said by Mary with respect to whether or not you should sign it or not sign it, as you remember?

A. She told us to read it over and to sign it if we wanted to.

Q. Did you feel that you would be penalized in any way if you did not sign the petition?

A. No, I never thought of that. I wanted to sign it; it expressed my feelings better than I could put it in words, and that is just what I wanted.

Q. There is a statement in the petition: "And refuse to acknowledge any union labor organization." Why did you want that?

A. Because I didn't want to belong to any labor organization outside of—

Mr. Langsdale: Will you read that answer?

Mr. Ingraham: She hasn't finished it.

Trial Examiner Batten: She hasn't finished it yet.

A. What made me want to sign, I didn't want to belong [fol. 5268] to any I. L. G. W. U. or any labor organization of that kind, that is the way I felt.

By Mr. Ingraham:

Q. Did the strikes that the I. L. G. W. U. engaged in influence you in any way in not wanting to belong to the I. L. G. W. U.? A. Well, yes, they did.

Q. Did you want Mrs. Reed to know that was the way you felt? A. I sure did.

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[fol. 5269] Mr. Ingraham (Continuing): Did you read or [fol. 5270] understand these garment companies which were involved in strikes with the I. L. G. W. U. had signed up with the I. L. G. W. U. and the employees were forced to join the I. L. G. W. U.?

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Mr. Ingraham: Do you understand the question?

A. Yes, I think I understand what you mean.

Trial Examiner Batten: Well, if you understand.

A. I think what he asked, he means did I read about some other company doing that, or heard about it?

* * * * * * *

[fol. 5271] A. Well, I think I have, but I wouldn't say positive whether I read it or had heard it, but I think I have heard that discussed or read about it.

* * * * * * *

[fol. 5272] By Mr. Ingraham:

Q. I want to direct your attention to the petition of March 2 that I asked you about this morning. You recall that petition? A. Yes, I do.

Q. Was that petition circulated by the Loyalty League?

A. No, it wasn't connected with it, to my knowledge, in any way.

Q. Did you know Rose Todd? A. Yes, I did.

Q. State whether or not you considered Rose Todd a boss of any kind. A. No, I never did.

Q. Did you know of any authority that Rose Todd ever had to direct other employees in anything?

A. No, I never did.

Q. Did you consider that Rose Todd had authority to speak for the management with respect to labor matters? [fol. 5273] A. No, I didn't.

Q. State whether or not instructors had any authority to hire, discipline, or discharge employees from July, 1935, to July, 1939.

A. Well, I never knew of it, if they did.

Q. Did you consider an instructor a boss?

A. No, I never did.

Q. Did you feel that because instructors joined the Donnelly Garment Workers' Union that that meant that the company was sponsoring the union?

A. No, I never did think the company was sponsoring the union.

Q. Did employees use the telephones at the plant?

A. The telephones?

Q. Yes. At the plant.

A. Yes; I have used the telephones.

Q. Has that been permitted as long as you have worked at the Donnelly Garment Company?

A. As long as I have been there, I have always used the telephone when I wanted to.

Q. Do the employees at times use the sewing machines for some personal purpose?

A. You mean for themselves?

Q. Yes.

A. Well, I never did. Oh, I've put a hem in a dress, or [fol. 5274] sewed up a seam in a dress that was ripped, or something like that. I don't know about the others.

Q. The company never objected to that?

A. They never did say anything to me.

Q. Do employees frequently pass papers down the sections?

A. Well, that is just about an everyday occurrence.

Q. Has the company ever objected to that?

A. No, they never did.

Q. Did an instructor direct or suggest that you attend either the March 18 meeting or the meeting the latter part of March or the meeting of April 27?

A. They never instructed me to attend any meeting.

Q. Have they ever suggested or instructed you to attend any union meeting? A. No, they never have.

Q. Has anybody representing the company ever suggested that you go to any union meeting?

A. They never did.

Q. Have you gone to union meetings of your own free will? A. I always have.

Q. Without any suggestion on the part of any official or executive of the company?

A. They never did suggest my going.

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[fol. 5275] Cross-Examination.

By Mr. Lane:

Q. Mrs. Riegel, I have heretofore shown you, for purposes of refreshing your recollection, Board's exhibit No. 1-RRRR, which appears in the Circuit Court of Appeals record at page 3471 and following. I will show you the fourth page of signatures of that offer, being page 3477,—

* * * * * *

By Mr. Lane:

Q. Now, will you look at the 11th name in the right-hand column and state whether or not that is your signature?

A. Yes, that is my signature.

Q. Did you sign that offer of proof?

A. I did.

[fol. 5276] Q. Was there any influence or suggestion or any action taken by the employer, so far as you know, in connection with calling the meeting of March 18, 1937?

A. No, there wasn't, to my knowledge.

Q. Was that meeting called by the employees on their own initiative, so far as you know?

A. So far as I know, it was.

Q. Did Mrs. Reed say at that meeting that she would not allow members of the International Ladies' Garment Workers' Union to work at the Donnelly Garment Company?

A. I didn't hear Mrs. Reed say that.

Q. You heard Mrs. Reed speak there, did you?
A. Yes.
Q. Did you hear all of her speech?
A. I was there during all of it.
Q. You were there when she came in and when she went out?
A. I was.
Q. Did she say in that speech that she would not allow I. L. G. W. U. to be in her plant?
A. No, I didn't hear that.

By Mr. Lane:
Q. Did she say she wanted the names of anyone who joined the I. L. G. W. U. reported to her?
A. I didn't hear her say that.
[fol. 5277] Q. Was anything said at that meeting about providing busses for employees to ride in?
A. It was discussed and talked about.
Q. Do you know when busses were first furnished?
A. No, I don't.
Q. Did you ride the busses?
A. I rode them home every evening, I think, as far as they went, and I think I rode them a few mornings, but not all mornings. I rode with a neighbor lady and sometimes we would get out at Thirty-first and Main, where we caught the busses. But I always rode back to Thirty-first and Main.
Q. When you didn't ride the busses what means of transportation did you have to get to work?
A. I rode with a neighbor lady. Her husband brought us down.
Q. Did you personally have any fear of violence from the I. L. G. W. U. that was conducting these strikes over at Gordon, Gernes, and Missouri during the time the strikes were going on?
A. Yes, I did.
Q. What was your belief, based on your conversations in the plant and from what you read in the papers, as to whether the I. L. G. W. U. intended to visit the same sort of disorder upon the employees at the Donnelly Garment Company?

A. Well, that's the way I took the readings and the conversations I heard. At least, I was afraid that was [fol. 5278] what they were going to do.

Q. Did you join the Donnelly Garment Workers' Union of your own free will?

A. I did.

Q. At the time you joined it did you have any belief in your mind that you were being coerced, intimidated, or dominated by the Donnelly Garment Company to take the action you took in helping to form the Donnelly Garment Workers' Union?

A. No, I didn't have that feeling.

Q. Do you know of anything that the company ever did that you thought was an instance of domination or pressure or control on the part of the company over you or the other employees in connection with forming any labor union or staying out of any labor union?

A. None of the officials or anyone ever talked to me and I never had that belief.

Q. Now, when you made the motion on April 27, 1937, to form an independent, unaffiliated plant union, did you think that you were taking that action on behalf of the Loyalty League?

A. No. I didn't connect the Loyalty League with it in any way.

Q. Who was Arch Lile?

A. I don't think I knew him—where he worked—I don't think I did.

Q. Did you know Lena Faulconer?

[fol. 5279] A. Yes, I did.

Q. What did she do?

A. She was a hemmer.

Q. A machine operator?

A. Yes.

Q. Do you know Eva Liebermann?

A. Yes, I know Eva.

Q. What was her position?

A. She was an operator.

Q. Do you know Lyle Jeter?

A. Yes, I knew Lyle.

Q. Do you know what he did?

A. He was a mechanic.

Q. Did you know Mrs. Riggs?

A. Well, I knew of Mrs. Riggs. I didn't know her personally.

Q. Had you seen her about the plant?

A. I had seen her to know who she was.

Q. Did you know Carl Crawford?

A. Yes.

Q. What did he do?

A. Well, he worked in the cutting department, so far as I knew.

Q. Did you know Cordelia Taylor?

A. No, I didn't.

[fol. 5280] Q. Did you know Leona Moore?

A. Yes.

Q. What did she do?

A. She was an operator.

Q. Was there any one of the persons whom I have thus far mentioned you regarded as being a representative of the management or as being entitled to speak for the management in directing the activities of any other employees or to speak for the management in labor matters?

A. No, I didn't regard them as such.

Q. Did you know Ellen Nokes?

A. I don't think I did.

Q. Did you know Virginia White?

A. I don't think so. I don't recall the name now.

Q. Did you know Fred Brown?

A. Yes, I knew Fred.

Q. Did you know Sally Ormsby?

A. Yes.

Q. Did you know Mamie Riddle?

A. Yes.

Q. Do you know where Fred Brown worked?

A. Well, in the cutting department.

Q. Where did Sally Ormsby work?

A. She was an operator, but I don't know what section [fol. 5281] she worked in.

Q. What about Mamie Riddle?

A. Mamie was an operator.

Q. Did you know Anna Richards?

A. I don't think so.

Q. Did you know Marjorie Green?

A. I knew Marjorie when I saw her.

Q. Do you know where she worked?

A. She worked in the office.
Q. Did you know Jack McConaughey?
A. Yes.
Q. Where did he work?
A. In the mechanics' cage.
Q. Did you know Hobart Atherton?
A. Yes.
Q. What did you observe him doing around the plant?
A. Well, I never knew what Hobart did—exactly what his job was. I always thought he worked in the mechanical department, down in the parts and things.
Q. Did you know Charlotte Casey?
A. No, I didn't.
Q. What did you observe Rose Todd doing around the plant?
A. Well, I don't know just what I would consider Rose's job, other than—
Q. Tell what you saw her do.
[fol. 5282] A. I have seen her come in our section and—maybe there would be an old bundle or a cut of dresses that was held up that we would have a recut out of, or something, and she would hunt up those old bundles, or maybe parts of them.
Q. Did you ever have the opinion, from what you saw Rose Todd do, that she was being held out by the management as a representative of the management, entitled to speak for the management in labor matters?
A. No, I never did.
Q. Did Rose Todd ever say anything to you, or did anybody else ever say anything to you that indicated that Rose Todd represented the management or was a boss or supervisor?
A. No.
Q. Was that true of all of the other persons whom I inquired about just before asking about Rose Todd?
A. Yes, that is true.
Q. Did you know Hazel Saucke?
A. Yes, I did.
Q. Do you know what she did?
A. She was an operator.
Q. Did you know Anna Reese?
A. Yes.
Q. What did she do?

A. She was an operator.

Q. Was there anybody who took any part in the meeting [fol. 5283] of April 27 who, in your opinion, occupied a supervisory status or position of a straw-boss or position superior to that of other employees?

A. No.

Q. Did you attend the meeting of May 11, 1937?

A. Yes, I did.

Q. I will ask you to state whether this was said, in substance, at that meeting:

"You realize now that Mr. Tyler is representing the Donnelly Garment Workers' Union and he will have to be paid. I expect a good many of you are wondering what he is going to charge. I talked to him in some detail, and I am sure you will feel that he is quite right in the answer he gave me. He doesn't know what his answer will be, because it depends on how much trouble we cause him and how much work he will have to do for us.

"The union does have to be self-supporting in every detail. Being a thoroughly reliable group of employees, we can take care of our own financial obligations."

Did Rose Todd say that, or that in effect?

A. Yes, I remember that she did.

Q. Did you attend the meeting on May 25, 1935?

A. Yes.

Q. Do you remember whether or not at that meeting Rose Todd read an article appearing in the noon paper of [fol. 5284] that day, which referred to an interview claimed to have been had with Meyer Perlstein, in which he was asserted to have said:

"'. . . the International Ladies' Garment Workers' Union opened headquarters at 1022 Baltimore Avenue today to organize,' he says, 'the Donnelly Garment Company.'

"'We will open with an advertising campaign through newspapers and radio against the patronage of garments manufactured in the Donnelly plant,' Perlstein said. 'Six girls now are undergoing training to travel from coast to coast visiting storekeepers handling the Donnelly garments, urging them to stop handling the Kansas City

product. If the store operators refuse to comply, their stores will be picketed.'

"'As membership of our union in the Donnelly plant increases, a strike will be called. In such a case additional money will be required and we are ready to spend $250,000 to accomplish our goal, and that amount is ready.'".

Do you remember that article from the paper being read at that meeting?

A. Yes, I recall it.

Q. Was there anything discussed in that meeting of the union about raising money for the Loyalty League?

A. No, there wasn't.

Q. Did you ever at a meeting of the Donnelly Garment Workers' Union discuss ways and means of raising any [fol. 5285] money for the Loyalty League?

A. No, we never did.

Q. Was there ever a time when a meeting of the Donnelly Garment Workers' Union was followed immediately by a meeting of the Loyalty League?

A. Not that I ever remember.

Q. Did you go to the meetings in March and April in your uniform, or did you dress before you went?

A. Well, I can't recall whether I always dressed or whether I didn't. I just can't remember.

Q. Did you sometimes go to the meetings in your uniform?

A. Well, I just don't remember.

Q. Do you recall at what hour your working day was finished in March and April of 1937?

A. Well, if we didn't work overtime, it would be 4:10 or 5:10.

Q. Was there ever a time in 1937, or any other time, when you were ordered by your instructor to go with the other members of your section in a body to a meeting and to stay together as a section and to return to work after the meeting was over?

A. No.

Q. Did that ever occur, as far as you know?

A. I don't remember anything like that ever occurring.

Q. Have you ever made a complaint since the forma [fol. 5286] tion of the Donnelly Garment Workers' Union

with respect to piecework prices, or any other matter involving your work, to a representative of the union?

A. Yes, I have.

Q. Are you able to fix the date of it?

A. No, I wouldn't know the exact date.

Q. Do you know whether it was before or after July 15, 1939?

A. No. I just couldn't recall.

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[fol. 5288] By Mr. Lane:

Q. Did you, from the time the Donnelly Garment Workers' Union was formed up to July 15, 1939, continue to belong to the Donnelly Garment Workers' Union of your own free will and choice?

A I did.

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By Miss Weyand:

Q. Were you working at the Donnelly Company at the time the Loyalty League was organized?

A. Yes, I was.

Q. Do you remember how it was organized?

A. How?

Q. Yes, what occurred.

A. You mean at the meeting it was organized?

Q. Is that the first you heard of the Loyalty League, at the meeting?

A. I don't understand your question.

Q. I just wondered what was the first you heard of the Loyalty League and what steps you knew that were taken to organize it.

A. Well, we had a meeting when it was first organized as a whole.

[fol. 5289] Q. When was that meeting?

Mr. Lane: Mr. Examiner, I have heretofore objected to matters going as far back as 1935 or thereabouts, on the ground we were precluded from inquiring into those matters under Your Honor's ruling, and I object to Miss Weyand going back to matters as far as 1935.

Trial Examiner Batten: Mr. Lane, of course, if you were precluded, why did you continue to ask questions about that?

Mr. Lane: I didn't ask any questions about 1935.

Trial Examiner Batten: Of course, you have asked questions concerning the events of Rose Todd and all those various people, whether they were ever supervisors, without any restriction at the time. Of course, it doesn't make any difference, because I haven't placed any restriction on the Loyalty League of any kind at any time in this hearing.

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Trial Examiner Batten: I'll overrule the objection.

Mr. Reed: I want to make an objection, or rather, I am asking for information just now. Are we to understand that as to the Loyalty League, all the events leading up to its organization and its organization back in 1935 are to be received, but not what the company did in the conduct of [fol. 5290] its business, or what the scope of authority the employees had in conducting the company's business, is cut off in 1939?

Now, it seems to me those two rulings are contrary to each other, and that either all matters back of the filing of the charges here — wait one moment until I get that straight. Either all the matters that happened back there in 1935 are out on both sides, and with reference to everything else, all that took place is competent, and that you can't — that for the purposes of the prosecution here you can go back to 1935; but when the company comes to its defence, that time is cut off at 1939. I don't think that those two rulings can stand together.

Trial Examiner Batten: Well, I think, Senator, if that was the ruling I would agree with you. Do you have an objection to this question?

Mr. Reed: I object to it for the reasons I have given in this colloquy, and I am asking Your Honor now if you want to clarify this situation.

Trial Examiner Batten: Well, I don't think it needs any clarification, Senator. I think if you will go back in the record, the day we were discussing it, when I made the ruling, and it is very clear, I have gone over it a couple of times, and I think it is very clear in the record what was covered in the ruling.

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[fol. 5291] Mr. Langsdale: The Court of Appeals ordered you to come back and take the testimony on the offers of proof, which you denied; on page 23 of respondent's offer of proof, with respect to the Loyalty League being organized as a social organization and remained such clear up to the time of the trial, they offered to prove it, and you wouldn't let them prove it, and the Court of Appeals told them they could prove it. That is the reason Your Honor ruled that way.

Mr. Reed: No, the Court of Appeals didn't tell them any such a thing.

Trial Examiner Batten: Is there a question pending? I'll have it read then, Senator, and if you have an objection to the question —

Mr. Reed: I object to it, because I say it is outside of the restrictions and rulings of the Court, denying us to go back to certain specified dates.

Trial Examiner Batten: Will you read the question?

(Thereupon the last question was read by the reporter, as follows:

"Q. When was that meeting?")

Trial Examiner Batten: You may answer. You are referring to the organizational meeting?

Miss Weyand: The one she mentioned. She said the first she heard of it was a meeting.

[fol. 5292] A. I said the formation of it.

By Miss Weyand:

Q. I see. What was the first you heard of the Loyalty League?

A. Well, the first I considered it as a body, as a whole, was when it was formed.

Q. Had you considered it as an individual before that?

A. As what?

Q. As an individual. You said you considered it as a body when it was formed.

A. Well, when we formed it, we grouped all together, where before we were just little organizations amongst ourselves.

Q. Now, when you refer to it as being little organizations, what do you refer to?

A. Well, I mean our clubs, our section clubs.

Q. Do you know what arrangements were made to form those section clubs into the Loyalty League?

A. What arrangements?

Q. Yes.

A. No. I don't remember clearly.

Q. When did you first learn they were going to form a Loyalty League?

A. When?

Q. Yes.

A. Well, I don't remember that hardly, as to date.

Q. Do you know?

[fol. 5293] A. You mean as to the exact date?

Q. Well, was it before the large organization meeting to which you referred?

A. Well, it was when we had that meeting.

Q. Did you know of it before you went to that meeting?

A. Well, probably that day, or it might have been the day before, I don't remember.

Q. Do you know anything of a meeting of 40 people at Mrs. Gray's home? A. Yes, I was there.

Q. You were at Mrs. Gray's house? A. Yes, I was.

Q. Will you tell me what took place at that meeting?

A. No, I can't exactly. I just don't remember.

Q. They did discuss forming the Loyalty League at that meeting, did they?

A. Well, I couldn't say whether that was before we formed it or after we formed it. I really just don't remember.

Q. How many meetings were you out at Mrs. Gray's house?

A. Well, I never was but to one that I remember of.

Q. Were there representatives from each section present at that meeting? A. Well, I really can't say.

Q. Did you go there as a representative of the club in your section?

[fol. 5294] A. I couldn't say. I did.

Q. Do you remember whether that meeting was in the afternoon or the evening? A. At Mrs. Gray's?

Q. Yes. A. Oh, it was at night.

Q. Do you remember the names of any other persons present at that meeting?

A. Well, one girl I remember, that I know, she was there, I sat by her, Kathryn Chandler.

Q. You say you sat by her. You mean you sat by her at Mrs. Gray's home, at the meeting?

A. That is the only one I really do remember.

Q. Do you remember whether notes were taken at that meeting? A. No, sir, I don't remember.

Q. Do you remember who presided at that meeting?

A. I sure don't remember that clearly. I don't know.

Q. Did you prepare a pledge to circulate among the girls at that meeting? A. I don't remember.

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[fol. 5296] Q. I am asking you to look at Board's exhibit No. 2, at pages 4362 and 4363 of the Circuit Court of Appeals record, asking you to direct your attention to the article "900 Join Loyalty League", and ask you if you ever read that before.

Mr. Ingraham: Now, I understand respondent has a continuing objection to this exhibit.

Trial Examiner Batten: That is my understanding, Mr. Ingraham.

A. I remember of attending that meeting where the word "Loyalty" was discussed.

[fol. 5297] By Miss Weyand:

Q. Have you read this article before?

A. Well, I am not sure.

Q. Do you know whether the meeting of February 5, held at the home of Mrs. Gray, is the meeting you attended?

A. I couldn't be sure. I attended a meeting there but I just can't be sure. I never attended but one, I never was at Mrs. Gray's house but once in my life.

Q. Do you know how you were invited to Mrs. Gray's house? A. No, I don't remember.

Q. Do you remember whether Mrs. Strickland was there? A. I just wouldn't know.

Q. Do you know who Mrs. Strickland is?

A. I know her when I see her, but, you know, I never met her personally, but I know where she works, on what floor.

Q. Do you remember whether cards were passed out at this meeting at which the meaning of this "Loyalty" was explained?

A. I just don't remember a lot about that meeting, it is so vague in my mind. I remember discussing the word "Loyalty", and what the word stood for, but I don't remember a lot about it.

Q. Do you remember who discussed the word "Loyalty"? A. I think Mrs. Gray did.

Q. Do you remember whether there was a drawing of a pin at that meeting? A. A drawing of it?

Q. Yes.

[fol. 5298] A. I don't remember just — what do you mean, a drawing, the shape of the pin?

Q. Yes, so you could see the design you were going to choose.

A. Well, I just don't remember clearly on that, lady.

Q. Do you remember whether officers were elected for the Loyalty League at that meeting?

A. I think they were.

Q. Who was elected?

A. I remember Herb Mutchler being our president.

Q. Do you remember whether a constitution was adopted at that meeting?

A. I don't recall very much about it.

Q. Do you know whether the Loyalty League had a constitution?

A. Well, I guess you would call it a constitution.

Q. What was it that you refer to, that you guess you would call a constitution?

A. Well, I would call it a pledge to the Loyalty League and to each other and to Mrs. Reed, and I guess you would call it a constitution; it was either a constitution or a pledge.

Q. Did the Loyalty League have representatives in each section? A. Yes, they did.

Q. How were they chosen? A. I don't remember.

[fol. 5299] Q. Were you ever a representative from your section to the Loyalty League?

A. Yes, I was; I think the first year, or something, I was the representative.

Q. What year?

A. I don't ever remember being a representative again.

Q. You don't recall how you were chosen?

A. No, I don't.

Q. What were your duties as representative of your section of the Loyalty League?

A. Well, I never did take an active part in the social activities, because I never could go regular to their activities, I had small children at home; and I know once I acted as a hostess at a dance, and also served on a committee—I don't know whether you would call it a picnic or an ice cream social that we had—but I never did do an awful lot, because I didn't take in the activities.

Q. Do you know what the representatives in each section were supposed to do?

A. Their duties, exactly?

Q. Yes. A. I don't remember.

Q. Did you sell tickets in your section for the affairs?

A. Yes, I sold tickets to that dance that I was a hostess at, I am sure, I took care of them.

[fol. 5300] Q. Did you collect funds in your section for other purposes? A. Well, I don't remember.

Q. How often did the Loyalty League have mass meetings? A. Well, I don't remember.

Q. Did it have them?

A. I don't remember that, I just really don't.

Q. You don't remember any meeting of the Loyalty League except the original organizational meeting?

A. Clearly, I don't remember right now.

Q. Do you know where that organizational meeting was held?

A. Well, I think on the second floor, to the best of my knowledge.

Q. Do you know who was the president following Herbert Mutchler? A. Well, Rose Todd, I believe.

Q. And do you know who the next president was?

A. Thelma Huffaker.

Q. Do you know any other officers of the Loyalty League? A. Other than those?

Q. Yes. A. I don't recall any.

Q. Do you know when Thelma Huffaker was elected president? A. From what date, or when?

Q. What year.

A. Well, let's see, the year—it was when Rose Todd was [fol. 5301] elected Chairman of our Donnelly Garment Workers' Union, she gave it up and it was taken over by Thelma, the best I member.

Q. Do you remember whether Thelma was elected at a mass meeting, or just a group of section representatives?

A. Of section representatives?

Q. Yes. A. I don't remember.

Q. Did you know the method by which the Loyalty League was formed?

A. I don't remember that either.

Q. Did you ever attend a meeting at which Thelma Huffaker presided? A. I don't recall of any.

* * * * * * *

[fol. 5303] Q. Was Eva Lieberman in your section?

A. Well, I wouldn't say. We were in what they called a special section, we did pinking, and they were blind stitchers and all; a lot of times there would be a vacant space in our section, and maybe they had taken machines out of other sections, and wanted to get some binding or straight sewing done, and the machines sitting in our place, and they would come up and work in our place at [fol. 5304] that time, and there have been some of them in our section at different times, but not all the time.

Q. Do you know who the instructor was in that section any time in the spring of 1937?

A. Well, I wouldn't be positive.

Q. What instructors do you remember along about 1936, '37 and '38? A. '36, '7 and '8?

Trial Examiner Batten: You mean instructors in her section?

Miss Weyand: Yes.

A. Well, I wouldn't know what years they were there. I can remember what instructors I had, part of them, when I was in 415 up on the eighth floor.

Miss Weyand: Will you state the ones you remember having?

A. But I wouldn't know just what time they were there. Well, I worked for Clara Finnell and Etta Dorsey.

By Trial Examiner Batten:

Q. Are those prior to July 1939? A. 1939?

Q. Yes.

A. Yes, I think so. Now then, I believe Lola Skeens was over there for a short time, Gertrude Dauben was our [fol. 5303] instructor once; whether it was before then or not, I don't know, but she has been my instructor; but I wouldn't know what year. There has been two or three since then, and I wouldn't recall when they came in.

. . . . . .

By Miss Weyand:

Q. Do you remember the thread girls at the time of any of those instructors you have mentioned?

A. I remember thread girls that we have had over there, but I wouldn't know just when they were there.

Q. Would you name the thread girls you recall?

Trial Examiner Batten: Are these prior to 1939, as far as you know? A. Well, yes, I think so.

Trial Examiner Batten: Well, if any of them are prior to July, 1939, you may mention them.

A. I think Jessie Mudd was over there prior to that, [fol. 5306] but I don't know whether she was or not, or whether Emma Grober was there or not; I just don't recall when they were there.

By Miss Weyand:

Q. What other thread girls do you recall?

A. In that section?

Q. Yes. A. Well, I just can't think.

. . . . . .

[fol. 5310] Q. Did Sylvia Hull have on a Loyalty League pin at any time on the morning of April 23rd?

A. Well, Sylvia didn't have it on when I went over there; whether she had it on before I don't know.

Q. You don't know how she happened to have it in her purse when you went over there? A. No, I don't.

Q. When did you first see that article about Sylvia Hull? A. When I did?

Q. When did you?

A. Well, I don't know whether I read it in the lobby, some of them had it down there that morning, or in the locker, I wouldn't be positive.

Q. Had you heard of if the day before?

A. The day before?

Mr. Reed: You mean heard of the article the day before it was printed?

Miss Weyand: No, it was printed on the 22nd, and we had been discussing a demonstration on the morning of the 23rd. I wondered if she heard of it on the 22nd.

A. Well, I could have. I don't remember clearly.

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[fol. 5312] Q. How soon after you started work did you notice a commotion around Sylvia Hull's machine?

A. Well, I don't remember.

Q. What is the first thing you remember seeing?

A. Seeing?

Q. That morning, of an unusual nature.

A. Well, I don't know as I remember anything, whether I was out in the wash room or someone said something, that Sylvia said she would give her pin back if they would give her her 35c; I think that was about the first I remember of any commotion or anything; I can't recall clearly what time in the morning it was.

Q. Had you previously stated that as long as Sylvia Hull was sitting there, you couldn't and wouldn't go to work?

A. Before I took the pin money over to her?

Q. Yes.

A. I didn't say I didn't. I could have said it. We talked about it, you know, the girls and all, and I might have said it, I don't remember.

• • • • • •

[fol. 5316] Q. How long after you took the money over to Sylvia Hull did she continue to work?

A. I never did know when Sylvia got up and left.

Q. But she was continuing to sew when you went over there to take the money?

A. She was sewing when I went over there and when I left.

• • • • • •

[fol. 5317] Q. Did you hear Mrs. Reed make any remark at the March 18 meeting about having received the Loyalty petition?

A. At that meeting?

Q. Yes. A. I don't remember clearly.

Q. You don't remember her making any reference, directly or indirectly, to the fact that a few weeks before certain girls had come out to her and presented a statement of their loyalty?

A. I don't remember whether she did or didn't.

Q. Do you remember how you came to move at the April 27 meeting that the employees form an independent union? A. How it came that I made the motion?

Q. Yes. That was the question. A. I wanted it.

Q. Had you discussed such a motion before going to the meeting?

A. No. But Mr. Tyler talked to us and explained it all to us, and I felt like that was just what I wanted.

Q. So you got up and made a motion for it? A. I did.

[fol. 5318] Q. Do you remember how you stated the motion?

A. Well, I don't know whether I can say it in the exact words. It seems like, "I make a motion that we form an independent, unaffiliated plant union," or something to that effect. I can't get the words all down just as they should be.

* * * * * *

[fol. 5319] Q. You think this March 18 meeting you heard about the morning it was held?

A. I don't remember whether word came down at lunch time or— The under-armers—we called ourselves the under-armers—always had lunch together. It may have been at lunch time; I don't know.

Q. What is your best recollection about the April 27 meeting?

A. Well, about in the same manner, as far as I can remember. There were about 10 or 12 of we under-armers, and we usually got word to the others if one heard something. That's about the best I remember.

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[fol. 5323] By Mr. Langsdale:

Q. Mrs. Riegel, on a number of occasions you answered the questions by Mr. Ingraham to the effect that no one representing the management was at a meeting. What do you understand by the phrase "no one representing the management", or "anyone representing the management"?

A. Did I answer that no one representing the management was at the meeting or told me to go to the meeting?

Q. Was at the meeting or told you to go to the meeting, or at any other time that you used that phrase; what did you mean by that?

A. By the management?

Q. Anyone representing the management.

A. Well, I would consider Mrs. Reed or Mr. Baty; I wouldn't know who else.

. . . . . .

Q. So, in each instance where you said, "no one representing the management did this or that or the other," you mean Mrs. Reed and Mr. Baty, is that it?

. . . . . .

[fol. 5324] A. Well, I meant anyone that had any authority never told me anything.

. . . . . .

[fol. 5325] By Mr. Langsdale:

Q. In answer to one of Mr. Ingraham's questions, you stated—his question was, "Did the employees at the March 18 meeting, appoint a committee," and your answer was, "Yes." What did you mean by "appoint a committee"?

A. Well, someone was designated to go and see legal counsel.

Q. How were they designated?

A. Well, I don't remember exactly.

Q. Well, were they appointed by Rose Todd, or were they elected by the body there?

A. Well, I don't know, I don't remember.

Q. Now, you stated that at the meeting of March 30 you threw your 50¢ up on the platform. On the following day, or on any day after that, did anyone in your section [fol. 5326] ask you again for the 50¢?

A. As I stated, there might have been someone that had taken up the money that was sitting by me or saw me throw my money up on there.

Q. Well, that isn't the question. The question is, did anyone ask you for it the next morning?

A. Well, I don't remember whether they did or not.

Q. Well, wasn't there some girl in the section who was collecting the 50¢ from other girls in the section on the day after this meeting?

A. Well, I had given mine, and I felt I had given what I had given, and I didn't give it a lot of thought.

Q. Well, do you know whether or not there was any girl that was collecting money from other girls the next day after the meeting?

A. Well, they made that rule that night, they said that there would be some girls that would pick it up in the sections the next day.

Q. Well, did they say it would be the representative?

A. I don't remember them saying it would be the representative.

Q. Do you know who your representative was?

A. Representative from what?

Q. From the Loyalty League in your section?

A. No, and I didn't know the Loyalty League was the [fol. 5327] one taking up the money.

Q. Well, do you know whether she did it or not?

A. I didn't know who she was at that time.

Trial Examiner Batten: Well, do you know whether someone did collect money in your section the next morning?

A. Yes, they did, from what I heard. I don't remember seeing anyone.

Mr. Langsdale: Well, did that person try to get the 50¢ from you again?

A. I said I didn't remember.

Mr. Reed: I submit that has been answered.

Trial Examiner Batten: She has answered it.

By Mr. Langsdale:

Q. What was the answer?

A. I don't remember. I told them I had already given mine, and I don't remember anything about it.

Q. Now, you said the 50¢ was not for the Loyalty League. Did you know that on the day of the 30th of March, Rose Todd had gone to the First National Bank and borrowed a thousand dollars in the name of the Loyalty League?

A. Why, I wouldn't know where Rose went.

Q. She didn't tell you that the night of this meeting, did she?

A. What night of what meeting?

Q. The meeting where you say there was a report of the committee, and you contributed 50¢. On the night of [fol. 5328] that meeting, did Rose Todd tell you that she had been to the bank on that day, and borrowed a thousand dollars from the First National Bank in the name of the Loyalty League?

A. I don't remember any such statement. We discussed that the lawyers would have to be paid a retaining fee, and we discussed how it would be gotten up, and they voted to give the money, and that is the part of it I remember, throwing up my 50¢.

Q. And Rose Todd didn't tell you she already had the money, did she?

A. I didn't hear any such statement.

Q. Now, didn't you know the 50¢ you contributed went to the payment of a note of a thousand dollars at the First National Bank in the name of the Loyalty League?

A. The 50¢ I contributed, to my understanding, was to go for the $500 retaining fee to Mr. Tyler.

Q. Yes, I understand you understood that. But did you later learn that your 50¢ was paid on the thousand dollar note of the Loyalty League at the First National Bank?

A. I never heard that.

Q. Did you know that the Loyalty League paid for the chairs at the April 27 meeting, when the Donnelly Garment Union was formed?

Mr. Lane: That is objected to as being a statement of or an affirmation of a fact, Mr. Langsdale, when it is con- [fol. 5329] trary to the evidence.

Trial Examiner Batten: The question is, did she know it.

Mr. Lane: Well, I object to the form of the question.

Trial Examiner Batten: Well, she may answer it.

Mr. Langsdale: Did you know that?

Mr. Lane: I object to the form of the question as though he was stating a fact, when it is contrary to the evidence.

Trial Examiner Batten: You may answer.

A. Well, I didn't know the Loyalty League paid for anything that the Donnelly Garment Workers' Union had.

By Mr. Langsdale:

Q. You don't know whether they paid for the chairs at the meeting of April 27?

A. No, I don't know that they did, and I never heard it mentioned or said that they did.

Q. You have been here, have you not, when other witnesses have testified, Mrs. Riegel?

A. Yes, I have.

Q. Did you hear Mrs. Mudd testify?

A. Yes, I did.

Q. Did you hear Mrs. Dean testify?

A. Yes, I did.

Q. Did you hear Mrs. Barnes testify?

A. Part of it. I don't remember how much.

Q. Did you hear Mrs. Holloway testify?

[fol. 5330] A. Holloway?

Q. Yes.

Mr. Lane: I think you mean Mrs. Cooper.

Mr. Langsdale: Yes, Mrs. Cooper, she used to be Miss Holloway.

A. Just part of it.

By Mr. Langsdale:

Q. Did you hear Mrs. Warth testify?

A. Just part of it.

Q. Did you hear Mrs. Reed testify?

A. Mrs. Reed?

Q. Yes.

A. No, I didn't.

Q. How long had you known Sylvia Hull on the 23rd of April, 1937?

A. I don't recall how long I knew her. I didn't know Sylvia personally so much; it seemed to me she sat in the section with another friend of mine, that was a good friend of mine, and I think I have eaten lunch beside them when she ate with this other girl, and all.

Q. Did you know she had been working there eight years on the 23rd of April, 1937?

A. Well, I didn't know how many years Sylvia had been there.

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[fol. 5334] Q. Did you hear anyone singing what they call the Loyalty League song?

A. No, I don't even know what they call the Loyalty League song.

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Q. You say that you were the one who took the 35¢ to Sylvia?

A. I did.

Q. Do you know what denominations it was in?

A. No, I don't. It was wrapped up when it was handed to me. I know the girls pitched some money up there, and somebody wrapped it up and asked me if I would take it over there. What it was in I don't know.

Q. Wasn't it wrapped up in toilet paper?

A. I heard Sylvia's accusation of what it was; but I [fol. 5335] took it over there in my hand.

Q. You carried it to her?

A. I carried it to her in my hand, over to Sylvia's machine.

Q. How many feet was that?

A. I don't know how big that building is.

Q. Well, was it as far as from the back door of this room to the chairs against the wall?

A. Oh, I think our building is bigger than that; we had three sections, I don't know in feet how big it is.

Q. At any rate, you carried this 35¢ wrapped up all the way from your section over to Sylvia Hull's machine, and you don't know what it was wrapped up in?

A. I don't know. It could have been a tissue, it could have been Kleenex, it could have been anything; I don't remember even what my birthday presents are wrapped up in. I don't know what it was wrapped up in.

Q. What did the thing it was wrapped up in look like to you?

A. I just said I didn't remember.

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[fol. 5342] Q. You read the article, you said, of February 26, in which Dubinsky had had an interview saying he wanted to organize the Donnelly garment plant.

Mr. Ingraham: Just a minute. You mean Perlstein?

Mr. Langsdale: Yes.

A. Yes, I think I did.

By Mr. Langsdale:

Q. And then some 4 days later you signed this petition that has been called "the Loyalty Petition"?

[fol. 5343] A. I signed the petition.

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[fol. 5344] Mr. Langsdale: I am asking you, did it occur to you that the company had the petition signed and got the names and pictures in the paper as an answer to Perlstein's interview of February 26?

Mr. Reed: Now, that is objected to as incompetent and immaterial and as assuming that the company had this petition signed, when all of the evidence is to the contrary.

Mr. Langsdale: It isn't assuming that at all. I am asking her—

Trial Examiner Batten: The objection is overruled.

You may answer.

A. I signed the petition. I didn't think the company was having the petition signed, and I didn't know anything about any picture going to be in the paper when I signed it.

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[fol. 5357] Q. On May 11 when you had your meeting—You remember the meeting of May 11, don't you?

A. I think I recall that.

Q. And I think you said you recall this statement by Rose Todd: (It appears at 815.)

"You realize now that Mr. Tyler is representing the Donnelly Garment Workers' Union and he will have to be paid."

Do you remember that?

A. I think so.

Q. Did you know that he had already been paid $500 at that time?

[fol. 5358] A. That was his retainer's fee. I knew he would have to be paid more, as long as we kept him, depending on what his duties were. I never gave a thought to how much.

Q. Did you know on May 11—Rose Todd told you prior to May 11 he had already been paid $500?

A. Well, I don't remember whether she had told us or not. I suppose she had. We had donated the money for that, and I supposed if they were going to retain him they would have to turn the money over to him.

Q. Did she say, "I expect a good many of you will be wondering what he is going to charge."?

A. I remember Rose saying that.

Q. You didn't know at that time that he had already been paid $500?

A. I don't know whether I definitely knew or not. I assumed he had.

Q. Well, what did you think Rose Todd was talking about on May 11 when she said, "Mr. Tyler is representing the Donnelly Garment Workers' Union and he will have to be paid," if you knew he was already paid?

A. Well, I didn't consider that $500 to pay him up. He was still our counsel.

Q. Did you think that this money that she was talking about on May 11 was in addition to the $500 he had already been paid, or did you know he had already been paid that?

[fol. 5359] A. I couldn't say.

Q. Could it be that you just have the dates mixed on when this 50 cents was collected, and that it was collected on May 25 instead of sometime in March, and Rose Todd was leading up to something else in the meeting of May 11 when she was talking about he was going to have to be paid? A. May 25?

Q. Yes.

* * * * * *

A. No. I was clear on when we paid the 50 cents, in the March meeting.

Q. But you don't know when it was paid to Mr. Tyler, do you?

A. Well, I told you I assumed it was given to him right away. I didn't suppose any lawyer would take a case unless he had some money.

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[fol. 5363] RUBY CLAYTON, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Mr. Ingraham: Will you state your name, please?

A. Ruby Clayton.

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Mr. Ingraham: Where do you live?

A. 2637 Charlotte.

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By Mr. Ingraham:

Q. Were you formerly employed at the Donnelly Garment Company? A. Yes, I was.

Q. What period of time did you work at the Donnelly Garment Company?

A. I worked from about 1929 until January, 1940.

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[fol. 5368] By Mr. Ingraham:

Q. In what capacity did you work at the Donnelly Garment Company? A. As an operator.

Q. Were you working at the Donnelly Garment Company in March and April, 1937?

A. I was off for a while, but I came back to work the 22nd day of March in 1937.

Q. Do you remember how long you were off?

A. Well, off about six or seven months.

Q. Prior to that time? A. Yes.

[fol. 5369] Q. Were you a member of the Donnelly Garment Workers' Union? A. I was.

Q. When did you join that union, if you recall?
A. Well, when we formed the union I joined it.
Q. Was that on or about April 27, 1937?
A. Yes, sometime around that time.
Q. Was there a meeting at which the union was formed, a meeting of employees? A. Yes.
Q. Do you know what time of day the meeting was held? A. It was after working hours.
Q. And do you know where the meeting was held?
A. On the second floor.
Q. Do you recall whether or not a vote was taken in regard to forming the Donnelly Garment Workers' Union?
A. Yes, I think there was.
Q. Now, did any officer or official discuss with you prior to that meeting the formation of the Donnelly Garment Workers' Union? A. No, they didn't.
Q. Did anyone that you thought represented the management discuss with you the formation of the Donnelly Garment Workers' Union? A. They did not.
[fol. 5370] Q. Did Mrs. Reed, Mr. Baty, Mrs. Reeves, Mr. Keyes, Mr. Green, or Mrs. Ella Mae Hyde ever discuss anything with you in respect to the formation of the Donnelly Garment Workers' Union? A. No, they didn't.
Q. Did Mr. Bachofer ever discuss anything with you in respect to the formation of the Donnelly Garment Workers' Union? A. I didn't know Mr. Bachofer.
Q. Did any of the people I have just named suggest or instruct you to attend this meeting?
A. No, they didn't.
Q. Did any of the people I have mentioned advise you that you should vote to form the Donnelly Garment Workers' Union? A. No.
Q. Did any instructor discuss with you the formation of the Donnelly Garment Workers' Union?
A. No, they didn't.
Q. Did any instructor suggest or direct you to attend this meeting? A. No.
Q. How did you happen to go to the meeting?
A. Well, we talked about it all the time, that was the main conversation, was about these meetings and about the strikes, and information that was going on.
[fol. 5371] Q. Had you read articles in the paper about strikes at the Gernes, Gordon, and Missouri plants?

A. Yes, I had.

Q. I will hand you respondent's exhibit 16, which contains the front page of the Kansas City Times of March 18, 1937, and ask you if you recall seeing the pictures of the strike at the Missouri, Gernes, and Gordon plants?

A. Yes, I saw them.

Q. I will hand you respondent's exhibits 18 through 38, and ask you to look over these exhibits, and state which exhibits you had read in the papers. As you go along, just please tell us which ones you read.

A. I think I read exhibit No. 18; I am not sure about this No. 19; I am not sure about No. 20; I didn't take the Post at that time, but I did see some of those articles that was in the Post. I don't think I read No. 20 either.

Trial Examiner Batten: Q. What was that number?

A. Exhibit No. 20, I don't think I read it either; I heard about this No. 21, but I don't think I read it; I believe I did read No. 22; I am not sure about 23; I think I read 24 also; and I read 25; and I read 26; I also read 27; and I read 28; and 29, I read that also; and 30, I read that; I don't think I read 31; I am not sure about 32; I read 33; I read 34; I read No. 35 also; and 36, I read that; and I read exhibit 37; I don't think I read exhibit 38.

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[fol. 5372] Q. State what effect, if any, the articles that you read that referred to the strikes at the Missouri, Gernes, and Gordon plants had upon you.

A. Well, naturally it made me fear that they might do the same thing to us, that they would use violence on us, since they had threatened to organize our plant.

Q. Had you heard of any threats being made by the International to use the same kind of violence on the Donnelly employees?

A. Well, I had heard that they meant to organize us, and naturally I thought that meant to do it in the same way.

Q. Did you see any violence at the other plants?

A. No, I didn't see any of it, but I heard a lot about it and read a lot about it.

Q. Was there a general discussion of those strikes among the Donnelly workers?

A. Yes, that is about all we did talk about.

Q. What was the effect—no, strike that.

Do you know whether or not there was a general discussion among the Donnelly employees on these articles that appeared in the paper?

A. Yes.

Q. Was there a general discussion of the violence that [fol. 5373] was going on at the Gernes, Gordon, and Missouri Plants?

A. Yes, there was. The girls would come in and talk about someone that they happened to know of that had been hurt in different ways.

Q. Well, so far as you could observe, what was the effect of the strikes at those other plants, on the employees of the Donnelly plant?

A. Well, they all felt the same fear that I did, that they would try to use the same violence on us, and they resented it because they didn't care—they wanted to go about their own business and take care of their own affairs, they didn't want to have someone coming down and telling us what we had to do.

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[fol. 5374] By Mr. Ingraham:

Q. Did you observe that other employees were nervous and excited? A. Yes.

Q. And did you discuss with other employees the violence that you had read about in the paper? A. I did.

Q. Did you observe that the violence did cause you and other employees to be worried and excited?

A. Yes, that is all they talked about. We talked it at lunch and before work and after work, and the girls couldn't think of anything else.

Q. Was there a general discussion that the International might be at the plant in the morning before you got there?

A. That's right. We expected them there every morning, and every night, and they passed out slips to us at night when we went home from work, and talked about visiting us the same way.

Q. Now, you said that you were present at the meeting at which the Donnelly Garment Workers' Union was

formed. Will you please state if there was a general discussion at that meeting of the violence that was going on [fol. 5375] at the Gernes, Gordon, and Missouri plants?

A. You mean among the girls at the meeting?

Q. Yes. A. I can't remember for sure about that.

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By Mr. Ingraham:

Q. Did you vote in favor of forming the Donnelly Garment Workers' Union? A. I did.

Q. Will you state what your reasons were?

A. Well, I didn't care about—I thought if we had our own union that we would not be molested, that we could, by the law, have a right to do, you know, go back and forth to work and not be beat up every time we turned around, [fol. 5376] or something; I didn't care about the violence and all.

Q. You mean that you didn't want the violence?

A. That's right.

Q. Did you want to join the I. L. G. W. U.?

A. No, I did not. We were perfectly satisfied with our wages and conditions at work, and we had no reason to want to join any other union, and we didn't see why we should be forced into it.

Q. Did Mrs. Reed, Mr. Baty, Mrs. Reeves, Mr. Green, Mr. Bachofer, or Ella Mae Hyde, or anyone you thought represented the management, request you or instruct you to vote in favor of forming the Donnelly Garment Workers' Union? A. No, they didn't.

Q. Did any instructor request you to join the Donnelly Garment Workers' Union?

A. No, no one even mentioned whether I should or should not, I did it all on my own.

Q. Did you ever hear of any of the people I have mentioned discuss with any employees that they should vote in favor of forming the Donnelly Garment Workers' Union? A. No, I didn't.

Q. Did you feel that you would be penalized if you did not vote to form the Donnelly Garment Workers' Union? A. I had no thought of that kind, no.

Q. Did you join the Donnelly Garment Workers' Union [fol. 5377] of your own free will? A. I did.

Q. Now, after you had returned to work on March 22nd, 1937, and prior to the time the Donnelly Garment Workers' Union was formed, did the employees hold another meeting? A. Yes, they did.

Q. Do you recall about when that meeting took place?

A. Well, it was about the last of March sometime; I don't recall the exact date; it was shortly after I returned to work.

Q. Did Mrs. Reed, Mr. Baty, Mrs. Reeves, Mr. Green, Mr. Bachofer and Mrs. Ella Mae Hyde discuss with you the holding of that meeting? A. No, they didn't.

Q. I want to include another name among these people I have mentioned, Miss Spilsbury. Did she ever discuss any meeting with you of any kind? A. No, she didn't.

Q. Do you know Miss Spilsbury? A. No, I don't.

Q. Did you ever have any talk of any kind with Miss Spilsbury? A. No, I haven't.

Q. Has Miss Spilsbury ever made any talk at any meeting that you can remember of?

[fol. 5378] A. No.

Q. Now, the questions I asked you with respect to the April 27 meeting, and I mentioned these people, Mrs. Reed, and so forth, I meant to include Miss Spilsbury. Would your answer be the same with Miss Spilsbury included in that list? A. That's right.

Q. Did any instructor discuss the holding of that meeting the latter part of March with you? A. No.

Q. Did anyone that you thought represented the management discuss with you the holding of that meeting?

A. No, they didn't.

Q. Do you recall when the meeting was held?

A. Sometime the last of March, but I don't remember the exact day.

Q. I mean what time during the day?

A. Oh, yes, it was after working hours. We have never had any meetings that was not after working hours.

Q. Do you remember where the meeting was held?

A. It was held on the second floor; it was vacant at that time.

Q. Will you state what occurred, so far as you can remember, at that meeting?

A. Well, to the best of my knowledge, they wanted to know what we could do, and we selected a committee—ap-[fol. 5379] pointed a committee, I should have said—to see an attorney to see what we could do to get legal advice, to see what we could do.

Q. Was anything said in connection with paying the attorney?

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A. Why, yes, we decided if we had any attorney, that he would have to have a retaining fee, to retain him, and we was asked for suggestions on how we would go about raising this fee, and some of them suggested a dance, and different things like that, but in the end some of them suggested we take up enough money from each one of the employees to make up enough to pay the attorney; and I think [fol. 5380] we decided on 50¢ each—in fact, I know we decided on 50¢ each.

Q. Did you contribute 50¢? A. I did.

Q. Did you see other employees contribute their money?

A. I took up the 50¢ in my section.

Q. When did you do that?

A. Well, in the next day or two or three, it took some time, because I had to spend my lunch and take up the collection from the girls, before work and after work, and it took quite some time; I think it took two or three days for me to pick it up.

Q. Now, did you pick that money up for the Loyalty League? A. I did not.

Q. Did you understand that when you made your contribution of 50¢, you were making it to the Loyalty League?

A. No, I understood it was just for the employees to give as a retaining fee to the lawyer to advise us on what would be the best thing to protect ourselves.

Q. Now, did anyone representing the company, or that you thought was a representative of the company, make any suggestions about raising this money, or anything that took place at the meeting?

A. No, it was just among the operators, the girls there in the meeting.

Q. Did you see Mrs. Reed, Mr. Baty, Mr. Green or Mrs. [fol. 5381] Reeves, or Miss Spilsbury, Mr. Bachofer, Ella Mae Hyde, at that meeting? A. No, I didn't.

Q. Now, at the meeting of April 27, where the union was formed, did you see Mrs. Reed, Mr. Baty—

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By Mr. Ingraham:

Q. Did you see Mrs. Reed, Mr. Baty, Mr. Green, Mrs. Reeves, Miss Spilsbury, Mr. Bachofer, or Ella Mae Hyde at that meeting? A. No, I didn't.

Q. Did you ever see any of those people at any union meeting after April 27? A. No, I haven't.

Q. When you—strike that.

After you collected the money at the meeting of the last of March, or after the meeting of the last of March, whom did you turn the money over to?

A. I gave it to Miss Todd.

Q. In collecting the money that you referred to, or anything that you did at the meeting at the last of March, did you do any of those things as the representative of the Loyalty League? A. No, I didn't.

[fol. 5382] Q. Were you a member of the Loyalty League? A. I was.

Q. Do you recall when you joined the Loyalty League?

A. Sometime in 1935 or thereabouts, it was a couple of years before.

Q. Do you recall what activities the Loyalty League engaged in?

A. It was purely social, we had dances and parties and carnivals, and we even had amateur shows that we would put on among the employees.

Q. Did you pay any dues to the Loyalty League?

A. No, we didn't.

Q. Have you ever authorized the Loyalty League to represent you in any labor matters? A. No

Q. Did you ever hear of the Loyalty League representing any employees in connection with labor matters?

A. No, I didn't.

Q. Did you ever hear of the Loyalty League dealing with the company with respect to wages and hours, and terms and conditions of labor?

A. I never heard of the Loyalty League doing anything other than just social activities, just putting on social activities.

Q. Did you feel that you would be penalized by the com-
[fol. 5383] pany if you did not join the Loyalty League?
A. No, I didn't.

Q. Do you recall any meeting of the Loyalty League that was held immediately following a meeting of the Donnelly Garment Workers' Union?

A. No, we never had any two meetings in one night.

Q. Did you ever hear of any Loyalty League meeting that immediately preceded a meeting of the Donnelly Garment Workers' Union?

A. No, I think I answered that in the other answer; I never heard of two in the same night.

Q. Do you recall of any mention of raising money for the Loyalty League that took place in any Donnelly Garment Workers' Union meeting? A. No.

Q. Was any business of the Loyalty League, so far as you can remember, ever discussed at any meeting of the Donnelly Garment Workers' Union?

A. I don't remember of them ever having a discussion of the union affairs at a Loyalty meeting, or vice versa, no.

Q. Was there any pressure or coercion brought to bear on you, of any kind, to join the Loyalty League?

A. No, there was none.

Q. Did you join the Loyalty League of your own free will? A. I did.

[fol. 5384] Q. Did the Loyalty League, so far as you know, sponsor the formation of the Donnelly Garment Workers' Union? A. Not to my knowledge.

Q. Was there any connection of any kind between the Loyalty League and the Donnelly Garment Workers' Union?

A. No, not to my knowledge, there was not.

Q. Did the Loyalty League continue in existence after the Donnelly Garment Workers' Union was formed?

A. Yes, it did.

Q. Did the fact that Rose Todd was president of the Loyalty League at the time of the formation of the Donnelly Garment Workers' Union indicate to you that the Donnelly—strike that question.

Did the fact [the] Rose Todd was president of the Loyalty League at the time that she was active in the formation of the Donnelly Garment Workers' Union lead you to be-

lieve that the Loyalty League was sponsoring the Donnelly Garment Workers' Union?

A. No, it didn't.

Q. Did the fact that Rose Todd took an active part in the meeting that was held the latter part of March indicate to you that it was a Loyalty League meeting? A. No.

Q. Did you consider Rose Todd a boss at the time?

A. I didn't consider her one, no.

[fol. 5385] Q. Did you consider her as an instructor and boss of operators? A. No.

Q. I believe you stated that you read respondent's exhibit 35, which was an article that appeared in the Journal-Post of April 22, 1937, entitled "Donnelly Worker will be sent to Union Convention."

A. Yes, I did read that. One of the girls brought it down to work and I read it, in fact a number of them did.

Q. Did you read in that article: "Perlstein said the Donnelly Committee desired one of their members to appear at the convention and ask the International body to endorse and support a strike against their employer." Do you recall that being in the article?

A. Do I recall that in the article, did you say?

Q. Yes. A. Yes, I remember reading it.

Q. Was that article generally discussed among the employees of the plant? A. Yes, it was.

Q. What did you think about Sylvia Hull going to the International Convention and asking support for a strike?

A. Well, it made me very indignant, because I hadn't asked her, or none of the other girls, that I have heard of, asked her to represent them; in fact, it was news to all the [fol. 5386] girls that I talked to.

Q. Did you favor a strike at the Donnelly plant?

A. No, I didn't, I was satisfied.

Q. Did you believe that a strike meant that the International would use the same sort of violence that had been used at the Missouri, Gordon, and Gernes plants?

A. Why, yes, I could hardly think anything else. That is the way they had called all the other strikes that I knew of:

Q. So far as you could observe, what effect did that article have on other employees at the Donnelly plant?

A. Well, there was a lot of talk at the plant, and it was all—no one seemed to like the idea that she would take it

on herself to put a piece like that in the paper and go some place to represent them, when they didn't want representation from the I. L. G. W. U.

Q. Were you at the plant on April 23, the day following the time the article was in the paper?

A. Yes, I was.

Q. What floor were you working on at that time?

A. On the eighth floor.

Q. What section were you working on?

A. 415, I believe it was, I worked in the special section.

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[fol. 5387] By Mr. Ingraham:

Q. Did you see Sylvia Hull that morning?

A. No, I didn't see her. She worked across the room from where I worked.

Q. Did you go over to Sylvia's section at all?

A. No, I didn't.

Q. Did you see other girls go over?

A. No, I didn't see anything at all.

Q. Did you keep on working? A. Yes.

Q. Did you remain a member of the Donnelly Garment Workers' Union up until July, 1939?

A. Yes, I did.

Q. Did you do that of your own free will?

A. I did.

Q. Did you feel that because instructors attended the meeting the latter part of March and the meeting of April 27 that that meant that the company was sponsoring those meetings?

A. No, I didn't; I felt like the instructors were working there the same as I was, and that they didn't have any more right to tell anyone what to do than I did.

Q. Did you feel that because the instructors joined and favored the formation of the Donnelly Garment Workers' Union that that meant that the company was sponsoring that union? A. No, I didn't.

[fol. 5388] Q. I'll hand you respondent's exhibit 6 that appears in the Circuit Court record at 4864, and ask you if you will please read that article. Do you recall reading that article?

A. I don't remember whether I read it or heard it discussed, but it is familiar to me.

Q. Do you recall the statement in the article: "The union claims only 25 members among the Donnelly workers, but officials said hundreds of others are related to union members. Within a year we will have it completely organized, Mr. Perlstein said. As soon as we have enough members, we will call a strike."

A. Yes, I do.

Q. (Reading) "This will be in addition to carrying our side to the consumers." A. I remember that.

Q. Did you want a strike at the Donnelly plant?

A. No, I didn't.

Q. What did you understand Mr. Perlstein meant by saying, "This will be in addition to carrying our side to the consumers"? Did you know what he meant by that?

A. Why, I thought he meant that other article he had in there about sending representatives to the different states to—

Trial Examiner Batten: Boycott, is that the word you are looking for?

[fol. 5389] A. Yes, to boycott the Donnelly Garment Company.

By Mr. Ingraham:

Q. Did you want that? A. No, I didn't.

Q. Did you understand that the sending of such emissaries to boycott the Donnelly Garment Company might affect your job? A. Yes.

Q. So far as you could observe, what was the effect of this article—strike that.

Did this article cause you to have any resentment toward the I. L. G. W. U.? A. Yes, definitely.

Q. Did anything—strike that.

Did you ever hear Senator Reed make a speech?

A. No, I don't think I ever did.

Mr. Reed: One fortunate woman.

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By Mr. Ingraham:

Q. I believe you stated that the February 26 article [fol. 5390] that I just handed you before I handed you

this last article, that that article was discussed. Do you mean that it was discussed after you got back to work?

A. Yes. I kept in constant touch with all the girls while I was off. I was off on account of illness, I had a major operation; but I was in touch with the girls, and I went to their meetings, just the same as I did while I was working; I mean, you know—I mean our clubs, and things like that.

Q. Do you have a sectional club? A. Yes, we did.

Q. Did that sectional club exist after the Loyalty League was formed?

A. Yes, I went to the meetings in our clubs after I quit work, well, up until I had the baby, and I couldn't go to the meetings because of him.

Q. The club still is in existence?

A. That's right.

Q. What do you call the club?

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A. Well, the club I belonged to in my section, we call the 500 Pennies Club.

[fol. 5391] Q. I think I asked you a question and I don't know whether you answered it. Let me ask it again.

Did this sectional club exist up until July 1939?

A. Yes, sir. It is still in existence.

Q. I am only going to ask you about matters that occurred up to July 1939. Did you attend a meeting of employees on March 18?

A. No. I wasn't at work at that time.

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Cross-Examination.

By Mr. Lane:

Q. Mrs. Clayton, who did you understand represented the management, entitled to speak for the management?

A. Well, anyone who can hire or fire, or an official of the company. That was my impression of who would be considered as a representative of the management.

Q. Did you know Rose Todd in April 1937?

A. Yes, I did.

Q. How long had you known her?

A. I had known her for quite a long while. I can't say just how long, but for quite a while.

Q. Do you know what she did, what her job was, in April 1937?

A. Well, she hunted lost bundles and things like that in [fol. 5392] the section.

Q. Will you detail, now,—tell everything you saw Rose Todd doing in her daily work in the plant?

A. She would just go through the sections and look to see if there were any bundles there that had recuts out of them—that the recuts had held up the bundles and they should have gone on through. That was all I ever saw her doing.

Q. Did you ever get the opinion in March or April of 1937 that Rose Todd was an official of the company, or a supervisor of the company?

A. No.

Q. Or a supervisory employee?

A. No.

Q. Did you get the opinion that she was a boss or that she had any control over the other employees?

A. No, I didn't.

Q. Were there any employees working under Rose Todd, as far as you know?

A. Not that I ever knew of.

Q. Did Rose Todd ever say anything to you that gave you the impression that the company was holding her out as being entitled to speak for the management, as far as directing the affairs of the other employees was concerned?

A. No, she didn't.

Q. Did you know Hobart Atherton?

[fol. 5393] A. I just knew him when I saw him.

Q. Do you know what he did?

A. No, I don't.

Q. Did you have the opinion that he was a supervisor or boss or representative of the management?

A. No, I didn't.

Q. Did you know Sally Ormsby?

A. Yes.

Q. Did she work in your section?

A. No. She was my locker mate. She was an operator in another section.

Q. Had she always been an operator, so far as you know?

A. Yes, she had.

Q. Did you have any idea that Sally Ormsby was a boss or a representative of the management?

A. No.

Q. Do you know who your instructor was in April of 1937?

A. I think it was Etta Dorsey.

Q. When you went back on March 22, 1937, you went into section 415, did you?

A. That's right. I worked in that section most of the time.

Q. Did you ever have the opinion in March and April of 1937 that Etta Dorsey was a spokesman for the company or that she was a supervisor or boss?

[fol. 5394] A. No.

Q. What did the instructor do, so far as the operators in the section were concerned?

A. She just sat down at the machine and showed the girls how to sew the different dresses or do their work, and if there was anything she was in doubt about she always went upstairs to see about it and we had to wait until she came back to show us.

Q. Did she, as far as you know, have any authority to hire the girls or fire the girls who worked in that section?

A. No.

Q. Or to discipline them in any way?

A. No.

Q. Who was the thread girl in section 415 in March and April of 1937?

A. I don't remember for sure. We had several thread girls, but Etta Dorsey and Kathryn Rosen were the only two instructors I ever worked steadily for.

Q. You mean you had—

A. At different times we had different thread girls.

Q. You don't mean you had several at one time?

A. No. Just one at a time.

Q. What did the thread girl do?

A. She brought thread to us to match the bundle of work, or rubber bands, or labels, or pins, or anything like that that we had to have, she gave those to us.

[fol. 5395] Q. Did the thread girls, as far as you know, have any ability to hire or fire operators?

A. No.

Q. Or to discipline operators?

A. No.

Q. Did you ever have the opinion in March or April of 1937 that the thread girl was held out by the management as being a boss of the operators in the sections?

A. No.

Q. Or as being a representative of the management, entitled to speak for the company in connection with labor matters?

A. No.

Q. Or any company policy?

A. No.

[fol. 5396] By Mr. Lane:

Q. Do you know what the closing hour was along in [fol. 5397] April of 1937, as far as your section was concerned—when you quit work?

A. I think it was 4 or 4:10—something like that. If we worked overtime it would be 5 or 5:10.

Q. Do you know whether you were working overtime in April 1937?

A. No, I don't.

Q. Did you go to the meetings in the latter part of March and on April 27, 1937, in your uniform?

A. I never attended the meetings in my uniform. I always dressed before going to the meetings.

Q. Did your get to each of the meetings, about March 30 and April 27, before the meeting had begun?

A. Yes.

Q. And did you remain throughout the meeting?

A. Yes.

[fol. 5400] Q. You voted, I believe, to form an independent plant union at that meeting?

A. Yes, I did.

Q. When you voted to do that, were you under any restraint or pressure or coercion from the company to vote [fol. 5401] in favor of forming a plant union, so far as you know?

A. No, I wasn't. That was my desire.

Q. Did you have the feeling in your mind that when you cast that vote you were exercising your own free choice in the matter?

A. Yes, I did.

Q. Was there any act, that you know of, by anybody that you believed represented the management from about the beginning of 1937 down to July 15, 1939, that in your own opinion constituted an act of coercion or intimidation on the part of the company to join any particular union or stay out of any other union?

A. No.

Q. Did you attend most of the meetings of the union following its organization in April 1937?

A. I attended most of them, yes.

Q. Did you attend the meeting of May 11, 1937, the union meeting?

A. Which one was it?

Q. For purposes of refreshing your memory as to whether you attended that meeting or not,— You have heretofore looked at the minutes of the May 11 meeting, have you not?

A. I think so.

Q. I will show them to you again, for purposes of refreshing your recollection (the number is 8-12, beginning at [fol. 5402] page 4406 of the Circuit Court of Appeals record) and have you look at them. Just glance at them briefly and see if they recall to your memory whether you did or did not attend that meeting.

A. (Referring to minutes indicated in the last question.) Yes, I attended that meeting.

Mr. Reed: What date is that, Mr. Lane?

Mr. Lane: May 11, 1937.

By Mr. Lane:

Q. Was there any discussion at that meeting of union finances?

A. Was that before we formed the union or—

Q. No. This is May 11.

A. We formed the union March 27, wasn't it—that we had the meeting to talk to Mr. Tyler, wasn't it? March 27 was the date I collected the 50 cents, I am sure, for Mr. Tyler.

Q. The meeting I directed your attention to was the meeting of May 14, 1937, a meeting of the union, which was formed on April 27, and you said you attended that meeting?

A. Yes.

Q. I will ask you whether or not this was said at that meeting:

"You realize now that Mr. Tyler is representing the Donnelly Garment Workers' Union and he will have to be paid. I expect a good many of you are wondering what he is going to charge. I talked to him in some detail and [fol. 5403] I am sure you will feel he is quite right in the answer he gave me. He doesn't know what his answer will be, because it depends on how much trouble we cause him and how much work he will have to do for us.

"The union does have to be self-supporting in every detail. Being a thoroughly reliable group of employees, we can take care of our own financial obligations."

Was that, or that in substance, said at that meeting?

A. I remember that being said at a union meeting, but I get confused on all of these dates. I can't keep up with the dates. But that was said at a union meeting.

Q. Was there ever, so far as your recollection goes, a meeting of the Donnelly Garment Workers' Union held at 3:45 in the afternoon?

A. No. I never attended a meeting or knew of a meeting being held only after working hours.

Q. Do you know what time of day the meeting of April 27 was held?

A. It was after working hours.

Q. What do you mean by that? I am asking you if you can fix the time of day.

A. I think most of them were held around 5 or 5:30, or something like that. I couldn't say about that particular meeting.

. . . . . .

[fol. 5404] By Mr. Lane:

Q. Now, I have shown you Board's exhibit No. 8-21 and asked you to look at that briefly to refresh your recollec-

tion as to whether you attended that meeting of May 25, 1937.

A. Yes, I did.

* * * * * *

Q. Did you attend the union meeting of May 25, 1937?

A. Yes, I did.

Q. Did you at that meeting discuss ways and means of raising money for the Loyalty League?

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[fol. 5405] A. We never did discuss raising money for the Loyalty League at any union meeting, or discuss the Loyalty League in any way at any of our union meetings.

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[fol. 5406] Q. Where was that meeting held?

A. On the second floor.

Q. Were there any employees of the Donnelly Garment Company at work, operating machines or doing any other work, at that meeting?

A. There were no employees on that floor. It was a vacant floor.

[fol. 5407] Q. Did Rose Todd say at that meeting, "For you people in here working, I want to advise you to work quietly."?

A. I don't remember hearing her say that. She may have.

Q. Did Hobart Atherton say at that meeting, "There seems to be a little misunderstanding as to why the Loyalty League needs this money and a little later on I will explain that to you."?

A. No.

Q. Was the union meeting of May 25 followed immediately by a meeting of the Loyalty League on that day?

A. We had a meeting of the Loyalty League sometime after that; I couldn't say just when it was.

Q. Was the union meeting on May 25 followed immediately by a Loyalty League meeting?

A. Oh, no. We never had a meeting, either one following the other—no two on the same day. I thought you meant days after that, or something like that. I never

attended two meetings on the same day, and I have never known them to have two on the same day.

Q. Did Rose Todd say at that meeting, "A motion has been made that we adjourn our union meeting and immediately open a Loyalty League meeting."?

A. No.

Q. Did Hobart Atherton say at the union meeting, "As Miss Todd has already told you, we have only one debt of [fol. 5408] the Loyalty League. A good many of you seem to be under the impression we have accumulated quite a lot of bills as we have gone along, but we have only one."?

A. No. I don't remember ever discussing the Loyalty League at a union meeting. We never discussed any affairs of the Loyalty League at a union meeting.

Q. When you collected 50 cents from the persons in your section shortly after March 30, 1937, did you do so as the Loyalty League representative?

A. No, I didn't.

Q. Were you the Loyalty League representative in your section?

A. No.

Q. Do you know who was?

A. No, I don't.

Q. Were these meetings of March 30, or thereabouts, 1937, and the organization meeting of the union on April 27, 1937, attended by large numbers of employees?

A. Yes.

Q. You mentioned that prior to July 1939, you had a club in your section you called "The 500 Pennies Club." How long had that been in existence?

A. Oh, for several years. I couldn't remember just how many years.

Q. What was the nature of that club?

[fol. 5409] A. Just a social club.

Q. Did you have officers?

A. Yes.

Q. Did you pay dues?

A. No, we didn't have any dues.

Q. What activities did you have?

A. We had dinner together—go out and have dinner together, and maybe go to a show. We always met once a month and had dinner together, and different things like that.

Q. In the evenings?
A. Yes.
Q. After work?
A. Yes.
Q. Had that club existed prior to the time the Loyalty League was formed?
A. Oh, yes.
Q. And continued to exist afterwards?
A. That's right.
Q. Did you know Lena Tyhurst in March and April 1937?
A. Yes.
Q. What did she do?
A. She worked with the inspectors.

* * * * * *

By Mr. Lane:
Q. Did you think Lena Tyhurst was a supervisor or a [fol. 5410] boss?
A. No, I didn't.
Q. Did you know Mrs. Gray?
A. Yes.
Q. What did she do?
A. She was employed in the store.
Q. Did you ever see her in the store?
A. Oh, yes.
Q. What did you see her doing?
A. Well, when the girls would go in to buy dresses, belts, material, or anything like that, she would wrap it up for us.
Q. Was she, in your opinion, a supervisor or a boss?
A. No.
Q. Or manager for the company?
A. No.
Q. Did you know Mrs. Bogart?
A. Yes.
Q. What did she do?
A. She worked in the dividing department. She was an instructor.
Q. Did you have the opinion that she was a supervisor or a boss?
A. No, I didn't.

Q. Or representative of the management?
A. No.

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[fol. 5411] By Miss Weyand:
Q. When you returned to work in March of 1937, you called up Mrs. Hyde, didn't you?
A. Mrs. Hyde called me.

* * * * * * *

[fol. 5412] Q. Were you working at the Donnelly Garment Company when the Loyalty League was formed?
[fol. 5413] A. Yes, I was.
Q. What do you remember of its formation?

Mr. Reed: Now, we make the objection that that is going back of the dates fixed by the Examiner.

Trial Examiner Batten: Well, I will make the same ruling I previously made.

Miss Weyand: Would the witness like the question read to her, or—

The Witness: Do you want me to answer?

Mr. Lane: I want the record to show the intervener makes the same objection, and I would like, instead of making the same objection to every such question, to have a continuing objection.

Trial Examiner Batten: You may have a continuing objection.

Mr. Reed: And that will go for the company, also?

Trial Examiner Batten: Yes. You may have a continuing objection to any ruling which I have made with respect to the Loyalty League, if any.

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A. Well, I don't remember a lot about it, just offhand.

By Miss Weyand:
Q. What do you remember?
[fol. 5414] A. Well, we just had a group meeting and elected officers, and things, and formed the Loyalty League.
Q. Now, when you say you "had a group meeting", what group are you referring to?

A. The employees of the Donnelly Garment Company.

Q. Where was that meeting held?

A. I think, on the second floor, or— I am sure it was on the second floor.

Q. Who presided at that meeting?

A. I don't remember.

Q. What officers were elected at that meeting?

A. I don't remember that either.

Q. Did you attend other meetings of the Loyalty League?

A. Yes, I attended quite a number of them.

Q. Where were those meetings held?

A. In the same place.

Q. Who presided at any of those meetings, that you recall? A. Well, I remember Miss Todd.

Q. Do you remember anyone other than Miss Todd presiding at any of those meetings?

A. I can't remember.

Q. Were you ever a representative of your section in the Loyalty League?

A. I might have been. I don't remember.

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[fol. 5415] By Miss Weyand:

Q. Who succeeded Rose Todd as president of the Loyalty League? A. Thelma Huffaker.

Q. Were you present at the meeting at which Thelma Huffaker was chosen as president? A. Yes.

Q. Do you know when that meeting took place?

A. No, I don't.

Q. Do you know who was present at that meeting?

A. It was sometime after we had formed our union— I remember that—and Miss Todd resigned as president because, she said, she had so many duties as president of our union that she couldn't take the responsibility of that also.

Q. Was that a mass meeting of all of the employees of the Donnelly Garment Company? A. Yes, it was.

Q. Do you know how the president of the Loyalty League was selected? Was it by a vote of the members, [fol. 5416] or was it by the vote of the representatives in the sections? A. It was by the members.

Q. Did the Loyalty League have a nominating committee? A. Yes, I think they did.

Q. Do you know how the nominating committee was chosen? A. Just from the members at large.

Q. That was at a mass meeting, was it? A. Yes.

Q. Do you know how the representative of each section of the Loyalty League was chosen?

A. I don't remember that.

Q. Did you ever attend a meeting at which Thelma Huffaker presided? A. I don't remember that.

Q. Do you remember whether on the occasion on which she was elected she was present? A. Yes, she was.

Q. Was she asked to come up and say a few words?

A. Yes. And she was introduced to the girls as the new president.

Q. Who introduced her as the new president?

A. Miss Todd, I think. I'm not sure.

Q. You don't know on what date that meeting was?

A. No, I don't.

Q. Was that meeting on the second floor?

[fol. 5417] A. I think so.

Q. You say you "think so." Is that correct?

A. We had most of our meetings on the second floor.

Q. It is your best recollection that the meeting at which Miss Todd introduced Thelma Huffaker was a mass meeting of the employees; is that correct?

A. It was a mass meeting when Thelma Huffaker was introduced as the new president, yes.

Q. And that was on the second floor?

A. I think it was.

* * * * * *

Q. What is the first meeting you recall after you went back to work in March of 1937?

A. Of any kind, you mean?

Q. Yes.

A. Well, the first meeting I recall was shortly after I went back to work. They had already selected a committee to see an attorney, and we had a meeting, and they told us they had seen an attorney and we would have to have a $500 retaining fee. That is the first one that I remember of.

[fol. 5418]

Q. What was the last meeting before you went back to work at which you met with other girls from the Donnelly Garment Company?

A. Well, all of the time I was off sick I met with the girls in my club regularly.

Q. And that was at dinner once a month; is that right?

A. That is right.

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[fol. 5419] Q. How were you selected to take up the 50 cents in your section?

A. Miss Todd asked me to take it up.

Q. Did you know Miss Todd personally?

A. Yes, I did.

Q. How long have you known her?

A. Well, quite a long time.

Q. How many years? A. Oh, I can't say.

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[fol. 5424] By Miss Weyand:

Q. When did you first learn of the newspaper article reporting that Sylvia Hull had been elected to attend a convention, or chosen to attend a convention?

A. The next morning, when I went to work.

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[fol. 5425] Q. You were working in section 415 at that time, is that correct?

A. I imagine I was, because that is the only section that I worked regularly in, but we had a 415 and a 415-A, and they were both special sections, but one was on one side of the room and the other on the other side of the room.

Q. Did you hear Ethel Riegel testify yesterday that she worked in section 415?

A. That's right, she did. We called them both 415, but they called one 415 and one 415-A; they were both special sections in one and the same section, but we had different instructors.

Q. Which were you in, 415 or 415-A?

A. I never worked in 415-A.

Q. Do you know whether Ethel Riegel was in 415 or 415-A? A. Well, she never did work in my section.

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[fol. 5431] Q. Do you know each section of the Donnelly Garment Workers' Union had section representatives?

A. Do I know what?

Q. Whether each section of the plant had a Donnelly Garment Workers' Union representative?

A. No, they didn't. We just had eight representatives altogether, and there was one for the larger floors, and then where there was, you know, small groups of people there was one that represented two or three different groups, maybe.

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[fol. 5439] By Mr. Langsdale:

Q. Mrs. Clayton, whom have you heard testify while you have been here in the courtroom and before you took the witness stand?

A. I just heard part of Ethel Riegel's, and part of Edith Dean's.

Q. Weren't you here when Mrs. Mudd testified?

A. No, I heard part of it, but not all of it. I just heard the first part of it.

Q. Then you heard part of three witnesses' testimony?

A. Just part of each of them, yes.

Q. I think I must have misunderstood your answer, when you were asked how you happened to go to the meeting of April 27. I have it here that you said, "Well, we had talked about it all the time," Had you ever talked about forming the union before you went to the meeting of April 27?

A. No. I mean we had talked about the strikes and discussed the violence and all that sort of thing.

Q. Yes, but you had never talked about forming a union?

A. And we talked of the meetings and all, but we [fol. 5440] didn't know anything about a union or even think about it, until Mr. Tyler talked to us.

Q. That is, you didn't even know why you were going to that meeting until you heard Miss Todd and Mr. Tyler speak, is that it?

A. We were going to hear what information Mr. Tyler had to give us.

Q. But you didn't know before you got to the meeting that there was going to be any union formed?

A. Why, no.

Q. You knew, did you not, that several weeks before April 27 the Gordon, Gernes, Missouri garment workers' strike had been settled?

A. I did know when they were settled, I don't remember the exact date.

Q. But it was settled before April 27, was it not?

A. I couldn't say as to that.

Q. You stated that you voted for the Donnelly Garment Workers' Union to escape violence, did you not?

A. That's right.

Q. There was no violence going on at that time in Kansas City, was there, that you knew of?

A. Well, there had been; that is the way they had been forming other unions, and they were still talking of organizing us. I had no reason to think they would do any different.

[fol. 5441] Q. Now, did Mr. Tyler's speech cause you to believe that forming the Donnelly Garment Workers' Union was to get away from the violence or the I. L. G. W. U.?

A. Well, naturally I thought if we had our own union that would be all that was necessary.

Q. How did you think that would protect you from violence?

A. Well, with our own union there would be no need for another one.

Q. But did you think the I. L. G. W. U. would just fold up and make no effort to organize the Donnelly Company?

A. I don't know; I should have known better, but I didn't.

Q. You say that Rose Todd asked you to collect the 50¢. Was that at the meeting she asked you that?

A. No.

Q. When did she ask you to collect the 50¢?

A. The next morning.

Q. Don't you remember at the meeting she said, "You can give your 50¢ to the representative of your department"? A. No, I don't.

Q. You didn't hear her say that?

A. No, I didn't.

Q. Did you hear her say, "If you want to give a dime at a time, that's all right?" A. I did not.

Q. Where were you when Rose Todd asked you to collect the 50¢?

[fol. 5442] A. I imagine I was probably where I undressed or something, I don't remember for sure; I remember that I collected the money, and she asked me, and I took the money to her, but I can't say exactly where that was when she asked me.

Q. Well, were you working at your machine?

A. Why, no.

Q. Why do you say "Why, no"?

A. Because we never talked during working hours, it was always before working hours or after working hours.

Q. Have you any recollection at all of where it was or when it was Rose Todd asked you?

A. I might have been in the wash room or downstairs, changing clothes, or I may have been working.

Q. Have you any recollection at all?

A. I don't know.

Q. Do you know why Rose Todd picked on you?

A. Well, I don't know. I was always active in things like that in my club. I was secretary and treasurer, and I used to take up money for showers and different things like that, and I imagine because I collected money in the section a lot would be the reason she did.

Q. Now, you said in answer to a question by Miss Weyand that you might have been a Loyalty League representative, but you didn't remember; is that correct?

A. I don't remember of being one, no.

[fol. 5443] Q. Do you mean to say that you could have been elected a Loyalty League representative and not remember?

A. I said I didn't remember it, didn't I?

Q. Well, you don't say you weren't a Loyalty League representative?

A. I couldn't have been at that time, because I just came back to work.

Q. You don't remember whether you ever were or not?

A. I don't remember ever being one, no.

Q. Do you know who the Loyalty League representative was in your section on the 30th of March, 1937?

A. No, I don't; we had several, I couldn't possibly remember any particular one.

* * * * * * *

[fol. 5444] Q. Now, why did you turn the money over to Rose Todd instead of some treasurer?

A. Why, it wasn't the Loyalty League that was getting the money. Why should I turn it over to the treasurer of the Loyalty League?

Q. Did you get a receipt from Rose Todd for it?

A. Why, no.

Q. Didn't you get any receipt to show how much you turned over to her?

A. I didn't get any receipt, and I didn't give any. I kept a list of the names of the girls as I collected from them, so I would know whom I had collected from; it wasn't compulsory for them to pay.

Q. Did you give a receipt to any of the girls you got the 50¢ from?

[fol. 5445] A. I did not.

Q. Did they all pay 50¢ at a time or did some of them pay a dime, or some less? A. They all paid 50¢.

Q. At a time? A. That's right.

Q. Now, did you collect 50¢ from your instructor?

A. I don't remember.

Q. Did you collect 50¢ from the thread girl?

A. I couldn't tell you whom I collected it from.

Q. Well, was there any reason—do you know anybody you collected any money from?

A. Well, no, no particular person. I know I collected from the girls in the section, but I don't remember who was there.

Q. Can you name one you collected the 50¢ from?

A. Just off-hand I couldn't. I could have put down a lot of them, if I had known you were going to ask me that.

Q. Well, you can take all the time you want to think about it now.

A. Well, I mean I could have asked the different girls which ones gave it to me.

Q. You can't remember it without them telling you?

A. Well, in a special section the girls change all the time. If you knew the way they worked, you would understand that, but not knowing that, you wouldn't understand.

[fol. 5446] Q. Well, you didn't change instructors during that time?

A. No.

Q. Who was your instructor during that period?

A. Etta Dorsey.

Q. Did you collect 50c from Etta Dorsey?

A. I don't remember.

Q. Was there any reason why you would pass her up in your collection efforts?

A. I don't remember who I collected from.

Q. Well, was there any reason why you shouldn't have collected from her?

A. No, I didn't see any reason why I should pass her up, but just to say I did, I couldn't, I don't know.

By Trial Examiner Batten:

Q. Do you know how much you turned over to Miss Todd?

A. No, I don't.

By Mr. Langsdale:

Q. Do you know what became of the money that was collected on that occasion?

A. It was collected to give to Mr. Tyler as a retaining fee.

Q. Well, do you know what actually became of it?

A. How could I possibly know, I wasn't there.

Q. Did you know that Mr. Tyler had already been paid when you collected the 50c?

A. How could Mr. Tyler have been paid?

Q. Well, did you know that?

[fol. 5447] A. Why should I know that?

Q. Miss Todd didn't tell you?

A. Why, no.

Q. Did anyone else tell you he was paid on the first of April, 1937?

A. We elected Miss Todd for our president because we all knew her and respected her, and knew her as an upright woman, and after all, it would be kind of hard for her to go around and tell each individual exactly, every employee she

met; she was working for our interest, and that was the thing.

A. No.

By Mr. Langsdale:

Q. Did Miss Todd tell you he had been paid on April 1, 1937?

A. No, why would Miss Todd tell me that?

Trial Examiner Batten: The question isn't why should she, the question is, did anyone tell you he was paid on April 1, 1937.

A. No.

By Mr. Langsdale:

Q. Did Miss Todd tell you when they were voting to collect the money on March 30, 1937, that she had been to the First National Bank on that day, and borrowed a thousand dollars in the name of the Loyalty League?

[fol. 5448] A. No.

Q. You didn't know that?

A. No, and I don't know of anyone else that does know it either.

[fol. 5449] Q. I hand you Board's exhibit No. 19 and ask you to examine it and state whether or not you ever saw that exhibit before.

(Thereupon Board's exhibit No. 19 was read by the witness.)

A. No.

Q. Never heard of it?

A. No.

Q. Do you recognize Miss Todd's signature there?

A. I wouldn't know Miss Todd's signature if I saw it.

Q. Did you learn, from Miss Todd or anyone else, that the money that you collected, the 50-cent pieces, went to help pay this note shown by Board's exhibit No. 19?

A. No, I didn't.

Q. I show you Board's exhibit No. 13, which appears on page 4699 of the Circuit Court of Appeals record, and ask you to examine it and tell whether you ever heard of that check before.

A. No.

Q. That is a check dated April 1, 1937, made payable to Frank E. Tyler, signed "Nelly Don Loyalty League, Rose Todd, Pauline Hartman," is it not?

A. Yes; that's what it says.

Q. Drawn on the First National Bank?

A. I don't see anything unusual about that.

Q. I am asking you if that isn't what this shows.

[fol. 5450] A. Yes.

Q. Did you ever hear of this check before?

A. No.

Q. Did Rose Todd tell you at any time, or did she ever tell anyone else, to your knowledge, that she had paid Frank Tyler by this check, Board's exhibit No. 13, on the first of April 1937?

A. I don't know how she paid him.

Q. Did she tell you that, or did anyone else tell you that?

A. No.

Q. Did you learn that the money that you collected, 50 cents at a time, was used to pay part of this note, Board's exhibit No. 19, on July 15, 1937?

The Witness: Would you please read that question?

(Thereupon the last question was read by the reporter.)

A. No.

Q. Did you learn that the 50-cent pieces that you had collected had not been deposited until the 13th of July 1937?

A. No, I didn't.

. . . . . .

[fol. 5455] By Mr. Lane:

Q. Mrs. Clayton, when your machine is in operation can you hear the girl next to you in a conversational tone?

A. Not very well, no.

Q. Can you hear the girls that are farther down the section when all of the machines are in operation?

A. No, you can't.

. . . . . .

[fol. 5456] LYDIA PHILLIPS, a witness called by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

Trial Examiner Batten: What is your name?

The Witness: Lydia Phillips.

By Mr. Ingraham:

Q. Where do you live, Mrs. Phillips?

A. Parkville, Missouri, Route 2.

Q. Are you employed at the Donnelly Garment Company?

A. Yes, I am.

Q. How long have you been employed at the Donnelly Garment Company?

A. Since February 25, 1929, but I was off from work from January of 1934 until in January of 1935.

Q. In what capacity are you employed at the Donnelly Garment Company?

A. As an operator.

Q. What floor have you worked on?

A. Eighth floor.

Q. In what section?

A. I am in 413. I have worked in all sections on eight, though.

Q. Were you working at the Donnelly Garment Company during the months of March and April 1937?

A. Yes, I was.

[fol. 5457] Q. Are you a member of the Donnelly Garment Workers' Union?

A. Yes, sir.

Q. Do you recall when you joined the union?

A. I don't remember when. It was when they organized.

Q. When the union was organized?

A. When the union was organized.

Q. Do you recall whether or not that was about the 27th of April?

A. Yes, I believe it was around that time.

Q. Do you recall where the meeting was held when the Donnelly Garment Workers' Union was organized?

A. On the second floor.

Q. Do you recall the time of day?

A. Well, I should judge, around 5 or 5:10 in the evening.

Q. Had you finished your work that day?

A. Yes, sir.

Q. Now, did Mrs. Reed, Mrs. Reeves, Mr. Baty, Mr. Green, Mrs. Spilsbury, Mr. Bachofer, Mr. Keyes, Mrs. Keyes, or Ella Mae Hyde ever discuss with you the holding of that meeting?

A. No, they didn't.

Q. Did they ever discuss with you anything in connection with the union?

A. No, they didn't.

Q. Did they request you to go to the meeting?

A. No, sir.

[fol. 5458] Q. Did you see any of the people that I have named at that meeting?

A. No, I didn't.

Q. Did anybody that you thought represented the management request you to attend that meeting?

A. No.

Q. Did your instructor request you to attend that meeting?

A. No.

Q. Now, you stated that you joined the Donnelly Garment Workers' Union at that meeting. Do you recall who presided at the meeting?

A. At the meeting when it was organized, you mean?

Q. Yes.

A. Well, you mean the ones that—

Q. Well, did anybody act as chairman?

A. Yes.

Q. Do you recall who that was?

A. Rose Todd.

Q. Did any of the people that I have mentioned request you to vote to form the Donnelly Garment Workers' Union?

A. No.

Q. Did you vote in favor of forming the Donnelly Garment Workers' Union?

A. Yes, I did.

Q. Did you do that of your own free will?

[fol. 5459] A. I sure did.

Q. Now, prior to the date of that meeting did you know of strikes that were going on at the Missouri, Gernes, and Gordon garment companies in Kansas City?

A. Yes, sir.

Q. Did you read about the strikes in the paper?

A. I read of some.

Q. I will hand you respondent's exhibit No. 18, which is the front page of the Kansas City Times of March 18, 1937, and ask you if you recall seeing the pictures on that page, of strikers?

A. Yes, I remember seeing that.

Q. I will hand you respondent's exhibits Nos. 18 through 38, inclusive, and ask you if you will look at those exhibits and state which exhibits you recall reading in the paper; and as you go along, will you just state whether you read the exhibit or not?

A. (Referring to exhibits.) Well, exhibit 18, I might have read, but I don't take the Kansas City Journal-Post, and if I did read it, it was brought up there and I read it there. But I'm not sure that I read it.

This exhibit 19, I don't believe I read that.

I'm not sure about exhibit 20, because that is in the Journal-Post and I don't take it.

I think I read exhibit 21 down there at the factory.

[fol. 5460] I didn't read exhibit 22. And I didn't read 23.

I remember reading 24. I also read 25.

26, I don't know whether I read that or whether I just heard them talking about it.

I read 27. And I believe I read 28. I read 29. Also, 30.

I didn't read 31. 31, I just heard them talking about it.

By Trial Examiner Batten:

Q. 31, you said?

A. 31. And I don't believe I read 32. 33, I believe I didn't read it, either. 34, I didn't read, but I heard them talking about it.

I read 35. I think I read 36. I'm not sure that I read 37, but I think I did. I read 38.

By Mr. Ingraham:

Q. What effect, if any, did the reading of the articles that referred to violence have on you?

A. Well, the violence— It just made me feel like I didn't want to belong to that organization.

Q. What organization are you referring to?

A. The I. L. G. W. U.

Q. Did you personally see any of the violence of those other strikes.

A. No, I didn't.

Q. Was there a general discussion of the strikes among the employees at the Donnelly plant?

[fol. 5461] A. Yes, there was.

Q. Was there a general discussion of these newspaper articles at the plant? A. Yes, there was.

Q. What effect, if any, so far as you could observe, did those articles have on other employees at the Donnelly plant?

A. Well, it kind of stirred up the plant down there, the employees.

Q. Was there a general discussion among the employees about the I. L. G. W. U. coming to the Donnelly plant next? A. Yes, there was.

Q. Had threats been made that that was what the I. L. G. W. U. intended to do? A. Yes, they had.

Q. Now, did the violence that was taking place at these other strikes have anything to do with causing you to vote to form the Donnelly Garment Workers' Union?

A. Yes, it did.

Q. Did you have any other reasons besides the violence that caused you to want to form a plant union?

A. Yes, I did. I read in the paper where it told about their guarantee, what their minimum wage would be in this I. L. G. W. U., and ours was far beyond that—above that, so I didn't feel like they could do us any good concerning wages.

[fol. 5462] Q. Did you object to joining the I. L. G. W. U.? A. Yes, I objected to it.

Q. I believe you stated that you read exhibit No. 27, which is an article that appeared in the Kansas City Star of March 17, 1937. The headline is "Sitters Block A Door." A. Yes, I read that.

* * * * * * *

By Mr. Ingraham:

Q. Do you recall whether or not at about the time this article appeared in the paper, or shortly thereafter, that a meeting of employees was held?

A. Yes, I remember that.

Q. Did the strikes at the Gernes, Gordon, and Missouri plants have anything to do with the holding of that meeting? A. Yes, it did.

Q. Do you recall the date on which that meeting was held?

A. I think it was the latter part of March.

Q. Do you recall whether or not it was about the time this article was in the paper?

A. I don't recall that, but it could have been around there. I know when these were taking place was when we called our meeting.

Q. Now, this meeting that you refer to, did any official of the company, or executive of the company, or anybody that you thought represented the management, discuss the [fol. 5463] holding of the meeting with you?

A. Not with me.

Q. Did you ever hear that the company wanted the meeting to be held?

A. No, I didn't hear that at all.

Q. Did Mrs. Reed, Mr. Baty, Mrs. Reeves, Mr. Green, Mrs. Spilsbury, Mr. Keyes, Mrs. Keyes, or Ella Mae Hyde request you to attend that meeting? A. No, sir.

Q. Did you go to that meeting of your own free will?

A. I sure did.

Q. Do you recall when the meeting took place?

A. Well, it was in—

Q. I mean, was it after working hours, or—

A. It was after working hours, yes. Around 5 o'clock, 5:10, or somewhere in there.

Q. Do you recall on what floor? A. Second floor.

Q. Was the meeting generally attended by the employees? A. Yes.

Q. Was there quite a large number of employees there?

A. Yes, there was, to my recollection.

Q. Do you recall Mrs. Reed making some remarks at that meeting? A. Yes, I do.

[fol. 5464] Q. Do you recall how Mrs. Reed happened to come to the meeting?

A. No, I don't remember just how she come to come. I know they were talking about it, but I couldn't say how it happened.

Q. Did you hear Mrs. Reed make the statement that if the plant was unionized it would be closed?

A. No.

Q. Did you hear Mrs. Reed make the statement that she wasn't going to let Dubinsky tell her how to run her business? A. No; she didn't say that.

Q. Did Mrs. Reed make any statement with reference to the right of the employees to join or not join any labor organization?

A. No, I don't remember her saying anything—

Q. Do you recall any remarks that Mrs. Reed did make?

A. Yes, I remember, but I don't know whether I can word it just the way she said it. I do remember she said she wasn't going to let Dubinsky force her to force us into forming a union, or joining their union, the I. L. G. W. U., if we didn't prefer it—if that wasn't our wishes, to join the I. L. G. W. U.

Q. Do you recall anything said at that meeting about arranging for busses?

A. Yes, there was something talked about, about the busses.

Q. Did Mrs. Reed say the company was trying to arrange for busses?

[fol. 5465] A. Well, she said something about they were going to try to arrange for busses.

Q. Do you recall Mrs. Reed's stating, "I can't say at this time what will be done to protect you against violence, but the company's attorneys will consider what legal steps might be advisable."?

. . . . . .

A. I remember her talking about that, but just what she said and how she said it, I don't remember. But it was talked about.

Mr. Ingraham: Do you recall at that meeting whether or not a committee was designated to call on lawyers to get legal aid?

. . . . . .

A. I remember them saying something about that.

. . . . . .

[fol. 5466] The Witness: I remember them saying something about it.

By Mr. Ingraham:

Q. Do you know who was named on the committee?

A. No, I don't.

Q. Now, will you state whether or not there was any meeting after this meeting that you have just testified about—any meeting between that meeting and the meeting at which the Donnelly Garment Workers' Union was organized, that you attended?

A. It seems to me like there was a meeting along about the last of March.

Q. Do you recall what occurred at that meeting on or about the last of March?

. . . . . .

By Trial Examiner Ratten:

Q. Do you know whether there was a meeting?

A. Well, it was along the last of March or the first of April—in there some place—where they had a meeting and took up 50 cents to pay for—

Q. I say, do you recall a meeting there about that time?

A. Yes.

By Mr. Ingraham:

Q. And you say 50 cents was contributed by the employees?

[fol. 5467] A. Yes.

Q. Do you know the purpose of making that contribution?

A. For a retaining fee for a lawyer.

Q. Now, at the meeting the last of March—state when that meeting occurred, what time of day.

. . . . . .

A. Around about 5 o'clock, if I remember right.

By Mr. Ingraham:

Q. Were you through work? A. Yes.

Q. Do you recall where the meeting was held?

A. On the second floor.

Q. Now, did any of the people I have mentioned, Mrs. Reed, Mr. Baty, Mrs. Reeves, and so forth,—did any of those people ask you to go to that meeting?

A. No, they didn't.

Q. Did any of those people ask you to contribute 50 cents? A. No, they didn't.

Q. Did you discuss with any of those people anything that occurred at that meeting?

[fol. 5468] A. No.

Q. Did any instructor request you to go to that meeting? A. No, nobody requested me to go.

Q. Did you go of your own free will? A. I did.

Q. Do you recall how you happened to hear that there was going to be a meeting?

A. Well, it was in talking to the girls. They would tell one another. That's the way I remember hearing about it.

Q. Now, at any of these meetings that you have testified about did the instructor in your section direct you to attend the meeting, and did you go as a body—all of the operators in the section go together? A. No.

Q. Do you recall whether or not you dressed before you went to the meeting?

A. Well, there might have been a time or two that I didn't dress, that I waited until after I got out of the meeting.

Q. Generally, what was your practice?

A. Dressing first.

Q. Do you recall when you got off work during March and April? A. When I got off work?

Q. Or what the regular time was?

A. The regular time was 4:10, but if we were working [fol. 5469] overtime, it was 5:10. But I don't remember whether we were working overtime at that time or not. If we were, that is when I went in my uniform, I expect, if we were working overtime.

Q. Now, did you understand that these meetings that you have referred to were Loyalty League meetings?

A. No.

Q. Did you ever hear anything said that caused you to believe that these meetings were Loyalty League meetings?

A. No.

Q. Did you ever attend a meeting of the Donnelly Garment Workers' Union that was immediately followed by a Loyalty League meeting? A. No, I didn't.

Q. Did you ever attend a meeting of the Donnelly Garment Workers' Union that was immediately preceded by a Loyalty League meeting? A. No, I didn't.

Q. Did you ever hear at a Donnelly garment workers' meeting any suggestion or discussion for raising money for the Loyalty League?

A. I don't remember anything of that sort.

Q. Now the meeting at which you testified 50 cents was contributed—did you make that contribution to the Loyalty League? A. No.

[fol. 5470] Q. Did you make it for any purpose of the Loyalty League?

A. No, I didn't.

Q. I don't think I asked you: Do you recall when you gave your 50 cents at that meeting in the latter part of March or the first of April?

A. I can't remember whether I gave it that evening or the next day. I gave it, but I don't remember when.

Q. Do you remember whom you gave it to?

A. I don't even remember that.

Q. Did the fact that Rose Todd took an active part in the meetings that you have testified about cause you to believe that the meetings were Loyalty League meetings?

A. No, sir.

Q. Did you believe that the Loyalty League sponsored the Donnelly Garment Workers' Union?

A. No, I didn't.

Q. Did you know of any connection between the Loyalty League and the Donnelly Garment Workers' Union?

A. Not any at all.

Q. I believe you stated that you read the article that appeared in the paper on April 22, which is contained in respondent's exhibit No. 35. The article is entitled "Donnelly Worker Will Be Sent To Union Convention."

A. I read that.

Q. Do you recall reading the part that stated, "Perl-[fol. 5471] stein said the Donnelly committee desired one of their number to appear at the convention and asked the International body to endorse and support a strike against their employer . . ."?

A. I read that.

Q. Did you want a strike in the Donnelly plant?

A. No, I didn't.

Q. Did you state whether or not you believed that a strike by the International would involve violence?

A. Yes, that's the way I felt about it.

Q. What effect did this article have on you?

A. Well, I didn't like it very well, because I didn't know that there was anybody in there that would do anything like that, because we were all so well satisfied there that it didn't seem to me that there could be anyone there at all that could be dissatisfied and let somebody else talk them into the notion of going some place else to represent us.

By Trial Examiner Batten:

Q. You mean the employees would have to be dissatisfied to have a union? Is that what you mean?

A. Well, it seems as though— I don't know. I didn't mean it just like that.

Q. You said "dissatisfied"—you didn't know there was anyone "dissatisfied."

A. Well, I didn't, because I felt like if anyone did go, they would have to have some reason for it.

[fol. 5472] By Mr. Ingraham:

Q. Had you heard that the I. L. G. W. U. had made charges that the Donnelly workers were poorly paid?

A. I heard that.

Q. I will hand you respondent's exhibit No. 41 and ask you to look at that circular and read it, please.

(Thereupon respondent's exhibit No. 41 was read by the witness.)

[5473] Q. Do you recall circulars like that exhibit being distributed at the Donnelly plant by the I. L. G. W. U. members about the time the first meeting of employees was held, the one you testified about?

A. I don't remember of this particular one.

Q. You don't remember that particular one?

A. I don't remember this one.

Q. At the meeting of March 18, where Mrs. Reed spoke, did you see or hear Mrs. Reed read a letter from the I. L. G. W. U.?

A. No, I don't remember that at all.

Q. I will ask you to read respondent's exhibit No. 6, and ask you if you recall reading this article in the Kansas City Times of February 26, 1937.

* * * * * * *

A. Yes, I remember reading it.

* * * * * * *

By Mr. Ingraham:

Q. Did you recall in this article the statement: "We are going to send a letter to the Donnelly Company within a week, suggesting a conference to establish collective bar-
[fol. 5474] gaining on questions of wages and working hours. If the firm refuses we will go to the consuming public of the company, and advise buyers of wages and hours prevailing there now." Do you recall reading that in this article?

A. I remember reading some of it.

Trial Examiner Batten: Do you remember reading that?

A. I remember reading that, but word for word I wouldn't remember it.

By Mr. Ingraham:

Q. Do you recall this statement: "The union claims only 25 members among the Donnelly workers, but officials said hundreds of others are related to the union members, and within a year we will have it completely organized, and as soon as we have enough members we will call a strike. This will be in addition to carrying our side to the consumers." Do you remember reading that?

A. Yes, I remember reading it.

Q. Did you want the I. L. G. W. U. to call a strike at the Donnelly plant?

A. No, I didn't.

Q. Did you want the I. L. G. W. U. to send representatives to the customers of the Donnelly Company?

A. No, I didn't.

Q. Why didn't you?

A. Well, because we didn't want the I. L. G. W. U. in there.

Q. Why didn't you want the I. L. G. W. U. to send repre-
[fol. 5475] sentatives to the customers of the company?

A. Because it would hurt our work.

Q. Did you feel that it might result in your not having work?

A. That's right.

Q. Now, did you understand that Sylvia Hull was going to the International Convention to ask the International to carry out this program?

A. Well, I read that she was going, but I didn't know at that time what she was going for.

Q. Well, did the article that you read state that she was going to ask support for a strike? Do you recall that in the article?

A. Yes, I recall that.

Q. Now, did you observe what effect the article that referred to Sylvia Hull going to the International Convention had on other employees?

A. Well, they didn't seem to like it a bit.

Q. Were you at the plant the following morning after the article had appeared in the paper?

A. Yes, I was.

Q. And what floor were you on?

A. On the eighth floor.

Q. Did you see Sylvia Hull on the eighth floor that morning?

A. Yes, I did.

Q. What section did you say you worked in?

[fol. 5476] A. I worked in 414.

Q. Where was that with reference to the section Sylvia Hull worked in?

A. Well, she worked on the south side of the building, and I was in the next section.

Q. You were in the next section?

A. In the next section.

Q. Did you go over to Sylvia's section?

A. Yes, I did.

Q. Did other employees go over there?

A. Yes.

* * * * * * *

[fol. 5477] Q. How long did you stay over in Sylvia's section?

A. I didn't stay over there, I just walked over there and came back.

Q. Did this article that appeared in the paper in connection with Sylvia Hull have anything to do with you voting in favor of forming the Donnelly Garment Workers' Union?

A. Yes, it did.

Q. What effect did it have on you?

A. Well, it made me feel like stronger than ever I wanted a union of our own in there.

Q. Did you object to Sylvia representing you?

A. Yes.

. . . . . .

[fol. 5478] By Mr. Ingraham:

Q. Did you hear any girls say that they did not want to work so long as Sylvia stayed there?

A. I didn't hear them say it, I heard about it afterwards, but I didn't hear them say it.

Q. Did you observe that that was the feeling among the employees?

A. Yes.

Mr. Langsdale: Just a moment. I object to that as an incompetent conclusion, that she could not draw from what she answered before; she heard no one say that, and how could she observe that that was the feeling among the employees when she heard nothing said.

Trial Examiner Batten: What was the basis of your observation, if that is the way you felt?

A. I didn't hear them.

Mr. Ingraham: She has testified she didn't hear them say it at the time.

Trial Examiner Batten: I am asking her about at the time. How long afterwards did you hear them talking about it?

[fol. 5479] A. Well, it was up in the day, but I didn't hear them say anything at that time.

By Trial Examiner Batten:

Q. When did you hear them say anything?

A. Sometime during that day.

Q. Sometime during that day?

A. Yes.

Q. What did you observe that led you to believe that was the way they felt?

A. Because they were talking about it during the day; some of them said they wouldn't work if she stayed in there.

Q. And that was the basis of your statement?

A. Yes, it was.

By Mr. Ingraham:

Q. Well, at the time Sylvia was there, did you see any of the employees not working?

A. Well, there were a lot of them working, but they were getting up a few at a time, you know, and going over there and coming back, but how long I don't know; I don't know how long it lasted.

Q. Well, were there employees that weren't working at the time, that did not work?

A. You mean—

Q. (Interrupting) While Sylvia was on the floor.

A. I don't know whether they did or not, whether they were working or not.

[fol. 5480] Q. Are you a member of the Loyalty League?

A. Yes.

Q. Do you recall about when you joined the Loyalty League?

A. Oh, it was after I came back to work in 1935, but I don't remember just when. It was after they had organized.

Q. What activities did the Loyalty League engage in?

A. In social activities.

Q. Did you pay any dues to the Loyalty League?

A. No, I never did.

Q. Did you ever hear of the Loyalty League dealing with the company with respect to wages and hours and terms and conditions of labor of the employees of the company? A. No, I didn't.

Q. Did you ever authorize the Loyalty League to represent you in connection with any labor matters? A. No.

Q. Did you ever hear of any other employee authorizing the Loyalty League to represent him or her in connection with any labor matters? A. No, I never did.

Q. Did you join the Loyalty League of your own free will? A. Yes, I did.

Q. Did you feel that you would be penalized by the company if you didn't join the Loyalty League? A. No.
[fol. 5481] Q. Did you understand or gain the impression that the Donnelly Garment Workers' Union was a successor to the Loyalty League? A. No.

Q. Will you state whether or not the Loyalty League continued after the formation of the Donnelly Garment Workers' Union? A. Yes, it did.

Q. Will you state whether or not you signed a petition that had the same writing that appears at the top of I. L. G. W. U. exhibit No. 10, appearing in the Circuit Court record at 5961? A. Yes, I signed this.

Q. Do you recall the petitions had the date mark of March 2? A. Well, yes, I do remember.

Q. Now, do you recall that this petition was circulated a few days after the article that you have read, which quoted from Mr. Perlstein?

A. I remember it was after that, but I don't remember how many days it was.

Trial Examiner Batten: What article was that, Miss Witness? After what article?

A. That article that I read about Perlstein.

By Trial Examiner Batten:

Q. What was it?

A. That was where Perlstein was going to try to organize us. I can't recall just the words.

[fol. 5482] Q. Oh, you mean one of those exhibits Mr. Ingraham showed you, is that it?

Mr. Ingraham: Yes, of February 26.

A. I can't quote the words, but I remembered what it was about.

By Mr. Ingraham:

Q. That was the article where Mr. Perlstein stated, "Within a year we will have it completely organized, Mr. Perlstein said, and as soon as we have enough members, we will call a strike." Is that the article you were referring to?

A. That is the article I was referring to.

Q. Do you recall who presented the petition of March 2nd to you?

A. No, I don't remember who it was, which one it was. There was two girls, Mary and Inez, that is all I knew; it was one of the two girls, but I don't remember which it was.

Q. Did either of those two girls hand you the petition?

A. One of them handed me the petition.

Q. Did they say anything to you when they handed you the petition?

A. They just handed it to me and told me to read it.

Q. Did they ask you to sign it? A. If I cared to.

Q. And did you read it? A. Yes, sir, I read it.

[fol. 5483] Q. And did you sign it of your own free will? A. Yes, I did.

Q. Did you feel that you would be penalized by the company if you did not sign it?

A. No, I didn't feel that way.

. . . . . .

By Mr. Ingraham:

Q. Do you recall a sentence, part of a sentence, which reads: "And refuse to acknowledge any union labor organization," in the petition?

A. Yes, I remember that.

Q. Did you have in mind any particular labor organization at the time you signed this? A. I. L. G. W. U.

Q. Did you want Mrs. Reed to understand that that was your view? A. Yes, sir.

. . . . . .

By Mr. Ingraham:

Q. Did you also want Mrs. Reed to understand your [fol. 5484] views about your appreciation of the treatment you had received from the company? A. Yes.

Q. Now, did you understand that this petition was being circulated by the Loyalty League?

A. No, I didn't understand it that way.

Q. Was anything said to you about the Loyalty League when the petition was presented to you? A. No.

Q. Did the fact that instructors joined the Donnelly Garment Workers' Union lead you to believe that the union was sponsored by the company? A. No.

Q. Will you state whether or not you considered instructors as bosses? A. No, I didn't.

. . . . . .

By Mr. Ingraham:

Q. Did the fact that instructors attended the meeting of March 18 and the meeting the latter part of March or [fol. 5485] the first of April lead you to believe that the company was sponsoring those meetings? A. No.

Q. I will hand you respondent's exhibit No. 7 and ask you to please read this article that appeared in the Kansas City Journal-Post of March 6, 1937.

* * * * * * *

A. I read that, I read most of it; I don't know that I read it clear through, but I did read most of it.

Q. I mean at the time it appeared in the paper?

A. Yes, at the time it appeared in the paper.

Q. Do you recall the statement attributed to Mr. Dubinsky where he stated: "Mr. Reed said many harsh things about me during the recent political campaign"?

A. I remember reading that.

* * * * * * *

By Mr. Ingraham:

Q. Did that statement by Mr. Dubinsky that Mr. Reed had said many harsh things about him in any way influence you in joining the Donnelly Garment Workers' Union?

A. No, that didn't.

Q. Did you hear Mr. Reed make any speeches in the [fol. 5486] 1936 campaign? A. No, I didn't.

* * * * * * *

By Mr. Ingraham:

Q. Did you ever hear Senator Reed say anything about Mr. Dubinsky?

A. I never did hear him say anything until I got up here in the courtroom.

Q. Did you ever read in the paper, that you recall, anything that Senator Reed said about Dubinsky?

A. I read some articles, but I don't remember what they were, about Dubinsky and Mr. Reed.

Q. Well, did those articles influence you in any way against the I. L. G. W. U.? A. No.

Q. Will you just glance at Board's exhibit 27 and state whether you recall reading that?

A. I don't remember reading this at all.

Q. Did any thread girl ever request you to attend any meeting?

[fol. 5487] A. No.

Q. Did you consider a thread girl a boss?

A. No, I didn't.

Q. Did the fact that the thread girls joined the Donnelly Garment Workers' Union lead you to believe that the company was sponsoring the union?

A. No, it didn't.

Q. Did the fact that thread girls attended the March 18 meeting and the meeting that you testified occurred the latter part of March or the first of April, or the meeting of April 27, did the fact that the thread girls attended those meetings lead you to believe that the company was sponsoring those meetings? A. No.

Q. Have you continued to remain a member of the Donnelly Garment Workers' Union of your own free will? A. Yes, I have.

Trial Examiner Batten: You mean up to July, 1939?

Mr. Ingraham: Yes, up to July, 1939.

* * * * * *

Cross-Examination.

By Mr. Lane:

Q. Mrs. Phillips, in 1937, in March and April, did you know Rose Todd? A. Yes; I did.

[fol. 5488] Q. How long had you known her?

A. I don't remember how long I had known her.

Q. Did you know her well or only casually?

A. Well, I didn't know her well.

Q. In March and April 1937, what did you observe Rose Todd doing about the factory?

A. Well, she—I don't know, I never did know just exactly what you would call her job, but she did come into our section.

Q. What did she do when she came to your section?

A. Well, I knew she was always doing something about the bundles, but I didn't know what it was all about.

Q. Did you ever have the impression from anything you saw Rose Todd do, that she was a supervisor or a boss or supervisory employee? A. No.

Q. Did Rose Todd ever say anything in that period that led you to believe she regarded herself as being a supervisory employee? A. No.

Q. Did you know Hobart Atherton?
A. I knew of him, but I didn't know him.
Q. Did you know Sallie Ormsby?
A. I don't remember whether I knew her at that time or not.
Q. Did you know Ethel Riegel?
A. No, I didn't know her.
[fol. 5489] Q. Did you know Arch Lyle?
A. No, I didn't.
Q. Did you know Lena Faulconer? A. No.
Q. Did you know Eva Lieberman?
A. No, I didn't know her.
Q. Did you know Mrs. Riggs?
A. No, I didn't.
Q. Or Lyle Jeter? A. Yes.
Q. What did he do? A. He was a mechanic.
Q. Did you know Carl Crawford? A. Yes.
Q. What did he do?
A. As far as I knew, he was working in the cutting department.
Q. Did you know Cordelia Taylor? A. No.
Q. Or Leona Moore? A. Yes.
Q. What did she do?
A. She was an operator.
Q. What section was she in, do you remember?
A. I don't remember what section she was in; she worked on seven, sometimes, and she worked on eight, so [fol. 5490] I couldn't tell you what section.
Q. Did you know Ellen Nokes? A. No.
Q. Virginia White?
A. No, I didn't know Virginia White.
Q. Did you know Fred Brown? A. Yes.
Q. Did you know what he did?
A. He worked in the cutting department.
Q. Did you know Mamie Riddle? A. Yes.
Q. What did she do? A. She was an operator.
Q. Do you know where?
A. Up on the eighth floor.
Q. Where did you say Sallie Ormsby was?
A. I don't know; I don't think I knew Sallie at that time.
Q. Did you know Anna Richards?

A. No, I didn't know her.
Q. Marjorie Green? A. I knew of her.
Q. Did you know where she worked?
A. She worked in the office.
Q. Did you know Jack McConaughey? A. Yes.
[fol. 5491] Q. Did you know where he worked?
A. He worked in the mechanic's cage.
Q. Did you know Charlotte Casey? A. No.
Q. Did you know Hazel Saucke? A. Yes, I knew her.
Q. Did you know what she did?
A. She was an operator.
Q. Did you know Anna Reese? A. No.
Q. Was there any of the persons I have mentioned that you regarded as being a supervisory employee or a boss or a representative of the management?
A. No, there wasn't any of them.
Q. When you voted on April 27th in favor of forming an independent plant union, did you cast your vote of your own free will? A. Yes, I did.
Q. Was there anything that you can recall that any of the executives or the supervisors of the company had done that you thought indicated any pressure or intimidation or coercion on their part to cause you to join any union or stay out of any union? A. No.

. . . . . .

[fol. 5492] Mr. Lane: Mrs. Phillips, you say you were away from the Donnelly plant from January 1934, to January 1935? A. That's right.
Q. And when you returned you went into section 413?
A. That's right.

. . . . . .

By Mr. Lane:
Q. Do you know who the instructor was in section 413 when you went back? A. Ada Vining.
Q. What did the instructor do in March and April, 1939?

Mr. Langsdale: You mean 1937, don't you?

Mr. Lane: Did I say "1939"?

Mr. Langsdale: Yes.

Mr. Lane: Excuse me. I meant 1937.

The Witness: What was that question?

By Mr. Lane:

Q. What did the instructor do?

A. She instructed us how to sew our operations—to do our operations that we were supposed to do.

• • • • • • •

[fol. 5493] Q. Did the instructors, so far as you knew, have any authority to discipline the operators? A. No.

Q. What did the thread girl do? A. She gave out the thread, the binding, shoulder tapes, and belt loops.

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Q. Where were you working in March and April of 1937? A. I worked in 414 for a while, and 412.

Q. Do you remember who the instructors were in those two sections?

A. Well, at that time Ada Vining was over there—at one time, and Mrs. Allison, and—I don't remember whether Lola Skeens was there at that time or not, she could have been.

Trial Examiner Batten: You mean they were in these two sections at different times? A. Yes.

By Mr. Lane:

Q. Did you have the opinion that Ada Vining or Mrs. Allison or Loka Skeens was your boss or your supervisor?

A. No.

[fol. 5494] Q. Do you know who the thread girls were in sections 414 and 412 in March and April of 1937?

A. No, I don't remember who they were.

Q. Did the thread girls, so far as you know, have any authority to hire and fire employees in the sections?

A. No.

Q. Or to transfer them from one section to another?

A. No, they didn't.

Q. Or to discipline the employees? A. No.

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By Mr. Lane:

[fol. 5497] Q. Mrs. Phillips, did you belong to a club in your section in March and April, 1937? A. I did.

Q. What was that club called? A. The By-Jingo.

Q. Did you have officers? A. No.

Q. What did that organization do?

A. Well, they had social gatherings after work in the evenings, and went out to dinner and shows together and had picnics.

Q. Do you know when that club was formed?

A. No. It was formed before I came back to work, [fol. 5498] during 1934 sometime.

Q. Did it continue to exist up until July 1939?

A. Yes, it did.

Q. Did you know Lena Tyhurst in March and April of 1937? A. Yes, I did.

Q. What did she do? A. She was an inspector.

Q. Did you look upon her as being a supervisory employee or a person held out by the management as speaking for the management in labor matters?

A. No, I didn't.

Q. Did you know Mrs. Gray?

A. Yes, I knew Mrs. Gray.

Q. What did she do?

A. She was clerk in the store.

Q. How long had you known her?

A. I don't remember how long I knew her, but I did know her.

Q. How frequently did you see her in the store?

A. About every day.

Q. What did you see her doing in there?

A. Clerking—waiting on the employees.

Q. Was she, in your opinion, during March and April 1937, a supervisor of the company? A. No.

[fol. 5499] Q. Did you know Marvin Price?

A. Yes, I did.

Q. What did he do? A. He was a mechanic.

Q. During this period we are talking about was Marvin Price, in your opinion, a supervisory employee of the company? A. No.

Q. Was there anything he did or said that indicated that he held himself out as being a representative of the management in connection with labor matters? A. No.

Q. Was anything ever said by any of the executives of the company that indicated that Marvin Price was their representative in labor matters? A. No, I don't recall anything.

Q. Did you know Mrs. Bogart? A. No.

Q. Did you know Ted Scoles? A. No, I didn't.

Q. Did you continue to belong to the Donnelly Garment Workers' Union down to July of 1939 of your own free will? A. Yes, I did.

Q. Did you go to the meetings of the Donnelly Garment Workers' Union after May of 1937?

A. Some of them; not all of them.

[fol. 5500] Q. When you went to the meetings did you go in your uniform or did you change to your street clothes? A. Changed to street clothes.

Q. Do you know what the quitting hour of your section was in March and April of 1937?

A. Well, it was the regular hours. It was 4 o'clock or 4:10.

* * * * * * *

By Miss Weyand:

Q. You have stated, I believe, that at the time of the Sylvia Hull demonstration you were working in section 414. Is that correct? A. That is right.

Q. Now, you said 414 was next to 412. Could you tell us which side it was next to?

A. On the north side.

Q. It was on the north side of 412; is that correct?

A. That is correct.

Q. And both 412 and 414 were located on the west side of the building; is that correct?

[fol. 5501] A. That is correct.

Q. Which row of 414 were you sitting in?

A. In the south row.

Q. Were you facing Sylvia Hull, or did you have your back to her?

A. I was facing— Well, I sat at one end and she was at the other end, and we faced one another.

Q. You were facing south; is that correct?

A. That is correct.

Q. And she was sitting across the south wall of the building, facing north; is that correct?

A. That is correct.

Q. How long had you been at work before you walked over to Sylvia Hull's machine?

A. I don't believe I went to work. I sat down to work, but I hadn't worked any. If I remember right, that's the way it was.

Q. When did you start work that morning?

A. Well, I will have to stop and think, because I have been in so many different sections and so many different kinds of work. I think it was 20 minutes to 8.

Q. That was the time you were supposed to start to work? A. If I remember right.

Q. What time did you begin work, if you recall?

A. It wasn't very long afterwards, because I didn't stay [fol. 5502] over there very long.

Trial Examiner Batten: Will you keep your voice up, please?

By Miss Weyand:

Q. How long did you stay over there?

A. I just went over there and came right back.

Q. Did some other girls from your section go over at the same time you did?

A. Another girl right there next to me did.

Q. Do you remember her name?

A. If I remember right, it was Amy—somebody—Epperson, I believe, and Dessie Horak.

Q. Had you read the newspaper article before you walked over to Sylvia Hull's machine? A. Yes, I had.

Q. Where did you read that article?

A. On the floor, the eighth floor.

Q. Do you remember who showed it to you?

A. No, I don't remember that.

Q. Did you hear any girl state that she, herself, would not work so long as Sylvia Hull was working for the company? A. No, I didn't hear them say that.

Q. But you heard other girls say that some girls had made such statements; is that correct?

A. During the day I did.

Q. Do you remember how early you heard that report? [fol. 5503] A. No, I don't remember.

Q. Was it in the morning?

A. I can't remember that. I know it was during that day that I heard it.

Q. Could you state your best recollection of just what you did hear?

A. Well, I heard that there were some girls over there said they wouldn't work there as long as she worked there. I do remember that, but nothing more.

Q. Do you remember seeing any girl who sat at her machine and refused to work?

A. No, I don't remember that.

Q. Do you remember whether other girls in your section were working that morning while Sylvia Hull was still on the floor? A. In my section?

Q. Yes. A. Yes, they were working.

Q. Could you see whether—

Trial Examiner Batten: Did you say some of them were working?

A Some of them were working, because some of them had got up and walked over there.

By Miss Weyand:

Q. Could you see whether the girls in Sylvia Hull's section were working?

[fol. 5504] A. I could have seen, I guess, if I had looked, but I didn't pay any attention to that part.

Q. And when you walked over to Sylvia Hull's machine, you don't know whether the girls were working in that section or not? A. I don't remember.

Q. Was Sylvia Hull sewing when you went over there?

A. Yes.

Q. Did she have on an International Ladies' Garment Workers' button when you went over there?

A. If she did, I didn't see it.

Q. Did she have on a Loyalty League button when you went over there? A. I didn't see that.

Q. Do you remember how long girls continued to go over to Sylvia Hull's machine that morning?

A. No, I don't remember.

Q. Were you working in section 414 all during March, as well as April, 1937?

A. Well, I don't remember. I went over to work in 412, but I don't remember whether it was during those two months or not. I couldn't say.

Q. Who was the instructor of 414 at that time?

A. If I remember right, it was Ada Vining.

Q. When did you join the Loyalty League?

[fol. 5505] A. Well, it was sometime after it was organized, but I don't remember how long.

Q. Where were you when you joined? A. I was in 413.

Q. Did you join at a meeting or did you join in your section? A. I was in my section.

* * * * * * *

Q. Do you know who the officers of the Loyalty League were?

[fol. 5506] A. Well, Rose Todd was the chairman; I know that.

Q. Did you know of any other officers of the Loyalty League? A. No, I don't recall any others.

Q. Did your section have a representative in the Loyalty League?

A. I think it did, but I don't remember who it was.

* * * * * * *

[fol. 5507] Q. Prior to July 15, 1939, did you ever see a notice passed through the section announcing a meeting of the Donnelly Garment Workers' Union?

A. No.

Q. When you signed the Loyalty petition of March 2, 1935, was more than one sheet presented to you?

A. I don't remember. I know there was one long sheet, but I don't remember whether there was more than one there or not; it seems to me like there were, and they were pinned together. I wouldn't say for sure.

Q. Was it passed through your section?

A. I don't know that. She gave it to me, one of the girls did.

[fol. 5508] Q. Had you seen anyone else sign it prior to your signing it?

A. I saw the girl next to me signing something, but I didn't know what it was until she handed it to me.

Q. Did Mary Sprofera or Inez Warren stand there and hand it to each girl down the section?

A. I don't know if they did before they came to me or not. After they handed it to me they went down the line with it.

Q. Did you notice whether there was the date March 2, 1937, on the sheet you signed?

A. I don't remember that at all.

* * * * * * *

[fol. 5509] Q. I would like to have you look at International Ladies' Garment Workers' Union exhibit No. 10, at page 5966 of the record, which is also in the record at 5380, and state whether or not the name Lydia Phillips, which appears in the second column of that page, about two-thirds of the way down, is your signature.

A. That looks like my writing.

Q. That is your signature?

A. That is my signature.

Q. Did you notice the other names on this sheet when you signed it? A. No, I didn't.

Q. Would you know who Oscar Steinborn is, being the sixth signature in the first column of the same page?

A. No, I don't.

Q. You don't know Oscar Steinborn? A. No, I don't.

* * * * * * *

[fol. 5512] Q. Did you sometimes have to make repairs on your own time?

A. Well, I might have sometimes, but I can't recall any [fol 5513] one certain time.

Q. Do you know whether you were usually paid when you made repairs?

A. Well, if I didn't quite make my guarantee by having repairs, I got my guarantee, so I figured I was paid for it.

Q. If you were making your guarantee anyway—making more than your guarantee, as you sometimes did, didn't you? A. Oh, yes, most of the time I did.

Q. On those occasions when your had to make repairs, did you get paid piece rate prices for the time you spent making the repairs? A. No.

Q. Did you get paid anything for making the repairs?

A. That would just depend on whether it was really my fault or the fault of something else.

Q. What other cause might there have been for having to make a repair?

A. Well, if the notches were wrong, or if it was cut wrong, or something—you know—on that order.

Q. Who determined whether you got paid for making the repairs? A. Mr. Baty did at that time.

Q. Who brought you the repairs when you had to make them? A. The instructor brought them.

Q. Who handed you your weekly pay check?

A. It was handed to me by the thread girl or the instructor.

* * * * * *

[fol. 5514] By Miss Weyand:

Q. Did you have a special operation which you performed?

A. Yes, I did.

Q. What was it?

A. Setting collars.

Q. Did you sometimes do other work than setting collars, or, prior to July 15, 1939, did you just set collars?

A. I did other work, too.

Q. When would you do other work?

A. Well, when collars run out we would do other work.

Q. Who determined what other work you did when the collars ran out?

A. The instructor.

Q. You stated this morning that certain articles which contained accounts of strikes influenced you in forming the Donnelly Garment Workers' Union. Is that correct?

A. That is correct.

[fol. 5515] Q. And you also stated that a certain article which contained a statement by Mr. Reed about Mr. Dubinsky did not influence you?

A. No, I didn't.

Q. You didn't state that?

A. I didn't say it.

Q. You said you had read some articles containing speeches of Mr. Reed's about Mr. Dubinsky, didn't you?

A. Yes.

Q. And you say now they did or did not influence you?

A. They didn't influence me.

Q. They did not?

A. They did not.

Q. How do you explain that certain articles did influence you and certain other articles did not influence you?

A. Well, because those other articles, of the strike at the Gernes, Gordon, and Missouri plants—we didn't want to have any strikes up there where we were, and I signed to join our union to keep them out.

Q. How do you know that the articles which you read containing speeches by Mr. Reed about Mr. Dubinsky did not influence you?

A. Because I figured that was a quarrel or fuss, or whatever you want to call it, between Mr. Reed and Mr. Dubinsky that didn't concern us, because Mr. Reed didn't [fol. 5516] have anything to do with our factory.

Q. Can you remember back now and remember how you felt when you read each of the articles which you have discussed here?

A. Well, I don't know that I can— It's kind of hard to put it in words. You mean the writing in there on Mr. Dubinsky and Mr. Reed?

Q. Each of the articles, I have reference to; not distinguishing now about strikes and violence and the ones that contained the speeches. What is there to make you remember how you felt when you read those articles?

A. Do you want me to tell you?

Q. Yes.

A. I remember this: When that came up about Mr. Reed and Mr. Dubinsky, I figured if Mr. Reed and Mr. Dubinsky couldn't get along, why did Mr. Dubinsky want to get through our factory to get to him and take his spite out on us?

Q. Did that influence you at all, that way of thinking about it?

A. It didn't influence me, because we wanted a union of our own, but it did make me mad, that Mr. Dubinsky wanted to take his spite out on us to get at Mr. Reed.

Q. Did it influence you, that Mr Reed had said Mr. Dubinsky wanted to organize the plant solely because of political animus?

A. No.

[fol. 5517] Q. You said that made you mad, didn't you?

A. It made me mad that way, yes.

Q. That didn't have anything to do with your feeling about the union?

A. No.

Q. But it made you mad?

A. It made me mad. Lots of things made me mad that didn't have anything to do with the union.

Q. When you got mad about the other articles, about the strikes, how did that have anything to do with how you felt about the union?

A. Because they were referring to the factories, and our factory was one of the factories in Kansas City.

Q. Wasn't the idea you expressed, that the International Ladies' Garment Workers' Union was trying to organize the Donnelly Garment Company because of a feud between Mr. Reed and Mr. Dubinsky, something that affected the garment factory, too?

Mr. Reed: I object to that as an improper question. It has all been gone over and canvassed thoroughly. It is incompetent and immaterial.

Trial Examiner Batten: Do you understand the question, Miss Witness?

The Witness: I don't believe I got it.

Mr. Reed: I object to it as incompetent and immaterial [fol. 5518] and not proper cross-examination.

Trial Examiner Batten: Objection overruled.

Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Wasn't the idea you expressed, that the International Ladies' Garment Workers' Union was trying to organize the Donnelly Garment Company because of a feud between Mr. Reed and Mr. Dubinsky, something that affected the garment factory, too?").

Trial Examiner Batten: Did you say you didn't understand it?

Mr. Reed: I don't understand the question.

Trial Examiner Batten: Let's find out if the witness does.

The Witness: I don't quite get it, no.

Trial Examiner Batten: Will you restate the question, Miss Weyand.

By Miss Weyand:

Q. Wasn't the idea you expressed, that you understood from these articles that the International Ladies' Garment Workers' Union was trying to organize the Donnelly Garment Company to get even with Mr. Reed, a matter that had to do with your garment company?

A. Now, a matter of what to do with the garment company—

Trial Examiner Batten: I think you had better break [fol. 5519] your question up into two or three questions, Miss Weyand.

Miss Weyand: She expressed before that she thought violence—

Trial Examiner Batten: I realize that, but I don't believe the witness can follow a question of that kind and answer it for you. That is the reason why I think you should break the question up.

Miss Weyand: All right.

By Miss Weyand:

Q. You stated, did you not, that these articles about Mr. Reed's speeches led you to believe that the International Ladies' Garment Workers' Union was trying to organize your company to get even with Mr. Reed? Is that correct?

A. I did think on that point, all right. I wondered if that was why, because it did mention in the paper about him getting at Mr. Reed through the factory, or something like that.

Q. You got the idea from the paper that the union was trying to organize to get even with Mr. Reed; is that correct?

A. That's the way I took that particular piece in the writing in the paper.

Q. And that made you mad?

A. Yes, to think that he wanted to take his spite out on us to get at Mr. Reed.

Mr. Reed: I didn't hear the answer.

[fol. 5520] Trial Examiner Batten: Will you read it, please?

(Thereupon the last answer was read by the reporter, as follows:

"Yes, to think that he wanted to take his spite out on us to get at Mr. Reed.")

By Miss Weyand:

Q. You said the articles about the strikes and violence influenced you because that had something to do with the garment company you worked at; is that correct?

A. That is right.

Q. Didn't you think the statement that the International Ladies' Garment Workers' Union was trying to organize your company to get even with Mr. Reed also had something to do with the garment company you were working at?

Mr. Reed: I object to that as incompetent and immaterial and a mere attempt at argument and not proper cross-examination.

Trial Examiner Batten: Objection overruled.

Will you read the question to the witness?

(Thereupon the last question was read by the reporter.)

Mr. Reed. Now,—

Trial Examiner Batten: I have overruled your objection. Do you have another one, Senator?

Mr. Reed: All right.

Trial Examiner Batten: Do you understand the question, Mrs. Phillips?

[fol. 5521] The Witness: Yes, I understand the question. I was just trying to figure out how to answer it.

A. I thought if the I. L. G. W. U. wanted to organize us, why didn't they come at us the other way, instead of going through our factory to get at Mr. Reed; why didn't they have a different way of getting us?

[fol. 5522] Q. I believe you stated there were some meetings at which you did wear your uniform, is that correct?

A. Yes, there were some.

Q. Do you remember what meetings those were?

A. No, I don't remember just what meetings they were.

Q. Was that in the spring of 1937?

A. If I remember right, it was.

Q. Do you remember any meeting in which there were no chairs?

A. No, I don't remember that.

Q. Did you attend meetings of the Donnelly Garment Workers' Union quite regularly?

A. Well, no, I didn't.

Q. When was the next meeting after April 27 that you recall attending?

A. Well, I don't remember; it was during the summer.

Trial Examiner Batten: With five children you had other things to do, didn't you?

A. I sure did.

By Miss Weyand:

Q. Do you have any way of recalling what time of day the April 27 meeting was held?

A. Well, it was around five o'clock, five or 5:10, I forget.

Q. Do you know how you remember that?

A. Well, I remember that because I remember either the girl next to me speaking about it or me talking to her, saying, "Are you going to dress before we go or wait un-
[fol. 5523] til after the meeting," and we both made up our minds we would go, so we went so we could get a seat, or get up in front, I don't remember just which it was.

* * * * * *

By Mr. Langsdale:

Q. Mrs. Phillips, will you name all of those whom, in March and April 1937, you considered representatives of the management?

A. Well, I'll name as many as I can recall at that time; it would be Mr. Baty and Ella Mae Hyde, and Mrs. Reeves —I am not sure about Mrs. Reeves, but I think—

[fol. 5524] Q. (Interrupting) You aren't sure about what?

A. Mrs. Reeves. There is Mrs. Reed—

Q. (Interrupting) You mean you aren't sure Mrs. Reeves represented the management?

A. I think she did.

Q. Go ahead.

A. And—let's see. I said Mr. Baty and Ella Mae Hyde, didn't I?

Q. Yes.

A. Mr. Green—well, I don't remember. There are others, but I don't remember, because those ones were the—

Q. (Interrupting) Were there any others that you knew or ever came in contact with that you considered representing the management?

A. Mr. Baty.

Q. Mr. who?

A. Mr. Baty.

Q. Well, you have mentioned Mr. Baty already.

A. What you say were there any more?

Q. No, that you knew or came in contact with.

A. No, as far as I can recollect now, there weren't; I can't remember.

Q. So, when you answered questions by Mr. Ingraham and Mr. Lane to the effect that no one representing the management had done or said anything, you had in mind [fol. 5525] these people whom you have named, is that correct?

A. That is correct; but I said there could have been others.

Q. But do you know of any others?

A. I can't recall of any.

Q. Well, you didn't have any others in mind when you answered the questions of Mr. Ingraham and Mr. Lane, about representatives of the management, did you?

A. Well, when he spoke those names, I remembered them being there, and remembered them being the representatives of the factory, but now I can't remember only just those.

Q. Well, let's see, then; you understood Mr. Ingraham, when he named those whom he did name. Was there anyone else in March and April whom you considered representatives of the management?

A. I don't remember any others.

Q. At the meeting of March 18, when there was an address by Mrs. Reed, was there a letter read?

A. I don't remember of any letter being read.

Q. Did you hear any letter read?

A. I don't remember it.

Q. Did Mrs. Reed request that someone read a letter that had been sent to the Donnelly Garment Company by the International Ladies' Garment Workers' Union?

A. I don't remember that.

Q. Now, let me understand you. You don't remember, [fol. 5526] or you say that no such letter was read?

A. As far as I know there was no such letter read, but I just don't remember whether it was or not, because I don't remember anything like that.

Q. Will you examine this signature, and tell the Examiner whether or not that is your signature?

A. No, that is not my signature.

Q. Is there another Lydia Phillips there except you?

A. Not that I know of.

Q. And you say that is not your signature?

A. Well, if I had signed anything like that I ought to remember it.

Q. I am not asking you whether you ever signed anything or not. I am asking you if that is your signature.

A. It don't look like it.

Q. You say it is not?

A. Well, if I ever signed it, I don't remember signing it.

Trial Examiner Batten: Well, look at your signature: Can you tell whether you wrote it or not?

Mr. Langsdale: I am not asking her to read what is up there, I am asking her if that is her signature.

Trial Examiner Batten: Well, the question is, is that your signature?

A. I don't believe it is.

Mr. Langsdale: Will you hand me the other signature [fol. 5527] of the—

Mr. Reed: (Interrupting) Now, I submit that a witness who is asked whether they attached their name to a document, or not, is entitled to see the document for the purpose of helping them to identify their signature. I have signed my name so many different times, and so many different ways, because I can't write very well, that frequently I can't tell by looking at the signature alone whether it was mine or somebody had imitated it; and I submit, as a matter

of fairness the witness should now be allowed to see the documents which are handed to her.

Trial Examiner Batten: Well, I don't think so, for the purpose of identifying a signature, Senator, at least preliminary.

By Mr. Langsdale:

Q. You identified this signature on the petition that you signed on March 2, 1935, as yours, did you not?

A. Yes, I did.

Q. Now, look at this signature, and see then if that helps you identify this signature that I am now showing you as yours.

A. Well, that don't—I wouldn't say whether I signed that or not, whether that was my signature or not, because I— it don't look like it.

Q. You say it is not?

A. I won't say it is not, but I don't know, but it don't look like it. I could tell if I could read what I signed.

[fol. 5528] Q. You mean that you can't identify your signature without seeing what your signature is appended to?

A. Oh, I can sometimes, but that don't look like my signature.

Q. You said that you didn't want to join the I. L. G. W. U. because the minimum that they had announced was less than the minimum you were already getting. What minimum had the I. L. G. W. U. announced for the Donnelly Garment Company?

A. Well, I read in one piece where they said that $13.00 was the minimum.

Q. Where did you read that?

Mr. Reed: In what company? Now, the sentence was confusing. Let's have the preceding question read.

Trial Examiner Batten: Will you read the question and the answer?

(Thereupon the preceding question was read by the reporter as follows:

"Q. You said that you didn't want to join the I. L. G. W. U. because the minimum that they had announced was less than the minimum you were already getting. What

minimum had the I. L. G. W. U. announced for the Donnelly Garment Company?

"A. Well, I read in one piece where they said that $13.00 was the minimum.")

Mr. Reed: Nobody claims they announced the minimum for the Donnelly Garment Company.

[fol. 5529] Trial Examiner Batten: The question was, what minimum had been announced for the Donnelly Garment Company.

Mr. Langsdale: By the I. L. G. W. U.

Mr. Reed: But he implies by that statement that this minimum was less than the Donnelly Garment Company was getting, and he adds this to it; and I object to it as a double barreled question.

Trial Examiner Batten: The question is, what minimum was announced for the Donnelly Garment Company by the I. L. G. W. U.

Mr. Reed: That assumes—

Trial Examiner Batten: (Interrupting) It doesn't assume anything. My question is pure and simple.

Mr. Reed: That question assumes one had been announced, and there is no evidence one had been announced for the Donnelly Garment Company, and I object to it.

Mr. Langsdale: I understood this witness to say she didn't want to join the I. L. G. W. U. because the minimum which the I. L. G. W. U. had announced for the Donnelly Garment Company in its campaign was less than what they already were getting.

Mr. Langsdale: Did you say that or not?

A. That was one of the things.

Mr. Reed: I object to that because the witness didn't say—

[fol. 5530] Trial Examiner Batten: (Interrupting) The witness just said that was one of the things.

Mr. Langsdale: She said it again.

By Mr. Langsdale:

Q. Now, when did you understand the I. L. G. W. U. had announced any minimum for the Donnelly Garment Company?

A. I didn't mean it, that the $13 was announced for the Donnelly Garment Company; I read that in the paper where it was the minimum. I understood what the I. L. G. W. U. would pay as a minimum to organize those three plants down there; now, that is the way I remember reading it.

Q. Where did you read that?

A. Well, if I remember right, it was in the Kansas City Star, or some piece in the paper.

Q. Did you read it in any of those articles that have been shown you by Mr. Ingraham and Mr. Lane?

A. I read something at that time, and I don't know whether—but I remember that, that was in my mind thoroughly at that time, that that was one of the things, why I didn't want the I. L. G. W. U. in there as a whole.

Q. Then you didn't mean to say that you had understood that the I. L. G. W. U. had announced a minimum for the Donnelly Garment Company?

Mr. Reed: I submit the witness has explained that and fully answered it.

[fol. 5531] Trial Examiner Batten: Please read the question.

(Thereupon the last question was read by the reporter, as follows:

"Q. Then you didn't mean to say that you had understood that the I. L. G. W. U. had announced a minimum for the Donnelly Garment Company?")

Trial Examiner Batten: You may answer.

A. I didn't read it in that way, but I figured if they organized us that that is all the minimum we would get if that is all the minimum they were going to give in the other factories.

By Mr. Langsdale:

Q. Now, this article on February 26, did you read there what the I. L. G. W. U. announced as the minimum for workers in silk dresses?

A. I don't remember reading that—I read that in one of those other articles, but I didn't read that then, I don't remember reading it then.

Q. Did they make any silk dresses down at the Donnelly Garment Company during that period?

A. I don't remember whether I did or not, at that period.

Q. Well, did anybody, to your knowledge?

A. I don't know whether you call it silks or not, but I guess you would.

Q. Speak a little louder; will you read her answer?

A. I don't know whether you call them silks or not, [fol. 5532] but I guess you would.

Q. Well, did you read in that article that the I. L. G. W. U. had announced that the minimum was $22.50 a week for silk dresses? A. I didn't read that then.

Q. What did you say?

A. I didn't read that at that time.

Q. Well, have you read it since? A. I read it since.

Q. Didn't you tell Mr. Ingraham you had read this article when it came out? A. I don't believe I did.

Q. Now, do you know what article you are referring to when you say that the minimum was less than the Donnelly Garment Company was getting?

A. I didn't read any place where they said it was less, but in the writing it didn't say less than the Donnelly Garment Company, but I knew it was less.

Q. Do you know who called a meeting on March 18?

A. No, I don't.

Q. Don't you know that it was Rose Todd and Hobart Atherton?

A. I knew it was Rose Todd that was the leader of that meeting.

Q. Let me show you this document which precedes the [fol. 5533] signature that I showed you of Lydia Phillips which appears in intervener's offer of proof, and is designated as 1-quadruple R, and ask you to read it and see if you remember signing it.

Mr. Reed: Is that the same paper shown the witness before?

Mr. Langsdale: Yes.

Mr. Reed: You didn't show it to the witness before?

Mr. Langsdale: I showed her her signature.

Mr. Reed: Yes.

By Mr. Langsdale:

Q. Do you now remember that you did sign that document?

A. Well, I remember something of this sort, but I still can't remember just exactly when the time was, but it could have been, because something like that I could have signed.

Q. Well, what do you now say about—just a moment. Let me state—

Mr. Reed: (Interrupting) The witness started to say something.

Trial Examiner Batten: Had you finished, Mrs. Phillips?

Mr. Langsdale: I want to identify these documents as accurately as I can, and then she can say whatever she wants to.

Mr. Reed: She was trying to answer the question.

Trial Examiner Batten: Just a moment, and we will have the answer thus far read, and we will see whether [fol. 5534] she finished it or not.

Will you read the answer?

(Thereupon the last answer was read by the reporter, as follows:

"A. Well, I remember something of this sort, but I still can't remember just exactly when the time was, but it could have been because something like that I could have signed.")

Mr. Langsdale: Now, let me state for the purpose of the record—

Trial Examiner Batten: (Interrupting) Well, had you finished?

A. Oh, what I started to say didn't amount to anything.

Trial Examiner Batten: Well, it ends there, "I could have signed." Had you finished your answer?

A. Yes. I could have signed it; I finished it.

Mr. Langsdale: The document which I have just shown the witness is one of the offers of proof of the intervener and appears at pages 3484, 3485 and 3486 of the Court of Appeals record in this case.

By Mr. Langsdale:

Q. Now, does reading this document refresh your memory as to some of the things that happened at that March 18 meeting? Let me ask you, you stated in answer to Mr. Ingraham's question that you didn't know why Mrs. Reed happened to come to the meeting. In this document, which has what purports to be your signature on it: [fol. 5535] "Mrs. Neil Donnelly Reed, came after the meeting had been in progress for some time, as hereinafter stated." Do you remember that?

A. Yes, I remember that.

Q. Now, do you now remember that the meeting had been called by Rose Todd, Hobart Atherton and some others? A. I remember Rose Todd being there.

Q. And Hobart Atherton?

A. I can't remember Hobart Atherton.

Q. Well, you say you didn't read this, or know it, when you signed this document?

A. If I signed it, I read it, because I never sign anything unless I read it.

Q. Well, it does say that Rose Todd and Hobart Atherton and some others called a meeting, doesn't it?

A. It says that in there.

Q. And then as to whether you knew why Mrs. Reed came to the meeting, let's see if this refreshes your memory: "Two or three employees, at the suggestion of the chairman, left the room to go after Mrs. Reed, and in a little while, Mrs. Reed came into the meeting." Is that true?

A. Well, I can't remember who went after her.

Q. Well, you do remember that someone went after her? A. I remember she was there.

Q. Do you remember that someone went after her? [fol. 5536] A. I don't remember that.

Q. Well, do you remember signing this statement that someone went after her?

A. I can't remember that far back. If I signed that, I don't remember when it was passed around or where or how.

Q. Do you know where you signed it or at whose request? A. No, I don't.

Q. Did you ever go to the offices of a Mr. Tyler and Mr. Lane, and sign any documents?

A. I don't remember.

Mr. Lane: Now, if the Examiner pleases, when I started to inquire the other day with respect to one of the offers of proof, as to when and where it was signed, and so forth, I was cut off because Your Honor said that that, in your opinion, was not material.

Mr. Langsdale: I am not offering it as to materiality, but simply to try to refresh this witness's memory.

Trial Examiner Batten: Well, I assume that the present examination is merely a matter of identification of the signature, as I understand it.

By Mr. Langsdale:

Q. Let's see if this is your memory about a letter having been read at the meeting.

Mr. Ingraham: I want to call attention in the record it is now 5:07.

Mr. Langsdale: Let me ask this one question, and I [fol. 5537] think I am through.

Mr. Ingraham: Go ahead, if you will finish with the witness.

Mr. Langsdale: I want to ask one more question, and then I am perfectly willing to quit.

Trial Examiner Batten: I realize it is after 5, but my only purpose was if you can dispose of this lady, who has five children, and also works—

Mr. Langsdale: (Interrupting) I think after this question I will be through. I had some more questions, but—

Trial Examiner Batten: (Interrupting) I prefer she don't have to come back here in the morning.

By Mr. Langsdale:

Q. Well, you are working at the plant, aren't you?

A. Yes.

Q. And you are either going to the plant or coming back here in the morning.

Trial Examiner Batten: It doesn't make any difference whether she comes here or goes to the plant. The important thing is to go to the plant. Respondent has made a showing heretofore that they are doing defense work, and if they are doing defense work, and if we can dispose of this lady tonight, there is just no reason for her to come back here in the morning, Mr. Langsdale.

Mr. Langsdale: It is all right with me to stay here [fol. 5538] until we dispose of her. I want to look at my notes, but I think this is the last question.

Trial Examiner Batten: If it is a matter of a question or two, we will continue with the witness.

By Mr. Langsdale:

Q. Let's see; to refresh your recollection, "Two or three employees, at the suggestion of the chairman, left the room to go after Mrs. Reed, and in a little while Mrs. Reed came into the meeting. She had someone to read to the meeting a letter that had been received from Meyer Perlstein of the International Ladies' Garment Workers' Union." Does that refresh your memory on that point?

A. I don't remember that; I don't remember that letter being read.

Q. And you don't remember Mrs. Reed having someone read it? A. No, I don't remember that.

* * * * * * *

[fol. 5545] Louise Garrett, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Will you please state your name?

A. Louise Garrett.

Q. Where do you live, Mrs. Garrett?

A. 4421 Woodland.

Q. Are you employed? A. Yes.

Q. Where? A. Donnelly Garment Company.

Q. How long have you been employed at the Donnelly Garment Company? A. Since April, 1936.

Q. In what capacity are you employed?

A. As an operator.

Q. Do you do any particular kind of sewing?

A. Pockets is what I usually do.—

Q. Are they made on a special machine?

A. No, a single needle.

* * * * * * *

By Mr. Ingraham:

Q. Were you employed at the company in the spring [fol. 5546] of 1937? A. I was.

Q. Do you recall strikes at the Gernes, Gordon, and Missouri plants, during the spring of that year?

A. Yes.

Q. Did you read in the paper about the strikes?

A. Yes.

Q. I will hand you respondent's exhibit 16, which is the front page of the Kansas City Times for March 18, 1937, and it contains pictures at the foot of the page; and I will ask you if you recall seeing those pictures there in the paper? A. Yes, I remember them.

Q. I will hand you respondent's exhibits 18 through 38, and ask you if you will look at those exhibits, and state whether or not you recall reading the articles that refer to the strikes.

* * * * * * *

A. I remember reading No. 18; I do remember reading No. 19; I remember reading No. 20; also 21; I read 22; I read 23; I remember 24; I remember 25; I remember 26; I remember 27; I remember 28; I remember 29; I remember 30; I don't remember reading 31; 32, I remember; and I remember 33; and I remember 34; and I remember 35; I remember 36, and I remember 37; I remember reading 38.

[fol. 5547] By Mr. Ingraham:

Q. State what effect, if any, the reading of the articles that referred to violence at the Gernes, Gordon, and Missouri plants had upon you.

A. It made me very nervous and uneasy, I was afraid to go to and from work, really.

Q. Did you personally see any violence at the Missouri, Gernes and Gordon plants? A. No, I didn't.

Q. Were these articles generally discussed by the employees of the Donnelly plant? A. Yes.

Q. What effect, if any, so far as you could observe, did those articles have on other employees at the Donnelly plant?

A. As far as I could see, everyone resented it, and felt about the same way I did, afraid and uneasy.

Q. Did you hear that threats were made to use the same sort of violence against the Donnelly employees?

A. I heard that.

Q. Are you a member of the Donnelly Garment Workers' Union? A. Yes, I am.

Q. Were you one of the employees that joined the union when it was formed? A. Yes.

Q. Do you recall about when it was that the Donnelly [fol. 5548] Garment Workers' Union was formed?

A. Well, it was about the same time the strike was going on over there, in April, I believe.

Q. Do you recall if it was about April 27?

A. I think so.

Q. Do you recall where the meeting was held at which the Donnelly Garment Workers' Union was formed, what part of the building? A. On the second floor.

Q. Do you recall what time of day that meeting was held?

A. I don't remember exactly what time, but it was after I finished my work, but I don't remember exactly what time the meeting was held—that we started the meeting, rather.

Q. Did Mrs. Reed, Mr. Baty, Mrs. Reeves, Mr. Green, Miss Spilsbury, Mr. Keyes, Mrs. Keyes, Mr. Bachofer or Ella Mae Hyde discuss the holding of this meeting with you?

A. They didn't.

Q. Did the instructor in the section in which you worked discuss the holding of the meeting with you?

A. No, she didn't.

Q. Did the thread girl discuss the holding of the meeting with you? A. No.

Q. Did anyone that you thought represented the management discuss the holding of this meeting with you?

[fol. 5549] A. No, they didn't.

Q. Did you believe that Rose Todd had authority to speak for the management with reference to labor matters?

A. I didn't believe that, no.

Q. Did you consider Rose Todd a boss? A. No.

Q. Did you consider instructors bosses?

A. No, I didn't.

Q. Did you consider thread girls as bosses? A. No.

Q. Did any of the people that I have named suggest or request that you attend that meeting?

A. No, they didn't.

Q. Did any of the people that I have named suggest or request that you vote in favor of forming the Donnelly Garment Workers' Union?

A. No, they didn't.

Q. Did you vote in favor of the forming of the Donnelly Garment Workers' Union? A. Yes, I did.

Q. Why did you vote in favor of forming the Donnelly Garment Workers' Union?

A. Because I thought it was better for us, the employees, and because I felt safer if we had a union of our own.

Q. I believe you stated that you read respondent's ex-

[fol. 5550] hibit 35, which was an article in the Journal-Post with the heading, "Donnelly Worker will be sent to Union Convention." A. Yes, I read that.

* * * * * * *

By Mr. Ingraham:

Q. Did that influence you in any way in voting in favor of forming the Donnelly Garment Workers' Union?

A. Well, it made me sure that I wanted to, more than before.

Q. State whether or not you wanted Sylvia Hull or the International Ladies' Garment Workers' Union to represent you. A. No, I didn't.

Q. State whether or not you considered this meeting where the Donnelly Garment Workers' Union was formed a Loyalty League meeting.

A. No, I thought it had nothing to do with the Loyalty League.

Q. Did anybody tell you that that was a Loyalty League meeting? A. No.

Q. Do you recall whether or not Rose Todd presided at the meeting? A. Where our union was formed?

Q. Yes. A. Yes, she did.

Q. Did the fact that Rose Todd presided at the meeting [fol 5551] or took any part in the meeting lead you to believe that it was a Loyalty League meeting? A. No.

Q. Did you see Mrs. Reed, Mr. Baty, Mrs. Reeves, Mr. Green, Mr. Keyes, Mrs. Keyes, Mr. Bachofer or Ella Mae Hyde at that meeting? A. No, I didn't.

* * * * * * *

By Mr. Ingraham:

Q. Did you see Miss Spilsbury at the meeting.

A. No.

Q. Did you see anybody at that meeting that you thought represented the management? A. No, I didn't.

Q. Did you consider instructors or thread girls supervisors or bosses? A. No, I didn't.

Q. Was there any pressure or coercion of any kind brought to bear by anybody on you to force you to join the Donnelly Garment Workers' Union?

A. No, I did it because I wanted to.

Q. Did you do it of your own free will?

A. Yes, I did.

[fol. 5552] Q. I believe you stated that you recall seeing the pictures that are in the Kansas City Times March 18, 1937, which is respondent's exhibit 16.

A. Yes, I remembered them.

Q. I believe you stated that you read the article that appeared in the Kansas City Star of March 17, which is respondent's exhibit 27; the article is entitled: "Sitters Block a Door."

A. Yes, I read that.

Q. Now, do you recall on or about that time, March 17 or 18, whether or not the employees held a meeting?

A. Yes; I couldn't say it was just at that time, I don't remember the dates, but it was around that time that that was happening.

Q. And the strikes had started at these other plants?

A. Yes.

Q. Do you recall why the employees held the meeting?

A. Well, we felt that we wanted to do something, and we didn't know exactly what we wanted to do, and we had a meeting to—different people expressed their feelings about it; I don't remember exactly what was said, or anything like that, but that was the reason.

Q. Will you state whether or not there was a discussion of the violence at these other strikes?

A. That was the main discussion at that meeting.

[fol. 5853] Q. Was anything said about the employees taking action to protect themselves?

A. We wanted to, but we didn't know exactly how to go about it, but we talked about it.

Q. Now, do you recall where that meeting was held?

A. On the second floor.

Q. Do you recall the time of day?

A. No, not exactly. It was after I finished work, and I was working then—I got off at 4:30, and it was after I finished work, but I went down before I dressed.

Q. In any event, it was after you had finished your work for the day?

A. After I had finished my work for the day, yes.

Trial Examiner Batten: You mean, then, you went down in your uniform?

A. I went down in my uniform so I could get a better seat. Some of the girls were getting off earlier than I was at that time.

. . . . . .

By Mr. Ingraham:

Q. Did Mrs. Reed, Mr. Baty, Mr. Green, Mrs. Reeves, Miss Spilsbury, Mr. Bachofer, Mr. or Mrs. Keyes, or Ella Mae Hyde discuss with you the holding of that meeting?

A. No.

Q. Did your instructor discuss the holding of that meet-
[fol. 5554] ing with you? A. No, she didn't.

Q. Did the thread girl discuss the holding of the meeting with you? A. No.

Q. Do you recall how you happened to go to the meeting?

A. I don't remember. I don't remember who told me there was a meeting or how I happened to go, but, however, I knew that there was a meeting.

Q. Do you recall whether or not Mrs. Reed was called down to that meeting?

A. That is the first meeting that we had while this violence was going on?

Q. Yes.

A. Yes, someone went after Mrs. Reed; I don't know who it was.

Q. Do you recall Mrs. Reed making a talk?

A. Yes, she did.

Q. Did Mrs. Reed state that the plant would be closed if it was unionized?

A. I'm sure she didn't say that.

Q. Did Mrs. Reed state that she would not let Dubinsky tell her how to run her business?

A. I don't remember her saying that.

Q. Do you recall anything that Mrs. Reed said with reference to the rights employees had to join or not join a
[fol. 5555] labor organization?

A. She said something like that, about we had a right to do as we pleased, but I don't remember the words that she said.

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By Mr. Ingraham:

Q. I will hand you respondent's exhibit 12, and ask you if you will read that exhibit.

* * * * * * *

A. I remember her speech that she made that day.

By Mr. Ingraham:

Q. Do you recall Mrs. Reed stating, "If you want to belong, that is your own business and it is up to you to decide."

A. I remember her saying that.

Q. Do you recall her saying: "I will say that neither Dubinsky nor any other Buttinsky is going to intimidate me or the company into forcing you to join the International against your will."

A. I remember that.

Q. Do you recall Mrs. Reed stating: "We are trying to make arrangements with the street car company for its buses to go to certain points and to pick you people up and [fol. 5556] bring you to the plant. We will let you know about this as soon as arrangements can be made."

Mr. Langsdale: Just a minute; before she answers I wish to object to this method of examination, showing the witness the purported transcript of what Mrs. Reed said, and having her read it over, and then taking the purported transcript back to his own chair and asking her if the things she just read in that transcript were true and were said. It is leading and suggestive, and an improper method of examination of his own witness.

Trial Examiner Batten: Do you recall the question, Mrs. Garrett?

Mr. Ingraham: Will you read the question?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Q. Do you recall Mrs. Reed stating: "We are trying to make arrangements with the street car company for its buses to go to certain points and to pick you people up and bring you to the plant. We will let you know about this as soon as arrangements can be made.")

A. Yes, I remember that.

By Mr. Ingraham:

Q. Now, is this exhibit, respondent's exhibit 12, a correct transcript of what Mrs. Reed said, so far as you can remember?

. . . . . .

[fol. 5557] A. As far as I can remember, yes.

By Mr. Ingraham:

Q. Did Mrs. Reed read any letter at that meeting?

A. I don't recall it.

Q. I will hand you respondent's exhibit 41 and ask you if you recall this circular being distributed by the International Ladies' Garment Workers' Union girls in front of the plant? Will you please read it?

A. I remember reading something to this effect, I don't know just whether it was handed to me outside of the plant or some girl gave it to me the next day, or just how, but I read something like that.

[fol. 5558] Q. That was in the form of a circular like this?

A. I am sure that it was.

Q. Did you always take the circulars that the International girls handed out?

A. I always have when they handed me one as I went out.

Q. Do you recall whether anybody read this circular at this meeting on March 18?

A. No, I never heard anyone read it.

Q. Did you hear any letter read?

A. No.

Q. Did the employees take any kind of action at that meeting of March 18, with respect to getting protection or doing anything about protecting themselves?

A. Well, it seems to me we appointed a committee or something, to—it was discussed at the meeting, I don't just exactly remember what we did do.

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[fol. 5559] By Mr. Ingraham:

Q. Do you recall whether a committee was designated to obtain legal advice?

* * * * * * *

[fol. 5560] A. I can't say for sure, but it seems to me that there was; we had discussed it, I do know that.

By Mr. Ingraham:

Q. Mrs. Garrett, was there any meeting held between this meeting of March 18 and the meeting of April 27 at which the Donnelly Garment Workers' Union was formed?

A. Yes, there was.

Q. Do you remember about when that meeting was held?

A. Oh, I think it was along about the first of March, or something like that.

Q. Do you mean the first of April?

[fol. 5561] A. The first of April, I mean the last of March or the first of April.

Q. Did Mrs. Reed, Mr. Baty, Mr. Green, Miss Spilsbury, Mr. and Mrs. Keyes, Mr. Bachofer, or Ella Mae Hyde discuss the holding of that meeting with you?

A. No, they didn't.

Q. Did any instructor or thread girl discuss the holding of that meeting with you?

A. No.

Q. Did any of these people I have just named suggest, or request that you attend the meeting?

A. No.

Q. Did you go to that meeting of your own free will?

A. Yes, I did.

Q. Do you recall where the meeting was held?

A. On the second floor.

Q. And do you recall what time of day?

A. Well, it was after my working hours, and after the first meeting I always dressed before I went down, so I was in my street clothes at that meeting.

Q. Now, do you recall what was done at that meeting?

A. Well, we discussed money for a retaining fee for an attorney, and decided how much each would give.

Q. Do you recall how much it was decided each would give?

A. 50¢ each.

[fol. 5562] Q. Did you give 50¢ at that meeting?

A. Not that night.

Q. When did you give your 50¢?

A. The next day.

Q. Did you consider this meeting a Loyalty League meeting?

A. No, it was not.

Q. Did anybody discuss with you the fact that this was a Loyalty League meeting?

A. No, I never heard that.

Q. Did you make your contribution of 50¢ to the Loyalty League?

A. No, I gave it to some girl in the section, I have forgotten who she was now.

Q. Well, did you intend that the 50¢ be used for any Loyalty League purpose?

A. No, I didn't.

Q. Did any of the people I have named request you to make a contribution of 50¢?

A. No, they didn't.

Q. Did you do that of your own free will?

A. Yes, I did.

Q. Did you feel that you would be penalized by the company if you did not attend that meeting?

A. Well, I didn't stop to think about being penalized by the company, I thought it was for my own benefit to [fol. 5563] attend it, so I attended it.

Q. Did you feel that you would be penalized by the company if you did not give the 50¢?

A. No.

Q. Have you felt that if you did not attend any meeting that you have testified about, that you would be penalized by the company?

A. No, I didn't.

Q. You attended the meeting of your own free will?

A. Always.

Q. Are you a member of the Loyalty League?

A. Yes.

Q. Do you recall when you joined the Loyalty League?

A. Shortly after I went to work there.

Q. Did you feel that you would be penalized by the company if you did not join the Loyalty League?

A. No, I didn't.

Q. Did you join the Loyalty League of your own free will?

A. Yes.

Q. Do you recall whether or not you paid any dues in the Loyalty League?

A. I never did.

Q. Did you authorize the Loyalty League to represent you in any labor matters?

A. No.

[fol. 5564] Q. Did you ever hear of the Loyalt League dealing with the company in regard to terms and conditions of labor?

A. I never did.

Q. Did you ever understand that the Loyalty League sponsored the Donnelly Garment Workers' Union?

A. No.

[fol. 5565] Q. Do you recall any meeting of the Loyalty League that immediately preceded or immediately followed a meeting of the Donnelly Garment Workers' Union?

A. No.

Q. Do you recall at any Donnelly Garment Workers' meeting discussing raising money for the Loyalty League?

A. No.

Q. Do you recall of any business of the Loyalty League ever being discussed at a Donnelly Garment Workers' meeting?

A. No.

Q. Did the fact that Rose Todd was president of the Loyalty League at the time that the Donnelly Garment Workers' Union was formed lead you to believe that the Loyalty League was promoting the Donnelly Garment Workers' Union?

A. No, it didn't.

Q. What activities did the Loyalty League engage in?

A. Well, social affairs, and things like that, as far as I know. That's all I ever knew of them doing.

Q. What do you mean by "social affairs"?

A. Such as picnics, dances, carnivals, and things like that.

Q. Was any pressure or coercion brought to bear on you by the Loyalty League or anyone representing it to cause you to join the Donnelly Garment Workers' Union?

A. No.

[fol. 5566] Q. Was any pressure of any kind ever brought to bear on you by the Loyalty League or anyone representing the Loyalty League to cause you not to join the I. L. G. W. U.?

A. No.

Q. I will hand you respondent's exhibit No. 6 and ask you to read this exhibit, which is an article that appeared in the Kansas City Times of February 26, 1937.

* * * * * *

Q. Do you recall reading that article?

A. I remember reading it.

Q. Do you recall any part of the article that stated, "The union claims only 25 members among the Donnelly workers but officials said hundreds of others are related to union members. 'Within a year we will have it completely organized,' Perlstein said. 'As soon as we have enough members, we will call a strike.' "?

A. I remember reading that.

Q. What did you think about that statement with reference to calling a strike?

A. Well, I didn't like the idea of the strike and I didn't think we would ever strike.

Q. Did you want to strike?

A. I wouldn't, no.

Q. Did you want the International to call a strike?

[fol. 5567] A. No, I didn't.

Q. Why didn't you?

A. Well, just because there was always violence at all of these strikes, and I didn't care for that, and then, I didn't—I was afraid, in other words, that if they came and called a strike we would have the same violence they had had at other places.

Q. (Reading) "He also stated, 'This will be in addition to carrying our side to the consumers.' "

Did you want that done?

A. No.

Q. What did you think he meant by that threat?

A. Well, I didn't know exactly.

Q. State whether or not you thought that Mr. Perlstein meant to cause the Donnelly products to be boycotted when he stated, "Part of the union's campaign against the Donnelly Garment Workers' Union will be to send six women to cities and towns where its garments are sold".

A. What did I think of that?

Q. Did you consider that was a boycott, the threat of a boycott?

A. That's what I would call it.

By Trial Examiner Batten:

Q. What is a boycott?

A. Well, it's where you go and tell someone else that you don't like what someone else is doing, I think, and ask [fol. 5568] them not to patronize them.

By Mr. Ingraham:

Q. Was that article generally discussed by the employees of the Donnelly plant?

A. Yes, it was.

Q. What effect, if any, did that article have on other employees, so far as you observed?

A. Well, they felt the same way I did about it, as far as I could observe. They didn't like it any better than I did.

Q. Do you recall a petition being circulated among the Donnelly employees a few days after that article appeared in the paper?

A. I don't remember right now.

Q. I will hand you L. L. G. W. U.'s exhibit No. 10 and ask you if you recall signing a petition that had the same language at the top of the page that appears on this exhibit, which appears in the Circuit Court of Appeals record at 5961.

A. Yes, I signed that.

Q. Do you recall whether or not you signed that on or about March 2, 1937?

A. It was before Mrs. Reed spoke to us that day.

Q. Do you recall whether it was on or about March 2?

A. Sometime along there.

Q. Who presented you with the petition?

A. There were two girls; one of them handed it to me. I [fol. 5569] don't know their last names. I know they were Mary and Inez, but I don't know their last names.

Q. Where were you when the petition was presented to you?

A. I was working.

Q. Did the girls say anything to you?

A. They asked me to read it and asked me if I would like to sign it.

Q. Did you want to sign it?

A. Yes, I did.

Q. And did you sign it of your own free will?

A. Yes.

Q. Did Mrs. Reed, Mr. Baty, Mrs. Reeves, Mr. Green, Miss Spilsbury, Mr. or Mrs. Keyes, Mr. Bachofer, or Ella Mae Hyde request you to sign this petition?

A. No one did, except the two girls asked me if I would like to.

Q. Did you feel you would be penalized if you did not sign the petition?

A. No.

Q. Did the petition express your feelings?

A. It did.

Q. Did you want Mrs. Reed to know your feelings?

A. I wanted her to, yes.

Q. Did any instructor or thread girl discuss with you in any way this petition?

A. No.

[fol. 5570] Q. Did you believe that this petition was being circulated by the Loyalty League?

A. No, I didn't.

Q. Did you hear anybody say that the petition was circulated by the Loyalty League?

A. No, I didn't.

Q. Did you understand or gain the impression in any way that this petition was circulated by the company?

A. No.

Q. Going back to the meetings that you have testified about, did you feel that because instructors or thread girls attended any of those meetings, that that meant that the company was sponsoring the meetings?

A. No, I didn't feel that way at all.

Q. Did you feel that because instructors or thread girls joined the Donnelly Garment Workers' Union, that meant that the company was sponsoring the Donnelly Garment Workers' Union?

A. No, I didn't.

Q. Did the attendance or presence of instructors, or thread girls at the meeting of April 27, where the Donnelly Garment Workers' Union was formed, cause you to feel any compulsion to join the Donnelly Garment Workers' Union?

A. No.

Q. Did the article which is contained in exhibit No. 6 [fol. 5571] and purported to quote Mr. Perlstein—did that

article have anything to do with your desire to sign the petition of March 2 which I just showed you?

A. Well, it really made me want to.

Q. I will hand you respondent's exhibit No. 7, which is an article which appeared in the Kansas City Journal-Post of March 6, 1937, and appears on page 4865 of the Circuit Court record, and ask you to please read that exhibit.

* * * * * *

By Mr. Ingraham:

Q. Do you recall ever reading that article?

A. Yes, I read it.

Q. Did the fact that Mr. Dubinsky said, "Mr. Reed said many harsh things about me during the recent political campaign." cause you to be influenced in any way against the I. L. G. W. U.?

A. No. I thought that was purely a difference between the two men.

Q. Did you hear Mr. Reed make any political speeches in the 1936 campaign?

A. I heard some of them, yes.

Q. Did you ever hear him say anything about Mr. [fol. 5572] Dubinsky in any of those speeches?

A. I don't recall it.

* * * * * *

By Mr. Ingraham:

Q. I will hand you Board's exhibit No. 27, which is an article that appeared in the Kansas City Times of May 11, 1937, and ask you if you will just glance at that and state whether or not you read that article.

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[fol. 5573] A. I read this article.

By Mr. Ingraham:

Q. Did anything that Senator Reed said with reference to Mr. Dubinsky or the I. L. G. W. U. influence you in any way against the I. L. G. W. U.?

A. No, it didn't.

Q. I want to direct your attention to the article that appeared in the paper, stating "Donnelly worker will be sent to union convention." That is respondent's exhibit No. 35. It appeared in the Journal-Post of April 22, 1937. Did you work the day following the 22d?

A. Yes, I did.
Q. What floor did you work on?
A. Seven.
Q. Was there a general discussion of that article among the employees?
A. There was. Some girls brought the article in to work with them.
Q. Did you know Sylvia Hull?
A. No. I never saw Sylvia Hull.
Q. Did you know Fern Sigler?
A. No.
Q. Did you go up on the eighth floor that morning?
A. No, I didn't.
Q. Did you go down to the sixth floor?
A. No.
[fol. 5574] Q. You didn't see either of those girls?
A. No, I didn't.
Q. Have you continued to remain a member of the Donnelly Garment Workers' Union of your own free will? A. Yes, I have.

Cross-Examination.

By Mr. Lane:
Q. Mrs. Garrett, what section were you working in in March and April of 1937?
A. I don't know the number of the section, but it was on the seventh floor. I don't remember the number.
Q. Do you remember who your instructor was?
A. Grace Gnotta.
Q. Was that a special section? A. No.
Q. What kind of work were you doing in that section at that time? A. Single-needle operations.
Q. Straight sewing? A. Yes.
Q. Do you remember approximately how long you worked in that section at that period?
A. How long I had worked?
[fol. 5575] Q. Yes.
A. At that time, I think about a year.
Q. Did you continue working in that section for some time after March and April, 1937?
A. About a year afterwards.

Q. Was Grace Gnotta your instructor during that whole two-year period? A. Yes, she was.

Q. Do you know who the thread girl was?

A. I had three different ones while I was in that section. Q. Who were they?

A. I don't remember their last names.

Q. Give me their first names.

A. Anna, Mary, and Edna.

Q. What did Grace Gnotta do as instructor of that section?

A. When we didn't understand how to make a certain garment, she showed us how to do it.

Q. Did she, so far as you know, ever hire anybody to work in that section, any operators? A. No.

Q. Did she ever fire any operators, so far as you know? A. No.

Q. Did you ever see her discipline any girls in that section? A. I can't say I ever did.

[fol. 5576] Q. Did you consider Grace Gnotta your boss or supervisor? A. No.

Q. What did these thread girls do?

A. Matched the thread with materials and gave us the right kind of thread.

Q. Did you consider any of those thread girls your boss or supervisor? A. No.

Q. Did you consider Grace Gnotta or any one of these thread girls was held out by the company as a representative of the management or spokesman for the management in connection with any labor matters?

A. No, I didn't consider them that at all.

Q. Did you know Rose Todd in March and April of 1937? A. I knew her by seeing her there.

Q. How long had you known her?

A. Since I had been working for the Donnelly Garment Company.

Q. And you started there in 1936, I believe? A. Yes.

Q. What had you observed Rose Todd doing?

A. Well, she would come into our section and get an old bundle that had been laid back for a long time and matched it up so that it could be completed.

Q. Was there anything else you saw her doing in your section?

[fol. 5577] A. Not in our section.

Q. Did you see her doing anything else at any other place in the plant?

A. No. I only saw her when she came into our section.

Q. Did Rose Todd ever say anything to you that indicated that she held herself out as being a supervisory employee or a superior employee? A. No, she didn't.

Q. Did anybody on the part of the management, or anybody else, ever say anything to you to indicate that Rose Todd was a supervisor? A. No.

Q. Did you know Hobart Atherton?

A. I knew him by seeing him around there.

Q. Did you know what his job was in March and April of 1937? A. No, I didn't.

Q. Was there anything he ever did to give you the impression that he was a supervisor of the company.

A. No.

Q. Did you know Sally Ormsby?

A. I knew her just by seeing her, at that time.

Q. Did you know what she did?

A. She was an operator.

Q. Do you know where she worked? A. No, I don't.

[fol. 5578] Q. Did you know Ethel Riegel in March and April of 1937? A. Only by seeing her.

Q. Do you know what she did?

A. She was an operator.

Q. Did you know Arch Lile? A. No, I didn't.

Q. Did you know Lena Faulconer? A. No.

Q. Did you know Eva Liebermann? A. Yes.

Q. What did she do? A. She was an operator.

Q. Did you know Mrs. Riggs, on the ninth floor?

A. No, I didn't.

Q. Did you know Lyle Jeter? A. Yes.

Q. What did he do? A. A mechanic.

Q. Did you know Carl Crawford? A. Yes.

Q. What was his job?

A. In the cutting department.

Q. Did you know Cordelia Taylor? A. No.

[fol. 5579] Q. Leona Moore? A. No.

Q. Did you know Ellen Nokes? A. No.

Q. Virginia White? A. No.

Q. Fred Brown? A. I knew him.

Q. Did you know what he did? A. No, I didn't.

Q. Did you know Mamie Riddle? A. I knew her.

Q. What did she do? A. An operator.
Q. Did you know Anna Richards? A. No.
Q. Marjorie Green? A. I knew her, but not well.
Q. Did you know where she worked?
A. In the office, I'm pretty sure.
Q. Did you know Jack McConaughey? A. Yes.
Q. Where did he work? A. In the mechanics' cage.
Q. Did you know Charlotte Casey? A. No.
[fol. 5580] Q. Hazel Saucke? A. Yes.
Q. What did she do? A. An operator.
Q. Did you know Anna Reese? A. Yes.
Q. What did she do? A. An operator.
Q. Was there anybody whom I have named or anybody who participated in any way in the meeting of April 27, at which the Donnelly Garment Workers' Union was formed, that you consider to be a supervisory employee?

Mr. Langsdale: Just a moment.

Will you read that question, please?

(Thereupon the last question was read by the reporter.)

Mr. Langsdale: I object to the question for the reason that it assumes she knew everyone who was there and what they did and what their ability was. That is not based upon those she knew, but the question says, "Was there anybody there that in any way had any authority?"

Mr. Reed: Let's have the question read again, please.

Trial Examiner Batten: Read the question again.

. . . . . .

[fol. 5581] Trial Examiner Batten: You may answer.
A. There was not.

. . . . . .

By Mr. Lane:
Q. Was there anybody who participated in that meeting that you considered to have a superior position over other employees?

Mr. Langsdale: Just a moment.

I object to the question for the reason that it is indefinite and uncertain as to what he means by "partici-

pated in that meeting." Does that mean, attended the meeting?

Mr. Lane: Either by speaking at the meeting or by attending the meeting.

Mr. Langsdale: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Mr. Langsdale: I object to the question for the same reason that I objected to the last question. It assumes this witness knew everybody who was there at that meeting and what their authority was.

Mr. Lane: Of course, the witness can only answer as to what her observation and knowledge was.

Mr. Langsdale: You didn't base it on her knowledge.

Mr. Lane: That was my question whether there was [fol. 5582] anybody she considered that. She can answer what she considered—

Trial Examiner Batten: I presume a question of that type, if it is answered, it is on the basis of what the witness may know.

Mr. Lane: I am inquiring as to this witness' knowledge or information.

Trial Examiner Batten: Of course, on cross-examination you may determine what her knowledge is of it—how extensive it is.

Mr. Lane: Now, will you read the question, please, Miss Reporter?

(Thereupon the last question was reread by the reporter, as follows:

"Was there anybody who participated in that meeting that you considered to have a superior position over other employees?")

Trial Examiner Batten: You may answer.

A. Well, I wouldn't say that they were superior. They probably drew more money, some of them, but I wouldn't say they were superior.

By Mr. Lane:

Q. Well, there were many operators who got more money than other operators, weren't there? A. Yes.

Q. You didn't consider the operators who got more [fol. 5583] money as having a superior position, as far as the company was concerned, than the other operators who got less money? A. No.

Q. You voted at that meeting in favor of forming the Donnelly Garment Workers' Union? A. I did.

Q. Did you at the time you cast that vote think you were doing so of your own free will? A. I did.

Q. Was that your voluntary choice at that time?

A. Yes, it was.

Q. Did you believe when you cast that vote that you were in any way being dominated, influenced, or coerced by the company in coming to that decision? A. I did not.

Q. Was it your feeling that you were doing what you were doing because you, as an employee, wanted to do that thing? A. Yes.

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[fol. 5584] By Mr. Lane:

Q. Can you state any instance or fact that you know of, anything said or done by any official of the company that led you to act one way or another at that meeting with regard to forming a union?

A. No.

Q. Had you, prior to that meeting of April 27th, given any thought, yourself, to the matter of forming an independent plant union?

A. Well, I had thought about it but I didn't know whether it was possible to be done or not.

Q. Had you discussed that with any other employees?

A. We had talked about it, several of us.

Q. Did you attend meetings of the Donnelly Garment Workers Union after its formation on April 27, 1937?

A. Did I attend meetings?

Q. Yes.

A. Yes.

Q. I will show you Board's exhibit 8-12 beginning at page 4406 of the Circuit Court of Appeals record and ask you to look briefly at the minutes of May the 11th, 1937, and state whether or not you attended that meeting?

* * * * * * *

By Mr. Lane:

Q. Did you attend that meeting?

[fol. 5585] A. I attended this meeting.

Mr. Reed: What is the date of that meeting?

Trial Examiner Batten: May 11th.

Mr. Lane: May 11th, 1937.

By Mr. Lane:

Q. I will ask you whether or not you would recall Rose Todd said substantially this at that meeting, "You realize now Mr. Tyler is representing the Donnelly Garment Workers' Union and he will have to be paid. I expect a good many of you are wondering what he is going to charge. I talked to him in some detail and I am sure you will feel that he is quite right in the answer he gave me. He doesn't know what his answer will be because it depends on how much trouble we cause him and how much work he will have to do for us. The union does have to be self-supporting in every detail. Being a thoroughly reliable group of employees we can take care of our own financial obligations."

Mr. Langsdale: Just a minute before she answers that question. I object to this method of examination, counsel having shown the witness the minutes of May the 11th and having her read them over and then going back to the counsel table and reading over those minutes and asking the witness after he has shown her what was done, whether or not that thing happened; it certainly is leading and suggestive to the nth degree.

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[fol. 5587] A. Yes, I remember her saying that.

By Mr. Lane:

Q. Did you personally believe that the Donnelly Garment Workers' Union should be self-supporting?

A. I certainly did.

Q. Was there, so far as you know, any financial contribution made by anybody to the Donnelly Garment Workers' Union other than by the dues of the members and the assessments of the members?

[fol. 5588] A. Not that I ever knew of.

Q. Was there ever a Donnelly Garment Workers' Union meeting at which you discussed the matter of raising funds for the Loyalty League?

A. No.

Q. Was there ever any time that you can recall when a meeting of the Donnelly Union was immediately preceded or immediately followed by a meeting of the Loyalty League?

A. No, there never was.

Q. Was there ever any occasion when Rose Todd said that a meeting of the Donnelly Garment Workers' Union was going to be two meetings, one of the union and another meeting of the Loyalty League?

A. No, she never said that.

Q. Would you look just briefly now at these minutes of May 25th, being Board's exhibit 8-21, appearing at page 4415 of the Circuit Court record and state whether or not you attended that meeting of May 25th?

Mr. Langsdale: Will you read that question, please?

(Thereupon the last question was read by the reporter.)

Mr. Langsdale: Now, I object to the question, he having handed to this witness certain purported minutes with the assumption they are genuine; she should be asked to read them herself and tell. There is a very decided dispute as to whether these are the correct minutes or the ones Miss Greenhaw reported; when he takes his own witness and [fol. 5589] hands her the minutes and says, "These are the minutes of that meeting you attended," I say that is leading and suggestive.

Trial Examiner Batten: But the question to the witness now is, did you attend this meeting.

Mr. Langsdale: Yes, those minutes of this meeting which they say are the correct minutes.

Trial Examiner Batten: You may look at them. Do you know, did you attend that meeting?

A. I think I did, as much as I have read of it; I remember it anyway.

By Mr. Lane:

Q. Well, read as much as you need to to refresh your recollection as to whether you attended it or not.

A. Yes, I remember I did attend this meeting.

Q. Where was that meeting held?

A. On the second floor.

Q. Were there any employees of the Donnelly Company at work during the time that meeting was held on the second floor?

Mr. Langsdale: I object to that question as immaterial. There isn't anything in the minutes even that have been shown her, or in the Elsie Greenhaw minutes that indicates the fact that there was anyone working on that floor. Of course, that is a misinterpretation of the minutes of Elsie Greenhaw, and also of the minutes that he has shown her.

Trial Examiner Batten: Well, the question to the witness is, was there anybody working on that floor at the [fol. 5590] time of the meeting; is that it?

Mr. Lane: That is correct.

Trial Examiner Batten: Well, she may answer.

A. There was not.

[fol. 5591] By Mr. Lane:

Q. Well, I will now show you the so-called Greenhaw minutes, being Board's exhibit 18-A, beginning on page 4709 of the Circuit Court of Appeals record and ask you to read that.

Mr. Langsdale: I object to the characterization of counsel of the minutes which tells the witness before she reads them that they are not genuine in his opinion.

Trial Examiner Batten: Of course, I think it would be better if the words "so-called" were left out.

Mr. Lane: All right, I will say the Greenhaw minutes, leave out the words "so-called".

Trial Examiner Batten: Let's proceed. Of course I don't suppose any counsels' characterizations of an ex-

hibit or the witnesses' testimony is evidence that would be binding upon anybody.

Mr. Lane: Well, isn't that the phrase that is used for identification of this instrument, the so-called Greenhaw minutes?

Trial Examiner Batten: Well, let's proceed.

Mr. Lane: Does "so-called" imply anything?

Trial Examiner Batten: Mr. Lane, I wasn't directing my remarks at you, I was directing my remarks at all counsel. You counsel can make any statement you want, and if you [fol. 5592] want to testify I will have you be sworn and come up here.

By Mr. Lane:

Q. Did you attend any meeting of the Donnelly Garment Workers' Union in May 1937 that convened at 3:30 or 3:45 in the afternoon?

A. I did not.

Q. Did you ever attend any meeting of the Donnelly Garment Workers' Union on May 25, 1937, at which Hobart Atherton said: "As Miss Todd has already told you we have only one debt of the Loyalty League. A good many of you seem to be under the impression we have accumulated quite a lot of bills as we have gone along, but we have only one." Did Hobart Atherton ever say that at a union meeting that you attended?

A. I couldn't have known just what was said there.

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By Mr. Lane:

Q. At the meeting of the Donnelly Garment Workers' Union which you said you have attended on May 25, 1937, was there any discussion by anybody about raising money for any purpose of the Loyalty League?

A. Oh, no, there never was.

[fol. 5593] Q. Did Hobart Atherton at that meeting say this: "As Miss Todd has already told you, we have only one debt of the Loyalty League. A good many of you seem to be under the impression we have accumulated quite a lot of bills as we have gone along, but we have only one."?

A. I don't remember him saying that.

Q. Did Rose Todd say at that meeting: "I want to tell you this is going to be two meetings, the first being a meeting of the Donnelly Garment Workers' Union and after that a meeting of the Loyalty League."?

A. No, she didn't say that.

* * * * * *

By Mr. Lane:

Q. I will ask you to state whether at the meeting of the Donnelly Garment Workers' Union on that date Hobart Atherton said this: "You all realize when this agitation first started, we didn't have any union started and it was up to some organization to take the initial step to protect our rights as employees of the Donnelly Garment Company. So the Loyalty League had a meeting of the representatives and were authorized by the representatives to retain legal counsel. We retained Mr. Tyler, as you all know. He came down here and talked to us. That debt, the bill of Mr. Tyler is the only debt the Loyalty League has which has not [fol. 5594] been paid and as Miss Todd told you, that is not pressing." Did Hobart Atherton ever say that at a Union meeting?

A. I never heard Hobart Atherton say that.

Q. Was there, at the union meeting of May 25th a motion made that the union meeting be adjourned and that a Loyalty League meeting be immediately opened?

A. No.

Q. Did you, in March or April of 1937, have any section club that you belonged to?

A. Yes, we did have.

Q. What was it called?

A. I don't remember the name of it; I belonged to the club in our section, I know.

Q. Did you have officers?

A. Yes, we did have.

Q. Did you pay any dues?

A. No.

Q. What did you do?

A. Oh, we would just go out to dinner and to a show sometimes.

Q. Was that club in existence when you began working there in 1936?

A. Yes, it was.

Q. Did it continue in existence after April, 1937?

A. Yes, I am sure it did.

[fol. 5595] Q. Was it still in existence in July 1939, as far as you know?

A. I don't know, I wasn't on that floor any more.

Q. Did you know Mrs. Tyhurst in April 1937?

A. Yes, I knew her.

Q. What did she do?

A. Well, I would call her an inspector, she would go through the sections and examine the work as it went through.

Q. Did you consider her a boss or a supervisor?

A. No.

Q. Did you know Mrs. Bogart?

A. No, I didn't know her.

Q. Did you know Mrs. Gray?

A. Yes, I knew her.

Q. What did she do?

A. She was a clerk in the store.

Q. How frequently were you in that store yourself?

A. Oh, just about every day.

Q. What did you see Mrs. Gray doing?

A. Waiting on the girls.

Q. Did you consider Mrs. Gray a supervisor of the company?

A. No.

Q. Or a boss over anybody?

A. No.

Q. Did you know Marvin Price?

[fol. 5596] A. Yes, I knew him.

Q. What did he do?

A. I don't know exactly, something mechanically, I think.

Q. Did you consider him a boss or a supervisor?

A. No.

Q. Did you know Ted Scoles?

A. No, I didn't know him.

Q. Did you consider any of the persons I have named that you say you knew, as persons who were held out by

the company as being representatives of the management in connection with labor matters?

A. No.

Q. Or entitled to speak for the management?

A. No.

Q. Did you know Miss Strickland?

A. Yes, I knew her.

Q. What was her job?

A. She worked in the patterns.

Q. Did you consider her a supervisor or a boss?

A. No.

Q. Did you belong to the Donnelly Garment Workers' Union from the time of its formation down to July 15, 1939, of your own volition and your own free will?

A. I did.

[fol. 5597] By Miss Weyand:

Q. Was Rose Todd wearing a uniform at the April 27th meeting?

A. No, she was not.

Q. Did you ever see Rose Todd wear a uniform?

A. No, I don't think so.

Q. Who asked you to join the Loyalty League?

A. Some girl in my section, I don't remember who she was.

Q. Whom did you consider a representative of the management?

A. I considered Mrs. Reed, Mrs. Reeves, Mr. Green, and Mr. Baty and Mrs. Hyde, that is all I can think of now.

Q. Those are the only persons you consider representatives of the management that you can think of at the present time?

A. At the present time, yes.

Q. Did you attend any meetings of the Loyalty League?

A. Yes, I have.

Q. Do you remember who presided at those meetings?

A. I believe Rose Todd did.

Q. Where were those meetings held?

A. I don't remember now where they were held.

Q. Were they in some vacant floor of the building in which the plant is located?

A. I don't remember that, I never went to but one or two meetings, and I don't remember.

Q. Was it in some other building?

A. No, it was in the building, our building.

[fol. 5598] Q. How long after you went to work was it before you joined the Loyalty League?

A. Oh, I couldn't say exactly; I imagine it was maybe a month or something like that.

Q. Do you know any officers of the Loyalty League other than Rose Todd?

A. Well, we had a representative in the section.

Q. Do you know who the representative in your section was?

A. I don't remember.

Q. Do you remember how the representative in your section was chosen?

A. Through votes by the girls in our section.

Q. Was it by passing a ballot around among the girls at their machines?

A. They would suggest — as they would pass it around each girl would suggest a representative that she thought she would like, and it was passed all around and each one would vote which one they preferred.

Q. That is, first they passed a paper around and each girl would write the name of the one she wanted to nominate, is that correct?

A. Yes.

Q. And the same paper went around, and you marked on it your vote, is that correct?

A. That's right.

[fol. 5599] Q. And that was while you were at your machines in your section; is that correct?

Mr. Reed: Just a moment. I couldn't hear the question.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. I don't remember whether we came back from lunch to do that or whether we were at our machines. I don't remember that.

By Miss Weyand:

Q. Did you have a representative from your section in the Donnelly Garment Workers' Union?

A. Do we have?

Q. Did you have prior to July 15, 1939?

A. Yes, we did have.

Q. How were those chosen?

A. Through ballot voting.

Q. Just by your section?

A. I don't know whether that was the way or -- I don't remember.

Q. Was it the same way the Loyalty League representative was chosen?

A. I don't know.

Q. Do you remember ever choosing a Donnelly Garment Workers' Union representative in the same manner you have described as used to choose the Loyalty League representative?

[fol. 5600] A. I don't remember it now.

Q. You don't know one way or the other?

A. No.

Q. Did you ever attend any meeting of any sort while you were employed by the Donnelly Garment Company prior to July 15, 1939, during working hours?

A. I don't think you would call it a meeting. I have gone down in my uniform during working hours to fashion shows and things like that, but that's all I remember.

Q. Did you ever hear Mrs. Reed speak except at the meeting of March [illegible], 1937?

A. Yes; when we would have our style shows she would always speak about something.

Q. Do you remember whether she ever mentioned labor matters in any of those speeches?

A. I can't recall that she did.

Q. At the March 18 meeting did you hear Mrs. Reed say:

"I want to say that I am awfully happy to have this opportunity to tell you how proud I was when those girls brought the petition out and—well, I have had a lot of nice things happen to me in my lifetime, but I have never had anything that made me so proud and so happy as that list of names that came to my house."?

A. I remember her saying something like that. I wouldn't say that those were the exact words.

[fol. 5601] Q. But you remember her saying she was happy to get the petition; is that correct?

A. Yes, I do.

Q. Had you seen the picture in the newspaper of Mrs. Reed receiving that petition?

A. I saw it.

Q. Did you see any of the other girls sign the petition?

A. Yes, I saw the girls around me sign it.

Q. Where were you working at that time?

A. Where was I working?

Q. Yes.

A. On the seventh floor.

Q. And that was in Grace Gnotta's section?

A. Yes.

Q. Do you know who the thread girl was at that time?

A. No.

Q. If I mentioned the last names of some girls who were thread girls at sometime, and you had the first names you have given, do you think you would know whether those were the last names of the thread girls?

A. I might. I'm not sure.

Q. You mentioned an Anna. Could that have been Anna Barthal?

A. I don't remember whether that was her last name or not.

Q. You mentioned a Mary. Could that have been Mary Copowycz?

[fol. 5602] A. I don't know.

Q. You wouldn't remember the last names, yourself, at all, of these girls?

A. Well, I remember Mary's last name now, but I don't know what her last name was at that time.

Q. What is it now?

A. Mary Snedder.

Q. Snedden?

A. Snedder. And I don't know how to spell it.

Q. There is a Snedden—S-n-e-d-d-e-n—on the list here.

A. Maybe that's it.

Q. There is an Edna Binert. Would that be the Edna you mentioned?

A. Something similar to that was her last name, but I wouldn't say that was it.

Q. Did you ever hear it said around the plant by anyone that Mrs. Reed would close down her business before she would have the I. L. G. W. U. in her plant?

A. I never heard anyone say that.

Q. Did you ride the busses which the company provided?

A. Only one morning.

Q. Did you have a bus pass?

A. Yes. Well, I don't know whether I did or not. It seems to me I had something to show when I got on the bus—I'm pretty sure I did. But I only rode it one morning.

* * * * * *

[fol. 5603] Q. Do you know whether anyone who attended the meeting of April 27, at which the Donnelly Garment Workers' Union was formed, failed to join that organization at that time?

A. I didn't know of anyone, no.

Q. Do you know whether the instructors were present at that meeting?

A. I think that they were. I think that my instructor was, at least.

Q. Do you know whether Lena Tyhurst was at that meeting?

A. I don't remember. I don't know whether she was or not.

[fol. 5604] Q. Did you have any understanding about whether instructors were allowed to join the Donnelly Garment Workers' Union?

A. I think they were. I don't know for sure, though.

Q. It was your impression that they were members; is that correct? A. Yes.

Q. And that is true as to thread girls, too, is it?

A. At that time, yes.

Q. You said this morning that you had heard threats made that the International Ladies' Garment Workers' Union would use the same sort of violence at the Donnelly Garment Company. Could you tell us what threats you heard and who made them?

A. I don't remember who made them. It has been so long ago, I don't know whether I read it or whether I

[fol. 5605] heard it, but I heard they were going to use the same methods of organizing us that they did the other garment plants here.

Q. You also testified that you felt it would be safer to have a union of your own. What did you mean by that?

A. I thought it would be protection for us. I thought that as a group we could protect ourselves better than each one individually.

Q. What protection do you have reference to?

A. I mean, that another union couldn't come in if we were organized.

* * * * * *

Q. You testified this morning that you thought the meeting of April 27 had nothing to do with the Loyalty League. When did you mean you thought that?

A. Was that the meeting where our union was formed?

Q. Yes.

A. Well, I never considered the Loyalty League ever having anything to do with the union; I never even thought of it.

Q. Did you know who was calling the meeting before you went to the meeting?

[fol. 5506] A. I don't remember whether I knew it or not—whether I knew who was calling it or not.

Q. Was Rose Todd presiding when you got to the meeting? A. No, but she did after I got there.

* * * * * *

Q. Had you ever attended a meeting before that Rose Todd presided at, that was not a Loyalty League meeting?

A. No.

Q. All of the other meetings which you had attended at which she presided were Loyalty League meetings?

A. The Loyalty League meetings and union meetings are the only meetings I ever attended there.

Q. Do you remember how Loyalty League meetings were called? A. No, I don't remember.

Q. Do you know how Donnelly Garment Workers' Union meetings were called? A. Yes, I do.

Q. How were they?

A. By an i.d.m. sent to us by Miss Todd.

Q. And was that true of the first meetings you attended?

A. I don't remember that.

Q. But after the first few meetings you remember you [fol. 5607] got an i. d. m. from Miss Todd; is that correct?

A. I think so.

Q. Do you remember any officer of the Loyalty League at any time other than Rose Todd?

A. I remember Thelma Huffaker.

Q. Were you at the meeting at which she was elected?

A. Yes, I was.

Q. Do you remember whether Rose Todd had her come up and say a few words after she was elected?

A. I don't know whether it was Rose Todd or someone else. I remember she came up and spoke after she was elected.

Q. Do you remember attending any meeting at which Thelma Huffaker presided? A. No, I don't.

Q. Did you ever attend a meeting at the Donnelly Garment Company of any sort at which there were no chairs?

A. I don't remember that.

Q. If your instructor was absent from your section for a period of time, who was in charge?

Mr. Ingraham: I object to that question as improper. It has no foundation in the evidence.

Trial Examiner Batten: Objection overruled. You may answer.

A. What do you mean, who was in charge?

By Miss Weyand:

Q. If the instructor was absent, who handed you your [fol. 5608] work?

A. If she was absent for a very short period?

Q. Yes.

A. Well, the thread girl handed us our work.

Q. And if the instructor was absent for a day or a week, who took her place?

A. Some other instructor—someone who could instruct, rather.

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[fol. 5609] Q. Do you know whether the union had a [fol. 5610] committee which passed on piecework prices for the union? A. I don't know that.

Q. You are a piecework worker, aren't you?
A. Yes.
Q. And you work substantially all of your time at piece rates; is that correct?
A. The bigger part of my time, yes.

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By Miss Weyand:
Q. And that was true from the time you went to work in 1936 until July 15, 1939; is that correct? A. That is.
Q. Referring to the period prior to July 15, 1939, do you remember any votes on matters at the Donnelly Gar-
[fol. 5611] ment Company which were not unanimous?
A. No, I can't remember any.

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By Mr. Langsdale:
Q. Mrs.—is it Mrs. Garrett? A. Yes.
Q. You are a married woman? A. Yes.
Q. You have heard other witnesses testify in this hearing? A. Yes.
Q. What other witnesses?
A. Lydia Phillips and Ethel Riegel.

* * * * * *

[fol. 5612] Q. At the meeting you thought was about the first of April 1937—that is where you said you agreed to give 50 cents apiece—was Mrs. Reeves at that meeting?
A. Mrs. who?
Q. Mrs. Reeves. A. No, I didn't see her.
Q. Do you know whether she was there or not?
A. The only way I would have of knowing would be to see her, and I didn't see her.
Q. She could have been there and you didn't see her?
A. She could have been, but I don't think so.
Q. Was Mr. Baty there? A. I didn't see him.
Q. But you don't know whether he was there or not?
A. No, I don't.
Q. Was Ella Mae Hyde there?
[fol. 5613] A. I didn't see her.
Q. She might have been there and you not see her?
A. Possibly, but not probably.
Q. Do you know?

A. I don't know. I didn't see her.

Q. Were any of these people that were named by Mr. Ingraham—Mr. Green, was he there?

A. I didn't see him.

Q. You don't know whether he was there or not?

A. No, I don't know.

Q. Was Mr. Keyes there?

A. I didn't see him either.

Q. Was Mrs. Keyes there?

A. I didn't know Mrs. Keyes.

Q. Was Mr. Bachofer there? A. I didn't see him.

Q. Was Miss Spilsbury there? A. I didn't see her.

Q. But they may all have been there and you not see them?

A. If I didn't see them, I wouldn't have any way of knowing whether or not they were there.

Q. That's what I mean. Take the meeting of April 27, do you know whether any of these people whom I have named were at that meeting? A. April 27?

[fol. 5614] Q. Yes. That is the one when the union was formed, the Donnelly Garment Workers' Union.

A. I didn't see any of those people there at that time.

Q. But you can't say they were not there?

A. Not definitely that they were not there, but I didn't see them.

Q. Now, at the meeting of April 1, was your instructor there? A. April 1?

Q. Well, the meeting where you say you agreed to give 50 cents apiece.

A. I don't remember whether she was there at that time or not.

Q. But you do remember she was at the meeting of April 27, when the union was formed?

A. I think she was, yes.

Q. Now, at this meeting of March 18, do you remember everything Mrs. Reed said?

A. No, I don't remember everything 5 years ago. I couldn't possibly remember everything she said.

Q. Wasn't she talking to you about the International Ladies' Garment Workers' Union threatening violence to the employees of the Donnelly Company?

A. I don't remember that she said that. The part I remember that she did say concerning that was giving us safe transportation to and from work.

[fol. 5615] Q. Didn't she tell you you have been hearing of the strikes of the International Ladies' Garment Workers' Union and threatening of violence?

A. I don't remember her saying exactly those words.

Q. Anything like that?

A. I remember she said something about she knew we were all upset, but I don't know whether she mentioned the violence or not. She said she would try to see about getting us safe transportation.

Q. Did her speech further upset you about the violence? A. No.

Q. Now, when you read of Senator Reed's calling Mr. Dubinsky a Bolshevist and Communist, did you believe Mr. Dubinsky was a Bolshevist or a Communist?

A. I didn't think a lot about that, because I thought that was just a difference between those two men and that was their own argument.

Q. But did you conclude that he was a Bolshevist or a Communist? A. I didn't think about it.

Q. You didn't give that any thought at all? A. No.

Q. Even though it was said by the attorney for the company you were working for?

A. I just didn't consider the matter any further.

* * * * * *

[fol. 5622] Q. What did Rose Todd say to you at the meeting which you have said was about April 1 about Mr. Tyler's fee?

A. I don't remember. She said that we would need some money for counsel, so— I don't remember just what she said.

Q. Did she tell you what the fee was?

A. I don't think she knew.

Q. On April 1? A. That's what I mean, yes.

Q. She didn't at that time know how much it was going to be? A. She said we would need about $500.

Q. Did she tell you how she knew that?

A. No. I don't know whether she did or not. I don't remember.

Q. She didn't tell you she had already paid Mr. Tyler, on the first of April, did she?

A. I don't remember her saying anything like that.

Q. Did you know she had? A. No.

Q. Rose Todd didn't tell the workers assembled there on that night that Mr. Tyler had already been paid?

A. I don't remember her telling us that.

* * * * * * *

[fol. 5625] Q. Now, Lena Tyhurst, where did you come in contact with her? A. At my machine.

Q. How did you happen to do that?

A. She was looking at some work that we were doing that we didn't know exactly how to put together. She was looking at it—going to take it up and measure it with the pattern and see if it was right.

Q. How did she happen to come to your machine, do you know?

A. Because I wanted to know how to do it. My instructor wasn't just sure.

Q. Who sent for Mrs. Tyhurst? A. I don't know that.

Q. Your instructor? A. I don't know.

Q. Have you any recollection at all?

A. I suppose she called her to take the dresses to the patterns to see if they were right—I don't know.

* * * * * *

[fol. 5627] By Mr. Langsdale:

Q. Did you ever send for her when she wasn't on your floor? A. No.

Q. Now, do you know why anyone sent for Lena Tyhurst to come to your machine and look at your work?

A. Well, because if it isn't right and a lot of it goes through, it causes an awful lot of trouble, and if we don't think it is right it is taken to the patterns to see if it is exactly right, and then there is no more trouble about it.

* * * * * *

Q. Now, Marvin Price, where did you come in contact with him?

A. I have just seen Marvin Price round there.

Q. You didn't know what he was doing?

A. I knew he had something to do with the mechanics, but I didn't know what.

Q. You didn't know whether he was the boss down in [fol. 5628] the mechanical department or not?

A. Well, he didn't act like one, but I don't know what he was.

Q. What do you mean, "he didn't act like one"?

A. He didn't seem to be bossing anyone around.

Q. You were not in the mechanical department, were you?

A. No, but I never did see him come up and tell someone they had this to do when they were working on my machine or something.

Q. You were not down in his department at any time when he was there, were you?

A. I have been up to the cage when he was in there working.

Q. Do you know where his office was—where his desk was?

A. I didn't know he had an office or a desk.

* * * * * * *

Q. Now, when Mr. Lane asked you if any certain people were held out by the management to speak on labor matters, what did you understand him to mean?

* * * * * * *

[fol. 5629] By Mr. Langsdale:

Q. What did you understand Mr. Lane to mean by that question?

A. Someone I would consider a boss.

Q. Would you think that all bosses would be speaking for the management in labor matters?

A. I don't know what I would think about that.

Q. Did you know what he meant then,—Mr. Lane?

A. Just what I said is what I thought he meant?

Q. That is, you thought he was using that as synonymous with "boss"? A. Yes.

Q. You said you knew Lyle Jeter and that he was a mechanic? A. Yes, I said that.

Q. You didn't know whether he had the right to boss anybody else or not, did you?

A. No. I knew he worked on my machine; that's all I knew.

Q. But you don't know what he did when he wasn't working on your machine, do you?

A. Working on someone else's machine, is all I ever saw him do.

Q. That is all you ever saw him do? A. Yes.

. . . . . .

[fol. 5630] Q. Do you know Lulu Nichols? A. No.

Q. You never heard of Lulu Nichols?

A. No. I know a Mrs. Nichols, I think, but I don't know who she is. I have heard of her, but—

Q. Did you know she fixed prices for the company?

A. No, I didn't know it.

Q. You have never learned that since you have been there?

A. I know a Mike Nichols, but I don't know what she does.

Q. You haven't any idea what she does?

A. I really don't.

Q. Did you know Dewey Atchison?

A. I know Dewey Atchison, yes.

Q. Did you know what he was doing in April, 1937?

[fol. 5631] A. I haven't any idea.

Q. Was he at the meeting where your union was formed? A. I don't know that.

Q. Did you learn that he had become a member of your union on April 27, 1937? A. No, I didn't.

Q. Was he at the meeting you have described as having been held about the first of April, 1937?

A. I don't remember that. If he was, I don't know it.

Q. You don't know whether he gave 50 cents or not?

A. No, I don't.

Q. I think you testified that you had attended the meeting of May 11, 1937?

A. What did we do at that meeting? I don't remember the dates.

Q. That was the first meeting following the organization meeting.

A. I attended all of the meetings after that—most of the meetings after that.

Q. Well, just to be sure, I will show you a photostat of the minutes of that meeting. I don't mean for you to read them all through, but just take a glance at them and see if you read them this morning and said you had attended that meeting.

Trial Examiner Batten: Is that 8-12?

[fol. 5632] Mr. Langsdale: Yes.

Trial Examiner Batten: Page 4406 of the Circuit Court record?

Mr. Langsdale: Yes.

A. (Referring to minutes.) I would have to read it a little more before I could remember.

Mr. Langsdale: All right. You just read to your heart's content.

(Thereupon the minutes above indicated were read by the witness.)

A. It seems to me I remember some of this. I don't remember all of it.

By Mr. Langsdale:

Q. Do you recall that in answer to Mr. Lane's question you said you had read those minutes and that they correctly reflected what had happened at that meeting?

A. I remember some of this. I can't remember it word for word like it is here.

Q. I don't mean that. But you remember the substance of it? A. Yes.

Q. You stayed throughout the meeting, didn't you?

A. I think so.

Q. Now, let me ask you if you remember this occurred at the meeting—if you remember that this question was [fol. 5633] asked by Miss Todd:

"If a new employee comes in, are you going to set a time before they have to become a member of the union?"

Do you remember that question?

A. I can't remember it.

Q. Do you remember Miss Todd saying:

"Anybody coming to work for us will join the union immediately and if there is any doubt in their mind about whether or not they want to join our union, then there is some doubt in their mind as to whether or not they want to work here."?

A. I don't remember that.

Q. Do you remember she said something like that?

A. I don't remember anything like that at all.

Q. You don't remember that. But you do remember that she said, just prior to that, "You realize now that Mr. Tyler is representing the Donnelly Garment Workers' Union and he will have to be paid." You remember all of that, do you?

A. Well, I remember— Was that May 11?

Q. Yes.

A. Yes, I remember something to that effect.

Q. And you remember she said, "I expect a good many of you are wondering what he is going to charge."

A. Yes, I remember that.

Q. You remember all of that? A. Well, that was—

[fol. 5634] Q. That was what?

A. That was to my interest.

Q. Was it to your interest that Rose Todd could say to the employees of the Donnelly Garment Company, "You will join this union or you will get out."?

A. I never heard Miss Todd say that.

Q. Do you say she didn't say it?

A. If she said it, I say I didn't hear her.

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[fol. 5636] By Trial Examiner Batten:

Q. Well now, do you remember, Miss Witness, whether you said this morning that correctly reflected the meeting?

A. I don't remember reading this article this morning.

By Mr. Langsdale:

Q. Do you remember reading any part of it this morning?

A. I remember reading something about Miss Todd saying that it would cost something to have an attorney, and I remember I said that I read that, and remembered it.

Q. Now, didn't Mr. Lane give you the minutes and tell you to read them through? A. I don't know.

Trial Examiner Batten: If I remember correctly, Mr. Lane gave her the minutes and said he had had her look at them before, and said, "Will you look at them briefly

and tell whether you attended this meeting." I think you used the word "briefly", if I recall correctly.

Mr. Lane: I think that's right.

By Mr. Langsdale:

[fol. 5637] Q. Well, had you read these minutes before you took the witness stand?

A. I don't know, I don't remember whether I had or not.

Q. Did you answer this morning, Mr. Lane's question that you had read them before?

Mr. Lane: That was not the question.

Mr. Reed: Now, we object to that because if she did answer, it is in the record, and I think the witness has now pretty plainly stated she did not read all of those minutes.

Mr. Langsdale: Well, if we are going to stall here—

Mr. Reed (Interrupting): I think the question asked by the Examiner himself clarified that very much.

Mr. Langsdale (Continuing): I call for the record there as to what she said in answer to Mr. Lane's question.

Trial Examiner Batten: Well, do you recall what you answered this morning, Miss Witness?

A. I don't recall. I think I just glanced at this this morning. I don't remember exactly whether I said I had read them or not, but I don't think I read this part this morning.

By Mr. Langsdale:

Q. Did you read that part anywhere or any time before you took the witness stand this morning?

A. I don't remember it.

Q. Now, you don't remember it? A. No.

Q. You don't remember whether you told Mr. Lane this morning you had read these minutes?

[fol. 5638] A. I don't think I told him I had.

* * * * * * *

[fol. 5641] By Mr. Langsdale:

Q. Did you, this morning, identify your signature on this petition, which occurs on page 5380 of the Circuit Court of Appeals record? A. No, I didn't.

Q. Will you look at it and see?

Mr. Reed: If the Examiner please, there is no use taking any time identifying that signature. We admit it is her signature.

Mr. Langsdale: I don't care for the admission. Yesterday they wouldn't admit one.

Trial Examiner Batten: Let's proceed. The question to the witness is whether that is her signature.

A. Yes, that is.

By Mr. Langsdale:

Q. Read the petition. Do you remember that wording of the petition that you signed on March 2?

A. Yes, I remember it.

Q. (Reading) "We, the undersigned, as members of the Donnelly Garment Company, wish to make it known we are positively happy and contented with the positions which we hold with this organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed." You remember that, do you?

A. Yes, I remember it.

[fol. 5642] Q. Now, did you really think you had any chance to refuse to sign that petition and stay on the job?

A. I didn't think it made a lot of difference whether I signed it or not.

Q. Well, did you think it might interfere with your position if you didn't sign it?

A. No, I didn't.

Q. It was passed to you down where your machine was?

A. That's right.

* * * * * * *

Q. And you knew it was going out to Mrs. Reed?

A. I suppose it was.

Q. You said you signed it because you wanted Mrs. Reed to know that?

A. That's right.

Q. Now, did you think every girl that signed this petition thought that if she failed to sign it she would lose her job?

. . . . . .

A. I only knew how I felt.

. . . . . .

[fol. 5644] Q. Now, let me call your attention to this part: "The employees of this company aren't only satisfied but on their own motion some months ago organized a Loyalty League to resist the activities of Mr. Dubinsky and his crowd." Do you remember reading that?

A. I don't remember just that part; I didn't read the complete thing this morning.

Q. Oh, I see. All you read was just the part Mr. Ingraham asked you about, is that it?

A. This morning I only read part of it.

Q. But I am talking about when you read it when it came out on May 11. Do you remember reading that part?

A. If that is the statement in the May 11 issue, I read all of it.

[fol. 5645] Q. Now, do you recall that part where Mr. Reed said the Loyalty League was organized to resist the activities of Mr. Dubinsky and his crowd?

A. I probably remembered that at the time, but I don't remember it now.

Q. Well, is that true, as far as you knew?

A. I never thought of the Loyalty League as that; I just thought of it as a club or something.

Q. Well, when you read this interview by Mr. Reed, did that cause you to think about it?

A. I don't remember whether it did or not.

Q. Do you have any reason to doubt it?

A. You mean any reason to doubt what Mr. Reed said?

Q. Yes.

Mr. Reed: I object to that as an improper question, and it is incompetent and immaterial.

Trial Examiner Batten: She may answer.

A. I don't remember what I thought about it.

Mr. Langsdale: You just don't have any recollection, but you do remember you read all about Mr. Reed saying harsh things about Mr. Dubinsky, calling him a Communist and a Bolshevist; you recalled that when Mr. Ingraham asked you the question?

A. I remember reading the speech, but I don't remember all about it.

. . . . . .

[fol. 5646] By Mr. Langsdale:

Q. You didn't know Rose Todd had been to the bank and borrowed a thousand dollars from the First National Bank in the name of the Loyalty League on the 30th of [fol. 5647] March, 1937, did you?

A. I didn't know that.

Q. She didn't tell you that on the night she was raising 50¢ per head?

A. Not that I heard, no.

Q. And you never did hear about that until you came to this trial, did you?

A. That's right, I never did.

Q. And you didn't know that on the next day, April 1st, the day you said this meeting was held, that Rose Todd had paid Mr. Tyler $500 by check on the First National Bank on the thousand dollars she borrowed from that bank; you didn't know that, did you?

A. I didn't know that, no.

Q. So you just went ahead and collected the 50¢ apiece as though Mr. Tyler hadn't been paid, is that correct?

A. We collected—we gave our 50¢.

Q. Yes. Now, could it be possible that you could be mistaken about the date and the time that the 50¢ was voted on, May 25 instead of on April 1st?

A. No, I am sure that it was before May 25.

Q. Why?

A. Well, I remember along about that time our union was formed, and I certainly remember it was not in May, it was in April.

[fol. 5648] Q. Now, do you know who the treasurer of the Loyalty League was at that time?

A. No, I don't remember.

Q. Do your know Pauline Hartman?

A. I don't know her personally, but I did know her.

Q. Didn't you know she was treasurer of the Loyalty League?

A. No, I didn't know that.

Q. And didn't you know that she collected all these 50¢ pieces that all of you contributed and took it to herself to keep?

A. Did I know that?

Q. Yes.

A. No, I didn't know that.

Q. And do you know she didn't put any of those 50¢ pieces in the bank until July 13, 1937?

A. No, I didn't know that.

Q. Did you know that on July 19, with those 50¢ pieces that you all gave, she paid $750 on that note?

A. No, I didn't know that.

Q. You didn't know any of those things?

A. No.

Q. So, of ecurse, you don't know anything about what the Loyalty League had to do with paying Mr. Tyler?

Mr. Lane: That is objected to as an assumption, a misstatement of the evidence.

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[fol. 5649] Trial Examiner Batten: Do you understand the question, Mrs. Garrett?

A. Yes, I didn't know, I didn't know about that.

By Mr. Langsdale:

Q. Do you know that Rose Todd had given a check to Mr. Tyler for $500 on the first of April, signed Donnelly Loyalty League, by Rose Todd, President, and Pauline Hartman, Treasurer?

A. No.

Q. You never learned that?

A. No.

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[fol. 5650] Redirect Examination.

By Mr. Ingraham:

Q. Mrs. Garrett, I believe you stated this morning that you did not consider the meeting of March 18, the meeting where Mrs. Reed spoke, a Loyalty League meeting?

A. No, I didn't consider it a Loyalty League meeting.

Q. Did you consider the meeting that was held the last of March or the first of April a Loyalty League meeting?

A. No.

Q. I believe Miss Weyand asked you a question to the effect that, did Rose Todd preside at any meeting that was not a Loyalty League meeting or a union meeting, a Donnelly Garment Workers' meeting, and I believe you answered "no." Did you mean to include the meeting of March 18 and the meeting that took place the latter part of March?

Mr. Langsdale: Just a moment. I object to that question as an effort to rehabilitate a witness after she has made an answer; it is his witness. She absolutely said she never had been at any meeting presided over by Rose Todd, which was not either a union meeting or a Loyalty League meeting.

Trial Examiner Batten: Well, the question is—to leave it without asking whether she referred to two meetings—now, do you understand the question, Mrs. Garrett?

A. Yes, I understand.

Trial Examiner Batten: You may answer.

[fol. 5651] A. I didn't consider those meetings either Loyalty League or union.

Mr. Ingraham: I have just asked her that and she testified that she did not consider the March 18 or the March 30 meetings Loyalty League meetings, and I just wanted to know—

Trial Examiner Batten: Are you asking a question?

Mr. Ingraham: No, I am just explaining. You said you thought it shouldn't be asked that way.

Trial Examiner Batten: Oh, I simply said I didn't think —whether you should have asked her whether she meant to include those meetings. I thought you should have called it to her attention, what she had testified to, clearly, and asked her what she meant. I have no objection to your question. I think it was Mr. Langsdale that objected to it.

By Mr. Ingraham:

Q. When was the union, the Donnelly Garment Workers' Union, organized?

A. It was organized sometime in April.

Q. After this meeting that you say occurred the latter part of March or the first of April?

A. Yes.

* * * * * * *

Recross Examination.

By Mr. Lane:

Q. Was it the custom of employees to send slips of paper through the section giving notices about their per-
[fol. 5652] sonal affairs?

A. We had the privilege to do that.

Q. Well, was it customary to do that, for the employees to do that?

* * * * * * *

A. Well, the only way I could answer that, if we wanted someone to know something we could send a slip of paper to them.

By Mr. Lane:

Q. Well, on what occasions do you recall notices were sent by the employees through the section by writing on a slip of paper?

A. In regard to our club—for instance, if we were planning something about our club, we could send that through our section; one girl could hand it on down the line.

Q. You didn't consider that was a notice sent out by the company?

A. Certainly not.

Q. Did any of the employees send notices for other purposes, making announcements about anything, that you can recall?

A. As far as I know, it has always been our privilege to send anything through that we wanted to.

Q. Well, state whether or not it was the custom or prac-
[fol. 5653] tice among the employees to simply designate all those notices that went through as i. d. m.'s?

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A. I don't know just what they would be called. That is what I would think they were.

* * * * * *

By Mr. Lane:

Q. Well, when you said this morning a meeting was announced by an i. d. m. sent through the section by Miss Todd, did you believe that notice was a notice that had been circulated by the company?

A. No, I never thought of it as that.

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[fol. 5654] ALICE FREED, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

Mr. Ingraham: Where do you live, Mrs. Freed?

A. 3031 Troost.

Mr. Langsdale: What was that address?

A. 3031 Troost.

By Mr. Ingraham:

Q. Are you employed? A. I am.

Q. Where? A. The Donnelly Garment Company.

Q. How long have you been employed at the Donnelly Garment Company?

A. I went there in July, 1936.

* * * * * *

Mr. Ingraham: In what capacity were you employed?

A. As an operator.

* * * * * *

[fol. 5655] By Mr. Ingraham:

Q. Were you working at the Donnelly Garment Company in the spring of 1937? A. I was.

Q. Do you recall strikes at the Missouri, Gernes, and Gordon plants that spring? A. I do.

Q. Do you recall reading in the newspaper about those strikes? A. I do.

Q. I will hand you respondent's exhibit 16 and ask you if you recall seeing the front page of the Kansas City Times of March 18, and saw the pictures that appear at the bottom of that page? A. Yes, I saw them.

Q. I will now hand you respondent's exhibits 18 through 38 inclusive, and ask you if you will state whether or not you recall reading the articles that appear in those exhibits, and as you look through, will you please state the exhibits—whether or not you read the particular exhibit.

A. I remember reading exhibit 18; and I read 19; I [fol. 5656] don't remember for certain whether I read 20 or not; I think I read 21; I don't think I read 22; nor 23; I read 24; and I think I read 25; I read 26; also 27; I am not sure about 28; I think I read 29; and 30 I read; I don't remember whether I read 31 or not; I think I read 32; I know I read 33; and 34; in fact I was quite interested, I think I read most of them; and I read 35; also 36; and 37; and I read 38.

Q. You stated that you believed you read most of them because you were quite interested? A. I did.

Q. What did you mean by that?

A. Well, I was employed in a garment company and I was very interested in what was going on.

Q. Had you been up to the strikes at these other plants at that time? A. No, I had not.

Q. What effect, if any, did the reading of these articles that referred to strikes, have on you?

A. Well, they made me rather uneasy on account of the violence.

[fol. 5657] Q. Had you heard of any threats being made against Donnelly employees to use the same sort of violence against them?

Mr. Langsdale: Just a moment. I object to that question as leading and suggestive.

Trial Examiner Batten: Well, I think it is leading, but she may answer.

Mr. Langsdale: I wish to have a continuing objection to that form of questions of this witness.

Trial Examiner Batten: You may have a continuing objection, Mr. Langsdale. Of course, I presume Mr. Ingraham is proceeding on the same basis as before, that where

a witness has an independent recollection, he will pursue it, and if it appears she hasn't, he can then follow the other method.

Mr. Ingraham: Yes.

. . . . . .

A. Yes.

By Mr. Ingraham:

Q. Were the strikes at these other plants discussed among the Donnelly employees? A. They were.

Q. What was the effect, so far as you could observe, on these other employees of these strikes?

A. Well, we all seemed to be under a rather nervous [fol. 5658] tension and wondering just what was going to happen.

Q. What caused you to believe that anything was going to happen?

A. Well, I thought if they were trying to organize those companies, they possibly would try to organize ours.

Q. With the same methods? A. Yes, I did.

Q. Did you join the Donnelly Garment Workers' Union?

A. I did.

Q. Do you recall when you joined the union?

A. Well, I think it was about the last of April when we formed our union.

Q. You joined it when the union was formed?

A. That's right.

Q. Did the strikes and violence at these other plants have anything to do with your joining the Donnelly Garment Workers' Union?

A. Well, I preferred to have a union of our own instead of an outsider.

Q. Well, did the strikes at these other plants cause you to want to have a union of your own? A. Yes.

Q. Did Mrs. Reed, Mrs. Reeves, Mr. Green, Mr. Baty, Mr. or Mrs. Keyes, Miss Spilsbury, Mr. Bachofer, or Ella Mae Hyde discuss with you the formation of a plant union? A. No.

[fol. 5659] Q. Did they discuss with you the holding of the meeting of April 27? A. No.

Q. Did any of those people I have mentioned request you to attend the meeting? A. They did not.

Q. Did any of the people that I have mentioned request you to vote to form the Donnelly Garment Workers' Union? A. They did not.

Q. Do you recall the time of day that the meeting of April 27 was held?

Miss Weyand: I object to the question as purely cumulative. I think we have heard enough witnesses on this. It is my position that no other witnesses should be asked the time of day; any further questions on that is cumulative.

Trial Examiner Batten: Why is that any more cumulative than other questions?

Miss Weyand: I intend to object to questions if not entirely personal to the witness from now on as cumulative.

Mr. Reed: Are we to understand that these facts are to be taken as facts, then, and not controverted?

Miss Weyand: No. They are still controverted. I am saying, it is my position that any further questions that are not of a personal—

Mr. Lane: May I ask whether Board's counsel would be [fol. 5660] willing to stipulate that if the witnesses were asked such questions they would so testify?

Miss Weyand: No, I am not willing to so stipulate.

Trial Examiner Batten: My question is, if that is cumulative, there are a good many of these other matters that are. If that is cumulative, isn't any further testimony with respect to the meeting of April 27 cumulative?

Miss Weyand: Except insofar as the personal reactions of the witness.

Trial Examiner Batten: Isn't that equally true of March 18?

Miss Weyand: That is true, in my view.

Trial Examiner Batten: Isn't it equally true of the meeting the last of March?

Miss Weyand: That is true, in my view.

Trial Examiner Batten: Isn't that true of May 11 and May 25?

Miss Weyand: Everything that is factual in the case, except the witness' own reaction, which is peculiar to the witness herself, is, in my view, cumulative; that is, as to the questions that have been asked, of course. They might have other questions—

Trial Examiner Batten: Yes. I am referring, of course, to the questions that have been asked.

How about these newspaper articles, and so forth?

[fol. 5661] Miss Weyand: If the witness read them herself, it isn't cumulative. After all, she is the only Alice Freed.

Trial Examiner Batten: Her reaction to those articles, of course, is her own—

Miss Weyand: —her own personal reaction. But any further questions as to the facts are, in my view, cumulative.

Trial Examiner Batten: Mr. Ingraham, what is your position?

Mr. Ingraham: I am not clear on just what Miss Weyand means by "matters that are purely personal to the witness." I am now asking this witness about the time of the meeting of April 27.

Do I understand that your position is, Miss Weyand, that any further evidence would be cumulative and that any further witnesses that we would put on the stand would testify that the meeting was held after working hours?

Miss Weyand: It would be purely cumulative, in my opinion.

Mr. Ingraham: But do you admit that the witnesses would so testify?

Miss Weyand: No, I don't admit that they would so testify.

Trial Examiner Batten: Irrespective of how they would testify, your position is that any further testimony—

Miss Weyand: —by the company to prove that it oc-
[fol. 5662] curred after working hours is purely cumulative.

Mr. Ingraham: Then, it is Miss Weyand's position that she objects, after a number of witnesses have taken the stand and testified about, for instance, the time of day of this meeting—that any further evidence would be cumulative? And I suppose she will present evidence to the contrary. And then it will be said that there were so many witnesses on one side and so many on the other.

Trial Examiner Batten: Well, let's assume she will—Let's assume that if I were to stop it now, she would present some witnesses; is it your position that 1,200 witnesses should state that was held after working hours?

Mr. Ingraham: Well, it is my position that unless Miss Weyand concedes that additional witnesses would testify as these witnesses have testified, we should then be permitted to put on further witnesses, if we so desire.

Trial Examiner Batten: My question is, 1,200?

Mr. Ingraham: Well, I think from what you stated the other day, we are going to have to determine that. You said you wouldn't.

Trial Examiner Batten: Yes. I am asking you now.

Mr. Ingraham: Well, we haven't determined that.

Trial Examiner Batten: Well, I want to know what your position is. I can't rule on this unless I know what your position is.

Mr. Ingraham: Well, we would have to have time to
[fol. 5663] consider that.

Trial Examiner Batten: All right. I will give you 15 minutes.

Mr. Ingraham: Oh, I don't know that we could decide that in 15 minutes.

Trial Examiner Batten: Well, I will give you a half an hour.

Mr. Ingraham: Now, it seems to me that this is a very important matter in this case and—

Trial Examiner Batten: Well, Mr. Ingraham, it is surely a matter you have given some thought to before this.

Mr. Ingraham: We have not determined how many witnesses we intend to call.

Trial Examiner Batten: I am not asking you how many. I am asking you whether or not in opposing Miss Weyand's motion, unless she will concede what they will testify to, you have a right to call 1,200 people.

Mr. Ingraham: I think we would.

Trial Examiner Batten: Do you mean, in any hearing or lawsuit that that would be proper?

Mr. Ingraham: I think you could stop us.

Trial Examiner Batten: Well, let's concede I could. Let's concede I will. Let's concede that I want to, even. I still want to know from you what you think about it. You certainly have some idea about it.

[fol. 5664] Mr. Ingraham: Our position is that we have other witnesses and—

Trial Examiner Batten: Well, proceed with your witnesses. Proceed with them, certainly. If you have no theory on this of any kind and can't give me any light of any kind—

Mr. Ingraham: I am not saying that.

Trial Examiner Batten: That is the way I take it, directly, Mr. Ingraham. I understand your statement right now to be that you don't care to even indicate what your position is on this question, that you have other witnesses to present, and that is all you care to say. Now, I say, you go ahead and present your witnesses. I expected I would get some help from all counsel on this matter, but—

Mr. Lane: Mr. Examiner, may I make these observations?

Trial Examiner Batten: Just a moment, Mr. Lane.

Mr. Ingraham: The position that I understand you are trying to place respondent in is that respondent is to state that Miss Weyand's objection is proper and—

Trial Examiner Batten: Certainly not.

Mr. Ingraham: —that it is cumulative.

Trial Examiner Batten: I am not trying to place you in any position. I simply asked you a direct question: Is it your position on this matter that you have a right, as you stated, to present 1,200 witnesses on this matter and that it would not be cumulative?

[fol. 5665] Mr. Ingraham: No, I wouldn't say it would not be cumulative. But I think that if it is going to be left up to counsel to determine the number of witnesses— As I understood the position that you took the other day, you were not going to determine how many witnesses—

Trial Examiner Batten: Yes. I asked all of you counsel to get together and try to work out something.

Mr. Ingraham: Then, I think it is certainly up to counsel for the respective parties to determine that.

Trial Examiner Batten: All right. Have any of you talked about it since I mentioned it?

Mr. Ingraham: We have not.

Trial Examiner Batten: Have you, Mr. Langsdale?

Mr. Langsdale: I talked to Mr. Ingraham and made a suggestion that I think is a good one.

Trial Examiner Batten: Have you discussed it with any counsel, Miss Weyand?

Miss Weyand: No, I have not.

Trial Examiner Batten: Have you, Mr. Lane?

Mr. Lane: No, I have not.

Mr. Langsdale: Let me state the suggestion I made to Mr. Ingraham only, and maybe somebody will think it is all right. I haven't talked to Miss Weyand about it and I don't know if she would agree with it or not.

Now, of course Mr. Ingraham would like to have us admit [fol. 5666] that a thousand witnesses whom he will name would testify to the same thing, and maybe we know that a hundred on that list will not so testify, and then if we

would say that, we would tell him who our witnesses are, and we are not going to do that.

I did say to Mr. Ingraham this: As far as the International Ladies' Garment Workers' Union is concerned, whenever he gets ready to quit there will be no unfavorable inference drawn from his failure to put on any more witnesses. If he puts on 25, 50, or 100, we will not say to the Board, "He said he would put on 1,200 witnesses and then didn't do it." In other words, we will take no such position in this.

I am not going to agree that any list of witnesses he names will all testify any one way.

Trial Examiner Batten: Well, counsel, I will deny the motion at this time.

Mr. Lane: May I make this observation at this time:

Miss Weyand says that, with reference to the establishment of the fact of the hour of the beginning of that meeting, that further testimony would be cumulative. I think, as far as the intervener is concerned, that is not the only purpose of directing the witnesses' attention to that meeting. The ultimate issue here is: Whether or not these witnesses were dominated, coerced, or controlled, and whether the Donnelly Garment Workers' Union was a union formed [fol. 5667] under the domination of the Donnelly Garment Company.

Now, whether the witness attended a meeting at 5 o'clock in the afternoon or at 3:30 in the afternoon has some bearing upon that witness' personal reaction as to whether he was under domination or control by the company; and therefore, the conclusion that the witness comes to upon these ultimate facts is in some respect determined by what Miss Weyand says is a purely factual issue in the case, as to which there is sufficient evidence.

Trial Examiner Batten: Of course, Mr. Lane, you are not in the same position as the respondent in your offers of proof. You have named very few people in some of your offers.

Mr. Lane: I think there are about 700 in one of the offers, and that's a good many witnesses.

Trial Examiner Batten: In some of the offers there are only a few.

Mr. Lane: Of course, you understand we are not bound by any number we have named, or that there might not be other witnesses—

Trial Examiner Batten: Whether you are or not—Assume, for this question, that you are; is it your position that you have a right to call every person you have named on your offers of proof and, as you have just stated, perhaps additional ones, whether it is cumulative or not?

Mr. Lane: I think we have the legal right to do so, [fol. 5668] certainly. I think the Examiner, being in charge of the conduct of the trial, has a right to say at any time when in his judgment a sufficient number of witnesses have been presented, so that additional testimony would be cumulative—to say we have gone far enough. Whether that is the exercise of sound discretion is another matter.

Trial Examiner Batten: Of course, I don't agree with you on that. What I am concerned about in asking my question, as I said to Mr. Ingraham, is whether or not you have any suggestion to make that will be helpful to me. Now, it isn't very helpful to me if all of counsel here simply say, "Well, that's your job. We just haven't anything to say about it."

Mr. Lane: You were asking me whether we have the legal right to do so.

Trial Examiner Batten: Yes.

Mr. Lane: I say, in the absence of any stricture on the part of the person in charge of the trial, we do have that legal right; and also, in the absence of any suggestion or restriction, I think counsel for any particular party must necessarily determine when he thinks the interests of his own client have been sufficiently presented.

Trial Examiner Batten: Don't misunderstand me. Any of you lawyers. That is your job; I agree with you

thoroughly on that, Mr. Lane, that you have to determine that in your own mind, every one of you.

Mr. Lane: In that connection, of course, since the inter-
[fol. 5669] vener has presented no witnesses yet, I am not prepared to say at what point the intervener would want to stop presenting witnesses, whether we would present 20, 50, or more, but I can say I certainly don't want to present 600 or 700 witnesses here.

Trial Examiner Batten: I will say this: As far as the intervener and respondent are concerned, I suppose the witnesses have been presented by both of you.

You are a proponent here, Mr. Lane.

Mr. Lane: Well, we do not mean to duplicate by calling back the same witnesses.

Trial Examiner Batten: No, I understand that. You are, as far as the further hearing is concerned, as I understand it, in the position of a proponent, because you made offers also. Now, I do not mean by that that you are not going to be permitted to put on any witnesses.

Mr. Lane: I am merely saying I can't say at this time numerically how many witnesses we would want to present. That is a matter of experience. We can't tell until we get into our case and have gone some time where we would want to stop.

Trial Examiner Batten: How long do you think it is going to take you to get into your case?

Mr. Lane: I have no idea what the respondent has in mind.

Trial Examiner Batten: How long do you think it might
[fol. 5670] be, Mr. Ingraham, before Mr. Lane could get into his case?

Mr. Ingraham: We can't tell.

Trial Examiner Batten: You mean you haven't the faintest idea what your plans are?

Mr. Ingraham: We intend to put on as many witnesses as you will hear.

Trial Examiner Batten: Well, you bring them on, certainly, Mr. Ingraham.

Mr. Langsdale: It occurs to me it would be dangerous for the Examiner to shut them off, and then have them object to it and then take an exception.

Trial Examiner Batten: Mr. Langsdale, I can tell you now, as far as I can see at the present time, I haven't the faintest idea, not even a hope, of ruling on anything with respect to cumulative matters.

. . . . . .

Trial Examiner Batten: I think, Mr. Langsdale, it is important, if the respondent believes that a lot of this testimony, which I don't hesitate to say I consider to be cumulative—repetitious—will be from now on—if the respondent believes that that type of testimony should be [fol. 5671] presented in this hearing, I am going to receive it; I am not going to exclude it.

. . . . . .

Mr. Lane: May I say this, Mr. Examiner: I think it isn't fair to any of the parties here now to compel them to state unequivocally what their positions are—

Trial Examiner Batten: I don't want it unequivocally. If they will give me a rough estimate—

Mr. Lane: (Continuing) —without having conferred together as to what kind of an estimate might be reached. I think everybody wants to be adequately heard and to adequately present his case, but I don't think there is anybody here who wants to needlessly prolong the case.

Trial Examiner Batten: No, I don't think so, Mr. Lane, but I will say now, if there is any counsel in this hearing now that hasn't a pretty definite idea about what his plans are, by this time, when we have been going for two and a [fol. 5672] half weeks, I would say he has been negligent to some extent. Now, whether he wants to disclose it to me is another thing. I don't mean you may not have a plan and a very definite plan, which you are entitled to have, but which you feel you should not disclose.

Mr. Ingraham: I will say this: Until the statement that the Examiner has just made, that in his opinion cer-

tain of this evidence is cumulative, we had no idea that you—

Trial Examiner Batten: I said, beginning now, Mr. Ingraham.

Mr. Ingraham: Yes, beginning now—certain evidence would be cumulative.

Trial Examiner Batten: I said, repetitious and cumulative.

Mr. Ingraham: Well, we didn't know, of course, that that was your view.

Trial Examiner Batten: Of course you didn't.

Mr. Ingraham: And we were not going to reach any conclusion until you have indicated that you consider that evidence cumulative.

Trial Examiner Batten: And you don't know now what I am referring to. Therefore, you can only proceed in the manner in which you have been proceeding, because I have not disclosed to any of you, and at the present time I haven't any idea of disclosing to you whether I think it [fol. 5673] is or isn't.

Mr. Ingraham: I understood you to say you thought that there was certain evidence that from now on would be cumulative.

Trial Examiner Batten: I think so, in my own personal opinion—and repetitious.

Mr. Ingraham: Don't you think counsel should be advised as to what evidence you refer to?

Trial Examiner Batten: No. I don't believe I want to take that responsibility at the present time at all.

Mr. Reed: Let me make just this one observation:

Trial Examiner Batten: Yes.

Mr. Reed: The situation presented is this: We put on seven or eight witnesses, and now it is said that anything from now on is cumulative—

Trial Examiner Batten: It isn't so said. There is no such statement in the record, Senator.

Mr. Reed: Well, I put my own construction on what was said.

On the other side, the prosecution here say they have a lot of witnesses and—

Trial Examiner Batten: I haven't heard any such statement. I have never heard it.

Mr. Ingraham: Well, that's off the record.

Trial Examiner Batten: I didn't know they had even [fol. 5674] a single witness.

Mr. Reed: I can't make a statement, as I am interrupted at every sentence.

Trial Examiner Batten: Senator, you proceed. I am very sorry.

Mr. Reed: I understand Mr. Langsdale's proposition that he recited here, and I don't suppose that that is off the record, that there be a limit on the number of witnesses that we will use, but, he doesn't put a limit on his witnesses, and he has expressly stated here he does not propose to give us the names of the witnesses. So, we must proceed, then, without that knowledge. Therefore, the only thing we can do is to continue to offer our witnesses. When that is stopped, either by a stipulation or by the ruling of the Examiner, of course we will have to stop, but we are proceeding in the dark entirely as to what they intend to do. They know what we have done and they hold back any statement or any knowledge from us as to what they intend to do or what "they have up their sleeve," to use a slang phrase.

Trial Examiner Batten: Of course, you would have an opportunity later to meet it.

I can tell you, as far as the Board and the intervener are concerned, they may offer it, but I am not going to receive any testimony in this hearing unless it is in rebuttal of the testimony which has been offered by the respondent and [fol. 5675] intervener in accordance with the offers of proof. As far as this first part of the hearing is concerned, it would be limited very definitely to that.

Mr. Langsdale: I think the Senator misunderstood my hallroom talk with Mr. Ingraham. That was, that when they thought they wanted to stop, we would cast no unfavorable inference on their quitting at that time. Now, that does not necessarily involve my having to tell them who my witnesses are. When they think they have put on their 20 best or 100 best, or whether they are best or not, then if they want to quit, I will never raise my voice as to whether they should put on more.

Trial Examiner Batten: We will recess until 5 minutes after 4, and maybe you men and women can talk—

Mr. Reed: (Addressing Mr. Ingraham) We can't "show our hand" if they don't tell us what they have.

Trial Examiner Batten: Now, Senator, I am not asking you to "show your hand." I don't think you should indicate to Mr. Langsdale or Miss Weyand how many witnesses you intend to call, but I do think that somewhere along the line there must be some general principle upon which you people can agree.

Now, don't misunderstand me, for one minute. I am not asking you people to assume the burden of what I have to do, because anytime in this hearing I come to the [fol. 5676] conclusion that there is something I must do, I shall do it, and it will be on my shoulders and no one else's.

Mr. Reed: I am very unfortunate, it seems, in having a voice that carries. I thought I was whispering to Mr. Ingraham.

Trial Examiner Batten: Well, I am sorry, Senator, if I—

* * * * * *

[fol. 5677] Trial Examiner Batten: Before you read the question, I want to ask all counsel now, you may advise me in the morning, I want to make the request and you can think it over between now and morning, that any witnesses to be presented from now on, as far as the respondent and intervener is concerned, whether it is possible for you to jointly present them, both being proponents covering the same matters, at least some of the same matters; and whether or not the Board and the Lady Garment Workers' Union cannot do the same thing.

I don't mean by that that we cannot proceed in about the same manner we have been proceeding, but Mr. Lane's statement that they have not started to put in their case raises the question as to whether or not they were going to have four cases here, I mean four distinct parties putting in evidence; now, I want you to give some thought to that tonight.

I see no reason at all why the respondent and the intervener cannot cooperate in that respect, and why the Board and the Lady Garment Workers' Union counsel can't cooperate in that respect; so you may advise me in the morning, after you have given some thought to it, on that particular matter.

Now, will you read the question?

Miss Weyand: I would like a continuing exception to your ruling.

Trial Examiner Batten: What ruling is that?

Miss Weyand: That this question can be answered by [fol. 5678] this witness. Do you wish me to state each time an objection as to the cumulative matter in the record, or may I have a continuing objection?

Trial Examiner Batten: You may have a continuing objection, because, as I very definitely stated, I haven't any idea at this time that I am going to grant any motion of any kind, with respect to any such motion; and if the time comes when I feel that I want to give further consideration to it, Miss Weyand, I will let you know; however, if you have objections to other questions, other types of questions, I would suggest that you make your objection each time.

Miss Weyand: All right. I could do that.

Trial Examiner Batten: Now, as long as you have brought that up let me understand you; as far as your motion is concerned it is only with respect to this question, although in my statement or question to you, you indicated that practically all of these meetings were now becoming cumulative, at least the meetings of March 18th, the meeting the last of March, the 27th of April, May 11th and May 25th, or any other union meetings.

Miss Weyand: I intend, after you have heard ten witnesses on any given questions, to object to those questions thereafter as being cumulative; as they come up I will object to the question, but will not restate it unless asked on further repetition of the same questions, but each time a question is asked I shall object to it that time as cumu-
[fol. 5679] - lative, as being a factual matter.

Trial Examiner Batten: Well, you may have a continuing objection to those questions.

Mr. Langsdale: Let me be sure I understand. You want counsel to report on matters — that is, as I get it now, Miss Weyand and I should confer together and see if we can prevent duplication?

Trial Examiner Batten: Yes, whether or not you can't jointly present anything you have to present, say for instance as the respondent will put in its case then the intervener will put in a case, then the Board will put in any other testimony it has, and then you will follow with your testimony. In other words, is it possible for us to work out any sort of a plan where we have, in substance, one party or two parties jointly putting in one case?

Mr. Langsdale: In fact, that is what it is anyway.

Trial Examiner Batten: I know, but in view of Mr. Lane's remark a few moments ago it doesn't appear to be that. Mr. Lane said, "We haven't yet offered any of our witnesses."

Now, that is the reason I want you all to give some thought to it, so tomorrow morning, if you care to —

Mr. Langsdale: (Interrupting) I thought Mr. Lane understood that neither the Board nor the International Lady Garment Workers' Union is going to draw any unfavorable inference about collaboration between him and counsel for the company.

[fol. 5680] Trial Examiner Batten: I understood that, but that doesn't dispose of the matters I just brought up. So, I want you all to give some thought to that.

Mr. Langsdale: Unless that was a defensive remark to keep anyone from knowing how many witnesses you are

going to put on, I would think your witnesses and the company's witnesses would be the same, other than you could put on any one of the witnesses, because the objective is the same.

Trial Examiner Batten: How about you people?

Mr. Langsdale: The same.

Trial Examiner Batten: Would you think the same with respect to you people?

Mr. Lane: Yes. I will say we certainly don't intend to put on the same witnesses the respondent puts on. Now, we may put on some witnesses the respondent has not presented, and so far as it is possible for us to do so any witnesses we offer we will avoid any duplication of the matter on any presented by the respondent. I think there are some interests of the intervener that are in contrast to that of the respondent.

Trial Examiner Batten: I understand; but your remark that you hadn't put your case in yet, I just didn't want to be confronted, when we finished with the respondent some time in the future, with being presented with a second case by a proponent, which would be unlimited almost, so I am just asking you to talk it over, and if you [fol. 5681] can tell me anything in the morning, all right; if you can't, all right.

Mr. Reed: I think it is a mistake to characterize either the plant union or the company as proponents, they are not proponents.

Trial Examiner Batten: I simply meant as far as —

Mr. Reed: (Interrupting). They are defendants.

Trial Examiner Batten: That's right, but I meant simply as far as this hearing is concerned with respect to the matters we are upon, Senator. I said that before recess.

Mr. Reed: Well, I didn't understand you.

* * * * * *

(Thereupon the last question was read by the reporter as follows:

"Do you recall the time of day that the meeting of April 27th was held?")

A. It was after my working hours.

By Mr. Ingraham:

Q. Do you recall where the meeting was held?

A. On the second floor.

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: I assume our remarks with respect to the prior one are applicable here, and you may have a continuing objection.

* * * * * *

[fol. 5682] By Mr. Ingraham:

Q. Did you vote at that meeting in favor of forming the Donnelly Union?

A. Now, it is the May 27th meeting you are talking about?

Q. The April 27th meeting. A. Yes, I did.

Q. Did you vote in favor of forming the Donnelly Garment Workers' Union of your own free will? A. I did.

Q. Did Mrs. Reed, Mrs. Reeves, Mr. Baty, Mr. Green, Mr. and Mrs. Keyes, Miss Spilsbury, Mr. Bachofer or Eila Mae Hyde suggest or direct that you vote in favor of form-
[fol. 5683] ing the Donnelly Garment Workers' Union?

A. No, they did not.

Q. Did any instructor request you or suggest to you that you vote in favor of forming the Donnelly Garment Workers' Union? A. They did not.

Q. Did any thread girl— A. (Interrupting) No.

Q. (Continuing) Request that you vote in favor of forming the Donnelly Garment Workers' Union?

A. No, they did not.

Q. Did you understand or have the impression that if you did not vote to form the Donnelly Garment Workers' Union that you would be penalized by the company?

A. No, I never had that feeling.

Q. Was there any pressure brought to bear by anybody on you to vote in favor of forming the Donnelly Garment Workers' Union? A. There was not.

Q. Was there any pressure brought to bear by anybody to cause you to attend that meeting?

A. No, I went with my own free will.

Q. Was that a meeting of the Loyalty League?

A. No.

Q. Did that meeting have any connection with the Loyalty League so far as you knew?

[fol. 5684] A. No, it did not.

Q. Was the meeting generally attended by employees?

A. Yes.

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: Well, the witness has answered it. The answer may stand. You may have a continuing objection to that question.

By Mr. Ingraham:

Q. Will you state whether or not, in your conversations with other employees of the company, if you ever heard anything said that indicated that the company was bringing pressure to bear on employees to form the Donnelly Garment Workers' Union?

A. No, I never heard anyone say that.

Q. I believe you stated that you read the article that appeared in the Kansas City Star of March 17th, which is respondent's exhibit 27, the article is entitled "Sitters Block a Door."? A. Yes, I read that.

Q. Now, do you recall whether or not a meeting was held shortly after the date that this article appeared in the paper on March 17th? A. Yes.

Miss Weyand: I object to that as cumulative.

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[fol. 5685] A. Yes, there was.

Trial Examiner Batten: I'll make the same ruling. I will permit the witness to answer, and you may have a continuing objection to that question.

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By Mr. Ingraham:

Q. Will you state whether or not—strike that—do you know why the meeting was held?

A. Well, it was more or less conversation about all this violence that was going on, and this article that was in the

paper, and we wondered what we could do to protect ourselves, and we thought we would have a meeting and talk it over.

Q. Do you recall when—strike that—do you recall what [fol. 5686] time of day that meeting was held?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: I make the same ruling. You may have a continuing objection.

A. Well, it was after working hours, I would say about 5 o'clock.

Mr. Ingraham: Do you recall where the meeting was held?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling, and you may have a continuing objection.

A. On the second floor.

Mr. Ingraham: Did Mrs. Reed, Mrs. Reeves, Mr. Baty, Mr. Green, Mr. and Mrs. Keyes, Miss Spilsbury, Mr. Bachofer, or Ella Mae Hyde suggest—

Mr Reed: (Interrupting) Or any of them.

By Mr. Ingraham:

Q. (Continuing) Or any of them suggest to you that this meeting should be held? A. No.

Q. Did any of those persons named request you to go to the meeting? A. They did not.

Q. Did you understand that you would be penalized by the company if you did not attend the meeting? A. No.

[fol. 5687] Q. Do you recall whether or not Mrs. Reed came to the meeting?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling. You may have a continuing objection.

By Mr. Ingraham:

Q. You may answer.

A. Yes, she came to the meeting.

Q. Did you hear Mrs. Reed state that if the plant was unionized, it would be—strike that question.

Did you hear Mrs. Reed make a talk?

A. Yes, I heard her.

Q. Did Mrs. Reed in her talk make a statement to the effect that if the International unionized the plant it would be closed?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: You may have a continuing objection. The same ruling.

By Mr. Ingraham:

Q. You may answer.

A. No, she didn't make that statement.

Q. Did your hear Mrs. Reed make any statement to the effect that she was not going to let Dubinsky tell her how to run her business?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: You may have a continuing objection. The same ruling.

[fol. 5688] A. No, she did not.

Mr. Ingraham: Did Mrs. Reed make any statements with reference to the right of employees to organize or not organize as they so wished?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

A. Yes, she said we were free to do as we wished to do.

By Mr. Ingraham:

Q. Do you recall if Mrs. Reed made any statement with respect to providing transportation for employees to work?

A. Yes, she said they were taking the matter up to see if they couldn't furnish us safe transportation to and from work.

Q. Do you recall anything that Mrs. Reed said with reference to the International or Dubinsky? A. Yes.

Q. What do you recall that she said?

A. That she was not going to let anyone intimidate her employees, that they were not to be forced to join any organization; that we could do as we wished.

Q. Did Mrs. Reed make any statement with reference to permitting the International or Dubinsky force her to do anything?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

[fol. 5689] Mr. Langsdale: I object to it as leading and suggestive.

Trial Examiner Batten: Will you read the question?

(Thereupon the last question was read by the reporter, as follows:

"Q. Did Mrs. Reed make any statement with reference to permitting the International or Dubinsky force her to do anything?")

Trial Examiner Batten: You may answer.

A. No.

Mr. Ingraham: Do you recall anything else that Mrs. Reed said in that speech?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

Mr. Ingraham: Did you answer that question?

A. No.

Trial Examiner Batten: You may answer.

A. May I have the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Q. Do you recall anything else that Mrs. Reed said in that speech?")

A. She thanked us for the petition that we had all signed and sent her.

By Mr. Ingraham:

Q. Do you recall anything else? A. No, I don't.

[fol. 5690] Q. Do you recall whether or not Mrs. Reed made this statement: "I know you are thinking about the

threats of violence that the union is making against you and the company. I want to say that the company and I intend to do everything possible to protect you in case of any violence."

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

* * * * * * *

A. Well, I don't just recall her exact words. I do remember about her saying about the transportation.

By Mr. Ingraham:

Q. Do you recall this, following that that I have just read: "We are now trying to make arrangements with the street car company for its buses to go to certain points and pick you people up and bring you to the plant. We will let you know about this as soon as arrangements can be made." A. Yes, I remember that.

[fol. 5691] Q. Do you recall Mrs. Reed making the statement: "Many of you have been here for a number of years, and you know that you have never been asked whether or not you belonged to a union. The company has not discriminated against anyone on that account, and Mr. Dubinsky is not going to make me discriminate against the employees because they would not belong to his union."

A. No, I don't recall that.

Q. Do you recall that Mrs. Reed said: "If you want to belong that is your own business and it is up to you to decide."

Miss Weyand: I object to that as cumulative and repetitious as to this witness in addition.

Trial Examiner Batten: The same ruling.

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A. Yes, I remember.

Mr. Ingraham: Do you remember Mrs. Reed making this statement, "I will say that neither Dubinsky or any other buttinsky is going to intimidate me or the company [fol. 5692] into forcing you to join the International against your will."

Mr. Langsdale: May I have the continuing objection to the form of this question?

Trial Examiner Batten: Yes.

Miss Weyand: I object to the question as cumulative, and in addition it is repetitious as to this witness.

Trial Examiner Batten: Well, as to your objection because of it being cumulative, I will make the same ruling. The witness may answer, and you may have a continuing objection as to the other.

By Mr. Ingraham:

Q. You may answer.

A. Yes, she said that she didn't feel we should be intimidated, to be forced to do anything against our own will.

Q. Did the employees take any action at this meeting with respect to designating or appointing a committee?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

A. Yes, we talked it over and we appointed a committee to see what could be done.

Mr. Ingraham: Do you recall who was appointed on that committee?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

A. Well, I am not right sure, but I think it was Rose Todd and Sallie Ormsby and Hobart Atherton, as well as I remember.

[fol. 5693] Mr. Ingraham: Do you recall what the committee was to do?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

A. They were to obtain legal advice for us so we would know what we could do legally.

Mr. Ingraham: Now, between the meeting of March 18 and the meeting of April 27, when the union was formed, did the employees hold another meeting?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

A. Yes, we had another meeting the last of March, sometime.

By Mr. Ingraham:

Q. Now, at that meeting, did Mrs. Reed and the people I named in my previous questions, or any one of those people, discuss with you the holding of that meeting?

A. They did not.

Q. Did any one of those people suggest to you that you attend that meeting?

A. They did not.

Q. What occurred at that meeting?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

A. Well, the committee reported that they had seen a lawyer for counsel so we could go ahead with this lawfully [fol. 5694] and be in the right; and I think that was the meeting where they reported they had consulted Mr. Tyler, and naturally a lawyer has to have retaining fees, so it was discussed and we decided that 50¢ each would be enough to make up the $500 which was his retaining fee.

Q. Did you contribute 50¢?

A. I did.

Q. Did you do it at that meeting?

A. No, I did it the next day.

Q. Did you make that contribution of 50¢ to the Loyalty League?

A. I did not.

Q. Was that a Loyalty League meeting?

A. No, sir.

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

Mr. Ingraham: Going back to the first meeting, the meeting of March 18, was that a Loyalty League meeting?

A. No.

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

A. No, it was not.

By Mr. Ingraham:

Q. Did the fact that Rose Todd took an active part in the three meetings that you have testified about, cause you to believe that these meetings, the meeting of March 18, the [fol. 5695] meeting the last of March, and the meeting of April 27, were Loyalty League meetings?

A. No, it did not.

Q. Did any instructor suggest or direct that you attend any of these meetings?

A. No.

Q. Did any thread girl suggest or discuss with you anything in connection with the attending of these meetings?

A. They did not.

Q. Did you consider an instructor a boss?

A. No.

Q. Did you consider a thread girl a boss?

A. No.

Q. Did the fact that instructors and thread girls may have attended the meeting of April 27, at which the Donnelly Garment Workers' Union was formed, cause you to believe that the company was sponsoring the formation of the Donnelly Garment Workers' Union?

A. No, it did not.

Q. Did the fact that instructors or thread girls attended the meeting of March 18, and the meeting the last of March, cause you to believe that the company was sponsoring those meetings?

A. No.

Q. Did you know of any connection between the Loyalty [fol. 5696] League and the Donnelly Garment Workers' Union?

A. No, I didn't; they were entirely two different organizations.

Q. Were, at any time, meetings of the Loyalty League held immediately preceding or immediately following meetings of the Donnelly Garment Workers' Union?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

A. No, they never were.

Mr. Ingraham: Do you recall any business of the Loyalty League being discussed at any meeting of the Donnelly Garment Workers' Union?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: You may answer. The same ruling.

A. No, I do not.

By Mr. Ingraham:

Q. Were you a member of the Loyalty League?

A. I was.

Q. What were the activities of the Loyalty League?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: You may answer. The same ruling.

A. They were purely social such as dances and maybe a carnival and some home talent plays.

By Mr. Ingraham:

Q. Did you pay any dues to the Loyalty League?

A. No.

[fol. 5697] Q. Did the Loyalty League or anybody representing the Loyalty League ever bring any pressure on you to cause you to join the Donnelly Garment Workers' Union?

A. No, they did not.

Q. Did you join the Loyalty League of your own free will?

A. I did.

Q. Did anybody bring any pressure on you to cause you to join the Loyalty League?

A. No.

Q. Did you pay dues to the Loyalty League?

A. No.

Q. I will hand you respondent's exhibit No. 6, which appears in the Circuit Court record at 4864, and ask you to

state whether or not you read that article that appeared in the Kansas City Times of February 26, 1937. Will you please read the article? Do you recall reading that article?

A. Yes, I read that article.

Q. Do you recall the statement attributed to Mr. Perlstein, stating: "the union claims only 25 members among the Donnelly workers, but officials said hundreds of others are related to union members. Within a year we will have it completely organized, Mr. Perlstein said. As soon as we have enough members we will call a strike." Do you recall that in the article?

A. Yes, I remember that very definitely.

[fol. 5698] Q. Did you want a strike at the Donnelly plant?

A. I did not.

Q. What did you think would happen if the International called a strike at the Donnelly plant?

A. Well, my reaction to that part of that statement was that I didn't see how they could call it if they didn't have members there.

Q. Well, if a strike was called, did you believe it would be the same kind of a strike that they had at the Gernes, Gordon, and Missouri plants?

* * * * * * *

A. Yes, that is what I thought.

* * * * * * *

By Mr. Ingraham:

Q. What did you think that meant?

A. I thought that would mean the same methods that they used in other places, which was violence.

Q. Do you recall the statement in this article stating that part of the union's campaign as directed against the Donnelly Garment Company, "will be to send six women to [fol. 5699] cities and towns where its garments are sold." Do you remember that?

A. Yes.

Q. What did you think that meant?

A. Well, I thought that they were going to try to get people to boycott our products or our dresses.

Q. State whether or not you thought that might affect your job.

A. Yes, of course I did, to a certain extent.

Q. Now, shortly after this article appeared in the paper on February 26, 1937, there was a petition circulated among the employees?

Miss Weyand: I object to that as cumulative.

Trial Examiner Batten: The same ruling.

A. Yes, there was.

[fol. 5700] Q. Did this article that you just read have anything to do with your signing that petition?

A. Well, I suppose it did, to a certain extent. That petition that we signed was— I can't quote it word for word, but it was that we were happy and contented with our work, and that was the way I felt about it.

Q. This article I have called your attention to, was that discussed by other employees in the plant?

A. Yes. We discussed everything that came out in the paper, I think.

Q. What effect, if any, as far as you could observe, did that article have on other employees?

A. Well, we all just felt that we had to really find out what we could do for ourselves and look after our own interests.

Q. Did you want to join the I. L. G. W. U.?

A No, I did not.

Q. Did you know of any other employees that wanted to join the I. L. G. W. U.?

A. I never heard any say that they did.

Q. I will hand you I. L. G. W. U. Exhibit No. 10 and ask you if the petition you signed had the language at the top of it that appears on the first page of this exhibit, which is page 5961 of the Circuit Court record.

A. Yes, that's what it was.

Q. Did you sign that petition of your own free will?

[fol. 5701] A. I did.

Q. Did you know that the petition was going to be sent to Mrs. Reed? A. Yes.

Q. Who presented the petition to you?

A. Mary—I can't remember just her last name.

Q. Where were you when she handed you the petition?

A. I was sitting at my machine working.

Q. Did she say anything to you?

A. She just handed me the paper and asked me to read it, and if I cared to sign it, all right.

Q. And you stated you would sign the petition?

A. I did.

Q. Did you want Mrs. Reed to know you were happy and contented in your position with the company?

A. Yes. That is the way I felt and I wanted her to know it.

Q. Did you want her to know that you were "thankful for the real humanitarian interest extended by our employer, Mrs. Reed."? A. Yes, I did.

Q. Did you want Mrs. Reed to know, "and refuse to acknowledge any union labor organization."?

A. That's right.

Q. Did you have any particular union in mind at that time?

[fol. 5702] A. Well, I didn't care about any other organization coming in there and organizing us.

Q. What do you mean, "other"?

A. Well, I had the I. L. G. W. U. in mind at that time, I guess, because that seemed to be the topic of the day, mostly.

By Trial Examiner Batten:

Q. How did you know that Mrs. Reed would know that? A. Well,—

Q. How did you know that she would know what you had in mind, except from reading the petition?

A. Well, the petition said "any other union labor organization." That was the one we talked about all of the time, but as far as that goes, it just meant any other union labor organization. I didn't want any of them.

Mr. Ingraham: Was there any other union attempting to organize you at that time besides the I. L. G. W. U.?

A. Not that I know of.

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Trial Examiner Batten: Well, I think, then, we will adjourn until 9:30 in the morning.

Before closing, don't forget, I would like to have all of you give some thought to the suggestion I made, and also give some thought to whether or not tomorrow morning you

[fol. 5703] can give me some idea of what your plans are. And when I say "plans," I mean, in accordance with my statement today. I do not expect you to disclose your programs to each other. That isn't what I have in mind. But it seems to me you would be able to give me some sort of a general idea. So, I will call on you in the morning for that.

. . . . . .

[fol. 5708] Trial Examiner Batten: The hearing will be in order. We will proceed.

Mrs. Freed.

I think we are ready to proceed.

I think I suggested last evening the possibility of counsel discussing some matters between last evening and this morning, and whether or not they could give me any information.

Mr. Ingraham, can you—

Mr. Ingraham: I haven't had a chance to discuss with Mr. Tyler anything concrete. The position of the respondent is that we are putting on our case, and so far as being bound by anything that the intervener, Donnelly Garment Workers' Union, presents in the way of evidence, we don't want to have any understanding that would bind us.

Trial Examiner Batten: Of course, I don't think I even intimated that.

Mr. Ingraham: Well, if the intervener, Donnelly Garment Workers' Union, desires to adopt our evidence, of course, we haven't anything to say about that.

Trial Examiner Batten: And I presume it works the other way also.

Mr. Ingraham: I would think so.

Trial Examiner Batten: Well, but my point was, have [fol. 5709] you given any thought at all to the number of witnesses or the length of time? It seems to me I ought to be able to get some sort of a general idea from counsel.

Mr. Ingraham: Mr. Hogsett, as you know, is in the case with us, and that matter is a matter of considerable

importance, and we did discuss it and we do want to take the matter up with Mr. Hogsett.

Now, he will be home Tuesday, as I understand from his office; and before that time we don't want to even indicate something that Mr. Hogsett might not agree with us about, and we might have different ideas after talking with him.

Trial Examiner Batten: You mean you haven't discussed this matter with him at all up to this time?

Mr. Ingraham: No, we have not

Trial Examiner Batten: You mean even in the preparation of your case?

Mr. Ingraham: No.

Trial Examiner Batten: Then, I assume that, not having discussed the matter in any way with Mr. Tyler, I don't believe you, Mr. Tyler, have any ideas on the matter, have you?

Mr. Tyler: If the Examiner please, Mr. Lane and I discussed the situation of some method of limiting the length of testimony, or of the entire case, last night. Personally I am hopeful that it can be done, and I have in my mind the possibility of a suggestion or two, provided it is [fol. 5710] mutually agreed to by all parties, or a ruling is made applying to all parties, limiting their testimony; but Mr. Lane and I haven't come to any agreement, nor have I had an opportunity this morning of discussing it with Mr. Ingraham.

I shall endeavor to do so. I think it has possibilities, and I think it ought to be done.

Trial Examiner Batten: Of course, you understand, Mr. Tyler, I stated yesterday—I don't presume you have seen the record—my idea in getting from counsel their ideas as to whether something could be worked out is not that I want to avoid making any ruling, which I should make. I'll make it when I think it should be made. That was not my purpose.

My purpose was to see whether or not there isn't some basis upon which all counsel can get together on some sort of a plan. In other words, your plan would be better than

any suggestion I could possibly make, and that was my thought. It was also my thought, as I stated yesterday, as far as the respondent and the intervener are concerned, certainly there doesn't need to be duplication.

I stated also, as far as the Board is concerned, and the Ladies' Garment Workers, we didn't need to go over the same ground twice. Now, that, of course, is within reasonable limits.

As Mr. Ingraham just stated, the respondent may want to adopt part of the testimony and it may not. You may [fol. 5711] feel that part of the testimony of the respondent covers some of your points, and you may feel some of it does not. Now, I am not trying to limit you on that. I am simply trying to find out whether or not there is any basis, common basis, on which something can be anticipated.

Now, I think you all realize that, of course, the Circuit Court didn't even have in mind 1200 witnesses, at least from reading it I didn't contemplate they even had that in mind, because if they did, they, of course, would realize that no administrative hearing nor judicial tribunal could ever function—I mean, it would be just beyond ordinary possible comprehension; so that I am looking for suggestions.

Now, after you have all talked it over, if none of you have any suggestions, why, of course, I will consider ways and means of equitably adjusting the matter. But I am only concerned with what you men think you can do.

Mr. Tyler: Well, I'll state that the intervener doesn't feel that it is necessary to make any formal motion adopting the evidence of the respondent.

Trial Examiner Batten: That's right, that isn't necessary.

Mr. Tyler: Any evidence it produces that assists in proving our contention is already to our benefit without a specific motion.

Trial Examiner Batten: That's right, Mr. Tyler. No [fol. 5712] one would even contemplate you would go through the record, or Mr. Ingraham would, or Mr. Langs-

dale would, or Miss Weyand would, and say, "We adopt that and reject that," that is not even under contemplation.

Mr Tyler: And I will say further the intervenor doesn't feel there is any obligation on it, or even would it be proper for it to endeavor to put on as many witnesses as the respondent, just to show it is carrying its end of the case.

I don't think there is any such obligation, and I don't think that is proper.

I will add that I will agree with you that the Court of Appeals said 1200 witnesses shall not be heard, in effect; they said, of course, it isn't necessary to hear 1200 witnesses; there are means of handling cumulative testimony, and I think it would be error for the Examiner to assume that the Court of Appeals was even willing that any such number of witnesses would be put on.

Trial Examiner Batten: Well, I will appreciate it, of course, if you men will give it further thought, and I will probably call upon you again tomorrow and again Monday, to see whether or not you have discussed it amongst yourselves.

In fact, I think I shall recess right now until 10:30 for the purpose of all counsel to get together and discuss this amongst yourselves, the Board, Mr. Langsdale, Mr. Ingraham, Mr. Tyler, all of you; so we will adjourn right now [fol. 5713] until 10:30, and you counsel may all, right here, discuss this matter, whether or not there is any possibility of arriving at anything.

So, until 10:30, we are recessed.

Mr. Langsdale: I suggest, Mr. Examiner, that the witnesses be excluded from the room during the discussion of any counsel.

Trial Examiner Batten: Well, I think that is advisable. So, if the witnesses will find some other place to retire to.

(Thereupon a recess was taken from 10 o'clock a. m. to 2 p. m.)

After Recess

(Thereupon the hearing was resumed, pursuant to recess, at 2 p. m., and the following proceedings were had:)

Trial Examiner Batten: The hearing will be in order. Mrs. Freed.

We will proceed, Mr. Ingraham.

ALICE FREED, a witness heretofore called by and on behalf of the respondent, having been previously sworn, was examined and testified further as follows:

Direct Examination (Continued)

By Mr. Ingraham:

Q. I will hand you respondent's exhibit No. 7 and ask you if you recall reading this article that appeared in the Journal-Post of March 6, 1937?

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[fol. 5714] By Mr. Ingraham:

Q. Do you recall whether or not you read that article?

A. Yes, I read that.

Q. Did the statement attributed to Mr. Dubinsky in this article, which was: "Mr. Reed said many harsh things about me during the recent political campaign," did that influence you in any way, that Mr. Reed had said anything about Dubinsky?

A. No, it did not.

Q. Did you hear Mr. Reed make any political speeches in the 1936 campaign?

A. No.

Q. Did anything that Senator Reed ever said that you heard of with regard to Dubinsky influence you in any way?

A. Not in the least.

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By Mr. Ingraham:

Q. I believe you stated that you read respondent's exhibit 35, which was an article that appeared in the Journal-Post on April 22, 1937, entitled, "Donnelly Worker will be sent to Union Convention"?

[fol. 5715] A. Yes, I read that.

Q. Were you at work the following morning, after that newspaper article was published?

A. I was.

Q. What floor did you work on?

A. I was on the seventh floor.

Q. Did you hear that article discussed among other employees?

A. Yes, I did.

Q. What effect did that article have on other employees?

A. Well, they felt the same as I did, they were rather indignant because they hadn't authorized anyone to represent them.

Q. State whether or not they — strike that.

Did the employees discuss the statement attributed to Mr. Perlstein: "Perlstein said the Donnelly Committee desired one of their number to appear at the convention and ask the International to endorse and support a strike against their employer." Do you recall that?

A. Yes.

Q. State whether or not the employees wanted a strike.

A. No.

Q. Did you see Sylvia Hull on the morning of the 23rd?

A. Yes.

Q. Where did you see her?

A. As she came down to her locker when she went [fol. 5716] home. Her locker was on the seventh floor, not very far from where I was working.

Q. I see. Did you leave your work?

A. No.

Q. Did you know a girl named Fern Sigler?

A. No.

Q. You didn't see her that morning?

A. No.

Q. Did you hear any employees make the statement they did not want to work if Sylvia Hull remained there at work?

Mr. Langsdale: Just a moment. I object to that as leading and suggestive. The witness ought to be asked to say what she heard without telling her what she heard.

Trial Examiner Batten: You may answer.

Mr. Langsdale: May I have a continuing objection?

Trial Examiner Batten: Yes.

Mr. Langsdale: Leading questions to this witness?

Trial Examiner Batten: Yes.

A. Will you read that again, please?

(Thereupon the last question was read by the reporter.)

A. I don't remember hearing anyone say that.

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[fol. 5717] Cross-Examination.

By Mr. Lane:

Q. Mrs. Freed, how long did you work on the seventh floor during 1937?

A. I was there all the time.

Q. What section were you in?

A. 519.

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By Mr. Lane:

Q. In March and April of that year who was your instructor?

A. Rosetta Cook.

Q. Will you describe what Rosetta Cook did as an instructor of that section?

A. Well, she would instruct we girls in the making of dresses.

Q. Did she ever, so far as you know, hire or fire any of the operators in section 519 when you were there?

A. No.

Q. Did you ever see her or hear her discipline an operator?

A. No.

Q. Did you regard her as a supervisor?

A. No.

Q. Or a supervisory employee of the company?

A. No.

Q. Did you regard her as having a superior position to your own?

[fol. 5718] A. No, I didn't.

Q. Did you think of her as being your boss?

A. No.

Q. Who was your thread girl in March and April 1937?

A. Well, I can't exactly remember, but I do think it was Marie Ashley at that time.

Q. What did she do as thread girl?

A. Well, she would bring we girls the thread to match the material we were working on, and labels and shoulder tapes.

Q. Did she ever hire or fire any operator that you know of?

A. No.

. . . . . .

By Mr. Lane:

Q. Did you ever hear her or see her discipline any operators?

A. No, I never did.

[fol. 5719] Q. Did you regard the thread girl as a supervisory employee?

A. I did not.

Q. Did you regard her as your boss?

A. No.

Q. Did you think that her position was superior to your position?

A. I did not.

Q. Now, is what you have said of Rosetta Cook, your instructor, true of all the other instructors in the plant, so far as you know?

A. That's right.

Q. And is what you have said of Marie Ashley, the thread girl, true of all the other thread girls in the plant, as far as you know?

A. Yes.

Q. Did you regard any instructor or any thread girl as a boss or as a supervisory employee?

A. No.

Q. Did you know Rose Todd in March and April of 1937?

A. I saw her through the building.

Q. Did you have a speaking acquaintance with her?

A. No.

Q. Did you know her by name?

A. I knew what her name was, yes.

Q. Did you observe her doing anything around the plant?

[fol. 5720] A. She would come into the section and take care of the bundles that would have recuts off, that had been off for some time, or something that had been lost off of it, take care of it so the work could go on.

* * * * * * *

By Mr. Lane:

Q. Will you explain what you mean by taking care of bundles that had recuts off of them, or something of that kind?

A. Well, sometimes we had a bundle that come to us where there may be a flaw in the material, and then we have to send for a recut, and of course we got to hold the bundle until the recut comes back.

Q. Do you mean by that that you sent that same garment down to match the bundle you have?

A. That's right.

Q. That the garment you have has some flaw in it?

A. That's right.

Q. Is that all you ever heard of Rose Todd doing?

A. Yes.

Q. Did you regard Rose Todd as a boss?

A. No.

Q. Did Rose Todd, so far as you know, have any employees working under her, whose activities she supervised?

[fol. 5721] A. Not that I ever knew of.

Q. Did you ever hear Rose Todd say anything that indicated she regarded that she was a supervisory employee of the company?

A. I never did.

Q. Did you ever hear anybody say that Rose Todd was a supervisor or a boss?

A. No.

Q. Did you know Hobart Atherton?

A. I knew who he was.

Q. Did you know what he did in March and April of 1937?

A. No.

Q. Did you see him occasionally around the plant?

A. Yes.

Q. Did you see what he was doing?
A. No, I did not.
Q. Did he ever do anything that you observed that made you believe that he was a supervisory employee of the company?
A. No.
Q. Did you know Sallie Ormsby?
A. Yes.
Q. What did she do?
A. She was an operator.
Q. Do you know what section she was in?
A. I think at that time she was on the eighth floor, I am not sure.
[fol. 5722] Q. Did you know Ethel Riegel?
A. No.

Mr. Langsdale: Who was that?

Mr. Lane: Ethel Riegel.

By Mr. Lane:
Q. Did you know Arch Lyle?
A. No.
Q. Did you know Lena Faulconer?
A. No.
Q. Or Eva Lieberman?
A. No.
Q. Did you know Mrs. Riggs?
A. No.
Q. Or Lyle Jeter?
A. Yes.
Q. What did he do?
A. He was a mechanic.
Q. What did you observe him doing around the plant?
A. Fixing the machines.
Q. Did you ever see him doing anything else?
A. No, I never did.
Q. Did you regard him as a boss or as a supervisor of the company?
A. No.
Q. Did he have any employees working under him who acted as he directed as a supervisor, as far as you know?

[fol. 5723] A. No, none that I knew of.
Q. Did you know Cordelia Taylor? A. No.
Q. Or Leona Moore? A. Yes.
Q. What did she do? A. She was an operator.
Q. Did you know Ellen Nokes? A. No.
Q. Or Virginia White? A. No.
Q. Did you know Fred Brown?
A. I knew who he was.
Q. Did you know where he worked?
A. In the cutting department, I think.
Q. Did you know Mamie Riddle? A. No.
Q. Did you know Anna Richards? A. No.
Q. Or Marjorie Green? A. I knew who she was.
Q. Where did she work? A. In the office.
Q. Did you know Jack McConaughey? A. Yes.
[fol. 5724] Q. Where did he work?
A. He was in the mechanics' cage.
Q. Did you know Charlie Casey? A. No.
Q. Did you know Hazel Saucke? A. No.
Q. Or Anna Reece? A. No.
Q. Was there anybody who attended the meeting of April 27, 1937, at which the Donnelly Garment Workers' Union was formed, that you regarded as a supervisory employee or a boss or a representative of the management?
A. Not that I saw.
Q. Was there anybody who participated in the meeting by talking or making a motion, or taking any other part in the meeting, that you regarded as being a boss or a supervisor of the company? A. No.
Q. You voted at that meeting, I believe you said, in favor of forming the Donnelly Garment Workers' Union?
A. I did.
Q. You cast that vote of your own free will, did you?
A. I did.
Q. When you voted that way, did you think that you were doing a voluntary act on your part, exercising your [fol. 5725] own right to express preference?
A. I certainly did.
Q. Was there anything in your mind at that time that you thought amounted to domination or coercion or intimidation on the part of the company?
A. There was not.

Q. Was there any instance or any fact that you can think of that to your mind indicated that the company was endeavoring to persuade you or any other employees about joining or forming any union or staying out of any union?

A. No.

Q. For the purpose of refreshing your recollection, I will show you Board's exhibit 8-12, appearing at page 4406 of the Circuit Court of Appeals record, being the minutes of the meeting of the Donnelly Garment Workers' Union of May 11, 1937. Will you look at those sufficiently to tell whether or not you attended that meeting?

. . . . . .

[fol. 5726] By Mr. Lane:

Q. Did you attend that meeting? A. Yes, I did.

Q. Did you attend the union meetings after April 27, 1937, fairly regularly? A. I did.

Q. Do you recall any discussion at the May 11 meeting with regard to payment of Mr. Tyler for his services to the union?

Mr. Langsdale: Just a moment. I object to the question as leading and suggestive. She has been shown what Mr. Lane has told her are the minutes of the meeting of May 11 of the Donnelly Garment Workers' Union, which she has spent considerable time reading—I assume, from beginning to end. Thereafter Mr. Lane takes the document which she has just read back to the counsel table and proceeds to ask her whether or not she remembers this, that, and the other happening, from the minutes he has told her were the genuine minutes of the meeting of the Donnelly Garment Workers' Union of May 11, 1937.

I object to it as leading and suggestive and an improper method of examining this witness.

. . . . . .

[fol. 5727] Trial Examiner Batten: You may answer.

A. Yes, we discussed the payment.

Mr. Lane: Did you understand or believe, yourself, that the Donnelly Garment Workers' Union had to be self-supporting?

A. Yes.

Mr. Langsdale: May I have a continuing objection to that form of question?

Trial Examiner Batten: Yes.

Mr. Lane: Do you know of any contribution, any financial contribution, that was ever made to the Donnelly Garment Workers' Union by anybody, other than by dues and assessments of its members?

* * * * * * *

A. No, I don't.

Q. Was there ever an occasion in May, or thereabouts, in 1937, at which a meeting of the Donnelly Garment Workers' Union was immediately followed by a meeting of the Loyalty League?

[fol. 5728] A. There was not.

Q. Was there ever an occasion when Rose Todd said at a union meeting that it was, in fact, going to be two meetings, one a union meeting and the other a Loyalty League meeting? A. No.

Q. Did you ever discuss at a union meeting in 1937 the matter of raising money for the Loyalty League? A. No.

* * * * * * *

Mr. Lane: I will hand you Board's exhibit No. 8-21, beginning on page 4415 of the Circuit Court of Appeals record, and ask you to look at that briefly, just sufficiently to state whether you attended that meeting of the Donnelly Garment Workers' Union on May 25.

* * * * * * *

Mr. Langsdale: I object to the question as assuming that the document which he has handed her recites the happenings of the meeting on May 25, 1937, there being a sharp controversy as to whether or not the document he has handed her is the genuine minutes or whether the document which was introduced by Elsa Greenhaw is the genuine minutes of that meeting. I think it is extremely leading and suggestive for him to hand to her a document which he claims to be the genuine minutes of the meeting, at [fol. 5729] the same time telling her they are the genuine minutes, and then asking her if she attended the meeting.

Trial Examiner Batten: I will overrule the objection.

As I have stated before, I am not going to attempt to tell any counsel how to ask their questions. If they want to proceed in that manner, or any other manner, they may do so. But, of course, as I previously said, the type of question, I presume, will be taken into consideration when you consider the weight which will be given the testimony.

You may proceed.

Was there a question?

Mr. Lane: Yes, there is a question pending.

(Thereupon Board's exhibit No. 8-21 was read by the witness.)

By Mr. Lane:

Q. Did you attend that meeting? A. Yes, I did.

Q. Now, in view of Mr. Langsdale's statement, I will show you Board's exhibit No. 18-A, beginning on page 4709 of the Circuit Court of Appeals record, and ask you to look at these minutes purported to have been kept by Elsa Graham Greenhaw.

Mr. Langsdale: I object to that question for the same reason, that he is, in effect, telling her that they are not the genuine minutes which he is showing her, when he describes them as "purported minutes." He handed her what he said were the genuine minutes of the meeting before. It [fol. 5730] is entirely leading and suggestive and an unfair method of examination of his own witness.

Trial Examiner Batten: I will overrule the objection.

Will you read the question, please?

Mr. Lane: There is no question pending. I just asked her to read the notes.

Trial Examiner Batten: You want her to read them in their entirety?

Mr. Lane: I want her to read Board's exhibit No. 18-A, yes, in view of what Mr. Langsdale said about the minutes.

Trial Examiner Batten: I presume, then, these have never been referred to before—she has not looked at them before?

Mr. Lane: I believe not. I didn't have access to them, and I believe this witness has not read them; I'm not sure.

Trial Examiner Batten: I thought the other day we were going to have these witnesses look at the documents ahead of time.

Mr. Lane: I have endeavored to do that with the witnesses, but we have been spending time in consultation and I simply have not had the time to do that with this witness.

I would like the record to show, Mr. Examiner, when I said we had been in consulation, I meant Board's counsel, Mr. Langsdale, and we had been in consultation. That was the consultation I was referring to, pursuant to Your Honor's suggestion.

[fol. 5731] Trial Examiner Batten: Would you mind letting me know if you accomplished anything, as long as you have brought the matter up?

Mr. Lane: Are you asking me that question?

Trial Examiner Batten: Yes.

Mr. Lane: I think we didn't come to any specific agreement yet as to how we could present our case.

Trial Examiner Batten: I hadn't intended to ask you, unless someone volunteered, but as long as you brought the matter up, I thought—

Mr. Lane: I didn't bring it up other than to refer to the conference.

* * * * * *

By Mr. Lane:

Q. During April and May of 1937, what was the quitting time of your section?

A. I think at that time it was 4:20.

Q. Was there ever any time in April or May of 1937 that a union meeting began at 3:30 or 3:45 in the afternoon? A. No.

Q. Did you generally get to the union meetings before the meeting had actually begun? A. I did.

Q. Did you get to the meeting on May 25 before it started?

A. I must have, because I was never late to any of them.

[fol. 5732] Q. I will ask you to state whether or not at the union meeting held on May 25 Rose Todd said, "I want to tell you this is going to be two meetings, the first being a meeting of the Donnelly Garment Workers' Union and after that a meeting of the Loyalty League."

Mr. Langsdale: I object to this line of cross-examination for the same reasons I objected to the manner of cross-examination about the document he showed her just prior to this, which he said was the genuine minutes of the meeting of May 25.

Trial Examiner Batten: I will overrule the objection.

You may answer.

By Mr. Lane:

Q. Did Rose Todd say that in the union meeting?

A. No.

Q. Did Hobart Atherton say at that meeting, "There seems to be a little misunderstanding as to why the Loyalty League needs this money, and a little later on I will explain that to you."? A. No.

Q. I will ask you if this was said at that meeting: "A motion has been made that we adjourn our union meeting and immediately open our Loyalty League meeting."?

A. None of our union meetings were followed or preceded by a Loyalty League meeting.

[fol. 5733] Q. Was that motion made at that meeting?

A. No.

Q. I will ask you whether at that union meeting or at the meeting held on that day Hobart Atherton said this, "As Miss Todd has already told you, we have only one debt of the Loyalty League. A good many of you seem to be under the impression that we have accumulated quite a lot of bills as we have gone along, but we have only one. You all realize when this agitation first started we didn't have any union started and it was up to some organization to take the initial steps to protect the rights of employees of the Donnelly Company, so the Loyalty League had a meeting of the representatives and was authorized by the representatives to retain legal counsel. We retained Mr. Tyler, as you all know. He came down here and talked to us. That

debt, the bill to Mr. Tyler, is the only bill the Loyalty League has and, as Miss Todd told you, that is not pressing."

Was anything like that said at the meeting on May 25?

A. No.

Q. I will show you Board's exhibit No. 1-RRRR, beginning at page 3471 of the Circuit Court of Appeals record, being the offer of proof made by intervener, and will direct your attention to page 3480 of that offer and to the—Now, I was going to say the 14th signature in the right-hand column, but in the copy which the Board has made of [fol. 5734] the photostat which we offered they haven't got the names—they are either not in the same sequence or they haven't the same number of names in the column, so in the typewritten copy of the record it is the 22d name in the right-hand column and in the photostatic copy of the record it is the 14th name.

I will ask you to state whether or not that (indicating) is your signature.

A. That is.

Q. Will you look briefly at that exhibit?

(Thereupon the exhibit referred to was read by the witness.)

Q. Did you sign that offer of proof?

A. I did.

Q. I will ask you whether or not at the meeting of March 18, 1937, at which Mrs. Reed spoke, Mrs. Reed said she would not allow members of the International Garment Workers' Union to work at the Donnelly Garment Company.

Mr. Langsdale: Just a moment. I object to this manner of cross-examination. Counsel shows her an offer of proof which she signed, containing certain statements, and she reads it. Then he takes the document back to the counsel table and reads from it, asking her if certain portions of it are true. She signed it and evidently she intended to convey the impression that it was true when she signed it.

I object to it for the reason that it is improper examina-[fol. 5735] tion of this witness and it is repetition because

the offer of proof—the fact that she says she signed it is not a statement of fact that that thing happened; and for the further reason that the question contains conclusions of law that are matters for this Board to decide and not for this witness to state in this hearing.

Trial Examiner Batten: I will overrule your objection, Mr. Langsdale, because I think we are proceeding here on the theory that these employees may express their conclusions and opinions, and so forth.

She may answer, and; if you want to, on cross-examination you may determine what the basis of her opinion or conclusion is.

Mr. Langsdale: There was another element of my objection, and that was that it is repetition. She said she signed it, and it is in evidence.

Trial Examiner Batten: Of course, you wouldn't want me to accept the offer of proof as evidence, would you, because someone signed it?

Mr. Langsdale: She said she signed it. Doesn't that make it evidence?

Trial Examiner Batten: Well, do you think so? If so, I might suggest that we receive affidavits from all of these people, and you won't have to bring them in here.

Mr. Langsdale: That isn't so at all. This is a docu-[fol. 5736] ment she read and says she signed. Isn't it repetition to take it back then and say, "Did you?—"Is that true?"

Trial Examiner Batten: I would say it would be repetition if this were evidence.

Let's proceed.

* * * * * *

By Mr. Lane:

Q. The question is, did Mrs. Reed in the meeting of March 18, at which she spoke, say she would not allow members of the International Ladies' Garment Workers' Union to work in the Donnelly Garment Company?

A. I don't remember hearing Mrs. Reed say that.

Q. Did she say that the I. L. G. W. U. would never be allowed in her plant?

A. I didn't hear that.

Q. Did she say she wanted the names of anybody who joined the I. L. G. W. U. reported to her?

A. No.

Q. Did you from April 27, 1937, the date when the Donnelly Garment Workers' Union was formed, up to July 15, 1939, belong to the Donnelly Garment Workers' Union of your own free will?

A. I did.

. . . . . .

[fol. 5737] By Mr. Lane:

Q. Did you know Lena Tyhurst?

A. I did.

Q. What did she do?

A. Well, she would come in the section and inspect the work as it went—well, as it went through the section, the quality of it and the workmanship.

[fol. 5738] Q. Was she, in your opinion, a supervisory official of the company in 1937?

A. No.

Q. Did you know Mrs. Bogart?

A. No.

Q. Did you know Mrs. Gray?

A. Yes.

Q. What did she do?

A. She worked in the store.

Q. How frequently were you in the store in that period, in 1937?

A. Oh, I went in most every noon.

Q. What did you observe Mrs. Gray doing?

A. Waiting on the girls.

Q. Did you ever have any conversation with her?

A. Not that I remember of.

Q. Did you regard Mrs. Gray as a supervisory official of the company?

A. No.

Q. Did you know Marvin Price?

A. I just knew who he was.

Q. What did he do?

A. I wouldn't know.

Q. Did you know Ted Scoles?
A. I knew who he was.
[fol. 5739] Q. Did you know what he did?
A. He was in the cutting room.
Q. Did you regard him as a supervisory official of the company?
A. No.
Q. Did you know Mrs. Strickland?
A. No.
Q. Did you regard Hobart Atherton as a supervisory official of the company?
A. I did not.
Q. Did you belong to any section club?
A. I did.
Q. Do you know the name of it?
A. I don't know whether we had a name for our club in our section or not. I don't recall it.
Q. Was that in section 519?
A. It was.
Q. Did you have any officers?
A. Yes.
Q. Did you pay dues?
A. Yes, we girls paid 5 cents a week.
Q. What did that club do?
A. Oh, we would have a dinner now and then, and go to the show, and things like that.
Q. Was that club in existence prior to April 27, 1937?
[fol. 5740] A. Yes.
Q. Did it continue in existence after April 27, 1937?
A. Yes.
Q. Was it still in existence on July 15, 1939?
A. Yes.

* * * * * *

[fol. 5741] Trial Examiner Batten: Miss Weyand.

By Miss Weyand:
Q. Did you work at other garment companies before you went to work at the Donnelly Garment Company?
A. I did.
Q. What other garment companies did you work at?
A. The Tilden Manufacturing Company, at Ames, Iowa.

Q. Is that the only other garment company you worked for?

A. Yes.

Q. What was your period of employment with them?

A. Well, I was there from 1931 until in the spring of 1936.

Q. What was your job with them?

A. As an operator.

Q. When did you join the Loyalty League?

A. Soon after I came to work at the Donnelly Garment Company.

Q. Who asked you to join the Loyalty League?

A. I don't remember.

Q. Did you join at a meeting?

A. No.

Q. Were you in your section when you joined?

A. I couldn't say as to that.

Q. Do you know who the officers of the Loyalty League were at the time you joined?

A. Rose Todd was chairman.

Q. Did you know any of the other officers of the Loyalty League at that time?

[fol. 5742] A. No, I did not.

Q. Do you know any officers of the Loyalty League at any time?

A. Well, after Rose Todd, Thelma Huffaker.

Q. Were you present at any meeting when Thelma Huffaker presided?

A. No, I was not.

Q. Were you present at any meeting where Rose Todd introduced Thelma Huffaker and had her say a few words?

A. No.

Q. Did your section have a representative in the Loyalty League?

A. I don't remember whether they did or not.

Q. Do you know whether your section has had, prior to July 15, 1939, a representative in the Donnelly Garment Workers' Union?

A. I don't remember whether they had one in the section on that floor or not.

Q. Did you work continuously on the seventh floor from the time you went to work in 1936 to July 15, 1939?

A. I did.

Q. Did you work continuously in section 519?

A. When I first went there it was 517 and then they moved in a new section and moved our section over and it was called 519.

Q. But otherwise you continued to work in the same [fol. 5743] section throughout that period?

A. Yes.

Q. Was Rosetta Cook your instructor throughout that period?

A. You mean from —

Q. (Interrupting) From the time you first went into the section until July 15, 1939?

A. No.

Q. What other instructors did the section have?

A. Pearl Collins.

Q. Is she the only other instructor the section had?

A. Yes.

Q. Do you know when she was the instructor of the section?

A. Well, as near as I can recall it was in the spring of 1938 until, I think, in August 1939, or around there sometime.

Q. Was Marie Ashley the only thread girl the section had during that period?

A. No.

Q. What other thread girl did the section have?

A. Jessie Mudd and Thelma Huffaker.

Q. Can you tell me the period of time which Jessie Mudd was the thread girl in that section?

A. No, I don't remember.

Q. Was it subsequent to March and April 1937?

A. Well, I don't think so. As near as I can remember, Marie Ashley was.

[fol. 5744] Q. I was asking whether it was subsequent to that time.

Trial Examiner Batten: Was it after that time?

A. That Jessie Mudd was?

By Trial Examiner Batten:

Q. Yes.

A. As near as I can remember, yes.

By Miss Weyand:

Q. When was Thelma Huffaker the thread girl in that section?

A. Well, I can't remember that.

Q. Do you know the order in which you had those thread girls?

A. No, I don't. I do remember that Marie Ashley was the first one.

Q. You don't remember whether Jessie Mudd was the second or third, or Thelma Huffaker the second or third?

A. No, I don't.

Q. Do you know when Marie Ashley ceased to be the thread girl in that section?

A. No, I don't remember that.

Q. Do you have any approximation of the date?

A. No.

Q. Did you know that continuously from the latter part of May, 1937, until July 15, 1939, the Donnelly Garment Workers' Union had a closed shop contract with the Donnelly Garment Company?

A. I knew we had a closed shop, but I don't remember just when that did take effect.

[fol. 5745] Q. Do you have any idea when it did take effect, what year, how long after you were organized?

A. No, I don't.

Q. Do you have any idea whether it was in effect a year or two years prior to July 15, 1939?

A. I don't remember.

Q. Do you know that the contract between the Donnelly Garment Workers' Union and the Donnelly Garment Company had always had a closed shop provision in it?

A. No.

Q. Did you know that at all times subsequent to May 27, 1937, if you had ceased to be a member of the Donnelly Garment Workers' Union, by the terms of the contract the company would have had to discharge you?

A. No, I didn't.

Q. You didn't know that?

A. I suppose I knew it at the time, but I didn't dwell on the subject, I don't remember of it.

Q. Did you know at any time during that period that there was a closed shop contract?

A. Yes.

Q. You testified here that continuously from the time you joined the Donnelly Garment Workers' Union, until July 15, 1939, you remained a member of your own free will, is that true?

A. That's true.

[fol. 5746] Q. Can you explain how you believed it was of your own free will that you were a member during that period, when the company would have discharged you if you had ceased to be a member?

A. Well, no one intimidated me in any way to join it. I did it of my own free will and I continued to belong to it because in the first place I joined it because it was what I wanted, and felt it was what I wanted, and I continued to belong to it.

Q. But within a month of the time you joined it, the company agreed to fire any girl who didn't belong to it. If you had ceased to belong to it, you would have lost your job. And you say, still, it was of your own free will that you remained a member?

Mr. Reed: That is objected to as only an argument and not a question.

Trial Examiner Batten: Overruled.

Mr. Lane: It is objected to further because she doesn't know when the closed shop agreement went into effect.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You may answer.

Mr. Reed: The company didn't make any such agreement.

Trial Examiner Batten: You may answer.

A. Yes, I continued to remain a member of my own free will.

By Miss Weyand:

Q. You considered the manner of your conduct a matter [fol. 5747] of free will, when you knew if you had done something different you would have lost your job?

Mr. Reed: Well, I object to that as a hypothetical question.

Trial Examiner Batten: I think it is hypothetical but very practical, Senator.

Mr. Reed: How is that?

Trial Examiner Batten: I think it is hypothetical but very practical.

Mr. Reed: Well, we object to it as an improper question.

Trial Examiner Batten: Will you read the question, please?

(Thereupon, the last question was read by the reporter.)

Mr. Reed: That simply means nothing, that question.

Trial Examiner Batten: Well, Senator, will you let the witness determine that question, please?

Mr. Reed: I am making an objection to you.

Trial Examiner Batten: Well, I will overrule that. I don't think that is an objection. The thing is whether or not the witness understands the question, Senator.

By Trial Examiner Batten:

Q. Do you understand the question, Miss Witness?

A. Well, if he will read it again, please. The discussion comes up and I want to be sure of the question.

Trial Examiner Batten: Well, we will have it read to [fol. 5748] you and you think about it a moment.

(Thereupon the last question was read by the reporter as follows:

"Q. You considered the manner of your conduct a matter of free will, when you knew if you had done something different you would have lost your job?")

Mr. Reed: Now, I object to that as incompetent and immaterial.

Trial Examiner Batten: Senator, will you please let the witness think a minute? I suggested that, and I will instruct her not to answer until you permit her to answer.

Mr. Reed: Well, very well, we will do it your way.

Trial Examiner Batten: Now, will you read the question?

A. No, I remember the question.

By Trial Examiner Batten:

Q. Do you recall it now?

A. Yes.

Trial Examiner Batten: Just a moment. Now, Senator, do you have an objection?

Mr. Reed: I object to it as incompetent and immaterial and speculative, and as throwing no light on the issues in this case, and as a meaningless question.

A. Yes, I felt that I was at my own free will.

By Miss Weyand:

Q. What would you consider something not of your own free will?

Mr. Reed: I can't hear that question.

[fol. 5749] Trial Examiner Batten: Will you read it, please?

(Thereupon the last question was read by the reporter, as follows:

"Q. What would you consider something not of your own free will?")

Mr. Reed: I object to that as incompetent and immaterial and meaningless.

Trial Examiner Batten: Well, of course, under present conditions—

Mr. Reed: (Interrupting) And it is speculative.

Trial Examiner Batten: Under present conditions I would wonder what—I don't believe that is—that might lead us off into a philosophical discussion of any subject. I don't believe, unless it is restated—

By Miss Weyand:

Q. Did you consider the loss of your job as something undesirable?

A. Why, yes, I would not consider that desirable.

Q. Would you have felt free to join the International Ladies' Garment Workers' Union after the closed shop contract was signed?

A. I wasn't interested in any other union. I am quite sure our union asked for the closed shop; that is what I wanted.

Q. Did you sign a check-off authorization?

A. A what?

Q. A check-off authorization.

A. Not that I remember of.

[fol. 5750] Q. Does the company check—or did the company, prior to July 15, 1939, check-off from your pay check the dues of the Donnelly Garment Workers' Union?

A. No, they were collected.

Q. Continuously until July 15, 1939, no dues were checked off from your pay check, is that correct?

A. As near as I remember right now, it is.

Trial Examiner Batten: Well, don't you remember whether on the check you got there was a deduction for union dues?

A. Well, my insurance is deducted, but I can't say right now all that time that anything else was or not, but I remember that our dues were collected at the beginning of our union.

By Miss Weyand:

Q. How long do you remember them being collected?

A. I just don't remember because I never gave it a thought; I know I always paid mine.

Q. Is it your belief that they were collected continuously from the time the union was formed until July 15, 1939, by some individual from you?

A. I just don't remember.

Q. Did you ever hear of the company, prior to July 15, 1939, checking off the dues of any employee?

A. I wouldn't know about anyone else's check but my own.

Q. Do you have your check stubs for that period?
[fol. 5751] A. I do.

Q. Can you look at them tonight and report back tomorrow with them here and state to us whether the dues were checked off, and bring the check stubs in?

A. I can.

Q. Will you do that?

A. Yes.

Q. Do you remember how many times prior to July 15, 1939, the amounts were collected around the plant to pay fees to Mr. Tyler?

Mr. Ingraham: Will you read that question, please?

(Thereupon the last question was read by the reporter.)

Mr. Lane: I object to it because it is indefinite. Is she talking about—

Trial Examiner Batten: (Interrupting) Well, it seems to me it is very definite, and a very simple question. The question is, how many times were amounts collected around the plant to pay fees to Mr. Tyler.

Mr. Lane: What did she mean by "around the plant"?

Trial Examiner Batten: Well, the Donnelly Garment Company plant, of course.

You may answer.

Mr. Lane: There is no evidence—

Trial Examiner Batten: (Interrupting) Just a moment, Mr. Lane. If you have made your objection, I will overrule [fol. 5752] it. Will you permit the witness to answer?

Mr. Langsdale: She doesn't mean out in the alley.

Mr. Lane: Well, I am objecting to it because the question implies, as a fact, something that is not in evidence. That is the basis of my objection.

Trial Examiner Batten: Overruled. You may answer.

A. Why, we had one or two special assessments, I don't remember just how many, but there weren't more than one or two, I am sure.

By Miss Weyand:

Q. Do you remember when those assessments occurred?

A. Not after the first one, no.

Q. Do you remember the amount of those assessments?

A. Well, one was a dollar, but I just couldn't say.

Q. Do you know when the dollar assessment was paid?

A. No, I don't remember that.

Q. Do you remember how it was collected?

A. There was someone appointed to take that money up.

Q. Do you remember whether you paid the dollar assessment in one lump sum or in installments?

A. I paid it all at one time.

Q. Besides the dollar which you have just now mentioned paying, did you pay any other sums for Mr. Tyler's fee?

A. If there were other assessments, I did.

Q. You have no recollection?

[fol. 5753] A. I can't remember at the present time or recall just when they were.

Q. And you are speaking [illegible] mounts you paid any time for Mr. Tyler's fee?

A. I said we had one or two assessments, I don't remember just exactly.

Q. During the period prior to July 15, 1939, where were meetings of the Donnelly Garment Workers' Union held?

A. On the second floor.

Q. Were all meetings prior to July 15, 1939, held on the second floor?

A. That's right.

Q. Was the question raised at any meeting as to whether or not the Donnelly Garment Workers' Union had the right to meet on the second floor?

A. I don't remember.

Q. Was any question raised as to what was a proper meeting place?

A. I don't remember that.

Q. Did you read the minutes of the meeting of May 11, 1937, this morning, when Mr. Lane—or this afternoon—when Mr. Lane handed them to you?

A. Yes, I did.

Q. Did you notice in those minutes any question raised as to where was a proper meeting place?

[fol. 5754] A. Well, I can't recall everything that was in those minutes, by just reading them here hurriedly.

Q. You have no recollection now from any meeting, or from reading the minutes, of any such matter with regard to any meeting of the Donnelly Garment Workers' Union?

A. I suppose naturally we discussed the proper place to hold the meetings, but I don't just recall when or where.

Q. Do you recall anyone asking whether it was proper to meet on company premises?

A. The company was not using that floor.

Q. Do you know whether or not the company was leasing that floor at any time prior to July 15, 1939?

A. I don't know.

Q. Do you know whether the Donnelly Garment Workers' Union paid rent to the company for that floor at any time prior to July 15, 1939?

A. I don't know.

Q. Do you know how notices of meetings of the Donnelly Garment Workers' Union were mimeographed or dittoed?

A. You mean how they—

Q. (Interrupting) Who did it, where it was done?

A. No, I do not.

Q. Do you know whether the Donnelly Garment Workers' Union used facilities of the company in preparing the notices of meetings?

[fol. 5755] A. No.

Q. Do you know whether the Donnelly Garment Workers' Union paid the company for the use of facilities to get out its notices?

Mr. Lane: That is objected to for the witness testified she didn't know how they were prepared. The question assumes they were prepared by the use of company facilities.

Trial Examiner Batten: Of course, the witness has testified she doesn't know whether they were prepared by company facilities. Of course, if she doesn't know, I don't presume she would be able to say whether they were paid for or not paid for.

Mr. Tyler: I object to it further because unless this witness was shown to be charged with some of the business

dealings of the union, it is wholly incompetent, or unless she knows the business that is carried on.

Trial Examiner Batten: Well, of course, Mr. Tyler, thus far in the hearing, if I had eliminated all the testimony on the basis of your objection, I am afraid that a good share of it wouldn't be in here. I will overrule the objection; but I don't think it is a proper question, because the witness said that she doesn't know, so how could she say they were paid or weren't paid, if she doesn't know?

By Miss Weyand:

Q. Do you know whether the Donnelly Garment Workers' Union used any facilities of the company for any [fol. 5756] purpose?

A. No, I do not.

Q. Do you know whether the Donnelly Garment Workers' Union ever paid the company for any facilities?

Mr. Reed: Well, now, that is the same question. I renew the objection just made, in view of the comment of the Examiner. It seems to me it is highly improper to press that question.

Trial Examiner Batten: Will you read the prior question to the last one, please?

(Thereupon, the question requested was read by the reporter, as follows:

"Q. Do you know whether the Donnelly Garment Workers' Union used any facilities of the company for any purpose?")

Trial Examiner Batten: What is the answer?

(Thereupon the last answer was read by the reporter.)

Trial Examiner Batten: Well, I think in substance it is the same thing. If she doesn't know whether they used them, how would she know whether they paid for them or not?

Miss Weyand: Do you know whether, when the Donnelly Garment Workers' Union had social affairs, salesmen or officers or executives of the Donnelly Garment Company ever bought large blocks of tickets?

A. No, I do not.

Trial Examiner Batten: Will you just speak a little [fol. 5757] louder, Mrs. Freed, please?

A. No, I do not.

Miss Weyand: When you testified earlier that you did not know of any financial support to the union except by assessments and dues, you did not know whether or not there might have been such financial support, did you?

Mr. Lane: That is objected to as speculative, what might have been.

Trial Examiner Batten: Well, I think it is. Of course, I think it is proper to ask this witness whether there might have been, without her knowledge. That would be, it seems to me, just as complete as the question, "So far as you know."

Miss Weyand: I will withdraw the question and ask you to state, do you know whether or not the company did give any financial support to the union?

Mr. Ingraham: Just a minute. That is repetition. The previous question back was that same question.

Trial Examiner Batten: Well, you may answer.

A. Well, we were a self-supporting organization.

Miss Weyand: You don't know yourself one way or the other whether or not the company did give financial support to the Donnelly Garment Workers' Union?

A. Well, no; but we were a self-supporting organization and raised our own money and our own dues.

Trial Examiner Batten: As a matter of fact, Miss [fol. 5758] Witness, you don't know one way or the other for certain, do you? A. No. How could I?

Trial Examiner Batten: Well, that is the answer.

Miss Weyand: And the same answer would apply to support other than financial support, would it, by granting its facilities or use of the room?

Mr. Reed: I object to that as repetition. It has been gone over and over again.

Trial Examiner Batten: Well, she has testified she didn't know anything about it.

Trial Examiner Batten: You wouldn't know whether the company had given to the Independent or plant union the use of its room, free of charge, you wouldn't know that, would you?

A. Why, no, I wasn't in charge of that part of it.

Miss Weyand: Whom do you regard as the bosses?

A. Mrs. Reed, Mr. Baty, Mr. Green, Mrs. Reeves.

. . . . . .

[fol. 5759] A (Continuing) —and Mrs. Hyde—Ella Mae Hyde.

By Miss Weyand:

Q. Was that all you regarded as bosses?

A. At that time that was about the only ones I knew the names of.

Q. Do you regard those persons as representatives of the management? A. I do.

Q. Do you regard any other persons as representatives of the management, having regard to the year 1937?

Mr. Reed: Pardon me, but I couldn't hear the question.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. Yes, there are other people, but I don't know who they are, because I haven't come in contact with them in any way.

By Miss Weyand:

Q. Those are the only ones whose names you know of, are they?

A. The only ones I can think of at the present time.

Q. Whom do you regard as a supervisory employee?

A. Mr. Baty.

Q. Any other persons? A. Mrs. Hyde.

Q. Any other persons?

[fol. 5760] A. I would regard all of the management of the company.

Q. Would that include other persons than those you have named, that you know the names of?

A. The ones that are in the management of the company.

Q. You have named the names of every person you regard as a boss or representative of the management, or as a supervisory employee, whom you knew the name of; is that correct? A. Yes.

Q. And when you answered questions this morning in which the words "boss," "representative of the management," or "supervisory employee" were used, you had regard only to these persons?

A. No. I had regard to the entire management.

Q. But you know the names of no other person in that group? A. Well, Mrs. Strickland.

Q. Who else?

A. And Miss Spilsbury. I don't recall any others.

Q. Those were the only persons whose names you knew or had in mind when you answered the questions this morning that had the words "boss," "representative of the management," or "supervisory employee;" is that correct?

The Witness: Will you repeat the question, please?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. Those are the only names that I know, yes.

Miss Weyand: Or had in mind, when you answered those questions?

[fol. 5761] Mr. Reed: I couldn't hear the question.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Or had in mind, when you answered those questions?")

A. No. I had in mind—

Trial Examiner Batten: Well, those were the only names you had in mind?

The Witness: Those were the only names.

Trial Examiner Batten: Is that what you meant?

Miss Weyand: Yes.

By Miss Weyand:

Q. Do you know whether any of those persons were present at the meeting of March 18 or April 27?

A. I didn't see any of them there.

Q. Do you know whether or not they were present?

A. Without seeing them, I wouldn't know, but I am sure they were not or I would have seen them.

Miss Weyand: That is all of the questions I have.

Trial Examiner Batten: Mr. Langsdale?

Cross-Examination

By Mr. Langsdale:

Q. When did you first hear of the meeting of March 18?

A. That day.

Q. From whom?

[fol. 5762] A. I don't remember.

Q. What time of day?

A. I don't remember that.

Q. Where were you?

A. I couldn't say where I was at.

Q. Did you talk to anybody about the meeting before you got to the meeting?

A. Well, it was by word of mouth that there was to be a meeting.

Q. That's what I wondered. Who by word of mouth told you about it?

A. Well, after five years I couldn't remember just who. We all talked about it.

Q. Have you any recollection at all of anybody you talked to? A. No.

Q. Did you know anything about the meeting until you got there, except that there was to be a meeting?

A. Well, I knew we were going to have one before I went to it, of course.

Q. Did you talk to anyone about the meeting, what the meeting was for, or anything of that sort, before you got there? A. I don't remember.

Q. Do you remember to whom you gave your 50 cents the day after the meeting that you say was the latter part of March?

[fol. 5763] A. No, I don't remember. There was a girl who was to take it up, and I gave it to her.

Q. Do you remember hearing Rose Todd say, "You can give it to the representative in your section."?

A. No.

Q. You don't remember that?

A. Girls were appointed in each section to collect the money.

Q. Where were they appointed?

A. I don't remember.

Q. How do you know they were appointed?

A. Well, someone had to collect the money, so—

Q. I know that. And someone did. But how did you know to whom to give your money?

A. Well, it was discussed that we were giving 50 cents and that there would be someone to take up the money.

Q. How did you find out who was to take up your money?

A. Well, I don't remember, at the time. I suppose I learned her name, or when she came and asked me for it—I don't remember.

Q. Do you know? A. Do I know who the girl was?

Mr. Reed: Now, the witness has answered, she doesn't remember. The next question, "Do you know?" is an improper question.

Mr. Langsdale: She said she supposes, and I am asking [fol. 5764] her if she knows.

Trial Examiner Batten: Do you know whom you gave your money to? A. No, I don't.

Trial Examiner Batten: Then, that is the answer, if you don't know.

By Mr. Langsdale:

Q. And you don't know how you happened to give it to the girl you did give it to?

A. Yes, because she was to take up the 50 cents in our section.

Q. Who? A. The girl I gave it to.

Q. How did you know she was to take it up?

A. I know there wouldn't have been anybody else taking it up.

Q. Anybody else than whom?

A. Than the girl who was appointed to.

Q. Appointed by whom? A. I don't know.

Q. You say you saw Sylvia Hull when she came to her locker on her way out of the building on the morning of the 23d of April? A. I did.

Q. Where was her locker?

A. On the seventh floor, not far from where I was working.

[fol. 5765] Q. Did you talk with her?

A. I did not.

Q. Did you learn from any source that she had been told to go home?

A. I did not.

Q. Did you learn from any source she had appeared that morning with an International Ladies' Garment Workers' Union pin on?

A. No.

Q. And you didn't know why she was leaving?

A. No, I didn't know why she was leaving.

Q. You didn't hear that from anybody?

A. No. I was busy at my work.

Q. You didn't hear from anybody why she was leaving?

A. No.

Q. Did it occur to you as unusual that she was leaving at that time of the morning?

A. Why, no. Sometimes the girls have something they might want to do that day and they ask to be excused. She had a perfect right to leave. I thought nothing of it.

Q. You suspected nothing unusual about her leaving?

A. No.

Q. How long have you known Sylvia Hull?

A. I didn't know her. That was the first time I ever saw her.

Q. How did you know it was she, then?

[fol. 5766] A. Someone said that was Sylvia Hull.

Q. Who said that?

A. I don't know who said it.

Q. Do you know how they happened to say, "That's Sylvia Hull."?

A. I don't know. I suppose someone said, "Who is that girl going home?" and someone said. I don't know.

Q. You say there is nothing unusual about a girl coming and getting her belongings out of the locker and leaving; is that true?

A. That happens once in a while, if you have something you have to attend to and ask to be excused.

Q. But someone did say to you, "That's Sylvia Hull."?

A. That's right.

Q. Did that mean anything to you at all?

A. Yes. I had read the article in the paper the night before.

Q. About Sylvia Hull's going to the convention?

A. Yes.

Q. Did that person tell you, who told you "That's Sylvia Hull," that she read that article, too?

A. I don't know.

Q. You said Rosetta Cook was your instructor?

A. Yes.

Q. You went to work there in 1936?

[fol. 5767] A. That's right.

Q. I believe you answered you knew Rose Todd by sight only; is that correct?

A. That's right.

Q. You had never talked with her?

A. Not at that time.

Q. At what time? Up to July 15, 1939?

A. No.

Q. You just knew who she was as she would pass through your section?

A. I hadn't talked to her before.

Q. Now, let's get you right. You had never talked to Sylvia Hull up to July 15, 1939?

A. I never talked with Sylvia Hull in my life.

Q. You say you saw her there doing something with reference to bundles?

Mr. Ingraham: Just a minute.

Trial Examiner Batten: You said "Rose Todd," and now you are talking about Sylvia Hull.

Mr. Langsdale: I beg your pardon. That was a mistake. I meant Rose Todd.

By Mr. Langsdale:

Q. You said you had never talked to Rose Todd?

A. Not up to that time.

Q. Up to July 15, 1939?

[fol. 5768] A. Oh, I talked to her before then.

Q. When?

A. Oh, I couldn't say, but I know I hadn't talked to her in the spring of 1937.

Q. You didn't talk to her in March or April of 1937?

A. Not that I remember.

Q. And you did say you had seen her in your section doing something with reference to bundles?

A. That's right.

Q. Did she do anything with reference to any of your bundles?

A. Not that I ever remember of.

Q. Did you ask her what she was doing with reference to any bundles?

A. No.

Q. Did you find out what she was doing with reference to any bundles?

A. Well, I suppose that I had heard the girls say that was what she did, and that is what it seemed to me she was doing.

Q. What?

A. Taking care of the lost bundles.

Q. Did you see her take care of any lost bundles?

A. Yes. She used to come in there and get the lost bundles and take care of them.

[fol. 5769] Q. What do you mean "lost bundles"?

A. They have recuts out of them and wouldn't be complete.

Q. Would that be a bundle some girl in the section would have been working on?

A. Yes.

Q. Tell me who had been working on any bundle you saw Rose Todd come in and take care of?

A. I don't know.

Q. Do you know of any occasion upon which you saw Rose Todd come on this floor and take care of any bundle?

A. I have seen her come and go, but I had my work to do and I couldn't—

Q. You didn't pay any attention to her; is that right?

A. Why, no.

Q. You don't know what she was doing, then, do you?

A. I know what her duties were.

Q. What were they?

A. Checking up the bundles that had recuts out of them.

Q. How do you know that?

A. Well, naturally, you learn what people do.

Q. Did you learn what she was doing?

A. Yes.

Q. From whom?

A. Well, from hearing the girls say that that was what she was supposed to do, and that's what she did.

[fol. 5770] Q. What girls?

A. The girls in the section I worked with. In fact, I think I asked some girl what she did.

Q. What girl did you ask?

A. I don't remember, after five years.

Q. You say you knew Hobart Atherton?

A. I knew who he was.

Q. Did you ever see him about the plant?

A. Yes.

Q. Doing what?

A. Just passing through on my floor. I would happen to look up and see him.

Q. How did you know it was Hobart Atherton?

A. Well, you just learn the names of people when you work there.

Q. Is that all you ever saw of him, just walking through your floor?

A. That's all I ever saw him doing.

Q. And why he was walking through the floor you don't know?

A. No. I suppose he was on his way to take care of his duties.

Q. But what his duties were he was on his way to take care of you don't know?

A. I don't know.

[fol. 5771] Q. You say you knew Lyle Jeter?

A. That's right.

Q. Where did you ever come in contact with him?

A. In fixing my machine.

Q. Any other place?

A. No.

Q. Did you ever talk with him?

A. Well, I might have said a word or two while he was at my machine. I know I told him it was all right when he fixed it and I tried it out.

Q. How did he happen to come to your machine?

A. There was something wrong with it.

Q. Do you know how he found that out?

A. I put in a call for someone to come and fix it and he would come.

Q. You put in a call?

A. Yes.

Q. And he responded?

A. That's right.

Q. Now, you read the minutes of the May 11 meeting this morning, did you not?

A. Yes.

Q. And you said you attended that meeting?

A. That's right.

Q. You read the minutes from beginning to end, did you?

[fol. 5772] A. I looked through them quite thoroughly.

Q. What was the answer?

A. I said I looked through them quite thoroughly.

Q. Did the minutes shown you, the minutes of May 11, 1937, correctly state what had been done at that meeting?

A. As near as I can remember, yes.

Q. And correctly stated what had been said at that meeting?

. . . . . .

A. Yes.

By Mr. Langsdale:

Q. When you read those minutes through, when they were presented to you by Mr. Tyler or Mr. Lane, did you see anything that did not correctly state what was done or said?

A. Well, I couldn't remember, after all of these years, exactly every little detail that took place in the meeting.

Q. But they appeared to you to be correct, did they?

A. That's right.

Q. Did you attend the organization meeting?

A. You mean, when we formed our union?

Q. On April 27.

A. I attended the meeting where we organized our union.

Q. That's what I mean.

A. That's right.

[fol. 5773] Q. Do you remember what occurred there at that meeting?

A. Well, we had had legal counsel and knew that we were within our rights to form our own organization.

Q. Well, I am going to show you the minutes of that meeting, Mrs. Freed, and ask you to read the first five pages of them.

Trial Examiner Batten: Is that 8-1?

Mr. Langsdale: 8-1, 2, 3, 4, and 5.

Trial Examiner Batten: Do you have the Circuit Court page number?

Mr. Langsdale: I haven't. Miss Weyand, will you find it?

Miss Weyand: 4395, through 4399.

(Thereupon the pages of the exhibit specified in the last question were read by the witness.)

By Mr. Langsdale:

Q. Mrs. Freed, you have read the first five pages, have you not, of the minutes of April 27, 1937?

A. That's right.

Q. And those pages contain a report of remarks made by Rose Todd and Mr. Tyler? A. Yes.

Q. Do they correctly report what Rose Todd said, as far as they go, and what Mr. Tyler said, as far as they go? A. As near as I remember, they do.

Q. You stated that this 50 cents that you contributed on [fol. 5774] the day after the meeting which you think was the latter part of March or the first of April you did not contribute to the Loyalty League? A. I did not.

Q. Did you know that the money was collected by a Miss Hartman, the treasurer of the Loyalty League?

A. No.

Q. Did you know the money was put in the First National Bank in an account of the Loyalty League?

A. I did not.

Q. Did you know the money was paid to the First National Bank on a note that had been signed by Rose Todd, president of the Loyalty League, upon which she had borrowed $1,000? A. I did not.

Q. Now, before you went to the meeting on March 27 did you know what the meeting was for?

Mr. Lane: Did you say "March 27"?

Mr. Langsdale: I didn't mean that. I meant April 27. That is, the organization meeting.

A. I knew Mr. Tyler was to be there to talk to us.

Q. Did you know it was a meeting at which there was to be a plant union formed, before you got there?

A. I don't recall now whether I did or not.

Q. You listened to the speeches of Rose Todd and Mr. Tyler, did you?

[fol. 5775] A. I did.

Q. And you believed what they said? A. Yes.

Q. Did the speeches help you to make up your mind about wanting the plant union?

A. No. I had my mind made up.

Q. You didn't pay any attention to the speeches?

A. Yes, I paid attention to them. I listened very closely.

Q. You believed them, did you? A. Why, yes.

Q. You say Lena Tyhurst came into your section to inspect work?

A. She looked at the work as it would go through, at the quality and the workmanship of it.

Q. How frequently did she do that in your section?

A. I wouldn't know.

Q. Every day?

A. I wouldn't know that.

Q. You were there, weren't you?

A. I was there, but I'm busy. I don't see everyone who comes and goes.

Q. Did she inspect your work?

A. I don't recall any instance when she did.

Q. Not ever? A. I just don't remember.

[fol. 5776] Q. Do you know whose work she did inspect?

A. No, I don't.

Q. Can you tell us any occasion on which she came into the section to inspect anybody's work?

(No answer.)

Q. Do you know whether she came into the section on an average of once a day, once a week, or—

Trial Examiner Batten: Just a moment. Was the prior question answered?

Mr. Langsdale: Yes.

Trial Examiner Batten: Will you read the question?

(Thereupon the next to the last question was read by the reporter.)

Mr. Langsdale: The answer was "No."

Trial Examiner Batten: Did you have an answer to it, Miss Reporter?

The Reporter: No.

Trial Examiner Batten: I certainly didn't hear it.

Mr. Langsdale: Maybe I just caught the shake of her head. She did shake her head.

By Mr. Langsdale:

Q. Do you know how often she came into your section?

A. No, I couldn't say.

Q. Do you know whether it was as much as once a week, once a month, or—

[fol. 5777] A. I suppose she did. I had my work to do—

Q. I know, but—

Mr. Reed: Let her finish.

A. (Continuing) I have my work to do and I can't be watching what other people are doing.

Trial Examiner Batten: You don't know, Mrs. Freed?

A. No.

Trial Examiner Batten: Then, that is the answer.

By Mr. Langsdale:

Q. You saw Mrs. Gray down in what you call the store; is that right? A. That's right.

Q. And you saw her there on occasions when you went to make a purchase? A. Yes.

Q. Did she wait on you? A. She has, yes.

Q. Did you talk with her?

A. If I did, I might have said, "It's a nice day," or something like that, but I don't remember anything outside of that.

Q. You never asked her what her duties were, did you?

A. No.

Q. And she never told you? A. No.

Q. And no one else ever did?

[fol. 5778] A. Why, no.

Q. Now, you said you knew Ted Scoles and that he was in the cutting department. Did you ever see him in the cutting department? A. No.

Q. Did you ever talk to him about what his duties were?

A. No.

Q. Did you ever talk to anyone else about what his duties were?

A. I heard people say he was in the cutting department.

Q. Anything else? A. No.

Q. You just heard people say he was in the cutting department? A. Yes.

Q. And you never heard anybody say anything else about him? A. No.

Trial Examiner Batten: If you will just speak up, Mrs. Freed, please,—

The Witness: All right.

By Mr. Langsdale:

Q. Now, you said that Rose Todd was the chairman or president of the Loyalty League when you joined?

A. That's right.

Q. That was in 1936?

[fol. 5779] A. That's right.

Q. Did you go to any meetings of the Loyalty League presided over by Rose Todd?

A. I don't remember ever attending a Loyalty League meeting.

Q. How did you know she was president?

A. Well, when you join something you, naturally, ask who the officers are.

Q. Did you? A. Yes.

Q. Do you remember whom you asked?

A. No, I don't.

Q. Now, I think you said Thelma Huffaker succeeded Rose Todd? A. I did.

Q. How did you know that?

A. Well, you hear of the activities, whether you attend the meetings or not.

Q. Did you ever attend a meeting presided over by Thelma Huffaker? A. No.

Q. Do you know when she succeeded Rose Todd?

A. I do not.

[fol. 5780] By Mr. Langsdale:

Q. Do you remember when the auditorium was built there in that building in which the Donnelly Garment Workers' Union held its meetings? A. No.

Q. They did construct such an auditorium, did they not, or someone did?

A. Why, they had one down on the first floor where they held fashion shows.

Q. Well, was that before they formed the Donnelly Garment Workers' Union? A. I don't remember.

Q. Did the Donnelly Garment Workers' Union ever hold any meetings in that auditorium? You said something about the second floor.

A. We held our meetings on the second floor.

Q. Yes, and they never held any meetings in the auditorium? A. Not that I ever remember of.

Q. When you said that the Donnelly Garment Workers' Union was a self supporting organization, did you know that Mr. Tyler had been paid by check given by the Loyalty League, for drawing up by-laws and assisting with your working agreement?

Mr. Lane: That is objected to as assuming facts not in evidence, that is stating matters of fact not in evidence.

Mr. Reed: I would like—

Trial Examiner Batten: What is your objection, Senator?

[fol. 5781] Mr. Reed: I would like to hear the question.

Trial Examiner Batten: Will you read the question?

(Thereupon the last question was read by the reporter, as follows:

"Q. When you said that the Donnelly Garment Workers' Union was a self supporting organization, did you know that Mr. Tyler had been paid by check given by the Loyalty League, for drawing up by-laws and assisting with your working agreement?")

Mr. Reed: The first part of it is objected to as matter that has been gone over, the payment to Mr. Tyler; and the second objection is that it assumes as a fact that Mr. Tyler was employed and paid for drawing up by-laws and a working agreement. Now, there is no evidence to sustain that.

Trial Examiner Batten: Well, I'll overrule the objection.

The question is, does she know whether or not Mr. Tyler was paid for these two matters by the check from the Loyalty League.

A. No, I do not.

By Mr. Langsdale:

Q. Did you know on June 15, 1937, in one of the board's meetings, Rose Todd stated the following:

"Q. I understand people are saying we paid Mr. Tyler $500 to organize our union.

"Rose Todd: A. As you know and as we have explained quite thoroughly, we paid Mr. Tyler $500 retainer fee; he helped us write up our by-laws and working agree-[fol. 5782] ment and will advise us and help us when we need it."

Did you know that Rose Todd said that in the board meeting on the 15th of June, 1937?

Mr. Ingraham: I object to that for the reason that question is indefinite. We don't know what board meeting Mr. Langsdale is referring to.

Trial Examiner Batten: Well, it is apparently — you are referring to the exhibit there?

Mr. Langsdale: Yes, I am referring to Board's exhibit 9-23.

Trial Examiner Batten: And you read from it, is that it?

Mr. Langsdale: I read from it, and it is purported to be the minutes of the group chairmen of June 15, 1937.

Trial Examiner Batten: It seems to me that is clear enough.

Mr. Langsdale: Board's Exhibit 9-23.

Mr. Ingraham: I know, but Mr. Langsdale said "a board meeting."

Trial Examiner Batten: Well, it is a board of the Donnelly Garment Workers' Union, isn't it?

Mr. Ingraham: They never called it a board meeting.

Mr. Langsdale: I'll reframe the question.

By Mr. Langsdale:

Q. Did you know that at a meeting of the group chairmen on June 15, 1937, the following occurred, as shown by Board's Exhibit 9-23, "Q: I understand people are say-
[fol. 5783] ing that we paid Mr. Tyler $500 to organize our union.

"Rose Todd: As you know and as we have explained quite thoroughly we paid Mr. Tyler $500 retainer fee. He helped us write up our by-laws and working agreement, and advises us and helps us when we need it."

Did you know that Rose Todd had said that at the meeting of the group chairmen on June 15, 1937?

A. No, I wasn't on that committee and I wasn't there.

Q. You never heard it?

A. No.

Q. Did you know that that $500 was paid to Mr. Tyler in a check signed "Rose Todd, President; Pauline Hartman, Treasurer of the Loyalty League," drawn on the First National Bank on the first day of April, 1937?

Mr. Lane: That is objected to as repetition.

Trial Examiner Batten: Well, it is all repetitious except the date, April 1.

Mr. Lane: Yes, I think he added that, but as far as the objection is concerned, it is repetitious.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Mr. Reed: That has been gone into, and it is objected to as repetition.

Trial Examiner Batten: Did you know that?

A. No, I did not.

* * * * * *

[fol. 5784] Redirect Examination.

By Mr. Ingraham:

Q. Did you ever work in any department that Mrs. Strickland worked in?

A. No.

Q. Did you ever work on the ninth floor?

A. You mean during that period?

Q. Yes, during that period.

A. No.

[fol. 5785] Q. Now, prior to July, 1939, did you know that Mrs. Strickland had any authority to speak for the management?

* * * * * *

A. I didn't know what Mrs. Strickland's duties were exactly.

By Mr. Ingraham:

Q. So, when you mentioned her name with Mrs. Reed and Mr. Baty, and so forth, you didn't know of any authority that Mrs. Strickland had to represent the management?

A. No, I did not.

Q. Did you ever see Mrs. Strickland giving any orders to anybody, directions?

A. No.

Q. Will you state whether or not you recall sometime [fol. 5785a] after the plant union was formed, signing an authorization to the company in connection with your union dues?

. . . . . .

A. Well, I can't recall just right now whether I did during that period or not.

. . . . . .

[fol. 5786] Mr. Ingraham: Mrs. Smith.

Trial Examiner Batten: I don't think we need to start with any other witness, Mr. Ingraham. I think I should advise all counsel that tomorrow morning at 9:30 I shall make my own ruling on various matters which are pending, and I would suggest that, Mr. Ingraham, you be prepared to proceed with Mrs. Reed; and Mr. Langsdale, will you [fol. 5787] have Miss Tobin here?

Mr. Langsdale: I don't know w ether Miss Tobin can come or not.

Mr. Reed: Mr. Examiner, before you adjourn, I have a statement I want to make. An hour or two ago I was called out by word that my son, a boy of 11 years of age, is very sick in northern Michigan, and Mrs. Reed immediately rushed to a plane to go up and take care of him; so that is the reason I left the room; so Mrs. Reed cannot be here in the morning.

Trial Examiner Batten: Senator, I am glad you said that, because I have a mother that is perhaps in worse shape than your son.

But irrespective of that, I want you to be ready to proceed in the morning with some witnesses.

Mr. Reed: Yes.

Mr. Langsdale: He is just saying why Mrs. Reed can't be here.

Mr. Reed: Yes, I want you to understand why Mrs. Reed can't be here.

Trial Examiner Batten: Yes, I understand perfectly well, Senator Reed.

Mr. Langsdale: And do you want Miss Tobin here tomorrow morning?

Trial Examiner Batten: Yes, I think if you can have [fol. 5788] Miss Tobin here, you'd better have her here.

* * * * * * *

[fol. 5792] Trial Examiner Batten: The hearing will be in order. I think we are ready to proceed.

I think I indicated yesterday to counsel just before we adjourned that I had about come to the conclusion that I would have to assume the responsibility for determining to what further extent testimony will be received through employee witnesses.

And then, after the hearing adjourned, I indicated to counsel, I think rather clearly, so that we might have the night to think it over, that I was inclined to make a ruling that I would not receive any further testimony of employee witnesses. I think I indicated to Mr. Lane that I considered the intervener in the same category, except that I would give some consideration to whether or not I felt that perhaps some few additional witnesses might be presented by the intervener.

I think everyone certainly is familiar with the fact that at least for the last few days I have made some efforts and suggestions for some sort of an understanding or suggestions from counsel, believing that if counsel themselves could work out some plan, that that would perhaps be more satisfactory to all of the parties; and I think I also indicated that I was not doing that because I wanted to avoid the duty which I have of ruling upon these matters when [fol. 5793] they are presented to me.

I think, further, that it must be obvious to all of counsel that there are several reasons why the employee testimony at this point in the proceedings is cumulative, and I think the record will indicate other reasons why some disposition of the matter must be made.

Now, it seems to me that the testimony of the employee witnesses at this point are purely cumulative as to why and how the Donnelly Garment Workers' Union was organized, and especially so when you consider the witnesses

which we heard in the prior hearing, all of which, of course, must be considered.

I think we all realized, too, that under the Circuit Court opinion the Court stated that the main and controlling issue is the formation and administration of the Donnelly Garment Workers' Union.

Now, before making a definite ruling on any of these matters, I want an expression of opinion from counsel. I think I have indicated pretty clearly how I feel about it at this point.

Now, Mr. Ingraham, what is the position of the respondent, that is, with respect to the employee witnesses?

Mr. Ingraham: Well, we are prepared to continue offering testimony of employee witnesses.

Trial Examiner Batten: To what extent?

[fol. 5794] Mr. Ingraham: Well, until Your Honor —

Trial Examiner Batten: (Interrupting) Well, until I stop you, is that it?

Mr. Ingraham: Yes.

Trial Examiner Batten: Mr. Tyler, what is your position in the matter?

Mr. Tyler: The intervener will expect to offer witnesses unless the Examiner declares that it is useless to offer them; but we will consider that the witnesses that the respondent has offered apply on whatever is a reasonable number, so that what we offer will probably be less, and it will almost certainly be less in number, and it will depend largely on how many the respondent offers.

But how to determine what is a reasonable number, I can't declare and rule on, and I haven't made up my mind; and I don't know just how we will reach the decision of what is a reasonable cross section or a reasonable number.

Trial Examiner Batten: In other words, you can't give me any idea what your position is with respect to either numbers or amount, is that it?

Mr. Tyler: Roughly, the intervener will expect to add some witnesses to those offered by the respondent. If the respondent offers a large number, we will expect to offer comparatively few; but I am unable to determine at this time, under the circumstances, what is a reasonable cross section.

[fol. 5795] Trial Examiner Batten: Of course, that is what I am trying to determine. I think you all understand what is a reasonable number or amount, and, of course, I would like to have counsel indicate if they have any idea of what is reasonable.

After all, you are the men who are going to have to handle this matter from the hearing on. You are the men who are going to present the matter to the Circuit Court and to the Board in oral argument.

Now, as I have said before, I am perfectly willing to assume the responsibility, but I would like some help on it if I could get it. And you feel that you couldn't indicate other than you have, is that it, Mr. Tyler?

Mr. Tyler: I feel that I can't indicate at this time. When the respondent has finished, in view of the length of time it has taken, and in view of the number of witnesses it has put on the stand, I think I can then make an estimate of how many I feel should be added from our standpoint; but before they finish, before I know how many they put on, before I know how long they take, I don't feel I should venture a statement as to how many the intervener would ask to put on.

Trial Examiner Batten: Miss Weyand.

Miss Weyand: I quite agree with the Trial Examiner's view that enough witnesses have been heard to get a fair sampling of what is the view of the employee witnesses [fol. 5796] which the company has offered and what they have testified to. I think that further witnesses are unnecessary, especially when considered in connection with the number of witnesses whose testimony appeared in the record before we started the hearing on the remand.

Trial Examiner Batten: Mr. Langsdale, what is your position?

Mr. Langsdale: Well, it occurs to me that nothing could be added to the view of the respondent or the intervener either by witness after witness. I think they have put on 11 employee witnesses, didn't you, Bob?

Mr. Ingraham: I think so.

Mr. Langsdale: And the testimony of each one of them is about the same. Now, what can be gained by putting on 11 more or 100 more, or 200 more, I don't see. Of course, that is their problem.

We are ready to do whatever the Examiner thinks should be done, and we are ready to cooperate in any way we can. I mean by "we" the I. L. G. W. U. I think everybody should want to see that done, particularly when the kind and type of evidence is exhausted by a number of witnesses.

Whatever the Examiner thinks will be all right with us. We have no desire to put on a large number of witnesses unless they do; however, I can't see that to the trial of fact the number of witnesses is going to be the guide-post.

[fol. 5797] Now, as far as the International Ladies' Garment Workers' Union is concerned, if we should quit here we should have very few witnesses.

That is about all I care to say. We will do whatever the Examiner thinks should be done.

Trial Examiner Batten: Is there anything further?

Well, if not, I think I shall rule at this time that as far as the offers of proof are concerned, and the employee witnesses are concerned, with respect to the respondent, that I have heard sufficient; that anything further would be cumulative, and any addition wouldn't enable the Examiner or the Board or the Circuit Court to get any better picture of the entire situation, the light of the entire hearing, the entire record and exhibits.

Now, Mr. Tyler, with that ruling, what is the position of the intervener?

Mr. Tyler: Under that ruling the intervener will desire to present a reasonable number of witnesses. I don't feel that I could commit myself at this time to the exact num-

ber, and I should like to add this suggestion, I understand that last night you indicated that the intervener wouldn't be expected to have its witnesses present today. Monday is Labor Day, and some of our witnesses I know are planning to leave town tonight and not be back until Tuesday morning.

I don't want to be in the position—I don't know how [fol. 5798] many—I don't know whether Your Honor, whether the Examiner expects to hold court Monday. If so, I should like to be able to telephone them this morning and see that some of them are here on Monday.

Trial Examiner Batten: Well, Mr. Tyler, there have been either 10 or 11 witnesses. Can you give me any sort of an idea of what you expect to call?

Mr. Tyler: How many we expect to call?

Trial Examiner Batten: Yes, to supplement the testimony which now—

Mr. Tyler: (Interrupting) I think that will depend somewhat on the length of time they are on the stand, how much time it takes.

Trial Examiner Batten: That won't have anything to do with the number, will it, Mr. Tyler?

Mr. Tyler: Yes; if a witness is on the stand a day at a time, I think it will take fewer witnesses than if they are on 15 minutes.

Trial Examiner Batten: Of course, you understand, Mr. Tyler, that as far as my ruling is concerned, I consider all of the matters which you and Mr. Lane have examined these witnesses on as cumulative also; in other words, the record will indicate clearly, of course, that you have examined them with respect to these matters which were in your offers of proof, and so forth, so you, of course, might [fol. 5799] feel it was your duty to cover those matters again.

But under my ruling I would not permit it, so that would, it seems to me, further reduce the time and amount, as far as you are concerned.

Mr. Tyler: It seems to me the only safe method is for the intervenor to proceed to put on witnesses, and when the Examiner says anything further will be cumulative, he stops them, and if he doesn't, when the intervener feels we have now presented a further cross section, the intervener should stop. I don't think I should be asked to state in advance how may witnesses the intervener wants to put on.

Trial Examiner Batten: Mr. Tyler, I only asked you that because you stated in your first talk it would depend somewhat on the number the respondent presented, and, of course, your presentation would be a small percent of those.

Now, that was my only reason for asking you, because I don't believe, Mr. Tyler, that numbers is the important factor.

In other words, I am certain that if I have anything to do with a decision in this case, and I am certain if the Board writes an order, it is not going to base it upon the one who presented the questions or the largest number of witnesses.

Mr. Tyler: Well, in view of that statement, I think I can say to Your Honor that the intervener will not be overlengthy; but I insist that the responsibility of determining [fol. 5800] when it is cumulative is still on the Examiner, unless the intervener comes to the point when it feels: "Well, we think we have put on a fair cross section."

Trial Examiner Batten: Well, I feel, Mr. Tyler, if you want me to determine the question entirely myself, I take it that is in substance the same position which the respondent takes.

Then, I will now determine that I have heard enough employee witnesses, both as to the respondent and the intervener.

So, that disposes of that matter.

Now, there are two or three other matters that I think I should dispose of with respect to Mrs. Reed. I am now striking out all of her testimony which pertains to the period subsequent to July, 1939, in accordance with a ruling which I made after Mrs. Reed testified.

Mr. Reed: All after July—

Trial Examiner Batten: (Interrupting) 1939, Senator. I think that is—let's see. I believe the respondent agreed with me on that point, not as to Mrs. Reed, but in general as to the period after July, 1939. I may be incorrect in that.

I believe Mr. Tyler took the position that all testimony, even down to date, is proper. I believe, Miss Weyand, the Board took the position that testimony subsequent to July, [fol. 5801] 1939, should be received, where it had any bearing on events prior to July, 1939. I believe, Mr. Langsdale, you took the position that you, as attorney for the International Ladies' Garment Workers, was ready and willing to proceed on the basis of taking testimony down to and including the date of the present hearing.

Now, I don't mean, by stating those matters, that I am attempting for one moment to correctly state your position. I am simply giving that purely from recollection.

Mr. Langsdale: That is correct as far as the International Ladies' Garment Workers' Union is concerned.

Trial Examiner Batten: So, any matters after that are stricken.

Now, unfortunately, as Senator Reed indicated, Mrs. Reed, of course, isn't here, unavoidably, and I want to say that I take the same position with respect to that that I did when Mrs. Reed testified in the first instance; that is, the last time we had the hearing, she was unavoidably out of the city for a good reason, and is at the present time.

I haven't changed my position one bit, which I made clear, I believe, the first day that Mrs. Reed testified, and that is that I was going to permit her to testify, not upon the basis of the offer of proof, but she is, I presume, the general manager and directing head of the company, and therefore I received her testimony in its entirety.

[fol. 5802] Now, some provision, of course, will have to be made of some kind for completing Mrs. Reed's testimony. As I understand it, all that is left is the redirect, is that correct, Mr. Ingraham?

Mr. Ingraham: That is correct.

Trial Examiner Batten: And, of course, the amount of examination by Mr. Tyler and Miss Weyand and Mr. Langsdale will be governed by the amount of redirect.

So it is impossible to tell what that may be.

Mr. Langsdale: May I ask a question of counsel here?

Trial Examiner Batten: Yes.

Mr. Langsdale: Do you expect to put her on at a later date in redirect?

Mr. Ingraham: Yes.

Trial Examiner Batten: Now, I think there is one other matter, the matter with respect to Wave Tobin. I believe at the time that matter came up Mr. Ingraham presented an offer of proof and a protest against the ruling of the Examiner, which I made on August 19, 1942, which is Board's Exhibit 1-SSSSS. Now, as far as the offer of proof is concerned, I have gone over Board's Exhibit 1-SSSSS, and I don't consider that there are any matters in there which are material in the hearing, and therefore I reject the offer of proof; and, furthermore—

* * * * * *

[fol. 5803] Trial Examiner Batten: And furthermore, with respect to the testimony which Wave Tobin has thus far given, I have reviewed that, and I do not consider that it is material or relevant to the issues in this case and accordingly it is stricken.

Now, with these rulings I think, Mr. Ingraham, we are ready to proceed.

* * * * * *

Mr. Reed: Respondent objects and excepts to all of the rulings just made by the Examiner, and to each of them separately. I presume that can be considered as a good objection as to all of them without my spreading them out and repeating the objection as to each paragraph.

Trial Examiner Batten: Well, I am certain, Senator, that that objection is good to them generally and specifically and separately and individually.

Mr. Reed: Yes.

Trial Examiner Batten: And, of course, in addition to your objection you are entitled to an automatic exception.

Mr. Tyler: The same is true as to the intervener, as I understand it.

Trial Examiner Batten: That's right, Mr. Tyler.

Mr. Langsdale: I believe I understood the Examiner to [fol. 5804] mean that when and if Mrs. Reed returns to Kansas City during the pendency of this hearing, she may testify on redirect?

Trial Examiner Batten: That's right. And if she doesn't return, if anything happens she is unavoidably detained, we will make very definite arrangements so that we may complete her testimony.

Mr. Reed: I am going to ask to have Mr. Langsdale's remarks and Your Honor's remarks in reply read, because I was talking, and I didn't hear what was said.

Trial Examiner Batten: Will you read them, please?

(Thereupon the remarks asked for by Senator Reed were read by the reporter, as follows:

"Mr. Langsdale: I believe I understood the Examiner to mean that when and if Mrs. Reed returns to Kansas City during the pendency of this hearing, she may testify on redirect?

"Trial Examiner Batten: That's right. And if she doesn't return, if anything happens she is unavoidably detained, we will make very definite arrangements so that we may complete her testimony.")

Mr. Reed: Thank you very much for that. I say to counsel perhaps there is a way we can avoid that. We will talk about that.

Miss Weyand: I would like to state an exception in the record to so much of the Trial Examiner's ruling as strikes such portions of Mrs. Reed's testimony pertaining to events [fol. 5805] subsequent to July, 1939, as are material to determining conditions in the plant prior to July 1939.

* * * * * *

Mr. Reed: Now, Your Honor says for us to proceed, and I don't now know the course to pursue unless we know whether the evidence is to be strictly limited to matters that are set forth in the offers of proof by the proponents of those offers.

Trial Examiner Batten: Well, Senator, I think you have a pretty good idea of what you think the Circuit Court's opinion means. We discussed it on several occasions. I don't believe I shall attempt to make any ruling in advance.

[fol. 5806] Mr. Reed: I want to be understood. Your Honor has held us strictly to our offers of proof, and, as I understand, they have been to the effect that no evidence is to be offered except by the party who has made offers of proof; and then to offer the evidence within the limits — evidence within the limits of that offer, am I correct about that?

Trial Examiner Batten: I don't believe that that is quite correct, Senator, although if you can indicate to me, or if you desire to, whether you have any other evidence to present, and if so, what it is, I think I would then be able to indicate to you what my position would be. Let me say this, Senator, before we go any further, so there will not be any misunderstanding about the position in which this leave the Board and the International Ladies' Garment Workers' Union, and as far as the hearing to this point is concerned, which I think perhaps you would like to know. Any evidence which they present, and I am going to make the same request that I have previously made — that they jointly present those matters wherever possible — their testimony will be limited strictly to rebuttal.

Now, you may wonder why I say rebuttal; I say rebuttal because my idea of the situation to this point is this: I have received certain testimony which the Circuit Court of Appeals feel I should receive in accordance with certain offers of proof. Now, had I received that testimony at the [fol. 5807] original hearing, the Board then would have been, and the Ladies' Garment Workers' Union would have been in the position of a party presenting rebuttal; and I don't assume that this further hearing, in substance, changes the position of the parties.

So, I thought I ought to let you all know that I considered and will follow that rule, that it will be rebuttal, and I think I stated in the prior hearing that when I stated rebuttal, I meant rebuttal.

Now, Senator, I think I interrupted you.

Mr. Reed: Well, in view of the ruling, limiting the number of witnesses that can be produced either by the respondent or by the intervener, it is very important whether or not the prosecution is to be allowed now to go into this case and undertake, by an equal number of witnesses, or by some other means, to try to balance the testimony which they offer. Now, if we are denied the privilege of going on because we were limited to the offer of proof, as they have no offer of proof, I don't think they are entitled to put a witness on.

Trial Examiner Batten: Well, Senator, I simply indicated my position to you because I thought I should, with respect to rebuttal. I think I covered it thoroughly when I said rebuttal, not rebuttal of all the issues in the case, not rebuttal of matters which were in the prior hearing, but [fol. 5808] rebuttal of matters presented here.

I think I have previously stated that numbers aren't the important factor. I don't believe any of you people, as lawyers, would attempt for one moment to balance any matter of testimony by counting up the numbers of witnesses; now, that would be just absurd.

I strongly emphasized the fact which, of course, doesn't show in the record, that when I said rebuttal, I mean rebuttal, so there shouldn't be any misunderstanding.

Mr. Reed: I still — and I don't want to be importunate about this.

Trial Examiner Batten: No.

Mr. Reed: Under the indicated ruling, since we on our part have introduced evidence which covers the whole field of organization and proceedings, if you call it rebuttal, or whatever you call it, they would be entitled under that ruling to go into all of the evidence which they think refutes, and therefore the whole field is open to them.

Trial Examiner Batten: Well, Senator, I would say this: that is a very definite possibility. If I were to accept your idea of it, I think I would apply the same rule which I indicated a moment ago, that when I take into consideration the testimony in this hearing, which is roughly now the same number of pages at this point as was received in the prior hearing, I; of course, would consider the [fol. 5809] witnesses in the prior hearing. The fact is that all of the parties at this time, in my opinion, had a full opportunity, except with respect to the matters which the Circuit Court sent the case back for; therefore, I would consider that the Board and the International Ladies' Garment Workers' Union must come within that same rule, within that same idea.

Now, I don't know whether I make myself clear to you or not, Senator.

Mr. Reed: Then, if I catch your view, they would be limited on the other side here on putting on evidence to rebut new matter that we have brought into the case now, and if they had gone into those questions before, they wouldn't be entitled to come in now and produce witnesses in rebuttal.

Trial Examiner Batten: Well, I think, generally speaking, I could agree with that except for this, that of course, I would feel, Senator, that there had been extremely few, if any, new matters presented, when you consider the other record. Do you understand what I mean? I don't know as I understand exactly your use of the word "new." Now, do you mean —

Mr. Reed: (Interrupting) Something additional, that was not in before; that is to say, to try to illustrate, if I may try to, suppose the prosecution produces evidence to sustain their charges, that is their case. We undertook to answer it, and Your Honor excluded certain evidence. Now, you have merely received that evidence.

[fol. 5810] Trial Examiner Batten: That's right.

Mr. Reed: Which then would mean that the prosecution would not be entitled to rebut that evidence unless that evidence brings into the case some new matter, some matter

that was not touched on in the previous hearing of this case.

Trial Examiner Batten: Well, Senator, I don't believe I could go with you that far. All I can say is that it would be my purpose to very definitely and strictly confine them to what I consider to be rebuttal testimony. We have received in this further hearing — and that doesn't mean that it opens up all of the issues in the case, and neither does it open up all the matters that are in the case to this point — now, I simply told you that at this point, Senator, because I wanted you to know what I had in mind with respect to that matter.

Now, that, of course, depends to some extent on what further testimony, if any, is received from the respondent and the intervener.

Now, that might open up matters which haven't thus far been opened up, I don't know. I mean, that is a conjecture, so I wouldn't want to say, Senator, except that they will be confined strictly to rebuttal, it will be strictly applied as far as any testimony which is offered.

Mr. Langsdale: What about Mrs. Reed's testimony, [fol. 5811] which didn't follow the offers of proof? Should we be permitted to answer that?

Trial Examiner Batten: Well, Mr. Langsdale, that depends largely on what you mean by "answer".

Mr. Langsdale: Well, I understand your distinction between answer and rebuttal. As I understand it, we put on our case and the Board put on its case in the former hearing, the respondent and intervener came along and offered certain testimony which you refused. Now, had you received it then, we would have been entitled to rebut it.

Now then, you are receiving it.

Trial Examiner Batten: That's right.

Mr. Langsdale: And you now say we have the opportunity to rebut it as we would have had if it had been received in the first instance.

Trial Examiner Batten: Let me say this: you are in no worse position now.

Mr. Langsdale: Than we would have been then.

Trial Examiner Batten: So far as Mrs. Reed's testimony is concerned, it is the same at this point as if it had been given at that time. In other words, your only opportunity, as I understand it, is rebuttal, which is rebuttal. I want to emphasize that because, for some unknown reason, in many of these hearings — at least it has been my experience — attorneys apparently don't seem to under-
[fol. 5812] stand the word "rebuttal". Now, I am sure all of you men do, and far be it from me to indicate to any of you, all of whom have a much wider knowledge of those matters than I do.

Mr. Langsdale: Of course, the respondent's and intervener's testimony is in the nature of an answer to the Board's testimony.

Trial Examiner Batten: That's right.

Mr. Langsdale: Now then, if there is anything new brought out, we have an opportunity to rebut it.

Trial Examiner Batten: That's right.

Mr. Langsdale: But Mrs. Reed's testimony is in the same category, however, she was not confined to the offers of proof. I think the Board and the International Ladies' Garment Workers' Union, if that evidence is going to stand, should have the opportunity to reply to it in the same manner that we would have replied to it, had she been to the former hearing.

Trial Examiner Batten: I agree with you, and you apparently agree with Senator Reed in principle, because you say anything "new".

Mr. Langsdale: Well, I think this: If the State puts on evidence that a certain man committed a murder, I say "yes, he did," and all the defendant says is "no," he didn't; well, there is nothing to rebut, is there? But if he says, "I was out at 58th and Holmes Street," and estab-
[fol. 5813] lishes an alibi in his answer to the State's charge, then that brings something in which the State has a right to rebut. But if it is just "no" against "yes—"

Trial Examiner Batten: Well, I don't intend to rule on it in advance. All I can tell you is, as I said before, as

far as I am concerned I don't care to discuss it any further, that anything you present, as far as the Board and the International Ladies' Garment Workers' Union is concerned, will be rebuttal, and I mean rebuttal.

Now, that is all I can say.

Mr. Langsdale: What I want to know is what you mean by rebuttal. Is it a reply to what they have put on, isn't that rebuttal?

Trial Examiner Batten: Well, Mr. Langsdale, would you mean by that, supposing I were to say "yes," you mean then you would reply to everything?

Mr. Langsdale: Oh, no.

Trial Examiner Batten: Well, then, you can see how futile it is to set those lines into a discussion.

Mr. Reed: If you will pardon me, and you have been very indulgent, and if Mr. Tyler will pardon me, I want to just say this one thing: I understand the record in the whole case being that the prosecution put in its case, the respondent put in evidence of witnesses, a number of them, that covered the same matter, or substantially the same [fol. 5814] matter, that was introduced through the mouths of witnesses here, so that issue was there, and the opportunity was given to the prosecution to answer it by witnesses, to rebut it at that time.

Now, the only change in the situation is that under the order of the Court you have admitted the same character of evidence here, but more of it, so I think that they are limited to a rebuttal of those things that are brought in here, if any, that weren't touched upon in the former hearing.

Trial Examiner Batten: Mr. Tyler.

Mr. Tyler: The intervener understands that this hearing is a continuance of the hearing held in 1939, and that what occurred in that hearing may be considered in connection with this evidence, and that offers of proof made in 1939 are still active, valid offers of proof at this time.

But in order to avoid any mistake of my own, on that part, the intervener here and now renews all of the offers of proof which it made in the 1939 hearing.

Trial Examiner Batten: Well, of course, I consider, Mr. Tyler, that that would be unnecessary, although if you want to provide for it, you may do so, and you have.

Mr. Tyler: I agree with Your Honor that this is merely a precaution in case I am wrong in my understanding.

Trial Examiner Batten: In other words, I assume that all of these people who were named in these offers of proof, I have again rejected the offers insofar as those [fol. 5815] names are on the list and haven't testified.

Mr. Reed: We desire on behalf of the respondent to adopt or to make the same offers of proof that we have made before in the trial of the case. I think they are in the case anyway, but I desire to leave no doubt.

Trial Examiner Batten: Well, that's all right.

Mr. Reed: Now, Your Honor said for us to proceed. We would now like to recall Wave Tobin, we haven't finished her examination.

Trial Examiner Batten: Well, I think, Senator, I disposed of that matter by my ruling on the offer of proof, and so forth.

Mr. Reed: Very well. Now, we expected, as you undoubtedly know, to take the rest of the day in putting on witnesses. Our witnesses aren't here.

Trial Examiner Batten: Well, I think I told Mr. Ingraham last night, Senator: In other words, you weren't up here, but I wanted to let all counsel know what I had in mind, so that you wouldn't be inconvenienced by bringing them down here, and I think I told Mr. Ingraham.

Mr. Ingraham: Yes.

Trial Examiner Batten: That I felt it would be unwise to bring these people out of the plant down here again this morning. So, I will take the blame for those people not being here.

[fol. 5816] Mr. Reed: We thought Wave Tobin would be here, and we expected to spend considerable time with her examination; and you have ruled on the offer of proof which we made, and I would like to have some time to prepare—it was an oral offer made in the heat of the trial, a

formal offer of proof. It seems to me that under the circumstances the wise thing to do is to adjourn this hearing over until Tuesday morning, and in the meantime we can all be prepared, in the light of these rulings, to proceed; if there is anything further to proceed on.

Mr. Langsdale: I understand there has been a written offer of proof presented to the Examiner as to Wave Tobin's testimony. I haven't received a copy of that.

Trial Examiner Batten: That's right. It is Board's 1-SSSSS.

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Trial Examiner Batten: As far as the Senator's request is concerned, if he wants to present another offer of proof with regard to Wave Tobin, I will receive it.

Mr. Reed: Of course, in explanation of the situation, while you made a preliminary statement or tentative statement last night to counsel, we had no very definite idea of what your ruling might be this morning, and I say, with all respect in the world that I am still in the nebulous belf [fol. 5817] as to just what Your Honor means. I would like to have some time to consider this matter, and see what we can do. Perhaps we can close this case very speedily unless the other side wants to put on witnesses.

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[fol. 5821] Mr. Ingraham: I want to make this statement:

In preparing the respondent's offer of proof at the last hearing—I believe it is Board's exhibit No. 1-OOOO—I inadvertently included the name of Eila Mae Hyde. She testified in the N. R. A. hearing and I intended to offer her testimony from that hearing. She was one of the company's principal witnesses. But through some sort of misunderstanding her testimony was not offered, and the stenographers in preparing this exhibit, this offer of proof, included her name. I did not intend to include her name in the offer of proof and I would like to withdraw her name. It was done by mistake.

Trial Examiner Batten: Is there any objection to that?

Miss Weyand: I object to the withdrawal. The Board, [fol. 5822] of course, in its last decision used that as an admission against interest and believed it was put there with full knowledge of the facts. I do not think it should be withdrawn at this time.

Mr. Ingraham: If the Examiner will recall, Mrs. Hyde testified, and I stated at the beginning of the hearing, that she was one of the supervisory employees. She was on the stand. And all of us assumed that there wasn't any question but what she was not a member of the union. She never has been a member.

Now, if there is any question about this, I would like to call Mrs. Hyde and have her testify that she was not a member of the union and never had been.

Mr. Langsdale: I don't think there is any doubt about that being the fact.

Mr. Reed: What's that?

Mr. Langsdale: Ella Mae Hyde was never thought by the International Ladies' Garment Workers' to be a member of the plant union, and it was never so claimed. It was always understood by our union that she was the supervisory agent.

Trial Examiner Batten: I think it was a matter of general understanding that she was not a member of the union.

Mr. Langsdale: As to the motion to withdraw, I will not take any part in that. But I will state, for the integrity of [fol. 5823] the record, it was never claimed by anybody that Ella Mae Hyde was a member of the union.

Trial Examiner Batten: I will dispose of the matter at our next session, but it will not be necessary for you to have her here. In other words, I am not going to get into any collateral matter of that sort.

Mr. Ingraham, have you folks had any further discussion since this morning by which you can enlighten me in any way on any matters?

Mr. Ingraham: I believe that the only additional evidence that we expect to offer will probably be offers of proof.

Mr. Reed: In view of the rulings.

Mr. Ingraham: In view of the rulings this morning, yes.

Trial Examiner Batten: Well, not that I am accepting it or feeling that you are bound by your statement, all I can say now is, of course, that the Board and the Ladies' Garment Workers' Union should be ready to proceed at our next session.

Now, in saying that, as I just stated, Mr. Ingrahain, I do not mean that you are bound by that.

Mr. Ingraham: I think that is correct, that they had better be prepared.

Mr. Langsdale: There may be some of the offers of [fol. 5824] proof which the Examiner will not reject.

Trial Examiner Batten: Well, let's not cross that bridge until we get to it.

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[fol. 5829] Trial Examiner Batten: The hearing will be in order. I think we are ready to proceed.

Mr. Stottle has given me four offers of proof. I assume, Mr. Stottle, you had better have the originals and one copy marked by the reporter. Let's see; I think we made the offers of proof part of Board's **Exhibit 1.**

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(Thereupon documents above referred to were marked as "Board's Exhibits Nos. 1-TTTTT, 1-UUUUU, 1-VVVVV and 1-WWWWW," for identification.)

Trial Examiner Batten: With respect to these offers of proof, Mr. Ingraham, I notice one is marked "Supplemental offer" and the other just "Offer of proof." Does that indicate the one, 1-TTTTT, supplemental offer of proof, supplements what?

Mr. Ingraham: Supplements the offer that we made at the time that Wave Tobin, her testimony was stopped.

Trial Examiner Batten: Well, then, you mean that to be supplemental of Board's Exhibit 1-SSSSS, is that right?

Mr. Ingraham: Yes, that is right.

Trial Examiner Batten: Now, the other offers of proof, are they, Mr. Ingraham, new matters, or are they matters that are covered in prior offers of proof, or what is the [fol. 5830] status of those?

Mr. Ingraham: They are in connection with the same testimony that we were offering to prove by Wave Tobin, except, I believe, one— the offer of proof of 1-UUUUU and 1-WWWWW are offers that are in line with the testimony that you said you would not receive in connection with Wave Tobin.

Trial Examiner Batten: So, then, the Wave Tobin testimony and the 1-WWWWW and the 1-UUUUU all pertain to the matter of showing the International Ladies' Garment Workers' contracts, and the matters indicated in the offers of proof?

Mr. Ingraham: That is correct.

Trial Examiner Batten: That would be 1-SSSSS, 1-TTTTT, 1-UUUUU, and 1-WWWWW, is that right?

Mr. Ingraham: That is correct.

Trial Examiner Batten: Now, 1-VVVVV, what is that?

Mr. Ingraham: That offers to prove the charges that were being made by the I. L. G. W. U. prior to the effective date of the Wagner Act.

Trial Examiner Batten: In other words, that refers to—

Mr. Ingraham: (Interrupting) N. R. A.

Trial Examiner Batten: The so-called background that we have discussed in this hearing before?

Mr. Ingraham: Yes.

Trial Examiner Batten: And this offer of proof, to prove, is, in fact then, supplemental to the parts of the [fol. 5831] record which were offered by the various parties in the original hearing, is that it?

Mr. Ingraham: That's correct. I would like to say this: I believe in the offers that were made at the previous hearing on behalf of the employees, and you have received the

testimony of certain of those employees, of course, at this time there is probably—oh, a hundred to 150 of those employees that no longer are employed by the company, but we were still offering to prove by those employees, the matters set out in the offers of proof.

Trial Examiner Batten: Of course, I don't presume, Mr. Ingraham, the fact they don't happen to be with the company now would have any effect upon the offer of proof.

Mr. Ingraham: No.

Trial Examiner Batten: Now, Mr. Tyler.

Mr. Tyler: I think the stenographer didn't catch my statement a few moments ago. I have an offer of proof in preparation, which will be here in the course of 1 hour or less, I think in half an hour, the substance of which is an offer to prove the successful operation of the Donnelly Garment Workers' Union since July 15, 1939. I wish to file it when it gets here, it won't be long delayed.

I also wish to make sure that the exhibits which were rejected in the 1939 hearing, which were made as offers of proof, and in case there was any exception, I now offer the [fol. 5832] rejected exhibits in the 1939 hearing as offers of proof.

Trial Examiner Batten: What rejected exhibits, Mr. Tyler; I don't understand.

Mr. Tyler: The ones the intervener offered, including 20-A to 20-KK.

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Mr. Stottle: Mr. Examiner, respondent also wants to reoffer rejected respondent's exhibit No. 2, which was rejected in the former hearing, and which is several of the contracts made between the International Ladies' Garment Workers' Union and certain garment companies in the Kansas City area.

And we offer—want to reoffer, offer or reoffer, intervener's exhibit 20, which is contained in the supplemental certificate of the Board in the Circuit Court of Appeals record at pages 6056 to 6094 inclusive.

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[fol. 5833] Mr. Stottle: I might say that respondent's exhibit No. 2, which has just been reoffered, appears in the supplemental certificate of the Board at pages 5991 to 6014 inclusive.

We also want to offer in evidence the judgment, findings of fact and conclusions of law of Judge Miller in the injunction suit which has been previously referred to in the pleadings and evidence.

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 43," for identification.)

[fol. 5835] Mr. Ingraham: Mr. Examiner, if you recall, you stated, I believe, that arrangements would be made to take Mrs. Reed's testimony, if necessary. Well, after court adjourned, Mr. Reed spoke to Mr. Langsdale and Miss Weyand, about the possibility of agreeing on what Mrs. Reed would say, and if I recall right, they said that if the Senator would prepare what he had in mind—he thought there was just several points—they would consider whether or not they could agree to it. We have been checking her testimony, and haven't completed it yet.

Now, we are prepared to close, subject to that, to either bringing Mrs. Reed in or agreeing with all parties that she would testify about certain matters.

Trial Examiner Batten: Well, how long do you think it would take you to go over those matters and determine?

Mr. Ingraham: Well, if we have time—

Mr. Hogsett: (Interrupting) A couple of days, 48 hours, something like that.

[fol. 5836] Trial Examiner Batten: Well, I think that would be all right. I think I said that we would make proper arrangements for Mrs. Reed's testimony. Is that satisfactory to other counsel?

Mr. Langsdale: I didn't hear the last remark.

Mr. Hogsett: Senator Reed can complete his examination of the testimony of Mrs. Reed with a view to such a statement as Mr. Ingraham referred to, within 48 hours.

Mr. Langsdale: My recollection was Mr. Ingraham had just two matters in mind when he talked to me and Miss Weyand, and one was with reference to a date she had given in 1935, and the other was in reference to the Wage and Hour exhibits that were offered.

Will you read what I have just said?

(Thereupon the statement asked for by Mr. Langsdale was read by the reporter.)

Mr. Ingraham: That's correct, and we are just checking through her testimony to see if there would be anything else.

Mr. Langsdale: Of course, I personally will not be willing unless the Examiner tells me to do so.

Trial Examiner Batten: I was going to suggest this, that we recess until 2 o'clock and you attorneys get together and see if you can settle this matter.

Mr. Langsdale: Now, the Senator says that is not contemplated, and I assume what you originally stated will be [fol. 5837] also true, and we ought to agree on that very easily.

Here is something I want to say before we close, at the end of the testimony of Mrs. Reed, when the Examiner announced that he was going to not permit any more witnesses to be put on by the respondent or the intervener, for the reason that he believed it would be cumulative; I asked Mr. Ingraham if he had any one witness, who, in his mind, is any more important to his case that would testify to anything materially different from what the 11 would testify to, and my recollection is he said "no." I told him I would join in urging the Examiner to permit him to put on any such witness if he had one. Is that correct, Mr. Ingraham?

Mr. Ingraham: Yes, you said that to me. I said, "no," Clif; I hadn't checked the testimony of each of these witnesses. I think I joked about it, I think these witnesses are very strong witnesses. Have you anything in mind in particular?

Mr. Langsdale: No. I thought you might have been caught napping with one witness you were holding back,

and if you wanted to put that one witness on I would urge the Examiner to permit you to put them on, and you told me "no."

Mr. Reed: Well, we were holding back a multitude of witnesses and we were prepared to put them on. When I say a multitude I mean at least a hundred.

Trial Examiner Batten: Then, I gather there was no particular one which was outstanding, as Mr. Langsdale [fol. 5838] has suggested.

Mr. Ingraham: Well, there were certain witnesses, for instance, that might add something; for instance, witnesses that worked in May Fike's section. However, you limited the testimony and we stopped. The witnesses, in general, would testify as to what these other witnesses so testified.

Mr. Langsdale: I would like to know if Mr. Tyler has any one witness or two witnesses that he deems more important than any of those who took the stand, on any particular point, or generally.

Mr. Tyler: In view of the Examiner's ruling as to hearing no more testimony from the employees, and no testimony as to the operation of the Donnelly Garment Workers' Union since July 15, 1939, I would say that the intervener has no star witness.

We do not say that we have one witness who would combine all or substantially all of the knowledge about the situation. We have a substantial number of both employees and ex-employees, and I would say no one of them or no two or three of them are any outstanding witnesses in importance as compared to the others.

Trial Examiner Batten: Well, in view of my ruling, Mr. Tyler, have you anything further?

Mr. Tyler: Nothing more, in view of your ruling.

Trial Examiner Batten: Then, am I correct in asking if [fol. 5839] the respondent and intervener rest, taking their exceptions of my rulings? Is that correct?

Mr. Ingraham: That is correct.

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Trial Examiner Batten: Now, as to the offers of proof which have been made this morning, Board's exhibits 1-TTTTT to 1-WWWWW inclusive, I will reserve my decision on those and I will reserve my decision on Mr. Stottle's offer of respondent's exhibit No. 2, intervener's exhibit No. 20, and the Judge Miller findings, which I believe were marked respondent's exhibit No. 43.

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[fol. 5840] Trial Examiner Batten: Miss Weyand, are you ready to proceed?

Miss Weyand: I am, but before proceeding I would like to ask about the statement that Mr. Ingraham undertook to prepare of the matters in which the firm of which Mr. Tyler is a partner, represented the Donnelly Garment Company, or Mrs. Reed. As the record now stands—I have checked it recently—Mr. Ingraham undertook to prepare such a statement and to submit it to the Trial Examiner, and the Trial Examiner was to say whether or not there was anything in the statement material to the case.

Mr. Ingraham: Well, I'll have that at 2 o'clock.

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[fol. 5841] ETTA DORSEY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Miss Weyand:

Q. Will you please state your name?

A. Etta Dorsey.

Q. Where do you reside? A. 3919 Troost.

Q. When did you begin to work at the Donnelly Garment Company? A. October, '25.

Q. Are you still working there? A. I am not.

Q. When you first went to work for the Donnelly Garment Company, what did you do?

A. I was an embroidery machine operator.

Q. How long did you continue to do that work?

A. About two years.

Q. What did you do next?

A. I was an instructor, for the same work.

Q. Were you continuously an instructor from 1927 to July 15, 1939?

[fol. 5842] A. I was.

Q. Do you know Ruby Clayton? A. Yes, I do.

Q. Did she ever work in your section?

A. Yes, she did.

Q. Did you know Ethel Riegel?

A. Yes, I do.

Q. Did she ever work in your section?

A. She has.

Q. Do you know Mary Warth? A. Yes, I do.

Q. Has she ever worked in your section?

A. Yes, she has.

Q. Do you know Oma Lee Cooper? A. Yes, I do.

Q. Has she ever worked in your section?

A. Yes, she has.

Q. Do you know Edith Dean? A. Yes, I do.

Q. Did she ever work in your section?

A. Yes, she did.

Q. Do you know Lydia Phillips?

A. Yes, I do.

Q. Did she ever work in your section?

A. Yes, she has.

[fol. 5843] Q. What section were you instructor of in March and April, 1937? A. 415.

Q. On what floor was that section located?

A. The eighth floor.

Q. What kind of work was done in that section?

A. Well, we had different machines, hemstitching—that section was changed around quite a lot, but I instructed hemstitching and zigzagging and eyelets and pinking and blind stitching, embroidery.

Q. And that is all the machines? A. I think so.

Q. Where on the floor was that section located at that time? A. Where on the floor?

Q. Yes.

A. Right in front as you come into the door at the entrance.

Mr. Reed: What was the number of that section?

Mr. Langsdale: 415.

By Miss Weyand:

Q. And that is at the north end of the building, is that correct?

A. That's right.

Q. And it consisted of rows of machines stretching east and west across the north end of the building, is that correct? A. Yes.

Q. Did you attend the meeting at which the Donnelly [fol. 5844] Garment Workers' Union was organized?

A. Yes, I did.

Q. Did you know before you got to that meeting that such a union was going to be formed?

A. Well, I don't know, but we sort of surmised something.

Q. How did you learn of that meeting?

Mr. Ingraham: I object to that. It is not proper rebuttal.

Miss Weyand: This is a preliminary question.

Trial Examiner Batten: Well, if it is preliminary, she may answer.

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A. No, that's all right. Well, I don't remember, but it was either by telephone or by Mrs. Wherry telling us; she usually went around and told the instructors.

Mr. Ingraham: Now, I move that the answer be stricken out; it is not a preliminary question, it is an attempt to prove the Board's case in chief, not proper rebuttal.

Trial Examiner Batten: Well, I'll determine whether it is preliminary. You may proceed.

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Miss Weyand: Do you know how the girls working in [fol. 5845] your section learned of the meeting?

Mr. Ingraham: I object to that question as not proper rebuttal.

Miss Weyand: I insist it is proper rebuttal, because four girls were called as witnesses by the company and said they were working in section 415 at that time. I think

the witness's answer will rebut their testimony as to the manner in which they learned of the meeting.

Mr. Reed: That will not rebut, the way they learned of the meetings. It just shows how this lady learned of the meeting; and Your Honor said rebuttal—when you ordered the close of our case you said that this evidence on rebuttal would have to be actual rebuttal, and repeated it several times.

Trial Examiner Batten: Yes, and I still say that when it is rebuttal I mean rebuttal.

Mr. Reed: Yes. Now, we object to this as not rebuttal.

Mr. Langsdale: It certainly is rebuttal, to have this witness, as instructor of those girls, who said they weren't notified by their instructor, to say, if she will, that she notified them; and they all said that.

Mr. Ingraham: That was the Board's case in chief, and they put on May Fike, and she testified the instructor notified her, that that was the way they were notified of the meetings. Now, they try to come in on rebuttal and bolster up the Board's case in chief by this type of testimony, and [fol. 5846] it is their case in chief to prove the instructors notified the girls of the meetings and asked them to go; therefore that was their charge.

Mr. Langsdale: Well, there was nothing in the ruling in the first case to prevent them putting on all they had to the contrary on that, but they did come here with a number of witnesses, this time, and have them testify in direct examination that they were not notified by the instructor. Now, if that was a part of the Board's case in chief, it was part of their defense in chief, and there is no ruling against that.

Trial Examiner Batten: Of course, I think I agree with Mr. Ingraham thus far, that if this lady were an instructor in some other section or was not here to testify with respect to those people who have here actually testified about how they were notified, that I would reject the testimony, but under these circumstances, I think it is rebuttal, because these certain named people testified here.

Why wouldn't it be, as to this instructor, without reference to other people, Mr. Ingraham?

Mr. Ingraham: This evidence was evidence that the Board offered in their case in chief, that instructors were supervisory employees; that was the position they took, and that instructors ordered the girls to go to meetings.

Now, they put on witnesses to that effect. Now, they come in and attempt to put on additional testimony to [fol. 5847] prove the same thing. I don't think that that is rebuttal.

Trial Examiner Batten: No; I think I can distinguish, Mr. Ingraham, between putting on testimony, general testimony, without reference to particular individuals who have testified here. Now, isn't there a difference there.

Mr. Ingraham: I don't see that there is a difference. If it was the Board's case in chief, to prove that instructors did certain things, then I don't see that it makes any difference to prove that an instructor did it with a particular girl.

Mr. Reed: The matter presents itself to me in this way, the Board undertook to establish its case and one of the elements that it undertook to establish was that the instructors sent its employees to the meetings. Now, they should have put in all their case on that. We sought to meet that evidence and it was excluded.

Now, we come in and seek to meet it, have sought to meet it, and we think have met it. Now, they come in and say, "Since you have met our testimony, we are going to introduce subject matter which was a part of our case in chief, and call it rebuttal."

Trial Examiner Batten: Well, Senator, don't you distinguish either between testimony, for instance, of this witness, with respect to specific statements that several of these witnesses made and the testimony of an instructor or other person that is general in nature?

[fol. 5848] Mr. Reed: If a witness made a statement here that she was not sent to a meeting by her instructor and this witness's testimony was to be limited to that particular thing, to show that that did not occur, that might be called rebuttal of that testimony, but it is plain that there is an attempt to open the doors now and put on wit-

nesses to deny everything that was testified to in the defense and call it rebuttal.

Trial Examiner Batten: Well, all I can say is, Senator, I am going to require that Miss Weyand confine it to rebuttal. I further want to say that this undoubtedly is preliminary in nature. Now, if this lady, who was there at the time, is in position to testify concerning these definite things which these people testified to, I think it is rebuttal.

Now, I have no idea, and will say so now, of permitting Miss Weyand or Mr. Langsdale to go into this entire subject matter in any form or fashion, and it is confined to rebuttal.

Mr. Tyler: If the Examiner please, the intervener wishes to suggest that mere contradiction is not rebuttal.. The Board had the burden of putting on all the evidence it had as to the people being forced or intimidated into going to or attending meetings, in its case in chief. The respondent and intervener had the opportunity to answer that, and some day somebody will weigh the comparative weight of the evidence; but merely for the Board to undertake to contradict the evidence which the respondnt placed is not proper rebuttal.

[fol. 5849] The contradiction is already made by the people who said it was not true. Their rebuttal should be limited to some subject which they had no opportunity properly to present in their original case, because it was brought up as something new by the respondent. Now, this is nothing now but just repetition of "I say it did," and "I say it didn't."

It is just merely a contradiction which I say isn't rebuttal at all.

Mr. Reed: I think this is a pretty good test. If you will indulge me a moment. Will not this lady's testimony, which she starts to give here, have been proper testimony to give by the prosecution on the first trial?

Plainly it would be, and therefore it cannot be called rebuttal, because we have some testimony to the contrary. They had the full right to call in that hearing this lady, and if she had testified, as she evidently is, and if she should have testified as she evidently is now, then that was

part of their case in chief and they should have put it on and we should have had an opportunity at that time to put on our evidence in denial.

Now, we were cut off from that right by the ruling, and we have now been, under the Court of Appeals' decision, accorded the right to put on some of our witnesses showing our side of this case. Then comes the prosecution and proposes now to put in a lot of evidence that was proper for them to have put in in the trial of the first case.

[fol. 5850] So that is not rebuttal, it is a continuance of their evidence, brought here by the prosecution under the pretext that they have a right to bring it in because we put in some evidence to the contrary.

Mr. Hogsett: May I suggest a thought? Everything the respondent has proven in a month or more of hearing has denied something or perhaps admitted something that the Board has proved. In other words, the proof that the respondent has brought has covered the whole field, but it has been defensive, it has been in negation of something that the Board proved or undertook to prove in its case in chief.

Now, let's see where it would lead if this is rebuttal. Well, if this is rebuttal, then everything that they proved in their case in chief can again be produced here and held as rebuttal, because it would be in negation of something that the respondent has proved. Well, that is not my conception of rebuttal testimony.

Trial Examiner Batten: Well, I'll say to you that that is not my idea of rebuttal either.

Mr. Hogsett: No. I don't think it could be logical, legally it won't stand up. I think this is a typical case of rebuttal that I am going to suggest; suppose a witness in the defense in the respondent's case had, in the course of the testimony, said they were, at a given time, at the meeting, say, of March 18, and heard what was said, and Mrs. [fol. 5851] Reed said this and not that; now, suppose they could show that that witness was working in a factory in Detroit on that day; that would be a perfect instance of rebuttal.

But for them to produce this lady to say she was sitting right next to Miss Mary Jones, respondent's witness, "It happened I was sitting right next to her, I heard Mrs. Reed's speech that day and what Miss Mary Jones said about it was wrong, Mrs. Reed said this and not that," well, that is all ancient history, we have been debating that subject, among others, for 3 or 4 years. I think that makes a perfect—not perfect, but maybe a crude but at least an illustration of what is and what is not rebuttal.

This lady is about, I gather from the purport and trend of the question, to say she, as the instructor, gave instructions or told these people in her section there was going to be a meeting. Well, how many times have you heard that already in their case in chief? That doesn't rebut anything, that isn't rebuttal, it is just some more testimony for the Board, in chief.

I think this is pretty fundamental, because I gather from the trend of the questioning so far that they are just going over their whole case again, and try to justify it on the ground—they pick out some witness, Ethel Riegel—I haven't been here to hear this, but I know something about what had gone on since I have been away—they may pick [fol. 5852] out a witness and say "Ruby Clayton said so-and-so, and now we want to prove that isn't so." If you let them get away with that—and I use that language without offense—then you are throwing the door wide open to about two or three more weeks, to the case in chief.

Trial Examiner Batten: Mr. Langsdale, were you going to say something?

Mr. Langsdale: Unfortunately for Mr. Hogsett, with regard to the argument, he wasn't here in this hearing nor the hearing of 1939, so he doesn't know what occurred, only what he read or someone told him.

Now, we had, in the 1939 hearing, one witness, May Fike, who said the girls in her section were sent to this meeting by their instructors. They bring along four in this lady's section who said that the instructor didn't send them to that meeting, "We learned of it out in the halls or by word from the girl next to me," or something of that sort. Now, when we say the instructor sent these girls to that meeting of April 27, and they come back to meet

that and they put on Ethel Riegel and Jennie Smith, or whatever the names are, and they say, "That isn't so, she didn't send us," certainly we have a right to show that that is so, and, "We sent you and you and you and you;" what could rebuttal be?

There was nobody that objected to any question they asked in the 1939 hearing along that line, the Examiner [fol. 5853] didn't deny them the right to prove whatever they had along that line. That isn't what the Court of Appeals sent it back specifically to prove, one of their offers of proof. They sent it back to show why and how they joined this Donnelly Garment Workers' Union.

Now then, they choose to put this evidence on in direct, and say that the instructor did not send them to the meeting, that is, four particular witnesses, and along they come and say, "You four witnesses were sent by the instructor."

Now, I believe that is just as perfect a case of rebuttal as Mr. Hogsett's illustration about somebody in Detroit. We will say one of those girls had said, "The instructor did send us to the meeting," and we had the proof they were in Detroit. Is there any greater variance in the testimony under that condition than there is to sit here and say, "Mrs. Dorsey didn't send me to the meeting," and Mrs. Dorsey comes along and says, "I did send that very girl to the meeting;" certainly that is rebuttal.

Now, they raise that in their offer of proof, and then put on some witnesses who swear to that, and we come along and show that those very witnesses aren't telling the truth about it.

Trial Examiner Batten: Miss Weyand?

Miss Weyand: I might point out that the witness on the stand is a witness that has been offered by the company [fol. 5854] themselves, and is named in their offer of proof for the purpose of proving something quite different from what she is prepared to testify.

I think, aside from the arguments here made on rebuttal, it is perfectly proper to put on one of the people that they offer in evidence, and have her testify to what her true understanding of the facts was. I think it is very

important that the Circuit Court of Appeals should have here in the record the evidence, the testimony of the people on their offer, who are not willing to testify in accordance with their offer, and particularly so when that witness was the instructor at the plant for a long, long period of years, had girls in her section who have testified here, and who can tell for the Circuit Court of Appeals' benefit and the Board's benefit, exactly what did occur.

Trial Examiner Batten: Just a moment, Miss Weyand. Surely that is not rebuttal.

Miss Weyand: No, I was —

Trial Examiner Batten: (Interrupting) Then, let us — I can tell you now I don't propose to accept that type of testimony.

Miss Weyand: Well, I was making it quite general, of course. This woman was the instructor for many years, of this section.

Trial Examiner Batten: Well, irrespective of that, I can [fol. 5855] tell you now I don't propose to accept any testimony on that basis.

Miss Weyand: I want the record to show I am going to offer a number of persons on their offer —

Trial Examiner Batten: (Interrupting) What I am concerned about is the matter of rebuttal. I am glad you mentioned the other point, however, because I am not going to receive it, so you might just as well prepare your offers of proof, and confine the testimony of these people to rebuttal.

Miss Weyand: Now, on the rebuttal point, I consider it rebuttal to put on any person who worked in a section there as an instructor or as a thread girl, or as a girl who sat next to one of the witnesses who testified here, when the witness I put on is prepared to state what she did, what she heard said in the presence of the other girl, that would refute the statements made by witnesses called by the company under their offer of proof and adduced here under the remand of the Court; and I am offering this witness on that basis. I think this witness is a particularly important witness because si[illegible]itnesses called by the com-

pany worked in section 415. Many of those witnesses mentioned Mrs. Dorsey by name, and it is certainly rebuttal to have Mrs. Dorsey herself come here and tell, for the benefit of the Board and the Court, exactly what happened when those girls were present. Her remarks were directed to the girls in her section, which included those girls, and [fol. 5856] I submit that is proper rebuttal.

Mr. Reed: Let me put it this way. Suppose we go back to the time when you were trying this case at first. The Board undertook to show that the plant union was a dominated union, by showing, by claiming that the instructors were persons in authority, and by showing that the instructors directed the employees to go to that meeting.

Now, they were allowed to go into that, they did go into that. Suppose they had then called this lady and she had testified to just what, evidently, she is going to testify to here. That evidence would have been competent, if any of it was competent.

Then we, on our side, would have had the right, with our witnesses at that trial and at that time, to have denied that testimony. Then, would you have said that if we, because we denied, we did not admit it, that the Board could again put on some more witnesses to the exact tenor it had produced, and say, "This is now rebuttal, because since we put our testimony in you put in your side of the case." If that is true, then what happens is this: the plaintiff puts in his case, the defendant puts in evidence contrary, then the plaintiff can go back and start to prove his case all over again.

Now, rebuttal must be a new matter that was not touched upon in the evidence in chief. So that what we are having here is a witness put on the stand to testify to the [fol. 5857] very things that she could have testified to in chief, and which they ought to have had her testify to in chief.

So that if we try it on that theory, they put on some evidence and they call it rebuttal, but it is part of their main case; we put on some evidence on the other side, and we call that — and immediately they say they want to rebut

that, and they put on evidence, and we come in with surrebuttal, and we just try this case four or five times over.

Trial Examiner Batten: Of course, there is possibility of that, Senator, providing I were to permit it. Now, we may differ as to just what is rebuttal. I think clearly Miss Weyand's first statement is entirely out of line, as far as I am concerned. I mean by that that you aren't going to try all the issues of this case over again, but I am still convinced in my own mind that if this witness testifies about these matters, which these four or five or six girls testified about here, that were in her section, and about specific matters in their testimony in the record, I don't see why that isn't rebuttal.

Now, with this understanding, of course, having tried the case once, and had it come back, I agree with you, Senator, in fact we did agree several days ago on this, that when a case of this kind comes back for further hearing, it certainly complicates the situation, it complicates it for everybody, because when it comes back you are just presented with the question of just why it was sent back, [fol. 5858] how far should you go, and that is only the first complication, and the further you go with a further hearing, the more complicated it becomes. Now, I am convinced that it is proper rebuttal, as I indicated to Miss Weyand in the first instance.

Now, I don't agree that we are here for the purpose of taking testimony, as stated by Miss Weyand a moment ago, because I think Miss Weyand admits herself that isn't rebuttal.

Now, I think, in order to get this matter worked out in my own mind, and I want to say I don't have it clearly in mind right now — I think I shall recess until 2 o'clock. And I want all of counsel to think it over in the meantime.

Mr. Langsdale: Before you actually recess, give me about two minutes, to read from the respondent's offer of proof, on page 15: "That he—" meaning the employee,— "was never directed, ordered by anyone, either the instructor employed by the Donnelly Garment Company or any officer, executive, supervisory employee of the Donnelly Garment Company or Donnelly Garment Sales Company, to attend the meeting of April 27, 1937."

They made that offer of proof, which was denied, and they went up to the Court of Appeals, and the Court of Appeals said they should have been permitted to make that proof, and they came back here and made it, and now they want to preclude us from showing that the very [fol. 5859] witnesses put on the stand aren't telling the truth about it.

Trial Examiner Batten: Well, Mr. Langsdale, I think my statement that I have made two or three times, about what is rebuttal, would cover, perhaps, that matter. Where a specific witness — you had several specific witnesses say that they worked in section 415 during March and April, that the instructor did not tell them to go to this meeting, nor did she say anything to them.

Now, I am inclined to believe that under the circumstances here, that is proper rebuttal.

Mr. Langsdale: I just wanted to call your attention to their offer of proof.

Trial Examiner Batten: I haven't worked the thing out fully in my own mind as yet, and that is the reason I want to recess until 2 o'clock.

Mr. Hogsett: I think that is a wise thing, because while this particular question is relatively unimportant, you are going to have it occurring again and again and again.

Trial Examiner Batten: Well, it isn't unimportant, because if I can get it straightened out and settled in my own mind, whether you accept my ruling or not, from now on you can proceed with the testimony.

Mr. Hogsett: That is what I think, that you get the legal scope of the rebuttal settled now, and I think I can get some legal aid for you on that.

[fol. 5860] There is one thing that Mr. Langsdale and Miss Weyand have each referred to and I want to make a comment about it. They each seem to be laboring under the opinion — I was about to say delusion, because I think it is a delusion legally — that they are entitled to disprove something that is stated in an offer of proof.

Well, that is not the law. An offer of proof is not proof. It is a mere showing on the record by a party whose proof

has been rejected, as to what it would be if he were permitted to offer it.

Now, offers have been made — Mr. Langsdale read from one, but that offer was rejected. Now, the Court of Appeals held that it was improperly rejected, and sent it back, but the point I make is that because something appears in an offer of proof doesn't mean that they, under the guise of rebuttal, can take up that statement and disprove it.

It is just wrong, 100% wrong, as a matter of law.

Trial Examiner Batten: Well, I think, Mr. Hogsett, that I disposed of that.

Mr. Hogsett: I thought you did too.

Trial Examiner Batten: I mean that general question, when I said to Miss Weyand that I didn't think that the offers of proof meant that Board's counsel could proceed to disprove the offers of proof.

Mr. Hogsett: That's right.

[fol. 5861] Trial Examiner Batten: And neither does it mean, clearly, that if there is testimony that should have been offered by the Board in the original hearing, it doesn't mean that it can now be offered and received.

Mr. Hogsett: I agree with both of those statements.

Trial Examiner Batten: Now, the only question in my mind is, what is rebuttal, and whatever conclusion I come to on it, I am going to limit the discussion to rebuttal.

Now, that is the only question, and I think at 2 o'clock I'll do this — I'll give you each 15 minutes at 2 o'clock to tell me anything further you want to tell me about rebuttal.

Mr. Reed: While you are thinking it over, I wish you would think of this situation, if I may ask you to do that, the prosecution put on witnesses who said that the instructors had sent them to this meeting. That was regarded as proper.

Now, they had a right to put on as many witnesses to that as they wanted to put on. This lady could have tes-

tified then, and if they had her, she should have testified then and they should have made their complete case.

Now, we come to our side of it, and we put on witnesses that rebut this testimony that has been put in, to deny or controvert this testimony that they had put in, to the effect that the instructors had sent the employees down to the meeting. So, there is their evidence on one side, here [fol. 5862] is our evidence on the other side, in direct denial. Now—

Trial Examiner Batten: (Interrupting) But I am convinced of this, Senator, that if these people who testified in this hearing had testified in the original hearing, and the Board had then offered some testimony in line with the suggestion which I have made—and it is not yet a ruling—I am convinced at that time I would have received that type of testimony.

Mr. Reed: That is to say, if there were 50 witnesses that knew a certain fact, and the Board put on 10 of them and stopped, then if we, on our side, put on 10 witnesses to controvert what had been offered and nothing else, then the Board comes in and says, "Well, I want to bolster my case, I want some more evidence, you swore to a certain set of facts here, and I want to rebut the facts," although those facts which we put in were in rebuttal of the case in chief.

Trial Examiner Batten: No, I don't think I could go along with you on that, Senator.

Mr. Langsdale: That is not this case.

Trial Examiner Batten: As far as this particular ruling is concerned, I couldn't. I agree with you heartily that as a general proposition I think you are absolutely right, it is not a question—it is somewhat similar, although not entirely so, to this matter of cross-examination. You have direct examination, then cross, then redirect, then [fol. 5863] recross, and it can get to the point where all you do is to pass witnesses back and forth to where there is never a stopping point. Now, I don't have any such thing in mind as that, and don't propose to proceed on any such basis as that.

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[fol. 5864] Mr. Lane: Mr. Examiner, the intervener has his offer of proof ready to present.

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Trial Examiner Batten: That will be 1-XXXXX.

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[fol. 5865] Trial Examiner Batten: Mr. Lane, in reading this, this offer is—while it makes reference to matters prior to July 15, 1939, do I understand from the heading that it is supposed to cover that period subsequent to July 15—

Mr. Lane: That is correct. I did refer, in that one paragraph, to ". . . continuously from its organization . . ."—

Trial Examiner Batten: As long as it is understood that it is an offer of proof pertaining to the organization subsequent to July 15, 1939,—

Mr. Langsdale: I move to strike out the other part of that.

Trial Examiner Batten: Miss Reporter, will you mark this?

(Thereupon the offer of proof above referred to was marked "Board's Exhibit No. 1-XXXXX" for identification.)

Mr. Langsdale: Mr. Examiner, in view of the statement as to the understanding, I can see no point to leaving the language in the offer of proof, ". . . continuously from its organization on April 27, 1937, to July 15, 1939, . . ." I don't think that should be in that offer of proof and I move to strike it out.

Trial Examiner Batten: I am not going to pass on the offer today, so I will not pass upon your objection today, Mr. Langsdale.

[fol. 5866] Mr. Langsdale: My thought was this: someone reading this record might not read this little colloquy, so if they do not mean to make the offer as between those dates, it should not be in their offer of proof.

Trial Examiner Batten: Of course, I don't know whether we have the right to assume that the people charged with the responsibility of passing upon these matters are not going to read the record or not. But I will reserve my decision upon the offer of proof, as well as the motion to strike, at this time.

Mr. Hogsett: May I have the number of that?

Trial Examiner Batten: No. 1-XXXXX.

Mr. Langsdale: I want the record to show now that the International Ladies' Garment Workers' Union has no objection to this offer and stands ready to meet it with witnesses.

Mr. Hogsett: The respondent joins in the offer of proof designated Board's exhibit No. 1-XXXXX.

Trial Examiner Batten: Well, I understood the respondent took the position thus far in the hearing that they didn't believe the matters were material from July down to the present, Mr. Hogsett.

Mr. Hogsett: That is not an accurate statement of the position of the respondent, as I understand it. The position of the respondent is that the Board is not entitled nor is the International entitled to offer evidence of acts by the [fol. 5867] respondent other than those alleged in the complaint but that circumstances, evidential facts, which may have occurred yesterday may be admissible if they throw light upon the issues framed by the complaint.

Trial Examiner Batten: Well, of course, I didn't understand that to be Mr. Ingraham's position.

Did I misunderstand you, Mr. Ingraham?

Mr. Hogsett: That is the respondent's position, as I understand it.

Trial Examiner Batten: Did I misunderstand you, Mr. Ingraham?

Mr. Ingraham: Yes.

Trial Examiner Batten: The other day when I struck Mrs. Reed's testimony as to matters after July, Miss

Weyand objected to that if those facts reflected the situation prior to that date. I understood that the respondent at that time was in opposition to Miss Weyand's position.

Mr. Hogsett: In that part of the record which I have is a statement by Senator Reed which quite clearly, to my mind, indicates he was taking the position that the Board should be held to the issues framed by the complaint, but that any circumstance which may have occurred at any time within reasonable proximity to the facts and circumstances in issue is admissible if it throws any light on the issues, either one way of the other.

[fol. 5868] Mr. Langsdale: On the Board's part or—

Mr. Hogsett: Oh, on anybody's part, that throws light on the issues, and has a reasonable tendency to prove or disprove the facts in issue, is admissible. I do not understand how you can draw a line anywhere and say that nothing that happened after this date is admissible at all. If something that happened after that time throws light upon the facts in issue, then I think it is admissible.

Trial Examiner Batten: The question arose, Mr. Hogsett, in the first instance, when we were going to try out the situation from July, 1939, down to the present time.

Mr. Hogsett: I understand that. And Senator Reed took the position, and, I think, with complete validity, that the Board cannot litigate facts or alleged facts that are not in issue; in other words, not long since, or long prior, for that matter. But there is a distinction between that and the right of a party, either the Board or ourselves, or anybody else, to prove an evidential fact which reflects light, one way or the other, upon the issues.

Now, to my mind that is perfectly clear. It seems to me there is not only a distinction that is sound formally but substantially.

Trial Examiner Batten: Of course, we are not here to discuss that. Of course, it may be a distinction without a difference.

[fol. 5869] Mr. Hogsett: That is possible, but I think not

Trial Examiner Batten: I believe that the position he took is not only sound but proper, and the question now before us is with respect to the rebuttal testimony.

Mr. Hogsett: Yes, sir. Now, I would like to be heard briefly on that.

Trial Examiner Batten: Yes.

Mr. Hogsett: I said, Your Honor, I would attempt to get some law which would aid you in formulating a workable program in the rulings upon evidence with respect to whether it is proper rebuttal or not. Now, I have found, or Mr. Stottle has found, and I am now presenting the decision in Light v. Toledo, St. L. & W. R. Company. (District Court, N. D. Ohio, W. D.) 208 Federal 158. I will read very briefly from the opinion.

Mr. Langsdale: What Court?

Mr. Hogsett: Federal District Court in Ohio, Judge Killits.

(Reading) "We propose to notice particularly the position of counsel for plaintiff that the Court erred in excluding the testimony of the two Pratts (two witnesses) offered by plaintiff in rebuttal. It is very plain, and in fact not disputed by counsel for plaintiff, as we understand them, that this testimon was competent in chief. In our judgment, it went beyond the fact of mere competency; it be-[fol. 5870] came, considered in the light of the allegations of the petition, a substantive part of the plaintiff's case in chief."

Now, note, please, this language which follows:

"The fact that, as it was offered to be testified to, it would tend to contradict the evidence of the defendant does not make it proper rebuttal under the circumstances, because the testimony which it was offered to contradict was itself contradictory of the testimony in chief. The authorities cited to us are principally cases in which the Court's discretion in admitting testimony in rebuttal, which was competent in chief, was not criticized."

Now, I pause there for a moment, and then I will come back to this opinion.

This says, in better language than I used, the thought that I was somewhat awkwardly attempting to present to you before the adjournment.

You had in mind, and perhaps you now have in mind, that because the testimony of this lady might contradict something that the respondent has offered, that ipso facto and alone—

Trial Examiner Batten: I didn't have that in mind, Mr. Hogsett.

Mr. Hogsett: You did not? Well, I gathered that you might.

—that the fact that it would contradict what Witness Jennie Jones or Mary Smith, offered by respondent, might have [fol. 5871] said made it competent, but this is to the contrary.

Trial Examiner Batten: No, Mr. Hogsett, I don't think the matter of contradiction has anything to do with it.

Mr. Hogsett: I am glad to hear you say that, because—

Trial Examiner Batten: I mean, from the standpoint of my ruling on the matter.

Mr. Hogsett: Well, I am glad to hear you say that.

You did say this:— I am not, of course, trying to pin you down to anything, except for purposes of illustrating the legal question I am now presenting. I believe you did say this, that this lady apparently would contradict something that some four or five or six witnesses said. Now, I gathered from that, that you had in your mind that the mere fact of contradiction automatically made it proper rebuttal, and I respectfully differ from that. I believe this case differs from that. The fact that if it was offered to be testified to, it would tend to contradict the evidence of the defendant does not make it proper rebuttal because—

Now, the Court doesn't just give you that and then leave it there; it gives the reason:

"... because the testimony which it was offered to contradict was itself contradictory of the testimony in chief."

I didn't put it in that form, but that is what I was driving at, that the evidence that you heard here in this last month has itself been contradictory in part. Here and [fol. 5872] there, there has been agreement, of course, but the aim has been to disprove the Board's case.

Now, comes along the Board and puts on a witness and is now going to contradict what we have shown. Now, there would be no end to that, if that theory should prevail with complete freedom; there would just be no end to it, because the logic of it would compel you to rule that after this series of proof is received, anything this lady should say, that we would have a right to again come on and contradict her. So, then, in surrebuttal—or maybe it is sur-surrebuttal—they would have, in turn, the right to come on and contradict what our people have said. There has to be an end.

The rule is, I believe, that any evidence that is competent in chief—and this clearly is—is not proper rebuttal, and the fact that it contradicts the evidence of the defendant does not add to its character or does not validate it as rebuttal:

Now, this Court goes on:

"We do not think that there is any soundness in the proposition that this alleged rebuttal testimony was competent by way of impeachment. Impeachment, to be competent in rebuttal, must be something more than a mere contradiction which is of the same character as the affirmation in chief to which the testimony in defense is offered in contradiction."

Now, when you ravel that language out— I'll confess, [fol. 5873] the first time I read it—and it may be the first time you have read it—you don't get it, but when you ravel it out, it has the philosophy of this thing better stated, more clearly stated, more precisely stated, than any case I have found.

Now, Stone against the Milwaukee, in the Eighth Circuit Court of Appeals, says:

"The evidence offered in rebuttal was clearly a part—"

Mr. Langsdale: What page and what book?

Mr. Hogsett: I beg your pardon. 53 Federal, 2d Series, 813 local, citation 860.

(Continuing) "—was clearly a part of the plaintiff's main case on these issues. (This was a negligence case.) Plaintiff should have introduced all his evidence in chief in the first instance, and not reserve a part of it for rebuttal. Rebuttal testimony should be directed to a rebuttal of the testimony brought out by the defendant. The rule requires that plaintiff must try his case out when he commences, and cannot divide up his evidence so as to give part of it in chief and hold back part of it for rebuttal."

I pause there to inject this: The court then goes on and states a rule which, I am frank to admit to you, is that the admission of testimony not strictly rebuttal is discretionary. Now, they no doubt will argue that; I expect it, and admit it. But I am assuming that you meant what you said, when you said, "This rebuttal is going to be rebuttal. [fol. 5874] And when I say 'rebuttal,' I mean 'rebuttal.'"

In other words, this discretion that is lodged in you, you are not going to resolve it in favor of the admission. I take it that is what that language means, when you say, "And when I say 'rebuttal,' I mean 'rebuttal.'" In other words, you are not going to stretch the rule to admit but you are going to apply it as it is.

"True, the Court may, in its discretion, admit in rebuttal evidence which properly should have been introduced in chief, but any relaxation of the rule is an appeal to the sound discretion of the Court."

Then, citations of cases.

"The testimony offered in rebuttal was as available when the plaintiff put in her testimony in chief as it was later in the trial. There was nothing to appeal to the Court's discretion, and the exclusion of the testimony was not error."

I could go on with cases from now until 5'oclock, but those two tell you all that I can give you to aid you in reaching a proper solution of this law question.

Trial Examiner Batten: Mr. Tyler?

Mr. Tyler: Mr. Examiner, I find quite often that on the question of evidence there is no better basis for fundamental theories than Prof. Wigmore, and I note that he says on the subject of rebuttal evidence:

[fol. 5875] "Certainly evidence which would, should or could have been a part of the case in chief is not properly a part of rebuttal evidence."

It goes on, Volume 4, page 24:—

Mr. Langsdale: What—

Mr. Tyler: Wigmore on Evidence, Second Edition.

"In the next place, the evidence offered thus tardily may consist in new facts which ought to have been put in before or in a repetition (either by a new witness or by the same former witness) of former facts already once evidenced. The customary rule will equally forbid both."

That is, neither may the prosecution add to the nature of evidence which it has already introduced in its primary case nor may it introduce new evidence which it could but did not introduce in its original case.

Now, in 1939 the Board built its case as it saw best. It had unlimited opportunities and it could have "concentrated its fire" on the meeting of April 27 or on any other subject—

Trial Examiner Batten: Now, Mr. Tyler, on that point —You say it had "unlimited opportunities"—

Mr. Tyler: I think so.

Trial Examiner Batten: If I recall correctly, I think the Board was stopped on several occasions, also. In fact, I think all of the attorneys in this case, both in the 1939 case and the present one, are all inclined to the belief that [fol. 5876] they should be permitted to present more than I have been inclined to receive.

Mr. Tyler: I didn't mean to refer to rulings on evidence, but they had an opportunity to bring in to Court any facts they thought were persuasive and offer them. Now, they could have concentrated on one set of facts or another. They did go into the question of whether instructors told girls to attend meetings.

Now, the respondent and intervener built their case according to the case of the plaintiff's. If the prosecutors had taken an entirely different fact and used different evidence, undoubtedly the defense evidence would have been built to meet it, but the defense is in and has committed itself, relying on the case made by the prosecution, and to now add to that case, even in the weight of one particular part of it, is to destroy the fairness of trial to the defendant, which has a right to rely on the presumption of law that all of the evidence in chief on which the prosecution relied was presented.

Trial Examiner Batten: What would happen, Mr. Tyler, if you were presented with this: supposing I were to accept Mr. Hogsett's statement of a moment ago that any circumstances that occurred since that throw any light on the situation as we heard it in 1939 are relevant? I mean—

Mr. Tyler: I presume if there was something they couldn't present at that time—had no opportunity to [fol. 5877] present at that time—some new subject came up, then I think it would be within Your Honor's discretion, but I think you have already indicated what your discretion is.

I think the difficulty we are in here is from a feeling which we all have, which is not the fact, that the testimony of this witness in some way tends to impeach the testimony of the other girls in section 514. We have a sort of a feeling that if they say, "We were not told by the instructor to go to the meeting," then if the instructor might say they were, that would in some way impeach these witnesses. That is not a fact. If the president and the board of directors and every officer of the company contradicted that girl, it would not impeach her—it would not impeach these witnesses from section 514; it would merely go to the weight of the evidence, and it would still be a part of the case in chief. Corpus Juris says impeachment does not include that kind of evidence. It says:

"It has been laid down that there are but four modes of impeaching the credit of a witness: One, by cross-examination; two, by proving previous contradictory statements or acts." The others are not applicable here.

Now, I agree that if the witness on the stand offered to say she heard these witnesses who say they were not told by the instructor to attend the meetings say positively at another time that they were so told—I would think that would be impeachment, but merely for this witness to say [fol. 5878] —if that is what she intends to say—they were so told, or even "I told them," is not impeachment, it is merely evidence on the other side of the case.

There are other methods of impeachment that have no bearing here, such as to show the conviction for some infamous crime, general lack of credibility, and so on. But the thing that is important here is that the only method of impeachment which, by any stretch of the imagination, could apply here is that the evidence was that these witnesses who said they were not told to go to the meeting themselves at some time said that they were; in other words, contradicting themselves.

But I care not how many of the other employees, board of directors, president, or mayor, or city council, or anybody, say that they were told to do so, that does not impeach the witness, and therefore, is merely additional evidence in chief which should have been presented when the Board presented its case and is wholly incompetent as rebuttal evidence.

Trial Examiner Batten: Miss Weyand?

Miss Weyand: All of the cases which have been cited by counsel for the company are cases where an appellate court said the Trial Examiner did not err in refusing to hear rebuttal—all of them clearly say it is within the discretion of a court to hear rebuttal on any matter which con- [fol. 5879] tradicts a matter raised in defense, even though it might have been presented in chief.

The usual rule for determining what is appropriate rebuttal is whether or not—and this appears from the quotations from the cases, both of the Federal cases cited by counsel for the company—whether or not rebuttal is a repetition of what occurred in chief. Now, in the case in chief here there was no direct proof as to whether or not any instructor on the eighth floor or the seventh floor sent any person to the meeting or notified any person of the meeting,

as I recall. May Fike was either on the fifth or sixth. There was none as to the floor from which most of the witnesses called by the company came.

When you put on a case in chief and make out a prima facie case by putting on a witness who says on her floor, in her section, the instructor sent her to the meeting, you assume, unless there is something in answer, that that stands for the whole plant. Then, when in answer the company comes in and shows by specific girls, in specific sections, that they were not sent by their instructors, then it becomes proper rebuttal to show that on that floor, in that section, they were sent to the meeting. I think that is proper rebuttal. We couldn't anticipate what section or what part of the floor they were going to call the girl from.

It requires proof of the complete facts—everybody who could testify in contradiction of anything they might put in. [fol. 5880] That is not the rule as to a case in chief.

For that reason I submit that it is entirely proper for the Board to present in rebuttal the testimony here offered.

I want to point out that I have never heard of a single case in my life where any court reversed any lower court, trial court, for allowing any matter to be put in in rebuttal that contradicted anything that was put in in defense. The cases come up on the question of whether or not it was reversible error to refuse that evidence in rebuttal. And there are many cases that hold that there was reversible error for a trial court to refuse matters in the case of witnesses put on for the defense where the matter offered is not entirely a repetition, as to exactly the same circumstances that were given in the case in chief. If it is the same witness that saw the same incident, in the same room, that you want to put on, then that is a repetition of the case in chief. That is not what we are trying to do here. Where it is a matter that has not been put on in chief and contradicts evidence put on in defense, the courts have reversed the trial courts for not allowing that sort of rebuttal.

Mr. Langsdale: If it please the Examiner, the matter which the Board seeks to offer evidence on here is in reply; at any rate, to evidence that was offered, and received, by the respondent and the intervener. Now, why was that

evidence received? If it is true that the Board and the In-
[fol. 5881] ternational Ladies' Garment Workers' Union covered the matter in their main case, then it was the duty of the respondent and the intervener to answer it in the main case. Certainly, if that rule works against the Board and the International, it works against the respondent and the intervener.

Why were they offering it here? They were offering it here only upon the theory that the Examiner excluded it in the last trial, and of course the Examiner excluded nothing in the last trial that was in answer to anything the Board or the International put on. So, you should strike out that evidence of theirs as not being within the scope of the remand or you should permit the Board and the International to reply to it. It has no place in this case on the remand, as it should have been answered, and they had an opportunity to do it without any contrary order, in 1939. But the respondent and the intervener assert that that matter was not covered in the 1939 hearing, that it is something new. If it had been covered, it was their duty then to answer it, and not now.

Now, as to the question of whether or not it is rebuttal, of course, as Miss Weyand pointed out, their cases hold that the trier of the fact did not exceed his discretion by refusing it or admitting it, but, as was also pointed out by Miss Weyand, there are many cases that hold that the trier of the fact may be reversed when he refuses admission of such testimony as an abuse of discretion.

[fol. 5882] I have here the case of Ankersmit et al. v. Tuch, in the 20th Northeastern Reporter, at page 819. It is in the New York Court of Appeals case. I will just read the syllabus because it covers the law and facts:

"In an action to recover the possession of certain goods alleged to have been purchased by the defendant's assignor by means of false and fraudulent representations as to his solvency, where the assignor, on being called as a witness by the defendant, had testified, on cross examination, that he had not made certain statements to one B. with regard to his solvency, it was competent for the plaintiff to show by B. after the defendant had rested that the assignor had

made such statements to him for the purpose of impeaching the credibility of the assignor, although the evidence of B. would have been competent on the direct examination by plaintiff; and the fact that it was not then introduced did not make it discretionary with the trial court to subsequently exclude it."

I think that is on all-fours with this case.

We, they say, could have offered this testimony in our case in chief. But along they come and say these instructors did not send the girls down to the meeting. Now, we had one witness who said she was sent to the meeting, and that was May Fike. They come along with ten or eleven to say that they were not and it wasn't done.

[fol. 5883] Now, what is the purpose of their offering that testimony? Do they hope by eleven witnesses against one, the trier of the fact will hold that the balance is overwhelmingly in their favor? That must be their reason, because they had an opportunity to reply to that evidence in their defense in 1939 and they didn't do it. Now they come along, under the offer of proof, which is based upon the theory that you refused that evidence in 1939, and offer it.

Now, if you did refuse it in 1939, we certainly had no opportunity then to reply to it. The first chance we have is now, when they offer this testimony.

I think that goes not only to this testimony in answer to the question Miss Weyand asked, but in answer to other questions she may ask.

They covered the duties of an instructor. I don't know why they did that this time. The last time they put Mr. Baty on, who went the full route and testified no instructor had any authority at all, that he was the only supervisor over some 1,200 or 1,300 people. They answered it then; why not now? And if they answer it now, we have a right to reply to it. If they had put on these witnesses when they had the opportunity in 1939, we could have done it then, but they wait until now.

Mind you, that is a field that was fully covered by them, by Mr. Baty and other witnesses, but here, under this offer [fol. 5884] of proof, they offer a number of other witnesses.

What are we to do, just say they have eleven and we only had one, or are we to reply to the evidence they put on under the guise that they had no opportunity to do it in 1939?

Trial Examiner Batten: Well, Mr. Langsdale, let's assume that in 1939 they didn't have an opportunity to put it on; that wouldn't change the situation particularly, would it? The only question here is whether or not—

Mr. Langsdale: —whether it is rebuttal.

Trial Examiner Batten: —whether or not it is rebuttal or reply testimony.

Mr. Langsdale: Whether it is rebuttal of anything properly in the record in this hearing. If we are excluded from producing that kind of testimony because we had the opportunity in 1939, then why are they permitted to put it on, when they had the same opportunity to answer it?

Trial Examiner Batten: I think I indicated this morning, and I am still of that opinion, that any ruling I make in the matter is not governed, Mr. Langsdale, by that particular factor. I do not consider that an important factor. It may be one of the factors; that is, whether everybody had the opportunity before. The fact remains, however, they didn't have the opportunity before, because the circuit court sent it back.

Mr. Langsdale: Of course, I say this language contained [fol. 5885] in that offer of proof—I think that should have been in a separate offer— The offer of proof of why and how they joined this union is not corollary to the offer that the instructors did not send people down to this meeting. If it is, then they replied to it in 1939—had the opportunity to reply to it, and did reply to it. Then, they are opening the case up again on that proposition.

This hearing is for the purpose of permitting them to put in testimony the Examiner wouldn't permit them to put in in 1939. Isn't that right?

Trial Examiner Batten: That is the fundamental basis of it.

Mr. Langsdale: What right do they have to introduce evidence on these points they did put on in 1939, and say to

us, "We are going to pile up witnesses and you will have to keep your mouth shut."?

I want to refer to the case of Stanley v. Beckham. 153 Federal Reporter, page 152. This is an Eighth Circuit Court of Appeals case. I will read one paragraph of the syllabus:

"In an action for broker's services, defendant sought, on cross examination of plaintiff, to prove an agreement to accept an employment and certain stock, in full for his services; but this, on objection, was excluded as not proper cross examination, as being matter of defense. As a part of the defense, one of defendant's witnesses testified that, [fol. 5886] after the services had been rendered, plaintiff in a stated conversation, accepted as full compensation a position as salesman and defendant's agreement to carry for him, on certain terms, certain capital stock of a corporation. Held, that it was error, after the admission of such evidence, to refuse to permit plaintiff in rebuttal to give his version of such conversation, so plaintiff had previously in such cross examination testified to certain phases thereof."

Trial Examiner Batten: I think that particular matter is in line with the suggestion which I indicated this morning, without having given any thought to the matter. As a matter of fact, I am more certain now, after having given the matter some thought, that my statement this morning concerning it is correct, and I am equally certain that my statement to Miss Weyand this morning about her first proposition is correct. So, as the result of two hours or two and a half hours of giving it some thought and listening to all counsel, I am still of the opinion that my statement on it this morning was substantially correct.

Mr. Reed: If Your Honor will indulge me for a few moments,—

I think that the theory of the other table basically has been well expressed by Miss Weyand. Her theory is—and she said it very clearly—that when a party starts to try a case, all the plaintiff has to do is to make out a prima facie case. Then, if that is denied by the defendant, the plaintiff [fol. 5887] can go and make out his full case.

Now, that isn't the law anywhere. If it was, and there was a case here involving a controversy of great importance, and one witness would be put on and swore to enough to sustain the charge, and there were no witnesses on the other side, the charge could be sustained. All they would need to do is put that witness on and say, "Now, there is your prima facie case. It isn't our case—oh, no,—but that is our prima facie case. And when you come in to deny it, then we will put in all of our case."

Now, that— I cannot characterize it in any other way than to say that that is a mistake. That isn't the law anywhere in this country. The law is that the plaintiff must put in his full case and rest, and that the defendant shall put in his full case and rest.

Now, if the defendant has introduced into his defense an entirely new subject matter, then the plaintiff can rebut it, and if in rebutting it he brings in an entirely new subject matter, that can be met by surrebuttal.

Now, let's see— I don't think I need mention this, for the Examiner has already put his finger on it. Let's see what our situation is.

I will call these people the plaintiff over here (indicating Miss Weyand and Mr. Langsdale); it is more polite than "prosecutors."

[fol. 5888] The plaintiff makes a charge. We are summoned here. And the plaintiff's—the prosecution's duty is to make its case, to prove those charges. If they do not put in evidence to prove those charges, the case, of course, falls by the wayside. But if they do, like any other litigant, they must put in all of the evidence they have to sustain those charges.

Now, they put in their evidence, and a part of that evidence was, and a part of their argument here and before the Board and before the Circuit Court of Appeals was that the instructors marshalled these employees and marched them down to the meeting at which the union was to be organized, or the preceding meeting. They put that in evidence, and they rested with that point, so far as they were concerned, proven. That was prima facie, as Miss Weyand said.

We then came forward and sought to rebut that evidence—to disprove it and put in our side, and when we got to a certain point Your Honor sustained objections to all of the evidence which we sought to introduce to rebut and overthrow what had been offered by the prosecution.

Thereupon, in order to save the point, we made elaborate offers of proof, but we were not allowed and we did not have the opportunity to put that evidence in. Your Honor was of the opinion that it should not go in. We, therefore, were denied the opportunity at that time to prove our side of the case and meet the charges and the evidence against us.

[fol. 5889] Now, the case went to the Circuit Court of Appeals and the Circuit Court of Appeals said that evidence is competent, that that evidence must be received, must be weighed and considered, and until that has been done there has not been a trial according to the law.

Now, we come back here to carry out the mandate of the Circuit Court of Appeals. There has been some difference here in our arguments as to what the scope of this hearing should be, which is a mere continuance of the other case. It is exactly the same as though we were trying that other case, as though this evidence had been admitted, as though the prosecution had rested, and as though we had come in then and offered all of this evidence that we have now offered. It is a mere continuance of that hearing, and that has been the import of Your Honor's ruling. That record, you say, is in the case, and we are here now to enjoy the opportunity which we would have had at that time if your ruling had been otherwise.

We, therefore, put in the rest of our defense, and we put in nothing new. We have simply put in more evidence to prove that the charge that the instructors were in control down there and that they bossed these people around and intimidated and coerced these people, is not the fact. So, we meet them squarely head-on.

Then, they turn around— I guess, under Miss Weyand's [fol. 5890] theory, and say, "We were only obliged to put

in a smattering of evidence to start with, and now we can go on and retry our case."

Now, I submit any ruling permitting that would be wrong, unfair, and would put any defendant—if that ruling were to be invoked or established, put him in a position so that he must go to trial and expose all he has and, because the prosecution has only put in, according to their theory, a prima facie case, he has to frame his evidence to meet a prima facie case, and that's all. Then, when you get through demolishing the prima facie case, they come back and say, "That isn't our case. We are now going on and put in a multitude of other evidence." Then, as has been said by Mr. Hogsett, comes the question of trying the case all over again.

Now, that is not orderly justice.

Now, I want to urge just one thing further:

Your Honor made a ruling— We were here with witnesses, a large number of them, and prepared to bring more—

Trial Examiner Batten: You mean, the day I ruled?

Mr. Reed: Yes.

Trial Examiner Batten: Yes. I think you had—about what—four?

Mr. Reed. Yes. And about forty ready to come.

Trial Examiner Batten: Yes, but I am speaking of those who were actually here.

[fol. 5891] Mr. Reed: Yes.

Trial Examiner Batten: You had a reserve.

Mr. Reed: Yes. We were getting out war orders and keeping everybody down there working, so—

Trial Examiner Batten: Yes. I think I suggested that to you, as a matter of fact, not to have them all here.

Mr. Reed: Yes, you very kindly did.

Now, we were prepared to go ahead and put on a great deal more testimony. Your Honor has said, "It is cumulative and I am going to rule that no evidence is to be of-

fered that is part of the case in chief of the prosecution. That isn't to be offered. I am not going to open that up. I am going to limit you now to rebuttal, and I mean rebuttal." And you said that with some emphasis.

Trial Examiner Batten: And I still mean it.

Mr. Reed: I think you do.

Now, if you were to open up this case and go into all of those other matters that have no relation to the charges, then, in that case, we would have been limited in the number of our witnesses, and the prosecution could come in perhaps with an equal number, but nothing like the number we could have presented, and we would try the case, then, in that haphazard way.

Trial Examiner Batten: Of course, Senator, I think I indicated the other day the number of witnesses is not the [fol. 5892] important factor.

Mr. Reed: That is true.

Trial Examiner Batten: We have done a lot of talking here about, someone has had ten witnesses, and somebody else has had five witnesses, and so on. That is not the criterion we use—

Mr. Reed: No. The greater weight of the evidence, and not the greater number of witnesses is—

Trial Examiner Batten: But, Senator, there is one question I would like to ask you, if you care to answer it:

Under the situation in which we now find ourselves here, is it your opinion that the Board would be entitled to any rebuttal? I mean, do you take the position that we are at the point now where we should stop?

Mr. Reed: If there is any new matter that we have brought out, they can put in evidence in rebuttal of that, I grant you.

Trial Examiner Batten: How about the testimony of Mrs. Reed?

Mr. Reed: You struck it nearly all out.

Trial Examiner Batten: Just since July 1939, Senator. But I took the position with Mrs. Reed that I was going to

exercise my discretion, because, due to matters over which she had no control, she wasn't here last time. I didn't do that because I felt that the Circuit Court had ordered me [fol. 5893] in its decision to take the testimony of Mrs. Reed; I did it because I thought it was fair that Mrs. Reed should have an opportunity to testify.

Now, certainly, in Mrs. Reed's testimony there were some matters which I would say might require a reply.

Mr. Reed: If she brought out a new matter which is material in this case, which hadn't been brought out by the prosecution. They do have the right on any matter of that kind to offer evidence to the contrary.

Trial Examiner Batten: Well, I think we have spent enough time on the discussion of it. I think we probably would all enjoy a ten-minute recess at this time, and then I will make my ruling on it.

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[fol. 5894] Direct Examination (Continued).

Trial Examiner Batten: Miss Weyand, you may proceed, in line with the suggestions which I made this morning, and if you have any other testimony in line with your other suggestion, you make it as an offer.

Miss Weyand: All right.

Trial Examiner Batten: Because I don't propose to go into all those matters, and the examination will be limited in what I consider to be rebuttal, in line with the suggestions I made this morning.

Now, I have had the reporter read to me the last two or three questions, and the last question was answered. I presume everybody would like to have the last three or four questions and answers read, so Mr. Reporter, will you read them?

(Thereupon the last questions and answers were read by the reporter as follows:

"Q. Did you attend the meeting at which the Donnelly Garment Workers' Union was organized?

"A. Yes, I did.

"Q. Did you know before you got to that meeting that such a union was going to be formed?

[fol. 5895] "A. Well, I don't know, but we sort of surmised something.

"Q. How did you learn of that meeting?

"A. Well, I don't remember, but it was either by telephone or by Mrs. Wherry telling us; she usually went around and told the instructors.")

Trial Examiner Batten: You may proceed.

Miss Weyand: Do you know how the girls working in your section learned of the meeting at which the union was organized?

Mr. Hogsett: That is objected to for all of the reasons heretofore asserted as not proper rebuttal and particularly unless the question is limited to the particular witnesses heretofore offered by respondent, by name.

Trial Examiner Batten: Well, you may answer the question, and then you may proceed, Miss Weyand, to bring it within the ruling which I have made.

Mr. Reed: May I hear the question, please?

Trial Examiner Batten: Yes.

(Thereupon the last question was read by the reporter.)

Mr. Hogsett: Just yes or no.

Trial Examiner Batten: Just a minute, Mr. Hogsett.

Mr. Hogsett (Interrupting): I am suggesting that that calls for merely a yes or no answer.

Trial Examiner Batten: Well, I never required a witness to say yes or no.

[fol. 5896] Mr. Hogsett: But, that is all that that question calls for, isn't it?

Trial Examiner Batten: I know, but I have placed no limitations on it. Prior hereto I have given witnesses unlimited latitude, as I have indicated to several witnesses we had while you were away. If they would answer yes or no, or answer definitely, then we didn't get into a sort of endless discussion.

Mr. Hogsett: I wasn't trying to say anything improper, but I thought the question called for, "Do you know or don't you know," and that necessarily would be yes or no.

Trial Examiner Batten: Well, I don't require yes or no answers.

Will you read the question, please?

(Thereupon the last question was reread by the reporter, as follows:

"Q. Do you know how the girls working in your section learned of the meeting at which the union was organized?").

A. Yes, I do.

Miss Weyand: How did they learn that?

A. I told the girls.

Mr. Hogsett: That is objected to, unless the question is confined to witnesses offered by respondent who were working there in her section.

Trial Examiner Batten: Will you read the question again?

[fol. 5897] (Thereupon the last question was read by the reporter, as follows:

"Q. How did they learn that?")

A. How did the girls learn that?

By Miss Weyand:

Q. Yes.

A. I told them.

Q. Now, at that time how many rows of machines were in your section? A. How many rows?

Q. Yes.

A. They were clear across the room.

Q. That is from the west wall of the building to the east wall of the building?

A. Yes, there was a dividing line, an aisle.

Q. And you had rows of girls on each side of the aisle? A. I did.

Q. And was Ruby Clayton working in that section at that time? A. Yes, she was.

Q. And she was among the girls you told to go to the meeting?

A. Yes, she was working for me and I told all the girls at the same time.

Trial Examiner Batten: Well, the question is, was she one of the girls you told, Ruby Clayton?

[fol. 5898] A. Yes, she was.

Miss Weyand: Was Oma Lee Cooper working in your section at that time?

Mr. Reed: I make the same objection.

A. Oma Lee?

Miss Weyand: Yes, her name was Oma Lee Holloway.

Trial Examiner Batten: Well, Senator, I assume we may have the same arrangement we have pursued here all the time, a continuing objection if you so desire.

Mr. Hogsett: Yes, we do.

Trial Examiner Batten: In order that you don't have to object to every question, that will continue through with this witness. Of course, it will be necessary to renew it on the next witness.

Mr. Tyler: The same objection will be allowed for the intervener, as to this witness, I take it?

Trial Examiner Batten: Yes, that is correct. Let me say this, we will get started here pretty soon, I guess. You may have a continuing objection.

Now, that means to either the respondent or the intervener I am granting a continuing objection to Miss Weyand's examining this witness within the bounds of what I indicated that I thought was proper.

Now, if Miss Weyand exceeds the bounds, I of course would expect counsel to object, not upon the basis of my [fol. 5899] ruling, but upon the basis of my statement to Miss Weyand that I don't propose to go into all inclusive matters.

Mr. Hogsett: Yes, sir, that's right.

Trial Examiner Batten: You may proceed.

Miss Weyand: And your answer is true with reference to Oma Lee Cooper, is that correct, the same, that you told her among the other girls? A. Yes.

Q. And that is true as to Edith Dean, is that correct?

Mr. Reed: We object to that as leading.

Trial Examiner Batten: Well, of course, it would be. It would be more proper to state the question, rather than in that manner, I think, Miss Weyand.

By Miss Weyand:

Q. Was Edith Dean working in your section at that time? A. Yes.

Q. Was she among the girls that you told about the meeting? A. Yes.

Q. Was Ethel Riegel working in your section at that time?

A. Yes, I believe she was, but I am not just so sure; but I really think she was.

Q. And you think she was among the girls that you told of the meeting? A. Yes, I do.

Q. What time of day was that meeting held?

[fol. 5900] A. Well, I don't remember.

Q. Was it during working hours or after working hours?

A. Well, it was during working hours, but I don't remember the time, because we went down in our white aprons.

* * * * * *

Miss Weyand: Were the girls in your section paid for the time they spent at that meeting?

Mr. Reed: I object to that as incompetent and immaterial, and not rebuttal.

Trial Examiner Batten: Well, I don't recall whether any of these witnesses were asked the question.

Miss Weyand: Yes, they all claimed it was after hours and on their own time.

Trial Examiner Batten: Well, you may answer, if you know.

A. What was the question?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Miss Weyand: Were your girls paid for the time they spent at the meeting?

A. Yes, they were paid for the meetings.

Q. Did the girls know before they went to the meeting that they would be paid for the time they spent there?

Mr. Reed: Now, we object to that as incompetent and [fol. 5901] irrelevant, and manifestly not rebuttal, and calls for a conclusion.

Miss Weyand: I asked if she knew.

Trial Examiner Batten: Well, do you know?

Mr. Tyler: I object. The only way she could know would be hearsay.

Trial Examiner Batten: Well, of course, I don't think at this late date, Mr. Tyler, we will attempt to eliminate hearsay.

Will you read the question, please?

(Thereupon, the last question was read by the reporter, as follows:

"Q. Did the girls know before they went to the meeting that they would be paid for the time they spent there?")

Mr. Reed: How could she know that?

Trial Examiner Batten: The question is, did she know?

Mr. Stottle: The question is, did the girls know.

A. I don't remember that particular meeting, but after we had some meetings—

Trial Examiner Batten: But you were asked about this meeting, Mrs. Dorsey. Do you know about this one?

A. Yes.

Trial Examiner Batten: Do you know whether they knew in advance?

A. That they were going to be paid?

[fol. 5902] Q. Yes.

A. Well, this meeting, I don't remember if they knew, because there was quite a few meetings, and I don't remember just this meeting.

Mr. Reed: Wait a minute. I insist the witness had answered the question and then went on to make some comment, and I asked to have it stopped.

Trial Examiner Batten: Well, of course the comment, I don't think is harmful to anyone, her last phrase. You may proceed, Miss Weyand.

Miss Weyand: Did you ever tell the girls in your section they would be paid for time spent at meetings of the Donnelly Garment Workers' Union?

A. Yes, they were to be paid.

Mr. Hogsett: That is objected to as not rebuttal of anything.

Trial Examiner Batten: You may answer.

A. Yes, I told them they were to be paid.

By Miss Weyand:

Q. Do you remember how many meetings of the Donnelly Garment Workers' Union occurred during working hours? A. No, I don't.

Q. Was it more than one? A. Yes.

Q. How many do you think it was?

[fol. 5903] Mr. Reed: Well, I object to that, how many she thinks it was. She says it was more than one, but she doesn't know.

Miss Weyand: I will withdraw that question.

By Miss Weyand:

Q. State what is your best recollection as to the number of meetings held during working hours.

Mr. Reed: I make the same objection; it is not rebuttal.

Trial Examiner Batten: You may answer.

A. Well, I'll say — oh, 4 or 5 anyway.

By Miss Weyand:

Q. Were those the first 4 or 5 meetings of the Donnelly Garment Workers' Union?

A. Were they the first —

Q. (Interrupting) 4 or 5 in order, meetings following April 27?

A. I don't remember concerning that or the Loyalty League. We had meetings that way too.

Mr. Lane: I can't hear the witness.

A. I said I didn't remember whether it was Loyalty League meetings or the union meetings, but we had those meetings, but I don't remember.

By Miss Weyand:

Q. Do you remember the meeting at which the Donnelly Garment Workers' Union was formed and Mr. Tyler came, whether that was during working hours?

A. Yes, I remember that.

Q. Do you remember whether the next meeting of the Donnelly Garment Workers' Union was during working hours?

[fol. 5904] A. When was it?

Q. Whether the next one following the meeting at which the Donnelly Garment Workers' Union was organized was during working hours.

Mr. Reed: We object, because the witness already has said she couldn't tell which meetings were held, whether Loyalty League or Union.

Trial Examiner Batten: The objection is overruled. Of course, this is a definite question, whether she does know whether the next one was held during working hours.

By Trial Examiner Batten:

Q. Do you remember, Miss Witness?

A. The next meeting?

Q. After the one at which it was formed, was it held during working hours, do you remember that?

A. No, I don't.

By Miss Weyand:

Q. Did you go to the meeting at which the Donnelly Garment Workers' Union was formed with the girls in your section?

Mr. Reed: Wait a minute. I object to that as leading and suggestive.

Trial Examiner Batten: Well, you may answer.

A. Yes, I went with my girls.

By Miss Weyand:

Q. Did you sit with any of the girls in your section at that meeting?

A. Well, yes, I did.

[fol. 5905] Q. Did the other instructors and thread girls go to that meeting?

A. Well, I'll say they did. We all were there.

Q. I just want what you know they did.

A. I can't say all of them, I don't know whether all of them went or not, but some of them went because I seen them.

Q. Had the employees raised a fund to pay Mr. Tyler a retainer fee prior to the meeting at which the Donnelly Garment Workers' Union was organized?

A. I don't remember.

Mr. Tyler: I object to that —

Mr. Hogsett: She said she doesn't remember.

By Miss Weyand:

Q. You mean you don't remember whether they raised one before that meeting or you don't remember whether or not it was raised at that time? What recollection do you have on the fees raised for Mr. Tyler?

A. The fees raised?

Q. Yes. What I was getting at, when you said you didn't remember, you mean you don't remember of one being raised before that meeting, is that what you mean?

A. Yes, I don't remember.

Mr. Lane: Now, I object to that and move to strike the answer out.

Mr. Hogsett: She says she doesn't remember; that was the answer.

[fol. 5906] Mr. Lane: Well, I am objecting to the form of the question, because it is cross-examination of her own witness.

By Miss Weyand:

Q. Had you heard of Mr. Tyler before you saw him at the meeting of April 27, at which the Donnelly Garment Workers' Union was formed?

A. No.

Mr. Tyler: I object to that as not rebuttal, incompetent, irrelevant and immaterial.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You may answer.

A. Had I heard of him?

By Trial Examiner Batten:

Q. Yes, had you heard of Mr. Tyler?

A. No.

Trial Examiner Batten: Can you hear the witness, Mr. Lane?

Mr. Lane: Not very well. She ought to turn her chair a little.

Trial Examiner Batten: Miss Witness, will you speak a little louder, please?

A. All right.

By Miss Weyand:

Q. Did you attend meetings of the Donnelly Garment Workers' Union at any time after the first meeting?

A. Yes, I attended some of them.

[fol. 5907] Q. Did you wear your uniform to those meetings?

Mr. Ingraham: I object to that. It is not proper rebuttal.

Trial Examiner Batten: You may answer.

A. Some of them.

By Miss Weyand:

Q. Did you sit with any girls in your section at those meetings?

A. Yes, I usually did.

Q. Do you know whether the girls felt that they were not free to express themselves when instructors were present at the meetings?

Mr. Hogsett: Just a minute. We object to that for the reason it is not rebuttal, and for the further reason that it calls for a pure guess; it is worse than a conclusion, it is a pure guess, and asks the witness to read the minds of the girls and say whether she thinks they understood something.

Trial Examiner Batten: Well, Mr. Hogsett, I think it is exactly on a par with many questions that we had here in the last two weeks, in which witnesses freely expressed their opinions and conclusions about how everybody else in the plant felt.

Mr. Tyler: I don't agree with Your Honor. I think the question has been largely —.

Trial Examiner Batten: If you will wait until I get through, Mr. Tyler.

[fol. 5908] Mr. Tyler: Very well.

Trial Examiner Batten: As a matter of fact, I don't believe I put any limit on — to be perfectly frank about it, I permitted the witnesses to say in answer to questions, "Well, how did the girls generally in the plant feel," why, some of the witnesses testified as to how the girls in general felt.

Mr. Hogsett: We stand on the objection as made.

Trial Examiner Batten: Well, I'll overrule the objection.

Mr. Reed: Well, I wanted to make — I think I can point out a distinction to you. I would like to do it. So many times —

Trial Examiner Batten: Well, I withdraw my statement on that. I thought Mr. Hogsett was ready to have me rule, so I did, but Senator —

Mr. Reed: (Interrupting) We introduced evidence that there was a state of disturbance, and of unrest at the

plant, and witnesses were permitted to testify how the girls acted, and that there was a general discussion in regard to the conditions, and danger which they might be in.

Now, that was a mere proof as to a general fact and could be proven in no other way. Now, the questions that are now sought to be propounded and answered are of an entirely different character. This goes to the question of whether these girls were coerced or driven by their employer, or whether they were afraid of their employer. [fol. 5909] Now, that is a concrete thing, and is the very essence of the charge here.

Trial Examiner Batten: Many of those witnesses, in fact every one of them, were asked — I don't remember whether it was Mr. Ingraham, but I am sure Mr. Lane asked many of those witnesses about coercion, influence, not only as to themselves, but whether they knew about whether anyone else was.

Mr. Tyler: Mr. Examiner, I think if you will review the testimony you will find the questions asked in the evidence, "Did you feel any sense of compulsion, did you know of any incidents of any girl being ordered or told, or any girl saying she was under compulsion, did you see any outward sign of compulsion," but they have not been asked, "Do you think those other girls were under compulsion." And that question is obviously invading the province of the Court, and obviously improper, and hasn't been part of our examination.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Q. Do you know whether the girls felt that they were not free to express themselves when instructors were present at meetings?")

Mr. Langsdale: If the Examiner please, Mr. Tyler is like a great many lawyers who leave a hearing and then come back, and not know what went on in their absence.

[fol. 5910] Mr. Tyler: I have had access to the daily records.

Mr. Langsdale: Yes, but that hasn't told you much. Mr. Lane and Mr. Ingraham frequently said, "Did you read the article of March 17th?" "Yes." "What effect did it have on you," and the girl would say, and "What effect did it have on the other girls in the plant," and I objected very strenuously to the form of that question, because it asked the girl to speculate, and so forth, just as now; and if they were permitted to answer, "It made them all mad, it made them all fearful," and that kind of a question was asked and answered, not once, but at least 50 times in this record; and if Mr. Tyler had read the record carefully, he would have found that out.

Now, If the question is improper now, it was improper then. The Examiner will remember, of course, that frequently they got an answer that it made them all mad.

Now, this question is based upon, "If you know." If she does know, she probably has some basis for her knowledge.

Trial Examiner Batten: Will you read the question, please?

Mr. Tyler: Mr. Examiner, the situation Mr. Lane called attention to is plainly distinguishable; outward signs of anger may be testified to by a witness, but inward states of mind that don't express themselves, like anger and intoxication, cannot. The question is whether this witness knows how the girls felt, if they were free to speak; it is [fol. 5911] improper. You can't pass on this question, but on the other, I think it is admissible on the ground of suggestion.

Trial Examiner Batten: Will you read the question.

(Thereupon the last question was read by the reporter, as follows:

"Q. Do you know whether the girls felt that they were not free to express themselves when instructors were present at the meetings?")

Trial Examiner Batten: You may answer.

A. No, I think they felt that way.

By Miss Weyand:

Q. Did any girl ever tell you she felt that way?

A. Well, I have heard comments on that, yes, several ones.

Q. And those comments were made to you by operators? A. Yes.

Q. Do you remember any specific comment you could tell us about?

Mr. Reed: Well, we object to that as incompetent and immaterial, and not rebuttal.

Trial Examiner Batten: You may answer.

A. Yes, one time one of my girls wanted to know why we didn't go to meetings, and so I said—well, I said, "You girls don't feel free—"

Mr. Ingraham: Just a minute—

Trial Examiner Batten: (Interrupting) Wait until we [fol. 5912] get the answer.

Mr. Ingraham: Well, she is testifying about matters that occurred after July, 1939; by what she was saying, that is plain.

Trial Examiner Batten: Well, did you mention any date?

A. No, I didn't.

Trial Examiner Batten: I didn't think so.

Will you read the answer thus far?

(Thereupon the last answer was read by the reporter, as follows:

"A. Yes, one time one of my girls wanted to know why we didn't go to meetings, and so I said—well, I said, 'You girls don't feel free—' ")

Trial Examiner Batten: Complete your answer.

Mr. Langsdale: Let her finish her answer.

Mr. Lane: I object to the question—

Trial Examiner Batten: (Interrupting) Just a minute, Mr. Lane. The question is being answered now. Please

either object at the end of the question or at the end of the answer. Let's don't interrupt the witness on every question.

Mr. Lane: May I state my objection for the record now?

Trial Examiner Batten: No, not now. I want the answer completed and then you may state your objection.

A. Well, I told her the girls didn't feel free to talk and to express their grief, and things like that, and she said, "Well, that's right, but it wouldn't make any difference to [fol. 5913] me if you were there, I would just say what I wanted to anyway."

Mr. Reed: I move to strike the answer out as not responsive. It is incompetent and immaterial.

Trial Examiner Batten: It may stand.

Mr. Ingraham: I would like to ask at this time a preliminary question as to whether or not she is referring to matters that occurred after July, 1939.

Trial Examiner Batten: Well, Mr. Ingraham, I assume that all you attorneys are proceeding on the basis that it is prior to July, 1939.

Now, just a minute; you shook your head there, Senator.

I can turn back here to several questions Mr. Ingraham asked without any time specified. Let's don't all of a sudden get so technical about everything; and furthermore, I want to say now that I want one counsel from each party to make the objections, from now on, if we are going to have as many objections as we have had thus far.

Now, I don't consider, Mr. Ingraham, that this question of bringing up the time—if you will wait until Miss Weyand has an opportunity to bring out the further facts concerning this conversation, as you did on several occasions.

Mr. Ingraham: Well, if I recall right, when the question came up when I was examining a witness, you immediately turned to the witness and inquired—

Trial Examiner Batten: (Interrupting) No; no, I have [fol. 5914] several of them marked on here where I didn't

but you, later brought it out. Now, give Miss Weyand the same opportunity.

Mr. Ingraham: Well, I object to the denial of my request.

Mr. Reed: I would like to say to the Examiner that I beg his pardon for having indulged in a shaking of my head. I didn't say a word, and I want you to know it is not meant to be offensive.

Trial Examiner Batten: Not a bit, Senator, not in the least.

Now, Mr. Lane, do you have an objection to the question?

Mr. Lane: Mr. Ingraham has stated the same ground of an objection, but this witness has no means of knowing we are talking about a period prior to July 15, 1939, because the question hasn't brought out the time specified.

Trial Examiner Batten: You may proceed, Mr. Lane.

Mr. Lane: My objection was, there is no limitation of time put on it, therefore it is improper.

Trial Examiner Batten: You may proceed, Miss Weyand.

Miss Weyand: When did you cease going to meetings of the Donnelly Garment Workers' Union?

Mr. Ingraham: I object to that question. It is not proper rebuttal.

Trial Examiner Batten: You may answer.

A. Let's see. It was in 1939.

By Miss Weyand:

Q. Did you attend meetings regularly from the time it was formed until 1939?

[fol. 5915] A. No, I didn't.

Q. What meetings did you attend? A. My meetings?

Q. Yes.

A. Well, a few, but I don't remember all of them.

Q. And you didn't attend them regularly after—

A. (Interrupting) After it was formed?

Q. After it was formed? A. No, I didn't.

Q. Is there any way you could tell us which meetings you went to and which you didn't go to?

A. No, I don't think so.

Q. Do you remember whom you had this conversation with? A. Yes, I do.

Q. Would you mind telling us the name of the girl?

Trial Examiner Batten: Will you determine the date, Miss Weyand?

Miss Weyand: That is what I am going to do.

A. It was Nina Gilardi.

By Miss Weyand:

Q. Do you know when the conversation occurred?

A. When?

Q. Yes.

A. No, I don't remember the day or anything about that. I remember that remark. The question was asked me [fol. 5916] and I answered as best I could.

Trial Examiner Batten:

Q. Well, do you remember, Miss Witness, whether it was before July, 1939, or after?

A. Before 1939?

Q. Yes or after? A. Oh, yes, it was before.

Q. Before July, 1939, sometime? A. Yes.

By Miss Weyand:

Q. Did you ever hear of any other girls making any comments about instructors attending meetings?

A. Well, I have heard some, but I can't recall their names. I just heard comments and I just passed them up, I didn't hardly pay a lot of attention to it, you know.

Q. Did you regard yourself as a supervisory employee?

Mr. Reed: We object to that as calling for her conclusion and not for facts, and not rebuttal.

Trial Examiner Batten: She may answer it.

A. Yes, I did.

By Miss Weyand:

Q. Why? A. Why?

Q. Yes.

A. Well, because we instructed the girls and we sort of led them right and wrong, and told them what they should do and like that.

Q. Could you state specifically what you were told by [fol. 5917] any representative of the company as to your status as a supervisory employee?

Mr. Ingraham: I object to that unless it is limited as to time.

Mr. Reed: And it is not rebuttal.

Trial Examiner Batten: You may answer.

A. Yes, at one time there was a person told us that we should carry ourselves as their superior, and that they sort of held us on a pedestal, and we could just well, shouldn't be just one of them, should be up above them and carry ourselves that way.

By Miss Weyand:

Q. Who was that?

A. Elizabeth Gates Reeves.

Q. Did you know whether the girls in your section regarded you as a supervisory employee?

A. I think they did.

Mr. Tyler: I object to that as calling for a conclusion. She don't know how the girls regarded her without seeing in their minds.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. Did you go over the pay roll cards weekly with the office prior to July 15, 1939? A. Yes, I did.

Q. Was it part of your duty to recommend transfers of girls from one section to another?

[fol. 5918] A. What do you mean? How transfers?

Q. When one of the girls was moved over from one section to another, did some representative of the company discuss with you whether or not the girl could be transferred?

A. Well, Mrs. Wherry talked to the instructor, and if we could give her up and it wouldn't cripple the section and help this other section out, then we would help each other out that way.

Q. What effect on a girl's earnings did the instructor's power to divide the work have?

Mr. Reed: Pardon me. I couldn't hear the question.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Mr. Reed: We object to that as not rebuttal, incompetent and immaterial, and a mere general question that could not be answered.

Trial Examiner Batten: You may answer.

Mr. Reed: Because the effect might be a certain way in one instance, and might be another way in another instance.

Trial Examiner Batten: You may answer.

A. Well, in my instance I knew that an instructor could divide the work equally, or else she could cripple a girl if she wanted to, if that is what you want to know.

Trial Examiner Batten: What do you mean by that?

A. Well, I mean cripple, like there was a whole lot of [fol. 5919] little bitty bundles, and if the instructor would give that to a particular girl, that little bitty bundle, it takes practically as long to open up a small bundle as it does a large bundle, and they can go right through a large bundle—I won't say in half the time, I don't know—but they can go right through a bundle real quick, and they make more money on big bundles.

Mr. Reed: I move to strike the answer out as not responsive, and it is not rebuttal.

A. It is so, though.

By Miss Weyand:

Q. Was the thread girl in charge during the absence of the instructor?

A. Well, I guess she was. Usually my girl, when I had one, I put her in charge.

Q. When you had a thread girl did you talk over with her assignments of work or division of work?

A. Yes; always.

Q. Who was your thread girl in March and April, 1937?
A. Well, I believe it was Vera Marshall.

Mr. Reed: Our objection, I suppose, stands to all these questions of this kind?

Trial Examiner Batten: Yes.

By Miss Weyand:

Q. Did the duties of an instructor change at any time prior to July, 1939?

A. What do you mean, change?

Q. Was there a change in your responsibility and in [fol. 5920] your work at any time prior to July 15, 1939, or did you do the same sort of work from the time you became an instructor until July 15, 1939?

Mr. Tyler: Just a minute. The first part of the question asked I object to, because as I understand it it is referred to as general, and the last part referred to this lady personally.

Trial Examiner Batten: Well, the question to this witness is whether or not there was any change in your duties, or responsibilities, prior to July, 1939; in other words, from the time you started to work as an instructor to July, 1939, was there any change in your duties or responsibilities that you recall?

Mr. Tyler: Now, may I have the question read, please?

Trial Examiner Batten: Do you mean my last statement?

Mr. Tyler: No, Miss Weyand's question.

Trial Examiner Batten: No, but I am restating it. I just stated it. Will you read the question I just stated, Mr. Reporter?

(Thereupon the question asked for was read by the reporter, as follows:

"Well, the question to this witness is whether or not there was any change in your duties or responsibilities prior to July, 1939; in other words, from the time you started to work as an instructor, to July, 1939, was there any change in your duties or responsibilities that you recall?")

[fol. 5921] A. No, I don't think so.

Mr. Tyler: I move it be stricken out because the evidence is the change was made after 1939.

Mr. Langsdale: What was that motion? Will you read it, please?

(Thereupon the last motion was read by the reporter.)

Mr. Langsdale: I ask that the motion be stricken out for the reason there isn't any credible evidence there ever was any such a change at any time.

Trial Examiner Batten: The motion to strike is denied.

Let's proceed.

By Miss Weyand:

Q. Do you remember a meeting of employees at which Mrs. Reed spoke in March 1937?

A. A meeting?

Q. Yes.

A. Yes.

Q. How did you learn of that meeting?

A. Well, it was either by telephone or by Mrs. Wherry, like I told you before.

Q. Do you know how the girls working in your section learned of that meeting?

A. Yes, I told them; I told them there was going to be a meeting.

Q. Do you know who called the meeting?

A. You mean called me on the phone?

[fol. 5922] Q. Yes, or called the meeting. Did you ever hear who arranged the meeting?

A. No, I did not.

Q. What time of day was that meeting held?

A. I'm sorry, but I don't remember.

Q. Was it during working hours or after?

A. Well, I know it was that, yes; it was during working hours, but I don't remember the time.

Q. Did the girls in your section time out before going to the meeting?

A. No.

Q. Did the girls in your section return to the section after the meeting?

A. Yes.

Q. Did the girls in your section sit together at the meeting?

A. Some of them did and some of them didn't; I don't know. We didn't all sit together.

Q. Did you sit with some of them at the meeting?

A. Yes.

Q. Were the girls in your section paid for the time they spent at that meeting?

Mr. Reed: I object to that because this witness couldn't possibly know, and because it is not rebuttal.

Trial Examiner Batten: You may answer.

[fol. 5923] A. Yes, they were paid, because it was on the cards when we went over them, and we saw it.

Mr. Reed: You saw all the cards?

A. I saw my girls' cards.

Mr. Reed: You did?

A. Yes.

Trial Examiner Batten: Just a moment, please. You answer the questions that Miss Weyand asks you, please.

A. Well, I was telling him what I knew.

Trial Examiner Batten: Senator, if you will wait a few moments to ask your questions.

Mr. Reed: I stand corrected, sir.

Trial Examiner Batten: Miss Weyand.

By Miss Weyand:

Q. And did you see it at the time of the meeting at which the Donnelly Garment Workers' Union was organized?

A. See it on the cards?

Q. Yes.

A. Well, not that certain way; it was just added on there, and it just said they were allowed that for the meeting, that allowance was made for the meeting.

Q. And you testified they were paid for the time they spent at the meeting at which Mrs. Reed spoke?

A. Yes, they got paid.

Q. And at the meeting at which the Donnelly Garment [fol. 5924] Workers' Union was organized?

A. Yes.

Q. Now, I wanted to know if you saw the same entries on their cards for that meeting as you saw on the cards for this meeting at which Mrs. Reed spoke.

A. Well, at all meetings I saw it.

Q. What did Mrs. Reed say at that meeting, if you recall?

Mr. Hogsett: Now, if the Court please, I now respectfully object, that that is not rebuttal. Now, I put it to you, if that is rebuttal, anything is. What becomes of your ruling that you are going to invoke the rules as to rebuttal, if you permit this reinvasion of the case in chief?

Trial Examiner Batten: Well, of course, Mr. Hogset, Mrs. Reed testified here about what she said in that meeting.

Mr. Hogsett: Exactly, in defense of the—

Trial Examiner Batten: (Interrupting) Each one of the girls who testified, testified very definitely about what she said at the meeting. Now, my only point is this: I am not saying, you understand, that it is or is not in this discussion. All I am saying, if that is not, then it seems to me that few, if any, questions which Miss Weyand has thus far asked are proper, because they all pertain, as I recall them, to the testimony which these last few witnesses have given. In other words, my only point is: what is the distinction between this and some of those other questions?

[fol. 5925] Of course, I understand you object to all of them.

Mr. Hogsett: Yes, that's right.

Trial Examiner Batten: And you have. But the thing I don't know is; what is the distinction between these and some of those other questions?

Mr. Hogsett: Well, I can suggest this much, now, there is some toehold connection with our case when Miss Weyand asks whether this witness told Ruby Clayton to go to this meeting. That is in one category. But here she just

goes back to the March 18 meeting, as an original proposition.

Trial Examiner Batten: Miss Weyand, how about that?

Miss Weyand: I wanted to identify the meeting that this witness remembers.

Trial Examiner Batten: Well, if that is your question,—

Mr. Hogsett: (Interrupting) But she is asking what Mrs. Reed said.

Miss Weyand: Yes, and if she tells what Mrs. Reed said at this meeting, it fixes it in her mind.

Mr. Hogsett: That is a very indirect way to go about it.

Trial Examiner Batten: You mean to tell me you asked that for the purpose of having the witness identify this meeting?

Miss Weyand: When we spoke of it, she generally, in my discussion with her, referred to it in that fashion, the meeting when such-and-such a thing was said.

[fol. 5926] Trial Examiner Batten: Then, it seems to me that unless you want her to say what Mrs. Reed said, you would accomplish the same thing by asking the witness: "Do you recall the meeting in which Mrs. Reed spoke in March 1937?"

Miss Weyand: I would like to have her answer the question.

Trial Examiner Batten: What question?

Miss Weyand: What she recalls Mrs. Reed saying at the meeting which she is now describing and speaking of.

Mr. Hogsett: And we object to that as not rebuttal; and I say to you sincerely that if that question is rebuttal, if an answer to it is rebuttal, then we might as well forget—

Trial Examiner Batten: (Interrupting) Mr. Hogsett, can you show me the difference between that and some of those other questions?

Mr. Hogsett: Didn't I suggest one? I again suggest there is some toehold for the contention that it rebuts what Ruby Clayton says, to ask this witness what she told Ruby

Clayton; I can see some possibility in that. But there is utterly none in saying to this witness, "Will you please tell what Mrs. Reed said at that meeting," that that rebuts what Ruby Clayton or anybody else says. It is just going into the plaintiff's case in chief again; and if that is it, why, then we might as well know it.

Mr. Langsdale: If the Examiner please, I would like for Mr. Hogsett to tell the Examiner why the respondent [fol. 5927] was permitted at this hearing to prove what Mrs. Reed said or didn't say. We had some witnesses as to what she said at the meeting, in the 1939 hearing, they had evidence she didn't say that, they even produced a document which they said was a transcript of Mrs. Reed's speech, made by Mrs. Frances Strine; so if that matter was a closed book so far as the Board is concerned, and the International is concerned, then it was a closed book so far as the respondent and intervener were concerned. So why did they open it up again?

Certainly it was not in the purview of the remand for them, if it was not in the purview of the remand for us.

Mr. Hogsett: The simple answer is that the subject was in the offer of proof which had been rejected.

Trial Examiner Batten: Well, of course, Mrs. Reed also testified at length about it.

Mr. Hogsett: That's right, purely as a defensive matter.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"What did Mrs. Reed say at that meeting, if you recall?")

Trial Examiner Batten: You may tell us.

A. Well, I remember Mrs. Reed saying that she didn't—that she wasn't going to have any Dubinsky or any 'sky to tell her how to run her business, and if we would stand by [fol. 5928] her she would stand by us. Now, I didn't blame her.

Mr. Reed: Now, I want to make an observation, because I want to get this clear. As I understood, Mrs. Reed's testimony was admitted here because she could not be at the last trial, and it was admitted on the same basis as though she had testified at the last trial; and the prosecution went into all that took place at that meeting. Her testimony there was merely cumulative, and admitted on the basis I have said.

Now, if you are to take the view that because she testified out of order, that that opens that whole question up again, then we might as well say the whole case is open.

Trial Examiner Batten: Well, Senator, I didn't make any such statement as that.

Mr. Reed: That is what I didn't understand.

Trial Examiner Batten: No statement such as you have just stated.

Mr. Reed: That the whole case was open?

Trial Examiner Batten: No. I think you just stated something about Mrs. Reed, didn't you?

Mr. Reed: Well, I didn't follow it. I am trying to—

Trial Examiner Batten: (Interrupting) Pardon me, I interrupted you. Proceed.

Mr. Reed: I was through. I say again that that testimony was admitted, and I understood it, as though it had [fol. 5929] been delivered at the last trial, and so I assumed, because Mrs. Reed was not able to come and testify at that time, that it was simply additional evidence received as though it had been offered at the last trial.

Now, if, because she testified to various things, that permits rebuttal, although the subject matter had been gone fully into, I don't know where the limitation is going to be.

Trial Examiner Batten: I simply stated to Mr. Hogsett that I see no distinction between this question and any of the others which I have permitted with respect to these witnesses who testified on the basis of the offers of proof.

So you may proceed, Miss Weyand.

Mr. Reed: Now, let me say this, of course we claim that this question cannot be justified by any ruling you have heretofore made on this same line of questions, because we insist your ruling is erroneous on those, and we can't bury one error under a mass of what we consider other errors.

Trial Examiner Batten: That is true, Senator, and it makes it quite impossible for you to distinguish between the two; you claim they are all wrong, therefore it is impossible to distinguish between this and the others, if they are all in error.

You may proceed, Miss Weyand.

By Miss Weyand:

Q. I hand you I. L. G. W. U. exhibit No. 10, which appears in the Circuit Court of Appeals record at page [fol.5930] 5961, and following, and also at 5375 and following, and ask you if that was circulated through your section.

A. Well, I remember this going through, but I didn't pass it through.

Q. Did you know it was going through at the time it went through?

A. Well, I just sort of seen it, because we just wasn't supposed to know, and I didn't pay any attention to it, a whole lot, I just seen something was going through the section.

Mr. Reed: Can we have the answer read?

Trial Examiner Batten: Will you read the answer?

(Thereupon the last answer was read by the reporter.)

Trial Examiner Batten: The question to you was, did you know this was going through your section?

A. Why, yes.

Trial Examiner Batten: That is the question.

A. I knew it, because I couldn't help but see it and afterwards I signed it myself.

Mr. Tyler: I move the first part of the answer be stricken.

Trial Examiner Batten: The first part of the answer may be stricken.

Mr. Tyler: That part about "We wasn't supposed to know," be stricken.

Mr. Langsdale: The International objects to that being stricken, because that may be open and subject to elucidation.

[fol. 5931] Trial Examiner Batten: Elucidation before I get the information she may make on her other statement, Mr. Langsdale.

You may proceed, Miss Weyand.

By Miss Weyand:

Q. Why did you say you weren't supposed to know it went through your section?

A. Why did I say that?

Q. Yes.

A. Well, somebody told me that we weren't supposed to have anything to do with it.

Q. When you say "we weren't supposed to have anything to do with it," whom are you referring to?

A. Well, just the instructors; they mentioned the instructors.

Mr. Reed: Now, I move to strike out the answer of the witness as being pure hearsay, it is incompetent and immaterial, and not rebuttal.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. Do you remember when you signed it?

A. No, I don't remember the date.

Q. Was it the same day the girls in your section signed it? A. No, it was afterwards.

Q. I ask you to look at the first name which appears on page 5974 and 5388, and ask you whether that is your signature? A. Yes, it is.

Q. Do you recall anything you were told at the time [fol. 5932] you signed it?

A. Well, yes, I recall that I was told that it was for the cornerstone of her new building, and Mrs. Reed wanted the instructor's name on it.

Mr. Reed: Now, we move to strike that out as mere hearsay, and as not rebuttal.

Trial Examiner Batten: Who told you that?

A. I can't remember who told me that.

Trial Examiner Batten: Do you have any recollection at all who brought it up to you at the time you signed it?

A. Well, it kind of seems like it was Mr. Wherry.

Mr. Reed: Now, I move to strike that out because that is mere speculation, manifestly.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. Were you a member of the Loyalty League?
A. Yes, I was.
Q. Who formed the Loyalty League?
A. Who formed it?
Q. Yes. A. Mrs. Gray.
Q. What was Mrs. Gray's position at that time?
A. She had charge of the outlet store.

Mr. Reed: Our objection stands for this line of questions?

Trial Examiner Batten: Yes.

[fol. 5933] Mr. Hogsett: Would Miss Weyand suggest anything that this rebuts? What does it rebut? Haven't we completely lost our moorings?

Trial Examiner Batten: You mean the question about the Loyalty League?

Mr. Hogsett: Yes.

Trial Examiner Batten: Of course, all those other witnesses have testified about the Loyalty League.

Mr. Langsdale: Mrs. Reed testified—

Trial Examiner Batten (Interrupting): On the first one or two questions, I don't know as I can determine what the purpose of it is.

Mr. Langsdale: Mrs. Reed testified that Mrs. Gray was just a clerk in the store. It certainly is rebuttal.

Trial Examiner Batten: You may proceed.

By Miss Weyand:

Q. Did you attend meetings of the Loyalty League?

A. Yes, I did.

Q. What time of day were those meetings held?

A. That I don't remember the time of day.

Q. Were they during working hours or after working hours? A. During working hours.

Q. Were the girls in your section paid for the time they spent at those meetings?

A. Well, like I said before, they were paid for all meetings.

[fol. 5934] Q. How were the girls in your section notified when a Loyalty League meeting was called?

A. The same way; by me.

Q. And how did you learn of it?

A. Like I say, either by telephone or Mrs. Wherry, or someone called up.

Q. Did you know Sylvia Hull?

A. Yes, I knew her when I seen her.

Q. Do you know what floor she worked on in April 1937?

A. I don't remember that date; I don't know what you have reference to—oh, in 1937—let's see.

Q. The last day she worked for the Donnelly Garment Company, do you know what floor she was working on?

A. Oh, yes, it was on eight.

Q. Where was her machine located on the eighth floor?

A. Well, I can't tell you exactly where her machine was located; but it was in that corner, in the east and south corner of the section, but I don't remember where her machine was.

Mr. Reed: Now, we make the objection that all this is put in about Sylvia Hull in the case in chief by the prosecution, and that this is not rebuttal.

Miss Weyand: Those are purely preliminary questions, and the further questions that I have, I can identify as strictly rebuttal.

[fol. 5935] Trial Examiner Batten: Of course, if they are preliminary, all I can say about the Senator's objection is:

I think we discussed Sylvia Hull and May Fike, and at that time Mr. Langsdale took the position that the Senator does now, that that had all been gone over before, and it was a closed book; so apparently, as I have frequently said, thus far in the hearing we haven't yet found any one matter on which any two lawyers seem to agree, but if you want to proceed—if these are preliminary questions, Miss Weyand, you proceed.

By Miss Weyand:

Q. How many doors into the eighth floor were there at that time? A. How many doors?

Q. Yes.

A. You mean entrances?

Q. Yes.

A. That we came in?

Q. Yes.

A. Well, there was one, and there was the elevators.

Q. Now, where were those located?

Mr. Reed: I submit that that is not rebuttal, and that whole question; the description of the premises, has been gone into.

Trial Examiner Batten: You may answer.

Mr. Reed: We simply are going over the same ground we went over last week.

[fol. 5936] Trial Examiner Batten: You may answer.

A. The door we usually came in was the north—the north and east of the building, and the elevator doors were north and west.

By Miss Weyand:

Q. Which elevators are you speaking of there?

A. The elevators on the eighth floor.

Q. In the northwest corner, are you speaking of passenger elevators or the freight elevators?

A. No, they are freight; the passengers are in the lobby outside of the door.

Q. And that is in which corner of the building?

A. That is north and east.

Q. And the only other means of getting to the eighth floor is by the freight elevators which were in the northwest corner, is that correct?

A. Yes, that's right.

Q. Now, is there a stairway anywhere? A. Yes.

Q. Where does that stairway enter the eighth floor?

A. Well, the stairway enters from the hall by the elevator, the north and east.

Q. So you have to come through the door that leads out to the passenger elevators, to come—

A. (Interrupting) To get to the stairs?

[fol. 5937] Q. To get to the stairs, is that correct?

A. Yes.

Q. So the only way any persons can come to the eighth floor is through the door that leads to the passenger elevators, and the stairs, or by the freight elevators, is that correct?

A. That's right, unless they want to climb the exit.

Q. And where is the exit?

A. West and north.

Q. And by "exit" you mean what?

A. The fire escape.

Q. Are there any rooms or walls on the eighth floor?

A. Any what?

Q. Rooms cut off of the eighth floor, or walls, or partitions dividing sections, or is it just one open floor?

Trial Examiner Batten: One big room?

A. Just one big room.

By Miss Weyand:

Q. And your section at that time was right in front of the passenger elevators and the freight elevators, isn't that right?

A. That is correct.

Q. There was no other section between your section and the door and the elevators?

A. No.

Q. Do you remember the last day that Sylvia Hull worked at the Donnelly Garment Company?

[fol. 3938] A. No, I don't remember the last day. I remember—yes, it was her last day that time.

Mr. Reed: I can't understand the witness.

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the last answer was read by the reporter.)

Miss Weyand: Do you remember what happened that day?

A. Well, there was just a commotion and girls going through the section and around; I didn't go over myself.

Mr. Reed: I move to strike out the answer as not rebuttal.

Trial Examiner Batten: Miss Weyand, are you still on preliminary questions?

Miss Weyand: No. I think this is rebuttal. We had several girls in her section who claimed not to have heard or seen anything at that time, and I wish to show by this witness what she said and heard, without going over, and I will also go into—

Mr. Reed: I thought that was part of their case in chief.

Trial Examiner Batten: Just a minute, Senator. My question to you was: are these still preliminary questions?

Miss Weyand: No, these aren't preliminary questions. This is the essence of what I consider the rebuttal in the matter. I have further questions, however, in rebuttal to the witness.

Trial Examiner Batten: Will you read the last question and answer, please?

[fol. 5939] (Thereupon the last question and answer were read by the reporter, as follows:

"Q. Do you remember what happened that day?

"A. Well, there was just a commotion and girls going through the section and around; I didn't go over myself.")

Mr. Reed: Now, I would like to go back to this question that Miss Weyand said was preliminary. I don't think she has in any way connected it up with anything. Yet she was allowed to get an answer that may and may not be important, on the ground that she was asking a preliminary question. I didn't know, when she asked the question, what she was going into was preliminary.

Miss Weyand: I said I had not finished developing the testimony.

Trial Examiner Batten: Well, you may proceed with your questions.

By Miss Weyand:

Q. Do you know what caused the commotion you spoke of, what it was about?

A. Just only by hearing what some of the girls talked about, what was in the paper, that she was a union girl and they weren't going to have her there.

Q. Did girls from your section go over to Sylvia Hull's machine?

A. No, I am sure they didn't, but I don't know for sure, because I told the girls, I just said, "Well, I wouldn't go [fol. 5940] over, I would just stay at my machine." I told some of my girls that, some of them might have gone over, but I don't think so.

Q. Did people come up to the eighth floor at that time from other places?

Mr. Reed: Now, I make the objection to that that it has all been gone over, it is not rebuttal, and it is not a follow-up on any preliminary question,

Trial Examiner Batten: Well, do you know whether people came up from other floors or not?

A. No, I don't remember any of the other girls in the other sections coming up. I can't remember that.

Miss Weyand: Did you see Miss Blodgett there?

Mr. Reed: Pardon me, I couldn't hear the question at all.

Trial Examiner Batten: Will you read it, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You may answer.

A. Yes, I believe I saw Miss Blodgett there, because this Sylvia, when they brought her through the section and to the door, she was crying, and Miss Blodgett had her with her.

By Miss Weyand:

Q. Did the Loyalty League continue to exist after the Donnelly Garment Workers' Union was formed, so far as you know?

A. Well, I think it did, but there wasn't very much to it.
[fol. 5941] Q. What did you know of its activities after that?

Mr. Reed: I move to strike out the last part of the previous answer as not responsive.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. When you said there wasn't much to it, what did you mean?

A. I mean it kind of died down, I didn't hear much about it.

Q. Did the girls in your section use the department phones to make telephone calls?

A. No.

Q. What do the words "department phones" mean?

A. Inside phones, to call from one section to the other or from one floor to the other.

Q. What telephones could the girls use?

A. The outside phones, which was on seven, and there was one in the lobby, several phones around.

Q. Could the girls get up and go to the phone at any time during working hours, without asking your permission?

A. Well, they didn't, they usually asked my permission.

Q. What are i. d. m.'s?

A. Well, i. d. m.'s, I always said, "I demand motion," that is the way I thought it was.

Mr. Hogsett: "I demand motion"?

A. Yes, you wanted action. When you got one of those i. d. m.'s you wanted to do something about it.

[fol. 5942] By Miss Weyand:

Q. When the girls passed notes in the section, were those notes called i.d.m.'s?

A. Well, they were all referred to as i. d. m.'s.

Q. If a girl passed a note to a friend?

A. No, no note.

Q. They weren't called i. d. m.'s?

A. No, they were just notes.

Mr. Hogsett: No motion was demanded on those occasions?

A. I don't think so.

Miss Weyand: Did those girls ever use their machines for family sewing?

A. They did not, but they sometimes did.

Trial Examiner Batten: Will you read the answer?

(Thereupon the last answer was read by the reporter.)

A. On the sly we will call it.

Miss Weyand: Do you know of any girl ever being reprimanded for using a machine—

Mr. Reed: (Interrupting) I object to that—

Trial Examiner Batten: You objected in the middle of the question, Senator.

Mr. Reed: I didn't think I did.

Trial Examiner Batten: The reporter just told me he didn't get it because of your interrupting. Now, Mr. Reporter, will you read what you have?

(Thereupon the last question was read by the reporter.)

[fol. 5943] A. No, not one particular girl. I just heard of it, not any of my girls.

By Miss Weyand:

Q. When you said they weren't supposed to, what did you mean by that?

A. Well, they were just not supposed to take up company time in sewing for themselves.

Q. Were they free to use the machines after company time for their own sewing?

Mr. Reed: One moment. Now, I object to that as incompetent and immaterial, and not rebuttal; it is all part of the case in chief.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: Well, I think the first time in this hearing, Senator, that I have any recollection of that

question coming up, was in Mrs. Reed's testimony. I don't recall prior to that time it was ever mentioned.

Mr. Reed: Well, I think you are mistaken.

Trial Examiner Batten: You may read it, please.

(Thereupon the last question was reread by the reporter.)

Trial Examiner Batten: You may answer.

A. Were the girls free?

Trial Examiner Batten: Yes, after working time, after they quit work could they go back and use the machines if [fol. 5944] they wanted to?

A. No, not in the factory.

Miss Weyand: That is all the questions I have.

Trial Examiner Batten: Mr. Langsdale.

[fol. 5945] Cross-Examination

By Mr. Langsdale:

Q. Who was Mrs. Wherry?

A. I beg your pardon?

Q. Who was Mrs. Wherry, whom you have mentioned in your testimony?

A. Who was she?

Q. Yes.

A. Well, we considered her as the head of the instructors.

Q. Who was Miss Blodgett?

A. Our nurse.

Mr. Langsdale: That's all.

Cross-Examination.

By Mr. Hogsett:

Q. Mrs. Dorsey, you began with the company in October 1925, I believe you said?

A. That's right.

Q. Now, what was your first work then?

A. It was an embroidery machine operator.

Q. How long did you continue in that work?

A. Around a year or so. It might have been 2 years. I don't remember the exact time.

Q. That would take it up to about 1927 or 1928?
A. Yes.
Q. What section were you in then?
[fol. 5946] A. Let's see. I was in— It was Mrs. Allison's section.
Q. I mean, the number?
A. I don't remember the number.
Q. What floor were you on?
A. We were in the Coca-Cola building at that time.
Q. From 1927 or 1928 on what was the next work that you did?
A. Instructing.
Q. For how long were you an instructor?
A. Up until March this year.
Q. Up until March of 1942?
A. Yes.
Q. Now, that would be an interval of— Between 1942, as the end, and 1927, we will say, as the beginning, that would be 15 years that you were an instructor; is that right?
A. Close to that.
Q. Yes. Of course I am not trying to pin you down to that, because you did say 2 or 3 years.
A. Yes. I wasn't there very long until I became—
Q. —an instructor?
A. That's right.
Q. In what section did you first work as an instructor? Give me the number.
A. I don't think it had a number. It was just a little group of embroidery machines. We didn't have very many [fol. 5947] at that time. I taught girls the embroidery work.
Q. When did you first work in a section that had a number?
A. I don't remember the year.
Q. Can you give me even approximately the year?
A. Well, it was when we moved over in the Corrigan Building.
Q. About when was that, what year?
A. I don't know. I would have to find out when—
Q. I am testing your memory. Have you any conception of when? Can you give it to us within a year or two, or even within 5 years?

A. No.

Q. Even though you cannot give it within 5 years, can you give the number of the section in which you worked as an instructor the first time you had a numbered section?

A. Well, we will say 415.

Q. On what floor did you work in 415?

A. I worked on the eighth floor the biggest part of the time. I won't say it was just that, but—

Q. Please, Madam, I want to take it a step at a time, to see how clear your memory is on the matter. At some indefinite time, which you cannot fix, within 5 years, you began working in section 415 on the eighth floor? Have I got that straight?

A. I think so.

Q. How many years from that indefinite beginning point did you work in that numbered section on the eighth floor?

[fol. 5948] A. Well, I'll tell you— I was changed around an awful lot, and that section was changed from floor to floor, and I couldn't tell you how many years it was.

Q. Can you tell me if it was as much as 1 year?

A. It was over that.

Q. Or 2 years?

A. It was over that.

Q. Or 3 years?

A. Well, we'll say 2 years.

Q. During that 2 years, at some indefinite time—

Mr. Langsdale: I object to this constant repetition of "some indefinite time"—

Mr. Hogsett: It is indefinite.

Mr. Langsdale: Just a moment. It is an effort on the part of counsel to terrify and intimidate this witness. She said she couldn't remember whether it was 2—

Trial Examiner Batten: I don't think the witness is being intimidated, Mr. Langsdale. If I thought for a moment she were, I would move her a little farther away, but I think Mr. Hogsett's reference to "indefinite time"— Of course, there may become a limit to the use of that term in his questions, but we will proceed.

Will you read the question that is pending, please?

Mr. Hogsett: Let me say to the witness, first:

By Mr. Hogsett:

Q. Are you terrified at all?

[fol. 5949] A. Not at all.

Q. Well, if you will not terrify me, I will not terrify you, and we will just get along fine.

A. All right.

Trial Examiner Batten: I doubt if either of you would get very far.

Will you read the question?

(Thereupon the last question was read by the reporter, as follows:

"During that 2 years, at some indefinite time—")

Trial Examiner Batten: Will you complete it, please?

Mr. Hogsett: Yes. I apparently had not completed it.

By Mr. Hogsett:

Q. During that 2 years that you worked in section 415, it was always on the eighth floor, was it?

A. Yes.

Q. Now, from the end of that time what was the next numbered section you worked in?

A. Well, I was changed around an awful lot.

Q. Yes. I believe you said that.

A. And when you change around as many times as I was, you can't remember just the dates and the sections and everything, but I can tell you the sections I had.

Q. Very well.

A. I had 5[illegible]. Let's see. They divided the 415 section at one time and it was 415-A and 415-B, and I had 415-A [fol. 5950] part of the time, and part of the time 415-B, and part of the time both of them.

Q. Any other numbered sections?

A. Well, I'll tell you— This last year I have been changed around a lot. I did floor work there for a while in 522, but just for a short while.

Q. Any other numbers?

A. I was in the notions department for a short while.

Q. Has that a number?
A. That was in 1940.
Q. Has that a number?
A. It's all the notions department.
Q. It has no number?
A. I think it does.
Q. What is the number?
A. Number 93, I think.
Q. Number 93, which is the notions?
A. "I think," I said.
Q. Now, have you given all of the numbered sections in which you worked as an instructor at any time?
A. Now, when I was down there in the notions I wasn't an instructor.
Q. All right. I will cross that off, because I am only dealing with your status as an instructor. Now, have you given me all of the numbered sections in which you have [fol. 5951] ever worked as an instructor, to the best of your memory?
A. Yes.
Q. To be accurate, I will read them to you. You said you started in 415, as the first numbered section, and you were in 523, 415-A, 415-B, and 522?
A. Not 522. I wasn't an instructor there.
Q. All right. I will cross that off. I will read them again. The only numbered sections in which you worked as an instructor were sections 415, 523, 415-A, and 415-B; is that right?
A. I think it was, as far as I can recall.
Q. Can you give me the floor on which you worked in section 523?
A. Let's see. That's down on two.
Q. I beg your pardon?
A. Number two—second floor.
Q. The floor, please, in which you worked in section 415-A?
A. What?
Q. The floor?
A. On eight.
Q. And on what floor was 415-B?
A. The same floor.
Q. On eight?
A. Yes.

Q. Then, your entire work as an instructor has at all [fol. 5952] times during the 15 years of time been on either the second or eighth floor, according to what you have said. Is that right?

A. The second and—what?

Q. I am only taking your word for it. You said 523 was on the second floor, and that 415-A—

A. Well, I worked on seven.

Q. In what numbered section did you work on seven?

A. Let's see. 523 was on seven.

Q. Then, I should correct that.

A. Yes.

Q. Instead of two, 523 was on seven; is that correct?

A. Yes.

Q. Has all of your work as an instructor during the 15 years of your service as such been on either the seventh or eighth floor?

A. No. I was down on the second.

Q. In what numbered section there?

A. Let's see. What did they call that? I don't remember what section that was.

Q. I will have to put a blank, then, for that. But it was some section which had a number, and it was on the second floor; is that right?

A. Yes.

Q. Now, have you covered all of the floors on which you ever worked in numbered sections as an instructor— [fol. 5953] two, seven and eight?

A. I think so.

Q. Now, can you give me the length of time in which you worked in section 523 as an instructor and—I will add to it, in the interest of brevity—when you worked there?

A. You mean, what date I worked there?

Q. Oh, not dates. I am just asking for years, approximately.

A. Well, I've been just changed around like that. I was in 415, and then I would go down to 523. I've changed around from two, seven, and eight, but I was, the biggest part, on the eighth floor.

Q. Can you give me the length of time in which you have worked as an instructor in any of these other numbered sections, namely, 523, on the seventh floor, 415-A, on the eighth floor, and 415-B, on the eighth floor, and this

numbered section that you cannot identify on the second floor? Can you give me the length of time and the time during which you have worked in any one of those sections?

A. I'll just say it's seasonal— We have seasonal work on the special, and that's what I did; I did special machine instructing, and it was as long as the season would last. Maybe we would have enough work for the second season, and maybe I would be there or maybe I would be someplace else.

Q. Other than that, you cannot tell me anything about [fol. 5954] the length of time or the time—

A. I told you, in 415, on the eighth floor, I spent the biggest part of my time there.

* * * * * *

Mr. Hogsett: Let's deal with this March 18 meeting, of 1937. Did you undertake to say that you told Ruby Clayton, Oma Lee Cooper, Edith Dean, and Ethel Riegel to go to that meeting?

Miss Weyand: She did not say that with reference to the March 18 meeting. I object to your misleading the witness on that. She said, the meeting at which the Donnelly Garment Workers' Union was organized.

Mr. Langsdale: April 27.

Mr. Hogsett: All right, I will go to that.

By Mr. Hogsett:

Q. Do you say you told these four girls on April 27, 1937, to go to that meeting?

A. I told the whole section. I didn't go to them in person.

Q. But you did say— And of course I am not trying to mislead you; I hope you know that. You did say, did you not, you told these three first named, Ruby Clayton, Oma Lee Cooper, and Edith Dean, and you thought you told Ethel Riegel? Didn't you say that?

* * * * * *

[fol. 5955] (Thereupon the last question was read by the reporter as follows:

"But you did say— And of course I am not trying to mislead you; I hope you know that. You did say, did you not, you told these three first named, Ruby Clayton, Oma Lee Cooper, and Edith Dean, and you thought you told Ethel Riegel? Didn't you say that?"

Trial Examiner Batten: Do you understand the question?

The Witness: Yes.

By Mr. Hogsett:

Q. Did you so testify?

A. I said I didn't go to them personally. I told all of the girls.

Q. But you identified—you picked out those particular girls— A. Those girls were in my section.

Q. But you identified them as being there on that day?

A. They were. I know the girls that were there.

* * * * * * *

[fol. 5956] Mr. Hogsett: It was about 5½ years ago that that meeting was held, and you recall that those three girls, Ruby Clayton, Oma Lee Cooper, and Edith Dean, were there on that day, and you think you recall that Ethel Riegel was; is that right?

* * * * * *

[fol. 5957] A. I said I told the section. I did not go to any particular girl. I never go to a particular girl—

* * * * * *

A. (Continuing) I said I did not go to those particular girls. I went to the whole section. I never told one girl at a time.

By Mr. Hogsett:

Q. How do you know Ruby Clayton was there the day you tell about? A. How do I know?

Q. Yes. A. Those girls worked for me then.

Q. How do you know Oma Lee Cooper was there that day?

A. Because those girls were all there.

Q. Were they there the day before?

A. Yes, because that was the busy season.

Q. Were they there the day after?

A. I won't say yes or no to that question.

[fol. 5958] Q. But you will pick out this particular day and say they were there, won't you?

A. I said— I didn't pick out any particular day.

Q. But Miss Weyand did. She directed your attention to a particular day, and you quite freely testified they were there and you remembered it?

Trial Examiner Batten: Now, just a moment. I don't think that is quite the testimony. I think the first question to the witness was, whether she told the girls, and she said she told her whole section. And then, Miss Weyand asked her about each one of these individuals, "Do you recall whether they were there?" and the witness, as I recall, then recalled that the first three were there and the fourth one she wasn't sure about.

Mr. Hogsett: That is exactly correct. And now I am asking her, how she is able to be sure that the first three were there, picking out that particular day, just so the testimony will be rebuttal.

. . . . . .

[fol. 5959] By Mr. Hogsett:

Q. All I am asking you to tell me, if you can, is how you are able to say those particular girls were there on that particular day in 1937?

A. Well, they worked for me then—they worked for me.

Q. They didn't work every day, of course?

A. Well, no, not just every day, but—

Q. So, as a matter of fact, you have no independent memory of the girls that were there on that day, or any other particular day, 5 years ago?

A. They worked for me, but maybe not that particular day.

[fol. 5960] By Trial Examiner Batten:

Q. What you mean is, in the ordinary course of events they would be working for you, unless they were out on vacation, or sick, or it was on Sunday, or—

A. Yes.

Q. That is, you told Mr. Hogsett you have no independent recollection that on a certain day, at a certain time, a certain girl was there at her machine? A. No.

By Mr. Hogsett:

Q. And in like manner, you cannot tell what particular girls were present in your section on March 18, 1937, the day of the meeting at which Mrs. Reed spoke? You can't remember just who was there that day, can you?

A. No, and no one else, that far back, but I remember I had a section and I told the girls that were there.

Q. Now, let's get it again. I think you made this clear, but I want to be sure; give me the number of the section and the floor on which you were working on each of these two dates, namely, March 18, 1937, and April 27, 1937?

A. On the eighth floor, in section 415.

Q. You are positive of that, are you? A. Yes.

Q. Now, in what section were you working on the day of the Sylvia Hull incident?

A. I was on the eighth floor, in 415.

[fol. 5961] Q. So that all three of these occasions found you in the same numbered section and on the same floor, namely, 415, on the eighth floor? A. Yes.

Q. Are you sure of that?

A. I am sure of that because, like I told you before, I spent the biggest part of my time on the eighth floor.

Q. Yes, but—

A. I changed around, but I don't know the years and times, and like that. I just worked—well, where they could put us. If they needed that for other machines, or something, they just moved us around. They moved us around a whole lot.

Q. But you saw the nurse take Sylvia Hull, you said,—

A. Yes. That was on the eighth floor.

Q. You know that was on the eighth floor? A. Yes.

Q. And you know you were in section 415, you say?

A. Yes.

Q. Now, let's take another date, March 2, 1937. In what numbered section were you working, and on what floor? A. I don't remember.

Q. Could you have made a change between March 2 and March 18, 1937?

A. Well, I could have, but I don't know as I did.

Q. Then, to the best of your memory were you still in [fol. 5962] section 415 and on the eighth floor from March 2, also? A. To the best of my memory.

Q. But these other dates you are sure about. You have made that very clear, haven't you? A. Yes.

Q. Now, isn't it a fact, Mrs. Dorsey, that your memory of the number of the section and the floor on which you worked on each of these three dates, namely, March 18, 1937, April 27, 1937, and the date of the Sylvia Hull incident, which was April 23, 1937, is wholly wrong, and that, as shown by your own record, you were working in section 518 on each of those days, and on the seventh floor?

. . . . . .

Miss Weyand: I would like to say, they can't impeach their own witness.

. . . . . .

[fol. 5964] Mr. Reed: It isn't material, but we have another curious legal proposition. A while ago it was that all the proponent of the case had to do was to make a prima facie case, and then, when the other side testified, come in and make a case. Now we have the thought that if a witness has sworn a certain way for us and a witness is put on on the other side in rebuttal, that if we ask any questions about the same facts, that that is impeaching testimony. It may be contradicting testimony, but that [fol. 5965] isn't impeaching evidence.

Trial Examiner Batten: Well, we will proceed. Mr. Hogsett.

Mr. Hogsett: Isn't it a fact that on March 18, 1937, you were working in section 518, on the seventh floor?

. . . . . .

[fol. 5966] A. No, I didn't work there. I was up on the eighth floor.

By Mr. Hogsett:

Q. Isn't it a fact that on April 23, 1937, the date of the Sylvia Hull episode, you were likewise working in section 518, on the seventh floor?

A. No. I was on the eighth floor.

Q. Isn't it a fact that on the date of the formation of the Donnelly Garment Workers' Union, namely, April 27, 1937, you were working in section 518, on the seventh floor?

A. Is it a fact?

Q. Yes. I am asking you if that is not a fact.

Mr. Langsdale: I object to the question again for the reason that it is repetitious.

Trial Examiner Batten: The witness may answer, if she recalls, where she was working.

A. I don't remember whether it was the seventh or eighth floor. I told you I was changed around so much, I don't remember the date, only just when something come up like the Sylvia Hull incident, and I remember being on the eighth floor then.

By Mr. Hogsett:

Q. Are you saying now you cannot remember the number of the section or the floor on any of these dates?

A. I told you that I wouldn't remember the dates that I was on them, but I worked the biggest part of the time on the eighth floor.

[fol. 5967] Q. I know, I heard that. But I am asking about the dates of these particular incidents.

A. The particular incidents?

Q. There are four of them I mentioned.

A. When Sylvia Hull—I was on the eighth floor—

Trial Examiner Batten: Now, Miss Witness, please answer the questions and don't start to answer them until Mr. Hogsett has completed his questions.

By Mr. Hogsett:

Q. On that date you say you were in section 415, on the eighth floor? A. Yes, on that date.

Q. And you say the same thing in regard to these other three dates—

Mr. Langsdale: What other three dates?

Mr. Hogsett: March 2, 1937.

Miss Weyand: She didn't say that with respect to March 2, 1937.

Mr. Hogsett: March 18, 1937, I should say, and April 23, 1937, and April 27, 1937.

Miss Weyand: I object. The witness has shown she doesn't remember things by the days of the month but by the things that occurred there.

Trial Examiner Batten: As I recall the witness' testimony, she thought it was her best recollection that she was on the eighth floor on the dates Mr. Hogsett asked her [fol. 5968] about, but she also said she wasn't certain, because she was moved around a lot.

Miss Weyand: She said she was certain as to incidents, rather than dates, and said she was on the eighth floor at the time certain incidents occurred.

Mr. Langsdale: Now, if the Examiner please, how long is an attorney going to be permitted to sit there and shake his fist in the face of a witness and ask her the same question over and over and over again? I submit it is repetition.

Trial Examiner Batten: Well, if I think Mr. Hogsett or any other attorney is improperly asking questions of a witness, or intimidating a witness, or pointing his finger at her too frequently, I will so indicate.

Mr. Langsdale: Well, I have a right to call the Examiner's attention to what I think about it, haven't I?

Trial Examiner Batten: Yes.

Mr. Langsdale: And I still object. Whether he is trying to hit her in the nose with his finger or not, this is repetition, because she has answered it 15 or 20 times.

. . . . . .

[fol. 5973] By Mr. Hogsett:

Q. Mrs. Dorsey, at the close of the hearing yesterday, the following questions and answers were recorded, and I'll read them to you, to get the connection in your mind:

"Q. I am asking about the dates of these particular incidents.

"A. The particular incidents?

"Q. There are four of them I mentioned.

"A. When Sylvia Hull—I was on the eighth floor—" Then I'll omit what the Trial Examiner said and give you the testimony.

[fol. 5974] "Q. On that date you say you were in section 415, on the eighth floor?"

Mr. Langsdale: What page are you reading from?

Mr. Hogsett: 5967. (Reading)

"A. Yes, on that date.

"Q. And you say the same thing in regard to these other three dates—

"Mr. Langsdale: What other three dates?

"Mr. Hogsett: March 2, 1937, March 18, 1937, April 23, 1937, and April 27, 1937?".

Mr. Hogsett: Is that correct?

Mr. Langsdale: Now, just a moment. Did I interpose an objection to that question?

Mr. Hogsett: Yes, the record says you did.

Mr. Langsdale: Now, are you waiting for an answer?

Mr. Hogsett: I would like a ruling and then an answer. No, I don't think you did really object. Miss Weyand did. You made some comments.

Miss Weyand: On page 5968 there is an objection by Mr. Langsdale, the third line from the bottom.

Mr. Hogsett: Oh, yes, that's right.

Trial Examiner Batten: What page is that you are starting on?

Mr. Hogsett: 5967 and following.

Mr. Langsdale: I now object to the question again, if [fol. 5975] I haven't, as assuming that she said she remembered the date of the March 2 circulation of the petition. In my recollection she said she didn't remember what floor that was on, what section it was.

Trial Examiner Batten: Well, I'll overrule the objection.

The question to the witness now is: is that correct? Now, if it isn't correct the witness may answer the question if it is or if it is not. That is the question, isn't it, Mr. Hogsett?

Mr. Hogsett: That's right.

Mr. Langsdale: Will you read her the question?

Mr. Hogsett: Let me ask it again.

The Witness: May I ask what is the answer I made?

Trial Examiner Batten: Just a moment, Miss Witness, March 18.

Mr. Hogsett: Let's rephrase it, and that will make it intelligible to you.

A. It is hard to remember dates. I remember incidents but don't remember the dates.

Trial Examiner Batten: Miss Witness, just please wait for the question.

By Mr. Hogsett:

Q. On March 2, 1937, on the occasion of the passing, of the so-called passing of the petition letter, or Loyalty League petition or whatever it is called, were you then working as instructor in section 415 on the eighth floor?

[fol. 5976] A. Now, that was March 27?

Q. No, no, March 2, 1937, at the time the protest letter was passed through the sections and signed by the employees.

A. Oh, that is when I said I wasn't supposed to know about it?

Q. Yes.

A. Yes.

Q. Now, were you working as instructor in section 415 on the eighth floor on that date?

A. Yes, I was.

Q. Now, let's go to the next date, on March 18, 1937, on the day of the meeting at which Mrs. Reed made a speech. Were you then working as instructor in section 415?

Mr. Langsdale: Just a moment before you answer that.

Mr. Hogsett: On the eighth floor?

Mr. Langsdale: I object to the question as repetition and ask it be stricken.

Trial Examiner Batten: I think it is repetitious to some extent, but let's get it straightened out so we can proceed.

By Mr. Hogsett:

Q. Please answer.

A. Was that the meeting when Mrs. Reed spoke to us about the Dubinsky and the 'sky matter?

Q. Yes.

A. Yes.

[fol. 5977] Trial Examiner Batten: What was your answer, Miss Witness? I didn't get it.

A. Yes.

By Mr. Hogsett:

Q. On the 23rd of April, 1937, at the time of the Sylvia Hull incident, were you working as instructor in section 415 on the eighth floor?

A. That's right.

Q. On April 27, 1937, the day the Donnelly Garment Workers' Union was organized, were you working as instructor in that section on that floor?

A. The day they organized?

Q. Yes.

A. I was on the eighth floor in 415.

Q. You said yesterday that section 415 was one which ran clear across the floor. Do you remember?

A. Well, I said part of the time it was divided and part of the time it was together; it wasn't that way all the time.

Q. When it was together and ran clear across the floor was there one instructor, or were there two instructors in that section?

A. Wait a minute—at that time—at one time, I said, I had all the whole section clear across the room, because I remarked to some of the girls, and some of the girls remarked I should have roller skates; and then I said they [fol. 5978] divided it and another instructor had half of it and I had half of it; but I don't remember the dates.

Q. But on the occasion when it ran clear across the floor and before it was divided, you were the only instructor, is that what you are saying?

A. I had a helper.

Q. Who was that?

A. Well, I don't remember. I had—my helpers were Frances Morrison and Vera Marshall and Grace Davis.

Q. Were they thread girls?

A. Yes, they were my thread girls.

Q. But was there any other person designated as instructor at that time?

A. Helping me instruct?

Q. No. Were you the only instructor?

A. I don't remember.

Q. Wait a minute. Let's get it clear so we won't have to go over it so much. On the occasion when your section ran clear across the floor, and before it was divided, were you the only instructor in that section?

A. Yes.

Q. What type of operators did you instruct?

A. The type of operators?

Q. Yes.

A. Well, now, I won't say at that particular time, but I [fol. 5979] had a lot of different machines. I have had hemstitching and I have had blind stitching and I have had eyelet, and I have had pinking and embroidery, and zigzagging and double stitching, airline tucking.

Q. Did you instruct the type of work known as shirring?

A. I did, yes, sir. We tripple shirred and single shirred.

Q. Was that the principal kind of work that you instructed in?

A. Principal?

Q. As to which you were instructor.

A. All I was telling you about was principal things, not one particular thing.

Q. Now, yesterday, in the course of your direct examination you expressed some uncertainty when Miss Weyand was asking you about certain meetings, whether they were Donnelly Garment Workers' Union meetings or Loyalty League meetings. Do you remember that?

A. I remember that incident.

Q. As a matter of fact you were trying to express the thought then, were you not, that your mind isn't clear on the details of whether the meetings you were talking about

in your direct examination were Donnelly Garment Workers' Union meetings or—

Mr. Langsdale: (Interrupting) Just a moment—

Mr. Hogsett: (Interrupting) Or Loyalty League meetings?

[fol. 5980] Mr. Langsdale: Just a moment—

Mr. Hogsett: (Interrupting) Isn't that true?

Mr. Langsdale: I object to that because there is not the slightest possible foundation for an assumption that she had the organization meeting of April 27 mixed up with Loyalty League meetings, not the slightest, and I am objecting to his assuming in his question that she had them mixed up with the Loyalty League meetings.

By Trial Examiner Batten:

Q. Do you understand the question, Miss Witness?

A. Yes, I do.

Q. Well, if you understand it, you may answer.

A. The reason I understand about Sylvia Hull and the meeting of the Workers' Union, organizing of it, because you remember those things.

By Mr. Hogsett:

Q. But you were confused, you mean, as to the others, as to whether they were the Donnelly Garment Workers' Union or Loyalty League meetings?

A. What I said was we had them so fast and furious there for a while I can't remember the dates, whether it was a Loyalty League meeting or not, but I do remember the incidents, because that happened.

Q. How many of each do you remember in 1937?

A. Oh, I don't know. I can't remember how many we had. I said we had them so fast and furious.

[fol. 5981] Q. How many, once a week or a month or a season? Can you give us any idea at all how many meetings?

A. No.

Q. Of one group or the other group?

A. No, I can't give you any idea.

Q. No idea at all?

A. No, there was too many meetings.

Q. Can you give us an approximation of it, your best judgment of it?

A. No.

Q. You have no idea at all, then, is that what you mean?

A. I mean we had meetings, but I said I didn't know how many.

Q. Of course, I am trying to make it clear to you that I am not asking for a definite, positive statement of the number. I am asking if you can give us your best approximate judgment of it.

Mr. Langsdale: Just a moment. I object to the question as repetition. The witness stated they had many of them but she couldn't tell how many.

Trial Examiner Batten: Well, the witness's question is whether she can approximate the number.

Mr. Hogsett: That's right.

Trial Examiner Batten: Can you tell us, Miss Witness?

A. No, I don't want to say; I might be wrong, but I know we had a lot of them.

[fol. 5982] By Mr. Hogsett:

Q. Do you know whether you had more of the Union meetings than the Loyalty League meetings?

A. I know there were some concerning the Union; the Loyalty League meetings were more or less social affairs, you know.

Q. As a matter of fact, that was all the Loyalty League was, a social group?

A. Yes, a kind of get-together and get acquainted affair, and plan on good times, and things like that.

Q. Yes. You had parties and picnics?

A. Yes, that was the object of it.

Q. The sole object, wasn't it?

A. I don't know whether it was the sole object; it might have had another leading, it might have led up to something, I don't know.

Q. To the best of your knowledge, was the Loyalty League purely and simply a social organization? Isn't that the honest truth?

A. No, I don't think so.

Q. In characterizing it here just a moment ago, you said that was what it was doing?

A. What?

Q. Engaging in social activities?

A. That is what we talked about, but maybe there was something behind the background.

Q. Well, you are speculating on that, aren't you?

[fol. 5983] A. I said maybe.

Q. Is that as far as you will go on that question?

A. Yes, as far as I will go.

Q. Now, you said yesterday, and I thought it seemed to me you made rather a point of it — Miss Weyand did — that you attended the Donnelly Garment Workers' Union, some of the meetings, in uniform.

A. Well, we did. We attended Loyalty League meetings in uniform too.

Q. Exactly, exactly.

A. And we attended the union meetings, like I told you.

Q. Exactly. Because you were ready to go to the meeting, and you preferred to go in your uniform and come back and change?

A. No, we had to go to work: It didn't last all the time. I know of one instance when we went down there in our uniforms, and it came time to go home when we got through, and some of the girls asked me if I would put their work away, and I said, "Yes, you go on home and I'll put your work away." What do you call that?

Q. Don't argue with me.

Trial Examiner Batten: Miss Witness, when Mr. Hogsett asks you a question, you answer it and stop; he will always ask the questions.

A. Well, all right.

By Mr. Hogsett:

Q. That last question you asked me indicates you have some interest in this matter. Are you protecting this for the Labor Board?

A. He said to forget it.

Q. I am questioning your position in this matter.

A. I am just a witness. Just ask me the questions and I'll answer what you ask.

Q. Are you also somewhat interested in protecting the matter?

A. *No, I certainly am not. I am not interested in either* side now.

Q. When did you sever your connection with the Donnelly Garment Workers' Union?

A. In March of this year.

Q. Under what circumstances?

A. Under what circumstances?

Q. Yes.

A. I quit because I wasn't treated right.

Q. Then you are mad, you quit sore, you are sore yet?

Mr. Langsdale. Just a minute. I object to the word "sore."

Trial Examiner Batten: Let's have one question at a time.

By Mr. Hogsett:

Q. You weren't treated right, you thought?

A. I don't think, I know.

Q. You quit because you were mad?

[fol. 5985] A. I wasn't treated right when I quit.

Q. Well, you are mad at the company?

A. I won't say at the company. I was mad at some of those people down there, they didn't treat me right.

Q. Who are you mad at?

A. Well, that Cecile Ealy is a snake in the grass.

Q. Well, he is a snake in the grass, you say?

A. It is a she, not a he.

Q. Are you mad at anyone else down there?

A. She makes me miserable.

Trial Examiner Batten: The question is, was there anyone else.

A. That I am particularly mad at?

By Trial Examiner Batten:

Q. Yes.

A. Well, I will admit I got a little mad at Mrs. Reed because she wouldn't hear me, and I thought after practically 16 years of service that she should have seen me and talked to me and heard my side of the story.

By Mr. Hogsett:

Q. All right. You wanted to make some complaints to her?

A. I certainly did.

Q. What is Cecile Ealy's position there?

A. I don't really know. She is a sort of a tattle-tale down there.

Q. You were mad and venomous about this whole mat-
[fol. 5986] ter, weren't you? Just boiling mad, aren't you?

A. Yes, when her name comes up it makes me mad.

. . . . . .

[fol. 5987] By Mr. Hogsett:

Q. Well, you feel unfriendly toward Mrs. Reed?

A. I wouldn't say that; I would talk to her right now if she was here.

Q. Oh, you would speak to her if she was here?

A. I certainly would.

Q. But you are unfriendly toward her?

A. I don't know; my heart has been for 16 years with her.

Q. You have a chip on your shoulder because she should have seen you at a time when you wanted to present a grievance?

A. I don't know why she didn't see me.

Q. You have a chip on your shoulder right now, as you are sitting in this witness chair?

A. I don't think I have.

. . . . . .

[fol. 5988] By Mr. Hogsett:

Q. Now, who else at the company are you at outs with or unfriendly toward?

A. I don't know as I am out with anyone. I have a lot of friends down there, I think.

Q. Well, with a good many people down there?

A. I hope so.

Q. But I am speaking of those whom you may be unfriendly with. How many others besides Mrs. Reed and Cecile Ealy are you angry with?

Mr. Langsdale: That is objected to. She said she wasn't angry with anyone down there.

Trial Examiner Batten: Well, the question is, is there anyone else, Miss Witness?

A. No.

By Mr. Hogsett:

Q. How about Lee Baty?

A. I think Mr. Baty is all right.

Q. He has your unqualified approval, has he?

A. I can't say unqualified.

* * * * * *

[fol. 5989] By Mr. Hogsett:

Q. Go ahead and tell what you were going to say.

A. Well, Mr. Baty, you know, he is kind of changeable.

Q. Like the weather?

A. Well, sort of.

Q. And you think he is all right just part of the time?

A. You see, one time I went up to Mr. Baty when I was being changed around; and naturally when you are changed around you begin to worry whether you will have work — If you don't have to work it is all right — at that time I had to work, and I am not a rich woman yet by any means, and I don't expect to be. Of course, I didn't expect to get rich down there.

Mr. Langsdale: Just a moment. I can't see the purpose of these things. I object to it because it will open up a matter of further examination. The question as to whether or not she is angry at Mr. Baty is proper, but not why and when and everything that may have happened between her and Mr. Baty.

* * * * * *

[fol. 5990] Trial Examiner Batten: Do you want to finish your answer?

A. I'll tell what Mr. Baty told me. That is what I was leading up to.

Trial Examiner Batten: Well, proceed.

A. Shall I?

Trial Examiner Batten: You may proceed.

A. And I went to see Mr. Baty and asked him what was the matter, was anything wrong with me that I had been changed around, and he said, "Why, no, Dorsey." Well, I said, "Mr. Baty, I have been changed around so much I was just kind of worried," and he said, "Dorsey, you don't need to worrk until I start to worrying." He said, [fol. 5991] "We are lucky to have people around like you and Grace Davis, especially, a machine instructor," and he said, "We have to take care of you and change you around any place you can work, and when we have work for you we try to take care of you, and you don't have no worry," and I went downstairs and was perfectly satisfied, until something else came up. Every time Cecile came up, "Mr. Baty wants you to do this," and "Mr. Baty wants you to do that."

Trial Examiner Batten: Now, Miss Witness— will you read the question to the witness, please?

(Thereupon the last question was reread by the reporter, as follows:

"Q. And you think he is all right just part of the time?"

Trial Examiner Batten: Now, the question to you, Miss Witness, is, do you think Mr. Baty is all right part of the time?

A. Well, I understood the question was, was I sore at Mr. Baty.

By Mr. Hogsett:

Q. No, it is a simple question.

Trial Examiner Batten: The question to you, Miss Witness, is short and simple. The question is — will you read it again, as you have it? Now, listen to it, Miss Witness, please.

[fol. 5992] (Thereupon the last question was reread by the reporter.)

A. Well, I'll say yes.

By Mr. Hogsett:

Q. You would. Part of the time you are not satisfied with him, and part of the time you are; is that it?

A. If he wasn't changeable; he is kind of changeable.

Q. All right. That makes three people, now. Is there anyone else that you are unfriendly toward?

Miss Weyand: She hasn't testified she was unfriendly toward those people, and I object to that characterization of it.

Trial Examiner Batten: Well, I think I said before in this hearing that I am not going to accept the questions which any attorneys ask as evidence.

Mr. Hogsett: No, they are not evidence.

Trial Examiner Batten: Now, if the question is asked in that manner and the evidence doesn't show that that is correct, it wouldn't change the evidence.

Now, do you understand this question?

A. Yes, I understand it. I want to say that I am not unfriendly with Mr. Baty; I would speak to him. It is not that, but the only one —

By Trial Examiner Batten:

Q. Well, the question to you, Miss Witness, is: is there anyone else?

A. No.

[fol. 5093] Q. Besides Mrs. Reed — and what was the other name?

Mr. Hogsett: Cecile Ealy and Mr. Baty.

By Trial Examiner Batten:

Q. (Continuing) Cecil Ealy and Mr. Baty, that you have talked about or testified about, is there anyone else?

A. No.

Mr. Langsdale: Just a moment. I object to the question; she is not unfriendly with anybody except one, and that is Cecile Ealy.

A. Yes.

By Mr. Hogsett:

Q. Now, you would go so far as to speak to Mr. Baty if you saw him?

A. Yes, I would.

Q. So, you haven't actually quit speaking to him?

A. No.

Q. Now, were you satisfied with his administration of the factory when he was put in as factory manager?

Miss Weyand: I object to that as irrelevant to any issue in this case.

Trial Examiner Batten: I think so too.

Mr. Hogsett: I think it throws light on whether she has an animus, as she sits here and gives this testimony.

Trial Examiner Batten: Well, suppose the employees should say they weren't satisfied with the management of the business.

[fol. 5994] Mr. Hogsett: I think it has a bearing.

Trial Examiner Batten: Well, I don't think so, Mr. Hogsett, as far as showing an interest is concerned.

Mr. Hogsett: Very good. I bow to Your Honor's ruling.

By Mr. Hogsett:

Q. Now, when were you first asked by anyone connected with either the Labor Board or Mr. Langsdale's client about the incidents you have testified to in this hearing?

A. When I was first asked about—will you please ask me again?

Q. Yes, I will. A. Thank you.

Q. When were you first asked by anyone connected with the Labor Board or anyone connected with Mr. Langsdale or his client about the incidents you have testified to here in this hearing?

A. Well, I can't remember the date.

Q. Well, roughly; I don't care to bind you to the exact date. Was it within the last week, or was it within the last 10 days, or the last month? Fix it as near as you can.

A. Well, I'll say within the last 10 days.

Q. Where were you approached and by whom?

Mr. Langsdale: Now, if the Examiner please, I don't know whether they are going to accord to us the courtesy we accorded to them by agreement, that they not rag wit-

[fol. 5995] nesses about talking to lawyers or investigators, or where they talked to them or have seen them.

If they want to go back on that agreement, why, I will adhere to it strictly.

Mr. Hogsett: I am not aware of any agreement of any kind.

Mr. Langsdale: Your co-counsel, while you were off in Michigan, made that agreement.

Mr. Hogsett: Did I violate any agreement that was made while I was gone?

Mr. Ingraham: I don't recall any agreement.

Mr. Langsdale: You remember we agreed we could bring these witnesses in and you wouldn't ask them who they had been talking to, where or when. Even when I asked one of the witnesses whether she went over to Mr. Tyler's office to sign one of those agreements, you objected to it as immaterial.

Trial Examiner Batten: Of course, I know nothing of any agreement—

Mr. Lane: (Interrupting) There wasn't any agreement.

Trial Examiner Batten: (Continuing)—between counsel. I remember one day the matter came up, and I believe—I don't recall the name of the witness—but I believe you, Mr. Langsdale, started to inquire of the witness whom she had talked to about this case, and I think the witness testified she hadn't talked to anyone except counsel; and [fol. 5996] I think I stated at that time that while I would permit you to ask that type of questions, we expected all witnesses to talk with counsel before they appeared here, because it would expedite the hearing.

Now, I see no reason why Mr. Hogsett should not proceed, within reasonable limits.

Mr. Langsdale: I don't either, but I am just wondering if this is going to be the cross-examination.

Trial Examiner Batten: In his present inquiry, I see no reason why he shouldn't proceed with it.

Mr. Langsdale: I haven't any objection to this specific question. I just wondered if they are going to do that; if they are, I would like to recall some of their witnesses and ask them along that same line.

Mr. Ingraham: Well, you examined three or four of our witnesses, and asked them if they had talked to me, and I didn't make any objection to it.

Trial Examiner Batten: As a matter of fact, I think I was the one who objected to it. But, let's don't waste any more time, Mr. Hogsett. You proceed, and if you proceed further than I think you should, if no one else objects, I will.

Mr. Lane: Mr. Examiner, I want the record to show that as far as I am concerned, I never made any such an agreement or was even approached about any such an agreement.

[fol. 5997] Trial Examiner Batten: Mr. Lane, I am not concerned about any agreement; and if you men make agreements outside of this hearing room, and it is not in the record, as far as I am concerned it is out.

Now, let's proceed with the witness. Is there a question pending, Mr. Reporter?

Mr. Langsdale: I have no objection to that question. I don't see any reason why she shouldn't tell everything she knows along that line; but my recollection was that we had that agreement.

Trial Examiner Batten: Mr. Reporter, will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Q. Where were you approached and by whom?")

Trial Examiner Batten: Yes, you may tell whom you talked to.

A. This lady (indicating), this attorney.

By Mr. Hogsett:

Q. Miss Weyand? A. Yes.

Q. Where were you approached by Miss Weyand?

A. At my apartments my room.

Q. And what was the length of the conversation you had with her on that occasion? A. The length?
[fol. 5998] Q. Yes.
A. Well, I don't know the amount of time.
Q. Oh, roughly. A. An hour.
Q. An hour. That's all right. Now, did she then go over the facts in detail, or merely generally?
A. Just generally.
Q. Did she go into detail such as she did in direct examination?
A. Not that one time, not the first time.
Q. Well, that is the first time. Now, when was the second time you talked with her?
A. Well, let's see. It was Monday night.
Q. This being Thursday—this is Thursday, today?

Trial Examiner Batten: No, this is Wednesday.

Mr. Hogsett: Is this Wednesday?

Trial Examiner Batten: I believe it is.

Mr. Hogsett: Well, I am a day off.

By Mr. Hogsett:
Q. It was day before yesterday evening, is that it?
A. Yes, Monday evening.
Q. And where did she talk with you then?
A. At Mrs. Skeens' home.
Q. Mrs. who? A. Mrs. Lola Skeens.
[fol. 5999] Q. How did you happen to be there?
A. How did I happen to be there?
Q. Yes. A. I went in a car there.
Q. Well, by arrangement? A. Sure.
Q. With Miss Weyand? A. Yes.
Q. Now, were there any other persons present besides you and Mrs. Skeens and Miss Weyand?

Trial Examiner Batten: Now, Mr. Hogsett, I don't believe—

Mr. Hogsett: (Interrupting) All right.

Trial Examiner Batten: What is the purpose of this?

Mr. Hogsett: I'll come to it in a moment. I'd rather not state it in the presence of the witness.

Trial Examiner Batten: Well, I don't want you to state it in the presence of the witness.

Mr. Hogsett: I'll withdraw the question.

By Mr. Hogsett:

Q. Now, on that occasion, how long did you talk with Miss Weyand? A. Well, I'll just approximate it.

Q. Yes. A. Two hours.

Q. Did she go over the case then in detail with you? [fol. 6000] A. Yes.

Q. In the same detail, approximately, as she did in direct examination? A. Yes.

Q. Now, was that the last time that you talked to her before you came to the courtroom? A. Yes.

Q. Now, until Miss Weyand, on night before last, went over these details with you as to what occurred on a given occasion in March and in April, 1937, and asked who was present on those occasions, and as to what you said and what other people said on those occasions back in 1937, had you ever given any particular thought—

A. (Interrupting) Of course I had.

Q. (Continuing)—to those incidents? A. Why, sure.

Q. In other words, to be concrete, what reason would you have for remembering for five years and a half that on the day Mrs. Reed made her speech, or on the day the Donnelly Garment Workers' Union was organized, that Ruby Clayton was present in your section?

Mr. Langsdale: Now, just a moment. I object to the question as assuming Mrs. Clayton was in her section.

Mr. Hogsett: All right. We will just stand on that.

Trial Examiner Batten: Just a moment. I'll overrule [fol. 6001] the objection.

Trial Examiner Batten: Do you understand the question? A. Yes, I do.

Trial Examiner Batten: You may answer.

A. Well, I hardly know how to answer. The only thing is, I don't know why—you just sit sometimes and sort of go over the whole thing and just think of things that happened.

Mr. Hogsett: I noticed in your direct testimony you were quite specific about that.

Miss Weyand: Now, she didn't testify anything about the girls that were in her section on March 18 in her direct testimony, and I don't want you to mislead the witness that way.

Mr. Hogsett: Oh, I am not; I am going to read what she said. I am reading from page 5897, at which point Miss Weyand is referring to the meeting where the Donnelly Garment Workers' Union was organized.

Trial Examiner Batten: What page is that, Mr. Hogsett?

Mr. Hogsett: 5897.

Mr. Hogsett: I'll read several questions and answers from that, and the following pages:

"Q. And was Ruby Clayton working in that section at that time?

"A. —"

[fol. 6002] Mr. Langsdale (Interrupting): That is April 27?

Mr. Hogsett: That's right.

Mr. Hogsett (Reading): "A. Yes, she was.

"Q. And she was among the girls you told to go to the meeting?

"A. Yes, she was working for me and I told all the girls at the same time."

Then the Examiner says: "Well, the question is, was she one of the girls you told, Ruby Clayton?

"A. Yes, she was.

"Q. Was Oma Lee Cooper working in your section at that time?"

I'll skip the intervening colloquy.

"A. Yes. Her name was Oma Lee Holloway."

Miss Weyand: That was by me, Oma Lee Holloway, not the answer.

Mr. Hogsett: Yes, that's right.

By Mr. Hogsett:

Q. And then the witness answers, finally, this question: "Q. And your answer is true with reference to Oma Lee Cooper, is that correct, the same, that you told her among the other girls? A. Yes.

"Q. And that is true as to Edith Dean, is that correct?"

Then, some colloquy, and then the question was:

[fol. 6003] "Was Edith Dean working in your section at that time? A. Yes.

"Q. And was she among the girls that you told about the meeting? A. Yes.

"Q. Was Ethel Riegel working in your section at that time?

"A. Yes, I believe she was, but I am not just so sure; but I really think she was.

"Q. And you think she was among the girls that you told of the meeting? A. Yes, I do."

Now, what I would like to know is this: How did you happen to remember, if you did remember, for five years, that on a given day these three girls, Ruby Clayton, Oma Lee Cooper and Edith Dean were present, and why you said to the girls they should go to the meeting? How did you happen to remember that?

A. Well, Ruby Clayton hadn't been back so very long, and Oma, she sort of talked to me and told me her troubles, she is kind of that way, you know; and that is all I can say.

Q. Well, that is interesting, but hardly an answer.

Mr. Langsdale: I submit it is an answer, and a very direct answer.

Trial Examiner Batten: I think the objection is made. I'll pass on it.

[fol. 6004] Mr. Hogsett: Well, I'll withdraw the comment.

Trial Examiner Batten: Had you finished your answer, Miss Witness?

The Witness: Yes, I had.

Mr. Hogsett: Now, the question I would like for you to answer is this: How did you happen to remember for

five years and a half that these three girls, Ruby Clayton, Oma Lee Cooper and Edith Dean, were present in your section on that particular day?

Mr. Langsdale: Just a moment.

Miss Weyand: I object to that as a repetition of a previous question.

Mr. Hogsett (Continuing): And they were among those girls who heard you say that they should go to the meeting where the Donnelly Garment Workers' Union was to be organized?

Miss Weyand: I object to that. She has already answered the reason; and furthermore she testified she told the whole group of girls and these were among that group.

Mr. Langsdale: I object to it for the further reason she hasn't said that any girl heard her say it, she hasn't so testified, although I assume she meant that by her obeying the command to go.

By Trial Examiner Batten:

Q. Miss Witness, do you understand the question?

A. I think so.

[fol. 6005] Q. How do you happen to remember?

A. I told him that I happened to remember that Ruby hadn't been back very long, and we had been talking; and Oma Lee just sort of talks to me and tells me her troubles, and things, and she was one of that kind.

Q. And that is the basis upon which you recall those girls were there on that day, is that right?

A. Yes, as well as I can recall back, why, those other girls he mentioned were in my section, and in fact they said so.

By Mr. Hogsett:

Q. Can you remember any other person who was without doubt in your section on that date?

A. Yes, I can, I can name over some of them.

Q. How many were in your section at that time?

A. I don't remember the amount. All the time it wasn't filled up, and sometimes it was overflowing. I can't remember the amount.

Q. Would it be 40 or more or less than 40?

A. Well, it wouldn't be over 40.

Q. Now, let me ask you this; in your conversation with Miss Weyand, was it explained to you that Ruby Clayton and Oma Lee Cooper and Edith Dean had testified here as witnesses for the respondent, and that it was quite important to the Board's case that you be able to fix the fact that they were in the section on that particular date?

[fol. 6006] A. No.

Q. A moment ago you said they testified here. How did you know that? A. I read it.

Q. Read it where? A. From Miss Weyand.

Q. What? A. Miss Weyand let me read it.

Q. Oh, then you did know it was important for you to cover that?

A. Yesterday, after we left here, I read it. That is why I told you they had already testified to that too.

Q. Where did you read it yesterday?

A. In her office.

Q. Miss Weyand took you to the Labor Board's office yesterday, did she, after the hearing closed? A. Yes.

Q. How long were you there on that occasion?

A. I don't remember how long.

Q. Well, roughly? You have been approximating other times. Please approximate this.

A. Well, I'll say 30 minutes.

Q. Well now, you say that you were changed around a good deal and you quit down at the Donnelly Garment Company in March of 1942, is that right?

[fol. 6007] A. Yes.

Q. Now, what have you done since then, Mrs. Dorsey?

A. I have been on a farm.

Q. Where do you live on the farm?

A. Gardon City, Missouri, Route 2. I haven't been down there all the time, I am there, and backwards and forth.

Q. Have you done any other work, been employed any other places? A. No.

Mr. Hogsett: May I have International's Exhibit No. 20?

Mr. Lane: That is the Intervener's.

Mr. Hogsett: Or Intervener's, whichever it is.

* * * * * * *

[fol. 6008] Mr. Hogsett: I show you intervener's exhibit No. 20, dated May 31st, 1939, and particularly the second signature on the left column, and ask you if you signed and swore to that paper.

Trial Examiner Batten: That is a rejected exhibit?

Miss Weyand: Yes. I object to the question, because I was not allowed to ask that question of any witness produced by the company.

Trial Examiner Batten: What witness was that, Miss Weyand?

Miss Weyand: I would have to check back.

Trial Examiner Batten: I remember when it came up.

Miss Weyand: Yes, and I started to ask such a ques-[fol. 6009] tion of a certain witness for the company and you refused to allow me. I can check back and see who it was.

Trial Examiner Batten: Well, I think I shall recess then, until you find out. I don't recall it.

* * * * * * *

[fol. 6010] Trial Examiner Batten: We will proceed.

Miss Weyand has given me the record for August 26, in connection with the testimony of Lois Barnes, in which it is indicated that Miss Weyand asked the question of the witness:

"Look at page 5 of intervener's exhibit No. 20 and tell me if that is your signature."

The answer was:

"Yes, it is."

I inquired:

"Is that the Circuit Court?"

Then there was some further discussion about its being a rejected exhibit. Then I stated:

"If it was rejected at the last hearing, what is the purpose of now presenting it?"

"Miss Weyand: I am not presenting it. I just asked the young lady her recollection of her signing certain documents."

And there was some further discussion on it. I stated:

"Then, you mean you want to use a rejected exhibit for that purpose?"

"Miss Weyand stated:

"I can use anything I want to that was signed around the plant."

"Trial Examiner Batten: Well, I don't think you are [fol. 6011] going to use a rejected exhibit."

Then you proceeded with the witness at that point.

I don't believe, if I understand the purpose of the present examination, it is the same in that instance, Miss Weyand.

Miss Weyand: Well, I don't know what the purpose of the present examination is. I can't see that it has any purpose whatsoever.

Mr. Hogsett: Now, that is certainly a devastating comment, if true.

Trial Examiner Batten: Well, I will excuse the witness.

Miss Witness, will you leave the room? Just go out in the hall.

(Thereupon the witness was temporarily excused from the Courtroom.)

Trial Examiner Batten: Now, Mr. Hogsett, have you any objection to—

Mr. Hogsett: Not at all. I think, in common fairness, I should tell you I think this affidavit which this witness signed is inconsistent with some of her testimony, both on direct and cross-examination.

Miss Weyand: I am unable to find any testimony, on either direct or cross, that it is inconsistent with. I ask that you show what it is inconsistent with.

Trial Examiner Batten: Now, as to whether it is in-[fol. 6012] consistent, that, of course, would be set forth by presenting this to the witness, and the record will then indicate whether there is an inconsistency.

Do you mean by your statement, Miss Weyand, the attorney has to convince the Examiner that there is an inconsistency before it is used?

Miss Weyand: I think so. I think any document must have some materiality before it can be used.

Trial Examiner Batten: You are proceeding on the basis of the rule which provides, in substance, that to impeach a witness you must lay a proper foundation for the impeachment?

Miss Weyand: Before you can use a document, you must show its materiality and—

Trial Examiner Batten: I don't believe, Miss Weyand, I could follow that practice, for this reason: In all hearings which I have conducted—in fact, on my own motion frequently I have required counsel to produce a written statement, which they have, which they didn't care to produce, and then determine on the record whether there is anything inconsistent. You are asking me to pass upon it first, whether there is an inconsistency—

Miss Weyand: Well, it is presented to you now as my objection to showing the exhibit to the witness, and I think at that point it is proper for you to determine whether there [fol. 6013] is an inconsistency.

Trial Examiner Batten: I will say this: it must be obvious on what basis Mr. Hogsett was proceeding. My reason for that is, he has been proceeding upon the theory of impeaching this witness' testimony for some time.

Miss Weyand: But this document I don't think can serve this purpose, because it is not inconsistent with any testimony she gave. So, I can't see any other purpose it could have.

Trial Examiner Batten: Of course, Mr. Hogsett tells me that is his purpose.

Mr. Hogsett: That's it.

Miss Weyand: Then, it is upon you to rule that there is no inconsistency.

Trial Examiner Batten: If Mr. Hogsett wants to proceed on that basis,— Here is the affidavit. The record will indicate whether it is inconsistent. Now, certainly, I am not going back over this record or try from memory to determine that point.

Miss Weyand: I think Mr. Hogsett should present to you the places in direct he thinks it is inconsistent with.

Mr. Hogsett: That same burden, then, would be shifted to me. I would have no hesitancy in doing that, if you want to take the time and go through this witness' testimony line by line.

[fol. 6014] Trial Examiner Batten: I don't want to take that time. If that is your position, you proceed with your examination; and if the record then indicates you were incorrect in assuming that there was an inconsistency, and it develops by a review of the record that there is no inconsistency, then we have the record on it.

Miss Weyand: I would like an exception to your ruling in that regard.

Trial Examiner Batten: Yes.

Mr. Langsdale: Of course, I think the rule is, to show a document to the witness and ask her if she signed that document, the document first must have some materiality. You couldn't ask if she signed the third book of the Bible.

Trial Examiner Batten: Or, if you signed your second papers to become a citizen.

Mr. Langsdale: Now, there must be something in this that makes it material.

Mr. Hogsett: Contradiction does.

Mr. Langsdale: Well, if there is one.

Trial Examiner Batten: You are putting me in this position: You are asking me to determine it from my memory.

Mr. Langsdale: Don't you think he should be required to point out what is material in the document?

Trial Examiner Batten: I don't think so. If he hands it to the witness for that purpose and then it turns out in the [fol. 6015] record that there is no inconsistency,—

Mr. Hogsett: —there is no harm done.

Trial Examiner Batten: And if it turns out that there is a contradiction,— I don't see how any possible damage can be done.

Mr. Langsdale: I am going to insist that I be permitted, when this question is asked any witness, to interrogate the witness on the circumstances under which they signed this affidavit, where, when, and who induced them to do it, and all of that sort of thing, which I was not permitted to do when their witnesses were on the stand as to their offer of proof.

Trial Examiner Batten: Well, are you asking me for a ruling now or are you just serving notice?

Mr. Langsdale: I am just announcing it ahead of time.

Mr. Hogsett: He is just threatening me.

Trial Examiner Batten: We will proceed.

Mr. Tyler: I wish to suggest, if the Examiner please, there is amply sufficient evidence of the materiality of this statement from the mere fact alone, without considering others, that this witness testified she had stated that girls did not feel free to talk and that she had heard comments in that case, whereas her affidavit says this action of the employees was the free and voluntary act.

Mr. Langsdale. Oh, no.

[fol. 6016] Miss Weyand: No.

Mr. Langsdale: No. But I submit, his speech is immaterial, because you have already ruled, Mr. Examiner.

Trial Examiner Batten: We will proceed.

Miss Weyand: I will call the witness.

(Thereupon the witness returned to the courtroom.)

Trial Examiner Batten: Mr. Hogsett, you may proceed.

Mr. Hogsett: I will rephrase the question. It is simpler to do that than to look it up in the record.

Mr. Hogsett: I hand you intervenor's exhibit No. 20—

Trial Examiner Batten: —A, I believe it is.

Miss Weyand: This is not A.

Trial Examiner Batten: Isn't it?

Mr. Hogsett: Let me just call it 20.

Trial Examiner Batten: Page what?

Mr. Hogsett: Page 6064.

Trial Examiner Batten: Circuit Court page number?

Mr. Hogsett: Circuit Court page number 6064.

By Mr. Hogsett:

Q. Directing your attention particularly to the signature "Etta Dorsey," on the second line in the last column, I will ask you if you signed and swore to that paper?

A. I did.

Q. When you signed and swore to it were the statements [fol. 6017] in it true or false?

Mr. Langsdale: Now, just a moment.

Has she read it?

Mr. Hogsett: I thought she did a-while ago. I will give her a chance. (Handing document to the witness.)

(Thereupon the document above referred to was read by the witness.)

Mr. Langsdale: Before you answer, I want to interpose an objection, that the question should be limited to the falsity or truthfulness as to this witness, and no one else. Certainly, when they use the word "we" in there, and she signs it, she is not speaking for "we," she is speaking only for herself, and she knows only that the statements therein are true as to herself, and I say it should be so limited.

Mr. Hogsett: That is true. That is fair enough.

Trial Examiner Batten: Proceed.

Mr. Hogsett: Was that affidavit at the time you signed and swore to it true or false, so far as you are concerned?

A. True.

Mr. Hogsett: I offer the affidavit—the paper in evidence, intervenor's exhibit No. 20-A to 20-KK, as a part of the cross-examination of this witness.

Mr. Langsdale: I object—

Trial Examiner Batten: It is rejected, except as to the [fol. 6018] page bearing this witness' signature.

What is the page number?

Mr. Hogsett: Circuit Court page number 6064.

Trial Examiner Batten: And you will have photostatic copies made of that page and—

Mr. Langsdale: Before you pass on this offer, I want to object to the offer of the document on the ground that it is immaterial. There isn't anything in that document, in any manner, shape or form, that contradicts anything this witness has said on the stand. It is immaterial and merely clogs the record.

Trial Examiner Batten: I will receive this page I have indicated in connection with this witness' testimony.

Mr. Hogsett: Please give me the names of the persons present at the meeting at Mrs. Skeens's home on Monday evening of this week.

Mr. Langsdale: I object to that question as an effort on the part of counsel to pry into the preparation of this case made by counsel. He has no right to know who was there, unless he states he thinks this witness may have been influenced to testify to something false. Certainly he has no right to find out who our other witnesses are or who the Board's other witnesses are, or who was there.

Mr. Hogsett: I submit, Your Honor, I have a legitimate right, within the bounds of cross-examination, to probe [fol. 6019] freely into every meeting had between the witness and my opponent in the case and to ascertain who was present at such meeting or meetings, and, indeed, what was said there. Now, the present question does not include what was said there, but I surely am entitled to the right, I submit, to learn who was there.

Trial Examiner Batten: Well, I don't think you are, unless there was someone there other than the attorneys and—

Mr. Hogsett: Well, there were.

Trial Examiner Batten: Just a moment, until I finish, Mr. Hogsett.

I don't think you are. If it was a conference in preparation of the case, I don't believe that under any rule counsel is entitled to inquire into that, because it happened to be at Mrs. Skeens's rather than in counsel's office, or your office, or Mr. Lane's office. I don't believe you are entitled to inquire in detail into matters concerning the preparation of the case.

Now, if you can show me this distinction, Mr. Hogsett, why are you any more entitled to do that than you are entitled to ask Mr. Langsdale to present to you his file that he has used in the preparation of this case, or Miss Weyand's file, assuming that she has taken statements that are not sworn to—On what basis—

Mr. Hogsett: I will be very glad to answer that by what [fol. 6020] I think is a clear distinction.

Mr. Langsdale's file and Miss Weyand's file would have had nothing whatever to do with this witness—would have had no effect upon the testimony of this witness, but—

Trial Examiner Batten: Assuming she had this statement she had prepared, and the witness had signed it, that isn't sworn to,—

Mr. Hogsett: I am not interested in that, unless I have reason to know that there is conflict, and in that event I can submit authority that we would be entitled to have that statement—if I could prove there was conflict.

Trial Examiner Batten: Conflict with what?

Mr. Hogsett: If I knew— Suppose I had a carbon copy of an affidavit which the witness had given Miss Weyand—I didn't have the original—it was over there—but I had the carbon. If this witness departed from the facts stated

in that carbon, I would have a right to say, "Didn't you make an affidavit to Miss Weyand, on a given date?" "I did." "It was signed and sworn to?" "That is true." "Now, I call on you for that affidavit."

Trial Examiner Batten: But in that case, Mr. Hogsett, you have this—you know.

Mr. Hogsett: I say, I would have to know that.

Trial Examiner Batten: You know the witness has said certain things.

[fol. 6021] Mr. Hogsett: I said that a moment ago.

Trial Examiner Batten: That, it seems to me, is quite a different situation.

Mr. Hogsett: Now, you drew me into a discussion of that type of case. That is afield. I don't think it is this situation at all.

Now, here is the reason: In cross-examining as to the credit of a witness, one of the elemental rules that Your Honor well knows is that you are entitled to probe all contacts between the witness and the opponent. Now, that can be carried to an extreme, of course,—

Trial Examiner Batten: Yes, I would say so.

Mr. Hogsett: But I haven't done that.

Trial Examiner Batten: Where the witness says, "Yes, I talked with Mr. Langsdale. I talked with Miss Weyand, and with these people," that doesn't mean—

Mr. Hogsett: Let me finish. You won't let me finish.

I have a right, I submit, to show to you in that connection and in that type of cross-examination as to credit, that a meeting was held of witnesses—proposed witnesses, and that at that meeting the facts were, as the witness has already indicated, gone into in detail, in concert—see?—for two hours.

Trial Examiner Batten: Just a moment, Mr. Hogsett. I don't understand the witness' testimony as being it was [fol. 6022] gone into in concert.

Mr. Hogsett: I do.

Trial Examiner Batten: Then, my recollection is poorer than yours.

Mr. Hogsett: I definitely understand exactly that, that there was a meeting called by Miss Weyand at Mrs. Skeens's home, and it was then for the first time, says the witness, that Miss Weyand went into details. Now, she did it, presumably, in the presence of all of these people. This was no single interrogation of this witness. It was done wholesale—if I may use that expression—so that the facts, may be,—I have a right to draw the inference, and ask you and the Board to do it, that in preparing the case the preparation was handled in that unusual way so that the testimony would coincide.

Trial Examiner Batten: In what unusual way?

Mr. Hogsett: In concert.

Trial Examiner Batten: What is the difference in that, Mr. Hogsett, and having witnesses present at a hearing all of the time, listening to all of the testimony?

Mr. Hogsett: Maybe none.

Trial Examiner Batten: Is there any particular difference?

Mr. Hogsett: Maybe none, but—

Trial Examiner Batten: I don't see, Mr. Hogsett, where going into the details of the thing, after the witness says, [fol. 6023] "Yes, I talked with Miss Weyand—I discussed this with Miss Weyand. She gave me the record and I read the testimony."—I don't see where this other matter is within the usual rule.

Mr. Hogsett: Well, I do. I call your attention to the fact that Mr. Langsdale, in the early days of this hearing, during the first week or ten days of it, on at least a half dozen occasions—several occasions—I don't want to exaggerate, and perhaps I did by saying "a half dozen"—called attention to the fact that witnesses for the respondent were in the courtroom hearing the testimony.

Trial Examiner Batten: Yes. And, Mr. Hogsett,—Pardon my interruption at this point. When Mr. Langsdale started to ask witnesses if they had not met in Mr.

Tyler's office, I think the record will show that I intimated at that point I felt that was not a matter for us to go into here in detail; Mr. Tyler had a perfect right to have the witnesses come up to his office, and Mr. Ingraham had—any attorney had the right; that I expected every attorney to prepare his case to expedite this hearing.

Mr. Lane: Mr. Examiner, you will recall that pretty nearly every witness the respondent had on the stand Mr. Langsdale asked if she wasn't present when Mary Warth testified, if she wasn't present when Lois Barnes testified, and so forth, and "Didn't you hear Mary Warth, Lois Barnes, and other witnesses testify to that on the stand?"

[fol. 6024] Trial Examiner Batten: Yes.

Mr. Hogsett: Well, I have said all I am going to on it. I have put my position before you and it is for you to rule.

Trial Examiner Batten: Is there a question pending?

Mr. Hogsett: Yes. In substance, it was this: Who were those present at Mrs. Skeens's home on last Monday evening?

Miss Weyand: I have no objection to the witness stating. If Mr. Langsdale has an objection, the Trial Examiner can rule upon his objection, but I have no objection to the witness stating.

Mr. Langsdale: I withdraw the objection.

Trial Examiner Batten: Now, because you withdraw your objection, it doesn't necessarily mean I will agree with you.

Mr. Langsdale: I don't want to be in conflict with the Board on this matter. But there is a vast difference between asking the witness, merely for the purpose of the record, "Weren't you sitting here and didn't you hear Mrs. Warth—?" and so on, because he knew she had, and the Examiner knew she had; she wasn't revealing anything about the preparation of the lawsuit.

Now, when they try to pry into the preparation, something they don't know as openly and notoriously as we did

that these witnesses were sitting here, I think they have no [fol. 6025] right to do it. But if Miss Weyand has no objection to it, then I have no objection to it.

Trial Examiner Batten: Of course, the fact that Miss Weyand has no objection does not do away with my feeling in the matter.

Mr. Langsdale: Of course, we can't speak for the Examiner.

Trial Examiner Batten: I think the subject matter is gone into as far as should be permitted, unless there is a showing that there were people there who were not attorneys or not witnesses in this case, and I don't think there has been sufficient showing here of a reason or a necessity for going into that meeting or who was present. To use a common term, I think it is fishing, and for that reason I will not permit the witness to disclose the names of those people who were present, Mr. Hogsett.

Mr. Hogsett: I now ask you, Mrs. Dorsey, to give me the names of the persons present in the Labor Board's office with yourself and Miss Weyand on last evening?

Trial Examiner Batten: Well, I think, Mr. Hogsett, that is in the same classification as the other. I think the evidence indicates clearly that it was a matter in connection with the preparation of the case, and I don't think I will permit the witness to disclose it.

Mr. Hogsett: Will you give me, Mrs. Dorsey, the num- [fol. 6026] ber or approximate number of persons present at Mrs. Skeens's home with yourself and Miss Weyand on Monday evening last?

Trial Examiner Batten: I think that comes within the same ruling, Mr. Hogsett.

Mr. Hogsett: Will you give me, Mrs. Dorsey, the number of persons or the approximate number of persons present in the Labor Board's office last evening with yourself and Miss Weyand?

Trial Examiner Batten: I think that comes within the same ruling.

Mr. Hogsett: Were any persons present at the meeting at Mrs. Skeens's home connected with the International Ladies' Garment Workers' Union.

Trial Examiner Batten: You may answer.

A. No.

Mr Hogsett: At the meeting at the Labor Board's office last night was any representative of the International Ladies' Garment Workers' Union present?

Trial Examiner Batten: You may answer.

A. Yes.

Mr. Hogsett: Who was present last evening?

Trial Examiner Batten: You may answer.

A. I don't know her name.

By Mr. Hogsett:

Q. Can you identify her here in the courtroom?

[fol. 6027] A. Yes.

Q. Will you please point out who it was?

(Witness complies.)

Q. That girl sitting over there (pointing), in the last—

Mr. Langsdale: That is Miss Eleanor Blue.

A. That's the girl.

By Mr. Hogsett:

Q. What is her position with the International Ladies' Garment Workers' Union?

A. I don't know.

Mr. Hogsett: Will you indicate that for the record, Mr. Langsdale?

Mr. Langsdale: I couldn't tell you that, myself. I assume she is an organizer. That seems to be her duties.

By Mr. Hogsett:

Q. How long was she present at the meeting last evening?

A. All of the time.

Q. You may have given me the time that meeting lasted, but I, at the moment, don't remember what you said. How long did that meeting last?

A. I said, I think, about 30 minutes.

Mr. Hogsett: That is all.

Trial Examiner Batten: Now, Mr. Hogsett, you may inquire, after that, who was there in addition to—

Mr. Hogsett: Monday night?

[fol. 6028] Trial Examiner Batten: Well, the night this young lady was there.

Mr. Hogsett: Now, I don't want to take advantage there. I believe you misunderstood. There was no International representative present there Monday night.

Trial Examiner Batten: When was she present?

Mr. Hogsett: Last night.

Trial Examiner Batten: Oh.

Mr. Hogsett: I don't want to take advantage—

Trial Examiner Batten: Oh, yes. This is Wednesday, isn't it?

Mr. Hogsett: Yes. Now, have I a right to inquire as to who was present last night?

Trial Examiner Batten: I think so.

Mr. Hogsett: Very well.

By Mr. Hogsett:

Q. Who was present at the meeting in the Labor Board office last evening?

A. Miss Weyand, Miss Blue, myself, and that lady (indicating Miss Boyles).

Trial Examiner Batten: Miss Boyles.

By Mr. Hogsett:

Q. Was anyone else present?

A. No.

Q. Then, the meeting last night included only yourself, as far as any witness was concerned?

A. That's right.

[fol. 6029] Mr. Hogsett: Now, Your Honor, in view of the fact that it now appears that the International is participating, at least to the extent indicated, in the preparation, I respectfully submit, without wishing to be persistent, that I have a right to know who was present at this meeting on Monday night.

Trial Examiner Batten: I think one of the reasons I neglected to mention as to why I don't think you are is because I have asked repeatedly in this hearing, Mr. Hogsett, that the respondent and the intervener cooperate and jointly try to work these matters out so as to take the least amount of time possible, and I on several occasions have asked Miss Weyand and Mr. Langsdale to please get together and work out these matters jointly so that we can avoid as much repetition as possible.

Now, under those circumstances I don't believe that I could agree with you, because of that request of mine, which may have some bearing upon the situation. I have requested that that be done. And I, in addition to that, have not permitted statements on the record here— The fact that Mr. Ingraham and Mr. Lane were cooperating together, or Mr. Langsdale and Miss Weyand—they were doing it at my request.

Mr. Langsdale: Let me suggest, the witness has stated that at the meeting out at the lady's house there was no representative of the International Ladies' Garment Workers' Union, and of course that includes me, because I am [fol. 6030] attorney for that organization.

I wasn't there Monday, Mr. Hogsett.

Mr. Hogsett: I understood her to so say.

Mr. Langsdale: And no one connected with my office was there.

Mr. Hogsett: You have an absolutely clean bill of health, Mr. Langsdale.

Mr. Langsdale: Well, I know— I will just "put the fish on your bait."

Trial Examiner Batten: Is that all?

Mr. Hogsett: That is all, Your Honor.

Trial Examiner Batten: Mr. Lane, or Mr. Tyler?

Cross-Examination.

By Mr. Tyler:

Q. Mrs. Dorsey, did I correctly understand your testimony, that you have not been employed at any other garment plant except the Donnelly plant?

A. You mean, since I quit?

Q. Well, at any time? Have you worked for any other garment plant at any time besides the Donnelly?

A. No. I worked for—it wasn't a garment company, it was just a little embroidery shop. That was called the Elite embroidery shop, and the Brook embroidery shop—those two places, but no garment plants.

Q. When did you work for the Elite embroidery shop?

[fol. 6031] A. They are not in business now. Well, it has been a long time ago.

Q. What is your best estimate?

A. Well, let's see, now. I would say about 19 years.

Q. And what was the name of the other one?

A. Brook.

Q. How long did you work for the Brook shop?

A. Shortly after that.

* * * * * * *

[fol. 6033] Q. What were the hours of work in the Donnelly plant in March 1939? And I ask you to notice that I am not saying "1937;" I am saying "1939." What were the hours of work in the Donnelly plant in March 1939?

A. Well, as far as I remember, we went to work at 7:30 and got off at 4, and 30 minutes for lunch, and we would have some overtime—special sections worked overtime. But I won't say, at that particular time, what the hours were.

Q. The regular closing hour was 4 o'clock?

[fol. 6034] A. Yes.

Q. What were the working hours in July 1939 at the Donnelly plant?

* * * * * * *

[fol. 6036] A. The working hours were the same—I usually worked those hours, 7:30 to 4. However, that is around a slack time and they might have varied some.

By Mr. Tyler:

Q. You will notice, Mrs. Dorsey, that I didn't ask what time you usually worked, or if that might vary. I asked what the hours were. Can you tell definitely what the hours were in July 1939?

A. Well, I'll say from 7:30 to 4.

Trial Examiner Batten: You mean, the hours of her—

Mr. Tyler: No. I mean the working hours in the plant.

A. Well, they go to work— You wouldn't suppose me to remember all of the sections, when I wasn't even connected in the sections? My section? Is that what you want to know?

By Mr. Tyler:

Q. I don't think you would know the hours in the plant. Do you know?

A. You mean, my section?

Q. No.

A. You mean—

[fol. 6037] Q. I am asking you if you know what the working hours in the plant were in July 1939?

A. All of the hours?

Q. Yes.

A. All of those people?

Q. Yes.

A. Why, no.

Q. Do you know what the hours of any other section but your own were in July 1939?

A. Well, 411 usually went on the early hour. I don't remember all of those sections— No, I don't.

Q. And when you say "usually," you mean it varied from time to time, don't you?

A. No, they don't vary. What I mean—maybe we would get off an hour early—see?—at slack times.

Q. Yes.

A. But we would go to work at 7:30. The first hour was 7:30, and then they would vary 15 minutes, like that.

Q. They have staggered hours, so that some sections close earlier than others probably?

A. Do you call that staggered hours?

Q. Well, some sections leave at earlier hours than other sections; is that true?

A. Say we go to work at 7:30 and get off at four, that would be our hours. And if we didn't have work, maybe [fol. 6038] we would get off at 3. And maybe 412 would go to work at a quarter of 8, and they would get off 15 minutes later.

Q. Sometimes they would get off at 4 and sometimes they would get off at 3, wouldn't they?

A. I said, at slack hours. But that was usually the special sections that did that, not the sewing sections.

Q. Can you remember the days when you had slack work and got off at 3?

A. No, I can't.

Q. Do you know of employees going to meetings of the Donnelly Garment Workers' Union after working hours still wearing their aprons?

A. After working hours?

Q. Yes.

A. You mean, when the union was formed?

Q. Yes.

A. No, I don't remember them wearing— I believe some of them did. Maybe they would work a little overtime and would go in their aprons to that meeting and then come back.

Q. And then come back and change their clothes and go home?

A. No. Come back and finish their work.

Q. I asked you if you knew of their going to meetings after working hours were over, still wearing their aprons.

A. No, not after they got through work. They changed their dresses and then went down to the meeting. The [fol. 6039] meeting was arranged so that they could do that.

Q. You say you don't know of any of them going directly to the meeting after working hours, before changing their aprons? A. After working hours?

Q. After they got through.

A. No. I said they changed their clothes, if they were through working.

Q. Some of them did, but didn't some of them go to the meeting wearing their aprons after they finished work?

A. If they had to work overtime. But I don't know what sections they were.

Q. That happened frequently, didn't it?

A. No.

Q. Did you ever do it yourself? A. No.

Q. But you knew of girls going to meetings after working hours, wearing their aprons, didn't you? A. Yes.

Q. How many meetings of the Donnelly Garment Workers' Union did you attend in 1937? That is the year when if was formed.

A. I don't know how many meetings I attended.

Q. You said the meetings were "fast and furious." What did you mean by that?

A. Don't you know what "fast and furious" means?

Q. Not as applied to meetings. Will you tell us your [fol. 6040] understanding of that?

A. We just had a lot of meetings, and I called it "fast and furious." We were called down kind of sudden like for the meetings.

Q. And these employees showed quite a bit of enthusiasm about those meetings, didn't they?

Mr. Langsdale: I object to that question as not proper cross-examination.

Mr. Hogsett: It has already been answered.

Mr. Langsdale: Then, I move that the answer be stricken out, because the question was not proper.

Mr. Tyler: I deny that the question isn't proper. The state of enthusiasm is a matter which, on the witness stand,—

Mr. Langsdale: This witness has not been examined in chief on that.

Mr. Tyler: She said "fast and furious." I have a right to inquire as to what she means by that.

Mr. Langsdale: Meetings called fast and furiously.

Trial Examiner Batten: Will you read the question and answer, please?

(Thereupon the last question was read by the reporter.)

The Reporter: And if there was an answer, I did not hear it.

Trial Examiner Batten: You may answer.

Mr. Langsdale: That, of course, opens up the floodgates.

[fol. 6041] Trial Examiner Batten: Irrespective of what it opens up, Mr. Langsdale,—

Mr. Langsdale: My objection is, it wasn't gone into on direct examination and is not proper cross-examination.

Trial Examiner Batten: Mr. Langsdale, you do not assume, do you, that we have been proceeding on the basis that you could only cross-examine with respect to matters which were brought out on direct?

Mr. Langsdale: Yes, I have been proceeding on that basis.

Trial Examiner Batten: I don't know of any ruling I made of that nature.

Mr. Langsdale: I think this is the first time it has been objected to on that grounds.

Trial Examiner Batten: You may answer.

A. Yes, at that time.

By Mr. Tyler:

Q. Now, when you told the girls in your section about the meeting of April 27, when the union was organized, did you tell them that they had to go to that meeting?

A. When we had meetings I told them there was to be a meeting. I didn't know it was going to be that—see? I just said, "Girls, there is to be a meeting."

Q. You just told them there was to be a meeting?

A. Yes.

[fol. 6042] Q. Did you order them to attend that meeting?

A. Well, when I told them to do anything, they did what I told them.

Q. Did the mere fact that you said, "There is to be a meeting of the employees," in your opinion amount to an order to attend it?

A. Well, the girls felt like I had the authority—I was given that authority. See?

Mr. Tyler: Now, I object—

Mr. Langsdale: Just a moment. He asked the question, and I suggest that he keeps still until she answers it, and then if he wants to move to strike out any part of it, all right.

Trial Examiner Batten: Just a moment.

Read the question and answer, please.

(Thereupon the last question and answer were read by the reporter.)

Trial Examiner Batten: Now, finish your answer.

A. (Continuing) The girls felt like I had the authority to tell them what to do, and when I said, "Do this," they usually did it.

Mr. Tyler: Now, I move that the answer be stricken out, because it doesn't state whether she felt she was giving the order, but only what she assumes the employees understood, which wasn't the question, and is a conclusion of the witness.

[fol. 6043] Mr. Langsdale: I submit, the answer is a perfect answer to his question. Certainly she has a right to judge from appearances and conduct of these people. And this is a pretty late day for Mr. Tyler to be talking about conclusions of the witness.

Mr. Stottle: Respondent objects because it is not responsive at all to the question.

Trial Examiner Batten: It may stand.

By Mr. Tyler:

Q. Did anybody tell you that you should order the girls to attend this meeting?

A. When I got those telephone calls and Mrs. Wherry come around and told me there was to be a meeting, and me tell the girls, isn't that— That was giving me that privilege, to tell the girls—I was to tell the girls.

Q. So that is what you were to do, tell the girls there was to be a meeting?

A. Tell the girls there was to be a meeting at a certain time.

Q. And that was all, wasn't it?

A. That was all—what?

Q. That you were to do, tell the girls there was to be a meeting.

A. That there was a meeting, sure.

Q. Now, on March 18, 1937—that is the date of the meeting at which Mrs. Reed talked—can you remember [fol. 6044] the girls that were present in your section on that day?

A. No, at the meeting, I couldn't remember all of them.

Q. No. Do you remember who were present in your section working that day?

Mr. Langsdale: That is the March 18 meeting?

Trial Examiner Batten: The question is, does the witness recall the names of the girls working in her section on March 18, the day Mrs. Reed made the talk. Is that right, Mr. Tyler?

Mr. Tyler: That is the question.

A. No, I don't remember the girls.

[fol. 6045] Mr. Tyler: Can you remember whether, on April 27, 1937, which is the date the Donnelly Garment Workers' Union was organized, whether Ida Mauk was working in your section that day?

A. Ida Mauk, she is a zigzag girl.

Mr. Reed: What was that answer? I couldn't hear it.

A. Ida Mauk worked for me.

Mr. Reed: I want the question.

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter.)

A. I don't remember whether she was there or not.

By Mr. Tyler:

Q. Can you remember whether Hazel Hawkins was working in your section on that day? A. No.

Q. Do you remember whether Anna Reece was working in your section on that day?

A. Well, there were other girls there, and I don't remember, some of them could have been working for me, the shirr girls.

Q. How about Ruth Strang?

A. She is the same.

Q. Well, my question is, do you remember whether or not she was working in your section that day? A. No.

Q. Lela Stevens?

[fol. 6046] A. No.

Q. By "no" you mean you do not remember?

A. That's right.

Q. Agnes Hutchinson?

A. No. I'll say this: I believe those girls worked there.

Q. Well, I am just asking if you remember whether they were there or not. Your statement is they might have been? A. Yes.

Trial Examiner Batten: Miss Witness, the question is, do you remember whether these people were there on that date? Now, as a matter of fact, do you remember whether anybody was there on that specific day?

A. Yes, some of them were.

Trial Examiner Batten: I mean by name. Can you name the people that were there on that day?

Mr. Langsdale: Is this April 27, the organization meeting?

Trial Examiner Batten: Yes.

By Trial Examiner Batten:

Q. In other words, can you name the people who were there on that day?

A. Yes, I can name some of them.

Q. At work? A. Yes.

Trial Examiner Batten: Well, proceed, Mr. Tyler.

Mr. Tyler: Go ahead and name the ones that you [fol. 6047] remember that worked in your section on April 27, 1937.

A. I have already said before that Ruby Clayton and Oma Lee Holloway and Edith Dean, and I think Ethel Riegel. I have said that before.

Q. How do you happen to remember those four?
A. And I told you why.

Mr. Langsdale: I object to that as repetition.

Trial Examiner Batten: Now, just a moment.

Trial Examiner Batten: You didn't tell Mr. Tyler why. The question from Mr. Tyler now is—I think it is repetitious, but you may answer the question.

A. I said before—

Trial Examiner Batten: Not as to Mr. Tyler, but repetitious when considering Mr. Hogsett's examination in connection with Mr. Tyler's. But you may answer the question.

Mr. Langsdale: Didn't the Examiner make a ruling it would be repetitious if asked by the intervener when already asked by the respondent?

Trial Examiner Batten: I haven't made any such ruling as that as yet. I have asked you all to avoid it, and perhaps in one or two instances I did feel that it was.

She may answer this question.

A. Well, as I have said before, Ruby hadn't been back very long and we were talking about things, you know, [fol. 6048] that happened, and like I said, Oma Lee comes to me about certain things, and I remember those girls.

By Mr. Tyler:

Q. Now, will you explain to me why the fact that Ruby hadn't been back very long enabled you to remember she was there on April 27?

A. Ruby had been ill.

Q. How does that help you to remember she was there on April 27, as distinguished from April 26 or April 30?

A. Well, I said she hadn't been back very long.

Q. How does that help you to remember she was there on April 27?

A. Well, I just remember that meeting, that meeting and—

Q. (Interrupting) I am asking about working in your section on April 27. How does that help you to remember she was working in your section on April 27?

A. Well, I said I didn't remember the dates; I remember the meetings at that particular time, and talking to her; she hadn't been back very long. That is what I said.

Q. And that is the only explanation you can give as to how the fact she hadn't been back very long, helps you to remember she was there in your section on April 27, 1937?

Mr. Langsdale: Just a moment. I object to the comment, "That is the only explanation you can give," because it is a perfect reason. She says she remembers talking to her on the day of that meeting.

[fol. 6049] Trial Examiner Batten: Of course, the question has been asked, and I think answered, wasn't it?

A. Yes.

Trial Examiner Batten: Was it not, Mr. Reporter?

The Reporter: No.

Trial Examiner Batten: Well, the reporter tells me it was not answered. Will you read the question to the witness?

(Thereupon the last question was read by the reporter, as follows:

"Q. And that is the only explanation you can give as to how the fact she hadn't been back very long, helps you to remember she was there in your section on April 27, 1937?")

Mr. Langsdale: Now, just a moment. I object to the question for the further reason it is an incorrect statement of her answer. She answered further she remembered talking to her.

Trial Examiner Batten: Well, you understand the question, Miss Witness, do you? If you do, you may answer. Do you want it read again?

A. No; that is all I can say, that I remember talking to her.

By Mr. Tyler:

Q. Now, that is Ruby you are talking about, that you remember talking to?

A. Those two girls I was talking about, Oma Lee and Ruby.

Q. Where was it you were talking to them on April 27?

[fol. 6050] A. In the section.

Q. What time of day was it?

A. I don't know, because we talk to the girls practically all the time, you know, showing them their work and giving them their work; we practically talk to them all day.

Q. Did you talk to those girls in the section that day?

A. Well, I gave them work, and different work was discussed, and they were instructed if they needed to be.

Q. The other girls whose names I have read to you, and whom you said you don't recall being present, might have been present in the section that day, so far as you know?

A. Yes, I might have had that whole row, you see, like I was talking before.

Q. Was Elizabeth Stone working in your section on April 27, 1937?

A. Well, she is a shirr girl, and I can answer the same way.

Q. By that you mean you don't know?

A. I don't remember for sure.

Q. Was Opal Chaney present?

A. That is the same answer, I don't remember.

Q. Would the answer be the same as to Ida Barton?

A. Yes.

Q. And Leona Sams?

A. That's right.

Q. Beatrice Fase?

[fol. 6051] A. That's right. I think I had all those girls at that time.

Q. That is really your answer as to all the girls in your section, that you think you had at that time?

A. I think I had them at that time, but they changed so many times.

Q. On April 27—

A. (Interrupting) And I had so many dealings with girls, I mean I worked with so many, but I don't remember any dates.

Q. You can't remember any of those girls as to the exact date in 1937?

A. You see, I had instructed those girls for some time.

Q. My question was, you can't be sure whether those girls were there in the section on any express date?

A. Those girls you read off.

Q. The answer would be the same as to Iva Andrus?

A. Yes.

Trial Examiner Batten: Mr. Tyler, what is the purpose of naming all those people if she don't remember, except the three she mentioned, and possibly the fourth one? What is to be gained by reading a list of names?

Mr. Tyler: I think the Examiner will see that what is developing is that she has a general belief that certain girls were present, but that she has no memory at all that any particular girls were present at a certain time. She be- [fol. 6052] lieves because they customarily were there, they were present at this time. That is what I am developing, but I don't think I should disclose it in advance.

* * * * * *

Miss Weyand: What was that last name you called?

Mr. Tyler: Iva Andrus, A-n-d-r-u-s (Spelling).

By Mr. Tyler:

Q. Would the same be true as to Goldie Spray?

A. No, I don't believe so.

Q. Nina Gilardi?

A. The same there.

Q. Grace Pardone?

A. The same there.

Q. And Anne Belan?

A. Belan—I might have had those girls. Like I said, I know I had a section, but I don't remember who the girls were. Like I said, I had many girls.

Q. Any one of them might have been absent any day in [fol. 6053] March 1937, without your now remembering it, is that it?

Trial Examiner Batten: April, isn't it, Mr. Tyler? Don't you mean April 27, 1937?

Mr. Tyler: I'll make it April.

Trial Examiner Batten: Well, you will make it April. Isn't that the date you have been talking about, April 27?

Mr. Tyler: Yes.

Trial Examiner Batten: That is what I thought you said.

Mr. Tyler: I'll make my question April. Is your answer the same?

A. Yes.

* * * * * *

[fol. 6054] Trial Examiner Batten: Let's go back to the question. It seems to me—I believe I don't understand that that is the present question.

(Thereupon the last question was read by the reporter, as follows:

"Q. Any one of them might have been absent any day in March 1937, without your now remembering it, is that it?")

Mr. Tyler: The question is the same, excepting April is inserted instead of March.

Trial Examiner Batten: Then it is my fault the question isn't clear. I asked you, don't you mean April 1937; so I may have given the witness the wrong impression; so I would suggest that you ask the question again, Mr. Tyler.

Mr. Tyler: Is it not a fact that any one of the girls working in your section might have been absent any day in April, 1937, without your now remembering what date she was absent?

* * * * * *

[fol. 6055] Trial Examiner Batten: Well, do you understand the question, Miss Witness? A. Yes.

By Trial Examiner Batten:

Q. Whether they were or might have been absent any one day during that month? A. Yes.

Q. Of April, 1937? A. Yes.

Trial Examiner Batten: You may answer.

A. Well, some of those girls may have been there, but the ones I am talking about were there, but I can't remember what girls weren't there on that particular day.

By Mr. Tyler:

Q. Now, when you say "there", where do you mean?

A. I mean at work.

Q. In your section? A. Yes.

Q. Now, let's go to the letter which was signed on March 2, and you remember—

A. (Interrupting) You mean that petition?

Q. (Continuing)—that was passed through your section? A. That petition you are talking about?

Q. Yes, that petition of March 2, 1937.

A. I don't remember the date, but I remember that petition.

[fol. 6056] Q. Was Thelma Brown working in your section that day? A. I don't remember.

Q. Was Margaret McArthur working in your section that day? A. I don't remember.

Q. Was Estelle Redena working in your section that day? A. Well, she could have been.

Q. Was Lela Stevens working in your section that day?

A. You named her once; she is a shirr girl.

Q. I am talking about March 2 now. We have been talking about April 27, but we are talking about March 2 now. Was she working in your section on March 2, 1937?

A. Well, she could have been. I don't remember.

Q. Was Anna Reece working there that day?

A. It could be; the same answer that way.

Q. That would be the same answer?

A. I don't remember.

Q. As to any girl that worked in your section that month, as to whether you are certain whether she was there on March 2, your answer would be, "I don't remember," would it?

* * * * * * *

A. Yes.

By Mr. Tyler:

Q. And would the same thing be true as to girls who [fol. 6057] worked in your section on March 30, 1937?

A. No, that wouldn't be true.

Q. You do remember some girls who worked in your section on the 30th day of March, 1937; is that correct?

A. Well, I ought to have had the same girls that I had.

Trial Examiner Batten: Well, the question is, Miss Witness, do you remember the specific names of the girls who worked in your section on the 30th day of March.

Trial Examiner Batten: Isn't that the question?

Mr. Tyler: Yes.

Mr. Reed: Or any of them.

By Mr. Tyler:

Q. I am not asking for your belief that it is probable that they worked there, because you think they generally did work in your section along about that time of that year. I am not asking for that.

I am asking for your exact memory as to whether you remember any specific girl who worked in your section on the 30th day of March, 1937.

A. Yes.

Q. Not that she probably might have, but did you actually remember any girl there?

A. That was two days after the meeting, and I think the girls worked for me then.

Mr. Tyler: Well, I ask that the answer be stricken out because again she is giving her impression as to what she [fol. 6058] thinks is probable.

Mr. Tyler: My question is: do you know of your own recollection of any girls whom you know were working in your section on the 30th day of March, 1937?

A. No. All I can say, is the same girls ought to have been working for me, that is, the girls that we have been talking about.

By Trial Examiner Batten:

Q. Well, Miss Witness, then you can't name the girls who reported to work to you on the morning of March 30, by name, can you? A. No, not all of them.

Q. Well, can you name any girl? A. No.

Q. Can you name any single girl that reported to you on the morning of March 30 to work in your section?

A. No, not now. I can't remember.

* * * * * *

[fol. 6059] By Mr. Tyler:

Q. You stated in your direct testimony that it appeared on the cards of the girls in your section that they were paid for time spent in attending meetings, is that correct?

A. What do you mean, "appeared on the cards"?

Q. That is what I am asking you.

A. Well, I said they were allowed on the cards.

Q. What words appeared on the cards indicating that?

A. It was just added down there, they just got so much for that meeting, and I don't think the meeting or anything was on the card, but we just had so much on the card added [fol. 6060] to their wages, and we were told that that was their allowance for that meeting.

Q. There was some figure?

A. Oh, there might have been some little something.

Q. Some amount of money stated on the card, is that correct?

A. Yes, just an allowance, you know.

Q. And there was nothing explaining what that allowance was for on the card?

A. I don't believe there was.

Q. Now, who told you that was an allowance for attending meetings?

A. Well, I don't remember who told me that, that particular thing, but we all—all we instructors were told that.

Q. You heard all instructors being told that, did you?

A. No, but we talked about it.

Q. You don't know that all instructors were told that?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You may answer.

A. No, I don't know they were all told.

By Mr. Tyler:

Q. You didn't hear them being told that? A. No.

Q. And you can't remember who told you that?

A. No.

[fol. 6061] Q. And you don't remember anything on the card indicating what this additional sum was for?

A. No.

Q. Are you sure there was an additional sum on the card?

A. Yes, it was added on because I was told that was what it was for, for the meeting, that the girls were going to be paid for the meeting.

Q. And how long did that continue?

A. I don't know.

Q. As long as you were there?

A. What time we had the meeting and went downstairs.

Q. That applied no matter what time the meetings were held?

A. Oh, no, that applied during working hours, when the girls lost time.

Q. And how many times did you see an additional sum put down on the cards in addition to their regular pay?

A. I don't know.

Q. Well, would you say it was a dozen or 20?

A. I wouldn't say. I will say I don't remember.

Q. You don't remember? A. No.

Trial Examiner Batten: Miss Witness, I was going to ask you a moment ago, you mean there was a time allowance or a money allowance?

A. A money allowance. It was just down there like they [fol. 6062] had given them—we will say the meeting lasted an hour and a half, or an hour, or maybe longer, well, they paid the girls for going to those meetings, they didn't lose their time.

By Mr. Tyler:

Q. When did you first notice that, Mrs. Dorsey?

A. Well, when we started to have those meetings.

Q. How did you happen to notice it at that time, do you remember?

A. I didn't notice it, they called my attention to it.

Q. Who called your attention to it?

A. I told you I didn't remember.

Q. Well, you told me you didn't know who told you they were paid for meetings.

A. Well, I don't remember who told me.

Q. But you don't remember who called your attention to it?

A. Whoever told me, that is what I mean by calling it to my attention.

Q. And that applied to both Loyalty League meetings and Donnelly Garment Workers' Union meetings?

A. I said all meetings.

Q. All meetings? A. Yes.

Q. When did the first of such allowances appear on the cards in your section, the first time it was put down, when was that?

[fol. 6063] A. I don't remember; when the meetings began.

Q. When did you first mention that to anyone?

A. Mention what?

Q. The statement that there was an allowance put on the cards for attending meetings?

A. Well, sometimes a girl would say, "Oh, another meeting," and I would say, "Well, now, you girls are going to get paid for this meeting," and they wouldn't care as long as they got paid, it was all right.

Q. And who authorized you to say that?

A. I told you I don't remember.

Q. You spoke of Mrs. Reeves telling you that the instructors were on a pedestal? A. Oh, no.

Q. I thought you used the words, "on a pedestal."

A. I did, but the instructor is not on a pedestal. I said that the girls—she said that the girls held us on a pedestal and we should act accordingly.

Q. When was that Mrs. Reeves told you that?

A. I don't remember. It has been a long time ago.

Q. You don't know whether it was when she was in charge of the plant or not? A. Why sure.

Q. That was when she was in charge? A. Yes.

[fol. 6064] Q. And that was a long time ago?

A. That is quite a long while ago.

Q. You mentioned that you remembered times when the girls came back from meetings in uniform, and the girls said, "Will you put our work away."

A. Yes.

Q. Does that mean they were through with their work when they came back from the meeting, and they weren't going to do any more work?

A. No, that meant it was time for them to go home. When we went down for this meeting, they left their work, it was a hurriedly called meeting and they left their work on their machines and went right on down to the meetings, and stayed so long, and then it was time for them to go home; and some of them said, "Dorsey, will you put my work away," and I said, "Go on home, I will put your work away."

Q. They were through with their work, except for putting it away?

A. No, they weren't through with their work, they finished it the next day.

* * * * * *

[fol. 6065] Q. Well, that is true, but if the girls came back upstairs, all they would have to do that night was to put the bundle away until the next day, isn't that right?

A. Yes.

* * * * * *

Q. You mentioned suggesting to some girls that they were not free, the girls were not free to talk in the presence of the instructor.

A. The girls weren't free? I didn't say they were not free; I said that we heard they didn't feel free to talk in the presence of the instructors.

Q. And you volunteered that instruction to the girls?

[fol. 6066] A. No, she asked me.

Q. I understood your testimony was that you said to her, "You girls aren't free to talk in the presence of the instructor."

A. No.

Q. And she said, "Yes, but I am willing to talk in your presence."

A. No.

Q. Well, will you correct me on that?

A. No, she asked me, she said, "Dorsey, who don't the instructors go to our meetings any more," and I said, "Well, Nina, I heard you girls didn't feel free to talk when the instructors were present;" and she said, "Well, maybe some of them don't, but it don't make any difference to me, I would."

Q. That is the way all the girls in your section felt?

A. No, they didn't. This particular girl felt that way.

Q. Will you state which particular ones were afraid to talk in your presence?

A. No, they didn't tell me. I just heard the girls talking.

Q. You didn't hear any one of them say she was afraid to talk?

A. I heard them, but I can't recall names, but this particular girl asked me that question, that is why I remember her.

[fol. 6067] Q. Well, isn't it the fact that particular girls said to you, "I feel afraid to talk if my instructor is present," or is it a fact that you heard a rumor that some of the girls felt that way?

A. I didn't hear no rumor, I heard girls talking.

Q. To you?

A. No, I heard it — you see, I just overheard conversations, but I can't say who the girls were.

Q. What were the conversations?

A. They just said they didn't think the instructors should be at those meetings.

Q. Is that all they said?

A. They said some of the girls wouldn't get up and talk if they were there; they said if they did the instructor would have it in for them, that they felt that way.

Q. How many times did you hear that?

A. I don't remember.

Q. And do you remember any of the girls that took part in the conversations?

A. No, I don't.

Q. Were you just passing by and heard that much of the conversation?

A. Well, I may have been. I don't remember now.

Q. What it adds up to is that you heard somebody make the statement that you have just said, in some conversa-

[fol. 6068] tion when you were passing by?

A. It might have been down to the lunch room when I was sitting there eating.

Q. Do you remember what year that was in?

A. I don't remember.

Q. And what place was it in?

A. Place?

Q. Yes.

A. I don't know what spot it was or place.

Q. And you don't remember any girl that was in the conversation?

A. No, because — well, I sort of felt that way myself, that the instructor didn't have any business being there.

Q. You mentioned that when Mrs. Reed made her statement in the March 18 meeting, you didn't blame her. What did you mean by that?

A. Well, I don't know whether that is March 18, whether that is the date or not, but at one meeting I said this, when she said she was not going to have any Dubinsky or any 'sky tell her how to run her business, I said I didn't blame her.

Q. You agreed with that, did you?

A. Yes.

Q. Do you still agree with it?

A. Yes, I did.

Q. Do you still agree with it?

[fol. 6069] A. Yes, I do.

Q. Did you attend any meetings of the Donnelly Garment Workers' Union, after July 1937?

A. I don't remember. I said I didn't attend very many meetings, so I don't remember.

Q. Did Mrs. Wherry give you any instructions about attending meetings, or telling the girls about meetings, after July 1937?

A. I don't remember.

Q. You think she may have?

A. No, I don't remember.

* * * * * * *

Trial Examiner Batten: Miss Weyand?

Redirect Examination.

By Miss Weyand:

Q. Weren't you mistaken about whether any representative of the International was at Mrs. Skeens' home Monday night, and wasn't Mrs. Blue there from a short time after the time we went into Mrs. Skeens' house until we left?

Mr. Lane: That is objected to as not proper redirect examination.

Trial Examiner Batten: She may answer.

Mr. Lane: And an attempt to rehabilitate her own witness.

Trial Examiner Batten: You may answer.

[fol. 6070] A. Well, I was just thinking. Let's see — well, I remember now that she was going to set out in the car, and you said "Miss Blue, you come on in with us." I do remember now, that's right.

Q. And she came in later, did she?

A. Yes, that's right; I am sorry.

Q. Do you remember whether Iva Andrus was working in your section around the time of the Sylvia Hull incident?

A. Yes, Iva was, because I remember her crying; yes, I remember that.

Q. And when you said you were through with work, did you mean you were through with the work before the meetings began or the girls were through when the meeting was over, because it was the end of the working hours?

. . . . . .

[fol. 6071] A. I mean the girls were not through with their work when they were called down to that meeting, and their bundles and their work was on the machines, and they asked me if I would put their work away, because after the meeting it was time for them to go home, they were anxious to go home, and I said, "You go on home, and I'll put your work away."

By Miss Weyand:

Q. And when did they ask you that, before the meeting or at the end of the meeting?

A. No, afterwards. Some of them, just like that, she said, "Dorsey, —" whoever the girls were, there were several of them — and when one asked you to do one thing, there are more that ask you to do the same thing.

Q. Do you remember anyone other than Lena Allison, who was your instructor when you were working in the Coca-Cola Building, and who was your instructor?

A. Yes, Rose Todd. She had charge of the sample room, [fol. 6072] and I worked in the sample room too. Yes, she was the instructor.

Q. Do you feel that you are unfriendly to Mrs. Reed?

A. No, I certainly don't.

Q. Do you feel that you are unfriendly to Mr. Baty?
A. No.

[fol. 6073] Recross-Examination.

By Mr. Ingraham:

Q. I believe you stated that there were allowances made to operator

Miss Weyand: I object to the question as not proper recross-examination.

Mr. Ingraham: Mr. Tyler asked her a question, as I understood, about being paid for the time that was spent in union meetings, and the witness answered that, yes, there were allowances made.

Trial Examiner Batten: I think on the other examination of this witness by Mr. Hogsett, he also, did he not, said something about that?

Mr. Ingraham: I don't believe so.

Trial Examiner Batten: Of course, if he didn't, he had the opportunity to.

Mr. Ingraham: Well, that was the first time the word "allowances" was used.

Trial Examiner Batten: Of course, in the direct testimony it was stated it was indicated on the card. Mr. Tyler, of course, brought out more of the details on it.

In this instance you may proceed, but after this let's confine it as nearly as possible,—.

By Mr. Ingraham:

Q. Will you state what allowances were made to operators, for what purpose?

[fol. 6074] A. What allowances?

Q. Yes.

A. Well, like I said, those meetings—they— When a girl loses time, she don't lose it on her own time; that is the allowance they pay.

Q. Was the allowance made for these meetings you have testified about the only allowances that were made to operators?

A. No. The girls get paid for machine time they have lost.

Q. Are there any other types of allowances that are made?

A. I know that the girls, whenever they lose time for meetings, or anything like that, they get paid for it.

Q. Do they get allowances if they do not make their minimum?

A. Well, their guarantee, you mean?

Q. Yes.

A. They are made up to that, yes.

Q. Now, outside of time lost on the machine and the money that is made up on the guarantee, what other types of allowances are made by the company?

A. Well, I don't recall any.

Mr. Ingraham: I will have this marked for identification—

Trial Examiner Batten: Incidentally, have you brought the other copy of the Judge Miller findings yet?

Mr. Ingraham: No. I will do that.

[fol. 6075] Miss Weyand: Have you brought the Tyler statement?

Mr. Ingraham: I will do that.

Miss Weyand: When can we have that?

Mr. Ingraham: This afternoon.

By Mr. Ingraham:

Q. If there is a mistake made in cutting of the particular part of the garment that the girl is working on and the girl loses time on that account, is she paid an allowance for that?

A. You mean, when it is somebody else's mistake?

Q. Yes.

A. If she loses a lot of time, more than a half an hour, that time is turned in by the instructor and is charged to that department.

Q. And if a girl has some repairs to make that are not her fault, are allowances made for that?

A. Well, usually all girls fix their own repairs, if they have time, and that is on their own.

Q. If, for some reason, it wasn't the girl's fault,—
A. You mean, somebody else's mistake?
Q. Yes.
A. Well, that's practically the same thing.
Q. Then, she would get an allowance for that?
A. She would get allowed her time it took to fix that over, yes.
Q. I will hand you respondent's exhibit No. 44 and ask [fol. 6076] if you will look at this document and state whether or not you worked in the sections shown on the document during the times stated. For instance, the first item would be November 1, 1925, to November 5, 1936. You were in section 415. Have you any recollection of that?
A. No, I don't remember it.

(Thereupon the employment card above referred to was marked "Respondent's Exhibit No. 44, Witness Dorsey," for identification.)

Q. Will you examine this document and look at the dates and see whether or not you worked in the sections listed in that column, being 523 or 415?

Mr. Langsdale: Is this the same document Mr. Hogsett apparently was reading from?

Mr. Ingraham: Yes.

Mr. Langsdale: Of course, it isn't proper recross examination. He had an opportunity to examine her about it then.

Trial Examiner Batten: I don't think it is either, but let's proceed and get through with this witness. And after this, let's not go back over these matters.

A. No, I couldn't say I remember it.

By Mr. Ingraham:
Q. Would you remember, in working in section 942—
A. Let me see that again.
[fol. 6077] Q. Yes. (Handing Respondent's Exhibit No. 44 to the witness.)
A. That's (indicating) 42.
Q. That is 1942. This is January 22, 1942. Did you work in section 942? A. You mean, notions?

Q. Yes.

A. I worked in the notions.

Q. Before that, in November, 1941, did you work in section 515? That was the period when you worked in the notions?

A. That was when I was a floor girl.

Mr. Langsdale: I would like to hear this clandestine conversation that is going on.

Trial Examiner Batten: Will you speak louder, both of you?

By Mr. Ingraham:

Q. Is that correct? A. In 515?

Q. Yes.

A. Yes, I worked just a short while in that 515 section. That is when I said I was a floor girl.

Miss Weyand: You had better look at those dates on that and—

Trial Examiner Batten: The question wasn't as to the dates. The question was, if she worked there.

Miss Weyand: He said, prior to that time. She had better look at the dates on this—

[fol. 6078] Mr. Reed: I submit, that is hardly proper, for counsel to tell her own witness that she had better do this or that when she is on the witness stand. I object to that sort of practice.

Trial Examiner Batten: You may proceed with your questions, Mr. Ingraham.

By Mr. Ingraham:

Q. Prior to the time you worked in 515 did you work in 531?

A. Like I said, I've been changed around so much, I just can't remember.

Q. Would you say you did not work in 531?

A. I don't remember the dates—see? I've worked around, in 531, and— Oh, I've worked around in so many sections, and they change so much all of the time, I don't remember.

Q. Did you ever work in 518? A. Yes, I have.

Q. Do you recall whether or not you worked in 518 from November, 1936, to August, 1937?

A. No. I think that was when I was up on the eighth floor.

Q. Would you say you were not in 518?

A. I would say I was up on the eighth floor, in 515.

Q. Where was 518?

A. Oh, I don't know right now. They changed them around.

Q. Wasn't 518 always on one particular floor?

A. No. They changed those special sections around. That is a special section.

[fol. 6079] Q. What section did you work in when you worked on the seventh floor? A. On the seventh floor?

Q. Yes. A. 515.

Q. 518, you mean?

A. 515. That was on seventh.

Q. Was 518 on seventh?

A. I don't remember.

Mr. Ingraham: Respondent offers in evidence respondent's exhibit No. 44.

Trial Examiner Batten: There is no objection?

(No response.)

It will be received, subject to, of course, some further identification as being a part of the respondent's records.

Mr. Ingraham: Yes.

(Thereupon the employment card above referred to, previously marked for identification "Respondent's Exhibit No. 44, Witness Dorsey," was received in evidence.)

Mr. Tyler: Did you ask to have it marked for identification?

Mr. Ingraham: It has been, exhibit No. 44.

Mr. Langsdale: Will that be photostated, as other exhibits?

[fol. 6080] Mr. Ingraham: Yes.

Mr. Langsdale: And copies furnished to all of the parties?

Mr. Ingraham: Yes.

That is all.

Trial Examiner Batten: Mr. Tyler?

Mr. Tyler: That is all.

Trial Examiner Batten: Miss Weyand?

Redirect Examination.

Miss Weyand: Do you know whether or not the section number which appeared on your check stub was always the same section in which you had been working for the period of the check?

Mr. Ingraham: Now, I object to that. It isn't proper re—rebuttal—redirect examination.

Trial Examiner Batten: Of course, I think this is as proper re—rebuttal as part of your examination was re—recross, Mr. Ingraham.

You may proceed.

A. Well, if I understand what you mean, the—like our time card and our check card is the same?

By Miss Weyand:

Q. Do they always agree with the section you were working in at the time you were working there?

A. No, not always. Sometimes I would change and my time card isn't changed until a period of time—it just don't make any difference—just sometime—I guess just when the office gets time to change it.

[fol. 6081] Q. What is the longest period you remember ever working in one section?

A. The longest period? Perhaps 415 was my longest period in several years, but I don't remember how long. Like I say, it changed around.

Q. You mentioned seasons in the business. Can you explain how that affected what section you worked in?

A. Yes. Like the hemstitching season. On the spring line and the summer line we had a lot of hemstitching, and the zigzagging, and lace work—I didn't say that before, but I am saying it now—that's seasonal. And when they get the amount of work they was going to cut through, then that's the season—that's over—see?

Trial Examiner Batten: Miss Weyand, was there anything in Mr. Ingraham's last examination about a season?

Miss Weyand: This all pertains to the state of that card—

Trial Examiner Batten: It pertains to it, but—I will permit you to proceed, but when you are through with this witness I have a suggestion to make.

Miss Weyand: When he put that card in, I think it is material to show—

Trial Examiner Batten: Well, proceed.

By Miss Weyand:

Q. When new lines came in that required new special machine operations, would that change the section in which [fol. 6082] you worked?

A. Sometimes, yes.

Q. How short a time were you sometimes in a given section? A. How short a time?

Q. Yes.

A. What was that question?

Q. How short a time would it be, a few weeks sometimes, you would be in a section, and then be changed to another section a few weeks later?

A. Yes, sometimes.

Q. Did that happen around 1936, 1937, and 1938?

A. Yes. The changes were made— Just like, as I said before, the special section has just always changed like that.

* * * * * *

[fol. 6083] Miss Weyand: I would like to ask Mr. Ingraham, first, whether he has brought the list of retainerships in which Mr. Tyler appeared.

Mr. Ingraham: Yes.

* * * * * *

[fol. 6084] Trial Examiner Batten: That list you were going to show to me, Mr. Ingraham,— I think I asked to see it before you presented it.

Mr. Ingraham: Yes. (Handing document to Trial Examiner Batten.)

Miss Weyand: This is a complete list of all of the matters in which Mr. Tyler or any member of the firm of Gossett, Ellis, Dietrich & Tyler—or whatever its name was during the various periods—appeared on behalf of Mrs. Reed or the Donnelly Garment Company or the Donnelly Garment Sales Company; is that correct?

Mr. Ingraham: That is correct.

Trial Examiner Batten: Of course, in view of your question at this place in the record, Miss Weyand, I presume we had better clear this matter up.

Miss Weyand: I would like to examine it further. I just wanted an exact statement of what it purported to be, so that I would know in examining it just what it purports to be. I would like to examine it further before making any comments about it.

Trial Examiner Batten: I was going to say, it goes down to 1932, and, of course, unless there is some question concerning the correctness of it, I don't think there is anything here that is material to the issues in this case.

Have you any objection, Mr. Ingraham, if counsel see it?

[fol. 6085] Mr. Ingraham: No.

Miss Weyand: I would like to examine it and decide later if I want to use it in connection with some other matters.

(Thereupon the document above referred to was handed to Miss Weyand by Trial Examiner Batten.)

By Miss Weyand:

Q. Mrs. Dorsey, I am going to hand you respondent's exhibit No. 44 and ask you whether from November 9, 1936, until July 30, 1937, you worked in section 518.

A. No, not all of that time, because in March and April I was upon the eighth floor, in 415.

Q. Do you recall when you went up in 415?

A. Do I recall the date?

Q. About what time it was?

A. No, I don't recall the date.

Q. But you had left the seventh floor and gone up to the eighth floor before March and April of 1937; is that correct?

A. That's right.

. . . . . .

Recross Examination.

By Mr. Hogsett:

Q. Now, apropos of that last series of questions, I hand you four pay checks issued by the Donnelly Garment [fol. 6086] Company to Etta Dorsey, on the dates of March 16, 1937, April 1, 1937, April 16, 1937, and April 30, 1937, calling your particular attention to the endorsements on the back of each of the four checks, and ask you if those are your endorsements and—

. . . . . .

By Mr. Hogsett:

Q. (Continuing) —and ask you whether you identify those endorsements as yours, and whether you identify those pay checks as pay checks cashed by you on the dates shown by the bank cancellation stamp on each check.

(Thereupon the pay checks referred to in the last question were handed to Mr. Langsdale and Miss Weyand by Mr. Hogsett, and, following Mr. Langsdale's and Miss Weyand's perusal, were handed to the witness by Mr. Hogsett.)

A. That's my signature (indicating on pay check).

Mr. Hogsett: Just look at each of the four, please, and then one answer can cover all.

. . . . . .

A. That's right. That's my signature (indicating on pay check).

[fol. 6087] Mr. Hogsett: And when you say, "That's my signature," you mean the endorsement on each of the four checks which I am holding in my hand is your signature—each endorsement is?

Trial Examiner Batten: Mr. Hogsett, if you will have them marked for identification, she can testify to them by the numbers on them.

Mr. Hogsett: All right.

Trial Examiner Batten: Those will be, I believe, 45-A, 45-B, 45-C, and 45-D.

* * * * * * *

Mr. Hogsett: I hand you respondent's exhibit No. 45-A, being the pay check of March 16, 1937, and ask you if you identify that endorsement as yours.

* * * * * * *

A. That's my signature.

Mr. Hogsett: I offer that in evidence.

[fol. 6088] Mr. Hogsett: I hand you respondent's exhibit No. 45-B, and ask you if you identify the endorsement on that as your signature.

A. That's right.

Mr. Hogsett: I offer in evidence that exhibit.

Q. I hand you respondent's exhibit No. 45-C, and ask you if you identify the endorsement on that exhibit as your signature.

A. Yes, that's mine.

Q. I hand you respondent's exhibit No. 45-D, and ask you the same question with respect to that endorsement.

A. That's my signature.

Mr. Hogsett: I offer in evidence respondent's exhibits Nos. 45-A to 45-D, inclusive.

Trial Examiner Batten: No objection?

(No response.)

They will be received.

* * * * * * *

By Mr. Hogsett:

Q. I note on each of these checks that certain numbers appear above your name. Do you note that? It is 487-09-5709. Do you note that on each check—this (indicating on check)?

A. Yes.

Q. That is your social security number, is it not?

[fol. 6089] A. That's right.

Q. I notice on the line immediately following the payee's name on each check appear these figures (.15 - .07). You see that?

A. Yes.

Q. Now, those indicate what?

A. Insurance.

Q. Insurance and— Something else?

A. Old age pension.

Q. In other words, those were deductions which the company made from the amount actually due you; is that right?

A. That's right.

Q. Now, I notice ahead of the name, the payee, on each of the checks, appear these figures, 95.518. You note that on each one, don't you?

A. Yes.

Q. 95 was your instructor's locker number, wasn't it?

A. Yes, it was my number.

Q. Or, rather, your time clock number? I misstated myself there.

A. Yes.

Q. That is what the 95 means?

A. Yes.

Q. What does the 518 mean?

A. 518 means the section.

[fol. 6090] Q. Exactly. So, according—

Mr. Langsdale: Just a moment. I move that the comment "Exactly" be stricken out.

Trial Examiner Batten: Of course, there is no question.

Mr. Langsdale: No.

Trial Examiner Batten: It may be stricken.

Mr. Hogsett: So, on each check, your own pay check for each of these semimonthly periods records you as having time clock number 95 and section number 518—yes or no? Is that right?

Miss Weyand: They speak for themselves, I think.

Mr. Hogsett: Well, is that true?

Trial Examiner Batten: The witness may testify to them.

A. Yes.

* * * * * *

[fol. 6091] Mr. Hogsett: Please give me the names of the persons present at Mrs. Skeens' home on Monday evening.

* * * * * *

[fol. 6092] A. Mrs. Skeens, Miss Weyand, and myself, and Miss Blue—I believe it is—and this lady (pointing to Miss Boyls).

* * * * * *

[fol. 6093] LOLA SKEENS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Miss Weyand:

Q. Will you please state your name?

A. Lola Skeens.

[fol. 6094] Q. Where do you reside?

A. 4812 West Fifty-second, Mission, Kans.

Q. When did you begin to work at the Donnelly Garment Company?

A. September 21, 1922.

Q. How long did you continue to work at the Donnelly Garment Company?

A. I worked there 17 years, with 2 years out when my son was born.

Q. What was the approximate date of those 2 years out?

A. Well, I left there—I think it was September 1, 1931, and I couldn't tell you just for sure when I came back.

Q. That was when you started the 2 years out; is that correct?

A. Yes.

* * * * * *

By Miss Weyand:

Q. When you first went to work for the Donnelly Garment Company what kind of work did you do?

A. The first three weeks I was on a machine.

Q. What did you do next?
A. I gave out repair work.
Q. For how long?
A. I don't know for sure. Two or three months, I should say.
[fol. 6095] Q. What did you do next?
A. Instructed.
Q. How long did you continue to be an instructor?
A. From then on.

By Trial Examiner Batten:
Q. Until when? When did you leave there?
A. When did I leave there?
Q. Yes.
A. September 19, 1941.

* * * * * *

By Miss Weyand:
Q. What section were you the instructor of in March and April of 1937?
A. 413.
Q. On what floor was that located?
A. Eighth floor.
Q. Do you know Sally Ormsby?
A. Yes, I do.
Q. Did she work in your section in 1937?
A Yes.
Q. Do you know whether she held any position in the Donnelly Garment Workers' Union?
A. She was a representative for the operators.

* * * * * *

[fol. 6096] By Miss Weyand:
Q. And she was in your section at the time she was representative for the operators; is that correct?
A. Yes.
Q. Do you know of any occasions upon which she went to Mr. Tyler's office or attended to business of the Donnelly Garment Workers' Union during working hours?

Mr. Hogsett: Objected to as not rebuttal of anything in the respondent's case.

Miss Weyand: I maintain it is rebuttal of Mrs. Reed's testimony that there was no support given to the Donnelly

Garment Workers' Union, and I intend by this witness to show that there was support given.

Mr. Hogsett: Which is a part of the Board's case in chief, clearly. No witness, in other words, for the respondent, so far as I am informed, has testified that Sally Ormsby did not or did go to see Mr. Tyler during working hours. In other words, our case did not include that, so this is not rebuttal of any part of our case.

Miss Weyand: I also maintain it is in rebuttal because it explains certain evidence offered by the company and the intervener in respect to the journeys of employees to see Mr. Tyler preparatory to forming the union.

[fol. 6097] Mr. Hogsett: All of which was a part of the Board's case in chief.

Miss Weyand: It was entirely new matter Mr. Tyler raised here. It was never the company's contention before that there had been a committee appointed at the meeting of March 18. For the first time, on this remand witnesses for the company testified that such a committee was appointed at that meeting, and it is certainly rebuttal at this time to explain that which was never maintained by any of the company's or intervener's witnesses prior thereto.

Mr. Hogsett: Now, I have the belief that counsel is wrong. I think I recall reading such testimony as having been given by Rose Todd at the 1939 hearing.

Mr. Langsdale: Mr. Hogsett is wrong. Rose Todd's testimony was just to the contrary. In addition to that, the intervener filed an offer of proof signed by some 20 people, which they evidently have overlooked at this hearing, to the contrary, and that is that Rose Todd, Sally Ormsby, and Hobart Atherton went to see these attorneys on their own and without a suggestion from anybody. That is one of the offers of proof they have in this case.

Now, they come forward at this hearing with some entirely different theory and some new witnesses who say there was a committee appointed at the March 18 meeting.

Trial Examiner Batten: Well, I wouldn't attempt to [fol. 6098] remember the testimony. So, you may proceed.

Trial Examiner Batten: You may answer.

Mr. Reed: Now, that embraces more than whether she went to his office. The question is, whether she knows of any occasion when she went to his office or attended to business of the union on company time. Now, that is not in rebuttal of anything we have put in this case.

Trial Examiner Batten: You may answer.

A. She did go, because she would come back and give me her time and ask me to make out her time ticket.

By Miss Weyand:

Q. Did you make out her time tickets?

A. Yes.

Q. And was she so paid?

A. Yes.

Q. And was that true every time she left work to go to see Mr. Tyler?

[fol. 6099] A. During working hours, yes.

Q. Did the time tickets show what she was doing?

A. Yes, they did for a while.

Q. Did you write it on?

A. I wrote on it, "For union meeting."

Q. Did you do that on all occasions?

A. I did at first, and then Miss Todd came to me and asked me not to put that on. And I asked her what I should write, and she said just to put it under "Miscellaneous" and they would understand.

Q. And did you follow Miss Todd's direction?

A. Yes, I did.

Q. Do you know Hazel Saucke?

A. Yes.

Q. Did she ever work in your section?

A. She did.

Q. Do you know Lois Barnes?

A. Yes.

Q. Did she ever work in your section?

A. Yes.

Q. Did you know Lydia Phillips?

A. Yes.

Q. Did she ever work in your section?

A. She did.

Q. Did you attend the meeting at which the Donnelly [fol. 6100] Garment Workers' Union was organized?

A. I did.

Q. Did you know before you got to that meeting that a union was going to be formed at the meeting?

A. I did.

Q. How did you learn of that meeting?

A. Mrs. Wherry told me.

Q. Do you know how the girls working in your section learned of the meeting?

A. I told them.

Mr. Ingraham: May respondent have a continuing objection to this line of questioning?

Trial Examiner Batten: Yes.

Mr. Hogsett: As not rebuttal.

Trial Examiner Batten: I presume it is upon the same grounds stated as to the previous witness.

Mr. Ingraham: Yes.

Mr. Hogsett: That's right.

By Miss Weyand:

Q. At what time of day was the meeting held?

A. I'm not sure what exact time. It was around 2:30, I think.

Q. Did the girls in your section wear their uniforms to the meeting?

A. Yes.

[fol. 6101] Trial Examiner Batten: Keep your voice up. When you were there in the plant, with machines running, and you had to talk to the girls, didn't you talk louder than that?

The Witness: I guess so.

Trial Examiner Batten: Well, try to talk louder here.

By Miss Weyand:

Q. Did you go to the meetings with the girls in your section?

A. Yes, I did.

Q. Did you sit with them at the meetings?

A. Part of them.

Q. Were the girls in your section paid for the time they spent at that meeting?

A. They was.

Q. Was an entry made on the girl's card to show she was to be paid?

A. There was.

Q. Did you see that entry?

A. Yes.

Q. Did the girls know before they went to the meeting that they would be paid for the time they spent there?

Mr. Reed: Wait a minute.

A. Not the first meeting.

Trial Examiner Batten: Senator?

Mr. Reed: I wanted to object to it, because—

Mr. Hogsett: She said, "Not the first meeting."

[fol. 6102] Mr. Reed: She did not? I couldn't hear it.

Mr. Langsdale: What was the question and answer?

Trial Examiner Batten: Read the last question and answer, please.

(Thereupon the last question and answer were read by the reporter, as follows:

"Q. Did the girls know before they went to the meeting that they would be paid for the time they spent there?

"A. Not the first meeting.")

Miss Weyand: Did they as to later meetings?

Mr. Reed: I object to that as calling for a mere conclusion and not giving us the benefit of any facts that may exist.

Trial Examiner Batten: You may answer.

Mr. Reed: Mere opinion.

A. As to later meetings?

By Miss Weyand:

Q. Yes. A. They knew then they would be.

Q. Did you ever hear of the employees raising a fund to pay Mr. Tyler a retainer fee prior to the meeting at which the Donnelly Garment Workers' Union was organized? A. No.

Trial Examiner Batten: You will have to speak louder, Mrs. Skeens.

The Witness: No.

[fol. 6103] Miss Weyand: Do you know whether the company intended for instructors to go to meetings of the Donnelly Garment Workers' Union along with—

Mr. Hogsett: Objected to.

Trial Examiner Batten: Just a minute. Did you get the question, Miss Reporter?

The Reporter: No.

Trial Examiner Batten: Will you read it as far as—

The Reporter (Reading): "Do you know whether the company intended for instructors to go to meetings of the Donnelly Garment Workers' Union along with—"

Miss Weyand: (Continuing) —with the girls in their sections?

Mr. Hogsett: Objected to as calling for an opinion and conclusion of the witness.

Trial Examiner Batten: You may answer.

A. Yes.

Miss Weyand: How do you know that?

A. That we were supposed to go with them? We supposed we were.

Q. Did you join the Donnelly Garment Workers' Union?

Mr. Hogsett: Wait a minute. Pardon me. If you have left that subject,—

Miss Weyand: Yes.

Mr. Hogsett: I move to strike out the answer of the [fol. 6104] witness, that the company knew that instructors were [go] to union meetings.

Miss Weyand: I didn't ask whether the company knew that instructors were to go to union meetings.

Mr. Tyler: I move—

Mr. Hogsett: Wait a minute, please, until I get through.

Trial Examiner Batten: Will you read the next to the last question and answer, and the last question and answer—the last two?

(Thereupon the last two questions and answers were read by the reporter, as follows:

"Q. How do you know that?

"A. That we were supposed to go with them? We supposed we were.

"Q. Did you join the Donnelly Garment Workers' Union?")

Mr. Hogsett: Now, I move to strike out the answer of the witness to the effect that the company intended instructors to attend union meetings, because when the witness is asked how she knew that, she expressly shows that what she says is knowledge is mere supposition.

Trial Examiner Batten: Well, I will not strike it out, Mr. Hogsett, because I think the next question and answer indicate clearly what basis there was for her prior answer.

Mr. Hogsett: And show it to be supposition and not knowledge.

Trial Examiner Batten: Well, I don't know as I am in-
[fol. 6105] dicating what I think it is. I think it is obvious to anybody who reads the two questions and answers what foundation there is for the prior answer. The record may stand as it is.

Miss Weyand: When Mrs. Wherry told you there was going to be a meeting, did you think she meant for you to go to the meeting?

Mr. Reed: Now,—

A. Yes. She told me we were to go with the girls.

By Miss Weyand:

Q. Do you remember how the second, third, fourth, and following meetings of the Donnelly Garment Workers' Union, held shortly after the organization meeting, were called? A. You mean, how we were notified?

Q. Yes.

A. I couldn't be sure. Mrs. Wherry told me part of the time, and part of the time I got it by phone from the operators.

Q. How were the girls in your section notified?

A. I took one row and told them, and my floor girl told the other row.

Q. Were some of those meetings during working hours?

A. All of the first ones were.

Q. Were the girls paid for the time they spent at those meetings? A. They were.

Q. Did the girls wear their uniforms to those meetings?

A. Yes.

[fol. 6106] Q. Did you go with them to those meetings?

A. Yes.

Q. Did you regard yourself as a supervisory employee?

A. Yes.

Q. Why? A. Well, because I was in charge of them.

Q. Do you know whether the girls in your section regarded you as their supervisor?

A. I think they did.

Q. What were your duties as an instructor?

A. To plan the work and to give out work and to instruct them.

Trial Examiner Batten: Will you keep your voice up, please, as much as you can?

Mr. Ingraham: Could I have the answer read, please?

Trial Examiner Batten: Yes.

(Thereupon the last answer was read by the reporter.)

By Miss Weyand:

Q. Did you go over the pay roll cards weekly with the office? A. Yes.

Q. And you continued doing that the entire time you were an instructor prior to July 15, 1939; is that correct?

A. Yes.

Q. Was the thread girl in charge during periods when you were absent for an hour or two?

[fol. 6107] A. She was.

Mr. Reed: I couldn't hear the question.

Trial Examiner Batten: Read the question and answer, please.

(Thereupon the last question and answer were read by the reporter.)

By Miss Weyand:

Q. Did you consult with your thread girl with respect to assignment of work? A. Yes.

Q. Did the duties of the instructor change at any time prior to July 15, 1939? A. No,

Q. Did the duties of the thread girl change at any time prior to July 15, 1939? A. No.

Q. What was the position of Lena Tyhurst in 1937?

A. I don't know exactly. She was to see that the work went out all right. I don't know just what her—

Mr. Reed: We can't possibly hear.

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the last answer was read by the reporter.)

Trial Examiner Batten: You hadn't finished?

A. (Continuing) Well, I don't know what she was supposed to be.

Miss Weyand: Was she over the instructors?

[fol. 6108] Mr. Lane: That is objected to for the reason that the witness has said she doesn't know what Lena Tyhurst did.

Trial Examiner Batten: You may answer.

A. Mrs. Wherry was over the instructors in 1937.

By Miss Weyand:

Q. You didn't regard Lena Tyhurst as also above the instructors?

A. I think she was above the instructors, but I don't think she was in charge of them.

Q. Did she have a supervisory position?
A. I think so.
Q. You don't think so? A. I do think so.
Q. Do you know what Mrs. Gray's position was in 1935?
A. I think she was in charge of the store.
Q. Do you know what Marvin Price's position was in 1937? A. No.
Q. Do you know what Stella Willis's position from 1935 to 1939 was? A. Instructor.

Mr. Reed: I can't hear.

Trial Examiner Batten: Instructor.

By Miss Weyand:
Q. Do you know in what section she was instructor?
A. Button and buttonhole.
Q. Did you know Sylvia Hull? A. Yes.
[fol. 6109] Q. Where did she work? A. Where?
Q. Yes. A. When?
Q. In April of 1937. A. In section 412.
Q. What floor was that on?
A. Eighth floor.
Q. Where was that section located with respect to your section?
A. Well, if was in the southwest corner of that floor.
Q. Where was your section located?
A. In the center, on the east.
Q. Did your sections touch at the corners?
A. No. There were bins, and the inspectors were in between.
Q. What section was to the south of your section?
A. Section 411.
Q. And that was the southernmost wall of that floor?
A. On the southeast.
Q. And what section was at the north of your section?
A. 415.
Q. And those were the only sections along the west wall of the building; is that correct? A. The east wall.
Q. Along the east wall of the building; is that correct?
A. Yes.
[fol. 6110] Q. Do you remember the last day that Sylvia Hull worked for the company? A. Yes.
Q. What happened that day?

Mr. Hogsett: Objected to as not rebuttal.

Trial Examiner Batten: You may answer.

A. Well, I just know there was an awful commotion. The girls had read in the paper where she was a representative for the union, and the girls came from all floors—went over there. I didn't go over, so I don't know what happened.

By Mr. Weyand:

Q. How long did it go on?

A. I don't know exactly.

Q. Can you approximate it?

A. Well, it must have been an hour or more.

Q. Did some of the girls from your section go over to Sylvia Hull's machine?

A. They went over—I don't know whether they went to the machine or not. They went over on that side.

Q. Did you see any supervisory employees from any other floor up there?

A. Just one, that I can recall.

Q. Who was that? A. Mrs. Bogart.

Q. What floor was she on? A. Five.

[fol. 6111] Mr. Lane: That is objected to, and I move to strike the answer for the reason that it is a mere conclusion of the witness.

Trial Examiner Batten: It may stand.

Miss Weyand: Did Sylvia Hall ask for Mrs. Wherry?

A. Mrs. Wherry told me she did.

Mr. Reed: Now, I move to strike that answer out as merely hearsay—

Trial Examiner Batten: It may stand.

Mr. Reed (Continuing): —and not a proper answer to the question.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. Was Mrs. Wherry on the eighth floor at any time that morning?

A. She was, early that morning.

Q. Was she there when the Sylvia Hull commotion was going on? A. I didn t see her.

Q. Did Mrs. Wherry tell you anything about the Sylvia Hull commotion?

Mr. Lane: Objected to as hearsay.

Mr. Reed: And not rebuttal.

Trial Examiner Batten: You may answer.

A. Mrs. Wherry told me Sylvia sent for her but that she didn't go.

By Miss Weyand:

Q. Do you remember a meeting of the employees at which Mrs. Reed spoke in March of 1937?

[fol. 6112] A. Yes.

Q. How did you learn that meeting was going to be held?

A. Well, either by phone or Mrs. Wherry told me, I don't know which.

Q. What time of day was that meeting held?

A. It was during working hours, but I don't know the time exactly. It was in the afternoon.

Q. Did you attend the meeting? A. Yes.

Q. Did the girls in your section wear their uniforms to the meeting? A. Yes.

Q. Were they paid for the time they spent at the meeting? A. Yes.

Q. Did you see the entries on their cards in that respect? A. Yes.

Q. What did Mrs. Reed say at that meeting, that you can recall?

A. All that I can recall is what she said about she wasn't going to have any Dubinsky or any other "sky" tell her how to run her business, that she would stay by us girls if we would stay by her.

Q. I hand you I. L. G. W. U.'s exhibit No. 10, which appears in the Circuit Court of Appeals record at page 5961 and also 5375, and ask you whether that petition was [fol. 6113] passed through your section?

A. It was.

Q. Did you sign it at the time it was passed through your section? A. No.

Q. Did you know at the time it was passed through your section that it was being passed?

A. I seen it being passed.

Q. Were you a member of the Loyalty League?

A. Yes.

Q. Who organized the Loyalty League?

A. Mrs. Gray.

Q. Were you present at the meeting at which the Loyalty League was organized? A. Yes, I was.

Q. Where was that meeting held?

A. I'm not sure whether— It was the second floor, I think. I'm not positive. It was on one of the vacant floors.

Q. It was in the building where the company had its plant? A. Yes.

Q. Who presided at that meeting?

A. Mrs. Gray.

Q. Did the Loyalty League continue to exist after the Donnelly Garment Workers' Union was formed?

A. I think it did. We didn't hear so much of it then. [fol. 6114] Q. Did you attend meetings of the Loyalty League after it was organized? A. Yes.

Q. Where were those meetings held?

A. In the building.

Q. At what time of day were they held?

A. I don't remember.

Q. Were they during working hours or after working hours?

A. I know the first one was during working hours. I don't remember about the—

Q. Were the girls paid for the time they spent at the first meeting? A. Yes.

Q. Do you know whether after the International Ladies' Garment Workers' Union began its efforts to get girls at Donnelly's to join the International the company had any policy with respect to hiring union members?

Mr. Tyler: We object to that. It is far beyond anything that could possibly belong in rebuttal, and, moreover, it calls for a conclusion of the witness about what the company intended. Our objection is that this is far beyond the limits of rebuttal and it belongs in the Board's case in chief, if it has a place here at all. The question calls for a conclusion of the witness.

Mr. Reed: And mere speculation.

[fol. 6115] Miss Weyand: I am offering it in rebuttal of statements of Mrs. Reed, at pages 3314 and 3315 of the record in the present hearing, where she stated there was no such policy and that the company had always employed many union members.

Mr. Reed: I want to call again the attention of the Examiner to this: As far as Mrs. Reed's testimony is concerned, it wasn't given before, for reasons we all understand, and when it was admitted here it was admitted as a part of the continuance of that case that was then tried, and it should have been rebutted at that time.

Miss Weyand: It couldn't have been rebutted at that time, because she wasn't present at that time.

Mr. Reed: To be treated now as though it was given at that time, as a part of the hearing on the main case, when all of the matters she has referred to of any importance were brought out by other witnesses at that time, and the prosecution had full opportunity at that time to reply to them. If there was any discrimination, it was by the company and not by Mrs. Reed.

Trial Examiner Batten: Certainly it isn't rebuttal unless it comes under Mrs. Reed's testimony, Miss Weyand. Does it?

Miss Weyand: I am claiming it comes under Mrs. Reed's testimony—not rebuttal as to anything else.

Mr. Tyler: I suggest, the mere fact that Mrs. Reed may have mentioned something about a matter that was fully [fol. 6116] gone into in the prosecution's case in the first hearing or that any other witness has mentioned such a matter does not make that a subject of rebuttal, because, otherwise, everything in connection with the case would become rebuttal. The fact that Mrs. Reed added something to what was already testified to in the original hearing does not make that a subject of rebuttal.

Trial Examiner Batten: Except that Mrs. Reed is the managing head of this company, and if it has any place here at all, it would be following her testimony.

Mr. Tyler: I submit, the evidence is what determines whether it is rebuttal or not, not the position of the person who refers to it. And the evidence has been fully gone through.

Trial Examiner Batten: Of course, that is true, under ordinary circumstances, Mr. Tyler. If I hadn't made the error which apparently I made in the first hearing and had received all of the testimony, no one can tell what might have been the situation. And had Mrs. Reed testified in the first hearing, perhaps no one can tell what the result might have been.

She may answer the question.

Mr. Reed: I want to call attention to the fact that the Board stated in its decision, and ordered and found that the company had an antiunion attitude prior to the time the Wagner Act came into effect in July 1935, and they [fol. 6117] continued to find that down to the date of the hearing. Now, that was then an issue. It was gone into and evidence was introduced on it.

Now, you permitted Mrs. Reed to testify in this case, at this hearing, because she couldn't be at the other hearing. If that reopens the whole case, then this is not a matter of rebuttal at all but of retrial.

Mr. Tyler: And in that case—

Trial Examiner Batten: Of course, Senator, in your recent statement there, I think you have something. In other words, if Mrs. Reed's testimony, because it was given in this hearing, opens up the whole subject matter, then, of course, there may be no limit to which we might go.

What do you think of that, Miss Weyand?

I am inclined to believe that that is more or less correct. In other words, was there anything Mrs. Reed didn't testify about, and if so, then any matter now is material?

Miss Weyand: Well, I think it would be within the discretion of the Trial Examiner to allow any matter to explain or contradict anything Mrs. Reed said which is not a repetition of evidence given in the Board's case in chief.

However, it is not my intention to bolster up matters which we knew were going to be contested at the time the Board's case in chief was put on. It is only my intention to rebut those matters which for the first time came into the defendant's case as direct statements of evidence of Mrs. Reed's understanding and direction.

[fol. 6118] Now, we have on the witness stand a supervisory employee who was with the company from 1922 down until a very recent date, who was in close contact with other supervisory employees, and with Mrs. Wherry, and I think it is entirely proper to ask her whether she knows if the company had a policy of getting rid of the I. L. G. W. U. after the I. L. G. W. U. started organizing the plant.

Mr. Lane: Mr. Examiner,—

Mr. Hogsett: That is the very essence of their case in chief.

Trial Examiner Batten: Miss Weyand, it seems to me, if I would accept your statement, then we have opened up the entire case.

Miss Weyand: No. I am merely rebutting direct statements Mrs. Reed made and limiting myself to rebuttal, in the strictest sense, of matters which came into the case for the first time because of Mrs. Reed's testimony here.

I think it is entirely proper, when she said they had a policy of not discriminating, to have a supervisory employee who was close to the management state they did have such a policy.

There was never any evidence in the case before as to what Mrs. Reed thought the policy of the company was. We didn't have an officer of the company state before what the policy of the company was, and it is certainly proper to [fol. 6119] have a supervisory employee so state.

Mr. Tyler: Now, if the Examiner please, the Board argues that the company had an antiunion attitude since a way back in 1930. They had an opportunity to present their case on that. The mere fact that some additional evidence which the court directed be put in the evidence was put in by an officer of the company does not change the fact that the Board is now trying to try that issue all over

again with witnesses and evidence which were properly a part of its case when it first put it in. The mere fact that some additional defendant witness denies it does not entitle the Board to put in its case all over again, with new witnesses, on the same subject which it supported before. If that were true—if the Board can go over its case again because of Mrs. Reed's testimony, then the respondent and intervener should be entitled to make an entirely new defense, and then the Board perhaps should have another rebuttal, but that, obviously, is not true.

Mr. Hogsett: May I put one further fact in your mind as supporting what Senator Reed has said and what Mr. Tyler has just said?

This question of the antiunion activity of the company prior to the Wagner Act and since was a part of the Board's contention and, therefore, of its case in chief, and in the brief in the Circuit Court of Appeals they had black-faced headings to separate the evidence—its discussion of the [fol. 6120] evidence of the alleged antiunion activity before the Act and of the alleged antiunion activity since the Act.

Now, that is just a circumstance that tends to convince the mind that that was the essence of their claim in chief.

Now, what Senator Reed has just said is manifestly true, that if you permit this, then the case is just wide open, clear up to an open throttle.

Trial Examiner Batten: Well, Mr. Langsdale, you haven't had anything to say yet.

Mr. Ingraham. Could I just add this:—I don't want to have two speak from a side, but I do want to say this:

In the testimony offered by respondent from the N. R. A. evidence respondent offered, among other questions and answers, this:

"Now, Mrs. Reed, have you or any official of the Donnelly Garment Company ever at any time discriminated against an employee on account of union affiliations or sympathies?

"A. I have not."

Then, in addition to that—

Mr. Langsdale: When was that?

Mr. Ingraham: That was from the N. R. A. evidence.

Mr. Langsdale: Was that offered in the 1939 hearing?

Mr. Ingraham: Yes.

Then, in addition to that, Elizabeth Reeves testified in the previous hearing at great length on the policy of the [fol. 6121] company, that it never engaged in any discrimination on account of union affiliations. That was all gone into, and this question adds nothing new. The Board offered its evidence that the company did do that, did discriminate, and we met it in that way.

Mr. Reed: I don't want to—

Trial Examiner Batten: Now, Senator, let's not have everybody on each side.

Mr. Reed: I beg your pardon.

Trial Examiner Batten: I mean, after all, Senator, Mr. Langsdale hasn't said anything yet and I want to hear what he has to say.

Mr. Langsdale: If the Examiner please, it seems to me that Mrs. Reed's testimony falls in two classes. In one class she answered the Board's case, and I doubt if—I won't say "I doubt," but at least there is some question about whether or not it is proper to rebut what she said in answer.

There is another class of testimony given by Mrs. Reed which was new and was not in answer to any part of the Board's case, and of course we are not foreclosed on that. We must have a right to reply to that.

Now, which classification this falls in—

Trial Examiner Batten: Of course, Mr. Langsdale, it seems to me that this particular matter falls in your first classification.

[fol. 6122] Mr. Langsdale: I—

Trial Examiner Batten: I'll tell you why. As Senator Reed says, the essence of the Board's case was unfair labor practice, interference, coercion, and so forth, by the com-

pany. Now, it may be true that Mrs. Reed didn't testify in the first hearing, but there were plenty of others who testified, and the purpose of the testimony was to show interference and coercion by the company.

Mr. Langsdale: I am inclined to believe that is correct.

Miss Weyand: Mrs. Reed, for the first time, brought up the contention that the company had in its employ for a period of time members of unions and had never done anything about it. That testimony is at pages 3314 and 3315 of the record. That was in the way of affirmative matter which had not been raised in the case before, and I think we have a right to rebut it.

Trial Examiner Batten: Miss Weyand, I am going to rule that you do not. There has to be some limit to this somewhere, or, the first thing we know, we will be retrying this whole case.

Mr. Langsdale: It seems to me Mrs. Reeves gave that same testimony in 1939 when she testified about the carpenters' union.

Trial Examiner Batten: Yes, I think I recall about carpenters, plumbers, and repairmen.

We will recess for 10 minutes, until 5 minutes after 3.

(Thereupon a 10-minute recess was taken.)

[fol. 6123] Trial Examiner Batten: We will proceed.

Miss Weyand: That is all the questions I have of this witness.

Trial Examiner Batten: Mr. Langsdale?

Mr. Langsdale: Just a moment until I see if I have any.

Recross-Examination.

By Mr. Langsdale:

Q. Who was Mrs. Bogart?

A. Who?

Q. Mrs. Bogart, B-o-g-a-r-t (spelling).

A. Oh, Mrs. Bogart was an instructor on the fifth floor in the dividing department.

Q. Was she an instructor on the fifth floor in the dividing department in March and April 1937?

A. I am sure she was.

Mr. Langsdale: That's all.

Trial Examiner Batten: Mr. Hogsett?

Mr. Hogsett: Mr. Ingraham.

Recross Examination.

By Mr. Ingraham:

Q. Mrs. Skeens, you testified that you worked for the company up until September 19, 1941, is that right?

A. September, 1941.

[fol. 6424] Q. Now, just prior to that date had you taken a vacation?

A. Yes. I came back from my vacation the 19th of August and if I remember right I left the 19th of September.

Mr. Langsdale: I didn't hear that.

Trial Examiner Batten: Will you read the answer?

(Thereupon the answer was read by the reporter.)

Mr. Ingraham: Now, after you returned from your vacation what work did you do at the plant?

A. Instructing.

Mr. Langsdale: What year are you talking about?

Mr. Ingraham: What year was that?

A. '41.

Mr. Ingraham: 1941.

By Mr. Ingraham:

Q. You were an instructor at that time?

A. Yes, sir.

Q. Had you been transferred at any time before that from instructing to do any other work?

A. You mean in the length of time I was there?

Q. No, just in, say, 1941.

A. No.

Trial Examiner Batten: What was your answer?

A. No.

By Mr. Ingraham:

Q. Now, how many weeks were you allowed off for a vacation?

A. Last year I had three because I was a Pioneer.

[fol. 6125] Q. And you received your pay for the 3 weeks?

A. For the three weeks.

Q. Isn't it a fact that you told the girls that you didn't intend to work long after you came back from your vacation?

A. I didn't figure I would stay long, I had intentions of leaving.

Mr. Reed: I couldn't hear.

A. I didn't intend to stay long, I didn't know just how long, I didn't have any definite time to stay.

By Mr. Ingraham:

Q. Were you dissatisfied with your work?

A. Not with my work exactly.

Q. What were you dissatisfied with?

A. With Cecil.

Q. What had Cecil done?

A. Well, she didn't just like me very well, and I wasn't very happy working under her.

Q. And you didn't care to work under her?

A. That was it. The company was swell.

Q. Were you mad at Mrs. Reed?

A. No.

Q. Isn't it a fact that you have told girls that you tried to see Mrs. Reed to have a talk with her and she wouldn't see you, and you didn't like it?

A. I did not, because I never tried to see Mrs. Reed.

Q. Now, you stated that you knew Sally Ormsby went [fol. 6126] to Mr. Tyler's office. Did Sallie Ormsby tell you that?

A. Yes, Sir.

Q. How many times did she go to Mr. Tyler's office?

A. I couldn't say for sure.

Q. More than once?

A. Well, she was out at meetings more than once, but I couldn't say that she was at his office. I know she came

back and had me make slips out for her, but I couldn't say she was in his office every time, I don't know.

Q. Did anybody besides Sallie Ormsby instruct you to make out slips for her?

A. Later I have made them out for different girls in 412; I think I made one out for Elsie Wright when she went down to some kind of a meeting, I don't remember when it was.

Q. When was that?

A. Well, I couldn't be sure of that, whether it was in 1940 or 1941.

Trial Examiner Batten: Well, was this time you made them out for Sallie Ormsby —

A. (Interrupting) Up to 1939?

Trial Examiner Batten: Was that before or after July 1939?

A. Yes, it was in 1937.

Trial Examiner Batten: This other instance you are telling about?

[fol. 6127] A. That was later than 1939. I forgot.

Trial Examiner Batten: You say it was when?

A. I think it was later than 1939.

By Mr. Ingraham:

Q. Who told you to make out slips for these girls?

A. Well, Sallie, when she came back from her first meeting she told me — I don't know who told her — but she told me I was supposed to make out slips for the time she lost.

Q. And she was the only one that ever told you that?

A. As well as I remember now.

Q. Did you know whether or not the company ever paid for any time that you put on these slips?

A. Well, I am sure they did.

Trial Examiner Batten: Well, the question is —

A. (Interrupting) It is always posted on the card.

Trial Examiner Batten: Well, the question is, do you know whether they did or not?

A. They did.

By Mr. Ingraham:

Q. How did you know that?

A. It was posted on their cards, the pay roll cards that we went over every week.

Q. Do you know whether or not the company paid the amount stated on the pay roll card? Did you ever see the pay check of the girls?

A. No, I didn't see their checks, I just saw the cards [fol. 6128] when I went over them. I did see their checks when they were handed out but I never noticed that.

Q. You never noticed whether the company ever paid this time or not?

A. No, I didn't see it on the checks.

Q. Now, did you attend the Donnelly Garment Workers' Union meetings?

A. I did all they had during working hours, and a few they had after working hours, not all of them, not very many of them.

Q. Do you know whether or not the Donnelly Garment Workers' Union paid out of their own treasury girls who spent time on union business?

A. I don't know about that.

Q. Did you ever hear that talked about?

A. No, Sir, not that I recall.

Q. Now, you stated that you recall the four meetings that were held by the Donnelly Garment Workers' Union after it was organized. Can you tell me about how soon after the meeting at which the Donnelly Garment Workers' Union was organized was there the next meeting?

A. No, I couldn't.

Q. Was it within a month?

A. Oh, yes, but I can't tell you whether it was the same week or not.

[fol. 6129] Q. Well, what took place at that meeting?

A. At the one where they were organized, you mean?

Q. No, the next meeting.

A. Well, I don't know.

Q. Do you remember anything that took place?

A. No, sir.

Trial Examiner Batten: Will you speak a little louder, please?

A. I said no, sir.

By Mr. Ingraham:

Q. Now, the next union meeting that was held what took place at that meeting?

A. Well, I don't remember just what took place at the meetings. I always went but I can't remember just what took place.

Q. Well now, can you tell me anything at all that took place at any meeting that you attended, any meeting of the Donnelly Garment Workers' Union?

A. Well, at the time it was organized I remember them passing around the cards and all of us signing cards where we joined up.

Q. Now, after that organizational meeting can you tell me anything that ever took place at any Donnelly Garment Workers' Union meeting?

A. No, I don't think so.

Q. Now, how many meetings did you attend in 1938 of [fol. 6130] the Donnelly Garment Workers' Union?

A. I couldn't say, I don't know.

Q. Did you attend any?

A. Well, I don't know. I surely did but I wouldn't say for sure.

Q. Up to July 1939 did you attend any meetings of the Donnelly Garment Workers' Union?

A. A few. I didn't attend very many if it was after working hours, and I was always in a hurry to go home. A few of them I attended.

Q. Now, these meetings that were held in 1937, which you have testified about, do you recall going back to work after any of those meetings?

A. Some of them I did.

Q. Well now, which ones?

A. Now, I don't know just which ones.

Mr. Reed: I can't hear.

Trial Examiner Batten: Will you speak louder?

A. I don't know just which ones. There was some that we went back to work afterwards, and some it was quitting

time when they were over, and I don't remember just which was which.

Q. Well, when did you make out the cards?

A. I didn't make out any cards. I said it was on the pay roll card that was made out when I went up there, it [fol. 6131] was already added on, if that is what you mean.

Q. Yes. What was added on?

A. How ever much time they were at the meeting; if it was an hour they were paid for an hour, and if it was an hour and a half they were paid for an hour and a half; of course, that was added on to the card when I went up and looked over the cards; I didn't make out any time for that.

Q. You never made out any time for meetings?

A. Not for those meetings. Everybody attended and I didn't have to make out slips for them.

Mr. Reed: I can't hear, the witness drops her voice and I can't hear.

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the answer was read by the reporter.)

By Mr. Ingraham:

Q. Did you make out slips for any kind of allowances?

A. I did when they have repair, you know, when it wasn't their fault, the machine time, anything like that, I made out their time, I made out their slips and turned them in, just the time it took, I didn't put any price on it.

Q. But Mrs. Wherry never told you at any time to make out time slips for girls attending union meetings, did she?

A. No.

Q. Did you ever hear that Mrs. Wherry told any other instructor to do anything like that?

[fol. 6132] A. No, I didn't.

Q. You heard Etta Dorsey's testimony this morning, didn't you?

A. Well, I heard her testify but I didn't hear her say that.

Q. You didn't hear her say Mrs. Wherry told her to make out time slips?

A. Well, I guess I wasn't listening, I didn't hear that.

Q. Well, Mrs. Wherry never told you anything like that, or ever told any instructor anything like that, to your knowledge?

A. To my knowledge.

Trial Examiner Batten: What was your answer?

A. To my knowledge I didn't.

By Mr. Ingraham:

Q. You mean she didn't?

A. I don't know that she ever told anybody, not to my knowledge.

Q. Did you ever order the operators in your section to attend any meetings?

A. I didn't order them to, I just shut off the power and told them we were going to have a meeting.

Q. Well, did you give them instructions they had to go to the meeting?

A. Just like I told you, I just shut off the power and I went along and told them, "We are going to have a meet-[fol. 6133] ing," and that was all, and they just went; I didn't tell them they had to go.

Q. Did you ever hear any other instructor tell employees they had to go to the meetings? A. No.

Q. Now, Mrs. Skeens, isn't it a fact that you are sent instructions from the office as to the work to give out, written instructions? A. As to the work to give out?

Q. Yes.

A. No. We have written instructions showing the girls what their part is, but not the work to give out. I don't understand you.

Q. Didn't you daily get instructions from the office as to the bundles and to what was to be done about them?

A. Well, we had certain dresses to get out, but I didn't—

Q. (Interrupting) Well, didn't you get written instructions about those dresses, how much to do of this and how much of that?

A. I don't remember getting written instructions.

Trial Examiner Batten: Well, Mrs. Skeens, when those bundles would come in, when this material would come into your section didn't you get some sort of instructions that come along with the bundles, a ticket?

A. No, they just put the work in the bin, and we had in-
[fol. 6134] structions what to do, you know what I mean, how the dresses were made and how we gave out the work.

Trial Examiner Batten: I think that is what Mr. Ingraham means. You got some sort of instructions along with your work.

By Mr. Ingraham:

Q. Wasn't work planned in the office upstairs?

A. Well, I think it was planned there, yes, what each section would do.

Q. Do you want to tell the Examiner that you had the authority to give out the work to certain people and refused to give work to other people?

A. Well, I didn't do anything like that.

Q. Well, you never thought that you had any right to do anything like that?

A. Well, no, I wouldn't think so.

* * * * * * *

[fol. 6135] By Mr. Ingraham:

Q. Wasn't it a fact that operators at times, if you were busy somewhere else, would get up and get their own bundles?

A. Years ago, they did, but not in the last few years.

Q. There wasn't any instructions against allowing them to do that, was there?

A. Well, they weren't supposed to do it and they didn't do it. I don't know as there were any instructions against it, but they didn't do it.

Q. Were there ever complaints made that sometimes the instructor would be busy and the girl didn't get a new
[fol. 6136] bundle, and for that reason she would get up and get one herself? A. I don't know that.

* * * * * * *

Q. Did you ever change an operator without consulting Mr. Baty? A. What do you mean, change them.

Q. Well, prior—now, I am speaking of prior to July, 1939—did you transfer operators out of your section without consulting Mr. Baty?

A. Why, I never did transfer any out unless somebody came and told me to transfer them out.

Q. Yes, and wasn't it Mr. Baty that did that?
A. No, it wasn't Mr. Baty.
Q. Wouldn't it come from Mr. Baty, the instructions?
A. Well, I imagine it would come from him but that wouldn't be the way I would receive it.
Q. You never hired or discharged an operator, did you?
A. I did not.

* * * * * *

[fol. 6137] Q. I believe you stated that you joined the Loyalty League when it was formed. Do you recall when it was formed? A. No, I don't.
Q. Do you remember what year it was formed?
A. No, I don't; I can't remember dates.
Q. Did you go to meetings of the Loyalty League?
A. I did the first ones.
Q. How many did they have?
A. I couldn't say.
Q. How many Loyalty League meetings did you attend in 1935, if you recall?
A. I wouldn't know. I suppose all they had, I am sure I did, but I don't know how many they had.

* * * * * *

Q. Do you know whether they had any meetings in 1936? A. I couldn't say.
Q. Do you know whether they had any meetings in 1937?
A. Yes, yes, I am sure they had them, I think, in 1937.
Q. When?
A. I don't know, but it seemed to me the union meetings and the Loyalty League meetings kind of came in together, I think; that is why I say there were many meetings for a while.
[fol. 6138] Q. What do you mean by "came in together"?
A. Well, for a while it seemed like we had a meeting every two or three days, and it seems to me some were Loyalty League meetings and some were union meetings.
Q. You mean to say they were holding them on different days? You mean you would have a union meeting one day—
A. (Interrupting) As far as I remember.

Q. (Continuing)—and a couple of days later you would have a Loyalty League meeting?

A. I believe it was like that. I am not sure.

Q. Would you say you had a union meeting twice a week?

A. Well, I don't know. There was some weeks I think we had two meetings, but I wouldn't say which they were, whether they were both union, or one was a Loyalty League meeting or not, I can't remember that.

Q. You can't remember anything that took place at any union meeting outside of the organizational meeting?

A. No, sir.

Q. Do you recall anything that took place at a Loyalty League meeting? A. No.

Q. Did you state that you attended the meeting at which Mrs. Reed spoke? A. Yes.

Q. Do you recall how that meeting happened to be held? [fol. 6139] A. No, I don't know how. We just got word there was going to be a meeting and went down.

Q. Were there strikes going on in other garment plants in Kansas City?

A. I believe they were. That is the time she spoke, when they were having trouble there, I don't know, somewhere at 26th and Grand.

Q. Were the employees—

Mr. Langsdale: Just a moment. I am having a lot of difficulty in hearing. Will you speak a little louder, or try to, Mrs. Skeens? A. I will try to.

By Mr. Ingraham:

Q. Were the employees generally frightened about what was going on at those other strikes?

A. Why, I think some of them were, most of them were.

Q. Were you? A. Yes.

Q. Were the employees talking about means to protect themselves against any attacks that would be made by the I. L. G. W. U.? A. Well, I didn't hear that.

Trial Examiner Batten: What is it?

A. I didn't hear them make any.

By Mr. Ingraham:

Q. Were you thinking, yourself, about how you could get in and out of the building, if a strike was called, [fol. 6140] without getting hurt?

A. Well, we had the buses at that time, that took care of us.

Q. Why did you have the buses?

A. Well, in case there was trouble over there, I guess, to protect us.

Q. Well, did you personally have any fear about being able to get in and out of the building without getting hurt?

A. Oh, no, I never thought that.

Q. Was that because your husband was an organizer for the union?

A. Well, my husband was not, no.

Q. Is your husband a union man?

A. He is at the post office, and he is in the union.

Q. Didn't he organize the postmen?

A. Why, he did not.

Q. Did you think that you might be hurt, and that was the reason you rode on the buses?

A. No, they just furnished the buses for us, and everybody rode them.

Q. You could have gone on the street car?

A. Why, I didn't ride the street car, I rode with my husband, but they furnished the buses for us, and I just rode them like everybody else did.

Q. Well, why didn't you come to work with your hus- [fol. 6141] band in his car?

A. Well, I understood that we were supposed to ride the buses, I thought that was what Mrs. Reed wanted us to do; all of us came to 31st and Main, and from that point down, and that is what I did. I always tried to do as near as I could what I was supposed to do.

Q. Now, isn't it a fact that the employees were attempting to take some action to protect themselves at that time?

A. Well, I don't know, outside of when they got that injunction to protect us, if that is what you mean.

Q. Now, at this meeting that Mrs. Reed spoke, wasn't it a fact the employees wanted to know what the company was going to do? A. I just don't recall it.

Q. You didn't hear anything like that at that meeting?

A. Well, if it was said, I probably heard it, but I don't recall it now, though.

Q. Do you recall anything that was said at that meeting other than what you say you heard Mrs. Reed say?

A. No, I don't think of anything.

Q. Now, you say you went down with the girls in your section. Whom did you sit with? A. Just which girls?

Q. Yes.

A. I can't remember. I sat with some of the girls from [fol. 6142] our section, but I don't know just which ones.

Q. You said that you told one row of girls at the table that there was a meeting to be held. Can you give the name of any of the girls that you told of the meeting?

A. I just went along and announced it. I didn't tell any special one. Is that what you mean, the girls that sat on the row that I told?

Q. Yes.

A. Well, I took the north row, and Sallie Ormsby was on that row, and Lorene Johnson, Emma Spahr, Pearl Hall, Ethel Maxwell, Martha Kuhn, Lucy Evans, Ruby Welch — there is more than that — there is 20, but I can't remember them all.

Q. Well, what did you say to any one of those girls that you have named, and give the girl's name.

A. And give the girl's name?

Q. Yes.

A. I didn't say anything to any individual, I just shut off the power, walked up this row and stood right there facing, you know, five or six girls, and I said, "There is going to be a meeting, and we are going down," and then I walked up so the next bunch could hear, until I got to the end of the row.

I didn't talk to any individual. I said it so about six of them would hear it, and then I would walk up and [fol. 6143] repeat it.

Q. Now, what time of day was that?

A. Well, it was in the afternoon, but I am not sure of the time.

Q. Could you be mistaken about it being at 2:30?

A. It seemed to me it was around 2:30. I could be mistaken; it might have been a little before, and it could have been a little after.

Q. Were most of those meetings held around 2:30?

A. Well, they were in the afternoon, and I judge they were around that time, between 2 and 3.

Q. You think between 2 and 3?

A. That is to my mind.

Q. Now, when you were through with the meetings, did the girls come back to work?

A. Sometimes they did. There was a meeting or two, I think, that was just at quitting time, and we didn't work.

Q. But all the rest of the meetings, you came back to work from?

A. Some of them we did, yes.

Q. Now, which meetings were those?

A. I don't know just how many. I don't remember just how many there were.

Q. Well, were some of the meetings after working hours?

A. Later; I don't know whether it was in 1937 or not. [fol. 6144] Q. Is it your recollection now that all the meetings in 1937 occurred before working hours were over?

A. The ones in the spring were, but I couldn't say — they had them later in the fall and I couldn't say about that.

Q. Now, at this meeting when Mrs. Reed spoke, how long did she speak?

A. I don't know.

Q. Well, would you say 15 minutes?

A. Oh, no, it was longer than that, I don't know whether it was exactly an hour or not.

Q. You think it was about an hour?

A. Well, as far as I remember; I don't know.

Q. I will hand you respondent's exhibit No. 12, and ask you to read this exhibit and state whether or not you recall Mrs. Reed making that speech.

A. Yes, I remember this, since I read it.

Mr. Langsdale: Will you answer so I can hear you?

A. Yes, I said I remembered since I read this; I didn't remember it before.

By Mr. Ingraham:

Q. Did you read it all?

A. No, I didn't.

Q. Well, read it all, please.

Mr. Langsdale: Is that respondent's exhibit 12, you are showing her?

Mr. Ingraham: Yes.

[fol. 6145] By Mr. Ingraham:

Q. Do you recall, Mrs. Skeens, Mrs. Reed making that speech?

A. Yes, I remember her making that speech.

Q. Was this what you recall that she said?

A. Well, all outside of that "buttinsky" business.

Q. Well, point out just what you mean.

A. Well, right here (indicating) I understood her to say, "any other 'sky," that is the way I understood her to say it, not buttinsky.

Q. I see. Now, outside of that —

A. (Interrupting) And I thought it was at this meeting that she said — it doesn't state here — that she would stand by us if we would stand by her; she said that at one of the meetings.

Mr. Langsdale: You know, this is not a private conversation between you and Mr. Ingraham; we all want to hear it.

By Mr. Ingraham:

Q. Now, where the word is "buttinsky" you understood her to say " 'sky."

A. Yes, sir.

Q. Now, do you recall Mrs. Reed saying: "If you want to belong, that is your own business and it is up to you to decide"?

[fol. 6146] A. Well, I don't recall that, but if it is in there she must have said it.

Mr. Langsade: Now, that is the vice of this transcript.

Trial Examiner Batten: Just a moment. Will you read the question?

Mr. Langsdale: She says she does not recall it, but if it is in there. I am objecting to him showing her what he claims is a transcript of what Mrs. Reed said, and handling

his questions in a way that would lead the witness to think it is a genuine transcript.

Trial Examiner Batten: Of course, Mr. Langsdale, the question to the witness was, does she recall the part that Mr. Ingraham read that Mrs. Reed said, and she said she didn't recall it.

Mr. Langsdale: Will you read the answer?

Trial Examiner Batten: Yes, I recall the last phrase she put in "but if it is in there."

Mr. Langsdale: Yes.

Trial Examiner Batten: But as far as the witness is concerned, she said she didn't recall it.

By Mr. Ingraham:

Q. You wouldn't say Mrs. Reed didn't say that?

A. I wouldn't say she didn't, I don't remember everything she said.

Q. Sure, I don't expect you to, Mrs. Skeens. Did you [fol. 6147] tell any operator to join or not join the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you tell any operator that he or she should remain a member of the Donnelly Garment Workers' Union?

A. No, sir.

* * * * * *

By Mr. Ingraham:

Q. Did you ever say anything to any operator regarding whether they should join or not join the Donnelly Garment Workers' Union?

A. No, sir, I don't think I ever did.

Q. Did you ever report to Mr. Baty any grievance that an operator might have, an operator in your section?

A. Only maybe some price was low on something.

Mr. Langsdale: Will you read that answer?

Trial Examiner Batten: I don't think you finished yet, did you?

A. No. I said that is the only thing, sometimes the price was low on something and I would tell Mr. Baty that [fol. 6148] we needed more money on them.

By Mr. Ingraham:

Q. And it was up to Mr. Baty to pass on grievances?

A. Well, I thought it was.

* * * * * *

Q. Well, do you recall signing an affidavit in May 1939?

A. What about?

Q. Well, an affidavit that the employees had formed the Donnelly Garment Workers' Union by their own free will?

A. I think I did.

Trial Examiner Batten: Now, before you show it to her, is this for the same purpose as shown to the witness this morning by Mr. Hogsett?

Mr. Ingraham: That is it.

Trial Examiner Batten: And that is the only purpose?

Mr. Ingraham: Yes.

Mr. Langsdale: I beg pardon, what is the purpose? I have forgotten.

Mr. Ingraham: Well, the purpose is to test their recollection.

Trial Examiner Batten: Well, it wasn't a matter of recollection, it was a matter of whether or not there was any conflict between the testimony given by the witness [fol. 6149] and the statement made in this affidavit.

Mr. Hogsett: That's right.

Trial Examiner Batten: That was the purpose of it, and the only purpose.

Mr. Langsdale: I object to it for the reason there isn't anything in the affidavit that in any way conflicts with the testimony given by this witness, and therefore it is not material for that purpose.

Trial Examiner Batten: Well, of course, as I said this morning, Mr. Langsdale, if, considering the record and the affidavit, it appears there is obviously no conflict, no harm is done.

Now, these aren't being received on any basis except the basis I stated.

Mr. Langsdale: Well, whoever considers the record will have his attention called to it.

Miss Weyand: I would like to object for the same reason I did this morning, and have a continuing objection.

Trial Examiner Batten: You may have a continuing objection, as I stated this morning, and I'll make the same ruling I made this morning.

By Mr. Ingraham:

Q. I'll hand you intervener's exhibit No. 20, and ask you if that is your signature that appears on page 6060 of the Circuit Court record.

A. Yes, that is my signature.

* * * * * *

[fol. 6151] Mr. Ingraham: Now, it is stated in this affidavit, "Each signer hereby further states that he or she has read or had read to him or her the contents of this affidavit." Do you recall reading the affidavit, Mrs. Skeens? A. Yes.

Mr. Langsdale: What was the answer?

The Witness: Yes.

Mr. Ingraham: And when you made this affidavit you knew the contents of what was in it?

A. Yes, sir.

Q. And were the facts stated therein true?

Mr. Langsdale: Just a moment. I object to the question unless confined to the facts as applied to this witness, and the plural therein the word "we," of course, is not intended to be answered by this question.

Mr. Tyler: I submit, she can tell as far as she knows. She may know as to other people; it's possible.

Trial Examiner Batten: Of course, as indicated this morning by Mr. Hogsett, it is only for the purpose of its application to this witness?

Mr. Ingraham: That is correct.

Trial Examiner Batten: For the identification of her signature, and whether she at the time she signed it felt it was correct?

Mr. Ingraham: That is correct.

[fol. 6152] Trial Examiner Batten: Without reference to all of the other signatures?

Mr. Ingraham: That is correct.

Mr. Langsdale: Is that worded exactly like the one Mr. Hogsett showed to Mrs. Dorsey?

Mr. Ingraham: I think it is.

Mr. Langsdale: Let me take a look at it.

(Thereupon the affidavit above referred to was handed to Mr. Langsdale by Mr. Ingraham.)

Mr. Ingraham: Will you please read the question?

(Thereupon the last question was read by the reporter, as follows:

"And were the facts stated therein true?")

A. Yes.

Mr. Ingraham: Mrs. Skeens, in September 1941 had you been requested by the company to change your work from instructor to an assistant in the dividing department?

A. Yes. Just before quitting time that Friday evening, about 3:30, they call me up—Miss Frances, and she asked me if I would—told me they wanted me to go down in the dividing department.

. . . . . .

By Mr. Ingraham:

Q. Was your pay to remain the same?

[fol. 6153] A. They didn't say.

Q. Were you willing to make that change? A. No.

Q. What did you do?

A. I just went home—I quit.

. . . . . .

Cross-Examination.

By Mr. Tyler:

Q. Mrs. Skeens, what does the word "Supervisory" mean to you?

A. Well, I thought we were over this group of girls.

Q. I am asking you what the word means to you. How would you define the word?

Mr. Langsdale: I submit that is an answer, directly.

Trial Examiner Batten: It may stand. She may answer the next question.

By Mr. Tyler:

Q. How would you define the word, Mrs. Skeens?

A. That you are over a group of people.

Q. Would you say that an employee whose duty was to pass work along a line of people and show them how it should be done was a supervisory employee? Is that what "supervisory" means to you? A. I think so.

* * * * * *

[fol. 6154] Mr. Ingraham: I want to make an offer of page 6060 of the Circuit Court record, contained in intervenor's exhibit No. 20.

* * * * * *

[fol. 6159] By Mr. Tyler:

Q. Now, did your duties differ from the ones described in that last question, Mrs. Skeens?

A. We disciplined, in a way. We had to see that they didn't talk too much or—

Q. What would you do if they talked too much?

A. I would just ask them to be quiet.

Q. Anything more than that?

A. No. If they talked too much, we was told to send them downstairs.

Q. Did you ever send a girl downstairs for talking too much? A. I didn't.

Q. What was the last meeting of the Donnelly Garment [fol. 6160] Workers' Union you attended, Mrs. Skeens?

A. I don't remember.

* * * * * *

Q. You wouldn't remember at what hours it was held, then, would you?

A. It was after working hours, but I don't remember just—They were at different shifts. One shift would go about three quarters of an hour—

Q. The working hours varied from time to time, did they not? A. Yes.

Q. Now, you stated that on the girls'—I think you called it time card— A. Pay roll card.

Q. Pay roll card.—there was an entry about paying them for time taken for union matters. What did that entry say?

. . . . . .

[fol. 6161] A. Well, I can't be positive. I think it said "meeting," but I'm not sure; I couldn't be positive.

By Mr. Tyler:

Q. Do you know what the word "meeting" meant, if that was the word there?

A. Yes. It would have meant the meeting that we had that week that would come on that card, on that pay roll card.

Q. How do you know that?

A. I didn't say why. I said they would know.

Q. And you are not sure that the word "meeting" was there?

A. I think it was, but I'm not positive it was.

Q. Or that any other word was there?

A. Yes, there was something there that specified what it was, and that's why I don't know whether it was just "meeting" or "union meeting."

Q. There were several things there about deductions or additions on the card, were there not?

[fol. 6162] A. No, I don't think so.

Q. Do you remember anything about insurance or old age security? A. That wasn't on there.

Q. That wouldn't be on the pay roll card? A. No.

Q. When was the first time you ever mentioned to anybody about that being on the card? When was the first time you ever told anybody about seeing that on the card?

A. Miss Weyand, I think.
Q. That was the first person you ever told about that?
A. Yes.
Q. And that was when, that you told Miss Weyand?
A. About a week ago. I don't remember what day it was.
Q. And you saw the card you are talking about more than 5 years ago, didn't you? A. Yes, sir.
Q. And that was the last time you saw it?
A. Yes, sir.
Q. Were there any of those entries in the month of March 1937?
A. Yes, there would be, because that's when—
Q. No, I am not asking you to decide whether you think it is probable. I am asking you whether you remember if there actually were in March, 1937.
[fol. 6163] A. Yes.
Q. You remember it? A. Yes.
Q. But you cannot remember what the words were?
A. No, sir.
Q. Now, when Sallie Ormsby asked you to make out a slip for her about some time spent on some union matter, did she bring any written order to you to do that?
A. No. She just told me, and I don't remember who she told me told her to do it.
Q. Did anybody else tell you to do it besides Sallie Ormsby?
A. I just don't remember. I know it was all right, or I wouldn't have done it, I guess.
Q. You know—or, have you heard that the Donnelly Garment Workers' Union has a policy of paying its members for any time they lose working for the company that they spent on union matters? Have you ever heard of that? A. I don't know.

Mr. Langsdale: Just a moment.

Trial Examiner Batten: Well, she said she doesn't know.

By Mr. Tyler:
Q. Weren't you supposed to keep track of the time that was spent away from the plant by anyone in your section? A. During working hours?

[fol. 6164] Q. Yes.

A. If it was on business reasons. If it was their own time, I didn't.

Q. Didn't you keep track of the time she spent away from the plant on other reasons except business reasons?

A. No. If she would go to town, or something like that, I didn't keep track. It would just show the time out and the time back in again.

Trial Examiner Batten: You say "the time out and the time back in." You mean, they punched their cards?

A. Yes, sir.

By Mr. Tyler:

Q. When Mrs. Wherry told you about announcing that there was to be a meeting, did she give you an order to order the girls to attend that meeting?

A. She just told me they was going to have a meeting after while and was going to organize the union, but for me not to say anything about the meeting until I got the call on the phone.

Q. But she didn't add to that any statement that you were to direct them to be present?

A. No. She said just to tell them we were going to have a meeting.

Q. And you didn't direct them to be present?

A. I didn't. I just shut off the power and told them we were going to have a meeting.

[fol. 6165] Q. And as far as you know, a half a dozen other girls in the same section might have passed the word along?

A. I don't know. I went along one row and told the girls, and my floor girl told the girls in the other row, and everybody knew it.

Q. So that everybody knew there was going to be a meeting? A. Yes.

Q. Is it true that Mrs. Wherry told you the same thing, in substance, during all of the union meetings in 1937?

A. No. I didn't say that.

Q. I am not saying you said it. I am asking you if that is true. A. No.

Q. Did anybody at any time ever give you instructions to order any girl to attend a union meeting?

A. No.

Q. You remember turning off the power on April 27, when the girls went to the meeting, do you?

A. I always turned off the power when we had a meeting.

Q. Do you remember turning off the power that day?

A. I don't just exactly remember that day, but I know every meeting they had I turned off the power.

Q. And that is the reason you think the meeting was held before working hours were over? A. I know it was.

[fol. 6166] Q. But you also turned off the power on every day after work was over, too, didn't you? A. Yes.

Mr. Tyler: That is all.

Trial Examiner Batten: Miss Weyand?

Redirect Examination

By Miss Weyand:

Q. How often did Mr. Baty come to your section around 1937? A. Not very often.

Q. Was it once a week, or could you approximate it?

Mr. Reed: I object to that as not rebuttal, all of it having been gone into in chief.

Trial Examiner Batten: Objection overruled.

You may answer.

A. Maybe once a week.

By Miss Weyand:

Q. Did the written instructions which you got when you had a new style direct which girl should do which operation? A. No.

Q. Who decided which girl should do which operation?

A. The instructor.

Miss Weyand: That's all I have.

Trial Examiner Batten: Mr. Langsdale?

[fol. 6167] Recross-Examination

By Mr. Langsdale:

Q. Whose duty was it to keep the girls in the section working? A. The instructor's.

Q. Was there any quota assigned to your section at any time when you were instructor?

A. We had quotas during the rush season.

Q. And whose duty was it to see that that quota was gotten out by the sewing girls? A. The instructor's.

Q. How did you perform that duty?

A. Well, we had to plan the work and give it to the girls, the ones we thought could get it out—we just had to plan to get it out in a certain length of time.

Q. Was it your duty to keep them at it? A. Yes, sir.

Q. And if a girl was disobedient at any time, what did you do about it?

A. Well, I don't know as I had any that was disobedient. We could send them down to the employment if they were disobedient, but I don't know as I ever had anybody who was disobedient.

Q. So the type and kind of work each girl got depended upon the instructor; is that true?

[fol. 6168] A. Yes, sir.

Q. Was there any difference in the money that would be made by the girls due to the way the instructor divided the work? A. There could be.

Q. How?

A. You could give one girl all of the small bundles and one all of the large bundles, and the one with the small bundles wouldn't make as much money as the one with the large bundles.

Q. And it was within the power of the instructor to do that, was it? A. Yes, it was.

* * * * * * *

By Mr. Ingraham:

Q. If an instructor gave a girl the small bundles would the operator have the right to complain to Mr. Baty?

A. Yes, she would.

Q. And as a matter of fact, was there any kind of discrimination like that, to your knowledge? A. No.

* * * * * *

[fol. 6169] GENEVA COPENHAVER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Miss Weyand:

Q. Will you state your name, please?

A. Geneva Copenhaver.

Q. Where do you reside?

A. 10101 East Tenth.

Q. Is that Kansas City, Missouri?

A. Kansas City, Missouri.

Q. When did you begin to work at the Donnelly Garment Company?

A. I first began to work there in 1928.

Q. How long did you continue to work there at that time? A. I worked there until May of 1929.

Q. Did you at a later date return to work for the Donnelly Garment Company?

[fol. 6170] A. Yes. I went back, I believe it was, in the latter part of September, in the year of 1935.

Q. How long did you continue to work after that?

A. I worked until some time in August of 1939.

Q. What was your job at the Donnelly Garment Company between 1935 and 1939?

A. Embroidery machine operator was what I was hired for.

Q. Did you do that most of the time?

A. When we had embroidery work I would do the embroidery work.

Q. What did you do the other time?

A. Run other machines—did work on other machines, in different sections.

Q. What section were you employed in in March and April of 1937? A. 415.

Q. What floor was that on? A. Eighth floor.

Q. Who was the instructor of that section at that time?

A. To the best of my knowledge, Etta Dorsey.

Q. Did you attend the meeting at which the Donnelly Garment Workers' Union was organized? A. Yes.

Q. How did you learn of that meeting?

A. I was told by the instructor in charge.

[fol. 6171] Q. What time of day was that meeting held?

A. In the afternoon.

Q. Did you wear your uniform to that meeting?

A. Yes.

Q. Did the other girls in your section wear their uniforms to that meeting? A. Yes.

Q. Did you time out before you went to that meeting?

A. Not that I remember of, no.

Q. What do you recall that happened at that meeting?

A. Well, I don't know as I can recall anything that was said particularly, because there were so many meetings, it's hard to designate what happened at this one and that one.

Q. I am speaking of the meeting of April 27, at which the Donnelly Garment Workers' Union was organized.

A. Well, I don't remember. It was one meeting—the one where something pertaining to this union—where they passed out these cards. Now, I couldn't say for sure that it was at that meeting that they passed out cards for us to sign for this union.

Q. Do you know whether the meeting at which they passed out cards was held during working hours?

A. I am quite sure it was.

Q. Did you sign a card at that meeting? A. Yes.

[fol. 6172] Q. Why did you sign the card?

A. Well, I felt like I'd better, if I wanted my job. That was the impression I got from it. I needed my job and needed it badly, and I got the impression that if I didn't, I wouldn't have a job very long.

Q. Could you state why you had that impression?

A. I didn't know anybody that didn't sign one, and I didn't know anybody that didn't belong to it after it was formed. I remember of one meeting—I don't know which one—where it was brought up in the meeting—someone asked if new employees coming into the plant would have a chance to join the union, and they said, yes, they would, and it went on in the conversation, if the new employee had any doubt as to whether they wanted to join the union, there would be a doubt in their mind as to whether they wanted to work for the company.

Mr. Hogsett: If the Court please, we object to this line of examination on the ground that it isn't rebuttal of anything. In other words, it is just going into the Board's case in chief again.

Trial Examiner Batten: I think it is, insofar as it attempts to determine what transpired at the meeting.

Mr. Hogsett: Yes, that is the line of inquiry I am now objecting to.

Trial Examiner Batten: But, of course, part of this testimony, as I recall it, was this witness' statement as to [fol. 6173] why she joined.

Mr. Hogsett: Which is not rebuttal either.

Trial Examiner Batten: Well, let's take them one at a time. I agree with you that the other matter, I don't believe is, the matter as to what transpired. But I gathered from the questions that it was an attempt of Miss Weyand's to set the time of the occurrence rather than what transpired.

Mr. Hogsett: Then, if that is so, I move to strike all of the testimony of this witness as to what transpired at the meeting of April 27, 1937, because it isn't proper rebuttal.

Trial Examiner Batten: I think it may stand, because I think that was the purpose of it.

Mr. Hogsett: And I move to strike out what occurred at the latter meeting, for the same reason.

Mr. Langsdale: What latter meeting?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Could you state why you had that impression?")

Trial Examiner Batten: Was there an answer?

The Reporter: Yes, there was a long answer.

Mr. Stottle: The answer is what we are objecting to.

Trial Examiner Batten: It may stand.

Mr. Ingraham: May respondent have a continuing ob-
[fol. 6174] jection to this testimony, for reasons we have heretofore given?

Trial Examiner Batten: Yes. Of course, I agree that going into what transpired at the meeting is not proper

rebuttal, but, as I said before, I don't think that is the purpose of it.

Mr. Reed: Well, it would be perhaps useful if we had that long answer read and know what she did testify to and know whether it was in or out. It was an involved answer.

Trial Examiner Batten: You may have it read. You want it read, Senator?

Mr. Reed: Yes, I am asking for that.

(Thereupon the last answer was read by the reporter.)

Mr. Reed: I move to strike out the whole of that answer as not responsive and as not rebuttal.

Trial Examiner Batten: I think I passed on it once before, Senator.

Mr. Reed: I don't know now— I beg your pardon for my stupidity, but I don't know now what Your Honor's ruling was on it.

Trial Examiner Batten: I think, did I not, Mr. Hogsett, in answer to your objection, state that it might stand? I thought I did.

Mr. Reed: I didn't hear you.

Trial Examiner Batten: I'm sorry, Senator.

Mr. Reed: I'm sorry, too.

Miss Weyand: Miss Court Reporter, will you mark this [fol. 6175] Board's exhibit No. 37 for identification?

(Thereupon the portion of newspaper above referred to was marked "Board's exhibit No. 37, witness Copenhaver," for identification.)

By Miss Weyand:

Q. Mrs. Copenhaver, will you please read this newspaper article and tell me if you attended the meeting there described? It begins at the second column. It is entitled "Cheers By Plant Union."

Mr. Ingraham. Can you give us the date of this newspaper article?

Miss Weyand: I am quite certain it was Wednesday, May 12. Doesn't it appear on there?

Mr. Ingraham: May 12, 1937?

Miss Weyand: Yes.

Trial Examiner Batten: Will you check that and be sure?

Miss Weyand: Yes, I will. I am certain it was May 12, 1937.

Mr. Langsdale: Kansas City Times of May 12, 1937.

By Miss Weyand:

Q. Did you attend that meeting?

A. Yes.

Q. Do you remember the picture being taken?

[fol. 6176] A. No, I don't remember the picture being taken, but I remember attending the meeting.

Q. Do you recognize any of the people in that picture? Will you look at it carefully?

A. Well, a lot of their faces I do recognize, but I don't —you know—I don't know their names.

Q. Do you remember what time of day that meeting was held?

A. In the afternoon.

Q. Do you remember how you were notified of that meeting?

A. We were always notified of meetings by our instructor.

Miss Weyand: I offer Board's exhibit No. 37 for identification in evidence.

Mr. Reed: We object—

Trial Examiner Batten: What— For the purpose of indicating it recalled to the witness' mind that she attended the meeting?

Miss Weyand: No. I want to offer it for the purpose of showing that every girl that attended that meeting, as far as I can see, is in uniform. I think that is proper evidence for the Board to consider in connection with the testimony—

Trial Examiner Batten: Of course, you haven't asked the witness about that, have you?

Miss Weyand: She recognizes those as people of the Donnelly Garment Company and she remembers being at the meeting there described.

Trial Examiner Batten: Is this the same picture that [fol. 6177] was offered in the last hearing?

Mr. Ingraham: I don't think it was.

Trial Examiner Batten: I don't mean "the last hearing;" I mean, at the "first hearing."

Mr. Ingraham: I think Mr. Langsdale had this picture.

Mr. Langsdale: We didn't offer it.

Trial Examiner Batten: I have a rather distinct recollection that at the first hearing someone had a picture of people in uniform and, if I am not mistaken, there were at least three efforts to have it identified, and so forth.

Miss Weyand: If you desire to have me bring specific persons who appeared in the picture and tell you that is their picture, I can do it, but that takes a lot of trouble to do that.

Trial Examiner Batten: I am not asking you to do anything. I am making the inquiry—

Miss Weyand: I have no recollection of that's being in the previous record. I have checked it and haven't been able to find it as of this date.

Trial Examiner Batten: I am certain everything said officially there is in the record. It doesn't make any difference. I will receive it, and I am receiving it on the same basis I have received other newspaper articles which have been received thus far—I think, about 38 of them.

Mr. Reed: We object as incompetent and immaterial and [fol. 6178] not proper direct examination, undertaking to introduce into the case as substantive evidence a mere newspaper article, and as not proper rebuttal.

Mr. Langsdale: I understand the article itself is not offered but merely the picture.

Trial Examiner Batten: Well, I have received it.

(Thereupon the portion of newspaper above referred to, previously marked for identification "Board's exhibit No. 37, Witness Copenhaver," was received in evidence.)

By Miss Weyand:

Q. Did you know Sylvia Hull?

A. I didn't know her personally. I only recognized her when I saw her.

Q. Were you working on the same floor with Sylvia Hull the last day Sylvia Hull worked for the company?

A. Yes, I was.

Q. Do you recall what happened that morning?

Mr. Tyler: We object. The Sylvia Hull incident is in no sense proper rebuttal. It was gone into in long detail in the case of the Board in chief.

Mr. Hogsett: Your Honor, I ask you to just stop for a second and think if this is rebuttal—everything is rebuttal that pertains to the case in any way.

Trial Examiner Batten: Of course, my idea of the Sylvia Hull incident is this:— I tried to, I think, in my talk here a month or so ago, indicate I did not think it was [fol. 6179] within the offers of proof upon which I was taking testimony, but I don't remember whether Mr. Tyler, or who it was, convinced me that I was wrong. I know Mr. Langsdale very strenuously opposed it and said it was a closed book.

Mr. Hogsett: I ask you to draw the line somewhere, if the Examiner please.

Trial Examiner Batten: I am inclined to agree with Mr. Langsdale, that, so far as what happened or transpired that day, there is sufficient testimony in the record. Now, we had a lot of it in the last hearing. It is true that all of the witnesses which Mr. Ingraham and Mr. Tyler examined —all, as I remember it, testified about the Sylvia Hull incident.

Mr. Tyler: I object, Your Honor. The question isn't whether the evidence is sufficient; the question is, whether there has been an opportunity to produce it at the proper place.

Now, if the Board can go over that incident, producing new witnesses about it, then the respondent and the intervener should be allowed to produce all of the witnesses they can find against it, which obviously would be improper.

It is repetition of what the Board tried to prove in its original case.

Trial Examiner Batten: Didn't you figure that was what I meant by the use of those terms, Mr. Tyler?

[fol. 6180] Mr. Tyler: No. I thought the word "sufficient" meant the Examiner felt, if there wasn't enough evidence on it the first time, you would admit more of it this time.

Trial Examiner Batten: If that is what you understood, I'm sorry I didn't state myself more clearly.

Mr. Langsdale: If the Examiner please, my position is —and I take it, Mr. Hogsett's— (Addressing Mr. Hogsett.) Did you examine the first witness, whoever it was?

Trial Examiner Batten: You mean, today?

Mr. Langsdale: No. When this hearing started.

Mr. Hogsett: Mr. Ingraham examined all of the witnesses. But their first witness, I believe, was Mrs. Cooper, was it not?

Mr. Ingraham: That is correct.

Mr. Langsdale: They commenced to interrogate her about the Sylvia Hull incident, and it was my position that that was not within the scope of the remand, that the only things within the scope of the remand were the things offered and denied by the Examiner. The Sylvia Hull incident was gone into thoroughly in 1939, and we put in the testimony in the Judge Miller trial, and they put in their testimony on that, and that was a closed book. And it was never maintained by the Circuit Court of Appeals that that should be gone into again, but they have done it with every witness they have put on the stand now.

[fol. 6181] The question occurs to me, if we have a right to keep the book opened?

Mr. Hogsett: Mr. Langsdale correctly said this afternoon, there are two classifications of defense evidence—

Mr. Langsdale: Of Mrs. Reed's evidence.

Mr. Hogsett: Yes. One is of a defensive character, and the other is, as he contends, new matter. Now, for the first time, I find myself in genuine accord with him on a legal proposition.

Trial Examiner Batten: You had better be sure of it, because it will be in writing.

Mr. Hogsett: I am in accord with that legal proposition. I admit that, as to any new matter that any of our witnesses have given, they are entitled to rebut. I haven't denied that. You haven't heard me say a word that even squinted of opposition to that, but this Sylvia Hull incident evidence is in no sense new matter.

Mr. Langsdale: Now, my remark quoted by Mr. Hogsett was with reference to Mrs. Reed's testimony.

Mr. Hogsett: But it is true, as a legal proposition.

Mr. Langsdale: The Examiner admitted the testimony of Mrs. Reed, not because of the remand, but because she had been ill and unable to attend this hearing before. It wasn't for the certain testimony she gave, and if he had admitted it for that reason, I would have objected to [fol. 6182] it on the ground that it was a closed book. But she opened the whole book, beginning with 1941—

Trial Examiner Batten: Perhaps I made a mistake in accepting her testimony, its not being within the remand.

Mr. Langsdale: I am not objecting to it.

Trial Examiner Batten: No. But I say, perhaps I did.

Mr. Langsdale: When I characterize Mrs. Reed's testimony as falling into two classifications, one as defensive, which she would have had a right to give had she been at the other hearing, and which you admitted because she wasn't able to be at the other hearing, and the other, the new matter, which we have a right to reply to now, that doesn't apply to other witnesses. No other witness had any right, in my opinion of the remand, to go into

something that had been closed and both sides had a full opportunity to be heard on in the last hearing.

Trial Examiner Batten: As I recall, both witnesses presented by the Board so far have been permitted to testify about the matter.

Mr. Langsdale: Yes.

Trial Examiner Batten: You may proceed, Miss Weyand.

Is there a question pending?

Miss Weyand: Will you read the last question, please?

(Thereupon, the last question was read by the reporter, as follows:

"Do you recall what happened that morning?")

[fol. 6183] Miss Weyand: The morning of the Sylvia Hull incident.

A. Well, it was in the morning that this demonstration, or whatever the commotion was, took place, and there was girls come from other floors, and when I first noticed it, there was just a bunch of girls crowded around over in the corner where she was.

I didn't even know who the girl was then, who the trouble was over, until someone told me. And I went over—I didn't get real close to her, but close enough that I could tell what was going on, and there was a commotion over there.

I came back over to my section. I happened to be in 415, right there in front of the door, and then I saw them take her out.

By Miss Weyand:

Q. Did you hear anything said, or any noises of any sort?

A. Yes. I heard booing and loud talking, and the girls, from what I could gather, were talking to her. I wasn't close, and there were so many girls around her, you couldn't hardly get a glimpse of her, but I did see them taking her out.

Q. Do you know whether she was continuing to work?

A. You mean, while the demonstration was going on?

Q. Yes.

A. She was trying to, but there was so much talking, and talking to her, that she couldn't work, and she was crying.

Q. Do you know whether the power on her shaft was turned off?

[fol. 6184] A. I saw the power turned on, but—you know, just walk up and turn the switch on. And one of the girls would turn it off, and somebody else would turn it on, and somebody else would turn it off. It was turned off and on about three different times while I happened to be over there.

Q. Did you know Fern Sigler?

A. I didn't know her even when I seen her. I didn't know the girl at all.

Q. Did you go down to the sixth floor on the day of the Sylvia Hull demonstration?

A. Yes. I understood there was some commotion down there, so out of curiosity—some of the girls went down, and I went with them.

Q. What did you see on the sixth floor?

A. There was girls bunched up around her machine, and loud talking—talking to her. I didn't stay down there but just a few minutes and came back.

Q. Do you know whether there was any deduction from your pay for the time you were away?

A. Not that I know of.

Q. Do you know whether the instructors on the eighth floor made any effort to get the girls to work during the time that demonstration was going on?

A. It seems to me our power was turned on for us to work—so we could work.

[fol. 6185] Q. Do you remember who your instructor was on that day?

A. To the best of my memory, I believe it was Etta Dorsey. I feel sure that's who it was.

Q. Did you attend a meeting around the time the strikes were going on at the Missouri, Gernes, and Gordon plants, at which Mrs. Reed spoke? A. Yes.

Q. How were you notified [at] that meeting?

A. We were always notified of our meetings through our instructor, or, along towards the last, by i. d. m.'s.

* * * * * *

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Volume X

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OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 29, 1946
CERTIORARI GRANTED APRIL 22, 1946

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EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION; PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 12,641.

United States Circuit Court of Appeals

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[fol. 6189] By Miss Weyand:

Q. Where was your machine located at the time of the Sylvia Hull incident?

A. I was working in 415 on the eighth floor. That section was the first section as you come in the door, the first section that you come to, and I was about the third or fourth machine, something like that, from the end of the table. That was the east end of the building, across the table; I faced the door, I was facing north.

Q. Did you consider your instructors as supervisors?

A. Absolutely.

[fol. 6190] Mr. Ingraham: Now—

Miss Weyand (Interrupting): Why?

Trial Examiner Batten: Just a moment?

Mr. Ingraham: Now, I move to strike the answer out as not proper rebuttal.

Trial Examiner Batten: Well, the answer may be stricken. While you make your objection—I assume you had one?

Mr. Ingraham: Yes. I object to the question on the ground that it is not proper rebuttal.

Trial Examiner Batten: You may answer.

Mr. Lane: The intervener makes the same objection.

Trial Examiner Batten: You may answer.

A. Absolutely, I regarded her as being my supervisor.

Miss Weyand: Why?

Mr. Ingraham: May I have a continuing objection?

Trial Examiner Batten: Yes. Well, I think there is already a continuing objection on this witness.

Mr. Ingraham: Well, if not, I want a continuing objection.

* * * * * *

Miss Weyand: Why did you consider your instructor to be a supervisor?

[fol. 6191] A. Well, the instructor—everything that we—like changing a price on a ticket or anything like that, it had to be O. K.ed by the instructor. The instructor always gave us our checks or had our checks brought to the section, and she would pass the checks around from girl to girl, and more than one time when I was unable to be at work, I would call, and I have talked to Mrs. Dorsey myself when I was working for her, I notified her that I wouldn't be able to be at work that day.

She was in full charge of the section, the girls looked to her for everything in regard to work or anything that they might be in doubt about; it was always the instructor you went to about the work.

Q. Did the instructors determine whether to divide the work, and lay off girls when the work was slack?

A. Yes, they did.

Q. Do you know of any instance of that?

A. Yes, I know that I have been sent home by the instructor whenever there was a lack of work in the section, and the instructor could—she distributed work the way she wanted to. If we had four or five different embroidery numbers in the line, and maybe there would be a few bundles in the number, that had different styles of dresses, maybe one of one price and one another price, maybe she could give that to one girl—

* * * * * * *

[fol. 6192] Miss Weyand: By dividing the work I mean whether it was distributed among all the girls in the section, or just given to some of the girls, part of them, and the rest go home.

Trial Examiner Batten: Do you understand the question?

A. Yes, I understand the question.

Trial Examiner Batten: You may answer it.

A. Well, they could do that. If there was just a small amount of work, just a few bundles, they could give that to one or two girls and send two or three girls home.

By Miss Weyand:

Q. Have you ever been sent home? A. Yes.

Q. Who was the instructor that sent you home, any incident?

A. Well, I don't remember. I have been sent home for [fol. 6193] the lack of embroidery work when Mrs. Dorsey was my instructor.

Q. Do instructors ever have girls transferred into or out of their sections?

A. Yes, to the extent that if they run out of work, like the special section, if they run out of work and have no work for the girls, they can be sent to Mrs. Hyde and then taken to another section.

Q. And who determines whether the girls are sent to Mrs. Hyde? A. The instructor.

Miss Weyand: I ask that this be marked as Board's exhibit No. 38 for identification.

(Thereupon the document above referred to was marked as "Board's Exhibit No. 38, Witness Copenhaver," for identification.)

Do you want to look at this, Mr. Trial Examiner? I was just explaining I want to use it for the form only.

By Miss Weyand:

Q. Mrs. Copenhaver, I would like to have you look at Board's exhibit 38 for identification, and tell me what that slip was used for.

A. Well, this is the kind of a slip that was given you by Mrs. Hyde, or whoever took care of you when you went down to the office, when you were transferred from one department to another. The department that you were going from was put on here, and the department that you were going to, and the [the] time that you left your original department and the time that you went into the other [fol. 6194] section was marked on here, and then this was to be O. K.ed by your instructor.

Q. Does the slip I hand you contain the initials of an instructor? A. It is signed by—

Mr. Ingraham: (Interrupting) Just a minute, please. I understood Miss Weyand to say she was submitting this just as to form and not anything—

Miss Weyand: Not to prove any facts of the transfer. I would like to use it as an illustration to show where the instructor signed on the slip.

A. Now, this is signed—

Trial Examiner Batten: Wait just a moment.

Mr. Ingraham: I object to this witness testifying that it is signed by the instructor or anybody else. It speaks for itself.

Trial Examiner Batten: Well, she will testify, if she knows, who signed it or initialed it.

A. The instructor signed it.

Trial Examiner Batten: Well, did you see her sign this one?

A. I don't remember about this one special one, but I have certainly seen them signed, a lot of them.

Miss Weyand: Do you know whose initials are on that?

[fol. 6195] A. This is C. F. I can't be certain who it was, however, I do know an instructor whom it might be.

By Trial Examiner Batten:

Q. You don't know who put the initials on there?

A. No, I couldn't testify to it.

Q. You didn't see them put on there?

A. I may have, but I wouldn't be certain of that.

By Miss Weyand:

Q. That was a slip that was used when you were transferred from one section—

A. (Interrupting) To another?

Q. Yes. A. Yes.

Q. And it was used continuously before July, 1939, at the time you were transferred?

A. To the best of my knowledge they used this slip.

Q. Now, did the check you received show the section you worked in when you were transferred, or the one you were transferred into?

A. The check showed the section you were working in. If I was working in section 415 one week, and if I was in another section another week, and received another check, it would still have 415 on it.

Miss Weyand: I offer this in evidence, for the purpose previously stated.

Trial Examiner Batten: You mean merely for the pur- [fol. 6196] pose of showing it is a slip that was used in effecting a transfer:

Miss Weyand: And to illustrate the method and procedure used in making a transfer from one section to another, and the instructor's duties in that regard.

Trial Examiner Batten: Well, of course—

Mr. Lane: (Interrupting) I object to it for the latter reason.

Trial Examiner Batten: This doesn't show anything about an instructor.

Miss Weyand: It is just an illustration of the type of slip the company prepared, which the instructor regularly approves, as the young lady said, when she goes to a certain section; she says it is approved by the instructor of the section she is transferred to.

Trial Examiner Batten: There is no testimony here that those initials are an instructor's initials.

Miss Weyand: She said usually they sent those around—there is an instructor down there, and these initials coincide with her handwriting in another exhibit I have. I am not offering to prove that, but I am offering this as a form the company used, and which instructors usually approved.

Mr. Langsdale: The testimony is, further, that this is the form that was always used, and she had seen many of them just like this, and had them herself.

Trial Examiner Batten: Well, it will be received as to [fol. 6197] form. This witness testified it was used to effect a transfer.

(The document heretofore marked "Board's Exhibit No. 38, Witness Copenhaver," for identification, was received in evidence.)

By Miss Weyand:

Q. When the instructor signs on this, what line does she usually put her name on, or initials on?

A. Right on the bottom line, right there (indicating).
Q. Following the words "Approved by"?
A. Yes.
Q. And that is the instructor, not in your permanent section, but in the section you are temporarily working in?
A. Yes.
Q. Do instructors eat in the cafeteria with the other girls? A. They eat—

Mr. Ingraham: (Interrupting) Now, I object to that question for the reason it is immaterial to any issue in this case, and it is not proper rebuttal.

Mr. Hogsett: If I may supplement by this suggestion, that illustrates the thin character of this Board's case, that they would have to rely on the fact that domination could be shown by an instructor eating in the same cafeteria. Now, that is getting down to pretty thin stuff, I submit, and the subject matter is wholly immaterial.

Miss Weyand: I don't offer to prove they eat in the [fol. 6198] same cafeteria. That isn't the purpose of this question.

Mr. Hogsett: Well, it is in the same field, the same atmosphere.

Trial Examiner Batten: You may answer the question.

Mr. Lane: The intervener makes the same objection, it is not rebuttal.

Trial Examiner Batten: The same ruling.

A. There is one cafeteria I know of in the building. There is a room in the back of the building, a little, small room, closed off to itself, and that is where the instructors eat their lunches.

By Miss Weyand:
Q. Who else eats in that room?
A. Well, Cecile Ealy and all the instructors.
Q. Anyone in addition to the instructors eat there?
A. The thread girls, I believe, eat in there.
Q. Does Mr. Baty eat in there?
A. Yes, I have seen Mr. Baty go in.
Q. Does Lena Tyhurst eat in there? A. Yes.

Q. Did Mrs. Wherry, when she was working for the company? A. Yes.

Q. Did any of the operators eat in there? A. No.

Q. Did Rose Todd ever make out one of those tickets for time for you?

[fol. 6199] A. I remember of one time that I worked up in the designing room on some work that I understood was for Miss Baty, it was bridge sets or lunch cloths and table cloths and napkins, it was embroidery work; and Rose Todd made out my time ticket to be turned in for my pay for that.

Q. Who requested you to do that work?

A. I don't remember who came down and got me and took me up there to do that.

Trial Examiner Batten: You say "time ticket". What do you mean?

A. Well, like if I was up there an hour or an hour and a half, well, then, I had to be paid for that time.

Trial Examiner Batten: You don't mean one of those slips, these transfer slips, do you?

A. Well, I don't know as it was the same form, but it was a ticket like that. I don't remember exactly whether it was exactly that same identical ticket but it was another one similar to that, but it was a ticket that you turned in as to how much time you spent up there, and you were paid for that time.

By Miss Weyand:

Q. What is an i. d. m.?

A. Well, it is a little note that might come from Mr. Baty or anyone that they want to get to the girls. It usually has "i. d. m." at the top of it, and they are usually brought to the sections by the basket boy, they call them, and the [fol. 6200] instructor passes it around through the section.

Q. When you say "anyone that they want to get to the girls," whom do you mean by "they"?

A. Well, if Mr. Baty wanted the girls to know something, in regard to the work, or there was too much talking going on in the plant, why, he may write that on an i. d. m., or have it written on there and sign his name on it, and it would be brought around to the different sections.

Cross-Examination

By Mr. Ingraham:

Q. When did you say you left the employ of the company? A. You mean the last time?

Q. Yes, the last time.

A. It was in 1939, and if I am not wrong about the month, it was sometime during the month of August, but I know that it was in 1939.

Q. Now, had you been sick prior to that time?

A. Prior to the time when I left the company?

Q. Yes.

[fol. 6201] A. That was my reason for leaving.

Q. Well, had you drawn 12 weeks of insurance?

A. I did.

Q. Now, how long had you been off at that time?

A. You mean —

Q. (Interrupting) In 1939.

A. When I drew my insurance?

Q. Yes.

A. Well, you had to be off a certain length of time before you could draw insurance. I don't remember just exactly what the length of time was.

* * * * * *

Q. Now, since you have left the employ of the company have you been employed?

A. Yes.

Q. Where?

A. At Brooke Wholesale Embroidery.

* * * * * *

[fol. 6202] Q. And what work do you do there?

A. I don't work there now.

Q. Well, when you did work there?

A. My last job was as instructor.

Q. How soon after you left the employ of the Donnelly Garment Company did you go to work for this concern?

A. I left Donnelly's in — as I say, I believe it was in August of 1939, and I went to work for the Brooke Embroidery two days before Christmas — let's see. Well, it was a year from the following Christmas — let's see. That would have been 1940; it was two days before Christmas in the year of 1940.

Q. And what work did you do when you started in with that concern?

A. The Brooke Embroidery?

Q. Yes.

A. I ran embroidery machines.

Q. And how long was it before you were made instructor?

A. Well — let me see. It was in October of the next year. I quit there this last summer — this summer, it was the middle of this summer, and I went to work there — I mean I was an instructor about the first of this year until [fol. 6203] I quit.

* * * * * *

By Mr. Ingraham:

Q. Did you join the I. L. G. W. U.?

A. You mean the International Ladies' Garment Workers' Union?

Q. Yes.

A. No, I never belonged to any other union but the Donnelly Garment Workers' Union.

Q. Now, do you recall in June of 1939, signing an affidavit under oath with respect to the formation of the Donnelly Garment Workers' Union?

A. June?

Q. Yes.

A. Of 1939?

Q. Yes.

A. Under oath?

Q. Yes.

A. Yes, I do.

Q. I will hand you intervener's exhibit 20, and refer you to page 6077, and ask you if that is your signature.

A. Yes, that is my signature.

* * * * * *

[fol. 6204] By Mr. Ingraham:

Q. Now, I will ask you to read this petition, and state if you recall signing that affidavit.

* * * * * *

By Mr. Ingraham:

Q. This affidavit states each signer hereby further states that he or she has either —

Mr. Langsdale: (Interrupting) Just a moment. I object for the reason the affidavit is the best evidence of its contents.

Trial Examiner Batten: You may proceed.

By Mr. Ingraham:

Q. (Reading) "That he or she has either read or had read to him or her the contents of this affidavit." Do you recall having read this affidavit?

A. As I remember that affidavit, it was read to us in groups of a few girls at a time.

Q. But it was read to you?

A. Yes.

Q. Now, was the affidavit that you made at that time, was that true or false?

Mr. Langsdale: Let her see it. She hasn't read the affidavit yet.

Mr. Ingraham: She read it.

Trial Examiner Batten: Yes, she read it.

[fol. 6205] A. I don't understand what you mean.

By Trial Examiner Batten:

Q. Well, was that affidavit correct when it was read to you?

A. Well it is correct to the extent they weren't standing over me, threatening my life, or anything like that.

Q. That isn't the question. The question is: Are the facts stated in the affidavit you signed at that time correct? That is the question to you.

A. You mean to point out that I signed it of my own free will?

Q. Yes.

Mr. Ingraham: No.

Mr. Hogsett: True or false.

Miss Weyand: The contents of the affidavit itself had to do with her joining the Donnelly Garment Workers' Union.

Trial Examiner Batten: Just a moment. You proceed, Mr. Ingraham. I was going to try to simplify it, but I guess I complicated it.

By Mr. Ingraham:

Q. You swore, when you signed this affidavit, that the things mentioned — you just read these matters that are contained in the affidavit — that they were true.

• • • • • •

[fol. 6206] Trial Examiner Batten: Do you understand the question, Miss Witness?

A. I am afraid I don't.

By Trial Examiner Batten:

Q. Well, this affidavit was read to you?

A. Yes.

Q. After it was read to you, you signed it, did you not?

A. Yes.

Q. Now, the statements in there, were they true and correct at the time you signed the affidavit?

• • • • • •

By Trial Examiner Batten:

Q. Do you recall what is in the affidavit? You just read it.

A. Well, to the best of my memory, in the affidavit —

[fol. 6207] Q. No, I am asking you if you remember what was in it. You just read it.

A. Well, maybe I didn't understand it. That is the point I mean, maybe I didn't understand what that covers.

Q. Well, you take it then and read it again.

A. Well, as I understand it, I signed this affidavit to the effect that I joined the Donnelly Garment Workers' Union of my own free will?

By Mr. Ingraham:

Q. Well, the affidavit contains all the statements that you swore to.

A. What I mean by that, I don't know — I don't know whether this refers to whether I was forced into the Donnelly Garment Workers' Union or if I just signed a card because I wasn't forced to.

Q. Yes, that is one of the things in the affidavit. The affidavit is very plain and simple. You have just read it now, and I want you to state whether or not it was true or false.

Mr. Langsdale: I don't think the witness should be required to state that the whole affidavit was either true or false.

Mr. Reed: I think that is manifestly an improper suggestion.

* * * * * *

[fol. 6208] Trial Examiner Batten: I think the question is proper to the witness, when she gets through reading it again.

A. Well, I still don't know just exactly how I should answer that question.

By Trial Examiner Batten:

Q. Well, you are the one that is answering the questions, Miss Witness.

A. If I can express myself the way I felt about that when I signed it; it seems to me there are so many questions in there, that that covers, that maybe wouldn't apply all the way through; one answer wouldn't apply to it.

Q. Well then, are there parts in there that you don't consider to be true?

A. No, not necessarily that, but he asked me if I considered that complete statement to be true or false.

Q. Well, do you consider there are parts of it that are true and parts of it that are false?

A. No; but as I read that, the way I understand it, that we signed that as more or less of a petition to prove that [fol. 6209] we had joined the Donnelly Garment Workers' Union under our own free will.

Q. Well, that part of the affidavit, then, you consider true, is that right?

A. To the extent that I wasn't threatened in any way, or forced by any means into signing a card or signing my name into the union — to join the Donnelly Garment Workers' Union.

Trial Examiner Batten: Well now, what is the next part there, Mr. Ingraham? Or do you care to proceed in that manner?

Mr. Ingraham: Yes, that's right.

By Mr. Ingraham:

Q. Let me read it then: "We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company, of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to hire or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union." Is that true or false?

* * * * * * *

[fol. 6210] Trial Examiner Batten: Just a moment, Miss Witness. Do you understand the part Mr. Ingraham just read?

A. Yes, I understand it.

By Trial Examiner Batten:

Q. Well, was that true or false, that you joined it of your own free will?

A. But my point is this, the impression I got of that, when I signed it, was that I was signing a card to join the union. They didn't force me in any way by threats — the company never intimidated me one way or the other, they never told me that if I didn't join the union I would be fired; and when I signed that, that was the impression I got of it.

Q. Well, then, with that interpretation on that sentence, it is true, is that right, as you have explained it?

A. Well, if I am making myself clear, I guess that is right. It is kind of hard to express yourself. I know how I felt about it. Maybe I didn't understand it when it was read to me, but that was the impression I got from it, that we were signing that card — that we had signed the card to join the Donnelly Garment Workers' Union, that we [fol. 6211] weren't forced to sign it in any way. Now, that was the impression I got of it when I signed it.

Mr. Ingraham: Now, was that sentence I have read true or false?

Mr. Langsdale: I object to that as repetition.

Trial Examiner Batten: Well, I think it is. The witness has answered it and explained it in her way, and I

don't think, Mr. Ingraham, that you, no matter how many times you ask the question, "Is it true or false," you will get any other answer.

Mr. Reed: Well, let's see.

Trial Examiner Batten: Well, that is about the third or fourth time. You may ask again, Mr. Ingraham.

Mr. Ingraham: I want you to read that first sentence, it is a very plain and simple sentence, and state whether or not that is true or false.

Mr. Langsdale: Now, I object to that question as it contemplates a "yes" or "no" answer, when the witness says she can't give a "yes" or "no" answer, but gives her explanation for it.

Trial Examiner Batten: Well, she may read it again.

A. Well, I am sorry. That is just about the best answer I can give you, because I really and sincerely—that is the truth. Maybe I didn't understand it, I am not saying that I did. Maybe I didn't just see through it, but [fol. 6212] when I signed it that was really what I got from it, when it was read to me.

Mr. Ingraham: What did you get from it?

Trial Examiner Batten: Just a moment.

Trial Examiner Batten: In other words, Miss Witness, you have no other answer than you gave once or twice?

A. No, that is the best I can do.

Mr. Ingraham: Are you now stating that that sentence that I have read was not true?

Mr. Langsdale: I object to that as repetition. It is certainly the same question in another form.

Trial Examiner Batten: You may answer.

A. Well, I don't—I wouldn't say it was true or untrue, because right now you have convinced me that maybe I didn't understand that when it was read to me.

Mr. Ingraham: No, I haven't convinced you of anything.

Mr. Langsdale: I object to that as argumentative, and ask it be stricken out.

Mr. Ingraham: Well, it is responsive.

Trial Examiner Batten: Well, it may stand. It is not a question.

Mr. Langsdale: Of course, it is responsive to the witness.

Trial Examiner Batten: Now, will you read the answer [fol. 6213] thus far, of the witness?

(Thereupon the last answer was read by the reporter, as follows:

"A. Well, I don't—I wouldn't say it was true or untrue, because right now you have convinced me that maybe I didn't understand that when it was read to me.")

Mr. Ingraham: Now, I want you to take that affidavit and point out what fact is contained in that affidavit that you swore to at the time, that now you testify was untrue.

Mr. Langsdale: Just a moment.

A. (Interrupting) I haven't testified it was untrue.

Trial Examiner Batten: Just a moment, Miss Witness.

Mr. Langsdale: Well, I object to the question as repetition, for that includes the sentence that has just been read and inquired about six times and answered six times.

Trial Examiner Batten: Well, I think, as far as that first sentence is concerned, you'd better proceed to the next part of it, Mr. Ingraham.

Mr. Ingraham: I want her to point out anything in that affidavit that was sworn to under oath that is untrue.

Mr. Langsdale: And I object to "sworn to under oath," it doesn't make any difference whether it was sworn to under oath or not, the question is was it true.

Mr. Ingraham: Well, I want her—

Trial Examiner Batten: Both of you, please, just a [fol. 6214] moment. Will you read that question—tell us if there is anything in that that you consider to be untrue?

Mr. Ingraham: I suppose a false affidavit you consider to be untrue.

Mr. Langsdale: You had hundreds of them down there.

Trial Examiner Batten: Both of you, let's proceed with this hearing.

A. Now, what is it you want me to read?

Mr. Ingraham: I want you to point out any fact of anything in that affidavit that you now are willing to testify is untrue.

Mr. Langsdale: Now, as I understand the Examiner's ruling, that doesn't include the sentence that has been gone over.

Trial Examiner Batten: She may read the entire matter and tell us if there is anything in there she considers to be untrue at the time she signed it.

[fol. 6215] (Thereupon the affidavit above referred to was read by the witness.)

A. Well, I wouldn't say there was anything in there that was untrue to the way that I understood this when it was read to me.

By Mr. Ingraham:

Q. Well, it isn't hard to understand, is it?

A. Well, maybe I'm dense, but—

Q. Is it hard to understand?

A. I do think it is worded in a little bit complicated way, yes.

Q. What is hard to understand about it?

A. Well, I don't know—in general. But I don't seem to have the same impression of this as you do.

Q. What impression do you have?

A. Just like I said before in my answer.

Trial Examiner Batten: Now, I think she has testified to that several times, Mr. Ingraham.

Mr. Ingraham: Well, it is a very plain, clear statement. I can't understand why the witness quibbles about it.

Trial Examiner Batten: Well, that isn't the first thing in this hearing we have had that probably was plain but was explained by witnesses. Now, it is obvious that the witness will not definitely say Yes or No on this document, and I will not require her to say it.

[fol. 6216] Mr. Ingraham: All right. Let me ask this witness—

First, I offer page 6077 of intervener's exhibit No. 20 (rejected) as a part of the cross-examination.

Miss Weyand: I object to it as not containing anything inconsistent with her testimony, on the grounds I have previously objected to the offer of this exhibit.

Trial Examiner Batten: It will be received on the same basis as the other pages.

Mr. Ingraham, has anything been done with reference to photostating those pages?

Mr. Ingraham: Not yet.

Trial Examiner Batten: I believe this is three of them, isn't it?

Mr. Ingraham: Yes.

Mr. Ingraham: I believe you testified yesterday this:—.

Miss Weyand: The page number, please.

Mr. Ingraham: 6172.

By Mr. Ingraham:

Q. Miss Weyand was asking you about the April 27 meeting. Do you know what meeting that was?

A. Was that the first meeting, where the Donnelly Garment Workers' Union was—where we signed the cards, or had that right?

Q. It was the meeting where the union was formed.

A. Where it was formed, and we signed cards and joined?

[fol. 6217] Q. (Reading from transcript.)

"Q. Why did you sign the card?

"A. Well, I felt like I'd better, if I wanted my job. That was the impression I got from it. I needed my job

and needed it badly, and I got the impression that if I didn't, I wouldn't have a job very long."

A. That's right, I testified to that.

Q. Did you join the Donnelly Garment Workers' Union of your own free will?

A. Well, I joined it of my own free will to the extent of this, I was never threatened or told if I didn't join the union I would be fired, or anything of the kind, by the company, or anybody who had any authority down there. But it was just clear in my own mind that if I didn't belong to the union I wouldn't have a job there very long, and I still feel that way about it.

Q. So, then, when you made this affidavit that you joined the Donnelly Garment Workers' Union—when you made this affidavit under oath, "It is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union," that wasn't true?

Mr. Langsdale: I object to that as repetition.

Trial Examiner Batten: You may answer.

A. No, I don't understand it that way. When I signed that [fol. 6218] petition right there, as I understood that, the way I took it, I wasn't forced, by any means at all, to sign the union card, but in my own mind I felt just as sure that if I didn't do that I wouldn't have a job.

Mr. Ingraham: So, at the time in 1939 when you made this affidavit under oath you felt that it wasn't a voluntary act, that you wouldn't have a job unless you did join the Donnelly Garment Workers' Union; and, yet, you stated in this affidavit that it was your voluntary act?

Mr. Langsdale: Just a moment. I object to the question as, not a double-barreled one, but a about a quadruple-barreled one, and for the further reason that it is argumentative and, also, repetition.

Trial Examiner Batten: I think it is argumentative.

Mr. Ingraham: Did you sustain the objection?

Trial Examiner Batten: Yes. I think it is argumentative.

By Mr. Ingraham:

Q. Now, Miss Witness, you know what the word "voluntary" means, don't you? A. Yes, I do.

Q. And you know what "free act" means?

A. Well, I think I do.

Q. Now, do you want to tell this Examiner that you can't understand what the language "It is our free, voluntary and considered wish and choice to belong to the Dom- [fol. 6219] nelly Garment Workers' Union"—that you don't know what that means?

Mr. Langsdale: Just a minute. I object to that question as not based on her testimony, for she said she knew what "voluntary" meant and what "free act" meant.

Mr. Ingraham: All right,—

Mr. Langsdale: Just a minute.

Are you going to withdraw the question?

Mr. Ingraham: No.

Mr. Langsdale: The question now involves other matters which have already been answered, and I object to it as repetitious.

Trial Examiner Batten: I think it is repetitious. However, I may be mistaken, but it seems to me that this is the question to the witness, Mr. Ingraham:—

If it isn't, say so. What distinction does she make between signing the card as a voluntary act and signing this affidavit as her voluntary act?

Mr. Ingraham: That isn't my question.

Trial Examiner Batten: Then, you state your question.

Mr. Ingraham: She says she understands what these words mean.

Mr. Ingraham: Now, I want you to state what you understand "free" and "voluntary" mean.

Mr. Langsdale: I object to that as not a proper question, unless it is used in connection with the other words they [fol. 6220] are used with in this affidavit. She says she knows what "voluntary" means and what "free act" means, and she has said what she understood them to mean

in their context with these other words, which makes it repetition, and I object to it.

The Witness: What is it you want me to explain?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Now, I want you to state what you understand 'free' and 'voluntary' mean.")

A. Well, I'd say that "free" meant you were not bound in any way to anything—that you were not bound in any way or obligated. And "voluntary" would mean you did it because you wanted to, I suppose. That would be as near as I could— Well, that you were not forced.

Mr. Ingraham: Now, don't you understand, then, that that meant that you were free to join the Donnelly Garment Workers' Union and—

Mr. Langsdale: Just a moment.

Q. (Continuing) —without regard to anything that anybody had threatened, or that you thought might be threatening, to prevent you from joining?

Mr. Langsdale: I object to the question as repetition. [fol. 6221] Now, she has gone over all of those matters and stated what she understood by those words as contained in the context of the affidavit.

Trial Examiner Batten: Do you understand the question?

The Witness: No.

Trial Examiner Batten: Will you restate it, Mr. Ingraham?

Mr. Ingraham: When you joined the Donnelly Garment Workers' Union, was that your free and voluntary act?

Mr. Langsdale: Just a moment. I object to that as repetition. That is the sentence that they have been interrogating her about now for forty minutes, and she has answered it many times.

Trial Examiner Batten: She may answer.

A. You mean, the day I signed the card, did I do that—

Mr. Ingraham: Yes.

A. I signed that card because, as I said yesterday,—

Mr. Ingraham: Now, just a minute. I want my question answered, and then she may explain.

Trial Examiner Batten: Will you read the question to the witness, please?

Mr. Langsdale: I object to the interruption. Her answer as it was coming out was certainly responsive and proper.

Trial Examiner Batten: Will you read the question?

[fol. 6222] (Thereupon the last question was read by the reporter, as follows:

"When you joined the Donnelly Garment Workers' Union, was that your free and voluntary act?")

Trial Examiner Batten: You may answer.

A. It was my free and voluntary act to the extent that I wasn't threatened in any way to sign that card—forced in any way. They didn't force me or threaten me, or anything, to make me join that union at any time.

Mr. Ingraham: Now, you stated yesterday—

Mr. Langsdale: What page are you going to read from?

Mr. Ingraham: 6172.

Q. (Continuing) "Q. Could you state why you had that impression?"

That referred to the part I just read, being "I got the impression that if I didn't, I wouldn't have my job very long."

Then, the next question:

"Could you state why you had that impression?"

"A. I didn't know anybody that didn't sign one, and I didn't know anybody that didn't belong to it after it was formed."

Then, the answer goes on:

"I remember of one meeting—I don't know which one—where it was brought up in the meeting—someone asked [fol. 6223] if new employees coming into the plant would have a chance to join the union, and they said, yes, they did. And it went on in the conversation, if the new employee had any doubt as to whether they wanted to join the union, there would be a doubt in their mind as to whether they wanted to work for the company."

Do you remember making that answer yesterday?

A. I do.

Q. Now, did you consider at the time you joined this union that if new people came to work in the plant and they didn't want to join the union, there would be doubt in their minds as to whether they wanted to work for the company?

A. No, I didn't.

Q. When did this meeting take place?

A. Which meeting?

Q. You stated that at a meeting that was said, that if new employees—

A. I don't remember which meeting that occurred in. I do remember of that statement being made, but I couldn't tell you—We went to so many union meetings that I have no idea which meeting that occurred in.

Q. How many meetings did you have a week?

A. Oh, I don't know how many meetings we had, but it seems to me like we were having meetings all the time, just one right after the other.

[fol. 6224] Q. Every two or three weeks?

A. I wouldn't designate how many we had.

Q. Approximately how many a week?

A. I couldn't say.

Q. How many a month?

A. At first, it seemed to me, they had— Now, this is just my own recollection—my own idea about it; I'm not certain. It seems to me we had three or four a month.

Q. At least three or four a month?

A. Yes, I'd say that.

Q. Now, will you state what occurred at the meeting at which the Donnelly Garment Workers' Union was formed?

A. Well, as I remember, the meeting took place in the afternoon, and we went down to the meeting in our uni-

forms, Mr. Tyler was there and he talked to the employees, and that was when Rose Todd told us that we were going to sign cards—or they had cards there for us to sign, and they were passed out through the meeting and we kept them, and at the end of the meeting the cards were taken up—the boys that passed out the cards walked down the aisles and collected the cards from each row and took them back and turned them in. I remember that.

Q. Anything else?

A. Well, not that I recall right now.

Q. All right, now, the next meeting that you attended, [fol. 6225] when did that meeting take place?

A. I don't know as I could tell you that, because I don't remember the dates when they had the meetings.

Q. What occurred at the meeting?

A. I don't know what occurred. I can't specify what happened at this meeting and what happened at that meeting. I just can't—

Q. What happened at any meeting after this first meeting you referred to?

A. Usually Miss Rose Todd conducted the meeting and they talked about different union matters, and things of that kind.

Q. What were those matters?

A. You mean, what were the union matters?

Q. Yes.

A. In regard to the International Ladies' Garment Workers' Union and in regard to the Donnelly Garment Workers' Union. Those were their subjects.

Q. What was ever said—in substance, now? I am not asking you to quote anybody.

A. You mean at any of the meetings after the first meeting?

Q. Yes.

A. Just like I told you there, I remember very distinctly that one time about that being said about the new employees having a chance to—

Q. Have you read copies of the union meeting minutes? [fol. 6226] A. Yes, I have.

Q. When did you read those?

A. Well, let's see. I read them last night.

Q. Where did you read them?

A. At Miss Weyand's—

Q. What minutes did you read?

A. Well, I couldn't tell you which ones I read. I just read some minutes. I don't know which ones they were, whether they were all of them, part of them, or of the first, second, or third—I don't know what they were.

Q. After reading the minutes last night, state what you recall took place at any union meetings, outside of what you referred to.

A. I would rather not depend on what I read in the minutes. I would rather tell you what I actually remember myself, without what I got out of the minutes I read.

Q. What do you remember, then?

A. Very little. Just like I said, I remember that instance— That just happened to impress me.

Q. Now, did you testify that you attended a meeting in March, a meeting of employees?

A. I don't know just what you mean now.

Q. Did the employees hold a meeting in the month of March, 1937?

Mr. Langsdale: Just a moment. I object to that as assum-[fol. 6227] ing that she said "employees." I don't think she said who held the meeting, except that there was a meeting in the plant.

Miss Weyand: I didn't ask her about the March meeting, I don't believe.

Trial Examiner Batten: The question to the witness was, was there a meeting of the employees in March; is that correct?

Mr. Ingraham: Yes.

By Mr. Ingraham:

Q. Do you recall strikes at the Gernes, Gordon, and Missouri plants? A. Yes, I do.

Q. Do you recall reading in the paper about those strikes? A. Yes, I do.

Q. Was there a general discussion among the employees at the Donnelly plant of the violence going on in those strikes?

A. Oh, you heard some girls talking about it.

Q. But there wasn't much talk?

A. Oh, it was discussed quite a bit, naturally.

Q. Were you of the opinion that there was going to be any violence at the Donnelly plant?

A. I never had the slightest bit of fear, in going in and out of the Donnelly plant—going back and forth to work, of being bothered by the union in any way. I was never approached— I drove my car back and forth every day and parked it there and I never saw anything in front of [fol. 6228] the Donnelly plant that might bother us.

Q. Did you ever hear that the Donnelly plant would be next?

A. I think there was something to that effect in the paper.

Q. Did you know what was going on at the Gernes, Gordon, and Missouri plants in the way of violence?

A. Only what I read in the papers and heard people tell. I didn't see it.

Q. Did you think there was any violence going on at these other plants?

A. I suppose there was. I didn't pay a whole lot of attention to it.

Q. Did you hear that the International strikers were beating employees at those plants?

A. Oh, I knew about what was going on up there, just from hearsay and what I read in the paper. I just read it in the papers.

Q. Did you ever hear that the strikers were pulling the employees' hair and tearing their clothes off?

A. Yes.

Q. And kicking them with razor blades?

A. I heard about them pulling their hair.

Q. And tearing their clothes off?

A. I did hear that.

Q. And that didn't bother you?

A. Well, if I had seen somebody out in front of Don- [fol. 6229] nelly's that looked like they might do that, it might have, but there was never a picket or anything I saw in front of the Donnelly plant that would put any fear in me whatsoever, so those things didn't bother me.

Q. But you just testified you heard that the Donnelly plant was going to be next? A. Yes.

Q. So it wouldn't bother you to have your clothes stripped off in the public streets in Kansas City?

A. Yes, it would bother me to have my clothes stripped off in the streets, but I would have to see somebody out there to do it before I would get excited about it.

Q. You would have to wait until they were ready to do it before you would be bothered about it?

Mr. Langsdale: Just a moment. Now,—

A. Absolutely, I wasn't one bit frightened about that. I was in and out of there all of the time, and I drove my own car to work and parked it out in front every day.

Trial Examiner Batten: Mr. Langsdale, did you have something you wanted to say?

Mr. Langsdale: No. I think she is taking care of herself all right.

Mr. Ingraham: Yes, she has demonstrated what she thinks—

Mr. Langsdale: Just a moment.

The Witness: Isn't that what I am supposed to do when—

[fol. 6230] Trial Examiner Batten: Just a moment, Miss Witness, you just answer the questions that are asked of you.

By Mr. Ingraham:

Q. Now, Mrs. Copenhaver, did you hear any discussion among the Donnelly employees of what they could do to protect themselves?

A. Oh, not other than just what a few girls passed as their opinion.

Q. Who were the few girls?

A. Oh, I don't remember who they were—just girls who might happen to be going in and out of the building, and so forth.

Q. So there wasn't any such general discussion down there at all?

A. I don't remember whether there was or not. I can't remember. There were different girls we would go in and out of the plant with and we would discuss it among ourselves and talk about the things that might have gone on in these other plants.

Q. Did the employees ride in buses?
A. Yes, they did.
Q. For weeks and weeks?
A. I don't know how long.
Q. Did you? A. No, I didn't.
Q. Did the newspaper have articles about the strikes?
A. You mean, the strikes at the Missouri and those places?
[fol. 6231] Q. Yes.
A. I read articles about those strikes.
Q. Were there pictures in the papers?
A. I believe there was.
Q. Were there very many?
A. I don't remember about that.
Q. Did the articles describe any violence at the Gernes plant?
A. As I remember, they did, yes.
Q. Did the pictures show the violence?
A. I don't remember about that.
Q. But what you read didn't cause you to be afraid that the International was going to come down to the Donnelly plant and use the same violence?

Mr. Langsdale: I object to that as repetition. She has answered that several times.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: I think it is somewhat repetitious, but you may answer.

A. No, it didn't frighten me to the extent that I was afraid to go to work.

By Mr. Ingraham:

Q. I am not asking you if you were afraid to go to work.
[fol. 6232] A. Well, I didn't worry about it, thinking they might come down there some morning and meet us down there. That didn't worry me.
Q. You never thought they were going to do it; is that right?
A. I didn't know. I wouldn't say that. I didn't know whether they would or not.

Q. I hand you respondent's exhibit No. 16 and ask you if you saw that article or saw that edition of the Kansas City Times?

A. I believe I remember seeing those pictures.

Q. What did those pictures indicate to you?

A. Well, it looked like a pretty good fight in progress.

Q. But you wouldn't be afraid of any fight like that?

Mr. Langsdale: I object to that as argumentative and having been asked and answered—repetition.

Trial Examiner Batten: I think it is repetition.

Mr. Ingraham: I am referring to this article—that the article didn't cause her to be afraid of fights like that.

Mr. Langsdale: Just a moment. It is still repetition. He has asked her that question generally, specifically, and back and forth, and she has said she wasn't afraid of being in any fight, she drove her car up and parked it in front of the plant every day.

Mr. Ingraham: Did you sustain the objection?

[fol. 6233] Trial Examiner Batten: Yes, I sustain the objection.

Mr. Ingraham: I will hand you respondent's exhibit No. 20 and ask you if you saw that edition of the Kansas City Journal-Post, Monday, March 22, 1937?

Mr. Langsdale: What is that? Is that the Sylvia Hull article?

Mr. Ingraham: No.

Mr. Langsdale: The strike article?

Mr. Ingraham: "Violence Marks Garment Strike."

A. Well, I think I saw those pictures.

Mr. Ingraham: I am not referring to the pictures.

Trial Examiner Batten: Did you read that article?

A. Yes, I think I read it.

By Mr. Ingraham:

Q. What effect did that have on you?

A. Well, it didn't have any effect on me. I wasn't implicated in it. I didn't work up there. I didn't have to argue with them.

Q. But you have testified you had heard discussed that the International was coming next to the Donnelly plant and was going to use the same violence—

Mr. Langsdale: Just a moment.

I object to that. She hasn't testified to anything of the sort. She said she heard rumors that they might come down there next, but nothing about using violence, or "the same violence."

[fol. 6234] Mr. Hogsett: Do they use different types of violence?

Mr. Langsdale: They didn't use all of the violence you people claim they did.

By Trial Examiner Batten:

Q. Did you understand they were going to use the same methods down at the Donnelly plant as they had used at the other plants?

A. I heard that.

Q. You heard that from the other girls?

A. Just in general conversation.

Mr. Ingraham: Now, will you please read the question?

(Thereupon the last question was read by the reporter, as follows:

"But you have testified you had heard discussed that the International was coming next to the Donnelly plant and was going to use the same violence—")

Trial Examiner Batten: You may answer.

Mr. Ingraham: I believe she answered that question in—

Trial Examiner Batten: She answered it in answer to my question. I used the word "methods" instead of "violence." But I thought you still wanted an answer to your question.

Mr. Ingraham: Will you please answer that?

The Witness: What was the question?

Mr. Ingraham: Will you read it again, please?

(Thereupon the last question was reread by the reporter.)

A. Yes, I heard that.

[fol. 6235] By Mr. Ingraham: I hand you respondent's exhibit No. 29, which is an article in the Kansas City Star for March 25, 1937, and ask you if you read the article that is entitled "The Hair Pulling Grows."

(Thereupon the article referred to in the last question was read by the witness.)

The Witness: Now, you asked me if I read that?

Mr. Ingraham: Yes.

A. Yes, I read that.

Q. What effect did the reading of that article have on you?

A. Well, maybe I was hard to convince that they were going to come down there, but I still had no fear— I had to see somebody out there first, before it would have frightened me that they were going to do something to me.

Q. Now, did the same type of article appear for weeks and weeks in the papers?

A. There were several articles about that, as I remember.

Q. What do you mean by "several"?

A. Well, the papers had write-ups in them in the mornings, and sometimes in the evening paper.

Q. Every day?

A. I don't know as it was every day, but there were several articles I remember reading.

Q. Was that for three or four weeks?

A. I don't know how long it went on. It seems like it [fol. 6236] did go on for quite a little while.

Q. I will hand you respondent's exhibit No. 31, which is the Kansas City Journal-Post edition of April 5, 1937, with the streamer across the front page, "Twenty Women Strikers In Fight. New Fights Stir Action." Did you read that article?

[fol. 6237] A. Yes, I read that.

By Mr. Ingraham:

Q. Did you read that article?

A. Yes.

Q. What effect did the reading of that article have on you?

A. Well, it didn't have any particular effect on me, it didn't apply to me.

Q. I hand you respondent's exhibits 18 through 38 inclusive and ask you to state if you read the other articles that you have testified about.

Trial Examiner Batten: Well, let's see. She has testified on 20, 29 and 31, I believe.

Mr. Ingraham: I think that's right.

Trial Examiner Batten: Will you go through these articles, Miss Witness, and as you go through them tell us whether you read them or not, and give us the number that is on the page.

A. You want me to read each one of these?

Mr. Ingraham: Yes. Do you recall reading that article?

Trial Examiner Batten: You read it sufficiently so you can tell us whether you did read it at the time or not. If you have to read it all the way through, you do so; of course, if you don't it is unnecessary.

A. I believe I read this one.

By Trial Examiner Batten:

Q. What is the number of it?

A. Exhibit 18.

[fol. 6238] Q. Exhibit 18?

A. Yes. I think I remember reading this one too.

Q. What number is that?

A. Exhibit No. 19.

Q. And I believe you have testified before that you read 20, the next one, is that right.

A. Yes. I read most everything that was in the paper at the time.

Q. Well, you go through each one. The next one would be 21.

A. I believe I read this one too, Exhibit 21.

Q. 21?
A. Yes. The next one is 22.
Q. 22. You read that?
A. I read that. I don't remember definitely about this 23, I wouldn't be certain about that.
Q. 23?
A. Yes. I think I read 24.

I don't remember this.

Q. What one was that?
A. No. 25.
Q. 25?
A. I don't believe I read that one.

I don't remember about this 26, whether I read it or not.

Q. 26?
[fol. 6239] A. Yes.

* * * * * *

By Trial Examiner Batten:
Q. Miss Witness, will you start again to read?
A. I believe I read this exhibit.
Q. Wait until Mr. Ingraham gets here. I think you left off at exhibit 31, did you not.

Miss Weyand: 26 is the last one.

Trial Examiner Batten: Oh, pardon me; 26.

By Trial Examiner Batten:
Q. Well, then, you start in with 27.
A. I believe I read this exhibit 27.
Q. 27?
A. Yes.

Trial Examiner Batten: While the witness is reading this next exhibit, I think it was Mr. Lane or Mr. Stottle called my attention to the fact that the 3—this doesn't concern you, Miss Witness—3 pages out of intervener's exhibit 20, which was rejected, and are now received, aren't given new exhibit numbers, but simply identified as a cer-
[fol. 6240] tain page number. Now, that appears to me to be satisfactory.

* * * * * *

[fol. 6241] Trial Examiner Batten: The witness states that she has read 28—

A. (Interrupting) And 29.

Trial Examiner Batten: (Continuing) And 29.

A. I believe I read No: 30, too.

By Trial Examiner Batten:

Q. 30?

A. Yes.

Q. And 31, I believe you have already testified about that?

A. Yes, I have already testified to that.

I believe I read No. 32.

Q. 32?

A. Yes.

I don't remember whether I read No. 33 or not. I don't believe I read 34. I don't remember whether I read No. 35 or not. I don't remember about this 36.

Q. 36?

A. Yes. I don't remember whether I read that or not for sure.

I read No. 37.

Q. Was there some question about 38? I notice you looking at it.

Trial Examiner Batten: Mr. Ingraham, I think the witness has some question about it.

A. Is this what you wanted me to read and see whether I had read it or not?

[fol. 6242] By Mr. Ingraham:

Q. Yes. Do you recall reading that article?

A. No, I don't believe I do. I don't believe I recall reading that 38.

Is that all?

Q. Yes. What effect, if any, did the reading of these articles about the violence at the Gernes, Gordon, and Missouri plants have on you?

A. At that time, you mean?

Q. Yes.

A. Well, it didn't have any effect on me. I wasn't implicated in it, I didn't work there, and I didn't think a whole lot about it. I talked—I heard comments and discussed it, and things of that kind, like it said, the hair pulling.

Q Were employees discussing the violence at those plants?

A. You mean the Donnelly employees?

Q. Yes.

A. Yes, I have talked to the girls myself about it, discussed it.

Q. Now, is it not a fact that the violence at the Gernes, Gordon, and Missouri plants caused the Donnelly employees to organize the Donnelly Garment Workers' Union?

A. Well, I guess that is what brought it about.

Q. Yes. I believe you stated that in March and April of 1937 you were in section 415?

[fol. 6243] A. In March and April?

Q. Yes.

A. Was that during the Sylvia Hull demonstration?

Q. Yes.

A. To the best of my knowledge, yes, that is where I was; it was on the eighth floor in section 415.

Q. Now, was section 415 a large section that ran across the entire floor of the building?

A. I couldn't be certain about that. There was an aisle that run north and south in the building; whether it was all one section at that time I don't remember. I don't remember whether that whole row completely even with the division was one section, or to where the aisle was [was] one section, from there east, and from the aisle west was another section, I can't say about that, I don't remember.

Q. Which side of the aisle did you work on?

A. As I remember I worked on the east side of the aisle.

Q. Now, did that section have in it more than one instructor?

A. Well, if that section was divided, as I say, from the aisle, which was about the middle of the building, if it was divided there into two sections, and the section from the aisle east—if there was just that one row of machines in there, as a rule we just had one instructor, no other girl on the floor; and if it was a whole row clear from the east side of the building to the west side of the build-
[fol. 6244] ing, they generally had an instructor and a thread girl.

Q. Do you recall who the instructor was for section 415 during the months of March and April, 1937?

A. As I recall, it was Etta Dorsey.

Q. Do you recall any other instructors that worked in that section?

A. There was only one instructor to the section.

Q. I mean at any time?

A. An instructor that had that section?

Q. When you were in the section.

A. Well, I wouldn't say that any other instructor had that section, I wouldn't remember whether or not any other instructor had that section when I worked in that one particular place or not.

Q. I believe you stated that you worked in 1928 at the plant and then left in 1929?

A. To the best of my memory, yes. I know I left there in 1929.

Q. Then when did you come back?

A. In, I believe it was, in September; I am not certain about the month, but I know it was 1938—I mean 1935.

Q. 1935? A. 1935.

Q. Well now, will you state what section you worked in when you first came back?

[fol. 6245] A. In 1935?

Q. Yes.

A. I went to work in the—well, it was that same section, I presume it was the same number, 415, but it was in that one particular place in the building, on the eighth floor, I remember that.

Q. Then how long did you remain in 415?

A. Well, it seems to me that it was quite a little while, because at that time I was embroidering, and I know I stayed in that section as long as—during rush season, on

the embroidery machine, I couldn't say exactly how long it was, I don't remember.

Q. Do you ever remember working in any other section than 415?

A. Oh, I have worked in any number of different sections than 415. I was changed from one section to the other and from one floor to the other, all over the place.

Q. Has 415 always been on the eighth floor?

A. Well, I can't say definitely about that, because they change those sections around. 415 was a special section.

Q. Did you ever work in 415 on any other floor than the eighth floor?

A. Well, I don't remember about that, whether I did or not.

Q. Do you recall the names of any girls that were working in 415 in the months of March and April, 1937?

[fol. 6246] A. In 1937, in March and April—as I remember I was running an embroidery machine at that time. I am not absolutely certain, but I feel sure that there were Elsie Holloway and Ann Perry, Mabel Spielbusch—Ann Perry and Mable Spielbusch were embroidery operators—those girls that I remember were embroidery operators that were working right there with me. Maybe they were, but I wouldn't be positive about that.

Q. And you don't recall any other instructor for 415 than Etta Dorsey?

A. I wouldn't know whether there was, because they might have had other instructors for that section at different times.

Q. I mean when you worked in the section.

A. I don't recall. I remember working in 415 for Etta Dorsey; I don't know whether I worked for anybody else in that same section or not, I don't remember.

Q. What other instructors were in the section in which you worked, in any other sections?

A. In any other sections, any other instructors that I worked for?

Q. Yes.

A. Oh, let's see. I worked for Carrie Abrams and Mrs. Niemeyer, Kathryn Rosen, Grace Davis, and there were probably others, but those are the ones I remember working for in other sections.

Q. Now, you testified yesterday that you went over to [fol. 6247] Sylvia Hull's section on or about April 23, 1937. Is that correct?

A. Yes, I walked over to the section.

Q. And I believe you testified that you saw Sylvia taken out?

A. Yes, I seen that—I was back in the section when I saw that.

Q. What did they do, drag her out?

A. No, I wouldn't say they drug her out.

Q. What do you mean, by "taking her out"?

A. Well, there was a bunch of girls around her. I don't mean they picked her up bodily and carried her out, or dragged her out through the doors, or anything of the kind.

Q. Did they push her out?

A. I don't know that they pushed her out; I just saw a bunch of girls around her.

Q. What was Sylvia doing?

A. She was walking on her own two feet, she was going out under her own power, as far as that goes, but there was a bunch around her. I don't mean to say they were, you know, taking her out by any force.

Q. You don't mean then that they were forcing her out?

A. I mean they didn't have ahold of her, dragging her out, or anything like that; there was a bunch of girls around her, and she was walking.

[fol. 6248] Q. Did you hear girls say they weren't going to work so long as she stayed there? A. Yes, I did.

Q. I believe you stated this morning that the instructor sent you home. Now, when the instructor sent you home, had you been guilty of misconduct?

A. Not that I know of; I never was told that, anyway.

Q. Why did she send you home?

A. For the lack of work.

Q. Isn't it a fact that when work ran out, that the instructor would receive orders to notify the girls there was a lack of work?

A. I don't know what kind of instructions the instructors got. I don't know anything about that.

Q. You wouldn't know whether she had received instructions from Mr. Baty to notify you to go home?

A. I don't know what they told her.

Q. I believe you stated that instructors—or an instructor had transferred you at some time. Did you say that this morning?

A. No, I don't mean that the instructor had transferred me. The instructor had sent me down to Mrs. Hyde. Mrs. Hyde would give me the transfer and tell me what section to go to or Kathleen, or whoever happened to be in Mrs. Hyde's office.

Q. That is a girl who worked there then?

[fol. 6249] A. I didn't know her last name, I just knew her first name.

Q. Would that occur when there was a lack of work?

A. When I would be transferred to other sections?

Q. Yes. A. Yes.

* * * * * *

[fol. 6250] Cross-Examination.

By Mr. Lane:

Q. Are you a married woman?

A. Yes, I am.

Q. What is your husband's full name?

A. Robert Copenhaver.

Q. What is his occupation?

* * * * * *

Mr. Langsdale: Just a minute. I object to that as immaterial.

* * * * * *

Mr. Lane: I think it is proper cross-examination to show this witness' relation to any situation that affects her testimony here.

Trial Examiner Batten: I don't think so, as far as her [fol. 6251] family relationship is concerned.

Mr. Lane: I intend to ask her whether her husband is a member of any union and—

Trial Examiner Batten: I don't think it is material, and I now so rule.

* * * * * *

[fol. 6252] Q. Now, without asking you specifically what your age is,—

A. I don't mind telling you.

Q. At any rate, you are past 30, aren't you?
A. Yes. I was 31 in June.
Q. And you know the nature of an oath, don't you?
A. I certainly do. I think I do.
Q. And you know the obligation entailed when you take an oath, don't you? A. I think I do.

* * * * * *

[fol. 6253] Mr. Lane: Now, when you made this affidavit referred to on page 6077 you thought you understood what that affidavit meant, didn't you?

* * * * * *

[fol. 6254] By Mr. Lane:
Q. Did you think you understood what that statement was that you were signing?
A. I thought I did.
Q. As a matter of fact, when you sign your name, you think you understand what you are signing your name to, don't you?

* * * * * *

A. I wouldn't say I thoroughly understood everything I signed down at Donnelly's.

[fol. 6255] By Mr. Lane:
Q. Don't you think at the time you sign your name to something you understand what you are signing?
A. I think I should. I know now that I should. But at that time we signed so many things down there, you would sign them hurriedly and you didn't have time to stop and read those things thoroughly and absorb them like you should.
Q. So you did sign things down there that you didn't understand?
A. Yes. There is no doubt in my mind that I signed things down there that I didn't understand as thoroughly as I should have understood them.
Q. But at the time you signed this you thought you understood it?
A. I signed my name and didn't think much about it.
Q. Did you know there was a hearing going on before the National Labor Relations Board in 1939?
A. Pertaining to the Donnelly case?

Q. Yes.

A. I knew they were having hearings and things of that kind, yes.

Q. Wasn't that matter discussed at the Donnelly Garment Workers' Union meetings?

A. I believe it was.

Q. You knew witnesses were being produced and testifying under oath?

[fol. 6256] A. I knew of two witnesses from my section that were brought to some sort of a trial down here.

Q. When was the first time you ever talked with anybody about this affidavit that was shown you this morning, this intervener's exhibit No. 20?

A. When? You mean, just recently?

Q. When was any time, other than the time you signed it? A. Other than when I signed it?

Q. Yes.

A. I don't know when the first time was.

Q. Well, you have talked with somebody about it before you took the witness stand, haven't you? A. Yes.

Q. Who was that? A. Miss Weyand.

Q. When did you talk with her about it?

A. Last night.

Q. Any time prior to last night?

A. I don't remember whether I did or not.

Q. When did you talk with Miss Weyand about your testimony in this case prior to last night?

A. Let's see. I believe it was in July.

Q. Now, are those the only two times you have talked with Miss Weyand?

A. No. I talked with her one other time, about a week ago.

[fol. 6257] Q. And you can't remember now whether on any occasion other than last night she showed you this affidavit, which is intervener's exhibit No. 20?

A. No, I don't remember whether she did or whether she didn't.

Q. She may have done so, so far as your memory—

A. I don't remember whether she did or didn't. I wouldn't say she did or she didn't.

Q. Have you talked with anyone else connected with the National Labor Relations Board other than Miss Weyand? A. In regard to that?

Q. About your testimony in this case?

A. Well, Miss Blue—the young lady over there (indicating)—

Miss Weyand: Miss Boyls.

A. (Continuing) Miss Boyls. She was there last night.

By Mr. Lane:

Q. I mean anyone at the National Labor Relations Board, represented by Miss Weyand—anyone else connected with her that you talked with?

A. No one other than Miss Boyls.

Q. When did you talk with her? A. Last night.

Q. You mentioned Miss Blue. When did you talk with Miss Blue?

A. I was mistaken. I was calling Miss Boyls "Miss Blue."

Q. Did you ever talk with Miss Blue?

[fol. 6258] A. Yes.

Q. About your testimony in this case?

A. I don't know as it was about my testimony. Just talking—

Q. Where was that conversation?

A. Just here and there in the hall when we would happen to meet.

Q. You have talked with her only during your attendance at this hearing?

A. Yes. I never saw her before.

Q. You never saw her before? A. No.

Q. And the first person you talked with connected with the National Labor Relations Board was Miss Weyand?

A. Yes.

Q. And she showed you this affidavit? A. Yes.

Q. And you had given some thought about the answers you were going to make when you were confronted with it this morning?

Mr. Langsdale: Just a moment. I object to that as immaterial, not tending to prove or disprove any issue in the case, and certainly not proper cross-examination.

Trial Examiner Batten: I don't think it is improper. She may tell us if she has given any thought to it.

[fol. 6259] By Mr. Lane:

Q. Will you answer the question, please? Have you given any thought to what you were going to answer when you were confronted with this affidavit?

A. Yes, I thought about what questions might be asked me and what answers I would make, naturally.

Q. You were told by Miss Weyand that you would likely be confronted with that affidavit this morning, weren't you?

Mr. Langsdale: Now, just a moment.

Has he a right to pry into the preparation Miss Weyand makes of her case in talking to the witnesses?

Trial Examiner Batten: I think, under the ruling I made in answer to Mr. Hogsett I would say no, but— She may proceed.

The Witness: May I have the question, please?

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. I don't remember whether she told me that that would be shown me this morning or not.

By Mr. Lane:

Q. At any rate, you thought it might, didn't you?

A. Well, I would expect to be shown most anything that might pertain to anything I had my name on.

Q. And you did think in your own mind about what answer you would give when that affidavit was shown to [fol. 6260] you, didn't you?

A. I thought about different things that might be asked me, yes.

Q. I show Board's exhibit No. 1-RRRR, which begins on page 3471 of the Circuit Court of Appeals record, and ask you to read that.

Trial Examiner Batten: What page is that, Mr. Lane?

Mr. Lane: 3471.

(Thereupon the exhibit referred to in the last question was read by the witness.)

By Mr. Lane:

Q. Now, I call your attention to the signature appearing on the fourth page of signatures, which is page 3477 of the Circuit Court of Appeals record, and particularly to the last signature in the first column on that page, and ask you to state whether that is your signature?

A. Yes, it is.

Q. Did you in your conversation with Miss Weyand about this case have this offer of proof called to your attention? A. You mean, did I see that?

Q. Yes. A. Yes, I saw that.

Q. You signed this offer of proof, didn't you, in 1939?

A. Yes.

Q. Did you read it before you signed it?

A. I don't remember whether I did or not.

[fol. 6261] Q. Did you have it read to you before you signed it? A. I don't remember.

Q. Do you remember this portion of it:

"The undersigned, all being employees of the Donnelly Garment Company or Donnelly Garment Sales Company below the rank of anyone with authority to employ or discharge or reprimand employees, and all being members of the Donnelly Garment Workers' Union, hereby state that they have read this statement in full, signed it of their own free will and choice, and if present in Court they would testify under oath to the following facts:"

Did you read that statement or hear it read to you before you signed this?

A. I don't remember whether I did or not.

Q. By saying you don't remember, you don't mean to say it wasn't read to you, do you?

A. I don't mean to say I did or didn't read it, or somebody did or didn't read it to me. I don't remember whether it was read to me or whether I read it or whether I didn't.

Q. Is there anything in this offer of proof that you now think was untrue at the time you signed it?

I will hand it back to you and you can go through it, and I will ask you to indicate anything in there, in that offer of proof, that you now think is untrue.

[fol. 6262] Trial Examiner Batten: You mean, now or—

Mr. Lane: That she now thinks was untrue at the time she signed it.

A. I would like to ask a question about this here (indicating). When they would have these signed, they would tell us that we were to sign—that they had something for us to sign—

Mr. Langsdale: Will you speak a little louder, please?

A. (Continuing) They would tell us they had something for us to sign. Of course, naturally, it was read to you, or you were supposed to read it yourself.

But right here (indicating) it says, " . . . Donnelly Garment Workers hereby state they have read this statement in full, signed it of their own free will and choice . . ." I suppose that would be your choice, if they put it before you to sign. Would that be considered your choice?

Mr. Lane: Now, I am asking the witness to answer my question. I would like the reporter to read the question to her.

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter, as follows:

"Is there anything in this offer of proof that you now think was untrue at the time you signed it?

I will hand it back to you and you can go through it, [fol. 6263] and I will ask you to indicate anything in there, in that offer of proof, that you now think is untrue.")

Trial Examiner Batten: Do you understand the question, Miss Witness?

Mr. Lane: And I have no objection to her making any explanation of anything she wants to explain.

Trial Examiner Batten: You may answer the question.

A. Well, the point that I meant to bring out there was, did the employees choose to bring this up and have this signed? I was notified. I didn't know they had it until I got down there. That's what I mean.

Mr. Lane: You go ahead and pick out anything in there you think is false.

A. I don't know as it was my choice. I was told that it was down there to be signed and I knew I was expected to sign it.

Trial Examiner Batten: Go on through it and tell us whether or not any of those items mentioned in there were true or—was that it—or untrue?

Miss Weyand: The witness was pointing out one item and stating whether it was her choice.

Trial Examiner Batten: I am asking her to proceed with it—

Miss Weyand: I wish she would finish with that one.

Mr. Lane: Let me ask the specific question.

[fol. 6264] By Mr. Lane:

Q. When you read in there, ". . . hereby state that they have read this statement in full, signed it of their own free will and choice, and if present in Court they would testify under oath to the following facts:" did you have the impression that you were not acting on your own choice?

A. At the time I signed this?

Q. Yes.

A. I'm not sure I even read this through.

Q. All right. Go ahead.

A. I'm not sure that I even knew what there was in it when I signed it.

Q. Go ahead and see if there is anything in there you think was untrue at the time you signed it.

A. Here (indicating) is something else:

"To the best of their knowledge and belief, the meeting of March 18, 1937, was called by employees." Of course, it was called by employees, but I never knew a meeting to be called actually by the girls that work in the factory. That's my point. The meetings were called by Rose Todd, or someone like that—they were not factory girls, the girls that were really the union members, because that was—the biggest part of the Donnelly Garment Workers' Union were factory girls, the girls that worked right in the fac-

tory. Those meetings were called— As I remember, Rose [fol. 6265] Todd called the first few.

Now, maybe that wouldn't prove that this was untrue, but that's my version of it.

This part right here (indicating) I don't think covers me:

"As a result of this information the attitude of the mind of the undersigned parties and of the employees of the company in general was one of apprehension, uneasiness, and fear that the employees of the Donnelly companies would be shortly subject to similar violence and intimidation which they understood and believed was being carried on in connection with the Gordon, Gernes, and Missouri strikes."

I didn't have any fear. I had no fear of them coming down there and bothering me, as I said before.

Q. Now, your answer applies only to you?

A. To me. I can't speak for anyone only myself.

Q. Did you read that in this statement before you signed it?

A. As I said, I don't remember whether I read this or not.

Q. You may have read it?

A. I don't know whether I did or not. I won't say I did and I won't say I didn't.

Here (indicating) it says that those things that happened at these other places was what influenced a belief as [fol. 6266] to possible and probable violence or intimidation by the International Ladies' Garment Workers' Union, and that that was one of the reasons which caused the undersigned to approve and to take a part in the formation of the Donnelly Garment Workers' Union. That didn't apply to me.

Q. That was not one of the reasons you thought caused the formation of the Donnelly Garment Workers' Union?

A. I mean, in signing this.

Q. I say, you now say the intimidation and things recited here did not apply to you, as far as the formation of the Donnelly Garment Workers' Union was concerned?

A. No. I had no fear of the outside unions intimidating me.

Q. Do you have any recollection of having read that at the time you signed that?

A. I don't remember whether I read this or not.

Q. So far as your memory now serves, you may have read this when you signed it?

Mr. Langsdale: I object to that as repetition.

A. I won't commit myself to say whether I did or did not read this, because I don't know.

By Mr. Lane:

Q. Did you have it read to you?

A. I don't know.

Q. Your memory on that is the same, you may have read that—

Mr. Langsdale: I object to that as repetition. It has [fol. 6267] been gone over and over and over again.

Trial Examiner Batten: As I understand it, she says she doesn't remember whether—

Mr. Lane: I am inquiring now as to a specific portion of this, and it isn't repetition.

Trial Examiner Batten: I think it is repetitious, where it has been asked several times, but you may ask the question.

Mr. Lane: She doesn't say she has no recollection about the document. She says she doesn't know whether she read all of it or any portion.

Trial Examiner Batten: You may proceed.

Is there a question pending, Miss Reporter?

Miss Weyand: She hasn't finished, has she?

Mr. Lane: I think I asked a question she hasn't yet answered.

Mr. Langsdale: It seems to me there is a question that the witness was asked and tried to answer.

The question, as I recall it, is; is there, whether you read it or not, anything in that document that you say is untrue? Isn't that the question to the witness?

Mr. Lane: No.

The Witness: That is why I understood I was reading that.

Miss Weyand: And you have not completed it?

[fol. 6268] The Witness: No.

Trial Examiner Batten: Well, complete your reading of the document.

(Witness complies.)

A. Well, I don't know how to express the last part of this, whether utterly this was true or untrue, but I still stick to the theory that I had the feeling that, according to the last part of this, that if I didn't belong to the union, I wouldn't have had a job. I still feel that way about it. I suppose if I had refused to sign any of these papers or pay my dues in the union, or such thing, I would have been without a job.

Mr. Lane: The question with respect to this instrument was, whether, having read it now, you now say there was anything in that which you in 1939, at the time you signed it, regarded as being untrue?

Mr. Langsdale: Just a moment.

A. In 1939—

Mr. Langsdale: Just a moment, please.

Trial Examiner Batten: Just a moment, Miss Witness.

Mr. Langsdale: I object to the question as repetition. She has gone through the document and answered that several things there were untrue in her opinion. It has been covered from one end to the other.

Trial Examiner Batten: I think she has answered.

[fol. 6269] By Mr. Lane:

Q. In 1939, at the time you signed it, did you then think there was anything in it that was untrue?

A. I couldn't say, because I don't know whether I read this or not.

* * * * * *

Q. Did you ever hear of a closed shop contract between the Donnelly Garment Workers' Union and the Donnelly Company?

A. Yes, I have heard that mentioned.

Q. And don't you know that a closed shop agreement is an agreement by which the employees who are eligible for that union must belong to the union which has the closed shop agreement?

A. I don't know as I ever had it explained to me.

Q. Did you hear it discussed in the meeting of May 11, 1937?

A. Closed shop agreement?

Q. Yes.

A. I don't remember.

Q. Didn't you hear it discussed by the members of the executive committee and by Rose Todd that they contemplated asking the Donnelly Garment Company for a closed shop contract?

A. I don't remember.

Q. And wasn't it explained in that meeting, if they got a closed shop contract, everybody in the company eligible [fol. 6270] for membership in the union would have to belong to the union?

A. That's the way I got it.

* * * * * *

[fol. 6274] By Mr. Lane:

Q. Mrs. Copenhaver, were you subpoenaed to come to this hearing?

* * * * * *

[fol. 6275] A. Well, I don't know. I believe I was. I may be wrong, but I believe I was.

By Mr. Lane:

Q. Well, do you have—

A. (Interrupting) I have a paper that was given me.

Q. Do you have it with you? A. Yes, I do.

Q. May I have it, please? When was that served on you?

* * * * * *

A. Day before yesterday.

By Mr. Lane:

Q. On April 27, 1937, at the meeting at which the Donnelly Garment Workers' Union was formed, what time did you go to that meeting?

[fol. 6276] A. In the afternoon.

Q. What time in the afternoon?

A. I don't know the exact time, but I know it was along in the middle of the afternoon.

Q. How many hours did you work during the week on which April 27 fell?

A. Well, I don't remember that.

Q. And you can't fix the time you went to that meeting?

A. Only that it was along in the afternoon; I would say around probably between 2 and 3, 2 or 3:30, something like that.

Q. Did you go with the other girls in your section?

A. Yes.

Q. Did you go in your uniform, or did you change?

A. No, I went in my uniform.

Q. And did you stay during the entire meeting?

A. Yes.

Q. And what did you do after the meeting?

A. I don't remember whether I went back upstairs or whether I went directly—I will take that back; I remember I went back upstairs.

Q. Did you resume your work?

A. Well, I don't remember whether or not I worked any more, but I remember going back upstairs.

Q. You mean back up to the eighth floor?

[fol. 6277] A. Yes.

Q. Was your locker on the eighth floor? A. No.

Q. Where was your locker?

A. I don't remember whether it was on the second or third floor; it was where all the rest of the lockers were.

Q. You went back to the eighth floor?

A. I went back to the eighth floor, I am sure of that.

Q. But you don't know whether you worked any, yourself?

A. I don't remember whether I went back to work any more or not.

Q. What was your purpose in going back to the eighth floor?

A. I don't remember whether I went back to do more work or went back to put my work away, or left something back up there that took me up there, but I don't remember whether I went back to work or not.

Q. When you went down to the meeting that day, did you punch your time clock, your time card?

A. I don't remember.

Q. Do you remember whether you punched your time clock before you went to the meeting or afterwards?

A. I don't remember.

Q. Do you remember how many hours you worked that day? A. No, I don't.

Q. You don't know what time quitting time was for the [fol. 6278] section that day?

A. I know what quitting time should have been.

Q. Well, on that day, on April 27, 1937?

A. Our regular working hours was that I would have quit work, say, at 4 o'clock, I believe.

Q. Did you quit work at 4 o'clock every day that week?

A. I don't remember.

Q. Did you quit that day at 4 o'clock?

A. I don't remember because I don't remember whether I went back up and went to work or not.

Q. Mrs. Copenhaver, don't you know that in any shop that has a closed shop agreement, the employees eligible to that union are required to belong to that union in order to keep their employment?

A. Really, I know nothing about unions.

Q. Well, do you know that particular matter? Do you know in a shop where a closed shop contract exists, those employees are required to belong to that union in order to keep their employment?

A. I know that now. I didn't say that I knew it then.

Q. Well, you know it now?

A. Yes, you have told me that.

Q. Well, I am asking you if you know.

A. Well, I know after you have told me.

Q. Were you paid for the time spent at the meeting on [fol. 6279] April 27, 1937, in which the Donnelly Garment Workers' Union was organized?

A. I never noticed any deductions from my pay.

Mr. Reed: I can't hear the answer.

A. I never noticed any deductions from my pay.

By Mr. Lane:

Q. You didn't notice any deductions? A. No.

Q. Well, you were a time worker, weren't you?

A. Well, I worked piece work.

Q. I mean to say piece work.

A. Yes, I done piece work.

Mr. Lane: I think that's all.

Trial Examiner Batten: Miss Weyand?

Miss Weyand: No questions.

Trial Examiner Batten: That's all. Oh, that subpoena, young lady, you'd better have it or you won't possibly be able to collect your money.

What is it you want? You want to know how Miss Weyand got it?

Mr. Ingraham: Yes.

Trial Examiner Batten: I issued that at her request, a written request.

That is all, young lady.

Mr. Langsdale: Just a moment. I want to ask her one question.

. . . . . .

[fol. 6280] By Mr. Langsdale:

Q. You stated already that the violence and the newspaper articles and talk of violence had nothing whatever to do with your joining the Donnelly Garment Workers' Union, did you not? A. Yes.

Q. Do you know any person who did join on that account? A. Because of the—

Q. (Interrupting) Violence and the newspaper articles and everything of that sort? A. No, I don't.

Mr. Lane: That is objected to for the reason she said that was one of the reasons why it was formed.

Mr. Langsdale: Oh, no, she didn't.

Mr. Lane: And it is an attempt to rehabilitate the witness.

. . . . . .

[fol. 6281] By Mr. Langsdale:

Q. (Continuing) Because of the violence and newspaper articles shown you, or any fear or threats of violence?

A. You mean, is that why I joined?

Q. No. A. Why anyone else joined?

Q. Do you know of anyone else who joined on that account?

A. Because they were afraid of that violence?

Q. Yes, do you know of anybody, any single human being?

A. No, I don't know of anybody that joined because of that.

Q. And do you know why the Donnelly Garment Workers' Union was formed, did anyone ever tell you?

A. Well, I don't know whether they told me or not; I had my conclusion of why I myself—my opinion—

Q. (Interrupting) I know, but did anyone ever tell you that? A. I don't know as anyone did.

Q. Did anyone connected with the management tell you why they were forming the Donnelly Garment Workers' Union? A. To keep other unions out.

Mr. Lane: Just a moment. I move to strike the answer [fol. 6282] out.

Trial Examiner Batten: It may be stricken.

Mr. Lane (Continuing) Because it was made before I had a chance to object. The question implies something that is not in evidence as far as this witness is concerned. The question was: Did anyone ever tell you why the management was forming that union.

Mr. Langsdale: No, that was not the question.

Mr. Lane: Will you read the question, please?

Mr. Langsdale: Please read the question.

Trial Examiner Batten: I don't recall it that way.

(Thereupon the last question was read by the reporter, as follows:

"Q. Did anyone connected with the management tell you why they were forming the Donnelly Garment Workers' Union?")

Mr. Lane: I object to that as—

Mr. Langsdale: (Interrupting) Let me amend that to read in this way:

Mr. Langsdale: Did anyone connected with the management of the Donnelly Garment Company ever tell you why the Donnelly Garment Workers' Union was being formed?

Mr. Stottle: The respondent objects to that unless it is identified who it was that was connected with the management which he refers to, because that leaves open as to her interpretation of who was connected with the management.

Mr. Langsdale: Her answer can be "yes" or "no" on that.

[fol. 6283] Trial Examiner Batten: Of course, I think we have had quite a few questions about whether anyone connected with the management did this or did that.

Do you recall the question, Miss Witness?

A. Well, as I understand the question is, was the people that told us—

Mr. Langsdale: No. Read the question, please.

Trial Examiner Batten: Please read the question.

(Thereupon the last question was read by the reporter, as follows:

"Q. Did anyone connected with the management of the Donnelly Garment Company ever tell you why the Donnelly Garment Workers' Union was being formed?")

Mr. Langsdale: You may answer that "yes" or "no".

Trial Examiner Batten: But you don't have to.

A. What I want to know is, do they consider Rose Todd as being connected with the management?

Mr. Lane: That is the purpose of the objection. Obviously she doesn't know.

Trial Examiner Batten: Of course, it was just as obvious with the questions asked many others, except perhaps the witnesses didn't ask the question this witness did, as to who is management.

By Mr. Langsdale:

Q. Will you answer that "yes" or "no"?

A. If Rose Todd—

Q. (Interrupting) No, just answer it "yes" or "no".

[fol. 6284] Trial Examiner Batten: She doesn't have to answer it "yes" or "no".

Mr. Langsdale: I know she doesn't, but I wondered if she could.

Trial Examiner Batten: That is for the witness to determine; but she certainly doesn't have to.

Now, may we have the question read again?

(Thereupon the last question was read by the reporter, as follows:

"Q. Did anyone connected with the management of the Donnelly Garment Company ever tell you why the Donnelly Garment Workers' Union was being formed?")

Mr. Reed: Now, let the witness say.

Trial Examiner Batten: Well, if there aren't any more interruptions, so we don't have to have it read again.

Now, will you answer the question, Miss Witness?

A. I don't know how to word it.

Mr. Langsdale: Well, let me reframe it. Did anyone ever tell you why the Donnelly Garment Union was being formed?

A. Rose Todd did.

Mr. Reed: Just a minute. We object to that as incompetent and immaterial, and in no wise binding upon the respondent in this case.

Trial Examiner Batten: She may answer, whether anyone ever told her it was being organized.

[fol. 6285] Mr. Langsdale: She has answered it.

Will you read the answer?

(Thereupon the last answer was read by the reporter, as follows:

"A. Rose Todd did.")

By Mr. Langsdale:

Q. What did Rose Todd tell you?

A. Well, I can't remember in words, but it was—the way I grasped it, the expression was that if we had a union of our own, we wouldn't be bothered with an outside union.

Q. Now, when you answered Mr. Ingraham's question this morning, which question was to the effect, was the violence at the plants where the strikes were going on, the reason for forming the Donnelly Garment Workers' Union, your answer was, "I guess that was the cause." Did you know any more about the cause than you have stated here in answer to my questions?

A. Not other than I thought it was organized to keep the other unions out. I guess that probably made the situation—well, complicated, when all that other trouble started up there, that was just some more to bring into it, but I felt it was being organized to keep the other unions out, because it was organized at the time all that was going on.

Q. Do you remember where you signed this document that has been marked Board's exhibit 1-RRRR?

. . . . . .

[fol. 6286] By Mr. Langsdale:

Q. Do you remember where you signed that document, that is, the one you were shown, to which a lot of names were signed?

A. I don't know as I remember exactly where I was when I signed that one.

Q. You said something about a half a dozen of you together being called somewhere and signing it together.

A. That was the one we swore to?

Q. That was the one you swore to.

A. Yes, where there was a group of five or six of us together.

Q. I see. Now, do you have any recollection at all as to where you signed this Board's 1-RRRR?

A. You mean the one where we swore to it?

Q. No, I mean the other one.

A. I don't remember a whole lot about that one.

Q. Was it somewhere in the plant?

. . . . . .

[fol. 6287] A. (Interrupting) It was on the premises.

Trial Examiner Batten: She said it was on the premises.

A. It was on the premises. I never signed one that was away from the building. Every one I ever signed was right there in the building, some place in the building.

By Mr. Langsdale:

Q. Were you ever shown any document down there to sign that you didn't sign?

A. No.

Q. You signed them all?

A. Every one that I was presented with.

* * * * * * *

Mr. Ingraham: So the record will be clear, you testified this morning that the violence at the Gernes, Gordon, and Missouri plants caused the formation of the Donnelly Garment Workers' Union?

Mr. Langsdale: Just a moment,—

A. (Interrupting) No, I didn't.

By Mr. Ingraham:

Q. What did you testify to?

A. I said I guessed it did. I didn't know that it did, I had no proof that it did.

Q. Now, after Mr. Langsdale's leading and suggestive questions, do you want to change your guess?

[fol. 6288] A. No, I do not.

Q. Are you standing on your answer to that question?

A. I am standing on my answer that I am guessing.

Mr. Ingraham: All right, she is standing on her answer, Mr. Langsdale.

By Mr. Ingraham:

Q. Now, on April 27, that is the date of the formation of the Donnelly Garment Workers' Union, had you attended any other meetings of employees prior to that time?

A. Yes.

Q. Where?

A. There at the plant.

Q. When?

A. Oh, I don't recall when they were.

Miss Weyand: I object to this as not proper recross.

Trial Examiner Batten: Well, I don't think it is either.

Mr. Ingraham: I wanted the witness to clarify her testimony with respect to meetings she attended. She doesn't recall dates and I think I have a right to ask the witness if, instead of: "Did you attend a meeting in March or April," to ask her if she attended meetings prior to that time.

Trial Examiner Batten: Well, of course, as a practical matter, I think perhaps you have, Mr. Ingraham, because I remember Mr. Lane asked quite a bit about meetings, but that question illustrates the exceedingly difficult situation we find ourselves in, proceeding on the basis—unless I take [fol. 6289] out a 3-hour course—but if it is a matter of a few questions, go ahead, Mr. Ingraham.

By Mr. Ingraham:

Q. Do you recall the time of any meeting prior to April 27?

A. You mean the date?

Q. Yes.

A. No.

Q. Do you recall going to any meeting in the year 1937 prior to that date?

A. Well, it seems as though we had some sort of meetings, I don't know when they were or what month they were held, or what years they were held in, I couldn't remember.

Q. All right. Tell me anything that occurred at any of those meetings, prior to the meeting of the formation of the Donnelly Garment Workers' Union.

Mr. Langsdale: If the Court please, this certainly doesn't clarify anything; this is a further effort to search her memory, and certainly it is not recross. He had an opportunity to do that on his first cross-examination.

Trial Examiner Batten: You may proceed.

A. I believe—now, I am not certain, but I believe there was a meeting held just a short time before.

By Mr. Ingraham:

Q. Before the April 27 meeting?

A. The April 27 meeting.

Q. What occurred at that meeting?

[fol. 6290] A. Well, I don't know as I can remember exactly what occurred, but it seems to me like we had a meeting of some description just before that.

Q. Do you recall anything that occurred at any meeting that you say you went to, prior to the meeting of April 27?

A. That was prior to the meeting where the union was organized, and we signed the cards?

Q. That is correct.

A. Well there is one meeting we had, I don't know when it was, that Mrs. Reed spoke, I remember going to a meeting where she spoke.

Q. You were at that meeting?

A. I was at that meeting.

Q. Now, when did that meeting occur?

A. I don't remember when.

Q. What floor was it held on?

A. Well, I wouldn't be certain about that either.

Q. Do you know anything that took place at the meeting?

A. No; I just remember of Mrs. Reed speaking at a meeting one time.

Q. Are you sure this was in 1937?

A. Yes, I am sure that Mrs. Reed spoke in a meeting in 1937.

Q. Did you ever hear Mrs. Reed speak at more than one meeting?

A. I don't remember about that, I can't say definitely whether I did or not.

[fol. 6291] Q. Now, were you in Etta Dorsey's section at that time, at the time that meeting was held?

A. I believe I was, but I won't be positive on that, but I feel that I was.

Q. And did Etta Dorsey tell you to go to that meeting?

A. Well, I don't remember. I couldn't say definitely that Etta Dorsey did, because I may not have been in her section, but whoever the instructor was told me.

Q. But did Etta Dorsey tell you to go to the meeting of April 27?

A. If she was the instructor there she did. The instructor in that section told me, and I have already testified that I think it was Etta Dorsey, and if Etta Dorsey was the

instructor there in that section at that time, she was the one that told me.

Q. So, you aren't sure now that Etta Dorsey was the instructor?

A. I could be wrong about that, but I feel sure that Etta Dorsey was the instructor at that time.

Q. So whoever the instructor was in your section told you personally to go to the meeting?

A. Well, I wouldn't say personally. They usually told a group of girls at a time, they would just walk up and—

Q. (Interrupting) Who was in the group of girls—

Trial Examiner Batten: (Interrupting) Mr. Ingraham, [fol. 6292] I don't think this is recross at all.

Mr. Langsdale: It is not recross.

Trial Examiner Batten: I thought you wanted to explain something here. It seems to me you are going into matters that under no classification could be considered as anything that was brought up since you finished with this witness.

Mr. Ingraham: Well, Miss Weyand didn't re-examine.

Trial Examiner Batten: Of course, she didn't but because she didn't re-examine the witness doesn't give you the privilege of continuing on.

Mr. Ingraham: Well, I didn't know that there was any strict rule to rebuttal or redirect, if applied—

Trial Examiner Batten: Of course, there isn't any strict rule, but I think I said yesterday, with the first witness, that I thought the witness was being passed around too freely.

Naturally, when you take turns, I expect you to complete with everything up to that point.

Mr. Ingraham: Well, I take it you are ruling that my questions aren't proper recross.

Trial Examiner Batten: I don't think they are.

Mr. Ingraham: I mean that you are ruling that way.

Trial Examiner Batten: I say, I don't think they are. Do you?

Mr. Ingraham: Yes, I do; yes.

Trial Examiner Batten: Well, I don't think they are, [fol. 6293] and I'll rule that they are not, at least the last question.

Mr. Ingraham: That's all.

Trial Examiner Batten: If you have any further questions I am not ruling on those.

Mr. Ingraham: Well, I kind of thought someone did examine the witness further about these meetings.

Trial Examiner Batten: Well, you ask this witness as many as you have.

Mr. Ingraham: You have stated that you went to the meeting of April 27, I believe? A. Yes.

Q. Now, what time was that meeting held?

Mr. Langsdale: That is objected to as not proper re-cross-examination.

Trial Examiner Batten: You may proceed.

A. In the afternoon.

By Mr. Ingraham:

Q. What time in the afternoon?

A. I couldn't be positive about that, I don't remember the time.

Q. Was it between 2 and 3?

A. I would say between 2 and 3 to 3:30; that is just an estimate of mine.

Q. Now, did you go to the meeting with the other girls in your section? A. Yes.

[fol. 6294] Q. Do you recall how many hours you were working during that time? A. No.

Q. Well, what was your usual time of quitting work?

A. As I remember, 4 o'clock.

Q. Did you have plenty of work at that time?

A. Well, I don't remember about that, how plentiful the work was.

Q. Now, how long did the meeting last?

A. I don't know, I don't remember how long it lasted.

Q. Would you say an hour?

A. Well, I just judge an hour, I would say an hour. I don't know how long it lasted, I don't know that it lasted an hour, or 2 hours, or an hour and a half, or half an hour, but I imagine it lasted at least an hour.

Q. Then, you say, you went back up to your section after the meeting?

Miss Weyand: I object to this as entirely repetitious and not proper recross.

Trial Examiner Batten: Overruled.

A. What was the question?

By Mr. Ingraham:

Q. Did you return to your section after the meeting?

A. I went back upstairs, yes.

Q. Did you go with the girls in your section?

[fol. 6295] A. Girls—I don't know whether they were girls in my section or not, but there were other girls that went up with me.

Q. Did you continue work then, after you returned?

A. I don't remember whether I went back to work or what my purpose was to go back up there, whether it was something I had forgotten, or something, or whether I went to put my work away, or I went back up there to go to work, or what took me back upstairs.

Trial Examiner Batten: Mr. Ingraham, the last two or three questions, do you think that is co-operating with me when I asked you and the intervener to not cover the same ground? They are identically the same questions.

Mr. Ingraham: The next question, I don't think, will be. Maybe that was.

Trial Examiner Batten: Perhaps it won't be.

By Mr. Ingraham:

Q. If you quit work ordinarily in the middle of the afternoon, did you then leave the plant?

A. I don't understand what you mean.

Q. Well, if, say, work ran out, there wouldn't be any further work, then would you leave the plant?

A. If there wasn't any further work in my section I was sent to Ella Mae, and if Ella Mae didn't put me in another section to finish out the day, I went home.

Q. You went home?

[fol. 6296] A. If I wasn't placed someplace else in the plant, but I didn't just stay around there if I wasn't doing anything.

Q. If work ran out at 3 o'clock, say, in the afternoon, you would report to Ella Mae, and if there wasn't any work you would go home. Is that a fact?

A. If I ran out of work in my section, I was sent to Ella Mae, even if it was 3 o'clock in the afternoon. Is that what you mean?

Q. Yes.

A. And if she didn't place me in some other section, I was sent home.

Q. Now, on April 27, do you recall running out of work about 3 o'clock? A. No, I don't.

Q. Or shortly thereafter? A. No, I do not.

Q. Do you recall there being a lack of work at that time, during that week, in your section?

A. I don't remember how much work we had, whether we were short on work or work was plentiful at that time. I don't remember about that.

Q. Now, do you say that you were paid for a full day's work on April 27, 1937?

A. To the best of my knowledge, I do not remember any deductions being taken from my pay.

[fol. 6297] Q. You don't recall not having any work the morning of April 27?

A. I stated before that I don't remember whether work was plentiful that day or at that time, or whether we were out of work. I know that I was working when I was called to the meeting, I do know that.

Q. And you also know that you were paid for the time you spent at the meeting?

A. I don't remember of any money being deducted from my check other than what I figured I would draw that week; I don't remember any money being deducted from my check.

Q. Do you recall what your check was that week?

A. No, I do not.

Q. If you worked less than 40 hours that week, would that indicate that you didn't work the full 8 hours a day?

A. If I worked less than 40 hours that week?

Q. Well, if your pay was less than your usual pay for 40 hours, would that indicate you didn't work the full 40 hours?

A. Well, if I had any time off, I knew how much time I had off, if I had been off any.

Q. Did you have any time off that week?

A. I don't remember.

Q. Would you say that you didn't quit work on Wednesday—I mean on the day of this meeting, around 3 o'clock?

A. I absolutely know I was working when I was called [fol. 6298] to that meeting, I do know that.

Q. Are you sure you went to the meeting?

A. Why, absolutely.

Q. What occurred at that meeting?

Mr. Langsdale: I object to that as not proper recross examination.

Trial Examiner Batten: Well, I think I have indicated two or three times that I don't think it is; clearly it is not. But Mr. Ingraham may proceed.

A. Do you want me to tell you?

Trial Examiner Batten: He seems to think it is.

A. What happened at that meeting, do you want me to tell?

By Mr. Ingraham:

Q. Yes.

A. On April 27, when the Donnelly Garment Workers' Union was formed?

Q. That is correct.

A. That was the meeting whereby we signed the cards joining the union.

Q. Did you do anything else?

A. At the meeting?

Q. Yes.

A. Nothing other than sit and listen.

Q. Listen to what?

A. The discussion of the union.

Q. Who talked?

[fol. 6299] A. Mr. Tyler, Miss Todd, I remember those two very distinctly.

Q. Did Mrs. Reed talk?

A. Not that I remember of.

Q. Did Mrs. Reeves?

A. Not that I remember of. I remember very distinctly of Mr. Tyler and Miss Todd talking, but I couldn't be positive of anybody else that talked.

Q. And you don't recall how long that meeting lasted?

A. No, I do not.

Q. Now, do you recall anything that either Mr. Tyler or Miss Todd said?

A. I remember when the cards were passed out that Miss Todd told them to pass the cards out and not to take them up until she told them to, to see that everybody had a card, and not to take the cards up until she told them to take them up, because I know we had the cards quite a little while during the meeting there; at the time the meeting was going on, we had the cards in our possession and they weren't taken up until the last part of the meeting.

Q. Did some of the people sign the cards the next day?

A. Not that I know of.

Q. Did Miss Todd say anything about that, that they could take the cards, that they didn't have to sign there?

A. Well, I was under the impression that everybody [fol. 6300] that was in there was to sign their cards and hand them back.

Q. And she didn't say they could keep them overnight?

A. Not that I ever remember her saying that, no.

Q. Did anybody outside of Rose Todd ever discuss with you or in your presence why the Donnelly Garment Workers' Union was formed?

A. No. The only time I heard Rose Todd say that was at a meeting, that it was—

Q. (Interrupting) which meeting?

A. I don't remember which meeting, particularly, that it was. I can't remember what happened at all the meetings we had.

Q. But nobody outside of Rose Todd, according to your recollection, ever discussed why the Donnelly Garment Workers' Union was formed?

A. Not that I remember of.

Q. Now, this statement that you have referred to, of Rose Todd's that was made at a union meeting?

A. What statement was that?

Q. As to why the Donnelly Garment Workers' Union was formed?

A. As I remember it, that statement was made at a meeting.

Q. And that was not made to you personally?

A. Oh, no.

[fol. 6301] Q. You have been sitting in the courtroom while the Board's witnesses have testified, have you not?

A. Yes.

Q. You have heard their testimony?

A. I heard Mrs. Dorsey's and Mrs. Skeens'.

Q. When you worked for Mrs. Dorsey did she discriminate against you in giving you work?

A. No. Mrs. Dorsey was one of the nicest instructors I ever worked for.

Q. Did you understand that the work was planned in the office upstairs?

A. I had the understanding that the work was planned. I didn't know where it was planned, whether upstairs, or where.

Trial Examiner Batten: Mr. Ingraham, do you think this is the subject of recross-examination?

Mr. Ingraham: Well, it may not be strictly recross-examination, but I think I have a right to ask the witness briefly about that subject.

Trial Examiner Batten: Why?

Mr. Ingraham: It wasn't asked on direct, but I notice in my notes that she testified about work being given out.

Trial Examiner Batten: Then, you mean you overlooked it; is that right?

Mr. Ingraham: Yes, I did.

Mr. Langsdale: May I suggest that if he is stalling for [fol. 6302] some message of Mrs. Hyde's, we will keep her here and you can recall her.

Mr. Ingraham: I am not stalling. I have a note here that she testified about dividing work.

Trial Examiner Batten: Well, let's proceed.

How much more do you have that you have overlooked, Mr. Ingraham?

Mr. Ingraham: That is all.

Trial Examiner Batten. Well, let's proceed.

By Mr. Ingraham:

Q. You understand that the work was planned in the office?

A. I didn't understand it was planned in the office. I was under the impression that it was planned. A company as large as that would have to plan its work. I didn't know where it was planned, whether in the office, or where it was.

Q. Who brought the work to the sections?

A. It was brought down to the floors and they had bundle boys that brought the work from section to section in baskets.

Q. And if you were an embroidery operator, you would be given embroidery work?

A. If I was doing embroidery work, I was given embroidery work.

Q. And other embroidery operators would be given that kind of work, too?

A. That was the only kind of work they could do on the [fol. 6303] embroidery machine, was embroidery work.

Q. Have you ever gone up and gotten a bundle yourself? A. No.

Q. You have never done that?

A. No. We were not allowed to do that.

Q. You were not allowed to? A. No.

Q. Did you feel if Etta Dorsey didn't want to give you a bundle she didn't have to give you a bundle?

A. I felt that was entirely up to her. She had the privilege of giving the bundles to who she wanted to.

Q. And you couldn't do anything about that?

A. Oh, I don't know. If I had wanted to fuss about it, I could probably have fussed about it to different ones.

Q. Did you ever know of her doing anything like that?

A. You mean, not dividing the work up evenly?

Q. Yes.

A. She was always awfully fair with me.

Q. Do you know, as a matter of fact, that was her absolute instructions, to give the bundles to the people that were ready for the bundles?

A. I don't know a thing about her instructions.

Q. Did the bundles come down, if you know, with directions?

A. No. As I remember, all that I ever saw of the bundles, they came down with tickets but no directions written on the bundle.

[fol. 6304] Q. What were the tickets?

A. The price tickets, the number of the bundle, and the size, and the cut number.

Q. Now, if it was a bundle that was to be given to girls on the embroidery machine, would that be indicated?

A. Yes, it would be indicated that it was embroidery, either by number or with "Embroidery" written on there. I don't know if it had a number showing it pertained to the embroidery section or if it was written on there—I don't remember about that, but it was always designated what section it was to go to.

Q. And then Mrs. Dorsey would give you a bundle and the other embroidery operators bundles after they came to the section; is that correct?

A. She gave out the work when she was the instructor in my section.

Q. And you never knew of any time that she didn't give the work out fairly?

A. To me, Mrs. Dorsey was perfectly fair.

Q. And you don't know what her instructions were from the office?

A. I know nothing about her instructions.

Q. And you don't know what the bundle boys' instructions were, do you? A. No, I don't.

[fol. 6305] Q. Did you make your minimum during the last three months that you were at the plant?

A. I don't remember whether I did or not.

Q. Do you have any recollection about that at all?

A. I don't remember whether I made my guarantee or not. I don't remember how much I made.

Q. Do you recall, as a matter of fact, that the company had to make up to you practically your guarantee during the last period you were there at work?

A. No, I don't recall that. They may have had to make up some to me, but I don't think they had to make it up every week.

Q. The last six weeks you were there?

A. I don't know what I drew the last six weeks. I don't even know whether I drew my guarantee the last six weeks.

Q. That is what I am asking you. You have no recollection of what the company had to make up to you because you didn't have your guarantee?

A. I don't remember about that. I don't remember whether I had my guarantee or not.

. . . . . .

[fol. 6306] Cross-Examination

By Mr. Lane:

Q. Mrs. Copenhaver, you testified in response to a question by Mr. Langsdale that you didn't know of anyone who joined the union because of the violence and the disturbances that were occurring at the Gernes, Gordon, and Missouri plants; is that correct?

A. No one told me that that was why they were joining.

Q. You said you didn't know of any individual—

A. No individual told me that, no.

. . . . . .

[fol. 6307] Q. You testified that there was no other individual you could name who joined the union for that reason? A. No one told me that.

. . . . . .

Mr. Lane: All right. Do you know of anyone who was not influenced by that?

. . . . . .

A. I would rather not testify to anybody else's ideas in that case. I would rather just testify to my own.

By Mr. Lane:

Q. Then, when you answered Mr. Langsdale that you didn't know of any individual who joined for that reason, your answer is, you had no information at all about it; is that correct?

A. No. What I mean is, nobody came to me and told me that—that that was why they were or why there were not joining and helping form the union.

[fol. 6308] Q. And nobody came to you and told you they were not influenced by that violence?

A. Nobody told me either way. That is why I say I would rather not testify to anybody else's ideas.

Q. But you have no personal knowledge about that at all?

A. I don't know whether anybody was influenced or was not influenced by that.

* * * * * * *

BESSIE WEILERT, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Miss Weyand:

Q. Will you please state your name?

A. Bessie Weilert.

* * * * * * *

[fol. 6309] By Miss Weyand:

Q. When did you begin to work at the Donnelly Garment Company?

A. One season before they moved to the Corrigan Building, when they were at the Coca-Cola Building.

Q. When was the next time you worked at the Donnelly Garment Company?

A. In the spring of 1933 or 1934.

Q. How long did you continue to work at the Donnelly Garment Company at that time?

A. With the exception of about three short periods off, until March of this year.

Q. What was the longest of those periods off?

A. About fourteen months.

Q. When did those fourteen months off occur?

A. It was the last of 1940 and all—almost all of 1941.

Q. What was the next longest period off?

A. About three months.

Q. When was that off?

* * * * * * *

A. 1938, I believe.

By Miss Weyand:

Q. Were you working at the Donnelly Garment Company in March and April of 1937?

[fol. 6310] A. I was.

Q. What sections were you working in during those months?

A. 413, Lola Skeens' section.

Q. And that was on what floor? A. Eighth floor.

Q. Who was the thread girl in that section at that time?

A. Nellie Biggs.

Q. Did you attend the meeting at which the Donnelly Garment Workers' Union was formed?

A. I did.

Q. How did you learn of that meeting?

A. My instructor told me.

Q. What time of day was that meeting held?

A. In the afternoon.

Q. Was it during working hours or after working hours?

A. During working hours.

Q. Did you time out before going to the meeting?

A. No.

Q. Do you have any specific way of remembering that?

A. I certainly do, because I thought I never would get out of the place, because we had to change our uniforms after we came back upstairs, and it was just a terrible mess.

Q. Did you get home late?

A. Not very.

Q. Did you get paid for the time you spent at that meeting?

[fol. 6311] A. I must have. I didn't time out until after I came back upstairs.

Mr. Lane: I move to strike out the answer, she "must have," as being speculation.

Trial Examiner Batten: It may stand.

Miss Weyand: Had you ever seen Mr. Tyler before the meeting at which the union was formed? A. No.

Mr. Lane: Mr. Examiner, with respect to all of these questions, the intervener objects, with respect to this witness, as not proper rebuttal.

Trial Examiner Batten: You may have a continuing objection.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: You may have a continuing objection.

By Miss Weyand:

Q. Had you ever heard of Mr. Tyler before that meeting? A. No.

Q. Did you sign a card at that meeting? A. I did.

Q. Why?

A. Well, I felt it was our duty, if we wanted to work there.

Q. Do you know if any effort was made to have everyone sign a card before he left the meeting?

[fol. 6312] A. There certainly was. Rose Todd had the cards given out by boys, and those cards were numbered, so many in the row, that was sitting in the row—they were numbered and everybody got one, and no more than one, and they were taken up likewise, and they were counted, because she told them to count the cards as they took them up.

Q. When you say "numbered" you don't mean there was a number written on—

Mr. Lane: I object to the leading question. I think it is improper for counsel to put words in a witness' mouth, when she has an answer she thinks is unfavorable.

Mr. Langsdale: I think it is a little late for Mr. Lane to be talking about leading questions.

Trial Examiner Batten: You may proceed. I have stated I am not going to instruct counsel how to ask their questions. If they persist in asking the witness questions that do not give the witness an opportunity to answer but simply say Yes or No, I presume that whoever passes upon this will give such weight to these answers as is proper.

Mr. Reed: May the question be read, the last question?

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You hadn't finished your question.

Miss Weyand: (Continuing)—the card, do you?

[fol. 6313] Mr. Reed: Now, that is objectionable on other grounds. The witness has just given an answer—

Trial Examiner Batten: I think it is objectionable. I think the question to the witness should be, "What do you mean by numbers on the card?"

By Miss Weyand:

Q. What do you mean by "numbered"? I believe that was your expression.

A. There were so many seated in the row, the numbers were counted out, and that number was your—

Q. By "numbered" you meant "counted"?

Mr. Reed: Now, that is an effort to supplement the answer of the witness by a statement of counsel. That isn't proper.

Trial Examiner Batten: We will proceed.

By Miss Weyand:

Q. Do you remember how the cards were taken up?

A. The same as they were given out.

Q. And that was what? A. By boys.

Q. Do you know whether they counted them?

A. They did. They seen that everyone gave their cards back.

Q. Did Rose Todd say anything about that in your presence?

A. She said, "Now, does everyone have a card?" She kept mentioning that, "Does everyone have a card? Now, [fol. 6314] don't leave until you have all of the cards."

Q. Do you remember any other meetings of the Donnelly Garment Workers' Union?

A. Yes, plenty of them.

Q. Did you attend meetings of the Donnelly Garment Workers' Union quite regularly? A. Yes.

Q. What do you remember happening at any other meeting of the Donnelly Garment Workers' Union?

A. Well, Rose Todd presided at the meetings and Marjorie Green took notes, and—

Mr. Lane: Excuse me. Are you referring now to the organization meeting or a subsequent meeting?

The Witness: Meetings.

Trial Examiner Batten: She is talking about union meetings.

A. (Continuing) And when there was a motion made of any kind, or anything came up, someone would say, "I make a motion—", and we would say, "Well,—", someone would say "Second the motion," and everyone said "Aye."

By Miss Weyand:

Q. Did you ever see an instructor attend a meeting of the Donnelly Garment Workers' Union? A. Yes.

Q. Do you remember whether instructors continued to attend up to July 15, 1939?

[fol. 6315] A. They were still attending meetings when I quit for that year.

Q. Did you ever complain about instructors attending meetings? A. Many times.

Q. Why?

A. Because I didn't think the girls felt free to talk before their instructors, and I told Rose Todd many times I didn't think that should be permitted.

Q. What authority does an instructor exercise over the girls in her section?

A. Well, one exercised enough to keep me home three weeks from work, without it, apparently, being know in the office.

Q. Who was that?

A. Well, with due respect to the instructor now,—I think very much of her now—it was Grace Gliotta.

Q. Why did she send you home?

A. Well, I had just come over to the Corrigan Building from their other building at Twenty-sixth and McGee, and I guess she just didn't understand me and I didn't understand her—

Mr. Lane: Mr. Examiner, may I ask a preliminary question before making an objection?

Trial Examiner Batten: Well, if you will let the witness answer before interrupting—

[fol. 6316] Mr. Lane: Excuse me.

Trial Examiner Batten: Will you read the answer thus far, please?

(Thereupon the last answer was read by the reporter, as follows:

"Well, I had just come over to the Corrigan Building from their other building at Twenty-sixth and McGee, and I guess she just didn't understand me and I didn't understand her—")

Trial Examiner Batten: Now, complete your answer.

A. (Continuing) —and she told me she wanted to put a hemmer on my machine—there was no other vacant machine— and I was supposed to come back, I supposed, when the hemmer had finished her work. And about three weeks later I called the office and told Ella Mae Hyde I wanted some definite answer about when I was coming back, because I was going to make other arrangements, and she said, "Why aren't you working, Bessie?" And I told her. And she said, "You come in tomorrow morning." And I did.

Mr. Ingraham: I move to strike—

Mr. Lane: May I ask the preliminary question I wanted to ask before objecting?

Trial Examiner Batten: Yes.

By Mr. Lane:

Q. May I ask what year that was?

A. That would be 1934 or 1935. I worked a few months in the building on McGee, and then we transferred over to [fol. 6317] the Corrigan Building, and it was my first instructor when I first come over there.

Q. What year was it you moved from the Coca-Cola Building to the Corrigan Building?

A. I don't have reference to the Coca-Cola Building. They had a small factory on McGee Street, at about Twenty-sixth and McGee.

Q. And you say it was in 1934 or 1935 that this occurred? A. Yes.

Mr. Lane: The intervener moves to strike all of the testimony with reference to that incident for the reason that it is prior to the effective date of the Wagner Act and is in no way binding upon the intervener.

Miss Weyand: I shall ask the witness next whether the instructors' duties and authority in that repect changed, so far as she knew, at any time prior to July 15, 1939.

Trial Examiner Batten: Of course, that hasn't anything to do with the objection.

Miss Weyand: I think it has, because—

Trial Examiner Batten: Did you start to make an objection, Mr. Ingraham?

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. Do you know whether at any time prior to July 15, 1939, the instructors' authority was lessened so that an [fol. 6318] instructor could not do what Grace Gnotta did to you on that occasion? A. Never.

Q. By that you mean you do know about it, whether it was lessened, do you?

A. It wasn't lessened.

Trial Examiner Batten: Just a moment, now.

Let's have the question and the answer read.

You mean you don't understand your own question; is that what you mean, Miss Weyand?

Miss Weyand: I should have asked that the question be read. I don't think the answer was responsive to the question.

Trial Examiner Batten: We will have the question and the answer read, and see.

Read the next to the last question and answer.

(Thereupon the next to the last question and answer were read by the reporter, as follows:

"Q. Do you know whether at any time prior to July 15, 1939, the instructors' authority was lessened so that an instructor could not do what Grace Gnotta did to you on that occasion?

"A. Never.")

By Trial Examiner Batten:

Q. What do you mean by "Never"?

A. Because there was another incident happened to me [fol. 6319] in 1939, when I—

Q. No, I asked you, what did you mean when you answered "Never."?

A. Their authority was never lessened.

Miss Weyand: Will you tell us about the incident in 1939 you started to mention?

Mr. Lane: What time in 1939?

The Witness: I can't say. It was while I was on the committee as chairman.

Mr. Lane: Was it before or after July 15?

The Witness: I couldn't say.

Mr. Lane: I object for the reason, then, that the witness is unable to identify the time in 1939, so that we are able to determine whether it was before or after July 15.

Trial Examiner Batten: Well, of course, if the time cannot be placed, it wouldn't be of any value, unless—

Miss Weyand: It is illustrative of the instructors' authority, and it did not change around that time. I think the incident is appropriate, regardless of whether it is placed as to—

Trial Examiner Batten: Well, I know your position, because you have stated that before. I think your position is the same as Mr. Hogsett stated the other day, but, of course, I do not agree with your position.

By Miss Weyand:

Q. Were you ever a chairman in the Donnelly Garment [fol. 6320] Workers' Union?

A. I was.

Q. When were you elected as a chairman?

A. It was the last of April 1938.

Mr. Ingraham: Will you please read the question?

(Thereupon the last question was read by the reporter.)

Miss Weyand: How long did you continue to be a chairman?

A. Active, for about six months, I would say, and I refused to carry on after that time.

By Trial Examiner Batten:

Q. Well, do you remember when you were elected?

A. Well, it was the last of April, because the first of May we really was taking off.

Miss Weyand: What year was that?

A. 1939.

Mr. Langsdale: Pardon me. I understood the witness to say "1938" before.

The Witness: 1939.

Trial Examiner Batten: I understand she was a committee chairman in 1939.

The Witness: Chairman on the committee.

Mr. Langsdale: Will you get her former answer, Miss Reporter?

Miss Weyand: She had said "1938," but she is saying [fol. 6321] now "1939" in correction.

Mr. Langsdale: I just wanted to be sure it was a correction.

By Miss Weyand:

Q. How were you notified of meetings of Donnelly Garment Workers' Union chairmen?

A. Rose Todd called the section I worked in and my instructor delivered the message, or the basket boy, the bundle boy—or whatever it is—would bring a message through the section, an i. d. m., signed "Rose Todd"—one way or the other.

Q. Did your check from the company include pay for the time you spent at chairmen meetings?

A. It did. Rose Todd told us to turn in the time.

Q. How did you turn in your time?

A. I wrote it out on paper and signed my name and gave it to my instructor and she O. K.'d it.

Q. Do you know what rate of pay you were given for the time you spent at meetings?

A. According to my guarantee.

Q. Do you know whether girls are paid for the time they spend in making repairs?

A. Well, that was an argument, too, while I was on the committee.

Q. Will you explain the situation in that regard?

A. The girls, of course, on piecework, when they lose time, I considered that was plenty sufficient for repairs, [fol. 6322] and at one time there was a rumor through the factory that they were going to take out for repairs from girls who did not make their guarantee, and I objected to that. I said, "I don't believe they will do such a thing." And in just a very short while they did begin that practice.

Immediately I went to Rose Todd, the chairman of our union, and objected strenuously about that, and I asked her who authorized such a thing, and she said, "Mrs. Reed did." And I told her I would not believe that from her—unless Mrs. Reed told me herself, I wouldn't believe it from anyone. And she and I sort of argued about it, and she said, "Well, maybe we had better talk to Mrs. Reed about it, herself." And I said, "Go ahead."

Q. Did you ask Rose Todd to take the matter up?

A. I certainly did. I asked her if she, as chairman of the union, was going to stand for such a thing. And she said, maybe they had been a little hasty in that. And I said, "Rose, don't you think this has broken our contract?" And I said, "Whoever authorized that should put on our check stubs what that was taken out for." I said, "Why haven't they done so?" And she said, "Well, the girls would understand what it was taken out for." And I said, "Certainly, they would know— They know what the social security is taken out for, and the insurance, and the union dues, and all, but it's stamped on our check stubs."

[fol. 6323] Mr. Reed: I move to strike out the answer of the witness as being mere hearsay, incompetent and immaterial, and binding on no one.

By Trial Examiner Batten:

Q. When was this, do you know?

A. Right at the Donnelly Company—

Q. No. What time? The year, or the month?

A. In 1939, when I was on the committee.

Q. Was it before July 15, 1939?

A. I certainly think it was. I wouldn't say for sure, but I believe it was.

Trial Examiner Batten: Now, Senator, your objection?

Mr. Reed: I move to strike out the answer of the witness because it relates to a conversation between her and Miss Todd, the president of the union, and is in no manner binding upon the respondent in this case, and is incompetent and immaterial.

Trial Examiner Batten: Well, there are two things about it I don't understand. First, how is it rebuttal?

Miss Weyand: I hadn't finished the line of questioning. I was leading up to a matter which pertained to an instructor's authority over the girls.

* * * * * *

[fol. 6324] Mr. Langsdale: I think it is rebuttal of their evidence that they continued to belong to the union of their own free will and accord, when the chairman of the union testifies to something that carries with it the inference that the union was functioning. The witnesses testified they not only joined of their own free will and accord, but they remained members—the union was functioning. Certainly, this witness, who was one of their committee chairmen—

Mr. Reed: The testimony that Mr. Langsdale refers to is that the person remained a member of the union of their [fol. 6325] own free will and accord. Now, he proposes to rebut that by showing that there was some dispute between one of these chairmen and the president of the union. That doesn't meet the question.

Miss Weyand: That is not what I propose to show by this witness—Senator Reed's statement isn't. I think, if you will allow her to continue telling her story, you can then determine whether or not it is proper rebuttal.

Mr. Lane: Under your ruling that no matters are to be inquired into that are subsequent to July 15, 1939,—and certainly the intervener has been so prohibited—I think it is incumbent upon the Board, to make anything admissible on that ground, to show that the incident refers to a date prior to that time.

Trial Examiner Batten: I understood the witness to say she was certain it was.

Mr. Lane: No. She said she wasn't certain.

Trial Examiner Batten: Miss Witness, what did you say when I asked you if this was prior to July 15, 1939?

A. I said I'm almost certain. I'm not positive, but I'm almost certain.

Mr. Lane: In view of that doubt and inability of the witness to fix that time, I think it isn't admissible.

Trial Examiner Batten: I think I will receive it on the same basis I have received other testimony where the wit- [fol. 6326] ness thought it was prior to July 15, 1939.

You may proceed.

Miss Weyand: Will the witness continue telling the story?

[fol. 6327] A. (Continuing) Miss Todd and I argued about this incident. And I told her I wouldn't believe that from anyone, unless Mrs. Reed told me herself she authorized such a thing. And she said, "Maybe you can talk to Mrs. Reed yourself about it." I said, "I certainly will." She said, "I will see if I can get you an appointment." And I said, "I will get one myself." And I did get an appointment with Mrs. Reed later, and Mrs. Reed admitted that she did that thing, and I apologized to Rose Todd for what I said to her.

By Miss Weyand:

Q. Did you continue to attend meetings of the Donnelly Garment Workers' Union?

A. No. Just a day or so after that I turned my contract back to Rose Todd and I told her I didn't want a thing to do with it.

Q. Did anyone tell you you were to continue going to meetings?

A. At one time. I told her I didn't want anything more to do with it. Then, when the next chairmen's meeting was called I refused to go down, and she called my section—Ada Vining was my instructor—and told Ada to ask me to come down, there was a chairmen's meeting on two—

By Mr. Reed:

Q. Did you hear that?

A. She called Ada Vining—

Q. I say, did you hear that?

[fol. 6328] Mr. Langsdale: I object to the interruption of the witness' testimony.

Trial Examiner Batten: I don't think there should be the interruption of the witness' answer, Senator.

Mr. Reed: Well, I don't think the witness should be allowed to ramble along here and—

Trial Examiner Batten: I think if you will let the witness answer, and then make your objection—

Read the answer, please.

(Thereupon the answer referred to was read by the reporter, as follows:

"At one time. I told her I didn't want anything more to do with it. Then, when the next chairmen's meeting was called I refused to go down, and she called my section—Ada Vining was my instructor—and told Ada to ask me to come down, there was a chairmen's meeting on two—")

The Witness: I will correct that. It was on the first floor.

A. (Continuing) —and Ada delivered that same message to me three times, and at the last I said, "Well, I'll go down, but I'm taking no part in this affair."

So, when I went down to the meeting I said to Rose, "I don't know what you want me here for." And she told me

to calm down—I was mad about it. And I said, "Well, I'm just going to sit here, I'm not going to take any part in [fol. 6329] these meetings." And she said, "Well, Bessie, aren't you pleased with some of the things that are being done?"

Mr. Reed: I object to that as not responsive to the question at all. I would like to have the question read.

Trial Examiner Batten: You proceed, and then we will have the question read.

A. (Continuing) And I said, "Yes, with what is being done, but there isn't nearly enough being done, Rose." And I said, "From now on don't expect me to do anything about it." I said, "I'm through." And I did—I really sat in from then on.

* * * * * * *

[fol. 6330] Trial Examiner Batten: These incidents you have related between you and Rose Todd and the meeting you attended, to which you say your instructor told you to go, were those all matters that occurred before July 15, 1939?

A. I can't say. It was while I was on that committee, and that was in 1939. I haven't any specific dates in my mind.

Trial Examiner Batten: Miss Weyand, some date will have to be fixed on that incident.

Mr. Langsdale: Well, if the Examiner please, I think the date is fixed, of her conversation with Mrs. Reed, as occurring, according to her best judgment, prior to July 15.

[fol. 6331] Trial Examiner Batten: That is right. But I asked her about this other matter, this subsequent matter, where the instructor told her she was to go down to the meeting.

* * * * * * *

By Trial Examiner Batten:

Q. You have no recollection as to when in 1939 that was; is that right?

A. No, I don't.

By Miss Weyand:

Q. That was shortly after the incident with Mrs. Reed, was it?

A. That was before I talked to Mrs. Reed.

Q. That Ada Vining notified you about the meeting?

A. Pardon me. It was after.

Q. How long after?

A. I just couldn't say that.

Q. Did you continue to go—

A. It was soon after, because that was what thoroughly disgusted me with it.

Trial Examiner Batten: The question is, Miss Witness, do you have any idea whether it was before or after July 15, 1939?

The Witness: No, not offhand, without—

Trial Examiner Batten: Well, Miss Weyand, I don't think I can receive testimony on that basis; I haven't thus far, and I don't propose to do it now.

Miss Weyand: Do you know whether this incident that [fol. 6332] you started to tell about—

Mr. Langsdale: Pardon me. Do I understand you are striking it out, then?

Trial Examiner Batten: I haven't yet. I have told Miss Weyand I do not propose to accept it, which means I am going to, unless some date is indicated with respect to it.

Miss Weyand: Do you know whether this incident I started to ask you about with regard to receiving difficult work because of complaints of girls occurred before July 15, 1939?

A. I feel rather sure that was in the spring of 1939, for this reason, that we was working on light dresses, and that was— I absolutely know that Rose Todd and Mary Copowycz framed two other operators and myself, because I caught her on it right after it was done.

Now, may I proceed to tell—

Mr. Lane: I move to strike out the answer as not responsive to any question, and for the further reason that it is a mere conclusion of the witness.

Trial Examiner Batten: Will you read the question please?

Mr. Reed: I would like to add, it is incompetent and immaterial and not redirect examination, and join in Mr. Lane's objection.

Miss Weyand: I will ask another preliminary question.

[fol. 6333] Trial Examiner Batten: Just a moment. I want to hear the question. Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Do you know whether this incident I started to ask you about with regard to receiving difficult work because of complaints of girls occurred before July 15, 1939?")

Trial Examiner Batten: What was the answer about the date?

(Thereupon the last answer was read by the reporter.)

Trial Examiner Batten: In other words, that would be in the spring, because you were working on light dresses?

A. Yes.

Trial Examiner Batten: Are you through with this?

Miss Weyand: No. These things all tie into—

Trial Examiner Batten: I mean, the incident I said I was going to strike the testimony about.

Miss Weyand: No. These are all a part of what I am getting to.

Trial Examiner Batten: Unless you determine a date of some kind, I will strike it.

Miss Weyand: You are not striking it now?

Trial Examiner Batten: Yes, I am striking it, unless a date is set. If a date is set, it will be reinstated. I don't want to have to keep track of all of those things.

[fol. 6334] Miss Weyand: Will you state the incident with respect to Mary Copowycz and Rose Todd that you started to state?

A. Well, I had made numerous complaints about the joining section and the collar section, particularly. The system we had, it just seemed it didn't work out properly for the last two operations on that dress and it just held us up. And I took it up with Rose Todd several times. Our whole section even went to Mr. Baty's office on one occasion and tried to explain to him the reasons we couldn't make it. It didn't seem to be as much the price, of any of those things, as the way the work was coming to us, the way it was given out, and so on.

I suppose Rose Todd got tired of hearing about it, because evidently she was going to show me they could make their guarantee if they tried.

Mr. Lane: I move to strike out the part of the answer about "evidently she"—

Miss Weyand: I wish you would wait until she finishes her answer.

Trial Examiner Batten: Finish your answer.

A. (Continuing) So Rose Todd come to the section and talked to Mary Copowycz, up by the bin. They would look toward my machine every once in a while, and I made a remark to these two operators—and I can present them, if necessary—that, "There must be something wrong." [fol. 6335] And I said, "We'll soon find out." And almost immediately Mary Copowycz began putting a very difficult operation—something none of us could make any money on—in my—we called it "horse"—it's where they put the bundles you work on.

And these other two operators, because they had always been friendly to me—almost the entire week we got that same work. Well, of course, we fell down. We knew when we had it we was going to.

And work was given to all of the other operators that would build their wages up for the week.

So after I thought they had had time to determine if they was going to make their guarantee that week, on my lunch period I went to the different machines in my section and inquired of these operators if they was making their guarantee that week.

Mr. Reed: I ask, Mr. Examiner, what is this in response to?

Trial Examiner Batten: If you will let the witness finish, Senator, I will try to determine.

Mr. Reed: But after the witness has plainly gone clear outside of the question, isn't it time to stop it, or do we have to hear it all, and then after it has been heard—

Trial Examiner Batten: You may go ahead.

A. (*Continuing*) One after another of those operators stated they were making it that week. Some of them [fol. 6336] stated it was the first time in weeks they had made it.

By Trial Examiner Batten:

Q. You mean, on the same—

A. Not the same operation we were doing, but it was difficult to handle. Some of it was priced better than others.

And Mary said that they got better work, to see if they could make it that week, to prove to me that I was wrong.

After the time went in, Rose Todd called me to her desk on the seventh floor, and she had three figures on paper before her. I knew what was coming, in my mind. And she said, "Bessie, I want to show you that these girls can make their guarantee if they try." She said, "Now, all but three in your section made their guarantee this week." And before she said another word, I said, "Yes, and I can tell you who those three operators were. One of them was myself." And she said, "Yes, it was." And I said, "I think that largest figure there is mine." And she said, "Yes, Bessie, it is."

I said, "Rose, I saw you and Mary Copowyez talking over at the bin. I knew at the time you was up to something." And I said, "Do you know, I inquired of these operators during the week if they was making their guarantee?" I said, "They have told me, in particular, some of them, that they hadn't made it in weeks and they all made it last week." I said, "You're right; I knew they was making it."

Mr. Lane: Now, has the witness finished, so that I can make an objection?

[fol. 6337] Miss Weyand: I would like to have the record show Mary Copowycz was her instructor at that time.

Trial Examiner Batten: Miss Weyand, what has this to do with rebuttal or the issues in this case? Here is a difference of opinion between a girl who works in a section and her instructor and Rose Todd. What does this have to do with the issues in this case—

Mr. Hogsett: With anything?

Trial Examiner Batten: —or with rebuttal?

Miss Weyand: It shows the authority of the instructors in the plant and the extent to which it affects the girls' freedom in the presence of the instructor.

Trial Examiner Batten: You mean, it shows that as assuming—that we assume that what this lady evidently felt, that these two people got together and framed her—

Miss Weyand: No. She stated the fact that she had work that week that was poor and the other girls had good work.

Trial Examiner Batten: Someone has to do the poor work, don't they?

Miss Weyand: I wanted to point out the instructor could decide who would do it.

Trial Examiner Batten: Well, this seems to be a long way around of doing it. And then the question is raised, whether this incident means anything.

Miss Weyand: I think it shows the power of the in-
[fol. 6338] structors in this plant, and for that reason I think it is admissible.

Trial Examiner Batten: I don't think it does, Miss Weyand, and I don't think it is rebuttal.

Mr. Lane: I move to strike out the entire answer of the witness.

Mr. Reed: We join in the motion.

Trial Examiner Batten: Well, of course, I presume you both would expect me to concur with you, wouldn't you?

Mr. Lane: Yes.

Trial Examiner Batten: If you had waited a minute, maybe I would have made the motion.

Miss Weyand, I am seriously considering it. Now, I have told you what I think about it. What have you to say about it?

Miss Weyand: I think, in view of the testimony of eight or nine girls', adduced over my objection, under the remand, as to whether or not they regarded the instructor as having any power to affect their wages or their conditions at the plant, this is proper rebuttal to show that another witness felt differently and to show the facts upon which she based her feeling and the facts from which she drew her conclusion as to the instructors' power to affect the girls.

Trial Examiner Batten: Mr. Langsdale, you were going to say something?

[fol. 6339] Mr. Langsdale: Well, Miss Weyand about states my thought about it.

All of these witnesses testified the instructor was just another working girl, with no authority whatever over any of the sewing girls. Now, we have proved by other witnesses that the instructor was a supervisor with the power to give good work to some girls and bad work to others. This is just an incident of that.

Trial Examiner Batten: Mr. Langsdale, if I were convinced that this is an incident of that, I wouldn't consider striking it, but I am not convinced that it is an incident of that.

Mr. Langsdale: She testified Mary Copowycz gave her and two other girls poor work and gave the others good work. Now, certainly, that is proven, that Mary Copowycz had the power to do that. Now, her conclusion as to why Mary Copowycz did it may be pure embellishment, but the gist of it is that Mary Copowycz had the power to do it and did do it, and that is certainly rebuttal.

Mr. Tyler: Mr. Examiner, I wish to direct your attention to the fact that in the original hearing the Board spent many days, a large part of which was endeavoring to show that the employees were dominated by instructors and other employees of the company.

The respondent and the intervener then put on witnesses [fol. 6340] who said, "We don't think we are dominated, and we don't think they have any authority."

Now, to go back and say that the—for the Board to go back and say, "We will put on some more people who think the instructors were supervisory employees, and show incidents of that," is merely to repeat their case in chief. Perhaps there are thousands of incidents in the plant which will reflect one way or the other. In that case the intervener and the respondent should have an opportunity to answer that all over again.

Trial Examiner Batten: Mr. Tyler, I am not considering it, I don't think, from the standpoint you just brought up.

Mr. Langsdale: May I say a word in reply to Mr. Tyler's argument?

Trial Examiner Batten: Yes. I will hear you all.

Mr. Langsdale: I objected to their opening up their defense in chief when they put eleven witnesses on to say that the instructor had no authority. If this is no part of our rebuttal, it was certainly no part of their case on the remand.

Trial Examiner Batten. Mr. Langsdale, I am not saying you haven't a right to rebut it, because all of the witnesses thus far I have permitted to testify about the instructors and whether they were supervisors, over the objection of the intervener and the respondent, and they have had a continuing objection to that.

[fol. 6341] Mr. Langsdale: And you let them do it over our objection.

Trial Examiner Batten: But on the basis of that ruling which I have made as to other witnesses— The thing is, I can't see where this incident means anything.

Mr. Langsdale: I think it does sustain the Board's theory that the instructor was a supervisor.

Mr. Tyler: If the Examiner please, the witnesses Mr. Langsdale has mentioned being put on in this hearing were not put on by the respondent for the purpose of showing the instructor has no authority. They were put on solely in response to the direction of the Circuit Court of Appeals that they tell why they formed this union. Now, in telling why, a certain latitude of reasons would certainly be allowed, which was for the Examiner to determine. But that doesn't mean that all of the things they might mention are to be again put in the case to be decided all over again. Cross-examination is proper to break down any reasons they may say they relied on in joining the union, but rebuttal is not proper to meet those reasons, unless they present something entirely new, and the matter of the authority of the instructors certainly is not new.

Trial Examiner Batten: Well, we will recess until a quarter after 4.

(Thereupon a 10-minute recess was taken.)

[fol. 6342] Trial Examiner Batten: I am just wondering if counsel understood me when I said a quarter after 4.

Mr. Langsdale: Personally I was watching the bench to see whether you were there or not. I came in as soon as I saw you.

Trial Examiner Batten: I am going to strike the last answer. It certainly hasn't any value in its present form, that is certain.

Let's proceed.

Mr. Langsdale: What did you do? Did you strike it?

Trial Examiner Batten: What is it?

Mr. Langsdale: I didn't get your ruling.

Trial Examiner Batten: I strike it.

And I think I interrupted you, Miss Weyand, on the following question. Do you have it, Mr. Reporter?

The Reporter: No. That was reported by Mrs. Creel.

Trial Examiner Batten: Do you want the question, Miss Weyand, the question and the answer that I struck, and the following question?

Miss Weyand: No, I'll drop that subject, I think.

By Miss Weyand:

Q. Were you a member of the Loyalty League?

A. I was.

Q. Did you have a pin?

A. I have.

Q. Do you remember how you got your pin?

[fol. 6343] A. My instructor gave it to me, — I bought it, rather, and she delivered it to me.

Q. Do you know Mrs. Gray?

A. I do.

Q. Who is she?

A. She was manager of our outside store.

Mr. Langsdale: I didn't get the answer.

A. She was manager of our outside store, to my knowledge.

By Miss Weyand:

Q. How do you know she is the manager?

A. Well, we always had to see Mrs. Gray if we wanted anything in the store, to see Mrs. Gray, and when it was remnant bundles, she would send i. d. m.'s, and say it was the remnant bundles.

Mr. Reed: I can't understand the witness.

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the last answer was read by the reporter.)

A. And her signature was on the i. d. m.

Mr. Lane: Now, I move to strike out the answer that Mrs. Gray was manager of the store, for the reason it is a mere conclusion; and the following answer of the witness doesn't state any facts upon which the conclusion can properly be based.

Trial Examiner Batten: It may stand.

By Miss Weyand:

Q. How long has Mrs. Gray been the manager of the store?

A. As long as I was there.

[fol. 6344] Q. Did you know Sylvia Hull?

A. I did.

Q. Do you remember the last day she worked at the plant? A. I do.

Q. Was she on the same floor with you that day?

A. She was.

Q. What happened?

A. Well, when I came in to work that morning, there was quite a number that had newspaper clippings with Sylvia's picture on those clippings, and that is the first I knew of it, and they said, "And she even came in to work this morning," and I was very much surprised; and I went over in the section where Sylvia was working, Miss Allison's section, and Sylvia was crying and trying to work, and Miss Allison was standing at the end of the section crying.

Mr. Reed: I couldn't hear the last of that.

A. Miss Allison was standing at the end of her section crying, and I stayed around there for a while, and I talked to Miss Allison for a minute or so, really sympathizing with her because she was crying; and then I went back to my section; but I don't think any of us worked for some time.

By Miss Weyand:

Q. Did people from other floors come up there?

A. Yes, I saw Ella Mae a time or two; there was others, but I didn't particularly know them.

Q. And by Ella Mae you mean who?

[fol. 6345] A. Well, she was the girl in the office; and the reason I remember that, I thought probably Ella Mae was—

Q. (Interrupting) What is Ella Mae's last name?

A. Hyde.

* * * * * *

[fol. 6349] By Miss Weyand:

Q. Did you consider the Donnelly Garment Workers' Union a company dominated union, or a company union?

A. I did.

Mr. Lane: I object to that as calling for a conclusion of the witness.

Trial Examiner Batten: She may answer. A. I do.

Miss Weyand: Why do you?

Mr. Langsdale: Pardon me, I didn't hear that.

Mr. Ingraham: Respondent makes the same objection.

Trial Examiner Batten: Overruled. As I recall, you both have a continuing objection.

Mr. Ingraham: Yes.

Miss Weyand: Will you tell us why?

Trial Examiner Batten: You may tell us.

A. Because it seemed it never done any good when you [fol. 6350] took grievances up with that committee; I never did get anywhere when I was on the committee, and everything went just as the company seen fit.

Trial Examiner Batten: Miss Weyand, what is that in rebuttal of, the statement the witness just made?

Miss Weyand: The conclusionary statements by witnesses offered by the company, that the union was organized, formed, and run by the girls.

Mr. Lane: Wasn't that a part of the main case?

Miss Weyand: Well, at the main case, the Trial Examiner was not operating on a theory that such conclusionary or opinion evidence of employees was material; with the Court remand saying that such evidence should be taken, we are in the position of the company putting in such evidence, and the Board's not having put it on because of this theory of law under which the same case was tried.

Trial Examiner Batten: I will let it stand.

Miss Weyand: Did you attend a meeting in March—

Mr. Ingraham: (Interrupting) Do I understand counsel to mean now that it is material to go into what the plant union did accomplish?

As I recall, counsel objected to those matters when we were putting on our witnesses.

Miss Weyand: I don't recall the objection of which you speak. Would you be more specific?

[fol. 6351] Mr. Ingraham: Well, as I recall, objection was made to whether the union was the preference of the employees, what the union had accomplished, why it was their preference.

Miss Weyand: I don't recall any objection to any such questions, that you weren't allowed to state that.

Mr. Ingraham: That is my recollection.

Trial Examiner Batten: Well, of course, the record will indicate. I sort of had that recollection myself.

Mr. Tyler: Of course, the union itself was not allowed to put on any witnesses whatever which would—

Trial Examiner Batten: (Interrupting) Well, Mr. Tyler, I don't presume that that is correct; at least, that is not my position, but if that is yours, why, the record should indicate it.

We will proceed.

By Miss Weyand:

Q. Did you attend a meeting in March, 1937, at which Mrs. Reed spoke? A. I did.

Q. How were you notified of that meeting?

A. Well, if I remember right, it was the same as it was when our union was organized.

Q. And that was how?

A. By our instructor.

Q. What time of day was the meeting held at which Mrs. Reed spoke?

A. I don't remember the exact time. I can't say the [fol. 6352] exact time.

Q. Was it during working hours or after working hours?

A. Yes, it was during working hours.

Q. Did you wear your uniform to that meeting?

A. I just don't remember if I did or not, that particular meeting.

Q. What do you recall that Mrs. Reed said at the meeting?

A. Well, that she would stand by us girls if we stood by her, and that—

Mr. Langsdale: (Interrupting) Will you speak a little louder?

A. That she would stand by us girls if we stood by her, and that no one was going to run her plant, no buttinsky or 'sky, rather. She just explained that she was giving us the impression we would be protected in case of violence that was happening in other plants. That is about all I can remember of the exact words.

Q. Did you ever work in a section of the plant for a period of time and then move to another section, and the section number which appeared on your check stub was not changed for a period of time? A. I did.

Miss Weyand: I would like the court reporter to mark these check stubs Board's exhibits 39-A to 39-E inclusive for identification.

[fol. 6353] (Thereupon the check stubs above referred to were marked as "Board's Exhibit No. 39-A to 39-E inclusive, Witness Weilert," for identification.)

Mr. Ingraham: I would like counsel to state the purpose of offering these stubs that are dated November, December, December, December, December, 1941.

Miss Weyand: Purely to show the practice of the company, in many cases, being very slow in changing the section number. I shall then ask the witness if that was the practice previously. It happens those are the only illustrations I have of check stubs with this witness.

We will try to put some others in that occurred during that period, with another witness.

Mr. Ingraham: Well, I object to proving that point by matters that are outside the time set by the Examiner.

Trial Examiner Batten: What have you to say about it, Miss Weyand?

Miss Weyand: Well, I think when I am proving merely a practice of the company in regard to having check stubs bear one section number and the girl actually be working, during a series of weeks for which the pay is covered, in

another section, that I can put on check stubs for any time, if there is a showing there was no change in the company's practice in that regard during the time involved.

Trial Examiner Batten: Well, doesn't that open up the [fol. 6354] whole thing to Mr. Tyler, to show there was no change in the conduct of the International Union prior, and then to a witness, after he has gone over the whole thing, and say, "Isn't that the same as it has always been?" What is the difference?

Miss Weyand: Because it has always been my theory that it has always been proper to prove something before by something that happens after.

Trial Examiner Batten: Well, you know the ruling I have made, don't you?

Miss Weyand: Well, I will offer this, then, and I will make an offer on that. I would like to say, in connection with the offer, that if the witness is willing to testify, will testify—shall I put it in this way, rather than to have her state what appears on these check stubs?

Trial Examiner Batten: Yes, you put it on.

Miss Weyand: That the handwriting which appears in the upper right-hand corner of Board's exhibit 39-A for identification, was on the check stub when she received it, and that she received it in the section numbered in handwriting at the corner, No. 411, and continued to work in section 411 continuously from prior to November 28, 1941, until subsequent to December 26, 1941, and that during that period her check stubs for weeks ending November 28, 1941, December 5, 1941, December 12, 1941, and December 19, 1941, indicated that she was working in section [fol. 6355] 517, whereas she was working actually in section 411, where all the checks were delivered to her; and that only on the check dated December 26, 1941, did the actual change in section numbers appear, and on the check stub dated December 26, 1941, which is Board's Exhibit 39-E for identification, the change for the first time appears with the section number in the addressograph as 411.

Trial Examiner Batten: We will proceed.

Miss Weyand: That is all the questions I have.

Trial Examiner Batten: Mr. Langsdale?

Mr. Langsdale: No questions.

Trial Examiner Batten: Mr. Ingraham?

Cross-Examination

By Mr. Ingraham:

Q. Mrs. Weilert, I understood you to say that you took a 14-months leave of absence in 1940.

A. It was about that long, to my memory.

Q. When was that?

A. It was about 14 months before I came back this last time; it was in—

Q. (Interrupting) In 1940 to 1941, is that what you said? A. Yes.

[fol. 6356] Q. And you worked how long?

A. Until March of this year.

Q. Of this year?

A. Yes.

Q. Now, at that time did you object to doing repair work?

A. I certainly did.

Q. You had objected for some time, is that a fact?

A. No, only once, that is when I quit.

Q. That is the only time you objected to repair work?

A. Never before did I ever refuse to do repair work.

Q. But at that time you did refuse to do it?

A. I did, and I quit.

Q. Now, I understood you to say that you had objected to having to do repair work without being paid.

A. I objected to them taking out of those girls' checks when they made less than the guarantee; that didn't sound sensible to me. They didn't take it out of the girls' checks who made over their guarantee, it was the ones who did not make their guarantee; and in my opinion and in my argument I couldn't see where our contract stood up, because the girls had no guarantee after that. Where was their guarantee?

Trial Examiner Batten: Well, Mr. Ingraham, isn't that a matter I struck out?

Mr. Ingraham: Yes, but the witness has just answered a question; Miss Weyand asked her whether she thought the [fol. 6357] Donnelly Garment Workers' Union was company dominated and she said—

Trial Examiner Batten: Well, I intended clearly—I thought I was not receiving those exhibits, and didn't I say on that question and answer that I wouldn't receive them?

Mr. Ingraham: I didn't understand you to say that. I thought the witness answered her question. Will you please go back—

Trial Examiner Batten: Oh, pardon me, Mr. Ingraham. I made a note here: "Q. Is the union company dominated and why," to be stricken, and I meant to strike it out before you started with your examination.

Mr. Ingraham: I see.

Trial Examiner Batten: I have a note here, I see it now.

Mr. Langsdale: What was the objection to that question, that caused you to strike it? I didn't hear it.

Trial Examiner Batten: Well, because I didn't think—the first question, of course, is purely a conclusion, Mr. Langsdale, but we have had plenty of conclusions all the way through, and the why raises the whole issue of grievances, and yesterday, when she related one incident, I struck that out, and I think I intended, in the prior hearing, on several occasions—

Mr. Ingraham: (Interrupting) Well, I think it is a question of conclusion, and the Examiner can't make an [fol. 6358] error to strike out.

Trial Examiner Batten: Well, I wasn't going along on it because of conclusions alone, but the answer is based entirely on the fact this lady—that there had been some grievances that hadn't been properly taken care of, and that was the primary reason for my striking out; but I notice now I had this note, and I meant to do it before.

Miss Weyand: I want an exception to that, and I didn't know, of course, before I released the witness, you were

going to strike that. I don't think her answer indicates it was purely a matter of grievance, not being settled completely, and I would like to have the answer read back to the Examiner.

Trial Examiner Batten: Mr. Ingraham, will you release the witness back to Miss Weyand, in view of the fact I have struck the matter?

Mr. Ingraham: Yes.

Trial Examiner Batten: You may proceed.

Direct Examination (Resumed)

Miss Weyand: Did you consider the Donnelly Garment Workers' Union an organization formed by the employees for their own benefit?

Mr. Ingraham: I object to that. The witness has already stated her basis for believing the union was company dominated.

Trial Examiner Batten: She may answer the question.

[fol. 6359] Miss Weyand: Will the reporter read the question to the witness?

Trial Examiner Batten: Please read the question.

(Thereupon the last question was read by the reporter, as follows:

"Q. Did you consider the Donnelly Garment Workers' Union an organization formed by the employees for their own benefit?")

A. At the time it was formed, I did.

By Miss Weyand:

Q. Did you later change your opinion?

A. I did.

Q. What opinion did you then form?

A. That it was most certainly company dominated.

Q. What did you mean by "company dominated"?

A. They operated everything just to suit themselves. I don't know of any incident where the girls had anything to say about it—or the union had anything to say about it.

Q. When you say "to suit themselves," whom do you mean by that?

A. The company.

Miss Weyand: That's all.

Mr. Ingraham: Mr. Examiner, I contend that opens up this same question.

Trial Examiner Batten: I think it opens up everything, if anything has been closed.

Mr. Ingraham: Yes.

[fol. 6360] Trial Examiner Batten: Clearly.

Mr. Langsdale, do you have anything?

Mr. Langsdale: No.

Trial Examiner Batten: Mr. Ingraham?

Mr. Langsdale: What was the ruling?

Trial Examiner Batten: I say I think it does open up everything that has been closed, if I have been able to close anything.

Mr. Langsdale: I don't hear any motion to strike.

Trial Examiner Batten: Well, apparently there isn't any.

Go ahead, Mr. Ingraham.

Cross-Examination (Resumed).

By Mr. Ingraham:

Q. Now, Mrs. Weilert, you stated that when the union was formed you thought that it was an organization formed by the voluntary action of the employees?

A. Yes.

Q. And did you vote in favor of forming the Donnelly Garment Workers' Union?

A. Well, yes. I don't know anything about unions, and if it was necessary, I felt that was what I should do.

Q. Did the violence at the other garment plants in 1937 cause you to feel that a plant union would protect the employees?

A. Well, I didn't know if it was the union that would protect us, that was a mystery to me; I didn't know any-

[fol. 6361] thing about unions, but I did feel like we needed protection if they came down there.

Q. And did Mr. Tyler advise you that a plant union would; in a measure, protect the employees?

A. That's right.

Q. And did you take that into consideration when you voted?

A. I don't know as I took it into consideration or not; I thought if that was what was necessary, that was the proper thing to do.

Q. So you used your own judgment about the matter at the time?

A. That's right.

Q. Now, up to 1937 had you been satisfied in your work—

A. (Interrupting) Yes.

Q. (Continuing) At the plant?

A. Yes.

Q. And had you notified Mrs. Reed?

A. Mrs. Reed what?

Q. That you were satisfied?

A. Before 1937?

Q. Well, in 1937, had you notified Mrs. Reed that you were satisfied in your work?

A. Not directly, that I know of.

Q. Did you ever write her a letter?

A. Before 1937?

[fol. 6362] Q. No, in 1937.

A. In 1937?

Q. Yes.

A. No.

Q. Are you sure of that?

A. Positive.

Mr. Ingraham: Mr. Reporter, will you please mark this exhibit as respondent's exhibit No. 46?

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 46, Witness Weilert," for identification.)

Mr. Langsdale: I object to the letter. It is not the original, it is a copy. Show it to the witness.

Mr. Ingraham: I'll withdraw that.

By Mr. Ingraham:

Q. Do you recall writing a letter?

A. In 1939.

Q. In 1937?

A. 1939.

Q. Well, I'll hand you exhibit 46, respondent's exhibit No. 46, and ask you if you recall writing such a letter.

A. I did not.

Q. You did not?

A. I did not, positive.

Mr. Ingraham: I would like to get the original of this letter right now.

A. I wish you would.

[fol. 6363] Mr. Ingraham: Will you recess for about 5 or 10 minutes?

Trial Examiner Batten: Well, is that all the longer it will take?

Mr. Ingraham: I think so.

Trial Examiner Batten: It seems you should have had the original here before you were going to present it to the witness.

Mr. Ingraham: I thought the witness would recollect writing this letter.

Mr. Hogsett: It is of no great delay, it is only a hundred feet from this courtroom. It is a record we are not at liberty to bring here, but we will have the clerk take it out.

Trial Examiner Batten: Well, we wil recess for 10 minutes.

(Recess was accordingly taken.)

Trial Examiner Batten: We will proceed.

Mr. Ingraham: Will you read the last question and answer?

(Thereupon the last question and answer were read by the reporter, as follows:

"Q. Well, I'll hand you exhibit 46, respondent's exhibit No. 46, and ask you if you recall writing such a letter.

"A. I did not.

"Q. You did not?

[fol. 6364] "A. I did not, positive.")

Mr. Ingraham: Mr. Reporter, will you please mark this exhibit?

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 47, Witness Weilert," for identification.)

Mr. Ingraham: I will hand you now respondent's exhibit No. 47, which is the original of exhibit No. 46, which you just testified about,—

Mr. Hogsett: Let her compare that with the copy.

Mr. Ingraham: (Continuing) —and ask you if that is a fact?

Mr. Langsdale: And ask you what?

Mr. Ingraham: If Exhibit 46, which she has just testified about, was a copy of exhibit No. 47.

A. That is not my signature.

Mr. Ingraham: Is this your signature to that affidavit?

A. That is my signature, but I don't know how it got on there.

Mr. Hogsett: Take that away from her and have her write the entire thing in her own handwriting right now.

Mr. Langsdale: I object to that, and I think she is not required to make any such asseveration.

By Mr. Ingraham:

Q. (Interrupting) Is this a letter in your handwriting?

[fol. 6367] A. It is not; but this is my signature.

Q. On the affidavit? A. On this, yes.

Q. Now, will you please write what is contained—

A. (Interrupting) Yes, I will.

Q. (Continuing)—in this exhibit?

A. Yes, I will.

Trial Examiner Batten: Just move up to the table, Mrs. Weilert.

(Thereupon the witness wrote as requested.)

By Mr. Ingraham:

Q. (Reading) "Kansas City, Missouri, July 15, '37. To whom it may concern:

"During the past 4½ years—"

A. (Interrupting) Four and a half?

Q. 4½ years. (Reading) "I have been employed as operator by the Donnelly Garment Company."

Mr. Langsdale: I submit the whole counsel table doesn't have to stand up and look over her shoulder while she is doing this, and one counsel is enough.

A. I am left-handed.

By Mr. Ingraham:

Q. Do you write with your right hand?

A. No, you couldn't read it if I did. I admit I am a little nervous writing here, but I can still sign my name, I think.

Q. Well, are you too nervous to write?

Mr. Langsdale: Just a moment. I object—

[fol. 6366] A. (Interrupting) No, I don't think so.

Trial Examiner Batten: Just proceed, Mr. Ingraham.

Mr. Ingraham: All right.

By Mr. Ingraham:

Q. (Reading) "Working conditions and salary have been very satisfactory and I am very well satisfied with my present employer. I do not wish to join any outside organization, and I feel that—"

A. (Interrupting) Outside organization?

Q. (Reading) "—any outside organization—"

A. I will just have to write that over if you read it.

Q. (Reading) "—and I feel that I have the right to use my own judgment in this matter. Yours respectfully, Bessie Weilert, 3930—"

A. (Interrupting) 3920, is it, or 3930?

Q. Well, this has got a stamp over it. I can't see, "Wabash."

A. Well, which is it, 3930 or 3920?

Q. 3930.

A. I don't live there.

Mr. Hogsett: It is '20.

Mr. Ingraham: It is '20.

A. It must be.

Mr. Ingraham: Will you please mark this as an exhibit?

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 48, Witness Weilert," for identification.)

Trial Examiner Batten: What is that, 48, Mr. Reporter?

[fol. 6367] The Reporter: Yes, sir.

Mr. Ingraham: Will you please pull your—let me push your chair up to the table again. Will you sign your name right-handed, please, on that table?

A. I sure will, if I can.

Trial Examiner Batten: Are you using the same pen?

Mr. Ingraham: No. Push up farther to the table.

A. I know when I was at school I had a terrible time, I couldn't write. I always wrote this way when I was in school, and they were trying to get me over that, I wrote backwards.

By Mr. Ingraham:

Q. You have written backwards right along?

A. In the first grade at school, but I can't write, and they had to let me write left-handed.

Q. And exhibit 48 was written with your left hand?

A. Absolutely. Any signature of mine would be with my left hand.

Mr. Ingraham: Will you just mark these, please?

(Thereupon the documents above referred to were marked as "Respondent's Exhibits No. 49-A through E inclusive, Witness Weilert," for identification.)

Mr. Hogsett: Well, did she endorse the pay checks with the right hand or left hand?

Mr. Langsdale: Well, I object to the exhibits because [fol. 6368] she says she always wrote with her left hand.

By Mr. Ingraham:

Q. I will hand you respondent's exhibit 49-A and ask you if that is your signature in your hand-writing on a pay check from the Donnelly Garment Company, dated July 3, 1937? A. It is not my signature.

Q. It is not your signature? A. It is not.

Q. All right. At that time, on July 3, 1937, were you in section 413? A. In 1937?

Q. Yes.

A. Yes, I was in Lola Skeens' section.

Q. What was your time clock number, 14?

A. It must have been from that.

Q. And is that check made out to Bessie Weilert?

A. Yes.

Q. And cashed through the bank?

A. Where was that cashed at?

Q. One is the Union National Bank, the other is—

Miss Weyand: (Interrupting) May I see that a minute?

A. There is nothing I can explain, unless my husband made a payment on the house and signed the check, maybe I forgot to sign it or something; that is the only thing I know of. I used to send my checks about that time to the [fol. 6369] savings company where we were paying on our home. I used to just—most of the time I didn't cash them, I would sign them and send them down there.

Mr. Langsdale: I didn't hear that answer. Will you read it?

Trial Examiner Batten: Will you read it, please?

(Thereupon the last answer was read by the reporter.)

A. Or maybe at Katz', maybe I would cash them and send the money down there, or something of that sort.

Mr. Langsdale: You mean by that the banker may have signed your name on the back of the check?

A. No, I don't mean that. It may be my husband signed it, in sending it to the bank, they know him down there; but I didn't sign that.

By Mr. Ingraham:

Q. Is this your pay check? A. Yes.

Q. Well, who signed your name on the back?

A. I don't know, unless it is my husband, but I didn't sign that; that could be possible.

Q. Now, the number over your name, is that your social security number? A. I suppose it is.

Mr. Langsdale: That is immaterial. She admits that is her pay check.

Mr. Ingraham: All right.

[fol. 6370] By Mr. Ingraham:

Q. Now, I'll hand you respondent's exhibit 49-B and ask you if that is your pay check.

A. Yes.

Q. Now, is that your endorsement on the back?

A. Yes.

Q. It is?

A. Yes. It was a habit of mine to stop on my way home and cash my checks; of course, there might have been exceptions.

Q. I hand you respondent's exhibit 49-C. Is that your pay check? A. It is.

Mr. Langsdale: I think one counsel hanging over the witness is sufficient, and I ask one counsel be requested to take his seat at the counsel table.

Mr. Ingraham: I am not hanging over the witness, I am merely questioning the witness.

A. That is my signature.

By Mr. Ingraham:

Q. That is your signature on respondent's exhibit 49-C? A. It is.

Q. I'll hand you respondent's exhibit 49-D and ask you if that is your pay check? A. It is.

Q. And I'll ask you if that is your signature?

A. It is.

[fol. 6371] Q. I'll hand you respondent's exhibit 49-E and ask you if that is your pay check? A. It is.

Q. And I'll ask you if that is your signature?

A. It is. There is only one there that is not my signature, and that could be possible that it was signed by my husband.

Mr. Ingraham: Will you please mark this as an exhibit?

(Thereupon the document above referred to was marked as "Respondent's Exhibit No. 50, Witness Weilert," for identification.)

Mr. Ingraham: I'll hand you respondent's exhibit 50, and ask you if you made the writing on that page with your right hand. A. With my right hand, yes.

Mr. Ingraham: Now, I offer in evidence respondent's exhibits 47, 48, 49-A, B, C, D, and E, and 50.

Trial Examiner Batten: Any objections?

Miss Weyand: Well, I object to them being received, the one which is the letter she wrote; I don't object to the receipt of 48 nor 49-A, B, C, D, and E, nor 50. I understand those can be received, but I do object to the receipt of No. 47 in evidence until it is determined who wrote it, and the circumstances under which it was written.

Trial Examiner Batten: You mean the copy?

Miss Weyand: No.

Trial Examiner Batten: Did you say No. 47?

[fol. 6372] Miss Weyand: That is the original, purported original hand writing. I don't object to the receipt of the copy for what it is worth.

Trial Examiner Batten: The offer included all the exhibits?

Mr. Ingraham: I stated 47, 48, 49—

Trial Examiner Batten: (Interrupting) A to E.

Mr. Ingraham: Yes, and 50; and I am also offering respondent's exhibit 46.

Trial Examiner Batten: What would be the purpose of offering the copy, Mr. Ingraham?

Mr. Ingraham: Well, the witness said she didn't sign any such letter.

Trial Examiner Batten: Oh, I see. That is in relation to her testimony?

Mr. Ingraham: Yes.

The Witness: To my memory I did not.

Mr. Langsdale: I object to the offer of either 46 or 47 as not having been identified; therefore they are not competent.

Mr. Ingraham: Now, Mrs. Weilert—

Mr. Langsdale: Wait just a minute.

Trial Examiner Batten: Well, of course, I think they should all be received, but the question that is to be determined, I presume, is whether or not that is her letter, her signature.

[fol. 6373] Miss Weyand: I think they should be identified and not received in evidence until it is determined where those copies came from and what they are.

Trial Examiner Batten: Well, I will receive them in evidence in connection with this witness's testimony; and of course, any questions, I presume, will be determined as with respect to any exhibits. Of course, this exhibit 47 will be received, but we will have to have the original, I won't accept the photostat, because if the issue of the handwriting is an issue, of course I am not going to accept a photostat.

(The documents heretofore marked "Respondent's Exhibits 46, 47, 48, 49-A, 49-B, 49-C, 49-D, 49-E, and 50, Witness Weilert," for identification, were received in evidence.)

By Mr. Ingraham:

Q. I hand you respondent's exhibit 47, and ask you if you did sign your name on the affidavit?

A. I must have. That is my signature.

Q. Now, that is dated the 27th day of October, 1937?

A. October 27, 1937?

Q. Yes. A. Yes.

Mr. Langsdale: When?

Mr. Ingraham: October, 1937.

By Mr. Ingraham:

Q. Now, do you recall making that affidavit?

A. No, I don't recall making that, but that is my signa[fol. 6374] ture; and what is in the letter is the way I felt, that would be all right.

Q. Your felt what was stated in the letter was all right?

A. Yes, I did.

Q. And so when you did sign the affidavit which stated: "I, Bessie Weilert, being duly sworn, state I wrote the attached letter of my own free will and that the facts contained therein are true," that was a fact? A. Yes.

Mr. Langsdale: Wait a minute. Let's get the question. Just a minute—

Mr. Ingraham: She has answered.

Trial Examiner Batten: Just a moment. Let's have the question.

Mr. Langsdale: You hadn't finished your question when she started to answer.

Trial Examiner Batten: Wait just a moment. Let's have the question read.

Mr. Langsdale: Just a moment. I object to the question as including that part of the affidavit in which she said she wrote the letter and which she says she didn't sign. If the question is only to get at the contents of the letter as to the way she felt, then I have no objection to it.

Trial Examiner Batten: What do you mean, Miss Witness, that the contents of the letter were true, or that you [fol. 6375] wrote the letter?

A. That is the way I felt at that time, yes, that I was pleased with my work.

By Trial Examiner Batten:

Q. You were referring to the contents of the letter?

A. Yes.

Q. And not to the fact that you wrote that?

A. No, I didn't write it.

By Mr. Ingraham:

Q. Why did you sign this paper?

A. That is what I don't know, that is what the mystery is to me.

Q. You have no recollection of it?

A. No, I do not.

Q. You have no recollection of being sworn?

A. No, I didn't sign that at that time; I know I would have, just that way. We signed a lot of things we didn't have to read.

Q. Now, this affidavit states: "I, Bessie Weilert, being duly sworn, state I wrote the attached letter."

A. Yes, I probably signed that.

Q. You signed that?

A. I signed a lot of things I didn't have to read, yes.

Q. And you swore to it?

A. Yes, I guess I did.

* * * * * * *

[fol. 6376] By Mr. Ingraham:

Q. So, Mrs. Weilert, in October, 1937, you were satisfied?

A. Apparently from that, if it was in October.

Q. Well, you stated—

A. (Interrupting) I was rather satisfied there until I was on the committee as chairman, that is when I could really see the unsatisfactory view of things, and then I wasn't satisfied.

Q. And that was in 1939? A. 1939.

Q. And I believe you stated you were elected on the committee in the spring of 1939? A. Yes, it was.

Q. Do you recall the month?

A. It was in April, it must have been.

Q. In April? A. Yes.

Q. And then how soon after that? A. Immediately.

Q. Immediately?

A. Afterwards, the first chairman meeting.

Q. And you think it was in the month of May?

A. Yes, I do.

[fol. 6377] Q. The early part of May?

A. Yes, I think so, I wouldn't say exactly.

Q. How often did you have meetings?

A. Well, if I recall it was once a week.

Q. Once a week?

A. I believe it was once a week.

Q. I didn't quite understand what you meant by "committee of chairmen." Was that a representative of the section?

A. That's right, for the operators. There were two representatives for the operators for that union.

Q. And you were one of them on the general executive committee?

A. Yes, I suppose that is what you would call it.

Q. Now, I'll hand you intervener's exhibit No. 20.

Miss Weyand: I would like to, in order to expedite matters, ask if the company could undertake to produce a letter that was written in 1939, or search its files to see if they can find the letter.

A. It was not written, Miss Weyand.

Miss Weyand: It was not? A. I dictated that.

By Miss Weyand:

Q. And it was typewritten? A. Yes.

Q. It wouldn't show your handwriting, then?

A. No.

[fol. 6378] Mr. Ingraham: I hand the witness intervener's exhibit No. 20 and refer to page 6076 of the Circuit Court record and ask the witness if her signature appears on that page.

Trial Examiner Batten: That is that rejected exhibit, is it not?

Mr. Ingraham: Yes.

A. Yes, that is it.

By Mr. Ingraham:

Q. That is your signature? A. Yes.

Q. Now, I'll ask the witness to read the writing that is on that page, please.

[fol. 6379] A. I have finished.

By Mr. Ingraham:

Q. Do you recall making that affidavit?

A. When did you say it was, May—

Q. (Interrupting) May 31, 1939.

A. Is that the one where the Notary Public was in the auditorium?

Q. I don't know anything about it.

A. Where we were called in groups to sign that?

Q. I don't know a thing about it. I had nothing to do with it.

A. Well, I really only remember one time where a paper was notarized, and it was in the auditorium on the first floor, and if that is the paper, why, yes, I signed it.

Q. Now, it states in the affidavit: "Each signer further states that he or she has either read or had read to him or her the contents of this affidavit."

A. That was read to us, he read it to us, the notary public.

Q. Now, you have read this—

A. (Interrupting) Just now.

Q. (Continuing) —just now?

A. Yes.

Q. Now, were the facts you swore to at that time true or [fol. 6380] false?

A. It must have been awfully early in May if I felt that way.

Trial Examiner Batten: Well, it was in May, 1939.

A. Well, I didn't feel that way, no.

Mr. Ingraham: So you swore to something that was not true?

Mr. Langsdale: Just a moment. I object to that as argumentative. Her answer speaks for itself, and the affidavit speaks for itself. It is purely argumentative, and in an effort to—

Trial Examiner Batten: (Interrupting) Will you read the last answer, please?

(Thereupon the last answer was read by the reporter.)

Mr. Langsdale: I object to it for the further reason it is repetition. She said she didn't feel that way, and she did sign it.

Trial Examiner Batten: Please read the last question.

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You may answer.

Mr. Ingraham: She did.

A. It seems I did.

Mr. Hogsett: Just now she answered it: "It seems I did."

Mr. Ingraham: So, in 1939, under oath, you swore to certain facts—

Mr. Langsdale: (Interrupting) Just a moment.

[fol. 6381] Trial Examiner Batten: You haven't finished yet, have you?

Mr. Ingraham: No.

Mr. Langsdale: No, I say the witness shouldn't answer until I put in my objection.

By Mr. Ingraham:

Q. You swore to certain facts with respect to the formation of the Donnelly Garment Workers' Union that weren't true?

Mr. Langsdale: I object to that as repetition.

Trial Examiner Batten: It is entirely repetitious. She just got through saying, didn't she? If you want to ask her what part of the affidavit she considers not to be true, all right.

Mr. Ingraham: All right.

By Mr. Ingraham:

Q. I'll hand you the affidavit and ask you to state what was not true.

A. Well, I didn't consider that "wish" and "choice" correct. It wasn't our wish and our choice, it was just a matter of duty, I felt it was our duty to belong to that union, if that was what they wanted us to do. I can't

really say it was my wish and choice, but that it was necessary.

Q. What was the next item that was untrue at the time you swore to it?

Trial Examiner Batten: If any?

Mr. Ingraham: Yes.

[fol. 6382] A. I suppose that it is supposed to be a choice, and I just can't say it was a choice, it was more of a duty to me.

By Mr. Ingraham:

Q. What item are you referring to now?

A. Where it says: "We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore, for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested."

Q. Now, is that the only false statement that you swore to?

A. That is one.

Q. What other false statements did you swear to?

Trial Examiner Batten: Just a moment. The witness hasn't said they were false statements, Mr. Ingraham. She says they were untrue.

Mr. Hogsett: What is the difference?

Trial Examiner Batten: Well, why don't you use the witness's language?

Mr. Ingraham: I don't have to follow the language of the witness.

Trial Examiner Batten: Well, of course, I don't assume the use of the words, "false statement" is correct. The questions have been to this witness: what in here was untrue.

Mr. Hogsett: Does your Honor draw a distinction be-
[fol. 6383] tween "false" and "untrue"?

Trial Examiner Batten: It is immaterial whether I draw a distinction or not.

Mr. Langsdale: I draw a great distinction —.

Trial Examiner Batten: (Interrupting) Just a moment. Unfortunately I think you two men will have to decide that matter.

A. When we signed this we were on our lunch period, we have a half an hour for lunch, or we did have, and when we were told to go to the first floor — this impressed me as something that hadn't been done properly; probably we had signed the same thing before, but it hadn't been done properly, and now was being notarized, and we rushed in there after lunch and rushed out, and goodness, I don't suppose — I know I didn't absorb half of this.

By Mr. Ingraham:

Q. So you now testify —

A. (Interrupting) That I didn't know the seriousness of this, if it is serious.

Mr. Langsdale: What is the answer?

Trial Examiner Batten: Will you read it?

(Thereupon the last answer was read by the reporter.)

By Mr. Ingraham:

Q. Is your memory better now, Mrs. Wellert, than it was in 1939, about those facts?

A. About these facts?

Q. Yes.

[fol. 6384] A. Well, I feel different than I did then.

Q. Yes. In May 1939 you felt differently than you feel now, is that a fact?

A. It could have been, maybe; I said if it wasn't the first it was mighty soon after the first meeting that I felt different about the union.

Q. So, at the time that affidavit was made you felt differently?

A. It could have been.

Q. And your feeling now is that the Donnelly Garment Workers' Union should have forced the company to pay for repairs?

Mr. Langsdale: Just a moment. I object to the word "forced" as not based on anything she said. All she said is: they should at least have made an effort to do it.

Trial Examiner Batten: Of course, I have stricken out that part, didn't I, about pay for repairs?

Mr. Ingraham: Well, I feel that Miss Weyand opened the whole door.

Trial Examiner Batten: You mean even the part I have stricken out of her testimony?

Mr. Ingraham: I feel so, yes. Miss Weyand went into —

Trial Examiner Batten: (Interrupting) We will proceed.

Mr. Langsdale: Now, I am objecting to the use of the word "forced" in there, as not based on her testimony. Her testimony was she thought the union should make an [fol. 6385] effort to do it. The word "forced" carries an entirely different interpretation.

By Trial Examiner Batten:

Q. Well, do you understand the question, Mrs. Weilert?

A. Well, I don't know if I do or not.

Q. Well, it is about that incident you related.

A. Taking out of their pay for repairs?

Q. Yes.

A. Well, it was something they never had done before in that way, to my knowledge.

By Mr. Ingraham:

Q. Well, how had it been done before?

A. Well, lost time, that is all I ever knew of, that they lost time seemed sufficient.

Q. Well, Mrs. Weilert, wasn't it a fact the company paid operators to perform certain particular work, and if an operator performed that work in such a way that the company was obliged to have it done over, then the operators hadn't performed what they were hired to do and wouldn't be entitled to be paid for that?

Mr. Langsdale: Just a moment. I object to the question as argumentative.

Trial Examiner Batten: Will you read the question?

Mr. Langsdale: The issue as to whether Mrs. Weilert was right or wrong isn't here. The issue that is here is, did

she protest against it, and was she dissatisfied on that account.

[fol. 6386] Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

"Q. Well, Mrs. Weilert, wasn't it a fact the company paid operators to perform certain particular work, and if an operator performed that work in such a way that the company was obliged to have it done over, that then the operators hadn't performed what they were hired to do and wouldn't be entitled to be paid for that?")

Trial Examiner Batten: You may answer.

A. Well, she still had a guarantee. I suppose those mistakes were allowed for, they must have been.

By Mr. Ingraham:

Q. Well, do you feel, Mrs. Weilert, that if you performed an operation in such a way that it has to be done over, the company should pay you for that?

Mr. Langsdale: Just a minute. I object to the question as argumentative, purely. The witness had based her opposition to that requirement of the company on her contract which guaranteed so much per week, and as I understand her testimony, when this was taken out, then her guaranteed contract was broken, and that was what she said, and that's all.

Mr. Ingraham: Now, I would like to have the witness answer my question.

Trial Examiner Batten: Will you read the question?

[fol. 6387] (Thereupon the last question was read by the reporter, as follows:

"Q. Well, do you feel, Mrs. Weilert, that if you performed an operation in such a way that it has to be done over, the company should pay you for that?")

Trial Examiner Batten: You may answer.

A. When you are on piece work, I feel the time you lose — no girl ever makes mistakes deliberately — because

she loses time when she does that over, it is a loss to her or sometimes it is to the company; and I always thought it was allowed off. Of course, if the girl is intolerable, they should fire her, I think they have the right to fire someone if they don't do the work the way it should be done, but I don't think they have the right to take that out of a set guarantee.

Q. Didn't you have quite a bit of repair work?

A. I didn't have. I had no more than the average.

Q. But you did have repair work?

A. I have had repair work, and I have always done it willingly.

Q. And have you personally complained about your own repair work?

A. I did when I quit, yes. I suppose I have made little remarks about it, probably, about it not being my operation, or something, but I did particularly when I quit.

. . . . . .

[fol. 6389] By Mr. Ingraham:

Q. Mrs. Weilert, I show you the signature, the endorsement, on respondent's exhibit No. 49-A, which you say is in your husband's handwriting, and ask you if that isn't the same signature that is on respondent's exhibit No. 47.

A. That's what I think it is.

Q. You think your husband wrote that letter?

A. Yes, I do. I think he did, and I had forgotten about it.

Q. And the facts in the letter are true, I think you testified?

A. Yes.

Q. And you told your husband to write that letter?

A. I probably did. I had forgotten about it entirely, though.

[fol. 6390] Q. And it was written at your home?

A. It must have been.

. . . . . .

By Mr. Tyler:

Q. Mrs. Weilert, you were elected to the committee of representatives of the Donnelly Garment Workers' Union in April 1939, were you not?

A. I think that's the date.

Q. That was about two years after the union had been formed, approximately?

A. Yes.

Q. And at the time of your election you believed the union was representing the wishes and the interests of the employees?

A. Yes, I did.

Q. And you attended the meetings of the committee held after you were elected to the committee of representatives, did you?

A. Yes, I did.

Mr. Hogsett: Mr. Tyler, may I interrupt a moment?

Mr. Tyler: Yes.

Mr. Hogsett: Mr. Examiner, in view of the testimony of the witness given to the last of Mr. Ingraham's cross-examination, do you now think it necessary that we go through the requirement of having this original letter withdrawn?

[fol. 6391] I suggest this as a reason why you may not think it is necessary: It appears now that the letter, according to the best knowledge of the witness, is in the handwriting of her husband, written at her home, at her request. Now, for all practical purposes, that is all we care about. It represented her views and communicated them to the company, at her request, so that the signature and the handwriting are no longer important.

Mr. Langsdale: You raise no further question about that?

Mr. Hogsett: No. I am convinced—

Trial Examiner Batten: If you raise no further question about that, there is no need—I would say, however, that you have a photostat.

Mr. Hogsett: Oh, yes, just like all exhibits.

Trial Examiner Batten: If you have two photostats made, so that there will be one for—

Mr. Langsdale: I think the exhibit of the writing here this morning should be stricken. In other words, there

is going to be no point raised about whether or not this is in her handwriting, this exhibit No. 47?

Mr. Hogsett: I think now that is true.

Trial Examiner Batten: Then, why don't counsel agree on the withdrawal of any of these exhibits you do not now think necessary?

Mr. Hogsett: Let it be by agreement understood that all [fol. 6392] of the exhibits which Mr. Ingraham exhibited to Mrs. Weilert with the view of testing the accuracy of her testimony on the subject of the handwriting in this original letter be withdrawn.

Trial Examiner Batten: That is respondent's exhibit No. 48. Now, I don't know whether I want to have them withdrawn—

Mr. Hogsett: For this reason, that it is now apparently no longer in issue that the letter was written by Mrs. Weilert's husband at her home, at her request and truly represented her views. Now, that being true, whether she wrote it personally is just wholly immaterial.

Trial Examiner Batten: That is true. But whether they should be withdrawn—I still think—

Mr. Hogsett: You mean—

Trial Examiner Batten: I mean physically withdrawn. I have no objection, Mr. Hogsett, if you will provide photostats of those, and photostats of those of which there is only one copy, and then have the record show they are withdrawn. I don't want them withdrawn physically. I want them in the record.

Mr. Langsdale: Why shouldn't the record be cleared of them completely?

Mr. Hogsett: Which way do you want it? We are agreed to anything.

* * * * * * *

[fol. 6394] Mr. Hogsett: I will state my personal belief, that this letter, exhibit No. 47, was actually written by Mrs. Weilert's husband, as she says it was.

Mr. Langsdale: Do you agree to that, Mr. Tyler?

Mr. Tyler: If the evidence shows that is a fact.

Mr. Hogsett: I think that is a fair inference from this check that she says she endorsed.

Mr. Tyler: I made no study of the comparative handwriting, but I am willing to let that stand.

Mr. Langsdale: All right.

Trial Examiner Batten: Then, that may stand. And you will, then, have photostats made in the usual way?

* * * * * *

[fol. 6395] By Mr. Tyler:

Q. After you were elected to the committee did the [fol. 6396] Donnelly Garment Workers' Union pay committee members for any expenses they incurred in connection with work for the union or time lost for the union?

A. You mean my time that I spent—

Q. I mean, any members of the committee. Were they paid by the union for time lost?

A. I never seen or had read to me any report of such. They might have, but I never had read to me or seen any report of it.

* * * * * *

[fol. 6397] By Mr. Tyler:

Q. What meetings of the executive committee did the company pay you for attending?

A. Why, I was under the impression they paid me for all of them—for the time lost on those meetings. I turned in the time to the instructor, and I don't know where else it went. It didn't go to the union, to my knowledge.

Q. Where did you get that impression?

A. Rose Todd told me to turn in the time for our union meetings.

[fol. 6398] Q. You turned in slips for all union meetings and the company paid you for all of them?

A. I wouldn't say the company paid me, but they must have paid me. I turned it in to my instructor, just the same as anything else.

Q. Do you remember a meeting of the group chairmen on May 2—that would be shortly after you were elected—

at which contracts of other companies were discussed and at which the Labor Board hearing was discussed—on May 2, 1939?

A. I don't remember that particular meeting, but I know there was discussions of the trials and hearings all of the time.

Mr. Langsdale: That is the May 2 meeting, you say?

Mr. Tyler: May 2, 1939.

By Mr. Tyler:

Q. If you attend that meeting, you are under the impression you were paid for it?

A. Yes.

Q. Now, I will show you the minutes of that meeting, which is on page 4681 of the exhibits, and ask you to look at the minutes, and especially the first sentence, and see if that refreshes your memory as to the time at which that meeting was held.

Trial Examiner Batten: What is the number of that exhibit, Mr. Tyler?

Mr. Tyler: That is page—

[fol. 6399] Trial Examiner Batten: —4681. But what is the number of the exhibit?

Mr. Tyler: Board's exhibit 9-104.

Mr. Langsdale: That is the meeting of May 2?

Mr. Tyler: Yes.

Miss Weyand: That is one meeting of May 2. There were two meetings on May 2.

Trial Examiner Batten: This is page—

Miss Weyand: Page 4679 has a meeting of May 2, an earlier meeting.

Mr. Tyler: This is the second meeting of May 2.

(Thereupon the exhibit referred to in the last question was read by the witness.)

A. What I am reading here is just what was my big disappointment. It was in your talk that we should always

hold in mind that we was representing those operators, who we was supposed to be representing, and I only felt I done my duty when I done so, but I didn't get anywhere with it. I was always put off and told to talk to them. And there was just the same complaints coming up week after week—no action being done. This is just why I was sincere when I went on this committee. I was sincere, but I seen that they wasn't sincere.

Mr. Tyler: Now, I move that the witness' answer be stricken as not responsive and she be directed to answer the question.

[fol. 6400] By Mr. Tyler:

Q. The question is, do the minutes of this meeting that I show you on this page refresh your recollection as to the time of day it was held?

A. No, not the time of day. I think I remember the first [fol. 6401] meeting. It seems it was held—

Q. I am not asking you that. I am asking you, do the minutes of this meeting refresh your recollection as to the time of day it was held?

A. This says, in the evening, but—

Q. That does not refresh your recollection?

A. No.

[fol. 6404] Mr. Tyler: You mean your meetings began at 10 after 4?

A. No. We got off at the early time, 10 after 4, and the meetings didn't take up until 5, the regular meetings.

[fol. 6405] Mr. Tyler: I am going to make this perfectly clear, now.

The minutes of the first meeting I show the witness state that a meeting of the union chairmen was held on Tuesday evening, May 2, and the date above it is 1939.

The witness says that statement does not refresh her memory as to the time that meeting was held. That is on

page, Circuit Court record, 4681; that has already been stated.

I then show her the minutes of the group chairmen meeting for May 2, consisting of one page and one paragraph preceding that meeting, which commences with the sentence, "Mr. Tyler is to be here at 5 o'clock this evening [fol. 6406] for the purpose of meeting the new chairmen." That is all I consider relevant. And I ask her if that statement refreshes her recollection as to when the second meeting on May 2 was held.

Mr. Langsdale: Just a moment. I object to the question for the reason that the witness has never stated anything about the time of the meeting of the second—

Trial Examiner Batten: I think the witness has already testified these matters do not refresh her recollection as to the time of the meetings.

Is that right, Miss Witness?

The Witness: That is right.

By Mr. Tyler:

Q. Now, the minutes of the first meeting are just over a page long, are they not?

A. Yes.

Q. Did you attend that meeting?

A. Let me read it.

(Thereupon the minutes above referred to were handed to the witness by Mr. Tyler and read by the witness.)

A. Yes, I do remember that.

Q. Wasn't it held at noon?

A. I just couldn't say the time of day.

Q. And wasn't it held on your own time?

A. On my own time?

Q. Not on company time?

A. Well, I was always late getting back to work. I [fol. 6407] always had some time to turn in.

Q. You were always late?

A. Back to my machine, yes.

Q. Were you late after this second meeting of May 2?

A. I couldn't say about that particular meeting.

Q. Were you paid for that particular meeting?

A. If that meeting was held at the time stated here (indicating), I wasn't. I had time out.

Q. Did you attend the meeting of the group chairmen held on May 16, 1939?

A. Well, I don't know, but I imagine I did, if I was there.

Q. Didn't you state that after the first meeting you attended you became disgusted with the union and didn't take any part in it?

A. About the first—

Mr. Langsdale: I object to that. She didn't say anything of the sort. She didn't say "after the first meeting."

Mr. Tyler: She said—

Trial Examiner Batten: Well, the record will show what she said.

By Mr. Tyler:

Q. You don't know whether you attended the meeting of group chairmen on May 16, 1939?

A. Not that particular day, no. I might have been absent; I don't think I was, though.

Q. Did you make a motion at that meeting on that date?

[fol. 6408] A. Not to my remembrance now.

Q. Did you ever make a motion that the fees of attorneys for the Donnelly Garment Workers' Union be paid? A. I don't recall right now.

Q. I will show you the minutes of the meeting of group chairmen of May 16, 1939, Board's exhibit No. 9-111, at page 4689. You may read the entire minutes, if you wish to, but all I wish to call your attention to is the statement in the middle of the page as to your making the motion, and I will ask you if that is true or false.

(Thereupon the minutes above referred to were read by the witness.)

[fol. 6409] A. I may have done so; I may have made the motion.

Q. If you did make it, did anybody force you to make it, by threats or—

A. No, nobody threatened me with anything.

Q. And if you did make it, did you still believe that the union was a good thing and was the actual choice of the employees—if you made this motion?

A. I thought it was necessary.

Q. You were willing at that time to move that the union pay attorneys for representing it, were you?

A. I knew that—

Mr. Langsdale: I object to the question. Her willingness to pay counsel has no relation whatever to her belief about the union.

Mr. Tyler: I think it has a bearing.

Mr. Langsdale: I don't think it has any relationship at all.

[fol. 6410] Trial Examiner Batten: She may answer.

A. I knew if we had a union, it was necessary to have an attorney.

* * * * * *

[fol. 6413] Trial Examiner Batten: You may answer whether you attended meetings regularly up to that one you recall in Mr. Tyler's office.

A. It seems to me in between these union meetings we were having meetings at noon, too.

[fol. 6414] Q. If you were, were you attending all of the meetings up to that time?

A. I couldn't say if I attended each one.

By Mr. Tyler:

Q. But you were attending regularly up to and including the meeting we have just referred to on June 1, haven't you?

A. I don't remember whether it was every one or not.

Q. I don't mean every one, but you were attending regularly, were you not?

A. Fairly regularly, yes.

Q. And some of those meetings were at noon, you say?

A. I couldn't say whether it was at that particular time or not, but at some of these evening meetings, when we had them, we had noon meetings, too.

Q. You were doing piecework, were you, then?

A. Oh, yes. I have always done piecework.

Q. And in what way did the company pay you for attending these meetings, or any of them?

A. By me handing my time slip to my instructor, as I stated before.

Q. And what did the instructor put on the time slip?

A. I don't know. I would put on, "Time spent at chairmen union meetings," and sign my name, and give it to the instructor.

Q. You got paid by the amount of work you turned out [fol. 6415] as a pieceworker, did you?

A. I had a guarantee for the week, and I usually made over my guarantee.

Q. If you didn't turn out as much work as you would otherwise, you wouldn't get as much pay; is that right?

A. I would always get the guaranteed amount. If you didn't get that much that week, you would get the guarantee.

Q. And that guarantee would apply whether you were taking time out for union meetings or whether you were not, wouldn't it?

A. I could tell if I was paid, because, as I say, I almost always made over my guarantee.

Q. Don't you know as a fact that the company never paid you for time spent at union meetings?

A. I didn't know that. That's news to me.

Q. Who was your instructor in May, 1939?

A. I believe it was Mary Copowycz.

Q. When did you last see your pay cards for May, 1939?

A. I can't say that.

Q. Not for a couple of years, did you?

A. I don't get that question clearly.

Q. When did you last see the cards that indicate the time for which you were paid? When did you last see them? A. I never did see any cards.

Q. You never did see them?

[fol. 6416] A. No.

Q. I now show you Board's exhibit 1-RRRR, which is an offer of proof by the intervener, and I show you what is apparently your name on the third page of signatures, being the ninth name down on the right-hand side, and ask you if that is your signature. A. Yes.

Mr. Lane: That offer of proof begins on page 3471, Circuit Court of Appeals record, and the page containing the signature is page 3476.

* * * * * * *

[fol. 6421] Q. I show you this offer of proof by the intervener, which is a part of Board's exhibit No. 1-RRRR, beginning at page 3490, and show you your name written at the bottom of the first page, or at the bottom of the last page, in the left-hand column, being the thirteenth name, and ask you if that is your signature. A. It is.

* * * * * * *

[fol. 6423] Mr. Stoffle: Yes, Mr. Examiner. We have had photostated respondent's exhibit 44, and we now offer the photostats and ask leave to withdraw the original exhibit.

Trial Examiner Batten: If there is no objection—

Miss Weyand: (Interrupting). I object. The original has not been identified as a record of the company. It appears on a card which is practically new, and the dates purport to go back to 1925. It is all in one handwriting, as far as I can observe, and all in the same ink, and under the circumstances I do not think it should be withdrawn at this time.

Trial Examiner Batten: Well, if there is any objection I won't permit its withdrawal.

* * * * * * *

[fol. 6427] Mr. Tyler: Mrs. Weilert, just before we recessed for noon I think you had identified your signature to offer of proof of Intervener which I now show you and which is page 3490 of the record.

Mr. Langsdale: Is that on the one that has the largest number of names in the section?

Miss Weyand: That is a smaller one.

Mr. Tyler: No, it is only the bottom of one page of names, a half a page of names.

By Mr. Tyler:

Q. Am I correct in my memory that you said that was [fol. 6428] your signature? A. That is my signature.

Q. Have you had an opportunity to read this offer of proof, Mrs. Weilert? A. No.

Q. Well, I am going to read you two parts of it, and I think it will be proper to ask questions about those parts, but you will certainly have the right to read the whole letter if you want to add any explanation.

Miss Weyand: You don't mean letter, you mean offer.

Mr. Tyler: I mean offer.

By Mr. Tyler:

Q. At the bottom of the second page appears this paragraph:

"The chairman then passed out cards which said in substance: 'I hereby agree to become a charter member of the Donnelly Garment Workers' Union and agree to abide by its by-laws and regulations.' It was explained that the employees could sign these cards or not as they chose, and that they should sign them when if doing so was their own voluntary choice."

Is that statement true or false?

A. They were always passing out those cards, but in signing that I don't think we used our best judgment.

Q. Now, your memory as to passing out those cards was just as good when you made this affidavit in 1939 as it is [fol. 6429] now, wasn't it?

Miss Weyand: That is not an affidavit.

Mr. Tyler: I am sorry.

Trial Examiner Batten: An offer of proof.

Mr. Tyler: An offer of proof.

Mr. Langsdale: I object to that as argumentative.

Mr. Tyler: I think that is proper in testing her memory.

Trial Examiner Batten: He is asking if her memory was as good then as it is now.

A. That was in 1939?

Mr. Tyler: Yes, this offer of proof was made in 1939.

Miss Weyand: You have not designated what chairman passed out what cards at what meeting. You will have to point out.

By Mr. Tyler:

Q. Isn't it clear to you it was the organizational meeting when the cards were passed out?

A. It is now since you mentioned it.

Q. Well, I believe you answered that it is true the employees were told they could sign those cards or not as they chose, and that they should sign them if in so doing it was their own voluntary choice.

A. I was always told that.

Q. When you signed that did you believe that in sub-[fol. 6430] stance was not true, that the employees were not free to sign the cards?

A. I don't know whether everyone felt free but I think everyone of them did sign that.

Q. Well, was it true you felt free to sign it or not when it was passed out?

A. I felt like if I didn't sign it I wouldn't have a job.

Q. And you felt you were not free then, didn't you?

A. I don't know what you would call it.

Q. All right. And when you signed this statement you then signed something you believed was not true, is that correct?

A. I don't know whether it was true or not. I told you how I felt about it.

Q. I'll read you the last sentence — or the first sentence in the last paragraph of the offer of proof, which would be 3492, or possibly 3493 of the record:

"That organization meeting convened at 4:30 or 4 —"

I think that is 45, as near as I can read it. The first hour is 4:30, isn't it?

A. Yes.

Q. And the next one, I think, is 4:45?

A. Well, I can't tell.

Q. I can't either. Let's assume it is 4:45:

"This organization meeting convened at 4:30 or 4:45 o'clock and lasted about an hour and a half or longer." [fol. 6431]. Was that statement as to the time it convened true when you signed it?

A. If that was the organizing of our union I still think I am right.

Q. Well, was this true or not, that the meeting convened at 4:30 or 4:45?

A. I don't know what time it was over, I don't remember that. Is that the meeting where I said I went back and timed out?

Q. Well, this is the organizational meeting. And we are agreed "Convened" means "began", when it started.

A. Well, it was in the afternoon it started.

Q. Then, was the statement that it convened at 4:30 or 4:45 true or false?

A. It might have been; it might have been after our quitting time and we went back upstairs and timed out.

Q. And your memory, when you signed this, about those facts happening in March, was at least as good as it is now, wasn't it?

A. Why, I don't know what my memory was then.

Q. Don't you think your memory in 1939 as to events happening in April 1937 was as good as it is now, at least?

Mr. Langsdale. I object to the question as argumentative.

A. I don't know whether it was or not.

[fol. 6432] Mr. Langsdale: Just a moment —

Trial Examiner Batten: She has answered it, she says she doesn't know whether it was or not.

By Mr. Tyler:

Q. When these offers of proof that have been shown you were signed by you were you still of the opinion that it was the full, free wish of the employees to belong to the union?

A. I felt it was what I should do if I wanted to work there.

Q. Please answer my question. When you signed these offers of proof were you of the opinion that the union was the free will choice of the employees?

A. As far as I knew about it then.

Q. You thought it was, as far as you knew about it?

A. Yes.

Q. I think you said something about telling Rose Todd that you were pleased with what had been done, but there wasn't nothing done?

A. That's right.

Q. You realized that the union had secured substantial advantages for the employees up to that time, had you?

A. I couldn't say that.

Q. You didn't see any signs —

A. (Interrupting) No.

Q. (Continuing) —that the contracts of the union had [fol. 6433] secured increases in minimums and additional holidays on up beyond what they had had before, you didn't know that?

A. I couldn't see that they were bettering things.

Q. Well, will you say that the union had not secured increases in minimum wages and holidays for which pay was allowed?

A. I just don't remember what the minimums were. That one incident, I think, that $15.00, that one incident; but they had been arguing about that for some time anyway, because after they had worked there a long time I think they would have been paid anyway without the union.

Q. You think they did get increases but they would have gotten them anyway whether there was a union or not?

A. Yes, I do.

Q. Isn't it a fact that the rule about not paying girls for repair time was rescinded, was changed by the company after about six weeks after it was put in?

. . . . . .

[fol. 6434] Miss Weyand: I object to the question in that you have misstated the rule that was supposedly put into effect and changed. I think if the question is allowed it should be cleared up what incident you are referring to because you said the matter of not paying girls for the

time they did repairs was rescinded, whereas the testimony was that the change was that not only the girls weren't paid for the time, but that there was a further deduction made.

By Mr. Tyler:

Q. You heard Miss Weyand's statement, Mrs. Weilert?

A. Yes.

Q. Wasn't the rule she speaks of changed by the company about 6 weeks after it went into effect?

Mr. Langsdale: Just a moment. I object to that as immaterial to any issue in this case.

Trial Examiner Batten. She may answer.

A. After the union went into effect?

By Mr. Tyler:

Q. No, after the rule went into effect the girls wouldn't be paid time spent on repairs. Wasn't that rule changed by the company after about 6 weeks?

A. It was changed after I objected to their practice, yes.

Q. And it was changed then partially either because you objected to it, or because the union objected or requested that it be changed, wasn't it?

[fol. 6435] A. My opinion is that it was changed because I demanded that put on their checks.

Q. You think the sole cause was your personal demand?

A. I don't know of anyone else that objected to it in that way on the committee.

Q. Don't you know whether the union took that up?

A. I don't know whether she did or not, Rose Todd, she was arguing for the company with me.

Q. Isn't it a fact you refused to do any repair work at all before you left the company even if the company had paid you for repair work?

A. I said that if it came back to me, after it came back I wouldn't rip it, and when it came back that is just what I done, I refused to rip it.

Q. Whether the company paid you for the time or not you refused to do any repair work, whether the company paid you for repair time or not, before you quit?

A. Well, I guess that is the way it was.

Redirect Examination.

By Miss Weyand:

Q. Will you state what the rule was about paying the girls for repairs prior to the change that you complained of?

[fol. 6436] A. Why, it has always been the same, as far as I know, that when they lost time I considered — no girl likes repairs, she didn't make mistakes deliberately.

Q. Well, was she paid for the time she spent making repairs?

A. If she didn't make her guarantee she certainly was because she got her guarantee in salary just the same.

Q. And if she was making her guarantee anyway did she get paid for the time she made repairs?

A. She couldn't have, she lost that time repairing.

Q. And she did it on her own time if she was making her guarantee for the week, is that correct?

A. That's right.

Q. Now, what was the change in the rule?

A. That those that didn't make their guarantee for the week — well, the way I would have to express it, that girl would have to pay the company to stay there and repair after she had lost her time and hadn't even made her guarantee anyway; now, that is my way of expressing it.

Trial Examiner Batten: Well, how would that work out?

A. Well, maybe if she hadn't had to repair she might have made her guarantee. Well, if she had repairs, why, that certainly kept her from making money on piece work, and time spent repairing she could have spent making money.

Trial Examiner Batten: What you mean is, if the [fol. 6437] minimum was $16.50 and she earned $15.00 making dresses —

A. (Interrupting) That's right.

Trial Examiner Batten: (Continuing) —and she had four hours of repair work —

A. (Interrupting) That's right.

Trial Examiner Batten: (Continuing) —she then lost that $1.50?

A. That's right.

Trial Examiner Batten: Which she would have made had she made a dozen more dresses?

A. That's right. When she received her check all the time that she spent on those repairs was deducted from that guarantee; and any time anyone, they did not have any guarantee because, you know, mistakes will happen to anyone — I don't know of anybody down there that didn't have repairs once in a while.

By Miss Weyand:

Q. When you went to Rose Todd about that matter what did you say to her?

A. I asked Rose Todd what was the meaning of taking out of these girls' checks for repairs, and she said, "Well, we have always taken out for the repairs, the company has always taken out for the repairs," and I said, "Rose, I have worked here a long time and I have had repairs the same as other people," and I said, "No one has ever taken money out of my check," and she said, "Well, that is Mrs. [fol. 6438] Reed's" — no, I asked her, I said, "Who authorized them to do this, Rose?" and she said, "Mrs. Reed did," and that is when I told her I didn't believe it, and I sincerely meant that, that didn't sound like Mrs. Reed to me.

Q. Did you know what the terms of the union contract with the company in regard to the minimum guarantee were at that time?

A. Well, if they were on a $20 guarantee they were supposed to have $20, that was my opinion; if they didn't make it they were supposed to get $20 anyway. There were lots of times when you waited for work, and other conditions existed that you wouldn't be able to make that amount, or over.

Q. When you spoke to Rose Todd did you mention the terms of the contract to her?

A. Yes, I did. I told her I felt it wasn't worth the paper it was written on to me, that an "if" or an "and" to the average person just changed the meaning of it, and in my opinion I didn't feel like that contract was worth anything.

Q. Did Rose Todd agree to take it up with the company on behalf of the employees?

A. I told her I didn't think it was fair or reasonable to make those deductions from the employees; she said maybe they had been a little hasty. I said, "Are you going to stand for it as our chairman?" and I said, "Well, I'll see Mrs. Reed myself," which I did later on.

[fol. 6439] Q. Did you ever receive any checks or money or payments in other forms from the Donnelly Garment Workers' Union for the time you spent at chairmen meetings?

A. No, not only my regular checks.

Q. And by regular checks you mean what?

A. My salary.

Q. From whom?

A. The Donnelly Garment Company.

Q. And those were the only payments you received?

A. Yes.

Q. This morning, in answer to a question, you said you became convinced, after the circumstances that you discovered at meetings of the Donnelly Garment Workers' Union chairmen that "They were not sincere." Whom do you mean by "they"? A. The company.

* * * * * * *

By Mr. Langsdale:

Q. Mrs. Wolfert, you were shown this offer of proof of the intervener on which your name was signed on the second page, were you not? A. Yes.

Q. You were shown that by Mr. Tyler? A. Yes.

[fol. 6440] Q. And did you read it?

A. I don't believe I did.

Q. Well, you read it all the way through.

Mr. Tyler: Which one is that, Mr. Langsdale?

Mr. Langsdale: I don't know how you designate it. It is just one page of signatures.

Miss Weyand: That is 3490 of the Circuit Court of Appeals record.

[fol. 6441] A. No, I didn't read the first part until just now.

By Mr. Langsdale:

Q. You have now read it all, have you?

A. Yes.

Q. Do you remember when you signed this document—pardon me.

Mr. Langsdale: Give me the exhibit number of this.

Mr. Lane: 1 quadruple R.

Mr. Langsdale: Are they all 1 quadruple R?

Mr. Lane: All the offers are, and that is page—

Miss Weyand (Interrupting): 3492 where her signature appears.

By Mr. Langsdale:

Q. Do you know where you signed this document?

A. I don't remember.

Q. Do you know how you happened to sign it?

A. No, I don't remember that.

Q. Do you know when you signed it?

A. No. We were signing so many things I can't designate any certain one.

Q. So your recollection of how, when and where, and under what circumstances you signed it, is absolutely nil, is it?

A. Well, I don't recall when I signed that particular paper, no.

Q. Now, I notice there are 36 names signed to this document. Were you all there at the same time, do you know?

[fol. 6442] A. I don't even remember of it.

Q. You have stated in your testimony that the instructor told you of the meeting of April 27?

A. That's right—well, all of them.

Q. I understand, but the organizational meeting of April 27, your instructor told you about it, did she?

A. Yes.

Q. That is true, is it, the instructor told you about it?

A. Yes.

Mr. Lane: That is objected to as an attempt to rehabilitate the witness.

By Mr. Langsdale:

Q. What did she say about it?

A. She said there was to be a meeting downstairs and to shut the power off, and we all just went down.

Q. And did she say anything more?

A. Well, once she told us they were going to organize our union.

* * * * * *

[fol. 6444] Mr. Langsdale: And you testified that meeting occurred during working hours?

A. Yes.

* * * * * *

Mr. Langsdale: So then this part of this document, which you signed, is not true?

* * * * * *

Mr. Lane: May I have a continuing objection to all this examination? It is a mere attempt to get the witness to reverse what she has formerly said.

Mr. Langsdale: I object to that comment because it is not an attempt to get the witness to reverse her previous testimony.

Trial Examiner Batten: You may have a continuing objection.

* * * * * *

[fol. 6445] Mr. Langsdale: Or "That said meeting was convened after the close of working hours at the plant." That is not true, is it?

* * * * * *

[fol. 6446] A. I don't remember what time the meeting was over, but it was started in the afternoon sometime, and I went back up and timed out. I didn't time out before I went down there, I came all the way back to the eighth floor to time out and put my work away.

By Mr. Langsdale:

Q. Do you understand the meaning of the word "convened"?

A. Maybe I don't, clearly.

Q. That means to start.

Trial Examiner Batten: Did the meeting start after working hours, or—

A. (Interrupting) No, it started in the afternoon before working hours were over.

By Mr. Langsdale:

Q. Now, I will ask you if this part of this document [fol. 6447] signed by 36 people is true, "Nor did any instructor ask or direct the employees to attend."

A. They told us that there was to be a meeting, and they went along with us.

Q. All right. Did you hear any discussion that afternoon or any motion that came up?

A. No, we didn't discuss anything. We were told that we were going to have a union.

Q. But when the matter of the name of the union came up, did anybody debate it? A. No.

Q. The name was already printed on the cards, wasn't it? A. Yes.

Q. I will ask you if this particular statement: "The name of the union was discussed," was true?

A. I don't know who it was discussed with.

Q. Well, did anybody debate it or—

A. (Interrupting) At that meeting?

Q. (Continuing)—question it or discuss it?

A. No.

Q. Now, the last paragraph in this document, it starts out: "This organization meeting convened at 4:30 or 4:45 o'clock," is that true? A. That it—

Q. (Interrupting) Convened that late in the afternoon? [fol. 6448] A. No.

[fol. 6458] Cross-Examination.

By Mr. Hogsett:

[fol. 6459] Q. Mrs. Weilert, you told Mr. Tyler, in substance, that you did not think that your Donnelly Garment Workers' Union contract had helped your wage situation any. Do you remember that—you thought the company would have done as well by you without it? Have I fairly stated that? A. Yes.

Q. Now, do you know of any other union contract with a garment manufacturing concern like the Donnelly Garment Company, with guarantees of as much as $16.50, $20.00, $22.50, and $25.60 a week?

Mr. Langsdale: Just a moment. I object to that as immaterial. It doesn't tend to prove or disprove any issue in this case and involves a subject which has been ruled out by the Examiner.

Trial Examiner Batten: She may answer.

By Mr. Hogsett:

Q. Do you know of any?

A. I'm not familiar with other factories' guarantees. I don't work at other places.

Q. I didn't know but what you might have some general familiarity with it.

A. No, I'm not familiar with other factories at all.

Q. In saying you didn't think this contract ha helped your situation any, did you know how the guarantees provided in that contract compared with other contracts?

A. Only what Rose Todd showed us.

Q. What did she show you?

[fol. 6460] Mr. Langsdale: I object to that as immaterial. It does not prove or disprove any issue in this case. If we are going into these contracts—

Trial Examiner Batten: She may answer.

A. She showed us a list of garment factories and the—

By Mr. Hogsett:

Q. —guarantees? A. Yes.

Q. She gave you the substance of what those contracts provided, as far as guarantees were concerned? A. Yes.

Mr. Langsdale: May I have a continuing objection to this?

Trial Examiner Batten: Yes.

Mr. Hogsett: Isn't it a fact, Mrs. Weilert, that the guarantees which the Donnelly Garment Workers' Union contract provided were from 50 to 200 percent in excess of those in the contracts that Rose Todd told you about?

A. I don't—

Mr. Langsdale: Just a moment. I object to that as improper. The contracts themselves would be the best evidence. I object to this as an effort to prove what would be in an I. L. G. W. U. contract by secondary evidence.

Trial Examiner Batten: No. It is simply an attempt to prove what Rose Todd said there. It isn't an attempt to prove what the contracts actually show.

[fol. 6461] By Mr. Hogsett:

Q. Isn't it true that the guarantees in the Donnelly contract were from 50—depending, of course, upon the varying character of service—from 50 to 200 percent in excess of the guarantees in these contracts that Rose Todd told you about?

A. I don't remember just the guarantee amounts of the other factories now, but I still say our union didn't help any.

Q. I know. And I am testing the reasonableness of your conclusion. That is why I am asking you these questions.

Mr. Langsdale: Just a moment. I object to the line of examination. The witness' distinguishing, herself, between what would be proper and what would not be proper—

Mr. Hogsett: She wasn't comparing her wage scale with another factory's, but she was saying they were no better in the Donnelly factory because of the union.

Trial Examiner Batten: Proceed.

Mr. Hogsett: Isn't this much true: From such knowledge as you acquired on the subject of wages at other garment factories, that the wages contracted for and the wages paid in the Donnelly plant were far in excess of those contracted for and paid in any other garment plant that you ever heard of?

Mr. Langsdale: Just a moment.

Will you read that question, please?

Trial Examiner Batten: Not that you ever heard of—

[fol. 6462] Mr. Hogsett: That you then heard of.

Trial Examiner Batten: That she then heard of, in this talk with Rose Todd, or what—

Mr. Langsdale: Is this confined to the talk with Rose Todd?

Trial Examiner Batten: Yes; as far as the information Rose Todd disclosed to the witness.

The Witness: Maybe Rose didn't show me a list of the other factories.

Trial Examiner Batten: Just a moment.

By Trial Examiner Batten:

Q. Whether she showed you all of them or only one, were the contracts Rose Todd showed you and told you about—was there less guarantee in those than in the Donnelly Garment Company's?

A. Yes, the ones she showed me.

By Mr. Hogsett:

Q. Do you know of any others she didn't show you?

A. No. I'm not familiar with their contracts.

Q. How many did she show you?

A. You mean, different factories?

Q. Yes. A. I don't recall.

Q. Nine or ten?

Mr. Langsdale: I object to that as assuming it was either nine or ten.

[fol. 6463] Mr. Hogsett: It's a question: Was it nine or ten?

Trial Examiner Batten: Do you know, Miss Witness, how many it was?

By Mr. Hogsett:

Q. Can you tell me approximately how many contracts she showed you?

A. She didn't show me any contracts.

Q. You said awhile ago she hadn't shown you "all of the contracts." What did you mean by that?

A. She hadn't shown me any contracts.

Q. What did she show you, or tell you?

A. This that was in the trial, that they had brought it out in the trial.

Q. I thought that was probably what you meant. Isn't this a fact, that Rose Todd showed you the figures that had been sworn to under oath and produced in docu-

mentary form in nine contracts with the International in house dress and wash frock concerns in the Kansas City territory, and in the only silk shop, namely, the Marlene dress factory, in the Kansas City territory?

Mr. Langsdale: Just a moment.

Trial Examiner Batten: You mean, did she show her the contracts?

Mr. Hogsett: The figures in those contracts.

By Trial Examiner Batten:

Q. Did she have a list of those, the figures for each place, Miss Witness?

A. No. She just pointed out the shops that were paying [fol. 6464] less than the Donnelly Garment Company.

Q. Did she read the amounts? A. Yes.

Q. She went down the list— A. Yes.

Mr. Hogsett: In other words, she gave you indefinite figures that had been sworn to and produced in documentary form in the—

Mr. Langsdale: Just a moment.

Mr. Hogsett: Now, Mr. Langsdale,—

Mr. Langsdale: Well, I—

Mr. Hogsett: Will you, please, before you answer a question for me, take a good look at Mr. Langsdale and see if he is objecting, so that I will not constantly be interrupted in my questioning?

Trial Examiner Batten: Just a moment.

Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Mr. Hogsett: —in the equity suit tried before Judge Miller, didn't she?

Mr. Langsdale: Just a minute.

Mr. Hogsett: Please wait until he objects.

Mr. Langsdale: Now, I object to the question as assuming what Rose Todd showed her was in any docu-

mentary form sworn to or used in any court proceeding [fol. 6465] whatsoever, unless she knows. He doesn't ask her if she knows.

By Trial Examiner Batten:

Q. Of course, Miss Witness, you said she had a list, didn't you?

A. I started to answer in that way.

Q. All you know is, she had a list? A. Yes.

Q. Do you know where she got the figures or the names?

A. No.

Q. Or the information? A. Not at all.

Mr. Hogsett: Didn't you tell me not ten minutes ago that she gave it to you as having been produced in the trial before Judge Miller?

Mr. Langsdale: Just a moment. She didn't tell him any such thing. I object to the misquoting of the witness.

Mr. Hogsett: I am not misquoting.

Mr. Langsdale: I think he is.

Trial Examiner Batten: Read the question.

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: Did you tell him that?

A. I don't think I told you she gave it to me. She read it to me.

Mr. Hogsett: Oh, well, I won't quibble about whether she gave it to you or read it to you.

Trial Examiner Batten: Just push your chair back that [fol. 6466] way, Mr. Hogsett.

(Thereupon Mr. Hogsett moved his chair farther from the witness.)

By Mr. Hogsett:

Q. Did she read it to you as having been produced at the trial before Judge Miller?

A. That's what she told me.

Q. How many different amounts or sets of figures did she read to you? A. I don't remember that.

Q. Was it nine or ten? A. I wouldn't say.

Q. Now, did the Donnelly Garment Workers' Union do anything at all that you approved of?

A. Not the union, no.

Q. What was the guarantee in the Donnelly plant, the minimum, before the Donnelly Garment Workers' Union was formed?

A. Well, as I stated before, in that contract that was the one thing that was changed, but that would have come about without the union, I'm sure.

Q. Would you be kind enough to answer my question?

Trial Examiner Batten: Just a moment.

The question to you is, what was the guarantee before the union was organized?

A. Different guarantees.

By Mr. Hogsett:

Q. What was the minimum guarantee?

[fol. 6467] A. Fifteen.

Q. Fifteen dollars a week? A. Yes.

Q. For how long had that been the minimum guarantee in the Donnelly plant? A. I can't say how long.

Q. For years? All of the time you were there?

A. Yes, I think so.

Q. How many years would that have been prior to 1937?

A. Three or four years.

Q. Now, this contract that the Donnelly Garment Workers' Union negotiated provided for a minimum guarantee of $16.50; did it not?

A. That was the change that was made, yes.

[fol. 6479] By Mr. Hogsett:

Q. That is not the question. Had you known Mrs. Reed to do an unjust thing to her employees in your entire employment there? A. I don't know what she does.

Q. Well, I am asking if you ever heard of her doing an unjust thing to her employees? A. Not deliberately.

Q. Deliberately or otherwise, have you ever known of an unjust thing that emanated from Mrs. Reed in your entire employment there?

Mr. Langsdale: I have a continuing objection there, [fol. 6480] I assume?

Trial Examiner Batten: Yes.

By Mr. Hogsett:

Q. Will you kindly answer?

A. I never came in contact with Mrs. Reed.

Q. Would you mind giving me a direct answer, whether you ever came in contact with her or not, had you ever known any unjust thing that Mrs. Reed ever did during your entire employment there?

A. Not Mrs. Reed herself.

Q. Mrs. Reed directly or indirectly? I want an answer.

Trial Examiner Batten: Now, just a moment. What was that answer?

A. Not Mrs. Reed herself.

Trial Examiner Batten: Now, you say "directly or indirectly." It seems to me you are taking in a lot of territory.

Mr. Hogsett: I mean to.

Trial Examiner Batten: Well, I know you mean to. That is the reason I am asking you about it. What do you mean by "indirectly"? Do you mean through all her supervisory employees and management?

Mr. Hogsett: I mean exactly that.

Mr. Langsdale: I object to it on the ground the question is preposterous.

Trial Examiner Batten: Well, I wouldn't permit the witness to answer that question if she wanted to.

* * * * * *

[fol. 6486] By Mr. Hogsett:

Q. In spite of your dissatisfaction, which you say was complete so far as the Donnelly Garment Workers' Union was concerned, you returned to work for the company after your absence in 1940, and again returned to work for the company after your absence in 1941, did you not?

A. I worked for the company, not the union.

Q. Yes, but you were entirely dissatisfied with everything the union had arranged with the company about employment, weren't you?

A. Just with the union I was dissatisfied, not the company.

* * * * * *

[fol. 6491] By Mr. Tyler:

Q. Mrs. Weilert, in answer to a question by Mr. Langsdale, about the request for an election, that these employees signed, as you have been shown, you made some statement that you were under the impression that related to something the union hadn't done properly in the first place. Do you mean that you believe or are under the impression that the labor union is not a valid labor union unless the Labor Board holds an election for it, is that your opinion?

[fol. 6492] By Trial Examiner Batten:

Q. Do you understand the question, Miss Witness?

A. I don't know as I understand those terms; but my answer was and is that we evidently had signed something that should have been notarized, and was not, and this was a repetition of that, and it was being notarized; it was merely a paper we had signed before and was doing it over again.

By Mr. Tyler:

Q. Well, do you remember that this paper said that the employees wanted an election? Was it your impression [fol. 6493] that a labor union was not a legal labor union unless the Labor Board had called an election in the plant?

Trial Examiner Batten: Just ask her the question. I mean, you ask her, "What do you mean when you said there was something wrong with the union?"

[fol. 6494] By Mr. Tyler:

Q. Was there something in the fact the union hadn't had an election by the Labor Board that you felt that this application for an election was to cure?

A. I didn't know what was wrong.

Q. You didn't know whether it was the lack of an election or not?

A. There was something, or some rumor, it was something we had to sign again. I just don't remember that clearly.

Trial Examiner Batten: Miss Witness, the question to you is, you say you thought there was something wrong. Mr. Tyler asked you what you thought was wrong.

A. Well, I don't know what it was myself.

Trial Examiner Batten: Well, that is the answer, you don't know, is that it?

A. Yes, I guess it is.

By Mr. Tyler:

Q. Were these employees sincere in asking for an election?

Mr. Langsdale: Just a moment. I object to him asking for her to pass upon the sincerity of other employees.

Trial Examiner Batten: I don't think she can hardly pass on the sincerity of all the — is there 800 persons on there, Mr. Tyler?

Mr. Tyler: Yes, I think there is 1186.

Trial Examiner Batten: Well, I don't hardly think this witness could pass upon their sincerity.

[fol. 6495] Mr. Tyler: All right.

By Mr. Tyler:

Q. Did anybody in the plant ever tell you that they really didn't want to have a secret election down there in which everybody would vote without the management knowing how they voted?

A. Well, I always wondered why they didn't have.

Q. You thought they were entitled to that, didn't you?

A. Well, I thought they should have it.

Q. And you still do?

A. I don't think anything about it.

Q. In the meeting of group chairmen on May 2, in 1939, in which Mr. Langsdale called attention to a statement made by Mr. Tyler, that 15 or 20 people from this union testified in Federal Court, and they did a swell job of it, do you remember Mr. Tyler saying in that same meeting this: "If any one on this committee thinks they aren't working for these 1300 people, but for Mrs. Reed or Mrs. Reeves or Mr. Baty or someone else, I want to know it. You are representing that you are going to make a good bargain and take care of these 1300 people. In working on this committee, you aren't working for Mrs. Reed, you

are working for these 1300 employees. If there is any doubt about that, if you do not believe that, speak up now and say so." Do you remember Mr. Tyler saying that in that meeting?

A. To us chairmen?

[fol. 6496] Q. Yes.

A. I certainly do, and that is why I say, in all sincerity, about what I was trying to do, I thought I was doing my duty.

* * * * * *

By Miss Weyand:

Q. Why did you say you thought it would have been better to have gone without vacations rather than have the Donnelly Garment Workers' Union?

A. Because I felt like that place was progressing just the same, and those nice things would have come along just as well without this union, far better; I think there would have been much more happiness in the plant without this union than there would have been with it.

Q. Can you explain that further, as to what you thought the union has done that lessened the happiness of the plant?

A. Why, it is just discontent since the union came in.

Q. What do you have reference to specifically?

A. Well, before the union, it seemed — well, I don't know — it seemed like when they go through with their grievances to the union, why, it is merely passed along to someone else, and before it is over, the very thing you have told them about is used against you.

Q. Do you know of any instance of that?

[fol. 6497] A. I have cited that in the instance where I was framed.

Q. Did you hear of any other girl ever complaining to the union and who felt that she got worse conditions because of making a complaint to the union?

A. I wouldn't —

Mr. Tyler: I object to that as hearsay. It wouldn't establish the truth of such an instance, if she merely heard of it.

Trial Examiner Batten: What was your answer?

A. I wouldn't speak for others. I am speaking for myself.

By Miss Weyand:

Q. I am asking if you ever heard any such a thing occur.

Mr. Tyler: I object on the ground it would be hearsay.

Trial Examiner Batten: You may answer.

A. On the committee, you mean, or in the factory?

By Miss Weyand:

Q. Have you ever heard any girl, as a result of complaining in a union meeting or to a committee or anywhere, complain that she had been treated unfairly because she had made the complaint?

A. I don't know that they put it in those words, that it was merely because of the complaint, but I think it was done, plenty of them.

Trial Examiner Batten: Now, just a moment —

Mr. Tyler: I move to strike that out as a conclusion.

Trial Examiner Batten: When you say "plenty of [fol. 6498] them," do you know the names of several girls who have been treated unfairly?

A. No, I know no names.

Mr. Hogsett: Now, if the Court please, that is pure speculation out of the blue sky. This witness is showing animus now, and she is willing to say, "I think it is done, plenty of it," without knowing the name of a single person; I move to strike it out.

Mr. Langsdale: I object to the scurrilous comment made to this witness by Mr. Hogsett.

Trial Examiner Batten: Mr. Hogsett, if you think that is true, why do you object to having this remain? Why do you want it stricken?

Mr. Hogsett: Because it will be here unobjected to, unless somebody on our side objects to it, and treated, maybe, as evidence, and it is not evidence, it is not worth the name of evidence.

Miss Weyand: There was plenty of things the company put out that I didn't think came under the head of evidence either.

Mr. Hogsett: This is not that type of case at all. Here is a fair question asked either by the Examiner or by somebody — I guess it was Miss Weyand — I think it was you, "Do you know anybody?" "No, I don't, but there was plenty of it." Now, she can't name a person, yet she is [fol. 6499] perfectly willing to leave that statement that "there was plenty of it." Now, that is not evidence.

Mr. Langsdale: Will you read the question and answer, please?

Trial Examiner Batten: You mean my question?

Mr. Langsdale: The question which she just answered, and where she said "plenty of it."

(Thereupon the question requested was read by the reporter, as follows:

"Q. Have you ever heard any girl, as a result of complaining in a union meeting or to a committee or anywhere, complain that she had been treated unfairly because she had made the complaint?")

Miss Weyand. My question was — I don't think it was stated quite accurately — Did you ever hear that any operator felt that because she had made a complaint either to a committee or in a union meeting she received unfair treatment?

Mr. Hogsett: Yes, that is right.

Mr. Reed: Now, we object to that as incompetent and immaterial, not redirect or recross-examination, whatever this is, and as calling for a mere speculation on the part of the witness, as to the feelings of somebody else, and if this was proven, it would be binding on no one.

Mr. Tyler: We object to it on the ground that if it would establish anything, it would tend to establish that injustice existed as to individuals and the union, and as [fol. 6500] being purely hearsay, without even the statement of the people themselves; and regardless of any fact it would be improper evidence, being hearsay.

Trial Examiner Batten: I still want the reporter to read my question and the answer to my question; that is what we started out to discuss.

(Thereupon the question requested was read by the reporter as follows:

"Q. When you say 'plenty of them' do you know the names of several girls who have been treated unfairly?

"A. No, I know no names.")

Mr. Hogsett: And I would like to have you pass on the motion that you strike out that statement of the witness that "there was plenty of it."

Trial Examiner Batten: Yes, I think my question was, when she added that on, "yes, plenty," I said to the witness, "Well, can you name any of the people," and she said she couldn't.

Mr. Hogsett: Now, I move to strike out the statement "there were plenty of complaints" on all the grounds heretofore given.

Trial Examiner Batten: I think it may stand, Mr. Hogsett, in view of my question to the witness and her statement that she couldn't name anyone.

Mr. Hogsett: All right, sir.

* * * * * * *

[fol. 6502] By Mr. Langsdale:

Q. Do you know it to be a fact there wasn't a single human being who received any raise at all by reason of the $16.50 minimum in the contract of June 22, 1937?

Mr. Reed: You mean by that question to assert that as a fact?

Mr. Langsdale: Yes, sir.

Mr. Reed: And you ask it in this leading form?

Mr. Langsdale: I assert it is not a fact.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: You may answer.

[fol. 6503] A. I don't know whether they did or not.

* * * * * * *

[fol. 6512] Q. Now, when you signed this affidavit, asking for an election to determine which union had a majority in the Donnelly plant, did you think it was a nice time to ask for an election, when there was a closed shop agreement requiring everybody to belong to the Donnelly Garment Workers' Union, and recognizing some by-laws that said anyone that belonged to any other union would have to be fired? Did you think that was a convenient time for the Donnelly Garment Company or the Donnelly Garment Workers' Union to ask for an election?

Mr. Reed: I think just this, that Mr. Langsdale ought to ask leave to print that; that is the custom of the men that want to make a speech, that is out of order.

Mr. Langsdale: You should know, Senator.

Mr. Reed: I do know.

Trial Examiner Batten: Will you read the question, please? Of course, I think it is repetition. If I remember correctly, you asked this witness once before about the closed shop.

Mr. Langsdale: Well, I don't care whether it is in there or not.

(Thereupon, the last question was read by the reporter.)

Trial Examiner Batten: You asked this witness something about a closed shop contract, and if she didn't know that if it was a closed shop contract no one could join any other union, and it seems to me that you also said, "Isn't [fol. 6513] it true that no one could join any other union under the Donnelly Garment Workers' Union contract or by-laws?"

Mr. Langsdale: But, this question, I think, is proper cross-examination after Mr. Tyler had asked her if she wasn't in favor of having an election when she signed that document drawn up by Mr. Tyler back in May, 19— or June or July, 1939, he asked her if she wasn't in favor of one at that time, and I think she said, "yes." I am asking her now if she thought it was a nice, convenient time to have one, and if there wasn't a chance for anybody else to work there if they belonged to any other union.

Mr. Tyler: Now, I would like to enter my objection. In the first place, the fact that there was a closed shop wouldn't present the slightest difficulty in a secret election and allowing a secret election to govern, because any closed shop agreement could be set aside by a secret election, and Mr. Langsdale knows it; and in the second place, the witness has already answered the question, and said she thought there should be an election, and his only object is to get her to say, "No, I don't think there should have been an election," which is not proper.

Trial Examiner Batten: If there isn't a prompt objection to the question, I'll now enter one and sustain it.

So, let's proceed.

[fol. 6514] Q. Did you have a thought that by a secret election the employees might get rid of the Donnelly Garment Workers' Union? A. That was my opinion.

* * * * * * *

Recross-Examination

By Mr. Hogsett:

Q. Just briefly— You told Mr. Langsdale in this last series of questions of his that this contract didn't get you a single thing of benefit. That has been the substance of what you told him.

I read from 4378 this term in the contract:

"The employer recognizes the union as the sole bargaining agency of the employees."

Prior to this contract did the Donnelly employees have any bargaining agent?

A. I didn't think we needed any.

* * * * * * *

Trial Examiner Batten: The question to the witness is, did they have a bargaining agent prior to this contract?

Mr. Hogsett: Yes.

Trial Examiner Batten: Now, you didn't, did you?

A. No.

[fol. 6515] By Mr. Hogsett:

Q. You didn't have any before this contract, did you?

A. Before the union was formed, no.

Q. You didn't have any agreement for arbitration such as you got in this contract, did you—had no agreement of any kind about arbitration? A. We didn't need it.

Q. Whether you needed it or not, you didn't have any?

A. No.

Q. You didn't have any agreement that there should be no strikes, stoppages, or lockouts, did you? Whether you needed it or not, you didn't have it? A. No.

Q. You didn't have any arrangement binding the company on the subject of vacations, did you, until this contract? Regardless of whether they were giving you pay for vacations, there was no contract that bound them to keep on doing it until they entered into this contract; isn't that true? A. No. We didn't need it.

Q. Whether you needed it or not, you didn't have any binding agreement—

Trial Examiner Batten: She said, "No."

Mr. Hogsett: All right.

Mr. Hogsett: You didn't have any agreement binding the company to pay half the premiums on your insurance—

* * * * * * *

[fol. 6516] A. I feel they could have broke it just as easy with that contract—

Mr. Hogsett: It isn't a question of—

Trial Examiner Batten: Just a moment, Mr. Hogsett.

The question is, there wasn't any contract prior to the Donnelly Garment Workers' Union, was there, requiring it?

[fol. 6517] A. No. We didn't need it.

Mr. Hogsett: Do you feel it necessary to argue this matter?

* * * * * * *

By Mr. Hogsett:

Q. Prior to this contract did you have any obligation binding the company to pay workers for Decoration Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day? A. No.

Q. Prior to this contract was there any obligation of the company fixing average minimums on group 1 operators of as much as $25.60 for 40 percent of them, $22.50 for 30 percent of them, and $20.00 per week for the remainder?

Mr. Langsdale: Just a moment. Let me get the import of that question.

. . . . . .

[fol. 6519] The Witness: No.

Mr. Hogsett: I will ask the same question with respect to the guarantees of the group 2 operators, being: $20 a week for 40 percent of them; $18 a week for 30 percent of them; and $16.50 per week for the remainder. You had no obligation—

. . . . . .

[fol. 6520] Trial Examiner Batten: Miss Witness, did you have these rates before this contract?

A. I don't remember, before 1937.

. . . . . .

[fol. 6526] By Mr. Tyler:

Q. Did you ever go around the factory in March, 1937, or April or May, 1937, and ascertain what was being paid to every class of employee and what the rules in the [fol. 6527] factory were as to all matters of employee representation? A. Did I—

Q. Did you ever go around the factory and make that investigation?

A. No. It was none of my business to.

Q. So you couldn't have taken this contract and compared with this contract what conditions and pay in the various departments were before the contract was entered into, could you?

A. No. That was not my business.

Q. And you didn't take the contract and compare it with previous conditions? A. No.

Q. Then, as far as you know, there might be 1, 50, or 100 changes in this contract in what had gone on before, couldn't there, as far as you know, of your own knowledge?

Trial Examiner Batten: Of course, I assume, Miss Witness, if you didn't know what the conditions were before the contract, as far as you are concerned, all of the items in the contract might be new and improvements; is that right?

The Witness: I can't say what I want to.

Trial Examiner Batten: Why?

Mr. Tyler: Won't you just answer the question?

Mr. Tyler: As far as you know, isn't that possible?

Mr. Langsdale: Is what possible?

[fol. 6528] Mr. Tyler: Not what you wish or what you would like to think, but what you really know.

Trial Examiner Batten: Now, just a minute. In order that the witness understands— I think the question, in substance, is simply this: If you didn't know what any of the conditions were in the shop prior to the contract, as far as you were concerned, all of the provisions in the contract may have been improvements over what had theretofore existed; isn't that right?

A. They may have been, but I don't think they were.

By Miss Weyand:

Q. Why don't you think they were?

A. Because I think those things would have come about even in a better way without the union than they did with it.

Q. Did you hear at the time the contract was entered into that many employees were terribly happy because they had gotten large increases and great improvements?

A. I never talked to very many that was pleased with that union.

Trial Examiner Batten: It isn't a question of whether they were pleased with the union. It is a question of whether they were pleased with the contract.

The Witness: No.

[fol. 6534] MARGUERITE KEYES, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

[fol. 6535] Direct Examination

By Miss Weyand:

Q. Will you state your name, please?

A. Marguerite Keyes.

Q. Where do you reside?

A. Kansas City, Missouri.

Q. Are you here under subpoena? A. Yes, I am.

Q. What is your business? A. I am a manufacturer.

Q. Do you have a shop in Kansas City?

A. Yes, I do.

Q. What is the name of your shop?

A. Marguerite Keyes, Incorporated.

Q. Where is your shop located? A. 905 Broadway.

Q. Were you ever employed by the Donnelly Garment Company? A. Yes.

Q. When did you first become employed by the Donnelly Garment Company?

A. In the spring of 1926.

Q. How long did you continue to be employed by the Donnelly Garment Company?

A. Until the spring of 1938.

Q. What was your position with the Donnelly Garment [fol. 6536] Company in March of 1937?

A. I was office manager and handled the finances of the company.

Q. I hand you I. L. G. W. U. exhibit No. 10 which appears at pages 5375 and 5961 of the Circuit Court of Appeals record and ask you to state when you first heard of that petition.

A. In the early spring of 1937.

Q. Where were you when you first heard of it?

A. In Mrs. Reed's home.

Q. What was the conversation that took place on that occasion?

A. Well, I had just come home from New York, and—

Mr. Lane: Just a moment, if Your Honor please. The intervener objects to this and all similar questions. It is not proper rebuttal testimony.

Mr. Hogsett: We join in that objection.

Trial Examiner Batten: Overruled.

A. I was in Mrs. Reed's home. I had just come from New York. I don't remember whether I had been at the office or not; and when I was there, talking with her, she showed me this petition that had been presented to her by some of her employees, and she was very happy to think that those people had voiced their satisfaction in being associated with her.

By Miss Weyand:

Q. Did she look it over to see if all the employees were covered by the petition?

[fol. 6537] Mr. Lane: I object to that as calling for a conclusion.

Trial Examiner Batten: You may answer, if you know.

A. I recall Mrs. Reed—she said she "would like to have the petition 100%."

By Miss Weyand:

Q. Who was not on the petition at that time, if you know?

A. Well, I know they didn't have the office and some of the executives of the company. I don't recall just the people that were not on there; however, I do know they did not have the tenth floor.

Q. What did you do after that, in that respect?

A. Mrs. Reed told me she would like to have that petition 100 percent, and whether I went back to the office that day or not, I do not recall; but the next day I did suggest to one of the girls in the office that she take this petition around and have it signed.

Q. Who was that girl? A. Pauline Shartzer.

Q. What was her position at that time?

A. She was a cost accountant and clerk, and worked on the pay roll.

Mr. Tyler: Mrs. Keyes, would you mind turning your chair a little? I have trouble hearing you.

Trial Examiner Batten: Will you speak just a little louder, please?

[fol. 6538] By Miss Weyand:

Q. Was she in the department of which you were the head? A. Yes, she was.

Q. Do you know whether Pauline Shartzer did circulate the petition then? A. Yes, she did.

Q. Will you look at the sheets there and tell us which one of those, if any, are in Pauline Shartzer's handwriting?

A. Well, you mean just—what is it?

Q. Which of the headings, if any, of those do you recognize are in Mrs. Shartzer's handwriting?

A. I would say that is Mrs. Shartzer's.

Q. That is page 5385 of the record?

A. That is Mrs. Shartzer's.

Trial Examiner Batten: Will you speak louder, please? What page is that?

Miss Weyand: 5386.

A. This is Mrs. Shartzer's.

By Miss Weyand:

Q. 5387?

A. And this is Mrs. Shartzer's (indicating).

Q. 5388. Now, will you look at the names that appear on those sheets and tell us what their positions are, as far as you know, generally, of the persons whose names appear on those sheets, first having reference to page 5385?

Trial Examiner Batten: Just step aside, please, Miss [fol. 6539] Weyand, so that other people can hear.

A. Well, I can just tell you, to the best of my knowledge,—that has been some time ago. I am not—I haven't had an opportunity to—

Q. Take your time in looking it over.

A. Miss Pauline Hartman was in the accounting department, cost accounting.

Mr. Langsdale: Speak a little louder, please.

A. Pauline Hartman, the first name that appears, was in the accounting department. Also, Opha Babb, Ellen

Hughes. I am not familiar with these next two names. Mrs. McCoster was Mr. Keyes' secretary, and Mrs. McClelland—I don't remember her capacity at that time.

Brigetta O'Brian was in charge of the advertising department. Betty Beal was a stenographer in the advertising department. Dorothy Stratton was in the order department; that also applies to Eleanor Ludwig, and John Lane. This next person I am not familiar with. June Smith, biller,—was a biller. I do not know the next person. Hallie Abenchain was a stenographer. Nettie Barnett was a stenographer.

I do not know the next person. Mrs. Borchardt was in the order handling department, but I do not know her capacity. Helen Atkinson, I believe, was in the filing department, but I am not sure.

These other people I am not familiar with. David Green [fol. 6540] was in the filing department. I do not know what Sam Sparks was doing at that time. I believe Martha Stevenson was in the pay roll department.

Ruth Alexander was in the order department, and Mrs. Stewart. Martha Landy was in the merchandise repair department. I do not know Lucy Hall. Mrs. Stephenson was in charge of the credit department. Mrs. Estes was her assistant.

Trial Examiner Batten: Will you speak a little louder, please.

A. Rachel Fredmon was in the credit department. Mary Butterfield was in the accounting department. Lucille Briggs was in the pay roll department; that also applies to Mildred Moore, Helen Swope, and Cecile Guerrant. Jane Daugherty, if my memory serves me right, was in the merchandise department. The other names I am not familiar with, at all. I know they were on that floor, but I do not know the department they were in.

Q. Referring to the next page, would you know whether those persons worked with the—who they were, generally? [Page 5386.]

A. Elmer Jensen was in the advertising department. Pauline Shartzer was in the accounting department; Ella

Mae Hyde was in the employment department, and Katheleen Denzel; Alice Blodgett was the nurse. I do not remember about Mr. Boozell at that time, but I think he was on the door, on the first floor.

[fol. 6541] Regina Stearman, Ruth Anderson, Rose Murray and Miss Cochran were in the retail store. Arthur Porter had charge of the parking lot. Martha Gray had charge of the retail store. Veda Hoyland, I believe, was in the buying department. Rose O'Leary was, I know. Mr. Weaverly had a desk in the first floor, and was an information clerk.

Marvin Price was in charge of the maintenance department. Anna Price was in charge of the shipping department. Dora Perry was the maid. Eloise Kleeburg was in the accounting department. Nellie Kraft was a designer. Dean Tutt was a porter. Ed Corbin a watchman, and W. E. Baker, I feel reasonably certain that was Bill Baker, a porter. Frances Keith was in the designing department at that time, I believe.

And Gertrude Cain was a designer.

Q. Do you know who the persons are whose names appear on 5387?

Trial Examiner Batten: Miss Weyand, is it necessary to go through every one of those names?

Miss Weyand: No, I don't think it is. She could generalize on about what floor they were on.

A. I can not read these. They are not very distinct. They are not very legible to me. Phenias Peterson, I believe, was the night watchman.

By Miss Weyand:

Q. What was Martha Gray's position with the Don-[fol. 6542] nelly Garment Company, prior to July 15, 1939?

A. Well, I can only tell you while I was there. I left there in the spring of 1938.

Q. I will change the question, as to time, prior to the spring of 1938.

A. She was in charge of the retail store.

Q. What was the extent of her control over the retail store?

A. She was responsible for the personnel and pricing of all materials that were sold in the retail store.

Q. How do you know those were her duties?

A. Well, I always worked with her whenever there was anything I wanted to know. We had a budgetary system, and I would go over the expenditures of the department with her at the end of the month.

Q. Do you know how long she had had that position?

A. I am not sure. I don't recall just when she went into the employment of the Donnelly Garment Company, but I think it was either 1929 or 1930.

Q. Do you remember any discussion of Mrs. Gray's position, in February of 1935?

Mr. Reed: I can't hear the question.

A. Yes.

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter.)

A. Yes, Mrs. Reed was in St. Louis at the time, and she [fol. 6543] called me over the phone and asked me to come to St. Louis. She had some things that she wanted to discuss with me; and Mr. Lee Baty and I went down that afternoon. We got in very late that night.

I went over to her hotel the next morning, and she told me that she was contemplating some personnel changes in the organization, and that she had in mind to make Mrs. Gray—place her in charge of the personnel department, that she had a way of getting along well with people.

Q. Do you know why Mrs. Reed was contemplating that change?

A. Yes, she said that there had been some dissatisfaction with the operators, and that they had discussed some of their problems with Mrs. Gray. She thought Mrs. Gray had handled herself very well, and that she would be a good person to work with the operators.

Q. Then did she express any dissatisfaction with the manner in which anyone else had been handling the operators? A. Yes, she did.

Q. What did she say?

A. That Mrs. Reeves had been too active; that some of the girls had wanted to—please don't hold me to strict accountability, but I believe there had been so much talk about organizing her people, and that some of the girls had been coming to Mrs. Reeves' office and discussing with her the girls that they had heard talk throughout the factory [fol. 6544] that they might join a union, and that those girls then would come—Mrs. Reeves would call them up to her office, and there was quite a bit of chaos throughout the organization on that account.

Trial Examiner Batten: Miss Weyand, this is going back into 1935, at the time of the N. R. A. case, isn't it?

Miss Weyand: Yes it is, in connection with the Loyalty League, and the testimony in that respect.

Trial Examiner Batten: I don't think that is, by any yardstick you want to use, or can be considered rebuttal. I think on two or three occasions I have said to Mr. Ingraham that I didn't believe, in this hearing, that we were going back into that old N. R. A. proceeding; in fact, I think I told Mr. Ingraham we were not.

Miss Weyand: Well —

Trial Examiner Batten: Now, just a moment. That they each had an opportunity to present the parts of the record in the old N. R. A. proceeding, and I didn't propose to reopen it. Now, this is, to me, clearly that very same thing.

Miss Weyand: Well, the company witnesses have testified as to the Loyalty League, and the manner of the formation, and so did Mrs. Reed and about Mrs. Gray. Of course —

Trial Examiner Batten: That is not this matter.

Miss Weyand: Mrs. Gray was the leading person forming the Loyalty League. Mrs. Reed testified in reference [fol. 6545] to her lack of information as to how the Loyalty League was formed. I think that this is proper rebuttal, because it deals with Mrs. Reed's relation with Mrs. Gray, the very month the Loyalty League was formed by Mrs. Gray.

Mr. Hogsett: In line with Your Honor's remarks now, I move to strike from the record all of the testimony of Mrs. Keyes, relating to conversations with Mrs. Reed or others, relating to all subjects back in 1935.

Mr. Tyler: Intervener joins in the same motion, and reiterates its objection that it is not proper rebuttal.

Miss Weyand: Then Mrs. Reed's testimony should be stricken pertaining to what she did in 1935, and what she knew of Mrs. Gray, and what she knew of the Loyalty League. If Mrs. Reed's testimony is going to stand, I submit that this is proper.

Trial Examiner Batten: I didn't say anything to you about the testimony of this witness with respect to the organization of the Loyalty League.

Miss Weyand: Mrs. Gray was the active party organizing the Loyalty League.

Trial Examiner Batten: Even assuming she was, I don't see that this particular testimony has anything to do with that. Now, you might say, well, it is a part of it; it is an inseparable part of the whole story. Well —

Miss Weyand: I think it is very proper rebuttal to Mrs. Reed's testimony about the capacity in which she remem- [fol. 6546] bers Mrs. Gray, if you recall. She went on with quite a long story of how Mrs. Gray was just a clerk in the retail store.

Trial Examiner Batten: I agree with you on that.

Miss Weyand: This is proper rebuttal on that.

Trial Examiner Batten: I agree with you this far, on some matters, who are the supervisory employees; but you are now going into the whole attitude of Mrs. Reed with respect to the period of 1935.

Miss Weyand: I will not continue with this line of questioning further. I do submit what is in the record at the present time is proper rebuttal about Mrs. Reed's denial that Martha Gray was anything more than a retail clerk.

Trial Examiner Batten: I don't consider it such, with reference to this last question. The only part I consider proper rebuttal and relevant is the part which refers to Mrs. Reed suggesting that Mrs. Gray take this job.

Miss Weyand: I also submit that it is proper rebuttal to Mrs. Reed's statement she did not know of any activity in her plant, questioning any employee about union membership. Mrs. Reed specifically testified to that.

Trial Examiner Batten: Let's assume that is true, Miss Weyand. You can't deny the fact that I said to Mr. Ingraham, on two or three occasions, that we are not going to open up that N. R. A. matter.

Miss Weyand: I am not opening it up, but Mrs. Reed [fol. 6547] testified to her lack of knowledge of any questioning of girls, and is, herself, a witness who testifies.

Mr. Reed: I can't understand what —

Trial Examiner Batten: I don't think it should stand; I am going to strike it, except the reference to the discussion between Mrs. Keyes and Mrs. Reed, about Mrs. Gray taking the job as employment manager, or whatever it was.

Miss Weyand: This is all a part of that same discussion.

Trial Examiner Batten: I know it is all part of the same discussion.

Mr. Tyler: The intervener wishes to point out to Your Honor, at the time you made the ruling on Mrs. Reed's testimony Your Honor said, "That may not be proper rebuttal, and I do not mean that from now on the whole case will be gone over, but because the Board has had a full opportunity to present what it says Mrs. Reed said, and because Mrs. Reed couldn't testify before, and is president of the plant, I shall allow this testimony on her part, but that does not mean that every subject that she mentioned is opened up to go over again." The reason behind the exercise of Your Honor's discretion was that this lady had not had an opportunity to testify before, whereas her opponents had had ample opportunity to testify as to what she said.

Trial Examiner Batten: That is true, Mr. Tyler; I am not making this ruling because of your remarks; I am [fol. 6548] making it because I think it goes back into that N. R. A. proposition, and back into 1935.

Now, we did go back into 1935, as far as the organization of the Loyalty League was concerned, but I don't think that it is proper rebuttal, and for that reason I have stricken it, in accordance with my ruling.

Miss Weyand: If this is going to be stricken, I would like to have such testimony of Mrs. Reed as denies she knew any of her operators were questioned about any union matters by supervisory officials, stricken from the record, too.

Trial Examiner Batten: There is no relation between the two, so I will deny it. In other words, there is no evidence before me to indicate that there is any consistency in the two.

Mr. Langsdale: I understand you didn't strike Mrs. Keyes testimony about her conversation with Mrs. Reed in which Mrs. Reed said she intended to make Mrs. Gray personnel manager.

Trial Examiner Batten: That is right.

Mr. Langsdale: That is still in.

By Miss Weyand:

Q. Did Mrs. Reed state whether or not she knew of the girls being questioned about their union membership?

Mr. Reed: Now, that is in 1935.

Trial Examiner Batten: That is the same conversation, I presume.

[fol. 6549] Mr. Stottle: We object to that for the same reason.

Trial Examiner Batten: I will sustain the objection.

Mr. Tyler: The intervener joins in the objection.

By Miss Weyand:

Q. How long had Marvin Price been in charge of the maintenance department in the Donnelly Garment Company?

A. He was in charge of the department when I came into the organization in 1926, and to the best of my knowledge was still in charge of it when I left.

Q. What do you know personally of his activities?

A. Why, I don't know what you mean.

Q. How do you know he was in charge? What contact did you have with him?

A. Well, he had charge of the maintenance department, and also the buying of supplies; and I wouldn't say every month, but every few months we would go over the expenses of the department and I would discuss them with Mr. Price.

Q. What was the position of Mrs. Florence Strickland at the Donnelly Garment Company, during the time you were employed with the company?

A. I can't tell you the early years, but I would say, in 1929 on through the balance of my time with the company, she was in charge of the pattern department.

Mr. Reed: In charge of what?

The Witness: The pattern department.

By Miss Weyand:

Q. Do you know anything about how Rose Todd happened to go to the law firm of Gossett & Tyler, to [fol. 6550] secure a lawyer to represent the Loyalty League?

A. I don't know about Rose Todd, but I do know that Mr. Keyes discussed Mr. Gossett with Mr. Ingraham.

Q. What was that conversation?

A. He talked with him over the phone from our home, and suggested Mr. Al Gossett as a fine person to represent the Loyalty League.

Q. Had the union been in —

Trial Examiner Batten: Just a moment.

By Trial Examiner Batten:

Q. Who was that?

A. Mr. Keyes.

By Miss Weyand:

Q. Had the Donnelly Garment Workers' Union been formed at that time?

A. Yes — the Donnelly Garment Workers' Union?

Q. Yes.

A. No, the Loyalty League.

Q. Did the Donnelly Garment Company ever employ Mr. Gossett's law firm to represent the Donnelly Garment Company?

A. Yes.

Q. When?

A. Well —

Mr. Langsdale: That has been admitted by stipulation, Miss Weyand, has it not?

Miss Weyand: It isn't in the record yet.

[fol. 6551] Trial Examiner Batten: You have a list there, haven't you?

A. Yes, he was retained by the Donnelly Garment Company.

By Miss Weyand:

Q. For how long?

A. Well, I know we paid him a retainer fee from 1926, when I went in there, until the fall of '32.

Q. What was Mr. Keyes' position with the company?

A. He was hired as general manager in charge of sales.

Q. When was he hired?

A. He was hired in the fall of 1932, but he came to the Donnelly Garment Company in January of 1933.

Q. Could Mr. Keyes hire and fire?

A. Well, he hired a great many people.

Cross-Examination

By Mr. Langsdale:

Q. Mrs. Keyes, how do you know that Florence Strickland was in charge of the department that you have testified she was in charge of during that period?

A. Because I was in charge of the accounting department and the records, and we had installed a budgetary control back in 1929, and I would discuss expenditures of the department with her.

Q. Did you know Ted Scoles?

[fol. 6552] A. I am sorry —

Q. Ted Scoles, did you know him?

A. Yes.

Q. What was his position with the Donnelly Garment Company in March and April of 1937, if you know?

A. He was in charge of the cutting department.

Q. Why do you say that?

A. Well, I never discussed anything with Mr. Ted Scoles in the production department; anything I wanted to discuss with him, it was either with Mrs. Reeves or Mr. Baty.

Q. You knew him as being in charge of that department?

Mr. Reed: That is — the witness has said she didn't know him in any capacity, and counsel then puts a leading question to the witness. It is assuming that to be true.

Trial Examiner Batten: I think she previously said he was in charge. Now if her statement that he was in charge is not supported by any knowledge which this witness has, of course I see nothing wrong with her statement that he was in charge. She apparently thought he was.

A. According to our record and the pay roll, he was classified as in charge of the department.

By Mr. Langsdale:

Q. When was it that Mr. Keyes had the conversation with Mr. Ingraham about Mr. Gossett, if you remember?

A. In the early spring of 1937.

* * * * * *

[fol. 6553] By Mr. Hogsett:

Q. Had Mr. Gossett been employed by Rose Todd at that time?

A. I don't know.

Q. As a matter of fact, you don't know when Mr. Gossett or Mr. Tyler was employed. You have no way of knowing?

A. No, Mr. Hogsett, to give you the exact date, I wouldn't know.

Q. Well, you wouldn't know the exact date, nor would you know whether it was before or after this conversation with Mr. Ingraham?

A. I know it was after that, but when —

Q. How do you happen to know that?

A. I don't know just when — I told you, — by day or date when he was hired.

. . . . . .

[fol. 6555] By Mr. Hogsett:

Q. Well, now, how do you know that it was before this [fol. 6556] conversation that Rose Todd had employed Mr. Gossett?

A. It was right after they had organized the Loyalty League.

Q. Right after they had organized the Loyalty League? Why, they had organized the Loyalty League years before, had they not?

A. Well, there was no activity in the Loyalty League, other than little parties that they have.

Q. Now, let me — pardon me, were you through?

A. Yes, sir.

Q. You have now said that this conversation that you heard between your husband and Mr. Ingraham, talking on the telephone, occurred right after they formed the Loyalty League. Now, when was it they formed the Loyalty League? Give me the year.

A. Well now, just a minute, Mr. Hogsett. You see, I haven't had the benefit of anyone discussing any of these things with me. I am trying to collect this in my own mind.

The Loyalty League was formed in the spring, I believe, of 1935.

Q. All right.

A. Well —

Mr. Langsdale: Let her answer, please.

A. And the company union was formed in early '37.

By Mr. Hogsett:

Q. Now, your answer was that the conversation you [fol. 6557] heard occurred right after they formed the Loyalty League.

A. Well —

Q. Are you wrong about that?

A. Yes, I am.

Q. Two years wrong?

. . . . . .

Trial Examiner Batten: Are you wrong about that?

A. I am wrong about that. I am now trying to collect my thoughts and associate some of these things. This has been a long time, and a great many things have happened to me since. I am trying slowly to answer your question, if you will just be a little patient.

* * * * * *

Q. Did you hear Mr. Ingraham's side of this conversation?

A. I did not.

Q. You have no idea what he — what his purpose was in calling Mr. Keyes, have you?

A. I didn't say he had called Mr. Keyes.

[fol. 6558] Q. Was it the other way around?

A. It could have been. I know Mr. Keyes talked with Mr. Ingraham over the telephone in our apartment. I do not recall if Mr. Keyes called Mr. Ingraham or Mr. Ingraham called Mr. Keyes.

Q. Now, you kept that conversation in mind since 1937; that would be about 5 years, wouldn't it?

A. Yes, I know that.

Q. When did you tell Miss Weyand about it, the Board's attorney?

A. When did I tell Miss Weyand? I only met Miss Weyand the other night.

[fol. 6559] A. I probably told that to Miss Weyand the only time I had a conversation with her. She was in my home.

Q. When?

A. She came out the other night; I believe it was Thursday night. I had never seen Miss Weyand before.

Q. Did you volunteer that conversation? How did Miss Weyand happen to discuss it with you at that time? How could she have known about that conversation that occurred five years ago?

A. I believe she asked me if I knew—

Q. —of what?

A. —of the formation of the union. And I told her I did not know when they formed the union but I did recall this conversation of Mr. Keyes' with Mr. Ingraham.

Q. And the way you stated that to Miss Weyand was that Mr. Keyes suggested Al Gossett as a fine person to represent the Loyalty League?

A. Yes.

Q. Is that what you told Miss Weyand?

A. Yes, I did.

Q. Now, this conversation with Mrs. Reed in St. Louis, that occurred in 1935, you have said?

A. Yes.

Q. That's seven years ago?

(No audible answer.)

Q. Now, how—

[fol. 6560] Trial Examiner Batten: Mrs. Keyes, you will have to speak your answers out. The reporter doesn't get the nod of your head.

By Mr. Hogsett:

Q. Now, how did Miss Weyand happen to know about that conversation that occurred seven years ago?

A. Miss Weyand came to my home and we had a very nice, wholesome talk, and that was part of our conversation.

Q. But how did you happen to mention this conversation of seven years back; what led up to that?

A. Mr. Hogsett, I'm sorry, I couldn't tell you just how we happened to be discussing that. She didn't come out to see me because she knew me. She came out there because, knowing that I was at the Donnelly Garment Company, she wanted me to give her some information, if I could be helpful, and I told her if I could give her some information—if it was something I knew for a fact, I would be happy to discuss it with her.

Q. Now, if you don't mind, I would like to get an answer to the question. How did the subject matter of this conversation that occurred in St. Louis seven years ago happen to be discussed at all between you and Miss Weyand on this occasion?

A. I think she wanted to discuss Martha Gray with me, and she asked me some questions which I answered.

Q. And in that way you volunteered the incident of the conversation back in 1935 in St. Louis; is that it?

A. Oh, yes. She wouldn't know otherwise.

[fol. 6561] Q. That's the point. You must have volunteered a good deal of information to her.

A. Not a good deal. I don't give a great deal of information.

Q. But you volunteered practically all of the detail information that she has questioned you about, didn't you?

A. And I would say that is all she knows.

Q. Exactly. And you volunteered all of that to her?

A. The little I gave her, yes.

Q. Now, did Mrs. Gray ever become personnel manager?

A. She did not, while I was at the Donnelly Garment Company.

Q. To the best of your knowledge, she never did, did she?

A. No.

Q. Then, this conversation about Mrs. Gray down in St. Louis was, to put it in a slang way, the occasion of walking up the hill and down again— There was nothing—

Mr. Langsdale: I object to that as argumentative.

Mr. Hogsett: Well, I will withdraw the form of that question. It is objectionable, perhaps.

By Mr. Hogsett:

Q. However, it is characterized, it boils down to this, does it not; that the announced intention of Mrs. Reed to give consideration to making Mrs. Gray personnel manager did not result at any time in her becoming personnel manager?

Mr. Langsdale: Just a moment. I object to the ques- [fol. 6562] tion as calling for a conclusion of the witness, because the testimony was that that was just at the time when Mrs. Gray formed the Loyalty League. Now, whether that is personnel activity or not is for the Examiner to pass upon.

Trial Examiner Batten: She may answer, if she knows.

Do you recall the question, Miss Witness?

The Witness: You just asked me why Miss Weyand discussed this with me?

Mr. Hogsett: No.

Trial Examiner Batten: Do you want the question read?

Read the question, please.

(Thereupon the last question was read by the reporter as follows:

"However it is characterized, it boils down to this, does it not, that the announced intention of Mrs. Reed to give consideration to making Mrs. Gray personnel manager did not result at any time in her becoming personnel manager?")

A. Not to my knowledge.

By Mr. Hogsett:

Q. Now, coming to the first item you covered in your testimony, that is, the document marked International's exhibit 10— Is that right? Is it 10?

Miss Weyand: That is correct.

By Mr. Hogsett:

Q. (Continuing) You were at Mrs. Reed's home at the time the employees came out to deliver the first 10 [fol. 6563] or 12 pages of that?

A. Oh, no, I wasn't.

Q. Did you not say you were?

A. No, I didn't.

Q. Well, I misunderstood you then. I took it, when you said you first heard of it in Mrs. Reed's home, you were there at the time.

A. I wasn't in her home when the petition was presented to Mrs. Reed.

Q. How soon after it was presented, if you know, were you there?

A. Well, I had been out of town and I don't know the exact date.

Q. In any case, you were there shortly after it was presented, as you understood?

A. I would say a couple of days after.

Q. Now, Mrs. Reed's attitude, as you expressed it, was that she was very happy to think that her people felt the way this petition indicated? A. Yes.

Q. As a matter of fact, she cried about it, didn't she?
A. Well, she was rather emotional, I thought.
Q. She was touched?

(No answer.)

Q. You know what I mean. A. Yes, I do know.
[fol. 6564] Q. And this remark, in the emotional state that she was in, was one that you carried on to Pauline Shartzer of your own accord?
A. Mrs. Reed told me she would like to have the petition 100 percent.
Q. And it was a natural thing, wasn't it, that she should?

Mr. Langsdale: I object to that as argumentative and not anything material as to any issue in this case.

Trial Examiner Batten: Is that a question, Mr. Hogsett?

Mr. Hogsett: I will withdraw it and put it in a different form.

Mr. Hogsett: Did you not regard it as a natural thing for Mrs. Reed, in the emotional state that you say she was in, to make that comment? A. I would say—

Mr. Langsdale: I object to that as immaterial and incompetent.

By Mr. Hogsett:
Q. In any case, you passed the suggestion on to Pauline Shartzer and she obtained signatures of additional people on that petition that you have identified, and that's all there is to it? A. Yes.
Q. Were you present at the hearing before His Honor, the Examiner, when your late husband, Mr. Keyes, testified?

[fol. 6565] Mr. Hogsett: I beg your pardon. It was a slip. I regard any person acting in a judicial capacity as a court, from force of habit.

A. No, I wasn't.

By Mr. Hogsett:
Q. Did you know of his testimony before the Examiner? Were you familiar with the subject matter of it?

A. No, I wasn't.

Q. Let me read you this part of Mr. Keyes' testimony in this proceeding relating to a subject concerning which you have testified. I read from page 2037.

"Q. (By Mr. Ingraham) Now, Mr. Keyes, is there a Miss Alexander in your department?

"A. Yes.

"Q. What character of work does she perform?

"A. She assists me in the correspondence with the stores on matters having to do with filling of orders.

"Q. Has she any supervisory powers?

"A. No, sir.

"Q. Is she in charge of the work that Elsa Graham performed?

"A. No. I was in charge of that work."

Now, to the best of your knowledge, are those answers by Mr. Keyes accurate or inaccurate?

A. When I left the employ of the Donnelly Garment [fol. 6566] Company early in 1938—this was 1939, and I can't tell you anything about the policy of the company or anything that went on at the Donnelly Garment Company—

Q. I just would like to know, Mrs. Keyes, if you can tell me whether these answers Mr. Keyes gave, as you correctly say, in June or July of 1939, were accurate or inaccurate.

Mr. Langsdale: Miss Alexander?

Mr. Hogsett: Yes.

A. I can only say, if Mr. Keyes stated it, it was accurate.

By Mr. Hogsett:

Q. He would know, would he not?

A. I should say he would. I know nothing about it at that time.

Q. To the best of your knowledge, is this testimony by Mr. Keyes correct? I read from page 2023 of this transcript.

"Q. I would like to ask, Mr. Keyes, if you ever instructed, advised, or suggested in any manner to any employee of the companies', that is, the Donnelly Garment Company or the Donnelly Garment Sales Company, that they join the Donnelly Garment Workers' Union.

"A. No, sir.

"Q. Have you ever instructed or advised or suggested in any manner, directly or indirectly, to any employee of those mentioned companies that they should not join the International union?

"A. No, sir.

[fol. 6567] "Q. Did you ever hear Mrs. Reed, Mr. Baty, Mrs. Reeves, or any other official or any person with authority to hire, fire, or discipline, advise or suggest to any employee that they should join the Donnelly Garment Workers' Union?

"A. No, sir.

"Q. Or that they should not join the International union?

"A. No, sir."

To the best of your knowledge, during the time that you were employed at the company were those answers by Mr. Keyes as there given accurate or inaccurate?

* * * * * * *

[fol. 6568] A. I can only say I know nothing whatsoever of the union activities in the Donnelly Garment Company.

Mr. Hogsett: That helps toward an answer, but it doesn't quite answer, Mrs. Keyes, what I am asking you.

Now, let me explain what I would like to know.

First, let me ask when you and Mr. Keyes were married.

A. December, 1936.

Q. And you continued in your employ and he continued in the employ of the company from then until 1938, when you left? A. That's right.

Q. Now, during all of the time of your connection with the company, and with particular reference to the time from 1937, in the spring, on until you quit, were the facts as testified to by Mr. Keyes and which I have just read, from page 2023 of his testimony, accurate or inaccurate, to the best of your knowledge?

* * * * * * *

The Witness: Well, Mr. Examiner, I just stated that I knew nothing whatsoever of the union activities in the Donnelly Garment Company, so I don't know, by answering

that, that I could say Yes, or No, and when I say something, I want to know?

[fol. 6569] Trial Examiner Batten: The question is, can you say Yes or No on this matter, so far as you know.

A. If Mr. Keyes stated—whatever he stated I would say would be correct.

Cross-Examination

By Mr. Tyler:

Q. Mrs. Keyes, I think you stated that you are at present engaged in business, but I'm not sure.

A. I am, in the manufacturing business.

Q. At the present time? A. Yes.

Q. Did you give the name of it?

A. Marguerite Keyes, Inc.

Q. What does it produce?

A. We manufacture sportswear, and at present we are making a defense garment.

Q. When was that business started, Mrs. Keyes?

A. October, 1940.

Q. When did Mr. Keyes first become connected with the Donnelly Garment Company or the Donnelly Garment Sales Company? A. January, 1933.

Q. It is correct, is it not, that since 1932 there has been no employment of Gossett, Ellis, Dietrich & Tyler, or any-[fol. 6570] body in that firm or connected with it, by the Donnelly Garment Company or the Donnelly Garment Sales Company?

A. By the Donnelly Garment Company, in 1932, to the spring of 1938, no.

[fol. 6571] May Stevens, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

By Miss Weyand:

Q. Will you please state your name?

A. May Stevens.

Q. Where do you reside? A. 2617 Poplar.

Q. When did you begin to work at the Donnelly Garment Company?

[fol. 6572] A. I believe it was in 1932, possibly a little while in 1931, but I know it was 1932.

* * * * * * *

By Miss Weyand:

Q. Were you working steadily in 1932?

A. No. Just the busy season.

Q. When did you begin to work steadily for the Donnelly Garment Company? A. In February, 1936.

Q. Had you worked seasonally at the Donnelly Garment Company from 1932 to 1936?

A. Yes, every year except 1935. I don't believe I was in the plant in 1935.

Q. Were you a member of the Loyalty League?

A. Yes.

Q. When did you join? A. In the spring of 1937.

Q. Did you attend any meetings of the Loyalty League?

Mr. Tyler: Intervener objects, because this is not proper [fol. 6573] rebuttal.

Mr. Hogsett: We join in that objection, asking that counsel be restricted to rebuttal.

Trial Examiner Batten: You may proceed.

Mr. Hogsett: May we have a continuing objection, as in the case of other witnesses?

Trial Examiner Batten: Yes.

Mr. Tyler: And the intervener also?

Trial Examiner Batten: Yes.

A. Only when these meetings were in connection with the Donnelly Garment Workers' Union.

Q. Did you ever work in Etta Dorsey's section?

A. I did.

Q. When? A. In February of 1937.

Q. Where was that section located at that time?

A. The first week that I worked extra in her section it was on seven. The machines were moved to the eighth floor.

Q. How do you happen to remember that?

A. Because I was clipping shirring and the prices were extra good, and one afternoon clipping from four machines I made $13.50.

Mr. Reed: How is that rebuttal?

Miss Weyand: Miss Reporter, will you mark these check stubs?

[fol. 6574] Trial Examiner Batten: What is it, Senator?

Mr. Reed: I thought you had not ruled. I move to strike the answer. We are going into a matter of prices now, I suppose.

Miss Weyand: No.

Trial Examiner Batten: It may stand as the witness' reason for recalling the other evidence, the moving of the sections.

Miss Weyand: Miss Reporter, will you mark these two check stubs as Board's exhibits 40-A and 40-B, respectively?

(Thereupon the check stubs above referred to were marked "Board's Exhibits 40-A and 40-B, Witness Stevens," for identification.)

Miss Weyand: Mrs. Stevens, I hand you Board's exhibit No. 40-B for identification and ask—

Mr. Reed: Exhibit—what?

Miss Weyand: 40-B for identification.

[fol. 6575] By Miss Weyand

Q. (Continuing) —and ask if that check covers the week to which you had reference. A. Yes.

Q. And that week you were working on what floor?

A. Eighth floor.

Q. Who was the instructor of the section?

A. Etta Dorsey.

Q. How do you happen to remember that check stub?

A. Because it was the highest check I ever made at the Donnelly Garment Company.

Q. I hand you Board's exhibit No. 40-A for identification and ask you if that was the check stub of the preceding week. A. Yes.

Q. What floor were you working on during that week?

A. Seventh floor.

Q. Who was the instructor of the section on the seventh floor in which you were working? A. Etta Dorsey.

Q. Will you state for me what section number appears on the check stubs?

A. 811, hand sewing department.

Mr. Reed: I can't hear.

Mr. Hogsett: 811, hand sewing section.

By Miss Weyand:

Q. What section number were you working in on the seventh floor under Etta Dorsey?

[fol. 6576] A. I don't believe I recall the section numbers.

Q. Do you remember the section number on the eighth floor in which you were working under Etta Dorsey?

A. No, I don't.

Q. Do you know whether it was 811 or some other section number?

A. 811 was my hand sewing section.

Mr. Reed: I can't hear.

Trial Examiner Batten: Miss Witness, will you speak louder, please, so everyone can hear you?

Miss Weyand: And 811 wasn't the section in which Etta Dorsey was your instructor during these two weeks?

A. No.

Mr. Reed: What two weeks are they? They are referred to, I suppose, on the card, but I haven't the benefit of knowing—

Miss Weyand: I handed them over to the counsel table before, but you may look at them again.

Mr. Reed: You just tell me—

Miss Weyand: They are check stubs for the weeks February 12, 1937, and February 19, 1937, and indicate on their face that they are for wages to and including the dates I have read.

Miss Weyand: I offer these check stubs in evidence.

Mr. Hogsett: No objection.

[fol. 6577] Trial Examiner Batten: No objection? They will be received.

(Thereupon the check stubs above referred to, previously marked for identification "Board's exhibit No. 40-A and 40-B, Witness Stevens," received in evidence.)

Mr. Reed: Now, I would like to see them.

(Thereupon Board's exhibit No. 40-A and 40-B were handed to Mr. Reed.)

By Miss Weyand:

Q. In what section were you working in March and April, 1937? A. 811, on the sixth floor.

Q. Who was the instructor of that section?

A. Frances Morrison.

Q. I hand you I. L. G. W. U. exhibit No. 10, which appears at pages 5375 and 5961 of the Circuit Court of Appeals record, and ask you if the next to the last name on the first column on page 5384 is your signature.

A. Yes, it is.

Q. Did you read the heading at the top of the sheet before you signed it? A. Yes, I did.

Q. Was it true when you signed it?

A. The first part, yes. I was contented, more or less, with my work. But the last part or the second part, never [fol. 6578] at any time was it my views.

Q. And that is which clause or sentence that you were not in agreement with?

A. (Reading) ". . . and refuse to acknowledge any union labor organization."

Q. Why did you sign that statement?

A. Because I felt it was my job in doing so.

Mr. Langsdale: What was that answer?

Trial Examiner Batten: Will you read the answer, please?

(Thereupon the last answer was read by the reporter.)

By Miss Weyand:

Q. By that you mean what?

A. That I would be laid off if I didn't sign it.

Q. Did you attend a meeting in March of 1937 at which Mrs. Reed spoke? A. Yes, I did.

Q. What time of day was that meeting held?

A. In the afternoon.

Q. Was it during or after working hours?

A. During working hours.

Q. How were you notified of that meeting?

A. By the instructor.

Q. Who was your instructor at that time?

A. Frances Morrison.

Q. Did you wear your uniform to the meeting?

[fol. 6579] A. I did.

Q. Were you paid for the time you spent at that meeting? A. Yes.

Q. Now, what do you remember Mrs. Reed saying at that meeting? A. Well, that—

Mr. Lane: If Your Honor please, I make the same objection with respect to this witness, that this is not proper rebuttal testimony, and I would like a continuing objection to all such questions.

Mr. Hogsett: Same objection by respondent and same request.

Trial Examiner Batten: You may have a continuing objection.

By Miss Weyand:

Q. What do you remember Mrs. Reed saying at that meeting?

A. That she wouldn't have Dubinsky or any other "sky" running her business, and if the girls would stand by her, she would stand by them, and we would never have to belong to any union or pay dues to any union to work in her shop.

Q. Was there a committee appointed at that meeting to go see a lawyer? A. No.

Q. Did you go back to the sixth floor after the meeting?

A. Yes.

[fol. 6580] Q. Were you working on the same floor with Fern Sigler the last day Fern Sigler worked for the company? A. Yes.

Q. What did you see that morning?

A. A lot of commotion, and heard a lot of booing and singing, and other sections coming down and coming up—coming on the floor.

Q. How long did it go on?

A. Possibly an hour.

Q. Whom did you see from other floors whom you recall by name?

A. Ella Mae Hyde, Mr. Boozell—

Q. What was the next meeting you attended following the meeting at which Mrs. Reed spoke?

A. The meeting that the union was formed.

Q. Who notified you of that meeting?

A. The instructor.

Q. Now, what time of day—

Mr. Reed: I didn't get it.

The Witness: The instructor.

Trial Examiner Batten: Miss Witness, will you speak a little louder, please?

The Witness: It seems like I am shouting.

Trial Examiner Batten: Well, even I have some difficulty in hearing you.

[fol. 6581] By Miss Weyand:

Q. What time of day was that meeting held?

A. In the afternoon.

Q. Was it during or after working hours?

A. During working hours.

Q. Did you wear your uniform to that meeting?

A. I did.

Q. Do you know whether other girls in your section wore their uniforms? A. They did.

Q. What happened at that meeting?

A. Well, they had Mr. Tyler there to speak to us and told us they were going to—had talked about forming a union, and they passed out cards to every girl and seen that every girl had a card, and then waited until later in the meeting to take them up, to see that every card was accounted for.

Q. Did you sign a card? A. Yes, I did.

Q. Why?

A. I felt that I had to do it to hold my job.

Q. What made you feel that way?

A. Well, the Fern Sigler incident, just previous to that, and by Mrs. Donnelly saying we would never have to have a union, and I decided that they had changed so sudden that it was surely something for the company and I had [fol. 6582] better join. And when in 1934, when I was in another shop, at Twenty-sixth and Main, I met the Donnelly girls they had sent to that plant that were union girls—

Mr. Reed: Oh, wait a minute, now. That certainly is not rebuttal.

Trial Examiner Batten: Now, let the witness finish, Senator. If there is something you think should be stricken, all right, but don't interrupt the witness.

Read the answer thus far, please.

(Thereupon the last answer was read by the reporter.)

Trial Examiner Batten: Finish your answer.

A. (Continuing)—and talked to them most every day about the conditions and why they were sent down there, and they were told that they were not making their guarantee, and they knew it was because they were union girls and that they would eventually be laid off.

Mr. Reed: I move to strike that as incompetent, immaterial, and as not rebuttal, being mere hearsay, and binding on no one. I think the Examiner excluded us from the right to even ask questions about 1934.

Trial Examiner Batten: Well, Senator, assuming I did, hasn't this witness a right to say why she felt that way?

Mr. Reed: Certainly not, as evidence against us, that some girl told her—

Trial Examiner Batten: Of course, I don't assume that [fol. 6583] it is evidence against you. It is simply this girl's statement of why she did something. Now, during the examination of a good many witnesses, they were free to express their opinions as to why they joined the Donnelly Garment Workers' Union.

Mr. Reed: We were not allowed to go back to 1934.

Trial Examiner Batten: You were allowed to go back if the witness gave that as a reason for doing something.

Mr. Reed: Well, this witness is going farther than that; she is undertaking to tell conversations she had with girls she said once worked for the Donnelly Garment Company and to state their reasons.

Trial Examiner Batten: She is giving it as her reason why she did something.

Mr. Reed: Well, if a person has a reason, it isn't material here what her reason was. If she had a reason, where some officer of the company had told her to do something, that would be one thing, but here she is undertaking to tell that girls at another shop in 1934 told her that they were discriminated against because they belonged to a union. Now, that sort of evidence simply means you open the door to every kind of hearsay evidence in the world.

Trial Examiner Batten: No, it doesn't, Senator. It is her reason. Now, to strike out all of the testimony given by witnesses as the reason why they did certain things, I would say offhand at least a third of the testimony would be stricken, Senator.

[fol. 6584] Mr. Reed: And I think a third of it, and perhaps two-thirds of it, ought to be stricken.

Trial Examiner Batten: Well, of course I don't know that I would disagree with you about that at all. But we will proceed. It may stand.

Mr. Langsdale: I understand the Examiner is not letting that statement remain in as proof of what the girls at Twenty-sixth and Grand said at all?

Trial Examiner Batten: No, it doesn't prove what they said, and it doesn't prove the facts. It is simply this witness' reason for why she did something.

By Miss Weyand:

Q. Did you attend all of the meetings of the Donnelly Garment Workers' Union which were held in May 1937?

A. I'm most positive I did.

Q. How were you notified of those meetings?

A. By the Instructor.

Q. Were those meetings during working hours or after working hours?

A. During working hours.

Mr. Reed: That is the month of May, is it?

Miss Weyand: Yes.

Mr. Reed: I can't hear back here.

Trial Examiner Batten: Read the last two or three questions and answers, please.

[fol. 6585] (Thereupon the last three questions and answers were read by the reporter.)

By Miss Weyand:

Q. Do you remember attending a meeting at which there were no chairs? A. I do.

Q. How do you remember that?

A. Because it was dreadfully warm— There was one girl fainted, possibly two, and I felt very faint myself, and I leaned against the freight elevator shaft, because it was cool, and remained standing there during the meeting.

Q. Did you return to work after that meeting?

A. Yes. I was the first one on the elevator going up and was in my section the first one, but I didn't go back to work until the other girls were on the floor.

Q. Did your instructor check up on your attendance at the meeting?

A. Yes, two or three days later.

Q. What did she say to you?

A. She came to me and asked me if I attended the meeting, that some of the girls in the section said I was on the floor when they came back and that I hadn't attended the meeting.

Q. Who was the instructor who did that?

A. Frances Morrison.

Q. State what effect, if any, your instructor's inquiry about your attending the meeting had upon you with refer-[fol. 6586] ence to your feeling free to attend or not attend subsequent meetings of the Donnelly Garment Workers' Union?

A. Each time thereafter I went down with my instructor and always sat in the same row of seats that she did.

Q. I hand you Board's exhibit No. 18, which appears in the Circuit Court of Appeals record at page 4709 and following, and ask you if those minutes correctly set forth the occurrences at the meeting you have just referred to.

Trial Examiner Batten: What is the number of that?

Miss Weyand: Board's exhibit No. 18.

Mr. Langsdale: Is that 18-A to 18-J, inclusive?

Miss Weyand: Yes.

Trial Examiner Batten: Do you want the witness to read the entire—

Miss Weyand: To look at it as much as she needs to to answer my question.

Trial Examiner Batten: Have you shown this to the witness before, as I suggested to other counsel?

Miss Weyand: Yes, I have.

A. Yes, these are mainly correct.

Mr. Reed: I couldn't hear the answer.

Trial Examiner Batten: Will you read the answer?

(Thereupon the last answer was read by the reporter.)

By Miss Weyand:

Q. Did you pay the 50 cents that was there voted to donate to Mr. Tyler for his fee?

[fol. 6587] A. Yes, I did.

Q. What month did you pay that 50 cents in?

A. In May.

Q. How do you remember that?

A. Because I have a little book that I kept such things set down in—or some things.

Q. How were later meetings of the Donnelly Garment Workers' Union generally called?

A. By an i. d. m. or by the instructors telling us.

Q. When the meeting was called by an i. d. m., who brought the i. d. m. to the section? A. The basket boys.

Q. Who handed it to the girls? A. The instructors.

Q. What is an i. d. m.?

A. Well, it is a slip of paper designating something of importance, a meeting, or something pertaining to work or other—

Q. Are notes passed from one girl to another in a section called i. d. m.'s? A. No.

Q. Can girls get up and go to the phone any time of the day they wish? A. No.

Q. What phones can the girls use?

[fol. 6588] A. Well, there is a main phone on seven and one on the first floor that they can use at noontime or after work.

Q. Can the girls use the department phones? A. No.

Q. Is your answer in reference to the phones a statement of the condition that existed during the whole time you were at the Donnelly Garment Company? A. Yes.

Q. What was Rose Todd's position with the company?

A. I asked several times but was never told what her position was.

Trial Examiner Batten: You say the entire time that she was at the Donnelly Garment Company? Did this witness testify as to when she left there or—

Miss Weyand: I don't believe she did.

By Miss Weyand:

Q. Will you state when you left the Donnelly Garment Company?

A. The 1st of September, 1941.

Q. And you worked there continuously from 1936 until 1941?

A. Yes.

Trial Examiner Batten: Of course, that question is limited to July 15, 1939?

Miss Weyand: Yes.

Miss Weyand: Did Rose Todd ever come around to your section inquiring whether you had enough thread, [fol. 6589] trimmings, bindings, notions, or other supplies?

A. No, she did not.

Mr. Reed: Just a moment. What was that question?

Trial Examiner Batten: Read the question and answer, please.

(Thereupon the last question and answer were read by the reporter.)

By Miss Weyand:

Q. Did you ever see Rose Todd wear a uniform?

A. No.

Q. What was Lena Tyhurst's position in 1936 and 1937?

A. She was over the instructors.

Q. Did you consider that the instructors were supervisory employees? A. Yes, I did.

Q. Why did you so consider them?

A. Because they had full charge of giving out the work and who they would give it to, and of laying off the girls or saying who would be called back.

Q. When you were working seasonally at Donnelly's, who told you what days to come to work?

A. The instructors.

Q. Did the instructors send girls home when work was low? A. Yes.

Q. Did your instructor ever keep you working when [fol. 6590] other girls were sent home? A. Yes.

Q. Could you give an instance of that?

A. At one time when I was working at hand sewing under Carrie Abrams, she was sending the girls home as they finished their bundles, so I thought, likewise, when I finished my bundle I would be sent home. So, when I finished mine she said, "You don't want to be sent home, do you?" So, she brought me more work.

Q. Could an instructor get a girl transferred to her section?

A. Yes.

Q. Do you know of such an instance?

A. Well, the one time—at this one particular time Mrs. Bogart, in dividing, had asked for me and had me sent to her section.

Trial Examiner Batten: Now, the last two questions—there is no time set on either of those instances.

By Miss Weyand:

Q. What year did this incident with Mrs. Bogart occur?

A. In 1937.

Q. In reference to when, with Carrie Abrams?
A. That would be an earlier date than 1937.

By Trial Examiner Batten:
Q. Well, when?
A. I'm sorry— That possibly was 1934.
[fol. 6591] Q. 1934?
A. Yes, it must have been.

Trial Examiner Batten: Well, I think that certainly is beyond the time involved. It may be stricken.

By Miss Weyand:
Q. I want to ask: Did that condition with regard to the instructors' duties continue unchanged during the entire time you were working for the Donnelly Garment Company?
A. Yes.

Trial Examiner Batten: The incident in 1934 may be stricken.

By Miss Weyand:
Q. If a girl did not make her guarantee was she notified of that fact?
A. Yes.
Q. Who notified her?
A. The instructor. Sometimes they were called to the office, but most generally the instructor told them.
Q. Where did the instructors eat?
A. Well, after 1937 there was a little room built at the end of the cafeteria and the instructors ate in that little room.
Q. And before 1937 where did they eat?
A. Well, —

Mr. Reed: I think that is going far afield. It is rebuttal of nothing.

[fol. 6592] Trial Examiner Batten: She may answer.

By Trial Examiner Batten:
Q. Before that time where did they eat?
A. The cafeteria was on seven, and it was the first few tables that they usually sat at.

By Miss Weyand:

Q. Who besides the instructors ate in this room established in 1937, thereafter?

A. The thread girls, and sometimes Mr. Baty—

Mr. Reed: I can't hear.

Trial Examiner Batten: The thread girls and sometimes Mr. Baty, did you say?

The Witness: Yes.

Trial Examiner Batten: Will you please keep your voice up?

By Miss Weyand:

Q. Where did Mrs. Tyhurst eat?

A. In this room with the instructors.

Q. Did Mr. Boozell ever work in the hand sewing section with you?

A. He did not.

Q. Do you know Mr. Weaverling?

A. Yes, I do.

Q. Did he ever work in the hand sewing section with you?

A. No.

Q. Did Rose ~~Todd~~ work in the hand sewing section during May 1937?

[fol. 6593] A. She did not.

Q. What was Helen Little's position in 1937 and 1938?

A. She was the instructor over the notions department.

* * * * * * *

By Mr. Langsdale:

Q. Pursuing that eating arrangement, did you ever see Rose Todd eating lunch?

A. Yes.

Q. Where did she eat?

A. She ate in that little room and at various places up on the floor of the cafeteria.

* * * * * * *

[fol. 6594] Trial Examiner Batten: Miss Weyand, the other day you said you thought you would take 2 days, and in an informal conference before recess Mr. Langsdale spoke about a number of witnesses. Now, what are your plans, Miss Weyand?

Miss Weyand: At the time I made the statement, I had no idea a couple of the witnesses would be cross-examined with the great length and consume the amount of time that was taken. I am very certain it won't take very much longer after this witness is completed. I would not want to make a statement, until she finishes her evidence, as to whether I have two, three or four witnesses, or perhaps no more witnesses.

Trial Examiner Batten: Mr. Langsdale, what did you mean by your statement? You realize, don't you, that you are under the same restrictions as Mr. Tyler. I asked you to cooperate with Board's counsel, and certainly I am not going to permit an unlimited amount of witnesses here.

Mr. Langsdale: Well, the witnesses in this case have so far been all Board's witnesses. I haven't put on any witnesses whatever. Whatever witnesses are put on will be the Board's witnesses. I haven't conferred with Miss Weyand about how many more witnesses she is going to put on. I would say that I don't know how long the cross-examination of this witness will take, but I would say that at 2 o'clock we ought to be able to make an announcement.

Trial Examiner Batten: Well, of course, I think that [fol. 6595] you certainly are approaching the point where I am inclined to tell you that I am not going to listen to any more witnesses.

Now, if you want to be prepared, both of you, to advise me at 2 o'clock, I will pass on it at that time.

* * * * * *

Cross-Examination.

By Mr. Hogsett:

Q. Mrs. Stevens, I want to go to the subject of the reason for the formation of the Donnelly Garment Workers' Union. Did fear have anything to do with that?

A. Not to me, it didn't.

Q. Were you in touch, through the press and otherwise, with the announced plan of the International Ladies' Garment Workers' Union, to organize the Donnelly plant?

A. Well, yes.

Q. You remember, do you not, that as of November 9, 1936, the general executive board of the International in Washington,—that is, Mr. Dubinsky, Mr. Antonini, Mr.

Katowsky, Mr. Feinberg, Mr. Levy, Mr. Cohen, and Mr. Perlmutter, and the other high officials of the International, formally announced their intention in the early future to organize every plant in the United States that was unorganized, and that, for the particular purpose of concentrating on the Donnelly Garment Company plant, they were going to open a special office in Kansas City? You remember that in the press, don't you?

[fol. 6596] A. Something to that effect.

Q. Then you recall, as of February 26, 1937, that Mr. Perlstein, who in the press was identified as Southwest Regional Director of the International announced formally the intention of the International to organize the Donnelly employees, and that as soon as they had enough members they would call a strike in the Donnelly plant? Do you remember that?

A. Something to that effect.

Q. Now, that preceded by just 4 days the passing from section to section of the document dated March 2 which you say you signed?

Mr. Langsdale: What preceded?

Mr. Hogsett: The Perlstein announcement.

Mr. Langsdale: The article of March 26 — I mean February 26?

Mr. Hogsett: That is right, February 26.

Trial Examiner Batten: Well, what you are asking the witness is if that is correct.

Mr. Hogsett: If she does not recall the passing of this paper from girl to girl through the section followed just 4 days after Mr. Perlstein's announcement of an intention to call a strike as soon as the International would get enough employees.

By Mr. Hogsett:

Q. Don't you remember that?

[fol. 6597] A. I know it was just before this petition was signed.

Q. Now, you recall, do you not, the speech reported in the press as having been made by Mr. Dubinsky in Kansas City on March 6, wherein substantially he said that "In a

few days Reed —" meaning Senator Reed — "would receive a polite letter from the International, demanding a conference, and that if he failed to answer this, the International would start its campaign"? Do you remember that?

A. Not definitely.

Q. I am substantially quoting the language to aid you, if it does aid you. Do you remember something to that general effect?

A. Something about it, but not just definite facts. Something to that effect.

Q. I have substantially given it as you remember reading it, is that right?

A. Well, yes.

* * * * * * *

By Mr. Hogsett:

Q. Now, were you, at that time, that is to say in February and March of 1937, contented with conditions in the plant?

A. Yes, I was.

Q. Did you want any outside organization calling a strike in that plant then?

[fol. 6598] A. I perhaps hadn't given it a thought.

Q. As you now look at it; if you were contented, as you say you were, was your mental condition such at that time, as you now look back at it, that you wanted Mr. Perlstein or anyone else representing this organization, to call a strike in your plant? Did you want that?

A. A strike would have to have a purpose, and that purpose would make the reason.

Q. Well, I am throwing the thing wide open. Did you want a strike called in that plant for any purpose or any reason on earth? A. Well—

Trial Examiner Batten. At that time?

By Mr. Hogsett:

Q. At that time?

A. Well, no, it wasn't necessary at that time.

Q. There wasn't a single grievance that you knew anything about, that any employee had with that company, was there? A. That I couldn't answer.

Q. I am also talking about that time—

Trial Examiner Batten: That you knew of?

By Mr. Hogsett:

Q. Did you know of a single grievance that any one of the employees at that plant had at that time against the Donnelly Garment Company?

A. At what date are you speaking?

Q. I am speaking of the time in February and March of [fol. 6599] 1937 when these two statements were made, one by Mr. Perlstein and the other by Mr. Dubinsky?

A. Well, there was no reason for a strike at that time.

Q. None in the world that you knew anything about, was there?

A. Not that I knew about.

Q. All right. This meeting of March 18—no, strike that, please.

Did you know that in fact the International, through Mr. Perlstein and Mrs. Wave Tobin did, in fact, write a letter, dated March 9, to the Company, demanding a conference for the purpose of a discussion of collective bargaining through the International? You learned of that too, didn't you?

A. Something to that effect.

Q. And that letter you say—I don't know that you said it, I don't believe you did—but that letter was read at the meeting of March 18, was it not, at which Mrs. Reed made a speech? A. I don't remember.

Q. Very good. Now, do you know from the press of the campaigns or drives that the International was making against the Gernes Garment Company, the Gordon Brothers Manufacturing Company, and the Missouri Garment Company, in March and April of 1937?

A. Yes, I did.

Q. The fact was that those strikes, or those drives, I will say, against those three plants were of such a char- [fol. 6600] acter that they became front page news in the Kansas City papers and remained front page news for about a month? Isn't that right? A. Yes.

Q. Did you note from those day by day records in the press what was going on down there? A. I did.

Q. Pardon me, I haven't finished. That the International pickets were kicking, and beating, and pulling the

hair, and tearing the clothes of employees seeking to enter those plants? You saw that, didn't you?

Mr. Langsdale: Just a minute there. Read the question.

Trial Examiner Batten: You mean she saw the articles, or saw the hair pulling?

Mr. Hogsett: In the paper, saw the accounts of it in the paper.

A. I did.

By Mr. Hogsett:

Q. Did you also see in the paper that 60, approximately 60, of those strikers moved into the entrance, the common entrance, into those three plants, and arranged a sit-down strike and remained there for about 3 days, until, because of sanitary conditions, the Health Department forced them to move? Do you remember reading that?

A. No, I don't recall that.

Q. Didn't you? All right. Did you not see pictures of the sit-down strikers, with their cots in the entrance of [fol. 6601] those plants? A. I don't remember that.

Q. I beg your pardon? A. I don't remember that.

Q. As a garment worker, you did, however, did you not, read with reasonable care the day by day chronicle of these events as they appeared in the press?

A. Yes, I was concerned, more or less. I had a daughter that was working in the Gernes plant at that time.

Q. Yes, ma'am, in the Gernes plant, you had a daughter? A. Yes, sir.

Q. Was that daughter allowed to work? A. Yes.

Q. Did she run through the picket lines?

A. She came up out in front: Mr. Gernes came out and got them and took them in. She went through it without a scratch.

Q. She got through without a scratch?

A. The whole time.

Q. Now, you say the whole time. As a matter of fact, finally they had to quit work, didn't they, at those plants?

A. Well, while Mr. Gernes was negotiating, they didn't work.

Q. Oh well, yes, and for some time before he started negotiating, they were put in such a state that they couldn't work, isn't that a fact?

A. No, I don't remember that, exactly.

[fol. 6602] Q. Did your daughter report to you that she had to pass through lines of pickets with police following and by force holding these pickets away from the employees? Your daughter, your own daughter told you that, didn't she?

A. She was not so very concerned. She seemed to take it as a laughing matter.

Q. It was a joke with her?

A. She would look out the windows and look down. She wasn't so worried.

Q. She wasn't? Well, did she tell you of the fact that she had to go through lines of pickets, that were being restrained by police?

Mr. Langsdale: Just a minute. I object to that as an assumption—assuming in his question that that is a fact.

Trial Examiner Batten: Well, the question to the witness is, did she tell you that?

Mr. Langsdale: He said, did she tell her the fact.

Trial Examiner Batten: The question to the witness is, did your daughter tell you that?

A. That they went through these pickets or whatever they were?

By Mr. Hogsett:

Q. And that the police were there, restraining the pickets or attempting to restrain the pickets? She told you that? A. I don't remember.

[fol. 6603] Q. For how many days or weeks, as the case may be, did your daughter report that she was going to work in that plant under those conditions?

A. I couldn't say how many days.

Q. I don't ask for an exact statement, but an approximate statement. Wasn't it nearly a month?

A. It could be.

Trial Examiner Batten: Under what conditions?

Mr. Hogsett: Under the conditions that the daughter described, where she would go through pickets being held back by police.

Mr. Langsdale: You are assuming the daughter described that. She said she didn't remember any such description from her daughter at all.

Trial Examiner Batten: I think the record will indicate what the witness testified to, and Mr. Hogsett said "under the conditions described by the witness". So let's proceed.

By Mr. Hogsett:

Q. Now, did you also read in the press an announcement over the name of Mr. Perlstein in relation to the Gernes, Gordon, and Missouri plants, that these manufacturers either will sign a union contract or they will never again manufacture dresses? Did you read that?

A. I don't recall.

Q. You don't recall that? You know, did you not, that the announced plan of Mrs. Wave Tobin and other Interna- [fol. 6604] tional representatives was that the Donnelly plant was next on the list, and that when they got down to the Donnelly plant, the methods used there would be the same as those used at the Gernes, Gordon, and Missouri drives? You heard that, didn't you?

Mr. Langsdale: I object to that as assuming that Wave Tobin or anyone else ever said such a thing at all.

Trial Examiner Batten: Well, of course, the question to the witness is whether she knew that or not.

A. I don't remember that.

Mr. Hogsett: You don't remember that. In any event, the formation of the Donnelly Garment Workers' Union occurred on April 25—

Trial Examiner Batten: 27th.

Mr. Hogsett: 27, 1937, at the time—at a time when this violence had been going on at the three other plants for weeks, and it was still continuing.

Mr. Langsdale: Just a minute. I object to that. There is no such evidence. That isn't a fact.

Mr. Hogsett: Mr. Langsdale, will you kindly not suggest to the witness anything, please. If you have an objection,—

Mr. Langsdale: I am objecting to his assuming that there was any newspaper article or anything else, or any word of mouth or any other sort of information that these strikes were going on as late as the 27th day of April.

[fol. 6605] Mr. Hogsett: What is the fact? I don't care whether it was a few days before or what.

Trial Examiner Batten: Will you read the question to the witness, please, Mr. Reporter?

(Thereupon the last question was read by the reporter, as follows:

"Q. In any event, the formation of the Donnelly Garment Workers' Union occurred on April 27, 1937, at a time when this violence had been going on at the three other plants for weeks, and it was still continuing.")

Trial Examiner Batten: You may answer.

A. Well, it was just after—

Trial Examiner Batten: What was your answer?

A. It was just after the trouble at the Gernes and Gordon plants.

By Mr. Hogsett:

Q. All right. How soon after?

A. I don't remember.

Q. Shortly after, within a few days afterwards, three or four or five or six days?

A. Maybe a week or two.

Q. A week or so, or two? A. A week or two.

Q. You say, do you, that fear, personal fear of personal violence to you, played no part at all in your choice to belong to the Donnelly Garment Workers' Union, and help organize it?

[fol. 6606] A. Absolutely not.

Q. You were entirely fearless, were you, about the matter? A. I had no fear of it.

Q. By the way, what was your husband then, an organizer for the union?

Mr. Langsdale: I object to that as incompetent, irrelevant and immaterial.

Trial Examiner Batten: Just a moment, Mr. Hogsett. I am not going to permit the witness to answer that question. I think Mr. Langsdale wanted to examine one or two of the respondent's witnesses along that line. I think Mr. Tyler or Mr. Lane, the other day, wanted to proceed on this. I don't believe I am going to permit an examination of these married women as to their husbands or their businesses. I think I stated in the first instance that in this day and age I think a woman has a certain degree of independence, and her husband's views can't necessarily be attributed to her.

Mr. Hogsett: Your Honor, I would agree with that, but I think that there is here a distinction; that is to say, that this is cross-examination and that without suggesting to the witness the exact reason why I think this is pertinent, I think that Your Honor will see on reflection that these answers that she has given make this particular question a pertinent one here, even though you may have excluded it elsewhere.

Trial Examiner Batten: No, I am not going to relax on [fol. 6607] it, Mr. Hogsett.

Mr. Tyler: Mr. Examiner, we feel that while your position is correct as to the ordinary case, where the husband's position would be one which is wholly occupied with the promoting of a certain view, that might affect the witness.

Trial Examiner Batten: I don't think so. If I did, I would be in a position where I would have to say, then, that Senator Reed's views would necessarily have an effect upon Mrs. Reed, and I think I have taken the position in this hearing, right from the beginning even in July and June of 1939, when Mrs. Reed hadn't testified and Senator Reed wasn't even here, I took the position then that I didn't think that what Senator Reed said or did necessarily would reflect Mrs. Reed's views in the management of her business, and I still contend that my position then and my position now, with respect to the husbands of these people, is correct.

Mr. Hogsett: May we have leave of Your Honor to make a written offer of proof on this subject?

[fol. 6608] Trial Examiner Batten: Let's have the offer of proof here.

Mr. Hogsett: We offer to prove that the witness on the stand that at the time concerning which she has been testifying, namely, in February, March, and April, 1937, and continuously up to the present time, her husband then was and at all such times has been and is now an organizer for a labor union.

Trial Examiner Batten: Well, I'll reject the offer on the basis of what I have just said.

Mr. Hogsett: Yes. Mr. Ingraham says that we desire now to make a similar offer of proof in relation to Geneva Copenhaver.

[fol. 6614] Cross-Examination

By Mr. Tyler:

Q. You were shown some minutes of the meeting of March 18—

Mr. Langsdale: Not March 18.

Mr. Tyler: May 25.

By Mr. Tyler:

Q. (Continuing) —of May 25, I think, by Miss Weyand, and you read them and said, if I remember correctly, that they were substantially correct. Is that correct; was that your answer—or substantially correct? A. Yes.

Q. When did you first see those minutes?

A. Possibly a couple of weeks ago.

Q. And that was the first time in your life you had ever seen those minutes? A. Yes.

Q. The minutes of the meeting described as about 5 years ago? A. Yes.

[fol. 6617] Q. Do you know who wrote those minutes that you identified or that you were shown? A. I do not.

Q. Were you ever told that Elsa Graham Greenhaw wrote those minutes?

A. I believe I've heard her name mentioned.

Q. And you have been told that she wrote those minutes, haven't you?

[fol. 6618] A. Perhaps so.

[fol. 6619] Mr. Tyler: Did you know before that there were two sets of minutes for that meeting?

A. I was told that there was.

Mr. Reed: Who told you?

Mr. Tyler: You say you were told—

Trial Examiner Batten: Now, Senator, let's have one at a time.

Mr. Reed: I was trying to talk to Mr. Tyler.

Trial Examiner Batten: But I could hear you plainly, Senator.

All right, Mr. Tyler.

Mr. Tyler: I think the witness said when she was told, but I'm not sure.

By Mr. Tyler:

Q. Will you tell us when you were first told that there were two sets of minutes?

[fol. 6620] A. Last week sometime, I believe.

Q. And by whom?

A. Well, Miss Weyand and— I believe she was the only one who mentioned it to me.

Q. Were you shown this set of minutes at that time, that you now have in your hand? A. Yes.

Q. And you read both sets of minutes at that time, did you? A. Yes.

Q. Do you know who Marjorie Green was?

A. No, I don't.

Q. Didn't you know that she customarily kept minutes for the Donnelly Garment Workers' Union?

A. I did know the faces of them then, but I don't remember the names.

* * * * * * *

Q. Did you state what your present occupation is, Mrs. Stevens, in the record? A. No, I didn't.

Q. What is it?

A. Well, I am an employee of the Marguerite Kerr dress shop.

Q. How long have you worked there?

A. Since November of 1941.

[fol. 6621] Q. You are a member of the International Ladies' Garment Workers' Union? A. Yes.

Q. Do they have a closed shop at that plant?

A. Yes, they do.

* * * * * * *

[fol. 6623] Trial Examiner Batten: Miss Weyand, can you tell me any more about your plans, you or Mr. Langsdale?

Miss Weyand: Well, I can't say until we finish with this witness, whether I will have another witness or not. Possibly I will not. I don't know.

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[fol. 6625] By Mr. Tyler:

Q. Mrs. Stevens, it is not my purpose to argue with you about what a closed shop is, but I want to be clear about what you feel that it is. Is it your understanding that in a closed shop, regular employees have to belong to the union in order to hold a job in that shop?

A. Yes, sir.

Q. When did you start working at Mrs. Keyes' plant?

A. In November of 1941.

Q. What is the name of that plant?

A. Marguerite Keyes.

Q. Incorporated?

A. Yes, sir.

Q. Marguerite Keyes, Incorporated?

A. Yes.

Q. In November of 1941?

A. November 1941.

Q. And what position have you held since you have worked there?

A. Well, I don't— I work there as an operator steady; [fol. 6626] and I have inspected, and at present I help out over the machines and over the materials and in the cutting department and just any place where I am needed.

Q. You have been an inspector there, have you?

A. Yes, sir.

Q. From what date to what date, about?

A. Well, say, from the first of January until possibly the last of March.

Q. 1942?
A. Yes.

* * * * * * *

By Mr. Tyler:
Q. Have you had any other job with Marguerite Keyes?
A. No.
Q. You have been an instructor?
A. Not in that capacity, of instructor.
Q. Have you done the work of an instructor?
A. Maybe, various times.

* * * * * * *

[fol. 6627] By Trial Examiner Batten:
Q. Miss Witness, you said, "maybe." What did you mean when you said, "maybe"?
A. I don't remember where I used that.

Trial Examiner Batten: Mr. Reporter, will you read back to the question, "Have you done the work of an instructor?" I think the witness said, "maybe."

(Thereupon the question requested and answer thereto were read by the reporter, as follows:

"Q. Have you done the work of an instructor?
"A. Maybe, various times.")

By Trial Examiner Batten:
Q. What did you mean, maybe?
A. The work I did maybe would have been classed as inspector work or instructor's work.
Q. What work do you mean?
A. Well, that would be maybe showing a girl about a certain class of work or something. I believe that would be an instructor's duty. I have done that at times.

* * * * * * *

[fol. 6628] Q. Do they have a head cutter in that factory?
A. Yes, they do.
Q. They have what they call a head designer?
A. Well no, not at the present time.
Q. When did you join the International Ladies' Garment Workers' Union, Mrs. Stephens?
A. In August, 1941.
Q. Have you been a member of it ever since?

A. Yes, sir.
Q. Continuously?
A. Yes, sir.

[fol. 6629] By Mr. Tyler:
Q. Have you been the chairwoman of the local International organization in that plant?
A. Yes.

Q. When did you begin to be chairwoman there?
A. Well, shortly after entering the shop, possibly a month later.
Q. About the end of 1941?
A. I believe so.
Q. And you were chairwoman until what date?
A. I believe it was in March.

By Trial Examiner Batten:
Q. 1942? A. In '42.

[fol. 6630] Q. Mrs. Stephens, I show you Board's Exhibit 1-RRRR, which is an offer of proof by the intervener, and on the first page of signatures, in the first column, I show you what appears to be your name. Is it the fourth name from the bottom, is that your signature?
A. It is.
Q. Now, I am going to read you — you may read it if you desire, and I would like to have you read the whole thing. But before you do, I am going to call your attention to one or two sentences, beginning on the second page:

"That the undersigned had all seen or heard of articles in the newspapers concerning the strikes at Gordon, Gernes, and Missouri; that as a result of this information the attitude of mind of the undersigned parties and of the employees of the company in general was one of apprehension and uneasiness and fear, that the employees of the Donnelly Companies would be shortly subjected to similar violence and intimidation, to that which they understood, and believed was being carried on in connection with the Gordon, Gernes, and Missouri strikes; that such state of

mind and apprehension was one of the causes of the action of employees in ratifying and in approving the action of [fol. 6631] certain employees in employing legal counsel in connection with investigation as to whether an injunction could be secured, giving the Donnelly companies legal protection against such anticipated violence."

Was that statement as to yourself true or false when you made it?

A. If I made it, — well, that isn't my belief, so it would be false.

Q. Was it false at the time you made it?

A. I don't know that I made it.

Trial Examiner Batten: You mean at the time she signed it, is that what —

A. At the time that was signed.

Mr. Tyler: I think that is the time she made the statement.

By Mr. Tyler:

Q. I will ask you to note the last paragraph, which says:

"The undersigned state that they are members of the Donnelly Garment Workers' Union, and joined said union and have at all times since remained members thereof solely of their own free will, choice and preference, and that they have not been influenced by any threats, coercion or pressure of their employer or any representative of said employer, and that they have no knowledge of any incidents in which the employer or any representative of the employer has exerted pressure, intimidation, coercion or [fol. 6632] any other influence upon the undersigned or any other employees to join the Donnelly Garment Workers' Union, or to stay out of any other labor union."

Was that true or false at the time you made it?

A. It was false.

Q. At the time you made it it was false, is that your answer?

A. As to my state of mind about it.

Q. In spite of your testimony on direct and cross, you now say that you had no feeling of fear or apprehension in respect to violence whatever?

Mr. Langsdale: What do you mean, "In spite of testimony on direct and cross"? She said she had no fear.

Trial Examiner Batten: The question to the witness now is whether or not she had any fear or apprehension at that time.

Mr. Tyler: At the time she made it.

Trial Examiner Batten: At the time you signed this document.

A. Yes.

By Trial Examiner Batten:

Q. What is your answer?

A. I did not.

By Mr. Tyler:

Q. When you stated this morning that you went along with the Donnelly Garment Workers' Union at the beginning because you thought it would mean your job, did you mean that you believed that at that time you would be discharged if you had not joined?

[fol. 6633] A. Yes, that is what I believed.

Q. What did you base that belief on?

A. The Fern Sigler incident.

Q. Did you believe that the overwhelming majority of the employees wanted this union and would get a closed shop contract, and for that reason you would have to join or lose your job?

Mr. Langsdale: Just a moment. Will you read that question?

(Thereupon the last question was read by the reporter.)

Mr. Langsdale: I object to the question as being double-barreled, whether she believed that the overwhelming majority wanted a union, and the other is that they would get a closed shop. Her answer might be to one or the other.

Mr. Tyler. I think they both have to go together if they make a reason for feeling that she might lose her job.

By Trial Examiner Batten:

Q. Do you understand the question?

A. I believe I do.

Trial Examiner Batten: You may answer it.

A. No, not in that sense of the word, about the overwhelming majority. It was because that we went in that meeting unprepared, and they just as much as forced us to join it.

By Mr. Tyler:

Q. What do you mean by "just as much as forced you to join it"?

A. We were handed cards and they told them to count [fol. 6634] them and see that every card was accounted for and handed back.

Q. And the fact that the cards were accounted for, in your mind, means that you were forced to join?

A. Yes.

Q. Weren't you told in that meeting that you were to do as you pleased; and nobody was to sign a card that didn't want to, or if anybody wanted to think is over, he was to keep it?

A. Perhaps so, but we knew differently.

Q. I show you intervener's exhibit 20-A to KK on page 6090 of the record, and show you what purports to be your signature, as being the sixth from the bottom in the left-hand column, and ask you if that is your signature.

Trial Examiner Batten: That is intervener's 20, rejected?

Mr. Tyler: No. 20, rejected; the page in the record is 6090.

By Mr. Tyler:

Q. Will you read the statement above the signature?

A. Well, even this first and second part was not my wish.

Q. You have said you signed it?

A. Yes.

Q. Was that statement true or false when you signed it?

A. It was false, because it wasn't my free wish to join it, or what I chose to do of my free will.

Q. You understood that you swore to it at that time?

A. Yes, but it wasn't my wish, because I called the [fol. 6635] Ladies' Garment Workers that night and had them come out and signed the other card, the one that was of my own free choice.

Q. When did you again talk with the International Ladies' Garment Workers' Union? A. That night.

Q. You had never been in touch with them before?

A. No, I called them immediately upon going home.

Mr. Hogsett: What date is that?

A. I believe I didn't make myself clear. The night the company union was formed, that was not my free wish, joining the Donnelly Garment Workers Union, because upon going home that night, April 27, I called the Ladies' Garment Workers' Union and signed a card that night.

Mr. Tyler: And that was the night of the signature that you appended to this instrument?

Mr. Langsdale: No, you don't get it.

Trial Examiner Batten: She said the April 27—April 27, she called up the union.

By Mr. Tyler:

Q. On April 27 you called the union, that night?

A. Yes, sir.

Q. And obtained a card from them and signed it?

A. Yes.

Q. And on July 14, 1941, is that is the correct date of this instrument, you swore to a contrary set of facts, did [fol. 6636] you not? A. Yes.

Trial Examiner Batten: What was your answer?

A. I said—

Miss Weyand: I believe you read the date of the notary's commission expiring instead of the date on which this was signed.

Mr. Hogsett: I have a little too much advice here.

Mr. Langsdale: Not enough.

Mr. Tyler: The 2nd of June, 1930.

Miss Woyand: 1939.

Mr. Tyler: Did you talk with your husband before you called the International representative on the night of the organization meeting?

Mr. Langsdale: I object to that as immaterial. It doesn't prove—tend to prove or disprove any issue in the case.

Trial Examiner Batten. Sustained.

By Mr. Tyler:

Q. You stated you couldn't find out what Rose Todd did. Whom did you ask in your endeavor to find out what Rose Todd did?

A. Oh, girls in my section and various ones that I came in contact with.

Q. What ones? A. Well—

Trial Examiner Batten: Can you give us the names of any people?

[fol. 6637] A. I don't believe I can give any definite names now, as I asked several at that time.

Mr. Tyler: None of them knew she was a thread girl?

Mr. Langsdale: Just a moment. I object to that as assuming she ever was a thread girl.

Trial Examiner Batten: It may stand. The answer was no.

By Mr. Tyler:

Q. You stated you paid 50¢ towards attorney's fees sometime in May, I believe? A. Yes, sir.

Q. To whom did you pay that?

A. To the representative in my section.

Q. What was her name, do you remember?

A. Neva Reason.

Q. And you remember the place you paid it to her, the place you were? A. In the section.

Q. Did you attend a meeting toward the end of March in which a large number of employees contributed 50¢ toward the attorney's fees? A. I did not.

Q. You knew a substantial number of employees had contributed sometime before you did, didn't you? A. No.

[fol. 6638] Q. You had never been told that? A. No.

Q. Does the chief cutter belong to the union, at the Marguerite Keyes, Incorporated, plant? A. Yes, sir.

Q. Is the correct name "head cutter" or "chief cutter"? A. We only have one.

Q. Which do you call him, "head" or "chief"?

A. Just a cutter.

Mr. Langsdale: What was the answer?

A. Just a cutter.

* * * * * * *

Trial Examiner Batten: Miss Weyand?

Miss Weyand: I wanted to offer this in evidence: the membership card. I would like to have it marked as Board's exhibit No. 40, for identification.

Trial Examiner Batten: Board's Exhibit 41, you mean.

(Thereupon the membership card above referred to was marked as "Board's exhibit No. 1, Witness Stevens," for identification.)

Redirect Examination

Miss Weyand: Mrs. Stevens, I hand you Board's exhibit 41, for identification, and ask you to say when you received that card. A. April 28, 1937.

Trial Examiner Batten: April 28, 1937?

Mr. Reed: I couldn't hear her.

Miss Weyand: How did you happen to receive that card?

[fol. 6639] A. By signing an application card the evening before.

Q. Did you pay any amount when you signed the application card the evening before? A. Yes, I did.

Miss Weyand: I offer this in evidence as Board's exhibit 41.

Trial Examiner Batten: If there is no objection, it will be received.

(The membership card heretofore marked "Board's Exhibit No. 41, Witness Stevens," for identification, was received in evidence.)

* * * * * *

Recross Examination.

By Mr. Langsdale:

Q. Mrs. Stevens, you stated that when you got away from the Donnelly Garment Company on the evening of [fol. 6640] the 27th of April, 1937, after you had signed the Donnelly Garment Workers' Union card, you called the International Ladies' Garment Workers' office?

A. As soon as I got home, I called.

Q. And did you get someone on the telephone then?

A. Yes, I did, someone in the office.

Q. And do you know who it was?

A. No, I couldn't say now who it was.

Q. Did you meet a Miss Jane Palmer?

A. She is the one that came to my house that night.

Q. And did you tell her that you had just signed the Donnelly Garment Workers' Union card?

A. Yes, sir.

Q. And that you wanted to join the I. L. G. W. U.?

A. Yes.

Q. You got this card the next day? A. Yes.

Q. Now, I believe you state that at the Keyes shop they have just one cutter?

A. I didn't understand that.

Q. Just one cutter at the Keyes shop?

A. Yes, sir, just one.

Q. He has no one working under him?

A. He has a spreader.

Q. A spreader?

[fol. 6641] A. Yes, sir.

Q. But no other cutter? A. No.

Trial Examiner Batten: What do you mean by a spreader? One who spreads out the goods on the table?

A. The material on the table.

* * * * * *

[fol. 6642] Q. Who stamped this card for you, if you know?

A. It was delivered to me by Miss Palmer. I don't know.

Q. Where was it delivered to you, if you remember?
A. At my home.
Q. And what time of day? A. In the evening.
Q. After you had gotten home from Donnelly's?
A. Yes.
Q. Now, you stated that you paid the 50¢ in May, 1937, to the representative in your section whom you named. What did you mean, "the representative"?
A. The Loyalty League representative, I believe.
Q. You stated that you were—you were asked a question, and stated that you didn't know Mrs. Greenhaw had refused to sign the March 2 document, and that she was not discharged. Did you know that Sylvia Hull refused to sign it, and she was subjected to the demonstration of April 23? A. Yes, sir.
Q. There was some question asked you about busses being furnished by the Donnelly Garment Company in March or maybe part of April, 1937. Had there been any demonstration by the I. L. G. W. U., of any kind or character, around the Donnelly plant at the time these busses were used?
A. No, there hadn't been.
Q. These strikes that were going on were at 26th and [fol. 6643] Walnut, and 26th and Grand?
A. Yes, sir.
Q. Is that true? A. Yes.
Q. And the Donnelly plant was where?
A. At 19th and Walnut.
Q. 19th and Walnut. So it was eight blocks from the Donnelly plant where the strikes were going on?
A. Yes, sir.
Q. Is that a built-up part of the city? A. Rather, yes.
Q. And congested? A. Very much.
Q. There was 8 blocks that separated the plants. Now, did you see any reason for having busses picking up the Donnelly workers and bringing them to the plant, and taking them home, at the time that was done?
A. I did not.
Q. There was no I. L. G. W. U. pickets around the Donnelly plant? A. No.
Q. None ever had come there, had they, to your knowledge? A. No.

Q. Did you know why the Donnelly Company was hauling their employees back and forth in busses at a time [fol. 6644] when there was no demonstration, no violence of any kind or character?

A. To create a fear, I suppose.

Mr. Tyler: I move that be stricken out as a conclusion. She says "she supposes". That means she doesn't know.

Trial Examiner Batten: I think it is clearly a supposition, but it may stand.

By Mr. Langsdale:

Q. What did you mean by that, Mrs. Stevens?

A. Well, to keep an agitation among the girls.

Q. That is, you thought the Donnelly Company was doing it for that purpose? A. I do.

Mr. Tyler: We object to this whole line of questioning. It is obviously based on a supposition of this witness. She said she didn't know but that she supposed. It is improper for her conclusion to be admitted in evidence.

Trial Examiner Batten: It may stand.

By Mr. Langsdale:

Q. Well, was that your feeling about the busses, Mrs. Stevens? A. Yes, it was.

Q. Did you feel any fear or necessity to ride in busses?

A. No, I didn't.

Q. Did you feel, in the spring of 1937, that you had a right to belong to any labor union that you might choose? A. Yes, I did.

* * * * * * *

[fol. 6646] By Mr. Langsdale:

Q. You joined the I. L. G. W. U. on April, and signed an application April 27, 1937? A. I did.

Q. Did you let anyone connected with the Donnelly Garment Workers' Union or the Donnelly Company know that you had joined?

* * * * * * *

A. No, I sealed it and placed it in the safety box.

* * * * * * *

[fol. 6647] Recross Examination (Resumed)

Mr. Hogsett: Mrs. Stevens, as I have caught your testimony, it appears that for about 4½ years, that is from April, 1937, until sometime in the summer or fall of 1941, I think November, you were off and on member of two unions, the Donnelly Garment Workers' Union and the International Ladies' Garment Workers' Union. Have I caught that straight? That is right, isn't it?

A. Yes, sir.

* * * * * * *

[fol. 6648] Q. May I have that card again, please? You say that this exhibit, Board's exhibit 41, is the card you took out on the International on April 28, 1937? You just paid the dues for one time, and then sealed it up and put it in a safety deposit box, and paid no more dues on that card? Have I caught that part of your testimony correctly?

A. Yes, sir, that is correct.

* * * * * *

By Mr. Hogsett:

Q. Did you mean a safety deposit box?

A. No, just a steel box.

Q. What was your point or reason in taking out this card in April of 1937, and paying dues just once, and then sealing up the card? Were you making some kind of evidence, or were you really joining the union with the view of being a member? Which was it?

A. Joining a union and being a member, but you don't [fol. 6649] pay dues to two unions, and the Ladies' International Garment Workers' Union—

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[fol. 6650] Q. Well now, let's see. You did join the union again? Or maybe I haven't that correctly—what did Mr. Langsdale ask you about August, 1941? Didn't you say you joined again then? A. Yes.

Q. All right. Did you take out another card at that time?

[fol. 6651] A. Yes.

Q. Where is that?

A. I don't have it. The chairlady has it.
Q. You don't have it, the chairlady has it?

Trial Examiner Batten: The shop chairlady has it, I believe she said.

A. She does have it.

By Mr. Hogsett:

Q. When you took out that second card in August, 1941, did you seal that up and put it away? A. No, I did not.

Q. It was only this first card of April '37 that you sealed up after paying dues once, and put away in a box?

A. Yes.

Q. Now, I notice on this card, Board's exhibit 41, there is something here about steel workers' drive assessment, and a blank to show how much it would be. Now, how much was it?

A. I had nothing to do with that.

Q. Did you pay that assessment to help the steel workers?

A. I did not. That didn't concern us.

Q. Another blank is "Anti-Nazi Fund" and a blank for so much money. Did you pay that? A. I did not.

Q. And another one is "Joint Board Assessment" and a blank for so much money. Did you pay that assessment?

A. I did not.

[fol. 6652] Q. And still another one is "1932 convention assessment". That would be 5 years before you entered. Did you pay anything on that assessment?

A. I did not.

Q. And still another one is "1934 convention assessment" and a blank indicating dollars opposite that. Did you pay any part of that assessment? A. I did not.

* * * * * * *

By Mr. Hogsett:

Q. You paid one week's dues and no other dues, and no assessments at all, is that right? A. That's right.

Q. How much were the dues that you paid that week?

A. 35¢.

Q. And how much were these assessments that you did not pay? A. I don't know.

Q. You know what the total dues and assessments in the International were for that year, 1937?

A. No, I don't.

Q. As I recall from former evidence, it would have [fol. 6653] been something like $18.50. With that statement made by me to you, does that refresh your memory as to what it would be? A. I don't know.

Q. All right. Now, you say you began going to meetings of the International when you joined the second time. Was that what you said? A. Yes.

* * * * * * *

[fol. 6654] Q. Now, from the time you first took this card, in April 1937, in the International, were you from time to time passing to them information about conditions at the Donnelly Garment Plant for their use in litigation that began in July 1937?

A. I talked to them at various times.

Q. Yes. Now, approximately, for your information, that litigation began in the Federal Court here on the 5th of July, 1937.

Mr. Langsdale: You are talking about the injunction?

Mr. Hogsett: Yes.

By Mr. Hogsett:

Q. From that time on how frequently would you be talking to International representatives, as you say you did? A. There was no occasion to see them.

Q. Well, but you did say you did see them.

A. Only just very seldom, only once or twice a year.

Q. Who would you see once or twice a year during that time after the litigation started?

[fol. 6655] A. I might add, in the first year—I don't know when the preceding year—whether I saw any of them.

Q. Well, you understand, I am only concerned with the time that litigation began, that is to say, when these two parties became adversaries in Court, and I am telling you when that was, July 5, 1937. Now, from that time on, how often would you see representatives of the International regarding conditions at the Donnelly plant?

A. I didn't see them at all regarding conditions.

Q. Well, regarding anything.

Mr. Langsdale: Here, wait a minute. Let her finish her answer.

Mr. Hogsett: I think I did.

Trial Examiner Batten: Did you finish your answer?

The Witness: Yes, I did.

By Mr. Hogsett:

Q. Concerning what did you see them, from time to time, as you say you did?

A. I might just estimate that I saw them three or four times in the balance of the year, or something like that. It wasn't very often.

Q. That is three or four times in the balance of—

A. 1937.

Q. '37. Well, now, let's see. What was happening then in 1937? There was a hearing in July, before Judge Otis on the question of law, and no evidence was offered there. [fol. 6656] There was a hearing on the motion to quash service, and a good deal of evidence was heard November 1 to 8 or thereabouts, and there was a hearing before a three-judge court; with those instances in your mind, can you tell me what you were seeing them about three or four times in the latter half of 1937?

A. Nothing that concerned any of those things.

Q. I see. Well, whom did you see, Mrs. Stevens?

A. Only the organizer.

Q. Who was that? A. Jane Palmer.

Q. Where would you see Miss Palmer?

A. At my home.

Q. She would come to your home? A. Yes, sir.

Q. Would you send for her on those occasions?

A. No, she would drop by.

Q. What would she talk about with you on those occasions?

A. The drive—the union drive, and the girls in the shop.

Q. I am sorry I cut you off there; tell me again what Jane Palmer would talk to you about.

A. About the union drive, and about the girls in the shop, in the Donnelly shop.

Q. She did that about three or four times in the last half of 1937?

A. I would estimate three or four times.

[fol. 6657] Q. You would tell her what she wanted to know, would you? A. Yes.

Q. You knew you were talking to your employer's adversary at that time, did you?

A. I don't quite understand the question.

Q. I mean this: you knew the company and the International were opponents in a lawsuit?

Trial Examiner Batten: You have one question pending.

Mr. Hogsett: I wanted to restate it.

By Mr. Hogsett:

Q. Did you know at the time you were talking to Miss Palmer that your employer and her union, the people she represented, were opponents in Court? A. I did.

Q. You thought that was all right? A. Yes.

[fol. 6662] By Mr. Hogsett:

Q. I think I understood your answer to Mr. Tyler, but I want to be very sure about it. Did you tell him that when you signed this affidavit on the 2nd of June 1939, which he showed you and which appears on page 6690 of the record, that you knew that you were swearing to a false affidavit?

A. I did.

[fol. 6666] Q. In respect to the March 2 paper you signed—, Do you know what I mean by that; the one that was passed through the section that has been referred to here as the March 2 paper?

[fol. 6667] A. Yes.

Q. Mr. Langsdale asked you, apparently in an effort to show that you felt you had to sign that,—

Mr. Langsdale: I object to the argument as improper.

Trial Examiner Batten: I will sustain the objection as far as the "effort" is concerned.

By Mr. Hogsett:

Q. Well, at least in that connection, he asked you whether or not you didn't know that another girl who had failed to sign that or refused to sign that paper was Sylvia Hull and, "Look what happened to her." Do you remember that question he asked you? A. Yes.

Q. The fact is, the Sylvia Hull incident occurred some seven weeks after the March 2 paper was signed by the employees, didn't it?

* * * * * * *

[fol. 6668] A. The incident he referred to was at a later date than the signing of that, yes.

Mr. Hogsett: Exactly. And the Sylvia Hull incident and the Fern Sigler incident each occurred on or about April 23, 1937; isn't that right? A. Yes.

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[fol. 6669] Trial Examiner Batten: Mr. Langsdale,—The question is, whether or not either of these incidents, the Sylvia Hull or Fern Sigler incident, had anything to do with her signing this petition of March 2. A. No.

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[fol. 6671] How much violence did you think there should be before it would be in order, according to your judgment, for the company to hire busses?

Mr. Langsdale: That is objected to as argumentative. The witness has stated there wasn't any at the time these busses were used.

Trial Examiner Batten: She may answer.

Mr. Langsdale: It is asking for a speculative answer on the part of this witness.

A. That makes it hard for me to answer, my feeling about all of this, the outside union, and all about going through a picket line. Of course, I wouldn't be concerned about going through a picket line.

Mr. Hogsett: You never would go through a picket line; that is what you mean? A. I expect I wouldn't.

* * * * * * *

[fol. 6672] By Mr. Hogsett:

Q. According to your opinion, would busses have been needed at all, in the absence of actual violence at the doors?

A. No.

Q. Now, you did tell me on cross-examination that you had heard of the threats by International representatives that the Donnelly plant was next on the list and that the methods used there would be the same as those at the Gernes, Gordon, and Missouri plants? You told me that, didn't you? A. Yes.

Q. But according to your judgment, it wasn't necessary [fol. 6673] to get busses there until that threatened violence actually began?

A. There would be no difference in getting off a streetcar and going through it or getting off a bus and going through it.

By Mr. Hogsett:

Q. There would be this difference, wouldn't there, that the busses not only brought you to the corner, but they actually brought the employees into the Donnelly property, inside the property lines, and unloaded at the loading dock; isn't that right? A. It's still the same thing.

Q. Is what I have said correct? The Donnelly busses wheeled into—

Trial Examiner Batten: Wait a minute. Let her answer.

A. But they still had to get off the busses and go through some sort of procedure to get into the building.

By Mr. Hogsett:

Q. Let me ask you if the fact is that the Donnelly property lines included the space where the busses loaded and unloaded? Did they?

A. I am still to say whether they were needed or not?

Q. Oh, no, Madam. I am asking—

[fol. 6674] Trial Examiner Batten: The question is, where the busses were unloaded, was it on the Donnelly property? A. Yes, I believe it was.

By Mr. Hogsett:

Q. And of course the streetcars would be unloaded, normally, out on the street; isn't that right? A. Yes.

Q. From the time you joined the International the second time, which I think was August, 1941, you have paid dues to that organization regularly since then?

A. Yes.

Q. What do those dues run?

A. At that time they were 35 cents a week.

Q. How much in assessments do you pay?

Mr. Langsdale: I submit that this is not material to any of the issues in this case, and certainly it is not proper recross-examination. Nothing of that kind was gone into in this woman's testimony on direct.

Mr. Hogsett: Mr. Langsdale was the gentleman who suggested it.

Trial Examiner Batten: Ho? is it relevant, what her dues were?

Mr. Hogsett: I think there is this relevancy: If they are $18.20 a year, the dues, and in addition to that they pay assessments, that would mean that an employee might be influenced to join the Donnelly Garment Workers' [fol. 6675] Union, whose dues were, I think, $2.00 a year—in other words, that would be a factor that is pertinent in—

Trial Examiner Batten: Then, it would be necessary to try out all of the issues of what they get for their money.

Mr. Hogsett: Sure. That's fair enough.

Trial Examiner Batten: Well, I am not going to try out that issue, Mr. Hogsett.

* * * * * * * *

[fol. 6676] By Mr. Tyler:

Q. Mrs. Stevens, after April 27, 1937, were you endeavoring to gather evidence which might be used against the Donnelly Garment Workers' Union for Miss Palmer or for an International representative?

A. No, that wasn't my purpose.

Q. You never made any effort to note any facts they might need and turn the facts over to them? A. No.

Q. Did you make efforts to get members for the International at the Donnelly plant after April 27?

A. I might have.

Q. Will you say whether you did or didn't?

A. Yes, I did.

Mr. Tyler: Did you get any?

Mr. Langsdale: I thought we would come to that—and what their names were and what their telephone numbers were.

I object to that as immaterial and not proving any issue in the case and not proper cross-examination.

Trial Examiner Batten: I don't think it is relevant to [fol. 6677] any issue here. However, I will permit her to answer that question.

Trial Examiner Batten: Did you get any?

A. Yes.

[fol. 6678] Mr. Tyler: Did the company or any representative of the company ever ask you if you were a member of the I. L. G. W. U.? A. No.

[fol. 6679] Q. Do you know of any people down there who were asked whether they were members of the International? A. I don't remember definitely.

Q. As I recall your answer to a question of Mr. Hogsett's, you said that in your opinion they would'nt need busses even if there was violence down at the Donnelly plant. Did you say that? A. Yes.

Q. Is it your position that the International was entitled to use violence in order to organize the plant?

A. No.

Q. What did you mean, then, that they didn't need busses if there was violence?

Mr. Langsdale: I object to that as argumentative.

Trial Examiner Batten: She may tell us why.

A. I think I stated awhile ago, I see no difference in getting off of a bus or getting off of a streetcar.

By Mr. Tyler:

Q. You mean, then, the violence would be the same in either case? A. Yes.

[fol. 6680] Q. In that case, if busses had been used, the violence would have gone on to the Donnelly property and right up to the loading dock, wouldn't it?

* * * * * * *

A. If there were violence, yes.

Mr. Tyler: Did you feel that violence wasn't important, because you, as a member of the International, wouldn't suffer by it and, therefore, it didn't make any difference to you about violence?

* * * * * *

[fol. 6681] A. If there were violence, of course it made a difference to me where it occurred.

By Mr. Tyler:

Q. Then, it would make a difference to you if there was violence in the Donnelly plant; is that correct?

A. Well, yes.

Q. To whom did you report names of members of the I. L. G. W. U. that you got or thought you could get in the plant?

A. Only the one person, Jane Palmer.

* * * * * *

[fol. 6684] Trial Examiner Batten: The record will show that Board's exhibit No. 1-YYYYY is received, being a stipulation as to further testimony of Mrs. Reed.

(Thereupon the stipulation above referred to was marked "Board's Exhibit No. 1-YYYYY," for identification and received in evidence.)

* * * * * *

[fol. 6690] Opal Chaney, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

[fol. 6699] Trial Examiner Batten: Well, the question, Miss Witness, is this: Mrs. Dorsey testified that the power was turned off for the purpose of the girls attending the meeting of March 18, being the meeting at which Mrs. Reed talked. Now, is that correct, or is it not correct?

A. She did not turn the power off during working hours.

[fol. 6700] Q. Mrs. Dorsey testified, Mrs. Chaney, that she told the operators that they would be paid for the time spent at this meeting of March 18. What are the facts about that?

Mr. Langsdale: I object to that as not proper surrebuttal. They all testified that the meeting was held after working hours; therefore, there would be no such statement made. And also testified they were not paid for attendance at that meeting.

Trial Examiner Batten: I am inclined to agree with Mr. Langsdale, Mr. Ingraham, for this reason: If the basis upon which you are proceeding is that the meeting was held after, then the issue to be determined is whether or not the meeting was held during working hours or after working hours.

Mr. Langsdale: It was never contended that any employee was paid for a meeting that started after working hours.

Mr. Ingraham: Mr. Examiner, we are rebutting the testimony of Etta Dorsey that she advised these employees that they would be paid for the time spent at the meeting. Of course we did not answer that in our previous testimony, because we didn't know of it.

Trial Examiner Batten: Of course, that is true, but your contention was that the meeting was after working hours.

Mr. Ingraham: That is correct.

Trial Examiner Batten: And the principal issue to be determined, Mr. Ingraham, is whether the meeting was

[fol. 6701] held during working hours or after working hours.

Mr. Ingraham: Our contention is that all of these meetings were held after working hours.

Trial Examiner Batten: Yes.

Mr. Ingraham: But when the Board puts on a witness that testifies to the effect that she had instructions to tell the employees or the operators in her section that they would be paid for time spent at meetings, I think we clearly have a right to rebut that.

Mr. Reed: Let me make this suggestion: The other side did not rest content with saying this meeting was held during working hours. They proceed to buttress that and give the reasons for their answer by saying, "Not only was it not held after working hours, but this occurred: I turned off the power myself—I did it."

And then they go a step farther and say, "I told the girls they would be paid."

Now, it is perfectly plain that that evidence which they gave there, not only as to the time of the meetings, but these circumstances which they add, is new evidence, and a refusal of it would be grievous error.

Trial Examiner Batten: Now, whether or not it is grievous error is an entirely different thing. I am inclined to agree with you, Senator, on the matter of whether she told the girls they would be paid. Now, of course, that [fol. 6702] brings up the whole question of, where are we at with respect to this hearing?

Now, you may answer this if you want to, Mr. Ingraham, and if you don't want to you don't need to: Am I to assume you are going to have all of the girls in section 518 here and testify about these specific matters?

Mr. Ingraham: I believe we are going to have a large number of them.

Trial Examiner Batten: Well, I want to tell you now that you are not, so don't plan on it. I would say, not to exceed three witnesses on those matters, out of that section.

Mr. Langsdale: Now, let me suggest to the Examiner that if the trier of the fact, either the Examiner or the Board, finds that this meeting was held out of working hours, then ipso facto, you will find that Etta Dorsey's testimony that she turned off the power and told the girls they would be paid for the meeting goes out the window. Certainly, if the meeting was held after working hours, then Etta Dorsey was wrong when she said they would be paid.

Trial Examiner Batten: We will proceed on the basis I have indicated.

* * * * * * *

Mr. Ingraham: Will you read the question, please?

[fol. 6703] (Thereupon the last question was read by the reporter, as follows:

"Mrs. Dorsey testified, Mrs. Chaney, that she told the operators that they would be paid for the time spent at this meeting of March 18. What are the facts about that?")

A. She did not tell us we would be paid, and we were not paid.

Mr. Ingraham: Mrs. Chaney, there has been testimony here that Etta Dorsey told the girls that they would be paid for the time spent at the meeting of April 27, at which the Donnelly Garment Workers' Union was formed. What are the facts about that?

Mr. Langsdale: That is objected to for all of the reasons stated by the other objection—not proper surrebuttal.

Trial Examiner Batten: She may answer.

A. She did not tell us we would be paid, and we were not paid for that meeting.

Mr. Ingraham: There has been testimony given by Etta Dorsey that she told the girls they would be paid for four or five other meetings that were held—meetings of the Donnelly Garment Workers' Union. What were the facts about that?

* * * * * * *

[fol. 6704] A. We were not paid at any time for any of our union meetings and she did not tell us we would be paid.

By Mr. Ingraham:

Q. There has been testimony given that the girls returned to work in that section after attending meetings. What are the facts about that?

Trial Examiner Batten: Now, Mr. Ingraham, I do not believe that is proper surrebuttal, because there was testimony by some witnesses concerning that and the Board put on some concerning it. Now, I don't believe that is proper questioning at this stage of the proceedings.

By Mr. Ingraham:

Q. There has been testimony given that if an operator did not intend to come to work she would notify her instructor. What are the facts about that?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

By Mr. Ingraham:

Q. There has been testimony given that after Mr. Baty took charge of the factory in 1935, and up until July 15, 1939, instructors had the authority to transfer girls from one section to another. What is the fact about that?

Mr. Langsdale: Objected to as not proper surrebuttal. Mr. Baty, in 1939, ran the whole gamut with reference to [fol. 6705] that particular issue.

Trial Examiner Batten. Objection sustained.

By Mr. Ingraham:

Q. I hand you Board's exhibit No. 38 and ask you if you have seen the supplemental pay and transfer books. Have you ever seen any of those?

A. Yes.

Q. Now, at the bottom, "Approved by," what would the instructor approve as to that slip?

Mr. Langsdale: How is that proper surrebuttal?

Trial Examiner Batten: You may answer.

A. That is merely to state that you were in the section that day.

By Mr. Ingraham:

Q. To verify the time from, to some other time?

A. The time you worked in that section, yes.

Q. When an operator was to be transferred to another section, who did it?

* * * * * *

A. Ella Mae Hyde.

Mr. Ingraham: Respondent offers to prove by this witness that if she were permitted to answer the question to the effect that, Did girls return to work after attending any of the meetings referred to? she would answer in the negative.

[fol. 6706] Respondent further offers to prove by this witness—

Mr. Langsdale: Just a moment. I want to make an objection to that offer, for all of the reasons offered to the question.

Trial Examiner Batten: Proceed.

Respondent further offers to prove by this witness that if she were permitted to answer the question as to whom the girls would notify if they were not coming to work, she would answer, "The employment office," and not "the instructor."

Mr. Langsdale: That is objected to in the offer for all of the reasons offered to the question.

Trial Examiner Batten: Any others?

Mr. Ingraham: No, that's all.

Trial Examiner Batten: The offers are rejected.

* * * * * *

Cross-Examination.

By Mr. Tyler:

Q. Mrs. Chaney, did you ever know of any instructor directing the girls in her section to go with her, the instructor, to any union meeting?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

By Mr. Tyler:

Q. Did you hear Etta Dorsey give any instructions or [fol. 6707] information about the holding of union meetings to the girls in her section?

Mr. Langsdale: Objected to as not proper surrebuttal, and repetition.

Trial Examiner Batten: Sustained.

By Mr. Tyler:

Q. Did you ever see any group of girls being herded together to a meeting of the union by any instructor?

Mr. Langsdale: Objected to as not proper surrebuttal. Respondent has so characterized it.

Trial Examiner Batten: Sustained.

By Mr. Tyler:

Q. You joined the Donnelly Garment Workers' Union of your own free will?

Mr. Langsdale: Objected to as not proper surrebuttal.

Trial Examiner Batten: Sustained.

By Mr. Tyler:

Q. Who turned off the power at the end of the day, regardless of whether the day was a short one or a long one, in the section?

* * * * * *

A. The instructors.

[fol. 6708] By Mr. Tyler:

Q. Were you ever a member of the executive committee of the Donnelly Garment Workers' Union, Mrs. Chaney?

A. No.

Q. Did you ever know of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any member of the union for work which that member did for the union?

A. I did not.

Q. Do you know whether the employees of the Donnelly Garment Company obtained any improved conditions by the contract which the union made with the company in May 1937?

Mr. Langsdale: I object to that as not proper surrebutta'

Trial Examiner Batten: Sustained.

* * * * * *

Mr. Tyler: I offer to prove that this witness, if allowed to answer the question as to whether she ever saw any group of girls taken to union meetings by the instructor, would answer that she did not.

Mr. Langsdale: That offer is objected to for the reasons [fol. 6709] offered against the question.

Trial Examiner Batten: Will it be agreeable to you, Mr. Tyler, to consider that the offer is one offer as to all of these questions, so that Mr. Langsdale doesn't have to interrupt, and I don't have to rule on each one separately?

Mr. Tyler: That is agreeable.

And I offer to prove that this witness, if asked the question whether there was any evidence of employees being herded to the union meetings, would answer No.

I offer to prove by this witness that if she were allowed to testify as to whether she knew of benefits received by the employees as a result of the contract of the Donnelly Garment Workers' Union with the company of May 27, 1937, would state that she did know of definite benefits received by reason of that contract.

Mr. Langsdale: The offers are objected to for the reasons given against the questions.

Trial Examiner Batten: The offer is rejected.

* * * * * *

[fol. 6716] By Miss Weyand:

Q. Did you ever work, on a transfer slip, in a section other than your regular section—the transfer slip I have reference to—

Mr. Hogsett (Interrupting): Objected to on the same ground, as not proper cross-examination in surrebuttal.

Trial Examiner Batten: You may answer.

[fol. 6717] A. Yes, I have.

By Miss Weyand:

Q. What section number would appear on your check stubs on those occasions?

A. The section I really belonged in.

Q. And not the section you worked in?

A. Not the one I worked in extra, no.

* * * * * *

[fol. 6718] By Miss Weyand:

Q. How do you happen to remember you were working in section 518 at the time of the meeting of March 18, at which Mrs. Reed spoke?

A. Well, we were working in that section when the company began giving us our old age benefit stubs.

* * * * * *

[fol. 6719] (Thereupon the last answer was read by the reporter.)

By Miss Weyand:

Q. Do you remember when the company began giving you your old age stubs?

A. Sometime along the first of the year, I believe.

* * * * * *

[fol. 6731] Mr. Hogsett: On page 6675 of the record yesterday, while Mrs. Stevens was on the stand, I made a verbal offer of proof in respect to the amount of dues [fol. 6732] of the International —

* * * * * *

I offer to prove by the witness May Stevens that the amount of regular dues of the International Ladies' Garment Workers' Union at the time of her membership was 35¢ a week, which, for 52 weeks a year would be $18.20 a year, and that in addition to that there were two regular assessments, one of $1 per year as a death benefit assess- [fol. 6733] ment, and the second an assessment of $1 a year as a fund in the Work Labor Movement as a whole. That is all.

* * * * * *

Trial Examiner Batten: I will reject the offer, because my recollection is that I rejected your tentative offer.

* * * * * * *

[fol. 6734] ANNA REECE, called as a witness by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. State your name, please.

A. Anna Reece.

Q. Where do you live?

A. 816 Monroe, Kansas City.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. Were you employed at the Donnelly Garment Company during the months of March and April 1937?

A. Yes, I was.

Q. Will you please state what section you were working in at that time?

A. 518.

* * * * * * *

[fol. 6735] By Mr. Ingraham:

Q. I will hand you respondent's exhibits Nos. 52-A to 52-G, inclusive, and ask you if you received those pay checks?

A. Yes, I did.

* * * * * * *

[fol. 6736] Q. Mrs. Reece, I notice in front of your name on these checks the number "518." What does that indicate, if you know? A. That is our section number.

Q. Did you actually work in section 518 during the months of March and April 1937? A. Yes, I did.

Q. Do you recall who your instructor was at that time?

A. Yes, sir, I do. It was Mrs. Dorsey.

Q. Do you recall a meeting of employees on March 18, at which Mrs. Reed spoke?

A. Yes, I remember that meeting.

Q. Mrs. Dorsey has testified that she advised the employees in her section that the company would pay them for the time spent at that meeting. What are the facts about that?

* * * * * * *

[fol. 6737] A. We were not paid for any meetings that we—

* * * * * *

Mr. Ingraham: The question was, Did Mrs. Dorsey tell—

Trial Examiner Batten: Oh, yes. Did Mrs. Dorsey tell you you would be paid?

A. She did not.

* * * * * *

[fol 6738] By Mr. Ingraham:

Q. Were you actually paid for the time spent at this meeting on March 18—paid by the company?

A. We were not.

Q. Do you recall a meeting of April 27, at which the Donnelly Garment Workers' Union was organized?

A. Yes, I remember that meeting.

Q. Mrs. Dorsey has testified that she advised the employees that they would be paid for the time spent at that meeting. Did Mrs. Dorsey so advise the employees?

* * * * * *

A. She did not.

By Mr. Ingraham:

Q. Were you paid for any time spent at that meeting?

A. We were not.

Q. Mrs. Dorsey testified that she advised employees that they would be paid for time spent at several union meetings. Do you recall M s. Dorsey's ever informing you or any other employee that you would be paid for time spent at Donnelly Garment Workers' Union meetings? A. No.

Q. Were you ever paid for any time spent at any Donnelly Garment Workers' Union meetings?

A. We were not.

* * * * * *

[fol. 6739] Mr. Ingraham: There has been testimony given that Edith Dean, Oina Lee Cooper, and Ethel Riegel

worked in section 518 during the months of March and April 1937. Do you recall whether or not they worked in that section at that time?

A. They did not.

By Mr. Ingraham:

Q. Do you recall during the months of March or April that you had any other instructor than Etta Dorsey?

A. We did not.

Q. Do you recall at any time during the time mentioned whether or not Etta Dorsey was transferred to some other section? A. She was not.

By Mr. Ingraham:

Q. I want to refer back to your pay checks, respond-
[fol. 6740] ent's exhibits Nos. 52-A to 52-G, inclusive. Do you recall ever receiving a pay check with a section number on it which was not the actual section in which you were working at the time?

A. I don't remember ever getting one that didn't have my own section number on it.

Q. Do you recall whether or not Etta Dorsey ever turned the power off in section 518 for the purpose of sending the girls to a union meeting?

A. Not to my knowledge.

Q. Do you recall Etta Dorsey's ever turning the power off for the purpose of sending you to the meeting of March 18 or the meeting of April 27?

A. She did not.

Q. Will you state whether or not Etta Dorsey, to your knowledge, ever transferred girls from section 518 to any other section? A. No, she didn't.

[fol. 6741] Mr. Ingraham: Who does transfer girls from one section to another?

A. When we get a transfer we go to the employment office, to Mrs. Hyde.

By Mr. Ingraham:

Q. There has been testimony given that if an operator did not intend to come to work, the operator would notify her instructor. What are the facts about that?

A. Well, when I am absent I call the employment office.

Q. Did you ever receive any instructions by anyone to notify your instructor if you were not coming to work?

A. No, I did not.

Q. Did you ever attend a meeting of the Donnelly Garment Workers' Union and then return to work?

A. No, sir.

Q. Did you return to work after the meeting of March 18? A. No, sir.

Q. Did you return to work after the meeting of April 27? A. No, we didn't.

Q. State whether or not you ever heard of any employee being paid for attending the March 18 meeting.

A. I never heard of anybody being paid for that.

[fol. 6742] Q. Or the April 27 meeting? A. No.

Q. Or any union meeting? A. No.

* * * * * * *

Cross-Examination

By Mr. Tyler:

Q. Mrs. Reece, did you ever hear any instructor direct the girls or the workers in her section to attend union meetings in a group? A. No, I did not.

Trial Examiner Batten: I think I ruled on that question with the prior witness. I do not consider it proper.

* * * * * * *

Mr. Tyler: Did you ever see any instructor in the Donnelly plant gather the girls in her section together and take them to any union meeting? A. No.

* * * * * * *

Trial Examiner Batten: I make the same ruling with respect to that question, Mr. Tyler.

* * * * * * *

[fol. 6743] Mr. Tyler: What was the custom in the Donnelly factory as to whether the employees went to union meetings with anybody they pleased or not?

. . . . . .

Trial Examiner Batten: The same ruling I made to the other two questions, Mr. Tyler.

Mr. Tyler: Did you ever hear of any employee at the Donnelly Company being paid by the company for any work that employee did for the union or any time that employee spent for the union? A. No, they were not.

. . . . . .

[fol. 6744] Mr. Tyler: Have you ever been on the executive committee of the Donnelly Garment Workers' Union, Mrs. Reece?

A. No.

Mr. Tyler: That is all.

I offer to prove by this witness that if she were allowed to answer the questions which the Examiner has sustained objections to, she would testify that she never heard any instructor direct the girls in her section to attend any union meeting in a group; that she never saw any instructor gather the girls together and take them to a union meeting; and that the custom at the Donnelly plant was that employees would attend union meetings with whomever they pleased, without obstruction or pressure or limitation.

. . . . . .

Trial Examiner Batten: The offer is rejected.

. . . . . .

By Miss Weyand:

Q. When did you start to work at the Donnelly Gar-
[fol. 6745] ment Company? A. 1928.

Q. What kind of work were you doing in March and April of 1937? A. Shirring.

Q. What instructors did you work under during the years of 1936, 1937, and 1938? A. Mrs. Dorsey.

Q. All of the way through? A. Yes.

Q. No other instructor? A. No.

* * * * * * *

[fol. 6746] AGNES HUTCHINSON, a witness called by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. State your name, please.

A. Agnes Hutchinson.

* * * * * *

By Mr. Ingraham:

Q. Where do you live, Mrs. Hutchinson?

A. 3321 Wyandotte.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. Have you worked there a number of years?

A. Yes.

Q. Were you employed by the Donnelly Garment Company during the months of March and April 1937?

A. Yes, I was.

[fol. 6747] Q. Do you recall what section you were working in at that time?

A. Section 518.

Q. I will hand you respondent's exhibits Nos. 53-A through 53-G, inclusive, and ask you if those are pay checks that you received during the months of March and April while working at the Donnelly Garment Company.

A. Yes, they were.

* * * * * *

Q. Now, I call your attention to the number in front of your name, 518, and ask you what that number signifies.

A. That states the section that I was in.

Q. Did you ever receive, to your knowledge, a pay check that had a section number on it which wasn't the section which you were actually working in at the time?

A. No.

Mr. Ingraham: I offer in evidence respondent's exhibits Nos. 53-A through 53-G, inclusive.

Trial Examiner Batten: No objection? They will be received.

(Thereupon the checks above referred to, previously marked "Respondent's Exhibits Nos. 53-A to 53-G, inclusive, Witness Hutchinson," for identification, were received in evidence.)

[fol. 6748] By Mr. Ingraham:

Q. During the months of March, April, and May, do you recall who your instructor was in that section—1937, I am referring to?

A. Etta Dorsey.

Q. Do you recall whether or not you had any other instructors during that time besides Etta Dorsey?

A. We did not.

Q. Etta Dorsey has testified that on March 18 she informed the girls in her section that they would be paid for the time spent at the meeting held later in the day. Do you recall Etta Dorsey's making such a statement as that?

A. No, I don't.

Q. Do you recall a meeting on March 18 at which Mrs. Reed spoke?

A. Yes, I remember it.

Q. Were you paid for the time spent at that meeting?

A. I was not.

Q. Did you attend the meeting?

A. Yes, I did.

Q. Do you recall a meeting of employees held on April 27, 1937, at which time the Donnelly Garment Workers' Union was organized?

A. Yes.

Q. Did you attend that meeting?

A. Yes, I did.

[fol. 6749] Q. Do you recall Etta Dorsey's making a statement to the operators in her section that they would be paid for the time spent at that meeting?

A. No, I don't.

Q. Were you paid for the time spent at that meeting?

A. We were not.

Q. Did you hear of any employees being paid for the time spent at either of those two meetings I have just referred to?

A. No, I didn't.

Q. Did you ever hear Etta Dorsey say that employees would be paid for the time spent at union meetings?

A. No, I did not.

Q. Did you ever hear of employees being paid for the time spent at the Donnelly Garment Workers' Union meetings?

A. No.

Q. Were you ever paid for any time spent at the Donnelly Garment Workers' Union meetings?

A. No, sir.

Q. If you did not intend to come to work, would you notify your instructor?

A. No, sir.

Q. Whom would you notify?

A. The employment department.

Q. Did you attend the meeting of March 18 that I referred to and then return to work?

[fol. 6750] A. No, sir.

Q. Did you attend the meeting of April 27 and then return to work?

A. No, sir.

Q. Did you attend any union meeting and return to work?

A. No, sir.

Q. Did you attend union meetings?

A. Yes, sir.

[fol. 6751] By Mr. Ingraham:

Q. Now, Etta Dorsey testified that operators had told her that they were not free to express themselves at meetings with instructors present. Did you ever hear any operator make any such statement as that?

* * * * * *

A. No, I did not.

By Mr. Ingraham:

Q. Do you recall whether Edith Dean, during March, April, or May, worked in section 518?

A. No, she did not.

Q. Did Oma Lee Cooper, during that time, work in section 518?

. . . . . .

A. No, she did not.

By Mr. Ingraham:

Q. Did Ethel Riegel work in 518 during that time?

. . . . . .

A. She did not.

. . . . . .

Cross-Examination

By Mr. Tyler:

Q. Mrs. Hutchinson, did you ever hear your instructor [fol. 6752] or any other instructor in the plant direct the girls in her section to go to union meetings?

A. No, I did not.

Q. Did you ever hear your instructor or any instructor in the plant tell the girls in the section that they should attend a union meeting together as a group?

Miss Weyand: I object to that as not proper surrebuttal.

Trial Examiner Batten: Well, of course, I assume, Mr. Tyler, you are going to ask those three questions?

Mr. Tyler: That's right.

Trial Examiner Batten: I thought I would wait until you had asked your three questions, so as not to encumber the record.

You may proceed.

Miss Weyand: And let her answer those questions?

Trial Examiner Batten: Yes.

By Mr. Tyler:

Q. Did you ever see any instructor in the plant gather the girls in her section together and take them to any union meeting?

A. No, I didn't.

Q. What was the custom in the Donnelly plant during the spring of 1937 and from the time the union was formed

on, as to whether employees went to union meetings with anyone they wanted to without any interference or repression or direction from anyone at all?

. . . . . .

[fol. 6753] A. We would go with whoever we wished to, or by ourselves.

Trial Examiner Batten: Now, I assume that those are the three questions?

Mr. Tyler: That's right.

Trial Examiner Batten: That you have asked the other two witnesses. And I permitted the witnesses to answer to avoid the necessity of you making an offer of proof; and on the basis of my ruling on the prior two witnesses, I'll now strike the testimony of these three questions.

Mr. Tyler: I think it will be proper for me to make an offer of proof as to this witness, then.

Trial Examiner Batten: Well, is that necessary? That is the reason I had the witness answer, so you could avoid making an offer. In other words, you have asked the questions, the witness has answered them, and I have stricken her answers.

. . . . . .

Mr. Tyler: Very well. I'll except to the Examiner's ruling. I think that will preserve the record.

. . . . . .

[fol. 6754] By Mr. Tyler:

Q. Did you ever hear of the company paying any employee of the Donnelly Company for any work—for any time that the employees spent in the union affairs, or on union meetings, or union work?

A. No, I did not.

. . . . . .

[fol. 6759] Mr. Ingraham: Well, I offer respondent's exhibits 52-A through G inclusive in evidence.

Trial Examiner Batten: Well, if there is no objection, they will be received.

. . . . . .

[fol. 6761] IRIS LITTEN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Will you please state your name?

A. Iris Litten.

Q. Where do you live?

A. 71 South 19th, Kansas City, Kansas.

Q. Where are you employed?

A. At present at Lake City Ordnance Plant.

Q. Were you employed by the Donnelly Garment Company in 1937?

A. Yes, I was.

Q. When did you leave the Donnelly Garment Company?

A. This last April, I believe the 10th, 1942.

* * * * * * *

[fol. 6762] Mr. Ingraham: In the months of March, April and May, 1937, do you recall what section you worked in at the Donnelly Garment Company?

A. Yes; I was in section 413.

* * * * * * *

Mr. Ingraham: Mr. Examiner, I intended to state before I put this witness on the stand that I understood you to say that you limited respondent to three witnesses in connection with the matters that Etta Dorsey testified about.

Trial Examiner Batten: Well, is that the way you understand it?

Mr. Ingraham: I understood you to say that very positively.

Trial Examiner Batten: Well, I think you are correct.

Mr. Langsdale: Well, I understood the limitation would be with reference to all matters inquired about this morning in connection with Etta Dorsey's testimony.

Trial Examiner Batten: My understanding of what I intended to do was limit you to three witnesses from that

section with respect to the matters that you asked the witnesses about. Now, is there any difference between that and your understanding?

Mr. Ingraham: No, that is what I understood you to say. Of course, we will prepare an offer of proof.

Trial Examiner Batten: If you have an offer, you make it right now, Mr. Ingraham.

[fol. 6763] Mr. Ingraham: Well, I haven't the—I have other witnesses here in connection with matters that relate to section 518.

Trial Examiner Batten: Well, I want an offer of proof; I don't want to wait for it until the witnesses are gone and the hearing is over. I want to say now any offers of proof must be here before the hearing closes. I am not going to accept any offers of proof when this hearing closes, on any matter, so if you have an offer, now, with respect to the people in that section, section 518, I want you to make it now.

* * * * * * *

Mr. Ingraham: Respondent offers to prove by Ruth Strandt, Ida Barton, Leone Sams, Beatrice Face, Goldie Sprague, Nina Gifardi, Grace Pardun, Anne Belan, Lulu Gordon, Ruth Chaney Miller, Ida Mauk, Estel Rothgeb, Ora Dull, Lela Stevens, Hazel Higgins, Violet Hawkins, Anne Elizabeth Stone, and each of them, that if permitted to testify they would testify that they were employed during the months of March, April, and May, 1937, by the Donnelly Garment Company, and during said time worked in section 518; that during all of said time, Etta Dorsey was their instructor and they had no other instructor during said time except Etta Dorsey; that Etta Dorsey [fol. 6764] did not inform them or state to them that they would be paid by the Donnelly Garment Company for the time spent at the meeting of March 18, 1937, where Mrs. Reed spoke; and they were not, in fact, paid for the time spent at said meeting; that Etta Dorsey did not inform them or state to them that they would be paid for the time spent at the meeting of April 27, 1937, and they, in fact, were not paid for the time spent at that meeting;

that Etta Dorsey did not state to them that they would be paid for time spent at union meetings and they, in fact were not paid for time spent at any union meetings; that they did not know of any employee being paid for time spent at any said union meetings, or the meeting of March 18, April 27, or any other meeting; that they did not attend any meetings during said time and return to work.

Mr. Langsdale: Union meetings, you mean?

Mr. Ingraham: Well, any of the aforesaid meetings, and return to work; that in the event they did not intend to come to work, they would notify the employment office, and would not notify their instructor; that the employment office would transfer operators in their section and it was not done by the instructor.

Trial Examiner Batten: Mr. Ingraham, to clear up that matter that Mr. Langsdale spoke to you about, union meetings, don't you think it would be well to indicate you are referring to the March 18, April 27 meetings, and all union meetings?

. . . . . .

[fol. 6765] Mr. Ingraham: Let me put it this way: that meetings referred to were any meetings of the employees, except fashion shows.

Mr. Langsdale: And not excepting Loyalty League meetings?

Mr. Ingraham: Well, there is a dispute about that—no, not excepting.

. . . . . .

[fol. 6766] Mr. Ingraham: I am through;—well, wait just a second. I want to add to the offer of proof that each of said stated persons will further testify that they [fol. 6767] never received a pay check with the section number on it that was not the correct section number in which said person worked, and that each of said persons' pay checks had on it section number 518 during the months of March, April, and May of 1937.

. . . . . .

Trial Examiner Batten: Well, my understanding is that the offer of proof is in line with the testimony of the three witnesses, and taking into consideration the objections offered by the various attorneys representing the parties, and upon that basis I reject the offer.

* * * * * * *

[fol. 6773] ANNA REECE, a witness recalled by and on behalf of respondent Donnelly Garment Company, having been previously duly sworn, was further examined and testified as follows:

Redirect Examination

By Mr. Ingraham:

Q. I will hand you, Mrs. Reece, respondent's exhibit No. 52-H and ask you if that was a pay check that you received from the Donnelly Garment Company.

A. Yes, sir.

* * * * * * *

Mr. Ingraham: I offer in evidence respondent's exhibit No. 52-H.

* * * * * * *

[fol. 6774] Recross-Examination

By Mr. Langsdale:

* * * * * * *

[fol. 6777] Q. It is your belief, then, that the section number is put on the check, even though the section be temporary; is that correct?

A. No, I didn't say that. I said the section number is on your paycheck if you have worked in that section and drawn your pay out of that section, but I said I didn't think I had ever been in a section for a pay period other than my own section.

* * * * * * *

[fol. 6778] Redirect Examination

By Mr. Ingraham:

Q. Mrs. Reece, I believe you stated this morning in answer to a question by Miss Weyand that you had worked

in Etta Dorsey's section during the years 1936, 1937, and 1938. Now, during that time did you work on the seventh floor?

A. A part of that time, yes, we worked on the seventh floor, but not all of that time.

Q. Do you recall whether or not during all of that time you were working in section 518?

A. Not on the seventh floor all of that time. I was in 518.

Q. What other floors did you work on that you recall?

A. We were moved from the ninth floor to the seventh floor, where I went to work for Mrs. Dorsey, and then we went from the seventh floor to the sixth floor, where Mrs. Dorsey was still instructor—however, it was a different section, 524. Then later, perhaps a year,—I don't remember the date—we went back on the eighth floor, into section 515-A.

Q. Now, during the months of March and April, 1937, [fol. 6779] what floor were you working on?

A. We were on seventh.

Q. And what was the section? A. 518.

Q. Who was your instructor? A. Mrs. Dorsey.

* * * * * * *

[fol. 6780] Trial Examiner Batten: Respondent's exhibit No. 52-H will be received.

* * * * * * *

Iris Litten, the witness previously on the stand, resumed the stand and was examined and testified further as follows:

Direct Examination (Resumed)

By Mr. Ingraham:

Q. Mrs. Litten, during the months of March, April, [fol. 6781] and May, 1937, what section were you working in? A. I was in 413.

Q. I will hand you respondent's exhibit No. 54-A to 54-I, inclusive, and ask you if you received these pay checks from the Donnelly Garment Company?

A. Yes, I did.

Q. When were you paid, if you recall, Mrs. Litten?
A. On Thursday of each week.
Q. And what was that pay for?
A. For the week preceding.
Q. Now, I notice in front of your name there is the number 413. What does that indicate?
A. That is the section that I worked in.
Q. Were you in that section during the periods that you received these pay checks? A. Yes.
Q. Do you know who your instructor was in that section? A. At what time?
Q. At that time, or at the time of March, April, and May, 1937? A. Yes. Lola Skeens.
Q. Do you recall a meeting of employees on March 18 at which Mrs. Reed spoke?
A. Yes.
Q. There has been testimony that the instructor or [fol. 6782] someone advised the girls that they were to be paid for the time spent at that meeting. Did you receive any such information from Lola Skeens or anyone else?
A. No one told me.
Q. Were you paid for the time spent at the meeting of March 18? A. No, I wasn't.
Q. Did you attend a meeting on April 27, 1937, at which time the Donnelly Garment Workers' Union was organized? A. Yes.
Q. Did you understand from Lola Skeens or anyone else that you were to be paid for the time spent at that meeting? A. No.
Q. Did you ever hear anyone say that employees were to be paid for the time spent at that meeting?

* * * * * * * *

Mr. Ingraham: I will restrict it to Lola Skeens.

* * * * * * * *

[fol. 6783] Trial Examiner Batten: Did she ever say anything to you? A. She never said a word to me.

Mr. Ingraham: Mr. Examiner, in view of Mr. Langsdale's objection, the way he worded it, I want to ask the question that I just asked without placing any limitation on it.

* * * * * * *

Mr. Ingraham: Did you ever hear any one say that the employees were to be paid for the time spent at the meeting of March 18 or the meeting of April 27?

[fol. 6784] A. No.

By Mr. Ingraham:

Q. Did Lola Skeens tell the employees in your section that employees were to be paid for the time spent at union meetings? A. No.

Q. Were you paid for the time spent at the March 18 meeting, the April 27 meeting, or any union meeting?

A. No, I wasn't.

Q. Do you recall ever being paid for any time you spent at any Loyalty League meetings? A. No.

Q. Did you ever—

[fol. 6785] Trial Examiner Batten: Of course, there is no testimony here by any instructor that Lola Skeens—is there—that they were paid for attendance at Loyalty League meetings?

Mr. Hogsett: I think some of them went pretty far. They had the company just paying for everything.

Mr. Langsdale: Mr. Examiner, the Board contends that the meeting of April 27 was called a Loyalty League meeting and that the meeting of May 25 was a joint Donnelly Garment Workers' Union meeting and a Loyalty League meeting.

Trial Examiner Batten: Of course, I am not concerned about your contentions.

[fol. 6786] Trial Examiner Batten: Well, it was my idea this morning that the witness could testify about specific testimony of specific witnesses, and that was my intent this morning in limiting it. I didn't intend to go into the cover-all questions, because I think we have had enough of those in the last hearing and I think we have had enough of them in this hearing.

Now, if there is any specific testimony about Loyalty League meetings, all right. If there isn't, then it is my intention that we are not going to go into it.

Now, whether that covers Mr. Ingraham's situation, I don't know.

Mr. Langsdale: Well, just for the purpose of the record,—There was specific testimony from May Stevens that the minutes, the Elsa Greenhaw minutes, of May 25 were correct, which means that that was a Loyalty League meeting, and the testimony was that the employees were paid for attending that meeting. So that does make the tes- [fol. 6787] timony specific that employees were paid for attending a Loyalty League meeting on the 25th of May, 1937.

Trial Examiner Batten: We will proceed.

* * * * * *

Mr. Ingraham: Did you ever attend a Loyalty League meeting that immediately followed a meeting of the Donnelly Garment Workers' Union?

* * * * * *

[fol. 6788] A. I never did.

* * * * * * *

By Mr. Ingraham:

Q. Were you ever paid for attending a Loyalty League [fol. 6789] meeting? A. No.

Q. Did Lola Skeens ever shut off the power for the purpose of your attending a meeting during working hours? A. No.

* * * * * *

Cross-Examination

By Mr. Tyler:

Q. Did you ever hear any instructor direct the girls in her section to attend a meeting of the Donnelly Garment Workers' Union?

A. No.

Q. Did you ever see any instructor gather the girls together in her section and take them down to a Donnelly Garment Workers' Union meeting?

A. We never did go in a group.

By Mr. Tyler:

Q. What was the custom from the beginning of the Donnelly Garment Workers' Union's existence down to July 15, 1939, as to whether the employees attended meetings with anybody they wanted to, entirely free from any interference or dominance about whom they went with?

[fol. 6790] A. The custom was, we would dress if we wanted to, or we wouldn't, and we went when we wanted to, or with whom we wanted to.

Q. Sometimes you would go after work, wearing your aprons?

A. I have.

Trial Examiner Batten: Just a moment. The last question— The three preceding questions are similar to those you have asked the preceding witnesses and I do not consider them proper, so I will strike the answers and it may stand as an offer of proof; that is, your three questions prior to the last question.

Mr. Tyler: What is your ruling as to the last one?

Trial Examiner Batten: That is in the same category. I didn't include it in my original statement because it is a new question which you have not asked the prior witnesses, but it may be stricken and considered as an offer of proof.

By Mr. Tyler:

Q. Did you ever hear of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any employee for time the employee spent on meetings of the Donnelly Garment Workers' Union or work for the Donnelly Garment Workers' Union?

[fol. 6791] A. No.

Trial Examiner Batten: Your last question may be considered in the same status. I will strike the answer and

it may be considered as an offer of proof. In other words, it now stands in the record as an offer of proof.

* * * * * * * *

[fol. 6794] Cross-Examination.

By Mr. Langsdale:

Q. How long have you been working out at Lake City?

A. Since April 13, I believe—on Monday after I quit Donnelly's.

Q. Did you quit Donnelly's or take a leave of absence?

A. I quit.

Q. Do you still belong to the Donnelly Garment Workers' Union?

A. No.

* * * * * * *

[fol. 6795] Q. Now, I think you stated that Lola Skeens did not tell you there was to be a meeting on March 18. That is the meeting at which Mrs. Reed made a speech. Is that true?

A. Yes. She didn't tell me. I didn't hear her tell anyone.

* * * * * * *

[fol. 6807] Trial Examiner Batten: Mr. Ingraham, do you have any further questions?

Mr. Ingraham: No, that's all.

I offer in evidence respondent's exhibits 54-A to —

Trial Examiner Batten: (Interrupting) To I.

Mr. Ingraham: (Continuing) — to I inclusive.

Trial Examiner Batten: If no objections, they will be received.

* * * * * * *

Lora Fries, a witness called by and on behalf of the Respondent, being first duly sworn, was examinetl and testified as follows:

Direct Examination.

By Mr. Ingraham:

Q. Please state your name?

A. Lora Fries.

Q. Where do you live, Miss Fries?

[fol. 6808] A. 2405 Sterling.

Q. Are you employed?

A. No.

Q. Were you employed in 1937 by the Donnelly Garment Company?

A. I was.

By Mr. Ingraham:

Q. When did you leave the employment of the Donnelly Garment Company?

A. In September of 1937.

Q. Were you steadily employed during the months of March, April, and May, 1937, by the Donnelly Garment Company?

A. I was.

Q. Do you recall what section you worked in?

A. 413.

Q. Do you recall who your instructor was?

A. Lola Skeens.

[fol. 6809] By Mr. Ingraham:

Q. I will hand you respondent's exhibits 55-A to H inclusive, and ask you if those six checks — or eight checks rather were received by you while working at the Donnelly Garment Company.

A. Yes, I received those checks.

Q. Now, I call your attention to the number, 413, in front of your name. What does that represent?

A. The section I was working in.

Mr. Ingraham: I offer in evidence Respondent's exhibits 55-A to H inclusive.

Trial Examiner Batten: If no objections, they will be received.

By Mr. Ingraham:

Q. State whether or not Lola Skeens ever told you or any other operators in your presence, that you would be paid for attending a meeting that was held on March 18, 1937, at which Mrs. Reed spoke.

A. She didn't tell me.

Q. Did you hear her tell anybody else?

A. No.

Q. Do you recall a meeting of employees on April 27, at which the Donnelly Garment Workers' Union was organized?

A. Yes.

[fol. 6810] Q. State whether or not Lola Skeens told you or any other employee in your presence that you were to be paid for the time spent attending that meeting.

A. No.

Q. State whether or not Lola Skeens ever told you that you were to be paid for the time spent at union meetings.

A. No.

Q. State whether or not Lola Skeens ever told you that you were to be paid for the time spent at Loyalty League meetings.

A. No.

Q. Lola Skeens testified that she told the girls in her section of union meetings by going down one side of the section and telling six girls at a time of the meetings. State whether or not she ever told you that a meeting was to be held at all.

A. No, Lola never told me that a meeting was to be held.

Q. Did Lola tell you that the meeting of March 18 was to be held?

A. She did not.

Q. Did she tell you that the meeting of April 27 was to be held?

A. No.

Q. Did she tell you that any union meeting was to be held?

A. No, not that I remember.

[fol. 6811] Q. Were you ever paid for the time spent at any of the meetings I have referred to?

A. No, I was not paid.

Q. Did Lola Skeens ever shut off the power for the purpose of sending you to any meeting?

A. No.

Cross-Examination.

By Mr. Tyler:

Q. Did you ever have any instructor in the Donnelly plant direct girls in her section to attend any Donnelly Garment Workers' Union meeting?

A. No.

Q. Did you ever see any instructor in the Donnelly plant gather the girls in her section together in a group and take them to a Donnelly Garment Workers' Union meeting?

A. No.

Q. What was the custom of the Donnelly plant, beginning with the organization of the Donnelly Garment Workers' Union in April, 1937, down as long as you worked there, as to whether the employees went to those meetings, [fol. 6812] with whom they chose, or whether they wanted to or not, without any direction, orders, or compulsion from anybody representing the company?

A. We went with whomever we pleased.

Q. Did you ever hear of the Donnelly Company or the Donnelly Garment Sales Company paying any member of the Donnelly Garment Workers' Union for any time they spent at the Donnelly Garment Workers' Union meetings, or any work they did for the Donnelly Garment Workers' Union?

A. No.

Trial Examiner Batten: Mr. Tyler, those first three questions come within my previous ruling. I don't think they are proper, and I'll strike them, and they may stand as an offer of proof; that is, the three questions preceding the one you just asked and the witness just answered.

By Mr. Tyler:

Q. Did you ever go to a Donnelly Garment Workers' Union meeting wearing your apron, before you changed into your street clothes?

A. As I remember it, I always was dressed to leave the plant.

Trial Examiner Batten: Of course, this question, too, Mr. Tyler, is in the same classification with the first three [fol. 6813] questions you asked the witness, and that is the reason I didn't interrupt you. Now, you inject one question in between the two, and I'll strike this answer, and it may stand as an offer of proof.

* * * * * * *

By Mr. Tyler:

Q. Did you see other girls who went to Donnelly Garment Workers' Union meetings after working hours, still wearing their aprons?

A. I did.

* * * * * * *

Trial Examiner Batten: I don't think it is. It may be stricken and may stand as an offer of proof.

* * * * * * *

[fol. 6814] By Mr. Tyler:

Q. You have stated that you knew of girls going to the Donnelly Garment Workers' Union meetings, after working hours, just wearing their aprons. I want to know if you saw that frequently, and with a substantial number of girls.

A. Well, there would be a few that wore their aprons because they weren't in any hurry to go home.

* * * * * * *

Trial Examiner Batten: Now, that question, of course, following the other one, I consider it improper and will strike the answer, and it may stand as an offer of proof, for the various reasons given with respect to the other questions.

* * * * * * *

[fol. 6819] Redirect Examination.

By Mr. Ingraham:

Q. Were those two meetings after working hours?

A. They were after working hours.

* * * * * * *

[fol. 6820] Recross Examination.

Mr. Tyler: Didn't Lola Skeens shut the power off at the end of the working day right along every day

A. Yes.

* * * * * *

LILLIE REYNOLDS, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. Will you please state your name?

A. Lillie Reynolds.

Q. Where do you work, Miss Reynolds?

A. I am not employed; I am home right now.

Q. Did you formerly work for the Donnelly Garment Company? A. I did.

Q. When did you work for the Donnelly Garment Company?

A. Well, I began working in 1929, I believe.

[fol. 6821] Q. And when did you leave the company?

A. This year, the first of March.

Q. Were you working for the Donnelly Garment Company during the months of March, April, and May, 1937?

A. I was.

Q. What section were you working in? A. 413.

By Mr. Ingraham:

Q. I hand you Respondent's exhibits 56-A to I inclusive, and ask you if these are pay checks that you received from the Donnelly Garment Company during the months of March, April, and May, 1937? A. They are.

Q. I will ask you what the number in front of your name indicates?

A. The 413 is the section.

Q. That is the section? A. Yes.

Q. Now, who was your instructor in 413 during the months of March, April, and May, 1937?

A. Lola Skeens.

Q. Did Lola Skeens turn off the power at any time for [fol. 6822] the purpose of sending you to any meetings?

A. No.

Q. Did she turn the power off when the working day was ended? A. Yes.

Q. Did you attend a meeting on March 18 at which Mrs. Reed spoke? A. I did.

Q. Did Lola Skeens tell you that that meeting was going to be held? A. No.

Q. Did you see Lola Skeens go up the north side of the section telling the girls to go to the meeting?

A. No, I didn't.

Q. Did you see the thread girl go up the other side of the section, telling the girls to go to the meeting?

A. No.

Q. Did Lola Skeens tell you that you were to be paid for the time spent at that meeting? A. No.

Q. Were you paid for the time spent at that meeting?

A. No.

Q. Did you attend a meeting on April 27, 1937, at which time the Donnelly Garment Workers' Union was formed?

A. Yes, I did.

Q. Did Lola Skeens tell you that that meeting was going [fol. 6823] to be held? A. No.

Q. Did she go up the north side of the section telling the girls that the meeting was going to be held?

A. No, sir.

Q. Did the thread girl go up the other side of the section, telling the girls that the meeting was going to be held? A. No, sir.

Q. Did Lola Skeens tell you you were to be paid for the time spent at that meeting? A. No.

Q. Were you paid for the time spent at that meeting?

A. No, sir.

Q. Did Lola Skeens tell you that any union meeting was going to be held? A. No.

Q. Did Lola Skeens tell you that you were to be paid for any time spent at any union meeting? A. No, sir.

Q. Did Lola Skeens tell you that you were to be paid for the time spent at any Loyalty League meeting?

A. No, sir.

Q. Were any of these meetings that I have referred to held during working hours? A. They were not.

* * * * * * *

[fol. 6824] Mr. Ingraham: Were you in fact paid for the time spent at any of the meetings I have referred to?

A. No.

* * * * * * *

Cross-Examination

By Mr. Tyler:

Q. Mrs. Reynolds, did you ever hear any instructor at the Donnelly plant direct the girls in her section to attend any meeting of the Donnelly Garment Workers' Union?

A. No, sir.

Q. Did you ever see any instructor in the Donnelly plant gather the girls together and take them in a group to a meeting of the Donnelly Garment Workers' Union?

A. No, sir.

Q. What was the custom from April 1937 up until July 15, 1939, as to whether the employees went to these meetings with anyone they chose to, or went or stayed away as they chose to?

A. Well, we went when we wanted to, and we went with whom we wanted to.

* * * * * *

[fol. 6825] By Mr. Tyler:

Q. Did you ever hear of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any member of the Donnelly Garment Workers' Union for time that member spent at meetings of the union, or doing work for the union? A. No, sir.

Q. Did you ever wear your apron to a meeting of the Donnelly Garment Workers' Union held after working hours? A. Yes, sir, I did.

Q. Why did you do that?

A. Because I wore my apron home several times; most of the time I went in a car and I was in a hurry to get home, and I just left it on.

Q. Was that a common occurrence among the girls or not?

A. Yes, I think quite a few of them went home that way with them on.

* * * * * *

[fol. 6826] Trial Examiner Batten: Now, all those questions except the one, were you ever paid for attending any union meetings? I think come within my prior rulings.

Mr. Tyler: That is, they are stricken, but may stand as an offer of proof?

Trial Examiner Batten: They may stand as an offer of proof, that's right.

* * * * * *

[fol. 6827] Cross-Examination

By Mr. Langsdale:

Q. You stated that Lola Skeens didn't tell you of the meeting of March 18. How did you learn of that meeting?

A. Just through the employees, the girls.

* * * * * *

[fol. 6830] Q. Now, let's go to the meeting of the 27th of April. You said Lola Skeens didn't tell you of that meeting. Who did tell you of it?

A. The same way, the employees.

* * * * * *

[fol. 6833] Mr. Ingraham: I offer in evidence Respondent's exhibits 56-A to I inclusive.

Trial Examiner Batten: If there is no objection, they will be received.

* * * * * *

[fol. 6834] Mr. Ingraham: Mr. Examiner, does the same ruling apply to section 413 as to section 518?

Trial Examiner Batten: Exactly.

Mr. Ingraham: Then respondent makes an offer of proof that if Marie Richardson, Hazel Hardman, Emilea Raines, Grace Short Kunther, Eva Liberman, Edna Tattershall, Lois Kesinger, Millie Ihle, Katherine Sutulovick, Ruth Putnam, Emma Hansen, Edith Alexander, Lillie Reynolds, Bertha Taylor, Lucille Wilkey, Anna Spahr, Pearl Hall, Nellie Stites, Ruth McBride, Lorene Johnson, Beulah Perkins, Mildred Brooks Ballard, Opal Richardson, Dorothy Dietz Sharp, Gladys Rudd, were permitted to testify, they would testify as follows:

That they were employed at the Donnelly Garment Company during the months of March, April, and May, 1937; that their instructor was Lola Skeens during said period; that each attended the meeting of March 18, 1937; that

Lola Skeens did not notify them or any of them that said meeting was to be held; that Lola Skeens did not go up the north side of the section notifying the girls of the meeting; that Lola Skeens did not inform the girls that they were to be paid for the time spent at that meeting; that they were not paid for the time spent at that meeting; that each [fol. 6835] of said persons attended the meeting of April 27, at which time the Donnelly Garment Workers' Union was formed; that Lola Skeens did not notify any of them of said meeting; that Lola Skeens did not go up the north side of the section, telling the girls of the meeting, and that the thread girl did not go up the south side of the section, telling the girls of the meeting; that Lola Skeens did not tell the girls that they were to be paid for the time spent at said meeting; and that none of the persons named received any pay for the time spent at said meeting; that they attended union meetings, and were never notified by Lola Skeens that said meetings were to be held, and were not informed by Lola Skeens that they would be paid for the time spent at said meetings, or any of them; and they were not, in fact, paid for any time spent at any union meeting; that Lola Skeens did not notify them of any Loyalty League meetings, and they were never paid for any time spent at any Loyalty League meetings; that all the meetings above referred to were held after working hours.

* * * * * *

[fol. 6837] Trial Examiner Batten: I am perfectly willing the offer of proof be just as all-inclusive as the last three witnesses.

* * * * * *

Mr. Ingraham. That Lola Skeens did not turn the power off for the purpose of sending the employees in section 413 [fol. 6838] to any of the meetings referred to.

Trial Examiner Batten: Well, are you finished?

Mr. Ingraham: Yes.

Trial Examiner Batten: Well, the offer of proof will be rejected on the same grounds as previously stated, for the same reasons, and I will allow the same objections, if there were any.

* * * * * *

[fol. 6839] GEORGE J. McCARTHY, a witness called by and on behalf of respondent Donnelly Garment Company, being first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Hogsett:

Q. Please state your name?

A. George J. McCarthy.

Q. And your occupation, Mr. McCarthy?

A. I am an employee of the Donnelly Garment Sales Company.

Q. How long so employed?

A. Since July 15, 1941.

Q. In what capacity?

A. As an assistant to the comptroller.

Q. What business does the comptroller have there, what scope?

A. As a general rule, his scope is comparable to that of any comptroller. It would take quite a long while to detail all of his duties.

Q. In a general way, he handles the figures and records for the company?

A. Yes.

Q. Are you an accountant by profession?

A. Yes.

Q. Have you had training in that field?

A. Yes.

[fol. 6840] Q. What training have you had?

A. I was engaged for quite a number of years with a public accounting firm in Kansas City as senior accountant and tax consultant.

Q. With what firm?

A. Edward J. Dillon & Company.

Q. That is a nationally known firm, isn't it?

A. Yes.

Q. Now, Mr. McCarthy, have you at our request made a comparative statement of the earnings per hour for piecework operators for the first six months of 1937 as compared with the same months in 1938? Just answer Yes or No. Have you done that?

A. Yes.

Q. Have you at our request made that study and analysis as to each and every section in the plant for those months?

A. We have.

Q. Have you at our suggestion taken in each instance the first five names on your records for a given section where those same names also appeared in the record for that section for the following year, so that you would have a comparative statement in each section of the first five names of persons who work in both sections?

A. We did.

Q. Now, in your opinion as an expert accountant, is that [fol. 6841] a perfectly fair method of sampling the results in all the sections for both of those periods?

A. Yes, I would say it would be.

Q. I hand you sheets which have been identified by the reporter as respondent's exhibits Nos. 57-A to 57-D, inclusive, and ask if that is the statement which you have prepared, at our request, upon the basis detailed?

A. Yes, it is.

(Thereupon the sheets above referred to were marked "Respondent's Exhibits Nos. 57-A to 57-D, inclusive, Witness McCarthy," for identification.)

Q. Are the facts and figures recorded in these sheets true and correct?

A. They are.

Q. Based upon records kept in the usual and due course of business?

A. That is right.

Mr. Hogsett: I offer respondent's exhibits 57-A to 57-D, inclusive.

* * * * * * *

[fol. 6847] (Thereupon the sheets above referred to, previously marked "Respondent's Exhibit No. 57-A to 57-D, inclusive, Witness McCarthy," for identification, were received in evidence.)

* * * * * * *

By Mr. Hogsett:

Q. Mr. Langsdale's objection—which, of course, isn't evidence, but I want to deal with it briefly—is that you should have taken in this study the time immediately be-

[fol. 6848] fore and the time immediately after this contract, which became effective, I think, July 1, 1937. Now, bearing on that, is the business of the Donnelly Garment Company a seasonal business, with a peak period at one time and a low period at another?

A. Yes, I think very definitely it is.

Q. Very definitely it is, because it is dealing in the field of women's styles and those are seasonal things, aren't they?

A. They are.

Q. In your opinion, as an expert, is it not only proper but eminently fair—or, I will say, entirely fair, to take the same season in each year, if you are going to make a comparative analysis?

A. That is the only way a just comparison could be made.

Q. Your low period is in the summer, isn't it, July, August, and September—or June and July?

A. That is right.

Q. And comparing the same period, the six months immediately before the contract became effective with the same period of months in the following year, in your opinion is that proper and fair?

A. That is.

. . . . . .

[fol. 6853] By Mr. Hogsett:

Q. You recall, Mr. McCarthy, last evening, that you identified and there was received in evidence exhibits 57-A to D inclusive?

A. That's right.

Q. I want to briefly cover with you what this exhibit shows. Taking the first section, shown in the first column appears the section number, the word "operators, and then five names; is that right?

A. That's right.

Q. Then opposite those names respectively appears a subheading covering information for the period January through June 1937: is that right?

A. That is also right.

Q. That in turn is broken down into a column showing the hours they worked in that period?

A. That's right.

Q. The amount they received in that period?
[fol. 6854] A. That's correct.

Q. And the compilation of the average per-hour which they respectively received during that period, is that right?

A. That's right.

Q. Then comes another column headed "January through June 1938," is that right?

A. That's right.

Q. Which in turn is broken down into the column showing the hours which they respectively worked in that period, the amount of money which they respectively received in that period, and the calculation of the average per hour which they respectively received during that period?

A. That's right.

Q. Now, the rest of these sections are set up in the same manner, are they not?

A. They are all similar.

Q. And you have covered in this exhibit all the sections in the plant?

A. That's right.

Q. Now, let's see how those —

Trial Examiner Batten: (Interrupting) Mr. Hogsett, you say all the sections; you mean not only sewing sections, but all sections, is that what you mean?

Mr. Hogsett: Well, I mean everything they designated as a section in which piece work operators work. I use the [fol. 6855] word in the same sense, and I believe the witness does, in which we have so frequently used it in this hearing, as a division in which piece work operators work.

By Mr. Hogsett:

Q. Let's see how these average earnings per hour compare for this first group that we have been looking at. I will read, skipping the names, and omitting the fractions of a cent, the amounts for the period January through June. You may check whether I read it accurately.

The first person received 46¢ plus.

A. That's right.

Q. In the period from January through June, 1938, is that right?

A. No, that is January through June, 1937.

Q. 1937; it is my slip. That same person received 55¢ plus average per hour in the corresponding period of 1938, is that right? A. That's right.

Q. Now, in like manner I'll just read the 1937 figures, and the 1938 figures, and you check whether I am reading it right.

The next person, 60¢ plus and 66¢ plus.

The next person, 50¢ plus and 63¢ plus.

The next person, 45¢ plus and 56¢ plus.

The next person 47¢ plus and 59¢ plus; is that right?

A. That is correct.

Q. Now, that is the way this whole thing is set up, isn't [fol. 6856] it, in that same manner?

A. That is correct.

Q. I'll not go through the details, I'll just let the exhibit speak for itself. A. That's right.

[fol. 6858] Cross-Examination

By Mr. Langsdale:

[fol. 6861] Q. What is your position with the Donnelly Company? A. Assistant Comptroller.

Q. And who is the comptroller?

A. Who is the comptroller?

Q. Yes. A. Mr. John B. Bachofer.

Q. And you are one of his assistants?

A. I am his only assistant.

Q. I see. You have picked five girls from each section?

A. That's right.

Q. Did you pick the five or did someone pick them for you?

A. If I prefer to state an answer, I picked them myself.

Q. Well, do you know? I am asking you.

A. I think it is already in the record as to the manner in which the five girls were picked.

Q. I am asking you whether you did or not.

Mr. Hogsett: Tell him again how they were chosen.

[fol. 6862] By Mr. Langsdale:

Q. Well, how did you happen to pick Ludie James, for instance?

A. Well, the first five girls in every section were chosen as a representative of the employees.

Q. Well, you chose the first five in each section, did you?

A. The first five.

Q. Now, who told you to do that?

A. I don't know that I had any instructions. In my own best judgment, those girls would provide, probably, a comparable basis.

Q. Well, do you know—did Mr. Baty tell you to pick the first five girls in each section?

A. Mr. Baty didn't have anything to do with it.

Q. Did anyone tell you to take the first five girls in each section? A. No.

Q. Do you know how you happened to do that?

A. It was my own best judgment, if we were going to provide—or rather compile a comparable statement, showing comparable figures for two different periods, we had to form some basis of judgment—or rather some standard of comparative people, and in my own best judgment we thought the first five in each section, a comparison of their salaries, would be a comparable statement.

Q. Well, now, did you do that on your own judgment, or [fol. 6863] was it suggested to you by anybody, that you take the first five?

A. No, I did it on my own judgment.

* * * * * *

Q. Why did you take January through June, 1938? Who told you to do that?

A. No one told me to do it. January through June, 1938, of course, we compared—it is already in the record that the Donnelly Garment Company business is a seasonal business, and for the first six months of 1937 an attempt was made to find an equal number of months during a comparable period so far as the activities of the Donnelly Garment Company were concerned in a period of work; and the next immediate period following were the first six months in 1938.

* * * * * *

[fol. 6865] Redirect Examination

By Mr. Hogsett:

Q. Is it a fact that Mr. Bachofer is ill, laid up?

A. That's right.

Q. He has had an operation within the last month, has he not? A. Yes.

Q. Is he on duty or has he been since that time?

A. No.

Q. This statement simply represents your judgment of a fair sampling of the actual earnings of the operators for the two comparable periods? A. That's right.

* * * * * * *

[fol. 6866] Opal Chaney, a witness heretofore called by and on behalf of the respondent, having been previously sworn, was examined and testified further as follows:

Redirect Examination

By Mr. Ingraham:

Q. Mrs. Chaney, I hand you respondent's exhibit 51-G; which is a check dated May 6, 1937, and ask you if you received that check from the Donnelly Garment Company.

A. Yes.

Mr. Ingraham: I offer in evidence respondent's exhibit 51-G.

Trial Examiner Batten: If there is no objection, it will be received.

* * * * * * *

[fol. 6869] By Mr. Ingraham:

Q. Mrs. Chaney, were March and April and May busy months at the factory, when there was a great deal of production? A. April and May is always busy.

* * * * * * *

Agnes Hutchinson, a witness heretofore called by and on behalf of the respondent, having been previously sworn, was examined and testified further as follows:

Redirect Examination

By Mr. Ingraham:

Q. I will hand you respondent's exhibit 53-H, which is a pay check of the Donnelly Garment Company and ask [fol. 6879] you if you received that pay check.

A. Yes, that is my signature.

Mr. Ingraham: Respondent offers in evidence respondent's exhibit 53-H.

Trial Examiner Batten: If no objection, it will be received.

* * * * * * *

[fol. 6871] By Mr. Ingraham:

Q. Were January, February, March, April, May, and June busy seasons at the Donnelly plant?

A. They usually are, then they have their spring lines.

Q. And that is the height of the production season for the plant? A. Yes, sir.

* * * * * * *

(Witness excused.)

MARY COPOWYCZ, a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Ingraham:

Q. Please state your name. A. Mary Copowycz.

Q. Where do you live, Mrs. Copowycz?

A. 2719 Gillham Road.

Q. Are you employed by the Donnelly Garment Company? A. I am.

Q. What is your position?

[fol. 6872] A. I am an instructor.

Q. Were you an instructor during the years 1937, 1938, and 1939? A. I was.

Q. Mrs. Copowycz, did you know a girl named Bessie Weilert? A. I did.

Q. During the year 1939, did she work in the same section you did? A. She did.

Q. Bessie Weilert has testified, Mrs. Copowycz, that you and Rose Todd framed her. State whether or not that is a fact.

* * * * * * *

Trial Examiner Batten: I thought I struck that testimony out.

* * * * * * *

[fol. 6873] Mr. Langsdale: I thought he struck it. That is my recollection. I thought he should and I think he did.

* * * * * * *

Miss Weyand. Yes, I am certain you struck that whole incident, because I had it on direct.

* * * * * * *

Mr. Langsdale: Well, may the record show, if you didn't [fol. 6874] strike it, you will strike it now? I want the record clear. I thought you did, and my recollection at the time was that I personally thought it should be stricken, and I thought you did.

Trial Examiner Batten: Well, of course, if it hasn't been it may be, but there isn't any question about it.

* * * * * *

Mr. Ingraham: Mrs. Copowycz, did Mr. Baty, Mrs. Wherry, or anyone else ever tell you that the girls that worked in the section in which you worked would be paid for attending the meeting of March 18, at which Mrs. Reed spoke?

* * * * * *

[fol. 6875] A. No, they did not.

* * * * * *

By Mr. Ingraham:

Q. Did Mr. Baty or Mrs. Wherry or anyone else advise you the operators were to be paid for the meeting of April 27? A. No.

[fol. 6876] Q. Did Mr. Baty or Mrs. Wherry advise you that the operators were to be paid for any union meeting?

A. Well, no, because they were always after working hours.

Q. Did Mr. Baty or Mrs. Wherry ever advise you that the employees were to be paid for time spent at Loyalty League meetings? A. No, sir.

Q. Did you ever see any allowance on any cards showing that employees were paid for time spent at the meetings I have mentioned, or any of them? A. No, I didn't.

Q. Did you ever turn the power off in your section for the purpose of sending girls to any meetings?

A. No, I didn't.

Mr. Langsdale: Now, was that any meeting?

Mr. Ingraham: Or any meetings I have mentioned.

Trial Examiner Batten: Mr. Ingraham, I don't know what your plans are, but I thought I indicated pretty clearly yesterday that if any of those instructors, as a result of testimony, were involved on those matters, they might testify as to them. Now, you are asking this witness a general question: the generalities of the situation we have long since passed. Now, I don't know what your plans are, but do your plan to call all the instructors?

Mr. Ingraham: Well, I planned to call a number of them.

[fol. 6877] Trial Examiner Batten: How many?

Mr. Ingraham: Well, in view of what you said about other witnesses, I was going to call at least three.

Trial Examiner Batten: Now, Mr. Ingraham, if you planned to call them all, you call them, every one of them, if that is your plan.

So, we will proceed.

Mr. Ingraham: Well, do you feel that that isn't rebuttal?

Trial Examiner Batten: Well, I clearly don't think it is, Mr. Ingraham.

* * * * * *

[fol. 6879] Cross-Examination

Mr. Tyler: Mrs. Copowycz, did you ever direct the girls in your section to attend any meeting of the Donnelly Garment Workers' Union in a group?

Miss Weyand: I object to the question as not proper surrebuttal.

* * * * * *

Trial Examiner Batten: Well, I would suggest then you ask the questions as you did of the other witnesses, and if I decide that it is not proper, it may stand as an offer of proof, rather than going through it, and then making an offer of proof.

* * * * * *

[fol. 6880] By Mr. Tyler:

Q. Did you ever know of any other instructor in the plant directing the girls in her section to go to a Donnelly Garment Workers' Union meeting as a group?

A. No, I didn't.

Q. What was the custom in the Donnelly plant, from the date that the union was formed, down to July 15, 1939, as to whether the employees went to the Donnelly Garment Workers' Union meetings with anyone they pleased, and whether they wanted to or not, without any pressure or direction on them, or whether they were directed or forced to go in a certain group?

* * * * * *

A. They could do just as they pleased.

By Mr. Tyler:

Q. Did you ever hear of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any member of the Donnelly Garment Workers' Union for any time that that employee spent attending union meetings, [fol. 6881] or doing union work? A. No, I didn't.

Q. Did you ever know of Bessie Weilert being paid for any time spent attending meetings of the executive committee of the Donnelly Garment Workers' Union?

A. No, I didn't.

Q. Did she ever make any such a report to you?

A. No, I don't think she did.

* * * * * *

By Mr. Tyler:

Q. Well, do you have any memory of her making any such report as that to you? A. No, I don't.

Q. Did she ever hand you any written request or mem- [fol. 6882] orandum asking that she be allowed payment for tending to any union business? A. No, she didn't.

Q. Did you ever wear your apron to a meeting of the Donnelly Garment Workers' Union, when the meeting was held after working hours?

A. I don't remember, but I could have.

Q. Do you know whether that was commonly done or not in the plant? A. It has been done.

* * * * * *

Mr. Tyler: Did the employees get any additional rights through that contract, do you know?

A. Why, I think they did.

* * * * * * *

[fol. 6883] Cross-Examination

By Miss Weyand:

* * * * * * *

[fol. 6884] Q. Do you remember any meetings of the employees of any kind, from 1932 on, which were held during working hours?

Mr. Stottle: That is objected to as going back to the period Your Honor has ruled on.

Trial Examiner Batten: What is it, Mr. Stottle?

Mr. Stottle: That goes back to the period you ruled on, [fol. 6885] 1932.

Mr. Tyler: The intervener objects; that is not proper cross-examination on surrebuttal, going back to 1932.

Trial Examiner Batten: You may proceed.

A. Well, I know that we have went to a style show, and that was during working hours.

By Miss Weyand:

Q. Do you know what arrangement was made to pay the girls for the time they spent at the style show?

A. I wouldn't know.

* * * * * * *

Q. Do you know in what years you had style shows that the girls attended during working hours?

A. No, I don't.

Q. Do you remember how often it occurred?

A. Not very often, no, but I don't remember how often.

Q. Do you remember any occasions on which Mrs. Reed spoke to the girls during working hours? A. No, I don't.

* * * * * * *

Q. Did she speak to groups of them during working hours?

A. No, I don't remember of it. I don't think so.

[fol. 6886] Q. What was that?

A. I don't think she ever spoke during working hours.

Q. Did she make speeches at the style shows?

A. Yes, she has.

Q. That was during working hours, wasn't it?

A. Yes, it was, although sometimes we have had style shows after working hours.

Q. Did Senator Reed ever make a speech down at the plant at a style show or other meetings?

A. I never saw Senator Reed in the Donnelly Garment Company.

* * * * * *

[fol. 6891] By Miss Weyand:

Q. What section were you the instructor of, from April, 1937, to July 15, 1939?

A. In 1937, the first half of the year, I think I was in 522; the last half I was in 517; then I was transferred the last part of 1938 to 414, in which I have been ever since.

Q. And were employees in your section notified of meet-

[fol. 6892] ings of the Donnelly Garment Workers' Union during that period?

A. Well, they have bulletins in the elevators and in the lobby of the building.

Q. Were i. d. m.'s ever brought to your section, notifying employees in your section of a meeting of the Donnelly Garment Workers' Union?

A. If they were I didn't know anything about it.

Q. How are i. d. m.'s brought to your section?

A. Well, that is such a common occurrence; they have i. d. m.'s for anything, if they have a birthday party, if they want to sell a house, or anything like that.

* * * * * * *

[fol. 6893] By Miss Weyand:

Q. Who brought the i. d. m.'s to your section regularly?

A. You mean pertaining to anything, or what exactly?

Q. Let's take first an i. d. m. which comes down from the office, notifying the girls of the vacation they would have, July 4 off; how would that i. d. m. come to your section?

A. Through a pick-up girl.

Q. What would happen when that i. d. m. arrived at your section? Who would she deliver it to, or where would the pick-up girl put it?

A. We have a basket up there for the girls to put the i. d. m.'s in.

Q. When an i. d. m. is put in the basket, which comes to your section by a pick-up girl, what happens to it next?

A. Well, either the thread girl or myself would take care of it.

Q. How would you take care of it?

A. Well, they are usually to us, and not to the section, and if they are pertaining to the section, why, we pass them through the section.

* * * * * *

[fol. 6895] By Mr. Langsdale:

Q. The style shows that you have testified about were style shows given by the Donnelly Garment Company, were they not?

A. Yes, they were.

Q. And during working hours?

A. No, not always.

Q. Well, some of them?

A. Yes. I can recollect one or two.

Q. Given during working hours?

A. That's right.

Q. I believe you testified you didn't know whether the girls were paid or not for those times they lost from their work?

A. The office took care of that.

* * * * * *

[fol. 6896] Mr. Lane: Mr. Examiner, in the cross-examination of Board's witness May Stevens the intervener examined her with reference to intervener's rejected exhibit No. 20, and especially with respect to page 6090 of the Circuit Court of Appeals record. I now have photostatic copies of that page of the record, which I offer in evidence.

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Trial Examiner Batten: It will be received on the same basis as the other pages which were received that were

offered by the respondent in Intervener's exhibit No. 20. Now, you understand what I mean by that, Mr. Lane?

* * * * * * *

[fol. 6897] LEE BATY, a witness recalled by and on behalf of respondent Donnelly Garment Company, having been previously duly sworn, was further examined and testified as follows:

* * * * * *

Direct Examination.

By Mr. Ingraham:

Q. Mr. Baty, did you ever tell Etta Dorsey that employees were to be paid for the time spent at the meeting of March 18?

* * * * * *

[fol. 6898] A. I did not.

By Mr. Ingraham:

Q. Did you ever give any instructions to Mrs. Wherry or anyone else to advise employees or instructors that employees were to be paid for attending the March 18 meeting?

* * * * * *

A. I did not.

By Mr. Ingraham:

Q. Were any employees paid for attending the meeting of March 18?

A. They were not, to my knowledge.

Q. Did you tell Lola Skeens that employees were to be paid for attending the March 18 meeting?

* * * * * *

A. I did not.

By Mr. Ingraham:

Q. Did you tell Etta Dorsey or Lola Skeens that employees were to be paid for attending the meeting of April 27?

A. I did not.

Q. Did you tell Mrs. Wherry or anyone else that employees were to be paid for attending the meeting of April 27?

[fol. 6899] A. I did not.

Q. Did you ever hear of Mrs. Wherry or anyone else advising instructors or employees that the employees were to be paid for attending the meeting of March 18 or April 27?

A. No, I did not.

Q. Did you advise Lola Skeens or Etta Dorsey that employees were to be paid for attending union meetings?

A. I did not.

Q. Did you advise Mrs. Wherry or anyone else that employees were to be paid for attending union meetings?

A. No.

Q. If orders were given to pay for the time spent by employees at the meetings I have referred to, who would give those orders.

A. I would give the orders, if it pertained to the production department.

Q. Lola Skeens and Etta Dorsey were in the production department?

A. They were.

Q. Did you ever give any orders that employees were to be paid for time spent at Loyalty League meetings?

A. I did not.

Q. Now, to your knowledge, were employees paid for any of the meetings that I have referred to?

A. They were not.

[fol. 6900] Q. Mr. Baty, after you became production manager do you recall going over the cards of the operators' in Etta Dorsey's section with Etta Dorsey?

A. I went over them occasionally.

Q. Do you recall whether or not there were allowances on employees' cards in Etta Dorsey's section showing that they were paid for time spent at any of the meetings I referred to?

A. There were no allowances made for anything of that kind.

Q. Do you recall going over cards with Lola Skeens for the operators in her section at any time?

A. I did occasionally.

Q. Were there any allowances on those cards showing that employees in Lola Skeens' section were given allow-

ances for time spent at any of the meetings I have referred to?

A. There was not.

Cross-Examination.

By Mr. Tyler:

Q. Mr. Baty, did you ever direct instructors to take the [fol. 6901] girls in their sections to meetings of the Donnelly Garment Workers' Union in a body?

A. No.

Q. Did you ever know of that being done as a custom in the plant?

A. I never heard of any such thing.

Q. Do you know what the custom was in the Donnelly plant from the organization of the Donnelly Garment Workers' Union down to July 15, 1939, as to whether employees did as they pleased about whom they went to union meetings with, or whether they went at all or not, or whether there was some restraint or control over them in that matter?

A. I have no information about it. I don't know how they went. I knew they had meetings, and that's about all.

Q. Did you ever give instructions that any employee was to be paid for attending meetings of the executive committee of the Donnelly Garment Workers' Union?

A. I never gave any instructions that they would be paid by the company.

Q. Do you know of their being paid by the company?

A. They were not, to my knowledge.

[fol. 6904] By Mr. Langsdale:

Q. Did you ever know of any allowances on any of the cards you examined in Etta Dorsey's section for time lost at fashion shows?

A. I did.

Q. Or Loyalty League meetings?

A. No.

Q. How was that designated, the loss for fashion shows?

A. If there was time lost on account of the fashion show, or for any other reason, I put it on the card.

[fol. 6905] By Mr. Tyler:

Q. Mr. Baty, are style shows a part of the education of the employees of the company?

* * * * * * *

A. They are.

Trial Examiner Batten: I don't presume the company is being charged with paying them for the time they spent attending a style show; at least, I hope not.

* * * * * * *

[fol. 6907] Fred V. Brown, a witness called by and on behalf of intervener Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Trial Examiner Batten: Did you testify in the other hearing, Mr. Brown?

The Witness: No, sir.

Direct Examination.

By Mr. Tyler:

Q. Will you state your name?

A. Fred V. Brown.

Q. Where do you live?

A. 6155 Kenwood.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been with the Donnelly Garment Company?

A. Twenty-three years.

Q. What position do you hold at the Donnelly Garment Company?

A. I am supervisor over the cutting department.

Q. How long have you been supervisor of the cutting department?

A. A year.

Q. Are you now a member of the Donnelly Garment Workers' Union?

A. No, sir.

Q. How long ago did you cease being a member of it?

[fol. 6908] Mr. Langsdale: I object to that as not proper surrebuttal. There is no issue in this case as to when he

ceased, unless it was during the period covered by this examination.

Trial Examiner Batten: Of course, having limited the hearing to July 15, 1939, how could it be material, assuming my ruling is correct, Mr. Tyler?

Mr. Tyler: Assuming your ruling is correct, that everything that has happened since July 15, 1939, is inadmissible, then of course this is inadmissible.

Trial Examiner Batten: I think I shall so rule, Mr. Tyler.

Mr. Tyler: An automatic exception is allowed, of course?

Trial Examiner Batten: Oh, yes.

By Mr. Tyler:

Q. Mr. Brown, you were one of the original members of the Donnelly Garment Workers' Union, were you not?

A. Yes, sir.

Q. And during the time you were a member of that union were you ever paid for attending meetings of the Donnelly Garment Workers' Union?

A. I was not.

Q. During the year 1937 were you a member of the executive committee of that union?

A. Yes, sir.

Q. Were you ever paid by the company for attending any meetings of the executive committee?

[fol. 6909] A. I was not.

Q. Did you ever attend any meetings of the Donnelly Garment Workers' Union held during working hours?

A. No, sir.

Q. You were treasurer of the Donnelly Garment Workers' Union at one time, were you not? A. Yes, sir.

Q. Did you ever have any knowledge of the Donnelly Garment Company or the Donnelly Garment Sales Company paying any member of the Donnelly Garment Workers' Union or into its treasury any sums for payment of employees for doing any work for the Donnelly Garment Workers' Union or attending any of its meetings?

A. I have no recollection of it.

Q. Do you know whether employees of the company—women employees of the company ever attended meetings of the Donnelly Garment Workers' Union held after working hours while still wearing their working aprons?

A. Oh, yes, they came to the meetings, some of them, with their aprons on.

Q. Did you ever know of any instance where an instructor gathered the employees together in her section and took them to a Donnelly Garment Workers' meeting as a group? A. No, I do not.

Q. What was the custom as to whether employees from [fol. 6910] April 27, 1937, until July 15, 1939, were free to attend Donnelly Garment Workers' Union meetings with anyone they chose or whether there was some pressure or control put on them as to whom they would go with or how they would go?

A. Well, they were free to go as they wanted to. There was no pressure, that I know of, put on anyone.

Trial Examiner Batten: Mr. Tyler, those last three questions—if you have finished with that series— Have you?

Mr. Tyler: I think so.

Trial Examiner Batten: Those last three questions I think were improper. They were not proper rebuttal.

I shall strike the answers and it may stand as an offer of proof.

Mr. Tyler: Very well.

Mr. Tyler: Did the Donnelly Garment Workers' Union pay any of its members who did work for that union?

* * * * * * *

[fol. 6911] A. Yes.

By Mr. Tyler:

Q. What ones?

A. Well, we paid taxi fares that some of them had paid out—

Trial Examiner Batten: Now, just a moment. I am not going into all of these accounts, Mr. Tyler. I think it was covered in the last hearing; if it wasn't, it should have been, so I am not going into all of these accounts.

* * * * * * *

[fol. 6913] By Mr. Tyler:

Q. Mr. Brown, will you answer the question as to what [fol. 6914] particular members of the Donnelly Garment Workers' Union, if any, were paid for work they did for the Donnelly Garment Workers' Union?

A. Well, I paid Hobart Atherton—I bought his gas bills—I bought a gas ticket for the running around that he did for the union. And I paid Raymond Smith for coming down from St. Joseph—driving down from St. Joseph.

Q. Were there any salaries paid?

A. Yes. I paid Rose Todd's salary, and I, myself, drew a salary.

Q. At that time were any other members of the executive committee paid anything for their services?

A. They were not.

Q. Do you know whether they have been since that time?

A. I understand they have.

Trial Examiner Batten: You mean, since July, 1939, or up to July, 1939?

By Mr. Tyler:

Q. I will say, after April 27, 1937, and up to July 15, 1939, do you know whether any other members of the executive committee were paid for their services by the union?

A. Well, no, I don't know for sure whether they have been or not.

Q. Do you recall a contract made by the Donnelly Garment Workers' Union with their employer in the spring [fol. 6915] of 1937, in a general way? A. Yes, sir.

Q. Do you know whether the employees obtained any benefits—additional rights under that contract that they didn't have before? A. Yes, they did.

* * * * * * *

[fol. 6918] JACK MCCONAUGHEY, a witness recalled by and on behalf of intervener Donnelly Garment Workers' Union having been previously duly sworn, was further examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name, please?

A. Jack McConaughey.

Q. You are the same Jack McConaughey who testified in the hearing in 1939 in this matter, are you not?

A. Yes, sir.

Q. You were a charter member—meaning by that, one of the original members—of the Donnelly Garment Workers' Union, were you not? A. Yes, sir.

Q. Do you still belong to the Donnelly Garment Workers' Union? A. No, sir.

* * * * * *

[fol. 6919] By Mr. Tyler:

Q. You attended meetings of the Donnelly Garment Workers' Union customarily, did you, from 1937, in the spring, until July 15, 1939, or thereabouts?

A. Yes, sir.

Q. Were you ever paid by the company for attending any of those meetings? A. I was not.

Q. You were a member of the executive committee of the Donnelly Garment Workers' Union at one time before 1939, were you not? A. Yes, sir.

Q. Were you ever paid by the company for attending any of those meetings? A. No, sir.

Q. When were those meetings customarily held?

A. Which—

Q. The executive committee meetings.

A. They were held at the noon hour or in the evenings, [fol. 6920] or sometimes after 5.

Q. If the meetings were of substantial length, when would those meetings customarily be held?

A. Usually at one of the committee member's house.

Q. Any other place except the committee members' houses? A. At the office of Mr. Tyler.

* * * * * *

By Mr. Tyler:

Q. You were at one time treasurer of the Donnelly Garment Workers' Union, were you? A. Yes, sir.

[fol. 6921] Q. During that time did you ever receive for the union any sums of money from the Donnelly Garment

Company or the Donnelly Garment Sales Company to be paid to the union or to any members of the union from the company or the Sales Company?. A. No, sir.

* * * * * *

[fol. 6922] Cross-Examination

By Miss Weyand:

* * * * * *

[fol. 6923] Q. How long did you have off for lunch?

A. My job is of such a nature that I had to arrange my lunch hour—at that time I don't remember exactly how long I took.

Q. Do you know how long other time workers had off for lunch?

A. Well, in the normal periods, in the production department, 45 minutes; and in the office, an hour.

Q. Are you speaking of time workers or pieceworkers?

A. Time workers.

* * * * * *

[fol. 6925] Q. Did you ever have any deductions from your pay check for time you spent attending to matters of the Donnelly Garment Workers' Union?

A. I didn't spend time with the Donnelly Garment Workers' Union during working hours.

* * * * * *

[fol. 6930] Mabel Riggs, a witness called by and on behalf of the Intervener, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name—is it Mrs. Riggs?

A. Mrs. Mabel Riggs.

Q. Where do you live, Mrs. Riggs?

A. I live at 3021 Campbell.

Q. Were you one of the original members of the Donnelly Garment Workers' Union?

A. Why, I am a member of the Donnelly Garment Workers' Union.

Trial Examiner Batten: Well, did you join it at the time it was organized?

A. Yes, I joined it at the time it was organized.

By Mr. Tyler:

Q. And you have been a member ever since?

A. I have.

Q. How long have you been employed at the Donnelly plant? A. A little more than 13 years.

Q. And that employment, has it been comparatively continuous? A. It has been continuous.

Q. And are you reasonably well acquainted with the customs of work that go on down there?

A. Well, I would say reasonably, yes.

[fol. 6931] Q. What kind of work have you done there?

A. My work has been in the designing room. I work with patterns.

Q. And have you done any other kind of work down there?

A. Well, our patterns involve a good many different kinds of work, and most of it has been with the patterns.

Q. Have you ever been an operator? A. I have not.

Q. Did you customarily attend meetings of the Donnelly Garment Workers' Union? A. I did.

Q. Did you attend any held during working hours?

A. No.

Q. Did you ever hear any instructor in the plant direct the group over which she was instructor to attend any union meeting in a group? A. No, I have not.

Q. What was the custom in the Donnelly Garment Company as to whether employees attended Donnelly Garment Workers' Union meetings with whom they pleased and as they pleased, or whether there was any pressure or compulsion from the company to require them to go in a group, or in any other manner.

* * * * * *

[fol. 6932] A. Well, I can speak for just our own floor, and if we were enthusiastic and we wanted to go to the meetings, no one had to tell us or take us.

* * * * * *

Mr. Tyler: Were you ever paid by the Donnelly Garment Company—

Trial Examiner Batten: (Interrupting) Just a moment: if you are going to that question, the two prior questions, I think, come within my prior ruling, and I will strike them and they may stand as an offer of proof.

By Mr. Tyler:

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Sales Company, for attending any Donnelly Garment Workers' Union meetings?

A. I attended those meetings on my own time, and didn't expect pay.

Q. Well, were you ever paid? A. No.

* * * * * * *

[fol. 6933] By Mr. Tyler:

Q. You have been a member of the executive committee?

A. I was a member the second year.

Q. That would be 1938? A. Yes.

Q. Were you ever paid by the Donnelly Company or the Donnelly Sales Company for attending any meetings of the executive committee? A. No.

Q. When were those meetings generally held?

A. They were held during the noon hour, or immediately after our work, after 5 in the evening, and on occasions in the evening.

Q. Did you have any knowledge of the contract executed between the Donnelly Garment Workers' Union and the Donnelly Company on May 27, 1937, and amended or added to by a wage agreement on June 22, 1937?

A. I had no hand in forming that. Of course, I have read it and I have benefitted by it.

* * * * * * *

Mr. Tyler: Do you know of any benefits received by yourself or other employees from the execution of this contract?

[fol. 6934] Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Well, of course, I think, Mr. Tyler, that comes within the same category, does it not, as the other questions?

Mr. Tyler: I wish to make the same offer of proof.

Mr. Langsdale: The same objection.

Mr. Tyler: As to that made to the answers of those other questions, and as was made in answer in the testimony of the witness Fred Brown.

Trial Examiner Batten: Well, the same offer and the same objections; I will make the same ruling.

Mr. Tyler: I don't believe I asked this question: Do you know whether women employees of the Donnelly Garment Company attended meetings of the Donnelly Garment Workers' Union held immediately after hours, still wearing their work aprons or not?

* * * * * * *

A. Yes, they ride to and from in their white aprons.

* * * * * *

[fol. 6936] Mr. Tyler: Mrs. Riggs, is there any further explanation you want to make about that? If there is, go ahead and explain.

* * * * * *

A. This is the explanation. I mean they would naturally go to work in their white aprons. I know some of the girls said, "I don't want to wear my dress, I want to wear my white apron, so why put them on?"

Mr. Tyler: Was the wearing of aprons to those meetings, held immediately after working hours, fairly common? A. I would say it was.

* * * * * *

[fol. 6937] Cross-Examination
By Miss Weyand:

* * * * * *

Q. How long did you have off for lunch?
A. We had one hour.

* * * * * *

[fol. 6939] ALVIN REIFEL, a witness called by and on behalf of the intervener, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name, please?

A. Alvin Reifel.

Q. Where do you live, Mr. Reifel?

A. 4304 West 53rd, Mission, Kansas.

Q. Where are you employed?

A. At the Donnelly Company.

Q. How long have you been employed there?

A. 9 years.

Q. What work do you do there, now?

A. Cutter.

Q. What other work, if any, have you done during the 9 years down there, besides being a cutter?

A. Various things. I have spread, worked on maintenance crews, and helped to move various things.

Q. Were you a member of the Donnelly Garment Workers' Union when it was first formed?

A. Yes, I was.

Q. Have you remained a member ever since?

[fol. 6940] A. Yes.

Q. You were at one time before July 15, 1939, a member of one of the executive committees, were you not?

A. Yes, I was.

Q. Were you ever paid by the Donnelly Garment Company for attending any meetings of the Donnelly Garment Workers' Union? A. No, I was not.

Q. Were you ever paid by the Donnelly Garment Company for attending any meetings of the executive committee of the Donnelly Garment Workers' Union?

A. No, sir.

Q. When were the executive committee meetings customarily held?

A. During noon hour—you mean during the time or the place?

Q. During the time you were on the committee.

A. Do you mean the place or the time?

Q. The time.

A. During noon hours or after working hours.

Q. If the meeting was substantial in length, what was the custom as to whether it was held at noon or after working hours?

A. I didn't get the question.

Q. If the meeting was going to be long, what was the custom as to whether it was held at noon or after working hours? A. After working hours.

[fol. 6941] Q. Did you ever see, during the time of your employment at the plant, any instructor or any other person, gather together a group of persons and take them as a group to a meeting of the Donnelly Garment Workers' Union?

A. No, sir.

Mr. Tyler: What was the custom, since April 27, 1937, and down to the middle of July, 1939, as to whether employees in the Donnelly Garment plant attended meetings of the Donnelly Garment Workers' Union, with whomever they please, and as they pleased, or whether they were under pressure or direction from anyone as to how they should attend those meetings?

A. As they pleased, no pressure.

Trial Examiner Batten: Now, those last two questions, Mr. Tyler, I think come under the ruling that I have made, and I strike the answers, and they may stand as an offer of proof, the same as with the other witnesses.

[fol. 6943] Cross Examination

By Mr. Hogsett:

Q. As I understood your testimony—I want to be certain about it—you did not attend any such meetings, either Donnelly Garment Workers' Union meetings or meetings of your committee, representing that union, during working hours; that's right, is it?

A. That's right.

Q. So, of course, there would be no deductions?

A. That's right.

[fol. 6946] ELIZABETH BARRETT, a witness called by and on behalf of intervener Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name, please?

A. Elizabeth Barrett.

[fol. 6947] Q. Is it Mrs. Barrett? A. Yes.

Q. Where do you live?

A. 819 West Seventy-seventh Street.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you worked there?

A. Since 1930.

Q. Substantially continuously? A. Always.

Q. Have you been a member of the Donnelly Garment Workers' Union since it was formed? A. I have.

Q. And have you been a member of the executive committee at some time prior to July 15, 1939?

A. 1938. I was in 1939, too.

Q. You were on the committee in 1938? A. Yes.

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for any time spent at a Donnelly Garment Workers' Union meeting? A. I was not.

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for any time spent at a Donnelly Garment Workers' Union executive committee meeting?

[fol. 6948] A. No, I wasn't.

Q. What work do you do at the Donnelly plant?

A. I am a pieceworker. I work in the belt section.

* * * * * *

By Mr. Tyler:

Q. Has that been true since the spring of 1937?

A. I have always worked in the belt section.

Q. Did you ever see any instructor in the Donnelly Company gather the girls together in her section and take them in a group to any meeting of the Donnelly Garment Workers' Union? A. I have not.

Q. What has been the custom at the plant as to whether the employees went to meetings of the Donnelly Garment Workers' Union with whom they pleased, and in such manner as they pleased, or whether there have been some instructions, orders, or pressure for them to go in certain groups?

A. We went as we pleased.

By Mr. Tyler:

Q. Did you ever wear your work apron to a meeting of the Donnelly Garment Workers' Union held after [fol. 6949] working hours? A. I have.

Q. Do you know whether that has or has not been a common custom at the Donnelly plant?

A. It is common.

Trial Examiner Batten: Now, the last three questions, Mr. Tyler, of course, are within the ruling which I have made, so that I will strike the answers and the answers may stand as an offer of proof.

Mr. Hogsett: Your Honor, that suggests to my mind this: Your Honor has from time to time rejected or refused to receive or stricken out certain evidence offered by the intervener, either through cross-examination of respondent's witnesses or through its own witnesses. The respondent, deeming each of those rulings adverse to its position, respectfully asks that respondent be allowed an exception to each such ruling.

Trial Examiner Batten: Of course, I don't need to allow you one. You are permitted one, an automatic exception.

[fol. 6950] Trial Examiner Batten: I will say, I grant you such ruling. Now, of course, I assume if any question comes up concerning any specific ruling, as to whether or not it is adverse, someone would have to settle it—I mean, if a difference of opinion arises.

[fol. 6951] Mr. Hogsett: I can't see that there would be any reasonable difference of opinion about this, for instance, as illustrative: Where you strike out, as you have evidence offered in response to three such questions as Mr. Tyler has asked each of his witnesses and asked each of our witnesses, that certainly is adverse.

Trial Examiner Batten: I don't think there is any question but what that is adverse, because I have, I would say, on a half a dozen occasions, asked the respondent and the intervener to cooperate to expedite the hearing. Therefore I could hardly say that it wasn't.

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[fol. 6960] Trial Examiner Batten: Mr. Tyler, might I ask: How many more witnesses do you intend to interrogate along the same line as these others?

Mr. Tyler: I expect to continue until I feel I have offered a fair cross-section of the witnesses to refute the testimony.

Trial Examiner Batten: Well, I think I should tell you now that, as far as these questions and this line of testimony is concerned, I don't think— You have some others here?

Mr. Tyler: Yes, I have other witnesses here.

Trial Examiner Batten: Were you contemplating more than you have here?

* * * * * * *

Mr. Tyler: I intend to continue until I feel that a fair cross-section of the evidence available to meet new matter has been presented.

[fol. 6961] Trial Examiner Batten: You proceed.

* * * * * *

MARJORIE GREEN, a witness recalled by and on behalf of intervener Donnelly Garment Workers' Union, having been previously duly sworn, was further examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Will you state your name, please?

A. Marjorie Green.

Q. You are the same Marjorie Green who testified in the previous part of this hearing held in 1939, are you not?

A. Yes, I am.

Q. Where are you employed?

A. Donnelly Garment Company.

Q. How long have you been there?

A. About nine years.

Q. Practically continuously? A. Continuously.

Q. Now, Miss Green, did you ever see any instructor at the Donnelly plant gather or call the girls in her section together and take them in a group to a Donnelly Garment Workers' Union meeting?

* * * * * * *

[fol. 6962] A. No, I didn't.

Mr. Tyler: What was the custom at the Donnelly plant as to whether employees attended meetings of the [fol. 6963] Donnelly Garment Workers' Union with whomever they pleased and in such manner as they pleased, or whether there was any pressure or orders put upon them to attend in certain groups or in a certain manner?

* * * * * *

A. They attended as they pleased.

Mr. Tyler: You were a member of the executive committee in some year, were you not, Miss Green?

A. Yes.

Trial Examiner Batten: Now, Mr. Tyler, those questions thus far, I think, come within my ruling and I will strike the answers, and the answers may stand as an offer of proof.

Mr. Hogsett: Respondent respectfully excepts to that ruling.

By Mr. Tyler:

Q. Now, Miss Green, you were a member of the executive committee in some year?

A. Yes, I was.

[fol. 6964] Q. What year was it?

A. 1937, 1938, and part of 1939, I believe.

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for attending any meetings of the Donnelly Garment Workers' Union? A. No, I was not.

Q. Were you ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for attending any meetings of the executive committee of the Donnelly Garment Workers' Union? A. No, I wasn't.

Q. Did you ever see women employees at the Donnelly plant wear their work aprons to the meetings of the Donnelly Garment Workers' Union that occurred after working hours? A. Quite often, yes.

Q. Was that a common occurrence or not?

A. Yes, it was.

Mr. Tyler: That's all.

Trial Examiner Batten: Now, the last two questions, I think, also come within my prior ruling.

Mr. Tyler: They are stricken, but the answers may stand as an offer of proof?

Trial Examiner Batten: Yes. If you will permit me, I will say the answers are stricken and they will stand as an offer of proof.

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[fol. 6965] Mr. Hogsett: Respondent respectfully excepts to the ruling.

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Cross-Examination

By Miss Weyand:

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Miss Weyand: Were any deductions ever made from your check for any time you took off to do Donnelly Garment Workers' Union matters?

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[fol. 6966] A. I took no time off from the company to attend Donnelly Garment Workers' Union meetings.

Miss Weyand: How long a lunch period did you have?

A. An hour.

* * * * * *

[fol. 6967] Trial Examiner Batten: Mr. Tyler, I am still more convinced that any more witnesses along this line—it isn't only cumulative but it is repetitious, especially if they testified in the prior hearing, as was indicated this morning. If you have witnesses you want to present who will testify to specific matters or other matters, you may produce them.

Mr. Tyler: I have one witness who will testify to an entirely separate state of facts. But I except to Your Honor's ruling, and I would like to make an offer of proof.

[fol. 6968] Trial Examiner Batten: You may do so.

Mr. Tyler: I offer to prove by the following witnesses: Rose Todd, Hobart Atherton—

* * * * * *

Mr. Tyler. (Continuing) —Hobart Atherton, Walter Higgins, Mary McClellan, and Freeland Rife, that if permitted to testify they would testify that they were members of the Donnelly Garment Workers' Union between April 27, 1937, and July 15, 1939; and that at some part of that time they were members of the executive committee of the Donnelly Garment Workers' Union; and that at no time and on no occasion during that period were they ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for attending Donnelly Garment Workers' Union meetings or meetings of the executive committee of the Donnelly Garment Workers' Union; and that they had no knowledge of and never saw any instructor gather the employees in her section together and take them as a group to any meeting of the Donnelly Garment Workers' Union; and that the employees were free to attend such meetings with whom and in such manner as they chose, without any interference, dictation or pressure from the employer; and that the women

employees in the Donnelly plant frequently attended meetings of the Donnelly Garment Workers' Union [fol. 6969] held after working hours while still wearing their work aprons; and that they were never paid for the time spent at any meetings of either the Donnelly Garment Workers' Union or the executive committee of the Donnelly Garment Workers' Union by the Donnelly Garment Company or the Donnelly Garment Sales Company.

* * * * * *

Trial Examiner Batten: I will reject the offer for the reasons I have previously stated.

Mr. Hogsett: Respondent joins in the offer and re- [fol. 6970] spectfully excepts to the ruling of the Examiner.

Trial Examiner Batten: Of course, understand, my rejection of the offer, under those circumstances, would be also applicable to you.

Mr. Hogsett: I so regard it, and it is perhaps unnecessary for me to repeat these exceptions, but I think it can't do any harm. I am doing it respectfully, in order to preserve the record.

Trial Examiner Batten: You may do so.

Mr. Tyler: Mr. Ingraham, will you take the stand please?

R. J. Ingraham, a witness called by and on behalf of intervener Donnelly Garment Workers' Union, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Tyler:

Q. Mr. Ingraham, you have been in attendance at the hearing of this case for the past several days, have you not? A. Yes, I have.

Q. Did you hear the testimony of Marguerite Keyes, who was on the stand, I believe, Monday?

A. I heard her testimony when she testified.

Q. Her testimony referred to an alleged telephone conversation sometime in the spring of 1937 between Mr.

Keyes and yourself. Did you hear that testimony?
[fol. 6971] A. Yes.

Q. Will you state what the facts are about that matter?

A. Well, I never had any such telephone conversation with Mr. Keyes or anyone else. I never discussed with anyone the employment of an attorney for the Loyalty League. I never represented the Loyalty League and I never was consulted by the Loyalty League.

In the second place, it is, of course, rather absurd that I would call Mr. Keyes, who was a layman, and ask him what he thought of a lawyer, Gossett, or anyone else. I have practiced law for 20 years or more in Kansas City and I don't think I needed any advice from Mr. Keyes as to whether Mr. Gossett or anybody else was a good lawyer, and I know I never had any such conversation.

Q. Do you know when Mr. Keyes first came to Kansas City?

A. Oh, I don't recall exactly. It was possibly in 1933 or 1934.

Q. Did you ever have any conversation with Rose Todd suggesting any lawyer for the Loyalty League or the Donnelly Garment Workers' Union?

* * * * * *

A. No, I never did.

* * * * * *

[fol. 6972] Mr. Tyler: Under the rulings of the Examiner, the intervener rests.

Trial Examiner Batten: Now, Mr. Tyler, just a moment. I want to know what rulings you are referring to before I accept your rest.

Mr. Tyler: Your rulings that further testimony would be cumulative and allowing me to make an offer of proof.

* * * * * *

Trial Examiner Batten: Is there anything further in the line of testimony?

(No response.)

If not, is there anything further along any line?

Mr. Hogsett: Your Honor, I'm not certain what the status of the record is with respect to certain written offers of proof.

* * * * * *

[fol. 6978] Trial Examiner Batten: I think first we will check on the exhibits. Board's Exhibit No. 1 I will come to in a few minutes.

Board's Exhibit No. 32, which is a wage and hour statement, of course, was covered by my striking of certain testimony of Mrs. Reed subsequent to July 15, 1939.

* * * * * *

[fol. 6979] Respondent's exhibit No. 43, which is the Judge Miller findings, and so forth, I reserved decision on. I will receive that. I checked on the record and I find that it is in there once before in an offer of proof. I will receive it, although if I write a report I will have to pass upon the question of what it is material to; I am not passing upon that point now. I meant by that, because I am receiving it, it doesn't necessarily mean that it has a direct connection with any testimony, but I will pass upon that later.

* * * * * *

[fol. 6980] Trial Examiner Batten: Now, my notes indicate that there is some question about the status of Board's exhibit No. 1-SSSSS. However, I checked the record and I find that it has been received. That was the "Offer of [fol. 6981] Proof and Protest Against Ruling of Examiner Made August 19, 1942." That offer was denied.

* * * * * *

On September 4, Mr. Ingraham made a motion to withdraw the name of Ella Mae Hyde from an offer of proof, as I recall it. That motion will be allowed.

On September 8—I believe that was the date—respondent reoffered certain offers of proof and reoffered respondent's exhibit No. 2 and intervener's exhibit No. 20 (rejected). I reserved decision on those. Those offers are now denied.

* * * * * *

Trial Examiner Batten: Oh, no,— Mr. Ingraham reoffered certain of the offers of proof that were given in the prior hearing, and reoffered respondent's exhibit No. [fol. 6982] 2 of the prior hearing, and intervener's rejected exhibit No. 20 of the prior hearing.

Mr. Tyler: That immediately followed the reoffer of—

Trial Examiner Batten: Just a minute. I will get to that. I have it here, Mr. Tyler. However, before getting to your matter, Mr. Tyler, I have another matter here.

There are pending in the record Board's exhibits Nos. 1-TTTTT, 1-UUUUU, 1-VVVVV, 1-WWWWW, and 1-XXXXX; which are offers of proof by the respondent. I reserved decision on those. Those offers of proof are rejected. That was on— I don't have the date on that, but—

Mr. Lane: 1-XXXXX is the intervener's offer.

Trial Examiner Batten: 1-XXXXX? Yes, you are correct. 1-TTTTT, 1-UUUUU, 1-VVVVV, and 1-WWWWW are respondent's offers, and they are rejected. 1-XXXXX is the intervener's offer, and that is rejected.

Now, on the other matter, Mr. Tyler, your reoffer of intervener's exhibit No. 20 (rejected),— You reoffered that?

Mr. Tyler: Yes.

Trial Examiner Batten: That reoffer is rejected.

On September 11, Miss Weyand made an offer of proof with respect to Board's exhibit No. 39-A, 39-B, 39-C, 39-D, and 39-E (rejected), and that offer of proof is rejected. I had reserved decision on that.

Now, in order that the record be clear, yesterday—no, [fol. 6983] on the 15th— Was the 15th yesterday?

Miss Weyand: No. The day before.

Trial Examiner Batten: Yes, the day before. —respondent made an offer of proof regarding the testimony of three witnesses employed in section 518 and an offer of proof with respect to three witnesses employed in section 413. Now, I think those offers of proof were rejected, although I am not clear about it. If the record is not clear, those two offers of proof are rejected.

Now, as far as my notes are concerned, that covers all matters which I have that are pending.

Mr. Hogsett, do your records indicate anything further?

Mr. Hogsett: Mine do not.

Trial Examiner Batten: Mr. Tyler?

Mr. Tyler: Nothing except what Mr. Lane will now offer.

Mr. Lane: When we reconvened after the recess during which the matter of designation of a new Trial Examiner was under consideration, Your Honor suggested that the intervener file a written pleading joining in the respondent's motion for the designation of a different Trial Examiner and affidavit of prejudice, and, also, application for continuance. We have joined in both of those matters and I have now prepared a written pleading, if Your Honor cares to have it for the file.

Trial Examiner Batten: Yes. That will be Board's ex- [fol. 6984] hibit No. 1-ZZZZZ. Do you have a duplicate of that, Mr. Lane?

* * * * * * *

It will be received.

* * * * * * *

Yesterday there was a witness, Mary Copowycz, on the stand, and during the cross-examination of Mr. Tyler, which begins at page 6879, the question at line 2, the question at line 6, and the answers thereto, the question at line [fol. 6985] 4, page 6882, and the answer, and the question at line 8, and the answer—those questions and answers are stricken, in accordance with my prior ruling on those other witnesses. Those are the questions which I find are the same as the others, Mr. Tyler. The answers may stand as an offer of proof.

Mr. Hogsett: Respondent adds here its exception to that order.

* * * * * *

[fol. 4] Board's Exhibit 1-YYYY.

Date 7/6/42 — Witness .....

Order Vacating Decision And Order, Reopening Record, Referring Proceeding To Regional Director, And Directing Further Hearing.

United States Of America
Before The National Labor Relations Board.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. C-1382.

The Board, on March 6, 1940, having issued a Decision and Order in the above-entitled proceeding; petitions to review and set aside the said Order having been filed in the United States Circuit Court of Appeals for the Eighth Circuit by Donnelly Garment Workers Union and Donnelly Garment Company, and, thereafter, on November 6, 1941, the said Circuit Court having entered its Opinion and Decree remanding the case to the Board for further proceedings not inconsistent therewith, and the Board having duly considered the matter and being fully advised in the premises,

It Is Hereby Ordered that the Decision and Order of the National Labor Relations Board, issued herein on March 6, 1940, be, and it hereby is, vacated and set aside; and

It Is Further Ordered that the record herein be reopened, that a further hearing be held for the purpose of taking additional evidence in accordance with the said Opinion and Decree of the aforesaid Circuit Court; and

It Is Further Ordered that the proceeding be, and it hereby is, referred to the Regional Director for the Seventeenth Region for the purpose of conducting such further hearing, and that the said Director be, and he hereby is,

authorized and directed to issue notice of such further hearing.

Dated, Washington, D. C., April 21, 1942.

By direction of the Board:

BEATRICE M. STERN,
Executive Secretary.

(Seal)

[fol. 61] (Board's Exhibit 1-RRRRR.)

Date 8/4/42 — Witness .....

Exceptions By Intervener, Donnelly Garment Workers' Union, To Order Denying Designation Of Another Trial Examiner And Order Denying A Continuance.

United States Of America

Before The National Labor Relations Board.

In the Matter of

Donnelly Garment Company
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract.

Case No. C-1382.

The intervener, Donnelly Garment Workers' Union, excepts to the order made by National Labor Relations Board on July 28, 1942 (Board's Exhibit 1 GGGGG) denying the application made by respondent, Donnelly Garment Company, and joined in by this intervener, for the designation of another trial examiner and application for continuance, and excepts to the rulings and actions of the trial examiner pursuant to such order for the following reasons:

1. Because upon the facts said order, rulings and action are contrary to law.

2. By said order intervener is denied due process of law contrary to the provisions of the Fifth Amendment of the Constitution of the United States in that intervener is

denied a full and fair hearing before a fair and impartial tribunal because the trial examiner, James C. Batten, has formed a fixed conclusion in his mind that the evidence which the Circuit Court of Appeals ordered received in this case has no probative value and should be given no weight or consideration.

[fol. 62] 3. Because the Board bases its order upon the erroneous assumption that the Circuit Court of Appeals ruled that trial examiner Batten was not shown to be biased or prejudiced whereas the Circuit Court of Appeals did not have presented to it and did not consider or rule upon the question of whether in receiving this evidence and making his findings and conclusions thereon and in making an intermediate report thereon said James C. Batten could act fairly and impartially and without a fixed opinion that such evidence was entitled to little or no weight or value.

4. Because said order in denying the continuance was, under the circumstances shown, an abuse of discretion upon the part of the Board.

FRANK E. TYLER,
LUCIAN LANE,
GOSSETT, ELLIS,
DIETRICH & TYLER;
Attorneys for Intervener,
Donnelly Garment Workers' Union.

[fol. 63] Board's Exhibit 1-SSSSS.

Date 8/19/42 — Witness .....

(Offer of Proof by Respondent Donnelly Garment Company, against Ruling of Examiner made August 19, 1942.)

United States Of America
Before The National Labor Relations Board
Seventeenth Region.

In the Matter of

Donnelly Garment Company, Respondent
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract,
Intervener.

The respondent Donnelly Garment Company protests against the ruling this day made by the Examiner to the effect

(1) that the respondent shall not be allowed to place its witnesses on the stand in the order it desires.

(2) Against the ruling that the respondent shall not be allowed to continue and complete the examination of Wave Tobin before proceeding to the introduction of the evidence of other witnesses.

Respondent shows that Wave Tobin was sworn as a witness on the 12th day of August, 1942, and that her examination was not concluded but was interfered with at about 3:00 o'clock P. M. by the Examiner, engaging in a colloquy with counsel which consumed all of the time until the adjournment at 3:40 P. M. August 12, 1942.

Upon the resumption of the hearing on this day, the respondent sought to continue the examination of said witness Tobin.

[fol. 64] The respondent offers to prove by the said Tobin that under the customs existing in labor unions and especially in the I.L.G.W.U. in the year 1937 and immediately thereafter, instructors or those employed in similar occupations, whether known as instructors or by other names, and head cutters and head pattern makers, whether known as head cutters or head pattern makers or by some other designation, were generally and usually regarded as competent and proper members of a union and were received into such unions while engaged at the work of instructors, head cutters or head pattern makers.

Respondent further expects to prove by Wave Tobin that the I.L.G.W.U. organized strikes in the plants of the Gerner, Gordon and Missouri Garment companies in Kansas City in March, 1937. That said Tobin, acting as agent

and representative of the I.L.G.W.U., was in charge of said strikes and aided, abetted, encouraged and directed said strikes, and the violence there perpetrated; and to show by said witness the nature of said violence and activities, and that it was intended that these same methods should be employed against the respondent and its employees.

Respondent alleges on information and belief and offers to prove by said Wave Tobin that said Wave Tobin is acquainted with the kind and character of contracts made by the I.L.G.W.U. with garment manufacturers in Kansas City and elsewhere; that Wave Tobin is acquainted with the methods of manufacture and the division of work in garment plants; and that employees in garment plants doing directory work are eligible for membership in the I.L.G.W.U.; and respondent states that it intends to show and can show by said Wave Tobin that the wages provided for in said contracts and paid under said contracts between the I.L.G.W.U. and garment manufacturers in 1937 [fol. 65] and at the present time are far less than the wages paid by respondent, and to show other provisions of said contract, all to the end of showing how and why the employees formed the plant union, and that it was organized for the purpose of preserving and improving the advantages they had in wages and conditions of labor and to protect themselves against the strikes, wrongs and outrages threatened to be visited upon them.

Respondent expects to develop from the testimony of the said Tobin, if she is permitted to testify, many other facts and circumstances bearing upon the issues of this case, and states that it is advised and believes that the facts to be developed will be of material assistance to respondent in the preparation and presentation of its case.

Respondent therefore renews its request that it be permitted to continue the examination of Wave Tobin at this time and to present its other witnesses in the order which respondent may see fit.

JAMES A. REED,
R. J. INGRAHAM,
WM. S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

[fol. 67] Board's Exhibit 1-TTTTT.

Date 9/8/42 — Witness .....

(Supplemental Offer of Proof by Respondent, Donnelly Garment Company, against Ruling of Examiner Made August 19, 1942, in respect of Testimony of Wave Tobin.)

Now comes respondent Donnelly Garment Company, and supplementing its offer of proof made August 19, 1942, in respect of testimony of Wave Tobin, further offers to prove by said witness Wave Tobin the following facts:

That as manager of the Kansas City Joint Board of the International Ladies' Garment Workers' Union she has custody of and access to records of said Kansas City Joint Board; that such records if produced would be identified by said witness as authentic and accurate; and that such records would show that in garment plants in Kansas City, Missouri, having contractual relations with the International Ladies' Garment Workers' Union, head cutters, head pattern makers, head examiners and instructors (whether known as head cutters, head pattern makers, head examiners and instructors or by some other designations) are treated as eligible for membership, and are accepted as; and in fact are, active members in the International Ladies' Garment Workers' Union; that this is true at the present time and has been true at all times during the years of 1937, 1938, 1939 and subsequent years, [fol. 68] while said plants have had such contractual relations; that the eligibility and acceptance of such head cutters, head pattern makers, head examiners and instructors (whether known as head cutters, head pattern makers, head examiners and instructors or by some other designations) as members of the International Ladies' Garment Workers' Union is in no wise exceptional or unique, but is conventional in the ladies' garment industry and in the operation of unions in that industry, and is in accordance with the well recognized usages and customs which prevail now, and which in the years 1937, 1938, 1939 and subsequent years have at all times prevailed, in the

ladies' garment manufacturing industry and in the operation and administration of the International Ladies' Garment Workers' Union, not only in Kansas City, Missouri and its trade territory but nationally.

JAMES A. REED,
ROBT. J. INGRAHAM,
WILLIAM S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

[fol. 70] Board's Exhibit 1-UUUUU.

Date 9/8/42 .. Witness .....

(Offer of Proof by Respondent, Donnelly Garment Company, relating to Witness Erwin Feldman.)

Now comes respondent Donnelly Garment Company and offers to prove by witness Erwin Feldman the following facts:

That he is now and for many years past has been engaged in the active practice of the law with his office at 1350 Broadway in New York, N. Y.; that he is now and has been during most of said time engaged in legal representation of ladies' garment manufacturing companies, many of which have been and are now in contractual relations with International Ladies' Garment Workers' Union; that he as counsel for manufacturers has frequently negotiated contracts with such union; that in addition to the foregoing he is now and for some years past has been the managing director of an association composed of ladies' garment manufacturers engaged in the same character of manufacture as respondent; that as a result of all the foregoing he is intimately familiar with the usages, customs and practices, with respect to the eligibility or ineligibility of employees of such manufacturers for membership in the International Ladies' Garment Workers' Union, which prevail now and which have prevailed in the years 1937, 1938, 1939 and subsequent years.

[fol. 71] That in plants of ladies' garment manufacturers generally throughout the nation, having contractual relations with the International Ladies' Garment Workers'

Union, head cutters, head pattern makers, head examiners and instructors (whether known as head cutters, head pattern makers, head examiners and instructors or by some other designations) are commonly and conventionally treated as eligible for membership, and are accepted as and in fact are active members, in such union; that this is true at the present time and has been true at all times during the years above referred to in plants having contractual relations with such union; that this usage, custom and practice is in no wise exceptional or unique or limited to any particular trade territory, but is usual, general and conventional. That this is true now and has been true at all times in the years above referred to.

JAMES A. REED,
ROBT. J. INGRAHAM,
WILLIAM S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

[fol. 73] Board's Exhibit 1-VVVVV.

Date 9/8/42 .. Witness .....

(Offer of Proof by Respondent, Donnelly Garment Company.)

In view of the Trial Examiner's ruling in the former hearing admitting (over Respondent's objections) extensive testimony from the old NRA hearing (upon which testimony the Trial Examiner and Board based many of its findings) and in view of the Trial Examiner's ruling in the present hearing (Record pp. 4314-4316) refusing to permit employees to testify concerning matters which occurred in connection with said old NRA hearing, the Respondent offers to prove by each of the employees called in this hearing and by each of the employees of the Respondent enumerated in Intervener's Exhibit No. 20 (rejected), which exhibit appears in the record herein at pages 6058-6094, that they respectively heard of the charges of the ILGWU in connection with the old NRA hearing, to the effect that the Donnelly plant was a "sweatshop", and that working conditions therein were bad and that Donnelly employees who

joined the ILGWU were discriminated against; that none of those charges were true; that the Donnelly plant was in [fol. 74] no sense a "sweatshop"; that on the contrary, working conditions therein were healthful and pleasant for the employees; that they respectively never heard of any discrimination or threatened discrimination by the Donnelly Garment Company, or any of its supervisory employees, or by any instructors or thread girls, against any employee of the Donnelly Garment Company because of affiliation with the ILGWU; that the attitude of Respondent's executives and supervisory employees at all times within their knowledge has been that the employees were free to belong or not to belong to any union as they might desire, and that their employment status would not be affected thereby; that said employees were not coerced, intimidated or influenced in any way by any of the acts or statements of Respondent's executives, supervisory employees, or by the instructors or thread girls, as charged by the ILGWU in the old NRA hearing.

JAMES A. REED,
ROBT. J. INGRAHAM,
WILLIAM S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

[fol. 76] Board's Exhibit 1-WWWWW.

Date 9/8/42 .. Witness .....

(Offer of Proof by Respondent, Donnelly Garment Company, relating to Witness Meyer Perlstein.)

Now comes respondent Donnelly Garment Company and offers to prove by witness Meyer Perlstein the following facts:

That he is a vice president and a member of the General Executive Board of the International Ladies' Garment Workers' Union and has been for some years last past; that previously he was for some five or more years the Southwest Regional Director of said union, having charge of its affairs in several states of the southwest including Missouri.

That Exhibit A attached hereto is a true and correct printed copy of an Agreement between the Chicago Association of Dress Manufacturers with the International Ladies' Garment Workers' Union and Chicago Joint Board of Locals 5, 18, 59, 81 and 100 I.L.G.W.U., dated March 1, 1936.

That Exhibit B hereto attached is a true and correct typewritten copy (except signatures which are omitted [fol. 77] from this copy) of a Memorandum Contract entered into between the Associated Garment Industries and the International Ladies' Garment Workers' Union covering the dress industry in the St. Louis Market.

JAMES A. REED,
ROBT. J. INGRAHAM,
WILLIAM S. HOGSETT,
BURR S. STOTTLE,
Attorneys for Respondent.

AGREEMENT

BETWEEN THE

Chicago Association of Dress Manufacturers

with the

International Ladies Garment Workers Union

and

Chicago Joint Board of Locals 5, 18, 59, 81 and 100 I. L. G. W. U.

CHICAGO, 1936

Exhibit A

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Agreement

AT a conference of representatives of the **Chicago Association of Dress Manufacturers,** hereinafter referred to as the "Association," representatives of the **International Ladies Garment Workers Union,** and representatives of the **Chicago Joint Board of Locals 5, 18, 59, 81 and 100, I. L. G. W. U.,** hereinafter referred to as the "Union," the following agreement has been made:

1. **Parties.** The Association, for itself and on behalf of its members, agrees to perform all the provisions of this agreement, and the Union agrees for itself and on behalf of its members, now employed and that may hereafter be employed by the members of the Association, to perform all of the provisions hereof on its and their part to be performed, and for and on behalf of its members agrees that they will perform their work conscientiously and faithfully.

2. **Union Shops.** The Association obligates itself, for itself and its members, that its members will maintain Union shops for the following class of employes represented by said Union, in which the standards hereinafter provided for will be maintained, and that they will employ none but members in good standing of the operative employes as herein enumerated: Cutters, operators, pinkers, basters, pressers, drapers, finishers, examiners, cleaners, special machine operators and sample makers.

3. **Head Cutters.** Head cutters who are members of the Union may nevertheless exercise the duties in their directory capacities over other cutters without becoming subject to censure or discipline by the Union, providing such head cutters do not violate the provisions of this contract. Head cutters who are not members of the Union shall not be allowed to cut, except original samples only.

4. **Calls for New Workers.** The Association agrees that their members will call the Union when in need of new workers. The Union agrees to furnish the employer with such workers, who are to the best of their knowledge competent to do the work required from amongst the number of unemployed workers.

5. **New Help to Join Union.** It is further agreed when there are no unemployed Union workers, the employer may engage workers who are not members of the Union, providing however, that such workers will become members of said Union at the end of the probation period if retained by the employer.

6. **Trial Period — (New Employees).** The employer shall have the right to discharge any employe at any time within a period of one week from the date of the beginning of employment. By mutual consent of the Association and the Union, the trial period may be extended for one additional week. This right of the employer shall be absolute and not subject to review. After such trial period the employer may discharge his employes for causes such as: incompetency, misconduct, insubordination in the performance of work, breach of reasonable rules jointly established and soldiering on the job.

7. **Distribution of Work.** Whenever there is insufficient work for all of the employes in the specific crafts, the available work shall be divided amongst them as equally as possible. It is also agreed that during the dull period of employment, the employer will not, as a matter of general practice, call in any employes to work unless the work to be performed shall yield at least a half day's pay to the employes so called in.

8. **Shop Chairmen Funtions.** In each shop there shall be a shop chairman or chairlady elected by workers of said shop, whose funtions shall be to help maintain harmony amongt employes, and to endeavor to adjust with the employer the complaints of the employes.

9. **No Meetings During Working Hours.** No shop meetings and no cessation of work shall take place during regular working hours, and all shop chairmen and chairladies shall perform all of

the regular duties of their particular crafts the same as any other employe.

10. **Visitation.** Representatives of the Union shall have access to the employer at any time during working hours to adjust complaints between employer and employes. Access to the workrooms shall not be oftener than once monthly and then only if accompanied by the employer or his representative.

11. **Working Time.** A standard working week shall consist of thirty-five (35) hours to be performed in five (5) days of seven (7) hours per day, beginning on Monday and ending on Friday, to be worked between the hours of 8:30 A. M. and 4:30 P. M. with one hour interval for lunch.

12. **Time and Pay Records.** It is further agreed that each employer shall have a time clock and keep accurate time put in by the workers in the performance of work. However, it is agreed that no worker shall be required to be in the shop unless there is work for him to do. It is further agreed that the employer will send in monthly a correct duplicate of payroll records of the Union employes to the Impartial Tribunal which shall be accessible to the duly designated representative of the Union and to the designated representative of the Association.

13. **Overtime.** Since the parties were unable to reach an agreement as to the question of overtime, and since both parties desire to maintain harmony in the market and to avoid unnecessary disturbance in the production that would be of no benefit to either of the parties, it is, therefore, agreed between them that the matter of overtime shall be submitted immediately upon the execution hereof to an arbitrator selected by both parties and who shall render his decision within four weeks. The decision of the arbitrator when rendered shall be binding upon the parties and become a part of this contract for the life therof. Pending such decision, the Union agrees to permit the workers to work one hour a day overtime in case of necessity.

14. **Piece Work Employes.** Piece work employes shall be compensated on a piece work basis. The fixing of the price per

garment on which work is to be performed shall be determined at the rate to yield to the worker the earning of the following minimums:

Pressers	$ .95	per hour
Operators	.76	" "
1st and 2nd Finishers	.55¼	" "

15. **Finishing — Piece or Week Work.** A change in the system of work in the finishing crafts from week work to piece work or from piece work to week work shall only be made at the beginning of a season.

16. **Twenty-five Per Cent Additional for Duplicate.** All piece workers shall receive not less than twenty-five per cent (25%) above settled stock prices for duplicates, providing, special workers are selected or special attention is required to do the work.

17. **Thirty-five Per Cent (35%) Additional for Samples.** All pressers working piece work pressing samples shall receive not less than thirty-five per cent (35%) above the settled stock price; however, it is understood that the employer may select pressers to do the work from amongst those employed by him.

COMPENSATION AND WAGES FOR WEEK WORKERS

18. **Sample Makers.** Sample Makers shall be paid on the week work basis and shall receive a wage of not less than Twenty-five Dollars and Fifty Cents ($25.50) for full time per week.

19. **Drapers.** Drapers shall be paid on a week work basis and shall receive a wage of not less than Twenty-three Dollars ($23.00) for full time per week; excepting in such shops where piece work system is practiced at the time of the signing of this agreement such piece work system may continue, providing however, that such workers earn not less than the minimum wage scale.

20. **Examiners.** Examiners shall be paid on the week work basis and shall receive a wage of not less than Eighteen Dollars ($18.00) for full time per week.

21. **Special Machine Operators.** Special Machine operators shall work by the week and receive a minimum of Eighteen Dollars $18.00) for full time per week.

22. **Basters.** Basters shall be paid on the week work basis and shall receive a wage of not less than Fifteen Dollars ($15.00) for full time per week. Basters are only those employed exclusively in the work of performing the basting operation, meaning that the needle work done is of a temporary character; the baster is not to do finishing work.

23. **Cleaners and Pinkers.** Cleaners and pinkers shall be paid on the week work basis and shall receive a wage of not less than Fourteen Dollars and Fifty Cents ($14.50) for full time per week.

24. **Sorters.** Sorters who are members of the Union shall be entitled to the benefits of this agreement and shall be paid not less than Fourteen Dollars ($14.00) minimum.

25. **Cutters.** It is further agreed that all cutters now employed shall receive an increase of Two Dollars ($2.00) per week, provided the pay of such cutters was not increased in the past sixty days. It is further agreed that the minimum scale of cutters shall be Forty Dollars ($40.00) for a full week's time and the minimum scale of cutters who also do grading shall be Forty-one Dollars ($41.00) for a full week's time. In the event cutters complain that the powder used in the process of performing their work is injurious to their health, and upon test of a chemist, such powder should be found injurious to the health of the workers, that the powder will be eliminated.

26. **Employment of Cutters.** With the genuine desire on the part of the Association and the Union to employ non-employed cutters, it is agreed that upon the execution of this agreement a joint committee shall investigate the shops with the view in mind to place, if possible, additional cutters to work.

27. **Minimum Number of Cutters.** A shop operating with more than six machines shall employ at least one cutter. A shop operating with more than eighteen (18) machine operators shall employ not less than two (2) cutters.

28. **Apprentice Cutters.** It is further agreed that no new apprentices shall be taken on as long as full fledged cutters are out of employment.

29. **No Reductions.** It is further agreed that during the life of this agreement there shall be no reductions of wage rates of piece workers or week workers unless it is mutually consented to by the Union and the Association. Any settlement made by a week worker and the employer below the minimum scale or any rate received by a piece worker less than the settled rate, shall be considered a private deal and be deemed a violation of this contract.

30. **Deficient Help.** It is agreed between the parties that scales of week work employes and piece work employe, as hereinabove period, shall not apply to employes who are deficient in their production by reason of their age, physical condition, or otherwise found to be deficient, and that the wages for such workers shall be agreed upon between representatives of the Union and the Association.

31. **Differential for Low Priced Garments.** Regarding the scale of prices for workers in the City of Chicago employed on garments sold for $3.75 and below — such workers shall receive not less than fifteen per cent (15%) below the minimum scales set forth in this agreement for a full week's work. In no event shall it be less than Fourteen Dollars ($14.00) per week.

32. **Price Committee Inside Shops.** In each inside shop a separte price committee shall be selected for each craft. The persons so selected shall be fully representative of their craft. Such committees shall consist of not more than three persons and the shop chairman or chairlady where a shop has fifty employes or less in the particular craft, and of not more than four persons and the shop chairman or chairlady where a shop has more than fifty employes in the particular craft. The price committee shall be selected by the workers from amongst their members.

33. **Agreed Settlements Binding.** Price settlements by the committee and employer or his representative, shall be taken up

and discussed outside of regular working hours only. The price fixed and agreed upon shall be signed by both employer and price committee, and shall be binding on the parties. Should it be necessary to resort to other provisions herein provided for, for the settlement of prices, such settlements may be made during regular working hours.

34. **Settlement of Piece Work Rates.** The determination of prices for the operations performed by piece workers for garments made during each week, shall be settled by the price committee hereinabove provided for on the part of the employes, and the employer or his representative at the end of each week. If no agreement is reached by said committee, same shall be referred to the duly authorized representatives of the Union and the Association. If the matter cannot be settled through the mediation of such representatives, the matter may be submitted to a committee composed of one selected by the Association and one selected by the Union. Should any of them fail to agree, the matter shall be refered to the Price Arbitrator hereinafter provided for, to determine a fair price for the garments in dispute, whose decision shall be binding. In all events a settlement shall be reached within the following week.

35. **Price Arbitrator.** The parties shall, within ten (10) days from the date of the execution of this agreeemnt, jointly agree upon one person familiar with the manufacture and production of dresses, who shall be known as "Price Arbitrator." To him shall be referred all questions regarding price settlements which cannot be adjusted between the employer and the respective price committee herein provided for, not adjusted between the Union representative and the Association representative, or a Special Committee, as herein provided. His tenture of office shall follow in the same manner as in this contract provided in respect of the Impartial Tribunals.

36. **Reference to Price Arbitrator.** The Price Arbitrator shall have authority te hear and determine the matter in his own way and shall have the right to call upon the employer or price committee, to hear and consider evidence submitted by any party, to obtain sufficient data, make tests, and to use any other practical

measures deemed by him necessary to reach a just and fair conclusion under the terms of this contract.

37. **Finding Retroactive.** He shall give a written report of his findings to the Association, the Union and the Employer, and his price decision shall be retroactive to the beginning of the process.

All parties hereto agree to be bound by the decision of such Price Arbitrator when made.

38. **Compensation.** The compensation of the Price Arbitrator shall be borne equally beween the Association and the Union.

39. **Holidays.** All employes paid on a weekly basis shall be paid for the following legal holidays, to wit: New Year's Day, Decoration Day, Fourth of July, and Labor Day. During the week in which such legal holiday occurs, employes working less than a full week shall be paid for the holiday pro rata for the hours worked; however, in no event shall they be paid less then one-half day for such legal holiday. The workers have a right to refrain from working on the first of May without pay. Pay day shall be weekly on a designated day; it shall be either on a Tuesday or Wednesday.

40. **Contractors.** On and after April 15, 1936, a member of the Association operating with contractors shall settle prices on garments to be produced by contractors on his own premises, or in any other permanent place where he may designate, by a price committee comprising representatives of each contracting shop, in which event the price committee shall consist of no more than five; provided, however, if the employer in question operates with more than three contractors, the committee shall consist of one representative of each contracting shop and two representatives of the inside shop, if he has one.

41. **Price Committee—Inside Production Only.** Garments which are designated to be made in inside shop only and which will not be sent to be made at a contractor's shop shall be considered by the price committee selected only from amongst the workers of the inside shop.

42. **Union Contractors Preferred.** A member of the Association who employs contractors shall employ only such contractors who are in contractural relation with the Chicago Joint Board of the I. L. G. W. U.

43. **Manufacturer Responsible for Pay.** A member of the Association who employs contractors shall be responsible to the members of the Union for the payment of their wages for work done by them on garments made by their employers for such Association member, providing such liability shall be limited to wages for one full week and two days in each instance, and provided further that notice of default is given to the Association within three days after such default.

44. **Sharing Work Among Contractors.** A member of the Association who employs contractors exclusively working for him shall share work with the contractors during slow periods of employment.

45. **Contractors to be Registered.** Any member of the Association who works with contractors now shall register with the Association and with the Union, the name and addreses fo the contractors so employed, and shall specify whether such contractors are employed to work for them exclusively, permanently or temporarily. When taking on new contractors, the employer is required to register the names and addresses of such contractors with the Association and the Union before giving any work to him.

46. **Inside Workers Preferred.** A member of the Association who is not employing contractors permanently shall not give work to any contractors unless workers in the inside shop are fully employed.

47. **Notice Before Strike on Contractor.** The Union agrees that before calling a strike or stoppage on a registered contractor who works for a member of the Association, the Union will give notice to the Association who will endeavor to adjust the dispute

in question between the Union and such contractor within thirty-six hours.

48. **No Work for Firms on Strike.** No employe shall be required to work on orders placed by a manufacturer or contractor against which the I. L. G. W .U. maintains a strike.

49. **Employers' Hours Limited.** Employers shall not engage themselves in any work belonging to the enumerated crafts before or after working hours.

50. **Adjustment of Grievances.** All complaints and controversies or grievances (except price settlements which shall be taken up in the manner hereinabove provided for), arising between the parties hereto or between an employer and any employe hereunder during the life of this agreement, which shall not have been adjusted by the shop chairman or chairlady with the employer, shall be set forth in writing and jointly investigated by the manager of the Association and by the manager of the Union or their deputies. When such representatives shall have arrived at a decision it shall be binding upon the parties hereto. Sould such representatives fail to agree, the matter shall then be referred by them to the Impartial Tribunal hereinafter provided for.

51. **IMPARTIAL TRIBUNAL.** The parties hereto agree between them that within two weeks from the date of the signing of this agreement, they will agree upon

who is hereby declared to be the Impartial Tribunal, whose duties and funtions shall be to hear and determine and render decisions on all complaints, grievances or controversaries which may arise during the term of this contract which cannot, in the first instance, be otherwise disposed of under the provisions hereof.

52. **Deficiency on Minimums.** The Impartial Tribunal shall also have the right to sit in judgment on complaints of the

Union that piece workers in any shop are not earning the minimum scales as provided herein. The Impartial Tribunal may consider and determine the complaint of the Association that, either the piece rates in any non-member shop are too low, or that the minimums in this contract provided for are not earned by workers in such non-member shop. Upon hearing such complaints he may render any decision he deems fair and just, and his decision shall then supercede any decision made on the settling of piece rates.

53. **Notice of Hearings.** The Impartial Tribunal shall, with all due dispatch, set a date for the hearing, notify the parties in any manner deemed necessary by him, and he may for such purpose recognize a representative of the Union, and the representatives of the Association, as the parties to whom notice will be sufficient in each case.

54. **Evidence.** He shall have the authority to call for any evidence, written or oral. The parties affected may present any evidence, written or oral, but the same shall only be of matters pertinent to the complaint.

55. **Powers.** (a) The Impartial Tribunal shall have power to enter any finding, fine, penalty, punishment or other order which, in his sole discretion, seems just and reasonable, having due regard for justice and equity in each case, and not in conflict with the provisions of this contract or the law of the land. Cases based on complaint of unjust discharge of an employe shall have precedence in the ordering of hearing over all other cases.

(b) Any discharge case which is brought before the Impartial Tribunal in which he decides to reinstate the worker, he may, in his discretion, award the worker compensation for loss of time either in part or in full for the time lost. Should a discharged worker be reinstated thru the mediation of the representatives of the Association and the Union and the matter of compensation for loss of time is disputed, it shall be referred to the Impartial Tribunal and he may, in his discretion award the worker compensation as hereinabove provided for.

56. **Compensation and Expenses.** The compensation of the Impartial Chairman shall be jointly contributed to equally by both parties, that is to say, the Association and the Union.

57. **Decisions Final and Enforced.** His decision shall be deemed and be accepted as final and binding upon all parties affected by such decisions, and his decisions shall be carried into effect, respectively, by every person, firm, member, employe, local, union or association named, and the failure to carry such decisions into effect, shall be deemed a violation of this contract.

Each case brought to the Impartial Tribunal or the Price Arbitrator shall be considered on its own merits and this agreement shall constitute the basis upon which each decision shall be rendered. No decision shall be used as a precedent for any subsequent case.

58. **Intrepretations Only.** The Impartial Tribunal may interpret this agreement, but shall have no authority to alter or modify the same or any provisions hereof.

59. **Vacancy in Office.** Upon the failure, refusal to act, or resignation of the Impartial Tribunal, then the parties shall immediately agree upon a successor or successors as the case may be, during the term of this contract, such successor to exercise all the duties and have all the powers and right of the Impartial Tribunal.

60. **Term of Office.** The Impartial Tribunal shall hold office for six months from the date of the execution of this contract and for successive periods of six months thereafter during the life of this contract, provided, for thirty days' notice prior to the expiration of any six months term, or upon the failure, refusal to act or resignation of the Impartial Tribunal (and the parties being unable to agree upon the Impartial Tribunal or his successor within said thirty days), either party shall notify the other party and Governor HENRY HORNER of the desire to appoint a successor Impartial Tribunal. Said Governor Henry Horner, upon such failure of the parties to agree within said thirty day period, shall, himself,

act as such successor, or shall appoint such successor who shall have all the rights, power and duties of the Impartial Tribunal.

GENERAL PROVISIONS

61. **No Strikes, Stoppages, Lockouts.** During the term of this agreement there shall be no general lockouts, general strike, individual shop lockout, individual shop strike or shop stoppages for any reason or cause whatsoever. There shall be no individual lockout, strike or stoppages pending the determinatin of any controversy, complaint or grievance. Should the employes of any shop or factory cause a stoppage of work, notice thereof shall be given by the Association to the Union in writing. The latter obligates itself to return the striking employes to their work within twenty-four hours after the receipt of such notice. Should any member of the Association cause a lockout in his shop, notice thereof shall be given by the Union in writing to the Association, and the member obligates himself, within twenty-four hours after the receipt of such notice, to re-employ the workers. Should the employes fail to return to work at the expiration of the twenty-four hours, said employes shall de deemed to have abondoned their employment. Should the employer fail to terminate the lockout and to re-employ the employes within the said period, he shall be liable to the employes for the full amount of the wages lost by them from the date of the commencement of the lockout.

62. **Rights and Duties of Parties to this Agreement.**

(a) The Union agrees that in the interest of stability and the maintenance of fair working conditions in the industry, that upon the suspension, expulsion or resignation of a member of the Association, he shall automatically cease to be a party to, and lose all benefits of this contract, and that the Union will not enter into contractual relations, orally or in writing, with any such ex-member who has been suspended, expelled, or resigned from the Association, until such individual, firm, or corporation has made satisfactory settlement with the Association for any legitimate claim it has against him.

(b) The Association agrees not to admit to membership any manufacturer before such manufacturer settled any legitimate claim that the Union has against them.

63. **No Favoritism.** The Union further agrees that when entering into a contract with any individual, firm, or corporation engaged in the dress business, that none of them shall receive any benefit or aid, nor any more favorable terms or conditions, than is accorded to the members of the Association, pursuant to the terms of this agreement.

64. **Security from Non-Member.** The Union further agrees that before the Union or any of its members enter into contractual relation with a non-member of the Association, the Union will require substantial cash security deposit for the performance of any such agreement on the part of such firm, the amount of such cash security deposit shall be based on a schedule which shall take into account the size of the shop and the volume of business, provided, in the Association is aggrieved by any such contract or its manner of enforcement by the Union, it may submit any such matter to the Impartial Tribunal for decision. The Union agrees to co-operate with the Association in maintaining fair trade practice in the industry as customarily prevails in the Chicago market.

65. **No Home Work.** It is further agreed that no work shall be taken out from the factory to be done at home and that same shall constitute a violation of this agreement, and the employer and the worker shall be subject to penalties by their respective organizations.

66. **Electric Irons.** It is further agreed that an employer, when establishing a new factory, or moving his factory, will install only electric irons in his pressing department.

67. **Preference to Union Service Shops.** Members of the Association who give out work to service industries agree to give

preference to such shops who are under contractual relations with the I. L. G. W. U.

68. **Cloak Union Standards.** The manufacture of garments which are identified as of a type belonging to the Cloak and Suit Industry, shall be manufactured under the prevailing Union standards in the Chicago Cloak and Suit Industry, if and when made by members of this Association.

69. **Reorganization.** The employer shall have the right to reorganize his shop. The reorganization herein provided shall be taken to mean a bona fide reorganization of the employer's business necessitated either by the curtailment or a fundamental change in the business or the character thereof. No reorganization shall take place unless fifteen day's notice of the intention to reorganize shall be given to the Union by the Association. Should such reorganization necessitate the discharge of any workers, the workers who are to lose their position by reason thereof shall be selected, either by lot or any other method agreed upon by the Association and the Union; however, should the Union and the Association disagree on the good faith of the reorganization or on the method of selecting the workers, the matter should be referred to the Impartial Tribunal without limitation as to the method of selection.

70. **Vigilance Committee.** It is mutually agreed upon the execution of this agreement a permanent joint committee shall be established for the purpose of observing the market before and after regular working hours of any day, Saturday, Sunday or Holidays, to ascertain if any shop is open or if any person is on the premises, and also for the purpose of ascertaining whether the hours and work day provisions of this agreement are being fully complied with. However, it is agreed that no more than two or any two of such committee shall investigate any one given shop.

71. **Committees Only to Report.** It is further understood that the duties of that committee shall be limited to observing and reporting to the Union and the Association whatever irregularities

they may find. Such committee members shall be furnished with a card properly signed by the Managers of the Association and the Union, identifying the purpose of their visit; upon presentation of such card to whomever is in charge of the shop, the committee shall be admitted to the workrooms for the purpose before mentioned.

72. **Courtesy Required.** It is further agreed that the members of the Association will extend all courtesies to the Vigilance Committee and that the Vigilance Committee will do likewise.

73. **Violators Subject to Penalties.** It is further agreed that members of the Association and members of the Union found by the Vigilance Committee violating the working hours as stipulated in this agreement, shall be subject to penalties by their respective organizations.

74. **All Notices in Writing.** It is further agreed between the parties hereto that wherever notice of one party to another is required to be given, that such notice shall be construed to mean notice in writing, delivered to the business office of the party notified.

75. **Private Deals Prohibited.** It is agreed by both parties that their members, that is, the members of the Association and the members of the Union, shall not enter into private agreement with one another as to wages, hours and working conditions, nor will such private agreements be sanctioned by either of the parties. However, should the Union or the Association find that a private deal was made by any member of the Union and a member of the Association, both parties shall be brought to trial before their respective organizations and if found guilty, punished. In no event shall this paragraph be construed that the worker or workers violating this paagraph should be deprived of tenure of employment unless the Union reaches such conclusion upon trial, or upon the decision of the Impartial Tribunal in the event the Association desires the discharge of such worker or workers.

76. **Modification of Agreement by Parties Only.** No member of the Association, no worker or group of workers shall have the right to modify this agreement or any provision thereof. Modifications of this agreement can only be effected at a conference called for such purpose by the parties and ratified by the respective organizations.

77. **Duration of Contract.** This contract shall terminate on February 28th, 1939. In the event that either of the parties shall desire a renewal thereof, or any changes or modifications in such renewal, it shall notify the other party at least sixty days prior to the expiration date thereof, whereupon the parties shall meet in conference within 10 days from receipt of such notice, for a consideration of such propesed changes or modifications.

IN WITNESS WHEREOF, the parties hereto have caused these Presents to be signed by their respective officers and their seals to be affixed, as of the First day of March, A. D. 1936.

CHICAGO ASSOCIATION OF DRESS MANUFACTURERS

By M. W. FRIED (Sgd.)
President

By ABRAHAM HELLER (Sgd.)
Executive Director

By ADOLPH H. HAAS (Sgd.)
Vice-President

INTERNATIONAL LADIES' GARMENT WORKERS UNION

By MORRIS BIALIS, (Sgd.)
Vice-President

CHICAGO JOINT BOARD OF LOCALS 5, 18, 59, 81 and 100

By LEONARD AXELROD (Sgd.)
Chairman

By M. A. GOLDSTEIN (Sgd.)
Secretary-Treasurer

LEWIS F. JACOBSON
Counsel for Chicago Association of Dress Manufacturers

PETER SISSMAN
Counsel for Chicago Joint Board of I. L. G. W. U.

[fol. 79] Exhibit B.

Memorandum Contract entered into between the Associated Garment Industries and the International Ladies' Garment Workers' Union covering the Dress Industry in the Saint Louis Market.

Preamble

The Union and the Association have heretofore maintained contractual relations over a period of years. In that time nothing of consequence has occurred to mar the relationship. During the term of contract which has just expired it has not been necessary to refer a single dispute to arbitration. Thus have industrial peace been brought about and the tools of primative adjustment been laid aside.

The Union and the Association, while proud of this progress, do not regard it as the ultimate objective of their relationship. The partnership relation between industry and the worker is not altogether a fiction. Through the introduction of efficiency and the elimination of ancient methods and wasteful processes it is quite possible to increase the income of the worker and expand the influence of the industry and the market simultaneously.

Under this document, then, our objective shall be the production of the finest products in the most efficient manner with the highest possible reward to the worker. To this end, by our signature hereto, we mutually pledge our co-operation and hereby covenant and agree this the eighth day of December, 1941, as follows:

I.

Definitions

(A) Association—shall mean the Associated Garment Industries of St. Louis, a corporation organized and existing under the laws of the State of Missouri.

(B) Union—shall mean the International Ladies' Garment Workers' Union, an unincorporated voluntary association of workers with headquarters in New York City

and shall embrace the St. Louis Joint Board thereof, the affiliated Locals in the St. Louis area, the several officers and members thereof individually and as a group.

(C) Workers — shall mean those members of the International Ladies' Garment Workers Union in good standing, engaged in productive work in the several shops who are members of the Association.

[fol. 80] (D) Coverage—The contract shall cover every shop of every member in good standing with the Association eligible to manufacture the merchandise herein covered which shall be ladies and misses dresses.

(E) "Low End"—shall mean dresses sold at wholesale for less than $5.75 each. Special arrangements shall be maintained for the production of summer wear and sportswear as heretofore and as modified shall continue as an exception to the term hereof.

(F) Top Skilled Cutters—shall mean those cutters who shall have been certified by a special board of three (3) members of the Union and three (3) members of the Association as such. Said Board shall be a permanent Board and shall prescribe a series of tests which shall demonstrate the skill of the applicant for classification. Only such cutters as shall have been examined and certified by such board shall be eligible for this classification. All cutters who are at the execution hereof employed in the capacity of top skilled cutters and receive the wage scale therefore, are hereby classified and certified as such without test. A majority of the board shall be sufficient and necessary to classify, a copy of their certification shall be filed with the cutter, and Union and the Association.

(G) Inside Shop—shall mean the member of the Association who shall contract work out to a contractor on a cut make and trim basis.

(H) Outside Shop—shall mean a contractor who shall receive work and contract as provided in (G).

II.

Distribution of Work

There shall be an equitable distribution of work among all the workers of each department of a particular shop.

Work shall be apportioned and distributed in the most economical and efficient manner. Preparatory operations may also be employed but when so employed shall be equalized so far as possible with the regular workers in the department.

Both parties realize the necessity of improving production methods and machinery to the end of increasing production in the plant and resulting in reduction of overhead expenses and increased earnings to the workers. To establish a procedure resulting in such accomplishments, both parties agree as follows:

The Association agrees that its members will institute a [fol. 81] system whereby certain complicated parts of a garment may be produced separately. The dress and the separate parts of the dress will be produced by the operators employed by the company.

Workers will not be called in for less than one half days' work and if so called shall be compensated therefor at the regular minimum rate for their craft as herein prescribed. Workers on piece work shall also be paid at the regular minimum rate herein prescribed for their crafts for all time in excess of twenty minutes at any one time per day spent in the factory waiting for work.

Such time shall be certified to by a suitable person designated by the management at the time of such waiting period and shall be filed with the person in charge of time or payroll at the end of the day in which the waiting period occurred.

III.

Pay Day

Each employer shall establish a regular weekly payday and wages shall be paid by check or other agreeable medium on that day.

IV.

Price Committee

(A) There shall be a committee of the workers in each shop selected by the workers in the shop to negotiate and make prices on new garments and to act as the representative of the workers for collective bargaining. In case of a

disagreement on the prices the matter shall be taken up between the Union and the Association and a settlement reached, if possible, within twenty-four (24) hours after submission. The price set shall be fair and equitable and shall be based on the productive ability of the average worker.

(B) A system of timing garments instead of bargaining prices may be established in the shop. The timers are to be selected jointly by the price committee of the shop and the management.

(C) The first three (3) garments of a style should be timed.

(D) Each employer is to designate a specific day of the week to settle prices. No such settlement shall be prolonged more than one (1) week unless the time is extended by mutual consent. No settling of prices shall be done during [fol. 82] the regular hours of business.

(E) In the event an agreement cannot be reached between the Shop Committee and the management, a representative of the Union and the Association shall be called in to assist in the adjustment.

(F) In the event these parties cannot agree, the matter shall be referred to a committee of four (4) to meet and decide within three (3) days, two (2) to represent the Union and two (2) the Association. Meantime, the mangement shall pay the workers on a substantial rate and the prices finally agreed upon shall be retroactive.

(G) Prices agreed upon in any of the above instances shall be reduced to writing and signed by the parties making the agreement or adjustment.

V.

The Union, the Association, and the Joint Labor Board

The Association agrees that all workers employed in the shop of its members must be members of the Union in good standing, and must continue their good standing membership in the Union during the life of the contract. New workers and apprentices engaged by a member of the Association shall, after a trial period of four (4) weeks be-

come members of the Union. During the probationary period such workers shall secure a working permit from the Union, which permit the Union agrees to issue.

Since the continued growth of the St. Louis area as a garment market presents problems which are the parties mutual responsibility and which support the underlying wages and hour structure of this contract, the Union agrees that none of its members shall directly or indirectly work for any firm member not in good standing with the Association. Any firm who shall hereafter become a member of the Association shall remain a member of the Association in good standing for the life of this contract.

The Union and the Association shall designate and maintain a Joint Labor Board to be composed of three (3) members of the Union and three (3) members of the Association who shall in turn select a chairman and a secretary. The function of the board shall be to supervise the enforcement of this contract, to mediate disputes arising hereunder as elsewhere provided and to perform such other duties as are herein imposed upon it. It shall meet at such time and place as it shall decide unless otherwise required by the provisions hereof.

[fol. 83] The Association agrees not to discriminate against any worker for his or her legitimate activity on behalf of the Union. No such activity shall be carried on during the hours of business.

VII.

Discharge

No worker shall be discriminated against or discharged unjustly. It is not the meaning of this section to limit the management's right to discharge for just cause.

VIII.

Minimum Wage Scales

(A) The following shall be the wage scales for time workers of normal speed and ability.

Top skilled cutters	$40.00
Second cutters	33.00
Finishers	$16.75 high range; $14.70 low range
Examiners	14.70
Drapers	19.84
Special Machine Operators	16.75
Bundlers	14.70

The following rates shall be the basis for the computation of piece rates and piece workers and shall also be the basis for the computation for overtime pay for both piece workers and week workers.

Operators	66½¢ per hour; 55½¢ low range.
Pressers	84¢ per hour.

(B) The present arrangements for subnormal producers as established shall continue.

(C) The pay for duplicates shall be based upon the average hourly earnings for the individual worker making the duplicates. The minimum wages for sample makers shall be $23.50 per week.

(D) Being unable to agree on wage increases requested by the Union, the parties hereby mutually agree that immediately upon the execution hereof they will submit that matter to the Board of Arbitration, composed of Tyrrell Williams, George A. Rozier, and ..... and agree that the increases, if any, shall be determined by the Board of Arbitration not later than the 15th day of December, 1941 and shall be effective retroactive to December 8, 1941.

[fol. 84]

IX.

Scale Revision

It is the intention of the parties hereto to maintain the above wage scale. At the end of each year, however, the right is reserved to either party to submit to the Board of Arbitration evidence that there has been some material and substantial change in the economic conditions of the market as to warrant an adjustment. The Board of Arbitration in determining the issue shall be guided by the general economic conditions of this market, the economic conditions of the industry and the wage scales in the other

markets, the prevailing cost of living, the average skill of the workers with reference to the standard skill of the industry and competitive conditions.

X.

Shop Committee

The workers in each shop of the Association shall be represented by a shop committee consisting of not less than three (3) nor more than five (5). The chairman of this committee shall be the shop chairman.

The shop committee shall represent the workers in all matters or any grievances which may arise in a shop between a member of the Association and the workers. Any matter or grievance which cannot be speedily adjusted shall be taken up for settlement between an accredited representative of the Union and an accredited representative of the Association. All such negotiations between the employer and the shop committee shall be after working hours.

Either of the parties, the Union or the Association shall have a right to refer any unsettled dispute to the Board of Arbitration designated in this agreement.

XI.

Help.

(A) The Union shall maintain a labor bureau containing the names and addresses and skill and craft of each unemployed worker. When a manufacturer shall be in need of additional help, he shall notify said bureau so that it may direct these people to be opening. The power to select employees shall remain with the management. The manufacturer shall judge all applicants on their ability and if help is needed at once, in the order of their appearance. Preference shall be given to applicants with Union cards.

[fol. 85] (B) The Union agrees that it and its individual members shall cooperate to the fullest extent with the management in the training of new and unskilled workers. Conduct tending to discourage the engagement or training of such new or unskilled workers when such workers are necessary is prohibited.

(C) No shop is to employ semi-skilled cutters unless a full fledged cutter is first employed and every shop where no cutter is employed and there is reasonable ground for belief that one should be employed, the matter shall be taken up between the Union and the Association, and if no agreement is reached, the matter shall be referred to arbitration for final disposition, nor shall any employer or designer displace any cutter.

(D) No work shall be given out to workers to be made in the home.

XII.

Hours

(A) The hours of work under this contract shall be limited to thirty-five (35) hours per week, divided into five (5) working days. No work shall be done on Saturday or Sunday. No one shall be required to work on legal holidays.

(B) The members of the Association shall be given the privilege to make up the loss of time for legal holidays either on Saturday or during week days by making arrangements with a joint committee of the Association and the Union preceding the holidays. Such time shall be considered regular time.

(C) Overtime: There shall be a joint committee on overtime composed of two (2) representatives of each, the Union and the Association. When a member of the Association shall be in need of overtime, he shall apply to the Association, which shall refer the matter to the said joint committee. Upon approval by the said joint committee, the Association may grant the overtime requested.

XIII.

Industrial Peace

(A) This agreement provides for an orderly adjustment of differences and it is specifically stipulated by the parties hereto that there shall not be recognized any provocation for direct action. Strikes, stoppages and lock-[fol. 86] outs are therefore prohibited. The Union undertakes the responsibility to see that this section is not vio-

lated and shall a stoppage occur, the Union will immediately order the workers to return to work.

(B) Since this agreement provides for an orderly adjustment and lockouts are prohibited, the Association undertakes the responsibility to see that this section is not violated and should a lockout occur, the Association will immediately order its members to return the workers to work.

(C) Persons violating this section shall be barred from the right of appealing to the protection of the balance of the contract, in the discretion of the Board of Arbitration. The Board of Arbitration is hereby authorized to, where in its judgment the matter warrants, inflict penalties on any who violate the two preceding sections in accordance with the gravity of the case. In cases of violation of said sections, the Board shall exercise injunctive relief upon application and prior to hearing on the merits of the dispute.

XIV.

Board of Arbitration

By unanimous agreement of parties to this agreement aforementioned, three (3) disinterested public-spirited citizens of known integrity and ability, shall upon their selection (within two (2) weeks after the signing of this agreement), and subscribing their hands hereto, become the Board of Arbitration under this contract.

(A) Theirs shall be the responsibility to:—

(1) Interpret the provisions of this contract.

(2) Enforce the provisions of this contract where amicable settlement as herein provided has failed.

(3) Enjoin the violation where such violation is about to be entered into, or where it has begun.

(4) Provide for common well being, promote harmony and insure industrial peace.

(5) Impose damages and penalties where damages are shown to actually exist or where the aggravation of the offense makes such award advisable.

(6) Revise scales as provided in Article IX.

(B) In the event of the death, resignation, refusal to serve or other incapacity of any member of this board, his position may be or may not be filled as the parties hereto see fit. If it is filled, it shall be done by the procedure prescribed for selection in the first instance.

[fol. 87] (C) Their tenure of office shall be for the life of this agreement.

(D) The Board may function through the office of one member above, but either the complainant or respondent shall have the right to be heard by the full board if he shall request it prior to the hearing of the first witness in the matter.

(E) The jurisdiction of the Board shall cover all the subject matter of this contract, but the attempts at adjustment between the Association and the Union, and its failure, and the filing of a written complaint shall be conditions precedent to the invoking of the jurisdiction of the Board and compliance with these conditions must be affirmatively pleaded in the complaint; except where strikes, stoppages or lockouts are involved when this Board's jurisdiction shall be complete at once. The Board shall also have jurisdiction in the first instance in adjusting wage scales as provided in Article VIII, Section D.

(F) Replies to complaints need not be in writing or may be a simple general denial. But, if any defense, justification, or new matter is to be presented at the hearing, the nature of the defense, justification, or new matter must be reduced to writing and submitted to the complainant sufficiently in advance of the hearing so as to avoid surprise and enable them to prepare themselves.

(G) Where the complaints appear vague or trifling, the Board may upon request, or of its own motion, direct that it be made more specific before proceeding.

(H) All evidence submitted at the hearing must be kept within the definite points raised by the written complaint and reply. No outside matter may be pleaded unless agreed to by all parties including the Board.

(I) Costs to be borne equally by the parties.

(J) Only the parties to this agreement or their representatives shall be recognized by the Board of Arbitration for the purposes of submitting disputes or making complaints hereunder. In the event of disagreement between the Union and the Association over any of the terms of this contract and after compliance with the conditions precedent heretofore, either the Union or the Association shall have the right to submit the matter to the Board of Arbitration for adjudication.

[fol. 88]

XV.

Contractors

(A) No work shall be given to a contractor who is not bound by the terms of or is not observing the conditions of this contract.

(B) During the life of this contract no firm which is a member of the Association shall move or produce garments beyond the ten cent car fare zone of the City of St. Louis, Missouri.

(C) Each member of the Association shall register with the Joint Labor Board each contractor to whom he contemplates giving work. Such registration shall take place at the beginning of each season. No work shall be given by such member to any other contractor than those so registered unless and until both the employees of the member factory and those of the registered contractors are fully employed and application for such additional registration shall have been made to and approved by the said Joint Labor Board, by the member.

(D) In order to eliminate competition in setting piece rates in contracting shops, the Joint Labor Board is hereby empowered to set up an arrangement mutually satisfactory to the workers and management of the inside and contracting shop.

XVI.

Illegal Overtime

To enforce the provision hereof with particular reference to hours, the Labor Board composed of representatives of both the Union and the Association shall when necessary designate a committee of two (2) representing

each party hereto, who shall inspect conditions of illegal overtime in the factories and report their findings from time to time, and as directed by and to the said Labor Board.

XVII.

Security for Compliance

The Union agrees to make no individual contract with any firm eligible to be covered by the terms of this contract i.e., manufacturers of silk and wool dresses, in the St. Louis trade territory, without first requiring and having a cash indemnity bond or security first of $500.00 posted in escrow to insure observance of the terms of this agreement to the end of eliminating a disadvantage to the firms who subscribe hereto, and agrees further to make no individual contract more favorable in any particular or generally than the terms hereof.

[fol. 89]

XVIII.

Finishers

An incentive system may be established in the finishing department of each shop whereby all workers in the finishing department may be given the opportunity to earn a wage based on their productive ability, but no skilled finisher of normal speed and ability shall be paid less than the minimum wage scale set forth for finishers.

XIX.

This Contract shall be in force from the date of the execution thereof, and shall remain operative and binding upon the parties thereto until November 30, 1945. This contract may be amended from time to time by additions agreed on by all parties concerned which shall be in the best interest of the St. Louis industry. This contract shall be considered ratified and continued in full force and effect for an additional year after the expiration date unless either party to it, being dissatisfied with it, shall so notify the other parties in writing thirty (30) days prior to its expiration date.

In Witness Whereof, the parties hereto have caused these presents to be signed by their respective representa-

tives and their seals to be affixed this 8th day of December, 1941.

ASSOCIATED GARMENT INDUSTRIES OF ST. LOUIS

By.....

By.....

INTERNATIONAL LADIES' GARMENT WORKERS' UNION,

By.....

BOARD OF ARBITRATION

.....

Chairman.

ST. LOUIS JOINT BOARD, I.L.G.W.U.

By.....

[fol. 90] (Board's Exhibit 1-XXXXX.)

Date 9/8/42—Witness .....

Offer of Proof of Intervener, Donnelly Garment Workers' Union.

United States of America,

Before the National Labor Relations Board

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers' Union, Party to the Contract.

Because of the rulings of the trial examiner refusing to permit witnesses to testify and excluding all evidence with reference to matters occurring subsequent to July 15, 1939, and striking from the record testimony and evidence

with respect to matters occurring after that date, the intervener, Donnelly Garment Workers' Union, offers to produce and examine under oath as witnesses herein the following named persons, viz.:

Mina Smith	Dale Berryhill
Walter Higgins	Johana Hunter
Mary McClelland	Mary Sneden
Freeland Rife	Earl Willoughby
Edith Williams	Fred Ellis
Jack McConaughey	Paul Oliver
Marjorie Green	Avis Mowry
Rose Todd	Gertrude Gassert
Bertha Estes	Leslie Ward
Nona Lowder	Al Staab
Lorraine Smith	Della Harrison
Edith Koll	Lillian Lubben
Rada Walker	Mildred Smar

and offers to prove that if such witnesses were sworn and examined they would testify in substance as follows:

That continuously from its organization on April 27, 1937, to July 15, 1939, and from July 15, 1939, down to the present date, Donnelly Garment Workers' Union, inter-[fol. 4] vener herein, has been continuously maintained and administered by its members and the officers thereof duly elected by its members as a bona fide labor union and as the bargaining agent of all of the employees of Donnelly Garment Company and Donnelly Garment Sales Company eligible to membership in said union; that during said period all of the eligible employees of Donnelly Garment Company have continuously belonged to said union and that their membership therein has been voluntary and that it represents their free-will choice of a bargaining agent; that Donnelly Garment Workers' Union has held regular and frequent meetings, that attendance at such meetings was voluntary and without penalty for non-attendance, and that attendance has been uniformly large, and that participation in the affairs of the union conducted at such meetings has been freely engaged in by all of its members.

Intervener offers to prove that at stated periods in accordance with the duly adopted by-laws of said inter-

vener union a board of committee chairmen or executive committee of said union has been elected from the membership by vote of the entire membership and that such committees have been as follows:

1939

Rose Todd
Mina Smith
Marjorie Green
Jack McConaughey
Walter Higgins
Mary McClelland
Bessie Weilert
Freeland Rife
Edith Williams

1940

Rose Todd
Bertha Estes
Jack McConaughey
Freeland Rife
Walter Higgins
Nona Lowder
Lorraine Smith
Edith Koll
Rada Walker

[fol. 92] 1941

Lorraine Smith
Avis Mowry
Jack McConaughey
Paul Oliver
Fred Ellis
Earl Willoughby
Mary Sneden
Johana Hunter
Dale Berryhill
Edith Koll

1942

Lorraine Smith
Gertrude Gassert
Fred Ellis

Leslie Ward
Edith Koll
Al Staab
Della Harrison
Lillian Lubben
Mildred Smar

Intervener offers to prove that in addition to the general union meetings the board of committee chairmen has held regular and frequent meetings for the purpose of conducting the business affairs of the union and that throughout the entire period the respective committees have continuously dealt with Donnelly Garment Company in bona fide negotiations and at arm's length with respect to wages, hours and working conditions and have genuinely represented the interests of the employees of Donnelly Garment Company as members of Donnelly Garment Workers' Union in their dealings with Donnelly Garment Company; that each of said committees during its period of incumbency has handled and presented to the company grievances and complaints of individual members of Donnelly Garment Workers' Union with respect to rates of pay, hours and working conditions and on behalf of such employees has secured adjustments of such disputes and grievances.

Intervener offers to prove that during such period it has negotiated for the renewal, extension, modification and continuation of its working agreement and bargaining contract with Donnelly Garment Company and has successfully [fol. 93] kept such contracts in full force and effect; that in the latter part of 1941 or early part of 1942 the duly elected committee of Donnelly Garment Workers' Union negotiated with the company with respect to a general increase of wages of the employees and after genuine bona fide negotiations secured for all of its members, except a few who had shortly theretofore received substantial increases, increases in pay of not less than seven and one-half per cent; that in May, 1942, the company by its interpretation of the wage contract between it and Donnelly Garment Workers' Union took the position that since May 30th and July 4th fell on Saturday that the company was not obliged to give such holidays to the employees with full pay and that the interpretation of such contract by Donnelly Garment Workers' Union required that the em-

ployees be given holidays on such dates and that full pay be given therefor even though such dates came on Saturday; that after genuine negotiations over such dispute the Donnelly Garment Workers' Union prevailed with the result that several thousands of dollars were paid to the employees by the company despite the contrary view of the company.

Intervener offers to prove that during said period Donnelly Garment Workers' Union has been completely self-supporting, and has collected from its members such dues as were required for its union purposes and that the check-off method of collecting dues had the support and authorization of every member of said union and that the union has fully accounted for all of such sums collected and that it has received no financial or other support from the respondent.

Intervener offers to prove that during all of said period the membership of Donnelly Garment Workers' Union has consisted only of employees below the rank of those having authority to hire, fire or discipline or to represent the management in any supervisory or confidential capacity; that in late 1941 when changes in company policies of management made it questionable whether certain spe-[fol. 94] cific employees and classes of employees because of increased responsibilities given to such employees could thereafter properly belong to Donnelly Garment Workers' Union, all such employees were requested by Donnelly Garment Workers' Union to resign therefrom and that such employees did resign and have had no further connection with Donnelly Garment Workers' Union.

Intervener offers to prove that during the period from July 15, 1939 to date, all members of Donnelly Garment Workers' Union have maintained and administered their union in good faith and of their own free will and as their representative and bargaining agent, and that during such period they have not been dominated, coerced or intimidated by respondent or anyone authorized to represent or representing respondent into belonging to or maintaining Donnelly Garment Workers' Union or into staying out

of any other labor organization, and that they know of no instances of coercion, domination or intimidation on the part of the respondent or anyone acting or speaking for the respondent, and that in addition to those persons specifically named above by which said matters are offered to be proved the intervener offers to call all of its members as witnesses and to prove by them the matters set out in this paragraph.

FRANK E. TYLER,
LUCIAN LANE,
GOSSETT, ELLIS, DIETRICH & TYLER,
Attorneys for Intervener, Donnelly Garment Workers' Union.

[fol. 95] Board's Exhibit 1-YYYYY.

9/14/42—Witness .....

(Stipulation as to Mrs. Reed's Further Testimony.)

United States of America
Before the National Labor Relations Board
Seventeenth Region

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. C-1382.

Whereas, Mrs. James A. Reed (Nell Quinlan Reed) was called to Michigan on September 3, 1942, on account of the serious illness of David Quinlan Reed, her son, and for that reason is unable to return to Kansas City at this time:

It is hereby stipulated that she would, if she were available, testify on redirect examination as follows, and that same may be received and considered as her testimony, to-wit:

That in her answers made in response to Mr. Langsdale's cross-examination with reference to Board's Exhibit 31-A, beginning near the bottom of page 3860 and on pages 3861 to 3865 inclusive of the transcript, she was referring to and had in mind the date June 1, 1935, instead of June 1, 1937, and was under the impression that said exhibit bore the date of June 1, 1935, as will appear from her answers to questions appearing on pages 3886 and 3887 of the transcript.

That she would further testify that after June, 1935, when Mr. Baty was given charge of the factory, and up to July 15, 1939, that Lena Tyhurst was not assistant factory [fol. 96] manager, that Marvin Price was not the head mechanic, that Ortense Root was not the sample department head, that Anna Price was not the shipping clerk head, and that none of said persons had any supervisory authority during said period; that neither she nor the Company ever authorized or gave them those titles and that they did not hold such positions on June 1, 1937, or between June, 1935 and July 15, 1939.

Dated this 14th day of September, 1942.

JAMES A. REED,
ROBT. J. INGRAHAM,
WILLIAM S. HOGSETT,
Attorneys for Respondent.

FRANK E. TYLER,
LUCIAN LANE,
Attorneys for Intervener, Donnelly Garment Workers' Union.

RUTH WEYAND,
Attorney for National Labor Relations Board.

.....
Attorney for I. L. G. W. U.

[fol. 97] (Board's Exhibit 1-ZZZZZ.)

Date 9/17/42—Witness .....

Joinder by Intervener, Donnelly Garment Workers' Union, With Respondent's Motion for Designation of Different Trial Examiner and Affidavit of Prejudice and Respondent's Application for Continuance.

United States of America

Before the National Labor Relations Board

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers' Union, Party to the Contract.

Case No. C-1382.

Intervener, Donnelly Garment Workers' Union, by oral statement in the record on July 8, 1942, at page 3139 thereof, having joined with the respondent in its motion for the designation of a different Trial Examiner and having then adopted the affidavit of prejudice filed by respondent in support of such motion, now by written pleading adopts said motion and affidavit, Board's Exhibit 1-CCCCC, and joins with respondent therein.

Intervener, Donnelly Garment Workers' Union, having orally adopted and joined in respondent's application for continuance Board's Exhibit 1-EEEEE filed with the National Labor Relations Board on or about July 16, 1942, now by written pleading adopts and joins in said application for continuance.

FRANK E. TYLER,
LUCIAN LANE,
Attorneys for Intervener, Donnelly Garment Workers' Union.

[fol. 155] (Intermediate Report of Trial Examiner, November 27, 1942.)

United States of America
Before the National Labor Relations Board
Trial Examining Division
Washington, D. C.

In the Matter of

Donnelly Garment Company

and

International Ladies' Garment Workers' Union

and

Donnelly Garment Workers Union, party to a contract.

Case No. C-1382.

Miss Ruth Weyand, Miss Helen F. Humphrey, and Miss Fanny Boyls, for the Board.

Reed and Ingraham, by Mr. James A. Reed, Mr. R. J. Ingraham, Mr. James J. Shepard, Jr. and Mr. Burr S. Stottle, of Kansas City, Mo., for the respondent.

Hogsett, Trippe, Depping and Houts, by Mr. William S. Hogsett, of Kansas City, Mo., for the respondent.

Mr. Clif Langsdale, Mr. Charles Turney, and Miss Jane W. Palmer, of Kansas City, Mo., for International Ladies' Garment Workers' Union.

Gossett, Ellis, Dietrich and Tyler, by Mr. Frank E. Tyler, Mr. Lucian Lane, and Mr. Raymond E. Draper, of Kansas City, Mo., for the Donnelly Garment Workers Union.

Statement of the Case.

Upon an amended charge duly filed by International Ladies' Garment Workers' Union, herein called the I. L. G. W. U., the National Labor Relations Board, herein called the Board, by its Acting Regional Director for the Seventeenth Region (Kansas City, Missouri), issued its complaint dated April 27, 1939, against Donnelly Garment Company, of Kansas City, Missouri, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce

within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. A copy of the complaint and amended charge, accompanied by notice of hearing, were duly served upon the respondent, the I. L. G. W. U. and the Donnelly Garment Workers Union, herein called the D. G. W. U., party to the contract.

[fol. 156] On May 2, 1939, the D. G. W. U. filed its petition to intervene, which was granted insofar as its interest might appear, by order of the Acting Regional Director for the Seventeenth Region.

Pursuant to notice, a hearing was held on June 5 to July 15, 1939, inclusive at Kansas City, Missouri, before the undersigned, the Trial Examiner duly designated by the Board. The Board, the respondent, the I. L. G. W. U. and the D. G. W. U. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues was afforded all parties.

With respect to the unfair labor practices, the complaint as amended, without objection, at the close of the Board's case alleged in substance: that the respondent (1) on or about April 27, 1939, and thereafter dominated and interfered with the formation and administration of a labor organization among its employees known as Donnelly Garment Workers Union and has given financial and other support to said organization, inter alia, (a) by encouraging and permitting its supervisory and other employees to promote the organization of and membership in the D. G. W. U. on the respondent's time, property, and at its expense; (b) by forming on or about February 12, 1935, through its officers and agents, the Donnelly Loyalty League, herein called the League, by continuing to dominate the League until on or about April 27, 1937, for the purpose of impeding and preventing the organization of the employees by the I. L. G. W. U.; (c) by creating on or about April 27, 1937, through its officers and agents, the D. G. W. U. as a continuation of the League; (d) by entering into a closed-shop agreement for the purpose of assisting the D. G. W. U. and of depriving the employees of the rights guaranteed them under the Act; (2) discouraged

membership in the I. L. G. W. U. by discharging Sylvia Hull and May Fike in April 1937 because they had joined and assisted the I. L. G. W. U.; and (3) by various acts[1] has coerced and restrained the employees from becoming members or continuing membership in the I. L. G. W. U. and has encouraged and compelled membership in the D. G. W. U. The amended complaint further alleged that the respondent by entering into a closed-shop contract with the D. G. W. U. has violated Section 8 (3) and 8 (1) of the Act and that the closed-shop contract between the respondent and the D. G. W. U. is void and of no effect.

At the opening of the hearing the respondent and the D. G. W. U. filed motions to make the charge and the complaint more definite and certain. The undersigned granted the motions in part and requested counsel for the Board to make the complaint more definite and certain in specified respects. Counsel for the Board, in compliance with this request, thereafter moved to strike certain por- [fol. 157] tions of the complaint and amend it, which motion was granted. At the close of the presentation of evidence by the Board in support of the complaint, the complaint was without objection again amended on motion of counsel for the Board. Service of the amended complaint was acknowledged by the parties. The undersigned denied various other motions by the respondent and the D. G. W. U. to make the complaint more definite and certain, and the respondent's contention that portions of the amended complaint was so vague, indefinite, and uncertain that they did not sufficiently appraise the respondent of the acts charged was overruled by the undersigned.

[1]The principal acts enumerated in the amended complaint are: (a) by discharging Fern Sigler in April 1937, (b) by statements of the respondent's president and certain supervisory employees in March and April 1937, (c) by a public statement against the I.L.G.W.U. made by James A. Reed, (d) by permitting a loud speaker system in its cafeteria to be used as a medium of propaganda in favor of the D.G.W.U. and in opposition to the I.L.G.W.U., (e) by keeping members and meetings of the I.L.G.W.U. under surveillance, (f) by circulating and inducing the employees to sign a petition professing their loyalty to the respondent, (g) by permitting certain supervisory and confidential employees to become members and active in the affairs of the D.G.W.U., (h) by discriminating in the allotment of work and by refusing to recall to work certain named employees who were allegedly members of the I.L.G.W.U., (i) by instigating and permitting the employees to engage in a demonstration on April 23, 1937, against certain members of the I.L.G.W.U., and (j) by granting a contract to the D.G.W.U. making membership therein a condition of employment.

During the course of the hearing, the respondent and the D. G. W. U. made several motions to dismiss the amended complaint and specific portions thereof. Decision on the motions having been reserved the motions for dismissal of the amended complaint in its entirety are hereby denied and the motions to dismiss certain paragraphs of the amended complaint, relating to certain of the acts of interference, restraint, and coercion[2] are hereby granted. The motions in all other respects are denied.

The respondent's answer was divided into four parts: In Part A the respondent contended that upon 10 stated ground[3] the Board is without jurisdiction to maintain the proceedings. In Part B, the respondent avers that the [fol. 158] complaint must be dismissed "for the reason that the Board, its agents, and representatives have exceeded their authority and have demonstrated their bias and prejudice against the respondent, and collusion with the International Union (I. L. G. W. U.) by filing of the

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[2]The portions of the amended complaint dismissed were sub-paragraph d,g,g(1),i,k,n, and p of paragraph 11 relating to: (1) public statements of James A. Reed; (2) statements of Alex Green and Ella Mae Hyde, supervisory officials of the respondent, concerning the I.L.G.W.U.; (3) use of a loud speaker system in the respondent's cafeteria to influence its employees regarding their union affiliations; (4) surveillance; (5) discrimination in the allotment of work to employees who were members of the I.L.G.W.U.; and (6) the refusal of the respondent to recall or assign work to certain named employees who were members of the I.L.G.W.U.

[3]The stated grounds were: (1) the Board is without jurisdiction to issue a complaint "at the request of an organization which does not represent a single employee in the respondent's plant: . . and [which] has been found by the United States Federal Court to be engaged in an unlawful conspiracy to force the respondent to compel its employees to join said organization against their wills"; (2) the Board has no authority to issue a complaint "for the purpose of attempting to abrogate and nullify contracts between the respondent and the exclusive representative of 100 percent of its employees, when said contracts are entirely satisfactory to both parties thereto and have been determined by a United States Federal Court to contain higher wages and more favorable working conditions, than are contained in any contracts entered into between the International Union (I.L.G.W.U.) and other garment manufacturers in this part of the country"; (3) this proceeding deprives the respondent, without a judicial hearing, of its right freely to contract as guaranteed by the Fifth Amendment to the Constitution of the United States; (4) if this proceeding were sustained, valid contracts between the respondent and the chosen representatives of its employees would be abrogated without a judicial hearing, due process of law, and a trial by jury in violation of the Fifth and Seventh amendments of the Constitution; (5) this proceeding deprives the respondent of its property without due process of law and of its right to trial by jury by providing for the awarding of unearned wages to former employees and for their reinstatement; (6) the amended charge of the I.L.G.W.U. is vague, indefinite, and does not state facts sufficient to support a formal complaint; (7) the Board,

complaint herein and by the maintenance of this proceeding in the face of [certain enumerated] facts of which the Board and its representatives have actual knowledge."[4] Part C is a petition for investigation and certification of representatives of its employees. The answer in Part D admits certain allegations of the complaint concerning the corporate structure and the nature of the business of the respondent, but denies specifically every allegation that it has engaged in or is engaging in unfair labor practices.

[fol. 159] During the hearing, the respondent filed a motion requesting that the complaint be dismissed for the

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without authority, by the issuance of its complaint has prejudged as true the allegations in the amended charge of the I.L.G.W.U.; (8) the complaint is vague, indefinite, insufficient and alleges conclusions instead of facts, all in violation of due process of law; (9) the maintenance of this proceeding violates the Fifth Amendment in Article III, Section 1 and 2 of the Constitution of the United States by permitting the Board to act as investigator, complainant, prosecutor, triers of facts, and judge of the controversy and by denying the respondent a judicial review of the evidence in accordance with the rules of law and evidence; and (10) the Board has not conducted an election among the respondent's employees to determine their choice of representatives, which is a condition precedent to a proceeding based on charges of unfair labor practices.

[4]The answer of the respondent alleges as facts of which the Board has knowledge: (1) that the I.L.G.W.U. has engaged in an unlawful conspiracy to injure and destroy the respondent's business by publishing false and libelous reports about the respondent and the working conditions in its plant, by inaugurating and threatening to inaugurate secondary boycotts against the respondent's customers and merchandise, by threatening assaults on the respondent's employees similar to those perpetrated against employees of garment manufacturers in Kansas City, Missouri, St. Louis, Missouri, Dallas, Texas, and Memphis, Tennessee; (2) that the I.L.G.W.U., knowing that the employees had refused to be represented by the I.L.G.W.U. publicly announced a drive against the respondent and the employees, requested by letter containing false statements a conference with the respondent for the purpose of making a closed-shop contract, and began attacks of fraud and violence against three other garment manufacturing companies in Kansas City, Missouri, at the same time announcing that similar acts of violence would be perpetrated against the respondent's employees; (3) the respondent, after receiving a request to enter into a collective bargaining agreement with the D.G.W.U., a voluntary organization of employees, sought to obtain a determination by the Board of the right of the D.G.W.U. to be exclusive bargaining agent of the employees but was advised by representatives of the Board that an application by an employer for certification of representatives could not be granted under the rules of the Board, and therefore, entered into a collective bargaining agreement with the D.G.W.U.; (4) that sometime after July 5, 1937, the United States District Court for the Western Division of the Western District of Missouri, three judges sitting, temporarily enjoined the I.L.G.W.U. from committing unlawful acts of fraud and violence against the respondent and the employees, which decision was appealed to the Supreme Court of the United States and by that Court remanded to be heard before a single judge in the District Court; (5) that the Board's Acting Regional Director for the Seventeenth Region, (Earnest P. Dunbar), on August 25, 1938, notified the respondent by letter that

reasons stated in Part A and B of its answer.[5] The I. L. G. W. U. moved to strike certain portions[6] of the respondent's answer.

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charges of unfair labor practices have been filed against the respondent by the I.L.G.W.U. and requested a conference on the charges, and thereafter the respondent requested the Acting Regional Director for the facts alleged in the charges and for an opportunity to present evidence thereon, but this privilege was denied by the representatives of the Board who threatened to file a complaint and conduct a long hearing unless the respondent acceded to the demands of the I.L.G.W.U., and further asserted that if a hearing was held the Board would find against the respondent; (6) at on or about February 4, 1939, at the request of representatives of the Board, written proposals upon which settlement of the charges might be reached were submitted to each other by the respondent, the D.G.W.U. and I.L.G.W.U. and that the proposal of the I.L.G.W.U. included an offer to drop all boycott activities against the respondent "so long as the respondent does not recognize any plant union as the bargaining representatives of its employees", acceptance of which proposal by the respondent would have compelled it to violate the terms of the National Labor Relations Act; and (7) that the hearing on the remanded injunction suit was begun in the United States District Court on March 22, 1939, at the close of which a permanent injunction against the I.L.G.W.U. was granted, pursuant to respondent's petition, and that representatives of the Board were in constant attendance at the hearing and consulted frequently with representatives of the I.L.G.W.U. during examination of respondent's witnesses, thus demonstrating that the Board assisted and is assisting the I.L.G.W.U. in its conspiracy against the respondent and is maintaining the proceedings herein, in violation of any authority vested in the Board by the Act.

[5]Part B of the respondent's answer included the findings of fact and conclusions of law of the United States District Court for the Western Division of the Western District of Missouri (Donnelly Garment Company et al. v. I.L.G.W.U., et al., D.G.W.U. Intervener's Case No. 2924) in an injunction suit brought by the respondent against the I.L.G.W.U. As a part of these findings of fact and conclusions of law, the District Court found that the respondent's employees acting unanimously had voluntarily formed the D.G.W.U. and at all times freely administered and maintained it. This finding of fact is not binding upon the Board and does not preclude an independent finding by the Board on this issue. Section 10 (a) of the Act provides:

> The Board is empowered . . . to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. [emphasis added]

Matter of National Electric Products Corp. and United Electrical and Radio Workers of America, Local No. 609, 3 N.L.R.B. 475, 500. See also Union Premier Food Stores, Inc. v. Retail Food Clerks and Managers Union, Local No. 1357 et al., 98 F.(2d) 821 (C.C.A. 3) where it was held that the District Court was without authority to conduct an election to determine the exclusive bargaining representative of certain employees since the Act vests power to determine that question exclusively in the Board. Cf. Blankenship v. Kirby, 96 F.(2d) 459 (C.C.A. 7); International Brotherhood of Teamsters v. International Union, 106 F.(2d) 871 (C.C.A. 9).

[6]From Part A of the respondent's answer the allegation that a United States District Court had determined that the contracts between the respondent and the D.G.W.U. contain higher wages and more favorable working conditions than contracts between the I.L.G.W.U. and other garment

[fol. 160] The undersigned took these motions under advisement and requested the respondent to submit a written statement of the evidence it would offer, to prove the averments set forth in Part A and B of the answer, and any other parts of the answer referred to in the motion to strike. The respondent submitted no statement of evidence in support of Part A of its answer except as to the paragraph relating to wages and working conditions provided for in contracts entered into between the I. L. G. W. U. and other garment manufacturers. In Part B of the answer the respondent submitted certain parts of the transcript of testimony taken in an N. L. R. B. hearing, in which it was also the respondent and the I. L. G. W. U. the charging Union and in the United States District Court injunction suit between the respondent and the I. L. G. W. U. The undersigned refused the proffered evidence, granted the motion of the I. L. G. W. U. to strike, denied the request of the respondent for dismissal of the complaint based on Part A of the answer, and refused to receive the respondent's petition for investigation and certification of representatives as set forth in Part C of its answer.[2]

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manufacturers in the area; from Part B of the answer the allegations that the I.L.G.W.U. was engaging in an unlawful conspiracy against the respondent, that it had engaged in violence against employees of other garment manufacturers and had announced that similar acts would be perpetrated against employees of the respondent, that the respondent's contract provided for higher wages, more favorable working conditions than contracts obtained by the efforts of the I.L.G.W.U., the allegations referring to the findings and decrees of the United States District Court for the Western Division of the Western District of Missouri, the averment that the I.L.G.W.U. admitted that the respondent's employees did not desire to be represented by the I.L.G.W.U., the allegations regarding the assistance of the Board's representatives in the alleged conspiracy of the I.L.G.W.U. against the respondent; from Part D the averments that the I.L.G.W.U. sought closed-shop agreements even when it represented only a few or none of the employees of the company with whom it sought such agreements. The reasons stated as grounds for striking these portions of the answer are that they are immaterial to the issues before the Board, that the Board is not bound by the findings of other judicial tribunals, that the "clean hands" doctrine of equity does not apply to proceedings before the Board, that these portions of the answer constitute an attempt by the respondent to try before the Board the Federal District Court injunction suit between the respondent and the I.L.G.W.U., and that under the Act the Board is not empowered to take cognizance of alleged law violation, coercion, or intimidation on the part of the complaining union.

[2] Donnelly Garment Company v. N.L.R.B., 123 F (2d) 215, 221, 225, (C.C.A. 8) where the Court stated:

"The main and controlling issue in the case was whether the formation or administration of the Donnelly Garment Workers Union had been supported, dominated, or interfered with by the Company or whether

Prior to the commencement of the hearing, the D.G.W.U. filed a motion requesting that the Board conduct an election among the respondent's employees to determine whether they desired to be represented by the D. G. W. U. or by the I. L. G. W. U., and that the hearing be postponed until the outcome of such election had been announced. Thereafter, on May 17 and June 3, 1939, the D. G. W. U. filed a petition and amended petition, respectively for investigation and certification for representatives. At the hearing the undersigned denied the motion and rejected the petitions. The D. G. W. U. also filed an answer denying all the allegations relating to the unfair labor practices of the respondent, but admitting the existence of a closed-shop agreement between the respondent and the D. G. W. U.

[fol. 161] At the conclusion of the hearing the parties were afforded an opportunity to argue orally before the undersigned, and were requested to file memorandum briefs. Memorandum briefs were filed by the respondent, the I. L. G. W. U., and the D. G. W. U.[8]

On October 11, 1939, the undersigned filed an Intermediate Report, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3),[9] and Section 2 (6) and (7) of the Act. The undersigned further found that May Fike had not been discriminatorily discharged, and recommended inter alia that the respondent cease and desist from the unfair labor practices which it was found to have engaged in, withdraw all recognition

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that union was a bonafide independent labor organization formed and administered exclusively by the employees of the Company and completely free from employer influence, domination and support.

We are of the opinion that the Trial Examiner did not err in confining the issues to those which were tendered by the complaint filed by the Board. We are satisfied that the Board was not required to try the International for conspiracy or to try the charge that the Board had conspired or colluded with the International.

[8] By stipulation, dated July 22, 1939, the amended complaint was further amended to conform it to the proof.

[9] The undersigned found that the discharge of Sylvia Hull was discriminatory within the meaning of the Act but did not recommend reinstatement or back pay for reasons discussed in Section E, infra.

and completely disestablish the Donnelly Garment Workers Union as the representative of the employees for the purposes of collective bargaining, cease and desist from giving effect to its contract and check-off agreement with the Donnelly Garment Workers Union, and that the allegations of the complaint as to May Fike be dismissed.

On October 12, 1939, the case was transferred from the Regional Office of the Seventeenth Region to the Board in Washington, D. C. and continued before the Board pursuant to Article II, Section 32, of the National Labor Relations Board Rules and Regulations—Series 2.

On December 1, 1939, the respondent, the D. G. W. U., and the I. L. G. W. U. filed exceptions to the Intermediate Report. The same parties filed briefs in support of their exceptions to the Intermediate Report. On January 9, 1940, a hearing for the purpose of oral argument was conducted before the Board in Washington, D. C., at which the respondent, the D. G. W. U., and I. L. G. W. U. appeared by counsel, who participated in the argument.

On March 6, 1940, the Board after consideration of the exceptions to the Intermediate Report, and the briefs submitted in support of the exceptions, issued its decision, containing its finds of fact, conclusions of law, and order.[10] In brief, the Board found that the respondent had dominated and interfered with the formation and administration of the D. G. W. U. and had contributed support to it in violation of Section 8 (2) of the Act; had discharged May Fike and Sylvia Hull in violation of Section 8 (3) of the Act; and had by these and other Acts interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act.

Thereafter the respondent, Donnelly Garment Company, filed with the United States Circuit Court of Appeals for the Eighth Circuit a petition to review and set aside the Board's order, to which the Board filed an answer requesting the enforcement of its order. The D. G. W. U. filed an intervening petition requesting that the Board's order be set aside, and the I. L. G. W. U. intervened in defense of the order. The petitioners, Donnelly Garment Company,

[10] 21 N.L.R.B. 164.

and D. G. W. U. challenged the validity of the Board's [fol. 162] order on two grounds: (1) lack of due process; and (2) lack of sufficient evidentiary basis for the Board's findings, conclusions, and order. The Circuit Court, on November 6, 1941, after consideration of briefs and arguments of counsel for the respective parties handed down its decision remanding the case to the Board for further proceedings.[11]

On April 21, 1942, the Board entered an order vacating and setting aside its Decision and Order dated March 6, 1940, reopening the record for a further hearing to take additional evidence in accordance with the Opinion and Decree of the Circuit Court, referring the proceeding to the Regional Director for the Seventeenth Region for the purpose of conducting the further hearing, and authorizing and directing the Regional Director to issue notices of the further hearing. On June 6, 1942, the Regional Director issued his notice of further hearing to the parties, notifying them that on July 6, 1942, at Kansas City, Missouri, a further hearing would be conducted.

Pursuant to such notice, a hearing was held on July 6, 7, and 8, 1942, and on various days between August 3 and September 17, 1942, inclusive at Kansas City, Missouri, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The Board, the respondent, the D. G. W. U., and the I. L. G. W. U. were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all of the parties.

On July 8, 1942, prior to the taking of any testimony in the further hearing, respondent filed with the undersigned

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[11] Donnelly Garment Company v. N.L.R.B., 123 (2d) 215, 225 (C.C.A. 8) where the Court stated:

> We think that the least the Board can do in order to cure the defects in its procedure caused by the failure of the Trial Examiner to receive admissible evidence, is to vacate the order and the findings and conclusions upon which it is based; to accord to the petitioners [the respondent and D.G.W.U.] an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner; and to receive and consider such evidence together with all other competent and material eviden in the record before making new findings and a new order.

its Affidavit of Prejudice for the purpose of obtaining the designation of another Trial Examiner. The D. G. W. U. concurred in the application. The undersigned referred the matter to the Board, and continued the hearing subject to 48 hours' notice to the parties. On July 17, 1942, the respondent filed with the Board an Application for a Continuance of the further hearing. On July 28, 1942, after consideration of the oral argument by the respondent, the I. L. G. W. U., and the D. G. W. U. before the Board, and related documents filed by the parties, the Board issued its order dated July 28, 1942, dismissing the Affidavit of Prejudice[12] and denying the Application for a Continuance.[13] On July 30, 1942, the undersigned notified the par- [fol. 163] ties that the hearing would reconvene on August 3, 1942, at Kansas City, Missouri.

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[12]The Board in its order dismissing the Affidavit of Prejudice, stated:

Each of the particulars relied on in the Affidavit of Prejudice were brought by the respondent to the attention of the Circuit Court of Appeals. The Court decided that the Trial Examiner and the Board has been free of any bias or prejudice. (See Donnelly Garment Company v. N.L.R.B., 123 F.(2d) 215 (C.C.A. 8)

Having carefully examined the matters now adduced by the respondent, we can see no reasons for disagreeing with the findings of the Circuit Court of Appeals or for doubting that the evidence ordered by that Court, to be admitted will be fairly and judiciously received and considered. Indeed, to disqualify the Trial Examiner for his previous error would be equivalent to barring a trial judge who had been overruled on a question of evidence by an Appellate Court, from presiding over the further hearing; such is not the customary practice. See Berger v. United States, 225 U.S. 22, 31; Minnesota and Ontario Paper Co. v. Molyneaux, 70 F.(2d) 545, 547, (C.C.A. 8).

[13]The Board in its order denying the Application for Continuance stated:

Respondent's Application for Continuance asserts that the hearing should be postponed to a date not earlier than December 23, 1942, for the reason that it is engaged in war production and that the employees it expects to call will not be available as witnesses without serious interference with such production. The need for the application of the principles of the Act to industry is even greater in time of war than in peace-time, while the abandonment or postponement of the Act's guarantees might well create the tensions that have in the past led to industrial discontent, disturbance, and unrest, with consequent impairment of efficiency and production.

We believe that the Trial Examiner is in the best position to make provision regarding the availability of particular witnesses and we hereby instruct him that, in so doing, he give every consideration to the desirability of causing as little hindrance as possible to the respondent's production.

The undersigned during the course of the further hearing received no request from the respondent for a continuance, a change in the hours or place of the hearing to accommodate witnesses engaged in war production activities.

The undersigned accorded the respondent and the D.G.W.U. an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing [14] and permitted Nell Quinlan Reed, the respond-
[fol. 164] ent's president, who was, because of a serious illness, prevented from testifying at the hearing of 1939, to testify in the further hearing upon all the issues set forth in the pleadings.

On September 25, 1942, the Board vacated and set aside the Intermediate Report of the undersigned, heretofore issued under date of October 11, 1939, and ordered the undersigned to issue an Intermediate Report on the entire record.

Upon the record thus made and from his observation of the witnesses, the undersigned makes in addition to the foregoing, the following:

Findings of Fact.

I. The Business of the Respondent.

The respondent, Donnelly Garment Company, is a Missouri Corporation, having its office and factory in Kansas City, Missouri, where it is engaged in the business of designing, manufacturing, selling, and distributing ladies' garments under the trade name of "Nellie Don." More

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[14] The United States Circuit Court of Appeals for the Eighth Circuit, (Donnelly Garment Company v. N.L.R.B., 123 F.(2d) 215, 222 (C.C.A. 8) in remanding the case for the purpose of adducing additional evidence, rejected at the hearing before the Trial Examiner [in 1939], stated:

> The petitioners [respondent and D.G.W.U.] proffered the evidence of the employees of the Donnelly Company, some 1200 in number, to show how and why they formed the Donnelly Garment Workers Union, to show that no influence was brought to bear upon them by the employer either in the formation or administration of the Union, to show what the President of the Company had said to them at the mass meeting in the spring of 1937, to show that their freedom to organize and to choose their own representatives for the purpose of collective bargaining had not been interfered with by their employer, and to show that their union, both in its formation and administration was exclusively controlled and supported by them. The Trial Examiner refused to receive this evidence. He permitted the petitioners to make formal offers of proof.
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> * * *
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> We do not say that the Trial Examiner was required to take the same testimony from 1200 witnesses. There were available to him well known expedients for limiting the number of witnesses where their testimony was cumulative.

than 99 percent of the raw materials and supplies — consisting chiefly of cotton, wool acetate, rayon and linen — used at the factory are purchased and transported through the channels of interstate commerce from points outside the State of Missouri. Approximately 96 percent of the garments designed, manufactured, and sold are distributed through the channels of interstate commerce to points outside of the State of Missouri.

Officers of the respondent Company are: Nell Quinlan (Mrs. James A.) Reed, president and treasurer; Alex C. Green, vice-president; R. J. Ingraham, secretary. The principal departments of the respondent and the persons in charge of them are: Production, Lee Baty; Merchandising, Retail Store and Receiving, Elizabeth Reeves; Comptroller and Office Manager, J. B. Bachofer; and Employment Manager, Ella Mae Hyde. [15]

During the peak production period of the year, the respondent employs approximately 1200 persons.

The parties stipulated and agreed that the operations of the respondent have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States, and that the respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

II. The Organizations Involved.

International Ladies' Garment Workers' Union, affiliated with the American Federation of Labor, [16] is a labor organization admitting to membership the factory employees of the respondent.

Donnelly Garment Workers Union is an unaffiliated labor organization. According to its by-laws, it admits to membership all employees of the respondent.

[fol. 165]

III. Unfair Labor Practices.

A. Respondent's Responsibility for the Activities of Various Employees.

In the incidents described in the following section, the respondent's responsibility for the activities of various

[15] For further findings concerning the respondent's supervisory staff see III A, infra.

[16] At the time of the original hearing the I.L.G.W.U. was unaffiliated.

employees who figured prominently in the organization of the D.G.W.U. must be determined. The Board contends that the respondent is responsible for their activities in most instances because of their supervisory status. The respondent asserts that they cannot be classified as supervisors because no authority to hire, discharge or discipline is vested in them. In view of the role these employees played in the organization and the establishment of the D.G.W.U. it is necessary to assay in general the status and function of "instructors" and "thread girls," in terms of their relationship to the management and to examine in some detail this relationship with respect to a number of individual employees. The undersigned will therefore determine the respondent's responsibility for their activities before considering the alleged unfair labor practices.

1. Instructors and Thread Girls.

The respondent's factory is in part composed of sewing sections. In each of these sections there are approximately 40 operators, each of whom operates a sewing machine. Assigned to each of these sections is an instructor and an assistant called a thread girl or floor girl. Among the duties of the instructor and thread girl in each section is the distribution of materials and supplies with which the operators work. Instructors also distribute directions as to how the work is to be done and teach operators how to execute each step of the process. This much is undisputed. It is also admitted by the respondent that prior to the advent of Lee Baty as production manager and factory superintendent the instructors had a part in determining lay-offs and discharges in their respective sections and also had disciplinary authority. Baty testified that after he became factory manager in June 1935, he took from the instructors and from all other supervisory employees the authority to hire, discharge, and discipline and vested all such authority in himself, so that he has been since that time the sole supervisory employee in the factory and personally observed the conduct, character of work, efficiency and general attitude of all employees.

The respondent has in its employ between 1100 and 1300 persons. On June 2, 1939, there were employed in the production and maintenance divisions, of which Baty is super-

intendent, 642 operators, 72 miscellaneous piece workers, 77 ironers, 11 folders, 41 examiners, 44 cutting department employees, 15 dividers, 44 instructors and distributors (thread girls or floor girls), 14 mechanics and helpers, 11 bundle boys, 52 clerical workers, 60 miscellaneous timekeepers, 20 porters and maids, working on 10 floors of the factory. In view of the number of employees, and the size of the factory, the undersigned finds that Baty's testimony in regard to the elimination of supervisors to be incredible. [17]

[fol. 166] It is plain from all the circumstances disclosed by the record that after June 1935, the instructors and the thread girls continued in their capacity as supervisors in charge of the operators who work in the various sewing sections of the factory. A number of the respondent's witnesses testified that instructors do not have the power to employ, discharge or discipline operators. There is substantial evidence, however, that they do perform functions which make them part of the supervisory staff.

The instructors, assisted by the thread girls [18] assume complete charge of and are fully responsible for their respective sections of the factory. Among the duties of the instructor is the assignment of bundles containing the materials and supplies upon which the operators work, and the transmission to the operators of the respondent's instructions for the performance of the sewing processes. Mrs. Reeves, who preceded Baty as factory manager and is now in charge of respondent's merchandising depart-

[17] The undersigned is unimpressed by the evidence adduced by the respondent to establish that all supervisory authority in June 1935 was vested in Baty. Appraising the respondent's evidence in the light of the contradictions and implausibilities found throughout, especially in the testimony of Mrs. Reed, Mrs. Reeves and Baty, the undersigned is fully persuaded of its untrustworthy character. The evidence is further weakened by the plain indications, during examination of the instructors, thread girls and employees, assuming arguendo, that any change in the supervisory set up of the plant was made when Baty took charge, it was known only to Baty and the respondent's officials. Finally, it is most improbable that such a far reaching reorganization of a large factory would occur without some notice to those affected and particularly to the employees who had for years, according to Mrs. Reed, been under ". . . more supervision and more executives than — I know: I have more than are usual in the plant of this kind . . . yes our supervisors. Now in my plant I have 40 operators, 40 machines under one supervisor with an assistant one in charge."

[18] The evidence clearly indicates that in the absence of the instructor, her duties are performed by the thread girl.

ment, stated in an affidavit dated October 30, 1937, and confirmed the same in her testimony that: "competent instructors teach the operators the particular operations to be performed by them and constantly supervise the same." [emphasis supplied] In addition to these duties the instructors perform other functions as the representative of the management. When work is slack in the section the instructors determine who shall take a day off and in what order the operators will be released from the section. Although Baty denied that the instructors are charged with the duty of disciplining and reporting upon the efficiency of the operators who work in their rgspective section, the evidence is convincing that they do so the same as before the advent of Baty as factory manager, in June 1935. The instructor constitutes the link through which the operators learn the management's directions and the management learns whether a girl is a desirable employee, her capacity for work, her attitude toward work, and her performance of the work.

The record clearly reveals that the instructors exercise supervisory, economic control over the operators in their sections. This is particularly true when as here the operators are paid upon a piece-rate basis. The instructors plan the work in each section, determining when the work comes into the section which operator shall work upon the more desirable bundles. They keep the operators busy and correct their mistakes. When repair work is necessary, the instructor decides whether the operator must rip the work out and do it over on her own time or receive pay for the work. Instructors report to the office weekly at a "going over of the cards" on the operators work for the past week. During temporary slack periods the instructors designate those operators who can be spared or transferred to other sections.

Over and above the supervisory and economic control exercised by the instructors, they regard themselves as supervisors and are so regarded by the operators; they are paid twice a month, their names being carried on a time workers pay roll, while the operators are paid on a [fol. 167] piece rate basis weekly; and they are responsible to Baty for the quality and quantity of work in

their respective sections. Although a substantial number of employee-operators testified during the hearing, none of them stated that Baty personally gave them any instructions or directions or conferred with them about their work. The undersigned is convinced that there was no apparent change in the conduct of instructors or thread girls after June 1935. Furthermore, it is undisputed that the respondent has continued to hold out the instructors and thread girls to the employee-operators as supervisory employees and has given no notice of any kind to the operators that the instructors' authority had been reduced or in any way changed in June 1935.

The respondent contended that there is no distinction between the duties of the instructor and the thread girl, one having charge of quality and the other quantity, and that none of them act in a supervisory capacity. Even if it be assumed arguendo that there is no appreciable distinction, the undersigned is of the opinion that instructors and thread girls have supervisory authority. Mrs. Reeves testified that the word instructor and floor (thread) girls and the word supervisor "means one and the same to me." Rose Todd, hereinafter found to represent the management, testified that the respondent does not use the term "supervisor" but that it does have an employee, called an instructor in charge of 40 operators and a second girl that might be called an assistant instructor. It is clear from the record and the undersigned is convinced and so finds, that the instructors and thread girls actually and in all respects serve as foremen and assistant foremen of the sections of 40 operators. [19]

[19] The absence of any hierarchy of supervisors between the operators and Baty, with solely the instructors to transmit orders and report on work, renders the instructors more nearly approximate to foremen than any other commonly known class of supervisors. The descriptions of foremen in works on labor relations often point to the "teacher" aspect of his duties. See Arthur G. Anderson, Industrial Engineering and Factory Management, (1928) page 39:

> The foremen provides the necessary human element at the point of contact to make adjustments, rectify errors, remedy deficiencies, interpret and administer instructions, make reports, supervise work, and most important of all, provide personal leadership. In the final analysis the foreman is responsible for output. He is a manager, a teacher, a leader. At the furtherest outpost of management he is management to the workers.

So viewed, the respondent is clearly responsible for their activities. See N.L.R.B. v. Skinner & Kennedy Stationery Co., 113 F.(2d) 667, 670 (C.C.A. 8); N.L.R.B. v. Christian Board of Publication, 113 F.(2d) 678, 682 (C.C.A. 8); Wilson & Company v. N.L.R.B., 123 F.(2d) 411, 414 (C.C.A. 8); N.L.R.B. v. Gamble-Robinson Co., 129 F.(2d) 588, 590 (C.C.A. 8).

It is plain from the foregoing, that the instructors and thread girls are supervisory employees, and exercise economic control over the operators, that prior to June 1935, the instructors and the thread girls were admittedly supervisory employees, that since that time the respondent has continued to hold them out to the operators as supervisory employees, and that the respondent has given no notice of any kind to the operators that the instructors and thread girls have any less authority than formerly. Since the instructors and thread girls are charged with certain duties and economic control which are supervisory, and disciplinary in nature, their interests are closely related [fol. 168] to those of the management and are often incompatible with those of the ordinary worker. On the basis of all the evidence, the undersigned finds that instructors and thread girls are supervisory employees and that they act as representatives of the management in the factory. [20]

2. Rose Todd.

Todd was one of the most active and outstanding among the employees of the respondent in the affairs of the League

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[20] The instructors are as important as the lead men and group leaders held by the Supreme Court to be employees of such a kind that the Board may base employer liability for unfair labor practices upon the employer's failure to prevent their activities in behalf of a favored union: International Ass'n of Machinists v. N.L.R.B., 311 U.S. 72; N.L.R.B. v. Link Belt Co., 311 U.S. 584; H. J. Heinz Co. v. N.L.R.B., 311 U.S. 514. In the Machinists case the Supreme Court said (pp. 79-80):

> According to petitioner these men were not foremen, let alone supervisors entrusted with executive and directorial functions, but merely "lead men" who by reason of long experience were skilled in handling new jobs and directed the set-up of the work . . .
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> The employer, however, may be held to have assisted the formation of a Union even though the acts of the so-called agents were not expressly authorized or might not be attributable to him on strict application of the rules of respondeat superior. We are dealing here, not with private rights (Amalgamated Utility Workers v. Consolidated Edison Co., 309 U.S. 261), nor with technical concepts pertinent to an employer's legal responsibility to third persons for acts of his servants, but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination or influence. . . . they [the lead men] were not high in the factory hierarchy and apparently did not have the power to hire or fire. But they did exercise general authority over the employees and were in a strategic position to translate to their subordinates the policies and desires of the management.

In the H. J. Heinz case the Supreme Court reaffirmed these principles and held that: "to the extent that petitioner may seek or be in a position to secure any advantage from these practices [by foremen and "group leaders"] they are not any the less within the condemnation of the act because petitioner did not authorize or direct them."

and in the formation and administration of the D.G.W.U. She was president of the League during the time that it played so effective a part in resisting the organizational campaign of the I.L.G.W.U. Todd was on the organizing committee of the D.G.W.U. and its first general chairman. Her status in the factory and her relation to the management is in dispute.

Todd, with an interruption of 2 years, has worked for the respondent for approximately 13 years. She was a nurse by profession and through acquaintance with Mrs. Reed as a nurse, secured a job at the respondent's factory in 1926. She worked for a short time as an operator and as a thread girl, during the early part of her employment. Also, prior to the interruption, Todd held various responsible positions with the respondent, including that of an instructor [21] and as an assistant to Dewey Atcheson, production engineer, in making time studies, studying production methods and studying rates of piece-work wages. She left her employment with the respondent in 1931 and for about 1 year worked for the Gernes Garment Company, where she took charge of the factory and later acted as a [fol. 169] traveling sales representative. When she returned to the employ of the respondent in 1933 Todd worked for several months as a thread girl. Until sometime in the spring of 1937 she helped in various sections of the factory spending a good share of her time in the sample department which makes sample dresses before general production begins.

From the record it is impossible to determine that Todd in 1937, 1938, and 1939 had any well-defined duties. During this period she was not assigned to any particular department, being directly responsible to Baty, the factory manager. Todd was assigned a desk in the factory — first on the ninth floor and later on the seventh floor — charged with the responsibility of keeping the various sections supplied with the necessary materials for maintaining operations and checking up on the delivery of various supplies that should be in the sections. In addition, if any of the sections were short of supplies which delayed the

[21] See Section III A, (1) supra for supervisory status of instructors.

work Todd was notified and arranged for the proper supplies to be forwarded to the department. These duties required that Todd move throughout the various sections of the factory and contact instructors and thread girls. For a period of 1938 Todd again worked with Dewey Atcheson on some special work. Baty testified that Todd received the same vacations as given to the instructors and that in August 1937, "He couldn't let Todd go [on vacation] in August as she was indispensable." The president of the First National Bank of Kansas City with which the company carried its account testified that he had known Todd for 10 or 12 years as "a kind of 'all-round man'" for the company and that she had come into the bank for several years as respondent's representative.

During the period from April 16 to 30, 1937, Todd was carried on the designing pay roll, from May 1 to 31, 1937, on the hand sewing pay roll, from June 1 to 30, 1937, on the button and button hole pay-roll and from July 1 to 15, 1937, on the receiving department pay roll, although she did not work in these sections during these pay periods. When the D.G.W.U. was organized she was receiving a salary of $130 a month and although the D.G.W.U. expressed to the respondent a desire to have her services part time, the respondent continued to pay her the $130 a month, in addition to which the D.G.W.U. paid her $65 per month.

The undersigned, appraising Todd's entire employment record with the respondent, is persuaded and finds that her position in the factory was one of considerable responsibility, involving duties of a supervisory nature.

Evidence on Todd's activities in the factory plainly points to the fact that she occupied a close and confidential relation to the management which was made known to the employees by respondent's conduct. On April 23, 1937, when anti-I.L.G.W.U. demonstrations against Fern Sigler, a member of the I.L.G.W.U., took place in the factory, the disturbance was reported to Rose Todd. When Baty ordered Sigler from her section to the office he was accompanied by Todd. At the conference which followed, Todd dominated the scene and took the lead in questioning Sigler about her union affiliation although both Baty and

Mrs. Hyde, the employment manager, were present. A reading of the transcript of that conference shows that Todd opened the conference and talked to Sigler of the respondent's policy of operating an open shop as if she represented the respondent, for example: ". . . we have had union people work here for years . . . We don't care. We have hired union people . . . I talked to some of the girls yesterday afternoon and tried to get them to see that it is all right if you want to work and belong to the union. However, they feel so keenly about it, we don't think we can do anything about it. . . We are going to run an open shop as long as the majority feels that way." Todd also said: [fol. 170] "My advice to you is, that if you feel that strongly about the union and have enough people to back you up, be in a union shop. I wouldn't any more think I could join the union than a man in the moon. I'd expect to be put out on the street and left there." Baty and Hyde acquiesced in all that Todd said and talked in the same vein. Todd also discoursed at length upon "our" employment policy. After the demonstrations in Sigler's section and the conference in the office it was Todd who finally sent the employees back to work. Todd's status around the plant was such that the respondent's telephone operators announced meetings over the inter-departmental telephone when Rose Todd asked them to, and instructors took directions from Todd when she directed the form in which they were to turn in time slips for employees absent from work on D.G.W.U. business. In addition, Rose Todd's position as president of the League, in which all of the respondent's supervisory force including Mr. Keyes, sales manager, Mrs. Hyde, Mrs. Reeves and Dewey Atcheson were members, and which came into existence to counteract the activities of the I.L.G.W.U., marked her in the eyes of the employees as a person in whom the management had confidence and whose views reflected those of the management. The respondent did nothing to discourage Todd's activities, although fully aware of them.

Irrespective of Todd's supervisory status, the undersigned is of the view that the evidence, as a whole, clearly identifies her with the management in the minds of the em-

ployees.[22] The undersigned finds that Rose Todd occupied a close and confidential position with the respondent and further finds that in such position she was acting for and on behalf of the respondent.

3. Hobart Atherton.

Hobart Atherton has been employed in the maintenance department of the respondent since November 1933. Atherton describes himself as the "clerk" of the company's maintenance department. He transmits orders to six em- [fol. 171] ployees who work with him in that department, shows them how to do the work when occasion demands, and keeps a record of the jobs performed. He also assists with repair work wherever needed. Atherton and the respondent deny that he is a supervisory employee in charge of the maintenance department. To accept their testimony would leave this department without supervision and would mean that each employee in the department decides for himself what repair jobs he will undertake. There is no evidence that any one else exercises any supervision or guidance over the work performed in the maintenance department, or that Baty, the factory superintendent, in any way directs these employees.

The undersigned finds that Hobart Atherton is a supervisory employee of the respondent in charge of the maintenance department of the plant.[23]

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[22] International Ass'n of Machinists v. N.L.R.B., 311 U.S. 72, 80, in which the Court said:

> The statute, we think purposely, does not define the particular methods or agents by which the employer may intermeddle unlawfully. So to confine representation of him would open easy escape from the Act's provisions. Nothing in it requires that such representation be limited to officials having any particular kind or degree of authority such as "hiring and firing," "disciplinary power," or even "supervisory capacity." These evidences of authority make more plain the connection of the actor with the employer, but their absence does not preclude the existence of such a connection. What is required is that substantial evidence show that the actor, whatever his official position, is acting in fact on behalf of the employer, not for himself or others only, and that, by whatever method or means, the employer brings pressure to bear upon his employees which deprives them of free and independent choice.

Cf. Cupples Co. Mf'rs. v. N.L.R.B., 106 F.(2d) 109 (C.C.A.-8), where the Court refused to hold the respondent liable for the acts of an employee inasmuch as the respondent had not held out the said employee as a person having authority to advise others with respect to joining or not joining labor organizations, had not directed the acts to be done, and the acts had not been done with the respondent's knowledge or consent.

[23] Atherton's position corresponds to those of the "group leaders" whose supervisory status was an issue in H. J. Heinz Co. v. N.L.R.B., 311 U.S. 514, 518, 521.

4. Other Supervisory Employees.

The status of certain other employees who were active in the League or the D.G.W.U. and who occupy responsible positions with the respondent is in dispute. These persons are Florence Strickland, in charge of the pattern department; Lena Tyhurst, assistant factory manager and in charge of the inspection department; Martha Gray, in charge of the outlet store; Ortense Root, in charge of the sample department; Heath Cowan, in charge of the receiving department (piece goods); Marvin Price, in charge of building maintenance; Ted Scholes, in charge of the cutting department; and Mary Bogert, in charge of the dividing department. Some of these employees admittedly had supervisory authority before the appointment of Baty as factory manager. They are all, except Martha Gray, under the supervision of Baty and so far as the record indicates, their relationship to the management after Baty assumed charge was identical with their prior duties and responsibilities as far as the employees in the various departments were concerned. The employees in these departments were not aware of any curtailment in the authority of those in charge after Baty was made factory manager.

The undersigned finds that the above named persons are supervisory employees and as such were representatives of the management. [24]

B. Events Prior to the Effective Date of the Act.

Prior to 1934 no effort had ever been made to organize the employees of the Donnelly Garment Company. In 1934 the I.L.G.W.U. established an office in Kansas City, Missouri, and announced in the papers that an attempt would be made to organize the garment workers of Kansas City. On March 15, 1934, the I.L.G.W.U. held an open meeting at the Musicians Hall to which all of the respondent's employees were invited. Another similar meeting was held at Eagles Hall on December 4, 1934. On both occasions the respondent's supervisory force attended the meetings in a group including Mrs. Reeves, then production manager,

[24] The respondent contends that in Baty resided the sole supervisory responsibility over the employees in each of these departments. See footnote 17 supra, for the undersigned's rejection of this untenable position.

Mrs. Hyde, personnel manager, and many of the instructors. Rose Todd, whose relation to the management is discussed hereinbefore, attended the meeting at the Musicians Hall. Dewey Atcheson, production engineer, attended the meeting at Eagles Hall.

[fol. 172] During this period at least a dozen of the employees joined the I.L.G.W.U., several of whom became active, passing out notices of meetings and soliciting their fellow workers to join the organization. Many of the employees attending the meeting and others, irrespective of membership in the I.L.G.W.U., were called to the office where Mrs. Reeves questioned them about their interest in the union and warned them that joining would do them no good. Employees were variously told by Mrs. Reeves that they had been "listening too much to somebody outside," that "Dennelly's don't belong to the union and they never will" and she had thought they had better "sense" than to join the I.L.G.W.U. and that they had been "misled" in doing so, and they ought to have "a darn good spanking" for their own good. Mrs. Gray, in charge of respondent's outlet store, told employees it was a "shame" that an employee had joined the I.L.G.W.U.

Dewey Atchison asked employees why they did not come to the management instead of "going down to a bunch of foreigners," advised against getting "messed up" with the union and warned they would be fired if they did. The instructors warned many of the employees that those who joined the I.L.G.W.U. would be discharged and urged employees not to give their money "to those foreigners." One instructor, referred to the I.L.G.W.U. members as "scum."

A substantial number of the employees who joined the I.L.G.W.U. were laid off or discharged shortly after joining. [25] Approximately 12 employees in June 1934 attended a dinner at the home of Glynn Brooks Yarnell, [26] an em-

[25] The undersigned makes no findings with respect to the reasons for these discharges which occurred prior to the effective date of the Act and which are not presently in issue.

[26] The pleadings and record designate this employee as Glynn Brooks. At the close of the hearing the pleadings were amended and the record corrected to designate her as Glynn B. oks Yarnell.

ployee who had joined the I.L.G.W.U., where they discussed joining the I.L.G.W.U. Yarnell was discharged in July 1934 although she had worked for the respondent since December 1924. Within a few months all except one of the employees who attended the dinner were either laid off or discharged. As a result of these lay-offs or discharges the I.L.G.W.U. on December 6, 1934, filed a charge against the respondent under Section 7 (a) of the National Industrial Recovery Act, alleging that eight employees had been laid off because they joined the I.L.G.W.U. A hearing on these charges was held in Kansas City, Missouri, in April and May 1935. The taking of testimony was completed, but before a decision issued the National Industrial Recovery Act was declared unconstitutional by the Supreme Court of the United States.

In the latter part of 1934 and the first part of 1935 all the other employees who were known to have joined the I.L.G.W.U. were transferred from the main factory of the respondent to a temporary branch which was used by the respondent during the busy season. When the rush of work was over and the use of the temporary building discontinued the employees, most of whom had several years service, were laid off. Employees working in the main factory with less service were retained. A strict seniority system was not followed in the factory, although it was the customary practice to provide regular employment for the older and more experienced operators.

As a result of this sequence of events the employees became hesitant to join the I.L.G.W.U. and those who had joined denied their membership when questioned. Employees who had not joined were even careful not to talk to those suspected of I.L.G.W.U. membership for fear of some discrimination with respect to their jobs.

[fol. 173] In February 1935, Martha Gray, in charge of the respondent's outlet store, and Florence Strickland, in charge of the pattern department, formed an organization among the respondent's employees known as the "Nelly-Don Loyalty League." The initial step in its organization was a meeting at the home of Gray, attended by approximately 50 employees representing the various sections of the factory. Within the next 3 days membership cards

were circulated and were signed by substantially all the employees. Florence Strickland, in circulating the cards, stated "that Mrs. Donnelly (Nell Quinlan Reed) would close her doors before she would have a union shop, and [employees] should sign these cards to keep — [their] jobs and keep [them] in work because she would close the doors." A statement was circulated along with the membership cards stating that:

> We protest against and will resist all attempts of outside interference in the business of said company or with our relations to the company as employees.
>
> We recognize the fact that . . . we have had generous and fair treatment from Nelly-Don (Nell Quinlan Reed) President of the company, and we repose our confidence in her rather than in professional agitators who are sent here to create discontent among the employees of the company.

Florence Strickland refused to allow Virginia Stroup, who was president of the I.L.G.W.U. local, to sign a membership card because she belonged to "another organization." Similarly Lena Allison, an instructor, refused to allow Frances Reidell a card on the ground that she was an I.L.G.W.U. member. Following the signing of the cards, on February 8, 1935, a mass meeting of all employees was held during working hours on the second floor of the building occupied by the respondent's plant, presided over by Martha Gray, who explained the meaning of the word "loyalty."

Meetings were regularly held on the second floor of the building.[27] The meetings were announced by a notice to the instructors, transmitted either by Mrs. Wherry, factory manager, or by the respondent's switchboard operator, calling each section and the instructors in each section notifying the employees to attend the meeting. Each of the sections in the plant had a representative elected by the employees in the section to represent them in the League. These representatives were chosen by passing a sheet of paper among the employees in each section while at their machines, on which nominations were made and then re-

[27] The respondent did not at this time have the second floor under lease. See footnote 34 infra.

passing the same sheet around in a similar manner so that each employee could mark his vote on the sheet. Virtually all the respondent's supervisors, including Mrs. Reeves, Mae Hyde, Dewey Atchison, Martha Gray, and Florence Strickland were members of the League. The League had songs of loyalty and sponsored the wearing of pins bearing the initial "L" as a demonstration of loyalty to Nell Quinlan Reed.

[fol. 174] It is clear from the events cited above, that prior to the effective date of the Act, the respondent's supervisors expressed to employees the uncompromising hostility of the respondent toward all labor unions and particularly toward the I.L.G.W.U. Employees were made fully aware of their employer's attitude and those who applied for membership or joined the I.L.G.W.U. did so with a great deal of hesitancy. During this period it was made plain to the employees by their supervisors that loyalty to the respondent meant the renunciation of the Union. Membership and influence in the League enabled the respondent to foster an organized employee resistance to outside unions. Membership of management representatives and supervisory employees, in the League, convinced the rank and file of the respondent's employees that the League was an organization approved by the respondent to which they must give their support, and that they must correspondingly refrain from joining or assisting the I.L.G.W.U. which the League so consistently opposed. [28]

The respondent contends that since the above-related activities took place prior to July 5, 1935, the effective date of the Act, they are irrelevant to the issues in this proceeding and that all evidence thereof should have been excluded. This contention fails to recognize that the League

[28] Since the League was set up as a rival to the I.L.G.W.U., the League cannot be held out as a "purely social organization," as contended by the respondent. See N.L.R.B. v. J. Freezer & Son, 95 F.(2d) 840, 841 (C.C.A. 4) also Senate Committee on Education and Labor, S. Rept. No. 573, 74th Cong., 1st Sess. pp. 10, where the following statement appears:

> Nor does anything in the bill interfere with the freedom of employers to establish pension benefits, outing clubs, recreational societies, and the like, so long as such organizations do not extend their functions to the field of collective bargaining; and so long as they are not used as a covert means of discriminating against or in favor of membership in any labor organization. (Emphasis supplied)

continued in existence after effective date of the Act. Furthermore, evidence of an employer's attitude and conduct with respect to labor unions for a reasonable period before the effective date of the Act has often been admitted for the purpose of evaluating the significance of events occurring after such date. [29]

Since the League was inspired by the respondent and fully supported by its representatives from its inception, the undersigned is convinced that the respondent thereby forcibly impressed upon its employees its anti-union sentiments.

Further, the League was dominated and controlled by the respondent, and prior to the effective date of the Act, the respondent used it to prevent its employees from joining the I.L.G.W.U. or any other outside labor organization. [30]

[fol. 175] C. Events Prior to April 27, 1937; Interference, Restraint, and Coercion.

Following the lay off and discharge of the I.L.G.W.U. members in late 1934 and early 1935, the organization of the League in 1935, and the inability of the I.L.G.W.U. to carry to a successful conclusion the case under the NRA, due to the decision declaring the Act unconstitutional, labor relations at respondent's factory remained in a quiescent condition until March 1937. During this period the I.L.G.W.U. abandoned temporarily its efforts to organize the factory. The League continued in existence, and solicited new employees to join. In some instances, instructors brought new employees notices that they were eligible to membership, directed them to the desk of the League president and later brought them their League pins.

On February 26, 1937, there appeared in the Kansas City Star an article stating that the I.L.G.W.U. had announced a campaign to organize the respondent's employees and had appropriated a large sum of money to be spent in a

[29] See N.L.R.B. v. Pacific Greyhound Lines, 303 U.S. 272, 273; N.L.R.B. v. Pennsylvania Greyhound Lines, 303 U.S. 261, 268-270; N.L.R.B. v. Link-Belt Co., 311 U.S. 584, 588.

[30] See Section C, infra, for findings concerning the League after the effective date of the Act. As to events described in Section B, above, the undersigned makes no finding of unfair labor practices, since they occurred prior to the effective date of the Act.

drive for recognition of the I.L.G.W.U. as the collective bargaining agent in the respondent's factory.

On March 2, 1937, Mary Sprofera and Inez Warren, shipping clerks, went during working hours to the various departments of the factory and secured the signatures of respondent's approximately 800 factory employees to a pledge which read as follows:

We, the undersigned, as members of the Donnelly Garment Company Co: wish to make it known we are positively happy and contented with the positions which we hold with the organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed. [Emphasis supplied]

The petition was passed through most, if not all, of the sections, being handed from operator to operator while they were at work at their machines. With six exceptions the instructors and thread girls did not sign when the petition went through their respective section, although they knew the petition was being circulated. Instructors Carrie Abrams, Ada Wolf, Clara Finnell, and Helen Little, and thread girls, Nellie Biggs, Grace Davis, and Emma Grover signed the pledge. Three employees, Sylvia Hull, Mamie Carlson, and Elsie Greenhaw, refused to sign, one stating that she disagreed with the expression of opposition to labor organizations, another, that she was not satisfied with conditions in the factory. Two of these individuals later signed for fear of losing their jobs, their names being later erased.

On the afternoon of the same day, Mary Sprofera and Inez Warren took the signed pledges to Mrs. Reed's home and presented them to her. Thereafter, as the result of arrangements made between Mrs. Reed and a newspaper representative, a picture of the employees presenting the pledge was taken and appeared on the front page of the Kansas City Star, accompanied by the statement that Mrs. Reed was going to place the pledge in the cornerstone of the new building she was planning to erect.

Mrs. Reed shortly thereafter expressed to her office manager, Marguerite Keyes, a wish that all employees, not merely factory employees, would sign the petition. Keyes requested an employee in her department, Pauline Shartzer, to circulate the pledge of refusal to acknowledge any labor organization, among all the employees who had theretofore not signed. As a result, everyone in the plant including the supervisory employees, watchmen, porters, maids and stenographers, indeed every employee except the three heretofore mentioned, signed the "loyalty" pledge. The instructors and thread girls who signed when the petition first went through their section, signed again a second [fol. 176] time on the same page with the other instructors and thread girls. The additional pledge was thereafter presented to Mrs. Reed.

Under all the circumstances above related the undersigned finds that the respondent, by permitting Mary Sprofera and Inez Warren, and requesting Pauline Shartzer to circulate the pledges in the factory during working hours and by requesting that additional signatures be secured, gave approval and lent assistance and encouragement to the solicitation of its employees to pledge themselves not to join the I.L.G.W.U. [31] and thereby interfered with, restrained, and coerced them in the free choice of a collective bargaining agent. [32]

On March 6, 1937, the Kansas City Journal-Post carried an article stating that David Dubinsky, president of the I.L.G.W.U., at a meeting of 700 union members in Kansas City had officially launched a movement to organize employees of the Donnelly Company. This announcement was followed by a letter to the respondent from the I.L.G.W.U. under date of March 9, 1937, requesting a conference be-

[31] The solicitation of expressions of employee opinion on union matters during working hours, with the knowledge and assistance of the employer, has been uniformly held to violate the Act. N.L.R.B. v. Remington & Rand, Inc., 94 F.(2d) 862, 870 (C.C.A. 2); Titan Metal Mfg. Co. v. N.L.R.B., 106 F.(2d) 254, 260 (C.C.A. 3); Wilson & Co. v. N.L.R.B., 103 F.(2d) 243, 251 (C.C.A. 8).

[32] It may be noted that the circulation of this pledge, coincidental with the renewed organizational activities of the I.L.G.W.U. among the respondent's employees, bears striking similarity to the circulation of the League membership cards and anti-union statements by the respondent 2 years earlier, soon after the I.L.G.W.U. had initiated its campaign among the employees. In each instance the pleas to the employees to be "loyal" to the respondent and to resist outside interference, appeared at crucial junctures in the campaign of the I.L.G.W.U. to organize the respondent's employees.

tween the I.L.G.W.U. and representatives of the respondent. The respondent did not reply to this letter.

A meeting of all the respondent's employees took place during working hours [33] on the afternoon of March 18, 1937, on the second floor of the building housing the respondent's [fol. 177] plant. [34] Employees were notified orally by their instructors that they were to attend the meeting, the instructors having been notified by either Mrs. Wherry or over the factory telephone system. Most all of the supervisory force were in attendance at the meeting, including Ella Mae Hyde, Martha Gray, and Elizabeth Reeves, the instructors and the thread girls. Rose Todd, with the assistance of Hobart Atherton, both of whom were officials of the League and supervisory employees, called the meeting and Todd presided. Chairs for the meeting were rented from the Kansas City Rental Chair Company under the name of the League. From these facts, the undersigned concludes, despite the denial of Rose Todd, [35] that the meeting was sponsored by the League and its officials.

[33] The Board contends and the respondent denies that this meeting and the one of April 27, 1937, referred to later herein, were held during working hours. Evaluating the evidence in its entirety, the undersigned is not persuaded by the testimony adduced by the respondent. A finding favorable to the respondent's position would necessitate the acceptance of testimony which is contrary to the weight of the evidence. The indefinite and routine testimony of respondent's witnesses with their lack of knowledge of details, and the mutually corroborative testimony of Board's witnesses, supported by other evidence, that operators attended meetings in their uniforms, that employees went to the meetings in groups and that no definite time was given in the call for the meetings, although the hours of work were staggered and the operators were working overtime, convinces the undersigned that the meetings of March 18 and April 27, 1937, were held during working hours.

[34] The meeting was held on the second floor of the building in which the respondent's plant was located; however, the respondent on March 18, 1937, did not have the second floor under lease, although occupying practically the entire building. Although the first and second floors were not leased by the respondent prior to May 1937, employees had regularly attended Loyalty League meetings and company style shows, held on these floors and did not know whether they were leased by the respondent. The building occupied by the respondent had ten floors and even during the time when the respondent did not have the first and second floors leased, there were no other occupants in the building except the respondent.

[35] At the hearing Todd testified that the meeting was a "spontaneous" gathering of the employees to discuss what means might be adopted to protect the respondent's employees against anticipated violence in connection with the I.L.G.W.U.'s projected organizational campaign. The record indicates that the respondent's employees had become alarmed by hearing reports that at other garment factories in Kansas City, where the I.L.G.W.U. was conducting organizational campaigns clashes had occurred, involving pickets, non-striking employees, and local police. Some of respondent's employees discussed the reports and expressed fear that an organizational campaign at the respondent's factory might precipitate similar strikes and violence.

Rose Todd made a few opening remarks, after which Mrs. Reed was requested to come in and address the employees. Mrs. Reed brought with her the letter which the respondent had received from the I.L.G.W.U. under date of March 9, 1937, requesting a conference. The letter was read to the employees. Mrs. Reed then made a talk in which she expressed her pleasure at receiving the "loyalty" pledge which had been presented to her on March 2, told the employees that the respondent was an institution to be proud of, that it had taken care of its employees by keeping the factory in operation during the depression, and that she intended to continue to run the business. Then she spoke of threats of violence that the I.L.G.W.U. was alleged to have made against employees of the company, and promised protection against such violence. Finally she directed her remarks to the question of unionization of the factory. What she said at this point is a matter of dispute. The Board's witnesses testified that Mrs. Reed stated she would close her factory before she would permit it to be unionized and that she would not allow "Dubinsky or any other 'sky' to tell her how to run her business." According to respondent's version, Mrs. Reed stated ". . . Neither Dubinsky or any other but-tinsky is going to intimidate me or the company into forcing you to join the International (I.L.G.W.U.) against your will." The undersigned does not consider it necessary to resolve the precise conflict in this testimony, since in the undersigned's view, Mrs. Reed's own version of her speech at the March 18 meeting, and the events which took place there, constituted an unfair labor practice. The meeting was sponsored by the League, which is controlled by the respondent, and was attended by most of the respondent's supervisory employees. Through the presence of supervisors and the sponsorship of the League which had for its purpose the exclusion of outside union organization from the factory, the employees must inevitably have been aware of the anti-union character of the meeting and could not have been free to express their independent views. It may be true, as the respondent contends, that many of them feared the alleged threats of the I.L.G.W.U. but instead of permitting the employees to decide for themselves what attitude they would adopt with regard to the I.L.G.W.U. the respondent

[fol. 178] seized upon such fears as may have existed to build up and strengthen a militant employee opposition toward that labor organization. Mrs. Reed's remarks indicated that the I.L.G.W.U. was the common enemy of both the respondent and its employees and promised the employees the respondent's protection and assistance against that organization. Mrs. Reed disparagingly labelled David Dubinsky, president of the I.L.G.W.U., a "but-tinsky" who was seeking to force the respondent's employees to join that Union. Mrs. Reed further told the employees that she had "had lots of nice things happen to me in my lifetime but I have never had anything that made me so proud and so happy" as the receipt of the "loyalty" pledge in which the employees unanimously agreed to refuse to acknowledge any union labor organization. While Mrs. Reed sought to appear as a disinterested defender of the respondent's employees in the exercise of their right to join or not to join a labor organization, against the background of the respondent's widely publicized hostility to the I.L.G.W.U. and the past repeated reminders to the employees that "loyalty" to the respondent demanded repudiation of outside union organizations, the undersigned is convinced that Mrs. Reed's remarks [36] made it plain that the respondent's attitude toward unionization had not changed and the membership of any of the employees in the I.L.G.W.U. was not to be tolerated.

The undersigned finds that by its sponsorship and domination of the March 18 meeting and by Mrs. Reed's talk at said meeting the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

On April 22, 1937, the Kansas City Journal-Post carried an announcement by the I.L.G.W.U. that Sylvia Hull, one of respondent's operators, had been named as a delegate to a convention of the I.L.G.W.U. Hull appeared for work

[36] The undersigned is not unmindful that Mrs. Reed told the employees that "you know that you have never been asked whether or not you belong to a union . . . if you want to belong that is your own business . . ." The undersigned cannot agree, however, that the reference to the employees' rights rendered them wholly free with respect to joining unions. On the contrary, in view of the respondent's past hostility to labor organizations, the undersigned believes that the employees could not fail to be discouraged from joining the I.L.G.W.U. or any other labor organization.

as usual at the respondent's plant on the morning of April 23. A few minutes after 8 o'clock while she was working at her machine on the 8th floor of the plant, two groups of employees — each consisting of 12 or 20 persons — successively gathered at her machine. They demanded to know what authority she had to represent them at the I.L.G.W.U. convention. Some of the operators stood on top of nearby tables, others sang Loyalty League songs. They told Hull that they would not allow her to belong to the Union, and demanded that she surrender her League pin, which she refused unless they returned to her the cost of the pin. Shortly thereafter, the operators returned, gave Hull 35 cents and she surrendered the pin. Lena Allison, the instructor in charge of Hull's section, was present throughout the demonstrations, but did not order the girls back to work or take any action of any kind; Mary Bogart, in charge of the dividing section, was present and pointed Hull out to some of the demonstrators. Ella Mae Hyde, the respondent's employment manager, appeared on the scene of the demonstration and told the demonstrators to return to work. The operators refused, saying they would not work while Hull was there. Hyde thereupon took her down to the office on another floor. They were followed by a number of the demonstrators shouting that they would not return to work until they heard Hull say she would go home. Hull then said "I will go home, I didn't know the girls felt this way about it or I wouldn't have done it." According to Hull's testimony, which is undenied, Hyde told her she would have [fol. 179] to go home. Hull replied that she did not want to quit but would go home for the day. Hyde took her employee-identification badge and Hull left a telephone number through which she might be reached. [37]

Later, during the same morning on which the above-described incident occurred, Fern Sigler, an operator who had displayed on that day for the first time her I.L.G.W.U. membership pin, was subjected to similar demonstrations. The employees surrounded Sigler's machine and sang songs, derided her, took her League pin from her and shouted "get up and go home, we don't want you in here." The demonstrations subsided when Baty, factory manager,

[37] The alleged discriminatory discharge of Hull based upon this incident is discussed in section E, *infra*.

accompanied by Rose Todd ordered Sigler from her machine to the office. As Sigler left the floor the operators shouted; "we are not going to work as long as she remains here." When Baty insisted on sending Sigler home she argued with him that she had a right to join the I.L.G.W.U. and it was the employer's duty to control the employees. Baty replied "We don't go in for the Wagner Act, we are just running our business here not a law office." Todd then stated "We are going to run an open shop as long as the majority feels that way." After the conference participated in by Baty, Hyde, Todd and Sigler, Sigler was sent home. Baty promised to talk to the operators and "quiet them down" and to call her back when the unrest had subsided. Despite his promise Baty admitted at the hearing that he did nothing to allay antagonism toward the I.L.G.W.U. in the plant.[38]

The undersigned finds that the respondent approved of and encouraged the demonstrations and took advantage of them to reveal once more to the employees its hostility to the I.L.G.W.U. and its support of anti-I.L.G.W.U. activities. Further the undersigned finds that by such acts the respondent interfered with, restrained, and coerced its employees of the rights guaranteed by Section 7 of the Act.

The undersigned further finds that by using the League and its officers as hereinabove described for the purpose of impeding and preventing the organization of its employees by the I.L.G.W.U., the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.[39]

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[38] The complaint contains no allegation of discriminatory treatment of Sigler. It should be noted that Sigler is the sister of May Fike, allegedly discharged for union activities, and referred to in Section E, hereof.

[39] The respondent contends that these demonstrations were of a 'spontaneous' nature for which it is not responsible and that the fear and resentment of the employees to the I.L.G.W.U. was the motivating cause of these demonstrations. The respondent condoned, approved and encouraged these demonstrations and made no sincere effort to check the demonstrators. Neither did it in any way discipline the demonstrators who had disrupted the normal operation of the factory nor did it take any steps to make it possible for these employees to return to their work in the factory unmolested. No deductions were made in the wages of time workers who participated in these incidents. See Matter of General Shoe Corporation and Georgia Federation of Labor, 99 F.(2d) 223 (C.C.A. 5); N.L.R.B. v. General Motors Corp., 116 F.(2d) 306, 309-310 (C.C.A. 7); N.L.R.B. v. Elkland Leather Co., 114 F.(2d) 221, 224 (C.C.A. 3).

[fol. 180] D. Domination and interference with the formation and administration of the D.G.W.U. and contribution of support; interference, restraint, and coercion.

1. The Formation of the D.G.W.U.

Shortly after the March 18 meeting a committee, which had been appointed at the close of that meeting, consisting of Rose Todd, Loyalty League president, and the representative of the respondent, Hobart Atherton, an officer of the League and a supervisor, and Sally Ormsby, employed Tyler, an attorney. When Tyler asked for a retainer fee Todd borrowed $1,000 from the First National Bank of Kansas City on the unsecured note of the Loyalty League, deposited the money in the Loyalty League checking account and a League check signed by Todd as president and Hartman as treasurer was given to Tyler. While the first conference with Tyler was limited to the discussion of the possibility of obtaining an injunction against the I.L.G.W.U., after the Act was held constitutional on April 12, 1937, Tyler suggested the formation of an independent union.

On April 27, 1937, a mass meeting of all respondent's employees was held during working hours, [40] on the second floor of the building in which the respondent's plant was located. [41] Notice of the meeting was given to the employees through their respective instructors who had been notified by Mrs. Wherry, or over the factory telephone system. Instructors and thread girls attended the meeting along with the operators in their sections. Chairs for the meeting were rented in the name of and paid for by the Loyalty League.

Rose Todd who was still president of the Loyalty League presided at the meeting. Her opening remarks indicated that she regarded the meeting as a part of the series which preceded it for she stated she hoped, "this meeting is going to be as enthusiastic as our last one was" and explained that she had called the meeting "as chairman of the com-

[40] See footnote 33 *supra*.

[41] See footnote 34 *supra*.

mittee of employees." [42] Todd stated that she had con- [fol. 181] sulted two lawyers, Mr. Gosset and Mr. Tyler, whom she had known for years, and they advised forming a plant union. She explained that the Loyalty League, being a purely social organization, would not take care of the situation; that another organization was necessary to give them representation to definitely confer with the proper representatives of the respondent at times when they felt that it was necessary. She pointed out that a union would have to be formed if they were to successfully resist attempts of organization by an outside union. She then told the employees that the new organization would be called the "Donnelly Garment Workers Union" and although she was distressed as they were at having to use the word "union" it seemed to be necessary.

Mr. Tyler was then introduced by Todd. Tyler stated that, "Some weeks ago several employees came to my office and employed Mr. Gosset and myself as legal advisers of the employees, so that I am in fact at this moment acting as an attorney for you or for many of you even though you have never seen me before . . . You may believe in unions or you may disbelieve in unions and still agree with the advice I am about to offer you. The reason for this advice I am going to give you is that we believe it is to your best interest to organize your own individual

[42] The meeting preceding it was, according to witnesses called by the Board, the meeting of March 18 at which Mrs. Reed spoke. The company claimed a meeting took place either the last of March or the first of April, however, the many inconsistencies in the evidence offered by the respondent respecting this meeting, and its entire improbability in view of the complete circumstances compels the undersigned to conclude that there was no meeting between March 18 and April 27. The borrowing of $1,000 from the bank on March 30 for the purpose of paying Tyler a fee is inconsistent with a meeting on or about that date at which money for Tyler was supposedly raised. Saucke testified that she moved the assessment at a meeting on or about March 30 for paying the fee yet she further testified she never heard of Tyler prior to April 27. Atherton, Warth, Barnes and Dean on the other hand testified that at the meeting on or about March 30, Rose Todd explained about the committee seeing Tyler. This seems unlikely since the minutes of April 27 show this to have occurred at that meeting. Atherton testified that he believed Eva Liberman made the motion that each employee contribute 50 cents for the fee. Saucke when first examined on cross as to whether she made a motion in the spring of 1938 to assess each employee $1 to pay Tyler his fee had no recollection of making such a motion but when confronted with the minutes of the 1938 meeting remembers that she made such a motion both in 1937 and again in 1939. This alleged meeting is furthermore the only meeting for which no minutes or other written record was furnished by the respondent or the independent union.

unaffiliated plant union of the employees of the Donnelly Garment Company and proceed with such a union." Tyler went on to explain that one of the reasons for the organization was the fact that the I.L.G.W.U. had sent a representative to its national convention and "in order to stop this and to make it clear that you are speaking for yourselves through your own representatives whom you choose, we think your own union is desirable." He also stated, "I do not think this action can or will be considered as an act of unfriendliness to your employer. I believe they recognize your right to take this step and it isn't an unfriendly act to them. [Emphasis supplied] In fact, it is much better for them and yourselves for you to have your own union with your own representatives rather than having a group trying to represent outsiders from New York." Todd then said, "Well, we are together as an entire group of employees. Let's form this organization." It was unanimously decided without any discussion and by a unanimous vote of the approximately 1300 assembled employees to form such a union. A nominating committee of five was then appointed by Todd to select a slate composed of a General Chairman and eight Group Chairmen to serve as representatives and officers of the new organization. While the committee retired to select its nominees, charter membership cards bearing the name "Donnelly Garment Workers Union" previously prepared were distributed for signature. Thereafter Tyler read the bylaws [43] which Todd, Atherton and Ormsby had requested him to draft. They were immediately adopted without alterations. The nomination committee returned to the meeting and presented the names of nominees for General Chairman and Group Chairmen who were unanimously elected as a group with Rose Todd as General Chairman. Thirteen hundred charter

[43] The bylaws indicate the purpose of the D.G.W.U. was in part the same as that of the Loyalty League which, in the words of Rose Todd, had become inadequate to give the employees the "protection" they needed. Article II of the bylaws provides *inter alia*:

> The purpose of this organization (D.G.W.U.) shall be. . . the protection of employees and members of this union from coercion, intimidation, violence, or threats of violence in order to force them to join unions organized and dominated by outsiders and not employees of this plant

membership cards previously distributed were collected and [fol. 182] the meeting declared adjourned. [44]

The facts as related above, make it plain that the organizational meeting of the D.G.W.U. was planned, organized and under the complete control of respondent's representatives. Under all the circumstances the undersigned concludes and finds, that the concept of an independent union originated with respondent's supervisory employees and further, that the respondent through the activities of its supervisory employees gave approval, and lent assistance and encouragement to the D.G.W.U.

[fol. 183] 2. Membership and participation by other supervisors in the D.G.W.U.

In addition to Todd's and Atherton's membership and participation in the D.G.W.U. as representatives of the management, the instructors and thread girls all attended

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[44] The committee of employees, Todd, Atherton and Ormsby, were instrumental in calling the meeting of April 27, "after a general request from a great many employees that we try to do something for our own protection." This same group had been appointed as a committee at a meeting sponsored by the Loyalty League on March 18 for the same purpose. The ledger sheets of the Kansas City chair rental company show the chairs were rented by the "Ellie Don' Loyalty League to be used on that date and cancelled check of the Loyalty League shows the League drew a check in favor of the chair rental company in payment therefor. The respondent's telephone operator called on the inter-departmental telephone system each department of the building and gave notice that Todd was calling a meeting of employees on the second floor. Todd presided at the meeting but denied that she was acting in her capacity as President of the League. Todd, out of the $1,000 borrowed in the name of the League, paid $500 to Tyler as a retaining fee. Though it is contended that the $500 retainer fee was in payment only for advice concerning a projected injunction suit against the I.L.G.W.U. for the protection of the respondent's employees, the undersigned is convinced that the fee covered Tyler's services in connection with the organization of the D.G.W.U., the proposed injunction suit having been rejected as a method of protection. Instead, Tyler advised the League committee to form an unaffiliated union. He attended the April 27 meeting and read the bylaws he had previously drafted on the instruction of the League committee. Thereafter in May or June 1937, he drafted proposals for a closed shop contract and a wage agreement hereinafter referred to, with the respondent. Tyler received no fees from the D.G.W.U. until November 23, 1937 which was 7 months after its formation and at a time when the D.G.W.U. had undertaken other legal action involving court litigation. Minutes of the group chairman of the D.G.W.U. for June 15, 1937 records that Rose Todd stated in explanation of the fee ". . . we paid Mr. Tyler a $500 retainer fee. He helped us write up our bylaws and working agreement and will advise us and help us when we need it."

From all the circumstances above related the undersigned finds that the meeting of April 27 was sponsored and financed by the Loyalty League through Todd, Atherton and Ormsby, and further that the League financed the employment of Tyler, paid him a retainer fee of $500 and that the fee covered the cost of his services in connection with the formation of the D.G.W.U. and the drafting of its bylaws.

the meeting of April 27 and signed cards for membership in the D.G.W.U. Dewey Atchinson, production engineer, joined but resigned July 14, 1937. The minutes of the meeting show that instructors and thread girls and others closely allied with the management regularly attended and participated in the meetings. At five different meetings, December 7, 1937, March 8, 1938, April 26, 1938, January 10, 1939, and February 7, 1939, Stella Willis, an instructor, participated in the meetings. On one occasion, she suggested an assessment of 50 cents per member to pay Tyler a further fee. While the motion was not put at that meeting, at a meeting held shortly thereafter, upon the motion of Helen Little, an instructor, an assessment of $1 per member for Tyler's fee was voted. In making her motion, Instructor Little stated:

I think most of the employees realize that if they belonged to the C.I.O. or the A. F. of L. they would be assessed quite a little bit more. I think the minimum is $1.25 per month, and I think everyone would be willing to help out and donate $1.

In 1939 Harry Grogan, whose name was listed on the payroll under the heading, "Instructors and Floor Ladies," urged the employees to vote an assessment of $2 apiece for Tyler. On this occasion Todd pointed out that low wages were paid in I.L.G.W.U. shops, and Grogan added that even $10 was not a third or even fourth of what it would have cost them, impliedly referring to the I.L.G.W.U., so that $2 each would be fair for Tyler's fee.

At the election of D.G.W.U. officers in April 1938, five thread girls in succession, Nellie Riggs, Jessie Mudd, Rose Hendricks, Edna Rawlings, and Clarice Martin and two persons whose names appeared on the payroll heading "Buying Records," [45] Hilda Richmond and Veda Hoyland either nominated or seconded the nomination of members of the two nominating committees which in turn recommended nominees for officers of the D.G.W.U. Both committees nominated were unanimously elected. The two nominating committees proposed their respective slates of

[45] This pay-roll heading covers the executive force of the factory, including heads of departments such as factory manager, head of the retail store, personnel manager, and Mrs. Wherry who was variously described as factory manager and head of instructors.

officers, each of which recommended Rose Todd for chairman, and Marjorie Green for secretary, both of whom had held these positions in 1937, for treasurer, Jack McConaughey, who had been on the board of Group Chairmen in 1937, and for representatives of the mechanics, Walter Higgins. However, despite this close similarity on the two slates and although no campaigning was done for those nominees whose names appeared on only one slate, when a standing vote was taken, Todd, who was presiding, called on two instructors who were present at the meeting, Lola Sheens and Stella Willis to give their opinions as to which slate received the larger vote.

[fol. 184] The election in April, 1939, repeated in many respects the occurrences of the previous year. However, this time Rose Todd herself appointed the two nominating committees without going through the formality of nominations and unanimous elections. Hilda Richmond, whose closeness to management is indicated by appearance of her name on the "Buying Record's" pay roll [46] was named by Todd as chairman of one of the committees and Harry Grogan whose name appeared on the pay roll under "Instructors and Floor Ladies" was a member of the other. These two nominating committees each brought in slates naming Todd chairman, Jack McConaughey treasurer, Marjorie Green, secretary, and Walter Higgins representative of mechanics. Again the election was by an open standing vote.

Heath Cowan, in charge of the receiving department; Marvin Price, in charge of building maintenance; and Ortense Root, in charge of the sample department were members of the D.G.W.U. and, as shown by its minutes, attended meetings and participated in its affairs. Ted Scoles, in charge of the cutting department; Lena Tyhurst, in charge of the inspection department; and Mary Bogart, in charge of the dividing department were also members of the D.G.W.U. At various times the question was raised by employees as to whether department heads and instructors should have the right to be members of the D.G.W.U. and attend and participate in its meetings. However, Todd's statement of the D.G.W.U. policy that all employees except

[46] See footnote 45, *supra*.

the executives Mr. Keyes, Mrs. Keyes, Mr. Green, Mr. Baty and Mrs. Hyde were eligible remained in effect. Employees, nevertheless, at various times expressed the view that the presence of such persons at meetings excluded them from speaking freely of their complaints. In a meeting of the D.G.W.U. Group Chairmen, Hobart Atherton when he stated, "I think department heads, instructors and so forth, should have all the privileges of membership except that they shall not be allowed the right to vote," realized the danger of participation by supervisory employees in the affairs of an organization devoted to the improvement of the employees' economic relationship with the employer.

Inasmuch as the respondent through its supervisory employees' membership and participation in the activities of the D.G.W.U., continued its control and direction of that organization, the undersigned finds that respondent is responsible for their activities, and that they were acting for and in behalf of the respondent.

3. The contracts; closed-shop, check-off and piece-work rates.

On April 28, 1937, the day following the D.G.W.U.'s organizational meeting, Rose Todd took the membership cards to Mrs. Reed, president of the respondent, and stated to her the D.G.W.U. had been organized by the unanimous vote of the employees and represented a majority. Mrs. Reed assured her that the respondent would consider the matter. On May 6, 1937, the Group Chairmen of the D.G.W.U. met with Mrs. Reed and told her that they would want a contract covering hours, wages, and working conditions "which up to now have been satisfactory" and that they would like a closed shop. Mrs. Reed at once replied, "I understand that is very essential to industrial peace." The D.G.W.U. then stated that they wished to pay part of Todd's salary. Mrs. Reed, in agreeing, stated, "I do not feel at the present time that you [Todd] need give all of your time to the union." [47]

[47] From these facts it seems clear, and the undersigned finds, that recognition as the exclusive bargaining agent of the employees was accorded the D.G.W.U. almost as soon as it was organized, although no statement of recognition in writing appears until the contract between the respondent and the D.G.W.U. was signed on May 27, 1937.

[fol. 185] Tyler thereafter prepared a draft of the proposed agreement containing a closed-shop provision, which was approved by the Group Chairmen of the D.G.W.U. on the morning of May 27. Tyler read the contract aloud to Mrs. Reed and the other representatives of the respondent and urged that it be given prompt attention. Mrs. Reed replied: "I would like to have a little time to look over this agreement. However, I think it is very much in line — and there will possibly be one or two little changes." Later she added, "I think the only changes it will be necessary to make will be just legal phraseology — the spirit of this agreement is satisfactory." At the close of the conference it was agreed that Mrs. Reed and other representatives of the respondent would meet with Todd and Tyler at 3 o'clock that afternoon, and that Tyler would then report the outcome to the Group Chairmen of the D.G.W.U. at 3:30 o'clock.

The D.G.W.U. committee met in the afternoon as agreed. Its minutes disclose that Tyler reported that the respondent had proposed three or four modifications, the acceptance of which he recommended to the committee. One change suggested by the respondent was the insertion of a provision limiting membership on the D.G.W.U. bargaining committee to persons employed by the respondent for a period of at least a year immediately preceding election to such committee. Tyler explained to the committee the purpose of this provision was "to eliminate the possibility of someone getting on this committee who is not a true representative of the employees and who may be working here merely to act as a traitor to the company." The agreement as modified was then adopted by the committee and signed by the parties.

Subsequently, on June 22, 1937, a supplemental agreement was entered into between the D.G.W.U. and the respondent establishing minimum wages for time workers and minimum weekly guarantees to piece workers. At the request of Todd, Baty, factory manager, supplied her with a detailed statement of wage rates in the factory and on the basis of this information, Tyler prepared a contract which was accepted by the respondent without substantial change. Terms of the supplemental agreement were never

submitted to the D.G.W.U. membership for approval before or after its execution, although it set the employees wages for a period of one year with a provision for an automatic extension. The D.G.W.U. demanded a minimum weekly wage of $16.50 for the respondent's lowest paid piece-work operators. Todd explained that the I.L.G.W.U. had announced that it was seeking a $16 weekly minimum in the garment industry, and she therefore thought it a good idea to improve a little on that minimum to defeat efforts of the I.L.G.W.U. to organize the respondent's employees. The respondent acceded to this demand. By its terms the original agreement of May 27, 1937, was to remain in effect for a period of 2 years while the expiration of the supplemental wage agreement of June 22, 1937, was set for July 1, 1938, with a provision for automatic extension from year to year unless either party gave written notice to the other of its desire to terminate it. On June 2, 1939, the original agreement of May 27, 1937, was extended for a 2-year period without any modification except to provide for its automatic renewal. These two agreements have continued in effect without change.

In August or September 1937 the company agreed, at the request of the D.G.W.U., to a check-off of the monthly dues of the members. Employees signed a card prepared and distributed by the respondent agreeing to permit the dues to be checked-off at the end of each month. Pursuant to this agreement the respondent submits to the D.G.W.U. a memorandum showing the number of employees on the pay roll during the month and a check covering their dues. The D.G.W.U. issues no receipts, keeps no record of individual dues payments and has no means of knowing what individuals paid dues during any month. The General Chairman or Treasurer of the D.G.W.U. were unable to state at the hearing what proportion of each month an employee must work to entitle the D.G.W.U. to collect the [fol. 186] dues from the respondent. The checks turned over for each month subsequent to July 1937 range from about $250 to $325. The amount deducted from each employee appears on the employees' respective check stub. Although the D.G.W.U. has never furnished the respondent with a list of its members, every employee of the respondent, upon the assumption that all employees under the closed-shop

are eligible to belong to the D.G.W.U., except the salesmen whose dues the company's decline to check off, authorized the checking off of the dues.

Soon after the D.G.W.U. was organized, the Group Chairmen, who composed its executive committee, appointed a committee to represent the D.G.W.U. in adjusting piece-work rates with the respondent. Some 600 to 800 of the respondent's 1300 employees were paid on a piece-work basis, so the procedure by which the piece-work rate is checked is concededly "the most important thing the individual operators have to bargain for with the company." The committee appointed consisted of Lulu Nichols, Josephine Spalito, and Rose Todd. Nichols is a supervisory employee and Spalito her assistant, both of whom are employed by the respondent for the purpose of establishing for it the piece-work prices paid the employees. Nichols was described, by Mrs. Hyde, as an "executive" of the respondent, and admittedly has final authority in setting piece-work prices in the first instance, and of adjusting subsequent complaints of operators that the price set is too low. Nichols' duty is thus described by Mrs. Reeves, who testified:

A. After a garment is designed, that particular garment is analyzed very thoroughly by Mrs. Nichols, who was a former piece-work operator; Josephine Spalito, a former piece-work operator, Rose Todd, a former piece-work operator. Prices are then discussed with the operator and also the instructor . . .

Q. If there is any employee who thinks the price is too low, what redress does she have?

A. She discusses it with the people who set the prices — Miss Todd, Mrs. Nichols, and her instructor . . .

Q. Who has complete charge of the making price rates after the complete report is made by this committee?

A. Mrs. Nichols.

Thus the same persons who set rates on behalf of the respondent in the first instance are also representatives of the D.G.W.U. for the purpose of protesting and negotiating in regard to those rates in behalf of the D.G.W.U. and the employees.

The respondent's immediate recognition of the D.G.W.U. and its ready acquiescence to a closed-shop and check-off through the medium of an organization which allowed it to retain control of the piece-work rates, when viewed in the light of respondent's persistent hostility to independently functioning unions clearly reveals its determination to prevent the employees from enjoying the rights conferred upon them by the Act, by forcing them to become members of an impotent collective bargaining agency to which, by its closed-shop and check-off, it had given assurances of financial stability.

[fol. 187] 4. Respondent's contribution of support to the D.G.W.U.

In addition to the holding of the organizational meeting of the D.G.W.U. on respondent's time [48] the succeeding three or four membership meetings were likewise held during working hours. Thereafter regular monthly meetings of the general membership were held after hours, but they continued to be held on the second and later the first floor of the building in which the factory is located. Prior to May 10, 1937, on which date the respondent took over the second floor under lease, the D.G.W.U. had obtained the permission of the landlord to use, without charge, the second floor as a meeting place. After May 10, 1937, the D.G.W.U. continued to meet on the second floor until April 1938 when the respondent remodeled a portion of the first floor to serve as an auditorium. From that time on, this became the meeting place of the D.G.W.U. Although the D.G.W.U. met on the property under lease by the respondent monthly from May 1937 on, it was not until November 1937 that the question of paying rental was raised. The first rental payment was made in April 1938, and consisted of $3 per meeting, held during the preceding twelve months. It is plain that prior to November 1937, rent-free use of the respondent's premises was contemplated and that the retroactive payment of rent was an afterthought. Rose Todd the General Chairman, twice announced in meetings of the D.G.W.U. that such use of the respondent's facilities was entirely proper. Meetings of the Group Chairmen, who composed the executive committee of the D.G.W.U., prior

[48] See footnote 33, *supra*.

to May 1938, were held in the office of Beulah Spilsbury, in charge of the designing department and thereafter in the auditorium on the first floor. No rental was ever paid for the use of this property. [49]

The general meetings of the D.G.W.U. and the meetings of the Group Chairmen were called through the respondent's facilities, either by the use of the respondent's inter-departmental telephone system or by sending a so-called I.D.M. to each department of the factory through the respondent's regular messenger service. Announcement of the meeting over the respondent's factory telephone system was accomplished by Todd notifying the telephone operator to call each department. [50] Each section has a telephone, and it is the duty of the instructor or thread girl to answer the phone and convey any message that might be given either to the employees generally if it was a general meeting or to the specific employee in question if it was a Group Chairmen meeting. The inter-departmental telephones were not available to the employees generally and could only be used for calls by supervisory employees pertaining to official business. An I.D.M. is the respondent's term for inter-departmental memoranda. When Todd wished to call a meeting of the employees generally, or of the Group Chairmen, she regularly prepared a notice on the company's I.D.M. paper which was sent to each section of the factory by the respondent's messenger service. Upon the arrival of the I.D.M. in any section, it was the duty of the instructor or thread girl to read the I.D.M. and pass it to the operators in the section.

[fol. 188] Miss Todd also utilized the I.D.M. system for collecting assessments and sending instructions pertaining to D.G.W.U. business to the members on the respondent's

[49] The D.G.W.U.'s treasury book shows only two payments to the respondent for use of space. Both of these were for meetings of the entire membership, as may be seen from the testimony of McConaughey concerning the first of these payments and the fact that the second payment was for "for 13 meetings" one less than the number of general membership meetings as shown by the minutes of the D.G.W.U. to have taken place between the two payments.

[50] Todd testified: "In using our house telephone system in that manner, we have what we call floor girls or thread girls in each department. It is absolutely her duty to answer the phone and convey any message that might be given. That was what was done."

time. [51] The D.G.W.U. receives its mail at the factory through respondent's messengers and freely uses the factory bulletin board.

Piece work operators who served as Group Chairmen or officers were paid by the respondent for the time lost at work while attending D.G.W.U. business, the time workers being allowed to take time from work with no deductions from their pay.

Rose Todd was a full time employee of the respondent. While a request was made to Mrs. Reed immediately after the formation of the D.G.W.U. that it should pay part of her salary, she continued to receive a full salary of $130 a month from the respondent and in addition thereto received $65 from the D.G.W.U. Despite receiving her full salary from the respondent, the nature of the work given her by the respondent to perform permitted her to devote as much time as she desired to the D.G.W.U. business without deduction from her pay. Thus she carried on the business of the D.G.W.U., representing 1300 or more employees, during the respondent's normal working hours. Soon after formation of the D.G.W.U. at the respondent's Kansas City plant, Todd went to the respondent's temporary auxiliary plant at St. Joseph, Missouri, to organize the employees in that factory. She was absent from her employment about a half day without a salary deduction.

At a meeting on May 11, 1937, Rose Todd announced that "our (D.G.W.U.) work will be conducted" at a desk on the ninth floor of the plant and that she could be reached on union business at "any time necessary." Todd's desk was the D.G.W.U.'s only office. Its records were kept there in a file belonging to the respondent and its business

[51] Miss Todd made the following announcement at a D.G.W.U. meeting in March 8, 1938: "I will tell you while we are all together how we will handle the payment of this . . . I would suggest that we appoint one person in each department, and I will appoint that person myself, and will send out an I.D.M. with instructions on how to collect this money. It is my idea as to what is put on that I.D.M.

"The name of the person who is to collect that money, and have that person list the names of each person in the department. When this is turned in, put the money in an envelope and return it to me between 11:00 and 12:45 on the 7th floor, or between 4:00 and 5:00 on the 10th floor, with the name of each member paid or unpaid, your name and section number, with the money."

was regularly transacted by employees who went there for that purpose. The check-off cards which were printed and distributed by the respondent were signed and turned in at this desk over a two weeks' period by employees who came there from all over the factory. Membership cards of those who were absent from the April 27, 1937, meeting, or of new members were signed and left at this desk. Grievances of members were reported to Todd during the working day and she attended to them during her hours of work. She collected money for the D.G.W.U. on the respondent's time and directed the D.G.W.U. representatives to do the same. When Todd left on her vacation in December 1937, she informed the Group Chairmen that a substitute, Miss Riddle, would be at the desk from 11 a. m. to 12:45 each day — much longer than the usual half hour lunch hour — to transact D.G.W.U. business.

The membership cards of the D.G.W.U. were mimeographed after working hours by employees in the respondent's circular department, on a machine owned by the respondent. Copies of the D.G.W.U. bylaws were produced [fol. 189] on a ditto machine belonging to the respondent. The D.G.W.U. owns no typewriter, and the secretary of the D.G.W.U. has often used a typewriter owned by the respondent for typing the minutes of the meetings of the D.G.W.U. and of the Group Chairmen.

It is apparent from the facts set forth above, and the undersigned finds, that the respondent has contributed a large measure of support to the D.G.W.U.

Summary and Conclusions.

From the foregoing facts, conclusions, and findings, it is clear that, notwithstanding the contention by the respondent and the D.G.W.U. that the D.G.W.U.'s formation was the result of the employees' own choice of a collective bargaining representative, the respondent has not permitted the employees to freely exercise that right of self-organization free from employer influence and domination.

Prior to the effective date of the act the respondent adopted a policy of opposition and hostility to labor organizations generally and to the I.L.G.W.U. specifically. In furtherance of this policy, the management made it

plain to the employees that "loyalty" to the respondent was synonymous with the rejection of membership in any labor organization. To solidify its purpose, the respondent inspired and dominated the Loyalty League, which had for its primary purpose the frustration of the efforts of the I.L.G.W.U. to organize the employees. In 1937, when the I.L.G.W.U. announced a renewal of its efforts to organize the respondent's employees after the Act had been held constitutional, the respondent through the medium of its Loyalty League and supervisory employees formed the D.G.W.U. to prevent its employees from selecting any "outside" labor organization as their representative. It was the League's officers and representatives of the management, Rose Todd and Hobart Atherton who hired the attorney who planned the D.G.W.U. and wrote its by-laws. It was the League which borrowed $1,000 at the bank on the security of its members, including Rose Todd and other supervisory employees, with which to pay a retainer fee of $500 to the attorney, a part of which retainer was for advice and services in connection with the formation of the D.G.W.U. The meeting of April 27, 1937, at which the D.G.W.U. was formed was sponsored and financed by the League. Rose Todd, at the time President of the League, directed and dominated the course of the meeting. The employees had heard nothing of the formation of a labor union prior to the meeting, but under the stimulus and pressure provided by the respondent they emerged from that gathering with a labor organization of approximately 1300 members. It is axiomatic that a labor organization free from employer domination does not persuade employees to join its ranks so rapidly. Like the League, membership in the D.G.W.U. includes a large number of the respondent's supervisory employees whose presence inevitably prevents the organization from being free of the respondent's domination. Through Rose Todd, General Chairman of the D.G.W.U., the respondent has retained complete control of that organization.

The record conclusively shows that the respondent contributed substantial support to the D.G.W.U. The organization has no office or headquarters of any kind apart from the respondent's factory. Respondent's facilities have been freely used in carrying on the business of the

D.G.W.U. and while the respondent contends it had no knowledge of the use of its various facilities, the practice has been so persistent and frequent that the undersigned is of the opinion that such a contention is impossible of belief and finds that the respondent had knowledge of these activities.

Rose Todd is allowed to take whatever time during working hours that is necessary for the handling of D.G.W.U. business without any deduction from her salary [fol. 190] and makes a practice of taking up its business at any time during the day. Also Todd, as President of the League and General Chairman of the D.G.W.U., was accorded almost complete freedom to roam through the factory engaging alternately in performing duties in connection with the factory's operation and handling matters relating first to the Loyalty League and then to the D.G.W.U. without interference or objection from the respondent. These facts demonstrate that the respondent has permitted and encouraged Todd to make use of the respondent's time in conducting the business of the D.G.W.U. This necessarily conveys to the employees of the respondent its approval of the League and the D.G.W.U. That the respondent lent encouragement and assistance to the D.G.W.U. becomes even more evident when its cooperative attitude toward the D.G.W.U. is compared with the hostility with which it met the efforts of the I.L.G.W.U. to organize the employees.

The completeness of the respondent's domination becomes more clear, as shown by the personnel of the D.G.W.U. committee for the adjustment of piece-work rates. Two of the three of this committee are persons employed by the respondent to set piece-work rates in the first instance and when one of these two, Lulu Nichols, is the respondent's authority on the finality of the rate, the result is that the respondent sits on both sides of the bargaining table and the aggrieved operators are left without any means of independent collective bargaining with regard to piece-work rates, ordinarily a matter jealously guarded for the promotion of the employees.

Negotiations between the respondent and the D.G.W.U. with respect to the provisions in the Articles of Agreement

signed on May 27, 1937, were completed within a few hours, and signed on the same day it was submitted to the respondent. Despite Mrs. Reed's determined opposition to a closed-shop, she made no protest when the D.G.W.U. made such a proposal. She stated: "I understand that [a closed-shop] is very essential to industrial peace." The closed-shop was granted and membership in a labor organization of the respondent's choice became obligatory upon the employees, buttressed with a check-off of dues, to guarantee financial stability to the organization that the respondent initiated and thereafter controlled.

On all the evidence, the undersigned finds the respondent dominated and interfered with the formation and administration of the D.G.W.U. and contributed support thereto, and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The D.G.W.U. is not and never has been the lawful representative of the respondent's employees for the purpose of collective bargaining in regard to the rates of pay, wages, hours of employment, and other conditions of employment. Under these circumstances, the undersigned finds that the contract, supplemental wage agreement, any extension, renewal, modification or supplement thereof, and any superseding contract between the respondent and the D.G.W.U. are void and of no effect. Independent of this finding of the invalidity of the above mentioned contracts, the closed-shop provision is invalid, having been made with a labor organization established, maintained, and assisted by unfair labor practices, therefore, the closed-shop provision does not fall within the proviso of Section 8 (3) of the Act.

The undersigned further finds that the respondent, by entering into a contract containing a closed-shop provision with the D.G.W.U., discriminated in regard to the hire and tenure and other terms of employment of its employees, thereby encouraging membership in the D.G.W.U. and discouraging membership in the I.L.G.W.U., and that it thereby interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed them in Section 7 of the Act.

[fol. 191] In addition, the undersigned concludes and finds that the respondent, by using the dominated Loyalty League to impede and prevent the employees free choice of labor organization, by permitting the circulation and requesting the employees to sign the pledge of March 2, 1937, and by the speech of Mrs. Reed at the March 18, 1937 meeting, has in these and other respects set forth above interfered with, restrained, and coerced the employees in the exercise of the rights guaranteed in Section 7 of the Act.

E. The Alleged Discharges.

The amended complaint alleges that the respondent discharged Sylvia Hull on or about April 23, 1937, and May Fike on or about April 26, 1937, and thereafter refused to reinstate them because they had joined and assisted the I.L.G.W.U.

Sylvia Hull was employed as a sewing machine operator by the respondent, with one interruption of 7 months for a period of 8 years. She was originally employed in the spring of 1928 and her employment was terminated on April 23, 1937. Hull became a member of the I.L.G.W.U. on March 23, 1937, and on April 22, 1937, it was publicly announced in a Kansas City newspaper that she had been selected by the I.L.G.W.U. to represent the respondent's employees at a convention of that organization.

The undersigned has previously described the anti-union demonstration by employees against Hull on the morning of April 23, 1937, which the undersigned found was condoned and encouraged by the respondent. During the demonstration, Mrs. Hyde, respondent's employment manager, removed Hull from her machine and told her that she would have to go home. Hull replied that she did not want to quit but would go home for the day. Hyde took her employee identification card which was necessary for admission to the factory. When Hull asked how she would get back into the plant, Hyde told her that she would come down to the door and admit her. At the same time, Mrs. Hyde took the telephone number of a neighbor, through whom Hull had stated she could be reached and agreed to call her, requesting Hull to get in touch with respondent if she did not receive a call inasmuch as the telephone num-

ber that Hull left was that of a neighbor. Hull thereupon left the plant. Hyde testified that the next morning and on another occasion she attempted to reach Hull through the number Hull had given her in order to recall her to work, but was unable to reach Hull and that since that time, she has never applied for reinstatement. Hull did not testify and the record is silent as to whether she ever received Hyde's message which it is found Hyde attempted to deliver.

Respondent contends that Hull voluntarily left the employ of the respondent. This contention was based on Hull's statement made when a number of the anti-union demonstrators demanded that she go home, and also from the fact that she did not seek to return. However, when Mrs. Hyde told her she would have to leave the plant, Hull refused to quit her employment but agreed to go home for the day. These facts plainly show that Hull did not voluntarily give up her position with the respondent and only acquiesced in a one day lay off under pressure from the respondent. Furthermore, from the fact that Hyde agreed to call her indicates that the respondent did not consider Hull's statement a resignation of her employment.

The undersigned finds that Sylvia Hull did not voluntarily leave the employment of the respondent but that she was temporarily laid off by the respondent because of her membership in and activity on behalf of the I.L.G.W.U. The undersigned therefore finds that the respondent discriminated in the regard to her tenure of employment, thereby discouraging membership in the I.L.G.W.U. and interfering with, restraining, and coercing its employees [fol. 192] in the exercise of the rights guaranteed in Section 7 of the Act. The undersigned further finds that under all the circumstances, the respondent's efforts to communicate with Hull as to her lay off was equivalent to an offer of reinstatement and the respondent has not discriminatorily refused to reinstate her within the meaning of Section 8 (3) of the Act.

May Fike was employed by the respondent sometime in 1927 and was, except for a 2 year period in 1931 and 1932, employed continuously until May 1937 when she left, at her request on a vacation. May Fike joined the I.L.G.W.U.

on March 15, 1937. The fact that Fike was a member of the I.L.G.W.U. was not known to the respondent, nor that she was the sister of Fern Sigler, who was excluded from the factory in April 23, 1937, as a result of a demonstration, hereinbefore referred to.

Fike's testimony as to conversations with respondent's agents and an alleged discriminatory lay off, if credited, provides a foundation which would afford an inference that her relationship to Sigler and her union membership was in part at least a motivating reason for the refusal of the respondent to reemploy her after she left on a vacation which was unauthorized. The undersigned does not credit this testimony of Fike. [52]

Sometime in the latter part of April, Fike advised her instructor that she desired to take a vacation. The instructor referred Fike to Mrs. Hyde, the employment manager. Fike explained to Hyde that she wanted the privilege of taking her vacation at a time other than a period set for all of the operators in the section, because her husband was having a vacation at that particular time. It is undenied that it is the customary practice of the respondent to grant vacations to the operators in a section at the same time. Hyde advised Fike that if she did take her vacation, her employment would be terminated and her return to work would depend upon whether there was any work for her. Fike left on her vacation and upon her return called Hyde and was advised that there was no work for her at that time and to call later. Fike called on several occasions thereafter and was advised by Hyde that there was no work available and to call later. On the last occasion Hyde told Fike that she would call her when the respondent

[52] The undersigned is not unmindful of the fact that Fike worked on the same floor with Sigler and was present during the demonstration of April 23, 1937, nor of the fact that Fike testified that Pearl Atchison, her instructor, spoke to her after the demonstration and inquired if she were a member of the I.L.G.W.U., warning Fike that she was in danger of losing her job because of the situation. Neither does the undersigned believe that there was any discrimination in Fike's lay off shortly thereafter, it appearing that an error was made in the selection of an operator for lay off and she was immediately returned to work. The undersigned is convinced from all the circumstances, that Fike's testimony with respect to the incidents occurring before she took her vacation were after-thoughts and an attempt by her to make it appear that the respondent's refusal to reinstate her after an unauthorized vacation was discriminatory.

needed her, and as far as the record indicates Fike, up to July 1939, had not been called for work.

Respondent defends the termination of Fike's employment on the grounds that she left voluntarily on April 30, 1937, after being told that if she took her vacation at that time her employment would be terminated. The undersigned is of the opinion that Fike was so advised by Hyde at the time she insisted on leaving on her vacation, and the undersigned finds that May Fike left her work voluntarily, [fol. 193] on April 30, 1937, terminating her employment with the respondent.

The undersigned finds that May Fike was not discharged because of relationship to Sigler or her membership in the Union. The undersigned further finds that, in view of all the circumstances, there is no substantial evidence to indicate that she was refused reinstatement for these reasons.

IV. The Effect of the Unfair Labor Practices Upon Commerce.

The undersigned finds that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy.

Since it has been found that the respondent has engaged in certain unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

The undersigned, having found that the respondent has dominated and interfered with the formation and administration of the D.G.W.U. and contributed support to it, in order to effectuate the policies of the Act and free the employees of the respondent from such domination and interference and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them by the Act, will recommend that

the respondent withdraw all recognition from the D.G.W.U. as the representative of any of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment, and completely to disestablish it as such representative. [53]

The undersigned, having also found that the respondent entered into an unlawful contract with the D.G.W.U. providing for a closed-shop, and in addition, agreed to the deduction of D.G.W.U. dues from the employees' wages as an integral part of the respondent's campaign to deny the employees the rights guaranteed them in the Act, will recommend that the respondent cease and desist from giving effect to the contract of May 21, 1937, and to the supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification or supplement thereof, or any superseding contract or agreement which may now be in force. Nothing in this recommendation should be taken, however, to require the respondent to vary those wages, hours, and other substantive features of its relations with the employees themselves, if any, which the respondent established in the performance of such contracts as extended, renewed, modified, supplemented and superseded. [54] The undersigned will also recommend that the respondent cease and desist from giving effect to any check-off agreement with the D.G.W.U. The undersigned is of the opinion that, under the circumstances of this case, the respondent should be required to reimburse each employee for any amounts which the respondent has deducted from the wages of the employee for dues and assessments in the D.G.W.U. The respondent concluded a closed-shop contract with the D.G.W.U., a dominated organization, thus compelling its employees to become and remain members of the illegal organization. The check-off agreement, a [fol. 194] device by which the respondent assured the financial stability of the dominated organization, could, as practiced, no more be avoided by the employees than could the compulsory membership requirement. The under-

[53] N.L.R.B. v. Pennsylvania Greyhound Lines, 303 U.S. 261; N.L.R.B. v. Pacific Greyhound Lines, Inc., 303 U.S. 272.

[54] National Licorice Co. v. N.L.R.B. 309 U.S. 350, 365-367.

signed finds that the monies thus deducted from the wages of the employees constituted the price of retaining their jobs, a price coerced from them for respondent's purpose of supporting and maintaining the organization which respondent had dominated in order to thwart bona fide representation. The undersigned further finds that, as a result of the imposition of the illegal closed-shop and check-off requirements, the employees suffered a definite loss and deprivation of wages equal to the amounts exacted from them for illegal purposes. The undersigned also finds that in these circumstances, the propriety of a recommendation requiring reimbursement of dues is particularly applicable, if the unfair labor practices are to be fully remedied and the purposes and policies of the Act are to be completely effectuated by restoration of the status quo. Hence, the undersigned will recommend that respondent reimburse its former and present employees for the amounts deducted from their wages for dues and assessments in the D.G.W.U. [55]

The undersigned has found that the respondent has discriminated in regard to the hire and tenure of employment of Sylvia Hull because of her membership in and activities on behalf of the I.L.G.W.U. The undersigned also found that Sylvia Hull never communicated with the respondent after she left the plant on April 23, and that the respondent made bona-fide but unsuccessful efforts to communicate with her to offer her reinstatement. Further, that under all the circumstances, the respondent's action was equivalent to an offer of reinstatement which Hull, by her failure to communicate with the respondent after instructions to do so, refused to accept. The undersigned will therefore recommend that the customary order of reinstatement be withheld, and that the respondent not be required to make Hull whole for any loss of pay incurred because of the discrimination against her on April 23, 1937.

The respondent's entire course of conduct, including its many and varied forms of interference, restraint, and

[55] N.L.R.B. v. Mackay Radio & Telegraph Co., 304 U.S. 333, 348, wherein that court said: "As we have held in National Labor Relations Board v. Pennsylvania Greyhound Lines, Inc., No. 413, October term, 1937, the relief which the statute empowers the Board to grant is to be adapted to the situation which calls for redress."

coercion, its domination and support of the D.G.W.U., and its discriminatory discharge of Sylvia Hull discloses a fixed purpose on the part of respondent to defeat self-organization and its objects. Because of the respondent's unlawful conduct in the past and its underlying purpose, the undersigned is convinced that there is a real danger of the respondent engaging in other related unfair labor practices proscribed by the Act in the future. The preventative purpose of the Act will be thwarted unless the undersigned's recommendation is coextensive with the threat. In order, therefore, to make effective the interdependent guarantees of Section 7 of the Act, to prevent a recurrence of unfair labor practices, and thereby to minimize strife which burdens and obstructs commerce, and thus effectuate the policies of the Act, the undersigned will recommend that the respondent cease and desist from in any manner infringing the rights guaranteed in Section 7 of the Act.

The undersigned also has found that the respondent has not discriminated in regard to the hire and tenure of employment of May Fike, and therefore will recommend that the complaint be dismissed as to May Fike.

Upon the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following:

[fol. 195] Conclusions of Law

1. International Ladies' Garment Workers' Union, and Donnelly Garment Workers Union are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of Donnelly Garment Workers Union and contributing support to it, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

3. By discriminating in regard to the hire and tenure and terms and conditions of employment of Sylvia Hull and other employees, thereby encouraging membership in the Donnelly Garment Workers Union and discouraging membership in the International Ladies' Garment Workers' Union, the respondent has engaged and is engaging in un-

fair labor practices within the meaning of Section 8 (3) of the Act.

4. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

6. The respondent has not discriminated in regard to the hire and tenure of employment of May Fike, within the meaning of Section 8 (3) of the Act. The respondent has not violated Section 8 (3) of the Act by refusing to reinstate Sylvia Hull.

Recommendations.

Upon the basis of the foregoing findings of fact and conclusions of law, the undersigned recommends that the respondent, Donnelly Garment Company (Kansas City, Missouri) and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the formation and administration of Donnelly Garment Workers Union or the formation or administration of any other labor organization of its employees, or from contributing support to the Donnelly Garment Workers Union or any other labor organization of its employees;

(b) Giving effect to its contract of May 27, 1937, and supplemental wage agreement of June 22, 1937, or to any extension, renewal, modification, or supplement thereof, or to any superseding contract or agreement which may now be in force with the Donnelly Garment Workers Union and from giving effect to its check-off agreement with the Donnelly Garment Workers Union;

(c) Discouraging membership in International Ladies' Garment Workers' Union or any other labor organization of its employees, or encouraging membership in Donnelly

Garment Workers Union or any other labor organization of its employees, by laying off any of its employees, or in any manner discriminating in regard to their hire and tenure of employment, or any term or condition of employment;

[fol. 196] (d) Dominating, controlling, and using the Donnelly Loyalty League to interfere with, restrain, and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right of self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Donnelly Garment Workers Union as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employement, or other conditions of employment, and completely disestablish Donnelly Garment Workers as such representative;

(b) Reimburse its former and present employees for all dues and assessments, if any, which it has deducted from their wages on behalf of the Donnelly Garment Workers Union;

(c) Post immediately in conspicuous places on every floor throughout the respondent's Kansas City factory, and maintain for a period of at least sixty (60) consecutive days, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraph 1 (a), (b), (c), (d), and (e) hereof; (2) that it will take the affirmative action set forth in paragraph 2 (a) and (b) hereof; and (3) that the respondent's employees are free to be-

come or remain members of the International Ladies' Garment Workers' Union and that the respondent will not in any manner discriminate against any employee because of membership or activity in such organization.

Notify the Executive Secretary of the Board in writing within ten (10) days of the receipt of this Intermediate Report what steps the respondent has taken to comply herewith.

It is further recommended that the complaint be dismissed insofar as it alleges that the respondent discriminated in regard to the hire and tenure of employment of May Fike.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Executive Secretary in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 37 of Article II of the Rules and Regulations of the National Labor Relations Board — Series 2, as amended, effective October 28, 1942 — any party may within fifteen (15) days from the date hereof, pursuant to Section 37 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding [fol. 197] (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 37, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date hereof.

JAMES C. BATTEN,
Trial Examiner.

Date: November 27, 1942.

[fol. 207] (Respondent, Donnelly Garment Company, Statement of Exceptions to Intermediate Report of Trial Examiner dated November 27, 1942.)

United States of America

Before the National Labor Relations Board

In the Matter of

Donnelly Garment Company, Respondent,
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union, Party to the Contract, Intervener.

Case No. C-1382

Comes now the above named respondent Donnelly Garment Company and, reserving the right to file such further objections and exceptions as it may be lawfully entitled to make or save, files this its statement of exceptions and objects and excepts to the Intermediate Report of the Trial Examiner herein (dated November 27, 1942), and to the findings, statements, inferences, conclusions and recommendations contained therein; to the acts and rulings of the Trial Examiner and of the National Relations Board in said case and in the hearings thereof; to the conduct of said proceedings and to the various acts and rulings of the Board and Trial Examiner in connection therewith, as follows, to-wit:

[fol. 208] 1.

Respondent excepts to the Intermediate Report and to the several findings, conclusions and recommendations of the Trial Examiner therein, for the reason that same thwart and violate the prime purpose and provisions of the National Labor Relations Act and deny to respondent and its employees the rights conferred by said Act and particularly the rights and benefits of collective bargaining conferred by said Act, in that the evidence clearly and overwhelmingly shows that the Donnelly Garment Workers' Union through its executive committee was at all times the free choice of a majority (in fact 100%) of respondent's working employees as their bargaining agency for

purposes of collective bargaining and by reason of which the contracts between respondent and that union were valid, and the findings, conclusions and recommendations of the Trial Examiner being contrary thereto are, and any order of the Board in accordance therewith would be, in contravention of the National Labor Relations Act and illegal.

2.

Respondent excepts to the Intermediate Report for the reason that the conclusions and recommendations therein contained are unsupported by the evidence and by the findings of fact; and the findings of fact, upon which the recommendations of the Trial Examiner purport to be based, are unsupported by the evidence.

3.

Respondent excepts to the Intermediate Report for the reason that said report is based upon a proceeding which is invalid, void, and in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

[fol. 209]

4.

Respondent excepts to the Intermediate Report for the reason that said report denies respondent and all of its employees the right of collective bargaining guaranteed by the National Labor Relations Act.

5.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner failed and refused to consider, find and recommend that this proceeding be dismissed, in whole or in part, for each and all of the reasons specified in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 of Part A of Respondent's Answer (Board's Exhibit No. 1-JJJ) and by adoption and reference contained in respondent's answer to amended complaint (Board's Exhibit No. 1-LLLL).

6.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner failed and refused to consider, find and report that this proceeding be dismissed

for each and all of the reasons specified in Part B of the Amended Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in Respondent's Answer to Amended Complaint, Exhibit No. 1-LLLL.

7.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner failed and refused to investigate, by secret election or otherwise, the true representatives of respondent's employees and so report and certify the same in accordance with the petition contained in Part C of the Amended Answer, Exhibit No. 1-JJJ, and by adoption and reference contained in Respondent's Answer to Amended Complaint, Exhibit No. 1-LLLL.

[fol. 210]

8.

Respondent excepts to the Intermediate Report for the reason that the essential findings of fact, conclusions of law, and recommendations, therein contained, adverse to respondent, are not the result of the exercise of a judicial consideration of material and relevant facts in evidence but are the result of partisanship, prejudice, abuse of discretion, and a complete disregard of the evidence; and such findings, conclusions and recommendations are arbitrary, capricious, oppressive and contrary to the law and the evidence.

9.

Respondent excepts to the Intermediate Report for the reason that the recommendations therein purport to be based upon findings of fact and conclusions of law which constitute neither findings of fact nor conclusions of law but an intermingling of argument, conjecture, unfair and unreasonable inferences, suspicion, surmise, and immaterial and irrelevant evidence.

10.

Respondent excepts to the Intermediate Report for the reason that the essential findings therein contained, adverse to respondent, are based on purported evidence which is irrelevant, immaterial and insufficient as a basis for such findings, and on purported facts and circumstances which could not legally support a decision of the Board adverse to respondent.

11.

Respondent excepts to the Intermediate Report for the reason that the essential findings therein contained, adverse to the respondent, are based on purported evidence which is incompetent as a basis for such report or the findings, conclusions, or recommendations contained therein.

[fol. 211]

12.

Respondent excepts to the Intermediate Report for the reason that each and every finding of fact adverse to respondent, and the conclusions and recommendations purported to be based thereon, is contrary to the law and the evidence, beyond the pleadings, the scope thereof, and the issues made thereby, and neither relevant nor germane thereto.

13.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner consistently disregarded the obligation to weigh and consider all the evidence, and ignored the legal doctrine that the burden of proof was cast upon the Board to establish the charges as alleged by a fair preponderance of the evidence.

14.

Respondent excepts to the Intermediate Report for the reason that said report and the several findings of fact and conclusions therein contained are without support in the evidence and could not lawfully influence or sustain a decision by the Board in conformity with the said report.

15.

Respondent excepts to the Intermediate Report for the reason that the findings of fact, adverse to respondent, and the conclusions and recommendations purported to be based thereon, are based wholly or substantially upon alleged acts occurring prior to July 5, 1935, with the result that respondent is convicted of violation of the National Labor Relations Act by reason of alleged acts occurring prior to the effective date thereof; and, which, if they occurred, were in all respects lawful and innocent.

[fol. 212] 16.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner held respondent to be bound by the alleged acts, omissions and declarations of employees, although no authority was shown for such alleged acts, omissions or declarations and the latter were not shown to be in the course or within the scope of any employment by respondent and the undisputed evidence negatived such authority and such course and scope.

17.

Respondent excepts to the Intermediate Report for the reason that the Trial Examiner held respondent to be bound by the alleged acts, omissions and declarations of instructors and other employees, although the undisputed evidence disclosed that instructors had no authority to hire, discipline or discharge, were not supervisory employees, and were not authorized to commit the alleged acts, omissions or declarations, and the said alleged acts, omissions or declarations were not shown to be in the course of or within the scope of their employment, nor in any way binding upon respondent.

18.

Respondent excepts to the Intermediate Report and to the several findings of fact and conclusions of the Trial Examiner contained therein adverse to respondent, because the Trial Examiner has failed to find and conclude that the respondent has not dominated or interfered with the formation and administration of the Donnelly Garment Workers' Union and has not contributed support to said Union, and has failed to find and conclude that the respondent did not discriminate against the International Ladies' Garment Workers' Union or its members or discourage membership therein, and has failed to find and conclude that respondent did not inter-
[fol. 213] fere with, restrain or coerce its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has failed to find and conclude that the respondent did not dominate, control, interfere with, or act through the Donnelly Loyalty League in any way, and has failed to find

and conclude that the Donnelly Garment Workers' Union was not a successor, of, or connected with, the Donnelly Loyalty League, and that the Donnelly Loyalty League did not dominate or interfere in the formation or administration of the Donnelly Garment Workers' Union, and has failed to find and conclude that respondent is not guilty of any of the unfair labor practices charged in the amended complaint and has failed to dismiss or recommend the dismissal of each and all of said charges against respondent, and because the Trial Examiner has failed to find, state or consider material, relevant and uncontradicted facts and evidence favorable to respondent and pertinent to the findings and conclusions made by the Trial Examiner, but has based his said findings and conclusions on incompetent and detached portions of the evidence deemed by the Examiner to be unfavorable to the respondent, and upon conjecture and improper inferences not warranted by the evidence.

19.

Respondent excepts to the Intermediate Report and to the several findings of fact, conclusions and recommendations therein contained adverse to respondent for the reason that the evidence and offers of proof herein (including the testimony of offered testimony of every member of the Donnelly Garment Workers' Union) show that the Donnelly Garment Workers' Union was formed and joined by one hundred per cent of the working employees of respondent of their own free will and accord without any in-
[fol. 214] fluence, domination, coercion or interference by respondent, and that they voluntarily chose said Union and its Executive Committee to represent them for the purpose of collective bargaining with respondent and have at all times desired to be so represented, and all the direct evidence was to the effect that none of respondent's executives or supervisory employees with power to hire, discharge or discipline, attempted to dominate, coerce, restrain or interfere in any way with respondent's employees in regard to their union membership or affiliations, and the findings and conclusions of the Trial Examiner that respondent has violated Sections 8 (1), 8 (2), 8 (3) of the National Labor Relations Act are made in the face of this uncontradicted showing, and said findings, conclusions and

recommendations of the Trial Examiner are contrary to the letter and spirit of the National Labor Relations Act in that they deny to respondent's employees the right to bargain with respondent through representatives of their own choosing and require the violation by respondent of the National Labor Relations Act by refusing to bargain with the representatives of a majority of its employees, and if said conclusions and recommendations are upheld by the Board, the Board, instead of endorsing the Act, will be in the position of violating, and requiring the respondent to violate, both the letter and the spirit of the Act.

20.

Respondent excepts to the findings of the Trial Examiner and each of them because said Examiner and/or the National Labor Relations Board did not investigate and certify, although so requested, the exclusive representatives of all of respondent's employees for the purposes of collective bargaining in accordance with Section 9, subsection c of the National Labor Relations Act prior to the institution and/or hearing of the present proceedings.

21.

[fol. 215] Respondent excepts to the conclusions of the Trial Examiner and each of them because said Examiner and/or the National Labor Relations Board did not investigate and certify, although so requested, the exclusive representatives of all of respondent's employees for the purposes of collective bargaining in accordance with Section 9, subsection c of the National Labor Relations Act prior to the institution and/or hearing of the present proceedings.

22.

Respondent excepts to the recommendations of the Trial Examiner and each of them because said Examiner and/or the National Labor Relations Board did not investigate and certify, although so requested, the exclusive representatives of all of respondent's employees for the purposes of collective bargaining in accordance with Section 9, subsection c of the National Labor Relations Act prior to the institution and/or hearing of the present proceedings.

23.

Respondent excepts to the findings of the Trial Examiner and each of them because the said findings are the result of an illegal, partisan and unfair proceeding in violation of the rights secured to respondent under the Fifth Amendment to the Constitution of the United States.

24.

Respondent excepts to the conclusions of the Trial Examiner and each of them because the said conclusions are the result of an illegal, partisan and unfair proceeding in violation of the rights secured to respondent under the Fifth Amendment to the Constitution of the United States.

25.

[fol. 216] Respondent excepts to the recommendations of the Trial Examiner and each of them because the said recommendations are the result of an illegal, partisan and unfair proceeding in violation of the rights secured to respondent under the Fifth Amendment to the Constitution of the United States.

26.

Respondent excepts to the Intermediate Report and to the several findings, conclusions and recommendations therein, for the reason that the evidence is so overwhelmingly contrary to most of said findings and to all of said conclusions, as to show that the Trial Examiner either did not consider all the evidence or was so biased and prejudiced against respondent that he intended to and did make his findings, conclusions and recommendations against respondent notwithstanding that he knew that same were contrary to the overwhelming weight of the evidence, whereby, in either event, respondent has been and is denied a fair hearing herein and deprived of its liberty and property without due process of law, in contravention of the provisions of the Constitution of the United States.

27.

Respondent excepts to the several findings and conclusions of the Trial Examiner, for the reason that it is the duty and obligation of the Board to prove its charges by a

fair preponderance of the evidence and is the duty of the Trial Examiner (and the Board) to make findings based on a fair preponderance of the evidence and the Trial Examiner has violated his duty in this respect and has made essential findings which are not only not supported or proved by a fair preponderance of the evidence but are wholly contrary to the overwhelming weight of the evidence.

28.

[fol. 217] Respondent excepts to the Intermediate Report and to the several findings, conclusions and recommendations therein, for the reason that the Trial Examiner's references therein to the testimony in most instances are so vague and uncertain that the respondent and the Board cannot determine upon what evidence the Trial Examiner is basing his said findings and conclusions and cannot determine what evidence was in the mind of the Trial Examiner, whereby respondent is and will be deprived of a fair trial and review herein.

29.

Respondent excepts to the Intermediate Report and to the failure and refusal [to] the trial Examiner to dismiss the Amended Complaint herein, for the reason that the Amended Complaint is not authorized by the amended charge upon which it purports to be based.

30.

Respondent excepts to the Intermediate Report of the Trial Examiner and to the finding, statement and conclusion therein contained on page 2 that "full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties" at the hearing held beginning June 5 and ending July 15, 1939, for the reason that same is not supported by the record, but on the contrary the record shows that respondent was repeatedly wrongfully denied opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing on the issues and that the intervener Donnelly Garment Workers' Union was likewise denied such rights and opportunity, whereby respondent was denied a fair trial herein.

31.

[fol. 218] Respondent excepts to the Intermediate Report and to the finding, statement and conclusion contained therein at page 8 that "full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all of the parties", at the hearing held beginning July 6 and ending September 17, 1942, for the reason that same is not supported by the record, but on the contrary the record shows that respondent was repeatedly wrongfully denied opportunity to be heard and to examine and cross-examine witnesses and to introduce evidence bearing on the issues and that the intervener Donnelly Garment Workers' Union was likewise denied such rights and opportunity, whereby respondent was denied a fair trial herein.

32.

Respondent excepts to the Intermediate Report and to the findings, statements and conclusions contained therein on pages 9 and 10 that "the undersigned accorded the respondent and the D.G.W.U. an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing and permitted Nell Quinlan Reed, the respondent's president, * * * to testify in the further hearing upon all the issues set forth in the pleadings", for the reason that said findings, statements and conclusions are not supported by the record, but on the contrary the record shows that the respondent and the intervener Donnelly Garment Workers' Union were repeatedly wrongfully denied the opportunity and right to introduce competent and material evidence rejected at the prior hearing, and that the Trial Examiner refused to permit Nell Quinlan Reed to testify at the hearing beginning July 6, 1942 and ending September 17, 1942 upon many of the issues set forth in the pleadings and in addi-[fol. 219] tion thereto, struck out, over the objection of respondent, a large part of the testimony of said witness after same had been given, whereby respondent was denied a fair trial.

33.

Respondent excepts to the Intermediate Report and to the finding, statement and conclusion contained therein on

Page 10, that "International Ladies' Garment Workers' Union, affiliated with American Federation of Labor, is a labor organization admitting to membership the factory employees of the respondent", for the reason that same is not supported by the evidence or the record herein.

34.

Respondent excepts to the finding, statement and conclusion of the Trial Examiner contained on page 10 of the Intermediate Report, that the Donnelly Garment Workers' Union "admits to membership all employees of the respondent", for the reason that same is not supported by the evidence or the record herein.

35.

Respondent excepts to the Intermediate Report and to the findings, statements and conclusions contained in Part III, A, thereof under the heading "Respondent's responsibility for the activities of various employees" and the subheadings numbered 1, 2, 3 and 4, appearing at pages 11 to 17 inclusive of the Intermediate Report, including the footnotes, and particularly those contained in the following portions thereof, to wit:

[fol. 220] The first paragraph under subheading "1. Instructors and thread girls" except the last two sentences thereof, page 11; the last sentence in the second paragraph under said subheading 1, p. 11; the footnote numbered 17 beginning at the bottom of page 11 and ending on page 12; the second and third paragraphs on page 12 of the Intermediate Report and footnote 18; the last paragraph beginning on page 12 and continuing on page 13; the first full paragraph on page 13 and the first two sentences of footnote 19 on page 13; the last paragraph beginning on page 13 and ending on page 14 and the first sentence of footnote 20 on page 14; the first paragraph under subheading "2. Rose Todd" except the third sentence thereof, p. 14; the second paragraph under said subheading 2 beginning on page 14 and ending on page 15 except the statement therein that "she left her employment with the respondent in 1931 and for about 1 year worked for the Gernes Garment Company" and excepting the last sentence of said paragraph; the first paragraph beginning on page 15; the sec-

ond paragraph beginning on page 15; the third paragraph beginning on page 15; the last paragraph beginning on page 15 and ending on page 16; the first paragraph beginning on page 16, being the last paragraph of said subheading 2; the following portions of the first paragraph under subheading "3. Hobart Atherton" beginning on page 16 and ending on page 17, to wit, the third sentence and the last two sentences thereof; the last paragraph under said subheading 3, being the first paragraph beginning on page 17, and footnote 23; the first paragraph under subheading "4. Other supervisory employees" on page 17; the second paragraph under said subheading 4, being the last [fol. 221] paragraph under said subheading, and footnote 24 (p. 17);

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, do not show or support a finding or conclusion, that the instructors, Rose Todd, Hobart Atherton or the various employees referred to in subparagraph 4, p. 17, or any of them, were supervisory employees of respondent or represented "the management" or were acting for or in behalf of the management with respect to the formation of the Donnelly Garment Workers' Union or with respect to any of the matters referred to in said Part III, A, or that respondent held said employees, or any of them, out to its employees as representatives of the management or as acting for the management with respect to any of such matters, or that the employees regarded or had reason to regard said employees or any of them as representatives of the management or as acting on behalf of the management with respect to any of such matters, or occupied a close or confidential position with respondent, or that said alleged supervisory employees exerted any pressure or coercion on the employees or interfered in any way with their free choice of labor affiliations or that respondent's employees were coerced, influenced or interfered with by any of said alleged supervisory employees with respect to any of said matters; because said findings, statements and conclusions, and portions thereof, and each of same, are not supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of

the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact [fol. 222] therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inference or surmise, and not based on any substantial; competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence, and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

36.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, B, thereof (pages 17-20 incl.) under the heading "Events prior to the effective date of the Act", for the reason that same and each of same are irrelevant and immaterial to any of the issues herein, are based upon alleged acts alleged to have occurred prior to the passage [fol. 223] of the National Labor Relations Act, make said Act an ex post facto law, and give a retroactive effect thereto, constitute the basis for the findings against respondent and a conviction of respondent for acts found to have been done when same were not prohibited by said Act or any other law, whereby respondent is denied due

process of law and a fair trial in contravention of the Constitution of the United States and the law of the land.

Respondent further excepts to the findings, statements and conclusions contained in Part III, B, of the Intermediate Report and particularly those contained in the following portions thereof, to-wit:

The last three sentences of the first paragraph thereof, page 17; the second paragraph thereof, being the first paragraph on page 18; the second paragraph on page 18; the third paragraph on page 18, except the second sentence and the last two sentences thereof; the fourth paragraph on page 18, excepting the last sentence thereof; the last paragraph on page 18; the first paragraph on page 19, except the statement of the quotation contained in the two indented paragraphs in the middle thereof; the last paragraph on page 19; the first paragraph on page 20 and the first sentence of footnote 28; the last two sentences of the second paragraph on page 20; the third paragraph on page 20; the fourth paragraph being the last paragraph on page 20;

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence; or by any findings supported by the evidence; [fol. 234] are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inference or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the

charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

[fol. 225] 37.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, C, thereof (pages 21 to 25 incl.) under the heading "Events prior to April 27, 1937; interference, restraint, and coercion", particularly those contained in the following portions thereof, to-wit:

The first, second and fourth sentences of the first paragraph on page 21; the second sentence and the last sentence of the third paragraph from the bottom on page 21; the second sentence of the second paragraph from the bottom on page 21; the last paragraph on page 21 and concluding on page 22; the first full paragraph on page 22, and footnote 32 on said page; the last paragraph beginning on page 22 and concluding on page 23, and footnote 33 except the first sentence thereof; the first full paragraph beginning on page 23 and concluded on page 24, except the following portion thereof, to-wit, "Mrs. Reed further told the employees that she had 'had lots of nice things happen to me in my lifetime but I have never had anything that made made so proud and so happy' as the receipt of the "loyalty" pledge in which the employees unanimously agreed to refuse to acknowledge any union labor organization. While Mrs. Reed sought to appear as a disinterested defender of the respondent's employees in the exercise of their right to join or not to join a labor organization, * * *"; the first full paragraph beginning on page

24; the fifth, sixth, seventh, eighth, eleventh, thirteenth, fourteenth and fifteenth sentences of the last full paragraph beginning on page 24 and concluded on page 25, and footnote 36, except the first sentence thereof; the word [fol. 226] "subjected" in the first sentence of the first full paragraph on page 25 and the remainder of said paragraph; the second full paragraph on page 25; the last paragraph on page 25 and footnote 39 except the first sentence of said footnote;

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements [fol. 227] or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

38.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, D, under the heading "Domination and interference with the formation and administration of the D.G.W.U. and contribution of support; interference, restraint, and coercion", and to subheading "1. The formation of the D.G.W.U." (pages 26 to 28 incl.), and particularly those contained in the following portions thereof, to-wit:

The first sentence of the first paragraph on page 26; the second paragraph on page 26; the third paragraph beginning on page 26 and concluded on page 27, except the first sentence thereof; footnote 42 on page 26; the statement in the first full paragraph beginning on page 27 and concluded on page 28 that it was decided and voted to form the D.G.W.U. "without any discussion"; footnote 43 except the first sentence thereof; the first full paragraph beginning on page 28, being the only paragraph on said page; the following portions of footnote 44: the second, third, fourth, seventh and last sentences of said footnote 44;

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges [fol. 228] against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not

support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

39.

[fol. 229] Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, D, thereof, under the subheading "2. Membership and participation by other supervisors in the D.G.W.U." thereof, (pages 29 to 30 incl.), and particularly those contained in the following portions thereof, to wit:

> The first three sentences of the first paragraph on page 29, and footnote 45 on said page; the first full paragraph on page 30; the second full paragraph on page 30; the last paragraph on page 30 under said subheading;

for each and all of the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence,

and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmises, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges al- [fol. 230] leged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

40.

Respondent excepts to the Intermediate Report and to each and all of the findings, statements and conclusions contained in Part III, D, thereof, under the subheading "3. The contracts; closed-shop, check-off and piece-work rates" thereof, (pages 30 to 32 incl.), and particularly those contained in the following portions thereof, to-wit:

> The statements, findings and conclusions in the third paragraph beginning on page 31, that the contract prepared by Tyler "was accepted by the respondent without substantial change"; that the terms of the supplemental agreement were not submitted to the D.G.W.U. membership for approval before or after its execution; and that Rose Todd thought it a good idea to improve a little on the minimum of $16.00 "to defeat efforts of the I.L.G.W.U. to organize the respondent's employees"; the last paragraph beginning on page 31 and concluded on page 32, except the first two sentences thereof; the fourth sentence of the first full paragraph beginning [fol. 231] on page 32; the last two paragraphs on page 32;

for each and all of the following reasons, to-wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent, and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

41.

[fol. 232] Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part III, D, under the subheading "[redacted]. Respondent's contribution of support to the D.G.W. U." thereof (pages 33 to 35 incl.), and particularly those contained in the following portions thereof, to wit:

The first paragraph on page 33, except the second, third and fourth sentences thereof, and footnote 49; the sec-

ond paragraph on page 33; the first paragraph on page 34; the second paragraph on page 34; the third paragraph on page 34; the fourth paragraph on page 34; the last paragraph of said subheading 4, appearing on page 35;

for each and all of the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not sup- [fol. 233] port a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

42.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions con-

tained in and under the heading "Summary and conclusions" beginning on page 35 and ending on page 37, for each and all of the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but [fol. 234] are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

43.

Respondent excepts to the Intermediate Report and to each and all of the findings, statements and conclusions contained in Part III, E, under the heading "The alleged discharges," beginning on page 37 and ending on page 39, and particularly those contained in the following portions thereof, to wit:

The first five sentences of the third paragraph thereof on page 37; the fourth paragraph thereof on page 37, except the first sentence of said fourth paragraph; the fifth paragraph thereof being the last paragraph beginning on page 37 and concluded on page 38, except the last sentence thereof; the second full paragraph thereof be- [fol. 235] ginning on page 38, except the last sentence thereof;

for each and all of the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not supported by the evidence or by any findings supported by the evidence; are immaterial and irrelevant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

44.

[fol. 236] Respondent excepts to the Intermediate Report and to the findings, statements and conclusions contained in Part IV thereof, on page 39, under the heading "The effect of the unfair labor practices upon commerce," that respondent engaged in the activities set forth in Section III of the Intermediate Report, for the reason that same are not supported by the evidence or by any inferences to be drawn therefrom, and for each and all the reasons heretofore set forth under respondent's exceptions to the findings, statements and conclusions set forth in said Section III. Respondent does not dispute that it was engaged in interstate commerce as set forth in the stipulation concerning said matter filed in this proceeding.

45.

Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained in Part V thereof, under the heading "The remedy," beginning on page 39 and ending on page 40, and particularly those contained in the following portions thereof, to wit:

The first, second, third and fifth paragraphs thereof; for each and all the following reasons, to wit:

Because said findings, statements and conclusions and portions thereof, and each of same, are not in accordance with the purposes and provisions of the National Labor Relations Act, but are contrary thereto, and because same are not conclusive to effectuate the policies and purposes of said Act but have the contrary effect; because they are not supported or justified by the evidence or by any findings supported by the evidence; are immaterial and irrele-
[fol. 237] vant and do not, by inference or otherwise, prove or tend to prove any of the charges against respondent or support any of the Trial Examiner's conclusions or recommendations adverse to respondent, and are insufficient in law and in fact therefor; are based on incompetent, irrelevant and immaterial evidence; are not supported by the alleged evidence therein set forth or referred to, either alone or in conjunction with other evidence or by any reasonable inferences therefrom, but are contrary to the

evidence; do not fairly state the evidence, and show that the Trial Examiner failed to consider relevant evidence pertaining to said matters; are biased, arbitrary and capricious, conjectural and speculative, consisting of mere inferences or surmise, and not based on any substantial, competent evidence; do not support a finding or conclusion that the respondent was or is guilty of any unlawful labor practice or of any of the charges alleged in the complaint; show and are the result of the bias and prejudice of the Trial Examiner against respondent and his non-judicial attitude toward the evidence; because the Trial Examiner in said Intermediate Report has misstated and distorted the evidence and the true meaning thereof for the purpose of making same appear adverse to respondent; because respondent is not responsible for said alleged facts, findings and statements or any of them or any adverse inferences, if any, drawn or to be drawn therefrom and same are not binding on respondent; and because respondent has, for each and all of the foregoing reasons, been denied a fair trial.

46.

[fol. 238] Respondent excepts to the Intermediate Report and to each and all the findings, statements and conclusions contained and set forth in the first five paragraphs under the heading "Conclusions of Law" on page 41, for the following reasons, to wit:

Respondent excepts to the conclusions contained in paragraph "1" of said Conclusions of Law, for the reason that the conclusion that the International Ladies' Garment Workers' Union is a labor organization within the meaning of Section 2 (5) of the Act, is not supported by the evidence.

Respondent excepts to each and all the findings, statements and conclusions contained in each of said paragraphs numbered 2, 3, 4, and 5, under the heading "Conclusions of Law" on page 41 of the Intermediate Report, for each and all of the following reasons, to wit:

1. Because the evidence does not show that the respondent has engaged in, or is engaging in, any of the unfair labor practices referred to in said paragraphs and each of same.

2. Because same are contrary to the evidence and contrary to the law under the evidence.

3. Because same are not supported or justified by the evidence or any inferences which may be properly drawn therefrom, or by any findings of fact by the Trial Examiner which are supported by the evidence or any reasonable inferences to be drawn therefrom.

4. Because same are not supported or justified by the findings of fact or any inferences which may be properly drawn therefrom.

[fol. 239] 5. Because same are partisan, biased, arbitrary, conjectural and speculative, and are not based on all the evidence or upon a fair consideration of the evidence.

6. Because same are based on conjecture, surmise and improper inferences and on incompetent, irrelevant and immaterial evidence and upon findings of fact not supported by the evidence.

7. Because the findings of fact upon which same are based are not supported by the evidence; and because the findings of fact are insufficient in law and in fact to support or justify said conclusions, for all the reasons hereinabove set forth in the respondent's exceptions to said several findings of fact.

8. Because there is an absence of evidence in the record to justify said conclusions or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said conclusions.

9. Because the evidence does not show that the respondent has violated the provisions of the National Labor Relations Act therein referred to.

10. Because said conclusions and determinations deprive respondent of its property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

11. Because said conclusions are based upon a hearing in which, and in the conduct of which, respondent was denied a fair trial.

12. Respondent excepts thereto for each and all the reasons hereinabove set forth to the findings of fact on which said conclusions are based.

[fol. 240] 47.

Respondent excepts to the Intermediate Report and to the recommendations and each of same contained and set forth under the heading "Recommendations" and under subparagraphs 1 (a), (b), (c), (d) and (e), on pages 41 and 42, for each and all of the following reasons, to wit:

1. Because said recommendations are not supported or justified by the evidence or any reasonable inference therefrom.

2. Because said recommendations are not supported or justified by the findings of fact or conclusions or any reasonable inferences therefrom made by the Trial Examiner.

3. Because said recommendations are contrary to the evidence and to the law under the evidence.

4. Because said recommendations are based upon the findings of fact and conclusions of the Trial Examiner in said Intermediate Report, which findings of fact and conclusions are in turn not supported or justified by the evidence or any reasonable inferences therefrom.

5. Because under the law and the evidence respondent should not be required or ordered to cease and desist from doing the acts and things enumerated in said recommendations of the Trial Examiner.

6. Because said recommendations or any order based upon same would deprive respondent of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

7. Because said recommendations are not based on a fair consideration of all the evidence, but are partisan, biased and arbitrary, and are based on conjecture and speculation, inference and surmise, not supported by any substantial competent evidence.

[fol. 241] 8. Because said recommendations are made in utter disregard of the evidence and of the obligation of the Trial Examiner to consider and weigh all the evidence.

9. Because the evidence does not show that the respondent has violated any of the provisions of the National Labor Relations Act.

10. Because there is an absence of evidence in the record to justify said recommendations or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said recommendations.

11. Because said recommendations and each of same are based upon a hearing in which, and in the conduct of which, respondent has been denied a fair trial.

12. Because said recommendations and each of same are based on incompetent, immaterial and irrelevant evidence.

13. Because said recommendations and each of same are contrary to and thwart the purposes and provisions of the National Labor Relations Act.

14. Because said recommendations and each of same are not conducive to effectuate the purposes and provisions of the National Labor Relations Act and are beyond the power of the Board to impose or require under the facts here existing.

15. Respondent further excepts to said recommendations and each of them for each and all of the reasons hereinabove set forth in its exceptions to the findings of fact and conclusions of the Trial Examiner.

16. Respondent further excepts to each and all of the recommendations contained and set forth in said subparagraphs 1 (a), (b), (c), (d) and (e), because the evidence does not show that the respondent is doing or has done any of the acts or things set forth in said recommenda-
[fol. 242] tions and for said reason respondent cannot desist and cease from doing same, and said assumption by the Trial Examiner is erroneous and not supported by the evidence.

48.

Respondent excepts to the Intermediate Report and to each and all of the recommendations of the Trial Examiner contained and set forth under the heading "Recommendations" and in subparagraphs 2 (a), (b) and (c), except the third paragraph of 2 (c) and the last paragraph of 2 (c), on page 42, for each and all of the following reasons, to wit:

1. Because said recommendations are not supported or justified by the evidence or any reasonable inference therefrom.

2. Because said recommendations are not supported or justified by the findings of fact or conclusions or any reasonable inferences therefrom made by the Trial Examiner.

3. Because said recommendations are contrary to the evidence and to the law under the evidence.

4. Because said recommendations are based upon the findings of fact and conclusions of the Trial Examiner in said Intermediate Report, which findings of fact and conclusions are in turn not supported or justified by the evidence or any reasonable inferences therefrom.

5. Because under the law and the evidence respondent should not be required or ordered to cease and desist from doing the acts and things enumerated in said recommendations of the Trial Examiner.

6. Because said recommendations or any order based upon same would deprive respondent of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

[fol. 243] 7. Because said recommendations are not based on a fair consideration of all the evidence, but are partisan, biased and arbitrary, and are based on conjecture and speculation, inference and surmise, not supported by any substantial competent evidence.

8. Because said recommendations are made in utter disregard of the evidence and of the obligation of the Trial Examiner to consider and weigh all the evidence.

9. Because the evidence does not show that the respondent has violated any of the provisions of the National Labor Relations Act.

10. Because there is an absence of evidence in the record to justify said recommendations or any of them, or to justify a finding or order of the National Labor Relations Board in accordance with said recommendations.

11. Because said recommendations and each of same are based upon incompetent, irrelevant and immaterial evidence.

12. Because said recommendations and each of same are contrary to and thwart the purposes and provisions of the National Labor Relations Act.

13. Because said recommendations and each of same are based upon a hearing in which, and in the conduct of which, respondent has been denied a fair trial.

14. Because said recommendations and each of same are not conducive to effectuating the purposes and provisions of the purposes and provisions of the National Labor Relations Act and are beyond the power of the Board to impose or require under the facts here existing.

15. Respondent further excepts to said recommendations and each of them for each and all of the reasons hereinabove set forth in its exceptions to the findings of fact and conclusions of the Trial Examiner.

[fol. 244] 49.

By excepting certain sentences and paragraphs in the foregoing exceptions to the Intermediate Report, respondent does not admit or intend to admit that the statements, findings or conclusions contained in said excepted sentences or paragraphs are true or are supported or justified by the evidence, or that any adverse inferences or implications that may be drawn therefrom are supported or justified by the evidence. The trial examiner, in preparing the Intermediate Report, has so intermingled statements that are supported by the evidence with statements that are not supported by the evidence that it is impossible to separate the true from the false even in single sentences, and the findings and statements in the Intermediate Report often

set forth portions of the evidence which, standing alone, are strictly true, but do not fully or fairly state the whole evidence or the true purport thereof, and the inferences that might be drawn from the portions stated are not and would not be justified by the whole evidence if same had been fairly stated by the trial examiner. For these reasons, respondent excepts to any and all inferences adverse to respondent which are or may be drawn from such partial or unfair statements of the evidence, and does not intend to admit the truth of any of the findings or statements in the Intermediate Report which are adverse to respondent, whether such statements are excepted from the foregoing exceptions or not.

[fol. 245] 50.

Respondent excepts to the action and order of the National Labor Relations Board (contained in Board's Exhibit 1-BBBBB) designating James C. Batten as trial examiner to conduct the further hearing of this case ordered by the Board, and excepts to the action and rulings of the Board and each of same contained and set forth in the Board's order (Board's Exhibit 1-GGGGG) denying respondent's motion (Board's Exhibit 1-CCCCC) for the designation of another trial examiner herein, and excepts to each and all the rulings and action of the Board contained and set forth in Board's order, Exhibit 1-GGGGG, and excepts to the action of the trial examiner, James C. Batten, in continuing to conduct said further hearing over respondent's objections set forth in its said motion, Exhibit 1-CCCCC, and in the affidavit attached thereto, and excepts to the trial examiner's disregard of and failure to sustain respondent's protest and exceptions (Board's Exhibit 1-QQQQQ) to the action, rulings and order of the Board denying respondent's motion for the designation of another trial examiner. These exceptions and each of same are made for each and all of the reasons and grounds set forth in said motion, Exhibit 1-CCCCC, and in the affidavit attached thereto, and for each and all of the reasons set forth in said Exhibit 1-QQQQQ, and for the further reason that by the denial of said motion and by virtue of said James C. Batten con-

tinuing to act as the trial examiner in charge of said further hearing, respondent has been denied a fair and impartial trial herein and same constitutes and has resulted in a denial to respondent of due process of law and respondent is deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

[fol. 246]

51.

Respondent excepts to the conducting of said further hearing by said James C. Batten as trial examiner and to his acts and rulings in the conduct thereof for the reason that said James C. Batten became and was biased against respondent in and during the first hearing of this matter, and took a biased and unjudicial attitude toward the evidence and particularly respondent's evidence and proffered evidence, and said bias and prejudice and unjudicial attitude of said trial examiner continued in and throughout the further hearing held herein whereby respondent has been denied a fair trial herein and is deprived of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

52.

Respondent excepts to the Board's denial of respondent's application for a continuance of said further hearing (Board's Exhibit 1-EEEEE) and excepts to each and all the rulings and action of the Board contained and set forth in its order, Exhibit 1-GGGGG, denying said continuance for and upon each and all the reasons and grounds set forth in said application for continuance; and for like reasons excepts to the action of the Trial Examiner in proceeding with said further hearing in denial of the application.

53.

Respondent excepts to each and all the rulings and action of the Trial Examiner in the conduct of the former hearing herein, made over the objections or exceptions of Re-
[fol. 247] spondent or which are adverse to Respondent (as to which adverse rulings and action Respondent was allowed an automatic exception) for each and all the rea-

sons and grounds stated in the record, and for the further reason that the bias and prejudice of the Trial Examiner toward Respondent and its evidence permeated said rulings and action and because by virtue of said rulings and each of same the record is filled with incompetent, irrelevant and immaterial evidence upon which the Trial Examiner has based his findings, conclusions and recommendations, by virtue of all of which Respondent has been denied a fair trial.

54.

Respondent excepts to each and all the rulings and action of the Trial Examiner in the conduct of said former hearing herein for the reasons set forth in Respondent's Statement of Exceptions heretofore filed herein. To avoid incumbering the record by setting out at length herein said exceptions, and for the convenience of the Board the Court and all parties Respondent hereby adopts and makes a part of this its Statement of Exceptions each and all of the following numbered exceptions contained and set forth in its said Statement of Exceptions heretofore filed herein (which Statement of Exceptions appears in the record herein at pages 6310 to 6600 inclusive), to-wit, Exceptions Nos. 15 to 41 inclusive, Nos. 168 to 360 inclusive, and Nos. 366 to 368 inclusive and Nos. 371 to 378 inclusive, as fully as though said exceptions and each of them were herein set forth in haec verba.

[fol. 248]

55.

Respondent excepts to each and all the rulings and action of the Trial Examiner, James C. Batten, made or taken during said second or further hearing of this matter, of the objections or exceptions of Respondent or which are adverse to Respondent (as to which adverse rulings Respondent was allowed an automatic exception) for each and all the reasons and grounds stated in the record and for the further reason that the bias and prejudice of the Trial Examiner toward Respondent and its evidence permeated said rulings and because by virute of said rulings and each of same the record is filled with incompetent, irrelevant and immaterial evidence upon which the Trial Examiner has based his findings, conclusions and recommendations and by virtue of all of which Respondent has been denied a fair trial.

56.

Respondent excepts to the ruling, action and comment of the Trial Examiner in striking the testimony of the witness, Mrs. Reed, as set forth in the following excerpts from the transcript of the record, page 3212, to-wit:

"Q. (By Mr. Ingraham) You are referring to circulars he distributed to your customers?

"A. He had a circular made of the letter, copy of the letter he sent to me, he had that made and distributed to my employees, shortly after the letter came to me; I don't remember what date. I also know that he tried to put it in the newspaper and they wouldn't put it in.

"Mr. Langsdale: I ask that that be stricken out as hearsay.

"Trial Examiner Batten: It may be stricken."

[fol. 249] 57.

Respondent excepts to the rulings, action and comment of the Trial Examiner as shown by the following excerpts from the transcript of the record, pages 3444, 3445, to-wit:

"Q. (By Miss Weyand) Then your answer would be she would decide for herself whether she wanted to follow the method given her by Mrs. Tyhurst, or given to her by someone else, or some other method that she wanted to follow, without regard to the fact that she had other instructions?

"A. I don't know what you are getting at.

"Trial Examiner Batten: I think what you are trying to get at, when that situation existed in the plant that you just described, that is, Mr. Baty was responsible for the entire production, the sewing section, and the instructions suggested one method and Mrs. Tyhurst should come through the section and suggest another, the operator then decided for herself which method she would use, is that correct?

"Miss Weyand: No, the question was—

"A. (Interrupting) Well, I don't know what you mean.

"Q. (By Miss Weyand) Even if that did not occur, would the operator be free to—

"Trial Examiner Batten: Miss Weyand, I don't understand it then, myself. I am afraid I'd better quit.

"Mr. Hogsett: May I make a general observation?

We have sat here for hours, listening to hypothetical questions that are not predicated on any facts. In other words, Miss Weyand is working out questions with geometrical precision, and has spun out of that geometrical precision a psychological vacuum, and has predicated her questions on that theory of hypothetical assumptions; and I submit it doesn't get us any place. That technicality of interrogation, in character, is objectionable, and not founded upon anything that is known to exist, I submit.

"Trial Examiner Batten: Well, I don't believe I will sustain your objection. As I previously stated, Mrs. Reed is the president of the company, and thus far I have permitted, I think, somewhat more latitude with Mrs. Reed than I perhaps would have with other witnesses, in view of the fact she is the president of the company. I will permit Miss Weyand to proceed, but I want to be sure that the witness understands the question.

"So, Miss Weyand, will you proceed, please?"

[fol. 250] 58.

Respondent excepts to the rulings, action and comments of the Trial Examiner, appearing in the record at pages 3454, 3455, and 3456, as shown by the following excerpts therefrom, to-wit:

"Q. (By Miss Weyand) So Mrs. Tyhurst has the authority to speak for the company in saying the notch should be put in?

"A. When you talk about authority—

"Mr. Hogsett: (Interrupting) It seems to me that is carrying this question of authority to an absurdity. Now, a truck driver might be driving a truck, and another assistant on the truck might say, 'You have got a flat tire, you'd better stop.' Would anybody say the assistant had authority to speak for the company, because he ordered the truck to stop? In other words, we reach a point beyond all reason.

"Trial Examiner Batten: Of course, I think the important point is the statement which Miss Weyand made yesterday, I believe, along with other matters, what was actually done in this plant.

"Mr. Hogsett: I agree.

"Trial Examiner Batten: Now, it seems to me the way to show what was done would be in the daily and ordinary operation of this plant. Now, you might call a person a foreman, when he is not a foreman, and you might call him a superintendent when he is not a superintendent; I think that is, as far as I am concerned, and I think as far as the Board is concerned, with what actually took place in this plant at these various times.

"Now, it seems to me some of these questions Miss Weyand has asked are hypothetical, and it seems there is no showing here that many of these things, which have been asked Mrs. Reed and answered, have ever occurred.

"Mr. Hogsett: That is exactly the point.

"Trial Examiner Batten: But I will say again, I am not going to attempt to tell any of the attorneys how to ask their questions. Thus far, with Mrs. Reed, I feel I have been very lenient with all of counsel, and I intend to pursue that policy until we are through with this witness, because she is the president of the company, and unfortunately was unable to testify in the prior hearing.

"Now, on that basis, Miss Weyand, you may proceed. Now, what was the question?

"A. Mr. Batten, may I try to throw a little light on this thing we are doing?

"Trial Examiner Batten: I would suggest, Mrs. Reed, if you understood the question, that you answer the questions, and then I think we will get along.

"A. Well, I will make a note of something then, when I get back.

[fol. 251] "Trial Examiner Batten: I think when Miss Weyand gets through, if your counsel wants to clarify these points, he can ask you questions regarding them.

"I told you yesterday, when you get through with your testimony, if you want to make a statement, you may do so, the witness may do so.

"Mr. Hogsett: Well, it is just a matter of her making a note now.

"Mr. Reed: I submit if the witness wants, at this time, to make a statement to clarify any answer she has made, she has a right to do it.

"Trial Examiner Batten: There is a question pending and I would like to clear that up first."

59.

Respondent excepts to the rulings, action and comments of the Trial Examiner contained in the following excerpts from the transcript of the record, pages 3476 and 3485, to wit:

"Q. What was Ted Scoles's position in January of 1935?

"Mr. Reed: That has been gone into, if Your Honor please, these identical questions.

"Trial Examiner Batten: I am sure I couldn't say, Senator. Will you answer the question, Mrs. Reed? * * *

"Q. Prior to 1942, what difference was there between Jack McCaughey's duties and his present duties?

"A. Well, for—

"Mr. Reed: (Interrupting) I submit that question has been answered and the details given in each instance. It has been asked what were his duties at a certain time, and what they were at another time. Now it is asked, to state the differences.

"Trial Examiner Batten: Well, the witness may state what the difference is, in her opinion.

"Mr. Reed: Well, I object to this interminable repetition.

"Trial Examiner Batten: She may tell us what she considers to be the difference."

[fol. 252] 60.

Respondent excepts to the action of counsel for the National Labor Relations Board in introducing in evidence Board's Exhibit 32-E as a part of Board's Exhibit 32-A-B-C-D, and cross-examining the witness, Mrs. Reed with reference to said Exhibit 32-E as being a part of said Exhibit 32-A-B-C-D, and as being filed in the Wages and Hours Division on October 31, 1940 as a part of said Exhibit 32-A-B-C-D in the files of the Wages and Hours Division, when as a matter of fact said Exhibit 32-E had not been prepared on said date and was not filed in said Wages and Hours Division on October 31, 1940 and was never a part of said Exhibit 32-A-B-C-D in the Wages and Hours Division, but on the contrary the data in said Exhibit 32-E was assembled and related to a much later data and was not filed in the Wages and Hours Division until after December 29, 1940, and was never filed therein as a part of said Exhibit 32-A-B-C-D; and respondent excepts to the attempt of counsel for the Board by the use of said official document Exhibit 32-A-B-C-D having the apparent authenticity of a document signed by the respondent's Vice President and duly filed in the Wages and Hours Division and bearing its date stamp as having been received therein on October 31, 1940, and by attaching said Exhibit 32-E thereto as a part thereof, to mislead, confuse and entrap the witness Mrs. Reed and thereby obtained testimony that the matter set forth in said Exhibit 32-E existed on and before said date of October 31, 1940; and excepts to the examination by the Trial Examiner of said witness Mrs. Reed with reference thereto and to the Trial Examiner's [fol. 253] action in permitting counsel for the I.L.G.W.U. after the Trial Examiner had stricken said testimony, to further examine the witness with reference thereto by reading into the record portions of said stricken testimony; and excepts to each and all the rulings of the Trial Examiner with reference to said matter, all of which rulings and action of the Trial Examiner and said actions of counsel for the Board and for the I.L.G.W.U. were highly prejudicial to respondent and show the Trial Examiner's bias against respondent and his desire to acquit counsel for the Board of said improper examination, by reason of

all of which respondent has been denied a fair and impartial trial.

The matters herein referred to appear in the record at pages 3526 to 3535, 3550 to 3586, 3748 to 3750, 3847 to 3859, 3875 to 3881, 3910 to 3920, 3932 to 3940, and 3947 to 3952, inclusive.

[fol. 254] 61

Respondent excepts to the rulings, action and comments of the Trial Examiner set forth in the transcript of the record at pages 3544, 3545 and 3546, as shown by the following excerpts therefrom, to wit:

"Q. (By Miss Weyand) Do you know what was the largest number of girls you ever employed in St. Joseph at one time?

"A. I do not.

"Q. Do you have any idea?

"A. Not any very definite idea.

"Q. Could you give us an approximation?

"A. I really couldn't.

"Mr. Hogsett. If it please the Examiner, I object as wholly pointless. We have again run into a line of questions that haven't any bearing on this case at all. It might be of interest if someone were writing a history of the Donnelly Garment Company, but it hasn't anything to do with whether this company dominated, sponsored, or coerced the formation of the employees' union, which is the issue here to try. It is far afield.

"Miss Weyand. I do not intend to pursue this line of questioning further.

"Mr. Hogsett. She always says that, and then—

"Trial Examiner Batten: In view of Miss Weyand's statement that she does not intend to pursue it any further—

"Mr. Hogsett. —there is nothing you can do about it.

"Trial Examiner Batten. —that will dispose of the matter. * * *

"I didn't assume, Miss Weyand, that when you said you didn't intend to pursue that further, you were precluded

from asking any further questions if, in your opinion, it was necessary."

Respondent further excepts to the action of the Trial Examiner in permitting counsel for the Board to examine and cross-examine witnesses at great length upon immaterial, incompetent and irrelevant matters, and when objection is made, permitting said testimony to stand as a result of counsel's statement that she does not intend to pursue the line of questioning further, or the statement [fol. 255] that the questions asked are preliminary, or the statements that the questions are asked for the purpose of testing the witness' credibility, as a result of which the record is filled with incompetent, irrelevant and immaterial evidence which has improperly influenced the Trial Examiner's findings and conclusions adverse to respondent.

62.

Respondent excepts to the rulings, action and comments of the Trial Examiner as shown by the following excerpts from the transcript of the record, pages 3591, 3598, to wit:

"Q. Do your employees have credits for the purpose of purchasing dresses in your retail store, is that a cash transaction?

"Mr. Hogsett: I can't see the remotest connection between that. I really have no objection, but I can't see it is at all relevant. I object to it, to save time.

"Trial Examiner Batten: You may tell us. * * *

"Q. Could you indicate what factors in her experience impressed you with her qualifications for being an instructor?

"Mr. Reed: I think that is a ridiculous waste of time.

"Trial Examiner Batten: Is that an objection, Senator?

"Mr. Reed: I object. It is a ridiculous waste of time."

Respondent further excepts to the failure of the Trial Examiner to instruct and require counsel for the Board to desist from such questioning upon utterly immaterial and irrelevant matters whereby the record is encumbered therewith and the true issues obscured and the Trial Ex-

aminer's findings and conclusions influenced by immaterial, incompetent and irrelevant evidence, all to respondent's prejudice.

[fol. 256] 63.

Respondent excepts to the comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record, page 3606, as showing the bias and prejudice of the Trial Examiner towards respondent and its witnesses and his endeavor to get the witness to make a statement contrary to the facts:

"Q. Turning now to April 1937 was Rose Todd assigned to any department of the plant?

"A. I testified about three times that she went through the plant supplying notions of thread, or whatever supplies might be missing to complete cuts.

"Trial Examiner Batten: Mrs. Reed, the question is, was she assigned to any department? Was she assigned to any definite department or section in April of 1937?

"The Witness: No, her job was just to go through the plant from one section to another.

"Trial Examiner Batten: In other words, she was not a part of any sewing section or department of the plant or the business; is that right?

"The Witness: She was a part of all of them. She simply went from one place to another, and when there was something missing, she would find out what it was, and then she would go to the notions department, if it was to get more thread, or—"

64.

Respondent excepts to the rulings, action and comments of the Trial Examiner with reference to Board's Exhibit No. 28 (being purported copies of certain pay rolls of respondent, which copies were prepared by the Board), as shown by the transcript of the record, pages 3612 to 3635 inclusive, pages 3688, 3689, for the reason that such record shows the bias and prejudice of the Trial Examiner toward respondent and its counsel and his evident desire to make use of error or mistakes of the Board in copying exhibits furnished by respondent to the Board because such record

shows the Trial Examiner's fixed purpose to refuse to take said erroneous record as true and not accept testimony of [fol. 257] the witness, Mrs. Reed, that same was incorrect, although the error therein was plainly pointed out by both counsel for the respondent and by said witness Mrs. Reed, and shows the evident purpose and intention of the Trial Examiner to enlarge the terms of the stipulation with reference to said Exhibit 28 in a manner unfavorable to respondent, casting the entire burden upon respondent's counsel for the correctness of said exhibit when the error was wholly that of the Board in copying same, and in representing to respondent's counsel that same was a true copy and thus obtaining the signature of respondent's counsel to said stipulation, by reason of all of which the bias and prejudice of the Trial Examiner against respondent and its evidence is shown and the non-judicial attitude of the Trial Examiner is shown by his refusal to permit correction by the witness of palpable errors in evidence caused by the Board and the correction of which would result in favorable inferences to respondent and the non-correction of which might be used for the purpose of drawing unfavorable inferences against respondent.

In connection with the foregoing exception, respondent calls particular attention to the following excerpts from the transcript of the record, to wit:

"A. I don't find it.

"I would like to call the Examiner's attention to the fact that I was puzzled about this pay roll list yesterday, and last night I looked up to see why these queer headings would be on certain pages, and I saw the original pay roll that was put in evidence, and apparently when this was copied the pages were not followed. Now, when--

"Q. (By Trial Examiner Batten) Well, do you have the original pay roll? * * * (p. 3613)

[fol. 258] "Mr. Ingraham: We brought in the original pay rolls.

"Trial Examiner Batten: And wasn't this supposed to be a copy of it?

"Mr. Ingraham: Yes. I do not have any recollection of making a copy of those pay rolls. We brought the original pay rolls in.

"Trial Examiner Batten: Whoever made them, they were marked as an exhibit and were received on the assumption that they were a copy of the pay roll. Now, are they a copy or aren't they, Mr. Ingraham?

"Mr. Ingraham: They are a copy, as far as the names and wages are concerned.

"I think this is what actually happened: I was asked by the Board's counsel to produce the pay rolls for their inspection, and I brought up the pay rolls, including the ones for the particular exhibits that you were inquiring about yesterday, and the Board took those pay rolls—.

"The Witness: The pages were mixed.

"Trial Examiner Batten: Do you mean the Board inserted these titles?

"Mr. Ingraham: No. But the pages got mixed up.

"The Witness: A title would be carried over to the next page, and the wrong page would be there.

"Trial Examiner Batten: I would suggest that the original pay rolls be marked and photostats be provided.

"Mr. Langsdale: If the Examiner please, I object to that change from the record as it now exists, until we look at the record and see what actually happened. * * * (pp. 3613, 3614)

"Mr. Ingraham: I was asked to produce these pay roll records, and I did produce them, and the next thing that appears is this stipulation.

"Trial Examiner Batten: Mr. Ingraham, you signed the stipulation, didn't you?

"Mr. Ingraham: Yes.

"Trial Examiner Batten: Then, it seems to me, if there is anything wrong with it, it is up to you folks to check it up—

"Mr. Ingraham: We will produce the pay roll records.

"Mr. Langsdale: I don't agree with that. I want to rely upon what they did produce in 1939.

"Trial Examiner Batten: You may rely completely, Mr. Langsdale, upon what is in the record, unless it is changed. Unless what is now in the record is corrected, it will remain, and any counsel may use it. * * * (p. 3615)

[fol. 259] "Mr. Ingraham: That's true, Miss Weyand, and the Board, as I recall, never challenged the division of the people in the pay roll, there never was any question raised.

"Trial Examiner Batten: Well, we will proceed on the assumption it is correct, until otherwise shown. * * * (p. 3631, 3632)

"Mr. Ingraham: Mr. Langsdale, we produced the record the last time, that the Labor Board asked for, and I brought them in, and I have a receipt in my pocket.

"Trial Examiner Batten: Well, now, just a minute. I just said we are going to proceed on the basis this record is correct. Now, if the parties who contend it is not, may or may not have an opportunity to present it in this hearing, I am not going back, I don't think, now, on this record, and revise it from page 1 up to 3200, whatever it is, including all of the numerous exhibits. (pp. 3632, 3633)

"Mr. Langsdale: My point is this, Mr. Examiner; if there is going to be any contention that the records they bring in here are the originals, I think it would be well to send someone representing the National Labor Relations Board down there this afternoon to see where they get them and how they get them and whether or not these are people who have been there any length of time.

"Trial Examiner Batten: I don't think so, Mr. Langsdale, because I think the burden is entirely on Mr. Ingraham's shoulders. He signed this stipulation and agreed to this. It is in the record and has been used since—what is it now? —since July, 1939.

"If it isn't correct, I think the burden is on [your], Mr. Ingraham, to produce whatever is necessary to show that it is correct. You agreed to the stipulation."

"Mr. Ingraham: I agreed to the stipulation but—

"Trial Examiner Batten: Now, on that basis, as I said awhile ago, we are going to proceed on the assumption that this is correct.

"Mr. Langsdale: I say, if they are going to come in later with a lot of—

"The Witness: I didn't say this was incorrect. I said it was incorrect in the way it is put together. Sometimes the heading is carried over and sometimes refers to the employees on the next page, when it shouldn't. (p. 3634)

"Mr. Ingraham: I didn't make up this exhibit. I produced the pay rolls and Mr. Leary took the pay rolls and checked them.

"Trial Examiner Batten: Whether you prepared them or not, you were the attorney who signed the stipulation.

"Mr. Ingraham: Yes. The Board had these pay rolls before them—

"Trial Examiner Batten: Therefore, you must assume the responsibility of entering into the stipulation.

"The Witness: We didn't know the Board would do a thing like that until this morning.

"Trial Examiner Batten: If you find it is incorrect, check it up and— The burden is on you. (p. 3635) * * *

[fol. 260] "Trial Examiner Batten: Miss Weyand, I said we will proceed on the assumption that it is correct. It is in the record, and it was stipulated, and unless some action is taken by one of the parties to make a motion or take some step to correct it, we will proceed on the assumption that the record is correct. (p. 3688) * * *

"Trial Examiner Batten: I am not going to initiate any action to change the record. The record stands. It has gone through the hearing, it has gone through the Board, and it has gone through the Court, and as far as I am concerned, I will accept the record as it is." (p. 3689).

65.

Respondent excepts to the ruling and action of the Trial Examiner as shown by the following excerpt from the

transcript of the record, page 3652, for the reason, among others, that same shows the purpose of the Trial Examiner to have elicited immaterial, irrelevant and incompetent evidence and then to base findings against respondent thereon:

"Q. Did you ever hear of a Twilight Club, prior to reading that today?

"A. I did not.

"Mr. Hogsett: What possible difference would it make if she did or did not? I object; it is immaterial.

"Trial Examiner Batten: I overrule the objection; the answer is necessary."

66.

Respondent excepts to the rulings, action and comments of the Trial Examiner appearing at pages 3656 to 3658 inclusive and to the following excerpts therefrom, to wit:

"A. I don't call to mind in a definite way a pin. I have heard discussions of a Loyalty pin, or a pin with the name Loyalty on it, but I don't remember that it was ever brought to my particular attention.

"Q. Was such a pin sold to employees around the plant?

"A. No to my knowledge.

"Mr. Hogsett: If the Examiner please, I object to this line of questioning as being wholly immaterial, and not having the remotest infinitesimal value, whether proving the Donnelly Garment Company dominated a garment union. It has not even a faint tendency to prove that. We [fol. 261] are all sitting here, wasting the time of the government, and every individual in this room, to no purpose at all, listening to such examination.

"I know that your Honor, and I think I might say that it is commendable—I know that you have been liberal in the examination in chief and in cross of this witness, for the reason, I think, that was commendable and a proper thing to do; but there must be a limit. * * *

"Trial Examiner Batten: * * * Well, I am going to pursue the same policy I have consistently followed, un-

less I feel that it is entirely beyond any matter which we covered in the original hearing, and there was a great deal of testimony in the first hearing concerning the Donnelly Loyalty League. I will permit you to continue, Miss Weyand."

Respondent further excepts to said ruling for the reason that the failure of the Trial Examiner to exclude said immaterial and irrelevant evidence encumbers the record therewith and obscures the real issues involved and has contributed to the erroneous findings of the Trial Examiner against respondent.

67.

Respondent excepts to the refusal of the Trial Examiner to exclude testimony as to whether respondent ever issued instructions to the instructors directing them to maintain a neutral attitude in labor matters, and to the Trial Examiner's interposing and asking questions to elicit said testimony over the objection of the respondent as same appears at page 3678 of the transcript of the record, for the reason that said testimony is incompetent, irrelevant and immaterial to any issue in this case and said action of the Trial Examiner shows his prejudice against respondent and his prejudgment of the charges against respondent, and because same incompetent, irrelevant and immaterial evidence contributed to the erroneous findings and conclusions of the Trial Examiner herein.

[fol. 262]

68.

Respondent excepts to the comments of the Trial Examiner set forth on pages 3680, 3681 of the transcript of the record which show the prejudice of the Trial Examiner against respondent and its witnesses. The following are excerpts from said comments:

"Q. Were the employees present there at the meeting wearing uniforms?

"A. A number of them were. I don't remember specifically how they were dressed. My plant employees do wear white uniforms.

"Q. (By Trial Examiner Batten) You thought some of them were wearing uniforms?

"A. If this hadn't come to my attention, I don't think I would have thought about it. I didn't think about it.

"Q. Is that your recollection?

"A. I don't remember.

"Q. Then, Mrs. Reed, when you are asked these questions and you don't remember, say you don't remember.

"A. The first thing I was thinking of, naturally, Mr. Batten, my plant employees do wear white uniforms, and, it being time to go home in the evening, some of them may have changed or they may not.

"At the time I wasn't thinking how they were dressed, so I don't remember whether they were wearing uniforms or not.

"Q. I would suggest that you give some thought to these questions, because after all that is the reason you are here, to answer these questions.

"A. I have been on the stand about five hours, and I am tired.

"Q. Irrespective of that, I would suggest that you give thought to these questions, and take your time.

"A. All right. Thank you.

"Q. And don't proceed to make an answer, and then make the statement later that you don't remember. I would think about the question first.

"A. Well, thank you very much."

69.

[fol. 263] Respondent excepts to the rulings, action and comments of the Trial Examiner appearing at pages 2690-91 of the transcript of the record as follows, to wit:

"Q. (By Miss Weyand) Is the door to your office one that leads into an outer reception office, or is it directly connected with the main part of the building?

"Mr. Reed: Now, Mr. Examiner, I have to object. This is a mere consumption of time. What difference does it make where her office door leads, or how many minutes it is open during a period of six or seven years? I can't see the reason for questions of this character.

Trial Examiner Batten: Well, Senator, as I have indicated before, I am not going to attempt to limit the examination at this point in any way. Whether it is material or not, I presume will appear. I don't suppose I can ask any of counsel on preliminary or introductory questions just the purpose.

I will permit you to proceed, Miss Weyand."

70.

Respondent excepts to the repeated interposition of the Trial Examiner in the examination of witnesses and to his rulings, action and comments as set forth in the following excerpts from the transcript of the record (pp. 3695-96 and pp. 3703-04), to wit:

"Trial Examiner Batten: The question was, Mrs. Reed, did you make any investigation of it yourself after Mr. Baty reported the incident to you?

A. After the incident was reported to me I made no further investigation.

Q. (By Miss Weyand) Did you give any directions that the girls should be contacted and assured protection to emain in the plant and work?

A. Mr. Baty was in charge of the plant, and I didn't feel that it was necessary for me to go into that incident at all.

Trial Examiner Batten: The question is, Mrs. Reed, did you? Did you do anything about it?

[fol. 264] "The Witness: But I say I didn't feel any reason for it.

Trial Examiner Batten: Let's assume that you felt that way, did you do anything about it?

The Witness. I did not."

71.

Respondent excepts to the rules, action and comments of the Trial Examiner as shown from the following excerpts from the transcript of the record (pp. 3743-44), to-wit:

"Q. (By Miss Weyand) Did the Donnelly Garment Workers' Union give the company a written notice that it desired the company to discharge these two girls?

A. That is my remembrance.

Mr. Reed. Wait a minute. We object to that. That is opening up exactly the question the Commissioner has ruled out.

Trial Examiner Batten: I didn't rule it out, Senator.

Mr. Reed: If you didn't rule it out—

Trial Examiner Batten: I have been trying to arrive at some sort of a limitation. I said we will proceed with Mrs. Reed. I do not intend, Senator, as I previously stated, to attempt to limit the matter at this time. When Mrs. Reed is through, I am more than convinced we have to work out some sort of a limitation on this thing.

Mr. Reed: This is something we didn't go into at all. It raises the question, if it raises anything, whether or not these girls were properly discharged.

Miss Weyand: The company did go into the resignation of various persons, Jack McConaughey and Lyle Jeter, that happened in 1939, 1940, and 1941.

Mr. Reed: If the company went into the question of Jack McConaughey and somebody else who resigned from the union, that has nothing to do with the discharge of these two girls. There is no connection between them.

Trial Examiner Batten: Read the question please.

(Thereupon the last question was read by the reporter as follows:

[fol. 265) 'Did the Donnelly Garment Workers' Union give the company a written notice that it desired the company to discharge these two girls?')

Trial Examiner Batten: You may tell us. Do you know whether you received a written notice, Mrs. Reed?"

72.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth from the following excerpts from the transcript of the record (p. 3765), to wit:

"Mr. Langsdale: I would like to ask one more question.

Q. (By Mr. Langsdale) 'Then, that group of people are taken up with Mr. Atchison, and Mr. Atchison discusses with them very thoroughly, he sees what they have made and he knows the reason that happened, he has listed each week on pay roll cards with the instructor, and Mrs. Wheery', was that true?

Mr. Reed: I insist, if your honor please, this witness ought to be asked direct questions, and not have things read.

Trial Examiner Batten: The question is not whether Mrs. Reeves' testimony is true, but was that the true situation in the plant at the time, if this witness knows.

Mr. Reed: I object to that method of examination.

Trial Examiner Batten: I will overrule the objection.

Mr. Reed: As incompetent, and immaterial.

Trial Examiner Batten: Do you know if that was the method?"

73.

Respondent excepts to the rulings, action and comments of the Trial Examiner throughout the hearing in permitting testimony and evidence to be introduced concerning matters which occurred prior to the passage of the National Labor Relations Act for the reason that said evidence is immaterial, irrelevant and incompetent, and for the further reason that same has contributed to the erroneous findings and conclusions of the Trial Examiner, and in [fol. 266] connection with this exception respondent calls attention to the testimony at pages 3760-3784 and to the ruling of the Trial Examiner concerning same as shown in the following excerpt from pages 3775-76, to wit:

"Q. And Mrs. Reeves was your production manager at that time, was she not?

A. Yes.

Q. And reading further from the same testimony—

Mr. Reed: (Interrupting) Just for the record, we object to the testimony with reference to what happened in 1935

and prior thereto, as entirely remote. It does not throw any light, it does not furnish a background for this case.

Trial Examiner Batten: Well, you may have a continuing objection to each question.

Mr. Reed: All right.

Trial Examiner Batten: That is, with respect to the 1935 situation.

Mr. Reed: I just think it is cumbering the record.

Trial Examiner Batten: You may proceed."

74.

Respondent excepts to the rulings, action and comments of the Trial Examiner set forth in the following excerpts from the transcript of the record pages 3825-26, to wit:

"Q. Would you have approved of her going around and getting these petitions signed and taking a whole day?

Mr. Reed: We object to that. That is purely a hypothetical question.

Trial Examiner Batten: She may tell us whether she would have approved.

Mr. Reed: Approved something that never took place?

Trial Examiner Batten: Whether she would have approved of Mrs. Shartzer's going around and spending a day getting a petition signed.

Mr. Reed: There is no evidence that she took a day.

[fol. 267] "Mr. Langsdale: I am going to assume it would have taken a day to get 1,000 names signed.

Q. (By Mr. Langsdale) On that assumption, would you have approved of that?

Mr. Reed: How can she talk on an assumption made for the first time by Mr. Langsdale in this courtroom? I [objection] to the question.

Trial Examiner Batten: Objection overruled.

You may proceed.

A. I know we had week workers that would go out and have their hair done and—

Mr. Langsdale: You said that before.

A. (Continuing) —and take two or three hours to do it, and —

Trial Examiner Batten: Mrs. Reed, the question is would you have approved this young lady's —I have forgotten her name — spending a day getting a petition signed in the plant?"

75.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record (pp. 3863-64), to-wit:

"Q. (By Mr. Langsdale) I asked you if you have any information that Lena Tyhurst was not in the position that she is described as here in the handwriting of Lee Baty on June 1, 1937?

A. Mr. Langsdale, I have said over and over and over again here that while Mrs. Reeves and Mr. Baty were managing the factory I had no knowledge of my own of the details of how they did it and what they called the people who are in the plant.

Trial Examiner Batten: Read the question, please.

(Thereupon the last question was read by the reporter).

Mr. Reed: That is calling for hearsay evidence. Whether you have heard something about it, that doesn't make evidence.

Trial Examiner Batten: Do you understand the question, Mrs. Reed?

The Witness: I have said over and over and over again—

Trial Examiner Batten: Just a moment, Mrs. Reed. Do you understand the question?

The Witness: Will you read the question again?

[fol. 268] "Trial Examiner Batten: The question is this: Do you have any information that Lena Tyhurst was not

assistant factory manager on this date as described on this document by Mr. Baty?"

76.

Respondent excepts to the action of the Trial Examiner in repeatedly interposing in the examining of witnesses, an illustration of which appears in the excerpts from the transcript of the record hereinafter quoted from pages 3888-3889, and Respondent excepts to said testimony so elicited by the Trial Examiner for the reason that same relates to a period prior to the passage of the National Labor Relations Act, and for the further reason that said evidence contributed to the erroneous findings and conclusions of the Trial Examiner. As a part of this exception Respondent calls attention to the following excerpts from the testimony (pp. 3888-3890), to-wit:

"Q. (By Trial Examiner Batten) Well, I thought this morning, in that old N.R.A. record—wasn't he one of the four that were mentioned as passing upon the people?

A. I am saying they would get his opinion and— The reason they would get his opinion, Mr. Batten, was to see how much—if we had a lot of double-stitching to do, he would be the one to know it and—

Q. Irrespective of what they got his opinion on, he was one of the four, was he not, Mrs. Reed?

A. But his opinion was always on the work.

Q. Whatever his opinion was on, he was one of the four mentioned by Mrs. Reeves, wasn't he, when she said they always got the opinion of these four people before they did anything?

A. That is right. But I am trying to say, Mr. Batten, the reason his opinion would be worth something was because of his knowledge of how much of a specific kind of work we had to get through and how many machines we had to do it with, and from that point of view.

Q. Well, of course, I didn't ask you why he is there.

A. I think you ought to let me explain.

[fol. 269] "Q. Mrs. Reed, I have no objection to your explaining. My only question to you was, was he one of the four mentioned this morning?

A. But it seems to me you ought to let me explain. It wasn't that he had personal control over the woman who was on the job, but he could tell us how much work we had

of a certain type that this woman could do. We didn't lay off any double-stitchers if we had—

Q. Mrs. Reed, I think you have explained that several times.

A. But it comes back all of the time, Mr. Batten, and it would seem that Dewey had control of managing the plant.

Q. No, we are not interested in managing the plant. We are interested in what these people did.

A. I am trying to explain it to you.

Q. Well, Mrs. Reed, you have already explained it several times. In fact, I think it was explained to Mr. Ingraham on direct examination and to Miss Weyand on cross-examination.

A. Well, Mr. Langsdale seems to want to know about it again.

Mr. Langsdale: I just don't want you to be confused about it, Mrs. Reed.

The Witness: I am not confused about Dewey. You are the one that is confused about Dewey.

Q. (By Mr. Langsdale) Didn't Mrs. Reeves testify:

'Nobody is let out of the Donnelly Garment Company unless four people pass on it.'

Would you say that is true?

A. That was my general knowledge.

Q. Would you say this is true?

'Then that group of people are taken up with Mr. Atchison and Mr. Atchison discusses them very thoroughly and he sees what they have made and he knows the reasons about what happened each week because he analyzes each week our pay roll cards with the instructor and Mrs. Wheery.'?

A. That wasn't my testimony, was it, Mr. Langsdale?

Q. I asked you if that was true. That was Mrs. Reeves' testimony."

77.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts

[fol. 270] from the transcript of the record (pp. 3968-69), to-wit:

"Q. (By Mr. Langsdale) Did you make any order at all with reference to the use of the i. d. m. system by the Donnelly Garment Workers' representatives?

Mr. Reed: I object to that as immaterial. The evidence so far, if it shows anything about this, is that this information, if it ever was received, came during the trial of these cases. If so, it is long subsequent to the charge that is filed here. If after this case was started or after this case was tried or while it was being tried the witness heard something in the trial, it is immaterial whether she went to investigate to find out whether it was going on or not.

Mr. Langsdale: I am past that. I am asking her now if she made any order with reference to the use of the i. d. m. system by the Donnelly Garment Workers' representatives.

Mr. Reed: If it was an order, it was the same thing.

Trial Examiner Batten: At what time?

Mr. Langsdale: At any time after she learned it was charged that they were using the i. d. m. system to pass information among the employees connected with that union.

Q. (By Trial Examiner Batten) Mrs. Reed, you have stated you did not make any investigation of it. Did you take any action with respect to it?

A. I never made any orders—

Mr. Reed: I make the same objection to the Examiner's question that I made to Mr. Langsdale's.

Trial Examiner Batten: I will overrule the objection.

Q. (By Trial Examiner Batten) Did you take any action on that?"

78.

Respondent excepts to the rulings, action and comments of the Trial Examiner as shown by the following excerpts from the transcript of the record (pp. 3983-84), to-wit:

"Q. (By Mr. Langsdale) While you were reading articles in the newspapers about the I.L.G.W.U., let me ask you if you read this article in the magazine 'Life', August 1st, 1938."

* * * *

Mr. Ingraham: Yes. We object to this kind of an inquiry. This purports to be an article concerning the recreational activities of the I.L.G.W.U. I don't know what the purpose of it would be in this hearing.

[fol. 271] "Trial Examiner Batten: Well, I don't either. I think the question to Mrs. Reed is, did she read this article or see it. Now, I will permit her to answer that question."

79.

Respondent excepts to the rulings and action of the Trial Examiner in directing the order of proof herein by requiring Respondent to proceed first with employee witnesses and by confining their testimony strictly to the offers of proof by "the 1200 employees", and in refusing to receive testimony under other offers of proof made by Respondent, and in denying to Respondent the right to put on its proof in the order it desires (when there was no reason such as the convenience of a witness involved which might call for the Trial Examiner's discretion in receiving particular evidence first), and in refusing to permit witnesses, while on the stand, to testify to matters which the Trial Examiner did not consider came within his strict construction of said "employee" offers of proof, and in refusing to receive pertinent and material testimony from said witnesses and other witnesses for respondent bearing on the question "how and why" the DGWU was formed and on whether there was any coercion, interference or support on the part of Respondent in connection with the formation of said union.

These rulings and action and Respondent's objections and exceptions thereto made at the time appear in the transcript of the record at pages 4049 to 4096 inclusive.

In connection with this exception, Respondent calls attention to the following excerpts from the transcript of

the record and excepts to each and all of said rulings and comments of the Trial Examiner, to-wit:

[fol. 272] "Trial Examiner Batten: I say to you, is this an introductory question opening up the question of violence through this witness?

Mr. Ingraham: We made an offer of proof by the employees on the facts involved in the so-called strikes at 26th and Grand, and I was briefly going to inquire of Miss Tobin who had charge of the strikes up there and if it was the I. L. G. W. U. and what went on." (pp. 4051-52)

• • • • • • •

"Mr. Ingraham: I think that we have a right to show by this witness what the facts were up there, so that—

Trial Examiner Batten: As to violence, yes.

Mr. Ingraham: —so that there will not be any question but what this violence did occur.

Trial Examiner Batten: Then, I will say I am going to rule that it is immaterial, to this extent: I am now going to direct the order of proof to this extent, I am going to direct that we first receive the testimony of the 1,200 witnesses, if they testify to material evidence that was ordered by the court, in accordance with the order of the court remanding the case.

• • • • • • •

"I am going to direct that order of proof at this time.

• • • •

Now, I am going to spend the rest of the afternoon listening to any argument which counsel have on my ruling that we will proceed with the 1,200 witnesses, as the court stated that testimony should be received. • • • (pp. 4052-53).

"Mr. Ingraham: Before Miss Tobin is excused, and before making any offer of proof, I have just one other question.

Trial Examiner Batten: Well, she has not answered the last one, has she?

Mr. Ingraham: No. I understood you to state that you were going to have us make an offer of proof.

Trial Examiner Batten: Yes, I want an offer of proof on that, as far as this witness is concerned; not a general offer of proof, Mr. Ingraham.

Mr. Ingraham: Yes.

Q. (By Mr. Ingraham) Miss Tobin, who is the chairlady at the Marguerite Keyes shop at the present time? (p. 4054)

. . . . . .

[fol. 273] "Mr. Ingraham: May the witness answer the question I have just asked, so that we can go ahead and present any argument we have on this legal point?

Trial Examiner Batten: I prefer that you present your arguments now, Mr. Ingraham. That was my request.

Mr. Reed: I want to say first, that the order of proof in a case is in the hands of the counsel who proffer the proof. If they do it in an improper way, it is then for a court or an examiner to rule on the evidence as it is offered. But no court has the authority to tell counsel the order in which they shall introduce proof. I don't think I am mistaken about that.

So, I say we propose to exercise our right to offer our proof in the manner which seems to us is best and proper. If the Examiner sees fit to exclude it, we can only save our exception at that time.

Now, in regard to this witness, you have stated that you did not propose to make any rule or follow any rule with regard to who brought in a witness—that you might bring in a witness and you might ask them questions like you would on cross-examination—

Trial Examiner Batten: If they become adverse to you, Senator.

Mr. Reed: Yes. Now, we have the right to show the interest of this witness. That is what we are trying to show, her employment for a number of years by the pros-

ecuting force in this hearing. We have the right to show her interest and to show that by her acts. And if we had no other ground than that, we have the right to ask this question and to have it answered now, and not two weeks from now, or some other time when we may reach it.

I insist we have the right to ask this lady if she was here when those strikes occurred and to ask her if she did not take part in them, and to ask her if she did not have direction of the violence that took place, and to show her photograph here—her picture in the pictures that display the riotous conduct of these strikers. That for the purpose of showing her interest, if nothing else.

Then, this evidence is competent for another reason. Of course, it cannot be that in a strike of this kind, violence of this kind, where there were hundreds and perhaps thousands of people concerned—we could not be expected to show by every one of the witnesses that we may put on here that they saw the strike. Some of them saw parts of it. But if we offer the person that was conducting the strike, who knows all about it, and prove the fact that the strike took place and the kind of strike it was, that it was given publicity through the papers and the employees hear of it and know it—the air is full of it, the air is full of danger for them, and that is a reason why they would want to organize a union of their own, to be protected against this violence, that is clearly within the decision of the Circuit Court of Appeals.

[fol. 274] "Now, here is what they said: —Mr. Hogsett called attention to it very graphically.

'At the hearing before the Trial Examiner, the petitioners proffered the evidence of the employees of the Donnelly Company, some 1200 in number, to show how and why they formed the Donnelly Garment Workers' Union, to show that no influence was brought to bear upon them by the employer either in the formation or administration of the union, to show how and why they organized the union.'

One of the whys is that this riotous conduct was going on, these brutal abuses were being visited upon girls going to work, that the threats had been made that the same

thing would be done to the Donnelly Garment workers, so that they were intimidated into riding there in busses or riding there in streetcars, all of that forms a part of this picture.

The only question, then, is, was the violence here? Not what reasons they had for it. We do not have to go into that. But was the violence here? Was the danger here? Was the threat here? Those things we have the right to go into.

Now, here is the lady who conducted the strike. We want to ask her a few brief questions about it.

Now, if Your Honor undertakes to take this case out of the hands of the attorneys and tell us how we shall introduce our evidence and the order of it, all I can say is that we will have to do as we did before, save our exceptions." (pp. 4056-57-58-59).

* * * * * * *

"Mr. Ingraham: Won't you let us finish with the question that is asked this witness?" (p. 4060).

* * * * * * *

"Trial Examiner Batten: I think we are ready to proceed. In line with my suggestion when we adjourned I went along the matter of the order of proof in the hearing, and with respect to the procedure which we will follow.

First, I am going to receive the testimony of the employees referred to in the Circuit Court's decision, and on that basis we are ready to proceed.

Mr. Langsdale: Mr. Examiner, may I ask you what you mean by 'in accordance with the Circuit Court's decision'? In other words, do I understand you to mean that you will receive the testimony of the employees that was offered?

Trial Examiner Batten: That's right. In accordance with the offers of proof.

Mr. Langsdale: And that doesn't mean then the same employees can go over the same matters that they did go over at the hearing?

[fol. 275] "Trial Examiner Batten: Well, I don't intend to cover all the matters covered in the prior hearing, Mr. Langsdale. I intend to accept first the testimony of the employees referred to in the Circuit Court's decision in the offers of proof which I rejected. Now, that doesn't mean I am limiting the hearing to that. (p. 4077.)

* * * * * *

"Mr. Reed: I confess I am not sure that I comprehend the ruling. Your Honor states that you will receive testimony of the employees on the matters that were referred to in the offers of proof. Do we understand that is all the testimony you are going to permit?

Trial Examiner Batten: No, I think I stated that is the testimony which I intend to receive first, Senator. In other words, I believe the Circuit Court, in that one matter at least, was specific, and they said I should receive the testimony of the 1200 employees in accordance with the offers of proof. Now, that much of the decision is definite, and I think in line with the Court's decision, that is the testimony which I should receive first, and accordingly I am directing that order of proof." (p. 4078)

* * * * * *

"Mr. Reed: We are in the middle of the examination of Wave Tobin. We insist respectfully that we are entitled to proceed with that witness, and I call attention to the Examiner's ruling, which, as I understand it, is that he proposes now to regulate the order of proof, and to direct the Respondent how they shall put in their case. That, we think, deprives us of our right under the law, and that is bad practice in any event." (pp. 4078-79).

* * * * * *

"Mr. Reed: * * * Now, we insist and we propose, on our part—of course, we cannot do it if the Examiner refuses—to go on with the examination of Miss Tobin, and when we ask questions that are outside the issues of this case, the proper objections can be made, but we are not required to tell counsel what we intend to prove by this witness.

Trial Examiner Batten: I think I stated the last day we met, Senator, that I did not intend to require it, as far as Miss Tobin was concerned.

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OCTOBER TERM, 1946

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vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

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No. 12,641

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vs.

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DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 12,641.

United States Circuit Court of Appeals

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DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

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INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

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We are ready to proceed in accordance with my ruling. We will proceed with the employees, in line with the offers of proof which were made and in line with the circuit court's opinion.

Mr. Ingraham: Respondent excepts to your ruling. We will have to get the employees up here.

. . . . . .

Mr. Ingraham: I would like to call Wave Tobin to the stand.

Trial Examiner Batten: I think I ruled on that this morning, Mr. Ingraham." (pp. 4087-88-89).

. . . . . .

[fol. 276] "Mr. Ingraham: Do I understand the ruling this morning is limiting the testimony to the testimony of Donnelly employees?

Trial Examiner Batten: I don't think that was the ruling Mr. Ingraham. You may read the record in the morning. I said I would receive first the testimony of the employees referred to by the circuit court in the offers of proof which I rejected.

Mr. Ingraham: Now, we have made other offers of proof besides the offers of proof of the employees. There are other offers of proof that were made at the last hearing besides those made on behalf of the employees.

Trial Examiner Batten: Yes, I think that is right.

Mr. Ingraham: Now, are we to be limited to the evidence that is covered in the offers of proof of employees?

Trial Examiner Batten: You are to be limited now to the 1,200 employees referred to by the court—why and how—the offers of proof made on behalf of those 1,200 employees. That is the matter which I will hear first." (pp. 4089-90).

. . . . . .

"Mr. Ingraham: I want to call the Examiner's attention to the last paragraph in respondent's last answer. It is Board's exhibit No. 1-LLLL.

Mr. Langsdale: What exhibit is that?

Mr. Ingraham: Board's exhibit No. 1-LLLL. Page 3441 of the record.

'Respondent further states'—I am reading from the answer—'that during all of the times mentioned in paragraph 11 of the Board's complaint the International Union, its officers, agents, and members were engaged in the said and lawful conspiracy against respondent set forth in section (B) of this answer and the matters set forth in said section (B) of this answer are by reference made a part specifically of respondent's answer to paragraph 11 as though set out in hæc verbae.'

Now, section (B) of respondent's answer was stricken out. Paragraph 11 of the Board's complaint remained in the complaint, and our answer to is remained in our answer; it wasn't stricken out.

Now, respondent offered to prove those facts which are in paragraph 11 by the following witnesses: Nell Quinlan Reed, Elizabeth Reeves, R. J. Ingraham, John Bachofer, Marguerite Keyes, Inez Warren, Pauline Shartzer, Mary Sprofera, Nelly Stites, Ruby Rickett, Lyle Jeter, Raymond Smith, Effie Hall, Geoge Couten, Flora Ruden, W. D. Rosenfield, Gordon I. Gordon, Velma Dowdy, Meyer Perlstein, David Dubinsky, Wave Tobin, Sylvia Hully and Ellen Pry.

[fol. 277] "That offer was rejected.

We offered to prove the allegations contained in subdivision B of our answer and those are— I will not take the time to read subdivision B.

Trial Examiner Batten: You mean subdivision B of your answer?

Mr. Ingraham: Yes. Now, in order to proceed we feel that Wave Tobin's testimony is essential and that under the offers of proof we have a right at this time to examine her." (pp. 4090-91-92).

* * * * * *

"Mr. Reed: I want to call attention to this situation which has arisen:

We are contending that Wave Tobin continue on the witness stand and that her testimony should be heard before other testimony is called for. That is the situation.

Now, the Examiner rules that he will not rule at this time and directs us to go forward with other witnesses; he is going to reserve his decision. If the decision is not made at this time, then the effect of it will be that we will go on and hear these other witnesses and we don't have a ruling. I think we are entitled to a ruling now, so that we will know how to proceed.

Trial Examiner Batten: Senator, I ruled this morning that I was first going to hear the 1,200 witnesses which the court referred to and which offers of proof I rejected, and I have not changed that ruling.

Mr. Reed: You have not changed that ruling, but we have now filed a paper here and we ask a ruling on it, and you say you will reserve that ruling. Of course, if you make the ruling after the damage, as we think, is done, that will do us no good if you then decide it in our favor.

Now, I don't think I will be able to change your mind, but I want to make this observation, that in the orderly procedure in courts of justice—and I have been there a good many years—and as said by the Court of Appeals here in its quotation from another eminent authority, it is the right of a litigant, through its counsel, to put its evidence in the order it sees fit, and the only question is whether the evidence is competent. The order of proof rests with the person proffering the proof.

Now, this proceeding that we are now talking about I have never seen in any court, at any time, where a judge undertook to say in what order you shall put on your testimony.

We offer it, and if it is incompetent, of course you can rule it out, but you cannot tell us, under any rule of law that I ever heard of, the order in which we shall proceed with our defense in this case." (pp. 4095-96).

[fol. 278] This exception is made for all the reasons and grounds given at pages 4049-4096 and 4315-16 of the record

and for the further reasons that said rulings were and are arbitrary and unnecessary to orderly procedure and constitute an abuse of any discretion vested in the Trial Examiner with reference thereto are contrary to law, and deprived respondent of a fair trial and of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

79-a.

Respondent excepts to the rulings, action and comments of the Trial Examiner appearing in the Transcript of the Record at pp. 4049-4073 inclusive, and to the statements and comments of the counsel for the Board and ILGWU therein appearing and to the refusal of the Trial Examiner to permit counsel for Respondent to continue with the examination of Wave Tobin, the witness then on the stand, and to his refusal to permit Respondent to proceed with the offering of its evidence in the order desired by Respondent and to the refusal of the Trial Examiner to permit said witness to answer the question appearing at the bottom of page 4048 and top of page 4049, as follows:

"Q. Now, Miss Tobin, there has been reference in this case to strikes at 26th and Grand, in the spring of 1937. Were you in charge of the strikers in the Missouri Garment Company plants?"

and in refusing to permit Respondent to proceed to elicit testimony from said witness concerning said matters and other pertinent matters herein, and excepts to the Trial Examiner's requirement that Respondent submit an offer of proof as to what Respondent would prove by said witness' testimony for each and all the reasons stated by counsel for Respondent at pages 4051-52 and 4056-4060 of the Record, and Respondent further excepts to the refusal of the Trial Examiner (as shown by the Record at pages [fol. 279] 4056-4060) to permit the witness Wave Tobin to answer the question asked by the Respondent at page 4054 of the record, to-wit:

"Q. (By Mr. Ingraham) Miss Tobin, who is the chairlady at the Marguerite Keyes shop at the present time?"

and excepts to the ruling of the Trial Examiner in refusing to permit Respondent to recall said witness Wave Tobin to the stand for such purpose or for any purpose as shown by the Record at pages 4088-92; and in refusing to permit Respondent to examine the witness Wave Tobin with reference to the matters set forth in section B of Respondent's answer, and with reference to the matters contained in or referred to in Respondent's offer of proof (Board's exhibit 1-SSSSS) as shown by the Record at pages 4090-4092.

In connection with this exception Respondent calls attention to and makes a part hereof all the quotations from the Record set forth in Respondent's preceding exception No. 79.

This exception is made and based upon all the reasons and grounds set forth or referred to in said foregoing exception No. 79, and upon the further ground that said ruling and action have denied to Respondent a fair trial herein and deprived it of due process of law under the Fifth Amendment of the Constitution of the United States.

[fol. 280] 80.

The respondent excepts to the refusal of the Trial Examiner and the Board to grant a secret election among the employees to determine their choice of a bargaining agency as set forth in the transcript of the record at pages 4157-58 as will appear from the following excerpts therefrom, to-wit:

"Mr. Reed: I just want to ask—I tried to ask it before Mr. Tyler reached the floor—now, if you will give us a secret election, since you say these people are afraid to testify in the presence of their employers or their associates, will you now give us a secret election? And I challenge the Board to that.

"Miss Weyand: I would like to state the Board's position with reference to a secret election for the record.

"The Board's position has consistently been, and was upheld by the Courts in this regard, that a secret election cannot be fairly conducted if any employer's unfair labor practices have not been corrected or dissipated.

"Mr. Reed: Well, you assume there are unfair labor practices, therefore you assume you can't have an election; therefore you get an election if the Board wants it and not as a matter of right, and the Board's position is, 'We have prejudged you, you are guilty of unfair labor practices, and therefore we won't give you a chance to have an election or give the employees a chance to have an election to determine what their wishes are.'

"That is the fine logic we have in this case, and it runs throughout it."

81.

Respondent excepts to the rulings, action and comments of the trial examiner as set forth in the transcript of the record at pages 4196-97 as shown from the following excerpts therefrom, to-wit:

"Q. Were you given any instructions, oral or written, or any rules of conduct, which stated what your duties as an operator were between January, 1936 and July, 1937?

"Mr. Ingraham: I would like to ask Miss Weyand under what offers of proof this line of questioning comes.

[fol. 281]. "Miss Weyand: I do not believe that on cross-examination I am restricted to any offers of proof. I think as I develop my questioning the point at which I am aiming will be clear. I think it is proper cross, under the questions that were allowed over my objections to be put to this witness, and, therefore, even though I objected to the questions as to what the instructors' duties were, I can certainly cross-examine as to that matter.

"Trial Examiner Batten: If course, Miss Weyand, I don't believe I could agree with you that you are not restricted to offers of proof on cross-examination. I think, generally speaking, you are, assuming—

"Miss Weyand: I do not mean—

"Trial Examiner Batten: Just a moment. —assuming I am able to confine the direct examination to the offers of proof, which I will attempt to do.

"Now, as to your second point, I don't know your purpose, but I think I permitted some questions of this witness as to supervisory employees, instructors, and so

forth, and following that examination on direct, I think you are within the direct examination, so you may proceed.

"Mr. Ingraham: Well, we object to this line of questioning as outside the scope of the ruling of the court.

"Trial Examiner Batten: I will overrule the objection".

82.

Respondent excepts to the ruling, action and comments of the Trial Examiner appearing on pages 4227-28 of the transcript of the record as shown by the following excerpts therefrom, to-wit:

"Q. Did you ever hear that either Sylvia Hull or Fern Sigler left their work as a result of certain demonstrations? A. I heard something about it.

Q. What did you hear?

Mr. Ingraham: Would you read the question, please?

Miss Weyand: Will you read the last question, please?

Trial Examiner Batten: Will you please read the last question?

(Last question was read by the reporter.)

Mr. Reed: The answer was what?

(Last answer was read by the reporter.)

[fol. 282] "Mr. Reed: We object to that as calling for pure hearsay evidence.

A. I can't recall—

"Trial Examiner Batten: (Interrupting) Just a moment, Mrs. Cooper, I don't believe at this point of the proceeding I would exclude hearsay, hardly.

"Mr. Reed: Well, we object to it.

"Trial Examiner Batten: I'll overrule the objection."

83.

Respondent excepts to the ruling, action and comment of the trial examiner appearing on pages 4256-57 as shown by the following excerpts therefrom, to-wit:

"Q. (By Mr. Langsdale) Would it have made any difference in your mental attitude toward the ILGWU had you believed Mr. Reed was telling the truth when he said that Mr. Dubinsky was a Communist and a Bolshevist?

"Mr. Reed: That is a purely hypothetical question, and the hypothesis is a mere assumption, 'Would it make any difference to you if something else had happened?'

"Trial Examiner Batten: Do you understand the question, Mrs. Cooper?

"A. I think he wants to know if I had heard that he was a Communist, if it made any difference in my opinion of the union.

"Mr. Langsdale: Yes.

"Trial Examiner Batten: Well, the question is, if you had believed Senator Reed's statement, would it make any difference?

"A. I was going mostly by their actions here in the city.

"Q. (By Mr. Langsdale) Now, Mrs. Cooper, that isn't the question.

"Mr. Langsdale: Will you read the question?

Trial Examiner Batten: Will you please read the question?

(Last question read by the reporter.)

"Mr. Reed: I object to that as incompetent and immaterial and entirely outside the issues in this case.

"Q. (By Trial Examiner Batten) Do you understand it?

"A. I think I do.

"Q. Well, if you do, you may answer it."

[fol. 283] 84.

Respondent excepts to the rulings, action and comments of the trial examiner as shown in the following excerpts from the transcript of the record on page 4263, to-wit:

"Q. (By Mr. Langsdale:) Did you get from this article any belief that Mr. Dubinsky was a Communist and a Bolshevist?

"Mr. Reed: Well, we object to that as immaterial and incompetent.

"Trial Examiner Batten: You may answer.

"Mr. Reed: I want to get my objection into the record, that is all.

"Trial Examiner Batten: Yes, I will overrule it, Senator."

85.

Respondent excepts to the rulings and action of the Trial Examiner throughout the hearing in permitting counsel for the Board and for the I. L. G. W. U. to adduce incompetent, irrelevant and immaterial testimony on the pretext that the same was for the purpose of credibility or that the questions asked were preliminary questions, whereby said improper and incompetent evidence was gotten into the record and contributed to the erroneous findings and conclusions of the Trial Examiner; that such was the purpose of the Board and its counsel is shown by the following excerpts from the transcript of the record at pages 4335, 4336, to-wit:

"Miss Weyand: I should say that if my cross-examination had brought out a connection of the company with the incident, the Board would be entitled to rely on it in its decision. * * *

"Miss Weyand: My purpose was directed at credibility, but I don't believe that when I direct a question at credibility which is a proper question to direct at credibility I am to be barred from taking the answer and saying I wish to use it for something else if the answer developed into a statement of a connection of the company with the incident."

[fol. 284] 86.

Respondent excepts to the rulings, action and comments of the Trial Examiner appearing in the following

excerpts from the transcript of the record at pages 4314 to 4316 inclusive, to-wit:

"Q. Do you recall at that time what the International was—What charges they were making about the working conditions at the Donnelly plant?

"A. I think I do.

"Trial Examiner Batten: Mr. Ingraham, is that in the offer of proof, the N. R. A. hearing?

"Mr. Ingraham. No. But the Examiner and the Labor Board laid great stress on the events that occurred prior to the effective date—

"Trial Examiner Batten: I do not intend to go into that on these offers of proof.

"Mr. Ingraham: Well, I will have to except to Your Honor's ruling.

"Trial Examiner Batten: You may do so.

"Mr. Ingraham: That is all.

"Trial Examiner Batten: I think I stated pretty clearly, Mr. Ingraham, on these employees, I want to confine it first to these offers of proof. That is the thing that the circuit court clearly indicated I should have taken. Now, I am not making a ruling, as I said before, at this time that I will not take anything else, but I am going to take first the things the circuit court clearly indicated I should have received, and that is my reason for it.

"Mr. Ingraham: At this time do you want me to make an offer of proof on these matters that I was going into?

"Trial Examiner Batten: Of course, I don't know that it is necessary to make an offer of proof. If you want to, you can. I haven't excluded it.

"Mr. Ingraham: You have not excluded that testimony?

"Trial Examiner Batten: No.

"Mr. Reed: Now, then, are we to try this case if—

"Trial Examiner Batten: Well, Senator, you are going to proceed, I hope, as I indicated yesterday, and I thought

everybody understood, and take first the employees, in accordance with the offer of proof, which the court said I should have accepted.

"Now, that is the plan we are going to follow.

[fol. 285] "Mr. Reed: I seem to be unfortunate. Every time I try to make a statement you interrupt me. I would like to make a statement for the record.

"How are we to try this case if the Examiner undertakes to direct us as to what testimony we shall offer first and not tell us what other testimony will be received, but withholds his decision until we have put our witnesses upon the stand and examined them, within the limitations that he has fixed; then, after that is all done, he may open up the case and try many other things.

"Now, I simply protest that that method is unfair and I except to the ruling of the Examiner.

"Trial Examiner Batten: I understand, Senator, you excepted to it yesterday. You stated, however, that if I intended to pursue that policy, you would comply with it.

"Mr. Reed: We are forced to comply with it. I didn't state I would voluntarily comply with it.

87.

Respondent excepts to the rulings, action and comments of the Trial Examiner, appearing at page 4350 of the transcript of the record, that "whether or not the employer exerted any pressure to exclude these people from the plant I don't think is material under these offers", and in refusing to permit respondent to adduce such evidence.

88.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from transcript of the record at pages 4353, 4354, 4355, 4356, to-wit:

"Q. Did Mrs. Hyde say anything to you?
"A. She did.
"Q. What did she say?

"A. She asked me to please go back to my machine.

"Q. And what did you do?

"A. Well, I still wanted to go down and see who the other girl was. I didn't know the other girl. But she asked me repeatedly to go back to my machine and go to work, and I went.

"Trial Examiner Batten: Now, you see, Mr. Lane, what this leads into. You are leading into trying out the whole issue. * * *

[fol. 286] "Trial Examiner Batten: The question here is how and why the Donnelly Garment Workers' Union was organized under the offers of proof.

"Mr. Lane: It is more than that. * * *

"Mr. Lane: Now, Your Honor makes repeated reference to the offers of proof and the Board's offers of proof. I find nothing in the opinion which confines the Intervener or the Donnelly Garment Workers' Union or the Respondent to specific offers of proof. The opinion says the evidence of the employees was to be taken, whether they were dominated or coerced.

"Trial Examiner Batten: Of course, Mr. Lane, I am referring to my ruling that we are first going to take the testimony of the employees, in line with the offers of proof. Of course, if you concede this is in accordance with the offers of proof, it is not in accordance with my ruling. * * *

"Mr. Reed: The difficulty is we are trying to do the impossible, we are trying to separate evidence which bears upon the whole case and limit it to bear upon one feature of the case, and that feature of the case is an essential part of the case itself; so that our difficulty arises from that attempt to first try one particular question.

"Now, you can't try that question, you can't try the very question here, without introducing evidence as to what took place. This lady saw it, and everything that took place there was dragged into this case by both sides before.

"Now, this witness is asked how she felt, what her state of mind was; she saw this difficulty. What took place at

that time would affect her mind, and what took place at that time would do something else; it would be a factor in arriving at any other conclusion whether the company was guilty of unfair labor practice by not going in and protecting these people.

"Trial Examiner Batten: Well, of course, Senator, that is not because of the order of proof, and it is not because of the issues in the case. The difficulties that we are running into is that we are trying to explore the minds of people.

"Mr. Reed: Yes.

"Trial Examiner Batten: Now, I don't care whether it is a Labor Board hearing or what kind of a lawsuit it is, when you attempt to do as we are doing here, explore people's mental reactions and their opinions—

"Mr. Reed: That is shown by what they do, isn't it?

"Trial Examiner Batten: But you get into serious difficulty. I feel that is what the Circuit Court wanted done; within the limits of our ability, I am going to comply with the Circuit Court's decision. I have made my ruling we are going to proceed in that manner. If I am wrong, Senator, we probably will be back here again.

[fol. 287] "Mr. Reed: I think we will.

"Trial Examiner Batten: Well, I hope I live to be here; I have enjoyed it very much thus far, but I made the ruling, and that is the ruling which we are going to follow."

89.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 4358 to 4360 inclusive, to-wit:

"Mr. Lane: Well, the Board has taken the position, apparently—

"Trial Examiner Batten: (Interrupting) The Board hasn't taken any position. The Board has set aside its decision and order, there is no decision and order in ex-

istence, so that can't be used as stating what the Board's decision is.

"Mr. Reed: Well, is there a record in existence that is a part of this hearing?

"Trial Examiner Batten: Well, I would assume so, Senator. At least we started with page 3000 and something, so I assume something precedes it.

"Mr. Reed: Well, the record is here, whether the Board did or didn't make a finding—we know it did make a finding. We know this point adverse to us was in the minds of the Court, and this case has been sent back here, and the Board is ordered to set aside its judgment and decision, and we are here now, prepared to try the issues in this case.

"Trial Examiner Batten: That is the very point I am glad you mentioned, Senator. I have felt that way for some time, that the position of the Respondent is that on every point I passed, the Board made an adverse finding in its prior decision and order; that means the Respondent can now come in here in a further hearing for a specific hearing, and attempt to disprove all the adverse findings brought.

"Mr. Reed: And that, not because of the adverse finding, but because we are entitled to put in this evidence, and the adverse findings simply go to this fact, that it is apparent that the Board has in its mind the importance of this question, and that their opinion was that we were guilty under this particular phase of the charge. Now, we come back to try it. We have the old record here and we have the right to meet every contention that is made. That contention is made by the Board today, although it set aside its findings, and the record is there, and it is here now, undertaking to say that on that record made, which is now, as I understand, a part of this hearing, certain deductions we have drawn, and it drew them. Now, we come in and want to show the facts in this case; and to shut us off from that—

[fol. 288] "Trial Examiner Batten (Interrupting): Of course, Senator, I can't agree with you that you are coming in here to show the facts; you are coming in here to

show the facts on the basis of the remand of the Circuit Court.

"Mr. Reed: I understand that, and you and I differ on that radically, on what the remand is, and we object to the ruling that has been made, to the effect that we are confined here to our offers of proof, and then we make the further point that our offers of proof are broad enough to cover every contention that we have thus far made in this case; and that we have the right now, under our offers of proof, to meet every issue in this case; and we object and except to any rulings to the contrary.

"Trial Examiner Batten: Well, of course, I think the record is pretty clear, Senator, that you have excepted to all of these rulings."

90.

Respondent excepts to the ruling, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record at page 4365, to-wit:

"Q. (By Mr. Lane) Will you state, Mrs. Saucke, what was said by anybody in the section?

"Trial Examiner Batten: Well, I'll object to that question and sustain my own objection. If this questioning indicates this witness can't identify what anybody said—I mean the names of anybody—then I would say the proper foundation is laid for your last question."

91.

Respondent excepts to the ruling and action of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 4381, 4382, to-wit:

"Q. Who did you deal with in arranging that picnic?

"Mr. Reed: Now, if Your Honor please, isn't this utterly immaterial to this case? I submit that it is. It is a useless consumption of time.

"Trial Examiner Batten: You may tell us. Who did you deal with?"

92.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record at page 4393, to-wit:

[fol. 289] "Q. Do you remember what the vote was against you?

"A. No.

"Q. How was the vote conducted?

"Mr. Reed: If Your Honor please, isn't this testimony an utter waste of time.

"Trial Examiner Batten: Well, I don't know, Senator.

"Mr. Reed: Well, I am objecting to this line of questioning as incompetent and immaterial.

"Trial Examiner Batten: I'll overrule the objections. I think it has to do with the Donnelly Garment Workers' Union, Senator, clearly."

93.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 4399, 4400, 4405-4406, 4410, 4411-4412, to-wit:

"Q. Did you know whether she would be a good person to represent you in the Donnelly Garment Workers' Union?

"Mr. Reed: Well, I object to that as utterly immaterial.

"Trial Examiner Batten: Well, she can answer.

Mr. Reed: An opinion of the witness as to whether some other lady, whom she says she hardly knew, would be a good person to represent her or not—

"Trial Examiner Batten: She may answer.

"Mr. Reed: Well, I want to put my objection in. It is immaterial, outside of the issues in this case, and a useless consumption of time.

"A. Well, what little I have seen of her, I imagine she would be very capable.

"Q. (By Miss Weyand): Did you know her well enough to form an opinion?

"A. I think I did.

"Q. And had you formed an opinion?

"Mr. Reed: I make the same objection.

"Trial Examiner Batten: Overruled. * * * *

[fol. 290] "Q. What discussions did you hear her participate in?

"A. I couldn't say.

"Mr. Reed: May my previous objection stand to any of this line of questioning?

"Trial Examiner Batten: Yes, you may have a continuing objection. * * *

"Q. Do you know what her opinion in regard to labor matters is?

"Mr. Reed: I object to that as calling for the information of somebody else, incompetent and immaterial.

"Trial Examiner Batten: Well, you have already answered it, haven't you?

"A. No, I haven't.

"Trial Examiner Batten: Well, you may answer.

"Mr. Ingraham: Respondent further objects, that the question is general.

"Trial Examiner Batten: You may answer. * * *

"Did you ever hear him make any statement about labor matters?

"A. I don't remember.

"Mr. Reed: I wish to call to the attention of the Court that that question is unfair as it simply refers to labor matters. Now, there are a thousand—ten thousand different things that concern labor matters. The question

does not mean anything in the form that it is put, and the witness might have to answer on matters entirely outside of this issue on labor matters. I got opinions on labor matters; most everybody has; and how many different opinions, and how many different kinds of questions is all open, it is all embraced in this one question on labor matters.

"I object to it as an improper form of examination.

"Trial Examiner Batten: We will recess until 20 minutes of 4. * * *

"Q. Did you know his character sufficiently to know whether he would make a good representative for the employees?

"Mr. Reed: Now, I object to that as utterly incompetent and immaterial, did she know this man's character sufficiently to know whether he would make a good representative for the employees. Now can that throw any light on this case? How can she be required to pass an opinion upon the qualifications of some man who is not even here in court?

"Trial Examiner Batten: Well, you may tell us whether you knew him well enough to have him represent you.

[fol. 291] 94.

Respondent excepts to the rulings and action of the Trial Examiner as set forth in the following excerpts from the transcript of the record at page 4421, to-wit:

"Q. (By Miss Weyand): And did you participate in the nomination of Mildred Mattox?

"A. Yes, I did.

"Mr. Lane: If the examiner please, the Intervener Donnelly Garment Workers' Union objects to that question; whether this witness, Mrs. Saucke, participated in the nomination of Mildred Mattox in April 1938, as a member of a nominating committee, whether this witness acted wisely or unwisely in so participating, or whether this witness was casually or intimately acquainted with Mildred Mattox doesn't throw any light whatever on the issues of

this proceeding, it is entirely irrelevant and immaterial, doesn't even approach the issue we are here to try out, and I object to it for that reason.

"Trial Examiner Batten: We will proceed.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: Overruled.

95.

Respondent excepts to the failure and refusal of the Trial Examiner to rule upon and sustain the objection made at page 4426 of the record, as shown by the following excerpts therefrom, to-wit:

"Miss Weyand: She said she didn't know who Stella Willis was and I just wanted the record to show how completely ignorant she was on what goes on there at the Donnelly Garment Company.

"Mr. Lane: I object to the comment and move that it be stricken."

96.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 4454, 4455, 4456, to-wit:

[fol. 292] "Q. Do you know anything about the way it happened at this election?

"A. What year?

"Q. 1938, that the two tickets brought in each had Rose Todd for president on each ticket, Jack McConaughey for treasurer on each ticket, and Margaret Green for secretary on each ticket.

"Mr. Reed: I object to that as immaterial; whether the witness noticed it or didn't notice it, is purely immaterial in this case.

"Miss Weyand: She was a candidate on one of the tickets for vice-president, and I think she would be a good person to explain.

"Mr. Ingraham: I didn't know there was a vice-presidential candidate.

"Trial Examiner Batten: Do you know anything about it?

"A. I had nothing to do in making up those tickets, didn't know who was on those tickets until they were placed on the board in front of me.

"Q. (By Miss Weyand): And you didn't later learn how that happened?

"A. I didn't even inquire.

"Q. You don't to this day know how that happened?

"A. You mean how those names—

"Mr. Reed: (Interrupting): She has already said she was not present, that she didn't know how the [list] were made up. Now she is asked if she didn't know how that happened; I object to it.

"Miss Weyand: She indicated at that time—

"Trial Examiner Batten: The question is whether she ever found out it occurred.

"Mr. Reed: Then it would be hearsay.

"Mr. Langsdale: That is not a question from the testimony in this case.

"Trial Examiner Batten: Did you ever find out, Mrs. Saucke?

"A. I never tried to find out.

"Q. (By Trial Examiner Batten): Then, you didn't find out?

"A. I didn't ask.

"Q. Then, if you didn't ask, you didn't find out, did you?

"A. No, I guess I didn't.

[fol. 293] For the reason that the testimony elicited there and on similar matters shown in the succeeding pages of the record is wholly immaterial and irrelevant to the issues and does not tend to prove any of the charges in the complaint and obscures the real issues and contributed to

the erroneous findings and conclusions of the Trial Examiner, and because said interposition of the Trial Examiner shows his partisanship and bias against respondent.

97.

Respondent excepts to the constant interposition of the Trial Examiner in the conduct of examinations by counsel and to his refusal to rule on respondent's objections and let counsel proceed to try the case in their own way, and to his rulings, action and comments, as same appear on pages 4483 to 4487 of the transcript of the record, said instance of such interposition by the Trial Examiner being but one of the hundreds throughout the record, to all of which respondent excepts.

98.

Respondent excepts to the rulings, action and comment of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 4511, 4512, to-wit:

"Q. Now then, would you have done the things you did on April 23, 1937, at Sylvia Hull's machine if you had known she was going there to represent only members of the I. L. G. W. U.?

"Mr. Reed: I object to that as incompetent and immaterial and asking the witness to testify to what she might have done under a state of facts which is not shown to have existed and which the witness did not have in mind, as shown by her own testimony.

"Trial Examiner Batten: Will you read the question, please?

"(Thereupon the last question was read by the reporter.)

"Trial Examiner Patten: You may answer.

"A. I certainly would, because the article also states they were going to call a strike.

"Q. That they were going to get permission—

"A. —to call a strike.

"Q. At any rate, you would have done and said exactly the same things you did say and do on April 23

at her machine or near her machine had you known she was going there to represent only employees of the Donnelly Garment Company that belonged to the I. L. G. W. U.?

"Mr. Reed: I renew my objection last made.

"Trial Examiner Batten: The objection is overruled.

"You may answer."

[fol. 204] 99.

Respondent excepts to the rulings, action and comment of the Trial Examiner in ruling and requiring that the witness on the stand, Mrs. Warth, give the name of a friend who she stated had had her clothes torn in the I. L. G. W. U. strikes, and in striking out the testimony of said witness with reference thereto because of her refusal to state the name of said friend, which said rulings, comments and actions appear at pages 4565 to 4575 of the record, and particularly in the following excerpts therefrom at pages 4573, 4574, 4575, to-wit:

"Trial Examiner Batten: If it is for the purpose of credibility, I will ask the witness to disclose the name.

"Mr. Reed: Do the counsel on the other side now say that they are going to test this lady's credibility by bringing in the witness, and do they vouch for the fact that that witness will contradict this witness?

"Trial Examiner Batten: That is not what I asked them. I asked Miss Weyand if it was a matter of credibility, and she said it was. I asked her, entirely so? And she said yes. Upon her statement, the witness may disclose the name of the person. * * *

"Mr. Reed: Are we, then, to understand that this question is to be asked, although limited to impeachment purposes, and that we can follow and show that this young lady, if she would come in and deny this, the fact back of it, or show, if she didn't deny it, that she spoke the truth?

"Trial Examiner Batten: I am making no ruling of any kind, senator, except to this witness, that she may disclose the name of the person.

"Mr. Reed: That's the trouble.

"Trial Examiner Batten: That isn't the trouble. If you believe you have the right to present such testimony, Senator, you present it, and at the time it is presented I will rule upon it.

"Mr. Reed: I am going to say to the witness that she has the right to withhold this name, if she wants to.

"The Witness: I think I will stand on that right, then.

"Trial Examiner Batten: All right. You may do so, and I shall strike your testimony with respect to this incident which was given on direct examination—

"Mr. Lane: Intervener excepts to the ruling of the Examiner.

"Trial Examiner Batten: —in accordance with the Board's rules.

"Mr. Reed: And we also except to the ruling."

[fol. 295] 100.

Respondent excepts to the ruling of the Trial Examiner refusing to permit Respondent to recall witness Wave Tobin to the stand and to continue its examination of her as shown by the following excerpts from the transcript of the Record at page 4692, to-wit:

"Trial Examiner Batten: Mr. Ingraham?

Mr. Ingraham: I would like the record to show that Wave Tobin is present in court and has been present at every session since she was on the stand, and respondent again asks the right to continue its examination of her.

Trial Examiner Batten: Has Mrs. Reed been in court since we started up again, Mr. Ingraham?

Mr. Ingraham: No, she has not.

Trial Examiner Batten: Well, I think I can verify the fact for you that, as far as I recall, Miss Tobin has been here every day.

We will proceed.

Mr. Ingraham: And my request to be permitted to continue my examination of her will be denied?

Trial Examiner Batten: We will proceed in line with the ruling which I have previously made, Mr. Ingraham."

101.

Respondent excepts to the rulings of the Trial Examiner limiting the Respondent's examination of its witnesses strictly to the Examiner's conception of what is covered by the offer of proof and refusing to permit witnesses while on the stand to testify as to other material and pertinent phases of the case as set forth in the following rulings and comments of the Trial Examiner appearing in the transcript of the Record at pages 4755-56, to-wit:

"Mr. Reed: Will you pardon me at that point?

We are now running into the vice, I think, of— I don't say that disrespectfully of the ruling. You say at the present time we are going to hear only from the witnesses who were named and that you are going to confine the issues to the one question of offers of proof.

[fol. 296] "Trial Examiner Batten: That is right.

Mr. Reed: But hereafter you will leave it open.

Trial Examiner Batten: I am not ruling upon that matter.

Mr. Reed: So, when we undertake to present our case we are handicapped by a ruling which limits our right to put in evidence on only one phase of the case, when the same witness that we have here could testify as to the other phases, if you hereafter admit them.

Now, we ought to know what is coming into this case, Mr. Examiner. We ought to know now.

Trial Examiner Batten: Senator, I would like to know, myself. If I knew, I could make a ruling, but I don't know, so I can't rule.

Mr. Reed: So we all proceed in the dark.

Trial Examiner Batten: We certainly do.

Mr. Reed: Very well, then. I object to that procedure.

Trial Examiner Batten: Except in accordance with the ruling I have made that we are first going to take the testi-

mony which I rejected in the offers of proof. That is the order of proof and we are going to follow that."

102.

Respondent excepts to the ruling and action of the Trial Examiner in limiting Respondent's evidence to matters occurring within six months prior to March 18th, 1937, to-wit, from November, 1936 on, and in ruling that things prior to that date are not covered by the offers of proof and should not be received in evidence under the Examiner's ruling directing the order of proof, as set forth in the ruling and comments of the Trial Examiner appearing at pages 4763-64 of the transcript of the Record as follows, to-wit:

"Trial Examiner Batten: I think we are ready to proceed, and I think the offers of proof contemplate the period in or about March 18, 1937, and as to any strikes or matters of that kind which occurred during that period, and I think it is reasonable to go back to—I think the offers contemplated at least a period, I would say, from November on, and any things prior to that I will now rule aren't covered by the offers of proof, and therefore shouldn't be presented at this time, in line with my ruling directing the order of proof."

[fol. 297] for the reasons among others that said ruling was and is unfair and prejudicial to Respondent and demonstrates the Trial Examiner's bias against Respondent and denies to Respondent a fair trial and the opportunity to get evidence admitted on behalf of the Board and ILGWU and constitutes the taking of Respondent's liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

103.

Respondent excepts to the rulings, action and comments of the Trial Examiner in the following excerpts from the transcript of the record at pages 4795-96-97-98, to-wit:

"Miss Weyand: I am going to hand the witness Board's Exhibit No. 2 and ask her to direct her attention to the second page thereof, which appears in the Circuit Court of

Appeals record at page 4362, and ask her to read an article there appearing, entitled 'Nine Hundred Join Loyalty League.' The article runs over to page 4363 of the Circuit Court of Appeals record.

Mr. Reed: What is that?

Miss Weyand: The article appears in the N. D. A. A. (being Nelly Don Athletic Association) News for February 1935.

Mr. Ingraham: We object to the witness being examined about what appeared in the Nelly Don Athletic Association News. There is no showing that the company had anything to do with the publication or is in any way responsible for anything that appeared in it.

Trial Examiner Batten: Of course, there isn't any question pending yet, Mr. Ingraham.

Mr. Lane: Mr. Examiner, wasn't it your ruling this morning that you were going to confine the examination at this point to matters occurring within a reasonable time prior to April 27, 1937?

Trial Examiner Batten: I say, there isn't any question pending yet to rule upon.

Mr. Lane: She is directing attention to what occurred in 1935.

Mr. Reed: I think if the Examiner will search his recollection, he will remember he refused to let Mr. Lane show the witness an article which lay outside of these limits, or examine about it.

(Thereupon the above-specified article was read by the witness.)

* * * * *

[fol. 298] "Q. (By Miss Weyand): Did you read that article when it appeared?

Mr. Ingraham: I object to that question as immaterial to any issue in this case.

Trial Examiner Batten: Overruled.

Mr. Lane: Intervener makes the same objection.

Trial Examiner Batten: Overruled.

A. I don't remember whether I read that or not.

Q. (By Miss Weyand): Have you ever read this article before?

A. I don't believe that I read it.

Q. Did you attend the meeting here described as a meeting at which 900 persons were present and cards were passed out for membership in the Loyalty League?

Mr. Ingraham: Now, I object to that question. It is outside the scope of the offers of proof, and the witness has stated that she did not read the article.

Mr. Reed: Outside of the scope of the ruling this morning made.

Trial Examiner Batten: Did you state, Miss Barnes, that you did not read this article?

A. I don't remember reading it in that pamphlet, no.

Trial Examiner Batten: Of course, the question now is did she attend the meeting of 900 people, is that right?

Miss Weyand: That is correct.

Trial Examiner Batten: You may answer.

Mr. Lane: I would like to have a continuing objection to showing the witness any article excluded by your ruling this morning. This witness was questioned about something that happened in 1935 and 1936, and the Board has gone back to 1935, and I want to object.

Trial Examiner Batten: Just a moment. You may have a continuing objection.

Mr. Ingraham: The respondent would like to have the same continuing objection.

Trial Examiner Batten: You may have the same continuing objection."

[fol. 299] for reasons among others that said testimony and the testimony adduced thereafter and appearing on pages 4798 to 4805 of the Record relating to the organization of the Loyalty League and similar matters is

wholly immaterial and irrelevant to any issue herein and contrary to the Trial Examiner's ruling that evidence of events occurring prior to six months before March, 1937 would not be received, and because said rulings are arbitrary, unfair and prejudicial to Respondent and demonstrate the biased and unfair attitude of the Trial Examiner toward Respondent and his non-judicial attitude toward the evidence by reason of all of which Respondent has been denied a fair trial and deprived of its liberty and property without due process of law.

104.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 4829-30-31-32 and 33, to-wit:

"Q. No one discussed those by-laws, did they?

A. No.

Mr. Reed: Wait a minute. I think counsel ought not to try to mislead the witness. If he puts in part of these minutes, he ought to put in the qualifying phrase that it was explained that the by-laws could be changed at any time. Isn't that right in the minutes before you?

Mr. Langsdale: No. Here is what Mr. Tyler said about it, 'I suggest that if the by-laws are satisfactory someone move they be adopted'.

Mr. Reed: Is that all that was said?

Mr. Langsdale: And then the motion was made by Ellen Nokes that 'we accepted the by-laws as they were read; seconded by Virginia White, unanimous acceptance.'

Mr. Reed: Give me the minutes.

Mr. Langsdale: Senator, I am examining this witness. Wait until I get through.

* * * * * *

Trial Examiner Batten: You may proceed. There is no question pending.

[fol. 300] "Mr. Lane: I submit that with respect to the minutes, he read only a portion of them.

Trial Examiner Batten: Of course, he hasn't read all the minutes; but I say, Mr. Lane, there is no question pending.

Mr. Lane: Well, his statement is incomplete and misleading.

Mr. Langsdale: Are you trying to suggest to the witness part of her answer?

Mr. Lane: No, I am not, but I am objecting to the misleading nature of your examination.

Trial Examiner Batten: If there is any misleading here, I think I would intercede. I am convinced he was not misleading anybody. Will you proceed, Mr. Langsdale?

Mr. Ingraham: We would like, before you proceed, to make an objection to the question, and move that the question and answer be stricken out.

* * * * * *

Mr. Reed: Well, I move to strike out the question as misleading and improper for the reason that there is no connection with the other matter called attention to, which counsel did not refer to, although he apparently was reading from the records. This was said, 'I suggest to adopt, then, the bylaws, and then leisurely amend them, when the majority of you wish them changed. They are drawn as follows:' so that there was in this meeting a statement made that if they adopted them, then they could change them afterwards.

Now, I think Mr. Langsdale, perhaps inadvertently, omitted to call attention to that fact.

Mr. Langsdale: I didn't do it inadvertently. I don't have to read everything that happened at that meeting.

Trial Examiner Batten: Read the question and answer, please; there is a motion to strike.

(Thereupon the last question and answer were read by the reporter as follows:

'Q. No one discussed those by-laws, did they?
A. No.')

Trial Examiner Batten: I don't see anything improper with that.

A. Mr. Examiner, I think before that I was asked if these by-laws were accepted, and I said they were accepted subject to change.

By Trial Examiner Batten:

Q. Well, then, you weren't misled by any questions Mr. Langsdale asked you, were you?

A. No, but he didn't read all of it.

Trial Examiner Batten: Well, if you weren't, the motion is denied. Let's proceed."

[fol. 301] 105.

Respondent excepts to the interposition of the Trial Examiner in the examination of witnesses throughout the hearing and has illustrated by the following excerpts from the transcript of the Record at page 4917, to-wit:

By Mr. Ingraham:

"Q. I will ask you to state whether or not after Mr. Baty took over the plant there was any change, to your knowledge, of the authority of instructors, passing on hiring or laying off or disciplining employees.

A. I don't know as the instructors ever had that authority to hire and fire employees.

By Trial Examiner Batten:

Q. You mean by that, not knowing whether they ever had it, you couldn't say whether there was any change? Is that what you mean?

A. Oh, yes, there was a change—

Q. No. My question to you is, not knowing whether the instructors ever had the right to hire and discharge, you couldn't say whether there was any change?

A. I know they never had the right to hire and discharge.

Q. Well, then, can you say whether there was any change when Mr. Baty went in there?

A. Yes.

Q. As to hiring and firing?

A. Well, as to— I don't know, but—

Q. My question to you was, as Mr. Ingraham's question was, whether there was any change as to hiring and firing.

Mr. Langsdale: I think the question was a little more comprehensive than that.

Trial Examiner Batten: It may have been, but that was the point I was concerned about."

as showing the partisanship of the Trial Examiner against Respondent and his evident desire to elicit testimony favorable to findings and issues which he had already resolved in favor of the Board and against Respondent.

[fol. 302] 106.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 4945-46:

"Trial Examiner Batten: What did you understand it to mean?

A. My understanding was she was going to represent all of us.

Q. You mean from reading the article?

A. From reading the article.

Mr. Langsdale: We certainly are not bound by understanding of someone who doesn't understand the English language when she reads it. I ask that the answer be stricken out as utterly irrational and having no foundation or basis in the article.

Trial Examiner Batten: It may stand.

Mr. Reed: I am protesting against the insulting remark made to a witness on the stand.

Mr. Langsdale: I don't consider it insulting but when I get ready to make that kind of remarks I will come around and take some lessons from you.

Mr. Lane: I move to strike out the remarks of Mr. Langsdale for the reason they are argumentative and they are not directed to the question I asked. They are not proper remarks to be made by counsel.

Trial Examiner Batten: Do you have a question pending?

Mr. Lane: No, I am asking those remarks be stricken."

107.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 4962-63, to-wit:

"Q. When was the first Loyalty League meeting, can you recall?

A. Well, the first Loyalty League meeting I recall was in 1935, I think, when they joined the organization down there to the plant; the Loyalty League is a social affair — we joined our clubs together, each section had a club.

Mr. Lane: Mr. Examiner, may it be understood the intervener, Donnelly Garment Workers' Union, has a continuing objection to inquiring into matters around 1935 or thereabouts? Your ruling was given when the intervener was going into matters except those within a reasonable time prior to April 27, 1937.

[fol. 303] "Trial Examiner Batten: Well, of course, this question has nothing to do with my ruling, but I'll grant you the continuing objection.

Mr. Lane: Well, she is inquiring of something that occurred in 1935.

Trial Examiner Batten: Yes, concerning the Loyalty League, Mr. Lane.

Mr. Ingraham: It is understood the respondent still maintains its objection to any matters prior to July 15, 1939.

Trial Examiner Batten: I didn't understand it, unless you make it.

Mr. Ingraham: Well, I made an objection at the first hearing as to all matters that occurred prior to July 15, 1939.

Trial Examiner Batten: You mean your original objection in the first hearing?

Mr. Ingraham: That is correct.

Trial Examiner Batten: Well, of course, the objection you made at that time, I assume, continues through the entire hearing.

Mr. Ingraham: Well, that will be my understanding of it."

for the reasons, among others, that said rulings are contrary to the Trial Examiner's ruling refusing to permit Respondent to adduce evidence of matters occurring prior to six months before March, 1937, and for the further reason that said evidence does not tend to prove any of the charges against Respondent.

108.

Respondent excepts to the ruling of the Trial Examiner permitting counsel for the Board to interrogate the witness concerning Board's Exhibit 2 and other related matters appearing in the transcript of the Record at page 4983 over the objections of Respondent and Intervener, for the reason that said examination is contrary to the ruling of the Trial Examiner refusing to permit Respondent to adduce evidence prior to November, 1936, and for the further reason that said evidence does not tend to prove any of the charges against Respondent.

[fol. 304]

109.

Respondent excepts to the rulings and action of the Trial Examiner as set forth on pages 5006-07 of the transcript of the Record, to-wit:

"Q. Well, at that time did you learn that if you had a plant union and got a closed shop, that you could keep the I. L. G. W. U. out by firing everybody that joined it?

Mr. Reed: That is what you do all the time.

Trial Examiner Batten: Is that an objection, Senator?

Mr. Reed: Yes, I object to the question as improper, not proper cross-examination.

Trial Examiner Batten: Overruled.

A. What was the question?

Trial Examiner Batten: Read the question.

(Thereupon the last question was read by the reporter.)

Mr. Lane: Well, I object to that for the reason that it is not the situation, and never had been the situation, that everybody that joined the I. L. G. W. U. —

Trial Examiner Batten: Is that an objection?

Mr. Lane: Yes, that is an objection.

Trial Examiner Batten: What is the objection?

Mr. Lane: Because the question states a hypothetical situation.

Mr. Ingraham: Respondent makes the same objection.

By Mr. Langsdale:

Q. Did you know or did you learn that at that time, if you should form a plant union, get a closed shop agreement, that everyone would have to belong to that union?"

110.

Respondent excepts to the rulings, comments and action of the Trial Examiner as set forth in the following excerpts of the transcript of the Record (pages 5010-5011), to-wit:

[fol. 305] "Trial Examiner Batten: Of course, if the question is asked and answered, then an objection is not proper at this time is it?

Mr. Lane: You have been interrogating the witness yourself, so I didn't have an opportunity to make the objection. Now, my objection is, to the question Mr. Langsdale asked, the last portion of it, with respect to keeping — to preventing any employees from joining the I. L. G. W. U. — now, that is not a provision of the Wagner Act, and I submit counsel should not be permitted to ask that question, that if they get a closed shop they have a right to require all the employees to belong to that union, and the Wagner Act doesn't provide that every employee shall stay out of the I. L. G. W. U.

Mr. Langsdale: Well, I say, Mr. Lane ought to go and read the Wagner Act, and read some of the decisions.

Trial Examiner Batten: Well, if that is an objection; it is overruled, because the question has been put and the answer is in the record. So, you proceed, Mr. Langsdale."

111.

Respondent excepts to the rulings, action and comment of the Trial Examiner as set forth in the excerpts from the transcript of the Record at pages 5063-64-65, to-wit:

"Q. Did you know that you were being paid far in excess of wages that were being paid in plants that had contracts with the I. L. G. W. U. in Kansas City?

A. I felt sure I was making far more than I would in some of these other factories.

Q. Was this article —

Trial Examiner Batten: How is that material? You say did she know. Well, of course, I have no objection to it, she has answered it. Of course, it doesn't mean that we are going into that whole question of whether, in fact, they were. The only question that will raise is whether or not this witness — what her own information is concerning the statement, whether it is supported by anything. I didn't want you to think that raises the whole issue of the truth.

Mr. Ingraham: We still contend that is an issue we are interested to go into and that even under your ruling, that is a factor that these employees have a right to consider.

Trial Examiner Batten: Yes, that is what I just said.

. . . . . .

Trial Examiner Batten: I am only going into it to the extent I indicated. These witnesses have testified what it was that lead them to form the organization or why they did it. Now, I am permitting it to that extent and that doesn't mean I am excluding the testimony you indicated, Mr. Ingraham, that you still take the position it is an issue. I am not ruling on that matter now, only with respect to this witness' testimony."

[fol. 306] 112.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth on pages 5154 to 5160 and at pages 5168 to 5169 of the transcript of the Record as showing the bias and prejudice of the Trial Examiner towards Respondent and his evident desire to have elicited evidence unfavorable to Respondent even though the questions asked were clearly incompetent.

113.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 5203, 5204, 5205, to-wit:

"Q. Did you think you could ignore the Act up until the time the Supreme Court declared it constitutional?

Mr. Reed: I object to that as incompetent and immaterial, entirely outside the issues in this case.

. . . . . .

Trial Examiner Batten: Will you read the question, please?

(Thereupon the last question was read by the reporter, as follows:

'Did you think you could ignore the Act up until the time the Supreme Court declared it constitutional?')

Trial Examiner Batten: Do you understand the question?

Mr. Reed: Now, how does that throw any light on the issues?

Trial Examiner Batten: Do you understand the question, Mrs. Mudd?

The Witness: I understand the question, but I don't believe he quoted me right.

Trial Examiner Batten: Irrespective of whether he quoted you right or not, if you understand this question, you may answer.

. . . . . .

Mr. Reed: I submit that question is incompetent and immaterial for any purpose, whether she thought she could ignore it or couldn't ignore it. She has simply said she read about the Act in the paper and she read it was before the Supreme Court, and there is no question of whether she wanted to ignore it or didn't want to ignore it; that is not in this case.

Trial Examiner Batten: Do you recall the question, Mrs. Mudd?

[fol. 307] "The Witness: Yes, but—

Trial Examiner Batten: You may answer."

114.

Respondent excepts to the rulings, action and comments of the Trial Examiner refusing to sustain Respondent's and Intervener's objections to questions propounded by the Board's counsel concerning the organization meetings of the Loyalty League and related matters extending back as far as 1935, which examination together with Respondent's and Intervener's objections appears at pages 5288 to 5301 of the transcript of the Record, for the reason that same are contrary to the rulings of the Trial Examiner limiting Respondent in the production of evidence to a time not prior to November, 1936, and because said rulings and action are emphatically unfair and prejudicial to Respondent, and by reason of which Respondent has been denied a fair trial herein.

115.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 5343-44, to-wit:

"Q. Did the thought occur to you that getting that Loyalty petition signed and getting the pictures in the paper might be the answer of the company to Perlstein's interview?

Mr. Reed: Read the question, please.

(Thereupon the last question was read by the reporter.)

Mr. Reed: I object to that as incompetent and immaterial and in no manner binding upon the parties to this case.

Mr. Stottle: And assuming as evidence something that is not in evidence.

Trial Examiner Batten: Do you understand the question.

The Witness: I was going to say—

Trial Examiner Batten: Well, do you understand the question that was asked you? Do you remember what it was?

[fol. 308] "The Witness: Well, it referred to the pictures going to be in the paper.

Trial Examiner Batten: Will you read the question please?

(Thereupon the last question was read by the reporter.)

Trial Examiner Batten: Do you understand the question?

The Witness: Not clearly; not that part of it, 'answer of the company'. I don't understand just what he means.

Trial Examiner Batten: Then, restate it, Mr. Langsdale. The witness says she doesn't understand the latter part of it.

By Mr. Langsdale:

Q. Was there anything that came to your mind about the company's getting this petition signed and then having pictures in the newspaper as an answer to Perlstein's interview that you read 4 days earlier?

Mr. Reed: I object to that as incompetent and immaterial and as assuming that the company had this petition signed, when all of the evidence is to the contrary.

Mr. Langsdale: It isn't assuming that at all. I am asking her —

Trial Examiner Batten: The objection is overruled."

for the reasons, among others, that same show the partisanship of the Trial Examiner and his desire to get into the Record an unfavorable statement of the witness with reference to the subject matter inquired about upon which the Trial Examiner was already committed in his previous finds and conclusions in this case.

[fol. 309] 116.

Respondent excepts to the ruling of the Trial Examiner that so far as the offers of proof are concerned and the employee witnesses are concerned with respect to respondent, that he had heard sufficient and that anything further would be cumulative and would not enable the Examiner or the Board or the Circuit Court to get any better picture of the situation, and excepts to the Trial Examiner's ruling and determination that he had heard enough employee witnesses both as to the respondent and intervener, and in refusing to permit respondent to call any more employee witnesses or adduce any further testimony under respondent's offers of proof and excepts to his ruling and action in refusing to permit intervener to put on any witnesses whatever or adduce any evidence whatever under the offers of proof, for the reasons, among others, that said rulings and action are contrary to the holding of the Circuit Court of Appeals in remanding the case and contrary to the order of the Board herein in ordering a further hearing of this matter; and for the further reason that respondent was prepared to call and place upon the stand all or substantially all of the witnesses named in the offers of proof referred to, and all of said witnesses would have testified to matters refuting each and all the charges against respondent and such testimony would have presented to the Trial Examiner, the Board and the Circuit Court of Appeals an overwhelming case sustaining respondent's contentions and refuting all of the charges against respondent, and because said rulings and action of the Trial Examiner deny to respondent an opportunity to adduce said material, competent and relevant evidence bearing on the issues involved herein, whereby respondent has been denied a fair trial and has been denied due process of law in contravention of the Fifth Amendment to the Constitution of the United States; all of said rulings

having been made over and against the objections of respondent.

[fol. 310] In connection with this exception, respondent refers to the following excerpts from the record (pages 5797, 5800), and excepts to the rulings, action and comments of the Trial Examiner set forth therein for each and all of the reasons hereinabove stated, to-wit:

"Trial Examiner Batten: Is there anything further?"

"Well, if not, I think I shall rule at this time that as far as the offers of proof are concerned, and the employee witnesses are concerned, with respect to the respondent, that I have heard sufficient; that anything further would be cumulative, and any addition wouldn't enable the Examiner or the Board or the Circuit Court to get any better picture of the entire situation, the light of the entire hearing, the entire record and exhibits. * * *

"Trial Examiner Batten: Well, I feel, Mr. Tyler, if you want me to determine the question entirely myself, I take it that is in substance the same position which the respondent takes.

"Then, I will now determine that I have heard enough employee witnesses, both as to the respondent and the intervener.

"So, that disposes of that matter."

Respondent further excepts to said rulings and action of the Trial Examiner as constituting an abuse of any discretion vested in the Trial Examiner with reference to said matters and as being unfair and prejudicial to the respondent and intervener by reason of other rulings and action of the Trial Examiner, and by reason of his subsequent rulings permitting the Board and I. L. G. W. U. to adduce in rebuttal extensive evidence which was not proper rebuttal but which related to matters which if pertinent at all should properly have been adduced in the Board's case in chief; and respondent further excepts to all the rulings and actions for all the reasons set forth in its exceptions to said rebuttal evidence.

117.

Respondent excepts to the ruling and action of the Trial Examiner in striking out all of the testimony of the witness Mrs. Reed pertaining to the period subsequent to July, 1939, for the reasons among others that said testimony is competent, relevant and material to many, if not all of the issues involved in this case; and for the further reason that said ruling does not designate with any degree of certainty the particular evidence which it was the intention of the Trial Examiner to strike; and for the further reason that the Trial Examiner has permitted testimony to be adduced by the Board and I. L. G. W. U. relating to the same matters to which said stricken testi- [fol. 311] mony relates, and the striking of same is unfair and prejudicial to respondent and denies to respondent a fair trial herein and denies to respondent due process of law in contravention of the Fifth Amendment to the Constitution of the United States; all of said rulings and action having been taken over and against the objections of respondent.

In connection with this exception, respondent refers to the following excerpts from the transcript of the record (pages 5800, 5801), and excepts to the rulings and action therein set forth for each and all of the reasons hereinabove stated, to-wit:

"Trial Examiner Batten: * * * Now, there are two or three other matters that I think I should dispose of with respect to Mrs. Reed. I am now striking out all of her testimony which pertains to the period subsequent to July 1939, in accordance with a ruling which I made after Mrs. Reed testified. * * *

"Trial Examiner Batten: So, any matters after that are stricken."

118.

Respondent excepts to the rulings and action of the Trial Examiner in rejecting the offer of proof made by respondent with respect to the testimony of witness Wave Tobin which offer of proof is designated as Board's Exhibit 1-SSSSS and to the Trial Examiner's determination

that the matters therein are not material to the issues herein, and excepts to the ruling and action of the Trial Examiner in ruling and determining that the testimony already given in the hearing by said witness Wave Tobin is not material or relevant to the issues herein, and excepts to the Trial Examiner's ruling and action in striking out the testimony of said witness Wave Tobin, for the reasons among others that said testimony given by said Wave Tobin and that offered to be proved by her in said offer of proof was and is competent, material and relevant to the issues herein, and for the further reason that said testimony so stricken and said testimony so offered to be proved by said witness relates to matters as to which the Trial Examiner permitted the Board and the I. L. G. W. U. [fol. 312] to adduce testimony, and the striking out of the testimony so given and the refusal to receive the testimony so offered is unfair and prejudicial to respondent and deprives respondent of a fair trial herein and of its liberty and property without due process of law in contravention of the Fifth Amendment to the Constitution of the United States; all of said rulings and action having been taken by the Trial Examiner over and against the objections of respondent.

In connection with this exception, respondent refers to the following excerpts from the transcript of the record (pages 5802, 5803), and excepts to the rulings, actions and comments of the Trial Examiner therein set forth for each and all of the reasons hereinabove stated, to-wit:

"Trial Examiner Batten: Now, I think there is one other matter, the matter with respect to Wave Tobin. I believe at the time that matter came up Mr. Ingraham presented an offer of proof and a protest against the ruling of the Examiner, which I made on August 19, 1942, which is Board's Exhibit 1-SSSSS. Now, as far as the offer of proof is concerned, I have gone over Board's Exhibit 1-SSSSS, and I don't consider that there are any matters in there which are material in the hearing, and therefore I reject the offer of proof; and furthermore— . . . .

"Trial Examiner Batten: And furthermore, with respect to the testimony which Wave Tobin has thus far

given, I have reviewed that, and I do not consider that it is material or relevant to the issues, in this case, and accordingly it is stricken.

"Now, with these rulings I think, Mr. Ingraham, we are ready to proceed."

Respondent further excepts to said rulings and action of the Trial Examiner because of his subsequent rulings permitting the Board and I. L. G. W. U. to adduce in rebuttal evidence relating to matters which said witness would have testified concerning, and permitted evidence in rebuttal which was not proper rebuttal but which related to matters which should properly have been adduced in the Board's case in chief, if pertinent at all.

[fol. 313] 119.

Respondent excepts to the rulings and action of the Trial Examiner in refusing to restrict the evidence of the Board and ILGWU after Respondent and Intervener rested in the further hearing, to proper rebuttal evidence and in permitting the Board and ILGWU to adduce extensive testimony which, if pertinent at all to the issues, was properly a part of their case in chief, and not proper to be offered in rebuttal.

These rulings arose upon Respondent's objections to the question asked of Board's witness Etta Dorsey at page 5844 of the Record as follows: "Q. How did you learn of that meeting?" (referring to the organization meeting of the Donnelly Garment Workers' Union on April 27, 1937), as not being proper rebuttal testimony, and upon Respondent's motion to strike the answer given and upon Respondent's objection to the succeeding question (at page 5844-45): "Q. Do you know how the girls working in your section learned of the meeting?" as not being proper rebuttal testimony. The next fifty pages of the Record contain a discussion of this objection, as a result of which the Trial Examiner permitted the answer given to stand and permitted the Board to continue the examination upon matters covered by the Board's case in chief. To this ruling and action of the Trial Examiner Respondent excepts for all the reasons and grounds set forth in the statements and

arguments of Respondent's and Intervener's counsel appearing at pages 5844 to 5895 inclusive of the Record; and for the same reasons excepts to all the testimony thereafter adduced by the Board and ILGWU from said witness Etta Dorsey in pursuance of said ruling and action of the Trial Examiner.

[fol. 314] In connection with this exception and for convenience Respondent refers to the following excerpts from the transcript of the Record (pages 5844, 5845, 5848, 5857, 5859, 5886 and 5894) setting forth the Trial Examiner's position and rulings to which rulings and action Respondent excepts for all the reasons aforesaid, which are too voluminous to be stated here, and for the further reasons that said ruling is unfair and prejudicial to Respondent in view of the Trial Examiner rulings limiting Respondent's and Intervener's evidence to the offers of proof and in restricting Respondent to some ten or eleven employee witnesses and in refusing to permit Intervener to put on any witnesses, and because in applying said ruling the Trial Examiner permitted the Board and ILGWU to go far beyond even the limits set by the Trial Examiner in his said ruling as to rebuttal evidence, and as set forth in said excerpts from the transcript of the Record, by reason of all of which Respondent has been denied a fair and impartial trial and due process of law as guaranteed by the Fifth Amendment to the Constitution of the United States. The excerpts above referred to are as follows:

"Q. How did you learn of that meeting?

Mr. Ingraham: I object to that. It is not proper rebuttal.

Miss Weyand: This is a preliminary question.

Trial Examiner Batten: Well, if it is preliminary, she may answer.

By Trial Examiner Batten:

Q. Do you want the question read?

A. No, that's all right. Well, I don't remember, but it was either by telephone or by Mrs. Wheery telling us; she usually went around and told the instructors.

Mr. Ingraham: Now, I move that the answer be stricken out; it is not a preliminary question, it is an attempt to prove the Board's case in chief, not proper rebuttal.

[fol. 315] "Trial Examiner Batten: Well, I'll determine whether it is preliminary. You may proceed.

Mr. Reed: I couldn't hear your closing ruling.

Trial Examiner Batten: I said I will determine whether it is preliminary.

Mr. Reed: This answer, now, is not a preliminary answer.

By Miss Weyand:

Q. Do you know how the girls working in your section learned of the meeting?

Mr. Ingraham: I object to that question as not proper rebuttal." (pp. 5844-45).

* * * * * *

"Trial Examiner Batten: Well, all I can say is, Senator, I am going to require that Miss Weyand confine it to rebuttal. I further want to say that this undoubtedly is preliminary in nature. Now, if this lady, who was there at the time, is in position to testify concerning these definite things which these people testified to, I think it is rebuttal.

Now, I have no idea, and will say so now, of permitting Miss Weyand or Mr. Langsdale to go into this entire subject matter in any form or fashion, and it is confined to rebuttal." (p. 5848)

* * * * * *

"Trial Examiner Batten: Of course, there is possibility of that, Senator, providing I were to permit it. Now, we may differ as to just what is rebuttal. I think clearly Miss Weyand's first statement is entirely out of line, as far as I am concerned. I mean by that that you aren't going to try all the issues of this case over again, but I am still convinced in my own mind that if this witness testifies about these matters, which these four or five or six girls testified about here, that were in her section, and about specific matters in their testimony in the record, I don't see why that isn't rebuttal." (p. 5857)

* * * * * *

"Trial Examiner Batten: Well, Mr. Langsdale, I think my statement that I have made two or three times, about what is rebuttal, would cover, perhaps, that matter. Where a specific witness — you had several specific witnesses say that they worked in section 415 during March and April, that the instructor did not tell them to go to this meeting, nor did she say anything to them." (p. 5859).

* * * * * *

[fol. 316] "Trial Examiner Batten: I think that particular matter is in line with the suggestion which I indicated this morning, without having given any thought to the matter. As a matter of fact, I am more certain now, after having given the matter some thought, that my statement this morning concerning it is correct, and I am equally certain that my statement to Miss Weyand this morning about her first proposition is correct. So, as the result of two hours or two and a half hours of giving it some thought and listening to all counsel, I am still of the opinion that my statement on it this morning was substantially correct." (p. 5886).

* * * * * *

"Trial Examiner Batten: Miss Weyand, you may proceed, in line with the suggestions which I made this morning, and if you have any other testimony in line with your other suggestion, you make it as an offer." (p. 5894).

120.

At pages 5895 to 5899 of the Record Respondent objected to questions as shown by the following excerpts from the Record and was allowed a continuing objection to said line of questioning, to-wit:

By Miss Weyand:

"Q. Do you know how the girls working in your section learned of the meeting at which the union was organized?

Mr. Hogsett: That is objected to for all of the reasons heretofore asserted as not proper rebuttal and particularly unless the question is limited to the particular witnesses heretofore offered by respondent, by name.

Trial Examiner Batten: Well, you may answer the question, and then you may proceed, Miss Weyand, to bring it within the ruling which I have made. (p. 5895)

* * * * * * *

"(Thereupon the last question was reread by the reporter, as follows:

'Q. Do you know how the girls working in your section learned of the meeting at which the union was organized?')

A. Yes, I do.

By Miss Weyand:

Q. How did they learn that?

A. I told the girls.

Mr. Hogsett: That is objected to, unless the question is confined to witnesses offered by respondent who were working there in her section. (p. 5896)

* * * * * * *

[fol. 317] By Miss Weyand:

"Q. Was Oma Lee Cooper working in your section at that time?

Mr. Reed: I make the same objection.

* * * * * * *

Trial Examiner Batten: Well, Senator, I assume we may have the same arrangement we have pursued here all the time, a continuing objection if you so desire.

Mr. Hogsett: Yes, we do.

Trial Examiner Batten: In order that you don't have to object to every question, that will continue through with this witness. Of course, it will be necessary to renew it on the next witness.

Mr. Tyler: The same objection will be allowed for the intervenér, as to this witness, I take it?

Trial Examiner Batten: Yes, that is correct. Let me say this, we will get started here pretty soon, I guess. You may have a continuing objection.

Now, that means to either the respondent or the intervener I am granting a continuing objection to Miss Wey-

and's examining this witness within the bounds of what I indicated that I thought was proper.

Now, if Miss Weyand exceeds the bounds, I of course, would expect counsel to object, not upon the basis of my ruling, but upon the basis of my statement to Miss Weyand that I don't propose to go into all inclusive matters." (pp. 5898-99).

Respondent excepts to the rulings and action of the Trial Examiner in admitting said testimony and in permitting the Board's counsel to continue said line of questioning, and excepts to the rulings and action of the Trial Examiner in overruling Respondent's and Intervener's objections to each and all of the questions asked by Board's counsel of the witness Etta Dorsey at pages 5895 to 5944 of the transcript for the reasons, among others, that said testimony is not rebuttal and does not come within the Trial Examiner's ruling as to rebuttal evidence, and covers matters which Respondent was not permitted to go into in said further hearing herein, and because the admission of same is unfair and prejudicial to Respondent and denies to Respondent a fair trial and due process of law.

[fol. 318] 121.

Respondent excepts to the rulings, action and comments of the Trial Examiner denying and overruling each and all of the special objections made by Respondent and Intervener to particular portions of said testimony of Etta Dorsey, which objections and rulings appear on each and all of the following pages of the transcript, to-wit, 5900 to 5904 inclusive, 5907 to 5911 inclusive, 5913, 5914, 5916 to 5922 inclusive, 5924 to 5929 inclusive, 5931 to 5936 inclusive, 5938 to 5941 inclusive and 5943 respectively, for each and all of the reasons given in said respective objections and for the further reason that said questions related to matters which the Trial Examiner refused to permit Respondent and Intervener to go into in further hearing, and because same does not come within the Trial Examiner's ruling as to rebuttal evidence, and because by the admission and consideration of said testimony Respondent has been denied a fair trial and due process of law.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 6042-6043, to-wit:

"Q. Did the mere fact that you said, 'There is to be a meeting of the employees,' in your opinion amount to an order to attend it?

A. Well, the girls felt like I had the authority—I was given that authority. See?

Mr. Tyler: Now, I object—

Mr. Langsdale: Just a moment. He asked the question, and I suggest that he keeps still until she answers it, and then if he wants to move to strike out any part of it, all right.

Trial Examiner Batten: Just a moment.

Read the question and answer, please.

(Thereupon the last question and answer were read by the reporter).

[fol. 319] "Trial Examiner Batten: Now, finish your answer.

A. (Continuing) The girls felt like I had the authority to tell them what to do, and when I said, 'Do this,' they usually did it.

Mr. Tyler: Now, I move that the answer be stricken out, because it doesn't state whether she felt she was giving the order, but only what she assumes the employees understood, which wasn't the question, and is a conclusion of the witness.

Mr. Langsdale: I submit, the answer is a perfect answer to his question. Certainly she has a right to judge from appearances and conduct of these people. And this is a [preety] late day for Mr. Tyler to be talking about conclusions of the witness.

Mr. Stottle: Respondent objects because it is not responsive at all to the question."

123.

Respondent excepts to the rulings and action of the Trial Examiner in overruling Respondent's objection to the Board's questions of the witness Lola Skeens as shown in the following excerpts from the transcript of the Record at pages 6096-6098 and 6100 of the transcript, to-wit:

"Q. Do you know of any occasions upon which she went to Mr. Tyler's office or attended to business of the Donnelly Garment Workers' Union during working hours?

Mr. Hogsett: Objected to as not rebuttal of anything in the respondent's case.

* * * * * *

Trial Examiner Batten: You may answer.

Mr. Reed: Now, that embraces more than whether she went to his office. The question is, whether she knows of any occasion when she went to his office or attended to business of the union on company time. Now, that is not in rebuttal of anything we have put in this case.

* * * * * *

Q. Do you know how the girls working in your section learned of the meeting?

A. I told them.

Mr. Ingraham: May respondent have a continuing objection to this line of questioning?

Trial Examiner Batten: Yes.

[fol. 320] "Mr. Hogsett: As not rebuttal.

Trial Examiner Batten: I presume it is upon the same grounds stated as to the previous witness."

for the reason that said testimony and rulings do not come within Examiner's ruling as to rebuttal evidence and relates to matters which Respondent and Intervener were not permitted to go into in said further hearing, and the admission of same is unfair and prejudicial to Respondent and denies to Respondent a fair trial and due process of

law. In pursuance of the continuing objection allowed to Respondent by the Trial Examiner to said line of questions and testimony, Respondent further excepts to the admission of the testimony thereafter adduced by the Board and ILGWU from said witness Lola Skeens in pursuance of said ruling and action of the Trial Examiner appearing in the transcript of the Record at pages 6098 to 6114 inclusive and at pages 6166 to 6168 inclusive, for the reason that same is not proper rebuttal evidence but if pertinent to the issues at all was a part of the Board's case in chief, and for the further reason that same does not come within the limits set by the Trial Examiner as to rebuttal evidence and for the further reason that same relates to matters which the Trial Examiner refused to permit Respondent and Intervener to go into in said further hearing herein, and because the admission of same is unfair and prejudicial to Respondent and denies to respondent a fair trial and due process of law.

124.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 6172 to 6174 inclusive, to-wit:

[fol. 321]. "Mr. Hogsett: If the Court please, we object to this line of examination on the ground that it isn't rebuttal of anything. In other words, it is just going into the Board's case in chief again.

Trial Examiner Batten: I think it is, insofar as it attempts to determine what transpired at the meeting.

Mr. Hogsett: Yes, that is the line of inquiry I am now objecting to.

Trial Examiner Batten: But, of course, part of this testimony, as I recall it, was this witness' statement as to why she joined.

Mr. Hogsett: Which is not rebuttal either.

Trial Examiner Batten: Well, let's take them one at a time. I agree with you that the other matter, I don't believe is, the matter as to what transpired. But I gathered

from the questions that it was an attempt of Miss Weyand's to set the time of the occurrence rather than what transpired.

Mr. Hogsett: Then, if that is so, I move to strike all of the testimony of this witness as to what transpired at the meeting of April 27, 1937, because it isn't proper rebuttal.

Trial Examiner Batten: I think it may stand, because I think that was the purpose of it.

Mr. Hogsett: And I move to strike out what occurred at the latter meeting, for the same reason.

* * * * * * *

Mr. Ingraham: May respondent have a continuing objection to this testimony, for reasons we have heretofore given?

Trial Examiner Batten: Yes. Of course, I agree that going into what transpired at the meeting is not proper rebuttal, but, as I said before, I don't think that is the purpose of it."

for the reason that said testimony is not proper rebuttal evidence and in pursuance to the continuing objection allowed Respondent by the Trial Examiner Respondent excepts to said rulings and to the admission of all the testimony of said witness Geneva Copenhaver adduced by the Board and ILGWU in pursuance of said ruling and action of the Trial Examiner, appearing in the transcript of the Record at pages 6169 to 6200 inclusive, and pages 6280 to 6287 inclusive, for the reason that said testimony is not proper rebuttal evidence, and does not come within the limits of the ruling of the Trial Examiner as to rebuttal evidence and relates to matters which the Trial Examiner [fol. 322] refused to permit Respondent and Intervener to go into in said further hearing and is contrary to former rulings of the Trial Examiner and the admission of same is unfair and prejudicial to Respondent and denies to Respondent a fair trial and due process of law.

125.

Respondent excepts to the rulings and action of the Trial Examiner as set forth in the following excerpts from

the transcript of the Record at pages 6176-77-78 for the reasons stated in Respondent's objections therein made, to-wit:

"Miss Weyand: I offer Board's exhibit No. 37 for identification in evidence.

Mr. Reed: We object—

Trial Examiner Batten: What—For the purpose of indicating it recalled to the witness' mind that she attended the meeting?

Miss Weyand: No. I want to offer it for the purpose of showing that every girl that attended that meeting, as far as I can see, is in uniform. I think that is proper evidence for the Board to consider in connection with the testimony—

. . . . . .

Trial Examiner Batten: I am certain everything said officially there is in the record. It doesn't make any difference. I will receive it, and I am receiving it on the same basis I have received other newspaper articles which have been received thus far—I think, about 38 of them.

Mr. Reed: We object as incompetent and immaterial and not proper direct examination, undertaking to introduce into the case as substantive evidence a mere newspaper article, and as not proper rebuttal.

Mr. Langsdale: I understand the article itself is not offered but merely the picture.

Trial Examiner Batten: Well, I have received it."

[fol. 323] 126.

Respondent excepts to the rulings, actions and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at Pages 6178-79 and 6182, to-wit:

"Q. Were you working on the same floor with Sylvia Hull the last day Sylvia Hull worked for the company?

A. Yes, I was.

Q. Do you recall what happened that morning?

Mr. Tyler: We object. The Sylvia Hull incident is in no sense proper rebuttal. It was gone into in long detail in the case of the Board in chief.

Mr. Hogsett: Your Honor, I ask you to just stop for a second and think if this is rebuttal—everything is rebuttal that pertains to the case in any way.

Trial Examiner Batten: Of course, my idea of the Sylvia Hull incident is this—I tried to, I think, in my talk here a month or so ago, indicate I did not think it was within the offers of proof upon which I was taking testimony, but I don't remember whether Mr. Tyler, or who it was, convinced me that I was wrong. I know Mr. Langsdale very strenuously opposed it and said it was a closed book.

Mr. Hogsett: I ask you to draw the line somewhere, if the Examiner please.

. . . . . .

Trial Examiner Batten: As I recall, both witnesses presented by the Board so far has been permitted to testify about the matter.

Mr. Langsdale: Yes.

Trial Examiner Batten: You may proceed, Miss Weyand."

for each and all the reasons therein stated in Respondent's and Intervener's objections and for the further reason that said questions relate to matters which the Trial Examiner refused to permit the Respondent and Intervener to go into in said further hearing and because same does not come within the limits of the ruling made by the Trial Examiner as to rebuttal evidence and because same are contrary to former rulings made by the Trial Examiner in said further hearing and because same are unfair and prejudicial to Respondent and deprived Respondent of a fair trial and due process of law.

[fol. 324] 127.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to permit respondent to recall Wave

Tobin to the stand, as shown by the following excerpts from the transcript of the record at page 5815, to-wit:

"Mr. Reed: Now, Your Honor said for us to proceed. We would now like to recall Wave Tobin, we haven't finished her examination.

"Trial Examiner Batten: Well, I think, Senator, I disposed of that matter by my ruling on the offer of proof, and so forth."

128.

Respondent excepts to the rulings and action of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 6189, 6190, to-wit:

"Q. Did you consider your instructors as supervisors?

"A. Absolutely.

"Mr. Ingraham: Now—

"Trial Examiner Batten: Just a moment?

"Mr. Ingraham: Now, I move to strike the answer out as not proper rebuttal.

"Trial Examiner Batten: Well, the answer may be stricken. While you make your objection—I assume you had one?

"Mr. Ingraham: Yes. I object to the question on the ground that it is not proper rebuttal.

"Trial Examiner Batten: You may answer.

"Mr. Lane: The intervener makes the same objection.

"Trial Examiner Batten: You may answer.

"A. Absolutely, I regarded her as being my supervisor.

"Q. (By Miss Weyand) Why?

"Mr. Ingraham: May I have a continuing objection?

"Trial Examiner Batten: Yes. Well, I think there is already a continuing objection on this witness.

"Mr. Ingraham: Well, if not, I want a continuing objection."

And further excepts to the admission of subsequent testimony of the same nature received in pursuance of said ruling.

[fol. 325] 129.

Respondent excepts to the ruling and action of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 6197, 6198, to-wit:

"Q. Do instructors eat in the cafeteria with the other girls?

"A. They eat—

"Mr. Ingraham: (Interrupting) Now, I object to that question for the reason it is immaterial to any issue in this case, and it is not proper rebuttal.

"Mr. Hogsett: If I may supplement by this suggestion, that illustrates the thin character of this Board's case, that they would have to rely on the fact that domination could be shown by an instructor eating in the same cafeteria. Now, that is getting down to pretty thin stuff, I submit, and the subject matter is wholly immaterial.

"Miss Weyand: I don't offer to prove they eat in the same cafeteria. That isn't the purpose of this question.

"Mr. Hogsett: Well, if it is in the same field, the same atmosphere.

"Trial Examiner Batten: You may answer the question.

"Mr. Lane: The intervener makes the same objection, it is not rebuttal.

"Trial Examiner Batten: The same ruling."

130.

Respondent excepts to the ruling and action of the Trial Examiner in sustaining objection to the question asked by counsel for the intervener of the witness Geneva Copenhaver at page 6250 of the record as to what was her husband's occupation.

131.

Respondent excepts to the ruling and action of the Trial Examiner in permitting the witness Bessie Weilert to testify as to matters which were not proper rebuttal evidence over the objections of the respondent and intervener, which objections appear in the transcript of the record at page 6311 as follows, to-wit:

"Q. (By Miss Weyand) Had you ever seen Mr. Tyler before the meeting at which the union was formed?

"A. No.

"Mr. Lane: Mr. Examiner, with respect to all of these questions, the intervener objects, with respect to this witness, as not proper rebuttal.

[fol. 326] "Trial Examiner Batten: You may have a continuing objection.

"Mr. Ingraham: Respondent makes the same objection.

"Trial Examiner Batten: You may have a continuing objection."

And respondent excepts to the rulings and action of the Trial Examiner in permitting the Board's counsel and counsel for the I. L. G. W. U. to continue said line of questioning of the witness Bessie Weilert and excepts to each and all the questions asked by Board's counsel and by counsel for the I. L. G. W. U. of said witness as set forth in the record at pages 6308 to 6355 inclusive, 6358 to 6360 inclusive, 6435 to 6458 inclusive, 6496 to 6514 inclusive and 6528, in pursuance of said continuing objection, and excepts to each and all the rulings of the Trial Examiner permitting said evidence to be adduced, for the reasons among others that said testimony is not proper rebuttal evidence and does not come within the Trial Examiner's ruling as to rebuttal evidence, and for the reason that same relates to matters which respondent and intervener were not permitted to go into in said further hearing, and is contrary to prior rulings of the Trial Examiner and the admission of same is unfair and prejudicial to respondent and denies to respondent a fair trial and due process of law.

132.

Respondent excepts to the rulings, action and comments of the Trial Examiner in refusing to sustain the objections and motions to strike of the respondent and intervener to the testimony given by the witness Bessie Weilert at pages 6315 to 6317 inclusive, for the reason that said testimony was not proper rebuttal testimony, related to a time prior to November, 1936 to which the Trial Examiner limited respondent in its examinations and related to alleged events occurring prior to the enactment of the National Labor Relations Act, and is wholly immaterial, incompetent and irrelevant to the issues herein.

[fol. 327] 133.

Respondent excepts to the rulings and action of the Trial Examiner in refusing to sustain respondent's objections and motion to strike out the answers and testimony of the witness Bessie Weilert given at pages 6327 to 6329 inclusive, for the reason that said testimony was not responsive to the questions asked and was not proper rebuttal testimony.

134.

Respondent excepts to the ruling and action of the Trial Examiner in refusing to strike out the answer of the witness referred to in the following excerpts from the transcript of the record at page 6343, to-wit:

"Q. Do you know Mrs. Gray?

"A. I do.

"Q. Who is she?

"A. She was manager of our outside store.

"Mr. Langsdale: I didn't get the answer.

"A. She was manager of our outside store, to my knowledge.

"Q. (By Miss Weyand) How do you know she is the manager?

"A. Well, we always had to see Mrs. Gray if we wanted anything in the store, to see Mrs. Gray, and when it was remnant bundles, she would send i. d. m.'s, and say it was the remnant bundles.

"Mr. Reed: I can't understand the witness.

"Trial Examiner Batten: Will you read the answer, please?

"(Thereupon the last answer was read by the reporter.)"

"A. And her signature was on the i. d. m.

"Mr. Lane: Now, I move to strike out the answer that Mrs. Gray was manager of the store, for the reason it is a mere conclusion; and the following answer of the witness doesn't state any facts upon which the conclusion can properly be based.

"Trial Examiner Batten: It may stand."

[fol. 328] 135.

Respondent excepts to the ruling of the Trial Examiner at pages 6349, 6350, permitting the witness Bessie Weilert to state that she considered the Donnelly Garment Workers' Union a company dominated union or a company union and to state why she thought so, as follows: "A. Because it seems it never done any good when you took grievances up with that committee; I never did get anywhere when I was on the committee, and everything went just as the company seen fit."

136.

Respondent excepts to the rulings, action and comments of the Trial Examiner at pages 6444 to 6446 inclusive, in permitting the witness Bessie Weilert to answer the question of counsel for the I. L. G. W. U., to-wit: "Q. (By Mr. Langsdale) So then this part of this document, which you signed, is not true?" and the question: "Q. (By Mr. Langsdale) Or 'That said meeting was convened after the close of working hours at the plant.' That is not true, is it?" and in overruling respondent's and intervener's objections thereto.

137.

At page 6497 of the record, counsel for the Board asked the following question and the witness Bessie Weilert made the following answer, to-wit:

"Q. (By Miss Weyand): Have you ever heard any girl, as a result of complaining in a union meeting or to a committee or anywhere, complain that she had been treated unfairly because she had made the complaint?

"A. I don't know that they put it in those words, that it was merely because of the complaint, but I think it was done, plenty of them."

Respondent and intervener moved to strike out the answer and particularly that part of the answer "but I think it was done, plenty of them" and the Trial Examiner ruled that it should stand, to which ruling and action respondent excepts, for the reason that said answer is a conclusion, not proper rebuttal and prejudicial to respondent.

[fol. 329] 138.

At page 6536 of the record, the following occurred:

"Q. I hand you I. L. G. W. U. exhibit No. 10 which appears at pages 5375 and 5961 of the Circuit Court of Appeals record and ask you to state when you first heard of that petition.

"A. In the early spring of 1937.

"Q. Where were you when you first heard of it?

"A. In Mrs. Reed's home.

"Q. What was the conversation that took place on that occasion?

"A. Well, I had just come home from New York, and—

"Mr. Lane: Just a moment, if Your Honor please. The intervener objects to this and all similar questions. It is not proper rebuttal testimony.

"Mr. Hogsett. We join in that objection.

"Trial Examiner Batten: Overruled."

Respondent excepts to the ruling and action of the Trial Examiner as set forth in the foregoing excerpts and further excepts to his action in permitting the Board's counsel and counsel for the I. L. G. W. U. to continue said line of questioning of the witness Marguerite Keyes, and further excepts to each and all the questions of said counsel to said witness, appearing in the transcript of the record at pages 6535 to 6552 inclusive, for the reason that said testimony

is not proper rebuttal evidence and does not come within the limits of the ruling as to rebuttal evidence made by the Trial Examiner, and for the reason that same relates to matters which respondent and intervener were not permitted to go into in said further hearing and is contrary to prior rulings of the Trial Examiner, and the admission of same is unfair and prejudicial to respondent and denies to respondent a fair trial and due process of law.

139.

At pages 6572-6573 of the record appears the following:

"Q. Did you attend any meetings of the Loyalty League?

"Mr. Tyler: Intervener objects; because this is not proper rebuttal.

"Mr. Hogsett: We join in that objection, asking that counsel be restricted to rebuttal.

[fol. 330] "Trial Examiner Batten: You may proceed.

"Mr. Hogsett: May we have a continuing objection, as in the case of other witnesses?

"Trial Examiner Batten: Yes.

"Mr. Tyler: And the intervener also?

"Trial Examiner Batten: Yes."

Respondent excepts to the rulings and action of the Trial Examiner as set forth in the foregoing excerpts from the record and further excepts to the rulings and action of the Trial Examiner in permitting Board's counsel and counsel for the I. L. G. W. U. to continue examination of said witness May Stevens, and excepts to each and all the questions asked by Board's counsel and by counsel of the I. L. G. W. U. of said witness as set forth in the transcript of the record at pages 6573 to 6595 inclusive and 6638 to 6647 inclusive, and excepts to each and all the rulings of the Trial Examiner permitting said evidence to be adduced on behalf of the Board and I. L. G. W. U., for the reasons among others that said testimony is not proper rebuttal evidence and does not come within the Trial Examiner's ruling as to rebuttal evidence, and for the reason that same

relates to matters which respondent and intervener were not permitted to go into in said further hearing and is contrary to prior rulings of the Trial Examiner, and the admission of same is unfair and prejudicial to respondent and denies to respondent a fair trial and due process of law.

140.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 6581, 6582, 6584, to-wit:

"Q. What made you feel that way?

"A. Well, the Fern Sigler incident, just previous to that, and by Mrs. Donnelly saying we would never have to have a union, and I decided that they had changed so sudden that it was surely something for the company and I had better join. And when in 1934, when I was in another shop, at Twenty-sixth and Main, I met the Donnelly girls they had sent to that plant that were union girls—

"Mr. Reed: Oh, wait a minute, now. That certainly is not rebuttal.

[fol. 331] "Trial Examiner Batten: Now, let the witness finish, Senator. If there is something you think should be stricken, all right, but don't interrupt the witness.

"Read the answer thus far, please.

"(Thereupon the last answer was read by the reporter.)

"Trial Examiner Batten: Finish your answer.

"A. (Continuing) —and talked to them most every day about the conditions and why they were sent down there, and they were told that they were not making their guarantee, and they knew it was because they were union girls and that they would eventually be laid off.

"Mr. Reed: I move to strike that as incompetent, immaterial, and as not rebuttal, being mere hearsay, and binding on no one. I think the Examiner excluded us from the right to even ask questions about 1934.

"Trial Examiner Batten: Well, Senator, assuming I did, hasn't this witness a right to say why she felt that way? * * *

"Trial Examiner Batten. * * * It may stand."

for the reasons therein stated and because said ruling is unfair and prejudicial to respondent and shows the bias and prejudice of the Trial Examiner against respondent.

141.

Respondent excepts to the rulings and action of the Trial Examiner in refusing to permit the witness May Stevens to answer the following question appearing in the record at page 6606, to-wit:

"Q. By the way, what was your husband then, an organizer for the Union?", and in rejecting the following offers of proof made by respondent and intervener appearing in the transcript of the record at pages 6608, 6609, to-wit:

"Mr. Hogsett: We offer to prove that the witness on the stand that at the time concerning which she has been testifying, namely, in February, March, and April, 1937, and continuously up to the present time, her husband then was and at all such times has been and is now an organizer for a labor union.

"Trial Examiner Batten: Well, I'll reject the offer on the basis of what I have just said.

"Mr. Hogsett: Yes, Mr. Ingraham says that we desire now to make a similar offer of proof in relation to Geneva Copenhaver. * * *

"Mr. Tyler: Intervener asks to be allowed to join in both offers of proof.

"Trial Examiner Batten: You don't mean Mr. Langsdale's proof.

"Mr. Tyler: No, Mrs. Copenhaver and this one.

"Trial Examiner Batten: Both of the offers made by Mr. Hogsett? Mr. Tyler wants to join in the two offers of proof made by Mr. Hogsett."

[fol. 332] 142.

Respondent excepts to the rulings, action and comments of the Trial Examiner in sustaining objection to the following question asked by respondent of the witness May Stevens at page 6662, to-wit:

"Q. (By Mr. Hogsett) Do you remember the taking of an oath in such a way that you would knowingly make a false affidavit?"

and in rejecting respondent's offer of proof (page 6663) that the witness if permitted to answer said question, would answer same in the affirmative.

143.

Respondent excepts to the comment of the Trial Examiner embraced in the words "without all of the flourishes" contained in the following excerpt from the transcript of the record at page 6667, to-wit:

"Q. The fact is, the Sylvia Hull incident occurred some seven weeks after the March 2 paper was signed by the employees, didn't it?

"Mr. Langsdale: I object to that as argumentative.

"Trial Examiner Batten: The question is, Did the Sylvia Hull incident occur seven weeks after?—without all of the flourishes.

"Mr. Hogsett: Well, I don't know why there is any flourish."

144.

Respondent excepts to the ruling, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at page 6702.

Trial Examiner Batten: "Now, you may answer this if you want to, Mr. Ingraham, and if you don't want to you don't need to: Am I to assume you are going to have all of the girls in section 518 here and testify about these specific matters?

Mr. Ingraham: I believe we are going to have a large number of them.

Trial Examiner Batten: Well, I want to tell you now that you are not, so don't plan on it. I would say, not to exceed three witnesses on those matters, out of that section."

[fol. 333] for the reasons among others that said limitations upon Respondent to three witnesses out of said Section 518 was unfair and prejudicial to Respondent, for the reason that said testimony related to highly important issues in view of the former findings of the Board and Trial Examiner and of the contentions of the Board and I.L.G.W.U. in this hearing, and unless the Trial Examiner was satisfied that the testimony of said three witnesses established the facts to which they testified, said limitations was unfair and prejudicial to Respondent, and in any event Respondent was entitled to put on additional witnesses for the consideration of the Board and Court and the limitation denied to Respondent a fair trial and due process of Law.

145.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 6704-05-06:

"Q. (By Mr. Ingraham): There has been testimony given that the girls returned to work in that section after attending meetings. What are the facts about that?

Trial Examiner Batten: Now, Mr. Ingraham, I do not believe that is proper surrebuttal, because there was testimony by some witnesses concerning that and the Board put on some concerning it. Now, I don't believe that is proper questioning at this stage of the proceedings.

Q. (By Mr. Ingraham): There has been testimony given that if an operator did not intend to come to work she would notify her instructor. What are the facts about that?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

Q. (By Mr. Ingraham): There has been testimony given that after Mr. Baty took charge of the factory in 1935, and up until July 15, 1939, instructors had the authority to transfer girls from one section to another. What is the fact about that?

Mr. Langsdale: Objected to as not proper surrebutal. Mr. Baty, in 1939, ran the whole gamut with reference to that particular issue.

Trial Examiner Batten: Objection sustained.

* * * * * *

[fol. 334] "Mr. Ingraham: Respondent offers to prove by this witness that if she were permitted to answer the question to the effect that, Did girls return to work after attending any of the meetings referred to? she would answer in the negative.

Respondent further offers to prove by this witness—

Mr. Lansdale: Just a moment. I want to make an objection to that offer, for all of the reasons offered to the question.

Trial Examiner Batten: Proceed.

Respondent further offers to prove by this witness that if she were permitted to answer the question as to whom the girls would notify if they were not coming to work, she would answer, 'The employment office,' and not 'the instructor.'

Mr. Langsdale: That is objected to in the offer for all of the reasons offered to the question.

Trial Examiner Batten: Any others?

Mr. Ingraham: No, that's all.

Trial Examiner Batten: The offers are rejected."

for the reasons among others that said rulings and action prevented the Respondent from adducing proper and highly material evidence in view of the former findings of the Trial Examiner and Board and the issues as developed in the hearing, and by the denial thereof Respondent has been denied a fair trial and due process of law.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 6706-7-8-9, to wit:

Q. (By Mr. Tyler): Mrs. Chaney, did you ever know of any instructor directing the girls in her section [—] go with her, the instructor, to any union meeting?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler): Did you hear Etta Dorsey give any instructions or information about the holding of union meetings to the girls in her section?

[fol. 335]. "Mr. Langsdale: Objected to as not proper surrebuttal, and repetition.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler): Did you ever see any group of girls being herded together to a meeting of the union by any instructor?

Mr. Langsdale: Objected to as not proper surrebuttal. Respondent has so characterized it.

Trial Examiner Batten: Sustained.

Q. (By Mr. Tyler): You joined the Donnelly Garment Workers' Union of your own free will?

Mr. Langsdale: Objected to as not proper surrebuttal.

Trial Examiner Batten: Sustained.

* * * * * *

Q. Do you know whether the employees of the Donnelly Garment Company obtained any improved conditions by the contract which the union made with the company in May, 1937?

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: Sustained.

* * * * * *

Mr. Tyler: I offer to prove that this witness, if allowed to answer the question as to whether she ever saw any group of girls taken to union meetings by the instructor, would answer that she did not.

Mr. Langsdale: That offer is objected to for the reasons offered against the question.

* * * * * *

Mr. Tyler: * * * And I offer to prove that this witness, if asked the question whether there was any evidence of employees being herded to the union meetings, would answer No.

I offer to prove by this witness that if she were allowed to testify as to whether she knew of benefits received by the employees as a result of the contract of the Donnelly Garment Workers' Union with the company of May 27, 1937, would state that she did know of definite benefits received by reason of that contract.

Mr. Langsdale: The offers are objected to for the reasons given against the questions.

Trial Examiner Batten: The offer is rejected.

Mr. Tyler: Of course, it is understood that an exception is allowed, without stating—

Trial Examiner Batten: Yes, you have an automatic exception."

147.

[fol. 336] Respondent excepts to the ruling and action of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at page 6716, to wit:

"Q. (By Miss Weyand): Did you ever work, on a transfer slip, in a section other than your regular section —the transfer slip I have reference to—

Mr. Hogsett (Interrupting): Objected to on the same ground, as not proper cross-examination in surrebuttal.

Trial Examiner Batten: You may answer."

148.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 6731-32-33, to wit:

"Mr. Hogsett: On page 6675 of the record yesterday, while Mrs. Stevens was on the stand, I made a verbal offer of proof in respect to the amount of dues of the International—

* * * * * *

I offer to prove by the witness May Stevens that the amount of regular dues of the International Ladies' Garment Workers' Union at the time of her membership was 35c a week, which, for 52 weeks a year would be $18.20 a year, and that in addition to that there were two regular assessments, one of $1 per year as a death benefit assessment, and the second an assessment of $1 a year as a fund in the Work Labor Movement as a whole. That is all.

Mr. Langsdale: The offer is objected to as immaterial, doesn't tend to prove or disprove any issue in this case. It is certainly immaterial, unless they prove what they got for the 35c a week, and how little the Donnelly Garment Workers' Union got for their 25c a month.

Trial Examiner Batten: I will reject the offer, because my recollection is that I rejected your tentative offer."

149.

(a) Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record relating to the testimony of witness Mrs. Reece, to wit: (pp. 6742-43-44.)

[fol. 337] "Q. (By Mr. Tyler): Mrs. Reece, did you ever hear any instructor direct the girls or the workers in her section to attend union meetings in a group?

A. No, I did not.

Trial Examiner Batten: I think I ruled on that question with the prior witness. I do not consider it proper.

Mr. Tyler: I expect to ask two more questions on the same line. Shall I make an offer of proof first, or—

Trial Examiner Batten: No. Ask the questions, Mr. Tyler.

Q. (By Mr. Tyler): Did you ever see any instructor in the Donnelly plant gather the girls in her section together and take them to any union meeting?

A. No.

Mr. Langsdale: I object to that as not proper surrebuttal.

Trial Examiner Batten: I make the same ruling with respect to that question, Mr. Tyler.

Mr. Langsdale: And I ask that the answer be stricken.

Trail Examiner Batten. I will wait until Mr. Tyler makes his offer of proof.

Proceed Mr. Tyler.

Q. (By Mr. Tyler): What was the custom in the Donnelly factory as to whether the employees went to union meetings with anybody they pleased or not?

Mr. Langsdale: Objected to as not proper surrebuttal.

Trial Examiner Batten: The same ruling I made to the other two questions, Mr. Tyler.

* * * * * *

Mr. Tyler: * * * I offer to prove by this witness that if she were allowed to answer the questions which the Examiner has sustained objections to, she would testify that she never heard any instructor direct the girls in her section to attend any union meeting in a group; that she never saw any instructor gather the girls together and take them to a union meeting; and that the custom of the Donnelly plant was that employees would attend union meetings with whomever they pleased, without obstruction or pressure or limitation.

Mr. Langsdale: I object to the offer for all of the reasons given against the question.

Trial Examiner Batten: The offer is rejected."

[fol. 338] (b) Respondent further excepts to the rulings, action and comments of the Trial Examiner made with

reference to similar questions and answers by the witness Mrs. Hutchinson as set forth in the transcript of the Record at pages 6751-52-53.

(c) Respondent further excepts to the rulings, action and comments of the Trial Examiner made with reference to similar questions and answers in the examination of the witness Iris Litten as set forth in the transcript of the Record at pages 6789-90-91.

(d) Respondent further excepts to the rulings, action and comments of the Trial Examiner made with reference to similar questions and answers in the examination of the witness Lora Fries, as set forth in the transcript of the record at pages 6811-12-13-14.

(e) Respondent further excepts to the rulings, action and comments of the Trial Examiner made with reference to similar questions and answers in the examination of the witness Lillie Reynolds, as set forth in the transcript of the Record at pages 6824-25-26.

(f) Respondent further excepts to the rulings, action and comments of the Trial Examiner made with reference to similar questions and answers in the examination of the witness Alvin Reifel, as set forth in the transcript of the Record at page 6941.

(g) Respondent further excepts to the rulings, action and comments of the Trial Examiner made with reference to similar questions and answers in the examination of the witness, Elizabeth Barrett, as set forth in the transcript of the Record at pages 6947-48-49.

[fol. 339] (h) Respondent further excepts to the rulings, action and comments of the Trial Examiner made with reference to similar questions and answers in the examination of Marjorie Green, as set forth in the transcript of the Record at pages 6962-63-64.

150.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 6762-63-64-66-67:

"Mr. Ingraham: Mr. Examiner, I intended to state before I put this witness on the stand that I understood you to say that you limited respondent to three witnesses in connection with the matters that Etta Dorsey testified about.

Trial Examiner Batten: Well, is that the way you understand it?

Mr. Ingraham: I understood you to say that very positively.

Trial Examiner Batten: Well, I think you are correct.

Mr. Langsdale: Well, I understand the limitation would be with reference to all matters inquired about this morning in connection with Etta Dorsey's testimony.

Trial Examiner Batten: My understanding of what I intended to do was limit you to three witnesses from that section with respect to the matters that you asked the witnesses about. Now, is there any difference between that and your understanding?

Mr. Ingraham: No, that is what I understood you to say. Of course, we will prepare an offer of proof.

Trial Examiner Batten: If you have an offer, you make it right now, Mr. Ingraham.

. . . . . .

Mr. Ingraham: Respondent offers to prove by Ruth Strandt, Ida Barton, Leone Sams, Beatrice Face, Goldie Sprague, Nina Gilardi, Grace Pardun, Anne Belan, Lulu Gordon, Ruth Chaney Miller, Ida Mauk, Estel Rothgeb, Ora Dull, Lela Stevens, Hazel Higgins, Violet Hawkins, Anne Elizabeth Stone, and each of them, that if permitted to testify they would testify that they were employed during the months of March, April, and May, 1937, by the Donnelly Garment Company, and during said time worked in section 518; that during all of said time, Etta Dorsey was their instructor and they had no other instructor during said time except Etta Dorsey; that Etta Dorsey did not inform them or state to them that they would be paid by the Donnelly Garment Company for the time spent at the meeting of March 18, 1937, where Mrs. Reed spoke;

and they were not, in fact, paid for the time spent at said meeting; that Etta Dorsey did not inform them or state to them that they would be paid for the time spent at the meeting of April 27, 1937, and they, in fact, were not paid [fol. 340] for the time spent at that meeting; that Etta Dorsey did not state to them that they would be paid for time spent at union meetings, and they, in fact, were not paid for time spent at any union meetings; that they did not know of any employee being paid for time spent at any said union meetings; or the meeting of March 18, April 27, or any other meeting; that they did not attend any meetings during said time and return to work.

Mr. Langsdale: Union meetings, you mean?

Mr. Ingraham: Well, any of the aforesaid meetings, and return to work; that in the event they did not intend to come to work they would notify the employment office, and would not notify their instructor; that the employment office would transfer operators in their section and it was not done by the instructor.

* * * * * * *

I want to add to the offer of proof that each of said stated persons will further testify that they never received a pay check with the section number on it that was not the correct section number in which said person worked, and that each of said persons' pay checks had on it section number 518 during the months of March, April, and May of 1937.

* * * * * *

Trial Examiner Batten: Well, my understanding is that the offer of proof is in line with the testimony of the three witnesses, and taking into consideration the objections offered by the various attorneys representing the parties, and upon that basis I reject the offer."

for the reasons, among others, that said line of testimony was highly important to the issues herein in view of the former findings and conclusions of the Trial Examiner and Board, and in view of the contentions of the Board and I. L. G. W. U. in the further hearing and unless the Trial Examiner was satisfied that the three witnesses who

had already testified to such matters had established same, it was prejudicial and unfair to Respondent to limit such testimony to three witnesses, and in any event Respondent was entitled to put on further witnesses as to said matters for the consideration of the Board and Court, and the limitation made by the Trial Examiner denied to Respondent a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

[fol. 341] 151.

Respondent excepts to the ruling, action and comment of the Trial Examiner as set forth in the following excerpts from the transcript of the Record at pages 6784-85, to-wit:

"Q. Do you recall ever being paid for any time you spent at any Loyalty League meetings?

A. No.

* * * * * *

Trial Examiner Batten: —that doesn't change the situation at all, because this morning I had no idea of going into all of these generalities, which I don't think carry a great deal of weight, anyway."

152.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the Transcript of the Record at pages 6834-35-36-37-38, to-wit:

"Mr. Ingraham: Mr. Examiner, does the same ruling apply to section 413 as to section 518?

Trial Examiner Batten: Exactly.

Mr. Ingraham: Then respondent makes an offer of proof that if Marie Richardson, Hazel Hardman, Emilea Raines, Grace Short Kunther, Eva Liberman, Edna Tattershall, Lois Kesinger, Millie Ihle, Katherine Sutulovick, Ruth Putnam, Emma Hansen, Edith Alexander, Lillie Reynolds, Bertha Taylor, Lucille Wilkey, Anna Spahr, Pearl Hall, Nellie Stites, Ruth McBride, Lorene Johnson, Beulah Perkins, Mildred Brooks Ballard, Opal Richardson, Dorothy Dietz Sharp, Gladys Rudd, were permitted to testify, they would testify as follows:

That they were employed at the Donnelly Garment Company during the months of March, April, and May, 1937; that their instructor was Lola Skeens during said period; that each attended the meeting of March 18, 1937; that Lola Skeens did not notify them or any of them that said meeting was to be held; that Lola Skeens did not go up the north side of the section notifying the girls of the meeting; that Lola Skeens did not inform the girls that they were to be paid for the time spent at that meeting; that they were not paid for the time spent at that meeting; that each of said persons attended the meeting of April 27, at which time the Donnelly Garment Workers' Union was formed; that Lola Skeens did not notify any of them of said meeting; that Lola Skeens did not go up the north side of the section, telling the girls of the meeting, and that the thread girl did not go up the south side of the section, telling the girls of the meeting; that Lola Skeens [fol. 342] did not tell the girls that they were to be paid for the time spent at said meeting; and that none of persons named received any pay for the time spent at said meeting; that they attended union meetings, and were never notified by Lola Skeens that said meetings were to be held and were not informed by Lola Skeens that they would be paid for the time spent at said meetings, or any of them; and they were not, in fact, paid for any time spent at any union meeting; that Lola Skeens did not notify them of any Loyalty League meetings, and they were never paid for any time spent at any Loyalty League meetings; that all the meetings above referred to were held after working hours.

Trial Examiner Batten: Now, aren't you including two things there that you haven't asked this witness thus far, Mr. Ingraham.

Mr. Ingraham: What are those things?

Trial Examiner Batten: Well, you just said, 'All the meetings were held after working hours,' and you said they would testify that they were not paid for any Loyalty League meetings. I don't recall that you asked this witness that.

Mr. Ingraham: I think I did, and I think I asked at least one of these witnesses if meetings were held after working hours.

* * * * * *

Trial Examiner Batten: I thought you were making me an offer now on the basis of those three last witnesses.

Mr. Ingraham: I am, and I thought I asked that question.

* * * * * * *

Trial Examiner Batten: * * * I will ask you if it is your intent that the offer of proof cover the testimony covered by the three prior witnesses?

Now, if that is your intention, then I am willing to accept the offer of proof.

Mr. Ingraham: All right.

Trial Examiner Batten: I am perfectly willing the offer of proof be just as all-inclusive as the last three witnesses.

* * * * * * *

Mr. Ingraham: That Lola Skeens did not turn the power off for the purpose of sending the employees in section 413 to any of the meetings referred to.

* * * * * * *

Trial Examiner Batten: Well, the offer of proof will be rejected on the same grounds as previously stated, for the same reasons, and I will allow the same objections, if there were any."

[fol. 343] for the reasons, among others, that said line of testimony was highly important to the issues herein in view of the former findings and conclusions of the Trial Examiner and Board, and in view of the contentions of the Board and I. L. G. W. U. in the further hearing and unless the Trial Examiner was satisfied that the three witnesses who had already testified to such matters had established same, it was prejudicial and unfair to Respondent to limit such testimony to three witnesses, and in any event Respondent was entitled to put on further witnesses as to said matters for the consideration of the Board and Court, and the limitation made by the Trial Examiner denied to Respondent a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

[fol. 344] 153.

(a) Respondent excepts to the rulings, action and comments of the Trial Examiner made with reference to the examination of the witness Fred Brown as set forth in the following excerpts from the transcript of the record at pages 6915, 6916, to-wit:

"Q. Do you know whether the employees obtained any benefits—additional rights under that contract that they didn't have before?

"A. Yes, they did. * * *

"Trial Examiner Batten: I don't think, Mr. Tyler, I want to open up that matter now, so I will ask you not to. If you have an offer of proof on it that you want to make, all right.

"Mr. Tyler: I offer to prove that this witness, if allowed to answer the question as to whether benefits were derived from the contract in the spring of 1937 and what the benefits were, would—

"Mr. Langsdale: Which contract?

"Mr. Tyler: I think there is only one.

"Mr. Langsdale: Two.

"Mr. Tyler: All right. The contract of May 27, 1937, as supplemented by the wage agreement of June 22, 1937.

"— would testify that he does not remember in detail all of such benefits, but that he is positive that some of the minimum—that the minimum pay before the contract was $15.00 a week and that by reason of the contract the minimum for anyone was raised to $16.50 a week, and that the payments made to certain individuals, regardless of contract rights, were increased by reason of the contract, and that the time allowed for vacations with pay to certain employees was increased over the custom, as well as being established as a legal right which had not existed before, and that there were other benefits, although he may not recall them in detail.

"Mr. Langsdale: The offer is objected to as not proper surrebuttal.

"Trial Examiner Batten: I will sustain the objection. I don't think it is proper."

(b) Respondent further excepts to the rulings, action and comments of the Trial Examiner made with reference to similar questions and answers in the examination of witness Jack McConaughey as set forth in the transcript of the record at pages 6921, 6922.

(c) Respondent further excepts to the rulings, action and comments of the Trial Examiner made with reference to similar questions and answers in the examination of the witness Mabel Riggs as set forth in the transcript of the record at pages 6933, 6934.

[fol. 345] 154.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts from the transcript of the record at page 6928, made with reference to the witness Jack McConaughey, to-wit:

"Mr. Langsdale: I do offer to prove by this witness, should he be permitted to testify on this, his answer would be that the union meetings were attended by the employees going to the meeting section by section, for the reason that the elevator service was limited to two elevators, with a capacity of 15 each, and that, therefore, it would be utterly impossible for all of the employees to reach the meeting at the same time.

"Mr. Hogsett: We had no objection to his inquiring of the witness whether that is so or not—whether that is the witness' testimony or Mr. Langsdale's improvisation.

"Mr. Tyler: I object to the offer of proof because, as a matter of fact, the witness' testimony would not be to that effect. The witness is here, and if anybody wants to settle it, the opportunity is apparent.

"Trial Examiner Batten: I don't think I am going to start out, at this stage of the proceedings, to test out whether the offers of proof that have been offered so far are justified."

155.

Respondent excepts to the rulings, action and comments of the Trial Examiner as set forth in the following excerpts

of the transcript of the record at pages 6967, 6968, 6969, 6970:

"Trial Examiner Batten: Mr. Tyler, I am still more convinced that any more witnesses along this line—it isn't only cumulative but it is repetitious, especially if they testified in the prior hearing, as was indicated this morning. If you have witnesses you want to present who will testify to specific matters or other matters, you may produce them.

"Mr. Tyler: I have one witness who will testify to an entirely separate state of facts. But I except to Your Honor's ruling, and I would like to make an offer of proof.

"Trial Examiner Batten: You may do so.

"Mr. Tyler: I offer to prove by the following witnesses: Rose Todd, Hobart Atherton—

"Mr. Langsdale: Just a moment. I wish the Examiner would permit him to bring Rose Todd here and put her on the stand.

"Trial Examiner Batten: Let's proceed.

"Mr. Tyler: (Continuing) —Hobart Atherton, Walter Higgins, Mary McClellan, and Finland Rife, that if permitted to testify they would testify that they were members of the Donnelly Garment Workers' Union between April 27, 1937, and July 15, 1939; and that at some part of that time they were members of the executive committee of the Donnelly Garment Workers' Union; and that at no [fol. 346] time and on no occasion during that period were they ever paid by the Donnelly Garment Company or the Donnelly Garment Sales Company for attending Donnelly Garment Workers' Union meetings or meetings of the executive committee of the Donnelly Garment Workers' Union; and that they had no knowledge of and never saw any instructor gather the employees in her section together and take them as a group to any meeting of the Donnelly Garment Workers' Union; and that the employees were free to attend such meetings with whom and in such manner as they chose, without any interference, dictation or pressure from the employer; and that the women employees in the Donnelly plant frequently attended meetings of the Donnelly Garment Workers' Union held after

working hours while still wearing their work aprons; and that they were never paid for the time spent at any meetings of either the Donnelly Garment Workers' Union or the executive committee of the Donnelly Garment Workers' Union by the Donnelly Garment Company or the Donnelly Garment Sales Company.

* * * * * *

"Trial Examiner Batten: I will reject the offer for the reasons I have previously stated.

"Mr. Hogsett: Respondent joins in the offer and respectfully excepts to the ruling of the Examiner.

"Trial Examiner Batten: Of course, understand, my rejection of the offer, under those circumstances, would be also applicable to you."

for the reasons among others that said line of testimony was highly important to the issues herein involved in view of the former findings and conclusions of the Trial Examiner and Board and in view of the contentions of the Board and I.L.G.W.U. in the further hearing and said rulings and actions were unfair and highly prejudicial to respondent and intervener unless the Trial Examiner was convinced that the facts testified to by the witnesses already called sufficiently established such facts so as to require findings in accordance therewith and even in such event, respondent and intervener were entitled to have further witnesses called and testify with reference to said matters, for the consideration of the Board and Court, and the refusal of the Trial Examiner to permit intervener to call further witnesses for such purpose denied to respondent and intervener a fair trial and deprived them of due process of law in contravention to the Fifth Amendment to the Constitution of the United States.

[fol. 347] 156.

Respondent excepts to each and all the rulings, action and comments of the Trial Examiner contained or referred to in the foregoing exceptions numbered 56 to 155 inclusive, for each and all of the reasons therein set forth or referred to and because same show the bias and nonjudicial attitude of the Trial Examiner and his prejudg-

ment of the issues herein against respondent and because same are unfair and prejudicial to respondent and deny to respondent a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States. In answer to some of the questions objected to, answers favorable to the respondent were given and respondent does not except to said favorable answers but does except to the rulings as showing the bias and non-judicial attitude of the Trial Examiner.

157.

The erroneous rulings, findings and conclusions of the Trial Examiner throughout the record and in the Intermediate Report are so numerous as to prevent setting same forth in detail in these exceptions, but respondent by the omission to except to any of the adverse findings or conclusions of the Trial Examiner in his Intermediate Report or the omission to except to many of the numerous rulings of the Trial Examiner throughout the hearing, does not mean that respondent is admitting the truth or correctness of any of said adverse findings or conclusions or that the correctness of said rulings, and respondent here excepts to any and all adverse rulings, findings or conclusions of the Trial Examiner.

158.

Respondent excepts to the ruling and action of the Trial Examiner rejecting respondent's offer of proof and protest against the ruling of the Examiner made August 19, 1942, contained in Board's Exhibit No. 1 SSSSS, as appears from page 6981 of the transcript of the record here-[fol. 348] in, for the reasons among others that the testimony therein referred to and offered to be proved was highly important to the issues involved herein in view of the rulings of the Trial Examiner admitting evidence offered by the Board and I.L.G.W.U. relating to the same subject matter as that sought to be proved by said witness Wave Tobin and in view of the former findings and conclusions of the Trial Examiner and the Board and in view of the contentions of the Board and I.L.G.W.U. in the further hearing herein, and said ruling and action in rejecting said

offer of proof and in refusing to permit respondent to examine said Wave Tobin with reference to said matters and with reference to such other pertinent matters as would have been elicited in the course of such examination, and in denying to respondent the right to place its witnesses on the stand in the order it desired, and denying to respondent the right to continue and complete the examination of said Wave Tobin before proceeding to the introduction of the evidence of other witnesses, were highly unfair and prejudicial to respondent and there was no basis for the exercise of any sound discretion of the Trial Examiner in refusing to receive such testimony and the denial thereof and the rejection of said offer of proof deprived respondent of a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

159.

Respondent excepts to the ruling and action of the Trial Examiner set forth on page 6981 of the transcript of the record herein denying respondent's reoffer of certain offers of proof and respondent's reoffer of Respondent's Exhibit No. 2 (rejected) and Respondent's reoffer of Intervener's Exhibit No. 20 (rejected) and each of same, for each and all the reasons and grounds set forth in the foregoing exception No. 158. This refers to all the offers of proof made by respondent in the former hearing of this matter before the Trial Examiner, including Board's Exhibit No. 1-OOOO and Board's Exhibits Nos. 1-JJJJ, 1-NNNN, 1-QQQQ, 1-XXXX, and Intervener's offer of proof Board's Exhibit No. 1-RRRR, and each of same.

160.

[fol. 349] Respondent excepts to the rulings and action of the Trial Examiner as set forth on page 6982 of the record herein rejecting and denying respondent's supplemental offer of proof designated as Board's Exhibit No. 1-TTTTT, for each and all the reasons and grounds set forth in respondent's exception No. 158 herein.

161.

Respondent excepts to the rulings and action of the Trial Examiner set forth on page 6982 of the record herein,

rejecting and denying respondent's offer of proof designated as Board's Exhibit No. 1-UUUUU for the reasons among others that the testimony therein referred to and offered to be proved was highly important to the issues involved herein in view of the rulings of the Trial Examiner admitting evidence offered by the Board and I.L.G.W.U. relating to the same subject matters referred to in said offer and in view of the former findings and conclusions of the Trial Examiner and the Board and in view of the contentions of the Board and I. L. G. W. U. in the further hearing herein, and the rejection of said offer of proof and the denial to respondent to adduce the evidence therein referred to was unfair and highly prejudicial to respondent and there was no basis for the exercise of any sound discretion on the part of the Trial Examiner in refusing to receive said testimony and said rulings deprived respondent of a fair trial and due process of law in contravention of the Fifth Amendment to the Constitution of the United States.

162.

Respondent excepts to the rulings and action of the Trial Examiner set forth on page 6982 of the record herein rejecting and denying respondent's offer of proof designated as Board's Exhibit No. 5-VVVVV, for each and all the reasons and grounds set forth in respondent's exception No. 161 herein.

163.

[fol. 350] Respondent excepts to the rulings and action of the Trial Examiner set forth on page 6982 of the transcript of the record herein, rejecting and denying respondent's offer of proof designated as Board's Exhibit 1-WWWWW, for each and all the reasons and grounds set forth in respondent's exception No. 161 herein.

164.

Respondent excepts to the rulings and action of the Trial Examiner set forth on page 6982 of the Transcript of the record herein, rejecting and denying intervener's offer of proof designated as Board's Exhibit 1-XXXXX, for each and all the reasons and grounds set forth in respondent's exception No. 161 herein.

165.

Respondent excepts to the rulings and action of the Trial Examiner set forth at page 6983 of the transcript of the record herein, rejecting and denying respondent's offers of proof, and each of same, of witnesses employed or formerly employed in Sections 518 and 413 of the plant of the Donnelly Garment Company, for each and all the reasons and grounds set forth in respondent's exception No. 161 herein.

166.

Respondent excepts to the rulings and action of the Trial Examiner as set forth in the following excerpts from the transcript of the record at pages 6984, 6985, to-wit:

"Trial Examiner Batten: * * * Yesterday there was a witness, Mary Copowycz, on the stand, and during the cross-examination of Mr. Tyler, which begins at page 6879, the question at line 2, the question at line 6, and the answers thereto, the question at line 4, page 6882, and the answer, and the question at line 8, and the answer—those questions and answers are stricken, in accordance with my prior ruling on those other witnesses. Those are the questions which I find are the same as the others, Mr. Tyler. The answers may stand as an offer of proof."

167.

[fol. 351] Respondent excepts to the findings of the Trial Examiner that check-off cards were distributed by the Respondent to its employees for their signature and to the finding of the Trial Examiner that Rose Todd went to the Respondent's plant at St. Joseph, Missouri to organize the employees in that factory, and was absent from her employment about a half of day without salary deduction therefor, and excepts to the findings of the Trial Examiner that instructors regard themselves as supervisors and that they exercised supervisory and economic control over the operators and are regarded by the operators as supervisory employees, and that they are responsible to Baty for the quantity and quality of work in their respective sections, and that Baty never gave them any instructions or directions or conferred with them about their work, and excepts to the findings of the Trial

Examiner as to what payrolls Rose Todd and other persons were carried on, and to the findings of the Trial Examiner to the effect that business of the I.L.G.W.U. was conducted during business hours, as not being supported by the evidence.

168.

Respondent excepts to the repeated rulings of the Trial Examiner permitting the Board and I.L.G.W.U. to adduce evidence relating to various subjects and relating to various periods of time, and to his ruling refusing to permit Respondent and Intervener to introduce countervailing evidence relating to said subjects and relating to said periods of time.

169.

Respondent excepts to the several rulings of the Trial Examiner whereby he refused to hear further witnesses on the part of Respondent and Intervener as to various issues involved without signifying that the matters con-[fol. 352] tended there by Respondent and testified to by Respondent's and Intervener's witnesses had been sufficiently established and/or without signifying as to what if any controverted issues were not sufficiently established by Respondent's or Intervener's witnesses.

170.

Respondent excepts to the rulings of the Trial Examiner in refusing to receive testimony from Respondent or Intervener as to matters occurring after July 15, 1939, irrespective of whether such matters had any bearing upon the issues involved herein, and irrespective of whether same tended to disprove the charges against Respondent.

171.

Respondent excepts to the rulings of the Trial Examiner requiring plaintiff to submit offers of proof as to the testimony of its various witnesses including Wave Tobin, instead of permitting Respondent to call said witnesses to the stand and adduce material testimony from them by oral examination, for the reason that it is well known that the testimony of a witness may be more fully and accurate-

ly developed by examination on the stand than by statements in an offer of proof, especially when the witness is an adverse witness, as was Wave Tobin, and counsel had not the opportunity of ascertaining fully the extent of her testimony, and for the further reason that said ruling is unfair and prejudicial to Respondent and demonstrates the bias of the Trial Examiner that he did not require the Board to submit offers of proof as to the testimony of Rose Todd and various other witnesses before calling them to the stand.

[fol. 353] 172.

Respondent excepts to the Trial Examiner's denial of credibility of Respondent's and Intervener's witnesses and to him accepting as to the slightest testimony unfavorable to Respondent or the slightest inferences therefrom, in disregard to the overwhelming evidence offered by Respondent and Intervener to the contrary, and refuting each and all of the charges in the complaint.

173.

Respondent excepts to the Trial Examiner's prejudgment, adverse to Respondent of the issues involved herein by reason of which Respondent has been denied a fair and impartial trial.

174.

Respondent excepts to the Trial Examiner's failure to dismiss each and all of the charges against Respondent and/or to find and recommend that same should be dismissed.

Wherefore Respondent prays that its exceptions be sustained and the Complaint dismissed.

Respectfully submitted,

JAMES A. REED
ROBT. J. INGRAHAM
WILLIAM S. HOGSETT
BURR S. STOTTLE
Attorneys for Respondent
Donnelly Garment Company.

[fol. 354]. Statement of Exceptions of Intervener, Donnelly Garment Workers' Union to the Second Report of the Trial Examiner.

United States of America
Before the National Labor Relations Board

In the Matter of
Donnelly Garment Company, Respondent.
and
International Ladies' Garment Workers' Union
and
Donnelly Garment Workers' Union,
Party to a Contract, Intervener.

Case No. C-1382.

Intervener, Donnelly Garment Workers' Union (referred to in the second intermediate report as the DGWU) excepts and objects to the second intermediate report of the trial examiner and to the proceedings, rulings, findings, conclusions appearing therein and other matters appearing in the record of this case in the following particulars and for the following reasons:

(1) To the bias and prejudice of the trial examiner against the intervener as evidenced by

(a) His denial of Intervener's petitions for an election as to bargaining representatives by the employes of the plant made before the beginning of the first hearing and repeated at various times thereafter, and his steadfast refusal to consider, allow or direct any formal ascertaining or regarding of the employes of the plant at any time during five years or to carry on any investigation among the employes of the plant.

(b) His refusal to receive and consider relevant and competent testimony of numerous witnesses offered by the intervener on matters relevant and of great importance to intervener's case and particularly showing such witnesses' [fol. 355] actual desires in the matter of labor representation, their reasons therefor and their freedom from employer domination in making such choice:

(c) His established custom and method of accepting any testimony whatever even though coming from only one to five discredited witnesses as being true, although denied by all other witnesses appearing, and in effect and substance denied by all other employes in the plant, and referring to such accepted evidence as in effect conclusive without any reference to or consideration of the overwhelming evidence to the contrary.

(d) His continued and wholly unjustified assumption that all witnesses offered by either respondent or intervener were subject to domination by and fear of their employer and that they would uniformly, continuously and without exception give false testimony by reason thereof.

(e) His denial to the intervener of the right to put on any witnesses whatever in the case in chief.

(f) His complete ignoring of the direction of the Circuit Court of Appeals to take and weigh and consider additional evidence as to the choice of the employes as to bargaining representative, their reason therefor and their subjection to or freedom from domination by the employer in such attitude.

(g) His refusal to admit evidence of, or give consideration to, the successful, independent and effective operation of the DGWU as a labor union down to and including the present time.

(h) His numerous findings of facts and drawing of inferences and conclusions unwarranted by, and in disregard of, the evidence.

(i) His unjustified characterization of witnesses of respondent and intervener as unworthy of belief.

[fol. 356] (j) His statements that evidence of the intervener would have no weight with him no matter how numerous or universal the witnesses were in its behalf, and his refusal to change this preconceived attitude following the instruction of the Circuit Court of Appeals that such evidence was to be received and considered without prejudice.

(k) His finding that the petition circulated by three employes on March 2, 1937, was directed by, inspired by,

or promoted by respondent or the Donnelly Loyalty League in the face of the overwhelming evidence to the contrary.

(l) His finding that the meeting of March 18, 1937 was a Donnelly Loyalty League meeting in spite of overwhelming evidence to the contrary.

(m) His finding that the employment of Gossett, Ellis, Dietrich and Tyler with a retainer fee of $500.00 was a payment in part for the organization of a plant union in spite of the undenied evidence and his own finding that the only subject discussed or considered at that time was the preparation of an injunction suit.

(n) His finding that the organization meeting of the DGWU was held on Company time in the face of practically universal testimony to the contrary, the finding being based on the testimony of not more than a half dozen discharged employes who admit bias against either the DGWU or the employer or both and who admit that the suggestion as to such time of holding the meeting was not called to their attention until about five years thereafter.

[fol. 357] (2) His refusal to admit evidence of the continued, satisfactory and effective operation of the DGWU through a period of five years down to and including the present day, and his arbitrary ruling that no evidence of any facts, conditions or circumstances occurring since the first hearing in 1939 was or could be admissible evidence.

(3) His finding that the Loyalty League was dominated by, created by or succeeded by the Donnelly Garment Workers' Union, or any of its members, although all of the evidence is that the Loyalty League still continues in existence, and all the evidence is that employees of the Company without domination or interference by the management promoted the organization of the DGWU for an entirely different and separate purpose which was wholly legal and proper.

(4) His refusal to hear any further witnesses of the DGWU or to take any reasonable cross section of testimony of the employees in order to arrive at any conclusions based on evidence as to the fact regarding the preference of

employees as to labor representation, the reasons for such preference and whether they were or were not dominated or influenced by the employer in such choice in spite of the fact that the sole or predominating reason for the second hearing was to develope such evidence.

(5) His refusal to weigh or consider the evidence as to the choice and wishes of the employees regarding labor representation because such evidence should have been a proper part of the decision.

(6) His assumption as expressed in his opinion that because the DGWU was a plant union maintaining no office outside the factory and that because it did not comply with certain theoretical but not required methods of book-
[fol. 358] keeping or administration, that it was not a valid labor organization, or that such facts were evidence of illegality.

(7) His finding that it was impossible to determine that Rose Todd in 1937, '38 and '39 had any well-defined duties, although in the same paragraph he points out what such well-defined duties were, and although the evidence shows conclusively definite, necessary, important and unchanged duties in her employment by the Company.

(8) His finding that instructors were "supervisory" and therefore represented management, without applying the correct legal test which shows conclusively that their duties were such as not to identify their interests with those of the employer, but on the other hand to mark them clearly as in the position of subordinate employes charged with showing employes methods and keeping work moving to and from operators.

(9) To the finding and conclusion that because the employer recognized the right of an organization, made up of substantially all of its employes below the rank of those representing management to negotiate for the employes, as the employer was required by law to do, and because it made a contract with such organization a month after it was organized, and a wage agreement within two months after organization, that the shortness of those times and the omission of the employer to illegally resist was evidence that there was no expression of the desires of the employes.

(10) To the finding and method pursued by the examiner in ignoring the conclusive evidence of the primary fact of the choice of the employes and placing exaggerated importance on inferences which could only be of importance where the primary fact was in doubt, and in the present case would have such speculative character as to be at least equally persuasive of the validity of the organization as of invalidity.

[fol. 359] (11) To the findings as to respondents contributions of support to the DGWU of delayed payment of rental for use of a room during part of the time leased by respondent, of occasional unauthorized use of respondent's typewriter, filing cabinet, ditto machine, to the use of the Company IDM forms, bulletin boards and similar inconsequential matters, although the uncontradicted evidence is that wherever use of such facilities was allowed such use had always been allowed to any group or any individual in the plant, and the finding that such matters constituted financial support of the union in spite of the fact that every dollar of its expenses during its existence had been raised by the membership of the union itself through dues or profits on entertainment.

(12) To the finding that Hobart Atherton, Florence Strickland, Lena Tyhurst, Martha Gray, Hortense Root, Heath Cowan, Marvin Price, Ted Scholes, Mary Bogart and others were supervisory employes, and the further assumption that such persons were possessed of the degree of authority which would identify their interests with the management rather than the employes, and that the employes looked upon them as representing the management, such findings and the assumptions being without foundation in the evidence, unjustified, contrary to and in disregard of the evidence.

(13) To the finding and discussion on page 23 that if Mrs. Reed stated at a meeting of the employes to which she was invited that, "Neither Dubinsky nor any other buttinsky is going to intimidate me or the Company into forcing you to join the International against your will", that such statement constituted an unfair labor practice, although such statement was not only lawful but in direct support of the law, and that in view of the uncontested fact that Mr.

Dubinsky at that time was endeavoring to force the management to put pressure on the employes to join the Int'r-
[fol. 360] national against their will, such statement was legally justified and such attitude was legally required.

(14) To the finding that the alleged statement of Rose Todd that, "We are going to run an open shop as long as the majority feels that way" was a sign of Company domination, whereas if said at all it was a correct and proper statement of the law and the rights of the employes, and in any case was not the act of the employer.

(15) To the finding and conclusion that if Instructor Little pointed out the greatly smaller cost of an independent union over the International that instead of being a fact proper to refer to and consider that it was evidence of domination by the management without any evidence upon which to base said finding and in defiance of any reasonable inference.

(16) To the finding that because no second fee was required by attorneys until seven months after organization and until the treasury of the union could take care of original expenses and accumulate some surplus, that therefore the original fee of $500.00 necessarily included work which it is admitted was not even mentioned when the original fee was paid, as being inference without foundation in the evidence and even contrary to all reasonable inferences therefrom.

(17) To the finding that the original fee in regard to investigating and preparing injunction was paid by the Loyalty League in violation of all the evidence, and to the finding that it would be evidence of domination even if true.

[fol. 361] (18) To the finding that it is axiomatic that a labor organization free from employer domination does not persuade employes to join its ranks so rapidly in spite of the conclusive evidence as to the reasons for employes being universally in favor of prompt action for the purpose of their own physical protection. The conclusion of the master is based on the theory that strong evidence of the intervener should be treated as contrary to its natural import, but that weak evidence is equally unbelievable,

which obviously springs from preconceived opinions, as unsupported by the evidence.

(19) To the finding that piecework members of the executive committee were paid by the company for time lost in connection with D.G.W.U. business.

(20) To the findings that employees were not represented on the committee fixing piecework prices in spite of the uncontradicted evidence to the contrary to the effect that they selected a member of the committee who had had experience previously in that line of work and that she continuously represented them, and the further evidence that the employees possessed and used means for obtaining changes in piecework prices even in cases where their own representative on the committee had not arrived at piecework prices satisfactory to the employees.

(21) To the finding and inference that although the committee was authorized by the membership to make contracts with the company on behalf of the employes, yet the fact that the committee did not submit the wage agreement to the membership as a whole is evidence of illegality or of denial of the wishes of the employees, there being no evidence whatever of such fact.

(22) To the finding and statement on page 9 of the report that the D.G.W.U. was given an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing in spite of the fact that the matter had been directed to take the evidence of the [fol. 362] employees or such part of them as would give a reasonable picture of the entire body as the purpose of this hearing and yet refuse to allow the intervener to produce a single further witness and further gave no consideration or weight whatever to the evidence of their choice of labor representatives, their reason therefor, and their freedom from domination in so doing.

(23) To the finding and inference that unless the instructors had enough authority to make them representatives of the management in the sense of ineligibility for union membership then it would have been impossible to operate the factory, such finding being contrary to all of the evidence and not subject of even reasonable inference.

(24) To the statement and finding on page 19 that Mrs. Strickland told the employes they should sign membership cards in the Loyalty League "to keep their jobs" as being wholly unsupported by the evidence.

(25) To the finding and conclusion that statements of employes that they had received generous and fair treatment from the company and refused to acknowledge any union labor organization at a time when no plant union had been considered and when the International was endeavoring to force membership by violence is evidence not of the truth of the statement made but is evidence in itself of the exact opposite.

(26) To the finding and inference that the statement in the by-laws of the DGWU, although fully supported by the facts, that one of the purposes of organization was self-protection of employes and members of the union from coercion, intimidation, violence or threats of violence in order to force them to join unions organized and dominated by outsiders and not employes of this plant is evidence that the union partially resulting from this reason was invalid and not the actual choice of the employes.

[fol. 363] (27) To the conclusions of law of the examiner and each of said conclusions because there is no evidence of domination or interference of the employer with the DGWU either in its formation or operation, no evidence of the employer contributing financial support to said union or engaging in unfair labor practices in connection therewith either under Section 8 (2) or Section 8 (3) of the National Labor Relations Act or of any violations of Section 8 (1) of the act, or that any practices in existence before, during or after the organization of the DGWU are unfair labor practices within the meaning of Section 2 (6) and (7) of the act.

(28) To the recommendations of the examiner and each of them because the evidence and the law do not justify any order requiring the respondent to cease and desist from dominating or interfering with the DGWU or contributing support thereto or from giving effect to the contract of May 27, 1937, and a supplemental wage agreement of June 22, 1937, or any extension, renewal, modification or supplement thereof, or from discouraging membership

in the International or encouraging membership in DGWU by laying off employees or any other manner, or from dominating, controlling or using the Donnelly Loyalty League to interfere with, restrain and coerce its employees or from in any other manner interfering with, restraining or coercing its employees in the exercise of their right of self-organization, or to form, join or assist labor organizations or bargain collectively.

(29) To the recommendation of the examiner that the company cease giving effect to its check-off agreement with the DGWU for the reason that such agreement is legal, valid and the desire of the employees.

(30) To the recommendation that the company be required to take affirmative action in withdrawing recognition from the DGWU on all matters of labor representation because such representation is a valid legal right of the intervener and it has a property right in the contract resulting from such recognition.

[fol. 364] (31) To the recommendation of affirmative action by the company in repaying employes for dues and assessments for the reason that such dues and assessments were voluntarily paid by the employes in a lawful manner and the employes do not desire such repayment.

(32) To the recommendation that the company take affirmative action by posting notices as recommended in the order for the reason that employes have not been dominated or threatened with domination by the employer and that except for the limitations imposed on themselves by themselves in the nature of a closed shop they are free to take any lawful action, and they are fully aware of their rights as to membership in any labor organization.

[fol. 365] (33) To the following statements in paragraph Three of the Intermediate report:

The first six sentences of paragraph Two on page 11.

The last sentence of paragraph Three on page 11.

All of paragraph Two on page 12.

All of paragraph Three on page 12.

Footnote Eighteen on page 12.

All of the last paragraph beginning on page 12 and continuing on page 13.

All of the last paragraph beginning on page 13 and continuing on page 14.

Footnote Nineteen on page 13.

All of the Second paragraph on page 14 except the first three sentences thereof.

Footnote Twenty on page 14.

All of the First full paragraph on page 15.

All of the remainder of sub-paragraph Two.

All of sub-head Three except the first and second sentences.

All of sub-paragraph Four.

for the reasons that such statements, findings and conclusions are not supported by the evidence or any evidence and do not establish or tend to establish that the employes referred to therein were supervisory employes, or represented the management rather than the employes, or were acting for or in behalf of the management in regard to any of the matters mentioned in the report or that the Company held them out to the employes as its representatives, or that the employes regarded them, or any of them, as representatives of the employer in connection with any labor matters whatever.

(34) Under sub-division B, labeled "Events prior to the Effective date of the Act:

The last Three sentences of the First paragraph on page 17.

All of First and Second paragraphs appearing on page 18.

[fol. 366] The First, Second and Fourth sentences of the Third paragraph on page 18.

All of the Fourth paragraph on page 18 except the last sentence.

All of the Fifth paragraph on page 18.

All of page Nineteen except the indented quotation thereon.

All of page Twenty except the First sentence in Second paragraph.

for the reason that such findings and conclusions relate to evidence which is incompetent, irrelevant and immaterial because referring to matters before the enactment of the National Labor Relations Act, and cannot in any event be properly considered as any ground for depriving the interveners of their right to organization and to contracts with the employer, nor do they amount to any evidence, and in particular not to evidence establishing or tending to establish invalidity of the union.

(35) To the method used by the examiner in the Intermediate report of stating controverted matters or matters unsupported by evidence as established facts without any page reference to the record, and frequently without any statement showing the insignificance of the evidence or circumstances or inference relied on or the overwhelming evidence contrary thereto.

(36) To the finding (p. 26) that the organization meeting of the DGWU was held during working hours, and especially to the fact that such finding is made with no citation of evidence or weighing of evidence. The only possible testimony must have been statements of three or four ex-employes who admitted prejudice or hatred and admitted that the matter had never been called to their attention for about five years after it happened, and a photograph showing many girls wearing aprons at the meeting, no consideration being given to, or mention made of, the fact that hundreds of employes in affidavits made at a [fol. 367] time when the matter was still fresh in their memory, stated that the meeting was held after hours and that many employes, with no contradictory evidence whatever, testified that on frequent occasions they wore their aprons to meetings which were held after hours and did not change to street clothes until after the meetings.

(37) To the First paragraph on page 22 in Subdivision C, the Second paragraph on page 24 in Subdivision C, and

the Second paragraph on page 25 in Subdivision C, for the reason that such statements are contrary to the evidence, wholly unjustified by the evidence, and can be at most based on inference and not on evidence. Also as to the Second paragraph on page 25 for the reason that the Board specifically and unequivocally abandons any claim that the company was in any way responsible for the feeling of the employes in the plant in connection with Sylvia Hull (see page 2652 of record of first hearing).

(38) To the First paragraph on page 28 in Subdivision D and the Third paragraph on page 30 in Subdivision D for the reason that such statements, conclusions and findings are not based on evidence, are contrary to all evidence and go beyond the matters occurring before the hearing began, while at the same time the examiner refused to consider on behalf of the intervener evidence of the efficient and successful operation of the plant union for five years and down to the date of the second hearing.

(39) To the last Two paragraphs on page 32 of Subdivision 3 of Subdivision D for the reason that the conclusion that the same persons set rates for the respondent as represented the union in this matter is obviously a distortion of the record, without evidence therein for the reason that all of the evidence shows that Rose Todd represents the union in the matter of fixing prices and does not represent the respondent, and for the reason that the [fol. 368] allegation and finding that the company forced employes to join the DGWU is not supported by the evidence, is contrary to all the evidence, and can rest only upon inference based on inference.

(40) To the statements on pages 33 and 34 on Subdivision 4 of Subdivision D stating that the union never had any intention of paying rent which it afterward paid; that it was the League which borrowed $1,000 at the bank and that the League would have been without right to borrow such money even if if were true that the DGWU was financed by the League; that the employes formed the union under pressure of the employer; that the fact that employes joined it so rapidly proves that it is invalid; that the employer retained complete control of the union

through Rose Todd; that the employer in recognizing the rights of the union and entering into a contract and wage agreement within two months with it, although admittedly bound by law to do so, nevertheless thereby provided evidence of violation of the law in so doing, and to the conclusion in the First paragraph on page 37, for the reason that such statements, findings and conclusions are unsupported by any evidence and in violation of all the evidence.

[fol. 369] (41) To the overruling of the motion of intervener and respondent for a new examiner by reason of the bias and prejudice of the examiner assigned for the second hearing, such ruling being by the Board after reference of the motion by the examiner to the Board.

(42) To the overruling of the motion of intervener and respondent for a continuance, such ruling being by the Board and by the examiner.

(43) To the ruling of the examiner that intervener be denied the right to put on any evidence in the case in chief on the second hearing.

(44) To the denial by the examiner of an election by the employees under proper precautions to insure secrecy of voting and fairness of administration from the beginning of the case in 1937 continuously for a period of some five years.

(45) To the refusal of the examiner to take, admit, consider and weigh the evidence of the employees.

[fol. 370] (46) The intervener excepts to each and all of the rulings and actions of the trial examiner in the conduct of the former hearing herein which were made and taken over the objections or exceptions of the intervener made at that time or which are adverse to the intervener, for all of the grounds stated in the record and for the further reason that the bias and prejudice of the trial examiner toward intervener and its evidence colored and affected said rulings and actions and said bias and prejudice affected and became a part of his findings, conclusions, recommendations and rulings, thereby depriving intervener of a fair trial.

(47) Intervener excepts to all of the rulings made by the trial examiner in the second hearing herein over the objection to, or adverse to, the intervener and to which intervener had an automatic exception, and adopts and renews the objections appearing in the record in such second hearing, and for additional grounds to the exceptions herein taken states that such adverse rulings were influenced by the bias and prejudice of the examiner against the intervener and thereby deprived the intervener of a fair trial.

(48) Intervener hereby adopts all of the exceptions taken and filed in the respondent's statement of exceptions, but in order to avoid unnecessary lengthening of the record does not copy or insert them herein, but nevertheless makes and adopts them as fully and completely as though set forth herein in detail and in full.

Wherefore, intervener prays that the Board sustain its exceptions herein, that the intermediate report of the Trial Examiner be disproved and that the complaint be dismissed.

Respectfully submitted,

FRANK E. TYLER,
LUCIAN LANE,
Attorneys for Intervener,
Donnelly Garment Workers' Union.

Form AD-88
(Rev. Aug. 1940)

APPAREL

INFORMATION RESPECTING COMPLIANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938

Person submitting information Alex C. Green (Name) Date 10/30/40

Name of firm DONNELLY GARMENT COMPANY (Corporation, partnership, or individually owned)

Address of firm 1828 Walnut, (Street) Kansas City, (City) Missouri (State)

Title of person submitting information Vice President

I. WAGES

A. (From October 24, 1938 to October 24, 1939 an employer was required to pay each employee subject to the act not less than 25 cents per hour for each hour worked in each workweek as provided in section 6 (a) (1); and from October 24, 1939 to October 24, 1945 an employer is required to pay such employees not less than 30 cents per hour for each hour worked in each workweek as provided in section 6 (a) (2) of the act.)

RECEIVED OCT 31 1940 W. A. S. DIV. KANSAS CITY, MO.

(Answer "Yes" or "No" to each of the following questions)

1. Has the firm complied with section 6 (a) (1)? Yes
2. Has the firm complied with section 6 (a) (2)? Yes
3. Is the firm now complying with section 6 (a) (2)? Yes

B. (Although an employer is required to pay the minimum wages mentioned above, section 3 (m) permits an employer to pay wages in other than cash. Thus, if board, lodging, or other facilities are customarily furnished by an employer to his employees, the employer is permitted to include a reasonable cost for such items as part of the wages paid to each employee. *Reasonable cost* means actual cost to an employer and does not include a profit to the employer or to any affiliated person.)

(Answer "Yes" or "No" to the following questions)

1. In computing wages has the firm deducted from such wages any charge for facilities furnished its employees? No
2. If so, state nature of facilities furnished to employees and specific amounts deducted

NATIONAL LABOR RELATIONS BOARD
PETITIONER / RESPONDENT / INTERVENOR
CASE NO. C-382 EXHIBIT NO. 29-A
IN THE MATTER OF Donnelly Garment Co. et al.
DATE 8-6-42 WITNESS Reed
DANIEL W. ROSS, Official Reporter
BY E. Reed

(Board's Exhibit 32A to 32E - Reje

DATE 8-6-42 WITNESS [illegible]
DANIEL W. ROSS, Official R...
BY E. Creel

II. OVERTIME

(From October 24, 1938 to October 24, 1939 an employer was required to pay each employee subject to the act at least one and one-half times the employee's regular rate of pay for all hours in excess of 44 in any workweek as provided in section 7 (a) (1); and from October 24, 1939 to October 24, 1940 an employer was required to pay each such employee at least one and one-half times the employee's regular rate of pay for all hours in excess of 42 in any workweek as provided in section 7 (a) (2) of the act; and from October 24, 1940 an employer is required to pay each employee at least one and one-half times the employee's regular rate of pay for all hours in excess of 40 in any workweek, as provided in section 7 (a) (3) of the act.)

7000

Rejected.)

4061

Form AD-65
(Rev. Aug. 1940)

INFORMATION RESPECTING COMPLIANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938

Person submitting information Alex C. Green (Name) Date 12/20/40

Name of firm Donnelly Garment Co. (Corporation, partnership, or individually owned)

Address of firm 1828 Walnut Street, (Street) Kansas City, (City) Missouri (State)

Title of person submitting information Vice President

I. WAGES

A. (From October 24, 1938 to October 24, 1939 an employer was required to pay each employee subject to the act not less than 25 cents per hour for each hour worked in each workweek as provided in section 6 (a) (1); and from October 24, 1939 to October 24, 1945 an employer is required to pay such employees not less than 30 cents per hour for each hour worked in each workweek as provided in section 6 (a) (2) of the act.)

(Answer "Yes" or "No" to each of the following questions)

1. Has the firm complied with section 6 (a) (1)? Yes
2. Has the firm complied with section 6 (a) (2)? Yes
3. Is the firm now complying with section 6 (a) (2)? Yes

B. (Although an employer is required to pay the minimum wages mentioned above, section 3 (m) permits an employer to pay wages in other than cash. Thus, if board, lodging, or other facilities are customarily furnished by an employer to his employees, the employer is permitted to include a reasonable cost for such items as part of the wages paid to each employee. *Reasonable cost* means actual cost to an employer and does not include a profit to the employer or to any affiliated person.)

(Answer "Yes" or "No" to the following questions)

1. In computing wages has the firm deducted from such wages any charge for facilities furnished its employees? No

2. If so, state nature of facilities furnished to employees and specific amounts deducted

NATIONAL LABOR RELATIONS BOARD
PETITIONER
RESPONDENT
INTERVENOR
CASE NO. C-1382 EXHIBIT NO. 33
IN THE MATTER OF Donnelly Garment Co. et al
DATE 8-18-42 WITNESS Reed
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Creel

II. OVERTIME

(Board's Exhibit 33 - Rejecte

(Answer "Yes" or "No" to each of the following questions)

1. Has the firm complied with section 7 (a) (1)? Yes
2. Has the firm complied with section 7 (a) (2)? Yes
3. Is the firm now complying with section 7 (a) (3)? Yes

III. RECORDS

Under section 11 (c) the Administrator has prescribed regulations for record keeping. A copy of the "Employers' Digest" is attached. In order to determine whether your records conform to such regulations, please answer "Yes" or "No" to each of the following questions.

A. Has the firm kept a true and accurate record of:

1. The name of each employee Yes
2. The address of each employee Yes
3. The date of birth of each employee under 19 Yes yes as to most employees
4. All of the hours worked each workday by each employee and as to all employees now
5. All of the hours worked each workweek by each employee yes
6. Regular rate of pay of each employee yes
7. Total wages at regular rate of pay for each workweek, excluding extra pay for overtime
8. Extra pay for each workweek for overtime — Kept together at first, kept separately now.
9. Additions to cash wages, if any, in the form of board, lodging, or other facilities none
10. Deductions from cash wages, if any, in the form of board, lodging, or other facilities none
11. Total wages paid for each workweek yes
12. Pay period yes
13. Date of payment yes
14. Is the firm keeping in a safe place and within easy access all of the information mentioned in Nos. A–1 through A–12? yes
15. Does the firm understand that such records must be kept for a period of at least 4 years after the entry of the record? yes
16. Will the firm keep such records for a period of at least 4 years after the entry of the record? yes

B. (No learner, apprentice, messenger, or handicapped worker may be employed at less than the minimum wage except under special certificate issued by the Wage and Hour Division in accordance with regulations promulgated by the Administrator.)

(Answer "Yes" or "No" to the following questions)

1. Does the firm employ such persons? Such persons are paid regular workers guarantee in excess of Wage & Hour minimums.
2. Has the firm obtained certificates for such employees?

IV. SECTION 15 (a) (3)

(This section of the act makes it unlawful for any person to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.)

(Answer "Yes" or "No" to the following question)

1. Has the firm discharged any employee for any one of the above-mentioned reasons? No

V. SECTION 15 (a) (1)

(It is unlawful under this section not only to produce goods for interstate commerce in violation of the act but also to ship, deliver, or sell in interstate commerce goods so produced. This is the "hot goods" provision. Any person found with such "hot goods" in his possession ...

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-182 BOARD'S EXHIBIT
IN THE MATTER OF
DATE 6-6-42 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER

(Board's Exhibit 32A to 32E - Rejected

32 E 1.32 E

Donnelly Garment Company

Pursuant to your request of December 29th the persons coming within the provision of the second part of Paragraph 6 of the questionnaire as at December 20, 1940 are as follows:

EXECUTIVE		SALARY
Mrs. Nell Quinlan Reed	President	Over $200.00 per month
Lee Baty	Factory Manager	" "
John B. Bachofer	Controller	" "
C. W. Howard	Head of New York Office	" "
Elizabeth Reeves	Merchandise Manager	" "
Beulah Spilsbury	Chief of Designing Dept.	" "
Ella Mae Hyde	Personnel Manager	" "
Ted Scoles	Supervisor, Cutting Dept.	" "
Marvin Price	Supervisor, Bldg. Maintenance	" "
Lyle Jeter	Supervisor, Machine "	" "
Ella Brown	Supervisor, Des. Mat'l. Purchases	" "
Florence Strickland	Supervisor, Pattern Dept.	" "
Martha Gray	Supervisor, Retail Store	$45.00 per week
Rose O'Leary	Supervisor, Mat'l. Purchases	45.00 " "
Pauline Hartman	Supervisor, Accounting	Over $200.00 per month
Harlan Justus	Supervisor, Tabulating	$42.50 per week
Helen Hauser	Supervisor, Planning Dept.	40.00 " "
Betty Belter	Supervisor, Notion Purch.	$32.50 " "

ADMINISTRATIVE		
Dewey Atchison	Ass't to Factory Manager	Over $200.00 per month
Mildred Francis	" " President	" "
Hilda Fitzgerald	" " Chief of Designing	" "
Fred Brown	" " Cutting Supervisor	" "
Cecile Ealy	" " Factory Manager	" "
Lena Tyhurst	" " Factory Manager	" "
Katie Schleicher	" " Chief of Designing	" "
Lula Nichols	" " " " "	" "

(Board's Exhibit 32A to

9

Lula Nichols

PROFESSIONAL

Nellie Kraft — Designer — Over $200.00 per month
Yolanda Prosperi — " — "
Gertrude Cain — " — "

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1822 | BOARD / PETITIONER / RESPONDENT / INTERVENOR | EXHIBIT NO. 32-E
IN THE MATTER OF Donnelly Garment Co.
DATE 8-6-42 WITNESS Reed
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Creel 7001

to 32E - Rejected.) 4065

4.32 e

he is not the original producer, may be restrained by injunction from shipping these goods in interstate commerce. He may also be subject to the criminal penalties of the act if he ships them knowing or having reason to believe that they were produced in violation of the wage and hour provisions of the act.)

(Answer "Yes" or "No" to the following questions)

1. Has the firm violated section 15 (a) (1)? No
2. List four or five principal suppliers of the goods handled by your firm and purchasers of such goods from your firm

Cohn, Hall, Marx	New York City
Harlem Adler	" " "
Schwarzenback Huber	" " "
Emery Bird Thayer	Kansas City, Mo.
J. L. Hudson	Detroit, Mich.

VI. EMPLOYEES

Total number of employees on the firm's pay roll 1,090

Total number of employees whom your firm considers exempt from the provisions of the act. (Refer to Employers' Digest) includes salesman . . 49

VII. RESTITUTION

(Board's Exhibit 32A

VII. RESTITUTION

Will your firm make immediate restitution of wages found to be due any employee under the supervision of the Wage and Hour Division of the United States Department of Labor? Yes

Any remarks in this connection should be made below or attached in a separate statement

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-182 EXHIBIT NO. 32-C

IN THE MATTER OF Donnelly Garment Co.

DATE 8-6-42 WITNESS Redl

DANIEL W. ROSS, OFFICIAL R...

BY E. Creel

The nature of business of the above establishment is Garment Manufacturing

The products sold or services rendered by the establishment are

House dresses and wash frocks

7002

(Rejected.) 4067

7002a

Our firm ships goods or products directly to the following States

All States

The approximate percentage of the firm's total production that is shipped out of State is

97%

We provide services in the following States

We receive goods or products from the following States New York, New Jersey, Mass. R. Island, Del. Conn. Penn. Maryland

The last shipment made out of the State was in yesterday

Our firm sells to purchasers or processors who in turn ship to the following States

Approximately 100 percent of our goods are sold for resale.

There are approximately 1,100 persons employed by the firm.

This information covers the period from October 24, 1938, to the date of this statement.

I do further state that the information supplied hereinabove or attached hereto is furnished in good faith and I understand and agree that the acceptance of this information by the Wage and Hour Division of the United States Department of Labor shall not affect in any way any cause of action arising under the act and that this information shall not give immunity in any action, civil or criminal, that may be brought under the act.

I hereby acknowledge that a copy of this questionnaire with the information contained therein or attached thereto has been received by me and is in my possession or the possession of this firm.

Allen G. Freeman
(Name)

Vice Pres.
(Title of office in firm)

1928 Walnut, Kansas City, Mo.
(Address)

U. S. GOVERNMENT PRINTING OFFICE 16—16824

(Board's Exhibit 32A to 32E - Rejected.)

BY E. Creel

II. OVERTIME

(From October 24, 1938 to October 24, 1939 an employer was required to pay each employee subject to the act at least one and one-half times the employee's regular rate of pay for all hours in excess of 44 in any workweek as provided in section 7 (a) (1); and from October 24, 1939 to October 24, 1940 an employer was required to pay each such employee at least one and one-half times the employee's regular rate of pay for all hours in excess of 42 in any workweek as provided in section 7 (a) (2) of the act; and from October 24, 1940 an employer is required to pay each employee at least one and one-half times the employee's regular rate of pay for all hours in excess of 40 in any workweek, as provided in section 7 (a) (3) of the act.)

7004

(Answer "Yes" or "No" to each of the following questions)

1. Has the firm complied with section 7 (a) (1)? Yes
2. Has the firm complied with section 7 (a) (2)? Yes
3. Is the firm now complying with section 7 (a) (3)? Yes

III. RECORDS

Under section 11 (c) the Administrator has prescribed regulations for record keeping. A copy of the "Employers' Digest" is attached. In order to determine whether your records conform to such regulations, please answer "Yes" or "No" to each of the following questions.

A. Has the firm kept a true and accurate record of:

1. The name of each employee Yes
2. The address of each employee Yes
3. The date of birth of each employee under 19 Yes
4. All of the hours worked each workday by each employee Yes as to most employees and as to all employees now
5. All of the hours worked each workweek by each employee Yes
6. Regular rate of pay of each employee Yes
7. Total wages at regular rate of pay for each workweek, excluding extra pay for overtime
8. Extra pay for each workweek for overtime Kept together at first kept separately now
9. Additions to cash wages, if any, in the form of board, lodging, or other facilities None
10. Deductions from cash wages, if any, in the form of board, lodging, or other facilities None
11. Total wages paid for each workweek Yes
12. Pay period Yes
13. Date of payment Yes
14. Is the firm keeping in a safe place and within easy access all of the information mentioned in Nos. A–1 through A–12? Yes
15. Does the firm understand that such records must be kept for a period of at least 4 years after the entry of the record? Yes
16. Will the firm keep such records for a period of at least 4 years after the entry of the record? Yes

B. (No learner, apprentice, messenger, or handicapped worker may be employed at less than the minimum wage except under special certificate issued by the Wage and Hour Division in accordance with regulations promulgated by the Administrator.)

(Answer "Yes" or "No" to the following questions)

1. Does the firm employ such persons? Such persons are paid regular workers guarantee in excess of wage & hour minimums
2. Has the firm obtained certificates for such employees?

~~IV. CHILD LABOR~~

Sec. 3 (*l*), and regulations and orders thereunder, in effect, establish a basic 16-year minimum age for employment, an 18-year minimum age for employment in occupations found and by order declared hazardous by the Chief of the Children's Bureau, and a 14-year minimum for certain nonmining, nonmanufacturing, and nonprocessing occupations for limited periods outside school hours. An employer may protect himself against unintentionally employing under-aged minors by obtaining employment certificates or certificates of age showing the minors to be above the minimum age for the occupations in which they are employed. Employers are advised to have on file certificates for minors under 20 in occupations declared hazardous and under 18 in all other occupations.

1. How many minors 16 and 17 years of age do you have in your employ?
   With certificates ____ Without certificates ____
2. How many minors 18 and 19 years of age in occupations declared hazardous do you have in your employ?
   With certificates ____ Without certificates ____
3. Do you have in your employ any minors under 16?
   With certificates ____ Without certificates ____
   Give occupation ____ Hours of work ____

(Board's Exhibit 34A to 34E - Rejected.)

4071

7024a

(Answer "Yes" or "No" to each of the following questions)

1. Has the firm complied with section 7 (a) (1)? Yes
2. Has the firm complied with section 7 (a) (2)? Yes
3. Is the firm now complying with section 7 (a) (3)? Yes

III. RECORDS

Under section 11 (c) the Administrator has prescribed regulations for record keeping. A copy of the "Employers' Digest" is attached. In order to determine whether your records conform to such regulations, please answer "Yes" or "No" to each of the following questions.

A. Has the firm kept a true and accurate record of:

1. The name of each employee Yes
2. The address of each employee Yes
3. The date of birth of each employee under 19 Yes Yes as to most employees
4. All of the hours worked each workday by each employee and as to all employees now
5. All of the hours worked each workweek by each employee Yes
6. Regular rate of pay of each employee Yes
7. Total wages at regular rate of pay for each workweek, excluding extra pay for overtime Kept togethe at first kept
8. Extra pay for each workweek for overtime seperately now
9. Additions to cash wages, if any, in the form of board, lodging, or other facilities none
10. Deductions from cash wages, if any, in the form of board, lodging, or other facilities none
11. Total wages paid for each workweek Yes
12. Pay period Yes
13. Date of payment Yes
14. Is the firm keeping in a safe place and within easy access all of the information mentioned in Nos. A–1 through A–12? Yes
15. Does the firm understand that such records must be kept for a period of at least 4 years after the entry of the record? Yes
16. Will the firm keep such records for a period of at least 4 years after the entry of the record? Yes

B. (No learner, apprentice, messenger, or handicapped worker may be employed at less than the minimum wage except under special certificate issued by the Wage and Hour Division in accordanco with regulations promulgated by the Administrator.)

(Answer "Yes" or "No" to the following questions)

1. Does the firm employ such persons? Such persons are paid regular workers guarantee in excess of wage & hour
2. Has the firm obtained certificates for such employees? minimums

IV. SECTION 15 (a) (3)

(This section of the act makes it unlawful for any person to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this act, or has testified c is about to testify in any such proceeding, or has served or is about to serve on an industry committee.)

(Answer "Yes" or "No" to the following question)

1. Has the firm discharged any employee for any one of the above-mentioned reasons? No

V. SECTION 15 (a) (1)

(It is unlawful under this section not only to produce goods for interstate commerce in violation of the act but also to ship, deliver, or sell in interstate commerce goods so produced. This is the "hot goods" provision. Any person found with such "hot goods" in his possession, even though

(Board's Exhibit 33 - Rejected.)

he is not the original producer, may be restrained by injunction from shipping these goods in interstate commerce. He may also be subject to the criminal penalties of the act if he ships them knowing or having reason to believe that they were produced in violation of the wage and hour provisions of the act.)

(Answer "Yes" or "No" to the following questions)

1. Has the firm violated section 15 (a) (1)? No
2. List four or five principal suppliers of the goods handled by your firm and purchasers of such goods from your firm

Cohn Hall Marx New York City, New York
Harlem Adler " " " " "
Schwarzenbach Huber " " " "

Donnelly Garment Sales Co.

VI. EMPLOYEES

Total number of employees on the firm's pay roll 973

Total number of employees whom your firm considers exempt from the provisions of the act. (Refer to Employers' Digest) 29

VII. RESTITUTION

(Board's Exhibit

VII. RESTITUTION

Will your firm make immediate restitution of wages found to be due any employee under the supervision of the Wage and Hour Division of the United States Department of Labor? Yes

Any remarks in this connection should be made below or attached in a separate statement

NATIONAL LABOR RELATIONS BOARD

CASE NO. (BOARD / PETITIONER / RESPONDENT / INTERVENOR) EXHIBIT NO.

IN THE MATTER OF

DATE WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

The nature of business of the above establishment is

Garment Manufacturing

The products sold or services rendered by the establishment are

Ladies' house dresses, wash frocks and play suits under the trade name of "Kelly Don".

16—16834

7005

hibit 33 - Rejected.) 4075

7005a

Our firm ships goods or products directly to the following States Missouri and Kansas and at various times to other states

The approximate percentage of the firm's total production that is shipped out of State is Approximately 10% or less

We provide services in the following States. New York

~~do not do so~~

We receive goods or products from the following States New York, New Jersey, Mass. Rhode Island, Del. Conn. Penn. Maryland

The last shipment made out of the State was in See below

Our firm sells to purchasers or processors who in turn ship to the following States Except for the percentage shipped out of state (above). Goods are sold to Donnelly Garment Sales Co. - a seperate Corporation located in same building.

Approximately 100 percent of our goods are sold for resale.

There are approximately 1,000 persons employed by the firm.

This information covers the period from October 24, 1938, to the date of this statement.

I do further state that the information supplied hereinabove or attached hereto is furnished in good faith and I understand and agree that the acceptance of this information by the Wage and Hour Division of the United States Department of Labor shall not affect in any way any cause of action arising under the act and that this information shall not give immunity in any action, civil or criminal, that may be brought under the act.

I hereby acknowledge that a copy of this questionnaire with the information contained therein or attached thereto has been received by me and is in my possession or the possession of this firm.

Allen A. Green
(Name)

Vice Pres.
(Title of office in firm)

(Address)

U. S. GOVERNMENT PRINTING OFFICE 16—16894

(Board's Exhibit 33 - Rejected.)

R-24-91A

COPY

Form AP-85
U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
(Rev. Aug. 1940)

INFORMATION RESPECTING COMPLIANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938

Person submitting information Alex C. Green (Name) Date 12/20/40

Name of firm Donnelly Garment Co. (Corporation, partnership, or individually owned)

Address of firm 1828 Walnut Street, (Street) Kansas City, (City) Missouri (State)

Title of person submitting information Vice-President.

I. WAGES

A. (From October 24, 1938 to October 24, 1939 an employer was required to pay each employee subject to the act not less than 25 cents per hour for each hour worked in each workweek as provided in section 6 (a) (1); and from October 24, 1939 to October 24, 1945 an employer is required to pay such employees not less than 30 cents per hour for each hour worked in each workweek as provided in section 6 (a) (2) of the act.)

(Answer "Yes" or "No" to each of the following questions)

1. Has the firm complied with section 6 (a) (1)? Yes
2. Has the firm complied with section 6 (a) (2)? Yes
3. Is the firm now complying with section 6 (a) (2)? Yes

B. (Although an employer is required to pay the minimum wages mentioned above, section 3 (m) permits an employer to pay wages in other than cash. Thus, if board, lodging, or other facilities are customarily furnished by an employer to his employees, the employer is permitted to include a reasonable cost for such items as part of the wages paid to each employee. *Reasonable cost* means actual cost to an employer and does not include a profit to the employer or to any affiliated person.)

(Answer "Yes" or "No" to the following questions)

~~1. Is the firm operating under a wage order? If so, which one?~~

1. In computing wages has the firm deducted from such wages any charge for facilities furnished its employees? No

2. If so, state nature of facilities furnished to employees and specific amounts deducted

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 EXHIBIT NO. 34-A
IN THE MATTER OF Donnelly Garment Co. etc
DATE 8-7-42 WITNESS Reed
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Reed

II. OVERTIME

(Board's Exhibit 34A to 34E Rejecte

DANIEL W. ROSS, OFFICIAL REPORTER
By E. Quell

II. OVERTIME

(From October 24, 1938, to October 24, 1939, an employer was required to pay each employee subject to the act at least one and one-half times the employee's regular rate of pay for all hours in excess of 44 in any workweek as provided in section 7 (a) (1); and from October 24, 1939 to October 24, 1940 an employer was required to pay each such employee at least one and one-half times the employee's regular rate of pay for all hours in excess of 42 in any workweek as provided in section 7 (a) (2) of the act; and from October 24, 1940 an employer is required to pay each employee at least one and one-half times the employee's regular rate of pay for all hours in excess of 40 in any workweek, as provided in section 7 (a) (3) of the act.)

7007

ected.)

4079

COPY

Donnelly Garment Company

Pursuant to your request of December 29th the persons coming within the provision of the second part of Paragraph 6 of the questionnaire as at December 20, 1940 are as follows:

		SALARY
EXECUTIVE		
Mrs. Nell Quinlan Reed	President	Over $200.00 per month
Lee Baty	Factory Manager	" "
John B. Bachofer	Controller	" "
C. W. Howard	Head of New York Office	" "
Elizabeth Reeves	Merchandise Manager	" "
Beulah Spilbury	Chief of Designing Dept.	" "
Ella Mae Hyde	Personnel Manager	" "
Ted Scoles	Supervisor, Cutting Dept.	" "
Marvin Price	Supervisor, Bldg. Maintenance	" "
Lyle Jeter	Supervisor, Machine "	" "
Ella Brown	Supervisor, Des. Matl. Purchases	" "
Florence Strickland	Supervisor, Pattern Dept.	" "
Martha Gray	Supervisor, Retail Store	$45.00 per week
Rose O'Leary	Supervisor, Matl. Purchases	45.00 " "
Pauline Hartman	Supervisor, Accounting	Over $200.00 per month
Harlan Justus	Supervisor, Tabulating	$42.50 per week
Helen Hauser	Supervisor, Planning Dept.	$40.00 per week
Betty Belter	Supervisor, Notion Purch.	$32.50 " "
ADMINISTRATIVE		
Dewey Atchison	Asst. to Factory Manager	Over $200.00 per month
Mildred Francis	" " President	" "
Hilda Fitzgerald	" " Chief of Designing	" "
Fred Brown	" " Cutting Supervisor	" "
Cecile Ealy	" " Factory Manager	" "
Lena Tyhurst	" " Factory Manager	" "
Katie Schleicher	" " Chief of Designing	" "
Lula Nichols	" " " " "	" "
PROFESSIONAL		
Nellie Kraft	Designer	Over $200.00 per month
Yolanda Prosperi	"	" "
Gertrude Cain	"	" "

(Board's Exhibit 34A to 34E - Rejected

34-C

IV. SECTION 15 (a) (3)

(This section of the act makes it unlawful for any person to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.)

(Answer "Yes" or "No" to the following question)

1. Has the firm discharged any employee for any one of the above-mentioned reasons? No

V. ~~VII~~ SECTION 15 (a) (1)

(It is unlawful under this section not only to produce goods for interstate commerce in violation of the act but also to ship, deliver, or sell in interstate commerce goods so produced. This is the "hot goods" provision. Any person found with such "hot goods" in his possession, even though he is not the original producer, may be restrained by injunction from shipping these goods in interstate commerce. He may also be subject to the criminal penalties of the act if he ships them knowing or having reason to believe that they were produced in violation of the wage and hour provisions of the act.)

(Answer "Yes" or "No" to the following questions)

1. Has the firm violated section 15 (a) (1)? No
2. List four or five principal suppliers of the goods handled by your firm and purchasers of such goods from your firm

Cohn Hall Marx — New York City, New York
Harlem Adler — " " " " "
Schwarzenbach Huber — " " " " "

NATIONAL LABOR RELATIONS BOARD
PETITIONER / RESPONDENT / INTERVENOR
CASE NO. C-1382 EXHIBIT NO. 34-C
IN THE MATTER OF Donnelly Garment Co. et al
Donnelly Garment Sales Co. DATE 6-7-42 WITNESS Reel
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. C. Reel

VI. ~~XIX~~ EMPLOYEES

Total number of employees on the firm's pay roll 973
Total number of employees whom your firm considers exempt from the provisions of the act. (Refer to Employers' Digest) 29
* Total number of homeworkers . . . . . .

VII. ~~VIII~~ RESTITUTION

Will your firm make immediate restitution of wages found to be due any employee under the supervision of the Wage and Hour Division of the United States Department of Labor? _____
Any remarks in this connection should be made below or attached in a separate statement.

(Board's Exhibit 34A to 34E - Rejected

The nature of business of the above establishment is Garment Manufacturing

The products sold or services rendered by the establishment are Ladies' house dresses, wash frocks and play suits under thetrade name of "Nelly Don".

If work is given to homeworkers through contractors, list on a separate sheet the names and addresses of ~~contractors~~ 7004

October 24, 1938.

16—38824

34-W 7009a

Our firm ships goods or products directly to the following States Missouri and Kansas and at various times to other States

The approximate percentage of the firm's total production that is shipped out of State is Approximately 1% or less

We provide services in the following States New York

We receive goods or products from the following States New York, New Jersey, Mass. Rhode Island, Del. Conn. Penn. Paryland

The last shipment made out of the States was in See below

Our firm sells to purchasers or processors who in turn ship to the following States Except for the percentage shipped out of State (above) goods are sold to Donnelly Garment Sales Co. - a separate Corporation located in the same building.

Approximately 100 percent of our goods are sold for resale.

Approximately 1,000 persons are employed by the firm.

This information covers the period from October 24, 1938 to the date of this statement.

I do further state that the information supplied hereinabove or attached hereto is furnished in good faith and I understand and agree that the acceptance of this information by the Wage and Hour Division of the United States Department of Labor shall not affect in any way any cause of action arising under the act and that this information shall not give immunity in any actio., civil or criminal, that may be brought under the act.

I hereby acknowledge that a copy of this questionnaire with the information contained therein or attached thereto has been received by me and is in my posse ion or the possession of this firm.

/s/. Alex C. Green
(Name)

Vice-Pres.
(Title of office in firm)

(Address)

U. S. GOVERNMENT PRINTING OFFICE 16—16534

(Board's Exhibit 34A to 34E - Rejected.)

Form AD-85
(Rev. Aug. 1940)

INFORMATION RESPECTING COMPLIANCE WITH THE FAIR LABOR STANDARDS ACT OF 1938

Person submitting information Alex C. Green (Name) Date 12/20/40

Name of firm Donnelly Garment Sales Co. (Corporation, partnership, or individually owned)

Address of firm 1828 Walnut Street, (Street) Kansas City, (City) Missouri (State)

Title of person submitting information President

I. WAGES

A. (From October 24, 1938 to October 24, 1939 an employer was required to pay each employee subject to the act not less than 25 cents per hour for each hour worked in each workweek as provided in section 6 (a) (1); and from October 24, 1939 to October 24, 1945 an employer is required to pay such employees not less than 30 cents per hour for each hour worked in each workweek as provided in section 6 (a) (2) of the act.)

(Answer "Yes" or "No" to each of the following questions)

1. Has the firm complied with section 6 (a) (1)? Yes
2. Has the firm complied with section 6 (a) (2)? Yes
3. Is the firm now complying with section 6 (a) (2)? Yes

B. (Although an employer is required to pay the minimum wages mentioned above, section 3 (m) permits an employer to pay wages in other than cash. Thus, if board, lodging, or other facilities are customarily furnished by an employer to his employees, the employer is permitted to include a reasonable cost for such items as part of the wages paid to each employee. *Reasonable cost* means actual cost to an employer and does not include a profit to the employer or to any affiliated person.)

(Answer "Yes" or "No" to the following questions)

1. In computing wages has the firm deducted from such wages any charge for facilities furnished its employees? No
2. If so, state nature of facilities furnished to employees and specific amounts deducted

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1572 BOARD / RESPONDENT / INTERVENOR EXHIBIT NO. 35-C
IN THE MATTER OF Donnelly Garment
DATE 8-6-42 WITNESS Beck
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Cree

II. OVERTIME

(Board's Exhibit 35A to 35E - Rejected.)

DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Cree

II. OVERTIME

(From October 24, 1938 to October 24, 1939 an employer was required to pay each employee subject to the act at least one and one-half times the employee's regular rate of pay for all hours in excess of 44 in any workweek as provided in section 7 (a) (1); and from October 24, 1939 to October 24, 1940 an employer was required to pay each such employee at least one and one-half times the employee's regular rate of pay for all hours in excess of 42 in any workweek as provided in section 7 (a) (2) of the act; and from October 24, 1940 an employer is required to pay each employee at least one and one-half times the employee's regular rate of pay for all hours in excess of 40 in any workweek, as provided in section 7 (a) (3) of the act.)

7011

ected.)

4089

7011a

(Answer "Yes" or "No" to each of the following questions)

1. Has the firm complied with section 7 (a) (1)? Yes
2. Has the firm complied with section 7 (a) (2)? Yes
3. Is the firm now complying with section 7 (a) (3)? Yes

III. RECORDS

Under section 11 (c) the Administrator has prescribed regulations for record keeping. A copy of the "Employers' Digest" is attached. In order to determine whether your records conform to such regulations, please answer "Yes" or "No" to each of the following questions.

A. Has the firm kept a true and accurate record of:

1. The name of each employee Yes
2. The address of each employee Yes
3. The date of birth of each employee under 19 Yes
4. All of the hours worked each workday by each employee Yes as to most employees and as to all employees now
5. All of the hours worked each workweek by each employee Yes
6. Regular rate of pay of each employee Yes
7. Total wages at regular rate of pay for each workweek, excluding extra pay for overtime kept together at first kept separately now
8. Extra pay for each workweek for overtime
9. Additions to cash wages, if any, in the form of board, lodging, or other facilities None
10. Deductions from cash wages, if any, in the form of board, lodging, or other facilities None
11. Total wages paid for each workweek Yes
12. Pay period Yes
13. Date of payment Yes
14. Is the firm keeping in a safe place and within easy access all of the information mentioned in Nos. A–1 through A–12? Yes
15. Does the firm understand that such records must be kept for a period of at least 4 years after the entry of the record? Yes
16. Will the firm keep such records for a period of at least 4 years after the entry of the record? Yes

B. (No learner, apprentice, messenger, or handicapped worker may be employed at less than the minimum wage except under special certificate issued by the Wage and Hour Division in accordance with regulations promulgated by the Administrator.)

(Answer "Yes" or "No" to the following questions)

1. Does the firm employ such persons? Such persons are paid regular workers guarantee in excess of wage & hour minimums
2. Has the firm obtained certificates for such employees?

IV. SECTION 15 (a) (3)

(This section of the act makes it unlawful for any person to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee.)

(Answer "Yes" or "No" to the following question)

1. Has the firm discharged any employee for any one of the above-mentioned reasons? No

V. SECTION 15 (a) (1)

(It is unlawful under this section not only to produce goods for interstate commerce in violation of the act but also to ship, deliver, or sell in interstate commerce goods so produced. This is the "hot goods" provision. Any person found with such "hot goods" in his possession, even though

(Board's Exhibit 35A to 35E - Rejected.)

Donnelly Garment Sales Company 35-6

Pursuant to your request of December 29th the persons coming within the provision of the second part of Paragraph 6 of the questionnaire as at December 20, 1940 are as follows:

		SALARY
EXECUTIVE		
Alex C. Green	President	Over $200.00 per month
George T. Keyes	Was Sales Manager	" "
B. Stephenson	Credit Manager	" "
George Fitzgerald	Advertising Manager	" "
Ortense Root	Supervisor, Sample Dept.	$42.50 per week
Anna Price	Supervisor, Shipping Dept.	Over $200.00 per month
Sam Sparks	Supervisor, Order Dept.	" "
Opha Babb	Supervisor, Acc'ts. Payable & Accounting	$45.00 per week
Ruth Wilcox	Supervisor, Tabulating	$42.50 " "
ADMINISTRATIVE		
Frances Keith	Ass't. to Adv. Manager	Over $200.00 per month
Ellen Hughes	" " " " (outside)	" "
Clem Smith	" " " " (outside)	" "

OUTSIDE SALESMEN

J. R. Allen
George A. Barton
E. L. Benton
D. E. Cohn
H. C. Cohn
Robert Crumply
J. K. DeHaven
Hubert Dille
Russell Farrar
Frank Fleming
Fred Gardner
E. L. Gutzmer
C. E. Hildebrandt
F. S. Howle
T. B. Kehler
Harold Knutson
Mervin Lund
Earl McHugh
John O'Keefe
A. B. Oldham
James Rodgers
Robert L. Ross
John Sawyer
Carrol Simon

NATIONAL LABOR RELATIONS BOARD
BOARD / PETITIONER / RESPONDENT / INTERV. NOR
CASE NO. C-1382 EXHIBIT NO. 35-E
IN THE MATTER OF Donnelly Garment Co et al
DATE 8-7-42 WITNESS Reed
DANIEL W. ROSS, OFFICIAL REPORTER
BY L. Reed

(Board's Exhibit 35A to 35E - Rejected.)

he is not the original producer, may be restrained by injunction from shipping these goods in interstate commerce. He may also be subject to the criminal penalties of the act if he ships them knowing or having reason to believe that they were produced in violation of the wage and hour provisions of the act.)

(Answer "Yes" or "No" to the following questions)

1. Has the firm violated section 15 (a) (1)? No
2. List four or five principal suppliers of the goods handled by your firm and purchasers of such goods from your firm

Donnelly Garment Co.

Emery Bird Thayer — Kansas City, Mo.

J. L. Hudson — Detroit, Mich.

VI. EMPLOYEES

Total number of employees on the firm's pay roll 117

Total number of employees whom your firm considers exempt from the provisions of the act. (Refer to Employers' Digest) 40

VII. RESTITUTION

Will your firm make immediate restitution of wages found to be due any employee under the supervision of the Wage and Hour Division of the United States Department of Labor? Yes

Any remarks in this connection should be made below or attached in a separate statement

(Board's Exhibit 35A to 35E

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-1382 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 35 (C)

IN THE MATTER OF Nelly Don et al

DATE 8-7-42 WITNESS Reed

DANIEL W. ROSS, OFFICIAL REPORTER

BY E. Reed

The nature of business of the above establishment is

Garment Selling

The products sold or services rendered by the establishment are

Ladies' house dresses, wash frocks and play suits under the trade name of "Nelly Don".

10—10834

7013

4995

(Rejected.)

7013a

35-D

Our firm ships goods or products directly to the following States All states

The approximate percentage of the firm's total production that is shipped out of State is Over eighty

We provide services in the following States None

We receive goods or products from the following States Missouri

The last shipment made out of the State was in 12/19/40

Our firm sells to purchasers or processors who in turn ship to the following States

Approximately 100 percent of our goods are sold for resale.

There are approximately 120 persons employed by the firm.

This information covers the period from October 24, 1938, to the date of this statement.

I do further state that the information supplied hereinabove or attached hereto is furnished in good faith and I understand and agree that the acceptance of this information by the Wage and Hour Division of the United States Department of Labor shall not affect in any way any cause of action arising under the act and that this information shall not give immunity in any action, civil or criminal, that may be brought under the act.

I hereby acknowledge that a copy of this questionnaire with the information contained therein or attached thereto has been received by me and is in my possession or the possession of this firm.

Wm. A. Green
(Name)

Pres.
(Title of office in firm)

(Address)

U. S. GOVERNMENT PRINTING OFFICE 16—18884

(Board's Exhibit 35A to 35E - Rejected.)

...HEERS BY PLANT UNION

...ONNELLY WORKERS INDICATE THEY ARE READY TO FIGHT.

...Outside Help Is Needed to Protect Jobs and Working Conditions, Miss Rose Todd Tells 1,300.

...Asked by their general-chairman if ...y intended to fight efforts of the ...ternational Ladies' Garment Work... union to organize their plant, ap...ximately 1,300 members of the ...nnelly garment workers' union yes...day afternoon cheered their as...

...e employees met on the second ...sentatives of the union already had asked the management for a closed shop, and if that request were granted it would mean that all who worked at the Donnelly Garment company would have to belong to the plant union and to no other. A union label would be sewed in all garments produced at the plant, Miss Todd said in answer to a question.

Miss Todd is to receive half of her salary from the union and half from the plant. She will work half a day for each. Frank Tyler has been retained as attorney for the union.

NO UNION, DUBINSKY SAYS.

Garment Workers' Head Makes Curt Reply to a Statement.

(By the Associated Press.)

ATLANTIC CITY, N. J., May 11.—...to "fight to a finish" any attempt to organize the workers under the international.

The delegates appropriated $100,000 for a campaign to unionize the Donnelly workers. Miss Rose Todd, chairman of the unaffiliated union in the Donnelly plant, replied in Kansas City today that "it will take a lot more than $100,000 to beat us." Asked if he had any comment to make on the Donnelly union chairman's statement, David Dubinsky, international president, said:

"Union chairman? There is no union in the Donnelly plant."

—Kansas City Star Photograph.

ASSERTING THEIR CONFIDENCE IN THEIR OWN PLANT UNION . . . 1,300 EMPLOYEES OF THE DONNELLY GARMENT COMPANY INDICATE AT A MASS MEETING THEY DO NOT DESIRE TO AFFILIATE WITH THE INTERNATIONAL LADIES' GARMENT WORKERS UNION. . . . A SECTION OF THE GROUP THAT FILLED THE SECOND FLOOR OF THE PLANT.

The DAY IN WASHINGTON

Senator Tydings warned the senate of another depression and urged government economy.

Authoritative sources said a house appropriations subcommittee cut ½ billion dollars from President Roosevelt's proposed 1½ billion dollars for relief.

The house appropriations committee reduced the interior department appropriation by 5 million dollars.

Administration officials were noncommittal on a proposal by Representative Dies that Mr. Roosevelt call an international monetary conference.

Counsel recommended to the securities commission that it test its power to compel testimony.

John L. Lewis's Committee for Industrial Organization issued its first charters.

Senator Shipstead announced opposition to the Supreme court reorganization bill.

Senator Wheeler charged at the railroad finance hearing that the late Van Sweringens used "dummy corporations" in defiance of the Interstate Commerce commission.

RAID TIP-OFFS BY POLICE.

New Charge Is Made in San Francisco Graft Probe.

(By the Associated Press.)

SAN FRANCISCO, May 11.—Edwin Atherton, former federal agent, charged today that sources within the San Francisco police department tipped off the underworld in advance of raids. Atherton [illegible]

...ies ... weighs two ... five pounds. ... Call the telephone number ... 3783.

MISSOURI COAL DEALERS ...

Kansas Citizens Are Among Those Chosen at Columbia

...Cole county, Mo., May 11.—...Morrison, St. Louis, was elected ...dent of the Missouri Retail ... association here today. Other ... E. A. Goldstein, Kansas ... Miller, St. Louis, first ... Joel P. ... vice-presidents. W. ... Jefferson City, secretary-treasurer, and Fred Achterhof and Daniels, all of Kansas ...

...marking

...bination
LUBRICAT...
COOLING SYS...
SPECI...
HERE'S WHAT W...
LUBRICATE entire chassis ... according to our manufacturer's ... using Goodrich 55-Point Chart-O-...
DRAIN, flush and refill cooling ... connections.
CHECK lights, horn, windshield ... and battery.
...h Silverto...
Stores SERVI...
...ray 15th & McG...

WES

DO YOU WANT TO

ITH COAST

ant to-

ty a Baby Buggy!

...r of the plant at 1828 Walnut ..., Miss Rose Todd, chairman of ... plant union which was organized ... 27, told the group the meeting ... been called because so many of ...ployees and stopped at her desk ...press their opinion of David Du...'s attack on the company. ...ny the international union of ...h Dubinsky is president appro... $100,000 to be used to or... the Donnelly company.

...re we going to defend our rights ... plant union and win this fight?" ... Todd asked the assembly.

...ensued cheering and handclap... was the answer.

...ERNMENT SHOULD BE INFORMED.

"This is very encouraging to hear," ... Todd continued, when quiet had ... restored. "If Dubinsky has any ...ings here, they had better carry ...ort to him."

...ain there were cheers.

...s Todd told the union members ... James A. Reed, whose wife, the ...r Nell Donnelly, is the owner of ... plant, had represented the com... in suits over patent infring... and other matters, but that he ...rwise had no connection with the ...pany. In his attack on the com... and its working conditions, ...sky has linked Reed with its ...agement.

"We intend to protect our jobs and ... the right kind of working con...," Miss Todd continued. "We ...n't need the help of any outsiders ... accomplish these things."

PEACEFUL METHODS URGED.

"If any organizers call on you at ..., have your answers ready. I ... we all understand, we are not ... to join Dubinsky's union. We ... make any necessary effort to pro... ourselves, but let us try to be ...eful."

Miss Todd told the plant union ...bers that their dues would be 25 ... a month and that union cards ... being printed. She said repre...

Leaders of the International Ladies' Garment Workers union received word from Kansas City tonight that

AS FAR AS DAVID DUBINSKY IS CONCERNED, "THERE IS NO UNION" AT THE DONNELLY GARMENT COMPANY . . . THE PRESIDENT OF THE INTERNATIONAL LADIES' GARMENT WORKERS UNION IN A MOMENT OF ORATORY.

what they described as a "company union" in the Donnelly Garment company's plant there was prepared

union in the Donnelly plant.

RAID TIP-OFFS BY POLICE.

New Charge Is Made in San Francisco Graft Probe.

(By the Associated Press.)

SAN FRANCISCO, May 11.—Edwin Atherton, former federal agent, charged today that sources within the San Francisco police department tipped off the underworld in advance of raids. Atherton recently accused the department of collecting a million dollars annually in graft.

Atherton said he tapped telephone lines into the McDonough Brothers' bail bond concern and learned of the tip-offs. Atherton has been making an investigation for more than a year.

Police said they would investigate the charges.

Many a successful business has been built on a foundation of Star Want Ads.—Adv.

(Board's Exhibit 37.)

"MY C
TO THE

MADE Cold!

Res. 24.16

(Respondent's Exhibit 16.)

(THE *Morning* KANSAS CITY STAR)

The Kansas City Times.

KANSAS CITY, MARCH 18, 1937—THURSDAY—20 PAGES.

SOUTH PASEO FOR HOMES

ZONING BOARD VOTES UNANIMOUSLY AGAINST BUSINESS AT 75TH.

Park Commissioners Join Residents in Opposition to the Move by W. W. H. Findlay for Stores.

The first application for business rezoning on South Paseo, on which thousands of dollars in WPA and city funds have been expended in repaving and beautification, met an overwhelming defeat late yesterday.

The application was filed by W. W. Findlay for the rezoning of residence property at the northeast corner of Seventy-fifth street and the Paseo. Members of the park board joined home owners of the vicinity in tion. The board of zoning adt voted unanimously against ge.

G. Haake, a member of the ard and WPA administhis district, and other opressed fear that the proning would be an opening or additional business zonings would destroy the boulevard. ake pointed out that, in adto the headway already made ification between Sixty-third et and the city limits, WPA workwould start in the next ten days constructing a mirror pool and sunk-

THE WEATHER—SOMEWHAT COLDER.

Kansas City and Vicinity: Cloudy to partly cloudy today; somewhat colder.

The thermometer readings yesterday:

1 p. m.	50	8 p. m.	48
2 p. m.	52	9 p. m.	46
3 p. m.	53	10 p. m.	43
4 p. m.	54	11 p. m.	41
5 p. m.	56	12 midnight	41
6 p. m.	50	1 a. m.	40
7 p. m.	48	2 a. m.	38

A year ago yesterday, high 63, low 29.
Precipitation in 12 hours ending 7 p. m., none.
Highest wind velocity yesterday, 14 miles; southeast.
River stage 7 a. m. yesterday, 8.8 feet; rise of 3 feet.

	6:30 a. m.	Noon.	6:30 p. m.
Relative humidity, pct.	61	54	70

THE ALMANAC.

Sun rises, 6:24 a. m. Sun sets, 6:26 p. m.
Moon rises, 10:20 p. m. Moon sets, 12:35 a. m.
Moon Phase—First quarter March 19.
Morning Stars—Jupiter, Mars, Mercury, Saturn.
Evening Stars—Neptune, Uranus, Venus.

(Detailed government observations, forecasts and weather map on page 8.)

A RIOT IN CHICAGO LOOP

POLICE FIGHT 1,200 STRIKING CAB DRIVERS FOR AN HOUR.

Six Chauffeurs Are Made Unconscious, Passengers Are Threatened and Taxis Overturned and Burned.

(By the Associated Press.)

IN TWO HOSPITALS IN A DAY.

A Bicycle Accident Makes Boy a Patient Again.

Riding his bicycle home from the University of Kansas hospital where he received treatment for an infected finger, Joseph Gomez, jr., 19 years old, skidded into a truck at Thirty-first and Summit streets at 4:15 o'clock yesterday afternoon. He was sent to the General hospital. He suffered severe back, elbow and leg injuries.

The truck was driven by Delbert Akers, 33 years old, 533 Freeman avenue, Kansas City, Kansas. Gomez lives at 3614 Summit street.

NOT QUITE SO MILD TODAY.

Partly Cloudy Weather Is Forecast by Mr. Hamrick.

Cloudy or partly cloudy weather, with a slight drop in temperature, is Mr. Hamrick's forecast for today. The temperature will climb nearly to 50, as compared to a reading of 56 at 5 o'clock yesterday.

Rain fell north of Kansas City last night, but the forecaster expected it to move eastward rather than southward.

NO SHAM IN HER SHAMROCK.

Each Year Mrs. T. J. Greene Gets Real One From Ireland.

Mrs. T. J. Greene, Chicago, stepped up to the desk at the Hotel Muehle- [illegible] asked for her mail

VOTES BY 'GHOSTS'

Five Names From Two Addresses Were Fraudulent, the Residents Testify.

MARKS FOR G. O. P. ERASED

Republican Witnesses See Their Ballots With X's in the Democratic Column.

First Visible Evidence From the 26th Precinct of 12th Ward Goes to Jury.

U. S. CASE NEAR ITS END

Attorney Says the Government Probably Will Finish Its Testimony This Morning.

With the conclusion of the case only the matter of a few more witnesses, the government late yesterday turned its atten-

Food Fair Attra

Crowds continue t Food Fair in the Mun torium. The show wil urday night.

The free cooking s ducted by Mrs. Beul will be concluded tom ernoon. The household connection with the will close Saturday ni

Doors to the hall o'clock each day. No a fee is charged until 3: Tickets are 25 cents for cents for children.

"Yes, sir; I certainly do. "And you see an X mark Democratic column. Did

HE AIR AT THE OAKLAND, CAL., STOP ON THE PACIFIC LEG . . . 'O HER BIG SHIP JUST BEFORE

en garden on the Paseo between Sixty-seventh and Sixty-eighth streets.

REAL ESTATE OFFICE THERE.

Mr. Findlay, accompanied by his ttorney, Fred G. Mancuso, presented he board plans for a 1-story building acing the Paseo and set back seventy-five feet from Seventy-fifth. It would contain four store rooms. He explained he had owned the property since 1919 and had erected a small real estate office there in 1921.

Mr. Mancuso said that since the permit for the office building had been issued before the zoning law was enacted in 1923, Mr. Findlay felt the property always could be used for business. He pointed to Mr. Findlay's large property holdings in the district as a proof Mr. Findlay did not believe the business building would damage property values. Seventy-fifth street was a natural business street, he argued, and store buildings were needed to serve the district.

Kenneth I. Fligg, attorney for the R. A. Long estate, which owns the northwest corner; Anthony Pumilia, owner of the southwest corner, and Charles Allen, owner of the southeast corner, favored the rezoning. They said stores were needed in the neighborhood, pointing out the nearest stores were at Seventy-fifth street and Troost avenue, Eightieth street

(Continued on Second Page.)

(By the Associated Press.)

CHICAGO, March 17.—A shouting mob of 1,200 striking taxi drivers late today made a sudden assault on working drivers in the downtown business district, beat six into unconsciousness, threatened passengers and fought a pitched battle with police, using stones and lead pipes as weapons.

Fighting off mounted policemen as they marched, the strikers toppled a score of cabs in the streets, showered machines with stones and set several afire.

Shots were fired but none found a mark. Six working chauffeurs, two pedestrians and a passenger were injured in the riot.

FIGHT FOR AN HOUR.

Thousands of spectators, gaping from business buildings and hotels, saw police reserves summoned from all stations near the Loop end the battle after officers already on the scene had struggled with the combatants for more than an hour.

The mass demonstration followed a meeting of strikers participating in a 12-day strike for higher commissions. Gathering recruits along the route, the throng trooped into the Loop at La Salle street and Wacker drive. A door was ripped from a Yellow machine there.

The strikers barged on, surrounded a Checker vehicle, slugged the driver and tilted the cab on its side. They loosed a barrage of stones against several operating taxies.

In front of the Sherman hotel, a Checker cab was halted. The chauffeur was pulled from his seat. He ran a gantlet of heavy fists across the street. Staggering under the blows, he pitched to the sidewalk fifteen feet from the entrance to the city hall.

KICKED UNTIL MOTIONLESS.

While municipal employees craned from windows overhead, the fallen victim was kicked until he lay motionless.

A Yellow taxi was up-ended in front of a street car near the Garrick theater in the heart of Chicago's Rialto.

Traffic was snarled as the rioters deployed through the crowded downtown district. Another clash ensued at the Illinois Central railroad station.

A riot call brought scores of patrolmen and firemen. Sirens whining, they sped to the focal battle points. The reinforcements protected the operating chauffeurs and righted the overturned cabs. Others scurried through the throngs on the sidewalks

(Continued on Second Page.)

up to the desk at the Hotel Muehlebach yesterday, asked for her mail.

"Where are your green colors today?" asked Jack Hogerty, a clerk, a friend of Mrs. Greene. He handed her a letter, postmarked Dublin, Ireland.

"I never wear anything but the real shamrock," Mrs. Greene answered, knowingly. She drew a letter and a part of a newspaper out of the envelope.

In the folded newspaper, a page from the Dublin Irish Times, was a shamrock. She broke the sprig and gave part to Hogerty.

"From my sister in Dublin," Mrs. Greene explained. "Each year she sends me a shamrock and she times the mail just right, so it reaches me on St. Patrick's day."

Mrs. Greene plans to spend a week with a sister-in-law, Mrs. Sarah G. Neff, the Walnuts.

CROWD AT ST. PATRICK, MO.

Town's Postmaster Is Busy With 1,300 Letters and Parcels.

(By the Associated Press.)

ST. PATRICK, Mo., March 17.—A holiday crowd of 500 persons, ten times this hamlet's population, took part in a double celebration today, observance of St. Patrick's day and the 100th anniversary of the founding of St. Patrick's Catholic church, in the only community in the United States named after the patron saint of Old Erin.

The festive day began with a solemn pontifical high mass. Postmaster John N. Kirchner was hard at work, stamping by hand 1,300 letters and parcels from Ireland, Spain, England and Germany in addition to those from all over the United States.

Late this afternoon a rural carrier made a special trip to the Carton, Mo., postoffice where final pieces of the record consignment of mail here were mailed.

HANFSTAENGL TURNS UP.

Missing German Nazi Leader Is Found in Zurich.

(By the Associated Press.)

GENEVA, March 17.—Dr. Ernst Hanfstaengl, Nazi leader missing from Berlin under mysterious circumstances, was located tonight at a hotel in Zurich.

"All I want to say is that I am on leave of absence," was his reply to a telephone inquiry as to the purpose of his presence in Switzerland and his plans.

[Hanfstaengl, Harvard-educated former head of the foreign press bureau at Berlin, disappeared from Berlin last month and was reported to have gone on a mission to Spain.]

Do you want to rent or sell your house? Now is the time to act. Use a want ad in The Star to reach prospects. Telephone HArrison 1000.—Adv.

late yesterday turned its attention to technical and visual evidence of ballot corruption in the fourth vote fraud trial. Randall Wilson, first assistant United States district attorney, said he probably would rest his case before noon today.

Five phantom voters, somewhat rare in the evidence in the earlier trials, went into the records yesterday afternoon as inhabitants of the twenty-sixth precinct of the twelfth ward, where six defendants are accused of having conspired to deprive citizens of the rights of franchise in the November 3 election. After witnesses had asserted, in effect, that the five were ghosts, a series of Republican witnesses took the stand, to learn their ballots had turned into votes for the Democratic candidates.

Far Ahead of Last Trial.

It was in conjunction with those voters the ballots from the precinct made their first appearance. The trial, already far ahead of the case of last week, began to move more briskly. The jurors, who had heard the government's chief witnesses in the morning session, leaned forward with every evidence of close attention.

Mrs. Mary Raines, 2045 Lister avenue, was the first of the Republican voters to take the stand. She had registered for the election, she said. She was a citizen of the United States. She had voted November 3, and she had voted a straight Republican ticket.

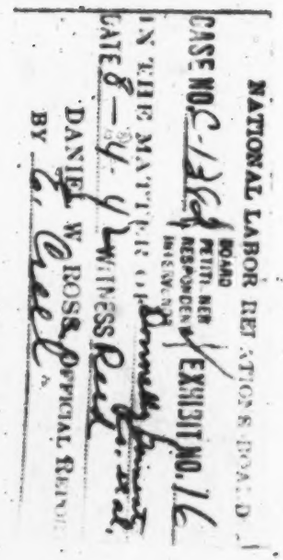
Wilson produced the ballot from her precinct on which was inscribed the same number that appeared opposite her name and address in the two poll books. Mrs. Raines, with Judge Albert L. Reeves moving in to peer over her shoulder, stared at the ballot.

Erasure on Her Ballot.

"You observe," Wilson said, "an erasure of the X mark once inscribed in the circle under the Republican column?"

Mrs. Raines said she certainly did.

"You see that it has been erased?"



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Stucker, 2200 Poplar.

"Ghosts" at Democrat's Home.

Clifford H. Adams, 4812 East Twenty-fourth street, testified he was a Democrat. Wilson produced the original register and the poll books. Did Mr. Adams, Wilson asked, have three persons named Fay Downs, Louise Downs and Roy Hays, living at his home election day?

"I never heard of them," Adams responded.

Forrest B. Herring, 2333 Lister, likewise was certain one Sam Herring and one Joe Herring, registered and voted from his home, were 'not corporeal beings.' He lived in a 6-unit apartment, he said, and aside from himself and his wife, no other Herring resided there.

To support his testimony, Wilson called T. S. D. Berger, Negro mail carrier in that precinct. Berger had not delivered letters to any Sam or Joe Herring, he said, nor had he heard of any Fay Downs or Louise Downs. There might have been a Roy Hays, he said; but he couldn't remember delivering any letters to

(Continued on Second Page.)

FISTS ARE USED IN A GARMENT WORKERS' STRIKE.

—Herald Examiner Photograph.

FIGHTING WORKERS—The tall, blond counterpuncher at the left is a member of the International Ladies' Garment Workers' Union. The brunette with flailing fists is a nonunion worker. The strikers last night remained in the building housing three garment shops, sleeping on cots.

POLICE STEP IN—The union member at the left drew blood from her adversary's nose before George R. McMeachin, police sergeant, swung her away from the fray. Two more policemen are holding her nonunion opponent, who swung a lightning-quick handbag. The battle was staged in front of 3817 Grand avenue yesterday, where the union attempted to close three garment companies in the building by a strike.

(Respondent's Exhibit 16.)

4101

7022.

(Respondent's Exhibit 16.)

...OGY TO NAZIS

REMARKS ABOUT GERMAN PROTEST.

...ll Issues Statement From Ambassador ...rges Controversy Dropped.

...ITHOUT HONOR" IS LaGUARDIA SAYS.

(Associated Press.)

..., March 17.—Mayor ...dia, commenting to... second apology made ... Hull to Germany ...yor's remarks about "the translation ...man government of ...isfaktionfahig is ab...ect."

...her, German ambas... protested earlier today ...ican government that in applying the Ger...o Hitler, had insulted the German state by ... "a man without ...

...or used the term in a ... an anti-Nazi rally in ...quare Garden Monday ...

...I am pleased that Hit...quick to recognize him... ...uardia said tonight.

Birmingham; C. P. Hood, American Steel and Wire Company, Cleveland, and A. N. Diehl, San Francisco, Columbia Steel.

A sit-down strike closed the 6-story Frank & Seder department store in Detroit today as police guarded its doors and numerous detectives stood inside.

Several minutes of excitement and confusion ensued as store officials attempted to prevent the strike by asking for a resumption of negotiations. Union leaders refused.

Lou Miller, one of the organizers for the Retail Clerks' Association, said the strike was called because the management refused to consider the union's demand for a "closed shop."

Striking and nonstriking employees disputed possession of one store today as a strike spread to two units of the F. W. Woolworth Company in New York.

Girl employees of a Brooklyn store of the chain obeyed shrill whistles signalling a strike of the department store workers' union, but in Manhattan one group of workers produced banners reading "We won't strike," and refused to quit work.

The refusal to join the sit-down at the Manhattan store threw the place into confusion for a time, and police reserves were called out to prevent disorder.

Unable to determine immediately which group was in the majority, the management emptied the store of ...tomers and locked the doors. A ... minutes later the store was re...ned, with the nonstrikers, assisted ...loorwalkers and executives, man... a part of the counters. Strikers ...ined in the store.

Committee for Industrial Or...tion will open on Friday its ... drive for union supremacy in ...r-flung textile industry, thus ...ing a new offensive in its ...ictional struggle with the Amer...n Federation of Labor.

VOTES BY 'GHOSTS'

Maine Still Is Fair Prey for Wisecracks

By Irvin S. Cobb.

SANTA MONICA, CAL., March 17.—There is only one answer to the attitude assumed by both of Maine's senators, who show a pronounced inclination to balk at whatever the new deal calls for in congress and especially at the plan to mold the supreme court somewhat closer to the Boy Scout model.

If these here foreigners don't like this country; why don't they go back where they came from?

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SOUTH PASEO FOR HOMES

(Continued from First Page.)

and the Paseo, and Seventy-fifth street and Prospect avenue.

SOUGHT PROTECTED HOMES.

Home owners who protested were led by A. W. Roth, 1832 East Seventy-fifth street; Fred I. Worth, 1821 East Seventy-fifth, and John Donnelly, 1829 East Seventy-fifth.

"I bought my home about a year ago, because I believed the district would be protected by the zoning law," Mr. Roth said. "The rezoning of this property for business would damage not only my home but others in the district. It would damage the boulevard. There is no need for business in the district."

Mr. Worth, who would be across the street from the proposed building, has owned his home nine years.

"I paid $9,000 for it," he continued. "We bought it because it was in a residence district. We wanted to get away from business. If this building is built, I'll have to give up my home."

OPENING WEDGE FOR BUSINESS.

Mr. Donnelly said the rezoning would be the opening wedge for business on the other three corners. He said to Mr. Mancuso:

"Would you like to live next to a store building?"

... did not answer. Later

SITTERS STAY IN ON COTS

SIEGE OF GARMENT SHOPS IS CONTINUED AT NIGHT.

Fights Between Women Occur at Quitting Time, With Punching, Hair-Pulling and Handbag Swinging.

Fifty members of the International Ladies' Garment Workers' Union settled down last night on cots inside the entrance of the building at 2617 Grand avenue, making a sit-down strike out of their attempts yesterday to close by strike three garment companies housed in the building.

Miss Wave Tobin, business agent for the union, said the union members had been warned by H. P. McElroy, city manager, that if they left the building they would not be allowed to return. All those who spent the night inside the doorway were employed in the building, she said.

FIGHTS AT CLOSING TIME.

Workers and strikers swung handbags and fists and pulled hair before policemen guided employees from plants at quitting time yesterday.

After a few skirmishes at the rear door of the building, the police moved in and the demonstration was over save for derisive shouting.

For half an hour after the plants closed at 4:30 o'clock fights occurred in an area of two blocks when union members and non-union workers met.

"The strike has just begun," said Miss Tobin.

The companies against which the union is seeking to force a strike are the Missouri Garment Company, occupying the second floor; the Gernes Garment Company, Inc., on the third floor, and the Gordon Brothers Manufacturing Company, fourth and fifth floors.

SAY MOST WOMEN WORK.

Company officials asserted a majority of the 800 women who work in the building went to work yesterday morning through a rear door two hours after union workers had blocked the main entrance by sitting down.

H. Gordon, president of the Gordon Brothers Manufacturing Company which employs 300 women, said only sixteen union workers and a few employees who were ill did not work and that the plant was operating smoothly. He said that 95 per cent of the women signed petitions opposed to their joining the union.

"There weren't more than fifty girls at work in the Gordon Brothers plant today," Miss Tobin said.

A majority of the women working for the other two plants entered the building through the rear door and spent the day inside, their lunches being taken to them at noon.

NORMAN P.-T. A. CARNIVAL.

The Parent-Teacher Association of the Norman school, 3514 Jefferson street, will sponsor a carnival at the school from 4 o'clock tomorrow afternoon until 10 o'clock.

Lovely to look at

New crysto stemware decorated with fine gold bands.

$13.50

Com... bowls, sticks many o... pieces to at corres... ingly low p...

JACCARD'S
1017 Walnut St.—K.C., Mo.

VOTES BY 'GHOSTS'

(Continued from First Page.)

such a name at 4812 East Twenty-fourth street.

In Hospital, but Voted.

A woman confined in Research hospital was voted arbitrarily election day. Wilson called Miss Virginia Cook, record librarian of the hospital, to the stand. Miss Cook had the records on Mrs. Sally Darling, 2008 Poplar, who was a patient at the hospital from September 28 to December 24 with a fractured knee cap.

The records showed, Miss Cook said, that Mrs. Darling did not leave the hospital. Hourly reports, written in the book, showed the patient awakening, having breakfast, being bathed, writing letters, listening to the radio and following other routines at the hospital throughout the hours the polls were open. Mrs. Darling was not summoned yesterday.

The fingerprints of Frank Ditsch, jr., the precinct leader for the Democratic rabbit faction and a defendant, were found on four ballots, L. J. Fallon, FBI fingerprint expert, said. Those ballots, and enlarged copies of the prints, were given to the jury for study.

Clerk Called Election Board.

Mrs. Marie Denger, Republican clerk of the precinct who pleaded *nolo contendere* (no defense) along with Mrs. Maurine Nelson, Republican judge, was recalled to the stand when the afternoon session began. What, Wilson asked, was the first thing she did when she returned home after the polls closed?.

"I telephoned the board of election commissioners," Mrs. Denger said. "I told them who I was and that I was the clerk in the twenty-sixth precinct of the twelfth ward. I said I could not and did not give my count. The person at the board said, 'All right,' and hung up."

"Would you say positively the ballots were not counted?" Ludwick Graves, defense counsel, asked on cross-examination. (Mrs. Denger had testified George Neeper, precinct captain for the Pendergast forces and a defendant, announced the vote totals as 501 for the Democrats and thirty-one for Republicans as soon as the polls closed.)

Expected 141 G. O. P. Votes.

"If they had been," Mrs. Denger returned, "I would have had my 141 votes."

"How do you know the Republicans had 141 votes in your precinct?"

"Because I polled the precinct."

"You were the Republican precinct captain?"

"I was the acting Republican precinct captain."

"Are you still in that capacity?"

Mr. Mancuso did not answer. Later, however, he said many of the property owners had purchased their property knowing the real estate office was on the corner. He contended Mr. Findlay had a moral, if not a legal, right to erect a store building on the property.

Mrs. W. H. Saxton, 1836 East Seventy-fifth street terrace, said she and her husband had owned their home since 1912.

"This is strictly a residence district," she added. "There is no need for stores. We are close enough now to stores. To rezone this property would ruin the Paseo."

Mrs. A. Al Neuman, 1820 East Seventy-fifth street terrace; Mrs. George T. Vance, 1824 East Seventy-fifth street, and George G. Croner, another property owner, also spoke against the rezoning. W. H. Shackelford, who is building four houses in the district, favored it on the ground a shopping center was needed. Opponents contended his opinion was not to be considered, since his property was three blocks away.

The application was the first filed for business zoning on the Paseo, south of Fifty-fifth street, in eleven years.

MONTGALL CHANGE DENIED.

The board also disapproved an application for rezoning of 180 feet of ground on the west side of Montgall avenue in the 3900 block, because of protests from property owners. The rezoning was sought by Mrs. Elsie Conrad to permit use of the property as a parking station for the Oak Park theater. Proponents contended improvement of the ground for the parking station would be a benefit to property values. Opponents argued the parking station would result in additional traffic and that noise from cars would be disturbing at night.

DELAY ON GILLHAM PLAZA.

Action on the application of the Gregg Realty Company for the rezoning of 3316-18-20-22 Gillham plaza, upon which a hearing was held March 3, was continued by the board until its next hearing. Apartment owners in the vicinity protested.

FOR A TRAILER PLANT.

Other cases upon which the board acted:

Rezoning of old Priests of Pallas den at 2100 East Tenth to permit its use in manufacture of bodies for trucks and trailers and to permit use of 40-horsepower motors; approved. No one protested. The property is owned by Miss Ruth M. Mason.

Mrs. Gurthea R. Meister, to permit erection of 1-car garage in front yard at 3840 Olive; disapproved because of protests from property owners in the block.

John L. Woolfolk, to rezone northwest corner of Seventy-sixth and Washington from residence to business use to permit operation of a parking

untries for them to find other subjects which can be discussed more imperately."

A RIOT IN CHICAGO LOOP

(Continued from First Page.)

and bollared as many combatants as they could find.

Several persons were bowled by charging mounted policemen, who rode into the ranks of demonstrators. Foot patrolmen plied their night sticks.

Among the injured was Dr. W. K. Fisher, a dentist, who was struck on the head by a flying missile as he walked along a street.

BLACK EYE FOR KANSAN.

A. A. Rose of Pittsburg, Kas., suffered a black eye when a cab in which he was a passenger was stoned. An unidentified woman was knocked to the pavement by a passing car.

Twenty-seven men seised in the affray were taken to a police station.

The outbreak, one of the most severe in Chicago labor history, capped a series of violent episodes attending the dispute between drivers and the Yellow and Checker Cab companies.

Shortly after the rioting, the Yellow Cab Company gave its answer by sending a line of cabs, each provided with two guards, through the Loop

Entrance Thru Store

1108 Walnut

Wolferman's Tiffin Room

Dine Downtown This Evening In Wolferman's Tiffin Room and Bring the Family, Too!

Special dinners served from 5 to 8 p. m.
eighty-five cents and one dollar

(Continuous Service From 11 A. M. to 8 P. M.)
Reservations If You Like . . . GRand 0638

Homemade Bread—
Made with milk from the Wolferman Dairy Farm; smooth texture . . . soft, crumbly, buttered crust—2 loaves . . . 25c ..... Loaf . . 13c
(Smaller sized loaves . . . ten cents)

Fresh Butter—
Wolferman's; churned from fresh, rich, sweet cream . . . you never tasted more delicious butter. Per lb . . 43c ..... 2 lbs. . . 85c

SPRING LAMB PATTIES—Delicious individual meat servings. 4 for 29c

INDIVIDUAL T-BONE STEAKS—About half pound each. Each 33c

OLD-FASHIONED COUNTRY STYLE SMOKED SAUSAGE—You will say it is the most delicious you ever tasted. Per lb 43c

CHOPPED BEEF — So economical; for tasty hamburger steaks . . . or a delicious beef loaf. 2 lbs., 55c; lb. 28c

CARROTS — Small, tender Lady Fingers. 2 lge. bchs. 11c

GRAPEFRUIT—Texas Marsh seedless; extra fine quality. 6 for 29c

COFFEE FUDGE CUP CAKES —Quite unusual. 6 for . . . 25c

OLD-FASHIONED CAKE DOUGHNUTS — Plump; golden brown ones . . . cooked in pure leaf lard. 6 for 19c

HOT CROSS BUNS—Dainty currant buns. Dozen . . . 29c

TOMATO CATSUP—Wolferman's; famous for its appetizing flavor. 3 bots. . . 50c

GOLDEN BANTAM CORN ON THE COB—Four ears in a tin; as tender as freshly gathered corn. Large tins, 2 tins 49c

ORANGE PEKOE TEA—In individual bags. Carton of 15 bags, 21c. 3 cartons . 59c

LEA AND PERRIN'S WORCESTERSHIRE OR BAND'S A-1 SAUCE. Med. bot. . . . 33c

RED KIDNEY BEANS—No. 2 tins; Wolferman's; a tasty salad item. 2 tins 25c

IMPORTED SMOKED SARDINES—In pure Olive Oil; from Norway. Quarter tins, 6 tins, 85c. 2 tins 29c

CHICKEN A LA KING—Hormel's. 2 tins, 65c. Tin . . 33c

WELSH RAREBIT — College Inn. 2 tins, 65c. Tin 33c

OLD-FASHIONED OVEN BAKED BEANS—B & M brand. 28-oz. tins, 2 tins 35c

Yellow and Checker Cab companies.

Shortly after the rioting, the Yellow Cab Company gave its answer by sending a line of cabs, each provided with two guards, through the Loop to the Sherman hotel and to the railroad stations.

Company officials said as a precautionary measure all cabs would be withdrawn from the streets at midnight and would not reappear until 7 o'clock tomorrow morning.

John Prendergast, police commissioner, announced all days off and vacations for policemen had been cancelled until further notice so a complete force would be on duty at all hours.

U. S. STEEL UNITS SIGN.

Contracts With C. I. O. Are Made by Five Subsidiaries.

(By the Associated Press.)

PITTSBURGH, March 17.—Five of the largest producing units of the 2-billion-dollar United States Steel Corporation signed contracts tonight with union followers of John L. Lewis, setting up machinery designed to insure industrial peace among their 160,000 workers for at least a year.

The contracts supplemented the one of March 2 in which the Carnegie-Illinois Steel Corporation recognized the right of the steel workers organizing committee, an affiliate of the committee for Industrial Organization, to deal with the company for its members.

The contracts provided that differences arising between now and next March 1, date of the expiration, should be taken up without cessation of work, with the final decision, if an agreement was not reached, to rest with an impartial umpire named by the company and union.

The companies agreed to recognize seniority rights in all cases of promotion or increase, or decrease of forces with brief reservations; granted a week's vacation with pay for all employees with five years or more of service and promised to reinstate any union member with full pay where it has been decided an injustice was done the worker.

Benjamin F. Fairless, president of Carnegie-Illinois, which employs 31,000, signed first. Others signing were B. F. Harris, National Tube, Pittsburgh; J. L. Perry, Tennessee Coal, Iron and Railroad Company,

Because I polled the precinct."

"You were the Republican precinct captain?"

"I was the acting Reublican precinct captain."

"Are you still in that capacity?"

"I don't know," Mrs. Denger said, "whether I am or not. If I am, I'll resign. I want nothing to do with any more elections."

'Did two deputy election commissioners come out "

"Yes, about 10:30 o'clock in the morning."

"Did you complain to them of any irregularities?"

"No."

She Made No Agreement.

"Did you make any agreement not to count the votes or to miscount them?"

"I did not."

"That's all," Graves said.

"Did you," Wilson resumed, "see a single judge in your poll count a single ballot?"

"I did not."

The trial will resume at 9:30 o'clock this morning. Wilson said C. A. Appel, jr., handwriting expert for the FBI, would be his chief witness, and he would rest after Appel had concluded his testimony.

Beside Neeper, Ditsch and Mrs. Kelley, other defendants in the case are Mrs. Cecilia Ditsch, Democratic judge and wife of Ditsch; Beulah Walton, Republican judge, and Olga Kegin, Democratic clerk.

A SWEEP FOR COURT PLAN.

Georgia County Votes 1,092 to 174 in Favor.

(By the Associated Press.)

CUTHBERT, GA., March 17.—Randolph County today voted 1,092 to 174 in favor of President Roosevelt's judiciary reorganization plan.

In Cuthbert, the county seat, the vote was 600 for to 89 against. The rural precincts also rolled up overwhelming majorities for the plan.

J. S. Sharley, justice of the peace, said he had telephoned Warm Springs to inform the President.

ALLAN HOOVER IS WED.

LOS ANGELES, March 17.—(A. P.)—Allan Henry Hoover, son of ex-President Hoover and Mrs. Hoover, and Miss Margaret Coberly, attractive Los Angeles social figure, were married today at the home of the bride's parents, Mr. and Mrs. William Bayley Coberly.

erection of 1-car garage in front yard at 3840 Olive; disapproved because of protests from property owners in the block.

John L. Woolfolk, to rezone northwest corner of Seventy-sixth and Washington from residence to business use to permit operation of a parking station; approved. The property has a 400-foot frontage on the west side of Washington and a depth of eighty feet. No one protested.

E. E. Harper, to permit use of 15 instead of 5-horsepower motors in operation of a proposed machine shop on north side of Seventy-fourth street 152 feet west of Wyandotte; approved. Property owners protested, but the board took the position the use of the larger motors would not damage property values. The property is zoned for light industry.

O. S. Birling, to permit conversion of single family dwelling at 4832 Harrison into a 2-family dwelling; approved. No one protested.

CHANGE FELONY MURDER LAW.

Death Penalty No Longer Mandatory in New York.

(By the Associated Press.)

ALBANY, N. Y., March 17.—New York juries will be permitted to recommend life imprisonment instead of death in felony murder cases under a law enacted tonight with a stroke of Governor Lehman's pen. It becomes effective immediately.

Existing state law provides that conviction for felony murder automatically carries a death sentence for all persons involved.

A "FIGHT CANCER" WEEK.

JEFFERSON CITY, March 17.—(A. P.)—Governor Lloyd C. Stark today proclaimed the week of March 21-27 as "Fight Cancer Week" and urged Missourians to co-operate with the women's field army in "its admirable and humanitarian purpose." The chief executive's proclamation was issued while a bill is pending in the state senate for the creation of a state cancer hospital at Columbia for indigent patients.

NOTICE.

PUBLISHER'S NOTICE
March 18, 1937. Vol. 100. No. 66.
The Kansas City Times (the morning Kansas City Star). The Kansas City Star every morning, evening and Sunday; thirteen papers a week. Subscription rates 15 cents a week delivered by carrier in Kansas City; by mail, postage prepaid, in Missouri and Kansas, 15 cents a week; elsewhere in the United States and island possessions, 20 cents a week; in foreign countries, 60 cents a week. Entered as second class matter at the postoffice at Kansas City, Mo., under the act of March 3, 1879. Publication office, Eighteenth street and Grand avenue.

OLD-FASHIONED CAKE DOUGHNUTS — Plump; golden brown ones . . . cooked in pure leaf lard. 6 for 19c
HOT CROSS BUNS—Dainty currant buns. Dozen 29c
CHOCOLATE CHIP ICE CREAM—Really a treat . . by Wolferman's. Quart . 48c
WILD CHERRY DROPS—Dainty pure cane sugar candies, by Wolferman's. Lb. 29c
WELSH RAREBIT — College Inn. 2 tins, 65c. Tin 33c
OLD-FASHIONED OVEN BAKED BEANS—B & M brand. 28-oz. tins, 2 tins 35c
OLIVE BUTTER — Grandee brand; for delicious sandwiches. 9-oz. jar, 35c. 2 jars 65c
SALTED SPANISH PEANUTS Freshly roasted. 2 lbs. ... 29c

MOCHA AND JAVA COFFEE—An old-time favorite. . . fine quality Arabian Mocha and Sumatra Java coffees . . . expertly blended ..... Per lb. 45c
HOMEMADE MAYONNAISE OR THOUSAND ISLAND DRESSING—Wolferman's: 13-oz. jars, 2 jars, 65c. Jar 33c
BAKED BEANS—Plain or with Tomato Sauce. 1-lb. carton . . 15c
BOSTON BROWN BREAD—Wolferman's ..... Small loaf . . 10c
BAKED OR BOILED HAM—By Wolferman's; prepared by experts—center slice, ½-lb., 48c ..... End sl., ½-lb. 38c
BARBECUE BRISKET OF BEEF—One of the most delicious products prepared in our kitchens . . . lean . . . fine flavor ..... Half lb. . . . 38c
BOCKWURST—A tasty Veal and Pork Sausage Per lb. 38c
IMPORTED SWISS CHEESE—Firm; large eyed. Half lb. 35c
AMERICAN SWISS CHEESE—Finest quality . . . Half lb. 21c

Established 1888 — Wolferman's "Food Magnificent" — Four Stores

FEATURING FINE FOODS.

For ALL Spring Cleaning—
GARMENTS and House Furnishings

Ladies', Men's and Children's Outer Garments of All Kinds

Rugs, Drapes, Lace Curtains, Tapestries, Blankets

RUGS Large and Small DYED

MONKEY CLEANERS & DYERS

(Respondent's Exhibit 16.)

4103

Resp 17-a

Pursuant to X p1

It is understood this is a true minimum for all employees including less experienced & underaverage piecework operators, bundle boys, messengers & other unskilled workers.

7022a

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-182 BOARD / PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 17-A
IN THE MATTER OF [illegible]
DATE 8-5-42 WITNESS Reel
REPORTER'S OFFICIAL REPORT
E Reel

(Respondent's Exhibits 17A to 17J.) 4105

Res. 17-a

+ Printed X P1

It is understood this is a true minimum for all employees including less experienced & underaverage piecework operators, bundle boys, messengers & other unskilled workers.

7022a

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-132 BOARD / PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 17-A
IN THE MATTER OF [illegible]
8-5-42 WITNESS Reel
[illegible] OFFICIAL REPORTER
L Cael

(Respondent's Exhibits 17A to 17J.) 4105

14a

~~It is agreed that~~ Nothing in this contract 17-B
shall prohibit ~~the~~ Donnelly Gar. Co. or the
Donnelly Garment Sales Co. from making
money allowances, bonuses or extra facilities
to any employee, the same to be set forth

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-352 EXHIBIT NO. 176
IN THE MATTER OF Donnelly Garment
DATE 5-1-42 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

Part

This agreement shall apply to each corporate employer and its employes, it being recognized that the business of said companies and the relation of the employes of the said companies are, in certain respects, dependent upon each other, and that it is desirous to have the same general conditions of employment in each of said companies. It is recognized and agreed that the employes of each corporation shall be members of this union. The word "employes" as used herein shall apply to the employes except salesmen and executives or any person in person of both companies, and the word "employers" as used herein shall refer to both corporate employers.

Hourly workers (illegible)

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1525 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 17C
IN THE MATTER OF Donnelly Garment Co et al.
DATE 8-5-42 WITNESS Reed
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Reed

(Respondent's Exhibits 17A to 17J.)

17-D

NATIONAL LABOR RELATIONS BOARD
CASE NO C-1382 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 17-D
IN THE MATTER OF Connelly Garment Co et al
DATE 8-5-42 WITNESS Reed
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Reed

17 BW

ARTICLES OF AGREEMENT.

THIS AGREEMENT is made and entered into between the Connelly Garment Workers' Union, a plant labor union made up of _____ out of a total of _____ employes of the employer below mentioned, party of the first part, and the _____ _____, a Missouri corporation being engaged in manufacturing, and the _____, a Missouri corporation being engaged in selling, each of said corporations having its ~~office~~ time and principal place of operation at 1828 Walnut Street, Kansas City, Missouri, parties of the second part. Party of the first part and parties of the second part hereby contract and agree as follows:

(1) This agreement shall apply to each corporate employer and its employes, it being recognized that employes of each corporation are members of the ~~plant~~ union, party of the first part, ~~working largely under the same roof~~ and ~~being~~ that they are desirous of the same general conditions of employment. The word, "employes" as used herein shall apply to the employes of both companies and the word, "employers" as used herein shall refer to both corporate employers.

(Respond

(2) Rates of pay: The rates of pay of employes under this contract shall be such as are agreed upon by the parties hereto. However, such rates shall have a minimum of Fifteen Dollars ($15.00) per week, ~~while operations are on dresses retailing at $5.95 less and a minimum of Eighteen Dollars ($18.00) per week while operations are on dresses retailing at over $5.95 each.~~ As hereafter stated (see slip)

(3) Hours: The working hours of the employes shall be eight (8) hours per day exclusive of meal period and Five (5) days per week. Any time in excess thereof shall be deemed as overtime.

(4) The employer recognizes the election of a com-

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 17-E
IN THE MATTER OF Connelly Garment Co. et al.
DATE 8-5-42 WITNESS Reed
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Reed

17-E

mittee to represent the union by ~~their union~~ to represent it and agrees to negotiate and deal with such committee in regard to conditions of employes, wages + hours of labor and all matters properly within the jurisdiction of such committee.

(5) Promotions and Seniority rights: Instructors and floor girls in addition to those employed at the date of this contract, or substituted for any of those now employed, shall be chosen by the employer from the rank of operators or other employes of the company except in cases of emergency or where definitely exceptional circumstances exist.

(6) The employer recognizes the union as the sole bargaining agency on behalf of the employes.

(7) Complaints and grievances: Any employe considering himself or herself unjustly disciplined or unjustly treated shall have the right to present such matter to the ~~committee elected to handle the affairs~~ duly authorized committee of this union, and such committee by a majority vote may elect to take the matter in question up

by a majority vote may elect to take the matter in question up with the employer for the purpose of securing redress for any proper grievance or injustice which the committee may believe to exist. Nothing in this agreement, however, shall prevent any employe from taking up any matter of dissatisfaction directly with his or her immediate superior, to the managing officers of the company in substitution for or in addition to, presenting such complaint to the committee representing the union.

(8) Meal period: The meal period for employes shall not be less than thirty (30) minutes per day nor more than one (1) hour per day, but within such limits may be fixed by the employer.

(9) Closed shop: The employer agrees that on and after June 15 1937 no one shall be employed in the business or plant in Kansas City, Missouri, or the business or plant in St. Joseph, Missouri, who is not a member of this union or who shall not become a member of this union within one week af-

(Respondent's Exhibits 17A to 17J.)

NATIONAL LABOR RELATIONS BOARD
NO. C-1382 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 17-7
IN THE MATTER OF Donnelly Garment Co. et al.
DATE 8-5-42 WITNESS Reed
DANIEL W. ROSS, OFFICIAL REPORTER
BY Reed

17-7

ter being employed, nor shall anyone be continued as an employe in the plant at Kansas City, Missouri or at St. Joseph, Missouri, after said person shall have resigned from or ceased to belong to such union or shall have been expelled from such union in accordance with its rules or by-laws covering such expulsion, and up until such date, beginning January 15th 1937 no different or preferential treatment shall be given by any employer to any employe on the ground of his or her membership or non-membership in this union.

(10) Lay-offs: It is recognized by the parties hereto that it is desirable that employment should be as regular and continuous as is consistent with proper merchandising and working conditions. [redacted], if the employer shall believe that a shorter day for employes will avoid a lay-off of any substantial number of employes, such shorter day with proportionate rates of pay for employes on hourly or weekly basis may be established.

(11) The employer agrees that such individual who may be chosen as general chairman of the union shall be entitled to spend the necessary time in the affairs of the union at the proportionate rate of pay hitherto received from the company for the time thereafter given to the company.

(12) Strikes: The union agrees that it will not call or instigate or support any strike during the period of any wage scale adopted in conformity with and furtherence of this contract which may be agreed upon between the employer and employe, and the employer agrees that no lock-out during such time, being effective time of any wage agreement entered into herein, shall be put into operation. The actual operation of the plant must necessarily depend upon business and trade conditions, but each party declares it to be its purpose to continue operations with as little and if possible no inter-

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1342 PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 17-G
IN THE MATTER OF Donnelly Garment Co. et al.
DATE 8-5-42 WITNESS Reed
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

Lockouts + Arbitration

12. STRIKES. The Union agrees that it will not call or instigate or support any strike during the period of any wage scale adopted in conformity with or in furtherance of this contract, and the employer agrees that so long as the union faithfully keeps its part of this contract there will be no lockout of the employes by the Company.

It is further agreed that in the event the Union and the Employer are unable to agree with reference to any matter of dispute that the question in dispute shall be submitted to a board of aribtration, one to be chosen by the Union, one by the Employer,

arbitration, one to be chosen by the Union, one by the Employer, and the third by the two ~~xxxxx~~ above referred to, and if the two can not agree as to the third arbitrator then such third member shall be chosen by a Judge of the United States District Court for this District. And it is further agreed between the parties that during the time of such negotiations or such arbitration there shall be neither a strike nor a lockout, and the parties hereto agree to accept and abide by any decision made by a majority of said board of arbitrators.

NATIONAL LABOR RELATIONS BOARD
CASE NO. (BOARD / PETITIONER / RESPONDENT / INTERVENOR) EXHIBIT NO.
IN THE MATTER OF
DATE WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER

(Respondent's Exhibits 17A to 17J.)

17-H

13 It is understood that the employwer shall have the right to reduce the number of employes in accordance with its judgment as to business requirements, and to discharge any employe whose services are unsatisfactory to the company for any reason which, to the employer, shall seem sufficient, but such discharge shall not be because of the affiliation of said employe with this union or his or her activities therein.

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1312 BOARD PETITIONER RESPONDENT INTERVENOR 17-H
IN THE MATTER OF Connelly Garment
DATE 8-5-42 WITNESS Reed Co. et al
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

7028

(Respondent's Exhibits 17A to 17J.-)

Vacations

A. An employee after six months consecutive employment and with regular attendance record shall be entitled to one week paid vacation each year. And

B. An employee after 2 years of consecutive employment shall have 2 weeks vacation worth pay each year.

7028a

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1423 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 17J
IN THE MATTER OF Donnelly Garment Co. et al
DATE 5-5-42 WITNESS Reid
DANIEL W. ROSS, OFFICIAL REPORTER
BY Reid

(Respondent's Exhibits 17A to 17J.)

17-Y

ruption in accordance with the terms of this contract regarding the eight hour day and the five day week as normal employment.

(13) Vacations: Each employe of this plant who shall have been employed for a period of not less than _____ months consecutively shall be entitled to one week per year vacation with pay, and will be allowed a second week's vacation without pay if satisfactory arrangements as to time can be arranged.

(14) Duration of contract: This contract shall continue in full force and effect for the period of 24 months from the date hereof.

IN WITNESS WHEREOF we have hereunto affixed our hands this _____ day of _____, 1937.

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1322 EXHIBIT NO. 17-Y
IN THE M... V... Donnelly Garment Co. et al.
DATE 5-5-42 TYPE Reel
DANIEL W... S. OFFICIAL REPORTER
BY Reel

DONNELLY GARMENT WORKERS' UNION

By _____
General Chairman

_____

_____

_____

(Respondent's Exhibits

Party of First Part.

ATTEST:

_____
Secretary

_____

By _____

ATTEST:

_____
Secretary.

_____

By _____

7A to 17J.)

4123

70

C. GARMENT NION CREWS SIT IN LOBBY

Work Goes On in Three Plants Here Despite Strike.

mbers of the International Ladies Garment Workers union went on strike Wednesday morning and defied the opening of three ment factories at 2617 nd avenue.

e companies affected the Gordon Brothers facturing company, the uri Garment company the Gernes Garment company, employing between 500 700 women workers.

Wednesday afternoon union workers who sat down in the lobby of the building early in the day in an attempt to prevent workers from entering the plant, still were on a down in the lobby and pickets on duty at all entrances.

Work Under Way.

Work was in progress in the three The managers of the Gordon the Missouri company said 10 per cent of their employees on duty. The

a few who were frightened

the Gernes plant it was said personnel was intact.

Officials of the garment workers' however, said there were

R

F

Gu

O. P. WOMAN ARES THREAT D SQUEALERS'

crat Hinted at State ecution, Mrs. Nelson Tells U. S. Jury.

producing the usual testiconcerning ballot manipulathe fourth vote fraud contrial developed a sensation own Wednesday when a govnt witness testified she had threatened by a Democratic ct captain with state prosecif she "squealed on the or-ion."

witness was Mrs. Maurine 3729 East Twenty-eighth Republican judge in the -sixth precinct of the Twelfth Mrs. Nelson has entered a nse plea to the fraud indict-She directed the threat ac-n against George Neeper, ratic captain in the precinct defendant in the trial.

Called at Her Home.

Nelson said Neeper called at ie after the indictment was d and said:

one who talks will be taken by the state. We were all r less guilty. It would be ad to go to the penitentiary aling on the organization."

highlights of government

the Republicans had d their ballots so heavily uld hardly rub out their

ots in the precinct were counted

LATE

TROPICAL P.

FIRST RACE—Mile.
Side Stepper (Wright)
Uthild O (LeBlanc)
Last Harvest (Arcaro)
Time, 1:40 3-5. Also
lace, aMidget Manne
Unknown Worlds, Blac
Broad Tobacco Buyer,
aPrima entry.
SECOND RACE—¾
Marpon (Bierman)
B. Mighty (Barbe)
Veiled Lady (LeBlanc)
Time, 1:11. Also
Clientele, Shining K
Color Sketch.
THIRD RACE—¾ m
Miss Grotte (Westrope)
Rich Cream (Wall)
Spanish Fly (Cooper)
Time, :47 2-5. Also
Lightly, Broad Vision,
ale, Miss Dolly Kay,
FOURTH RACE—¾
Genevra M. (Balzak)
Sirg Lee (Wright)
Miss Apprehend (West
Time, :47 1-5. Al
Jacqueline M., Croix
Singing Slave.

HOUSTON-

FIRST RACE—¾-mile
aSolar Maid (Pierson)
Pierod (Bauer)
aMashed Bud (Roberts)
Time 1:18. Also ran
Peep, Juror, Ben's Wor
bar, Bashful Lover, B
Out.
aField.
SECOND RACE—¾-m
Brides Delight (Roberts
Agronette (Vedder)
Lapon Lassage (Cornay
Time (:
Also ran
My Boy, Spunting Co
ing Miss, American Bad
Porte.
aField.

HOT SPRIN(

FIRST RACE—¾-mile
Quidman (Dotter)
Frank C (Johnson)
Georgia Meadon (Calro
Time 1:
Also
Crashed Ice, Sophie C
Orion.
SECOND RACE—¾
Barometer (Machado
Golden Gate (R. C.
Fiery Heels (Jessop)
Time—1:
Also

FRENCH CO

Wo

W

(Respondent's

K C Journal - Post - March 17, 1937

C1382, Exhibit No. 18
Donnelly
Reed
8-5-42
B Warren

...ion, however, said there were ...re employes out than the man... conceded.

Picket Building Here.

Striking employes, headed by ...ie Wave Tobin, business manager of the union, assembled at the ...nt and rear entrances of the ...ding at 6:30 a. m., preventing ...-workers from entering the ...ding. By 8 a. m. more than ...persons were assembled about ...trances.

...lice had some difficulty in ...taining order, a few hair pulling ...ntests between members of ...ing factions keeping them on ...dert at the Grand avenue en...

...bout a score of strikers followed ...e sit-down technique, sitting on ...floor of the lobby and blocking ...ge within.

A. B. Germer, president of the

Turn to Page 2, Column 5.

AMELIA TIMES BY AME

G. I

TAKE $18,000 IN FURS

Thieves Loot Truck Near Armour and Troost.

Fur coats valued at $18,000 were stolen early Wednesday morning from an inclosed truck. The truck had been parked just south of Armour boulevard on Troost avenue by John H. Hagarty, a sales promotion employe of the Montreal Fur Trading company, New York City.

Hagarty told police there were between 70 and 75 fur coats in his truck, ranging in value from $100 to $800 each. The seals were insured, he said.

Hagarty said his wife, who are stopping at the Robert E. Lee hotel, had returned from Independence with E. C. Fink, an Independence fur dealer, who lives at the Valentine-on-Broadway hotel, 3724 Broad-

...counted and the vote was ...arily decided upon as 501 ...e Democrats and 31 for the Republicans.

Says Box Was Removed.

The ballot box was taken by Neeper and Frank Ditsch, jr., Shawnee captain, to the basement of the polling place and kept there 10 or 15 minutes.

Neeper threatened to eject Mrs. Marie Denger, Republican clerk, if she refused to sign a poll book on which fraudulent entries had been made.

Mrs. Nelson was examined by Randall Wilson, assistant district attorney.

Q—Did you count any of the large ballots? A—No.

Q—Was Mrs. Walton (Mrs. Beulah Walton, Republican judge) a regular commissioned officer in the precinct? A—No.

Q—Who was? A—Mrs. Doughtie Askew.

Q—Did Neeper offer an explanation about the change? A—He told

Woman Wou... Envoy to ...

PARIS, March 1... Charles de Chambru... grandson of Lafay... French envoy ... was shot by a wom... railway station h... night.

Count de Cham... scended from Lafay... Revolutionary war ... Virginie, Marquise ...

Because of the se... cestor in the revol... American citizen... right, granted by th...

The woman who ... dame de Fontagnes, ... ist.

The bullet from h... him in the abdomen ... to La Riboisiere ho... there said his woun... ous and that he w... to a private clinic sh...

He is a son of Co... Chambrun, who sat

Exhibit 18.) 4125

id Mrs.
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book and tally sheet? A—I signed them because I thought it was my duty as a clerk to do so, and because I was afraid not to. Mr. Neeper said that if I did not sign my name to the poll books he would put me out.

The government's opening statement, which was made by Wilson, contained charges of ballot box stuffing, fake names in poll books, erasures of voters' cross marks from Republican columns and the making of substitute "Xs" over the Democratic columns on ballots. Wilson said the government would undertake to prove that some names, allegedly written into poll books to facilitate stuffing the box, apparently were fictitious and addresses were nonexistent.

Wilson said the government would undertake to show that one of the defendants as early as 9 a. m. on election day induced other defendant to begin v names of persons who had not into the poll books. In the noon, he said, two of the defe removed the ballot box to a ment.

One of the defendants re away from the poll 15 to 20 m and the other for one and a to two hours, Wilson charge

He indicated the gove would undertake to show erasures were made and sub crosses marked at the head Democratic column while the were in the custody of th fendant.

Ballots Held Intact

The trial, as in the three pre it, opened with testimony d to show that the ballots ha held intact since they were by the government, imme after the federal grand ju convened December 14.

Members of the election and deputy marshals testifie the custody of the ballots an tion records at the county house, in transit to the federa ing, and at the federal b where they are locked in vat

Judge Reeves announced he hold no more election trials sitting, although four were docket. The current trial second on his docket.

The next will begin, if not tervenes, April 8 before Jud rilll E. Otis.

legal struggle would follow.

Lawyers said Judge Campbell would have to be informed, officially that the sit-down strikers still held the plants, and that Chrysler attorneys probably would be the persons to do it. That strategy would call for the Chrysler counsel to appear before Judge Campbell, establish the fact the strikers still were in the factories and ask that they be cited for contempt of court. Should the strikers be cited, the sheriff then probably would proceed to evict them. Chrysler corporation had no statement immediately on what its lawyers were planning to do. It was believed the legal maneuvering might consume a week.

Detroit still was a strike-plagued city as Murphy prepared to convene his "committee of 20," which was supposed to include representatives of capital, labor, civic organizations, and the general public.

provide for themselves.

The compromise was reached in a 5-hour conference Tuesday night of Mayor Frank Cuzens and representatives of the Hotel association and the Waiters and Waitresses' association.

Service at the hotels was restored immediately.

The agreement set up a 3-man arbitration board, to begin deliberation not later than Thursday night, with full power of final judgment.

STRIKE CALLED BY GARMENT UNION WORKERS IN K. C.

Continued from Page 1.

Gernes company, denied that any of his employes were on strike.

"We have about 200 girls who are being paid good wages and are satisfied," Gernes said. "We have no trouble with the union or anyone. We have not even been approached by the union."

Opens Way for Employes.

About 8:15 a. m. Gernes managed to open the way for his employes to enter the building through the rear entrance. He said virtually all had entered by 8:30 a. m.

Hyman Gordon, president of the Gordon company, denied allegations of the strikers that he was paying "starvation wages."

"The girls are making good money, and I can prove it by our checks," he said. "There are only about 16 of my girls that are responsible for this trouble."

Miss Tobin said, "We are fighting to stop some of these $6 a week checks. The fight is for a 40-hour week and $13 a week minimum."

Meyer Perlstein, regional director of the union, at union headquarters, 1022 Baltimore avenue, said the union was demanding restoration of the NRA hours and wages.

Want NRA Conditions.

"After the NRA code was thrown out," he said, "the three companies lengthened hours and reduced wages. We want contracts with the three companies providing for NRA conditions."

Perlstein said the strike was voted Tuesday afternoon at a meet-

(Sandy) Sinclair and [illegible] Maloney. Accompaniment will be furnished by Miss Katherine Farley, Mrs. John McQueeny, Harry Kelly, Miss Marie Murphy and other members of the order.

Dancing, including jigs, reels and other forms of the terpsichorean art, will be presented by Miss Margaret Haffey, John H. Cassidy, Miss Cheri Worth and pupils of the Rhea Dale dance school.

The Steuben club, Armour boulevard and Forest street, will be the scene of the entertainment. After the program there is to be dancing. All Hibernians are invited.

30-DAY JAIL TERM FOR PETTY LARCENY

EXCELSIOR SPRINGS, Mo., March 17.—(UP)—Lee Beard, 23 years old, of Joplin, Wednesday faced a 30-day sentence in the Clay county jail for petty larceny. He also was fined $22.15 on his plea of guilty.

Two of Beard's companions, Melvyn Lantz, 22, Joplin, and Raymond Dawson, 24, Commerce, Ok., will be given a hearing Saturday on charges of operating a motor vehicle with improper license plates.

The three said they bought the automobile at a St. Joseph junk yard, but it bore Kansas license plates.

'BANZAI' HOLE IN ONE.

SALINAS, CAL.—(UP)—The Japanese language has provided just the right word to express the proper feeling when a golfer makes a hole in one. John Urabe, star Japanese golfer, tried it out when he holed a 225-yard drive here and it was all that was necessary. It is simply "Banzai."

NEGRO UNION TO MEET.

The regular meeting of the Negro Democratic union of Kansas City, Kas., will be Wednesday night at the Third Christian church, Fifth street and Cleveland avenue.

(Respon
this

K.C. Journal-Post
8-5-42 WITNESS
C/382
NATIONAL LABOR RELATIONS BOARD
EXHIBIT NO.
B. Warren Reed

Respondent's Exhibit 18. 4127-63

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second on his docket.

The next will begin, if not
tervenes, April 5 before Jud
rilll E. Otis.

POSSE HUNTS 2 WH
BEAT TEXAS WO

SAN BENITO, TEX., Ma
(UP)—A posse followed
hounds Wednesday in searc
men who Mrs. Frank
daughter-in-law of one of
who disappeared last fa
hunting on the vast Kin
said halted her at a highw
section and beat her.

MRS LOVE RALLI

LOS ANGELES, March
—Mrs. Helen Wills Love, w
into a coma nearly a wee
an attempt to commit s
will power, regained con
for a few minutes Wedne
then sank back into her stupor.

PLANNED GIRL'S DEATH.

CHARLOTTESVILLE, VA., March
17.—(UP)—Prosecutors filed a bill
of particulars Wednesday charging
that Dr. Richard G. Miller deliber-
ately killed 18-year-old Cleo Sprouse
with chloroform.

FILED 17
Kennedy
FINAL REPORTER

March 17, 1937

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"Symptom of Deeper Condition."

"Sit-downs are a symptom of a deeper condition and not the cause. We ask that those who are interested in law and order use their energies most effectively by helping lengthened hours and reduced wages. We want contracts with the three companies providing for NRA conditions."

Perlstein said the strike was voted Tuesday afternoon at a meeting of union employes of the three companies at union headquarters.

"About two weeks ago," he said. "The Gordon company organized a company union. The girls objected to that and called the meeting at which the strike was voted."

Perlstein said there were about 500 workers employed by the three plants, two-thirds of whom were members of the union. Company officials placed the number of employes at 700 and said union members were greatly in the minority.

While Gernes denied that any of his employes were on strike, several pickets outside the building, including at least one employe of the Gernes plant, bore signs announcing that the strike was by employes in all three plants.

Gordon asked police to remove the strikers who were sitting in the lobby of the building, but police refused, stating it would be necessary for him to obtain a court order to be served by the sheriff. Gordon announced his intention to do so

The police confined themselves to keeping sidewalks as clear as possible and halting disturbances.

Chic

NEW VERTICA
DESIGN

The last word in smartn

Enchantingly this a
popular Vertical design
fit into your living roo
Its size amazingly petite a
compact—its tone gloric
like all Chickerings.

New CHICK

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GARMENT PLANTS HUM AS POLICE GUARD WORKERS

Crews Escorted Through Lines of Union Pickets Here.

Pictures on Picture Page.

Under protection of police, who escorted them through lines of cat-calling women strikers and strike sympathizers, employes of the three garment companies at 3617 Grand avenue went to work Thursday morning through the rear entrance on Walnut street.

Managements of the Missouri Garment company and Gordon Brothers Manufacturing company said 90 per cent of their 300 employes each were at work while A. B. Gernes, head of the Gernes Garments company, said all of his 200 employes were at their tasks.

Leaders of the International Ladies' Garment Workers' union, which called a strike beginning Wednesday morning, claimed a much larger percentage of workers on strike, however.

Camp in Front Lobby.

Between 40 and 50 women, all of whom said they were strikers, were camped Thursday morning in the front lobby of the building, where they had spent the night on cots and blankets on the floors and in show windows. They blocked the front entrance of the building.

Many of them red-eyed from lack of sleep, the sit-downers in the lobby said they "got along fine" during the night and that the Motion Picture Operators' union had sent them a lunch and provided funds for a breakfast. Spokesmen for the women in the lobby said it was their intention to remain there until union demands for a minimum of $13 a week, 40-hour week and recognition of the union were met.

Comment on Wages.

On the other hand, managements of the garment factories said their wages except in isolated instances,

Post — March 19, 1937
L LABOR RELATIONS BOARD
12 EXHIBIT No. 19
Donnelly Reed
12 WITNESS
B. Warren

Kansas Cityans Start 10,000-Mile Air Tour

to Kansas City by Braniff ...ot. The trip, with stopovers, ...take about seven weeks and ...over more than 10,000 miles. ...photograph shows Mrs. Lons... and her son, and Mrs. Lons... ...grandchildren Patsy and ...r Thornton, children of Mr. ...Mrs. Oliver Thornton, 330 Fifty-first street. The grand... ...ren were at the airport to ...rs. Lonsdale and their uncle

AMELIA E... REACHES ...ON GLO...

Continued

...ping her picture ... and refused to p... assistants were w...

Manning said ... good throughout ...

After the plan... army hangar Mi... crew went to th... John C. McDon... and a rest befo... Howland island.

With Miss Ear... parade across the ... America's Hawa... a routine flight ... air line's giant ... per as yet unn... with a crew of ... for Auckland, N...

Hawaii Clip...

The Hawaii Cl... water at its Alar... at 3:13 p. m. (5:1... time). At 4:21 p... sky, commanded ... Edwin C. Music ... air.

Seventeen m... Earhart took off ... port, nearby.

It soon becam... can airways ha... "making a race ...

At 5:60 p. m. ... ported Miss E... passing the Par... He asked perm... his sp...d from ... Permission was ...

Mantz and ... at Honolulu. M... pany. Miss E... Australia. From ... tinue the flight ...

News of Saf... Brings H... Husba...

OAKLAND ... March 18.—(U... husband of Am... lighted Thursda...

plant and that none of his workers belonged to the union.

Under direction of D. E. Reddish, detective assigned to labor troubles, and I. A. C. W. Shepard of the Country Club police station, nearly a score of police officers kept approximately 150 strikers and sympathizers on the move on the Walnut street side of the factories Thursday morning as workers went to their tasks.

Singly and in groups, workers were escorted to the rear door leading to the three factories amid jeers and cat-calls from the onlookers.

More Police on Duty.

Half a dozen police under Sgt. Mike Shay of the Nineteenth street police station, who spent the night at the scene, were joined at 7:30 a. m. by those under direction of Lieutenant Shepard, including 10 motorcycle patrolmen under Sgt. George R. Maschin.

Three or four fights between women workers and strikers were broken up by the police, but no arrests were made. Strikers engaging in the fights, however, were placed in a police car to keep them out of the way until all workers reporting had entered the plants.

Police said they had received orders to keep the entrances of the plants clear and strikers and sympathizers on the move.

Those encamped in the front lobby said they were holding their places because Judge H. F. McElroy, city manager, had informed them they would not be permitted to return once they departed. They announced their intention of remaining in the lobby again Thursday night.

GENERAL MOTORS

Pi P Journal K.C. NAT

Be castic Stutt ming of t dipp the

fifth street and the Paseo for business use.

W. W. H. Findlay, owner of the property, and his attorney, Fred G. Mancuso, presented to the board plans for a 1-story business building, containing four storerooms. Mancuso said his client bought the property in 1919 and erected a real estate office on it in 1921, prior to enactment of the zoning law.

Seventy-fifth street is a business artery, the attorney declared, and store buildings on it at the Paseo are needed to serve a large residential area. He pointed out that the nearest shopping centers are at Seventy-fifth street and Troost avenue, Eightieth street and the Paseo and Seventy-fifth street and Prospect avenue.

Others Favor Move.

Charles Allen, owner of the south-

NEARS END F EVIDENCE IN VOTE TRIAL HERE

Continued from Page 1.

e 50 such witnesses before it its case.

Trial Moves Swiftly.

trial, with the bulk of evitaken into consideration, has more swiftly than the one ing it.

evidence has run the gamut tion irregularities. The govnt has adduced testimony to that the ballot box had been stuffed; that "ghosts" had voted in the precincts; that a woman had been voted while she was ill in a hospital; that ballots marked for the Republican candidates had been altered to make them count for the Democratic candidates; that the ballot box had been removed for a time from the poll and that a Democratic precinct captain had "doctored" the count early in the day and had so informed a Republican election judge and watcher.

In the latter connection, the Republican and Democratic committee women's names were drawn into the testimony.

Quotes Precinct Captain.

Mrs. Marie Denger, Republican clerk and a defendant who has pleaded nolo contendere, quoted George Neeper, Democratic precinct captain, as suggesting the committeewomen had agreed to limit the

"I knew she' said. "In fact, minutes before rival."

Except for sleep, Putnam receiving repo

Miss Earhart rose easily fro port and head a rainstorm at day (6:28 p. m.

Putnam sat radio receiver ways, broadca of encouragem

The flight is series of adv most woman former Atchi abandoned a after the Wor first solo flig inst tion in

St eady the Atlantic a set numerous records for fli

Crew

A crowd of the Oakland Accompanying Manning and tors, and Paul flier, who is technical adv year-old Nev plans to acco Australia. Th plane at Hon

Miss Earha purs her hai as she climb laboratory." husband goo the controls.

The plane foot muddy approached

(Respondent's Exhibit 19.)

4129

(Respondent's

"NEWS WHILE IT'S NEWS"

KANSAS CITY JOURNAL-P

An Independent Newspaper

83rd Year. No. 181. | Entered as second class mail matter at Kansas City, Mo., under the act of March 3, 1879. | Kansas City, Mo., Monday, March 22, 1937. | Publication Office, 22nd and Oak Sts. Published Daily and Sunday.

VIOLENCE MARKS GARMENT S

ETROIT POLICE USH RAIDS ON SITTERS' NESTS

reats of General Auto Strike Fail to Halt Officers.

By United Press.

ETROIT, March 22.—Detroit po- resumed their raids on sit-down ers in closed small plants and ories Monday as the threat of a ral automotive strike hung over city.

ey moved in on the Thomas P. y company's printing plant e 26 sit-down strikers have

REATS AGAINST LIFE REVEALED BY MURPHY

LANSING, MICH., March 22.— reats against the life of Gov. nk Murphy to influence his ivity in Michigan labor utes were revealed by the ecutive on his return to the

GENERAL MOTORS TO BUILD BUFFALO PLANT

BUFFALO, N. Y., March 22.—(UP)—Plans to construct a million-dollar General Motors plant in Tonawanda, just outside the Buffalo city limits, were announced Monday by Marvin E. Coyle, president of the Chevrolet division of the corporation.

The plant, which will employ between 3,000 and 4,000 workers, will build motors and axles.

Coyle said he expected the plant to begin production January 1, 1938.

SCHOOL'S GAS "STOLEN" FROM PRIVATE LINES

Company Didn't Know Pipes Were Tapped at Disaster Scene.

By United Press.

NEW LONDON

TWO WOMEN FOUND DEAD FROM FUMES

Third Is Near Victim in Tragedy at 1402 Summit.

A small first floor apartment in a rooming house at 1402 Summit street became a death trap for two women Monday morning. Fumes from a stove apparently caused their death, according to preliminary investigations by police.

The dead are Miss Lucille Weare, about 35 years old, and Mrs. Pearl Bright, about 37, who roomed together in the first floor rear part of the rooming house. Their bodies were found stretched out on the floor about 9:30 a. m.

A third near victim of the tragedy was Mrs. Emma Loomis, who lives in a second floor room above the

Just a Coincidence, Wife Hopes

STRIKE FEARS TUMBLE STO MARKET AG

Losses Range to More 6 Points; Tradin Mostly Dull.

By ELMER C. WALZER United Press Financial Editor.

NEW YORK, March 22.—C over spread of sit-down brought another wide bre stocks Monday. Losses ran more than 6 points.

Trading for the most pa dull—major operators withd to the sidelines for safety—b late periods of liquidation the market in steel, motor a shares thin and prices cru The decline, as measured by Jones averages, was one worst of the year. Utility showed best resistance, but th age made a new low for the

Small Holders Unload

The situation in Detroit, w general auto strike is thre

(Respondent's Exhibit 20.)

JRNAL-POST

FINANCIAL EDITION

22, 1937. Publication Office 22nd and Oak Sts. Published Daily and Sunday. IN GREATER KANSAS CITY 2c PRICE 15c A WEEK COPY) BY CARRIER

ARMENT STRIKE

STRIKE FEARS TUMBLE STO MARKET AG

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By ELMER C. WALZE
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Small Holders Unload

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GROUP BREAKS POLICE LINES; SEVERAL HURT

Head of One Plant Mauled in Melee at 2617 Grand Avenue.

Violence marked the fifth day of the strike of the garment workers union at 2617 Grand avenue Monday morning. A strike picket received a possible fracture of the left arm. Hyman Gordon, head of one of the three garment companies affected, was mauled by women, a score of women workers were assaulted despite police efforts to protect them, and 30 strikers and

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to

L Post - March 22, 1937
20
Donnelly
Read
1-5-42
WITNESS
B. Warren

A PRICE

50 PER MONTH

...ive on his return to the ...l Monday. The governor ...d he had received death threats ...y times since the wave of sit-...n strikes began in the state ...e months ago. He did not re-...l specific threats.

...n possession since March 12. ...employes surrendered as soon ...olice knocked on the door.

...olice next went to the Fort street ...A station and evicted 10 men, 5 ...en and 4 children who had ...d a sit-down strike because ...ried women were removed from ...f rolls. There was no resistance. ...strikers were sent home.

...he city council Monday rejected ...application from the United ...omobile Workers for permission ...hold a mass meeting Tuesday ...t in Cadillac square. Union ...ers said they would hold the ...ting anyway.

Despite Martin's Threats.

...spite threats by Homer Martin, ...ional president of the United ...omobile Workers, that a general ...motive strike would be called ...se forcible evictions by police ...id, Commissioner Heinrich A. ...ert conferred with subordinates ...the next moves in that direction ...Martin said Monday his organiza-...n was considering drawing up a ...tion asking the recall of Mayor ...k Couzens because of the raids ...inst strikers.

...Martin and Richard T. Frankens-..., organizational director of ...WA, went to Chrysler's tem-...ary offices in a downtown build-...to meet with representatives of ...corporation in whose nine ...ts 8,000 sit-down strikers re-...in in defiance of injunctions and ...ts of body attachment.

Appeals to Murphy.

...Martin, in a letter Monday to ...Frank Murphy, asked the state ...d executive to "give the workers ...his state a quare deal" by de-...ding that the Chrysler corpora-...abide by the Wagner labor act.

By United Press.

NEW LONDON, TEX., March 22.—William C. Shaw, 61-year-old superintendent of the New London school, admitted before a military board of inquiry Monday that the gas which apparently exploded, killing 428 persons last Thursday, was taken without permission from the pipe lines of a private company.

Just before he had completed his testimony, Shaw virtually collapsed. He was assisted from the witness chair to an anteroom while additional witnesses were summoned.

This testimony, given by the oldest educator in Texas in a firm voice, came after a 16-year-old survivor of the explosion stood before the court and showed that his hair had been singed in the blast. From him came the first direct clew to the source of the spark that apparently detonated pockets of gas that had formed from faulty connections or equipment.

Blames Electric Spark.

The youth, John Dow, testified the explosion, accompanied by a flash of flame, came from the sub-basement when a manual training instructor closed an electric switch to a sanding machine.

Shaw went before the board this third day of the inquiry and admitted that the Parade Gas company's natural gas pipe line that passed under the campus of the school was tapped without the company's permission.

He also admitted officials of the United Gas company, from which the school board previously bought its fuel gas supply, had warned him "the board might be using a dangerous gas." He said a United Gas

Turn to Page 4, Column 1.

DITTO ON $25 FINE, TOO

William Hale and William Hale Before Judge.

...in a second floor room above the quarters occupied by Mrs. Bright and Miss Weare. Fumes seeping through the floor and walls made her so ill and faint that neighbors summoned an ambulance for her.

Dies as Wedding Nears.

Neighbors said they had been told that Monday was to have been Miss Weare's wedding day. They did not know the name of her fiancé.

Ila Miller and Ira Johnson, members of the police homicide squad, said, after a preliminary investigation, that they believed the deaths accidental.

They found a gas burner under a water heater still burning when they arrived at the scene. This discred-

Turn to Page 2, Column 2.

MOST ACTIVE STOCKS

NEW YORK, March 22.—(UP)—The 15 most active stocks traded on the New York stock exchange:

	Sales.	High.	Low.	Close.	Chge. Net
N Y Cent	34,300	51¾	48⅞	49	—1⅞
U S Steel	46,200	113½	112⅜	112⅝	—1⅞
Rep Steel	44,200	43½	42⅜	43⅛	—⅜
Rad Co Am	33,100	11½	11⅜	11⅜	—⅛
Anac Cop	30,700	61⅞	60⅝	60⅞	—1⅜
Balt & O	23,600	21⅞	20⅞	21⅛	—⅞
Gen Motors	20,300	62⅛	61⅛	61⅝	—1⅜
Socony Vac	18,700	18⅜	17⅝	17⅞	—⅝
Yellow T &	18,600	22⅝	20¼	20½	—2⅛
Interl Ha Ir	18,000	24⅞	23	23¾	—1⅝
Commow So	17,600	3¼	3	3	—
Elec P & L	17,100	25⅝	23¾	24	—1⅝
Int Nickel	16,700	61½	59⅞	60¼	—1⅜
Tex Corp	16,200	51⅝	50	53⅝	—1⅜
Chrysler	15,400	134⅛	130⅛	131⅞	—1⅝

MARKETS AT A GLANCE.
By United Press.

STOCKS—Broke 1 to more than 3 points in moderate trading.

BONDS—Lower; 18 U. S. government issues at new lows.

CURB STOCKS—Fractions to 3 points lower.

FOREIGN EXCHANGE—Easy.

COTTON FUTURES—Closed 11 to 20 points higher.

Kansas City.

WHEAT—About 1¼ cents higher and down from best prices.

CORN—Up ½c to about a cent.

CATTLE—Steady to a quarter lower.

HOGS—Unchanged to a nickel up.

SHEEP—Quoted weak to lower.

STOCK AND BOND INDICES.

Copyright, 1937, by Standard Statistics Co.

Following are the New York stock and

Mrs. Mildred Salghman (lower right), 23 years old, 613 Waverly avenue, Kansas City, Kan., hopes the simultaneous disappearance of her 27-year-old husband, Raleigh Salghman (lower left) and her 15-year-old sister, Miss Grace Warden (upper), 55 South Coy street, sophomore at Wyandotte high school, is a coincidence. She told Kansas City, Kan., police Monday her husband had given her no reason to think he was leaving with Miss Warden.

LATEST RACING RESULTS

RACE ENTRIES ON PAGE 6.

TROPICAL PARK—FLA.

FIRST RACE—¾ mile.
Rosmary Royal (Wagner) $6.80 $3.10 $2.20
Brave Caruso (Schmidt) 3.80 2.80
Slippery Jim (LeBlanc) 2.60
Time, :1:13 1-5. Also ran: Smart Bird, Candor, Top On, Erins Dey, Tycoone.

SECOND RACE—Mile.
Van Wyck (Landolt) $11.60 $6.00 $6.60
Lambs Wool (Schmidt) 10.80 7.20
Symums Run (Hardy) 25.00
Time 1:39 4-5. Also ran: War Rumor, Revenge, Grover O., Octave, Unknown Worlds, Opaca, Linlaer, Polychrome.

THIRD RACE—¾-mile.
Earl Porter (LeBlanc) $4.80 $3.00 $2.80
Jildee Rose (Balash) 4.60 3.40
Torpsichore (Steffen) 6.00
Time 1:11 1-5. Also ran: Miss Trophy, Inecona, Miss Dignity, Top.

FOURTH RACE—¾-mile.

HOT SPRINGS—ARK.

FIRST RACE—¾-mile.
Red Co (Martin) $3.80 $2.60 $2.80
Obedient (York) 6.80 4.70
Kendal Green (Smith) 6.80
Time 1:07 4-5. Also ran: Tempting Witch, Flying Justice, Vimaha, xBonnet, xBrorpeth, Golden Spur, Forewarned, Captialist, xField.

LENTEN SERIES BEGINS

Dean Sprouse Speaks at Union Service.

The first of a series of union

Small Holders Unload.

The situation in Detroit, w... general auto strike is thre... plus announcement that 13,00... & Laughlin Steel employes ... seek new wage adjustmen... outbreaks of sit-down str... other centers, created nervo... ing by small holders.

United States Steel b... around 112 for almost 5 po... Republic dropped more ... Bethlehem dropped to ar... for almost 4 points loss. Gu... was 5 points lower. Weakne... in face of announcement by ... can Iron & Steel institute o... erations schedule for the ... this week at 89.6 per cen... pacity making tonnage out... est since May, 1929.

Chrysler led the decline ... by dropping more than 6... Motors lost a point. Du P... holds a substantial block ... Motors, broke to a new l... year on more than 5 po...

American Telephone dropped to a new low for the year on almost 3 points loss. Western Union lost ... and International Telephone was ½ lower at 13. Metal shares weakened under lead of Anaconda which was almost 4 points lower under 60 and American Smelting which gave almost 2 points.

Several New Lows Quoted.

New York Central dropped through 50 for almost 3 points loss while Southern Pacific lost more than 3, Southern Railway lost almost 3 and Atchison gave 2¾ to 81. Chesapeake & Ohio made a new low for the year at 60.

Mercantile shares dropped fractions to 2 points as prospects of losses in sales as result of strikes. Among utilities, North American

Dow-Jones' preliminary closing averages showed industrial, 179.82, off 4.22; railroad 60.18, off 2.40; utility 31.92, off 0.87.

Transactions approximated 2,030,000 shares compared with 1,740,000 shares Friday.

Curb transactions were 545,000 shares compared with 432,000 shares Friday.

Bond transactions approximated

K.C. Journal

By ELMER C. WALZER
United Press Financial Editor.

NEW YORK, March 22.—C
over spread of sit-down
brought another wide bre
stocks Monday. Losses rang
more than 6 points.

Trading for the most pa
dull—major operators withd
to the sidelines for safety—b
late periods of liquidation
the market in steel, motor a
shares thin and prices cru
The decline, as measured by
Jones averages, was one
worst of the year. Utility
showed best resistance, but the
age made a new low for the

Small Holders Unload.

The situation in Detroit, w
general auto strike is three
plus announcement that 13,00
& Laughlin Steel employes
seek new wage adjustmen
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Curb transactions were 545,000 shares compared with 432,000 shares Friday.

Bond transactions approximated

proposal a plan for a constitutional amendment.

Would OK "Reasonable" Change.

Wheeler, declaring he spoke for the "vast majority" of foes of the president's plan, said the opposition would support "any reasonable constitutional amendment" as a compromise.

He forecast quick passage of such an amendment if supported by the president, and declared that Roosevelt himself, had he been on the supreme court at the time, would have ruled the NRA and AAA unconstitutional.

"An increase in the number of justices of the supreme court, apart from any question of policy, which I do not discuss, would not promote the efficiency of the court," Hughes' letter said.

"It is believed that it would impair that efficiency so long as the court acts as a unit," Hughes said.

Rejects Division Plan.

Hughes added "it is believed" a suggested plan for dividing the court up into groups to speed its

Violence marked the fifth day of the strike of the garment workers union at 2617 Grand avenue Monday morning. A strike picket received a possible fracture of the left arm. Hyman Gordon, head of one of the three garment companies affected, was mauled by women, a score of women workers were assaulted despite police efforts to protect them, and 30 strikers and sympathizers were detained temporarily by police.

The scene on Walnut street at the rear entrance of the building housing the Gordon Brothers Manufacturing company, the Gernes Garment company and the Missouri Garment company was one of bedlam.

Shout and Jeer.

More than 200 strikers and strike sympathizers stood behind rows of uniformed police shouting and jeering, shoving, kicking and fighting whenever a group of women workers attempted to enter the building.

Dozens of times the strikers and sympathizers broke through the police lines to grab a woman worker and give her a mauling and hair pulling. After each melee from one to several women were loaded aboard a patrol wagon standing near the scene. Several loads were taken to the Nineteenth street station and later released without being booked.

When Gordon, president of the Gordon Brothers Manufacturing company, left his car and started to enter the rear door between lines of policemen, half a dozen or more women broke through the lines and seized him.

Police had considerable difficulty in freeing Gordon from the pulling hands of the women and got him into the building after a considerable roughing and hair pulling.

But in spite of the violence, it seemed to be a highly good humored

Turn to Page 2, Column 4.

MAY RAIN TUESDAY

Temperature Will Be in 60's, Hamrick Predicts.

Spring spread her arms with a generous gesture of sunshine and balmy temperature Monday. But being a capricious miss, she threatened clouds and possible spring showers Tuesday.

—Tyner-Murphy Photo.

peared before it was destroyed Sunday night by fire. Cause of the blaze has not yet been determined.

LABOR RELATIONS ACT VIOLATED, CHARGE BY UNIO

Organizer Prepares to Ta Butler Dispute to Federal Board.

Charges against the Butler M facturing company will be with the national labor rela board, Hugh Lyons, Granite Ill., organizer for the Amalgam Association of Iron, Steel and Workers, who is in Kansas Ci direct a strike at the plant, nounced Monday.

Lyons said the complaint ag the company, where 174 m bers of the union have been sit-down strike 10 days, wil filed Monday afternoon or Tue morning.

L Post - March 22, 1937

1-C342 20 Pinnacle Road 5-5-42 WITNESS DANIEL W. BOSS, Offic BY

sioner. Men defendants were released on $2,000 bonds and women defendants on $1,500 bonds.

James Dalco, defense attorney, objected to fingerprinting the new defendants. His objection was disregarded by Robert Pulliam, chief deputy, who said department of justice regulations required it. Fingerprints made on arraignment have been used in previous trials for comparison with prints on altered ballots.

The new indictments charge irregularities in the seventh and tenth precincts of the Twelfth ward and the twenty-first precinct of the Fifth ward.

VIOLENCE MARKS GARMENT UNION WORKERS' STRIKE

Continued from Page 1.

group that sought to keep the garment workers from going to their

taxicab, only to turn away in fear of attempting to enter. Between 50 and 75 woman workers assembled at Twenty-seventh and Walnut streets, half a block away, fearing to approach closer to the building and run the lines of strikers and sympathizers.

Later, however, when the ranks of strikers and sympathizers had been thinned somewhat by trips of the patrol wagon, A. B. Gernes, head of the Gernes Garment company, and Milton Gordon of the Gordon plant, picked up the girls in groups in their cars and drove them to the entrance.

By mid-morning managements of the three garment plants said virtually all of their workers had entered the plant and were at their tasks.

While officials of the Missouri and Gordon plants say that less than 10 per cent of their employes are on strike and the Gernes plant claims none on strike, officials of the International Ladies Garment Workers union claimed a considerable larger percentage to be out.

DOG'S DEVOTION FATAL.

WARNEMUENDE, GERMANY March 22.—(UP)—The fidelity of a Doberman Pinscher dog to its dead master led to his own death Mon-

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Funeral
Howard R
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board, Hugh Lyons, Granite
Ill., orgahizer for the Amalgam
Association of Iron, Steel and
Workers, who is in Kansas Ci
direct a strike at the plant,
nounced Monday.

Lyons said the complaint ag
the company, where 374 m
bers of the union have been
sit-down strike 10 days, wil
filed Monday afternoon or Tue
morning.

Hearing on an application fo
injunction, sought by the B
company to oust the strikers
the plant, was continued Mo
afternoon until 9 a. m. Tue
after attorneys for both sides
ferred with Judge Emery
Wright. The attorneys wanted
time to study the law on the
ter.

The strikers, according to
organizer, merely are seekin
induce their employers to r
nize their union as the sole bar
ing agency for the Butler wor
By refusing to negotiate with
union members, he said, the
pany has violated the national
relations act.

Lyons asserted the sit-down
at the Butler plant started aft
E. Norquist, president, and
company executives ignored
quest to meet with the worker
said that he had called upon
pany representatives and arra
for a conference Monday night at
which he hoped the whole contro-

K.C. Journal Post - May

NLRB 5/3/42

4-5-42 WITNESS

DANIEL W. ROSS, OFF

BY B Wanru

were arraigned before Charles H
Thompson, United States commis-

and the twenty-first precinct of the
Fifth ward.

VIOLENCE MARKS GARMENT-UNION WORKERS' STRIKE

Continued from Page 1.

group that sought to keep the garment workers from going to their tasks. They seemed to be having a lot of fun. Even those put in the patrol wagons and taken to the police station accepted it as a lark. They were driven away with the shouts of the others ringing in their ears.

In one of the melees Miss Mary Brown, 3410 Troost avenue, strike picket, fell to the sidewalk. She was taken to the general hospital where it was said she suffered a possible fracture of the left arm.

Many of the workers approached the building by foot, motor car and

While officials of the Missouri and Gordon plants say that less than 10 per cent of their employes are on strike and the Gernes plant claims none on strike, officials of the International Ladies Garment Workers union claimed a considerable larger percentage to be out.

DOG'S DEVOTION FATAL.

WARNEMUENDE, GERMANY March 22.—(UP)—The fidelity of a Doberman Pinscher dog to its dead master led to his own death Monday. The dog made daily trips for two months to visit the grave of its master, a retired sea captain. On the way home Sunday the animal broke through the thin ice of a pond and drowned.

MRS. SCHORER IN HOSPITAL.

Mrs. Edwin H. Schorer, wife of Dr. Schorer, director of health, underwent a minor operation at Research hospital Monday. Her condition after the operation was said to be satisfactory and it was said she would be able to return to her home, 1010 West Fifty-ninth street, later this week.

Emery · Bird · Thayer's
Greater BASEMENT

(Respondent's Exhibit 20.) 4133

(Respondent's Exhibit 21.)

KANSAS CITY JOURNAL-POST

An Independent Newspaper

. 182. Entered as second class mail matter at Kansas City, Mo., under the act of March 3, 1879. Kansas City, Mo., Tuesday, March 23, 1937. Publication Office, 22nd and Oak Sts. Published Daily and Sunday.

IT ORDERS BUTLER SITTERS

RS NGE LATIC

ter Asks ck to

23.—Ray- new deal uesday that diency" of- sevelt's ju- as "atrophy tic institu-

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American

WEATHER IN VARIETY

Alternating Wet and Fair Periods Forecast.

A variety of weather is in prospect for the Kansas City area the remainder of this week, beginning with showers Tuesday afternoon and continuing Tuesday night and Wednesday, according to the district forecaster in Chicago.

Mr. Hamrick does not look for any extremely cold weather here. The district forecast indicates rain or snow Tuesday night and Wednesday for the Missouri valley district, with sunshine and rising temperature Thursday and Friday.

KANSAS BEER BILL COMPROMISE DUE FOR ACTION SOON

House and Senate Conference Agreement Is Reported.

From the Journal-Post Topeka Bureau.

TOPEKA, March 23.—The senate and house conference committee working to iron out differences over the bill to regulate beer sales was reported to have reached an agreement Tuesday over the question of giving township officials control over beer dispensers.

The house had provided that no

LEWIS ACCEPTS BID FOR PARLEY WITH CHRYSLER

Governor Hopes to Get Two Rival Leaders Seated at Same Table.

NEW YORK, March 23.—(UP)—Walter P. Chrysler late Tuesday accepted Gov. Frank Murphy's invitation to confer with John L. Lewis and the Michigan governor at Lansing Wednesday.

By United Press.

DETROIT, March 23.—Gov. Frank Murphy prepared Tuesday to meet on neutral ground Wednesday with the two key men in Detroit's labor troubles in an attempt to settle the Chrysler corporation strike.

John L. Lewis, chairman of the Committee for Industrial Organization, accepted Murphy's invitation to attend a conference at Lansing at 11 a. m. Wednesday. Soon after noon the governor had received no reply from Walter P. Chrysler, head of the automobile concern, who also was invited, but Murphy said he was "very hopeful" the conference would be held.

Lewis, who technically can be arrested if he sets foot in Detroit, wired Murphy from Washington he was being summoned "under [illegible]

LATEST RACING RESULTS

BACK ENTRIES ON PAGE 8.

FAIR GROUNDS—LA.

FIRST RACE—¾ mile.

Yule Star (Simpson)	$9.00	$3.60	$2.80
Prevention (Dubois)		3.40	3.40
Big Fish (Marrero)			4.20

Time, 1:13 3-5. Also ran My Blase, Dedication, West Main, Thistle Jock, Granbury.

SECOND RACE—5½ furlongs.

Calico Miss (Duffy)	$16.60	$7.60	$4.00
Sun Dora (Marrero)		6.00	3.80
Porter Call (Hill)			3.00

Time, 1:07 3-5. Also ran xVerna T., Authority, House Warmer, xRedwick, xBrother, Bedight, Loyal, In Memory, Doc Oster.
xField.

HOUSTON—TEXAS

FIRST RACE 4½ furlongs.

Sister Polly (Richard)	$13.30	$3.10	$3.70
Joe D. (Manifold)		7.40	4.80
Kizzy D. (Herbert)			4.00

Time, :55 4-5. Also ran Loiret Chiffre, Livanne, Grand Waters, Sequoia Hills, Magic Baby, Unrivalled, xExum, xSheep Out.
xField.

MAD WRITER SOUGHT

Aimee Under Guard as Result of Threat.

LOS ANGELES, March 23.—(UP)—A deranged man was sought by police Tuesday as the author of a note threatening to kidnap Aimee Semple McPherson from her Angelus temple.

While the red-haired evangelist was kept under guard, Detective Lieutenants Robert Underwood and D. R. Patton submitted the letter to fingerprint experts.

FIVE KILLED IN TEXAS AUTO-BUS COLLISION

TROPICAL PARK—FL

FIRST RACE—¾ mile.

Justa Play (Steffen)	$25.80	$14.30	
Hermanita (Swain)		31.70	
Scintilla (LeBlanc)			

Time, 1:13. Also ran King Bee, Crop, Miss Tad, Mahi, Dark Wizard, J. Little Dash, Mantadee, Chinese Jr.

SECOND RACE—¾ mile.

Alice Highland (Schmidt)	$4.70	$ 3.10	
Monon Lad (Swain)		12.30	
Aftermath (Kurtsinger)			

Time, 1:13 3-5. Also ran Lucky Chaiphone, Harp o' Gold, Nipponese Pecan, Addie, More Poise.

THIRD RACE—¾ Mile.

Negrete (Barba)		$45.60	$14.80
Miney (A. Cooper)			7.70
Proximity (Wall)			

Time—1:14 4-5. Also ran All Love Potion, Lancers Lady, Nancy War Jewel, Bonnie Maid, Jamesville, Ish Miss, Wee Colleen.

FOURTH RACE—¾ Mile.

Oddess Lady (Arcare)	$12.00	$5.6[illegible]	
Miss Apprehend (Balaski)			6.70
Sing Low (Wright)			

Time—48 1-5. Also ran Sherat Radio Charm.

HOT SPRINGS—ARK

FIRST RACE—¾ mile.

Blagden (McCray)		$9.40	$3.2[illegible]
Small Change (Faust)			4.6[illegible]
Aunt Marie (Canfield)			

Time, 1:08 3-5. Also ran Whba Wise Eddie, Peter Pepper, Prairie xIndiana Fiver, xTide Time Colon Chief Bunting, xOnslaught.

SECOND RACE—¾ mile.

Tulevries Lin (Machado)	$3.80	$3.2[illegible]	
Romaine (Barnett)			3.1[illegible]
xQueen Regnant (Beurlock)			

Time, :47. Also ran Gray Lass, Clap, Pebble M., Pearl Dyed, M Gipsey, Aim High, xWhite Spot, Bert, xAccordian.
xField.

MOST ACTIVE STOC

NEW YORK, March 23 (UP) ... most active stocks traded on ... York stock exchange.

	Sales	High	Low	Close
Rep Steel	45,100	43¾	41¾	43

STOCK PRICES MOVE HIGHER

GROUP RES FROM INT WITH O

NEW DISTURBANCE NETS ARRESTS IN GARMENT STRIKE

Union Group Repeats at Plant and Police Book 23.

Dress cutters at the Gordon Brothers Manufacturing company Tuesday morning joined the strike of members of the International Ladies Garment Workers' union, affecting three factories at 2617 Grand avenue. The company has material cut for about a week ahead, according to Hyman Gordon, head of the Gordon plant.

Violence again marked the arrival at the three plants of em-

(Respondent's Exhibit 21.)

RNAL-POST FINANCIAL EDITION

Publication Office, 22nd and Oak Sts. Published Daily and Sunday.

IN GREATER KANSAS CITY 2c PER COPY) BY CARRIER 15c A WEEK

R SITTERS OUT

STOCK PRICES MOVE HIGHER

GROUP RESTRAINED FROM INTERFERING WITH OPERATIONS

NEW DISTURBANCE NETS ARRESTS IN GARMENT STRIKE

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Violence again marked the ar-

Property Seizure Is Called Illegal in Injunction by Judge Wright.

An injunction to restrain 174 sit-down strikers from interfering with the operations of the Butler Manufacturing company, which they have held since March 12, was issued in the circuit court Tuesday by Judge Emory H. Wright.

The next move in the controversy between workers and employes is to serve the 148 named as defendants with a copy of the court order and demand they evacuate the plant by 9 a. m. Wednesday. Failure to comply with the order would mean that the workers were in contempt of court and liable to fine and im-

...uld not win ...perals. ...cracy work ...instruments ...said. ...swer to our ...ure genera... ...at American ...minor flaws, ...test and best ...nent of de...

American ...public in an ...ly what is ...of economic ...reak to con... ...wisdom, and ...the change. ...r. Roosevelt ...ade his own ...a the grand ...an constitu... ...to seek to ...the destruc... ...tradition is

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...and New York ...March 23.— ...n in an in... ...indicated his ...t, probably ...in May on ...light around ...interrupted ...90,000 Lock... ...shed at Luke ...plane is to ...ok and Miss ...to California ...lalolo. ...aths of Miss ...onolulu." Mr. ...a variety of ...to her plans ...rectly quoted ...she hops off ...empt a speed ...ld. ...no founda...

From the Journal-Post Topeka Bureau.

TOPEKA, March 23.—The senate and house conference committee working to iron out differences over the bill to regulate beer sales was reported to have reached an agreement Tuesday over the question of giving township officials control over beer dispensers.

The house had provided that no licenses could be issued by county commissioners without approval of the township officials. The senate refused to approve the township provision. The compromise agreement provides that when an individual applies to the county commissioners for a beer permit the county commissioners shall notify the township officials by registered mail of such application and shall fix a hearing date at which the township officials may appear and register a protest.

If the township officials do not appear to protest then the county commissioners may proceed to issue the permit.

It was expected that a report would be made to the two houses on the compromise agreement before the end of the day. A poll indicated a majority of the members of the two houses would accept the compromise plan.

SENATE PASSES BILL FOR CAPITOL ADDITION

WASHINGTON, March 23.—(UP)—The senate Tuesday passed a bill authorizing an appropriation of 4 million dollars to build an addition to the east front of the capitol building. The measure now goes to the house.

Chairman Tom Connally (D), Texas, of the senate committee on buildings and grounds, in urging enactment of the bill, said "every capitol architect since 1851 has advocated the addition according to the plans now proposed."

...tion, accepted Murphy's invitation to attend a conference at Lansing at 11 a. m. Wednesday. Soon after noon the governor had received no reply from Walter P. Chrysler, head of the automobile concern, who also was invited, but Murphy said he was "very hopeful" the conference would be held.

Lewis, who technically can be arrested if he sets foot in Detroit, wired Murphy from Washington he was being summoned "under duress."

"Nevertheless and notwithstanding, I agree to be present," Lewis' telegram said.

Lansing, the state capital, is in Ingham county—outside the jurisdiction of the Wayne county circuit court, which ordered the arrest of Lewis and the 6,000 Chrysler sit-down strikers because they ignored an injunction commanding them to leave nine plants. Should Sheriff Thomas Wilcox suddenly decide to enforce the court's order, he could arrest Lewis if the labor leader

Turn to Page 2, Column 4.

FIVE DIE IN FIRE

Others Hurt in Leap From Blazing Residence.

BALDWIN, N. Y., March 23.—(UP)—Five persons died early Tuesday in a fire which destroyed the residence of William Morse at Baldwin Harbor, Long Island.

The victims were Mrs. Rose Morse, 42-year-old wife of William Morse, and their daughters, Rose, 13; Jessie, 11; Helen, 9, and Barbara, 4.

Morse, janitor at the Baldwin high school; his daughter, Lillian, 19, and his son, William, jr., 16, suffered broken bones and other injuries when they leaped from second-story windows.

Firemen tentatively advanced the theory the flames originated from an oil burner attached to a coal range in the kitchen.

...note threatening to kidnap Aimee Semple McPherson from her Angelus temple.

While the red-haired evangelist was kept under guard, Detective Lieutenants Robert Underwood and D. R. Patton submitted the letter to fingerprint experts.

FIVE KILLED IN TEXAS AUTO-BUS COLLISION

AUSTIN, TEX., March 23.—(UP)—Five persons were killed Tuesday when an automobile and a bus in which members of the Glenn Lee orchestra were riding, collided. The bus bore Illinois license plates.

E. D. Davenport of Dallas and his chauffeur, and Sanford Hendry and Edgar Williamson, orchestra members, were killed, police said. The body of the fifth man was not identified.

HOWARD WILKINSON SHOOTS SELF FATALLY

Howard Wilkinson, 60 years old, 3037 Flora avenue, died in a general hospital ambulance Tuesday afternoon from a bullet wound in his left chest. His wife, Mrs. Mamie Wilkinson, told police she heard a shot and went to the basement of their home and found her husband seated in a rocking chair and clutching an automatic pistol. She said he had been dispondent.

EASTER VACATION AT M. U. STARTS THURSDAY

COLUMBIA, MO., March 23.—(UP)—Frederick A. Middlebush, president of the University of Missouri, announced Tuesday that Easter vacation for university students would start Thursday. Classes will be resumed the following Monday.

This will be the only vacation break in the second semester. Final examinations will be held May 29 to June 5 inclusive.

...Romaine (Barnett) ... xQueen Regnant (Scurlock) ... Time, :47. Also ran: Gray Lass, clsp. Pebble M., Pearl Draped, Gipsey, Aim High, a-Milk Spot, Bert, xAccordian, xField.

MOST ACTIVE STOC

NEW YORK, March 23 —(UP)— ...most active stocks traded on t... York stock exchange:

	Sales	High	Low	Close
Rep. Steel	48,100	43⅜	41⅞	43
N. Y. Cent	43,700	51⅛	49⅞	51
U. S. Steel	38,600	113⅞	112⅛	113
Gen. Motors	20,700	63⅝	61⅞	61
Amacon Cop	18,300	62⅞	60⅛	62⅜
Int. Paper C	16,600	7⅝	7	7⅛
Rad. Cr. Am	13,600	11⅝	11	11⅛
Balt. & O.	10,100	37⅛	36	36⅞
Yellow T. n	10,200	32⅝	30⅜	31⅞
Comwlth. &	10,400	3⅛	3	3
Texas Corp	10,000	57⅝	56⅛	57
Socony Vac	13,400	18⅛	17⅝	18
Ken. Copper	14,400	62⅛	60	6...
Interlake Ir	14,400	24⅞	23⅛	...
Int. Pap. Pr	13,700	110⅛	107⅜	1...
Gen. Elec	13,700	55⅞	54⅛	...

MARKETS AT A GLA... By United Press. New York.

STOCKS—Higher in mod...
BONDS—Irregularly high... ernment issues higher.
CURB STOCKS—Higher ...
FOREIGN EXCHANGE—... tion to the dollar.
COTTON FUTURES—Cl... points lower.
RUBBER—Easy.
Kansas City.
WHEAT—Minor fraction to 1 cent l...
CORN—Gained ½ cent for the day.
CATTLE—Steady to a quarter lower.
HOGS—Generally weak to a nickel down.
SHEEP—Unevenly lower; extreme losses 50 cents.

COMMODITY PRICE INDEX.

Copyright, 1937, by Dun & Bradstreet.

NEW YORK, March 23 —(UP)—Dun & Bradstreet's daily weighted price index of 30 basic commodities, compiled for the United Press (1930-1932 average 100):

Tuesday	182.28
Monday	180.74
Week ago	181.93
Month ago	143.49
Year ago	130.90
1937 high (March 23)	182.74
1937 low (January 29)	141.47

Of the 30 commodities used in compiling the index 6 advanced, 10 declined and 14 were unchanged. Wheat, corn, butter and tin advanced, while cotton, rubber, lead, hogs, steers, lambs, oats, lard, silk and rye declined.

RANGE OF STOCK AVERAGES.

NEW YORK, March 23 —(UP)— Dow Jones stock averages:

	High	Low	Close	Gain	Sales
30 Ind.	182.50	179.93	181.87	2.06	1,880,000
20 Rails	61.43	60.32	61.13	0.96	1,417,000
10 Util.	33.56	31.90	33.31	0.20	77,300

...123⅛, Caterpillar Tractor was up 2 at 88, and Case reached 153, up 3. Mail order issues followed the farm group.

Several issues made wide gains. American Steel Foundries touched 62, up 4½ points; Allied Chemical 238, up 4; American Agricultural Chemical 91, up 3; Fairbanks-Morse 60½, up 3½; Continental Baking A 33, up 2⅜; International Paper preferred 109⅜, up 3⅛; Union Bag & Paper 82⅛, up 3⅜, and Westinghouse Electric 139⅜, up 4¼.

Du Pont Goes to New Low.

Du Pont, an exception to the trend, declined to a new low for the year at 158½, off 2⅜.

Corporate bonds were mixed, while U. S. governments generally were firmer.

Grains closed irregularly higher. Metals gained here and in London.

Dow-Jones preliminary closing averages, industrial 181.89, up 2.07; railroad 61.13, up 0.95; utility 32.31, up 0.39.

Transactions approximated 1,500,000 shares compared with 2,030,000 shares Monday. Curb transactions approximated 335,000 shares, compared with 545,000 shares Monday.

Bond transactions approximated $20,180,000 compared with $18,900,000 Monday.

WHAT THE MARKET DID.

	Tues.	Mon.	Wk ago
New highs	8	14	16
New lows	188	156	49
Advances	483	67	476
Declines	230	781	344
Unchange	168	72	181
Total	881	934	899

...day morning joined the strike of members of the International Ladies Garment Workers' union, affecting three factories at 2617 Grand avenue. The company has material cut for about a week ahead, according to Hyman Gordon, head of the Gordon plant.

Violence again marked the arrival at the three plants of employes who have not joined the walkout. And again, as Monday, Gordon was mauled by women strikers and strike sympathizers when he sought to enter the plant at the rear entrance on Walnut street.

Despite efforts of police to protect him, Gordon was pulled and shoved around in the street and on the sidewalk in front of the rear entrance and received several scratches on the face.

Jack M. Spry, international organizer for the union, said the signing up in the union Monday of the four Gordon plant cutters meant "a big break for the union" in the strike.

For the first time in the strike, which began last Wednesday, arrests were made Tuesday morning.

Turn to Page 2, Column 2.

of court and liable to fine and imprisonment.

A representative of the sheriff's office was expected to go to the plant Tuesday afternoon to read the order.

The workers, from the time they first started their sit-down strike, have announced they had no intention of relinquishing the property until their demands were met. They ignored a previous demand to leave after it was posted as a bulletin March 18 by their employers. The workers said Monday, a few hours before the first hearings on the application for an injunction was heard, that they would resist eviction.

Favors Property Owner.

In granting the injunction, Judge Wright said the law on the matter clearly favored the property owner, as no one had a right to seize another's property. However, he conceded the fact workers, in many instances, were left at a disadvantage because of the lack of necessary legal machinery to appeal their cause.

"And until the congress or the state legislature establish laws for the workers, existing laws must be enforced," Judge Wright ruled.

Harry S. Davis and William Goodman, attorneys for the strikers, opposed the issuance of an injunction and asked for two or three days more time in which to try to end the differences between the workmen and their employers, who, they said, were "only inches apart."

Gives Workers' Views.

"The workmen," Davis asserted, "are laboring under the theory that what the law gives to one man should be given to others. Their employers are invoking the law against them, still they refuse to recognize the national labor relations act, which gives the worker the right to organize and to bargain collectively."

Davis said the men never had refused to arbitrate, in fact, he declared, they were eager to arbitrate with their employers in an attempt to bring about a peaceful settlement of the whole controversy.

As an example of what he said was the company's unwillingness to deal with the men, Davis cited a notice posted March 18 by company officials in which the men were ordered to vacate the premises they have held since March 12 under threat of dismissal and prosecution for trespassing.

Davis also asserted the Butler company did not enter court with clean hands since it had violated the provision of the national labor relations act by threatening dismissal and prosecution of the workers for their activities in organizing

Turn to Page 2, Column 4.

(Respondent's Exhibit

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enforced," Judge Wright rule

Twenty-Three Arrested as Strikers, Non-Strikers and Police Stage Daily 'Show' at Garment Plant

Journal-Post Photos

Fights and hair-pullings between strikers and strike sympathizers and workers were frequent Tuesday morning at the scene of the strike of union members at three garment plants at 2617 Grand avenue. Twenty-three arrests were made. At the left, two women strikers and a policeman were caught by the camera as they fell to the sidewalk in one of the melees. At the right, a woman striker pulls the hair of a worker seeking to enter the plant while a policeman tries to separate them. Hyman Gordon, head of one of the factories, was given a severe mauling by the strikers in spite of police efforts to protect him. The women arrested were booked at the Nineteenth Street police station on charges of disturbing the peace. They were released on $25 bond.

Those statements can be made with reasonable certainty on the basis of what I was permitted to learn or witness on a trip to Moscow—first stop on my flying survey of Europe's 1937 war machines. The statements are made with a full knowledge of the fact the country's policy of secrecy has had a tendency to result in exaggeration abroad of the military power of the Soviets—a result the Soviets naturally have encouraged.

The soviets in 1937 are devoting one-fourth of their entire budget to military preparations, totaling 26 million roubles, which, at the arbitrary exchange rate of five roubles to the dollar, amount to $5,200,000,000.

Largest in World.

In numbers alone the Soviet standing army is the largest in the world, totaling 1,260,000, which is double what it was four years ago.

The union has a population of 170 million—the largest in the world except for China—to draw upon. At present, the population yields a conscription class of 2 million a year, from which only the best are chosen, to serve from two to four years.

Russia has 2¼ million trained reserves and 1¼ million partly trained. In addition 13 million youths receive rudimentary preliminary training under the volunteer air and chemical defense society.

Furthermore, the Soviets decided to adopt Benito Mussolini's plan for preliminary military training of children from 8 years old and upward in drills, games and sports designed to imbue them with the military spirit.

Vast Pool of Manpower.

An advantageous feature of the Soviet army is that only 37 per cent is composed of non-permanent militia, the remainder being permanent through the conscription period.

Thus the Soviets tower far above other European armies in numbers actually under arms, numbers of immediately available trained reserves and a vast pool of other manpower.

In two vital factors of modern warfare the Soviets undoubtedly are heavily superior, that is, in numbers of airplanes and tanks, regarding which the utmost secrecy is preserved.

Only comparative figures are ever given in official reports. The latest, issued last January, said only that aviation strength had increased in four years by 330 per cent, and [illegible] nourished and excellently disciplined.

NEW DISTURBANCE NETS ARRESTS IN GARMENT STRIKE

Continued from Page 1.

Nineteen strikers and strike sympathizers and four workers were booked at the Nineteenth street police station on charges of disturbing the peace. They were released on $25 bond each for appearance in municipal court Wednesday at 9 a. m. Frank Aylward represented the union as attorney.

Previously police merely have taken disturbers to the police station where they were held for a brief time and then released.

Forty policemen, including seven double cruiser crews in charge of Lt. C. W. Shepard of the Country Club station, 10 motorcycle patrolmen in charge of Sgt. George B. Meachim, and D. E. Reddish, detective assigned to labor troubles, ward at the garment plants striving to keep order.

Crowd Annoys Police.

Police were annoyed by a large crowd of men spectators, including many apparent strike sympathizers, which assembled across the street from the Walnut street entrance to the building. Between 300 and 400 [illegible] in the crowd, it was estimated. It was necessary to drive the crowd of spectators back several times.

A. B. Gernes, head of the Gernes Garment company, said virtually all of his women employes had entered the plant by 9 a. m. The Gordon and Missouri Garment plant claimed a large majority of their workers had entered by that hour. A fleet of taxicabs carried Gordon workers to the door, from which the workers entered the building through lines of police holding back struggling strikers and sympathizers.

List Those Booked.

Strikers and strike sympathizers booked by police included:

Mrs. Nellie Mesaeaas, 700 Kensington avenue.
Miss Anna Talperis, 3000 Brooklyn avenue.
Mrs. Josephine Nichols, 2117 East Tenth street.
Miss Mabel Jordan, 1624 Belleview avenue.
Mrs. Frankie Bennett, 1917 Troost avenue.
Mrs. Georgia Gill, 1300 Troost avenue.
Mrs. Della Jackson, 4040 East Sixty-ninth street.
Miss Mildred McCabe, 727 Riverview avenue, Kansas City, Kas.
Miss Verna Hedrick, 3031 Charlotte street.

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Hughes' Letter Cited

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NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382
EXHIBIT NO. 21
IN THE MATTER OF
CASE & SWAN WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

K.C. Journal - Post - March 23, 1937

(Respondent's

given in official reports. The latest, issued last January, said only that aviation strength had increased in four years by 330 per cent, and tanks corps strength 700 per cent.

The most conservative estimates of foreign observers indicate that the Soviets possess 3,000 military airplanes, including 500 bombers of modern design and efficiency. They agree that the number may be increased rapidly because the manufacturing plants are operating on a mass production basis. An American engineer who visited one large plant said Russia is equipped for the biggest mass production of any European nation.

MAKE GOOD PILOTS.

Although the efficiency of the American-model motors built in Russia under license is not quite as high as those built in the United States, their general efficiency when fighting in Spain has been one of the biggest surprises of the civil war there.

Particularly astonishing in Spain was the performance of fast pursuit

Mrs. Georgia Gill, 1300 Troost avenue.
Mrs. Della Jackson, 4040 East Forty-ninth street.
Miss Mildred McCabe, 707 Riverview avenue, Kansas City, Kas.
Miss Verne Hedrick, 3001 Charlotte street.
Mrs. Stella LaFallier, 7041 Walrond avenue.
Mrs. Rachael Williamson, 1014 Ashland avenue.
Mrs. Mary Johnson, 713 East Fifteenth street.
Miss Lola Walters, 1316 Summit street.
Mrs. Mary Deist, 1414 Madison avenue.
Mrs. Gladys Knopp, 112 North Overton, Kansas City, Kas.
Mrs. Rosalie Poole, 3020 Benton boulevard.
Mrs. Irene Liggett, 3010 Van Horn road.
Mrs. Bertha Powers, 1016 South Twenty-sixth street, Kansas City, Kas.
Mrs. Velma Roseberry, 27 North Tenth street, Kansas City, Kas.

Workers booked were:

Mrs. Pearl Tilghman, 3107 East Fifteenth street.
Miss Tillie Glyer, 3001 Baltimore avenue.
Mrs. Alvina Holstrom, 3010 Brooklyn avenue.
Mrs. Ida Lawton, 1300 Topping avenue.

Cernes appeared at the police station and furnished bond for the four workers.

NEW ROOMER STEALS

Pays $2 Rent, Takes $16.50

[illegible] 7

[illegible] said in an address Monday night the proposal is "plainly constitutional."

Clarke, who describes himself as a "Progressive with both feet on the ground," emphasized he was expressing no opinion as to the wisdom of the plan, but discussing only the "naked legal question."

The former justice, appointed by Woodrow Wilson, retired to San Diego to "read many books" and had made no public speech for seven years.

President Accused of Cracking Patronage Whip

CHAPEL HILL, N. C., March 23.—(UP)—Sen. Rush D. Holt (D), West Virginia, Tuesday accused the administration of "cracking the party whip" and "starting the fires back home under those who disagree" with the president's proposals for judicial reorganization.

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BATTLE ROYAL IS RESUMED AT DOOR OF PLANT

More Arrests Are Made in Garment Union Melee Here.

Violence flared anew Thursday in the strike of the International Ladies Garment Workers' union, when the strikers and their sympathizers attempted to prevent nonstrikers from entering the plants of the Gordon Brothers Manufacturing company, the Missouri Garment company and the Gernes Garment company at 2817 Grand avenue.

A number of strikers and nonstrikers were arrested when they engaged in hair pulling and punching melees, and one policeman, James Gildee, assigned to the Nineteenth street police station, was injured when he tried to separate combatants at the Walnut street door of the building. Gildee suffered a sprained ankle.

Treated at General.

Mrs. Frankie Bennett, 27 years old, 1317 Troost avenue, suffered a scratched arm and scratches. She was given emergency treatment at the general hospital.

Approximately 60 policemen were on duty when the workers began arriving at the building to go to work. As each nonstriker appeared, a rush started in her direction and the police were kept busy trying to afford her protection. Many of the nonstrikers were isolated from their companions and subjected to severe maulings.

Increase in Violence.

Lieut. W. C. Shepherd of the Country Club police station, who was in charge of the police at the scene, said it appeared to him that fewer nonstrikers were attempting to enter the building, but that the violence attendant upon such attempts had increased.

...before the sit-downers who have held the plants for more than a

MONTGOMERY WARD TO BUILD STORE IN K. C. K.

Factory Structure to Go Up on Old Wyandotte Courthouse Site.

A new Montgomery Ward & Co. development on the site of the old Wyandotte county courthouse in Kansas City, Kas., at Seventh street and Minnesota avenue, was assured Thursday, when the sale of the site was announced.

R. W. Perry, former Kansas City banker, was announced as the successful bidder for the site. His bid of $180,000, submitted to the Wyandotte county board of commissioners.

Mr. Perry announced immediately that he was under contract to sell the site to Montgomery Ward & Co., for the erection of a retail store.

Mr. Perry submitted the only bid for the property.

Got Bid for Jail Site.

A bid for the old jail site at the northeast corner of Seventh street and State avenue, in which the Security National bank, as trustee for a group of 10 business men, offered $30,000, was not immediately approved.

Mr. Perry's purchase of the courthouse site made effective at once, it was announced, a long-time lease which had been made by Montgomery Ward & Co., contingent upon the sale. The lease contract calls for 20 years, with a provision for two additional 5-year terms.

The company, probably within the next 30 days, will start the construction of a 3-story concrete and brick building, the improvements to cost between $350,000 and $400,000. The building will be used as a retail store, and approximately 100 persons, the majority of them resi-

ITALY SI WAR THI 'VOLUNT

England Spurns Naval Blockad Urged by Frai

Move to Keep Supplies 'Volunteers' From Spa Proposed.

By United Press.

LONDON, March 25.—F proposed a naval blockade o Spanish coast Thursday. B authorities indicated their u ingness to accept it.

The French suggestion w transform the present naval servation patrol into a real b ade, under which the warshi Britain, France, Italy and Ger would search and turn back vessels suspected of carrying and munitions to Spain.

British sources made it clea country does not wish to risk with Germany and Italy if nonintervention effective.

The French suggestion wa vanced as a possible measure present ban on shipping "v teers" and war supplies to proves ineffecti

Earlier Yvon Delbos, F foreign minister, outlined the to Sir George Clerk, re

K.C. Journal-Post-March 25, 1937

(Respondent

increase in violence.

...W. C. Shepherd of the Country Club police station, who was in charge of the police at the scene, said it appeared to him that fewer strikers were attempting to enter the building, but that the violence attendant upon such attempts had increased.

While the fights were occurring at the garment plants, strikers, nonstrikers and sympathizers of both sides who were arrested Tuesday were preparing for their appearance in the South municipal court today to answer to charges of disturbing the peace.

Hearing on an application for an injunction, sought by the companies to prevent interference by strikers, also was postponed. Thursday when the strikers obtained a change of venue from the court of Judge Harry E. Wright to that of Judge William A. Brown. In Judge Brown's court probably late Thursday, attorneys for the strikers planned to ask more time to prepare a defense.

VOTE INQUIRY WIDENS

before the sit-downers who have held the plants for more than a fortnight:

1. Lewis, chairman of the committee for industrial organization, agreed to get the sit-downers out of the plants.

To Continue Parleys.

2. Chrysler pledged he would not attempt to resume production of automobiles or remove tools and machinery from the nine plants during subsequent negotiations.

3. Both parties agreed to continue their conferences on the issue of whether the UAW should be made the sole collective bargaining agency for all of Chrysler's employes.

Frankensteen read to the strikers the following letter from Governor Murphy, addressed to the United Automobile Workers:

"As you are aware, the conference arranged by me between Mr.

company, probably within next 30 days, will start the construction of a 3-story concrete and brick building, the improvements to cost between $350,000 and $400,000. The building will be used as a retail store, and approximately 100 persons, the majority of them resi-

Turn to Page 2, Column 3.

KILLS THREE AND SELF

South Boston Slayer Apparently Insane.

BOSTON, March 25. — (UP) — Four persons were killed in South Boston Thursday in what police described as a triple murder and suicide.

Police listed the victims as follows:

Dr. Charles E. Mackey, South Boston dentist and former Boston school committeeman.

Jeremiah Mackey, his brother, who was named by police as the slayer.

Paul Costa, chauffeur for Dr. Mackey.

nonintervention effective.

The French suggestion was advanced as a possible measure to present ban on shipping "volunteers" and war supplies to Spain proves ineffective.

Earlier Yvon Delbos, French foreign minister, outlined the plan to Sir George Clerk, new British ambassador.

Reports Cause Anxiety.

From this conference, and a conference between Delbos and the German ambassador, came the report from Paris that France was ready to ask for coercive action to stop Italian volunteers from Spain. This, coupled with the belief Italy would send such volunteers in view of reported severe defeat of Italians on the Madrid front, caused anxiety here.

But coupled with the semi-official denials from Rome that any Italian volunteers have been sent so far since the international ban on volunteers was imposed February 20, the authoritative disclosure here of the new French plan gave hope of an agreement.

Under the present control

Turn to Page 2, Column

spondent's Exhibit 22.) 413

sprawling town. We crossed arshes, and up over a wild in chain where we had an view of civilization, and down, ckingly, to the bright blue sea e palm-lined, African-looking e of Alicante.

A WILD CELEBRATION.

lane roared on toward Morocco, rattled into Alicante from the in a ramshackle bus. I arn the midst of a celebration icked the beautiful sea promand filled the streets with a crowd.

ilts between the ages of twen- and twenty-six were being up, and they, their girls and amilies were celebrating their ent and the victory over Italgular troops on the Guadalaront. Walking four abreast, nked, they were singing, shoutaying accordions and guitars. e boats in Alicante harbor packed with couples holding taking their last rides together, hore, where long lines formed nt of jammed recruiting staphe atmosphere was one of wild tion.

NO SIGN OF CONFUSION.

long the coast to Valencia, we through celebrating crowds eminded me more of the old of ferias and fiestas than of It was only the convalescent ed, limping along in heavy, militia uniforms, who made em real.

l, meat especially, was being d at Alicante, but, in the small between, I saw butcher shops and meat being sold with no ormed outside. Our driver reto get himself a good steak on y home.

ing into Valencia in the dark h miles of orange groves in the smell of orange blossoms, strong even through the the road, made it seem to this sleep correspondent like a wed-But, even half asleep, watchlights cut through the dust, new it wasn't an Italian wedey were celebrating.

A QUIET DAY IN STRIKE

GARMENT WORKERS AND UNION MEMBERS CLASH ONLY ONCE.

Police Are on Guard as Women Hurry From Factories to Street Cars—Sitters Remain in Lobby.

Only one brief skirmish between striking members of the International Ladies' Garment Workers' Union and workers of the three garment companies occupying the building at 2617 Grand avenue marred the order maintained by police late yesterday.

With the entrance to the building closed for the second day by some fifty seated members of the union, workers left by a rear door on Walnut street when the plants closed at 4:30 o'clock. A detail of police escorted the women to the street car stop at Twenty-sixth street and Grand avenue.

Many of the workers who have refused to join the strike hurried from the door with heads lowered, as they passed the two placard-bearing pickets. Others laughed and joked with the pickets. A crowd of strikers on the east side of Walnut street shouted to the departing workers, urging them to join the strike.

STRIKERS PURSUE THREE.

The three companies against which the union is directing the strike are the Missouri Garment Company, occupying the second floor of the building; the Gernes Garment Company, Inc., on the third floor, and the Gordon Brothers Manufacturing Company, on the fourth and fifth floors. The one outbreak between strikers and workers occurred shortly after 5 o'clock when Miss Waneta Armstrong, 908 Benton boulevard, 18-year-old employee of the Gordon Brothers plant, ran across Grand avenue to the northwest corner of the intersection, where there were no police guards. With her ran two companions.

A group of strikers hurried in pursuit. Overtaking Miss Armstrong, they beat her with handbags. One woman slapped the worker's face. She fell to the sidewalk, breaking her wristwatch. Police hurried to the scene and put five strikers in the patrol wagon.

"This makes me kinda mad," said Miss Armstrong.

The arrested strikers were taken to the Nineteenth street police station. They were released after questioning

SECOND NIGHT IN LOBBY.

As the last of the workers departed, the fifty women holding the front entrance to the building prepared for their second night in the drafty vestibule.

"We're really keeping house now," one of them explained. "We have a mop and a broom, plenty of cots and blankets. We're comfortable enough to stay here until the company owners are ready to talk terms."

As on the previous night, the union organization provided the evening meal. Two policemen were stationed near the entrance.

Miss Wave Tobin, business agent for the union, asserted that of 600 women employed by the three plants normally, fewer than 200 reported for work yesterday. The three company owners asserted only a few employees were not at work yesterday. Officers of the Missouri Garment Company said 90 per cent of the 270 employees were on duty. The Gordon plant reported only sixteen of the 300 women employed there were absent. A. B. Gernes said all except four of his 200 employees reported for work yesterday.

"Three of the four are on the sick list," he said. "The fourth one, I suppose, is on strike."

Miss Tobin said the union had little quarrel with the Gernes plant.

"We are interested chiefly in the other two companies," she said.

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K.C. Times-March 19, 1937

D.C. 3942 Pumelly Read

T.S. 3542 Warren

DANIEL W. HOSS, OFFICIAL REPORTER

(Respondent's Exhibit 25.)

PHOTO PLAYS—FIRST RUN.

TODAY!
it moves to the
NEWMAN

PHOTO PLAYS—FIRST RUN.

A SOCK SHOW from the WORD "GO"!
TODAY!
IT'S GAY! IT'S GAGGY!
IT'S GIGGLY! IT'S GRAND!
—Chock full of thrill-thronged, laugh-laden moments . . . with plenty of time out for romance!

lds Court

..., RKO Radio's chief

Journal-Post.-March 27, 1937.

fer Daintily r Easter Para

t Dresses Will F eaders Never r Furs.

...nd Saturday gave a dres... some of the beauties will

WORK TO BE RAPID ON PLANT TO BREW MUEHLEBACH BEER

New Company Will Spend $500,000 in Adding to Ice Plant.

Picture on Picture Page.

Construction of the $500,000 additions which will convert the former plant of the Western Ice Service company into a new home for the reorganized George Muehlebach Brewing company, a pioneer Kansas City industry which dates back to 1868, will be started Monday.

Erection of the additional buildings necessary to change the ice manufacturing plant into a brewery will be rushed so that production of Kansas City's once-famous Muehlebach beer can be started

Arbiter in Strike

Judge Bourke A. Brown (above) was arbiter Saturday in the dispute between three garment manufacturers and the International Ladies Garment Workers union. Judge Brown set a precedent in refusing an injunction to the companies against the union and offering to serve as arbitrator.

JUDGE BROWN'S GARMENT TRUCE MOVE HITS SNAG

Continued from Page 1.

mentals about it upon which we should see if we are in agreement before we go any further."

Judge Brown then listed seven points of what he considered fundamentals in employer-employe relations. Both sides agreed that they accepted those fundamentals.

"Now since we all agree on this," said Judge Brown, "here is the sort of agreement I think both sides should accept."

Then Reads Proposal

SERVICES SUNDAY FOR L. S. HAWKES, VICTIM OF SMOKE

Manufacturer of Cabinets Found Suffocated on Floor of Home.

Funeral services for LeGrande S. Hawkes, 42 years old, who died of suffocation from smoke Friday night at his home, 8802 the Paseo, will be held at 4 p. m. Sunday in the Freeman chapel, Forty-second street and Baltimore avenue. Burial will be in Logan, Utah.

Mrs. Hawkes Saturday was at the home of William F. Burgmeier, 6... the Paseo, where she spent the ... following the tragic death of her husband. Mr. Hawkes' relatives are in Boise, Id.

Mr. Hawkes was found unconscious on the floor in the living room of his home about 8 p. m. Friday when firemen arrived in response to an alarm sent in by neighbors who detected smoke seeping through the walls.

Indications in the Hawkes home, after the fire was quenched, were that Mr. Hawkes had fallen asleep in a chair while smoking and that the cigaret had ignited the upholstery of the chair.

The chair was in flames and the fire had eaten through the floor into the basement. Mr. Hawkes was prone on the floor, his face bruised from the fall. He appeared to have been partly aroused by the heat and smoke, but too much choked to fight his way to safety. Mr. Hawkes, 42 years old, was owner of the Hawkes Manufacturing company, 1822 Main street, which made and marketed a special type of filing cabinet. He came to Kansas City in 1934 with his product and located here to manufacture and sell it in the Middle West after several years in the East.

Mr. Hawkes, who was born in Boise, Ida., was in New York City from 1914 to 1917, inclusive, as elder and missionary for the Mormon church, in which he was reared.

After coming to Kansas City he forsook the Mormon faith and affiliated with the Rev. Dr. L. H. Birkhead's Liberal center in 1933.

Surviving are his widow, Mrs.

r Furs.

ed Saturday gave a dres

some of the beauties will
ed hats. And film stars

UNGE OF AUTO
DEATH VALLE
COSTS TWO LI

Continued from Page 1.

Gleason and Daniel Da
five were on their way
to attend a baseball
reen the St. Louis Brown
Cleveland Indians. James
was a member of the
egation and at the time
ged to wed Miss Sullivan

All in Same Manner.

of the accidents occurr
same manner, the cars
en eastbound and going on the
onto the shoulder at the right
of the road, then careening to
left side and on down a 50-foot
to the railroad tracks below,
ning against the bridge railings.
highway department has made
npts to improve the road at
th valley."

gil H. Edwards, credit mana-
of the Sinclair Refining com-
in Kansas City, was summoned
onville in an attempt to posi-
y identify the victims in Sat-
y's wreck. Leonard was em-
d in the credit department of
company. His address listed
the company was 619 West
eenth street, where he had not
ned Friday night. He was a
ber of the Connie Burns post
e American Legion.

onard's mother formerly lived
ansas City. She now lives in
iton, Ia., with her daughter,
Mae Reid.

erton Trice, Rochepert, saw the
ced automobile from the high-
at about 7 a. m., and he no-
authorities in Boonville, who
rn called Howard county o

y body of the man identified
onard was thrown clear of the
car. The other man's body
crumpled under the steering
l.

K.C. Journal
4-5-42
B.

and director and brewmaster of the local plant.

Also participating in the reorganization are Andres Soriano, Manila capitalist, and a group of his associates. Two of them, Niels Nyborg and Martin H. Ruppel, flew to the United States on the China Clipper a month ago and came to Kansas City to collaborate in the engineering and financial phases of the deal.

Sales Concentration.

It was through Mr. Sund that the Manila interests came into the Kansas City enterprise. During the years of prohibition Mr. Sund was in Manila as general superintendent of a brewery and cold storage plant owned by Mr. Soriano.

According to Mr. Drum, there will be no public offering of securities by the new company. The capital stock, 30,000 shares of no-par value, already has been subscribed by the Muehlebach estate, the Omaha brewery group and the Manila interests.

When the new brewery begins operation it will employ from 175 to 200 men, depending upon the season. Principal sales efforts will be concentrated in the Kansas City area, where the Muehlebach brews formerly were so popular.

NAME ART WINNERS

tions. Both sides agreed that they accepted those fundamentals.

"Now since we all agree on this," said Judge Brown, "here is the sort of agreement I think both sides should accept."

Then Reads Proposal.

Judge Brown then read his suggested agreement. His second point, however, that providing that the union should represent its members only, brought protests from Aylward, Russell and Perstein.

The union representatives protested that while such agreements were all right in theory, they did not work out in practice and that the closed shop was the only answer.

Judge Brown declined to amend his proposal.

"No court," he said, "can approve a closed shop agreement and be fair to all concerned."

Upon completion of the reading of the proposed agreement, White said all three companies were ready immediately to sign. Aylward and Russell said the matter would have to be submitted to the strikers.

Other points in the proposed agreement included reinstatement of any employes discharged for union activity, no strikes until points of disagreement were fully discussed by employer and union, no violence, intimidation or interfering with business in case of strike and no intimidation of employes by either union or employers.

Action Sets Precedent.

The conference was arranged Friday when Judge Brown set a precedent in labor troubles in refusing to grant an injunction sought by the three companies to prevent interference by strikers and offered to act as arbitrator in the settlement of the differences. Coincident with that hearing Friday 41 strikers and 16 non-strikers were discharged in South municipal court when they were called before Judge James H. Anderson on charges of disturbing the peace in connection with disturbances at the factories.

The scene at the building housing the three factories was far different Saturday morning than in the last 10 days when 60 policemen assigned to the strike were unable to keep order and fights between strikers and nonstrikers were thick and fast. Saturday morning things were peaceful. Only three pickets walked up and down in the swirling snow in front of the doors.

PAGEANT TO FEATURE SERVICE IN CEMETERY

Memorial services at Floral Hills

and missionary for the Mormon church, in which he was reared.

After coming to Kansas City he forsook the Mormon faith and affiliated with the Rev. Dr. L. K. Birkhead's Liberal center in 1938.

Surviving are his widow, Mrs. Marjorie Hawkes, to whom he was married in Texas in 1922; three brothers, Percy Hawkes, Ace Hawkes and Walter Hawkes, Bess, and two sisters, Mrs. Effie Brown and Mrs. Elsie Gunnell, Logan, Utah, where the body probably will be taken for burial.

Employ a little of your time each evening reading Journal-Post Want Ads. Dividends will come to you through savings made on those you answer.

Kansas City's Foremost Household Cleaners and Refinishers
Pickup & Delivery Service
CALL VA. 1900
HOME Rug & Curtain Cleaning Co.
MAIN PLANT—39TH & FOREST
BRANCH OFFICE—4720 TROOST

Smith's Shoe Shop

Dentists
Dr. T. L. Barnidge
Dr. L. C. Gartin
8:30 A. M. TO 8:00 P. M.
NOT OPEN ON SUNDAY
1017 Walnut St.
OVER JACCARD'S JEWELRY STORE
2ND FLOOR, NORTH OF
EMERY, BIRD, THAYER D. G. CO.
Victor 1815

CREDIT.. you said it!

LA BOHEME
PASSOVER WINE

(Respondent's Exhibit 23.)

"bone d... to take up the Easter serv... of re... Church... a mose... n un... Easter songs which it is ... of ... churches. perance can b... sermons will be cessfully. pastors at Protestant ...th special Easter music Legalization of ... Easter Sunday masses and of controversy ... celebrated at all Catholic going on ever since 1933, legalized 3.2 beer ...tionally ... return of beer, just before the ...tional prohibition amendment repealed, brought a widespread ...sire for beer. The Kansas ... became so insistent upon their beer, the barriers of ... dry enactments failed to det...

Juries Refuse to Convict.

Beer came into Kansas fr... directions to be sold and ... openly. Validy the ultra dry... to stop it. But when the beer ... were arrested, juries refused to ...vict. An appeal was made to ... supreme court. That tribunal ... it was entirely up to the juri... say whether beer was intoxic...

Kansas sentiment became ... changed the legislature finally ... mitted to the people a propos... take the prohibition amendment ... of the state constitution. That ... one of the big issues in the ... paign of 1934.

The prohibitionists became ... afraid they would lose all ... prohibition machinery, they ... vinced the people they were ... trying to stop the drinking of ... in Kansas but merely were tr... to prevent a return of the salo...

Vote to Keep Amendment.

The people voted to retain ... prohibition amendment by ne... 60,000 votes. But the ultra-drys ... mediately went back on their pr... ise to oppose the sale of beer ... tried to get the 1935 legislatur... outlaw beer. They failed when ... Claude C. Bradley of Colur... tied up their bill in a confer... on the last day of the 1935 leg... tive session.

Then beer dealers began to ... beer of a greater strength than ... and the juries again refused to ...vict. Beer selling became a ... business in the state, but t... were no state regulations and ... state was receiving no reve... from the sale.

Urges "Rule of Reason."

Again in the 1936 campaign ... became a major issue, and Go... nor Huxman took the stand ... something must be done to en... tolerable conditions. In his ... sage to the legislature in Jan... he repeated his assertion that ... thing must be done and called ... the legislature to apply the ru... reason to the beer question.

The house of representatives ...

of the cathedral, will ... The largest Eas... service in point of antic... numbers in attendance will be at the Municipal auditorium where Dr. Burris A. Jenkins, pastor of the Community church, will have charge of the an...

Turn to Page 1, Column 2.

GARMENT TRUCE MOVE HITS SNAG

Union Leaders Seek Right to Bargain for All Employes.

Judge Darius A. Brown's efforts to compromise a garment union strike rather than issue an injunction against mass picketing struck a snag Saturday when union leaders objected to his proposal that it be recognized as the sole collective bargaining agency for its members only. The leaders insisted that it be recognized as the bargaining agency for all employes.

Attorneys for the three garment companies said Judge Brown's proposal was satisfactory. Meyer Perlstein, St. Louis, district director for the Ladies' Garment Workers' union, who voiced the objection, said he would submit the proposal to the strikers.

He will report back Monday morning, when Judge Brown is scheduled to take up the companies' application for an injunction.

"No" to Closed Shop.

Judge Brown declined to approve a closed shop agreement, on which the union insisted, on the ground that it would be unfair to employes not members of the union.

At the conference, begining at 11 a. m., were Milton Gordon, president of Gordon Bros. Manufacturing company; A. B. Gernes, president of Gernes Garment company, and Sidney M. Feinberg, president of the Missouri Garment company; Harry L. Thomas, Paul T. White and Ira B. Burns, their attorneys. Miss Wave Tobin, business agent of the union, Frank W. Aylward and Ralph Russell, union attorneys, Judge Brown and Perlstein.

Agree on Fundamentals.

"The only purpose of the court," Judge Brown said in opening his ...

...was 5 feet 11 inches tall, had black hair and blue eyes. The coroner said he was checking on a man whose last name was given him as "Mischler," believed to be Leonard's roommate, on the theory the two were together when the accident occurred.

The men were in a 1929 Plymouth. It bore Kansas [illegible] license ... issued to Dr. Lane.

The car was demolished and the bodies of the men mangled.

The car which figured in Saturday's accident went out of control at the same spot where on April 14, 1933, Dr. Harry S. Lane, 52-year-old Kansas City physician, and operator of the Fairmount maternity hospital, and Charles S. Thompson, retired Texas real estate man, plunged to their deaths in Lane's motor car.

Five Others Injured.

It was at the same place where on April 17, three days after Dr. Lanes' car took its fatal plunge, that three men and two young women from Kansas City were injured when the car in which they were riding became uncontrollable and crashed against the abutment and concrete railing of the viaduct over the Katy railroad tracks.

Those injured in this accident included Miss Margaret Sullivan, formerly employed by the Journal-Post, now Mrs. James Gleason; James J. Kirk, Miss Florence Kirk, Matthew ...

Turn to Page 2, Column 5.

NOOSE FOR NEGRO

G. A. Allen Sentenced to Be Hanged April 30.

Granville A. Allen, Negro, 25 years old, Saturday was sentenced by Judge Brown Harris to be hanged April 30 for the murder of Howard Preston, 45, who was killed by Allen in his home at 1010 Chestnut avenue, October 20, 1936.

Judge Harris set the date for the hanging after he had overruled Allen's motion for a new trial. Attorneys for Allen indicated they would appeal to the state supreme court, an action which automatically would stay the hanging until the case has been passed on by the higher court.

Allen was found guilty by a jury in Judge Harris' court March 16.

Testimony was that he had entered the Preston home to rob. Preston heard him in the apartment and engaged in a scuffle with the intruder. In the scuffle, the Negro's gun was discharged, the bullet striking Preston and killing him. As Allen fled from the apart-

K.C. Journal-Post - March 27, 1937

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6-5-42

Dunnell

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(Respondent's Exh

Again in the 1936 campaign became a major issue, and Gov nor Huxman took the stand something must be done to cre tolerable conditions. In his sage to the legislature in Jan he repeated his assertion that thing must be done and called the legislature to apply the re reason to the beer question.

The house of representatives sponded by passing a more fanatical "bone dry" law than the state had ever known. It proposed to prevent the sale of any beverage having any amount of alcohol in it—even less than one-half of 1 per cent.

But the senate amended that measure to legalize 3.2 beer. Public sentiment rallied so strongly behind the senate that the house changed its attitude and voted to legalize the beverage.

TWO BURN TO DEATH IN GASOLINE TRUCK

WINFIELD, KAS., March 27.—(UP)—Lawrence Leubeke, 28 years old, driver for a Clay Center oil company, and an unidentified youth were burned to death Saturday

approaching the plant to go to work. Before he could drive through the crowd, the window of the right front door was smashed, and the left rear door of Crouch's sedan was wrenched open. Other employes reported they were struck by members of the crowd.

One line of pickets was established by the strikers on Eastern avenue at Fifteenth street. A second picket line was on duty north of the plant on Twelfth street, and a third group of pickets watched the loading dock at the rear of the plant.

To enter or leave the building, it was necessary to run the gantlet between the picket lines.

Shortly before 1 p. m. [illegible] men office workers who had finished their work for the day were escorted through the picket lines by police.

and Sidney M. Feinberg, president of the Missouri Garment company; Harry L. Thomas, Paul T. White and Ira B. Burns, their attorneys; Miss Wave Tobin, business agent of the union, Frank W. Aylward and Ralph Russell, union attorneys, Judge Brown and Perlstein.

Agree on Fundamentals.

"The only purpose of the court," Judge Brown said in opening his remarks, "is to find out if fair-minded men and women can get together and agree on the future relations between the two parties. I stayed up until midnight Friday night studying this case and there seems to be some definite funda-

Turn to Page 2, Column 7.

HISTED GETS $15,000

Judge Reeves Files Decree in Pickering Case.

Judge Albert L. Reeves Saturday filed in federal court a final decree ending all litigation involving the Pickering Lumber company and completing its reorganization. He allowed claims recommended Clifford Histed, the court's spec

nigher court.

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Testimony was that he had entered the Preston home to rob. Preston heard him in the apartment and engaged in a scuffle with the intruder. In the scuffle, the Negro's gun was discharged, the bullet striking Preston and killing him. As Allen fled from the apartment, Preston's son, Howard E. Preston, shot the Negro, who later was found by police wounded in a nearby alley.

WHO TOOK THAT HAM?

T. J. Higgins Is Victim of Thief or Prankster.

Thomas J. Higgins, chief of detectives, smacked his lips Saturday as he regarded the sugar-cured country ham a friend at the city market had presented him for Easter breakfast.

Gloating over the prospects of fragrant ham and ham gravy Easter morning, Chief Higgins put the ham in his locker in his private office and went out on business.

When he returned the ham was

Chief Higgins is wondering

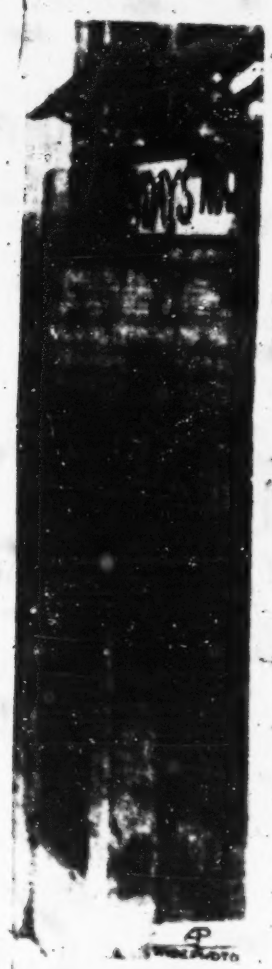
Plaintiff's Exhibit 2341 [illegible] 33

DECLINE IS HALTED.

gains Part of Losses for Some.

(By the Associated Press.)

, March 17.—Buying sup-



CONTINUE TO OCCUPY [illegible] KERCHEVAL PLANT, [illegible]EWALK, WHERE THEIR "WOMEN'S EMERGENCY

decline in United States bonds in the New York inges today and some had dropped widely recov- siderable part of their

2% per cent bonds of h at one time were down an $12 per $1,000 face ured $8.90 of their de- s from the day's lows urded for the 4 per cents he 3¼ per cent of 1943- % per cents of 1955-60.

on the sidewalk.

Police officers were rushed to duty outside the building. A patrol wagon stood near by ready to house any troublemakers, but no arrests were made.

H. Gordon, president, who with Milton Gordon, vice-president, operates the Gordon Brothers Garment Company, said union officials appeared at that plant yesterday and attempted to organize the workers under the union. Mr. Gordon said the girls circulated a petition which contained signatures of 95 per cent of the 300 workers, expressing a desire not to join the union.

AT ALL THREE COMPANIES.

"Knowing the feeling of the girls expressed in the petition we decided to fight it out," Mr. Gordon said. "The result was the union struck at all three garment companies in the building."

Only the few union members employed in the Gordon plant and a few others who were ill, were absent from their work today, Mr. Gordon reported. The plant was running smoothly but the union agitators were expected to continue to attempt to force a strike, for a few days.

A. B. Gernes, president of the garment company bearing his name, said the attempted strike came as a surprise to him today. There had been no hint of a union threat in his organization. Shortly after the trouble started the 250 women employed in his company entered the building through the east door and went to work.

The hundreds of women and the presence of police attracted the attention of the downtown-bound workers and caused a traffic congestion that required the direction of several of the officers to straighten out.

CALLS "SIT-DOWNS" OMINOUS.

Johnson Sees Threat of Dictatorship in Strike System.

(By the Associated Press.)

WASHINGTON, March 17.—Senator Johnson of California, Republican, told the senate today the sit-down strike was "the most ominous thing in our national economy."

In a brief statement he added:

"If the conduct of these strikes is supported by the public, the warning signals are out—therein lurks dictatorship."

"PARNELL" CLOSES RUN HERE.

Final Production Tonight of the Resident Theater Drama.

The final production of Mrs. Elsie Schauffler's drama, "Parnell," at the Resident theater will be tonight.

FILED
SEP. C. 1937
EXHIBIT NO. 27
DANIEL W. ROSS, OFFICIAL REPORTER
BY [illegible]
C. Star — March 17, 1937
NATIONAL LABOR RELATIONS BOARD

in devising offensive golgaws; retailers perpetuate the indignity; publishers carry on the traditions by issuing songs, cards, posters, games, menus and programs that insult, by implication, a distinguished race.

I present my exhibits before the court of public opinion; the shillalah, the clay pipe, the pig, the hod, the jaunting car, the donkey, the potato—these are the symbols of St. Patrick's day. Because the potato, which, in fact, is native to tropical America and not to Ireland, kept alive a famine-stricken people, it has ever since been dished out to a leering world as humorous and fitting fare for a lovable, if lowly, people.

"UNMITIGATED INSOLENCE."

Walk through a 5-and-10 store. Visit a stationery department. Drop in at a novelty shop. Pause at a newsstand. Attend a social gathering. There you find the story in its unmitigated insolence. There you find St. Patrick transmuted into the Paddy, with an upturned nose and a simian lip from which dangles a clay pipe. In his buttonhole is a shamrock; atop his narrow forehead sets, at a rakish

(Continued on Third Page.)

sult was made before Federal Clancy in New York early in uary this year.

day's action was taken subject approval of Judge Clancy and R. O'Reilly appointed a special r in the case to observe and re- on the proceedings.

ckholders also approved retire- as of October 23, 1935, of 1 mil- shares of $1 par value 5 per cent mulative stock, and likewise their consent to discontinuance fiscal agency and management onship between Henry L. Do- & Co. and Cities Service Com- and its subsidiaries. The ar- ment had heretofore been car- out.

BONE SHATTERS BULLET.

bia, Mo., Farmer Fails in Suicide Attempt.

(By The Star's Own Service.)

UMBIA, Mo., March 17.—Paul r's jawbone was tougher than so his suicide attempt was a . The 38-year-old farmer a gun in his mouth and pulled igger in a shooting gallery last but the bullet shattered when uck his jawbone. Hospital at- ts expect him to recover.

ELIA READY TO START.

d-the-World Flight May Get nder Way Late Today.

(By the Associated Press.)

OAKLAND, CAL., March 17.—Amelia Earhart awaited only a weather bureau "go" signal today to send her plane toward Honolulu on the first leg of a projected 27,000-mile world flight.

Promised favorable weather after a 3-day wait, the flier and her three companions expected to take off between 4 and 5 this afternoon (6 to 7 p. m., Kansas City time).

Miss Earhart's crew comprises Paul Mantz, her technical adviser, who will act as relief pilot as far as Honolulu; F. J. Noonan, who will serve as relief navigator as far as Howland Island, first stop after Honolulu, and Capt. Harry Manning, navigator, who will go as far as Port Darwin, Australia. From there the woman will continue alone.

CORONATION GOWN TO BE RICH.

Queen Elizabeth Will Wear Gold Embroidered Ivory Satin.

(By the Associated Press.)

LONDON, March 17.—Queen Elizabeth's coronation gown will be ivory satin, richly embroidered with gold. Her majesty approved the design today. The gown will be of princess shape, with full train

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INJUNCTION STOPS HAIR PULLING IN GARMENT STRIKE

Workers in Taxicabs Find Way to Factories Unmolested.

Workers at three garment factories at 2617 Grand avenue went to work peacefully Wednesday morning under protection of an injunction against violence by striking members of the International Ladies Garment Workers union.

It was the first morning in two weeks those not on strike did not have to dodge through lines of police striving to hold back struggling groups of strikers bent on pulling hair, snatching hats and coats and getting in a blow here and there.

The injunction against violence on the part of the strikers or interference with the operation of the three companies, issued Tuesday by Judge Darius A. Brown in circuit court, was read to more than a score of strike pickets by deputy sheriffs Wednesday morning. The pickets contented themselves with walking up and down in pairs in front of the Walnut street entrance of the building as nonstrikers were taken to the plants in taxicabs.

Compromise Fails.

Judge Brown issued the injunction after his efforts had failed to bring the managements of the three concerns—the Gernes Garment company, Gordon Brothers Manufacturing company and Missouri Garment company—and representatives of the union into agreement. The union rejected Judge Brown's proposed agreement because it provided that the union be recognized as the sole bargaining agency for its own members instead of for all employes as the union demanded.

Floyd Gibson, chief deputy, and Harry Skinner, Matt Schinnick, jr., and John A. Deming, deputy sheriffs, appeared at the plants at 7:20 a. m. and read the injunction [illegible]

P. J. ARNOLD SERVICES

Loan Association Executive Heart Attack Victim.

Funeral services for Paul John Arnold, 50 years old, secretary-treasurer of the Bankers' Savings & Loan association, were to be held at 3:30 p. m. Wednesday in the Newcomer chapel, Brush Creek boulevard and the Paseo. Burial was to be in Mount Moriah cemetery.

Mr. Arnold died unexpectedly of a heart attack Sunday night at his home, 3231 Prospect avenue.

The active pallbearers:

Karl H. Reyes, Lester Parker, Willis [illegible], Clarence Paradis, Herbe[illegible], Harry [illegible]

Ho[illegible]
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MISSOURI HOUSE PERFECTS ITS JOB INSURANCE BILL

Employers' Reserve Plan Stays as Pool Proposal Is Rejected.

By WALTER G. HEREN
Journal-Post Jefferson City Bureau.

FERSON CITY, March 31.—[illegible]nemployment compensation re was perfected and ordered d as amended by the house of entatives Wednesday.

[illegible]onents of the employers' re-plan succeeded in fending off [illegible]empts to substitute the pool type of plan and indications the bill would go to the sen-uch as it came from the house security committee.

[illegible]y minor amendments were d on the bill in the house. Sal-of members of the unemploy-compensation commission of which will administer the were reduced by the amend-from $7,500 to $5,000, while [illegible]ors of divisions under the com-on were cut from $4,800 to a year.

[illegible] house defeated an amend-setting aside 40 per cent of all oyer contributions as a pooled

Under it the employe first have drawn upon the em-r reserve fund of his indi-al employer and if that fund ne exhausted he still could get fits from the pool fund set up e amendment.

K. C. Group Opposes Hess.

e attempt to substitute the pool plan for the employer's in-lual reserve system, was spon-d by Rep. David Hess, St. Louis, said that union labor was against employers' reserve system use its leaders felt that it would afford adequate protection for

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K.C. Journal-Post - March 31, 1937
8-5-42 Donnelly Read
B. Warren

Floyd Gibson, chief deputy, and Harry Skinner, Matt Schinnick, jr., and John A. Deming, deputy sheriffs, appeared at the plants at 7:30 a. m. and read the injunction twice at both the rear and front doors. The injunction bore the names of 165 defendants, but it was said there were many duplications of names.

There were but a handful of policemen, compared with previous days, on duty at the plants Wednesday morning and they were getting a rest from the arduous task of holding back the determined groups of strikers who have attempted to prevent employes entering the plants the last three weeks.

To Try Legally.

Miss Wave Tobin, business agent of the International Ladies Garment Workers union, said the pickets would obey the injunction but would continue by peaceful means to try to persuade nonstrikers to join the union and leave work until the three garment companies sign union agreements.

"I have worked on nine successful strikes here," she said, "and in seven of them we have been under injunction."

Throughout the strike managements of the garment strikes have asserted that but few of their employes were members of the union and on strike. On the other hand, union officials have claimed a majority of employes as union members and on strike.

Five other garment manufacturing plants here have signed union agreements recently.

Picket Line Thins at Butler Plant

There was no indication of violence at the Butler Manufacturing company, 7400 East Thirteenth street, Wednesday. The picket lines of the strikers were considerably thinner and there were fewer police around the plant.

Only a few executives and department heads were permitted to enter the plant.

Delegates of the CIO and the American Federation of Labor, who formed committees to aid the strikers, announced Tuesday night that a weekly contribution of $1,000 has been pledged to aid the strikers.

Officials of the company did not comment Wednesday concerning the possibility of early negotiations for a settlement.

SPY SCARE PASSES.

personal property and $2,000 in real estate.

employers reserve system use its leaders felt that it would afford edequate protection for employes and would encourage formation of company unions.

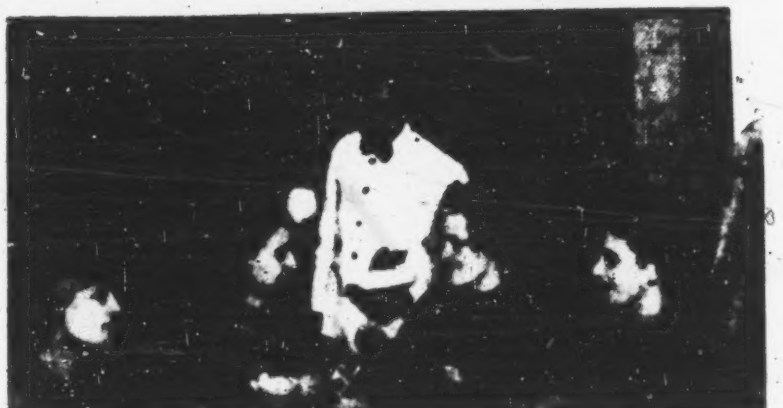
he final vote on the Hess amendit was 45 for and 65 against the nge in form of the bill. All the sas City representatives present, ept Rep. Edgar J. Keating, voted inst the Hess amendment. Keatsupported it. All the St. Louis resentatives, except Rep. O. E ichick, voted for the Hess amendnt.

l to Regulate nes Is Reported

EFFERSON CITY, March 31.—P)—The senate Wednesday perfected for final passage the bill by Sen. Albert M. Clark, Richmond.

"We'll say

These charming St. Louis dolls, Miss Miriam Wi 4582 Westminster Place, and Miss Jane Miller, Maryland Avenue, could never agree on cigarettes Old Gold's one-week trial offer. Today they are one in ing "O. Gs. are the finest cigarettes we have ever smok



(Respondent's Exhibit 24.)

A TREAT TO ALL

OF ENTERTAINMENT
D IN BIG SHOW.

nd Bobby Clark Top
Artfully Combines
Sparkling Fun
iart Dancing.

Ziegfeld presents ide
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Orchestra directed by

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They Miss the Bad Along With the Good

By Irvin S. Cobb.

SANTA MONICA, CAL., March 22.—Colonel Rasmussen is fixing to explore uncharted regions in remote Alaska, where he asserts there exists a race of aborigines who have had absolutely no contact with the outside world for 500 years.

Think of all the things those people have missed—and pity them! And then think of some of the things they've missed—and envy them!

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STRIKE CALL WAITS

(Continued from First Page.)

cago. Dresses were torn from several women in a clothing shop controversy. Another taxi was burned in the 18-day-old drivers' strike. The strikers' attorney asked police to remove operating cabs from the streets to forestall fresh outbreaks. Two hundred officers were held at the central station and seventy-five at the city hall as a precaution against disorder.

Governor A. B. Chandler of Kentucky and Mayor Neville Miller of Louisville joined the opposition to sit-down tactics. In a joint statement they termed sit-down strikes unlawful and urged workers to refrain from taking part in them.

In Chicago the state's attorney's office and the municipal court joined police in an attempt to discourage sit-down demonstrations. A 78-year-old statute was revived to protect property of employers and under it warrants were issued for the arrest of strike leaders.

SUE TO QUIET STRIKERS

INJUNCTION AGAINST GARMENT UNION ASKED BY 3 COMPANIES.

Fists Still Fly at 2617 Grand, and Women Locked in Patrol Wagon Cheer Others; are Released After Workers Depart.

Three garment companies occupying the Shukert building at 2617 Grand avenue yesterday afternoon applied for an injunction against the International Ladies' Garment Workers' Union and forty-five members who are conducting a strike against them.

Judge Emory H. Wright set a hearing at 2 o'clock tomorrow. The application asked that the court order prohibit the women from occupying the premises or interfering with the companies' operations.

The injunction was sought by the Gernes Garment Company, the Missouri Garment Company and the Gordon Brothers' Manufacturing Company after a skirmish yesterday morning, in which Hyman Gordon, head of the Gordon Brothers' plant, was struck by the women strikers as he entered the building.

RUSH POLICE LINES.

The demonstrators yesterday afternoon attempted to surge through the police lines every time a group of workers was let out a rear door of the building. Grinning police shoved them back, but there were flurries of fists and hair-pulling.

After each attack, Sergt. W. D. Tays shoved one or two women into a patrol wagon standing by the door. Those in the patrol wagon cheered the demonstrators. After the plant had closed Sergeant Tays released the women.

Several hundred men from nearby offices and shops gathered across the

said he had received in an encounter yesterday morning.

INJUNCTION HEARING TODAY.

Attorneys for Butler Strikers Are Given Time to Prepare Case.

The hearing of an injunction application sought by the Butler Manufacturing Company, 7400 East Thirteenth street, to oust sit-down strikers from the plant was postponed yesterday afternoon until 9 o'clock this morning by Judge Emory H. Wright, after attorneys for the strikers said they just had been retained and had not had time to prepare their case.

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K.C. Times - (Re

(Respondent's Exhibit 26.)

- March 23, 1937

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PROVIDENCE STRIKE ENDS.

Workers Accept Wage Hikes and Recognition of C. I. O.

(By the Associated Press.)

PROVIDENCE, R. I., March 23—(Tuesday).—A city-wide, 1-day strike against Providence retail stores ended early today when workers accepted a proffered agreement of store owners granting wage increases and recognition of the committee for industrial organization as a bargaining agency.

Joseph Sylvia, state chairman for the C. I. O., announced ratification at a meeting of strikers, shortly after the agreement was presented to them.

WIFE SUES MICHAEL CUDAHY.

Divorce Action After Dismissal of Separate Maintenance Suit.

Los Angeles, March 22—Michael Cudahy, of the Chicago meat packing family, was sued for divorce today by his wife Mary, screen dancer known as Jacklyn Ruth. Mrs. Cudahy's suit for separate maintenance was dismissed last week.

the women.

Several hundred men from nearby offices and shops gathered across the street and applauded the sparring matches.

Twice in the demonstration paper bags full of water were dropped from upper floors of the besieged building, striking no one.

AGAINST THREE COMPANIES.

Miss Wave Tobin, manager of the International Ladies' Garment Workers' Union No. 118, said that a statement attributed to her yesterday that the union was not attempting to keep employees of the Gernes Garment Company from working was not true. The strike is against all three companies in the building, she said.

Cheers rose from the forty-five strikers as Miss Tobin announced that four men pattern cutters in the Gordon company had joined the union earlier yesterday. They cheered also when taxicab drivers were dissuaded by union members from waiting to transport non-union workers to their homes.

James Offord, 1224 Ewing avenue, one of the policemen on strike duty, appeared at his post yesterday afternoon with a discolored eye, which he

Join the Easter Parade in

HE KANSAS CIT

KANSAS CITY, MARCH 17, 1937—WEDNESDAY—26 PAG

...'s Voting 10 to 1 for ...evelt's Court Plan.

(By the Associated Press.)

...x, Ga., March 17.—... County citizens voted ... in favor of President ... federal court reor... plans in early returns ... the first ballot box ... program.

... the Peeples J. S. Shar... ...ced the vote, which ...ial standing was: For ..., against 20.

... officials included on ... for a tax collectorship ... question of "for" or ... the presidential pro... whole.

...W. E. Tayler said to... ...ial group was back of ... several "folks around ... just got together" ... ago and decided that ... had to elect a tax ... might as well vote ... question.

...CHAMBRUN IS SHOT.

...unds Former French ...assador to Italy.

(By the Associated Press.)

...rch 17.—Count Charles de ...ormer French ambassador ... shot today by a woman ... a train for Brussels.

..., who was born in the ...m at Washington in 1875 ...descendant of Lafayette, ... in the thigh.

...ot, police said, was a ...man. ... the count's wound was

...CLINE IS HALTED.

...gains Part of Losses for Some.

(By the Associated Press.)

..., March 17.—Buying sup...

SITTERS BLOCK A DOOR

UNION WOMEN FAIL, HOWEVER, IN EFFORT TO STOP WORKERS.

Small Group Fills Building Entrance Through Which 800 Garment Employees Pass—Another Doorway Used.

A threatened strike at the three garment companies occupying four floors of the Shubert 3617 Grand building today turned the 3600 block on Grand avenue into a seething mass of more than 800 women workers as union members blocked the entrance to the building by sitting down on the floor just inside the entrance.

The workers are employed by the Missouri Garment Company, occupying the second floor; the Gernes Garment Company, Inc., third floor, and the Gordon Brothers Manufacturing Company, occupying the fourth and fifth floors of the building.

THROUGH ANOTHER DOOR.

One young woman paraded in front of the building bearing a sign calling for a strike in the three garment plants, demanding an end to "starvation wages," and bearing the name of the International Ladies' Garment Workers' Union, No. 118. Less than two hours after the workers were blocked from their work, they entered the building through an east door, while union members continued to sit in the hallway of the main entrance, and others loitered on the sidewalk.

Police officers were rushed to duty outside the building. A patrol wagon stood near by ready to house any troublemakers, but no arrests were made.

H. Gordon, president, who with Milton Gordon, vice-president, op-

THE WEATHER—SHOWERS PROBABLE.

12 midnight	36	9 a. m.	41
1 a. m.	37	10 a. m.	42
2 a. m.	36	11 a. m.	43
3 a. m.	36	12 noon	44
4 a. m.	36	1 p. m.	50
5 a. m.	36	2 p. m.	52
6 a. m.	36	3 p. m.	*54
7 a. m.	36	4 p. m.	*56
8 a. m.	39		

*Unofficial.

The Forecast—Kansas City and Vicinity: Mostly cloudy tonight and Thursday with occasional showers probable; somewhat colder Thursday.

Relative humidity, noon, 34 per cent.
Wind velocity, noon, 14 miles from the south.
Wind velocity 7 a. m., 8 miles from the southeast.
River stage today, 7 a. m., 8.8 feet; rise of .3 foot.
Precipitation in twenty-four hours ending 7 a. m., none.
Lake of the Ozarks, 7 a. m., 4 feet below full reservoir.
(Government forecast for grain area on market page.)

THE ROOSEVELTS' WEDDING DAY

Anniversary Finds Them Far Apart—Exchange Greetings.

(By the Associated Press.)

WARM SPRINGS, GA., March 17.—The thirty-second anniversary of their wedding found President and Mrs. Roosevelt 1,000 miles apart today, but an exchange of greetings recalled to them that memorable St. Patrick's Day in New York City when Uncle "Teddy" gave Anna Eleanor Roosevelt away to her sixth cousin.

Instead of a family dinner at the White House in Washington, the customary celebration since he became chief executive; the President arranged another day of relaxation at his vacation cottage here. Mrs. Roosevelt was in Oklahoma on a lecture tour. She may join the President here after speaking at Birmingham March 23.

O. K. DOHERTY SETTLEMENT.

Stockholders Accept Restitution to the Company.

(By the Associated Press.)

...ER, DEL., March 17.—Stockhold... Cities Service Company yester... approved the offer of Henry L. ... to settle for 1¼ million dol... 20-million-dollar stockholders' ...ought against the company, its ...aries, Doherty and other direc... ...leging various acts of misman... ...ent. The suit was originally ...in 1933 by Norman C. Norman ...ve other stockholders owning a ...of 840 shares at that time.

...erty's offer to settle for 1¼ mil... ...dollars, or at his option not less ... ¼ million shares of common ... of the company, was revealed ... a motion for adjournment of ...uit was made before Federal ... Clancy in New York early in ...ary this year.

...day's action was taken subject ...approval of Judge Clancy, and ... R. O'Reilly appointed a special ...er in the case to observe and re... ...on the proceedings.

...holders also approved retire...

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Senator B... crat, an out...

K.C. Sta... NATIONAL L...

IN THE MATTER OF ... NO. C-3462 ... DATED 5-4-2... DANIEL ... BY ...

WILL BE CLOUDY.

obable and Day to Be ghtly Cooler.

ty skies are forecast for ith occasional spring able. The temperature, adds, will be somewhat day's.

ar at Chicago sees local able in parts of Mis- rn Kansas, Oklahoma, thern Nebraska.

NNOR'S BIRTHDAY.

Weather Man Is "Up the 70s."

Patrick's day and an- y for P. Connor, former rver here. As has been h occasions, the Irish weather received most r's jovial attention. doctor's care at his home ast few weeks, was in excellent spirits mmented upon the "fine ther," noting that the perature was 10 degrees at the same time yester- It demonstrated his erest in Kansas City's h he observed for forty-

green carnations and ks on the table. Mrs. ed that Mr. Connor was St. Patrick. How old or today?

way up in the 70s." Connor. A nod and a Connor's answer.

LIOT IS TO WED.

March 17.—(A. P.)— movie leading man, sur- ends today with the an- that he will be married Martha Cramer, former- rk.

Case 2:18-cv-00804-BCW Document 84-1 Filed 04/19/19 Page 4 of 5

et N. B. Levitt Lyle.—

A NEW "SIT-DOWN" APPLICATION IN GARMENT DISPUTE.

—Kansas City Star Photograph.

Members of the International Ladies' Garment Workers Union attempted to force a strike today for the employees of three garment companies in the Shukert 2617 Grand building and proceeded to sit down on the floor just inside the entrance to block the workers from their jobs. Some of the union members are shown above carrying on their sit-down blockade. Wave Tobin, business agent for the union, is shown standing at the left reading a newspaper. The three companies delayed by the threatening strike were the Missouri Garment Company, the Gernes Garment Company and the Gordon Brothers Manufacturing Company, all in the building at 2617 Grand avenue.

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(Respondent's Exhibit 27.)

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—Kansas City Star Photographs.

TY MEETING IN YEARS (upper)—Nine of Southern directors were at this "home office" eeting of the board got under way at 11 o'clock from left to right, are R. Crosby Kemper and City bankers; C. E. Johnston, Kansas City neth D. Steere, New York broker, new chair- n, a Boston partner of Mr. Steere in Paine, Couch, the new executive committee chairman, nsas City, president of the Loose-Wiles Biscuit r John A. Nison, Omaha business man, and ew York City, a spokesman for Holland stock-

FAIL TO STOP WORKERS

UNION PICKETS AT GARMENT COMPANY DOORS IN SKIRMISHES.

Police Escort Employees to Entrance and Lose Several Buttons Off Their Coats—A Woman Injured.

A recurrence of skirmishes involving hat grabbing and button tearing marked today's strike activities at the garment companies in the Shukert building at 2017 Grand avenue, as workers attempted to enter the rear entrance of the building on Walnut street.

Shortly after 7 o'clock the rear entrance was crowded with a group of about seventy-five pickets who attempted to dissuade workers in the Gordon Brothers Manufacturing Company and the Missouri Garment Company from entering the building.

POLICE TRY FOR CALM.

Under orders from Robert J. Coffey, chief of police, a squad of about twenty patrolmen under the direction of D. E. Reddish, detective, endeavored to maintain order as the workers entered the building.

About fifty workers assembled on Walnut street a half block from the door, afraid to run the gauntlet to enter the building. They later were escorted to the door in a motor car by officials of the Gordon plant, where about half of the workers' machines were idle today. Included in the waiting group were several employees of the Gernes Garment Company, Inc., on the third floor. The International Ladies' Garment Workers' Union No. 118, which is calling the strike, is not attempting to keep the Gernes employees from working, according to Miss Wave Tobin, manager of the striking union.

Today when Hyman Gordon, president of the company bearing his name, attempted to enter the plant the pickets surged forward and broke the line formed by police. They seized his hat and pulled at his clothes, until he reached the safety of the door. Police recovered his hat.

Gordon said he would close down the Gordon plant rather than sign an agreement with the union.

CRUMB OF TWO SIDES.

When recruits to the union ranks appeared shouts of cheer would break from those already on picket duty.

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K.C. Star - March 22, 1937

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-352 EXHIBIT NO. 28

IN THE MATTER OF Donnelley Reed

DATE 8-5-42 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY B Wadsworth

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eeting of the board got under way at 11 o'clock from left to right, are R. Crosby Kemper and City bankers; C. E. Johnston, Kansas City neth D. Steere, New York broker, now chair- n, a Boston partner of Mr. Steere in Paine, Couch, the new executive committee chairman, nsas City, president of the Loose-Wiles Biscuit John A. Nixon, Omaha business man, and w York City, a spokesman for Holland stock-

SMILES (below)—New factories, new process- diversified agriculture, the future Mr. Couch is on the upturn. The Ozarks as a recreation itself and with a tremendous future. Having in Arkansas and adjacent states, Mr. Couch to increase his investment in railroads and dness betterment in the area south from Kan-

CASE

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cused fol- a house- north end was con- James S. at Liberty

ted at the S, Kansas who told pe to pre- Cullom and

the daughter, Bessie, 23, was on a bed in the adjoining room.

An iron pipe was found in Mrs. Kadeah's room. Police expressed belief it was used in the attack. A screw driver found under the girl was used to club the two women, police said.

NEW CAP FOR BANDIT'S FOE.

Officer Williams to Be Honored by South Central Group.

Glenn E. Williams will have a new police cap tomorrow, to replace the one blasted off his head last Friday by bandit bullets.

The presentation will be made by the South Central Business Association at its luncheon tomorrow, at which Officer Williams will be a special guest.

Williams, who shot it out with a bandit attempting to rob a loan office at 3119 Troost avenue Friday, has been in the Thirty-first street dis-

the line formed by police. They seized his hat and pulled at his clothes, until he reached the safety of the door. Police recovered his hat.

Gordon said he would close down the Gordon plant rather than sign an agreement with the union.

CRUMB OF TWO KINDS.

When recruits to the union ranks appeared shouts of cheer would break from those already on picket duty, while derisive cheers would greet workers as they arrived in taxicabs or private cars.

Police directed motor car drivers with worker passengers to drive as closely to the curb as possible and would assist them to run the gauntlet, but did not offer to help them from the motor cars. Miss Tobin, manager and organizer of the union, watched the proceedings from the sidelines.

Several women were placed in a police wagon after skirmishing with the police and when the capacity had been reached they were taken to a police station and released. As they waited in the wagon they were given cigarettes by Miss Tobin.

The east side of Walnut street was lined with a crowd of over 100 spectators watching the proceedings.

Several of the police lost gold plated buttons on their uniforms. Shortly after 8 o'clock a number of pickets believed to be from other garment companies left the scene and considerably thinned the ranks of the strikers.

Miss Mary Brown, 38 years old, 3410 Troost avenue, was taken to General hospital with a broken arm she said she suffered when she fell at the entrance to the building, when she was pushed back by persons in front of her.

THE AMALGAMATED SIGNED.

[illegible] Shop Agreement Was Not

TRUTONOPHONE
Hearing Aids—First, Walnut
JONES
12th, Main, Walnut GR. 3939

HIGH BLOOD PRESSURE?

If your doctor has said you have high blood pressure, he has probably also told you to avoid caffeine in coffee. For caffeine is an active stimulant, whereas you need rest and quiet.

But you can still enjoy the best coffee money can buy, if you change to Kaffee-Hag Coffee. This fine coffee is 97% caffeine-free, but 100% flavorful. Try it today. At your grocer's. Made by Kellogg in Battle Creek.

LOANS on DIAMONDS
2% Per Month
K. C.'s Only Exclusive Diamond Loan Co
Established 20 Years
GRAY'S, 1118 MAIN

(Respondent's Exhibit 28.)

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Well, I'll Tell You—

By Boe Burns.

As long as we are contented, we should turn a deaf ear to all wild stories that make us dissatisfied with our lot. Nine times out of ten, if you git to the bottom of these wild tales, you'll find out that there's a catch in 'em. We had a married men's club down home that used to meet every Thursday night. You couldn't find a more happily married bunch of men anywhere. They never kicked about breakin' up early because they just took it for granted that they had to be home with their wives by 10 o'clock.

Finally a new family moved to town and the man joined this club. Right away, he started braggin' about bein' boss in his home. He bragged that he could stay out as late as he wanted to and go home whenever he pleased and he showed 'em a latch key to prove it. Pretty soon, all the other husbands started complainin' to their wives about not havin' any freedom, and they told their wives about this new man carryin' the latch key.

A committee of wives called on this new lady and told her that her husband was settin' a bad example for their husbands. They said "We even hear that you let your husband carry a latch key." The man's wife said, "Well, yes I do let him carry a key, jest to humor him—he likes to show it to the boys to show how independent he is, but the key don't fit the door!"

(Copyright, 1937.)

THE HAIR PULLING GROWS

POLICE UNABLE TO STOP STRIFE AT GARMENT FACTORIES.

Women Scuffle and Scream at Each Other as Garment Union Pickets Attempt to Keep Workers From Jobs.

For two hours today women pickets and employees of three garment firms at 3617 Grand avenue scuffled and screamed at each other as the pickets attempted to prevent the workers from entering the building. About thirty-five police officers tried to keep order. The officers said it was the "worst day so far."

James Gildea, a patrolman, suffered a sprained right ankle at the scene and went to his home. Mrs. Frankie Bennett, 23 years old, 1317 Troost avenue, a picket, received a badly wrenched left wrist and severe lip bruises. She was treated at the General hospital and then arrested and charged with disturbing the peace. Eleven other pickets and two workers also were arrested today.

The fourteen women arrested today, twenty-one arrested yesterday and twenty-three arrested Tuesday are scheduled to appear at 9 o'clock tomorrow in the South Side court. Some of the women have been arrested each day.

As motor cars containing workers pulled to the curbing at the building today, the officers formed a double line leading from the curb to the entrance of the building at 3617 Grand avenue. The workers then dashed through the police lanes. Often, however, the pickets broke through the police cordon and then clothes were torn, hair pulled, faces scratched and shins kicked. Several times workers' lunches were scattered on the sidewalk and purses were ripped open.

The pickets are members of the International Ladies' Garment Workers' Union and are attempting to enlist workers at the Missouri Garment Company, the Garnes Garment Company and the Gordon Brothers Manufacturing Company, which co-

mistaken for Queen Mother Mary, died Wednesday at the age of 71. Sentries often saluted Mrs. Lee as she walked from her home at Windsor and scores of visitors photographed her in the belief she was Queen Mary.

RICH LIBRARY TO K. C. U.

(Continued From First Page.)

K.C. Star - March 25, 1937.

D.C./382 EXHIBIT NO. 27
WITNESS Donnelly
DANIEL W. ROSS, OFFICIAL REPORTER

No Schc Frida

1. Novelty wool dress with pure dye, pure silk, high tie bodice. Matchi the coat last year Spring. Grey w dubonnet, bei brown or mine

(Res

humor him—he likes to show it to the boys to show how independent he is, but the key don't fit the door!"

(Copyright, 1937.)

ways which would set up a state driver's license act, long sought in Missouri.

Among others who will attend the conference are Senator Michael Kinney, chairman of the committee to which the bill was referred, and Albert Bond Lambert, chairman of the St. Louis police board.

PROPERTY OWNERS TO BAND.

Stabilization of Prices Is Goal of a New Group.

Officers will be chosen tomorrow afternoon at the meeting of directors of a property owners' association, as yet unnamed, that has been formed to work for restriction enforcement and the stabilization of real estate values in an area between Twenty-fifth street and Linwood boulevard, Robert Gillham road to Prospect avenue.

Nearly two hundred property owners, meeting last night at the Neurological hospital, 3625 the Paseo, chose this first board of directors:

[illegible]

The pickets are members of the International Ladies' Garment Workers' Union and are attempting to enlist workers at the Missouri Garment Company, the Garnez Garment Company and the Gordon Brothers Manufacturing Company, which occupy the same building.

QUIET AT BUTLER PLANT.

Twenty Men Return to Work, Unmolested by Pickets.

About twenty men returned to their jobs at the Butler Manufacturing Company, 7400 East Thirteenth street, today, according to E. E. Norquist, president of the company. It was the first work since March 12, when a sit-down strike started.

The building was surrounded by pickets today, but the men appearing for work were not molested. Mr. Norquist said a few men would be added each day. Eight plant employees engaged in unloading a car of coal at Twelfth street and Crystal avenue, near the plant, were the target of rock throwing strikers until police arrived. No arrests were made and the men continued their work.

The sit-down strikers abandoned the plant yesterday morning on a circuit court order.

A QUEEN'S DOUBLE DIES.

of collections useful both to research scholars and students.

A "VALUABLE MINE."

"The Snyder library, unequaled anywhere in its special field of mid-western Americana, offers to the specialist a mine of invaluable material inaccessible elsewhere. The university holds a deep debt of gratitude to those who have made this possible. The activity of Dr. Clarence Decker in making a careful study of the resources of this library has contributed in no small degree to this result.

The gift, anonymously, of another rare American library of about 500 volumes, within the week supplements the Snyder library and indicates the possibilities of the type of growth to

with pure dye, pure silk, high tie bodice. Matchi the "last wor Spring. Grey u dubonnet, hei brown or powe navy. Sizes $14.95. Third

2. The Jigger leather bound. coat with Sheila Thistle and navy and brown. Co navy. Sizes $29.95. Third.

3. Printed crepe dress for sizes Also bolero and styles, $7.95. Floor.

1. Dainty confir or party dresses rayon taffeta, ge or crepe. Sizes $2.95-$3.95. (She White net with trim. $4.95. Fourth Floor.

BOOK

GIRL'S ED.

Person day-

covery taining where 0-year- and a rovided York's

ticized by un- Martin- uestion ok.

paper- artists posed, dates," -hum-

IN ys-

THE WEATHER—GENERALLY FAIR.

Midnight	33	8 a. m.	34
1 a. m.	33	10 a. m.	37
2 a. m.	33	11 a. m.	39
3 a. m.	33	12 noon	39
4 a. m.	32	1 p. m.	39
5 a. m.	32	2 p. m.	39
6 a. m.	32	3 p. m.	39
7 a. m.	32	4 p. m.	39
8 a. m.	31		

*Unofficial.

The Forecast—Kansas City and Vicinity: Generally fair tonight and Wednesday; rising temperature Wednesday.

Relative humidity, 7 a. m., 86 per cent.

Relative humidity, noon, 51 per cent.

Wind velocity, noon, 1 mile; from the south.

River stage today, 7 a. m., 7.9 feet; fall of .7 foot.

Precipitation in twenty-four hours ending 7 a. m., .07 inch.

Lake of the Ozarks, 7 a. m., .5 foot below full reservoir.

(Government forecast for grain area on market page.)

The Midweek Forecast.

Missouri, Kansas, Southern Nebraska, Southern Iowa and Eastern Colorado—Generally fair with rising temperature Wednesday; probably fair and mild Thursday; unsettled Friday and Saturday. Little if any precipitation indicated.

Arkansas and Oklahoma—Generally fair with slowly rising temperature Wednesday and probably Thursday. Increasing cloudiness Friday.

VOTE BILL IS SINKING

ONLY ORDERS FROM DEMOCRATIC ORGANIZATION CAN SAVE IT.

Spokesman, Shannon C. Douglass, Says He Has a Substitute Measure, but the Time Is Short for Action.

(By The Star's Missouri Correspondent.)

JEFFERSON CITY, March 30.—The bill proposing permanent registration for Kansas City is doomed unless the Democratic organization of that city gives the word to revive it.

That is the situation today. The pending proposal is destined to take its place alongside similar bills which Kansas City has sought enacted into law starting in 1933.

FINGERS TELL A TRAGEDY.

Husband Killed by Car Identified by Blind Woman.

u-

Los Angeles, March 30.—Fifth

K.C. Star—March 30, 1937

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-382

EXHIBIT NO. 30

IN THE MATTER OF:

DATE 4-5-42 WITNESS Reed

DANIEL W. ROSS, OFFICIAL REPORTER

BY R. Reed

A CURB ON PICKETS

Judge Brown Issues Injunction Against Garment Workers' Union.

WOMEN STONE TAXICABS

While Court Hearing Is On, Battle Continues at 2617 Grand Avenue.

ORDER AGAINST VIOLENCE

Court Acts Only After Continued Efforts to Gain Peace by Conferences.

After another fruitless effort today to establish peace between workers and the three garment companies at 2617 Grand avenue, Judge Darius A. Brown issued a temporary restraining order, enjoining the workers from further violence.

In the meantime, while lawyers were arguing for and against the injunction another of the almost daily battles was in progress in front of the plants.

Throw at Cars.

Stones were flying as employees arrived in taxicabs and attempted to pass the pickets. No one was injured, but nine pickets and two workers were arrested during the melee which lasted two hours.

Before deciding upon issuance of the restraining order, Judge Brown conferred again with lawyers for the workers and the union. It was to no avail. Lawyers for the union asserted there would be no settlement until the companies recognized the union as the sole bargaining agency for the employees.

Judge Brown ordered that the temporary restraining order against the pickets and the union they represent

Capital Editor, 9, Re on "Sanzeem" Cou

(By the Associated Press

WASHINGTON, March 30. year-old Nicky Arundel tu at the senate judiciary c tee hearing today to repo court business" for his "Nicky's News."

Perched on the knee of tor McCarran, Nicky sold h let to the committee memb

Its leading story was hea "Supreem court hasn't made bigger yet. Still try.

The flaxen-haired Wash youngster, dressed in serg breeches and an Eton coll at a press table and sc notes industriously through hearings.

"From now on Nicky's will have scoops about this ness," read the current is Nicky's journal.

A footnote to his pape closed that "there are no this week because nobody p their adds last week."

BUYS HOTEL PRESI

GROUP HEADED BY FRANK ARE NEGOTIATING.

Sale Will Include Buildin nishings and Land—Dean His Hotel Manageme Interests.

Negotiations for the purch the Hotel President by a group ed by Frank J. Dean are und The purchase would be from t cantile Commerce Bank and Company of St. Louis, the mortgage beneficiaries.

Articles of incorporat new hotel company were be filed late today at Je by the new purchasers.

The land, building and of the hotel are included

Mr. Dean, veteran hote

(Responden

937

(By The Star's Missouri Correspondent.)

JEFFERSON CITY, March 30.—The bill proposing permanent registration for Kansas City is doomed unless the Democratic organization of that city gives the word to revive it.

That is the situation today. The pending proposal is destined to take its place alongside similar bills which Kansas City has sought enacted into law starting in 1920.

It was all but a knockout blow that was delivered the bill last night when Shannon C. Douglass, who told the house committee he was authorized to speak for the Kansas City Democratic organization, said the pending proposal was "mechanically unworkable."

The organization favors a workable permanent registration law and he is willing to submit a substitute for the pending bill, Douglass related. The substitute, he said, would be forwarded to the committee shortly. The understanding here is that the substitute represents the Kansas City bill which failed in the house in the 1921 session after it was loaded down with amendments.

There is an outside chance yet that new life may be pumped into the proposal, but time is short, the assembly is tackling some of its biggest statewide problems, and efforts must come fast.

Los Angeles, March 30.—Police disclosed today that after arresting two Japanese following a knife fight they broke into a locked chamber of an Alameda street rooming house and found a radio set, maps of Hawaiian fortifications and plans of the Los Angeles water system.

One of the Japanese, wounded in the stomach, was taken to the county hospital. Officers said he was in such a condition that he was unable to talk, beyond giving his name as T. Onishi. The other Japanese identified himself as Buichiri Abe.

"We are convinced that Abe is connected with a foreign spy organization and was in the business of soliciting and forwarding of military information," said Detective Capt. Bert Wallis.

"We believe his fight with Onishi was the result of espionage activities in which the two men must have engaged. It will be up to the government to investigate this, however."

WIFE ON DOUBLE SHIFT.

Chicagoan Is Charged With Divid-

Before deciding upon issuance of the restraining order, Judge Brown conferred again with lawyers for the workers and the union. It was to no avail. Lawyers for the union asserted there would be no settlement until the companies recognized the union as the sole bargaining agency for the employees.

Judge Brown ordered that the temporary restraining order against the pickets and the union they represent be drawn immediately. He said it would be served individually upon the union representatives late today. Lawyers for the union said they would file a motion immediately for the dissolving of the injunction.

Three Plants.

The union involved is the International Ladies' Garment Workers' Union of America. The three companies whose plants are being picketed, and from whom union recognition is demanded, are the Missouri Garment Workers, the Germes Garment Company and Gordon Brothers' Manufacturing Company.

In the battling today a taxicab driven by Pete Copulos, 28 years old, 1918 Campbell street, was stoned first. A large stone struck the door post between the front and back windows of the cab, causing a dent in the body but not breaking any glass. Later two other taxicabs were the targets of flying stones, but they did little

The purchase would be from C cantile Commerce Bldg. and Company of St. Louis, the mortgage bondholder

Articles of incorporat new hotel company were be filed late today at J by the new purchasers.

The land, building and of the hotel are included

Mr. Dean, veteran hote has completed the sale o cent interest in the Tr Company to Barney Allis, company, which operate Muehlebach.

Mr. Dean formerly was ident and general mana United Hotels Company, an extensive hotel chain trolled the stock in th Hotel Corporation, an operating company. He owned and operated the more.

SOCIALISTS NOT TO

Some Support Will Be Given munists, Says Chairma

(By the Associated Press.)

CHICAGO, March 30.—Arthur Dowell, chairman of the S party publicity committee, said the adoption of a "united front gram by a special party conv

(Respondent's Exhibit 30.)

•4157

...ard Year. ...NO. 195. Entered as second class mail matter at Kansas City, Mo., under the act of March 3, 1879. Kansas City, Mo., Monday, April 5, 1937.

20 WOMEN STRIKERS

...SHANDLING ...F BALLOTS AT ...POLLS ALLEGED

...t Accused as Fifth Vote ...Frand Trial Opens Before Otis.

THE JURY.

...L. Bay, Tarkio, automobile ...dements.
..., D. Baxter, Marionville, ...er.
...A. Chambers, Butler, insur-...
...ury Eldred, Mack's Creek, ...er.
...y French, Napton, farmer.
...y C. Gerber, Versailles, ...er.
...ede Henson, Cape Fair, ...er.
...arles W. Huff, Fairgrover, ...er.
...B. Lindsey, Preston, filling ...n operator.
...win Nichols, Ashland, farmer.
...rge Norman, Galena, read-...er.
...n Payne, Fayette, farmer.
...L. Waters, Fulton, merchant, ...ate juror.

...ctures on Picture Page.

...fraud picture which the gov-...t will seek to establish in ...n election fraud trial which

Horse 'Whips' Car

Dobbin Gets Decision in Highway Clash.

DALLAS, TEX., April 5.—(UP) The automobile may have replaced the horse, but when it comes to battle Fred Bosworth's charger proved he was superior to the machine.

Horse and car disputed a highway. The horse attacked by jumping up in the air and landing on the hood of the car.

Bosworth, 16 years old, suffered a broken arm. The car hood was smashed. The horse trotted away unhurt.

CARL BARELLI GOES ON TRIAL

Receipt of Stolen Property Is Charged.

Carl Barelli, 24 years old, 513 Cherry street, one of nine indicted by the Jackson county grand jury on a charge of receiving stolen property, went on trial Monday in Judge Brown Harris' court.

The jury was selected immediately after Judge Harris sentenced Charles (Cheese) Casciola to two years in the penitentiary on a charge of tampering with a motor car.

Barelli was indicted on a charge of receiving stolen property after the warehouse of the Goodyear Tire and Rubber ...

K. C. K. MILK STRIKE TAKES VIOLENT TURN

Union Plans Complaint to U. S. Labor Relations Board.

Picture on Picture Page.

First reports of violence in the strike of milk wagon drivers of the Meyer Sanitary Milk company were received by Kansas City, Kas., police Monday as R. O. Jackson, business agent of the teamsters' union, prepared to go before the federal labor relations board to discuss possible charges against the dairy owners.

William E. White, commissioner of conciliation, United States department of labor, was in Kansas City Monday, reportedly to attempt to settle the strike. Jackson conferred with him concerning working conditions at the plant.

Mayor Don C. McCombs asked a committee from the strikers to meet with him to discuss plans for preserving order. He said that the Kansas mob law made the city liable for injuries received by persons.

AIR CRASH TIP SPURS HUNT FOR 8

Craft Lost Saturday May Be in Desolate Arizona Area.

By United Press.

SPRINGERVILLE, ARIZ., April 5.—Posses of lumberjacks patroled desolate mountain sides in this area Monday in search of a Douglas transport plane carrying eight passengers which an 11-year-old boy contended he saw crash.

The child, a son of Henry McDaniel, ranger atop Escudilla peak in the White mountains, told his parents he watched the plane spiral to the ground as he was playing in the yard of his isolated home.

The child's story at first was discounted, but later reports of persons seeing the plane flying dangerously low and its motors missing fire convinced officers a search should be made.

Mrs. Inez Booth, manager of the Springerville telephone office, said residents in Greer and Alpine, both tiny mountain hamlet in this area, had heard the plane about 3 p. m. Saturday.

'CONSTITUTION AS WRITTEN'

Justice McReynolds States His Belief.

By United Press.

WASHINGTON, April 5.—Justice James C. McReynolds Monday departed from the prepared text of his dissenting opinion in a minor supreme court case to assert "We believe in the constitution as written and not whittled away by tenuous reasoning."

McReynolds' remarks, regarded as of significance in the light of the present judiciary controversy, were presented in a dissent to a majority ruling which approved a District of Columbia statute which provides for trial without jury of certain petty offenders.

(Respondent's Exhibit 31.)

Publication Of the 32nd and Oak Sts.
Published Daily and Sunday

IN GREATER KANSAS CITY 2c PER; 15c A WEEK COPY; BY CARRIER

ARE CITED

QUIET MARKET SESSION PACED BY OIL SHARES

New Fights Stir Action

Traders Show Hesitation Early Dealings; U. S. Bonds Gain.

By ELMER C. WALZER
United Press Financial Editor

NEW YORK, April 5.—Oil sh
paced the stock market higher
day in quiet trading.

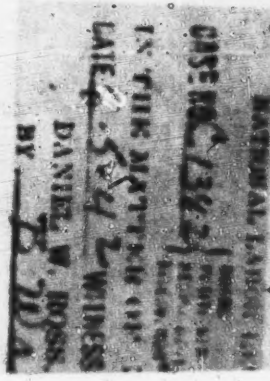
Traders were hesitant early,
ticipating a supreme court ruli
the Wagner labor relations
When none was forthcoming
effort was made to extend the
advances which had ranged
points.

Government bonds strengthe
on announcement the federal
serve will support government
curities on the open market,
poration bonds generally stre
ened. This gave more assuran
stock market operations.

Leading Commodities Up.

Cotton gained 50 to 75 cents a
Corn futures in Chicago were st
gaining 4 cents a bushel. W
and oats advanced. Other comm
ties were mixed.

Demand for oil shares coin
with reports that additional
oil price rises soon will be p



Judge Brown Sets Garment Case Hearing for Wednesday.

Twenty-one citations for contempt of court against 20 women members of the International Ladies Garment Workers' union, involved in a strike at three garment plants at 2617 Grand avenue, were issued Monday afternoon by Judge Darius A. Brown.

One of the citations was against Miss Wave Tobin, business agent of the union. Two of them named Rosalie Poole.

Those named were ordered to appear before Judge Brown at 9 a. m. Wednesday to show why they should not be held in contempt for alleged violation of the injunction he issued last week prohibiting violence and interference with nonstrikers.

The issuance of the citations followed a conference between Paul T. White and Harry L. Thomas, attorneys for the garment companies.

...er.
...B. Lindsey, Preston, filling ... operator.
...win Nichols, Ashland, farmer.
...orge Norman, Galena, road-...er.
...n Payne, Fayette, farmer.
...L. Waters, Fulton, merchant, ...ate juror.

...ictures on Picture Page.

...fraud picture which the gov-...t will seek to establish in ...n election fraud trial which ... Monday before Federal ... Merrill E. Otis will center ...activities of a pair of Demo-...handled ballots, looked them ...ided them, altered some of ...d put them in the ballot ...ll without authority.
...was the charge contained in ...ning statement to the jury ...all Wilson, assistant United ...istrict attorney.
...rial is that of eight persons ...o twenty-second precinct of ...ulfth ward, judges, clerks ...cinct workers, all charged ...onspiracy to commit vote ...

...defendants are: ...Shoemaker, Democratic judge. ...Democratic judge. ...Republican judge. ...Republican judge. ...Democratic clerk. ...D. Adams, Republican clerk. ...H. Kaiser, Democratic precinct ...of the Pendergast faction. ...McNamara, Democratic precinct ...of the Shannon group.
...charges are that they con-

...rs to Page 4, Column 3.

...NGEANCE IN FIRE

...Named in Burning of ...Zion Church.

Carl Barelli, 24 years old, 313 Cherry street, one of nine indicted by the Jackson county grand jury on a charge of receiving stolen property, went on trial Monday in Judge Brown Harris' court.

The jury was selected immediately after Judge Harris sentenced Charles (Cheese) Casciola to two years in the penitentiary on a charge of tampering with a motor car.

Barelli was indicted on a charge of receiving stolen property after the warehouse of the Goodyear Tire and Rubber company, 2580 McGee trafficway, was robbed the night of December 31, last.

The first witness was W. L. Smith, ... the Goodyear company.

He said it was his duty to go to the warehouse daily to fill orders and that he was the last man in the employ of the company to be in the warehouse December 31.

Found in Warehouse.

New Year's day was a holiday.

Turn to Page 4, Column 1.

RACE RESULTS

RACE ENTRIES ON PAGE 2.

BOWIE—MARYLAND

FIRST RACE—6 furlongs.

Acaulee (Lehman)	$8.70	$3.80	$2.20
Golden Vale (Westrope)		2.60	2.10
Freehound (Haddock)			2.30

Time, 1:15 3-5. Also ran: Waterman Italian Harry, Gabapatch, Taunton.

SECOND RACE—6 furlongs.

Prince Eld (Saunders)	$12.20	$6.40	$3.40
Conservative (Leblanc)		4.20	3.70
Ipso Facto (Barba)			2.60

Time, 1:14. Also ran: Statesman, Miss Sue, Stonewater, Light Chatter, Play Not.

THIRD RACE—6 furlongs.

Victorian Star (Reagle)	$8.20	$3.80	$2.10
Francesa (Gilbert)		3.20	2.60
Black Bee (Oakes)			6.00

Time, 1:16 3-5. Also ran: Isadore, Bar-

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Time, 1:16 3-5. Also ran: Isadore, Bar-

...of conciliation, United States department of labor, was in Kansas City Monday, reportedly to attempt to settle the strike. Jackson conferred with him concerning working conditions at the plant.

Mayor Don C. McCombs asked a committee from the strikers to meet with him to discuss plans for preserving order. He said that the Kansas mob law made the city liable for injuries received by persons during labor demonstrations, and, for that reason, he desired to obtain the cooperation of strikers to keep ... sides, he said, disturbances will give the city a "black eye."

The alleged beating of a substitute driver, smashing of a truck's windshield and intimidation of another driver Monday marred the peaceful trend of the strike, which started Friday night.

Meanwhile, Fred Meyer, president of the milk company, announced he had hired armed guards to accompany some of his trucks on deliveries. O. Q. Claflin, jr., attorney for the firm, said the firm's delivery ...

Turn to Page 4, Column 6.

RITES FOR MRS. WHITE

65-Year Resident of K. C. K. to Be Buried Tuesday.

Funeral services for Mrs. Kate Alice White, 66 years old, mother of Frederick R. White, former county attorney of Wyandotte county, will be held at 2:30 p. m. Tuesday in the Fairweather-Werner chapel. Kansas ...

...preme court case to assert "We believe in the constitution as written and not whittled away by tenuous reasoning."

McReynolds' remarks, regarded as of significance in the light of the present judiciary controversy, were presented in a dissent to a majority ruling which approved a District of Columbia statute which provides for trial without jury of certain petty offenders.

McReynolds' opinion held this denial of jury trials violated the constitutional guarantee of trial by jury provided in the sixth amend... ... in view ... nounced," said McReynolds, reading from his printed opinion, "it seems permissible to inquire what will be...

Turn to Page 2, Column 2.

DUNN BURIAL IN PAOLA

Services Tuesday for Oil Company Executive.

Funeral services for C. Vernon Dunn, 49 years old, secretary-treasurer of the Forbes Petroleum company, will be held at 2:30 p. m. Tuesday in the Christian church at Paola, Kas., the place of his birth. Burial will be in Elmwood cemetery, Paola.

Mr. Dunn, whose home was at 1412 East Thirty-fifth street, died Saturday night at Research hospital. He became associated with the petroleum company five years ago.

Coming to Kansas City in 1924 to become a member of the headquarters staff of the De Molay grand council, Mr. Dunn was manager of the Kansas City De Molay band seven years.

... in the yard of his isolated home.

The child's story at first was discounted, but later reports of persons seeing the plane flying dangerously low and its motors missing fire convinced officers a search should be made.

Mrs. Inez Booth, manager of the Springerville telephone office, said residents in Greer and Alpine, both tiny mountain hamlet in this area, had heard the plane about 3 p. m. Saturday.

These reports checked with the boy's assertion he saw the plane fall at 3:30 p. m.

Mrs. Booth said a witness in ... told her the big plane's ... burning fire.

Greer is 15 miles of Springerville and Alpine is 26 miles south of this small town.

The ranger station is atop Escudilla peak, 11,691 feet above sea level. The district is one of the most rugged in Arizona, cut by canyons and the slopes heavily timbered. Only the ranchers and their workers and a few isolated lumber camps with a handful of workers inhabit the area.

Extensive Search for Missing Plane Ordered

BURBANK, CAL.—April 5.—The bureau of air commerce Monday ordered an extensive search for a giant new Douglas transport plane, missing and feared lost with eight persons aboard.

The huge 2-motored transport has not been reported since it left Burbank at 1 p. m. Saturday (Kansas City time) and headed into an Arizona wind and snowstorm. It carried no radio transmitter and was not on a scheduled trip. Hence, for

Government bonds strengthi
on announcement the federal
serve will support government
curities on the open market.
poration bonds generally stren
ened. This gave more assuranc
stock market operations.

Leading Commodities Up.

Cotton gained 50 to 75 cents a
Corn futures in Chicago were st
gaining 4 cents a bushel. W
and oats advanced. Other comm
ties were mixed.

Demand for oil shares coinc
with reports that additional c
oil price rises soon will be p
Socony-Vacuum led in turnover
advanced fractionally to a new
for the year. Texas corpora
Consolidated and
board made new highs for the
on gains that extended to a p
Most of the advances were m
tained.

Private reports of tremen
backlogs in steel offset the first
cline since February in the op
ing rate. American Iron &
institute said operations this
are scheduled at 89.9 per ce
capacity, a decline of 0.8 point.
Steel, however, was strong, cr
119 for more than 2 points
Other steel shares firmed in
trading although Bethlehem
slumped to a fractional loss.

Copper shares softened as
of export copper were rg
under 16 cents a pound. Ana
dipped more than a point to
61 and Kennecott at 60¼ hai
loss. Rails were mixed. At
losing almost 2 points while
sylvania and New York C
firmed. Utilities held barely steady
in light trading.

Chrysler Shows Strength.

Hope for settlement of the Chrys-
ler strike brought easy demand in
motor shares, most gains being
maintained. Chrysler at

Journal-Post - April 5, 1937

Pure Oil	11	6	21¼	21¼
Par Pet	11	6	24¾	24¾
Int Paper P	10	100	120¾	118¾	120¾
Stan O NJ	9	600	73	72	72¾
Loews	9	500	82¾	79	82
Re Cp Am	9	100	11	10¾	10¾

MARKETS AT A GLANCE

One of the citations was against Miss Wave Tobin, business agent of the union. Two of them named Rosalie Poole.

Those named were ordered to appear before Judge Brown at 9 a. m. Wednesday to show why they should not be held in contempt for alleged violation of the injunction he issued last week prohibiting violence and interference with nonstrikers.

The issuance of the citations followed a conference between Paul T. White and Harry L. Thomas, attorneys for the garment companies, and Judge Brown in the latter's chambers. Some of the citations alleged violence and others interferring with workers.

Others named were:

Isabel Jordan	Clara Easton
Thurley Harriman	Pat Wilborn
Tilly Harriman	Anna Zapka
Uni Nepote	Nora Pulver
Alberta Brown	Yevette Boettcher
Rachael Williamson	Mary Johnson
Esther Miller	Ellen Frye
Ruth Thompson	Elsie Fuller
Irene Liggett	Wanda Ferrell

Approximately 200 marching, singing, shouting strikers and strike sympathizers Monday morning prevented entrance of nonstrikers to the three garment plants. The few workers who did try to run the gauntlet of the picket line were severely mauled despite efforts of 44 police to maintain order.

Up to noon only three or four nonstriking employes had entered the three plants and they did not go unscathed.

At that hour there still were approximately 80 pickets on duty, half of them taking turns patrolling the sidewalk in front of the door while the other half kept warm in a restaurant on Walnut street.

L. C. W. Shepard of the Country

Turn to Page 2, Column 1.

(Respondei

Hair-Pulling at 3 Garment Plants Nets Court

FEW WOMEN GET THROUGH MASSED LINE

Entrance Blocked by 200 Strikers and Their Sympathizers.

TOO MUCH FOR POLICE

Officers Try in Vain to Prevent Morning Battle at 2617 Grand.

Continued from Page 1.

Club police station, in charge of the strike detail, advised workers they would enter the plants at their own risk.

Can't Escort Them In.

"We cannot escort you," he said. "We merely are here to prevent fights. We cannot keep them from starting if you try to enter."

The first determined nonstriker who attempted to run through the strikers and strike sympathizers, walking two abreast in front of the entrance to the three factories, received a severe mauling. The left sleeve of her coat was torn off.

The scene of action in the strike Monday morning was changed from the rear entrance on Walnut street, where workers have entered heretofore in the strike, to the front door on Grand avenue. The change was made, Lieutenant Shepard said, at the request of the managements of the three plants, the Gordon Brothers Manufacturing company, the

Ford Assembly Line Moves Again

—Journal-Post Photo.

Employes at the Ford Motor company's plant, 1025 Winchester avenue, were back at work Monday morning, after settlement of the sit-down strike they inaugurated Friday afternoon. All of the union men were buttons which proclaimed they were members of local union No. 249 of the United Automobile Workers of America. This picture was taken when operation of the assembly line was resumed. All of the men were issued new time cards by the company.

FORD PLAN WIT

the matte respected 250 who a

By Pay che Monday & 15 to Apri the Un

5, 1937

Wants It to Be Understood ly Does Not Boss Him Around

Dieting, Not Economizing and Not king Less, Edward Would Have It Known.

By United Press.

GANG, AUSTRIA, April 3.—The Duke of Windsor is ing a campaign to offset rumors Mrs. Simpson is

SENATE SPIKES ILLEGAL BRAND FOR SIT-DOWNS

Move to Tack Amendment on Guffey Bill Is Defeated.

BY VOTE OF 48 TO 36

Byrnes, Critic of Labor's Weapon, Refuses to Withdraw Plea.

By United Press.

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The action was on an amendment which referred to strikes in all industries engaged in interstate commerce.

The vote came after three days of wrangling debate over the amendment proposed by Sen. James F. Bryney (D), South Carolina, who contended the senate should declare its attitude toward sit-down strikes, which he termed "clearly illegal."

Senate leaders were forced to permit the amendment to come to a vote after failing in attempts to persuade Byrnes to withdraw it and agree to consideration of sit-downs in a separate resolution.

Byrnes and his supporters insisted on a vote on the amendment, contending a declaration of senate attitude toward sit-downs might be lowed to a

Nets Court Citations for 20

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WASHINGTON, April 5.—Recent visitors to the White House report President Roosevelt's opinion on sit-down strikes to be that the technique is illegal and that public opinion will cause labor to abandon or assure labor it may bargain collectively.

DETROIT, April 5.—(UP)—Gov. Frank Murphy, confident he can restore peaceful relations between capital and labor in this strike-ridden industrial area, planned a series of conferences with automobile manufacturers Monday in an effort to settle controversies affecting 73,400 workers.

The red-haired executive, successful mediator in the 44-day nationwide strike of General Motors corporation employes, resumed at 10 a. m. his conference with Walter P. Chrysler and John L. Lewis on plans to end a strike that has made 60,000 Chrysler workers idle.

Indicating he believed a Chrysler settlement was near, Murphy announced that "some time later this week" he would turn his mediation attempts to the Hudson and Reo motor car company strikes. Approximately 11,000 Hudson employes and 3,400 Reo workers are idle.

If you wish to find a desirable tenant for your vacant room insert an advertisement in the Journal-Post. Phone Victor 4000 and ask for a Want Ad taker.

GOLDMAN RITES SET

Funeral of Financier to Be Tuesday.

NEW YORK, April 5.—(UP)—Funeral services will be held here Tuesday for Henry Goldman, 79-year-old banker, philanthropist and art collector who died Sunday.

Until his retirement in 1917, Goldman was senior partner in the banking firm of Goldman, Sachs & Co., which assisted in organization of many of the country's largest corporations, among them Sears, Roebuck & Co., F. W. Woolworth company, B. F. Goodrich company, Studebaker corporation, Jewel Tea company and the Underwood Typewriter company.

MRS. ROOSEVELT ON RADIO.

WASHINGTON, April 5.—(UP)—Mrs. Franklin D. Roosevelt will broadcast a plea for peace Tuesday night on the twentieth anniversary of the entrance of the United States into the World war. Admiral Richard E. Byrd, polar explorer, who is chairman of the no-foreign-war crusade, and Dr. Harry Emerson Fosdick will join her in broadcasting from the White House.

JONES

German Day

"International Cooking School"

Tuesday, April 6 at 11 A. M.

ALONZA RAY

Chef of the

BAVARIAN RATHSKELLER

1118 East Armour

Will demonstrate the preparation of

GERMAN POT ROAST and GERMAN POTATO PANCAKES

their own fine old German recipes which are the pride of the Bavarian Rathskeller.

Receive Your German Recipes!

No Charge for Admission.

Auditorium—Third, Main.

mage. Lieutenant Shepard said, at the request of the managements of the three plants, the Gordon Brothers Manufacturing company, the Missouri Garment company.

It was there the police and picket line forces were established. Many workers arrived in taxicabs and by street car to take one look at the imposing line of pickets, including many women from other garment factories and other unionized industries, and depart hurriedly.

Those who chose to brave the circling line of marching pickets found themselves in the midst of a scrambling mass of hair-pulling, kicking, scratching women. Meanwhile, police were trying to keep order against impossible odds.

Advised Not to Risk It.

Soon F. Parsons, mechanic of the Missouri Garment company, on instructions of the plant superintendent, stood in the street and turned away all workers who arrived at the plants in motor cars and taxicabs.

"Don't risk it," he told them. "You will get hurt."

Each group of nonstrikers that turned away brought cheers from the strikers and sympathizers, who continued their slow march past the door.

Entering Fourth Week.

Police said the situation Monday morning at the plants was by far the worst they had encountered in the strike, which is entering its fourth week.

A large group of men sympathizers assembled across the street from the factories, watching the picketing. One of the office workers in the Gernes plant, Yale Wolf, tried to run the picket line and was repulsed. He went across the street and immediately was struck in the mouth and knocked down by a man sympathizer. Wolf was unable to point out his assailant to police.

A large group of nonstriker women also assembled across the street. Several strikers went over to talk with them and try to persuade them to join the union. That resulted in a fight and the arrest of three women.

One traffic accident was due indirectly to the picketing. Almost in front of the entrance to the plant, a beer truck halted and a following motorist crashed into the rear of it. The car was badly damaged.

JOHNSON IN NEW ROLE

Former NRA Head to Advise

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after having gained recognition of their union as the collective bargaining agency for its members.

Six CIO Unions Form Central Organization

Leaders of six Committee for Industrial Organization unions formed a central permanent organization for this vicinity Sunday night after participating in negotiations connected with several strikes.

The union leaders were addressed by Ed Hall, second vice president of the United Automobile Workers of America, who came here in connection with a sit-down strike at the Ford Motor company.

Upon Hall's advice, the leaders

K.C. Journal-Post - April 5

CASE NO. L-2543 EXHIBIT NO. 31
IN THE MATTER OF Daniewsky
DATE 8-5-41 WITNESS Rose
DANIEL W. ROSS, OFFICIAL REPORTER
BY

it Known.

By United Press.

GANG, AUSTRIA, April 5.—The Duke of Windsor is ime charting a campaign to offset rumors Mrs. Simpson is activities by remote control, it was reported Monday. Allen, the duke's solicitor, is aiding in drafting the mar- and in mapping out the duke's investments. been enlisted also, it an effort to persuade apers that the duke is himself to a frugal down his expenditures icing his consumption

lleged restrictions, it is said, are attributed by the newspapers to Mrs. Simpson's "influence." The duke is said to feel that people might get the impression he is under undue influence of his American born sweetheart.

BELIEVES STITUTION 'S WRITTEN'

d from Page 1.

ther solemn declara- mendment. Constitu- ees ought not to be to convenience nor questionable prece- tain reasoning."

arted from his text to

in the constitution d not whittled away soning."

e Butler joined Mc- he dissent which was only business of the day.

d supreme court deci- utionality of the Wal- tions act was not pre-

Monday is now the at which the Wagner announced.

ncerns Woman.

... Ethel Cosmans, convicted without jury trial of unlicensed selling of railroad tickets. McReynolds emphasized the fact it was a woman involved—a fact which immediately brought to listeners' minds last week's bitter court division over the Washington state minimum wage law for women.

"Our social predilections are so strong within us that we cannot consider this a petty offense," said McReynolds of the ticket selling case. "What is to become of the other solemn declarations of the amendment? (Sixth amendment guaranteeing right of trial by jury.)

"Does this mean that she may be denied a speedy trial, a right to appear and face the charges, to injunction restraining the Georgia Power company from prosecuting a suit against the Tennessee valley authority.

It refused as it has several times in the past to hear a request for an injunction against a national labor relations board hearing.

It declined a new test of the municipal bankruptcy law, outlawed in a court decision last year.

The Georgia Power company had asked the court to stay an injunction which it held prevented it from an action originating in the Tennessee federal courts against the TVA.

Refusal of the supreme court to issue the stay was believed here to eliminate the Georgia Power company from the Tennessee action—an action in which 19 separate utility companies had joined.

FIRE KILLS 6 CHILDREN

Parents Burned Severely in Pennsylvania Home.

PORT ALLEGHANY, PA., April 5.—(UP)—Six children were burned to death Monday in a fire which destroyed their 2-story frame house. The victims were the children of Mr. and Mrs. Gerald Sweezey. The parents were burned severely. The children were trapped by an explosion. Firemen stood by helplessly when the water supply gave out.

KIRKSVILLE'S MAYOR RESTING COMFORTABLY

KIRKSVILLE, MO., April 5.—(UP)—Mayor Gail A. Jacobs was reported resting more comfortably Monday than at any time since March 30 when he was injured critically by an explosion of blasting powder that had been placed in his automobile in a murder plot.

His left leg was amputated Saturday night. He was reported to have spent a fairly restful Sunday

Byrnes and his supporters insisted on a vote on the amendment, contending a declaration of senate attitude toward sit-downs might be lowed to await action on a separate resolution.

WASHINGTON, April 5.—Recent visitors to the White House report President Roosevelt's opinion on sit-down strikes to be that the technique is illegal and that public opinion will cause labor to abandon or alter it.

The administration attitude is that there is no authority for federal intervention in these strikes, especially under existing interpretations of the constitution. It appears Roosevelt does not consider the sit-downers to be un-American elements bent on subversive objectives, as do some adverse critics of current labor methods.

Roosevelt already is on record, however, in favor of making labor unions responsible for the actions of their membership—a policy which would discourage the socalled "unauthorized strike."

There is no immediate prospect, however, of a presidential statement on the sit-down technique unless there is some fundamental change in the situation. The White House policy of silence is in contrast with the alarm of some notable congressional Democrats and their eagerness to obtain a repudiation of sit-downs either from the president or in the form of an expression of senate sentiment.

Meanwhile, powerful forces are playing on the capital-labor situation and their influence is tending toward adjustments to relieve industry of sit-down strikes and to re-

Dentists
Dr. T. L. Barnidge
Dr. L. C. Gartin
8:30 A. M. TO 8:00 P. M.
NOT OPEN ON SUNDAY
1017 Walnut St.
OVER JACCARD'S JEWELRY STORE
2ND FLOOR, NORTH OF
EMERY, BIRD, THAYER D. G. CO.
Victor 1815

WEDDING RINGS $3.95
Open a Charge Account
MAGNUSON

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Meanwhile, powerful forces are playing on the capital-labor situation and their influence is tending toward adjustments to relieve industry of sit-down strikes and to re-

their own fine old German recipes which are the pride of the Bavarian Rathskeller.

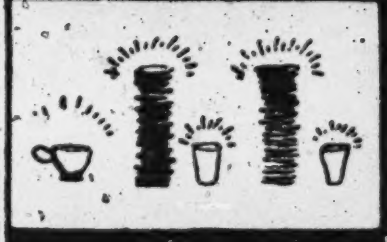
Receive Your German Recipes!

No Charge for Admission.

Auditorium—Third, Main.

HOT WATER . . . for

BATHS

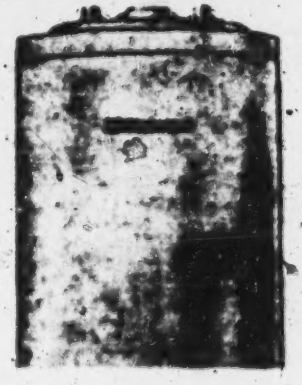


DISH WASHING

SHAVES

and every other HOUSEHOLD NEED

RENT an Automatic GAS



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EMERY, BIRD, THAYER D. G. CO.

Victor 1815

WEDDING RINGS $3.95
Open a Charge Account
Mack-Ryer

...sefully defended Barelli ... Judge Harris Monday, ...d the delay, demanding ...lient be given an opportu... ...n immediate trial.

"...e are ready and eager for ... to start," Waldman asser... protest was overruled.

... discussing Barelli's t... ...es expressed surprise Tues... ... the state's principal witn... ...ge Edwards, who said he tri... ...d a load of tires from the ... ...ant's home to a warehouse, ...le to identify the accused n...

...e jury that acquitted Ba... ...erated only an hour and ...tes. The defendant offered ...mony to defend himself aga... ...charge. After the state re... ...ase at 3:30 p. m. Monday, W... filed a demurrer to the ...e. The theft of the tires had ... proved, Waldman conten... the defendant had not b... ...lusively connected with ...

...dge Harris overruled the ...er.

Theft Revealed January 2.

...ate witnesses testified that ... of the 151 tires was discove... ...ary 2 and that they were id... ...l six days later at the Busy ...sfer company warehouse, 1... ...ut street.

Phil Hoyt of the police int... ...e unit testified that he and ... learned that 53 tires had b... ...d January 2 in the W. E. M... Transfer company wareho... Grand avenue.

"...e watched the warehouse cl... ...ntil January 7," said Lieuten... ... "At that time 53 tires w... ...ried out and trucked to ... Beg warehouse."

...utenant Hoyt then told of ... another truck take 53 m... to the warehouse.

...rtis Wagner, a defective

STRIKERS AGAIN BAR 3 GARMENT PLANTS' CREWS

But Scene Is Much Less Riotous Than One of Preceding Day.

Striking members of the International Ladies' Garment Workers' union and sympathizers again kept production workers from going to their tasks in three garment factories at 2617 Grand avenue Tuesday morning.

Only three or four non-strikers of the dozen or so who appeared at the scene attempted to run the picket line, established again at the rear entrance on Walnut street, but they were repulsed. Several of the office force of the Gernes Garment company, however, gained entrance at the front door on Grand avenue.

The strike situation was considerably less acute Tuesday morning than on Monday because fewer non-strikers tried to enter the plant and because the number of pickets marching up and down in front of the doors had been limited by the union to a scant 20 or 25 on orders from Otto P. Higgins, director of police. A hundred or more others, however, stood across the street or occupied a nearby restaurant.

Meyer Perlstein, St. Louis, district director of the union, arrived here Tuesday morning. He said he expected "some important telephone calls" and might have something to announce later in the day.

Miss Wave Tobin, business agent of the union, who was among 20 women cited Monday for contempt of court for alleged violation of the injunction against violence issued by Judge Darius A. Brown, said none of the pickets on duty Tuesday was named in the injunction.

WYANDOTTE HIGH LANDSCAPING DEAL DRAWING PROTEST

Petition to Block Approval of Contract Circulated in K. C. K.

A petition protesting the awarding of a contract for the landscaping and grading around the new Wyandotte high school to the L. G. Barcus Construction company was drawn up and circulated Tuesday by a group of taxpayers and property owners living in Kansas City, Kas.

The petition stated that the lowest bid, one allegedly made by R. G. Aldridge in full compliance with

Kill Your Piles!

Don't let itching bleeding internal or protruding piles rob your vitality and cause an expensive, painful operation. In 15 minutes you can stop the pain and quickly shrink sore swollen tissues with the Doctor's new prescription Chinа-Reid. It's guaranteed to fix you up in 10 days or money back. Ask Katz Drug, Park view or any drug store for guaranteed China-Reid

require... passed ... bid, w... $120,00...

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(Responder...

- K.C. Journal-Post - April 6, 1937

IN THE MATTER OF ... NATIONAL LABOR ... EXHIBIT NO. 32

CASE NO. C-1382

DATE 8-5-42 WITNESS Reid

DANIEL W. ROSS, OFFICIAL REPORTER

BY R. W. Ross

CALL OF THE ROAD

ondent's Exhibit 32.) 4163

LINDYS MISSING 3

Woman Uses Horsewhip

ATE WIFE OF TY FIREMAI AKES ATTAC

Manager Is Uninju in Episode Near Office.

dge H. F. McElroy, ger, Wednesday k just outside his off e city hall by a hor , wielded by Mrs. La M. Wyatt, 3314 E nty-third street, wife y fireman.

Wyatt, placed under a ee lieutenants of police, to the matron's room at p uarters, where she was Then Judge McElroy Higgins, director of p nstructed him not to fi e assault her. He aske held until her husban notified. When Wyat at police headquarters rned over to his custody, ter an [illegible] ," y said, "the incident

K.C. Journal-Post - April

CASE NO. C/3627 EXHIBIT NO. 33

IN THE MATTER OF

DATE 8-5-42 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

HIGGINS CLEARS NON-STRIKERS' WAY TO PLANTS

Police Director Tires of Violence by Women in Garment Mixup.

Picture on Picture Page.

For the first time since a strike was called several weeks ago by the International Ladies' Garment Workers' union at the plants of the Gordon Brothers Manufacturing company, the Gernes Garment company and the Missouri Garment company, the day opened without violence Wednesday when non-strikers reported for work at 3017 Grand avenue. As a result more workers entered the building.

Otto P. Higgins, director of police, had taken personal charge of police activities at the scene.

Director Higgins cleared the block from Twenty-sixth to Twenty-seventh street on Walnut, made all spectators and strike sympathizers move on and permitted only five peaceful pickets to remain within the territory adjacent to the rear entrance of the plants.

Use Elevators.

He also established a system of [illegible] the use of the elevator of a freight elevator, which was used by non-strikers in reaching

Rudy Valee Again in L As Fists F

(Respondent

(Respondent's Exhibit 33.)

4165

EXHIBIT NO. 33.

OFFICIAL REPORTERS

Post- Apr. 7, 1937

quarters, where she was
. Then Judge McElroy
. Higgins, director of
nstructed him not to fi
against her. He asked
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notified. When Wyatt
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for an [illegible] investigation," J
ay said, "the incident

"Struck for Others."

t I did was not for m
Mrs. Wyatt said, "but fo
of all the firemen in
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ge McElroy had been att
hearing of the city plan
n and had started for hi
hen the attack occurred.
st reached the door, with
attack said, when the wo
ad been pacing back and
corridor, suddenly steppe
n and swung at him wit
whip.

woman told George Gooch,
in the office, she wanted to
dge McElroy as she was from
the city.

ould like for him to recom-
a good hotel," she said.

at's impossible," Gooch re-
"The city manager doesn't
mend hotels."

Wyatt remained in the lobby.

STOCKS—Sharply lower in decline wid-
ening.

BONDS—Lower.

COTTON—Lower under lead of
closing sharply.

FOREIGN EXCHANGE—Lower; French
francs off more than a point.

COTTON—Finished 10 to 18 points
lower.

SUGARS—Sharply lower.

SILVER—At New York off 3/8c to 5/8c a
fine ounce.

Kansas City.

WHEAT—Closed 1-cent to 1½-cent
lower.

had taken personal charge of police activities at the scene.

Director Higgins cleared the block from Twenty-sixth to Twenty-seventh street on Walnut, made all spectators and strike sympathizers move on and permitted only five peaceful pickets to remain within the territory adjacent to the rear entrance of the plants.

Use Elevators.

He also established a system of police from the rear to the entrance of a freight elevator, which was used by non-strikers in reaching their places of employment on the upper floors of the building.

Two groups of non-strikers, approximately 100 in all, were taken up on the elevator.

Prior to establishing the police cordon, Director Higgins said:

"This rough stuff is becoming a public nuisance. It is interfering with business in the block and there have been many protests from business men not involved in the strike and from their customers who have feared to approach the places of business. Police officers have been bruised and mauled and their clothes torn. One officer was thrown to the sidewalk and sat

Turn to Page 2, Column 5.

TWELVE DOWN LADDERS

By

BOSTON, April 7.—Rudy
found himself the center of t
following a reported altercation
crowded Shubert theater lobby Tuesday
Vallee and Judy Stewart, Broadway
ster when the light of a camera, handled
flashed in their faces. Vallee's publicit
tactics as he wrested the camera from

al conference of Jews and
lans at 8 p. m. in Edison
& Light building.

religious leaders on this
e team," sent out by the
conference, are Dr. M. A
Atlanta, Baptist minister
ing Protestant sects; R
d I. Israel, Baltimore, re
the Jews of America,
Aloysius P. Hodapp, Chi
olic church leader.

good will tours were b
3 and it is believed much
accomplished toward pre
ustice, friendship, unders
and cooperation among
groups that share citize
erica.

Kansas City persons promi
and business life com
mittees sponsoring the
hursday night. They are

Ashley
Maillard
Stern
Elliott
Porter
Nichols
Malle
Greiner
Genevieve P.
Stern
Dietrich
Thomas McGee
Mulair
Marsh
Copeland
Rothenheimer
Gillis
Joseph C.
Inman
T. Kemper
Goldman
J. O'Flah-
Moore
L. Burr-
Samuel Fleet
A. Conley
British
Hardesty
Ilya Kulka
Miller, III
Pfeiffer
Ann Miller
W. Miller
Lyons
Doherty
Dowley
Mary J.
Clark

Chairmen for the meeting
e. Henry M. Beardsley,
Bernstein and Fred J. Wo

Should this be done it would re-
quire more than two years.

K.C. Journal-Post- April 7, 1939

EXHIBIT NO. 33

IN THE MATTER OF

DATE 4-5-39 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

probably would be beaten in that
town also, unless overwhelming
public sentiment could be aroused
elsewhere in the state.

POLICE DIRECTOR CLEARS WAY INTO GARMENT PLANTS

Continued from Page 1.

upon by five women strikers. It was humiliating.

"Moreover the work of the police department has been hampered because of the necessity of sending from 60 to 80 men to the garment plants every day. A majority of the pickets have been hired to perform their duties at $1 a day and carfare.

"On Monday I called the business agent of the union to my office and told her there must be no more rough stuff. It did no good. I warned the strikers again on Tuesday, and again my warning went unheeded. Now, I'm prepared to act. Any more trouble occurring here will be dealt with severely."

While the police were guarding the nonstrikers from any attack, Matt Shifnick and Harry Skinner, deputy sheriffs, were endeavoring to serve 21 contempt of court citations on 20 women, named Monday by Judge Darius A. Brown to appear in his court to show cause why they should not be held in contempt of court.

Difficult Search.

Issuance of citations followed reports of violation of an injunction prohibiting violence or interference with nonunion workers in the three plants.

Shinnick and Skinner experienced difficulty in finding the women named in the writs, which demanded that they appear before Judge Brown at 9 a. m. Wednesday.

Then Miss Wave Tobin, business agent of the union, one of the women named, was pressed into service by the deputies and aided them in identifying the women

The changes were made by er
ing the voters' "Xs" over the
publican columns of candidates
marking them over the Democra
columns.

Appel found four types of "
had been used in altering the b
lots, indicating, he said, that f
persons changed them.

In some cases, persons who
tered ballots did not trouble
erase "Xs" in squares opposite
publican candidates' names wh
they erased "Xs" from the Repu
lican circles and substituted "X
over the Democratic columns.

Appel illustrated his findi
with greatly enlarged photogra
of markings on ballots, as he h
done in other trials.

He made it clear with the pho
graphs that the "Xs" on the chang
ballots were not made by vote
The changed ballots lay on ot
ballots and the impressions ma
by remarking them were clea
visible on the other ballots. Vot
have only one ballot to mark. N
urally they make no indentations
other ballots with their markin

RECEIVERSHIP SHIFTE

Prudential Association
McCammon's Hands.

J. W. McCammon, state buildi
and loan association supervisor, w
made receiver of the Prudenti
Building and Loan associati
Wednesday by Judge Ben Terte
the circuit court after the latter h
accepted the final report of Ira M
Bride, former supervisor and r
ceiver of the concern.

Similar proceedings in the r
ceivership of the Industrial Buildi
and Loan association were expecte
Wednesday afternoon in the circu
court.

As soon as receivership authori
in the Industrial is transferred
McCammon, control of all buildi
and loan companies in re
in Kansas City will have

937

...hairmen for the meeting
...e Henry M. Bengsley, R
...nnahan and Fred J. Wol

STRIKERS GET CHANCE TO RETU

...LIN, MO., April 7.—(U
...Haworth, district WPA
...ister, Wednesday rescinde
...to cancel further public
...ts and announced he would
...265 persons who went on a
...hour Tuesday to return to
...tions of the strikers' requests
...nnulled. A protest had been
...by the strikers against two
...aid foremen whom workers
...of trying to speed up oper-

THS AND FUNERALS

...Helen E. Lamb, Mary Ellen

...GHAM—Mrs. Helen E. Ashenden,
...old, died Tuesday night at her
...Elm Forty-fourth street. She is
...by her husband, Kenneth E. Ashen-
...the home; a sister, Mrs. Martha
...Michigan City, Ind., and an uncle,
...Cheyenne, Chicago. The funeral
...ial will be held in Rensselaer, Ind.

...—Funeral services for Mrs.
...Henrietta Fowler, 78 years old,
...A. Fowler, Kansas City con-
...will be held at 2:30 p. m. Thurs-
...the Beach Hill Reorganized Church
...Christ of Latter Day Saints,
...Burial will be in Mound
...cemetery. Mrs. Fowler died Tues-
...her home, 1331 South Pleasant
...Independence. Before going to
...she lived 11 years and Mrs. Fowler

Douglass said Wednesday that he had been assured the substitute bill would be given consideration at Jefferson City and that organization leaders here had told him it was acceptable to them. He expressed the fear, however, that lack of any zealous support in an organization way was the real stumbling block. He said there was danger the bill would be permitted to die in committee as has happened time and again in the last 10 years that Kansas City has been trying to get permanent registration.

Douglass, a former Democratic member of the election board, is well informed on registration and election laws and has been the co-author of several proposed permanent registration bills for Kansas City.

The bill he submitted last week was offered as a substitute for house bill No. 450, which was drafted by a city council committee headed by A. N. Gossett. The latter bill had the approval of Mayor Bryce B. Smith and other administration leaders.

...Judge Brown at 9 a. m. Wednesday.

Then Miss Wava Tobin, business agent of the union, one of the women named, was pressed into service by the deputies and aided them in identifying the women sought.

Hearing on the contempt of court citations were continued to Monday at 9 a. m. by Judge Brown. Seven women served with the writs at the garment plants Wednesday morning, Miss Tobin, Par Wilburn, Clara Seeton, Ella Frye, Anna Zupke and Rosalie Poole, who was served with two, appeared in Judge Brown's court. Twenty-one citations had been issued but the deputy sheriffs were unable to serve the others.

At the conference with Judge Brown Paul T. White and Harry L. Thomas, attorneys for the three garment companies, filed a motion to amend the motion to eliminate all picketing at the plants. Judge Brown set hearing on the motion for 9 a. m. Saturday.

Ralph Russell and Frank W. Aylward, attorneys for the union, filed a motion to dissolve the injunction.

"We made the motion on the ground that the companies are coming into a court of equity with unclean hands," said Russell. "We allege that they are operating sweat shops; that they have tried to break up the union organization, and that they have imported a St. Louis strike breaking organization to incite trouble. We charge that the garment companies themselves have been responsible for the trouble at

As soon as receivership authorit... in the Industrial is transferred ... McCammon, control of all buildi... and loan companies in re... in Kansas City will have ... the new supervisor.

(Respondent's Exhibit 53.)

4167

Resp 4.34. BW.

ARMENT UNIONS ET CLOSED SHOP IN 3 MORE PLANTS

tal of Five Factories Have Signed Agreements Here This Week.

hree more Kansas City garment ufacturing companies Friday d closed shop union agree- , two with the International Garment Workers union, a affiliate, and one with the d Garment Workers of Ameri- affiliated with the A. F. of L.

he Theo Azar company, 906-7 adway, and the Mayfair Manu- ring company, makers of wom- undergarments and night cloth- signed with the International Garment Workers an agree- calling for a $13 minimum for hour, 5-day week and arbitra- of any disputes which cannot settled among employer and em- es or employer and union. y were not involved in the re- strikes.

e Goodenow Textile company, Main street, manufacturer of 's underwear, approximately of whose employes went on last week, signed with the d Garment Workers. The ement calls for a 12½ per cent increase and a 40-hour, 5-day . The plant was closed and picketed during the negotiations r a truce agreed to by union company officials.

oyer Perlstein, regional director he International Ladies Garment ers, and Miss Wave Tobin, ess representative, are nego- g with the Camille Azar com- , 1000 Broadway, and with the ourt Garment company.

atter company was one of involved in the strikes af-

'Shower Bath' Coed Is Reported as Missing

K.C. Journal-Post - Apr. 2

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-458 EXHIBIT NO. 34

IN THE MATTER OF

DATE 5-4-37 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

—Acme.

e Martin. The picture of ained her so much notoriety.

G. E. NICHOLSON'S FUNERAL RITES T BE HERE TUESDA

Former K. C. Financier Di Friday in Atlanta, Ga., at 76.

Funeral services for George Nicholson, former president of Kansas City Gas company and Wyandotte County Gas comp and a widely known zinc mine smelter operator, who died Fri night in Atlanta, Ga., will be Tuesday afternoon in Kansas Cit

The honorary pallbearers:

W. T. Kemper	H. P. Wright
Cliff C. Jones	Leslie J. Lyons
George B. Longan	William P. Helm
William O. Holt	L. T. Sunderland
M. B. Nelson	Maj. T. J. Strickle
J. C. Nichols	Judge H. P. McElr
James Kemper	George Cowden
Harry T. Abernathy	Dr. Charles Denn
W. T. Grant	Dr. Frank Ridge
A. L. Berger	W. D. Wight
Albert Newmah	

Walter S. McLucas, Detroit.
Charles Scott, Iola, Kas.
Thomas N. Bowlus, Iola.
Fred Horton, Iola.
G. A. N. Desoulles, New York.
Col. Leigh Hunt, Brownsville, Tex.
Leonard K. Bayer, Birmingham.
J. M. Donnelly, Birmingham.

The 76-year-old financier live Kansas City until four years Since then he had spent much of time in Atlanta where he had b ness interests, although he m tained his Kansas Cit 1028 West Fifty-eighth

Mrs. Nicholson, who w when he died, will acc body back to Kansas C here at 2 p. m. Monday.

Once Kansas' Weal

Once considered the man in Kansas Mr. Ni an important figure in ment of cement plants and zinc mines in the area. He also owned line properties.

(Respondent'

...ka pap... ...ness representative, are nego-...g with the Camille Azar com-...7, 1000 Broadway, and with the ...uri Garment company.
...e latter company was one of ...three involved in the strikes af-...g three companies located, a... Grand avenue. The other two, ...Gernes Garment company and ...don Brothers Manufacturing ...any, signed union agreements ...day.

...t-Joy ...
...ble. Co... ...ould wan... ...alone.
...&C Bu...
...Bird-...
...GAGE ...
...Servi...
...all for ...
...HA. 35...
...HALF ...
...Shoe ...

...APER HITS AT NAZIS

...ifesto Is Circulated in Germany.

...ERLIN, April 10.—(U.P.)—Secret ...e said Saturday a manifesto ...d by a new "German Freedom ..." denouncing the Nazi govern-... and demanding a return of ...racy was printed abroad, ...d into Germany and remailed ... the country.

APR 10 1937

...— Acme.

...e Martin. The picture of ...ained her so much notoriety.

...player in whose arms she ... to portray the "Good ... Kiss" in the life of a Drake ... for a college humor maga-... He hired a substitute when ... Martin failed to report from ...in, N. Y.
...shower bath portrait also was ...of the series. Miss Mar-...ook her Broadway engage-... won after its publication.

'TUFFY' TO HOSPITAL

Insanity Plea Indicated by Defense Move.

Edwin J. (Tuffy) Hucksetine, 21-year-old former newsboy, who is scheduled to go to trial Monday before Judge Brown Harris on a charge of first degree murder, in

BURD RITES MONDAY

Death of Lumberman Was Unexpected.

Funeral services for J. Laurence Burd, vice president and treasurer of the Burd-Miles Lumber company, will be held at 3:30 p. m. Monday in the Stine & McClure chapel, 3235

...an important figure in ...ment of cement plants, ...and zinc mines in the ...area. He also owned ...line properties.

At his death Mr. Nich... ...a cement plant at Atla... ...other at Birmingham, ...other interests. He pion... ...development and oper... ...ment plants in Kansas, ...and Tennessee and had ...in Oklahoma and Kans...

In 1919 Mr. Nichols ...head of a group of Kan... ...italists who purchased ...City Gas company and ...ette County Gas co... ...now controlled by C... ...company.

Born in New ...

Since childhood he ... the Middle West. Born ... January 13, 1881, he ... ...souri with his parents in the ... At 21 he had a thorough prac... ...training in the contracting busi... ...having learned it from his fa... It was then his father took the y... ...into business with him at Jo...

4169

...dent's Exhibit 34.)

Resp 4

GRAIN NOTES

fed receipts of grain in Chicago were 4 cars of wheat, 44 cars 57 cars of oats, 11 cars of rye and f barley.

City elevator stocks of grain in with changes since Monday

	8,850,720;	decrease,	238,370
	77,837;	decrease,	10,878
	380,780;	decrease,	13,234
	29,334;	decrease,	4,149
	90,296;	decrease,	1,286
	91,906;	increase,	2,306
	8,166,383;	decrease,	286,509

receipts of wheat:

	Thurs.	Wk. ago.	Yr. ago.
City	37	36	43
	7	17	7
s	11	3	36
	9	9	8
ills	29	50	189
	30	14	30
	373	336	633
	478	485	945

receipts of corn:

	Thurs.	Wk. ago.	Yr. ago.
City	9	13	34
	30	58	80
	33	37	69
	13	30	86
	104	128	330

receipts of oats:

	Thurs.	Wk. ago.	Yr. ago.
City	3	8	1
	21	21	30
	13	17	13
	13	8	8
	49	54	87

receipts of grain at interior rn markets:

	Wheat.	Corn.	Oats
n	4	..	..
	10	..	..
	9	..	..
h	3	3	3
th	3	..	..
	6	..	..
	5	..	..
	1	..	..

was general during the past 24 r western Canada, with amounts about ½ to ½ inch. Light rains ived in North Dakota, Montana esota as well as in Illinois, In- d Ohio. Indications are for nsettled weather for the North- rday night and Friday. Fair and eather is forecast for the West west.

Cromwell wired Lamson Bros. & Salina, Kas., to the effect that wheat were reported by a state ist in a letter dated April 26 in was stated: "In 1934 the mites injurious to wheat across Kan- the Oklahoma line to Harvey orth of Nebraska, and that fail to over and many garden plants." orn was planted this week, but still much plowing to be done in n for planting. The weekly Wea- bulletin said. Wheat made good nt growth and ranges from poor ood. Oats seeding is about com-

fall of importance was received state during the past week and is generally backward, the weekly crop report said. Rain is ntly needed over most of the

ed Argentine shipments of wheat were 8,248,000 bushels; corn, 7,- shels and oats 482,000 bushels. d open interest in grain futures s City Wednesday were as fol- omitted):

	May.	July.	Sept.	Tot
	666	1,397	326	3,363
	7	131	....	138
	1	..	..	1

CATTLE PRICES SHOW STRENGTH

No Change in Hogs; Sh Quoted Steady.

CATTLE.

Estimated receipts:

	Thurs.	Wk. ago.	Yr.
Kansas City	3,000	1,500	
Chicago	5,000	3,000	
St. Louis	3,200	2,000	
Omaha	6,700	3,000	
St. Joseph	1,000	1,300	
Totals	18,900	10,800	

Receipts of cattle in Kansas City most western market centers were Local arrivals included a fair per of medium to good fat steers and lings. Nothing choice, however, was Trade was fairly active with prices to strong. Early sales on the best and yearlings ranged around $10.50@ Plain to common kinds sold down to

Cows and butcher grades were steady, most cows again selling ar $3.50@6.75, with some medium heifers up to $10.25. Calves were st best veals quoted around $9@10.

The market on stockers and feeders moderately free with kinds just n selling at firm prices and off qu mixed weights and breeds again slow sales were reported around $6@8.50. fleshy feeders fat enough to come packer competition, were returned to country for finishing at $11.30.

HOGS.

Estimated receipts:

	Thurs.	Wk. ago.	Yr
Kansas City	1,000	1,000	
Chicago	13,000	10,000	
St. Louis	6,000	6,000	
Omaha	4,000	4,000	
St. Joseph	3,000	1,500	
Totals	29,000	23,000	

The market on hogs was fairly with prices fully steady with the bes Wednesday. Numerous sales were up to $11.20 paid by both shipper packers. That was the top for the

The bulk of sales sold around 10.20; heavies, $9.90@10.20; mediums @10.20; lights, including light light 10.10; packing sows were higher wit quoted from $9@9.75; stock pigs quoted around $8@8.

SHEEP.

Estimated receipts:

	Thurs.	Wk. ago.	
Kansas City	7,000	5,500	
Chicago	12,000	12,000	
St. Louis	3,000	2,000	
Omaha	4,000	7,000	
St. Joseph	4,000	4,000	
Totals	30,000	31,000	

The market on fat sheep and lam fully steady. Trade, however, was slow and late in starting. Some lambs sold early up to $10.25. lambs ranged around $10.50@10. range of prices was also quoted best fed lambs. Some medium gra lambs sold early at $12.25. Bodi good lambs were quoted $12@12.5 to medium, $11@12; no sales were re on yearlings and ewes were quoted

ESTIMATE FOR FRIDAY.

Kansas City, 300 cattle, 300 calv hogs and 3,000 sheep. Chicago, 1,000 500 calves, 19,000 hogs and 9,000 Omaha, 500 cattle, 200 calves, 3,5

KANSAS CITY PRODUCE

Exchange Prices.

The following prices represent other

K.C. Journal-Post - April 22, 1937

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-1429 PETITIONER RESPONDENT INTERVENOR

EXHIBIT NO. 33

IN THE MATTER OF Donnelly

DATE 4-5-42 WITNESS Reed

DANIEL W. BOSS, OFFICIAL REPORTER

BY R. W. Boss

DONNELLY WORKER WILL BE SENT TO UNION CONVENTION

Garment Organization Seeking Support for Strike at Plant.

Sylvia Hull, an employe of the Donnelly Garment company, has been named a delegate from Kansas City to the International Ladies' Garment Workers' union biennial convention May 3 at Atlantic City. Meyer Perlstein, regional director, announced Thursday.

The Donnelly worker, according to Perlstein, was one of a committee from that garment company who appeared Wednesday night before a joint group representing various Kansas City locals and requested representation at the national convention.

Perlstein said the Donnelly committee desired one of their number to appear at the convention and ask the international body to indorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours and improved conditions. The Kansas City joint committee, Perlstein asserted, agreed to pay all expenses of the Donnelly delegate.

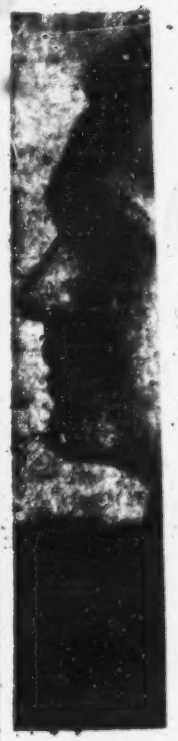
Other delegates from Kansas City are

Cinderella Robinson and Grace Ballard, members of local No. 710 and employed by the Brand & Puritz company; Louise Smith, local No. 114, employed by the Laverne Coat shop; Anna Koval, local No. 114, employed by the Fashionbuilt Garment company; Arlean Gaither, local No. 118 employed by the Gordon Brothers Manufacturing company; Ora Thornton and Annis Vaughan, local No. 250, employes of the Western-Bingman-Prins company, and Mary Wave Tobin, business representative of the Kansas City locals.

Perlstein said the executive committee of the various local unions in Kansas City would meet Thursday afternoon to consider a resolution calling on the national organization to appropriate funds to carry on a strike at the Donnely plant.

The delegates from this section will meet April 30 in St. Louis to go to Atlantic City by special train. Perlstein will be a delegate from St

Electe



Mrs. Arthur McGee street, president of th club for the ex

VITAL S

MARRIA Issued b

Harry Schlosser Thelma

Oayal W Geraldin

Leonard Jessie M

Othello Fannie

James E Annette

George Dorothy

Dr. Kent Dorothy

Henry A Helen M

Raleigh Cora L

Percy A Bessie

Richard Edna W

Joseph Margare

John Bl Mary A

(Respondent's Exh

's Exhibit 35.) 4171

ed Argentine shipments of wheat were 8,248,000 bushels; corn, 7,- shehis and oats 482,000 bushels. id open interest in grain futures s City Wednesday were as fol- omitted:

	May	July	Sept	Tot
	860	1,307	325	2,523
	7	131	....	138
	1	....	....	1
	4,448	5,943	3,670	13,019
	788	896	....	1,184
	152	....	....	152

receipts and shipments of lead- s in bushels:

—	Thurs.	Wk ago	Yr ago
	272,000	268,000	324,000
	407,000	237,000	824,000
	313,000	150,000	190,000
ts—			
	511,000	228,000	370,000
	173,000	178,000	530,000
	436,000	353,000	173,000

shington correspondent of the Times states that owing to the r economy the AAA has aban- ne for developing in the "near farm plans built around the anary crop insurance and ten- rogram. Secretary Wallace, al- luctant to discuss the effect of my drive upon his agricultural quoted as conceding that unless ey was forthcoming to finance hole thing will go out of the

best fed lambs. Some medium good lambs sold early at $12.35. Medi- good lambs were quoted $12@12.50 to medium, $11@12; no sales were re on yearlings and ewes were quoted $6

ESTIMATE FOR FRIDAY.

Kansas City, 200 cattle, 300 calves hogs and 2,000 sheep. Chicago, 1,000 300 calves, 10,000 hogs and 9,000 Omaha, 800 cattle, 200 calves, 3,500 and 4,000 sheep. St. Joseph, 600 400 calves, 3,000 hogs and 4,500 sheep.

CHICAGO LIVE STOCK

CHICAGO, April 12.—(UP)—HOGS—Receipts 13,000, including 5,000 directs. Market strong to 10c higher early. Top $10.40; bulk good and choice 200-320 lbs., $10.20@10.40; 150-190 lbs. $9.75@10.25; good packing sows, 330-550 lbs., $9.00@9.50; best pigs, $8@9.50.

CATTLE—Receipts, 6,000; calves 1,500. Good and choice fed steers and yearlings slow, steady; common and medium grade active and firm to shade higher; those selling at $10.50 down; no strictly choice offerings here; bulk $9.75 to $11; best steers around $14; but very few above $12.50. All she-stock unevenly firm to 25c higher; both cows and heifers especially common and medium grades, selling at new high on crop. Bulls firm to 10c higher; weighty sausage bulls selling at $7; vealers about steady at $8.50@10, very few selected chipper kinds $10.50; stockers and feeders more active at $7@8.50.

SHEEP—Receipts 12,000, including 4,000 [illegible]

Victoria, 90c@$1.

NEW POTATOES—Texas Triumphs, 50-lb. sack, U. S. No. 1, $1.65@1.85; No. 2, $1.10@1.25.

PEAS—California, bushel hamper, $2.25@2.50.

Fruits.

BANANAS—Pound, in bunches, 4½@4½c.

ORANGES—Florida, [illegible] Valencia, $4.50@5.25; California, navels, small to medium, $3.50@3.75; large, $4.50@5.

LEMONS—California, box, fancy, 300s, $6.75; choice, 360s less.

APPLES—Western, boxes, Delicious, extra fancy, $2.50@3; Winesaps, extra fancy, $2.25@2.50; fancy, $2.25.

GRAPEFRUIT—Texas, box, Marsh seedless, $3.25@3.75; Florida, $3.50@4.

STRAWBERRIES—Louisiana, 24-pint crate, Klondike quality, $3@3.10.

CHICAGO PRODUCE

CHICAGO, April 12.—(UP)—EGGS—Market, firmer; receipts 36,799 cases. Fresh graded firsts, 23c; dirties, 19½c.

tion calling on the national organization to appropriate funds to carry on a strike at the Donnely plant.

The delegates from this section will meet April 30 in St. Louis to go to Atlantic City by special train. Perlstein will be a delegate from St. Louis. The convention will last two weeks.

DEATHS AND FUNERALS

Baker, Leon — Lan, Berlha Harvey
Frazier, Eva Luella — Nichols, James F.
Gayton, Elizabeth — Taylor, Hyman
Burns — Waldon, Lillie M.

BAKER—Funeral services for Leon Baker, 50 years old, 3402 Indiana avenue, who died Tuesday at his home, will be held at 2 p. m. Friday in the Quirk & Tobin chapel, Linwood boulevard and Main street. Burial will be in Memorial Park cemetery. Surviving are his widow, Mrs. Ella Baker, of the home, and two sisters, Mrs. William Gough, Chanute, Kas., and Miss Mabel E. Baker, Chicago.

FRAZIER—Funeral services for Mrs. Eva Luella Frazier, 48 years old, who died Wednesday night at her home, 1439 Belle-fontaine avenue, will be held at 2 p. m. Friday in the Forster chapel, 918 Brooklyn

Chas. Le
Percy A.
Bessie O
Ise
Richard
Edna W
Joseph P
Margare
John Bi
Mary Ar

Arthur
Ellen
Mary
Grace

Marie
Rosem
France
Lillian
Myrtle
Wilma
Pearl
Bessie
Dorothy M. again
Shirley against
Sophie V. against
Mildred against
Alma against
Hazel E. against
Hedwig against
Filed in W
Clarissa against
Effie C. against
Muriel W. against

Trailer company of Detroit, the Friedman-Harry Marks Clothing company, Inc., of Richmond, and the Associated Press, were 5 to 4 decisions.

One Opinion Is Unanimous.

The court was unanimous in the Washington, Virginia and Maryland Coach company case.

Justice Roberts, who has held the balance of power in some 5 to 4 decisions, delivered the 5 to 4 opinion holding the Wagner act did not violate freedom of the press and could be applied to the Associated Press. He also delivered the unanimous decision in the Coach company case.

Chief Justice Hughes, who was 75 years old yesterday, delivered the opinions in the other three cases. Mrs. Hughes, from a front row seat, listened intently.

The four dissenting justices—McReynolds, Sutherland, Van Devanter and Butler—in an opinion read by McReynolds, contended the court's rulings in the Wagner cases reversed the view of interstate commerce expressed in decisions outlawing NRA and the Guffey coal act.

In these two decisions, the court had said:

"The local character of mining, of manufacturing and of crop growing is a fact, and remains a fact, whatever may be done with the products."

"Employees," Hughes asserted in the Jones & Laughlin decision, "have as clear a right to organize and select their representatives for lawful purposes as the respondent (steel corporation) has to organize its business and select its own officers and agents."

Issue in Sit-Down Strikes.

The question of collective bargaining, upheld by the court in businesses engaged in interstate commerce, has been the major point of dispute in the recent series of sit-down strikes.

Under the decision, the legislation is applicable to all businesses held to be in interstate commerce.

The ruling, holding that a steel company, a trailer company and a clothing manufacturing concern were engaged in interstate commerce, broadened the applicability of the statute far beyond what its opponents contended were the proper boundaries.

The coach company admitted its activities were in interstate commerce.

In each of the five separate decisions, the tribunal sustained orders of the national labor relations board directing the reinstatement of employees who had been discharged for what the government contended were "unfair labor practices."

The Minority Is Unchanged.

Justice McReynolds delivered the dissenting opinion in the steel, coach company (trailer) and clothing company cases, with Justices Van Devanter, Sutherland and Butler concurring. Justice Sutherland read the dissent in the Associated Press case. The same justices were in the minority in each 5 to 4 decision.

Reading rapidly from the steel opinion and frequently glancing about the packed courtroom, Hughes asserted that "the steel industry is one of the great basic industries of the United States, with ramifying activities affecting interstate commerce at every point."

"The government," he continued, "aptly refers to the steel strike of 1919-1920 with its far-reaching consequences. The fact that there appears to have been no major disturbance in that industry in the more recent period did not dispose of the possibilities of future and like dangers to interstate commerce which Congress was entitled to foresee and to exercise its protective power to forestall.

Congress Within Rights.

respect to the free and appropriate exercise of the right of selection and discharge."

The chief justice said the Wagner law in its present application "goes no further than to safeguard the rights of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer."

"That is a fundamental right," Hughes continued. "Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents."

(Wirephoto)

MORRIS WATSON, EDITORIAL EMPLOYEE OF THE ASSOCIATED PRESS, TODAY ORDERED REINSTATED IN HIS POSITION BY THE UNITED STATES SUPREME COURT IN ITS FIRST DECISION INVOLVING THE WAGNER ACT.

Trailer Opinion by Hughes.

The opinion in the Fruehauf Trailer case, also delivered by Chief Justice Hughes, upheld an order by the national labor relations board directing the company to reinstate seven dis-

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week:

The court also ordered the property restored to the trustees. The apartments were valued at about $400,000 each in the application for the writ.

The writ was made returnable in thirty days in the supreme court for argument on the merits. The petitions listed Barnet L. Rosset, Charles J. Young and Rhodes as trustees for the Riviera and the same group, with Clark, as trustees for the Villa Locarno.

The receivership application was filed before Judge Bird April 7 by Fred L. Bellemere, Kansas City lawyer, representing Mrs. H. V. Carson, a bondholder.

The application for the writ of prohibition said the receivership was granted by Judge Bird without any notice to the trustees or without giving them an opportunity to be heard. The trustees also alleged the granting of the receivership was a "palpable abuse of discretion" on the part of Judge Bird.

Rhodes and Clark were here to appear before the court today to urge the prohibition and Bellemere appeared to oppose the writ. The court considered the matter in conference after hearing the arguments of the lawyers.

It also was alleged that Werby took possession of the apartments immediately after the receivership was granted by Judge Bird. The order of the supreme court will restore the management of the two apartments to the trustees pending a final determination of the writ by the supreme court.

MRS. BRILL MAY GO TO JAPAN.

No Chance for Reconciliation With Mate, She Says.

(By the Associated Press.)

LOS ANGELES, April 12.—Mrs. Nan Pierson Brill, whose wealthy husband, William Hunsaker Brill, is seeking an annulment of their marriage, said yesterday she planned to leave this week for Japan, "to get away from it all."

Mrs. Brill, accompanied by two bodyguards, who so far have succeeded in keeping her from being served with official notice of the suit, spent the day at the beach.

"There isn't a chance for a reconciliation now," she said. "I've lost five pounds this week from worry over the embarrassment Bill has caused me."

THE KANSAS CI

)2. KANSAS CITY, APRIL 7, 1937—WEDNESDAY-

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HELEN MORGAN WILL BE WED.

Marriage to Unidentified American Is Plan of Singer.

(By the Associated Press.)

NEW YORK, April 7.—Helen Morgan, night club singer, sailed today, and said, "While abroad I am going to meet the man I love and marry him." The singer refused to identify the man, but said he is an American.

TRY FOR PERPETUAL MOTION.

The Patent Office Points Six Ap-

K.C. Star - April 7, 1937
NATIONAL LABOR RELATIONS BOARD
CASE NO. C-34 EXHIBIT NO. 34
IN THE MATTER OF
DATE 4-5-42 WITNESS
DANIEL W. ROSS, OFFICIAL R
BY

WOMEN'S BATTLES STOP

POLICE DIRECTOR TAKES CHARGE AT 2017 GRAND.

Garment Workers Enter Peacefully Between Lines of Officers—Seven Contempt Citations Are Served.

Police put a stop to the violence today at the three garment companies at 2017 Grand avenue where beatings, clothes tearing, and hair pulling have resulted between workers and union pickets. At the same time deputy sheriffs served seven of the twenty-one contempt citations issued by Judge Dustin A. Brown.

Otto P. Higgins, director of police, took charge of the police contingent this morning, and workers were insured peaceful entrance to the plants.

THROUGH LINES OF POLICE.

Under Higgins's direction a line of uniformed officers was formed on each side of the freight elevator at the rear entrance of the building.

Yesterday, despite citations of contempt of court, and fifty-two policemen, there were skirmishes between union pickets and women workers, and many of the latter were kept from their jobs.

Today Director Higgins stood on the rear of a police patrol bus parked just opposite the freight elevator, and issued orders to his men to preserve order. The block on Walnut street was kept clear of motor cars, except those taking workers to the plants of the Gordon Brothers Manufacturing company, the Gerbes Garment company, and the Missouri Garment company, whose employees the International Ladies Garment Workers' Union of America has been attempting to organize.

TIRED OF DISTURBANCES.

From the time of the [illegible]

THE WEATHER—RAIN PROBABLE.

12 midnight	64	9 a. m.	46
1 a. m.	63	10 a. m.	48
2 a. m.	62	11 a. m.	48
3 a. m.	60	noon	50
4 a. m.	61	1 p. m.	51
5 a. m.	61	2 p. m.	53
6 a. m.	62	3 p. m.	*53
7 a. m.	62	4 p. m.	*53
8 a. m.	60		

*Unofficial.

The Forecast—Kansas City and Vicinity: Rain tonight and probably Thursday morning; slightly cooler.

Relative humidity, noon, 48 per cent. Wind velocity, noon, 11 miles; from the east.

River stage today, 7 a. m., 0.3 foot; fall of .3 foot.

Precipitation in twenty-four hours ending 7 a. m., .60 inch.

Lake of the Ozarks, 7 a. m., 2.7 feet below full reservoir.

[Government forecast for grain area on market page.]

SEARCH FOR THE LINDYS

NO GREAT ALARM IS FELT FOR THEM, HOWEVER.

Unreported Since They Left Zagreb, Jugo Slavia, Yesterday, the Fliers Are Sought by Austrian Planes.

(By the Associated Press.)

VIENNA, April 7.—All Austrian gendarmes, especially those in Alpine posts, were instructed today to be on the alert for some sign of Col. and Mrs. Charles A. Lindbergh, unreported since they took off from Zagreb, Jugo Slavia, yesterday morning.

Airplanes made search flights from Innsbruck, Salzburg, Klagenfurt and Graz, but a systematic hunt was difficult because of bad weather.

Presumably the Lindberghs were on the way to their English home.

FUEL FOR SHORT FLIGHT.

When they left Zagreb the Lind-

SNORES ON TRAIN TRAC

Engineers Are Slumbering I in Time to Stop.

(By the Associated Press.)

CINCINNATI, April 7.—John Do Washington, Negro, was "jes' so he lay down to sleep—his he the inside rail of one track an feet across the inside rail of an high on a Cincinnati trestle.

Engineers of an outbound trai an inbound train saw him in ti stop.

Police were summoned. D hardly opened his eyes as the him into headquarters.

REPORT GOLD PRICE CU

Rumor, Later Denied, Causes in Commodities.

(By the Associated Press.)

NEW YORK, April 7.—Prices of commodities dipped sharply following broad recessions in the don metal exchange and report nied in Washington, that the g ment contemplated reducing the of gold as a measure against tendencies.

Copper futures broke 1 c pound, the limit for a single trading, on the New York comm exchange, cotton futures were much as $1.50 a bale, and futures sagged as much as 40 pound. Later cotton steadie prices improved somewhat.

The stock market opened ge lower with motors, steels and shares lower. Despite the sett of the Chrysler strike, shares company sold off more than 6

Others to lose from $1 to cluded Bethlehem Steel, United Steel, Goodyear Rubber, Am Copper, Kennecott Copper, In tional Harvester, American Sm & Refining and Standard New Jersey.

In the bond market there was tional recessions all along the but trading was not heavy.

K.C. Stay
NATIONAL
CASE NO. 1242
IN THE MATTER
DATE 5-4-2
DANIEL
BY

A friend of the actor had reported in Madrid the side of his face had been creased by a machine gun bullet.

PRESS ON TO WRECKED PLANE

Pilot Reports Searching Party Is on Right Track.

(By the Associated Press.)

WINSLOW, ARIZ., April 7.—Maj. A. D. Smith, pilot of a twin ship of the Douglas air liner that crashed on the slopes of the White Mountains, radioed Transcontinental and Western Air Express field here today that ground parties were still "seven or eight miles" from the wreckage when he dropped flares to guide them shortly after 10 o'clock.

the Gordon Brothers Manufacturing company, the Gerbes Garment company, and the Missouri Garment company, whose employees the International Ladies Garment Workers' Union of America has been attempting to organize.

TIRED OF DISTURBANCES.

From the rear of the patrol bus Higgins said:

"The workers are going in—and going peacefully. I told Miss Tobin (Wave Tobin, representative of the union) Monday afternoon that the fights were going to stop, and the pickets no longer were going to make fools out of constituted authorities, and beat these women workers up.

"I told her it would stop, and that if it didn't, she would be the first to go to jail.

"Peaceful picketing is all right, but when they bring in outsiders and paid agitators, that's different.

"And it's going to stay stopped," he declared emphatically. "We can't keep all these officers tied up here forever and risk endangering the rest of the city by lack of protection."

Higgins said a majority of the women pickets were hired by the union at $1 a day and a street car pass.

The seven women appeared later before Judge Brown and, at the suggestion of the court, the hearing was continued until 9 o'clock Monday morning. The two deputy sheriffs told the court they believed they would be able to serve the citation orders on the remainder of the women by Monday. The women who appeared were Miss Tobin, Clara Seaton, Pat Wilbourne, Anna Eupka, Mary Johnson, Ellen Frye and Rosalie Poole.

Lawyers for the garment companies today filed a motion to modify the injunction granted a week ago to en-

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Airplanes made search flights from Innsbruck, Salzburg, Klagenfurt and Graz, but a systematic hunt was difficult because of bad weather.

Presumably the Lindberghs were on the way to their English home.

FUEL FOR SHORT FLIGHT.

When they left Zagreb, the Lindberghs were reported to have only enough gasoline to carry them to Austria, about two hours from Zagreb by air.

Friends of the Lindberghs in England were not worried, indicating they believed the Lindberghs were safe whether they landed secretly at some scheduled spot or had come down at some remote landing field.

OFFER THEIR CAUSE OF ALARM.

When they left England in February, at the start of a tour that was to take them all the way to India, the Lindberghs were "lost" for twenty-four hours after their departure.

It was learned eventually they had landed at Pisa because of fog and stormy conditions and embarked upon a sightseeing tour of the famous city without advising anyone of their unscheduled stop.

Later they were out of touch with the world for several days while in India, and at that time there was keen anxiety.

Pilots at the Zagreb airport still were waiting for the telegrams they said Lindbergh promised to send them "upon landing any place."

TRAP INJURES ITS MAKER.

One-Legged Farmer Loses Other Leg in Explosion.

(By the Associated Press.)

ROCKPORT, IND., April 7.—Weary of corn thievery, Frank Coleman,

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company sold off more than $6

Others to lose from $1 to $ cluded Bethlehem Steel, United Steel, Goodyear Rubber, Am Copper, Kennecott Copper, In tional Harvester, American Sm & Refining and Standard New Jersey.

In the bond market there wer tional recessions all along the but trading was not heavy.

Heavy foreign selling was a of the commodity decline. Tr ports said London had heard ports of a possible reduction gold price and that this, co with expressed fears that the w paredness demand for comm was falling off, started the dip

In all North American g grains were off by from around a bushel to 1¼ cents. In New silk, hides and coffee futures

New York bankers said they expect a reduction in the gold although they acknowledged within the realm of possibility ducing the gold price, set sinc 1934 at $35 an ounce, would te tomatically to lift the value currency dollar, although th content of the dollar would not sarily change.

A rise in the value of the would force prices lower in rela it and thus act as a deflation restrictive measure against a tion.

NAZIS TRY FOUR CATHO

Chaplains Are Accused of M With Communists.

(By the Associated Press.)

BERLIN, April 7.—Accused c treason, four high-ranking ch of the Catholic youth organ went on trial with three othe mans today in the Nazi picke ple's court. They were charge subversive activity in trying t "a united Communist-Catholic The leading figure was Josef

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he dropped flares to guide them shortly after 10 o'clock.

Major Smith said he saw several automobiles parked near the group, indicating they were waiting for his directions before pressing on into the rugged area where the plane was sighted yesterday.

"I circled over the spot about thirty minutes," Major Smith told T. W. A. operators here. "The searchers were headed in the right direction when I left. I don't think they will have any trouble finding the location now."

FHA EYES BUILDING BOOM.

Control Measures Will Be Used to Fight Inflation.

(By the Associated Press.)

WASHINGTON, April 7.—Federal housing administration officials said today they were ready to use several instruments of control against any runaway boom in residential construction.

Inflationary evils in real estate, they said, would impair the building program.

The average of all home building costs, including real estate, housing authorities estimated, advanced about 20 per cent in the last six months. Most of the increase came since the first of the year.

The FHA could combat inflation, officials said, by holding property appraisal for insurance to long-range values, which may be substantially below temporary boom values, they said.

MORE RAIN IS EXPECTED.

Slightly Cooler Tomorrow, Mr. Hamrick, Forecasts.

RAIN IN DUST BOWL.

TRIBUNE, KAS., April 7.—(A. P.)—A soaking rain started falling here early today, boosting crop prospects over the area. It was the best rain so far this year.

Rain tonight and probably Thursday morning, and slightly cooler is the forecast. Mr. Hamrick does not expect the mercury to go above 50 degrees tomorrow. The wind will be from the northwest.

No rain was reported today east and south of Kansas City, but good falls all less than an inch, were reported from Southeast Nebraska, Iowa, Kansas and Northwest Missouri. Lexington had 11 inch; Maryville, .45; St. Joseph, .16; and Kidder, .04. These reports came from Kansas:

Topeka	.07	Lawrence	.06
Concordia	.11	Manhattan	.09
Hanover	.27	Phillipsburg	.27
Horton	.10		

The Kansas City rain table:

Rainfall today	.06
Rainfall this month	.28
Deficiency this month	.33
Rainfall this year	6.35
Excess this year	.16

—Kansas City Star Photograph.

OTTO P. HIGGINS, DIRECTOR OF POLICE, TAKES COMMAND OF THE GARMENT WORKERS' DISTURBANCE TODAY, AND LAYS DOWN THE LAW . . . NO DISTURBANCES.

join the union members from violence. They seek to enjoin the union women from picketing in any form. A hearing was set for 9 o'clock Saturday. At the same time lawyers for the union filed a motion to dissolve the injunction. The motion will be heard after the modifying motion is heard.

The seven citations for contempt of court were served at the scene today by Matt Shmnick and Harry Skinner, deputy sheriffs. They were unable to find the remainder of those named.

Miss Tobin was the first served.

Miss Tobin had changed her customary attire of gray fur coat and white silk shirtwaist to a more somber garb of black woolen coat, smart gray tailored suit, and trim black felt hat.

RACIAL CLASH IN PRISON.

AUBURN, N. Y., April 7.—(A. P.)—Twenty inmates of Auburn prison[illegible]

1-legged farmer, set a trap near his crib which would explode dynamite when the crib door was opened.

Coleman forgot about the trap when he went to the crib yesterday. He opened the door. The dynamite blew off his other leg, destroying the crib and tore a 4-foot hole in the ground.

He was taken to an Evansville hospital in dangerous condition.

TWO DIE IN CRASH OF SHIPS.

LONDON, April 7.—(A. P.)—The captain and one member of the crew of the Glasgow steamer Lairdsmoor drowned today when the liner collided with the motorship Taranaki in a thick early morning fog in North Channel, between Black Head Cape Ireland, and the coast of Wigtonshire Scotland. The Lairdsmoor sank.

BLOCK BAR ON ALIEN ARTISTS.

WASHINGTON, April 7.—(A. P.)—The house immigration committee subcommittee [illegible]

"a united Communist-Catholic
The leading figure was Josef
saint, provincial chaplain
Duesseldorf Catholic youth
Rossaint and Chaplain Karl
er su Remscheid, it was c
acted in full agreement with
lain Frans Steber, leader
Catholic Young Men's Asso
in Germany.
The prosecution alleged
Clemens, general secretary of
sociation, permitted sub-lead
the Catholic organization t
with Communist functionaries

NO ARRESTS IN SLUGG

**Police Seek Three Men in
on City Firemen.**

The three men sought by th
for the slugging of city firem
terday had not been arrested
The sluggers were reported
visited three fire stations, o
doors to the Country Club pol
tion, and attacked firemen
blackjacks.

A BLACK LEGION AMONG

**Activities in Arizona Are C
to Influence of Film**

(By the Associated Press.)

TUCSON, Ariz., April 7.—Arc
activities of a gang of boys wi
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LONG WENDEL C

**Two Convicted in
Twenty Years**

NEW YORK, April
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Lindbergh kidnaping
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Governor Hoffman having
grant the extradition papers
Wendel was kidnaped by
February 14, 1935, from in
Manhattan hotel and taken
to Brooklyn. He was held
ten days and allegedly tort

(Respondent's Exhibit 36.)

41-3

SAS CITY STAR.

TY, APRIL 8, 1937—THURSDAY—24 PAGES. PRICE:

WEATHER—GENERALLY FAIR.

ights	42	9 a. m.
	43	10 a. m.
	43	11 a. m.
	43	12 noon.
	43	1 p. m.
	42	2 p. m.
	42	3 p. m.
	42	4 p. m.
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Forecast—Kansas City a
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INJURED IN HUMANE ACT.

K.C. Star- April 8, 1937

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-136

DANIEL W. ROSS, OFFICIAL REPORTER

A BREAK IN LABOR ROW

GERNES PLANT AT 2617 GRAND AVENUE IS UNIONIZED.

Agreement Signed Today Provides for Separate Bargaining Group —No Settlement in Two Other Disputes.

The labor troubles of the Gernes Garment company on the third floor of the building at 2617 Grand avenue, scene of many battles between women, were terminated today with the signing of a contract by Meyer Perlstein, regional director of the International Ladies Garment Workers' union, and A. B. Gernes, president of the garment concern.

There was, however, no indication that two other garment manufacturing concerns, tenants in the same building, would make peace with the union organizers.

The Gernes agreement was formulated in conferences in Perlstein's room at the Hotel Muehlebach. It provides for the formation of a separate local organization of the union exclusively for employees of the Gernes plant. That local union will be the sole bargaining agency of the workers in that plant in the future. A 3-year contract was signed, it was said.

The Gernes employees' organization will be an affiliate of the International Ladies Garment Workers' union.

Under the contract, women employees will receive a minimum of $13 a week, with a higher basic rate for more productive workers. A minimum of $10.40 a week will be paid to women apprentices for the first six weeks of employment. The settlement does not affect the dispute in the Gordon Brothers Manufacturing company and the Missouri Garment company, also operating in the same building.

Since the labor trouble began at 2617 Grand avenue March 17, employees of all three concerns have been using a freight elevator on the Walnut street side of the building. No provision was made in today's settlement for special identification of

New Strike and Ford Controversy Enter Struggle.

(By the Associated Press.)

Organization of Ford Motor company employees becomes next goal of United Automobile Workers of America.

Employees of General Motor plant at Oshawa, Ontario, walk out after break in negotiations.

Henry Ford says his company will recognize no union; John L. Lewis says motor magnate "will change his mind."

Negotiations on Hudson Motor Car company strike under way.

Ninety thousand motor car workers ready to return to jobs.

William Green, president of the American Federation of Labor, to call executive committee to consider expulsion of C. I. O. unions.

SEE MORE SITTER ROUTS

REPRESENTATIVES SAY HERSHEY INCIDENT WILL BE REPEATED.

Bloodshed in Other Strikes Is Predicted by Lawmaker Who Boosts Probe—Battle Stirs the Capital.

WASHINGTON, April 8.—The action of infuriated farmers in driving sit-down strikers out of the Hershey Chocolate factory in a hand-to-hand battle, brought predictions from members of Congress today of bloodshed all over the nation unless sit-down strikes are stopped.

The bloody fray at Hershey excited more interest among lawmakers studying the sit-down questions than any other thing that has happened since the first seizure of the General Motors plant in Michigan.

SERIOUS TROUBLE IS SEEN.

"This means there is going to be serious trouble," said Representative

C. I.

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E DIRECTOR LOOKS ON.

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Higgins explained, is to
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They will nip riots in the
director said.
sses are to be held each
Thursday and Saturday
til 11:30 o'clock in the gym-
until the men become ex-
ju-jitsu.

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brought $350 in the numismatic market yesterday. It was an uncirculated specimen of the Panama-Pacific commemorative coin issued in 1915. It is said to be the most valuable of the various commemorative coins issued by the United States. An octagonal $50 gold piece issued in San Francisco in 1852 sold for $240.

ALABAMA TORNADO KILLS.

Many Also Injured by Storm Which Hits Village.

(By the Associated Press.)

TROY, ALA., April 3.—A tornado killed at least one person injured numerous others and leveled houses in a lumber mill village at Brundidge, Ala., today. Fred Crowley, 12, was known to be dead.

L. R. Ray, a justice of the peace at Troy, said he was informed the storm struck the mill village, half a

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The Gernes employees' organization will be an affiliate of the International Ladies Garment Workers' union.

Under the contract, women employees will receive a minimum of $13 a week, with a higher basic rate for more productive workers. A minimum of $10.40 a week will be paid to women apprentices for the first six weeks of employment. The settlement does not affect the dispute in the Gordon Brothers Manufacturing company and the Missouri Garment company, also operating in the same building.

Since the labor trouble began at 2617 Grand avenue March 17, employees of all three concerns have been using a freight elevator on the Walnut street side of the building. No provision was made in today's settlement for special identification of the Gernes employees. It was said peaceful picketing under police supervision would continue.

The Gernes company employs 200 persons.

GARMENT WORKERS ARE SAFE

Eighteen Patrolmen on Guard When Women Enter Plants.

Otto P. Higgins, director of police, was present again today where disturbances and violence had occurred at the three garment companies at 2617 Grand avenue when union pickets attempted to prevent workers from entering the plants. Today the workers entered the rear entrance on Walnut street peacefully between two lines of eighteen patrolmen. Eight pickets made no attempts to stop the workers.

WALK THROUGH FIERY PIT.

WASHINGTON, April 3.—The action of infuriated farmers in driving sit-down strikers out of the Hershey Chocolate factory in a hand-to-hand battle, brought predictions from members of Congress today of bloodshed all over the nation unless sit-down strikes are stopped.

The bloody fray at Hershey excited more interest among lawmakers studying the sit-down questions than any other thing that has happened since the first seizure of the General Motors plant in Michigan.

SERIOUS TROUBLE IS SEEN.

"This means there is going to be serious trouble," said Representative Dies of Texas, Democrat, who is sponsoring a resolution for investigation of sit-down strikes.

"This thing has just begun. It is going to spread. There will be bloodshed unless public authority acts with courage. There will be vigilante organizations taking the law in their own hands if the sit-down strike wave continues, just as the farmers did at Hershey.

SENATE IS GIVEN BLAME.

"And, say what you will, those leading these strikes believe that the government is with them. The fact that the senate adopted a pussy-footing resolution will increase that belief.

"The sit-down strike has got out of the hands of those who started it. Regardless of what Secretary Perkins says about their being of the wage

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(Respondent's Exhibit 37.)

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THE WEATHER—GENER-

week.

The court also ordered the property restored to the trustees. The apart-

WAGNER ACT IS UPHELD

Supreme Court in Epochal Rulings Gives National Labor Board Control Over Employer-Employee Relationships in Interstate Commerce Businesses.

BIG NEW DEAL VICTORY

Decision, Split 5 to 4, in Jones and Laughlin Case Widens Scope of Interstate Commerce Clause.

The Only Unanimous Ruling Brings Bus Company Under Federal Control of Transportation.

ASSOCIATED PRESS ALSO LOSES

Justice Roberts Reads 5 to 4 Decision That Denies Interference With Freedom of the Press.

(By the Associated Press.)

Washington, April 12.—The Supreme court gave the government a major victory today by upholding constitutionality of the Wagner labor relations act as applied to all business engaged in interstate commerce.

Four of the Supreme court's decisions, involving the Jones and Laughlin Steel corporation of Pittsburgh, the Fruehauf Trailer company of Detroit, the Friedman-Harry Marks Clothing company, Inc., of Richmond, and the Associated Press, were 5 to 4 decisions.

Court Divides 5 to 4 in Support of Wagner Act.

Washington, April 12.—The Supreme court today upheld the constitutionality of the national labor relations act in five separate opinions which dealt with news transmission, interstate bus traffic and the manufacture of steel.

The court divided, 5 to 4, with Justices Sutherland, McReynolds, Van Devanter and Butler in the minority, in upholding constitutionality of the Wagner act in the Jones & Laughlin Steel corporation case; the Fruehauf Trailer company of Detroit; the Friedman-Harry Marks Clothing company, Inc., of Richmond and the Associated Press.

It was unanimous in only one decision: that involving the Washington, Virginia & Maryland Coach company.

reasons than such intimidation and coercion.

"The true purpose is the subject of investigation with full opportunity to show the facts. It would seem that when employers freely recognize the right of their employees to their own organizations and their unrestricted right of representation there will be much less occasion for controversy in respect to the free and appropriate exercise of the right of selection and discharge."

K.C. Star- April 12, 1937

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138 EXHIBIT NO. 38

IN THE MATTER OF

DATE 8-5-42 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

caused me."

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TATORS AT HISTORIC SUPREME COURT ESSION TODAY—(Wirephoto).

rsons who went to the supreme court building in Washington today were ey the Wagner labor relations act was upheld. Here is the vanguard of the or and hoping to be admitted.

Congress Within Rights.

"It is not necessary again to detail the facts as to respondent's (Jones & Laughlin) enterprise. Instead of being beyond the pale, we think that it presents in a most striking way the close and intimate relation which a manufacturing industry may have to interstate commerce and we have no doubt that Congress had constitutional authority to safeguard the right of respondent's employees to self organization and freedom in the choice of representatives for collective bargaining."

(The legislation guaranteed collective bargaining to workmen and set up the national labor relations board to aid in settling industrial disputes. It was termed "labor's magna charta" by William Green, president of the American Federation of Labor.)

"Employees," Hughes continued, "have correlative right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. Restraint for the purpose of preventing an unjust interference with that right cannot be considered arbitrary or capricious. . . .

A Right to Hire and Fire.

"The act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other

[illegible] labor relations board directing the company to reinstate seven discharged employees.

"We have examined respondent's (trailer company) contentions," Hughes asserted, "and we are of the opinion that the findings of the board, with respect to the nature of the respondent's business and the circumstances of the discharges complained of are supported by the evidence."

The chief justice said "the questions relating to the construction and validity of the act have been fully discussed" in the court's opinion, just delivered, upholding the act, as applied to the Jones & Laughlin Steel corporation.

"We hold that the principles there stated are applicable here," he concluded.

Bus Decision by Roberts.

In the bus company decision, Justice Roberts said:

"The act limits the jurisdiction of the board to instances which fall within the commerce power and if the board should exceed the jurisdiction conferred upon it, any party aggrieved is at liberty to challenge its action."

"The right to contract," McReynolds asserted in his dissent to the steel ruling, "is fundamental and includes the privilege of selecting those with whom one is willing to assume contractural relations. This right is unduly abridged by the act now upheld.

"A private owner is deprived of power to manage his own property by freely selecting those to whom his manufacturing operations are to be

(Continued on Second Page.)

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(Respondent's Exhibit 38.)

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who
and

Well, I'll Tell You—

By Bob Burns.

other circumstance which aroused suspicion, he pointed out, was the fact the vote on a constitutional amend-

WAGNER ACT VALID

(Continued From First Page.)

entrusted. We think this cannot lawfully be done in circumstances like those here disclosed.

"It seems clear to us that Congress has transcended the powers granted."

Although Justice Sutherland read his dissent to the Associated Press decision immediately after it was delivered, Justice McReynolds did not announce his dissent to the other three cases until after all had been decided.

Sutherland Is Brief.

Looking over the audience, he said: "I have written our joint views and I will not stop to read it. I think I can give you some understanding of what these opinions mean."

He then read provisions of the act and said it did not "prohibit strikes."

"This act is leveled at employers," he continued. "The character of employment has nothing to do with it. We are told the act is intended to prevent employers from discharging employees who belong to a labor organization. . . .

"It has been held by this court for fifty years, and especially for the last two, that manufacture is only incidentally related to interstate commerce and Congress has no power to regulate it."

The court, in a 5 to 4 decision delivered by Justice Roberts, held the Wagner act was constitutional in its application to the Associated Press.

The majority decision held that the statute did not "abridge the freedom of speech, or of the press, safeguarded by the first amendment" to the Constitution.

A dissenting opinion was written by Justice Sutherland in which Justices Van Devanter, McReynolds and Butler concurred.

They asserted "the application of the act here has resulted in an unconstitutional abridgement of the freedom of the press."

Opinion by Justice Roberts.

Justice Roberts, who frequently has held the balance of power on the court in 5 to 4 decisions, said in his opinion:

"It is insisted that the Associated Press is in substance the press itself, that the [illegible] speaks solely

providence of God, favored, as they sometimes boast, above all others in the plenitude of their liberties—desire to preserve these so carefully protected by the first amendment: liberty of religious worship, freedom of speech and of the press, and the right as freemen peaceably to assemble and petition their government for a redress of grievances.

"If so, let them withstand all beginnings of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

Roberts, speaking for the majority, said "the business of the Associated Press is not immune from regulation because it is an 'agency of the press.'"

Press Rights Not Restricted.

"The publisher of a newspaper," he continued, "has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others. He must answer for libel. He may be punished for contempt of court. He is subject to the anti-trust laws. Like others he must pay equitable and nondiscriminatory taxes on his business.

"The regulation here in question has no relation whatever to the impartial distribution of news. The order of the board in no wise circumscribes the full freedom and liberty of the petitioner to publish the news as it desires it published, or to enforce policies of its own choosing with respect to the editing and rewriting of news for publication, and the petitioner is free at any time to discharge Watson, or any editorial employee who fails to comply with the policies it may adopt."

WAGNER ACT IN OUTLINE.

Rights of Employee and Employer Are Clear.

(By the Associated Press.)

WASHINGTON, April 12.—The Wagner national labor relations act, on which the Supreme court ruled today, states this public policy:

"Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activity, for the purpose of collective bargaining or other mutual aid or protection."

The act also states that it shall be an unfair labor practice for an employer:

To interfere with, restrain or coerce employees in the exercise of the

BURNS FATAL TO A WOMAN.

Mrs. W. J. Schmittner Dies Following an Accident at Home.

Above the music of the radio William J. Schmittner last night heard the cries of his wife from her upstairs bedroom in their home at 391 Central street.

He ran upstairs and found his wife lying on the floor in a corner of the room. Her nightgown had been burned entirely away, and her body was burned severely. She was taken to St. Mary's hospital, where she died today.

Mr. Schmittner, deputy public administrator for Jackson County, said he was not certain how his wife's garment caught fire. She may have struck a match to light a cigarette, he said.

Mr. Schmittner's hands were burned slightly when he used a pair of his pajamas, hanging conveniently near, to extinguish the flames.

The Schmittners had no children. She was 66 years old, and was the daughter of the late George Etchingham, active in Democratic politics here. She leaves a half-brother, Emmett Etchingham of Cheyenne, Wyo., and two half-sisters, Mrs. Michael J. O'Hearn, 3 East Fifty-sixth street, and Mrs. J. E. Tolin, 909 Garfield avenue, Kansas City, Kansas.

C. OF C. PLANS TWO TRIPS.

Atchison, Kas., and Marshall, Mo., on Good Will Calendar.

The Chamber of Commerce will sponsor a 1-day good will trip to Atchison, Kas., May 6, and to Marshall, Mo., April 29. It was announced following a meeting today of the trade tour committee. The trip to Atchison will be by bus and the trip to Marshall by train.

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K.C. Star - April 12, 1937
NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138
EXHIBIT NO. 38
IN THE MATTER OF
DATE 4-5-42 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

other circumstance which aroused suspicion, he pointed out, was the fact the vote on a constitutional amendment was identical, 342 for and 8 against.

When Phelps finished the first part of the arguments, court recessed until 1:30 o'clock.

"Case Not Made."

Madden, for the defense, made the closing statement, asserting the government had not proved a case against the five defendants.

"This is the first time in my career," he said, "that I have appeared in a criminal case in the federal court. It seems to me that the government has proved by its own witnesses and their testimony that these defendants are innocent. The government has said that 'someone' erased 'X' marks and made substitutions, but it has not proved beyond a reasonable doubt that any of the defendants changed them.

"The government must prove a conspiracy before this jury can convict these defendants. It never has been proved that any of the defendants entered into a conspiracy. To convict in this case in the federal court it must be proved beyond a reasonable doubt that defendants conspired.

"The important evidence is that erasures of 'X' marks were made. This case has no connection with any vote case which has gone before or may follow after. The circumstantial evidence the government has shown to the jury must be received with caution.

Benefit of Any Doubt.

"Of course, all the defendants are presumed to be innocent until they are found guilty beyond any reasonable doubt. If there is any doubt in your minds you must give the defendants the benefit.

"I am not so blind as not to recognize the fact there has been a crusade for honesty in elections. Whenever a crusade of this nature, when the public is aroused, there is danger to the safeguard thrown around defendants in a criminal case.

"An innocent man may be convicted in the effort to convict the guilty. I say the government spent nearly three days and has proved no more than I admitted in the first thirty minutes. I admitted ballots were changed. The government proved it. There is no dispute.

"The issue here now is whether any of the defendants changed the ballots. I say the government has not established that fact beyond a reasonable doubt.

"The jury should return a verdict of 'not guilty.'"

SEVEN ARE ARRAIGNED.

Judge Otis Proceeds After Cellist Steps Out of Case.

court in 5 to 4 decisions, said in his opinion:

"It is insisted that the Associated Press is in substance the press itself, that the membership consists solely of persons who own and operate newspapers, that the news is gathered solely for publication in the newspapers of members.

"Stress is laid upon the fact that this membership consists of persons of every conceivable political, economic, and religious view, that the one thing upon which the members are united is that the Associated Press shall be wholly free from partisan activity or the expression of opinions, that it shall limit its function to reporting events without bias in order that the citizens of our country, if given the facts may be able to form their own opinions respecting them.

On Freedom of the Press.

"The conclusion which the petitioner draws is that whatever may be the case with respect to employees in its mechanical departments it must have absolute and unrestricted freedom to employ and to discharge those who, like Watson, edit the news, that there must not be the slightest opportunity for any bias of prejudice personally entertained by an editorial employee to color or to distort what he writes and that the Associated Press cannot be free to furnish unbiased and impartial news reports unless it is equally free to determine for itself the partiality or bias of editorial employees. So it is said that any regulation protective of union activities, or the right collectively to bargain on the part of such employees, is necessarily an invalid invasion of the freedom of the press.

"We think the contention not only has no relevance to the circumtances of the instant case but is an unsound generalization. The ostensible reason for Watson's discharge as embodied in the records of the petitioner, is solely on the grounds of his work not being on a basis for which he has shown capability."

Discharged for Guild Activity.

"The petitioner did not assert and does not now claim that he had shown bias in the past. It does not claim that by reason of his connection with the union he will be likely, as the petitioner honestly believes, to show bias in the future. The actual reason for his discharge, as shown by the unattacked finding of the board, was his guild activity and his agitation for collective bargaining.

"The statute does not preclude a discharge on the ostensible grounds for the petitioner's action; it forbids discharge for what has been found to be the real motive of the petitioner.

"These considerations answer the suggestion that if the petitioner believed its policy of impartiality was likely to be subverted by Watson's continued service, Congress was without power to interdict his discharge.

an unfair labor practice for an employer:

To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in the declaration of policy.

To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it.

By discrimination in regard to hire or tenure of employment of any term or condition of employment to encourage or discourage membership in any labor organization.

To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the act.

To refuse to bargain collectively with the representative of his employee.

The act also sets up a labor relations board of three members to enforce the act's provisions and to conduct elections among employees when a dispute arises as to which of two or more labor organizations represent a majority of the employees for collective bargaining. The act provides that the majority unit shall speak for all employees in collective bargaining.

ALUMNI TO HONOR ABBOT.

The Rt. Rev. Stephen Schappler Will Be Consecrated Wednesday.

The Rt. Rev. Abbot Stephen Schappler, who is to be consecrated as head of Conception college, Conception, Mo., Wednesday, will be guest of honor at a dinner tonight at the Hotel Muehlebach given by the Kansas City alumni group of the college.

Dr. Leo J. Latz, Chicago, president of the national alumni organization, will be toastmaster.

The consecration ceremonies at the college Wednesday will be presided over by Bishop C. H. Lelliond of St. Joseph.

SIT ON G. E. PAY DEMAND.

Electrical Union Asks Increase for $1,000 Employees.

(By the Associated Press.)

NEW YORK, April 13.—Demands for wage increases totaling 13 million dollars annually were discussed in a conference today between representatives of the United Electrical and Radio Workers of America and William R. Burrows, General Electric company's vice-president in charge of manufacturing.

The union delegates, headed by James B. Carey, president, are demanding a flat 10 cents per hour increase for 61,000 employees.

The increase asked by the union, Burrows said at the conclusion of this morning's discussions, would mean an annual wage increase of 13 million dollars over and above the recent general increase of 7 million dollars granted by the company.

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An old style breakfast these cool mornings—Hot Buckwheat Cakes with Genuine Maple Syrup and our own Pork Sausage—and always Good Sweet Bacon with Eggs and Hot Toast. To complete the above selections our Tiffin Room Coffee.
Daily Except Sunday
A few steps down—1108 Walnut

of 'not guilty.'"

SEVEN ARE ARRAIGNED.

Judge Otis Proceeds After Collet Steps Out of Case.

Following Judge John Caskie Collet's statement disqualifying himself to sit in any of the vote fraud cases, Judge Merrill E. Otis arraigned seven defendants indicted for vote irregularities in the ninth precinct of the twelfth ward.

Only five were present, two having sent certificates of illness. The two not present were:

COUNT B. WELLS, Republican judge.

AMY FERGUS, Republican judge.

Those arraigned were:

WILMER HENDERSON, 37 years old, 1200 College avenue, Democratic judge.

GLEN BARNARD, 40 years old, 1230 College avenue, Democratic judge.

ABRAHAM B. LEVY, 37 years old, 1422 Benton boulevard, Democratic clerk.

MAUDE SPAINE, 45 years old, 1218 College avenue, Republican clerk.

FRANK P. DIXON, 43 years old, 1311 Benton boulevard, Democratic precinct captain.

The defendants appearing were represented by William G. Boatright and James Dalco, lawyers who have appeared for defendants in several of the vote fraud cases. Judge Otis allowed the defendants to continue their freedom under their original bonds of $2,000 for the men and $1,000 for the women, made when they were indicted.

Dalco asked when the defendants arraigned could expect to go to trial. Judge Otis said the case probably would be called the first week in June. He explained that there was only the one courtroom in the building large enough for all of the activities involved in a vote fraud trial and that it would be in use through May by Judge Albert L. Reeves and Judge Collet.

discharge for what has been found to be the real motive of the petitioner.

"These considerations answer the suggestion that if the petitioner believed its policy of impartiality was likely to be subverted by Watson's continued service, Congress was without power to interdict his discharge. No such question is here for decision. Neither before the board (National Labor Relations board) nor in the court below, nor here has the petitioner professed such belief. It seeks to bar all regulation by contending that regulation in a situation not presented would be invalid. Courts deal with cases upon the basis of the facts disclosed, never with nonexistent and assumed circumstances.

"The act does not compel the petitioner to employ anyone; it does not require that the petitioner retain in its employ an incompetent editor or one who fails faithfully to edit the news to reflect the facts without bias or prejudice.

"The act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees.

Position Not Guaranteed.

"The restoration of Watson to his former position in no sense guarantees his continuance in petitioner's employ.

"The petitioner is at liberty, whenever occasion may arise, to exercise its undoubted right to sever his relationship for any cause that seems to it proper, save only as a punishment for, or discouragement of, such activities as the act declares permissible."

The national labor relations board had directed the Associated Press to reinstate Morris Watson, a New York editorial employee. Watson contended he had been dismissed because of activities in connection with the American Newspaper Guild. The Associated Press said he was discharged because his work was not up to his proven capability.

On the subject of freedom of the press, Justice Sutherland's minority opinion said:

"Do the people of this land—in the

crease for 61,000 employees.

The increase asked by the union, Burrows said at the conclusion of this morning's discussions, would mean an annual wage increase of 13 million dollars over and above the recent general increase of 7 million dollars granted by the company.

Carey said his impression was that the 7-million-dollar increase would be considered as part of the total sum demanded.

WALK A PLANK IN THEFT.

Robbers to Seufert Building From an Adjoining Fire Escape.

Robbers who last night took scissors, razors and knives valued at more than $300 from stock cases of the Seufert Hardware company at 1427 Grand avenue used a plank to go from a fire escape of an adjoining building at 1429 Grand avenue to the roof of the Seufert building.

A penthouse door on the Seufert building was then broken into and the thieves went down into the store and came out the same way.

RECESS THE COURT HEARING.

Wagner Decision Causes Senate to Take Time Off.

WASHINGTON, April 13.—The senate judiciary committee quickly recessed its hearing on the Roosevelt court reorganization bill today when members learned the Supreme court was deciding constitutionality of the Wagner labor relations act. The court's decision, awaited for weeks, stirred interest among committeemen. The recess came while Texas Democratic opponents of the President's plan were testifying it would undermine constitutional liberties and damage the party irreparably.

APPROVES MARITIME BOARD.

WASHINGTON, April 13.—(A. P.)—The senate commerce committee unanimously recommended today the confirmation of the President's five appointments to the Federal Maritime commission.

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(Respondent's Exhibit 38.)

4179

(Respondent's Exhibit 41.)

Respondents
Ex 41
RCS = 8/24/42

The Union

To The

Donnelly Garment Company

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-1392 EXHIBIT NO. 41

IN THE MATTER OF Donnelly Garment Co. et al.

DATE 8-24-42 WITNESS Wahrt

DANIEL W. ROSS, OFFICIAL REPORTER

BY Scott

COPY

March 9, 1937

Donnelly Garment Company,
1828 Walnut Street,
Kansas City, Missouri.

Gentlemen:

The Kansas City members of the International Ladies' Garment Workers' Union feel compelled to place before you the following grievances that should be adjusted immediately.

Fifteen members of our Union were discharged by your firm because of their affiliations with our organization. Their case was up before the National Labor Relations Board. During the period the hearings took place the NRA was declared unconstitutional by the Supreme Court of the United States and the Government could proceed no further. The discharged workers have not as yet been returned to work by your firm.

The Dress Industry, in which your firm is engaged, is highly unionized throughout the country. Every producer of dresses is in contractual relations with our Union. The 150,000 workers employed in this industry are enjoying a 5-day, 35-hour working week and a $22.05 per week minimum wage scale for operators and reasonable, fair minimum scales for finishers, pressers, cutters, et cetera. Piece workers, who compose the majority of workers in your shop as well as in the industry, are enjoying the right, through committees selected by them, of having an equal voice with the management in each shop in determining the piece rates for each garment or operation of a garment.

The workers in the industry enjoy the freedom and right of organization. Collective bargaining has been established as a permanent institution. These are the conditions and wage scales in the industry.

In your shop the minimum wage scale for operators is between $12.50 and $15.00 per week.

The wage scales for finishers, pressers and cutters are at least 30% lower than those that exist in the industry.

The hours of work in your shop are from 40 to 50 per week.

Your workers are denied the right of joining a labor organization, and those who do, are immediately discharged. Your workers are denied the privileges of genuine collective bargain-

the piece rates should be as they are set exclusively by representatives of your firm.

The conditions and wages under which your employees are working not only deprives them of the privileges and opportunities enjoyed by the workers in this industry, but endangers their general work standards and wage scales. Your firm has undue and unjustified advantages over your competitors. The Union believes in "Fair Competition," but it does not consider competition fair when it is gained solely at the expense of the workers.

Under your system of production workers are compelled to invest extraordinary effort, but the reward that follows is very meager in proportion to the efforts invested. Under modern methods of production such treatment of workers is not only wrong from the humane point of view, but also destructive from the economical point of view. In comparison with other shops in the industry which produce the same type of garment the production in your shop is about 30% higher while the earnings of the workers are about 30% lower.

We, therefore, believe that a conference between our Union and your firm, for an adjustment of these grievances, should take place immediately. The Union has named a committee which stands ready to meet a similar committee named by your firm.

May we respectfully request that you advise us before the end of this week as to when and where it would be convenient for you to meet our Conference Committee.

Our aim is industrial peace. We believe in intelligent co-operation between employer and employee. Such co-operation is essential to the welfare of all factors in industry, including the consuming public and community at large. Peace and harmony prevails in the major part of the Dress Industry and we are eager to extend this co-operation to include your firm. Let us join hands to avoid industrial conflict.

Respectfully yours,

Kansas City Joint Board

INTERNATIONAL LADIES GARMENT WORKERS UNION.

By Wave Tobin, Manager

MP Approved by: Meyer Perlstein, Regional Director

GARMENT WORKERS' DRIVE.

Funds Set Aside for Unionization of Entire Industry.

(By the Associated Press.)

WASHINGTON, Nov. 9.—An immediate nation-wide drive to unionize an estimated 90,000 unorganised clothing workers was ordered today by the executive board of the International Ladies' Garment Workers' Union.

In deciding on a vigorous effort to extend its influence into new fields, the board voted an appropriation of ¼ million dollars and pledged "all its material resources." David Dubinsky, president of the union, was authorized to utilize his entire present staff in the drive and to employ fifty additional organizers.

Deferred until tomorrow was consideration by the board of its future relationship with John L. Lewis's committee for industrial organization.

Dubinsky said the ladies' garment workers now has a membership of 220,000 and about 4 million dollars in its treasury. About $150,000 was spent in helping finance President Roosevelt's campaign for re-election.

He said the organization drive would open with establishment of offices in St. Louis, Kansas City, Pennsylvania and Upper New York.

Dubinsky asserted the St. Louis office would have sufficed for Missouri except that the union "wants to give Jim Reed a break." He explained that the wife of James A. Reed, former Democratic senator from Missouri who supported Governor Landon in the campaign this year, is the founder and principal stockholder of a factory in Kansas City.

The Kansas City office of the drive will concentrate on unionizing employees in the Donnelly Garment Company, which Dubinsky says is largely owned by Mrs. Reed.

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CLERK'S COPY.

Volume XII

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 29, 1946
CERTIORARI GRANTED APRIL 22, 1946

Nos. 786 - 787

VOLUME XII.

RECORD.

Office - Supreme Court, U. S.
FILED
JAN 29 1946
CHARLES ELMORE CROPLEY
CLERK

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT-WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

Testimony and Exhibits in Case No. 12,641.

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 12,641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT.

DONNELLY GARMENT WORKERS' UNION, INTERVENER.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER.

ON PETITION FOR REVIEW OF ORDER OF NATIONAL LABOR RELATIONS BOARD.

FILED AUGUST 5, 1943.

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51D, Check for $22.51, dated April 8, 1937	7082	4229
51E, Check for $24.38, dated April 1, 1937	7083	4231
51F, Check for $18.78, dated March 25, 1937	7084	4233

	Original	Print
51G, Check for $18.95, dated May 6, 1937	7085	4235
52A to 52H, Checks, Donnelly Garment Company to Anna Reece	7087	4237
52A, Check for $15.06, dated March 11, 1937	7087	4237
52B, Check for $15.50, dated March 18, 1937	7088	4239
52C, Check for $17.75, dated March 25, 1937	7089	4241
52D, Check for $20.84, dated April 1, 1937	7090	4243
52E, Check for $19.63, dated April 8, 1937	7091	4245
52F, Check for $18.13, dated April 22, 1937	7092	4247
52G, Check for $24.25, dated April 29, 1937	7093	4249
52H, Check for $18.93, dated May 6, 1937	7094	4251
53A to 53H, Checks, Donnelly Garment Company to Agnes Hutchinson	7096	4253
53A, Check for $19.23, dated March 18, 1937	7096	4253
53B, Check for $22.71, dated March 25, 1937	7097	4255
53C, Check for $22.40, dated April 1, 1937	7098	4257
53D, Check for $23.31, dated April 8, 1937	7099	4259
53E, Check for $28.77, dated April 15, 1937	7100	4261
53F, Check for $32.24, dated April 22, 1937	7101	4263
53G, Check for $30.00, dated April 29, 1937	7102	4265
53H, Check for $26.06, dated May 6, 1937	7103	4267
54A to 54I, Checks, Donnelly Garment Company to Iris Litten	7105	4269
54A, Check for $23.62, dated March 11, 1937	7105	4269
54B, Check for $25.59, dated March 18, 1937	7106	4271
54C, Check for $24.73, dated March 25, 1937	7107	4273
54D, Check for $24.37, dated April 1, 1937	7108	4275
54E, Check for $25.77, dated April 8, 1937	7109	4277
54F, Check for $26.44, dated April 15, 1937	7110	4279
54G, Check for $24.62, dated April 22, 1937	7111	4281
54H, Check for $33.31, dated April 29, 1937	7112	4283
54I, Check for $25.03, dated May 6, 1937	7113	4285
55A to 55H, Checks, Donnelly Garment Company to Flora Fries	7115	4287
55A, Check for $26.88, dated March 18, 1937	7115	4287
55B, Check for $27.10, dated March 25, 1937	7116	4289
55C, Check for $23.31, dated April 1, 1937	7117	4291
55D, Check for $25.74, dated April 8, 1937	7118	4293
55E, Check for $24.94, dated April 15, 1937	7119	4295
55F, Check for $32.59, dated April 22, 1937	7119	4297
55G, Check for $34.22, dated April 29, 1937	7120	4299
55H, Check for $29.97, dated May 6, 1937	7121	4301
56A to 56I, Checks, Donnelly Garment Company to Lillie Reynolds	7123	4303
56A, Check for $22.35, dated March 11, 1937	7123	4303
56B, Check for $27.15, dated March 25, 1937	7124	4305
56C, Check for $22.21, dated March 18, 1937	7125	4307
56D, Check for $22.44, dated April 1, 1937	7126	4309
56E, Check for $27.61, dated April 8, 1937	7127	4311
56F, Check for $23.42, dated April 15, 1937	7128	4313
56G, Check for $30.57, dated April 22, 1937	7129	4315
56H, Check for $33.34, dated April 29, 1937	7130	4317
56I, Check for $27.58, dated May 6, 1937	7131	4319
57, Tabulation relative to Comparative Earnings of Piece Work Operators—First Six Months—1937 and 1938	7131	4321

[fol. 7064] (Respondent's Exhibit 43.) Date 9-8-42—
Witness .....

Judgment

Findings of Fact and Conclusions of Law

In the District Court of the United States for the Western Division of the Western District of Missouri.

Donnelly Garment Company, a Corporation, and Donnelly Garment Sales Company, a Corporation, Plaintiffs,

vs.

International Ladies' Garment Workers' Union, an unincorporated association, et al., Defendants,

Donnelly Garment Workers' Union, an unincorporated association, et al., Interveners.

Reed & Ingraham, Hogsett, Murray, Trippe and Depping for plaintiffs.

Mr. Frank P. Walsh, Mr. Roy W. Rucker and Mr. Jerome Walsh for defendants.

Gossett, Ellis Dietrich and Tyler for Interveners.

[fol. 7064a] Judgment.

Now on this 27th day of April, 1939, again come all of the parties in this suit, by their attorneys of record, and this cause having heretofore come on for trial before the court upon plaintiffs' amended complaint, defendants' answer thereto, interveners' petition of intervention, and defendants' answer thereto; and the court having heard the evidence of the parties in the form of the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of plaintiffs' verified amended complaint and interveners' verified petition of intervention; and now the court, being fully advised in the premises, doth now find that unlawful acts have been threatened and will be committed by defendants unless restrained, and have been committed and will be continued by defendants unless restrained; that substantial and ir-

reparable injury to the property of plaintiffs and to the property of interveners will follow; that as to each item of relief prayed for by plaintiffs and interveners respectively, and as to each item of relief granted, said parties respectively, greater injury will be inflicted upon plaintiffs and interveners, respectively, by the denial of relief than will be inflicted upon defendants by the granting of relief; and that plaintiffs and interveners respectively have no adequate remedy at law; and that the public officers charged with the duty to protect the property of plaintiffs and interveners respectively are unable and unwilling to furnish adequate protection; and that due and personal notice of this hearing has been duly given to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed, who are charged with the duty to protect the property of plaintiffs and interveners respectively; and that the plaintiffs and interveners respectively, have not failed to comply with any obligation imposed by law which is involved in the labor dispute in question, and have not failed to make every reasonable effort to settle such dispute, either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration; and that there has been clear proof of actual participation in, or actual authorization of, the acts hereinafter enjoined, by the defendants, or of ratification of such acts by the defendants after actual knowledge thereof; and that issuance of a permanent injunction as prayed by plaintiffs and interveners respectively and as hereinafter granted, [fol. 7064b] is necessary to prevent immediate and irreparable injury to plaintiffs and interveners, respectively, by reason of threatened loss and damage to plaintiffs and interveners and each of them, from violation by defendants of the Anti-Trust Laws of the United States, and from unlawful acts and threatened attempts by defendants to destroy the rights of plaintiffs and interveners respectively;

And as the basis of this decree, the court makes and files in the record of this cause, prior to the issuance of the injunction hereinafter granted, findings of fact and conclusions of law, which constitute the grounds of the court's action herein;

And the court further finds that the injunction hereinafter granted includes only a prohibition of such specific acts as are expressly complained of in plaintiffs' amended bill of complaint and in interveners' intervening petition, respectively, and as are expressly included in said findings of fact made and filed by the court as aforesaid.

Wherefore, It Is Now By The Court Considered, Ordered, Adjudged and Decreed, that the defendants International Ladies' Garment Workers' Union, an unincorporated association, David Dubinsky, president, secretary and treasurer of said association, and members of the general executive board, Meyer Perlstein, Southwest Regional Director of said association, Wave Tobin, manager of Kansas City Joint Board of International Ladies' Garment Workers' Union, and all other members of said union (who are too numerous to mention), and each of them, and their officers, agents, servants, employees and representatives, and each of them, and all persons acting under the authority, direction or control of defendants or any of them, be and they are now by the court permanently and perpetually enjoined:

1. From engaging in any act of fraud or violence, or in any threat thereof, at or near the premises of plaintiff's place of business at 1828 Walnut Street, Kansas City, Missouri, or at any other place or places whatsoever, in anywise calculated or tending to interfere with, disturb or injure any officer, agent, employee or customer of plaintiffs, or the business of plaintiffs or any of plaintiffs' customers.

2. From doing any act or acts of fraud or violence or making any threats thereof, calculated or tending to injure or interfere with the businesses of plaintiffs, or to injure or interfere with the businesses of plaintiffs' customers [fol. 7064c] on account of said customers dealing in or handling plaintiffs' products, or calculated or tending to interfere in any way with trade or commerce between plaintiffs and their customers, or to interfere with or molest any employee of plaintiffs or any person or persons making delivery of goods or parcels to or from plaintiffs' place of business or to or from plaintiffs' customers.

3. From interfering in any way, involving fraud or violence or threats thereof, with the contracts existing between the plaintiffs and the Donnelly Garment Workers' Union, or with any contracts which plaintiffs and said Donnelly Garment Workers' Union may hereafter negotiate or make, or with the due performance of said contracts by any party thereto.

4. From attempting, by fraud or violence or threats thereof, to compel or induce any of the employees of plaintiffs to withdraw or resign from the voluntary association of employees designated as Donnelly Garment Workers' Union; and from attempting, by fraud or violence or threats thereof, to compel or induce any of said employees, to join the International Ladies' Garment Workers' Union or any subdivision or local unit thereof.

5. From announcing, charging, publishing, circulating or causing to be announced, charged, published or circulated, any knowingly false and fraudulent statements regarding wages, hours of labor, or working conditions in plaintiffs' plant, or regarding their labor policies, or the ability of plaintiffs to fill orders for merchandise.

6. From conducting, threatening, instigating, or causing or attempting to conduct, threaten or instigate a secondary boycott or picketing of any of plaintiffs' customers or of any of the places of business of plaintiffs' customers.

7. From notifying or requesting plaintiffs' customers or members of the public, by or on the strength of knowingly false and fraudulent statements, or by or with violence or threats thereof, not to patronize plaintiffs', or purchase plaintiffs' products or merchandise; and from interfering or attempting to interfere in any manner, involving fraud or violence or threats thereof, with the business of the customers of plaintiffs, wheresoever situated; and from boycotting any of said customers or picketing their places of business because of their buying, selling, handling or dealing in plaintiffs' products; and from issuing or distributing circulars [fol. 7064d] or written or printed matter, and from making or uttering verbal statements, containing any knowingly

false and fraudulent statements calculated or tending to injuriously affect the business of plaintiffs or their said customers; and from issuing any knowingly false and fraudulent written or verbal statements calculated or tending to prevent any person or persons from purchasing the goods produced or sold by plaintiffs; and from doing any other act or thing whatsoever, involving fraud or violence or threats thereof, calculated or tending to interfere with the business dealings of plaintiffs or their customers.

And now it is by the court further considered, ordered, adjudged and decreed that all injunction bonds given by plaintiffs or interveners in this cause be and the same are now released and discharged, and that all liability thereon be and the same is now ended.

And now it is by the court further considered, ordered, adjudged and decreed that the plaintiffs and interveners respectively have and recover of and from the defendants their costs herein.

ANDREW MILLER,
United States District Judge.

[fol. 7064e] Findings of Fact.

The court makes and files in the record of this cause the following findings of fact:

1. Plaintiff Donnelly Garment Company, a corporation organized under the laws of the state of Missouri, is engaged in the manufacture and sale of ladies' house dresses and wash frocks under the trade name of "Nelly Don." Plaintiff Donnelly Garment Sales Company, a corporation organized under the laws of the state of Missouri, is engaged exclusively in the sale and distribution of ladies' house dresses and wash frocks manufactured by the Donnelly Garment Company under its trade name "Nelly Don." Plaintiffs are and were, during the times complained of, engaged in interstate trade and commerce, bringing raw materials from outside the state of Missouri and manufacturing the same in the state of Missouri, and selling over 80 per cent of the finished product outside the state of Missouri.

2. The defendant, International Ladies' Garment Workers' Union (hereinafter referred to as International), is an unincorporated association composed of members, many of whom reside in the Western Division of the Western District of Missouri; and the individual defendants are officers, members of the Executive Board, members, agents or servants of said International.

3. The interveners are members of the Executive Committee of the Donnelly Garment Workers' Union, an unincorporated association, formed and administered by all of the employees of plaintiffs, exclusive of officers, executives and persons with authority to employ or discharge.

4. On March 2, 1937, about three or four days after the International had publicly announced in the Kansas City press its intention to organize the plant of the Donnelly Garment Company, 1,185 of plaintiff's employees (being all but three of the then employees, excluding those with authority to hire or discharge) in a writing delivered to plaintiffs refused to acknowledge or accept the International as their representative.

5. On March 9, 1937, the International mailed to the Donnelly Garment Company a letter asserting certain alleged "grievances" pertaining to wages, hours and working conditions in the Donnelly Garment Company plant. [fol. 7064f] The statements of fact in said letter, upon which the alleged "grievances" were based, were false and fraudulent statements, known by the writers of the letter to be false when the letter was written; and the purported "grievances" therein were not stated in good faith, but were stated fraudulently for the purpose of making it ostensibly appear to plaintiffs' customers, the consuming public and the courts that there was some basis for said "grievances", when in fact there was no basis therefor. Said letter did not represent a bona fide attempt by the International to negotiate or adjust a labor dispute, but was merely part of a scheme by the International to organize the plaintiffs' employees as members of the International. No bona fide demand concerning "terms and conditions of employment" or concerning "the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or condi-

tions of employment," was being made by any of the defendants upon plaintiffs in said letter, or at the time this suit was filed.

6. Shortly after the Supreme Court of the United States sustained the validity of the National Labor Relations Act, and on April 27, 1937, one hundred per cent of plaintiffs' employees (other than officers, executives and those with authority to hire or discharge) voluntarily formed and became members of the Donnelly Garment Workers' Union, and unanimously designated and selected the nine members of the Executive Committee of said union as their sole representatives for the purposes of collective bargaining with plaintiffs in respect to rates of pay, wages, hours of employment and all other conditions of employment, and all matters for their mutual aid and protection. Said employees have at all times freely administered and maintained said union. At the time of the formation of said union and at all times since, none of said employees have been or are members of the defendant International.

7. On May 27, 1937, after negotiations between plaintiffs and the Executive Committee of the Donnelly Garment Workers' Union, a written contract was made and entered into between Plaintiffs and the Donnelly Garment Workers' Union, which was supplemented thereafter on June 22, 1937, by a supplemental contract between the same parties, which contracts provided for wages, rates of pay, hours of employment and all other conditions of employment. Said contracts provided that plaintiffs were bound to and did recognize the Donnelly Garment Workers' Union as the sole bargaining agency on behalf of all of their said employees. Said contracts were and are satisfactory to all parties thereto, and the same have been at all times since and are now recognized by the parties as [fol. 7064g] in full force and effect. By the aforesaid negotiations and contracts all matters of agreement between plaintiffs and their employees concerning terms and conditions of employment, and concerning the association and representation of plaintiffs' employees in negotiating, fixing, maintaining, changing and seeking to arrange terms

and conditions of employment, were fully fixed, established, settled and determined; and at all times since the making of said contracts there has been and is now no controversy or dispute of any kind between plaintiffs and any of their employees concerning any of those matters. At all said times, and up to the time this suit was filed, and ever since, complete harmony has prevailed between plaintiffs and their employees, and all parties to the contracts were and are satisfied therewith. The terms and conditions of said contracts are more favorable to the employees than the terms and conditions contained in any contract between the International and any manufacturer of house dresses and wash frocks introduced in evidence in this cause.

8. Plaintiff Donnelly Garment Company is and has been continuously since its incorporation a manufacturer of house dresses and wash frocks (so-called "cotton garments") and is classified in the industry as such and is not classified as a "ready-to-wear" manufacturer (so-called "silk dress" manufacturer). According to the established custom in the industry the rates of pay of piece work operators in the "ready-to-wear" industry (so-called "silk dress" industry) do not apply to the rates of pay of piece work operators in the "house dress and wash frock" industry (so-called "cotton garment" industry).

9. At all times which are material in this case the wages actually paid by plaintiffs to their employees for various kinds of work were, and are now, in excess of wages paid to similar employees for the same or similar kinds of work by other manufacturers of ladies' garments operating under any of the contracts with the International which are in evidence, whether said manufacturers were engaged in the ready-to-wear industry or in the house dress and wash frock industry.

10. Notwithstanding the entirely harmonious relations between plaintiffs and their employees, the International, its officers, the General Executive Board, and its Southwest Regional Director, Meyer Perlstein, several months prior to the institution of this suit, entered into a combination and conspiracy for the sole and only purpose of compelling plaintiff's employees to join the International and accept [fol. 7064h] the International as their exclusive bargaining agent for the purposes of collective bargaining.

11. Pursuant to said combination and conspiracy, and in carrying forward the same, the International, its officers, General Executive Board, agents and members have threatened to and have in fact caused to be published and circulated among plaintiff's customers and the consuming public false statements regarding wages, rates of pay, hours of labor and working conditions in plaintiff's plant, and have attempted to induce said customers and the consuming public to boycott plaintiff's goods, and have threatened plaintiff's customers with a secondary boycott of their places of business and with picketing of the same upon refusal by such customers to discontinue purchasing or selling plaintiff's merchandise.

12. Pursuant to said combination and conspiracy and in carrying forward the same, the International, its officers, General Executive Board, agents and members have threatened or caused to be threatened the use of physical violence against plaintiff's employees for the purpose of intimidation of plaintiffs and their employees.

13. The International, its chief officers and General Executive Board, and its Southwest Regional Director, Meyer Perlstein, have authorized, ratified and confirmed or approved the use of assaults, physical violence and threats thereof, and publication of false statements, and the use and threats of a secondary boycott, as means of destroying the business of garment manufacturers, including plaintiffs, unless they recognize the International as the exclusive bargaining agent for their employees, and compel their employees to join the International.

14. The acts and threats of defendants, by this court found to have been established by the evidence, and by this court found to be unlawful, were acts and threats in pursuance of a combination and conspiracy on the part of the International, its chief executive officers, its General Executive Board, its Southwest Regional Director (Meyer Perlstein), its Kansas City Manager (Wave Tobin), and its agents, Jane Palmer, Esther Smith, Grace Bullard, Mary Jane Miller and others, the object and purpose of which combination and conspiracy was to injure and destroy plaintiff's business (and thereby to restrain, burden, obstruct, interrupt and destroy plaintiff's interstate trade

and commerce), as a means of coercing plaintiff's to require their employees to join the International and to accept the International as their sole bargaining representa-
[fol. 7064i] tive in respect to rates of pay, wages, hours of employment and other conditions of employment.

15. The acts and threats of defendants which are found by this court to have been established by the evidence, and which are by this court declared to be unlawful, will, unless enjoined, materially burden, obstruct, interrupt and destroy plaintiff's interstate trade and commerce, causing immediate and irreparable loss and damage to each of the plaintiffs far in excess of $3,000.00.

16. The defendants' unlawful acts hereinabove described have been threatened and will be committed unless restrained, and have been committed and will be continued unless restrained; and substantial and irreparable injury to plaintiffs' property will follow; and as to each item of relief prayed for and granted, greater injury will be inflicted upon plaintiffs and interveners by the denial of relief than will be inflicted upon defendants by the granting of relief; and plaintiffs and interveners have no adequate remedy at law; and the public officers charged with the duty to protect plaintiffs' property are unable and unwilling to furnish adequate protection.

17. After plaintiffs received from 1,183 of their employees on March 2, 1937, the employees' protest against any acknowledgment or dealing with the International as the representative of said employees, and after the aforesaid negotiations and the making of the aforesaid contracts with their employees, and before the time this suit was begun, plaintiffs definitely determined that they could not attempt to compel or influence any of their employees against their will and free choice to become members of or to be represented by the International, and could not negotiate, mediate or arbitrate any demand by defendants for the abrogation of plaintiffs' contracts with their employees, or for the nullification of their employees' rights of self-organization and collective bargaining through representatives of their own choosing.

18. At no time after the plaintiffs on March 2, 1937, were notified by their employees of their refusal to accept the defendant union as a bargaining agent, was there any thing which the plaintiffs or interveners could reasonably have offered to the defendants by way of compromise or settlement of the dispute which had arisen; and any settlement between plaintiffs or interveners and defendants of any alleged controversy or alleged dispute between plaintiffs or interveners and defendants, or of any demand by defendants upon plaintiffs, was at all times after March 2, 1937, utterly impossible; and any attempt at such a settlement by plaintiffs, or interveners, either by negotiation or [fol. 7064j] with the aid of any available governmental machinery of mediation or by voluntary arbitration, would have been and was at all said times, entirely and obviously useless and unreasonable.

19. In conferences which occurred on January 20, 1939, February 4, 1939, and April 1, 1939, between duly authorized representatives of the plaintiffs, defendants and interveners, and in the letters which passed between the parties shortly following each of said conferences, plaintiffs and interveners did in fact make every reasonable effort to settle the dispute with defendants by negotiation, and with the aid of available governmental machinery of mediation (that is, through representatives of the National Labor Relations Board) and through voluntary arbitration; and the failure to settle such dispute was not due to any fault or unreasonable attitude or position taken by plaintiffs or interveners.

20. Plaintiffs and interveners have not failed to make every reasonable effort to settle the dispute with defendants either by negotiation or with the aid of any available governmental machinery of mediation or by voluntary arbitration.

21. Due and personal notice of this hearing has been duly given by plaintiffs and interveners (although this court has not directed or required the giving of any such notice) to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threat-

ened or committed, charged with the duty to protect plaintiffs' property.

22. There has been clear proof of actual participation in, or actual authorization of, the acts to be enjoined, or ratification of such acts, by the defendants after actual knowledge thereof.

23. Plaintiffs did not at any time discriminate against their employees on account of affiliations with defendant International; and at and long before the time this suit was filed the plaintiffs' employees unanimously were protesting against any interference in their affairs by the International, and the International was not the representative of any of said employees for the purposes of collective bargaining or otherwise.

[fol. 7064k] Conclusions of Law

The court now files in the record of this cause the following conclusions of law:

1. This court has jurisdiction of this suit because it is a suit of a civil nature in equity wherein the matter in controversy exceeds, exclusive of interest and costs, the sum and value of $3,000.00, and which arises under the Anti-trust Laws of the United States (15 U. S. Code, Secs. 1, 26).

2. The fact that on August 8, 1938, the International Ladies' Garment Workers' Union filed charges against the plaintiff Donnelly Garment Company with the National Labor Relations Board, and that on April 7, 1939, a complaint was filed against said company by said Board, does not in any way affect the jurisdiction of this court in this suit.

3. Section 8 of the Norris-LaGuardia Act (29 U. S. Code, Sec. 108) is not to be construed so as to require of plaintiffs or interveners a mere idle ceremony; and the court having found as a fact that any settlement between plaintiffs and defendants or between interveners and defendants of the controversies between them was impossible, and that any attempt at such a setlement, by negotiation, mediation or arbitration, would have been use-

less, such an attempt was not required of plaintiffs or interveners as a condition precedent to the plaintiffs' or interveners' right to injunctive relief.

4. Section 8 of the Norris-LaGuardia Act (29 U. S. Code, Sec. 108) did not require any effort on plaintiffs' or interveners' part to settle the dispute with defendants where such an effort would have been unreasonable; and the court having found as a fact that any attempt by plaintiffs or interveners to settle the controversy with defendants by negotiation, governmental mediation or arbitration, would have been unreasonable, such an attempt was not required of plaintiffs or interveners as a condition percedent to plaintiffs' or interveners' right to injunctive relief herein.

5. The plaintiffs and interveners have not in any respect failed to comply with any obligation imposed upon them by any law involved in the labor dispute in question. This suit involves or grows out of a labor dispute.

6. The publication and circulation by the International Ladies' Garment Workers' Union of false statements of fact regarding plaintiffs' treatment of their employees, [fol. 7064] for the purpose of injuring plaintiffs' business, was unlawful, and constituted a fraud upon plaintiffs.

7. The International's threat to cause secondary boycotts of plaintiff's customers and to picket such customers' places of business, unless such customers would cease buying plaintiff's products, was unlawful.

8. The International's threats to use physical violence and acts of terrorism and intimidation against plaintiff's employees, as a means of coercing plaintiffs to require their employees to join the International and accept the International as the representative of such employees for purposes of collective bargaining, was unlawful.

9. The wrongful acts and threats of the defendants, found to have been established by the evidence, constitute a restraint upon plaintiffs' interstate trade and commerce, in violation of the Anti-trust Laws (15 U. S. Code, Sec. 1).

10. Plaintiffs and interveners respectively have no adequate remedy at law; and are respectively entitled to a

permanent injunction against the defendants, their officers, agents, servants, employees, representatives and members, and all persons acting under the authority, direction, or control of defendants, or any of them, permanently enjoining them from any and all acts of fraud or violence or threats thereof complained of in the complaint and petition of intervention; and from conducting, threatening, instigating, or causing or attempting to conduct, threaten or instigate a secondary boycott or picketing of any of plaintiffs' customers, or of any of the places of business of plaintiffs' customers.

(Respondent's Exhibit 44.)

Resp. 44

DONNELLY GARMENT CO.

NAME AND ADDRESSES OF EMPLOYEES

S 903

E-EMPLOYED [redacted]
R-RE-EMPLOYED [redacted]
T-TRANSFERRED

NAME Dorsey, Mrs. Etta (Williams)

TYPE OF WORKER Cash

1/22/1897

Address Telephone	Date Employed or Trans.		Emp. No.	Locker No.	Date Left	Reason	Length of Service
5513 Tracy	E	10/1925	95-415	240	3/27/42	Pregnant	16 yrs 5 mos
Hi. 2536	+	10/5/36	99.531	122			
4725 Holmes	+	10/19/36	96.523	192			
Hes. 3675	+	"/3/36	96.455	589			
1841 E 68th Ter.	+	"/9/36	95.518	697			
Hi 2536 - Mother	+	7/30/37	95.546	612			
Hes 4566 - neighbor	+	"/17/38	95.518				
	+	"/5/38	95.541				
5604 Tracy	T	6/22/38	98415	90			
Hi 2536	—		92415	697			

(over)

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 44
IN THE MATTER OF Donnelly Garment Co. et al
DATE 9-9-42 WITNESS Dorsey
DANIEL W. ROSS, OFFICIAL REPORTER
BY [signature]

NAME Dorsey, Etta

Address Telephone	Date Employed or Trans.		Emp. No.	Locker No.	Date Left	Reason	Length of Service
5604 Tracy	+	11/6/39	95518	697			
Hi 2536	+	1/2/40	96.445	589			
4915 Troost	+	10/19/41	96.531	417			
Jas. 9688 - Apt 6	+	10/31/41	96.515	699			
4919 Troost	+	1/22/42	2.942				
Jas 9688							
Jas. 9690 - Apt 15							

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 44 (cont.)
IN THE MATTER OF Donnelly Garment Co. et al
DATE 9-9-42 WITNESS Dorsey
DANIEL W. ROSS, OFFICIAL REPORTER
BY [signature]

(Respondent's Exhibit 45-A.)

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 45-A
IN THE MATTER OF Donnelly Garment Co. et al
DATE 9-4-42 WITNESS Dorsey
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Creel

Donnelly Garment Company
1500 WALNUT STREET

P. R. No. 3676

KANSAS CITY, MO., MAR 16 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY ROLL

PAY TO THE ORDER OF 96.518 [redacted]-09-5709 Eva Dorsey (.15 - .07) $63.88

THE FIRST NATIONAL BANK
KANSAS CITY, MO.

DONNELLY GARMENT CO. $63 88 CTS. DOLLARS

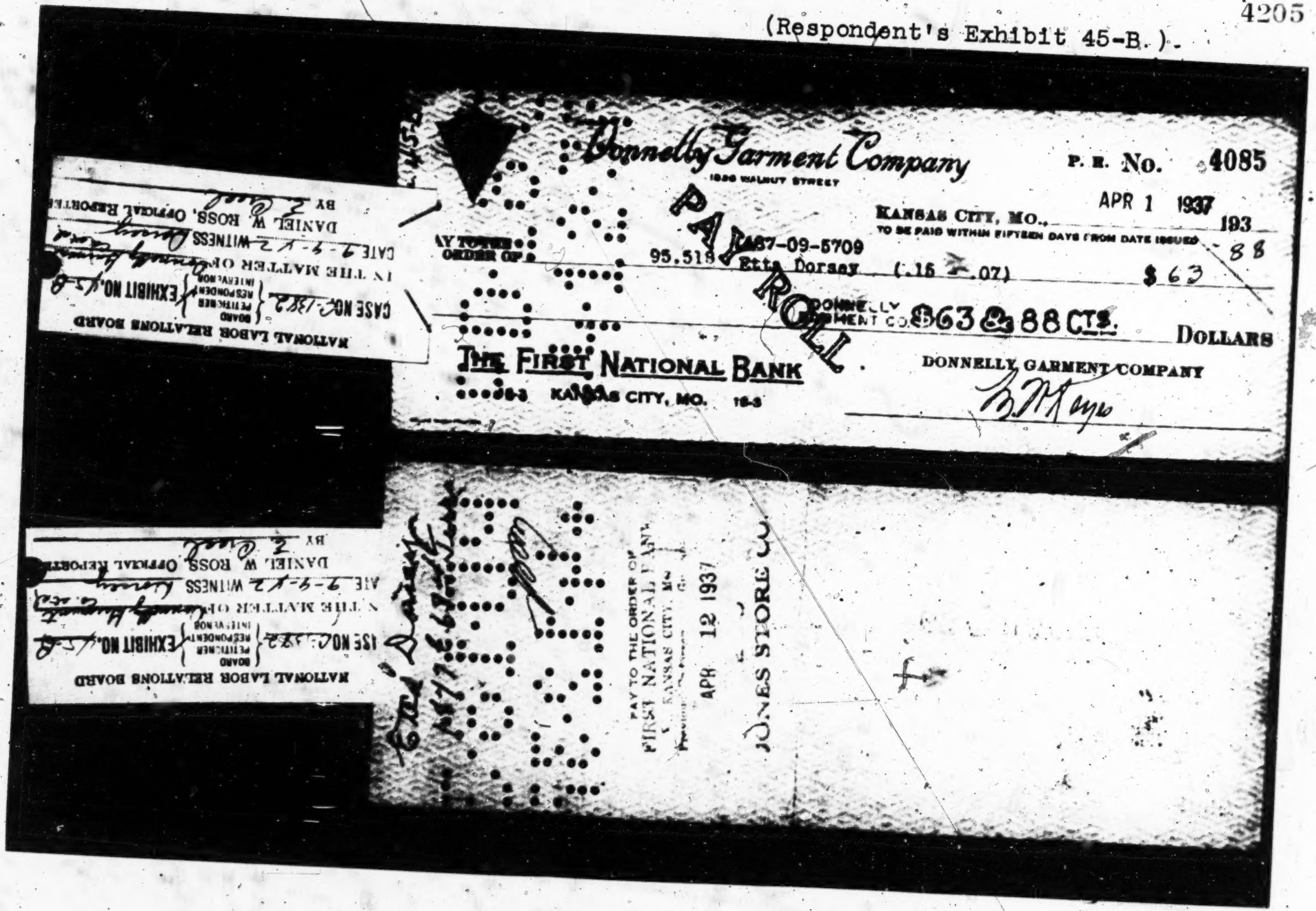
DONNELLY GARMENT COMPANY

Eva Dorsey
1847 E. 68th Ter.

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 45-A
IN THE MATTER OF Donnelly Garment Co. et al
DATE 9-4-42 WITNESS Dorsey
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Creel

KANSAS CITY NATIONAL BANK & TRUST CO. KANSAS CITY, MO.
CLEARING HOUSE
MAR 16 37
33

(Respondent's Exhibit 45-B.)



Donnelly Garment Company
1836 WALNUT STREET

P. R. No. 4085

KANSAS CITY, MO., APR 1 1937 193

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF Etta Dorsey 487-09-5709 95.518 (.15 + .07) $63 88

DONNELLY GARMENT CO. $63 & 88 CTS. DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

PAYROLL

NATIONAL LABOR RELATIONS BOARD
BOARD PETITIONER / RESPONDENT / INTERVENOR
CASE NO. 1382
EXHIBIT NO. [illegible]
IN THE MATTER OF
DATE 7-9-42 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

PAY TO THE ORDER OF
FIRST NATIONAL BANK
KANSAS CITY, MO.
APR 12 1937
JONES STORE CO.

NATIONAL LABOR RELATIONS BOARD
BOARD PETITIONER / RESPONDENT / INTERVENOR
CASE NO. 1382
EXHIBIT NO. [illegible]
IN THE MATTER OF
DATE 7-9-42 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 BOARD PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 454
IN THE MATTER OF Donnelly Garment Co. et al
DATE 9-9-42 WITNESS Dorsey
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Ouell

Donnelly Garment Company
P. R. No. 4520
KANSAS CITY, MO., APR 15 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED
PAY TO THE ORDER OF Bettie Dorsey 62
(.15 - .07) $77
DONNELLY GARMENT CO. $77 62 CTS. DOLLARS
THE FIRST NATIONAL BANK
KANSAS CITY, MO.
DONNELLY GARMENT COMPANY
M. M. Keys

APR PAY ROLL CITY NATIONAL BANK & TRUST CO. KANSAS CITY, MO.

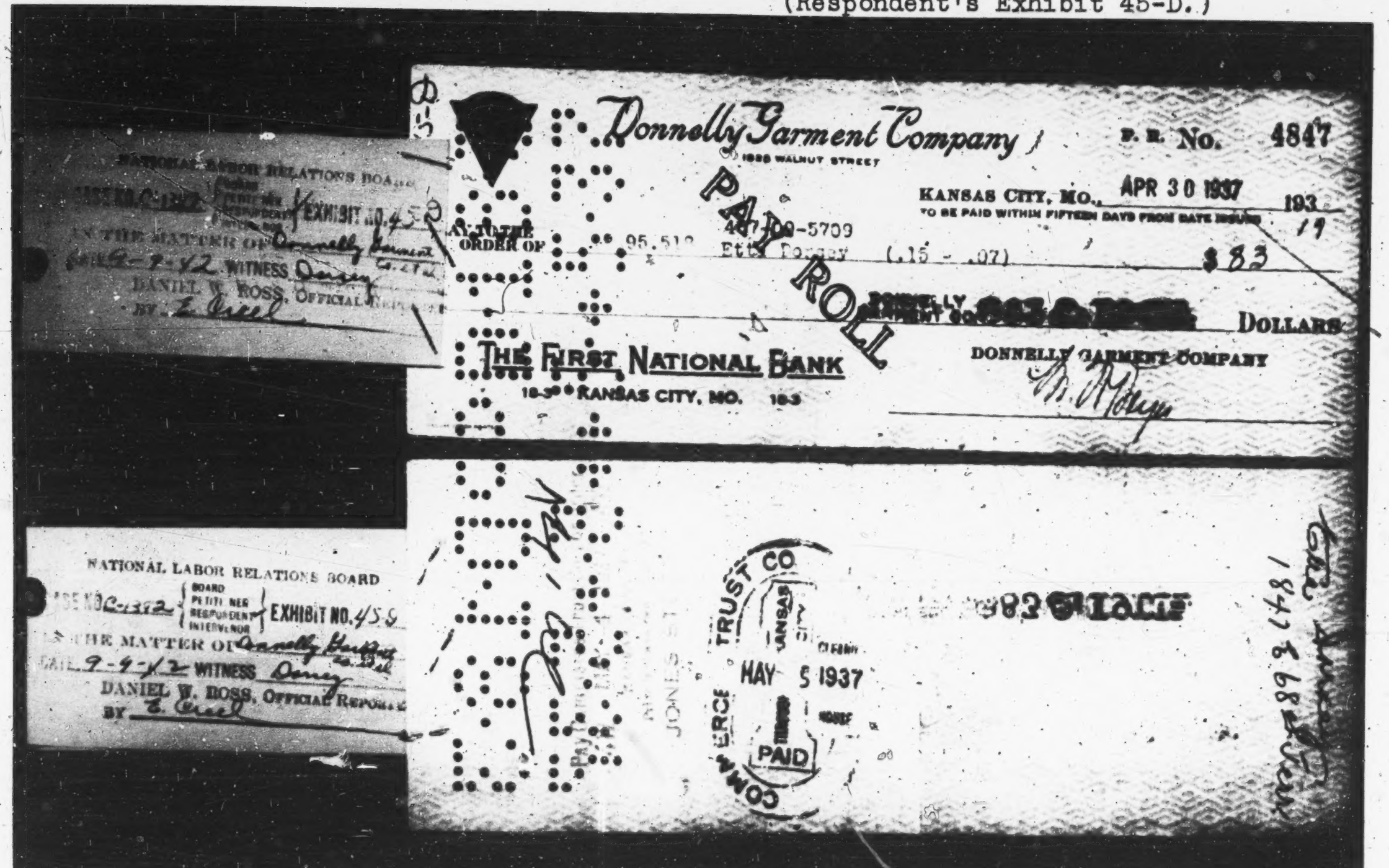
NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 BOARD PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 454
IN THE MATTER OF Donnelly Garment Co. et al
DATE 9-9-42 WITNESS Dorsey
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Ouell

U.S. Treas. Dept. 18 1937 & 1938 Issues

33 KANSAS CITY CLEARING HOUSE APR 27 37

732

(Respondent's Exhibit 45-D.)



NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1312 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 45-D
IN THE MATTER OF Donnelly Garment Co. et al
DATE 9-9-42 WITNESS Dorsey
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Greel

Donnelly Garment Company
1020 WALNUT STREET
P. R. No. 4847
KANSAS CITY, MO., APR 30 1937 19
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED
PAY TO THE ORDER OF 95-512 Etta Dorsey (.15 - .07) $83
DONNELLY [redacted] DOLLARS
THE FIRST NATIONAL BANK
KANSAS CITY, MO.
DONNELLY GARMENT COMPANY
PAYROLL

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1312 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 45-D
IN THE MATTER OF Donnelly Garment Co. et al
DATE 9-9-42 WITNESS Dorsey
DANIEL W. ROSS, OFFICIAL REPORTER
BY E. Greel

COMMERCE TRUST CO
KANSAS CITY
MAY 5 1937
PAID

$83 [illegible]

414

Kansas City Mo
July - 15 - 37

To whom it may concern:-

During the past four and one half years I have been employed as operator by the Donnelly Garment Co.

Working conditions & salary have been very satisfactory and I am very well satisfied with my present employer. I do not wish to join any outside organization & I feel that I have the right to use my own judgment in this matter.

Yours respectfully

Bessie Weilert

3920 Wabash

NATIONAL LABOR RELATIONS BOARD
BOARD / PETITIONER / RESPONDENT / INTERVENOR
EXHIBIT NO. 47
CASE NO. C-1382
IN THE MATTER OF: Donnelly Garment Co. / Bessie Weilert et al.
DATE 4-11-42 WITNESS Weilert
DANIEL W. ROSE, OFFICIAL REPORTER
BY _____

State of Missouri :
: ss.
County of Jackson :

(Respondent's Exh

DANIEL W. ROSS, OFFICIAL REPORTER
BY _____

3920 Wabash

U.S. EXHIBIT 4211

State of Missouri :
: ss.
County of Jackson :

I, Bessie Wilcox, being duly sworn, state that I wrote the attached letter of my own free will and that the facts contained therein are true.

Dated this 27th day of October, 1937.

Bessie Wilcox

Subscribed and sworn to before me this 27th day of October, 1937.

My commission expires _____.

Horace B. Powell
Notary Public in and for
Jackson County, Missouri

4211

(Respondent's Exhibit 49-A.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 2531

1937

KANSAS CITY, MO. 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 14.417 Bessie Weibert (10.07) $25.40

DOLLARS

THE FIRST NATIONAL BANK
18-3 KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY
C. Batson

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 49-A
IN THE MATTER OF Donnelly Garment
DATE 9-10-42 WITNESS Weibert
DANIEL W. ROSS, OFFICIAL REPORTER
BY Scott

PAID
THROUGH CLEARING HOUSE
JUN 14 1937
UNION NATIONAL BANK
KANSAS CITY, MO. 18-9

PAY TO THE ORDER OF
UNION NATIONAL BANK
KANSAS CITY, MO.

JUN 14 1937

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 49-A
IN THE MATTER OF Donnelly Garment Co.
DATE 9-10-42 WITNESS Weibert
DANIEL W. ROSS, OFFICIAL REPORTER
BY Scott

Donnelly Garment Company

1008 WALNUT STREET

P. R. No. 918

KANSAS CITY, MO. MAY 20 1937 193

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY 437-00-3123

14.1 Beagle Wellert (10.07) $21 20

PAY ROLL

N. P. 18-18

DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

C Batatri

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-132 PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. Y 9-B

IN THE MATTER OF Donnelly Garment

DATE 9-16-42 WITNESS Wellert

DANIEL W. ROSS, OFFICIAL REPORTER

BY Scott

(Respondent's Exhibit 49-B.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 8541

KANSAS CITY, MO. MAY 6 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF

487-09-8128
14.413 Bessie Hallert (10.07) $27.64

PAYROLL

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

[redacted] DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

C. Britain

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-112 EXHIBIT NO. 49C
IN THE MATTER OF Donnelly Garment Co.
DATE 1-10-38 Hallert
DANIEL W. ROSS, OFFICIAL REPORTER
BY [illegible]

(Respondent's Exhibit 49-C.)

Resp. Ex 49c

COMMERCE TRUST CO. PAID MAY 10 1937 KANSAS

[illegible]

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-112 EXHIBIT NO. 49C
IN THE MATTER OF Donnelly Garment Co.
DATE 1-10-38 WITNESS Bessie Hallert
DANIEL W. ROSS, OFFICIAL REPORTER

(Respondent's Exhibit 49-D.)

Donnelly Garment Company
1823 WALNUT STREET

P. R. No. 5232

APR 8 1937

KANSAS CITY, MO. 193

TO BE PAID WITHIN THIRTY DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 22-3123 11.417 Bessie Tellert (10.07) $26

DOLLARS 26 34 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

E. Batson

PAY ROLL

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 49-D
IN THE MATTER OF Donnelly Garment Co.
DATE 9-10-42 WITNESS [illegible]
DANIEL W. BOSS, OFFICIAL REPORTER
BY [illegible]

DANIEL W. BOSS, OFFICIAL REPORTER
BY [illegible]
DATE 9-10-42 WITNESS [illegible]
IN THE MATTER OF Donnelly Garment Co.
CASE NO. C-1382 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 49-D
NATIONAL LABOR RELATIONS BOARD

APR 12 1937
23-3
JONES STORE CO

PAY TO THE ORDER OF
FIRST NATIONAL BANK
KANSAS CITY, MO.

Bessie Tellert

Rec'd 4 Ans

Respondent's Exhibit 49-E.)

Donnelly Garment Company P. R. No. 3514

KANSAS CITY, Mo. MAR 25 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 14.11 Weilert (10.07) $25.05

825 & 05 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 10-3

N. P. 18-18

DONNELLY GARMENT COMPANY

C. Peters

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1312 EXHIBIT NO. [illegible]
IN THE MATTER OF
DATE 9-[illegible] WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

PAID THROUGH
KANSAS CITY
CLEARING HOUSE
18-18 A TRUST CO. 18-18
MERCANTILE HOME BANK
KANSAS CITY, MO.

MERCANTILE HOM
FOR DEPOSIT ONLY
RATZ DRUG CO., No.

Rec'd Ex 49-E
49-07-813

(Respondent's Exhibit 51-A.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 7957

KANSAS CITY, MO. APR 29 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF

PAY ROLL

N.P. 181

$

DOLLARS

DONNELLY GARMENT COMPANY

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 19-3

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 | BOARD / PETITIONER / RESPONDENT / INTERVENOR
EXHIBIT NO. 51a
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/37 WITNESS Cheney
DANIEL W. ROSS, Official Reporter
BY Scott

COMMERCE TRUST CO. MAY 1937 CLEARING PAID

Pay Commerce Trust Co. or Order
2314 KANSAS CITY, MO.
GEO. H. WEYERING

(Respondent's Exhibit 51-B.)

Donnelly Garment Company

1828 WALNUT STREET

P. R. No. 7132

APR 22 1937

KANSAS CITY, MO. 193

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 8,51[illegible] / 495-[illegible]3139 Opal Chaney (10.07) $25.43

PAYROLL

DONNELLY GARMENT COMPANY

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO.

12-3 10-3

N. P. 18-3

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138 EXHIBIT NO. 51-B

Donnelly Garment Co

9/15/54 WITNESS Chaney

DANIEL W. ROSS, OFFICIAL REPORTER

BY Scott

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138 EXHIBIT NO. 51-B

THE MATTER OF Donnelly Garment Co

DATE 9/15/54 WITNESS Chaney

DANIEL W. ROSS, OFFICIAL REPORTER

BY Scott

Opal Chaney

[illegible]

PAY TO THE ORDER OF FIRST NATIONAL BANK, KANSAS CITY, MO. A Member Endorsement Guaranteed

152

KATZ DRUG CO. No. 7

51-B

(Respondent's Exhibit 51-C.)

Donnelly Garment Company

1828 WALNUT STREET

P. R. No. 6303

KANSAS CITY, MO. APR 15 1937

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 495-05-3189 Opal Chaney (10.07) $27.47

DOLLARS

PAYROLL

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO. 18-2

DONNELLY GARMENT COMPANY

C Boston

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 51-C

IN THE MATTER OF Donnelly

DATE 9/15/37 WITNESS Chaney

DANIEL W. ROSS, OFFICIAL REPORTER

BY

Opal Chaney
1520 Campbell
City
Mo.

Pay rec

JONES STATIONERY CO.

(Respondent's Exhibit 51-D.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 5472

APR 8 1937

KANSAS CITY, MO.
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

193

Pay to the order of [illegible]-3139 8.31 Opal Cheney (10.07) $ 22.51

DOLLARS

PAYROLL

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 10-3

DONNELLY GARMENT COMPANY

C. Boston

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 BOARD EXHIBIT NO. 51-D
IN THE MATTER OF Donnelly Garment Co
DATE 9/15/37 WITNESS Cheney
DANIEL W. ROSS, OFFICIAL REPORTER
BY Scott

JONES STORE CO.

TRUST CO. KANSAS CITY MISSOURI APR 8 1937 PAID COMM.

Opal Cheney
520 Cleveland
K. C. Mo.

(Respondent's Exhibit 51-E.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 4620
APR 1 1937

KANSAS CITY, MO. 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 8.519 Opal Chaney (10.07) $24 38

PAY ROLL

DOLLARS 24 38 CTS.

NOT GOOD FOREVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 10-3

DONNELLY GARMENT COMPANY

R. Baston

NATIONAL LABOR RELATIONS BOARD
BOARD EXHIBIT NO. 51-E
DATE 9/15/37 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 51-E
IN THE MATTER OF Donnelly Co
DATE 9/15/37 WITNESS Chaney
DANIEL W. ROSS, OFFICIAL REPORTER
BY

PAY TO THE ORDER OF
THE NATIONAL BANK
KANSAS CITY, MO.
APR 2 1937
238
JONES STORE CO.

Opal Chaney
1520 Charlotte
K. C. Mo

Resp-51-E

(Respondent's Exhibit 51-F.)

3-F

Donnelly Garment Company

1828 WALNUT STREET

P. R. No. 3748

KANSAS CITY, MO. MAR 25 1937 193

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF

(10.07)

$18.78

EIGHTEEN 78 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

PAYROLL

THE MATTER OF

DANIEL W. KISS, OFFICIAL REPORTER

BY

DATE 9/15/38 WITNESS

DANIEL W. KISS, OFFICIAL REPORTER

BY

EXHIBIT NO. 51

ON HEARING

PAID

MAR 27 1937

UNION NATIONAL BANK

KANSAS CITY, MO.

18-9

THROUGH CLEARING HOUSE

18-9

UNION NATIONAL BANK

FOR CREDIT OF ACCOUNT OF

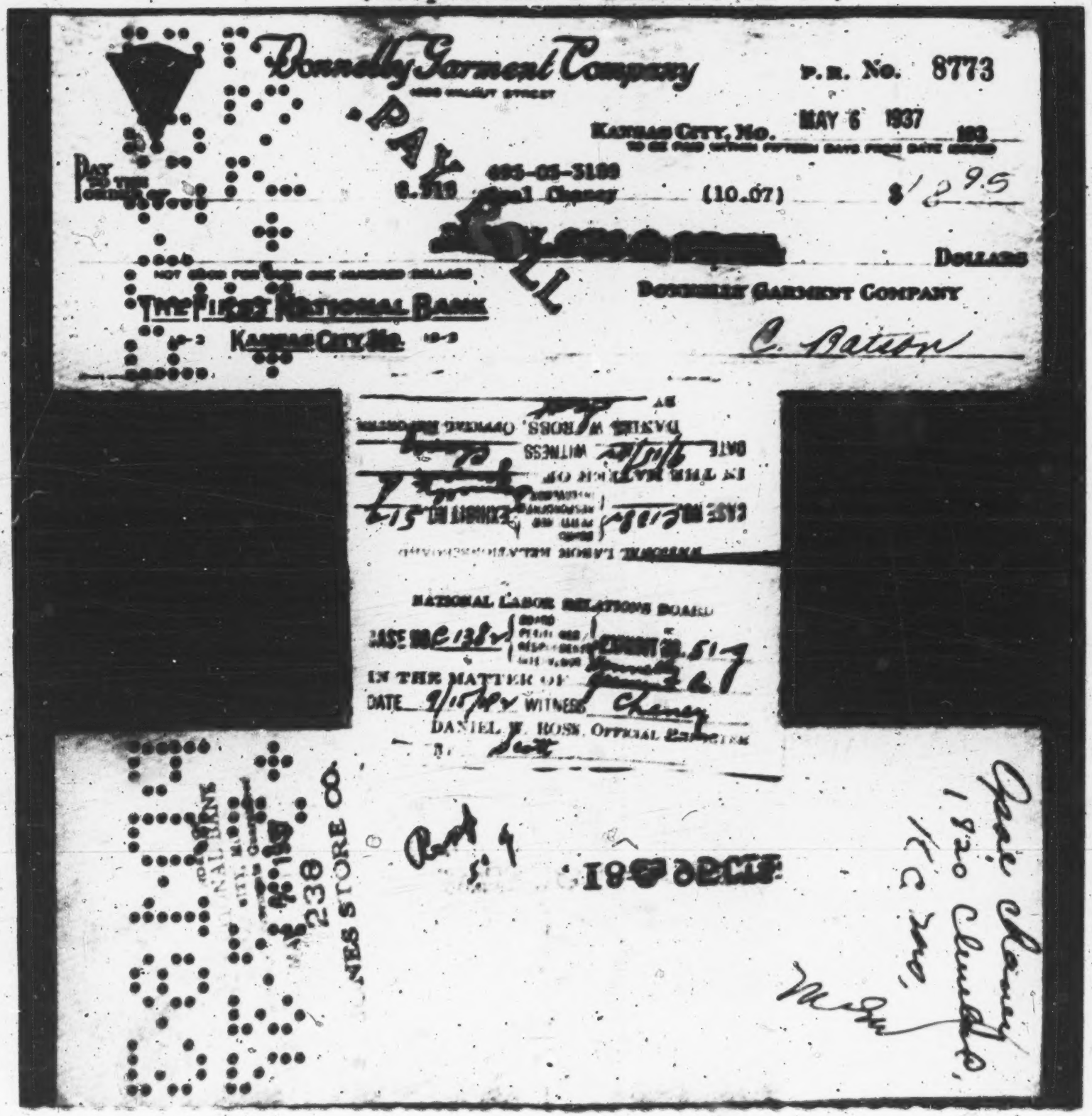
Kansas City Power & Light Co.

1536.51 ac Pd 11

K.C.P.&L. Chg.

Rec'd

(Respondent's Exhibit 51-G.)



Donnelly Garment Company

P.R. No. 8773

KANSAS CITY, MO. MAY 6 1937

PAY ROLL

495-05-3189 (10.07) $12.95

DOLLARS

DONNELLY GARMENT COMPANY

THE FIRST NATIONAL BANK

KANSAS CITY, MO.

C. Bates

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138 EXHIBIT NO. 51-G

IN THE MATTER OF

DATE 9/15/37 WITNESS

DANIEL W. ROSS, Official Reporter

BY

Book 51

Jane Clancy
1820 Chundle
KC Mo

238

NES STORE CO

(Respondent's Exhibit 52-A.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 2030

KANSAS CITY, MO.

PAY TO THE ORDER OF

88-00-3023

1.51[illegible] Anna Reece (.10 - .07)

PAY ROLL

[illegible] 06 CTS.

THE FIRST NATIONAL BANK
KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-[illegible] BOARD / PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 52-A
IN THE MATTER OF Donnelly G. Co.
DATE 9/15/44 WITNESS Reece
DANIEL W. ROSS, OFFICIAL REPORTER
BY Reed

JONES STORE CO.

(Respondent's Exhibit 52-B.)

Donnelly Garment Company

1500 WALNUT STREET

P. R. No. 2887

KANSAS CITY, Mo. MAR 1 1923

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 1.519 Anna Reece (.10 .07) $15 50

PAYROLL

DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

C. Reece

EXHIBIT NO. 52-B

Donnelly Garment Co

Reece

C138v

9/15/42v

Creel

9/14/42

Creel

EXHIBIT NO. 52-A

Creel

Anna Reece

3-5-42

JONES STORE CO.

(Respondent's Exhibit 52-C.)

Donnelly Garment Company

P. R. No. 3748

KANSAS CITY, MO. MAR 25 [illegible]

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF [illegible] (.10 - .07) $ 1 4 15

[illegible] DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

PAYROLL

NATIONAL LABOR RELATIONS BOARD

EXHIBIT NO. Resp. 52-C

CASE NO. C-1387

IN THE MATTER OF

DONNELLY GARMENT COMPANY

DATE 9/15/54

WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

PAID THROUGH KANSAS CITY CLEARING HOUSE

APR 13 37

(Respondent's Exhibit 52-D.)

Donnelly Garment Company

1520 WALNUT STREET

P. R. No. 4613

APR 1 1937

KANSAS CITY, MO.

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 487-50-3023 1.51[illegible] Anna Reece (.10 - .07) $20 84

N-1 18

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

DOLLARS $20 84 CTS.

THE FIRST NATIONAL BANK

KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

A. Batson

PAYROLL

NATIONAL LABOR RELATIONS BOARD

EXHIBIT NO. 52-d

Donnelly Garment Co.

Reece

C138-v

9/16/40-v

Cruel

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138

EXHIBIT NO. 52-A

IN THE MATTER OF

DATE 9/15/40 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

COMMERCE TRUST CO. KANSAS CITY APR 17 1937 PAID

COMMERCE TRUST CO. KANSAS CITY DONNELLY GARMENT CO. 2334

Anna Reece 487-50-3023

(Respondent's Exhibit 52-E.)

(Respondent's Exhibit 52-F.)

Donnelly Garment Company
1888 WALNUT STREET

P. R. No. 7125

KANSAS CITY, MO. APR 22 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 1.51 Anna Secco (.10 - .07) $ 18 13

DONNELLY GARMENT COMPANY 18 13 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
18-3 KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY
C. Batson 18-1

PAY ROLL

Re. 52-F

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138
EXHIBIT NO. 52-F
DATE 9/15/42 WITNESS
DANIEL W. LOSS, OFFICIAL REPORTER
BY

DATE 9/11/42 WITNESS
DANIEL W. LOSS, OFFICIAL REPORTER
BY

COMMERCE TRUST CO. KANSAS CITY MAY 8 1937 PAID

CATZ DRUG

(Respondent's Exhibit 52-G.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 7950

APR 29 1937

KANSAS CITY, MO.
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF

09-3023 1.51 Anna Reece (.10 .071 $24 25

PAYROLL

[redacted] DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY MO. 18-3

DONNELLY GARMENT COMPANY

P. Batson

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-137 EXHIBIT NO. 52-G
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/37 WITNESS Reece
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

MAY 12 1937
PAID

(Respondent's Exhibit 52-H.)

Donnelly Garment Company

1020 WALNUT STREET.

P. R. No. 8766

KANSAS CITY, MO. May 6 1937 193

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 487-09-9023 Anna Reece (.10 - .07) $ [redacted] DOLLARS

PAYROLL

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY MO.

DONNELLY GARMENT COMPANY

C. B. Olson

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138 EXHIBIT NO. 52-H

IN THE MATTER OF Donnelly Co.

9/16/36 WITNESS Reece

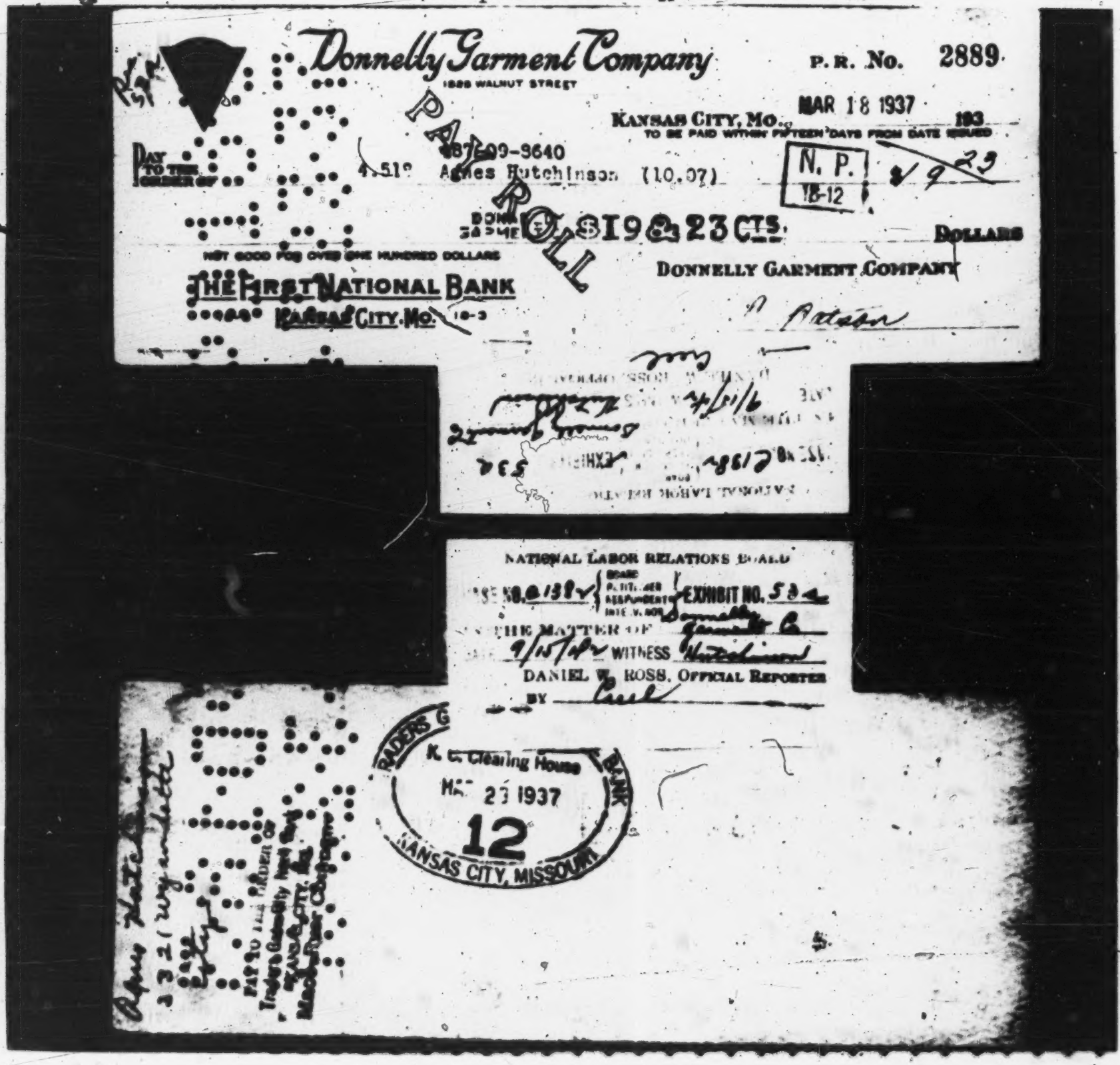
DANIEL W. ROSS, OFFICIAL REPORTER

BY Creel

COMMERCE TRUST CO. KANSAS CITY MAY 22 1937 PAID

MAY 21 1937 412

(Respondent's Exhibit 53-A)



Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 2889

KANSAS CITY, Mo., MAR 18 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 487-09-3640 4.51 Agnes Hutchinson (10.07)

N. P. 18-12

PAYROLL

8 I 9 & 23 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 10-3

DONNELLY GARMENT COMPANY

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138
EXHIBIT NO. 53-A
IN THE MATTER OF Donnelly Garment Co.
9/15/36 WITNESS Hutchinson
DANIEL W. ROSS, OFFICIAL REPORTER
BY Paul

RAILWAYS CLEARING HOUSE BANK
K. C. Clearing House
MAR 23 1937
12
KANSAS CITY, MISSOURI

(Respondent's Exhibit 53-B.)

Donnelly Garment Company

1300 WALNUT STREET

P. R. No. 3744

KANSAS CITY, MO. MAR 25 1937

PAY ROLL

487-28-8640 4.51¢ Agnes Hutchinson (10.07)

N. P. 18-3

$22.71

DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-1314 BOARD / PETITIONER / RESPONDENT / INTERV. NOR EXHIBIT NO. 53-B

IN THE MATTER OF Donnelly Garment Co

DATE 9/15/44 WITNESS Hutchinson

DANIEL W. ROSS, OFFICIAL REPORTER

BY Paul

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-1314 BOARD / PETITIONER / RESPONDENT / INTERV. NOR EXHIBIT NO. 53-B

IN THE MATTER OF

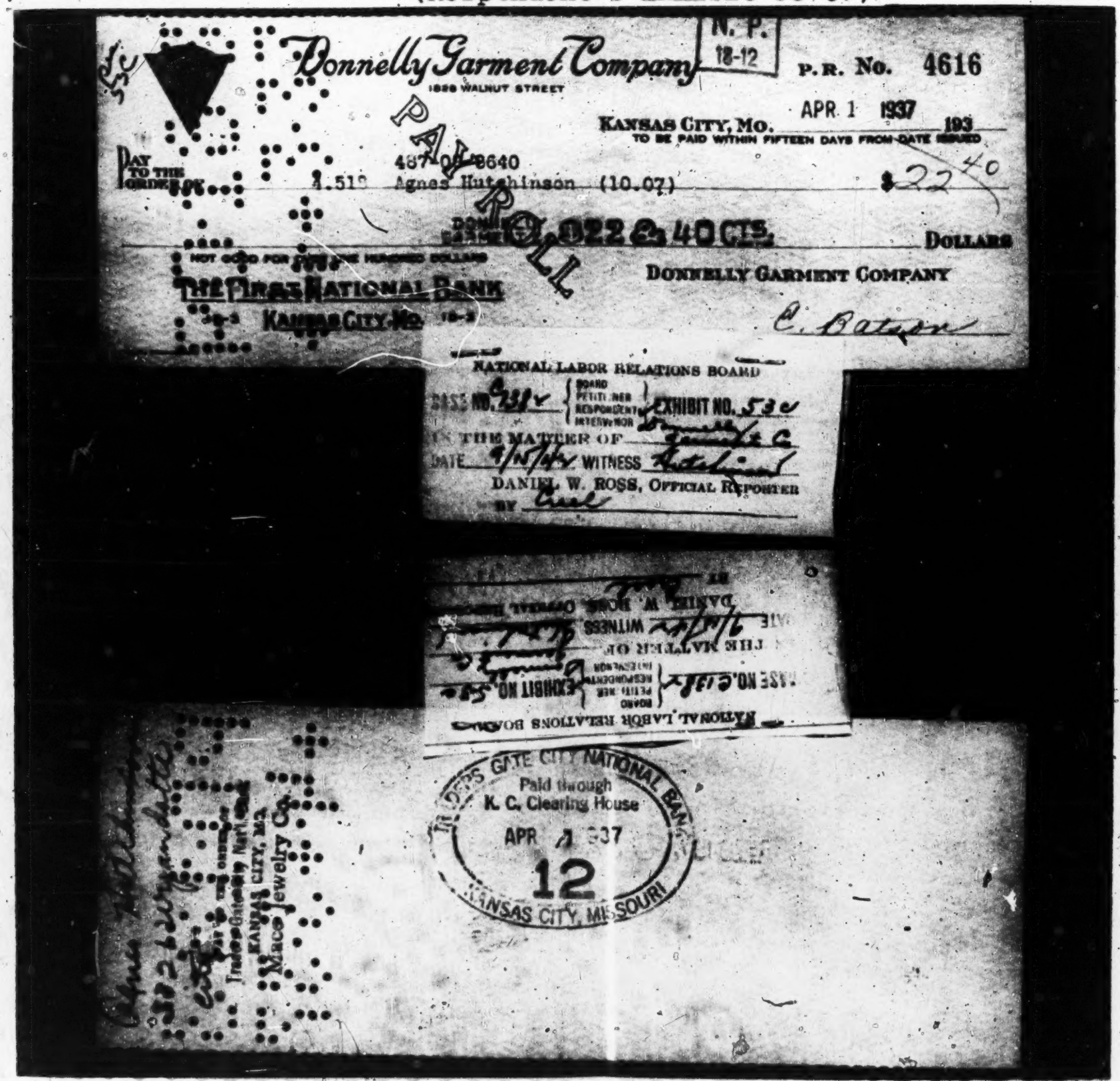
DATE 9/15/44 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY Paul

FIRST NATIONAL BANK KANSAS CITY, MO. MAKE-RYER CO.

(Respondent's Exhibit 53-C.)



Donnelly Garment Company
1828 WALNUT STREET

N. P.
18-12

P.R. No. 4616

APR 1 1937

KANSAS CITY, MO. 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 4870 8640 Agnes Hutchinson (10.07) $22 40

DONNELLY GARMENT COMPANY
PAYROLL
TWENTY-TWO & 40 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY
C. Batson

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-231 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 53-C
IN THE MATTER OF Donnelly G.C.
DATE 9/15/37 WITNESS Hutchinson
DANIEL W. ROSS, OFFICIAL REPORTER
BY Cook

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-231 { BOARD / PETITIONER / RESPONDENT / INTERVENOR } EXHIBIT NO. 53-C
IN THE MATTER OF Donnelly G.C.
DATE 9/15/37 WITNESS Hutchinson
DANIEL W. ROSS, OFFICIAL REPORTER
BY Cook

GATE CITY NATIONAL BANK
Paid through
K. C. Clearing House
APR 1 1937
12
KANSAS CITY, MISSOURI

Indorse Guaranty Natl
KANSAS CITY, MO.
Mace Jewelry Co.

(Respondent's Exhibit 53-D.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 5468
APR 9 1937

KANSAS CITY, MO. 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY ROLL

87-00-3340
4.519 Agnes Hutchinson (10.07)

N. P.
18-12

$ 23 31

DONNELLY GARMENT CO. $23 & 31 CTS. DOLLARS

NOT GOOD AFTER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

C. Batson

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-318 (BOARD PETIT JUR PRESIDENT INTERVENOR) EXHIBIT NO. 53-D
IN THE MATTER OF Donnelly Garment Co
DATE 9/15/44 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

Paid through
K. C. Clearing House
APR 10 1937
12
KANSAS CITY, MISSOURI

Office Petty Cash
$32.1 Pd

(Respondent's Exhibit 53-E.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 6299
APR 15 1937

KANSAS CITY, MO. 193
TO BE PAID WITHIN THIRTY DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 4.516 Agnes Hutchinson (10.07) N. P. 12 $ 28 77

PAY ROLL

DOLLARS 28 & 77 CTS.

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

C Patton

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 EXHIBIT NO. 53-E
IN THE MATTER OF Donnelly Garment Co
DATE 9/15/37 WITNESS Hutchinson
DANIEL W. ROSS, OFFICIAL REPORTER
BY Cuel

Paid through K. C. Clearing House APR 1937 12

Agnes Hutchinson
332 Lydia Ave
Kansas City Mo

Traders Gate City Nat'l Bank
Kansas City Mo
Main Jewelry Co

(Respondent's Exhibit 53-F.)

Donnelly Garment Company

1020 WALNUT STREET

P. R. No. 7128

KANSAS CITY, MO. APR 22 1937 193

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 487-09-8640 4.819 Agnes Hutchinson (10.07) $32.24

N. P. 18-12

DONNELLY GARMENT CO. THIRTY-TWO & 24 CTS. DOLLARS

THE FIRST NATIONAL BANK KANSAS CITY, MO. 10-3

DONNELLY GARMENT COMPANY

C Patton.

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-1384 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 53-F

IN THE MATTER OF Donnelly G

DATE 9/15/37 WITNESS Hutchinson

DANIEL W. ROSS, OFFICIAL REPORTER

BY Cruse

TRADERS GATE CITY NATIONAL BANK

Paid through K. C. Clearing House

APR 24 1937

12

KANSAS CITY, MISSOURI

(Respondent's Exhibit 53-G.)

Donnelly Garment Company
1020 WALNUT STREET

P.R. No. 7953

KANSAS CITY, MO. APR 29 1937 193
TO BE PAID WITHIN SEVERAL DAYS FROM DATE ISSUED

PAY [redacted] DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

C. Batson

NATIONAL LABOR RELATIONS BOARD
BOARD EXHIBIT NO. 53-G
DANIEL W. ROSS, OFFICIAL REPORTER
WITNESS 9/15/37
BY Creel

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 BOARD EXHIBIT NO. 53
RESPONDENT
INTERVENOR
IN THE MATTER OF Donnelly Co
DATE 9/15/37 WITNESS Hutchinson
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

FEDERAL RESERVE BANK KANSAS CITY NATIONAL BANK
Paid through K.C. Clearing House
MAY 3 1937
12
KANSAS CITY, MISSOURI

Wilmie Hutchinson
3229 Jefferson
City

TRACE JEWELRY CO.

(Respondent's Exhibit 53-H.)

Donnelly Garment Company

1828 WALNUT STREET

P. R. No. 8769

MAY 6 1937

KANSAS CITY, MO.

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED 193

PAY TO THE ORDER OF

487-09-3640

4.512 Agnes Hutchinson (10.07)

$ 2.06

DOLLARS

NOT GOOD FOR MORE THAN ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

PAYROLL

C138

EXHIBIT NO. 53-H

Donnelly Gar. Co.

IN THE MATTER OF

Hutchinson

DATE 9/15/37 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY Creel

CASE NO. C138

DANIEL W. ROSS, OFFICIAL REPORTER

BY Creel

DATE 9/15/37 WITNESS

IN THE MATTER OF

Donnelly Gar. Co.

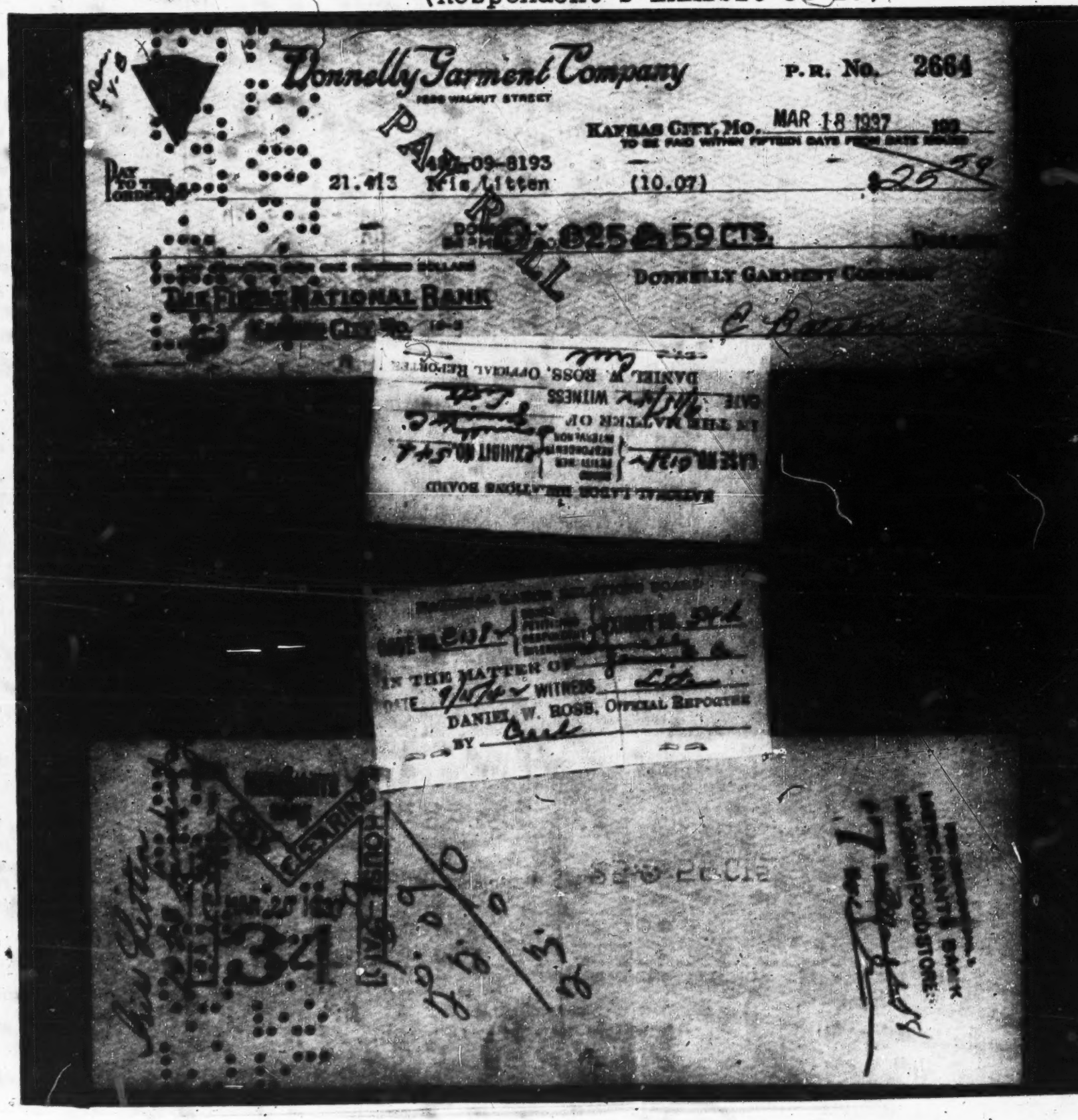
Hutchinson

FILED

(Respondent's Exhibit 54-A.)

Donnelly Garment Company
1828 WALNUT STREET
P.R. No. 1811
MAR 11 1937
KANSAS CITY, MO. 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED
PAY TO THE ORDER OF
21.415 Iris Litten (10.07) $23.62
DOLLARS
BOY GOOD FOR OVER ONE HUNDRED DOLLARS
THE FIRST NATIONAL BANK
KANSAS CITY, MO.
DONNELLY GARMENT COMPANY
PAYROLL
NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138
EXHIBIT NO. 54-A
THE MAYFLOWER CORP.
9/15/38 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY
MERCHANTS BANK
KANSAS CITY CLEARING HOUSE ASS'N
MAR 3 1937
FOR DEPOSIT ONLY
MERCHANTS BANK
MILGRAM FOX STORES

(Respondent's Exhibit 54-B.)


Donnelly Garment Company
1200 WALNUT STREET
KANSAS CITY, MO. MAR 18 1937
P. R. No. 2664
PAY TO THE ORDER OF
21.413 Nels Litten (10.07)
$25.59
PAY ROLL
$25 & 59 CTS.
DONNELLY GARMENT COMPANY
THE FIRST NATIONAL BANK
DANIEL W. ROSS, OFFICIAL REPORTER
IN THE MATTER OF
DATE
WITNESS
BY
EXHIBIT NO.
CASE NO.
MAR 25 1937
34
Mr. White
Mr. Litten
Mr. Bailey
Mr. Bailey
Mr. Litten
Mr. White
Mr. Bailey
Mr. Litten
Mr. White
Mr. Bailey
Mr. Litten
Mr. White

(Respondent's Exhibit 54-C.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 3521

KANSAS CITY, MO. MAR 25 1937
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED 193

PAY TO THE ORDER OF 487-09-8193 21.113 Iris Litten (10.07) $ 24 73

PAYROLL

DOLLARS 24 & 73 CTS.

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

C Batson

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 | BOARD / PETITIONER / RESPONDENT / INTERVENOR
EXHIBIT NO. 54-C
IN THE MATTER OF Donnelly Garment Co.
DATE 9/18/34 WITNESS Litten
DANIEL W. ROSS, OFFICIAL REPORTER
BY Cook

CASE NO. C-138 | BOARD / PETITIONER / RESPONDENT / INTERVENOR
EXHIBIT NO. 54-C
IN THE MATTER OF Donnelly Garment Co.
DATE 9/18/34 WITNESS Litten
DANIEL W. ROSS, OFFICIAL REPORTER
BY Cook

CLEARING HOUSE — PAID
MAR 25 1937
34

24.73
24.73
24.73

FOR DEPOSIT ONLY
MERCHANTS BANK
MILGRAM FOOD STORES

(Respondent's Exhibit 54-D.)

(Respondent's Exhibit 54-E.)

Donnelly Garment Company
1888 WALNUT STREET

P. R. No. 5238
APR 8 1937

KANSAS CITY, MO. 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 09-3193 21.413 Mis Litten (10.07) $25 77

DONNELLY GARMENT COMPANY $25 77 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO.

PAYROLL

DONNELLY GARMENT COMPANY

C. Batson

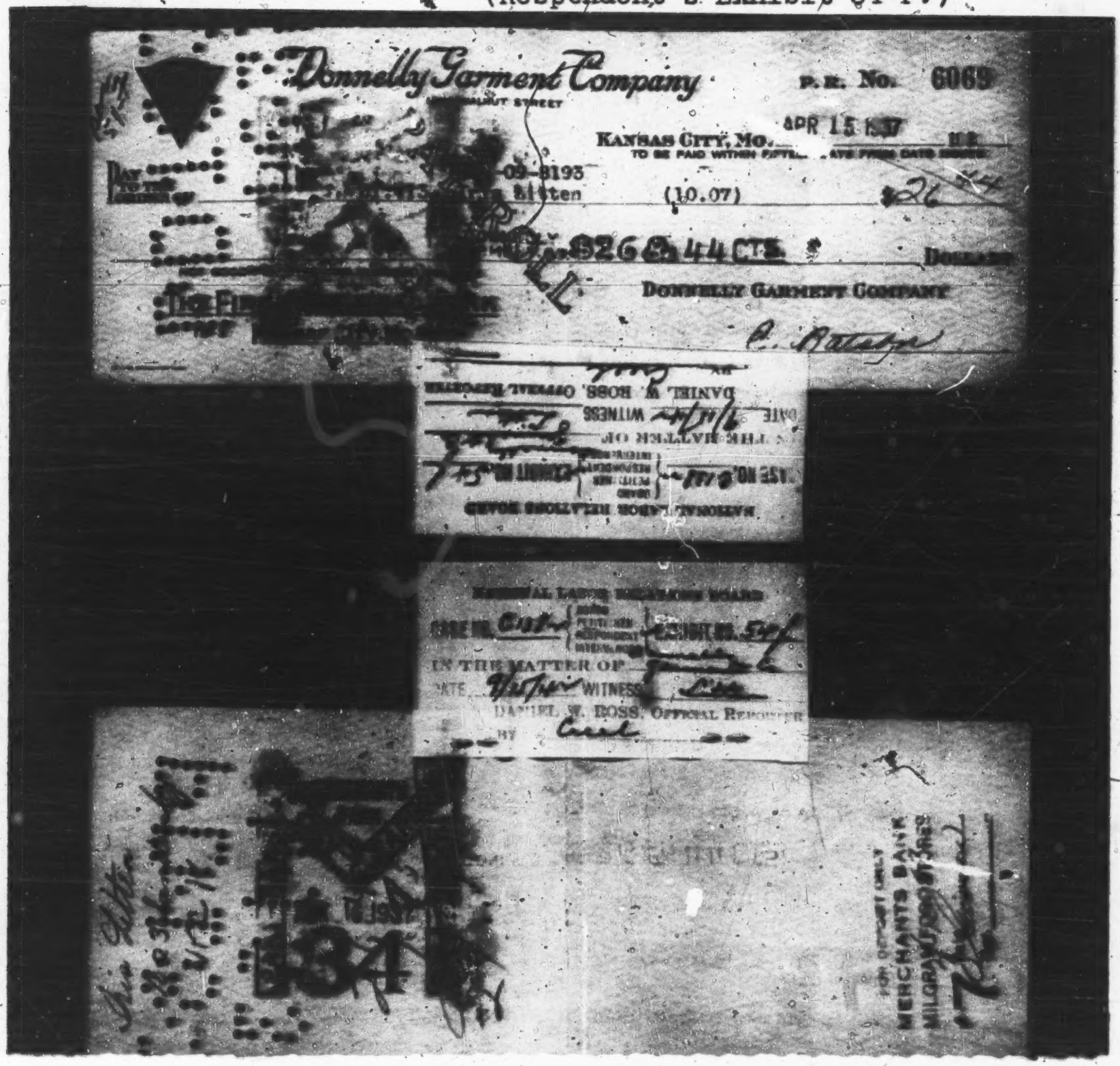
NATIONAL LABOR RELATIONS BOARD
CASE NO. C138 BOARD EXHIBIT NO. 54-E
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/37 WITNESS Litten
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

NATIONAL LABOR RELATIONS BOARD
CASE NO. C138 BOARD EXHIBIT NO. 54-E
IN THE MATTER OF
DATE 9/15/37 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

MERCHANTS BANK CITY CLEARING HOUSE PAID
APR 9 1937
3 4

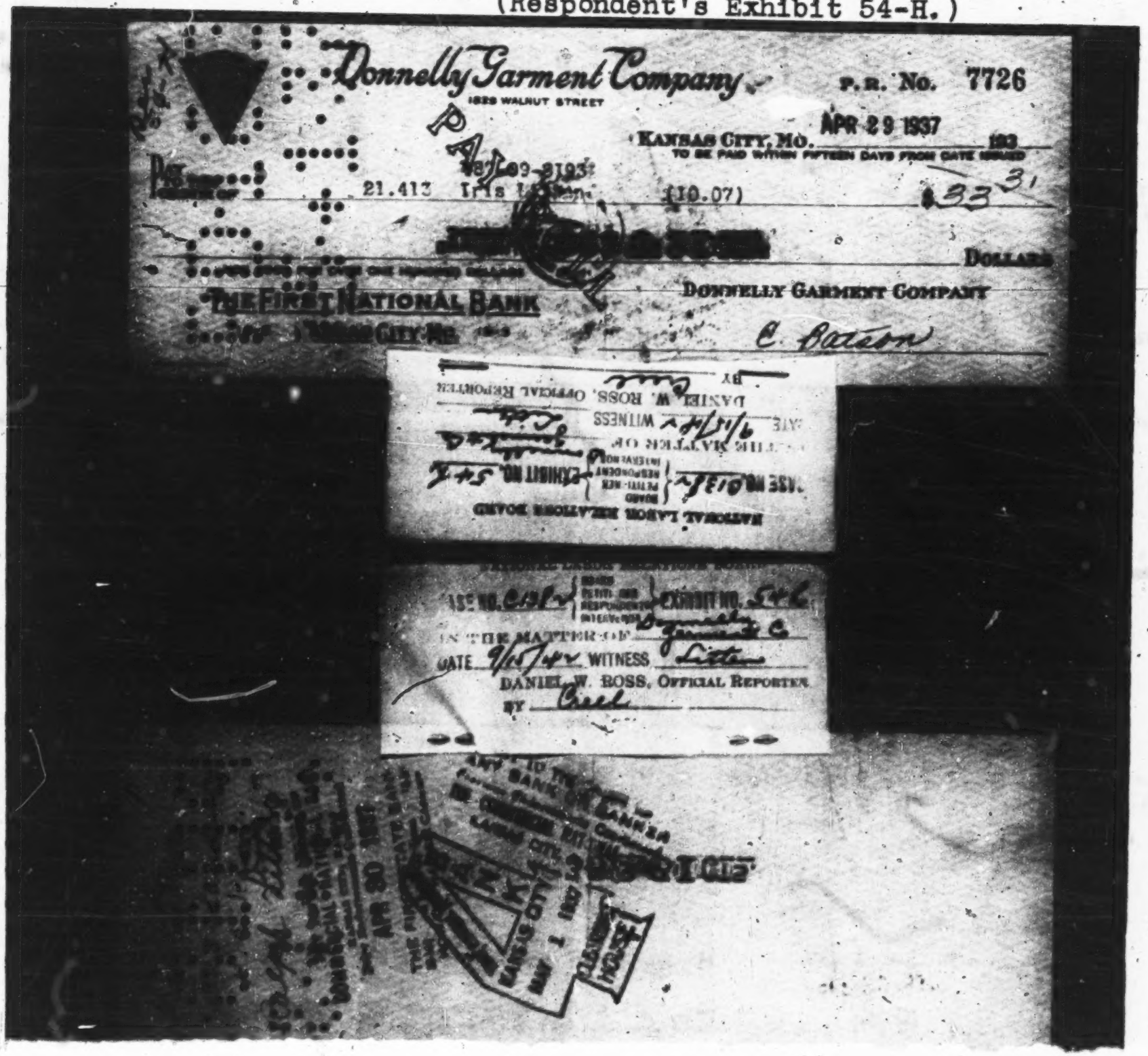
FOR DEPOSIT ONLY
MERCHANTS BANK
KANSAS CITY, MO.

(Respondent's Exhibit 54-F.)



(Respondent's Exhibit 54-G.)

(Respondent's Exhibit 54-H.)



(Respondent's Exhibit 54-I.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 8547

KANSAS CITY, Mo. MAY 6 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 21.413 487-09-8193 Iris Litten (10.07) $25.03

[redacted] DOLLARS

VOID IF NOT CASHED FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

C. Patton

PAYROLL

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 BOARD / PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 54-I
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/44 WITNESS Litten
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 BOARD / PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 54-I
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/44 WITNESS Litten
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

Iris Litten
1020 Charlotte

MERCHANTS BANK CITY CLEARING HOUSE PAID MAY 8 1937

FOR DEPOSIT ONLY
MERCHANTS BANK
WILLINGHAM-WOOD STORES

(Respondent's Exhibit 55-A.)

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 2658

KANSAS CITY, Mo. MAR 18 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 15.417 Flora Fries (10.07) $26 88

DONNELLY GARMENT COMPANY $26 & 88 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
18-3 KANSAS CITY, MO. 18-3

PAY ROLL

DONNELLY GARMENT COMPANY

A. Bacon

NATIONAL LABOR RELATIONS BOARD
BOARD EXHIBIT NO. 55a
CASE NO. C-138
PETITIONER
RESPONDENT
INTERVENOR
IN THE MATTER OF Donnelly Garment Co
DATE 9/15/37 WITNESS Fries
DANIEL W. ROSS, Official Reporter
Scott

PAY EXACTLY AS WRITTEN ON FACE HEREOF
PAYABLE BY THE FIRST NATIONAL BANK
KANSAS CITY, MO.

Donnelly Garment Company

1828 WALNUT STREET

P. R. No. 3515

MAR 25 1937

KANSAS CITY, MO. 193

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF [illegible] 487-02-0548 Flora Folas (10.07) $ [illegible]

PAYROLL

[illegible] & 10 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

18-3 KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

C. Dawson

NATIONAL LABOR RELATIONS BOARD

Case No. C-1381 BOARD EXHIBIT NO. 554

PETIT. NER. Donnelly Garment Co.

RESPONDENT

INTERVENOR

IN THE MATTER OF

DATE 9/15/37 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

NATIONAL LABOR RELATIONS BOARD

EXHIBIT NO. 554

Donnelly Garment Co.

DATE 9/15/37 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

(Respondent's Exhibit 55-B.)

(Respondent's Exhibit 55-C.)

Donnelly Garment Company
1888 WALNUT STREET

P. R. No. 4381
APR 1 1937

KANSAS CITY, MO. 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 15.417 Flora Fries 467-20-0548 (4-10-07) $23 31

DOLLARS 23 31 CTS. DOLLARS

PAYROLL

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY

E Bacon

NATIONAL LABOR RELATIONS BOARD

CASE NO. C 181 BOARD / PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 55C

IN THE MATTER OF Donnelly Garment Co

DATE 9/15/37 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

22

CITY NATIONAL BANK & TRUST CO. KANSAS CITY CLEARING HOUSE APR 5 1937 33 KANSAS CITY, MO.

FOR DEPOSIT ONLY
COOK PAINT & VARNISH CO.

(Respondent's Exhibit 55-D.)

Donnelly Garment Company
1888 WALNUT STREET

P. R. No. 5233
APR 8 1937

KANSAS CITY, Mo.
TO BE PAID WITHIN 193
ATD. FROM DATE ISSUED

PAY ROLL

-09-0548 -
15.41? Flora Fries (10.07) $25.74

$25 & 74 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 18-3

DONNELLY GARMENT COMPANY
C. Batson

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 55-D
IN THE MATTER OF Donnelly Garment Co
DATE 9/14/37 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY Scott

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 EXHIBIT NO. 55-D
IN THE MATTER OF Donnelly Garment Co
DATE 9/14/37 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY Scott

COMMERCE TRUST CO.
KANSAS CITY, MO.
APR 8 1937
18-1

Flora Fries
1400 Lydia
Independence, Mo.

(Respondent's Exhibit 55-E.)

Donnelly Garment Company
1205 WALNUT STREET

P. R. No. 6064

KANSAS CITY, MO. APR 15 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 487-09-3548 15.413 Flora Fries (10.07) $24 94

DONNELLY GARMENT CO. 824 & 94 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

C. Batson

PAYROLL

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 55-E
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/37 WITNESS Fries
DANIEL W. BOSS, OFFICIAL REPORTER
BY Scott

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 EXHIBIT NO. 55-E
IN THE MATTER OF
DATE 9/15/37 WITNESS
DANIEL W. BOSS, OFFICIAL REPORTER
BY

FIRST NATIONAL BANK TRUST CO. KANSAS CITY MISSOURI APR 20 1937 PAID

(Respondent's Exhibit 55-F.)

Donnelly Garment Company
1626 WALNUT STREET

P. R. No. 6895

12 1937

KANSAS CITY, MO. 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY ROLL

487-02-3548

15.412 Floss Prius (10.07) $32 59

DONNELLY GARMENT COMPANY
BARMEN[illegible] $32 59 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO. 10-3

DONNELLY GARMENT COMPANY

C. Batson

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1354 | BOARD PETITIONER RESPONDENT INTERVENOR | EXHIBIT NO. 55-F
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/37 WITNESS Prius
DANIEL W. ROSS, OFFICIAL REPORTER
BY Ross

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1354 | BOARD PETITIONER RESPONDENT INTERVENOR | EXHIBIT NO. 55-F
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/37 WITNESS Prius
DANIEL W. ROSS, OFFICIAL REPORTER
BY Ross

JONES STORE

FIRST NATIONAL BANK
KANSAS CITY, MO.

Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 7721

KANSAS CITY, Mo. APR 29 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF [redacted] $24.22

[redacted] DOLLARS

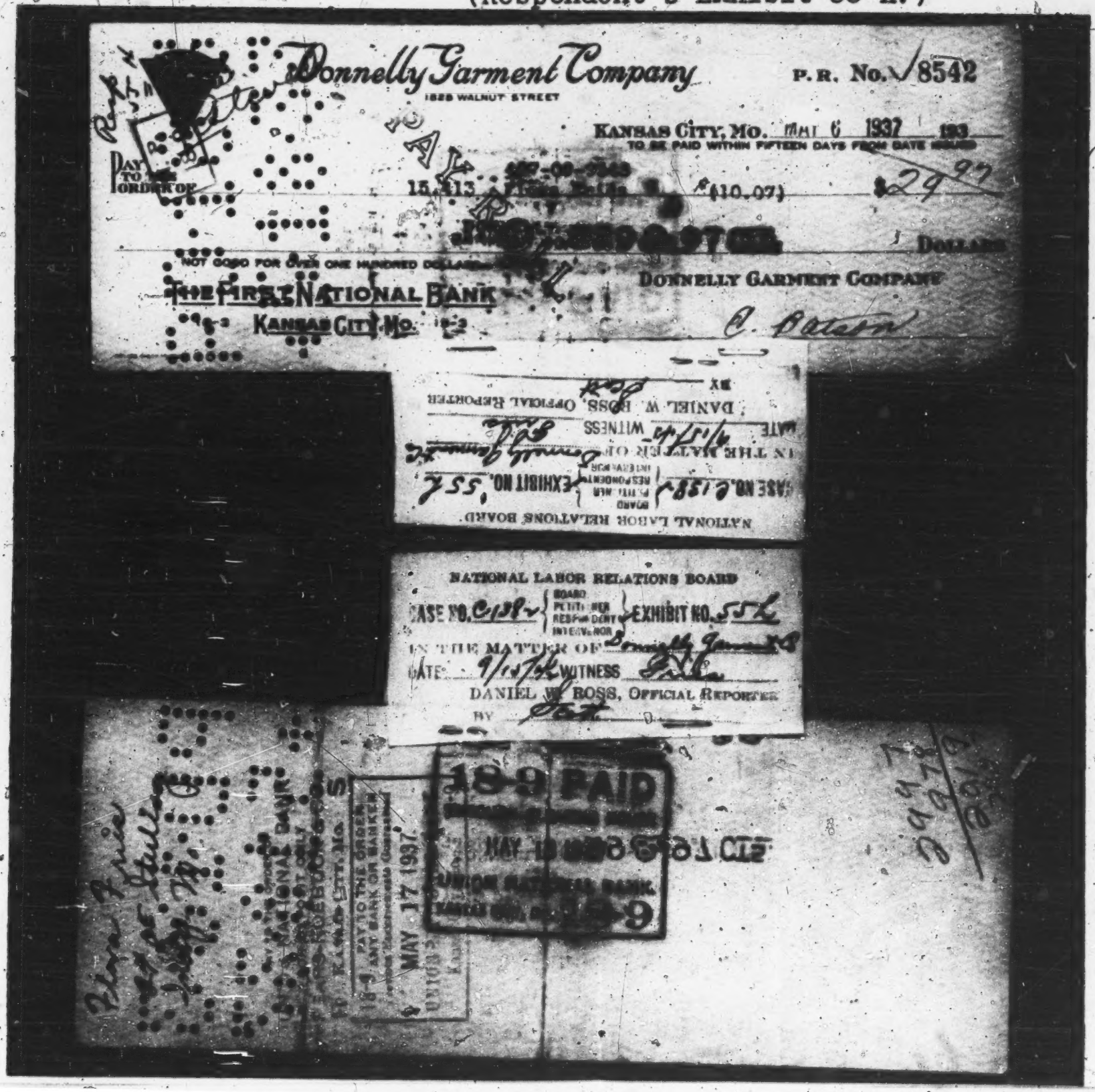
NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE First NATIONAL BANK
KANSAS CITY, MO.

DONNELLY GARMENT COMPANY
C. Batson

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-1382 BOARD / PETITIONER / RESPONDENT / INTERVENOR EXHIBIT NO. 554
IN THE MATTER OF Donnelly Garment Co
DATE 9/15/38 WITNESS Flinn
DANIEL W. ROSS, OFFICIAL REPORTER
BY Scott

(Respondent's Exhibit 55-H.)



Donnelly Garment Company
1828 WALNUT STREET

P. R. No. 8542

KANSAS CITY, MO. MAY 6 1937
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF

15,413 (10.07) $29.97

DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

C. Batson

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 | BOARD / PETITIONER / RESPONDENT / INTERVENOR | EXHIBIT NO. 55-H
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/38 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 | BOARD / PETITIONER / RESPONDENT / INTERVENOR | EXHIBIT NO. 55-H
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/38 WITNESS
DANIEL W. ROSS, OFFICIAL REPORTER
BY

189 PAID
MAY 19
UNION NATIONAL BANK
KANSAS CITY, MO.

MAY 17 1937
PAY TO THE ORDER OF ANY BANK OR BANKER

(Respondent's Exhibit 56-A.)

Donnelly Garment Company

1020 WALNUT STREET

P. R. No. 1807

KANSAS CITY, Mo.

MAR 11 1937

PAY TO THE ORDER OF 17.413 Billie Reynolds $22

DONNELLY GARMENT COMPANY

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO. 10-2

PAY ROLL

22 & 35 CTS. DOLLARS

DONNELLY GARMENT COMPANY

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-181 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 56-A

IN THE MATTER OF Donnelly Co.

DATE 4/15/37 WITNESS Reynolds

DANIEL W. ROSS, OFFICIAL REPORTER

BY

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-181 EXHIBIT NO. 56-A

IN THE MATTER OF

DATE 4/15/37 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

Reynolds

Donnelly Garment Co.

THE A. & P. TEA CO.

MAIN BROADWAY

KANSAS CITY, MO.

(Respondent's Exhibit 56-B.)

Donnelly Garment Company

1000 WALNUT STREET

P.R. No. 3517

KANSAS CITY, MO. MAR 25 1937

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 17.417 Lillie Reynolds $ 37.15

DOLLARS

PAYROLL

THE FIRST NATIONAL BANK

OF KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

C. Batson.

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138 BOARD EXHIBIT NO. 56-B

PETITIONER Donnelly Garment Co.

RESPONDENT

INTERVENOR

IN THE MATTER OF

DATE 4/14/37 WITNESS Reynolds

DANIEL W. ROSS, Official Reporter

BY

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138 BOARD EXHIBIT NO. 56-A

PETITIONER

RESPONDENT

INTERVENOR

IN THE MATTER OF

DATE 4/14/37 WITNESS

DANIEL W. ROSS, Official Reporter

BY

COMMERCE TRUST CO. KANSAS CITY CLEARING APR 2 1937 TRANSIT PAID

Leave Reynolds for Defendants

(Respondent's Exhibit 56-C.)

Donnelly Garment Company

1000 WALNUT STREET

P. R. No. 2660

KANSAS CITY, MO. MAR 13 1937

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY ROLL

Pay to the order of 174413 Lillie Reynolds $22.21

DONNELLY GARMENT COMPANY

FIFTY-TWO AND OVER ONE HUNDRED DOLLARS

$22 & 21 CTS. DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

E Adams

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-1381 EXHIBIT NO. 56-C

IN THE MATTER OF Donnelly Garment Co.

DATE 1/15/38 WITNESS Reynolds

DANIEL W. ROSS, Official Reporter

By Scott

FOR DEPOSIT ONLY

To the Credit of the Account of

The Donnelly Garment Co.

Lillie Reynolds

12

(Respondent's Exhibit 56-D.)

Donnelly Garment Company

1828 WALNUT STREET

P. R. No. 4383

KANSAS CITY, MO. APR 1 1937 193

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF Lillie Reynolds $22.44

DOLLARS

PAY ROLL

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO. 10-3

DONNELLY GARMENT COMPANY

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-1318 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 52-A

IN THE MATTER OF

DATE 9/15/37 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-1318 BOARD PETITIONER RESPONDENT INTERVENOR EXHIBIT NO. 52-D

IN THE MATTER OF

DATE 9/15/37 WITNESS

DANIEL W. ROSS, OFFICIAL REPORTER

BY

FOR DEPOSIT ONLY

TO THE ACCOUNT OF

The Kansas Grocery & Baking Co.

The Kansas Grocery Dept.

403 W. 18th St. Kansas City, Mo.

A-28

(Respondent's Exhibit 56-E.)

Donnelly Garment Company

1328 WALNUT STREET

P. R. No. 5235

APR 8 1937

KANSAS CITY, MO. 193

TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

61

17.117 Billie Reynolds $27

PAY TO THE ORDER OF

Twenty Seven & 61 CTS. DOLLARS

NOT GOOD FOR OVER ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK

KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

C. Bacon

PAID

DANIEL W. ROSS, OFFICIAL REPORTER

NATIONAL LABOR RELATIONS BOARD

CASE NO. C-138 BOARD EXHIBIT NO. 57-E

PETITIONER

RESPONDENT Donnelly Gar. Co.

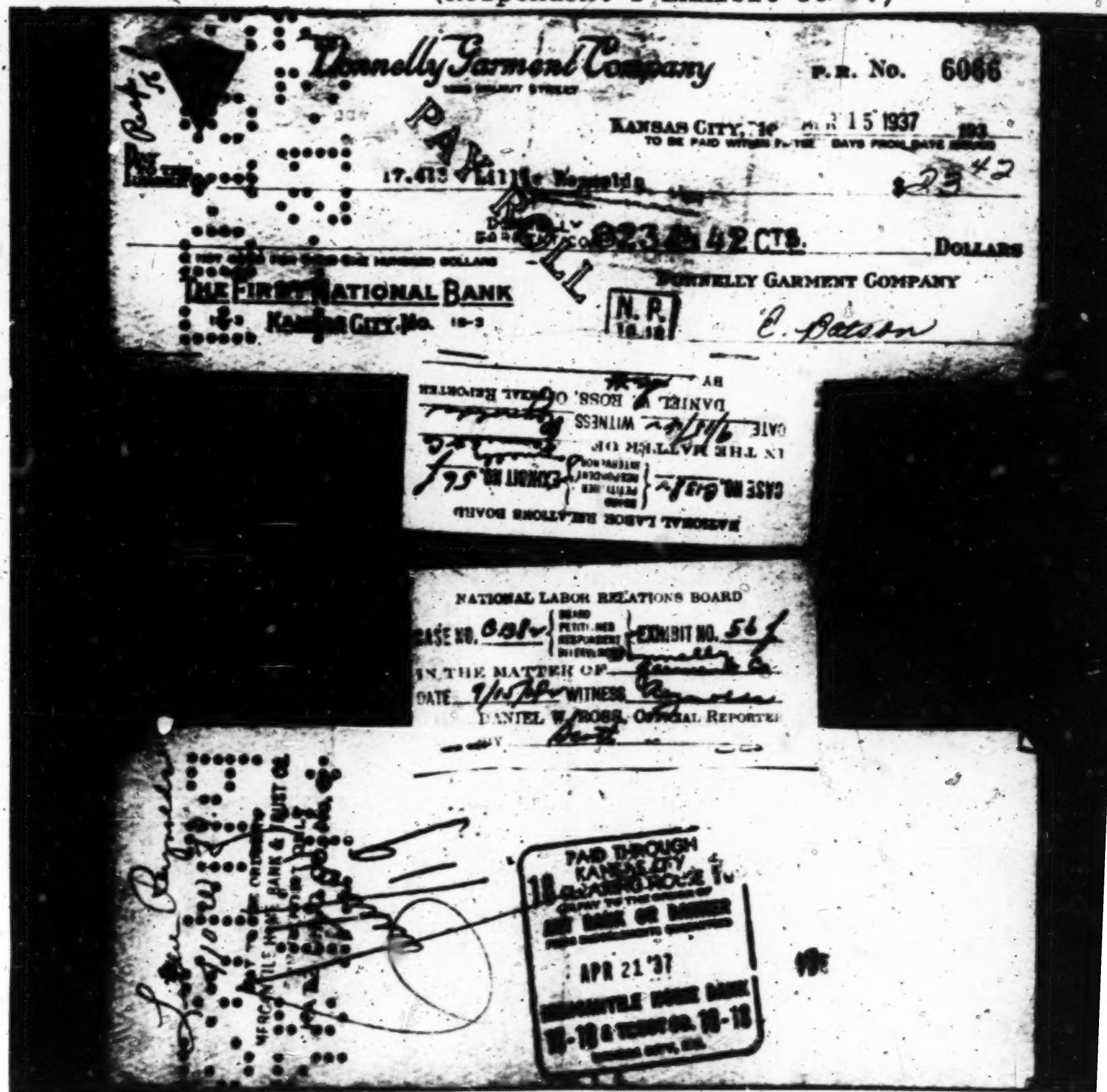
IN THE MATTER OF

DATE 9/15/37 WITNESS

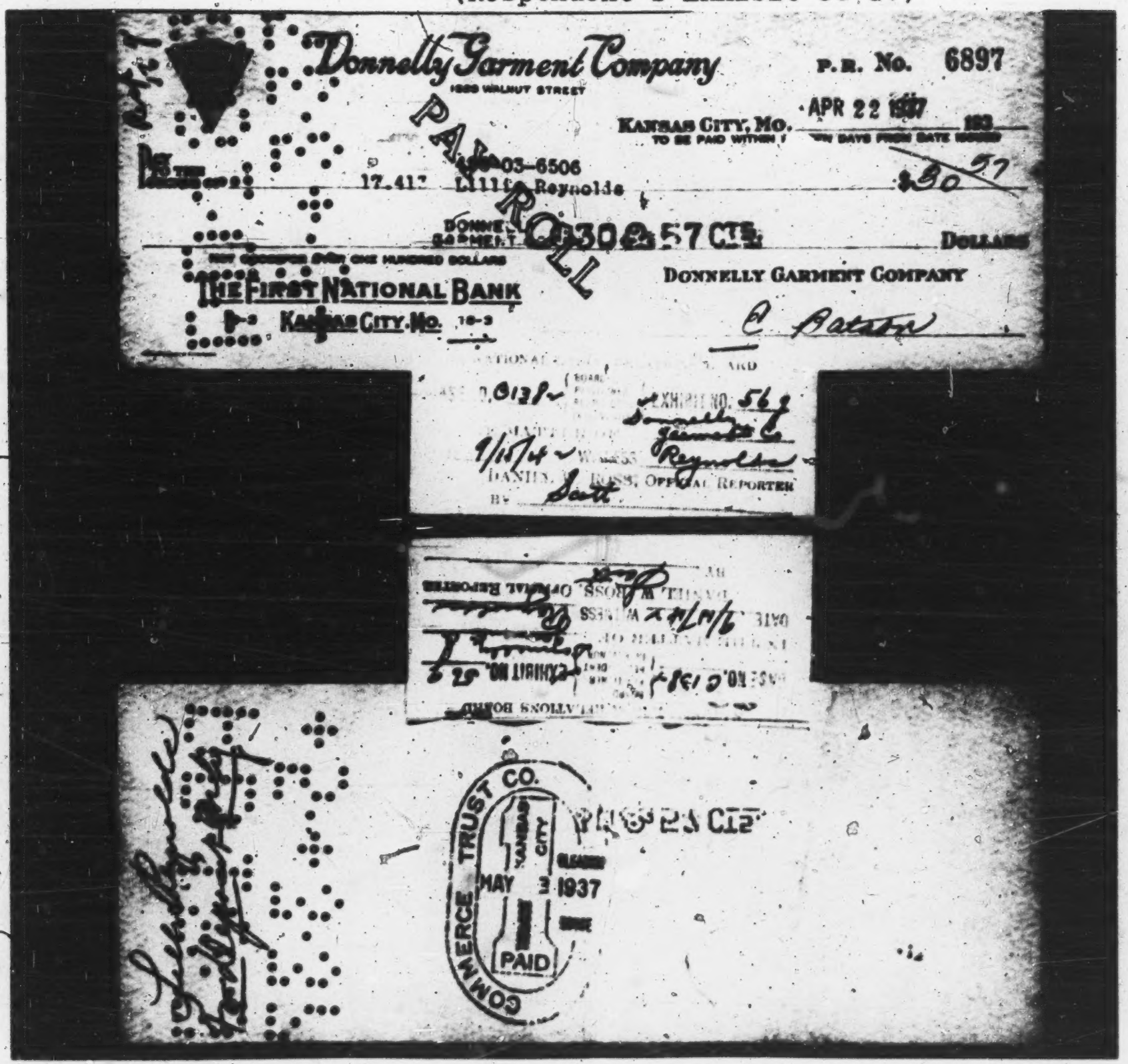
DANIEL W. ROSS, Official Reporter

COMMERCE TRUST CO. KANSAS CITY CLEARINGS APR 17 1937 PAID

(Respondent's Exhibit 56-F.)



(Respondent's Exhibit 56-G.)



Donnelly Garment Company
1020 WALNUT STREET

P. R. No. 6897

APR 22 1937

KANSAS CITY, MO.
TO BE PAID WITHIN 1 | 183 DAYS FROM DATE ISSUED

PAY ROLL

17.417 Lillie Reynolds $30.57

DOLLARS

THE FIRST NATIONAL BANK
KANSAS CITY, MO.

DONNELLY GARMENT COMPANY

C. Patton

EXHIBIT NO. 56-G
9/15/44
James C. Reynolds
DANIEL W. ROSS, OFFICIAL REPORTER

COMMERCE TRUST CO.
KANSAS CITY
MAY 3 1937
PAID

$30.57

(Respondent's Exhibit 56-H.)

Donnelly Garment Company
1020 WALNUT STREET

P. R. No. 7723

KANSAS CITY, Mo. APR 29 1937 193
TO BE PAID WITHIN FIFTEEN DAYS FROM DATE ISSUED

PAY TO THE ORDER OF 406-03-6506 17.41? Willie Reynolds $33.34

[redacted] DOLLARS

NOT GOOD FOR MORE THAN ONE HUNDRED DOLLARS

THE FIRST NATIONAL BANK
Kansas City, Mo. 10-3

PAYROLL

DONNELLY GARMENT COMPANY

G. Batatu

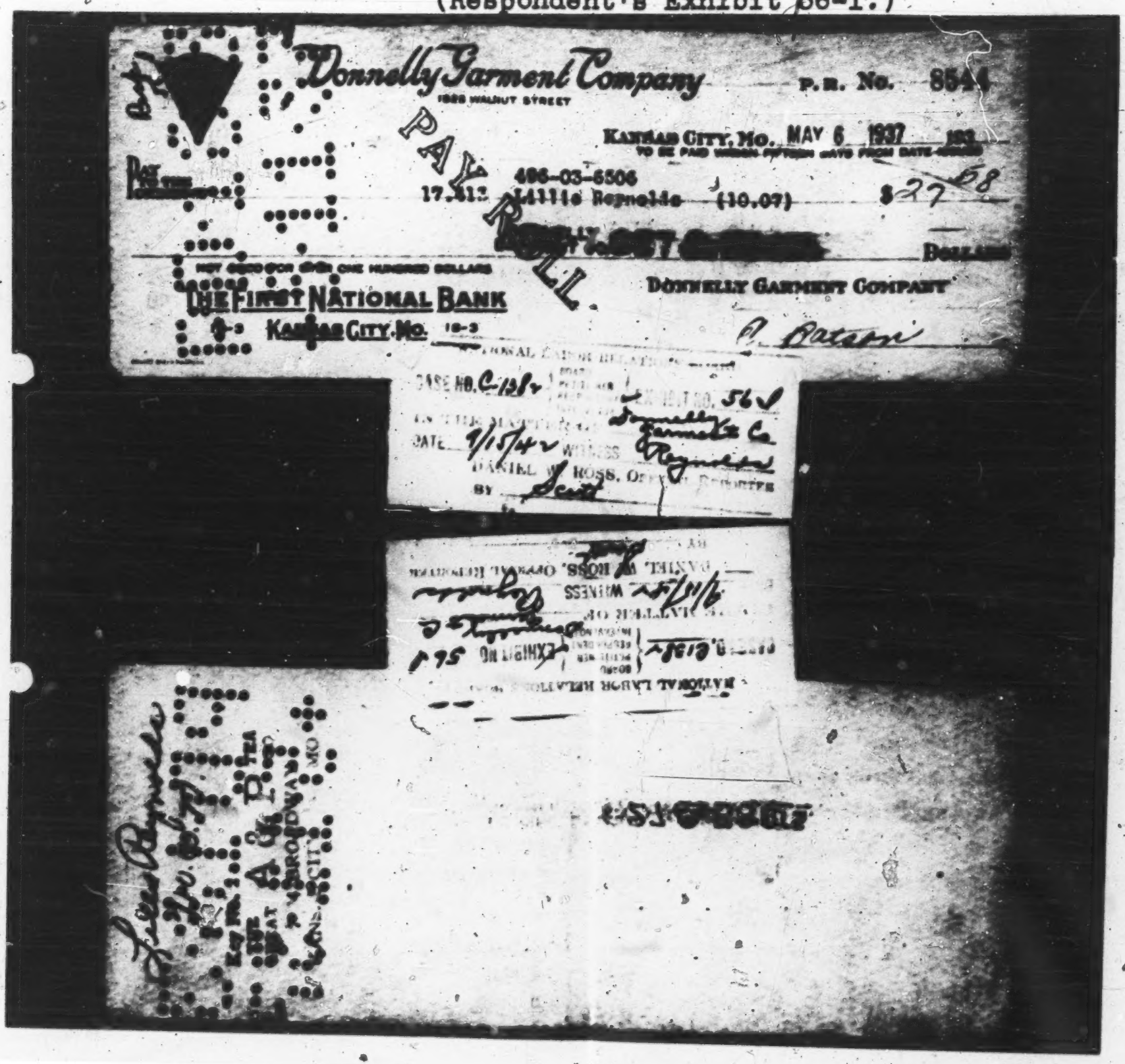
NATIONAL LABOR RELATIONS BOARD
CASE NO. C-[illegible] EXHIBIT NO. 56-H
IN THE MATTER OF [illegible]
DATE 9/15/37 WITNESS [illegible]
DANIEL W. ROSS, OFFICIAL REPORTER
BY [illegible]

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-[illegible] EXHIBIT NO. R-25
IN THE MATTER OF [illegible]
DATE 9/15/37 WITNESS [illegible]
DANIEL W. ROSS, OFFICIAL REPORTER
BY [illegible]

COMMERCE TRUST CO. KANSAS CITY CLEARED MAY 3 1937 PAID

Endorsed: Willie Reynolds

(Respondent's Exhibit 56-I.)



PIECE WORK OPERATORS

Comparative Earnings

First Six Months - 1937 and 1938

	January through June, 1937		
	Hours	Amount	Average Per Hour
Section 411 (Operators)			
James, Lutie,	1,035.40	481.23	.4646
Proctor, May	1,044.55	633.38	.6061
Donnelly, Helen,	781	397.04	.5083
Perry, Laura	1,058.20	484.64	.4579
Beal, Jane,	1,104	529.59	.4797
Section 412 (Operators)			
Walton, Helen	1,058.50	611.71	.5777
Copenhaver, Maude,	1,098	649.43	.5913
Schneider, Ethel,	1,088.45	627.47	.5763
Voorhees, Emma	1,057	699.01	.6612
Koll, Edith	1,040.25	550.56	.5291
Section 413 (Operators)			
Richardson, Marie	1,071	514.19	.4801
Hardman, Hazel	1,130	556.31	.4923
Kammer, Pauline	1,075	480.50	.4469
Liberman, Eva	1,033	523.92	.5071
Tattershall, Edna	1,074	476.65	.4438
Section 414 (Operators)			
Shelton, Blanche Martin	1,098	607.57	.5533
Black, Pearl	1,084	582.70	.5375
Barnes, Lois	1,073.45	580.91	.5410
Engle, Inez	1,142.40	597.64	.523
Leger, Margaret	1,130	677.33	.5993
Section 415 (Operators)			
Fisher, Zella	1,080	696.29	.6447
Stark, Ada Lee	1,123.30	604.50	.538
Riegel, Ethel	1,033	757.32	.7331
Clark, Bessie	1,113.25	661.91	.5944
Brewer, Hylda	1,031	546.06	.5296

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 — BOARD / PETITIONER / RESPONDENT / INTERVENOR
EXHIBIT NO. 57a
IN THE MATTER OF Donnelly Garment Co.
DATE 9/15/42 WITNESS McCarthy
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

(Respondent's Exhibit 57.4321

4321

January through June, 1938		
Hours	Amount	Average Per Hour
933	515.99	.5530
902.50	602.81	.6676
930.30	591.87	.6360
741.50	421.24	.5678
904	537.06	.5939
882	599.88	.6800
925	762.54	.8240
941	651.59	.6924
958.40	706.75	.7372
883.45	556.39	.6295
1,034.45	605.73	.5853
949	514.96	.5426
988.50	502.42	.508
954.50	623.28	.6533
974.45	521.89	.5354
939	543.46	.5785
951	595.75	.6264
1,009	629.07	.6233
961.40	617.51	.6421
872	592.97	.6800
859	625.75	.7284
1,017	687.62	.6761
907.45	754.58	.8312
957.05	687.97	.7188
921.20	523.49	.5681

Resp 5-B

Piece Work Operators (Continued

Comparative Earnings

First Six Months - 1937 and 1938

	January through June, 1937		
	Hours	Amount	Average Per Hour
Section 516 (Operators)			
Cawthorn, Sinie	973.20	341.29	.3506
Kelly, Etha	1,056.30	475.71	.4502
Frye, Dorothy	1,107.55	511.18	.4613
Anderson, Gladys	953	460.56	.4832
Raines, Cora	1,134.50	591.86	.5216
Section 517 (Operators)			
Taylor, Margaret	1,110	512.31	.4615
Kellogg, Hazel	1,023.55	410.36	.4009
Broker, Margaret	860	369.48	.4296
Darrell, Ruby Stark	1,128	507.58	.4498
Gulick, Sophia	1,124	485.60	.4319
Section 519 (Operators)			
Bogan, Ethel	1,132.40	556.05	.4909
Willis, Myrtle	1,107	501.55	.4523
Kent, Cassie	803	333.06	.4146
Ward, Lucille	1,105	490.95	.4442
Jonas, Annie,	1,099.50	491.61	.4470
Section 711 (Operators)			
Dobbs, Opal	1,067	707.30	.6628
Chapman, Jo	1,101	787.35	.7151
Koefoed, Opal	839	354.66	.4226
Pittillo, Ethel Foster	1,092.45	678.69	.621
Quinn, Myrtle	1,095.45	708.94	.6469
Section 811 (Handworkers)			
Davis, Edna	1,082.40	575.78	.5317
Priess, Jennie,	1,088	474.90	.4364
Rudy, Bessie	1,096.45	696.43	.634J
Rust, Jake	1,110.50	562.77	.5066
Richards, Lillian	1,018	555.69	.5456

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138
EXHIBIT NO. 5-7-B
Donnelly Garment Co
McCarthy
IN THE MATTER OF
DATE 9/15/42
WITNESS
DANIEL W. ROSS, OFFICIAL
BY Creel

(Respondent's Exhibit 57.)

7132

January through June, 1938

Hours	Amount	Average Per Hour
940.35	397.89	.4230
864	441.06	.5104
908	471.30	.519
905.50	565.71	.6245
912.45	524.25	.5743
923	507.12	.5494
866.55	395.90	.4566
964.30	478.53	.4961
957.30	527.78	.5512
911.30	524.46	.5753
781	441.35	.5648
931	457.93	.4916
944.40	429.74	.4549
940.45	487.39	.518
991	521.96	.5267
1,020	807.74	.7917
892.30	705.04	.7900
1,084.30	586.84	.5411
1,039	704.53	.6779
1,018.20	785.00	.7708
853.30	494.95	.5799
930.30	449.80	.4833
1,053.00	731.44	.6946
926.45	559.51	.6037
1.045	667.20	.6384

Per C 51

Piece Work Operators (Continued)

Comparative Earnings

First Six Months - 1937 and 1938

	January through June, 1937		
	Hours	Amount	Average Per Hour
Section 521 (Operators)			
Howe, Kathryn,	857.55	363.92	.4241
Bennett, Pearl	1,025.40	419.09	.4086
Meinke, Inez	1,029.05	409.38	.3978
Clements, Dorothy,	1,021.35	415.61	.4068
Speaker, Gladys	991.10	449.00	.453
Section 522 (Operators)			
Maggio, Alice,	757.40	306.14	.404
Hadley, Elsie	731.00	339.42	.4643
May, Dixie	692.25	276.19	.3988
Lewis, Evelyn	744.50	282.91	.3798
Hinckley, Ethel	802.50	311.06	.3874
Section 523 (Operators)			
Davidson, Augusta	1,049	533.92	.5090
Snell, Violet	1,027	519.49	.5058
Wallace, Juanita	712	293.33	.4125
Peach, Carrie Rice	1,086	590.31	.5436
Benus, Blanche	721	312.24	.4331
Section 524 (Operators)			
Wilde, Altha	1,058.45	450.66	.4256
Warth, Mary	1,055.15	629.73	.5967
Comstock, Ellen	925.20	483.48	.5224
Elston, Alpha	1,043.25	698.67	.6696
Davis, Betty	1,075	519.31	.4830
Section 531 (Operators)			
Stark, Dale	1,071	625.45	.5838
Barrett, Elizabeth	998	612.40	.6133
Slankard, Ruby	1,096	664.66	.6063
Saunders, Ardath	999	457.02	.4583
Hansen, Viola Smith			

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138 BOARD EXHIBIT NO. 51-C
IN THE MATTER OF Samuel Lamont Co.
DATE 9/15/54 WITNESS McCarthy
DANIEL W. ROSS, OFFICIAL REPORTER
BY Creel

(Respondent's Exhibit 57.)

January through June, 1938

Hours	Amount	Average Per Hour
614	286.84	.4669
901	420.40	.4665
866.50	380.84	.4393
863.50	402.49	.4659
969.30	504.47	.5203
907	426.50	.4703
925.30	448.12	.4841
889.50	405.82	.456
953.45	420.90	.4412
944	407.80	.4319
1,029.55	561.59	.5452
832	436.60	.5246
848.45	453.11	.5338
904	461.35	.5101
894	460.92	.5154
946	553.38	.5847
1,019	678.91	.6662
659.30	398.15	.6037
1,024	713.86	.697
973	721.27	.7411
902.55	598.28	.6626
897	610.58	.6805
985	591.43	.6003
858.30	416.86	.4855
896	465.68	.5197

Rec 5-7-38

Piece Work Operators (Continued)

Comparative Earnings

First Six Months - 1937 and 1938

	January through June, 1937		
	Hours	Amount	Average Per Hour
Section 61 (Pressers)			
Mills, Ethel	1,011	526.40	.5206
Belcher, Florence,	1,027	526.37	.5124
Young, Margaret,	1,026.40	581.37	.5662
Smith, Cecile,	1,045	628.52	.6012
Phipps, Elsie	1,099	522.64	.4755
Section 31			
Blackwood, Corrine,	1,180	608.21	.5154
Feiser, Elsie	1,183	698.21	.5902
Wright, Carrie,	1,093	546.15	.5043
Robeson, Mary	1,152	668.31	.5801
Maxwell, Georgia Lee	1,195	609.03	.5096

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-138-1 PETITIONER / RESP. DIST. / INDEX
EXHIBIT 575 Donnelly Garment Co
IN THE MATTER OF
DATE 9/13/38 WITNESS McCarthy
DANIEL W. ROSS, OFFICIAL R...
BY Creel

(Respondent's Exhibit 57.)

January through June, 1938

Hours	Amount	Average Per Hour
919.50	539.89	.5869
961.45	578.88	.6019
868.20	614.65	.7078
1,017	697.53	.6858
998	644.88	.6461
969	587.64	.6064
1,005	677.06	.6737
870	536.19	.6163
1,000	692.46	.6925
1,051	565.19	.5378

CLERK'S COPY

Volume XIII

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONS FOR CERTIORARI FILED JANUARY 20, 1946
CERTIORARI GRANTED APRIL 22, 1946

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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4328 *Appearance of Counsel for Petitioner*

United States Circuit Court of Appeals, Eighth Circuit

No. 12641

DONNELLY GARMENT COMPANY, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD

The Clerk will enter my appearance as Counsel for the Petitioner.

JAMES A. REED,
ROBT. J. INGRAHAM,
BURR S. STOTTLE,
All of 1215 R. A. Long Building,
Kansas City, Missouri.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, June 23, 1943.

Appearance of Mr. Alvin J. Rockwell and Mr. Malcolm F. Halliday as Counsel for Respondent

The Clerk will enter my appearance as Counsel for the Respondent.

ROBERT B. WATTS,
General Counsel.
ERNEST A. GROSS,
Associate General Counsel,
National Labor Relations Board.

[Endorsed:] Filed in U. S. Circuit Court of Appeals July 6, 1943.

Appearance of Mr. Alvin J. Rockwell and Mr. Malcolm F. Halliday as Counsel for Respondent

The Clerk will enter my appearance as Counsel for the Respondent.

ALVIN J. ROCKWELL,
General Counsel,
MALCOLM F. HALLIDAY,
Associate General Counsel,
National Labor Relations Board.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, June 30, 1944.

4329 *Appearance of Miss Ruth Weyand as Counsel for Respondent*

The Clerk will enter my appearance as Counsel for the National Labor Relations Board.

RUTH WEYAND.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Mar. 6, 1945.

Appearance of Mr. Clif Langsdale as Counsel for Intervener International Ladies' Garment Workers' Union

The Clerk will enter my appearance as Counsel for the Intervener, International Ladies Garment Workers' Union.

CLIF LANGSDALE,
Scarritt Bldg., Kansas City, Mo.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Oct. 6, 1943.

Appearance of Mr. Frank E. Tyler as Counsel for Intervener Donnelly Garment Workers' Union

The Clerk will enter my appearance as Counsel for the Intervener, Donnelly Garment Workers' Union.

FRANK E. TYLER.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, June 27, 1944.

United States Circuit Court of Appeals, Eighth Circuit

No. 12641—Civil

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
DONNELLY GARMENT WORKERS' UNION, INTERVENER-PETITIONER
INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER

Application for leave to adduce additional evidence

1. Comes now the above named petitioner, Donnelly Garment Company, and respectfully shows to the Court that one of the grounds upon which petitioner is asking that the Board's order herein be set aside is that the trial examiner and the board refused to permit petitioner to adduce competent and ma-

4330 terial evidence; that section 10 (e) of the National Labor Relations Act (29 U. S. C. A. 160 (e)) provides that upon application to the Court the Court may order such additional evidence to be received; that petitioner in its brief filed herein asked the Court for leave to adduce additional evidence and the petition for review; in effect, seeks such relief, but in view of the decision in N. L. R. B. v. Fairchild Engine and Airplane Corporation, (C. C. A. 4) 145 F. 2d 214, that such an application to the Court is prerequisite, petitioner is filing this application.

2. Petitioner sought to introduce evidence before the Board as to the character of the violence and unlawful methods used by the International Ladies' Garment Workers' Union in its strikes and activities and of threats made by said ILGWU to use similar violence and methods against petitioner and its employees; that such evidence was competent and material for the purpose of showing that the formation by petitioner's employees of their own union (Donnelly Garment Workers' Union) was due to such violence, unlawful methods and threats of the ILGWU, and to their desire to protect themselves against such threatened violence, and not due to any domination, coercion or interference on the part of petitioner; that such evidence was also competent and material as bearing on the good faith of the employees in testifying to their reasons for preferring an association of their own to the ILGWU and on the effect to be given to the testimony of witnesses, and as bearing on the finality to be given to the Board's findings of fact, and for the purpose of explaining acts of alleged domination, interference or discrimination (See N. L. R. B. v. Indiana & Mich. Elec. Co., 318 U. S. 9, 23-29). The Trial Examiner and the Board refused to receive such evidence.

3. The Board, in both its first and second decisions, based its findings that petitioner dominated, coerced and interfered with its employees in their selection of a bargaining representative, in large part, upon the mere fact of membership in the DGWU of certain of petitioner's employees, to wit: instructors, thread girls, inspectors, cutters, pattern maker, maintenance clerk, and other employees alleged to be "leaders." Petitioner sought to adduce evidence showing that employees doing similar work and having similar status were eligible to membership in labor unions including the ILGWU and were not classed as supervisory empl. . . by such unions or by the trade generally. The trial examiner and board refused to receive such evidence (see petitioner's offers of proof, Exhibits 1-SSSSS, 1-TTTTT, 1-UUUUU, R. X. 3787-3792).

4. The trial examiner limited petitioner's testimony on the remand to eleven employee witnesses, ruling that further

4331 employee testimony would be cumulative. However, the trial examiner then permitted the board to introduce as "rebuttal" much testimony which was a part of the Board's case in chief and having done so limited Petitioner's rebuttal or surrebuttal thereof to three witnesses from each of the three sections or departments in petitioner's factory in which the board's rebuttal witnesses had been employed, although the testimony given by the board's witnesses related in part to general conditions in the plant and was rebuttable by witnesses from various sections of the plant as well as by other testimony. The trial examiner denied petitioner's offers of testimony by other employees, or any and all matters, and refused to permit petitioner to adduce any testimony other than employee testimony.

5. The trial examiner made a ruling in the second hearing that petitioner could not offer testimony relating to a period prior to November, 1936 (i. e., six months prior to the formation of the DGWU on April 27, 1937), but permitted the board to adduce testimony relating to periods long prior to November, 1936. Petitioner was entitled to adduce testimony relating to periods as far back as the board was permitted to go.

6. The board and ILGWU devoted much time in the trial in attempting to show that the provisions of the contract between petitioner and the DGWU were not proper provisions but showed the DGWU to be a sham union. Petitioner sought to disprove this by showing that similar provisions were contained in the contracts made by the ILGWU with other garment companies in Kansas City. The trial examiner refused to receive these contracts in evidence (Petitioner's Exhibit 2, rejected, R. VI, 1653–1676). These contracts were also competent and material as bearing on the issue of why the employees formed their own union in preference to the ILGWU.

7. The board, in its order, directs petitioner to reimburse its employees for all amounts deducted from the pay of its employees and paid to the DGWU as their dues. There was no charge concerning this matter in the complaint; petitioner did not know that the board challenged the bona fides of the individual authorizations which each employee gave in writing to petitioner to deduct the amount of his dues from his pay check and pay same to the DGWU, or the voluntary character of such authorizations, and did not know that the Board had in mind making an order of reimbursement thereof. Although petitioner thinks that under the evidence adduced the board's order of reimbursement should be set aside, yet petitioner would have offered additional evidence bearing upon said matter had it been apprised of the board's purpose.

4332 Wherefore, petitioner respectfully asks the court for leave to adduce the additional evidence hereinabove referred to upon each and all said matters and issues.

Respectfully submitted.

REED & INGRAHAM,
R. J. INGRAHAM,
BURR S. STOTTLE,
Attorneys for Petitioner, Donnelly Garment Company.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Mar. 6, 1945.

Application of Intervener Donnelly Garment Workers' Union for leave to adduce additional evidence

1. Comes now the above named Intervener-Petitioner, Donnelly Garment Workers' Union, and shows to the Court that one of the grounds upon which Intervener-Petitioner is asking that the Board's order herein be set aside is that the Trial Examiner and the Board refused to permit Intervener-Petitioner to adduce competent and material evidence; that Intervener-Petitioner's exception to such rulings and exclusion of evidence was taken at the proper time in the hearing and preserved in the record and set forth with arguments on the law involved in the brief of Intervener-Petitioner filed herein and in the exceptions taken to the intermediate report and the finding of the Board, but that in view of the decision in N. L. R. B. v. Fairchild Engine & Airplane Corporation (C. C. A. 4) 145 Fed. (2d) 214, this application to the court is hereby made for the purpose of fully protecting the rights of Movant to have the exclusion of such important evidence considered as grounds for reversal by this honorable court or that this court may order such evidence received or such other relief afforded as may be just and proper.

2. Intervener-Petitioner sought to present on the witness stand, as its own witnesses and in support of its pleadings, a reasonable number of the approximately twelve hundred employees, all of whom, below the rank of supervisor or anyone having the authority or right to employ, discharge, or reprimand employees, are members of the intervening plant union, but the Trial Examiner refused to permit Intervener-Petitioner to put on any witnesses whatever in its case in chief, and only six witnesses in surrebuttal as to limited and specified points.

3. Intervener-Petitioner was refused and denied the right and opportunity to introduce evidence showing that the employees were impelled to form their own union as a means of protection

against the threatened violence and fraud of the International, and not because of any inducement, threat, domination, or control of the employer.

4333

4. Intervener-Petitioner was denied the right to show by evidence the successful continuance and effective operation of the plant union after the date of the first hearing in 1939 and down to and including the present.

5. The Examiner and the Board refused to receive, admit, and consider the direct, competent, and material testimony of the employees as to the reasons for their joining and supporting the Donnelly Garment Workers' Union, although this court had specifically directed that the second hearing of this case was held for that express purpose (Donnelly Garment Company, et al. vs. N. L. R. B., 123 Fed. (2d) 215, l. c. 225).

6. Wherefore Intervener-Petitioner respectfully asks the court for leave to adduce such evidence excluded from the hearing as above referred to.

Respectfully submitted.

GOSSETT, ELLIS, DIETRICH & TYLER.
FRANK E. TYLER.
VERA L. JONES.

[Endorsed:] Filed in U. S. Circuit Court of Appeals, Mar. 6, 1945.

Order of Submission

March Term, 1945

Tuesday, March 6, 1945

This cause having been called for hearing in its regular order, upon application of counsel four hours was allowed by the Court for oral argument, and the same was argued by Mr. Robert J. Ingraham for petitioner, Donnelly Garment Company, by Mr. Frank E. Tyler for Intervener-petitioner, Donnelly Garment Workers' Union, by Miss Ruth Weyand, Attorney, National Labor Relations Board, for respondent, and by Mr. Clif Langsdale for intervener-respondent, International Ladies' Garment Workers' Union.

Thereupon this cause was submitted to the Court on the petition to review decision of the National Labor Relations Board, the answer to the petition to review and request of the Board for enforcement, the pleadings and proceedings before said Board and the briefs of counsel filed herein.

4334 United States Circuit Court of Appeals,
Eighth Circuit

No. 12641

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DONNELLY GARMENT WORKERS' UNION, INTERVENER

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER

On Petition for Review of Order of National Labor Relations Board

October 29, 1945.

Mr. Robert J. Ingraham (Mr. Burr S. Stottle was with him on the brief) for Petitioner.

Mr. Frank E. Tyler (Messrs. Gossett, Ellis, Dietrich & Tyler were with him on the brief) for Intervener, Donnelly Garment Workers' Union.

4335 Miss Ruth Weyand, Attorney, National Labor Relations Board (Mr. Alvin J. Rockwell, General Counsel, National Labor Relations Board, and Mr. Malcolm F. Halliday, Associate General Counsel, National Labor Relations Board, were with her on the brief) for Respondent.

Mr. Clif Langsdale for Intervener, International Ladies' Garment Workers' Union.

Before SANBORN, WOODROUGH, and RIDDICK, Circuit Judges.

SANBORN, Circuit Judge, delivered the opinion of the Court.

This is a petition of the Donnelly Garment Company to review and set aside an order of the National Labor Relations Board, entered June 9, 1943 (50 N. L. R. B. 241), requiring the disestablishment of the Donnelly Garment Workers' Union and the abrogation of its contracts with the petitioner. The Board, in its answer, has requested this Court to enforce the order.

The National Labor Relations Board, on April 27, 1939, upon charges filed by the International Ladies' Garment Workers' Union (hereinafter referred to as "the International"), issued a complaint, subsequently amended, against the Donnelly Gar-

ment Company, of Kansas City, Missouri, a manufacturer of women's garments, doing a nationwide business, charging it with having engaged in unfair labor practices within the meaning of Section 8 (1), (2) and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. A. § 151 et seq.

Briefly stated, the charges were that the Company had fostered, dominated and supported the Donnelly Garment
4336 Workers' Union, an independent union of the Company's employees (which, for convenience, will be called the "plant union"), and its alleged predecessor, the "Nelly Don Loyalty League"; that the Company had entered into a closed-shop agreement with the plant union for the purpose of assisting it; that the Company, in April 1937, discriminatorily discharged, and had refused to reinstate, two employees, Sylvia Hull and May Fike, for joining and assisting the International.

In its answer, the Company denied that it had engaged in any unfair labor practices, and asserted the existence, on the part of the International, of a conspiracy to force the Company, by fraud, violence and secondary boycott, to compel its employees, against their will, to join the International, and that the Board, its agents and representatives were furthering this unlawful conspiracy.

The Donnelly Garment Workers' Union (the plant union) was permitted to intervene. It admitted in its answer that the Company and the plant union had entered into a closed-shop agreement, but denied all of the other allegations of the complaint.

The International was also permitted to intervene, in support of the charges against the Company.

Upon the issues made by the pleadings, a hearing was had in 1939 before a Trial Examiner appointed by the Board. He excluded evidence which the Company, and the plant union deemed to be relevant and material, including proffered testimony of employees tending to show that the plant union was not dominated and supported by the Company, and evidence that the International was engaged in an unlawful conspiracy to force the Company to compel its employees to join the Interna-
4337 tional against their will. The Trial Examiner, in his intermediate report, found the facts in favor of the Board, except as to the alleged discriminatory discharge of May Fike and as to the alleged discriminatory discharge and refusal to reinstate Sylvia Hull. He found that May Fike had not been discriminatorily discharged; and found that Sylvia Hull had been excluded from the plant of the Company because of union membership and activities, but was not discriminatorily discharged.

The Board's decision of March 6, 1940, sustained the rulings and adopted the recommendations of the Trial Examiner, except that the Board determined that May Fike had been discrimin-

torily discharged and was entitled to be compensated for her loss of wages. The Board ordered the Company to cease and desist from engaging in the unfair labor practices found to exist; to disestablish the plant union as the representative of its employees for purposes of collective bargaining; to cease and desist from giving effect to its contracts with the plant union, except "the substantive features * * * relating to rates of pay, wages, hours of employment, or other conditions of employment"; to reimburse the employees for amounts deducted from their wages as dues for the plant union; to reinstate May Fike and to reimburse her for any loss in wages.

The Company filed in this Court its petition for a review of the order of the Board. The Board answered the petition and asked that its order be enforced. The validity of the order was challenged by the Company upon two grounds: (1) lack of due process, and (2) lack of an adequate evidentiary basis for the order. This Court thought that the Board, by refusing to receive and to consider the proffered evidence of the employees of the Company indicating that their freedom of choice of a bar-
4338 gaining representative had been in no way interfered with and that the plant union was uninfluenced, undominated and unsupported by the Company, had clearly denied the Company and the plant union due process of law. See Donnelly Garment Co. v. National Labor Relations Board, 8 Cir., 123 F. 2d 215. We expressed the opinion that bias and prejudice on the part of the Trial Examiner and the Board was not shown by the record; that the Trial Examiner had not erred in confining the issues to those tendered by the complaint; and that the Board was not required to try the International for an alleged conspiracy, nor to try the charge that the Board had conspired or colluded with the International. We concluded that there was a lack of due process in the proceedings before the Board in that competent and relevant evidence offered by the Company had been excluded. We said, in that connection (p. 224 of 123 F. 2d):

"The truth is that a controversy tried before a court or before an administrative agency is not ripe for decision until all competent and material evidence proffered by the parties has been received and considered."

We also said (p. 225 of 123 F. 2d):

"Our conclusion is that the petition of the Board for enforcement of the order under review must be denied. We think that the least that the Board can do in order to cure the defects in its procedure caused by the failure of the Trial Examiner to receive admissible evidence, is to vacate the order and the findings and conclusions upon which it is based; to accord to the petitioners [the Company and the plant union] an opportunity to introduce

all of the competent and material evidence which was rejected by the Trial Examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order."

4339 The final paragraph of our opinion reads as follows (p. 225 of 123 F. 2d):

"The petition of the Board for the enforcement of its order is denied, and the case is remanded to the Board for further proceedings."

The mandate of this Court provided that the case be "remanded to said Labor Board for further proceedings not inconsistent with the opinion of this Court." It is, we think, apparent that what this Court, in effect, ruled was that the Company and the plant union were entitled to a new trial upon the evidence already taken and such competent and material evidence as might be proffered upon a further hearing. We were advising the Board that, in our opinion, it had not complied with the minimal constitutional requirements of due process. Under the order of this Court, the Board was at liberty to do whatever was necessary in order to give to the parties the full and fair hearing to which they were constitutionally entitled. If the Board thought that this Court was wrong in its conclusion that the proceedings which preceded the Board's order were lacking in due process, the Board was, of course, at liberty to apply to the Supreme Court for certiorari. The Board entered an order setting aside its decision and order of March 6, 1940, and reopened the record for a further hearing "for the purpose of taking additional evidence in accordance with said opinion and decree" of this Court.

The Board designated as the Trial Examiner to conduct the further hearing the same Trial Examiner who had presided at the original hearing and who, during that hearing, had expressed the opinion that evidence of employees of the Company which this Court ruled to be competent and material was immaterial and valueless. The Company presented to the Board a request

4340 that it designate another Trial Examiner to conduct the hearing. The basis for the request was that the examiner designated was biased and prejudiced. Attached to the request was an affidavit of prejudice signed by the Secretary of the Company, stating that he believed that the examiner had prejudged the evidence which this Court had held must be received and considered. The basis for the affiant's belief was stated in detail. It consisted of rulings and remarks of the examiner, made during the original hearing, relative to the admissibility and worth of evidence proffered by the Company and rejected. The intervener plant union concurred in the request for the designation of an-

other Trial Examiner. The Board refused the request. It stated that this Court had decided "that the Trial Examiner and the Board had been free of any bias or prejudice."[1]

The further hearing was conducted by the Trial Examiner during the summer of 1942. He permitted Mrs. James A. Reed (Nell Quinlan Reed), the President of the Company (who had by reason of illness been unable to appear at the original hearing), to testify. He admitted the evidence of eleven of the employees of the Company tending to show that the employees voluntarily formed the plant union and that the union had at all times been free from employer influence, domination, and support.
4341 He then ruled that other similar employee testimony would be cumulative and refused to admit it. He rejected other offers of proof made by the Company and the plant union. He struck out so much of Mrs. Reed's testimony as related to events subsequent to July 15, 1939, the date of the termination of the first hearing. He received, as rebuttal; testimony offered by the Board tending to strengthen its case in chief, and allowed the Company and the plant union a limited surrebuttal.

The intermediate report of the Trial Examiner was filed November 27, 1942. It recites that he had accorded the Company and the plant union an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing, and that the report was based upon the entire record.

The findings of the Trial Examiner, insofar as they relate to controversial matters, are, in substance, as follows (50 N. L. R. B. 244):

Under the heading, "Respondent's [the Company's] Responsibility for the Activities of Various Employees," the Trial Examiner found: That instructors and thread girls (members of the plant union), of whom there were some 44, were supervisory employees and representatives of the Company; that Rose Todd, who was active in the formation and administration of the plant union, was in fact a supervisor and was regarded by the other employees "as a person in whom the management had confidence and whose views reflected those of the management"; that Hobart Atherton,

[1] This statement is based upon the following language in the opinion of this Court (123 F. 2d 215, 219):

"We think that it cannot be said that it appears from the record of the proceedings before the Examiner and before the Board that there was a denial of due process because of bias and prejudice or collusion. If, as petitioners [the Company and the plant union] contend, the Trial Examiner and the Board ruled erroneously with respect to the issues to be tried or in the exclusion of evidence and drew unwarranted inferences from the evidence adduced, that would not justify a conclusion that either the Examiner or the Board was prejudiced or deliberately unfair. That the Examiner made comments which might better have been omitted, with respect to the attitude of the petitioner's witnesses or the character of their testimony, is not enough to show a denial of due process. Compare Cupples Co. Manufacturers v. National Labor Relations Board, 8 Cir., 106 F. 2d 100, 113; Goldstein v. United States, 8 Cir., 63 F. 2d 609, 612-614."

who was employed in the maintenance department of the Company, and who was active in the formation of the plant union, was a supervisory employee in charge of that department; that Florence Strickland, of the pattern department, Lena Ty-
4342 hurst, of the inspection department, Martha Gray, of the outlet store, Ortense Root, of the sample department, Heath Cowan, of the receiving department, Marvin Price, of building maintenance, Ted Scholes, of the cutting department, and Mary Bogert, of the dividing department [all of whom had been active in the organization known as the Loyalty League], were supervisory employees.

The Trial Examiner, under the heading, "Events Prior to the Effective Date of the Act [National Labor Relations Act]," found: That prior to 1934 no effort had been made to organize the employees of the Company; that in 1934, the International established an office in Kansas City, Missouri, and announced in the papers that an attempt would be made to organize the garment workers of Kansas City; that on March 15, 1934, and December 4, 1934, the International held open meetings, to which the employees of the Company were invited; that supervisory employees of the Company, including Mrs. Reeves, then production manager, and Mrs. Hyde, personnel manager, attended the meetings in a group; that at least a dozen of the employees joined the International and that several became active in its behalf; that employees were called to the office of Mrs. Reeves, questioned about their interest in the International, and warned against joining it; that Mrs. Gray, "in charge of respondent's [the Company's] outlet store," said that it was a "shame" that an employee had joined the International; that a substantial number of employees were laid off or discharged shortly after they joined the International; that about 12 employees, in June 1934, discussed joining the International at the home of Glynn Brooks Yarnell, an employee of the Company and a member of the International; that Yarnell was discharged in July 1934, although she had worked for
4343 the Company since 1924; that, within a few months, all except one of the employees who had met at her home were either laid off or discharged; that the International, on December 6, 1934, filed a charge against the Company under Section 7 (a) of the National Industrial Recovery Act, asserting that eight employees had been laid off because of their having joined the International; that testimony in that proceeding was completed, but before it was decided, the Act was declare unconstitutional; that in the latter part of 1934 and the first part of 1935, all of the other employees who were known to have joined the International were transferred from the main factory of the Company to a temporary

branch factory which was used during the busy season; that when the use of the temporary building was discontinued, the employees, most of whom had several years' service, were laid off, while employees working in the main factory were retained; that, as a result of these events, employees became hesitant about joining the International, and those who joined denied having done so, and employees who had not joined were careful not to talk with those suspected of having joined, for fear of discriminatory treatment with respect to their jobs; that in February, 1935, Martha Gray, "in charge of the * * * outlet store," and Florence Strickland, "in charge of the pattern department," formed an organization among the employees, known as the "Nelly Don Loyalty League"; that it was initiated at a meeting at the home of Mrs. Gray, attended by about 50 employees representing the various sections of the factory; that, within a few days, substantially all employees had joined; that Florence Strickland, in circulating membership cards, stated that Mrs. Donnelly (Mrs. Reed) would close her doors before she would have a union shop, and that employees should sign the cards to keep their jobs; that a statement was circulated along with the membership cards
4344 to the effect that the employees protested against and would resist outside interference with the business of the Company or with their relations to the Company, and that they recognized that they had had generous and fair treatment from Nelly Don (Mrs. Reed), President of the Company, and reposed confidence in her rather than in "professional agitators who are sent here to create discontent among employees of the company." The Trial Examiner found that Florence Strickland refused to allow Virginia Stroup, an employee who was president of the International Local, to become a member of the Loyalty League, because Stroup belonged to "another organization"; that Lena Allison, an instructor, refused membership to Frances Reidell on the ground that she was a member of the International; that on February 8, 1935, a mass meeting of the employees was held during working hours, on the second floor of the building occupied by the Company, presided over by Martha Gray, who explained the meaning of the word "loyalty"; that meetings of the Loyalty League were regularly held on the second floor of the building, upon notices transmitted by Mrs. Wherry, factory manager, or by the switchboard operator of the Company, and transmitted to the employees in each section by their instructor; that each section had a representative in the League, elected by the employees in the section; that virtually all of the Company's supervisory employees, including Mrs. Reeves, Mrs. Hyde, Dewey Atchison, Martha Gray, and Florence Strickland, were members of the Loy-

alty League; that "the League had songs of loyalty and sponsored the wearing of pins bearing the initial 'L' as a demonstration of loyalty to Nell Quinlan Reed"; that, by means of the League, the Company fostered an organized employee resistance to outside union; that evidence of these events, which preceded
4345 July 5, 1935, the effective date of the National Labor Relations Act, is competent because the League continued to exist after the Act went into effect, and for the purpose of evaluating what afterwards transpired; that the League was dominated and controlled by the Company and was used by it to prevent its employees from joining the International or any other outside labor organization.

Under the heading, "Events Prior to April 27, 1937; Interference, Restraint, and Coercion," the Trial Examiner found: That from the time that the Supreme Court decided that the National Industrial Recovery Act was invalid until March 1937, the International made no further effort to organize the employees; that during this time the League continued in existence and new employees were solicited to join; that on February 26, 1937, there appeared in the Kansas City Star an article stating that the International had announced a campaign to organize the Company's employees and had appropriated a large sum to be spent in a drive for recognition of the International as the collective bargaining agent for the Company's employees; that on March 2, 1937; Mary Sprofera and Inez Warren, shipping clerks, during working hours went through the factory and secured the signatures of approximately 800 factory employees to a pledge reading as follows:

"We, the undersigned, as members of the Donnelly Garment Company wish to make it known we are positively happy and contented with the positions which we hold with the organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed;"

that, with six exceptions, the instructors and thread girls did not sign the petition initially; that three employees, Sylvia Hull,
4346 Mamie Carlson and Elsie Greenhaw, at first refused to sign; that two of them subsequently signed for fear of losing their jobs, their names being later erased; that in the afternoon of the day the pledge was signed, Mary Sprofera and Inez Warren took it to Mrs. Reed at her home and presented it to her; that, as the result of arrangements made between Mrs. Reed and the representative of the Kansas City Star, a picture of these employees presenting the pledge to her appeared on the front page of the paper, accompanied by the statement that Mrs. Reed was going to place the pledge in the cornerstone of the new building she

was planning to erect. The Trial Examiner found that Mrs. Reed, shortly thereafter, expressed to her office manager, Mrs. Keyes, a wish that all the employees would sign the pledge; that Mrs. Keyes requested an employee, Pauline Shartzer, to circulate the pledge among those who had not signed it; that the signatures of all employees, including supervisors, excepting the three employees who had refused to sign, were obtained and presented to Mrs. Reed; that, by permitting Mary Sprofera, Inez Warren and Pauline Shartzer to circulate the pledges in the factory during working hours, under the circumstances outlined, the Company interfered with, restrained and coerced its employees in the free choice of a collective bargaining agent.

The Trial Examiner found that on March 6, 1937, the Kansas City Journal-Post carried an article stating that David Dubinsky, President of the International, at a meeting of 700 union members in Kansas City, had launched a movement to organize the employees of the Donnelly Company; that this announcement was followed by a letter to the Company from the International, under date of March 9, 1937, requesting a conference between the International and the Company; that the Company did not reply
4347 to the letter; that a meeting of all the employees of the Company took place during working hours on the afternoon of March 18, 1937, on the second floor of the building occupied by the factory; that employees were notified orally by their instructors that they were to attend; that the instructors had been notified by Mrs. Wherry or over the Company's telephone system; that most of the supervisory employees attended the meeting, including Mrs. Hyde, Mrs. Gray and Mrs. Reeves, and the instructors and the thread girls; that Rose Todd, with the assistance of Hobart Atherton, "both of whom were officials of the League and supervisory employees," called the meeting; that Rose Todd presided; that chairs for the meeting were rented by the League; that the meeting was sponsored by the League and its officials; that Mrs. Reed was invited to address the meeting; that she brought with her the letter which the Company had received from the International "requesting a conference"; that the letter was read to the employees; that Mrs. Reed then expressed her pleasure at having received the "loyalty" pledge which had been presented to her on March 2, stated that the Company was an institution to be proud of, that it had taken care of its employees by keeping the factory in operation during the depression, and that she intended to continue to run the business; that she spoke of threats of violence that the International was alleged to have made against employees of the Company, and promised protection against such violence. The Trial Examiner found that the Board's

witnesses testified that Mrs. Reed said that she would close her factory before she would permit it to be unionized, and would not allow "Dubinsky or any other 'sky' to tell her how to run her business"; that the Company's witnesses testified that Mrs. Reed stated that "Neither Dubinsky or any other but-tinsky is going to intimidate me or the company into forcing you [the employees] to join the International against your will." The
4348 Trial Examiner found that it was unnecessary to resolve the conflict in this testimony, and that Mrs. Reed's own version of her speech constituted an unfair labor practice. The Trial Examiner found that the meeting was sponsored by the League; that supervisors were present; that the employees must have been aware of the antiunion character of the meeting; that, while many of them may have feared the alleged threats of the International, the Company, instead of permitting them to decide what attitude they would adopt toward the International, "seized upon such fears as may have existed to build up and strengthen a militant employee opposition toward that labor organization"; that Mrs. Reed's remarks indicated that the International was the common enemy of both the Company and its employees, and promised protection against it; that she labelled David Dubinsky a "but-tinsky" who was seeking to force the employees to join the International; that, while Mrs. Reed "sought to appear as a disinterested defender of the * * * employees in the exercise of their right to join or not to join a labor organization," her remarks made it plain that the Company's attitude toward unionization had not changed and that membership of any of the employees in the International was not to be tolerated. The Trial Examiner found that the Company, by its sponsorship and domination of the March 18, 1937, meeting of its employees and by Mrs. Reed's talk at that meeting, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The Trial Examiner found that on April 22, 1937, the Kansas City Journal-Post carried an announcement by the International that Sylvia Hull, one of the Company's operators, had been named as a delegate to a convention of the International; that the
4349 next day, when she went to work, she was subjected to a demonstration by other employees, who demanded to know what authority she had to represent them at the convention, sang Loyalty League songs, and demanded the surrender of her Loyalty League pin (which she surrendered upon being paid its cost); that the instructor in the section where Sylvia Hull worked was present, but did not order the demonstrators back to work; that Mary Bogart, in charge of the dividing section, was present

and pointed Sylvia Hull out to some of the demonstrators; that Mrs. Hyde, employment manager, appeared and told the demonstrators to go back to work; that the demonstrators stated they would not work while Sylvia Hull was there; that Mrs. Hyde took Sylvia Hull down to the office; that a number of the demonstrators followed, shouting that they would not return to work until they heard Sylvia Hull say she would go home; that she then said, "I will go home, I didn't know the girls felt this way about it or I wouldn't have done it"; that Mrs. Hyde told Sylvia Hull that she would have to go home; that she replied that she did not want to quit but would go home for the day; that she gave to Mrs. Hyde a telephone number through which she might be reached; that on the same morning a similar demonstration took place near the machine operated by Fern Sigler, who was wearing an International pin; that this demonstration subsided when Mr. Baty, the factory manager, accompanied by Rose Todd, ordered Fern Sigler from her machine to the office; that, as she left the floor, the operators shouted, "we are not going to work as long as she remains here"; that when Baty insisted on sending Fern Sigler home, she argued with him that she had a right to join the International and that it was the duty of the Company to control its employees; that Baty replied, "We don't go in for the Wagner Act, we are just running our business here not a law office"; that Rose
4350 Todd then stated, "We are going to run an open shop as long as the majority feels that way"; that the conference was participated in by Baty, Mrs. Hyde, Rose Todd, and Fern Sigler; that Fern Sigler was sent home; and that Baty promised to talk to the operators and quiet them down and to recall Fern Sigler when the unrest had subsided, but that, despite his promise, Baty did nothing to allay antagonism toward the International. The Trial Examiner found that the Company approved of and encouraged the demonstrations and took advantage of them to show its hostility to the International and its support of anti-International activities, and thereby interfered with, restrained and coerced its employees in violation of the rights guaranteed them under Section 7 of the Act. He also found that the Company, by using the League and its officers for the purpose of impeding and preventing the organization of the Company's employees by the International, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

Under the heading, "Domination and interference with the formation and administration of the D. G. W. U. [the plant union] and contribution of support; interference, restraint, and coercion," the Trial Examiner made the following findings: That

shortly after the March 18, 1937, meeting, a committee composed of Rose Todd, Hobart Atherton, and Sally Ormsby, employed Frank E. Tyler, an attorney; that when Tyler asked for a retainer [of $500], Rose Todd borrowed $1,000 from the First National Bank of Kansas City, upon the unsecured note of the Loyalty League, deposited the money in the Loyalty League checking account, and gave to Tyler a League check signed by Todd as president and Hartman as treasurer; that, while the first conference with Tyler related to the possibility of obtaining an
4351 an injunction against the International, Tyler, after the National Labor Relations Act was held constitutional, on April 12, 1937, suggested the formation of an independent union; that on April 27, 1937, a mass meeting of all the Company's employees was held during working hours, on the second floor of the building in which the Company's plant was located, upon notice given by the instructors, who had been notified by Mrs. Wherry or over the telephone system; that instructors and thread girls attended the meeting along with the operators in their section; that chairs for the meeting were rented and paid for by the Loyalty League; that Rose Todd, who was still the President of the League, presided at the meeting; that she stated that Mr. Gossett and Mr. Tyler, whom she had consulted, advised forming a plant union; that she further stated that the Loyalty League, being a purely social organization, would not take care of the situation; that another organization was necessary to represent them; that she pointed out that a union would have to be formed if they were to successfully resist organization by an outside union; that she told the employees that the new organization would be called the "Donnelly Garment Workers' Union," and that, although she was as distressed as they were at having to use the word "union", it seemed to be necessary; that Mr. Tyler was then introduced by Rose Todd; that Tyler stated, in substance, that, some weeks before, several of the employees came to his office and employed Mr. Gossett and himself as legal advisers of the employees; that he was acting as such; that, whether they believed in unions or not, he and Mr. Gossett believed that it was to the employees' best interests to organize their own individual unaffiliated plant union; that Tyler stated that one of the reasons for the organization was the fact that the International had sent a representative to its national convention and "in order to stop this and make it clear that you are speaking for yourselves
4352 through your own representatives whom you choose, we think your own union is desirable"; that he also stated: "I do not think this action can or will be considered as an act of unfriendliness to your employer. I believe they recognize your right to take this step and it isn't an unfriendly act to them. In

fact, it is much better for them and yourselves for you to have your own union with your own representatives rather than having a group trying to represent outsiders from New York"; that Rose Todd then said: "Well, we are together as an entire group of employees. Let's form this organization"; that it was decided by a unanimous vote, without discussion, by the approximately 1,300 employees to form such a union; that a nominating committee of five was appointed by Rose Todd to select a General Chairman and eight Group Chairmen to serve as representatives and officers of the new organization; that membership cards, previously prepared, were distributed; that Tyler then read the by-laws, which he had prepared, which were unanimously adopted without alteration; that the officers named by the nominating committee were unanimously elected; that the 1,300 membership cards were collected, and the meeting declared adjourned. The Trial Examiner found "that the concept of an independent union originated with respondent's [the Company's] supervisory employees and further, that the respondent [Company] through the activities of its supervisory employees gave approval, and lent assistance and encouragement to the D. G. W. U. [the plant union]."

Under the heading, "Membership and participation by other supervisors in the D. G. W. U. [the plant union]," the Trial Examiner made findings that Dewey Atchison, production engineer, joined the plant union at the April 27, 1937, meeting, but resigned on July 14, 1937; that instructors and thread girls regularly
4350 attended the meetings of the union; that other supervisory employees, named by the examiner, attended and took part in meetings; that at the meeting where officers were elected, there were few, if any, contests; that Rose Todd continued on as chairman; that at various times the question as to whether department heads and instructors should have the right to membership was raised; that Rose Todd took the position that, aside from the executives of the Company, Mr. Keyes, Mrs. Keyes, Mr. Green, Mr. Baty, and Mrs. Hyde, all employees were eligible; that employees at various times expressed the view that the presence of instructors and department heads at meetings prevented other employees from speaking freely of their complaints; that, through its supervisory employees, the Company continued its control and direction of the plant union.

Under the heading, "The contracts; closed-shop, check-off and piece-work rates," The Trial Examiner made the following findings: That on April 28, 1937, the day following the organization of the plant union, Rose Todd presented the membership cards to Mrs. Reed, stating that the plant union had been organized by the unanimous vote of the employees and represented a majority; that

Mrs. Reed assured her that the Company would consider the matter; that on May 6, 1937, the Group Chairmen of the plant union met with Mrs. Reed, and told her that they would want a contract covering hours, wages, and working conditions, "which up to now have been satisfactory," and that they desired a closed shop; that Mrs. Reed at once replied, "I understand that is very essential to industrial peace"; that the representatives of the plant union told Mrs. Reed they wished to pay part of Rose Todd's salary, and that Mrs. Reed, in agreeing, stated, "I do not feel at the present time that you [Todd] need give all of your
4354 time to the union"; that Tyler thereafter prepared a proposed agreement containing a closed-shop provision, which was approved by the Group Chairmen of the plant union on the morning of May 27, 1937; that it was presented to Mrs. Reed, who stated, in effect, that the spirit of the agreement was satisfactory, but that changes in phraseology might be needed; that Mrs. Reed and other representatives of the Company met with Tyler and Rose Todd at three o'clock that same afternoon, and that Tyler, after the conference, reported to the Group Chairman that the Company had suggested a few modifications of the proposed contract, which he recommended should be accepted; that on June 22, 1937, a supplemental agreement covering minimum wages for time workers and minimum weekly guarantees to piece workers, who entered into; that the terms of this contract were not submitted to the membership of the plant union for approval before or after its execution, although it fixed wages for a year and had a provision for an automatic extension; that the plant union demanded a minimum wage of $16.50 a week for the lowest paid piece workers; that Rose Todd stated that the International had announced that it was seeking a $16 weekly minimum in the garment industry, and that she thought it would be a good idea to improve on that to defeat efforts of the International to organize the Company's employees. The Trial Examiner found that, by its terms, the original agreement of May 27, 1937, was to remain in effect for a period of two years, while the supplemental wage agreement was to expire July 1, 1938, subject to the provision for automatic extension from year to year unless either party notified the other in writing of a desire to terminate it; and that the two contracts have continued in effect without change.

The Trial Examiner found that in August or September
4355 1937, the Company agreed, at the request of the plant union to a check-off of the monthly dues of its members (except the salesmen); that employees signed cards, prepared and distributed by the Company agreeing to permit the dues to be checked off; that the plant union kept no records of individual

dues paid, and issued no receipts to members; that the checks for dues checked off, which were turned over each month to the plant union, range from $250 to $325 a month.

The Trial Examiner found, with respect to the committee consisting of Lulu Nichols, Josephine Spalito, and Rose Todd, appointed by the Group Chairman to adjust piecework rates, that Nichols was a supervisory employee of the Company and that Spalito was her assistant; that it was their duty to fix piecework rates for the Company; that the same persons, therefore, represented the Company and the employees in negotiations in regard to piecework rates, and that the employees were forced to become "members of an impotent collective bargaining agency * * *."

Under the heading, "Respondent's [the Company's] contribution of support to the D. G. W. U. [the plant union]" the Trial Examiner found: That the meeting at which the plant union was formed and the succeeding three or four membership meetings were held during working hours; that the meetings were held in the building where the factory was located; that prior to May 10, 1937, the Company did not lease the second floor, on which the meetings were held, and the plant union was permitted to use it as a meeting place without charge; that on May 10, 1937, the Company leased the second floor, and the plant union continued to use it as a meeting place until April 1938, when the Company remodeled a portion of the first floor to serve as an auditorium; that thereafter the plant union used the auditorium for its meetings; that not until November, 1937, was the question of
4356 paying rent raised; that the first rental payment to the Company was made in April 1938, and was at the rate of $3.00 for each meeting held during the preceding twelve months; that this payment of rent was an afterthought; that Rose Todd had announced in meetings that the use of the Company's facilities was entirely proper; that meetings of the Group Chairmen, who composed the executive committee of the plant union, were, prior to May 1938, held in the office of Beulah Spilsbury, who was in charge of the designing department, and thereafter in the auditorium, and that no rental was paid for the use of Company property by the Group Chairmen; that notices of meetings of the plant union and of the meetings of Group Chairmen were given through the means of communication furnished by the Company; that Rose Todd, in giving notice of meetings, collecting assessments and giving instructions, used the messenger service of the Company; that piecework operators who served as Group Chairmen or officers were paid for time lost in attending to the business of the plant union; that Rose Todd continued to receive

her full salary as an employee of the Company and, in addition, was paid $65 a month by the plant union; that she was permitted by the Company to devote as much time as she desired to the business of the plant union without deduction in pay; that she carried on such business during working hours; and that in organizing the employees at the Company's St. Joseph plant she lost half a day without a salary deduction; that at a meeting of May 11, 1937, Rose Todd stated that union work would be conducted at a desk on the ninth floor of the plant and that she could be reached at any time necessary; that her desk was the plant union's only office; that the business of the union was transacted there; that the records of the union were kept in a file case belonging to the Company: that Rose Todd collected money for the union on
4357 Company time; that when she took her vacation in December 1937, she told the Group Chairman that a Miss Riddle would be at the desk from 11 A. M. to 12:45 each day to transact union business; that the membership cards of the plant union were mimeographed after working hours by employees on a machine belonging to the Company; that copies of the plant union's bylaws were made on a ditto machine of the Company; that the plant union had no typewriter, and a Company machine was used for typing minutes of meetings of the union and its Group Chairmen.

Under the heading, "The Alleged Discharges," the findings of the Trial Examiner are: That Sylvia Hull, whose employment with the Company terminated April 23, 1937, had worked for the Company for nearly eight years; that she joined the International on March 23, 1937; that on April 22, 1937, it was publicly announced in a Kansas City newspaper that she had been selected by the International to represent the Company's employees at the International's convention; that, after the demonstration to which Sylvia Hull was subjected the following day at the plant, she went home with the understanding that she would be recalled; that she did not voluntarily quit her employment, and acquiesced, under pressure, in a one-day lay-off; that she was temporarily laid off by the Company because of her union activities and affiliations; that the Company thereby discriminated against her in regard to her tenure of employment, and thereby discouraged membership in the International, and restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act; but that the Company, through the efforts of Mrs. Hyde, attempted to recall Sylvia Hull to work and had not discriminatorily refused to reinstate her. The Trial Examiner, in dealing with the issue of the
4358 alleged discriminatory discharge of May Fike, found that

she was not discharged because of her union affiliations or activities.

In conclusion the Trial Examiner found that the activities of the Company set forth in his findings "tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce." He recommended to the Board the form of order which he thought should be entered by it.

The Board, after hearing exceptions to the report of the Trial Examiner, entered its decision and order, on June 9, 1943, affirming his rulings and adopting, with certain unimportant exceptions, his findings, conclusions, and recommendations. The Board's order of June 9, 1943, which is the order now under review, directed the Company to disestablish the plant union as the representative of the Company's employees; to cease giving effect to the contracts with the plant union; and to reimburse the employees for dues and assessments deducted from their wages by the Company on behalf of the plant union.

In its decision, the Board said:

"In remanding the case to the Board for further hearing, the Circuit Court directed that the respondent [the Company] and the D. G. W. U. [the plant union] be permitted to adduce the previously proffered testimony of respondent's [the Company's] employees to show, in substance, that they formed and joined the D. G. W. U. of their own free will and that they were not influenced, interfered with, or coerced by the respondent in choosing that organization as their bargaining representative. In compliance with the Court's mandate and pursuant to the respective offers of proof submitted by the respondent and the D. G. W. U. at the original hearing, the Board permitted the introduction of such testimony. We have carefully considered all such evidence adduced by the respondent and the D. G. W. U. We find,
4359 however, that the testimony in question does not overcome more positive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the D. G. W. U. which subjected that organization to the respondent's domination and which removed from the employees' selection of the D. G. W. U. the complete freedom of choice which the Act contemplates. Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the D. G. W. U., we are moreover impelled to adhere to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature is immaterial to issues such as those presented in this case. A consideration of all the evidence convinces us, and we find, that the respondent dominated and interfered with the formation and ad-

ministration of the D. G. W. U. and contributed support thereto; and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

We have set forth in detail the findings of the Trial Examiner because they state the facts which the Board contends are established by the evidence. Briefly stated, the determination of the Board that the plant union was sponsored, interfered with and dominated by the Company, is based upon the following conclusions: (1) That the Company, prior to the effective date of the National Labor Relations Act, was hostile to the International and to outside unions; (2) that the Loyalty League was organized by supervisory employees of the Company for the purpose of resisting organization by the International; (3) that the plant union was an offshoot or successor of the Loyalty League; (4) that supervisory employees participated in the organization and in the administration of the plant union; (5) that the plant union did not function as a true bargaining representative of the em-
ployees, and that the Company, in effect, bargained with
4360 itself as to wages, hours, and working conditions; (6) that
the Company made substantial contributions of its facilities to the plant union; and (7) that Mrs. Reed's speech to the employees at the March 18, 1937, meeting was coercive. In other words, the position of the Board is that the organization of the plant union was solely attributable to efforts of the Company and its representatives to prevent its employees from joining the International.

The Company and the plant union contend that the determination of the Board is based upon a distortion and disregard of the competent and relevant evidence introduced and proffered by them during the hearings. They contend that this evidence shows conclusively that the formation of the plant union was solely attributable to the fraudulent and violent methods which they assert were, at the time, being employed by the International to compel employers engaged in the garment industry in Kansas City and the Southwest to force their employees to join the International on penalty of having the business of the employers destroyed.

The Company and the plant union contend that the circumstances surrounding the organization of the plant union were, in general, as follows:

That the International, in the year 1937, was engaged in a campaign to organize the garment industry in Kansas City, including the Company, which was the largest local employer engaged in that industry; that on February 26, 1937, Meyer Perlstein, Southwest Regional Director of the International, pub-

licly announced in the press that the plan was to send a letter to the Company within a week, suggesting a conference to establish collective bargaining on the question of wages and working hours, and stating:

4361 "* * * If the firm refuses, we'll go to the consuming public of the country and advise buyers of the wages and hours prevailing there now.

* * * * * *

"Part of the union's [the International's] campaign directed against the Donnelly Garment Company will be to send six women to cities and towns where its garments are sold 'advising retailers and labor organizations.' * * *

"The union [the International] claims only twenty-five members among the Donnelly workers, but officials said 'hundreds of others are related to union members.'

"'Within a year, we'll have it completely organized.' Mr. Perlstein said, 'As soon as we have enough members, we'll call a strike. This will be in addition to carrying our side to the consumers.'"

The Company and the plant union assert that this threat of a secondary boycott and a strike caused resentment and fear among the employees, and that they voluntarily, and without suggestion of any officer of the Company, circulated what has been referred to as the "loyalty petition," stating that they were contented, refused to acknowledge any outside interference, and were thankful for the humanitarian interest extended to them by Mrs. Reed; that on March 6, 1937, David Dubinsky, President of the International, in the course of a speech made in Kansas City, said: "Reed [the husband of Mrs. Reed, President of the Company] will receive a polite letter within a few days inviting him to confer with Kansas City labor leaders about signing a union contract. If he refuses to meet with us, we shall start our campaign"; that

4362 on March 9, 1937, Perlstein prepared a letter which was mailed to the Company concerning alleged grievances;[2] that the Company did not reply to the letter because it regarded the letter as a mass of falsehoods; that the International was

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[2] "March 9, 1937.

"DONNELLY GARMENT COMPANY,
1825 Walnut Street, Kansas City, Missouri.

"GENTLEMEN: The Kansas City members of the International Ladies' Garment Workers' Union feel compelled to place before you the following grievances that should be adjusted immediately.

"Fifteen members of our Union were discharged by your firm because of their affiliations with our organization. Their case was up before the National Labor Relations Board. During the period the hearings took place the NRA was declared unconstitutional by the Supreme Court of the United States and the Government could proceed no further. The discharged workers have not as yet been returned to work by your firm.

"The Dress Industry, in which your firm is engaged, is highly unionized throughout the country. Nearly every producer of dresses is in contractual relations with our Union. The 150,000 Union workers employed in this industry are enjoying a 5-day, 35 hour working week and a $22.05 per week minimum wage scale for operators, and reasonable, fair minimum scales for finishers, pressers, cutters, et cetera. Piece workers, who compose the majority of workers in your shop as well as in the industry,

without authority to represent the employees, and they were protesting against being represented by it; that as a preliminary to the planned campaign against the Company, the International, about March 15, 1937, called strikes against three smaller garment manufacturers in Kansas City, which were located not far
4363 from the plant of the Company; that the pickets of the International took possession of the buildings or building which housed these factories; that pickets, imported by the International, carried on a program of terrorism and violence; that employees of those factories who were trying to go to their work were beaten and kicked, and their clothing was torn or stripped off; that the Kansas City newspapers were filled with articles and pictures descriptive of what was taking place in these plants; that
4364 the plants were closed; that the employees of the Donnelly Company were fully aware of what was going on at these plants, and knew that the same tactics were to be employed to force the Company to compel its employees to join the International, in entire disregard of their rights and wishes; that it was the intention of the International to use the same methods to procure the organization of the Donnelly plant that had been used

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are enjoying the right, through committees selected by them, of having an equal voice with the management in each shop in determining the piece rates for each garment or operation on a garment.

"The workers in most of the industry enjoy the freedom and rights of organization. Collective bargaining has been established as a permanent institution. These are the conditions and wage scales in the organized industry.

"However, in your shop the minimum wage scale for operators is between $12.50 and $15.00 per week.

"The wage scales for finishers, pressers and cutters are at least 30 per cent lower than those that exist in the industry.

"The hours of work in your shop are 46 and more per week.

"Your workers are denied the right of joining a labor organization, and those who do, are immediately discharged. Your workers are denied the privileges of genuine collective bargaining. The piece workers in your shop have no voice as to what the piece rates should be as they are set exclusively by representatives of your firm.

"The conditions and wages under which your employees are working not only deprive them of the privileges and opportunities enjoyed by the workers in this industry, but endanger their general work standards and wage scales. Your firm has undue and unjustified advantages over your competitors. The Union believes in 'Fair Competition,' but it does not consider competition fair when it is gained solely at the expense of the workers.

"Under your system of production, workers are compelled to invest extraordinary effort, but the reward that follows is very meager in proportion to the efforts invested. Under modern methods of production such treatment of workers is not only wrong from the humane point of view, but also destructive from the economical point of view. In comparison with other shops in the industry which produce the same type of garment the production in your shop is about 30 per cent higher while the earnings of the workers are about 30 per cent lower.

"We, therefore, believe that a conference between our Union and your firm, for an adjustment of these grievances, should take place immediately. The Union has named a committee which stands ready to meet a similar committee named by your firm.

"May we respectively request that you advise us before the end of this week as to when and where it would be convenient for you to meet our Conference Committee.

"Our aim is industrial peace. We believe in intelligent cooperation between employer and employee. Such cooperation is essential for the welfare of all factors in industry, including the consuming public and community at large. Peace and harmony prevail in the major part of the Dress Industry and we are eager to extend this cooperation to include your firm. Let us join hands to avoid industrial conflict.

"Respectfully yours,

"KANSAS CITY JOINT BOARD.
"INTERNATIONAL LADIES' GARMENT WORKERS' UNION.
"By WAVE TOBIN, *Manager*.

"Approved by: Meyer Perlstein, Regional Director, International Ladies' Garment Workers' Union.
"MR."

at other plants in Kansas City and in other cities of the Southwest region under the jurisdiction of Perlstein; that on March 18, 1937, upon premises not leased or controlled by the Company, its employees voluntarily held a meeting arranged by Rose Todd and Hobart Atherton, employees of the Company; that, at the meeting, the violence at the strikes at the G[illegible]nes, Gordon, and Missouri Garment companies and the threats that were being made against the employees of the Donnelly Company were discussed; that the question of what action might be taken by the employees against the threatened assaults was considered; that someone was sent to ask Mrs. Reed to speak to the meeting; that she made a short talk; that a stenographic transcript of her talk was made, and rep-
4365 resents all that she said;[a] that she left the meeting immediately after she finished her talk; that shortly after this meet-

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[a] March 18, 1937.

Mrs. REED:

"I want to say that I am awfully happy to have this opportunity to tell you how proud I was when these girls wrote the petition out, and—well, I have had lots of nice things happen to me in my lifetime, but I have never had anything that made me so proud and so happy as that list of names that came to my house. Many of those girls I had worked with—and who had really helped to build this business into what it is now.

"Over a period of twenty-one years we have built up an institution which anybody can be proud of, anybody connected with it. I had a letter from one of the girls last night telling me that she had worked for the Donnelly Garment Company, but she wasn't ashamed to tell anyone that she had worked for a garment company. When Mr. Dubinsky put Mr. Reed into the garment business—he didn't know he was in it before—he said he would not be ashamed to belong to the Donnelly Garment Company.

"We have an institution we can be proud of. You folks are just beginning to be initiated into the knowledge of just what kind of a business we are in, and some of the people that are in it.

"A great many years ago when I first started, a man in St. Louis said, 'You know you have to have two fires and a failure to stay in that business.' We have not had any fires or any failures yet. We are twenty-one years old and we are pretty well grown up, and I think we know how to run our own business.

"Just from a practical standpoint, let me say that this business has grown up around the policy of year-around work. Up until the time of the depression we practically kept that up. I increased my business in the fall of the year and I increased my machines, and then we always had plenty of business the next spring. In the spring when the depression came on I put new machines in with the idea that I had the business and that I could give a certain amount of work to a certain number of women for a few months. A number of you will remember that the old girls agreed that they would share their work with the new ones that fall if they had to. They did not have to very much, but they did a little. By the time the next spring came along the new ones were the old ones, and they wanted to work too, so we have made every effort in the world to keep the plant going.

"We have built up a Nelly Don garment, and we have built up a Nelly Don trade, and each time we get up a line we try to make something that enough women will buy to keep our plant running. There has been so much talk 'Mrs. Reed isn't interested any more; Mrs. Reed doesn't care anything about it any more, etc.' Mrs. Reed may not work as many hours as she used to, but the burdens on her are bigger now than ever. No matter what anybody else may say, I'll be right here running this business.'

"I know you are thinking about the threats of violence that the Union is making against you and the company. I want to say that the Company and I intend to do everything possible to protect you in case of any violence. We are now trying to make arrangements with the street car company for its buses to go to certain points and pick you people up and bring you to the plant. We will let you know about this as soon as arrangements can be made.

"Many of you have been here for a number of years and you know that you have never been asked whether or not you belong to a union. The company has not discriminated against anyone on that account and Mr. Dubinsky is not going to make me discriminate against employees because they would not belong to his Union. If you want to belong that is your own business and it is up to you to decide. I will say that neither Dubinsky or any other buttinsky is going to intimidate me or the Company into forcing you to join the International Union against your will.

"I can't say at this time what will be done to protect you against violence, but the company's attorneys will consider what legal steps might be advisable. In any event, you can understand that the company will not submit to any unlawful attacks lying down."

ing, Rose Todd, Hobart Atherton and Sally Ormsby, on behalf of themselves and other employees, consulted the law firm of Gossett; Ellis, Dietrich & Tyler, of Kansas City, relative to securing
4366 protection against the anticipated attack of the International; that Mr. Tyler advised the possibility of obtaining an injunction, and asked for a retainer fee of $500; that the committee took the liberty of borrowing money from the First National Bank of Kansas City, and paid this retainer; that the money was later repaid through voluntary contributions of fifty cents each by the employees; that on April 1, 1937, Meyer Perlstein publicly stated, with respect to the campaign to organize the employees at the Gernes, Gordon, and Missouri plants: "These three firms will soon have union shops. If not, they will never again manufacture dresses;" that after the Supreme Court, on April 12, 1937, had sustained the constitutionality of the National Labor Relations Act, Mr. Tyler suggested to Rose Todd, Sally Ormsby, and Hobart Atherton the advisability of the employees organizing an independent union as a matter of self-protection; that on or about April 22, 1937, an article appeared in the Kansas City press, stating, in effect, that Sylvia Hull, an employee of the Company, had been named a delegate to the International's Convention at Atlantic City, to be held on May 3, to ask the International to indorse and support a strike against the Company "for failure to negotiate a contract for higher wages, shorter hours, and
4367 improved conditions"; that Sylvia Hull had not been authorized by any of the employees of the Company to represent them; that the article was given to the press by Perlstein; that the publication of this article caused other employees to hold

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"DONNELLY WORKER WILL BE SENT TO UNION CONVENTION

"Garment Organization Seeking Support for Strike at Plant

"Sylvia Hull, an employe of the Donnelly Garment Company, has been named a delegate from Kansas City to the International Ladies' Garment Workers' Union biennial convention May 3 at Atlantic City, Meyer Perlstein, regional director, announced Thursday.

"The Donnelly worker, according to Perlstein, was one of a committee from that garment company who appeared Wednesday night before a joint group representing various Kansas City locals and requested representation at the national convention.

"Perlstein said the Donnelly committee desired one of their number to appear at the convention and ask the international body to indorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours, and improved conditions. The Kansas City joint committee, Perlstein asserted, agreed to pay all expenses of the Donnelly delegate.

"Other delegates from Kansas City are:

"Cinderella Robinson and Grace Bullard, members of local No. 270 and employed by the Brand and Furlitz company; Louise Smith, local No. 114, employed by the Laverne Coat shop; Anna Koval, local No. 114, employed by the Fashionbuilt Garment Company; Arlean Gaither, local No. 118, employed by the Gordon Brothers Manufacturing company; Ora Thornton and Annis Vaughn, local No. 250, employes of the Stern-Stegman-Prins company, and Miss Wave Tobin, business representative of the Kansas City locals.

"Perlstein said the executive committee of the various local unions in Kansas City would meet Thursday afternoon to consider a resolution calling on the national organization to appropriate funds to carry on a strike at the Donnelly plant.

"The delegates from this section will meet April 30 in St. Louis to go to Atlantic City by special train. Perlstein will be a delegate from St. Louis. The convention will last two weeks."

a demonstration against Sylvia Hull when she came to work the following day; that she was not physically molested and voluntarily went home; that she later attended the convention of the International at Atlantic City, where she delivered a speech, which had been prepared for her, containing false statements concerning the Company, and asking that the convention vote funds to support a strike at the Donnelly plant; that she never sought to return to her work at the plant but became a paid worker for the International; that on April 27, 1937, all of the Company's employees, with the exception of those having authority to hire, discipline or discharge, voluntarily attended a meeting held after working hours on premises not leased or controlled by the Company, and, upon the advice of Mr. Tyler, their counsel, and for their own self-protection, by unanimous vote, organized their own union and elected its officers and a bargaining committee; that the Company did not, directly or indirectly, influence the
4368 formation of the union or contribute to its support or participate in its administration; that the plant union, after negotiations, entered into collective bargaining contracts with the Company covering wages, terms and conditions of employment, and providing for a closed shop and exclusive representation by the plant union; that these contracts provided for better wages and working conditions than prevailed in other comparable plants in the locality under contracts negotiated by the International; that the contracts negotiated by the plant union with the Company have been complied with, and all complaints which have arisen have been satisfactorily adjusted; that on May 25, 1937, Perlstein publicly urged a boycott of Donnelly products and announced that retailers would be visited and urged to refuse to buy such products, under threat of having their stores picketed, and that $250,000 had been appropriated by the International to finance its campaign; that the International sent out representatives to urge retailers to boycott the products of the Company under threat of a secondary boycott; that circulars were widely distributed, containing false statements as to wages and working conditions in the Donnelly factory, as a ground for appealing to the public to refrain from buying the Company's products.[8]

[8] "TO THE CONSUMING PUBLIC:

"The Donnelly Garment Company of Kansas City, Missouri, producers of the 'Nelly Don' dress, are on the unfair list of organized labor. Therefore, we appeal to the consuming public to HELP US BY NOT BUYING, AND BY NOT OFFERING FOR SALE 'NELLY DON' DRESSES until we establish in the shop of the Donnelly Garment Company the rights and privileges, wage scales, and hours of work that prevail in every shop in the dress industry throughout the country.

"The workers of the Donnelly Garment Company are compelled to work long hours while their wage scale is far below that which prevails everywhere else in the dress industry. The speed-up system is such that most of the 1300 workers employed by this firm are in a state of exhaustion and fatigue. Many of them must have constant

4369 The Company and the plant union further assert:

That the employees whom the International contends were discriminatorily discharged by the Company in 1934 and 1935 were not discharged because of their union affiliations or activities; that the evidence relative to events which occurred prior to the effective date of the National Labor Relations Act furnishes no basis for an inference that the Company was hostile toward outside unions.

That the "Nelly Don Loyalty League," organized in 1935, was a voluntary association, formed for social purposes, and that it never functioned as a labor union or a representative of the employees; that it collected no dues and held no regular meetings; that it was not the predecessor of the plant union and did not assist or influence the formation of that union; that the League continued to exist and operate after the formation of the plant union, exactly as before.

That the instructors, thread girls, and other employees, whom the International asserts, and the Board found, were supervisory employees, ineligible for membership in the plant union, were in fact not supervisory employees, and that employees holding
4370 comparable positions in plants organized by the International were regarded as eligible for union membership.

That the Company refused to provide for a check-off of union dues in its contracts with the plant union, and only consented to deduct them after each employee had individually authorized the Company, in writing, to make the deduction.

That the use by the plant union of typewriters, mimeograph machines and other facilities belonging to the Company was never consented to or known by the Company.

The picture drawn by the International and the Board is that of an employer which, solely because of hostility to the International, has influenced, and coerced its employees into forming a plant union and entering into a closed-shop agreement, thus depriving them of their freedom of action and choice and making them, in effect, the bondservants of their employer.

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medical attention because of the nervous strain imposed upon them by this system. Numerous workers suffer complete nervous breakdowns.

"On the next page of this booklet we reproduce a copy of a letter which was sent to the Donnelly Garment Company. The firm has not replied to this letter, but has instead, organized a company union which has been named the 'Donnelly Garment Worker's Union.' The Company has also more firmly entrenched in their shop the Spy System which they established long ago. The Spy System is under the direct supervision of a notorious strike-breaking detective agency, through which every worker is spied upon. Those who dare to complain of conditions or join a labor organization, or express a favorable opinion of a union, are immediately discharged.

"We appeal to you to help us establish in this shop, conditions and wages that befit civilized human beings. WE APPEAL TO YOU NOT TO PURCHASE THE 'NELLY DON' DRESS.

Kansas City Joint Board,
INTERNATIONAL LADIES GARMENT WORKERS' UNION,
Executive Office:
1022 Baltimore Avenue, Kansas City, Missouri."

The picture which the Company and the plant union present is that of a group of employees, on friendly terms with their employer, satisfied with their wages and working conditions, and desirous of avoiding strikes and labor troubles, who, upon the advice of their counsel and for their own protection against an unjustified and unlawful attempt by the International to force them to become, and to force their employer to make them become, members of that union against their will, voluntarily formed and have satisfactorily administered their own completely independent union.

The question as to which is the true picture, insofar as that presents a question of fact, is not a matter with which this Court can concern itself. Our sole function is to determine whether the Board, acting within the compass of its power, (1) has
4371 held a proper hearing, (2) has made findings based upon substantial evidence, and (3) has ordered an appropriate remedy. National Labor Relations Board v. Bradford Dyeing Association, 310 U. S. 318, 342; Eagle-Picher Mining & Smelting Co. v. National Labor Relations Board, 8 Cir., 119 F. 2d 903, 907.

The Company and the plant union assert that the trial accorded them was unfair because of (1) the Board's refusal to designate another examiner to preside at the hearing after remand; (2) the bias and nonjudicial attitude of the Trial Examiner and the Board throughout the entire case; (3) the failure to give consideration to employee testimony; (4) the refusal to permit the Company to prove a conspiracy on the part of the International, by fraud and violence, to force the Company's employees to become members of that union; (5) the receiving, over objection, of the evidence of the Board relating to events which occurred in 1934 and 1935, and the refusing to receive evidence of the Company relative thereto; (6) the Trial Examiner's direction of the order of proof and his limitation of testimony; (7) the exclusion of competent and material evidence.

1. The refusal of the Board to designate another Trial Examiner.

The contention of the Company and the plant union is that the Trial Examiner who had conducted the first hearing, and was designated to hold the second hearing, had completely prejudged the case and that his rulings, set out in the affidavit of prejudice presented to the Board, demonstrated that he had a fixed opinion as to the worthlessness of evidence which this Court had ruled was admissible and must be considered. The fact that we said in our former opinion that "it cannot be said that it appears from the record of the proceedings before the Ex-

4372 aminer and before the Board that there was a denial of due process because of bias and prejudice or collusion" (123 F. 2d 215, 219) was not a ruling that, in case the Board granted a further hearing, the same Trial Examiner would be a suitable person to conduct it, over the protest of the Company and the plant union. A few of the Trial Examiner's remarks, at the first hearing, about the value of the proffered testimony of the employees were: "No, I don't think it is of any value in the issues in this case, to parade these people on the stand." Now, if that is your idea, you may make as complete an offer as you care to with respect to that matter." "I think I should tell you now that if there is any further testimony of that kind, you can put it in an offer of proof, because I don't think it is material to the issues here * * *." "Now, I don't consider that testimony, if it were given, of any value when they are put up here on the stand and testify under oath, with the respondent [the Company], and in some cases, the foreman and the superintendent present. It might result in coercion, and it might not." With all due respect to the Trial Examiner, who conducted himself with courtesy and patience under conditions which were not always tranquil, it is hard to believe that he could be entirely impartial in weighing evidence which, he, sincerely, considered to be of no value or materiality. We think that a party to a controversy such as this who believes and has substantial grounds for believing that he cannot have a fair trial before a certain trial examiner, should not be forced to present his case to that examiner. We realize, of course, that the Board is at liberty to conduct its proceedings in its own way, through its own instrumentalities, subject only to the condition that the proceedings shall measure up to the constitutional requirements of due process. The unfairness
4373 of trying issues of fact to those who may have prejudged them has been dealt with in Winebrenner v. United States, 8 Cir., 147 F. 2d 322, 328–329.

2. The alleged bias and nonjudicial attitude of the Trial Examiner and the Board.

It is contended that it appears from the record that the Trial Examiner and the Board had prejudged the case and were determined to convict the Company at all events, disregarding its testimony whenever necessary to make a finding favorable to the Board. In order to sustain a ruling to that effect, it seems to us that it would be necessary to be able to demonstrate from the record to a moral certainty the existence of such a mental state. The presumption is the other way, Cupples Company Manufacturers v. National Labor Relations Board, 8 Cir., 103 F. 2d 953,

958, and inquiry into the mental processes of the Board members is not a function of this Court. Morgan v. United States, 304 U. S. 1, 18. The record is persuasive, as we have already pointed out, that the Trial Examiner had, upon the first hearing, reached the conclusion that the testimony of employees upon the issue whether their plant union was or was not dominated by the Company should be disregarded. We think, however, that a ruling by this Court that the proceedings of the Board lacked due process because of its alleged bias and prejudice against the Company and the plant union is not justified.

3. Failure to consider employee testimony.

The employee testimony which the Company and the plant union contend was given no consideration by the Board is that which was thought by the Examiner and the Board, upon the first hearing, to be immaterial, and which we held to be competent and material (123 F. 2d 222–223). Upon the second hearing, the Trial Examiner received the testimony of eleven of
4374 the Company's employees relative to how and why they came to organize the plant union and what sort of an organization it was and is. He then ruled that further evidence of employees would be cumulative. There was other similar employee testimony in the record of the first hearing, as the Board points out, but it is, of course, obvious that that evidence had, prior to the remand, been ruled by the Board to be immaterial, and had therefore not been considered. Although the plant union complains that the Trial Examiner heard none of the employee testimony proffered by it, it is apparent that this testimony would have been no different than the testimony of the eleven witnesses produced by the Company and that the testimony received was for the benefit of both. The ruling by the Trial Examiner that further employee evidence would be cumulative was equivalent to a ruling that all of the employees offered as witnesses would have given the same evidence as that which was received. We are satisfied that the Examiner was justified in limiting the number of witnesses as he did.

There is much force in the contention that, while the employee evidence was received, it was still regarded by the Board as being entirely immaterial and worthless. The Board was of the opinion, and is apparently still of the opinion, that the ruling of this Court relative to the admissibility of such evidence was and is erroneous. The Board is, of course, entitled to its opinion in that regard. The Board's attitude toward this employee evidence was well expressed by its counsel at the second hearing, after an employee had stated that she had joined the plant union of her own

4375 free will.* As already pointed out, the Trial Examiner states that he has based his findings upon the entire record. He makes no specific reference to the employees' testimony as to the plant union being their voluntary and uninfluenced choice. The Board, in its order adopting the findings of the Examiner, said with respect to such evidence: "Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the D. G. W. U. [the plant union], we are moreover, impelled to adhere to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature is immaterial to issues such as those presented in this case." The Board argues that its statement relates merely to testimony that the employees formed and joined the plant union of their own free will and were not influenced, interfered with, or coerced by the Company; that this testimony was not material, because of positive evidence in the record that the Company

*Miss WEYAND: "I would like to make a statement in connection with that question. While we are here to take such evidence under the remand of the Court, it is my position that the question is one which should not properly be directed to the witness. I am, of course, acquiescing in the Circuit Court of Appeals ruling we do take such evidence, but I would like to make a statement for the record, of my position on that question.

"I think such questions are improper in a Labor Board hearing, in the first place because they violate the principle of a secret election stated in Section 9 of the Act. The Congressional intent there expressed was clearly that employees should not be required to disclose in the presence of their employers or any representatives of the employers or in the presence of anyone else, if they did not so desire, whether or not they favored one union over another union.

"To ask an employee who is still employed by the employer, in the presence of employer's representatives, whether or not she favors a given union, violates the principles of secret elections. I think the question is improper for a second reason, that is because the Board's inquiry in a Labor Board case is whether or not the employer interfered, restrained, or coerced employees. The Congressional intent is clear that that inquiry is directed to whether or not the employer did certain acts, which normally and reasonably have the effect of interfering with, restraining, or coercing.

"It is not the Board's job to inquire whether or not the restraint, interference, or coercion actually had that effect on any given employee. The Board is not required to look into the minds of the employees and see if any one or more employees are actually interfered with, restrained, or coerced.

"The Courts have repeatedly held that espionage, even though unknown to any of the employees, constituted interference within the meaning of the Act and has held immaterial that no employee knew he was being spied upon, and if it was held immaterial that the employer had not used the information that he received through the espionage for the purpose of depriving the employees of other rights in the Act.

"There is a third reason why I think the question is improper in a Labor Board hearing, and that is that the proof, if we can assume it is proof, that any employee was not interfered with, restrained or coerced, has no weight or bearing upon whether or not any other employee was restrained, interfered with, or coerced. That is a general proposition, that negative evidence does not establish the absence of affirmative evidence in other instances.

"It is the Labor Board's duty only to show the acts of the employer are the type that interfered with, restrained, or coerced; that if in this case, where the prior evidence shows the employer has interfered with, restrained, and coerced certain employees, the fact they may provide many witnesses who think they were not interfered with, restrained, or coerced has no bearing on whether other employees were interfered with, restrained, or coerced.

"For a fourth reason, I think the question is improper because of the unreliability of introspective inquiries. By reason of the very nature of the subject matter, the employees who have been the subject of unfair labor practices really become so interfered with or dominated that they do not know their own minds, even assuming they were able to speak in the presence of the employer freely. It is our position they cannot speak freely in the presence of their employer, and if they have been, for long years, under the interference, restraint, and coercion of their employer, their state of mind is one which they cannot provide a fair introspective account of their own state of mind, because the domination, interference, and restraint which the Act presupposes goes to the coloring of the employee's point of view, so he cannot look into his own

had interfered with and assisted in the formation of the plant union which rendered that organization incapable of acting as the bargaining agent of the employees.

It is our understanding that, when an employer is charged with an unfair labor practice which he denies having committed, the Constitution of the United States guarantees him a fair trial of the issue; that one of the requirements of a fair trial is that any evidence which is competent and material shall be received and considered, and that the strength of the testimony against him has no bearing upon the admissibility of his testimony or his right fully to present his defense. The rule contended for by the Board that the introduction of positive and direct evidence of guilt renders pertinent "conclusionary" evidence of innocence immaterial might make for expedition in the trial of controversies before the courts and administrative agencies, but it is not in accord with present basic ideas of fairness. If one were of the opinion that it appeared from the undisputed evidence in this record that the plant union was, as a matter of law, a company-dominated union and that all reasonable and fair-minded men could, from the evidence, reach no other conclusion, one might believe that the failure of the Board to consider what it terms "conclusionary" evidence, no matter how material, was harmless error. The Board, however, had the burden of proof; it was the sole judge of the facts, of the credibility of witnesses, and of the weight of their evidence. Unquestionably it could have found from the competent evidence introduced and proffered by the Company and the plant union that the latter was not company-dominated, or the Board could have determined that the evidence was insufficient to justify the conclusion that the plant union was company-dominated. It seems to us that the Company and the plant union are justified in contending that the evidence of the employees tending to show lack of domination and interference by the Company received no different or greater consideration upon the second hearing than it did upon the first, and that it was disregarded in both hearings.

4. Refusal of evidence of conspiracy on the part of the International.

The contention is that the Company and the plant union were entitled to show that the International, at and prior to the

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mind and state what his position would have been if he hadn't been subject to this economic power which has been exercised over him unfairly by the employer.

"For those four reasons it is my position that the line of inquiry here directed to whether or not an employee believes that he joined the Donnelly Garment Workers' Union of his own free will isn't a proper line of inquiry.

"I am aware that the Court has directed us to take that testimony, and I will not object further in this hearing, but I do wish the record to show my position on this line of questions."

time of the formation of the plant union, was engaged
4378 in an unlawful conspiracy to force the Company, by the use of fraud and violence, to compel its employees, regardless of their wishes, to join the International.

This Court, in its former opinion in this case, said (page 225 of 123 F. 2d): "We are of the opinion that the Trial Examiner did not err in confining the issues to those which were tendered by the complaint filed by the Board. We are satisfied that the Board was not required to try the International for alleged conspiracy nor to try the charge that the Board had conspired or colluded with the International." This statement, we think, was based upon the theory that the clean hands doctrine was not necessarily applicable to proceedings before the Board, and that, while the Board might, if it saw fit, inquire whether it was being taken advantage of to further unlawful or unworthy activities of the complaining union, it was not compelled to do so. The case of National Labor Relations Board v. Indiana & Michigan Electric Co., 318 U. S. 9, decided January 18, 1943, deals with this same question. It was held in that case that, while the misconduct of the party making charges of unfair labor practices against an employer does not deprive the Board of jurisdiction to issue a complaint or conduct a proceeding, such misconduct may properly be considered by the Board in determining whether it should institute or continue a proceeding upon the charges, and that the Board properly may be required to receive evidence and make findings on that issue. The Supreme Court said (page 19 of 318 U. S.): "The Board might properly withhold or dismiss its own complaint if it should appear that the charge is so related to a course of violence and destruction, carried on for the purpose of coercing an employer to help herd its employees into the complaining union, as to constitute an abuse of the Board's process."

4379 The Company and the plant union here have at all times contended that the International, by the use of fraud and violence, was endeavoring to force the Company to herd its employees into the International, and that the charges filed by the International with the Board were not filed in good faith, but for the purpose of influencing the result of an action for an injunction brought by the Company to prevent the International from carrying out its threats.[7] That the charges of misconduct made by the Company and the plant union against the International are not without substance is shown by the record. We think

[7] In this connection, see: Donnelly Garment Co. v. International Ladies' Garment Workers' Union (D. C. W. D. Mo.), 20 F. Supp. 767; same title, 21 F. Supp. 807; same title, 23 F. Supp. 998; same title, 8 Cir., 99 F. 2d 309; International Ladies' Garment Workers' Union v. Donnelly Garment Co., 8 Cir., 119 F. 2d 892, and 121 F. 2d 561; Donnelly Garment Co. v. Dubinsky, (D. C. W. D. Mo), 55 F. Supp. 587, 590, 594.

that if a further hearing were to be held, the application of the Company and the plant union to this Court for permission to adduce before the Board additional evidence of the alleged misconduct of the International should be granted.

5. Evidence as to events in 1934 and 1935.

The Board based its findings of hostility of the Company to outside unions upon evidence of events which preceded the enactment of National Labor Relations Act. The Company and the plant union regarded such evidence as incompetent and immaterial, and objected to its introduction. It is true that an employer's attitude prior to the Act toward the unionization of his employees may be an unfair criterion by which to judge his subsequent attitude. No doubt, an employer is entitled to the benefit of the presumption that he intends to comply with the law. We see no reason, however, why the Board may not show what
4380 the labor situation was at a plant shortly prior to July 5, 1935, for whatever light that may throw upon subsequent events. It must be remembered that in this case the Board was contending that prior to that date, the Loyalty League was formed for the purpose of resisting the International and that the plant union formed in 1937 was an outgrowth of or a substitute for the League.

It is argued that the Company and the plant union were not permitted to introduce evidence relative to these past events which the Board contended showed anti-union sentiment on the part of the Company. This argument appears to be based in part upon the refusal of the Trial Examiner, during both the first and second hearing, to receive evidence relative to the methods which the International, from the beginning, was using in its efforts to organize the Company's employees, and in part upon the assertion that, during the second hearing, the Examiner, over the objection of the Company, permitted the Board to examine witnesses relative to events that occurred in 1935, but refused the same privilege to the Company. The testimony specifically referred to as having been improperly received, over objection, related to the Loyalty League, which, as already pointed out, the Board contended was an instrumentality of the Company to resist the International, and which the Company and the plant union asserted was a mere social organization. What motivated the formation of the League and what purpose it served were proper subjects of inquiry, and we think that the rulings of the Trial Examiner relative thereto did not deprive the Company or the plant union of a fair trial. On the second hearing, the Trial Examiner permitted Mrs. Reed, the President of the Company, to cover the entire field in her testimony, although he subsequently struck out so much of her evidence as related to matters subsequent to July 15, 1939.

4381 We think, however, that the Trial Examiner, in view of the importance which he ascribed to events preceding the enactment of the National Labor Relations Act, should have received evidence proffered by the Company on the second hearing to show the methods employed by the International or organize the employees of the Company and that the Company was not guilty of the charges of discriminatory treatment of its employees made by the International under the National Industrial Recovery Act. We should hesitate to rule that the Trial Examiner's failure in this regard amounted, alone, to a denial of due process, but if the Company's attitude toward outside unions prior to the National Labor Relations Act was to be regarded as a matter of controlling consequence, the Company should, we think, have been afforded a full and fair opportunity to prove that its attitude was not what the International asserted it to be.

6. The Trial Examiner's direction of the order of proof.

It would be a rare case in which the direction of the order of proof would be of sufficient consequence to amount to a denial of due process. The refusal of the Examiner to permit the Company to complete its examination of the witness Wave Tobin prior to putting on its employee testimony did not make the second hearing unfair. The order of proof is a matter addressed to the discretion of the trial tribunal. United States v. Manton, 2 Cir., 107 F. 2d 834, 844.

7. Exclusion of competent and material evidence.

The Company and the plant union contend that, to refute the evidence relied upon by the Board and the International as indicating that the contracts with the plant union were a sham, evidence that contracts containing similar provisions were
4382 made by the International should not have been rejected.

We know of no reason why evidence that provisions similar to those in the contracts between the Company and the plant union were not unusual and were included in contracts of the International itself should not have been considered pertinent. It at least bore upon the "imponderables" which the Board has the power to appraise. International Association of Machinists v. National Labor Relations Board, 311 U. S. 72, 79; National Labor Relations Board v. Link-Belt Co., 311 U. S. 584, 599.

The Trial Examiner refused to receive evidence proffered by the Company (1) to show that, under the customs existing in labor unions and particularly in the International in the year 1937, instructors, head cutters, and head pattern makers or those holding equivalent positions, regardless of titles, were usually regarded as eligible to union membership and were received into such unions; (2) to show that Wave Tobin organized strikes in the Gernes,

Gordon and Missouri Garment companies in Kansas City in March 1937; that she, as agent and representative of the International, was in charge of and directed the strikes and the violence perpetrated in connection with them, and to show, by her, the nature of the violence and that it was intended that the same methods should be employed against the Company and its employees; (3) to show, by the records of the Kansas City Joint Board of the International, that in the garment plants in Kansas City having contracts with the International, head cutters, head pattern makers, head examiners and instructors, whether known as such or not, are treated as eligible for union membership and are active members of the International, and that the eligibility and acceptance of such employees as union members is customary in the garment industry; (4) to show substantially similar
4383 facts by Erwin Feldman, counsel for garment companies which have contracts with the International.

The Company and the plant union, in support of their claim that the employees formed their own union in order to protect themselves against violence and misrepresentation and to prevent the Company, under threat of the destruction of its business and their jobs, from herding them into the International against their will, had a right to show what methods the International was resorting to in its organizing campaign in Kansas City. Such testimony would have substantiated the evidence of the employees that that was the reason they organized the plant union. The employees were interested witnesses whose testimony might be discounted. The testimony of those who conducted the strikes for the International could not well be disregarded. Most of the testimony relating to the alleged fraud and violence of the International is in the record in the form of offers of proof, but it was not received or considered by the Trial Examiner or by the Board.

The other offers of proof referred to, should not, we think, have been rejected. If the issues had been tried before a jury, evidence that employees holding positions similar to those of the employees who were asserted by the Board to be ineligible to union membership, were regarded by the International and other large unions as eligible to union membership, would, in our opinion, have been admissible. We do not mean that the jury would have been bound by such evidence, but that the evidence would tend to indicate that employees holding similar positions were not usually considered by employers and employees in the garment industry to be representatives of the management.

4384 Our conclusion is that the Company and the plant union have not yet had the full and fair trial to which they are

constitutionally entitled. It is apparent that the Board was convinced, upon the first hearing, that it had before it and had considered all of the competent and relevant evidence which it was required to receive and consider. It believes now that it has fully met the requirements of due process, has complied with the mandate of this Court, and is entitled to the enforcement of its order. We do not question the sincerity of the Board's belief. Courts and lawyers seldom differ as to what the requirements of due process are, but they not infrequently differ as to whether such requirements have been adequately met. (Compare, In re Noell, 8 Cir., 93 F. 2d 5, 7. See, also, Panhandle Eastern Pipe Line Co. v. Federal Power Commission, 8 Cir., 143 F. 2d 488, 493–494.) In order to resolve this controversy over the question of due process, we think that the Board would be entirely justified in applying for certiorari. With that thought in mind, we have tried to give a fairly complete statement of the issues. The questions presented are of importance to the Board in the administration of the Act. They are also of importance to the Company, to the International, to the public, and particularly to the employees whose rights are involved.

We think that it would be inappropriate to consider the adequacy of the evidentiary basis for the Board's order at this time and upon this record. We have no right to assume that if the Board had received and considered all of the competent and material evidence proffered by the Company and the plant union, it would have made the same findings and order. We cannot avoid the conclusion that, in the absence of the rejected testimony, the record presents an incomplete picture.

4385 The prayer of the Board for a decree of this Court enforcing the order under review is denied for want of due process in the proceedings upon which the order is based.

RIDDICK, Circuit Judge, Concurring.

This case is unusual among labor disputes. The employer, the Donnelly Garment Company, and all of its employees, approximately 1,200 in number, are now and have been since the beginning of this case aligned on the same side of the controversy. This fact is of controlling significance in the settlement of the case.

In 1937, following the decision of the Supreme Court sustaining the constitutionality of the National Labor Relations Act, the employees of the Garment Company organized a plant union. The company recognized the union as the exclusive bargaining agent of its employees. The union and the company entered into a contract governing wages, hours of labor, and conditions of employment, which, for the five years passing between the forma-

tion of the union and the Board's order now before this court, has satisfactorily served the purpose for which it was intended. The ultimate question for decision is whether the plant union is the independent agency of the employees, freely organized and administered by them in their interest, or whether, as the Board found, it has its roots in a prohibited domination and coercion of employees by the company.

When the Board's charge of company domination of the plant union first came on for hearing before the Board, the union had been in existence for two years. The plant union was permitted to intervene in the hearing before the Board to contest the charge of company domination. It requested the Board to conduct a secret election to determine the question at issue. This re-
4386 quest was denied by the Board for reasons which are not important here and which were no doubt sound. But, after the Board refused the requested election, there remained but one other means of determining the facts at issue before the Board—a hearing at which those who knew the facts might be permitted to testify concerning them. The Board after denying the employees the right to vote upon the question at issue also refused to let them testify. We held that this refusal constituted a denial of due process, and remanded the case to the Board in order that the rejected evidence as well as any other admissible and material evidence might be heard.

At the second hearing before the Board the company and the employees offered to prove by each of the persons then working for the company that the plant union had been organized and subsequently administered by employees alone, free from the coercion or control of the company, and that it was at the time of the hearing the agency freely chosen by each of them to represent them in collective bargaining with the company. The testimony of a relatively small number of employees was received. It conformed in all respects to the terms upon which it was offered. The examiner conducting the hearing refused to hear testimony of other employees on the ground that it was merely cumulative. This refusal is not subject to criticism, but implicit in it is the finding that each of the remaining employees would have testified to the same effect as those whose testimony was received. The situation in this case, therefore, is the same as if each and every employee had testified in denial of the charge of company domination of the plant union.

Unless this employee evidence is in some manner contradicted by other evidence in the record, the finding that the plant union was not the free agent of the employees is a denial of the employees' right of collective bargaining by the agency of their

4387 own choice, which the National Labor Relations Act guarantees and which it must be supposed this proceeding was instituted to protect. In my opinion, there is no substantial evidence tending to support the Board's finding.

At most, the evidence on which is based the Board's finding of company domination is sufficient to establish that at the time of the formation of the union there existed between the company and the International Union a spirit of active hostility, in which the employees of the company joined on the side of the company, and a long history of amicable relations between the company and its employees; and that the plant union was organized by the employees as a result of the attempt of the International Union to organize them and as a means of preventing that organization. There was neither any evidence, nor any finding by the Board, that any of the employees of the company had ever been disciplined or discharged by the company because of labor activities or affiliations. Membership of so-called supervisory employees originally permitted by the plant union had been terminated at the time of the hearing before the Board. Inconsequential use by officers of the plant union of the company's communication system and telephones and some office equipment had been the custom among the employees long before the organization of the plant union, and was quite evidently regarded by the company and the employees as of no significance. Whatever degree of substantiality such evidence may have in other situations on the question of employer domination of a plant union, it is as a matter of law entitled to none when opposed by the employee testimony in this record. Whether the company or any of its employees, before the full reach of the National Labor Relations Act had been definitely determined, engaged in activities now recognized as a possible means of employee coercion, the fact that at

4388 the time of this hearing, five years after the organization of the plant union, the employees unanimously chose it as their agent for collective bargaining ought to control the issue in this case.

For more than seven years the employees have defended the plant union, at great expense to themselves, before every tribunal in which its integrity has been called in question. Throughout this period they have been fully advised of their rights under the National Labor Relations Act. There have been no defections from their ranks. None of them permitted to testify has been impeached on the witness stand. The credibility of none of them has been attacked. Five years after the organization of the plant union all of its members have testified to their deliberate choice of it as their agency for collective bargaining with their employer.

In this situation there is no room, in my opinion, for the inference that these employees have been, and continue to be, the victims of an illegal coercion by means unknown to them and too subtle to be susceptible of proof, or for the inference that they have surrendered their right freely to choose their labor affiliation in return for the occasional inconsequential use of the Garment Company's telephones, mimeograph machines, and office facilities.

I think it clear beyond question that there was a denial of due process in the hearing before the Board, because of the Board's refusal to give any weight to some of the material evidence received, as well as because of its refusal to hear material evidence offered by the Garment Company and the plant union. This, of course, requires that the Board's petition for enforcement be denied. But the real issue in this case is whether there is in the record before us any substantial evidence to sustain the Board's order. In view of the long history of this case, I think the issue should be decided. There have been two trials of this controversy before the Labor Board and before this court. It is quite
4389 certain that if upon a third trial the evidence which the Board rejected should be received, it could not weaken, if it failed to support, the case which the employees have made. The public interest requires that there should be an end to this controversy, and, in an effort to accomplish that desired result, I think this court should hold that there is no substantial evidence in the record before it to support the Board's order, and that, accordingly, the order should be set aside.

WOODROUGH, Circuit Judge, dissenting.

The decision here involves the application of the legislation that has been enacted by Congress to meet the great problem of labor disputes, and as I am not in agreement, the importance of the matter necessitates a brief statement.

Labor disputes within judicial knowledge have been a kind of warfare, costly in suffering and economic loss, and for a long time they were not justiciable. But the labor acts have now formulated into positive law definitions of certain rights of labor and certain few restrictions on the power of management over labor in industry that are deemed to have the weight of public opinion behind them and are declared by Congress to be conducive to industrial peace. By the provisions which are most relevant in this appeal, Congress has established that one of the most crucial of labor disputes, and the one that has long bred disorder, namely, the question of the affiliation of a plant's workers with the labor union of the trade at which they work, shall be determined by resort to the democratic process of elections.

There has never been, and is, no unanimously agreed on yardstick to settle whether unionism has caused or hin-
4390 dered the gains that have admittedly accrued to labor. The gains go to the workers in a shop equally, whether they affiliate with labor unions or oppose them, as there is no such thing in industry as a higher wage to a union worker as such. Though this advantage to a worker of a position where he may get the gains of union without the pains, is obvious to the dullest, and millions refuse to join the unions, the fact remains that other millions have joined up. In newer fields they are induced to do so by ways and means, fair and foul, that are now thoroughly well known. Since elections have been provided for, the term "electioneering" covers them all. The Labor Relations Board has been established with a main central purpose of determining the will of the workers in respect to such joining or not joining by the democratic process of free election by secret ballot. The Acts extend the democratic process and its incidents beyond the political into the economic field. In the old field, the democratic way is, and always has been, the hard way. In the new field, the character of the feelings aroused is the same and resistance is, as expected, no less formidable. But the democratic way prevails in the political field and Congress has enacted that it shall have its place also in the field of labor relations.

Despite the enormous volume of the record in this appeal, accumulating ten years' administrative and court proceedings between the same parties, the one single matter of substance involved in it is whether or not an election by secret ballot with concomitant electioneering shall be allowed for the workers in the Donnelly Garment Company's factory at Kansas City on the selection of a bargaining agency. The old established union of the garment workers, claiming that in the course of its existence
4391 it has lifted the condition of the workers in the industry from degradation to decency, and promising to continue the advance, has wanted to obtain affiliation of the workers in the Donnelly plant and has raised a labor dispute, and the Board has tried through the years to remove the obstacles to apply the democratic process of election to determine the dispute.

The Donnelly company has resisted, not because it has ever feared the result of an election, but it has feared the electioneering that goes with the democratic process of a free election. It has accordingly engaged, during the years, in measures to anticipate, suppress and prevent the electioneering which is included in the American concept of an election. It has succeeded through an injunction erroneously issued by a district judge (belatedly reversed), by discharge and dropping out of employees favoring

union affiliation, by a slight wage increase, by company dominated union and closed shop contract made with it, and protracted court proceedings which include several decisions. The conclusions of the majority opinion in this proceeding refusing to enforce the Board's order to disestablish the plant union, in effect validates the contract that has been made by which any affiliation with the old union is forbidden to any of the workers in the plant during its continuance, collective bargaining is completely forestalled and avoided, and any practical opportunity or occasion for the application of the democratic process of an election at the plant has been anticipated and removed. The company has been, and is, proceeding in its competition within the unionized industry freed under judicial rulings from any impact upon its workers of the electioneering and secret ballot of the democratic process of election provided by Congress. It has so proceeded in a peace which is grateful but which is not, in my opinion, anchored in sound application of the Labor Acts.

4392 On the first appeal of this particular proceeding (which is an inquiry upon a charge against the company of unfair labor practices) the company complained that the Board had refused to let it bring in and inquire of each and all of its twelve hundred workers individually touching his or her mental attitude for or against the established garment workers union and a plant union, and his or her reasons. It was the Board's position that it had no right or power to determine the will of the workers in a plan in such a manner or in any other way than through the election upon secret ballot prescribed for such determination by it in statute of the Board's creation. This court held that the Board had denied due process in refusing to permit the inquisition of the individual employees.

If decision on that appeal had been conclusive of the controversies to be decided here, I would be bound to follow it under our discipline in the court, but it has not been. I did not sit with the division of this court which rendered decision, and consider it my duty to take this first opportunity to state my view that the Board was neither required to permit the inquisition of the workwomen, nor was it bound to give any special or particular weight to the answers they made to the interrogatories propounded to them on the subject in the presence of the company's representatives. I do not agree with the implication of the decision that the Board should have found the facts according to what the twelve employees answered, or the stipulation that the others would answer similarly if interrogated under the same surroundings.

In the thought of this country, voting a political preference includes casting the ballot in secret, and when the process is ex-

tended to the economic field the same element of secrecy necessarily goes with it. A procedure by which the will of any
4393 mass of people is determined by having either the political or the industrial bosses who are in control call in the individuals for questioning as to their will and having the answers so elicited recorded as determinative of that will, is futile and contrary to any American concept of a free election process.

It happens in this case that both the outstanding owner of the company herein and the great and famous spokesman for it,* had and deserved the highest honor, trust, respect and affection, and there may have been no single one of the workers in the plant without some obligation for some kindness personally bestowed. But the fact, indisputable as it is, does not detract from, it illuminates the principle involved in this case.

The American concept of free election includes the element of electioneering, as vitally essential a part of it as is the secret ballot. Indeed, the first is much older in the tradition than the second. The history of electioneering in the sense of attempting to win elections in the political field probably records every form of brutality, violence and fraud that the occidental mind conceives of. Yet in that field the democratic process stands. The gist of the long years of wordy controversy in this case is that the electioneering of the Ladies Garment Workers Union in a Donnelly plant election would be too terrible to be permitted. The supposed terror has been enlarged upon in every argument to the Board and to this court, as well as to the workers in the plant. The anticipated terror has been first erroneously enjoined and now forestalled and prevented by judicial decision.

There is no reason to believe that the Congress which enacted the labor laws thought that the democratic process which it
4394 introduced into the economic field would be immune from the impact of any of the clashing of interests and resultant passions, excitements and incidents attendant on its practice in the political field. The element of electioneering will continue to inhere as a vital and vitalizing element.

But there is no power in the courts to prevent political elections because the electioneering will involve excitement and violent clashing. The labor acts have similarly forbidden the courts to try to use the judicial powers of prevention against the working out of the democratic process in the economic field into which Congress has extended it.

Here the forbidden result has been attained and the judicial preventive keeps any electioneering from being done and any election from being held because the form into which the proceed-

* The late Honorable James A. Reed, of Missouri.

ings have been cast opened the door to it. The court would never have ordered an election which it identified as an election to be determined by letting the bosses interrogate the voters individually and recording the answers as votes. I am satisfied that the thing cannot and should not be done under any form.

My study of the record herein has satisfied me that the findings of the Board herein are sustained by substantial evidence. They are clear and unambiguous and set out the several steps by which the company anticipated and has prevented any kind of an attempt by the established garment workers labor union to obtain the affiliation of the workers in the company plant. It appears to me that the methods by which the company fostered and set up and now maintains its plant union, including all its workers, present and prospective, and binding them against other affiliation, as well as precluding any collective bargaining, are the same methods that have been consistently held by the courts to be contrary
4395 to the Act. When, as it is said, the established union arrogantly demanded of the company that it herd the women and girls who worked for it in o the union, nobody doubted that the company could easily have done so. The form of the company's charge that the union members conspired to force the company to herd its workers into the union directly implies that the company could have done so. Or it could proceed to herd the employees into a company union with no means or power of collective bargaining. Or it could have left them to get together away from their bosses to consider and to exercise a free choice. The company went as far from leaving them to a free choice as it did from herding them into the union affiliation demanded. Its agents held out to and regarded by the workwomen as their bosses, acting with and for the management, used company facilities and the power and authority of the employer to gather all of the personnel in a hall on the plant property, and then and there directed and consummated the organization of the plant union. The women and girl workers acquiesced, as the established discipline of the business and the accustomed submission to the authority of the supervisors over them rendered it practically certain that they would. There was no interval between the time they checked in for work at their machines (i. e., reported themselves for orders and direction) and the time when they signified their adherence to a plant union when it could fairly be said that they were released from the factory discipline or the authority of the company agents who maintained that discipline over them. The prima facie evidence was clearly sufficient to support the charge of domination, and without disproof could justify no other inference than that the company did by unfair labor practices set up and

herd its workers into the pseudo plant union in order to forestall and prevent any electioneering for union affiliation.

4396 Instead of attempting to disprove that showing, it appears to me that the company proffered testimony that tended merely to divert the inquiry away from it and it does not appear to me that the Board denied the company or the pseudo plant union due process of law by excluding such proffered testimony. The repeated offers to bring in all the working women and girls to testify individually merely illustrates what appears to me to have been the tendency of the company's proffers to divert the trial from the charges. There happened to be only twelve hundred of the workers in the particular plant, but in shops that employ many thousands it is obvious that the lifetime of an Examiner would be too short. The offers to prove what the electioneering conduct of the established garment workers union had been before the company herded its workers together into the company union is of the same nature. That there was fear of the union seems to me as irrelevant to the charges against the company as is the history of the origin of such fear. As to that also, the history of the union is too long, and the lifetime of an Examiner would be too short. It seems to me that the inquiry demanded in the proposed fields of controversy would only protract and distract. It could not illuminate. Employers may not commit the unfair labor practices such as charged in this case to prevent union electioneering even by labor unions that have a bad record behind them. There was no showing here, as in the Indiana & Michigan Electric Company case (318 U. S. 9), that the labor union was resorting to violence and acts of terrorism adapted and intended to affect the trial and inquiry of the Board then pending. Nor does the offer to prove that the supervising agents of the company, who effected the organization of its plant union, had the same rank in the Donnelly company as some of the members of the established union have in other companies,

4397 appear to me to be relevant. The question whether they acted for management and bound the company by their acts was controlling. There were also offers to prove that the labor union claimed and promised better wages and working conditions and that the representation was false in that the company under its system did and would do better by its workers than union shops. I think the issue so tendered is not justiciable, either by the Board or by the courts. The question of sanctioning or suppressing labor unions is political and is debated by millions. To the extent that it is settled by the Labor Acts, the courts are bound. It is not within the power of the courts, by taking one side or the other at the instance of a private litigant, to settle

whether the patriarchal or the labor union system does better for working people in the garment making industry, or in any or all of the industries. The process of election under secret ballot is alone appropriate to that quarrel.

Neither do I find evidence of bias or prejudice to disqualify the Examiner in this case. He seems to me to have ruled in accord with the dictates of his conscience and to have endeavored, against great resistance, to keep the trial within a rational relation to the charges to be tried. The multiplied offers to enter into unlimited remote controversial fields of inquiry suggested means to prolong the hearing to the point of frustration, but not, as it seems to me, to a fairer decision on the charges being tried.

In my opinion the order based upon the Board's findings and conclusions (reported 50 N. L. R. B. 241) should be enforced as prayed.

A true copy.

Attest:

_____,

Clerk; U S. Circuit Court of Appeals,
Eighth Circuit.

4398 *Decree*

United States Circuit Court of Appeals, Eighth Circuit

No. 12641—September Term, 1945

Monday, October 29, 1945

DONNELLY GARMENT COMPANY, A CORPORATION, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DONNELLY GARMENT WORKERS' UNION, INTERVENER

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, INTERVENER

On Petition to Review Order of National Labor Relations Board

This matter came on to be heard on the petition of the Donnelly Garment Company to review and set aside an order of the National Labor Relations Board, entered June 9, 1943 (50 N. L. R. B. 241), requiring the disestablishment of the Donnelly Garment Worker's Union and the abrogation of its contracts with the petitioner and on the answer of the Board to said petition requesting enforcement of the Board's order, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the prayer of the National Labor Relations Board for a decree of this Court enforcing the order under review is hereby denied for want of due process in the proceedings upon which the order is based, and said order is hereby set aside.

And it is further ordered by this Court that no costs be taxed in this Court in favor of either of the parties.

October 29, 1945.

4399 *Order directing Clerk to transmit certified transcripts of records to Clerk, Supreme Court, U. S.*

United States Circuit Court of Appeals, Eighth Circuit

January Term, 1946

Saturday, January 12, 1946

No. 12641

DONNELLY GARMENT COMPANY, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD

No. 475, Original

DONNELLY GARMENT COMPANY, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD

The Solicitor General of the United States has ordered transcript of record for filing in the Supreme Court in the first of the above cases in connection with a petition for writ of certiorari, and in addition has requested that complete set of typewritten transcript of all testimony and exhibits introduced before the Labor Board be transmitted and the latter refers to testimony and exhibits contained in the record of proceedings from the Labor Board in the second of the foregoing cases, No. 475, Original.

It is Ordered that the application be, and is hereby, granted and the Clerk of this Court is directed to transmit the certified typewritten transcript of all pleadings, testimony and exhibits in both of these matters to the Clerk of the Supreme Court of the United States with respect that the same be returned to the Clerk

of this Court at St. Louis, Missouri, after disposition of the matter in the Supreme Court.

January 12, 1946.

Clerk's certificate

United States Circuit Court of Appeals, Eighth Circuit

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains printed record, Volume A and Volumes I
4400 to XII, inclusive, in a certain matter in said Circuit Court of Appeals wherein Donnelly Garment Company, a corporation, was Petitioner and the National Labor Relations Board was Respondent, and Donnelly Garment Workers' Union and International Ladies' Garment Workers Union were Interveners' No. 12641, on which said matter was heard in said Circuit Court of Appeals, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in said Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, being Volume XIII.

I do further certify that a certified copy of the decree of said Circuit Court of Appeals in the aforesaid matter, No. 12641, was on the 16th day of November, A. D. 1945, transmitted to the respondent National Labor Relations Board and also a certified copy to counsel for the petitioner and interveners.

And I do further certify that in pursuance of the order of said Circuit Court of Appeals entered on the 12th day of January, A. D. 1946, there is being transmitted to the Clerk of the Supreme Court of the United States certified transcript of pleadings, testimony and exhibits as received from said National Labor Relations Board in said matter No. 12641, consisting of Volumes I to VI, inclusive, and also certified transcript of pleadings, testimony and exhibits as received from said National Labor Relations Board in cause No. 475, Original, entitled Donnelly Garment Company, Petitioner, vs. National Labor Relations Board, Respondent, consisting of Volumes IA to XIIIA, inclusive.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this 16th day of January, A. D. 1946.

[SEAL] E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

4401 Supreme Court of the United States

No. 38, October Term, 1946

Order allowing certiorari

Filed April 22, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

4402 Supreme Court of the United States

No. 39, October Term, 1946

Order allowing certiorari

Filed April 22, 1946

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice JACKSON took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1946

FILE COPY

JAN 29 1946

No. 786 38

In the Supreme Court of the United States

OCTOBER TERM 1945

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION, AND INTERNATIONAL LADIES GARMENT WORKERS' UNION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Sec. 7 52

Sec. 8 52

Sec. 8 (1) 52

Sec. 8 (2) 52

Sec. 8 (3) 52

Sec. 10 (a) 53

Sec. 10 (b) 53

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Sec. 10 (e) 54

In the Supreme Court of the United States

OCTOBER TERM 1945

No. 786

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION, AND INTERNATIONAL LADIES GARMENT WORKERS' UNION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decree of the United States Circuit Court of Appeals for the Eighth Circuit entered on October 29, 1945 (XIII 71),[1] setting aside and refusing to enforce an order issued by the Board against Donnelly Garment Company.

[1] The volume of the printed record which contains the pleadings, the Board's decisions and orders, and the petition to review and answers is referred to as "A," and the other volumes of the printed record are referred to by the Roman and Arabic numbers indicating the volume and the page thereof.

OPINIONS BELOW

The opinions of the circuit court of appeals (XIII 7–64) are reported in 151 F. (2d) 854. Prior opinions of the circuit court of appeals in this case are reported in 7 L. R. R. Man. 560 and in 123 F. (2d) 215. The findings of fact, conclusions of law, and order of the National Labor Relations Board (A 618–622, X 3837–3898) are reported in 50 N. L. R. B. 241. A prior decision of the National Labor Relations Board in this case (A 552–617) is reported in 21 N. L. R. B. 164.

JURISDICTION

The decree of the circuit court of appeals was entered on October 29, 1945. (XIII 71). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. (a) Where an employer expresses opposition to a nationally affiliated labor organization and through his supervisory staff sets up and thereafter takes a leading part in the administration of a plant union for the declared purpose of preventing the nationally affiliated labor organization from organizing his employees, and grants the plant union a closed-shop agreement and financial and other support, must the Board consider testimony of employees that they freely

formed and joined such plant union and knew of no interference with, domination or support of it by the employer, when deciding the question whether the employer has, in fact, interfered with, dominated and supported the plant union in violation of Section 8 (2) of the National Labor Relations Act.

(b) Is the trial examiner who presides at a hearing on remand for the purpose of receiving such employee testimony biased and incapable of giving such testimony proper consideration merely because at the first hearing he expressed his opinion that such testimony was immaterial?

2. Whether the Board denied the employer and plant union due process of law in excluding the following evidence as immaterial to the issue of employer domination and support of a labor organization:

(a) Evidence as to whether contracts made by a nationally affiliated labor organization with other employers contain provisions as beneficial to employees as the provisions contained in a contract made by the employer with an alleged company-dominated labor organization;

(b) Evidence that employees at other plants having duties similar to those of the supervisory employees who were active in the formation and administration of the alleged company-dominated labor organization were eligible for membership in nationally affiliated labor organizations.

3. Whether the Board denied the employer and plant union due process of law in excluding evidence of misconduct of a nationally affiliated labor organization occurring at plants other than the employer's as immaterial to a determination by the Board of whether the employer has engaged in unfair labor practices and to a consideration of whether the Board should prosecute its complaint on charges filed by such nationally affiliated labor organization.

4. Whether the employer and plant union were denied due process of law by the Board's refusal to receive at a hearing on remand the following evidence which was not offered at the first hearing and was not alleged to be newly discovered or unavailable at the first hearing:

(a) Evidence regarding the eligibility to membership in a nationally affiliated labor organization of employees at other plants having duties similar to those of the supervisory employees who were active in the formation and administration of an alleged company-dominated labor organization;

(b) Evidence of the non-discriminatory character of the discharges and lay-offs of certain employees prior to the passage of the Act, where all evidence on such subject offered by the employer at the original hearing was received and the Board made no finding as to whether the discharges and lay-offs were, in fact, discriminatory.

Another question, which was passed upon by the concurring and dissenting judges below and which we think should be decided by this Court if it grants certiorari, is:

5. Is there substantial evidence in the record to support the Board's findings that the employer engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act, and is the Board's order proper?

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 52–54.

STATEMENT

PROCEEDINGS CULMINATING IN THE CIRCUIT COURT OF APPEALS' DECISION AND REMAND ORDER OF NOVEMBER 6, 1941

This case was originally before the circuit court of appeals in 1940 and 1941 upon the petitions of Donnelly Garment Company, herein called the Company, and Donnelly Garment Workers' Union, herein called the D. G. W. U., to review and set aside and upon the request of the Board to enforce an order of the Board dated March 6, 1940 (A 552–617). At the hearing in that case, the trial examiner (1) had refused to permit the Company and the D. G. W. U. to call to the witness stand 1,200 employees of the Company whom the Company alleged would each testify that he had joined the D. G. W. U. of his own free will,

that the employees had voluntarily formed the D. G. W. U., and that such union was at all times free from employer influence, domination and support, although the trial examiner did receive such testimony from 9 employees and admitted excerpts from the record in another case containing such testimony from 12 other witnesses (I 193–194, 214–215, II 609, 612–626, 651–653, 655, 660–661, 664, 669, 704, 704a, 704p–707, 718a–718c, 718r, 718s, IV 1223, 1226, 1228–1229, 1234, 1336v, 1336ee, 1336ii, 1336pp, 1336ccc, 1336ooo, 1336xxx, 1336cccc, VI 1752–1753); and (2) had also excluded evidence that the International Ladies Garment Workers' Union, herein called the I. L. G. W. U., before and at the time of the formation of the D. G. W. U. had conspired to force the Company to sign a closed-shop contract with it by threatening and later carrying out a secondary boycott against the Company and by threatening to call a strike and to engage in conduct at the Company's plant in Kansas City similar to that engaged in by it at other garment factories in Kansas City where pickets forcibly prevented employees from going to work (II 626–627, 660–661, 705, III 758, VI 1752–1753). The trial examiner also excluded evidence relating to labor agreements made by the I. L. G. W. U. with other employers (discussed *infra*, pp. 25–26), and other evidence not material to the issues here presented. The Board in that

case upheld the trial examiner in excluding all such evidence and in rejecting offers of proof which were made as to some of it (A 560–561).[2]

On November 6, 1941, the court below handed down its decision in that case, denying enforcement of the Board's order and remanding the case to the Board for further proceedings (123 F. (2d) 215). The court below ruled (123 F. (2d) at 222–225) that the statements and rulings of the trial examiner, although in some respects

[2] During the pendency of the petitions for review, the Company and the D. G. W. U. filed with the court below applications for leave to adduce (1) evidence to show that they had been denied due process because of bias and prejudice on the part of the Board and its subordinates and collusion by them with the I. L. G. W. U., and (2) evidence going to the merits of the case, which had been excluded by the trial examiner and which they contended was competent and material. On November 7, 1940, after oral argument on the applications, the court below handed down its opinion (7 L. R. R. Man. 560), one judge dissenting, holding that the showing made by the Company and the D. G. W. U. as to the alleged bias and collusion was insufficient to invoke any action of the court, and denying the applications in that regard. It also denied the applications to adduce the excluded evidence allegedly going to the merits of the case but did so without prejudice to a renewal of such applications when the case should be finally submitted to the court (see 123 F. (2d) 215, 219–220). On May 21, 1941, oral argument was had on all issues except that which had been decided in the court's opinion of November 7, 1940. Thereafter, pursuant to a letter from Presiding Judge Archibald K. Gardner, dated July 24, 1941, requesting additional briefs on the bias and collusion question decided by the court on November 7, 1940, the parties filed additional briefs and reargued said question before the court on September 6, 1941.

erroneous, did not establish that he was biased, that the trial examiner and the Board had properly confined the issues to those tendered in the complaint by refusing to try the I. L. G. W. U. for the alleged conspiracy, but had denied the Company and the D. G. W. U. due process by excluding the evidence of employees, in accordance with an offer of proof, that they formed and joined the D. G. W. U. of their own free will and did not know of any interference with, domination or support of the D. G. W. U. by the Company. The court required the Board to vacate its findings, conclusions and order and to accord the Company and the D. G. W. U. "an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order" (*ibid.* at 225).

BOARD PROCEEDINGS AND FINDINGS SUBSEQUENT TO THE REMAND ORDER

Pursuant to the court's mandate, the Board vacated its findings, conclusions and order of March 6, 1940, and directed a further hearing for the purpose of taking additional evidence in accordance with the opinion of the court below (X 3785–3786). The same trial examiner who presided at the previous hearing again presided

(I 1, VII 2057).[3] He received the testimony of 11 of the 1,200 employees named in the offer of proof that they had voluntarily formed the D. G. W. U., that they had joined it of their own free will, and that they knew of no interference with, domination or support of such union by the Company (VIII 2588, 2599–2600, 2631–2632, 2722–2723, 2772, 2858–2859, 2914–2915, IX 3006, 3049–3050, 3078, 3123, 3218). The trial examiner then ruled that further evidence of the same nature would be cumulative (X 3250–3251, 3253–3255, 3272–3273). The Board thereupon called several of the 1,200 employees, who testified contrary to the offer of proof (III 746, 750, 751, 753, IX 3274, 3282, 3426–3434, 3467, 3469, 3471, 3474, X 3497–3498, 3528, 3550–3554, 3558–3559, 3618, 3661, 3665–3670, 3691–3693). Thereafter the trial examiner issued his intermediate report in which he found "upon the entire record" that the Company had engaged in unfair labor practices in violation of Section 8 (1), (2), and (3) of the Act and recommended that the Company cease and desist from such unfair labor practices and take certain affirmative action which he found would effectuate the policies of the Act (X 3837–3898).

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[3] The Board overruled the Company's application for designation of another trial examiner, pointing out that all the grounds urged by the Company as showing bias and prejudice had been presented to the circuit court of appeals, which ruled them insufficient to establish disqualification (A 498–501).

On June 9, 1943, the Board issued its decision and order sustaining the rulings of the trial examiner in regard to the admission and rejection of evidence and approving and adopting, with exceptions not here material, his findings, conclusions, and recommendations (A 618-622). In regard to the evidence received pursuant to offers of proof at the first hearing, the Board stated that it had carefully considered all such evidence but "that the testimony in question does not overcome more positive evidence in the record that the [Company] committed acts of interference and assistance in the formation and administration of the D. G. W. U. which subjected the organization to the [Company's] domination and which removed from the employees' selection of the D. G. W. U. the complete freedom of choice which the Act contemplates." The Board added: "Since we find the evidence here adduced totally unpersuasive that the employees voluntarily designated the D. G. W. U., we are moreover impelled to adhere to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature is immaterial to issues such as those presented in this case." (A 619.) The pertinent facts as found by the Board and as shown by the evidence may be summarized as follows:[1]

[1] In the following statement the references preceding the semicolon are to the pages of the record where the findings in

Beginning with the first attempt of the I. L. G. W. U. in 1934 to organize the Company's employees and continuously thereafter the Company engaged in a course of conduct designed to prevent its employees from joining that labor organization. The Company's production manager, personnel manager, and other supervisory employees attended meetings of the I. L. G. W. U. in a group and thereafter questioned individual employees about their interest in the I. L. G. W. U., disparaged it, and warned them against joining that organization, even threatening discharge of employees who joined (X 3859–3860; I 44, III 1033–1036, 1044, 1052–1055, 1058, 1063, 1066–1070, 1073–1074, 1076, 1079–1090, 1100–1108, IV 1113, 1120g, 1141, 1150–1151, 1323, 1325–1326, 1329–1331. A substantial number of the employees who joined the I. L. G. W. U. were laid off or discharged shortly after joining (X 3860–3861; III 1036–1044, 1046–1055, IV 1141, 1153, 1155–1156, 1316–1317). All of the other employees who were known to have joined the I. L. G. W. U. were transferred from the main factory to a temporary branch and thereafter laid off prior to June 1935 (X 3861; III 1062–1066, 1073–1077, IV 1120uu–1120vv, 1126v–1129, 1130d–1130e, 1132, 1135–1136, 1156b–1157, 1324–1325, 1327, 1333–

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the intermediate report which was adopted by the Board appear; references following the semicolon are to the pages of the record where the supporting evidence appears.

1334). The Board expressly refused to make any finding as to whether the discharges and lay-offs were discriminatory (X 3860, n. 23). However, it did find, on the testimony of some of the employees, that as a result of the sequence of events above-related, employees became afraid to join, admit their membership in, or discuss the I. L. G. W. U. (X 3861; III 1044–1046, 1047–1048, 1080–1081, 1141–1142).

In the early part of 1935, two of the Company's supervisory employees formed an organization called the Loyalty League, whose purpose was to promote loyalty to the Company and to oppose the I. L. G. W. U. (X 3861–3862; I 181, 304–305, III 732–733, 798d–798e, 1078, V 1620, IX 3030–3032, 3233, 3336, 3439, X 3572, 3644–3645, 3650). All employees, both supervisory and non-supervisory, except members of the I. L. G. W. U., were admitted to membership and became members (X 3860–3863; I 308, II 407, 429, 431, 533, 551, III 798e, 1071, 1078–1079, 1091, 1097, 1108, IV 1113, 1117). After the Act became effective, supervisory employees continued to solicit new employees to join the Loyalty League (X 3864; VIII 2607–2608).

Following a newspaper announcement in February 1937 that the I. L. G. W. U. was planning a second campaign, the Company secured from all but three of its employees a written pledge not to join any labor organization (X 3866; I 354–354a,

II 377–378, V 1354–1356, 1623, 1649, VII 2432–2433, IX 3335, X 3642–3644). The pledge was handed from operator to operator while they were at work (X 3864–3865; I 311–312, 354–354a, 354p–355, III 1019, IV 1294–1300, VIII 2578, 2609–2615, 2637–2638, 2725, X 3665). One of the three girls who went through the plant circulating the pledge did so at the direction of the office manager who in turn had been told by Mrs. Reed, the Company's president, that she wanted all employees to sign it (X 3865–3866; II 513–514, X 3640–3644, 3657–3658, IV 1299–1300).

On March 18, 1937, Mrs. Reed made a talk at a meeting sponsored by the Loyalty League and held during working hours (X 3867–3868; I 44d–46, 48–49, 147, 308–310, 334w, 345, 354b, II 534, V 1621, IX 3328–3329, 3438, 3457–3458, X 3575, 3666), in which she expressed her pleasure at having received the pledge not to join any labor organization, spoke of threats of violence that the I. L. G. W. U. was alleged to have made against the employees of the Company and promised to protect the employees from such violence (X 3867–3868; I 48–49, 147–148, 310, 354b–354c, II 588, III 1029–1030, VIII 2620, X 3575–3576, 3666). Her remarks made it plain that the Company's attitude toward unionization had not changed and that membership of any of the employees in the I. L. G. W. U. was not to be tolerated (X 3869; I 310, 354c, III 1029, V 1362a, IX 3332, 3413, 3438, 3459, X 3666).

On April 23, 1937, the day following an announcement in a local newspaper that employee Hull had been named as a delegate to a convention of the I. L. G. W. U., employees, in the presence of and with the acquiescence of supervisors, carried on a demonstration against Hull as she attempted to work and informed the Company's employment manager that they would not work while Hull remained (X 3869–3870; II 535–537, 541–524d, III 1015, IV 1339–1344, V 1346–1350, IX 3012–3015, 3436–3437, 3479–3480, X 3517). The employment manager, instead of maintaining discipline and insisting upon the demonstrators returning to their work, sent Hull home (X 3870; II 535–536, V 1343, 1356–1357, X 3517, 3573). Under similar circumstances and on the same day the Company sent home another employee, Sigler, who had appeared at work wearing an I. L. G. W. U. pin (X 3870–3871; I 70–72, 315–325, II 444–445, 497–499, 537–538, III 801–807, X 3666–3667). The Company thus approved and encouraged the demonstrations and took advantage of them to show its hostility to the I. L. G. W. U. (X 3871).

Shortly after the March 18 meeting at which Mrs. Reed addressed the employees, two representatives of management, Todd and Atherton, both of whom were officers of the Loyalty League, and another employee, Ormsby, hired an attorney to advise the employees in opposing the I. L. G. W. U. (X 3872; I 38–39, 176, II 555–556,

558–559, Tr. 318). Upon the attorney's advice that the best way to combat the I. L. G. W. U. was to form a plant union, Todd called a meeting of the employees during working hours on April 27 for that purpose (X 3872; I 328c–328d, II 558–559, V 1365–1366, IX 3312–3314, 3430, 3470–3471, 3457–3458, X 3530, 3541, 3620, 3667).

The organizational meeting of the plant union was planned and organized by, and was under the complete control of, the Company's representatives (X 3875). Employees were notified by their instructors, whom the Board found to be supervisors (see *infra*, pp. 20–21), to attend—the instructors having in turn been notified by the Company's telephone operator, or by Mrs. Wherry, factory manager—and the meeting was attended by supervisory employees accompanied by the non-supervisory employees under them (X 3872; I 328c–328d, 354c–354d, II 378ee, 704g, V 1364e, 1374d, VIII 2692, 2911–2913, 2995, IX 3276, 3309–3312, 3315–3316, 3397–3399, 3430–3434, 3457, 3467, 3479, X 3551, 3619–3621, 3667). After listening to speeches by Todd and the attorney, who had been invited to address the meeting, the employees, without any discussion, voted unanimously to form the D. G. W. U. (X 3873–3874; III 822–826). Before the meeting adjourned, about 1300 charter membership cards previously prepared were distributed, signed, and collected; by-laws previously prepared were adopted without alteration; and a

general chairman, Todd, and 8 group chairmen were nominated by a committee appointed by Todd and were unanimously elected to serve as officers and representatives (X 3874–3875; I 80b–80c, 176–177, 328h–330, III 826–830, X 3553, 3667). The purpose of the organization, as stated in its by-laws, was, *inter alia,* "the protection of employees and members of this Union from coercion, intimidation, violence or threats of violence in order to force them to join unions organized and dominated by outsiders not employees in this plant" (X 3874; III 798f).

Through the membership and activities of supervisory employees in the D. G. W. U., the Company continued its control and direction of the D. G. W. U. (X 3878). In addition to Todd, the general chairman, other employees, including instructors and thread girls, whom the Board found to be representatives of management (see *infra,* pp. 20–21), regularly attended, notified employees under them to attend, and took an active part in subsequent meetings of the D. G. W. U. (X 3875–3877; I 99, 131, 136, II 421, 424–424b, 428–429, 510, 715–716, 718d–718e, III 743–755, 830, 854, 865–866, 868–870, 875–882, 887, 891–894, 897–900, 909–911, 1003–1005, 1007, 1011, 1032, 1091, V 1349–1350, VII 2175, 2255–2257, VIII 2961–2962, 2671–2672, 2676–2677, 2680, 2689, 2733, 2911–2912, 2914, 2949–2953, IX 3157, 3316, 3426–3427, 3435–3436, 3445–3446, 3450, X 3644, 3649–

3650, 3671, 3673, 3675). Thus, at the 1938 election of officers, five thread girls nominated or seconded the nomination of the two nominating committees, and both committees were unanimously elected (X 3876; III 875–876, 1003–1004, VIII 2680, 2689, 2733, 2911–2912, 2949). Moreover, upon the election of the nominees, which was by standing vote, Todd called upon two instructors to give their opinions as to which slate received the larger vote (X 3877; III 881–882, 1003–1005, VIII 2953). Todd was the candidate for chairman on both slates (X 3877; III 879). Although upon several occasions employees questioned the right of some of these representatives of management to be members of or to attend and participate in meetings of the D. G. W. U. and expressed the view that the presence of such persons at meetings precluded the employees from speaking freely of their complaints, Todd assured them that all employees except the executives of the Company and the head of the personnel department were properly eligible for membership and might participate in the activities of the D. G. W. U. (X 3877–3878, III 926–927, IX 3320–3324, 3411–3413, X 3554).

Since some 600 to 800 of the employees are paid on a piece-work basis, the setting of piece-work rates determines the wage rate of the majority of the employees and is concededly the most important subject of bargaining (X 3881; I 114,

II 490, V 1374f–1375, VII 2173, 2186). Todd and the group chairman appointed as the D. G. W. U.'s committee to deal with piece-work rates Todd, Nichols and Spalito (X 3881, III, 923). Nichols is the executive of the Company who has full power to set piece-work rates on behalf of the Company and Spalito is her assistant (X 3881; II 417–418, 718f, III 923, 1007, 1108–1109, V 1374f–1375, VII 2144–2148, 2158, 2234–2239, 2400). Thus, the same persons who set rates on behalf of the Company in the first instance are also representatives of the D. G. W. U. for the purpose of protesting and negotiating in regard to those rates in behalf of the D. G. W. U. and the employees (X 3881).

In a single day, May 27, 1937, a contract providing for a closed shop was presented by the D. G. W. U. to the Company, was modified at the suggestion of the Company to include, *inter alia*, a provision that no employee should serve on the bargaining committee of the D. G. W. U. unless he had been in the employ of the Company for at least a year, and was agreed upon and signed by the parties (X 3879; I 84–86, 89–90, 198, III 807–811, 918–922, VII 2095–2098, 2104–2105, 2376, 2378–2379). In June, after the I. L. G. W. U. had publicly announced its intention to obtain a minimum weekly wage of $16, Todd recommended to the group chairman, and they decided, that in order to improve upon the

I. L. G. W. U.'s accomplishments, the D. G. W. U. should demand a minimum of $16.50 for piece-work operators (X 3880; I 118, III 929). The Company granted this demand and entered into a supplemental wage agreement with the D. G. W. U. on June 22 (X 3879–3880; II 462, III 812–821, VII 2110–2112, 2379–2386). In August or September 1937, the Company granted the D. G. W. U.'s request for a checkoff of monthly dues of 25¢ and each employee thereafter signed a card prepared by the Company authorizing such checkoff (X 3880; I 224, 226–227, 233–234, 259, 262, 274a–274b, III 799, VII 2112–2113, 2387–2388). The original closed-shop agreement, the supplemental wage agreement, and the checkoff agreement continued in effect without change up to the date of the hearing before the Board (X 3880; I 126–127, 271, 277–278, III 947–948, VII 2112). By signing a closed-shop and checkoff agreement with an organization in which it controlled determination of piece rates, the Company forced its employees to become members of an impotent bargaining agency (X 3882).

The Company in various ways lent financial support to the D. G. W. U. It permitted the organizational meeting as well as 3 or 4 other membership meetings to be held during working hours (X 3882; IX 3314–3315, 3410–3411, 3414, 3434, 3449, 3450, 3458, X 3669–3670). It paid the employees for their time thus lost from work as

well as for time lost in attending committee meetings and transacting other D. G. W. U. business during working hours (X 3884; I 127–128, 166, IX 3427–3429, 3447, 3466–3467, X 3558–3559, 3603–3604, 3606–3609, 3618). It furnished Todd with a desk at which she carried on her union business and permitted her to keep union records in a file belonging to the Company (X 3884–3885; I 35–36, 133, 262–263, III 830–831, 833, 870, 941). It permitted its interdepartmental telephones and memoranda, its messenger service, its bulletin boards, its mimeographing and dittoing machines and its typewriters to be used by the D. G. W. U. (X 3883–3884, 3885; I 62–62a, 107–108, 128–129, 262; II 378ee, III 869, 900, 936, 704g, V 1364e, 1374d, VIII 2580, 2897, 2968, IX 3152–3153, 3276, 3342, 3434, 3480, X 3558, 3671). Although the Company permitted Todd to, and she did devote a substantial amount of her normal working time to transacting D. G. W. U. business, the Company continued to pay her full regular salary (X 3884; I 31–32, 127–128, 166, III 1006, 1010, 1010b, 1010c, 1010e, 1010h).

The instructors whose activities in the D. G. W. U. have been described (*supra*, pp. 15–17), serve in all respects as foremen, each being in charge of a section of 40 operators whom they supervise, assigning work among the operators and transmitting the management's directions (X 3850–3853; I 18, 312–313, II 391–392, 505–506,

III 1109, 734c, 734g, VII 2253, VIII 2957–2960, 2963–2965, IX 3104, 3325–3326, 3434, 3464, 3469, X 3482–3483). They discipline the operators under them, determine who is to be laid off during slack periods, and keep the management informed as to whether an operator is a desirable employee, her capacity for and her attitude toward work (X 3851–3852; I 302, 1058–1061, 1092–1093, 1104, IV 1120i, 1120u–1120v, 1120z–1120bb, 1120dd–1120ee, 1120mm, V 1375, VIII 2962, IX 3326–3328, 3464; X 3482–3483, 3517–3518, 3554–3556, 3673). The instructors are assisted in all aspects of their work by the thread girls who assume charge whenever the instructors are absent and who serve in all respects as assistant foremen (X 3851, 3853; I 18, III 1109, IX 3153, 3326, 3435).

Todd not only had duties of a supervisory nature but also entirely aside from her supervisory status, occupied a close and confidential position with the Company and in such position was acting for and on behalf of the Company. She was a nurse by profession and through acquaintance with Mrs. Reed as a nurse, had secured a job with the Company in 1926 (X 3855; I 14, 142a, VII 2277–2278). The president of the Company's bank knew her as "a kind of all round man" for the Company (X 3856; II 718w). She had in the past been an instructor, a thread girl, and assistant to the production engineer (X 3855–3856;

I 19–23, 30–31, II 718w, VII 2116, 2279, IX 3414). Todd apparently had no well-defined duties at the time of the formation of the D. G. W. U. and thereafter, but was assigned a desk, and, among other duties, was charged with the responsibility of keeping the different sections of the plant supplied with materials necessary to keep production going (X 3855; I 26–28, VII 2116–2117, 2166–2167, VIII 2726, 2830). These duties and others required her frequently to move throughout the plant and interview the instructors and thread girls (X 3856; I 29). Her status was such that the telephone operator readily announced over the interdepartmental telephones meetings called by Todd, and instructors readily took directions from her as to the form in which they were to turn in time slips for employees absent on D. G. W. U. business (X 3857; V 1374d, IX 3429, cf. X 3487). Moreover, when Todd, in the presence of Production Manager Baty, and Personnel Manager Hyde, purported to explain the Company's employment policy to employee Sigler who was sent home following a demonstration against her for wearing an I. L. G. W. U. pin, they acquiesced in Todd's statements and assumption of authority, thereby permitting her to appear as a representative of management in the eyes of the employees (X 3856–3857; I 80, III 801–807). The Board found that Todd, the instructors, thread girls and other supervisory employees were

acting for and on behalf of the Company in their activities in forming, joining, and participating in the administration of the D. G. W. U. (X 3878, 3886–3887).

Upon the basis of the foregoing facts, the Board concluded that the Company had dominated and interfered with the formation and administration of the D. G. W. U. and contributed support to it in violation of Section 8 (2) of the Act; had encouraged and condoned the demonstrations of April 23, 1937, against employee Hull and laid her off, and had entered into a closed-shop contract with the D. G. W. U., in violation of Section 8 (3) of the Act; and by these and other acts had violated Section 8 (1) of the Act (X 3866, 3869, 3871, 3886–3890). The Board ordered the Company to cease and desist from dominating and interfering with, or contributing support to the D. G. W. U.; from giving effect to any contract with it; from discouraging membership in the I. L. G. W. U. or any other labor organization; from dominating, controlling, and using the Loyalty League to interfere with, restrain and coerce its employees; and from in any other manner interfering with, restraining, or coercing its employees (A 621). Affirmatively, it ordered the Company to withdraw recognition from and completely to disestablish the D. G. W. U.; to reimburse its former and present employees for all dues and assess-

ments which it had deducted from their wages on behalf of the D. G. W. U.; and to post appropriate notices (A 621–622).

THE CIRCUIT COURT OF APPEALS' DECISION OF OCTOBER 29, 1945

Thereafter the Company filed its petition in the court below to review and set aside the Board's order (A 1–360). The Board answered and requested enforcement of its order (A 361–365). The D. G. W. U. and the I. L. G. W. U. were permitted to intervene and file briefs (A 368–369). On October 29, 1945, the court below handed down its opinion (one judge concurring and another dissenting) and entered its decree denying enforcement of any part of the Board's order and setting aside the entire order for want of due process because the Board had failed to consider the conclusionary testimony received pursuant to the court's remand order of November 6, 1941; because the same trial examiner who presided at the first hearing again presided at the hearing on remand; and because the Board had refused to receive at the hearing on remand certain evidence which the court deemed material (XIII 7–71).

The rejected evidence which the court below deemed material consisted of (1) evidence rejected by the trial examiner at the first hearing as well as at the hearing on remand, the exclusion of which was not mentioned in the court's

opinion of November 6, 1941; (2) evidence rejected at both hearings, the exclusion of which was approved by the court in its opinion of November 6, 1941; and (3) evidence not within the scope of the remand order by reason of the fact that all such evidence offered at the original hearing was received.

The evidence in the first category consisted of contracts made by the I. L. G. W. U. with other employers. In its answer to the complaint the Company alleged that its contract with the I. L. G. W. U. "provides for higher wages and more favorable conditions of employment than are contained in any contract which the" I. L. G. W. U. "has entered into with the other garment manufacturers in this part of the country" (A 389–390). The trial examiner refused to receive the I. L. G. W. U. contracts stating that so many factors entered into the wage rates and conditions of employment reflected in other contracts as to render any comparison useless without an investigation into all those other factors (I 201–207, 217, 238b, II 378hh–380, VI 1653–1676). The court in remanding the case to the Board made no mention of the admissibility of such contracts. When the issue arose during the hearing on the remand (VII 2507–2520), the trial examiner rejected a new offer of proof respecting the contracts (X 3789) ruling such evidence beyond the scope of the remand and also immaterial

(IX 3257) but stating that he would receive testimony of any employee that she knew of such contracts and that her dissatisfaction with their terms led her to prefer the D. G. W. U. (VII 2514–2518, VIII 2521). He did receive such testimony (VIII 2593–2594, 2929–2931, IX 3080).

The evidence included in the second category was offered in support of allegations made in the Company's answer to the Board's complaint, said answer alleging that the I. L. G. W. U. was engaged in a conspiracy to force the Company by fraud and violence to sign a closed-shop agreement with the I. L. G. W. U. (A 387–394). At the first hearing, although the Company and the D. G. W. U. had sought to introduce evidence that the I. L. G. W. U. had engaged in acts of violence at plants other than the Company's for the purpose of showing that the I. L. G. W. U. was attempting to use the Board's processes to injure the Company and for the purpose of showing the employees' reasons for forming or joining the D. G. W. U., the trial examiner ruled that the I. L. G. W. U. was not on trial and refused to receive testimony concerning violence by the I. L. G. W. U. unless the witness had personally encountered violence or had been personally threatened with violence (I [illegible] 190, 219–223, 334k–334l, 344q–344y, 366–367, II 553, 614, 627, 660–661, 700–703, 705, 718y, 718bb, 718aa, Tr. 69, 111, 114, 118, 2046–2047, 2468, 2583). The Com-

pany filed an offer of proof (II 704p, III 742d, IV 1156b–1306, V 1409–1619) which the trial examiner rejected (VI 1752). In its opinion of November 6, 1941, the court below upheld the trial examiner's refusal to "try" the I. L. G. W. U. "for alleged conspiracy" (123 F. 2d 215, 225). At the hearing on remand, the trial examiner nevertheless received all evidence offered through Mrs. Reed as to all she knew of any violence or threatened violence by the I. L. G. W. U. (VII 2077–2092, 2151–2156), as well as all evidence offered as to what the employees had seen, read, or heard regarding such violence by the I. L. G. W. U. which had occurred within a reasonable period prior to the formation of the D. G. W. U.—such evidence being considered relevant to show the employees' reasons for forming or joining the D. G. W. U. (VIII 2566–2568, 2624–2626, 2711–2713, 2768–2771, 2788, 2848–2851, 2915–2917, 3003–3006, 3046–3049, 3078–3081, 3120–3121, 3169–3171, 4101–4103, 4125–4169, 4173–4175). The reasonable period was fixed as 6 months at the suggestion of counsel for the Company (VIII 2788, 2805–2809). The trial examiner considered irrelevant and refused to receive evidence as to whether any of the alleged violence at other plants actually occurred (VII 2512–2513, VIII 2540–2542, 2554–2555). There was no offer at either of the two hearings to show any fraud or violence at the Company's plant. It is this evidence of

misconduct against other employers which the court below now rules material.

The evidence included in the third category—evidence which was either not offered or which was offered and received at the first hearing—related (1) to whether employees at other plants having duties similar to those of the supervisory employees who were active in the formation and administration of the D. G. W. U. were eligible to membership in the I. L. G. W. U.; and (2) to whether certain union members discharged or laid off prior to the passage of the Act were discriminatorily discharged or laid off. No evidence was offered at the first hearing regarding the eligibility of any employees to membership in the I. L. G. W. U. At the hearing on remand the trial examiner at first permitted counsel for the Company to call to the stand and question an official of the I. L. G. W. U. respecting the eligibility of instructors to membership in that union (VII 2507, VIII 2523). When she testified that they were ineligible and counsel for the Company indicated that he intended to prove that they were eligible by proving numerous instances of their admission (VIII 2523, 2537–2539), the trial examiner struck all testimony he had received and refused to receive further such evidence for the reason that it was not within the scope of the remand order and for the additional reason that it was immaterial to any issue in the case (VII 2508–2510;

VIII 2559, 2564, 2788, IX 3257, X 3787–3794). With respect to the discharges and layoffs prior to the Act, during the first hearing excerpts from the transcript of a hearing before the National Industrial Recovery Board which tried charges that the Company had discriminatorily discharged or laid off certain employees and also excerpts from the transcript of a hearing in an injunction suit before Federal District Judge Miller (*infra*, pp. [redacted]5; 44) were introduced in evidence pursuant to a stipulation of the parties, and all other evidence offered by the Company to show that the discharges and lay-offs were nondiscriminatory was received (I 44a, 273, II 389–390c, 394–395, 399–401, 539, 550a, 707, III 728–729, 740, 1032–1110a, IV 1112cc–1112dd, 1120n, 1120o–1120w, 1120z, 1120aa–1120ee, 1316–1318, Tr. 1891, 1964, 1967–1968, 1978, 2815). This matter, not being within the scope of the remand order, the trial examiner, during the hearing on remand, refused to receive any further testimony on that matter (VIII 2639, X 3783, 3792–3793), except the testimony of Mrs. Reed, the Company's president, who by reason of illness had been unable to testify at the first hearing (VII 2064–2065, 2069–2074, 2148–2151). There was no claim that any of the other evidence offered was newly discovered or otherwise unavailable at the first hearing. In its decision, the Board expressly stated that it made no finding whether the discharges and lay-offs were, in fact, discriminatory (X 3860, n. 25).

The court below suggested in its opinion that the Board apply to this Court for a writ of certiorari to review the due process questions involved (XIII 51).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. (a) In holding that the Board in dealing with the question of company domination of the D. G. W. U. failed to consider testimony of the Company's employees that they freely formed and joined the D. G. W. U. and knew of no interference with, domination or support of that union by the Company.

(b) In holding that the Board was required to consider such evidence.

(c) In holding that the trial examiner who presided at the hearing on remand was biased and incapable of giving such testimony proper consideration because he had expressed his opinion at the first hearing that such testimony was immaterial.

2. In holding that the Board had denied due process to the Company and the D. G. W. U. by refusing to receive in evidence labor agreements made by the I. L. G. W. U. with other employers.

3. In holding that the Board had denied due process to the Company and the D. G. W. U. by refusing to receive evidence as to whether or not the I. L. G. W. U. admitted to membership employees at other plants having duties similar to

those of the Company's employees whom the Board found to be supervisory.

4. In holding that the Board had denied due process to the Company and the D. G. W. U. by refusing to receive evidence that the I. L. G. W. U. at and prior to the time of the formation of the D. G. W. U. had used fraud and violence at the plants of other employers to compel their employees to join the I. L. G. W. U.

5. In holding that the Board had denied due process to the Company and the D. G. W. U. by refusing to receive evidence as to whether the Company, prior to the passage of the Act, had discriminatorily discharged or laid off certain members of the I. L. G. W. U.

6. In setting aside and refusing to enforce the Board's order.

7. If the Board improperly failed to consider any evidence, in failing to remand to the Board such portions of the case as were affected by such failure of the Board.

REASONS FOR GRANTING THE WRIT

The statement of facts, which, for reasons of clarity, we have set forth in greater detail than is customary in a petition for certiorari, shows that in 1935 and thereafter the Company flagrantly violated the National Labor Relations Act in a number of respects. The court below has twice set aside the Board's finding to this effect on procedural and evidentiary grounds which we

believe are utterly without substance, and which, as we shall show, conflict with decisions in other circuits. After more than seven years of litigation before the Board and in the courts,[5] we think that the miscarriage of justice which has thus far enabled the Company to disregard the Act with impunity is sufficient to call for the exercise of this Court's supervisory powers. Indeed the court below itself recognized the importance of the issues presented and their appropriateness for review by this Court on certiorari, for it stated, "In order to resolve this controversy over the question of due process, we think that the Board would be entirely justified in applying for certiorari. With that thought in mind, we have

[5] The original charge in this case was filed on August 9, 1938 (A 391, 553). The complaint was issued upon amended charges filed on April 6, 1939 (A 375–376) and the original hearing was held between June 5 and July 15, 1939 (X 3838). The typewritten transcript of testimony taken at that hearing covered over 3100 pages (Tr. 1–3116) and the exhibits another 2600 pages (fol. 4361–5990) including more than 750 typewritten pages of excerpts from the transcripts of hearings held in 1935 before the National Industrial Recovery Board and of hearings held in 1939 before a federal district court (fol. 5114–5895) in the injunction suit (*supra*, p. 29). The Board's original decision was dated March 6, 1940 (A 552–617). The hearing on remand pursuant to the circuit court of appeals' decision of November 6, 1941, was held between July 6 and September 17, 1942 (X 3846). The transcript of that hearing covered over 3800 typewritten pages of testimony (Tr. 3117–6992) and another 140 pages of exhibits (fol. 6994–7139). The total unprinted record in this case is more than 10,000 pages long.

tried to give a fairly complete statement of the issues. The questions presented are of importance to the Board in the administration of the Act. They are also of importance to the Company, to the International, to the public, and particularly to the employees whose rights are involved." (XIII 51.)

1. Despite the holding of the court below that the Board did not consider the employees' testimony as to the D. G. W. U.'s being their uninfluenced choice (XIII 40-44), this was not the case. The court must have overlooked the Board's statement that it "carefully considered all such evidence" but found that it did not overcome more positive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the D. G. W. U. which subjected that organization to the respondent's domination and which removed from the employees' selection of the D. G. W. U. the complete freedom of choice which the Act contemplates" (A 619). The Board found, in the circumstances of this case, that such testimony was "unpersuasive that the employees voluntarily designated the D. G. W. U." It is true that the Board expressed its view, "derived from" its "experience in administration of the Act", that such evidence is immaterial to issues like those in this case. Nevertheless, the Board subsequently found that "A consideration of all the evidence"

convinced it "that the respondent dominated and interfered with the formation and administration of the D. G. W. U." (*Ibid.*) Accordingly, it is clear that the Board did consider the employees' testimony but found it not controlling.[6]

At any rate, in holding that in determining whether the Company had interfered with, dominated, and supported the D. G. W. U., the Board must consider as material conclusionary testimony of employees that they freely formed and joined that organization and knew of no interference with, domination or support of it by the Company, the court below has decided an important question in a manner which conflicts with the decision of the Court of Appeals for the District of Columbia in *Bethlehem Steel Co.* v. *National Labor Relations Board,* 120 F. (2d) 641, 653.[7] In that case,

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[6] The Board was certainly justified in treating such evidence as not controlling. In a situation like that at bar, where the Company has a closed shop with a plant union, there could be little chance that an employee still desiring to continue working for the Company would testify in the Company's presence that the plant union was not the union of his choice. For a detailed analysis of the Board's attitude toward this type of employee evidence, see opinion below, note 6 (XIII 41–43).

[7] The action of the Board in setting aside its former decision and order and conducting another hearing in accordance with the circuit court of appeals' remand order of November 6, 1941, rather than then applying to this Court for a writ of certiorari, does not, of course, affect the right of this Court now to grant certiorari to review any ruling made by the court below in its interlocutory decision. *Panama Railroad* v. *Napier Shipping Co.*, 166 U. S. 280, 284; *Hamil-*

the employers sought to ask representatives of plant unions charged with being company dominated a series of questions designed to elicit whether the witnesses were conscious of being influenced, restrained, interfered with, coerced, or dominated by their employers. It was stipulated by the counsel and the examiner that the witnesses would have answered in the negative. The court of appeals denied the employer and the dominated unions leave to adduce such testimony, holding that, "Since the organization, structure, and Company support of the plans ensure Company dominance and violate the Act, this testimony would have been irrelevant" (*ibid.*). The decision of the court below holding that the Board must receive and consider such evidence is directly in conflict, for the organization, structure, and company support of the D. G. W. U. in the instant case likewise insure company dominance and violation of the Act. As shown by the facts summarized *supra*, pp. 11–23, the Company, after demonstrating strong opposition to the organization of its employees by the I. L. G. W. U., formed an organization called the Loyalty League whose primary purpose was the frustration of efforts of the I. L. G. W. U. to organize its employees, and thereafter, through the Loyalty League and its supervisory employees, set up and

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ton-Brown Shoe Co. v. *Wolf Bros.*, 240 U. S. 251, 257–258; *Simmons Co.* v. *Grier Bros. Co.*, 258 U. S. 82.

took a leading part in the administration of a labor organization called the D. G. W. U., participated in determining the structure of the bargaining committee, controlled the piece-work committee through membership of its supervisory employees on that committee, granted the D. G. W. U. a closed-shop contract, agreed to a checkoff of dues for that labor organization, and otherwise contributed financial and other support to it.

The holding of the court below also conflicts in principle with decisions of other circuit courts of appeals. In *Western Cartridge Co.* v. *National Labor Relations Board*, 134 F. (2d) 240, 244–245 (C. C. A. 7), certoriari denied, 320 U. S. 746, the examiner had permitted the Independent, an alleged company-dominated union, to adduce testimony of witnesses who had participated in its organization as to their reasons for joining—as was permitted in the instant case—but he rejected as cumulative the testimony of several thousand other employees as to their reasons for joining. The Independent contended that it had been denied a fair hearing, arguing that such testimony "was material and tended to prove that these employees had joined the Independent of their own free will, and to disprove interference by the company." In rejecting this argument, the court stated, *inter alia*:

> Uncontradicted testimony of a large number of employees to the effect that they

were free from coercion and under no sense of constraint cannot avail the Independent, *Bethlehem, etc.*, v. *N. L. R. B.*, 1 Cir., 114 F. (2d) 930, 937, and *American Enka Corp.* v. *N. L. R. B.*, 4 Cir., 119 F. (2d) 60, 62, and a showing of non-coercion in one instance does not disapprove an affirmative showing of coercion in another instance, *United States* v. *General Motors Corp.*, 7 Cir., 121 F. (2d) 376, 405. The recognition of constraint calls for a high degree of introspective perception, *Bethlehem Shipbuilding* case, supra, 114 F. (2d) 937, and it would be a rare case where the finders of fact could probe the precise factors of motivation underlying each employee's choice. Normally, the conclusion that the employees' choice was restrained by the employer's interference must of necessity be based on the existence of conditions or circumstances which the employer created or for which he was fairly responsible, and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act contemplates, *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, 588, 61 S. Ct. 358, 85 L. Ed. 368.

The Circuit Court of Appeals for the Fifth Circuit ruled similarly in *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867, 870, 871, certiorari denied, 310 U. S. 651. In two other cases in which the Board has refused

to give weight to conclusionary testimony like that offered in this case, the Circuit Court of Appeals for the First and Fourth Circuits have enforced Board orders based upon findings that the employer has violated Section 8 (2) of the Act. See *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board*, 114 F. (2d) 930, 937 (C. C. A. 1), certiorari dismissed, 312 U. S. 710; *American Enka Corp.* v. *National Labor Relations Board*, 119 F. (2d) 60, 62 (C. C. A. 4).[8]

Although in one early case, *National Labor Relations Board* v. *Swank Products, Inc.*, 108 F. (2d) 872, 875 (C. C. A. 3), the conclusion of the circuit court of appeals that there was not substantial evidence to support the Board's finding that the employer had violated Section 8 (2) of the Act was held to be "reenforced by a stipulation

[8] Cf. *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, reversing 101 F. (2d) 841, 847 (C. C. A. 4) and *National Labor Relations Board* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282, reversing 116 F. (2d) 350, 355–356 (C. C. A. 7), in which this Court reversed the circuit courts of appeals, which had set aside Board orders of disestablishment on the ground that the employees desired to be represented by the labor organization which Board found to be company dominated. Cf. also *National Labor Relations Board* v. *New Era Die Co.*, 118 F. (2d) 500, 505 (C. C. A. 3) wherein the court upheld the Board in its refusal to permit the employer, who had refused to bargain with an accredited bargaining representative, to show by the testimony of his employees who had revoked their authorizations of such representative that they did so voluntarily. This testimony the court held was "properly rejected as immaterial."

of counsel that members of the Association, if called, would have testified that they joined without interference or coercion and that their preference was for the Association, and not for either of the other two unions seeking to organize the employees, in no case except the instant one has a court ever ruled that the Board denied due process to an employer by holding such testimony immaterial.

As a corollary to its ruling in this respect, the court below concluded that the trial examiner, because he had expressed his opinion at the first hearing that such testimony was immaterial, was disqualified to preside at the hearing on remand. If the Board is correct in its view that such testimony was immaterial, then the court's ruling relative to the trial examiner must fall for that reason alone. However, the court below, nevertheless, erred in holding that the trial examiner was disqualified. He had no power to decide a case but merely make recommendations to the Board which alone has power to decide. Section 10 (c) of the Act; *National Labor Relations Board* v. *Air Associates, Inc.*, 121 F. (2d) 586, 588–590 (C. C. A. 2); *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. (2d) 494, 496 (C. C. A. 3); *National Labor Relations Board* v. *Botany Worsted Mills*, 133 F. (2d) 876, 882 (C. C. A. 3), certiorari denied, 319 U. S. 751. There would consequently be even less reason for

disqualifying him from presiding at the hearing on remand than for disqualifying a judge who has ruled erroneously upon the materiality of evidence from hearing the same case on remand. It is well settled that a judge is not disqualified from presiding at a hearing because of his previous erroneous rulings in the case. *Ex parte American Steel Barrel Co.*, 230 U. S. 35; *Berger* v. *United States*, 255 U. S. 22, 23–24. The same doctrine applies to administrative proceedings. *United States* v. *Morgan*, 313 U. S. 409, 421.

2. The decision of the court below, insofar as it ruled material to the issue of company domination of the D. G. W. U. evidence as to whether contracts made by other employers with the I. L. G. W. U. contain provisions as beneficial to employees as those in the contract made by the Company with the D. G. W. U., is in conflict with a decision of the Court of Appeals for the District of Columbia. *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. (2d) 641, 651, 653 (App. D. C.). In that case, the employer, charged with interfering with, dominating and supporting a plant union had sought to subpoena a witness for the purpose of questioning him concerning the dates, scope, duration and terms of certain agreements made between the charging union and another employer. The Court of Appeals upheld the Board's ruling (14 N. L. R. B. 539, 595, n. 36) that "these agree-

ments were irrelevant" and that neither the other employer nor the agreements were "on trial" (120 F. (2d) at 651). No facts exist in the *Bethlehem Steel* case which differentiates it from the instant case with respect to the relevancy of this type of evidence.

3. The decision of the court below is in conflict with decisions of the Circuit Court of Appeals for the Seventh Circuit insofar as it holds material to the issue of employer responsibility for conduct of supervisory employees in forming and administering the D. G. W. U., evidence that the I. L. G. W. U. admits to membership at other plants employees holding positions similar to those of the Company's supervisory employees. *New Idea, Inc.* v. *National Labor Relations Board*, 117 F. (2d) 517, 524 (C. C. A. 7); *National Labor Relations Board* v. *Aintree Corp.*, 132 F. (2d) 469, 472 (C. C. A. 7), certiorari denied, 318 U. S. 774.

In the *New Idea* case, the company contended that it should not be answerable for the conduct of its assistant foremen in dominating and supporting a plant union because, among other reasons, such assistant foremen were eligible to membership in both the plant union and in an American Federation of Labor union. The court held, however, that ineligibility to union membership was not a condition precedent to employer responsibility for the acts of supervisory employees. In the *Aintree* case, the same court in

upholding its former ruling in the *New Idea* case, relied heavily upon this Court's decision in *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 80–81, wherein this Court upheld the Board's finding that the employer was responsible for conduct of some of his minor supervisory employees in throwing their support to one nationally affiliated labor organization and opposing another even though such supervisory employees were "bona fide members" of the former.

Evidence respecting the eligibility of supervisors to membership in the charging union is clearly irrelevant in a case like the instant where instead of one or two supervisors possibly acting in their own interest there is concerted activity by the entire body of supervisors in forming and participating in the administration of the D. G. W. U. (*supra*, pp. 15–18).

Aside from the immateriality of this evidence, however, we believe that the trial examiner properly excluded it at the hearing on remand because it was not within the scope of the remand order. No attempt was made by any of the parties to introduce such evidence at the original hearing, the transcript of which is a part of the entire record, and neither the Company nor the D. G. W. U. alleged that such evidence was newly discovered or unavailable at the original hearing. The trial examiner made it clear at the hearing

on remand—and we think properly so—that with the exception of testimony of Mrs. Reed, the Company's president, who was precluded on account of illness from testifying at the first hearing, he did not intend to receive any evidence except that mentioned in the opinion of the court below as having been improperly rejected by him at the first hearing (VIII 2788). As this and other courts have recognized, "the proper administration of justice demands that there be an end to litigation. It demands that parties shall not present their causes of action or their defenses piecemeal." *Sorensen* v. *Pyrate Corp.*, 65 F. (2d) 982, 985 (C. C. A. 9); *Roberts* v. *Cooper*, 20 How. 467, 481; *United States Trust Co.* v. *New Mexico*, 183 U. S. 535, 537, 540.

4. Other evidence not included within the scope of the remand order, the exclusion of which at the hearing on remand was held by the court below to constitute a denial of due process, related to whether or not certain employees discharged or laid off by the Company prior to the passage of the Act were discriminatorily discharged or laid off.[2] As shown, *supra*, p. 29, at the first hearing, pursuant to stipulation of all the parties, excerpts from the transcript of a hearing before the National Industrial Recovery Board which

[2] In so holding, the court erroneously assumed that the Board had inferred discriminatory motives for the discharges and lay-offs (XIII 48). The Board expressly stated in its decision that it made no finding on that question (X 3860, n. 25).

tried charges that the Company had discriminatorily discharged or laid off these employees and excerpts from the transcript of the hearing in the injunction suit before Federal District Judge Miller were introduced in evidence and all other evidence offered by the Company on this subject was received. The Company raised no question in this regard either before the Board or the court below prior to the hearing on remand, and it has never alleged that any additional evidence which it may have on that subject is newly discovered or was unavailable at the first hearing. The Company should not be permitted to present its defenses piecemeal.

5. The court below in its first opinion (123 F. (2d) at 225) approved the Board's refusal to try the I. L. G. W. U. for a conspiracy to force the Company to enter into a closed shop with it. However, in its second opinion the court below held that such evidence was relevant for the Board to consider (1) in determining whether charges were filed by I. L. G. W. U. in good faith or for the purpose of influencing an injunction suit brought by the Company against the I. L. G. W. U. in a Federal District Court to prevent the I. L. G. W. U. from carrying out threats to use violence in organizing the Company's plant,[10]

[10] See *Donnelly Garment Co.* v. *International Ladies' Garment Workers' Union*, 20 F. Supp. 767 (W. D. Mo.), affirmed, 21 F. Supp. 807 (W. D. Mo.), reversed in 304 U. S. 243; 23 F. Supp. 998 (W. D. Mo.); 99 F. (2d) 309 (C. C. A. 8).

and (2) in determining the reason why employees joined the Loyalty League and the D. G. W. U. (XIII 44–48).

The reversal by the court below of its position on the materiality of this evidence is apparently due to the interpretation it put upon this Court's decision in *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, which was handed down subsequent to the first opinion in the instant case. During the progress of the hearing before the Board of the *Indiana & Michigan* case and at various times prior to the Board's decision, severe damage was done to the properties of the employer for which several prominent union leaders were subsequently indicted and convicted. Several of these leaders had been witnesses at the hearing before the Board. The employer sought to adduce additional evidence before the Board to show an unlawful conspiracy among the union leaders to intimidate and coerce the employer into settling the case

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certiorari denied, 305 U. S. 662; 119 F. (2d) 892 (C. C. A. 8); 121 F. (2d) 561 (C. C. A. 8); 47 F. Supp. 61 (W. D. Mo.); *Donnelly Garment Co.* v. *Dubinsky*, 47 F. Supp. 65 (W. D. Mo.); *Donnelly Garment Co.* v. *International Ladies' Garment Workers' Union*, 47 F. Supp. 67 (W. D. Mo.); 55 F. Supp. 572 (W. D. Mo.); *Donnelly Garment Co.* v. *Dubinsky*, 55 F. Supp. 587 (W. D. Mo.); *International Ladies' Garment Workers' Union* v. *Donnelly Garment Co.*, 147 F. (2d) 246 (C. C. A. 8), certiorari denied, 325 U. S. 852, where an injunction erroneously granted by the federal district court was subsequently set aside.

then in the process of being heard and decided, and recognizing the union as bargaining representative of his employees. The employer alleged that the unlawful destruction of his property was pursuant to the conspiracy thus to coerce and intimidate the employer in the defense of his case before the Board. This Court held that under the circumstances the unlawful conduct of the union leaders was material to a consideration of the weight and credibility of the testimony of these leaders as well as the witnesses closely associated with them. It also held that under the circumstances the Board might wish to consider whether it should permit its processes to be taken advantage of by unions or by union leaders to advance their illegal purposes.

In this case there was no offer to prove that any of the witnesses had been convicted of any unlawful conduct against the Company or any other employer and, therefore, the rejected evidence could have no bearing on the weight and credibility of any of the testimony. Moreover, since none of the alleged unlawful conduct of union leaders occurred during or immediately preceding the hearing and other proceedings before the Board, it could not have been designed to intimidate the Company in the defense of its case before the Board as was allegedly true in the *Indiana & Michigan* case. The court below appears to have felt that the excluded evidence of misconduct was admissible for the purpose of

showing that the charges filed by the I. L. G. W. U. were designed to influence the result of the action for an injunction mentioned *supra*, p. 44; but that is immaterial here where the Board was concerned only with determining whether the Company had engaged in unfair labor practices and with insuring to all parties a fair hearing on such issues. The Board issues a complaint only after its investigation shows that there is merit to the charges, and the motive of the I. L. G. W. U. in filing the charges cannot deprive the Board of jurisdiction to proceed on the charges. *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, 18; *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. (2d) 867, 872 (C. C. A. 5), certiorari denied, 310 U. S. 651; *National Labor Relations Board* v. *Fickett-Brown Mfg. Co., Inc.*, 140 F. (2d) 883, 884 (C. C. A. 5).

It is true, as this Court pointed out in the *Indiana & Michigan* case (318 U. S. at p. 19), that the Board might in its discretion withhold or dismiss its complaint "if it should appear that the charge is so related to a course of violence and destruction, carried on for the purpose of coercing an employer to help herd its employees into the complaining union, as to constitute an abuse of the Board's process." But no offer was made to show any violence or destruction or any other kind of misconduct at the Company's plant and the Board does not feel that threats made by

a union to call a strike—even a strike accompanied by violence upon the picket lines as was allegedly true at strike-bound plants in Kansas City—should influence it in issuing a complaint upon charges filed by the union making such threats. As pointed out, *supra*, p. 27, the trial examiner admitted in evidence all testimony of Mrs. Reed and of employees as to what they had seen, read, or heard regarding violence upon the picket lines at other plants where the I. L. G. W. U. had called strikes and threats of a strike accompanied by similar violence at the Company's plant—the evidence of the employees being considered relevant to show their reasons for joining the D. G. W. U.—but considered irrelevant and refused to receive other evidence as to whether such violence actually occurred. Taking cognizance of the Company's contentions relative to the alleged threats, the Board stated in its decision "It may be true, as the [Company] contends, that many of them [the employees] feared the alleged threats of the I. L. G. W. U. but instead of permitting the employees to decide for themselves what attitudes they would adopt with regard to the I. L. G. W. U., the [Company] seized upon such fears as may have existed to build up and strengthen a militant employee opposition toward that labor organization" (X 3868–3869).

As Judge Woodrough in his dissenting opinion in this case pointed out, "the inquiry demanded

in the proposed fields of controversy would only protract and distract. It could not illuminate. Employers may not commit the unfair labor practices such as charged in this case to prevent union electioneering even by labor unions that have a bad record behind them". (XIII 63.) A determination whether the Board is required to sidetrack the functions expressly delegated to it under the Act for the purpose of inquiring into alleged unlawful conduct of the charging union in situations such as those present in this case is important to the administration of the Act. To require the Board to take such evidence would not only permit employers who have violated the Act to do so free of the sanctions of the Act whenever the organization filing the charge has been guilty of misconduct, but would greatly hamper the work of the Board by diverting its inquiries to collateral matters rather than to the merits of the unfair labor practice charges.

6. The court below did not decide whether the Board's subsidiary findings of fact, upon which the Board based its conclusions that the Company had violated Section 8 (1), (2), and (3) of the Act, are supported by substantial evidence, although the concurring and dissenting judges passed upon this question.[11] We submit that the

[11] The judge in the court below who wrote the opinion designated as the opinion of the court refused to decide whether there was substantial evidence to support the Board's

facts summarized in the Statement *supra*, pp. 11–23, amply support the Board's findings and that the Board's order is in all respects proper. We believe that the court below erred in setting aside and refusing to enforce the Board's order. This case has four times been argued before the court below over a period of more than four years (*supra*, pp. 7, n. 2, 24). Three opinions have been issued by that court but it has not yet passed upon the substantiality of the evidence supporting the Board's findings (7 L. R. R. Man. 560; 123 F. (2d) 215; XIII 7–69). If this case should be remanded to the court below, that court, in line with its past practice in this case, might again consider the case on some procedural or due process question not before this Court and might again, without passing on the question of substantiality of the evidence, refuse to enforce the Board's order. Accordingly, if this Court grants certiorari, we request that, in addition to reversing the court below on the due process issues presented, this Court enforce the Board's order *in toto*.

CONCLUSION

As the court below recognized, the questions raised by its decision are of substantial public importance. The decision in several respects conflicts with decisions of other circuit courts of ap-

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order (XIII 51). A concurring judge thought that that question should be decided in the negative, and the dissenting judge thought that the order should be enforced (XIII 55–56, 61, 64).

peals. It is, therefore, respectfully submitted that this petition for a writ of certiorari should be granted.

J. HOWARD MCGRATH,
Solicitor General.

DAVID A. MORSE,
General Counsel,
National Labor Relations Board.

JANUARY 1946.

APPENDIX

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*):

* * * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, main-

tained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including

reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

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Nos. 38 and 39

In the Supreme Court of the United States

OCTOBER TERM, 1946

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

v.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 38

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

No. 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

v.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION, AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinions in the circuit court of appeals (XIII 7–64)[1] are reported in 151 F. 2d 854.

[1] The volume of the printed record, which contains the pleadings, the Board's decisions and orders, the petition to

Prior opinions of the circuit court of appeals in this case are reported in 7 L. R. R. M. 560 and in 123 F. 2d 215. The findings of fact, conclusions of law, and order of the National Labor Relations Board (A 618–622, X 3837–3898) are reported in 50 N. L. R. B. 241. A prior decision of the National Labor Relations Board in this case (A 552–617) is reported in 21 N. L. R. B. 164.

JURISDICTION

The decree of the circuit court of appeals was entered on October 29, 1945 (XIII 71). The petitions for writs of certiorari, in both Nos. 38 and 39,[2] were filed on January 29, 1946, and were granted on April 22, 1946 (XIII 73). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. (a) Whether, when an employer expresses opposition to a nationally affiliated labor organization, through its supervisory staff sets up and thereafter takes a leading part in the adminis-

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review, and the answers, is referred to as "A," and the other volumes of the printed record are referred to by Roman and Arabic numbers indicating the volume and the page thereof.

[2] The petitions in both cases were directed to the same judgment of the court below. No. 38 was filed by the Board, the International Ladies' Garment Workers' Union being designated as a technical respondent; No. 39 was filed by the International Ladies' Garment Workers' Union, the Board being designated as a technical respondent.

tration of a plant union for the declared purpose of preventing the nationally affiliated labor organization from organizing its employees, and grants the plant union a closed shop agreement and financial and other support, the Board must give weight to testimony of employees that they freely formed and joined such plant union and knew of no interference with, domination or support of it by the employer, when deciding the question whether the employer has, in fact, interfered with, dominated, and supported the plant union in violation of Section 8 (2) of the National Labor Relations Act.

(b) Whether the trial examiner who presides at a hearing on remand for the purpose of receiving such employee testimony is biased and incapable of giving such testimony proper consideration merely because at the first hearing he expressed his opinion that such testimony was immaterial.

2. Whether the Board denied the employer and plant union due process of law in excluding the following evidence as immaterial to the issue of employer domination and support of a labor organization:

(a) Evidence as to whether contracts made by a nationally affiliated labor organization with other employers contain provisions as beneficial to employees as the provisions contained in a contract made by the employer with an alleged company-dominated labor organization;

(b) Evidence that employees at other plants having duties similar to those of the supervisory employees who were active in the formation and administration of the alleged company-dominated labor organization were eligible for membership in nationally affiliated labor organizations.

3. Whether the Board denied the employer and plant union due process of law in excluding evidence of misconduct of a nationally affiliated labor organization occurring at plants other than the employer's as immaterial to a determination by the Board of whether the employer has engaged in unfair labor practices and to a consideration of whether the Board should prosecute its complaint on charges filed by such nationaliy affiliated labor organization.

4. Whether the employer and plant union were denied due process of law by the Board's refusal to receive at a hearing on remand the following evidence which was not offered at the first hearing and was not alleged to be newly discovered or unavailable at the first hearing:

(a) Evidence, the materiality of which is questioned in 2 (b), *supra*, regarding the eligibility to membership in a nationally affiliated labor organization of employees at other plants having duties similar to those of the supervisory employees who were active in the formation and administration of an alleged company-dominated labor organization;

(b) Evidence of the non-discriminatory character of the discharges and lay-offs of certain employees prior to the passage of the Act, where all evidence on such subject offered by the employer at the original hearing was received and the Board made no finding as to whether the discharges and lay-offs were, in fact, discriminatory.

5. Whether there is substantial evidence in the record to support the Board's findings that the employer engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act, and whether the Board's order is proper.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 108–110.

STATEMENT

I

PROCEEDINGS CULMINATING IN THE CIRCUIT COURT OF APPEALS' DECISION AND REMAND ORDER OF NOVEMBER 6, 1941

Upon charges and amended charges filed in 1938 and 1939 respectively, by International Ladies' Garment Workers' Union, herein called the I. L. G. W. U., the Board, on April 27, 1939, issued its complaint against Donnelly Garment Company, of Kansas City, Missouri, herein called the Company (A. 369–376, 553). The com-

plaint alleged that the Company had dominated and interfered with the formation and administration of a labor organization known as Donnelly Garment Workers' Union, herein called the D. G. W. U., and contributed financial and other support to it; had discharged two of its employees because they joined and assisted the I. L. G. W. U.; had, by these and other acts, coerced and restrained its employees from becoming or remaining members of the I. L. G. W. U. and had encouraged and compelled membership in the D. G. W. U.; and that by the aforesaid conduct, the Company had violated Section 8 (1), (2), and (3) of the National Labor Relations Act (A 369–374).

A hearing upon the complaint was held before a trial examiner of the Board from June 5 to July 15, 1939 (A 555). At that hearing, the trial examiner refused to permit the Company and the D. G. W. U. to call to the witness stand 1,200 employees of the Company who the Company alleged would each testify that he had joined the D. G. W. U. of his own free will, that the employees had voluntarily formed the D. G. W. U., and that such union was at all times free from employer influence, domination and support; the trial examiner did receive such testimony from 9 employees and admitted excerpts from the record in another case containing such testimony from 12 other witnesses (I 193–194, 214–215; II 609, 612–626, 651–653, 655, 660–661, 664, 669, 704, 704e, 704p–707, 718a–718e, 718r, 718s; IV 1223, 1226,

1228–1229, 1234, 1336v, 1336ee, 1336ii, 1336pp, 1336ccc, 1336ooo, 1336xxx, 1336eeee; VI 1752–1753). The trial examiner also excluded evidence that the I. L. G. W. U., before, and at the time of the formation of the D. G. W. U., had conspired to force the Company to sign a closed-shop contract with it by threatening to call a strike and to engage in conduct at the Company's plant in Kansas City similar to its conduct at other garment factories in Kansas City where pickets engaged in acts of violence and forcibly prevented employees from going to work (II 626–627, 660–661, 705; III 758; VI 1752–1753). Also excluded was evidence relating to labor agreements made by the I. L. G. W. U. with other employers (discussed *infra*, pp. 92–96), and other evidence (I 208–212, 220–221, 238i–238j, 243; VI 1924–1928, 1930–1931), not material to the issues presented by the petitions for writs of certiorari. On March 6, 1940, the Board issued its decision, in which it upheld the trial examiner in excluding all such evidence and in rejecting offers of proof as to some of it, and found that the Company had engaged in unfair labor practices in violation of Section 8 (1), (2), and (3) of the Act, substantially as alleged in the complaint (A 552–615). It issued the usual cease and desist and affirmative relief order for violations of this kind (A 615–647).

Thereafter, the Company and the D. G. W. U. filed separate petitions in the court below to

review and set aside the Board's order; and the Board filed its answer and petition for enforcement (XIII 4). During the pendency of these petitions, the Company and the D. G. W. U. filed with the court below applications for leave to adduce (1) evidence to show that they had been denied due process because of bias and prejudice on the part of the Board and its subordinates and collusion by them with the I. L. G. W. U., and (2) evidence mentioned *supra*, pp. 6–7, allegedly going to the merits of the case, which had been excluded by the trial examiner and which they contended was competent and material. On November 7, 1940, after oral argument on the applications, the court below handed down its opinion (7 L. R. R. M. 560), one judge dissenting, holding that the showing made by the Company and the D. G. W. U. as to the alleged bias and collusion was insufficient to invoke any action of the court, and denying the applications in that regard. It also denied the applications to adduce the excluded evidence allegedly going to the merits of the case but did so without prejudice to a renewal of such applications when the case should be finally submitted to the court (see 123 F. 2d 215, 219–220).

On November 6, 1941, the court below handed down its decision denying enforcement of the Board's order and remanding the case to the Board for further proceedings (123 F. 2d 215).

The court below ruled (123 F. 2d at 222–225) that the statements and rulings of the trial examiner, although in some respects erroneous, did not establish that he was biased, that the trial examiner and the Board had properly confined the issues to those tendered in the complaint by refusing to try the I. L. G. W. U. for the alleged conspiracy, but had denied the Company and the D. G. W. U. due process by excluding the evidence of employees, in accordance with an offer of proof, that they formed and joined the D. G. W. U. of their own free will and did not know of any interference with, domination or support of the D. G. W. U. by the Company. The court required the Board to vacate its findings, conclusions and order and to accord the Company and the D. G. W. U. "an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order" (*id.* at 225).

II

BOARD PROCEEDINGS AND FINDINGS SUBSEQUENT TO THE REMAND ORDER

Pursuant to the court's mandate, the Board vacated its findings, conclusions and order of March 6, 1940, and directed a further hearing for

the purpose of taking additional evidence in accordance with the opinion of the court below (X 3785–3786). The same trial examiner who presided at the previous hearing again presided (I 1, VII 2057).[4] He received the testimony of 11 of the 1,200 employees named in the offer of proof that they had voluntarily formed the D. G. W. U., that they had joined it of their own free will, and that they knew of no interference with, domination or support of such union by the Company (VIII 2588, 2599–2600, 2631–2632, 2722–2723, 2772, 2858–2859, 2914–2915, IX 3006, 3049–3050, 3078, 3123, 3218). The trial examiner then ruled that further evidence of the same nature would be cumulative (X 3250–3251, 3253–3255, 3272–3273). The Board thereupon called several of the 1,200 employees, who testified contrary to the offer of proof (III 746, 750, 751, 753, IX 3274–3282, 3310–3313, 3320–3325, 3329–3330, 3344, 3408–3416, 3426–3435, 3467, 3469–3471, 3474, X 3497–3498, 3528, 3550–3554, 3558–3559, 3612, 3661, 3665–3670, 3691–3703). Thereafter, the trial examiner issued his intermediate report in which he found, "upon the entire record", that the Company had engaged in unfair labor practices in violation of Section 8 (1), (2),

[4] The Board overruled the Company's application for designation of another trial examiner, pointing out that all the grounds urged by the Company as showing bias and prejudice had been presented to the circuit court of appeals, which ruled them insufficient to establish disqualification (A 498–501).

and (3) of the Act and recommended that the Company cease and desist from such unfair labor practices and take certain affirmative action which he found would effectuate the policies of the Act (X 3837–3898).

On June 9, 1943, the Board issued its decision and order sustaining the rulings of the trial examiner in regard to the admission and rejection of evidence and approving and adopting, with exceptions not here material, his findings, conclusions, and recommendations (A 618–622). In regard to the evidence received pursuant to offers of proof at the first hearing, the Board stated that it had carefully considered all such evidence but "that the testimony in question does not overcome more positive evidence in the record that the [Company] committed acts of interference and assistance in the formation and administration of the D. G. W. U. which subjected that organization to the [Company's] domination and which removed from the employees' selection of the D. G. W. U. the complete freedom of choice which the Act contemplates." The Board added: "Since we find the evidence here adduced totally unpersuasive that the employees voluntarily designated the D. G. W. U., we are moreover impelled to adhere to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature is immaterial to issues such as those presented in this

case" (A 619). The facts as found by the Board may be summarized briefly as follows:*

In 1937, when the I. L. G. W. U. made attempts to organize the Company's employees, the Company took various steps to discourage the employees from joining, as it had done upon a previous occasion in 1934 when the I. L. G. W. U. had instituted a membership campaign (X 3859–3863). It continued to maintain and support an organization called the Loyalty League which it had formed in 1935 for the primary purpose of frustrating the organizational efforts of the I. L. G. W. U. (X 3861–3864). It permitted, encouraged, and directed the circulation throughout its plant during working hours of a pledge not to join any labor organization (X 3866–3867). Its president, Mrs. Reed, made a speech to the employees, expressing appreciation for the pledge and assuring them that she would attempt to protect them from any violent conduct on the part of I. L. G. W. U. organizers which she alleged was being threatened (X 3867–3869). Through its supervisory and management representatives, the Company approved and encouraged demonstrations against two employees who had dared to join the I. L. G. W. U. and forced such employees to leave its employ (X 3869–3871). Through two of its management representatives, Todd and Atherton, the Company hired an at-

* The evidence supporting the findings is set forth in detail at pp. 22–66, *infra*.

torney to advise its employees in opposing the I. L. G. W. U. (X 3872). At his suggestion, one of these management representatives, Todd, called a meeting of the employees during working hours[5] for the purpose of forming a plant union, the D. G. W. U., to combat the I. L. G. W. U. (X 3872). Supervisory employees, accompanied by their subordinates, attended, and the D. G. W. U. came into being with management representative Todd as its chairman (X 3872–3875). Thereafter, through the membership and activities of its supervisory employees in the D. G. W. U., through the membership solely of management representatives on its most important committee, the piece-work committee, through management's participation in determining eligibility to membership on the bargaining committee, through the grant of closed-shop and check-off agreements, and through the grant of financial and other support to the D. G. W. U., the Company continued its domination and control of the D. G. W. U. (X 3875–3884).

The Board concluded that by this conduct the Company had violated Section 8 (1), (2), and (3) of the Act (X 3866, 3869, 3871, 3886–3890) and ordered the Company to cease and desist from such unfair labor practices, to disestablish the D. G. W. U., to reimburse its employees for the

[5] The Board, unaided by additional evidence introduced at the second hearing (IX 3312–3314, 3430, 3457–3458, 3470–3471, X 3530, 3542, 3620, 3667), had previously found that the meeting took place after working hours (A 583).

dues and assessments which it had checked off from their wages on behalf of the D. G. W. U., and to post appropriate notices (A 621–622).

III

THE CIRCUIT COURT OF APPEALS' DECISION OF OCTOBER 29, 1945

Thereafter, the Company filed its petition in the court below to review and set aside the Board's order (A 1–360). The Board answered and requested enforcement of its order (A 361–365). The D. G. W. U. and the I. L. G. W. U. were permitted to intervene and file briefs (A 368–369). On October 29, 1945, the court below handed down its opinion (one judge concurring and another dissenting) and entered its decree denying enforcement of any part of the Board's order and setting aside the entire order for want of due process because the Board had failed to give probative weight to the conclusionary testimony received pursuant to the court's remand order of November 6, 1941; because the same trial examiner who presided at the first hearing again presided at the hearing on remand; and because the Board had refused to receive at the hearing on remand certain evidence which the court deemed material (XIII 7–71). The rejected evidence which the court below deemed material, together with the propriety of the trial examiner's exclusion of it, is discussed in detail, *infra*, pp. 35–104.

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. (a) In holding that the Board, in dealing with the question of company domination of the D. G. W. U., denied due process to the Company and the D. G. W. U. by failing to give weight to testimony of the Company's employees that they freely formed and joined the D. G. W. U. and knew of no interference with, domination or support of that union by the Company.

(b) In holding that the trial examiner who presided at the hearing on remand was biased and incapable of giving such testimony proper consideration because he had expressed his opinion at the first hearing that such testimony was immaterial.

2. In holding that the Board had denied due process to the Company and the D. G. W. U. by refusing to receive in evidence labor agreements made by the I. L. G. W. U. with other employers.

3. In holding that the Board had denied due process to the Company and the D. G. W. U. by refusing to receive evidence as to whether or not the I. L. G. W. U. admitted to membership employees at other plants having duties similar to those of the Company's employees whom the Board found to be supervisory.

4. In holding that the Board had denied due process to the Company and the D. G. W. U. by refusing to receive evidence that the I. L. G. W. U.,

at and prior to the time of the formation of the D. G. W. U., had used fraud and violence at the plants of other employers to compel their employees to join the I. L. G. W. U.

5. In holding that the Board had denied due process to the Company and the D. G. W. U. by refusing to receive evidence as to whether the Company, prior to the passage of the Act, had discriminatorily discharged or laid off certain members of the I. L. G. W. U.

6. In setting aside and refusing to enforce the Board's order.

7. If the Board improperly failed to consider any evidence, in failing to remand to the Board such portions of the case as were affected by such failure of the Board.

SUMMARY OF ARGUMENT

I

The court below erred in setting aside and refusing to enforce the Board's order. The order was based upon findings of fact fully supporting and, indeed, compelling the Board's conclusion that the Company had engaged in unfair labor practices in violation of Section 8 (1), (2), and (3) of the Act. Neither the Board's treatment of the evidence received nor its refusal to receive evidence amounted to prejudicial error or a lack of due process.

To enable the Court to pass upon the substantiality of the evidence to support the Board's

findings, we have set out that evidence in detail in point I of the Argument and refer this Court to the statement of the Board's findings, *supra*, pp. 12–13, for a summary recital of it. The evidence fully supports the Board's ultimate findings that the Company engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act, and warrants the Board's order requiring the Company to cease and desist from such unfair labor practices; to withdraw recognition from and completely to disestablish the D. G. W. U.; to reimburse its former and present employees for all dues and assessments which it had deducted from their wages; and to post appropriate notices.

II

In the face of this strong and compelling evidence that the Company dominated and interfered with the formation and administration of the D. G. W. U. and contributed financial and other support to it, employees of the Company testified that they formed and joined the D. G. W. U. of their own free will and were not influenced, interfered with, or coerced by the Company in their selection of a bargaining representative. The Board properly refused to give weight to this conclusionary testimony. This is so, in the first place, because the organization, structure, and Company support of the D. G. W. U. were such as to ensure Company domination. It is so, in

the second place, because even if the facts surrounding the formation, administration and support by the Company of the D. G. W. U did not compel a finding of violation by the Company of Section 8 (2) of the Act, the conclusionary testimony in question is so introspective and unreliable in character as to warrant the Board in treating it as overcome by "more positive evidence" or, indeed, in not receiving it at all.

The evidence can be of so little, if any, value that the Board should not be required to receive it. The domination, interference, and restraint of the employer having economic power over its employees over a long period of years, as here, necessarily colors the employee's point of view so that he cannot separate in his own mind those beliefs which have been instilled by his employer's unfair conduct from those which he formed or might have formed independently of such conduct. Hence an employee may believe that he has not been coerced and so testify, when in fact he has been coerced. And even if he realizes that he has been influenced or coerced by his employer's conduct, he may not feel free so to express himself while testifying in the presence of his employer or its representatives.

Finally, conclusionary evidence of the sort here involved may be excluded in the interests of judicial and administrative efficiency. Since testimony of some employees that they themselves had not been coerced would not disprove that

others had, in fact, been coerced, voluminous examination and cross-examination of all the employees might well be required. Such testimony would be of too little value to justify the large expenditure of time and money which would be required and the consequent interruption of the Act's remedial processes.

The court below erred in holding that the trial examiner was disqualified from presiding at the hearing on remand merely because he had expressed his opinion at the first hearing that the conclusionary testimony of employees was immaterial. As we have shown, he ruled correctly at the first hearing; but even if he had not, he was not, because of an erroneous ruling, thereafter disqualified from presiding at a remand hearing of the case. It is well settled that a judge is not disqualified from presiding at a hearing because of his previous erroneous rulings in the case. The same principle should apply with all the more force to a trial examiner, for he cannot decide the case, as can a judge, but can merely make recommendations to the Board, which alone has power to decide. Section 10 (c) of the Act.

III

The court below erred in holding that the Company and the D. G. W. U. were denied due process by the Board's refusal to receive evidence at the hearing on remand which did not fall within the category of evidence mentioned by the court in its

first opinion as having been improperly rejected by the trial examiner at the first hearing. Part of the evidence, the rejection of which at the remand hearing was considered by the court below to amount to a denial of due process, was not even offered at the first hearing. Part of it was offered and received, and the trial examiner only refused to receive cumulative evidence of the same nature. As to evidence in these categories, it is the Board's position that the parties should not be permitted to present their defenses piecemeal, that a single trial of the issue was enough. It is also the Board's position that the other evidence was not within the scope of the remand order because the propriety of its rejection at the first hearing was fully argued before the court and presumably fully considered by it prior to the remand order, and the court below, either expressly or by implication, approved the rejection of such evidence in its first opinion.

In any event, all of such evidence—evidence regarding eligibility of supervisory employees to membership in the I. L. G. W. U., evidence regarding the terms of the I. L. G. W. U. contracts, evidence bearing upon whether or not discharges and lay-offs occurring prior to the passage of the Act were discriminatory, and evidence of fraud or violence practiced by the I. L. G. W. U. at plants other than the Company's—was only remotely relevant or wholly immaterial to any issue

in this case and was properly rejected for that reason. The Board should not be required to sidetrack its hearing on the merits of the unfair labor practice charges by inquiring into such collateral matters.

IV

This case has been argued before the court below on four occasions, and that court has delivered three opinions therein. It has, however, not yet passed on the substantiality of the evidence in support of the Board's findings. This case has been pending before the Board and the courts for more than seven years, and under the circumstances, we think this Court should pass on that question now and direct that the Board's order be enforced in full so that further protracted proceedings before the court below may be avoided.

ARGUMENT

I

THE BOARD'S FINDINGS THAT THE COMPANY HAS ENGAGED IN UNFAIR LABOR PRACTICES IN CONTRAVENTION OF SECTION 8 (1), (2), AND (3) OF THE ACT ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND SUSTAIN THE BOARD'S ORDER

The judge in the court below who wrote the opinion designated as the opinion of the court did not decide whether there was substantial evidence to support the Board's order (XIII 51).

A concurring judge felt that the question should be decided in the negative and the dissenting judge thought that it should be decided in the affirmative (XIII 55–56, 61, 64). To enable this Court to pass upon that question (see *infra*, pp. 104–106) and also to facilitate a better understanding of the other issues involved, a full statement of the Board's findings and the evidence supporting such findings is set forth below.[6]

A. THE COMPANY'S SUPERVISORY AND MANAGEMENT HIERARCHY

Before setting forth the various acts found by the Board to be unfair labor practices, we shall describe first the supervisory or management status of various employees, and the Company's responsibility for their participation in the formation and administration of the D. G. W. U. and in the commission of other unfair labor practices.

In the operation of its business of designing, manufacturing, selling, and distributing ladies' garments, the Company employs between 1,100 and 1,300 persons (X 3850; VII 2419–2422). The Company concedes responsibility for the labor relations conduct of its "principal officials"—Mrs. Reed, its president, Mr. Baty, its production manager, Mrs. Reeves, head of its merchandising

[6] In the following statement, references preceding the semicolon are to the pages of the record where the findings in the Intermediate Report which was adopted by the Board (A 618) appear; references following the semicolon are to the pages of the record where the supporting evidence appears.

department, Mrs. Hyde, its personnel director, and Mr. Keyes, its sales manager—but denies responsibility for the conduct of persons lower in its directive heirarchy (II 392–393, VII 2121–2124, 2127–2145, 2170–2173, X 3909–3911). The Company's position in this respect appears to be grounded largely on the absence in its plant of such normal titles as "foremen", "supervisors", or "group leaders" (I 17, 19, II 422). The Board, however, after considering their functions and positions, decided that in spite of the absence of the usual nomenclature, certain employees, such as instructors, thread girls, and other employees charged with managerial responsibilities and duties, were in fact supervisory employees and representatives of management and that their conduct in coercing and interfering with the employees in the exercise of their rights of self-organization and to select a bargaining representative was attributable to management (X 3850–3859). The Board was certainly entitled thus to base its decision on the role actually played by the supervisory employees rather than upon their titles. Cf. *Cupples Company, Mfrs. v. National Labor Relations Board,* 106 F. 2d 100, 114 (C.C.A. 8).

1. *Instructors and thread girls.*—The Company operates under what is known as the section system rather than the dressmaking system of manufacturing ladies' garments (VII 2252). Instead of each operator making a complete dress, which

requires experience and skill, each performs one sewing operation and a whole section of operators is required for the manufacture of a complete garment (VII 2252–2253). This requires almost no skill on the part of the individual operator but requires a large degree of planning and supervision on the part of management (IV 1120 ss, VII 2277, 2252–2253). The operators are grouped into sewing sections of 40 operators each and in charge of each section is an instructor and her assistant called a thread girl or floor girl (X 3850; I 18, II 392, 422, 507, III 1109, V 1374d VII 2253). For each style of garment to be made by the section, the instructor and thread girl are furnished with an instruction sheet in a code understood by the instructor and thread girl (II 503–505, VIII 2963–2967). The instruction sheet indicates the operations which the section is to perform on the garment, but the designation of the specific operators to perform each operation is left to the instructor and thread girl (II 505–507, VIII 2959, 2963–2964, IX 3104, 3326, 3434, 3469, X 3482–3483).

The instructors and thread girls, as the Board found, are in all respects the foremen and assistant foremen of their sections (X 3853). Mrs. Reed, the Company's president, in effect so conceded when she testified in 1935, before the old N. R. A. Board, regarding the duties of the instructor and thread girl, that she had, "40 operators, 40 machines, under this one supervisor with an assistant" (X 3851; III 1109). While

instructors lack the power to hire and fire, they assign work (X 3851; II 505–506, IX 3104, VIII 2959–2960), discipline girls (X 3851, 3853; IX 3464, III 1058–1059, IV 1120i, 1120u–1120v, 1120z–1120bb, 1120dd–1120ee, 1120 mm), and constitute the link through which the girls learn the management's directions (X 3852; I 302, 312–313, III 734c, 734g, VIII 2956–2957), and through which the management learns whether a girl is a desirable employee, her capacity for and her attitude towards work (X 3852; II 419–420, III 1059–1061, 1092–1093, V 1375). Instructors are fully responsible for their respective sections of the plant. They are assisted in all aspects of their work by the thread girls who assume charge whenever the instructors are absent (X 3851; IX 3153, 3326, 3435, III 1109).

The Board properly rejected the Company's contention that since June 1935, when it appointed Lee Baty as production manager and plant superintendent, he has been the sole supervisory employee over the production and maintenance employees (X 3851; II 518–519). The production department was composed in 1937 of approximately 1100 employees located on 7 different floors of the plant (II 490–491, VIII 2949–2955). The Company's contention postulates an arrangement under which it is improbable that any plant could operate. If Baty were the only person to exercise authority, to direct, discipline,

hire, lay-off, and discharge this large group of employees, he would have to observe personally the operations of all the operators in connection with those matters as well as such others as recommendations regarding wage increases, transfers, promotions, etc. Baty's testimony that he did just that (II 518–519) was inherently improbable and justifiably disbelieved (X 3851).

Moreover, the record affirmatively shows that no change was in fact made in the duties of the instructors and thread girls after Baty became production manager, and that they have at all times exercised a large amount of economic control over the girls in their sections (X 3850–3852; III 734e, 734g, 734i, 734k, IX 3327–3328, 3435, X 3556–3557, 3673–3674). They plan the work in each section, determining, when each new style comes in, which girls shall do which jobs (X 3852; VIII 2957–2960, 2963–2965, IX 3104, 3325–3326, 3434, 3468–3469, X 3482–3483). They keep the girls busy and correct mistakes (X 3852; II 670, IX 3468–3469). They determine who is to be laid off during slack periods (X 3852; I 302, X 3482–3483, 3517–3518, 3554–3557, 3673). When repair work is necessary, the instructor decides whether the girl to whom she assigns the work shall do it on her own time or receive pay for doing it (X 3852; VIII 2967, IX 3451, III 1059, IV 1120x–1120y). The instructors report to the office each week at a "going over of the cards

on the girls' work for the past week (X 3852; VIII 2962, III 1059, 1092–1094, 1104, IV 1120x–1120y, 1120mm). They regard themselves as supervisors (X 3852; IX 3324–3326, 3410, 3434, 3464), and are so regarded by the employees (X 3852; VIII 2604–2607, IX 3325, 3410, 3434, X 3481–3483, 3555, 3673–3675). Indeed, Mrs. Reeves, formerly factory manager and thereafter in charge of merchandising (X 3851–3852; VII 2171), herself testified that instructors "constantly supervise" the operators and that the words instructor and floor girl and the word supervisor "means one and the same to me" (X 3852–3853; II 422–423, III 1092–1093).

Under the circumstances, the Board correctly concluded "that the instructors and thread girls are supervisory employees and that they act as representatives of management in the factory" (X 3854). Their functions fall entirely within the accepted definitions of foremen, whose duties often include teaching or instructing their sub-

[7] The Board has repeatedly recognized that in the garment manufacturing industry, instructors are supervisory employees who are to be excluded from units of production and maintenance employees. *Matter of Union Underwear Co., Inc.*, 63 N. L. R. B. 92, 94; *Matter of Tubize Rayon Corp.*, 59 N. L. R. B. 82, 83–84; *Matter of Forest City Mfg. Co.*, 27 N. L. R. B. 1100, 1103–1105; *Matter of Wells-Lamont Smith Corp.*, 25 N. L. R. B. 21, 23–24; *Matter of Vicksburg Garment Co.*, 5 N. L. R. B. 301, 302–303. For similar rulings as to floor girls, see *Matter of Hirsch Shirt Corp.*, 12 N. L. R. B. 553, 560, 563; *Matter of Hayk v. Buck Co.*, 12 N. L. R. B. 230, 233.

ordinates. Thus Arthur G. Anderson, *Industrial Engineering and Factory Management*, p. 39, states:

> The foreman provides the necessary human element at the point of contact to make adjustments, rectify errors, remedy deficiencies, interpret and administer instructions, make reports, supervise work, and most important of all, provide personal leadership. In the final analysis the foreman is responsible for output. He is a manager, a teacher, a leader. As the farthest outpost of management, he is management to the workers.

As we have shown above, and as the Board found, the instructors and thread girls performed all of these functions (X 3850–3853). Upon such findings, the Company is clearly responsible for their activities. *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 520–521; *International Association of Machinists* v. *National Labor Relations Board* 311 U. S. 72, 80–81; *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 599.

2. *Rose Todd.*—Rose Todd was a nurse by profession, and, through acquaintance with Mrs. Reed as a nurse, had secured a job with the Company in 1926 (X 3855; I 14, 142a, VII 2277–2278). The president of the bank with which the Company did business knew Todd for 10 or 12 years as a "kind of all-round man" for the Company

(X 3856; II 718w). From 1926 to 1931, she held several responsible positions at the factory, including that of an instructor, and served as an assistant to Dewey Atchison, production engineer (X 3855; I 19–23, VII 2279, IX 3414). During 1932 she left the Company's employ and for a short period was in charge of the Gernes Garment Company plant in Kansas City (X 3855; V 1374c). Upon returning to the Company's employ, she worked for a while as a thread girl (X 3855; I 23–24).

Todd apparently had no well-defined duties at the time of the formation of the D. G. W. U. and thereafter, but was assigned a desk and among other duties was charged with the responsibility of keeping the different sections of the plant supplied with materials necessary to keep production going (X 3855; I 26–28, 30–31, VII 2116–2117, 2166–2167, VIII 2726, 2830). These duties and others required her frequently to move throughout the plant and to interview the instructors and thread girls (X 3856; I 24–24a, 29). Her status was such that the telephone operators readily announced over the inter-departmental telephones Loyalty League and D. G. W. U. meetings called by Todd, although inter-departmental telephones were reserved for Company business; and instructors readily took directions from her as to the form in which they were to turn in time slips for employees absent on D. G. W. U. business (X 3857; V 1374d, IX 3342, 3429, cf. X 3487,

3672). Her status was such also that when she, in the presence of Production Manager Baty and Personnel Manager Hyde, purported to explain the Company's employment policy to employee Sigler, who was sent home following a demonstration against her for wearing an I. L. G. W. U. pin, they acquiesced in Todd's statements and assumption of authority, thereby permitting her to appear as a representative of management in the eyes of the employees (X 3856–3857; I 80, III 801–807). By reason of her position also, she often had lunch in the Company's private dining room which was reserved for executives and supervisory personnel (X 3674–3675).

Todd was president of the Loyalty League, a management-sponsored organization to which all of the Company's supervisory force, including Sales Manager Keyes, Employment Manager Hyde, Production Manager Reeves, and Production Engineer Atchison, belonged, and which came into existence in 1935 to counteract the I. L. G. W. U.'s organizational activities (*infra*, pp. 37–46, 53). This position helped to mark Todd in the eyes of the employees as a person whom management was willing to have direct its employees' anti-union activities. As president also, of the D. G. W. U., she was permitted to use the desk furnished her by the Company in transacting business for that organization and to spend substantial amounts of her working time in

attending to its affairs with the knowledge and permission of management (X 3886–3887; I 127–128, 166, III 833, 835, 869). Although paid a salary of $65.00 per month by the D. G. W. U. for her services thus rendered, the Company continued to pay her regular salary in addition, thereby recognizing that her activities in connection with the D. G. W. U. were performed as a part of her duties for the Company (X 3856; I 31–32, III 915, 1006, 1010, 1010b, 1010c, 1010e, 1010h).

It was well within the Board's competence to find, as it did, that in her labor relations activities Todd "was acting for and on behalf of" the Company (X 3858). In so finding, the Board cited and followed the persuasive language of the Court of Appeals for the District of Columbia in *International Association of Machinists* v. *National Labor Relations Board,* 110 F. 2d 29, 44–45, affirmed, 311 U. S. 72. To the same effect, see *National Labor Relations Board* v. *Link-Belt Co.,* 311 U. S. 584, 599; *Union Drawn Steel Co.* v. *National Labor Relations Board,* 109 F. 2d 587, 589–591 (C. C. A. 3); *Triplex Screw Co.* v. *National Labor Relations Board,* 117 F. 2d 858, 860 (C. C. A. 6); *Atlas Underwear Co.* v. *National Labor Relations Board,* 116 F. 2d 1020, 1022–1023 (C. C. A. 6). The employees involved in the *Atlas* and the *Triplex* cases bore a striking resemblance to Todd; each held a position which gave him ready access to the entire plant and each

was favored with signs of management confidence.[8]

3. *Other supervisory employees.*—Other employees found by the Board to be supervisors and representatives of management, and who were active in the Loyalty League or the D. G. W. U., were heads of the various departments or sections, *i. e.:* Hobart Atherton, in charge of machine maintenance; Florence Strickland, in charge of

[8] In the *Atlas* case, an employee named Wright served as an "order chaser," a position which gave him access to employees in every department in the plant. While continuing to receive his regular salary, Wright devoted much of his time to the organization of the union found by the Board to be company-dominated. The Board contended that the Company was answerable under the Act for these activities on Wright's part. Although he admittedly was not a supervisory employee, the court held (116 F. 2d at 1023): "It is now settled that the employer may gain no advantage from the acts of those who reasonably may be regarded by employees as representing the policy of the management, and that neither the principles of agency nor the doctrine of *respondent superior* are applicable, where the consequence of such acts is employee fear of reprisals if the inside union is not supported. *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514." See also *National Labor Relations Board* v. *Southern Bell Telephone Co.*, 319 U. S. 50 54; *National Labor Relations Board* v. *Laister-Kauffmann Aircraft Corp.*, 144 F. 2d 9, 15 (C. C. A. 8); *National Labor Relations Board* v. *American Manufacturing Co.*, 106 F. 2d 61, 68 (C. C. A. 2), affirmed, 309 U. S. 629; *Republic Steel Corp.* v. *National Labor Relations Board*, 107 F. 2d 472, 476, 477 (C. C. A. 3), certiorari denied, 309 U. S. 684; *Swift & Co.* v. *National Labor Relations Board*, 106 F. 2d 87, 92–97 (C. C. A. 10); *National Labor Relations Board* v. *J. Greenebaum Tanning Co.*, 110 F. 2d 984, 987 (C. C. A. 7), certiorari denied, 311 U. S. 662; *System Federation No. 40* v. *Virginian Railway Co.*, 11 F. Supp. 621 (E. D. Va.), affirmed, 84 F. 2d 641 (C. C. A. 4), affirmed, 300 U. S. 515.

the pattern department; Lena Tyhurst, in charge of the inspection department; Martha Gray, in charge of the outlet store; Ortense Root, in charge of the sample department; Heath Cowan, in charge of the receiving department; Marvin Price, in charge of building maintenance; Ted Scoles, in charge of the cutting department; Dewey Atchison, production engineer; and Mary Bogart, in charge of the dividing department (X 3858–3859, 3860, 3861–3863, 3870, 3877; I 136, II 424–424a, 424d, 428–429, 510, 514–515, 551, 589, 591–592, III 1003, 1007, 1011, 1090–1091, V 1349–1350, VII 2175, 2255–2257, Cf. 2200–2203, 2007–2012, VIII 2961–2962, IX 3157, 3233, 3336, 3435–3437, 3445–3446, X 3572, 3644–3645, 3649–3650, 3673). Each of these employees, who had a status approximately coordinate with the instructors (II 424–424c, III 1010q, VII 2143, IX 3435–3436, 3445, X3673–3675), held a position with at least as much authority as did the "group leaders" for whose conduct this Court held the employer responsible in *H. J. Heinz Co.* v. *National Labor Relations Board*, 311 U. S. 514, 519–521. Moreover, no other representative of the Company was shown to have exercised any direct control or supervision over any of the employees under these department or section heads. There is ample support, therefore, for the Board's conclusion that these persons "are supervisory employees and as such were representatives of management" (X 3858–3859).

B. THE COMPANY'S PRE-ACT BACKGROUND OF ANTI-UNION ACTIVITIES

1. *The Company's opposition to the I. L. G. W. U. during its 1934 campaign.*—In 1934, the I. L. G. W. U. established an office in Kansas City, Missouri, and began its organization of the garment workers of Kansas City, including the employees of the Company (X 3859; IV 1307–1312). Open meetings to which all of the Company's employees were invited were held by the I. L. G. W. U. on March 15 and December 4, 1934 (X 3859; III 1033–1034, 1102, 1104). On both occasions, the Company's supervisory force, including Mrs. Reeves, then production manager (X 3859–3860; III 1058, 1105–1106, IV 1113; 1120g), Mrs. Hyde, personnel manager (X 3860; III 1107–1108), and many of the instructors (X 3860; III 1034, 1103–1104, 1106–1107), attended the meetings in a group. In addition, Ross Todd, whose relation to the management is discussed *supra*, pp. 28–32, attended the first meeting (X 3860; I 44), and Dewey Atchison, production engineer, attended the last meeting (X 3860; III 1091, 1096–1097).

During 1934, at least a dozen of the Company's employees joined the I. L. G. W. U. (X 3860; III 1033, 1036–1037, 1043, 1048, 1052, 1098, IV 1120–1120vv, 1141, 1153, 1156–1157). Several of them became active passing out notices of meetings and soliciting their fellow workers (X 3860; III 1098–1099, IV 1120oo–1120rr, 1153–1156b). Employees who were observed attending meetings and others were called to the office where Production

Manager Reeves questioned them about their interest in the Union, reprimanded those who had joined, and warned others that joining would do them no good (X 3860; I 306–308, III 1035–1036, 1044–1046, 1052–1055, 1067–1068, 1073–1074, 1076, 1079–1087, IV 1141, 1153–1154, 1329). Mrs. Gray, manager of the Company's retail outlet store (X 3860; IX 3336, X 3572, 3644–3645), told an employee that it was a "shame" that she had joined the I. L. G. W. U. (X 3860; III 1088–1089). Production Engineer Dewey Atchison asked employees why they did not come to the Company instead of "going down to a bunch of foreigners" (X 3860; III 1068, IV 1331), advised against getting "messed up" with the Union (X 3860; III 1100–1101), and warned that they would be fired if they did (X 3860; III 1101–1102). The instructors, who at that time unquestionably had power to direct, discipline, and recommend the discharge of employees (X 3850; III 1059, 1061, 1091–1096, IV 1120i–1120k, 1120aa, 1120ee, 1120*ll*–1120mm, VII 2416), also warned employees that those who joined the I. L. G. W. U. would be discharged and urged employees not to give their money "to those foreigners" (X 3860; III 1047–1048, 1063, 1069, 1090, IV 1150–1151, 1323, 1325–1326, 1329, 1331). One instructor referred to the I. L. G. W. U. members as "scum" (X 3860; III 1070, IV 1331).

A substantial number of the employees who joined the I. L. G. W. U. were laid off or discharged shortly after joining. In June 1934,

about a dozen employees attended a dinner for the purpose of discussing joining a labor organization at the home of Mrs. Yarnell, an employee who had joined the I. L. G. W. U. (X 3860–3861; III 1036–1037, 1046–1051, 1098 IV 1153). Mrs. Yarnell was discharged in July 1934, although she had worked for the Company since December 1924 (X 3861; III 1046–1049). Within a few months thereafter, all except one of the girls who had attended the dinner were either laid off or discharged (X 3861; III 1037–1040; 1042–1044, 1051). As a result of these lay-offs or discharges, the I. L. G. W. U. filed a charge against the Company under Section 7 (a) of the National Industrial Recovery Act, alleging that eight employees had been laid off because they joined the I. L. G. W. U. (X 3861; IV 1316–1317). A hearing on these charges was held in the spring of 1935 but, before a decision issued, the National Industrial Recovery Act was declared unconstitutional by this Court (X 3861; III 1032–1110a, IV 1318).

In the latter part of 1934 and the first part of 1935, all the remaining employees who were known to have joined the I. L. G. W. U. were transferred from the Company's main plant to a temporary branch, and laid off when the branch closed down in June 1935, despite the fact that most of these girls had several years service with the Company, whereas employees in the main plant with less service were retained (X 3861; III 1062–1066, 1073–1077, IV 1120nu–1120vv,

1126v–1129, 1130d–1130e, 1132, 1135–1136, 1156b–1157, 1324–1325, 1327, 1333–1334).

The Board expressly refused to make any finding as to whether the discharges and lay-offs were discriminatory (X 3860, n. 25); however, it did find, on the testimony of some of the employees, that as a result of the sequence of events above related, employees became afraid to join, admit their membership in, or discuss the I. L. G. W. U. (X 3861; III 1044–1046, 1047–1048, 1076, 1080–1081, 1084, 1141–1142).[9]

2. *Formation of the Loyalty League.*—In February 1935, Mrs. Gray, manager of the Company's retail store (X 3861; IX 3336, X 3572, 3644–3645), and Mrs. Strickland, head of the pattern department (X 3861; IX 3233, X 3650), formed an organization among the Company's employees known as the "Nelly Don Loyalty League" (X 3861; III 798d–798e, 1078, IX 3336, 3439). The initial step in its organization was a meeting at the home of Mrs. Gray, attended by approximately 50 employees, representing the various divisions of the factory (X 3861; III 732–733, 798e, IX 3030, 3032). Within the next three days, membership cards were circulated and signed by substantially all of the Company's employees

[9] As shown, *infra*, pp. 90–92, all evidence offered by the parties at the first hearing respecting these lay-offs and discharges, was received by the trial examiner; however, he refused to receive further evidence on this matter at the hearing on remand.

(X 3861–3862; III 798e). Mrs. Strickland, in circulating the cards, stated that Mrs. Reed "would close her doors before she would have a union shop, and we should sign these cards to keep our jobs and keep us in work because she would close the doors" (X 3862; III 1078). The statement of association circulated with the membership cards (X 3862; I 181, 304–305, V 1620, IX 3032), stated that:

> We protest against and will resist all attempts of outside interference with the business of said company or with our relations to the company as employees.
>
> We recognize the fact that * * * * we have had generous and fair treatment from Nelly Don (Mrs. Reed), President of the company, and we repose our confidence in her rather than in professional agitators who are sent here to create discontent among the employees of the company.

Mrs. Strickland refused to allow Virginia Stroup, who was president of the I. L. G. W. U. local, to sign a membership card because she belonged to another organization (X 3862; III 1078–1079). Similarly Instructor Allison refused to give Frances Reidel a card on the ground that she was an I. L. G. W. U. member (X 3862; III 1071).

Following the signing of the cards, on February 8, 1935, a mass meeting of all the employees was held during working hours on the second

floor of the building occupied by the Company's plant (X 3862; I 308, VIII 2666, IX 3033, 3066–3067, 3439). Mrs. Gray presided and explained the meaning of the word "loyalty" (X 3862; III 733, 798e, VIII 2667, IX 3032, 3439).

All of the Company's supervisory employees, including Sales Manager Keyes, Employment Manager Hyde, Production Manager Reeves, and Production Engineer Atchison, became members of the League (X 3859, 3860, 3863; II 407, 429, 431, III 1091, 1097, 1108, IV 1113, 1117). Meetings of the League were regularly held on the second floor of the building (X 3862; I 39–40, 309, VIII 2666, IX 3033, 3067). These were announced by notice to the instructors, transmitted either by Mrs. Wherry, factory manager (III 1011, 1095–1096, 1108, IX 3344, 3435), or by the Company's switchboard operator, calling each section; the instructors in turn notified the girls in their sections to attend the meeting (X 3862; I 308–309, IX 3328, 3337, 3398, 3457).

Each section of the plant had a representative, elected during working hours by the employees in the section, to represent them in the League (X 3862–3863; I 39, II 378j–378k, III 798e, VIII 2888–2889, IX 3032–3033, 3148). The League had songs of loyalty and sponsored the wearing of pins bearing the initial "L" as a demonstration of loyalty to Mrs. Reed (X 3863; I 319–320, II 542, VIII 2581, 2608–2609, 2667, 2694, 2843, X 3572).

C. THE COMPANY'S CONTINUED OPPOSITION TO THE I. L. G. W. U.; UNFAIR LABOR PRACTICES PRECEDING FORMATION OF THE D. G. W. U.

1. *Events culminating in the "Loyalty Pledge" of March 2, 1937.*—Following the lay-offs and discharges of non-I. L. G. W. U. members in late 1934 and early 1935, the organization of the Loyalty League in 1935, and the inability of the I. L. G. W. U. to carry to a successful conclusion its case under the National Industrial Recovery Act due to the decision declaring that Act unconstitutional, labor relations at the Company's plant remained in a static condition until March 1937 (X 3864). The Loyalty League continued in existence; new employees were invited to join; and solicitations took place on Company time and property (X 3864; VIII 2607–2608, X 3572). In some instances, instructors brought new employees notices that they were eligible to membership, directed them to the desk of Rose Todd, the Loyalty League president, and later brought them their Loyalty League pins (X 3864; VIII 2607–2608, X 3572). Although, as the Board was careful to point out, the formation of the Loyalty League preceded the passage of the Act by about five months and was, therefore, not a violation of the Act (X 3863–3864), its continuance subsequent to the enactment of the Act, the continued participation of its supervisory employees in its affairs, including the leadership of Todd as its president, and the Company's grant to the League

of its time and facilities, were undoubtedly violations of the Act. Since, as the Board found, the Company used the League and its officers "for the purpose of impeding and preventing the organization of its employees by the I. L. G. W.-U.", it interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act (X 3871, 3889).

On March 2, 1937, within a few days after the I. L. G. W. U. had announced in the newspapers a second campaign to organize the Donnelly employees (X 3864–3865; III 1019), Mary Sprofera and Inez Warren, shipping clerks, went during working hours to most of the Company's factory workers and secured their signatures to a pledge which read as follows (X 3865; V 1623–1647):

> We, the undersigned, as members of the Donnelly Garment Co. wish to make it known we are positively happy and contented with the positions which we hold with this organization and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed.

The pledge was passed through the sewing sections, being handed from girl to girl while they were at work at their machines (X 3865; I 311–312, II 594, 602, VIII 2578, 2609–2615, 2637–2638, 2725). The instructors and thread girls knew that the pledge was being passed, but, with seven

exceptions,[10] they themselves did not sign when the pledge went through their respective sections (X 3865; I 311–312, IX 3334–3335, 3438–3439). Three employees, Sylvia Hull, Mamie Carlson, and Elsie Greenhaw, refused to sign, one stating that she disagreed with the expression of opposition to labor organizations, another that she was not satisfied with conditions (X 3865; I 354–354a, 354p–354q, II 377–378, V 1354–1355). Two of these girls later signed for fear of losing their jobs but their names were erased (X 3865; V 1354–1356, VII 2432–2433, Tr. 1832). At least one other employee whose name was not erased signed for fear of being fired (X 3665).

On the afternoon of the same day, employees Sprofera and Warren presented the signed pledge to Mrs. Reed at her home (X 3865; II 513–514, IV 1300, VII 2074–2077, 2431–2437). Thereafter, as a result of arrangements made between Mrs. Reed and newspaper representatives, a picture of the girls presenting the pledge was taken and appeared on the front page of a local newspaper, accompanied by the statement that Mrs. Reed was

[10] Instructors Carrie Abrams (III 1004, V 1631, VIII 2893–2894, 2950), Ada Wolfe (II 721, III 1005, V 1623, VIII 2611–2612), Clara Finnell (III 1004, V 1627, VIII 2951), and Helen Little (II 424b, III 1007, V 1631, X 3675), and thread girls Nellie Biggs (III 1003, V 1629, VIII 2949, X 3551), Grace Davis (III 1004, V 1627), and Emma Grober (III 1004, V 1631, VIII 2951), signed the pledge when it went through their respective sections (X 3865).

going to place the pledge in the cornerstone of a new building she was planning to erect (X 3865; II 513–514, VII 2074–2077, 2434–2436).

Mrs. Reed shortly thereafter expressed to her office manager and head of the accounting department, Mrs. Keyes, a wish that all the employees, not merely factory workers, should sign the pledge (X 3866; X 3640–3641, 3657–3658). Mrs. Keyes thereupon had one of the girls in her department, Pauline Shartzer, circulate the pledge among all the employees who had theretofore not signed (X 3866; I 354–354a, IV 1299–1300, X 3641–3644). As a result, everyone in the plant, including the full supervisory force, watchmen, porters, maids, stenographers, indeed, every employee except the three heretofore mentioned, signed the pledge (X 3866; I 354a, IV 1288–1291, V 1643–1649, VII 2432–2433, VIII 2947–2955, IX 3335, X 3642–3644).

The Company thus used its influence flowing from its economic power over the employees to preclude the choice of a bargaining representative by them. Such solicitation of employee expressions of opposition to unionization during working hours, with the knowledge and approval of the employer, has uniformly been held violative of the Act. *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 F. 2d 862, 870 (C. C. A. 2), certiorari denied, 304 U. S. 576; *Titan Metal Mfg. Co.* v. *National Labor Relations Board*, 106

F. 2d 254, 260 (C. C. A. 3), certiorari denied, 308 U. S. 615; *National Labor Relations Board* v. *New Era Die Co.*, 118 F. 2d 500, 503 (C. C. A. 3); *Virginia Ferry Corp.* v. *National Labor Relations Board*, 101 F. 2d, 103, 104 (C. C. A. 4); *National Labor Relations Board* v. *West Kentucky Coal Co.*, 116 F. 2d 816, 817 (C. C. A. 6); *National Labor Relations Board* v. *Colten*, 105 F. 2d 179, 181–182 (C. C. A. 6); *Wilson & Co.* v. *National Labor Relations Board*, 103 F. 2d 248, 251 (C. C. A. 8); *Swift & Co.* v. *National Labor Relations Board*, 106 F. 2d 87, 94 (C. C. A. 10).

2. *The March 18, 1937, meeting.*—Following the publication in a local newspaper of an announcement that the I. L. G. W. U. had officially launched a campaign to organize the Company's employees (X 3866; III 1021), that organization, on March 9, 1937, sent the Company a letter requesting a bargaining conference (X 3866–3867; III 1022–1024). The Company did not reply to this letter, but its president, Mrs. Reed, had the letter read to a mass meeting of all the employees on March 18 (X 3867–3868; I 48–49, 147–148, 310, 354b–354c, II 588, VIII 2620).

This meeting was sponsored by the Loyalty League and its officials and was called to discuss means of combatting the I. L. G. W. U.'s projected organizational campaign (X 3867, note 35); like the previous meetings of employees, it was held during working hours on the second floor of the building housing the Company's plant (X

3867; I 308–309, IX 3328–3330, 3438, 3457–3458, X 3575, 3666). The employees were notified orally by their instructors that they were to attend the meeting, the instructors in turn having been notified either by Factory Manager Wherry or over the plant telephones (X 3867; I 308–309, 354b, II 595, IX 3328, 3438, 3457, X 3539–3540, 3575, 3666). The meeting was attended by most of the Company's supervisory force (X 3867; I 309–310, II 534, IX 3438).

Rose Todd, who was at that time president of the Loyalty League as well as closely associated with the management (see discussion of Todd, *supra*, pp. 28–32), presided at the meeting (X 3867–3868; I 44d). Chairs for the meeting were rented from a local business concern in the name of the Loyalty League (X 3867; I 334w, 345, III 960, 962, V 1621).

Following a few opening remarks by Todd, Mrs. Reed was invited to come in and address the employees (X 3868; I 48). Mrs. Reed brought the letter from the I. L. G. W. U. with her and, as we have said, had someone read it to the assembly (X 3868; I 48–49, 147–148, 310, 354b–354c, II 588, VIII 2620). She then made a speech in which she inaccurately described the Company's past labor policy, asserting that the employees had never been asked whether or not they belonged to any union (see account of the Company's questioning of employees in 1934, *supra*, pp. 34–35); promised to protect her employees from violence

at the hands of the I. L. G. W. U. (X 3868; III 1029–1030); and stated that neither Dubinsky, president of the I. L. G. W. U., nor any other "but-tinsky" could intimidate her or the Company into forcing the employees to join the I. L. G. W. U. (X 3868; III 1030).[108] She also told the employees "I have had lots of nice things happen to me in my lifetime, but I have never had anything that made me so proud and so happy as the list of names that came to my house"—referring to the "Loyalty" pledge in which her employees had unanimously agreed to refuse to accept any labor organization (X 3868–3869; III 1029). The Board found that Mrs. Reed's remarks made it plain to the employees that the Company's attitude toward unionization had not changed and that membership of any of the employees in the I. L. G. W. U. was not to be tolerated (X 3869; I 310, 354c, III 1029, V 1362a, IX 3332, 3413, 3438, 3459, X 3666).

The Board appraised the speech in the setting in which it occurred. The calling by Todd of the meeting avowedly to discuss means of preventing organization of the plant by the I. L. G. W. U. and her assumption of the chairmanship of the meeting, in view of her supervisory status, her confidential status, and her presidency of the anti-

[108] Numerous witnesses testified that Mrs. Reed referred to "Mr. Dubinsky or any other ski" (I. 310, 354c, V. 1362a, IX 3332, 3413, 3438, 3459, X 3576, 3666). The Board did not resolve this conflict in testimony (X 3868).

union Loyalty League, were themselves improper. The use of the interdepartmental phones, the relaying by instructors to employees of the direction to attend such a meeting, and the holding of the meeting during working hours, were likewise violative of the Act. In this setting, and in the light of the Company's anti-union background, the Board's finding that Mrs. Reed's speech interfered with and coerced employees in the rights guaranteed them under Section 7 of the Act, is plainly warranted. The speech, in this setting, was not protected by the First Amendment. See *National Labor Relations Board* v. *Virginia Electric and Power Co.*, 314 U. S. 469, 477; *Virginia Electric and Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 538–539, affirming 132 F. 2d 390 (C. C. A. 4); *Thomas* v. *Collins*, 323 U. S. 516, 537; *National Labor Relations Board* v. *American Laundry Machinery Co.*, 152 F. 2d 400, 401 (C. C. A. 2); *National Labor Relations Board* v. *M. E. Blatt Co.*, 143 F. 2d 268, 273–275 (C. C. A. 3), certiorari denied, 323 U. S. 774; *National Labor Relations Board* v. *Trojan Powder Co.*, 135 F. 2d 337, 339 (C. C. A. 3), certiorari denied, 320 U. S. 768; *Elastic Stop Nut Corp.* v. *National Labor Relations Board*, 142 F. 2d 371, 378 (C. C. A. 8), certiorari denied, 323 U. S. 722; *Reliance Mfg. Co.* v. *National Labor Relations Board*, 143 F. 2d 761, 763 (C. C. A. 7); *National Labor Relations Board* v. *William Davies Co.*, 135 F. 2d 179, 181 (C. C. A. 7), certio-

rari denied, 320 U. S. 770; *R. R. Donnelley & Sons Co.* v. *National Labor Relations Board* (C. C. A. 7).

3. *The April 23, 1937, demonstration against I. L. G. W. U. members.*—On April 22, 1937, a local newspaper carried an announcement by the I. L. G. W. U. that Sylvia Hull, one of the Company's operators, had been named as a delegate to the bi-annual convention of the I. L. G. W. U. (X 3869; III 1015). On the next morning, from the time Hull arrived at work until she was removed from her machine by Mrs. Hyde, employment manager, she was subjected to a continuous anti-union demonstration (X 3869–3870; II 535, 541–542d, IV 1339–1340, V 1341–1350, IX 3013–3015, 3479–3480, X 3517). Although Hull sat at her machine sewing and did nothing to provoke any hostility, girls from all over the plant came in groups to her place of work on the eighth floor of the plant (X 3870; IV 1340, V 1341–1343, 1349–1350, VIII 2693, 2926–2927, 2991–2993, IX 3013–3015, 3480). They told Hull that she could not belong to the I. L. G. W. U. and demanded that she surrender her Loyalty League pin (X 3870; IV 1346–1347, 1349, IX 3014, 3036, 3042–3043). Some of the girls stood on nearby tables (X 3870; V 1346–1347); they sang songs and booed (X 3870; V 1346, VIII 2665, 2693, IX 3479–3480). Although Mrs. Allison, the instructor of the section in which Hull worked, was present throughout the demonstration, she did not order the girls back

to work or take any kind of action (X 3870; II 663–664, V 1343–1344, 1347, 1350, X 3573). Mrs. Bogart, head of the dividing department, was also present and pointed Hull out to some of the demonstrators (X 3870; V 1349–1350, IX 3437, 3445–3446). After the demonstration had continued for an hour or so, Employment Manager Hyde appeared and, after watching the demonstration for a short time, ordered the girls to return to work; when they refused to do so, she removed Hull from the floor and sent her home (X 3870; II 535–536, V 1356–1357, X 3517, 3573).

On the same day, Fern Sigler came to work, displaying for the first time her I. L. G. W. U. membership pin, and also wearing a Loyalty League pin (X 3870; I 319). She was subjected to a demonstration similar in character to that to which Hull was subjected (X 3870; I 70–72, 315–316, 319, 321–325, X 3666–3667). Sigler attempted, throughout the demonstrations, to continue sewing, and even when Production Manager Baty, accompanied by Rose Todd, ordered Sigler to his office, she expressed the desire to remain at her work (X 3870–3871; II 442, 444–445, 497–499, 544). Baty, however, commanded her to go to his office and she complied (X 3871; II 444).

The interview in Baty's office was participated in by Mrs. Hyde, Mr. Baty and Miss Todd (X 3871; III 801–807). When Baty insisted on sending Sigler home, she argued with him that she

had a right to join the I. L. G. W. U., and that it was the employer's duty to control its employees. Baty replied, "We don't go into the Wagner Act. We are just running our business here and not a law office." Rose Todd then purported to explain the Company's labor relations policies and told Sigler, among other things, "We are going to run an open shop as long as the majority feels that way" (X 3871; III 801–807).

As a result, Sigler was sent home at once, while no steps were taken to discipline any of the demonstrators (X 3871; II 445, 499, 542–542b, III 807). Neither Hull nor Sigler thereafter returned to work at the plant (X 3890; II 499, 536, 543, 549). While the Company claims to have made attempts to recall Hull, it never actually reached her, nor did the Company take any steps which would guarantee either of the girls safe, unmolested work (X 3871, 3890; II 536, 543, 548–549, V 1356–1357).

Upon these facts, the Board concluded that the Company "approved of and encouraged the demonstrations and took advantage of them to reveal once more to the employees its hostility to the I. L. G. W. U. and its support of anti-I. L. G. W. U. activities," thereby violating Section 8 (1) of the Act (X 3871). The Board also found that Hull did not voluntarily leave her employment, but that the Company temporarily laid her off because of her membership in and activities on behalf of the I. L. G. W. U.,

thereby discriminating in regard to her tenure of employment in violation of Section 8 (3) of the Act (X 3890).[11]

These findings are clearly proper irrespective of whether the demonstrations arose from the Company's prior anti-union activities or from an independent antipathy of the employees to the I. L. G. W. U. One major purpose of the Act is to prevent abuse of the economic power which an employer wields over its employees so as to interfere with and restrain them in the selection of a bargaining agent.[12] Such abuse may plainly result from omission as well as commission on the part of the employer.[13] The Board, as well as the Company's employees, could not but recognize that, in the normal course of operations, an employer is

[11] The complaint did not allege that Sigler's employment was discriminatorily terminated and the Board made no finding in that regard (X 3871, n. 38).

[12] See Section 1 of the Act. See also, S. Rep. No. 573, 74th Cong., 1st Sess., pp. 3, 10; H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 16, 17–18.

[13] Compare *National Labor Relations Board* v. *Hudson Motor Car Co.*, 128 F. 2d 528, 531, 532–533 (C. C. A. 6); *Kansas City Power and Light Co.* v. *National Labor Relations Board*, 111 F. 2d 340, 346–347 (C. C. A. 8); *Westinghouse Electric and Manufacturing Co.* v. *National Labor Relations Board*, 112 F. 2d 657, 660–661 (C. C. A. 2), affirmed *per curiam*, 312 U. S. 660; *Western Union Telegraph Co.* v. *National Labor Relations Board*, 113 F. 2d 992, 996 (C. C. A. 2); *Swift & Co.* v. *National Labor Relations Board*, 106 F. 2d 87, 93 (C. C. A. 10). In each of these cases the court found the source of employer responsibility for unfair labor practices in the fact that it failed to take affirmative action.

prompt to halt, by invocation of its power to discipline, any substantial disturbances which may interrupt its operations. The Company's failure to follow this normal procedure in this case was a patent abuse of its authority over its employees and manifested its approval of such conduct. Cf. *National Labor Relations Board* v. *Elkland Leather Co.*, 114 F. 2d 221, 223 (C. C. A. 3), certiorari denied, 311 U. S. 705. And in considering the effect of such manifest approval upon the employees, the Board could not ignore the part which the Company had already played in fostering hostility to the I. L. G. W. U. An employer may not escape responsibility for the anti-union acts of its employees where "the attitude of the [employer's] non-union men was, if not inspired by, at least encouraged and promoted by the [employer] and its agents." *Clover Fork Coal Co.* v. *National Labor Relations Board*, 97 F. 2d 331, 335 (C. C. A. 6); *National Labor Relations Board* v. *New Era Die Co., Inc.*, 118 F. 2d 500, 504 (C. C. A. 3); *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. 2d 494, 495 (C. C. A. 3); *National Labor Relations Board* v. *Taylor-Colquitt Co.*, 140 F. 2d 92, 93 (C. C. A. 4); *National Labor Relations Board* v. *Goodyear Tire and Rubber Co.*, 129 F. 2d 661, 664 (C. C. A. 5); *National Labor Relations Board* v. *J. Greenebaum Tanning Co.*, 110 F. 2d 984, 987 (C. C. A. 7), certiorari denied, 311 U. S. 662; *National Labor Relations Board* v. *General Motors Corp.*, 116 F. 2d 306, 309–310

(C. C. A. 7); *National Labor Relations Board* v. *J. G. Boswell Co.*, 136 F. 2d 585, 591 (C. C. A. 9).

D. FORMATION OF THE D. G. W. U.; COMPANY PARTICIPATION AND SUPPORT

1. *Formation and administration of the D. G. W. U. by Company representatives.*— Shortly after the March 18 meeting at which Mrs. Reed addressed the employees, two representatives of management, Todd and Atherton, both of whom were officers of the Loyalty League, and another employee, Ormsby, hired an attorney, Tyler, to advise the employees in opposing the I. L. G. W. U. (X 3872; I 38–39, 176, II 555–556, 558–559, Tr. 318). When Tyler asked for a retainer fee, Todd borrowed $1,000 from a local bank upon the unsecured note of the Loyalty League (X 3872; II 556–557; III 959), deposited the money in the Loyalty League checking account, and a League check, signed by Todd as president, and Hartman as treasurer, was given to Tyler (X 3872; I 179, II 378i, 378l–378q, III 949). Upon the attorney's advice that the best way to combat the I. L. G. W. U. was to form a plant union—advice which was given only after this Court held the Wagner Act constitutional on April 12, 1937—Todd called a meeting of the employees on April 27 for that purpose. This meeting was held during working hours. (X 3872; I 328c–328d, II 558–559, IV 1365–1366, IX 3312–3314, 3430, 3457–3458, 3470–3471, X 3530, 3541, 3620, 3667).

Like Loyalty League meetings, it was held on the second floor of the building occupied by the Company's plant (X 3862, 3872; I 39–40, 309, VIII 2666, IX 3033, 3067).

The organizational meeting of the plant union was planned and organized by, and was under the complete control of the Company's representatives (X 3875). Employees, while at work, were notified by their instructors to attend—the instructors having in turn been notified by the Company's telephone operator or by Mrs. Wherry, factory manager (III 1011, 1095–1096, 1108, IX 3344, 3435)—and the meeting was attended by supervisory employees, accompanied by the non-supervisory employees under them (X 3872; I 328c–328d, 354c–354d, II 378ee, 704g, V 1364e, 1374d, VIII 2692, 2911–2913, 2995, IX 3276, 3309–3312, 3315–3316, 3397–3399, 3430–3434, 3467, 3470, X 3551, 3619–3621, 3667). Chairs for the meeting were rented in the name of, and paid for by, the Loyalty League (X 3872; I 345, 349, III 963, V 1621).

Todd presided at the meeting (X 3872; I 328g, III 821). Her opening remarks indicated that she regarded the meeting as par of the series which has preceded it, for she stated that she hoped "this meeting is going to be as enthusiastic as the last one was" (the March 18 meeting), and explained that she had called the meeting "as chairman of the Committee of Employees" (X 3872–3873, III 821). She stated that she had consulted two lawyers whom she had known

for years and that they advised forming a plant union (X 3873; III 822). Todd indicated that she knew the question was in everyone's mind as to why the Loyalty League would not suffice, but that it would not (X 3873; III 822), that a union would have to be formed if they were successfully to resist attempts of organization by an outside union (X 3873; III 822–823). She then told employees that the new organization would be called the "Donnelly Garment Workers' Union," that although she was as distressed as they were at having to use the word "union", it seemed to be necessary (X 3873; III 822).

After listening to Todd's speech and a talk by Attorney Tyler, who had been invited to address the meeting, the employees, without any discussion, voted unanimously to form the D. G. W. U. (X 3873–3874; III 822–826). Before the meeting adjourned, about 1,300 charter membership cards previously prepared were distributed, signed, and collected; by-laws previously prepared, were adopted without alteration; and a general chairman, Todd, and eight group chairmen were nominated by a committee appointed by Todd and were unanimously elected to serve as officers and representatives (X 3874–3875; I 80b–80c, 176–177, 328h–330, III 826–830, X 3553, 3667). The purpose of the organization as stated in its by-laws was, *inter alia,* "the protection of employees and members of this Union from coercion, intimidation, violence or threats of violence,

in order to force them to join unions organized and dominated by outsiders not employees in this plant" (X 3874; III 798f).

Through the membership and activities of supervisory employees, the Company continued its control and direction of the D. G. W. U. (X 3878). In addition to Todd, the general chairman, other supervisory employees including instructors and thread girls, Heath Cowan, head of the receiving department, Marvin Price, adviser on mechanical matters and in charge of maintenance of factory building and equipment, and Ortense Root, head of the sample department, all of whom the Board found to be representatives of management (see *supra*, pp. 23–33), regularly attended, notified employees under them to attend, and took an active part in subsequent meetings of the D. G. W. U. (X 3875–3877; I 99, 131, 136, II 421, 424–424b, 428–429, 510, III 743–763, 830, 854, 865–866, 868–870, 875–882, 887, 891–894, 897–900, 909–911, 1003–1005, 1007, 1011, V 1349–1350, VII 2175, 2255–2257, VIII 2671–2672, 2676–2677, 2680, 2689, 2733, 2911–2912, 2914, 2949–2953, 2961–2962, IX 3157, 3316, 3426–3427, 3435–3436, 3445–3446, 3450, X 3644, 3649–3650, 3671, 3673, 3675).[14] Thus, at

[14] In addition, Dewey Atchison, production engineer (X 3876; II 715–716, 718d–718e, III 1032, 1091), Ted Scoles, head of the cutting department (X 3877; I 136, II 424), Lena Tyhurst, head of the inspection department and in charge of the quality of work (X 3877; II 424a, 428–429, III 1007, VII 2175, VIII 2961–2962, IX 3157, 3435, X 3673), and Mrs. Bogart, head of the dividing department

the 1938 election of officers, five thread girls nominated or seconded the nomination of two nominating committees and both committees were unanimously elected (X 3876; III 875–876, 1003–1004, VIII 2680, 2689, 2733, 2911–2912, 2949). The two committees brought in identical recommendations for the primary offices of chairman, secretary, treasurer and also for the representative of the mechanics (X 3877; III 879). Moreover, upon the election of the nominees, which was by standing vote, Todd called upon two instructors to give their opinions as to which slate received the larger vote (X 3877; III 881–882, 1003–1005, VIII 2953). Todd was the candidate for chairman on both slates (X 3877; III 879). The election in 1939 repeated in many respects the occurrences of the previous year; however, this time Todd herself appointed the two nominating committees without going through the device of nomination and unanimous selection as in the 1938 election (X 3877; III 897–898, 899–900). These two nominating committees each brought in slates naming Todd as chairman and the same employees as treasurer, secretary, and representative of the mechanics (X 3877; III 909–910). Again the election was by an open standing vote (X 3877; III 911).

(X 3877; II 424a, III 1003, V 1349–1350, VII 2255–2257, IX 3445–3446), although not shown to have been active, were members of the D. G. W. U. (X 3877; III 743, 753, 755).

Although upon several occasions employees questioned the right of some of these representatives of management to be members of or to attend and participate in meetings of the D. G. W. U., and expressed the view that the presence of such persons at meetings precluded the employees from speaking freely of their complaints, Todd assured them that all employees except the executives of the Company and the head of the personnel department were properly eligible for membership and might participate in the activities of the D. G. W. U. (X 3877–3878; III 926–927, IX 3320–3324, 3411–3413, X 3554).

2. *The D. G. W. U. procedure for setting piece-work rates.*—Soon after the D. G. W. U. was organized, the group chairmen, who composed its executive committee, appointed a committee to represent the D. G. W. U. in adjusting piece-work rates with the Company (X 3881; III 923). Some 600 to 800 of the Company's 1,300 employees were paid on a piece-work basis so that the procedure by which piece-work rates were fixed was concededly "the most important thing the individual operators have to bargain for with the Company" (X 3881; I 114, II 490, VII 2173, 2186). When a new style of garment was designed, a separate piece-work rate was set for each separate operation to be performed on the garment, i. e., so many cents being paid for each dozen shoulder seams stitched, so many cents for each dozen pockets set in, etc. (V 1374f–1375).

The piece-work committee appointed consisted of Mrs. Lulu Nichols, Josephine Spalito, and Rose Todd (X 3881; III 923). Mrs. Nichols, a supervisory employee, and Miss Spalito, her assistant, were both employed by the Company for the purpose of establishing for the Company the piece-work prices to be paid its employees (X 3881; II 417–418, 718f, III 1007, 1109, V 1374–1375, VII 2144–2148, 2158, 2234–2239, 2400). Mrs. Nichols was described by Employment Manager Hyde as an "executive" of the Company (X 3881; III 1109), and she admittedly had final authority in setting piece-work rates on behalf of the Company (X 3881; I 114, VII 2114, 2158, 2234–2239, 2400). Thus, the same persons who set the rates on behalf of the Company in the first instance, were also representatives of the D. G. W. U. for the purpose of protesting and negotiating with regard to those rates (X 3881).

3. *The closed-shop, check-off and wage agreements.*—On May 6, 1937, Todd and the D. G. W. U. group chairmen informed Mrs. Reed that they would want a contract concerning hours, wages, and working conditions "which up to now have been satisfactory," and that they would like a closed shop (X 3878; III 913). Mrs. Reed replied, "I understand that is very essential to industrial peace" (X 3878; III 913). The D. G. W. U. then expressed a desire to pay part of the salary of Rose Todd, a substantial amount of whose working time, it was contemplated, would

be spent on D. G. W. U. business, and Mrs. Reed, acquiescing, told Todd, "I do not feel at the present time that you need to give all of your time to the union" (X 3878; III 913). In fact, as we have shown, (*supra*, p. 31), the Company continued to pay all of Todd's regular salary and the amount paid her by the D. G. W. U. was in addition.

Thereafter, in a single day, May 27, 1937, a contract providing for a closed shop was presented by the D. G. W. U. to the Company, was modified at the suggestion of the Company to include, *inter alia*, a provision that no employee should serve on the bargaining committee of the D. G. W. U. unless he had been in the employ of the Company for at least a year, and was agreed upon and signed by the parties (X 3879; I 84–86, 89–90, 198, III 807–811, 918–922, VII 2095–2098, 2104–2105, 2376, 2378–2379). In June, after the I. L. G. W. U. had publicly announced its intention to obtain a minimum weekly wage of $16.00, Todd recommended to the group chairmen, and they decided, that in order to improve upon the I. L. G. W. U.'s accomplishment, the D. G. W. U. should demand a minimum of $16.50 for piecework operators (X 3880; I 118, III 929). The Company granted this demand and entered into a supplemental wage agreement with the D. G. W. U. on June 22 (X 3879–3880; II 462, III 812–821, VII 2110–2112, 2379–2386). In August or September 1937, the Company granted the

D. G. W. U.'s request for a check-off of monthly dues of 25 cents and each employee thereafter signed a card prepared by the Company authorizing such check-off (X 3880; I 224, 226–227, 233–234, 259, 262, 274a–274b, III 799, VII 2112–2113, 2387–2388). The D. G. W. U. issued no receipts, kept no record of individual dues payments and had no means of knowing what individuals paid dues in the past months (X 3880; I 266–271, 292a, II 704g–704i). Nor were the general chairman and the treasurer of the D. G. W. U. able to state at the hearing what proportion of each month an employee must work to entitle the D. G. W. U. to collect his dues from the Company (X 3880; I 271, II 704i). The original closed-shop agreement, the supplemental wage agreement, and the check-off agreement continued in effect without change up to the date of the hearing before the Board (X 3880; I 126–127, 271, 277–278, III 947–948, VII 2112, A 389).

4. *Further financial and other support by the Company.*—The Company, in various other ways, lent financial and other support to the D. G. W. U. It permitted not only the organizational meeting, but the succeeding three or four other membership meetings to be held during working hours (X 3882; IX 3314–3315, 3410–3411, 3414 3434, 3449, 3450, 3458, X 3669–3670). Thereafter, although regular monthly meetings of the general membership were held after working hours and on the employees' own time, they con-

tinued to be held on the second and later on the first floor of the building in which the plant is located. (X 3882; I 129–130, IX 3228). Prior to May 10, 1937, the D. G. W. U. obtained the permission of the landlord to use the second floor as a meeting place and pay no rent therefor (X 3882; I 129–130).[15] After May 10, 1937, the D. G. W. U. continued to meet on the second floor until the Company remodeled a portion of the first floor to serve as an auditorium which then became the meeting place (X 3882; I 130–131, II 380–381, III 877, 939, 943). Although the D. G. W. U. met on the second floor monthly from May 1937 on, it was not until November 1937 that the question of paying rent was raised. (X 3882; II 378cc–378dd, III 939, 943). The first rental payment was made in April 1938 and consisted of $3.00 per meeting held during the past year (X 3882; II 378cc–378dd). It is plain that

[15] Although the first and second floors were not leased by the Company prior to May 1937 (I 129–130, II 380–381), employees had regularly attended Loyalty League meetings and Company style shows held on these floors and did not know whether or not they were leased by the Company (VII 2354–2358, VIII 2666, 2897, IX 3033, 3067, 3229). This free use of the property can only be explained by the assumption that the landlord regarded the activities of the D. G. W. U. as a part of the Company's business activities—a gratuity which the tenant would expect to be accorded as a corollary to its lease. The grant by the landlord to the D. G. W. U. would clearly never have been given if it had not been sought by the Company's supervisors, as it was (I 129–130), and desired by the Company.

prior to November 1937, rent-free use of the Company's premises was contemplated: Todd, the general chairman, twice announced at meetings that use of the Company's facilities was entirely proper (X 3882; III 835, 853).

Meetings of the group chairmen who composed the executive committee of the D. G. W. U., prior to May 1938, were held in the office of Mrs. Spilsbury, head of the designing department (X 3882–3883; I 131, 136, III 928), and thereafter in the auditorium on the first floor (X 3883; III 946). No rental was ever paid for such use of this property (X 3883; II 378cc–378dd, III 877–912, Tr. 4989–5030, 5000, 5024).

Both the general meetings of the D. G. W. U. and the meetings of the group chairmen were called through use of the Company's facilities, either by use of its interdepartmental telephone system, or by sending a so-called I. D. M. (interdepartmental memorandum) to each department of the plant through the Company's regular messenger service (X 3883; I 128a–129, II 378ee, 704g, V 1364e, 1374d, VIII 2897, IX 3152–3153, 3276, 3397–3399, 3434, X 3558). Announcement of a meeting over the Company's plant telephone system was accomplished by Todd's notifying the telephone operator to call each department. Each section had a telephone and it was the duty of the instructor or thread girl to answer the telephone and convey any message that might be given either to the employees generally, if it was

a general meeting, or to the specific employee in question if it was a group chairmen meeting (X 3883; V 1374d, VIII 2968, IX 3434, 3452, 3467–3468, 3474, X 3558). The interdepartmental telephones were not available for use by the employees generally, but could only be used for calls by supervisory employees pertaining to Company business (X 3883; IX 3342, X 3672). In addition, Todd called meetings of employees generally or of the group chairmen, by preparing a notice on the Company's I. D. M. paper which was sent to each section of the plant via the Company's messenger service (X 3883; I 128a–129, VIII 2897, IX 3152–3153, 3480, X 3558, 3671). Upon the arrival of an I. D. M. in any section, it was the duty of the instructor or thread girl to read the I. D. M. and pass it to the girls in the section (X 3883; I 128a–129, IX 3152–3153, 3342, X 3487, 3558, 3671, 3672, 3759).

Todd also utilized the I. D. M. system for collecting assessments and sending instructions pertaining to D. G. W. U. business to members (X 3883; III 869, 900, 936). The D. G. W. U. received its mail at the plant through Company messengers and frequently used the plant bulletin boards (X 3884; I 128–129, 264–265, VIII 2580).

Piece-work operators who served as group chairmen or officers were paid by the Company for time lost from work while attending to

D. G. W. U. business (X 3884; IX 3427–3429, 3447–3449, 3466–3467, X 3603–3604, 3606–3609 3618). Time workers were allowed to take time from their work with no deductions in pay (X 3884; I 127–128, 166, Tr. 6942).

At a meeting on May 11, 1937, Todd announced that "our work will be conducted" at a desk on the ninth floor of the plant and that she could be reached on Union business at "any time necessary" (X 3884; III 830, 833, 835). Todd's desk was the D. G. W. U.'s only offices; its records were kept there in a file belonging to the Company (X 3884; I 35–36) and Union business was regularly transacted by employees who went there for that purpose (X 3884–3885; I 133, III 831, 869–870). Thus, the check-off cards heretofore referred to, which were printed and distributed by the Company, were signed and turned in at this desk over a two-week period by employees who came there from all over the plant (X 3885; I 262–263). Membership cards of those who were absent from the April 27 meeting were signed and left at this desk (X 3885; Tr. 451). When Todd left on her vacation in December 1937, she informed the group chairmen that a substitute would be at her desk from 11:00 a. m. to 12:45 each day—much longer than the usual half-hour lunch period—to transact D. G. W. U. business (X 3885; III 941, IX 3393).

Grievances were reported to Todd during the working day and she attended to them on Company time (X 3885; Tr. 611–612). She also collected money for the D. G. W. U. on Company time and directed the D. G. W. U. representatives to do the same (X 3885; III 869).

Membership cards were mimeographed after working hours on a machine owned by the Company (X 3885; I 59–60, 62–62a, 262). Copies of by-laws were produced on a ditto machine belonging to the Company (X 3885; I 62). The D. G. W. U. owns no typewriter and the secretary of the D. G. W. U. has often used a typewriter owned by the Company for typing the minutes of the meetings of the D. G. W. U. and of the group chairmen (X 3885; I 107–108).

5. *The Board's conclusions regarding the D. G. W. U.*—Either the Board's findings regarding Todd's supervisory or confidential status (*supra*, pp. 28–32), or its findings respecting the instructors' or thread girls' status as foremen and assistant foremen (*supra*, pp. 23–28), in and of themselves would necessitate the finding that the Company dominated the formation and administration of the D. G. W. U. Todd's role in the formation and administration of the D. G. W. U. (*supra*, pp. 53–58, 59–66), was such that, assuming her supervisory or confidential status, there can be no doubt of the correctness of the Board's finding that through her the Company dominated

the formation of the D. G. W. U. and thereafter retained Company control of that organization (X 3886). Similarly, the membership and activities in the D. G. W. U. of the instructors and thread girls (*supra*, pp. 53–58) were such that, assuming their status as foremen and assistant foremen, there can be no doubt of the correctness of the Board's finding that their "presence inevitably prevents the organization from being free of the [Company] domination" (X 3886). Their role in the nomination and election of the executive committee in 1938 (*supra*, p. 57), itself spelled domination.

Quite apart from the role of Todd and the instructors and thread girls in the D. G. W. U., the composition of its committee for the adjustment of piece-work rates itself constituted fundamental and unmistakeable domination of the D. G. W. U., as the Board found (X 3887). As shown (*supra*, pp. 58–59), this committee, the most important of all the D. G. W. U. committees, was composed entirely of management representatives, two of whom had as their sole duty the job of establishing piece-work rates on behalf of the Company. The result was, as the Board noted (X 3887), that the Company "sits on both sides of the bargaining table and the aggrieved operators are left without any independent collective bargaining with regard to piece-work rates,

ordinarily a matter jealously guarded for the promotion of the employees."[16]

The House Committee Report on the bill which became the Act, in explaining the purpose of Section 8 (2) of the Act, stated that "collective bargaining is reduced to a sham when the employer sits on both sides of the table" (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 18). It is, of course, immaterial, when the employee organization is dominated by the employer, as here, that the employees may feel that they are acting freely in having a representative of management serve as their bargaining agent. The Act does not permit such a course of conduct. *National Labor Relations*

[16] For descriptions of the manner in which bona fide unions bargain respecting piece rates, see The Twentieth Century Fund, *Trends in Collective Bargaining* (1945), pp. 74–75; Sumner H. Slichter, *Union Policies and Industrial Management* (1941), pp. 341–344; C. Lawrence Christenson, *Collective Bargaining in Chicago: 1929–1930* (1933), pp. 341–345; Morris Greenberg, *How to Operate Under a Collective Agreement*, Society for the Advancement of Management Journal, Vol. III, No. 1 (January, 1938), p. 8; National Industrial Conference Board, Studies in Personnel Policy No. 19, *Some Problems in Wage Incentive Administration* (1940), pp. 15–16; John R. Commons, *Trade Unionism and Labor Problems* (2nd series, 1921), pp. 215–217; Wilfred Carsel, *A History of the Chicago Ladies' Garment Workers' Union* (1940), p. 247; International Ladies' Garment Workers' Union, *Report of the General Executive Board to the Twenty-fifth Convention, 1944*, pp. 50–53; Spencer Miller, Jr., *Labor's Attitude Toward Time and Motion Study*, Mechanical Engineering, Vol. 60, No. 4 (April 1938), p. 289, 290–291; Harold B. Bergen, *Problems of Scientific Management in Unionized Plants*, Mechanical Engineering, Vol. 60, No. 3 (March 1938), p. 235, 237–238.

Board v. *Pennsylvania Greyhound Lines*, 303 U. S. 261, 267–268; *National Labor Relations Board* v. *H. E. Fletcher Co.*, 108 F. 2d 459, 465–466 (C. C. A. 1), certiorari denied, 309 U. S. 678; *National Labor Relations Board* v. *Griswold Mfg. Co.*, 106 F. 2d 713, 721 (C. C. A. 3); *Virginia Ferry Corp.* v. *National Labor Relations Board*, 101 F. 2d 103, 105 (C. C. A. 4); *American Enka Corp. v. National Labor Relations Board*, 119 F. 2d 60, 62–63 (C. C. A. 4); *National Labor Relations Board* v. *Rath Packing Company*, 115 F. 2d 217 (C. C. A. 8).

Moreover, all the circumstances accompanying the organization and functioning of the D. G. W. U. compel the conclusion that it is a Company-dominated organization. Prior to the enactment of the Act and thereafter until the Act was held constitutional, the Company had made it clear to its employees that it was opposed to the I. L. G. W. U., and that membership therein was an act of serious disloyalty to Mrs. Reed (*supra*, pp. 33–53). When the Act was declared constitutional, Todd and Atherton, officers of the anti-I. L. G. W. U. Loyalty League and the whole supervisory staff found that a union was necessary, though distasteful (*supra*, pp. 53–55). At the same meeting at which the subject of organizing a union was first presented to the employees, the D. G. W. U. was organized, officers elected, by-laws adopted and approximately 1,300 employees enrolled as members (*supra*, pp. 55–56).

The use of the Loyalty League bank account in borrowing money, hiring an attorney, and renting chairs serve to make abundantly clear the similarity of the role played by the D. G. W. U. to that played by the Loyalty League; the conformity to the accustomed procedures of the Loyalty League as to the method of calling a meeting, place of meeting, and time (*supra*, pp. 37–40, 44–45, 53–54, 61–65), point unmistakably in the same direction and were useful means of taking advantage of the employees' accustomed subservience to the employer's desire to place the employees in a strait-jacket with respect to labor matters. No employee confronted with the situation presented at the April 27 meeting could have felt free to refuse to join the D. G. W. U. The hasty grant of the closed-shop and check-off (*supra*, pp. 59–61), prevented the escape of any employees thereafter from the pattern of anti-I. L. G. W. U. employment relations dictated by the Company. Cf. *Virginia Electric and Power Co.* v. *National Labor Relations Board*, 319 U. S. 533.

In addition, the grant of extensive use of the Company's facilities, of pay for time spent during working hours on D. G. W. U. business, as well as the membership of the instructors, thread girls and other representatives of management in the D. G. W. U. (*supra*, pp. 53–54, 56–57, 59, 61–66), constituted such substantial support by the Company of the D. G. W. U. as to compel the Board's conclusion that such labor organization

existed in contravention of Section 8 (2) of the Act."

The grant by the Company of a closed-shop contract to the D. G. W. U. under the circumstances was, as the Board found (X 388), a violation of Section 8 (3) of the Act, for it constituted discrimination in regard to a condition of employment to encourage membership in a labor organization as proscribed by that Section. All employees of the Company, as a condition of their employment, were compelled to join the D. G. W. U. The Company in thus forcing D. G. W. U. membership upon its employees was not protected by the proviso to Section 8 (3) of the Act which protects closed shop contracts with legitimate labor organizations which have been selected by a majority of the employees in an appropriate bargaining unit, for the proviso exempts from its protection any labor organization "established, maintained, or assisted" in violation of Section 8 (2) of the Act.

E. THE BOARD'S ORDER IS VALID AND PROPER

The Board's order required the Company to cease and desist from dominating, interfering with, or contributing support to the D. G. W. U. or any other labor organization; from giving effect to any contract with the D. G. W. U.; from dis-

[11] Under the compelling facts of this case, the testimony of employees that they joined and formed the D. G. W. U. of their own free will was properly accorded no weight by the Board (See discussion *infra*, pp. 73-82).

couraging membership in the I. L. G. W. U. or any other labor organization; from using the Loyalty League to interfere with, restrain, and coerce its employees; and from in any other manner interfering with, restraining, or coercing its employees (X 3896-3897). As affirmative action which would remedy the Company's unfair labor practices, the Board ordered the Company to withdraw recognition from and completely disestablish the D. G. W. U.; to reimburse its former and present employees for all dues and assessments which it has deducted from their wages on behalf of the D. G. W. U.; and to post appropriate notices (X 3897).

These are the usual and uniformly approved remedies for unfair labor practices such as those found by the Board in this case. Aside from their challenge to the Board's findings of unfair labor practices, neither the Company nor the D. G. W. U. in their briefs in the court below challenged any portion of the order except that requiring reimbursement of checked-off dues and assessments. The validity of such an order requiring reimbursement of dues checked off under a closed-shop agreement with a company-dominated union has heretofore been approved by this Court in *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, 539–545, and is no longer open to question.

II

THE COURT BELOW ERRED IN HOLDING THAT THE COMPANY AND THE D. G. W. U. WERE DEPRIVED OF DUE PROCESS BY THE BOARD'S TREATMENT OF CONCLUSIONARY TESTIMONY RECEIVED PURSUANT TO THE COURT'S REMAND ORDER

As stated *supra*, p. 9, the court below, in its first decision, held that the Board had denied the Company and the D. G. W. U. due process by excluding the testimony of employees, in accordance with offers of proof, that they formed and joined the D. G. W. U. of their own free will and did not know of any interference with, domination or support of the D. G. W. U. by the Company. The offers of proof were very comprehensive, including not only conclusionary testimony to that effect but also cumulative testimony as to how and why employees had formed or joined the D. G. W. U. (III 743–763, 765–795). At the hearing on remand the Board received, as we have shown, the testimony which the court held had been wrongfully excluded (*supra*, p. 10).

The court below in its second decision, from which this appeal is taken, held that although the Board had received the evidence referred to in its first decision as having been wrongfully excluded, the conclusionary testimony of employees that they formed and joined the D. G. W. U. of their own free will and were not influenced,

interfered with or coerced by the Company "received no different or greater consideration upon the second hearing than it did upon the first, and that it was disregarded in both hearings" (XIII 44).

The court accordingly concluded that the Board had again denied due process to the Company and the D. G. W. U. (XIII 52).

A. THE PROPRIETY OF THE BOARD'S TREATMENT OF THE CONCLUSIONARY TESTIMONY

It is submitted that the Board's treatment of the evidence under consideration was entirely proper. As mentioned, *supra*, pp. 11–12, the Board stated in its decision that it had "carefully considered all such evidence" but found that it did "not overcome more positive evidence in the record that the [Company] committed acts of interference and assistance in the formation and administration of the D. G. W. U. which subjected that organization to the [Company's] domination and which removed from the employees selection of the D. G. W. U. the complete freedom of choice which the Act contemplates" (A 619). It found, under the circumstances of this case, that such testimony was "totally unpersuasive that the employees voluntarily designated the D. G. W. U." and expressed the view, moreover, that it was "impelled to adhere to the opinion, derived from [its] experience in administration of the Act, that conclusionary evidence of this

nature is immaterial to issues such as those presented in this case" (A 619).

We submit that the Board's treatment of the testimony in question was entirely proper for several reasons. Under the circumstances of this case, the organization, structure, and Company support of the D. G. W. U. were such as to ensure Company domination. As shown *supra*, pp. 33–71, the Company, after demonstrating strong opposition to the organization of its employees by the I. L. G. W. U., formed an organization called the Loyalty League whose primary purpose was the frustration of efforts of the I. L. G. W. U. to organize its employees, and thereafter, through the Loyalty League and its supervisory employees, set up and took a leading part in the administration of a labor organization called the D. G. W. U., participated in determining the structure of the bargaining committee, controlled the piece-work committee through membership of its supervisory employees on that committee, granted the D. G. W. U. a closed-shop contract, agreed to a checkoff of dues for that labor organization, and otherwise contributed financial and other support to it. The evidence of Company domination and support was thus so strong and conclusive that the Board was compelled to find a violation of Section 8 (2) of the Act. No introspective testimony of an employee that he in fact was not coerced could overcome the necessary conclusion to be drawn from the Company's

overt acts. Under similar facts, the Court of Appeals for the District of Columbia in *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. 2d 641, 653, held that employee testimony, excluded by the trial examiner, as to whether the employees were conscious of being influenced, restrained, interfered with, coerced or dominated by their employer "would have been irrelevant."

Moreover, even assuming *arguendo*, that the facts described *supra*, pp. 33–71, would not "ensure Company dominance and violate the Act" (*Bethlehem Steel Co.* v. *National Labor Relations Board, supra*, 120 F. 2d at 653)—that a different inference might be possible—the conclusionary testimony of the employees that they joined the D. G. W. U. of their own free will and were not influenced, interfered with, or coerced by the Company is so introspective and unreliable in character that the Board should not be required to accord it greater weight than the more demonstrable contrary evidence, or, indeed, to receive such evidence at all. Thus the Board was correct both in holding that the conclusionary testimony was outweighed, and that, while it had been considered, it was immaterial (A. 619.). This is so partly because employees who have been subjected to their employer's illegal interference cannot separate in their own minds those beliefs which have been instilled by their employer's unfair conduct from those which they formed or might have

formed independently of such conduct. Hence, an employee may believe that he has not been coerced, and so testify, when in fact he has been coerced. The domination, interference, and restraint of the employer having economic power over him through a long period of years, as here, necessarily colors the employee's point of view. And even if the employee realizes that he has been influenced or coerced by his employer's coercive conduct, he may not feel free so to express himself while testifying in the presence of his employer or its representatives (compare II 613, 718b–718c, VII 2065–2066, VIII 2621).[18]

This Court, in *National Labor Relations Board* v. *Link-Belt Co.*, 311 U. S. 584, 588, recognized the futility of any attempt by the Board to "probe the precise factors of motivation which underlay each employee's choice" of a bargaining representative, and pointed out that "normally the conclusion that their choice was re-

[18] It is well recognized that employer-conducted polls as to the preference of employees for a bargaining representative cannot be considered indicative of the free and uncoerced choice of the employees. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 76, affirming 110 F. 2d 29, 36 (App. D. C.); *National Labor Relations Board* v. *New Era Die Co.*, 118 F. 2d 500, 503–504 (C. C. A. 3); *Titan Metal Mfg. Co.* v. *National Labor Relations Board*, 106 F. 2d 254, 260 (C. C. A. 3), certiorari denied, 308 U. S. 615; *National Labor Relations Board* v. *Rock Hill Printing & Finishing Co.*, 131 F. 2d 171, 172–173 (C. C. A. 4); *Shell Oil Co.* v. *National Labor Relations Board*, 128 F. 2d 206–207 (C. C. A. 5); *National Labor Relations Board* v. *Colten*, 105 F. 2d 179, 181–182 (C. C. A. 6).

strained by the employer's interference must of necessity be based on the existence of conditions or circumstances which the employer created or for which he was fairly responsible and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act contemplates." This necessity of weighing the employer's conduct in each case, and determining from the nature of the conduct, rather than from the minds of the employees, whether the conduct has been in contravention of the Act, has been recognized by the courts in many situations. Indeed, it has become almost axiomatic that where employer conduct is of a kind which tends to interfere with or coerce employees in their rights guaranteed by Section 7 of the Act, the Board does not need to prove that such conduct actually had the effect of interfering with or coercing the employees involved.[19]

[19] *See National Labor Relations Board* v. *John Englehorn & Sons*, 134 F. 2d 553, 557 (C. C. A. 3); *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. 2d 951, 955–956 (C. C. A. 4); *Humble Oil & Refining Co.* v. *National Labor Relations Board*, 113 F. 2d 85, 92 (C. C. A. 5); *National Labor Relations Board* v. *American Mfg. Co.*, 132 F. 2d 740, 742 (C. C. A. 5); *National Labor Relations Board* v. *Aintree Corp.*, 132 F. 2d 469, 472 (C. C. A. 7), certiorari denied, 318 U. S. 774; *National Labor Relations Board* v. *Illinois Tool Works*, 153 F. 2d 811, 814 (C. C. A. 7); *Elastic Stop Nut Corp.* v. *National Labor Relations Board*, 142 F. 2d 371 (C. C. A. 8), certiorari denied, 323 U. S. 722; *National Labor Relations Board* v. *Crown Can Co.*, 138 F. 2d 263 (C. C. A. 8), certiorari denied, 321 U. S. 769.

The Circuit Court of Appeals for the Seventh Circuit, in *Western Cartridge Co.* v. *National Labor Relations Board*, 134 F. 2d 240, 244–245, certiorari denied, 320 U. S. 746, aptly summarizes the reasons for refusing to accord weight to conclusionary testimony similar to that here involved, as follows:

> Uncontradicted testimony of a large number of employees to the effect that they were free from coercion and under no sense of constraint cannot avail the Independent, *Bethlehem, etc.* v. *N. L. R. B.*, 1 Cir., 114 F. (2d) 930, 937, and *American Enka Corp.* v. *N. L. R. B.*, 4 Cir., 119 F. (2d) 60, 62. and a showing of non-coercion in one instance does not disprove an affirmative showing of coercion in another instance, *United States* v. *General Motors Corp.*, 7 Cir., 121 F. (2d) 376, 405. The recognition of constraint calls for a high degree of introspective perception, *Bethlehem Shipbuilding* case, *supra*, 114 F. (2d) 937, and it would be a rare case where the finders of fact could probe the precise factors of motivation underlying each employee's choice. Normally, the conclusion that the employees' choice was restrained by the employer's interference must of necessity be based on the existence of conditions or circumstances which the employer created or for which he was fairly responsible, and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act

contemplates, *N. L. R. B.* v. *Link-Belt Co.*, 311 U. S. 584, 588, 61 S. Ct. 358, 85 L. Ed. 368.[20]

Moreover, the conclusion of a witness as to whether conduct of the employer has coerced him or any other employee, like many types of lay opinion evidence, should be excluded in the interest of judicial and administrative efficiency. "A showing of non-coercion in one instance does not disprove an affirmative showing of coercion in another instance." *Western Cartridge Co.* v. *Na-*

[20] For similar rulings of other circuit courts of appeals, see *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. 2d 867, 870, 871 (C. C. A. 5), certiorari denied, 310 U. S. 651; *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board*, 114 F. 2d 930, 937 (C. C. A. 1), certiorari dismissed, 312 U. S. 710; *American Enka Corp.* v. *National Labor Relations Board*, 119 F. 2d 60, 62 (C. C. A. 4). But cf. *National Labor Relations Board* v. *Swank Products, Inc.*, 108 F. 2d 872, 875 (C. C. A. 3).

Compare also *National Labor Relations Board* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, reversing 101 F. 2d 841, 847 (C. C. A. 4), and *National Labor Relations Board* v. *Automotive Maintenance Machinery Co.*, 315 U. S. 282, reversing 116 F. 2d 350, 355-356 (C. C. A. 7), in which this Court reversed the circuit courts of appeals which had set aside Board orders of disestablishment on the ground that the employees desired to be represented by the labor organization which the Board found to be company dominated. Cf. *National Labor Relations Board* v. *New Era Die Co.*, 118 F. 2d 500, 505 (C. C. A. 3), wherein the court upheld the Board in its refusal to permit the employer, who had refused to bargain with an accredited bargaining representative, to show by the testimony of his employees, who had revoked their authorizations of such representative, that they had done so voluntarily. This testimony the court held was "properly rejected as immaterial."

tional Labor Relations Board, 134 F. 2d 240, 244–245 (C. C. A. 7), certiorari denied, 320 U. S. 746; cf. *National Labor Relations Board* v. *Trojan Powder Co.*, 135 F. 2d 337, 339 (C. C. A. 3), certiorari denied, 320 U. S. 768; *United States* v. *General Motors Corp.*, 121 F. 2d 376, 405 (C. C. A. 7), certiorari denied, 314 U. S. 618. In this case, 32 employees testified that they were not coerced and the Company offered to prove that the remaining approximately 1,200 employees would have testified to the same effect (*supra*, pp. 6–7, 19). The Board on the other hand called several of the employees listed in the offer of proof who testified that employees were coerced (IX 3471, X 3497–3498, 3523–3528, 3552–3554, 3612, 3665–3670, 3691–3693–3703). If the Board is required to receive this testimony, it will be unable to limit those who testify on this question to any number short of the total number of employees. And if such testimony must be admitted, "an undue burden will be placed on the adversary to develop the facts on cross-examination." Note, *Evidence Problems in N. L. R. B. Hearings and the Applicability of the Proposed Code of Evidence* (1942), 55 Harv. L. Rev. 820, 826. Many months might be thus consumed in examining and cross-examining all the witnesses whom the Company might offer for this type of testimony. Unless such voluminous testimony could be of substantial value in deciding the issue involved, the necessary time and expense consumed would be

wasted and the hearing of many unfair labor practice cases would be so delayed as to make largely ineffectual the Act's remedial provisions. Compare Section 10 (i), Appendix, *infra*, p. 110. In short, the Board is well within the bounds of an administrative discretion informed by experience when it excludes conclusionary testimony of the type here involved. Evidence of this sort is of too little probative value to outweigh the burdens attendant upon its admission.

In any event, the Company was not here prejudiced by the treatment which the Board accorded this testimony. As this Court, in *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146, 163, pointed out, where evidence "would be of slight probative value" the Board might properly say "that accepting the offers of proof it would not alter the determination" of the question before the Board. Compare also the attitude of the Circuit Court of Appeals for the Tenth Circuit in *Wilson & Co., Inc.* v. *National Labor Relations Board*, decided July 8, 1946, 18 L. R. R. M. 2198, 2200, toward background evidence rejected by the trial examiner as immaterial. The court said: "If this evidence were admitted and considered, it would not change the result here. Therefore, it is unnecessary to pass upon its admissibility."

B. THE PROPRIETY OF THE BOARD'S RETENTION OF THE SAME TRIAL EXAMINER TO PRESIDE AT THE HEARING ON REMAND

In holding that the trial examiner was disqualified to sit at the hearing on remand merely

because, at the first hearing, he had expressed his opinion that the conclusionary testimony above discussed was immaterial (XIII 38–40, 51), the court below was clearly wrong. In the first place, if the Board is correct in its view that, under the facts of this case, such testimony is without probative force, then the court's ruling relative to the trial examiner must fall for that reason alone. But in any event, there was no more reason for disqualifying the trial examiner from presiding at the hearing on remand than there would be for disqualifying a judge who has ruled erroneously upon the materiality of evidence from hearing the same case on remand. It is well settled that a judge is not disqualified from presiding at a hearing because of his previous erroneous rulings in the case. *Ex parte American Steel Barrel Co.*, 230 U. S. 35; *Berger* v. *United States*, 255 U. S. 22, 23–24. The same doctrine applies to administrative proceedings. *United States* v. *Morgan*, 313 U. S. 409, 421.

Indeed, there is even less reason for disqualifying the trial examiner than there is for the disqualification of the judge in such circumstances. The trial examiner has no power to decide the case; he may only make recommendations to the Board. Section 10 (c) of the Act; *National Labor Relations Board* v. *Air Associates, Inc.*, 121 F. 2d 586, 588–590 (C. C. A. 2); *National Labor Relations Board* v. *Weirton Steel Co.*, 135 F. 2d 494, 496 (C. C. A. 3); *National Labor Relations*

Board v. *Botany Worsted Mills*, 133 F. 2d 876, 882 (C. C. A. 3), certiorari denied, 319 U. S. 751; *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. 2d 38, 43 (C. C. A. 6). The Board may accept some or all of his recommendations or may reject all. In this case it accepted most, but not all of his recommendations. It expressly and independently ruled upon the weight and materiality of the evidence which the court below directed it to consider upon the remand. In short, it was the Board, not the trial examiner, who decided the case.

No better presiding officer could have been chosen than the examiner who conducted the initial proceedings. He was especially well qualified, for he was familiar with the company's operations, the names and identity of the persons involved, and the voluminous record at the previous hearing, which was a part of the entire record to be considered after the hearing on remand. He had observed the demeanor of the witnesses who testified at the first hearing and was therefore well qualified to decide the credibility of their testimony. Moreover, the trial examiner was familiar with the issues involved and the reason why the second hearing was being conducted. He was, accordingly, the logical person to be selected to preside at the second hearing.

III

THE COMPANY AND THE D. G. W. U. WERE NOT DEPRIVED OF DUE PROCESS BY REASON OF THE BOARD'S LIMITATION OF EVIDENCE AT THE HEARING ON REMAND TO THOSE MATTERS MENTIONED BY THE COURT BELOW AS HAVING BEEN ERRONEOUSLY EXCLUDED AT THE FIRST HEARING

In its first decision (123 F. 2d 215), the court below did not direct that there be a hearing *de novo* as to all issues presented by the pleadings, but only that the Company and the D. G. W. U. be afforded "an opportunity to introduce all of the competent and material evidence *which was rejected by the Trial Examiner*" (italics supplied) (*id.* at 225). The mandate remanded the case to the Board "for further proceedings not inconsistent with the opinion of [the] court."[20a] The hearing on remand was therefore only a supplemental hearing and the trial examiner, whose action was approved by the Board in its decision (A 618), limited it rather strictly to the receipt of evidence which the court below had held was erroneously rejected at the first hearing (VII 2508–2519, VIII 2542–2564, 2788, IX 3276–3308). The only exception which he made to this limitation was in the case of Mrs. Reed, the Company's president, who had been unable to testify at the first hearing because of illness (VII 2064–2065, 2077–2092, 2151–2156). The hearing on remand

[20a] The mandate is unprinted but is on file with the Clerk of this Court.

was conducted upon the same complaint and answer without any amendment, and no new issues were therefore presented by the pleadings.

The court below nevertheless ruled that the Company and the D. G. W. U. were denied due process by the trial examiner's refusal to receive certain evidence at the hearing on remand which the court deemed material but which it had not found was improperly rejected at the first hearing (XIII 46-51). This evidence falls into the following categories: (1) evidence not within the scope of the remand order by reason of the fact that it had not been rejected at the first hearing; (2) evidence rejected by the trial examiner at the first hearing as well as at the hearing on remand, the exclusion of which was not mentioned in the court's first opinion; and (3) evidence rejected at both hearings, the exclusion of which was approved by the court in its first opinion. The propriety of the Board's rejection of each of these categories will be discussed separately.

A. EVIDENCE NOT REJECTED AT FIRST HEARING

The evidence included in the first category—evidence which was either not offered or which was offered and received at the first hearing—related to (1) whether employees at other plants having duties similar to those of the supervisory employees who were active in the formation and administration of the D. G. W. U. were eligible to membership in the I. L. G. W. U., and (2)

whether certain union members discharged or laid off prior to the passage of the Act were discharged or laid off because of their union membership or activities.

1. *Eligibility of supervisors to union membership.*—No evidence was offered at the first hearing regarding the eligibility of any employees to membership in the I. L. G. W. U. At the hearing on remand, the trial examiner at first permitted counsel for the Company to call to the witness stand and question an official of the I. L. G. W. U. respecting the eligibility of instructors to membership in that union (VII 2507, VIII 2523–2527). When she testified that they were ineligible and counsel for the Company indicated that he intended to prove that they were eligible by showing numerous instances of their admission (VIII 2523–2527, 2529–2533, 2537–2540, 2543), the trial examiner struck all testimony he had received on that issue and refused to receive further evidence for the reason that it was not within the scope of the remand order and for the additional reason that it was immaterial to any issue in the case (VII 2508–2510, VIII 2559–2564, 2788, IX 3257, X 3787–3799).

Since such evidence was not offered at the first hearing, it could not fall within the purview of that evidence which the court below directed the Board to receive upon remand, that is, the "competent and material evidence which was rejected by the Trial Examiner" at the first hearing. The

trial examiner made it clear at the hearing on remand—and we think properly so—that with the exception of testimony of Mrs. Reed, the Company's president, who was precluded on account of illness from testifying at the first hearing, he did not intend to receive any evidence except that mentioned in the opinion of the court below as having been improperly excluded by him at the first hearing (VIII 2596–2598, 2639–2641, 2786–2788–2791, 2802–2803, 2808–2809, IX 3182, 3259–3266, 3277–3288, 3307–3308, 3330–3334, 3439–3445, 3646–3649). Neither the Company nor the D. G. W. U. alleged that evidence regarding eligibility of supervisors to membership in the I. L. G. W. U. was newly discovered or unavailable at the first hearing nor offered any explanation for their failure to offer such evidence at that time. As this and other courts have recognized, "the proper administration of justice demands that there be an end to litigation. It demands that parties shall not present their causes of action or their defenses piecemeal." *Sorensen* v. *Pyrate Corp.*, 65 F. 2d 982, 985 (C. C. A. 9). Accord: *Roberts* v. *Cooper*, 20 How. 467, 481; *United States Trust Co.* v. *New Mexico*, 183 U. S. 535, 537, 540.

However, aside from the propriety of the trial examiner's exclusion of the evidence in question because it was not within the scope of the remand order, it was properly excluded because it was of only remote relevance to the issues of this case, which were whether the Company had engaged in unfair labor practices in violation of Section 8

(1), (2), and (3) of the Act. This Court has held that the membership of alleged supervisory employees in a nationally-affiliated union does not require the Board to disregard other evidence in the record tending to show employer responsibility for the acts and statements of those employees. *International Association of Machinists* v. *National Labor Relations Board*, 311 U. S. 72, 81. And in situations similar to that present in this case, the Circuit Court of Appeals for the Seventh Circuit has twice held that eligibility of supervisors to membership in an affiliated labor organization does not preclude the Board from finding the employer responsible for participation by such supervisors in the formation and administration of an unaffiliated labor organization. *New Idea, Inc.* v. *National Labor Relations Board*, 117 F. 2d 517, 524 (C. C. A. 7); *National Labor Relations Board* v. *Aintree Corp.*, 132 F. 2d 469, 472 (C. C. A. 7), certiorari denied, 318 U. S. 774. Similarly, it has been recognized that ineligibility of a supervisor to membership in an affiliated union is not a condition precedent to employer responsibility for his labor relations activities involving violations of sections of the Act other than Section 8 (2). See *National Labor Relations Board* v. *John & Ollier Engraving Co.*, 123 F. 2d 589, 593 (C. C. A. 7); *National Labor Relations Board* v. *Christian Board of Publication*, 113 F. 2d 678, 682 (C. C. A. 8); *National*

Labor Relations Board v. *Pacific Gas & Electric Co.*, 118 F. 2d 780, 788 (C. C. A. 9).

Thus while these cases do not hold that evidence as to the eligibility to membership of alleged supervisory employees in nationally-affiliated unions is irrelevant to the issue of their supervisory status, they do serve to show that membership or eligibility to membership is by no means controlling. This being so, we believe it clear that, under the circumstances of this case, the proffered testimony could have been and was properly excluded on grounds of remoteness. The direct evidence in the record to show the supervisory status of the instructors was overwhelming (see *supra*, pp. 23–28); the testimony on this issue, introduced by both the Board and the Company was voluminous (see record references cited *supra*, pp. 23–28); and the Company's offers of proof on this issue related to employees holding allegedly comparable positions in plants other than the Donnelly plant (X 3788–3791) and, indeed, to some extent, in plants outside Kansas City (X 3791–3795). It was within the trial examiner's discretion, under the circumstances, to exclude the tendered evidence. Cf. *Newman* v. *Clayton F. Summy Co.*, 133 F. 2d 465, 466–467 (C. C. A. 2).

2. *Pre-Act discharges and lay-offs.*—Other evidence not included within the scope of the remand order, the exclusion of which at the hearing on remand was held by the court below to constitute a denial of due process, related to whether or not certain employees discharged or laid off prior to

the passage of the Act were discriminatorily discharged or laid off (XIII 47–48). During the first hearing, excerpts from the transcript of a hearing before the National Industrial Recovery Board which tried charges that the Company had discriminatorily discharged or laid off certain employees and also excerpts from the transcript of a hearing in an injunction suit before Federal District Judge Miller (*infra*, pp. 98–99) were introduced in evidence pursuant to a stipulation of the parties, and all other evidence offered by the Company to show that the discharges and lay-offs were nondiscriminatory was received (I 44a, 273, II 389–390c, 394–395, 399–401, 539, 550a, 707; III 728–729, 740–741, 1032–1055, 1057–1059, 1061–1090, 1096–1108, IV 1112cc–1112dd, 1119–1120w, 1120z–1129, 1130d–1160, 1276a, 1276g–1276m, 1316–1336, V 1368a–1374c, 1617–1619, Tr. 1891, 1964, 1967–1968, 1978, 2815): This matter not being within the scope of the remand order, the trial examiner, during the hearing on remand, refused to receive any further testimony with reference to it (VIII 2639, X 3783, 3792–3793), except the testimony of Mrs. Reed, the Company's president, who by reason of illness had been unable to testify at the first hearing (VII 2064–2065, 2069–2074, 2148–2151). In its decision, the Board expressly stated that it made no finding whether the discharges and lay-offs were, in fact, discriminatory (X 3860, n. 25). It used the evidence, along with evidence of the Company's pre-Act

hostility to the I. L. G. W. U., merely to show a background in which employees became hesitant to join, admit membership in, or discuss the I. L. G. W. U. (X 3860–3861, 3863–3864).

The Company raised no question in regard to this evidence either before the Board or the court below prior to the hearing on remand other than an objection that it was immaterial and that some of it was hearsay (I 44a, III 1110a–1110c, V 1368). It has never alleged that any additional evidence which it may have on that subject is newly discovered or was unavailable at the first hearing.

B. EVIDENCE REJECTED AT FIRST HEARING BUT NOT MENTIONED IN FIRST OPINION OF COURT BELOW

The trial examiner, at the first hearing as well as at the hearing on remand, refused to receive evidence relating to whether the contract made by the Company with the D. G. W. U. contained provisions as beneficial to the employees as contracts made by other employers with the I. L. G. W. U. (I 201–207, 217, 238b–238c, II 378hh–380, VI 1653–1676, 1920, 1922, 1929–1930, VII 2507–2520, VIII 2521–2522, IX 3257, X 3789). In its answer to the complaint, the Company had alleged that its contract with the D. G. W. U. "provides for higher wages and more favorable conditions of employment than are contained in any contract which the" I. L. G. W. U. "has entered into with other garment manufacturers in this part of the country" (A 389–390). In refusing to receive the I. L. G. W. U. con-

tracts during the first hearing, the trial examiner stated that so many factors entered into the wage rates and conditions of employment reflected in other contracts as to render any comparison useless without an investigation into all those other factors, and, furthermore, that he believed it material to show only how the terms of the D. G. W. U. contract were arrived at—whether or not by true collective bargaining—and not whether the terms were better or worse than those in other contracts (I 202–207, 238b–238c, II 378hh–380, VI 1920–1922, 1929–1930, 1985–1987).

Although the Company argued in its brief before the court below prior to the remand that it had been denied due process by the Board's refusal to receive the I. L. G. W. U. contracts, the court made no mention of the admissibility of such contracts in remanding the case to the Board. When the issue arose during the hearing on remand (VII 2507–2520), the trial examiner rejected a new offer of proof respecting the contracts (X 3789), ruling such evidence beyond the scope of the remand and also immaterial (IX 3257), but stating that he would receive testimony of any employee that she knew of such contracts and that her dissatisfaction with their terms led her to prefer the D. G. W. U. (VII 2514–2518, VIII 2521). He did receive such testimony (VIII 2593–2594, 2929–2931, IX 3080).

Although we recognize "that a judgment of reversal is not necessarily an adjudication by the

appellate court of any other than the questions in terms discussed and decided" (*Mutual Life Insurance Co.* v. *Hill*, 193 U. S. 551, 553–554), we believe that a reasonable interpretation of the first decision of the court below (123 F. 2d 215) warrants the conclusion that the court considered and rejected as without merit the Company's contention that it had been prejudiced by the trial examiner's exclusion of the testimony in question. Since the Company had complained of the trial examiner's rejection of evidence on numerous subjects, and the court below expressly considered and ruled upon the materiality of evidence on several of the subjects when remanding the case for a supplemental hearing for the purpose of receiving "all the competent and material evidence which was rejected by the Trial Examiner" (123 F. 2d at 225) at the first hearing, there was nothing in the court's opinion which could have put the examiner on notice that any rejected evidence not mentioned in the opinion was considered by the court as competent and material. There still remain numerous rulings of the examiner on the admissibility of evidence, urged by the Company as prejudicial error in the court below, which have not been expressly passed upon by the court below in either its first or second opinion. Assuming *arguendo* that the examiner had committed various prejudicial errors, is it reasonable to assume that the court below would permit successive remands for the purpose of re-

ceiving only one type of admissible evidence at each remanded hearing, when one remand should suffice?

However, regardless of whether such evidence be considered within the scope of the remand order, we believe that its rejection was proper on the ground that it was immaterial to any issue in the case. The court below, in finding the exclusion of evidence regarding the contracts to be prejudicial error, apparently assumed that the Board found the substantive provisions of the contracts between the Company and the D. G. W. U. to be a "sham" (XIII 48–49). However, the Board made no such finding. It clearly considered the testimony regarding the D. G. W. U. contracts relevant only to show that there was no collective bargaining with respect to the provisions, to show that the provision placing a limitation upon the qualification to membership on the D. G. W. U.'s bargaining committee was included at the request of the Company, and to show, by the closed-shop and check-off provisions, an attempt by the Company to perpetuate its illegally constituted instrumentality for excluding bona fide labor organizations (*supra*, pp. 58–61, 70–71). As the Court of Appeals for the District of Columbia said in *Bethlehem Steel Co.* v. *National Labor Relations Board*, 120 F. 2d 641, 651 (App. D. C.), when confronted with a like argument by the employer, "these agreements were irrelevant" and neither the other employers nor

the agreements which they made nor the charging union were "on trial." Had the Company, in the instant case, unilaterally posted a statement of policy setting forth wages and working conditions, the existence of bona fide I. L. G. W. U. contracts, containing similar terms, would not even have tended to refute the fact that the statement of policy was not arrived at through collective bargaining. That is equally true here where the so-called contract was the product of "negotiations" at which the employer sat on both sides of the bargaining table. In any event, this evidence, like that as to the eligibility of alleged supervisory employees to I. L. G. W. U. membership, was so remote as to make its exclusion a matter for the discretion of the trier of the facts. See *supra*, pp. 87–90.

C. EVIDENCE THE REJECTION OF WHICH WAS APPROVED IN THE FIRST OPINION OF THE COURT BELOW.

The third category of evidence, the rejection of which at the hearing on remand was found by the court below to deprive the Company and the D. G. W. U. of due process, related to misconduct of the I. L. G. W. U., the union which had filed charges in this case (XIII 44–50). The rejection of this evidence had been expressly approved by the court below in its first opinion (123 F. 2d 215, 225).

The evidence regarding misconduct of the I. L. G. W. U. was offered in support of allegations made in the Company's answer to the

Board's complaint, in which it was alleged that the I. L. G. W. U. was engaged in a conspiracy to force the Company, by fraud and violence, to sign a closed-shop agreement with the I. L. G. W. U. (A 387–394). At the first hearing, although the Company and the D. G. W. U. had sought to introduce evidence that the I. L. G. W. U. had engaged in acts of violence at plants other than the Company's for the purpose of showing that the I. L. G. W. U. was attempting to use the Board's processes to injure the Company and for the purpose of showing the employees' reasons for forming or joining the D. G. W. U., the trial examiner ruled that the I. L. G. W. U. was not on trial and refused to receive testimony concerning violence by the I. L. G. W. U. unless the witness had personally encountered violence or had been personally threatened with violence (I 4, 190, 219–223, 334k–334l, 344q–344v, 366–367, II 553, 614, 627, 660–661, 700–703, 705, 718y, 718bb, 718aa, Tr. 69, 111, 114, 118, 2046–2047, 2468, 2583). The Company filed an offer of proof (II 704p, III 742d, IV 1156b–1306, V 1409–1619) which the trial examiner rejected (VI 1752). Although, in its first opinion, the court below upheld the trial examiner's refusal to "try" the I. L. G. W. U. "for alleged conspiracy" (123 F. 2d 215, 225), at the hearing on remand, the trial examiner nevertheless received all evidence offered through Mrs. Reed as to all she knew of any

violence or threatened violence by the I. L. G. W. U. (VII 2077–2092, 2151–2156), as well as all evidence offered as to what the employees had seen, read, or heard regarding such violence by the I. L. G. W. U. which had occurred within a reasonable period prior to the formation of the D. G. W. U.—such evidence being considered relevant to show the employees' reasons for forming or joining the D. G. W. U. (VIII 2566–2568, 2624–2626, 2711–2713, 2768–2771, 2788, 2848–2851, 2915–2917, 3003–3006, 3046–3049, 3078–3081, 3120–3121, 3169–3171, 4102–4103, 4125–4169, 4173–4175). The reasonable period was fixed at six months at the suggestion of counsel for the Company. (VIII 2788, 2805–2809). The trial examiner considered irrelevant and refused to receive evidence as to whether any of the alleged violence at other plants actually occurred (VII 2512–2513, VIII 2540–2542, 2554–2555). There was no offer at either of the two hearings to show any fraud or violence at the Company's plant. It is this evidence of misconduct against other employers which the court below, in its second opinion, ruled material (XIII 44–50).

In that opinion, the court held that such evidence was relevant for the Board to consider (1) in determining whether charges were filed by the I. L. G. W. U. in good faith or for the purpose of influencing an injunction suit brought by the Company against the I. L. G. W. U. in a Federal District Court to prevent the I. L. G. W. U.

from carrying out threats to use violence in organizing the Company's plant (XIII 45–46),[21] and (2) in determining the reason why employees joined the Loyalty League and the D. G. W. U. (XIII 46–50).

The reversal by the court below of its position on the materiality of this evidence is apparently due to the interpretation it put (XIII 45) upon this Court's decision in *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, which was handed down subsequent to the first opinion in the instant case. During the progress of the hearing before the Board of the *Indiana & Michigan* case and at various times prior to the Board's decision, severe damage was done to the properties of the employer for which several prominent union leaders were subsequently indicted and convicted. Several of these leaders

[21] See *Donnelly Garment Co.* v. *International Ladies' Garment Workers' Union*, 20 F. Supp. 767 (W. D. Mo.), affirmed, 21 F. Supp. 807 (W. D. Mo.), reversed, 304 U. S. 243; 23 F. Supp. 998 (W. D. Mo.); 99 F. 2d 309 (C. C. A. 8), certiorari denied, 305 U. S. 662; 119 F. 2d 892 (C. C. A. 8); 121 F. 2d 561 (C. C. A. 8); 47 F. Supp. 61 (W. D. Mo.); *Donnelly Garment Co.* v. *Dubinsky*, 47 F. Supp. 65 (W. D. Mo.); *Donnelly Garment Co.* v. *International Ladies' Garment Workers' Union*, 47 F. Supp. 67 (W. D. Mo.); 55 F. Supp. 572 (W. D. Mo.); *Donnelly Garment Co.* v. *Dubinsky*, 55 F. Supp. 587 (W. D. Mo.); *International Ladies' Garment Workers' Union* v. *Donnelly Garment Co.*, 147 F. 2d 246 (C. C. A. 8), certiorari denied, 325 U. S. 852; *Donnelly Garment Co.* v. *Dubinsky*, 154 F. 2d 38 (C. C. A. 8). These cases mark the history of the Company's unsuccessful attempts to enjoin the I. L. G. W. U.

had been witnesses at the hearing before the Board. The employer sought to adduce additional evidence before the Board to show an unlawful conspiracy among the union leaders to intimidate and coerce the employer into settling the case then in the process of being heard and decided, and into recognizing the union as bargaining representative of its employees. The employer alleged that the unlawful destruction of its property was pursuant to the conspiracy thus to coerce and intimidate the employer in the defense of its case before the Board. This Court held that, under the circumstances, the unlawful conduct of the union leaders was material to a consideration of the weight and credibility of the testimony of these leaders as well as of the witnesses closely associated with them. It also held that, under the circumstances, the Board might wish to consider whether it should permit its processes to be taken advantage of by unions or by union leaders to advance their illegal purposes.

In the case at bar, there was no offer to prove that any of the witnesses had been convicted of any unlawful conduct against the Company or any other employer. And since none of the alleged unlawful conduct of union leaders in the case at bar occurred during or immediately preceding the hearing and other proceedings before the Board, it could not have been designed to intimidate the Company in the defense of its

case before the Board as was allegedly true in the *Indiana & Michigan* case. The court below appears (XIII 46) to have felt that the excluded evidence of misconduct was admissible for the purpose of showing that the charges filed by the I. L. G. W. U. were designed to influence the result of the action for an injunction mentioned *supra*, pp. 98–99, but that is immaterial here where the Board was concerned only with determining whether the Company had engaged in unfair labor practices and with insuring to all parties a fair hearing on such issues. The Board issues a complaint only after its investigation shows that there is merit to the charges, and the motive of the I. L. G. W. U. in filing the charges cannot deprive the Board of jurisdiction to proceed. *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, 18; *National Labor Relations Board* v. *Brown Paper Mill Co.*, 108 F. 2d 867, 872 (C. C. A. 5), certiorari denied, 310 U. S. 651; *National Labor Relations Board* v. *Fickett-Brown Mfg. Co., Inc.*, 140 F. 2d 883, 884 (C. C. A. 5).

It is true, as this Court pointed out in the *Indiana & Michigan* case (318 U. S. at p. 19), that the Board might, in its discretion, withhold or dismiss its complaint "if it should appear that the charge was so related to a course of violence and destruction, carried on for the purpose of coercing an employer to help herd its employees

into the complaining union, as to constitute an abuse of the Board's process." But no offer was made to show any violence or destruction or any other kind of misconduct at the Company's plant, and the Board does not feel that threats made by a union to call a strike—even a strike accompanied by violence upon the picket lines as was allegedly true at strike-bound plants in Kansas City—should bar it from issuing a complaint upon charges filed by the union making such threats. In the *Indiana & Michigan* case, this Court itself said that "the Board is not required to sidetrack proceedings involving an employer's violation of the labor law while it explores irrelevant derelictions of parties or witnesses or acts of unknown or irresponsible persons." 318 U. S. at 28.

As stated, *supra*, pp. 97–98, the trial examiner admitted in evidence all testimony of Mrs. Reed and of employees as to what they had seen; read, or heard regarding violence upon the picket lines at other plants where the I. L. G. W. U. had called strikes—the evidence of the employees being considered relevant to show their reasons for joining the I. L. G. W. U.—but he considered irrelevant and refused to receive other evidence as to whether such violence actually occurred. Taking cognizance of the Company's contentions relative to the alleged threats, the Board stated

in its decision that "It may be true, as the [Company] contends, that many of them [the employees] feared the alleged threats of the I. L. G. W. U. but instead of permitting the employees to decide for themselves what attitudes they would adopt with regard to the I. L. G. W. U., the [Company] seized upon such fears as may have existed to build up and strengthen a militant employee opposition toward that labor organization" (X 3868–3869).

As Judge Woodrough pointed out in his dissenting opinion in this case, "the inquiry demanded in the proposed fields of controversy would only protract and distract. It could not illuminate. Employers may not commit the unfair labor practices such as charged in this case to prevent union electioneering even by labor unions that have a bad record behind them". (XIII 63). To require the Board to sidetrack the functions expressly delegated to it under the Act for the purpose of inquiring into alleged unlawful conduct of the charging union in situations such as those present in this case, would not only permit employers who have violated the Act to do so free of the sanctions of the Act whenever the organization filing the charge has been guilty of misconduct, but would greatly hamper the work of the Board by diverting its inquiries to collateral

matters rather than to the merits of the unfair labor practice charges.

An inquiry by the Board into such collateral matters would, moreover, be inconsistent with this Court's admonition that "The Board acts in a public capacity to give effect to the declared public policy of the Act to eliminate and prevent obstructions to interstate commerce by * * * protecting the 'exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, * * *'." *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 362; *Phelps Dodge Corp.* v. *National Labor Relations Board*, 313 U. S. 177, 193. The I. L. G. W. U., because it filed charges, did not "become the actor in the proceeding." *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261, 265. This function rested with the Board as the agency delegated by Congress to protect the public interest in suppressing unfair labor practices.

IV

THE BOARD'S ORDER SHOULD BE ENFORCED BY THIS COURT

As we have shown, *supra*, pp. 21–72, the Board's findings are supported by substantial evidence and its order is in all respects proper. Neither the Board's treatment of the evidence received nor

its rejection of other evidence constituted prejudicial error or a denial of due process. See *supra*, pp. 73–104. The court below erred, therefore, in refusing to enforce the Board's order.[22]

This case has four times been argued before the court below over a period of more than four years.[23] Three opinions have been issued by that

[22] Even if due process was not accorded, we believe that the court below nevertheless erred in setting aside and refusing to enforce the Board's order rather than remanding the case to the Board for the correction of such prejudicial errors as had been committed.

[23] On November 7, 1940, after oral argument on applications of the company and the D. G. W. U. for leave to adduce (1) evidence to show that they had been denied due process because of bias and prejudice on the part of the Board and its subordinates and collusion by them with the I. L. G. W. U., and (2) evidence going to the merits of the case, which had been excluded by the trial examiner and which they contended was competent and material, the court below handed down its opinion (7 L. R. R. M. 560), one judge dissenting, holding that the showing made by the Company and the D. G. W. U. as to the alleged bias and collusion was insufficient to invoke any action of the court, and denying the applications in that regard. It also denied the applications to adduce the excluded evidence allegedly going to the merits of the case, but did so without prejudice to a renewal of such applications when the case should be finally submitted to the court (see 123 F. 2d 215, 219–220). On May 21, 1941, oral argument was had on all issues except that which had been decided in the court's opinion of November 7, 1940. Thereafter, pursuant to a letter from Presiding Judge Archibald K. Gardner, dated July 24, 1941, requesting additional briefs on the bias and

court but it has not yet passed upon the substantiality of the evidence supporting the Board's findings (7 L. R. R. M. 560; 123 F. 2d 215; XIII 7–64). "This court, in the exercise of its appellate jurisdiction, has power not only to correct error in the judgment entered below, but to make such disposition of the case as justice may at this time require." *Watts, Watts & Co.* v. *Unione Austrica Etc.*, 248 U. S. 9, 21. And this Court has, in other Labor Board cases, passed on the substantiality of the supporting evidence even though the circuit court of appeals had not done so. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 29, reversing, 83 F. 2d 998 (C. C. A. 5); *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U. S. 49, 57, reversing 85 F. 2d 391 (C. C. A. 6). To avoid further delay in a case which has been before the Board and the courts for more than seven years (A 369), we respectfully request that, in addition to reversing the court below on the due process issues presented, this Court pass on the sufficiency of the evidence and enforce the Board's order *in toto*.

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collusion question decided by the court on November 7, 1940, the parties filed additional briefs and re-argued that question before the court on September 6, 1941. The case was again argued before the court below just prior to its decision of October 29, 1945 (XIII 6).

CONCLUSION

The decree of the court below should be reversed, and the cause remanded with directions to enforce the order of the Board in full.

Respectfully submitted.

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SEPTEMBER 1946.

APPENDIX

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*):

* * * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, main-

tained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SECTION 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. * * *

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including

reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

* * * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

* * * * *

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

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Nos. 38 and 39

In the Supreme Court of the United States

OCTOBER TERM, 1946

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v.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER

v.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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In the Supreme Court of the United States

OCTOBER TERM, 1946

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No. 39

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REPLY BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

Pursuant to leave granted at the oral argument in this case, this reply brief is filed in order that

there be no misunderstanding of the record which would prevent final disposition of this protracted litigation.

I

THE BOARD PROPERLY LIMITED TO ELEVEN THE NUMBER OF EMPLOYEE WITNESSES WHOM THE COMPANY AND THE D. G. W. U. WERE PERMITTED TO CALL DURING THE HEARING ON THE REMAND

The D. G. W. U., in its brief (pp. 5, 27, 29, 33, 61, 69), argues that the Board failed to comply with the remand of the court below because it did not, during the hearing held pursuant to remand, receive any of the witnesses offered by the D. G. W. U. on its examination in chief, and because it limited to eleven the number of employee witnesses the Company was permitted to call. The court below rejected both of these arguments. It said (XIII 41):

> Although the plant union complains that the Trial Examiner heard none of the employee testimony proffered by it, it is apparent that this testimony would have been no different than the testimony of the eleven witnesses produced by the Company and that the testimony received was for the benefit of both. * * * We are satisfied that the Examiner was justified in limiting the number of witnesses as he did.

Actually six of the eleven employee witnesses called by the Company were also named in the

D. G. W. U.'s offers of proof (Oma Cooper, whose earlier name, Holloway, VIII 2564, appeared on the offer III 767; Lois Barnes, III 771; Edith Dean, III 779; Ethel Riegel, III 773; Lydia Phillips, III 787; Alice Freed, III 779), and counsel for the D. G. W. U. examined each of the eleven witnesses extensively as to all matters set forth in its offers of proof.[1] The trial examiner made it clear throughout that he regarded these witnesses as produced by both the Company and the D. G. W. U. (IX 3179, 3183–3184, 3186, 3202, 3251, 3254–3255). And after the con-

[1] The following is a tabulation of the number of typewritten pages consumed by the respective examinations of each of these eleven witnesses by counsel for the Company and by counsel for the D. G. W. U. with supporting references to the printed record:

Name of witness	Number of typewritten pages of examination			
	By the Company	Record References	By D. G. W. U.	Record References
1. Oma Cooper	62	VIII 2564-2592	19	VIII 2592-2600
2. Hazel Saucke	48	VIII 2623-2641	51	VIII 2641-2665
3. Mary Warth	43	VIII 2709-2726, 2749-2752.	26	VIII 2726-2732, 2752-2754, 2760-2767.
4. Lois Barnes	87	VIII 2767-2814, 2845.	17	VIII 2814-2822, 2846-2847.
5. Edith Dean	40	VIII 2848-2868	22	VIII 2868-2879
6. Jessie Mudd	42	VIII 2911-2934, 3000, IX 3001	29	VIII 2934-2947, IX 3001.
7. Ethel Riegel	34	IX 3002-3020	13	IX 3020-3027.
8. Ruby Clayton	28	IX 3045-3057	20	IX 3057-3066.
9. Lydia Phillips	31	IX 3076-3094	13	IX 3094-3099
10. Louise Garrett	30	IX 3119-3135, 3166-3168.	26	IX 3135-3147, 3168-3169.
11. Alice Freed	64	IX 3169-3206, 3248-3249.	24	IX 3206-3219
Total pages	509		260	

clusion of the testimony of the eleventh employee witness, counsel for the D. G. W. U. expressly conceded that he had no witness to offer whose testimony would differ from that of those already produced (IX 3273).

The trial examiner acted within a proper exercise of his discretion in limiting the Company and the D. G. W. U. to eleven witnesses respecting the matters covered by their offers. He imposed a similar limitation upon the Board and the I. L. G. W. U. During the examination of the sixth witness called by the Board during the hearing upon remand, the trial examiner ruled that any further witnesses would be cumulative, that he would treat the witnesses called by the Board as included in the number the I. L. G. W. U. would be entitled to offer, and applying the same restriction to counsel for the I. L. G. W. U. that he applied to counsel for the D. G. W. U., would refuse to hear further witnesses for the Board or the I. L. G. W. U. (Tr. 6623; cf. X 3676).[2] The authorities are all agreed that a limitation such as eleven witnesses on each side of an issue is entirely proper, where the limitation is so imposed that neither

[2] On none of the points covered by the Company or the D. G. W. U. had the combined number of witnesses called by the Board and the I. L. G. W. U. on the first and second hearings exceeded eleven. This fact can be verified by checking the number of witnesses to whom reference is made in the statement of evidence supporting the Board's findings in the Board's main brief in this case, pp. 21–66.

party is caught with some of his best witnesses withheld.[3] Here both the Company and the D. G. W. U. were aware from the beginning of the hearing on remand that the Board did not contemplate hearing an unlimited number of witnesses. Moreover, at the time the trial examiner stopped them, counsel for the Company also admitted that he had no witness who would add anything different from the eleven who had already testified (IX 3272–3273).

II

THE COMPANY AND THE D. G. W. U. WERE PERMITTED AT BOTH HEARINGS TO INTRODUCE EVIDENCE AND EXAMINE WITNESSES RESPECTING ALL SUBJECTS AS TO WHICH THE BOARD AND THE I. L. G. W. U. INTRODUCED EVIDENCE

In their briefs, the Company (pp. 69–71), and the D. G. W. U. (p. 71), assert that the Board was permitted to question employees about events occurring prior to November 1936, while the Company and the D. G. W. U. were not permitted to put on any evidence as to events occurring that early. The court below held that the Board should have permitted the Company and the D. G. W. U. to introduce evidence to answer the Board's evidence that the Company had discriminated against I. L. G. W. U. members in 1934 and 1935 (XIII 47–48). In the Board's

[3] See discussion and cases collected in 6 Wigmore, *Evidence* (3rd ed.) secs. 1907–1908. Cf. American Law Institute, *Model Code of Evidence*, Rule 105 (c).

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main brief (pp. 90–92) we have collected the record references showing that at the first hearing the Company was allowed to and did offer all the evidence it wished to meet these charges and at the hearing on remand was allowed unrestricted examination of Mrs. Reed on this issue.[4] The trial examiner refused during the hearing on remand to permit the Board to introduce any evidence as to the matters covered by the N. R. A. hearing. Indeed, he even refused to permit the Board to rebut the testimony given by Mrs. Reed during the hearing on remand which pertained to this issue (IX 3439–3445, X 3645–3649).

[4] The Company in its brief (pp. 75–76, 136, 137–138), accuses the Board of having dismissed all portions of its complaint pertaining to the pre-Act discharges but nevertheless making findings with respect thereto. As the trial examiner's rulings clearly demonstrate, he was dismissing only the allegations that the Company committed unfair labor practices by refusing after the Act became effective to reemploy persons earlier discharged (see allegations in the motion to amend the complaint, A 431–433), but was not ruling that the discharges in 1934 and 1935 were not still in issue insofar as they indicated the Company's hostility to the I. L. G. W. U. Thus, when this amendment to the complaint was offered, the trial examiner said he would withhold ruling on the motions to strike these allegations from the complaint until the parties could work out their offers of proof of the evidence taken in the N. R. A. hearing (Tr. 216–221). Counsel for the Company and the D. G. W. U. thereafter entered into a stipulation with the Board whereby each of the parties placed in the record excerpts from the N. R. A. and Judge Miller hearings in lieu of retrying *de novo* the issue of the Company's hostility to the I. L. G. W. U. in 1934 and 1935 (I 44–44a,

During the hearing on remand, the trial examiner permitted the Company and the D. G. W. U. to question and they did question the eleven employee witnesses produced under their offers of proof with respect to the organization of the Loyalty League at the Company's plant in February 1935 (VIII 2632–2633, 2666, 2718, 2727, 2734, 2777–2778, 2827, 2829–2830, 2859, 2861, 2927, IX 3010–3011, 3030–3032, 3052, 3066–3067, 3090), and to the asserted change in the status of the instructors when Bate became production manager in July 1935 (VIII 2812, 2830, 2861–2864, 2933, IX 3001). These were the only events occurring

273, II 389–390c, III 740–741; Tr. 315–317, 1746–1748, 1964). When counsel for the Company expressed doubt as to what he had to meet in the N. R. A. evidence, the trial examiner told him to bring in any evidence he was in doubt about and it would be ruled on (Tr. 1891). The trial examiner likewise made it clear that although he felt the Company should abide by its stipulation to put in pre-Act events by excerpts from previous hearings, if the Company wanted to put on additional witnesses they would be heard (II 394–395). And he did receive such testimony (II 398–401, Tr. 1907, 1967–1978, 1992–1993, 2009–2021). That the Company was not confused by the trial examiner's rulings is conclusively demonstrated by the extensive excerpts from the N. R. A. and Judge Miller hearings pertaining to the discharges in 1934 and 1935 which, subsequent to these rulings, it introduced in evidence (III 1110c–IV 1305, VI 1751–1753). Counsel for the Company, during the hearing on remand, asserted that the Company, during the first hearing, met all the evidence introduced by the Board from the N. R. A. record (IX 3443–3444). Nor has the Company ever shown that it had any specific evidence on these issues other than that already received.

prior to November 1936 as to which the Board was permitted to question witnesses during the hearing on remand, the Board being limited even as to these matters to cross-examination of the witnesses produced by the Company and the D. G. W. U. or to rebuttal of the testimony of employee witnesses produced by the Company and the D. G. W. U. (IX 3276–3311, 3427–3429, 3439–3445, X 3559–3571, 3573–3580, 3646–3649, 3673–3674).

In dealing with the admissibility of evidence that the I. L. G. W. U. allegedly admits instructors to union membership (Co. Br., pp. 80–86),[5] the Company attempts to create the impression that the issue of the supervisory status of instructors was not tried at the first hearing, but came into the case only when the Board, after rejecting the Company's evidence on the remand, itself put in extensive testimony as to whether employees regarded instructors as supervisors (Co. Br., pp. 84–85). Actually the issue of the supervisory status of the instructors was fully litigated at the original hearing (I 15–20, 22–24a, 25, 41, 135–139,

[5] In the course of this discussion, the Company lists among those whom it says the Board found to be representatives of management "Examiners" (Co. Br., p. 80) and the "inspectors" (Co. Br., p. 81) and cites Board cases to show that the Board on other occasions has held examiners and inspectors not to be supervisors (Co. Br., pp. 82–83). Actually the Board made no finding in the instant case that examiners or inspectors were supervisors or representatives of management, there never having been any claim made in this case that they were.

191–192, 239, 299–302, II 391–392, 411–412, 414–415, 419–423, 426–429, 450–453, 490–493, 504–512, 515, 517–519, 670, III 734c, 734g, 734j, 734k). When the first employee witness called by the Company and the D. G. W. U. during the hearing on remand was questioned with respect to the supervisory status of the instructors (VIII 2584), counsel for the Board objected to the question as not within the scope of the remand (VIII 2584–2586). The trial examiner ruled that he would construe the offers as permitting the employee witnesses to give their opinion of the instructors' supervisory status (VIII 2586) and each of the eleven employee witnesses called by the Company and the D. G. W. U. were permitted to testify as to his opinion of the instructors' status (VIII 2586–2587, 2604–2606, 2731, 2734, 2812, 2830, 2843–2844, 2861–2864, 2933–2934, 2956–2969, IX 3001, 3019, 3059–3060, 3092, 3103–3104, 3122, 3153, 3206–3207).[6] It was only thereafter that the attorney for the Board was permitted by way of rebuttal to call as witnesses the two instructors under whom the majority of the employees called by the Company and the D. G. W. U. had worked in March

[6] The Company, in its brief (pp. 143, 144, 148, 150), repeatedly emphasizes that the instructors were not "over" the operators. However, in referring to instructors and thread girls, employees called by the Company and the D. G. W. U. continually spoke in terms of "worked under" or "worked for" her (VIII 2602, 2605, 2611–2613, 2680, 2948, IX 3034, 3059).

and April 1937,[7] and to question them as to whether they regarded themselves and were regarded by others as having supervisory status at that time (IX 3320–3328, 3397–3398, 3410–3412, 3434). Thereafter, the attorney for the Board also called in rebuttal three employees who had worked in these sections at that time and similarly questioned them (IX 3470, X 3481–3483, 3551, 3554–3556, 3662, 3673–3675).

III

THE BOARD'S FINDINGS ARE SUSTAINED BY SUBSTANTIAL EVIDENCE

Despite the vigorous attacks made by the Company (Br., pp. 99–196) and the D. G. W. U. (Br., pp. 92–125) upon the Board's findings, we submit that the evidence cited in the Board's brief (pp. 22–71) affords full support for each finding there set forth. It would serve no good purpose to make a detailed defense of each citation attacked. We merely wish to urge the Court to examine even references which the Company asserts contain no mention of the subject for which they are cited. For instance, on page 130

[7] Eight of the eleven employee witnesses called by the Company and the D. G. W. U. testified that they had worked in the sections of Instructor Dorsey or Skeens at approximately this time (VIII 2607, 2676–2677, 2733, 2823, 2892, IX 3034–3035, 3059, 3074, 3097), and Dorsey (IX 3274–3276, 3310–3312) and Skeens (IX 3429) in turn testified that these girls were working in their respective sections at this time.

of the Company's brief, it is asserted that "At II, 588, there is nothing said about the letter" although in fact on II, 588, it appears that Atherton, a witness called by the Company, during the course of cross-examination, twice volunteered information respecting the reading of the letter in exact accord with the finding of the Board which the Company is at that page of its brief attacking.[8]

However, with respect to certain of the findings under attack, the corroborative details of the supporting evidence may not be apparent by an examination of the citations to the supporting evidence as set out in our main brief. We, therefore, wish to set out such details as to a few of the most controverted findings.

A: THE APRIL 27, 1937, MEETING

Rose Todd, who presided at the April 27, 1937, meeting and became president of the D. G. W. U. (III 821–830), claimed to have called the meeting by having the Company's telephone operators phone each section of the plant on the interdepartmental phones (V 1274d). She testified that it is the duty of the instructor or thread girl to

[8] It is to be noted that in one of its offers of proof (III 785) the D. G. W. U. also sought to establish the facts respecting the reading of this letter to be just as the Board found them. When one of the witnesses whose name purports to be attached to this offer (III 787) was called as a witness by the Company, she testified contrary to the offer (IX 3086–3087, 3110–3119) and then denied her signature (IX 3111–3112).

answer the phone and convey any message received to the girls in her section and that this was done on April 27th (V 1374d).[9] McConaughey, treasurer of the D. G. W. U. (II 692) and the first witness called by the D. G. W. U., testified that the telephone operator called his department and asked that people in the department be informed of the meeting (II 704g). Collins, an instructor called as a witness by the Company, remembered that the message was taken by either herself or the thread girl (II 667, 669). Instructors Dorsey and Skeens both testified that they received such a phone call on April 27th and notified the employees in their section that they were to attend the meeting (IX 3276, 3309–3312, 3315–3316, 3397–3399, 3430–3434, 3467). Operators Fike, Copenhaver, Weilert and Stevens each testified that she was sent to the meeting by her instructor (I 328c–328d, IX 3470, X 3551, 3619–3621, 3667). In view of Todd's testimony that she used this method of calling the meeting, cor-

[9] In an effort to mitigate the effect of the testimony that Todd used interdepartmental phones to call meetings of the D. G. W. U., the Company questioned the first employee witness called by it during the hearing on remand as to whether employees could freely use the phones at the Company's plant and she testified that they could (VIII 2587). On cross-examination of this witness it became clear that the only phones employees could use were public phones on the second and seventh floors, and that there were always long lines of employees waiting to use these phones (VIII 2621–2622). The interdepartmental phones could only be used by supervisory employees for Company business (IX 3342, X 3672).

roborated by such a wealth of additional testimony, the Company's belittling (Co. Br., pp. 104–107) of the Board's finding that employees were notified of the April 27th meeting by their instructors (X 3872), seems completely unjustified.

The Board's finding that the April 27th meeting was held during working hours (X 3867, n. 33, 3872) is sustained by the direct testimony of Instructors Dorsey and Skeens, who testified not only that the meeting was during working hours but that they had seen entries on the pay roll records disclosing that piece work employees were paid for the time they spent in attendance at this meeting (IX 3312–3315, 3329–3330, 3337, 3408–3410, 3430–3431, 3434, 3465–3468).[10] Operators Fike, Copenhaver, Weilert and Stevens also testified that this meeting was held during working hours (I 328c–328e, IX 3470–3471, X 3530–3532, 3541–3544, 3551, 3620–3621, 3667). The Company's pay roll shows that during the last two weeks of April 1937, the plant instructors and thread girls were paid for 26 hours overtime or 53 hours of work a week (III 1003–1004), and a thread girl called as a witness by the Company conceded that instructors and thread girls were never paid overtime except when their section also was working the additional hours (VIII 2986–2989).

[10] The Company produced no payroll records to controvert this testimony although it had the records for this period (XII 4204–4321).

The Board's finding that this meeting was held during working hours is moreover corroborated by the testimony that all of the meetings of plant employees during March,[11] April, and May, 1937 were held during working hours and that employees were paid for time spent attending these meetings (I 309, 328c–328d, IX 3312–3315, 3328–3330, 3408–3411, 3414, 3431, 3434, 3449–3451, 3458, 3465–3467, X 3543, 3669–3670).[12] Witnesses recalled numerous incidents which could not possibly have occurred had these meetings been held after working hours. For instance, there is Stevens' testimony that because she was the first

[11] Rose Todd herself never testified that the March 18, 1937 meeting was after working hours. Indeed, when questioned as to whether she got permission to hold this meeting during working hours, she did not deny it was held during working hours but stated that she had not asked permission and didn't know whether anyone else had secured permission (I 49).

[12] While Instructors Dorsey and Skeens were not able to be certain whether some of these were D. G. W. U. meetings rather than Loyalty League meetings (IX 3314–3315, 3361, 3363, 3454–3455), their uncertainty does not detract from their testimony but merely reinforces the Board's findings that the March 18 and April 27 meetings were sponsored by the Loyalty League and, in view of Rose Todd's presidency of the League and its use of the same system of calling meetings and the same meeting place, employees in attending the March 18 and April 27 meetings would reasonably be subject to all the compulsions inhering in Loyalty League activities (X 3867, 3868, 3872, 3875, n. 44, 3886). See also the minutes of the meeting of the D. G. W. U. on May 27, 1937, which was immediately followed by a Loyalty League meeting (III 952–958, I 354d–354g, 365, 368–369, II 378a–378d, X 3661). Cf. X 3662.

employee back at work following one of these meetings, her instructor accused her of not having been present (X 3670). The instructor named by Stevens was not called to deny this incident. Instructor Skeens also recalled going back to work after several D. G. W. U. meetings (IX 3450, 3458). Then there is the testimony of Instructor Dorsey that she reassured girls who did not wish to attend the meetings that they would be paid, and that then the girls went without complaint (IX 3410). Instructor Dorsey also recalled putting away the work of certain of the girls in her section on one occasion when the meeting began during working hours but did not finish until closing time (IX 3363, 3410–3411, 3414). The witnesses called by the Board remembered wearing their uniforms to the March 18, April 27 and some four or five other D. G. W. U. meetings held during April or May (I 328d, IX 3312, 3317, 3363, 3410, 3430, 3434, 3470–3471, X 3502–3503, 3530, 3551, 3666, 3667).[13]

B. THE ALLEGED MEETING OF MARCH 30, 1937

Both the Company (Br., pp. 20–21, 92–93, 117) and the D. G. W. U. (Br., pp. 19, 106–107) vigor-

[13] A newspaper picture of the May 11, 1937 meeting shows all visible persons to be in uniform (XI 4099, IX 3473–3474), although many witnesses called by the Company and the D. G. W. U., in explaining that all meetings were after work, described how they and many other employees changed into street clothes before the meetings (VIII 2572, 2728, 2818, IX 3060, 3099).

ously attack the Board's finding that no meeting took place on March 30, 1937 (X 3873, n. 42). In resolving the conflicts of testimony respecting this meeting, the Board pointed to the following evidence: None of the witnesses called by the Board remembered any meeting prior to April 27, 1937, at which funds were raised to pay Mr. Tyler a fee (I 332, IX 3316–3317, 3432, X 3552). Instead, they fixed the March 18, 1937 meeting as the one preceding the April 27, 1937 meeting (X 3666–3667). Rose Todd, who first testified that there was such a meeting, explained it as the source of the funds used to pay Tyler's fee (I 177–180) and did not disclose what later became apparent when bank records were introduced, that she had borrowed $1,000 from the First National Bank and that the check for $500 given Tyler on April 1, 1937 actually came from this source (II 378m–378p, II 556–557, III 949, 959, I 279–280). Moreover, the Board produced minutes of a meeting held on May 27, 1937 which shows that it was at a Loyalty League meeting on this date that employees decided to contribute 50 cents apiece to reimburse the Loyalty League treasury for the amount paid to Tyler (III 954–95[illegible] I 354d–354g, 365, 368–369, II 378a–378d, X 3671). The Company and the D. G. W. U. at first sought to discredit these minutes by producing records of the Loyalty League to show that $623.20 which its treasurer claimed had been contributed by employ-

ees in 50-cent donations was deposited in the bank on May 13, 1937 (II 378s–378z, III 991, Tr. 1775–1789, 1792–1796). However, upon obtaining the bank records, it was established that the sum of $623.30 was deposited on July 13, 1937 (III 960, II 384, Tr. 1775–1779, 1841–1842).

The testimony of the witnesses called by the Company and the D. G. W. U. was obviously based upon these employees' assumption years later that they must have contributed the money before the check was given to Tyler on April 1, 1937, as none of them had ever been told of Rose Todd's borrowing of the money (VIII 2698, IX 3040, 3075–3076, 3165, 3242, 3247–3248). Thus Saucke, who testified at the trial that she had never heard of Todd's loan from the bank (VIII 2698), claimed that she moved the assessment at the meeting on or about March 30 for paying the fees (VIII 2630–2631, 2668–2669, 2672–2673, 2697–2698). When Saucke was first examined on cross as to whether she made a motion in March 1938 to assess each employee a dollar to pay Mrs. Tyler's fees, she had no recollection of making such a motion, but when confronted with the minutes of the March 1938 meeting showing such a motion, she claimed to remember that she had made such a motion both in March 1937 and again in March 1938 (VIII 2672–2674, 2679, 2695, III 866–868). It seems probable that she only made the motion in 1938 and had just confused the year when trying to recollect in 1942 the facts of such earlier events.

IV

THE BOARD PROPERLY ORDERED REIMBURSEMENT OF DUES CHECKED-OFF TO THE D. G. W. U.

The Company (Br., pp. 194–195) attempts to distinguish the instant case from *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 319 U. S. 533, wherein this Court sustained the Board's power to order reimbursement of dues checked off to a company dominated union in which membership was coerced by a closed-shop contract. The Board in this case found (X 3893–3894) that—

> The check-off agreement, a device by which the respondent assured the financial stability of the dominated organization, could, as practiced, no more be avoided by the employees than could the compulsory membership requirement. * * * the monies thus deducted from the wages of the employees constituted the price of retaining their jobs, a price coerced from them for respondent's purpose of supporting and maintaining the organization which respondent had dominated in order to thwart bona fide representation. * * * as a result of the imposition of the illegal closed-shop and check-off requirements, the employees suffered a definite loss and deprivation of wages equal to the amounts exacted from them for illegal purposes.

These findings are fully sustained. The check-off authorizations were all entered into subsequent

to the signing of the closed-shop agreement (see Bd. Br., pp. 60–61). They were prepared by the Company and signed in the plant at the desk of Rose Todd (I 226–227, 233–234, 262–263) a management representative and supervisory employee (see Bd. Br., pp. 28–32). There was testimony by employees that they did not sign such papers freely because they felt that if they didn't sign all such documents or pay their dues they would lose their jobs (X 3528, cf. IX 3471, X 3612, 3665, 3667). Cf. *National Labor Relations Board* v. *Baltimore Transit Co.*, 140 F. 2d 51, 56–59 (C. C. A. 4), certiorari denied, 321 U. S. 795.

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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 786.

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,
VS.
DONNELLY GARMENT COMPANY, A CORPORATION; DONNELLY GARMENT WORKERS' UNION; AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR RESPONDENT, DONNELLY GARMENT COMPANY, IN OPPOSITION.

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BRIEF FOR RESPONDENT, DONNELLY GARMENT COMPANY, IN OPPOSITION.

OPINIONS BELOW.

The opinions of the Circuit Court of Appeals (XIII, 7-64) are reported in 151 F. 2d 854. Prior opinions of the

Circuit Court of Appeals in this case are reported in 123 F. 2d 215.

JURISDICTION.

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code as amended by the act of February 13, 1925, and Section 10(e) and (f) of the National Labor Relations Act.

THE FACTS AND ISSUES.

The Petitioner does not fairly state the facts or evidence.

The Petitioner does not correctly state the issues, but presents hypothetical questions.

Petitioner's Statement of Facts.

Petitioner by a distorted statement of the evidence attempts to make it appear that, on the facts, the decision below has grievously frustrated the Labor Board in carrying on its legitimate objectives (p. 32). The exact opposite is true—the Labor Board for seven years has sought to prevent the Donnelly employees from having the union of their own selection—a choice not merely by a majority but by 100% of the employees (see excerpt from Judge Riddick's opinion, XIII, 55), and has sought to punish respondent for having recognized and dealt with that union, as an employer is specifically required to do by the National Labor Relations Act (29 U. S. C. A., Sec. 159).

Petitioner's statement is extremely distorted in that throughout it *assumes* as proved by substantial evidence the very matters which are in controversy.

For example, at page 15, Petitioner says that "Todd called a meeting of employees during working hours on April 27, 1937" (the organization meeting of the Donnelly Garment Workers' Union), whereas the Trial Examiner found in his first intermediate report that the meeting was held after working hours (A. 526), and the actual and offered testimony of the 1,200 employees was that it was held after working hours (III, 760; VIII, 2565, 2623, 2917, 3003, 3078, 3187 and 3253).

Practically every other statement in Petitioner's statement of facts is subject to the same criticism.

We are cognizant of the rule that the Board's findings, if supported by the evidence, are conclusive; but that rule is not applicable here where the Court below did not reach the merits (XIII, 37, 51). Implicit in the rule that the Board's findings are conclusive is the prerequisite rule that the Board shall have first given a proper hearing and have received and considered the competent and material evidence offered by the respondent—and whether the Board did that here was the issue before the Court below.

Petitioner's Statement of the Issues.

Petitioner's statement of the "Questions Presented" (p. 2) is even more unfair and incorrect. They present hypothetical issues, not the real issues. Petitioner assumes as facts the very matters which are in controversy and leaves out facts and evidence which were before the Court below and, on such premise asks, did the Court below err? Such issues are, therefore, hypothetical and for this Court to pass upon the issues as presented by Petitioner would not answer the question whether the Court below erred.

For illustration, we refer to Petitioner's Question 1(a) (at p. 2), which assumes that the employer "through his

supervisory staff sets up and thereafter takes a leading part in the administration of a plant union." That statement assumes as a fact the principal controverted question in the case. The Court below did not pass on any question or matter involving that assumption.

Practically every other of the "Questions Presented" by the Petitioner contains the same vice.

THE REAL ISSUES.

The issue upon which the Court below based its refusal to enforce the Board's order was whether respondent was denied a fair trial by the Board's refusal to receive and consider certain evidence and by its refusal to designate a different trial examiner to conduct the second hearing. These matters are set forth in the Court's opinion at XIII, 38-51. The issue as to whether the Board's findings and order were supported by the evidence was not reached by the Court below (XIII, 37). The issue here on application for certiorari is not whether the Court below was wrong in some one or more of these rulings, but whether the decision of the Court below is so completely wrong, in all respects, as to constitute an abuse of the Court's power and discretion.

SUMMARY OF ARGUMENT.

Certiorari should not be granted for the following reasons:

I. The Court below, in refusing to enforce the Board's order, did not abuse the power and discretion vested in it by Congress.

(a) The Court was "not in error" in ruling that the Board should have received and considered the offered evidence.

(b) The Court was "not in error" in ruling that the Board should have designated a different Trial Examiner for the second hearing.

(c) In any event, the Court's rulings were not so completely wrong as to constitute an abuse of the Court's judicial power and discretion.

II. The decision of the Court below does not involve questions of such importance or character as to call for the issuance of certiorari by this Court.

III. The decision below does not conflict with decisions of this Court or with decisions of other circuits.

ARGUMENT.

I.

The court below did not abuse its power and discretion in refusing enforcement of the Board's order.

In *National Labor Relations Board* v. *Indiana and Michigan Electric Co.*, 318 U. S. 9, this court said (at p. 28):

> "But courts which are required upon a limited review to lend their enforcement powers to the Board's orders *are granted some discretion* to see that the hearings out of which the conclusive findings emanate *do not shut off* a party's right to produce evidence or conduct cross examination material to the issue. * * * Findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, its findings, is heard *and weighed.*"

and at p. 16:

> "Thus, in order to decide this case in favor of the Board we would have to hold not merely that the evidence of dynamiting would be a matter of indifference in our view of the case but that the court designated by statute to exercise discretion in the matter and which desired to know the facts about it before passing on the sufficiency of the evidence and the impartiality of the examiner and which thought the finder of the facts should hear and consider such evidence, must *not only have been in error* but must *also have abused* its judicial discretion."

The foregoing ruling is applicable here. Although that ruling was made upon an application to adduce additional evidence yet the same reasoning is applicable in

a proceeding to enforce an order of the Board. The Circuit Court of Appeals is the court vested by Congress with the power of determining whether the Board's orders shall be enforced. Of course, that is not an uncontrolled power, but certainly it carries a wide latitude and range of discretion and judgment to be exercised by the court, especially as to evidentiary matters and procedural questions, which are the type of matters ruled on in this proceeding.

This Court should no more review the decision of the Circuit Court of Appeals in its decision upon these fact questions than the Circuit Court of Appeals should review the decision of a trial court upon similar fact questions—as held by this Court in the recent case of *United States* v. *Johnson*, decided February 4, 1946, where the Court said (90 L. Ed. Advance Opinions 389, l. c. 391):

> "But it is not the province of this Court or the Circuit Court of Appeals to review orders granting or denying motions for a new trial when such review is sought on the alleged ground that the trial court made erroneous findings *of fact*" (Citing cases).
>
> "While the appellate court might intervene when the findings of fact are wholly unsupported by evidence" (Citing cases), "it should never do so where it does not clearly appear that the findings are not supported by any evidence."

Under the above quoted cases, certiorari should not be granted herein unless the Court below "not only is in error" but also unless the bases of its decision are so utterly groundless that it has "abused its judicial power and discretion."

Neither of such conditions exists here:

(a)

THE COURT BELOW WAS "NOT IN ERROR" IN RULING THAT THE BOARD SHOULD HAVE RECEIVED AND CONSIDERED THE PROFFERED EVIDENCE.

The Court below bases its decision as to the exclusion of evidence on the Board's refusal to receive and consider evidence as to six different matters (XIII, 40-50).

This Court's ruling in the *Indiana and Michigan case, supra* (l. c. 16), would apply if only *one* material class or item of evidence had been excluded by the Board. We submit that the Court below was right as to all six classes. Each of these types of evidence was directly relevant and material to some phase of the case as to which Board made findings adverse to respondent. We briefly discuss the various types of evidence excluded:

(1) Evidence of conspiracy by ILGWU.

In *NLRB* v. *Indiana and Michigan Electric Co., Supra,* this Court in passing upon the materiality of evidence of violence and lawlessness engaged in by the petitioning union held (headnote 1) that—

> "the dynamiting and other acts of violence might have explained the preference expressed by some employees for the latter union, which preference had been wholly disbelieved by the Board, and, on the whole case, it would seem that the Board ought to have considered the dynamiting, along with the other evidence, before reaching any final conclusion in the case."

And the Court also held (l. c. 20) that such evidence would go to the

> "fairness of giving absolute finality to the Board's findings of fact" and also (l. c. 24) would bear on the

employees' "good faith in testifying to the reasons for preferring an association of their own to Local B-9."

The excluded evidence here, with reference to the conspiracy, unlawful activities, and threats of the complaining union, ILGWU against the Donnelly company and its employees, comes within the same category as that ruled upon by this Court in the *Indiana and Michigan case, supra*. The excluded evidence here would have shown that the ILGWU was threatening to subject the Donnelly employees to physical violence and to the humiliation of having their clothing stripped from them in the public streets, as the ILGWU had been doing in its other strikes (A. 488-491; IV, 1216, 1228, 1273, 1275, 1302, 1305; V, 1412, *et seq.*, 1477, 1483, 1511, 1527, 1546; XII, 4195) as well as endangering their jobs and right to go to and from their work in peace and security. These were vital rights—rights which respondent's employees might be expected to protect and preserve to themselves by every lawful means, without any "coercion" by respondent. This evidence, therefore, had a direct bearing on the principal issue here, of "domination."

The Board refused to receive such testimony or to let respondent go into any of the matters relating to such conspiracy (A. 509) which were pleaded as a defense in Part B of respondent's answer (A. 387-394), but struck that part of respondent's answer (A. 508) and rejected respondent's offer of proof (III, 742d; VIII. 2562) on Part B of its answer.

Such evidence was also competent and material because it would throw light on many controverted issues as to which the Board made adverse findings, and also would bear on the good faith, truthworthiness and reasonableness of the testimony of respondent's employees as

to how and why they formed the Donnelly Garment Workers' Union, as well as upon that of respondent's officials. (*Indiana and Michigan case, supra*, l. c. 24).

The Court below "was not in error" in holding that such evidence should have been received and considered by the Board.

(2) Refusal of Board to consider employees' testimony as directed by the Circuit Court of Appeals in its former decision.

The Court in its previous opinion (123 F. 2d 215) held that the testimony and offered testimony of the "1,200 employees" of respondent as to "how and why" they came to form and join the Donnelly Garment Workers' Union and that they did so freely and without any domination, coercion or interference by the employer, was competent and *material* testimony and should have been received *and considered* by the Board. We do not argue that all 1,200 witnesses should have been permitted to take the stand; but that the testimony of those who did testify as to such matters should have been accepted by the Board *as being material* to the issues and should have been fairly weighed and considered by the Board *as material*, in accordance with the previous opinion of the Court below, and that the offered testimony of the remaining 1,200 employees having been rejected as *cumulative*, should have been considered as though the "1,200 witnesses" had actually testified thereto (as Judge Riddick held XIII, 53). But the Trial Examiner and the Board *refused to regard this evidence as having any materiality whatsoever*. The Trial Examiner repeatedly said in the first trial that it was wholly worthless and he would not consider it (A, 484-487, 492-3). In the second hearing, although he permitted eleven employee witnesses to testify and it was conceded that the remaining 1,200 employees would testify substantially the same way, this overwhelming proof did

not move him one jot or tittle and he blandly finds in his second Intermediate Report, as in his first, that the employees were "coerced" by the employer into forming the Donnelly Garment Workers' Union, thereby necessarily holding that each and all of these 1,200 witnesses either committed perjury or that they were practically morons, who did not know when duress was being applied to them.

That the Trial Examiner completely disregarded and refused to consider the employees' testimony is conclusively shown by the fact that in his Intermediate Report the only mention made by him of this testimony—obviously the most important evidence in the case—is at X, 3838, where he says "the undersigned accorded the respondent and the Donnelly Garment Workers' Union an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing * * *," and then after devoting 40 printed pages to the recitation of other evidence, mostly circumstantial, and without once mentioning that the 1,200 employees say there was no coercion, the Trial Examiner at X, 3888, says: "*On all the evidence* the undersigned finds the respondent dominated and interfered with the formation and administration of the Donnelly Garment Workers' Union * * *"! A more flagrant disregard of important evidence and flaunting of the Court's ruling can hardly be conceived, unless it be that of the Board itself to which we now turn.

The Board was more blunt in stating its disregard for the evidence which the Court had ruled was material. The Board adopts the Trial Examiner's intermediate report word for word (A, 618) save for a minor correction (A, 620) and bluntly says that it "adheres to its opinion," that the employees' testimony has no materiality upon the issue of domination— "* * * we are moreover impelled to adhere to the opinion, derived from our experience in

administration of the Act, that *conclusionary* evidence of this nature is *immaterial* to issues such as those presented in this case" (A, 619).

The Board lamely attempts to side step its open avowal that it deems said evidence immaterial by saying that it "carefully considered all such evidence" (A, 619). It seems, obvious, however, that no *bona fide* consideration was given by the Board to evidence which it avowedly treated as immaterial. The respondent gained nothing by the Court's remand of the case to the Board to "receive *and consider*" (XIII, 5) the excluded evidence. It was the same as though the Board had again refused to receive it at all. The Board's refusal to accept the spirit of the Court's decision made the remand a mere farce. As said in *De Bardeleben* v. *National Labor Relations Board,* (C. C. A. 5) 135 F. 2d 13, l. c. 14-15:

> "The finding of the board that the acts of the employees in forming their own association were not their voluntary acts but were the results of domination, interference and support by the company, *in the face of the positive evidence of those who formed the organization* that this was not so, and with no evidence to the contrary, *is a mere fiat.*"

And in *Humble Oil & Refining Co.* v. *National Labor Relations Board,* (C. C. A. 5) 113 F. 2d 85, l. c. 91:

> "*If human testimony can establish anything,* it establishes that Humble did not dominate or interfere with the organization of either Federation."

Nor was this "conclusionary" evidence, as it is referred to by the Board. It is testimony as to *facts.* The witnesses were asked, not only, "did you join the DGWU of your own free will," but were asked questions such as these: "Did any officer, executive or anyone that you

thought was representing the management talk to you about the meeting?" (of April 27th) (VIII, 2565): "Now, prior to that meeting; had anyone, any officer, executive, or anyone representing the management, suggested to you or suggested to anybody else in your presence that the employees form a union?" (VIII, 2566); "Did any official, executive, or representative of the management request you to sign the petition?" (of March 2nd) (p. 2578); "Did you gain the impression from any source, or did you understand that the Loyalty League had anything to do with the formation of the Donnelly Garment Workers' Union?" (p. 2582); "Did you ever hear anybody in the factory say that Ross Todd represents the employers about labor matters?" (p. 2593) etc., etc. *The answers to all these questions were in the negative.* Those and many other similar answers constituted testimony as to *facts*, not conclusions.

But we also submit that the answers that the employees "joined the DGWU of their own free will and without coercion on the part of the petitioner" is testimony as to a *fact—i. e.* the state of mind of the witnesses —and as to the *fact* that such state of mind was not created by duress of petitioner. And who would know that fact better than the employees concerned?

Respondent respectfully submits that the Board's refusal to treat as material the unanimous testimony of the employees concerned that they formed and joined the DGWU as their voluntary choice of a bargaining agency, was not only a flagrant abuse of its own power (*Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, l. c. 226; *Indiana and Michigan case, supra*, l. c. 28; *NLRB* v. *Laister-Kauffmann Aircraft Corp.*, (C. C. A. 8) 144 F. 2d 9, l. c. 16), but was also a flagrant disregard of the Court's ruling.

The Court was "not in error" in its ruling on this matter.

(3) Failure to receive evidence as to events in 1934-35.

The Board over respondent's objections (III, 1110 a, b, c,) received in evidence hundreds of pages of testimony given in an invalid Labor Board proceeding back in 1934-35 (prior to the enactment of the National Labor Relations Act). Respondent contends, and the Court below ruled (XIII, 48), that having admitted the Board's and ILGWU's evidence as to the 1934-35 activities, the Board should not have excluded respondent's countervailing evidence and cross examination relating to the same period and events (VIII, 2823-25, 2887-8, 2896; X, 3757; A, 278, 281, 285, 287). The Board based its finding (erroneous, we claim) of respondent's "hostility to unions" on such evidence (X, 3869, 3871, 3885-6). The relevance and materiality of such countervailing evidence and cross examination as to these matters, and the unfairness of excluding it seems too obvious to require further discussion. The Court below was "not in error" in ruling that it should have been received and considered.

(4) Failure to receive evidence of provisions of ILGWU contracts.

The issue here is not the general, abstract question of whether in a unfair labor practice proceeding the contracts of the complaining union with other employers are admissible, as petitioner seems to present it. The relevance of the evidence is based upon the fact that the Board and ILGWU devoted much time and evidence in an effort to show that the contracts between respondent and the DGWU were "sham" contracts (I, 160d, 160g, 161-2, 205-6), in support of their contention that the DGWU was dominated by respondent. They pointed to the provision in the DGWU contract that members of the bargaining committee

must have been employed for a year by the respondent (I, 160d, 160g), as showing company domination. To rebut this and show that the provision was a proper and usual one in union contracts and hence no proof of domination, respondent offered to prove that the ILGWU contracts contained similar provisions (VI, 1656, 1661-2, 1669). Such evidence was clearly competent for that purpose and its materiality is shown by the Board's adverse findings based on the very contention which this rejected testimony would have refuted (X, 3879). The Court was "not in error" in ruling such contracts admissible for the purposes offered.

(5) Refusal to receive evidence that Instructors, Thread Girls and other employees of respondent, held by the Board to be Supervisory Employees, were not so considered in trade unions generally, including the ILGWU itself, but were eligible to union membership.

One of the chief bases of the Board's decision against respondent is that the employees known as Instructors, Thread Girls, Head Pattern Maker (Mrs. Strickland) Head Cutter (Mr. Scoles), Examiners, and certain other employees, participated in the formation of the DGWU and were members of it and that their participation therein rendered that Union a dominated union, on the ground that such employees were "representatives of the management" (X, 3875-3878). To refute this finding or inference by the Board, the respondent sought to show by Wave Tobin, local manager of the ILGWU (X, 3788) and by the records of the ILGWU (X, 3790) and by Erwin Feldman, Counsel for many garment companies (X, 3791-2), that such employees and employees holding similar positions in garment companies, were regarded in trade unions generally, including the ILGWU, as not being Supervisory Employees but as being eligible to membership and participation in such unions. The relevance of this evidence

for such purpose is apparent. In *International Assoc. of Machinists* v. *National Labor Relations Board*, 311 U. S. 72 (l. c. 80), this Court held that the test as to domination by alleged Supervisory employees was whether the employees generally "would have just cause to believe" that such alleged supervisory employees "were acting for and on behalf of the management." If employees in the garment industry generally *do not* regard such employees as supervisory employees and *do* regard them as eligible to join and participate in unions, those facts would have a bearing on the true status of such employees in the case at bar. It would also throw light on the credibility and effect to be given to the testimony of the employees and of respondent's officers as to the status of such alleged supervisory employees (*Indiana and Michigan case, supra*, l. c. 24-27).

In fact, the Board itself has used this very type of evidence for this very purpose: In *Reid, Murdock & Company*, 56 NLRB No. 57, The Board said: "The Union has included keymen of similar work status in its bargaining contracts with the company's competitors." (And the Board in that case found such "keymen" *not* supervisors but "ordinary production and maintenance employees.")

Under the Board's own decisions in other cases, the instructors, thread girls, Rose Todd, Hobart Atherton, head pattern maker, Mrs. Strickland, Mrs. Gray, the inspectors, and similar employees, were not supervisory employees but were eligible to membership in the DGWU and their membership and participation therein does not constitute domination, coercion or interference by the management:

Ranco, Inc., 57 NLRB No. 82, decided July 20, 1944, was an *unfair labor practice* case, similar to the case

at bar. The question was whether "group leaders" and "set up men" were supervisory employees. The "group leaders" were very much like the instructors in the case at bar—they *instructed* employees, *gave them work*, etc. The Board said:

> "The basic question to be determined in order to resolve the issues concerning interference, restraint, and coercion on the part of the respondent and domination of the independent by the respondent is the alleged supervisory status of two classes of employees, namely, group leaders and set-up men. * * *
>
> "Group leaders *give work* to employees in the production or inspection line, *instruct* employees in their duties, ascertain whether they are supplied with work, obtain supplies and equipment for employees, and at times engage in production work alongside ordinary employees.
>
> "The record clearly establishes that neither group leaders nor set-up men have power *to hire, demote, or discharge employees, to grant raises or leaves of absence, or to recommend such action.* Their authority in this regard *is limited to reporting to their superiors*, either foremen or assistant foremen, the inefficiency of employees within their groups. * * * Although some employees testified that they regard set-up men and group leaders as their 'bosses,' the evidence establishes, in our opinion, that group leaders and set-up men perform no supervisory functions, being merely highly skilled employees, *and are not regarded as supervisors by the management, by the other employees, or by themselves.* Set-up men and group leaders were eligible to membership in both the Independent and the Union; several joined either one or the other organization. At the hearing, Lewis Strickland, the Union's International Representative, *admitted that group leaders and job-setters were members of the Union* and stated that their continued eligibility to membership was 'a matter for me to de-

termine later on.' In view of all the evidence, we find that group leaders and set-up men were not supervisory employees. * * * We conclude that the respondent is not liable for their activities and statements."

In *Industrial Rayon Corporation*, 56 NLRB No. 104, decided May 15, 1944, the Board held that section *inspectors* and the *head inspector* in the cone packing department were *not* supervisory employees, saying:

> "While they are responsible for the quality of the work produced, they do not supervise production employees *in the sense that they have the power to hire, discharge, lay-off, discipline or otherwise effect changes in their status.* Rejection by them of the work of the production employees does not have any direct or significant effect upon the earnings of these employees; *they have no voice in determining or shaping the labor policy of the company.* It is clear, therefore, that *in the area of labor relations and policy*, these employees do not constitute management *in the eyes of the rank and file* as do truly supervisory employees."

(And to the same effect, see: *Dortch Stove Works, Inc.*, 58 NLRB No. 82; *Reid, Murdock & Co.*, 56 NLRB No. 57; *Yale & Towne Mfg. Co.*, 56 NLRB No. 193; *Land O'Lakes Creameries, Inc.*, 53 NLRB No. 170.)

Although respondent contends that the "Instructors," "Thread Girls," etc., were in no sense supervisory employees and hence properly participated in the Donnelly Garment Workers' Union under the Board's former decisions, now the Board has gone further and held (in the United Mine Workers' case, announced in the press on March 7th, 1946) that it is *proper* for *foremen* (admittedly "Supervisory" employees) to be included in Unions *with production "workers."*

The Court below was "not in error" in ruling that such offered evidence should have been received.

(6) Refusal to permit respondent to examine Wave Tobin as to threats and violence of ILGWU, and concerning eligibility of "instructors," etc., to participate in unions, and generally.

The Trial Examiner refused to let respondent examine Wave Tobin at all (VIII, 2561-2-3; IX, 3257). After first letting her testify for a short while, he stopped her testimony (VIII, 2543), ruling that he would first hear the 1,200 employees (VIII, 2556, 2561). But later he refused to let her be recalled to the stand to testify as to anything (X, 3257, X 3783), rejecting respondent's offers of proof 1-SSSSS and 1-TTTTT (X, 3787-3790), and struck out entirely the little testimony which she had given (IX, 3257). The Board's refusal to permit respondent to call and examine Wave Tobin therefore became not merely a ruling on the "order of proof," but the *total exclusion* of Wave Tobin as a witness, and hence was arbitrary, unfair, and contrary to all concepts of a fair trial. The Court was "not in error" in ruling that such testimony should have been received.

We respectfully submit that as to each and all of the six items or types of evidence excluded, the Court below was "not in error" in ruling that it should have been received by the Board, and further submit that if the Court was right as to *any one* of the six items, this Court should not disturb the decision by writ of *certiorari*.

(b)

THE COURT WAS NOT IN ERROR IN RULING THAT THE BOARD SHOULD HAVE DESIGNATED A DIFFERENT TRIAL EXAMINER FOR THE SECOND HEARING.

Respondent in its Application for Designation of Another Trial Examiner for the second hearing made a very

strong showing that Trial Examiner Batten had prejudged respondent's most important evidence (A, 475, 483, 493). Batten's mind was completely saturated with the view that the testimony of the 1,200 employees concerned, as to "how and why" they formed and joined the DCWU and that they did so freely and voluntarily, without coercion, was completely worthless and immaterial. It was, therefore, impossible for him to fairly evaluate that testimony, as respondent was entitled to have it evaluated.

The Court below is entitled to some latitude and discretion in determining whether it shall enforce an order of the Board upon a hearing so conducted (*Indiana and Michigan case, supra*, l. c. 28). It was not merely a question of Batten's erroneous rulings in the first hearing, which could be reviewed on appeal; it was a question of "preventing his future action in the pending cause" (*Ex Parte American Steel Barrel Co.*, 230 U. S. 35, l. c. 44) when he had pre-judged the case. Here the circumstances amply justify the Court's ruling that the Board should have appointed a different Trial Examiner for the second hearing (*NLRB* v. *Washington Dehydrated Food Co.*, (9 C. C. A.) 118 F. 2d 980, l. c. 997; *NLRB* v. *Henry K. Phelps, Jr., Trustee*, (5 C. C. A.) 136 F. 2d 562, l. c. 566-7).

(c)

IN ANY EVENT, THE COURT'S RULINGS WERE NOT SO COMPLETELY WRONG AS TO CONSTITUTE AN ABUSE OF ITS JUDICIAL POWER AND DISCRETION.

As said in the *Indiana and Michigan case, supra*, l. c. 16, the Court below must "not only have been in error" but must also "have abused its judicial discretion," to warrant this court in reviewing its decision.

Congress in setting up the procedure under the National Labor Relations Act vested in the Circuit Court

of Appeals the power and discretion of determining (under certain limitations) whether the Board's order should be enforced. It was not contemplated by Congress that every decision by the Circuit Court of Appeals should be reviewed by this court. Congress was familiar with the policy of this court that it would not ordinarily review on certiorari decisions of the Circuit Court of Appeals except those falling within the scope of Rule 38 of this Court, and, with that knowledge, Congress made no further provision for review by this court of Labor Board cases. A wide latitude of discretion must be allowed to the Circuit Court of Appeals in passing upon such matters. For example in *NLRB* v. *Sands Mfg. Co.*, 306 U. S. 332, l. c. 341-2, this Court held that certain statements by certain alleged supervisory employees did not, under the circumstances, constitute evidence of the employer's policy and in the *International Machinists case, supra* (l. c. 80), this court laid down the rule that whether the statements of an alleged supervisory employee constitute domination depends not so much on the nature of the employee's position but on whether the employees generally have "just cause to believe" that he is speaking for the management. Under these rulings, there is a wide range within which the Circuit Court's discretion and determination as to the relevance and materiality of evidence excluded by the Board should be given finality in enforcement cases and not be reviewed by this court on certiorari.

The case at bar comes especially within that range for the court below has in good faith exercised its power and discretion upon six different types of evidence and in so doing it has not abused its discretion, "even though in this court's view such evidence would be a matter of indifference" (*Indiana and Michigan case, supra*, l. c. 16).

II.

The decision of the court below does not involve questions of such importance or character as to call for the issuance of certiorari by this court.

Our comments (pp. 20-21, *supra*) are also applicable here.

This case is peculiarly one in which this court should not disturb the decision of the court below. The grounds upon which the court below based its decision are *procedural matters* and *questions of evidence*. This court has in many decisions established the general rules governing the admissibility of evidence and a reiteration of those rules in a review of this case would serve no useful purpose. No two cases are exactly alike on the facts and no absolute criteria can be established to govern future rulings by inferior courts on such question. The Circuit Court of Appeals must be given a wide latitude in the exercise of their power and discretion in such matters. We respectfully submit that the case does not fall within any of the categories embraced in Rule 38 of this court.

It is true that the court below stated in its opinion (XIII, 51) that it believed the Labor Board would be justified in applying for certiorari. However, the court below did not deem the questions of sufficient importance or have such doubt concerning how they should be answered as to cause that court to certify the questions to this court for answer, as it was entitled to do under the statute (28 U. S. C. A., Sec. 346). True, as stated by the court below, the decision is an important one to the parties, namely, the Board, the Respondent, the Respondent's Employees, and the International Ladies Garment Workers' Union—but what case is not? It is important to the public only in the sense that all questions which involve the ruling of a public body, such as the Labor

important. But under Rule 38 this court does not ordinarily consider importance of that nature a sufficient ground to disturb decisions of Circuit Courts of Appeal, unless the guidance of this court is needed for future decisions.

We respectfully submit that certiorari should be denied for lack of general judicial importance of the rulings below.

III.

The decision below does not conflict with decisions of this court or with decisions of other circuits.

Petitioner says (p. 34) that the decision below (as to the materiality of the "employee testimony") conflicts with *Bethlehem Steel Co.* v. *NLRB*, 120 F. 2d 641. In the Bethlehem case there was a *prior company-dominated* Plan—and the court said (l. c. 653):

> "Since the organization, structure, and Company support of the Plans ensure Company dominance and violate the Act, this testimony would have been irrelevant."

The court's holding of immateriality is based on the fact of the company's domination of the *prior union*. But that is not the situation here. Here there was no prior union, and hence there is no conflict with the Bethlehem Steel Co. case.

In the prior decision herein of the Court below that court said (123 F. 2d l. c. 222):

> "This was *not a case* where domination and support by an employer of an independent union was conceded or *where the independent union was conclusively shown to be of a character which could not, in any event, act as the bargaining representative* of its members. The evidence of the Board which tended

to show domination and support of the independent union by the Company *was circumstantial.*"

Nor does the decision below conflict with *Western Cartridge Co.* v. *NLRB*, 134 F. 2d 240. In quoting from that case, pp. 36-37, petitioner stopped short of the paragraph immediately following the part quoted, which reads (l. c. 244):

> "In the instant case, the record discloses that the examiner permitted Independent to adduce the testimony of witnesses *who had participated in its organization* as to their reasons for joining, but that he refused to receive the testimony of *several thousand* employees as to their reasons for joining the Independent *after* its formation."

Here the Trial Examiner and Board refused to consider as material the testimony of the employees *who participated in organizing* the independent union. That clearly differentiates the two cases.

The other cases alleged (pp. 37-38) to be in conflict with the decision below are distinguishable in that *they each involve a prior company dominated union* or plan and that the new union or plan was merely a continuation under a new name, and hence was invalid under the holding of this Court in *NLRB* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241. Such holdings are therefore not in conflict with the decision at bar where there was no prior union.*

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*The Board, realizing this obvious distinction and seeking to overcome that obstacle so as to bring the case within the ruling of the Newport News case, attempted to fashion a "prior union" out of a social organization existing among the Donnelly employees known as the Loyalty League, which organization however never approached the status of a labor union in any way. It never dealt with the Company as to wages and working conditions, it had no dues, held no regular meetings and, according to the testimony and offered testimony of the 1,200 employees, was not connected with the Donnelly

Petitioner concedes (p. 38) that *NLRB* v. *Swank Products, Inc.*, (C. C. A. 3) 108 F. 2d 872, 875, is in harmony with the decision below. So is that of the 5th circuit in *Humble Oil & Ref. Co.* v. *NLRB* (113 F. 2d 85 l. c. 91). And see also the eight cases cited by the court below in its former opinion, 123 F. 2d, beginning at the bottom of page 222.

The cases cited by petitioner at p. 39 as being in conflict with the decision below that the Board should have designated a different Trial Examiner for the second hearing are not in conflict but are distinguishable.

In *NLRB* v. *Air Associates, Inc.*, 121 F. 2d 586, the court (quoting from *NLRB* v. *Ford Motor Co.*, 114 F. 2d 905, 909), concedes that: "each decision must be based upon the peculiar facts of the case involved and the cause and degree of the impropriety" (l. c. 589), and pointed out that even if the Examiner were biased it would not upset the Board's order "since respondent does not assert that the Examiner committed any error in the admission or exclusion of evidence" (l. c. 589). (How different from the case at bar, where not only does the respondent assert, but the court below finds, that the Trial Examiner committed error in excluding six different classifications of material

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Garment Workers' Union in any way but its activities were purely social (III, 762; I, 37, 187; II, 643, 561, 622, 652, 676, 678-9; VIII, 2581-2, 2632, 2718, 2727, 2777-8, 2860, 2827-8; IX, 3011, 3052, 3090, 3129-30, 3196). In fact, the Board's own witness, Etta Dorsey, a very hostile witness, let the truth as to the true status of the Loyalty League escape her when she testified (IX, 3362-3):

"Q. As a matter of fact, that was all the Loyalty League was, a social group?

A. Yes, a kind of get together and get acquainted affair, and plan on good times and things like that.

Q. Yes, you had parties and picnics.

A. Yes, **that was the object of it.**"

And the Board's witness, Mrs. Keyes, testified similarly (X, 3653):

"Q. [illegible] activities in the Loyalty League other than

and competent evidence!) Also the court in the Air Associates case says: "But here the trial examiner made no decision and his tentative findings *were disregarded*" (l. c. 590). (How, different, here, where the entire Intermediate Report of the Trial Examiner was adopted *verbatim* by the Board, except for a minor correction stated by the Board at A, 620.)

In *NLRB* v. *Weirton Steel Co.*, 135 F. 2d 494, the court pointed out that "the trial examiner against whom most of the accusations of unfairness are made was superseded long before the end of the hearings and made no intermediate report," and that "When the second trial examiner took charge of the hearings, he afforded the Company a full opportunity to offer any evidence which it had previously been prevented from introducing" (l. c. 496). This fact situation is so different that there is no conflict with the case at bar.

In *NLRB* v. *Botany Worsted Mills*, 133 F. 2d 876, it likewise appears that there is no similarity between that case and the one here. The statements of the Trial Examiner most complained of was that he "was bound by prior rulings of the Board upon the very case in hand" (l. c. 882). The court also said, concerning the Trial Examiner's ruling on evidence, etc.: "In the view we take of the case, there was no error in these rulings" (l. c. 882). (How different from the situation here where the court below holds that the Trial Examiner and Board erred in many different respects!)

Nor does *Ex Parte American Steel Barrel Co.*, 230 U. S. 35, aid petitioner. On the contrary in that case this court said of the rule for disqualifying judges that:

> "It was never intended to enable a discontented litigant to oust a judge because of adverse rulings

made, for such rulings are reviewable otherwise, *but to prevent his future action in the pending cause*". (l. c. 44).

That is precisely what respondent sought here in asking for a different Trial Examiner—"to prevent his (Batten's) future action in the pending cause"—after he had *prejudged* respondent's most important evidence as worthless and immaterial and had expressed such pre-judgment in terms so positive and unequivocal (A, 484, 486, 492) as to show beyond question that he could not in the second hearing fairly evaluate such testimony or accord to it any weight whatever.

There is obviously no conflict between the case at bar and the *American Steel Barrel* case but, rather, the latter case *supports* the holding of the Court below.

Likewise the case of *Berger* v. *United States*, 255 U. S. 22, is not in conflict with the case at bar. That case is one of the leading cases holding that it is essential to judicial administration that a litigant have a fair trial before an unbiased judge. It holds that a showing which gives "fair support" to the charges of a "bent of mind" that "may" impede impartial judgment, is sufficient. The decision below is in harmony, not in conflict, with that view.

Petitioner (p. 39) misconceives the importance of the Trial Examiner in the procedure set up by the NLR Act. While the Trial Examiner does not make decisions, his findings and recommendations in his Intermediate Report carry great weight with the Board, as do the findings of a Master, or of a lower court with appellate courts. If the Trial Examiner is biased or has pre-judged a case, it is well nigh impossible to prevent such bias or pre-judgment from being carried forward into the Board's deci-

sion. The instant case is an excellent example, as the Board here accepted the Trial Examiner's report *in toto*.

In Paragraph 2 (p. 40), Petitioner again cites *Bethlehem Steel Co. v. NLRB*, 120 F. 2d 641, as being in conflict with the decision below on the admissibility of certain provisions in ILGWU contracts. As pointed out, *supra*, the issue is not whether those contracts were admissible *generally*, but to rebut the Board's and ILGWU's evidence and contentions. In the Bethlehem Steel Co. case the purpose was to make a *general* showing "regarding the dates, scope, duration and terms of the agreements * * *" (l. c. 651). The Court held the contracts were irrelevant for such purpose. That holding does not conflict with the holding here.

Under Paragraph 3 (p. 41), the Board cites two cases as being in conflict with the decision below on the question as to whether evidence was admissible tending to show that employees of the same or similar status as the Instructors, Thread Girls, Examiners, etc., were generally regarded in the garment industry and unions, including the ILGWU, as not being supervisory employees and as being eligible to union membership. Here again, the contentions of the Board in the hearings must be considered in determining the relevance and materiality of the proffered evidence. We have discussed this at pp. 15-19, *supra*.

With this background it is apparent that the case of *NLRB v. Aintree Corp.*, 132 F. 2d 469, is not in conflict with the decision below.

Nor does *New Idea, Inc., v. NLRB*, 117 F. 2d 517, conflict with the decision below. In fact, apparently, the Board there admitted the very kind of evidence that the Board here excluded (l. c. 524). The question of the admissibility of such evidence was not involved.

At p. 42, the Board veers from its argument as to conflict of cases, to argue that even if relevant and material, the Board was justified in rejecting such evidence because it was not covered by the remand. This argument is fallacious for at least four reasons:

1. The Board by its evidence at the second hearing bearing on the supervisory status of Instructors and Thread Girls (IX, 3324-5, 3434-5-6-7; X, 3481-2, 3554, 3642, 3644, 3650-1-2, 3673, 3675,) made admissible this rebuttal evidence, whether covered by the remand or not.

2. The Trial Examiner permitted the Board great latitude in putting in additional testimony in the second hearing to bolster its case in chief (over respondent's *strenuous* objections, IX, 3276-3288, incl., 3292-3309, incl.; 3330-3332, incl.; 3471-2; 3486; X, 3552, 3640-1, 3666) and it little behooves the Board to complain that the respondent in rebuttal thereof sought also to add to its defense in chief.

3. It was fairly within the terms of the remand which was for the purpose of receiving and considering "all of the competent and material evidence" (123 F. 2d l. c. 225) which the Board had rejected at the first hearing, including "how and why the employees came to organize" the DGWU (l. c. 222). Also the Board at the first hearing had rejected the ILGWU contracts which respondent had offered in evidence, and the Board had striken out in its entirety Part B of respondent's answer, relating to the conspiracy of violence and fraud on the part of the ILGWU. If all this evidence had not been rejected at the first hearing, the respondent would in connection therewith have adduced evidence on the points in question.

Lastly, and in any event, the Court's ruling as to this one item of evidence, even if erroneous, is not such

an abuse of its discretion and power as to invalidate its decision on the other five types of evidence which it held the Board should have received and considered.

Under Paragraph 4 (pp. 43-44), petitioner argues the correctness of the Trial Examiner's ruling that respondent could not adduce evidence of matters occurring more than six months prior to the first hearing, while permitting the Board to go into such matters. It appears to us that the mere statement of this matter shows the unfairness of such a ruling, and respondent protested vigorously against it, to the Trial Examiner, at the time (VIII, 2309, 2823-25, 2887-8; Assignments of Error Nos. 243, 244, 248, 249; A, 278-280, 285-87; X, 3757), but without avail. The question therefore is not whether such evidence was offered in the first hearing but whether in the second hearing the Board should be permitted to bolster its case in chief and at the same time respondent should be denied the opportunity to refute such additional testimony.

Under Paragraph 5, pp. 44-49, petittioner argues that the Court below erred in its ruling as to the admissibility of evidence concerning the ILGWU conspiracy. We have presented this under Point I, *supra*.

Petitioner obviously labors in its efforts to show that the court below misinterpreted or misapplied the ruling of this court in the *Indiana and Michigan case*, *supra*, but it is clear from the opinion that the Court below had none of the misconceptions which petitioner attributes to it.

If respondent had been permitted to show the matters alleged in Part B of its answer (stricken by the Board A, 508), it would clearly have shown a situation within this Court's language in the *Indiana and Michigan case*, that—

"* * * if it should appear that the charge is so related to a course of violence and destruction, carried on *for the*

*purpose of coercing an employer to help herd its employees into the complaining union * * *".* (1. c. 19).

That was exactly what the ILGWU was seeking to do here (See Part "B" of respondent's answer, A. 387-8).

CONCLUSION.

In *Ford Motor Co. v. NLRB*, 305 U. S. 364, 373, this court held that the Circuit Court of Appeals "may adjust its relief to the exigencies of the case in accordance with the equitable principles governing judicial action * * * to secure a just result with a minimum of technical requirements."

The decision below is in accord therewith.

Certiorari is ordinarily only granted when necessary to do substantial justice. To grant it here would do *injustice* both to respondent and to its employees who have *unanimously* freely chosen and maintained the DGWU as their bargaining agency for seven (now nearly nine) years. Respondent respectfully submits that this honorable court should now terminate this unjustifiable litigation, by denying certiorari.

Respectfully submitted,

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In the Supreme Court of the United States

October Term, 1945.

No. 786. 38

NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION, and INTERNATIONAL LADIES' GARMENT WORKERS' UNION.

No. [redacted] 39

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, *Petitioner,*

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION and NATIONAL LABOR RELATIONS BOARD.

BRIEF OF DONNELLY GARMENT WORKERS' UNION IN OPPOSITION TO CERTIORARI.

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In the Supreme Court of the United States

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NATIONAL LABOR RELATIONS BOARD, *Petitioner,*

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION, and INTERNATIONAL LADIES' GARMENT WORKERS' UNION.

No. 786.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, *Petitioner,*

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION and NATIONAL LABOR RELATIONS BOARD.

BRIEF OF DONNELLY GARMENT WORKERS' UNION IN OPPOSITION TO CERTIORARI.

Opinions Below.

The opinion of the Circuit Court of Appeals is reported in 151 F. (2d) 854. The prior opinion of the Circuit Court of Appeals in this case is reported in 123 F. (2d) 215. The findings of fact, conclusions of law, and order of the

National Labor Relations Board are reported in 50 NLRB 241. The prior order of the National Labor Relations Board in this case is reported in 21 NLRB 164.

Jurisdiction.

Decree of the Circuit Court of Appeals was entered October 29, 1945. Jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by Act of February 13, 1925, Sec. 347 USCA.

Questions Presented.

(All italics are ours.)

(1) Where the Labor Board refused to receive or treat as material, or to give any consideration whatsoever to the sworn testimony of all the employees as to their choice of a labor union, and as to their freedom from outside influence in organizing and operating it; and the Court of Appeals sent the case back to the Board with specific instructions that such testimony is material under the circumstances of the case at bar and must be considered by the Board as material, although the exact weight given it is a matter for the Board; and where the Board on rehearing reasserted that the specific evidence, which it had been directed to treat as material, is actually *immaterial*, and making it clear beyond doubt that such is its position in the following words (A. 619):

> "Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the DGWU, we are moreover *impelled to adhere* to the opinion, derived from our experience in administration of the act, that conclusionary evidence of this nature is IMMATERIAL to issues such as those presented in this case,"

is there any doubt, which should be taken over by this Court on certiorari, as to the correctness of the Court of Appeals' opinion in setting aside the Board's order which is based upon its expressed refusal to consider material evidence as material?

(2) Where the *statute* creating the Board provides that the Court of Appeals shall have jurisdiction to control the proceedings of the Labor Board when they violate fundamental rights and due process, using in part the following language:

> "Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board;" (29 U. S. C. A., ch. 7, Sec. 160)

and where *this Court* has specifically held in *National Labor Relations Board* v. *Indiana and Michigan Electric Company*, 318 U. S. 9, 87 L. Ed. 579, that the Circuit Court of Appeals has the power and right to direct the Labor Board to take and receive as material and of some weight specific evidence, is there any reason for this Court to grant certiorari in order to repeat this definite and well-established principle of law?

(3) Where all of the employees, and a majority of the five ex-employees appearing on behalf of the Labor Board, testify or file affidavits and are offered as witnesses that the plant union was the free-will choice of the employees; and where such plant union has been operated effectively for years, securing many settlements of disputes advan-

tageous and satisfactory to the employees; and where the employees have repeatedly petitioned for a secret election and offered to abide by its result if carried on at any time over a period of years, and have been refused such opportunity; and where the only evidence of domination is by inferences, which might be interpreted as favoring either side, as against the practically universal testimony of those who know the facts and whose testimony is unimpeached and uncontradicted—did the Court of Appeals not only err but exceed its discretion in ordering that the testimony of these employees must be considered as material although the exact weight to be given to it is a matter for the Board?

(4) Where the Court of Appeals points out as an additional denial of due process the bias and prejudice of the trial examiner, the fact of his reassignment to take the evidence on the second hearing also, and the fact that his opinion and belief of the immateriality of the evidence of the employees remained fixed and unmodified by the specific direction of the Court of Appeals to the contrary, can there be any question for this Court as to the correctness of the Court of Appeals' opinion and order in setting aside the order of the Labor Board?

(5) Where the treating of substantial and material evidence as wholly immaterial is of itself sufficient to make it necessary to set aside the finding of the Board, is it necessary or useful for this Court to grant certiorari in order to consider whether there might have been other grounds which would also have made it necessary to set aside the order of the Board?

Statutes Involved.

The pertinent provisions of the National Labor Relations Act are set forth in the Appendix, *infra*, pp. 32-34.

STATEMENT OF FACTS.

The parties to this matter are the Donnelly Garment Workers' Union, an unaffiliated union representing all the workers in the Donnelly Garment Company except those not eligible, and hereafter referred to as the DGWU, respondent herein; the Donnelly Garment Company of Kansas City, Missouri, a Missouri corporation in the business of manufacturing women's dresses, designated as the Company; the International Ladies' Garment Workers' Union, a widespread organization with offices in many states, referred to as the International; and the National Labor Relations Board, hereafter called the Board.

The statement of facts submitted in the Board's brief is actually its *Findings of Fact* in the second hearing, and it has prefaced each of its citations to the record by a citation to these findings. It was on the basis of the entire record—not on the findings of fact by the Board—that the Circuit Court of Appeals determined that due process had been denied this respondent. We therefore set forth below a part of the omitted picture. The court below included in its opinion the statement of facts which we contend the evidence shows. (151 F. (2d), l. c. 864-869) and we adopt that statement of facts as ours, and amplify it, with citations to the record, in the following statement:

In the spring of 1937 the International entered the Kansas City labor field with the announced purpose of making itself the bargaining agent for all workers in the local garment manufacturing industry (V 1532, 1549). In the progress of this campaign against workers in plants of other employers near that of the Company, violence was freely used for about thirty days without any affective protection by the local police (VII 2154, XI 4101, 4165-6).

The employees of the Company, mostly women, terrified by these occurrences and by threats of similar or greater force which would be used against them in turn unless they joined the International (IV 1336f, 1336cc, 1336ggg), had a general meeting to consider ways and means of self-protection (VIII 2568, 2920).

On March 27, 1937, a committee of workers retained legal counsel to advise them on means of protection (II 577; IX 3193). The Board is inaccurate when it states (Br. p. 14) that the purpose for which an attorney was hired was to oppose the ILGWU. Its citations to the record do not support that conclusion, but instead clearly state "what we had in mind was an injunction of some kind of protection" (I 176), and at II 556, "we told Mr. Tyler * * * we were desirous of knowing what we could do, or what could be done for us in the way of getting protection against such things (violence) as were occurring at the Missouri, Gordon & Gernes Brothers plants." On April 12, 1937, the newspapers (VII 2154, XI 4177-4179) publicized the decision of the United States Supreme Court sustaining the National Labor Relations Act, calling particular attention to the holding that workers had the right to organize their own unions, affiliated or not, to serve as their bargaining agents under the protection of the Board.

On April 27, 1937, in reaction to the violence, with the advice of their own attorney, the employees voluntarily formed their own union, the Donnelly Garment Workers' Union (II 559-561; IV 1336i, 1336ll-1336oo, 1336ww, 1336iii-1336jjj; also Board witnesses at X 3514, 3581-3582). Practically all in the Kansas City plant attended this meeting which was held in space independent of Company control and without management domination

(VIII 2565-2566, 2914-2915; IX 3006, 3078, 3122, 3187-3188).

An executive committee was selected after careful consideration, and on May 27, 1937, conferred with Mrs. Reed, the managers of the Company, and the attorney for the Company and arrived at a contract concerning wages, hours, and terms of employment and providing, among other things, for a closed shop. This contract has been supplemented by another agreement, increasing wages, negotiated on June 22, 1937, and affected by further negotiations from time to time (I 105, II 580-582, 713-714; III 812). Meetings of the DGWU have been held frequently since then and have been well attended (I 105, II 584, 718; III 830-865; IV 1336m).

Since its organization, the DGWU has functioned continuously and effectively as the chosen forum and bargaining agent of the workers and its activities have been entirely self-supported and self-controlled (I 216-217, 228, 235; II 430, 624, 692-694, 718g, 718r; X 3763-3766, 3774).

On April 6, 1939, the acting regional director for the 17th Region of the National Labor Relations Board filed a complaint against the Company and amended this on April 27, 1939, withdrawing the original charge. The complaint alleged that the Company was engaged in unfair labor practices affecting interstate commerce by dominating the DGWU (A. 369-370). The Donnelly Garment Workers' Union, this party, received a copy of the complaint, the amendment, and notice of hearing as party to the contract with the Company, and upon permission of the director intervened and filed its answer (A. 381-382). This party also then filed with the Board its formal application requesting that the Board hold a secret election at the plant in order to determine the em-

ployees' choice of bargaining agent (A. 409-410). The Board did not grant the application for an election, and although an election on several other occasions had been requested, the Board has uniformly refused to act (A 560; III 783; IV 1336qqq; VI 1693-1729; X 3844; XI 3965).

Trial Examiner Batten conducted the hearing for the Board, sustained the complaint, and was sustained in turn by the Board. In November, 1941, the Circuit Court of Appeals remanded the case to the Board (123 F. (2d) 215).

The language of the court in directing that the testimony of the employees as to their choice of a labor union and their reasons for forming it, be received and considered as material, regardless of the particular weight the Board might give to it, is as follows:

> "We have no doubt that the testimony offered by the petitioners in their efforts to prove that the employees of the Donnelly Company formed the Donnelly Garment Workers' Union *of their own free will* and that the *formation and administration* of the union was free from employer influence, domination and support, and to explain how and why they came to organize the union, was *competent, relevant* and *material* and should have been received. The individuals who form an unincorporated association certainly should know what sort of an organization it is, how it happened to be formed, who influenced its formation, and who controls it. We think there can be no doubt of the right of the members of such an organization to testify to such matters, and that their evidence is admissible regardless of its weight." (l. c. 222.)

The court then said (l. c. 224):

> "That a refusal by an administrative agency such as the National Labor Relations Board to receive

and consider competent and material evidence offered by a party to a proceeding before it, amounts to a denial of due process is not open to debate. (Citing cases.)

"The truth is that a controversy tried before a court or before an administrative agency is not ripe for decision until all competent and material evidence proffered by the parties has been received and considered."

The express holding of the court was (l. c. 225):

"Our conclusion is that the petition of the Board for enforcement of the order under review must be denied. We think that the least that the Board can do, in order to cure the defects in its procedure caused by the failure of the Trial Examiner to receive admissible evidence, is to vacate the order and the findings and conclusions upon which it is based to accord to the petitioners an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner, and *to receive and consider such evidence together with all other competent and material evidence* in the record before making new findings and a new order."

Trial Examiner Batten, over the objection of the DGWU and the Company, again was appointed as Examiner and heard the case in July to September, 1942. He first permitted the Company to introduce testimony of Mrs. Reed, president of the Donnelly Company, and some eleven employees. At the opening of the hearing Examiner Batten stated that the employee testimony was relevant and was material, and that he was agreeable to hearing it (VII 2518). But after the testimony of Mrs. Reed and only eleven employees had been received on behalf of the Company, and *before* the employees' organization (DGWU) had offered testimony, the Examiner ruled:

> "Then, I will now determine that I have heard enough employee witnesses, both as to the respondent and the intervener.
>
> "So that disposes of that matter" (IX 3255).

The DGWU was permitted to put on six witnesses in surrebuttal, but only as to questions raised previously before the Board (X 3765, 3766, 3770, 3773, 3775, 3777). The Trial Examiner and the Board, after refusing this evidence, reached the same conclusion that they had before (III 764-796). The Board's opinion on this point is:

> "Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the DGWU, we are moreover impelled to *adhere* to the opinion derived from our experience in administration of the act, that conclusionary evidence of this nature is *immaterial* to the issues such as those presented in this case" (A. 619).

On appeal again to the Eighth Circuit Court of Appeals (151 F. (2d) 854) that court again refused to enforce the order of the Board.

SUMMARY OF ARGUMENT.

(1) The court below acted in accordance with established law and no new or novel question is involved. It is not necessary to "probe the mental processes of the Board" in order to know that the Board flatly refused to treat as material vitally important evidence which the Court of Appeals specifically directed the Board to consider as material evidence, for the Board states in so many words that it adheres to its previous opinion that the evidence in question is immaterial. The law is clear that in such situation due process is denied and the Board's order must be set aside as was done by the Circuit Court of Appeals. No good purpose would be served by the granting of certiorari by the Supreme Court merely in order to reassert this principle already firmly established in the law.

(2) The case at bar is not in conflict with the cases relied on by petitioners. We have grouped the cases in the argument in order to show briefly that they are not in point.

(3) This litigation should end. Federal courts have repeatedly found the fact to be that the DGWU is the free-will choice of the employees as bargaining agent and no court has ever found to the contrary. In two hearings of some six weeks each, the Board has completely failed to make a case and in categorically refusing to follow the Circuit Court of Appeals' ruling as to what is material evidence, it has admitted that it is unable to make a case. If it accepts as material, testimony of the employees as to their choice of a labor union and how and why they formed it, the unanimous testimony or affidavits of all of

the 1100 employees, plus a majority of the five ex-employees relied on by the Board itself that the DGWU was the free-will choice of the employees, mere inferences would be completely destroyed. If the Board refuses to consider such testimony as material it violates the established principles of law and common sense and it expressly refuses to follow the directions of its supervisory court as to what is material evidence in this case. The Board admits on page 50 of its brief that it cannot establish a case by any ordinary procedure and it does not care to make another effort to do so, its hope being that the Supreme Court will merely enforce the order of the Board and ignore all decisions and opinions of the Circuit Court of Appeals. The DGWU has carried on this fight, maintaining its organization and paying all of the expenses of the litigation for seven years, and being ready at any point in that seven years to establish the fact of its being the choice of the employees by secret election, by testimony on oath on the witness stand, and by affidavit. It should be relieved of the burden of any further litigation.

ARGUMENT.

I. The Court Below Acted in Accordance with Established Law and no New or Novel Question Is Involved.

The Circuit Court of Appeals acted within the jurisdiction vested in it by the statute creating the Board, (quoted *supra*, p. 3.)

Further, the court has acted in accord with the definite and well-established rule of law as specifically stated in the recent case of *NLRB* v. *Indiana and Michigan Electric Company*, 318 U. S. 9, 87 L. Ed. 579, wherein this Court sustained the Circuit Court of Appeals in its direction to the Labor Board to take and consider certain evidence on a remand (p. 585, L. Ed.). The Board resisted this instruction and decision on the ground that such evidence was either cumulative or immaterial and that therefore the Court of Appeals committed error in directing that it must be taken and considered by the Board. The Supreme Court sustained the Court of Appeals, pointing out that the Court of Appeals has control over the Board in such matters and that such control should not be disturbed unless the Court of Appeals has acted arbitrarily or abused its discretion. This Court held that in order to reverse the Court of Appeals the Supreme Court must not only disagree with the Court of Appeals as to whether, under the circumstances of that case, the evidence in question was material, but it must also find that the Court of Appeals was so grossly wrong as to amount to abuse of discretion. See p. 585:

> "Thus, in order to decide this case in favor of the Board we would have to hold not merely that the evidence of dynamiting would be a matter of indifference in our own view of the case, but that the

court designated by statute to exercise discretion in the matter and which desired to know the facts about it before passing on sufficiency of the evidence and the impartiality of the examiner and which thought the finder of the facts should hear and consider such evidence, must not only have been in error but must also have abused its judicial discretion."

So in the case at bar, in order to reverse the Court of Appeals, this Court would not only have to disagree with the Court of Appeals as to whether the sworn testimony of all the employees as to their choice of a bargaining representative and how they arrived at it was material in determining that point, but this Court would have to take the further step of holding that in reaching its decision on such question the Court of Appeals acted arbitrarily and abused its discretion. The decision that the testimony of many witnesses as to their choice, intent and free will is material and must be given some weight in the absence of any evidence the Board may produce that such testimony was perjury, or was so unintelligent that the witnesses did not understand what they were testifying about, is clearly correct. Perhaps every rule has exceptions and even though theoretically it might be urged that such rule, which is as old as the common law itself, might not apply, yet the Court of Appeals had the power and the duty of determining the question of whether it applied here and it would be merely absurd to say that they grossly abused such discretion, or that discretion did not extend to this point, and therefore that certiorari should be granted.

In an effort to distinguish the Indiana & Michigan case the Board points out that in that case the *witnesses* before the Board were guilty of violence and destruction of property, while in the case at bar there was no showing

that the witnesses were themselves guilty of violence, though it must be conceded that there was much violence in the campaign of the International directed toward organization of the Donnelly employees by first organizing the smaller nearby plants and showing the Donnelly employees what would happen to them if they did not join (IV 1336f, 1336y, 1336cc, 1336hh, 1336vv, 1336aaa, 1336ggg, 1336vvv; VIII 2853).

Whether this is a valid distinction or not, and we submit that it is not, at least it completely misses the point of the Indiana and Michigan case. The doctrine of that case is *not* that the Court of Appeals has the power and duty to direct the taking into consideration of the evidence it holds to be material, *only in case such evidence is concerning violence*. The holding and the law is that the Court of Appeals has the power and duty to direct the taking and consideration of evidence which it determines as material and important under the circumstances of the case, regardless of whether such evidence concerns violence or any other point that is material to the litigation. This Court has said in the Indiana and Michigan case:

> "But the court is given discretion to see that before a party's rights are finally foreclosed his case has been fairly heard. Findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, its findings, is heard and weighed" (l. c. 591).

The twice repeated refusal to accept as material and give any weight to the testimony of the employees is conclusive on the denial of due process. A further hearing and opinion on this case would add nothing whatever to the law as set forth in the Indiana & Michigan case.

Nor is there any ruling or finding in the opinion of the court in the Donnelly case that any further hearing is necessary.

As the Board points out in its brief (p. 32) the Court of Appeals, after twice firmly pointing out to the Board that the testimony of the employees was material, referred to the possibility of certiorari. Obviously its position was that it had no doubt whatever as to the materiality of this evidence and the necessity of its being considered as material, but that if the Board was still unwilling to accept this view the only possible chance to avoid complying with it was application for certiorari in which the Supreme Court would either approve the opinion of the Circuit Court of Appeals or determine that that court had so misunderstood the law or exceeded its discretion as to make a hearing before the Supreme Court necessary.

In an earlier opinion in this same controversy the same judge pointed out in reference to another matter, that if the DGWU and the Company felt that error had been committed by the court against them, "The error is one which properly can be corrected only by the Supreme Court of the United States on certiorari" (123 F. (2d) l. c. 220-221), and it was equally clear that such language did not mean that in the court's opinion certiorari should be granted.

If the Court of Appeals had desired to intimate that the Supreme Court should grant certiorari it would have taken the appropriate action in such situation: i. e., certification to the Supreme Court under the provisions of the Judicial Code, Sec. 239, as amended, 28 USCA 346 (see appendix).

II. The Case at Bar Is Not in Conflict with the Cases Relied on by Petitioners

As cited by the Board:

1a. In holding that the Board was required to consider employee testimony.

In the case of *Bethlehem Steel Co.* v. *NLRB*, 120 F. (2d) 641, the court's ruling with regard to employees' testimony deals with the effect *their* testimony would have on other evidence which had previously established the fact that the Plans were started in 1918, were concededly Company supported and managed for nearly 20 years prior to 1937, and at that time were amended in an attempt to make them conform to the provisions of the National Labor Relations Act. The Court found, "The amendments could not erase from the minds of the employees the well-known and long-continued Company encouragement and approval of the Plans" (l. c. 646).

Facts similar to those in the above case, *i. e.*, a long period of admitted company-control and management of a plant union with amendments in 1937 to conform to the Act—also are found in the following cases cited by the Board:

Bethlehem Shipbuilding Corp. v. *NLRB*, 114 F. (2d) 930 (see l. c. 937 and 941).
American Enka Corp. v. *NLRB*, 119 F. (2d) 60 (see l. c. 61 and 63).
NLRB v. *Newport News Shipbuilding Co.*, 308 U. S. 241, 84 L. Ed. 219 (see l. c. 244, 251).

The Donnelly Garment Workers' Union was *organized* in 1937 and hence there could not have been amendments made in an effort to conform, and thus no "Company encouragement and approval" to be erased from the

minds of the employees. Therefore, the ruling of the Circuit Court that in *this* case and in *these* circumstances the testimony of employees was material was not in conflict with the Bethlehem case or any of the other above cited cases and was within the discretionary powers of that court.

Further, these cases do not deal with, give consideration to, nor determine the effect of a remand by the Circuit Court of Appeals to the Board with instructions to hear and consider employee testimony. They represent petitions to review the Board's original order.

In *Western Cartridge* v. *NLRB*, 134 F. (2d) 240, the company refused to recognize an A. F. of L. Local No. 22574, for which the employees had voted and which the Board had certified, but instead the company continued to deal with and support the Independent (l. c. 243); and the Independent (as a petitioner for review of the Board's order) contended it was denied a fair trial because its individual members were not permitted to testify. On this point the court said:

> "To be sure, as a general rule, findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, the Board's findings is heard and weighed" (l. c. 244).

However, in that case, the Company having refused to deal with the Local for which the employees had voted, and there being "cogent, specific evidence of the Company's interference" the court held the Independent had received a fair hearing (l. c. 245).

The case here ~~certified~~ considered *is in agreement*, not in conflict, with the above stated general rule. Here the employees

voted for the DGWU as their choice for a bargaining agent; here there is not "cogent, specific evidence" upon which to base a finding that the employees had received a fair hearing.

Also in *NLRB* v. *New Era Dye Co.*, 118 F. (2d) 500, the company refused to bargain with the authorized union. Twenty-five of the 39 employees voted for the union, and the company offered employee testimony to show that 21 *later* revoked their authorization. The court ruled that, the company having committed *proven* unfair labor practices *before* the revocations occurred, such employee testimony was not material (l. c. 505).

In the following cases cited by the Board, it *did* receive and *did* consider a substantial amount of employee testimony. Therefore, the holding by the court in the instant case that previously refused employee testimony must be received and considered by the Board could not be in conflict with rulings in these cited cases on the admissibility of employee testimony:

NLRB v. *Brown Paper Mill Co.*, 108 F. (2d) 867 (shows testimony by 708 members, l. c. 937).

Bethlehem Shipbuilding Corp. v. *NLRB*, 114 F. (2d) 930 (testimony received from "various employees," l. c. 937).

American Enka Corp. v. *NLRB*, 119 F. (2d) 60 (a large number of employees testified, l. c. 62).

NLRB v. *Newport News Shipbuilding Co.*, 308 U. S. 241, 84 L. Ed. 219 (results of secret ballot were in the record, l. c. 248).

NLRB v. *Automotive Maintenance Mach. Co.*, 315 U. S. 282, Rev. 116 F. (2d) 350 (testimony of "nearly all of the employees was included," l. c. 356).

16: In holding that the Examiner was disqualified to preside at the hearing on remand.

The Court in *NLRB* v. *Air Associates, Inc.*, 121 F. (2d) 586, found that inasmuch as the Board *disregarded* the trial examiner's report, that even though he were biased it was not prejudicial to the parties (l. c. 588). In the subject case, the Board *adopted* the examiner's reports on both hearings.

Of like effect is the holding in *NLRB* v. *Weirton Steel Co.*, 135 F. (2d) 494. Here the allegedly biased trial examiner was superseded during the original hearing, and he made no intermediate report. The Court found that the effect of his bias was overcome by the appointment of a second examiner who did afford a full and unbiased hearing. The facts and the issues regarding the trial examiner in the above two cases are such as to make any holdings of the courts as to bias in them not in conflict with the case at bar.

A representative proceeding as to the unit appropriate, not a complaint proceeding as here, is in issue in *NLRB* v. *Botany Worsted Mills*, 133 F. (2d) 876, l. c. 882. Further, it was contended in the Botany case that the appointment as a trial examiner one who had conducted the preliminary investigation established, *per se*, his bias. The court held that this did not preclude his affording the parties a fair hearing.

This is substantially different from appointing, over the objection of the parties, the same examiner for a second hearing when he had previously announced publicly and had recorded his opinion on all the issues involved.

The decisions in the two cases: *Ex parte American Steel Barrel Co.*, 230 U. S. 35, 57 L. Ed. 1379, and *Berger*

v. *U. S.*, 255 U. S. 22, 65 L. Ed. 481, deal (1) with the right of a senior judge to compel Judge Chatfield to continue with a bankruptcy hearing, and (2) with the right of Judge Landis to preside at a criminal trial. In both cases the point was whether the respective judges should continue in the *original* (not remanded) proceedings and to hear the cases, after affidavits of prejudice had been filed against them; not as here, where the point involved is whether the examiner is a proper party to hear the case on remand, after he has once rendered his opinion on the issues. Petitioners (NLRB and ILGWU) in the case at bar indicate in their briefs that the court held that the reason the examiner was disqualified was because of his "erroneous rulings." The fact is that the court held he was disqualified because he had prejudged the issues—not that he had made mistakes in ruling on the law (151 F. (2d), l. c. 870).

In *U. S.* v. *Morgan*, 313 U. S. 409, 85 L. Ed. 1429, the Secretary of Agriculture had made public statements to the press which were said to show his bias. The court found that, the Secretary having admitted that his statements were made on an erroneous understanding of the court's prior decision and having shown that he did consider and weigh the market conditions, the previous statements showing bias were overcome. The court concluded that "nothing in this record disturbs" the assumption that the Secretary judged this "particular controversy fairly." (l. c. 421.) In the case at bar, there is no admission on the part of the examiner that he might have been in error in his original rulings, nor any showing that he did consider or weigh the evidence which the Circuit Court of Appeals has twice held to be material.

2. In holding that evidence should have been received and considered showing DGWU contracts contained similar provisions to ILGWU contracts.

The company in *Bethlehem Steel Co.* v. *NLRB* (*supra*) was denied issuance of a subpoena to McDonald for the purpose of questioning him regarding "dates, scope, duration and terms" of SWOC agreements. In that case similar provisions in contracts made by the plans with Bethlehem had not previously been put in issue by the Board. The court found that under those circumstances the designated questions to be asked McDonald were irrelevant (l. c. 651).

The decision of the court on that state of facts cannot be in conflict with the one at bar, wherein the DGWU's contracts had been put in issue by the Board, were relied on by it in its findings, and determined by it to be a "sham" (l. c. 862, 864). DGWU's offer was to establish that provisions in its contracts were bona fide and usual 151 F. (2d), l. c. 868).

3. In holding as material to the issues evidence that ILGWU admits to membership employees having supervisory duties.

In *New Idea, Inc.* v. *NLRB*, 117 F. (2d) 517, the Board did receive and did weigh testimony that "supervisory" employees were eligible to be, and in fact were, members of both the Association and the A. F. of L. (l. c. 523). In the DGWU case the examiner *refused* to receive evidence that "supervisory" employees were admitted to the ILGWU, or that the employees he labeled as "supervisory" were not usually so considered by the *garment industry* (*supra*, l. c. 875).

There is no showing in either *NLRB* v. *Aintree Corp.*, 132 F. (2d) 469, or in *International Assn. of Machinists* v. *NLRB*, 311 U. S. 72, 85 L. Ed. 50, that due process was not afforded all parties, or that all the evidence proffered

by the respective companies was not received. Neither is any comment made in these two cases as to the effect of membership of "supervisory" employees in ILGWU and/or "The Better Union" in the first case; or in the A. F. of L. and U. A. W. in the second case. Those cases do not have occasion to rule on issues in any way similar to the case at bar and, therefore, the opinions therein do not conflict with this decision.

We believe that regardless of whatever degree of importance the court may attach to the denial of due process by reason of the bias of the examiner, the error in his reappointment for the second hearing or the refusal to admit evidence of other contracts, the decision of the Court of Appeals must stand because of the clear refusal of the Board to treat vitally important material evidence as material. No decision complies with the due process requirement where that situation is shown to exist.

The Board cites in its petition six cases which deal with procedural matters, the gist of which is as follows:

Three to show right of this Court to review interlocutory decisions (pages 34 and 35):

Panama R. R. v. *Napier Shipping Co.*, 166 U. S. 280, 41 L. Ed. 1004, determines jurisdiction in admiralty case, when Circuit Court of Appeals limited its second review to question of damages.

Hamilton-Brown Shoe Co. v. *Wolf Bros.*, 240 U. S. 251, 60 L. Ed. 629, determines right of Sp. Ct. in patent infringement case to notice and rectify errors in interlocutory proceedings.

Simmons Co. v. *Grier Bros. Co.*, 258 U. S. 82, 66 L. Ed. 475, deals with Bill of Review in patent infringement, and holds that the Bill may be granted

only after final decree. Case also sets forth when a decree is interlocutory and when final.

And three to show that this litigation should end (pg. 43):

Sorensen v. *Pyrate Co.*, 65 F. (2d) 982, on second hearing after remand for assessment of damages, defendants for the first time attacked validity of contract. Court said this defense should have been urged at first trial, and defenses should not be presented by piecemeal.

Roberts v. *Cooper*, 20 Howard 467, 15 L. Ed. 969, deals with what matters the Supreme Court will consider on second writ, and concludes that "none of the questions before it on first writ can be reheard or examined upon the second" (l. c. 973), else obstinate litigants could compel the court to listen to criticisms of their own opinions.

U. S. Trust Co. v. *N. M.*, 183 U. S. 535, 46 L. Ed. 315. This is a suit brought by Territory of New Mexico to collect taxes, and liability is denied *in toto*. The District Court had dismissed the intervening petition, stating it did not show on its face a valid claim. The effect of the Supreme Court's having reversed that order, was that the inquiry starts with the adjudicated fact that a valid claim is presented (l. c. 319).

We heartily agree that this litigation should end *now*. As cited by ILGWU:

This petitioner (Br. p. 25) only partially states the ruling of Chief Justice Hughes in *Morgan* v. *U. S.*, 304 U. S. 1, 82 L. Ed. 1129. The full quotation is: "It was not the function of the Court to probe the mental processes of the Secretary in reaching his conclusion *if he gave the hearing which the law required.*" In both this case and the one at bar the courts have ruled that the parties did not receive "the hearing which the law required." But the

Court in this case did not need to resort to "probing" to ascertain the mental processes of the Examiner and the Board, for the Record shows that both considered and declared as immaterial the proffered employee testimony in the first hearing (A. 560, VI 1693) and continued to so assert after the Court remanded the case (A. 619, X 3844).

We find in *NLRB* v. *Bradford Dyeing*, 310 U. S. 318, 60 Sup. Ct. 918, 84 L. Ed. 1226, that the Court found that the rulings "manifested liberality," the proceedings were conducted in a manner calculated to bring a just result; and the rights of a full and fair hearing were "solicitously guarded" (l. c. 1242). The findings have been the direct opposite to the above, by the courts who have reviewed the proceedings herein (123 F. (2d) 215, 225; and 151 F. (2d) 854; see as to "rulings," points 3, 4, 5 and 7; as to "conduct of hearings," points 1 and 2; as to "fair trial," the conclusion, l. c. 875.)

The point in issue in *Federal Com. Com.* v. *Pottsville Broadcasting Co.*, 309 U. S. 134, 60 Sup. Ct. 437, 84 L. Ed. 656, is whether, under remand from the Court of Appeals to reconsider an application for a broadcasting station, the Commission must confine its consideration to matters presented in the original record (l. c. 660). This Court ruled that the Commission was not confined to the original record but should reconsider the application on a comparative basis, and further stated: "On review the court must thus correct errors of law and on remand the Commission is bound to act upon the correction" (l. c. 663).

In *Fly* v. *Heitmeyer*, 309 U. S. 146, 60 S. Ct. 443, 84 L. Ed. 664, this Court said that the only relevant difference between this case and the Pottsville case (*supra*) was

that here the Commission proposed also to receive *new* evidence. This Court held that whatever new evidence was necessary for the Commission to receive in order to discharge its duty under the law, should be received.

There is no conflict between the two cited cases and the one here considered. The issues of a fair hearing are not involved in the cited cases, but rather the scope of the hearing upon remand. However, all three cases have held that the courts do have the power to "correct errors of law and on remand the" administrative agency "is bound to act upon the correction."

This petitioner cites in support of its contention that the Court erred in holding due process was denied because of the designation of the same trial examiner, five cases:

In *Walker* v. *United States*, 116 Fed. (2d) 458, a conspiracy case, the Court states that no action or conduct of the judge indicative of bias is alleged except erroneous rulings of the court, and bias and prejudice must be urged on something other than rulings in the case (l. c. 462).

Likewise, in *Ryan* v. *United States*, 99 Fed. (2d) 864, the ruling is the same, and the court adds, "If there is error in such rulings, it may be corrected on appeal" (l. c. 871).

In an action for injunctive relief in *Refior* v. *Lansing Drop Forge Co.*, 124 Fed. (2d) 440, the judge having evinced irritation over the delay of the parties in bringing the case to trial and having made adverse rulings to Refior, was said to have shown bias, and an affidavit was filed against him. The Court held that a judge may not be ousted because of adverse rulings, since they are reviewable otherwise (l. c. 444).

In contempt proceedings of *O'Malley* v. *United States*, 128 Fed. (2d) 676, the Court said that "Judges may, and indeed must, make rulings as matters present themselves, and having done so are not subject to a charge of prejudice" (l. c. 685).

Berger v. *United States*, 255 U. S. 22, 41 St. Ct. 230, is also cited. This case we have discussed *supra*.

In all of the above five cases the issue involved the effect of erroneous rulings, not the denial of due process, because of the appointment of the same judge to hear the second time the same case, wherein he had already announced his decision on the issues, as in the case at bar. Therefore, the rulings in the cited cases are not in conflict with the one at bar.

III. This Litigation Should End.

The Board says in its brief at page 43, quoting from *Sorensen* v. *Pyrate Corp.*, 65 F. (2d) 982, 965, "* * * the proper administration of justice demands that there be an end to litigation * * *." With this statement we unqualifiedly agree, and to it we would add an equally well-known principle that "Justice delayed is justice denied." There have been some fifteen opinions in the Federal and Supreme Court Reporters on the Donnelly situation —injunction, damages and labor dispute (see table of cases in appendix). Twice the Labor Board after hearings of some six or seven weeks has completely failed to make a case and has in its second opinion admitted that it cannot follow the law and make a case by its declaration that, in spite of the Court of Appeals' opinion and ruling that testimony of employees is material and must be considered, the Board is "Impelled to adhere to the opinion * * * that evidence of this nature is *immaterial*. * * *" (A. 619). After very substantial hearings Fed-

eral courts have repeatedly found the fact to be established beyond any doubt that the DGWU is a bona fide labor union formed and administered by the free-will choice of the employees without any domination or coercion of the employer.[1] In some of these opinions the court has refrained from any finding or opinion on this point, but in no decision has any court expressed any opposite view or conclusion as to the evidence presented over many weeks of testimony and at various times over a period of seven years. Repeatedly employees have testified that the DGWU was their free-will choice of a bargaining agent and all employees in good faith have been ready to so testify over a period of seven years. At least twice the testimony of *all* employees has been tendered in open court or before the Labor Board and the solemn

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[1]We have included in this brief only two excerpts from the Court's opinions:

21 F. S. 807, l. c. 809 (1937):

"Among these employees there are no members of defendant union shown by the evidence, and no division exists among them. The proofs overwhelmingly establish that they are neither company inspired nor dominated. To insure their full independence of action, they have consulted able counsel of their own choosing, and have perfected their organization in full accord with the provisions of the National Labor Relations Act, 29 U. S. C. A. 151 *et seq.*"

And the last is like the first:

151 F. (2d) 854, l. c. 877 (1945):

"For more than seven years the employees have defended the plant union, at great expense to themselves, before every tribunal in which its integrity has been called in question. Throughout this period they have been fully advised of their rights under the National Labor Relations Act. There have been no defections from their ranks. None of them permitted to testify have been impeached on the witness stand. The credibility of none of them has been attacked. Five years after the organization of the plant union all of its members have testified to their deliberate choice of it as their agency for collective bargaining with their employer. In this situation there is no room, in my opinion, for the inference that these employees have been and continue to be, the victims of an illegal coercion by means unknown to them and too subtle to be susceptible of proof, or from the inference that they have surrendered their right freely to choose their labor affiliation in return for the occasional inconsequential use of the Garment Company's telephones, mimeograph machines, and office facilities."

The following citations say substantially the same:

99 F. (2d) 309, 313-4 (1938).

119 F. (2d) 892, 893 (1941).

123 Fed. (2d) 215, 222 (1941).

55 F. S. 587, 490 (1944).

affidavits of all the employees to this fact is in the record in this case. The Board asserts (Br. p. 9) that it "called several (5) of the 1,200 employees, who testified *contrary* to the offer of proof." This is not a correct statement. These five ex-employees had vigorous complaints as to the way they were treated by the Company or its officers or the plant union, but when it comes to the question as to whether the employees formed the plant union by their own free-will choice and in accordance with their own wishes, at least the majority of these five Board witnesses readily agree that it was the free-will choice of the employees, which is the very fact petitioner put them on the stand to disprove and, after a search of several years for such testimony, these five disgruntled ex-employees are the only witnesses the Board did put on or offered to put on to testify that the DGWU was not the free-will choice of the employees. Etta Dorsey and Lola Skeens both stated on the stand that their prior statements that the employees formed the union and operated it without any outside influence was true (IX 3383; X 3463). Their testimony shows that what they were interested in and what they wished to talk about were their personal grievances against the Company or the plant union. But so far as the question of the actual choice of the overwhelming majority of the employees goes, they readily agree that the employees wanted their own plant union. Geneva Copenhaver testified in the second hearing, as one of these five ex-employee Board witnesses, that in her opinion it was the violence of the International against nonmember employees at points some eight blocks away and the desire to secure protection from such contemplated attacks upon themselves, which caused the employees to form their own union (X 3514). Repeatedly the plant union has requested and been denied an official

but completely secret election to demonstrate the fact of their choice yet again. One of the attorneys for the International is in the record as having admitted that the employees do not want the International as their bargaining representative but that the employer must compel them to accept it or go through this litigation (V 1402).

Now the dilemma of the Board in this extraordinary situation of the evidence is obvious. If they admit that the testimony of employees and ex-employees as to the voluntary actual free-will choice of the DGWU as their bargaining agent is of any weight whatever (*i. e.*, is material), then it is so strong, so unweakened and so overwhelmingly in support of such undominated choice (including the testimony of the Board's own witnesses) that it cannot be effectively opposed by mere inferences drawn from claims which prove nothing in themselves and which generally do not exist at all unless weak evidence against the overwhelming weight of all the testimony is accepted.

The unanimous testimony of witnesses who know the facts and who are not in any way shown to have committed perjury or misunderstood the facts, or to have been contradicted by opposing witnesses, cannot be overcome by mere inference, and especially when the Board has the burden of proof. (*Woodward* v. *C. M. & St. P. Railway*, 145 Fed. 577, 582; *Cupples* v. *NLRB*, 106 Fed. (2d) 100, l. c. 104; *NLRB* v. *A. S. Abell*, 97 Fed. (2d) 951, l. c. 957; *NLRB* v. *Mathieson*, 114 Fed. (2d) 796, l. c. 801; *Quaker State Oil* v. *NLRB*, 119 Fed. (2d) 631, l. c. 632; *L. Grief & Bro.* v. *NLRB*, 108 Fed. (2d) 551, l. c. 558; *NLRB* v. *Sun Shipbuilding*, 135 Fed. (2d) 15, l. c. 25; *NLRB* v. *Union Pacific Stages*, 99 Fed. (2d) 153, l. c. 177; *Donnelly Garment Company* v. *NLRB*, 123 Fed. (2d) 215, l. c. 224; *NLRB* v. *Indiana and Michigan Electric Co.*, 318 U. S. 9, 87 L. Ed. 579, l. c. 592.)

On the other hand, if the Board refuses to consider as material the testimony of all of those who know the fact to be determined it violates the simplest principles of evidence, common sense and fair play, and also the express and explicit ruling of its supervisory court in this very case as to what is material evidence. The Board chooses the second of these two alternatives as the lesser of two evils. It urges on the last page of its petition that the Court of Appeals has twice refused to enforce the Board's order, "On some procedural or due process question," and that it might do so again, and it therefore requests that the Supreme Court simply ignore the function and duty of the Court of Appeals and issue a decree enforcing the Board's order, in the teeth of the clear lack of due process and the Board's flatly declared intention of not abiding by due process, and of the overwhelming and conclusive evidence that such action would deprive the employees of the very rights which the Wagner Act was passed to secure to them. If the Court of Appeals no longer has power or authority or discretion to pass on questions of materiality of evidence and due process, after repeated, full and deliberate hearings, then order and responsibility have disappeared from judicial proceedings.

We respectfully submit that the petition for certiorari should be denied.

Respectfully submitted,

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GOSSETT, ELLIS, DIETRICH & TYLER,
Of Counsel.

APPENDIX.

Sec. 239 Judicial Code, amended, 28 U. S. C. A. Ch. 9, Sec. 346, amended:

Certificates of questions by circuit courts of appeals and Courts of Appeals of District of Columbia. In any case, civil or criminal, in a circuit court of appeals, or in the United States Court of Appeals for the District of Columbia, the court at any time may certify to the Supreme Court of the United States any questions or propositions of law concerning which instructions are desired for the proper decision of the cause; and thereupon the Supreme Court may either give binding instructions on the questions and propositions certified or may require that the entire record in the cause be sent up for its consideration, and thereupon shall decide the whole matter in controversy in the same manner as if it had been brought there by appeal.

National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. 151, *et seq.*):

Rights of Employees.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

Prevention of Unfair Labor Practices—Powers of Board Generally.

Review of final order of Board on petition to court:

Sec. 10 (f) " * * * upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; * * *"

Donnelly Opinions.

On Labor Board Litigation

21 NLRB 164
123 F. (2d) 215
50 NLRB 241
151 F. (2d) 854

On Injunction

20 Fed. Supp. 767
21 Fed. Supp. 807
304 U. S. 243, 82 L. Ed. 1316
23 Fed. Supp. 998
99 F. (2d) 309
305 U. S. 662, 83 L. Ed. 430
119 F. (2d) 892
121 F. (2d) 561
47 F. Supp. 61
47 F. Supp. 65
47 F. Supp. 67
55 F. Supp. 572
147 F. (2d) 246
55 F. Supp. 587

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Nos. 38 and 39.

In the Supreme Court of the United States

October Term, 1946.

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION and INTERNATIONAL LADIES' GARMENT WORKERS' UNION,

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, *Petitioner*,

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION and NATIONAL LABOR RELATIONS BOARD.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF FOR DONNELLY GARMENT WORKERS' UNION.

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Cases Involving DGWU and International Connected With Same General Dispute Now Before This Court.

NLRB Litigation:

1941 (123 F. (2d) 215)—Petition of Board for enforcement of its order was denied "Because of lack of due process in the hearing before the Board," and the case was remanded with instructions:

> "To accord to the petitioners an opportunity to introduce all of the competent and material evidence which was rejected by the trial examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order." (l. c. 225.)

1945 (151 Fed. (2d) 854)—Prayer of Board for order enforcing its decree denied. The court said:

> "Our conclusion is that the Company and the plant union have not yet had the full and fair trial to which they are constitutionally entitled." (l. c. 875.)

Injunction:

August, 1937 (20 F. Supp. 767)—Court overruled motion to dissolve temporary restraining order, which it had issued on July 5, 1937.

December, 1937 (21 F. Supp. 807)—Injunction granted to DGWU by three-judge court.

May, 1938 (304 U. S. 243, 82 L. Ed. 1316)—Vacated judgment of three-judge court, as International mistakenly appealed direct to this Court. (l. c. 1321, 1323.)

July, 1938 (23 F. Supp. 998)—Judge Collet dissolved temporary restraining order on the ground that the allegations in amended bill did not comply with the Norris-LaGuardia Act. (l. c. 1001.)

October, 1938 (99 Fed. (2d) 309)—Reversed decision of Judge Collet, holding that if allegations of petition were true, the provisions of the Norris-LaGuardia Act had been met.

January, 1939 (83 L. Ed. 430, 305 U. S. 662)—International's petition for writ of certiorari denied.

June, 1939—Not officially reported, but see 1616a-1616p, Vol. V, for portions of findings and opinion by Judge Miller, granting injunction.

June, 1941 (119 F. (2d) 892)—Decree appealed from was reversed and case remanded for want of jurisdiction, as it was predicated solely upon Sherman Act, which Act, shortly before this decision, had been held as inapplicable to labor unions. (l. c. 898.)

July, 1941 (121 F. (2d) 561)—The court modified its decree of June, 1941, by including in its opinion that the case was remanded "for further proceedings not inconsistent with the opinion of this Court." (l. c. 564.)

1944 (55 F. Sup. 587)—Injunction denied on the premise that if a present threat to the plaintiff did not exist, then equity should not interfere. (l. c. 603.)

1946 (154 Fed. (2d) 38)—CCA affirmed trial court's denial of injunction on basis that the findings as to jurisdiction and power of the court were "not clearly erroneous" (l. c. 45) on issues necessary to its powers and jurisdiction.

Damages:

1944 (55 F. Sup. 572)—Court denied the International recovery on $10,000.00 and $2,000.00 bond; and "in light of all the circumstances" awarded only $2,000.00 as expenses and attorneys' fees under the $25,000.00 bond. (l. c. 586, 587.)

1945 (147 Fed. (2d) 246)—Judgment of District Court affirmed. (l. c. 255.)

In the Supreme Court of the United States

October Term, 1946.

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION and INTERNATIONAL LADIES' GARMENT WORKERS' UNION.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, *Petitioner*,

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION and NATIONAL LABOR RELATIONS BOARD.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

Nos. 38 and 39.

BRIEF FOR DONNELLY GARMENT WORKERS' UNION.

Opinions Below.

The opinion of the Circuit Court of Appeals, now before this Court because of the grant of petition for cer-

tiorari filed by the Labor Board and the International, is represented in 151 Fed. (2d) 854. A prior opinion of the Circuit Court of Appeals is reported in 123 Fed. (2d) 215. For the convenience of the Court, a supplemental list of cases involving the same parties in the same dispute is added to the general table of cases, tax books, statutes, *supra*.

Jurisdiction.

This Court has jurisdiction by virtue of the provisions of Section 240 (a) of the Judicial Code as amended February 13, 1925, and upon Section 10 (e) and (f) of the National Labor Relations Act.

STATEMENT OF FACTS

The Donnelly Garment Workers' Union, appellee herein (intervener below), is an unincorporated organization of all employees, other than those having supervisory powers or an official position (I 135, 191) of the Donnelly Garment Company and the Donnelly Garment Sales Company, located in Kansas City, Missouri. It was organized on April 27, 1937, and on May 27, 1937, executed a contract with the employers for a term of two years, which has since been renewed and is in effective operation at this date. In addition, a Supplemental Wage Agreement, entered into between this union and the employers, is also in effect.

The Donnelly Garment Company is a corporation engaged exclusively in the manufacture of ladies' garments, which are marketed through the Donnelly Garment Sales Company, a corporation, the operation of both companies being in and directly related to interstate commerce.

The International Ladies' Garment Workers' Union was the original complainant in this proceeding before the National Labor Relations Board.

For purposes of brevity, we shall refer to the Donnelly Garment Workers' Union as the "DGWU," the Donnelly Garment Company and Donnelly Garment Sales Company collectively as "The Company," the International Ladies' Garment Workers' Union as "The International," and the National Labor Relations Board as "The Board."

This action was started on April 6, 1939, two years after DGWU was organized, through the filing of the original complaint against the Company by the acting regional director for the Seventeenth Region of the Board. On April 27, 1939, the original complaint was withdrawn

and an amended charge was filed alleging that the Company had engaged in and was engaging in unfair labor practices affecting interstate commerce. A copy of the complaint, the amended charge, and notice of hearing were served on the DGWU, as party to the contract. The DGWU, upon permission of the acting regional director, intervened in the action and thereafter filed its motion to make the complaint and charge more definite and certain, its answer, and its application for the Board to hold an election (A 409, 560; X 3844) to determine the choice of the employees as to their bargaining agent.

Other less formal requests by the DGWU for the Board to hold such an election had preceded this formal application and others have followed it, none of which has been granted. (I 242-3, IV 1336qqq, XI 3965).

Hearing on this original complaint was held before Trial Examiner Batten, who sustained the allegations of the complaint and was sustained by the Board in refusing to receive or consider as material the testimony of any employee and the proffered testimony of every employee as to their reasons and motives in forming the DGWU and their freedom from interference in doing so. The findings and opinion of the Board were reviewed by the Circuit Court of Appeals in November, 1941. The opinion and decision of that court (123 F. (2d) 215) was that the testimony of employees should have been received and weighed by the Labor Board and the case was sent back to the Board for further hearing with instructions:

> "To accord to the petitioners an opportunity to introduce all of the competent and material evidence which was rejected by the trial examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order." (l. c. 225.)

The hearing under this mandate was heard by Trial Examiner Batten on various days in July, August and September of 1942. In this hearing the DGWU was permitted to put on not a single witness in its case-in-chief (IX 3255), having the opportunity only in surrebuttal to submit the testimony of six of the employees as to specific matters already before the court, but which did not include matters on which the Circuit Court of Appeals directed that evidence be taken (IX 3763, 3766, 3768, 3772, 3774, 3776). The Company was permitted to introduce in its case-in-chief the testimony of the president of the Donnelly Companies, Mrs. Reed (who was ill at the time of the prior hearing), and a few other witnesses. The ruling of the Trial Examiner, and the Board (which is the ruling considered and reviewed by the court below), was to the effect that the employees of the Donnelly Companies had not exercised their free will and choice in the selection of their union. This ruling was made without the Trial Examiner's permitting the testimony of the employees to go into the record to the effect that the DGWU was and still is the union of their free will and choice. The fact that the DGWU was the free will choice of the employees, and that they were not coerced in any way by the Company, is supported by the testimony of every employee who testified on this point for DGWU[1], for the Company[2], and for the Board (these employees were actually witnesses for DGWU although examined first by the Board), and by the testimony of seven ex-employees who testified on behalf of the Board[3], except

(1) II 704, 715 & 718a-b, 718l, 718r & 718u; (second hearing) 3765, 3769, 3773, 3775.

(2) II 405-410, 561, 612, 655, 664, 662, 672, 675; (second hearing) VIII 2566, 2632, 2722, 2772, 2858, 2914, IX 3006, 3049-3050, 3078, 3140, 3187; X 3726, 3735, 3739, 3743, 3756.

(3) I 488, II 355; (second hearing) IX 3462-3463, X 3492 & 3501, X 3581.

two: one of whom admitted perjury[4] and the other's testimony to this point was conflicting.[5]. The International's witnesses testified only as to collateral matters. The affidavit of every one of the 1160 employees that they chose the DGWU without any interference or coercion is also in the record[6]. Also on behalf of the DGWU, was an offer of testimony of every employee to the same effect[7].

The DGWU and the Company petitioned the Circuit Court of Appeals to review and to set aside that order of the Board. In the opinion of the Court, reported at 151 F. (2d) 854, it was held:

> "Our conclusion is that the Company and the plant union have not yet had the full and fair trial to which they are constitutionally entitled." (l. c. 875.)

and the Court further held:

> "The prayer of the Board for a decree of this Court enforcing the order under review is denied for want of due process in the proceedings upon which the order is based." (l. c. 875.)

From that decision the Board and the International petitioned this Court for Writs of Certiorari, and the case is now before this Court upon writs granted to petitioners on April 22, 1946.

(4) May Stevens testified that she committed perjury when she signed the affidavit that she joined of her free will (X 3690, 3703).

(5) Etta Dorsey who was shown to have had her memory refreshed by Board (IX 3369) and International (IX 3390) representatives five years after the happenings, and who testified that she *quit* her job because she was mad at a co-employee (IX 3364-5), and that she was still mad at her (IX 3365). On cross-examination she testified "Q. Was the affidavit at the time you signed and swore to it true or false so far as you are concerned? A. True." (IX 3380.)

(6) VI 1677 to 1749.

(7) I 355, II 613, II 718b, III 743 (offer of proof), VI 1675, IX 3270, X 3783.

There has been considerable litigation concerning issues related to this case. The citations to the officially reported cases are shown in the table of "Donnelly" cases *supra*; two others are in the record. (NRA and Judge Miller injunction.)

In 1935, four years prior to the filing of this action, there was a hearing on a complaint against the Company under the labor provisions of the National Recovery Act. Before the hearing on this complaint was completed the Supreme Court invalidated that Act. In the first NLRB hearing, portions of the record from the NRA hearing were offered in evidence by the NLRB attorney, and admitted by the Trial Examiner. (III 1110a-c.)

In July, 1937, the DGWU and the Company petitioned the U. S. District Court for a restraining order directed to the International, and upon the facts then presented, the Court granted a temporary restraining order. In December, 1937, a 3-Judge Court issued a permanent injunction against the International. In June, 1939 (two months after the original NLRB complaint was filed), there was a further hearing in the injunction action before Judge Miller, resulting in the issuance of a restraining order against the International. Portions of the hearing before Judge Miller are in the record in this case (IV 1336B; V 1365; V 1374c-1376).

The facts surrounding the organization of the DGWU and the attempts of the Board and the International to discredit its formation and operation are set forth below. Their variances from the statement of facts set forth by the Board is largely explained by the fact that the Board relies heavily on its own findings rather than on testimony. Actually it uses "The facts as found by the Board" as its concise statement of the facts in the case (p. 12) and completely fails in furnishing this Court with

> "A concise statement of the case containing all that is material to the consideration of the questions presented, with appropriate page references to the printed record." Supreme Court Rule—No. 27 (d), 83 Law Ed. 1646.

Its citation to the record turns out to be a citation to the findings of the Board no fewer than 225 times, and frequently to such findings wholly unsupported (36 times). As the Court of Appeals has twice pointed out (123 F. (2d) 215, l. c. 225 and 151 Fed. 854, l. c. 875), these findings were reached by excluding from consideration the testimony of all the employees as to how and why they formed the DGWU and as to their complete freedom from coercion or interference in doing so, by repeatedly declaring it to be immaterial and thereby not putting it in the scales at all to be weighed against what the Board considers legitimate inferences from subsidiary facts. Clearly, findings reached in this manner are wholly without probative force. The Board finds subsidiary facts on testimony overwhelmingly denied, cites them as established and repeats the citations many times, basing its findings on arbitrary inferences therefrom.

An example of this is the Board's statement in its brief (pp. 12 and 13): "Through two of its management representatives, Todd and Atherton, the Company hired an attorney to advise its employees in opposing the ILGWU (X, 3872)." This statement is not the fact. The testimony on this point, without any exception, is that the employees, acting for themselves only, hired a firm of attorneys to provide them with legal assistance by way of injunction or whatever legal steps might be available to protect themselves (the employees) from violence which the International was inflicting upon employees of nearby garment factories and was then threatening against Donnelly

employees, and that then and at all times thereafter every legal expense by way of attorneys' fees and otherwise was paid by the employees only (X, 3661, Mrs. Keyes, an ex-employee, a Board witness, and at the time in question in charge of company finances; II, 558; IX, 3193; II, 557, 718v; I, 178; II, 587, 588; IX, 3083; I, 216, 238, 230; II, 430, 624, 718r; II, 572, 692; IX, 3231).

The sole and only citation in support of the Board's statement in its brief at page 12 is to its own finding (X, 3872), and even this does not so find. The allegations of the finding are that Rose Todd, "a representative of the respondent," and Hobart Atherton, "an officer of the League and a supervisor," and Sally Ormsby, after a meeting of the employees at which they were appointed a committee by such employees, employed Mr. Tyler and that the subject of employment was *solely* the possibility of an injunction protecting the employees from International violence. The statement that the Company hired an attorney is without foundation and the implication that it was for the purpose of preventing the employees from having a free opportunity to join the International is not even supported by the citation to the Board's finding.

Farther on in its brief, page 53, the Board recites that three employees employed an attorney to advise the employees in opposing the ILGWU. Besides its own finding, it cites testimony of Rose Todd that the Loyalty League is purely a social organization and that affiant was president of it; that when the employees employed attorneys on March 27, the sole thing they had in mind was an injunction or protection against violence and there had never been any talk about forming a union until about a month later (I, 38-39, 176); and the testimony of Mr. Atherton that Mrs. Reed had nothing to do with the call-

ing of the meeting and that a few employees took it upon themselves to call on a firm of attorneys to see what they could do in the way of obtaining protection and that they talked to Mr. Gossett and Mr. Tyler, who asked them if they represented all the employees and who asked for a retainer (II, 555-556), and again the testimony of Mr. Atherton to the effect that after several conferences with the attorney and after the Wagner Act had been declared constitutional, he suggested that "it might be a good thing if we could organize our own independent union" and that arrangements for the organizational meeting were made with the owner of the building on a floor not leased from the Donnelly Company and without taking the matter up with the Donnelly Company at all (II 558-559). The use of such evidence as this to support the former claim that the Company hired or paid an attorney for the employees or even the later inference that the attorney was employed to oppose the freedom of employees to join the International when the citations are either not on the subject at all or flatly contradict what they are cited to establish, is astounding.

The International's statement of this situation is that "three employees including Miss Todd employed an attorney, Mr. Frank Tyler. They paid him a retainer fee of $500.00, as they stated, to bring some sort of an injunction suit against the International." The International then states (its brief, page 17) that "no such injunction suit was ever filed but the $500.00 was kept by Mr. Tyler and applied by him on his fee for his help in organizing the plant union." As a matter of fact, the DGWU did prosecute an injunction suit, together with the Company, in the federal courts through two trials. In any case, any group of employees was entitled to employ attorneys to investigate and advise them as to the chances of an injunction giving them the needed protection, and all of the

money so used came from the employees, part of it having been borrowed from a bank and later repaid.

The Board frequently recites findings, inferences or conclusions as though they were established and even admitted facts which are supported by insignificant and discredited evidence or by no evidence whatever. We shall point out a substantial number of examples in the argument under the point of lack of substantial evidence, although we are under some handicap in doing justice to this subject since the Board's brief, due on September 24, was not served on us until September 30. No explanation of the delay has been offered up to the time this goes to print. In order to substantially comply with the rules, our own brief will have to be in the hands of the printer by the evening of October 3.

The International entered the labor market in Kansas City in the spring of 1937 for the avowed purpose of becoming the bargaining agent in that area for all employees engaged in making ladies' garments (X 3677), with special emphasis on the Donnelly Company (IV 1336g, 1336vvv; V 1549). Similar campaigns had already been waged in other cities in this area, viz: Dallas, fall of 1935 (V 1527); Memphis, spring of 1937 (V 1411-1421); St. Louis, spring of 1935 (V 1529-32). The operations of the International in its drive for members were characterized by many successive days of force and violence, and were concentrated against employees of garment companies within the radius of five or six blocks of the Donnelly Company (II 718y, VI 1336x, 1336rrr-sss, XI 4125-4171; see also Donnelly injunction cases, listed in table, *supra*). Not only did many Donnelly employees see this unlawful violence, but it was featured in several news stories in the newspapers (IV 1236-1241, 1257-1275, XI 4125-4165, 4173-75). The Company has around 1,200 employees, mostly girls and

women, and to these employees the brutality and intimidations and utter disregard for the person and rights of the employees at the Missouri Gordon, Gernes Garment Companies were not mere incidents but were driving forces to seek self-preservation in their own union. For over a month, from March 15 to April 17, 1937, these disorders continued, and the workers at these three plants were beaten, kicked, knocked down and their clothes torn with systematic bratality in the effort of the International to organize them into locals. Representatives and pickets of the International frequently stated that this procedure was a mere curtain raiser to what would be done to the Donnelly workers to induce them to join the International (II 718z).

In fact, the testimony of Mr Perlstein, Southwest District Manager of the International (V 1510-1511), was as follows:

> "By Mr. Tyler:
>
> Q. Mr. Perlstein, if I correctly understood you this morning, you do not admit that the methods used by the International at the Gordon, Gernes and Missouri Companies were illegal, is that correct? A. That is correct.
>
> Q. And I believe you stated yesterday that you never give up, didn't you? A. Yes.
>
> Q. Then we may reasonably expect that these same methods used by the International at the Gordon, Gernes and Missouri strike, whatever they were, will be continued down at the Donnelly plant unless this court grants a permanent injunction, is that true? A. Yes."

The tactics used in this preliminary organization of the smaller plants directly motivated the members of the DGWU to join together for their own protection. See the testimony of members of the union, which is in the record (IV 1336g, 1336hh, 1336mm-nn, 1336ww, 1336uuu, IX

3005d, 3013, 3047, 3171), and also that of two witnesses for the Board, Copenhaver and Weilert (X 3514, 3581), and the offer of proof in which 1,160 employees offer to so testify (III 743, IX 3270).

On March 18, 1937, a meeting of the employees was called by some of the employees (VIII 2626, 2851, 2920) to consider what might be done to protect themselves from similar violences when the International moved its attack a few blocks closer to the Donnelly plant (VIII 2569-70). This meeting was held after working hours (VIII 2569, 2923), and offer of proof (III 743, IX 3270).

They had ample reason to hold this meeting. During the course of the meeting, which was organized and attended solely by employees, Mrs. Koll suggested that Mrs. Reed, president of the Donnelly Garment Company, who was in the building, should be invited to come to the meeting (II 719, IX 3125), which was held in a room on the second floor of the same building which housed the Company, but not leased or controlled by the Company (A 575, note 4D). A messenger from the meeting went to Mrs. Reed's office and asked her to come down to the meeting place, which she did (I 45). At the meeting she made a talk to the employees in which she said she would not permit Dubinsky to force her employees to join anything they did not wish to join, but in which there was no trace of any effort to control their choice as to labor union affiliations (VIII 2627) and no effort to direct their actions as to whether they should or should not unionize.

On March 27, 1937, three employees of the Company (II 556), after informal consultation with many other employees (II 555), decided that they would consult attorneys to find out what they could do or what they were entitled to do, what they could get in the way of protection (II 556) against the violence threatening to move

over from the smaller plants eight blocks away. These employees called on Mr. Gossett of the firm of Gossett, Ellis, Dietrich and Tyler (I 63). At that conference the possibility of an injunction suit in either the state or federal courts was considered. Mr. Tyler questioned them as to whom they represented and they stated they represented the employees of the Company (II 556). It was agreed that the attorneys would investigate the legal situation and that the employees would pay a retainer. There were numerous conferences between representatives of the employees and the attorneys.

On April 12, 1937, the newspapers carried front page headlines announcing the decision of the Jones-Laughlin case by this Court, sustaining the National Labor Relations Act (I 61, XI 4177). This decision was discussed by the Donnelly employees among themselves and it directed their attention to the fact that this Act established not only the right of the employees to organize themselves and deal collectively with their employer, but also to the fact that 51 per cent or more of them had the right to deal for all employees and that such organization and such contracts were entitled to receive the special protection of the National Labor Relations Board (VIII 2577, 2857). Shortly thereafter suggestions were made that the

(8) Testimony of Hazel Saucke:

"Q. What effect did this article (on the Wagner Act) have on your mind, with reference to the question of forming a union of employees of the Donnelly Company? A. Well, it gave me confidence that we had the right to go ahead and form a union of our own liking rather than have to join the International Union." (VIII 2641.)

Testimony of Marjorie Green:

"• • • Mr. Tyler, who we had previously hired as our attorney, was there and he would explain to us what we could do in the way of protection, and Mr. Tyler did talk to us and he explained that since the Wagner Act had become constitutional that we were legally entitled to form our own employees' union; that it was just as legal and just as valid as any other labor union and he was not trying to force us to do anything against our wishes but he believed we would get the protection we needed in this way, and he thought we could handle our own collective bargaining for ourselves through our representative and it would give us the protection that we wanted." (V 1362d-1363.)

employees might greatly strengthen their position by organizing their own labor union (II 559).

Ten days later, on April 22, the Donnelly workers were startled to learn from a newspaper article that one of their co-workers, Sylvia Hull, was to be a delegate from "Donnelly Workers' Local" to the International's convention at Atlantic City (I 254, II 558, V 1513, IX 3012, 3088, XI 4171). The existence of a "Donnelly Workers' Local" was a surprise to all of the 1,300 employees except the one chosen as delegate and perhaps one other (IV 1338, V 1563), for the Donnelly garment workers knew of no meeting at which a "Local" of the International had been organized or had received their authorization to act for them, and certainly of no meeting at which they authorized anyone to represent them at that convention (I 97, IV 1336nnn). There was a demonstration of protest and resentment at Sylvia Hull's attempt to represent them and to convey to the public that the Donnelly workers were a part of the International (IX 3089).

There were repeated statements in speeches and newspapers emanating from Mr. Dubinsky, who was the president and secretary-treasurer of the International (II 378hh), and from Mr. Perlstein, to the effect that the International was going to organize the Donnelly employees; and the district manager went so far as to promise in an interview published in the Kansas City Times on February 26, 1937, that there would be a countrywide boycott of the product which the Donnelly garment workers made (V 1497-1498, IX 3132).

On April 27, 1937, an organization meeting was called by the employees themselves outside of working hours and at that meeting the Donnelly Garment Workers Union came into being (VIII 2565, 2915; IX 3005, 3077, 3121, 3171). Although the meeting was held in a room in the

same building where the employees worked, this room and the floor containing it were not owned, leased or under the control or supervision of the Company (II 382, 559; IV 1229, VI 1336h, VIII 2917, X n41, 3872).

On May 27, 1937, the executive committee, selected at this organization meeting, after substantial consideration[9] (I 213) notified the Company that it desired to present a collective bargaining contract to the employers. This contract was presented by the committee to Mrs. Reed, who had with her the heads of some of the departments and Mr. Ingraham, an attorney for the Company (VII 2096-2097, 2112). These original articles of agreements are in evidence (III 807). Negotiations lasted all day and concessions were made by both sides (II 704j, 704o).

This first contract provided for a minimum wage of $15.00 per week for all workers, including bundle boys, etc.; a 40-hour week with excess treated as overtime; promotion and seniority rights; a closed shop after June 5, 1937; arbitration of difficulties; extension of vacation privileges and the recognition of the right of the individual who may be chosen as a chairman of the union to spend the necessary time in union affairs and to continue his or her employment with the Company at the proportionate rate of pay theretofore received from the Company for the time given to union affairs. The contract was to continue for two years and consistently has been renewed, with some changes.

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(9) Testimony of Hobart Atherton:

"The executive committee of the union immediately got to work upon drafting a working agreement, or a contract, which we wanted to negotiate with the Donnelly Garment Company and the Donnelly Garment Sales Company.

After numerous conferences among ourselves, and with Mr. Tyler, we finally worked out a draft of what we wanted and asked the Company Officials for a meeting at which we wanted to present this contract to them." (II 562.)

There have been wage agreements in the form of supplemental contracts. The first, dated June 22, 1937 (III 812) was agreed upon between the parties after substantial consideration [10] (VII 3381). In this contract the basic minimum wage was raised to $16.50 and the minimum wages for specific classes of workers were raised in several instances. Minimums were guaranteed to the employees for the life of the contract and the length of vacations on pay was increased. The benefits of the contract to the employees are repeated at various points in the testimony by various witnesses (II 580; VII 2380).

The DGWU was recognized by the court as representative of the Donnelly employees and was permitted to intervene in an injunction suit filed by the Company. A three-judge U. S. District Court awarded a temporary injunction against violence, fraud, secondary boycott and interference with the contract existing between the Company and the DGWU (21 Fed. Supp. 807). Even the one dissenting judge in the final paragraph of his opinion (l. c. 831) said, "An overwhelming showing justifying an injunction under the law as it was certainly has been made." The findings of fact, conclusions of law, and the decree of the court in issuing the permanent injunction are made a part of this record (V 1616a, 1616h, 1616k).

(10) "Q. Mr. Atherton, what, if anything, was done in preparation by the committee of the union for determining what wages they would ask in the wage agreement?

"A. The Company was asked to give certain data as to wages and salaries paid different classifications of employees. And those were furnished to us. They were discussed at much length, living conditions, cost of living—by that I mean the cost of housing, food, clothing, and so on. All of those things were discussed between us as to arriving at what demands we would make in the way of minimum wages.

"Q. Did you make any investigation of what wages were being paid in other garment plants in this locality?

"A. We did, to a certain extent, inasmuch as we received information from individuals as to what they were getting, and we had been told what wages were being paid under the ILGWU contracts in other shops in Kansas City." (II 579.)

Since its organization the DGWU has functioned continuously and effectively. Meetings are held after working hours in a room which is used by the Company for style shows during the year and for the use of which room the DGWU pays rent to the Company (IV 1336l; I 227). The Executive Committee, now in its tenth or eleventh personnel, meets about twice each month; it has dealt with a great many complaints of individuals or groups and has secured satisfactory action on many of them from the employer (I 114, 231-233, 234-238a). We submit that no one can read the minute book and the history of the union and go over its treasurer's record without coming to the conclusion that here is the genuine expression of the will and choice of at least the overwhelming majority of the employees if not absolutely 100% of them. People do not continue to attend meetings with undiminished enthusiasm and carry on such organization year after year on their own initiative unless the organization has their genuine support. They are not subject to a fine for non-attendance.

As has been previously stated, the hearing before the Board was started in 1939, approximately *two years* after the first contract was signed by the DGWU with the Company. The Board called the first witness at this hearing (I 13) and this witness was not one for the Board but was the chief witness for the DGWU and the Company. The Board's attorney proceeded to examine her, not as a direct witness, but by methods usually associated with cross-examination. The examiner vigorously assisted (I 15, 18, 20, 24, 53, 63-68, 86, 87-89, 90, 92-93, 94, 96, 113, 123-124, 138, 151, 160a, 165, 185, 197). This continued for four days.

In the course of the first hearing, there was a suggestion by the attorney for the International that the evidence would show financial support of the union by the

employer and payment of the attorneys for the union by the employer. After six weeks spent almost entirely in cross-examination of the members of the union or officers of the Company (for the Board put on nothing which could be called a case of its own), no shred of such evidence developed. But these same witnesses testified to the direct opposite—that all expenses were borne by the union (for example, see: II 695; VI 1336k; IX 3231; X 3677, 3768). After employing attorneys, Miss Todd borrowed one thousand dollars from the First National Bank because the attorneys had stated to her that if the employees were actually in earnest they would be able to pay a respectable retainer fee, and she believed it was desirable to pay them promptly as evidence of good faith and used this means to do so, even before collections from the various employees were completed (II 557, 718v). A 50-cent contribution by each employee was voted about the end of March, 1937, and collected by various employees in the departments in which they were individually employed (II 587, 588; IX 3083). The Board's finding that no such meeting occurred is discussed hereinafter. The loan was repaid by the employees. The president of the bank referred to Miss Todd as a sort of handy man for the Company but stated that he never considered her as representing the Company and that neither she nor anyone else ever intimated to him that she represented the Company. He understood she represented the employees only (II 718v, 718x).

A great deal of time was spent by the attorney for the International and the attorney for the Board examining witnesses regarding the payment of rent to the Kansas City Chair Company for chairs used at union meetings. It developed that there were a few meetings at which no chairs were rented and those present remained standing

(II 694), but the testimony of the treasurer and others, with no disputing evidence whatever, was that the union itself had paid the rent for chairs at every meeting at which they had been used. Out of some 20 or 30 meetings a few receipted bills for the chair rental had been lost, but the evidence of the DGWU's officers (II 693) was positive that rental for any chairs used at a union meeting had always been paid for by the employees out of Union funds and not by the Company. With an evident feeling of triumph at having finally discovered something, the attorneys for the Board and the International produced an official of the Kansas City Chair Company, who testified that chairs for the union and chairs for the Company itself had been carried for some time in one account under the heading of "Donnelly Garment Company" (I 334w). But this official also testified that the Chair Company had no system of bookkeeping worthy of the name at the time these entries were made in 1936, and that the accounts might well have been carried as they were as a matter of convenience (I 334x). Since the chairs all went to the same building and to an organization, the first name of which was "Donnelly," it is perfectly natural for the party taking orders at the Chair Company to enter them under one heading. Absolutely no one testified that the employer paid any of this rental or that the union did not pay all of it, and there is even no inference worthy of the name that such was not the case.

There was evidence that the employees without the consent of the Company had used typewriters or ditto machines of the Company after hours for union work; it being hoped, probably, that the inference would be drawn that it was with the consent of the employer after all and that it might thereby establish such domination as wo destroy the validity of the union (I 59-62a). There was

also testimony that the chairman of the union had used a filing cabinet belonging to the Company for the depositing of certain documents connected with the union, although the filing cabinet used for membership cards had been purchased by the union itself. This filing cabinet had stood in its place for a number of years, was not then in use, and the chairman of the executive committee of the union merely put certain union documents in it because it was convenient, without asking or receiving the consent or permission of anybody (I 35-36, 217). The treasurer's accounts show disbursements every month of the existence of the union, the disbursements running into a large amount of money and covering every proper need of the union from prizes at its parties to the printing of briefs, the payment of attorneys, and the payment of witnesses for time lost while attending trials. These records cannot fail to convince that they show organization and support of the union by the employees themselves (I 216, 228-230; II 430, 624, 718r).

Employees who were members of the executive committee of the union have been late some twenty minutes or so in returning to work after noon meetings of that committee without being docked and it is equally true that employees have been late in similar amounts of time in returning from the dentist or some personal errand without being docked. Instructors deh er work to employees and show beginners how to operate machines but have no supervisory power (IX 3122, 3195, 3206, III 743), and no more authority to report an employee than any other employee has and frequently receive less pay than operators (I 300-361, II 450-451). The price fixing committee has always had representatives of the DGWU on it, beginning with Rose Todd who had no supervisory power, and who are selected by the union (I 112-114). The Board

found that Rose Todd had no well defined duties and in the same paragraph found that her definite duties were:

> "During this period she was not assigned to any particular department, being directly responsible to Baty, the factory manager. Todd was assigned a desk in the factory—first on the ninth floor and later on the seventh floor—charged with the responsibility of keeping the various sections supplied with the necessary materials for maintaining operations and checking up on the delivery of various supplies that should be in the sections. In addition, if any of the sections were short of supplies which delayed the work, Todd was notified and arranged for the proper supplies to be forwarded to the department. These duties required that Todd move throughout the various sections of the factory and contact instructors and thread girls. For a period of 1938 Todd again worked with Dewey Atcheson on some special work." (X 3855-6.)

The action of the price fixing committee is not final and other representatives of the union have taken up complaints, including prices, with the management many times and have often been successful (I 114, 231-233, 234-238a; II 628; VII 2159-2164).

The Board has steadfastly refused to hold an election of the employees on the question of their free will choice of labor unions (I 242; IV 1336qqq; XI 3965).

The Board paid much attention to an organization called the "Donnelly Loyalty League" or the "Nelly Don Loyalty League." It was organized in February, 1935, by the employees for the purpose of resisting the spread of certain false statements about conditions of employment in the Donnelly plant and for the purpose of social intercourse between employees (I 37, 38, 42; VIII 2582, 2666, 2718, 2727, 2778, 2860, 2927; IX 3011, 3052, 3090). It never

undertook to be a labor union, to make any contracts with employers, and the fact that it did express resentment against statements repeatedly found to have been false cannot make a labor union out of it. The Board asserts that the DGWU is the League's successor, but absolutely fails to produce any evidence whatever to support such claim. The employees testified that it was not (II 704j; IX 3130, 3362). In the first place, the Loyalty League is still alive today and it has no successor (I 186-187; II 584a; VIII 2731); in the second place, the conclusion after reading the evidence cannot be avoided the DGWU would have been organized under the circumstances whether any Loyalty League existed or not. There are other social organizations among employees of the plant such as an Athletic Club (I 36), "The Pioneers" (II 409), etc., and it would be as reasonable to say that any one of them was the predecessor of the union. It is true that the one-time chairman of the executive committee of the union was also at one time president of the Loyalty League, which is a normal result of the qualities of leadership in any group. The employees did not consider her, nor the others so charged by the Board, as representative of the management (VIII 2593, 2644, 2726, 2812, 2859, 2872, 2929; IX 3058, 3092, 3122, 3195, 3208, 3218, and offer of proof, III 743, *et seq.*) It is also true that when attorneys were first employed by the employees to investigate the possibilities of injunction the first payment of retainer was made by check drawn on the Loyalty League solely as a matter of convenience, there being no bank account of employee funds other than this (I 178). But from the moment the possibility of forming a labor union was conceived of, the union proceeded on its own initiative through its own organization and raised every dime of its expenses by dues from its own members, profits from

entertainments given by itself and at its own expense (I 230; II 572, 692; IX 3232). As a matter of fact, the Loyalty League itself was the spontaneous expression of the genuine sentiment of the employees. One ex-employee (thereafter shown beyond any possible doubt to have been biased and completely and thoroughly discredited), in the first hearing offered the only testimony to the contrary which, even if true, would be no more than inference to that effect. This was Mrs. Greenhaw (brought by the Board from Portland, Indiana), who testified that there was a meeting of both the DGWU and the Loyalty League on May 25, 1937, and this was contradicted by every witness for the Company and the DGWU who was questioned on the subject. The statement was denied by Mr. McConaughey (II 704a), Mr. Crawford (III 722), Miss Green (II 718), Mrs. Weigand (II 718m-n), and many others.

One of the attorneys for the International has been quoted as stating in reference to ascertaining the choice of the employees as to a labor union, "I don't care about their choice" (V 1402). He does not agree that this is a correct quotation (V 1382), but states that he did say something to this effect, "I can conceive it is very reasonable to me that a large majority wouldn't want to join the International. I'm not asking that you put them in there. I believe sincerely that a large majority of your people don't want it," but he suggests the reason is because of their intimidation and campaign of vilification. This fits into the unavoidable picture of the entire proceedings that our opponents have realized that the actual determination at this time or at any time in the past of the free will choice of the employees would be and is overwhelmingly in favor of the DGWU, and against them.

The significant and important evidence in the first hearing was the testimony of every employee who took the stand (eight called by the DGWU and fourteen by the Company) that they formed the DGWU of their own choice and without any interference or coercion or suggestion from the employer. They gave their reasons for preferring their own union and for forming and operating it, which frequently included dislike of the violence used by the International at nearby plants and often threatened against Donnelly employees when the little plants had been whipped into line (IV 1336g, 1336vv-ww, 1336vvv; IX 3013; X 3514). Many thought the formation of their own union would not only afford protection against violence but prevent repetition of the incident in which one employee (Sylvia Hull), representing herself and only one other employee (V 1563), had attended an International convention on the pretense of representing a "Donnelly Local," and made a speech written for her by Mr. Perlstein, regional director for the International (V 1569). Rose Todd testified: "I mean the thing that prompted us to get busy and form a union of our own is the thing Sylvia Hull did" (I 254; see also I 96-97). Subsequent evidence has proven that those who believed that formation of their own union would give them protection were correct. The employees' union appeared in the injunction case against the International.

In addition to the employees who took the stand, the DGWU and the Company offered in good faith to put every one of the 1,160 employees on the witness stand who would testify to their desire to belong to the DGWU, their reasons therefor and to complete lack of interference or pressure from the Company. When this offer was refused

by the examiner the affidavits of all of such 1,160 employees to this effect were offered in evidence and refused and are in the record (VI 1677 to 1749; IX 3270).

No DGWU or Company witness who signed this affidavit has ever been impeached or shown to have committed perjury, nor to lack enough intelligence to know his choice between two unions and none has ever retracted over a period of some nine years with the exception of one *ex-employee*, a witness for the Board who several years thereafter and at the second hearing testified that she joined the International the same day she signed this affidavit, that she acted as a spy for it by reporting employee activities to the end that she committed perjury when she signed such affidavit (X 3696). She was not permitted to answer a question as to whether her husband was an organizer for the International (X 3683-4).

The second hearing of this case before the examiner for the Labor Board again took several weeks' time in the months of July, August and September of 1942. It was heard by the same examiner over the protest of the DGWU and the Company on the grounds of his prejudice (VII 2059-2063).

Its purpose as stated by the Circuit Court of Appeals (123 Fed. (2d) 215) was to take and consider the testimony of the employees as to their choice and why and how they formed the plant union. Every employee who testified reaffirmed his free choice of DGWU, gave persuasive reasons therefor and denied any interference or coercion. Again, both the DGWU and the Company offered in good faith to put every employee of the Company on the witness stand for testimony to the same effect and to prove no coercion and "to prove the successful operation of the Donnelly Garment Workers' Union since July 15, 1939" (IX 3270, 3265, 3253). Again the affidavits of all employ-

ees below the rank of supervisor as offered in the first hearing (VI 1675) were offered in evidence (IX 3270; X 3783). The examiner would not permit the DGWU to put on any witnesses whatever in its case-in-chief (IX 3255) and allowed DGWU six witnesses on surrebuttal (X 3763) on strictly limited details and not on the points of evidence which it had been directed to take by the appellate court.

In the second hearing the Labor Board put on six witnesses of its own. All of them were ex-employees. At no time has any employee testified in favor of the Board's contention in any hearing or lawsuit. Of the six ex-employees whom *the Board* put on the stand in the second hearing, one testified that she knew nothing whatever about labor relations in the plant, but that she believed it to be true that nobody connected with the management ever urged or tried to induce any employee to stay out of the International or to join the plant union (X 3660). Three readily agreed that the plant union was the voluntary preference of the great majority of the workers and that one of the primary causes of its formation was the desire to protect the members from threatened violence of the International (IX 3455 and 3463; X 3514, 3581). This was exactly the fact that they were placed on the stand for the purpose of disproving. One stated that she was not forced or threatened in any way in joining the DGWU (X 3501) but she did have a feeling that if she did not sign she might not have a job, but she explained this by saying that if the DGWU secured a closed shop contract she would then have to belong in order to have a job which, of course, means that if there was any coercion it was by the law itself (X 3529). One stated that when she signed an affidavit that she preferred the DGWU, she committed perjury (X 3690, 3703 and footnote 4, *supra*);

that on the same day she joined she notified the International, and that she acted for the International in getting information about the DGWU (X 3696, 3708). The substance of the testimony of these Board witnesses is as to their personal grievances against either the Company or the plant union, but it recognizes and supports the universal testimony of the employees that so far as the DGWU's being the voluntary, actual free will choice of the overwhelming majority of the employees, no doubt whatever exists. The testimony of these employees is discussed in more detail with citations in the argument. Thus two long hearings by the Labor Board and two substantial hearings of injunction cases by federal courts have repeatedly produced the sworn statements of all employees as to the fact of their actual choice and the reasons therefor, which testimony is actually supported on this fact by the witnesses produced by the Board for the purpose of contradicting it.

The Circuit Court of Appeals on the first hearing from the Board pointed out that the persons who formed an organization must know why they did it and that there was no presumption that they would commit perjury:

> "It was not shown that any of the employees of the Donnelly Company, whose testimony was offered, was under any disqualifying disability. There was no presumption that these employees would commit perjury, and, even if the trial examiner believed they would perjure themselves, that would not have affected the admissibility of their evidence" (123 F. (2d) 222)

and directed that the Board receive and consider this evidence as material regardless of how much weight the Board gave to it.

On the second hearing the examiner and the Board not only refused to receive any testimony whatever from the DGWU upon its case-in-chief and received no more than eleven employees called by the Company, but again refused to consider the testimony of every employee in the plant as to why she or he joined in forming or supporting the DGWU and whether she or he was in any way coerced or interfered with. It again held that all such evidence was wholly immaterial to the issue of why and how the union was formed and whether the employees preferred it as their choice. The entire opinion of the Board demonstrated that no consideration whatever was given to the extraordinary amount of the testimony of the employees and the complete lack of any contradiction of it, but we need not rely on this evidence to show that the Board again flatly refused to consider such evidence as material, in spite of the Court of Appeals' direction to that effect, by its own unequivocal declaration to that effect:

> "Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the DGWU, we are moreover impelled to adhere to the opinion, derived from our experience in administration of that act, that conclusionary evidence of this nature is *immaterial* to issues such as those presented in this case." (Italics ours.) (A 619.)

We shall maintain that this evidence is material and is not discredited by the use of mere inference which is the Board's only method of establishing its falsity; and that a decision of the Board, which refuses to treat it as worthy of any consideration whatever in spite of directions from the supervising court to do so, cannot stand.

Our problem is whether the purpose of the Act is to be achieved by recognizing that proven choice, or whether

the Act, by regarding inferences or secondary evidence as ends in themselves, can be made to work backward, so to speak, and produce the exact opposite of its purpose.

We shall not urge that the Board need hear the testimony of every employee. As the Court of Appeals pointed out, there are well-known expedients to substitute a reasonable cross-section of a large group of witnesses for all of them:

> "There is available to him (the examiner) well-known expedients for limiting the number of witnesses where their testimony was cumulative" (123 F. (2d), l. c. 222),

nor shall we assert that the Board can be told how much weight it should give to any material evidence. But we shall earnestly submit that when the supervisory court, acting in accord with its powers and within its discretion, directs that certain important evidence be treated as material, the Board cannot explicitly refuse to follow such direction by saying that it "* * * is impelled to adhere to the opinion * * * that conclusionary evidence of this nature is *immaterial* * * *." We shall urge that the testimony of every employee in the plant to a fact within his own knowledge, without impeachment, plus majority of the six *ex*-employees offered by the Board who recite personal grievances but agree that the overwhelming majority of employees prefer the DGWU was correctly held by the Court of Appeals to be material and that the Board cannot refuse to consider such evidence and base a contrary decision wholly on inference. We believe that the Board cannot lawfully presume that every employee in the plant is a perjurer and has so continued in different hearings over a period of years without having at least some evidence for such an outrageous conclusion.

Nor can it presume that these employees do not have enough intelligence to know why they formed their own union or what their actual choice is.

Twice the Circuit Court of Appeals for the Eighth Circuit has held that the Board has not yet received and considered all of the competent and material evidence (123 F. (2d), l. c. 225, 151 F. (2d), l. c. 875). The Board has unequivocally recorded its refusal to do so.

SUMMARY OF ARGUMENT AND QUESTIONS PRESENTED.

(1) All of the employees, numbering some 1,100, were offered as witnesses that the plant union was the free will choice of the employees and to give their reasons for forming and operating it and that they were in nowise interfered with or dominated by their employer in so doing; at least four of the seven ex-employees offered by the Board in two long hearings agree that the plant union was the actual wish and choice of the overwhelming majority of the employees; Federal Courts, after lengthy hearings or the review of lengthy hearings on appeal, have repeatedly found that the plant union was the voluntary choice of the employees; the affidavits of all employees are in the record stating that the plant union is their free and voluntary choice formed without interference and no employee has been impeached or shown to be part of any plan to testify falsely. Offers of proof of large numbers of employees giving detailed evidence and support thereof, showing successful negotiations of the Company for increases in wages, complete payment of all financial expenses by the members and no one else and many similar facts are in the record. The plant union has repeatedly petitioned for a secret election and been denied. This condition has continued over a period of years. Can the Labor Board validly disregard this evidence on the foundation of inference only?

(2) Where the statute creating the Board provides that the Court of Appeals shall have jurisdiction to control the proceedings of the Board and where this Court has held that the Labor Board must follow instructions of the Circuit Court of Appeals on a rehearing if such

instructions are not an abuse of discretion and where Congress has recently passed the Federal Administrative Procedure Act strengthening and increasing the duty of the Circuit Court of Appeals to set aside Labor Board findings reached without due process and fair trial, can the Labor Board clearly and explicitly refuse on rehearing to follow such instructions of the Appellate Court?

(3) Can the Labor Board successfully maintain that it has satisfied the burden of proof resting upon it by merely producing slight evidence by a comparatively minute portion of testimony of discredited witnesses that the *type* of incidents which it regards as associated with domination occurred without in any way meeting or contradicting the evidence of all the employees that no dominance or interference existed on the ground that when the type of action has been shown, all testimony that interference did not exist may be ignored because all witnesses contrary to the Board may be *presumed* to be unable to know their own choice, or if they do know it, it may be *assumed* that they will perjure themselves on the witness stand or by affidavit through fear of their employer.

(4) Where the Board, after instructions from the Court of Appeals to take and consider as material the testimony of the employees (or a reasonable cross-section of them where all of them are tendered) and the Board refuses to take any substantial number of such employees offered as witnesses by the Company and none at all of those offered by the intervener, gives no consideration to its value in its opinion and summarizing its findings as follows:

> "Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the DGWU, we are moreover *impelled to ad-*

here to the opinion, derived from our experience in administration of the act, that conclusionary evidence of this nature is IMMATERIAL to issues such as those presented in this case."

and where such evidence is the best and most direct evidence without the consideration of which the intervener is deprived of an opportunity to present its case, is the refusal to receive it merely judicial error or a denial of due process?

(5) Where, in addition to the failure and refusal to take or consider the principal body of evidence for the taking of which the Court of Appeals remanded the hearing, it also appears that the same examiner who was influenced by bias and prejudice in the first hearing and was appointed over the protest of the intervener and the Company for the second hearing, was still activated by the same bias and prejudice and where the evidence of the employees as to violence of the International at nearby plants and threatened against them as a cause of their forming their own union, was refused in violation of the mandate of the Court of Appeals, can the Board be heard to urge that because of alleged doubt on minor grounds of denial of due process and fair trial, the court should ignore the primary and substantial grounds given by the Court of Appeals for vacating the Board's order?

ARGUMENT.

I.

A decision in favor of the Board and against the intervener in this case would be a denial and a stultification of the provisions and purposes of the National Labor Relations Act, and the establishment and enforcement of the exact reverse of the principle that the Act was enacted to enforce. It would deny the support of the law to the union which is beyond question the actual free choice of the employees.

It is axiomatic that the purpose of the Act is to support and protect employees in organizing or joining labor unions of *their own choice* rather than to force them into national unions they did not choose; or to destroy substantive rights of employees merely in order to punish employers for possible minor infractions, of which employers might or might not be guilty; or to free the Labor Board from the obligation to observe due process and the duty to actually weigh evidence. See Section 1 of the Act, which sets forth its purpose and policy:

> "It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, *self-organization, and designation of representatives of their own choosing*, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection." (Emphasis ours.)

The court said in *NLRB v. Sun Shipbuilding and Dry Dock Company*, 135 Fed. (2d) 15, at page 18:

> "After all, the fundamental purpose of the Act is to secure to employees entitled to its protection the right to bargain collectively through representatives of *their* own choosing." (The emphasis here is that of the court.)

See *National Labor Relations Board* v. *Gluek Brewing Company*, 144 Fed. (2d) 847, 858:

> "The grave purpose of Congress in passing this Act was to provide the means for protecting the rights of labor to organize."

See *Humble Oil Company* v. *NLRB*, 113 Fed. (2d) 85 at 92:

> "It would be strange indeed if a labor organization, freely organized by a large majority of the employees, is to be destroyed whenever some well-wishing supervisor, contrary to his own duty and orders, says something in its favor. As we see it, the employees who freely formed these organizations have the right under the law to have them function. If the employer trespasses through his representatives, he and they ought to be stopped, but a more serious and demoralizing trespass than here appears is necessary to show such domination or interference or support as will justify annihilation of such organizations."

If the employees actually reach a conclusion as to their own choice and that fact is established, just as any other fact involving mental intent is established, by reasonable evaluation of the evidence, then subsidiary facts as to whether an employer indicated a preference or made critical remarks, or employer's property was used in insignificant ways, or three or four employees considered instructors as having supervisory powers, contrary to the

impression of more than a thousand others, etc., etc., become unimportant and insufficient as grounds to set aside that choice. Where the preference of employees is actually in doubt, such subsidiary facts are, of course, valuable as secondary persuasive evidence as to whether, if some alleged choice has been made, the apparent evidence of choice is genuine, and the subsidiary facts or "badges" of domination or pretense of choice should be given due and proper weight.

Certainly the situation may exist where the fact of choice is definitely proved by any reasonable method of considering evidence, and this may be true even though the employer or employee may have taken steps beyond the boundary of strict neutrality. The fact that A might allow B to take insignificant privileges with A's property or, for that matter, that A might endeavor to urge or even bribe or threaten B in order to get B to adopt a certain position does not destroy the possibility and the right of B to actually take that position of his own free will and accord, and where an Act is passed with the purpose of securing that right to B, and where B has actually made such decision himself and expended thousands of dollars, years of work and secured valuable contract rights (III 807, 812-821, 947; II-704j-704n; II 713-714) in connection with such action, there can be no valid reason for denying him protection in such choice because someone else may or may not have acted improperly. The mental fact of choice or of good faith may be proved beyond any reasonable doubt where the evidence is sufficient and when such is the case, to continue to indulge speculative inferences that it might be all a mistake or a deception, or to give illogical importance to minor, secondary and subsidiary facts, or to assume that all employees are perjurers or lacking in ordinary intelligence is not a method of

weighing evidence by any theory of jurisprudence, but merely a refusal to weigh, accept, consider or be actually receptive to evidence (Trial Examiner refuses, II 718, 613-14, IX 3217, IX 3255).

It has been proved beyond any reasonable doubt in the case at bar that the overwhelming majority of the employees in 1937 and for the nine years thereafter preferred and have selected the DGWU as their bargaining representatives. Our opponents may say that this is begging the question; that what this litigation is about is the attempt to ascertain whether there was free choice, whereas the above statement merely assumes it and proposes to go on from there. Let us see if it assumes such conclusions or if it merely recognizes what otherwise one would have to wilfully close his eyes in order not to admit.

Consider the following established facts:

1. *All* employees below the rank of supervisor have repeatedly offered, in good faith, to testify that they formed the DGWU of their own choice and free will without intereference, and to state how and why they formed the DGWU. (Vol. III, pp. 764-781, 792-795, 789-791, 783, 784-787; X 3829-3834.)

2. Every employee allowed to testify so stated. (II 704c-704e, 715, 664, 655, 624, 718l-718n, 718q-718u, 718y-718z; III 722-724, 725; VIII 2566-2570, 2579-2580, 2592, 2626-2630, 2722, 2770-2772, 2817-2818, 2841-2842 and 2847, 2869-2874, 2937; IX 3060-3061, 3140.) None were impeached nor shown to have had a part in any plot or plan to conceal the truth or commit perjury. "There was no presumption that these employees would commit perjury." (123 Fed. (2d) 215, l. c. 222).

3. The affidavits of 1,160 employees, being practically all of the employees at the time of the affidavits, are in the record (Vol. VI, pp. 1677 to 1749), specifically so stat-

ing, together with other affidavits and offers of proof (III 743, *et seq.*, X 3829) to the same general effect by a large numbers of employees. See footnote*.

4. This condition has continued without interruption for nine years. The DGWU has functioned continuously during all that time, making or extending contracts with the employers, securing redress of grievances and paying every dime of its own expenses including all attorneys' fees and costs of litigation. (151 Fed. (2d), l. c. 877, X 3829-3834, II 690-696, X 3661, IX 3231, II 587-588, VIII 2594-2595, 2766, 2938, IX 3044, 3141.)

5. The Board in its first hearing of some five weeks offered two ex-employee witnesses of its own, Mrs. Greenhaw, who was completely discredited and not thereafter referred to or relied on by the Board, and May Fike, who

*The wording of this affidavit is as follows:

We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, again reassert under oath that it is our free, voluntary and considered wish and choice to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union. We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, and therefore for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union and any and all others who may be interested, we hereby repeat the previous demands for an election and do ourselves specifically request that a fair and secret election of employees be held for the purpose of allowing us to designate our choice of labor unions and representatives for the purpose of collective bargaining, in which every employee shall be entitled to one vote and only one, and such vote shall be absolutely secret, and any other condition which shall be fair and just.

Each signer hereby further states that he or she has either read or had read to him or her the contents of this affidavit; that he or she understands that it is an affidavit and that the decision of whether to sign it or not has been left to affiant without any coercion, persuasion, or pressure of any sort, and that affiant at the time of making this statement is a bona fide employee of the Donnelly Garment Company or the Donnelly Garment Sales Company.

Other sworn offers of proof of large numbers of employees were offered to the same general effect, denying specific charges and reciting details of fact with more particularity. (See pages 742, 755, 789, 782, 784.)

was endeavoring to secure pay for some months after her discharge.

When it came to the consideration of the testimony of the Board's witnesses, of whom there were only two having any bearing on affairs at the factory, the examiner showed a complete and absolute reversal of attitude. He was ready to accept the statements of Mrs. Greenhaw, an ex-employee, as being more convincing than the statements of all the employees at the plant. He says in his intermediate report (A. 519): "The undersigned accepts this testimony of Mrs. Greenhaw as correct for the reason that Mrs. Greenhaw, of all the witnesses who testified at the hearing, was a disinterested party. Mrs. Greenhaw was not a member of any organization while employed at the Donnelly plant. Her testimony was given in a straightforward and unhesitating manner. She has always been employed in very responsible positions and left the respondent's employ with a good record. A further reason for the acceptance of her version is that the testimony of the respondent's witnesses with respect to the calling of the meeting and the circumstances surrounding it varied substantially." Now the record shows that this witness had a definite grudge against the Donnelly Company (II, 374, 375). She was a member of the union, but not of the League, although she says members of the union and members of the League were the same people (I, 365). She felt that she should have been made secretary to one of the executives of the Company, even though she knew no such position was open (II, 374). She had originally been brought to the Company by one of the officers, who made a place for her by creating a job which did not previously exist (II, 374). In the second hearing, the Board offered six *ex*-employees (no *employee* ever testified contrary to the DGWU's claim), one of whom

stated that she knew "nothing whatsoever of the union activities in the Donnelly Garment Company" (X, 3660), but that she believed that no official or person with authority ever advised or suggested to any employee that he or she should join the DGWU or stay out of the International (X, 3660-1). Three of the remaining five readily agreed that the plant union was the voluntary choice of the employees themselves (Dorsey, IX, 3383; Skeens, IX, 3463; Copenhaver, X, 3506), although these ex-employees had various complaints against the Company or the plant union, which they were eager to discuss (Dorsey, IX, 3383; Skeens, IX, 3462-3). Neither of the remaining two denies that the overwhelming majority of the employees organized the plant union of their own free choice, although they personally did not approve of such union at the time of their testimony more than five years later (X, 3492 to 3529; X, 3581). Mrs. Weilert states that she believed the organization was formed by the voluntary action of the employees at that time, and that her husband had written a letter at her dictation repeating the assertion that her action in union matters was voluntary and according to her own wishes (X, 3581; X, 3591, 3690). The last witness of this group, May Stevens, stated that as far as she was concerned personally she committed perjury several years previously when she made an affidavit that the DGWU was her own choice (X, 3690); that she joined the International the same day she signed the affidavit (X, 3696, 3708); and for some time secretly furnished information about Donnelly employees to the International (X, 3708). Their memories were refreshed some five years after the events to which they testified, by the International or the Board representatives a few days before the hearing (Dorsey, IX, 3369; Skeens, IX,

3466; Copenhaver, X, 3520; Stevens, X, 3685), and they admitted bias (Skeens, IX, 3447; Weilert, X, 3564; Stevens, X, 3696, 3708), and even hatred (Dorsey, IX, 3364, 3365). They also admitted that the violence of the International threatened against Donnelly employees was a substantial cause of the formation of the plant union (Copenhaver, X, 3514; Weilert, X 3581; Skeens, IX, 3455).

6. Federal Courts have four times heard, or considered on appeal evidence in each of four different hearings, each of which occupied five of six weeks, in injunction cases on this same general dispute between the same parties or on appeals from Labor Board hearings, and have repeatedly found as a fact from that evidence that the DGWU was the voluntary choice of the employees, uninfluenced by the employer.

See, 21 Fed. Supp. 807, at 809:

> "The employees of the Donnelly Garment Companies, over 1300 in number, have completed an organization known as the 'Donnelly Garment Workers' Union.' They have negotiated with their employers a contract which provides specifically for the wages, hours, terms and conditions of their employment that are entirely satisfactory to both parties. So far as this hearing shows, they are unanimous in this attitude, and have declared their opposition to affiliation with the defendant union, or with any other unrelated organization. Among these employees there are no members of the defendant union shown by the evidence, and no division exists among them. *The proofs overwhelmingly establish that they are neither company inspired nor dominated.*" (Italics ours.)

and 119 Fed. (2d) 892, at 893:

> "In considering the question of jurisdiction, we accept as established the following facts: * * * That the defendants have at all times during the existence

of their controversy with the plaintiffs insisted that the Donnelly Garment Company disregarded the wishes of its employees with respect to representation for purposes of collective bargaining, that it recognize the International as the exclusive bargaining agent for all of the Company's employees, and that the Company disregard the contracts which it has entered into with its employees, through their independent union, relative to representation, hours, wages and working conditions."

and 151 Fed. (2d) 854, at 877:

"For more than seven years the employees have defended the plant union, at great expense to themselves, before every tribunal in which its integrity has been called in question. Throughout this period they have been fully advised of their rights under the National Labor Relations Act. There have been no defections from their ranks. None of them permitted to testify has been impeached on the witness stand. The credibility of none of them has been attacked. Five years after the organization of the plant union all of its members have testified to their deliberate choice of it as their agency for collective bargaining with their employer. In this situation there is no room, in my opinion, for the inference that these employees have been, and continue to be the victims of an illegal coercion by means unknown to them and too subtle to be susceptible of proof, or for the inference that they have surrendered their right freely to choose their labor affiliation in return for the occasional inconsequential use of the Garment Company's telephone, mimeograph machines, and office facilities."

and Vol. V of the record, being a part of the findings of Judge Miller, at page 1616e:

"Shortly after the Supreme Court of the United States sustained the validity of the National Labor Relations Act, and on April 27, 1937, one hundred per cent of plaintiffs' employees (other than officers,

executives and those with authority to hire or discharge) voluntarily formed and became members of the Donnelly Garment Workers' Union, and unanimously designated and selected the nine members of the Executive Committee of said union as their sole representatives for the purposes of collective bargaining with plaintiffs in respect to rates of pay, wages, hours of employment and all other conditions of employment, and all matters for their mutual aid and protection. Said employees have at all times freely administered and maintained said union. At the time of the formation of said union and at all times since, none of said employees have been or are members of the defendant International."

See 55 Fed. Sup. 587, at 590:

"There can be no doubt that at the time an overwhelming majority of the Donnelly Company employees, numbering some 1,200, were entirely satisfied with their working conditions and wages, and only a small minority had professed any interest in the International's organizational activities."

We submit that federal courts in this country are sufficiently competent and reliable judges of evidence to insure that where a dispute on the same subject between the same parties has been tried before them or appealed to them four times, as a result of four hearings of five or six weeks each and one of about one week, and where the trial courts, or the appellate court on review of such exhaustive evidence have repeatedly found that the employees formed their union of their own free will and choice without interference, and have never found to the contrary, although they have sometimes made no finding at all on that point, that particular point may be safely regarded as an established fact.

While no federal court has held to the contrary, the Labor Board has twice reached an opposite conclusion by the expedient of totally disregarding and considering as wholly immaterial the repeated testimony of every employee in the plant as to his or her choice in what he or she said were the causes and reasons for the formation of the plant union (A. 619, 603). These causes included resentment against the violence being used by the International at smaller plants some six or eight blocks away and being threatened against these employees when the small plants were whipped into line, their desire to run their own affairs, and resentment at the announcement that Sylvia Hull was to represent Donnelly employees or the "Donnelly Local" at an ILGWU convention at a time when none of the employees had any knowledge of any ILGWU organization within their plant, nor any desire to belong to such an organization when, as later developed, Sylvia Hull represented only one other employee besides herself. (VIII, 2573-2576, 2644-2645; V, 1562-1563, 1566.) Perlstein and another prepared her convention speech and resolution. (V, 1569-1570; VIII, 2712, 2720, 2929, 2997; IX, 3088.

7. All other evidence of the Board is merely inference from facts which may be used to indicate whatever preconceived interpretation either side may put upon them or from alleged facts which were found or supported by generally discredited testimony and against overwhelming unimpeached testimony to the contrary. (See the detailed offer of proof of a great majority of employees: III, 743-763.)

8. The Board and the ILGWU have repeatedly denied petitions for secret elections as petitioned for by the DGWU or offers to submit, if the International would join, to the result of any fair and secret election. (A, 409, 560; X, 3844; XI, 3965; IV, 1336qqq; I, 242; III, 783.

The Board will doubtless defend its refusal to grant an election over a period of nine years by saying that the Board does not hold elections while a charge of domination is pending. But this does not prevent the International from agreeing to such a test if it really wants or is willing to risk the answer being developed. If a secret election, so controlled that no one will know how any individual employee votes, will not determine, or at least throw great light on that fact, then no method of investigation will do so. If our opponents feel that the election should be delayed until sometime in the future when they feel that they might win, it would be equally reasonably to delay still longer because thereafter the employees might be converted to still a third point of view. The logical position is that the employees are entitled to their choice now, without burden or prejudice, and have been so entitled for the past nine years.

However, the denial of an election does somewhat limit the alternative positions left to the Board. It is hardly logical for the Board to deny petitions for a secret election made by substantially all the employees over a period of several years and then when the employees go on the witness stand or present affidavits as to their choice and how and why it was made, to claim that such evidence is inconsequential and immaterial because it is a violation of the principle of secret elections. (Examiner, *supra*, II, 7, ob.) The validity of a labor union does not depend on certifications by the Board, nor on the Board's holding an election, nor does the law hold that its valid existence, and right to be treated as such, cannot be established by the union itself, nor found as a collateral court proceeding. It is equally true that where the Board, without an election, makes a finding without due process, or in direct violation of the directions as to material evidence by its

supervisory court, acting within its discretion, or in open disregard of common sense, weighing the probative value of evidence, all of which exist in this case, its orders and findings must be set aside.

The Board might undertake to claim that all employees are perjurers, but with no evidence whatever on which to base such a charge, it would be difficult to support, and the Board, in this case, makes it only by inference, when it says that employees who know the employer has representatives in court will be afraid to tell the truth under oath or in affidavits. This still claims that the employees are perjurers, but suggests that the cause is fear rather than bribery or something else. If the evidence of choice of the employees were less decisive or had existed only briefly during a period of excitement or fluctuation, or the question put to them was not clear, or there was reason to believe that the result was only temporary, or there were evidence of fear or bribery, then an argument might be based on such situation to indicate that the result was unreliable and secondary evidence of inference might be important. The Board, however, has recognized that to actually weigh the sworn clear and reasonable testimony of all the employees without any impeaching evidence against them, or any of them, against inferences that they might have been dominated by such petty instances as are bound to happen among hundreds of employees over a period of years, would make it logically impossible to find against the overwhelming direct evidence. The burden of proof is still on the Board. It could not be met by the inference resulting from the fact that four or five ex-employees with admitted bias and who had their memories refreshed by International organizers five years after the facts occurred, had the impression, contrary to everyone else, and the sworn statements of all who knew the fact,

that Rose Todd or Hobart Atherton, or someone else had a position of authority, or that the instructors had such place, or that Rose Todd was representing the employers and not her union on the piece work committee, or that committee members were not docked when a few minutes late from committee meetings, just as they were not docked when late from the dentist's office or other personal errands. Employees were regularly allowed to transact business while at the plant. (II, 719-720; VIII, 2643-2644, 2693; VIII, 2621-2622; VIII, 2579-2580.)

Thus the Board retreats to two desperate and untenable positions: (1) That employees do not have enough intelligence to make a choice. They cannot know whether they prefer A to B after months of consideration, as their bargaining representative (or, if they can, it may be assumed that they will state it untruthfully). Therefore, the Board will make such choice for them. Perhaps instances might arise in which the question was not clearly put to them or the result was a fluctuating or uncertain one, as suggested above, but that is not the case here. The Act clearly contemplates that it is the employees' *own* choice which is to be enforced, regardless of whether the Board or the International believes they used sound reasoning and made the choice they should have made or not. (Section 1 of the Act, quoted *supra*.) Nowhere in the law is it held that the Board should make the choice for them.

NLRB v. *Sun Shipbuilding*, 135 Fed. (2d) 847.
Humble Oil v. *NLRB*, 113 Fed. (2d) 85.
Ballston-Stillwater Knitting Co. v. *NLRB*, 98 Fed. (2d) 758.
NLRB v. *Swank Products*, 108 Fed. (2d) 872.
NLRB v. *Sands Mfg. Co.*, 306 U. S. 332, 83 Law Ed. 682.

Consolidated Edison Co. v. *NLRB*, 305 U. S. 197, 83 Law Ed. 126.
NLRB v. *Gluek Brewing Co.*, 144 Fed. (2d) 847.
Donnelly v. *NLRB*, 151 Fed. (2d) 854 at 877.
L. Grief & Bro. v. *NLRB*, 108 Fed. (2d) 551.
NLRB v. *Lion-Shoe Co.*, 97 Fed. (2d) 448.
NLRB v. *Union Pacific Stages*, 99 Fed. (2d) 153.
Magnolia Petroleum Co. v. *NLRB*, 112 Fed. (2d) 545.

(2) That it makes no difference what the choice of the employees is. They are no longer entitled to it if the employer has done or said something which might conceivably in other situations have dominated the employee. This would be carrying the "impure atmosphere" doctrine to such absurd lengths that it would always be possible for an employer to defeat any union of which he did not approve by the simple expedient of *favoring* it. He could do this by one speech or half a dozen minor actions without leaving any possibility of discovering his inner purpose. No organization of hundreds of employees over years of time will ever be valid if the greatly outweighed testimony of a few biased witnesses as to acts or circumstances which might by inference have spelled domination in some circumstances can overcome clear and overwhelming and persisting evidence of genuine and actual freedom of choice.

The Board is not enfitled to ignore the established principles of common sense as to evidence to the extent of disregarding the sworn testimony of any number of witnesses who know the fact and who are not impeached or discredited or contradicted on the basis of mere inference, suspicion or conjecture based on disputed facts which could certainly exist concurrently with the truth stated by such witnesses. (See *Cupples* v. *NLRB*, 106 Fed. (2d) 100, l. c. 104:)

"We shall attempt to make a fair statement of what we consider to be the important facts disclosed by the evidence, keeping in mind that, while the burden of proof was upon the Board, it is entitled to have the evidence and all reasonable inferences which may be drawn therefrom viewed in the light most favorable to its conclusions; that questions involving the weight of evidence and the credibility of witnesses were for it to determine, but that evidence which merely furnishes grounds for suspicion and conjecture proves nothing, and that the Board, like a jury, *may not disregard the uncontradicted testimony of unimpeached and credible witnesses.*" (Italics supplied.)

As a footnote following the above quotation the court added:

"The testimony of a witness not shaken on cross-examination and not contradicted by any witness, fact or circumstance, must be accepted as true. (*Woodward* v. *Chicago M. & St. P. Ry.*, 8 Circ., 145 F. 577, 582.)"

Humble Oil Co. v. *NLRB*, 113 Fed. (2d) 85, at 92 (quoted *supra*).

NLRB v. *Mathieson*, 114 Fed. (2d) 796, l. c. 801:

"The Board makes reference to the fact that respondent permitted the association to hold the election for members of its council on company property. At that time, however, the association already had a clear majority of the employees; and this could not have influenced the obtaining of the majority * * *

While it may have been better for the election to have been held at some other place, we cannot see that this circumstance is sufficient, either alone or in connection with other circumstances, to support the conclusion that the association is dominated by respondent."

The fact that the records of the association were kept in respondent's vault is utterly without significance when considered, as they must be, in the light of surrounding circumstances."

NLRB v. *A. S. Abell*, 97 Fed. (2d) 951, l. c. 957:

"In this respect the burden of proof was upon the union, and while the charge was supported only by conjecture and suspicion, it was refuted by positive and direct testimony. The failure of the Board to credit this testimony does not supply the lack of affirmative proof of unfair labor practice on the part of the employer."

NLRB v. *Vincennes Steel Corporation*, 117 Fed. (2d) 169, l. c. 174:

"We fail to find any evidence as to the number of employees, office help and supervisory officials who had cars, but we assume the number was more than six. We think the incident is without material significance. It does not furnish the basis for a healthy suspicion, much less a reasonable inference."

See, also:

St. Joseph Stock Yards Co. v. *United States*, 298 U. S. 38, 73, 56 S. Ct. 720, 80 L. Ed. 1033.

Ohio Bell Telephone Co. v. *Public Utilities Commission*, 301 U. S. 292, 304-305, 57 S. Ct. 724, 81 L. Ed. 1093.

Railroad Commission v. *Pacific Gas & Electric Co.*, 302 U. S. 388, 393, 58 S. Ct. 344, 82 L. Ed. 319.

Morgan v. *United States*, 304 U. S. 1, 14, 15, 58 S. Ct. 773, 999, 82 L. Ed. 1129.

Pittsburgh Plate Glass Co. v. *National Labor Relations Board*, 313 U. S. 146, 177, 61 S. Ct. 908, 923, 85 L. Ed. 1251.

Interstate Commerce Commission v. *Chicago, R. I. & P. Ry. Co.*, 218 U. S. 88, 102, 30 S. Ct. 651, 656, 54 L. Ed. 946.

St. Joseph Stock Yards Co. v. *United States*, 298 U. S. 38, 75, 78, 56 S. Ct. 720, 736, 737, 80 L. Ed. 1033.

Ohio Bell Telephone Co. v. *(Public Util.) Commission*, 301, U. S. 292, 304, 305, 57 S. Ct. 724, 730, 81 L. Ed. 1093.

If the methods of procedure were treated as an end in themselves and as more important than the purpose of the Act which is to support the actual choice and right of employees to select and deal through the bargaining agency of that choice, whenever and however that fact clearly appears, then the tail would wag the dog. The length of court decisions on labor cases demonstrates that no secondary detail such as the possible use of employer's property in petty ways is conclusive, for if it were most labor cases could be decided in five lines of opinion. Such arguments from inference are useful only to aid in determining the fundamental fact of free choice of the employees without domination and when such fact is established, the inference from details of procedure ceases to have decisive weight.

If we correctly understand the Board's position, it is that all it need do is to show *the type* of actions commonly associated with domination. This meets and satisfies the burden of proof resting upon the Board and the case is over. If, per chance, the employees and all of them wish to testify to the contrary (III 743-763), the law holds that they do not know their own minds, or, if they do, then it may safely be assumed that they are unable to testify truthfully and cannot speak freely in the presence of their employer. See the statement of the Board's position by

its attorney, quoted in the footnote to the opinion below, 151 Fed. (2d) l. c. 872:

> "It is the Labor Board's duty to show the acts of the employer are the type that interfered with, restrained or coerced; * * * the employees who have been the subject of unfair labor practices really become so interfered with or dominated that they do not know their own minds, even assuming they were able to speak in the presence of the employer freely. It is our position they cannot speak freely in the presence of their employer. * * *"

Thus, if the Board finds on the testimony of half a dozen biased and discredited ex-employees that they had certain impressions or that certain secondary facts occurred from which inferences might be drawn, then any amount of contrary, direct testimony is *presumed* to come from their lack of ability to know their own minds or, as an alternative, it might be *assumed*, without any evidence to that effect, that they are committing perjury. We think there is no authority for this position.

Now, of course, a litigant is entitled to try to prove that this picture does not prove what it seems to be. But in undertaking to destroy or weaken the sworn testimony of everyone having knowledge of the particular fact to be developed such litigant should certainly expect to affirmatively show that the records made by these people were not in the substantial number claimed, or that their attitude only lasted a week or two, or that at least some of the witnesses were not worthy of belief, or by cross-examination to show their insincerity or to affirmatively produce evidence of some plot by them to misrepresent the facts. But to simply shrug off the testimony on the implication that everybody knows that cannot be true, or on the inference that the actions of supervisors or employer

might have bribed or dominated the group in some sets of entirely different circumstances, but with no evidence that it did so here, is simply no answer to this evidence whatever. One does not get rid of overwhelming, unimpeached, sworn testimony of self-respecting American citizens so easily.

The purpose of the law is not to empower either the International or the DGWU to increase its organization but to enable this group of employees considered as human beings, to proceed in labor matters as it chooses, without penalty either from the company, the International or the Labor Board.

L. Grief & Bro. v. *NLRB*, 108 Fed. (2d) 551, l. c. 558:

> "It is not an answer to point to circumstances indicating that the management preferred an inside to an outside union, or that citizens in the community entertained a hostile feeling toward the Amalgamated. It goes without saying that the determination of the employees to form their own association and to be free from the outside interference of a national union was influenced by their past experience in the plant, and by the general opinion in the community of which they are a part; but these contacts did not deprive them of their rights under the Act, or require them to choose bargaining representatives offensive to their employer or to their fellow citizens, so long as their choice was not dominated or interfered with by the employer."

See also *Quaker State Oil* v. *NLRB*, 119 Fed. (2d) 631, l. c. 632.

In *NLRB* v. *Sun Shipbuilding and Dry Dock Co.*, 135 Fed. (2d) 15, at page 25, the court said:

"The term 'evidence' as used in this connection means 'substantial evidence,' that is, 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion' (*Consolidated Edison Co. of New York* v. *National Labor Relations Board*, 305 U. S. 197, 229, 59 S. Ct. 206, 217, 83 L. Ed. 126) and affords "a substantial basis of facts from which the fact in issue can be reasonably inferred' (*National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299, 59 S. Ct. 501, 505, 83 L. Ed. 660). See also *Quaker State Oil Refining Corp.* v. *National Labor Relations Board*, loc. cit., *supra*, and *Martel Mills Corporation* v. *National Labor Relations Board*, 4 Cir. 114 F. (2d) 624, 627-629. While it is for the Board, therefore, to find the facts and to draw material inferences from the evidence (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271, 58 S. Ct. 571, 82 L. Ed. 831, 115 A. L. R. 307), it is for a reviewing court to say whether the Board's findings are supported by substantial evidence and whether its conclusions are reasonably inferable from the evidence which it accredits. Guided by these standards, it is our opinion that the Board's findings of unfair labor practices on the part of the respondent are not supported by substantial evidence."

The so-called determination of whether substantial evidence exists which proceeds by blankly ignoring the testimony of any number of those who must know whether they were dominated (see foot note) although that testimony has not been weakened by impeachment or cross-examination, and promptly accepting in contradiction

See opinion of Court of Appeals remanding this case, 123 Fed. (2d) 215, at 222.

"The individuals who form an unincorporated association certainly should know what sort of an organization it is, how it happened to be formed, who influenced its formation and who controls it."

thereto small bits of frequently disputed testimony as to minor details, which could be no more than inferences or basis for persuasion in a close case and each bit of which is obviously colored by prejudice, and frequently contradicted by a much larger number of employees, is simply not a determination that substantial evidence exists but a refusal to determine that fact and a headlong, biased conclusion without *weighing* evidence at all. The Board has itself recognized that absurd methods of weighing evidence are not actually the consideration of evidence.

In *Bahan Textile Machinery Co., Inc.*, v. *United Electrical Radio and Machine Works of America*, case No. C-2209, 43 NLRB 97, 11 Labor Relations Reference Manual 6, the trial examiner accepted the testimony of two witnesses in one respect when contradicted by two other witnesses and in another respect accepted the testimony of the second two when contradicted by the first two. The Board said:

> "Although the trial examiner had the opportunity at the hearing to observe the witnesses, we cannot agree with his resolution of the conflicts in testimony. The record affords no basis for believing Kirby and White, in one respect, when contradicted by Bedenbaugh and Thomason, and for accepting the testimony of Bedenbaugh and Thomason, in another respect, when contradicted by Kirby and White. Moreover, standing alone, the uncontradicted testimony of Thomason, that Bedenbaugh told the respondent's employees that they did not need the assistance of a union to obtain an increase in pay, is of insufficient probative value to support the allegations of the complaint. Under the circumstances, therefore, we are unable to find that the alleged unfair labor practices have been established by the record. Accordingly, we find that the respondent has not interfered with, restrained, or coerced

its employees in the exercise of the rights guaranteed in Section 7 of the Act. We shall, therefore, dismiss the complaint."

We do not mean to argue that the existence or non-existence of substantial evidence is a question which can be determined by a pair of scales or a foot rule, or any mechanical process not involving the use of enlightened judgment, but, on the other hand, it is equally not a matter subject only to the unreasoning individual fancy or the prejudice of the trier of the fact. It is governed by legal principles, common sense and experience and the results reached must come within the bounds of such principles in order to be valid and sustained by a higher court. For example, the result must be based on a consideration of *all* the evidence and not on exclusive preoccupation with a particular part only. See the case of *NLRB* v. *Union Pacific Stages*, 99 Fed. (2d) 153, at 177:

"It is suggested that this court should accept the findings of the Board; that contradictions, inconsistencies, and erroneous inferences are immune from criticism or attack by Section 10 (e) of the Act, 49 Stat. 453, 29 USCA, Sec. 160 (e), which provides that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But the courts have not construed this language as compelling the acceptance of findings arrived at *by accepting part of the evidence and totally disregarding other convincing evidence*.

"We are bound by the Board's findings of fact as to matters within its jurisdiction, where the findings are supported by substantial evidence; but we are not bound by findings which are not so supported. 29 USCA, Sec. 160 (e) (f); *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142, 57 Sup. Ct. 648, 650,

81 L. Ed. 965 * * *. Substantial evidence is evidence furnishing a substantial basis of facts from which the facts in issue can reasonably be inferred; and the test is not satisfied by evidence which merely creates a suspicion or which amounts to no more than a scintilla or which gives equal support to inconsistent inferences. *Cf. Pennsylvania R. Co.* v. *Chamberlain*, 288 U. S. 333, 339-343, 53 S. Ct. 391, 393, 394, 77 L. Ed. 819." *Appalachian Electric Power Co.* v. *National Labor Relations Board*, 4 Cir., 93 F. (2d) 985, 989.

"'Substantial evidence' means more than a mere scintilla. It is of substantial and relevant consequence and excludes vague, uncertain, or irrelevant matter. It implies a quality of proof which induces conviction and makes an impression on reason. It means that the one weighing the evidence takes into consideration *all the facts* presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and, *considering them in their entirety and relation to each other*, arrives at a fixed conviction.

"The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power. Testimony is the raw material out of which we construct truth and, unless *all of it is weighed* in its totality, errors will result and great injustices be wrought. *National Labor Relations Board* v. *Thompson Products, Inc.*, 3 Cir., 97 F. (2d) 13, 15." (Italics ours.)

See *Donnelly Garment Company* v. *NLRB*, 123 Fed. (2d) 215, at 224:

"The truth is that a controversy tried before a court or before an administrative agency is not ripe for decision until *all* competent and material evidence proffered by the parties has been received and considered." (Italics ours.)

See *NLRB* v. *Indiana & Michigan Electric Co.*, 87 Law Ed. 579, at 592:

> "Findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support its findings, is heard and weighed."

For example, evidence that A shot a revolver at B with the intention of killing him and that the shot actually did kill him, if considered alone to the exclusion of other material evidence, is not necessarily substantial evidence that A is guilty of murder. Other material evidence if admitted may show self-defense so conclusively that it cannot be said that there is *any* substantial evidence of murder.

In the case at bar the Board not only failed to consider all the evidence, including the primary evidence (the testimony of the employees themselves as to their mental intent), but it even refused to admit it in substance, in defiance of the direction of the reviewing court, and reasserted in its second opinion that it flatly refused to consider it material.

In its first opinion the Board said (V. A., p. 603):

> "The respondent and the DGWU contend that its employees formed and joined the DGWU of their own free will in order to resist unionization by the ILGWU and were not coerced or interfered with in their choice of the DGWU or in their rejection of the ILGWU. In support of this contention they sought to introduce the testimony of the members of the DGWU that they were not dominated by the respondent but formed, joined and supported the organization of their own free will. They also offered evidence to show that the employees knew of the violence accompanying the ILGWU organizational campaigns at other garment factories and

of threats by ILGWU representatives that the same tactics would be used at the respondent's plant and formed the DGWU for that reason. The trial examiner refused these offers of proof, ruling that such testimony was irrelevant and immaterial to the issues. We have affirmed the rulings of the trial examiner on those offers of proof * * *."

On the appeal the Circuit Court of Appeals pointed out and specifically ruled that such evidence was relevant and material and that it must be taken and given due consideration in any valid decision of the case.

See 123 Fed. (2d) 215, l. c. 222:

"It was not shown that any of the employees of the Donnelly Company whose testimony was offered was under any disqualifying disability. There was no presumption that these employees would commit perjury, and, even if the trial examiner believed that they would perjure themselves, that would not have affected the admissibility of their evidence. It is elementary that there is a distinction between the admissibility of evidence and its weight or sufficiency. *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 5 Cir., 98 F. (2d) 870, 871. Surely, if the testimony of an employee which tends to prove that an employer interfered with or supported the organization of an independent union is admissible, the testimony of an employee which tends to disprove domination and support of such a union by an employer is equally admissible. Evidence is relevant if it tends either to prove or disprove any issue in the case. We do not say that the trial examiner was required to take the same testimony from 1,200 witnesses. There were available to him well-known expedients for limiting the number of witnesses where their testimony was cumulative."

And at page 225:

> "Our conclusion is that the petition of the Board for enforcement of the order under review must be denied. We think that the least the Board can do, in order to cure the defects in its procedure caused by the failure of the trial examiner to receive admissible evidence, is to vacate the order and the findings and conclusions upon which it is based; to accord to the petitioners an opportunity to introduce all of the competent and material evidence which was rejected by the trial examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order."

In its second opinion rendered on the rehearing as directed by the Court of Appeals in the above opinion the Board said it had admitted the evidence in question. This was hardly accurate since in fact it admitted only eleven employee witnesses for the company and none for the DGWU in its direct case, and only six on surrebuttal on strictly limited details not on the point of evidence directed to be taken by the appellate court. Certainly this cannot be considered any reasonable cross section of the testimony of 1,200 employees. The Board says it considered such evidence, although the entire opinion shows that it did not give two lines of serious consideration to the actual force or value of such evidence. This is true of both reports of the examiner and both reports of the Board, which included a great many pages of discussion of the evidence. Then the Board makes the actual situation perfectly clear and beyond question by adding in its second opinion the following (see Vol. A, p. 619):

> "Since we find the testimony here adduced totally unpersuasive that the employees voluntarily desig-

> nated the DGWU, we are moreover impelled to *adhere to the opinion*, derived from our experience in administration of the act, that conclusionary evidence of this nature *is immaterial* to issues such as those presented in this case." (Italics ours.)

In other words, the Court of Appeals is mistaken when it says this evidence is material. It is, of course, absurd for a trial body which is authoritatively told that certain evidence is material and its weight as such must be considered, to say, "I know that it is *not* material." And that, "I adhere to my former opinion." If it is immaterial, whether in legal or layman's language, its weight is inconsequential, or more accurately, nonexistent, and the body acting on the persistent belief and declared principle that material evidence is immaterial *cannot* give it proper weight. It is excluded before it ever reaches the scales of judgment for any deliberate estimate. Yet there can be no doubt that the court correctly stated the law.

See, also, *Martel Mills* v. *NLRB*, 114 Fed. (2d) 624, at 631:

> "Obviously, our chief guide is the words of the witness under oath *who undertook to disclose the workings of his mind.*" (Italics ours.)

The question is thus frankly presented whether the appellate court has any control whatever over the administrative board. The point that the Court of Appeals' findings and directions became the law of the case and just as binding as any other law, is discussed elsewhere herein.

It is likewise true that the fact-finding body is not entitled to repeal the principle of the burden of proof. If two equally probable but inconsistent inferences are possi-

ble from the same set of facts, then ordinarily a finding cannot properly be based upon either of them and the party bearing the burden of proof has failed to establish his position. See *Penn. Railroad Co.* v. *Chamberlain*, 288 U. S. 333, 53 S. Ct. 391, 77 L. Ed. 819, at 823:

> "We, therefore, have a case belonging to that class of cases where proven facts give equal support to each of two inconsistent inferences; in which event, neither of them being established judgment, as a matter of law, must go against the party upon whom rests the necessity of sustaining one of these inferences as against the other, before he is entitled to recover." (Citing cases.)

See, also, *Smith* v. *First National Bank*, 99 Mass. 605, 611, 97 Ann. Dec. 59:

> "There being several inferences deducible from the facts which appear, and equally consistent with all these facts, the plaintiff has not maintained the proposition upon which alone he would be entitled to recover. There is strictly no evidence to warrant a jury in finding that the loss was occasioned by negligence and not by theft. When the evidence tends equally to sustain either of two inconsistent propositions, neither of them can be said to have been established by legitimate proof. A verdict in favor of the party bound to maintain one of these propositions against the other is necessarily wrong."

It can hardly be urged in the case at bar that the complainant ever reached the point of a state of facts from which a reasonable conclusion in its favor might be drawn when actually *considered in the light of the contrary evidence*. The inference from a number of minor circumstances that the employees might be dominated by the employer and that all of the employees are perjurers

simply cannot be said without completely departing from reason, to be entitled to be seriously compared with the infergnce that several hundred unimpeached, uncontradicted witnesses without exception who know the fact are telling the truth. Obviously, if two different inferences may be reasonably founded upon an established fact and one may be shown to be overwhelmingly more probable, then the trier of the fact is not entitled to say under the guise of considering whether there is substantial evidence that he will arbitrarily place reliance on evidence which established rules and experience show to be discredited and no longer worthy of belief. (See *NLRB* v. *Sands Manufacturing*, 83 L. Ed. 682, 306 U. S. 332, and *NLRB* v. *Bell*, 98 Fed. [2d] 406, 410.)

We have quoted the Cupples case, *supra*, to the effect that evidence which merely furnishes ground for suspicion, does not entitle the Board to disregard the uncontradicted testimony of unimpeached and credible witnesses. See, also, *Foote Bros. Gear and Machine Corp.* v. *NLRB*, 114 Fed. (2d) 611, at 621:

> "Undoubtedly, the rule is well established that a finding by referee, trial court, or administrative board if supported by substantial evidence should be accepted by an appellate reviewing court. This does not relieve the appellate court, however, of the duty of examining the evidence to ascertain whether the findings is supported by evidence. And an examination of the evidence necessitates an analysis which to a certain extent is a weighing of such evidence. In fact, the court's duty to make this examination and anaylsis of the evidence is quite as clear (even though more burdensome and involves the tedious study of testimony and witnesses' qualifications and biases, etc.) as the construction and application of statutes or any other legal question. Evidence, to be substantial, 'Must be enough to justify, if the trial

were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.". (Citing cases.)

In *Pennsylvania Railway* v. *Chamberlain* (*supra*), at page 823 of the L. Ed., the court says:

"And the desired inference is precluded for the further reason that respondent's right of recovery depends upon the existence of a particular fact which must be inferred from proven facts, and this is not permissible in the face of the positive and otherwise uncontradicted testimony of unimpeached witnesses consistent with the facts actually proved, from which testimony it affirmatively appears that the fact sought to be inferred did not exist. This conclusion results from a consideration of many decisions, of which the following are examples: *Wabash R. Co.* v. *De Tar*, (C. C. A. 8th) 141 Fed. 932, 935, 4 LRA (N. S.) 352; *Ragsdale* v. *Southern R. Co.*, (C. C.) 121 Fed. 924, 926; *Cunard S. S. Co.* v. *Kelley*, (C. C. A. 1st) 126 Fed. 610, 617; *Frazier* v. *Georgia R. & Bkg. Co.*, 108 Ga. 807, 33 S. E. 996; *Bowsher* v. *Grand Rapids & I. R. Co.*, 174 Mich. 339, 344, 140 N. W. 524; *Rashall* v. *St. Louis, I. M. & S. R. Co.*, 249 Mo. 509, 522, 155 S. W. 426; *George* v. *Mo. Pac. R. Co.*, 213 Mo. App. 668, 674, 251 S. W. 727; *Stines* v. *Dillman*, ... Mo. App. ...., 4 S. W. (2d) 477, 478; *Akerson* v. *Great Northern R. Co.*, 158 Minn. 369, 374, 197 N. W. 842; *Butterfield* v. *Trittipo*, 67 Ind. 338, 343, 344; *Blid* v. *Chicago & N. W. R. Co.*, *supra*, 99 Neb. 691-693, 131 N. W. 1027). A rebuttable inference of fact, as said by the court in the Wabash R. Co. case, 'must necessarily yield to credible evidence of the actual occurrence.' And, as stated by the court in *George* v. *Missouri P. R. Co.*, 213 Mo. App. 668, 251 S. W. 729, *supra*, 'It is well settled that where plaintiff's case is based upon an inference or inferences, that the case must fail upon proof of undisputed facts inconsistent with such inferences'."

In short, where a substantial number of witnesses who know the facts testify and are neither impeached nor discredited, the Board is not free to repeatedly refuse to consider such evidence as material and to use subsidiary facts which are the basis of inferences as a ground for finding the opposite. Where the Board, having perhaps become somewhat partisan in the heat of battle, evolves rules of evidence of its own, or disregards principles of evidence based on the experience of mankind and makes a finding which cannot be supported by logical reason or the experience crystallized in the principles of law, then that finding must be set aside. It is submitted that that is the situation in the case at bar.

But even without this the Board's order should be set aside and its complaint dismissed because it has treated and ruled as *immaterial* and of *no weight,* evidence, without the consideration of which *as material and of value* the law holds that no judgment in favor of the Board can be valid or sustained.

II.

When the Court of Appeals on the first appeal from the Labor Board expressly directed that the testimony of employees should be considered material evidence on the rehearing, such ruling became the law of the case, and the refusal of the Labor Board to comply with it makes it necessary that the order of the Board be set aside and its complaint dismissed.

(a) The situation in the case at bar.

(b) The application of the rule.

(c) The Indiana and Michigan electric case.

(d) The effect of the Administrative Procedure Act.

(a) The situation in the case at bar.

The situation presented by the first review proceeding, as stated by the Circuit Court of Appeals (123 Fed. (2d), l. c. 222) was that:

> "At the hearing before the Trial Examiner, the petitioners proffered the evidence of the employees of the Donnelly Company, some 1,200 in number, to show how and why they formed the Donnelly Garment Workers' Union, to show that no influence was brought to bear upon them by the employer either in the formation or administration of the Union, to show what the president of the Company had said to them at a mass meeting in the spring of 1937, to show that their freedom to organize and to choose their own representatives for the purposes of collective bargaining had not been interfered with by their employer, and to show that their union, both in its formation and administration, was exclusively controlled and supported by them. The Trial Examiner refused to receive this evidence. He permitted the petitioners to make formal offers of proof."

With respect to such situation the court said:

> "We have no doubt that the testimony offered by the petitioners in their efforts to prove that the employees of the Donnelly Company formed the Donnelly Garment Workers Union *of their own free will* and that the *formation and administration* of that union was free from employer influence, domination and support, and to explain how and why they came to organize the union, was *competent, relevant* and *material* and should have been received. The individuals who form an unincorporated association certainly should know what sort of an organization it is, how it happened to be formed, who influenced its formation, and who controls it. We think there can be no doubt of the right of the members of such an organization to testify to such matters, and that their evidence is admissible regardless of its weight." (Italics ours.) (l. c. 222.)

That court then said:

> "That a refusal by an administrative agency such as the National Labor Relations Board to receive and consider competent and material evidence offered by a party to a proceeding before it, amounts to a denial of due process is not open to debate. (Citing cases.)
>
> "The truth is that a controversy tried before a court or before an administrative agency is not ripe for decision until all competent and material evidence proffered by the parties has been received and considered." (l. c. 224.)

The express holding of that court was:

> "Our conclusion is that the petition of the Board for enforcement of the order under review must be denied. We think that the least that the Board can do, in order to cure the defects in its procedure

caused by the failure of the Trial Examiner to receive admissible evidence, is to vacate the order and the findings and conclusions upon which it is based, to accord to the petitioners an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner, and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order." (l. c. 225.)

Clearly and explicitly, the Court of Appeals on the first appeal directed the Board to do three things: (1) To vacate its order. (2) To receive all of the evidence specifically pointed out and determined to be material. (3) *To consider* this evidence in the light of and together with all of the material evidence before making new findings and a new order.

The Board did vacate its first order. Obviously, the Board did *not* do either of the other two things. On the point of receiving the evidence it allowed some eleven employees offered by the company to testify, but *none whatsoever* of those offered by the organization of the employees themselves—being substantially the entire group of employees. The ruling at IX 3255, which was made before the intervener had an opportunity to offer any testimony, is:

"Then, I will now determine that I have heard enough employee witnesses, both as to the respondent and the intervener.

So, that disposes of that matter."

It is curious enough that this action of the examiner followed repeated prior declarations that he was going to hear the evidence of the 1,200 employees and hear it first (VIII 2561; X, 3956, 3959, 3960). He never did.

No intention to hear either any reasonable number of such a group or to allow any reasonable cross-section of it to testify or use any method to obviate the necessity of hearing all 1,200 employees and yet obtain the substance of their testimony was indicated. The Court of Appeals had pointed out that there were well-known methods of doing this. Even the small amount of testimony actually received was not allowed to extend to the subjects pointed out by the Court of Appeals. The Board simply did not receive the evidence which it was directed to receive.

On the point of *considering* the evidence, which it was the principal purpose of the *second hearing* to weigh carefully, the Board and the examiner *recited* that not only did they admit it but they considered it (X 3848, A. 619), but the mere formal lip service recognition of the direction of the Court of Appeals cannot amount to compliance in actual fact where the opinion and order themselves show conclusively that there was no real compliance. Nowhere in the long opinions of the Examiner or the Board does there appear any discussion or thought given to the substance of the testimony of the employees. The fact of their statement of their desires in the matter, the remarkable fact of the overwhelming number so offering to testify, the substance of their testimony, the bearing of such witnesses as testified upon the stand, the question of whether their testimony was coherent or contradictory, whether the reasons given were persuasive or improbable, the consideration of their credibility—all these and many other possible methods of evaluating testimony of the employees are not even mentioned. The Examiner's belief is that any amount of sworn testimony of any number of employees is worthless (A. 484), which ruling the Board approved.

In addition to simply ignoring it in his mental processes directed toward a final result, the Examiner carried out vigorous flanking attacks upon the minute portions admitted, such as ruling that only such testimony as was specifically designated by a formal offer of proof could be presented in the second hearing (VII 2394, VIII 2784, 2785, 2788, 2802, 2808). There was nothing in the decision of the Court of Appeals to warrant limiting of evidence of the employees narrowly within the exact words of a formal offer of proof. He agreed with the Board's attorneys, who still asserted in the second hearing, that this evidence was immaterial (VII, 2083-4, VIII 2590). He ruled that only those witnesses who had actually signed or were specifically named in an offer of proof could be presented at this hearing (VIII 2802). He limited it to a period going back six months before the formation of the DGWU or to about November, 1936 (VIII 2808, VII 2398), but he permitted the Board and the ILGWU to go into matters going back to 1934 and 1935 (151 Fed. (2d), l. c. 874, VIII 2824, 2887, 2890, IX 3027, 3066). He refused to permit any testimony with reference to matters of operation of the plant union occurring subsequent to July, 1939 (VII 2392, 2397, VIII 2597, X 3764). It would seem beyond argument that if the plant union has continued to operate successfully for seven years and down to the present date, which is the fact, that should be some evidence of its being the choice of the employees. Certainly if it had lasted only a few weeks or a few months after the original trouble, the Board would have considered that as very strong evidence that it was not really the choice of the employees. It mentioned in a footnote that the U. S. District Court found that "the respondent's employees acting unanimously had voluntarily formed the DGWU and at all times freely administered and main-

tained it" (X 3842), but merely comments this finding was not binding on the Board.

All of these rulings of the Trial Examiner the Board sustained and approved. The internal evidence of the Board's opinion itself shows that the evidence it was directed to weigh and consider was never weighed and considered at all. If opinions do not disclose the processes of reasoning and the matters weighed and considered in reaching the judicial result, then it is worse than useless to write them for they would become actually deceptive as to what law may be relied upon. However, there is no need to rely on what we have termed internal evidence of the opinion. The Board itself clearly and beyond any question describes its own position (A, p. 619):

> "Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the DGWU, we are moreover impelled to adhere to the opinion, derived from our experience in administration of the act, that conclusionary evidence of this nature is *immaterial* to issues such as those presented in this case." (Italics ours.)

The reviewing court on the second appeal found that this testimony "received no different or greater consideration upon the second hearing than it did upon the first, and that it was disregarded in both hearings." (151 F. (2d) l. c. 873.)

This situation is clear and we think cannot be successfully dismissed or explained away. The Board's method of meeting it is to endeavor to distract attention from it by suggesting that the question is whether "the company and the DGWU were not deprived of due process by reason of the Board's limitation of evidence at the hearing on remand to those matters mentioned by the court below as having been erroneously excluded at the first hearing." (Heading of Board's point No. 3, page

85, its brief, and index p. II.) It thus endeavors to assert that the question for argument is whether the Board acted wrongfully in *scrupulously following* the instructions of the Court of Appeals.

The picture presented by the Board for consideration is that of the DGWU and Company's attorneys artfully trying to induce the Board to pay no attention to the Court of Appeals; while the Board's attorneys sturdily defend it in its unflinching determination to follow the Court of Appeals' directions to the letter. The fact that the Board's attorneys found it necessary to present this picture upside down to this Court is a revealing light on the weakness of its position. The Board in clear and emphatic language stated that it would *not* follow the direction of the Court of Appeals on the centrally important issue, nor follow the specific directions of that court as to treating as material the evidence of the employees. Surely the Court of Appeals is an adequate judge of whether its instructions were followed, and its deliberate finding, now here on appeal, is that they were not (151 F. (2d), l. c. 875). As a means of avoiding this issue, the Board devotes many pages to considering whether evidence that employees in other plants, having duties similar to Donnelly instructors, were permitted to belong to other unions, should have been considered by the Board; whether evidence that certain union members were discharged because of their membership was properly admitted; whether evidence comparing the DGWU's contract with the contracts of other labor organizations was properly excluded; whether evidence of alleged violence at other plants was properly excluded, and similar matters. The picture which the Board is trying to paint is that of a large number of minor questions in which the Board earnestly endeavored to follow the complicated instruc-

tions from the Court of Appeals and substantially succeeded in doing so, properly using its own discretion where such instructions were not clear. Of course, this is not a true picture. It would have been impossible for the Court of Appeals to have more clearly stated its rulings that the testimony of the employees as to why they formed their union, and whether they were coerced or not, should be treated as material than was done in its opinion. Lengthy arguments as to whether the Board properly ruled on minor matters of evidence can only serve to obscure the issue of the Board's refusal to follow the substance of the court's instructions. The Court of Appeals on the second appeal has held that the Board did not. We submit that all of the Appellate Court's rulings as to evidence and the prejudice of the examiner and the denial of due process were clearly correct. But that over and above all of these, the Board's refusal to follow the court's direction on the central point of the materiality of the employees' testimony is sufficient, standing by itself, to require the setting aside of the Board's order.

See:

St. Joseph Stock Yards Co. v. *United States*, 298 U. S. 38, 73, 56 S. Ct. 720, 80 L. Ed. 1033.

Ohio Bell Telephone Co. v. *Public Utilities Commission*, 301 U. S. 292, 304-305, 57 S. Ct. 724, 81 L. Ed. 1093;

Railroad Commission v. *Pacific Gas & Electric Co.*, 302 U. S. 388, 393, 58 S. Ct. 344, 82 L. Ed. 319.

Morgan v. *United States*, 304 U. S. 1, 14, 15, 58 S. Ct. 773, 999, 82 L. Ed. 1129.

Pittsburgh Plate Glass Co. v. *National Labor Relations Board*, 313 U. S. 146, 177, 61 S. Ct. 908, 923, 85 L. Ed. 1251.

Interstate Commerce Commission v. *Chicago, R. I. & P. Ry. Co.*, 218 U. S. 88, 102, 30 S. Ct. 651, 656, 54 L. Ed. 946.

(b) **The application of the rule.**

We shall argue elsewhere herein that the treating of this large body of important and material evidence as immaterial and irrelevant makes it impossible for the Board to legitimately reach a conclusion that there was substantial evidence in favor of it, because items of evidence cannot be intelligently considered in a vacuum but only in whatever light or explanation is thrown upon them by the other material relevant evidence in the case. We shall submit later on that the refusal to admit and consider this evidence was denial of due process. But in addition to these facts there is a definite and positive principle of law which requires the vacation of the Board's order and the dismissal of its complaint; that is, "The law of the case." The decision of the Court of Appeals as to what evidence is material and must be considered in order to arrive at a valid decision and order in this case is just as much valid, enforceable and settled law as any other decision of an appellate court in a position of direct authority over a trial court. It has the additional value of being explicitly applied to this case, so that doubts as to differences in facts and whether the cases are "on all fours" do not exist. It is the very reason for the existence of an opinion when a case is sent back for rehearing.

The general statement of this doctrine was well put by the Supreme Court in *Eastern Cherokees* v. *United States*, 225 U. S. 572, l. c. 582, 32 S. Ct. 707, 56 L. Ed. 1212, l. c. 1216:

> "When a case has been once decided by this court on appeal, and remanded to the Circuit Court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The Circuit

> Court is bound by the decree as the law of the case, and must carry it into execution, according to the mandate. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded."

As said in *Federal Communications Commission* v. *Pottsville Broadcasting Company*, 309 U. S. 134, 144, 84 L. Ed. 656, 663, quoting from an opinion of the late Mr. Chief Justice Hughes:

> "'Whether the Commission applies the legislative standards validly set up, whether it acts within the authority conferred or goes beyond it, *whether its proceedings satisfy the pertinent demands of due process*, whether, in short, there is compliance with the legal requirements which fix the province of the Commission and govern its action are appropriate questions for judicial decision.'" *Federal Radio Commission* v. *Nelson Bros. Bond and Mortg. Co.*, 289 U. S. 266; 77 L. Ed. 1166, 1174, 53 S. Ct. 627, 89 A. L. R. 406."

Mr. Justice Frankfurter then states:

> *"On review the court may thus correct errors of law and on remand the Commission is bound to act upon the correction."* (Italics ours.)

The court said in *Claiborne-Reno Co.* v. *E. I. Dupont DeNemours and Co.*, 77 Fed. (2d) 565, l. c. 566:

> "In the latter case, which is one of the very late cases defining the 'law of the case,' this court in an able opinion by Van Valkenburgh, Circuit Judge, said: 'The phrase "law of the case" has been employed and applied in many decisions of this and

other federal courts. Stated generally, the rule is that, "where evidence is substantially the same on both trials, questions of law determined on writ of error or appeal are 'law of the case,' both for trial and appellate court, on second writ of error or appeal." *Pennsylvania Mining Co.* v. *United Mine Workers of America et al.*, (C. C. A. 8) 28 F. (2d) 851; *Thompson* v. *Maxwell Land-Grant & Railway Co.*, 168 U. S. 451, 18 S. Ct. 121, 42 L. Ed. 539.' This rule has been announced and received adherence in many decisions of this court." (Citing cases.)

As said in 5 C. J. S., Sec. 1964:

"The doctrine of the law of the case has been applied to decisions of a reviewing court in respect of evidence, as in the case of adjudication on review held to establish the law of the case as to burden of proof and presumptions, and admissibility."

The Court of Appeals went to the trouble of explaining that much time would be saved by admitting evidence rather than indulging in long arguments. (See the record.)

See 123 Fed. (2d) 215, at 223:

"The attitude of this court toward the conduct of hearings by a trial examiner we think has been entirely consistent. In *Cupples Co. Manufacturers* v. *National Labor Relations Board*, 8 Cir., 106 F. (2d) 100, 113, we made the suggestion that if a trial examiner would, 'within reasonable limits, permit each of the parties to the proceeding before him to prove his own case, in his own way, by his own counsel,' charges of lack of due process for failure to accord a full and fair hearing could readily be avoided. In *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, *supra*, 113 F. (2d) 698, 702, we ex-

> pressed the opinion that the practice which should be followed by a trial examiner in taking evidence and ruling upon objections to evidence is that which applies to special masters in equity proceedings, and 'that the record should contain all evidence offered by any party in interest, except such as is palpably incompetent * * *.'"

Thus the Court of Appeals took occasion to point out with care and detail to the Board and the examiner just what evidence must be taken and given due consideration in order to lay a basis for any valid finding and order. It even went to the unusual length of pointing out to the examiner and the Board a procedure which would avoid a second failure to afford due process, without injuring the Board's case if evidence was admitted beyond a reasonable cross-section of the employees, or such evidence was admitted which turned out to be immaterial or merely cumulative. The Board confessed its inability to make a case when it refused to take the testimony of employees in any substantial manner. Organizers for the International had many months or years in which to talk with these employees, or any of them, and to check and test their testimony and if it found ground to believe that it could make anything favorable to its case out of the examination or cross-examination of any employees, it would surely have made the attempt. Its total abandoning of this field of testimony means that it can make no progress whatever in it. A second time it confessed its inability to make a case when it flatly contradicted the ruling of the Court of Appeals that the testimony of the employees as to their personal knowledge, motives and volition was material. For if it once admitted that such evidence is material and must be considered, together with other evidence and

as throwing light on other evidence, it immediately appears that it is so overwhelmingly against the Board's position and so bereft of any infinitesimal item in the Board's favor, that it precludes any decision in favor of the Board.

The intermediate opinion of the examiner adopted in substance by the Board (A, 618) mentions in a footnote (3867) that some of respondents' employees discussed reports of "clashes" at other garment factories and expressed a fear that an "organizational campaign" at the respondents' factory might precipitate similar "strikes" and violence. The impression given is that in carrying on a lawful and even dignified campaign certain minor incidents of impropriety might arise which would be no more the fault of one side than the other. This is an outrageously unfair picture of what really went on. The fact is that all the employees and a majority of the five ex-employees who testified for the Board agreed that this nearby violence was a prime cause of organizing the DGWU. But this universally established fact is never referred to by the Board, which suggests, in a sentence, that all the testimony concerning it, *as a cause*, is wrong and that it is really evidence of domination because Mrs. Reed is alleged to have mentioned the undeniable fact of violence and the undeniable right to protection, whereupon the Board infers that every employee in the factory immediately loses his or her ability to tell the truth, or the ability to know what causes him or her to take a position on his or her own affairs, or both, and that *the management* reached a conclusion for them which they all believed (or falsely swore they believed) they reached for themselves. (Except that a majority of five discredited ex-employees, while agreeing that such violence caused the employees in general to organize their own union, yet

asserted that they, personally, were not frightened.) We respectfully refer the court to the various opinions of the federal courts, cited, *supra*, in the injunction cases on this dispute which considered the violence situation and its results in this matter, after hearing many weeks of testimony.

This evidence should have been given due consideration because it established a reason for forming the DGWU. The testimony of *both* sides established it. If the Board is entitled to try to show that the reason for such formation was the domination of the employer surely it is equally admissible for the intervener to show that the reason was an entirely different one. See *Donnelly* v. *NLRB*, 123 Fed. (2d) 215, l. c. 221:

> "The petitioner Donnelly Garment Workers' Union, in the hearing before the examiner, attempted to prove that it was an independent labor organization of all the employees of the Donnelly Garment Company; that the union was organized by and for such employees and was under their exclusive domination and control, and that it at all times had been free from employer domination, interference and support; that the employees believed and had reasonable grounds to believe that the International was resorting to force, violence and threats to compel other employees in other garment plants in Kansas City to join the International and to force their employers to compel them to join it, and was about to attempt to force the employees of the Donnelly Company by the same methods to join the International and that one of the motives which prompted them to form the Donnelly Garment Workers' Union was self-protection."
>
> . . . . . .
>
> "It was not shown that any of the employees of the Donnelly Company whose testimony was offered

was under any disqualifying disability. There was no presumption that these employees would commit perjury, and, even if the trial examiner believed that they would perjure themselves, that would not have affected the admissibility of their evidence."

"Evidence is relevant if it tends either to prove or to disprove any issue in a case. We do not say that the trial examiner was required to take the same testimony from 1200 witnesses. There were available to him well-known expedients for limiting the number of witnesses where their testimony was cumulative."

See:

Smyth v. *Klauder*, 58 Fed. (2d) 109 at 110: "It cannot be varied or examined by the trial court except for the purpose of execution"; certiorari denied, 284 U. S. 681, 76 L. Ed. 575.

Litchfield v. *Dubuque*, 74 U. S. 270, 19 L. Ed. 150.

Goldwyn Pictures v. *Howells Sales*, 287 Fed. 100, certiorari denied, 262 U. S. 755, 67 L. Ed. 1217.

In Re Sanford Fork and Tool Co., 160 U. S. 247, 255, 40 L. Ed. 414.

Federal Trade Commission v. *Standard Education Society*, 97 Fed. (2d) 513, certiorari denied, 305 U. S. 642, 83 L. Ed. 414.

Henning v. *Eldridge*, 33 N. E. 754, l. c. 755.

Tribune Co. v. *Emery Motor Livery Co.*, 170 N. E. 772, l. c. 774.

As stated in 5 C. J. S., par. 1964, p. 1501:

"The rule is especially applicable where the appellate court has remanded the cause with specific directions as to the steps to be taken by the lower court, or on further proceedings after answer to certified questions; and such rule holds good regardless of

whether the decision of the appellate court is right or wrong, it being said that it is only where the decision is deemed erroneous that the doctrine of 'the law of the case' becomes at all important."

(c) The Indiana and Michigan Electric case.

The case of *NLRB* v. *Indiana and Michigan Electric Company*, 318 U. S. 9, 87 L. Ed. 579, was cited to the Circuit Court of Appeals, and was referred to by that court in its last decision in this case (*Donnelly* v. *NLRB; DGWU, Intervener*, 151 Fed. (2d) 854 at 873). The Board in its brief to this court devotes several pages to consideration of that case (Bd. Bf., pp. 99-192). We believe that applicable to the case at bar in two distinct ways:

First, on the law of the case. In the Indiana and Michigan case, Marks and Freeman, two union members, both of whom had been witnesses against the company, and three others, had engaged in dynamiting the company's transmission poles shortly before the hearing. The company proposed to produce evidence of this fact for the purpose of discrediting the testimony of Marks and Freeman. The Circuit Court of Appeals held that the evidence was material (87 L. Ed., l. c. 585), and directed the Labor Board to take and so consider it. The Board refused to do so and on certiorari granted by this court, gave its reasons. It argued that the Court of Appeals was wrong in asserting that a remand might result in the impeachment of Guy, Marks and Freeman, for, say the Board, their "testimony was either cumulative (being corroborated by other witnesses) or entirely immaterial and not relied on by the Board; and that there is other substantial evidence in the record to support the Board's decision" (l. c. 585). This court held that the Board must comply with the directions of the Appellate Court as to

evidence, pointing out that even if the Supreme Court did not agree with the Court of Appeals, still the Board would have to follow the direction of the Court of Appeals as to the taking and considering of evidence unless such directions were so far afield as to amount to an abuse of discretion (see page 585):

> "Thus, in order to decide this case in favor of the Board we would have to hold not merely that the evidence of dynamiting would be a matter of indifference in our own view of the case, but that the court designated by statute to exercise discretion in the matter and which desired to know the facts about it before passing on the sufficiency of the evidence and the impartiality of the examiner and which thought the finder of the facts should hear and consider such evidence, must not only have been in error but must also have abused its judicial discretion."

And again at page 591:

> "But the court is given discretion to see that before a party's rights are finally foreclosed, his case has been fairly heard. Findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, its findings is heard and weighed."

Although the Board discusses the Indiana and Michigan case at length, it does not refer to this important point.

To the same effect is *Southport Petroleum Co.* v. *NLRB*, 315 U. S. 100, 86 L. Ed. 718 at 723. This court, therefore, confirmed the power and duty of the Court of Appeals to direct the Board as to what is material evidence in the case appealed to it and to direct the Board not only to take such evidence, but to treat it as material and to place it in the scales on one side to be weighed

against conflicting evidence, unless the Court of Appeals was so far wrong in its judgment as to go beyond the discretion conferred upon it as the supervising authority over the Board. We submit that this ruling applies in the case at bar.

Second, on the exclusion of evidence as to violence. As a distinct and separate reason for the consideration of such evidence refused by the Board (I 334q-334v; II 553, 614, 626-627, 700-703, 706, 718y-718bb; III 742d, 758 [offer of proof 1-0000]; VI 1752-1753 [offer of proof refused], 2046-2047) in this case this court in the Indiana and Michigan case pointed out the following situation (87 L. Ed., l. c. 587):

> "We think this course of violence and lawlessness concurrent with the Board proceedings, apparently instigated by those who stand to gain from the Board's decisions, participated in by parties and witnesses, may not be said to lack possible materiality on other issues of the case. The question goes to the fairness of giving absolute finality to the Board's findings of fact where there has been a refusal to hear and incorporate in the record such evidence as may be produced of such a conspiracy."

and again at 591:

> "The remedies of the law are substitutes for violence, not supplements to violence, and it is proper that courts and administrative bodies so employ their discretion as to dispel any belief that use of dynamite will advance legal remedies."

and at page 589:

> "It is unrealistic to say that this union was granted nothing by the Board's order or that no relief has been given to this particular union."

This court also held, at page 587, that:

> "The Board might properly withhold or dismiss its own complaint if it should appear that the charge is so related to a course of violence and destruction, carried on for the purpose of coercing an employer to help herd its employees into the complaining union, as to constitute an abuse of the Board's process." (Also quoted at 151 F. (2d), l. c. 873.)

When the party to a dispute who is asking enforcement or investigation of its position by the Labor Board is definitely associated with unlawful violence, in that identical dispute, it is the duty of the Board and the court to scrutinize the facts in order that its aid shall not be given to violence and lawlessness. Of course, what the complaining witness is guilty of, if anything, has nothing to do with whether the intervenor is or is not a valid union. But this is a different point. To say that the court, by supporting the organizational plans against a certain factory, would not be lending aid and support to lawlessness of a group who employ lawlessness in those very organizational plans, is, as this court has said, simply not realistic. It gives them the great assistance of a department of government ruling against their opponents.

The violence of the International is established. Three courts have so held: See 21 Fed. Supp. 807, l. c. 811, 819, and the conclusion of even the dissenting judge therein at page 831 is to the effect that insofar as misconduct of the International goes an overwhelming case in support of injunction has been made; 151 Fed. (2d) 854 at 873, where the court said "that the charges of misconduct made by the company and the plants union against the International are not without substance is shown by the record"; and 154 Fed. (2d) 45, in which the Court of Appeals denied a permanent injunction because of lack of

evidence of *present* threat and of lack of evidence that the *present* police force would not or could not control similar outbreaks at the time of the trial some eight years after clearly established violence when the suit was originally filed, and based its finding solely on jurisdictional issues "since we conclude that the trial court's findings against the appellants in this case *on issues necessary to its power and jurisdiction* to enjoin the appellees are not clearly erroneous, the decree appealed from is affirmed." (Italics ours.)

But the Board argues that the violence used by the International in this case was not dynamiting as in the Indiana and Michigan case; that it was not shown to have been perpetrated by witnesses in this case, but was actively indulged in against employees of nearby companies and not against Donnelly employees.

This is a distinction without a difference.

The reasoning of the Indiana and Michigan case is that any substantial violence (not limited to dynamiting or to witnesses on the stand) which is perpetrated *as a part of a campaign* to force unionization of a plant or its employees, will not be aided by an arm of the government entertaining a petition calculated to assist the perpetrators in the organizing of that plant. It quotes the Board's finding that "it may be true, as the (company) contends, that many of them (the employees) feared the alleged threats of the ILGWU," but finds that instead of permitting employees to decide for themselves what attitudes they would adopt, the company seized upon such fears to build up and strengthen a militant employee opposition toward that labor organization. The only evidence or testimony it cites in support of this wholly unjustified finding is the opinion of the Board itself. (X 3868-3869).

That the violence in the present case was part of a plan to organize this plant is clear.

In November, 1936, International's president (V 1549) and General Executive Board (X 3677) announced an organizational drive in which their Kansas City office would concentrate on the Donnelly plant (V 1549). Newspaper advertisements stated that the smaller Kansas City plants were being organized in order to get ready for Donnelly's (IV 1336g), and during the violence around those smaller plants the pickets made statements to the same effect (IV 1336vvv). Miss Tobin, manager of International's local organizations in Kansas City (IV 1318), while a beating was being administered to an elderly woman in front of other Kansas City plants, stated that this was just a sample of what they were going to do at Donnelly's (II 718z). Mr. Dubinsky testified that the full page advertisement of the International addressed to the Donnelly Company had and has his approval. That advertisement stated that the International "cannot, should not and will not permit one individual employer to segregate itself," and that

> "It still lies within your choice to avoid a conflict which may prove as costly as it appears futile at this stage to all sides involved in it. Your readiness to meet us in this endeavor in a spirit of industrial statesmanship rather than in that guerrilla warfare will be applauded by every constructive factor in the dress industry in general the country over" (V 1534-4.)

Justice, the organ of the International, announced that the union "is now concentrating on organizing the few remaining small shops while preparing to organize a drive to organize the Donnelly Garment Company" (V

1519), and that "David Dubinsky, president of the ILGWU, on Saturday, March 6, officially launched a movement to organize the Donnelly Garment Company" (V 1521). Mr. Dubinsky gave an interview to the Associated Press in which he stated that the St. Louis office of the International would have sufficed for Missouri except that the union "wants to give Jim Reed a break" (V 1549). Numerous other exhibits demonstrating that the main object of violence in Kansas City was the unionization of the Donnelly employees appear in the record (V 1417 to 1583 and XI). No efforts to negotiate were ever addressed by the international to the employees, but only to the management. The Regional Director for the International stated that the same actions would be taken against Donnelly employees, if the court did not issue an injunction (V 1510-11). It may be that this evidence is not sufficient to enjoin the officers and all members of the board of the International under the narrow provisions of the Norris-LaGuardia Act as to personal authorization, present threat, inability of police force, etc., but it surely shows that the campaign of the International in Kansas City was directed toward the forcible organization of the Donnelly employees.

If the violence of the International directed toward the organization of these employees by for is aided by the Boards dissolving of its opposition (the DGWU), then the violence has been successful and an appropriate and paying procedure. A labor group may use unlawful violence and the aid of the Labor Board at the same time and in the same campaign.

(d) The effect of the Administrative Procedure Act.

The Court of Appeals had ample authority under the law to set aside the order of the Labor Board in this case. Such authority springs not only from the express provisions of the National Labor Relations Act (29 U. S. C. 160, e, f), but also from fundamental principles of common law, which are fully discussed in the opinion of that court and are the subject of a substantial part of this brief. Since that opinion was rendered, the power and duty of appellate courts to set aside orders and findings reached without due process—as is the situation here—has been substantially extended and clarified by the Administrative Procedure Act (Chapter 324, Laws of 79th Congress, Second Session, Public Law 404, approved on June 11, 1946). The parts of that Act herein relied on became effective on September 11, 1946. Its provisions as to the review by the courts of orders of administrative agencies read as follows:

> "(e) Scope of review.—So far as necessary to decision and where presented the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of Sections 7 and 8 or otherwise reviewed on the record of an agency hearing provided by statute; or (6) unwarranted by

the facts to the extent that the facts are subject to trial *de novo* by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

It is to be noted that the reviewing court shall decide all relevant questions of law, which certainly include the admissibility of competent and material evidence and whether evidence is material, and that such appellate court is to interpret constitutional and statutory provisions, which includes due process. The appellate court is directed to "hold unlawful and set aside agency action" which does not measure up to the requirements of due process. It is submitted that "set aside" as herein used means "set aside" and nothing more. It does not direct further hearings nor substitute orders, but leaves the agency with its petition denied. This course of action is especially appropriate where the agency has flatly refused to follow the instructions given to it in the same case by the court with supervisory powers and has stated its decision not to proceed in accordance therewith and, by implication, admitted that it could not possibly make a case by proceeding in accord with such instructions (that is, in this case, the taking and considering as material evidence the testimony of the employees, either in total or in any reasonable cross-section). The six grounds listed in the quoted paragraph and the general requirement as to prejudicial error may be urged to have been recognized parts of the law before this Act was passed. Indeed, the Court of Appeals opinion relies on some of them. Yet the statute will not be construed to be meaningless where there is a reasonable interpretation. Surely one purpose, if not the predominating and sole purpose, of the statute

was to make clear, especially because of some court decisions which exhibited a contrary or at least a doubtful idea, that these constitutional and fundamental requirements are to be fully and definitely enforced in dealing with findings and orders of administrative agencies, including the Labor Board.

So considered—and we are at a loss to see how it could be considered in any other manner—the Act declares a public policy of enforcing these principles, through the supervision of appellate courts, without any relaxation in favor of administrative bureaus, and removes any possible shadow of doubt that the order made by the Court of Appeals was properly entered. The debates on the bill before Congress show that it was passed with this definite and express purpose in the minds of the legislators. (See quotations in the appendix to this brief.)

The International relies heavily in its brief in the last part of point one (International's brief, page .....) on inference as justifiable support for the decisions of administrative agencies. It quotes language indicating that "inferences to be drawn are for the Board and not the courts" and that inferences drawn by the Board will not be disturbed by the court even though contrary inferences could have been drawn. We submit that these cases do not hold that inferences drawn by the Board must or should be sustained when to do so requires that positive, direct and material testimony to the contrary from witnesses who are not impeached or discredited must be completely disregarded in order to sustain such inferences. However, in any case we think the Federal Administrative Procedure Act has declared and clarified the policy of Congress as to the direction and supervision of administrative agencies so that no such contention as that of the Board and the International can be sustained. The Inter-

national's brief argues that Congress could grant such scope of review of administrative board findings to the courts as we claim, but that it has not done so. The Federal Administrative Procedure Act has made the grant of such scope of review clear.

III.

The findings of fact by the Board are not supported by substantial evidence.

(a) The findings are based on inference and suspicion.

The Board has devoted the major portion of its brief and all of Point I of its Argument to a defense of its findings. Elsewhere herein we have quoted from cases pointing out that neither a trial court nor an administrative agency is free to disregard direct testimony, by relying merely on suspicion. It would seem logical that if the law regards the unimpeached positive testimony of an uncontradicted witness who knows the facts as prevailing over mere inference or conclusions drawn from secondary facts, then the similar testimony of some 1,200 witnesses without exception would require a veritable mountain of inferences and testimony about secondary facts from which conclusions may be drawn but which do not in themselves determine the issue, in order to have any hope of raising some shadow of doubt. The Board apparently agrees with this for it has used in its brief an appalling number of citations, perhaps with the idea that it will produce the impression of a mountain of evidence, even though it be a combination of inference and secondary facts, and even though a large part of it is outweighed by a much larger body of evidence flatly to the contrary. We ask the court's consideration of the nature of these citations, which will demonstrate that they are far

from being a mountain of evidence and far from being "substantial."

An examination of the Board's and the International's citations show that they fall into five classes:

(1) The citation of its own findings as evidence in support of their correctness. The Board cites its own findings more than 225 times, often with no supporting evidence (36 times), and sometimes with preliminary statements that "as the Board found," etc., and sometimes without such explanation. The International also relies heavily on the Board's findings as evidence to support their correctness (X 3837-3898 is the Board's findings).

(2) Citations to facts which are noncontroversial and throw no light on the questions involved, such as the dates on which actions were filed, the names of witnesses who testified, etc.

(3) Citations of testimony of employees to the effect that they never considered Rose Todd or Hobart Atherton as representing the employer or having any supervisory powers or speeches of employees or actions in meetings to the effect that they desired their own union, etc., as inferentially proving the opposite of what they say.

(4) Citations to the NRA hearings held before the National Labor Relations Act was passed.

(5) References to the testimony of the seven ex-employees in two hearings of about six weeks each. These ex-employees recite personal grievances against their co-employees or against the Company, readily admitting bias or even hatred, and that their memories as to dates, exact hours and statements occurring five years before the second hearing were refreshed only about a week before that hearing by representatives of the Board or the

International. We have commented elsewhere in detail and with repetition on the testimony of these witnesses because it is actually the Board's case and because of the peculiar fact that their testimony also recognized that as to the fact for the ascertainment for which the case was remanded for rehearing, they clearly support the position of the DGWU. In other words, they agree (with one exception) that when they previously stated that the plant union was the free and voluntary choice of the employees, they were telling the truth. They agree that the belief that the formation of the plant union would substantially aid the employees in protecting themselves against the violence being perpetrated by the International against employees of nearby smaller plants and threatened against these employees, was held by the employees generally. Their contrary evidence five years later is that they personally did not fear such violences; that they signed everything they were asked to sign although nobody in any way forced them to do so; that they now feel the employees or they themselves did not exercise their best judgment that they felt that is they did not join the plant union they might not have a job since if the plant union secured a closed shop they would have to belong to it in order to work, and that (in the case of one Board witness) she joined the International on the same day on which she made a statement in favor of or joined the DGWU, and for a time secretly reported such facts as she could gather about the DGWU to the International. In spite of the hundreds of citations, this is the Board's case.

The Board states on page 10 of its brief, "The Board thereupon called several of the 1,200 employees who testified contrary to the offer of proof," and cites 22 references covering 81 pages in the record. The fact is that no employee ever testified contrary to the offer of proof.

This testimony was offered by the Board as evidence in rebuttal of the evidence of the Company and the intervener (IX 3277), but is now being cited by the Board as being in contradiction to evidence which the intervener and the Company were not allowed to introduce. The offer of proof which the Board claims this evidence refutes was refused by the trial examiner (III 743).

The first four citations used by the Board in support of its statement above cover four pages of the record and refer to lists of names on the Company's offer of proof, Exhibit 1-00000.

The next citation, covering nine pages in the record, refers to testimony of Dorsey, an ex-employee, and which contains no contradiction to the offer of proof and some arguments by the trial examiner and the attorneys. The balance of the references are to more testimony by Dorsey and testimony of Skeens, Copenhaver, Weilert and Stevens, all ex-employees of the Company, who are discussed hereinafter. The offer of proof (III 743-763) includes statements of many details as to hours of meetings, Loyalty League, no pressure to attend meetings, etc. If the Board means that five ex-employees testified contrary to some unspecified detail or details included in this offer of proof, we think it should so state. Their explicit or tacit admission that the affidavit (VI 1677 to 1749) and the substance of this offer of proof are true—that is, the choice of the DGWU by the overwhelming majority of the employees—is clear.

At the start of Part One of its Argument to this court, the Board attempts to establish that its findings as to the supervisory or management status of various employees is based on "strong and compelling evidence." To prove this point it begins by considering various subsidiary matters, such as: "1: Instructors and thread girls" (p.

23). The trial examiner in the first hearing rejected the proffered evidence that the locals of the ILGWU, at least in this section of the country, admitted to membership employees from other garment factories who did comparable work and had similar titles to the instructors and thread girls at the Donnelly plant. The court below was of the opinion (151 F. (2d), l. c. 874-5) that this offer of proof should not have been rejected. The Board in its brief (pp. 20-21) still contends that such evidence "was only remotely relevant or wholly immaterial to any issue in this case." The Board found "that the instructors and thread girls are supervisory employees and that they act for the management in the factory" (p. 27, Bd. Br., X 3854), and an analysis of its citations to the record shows that it has based its finding on scant and unreliable evidence. Its 118 citations under this specific point fall into the general classifications of: to its own findings, 23; to uncontradicted matter, 16 (its first 14 citations fall into this category); to testimony of discredited witnesses, 31 (that is, citations falling between IX 3426 and X 3708); to "NRA and JMC" testimony, 20, most of which testimony was given in 1935, and was as to acts prior to the National Labor Relations Act (citations to Record III 1032 to IV 1300). We find that of the testimony falling outside these general classifications, the Board has relied heavily upon that of Jessie Mudd, a thread girl, for it cites her testimony ten different times: 2963-67, 2959, 2963-64, 2959-60, 2956-57, 2949-55, 2957-60, 2963-65, 2967, 2962. The Board, however, found it necessary to omit her testimony after its statement that "the thread girls assume charge whenever the instructors are absent" (Br., p. 25), for Jessie Mudd, a thread girl herself, testifies to the direct opposite (VIII 2960). It relies instead upon statements by two ex-employees and upon testimony in the

1935 NRA hearing, and of one Garrett, who was not a thread girl and whose testimony was not that the thread girls were in charge, but was that when the instructors were "absent for a very short period" then "the thread girl *handed us* work" (IX 3193). She did not consider an instructor to be a supervisor (3146). Does the Board infer from this statement that handing work to operators made thread girls instructors or that this action identifies such employees as holding positions of authority?

When the Board finds that the instructors had the power to "discipline girls," it cites its own findings twice and shows that they are supported by six citations to the 1935 NRA hearing as to conditions *before* the NLRA was enacted and two years before the DGWU was organized, and by testimony of Skeens (a disgruntled ex-employee), whose statement on the cited page is, "We disciplined in a way. We had to see that they didn't talk too much or—" (IX 3464).

The Board states, page 27 in its brief, that the instructors regard themselves as "supervisors" and were so regarded by the employees. The only testimony cited to support this is that of the four disgruntled ex-employees, and of one other, whose testimony is that she considered the instructor at two other plants, Liberty Garment Co. and Brooks, as supervisors (VIII 2604), but at no place does she state that the Donnelly instructors were considered by her as supervisors. There is much testimony to the contrary.

The Board to bolster its finding that instructors are supervisors selects a quotation from the testimony of Mrs. Hyde (II 423) but rejects her testimony on succeeding pages (II 425) that Mr. Baty and Mrs. Hyde were the only persons that have anything to do with hiring and discharging employees and on page 426 that instructors

do not have "any authority to order or discipline or fire people that work in their sections."

The Board concludes its argument on this point by the statement that the functions of the instructors and thread girls "* * * fall entirely within the accepted definition of foreman, whose duties often include *teaching* or *instructing* their subordinates" (Bd. Bf. 27-28). The fact that the instructors' duties were "teaching and instructing," is admitted, and evidently that is actually what the Board found that the Donnelly instructors did. Does the Board mean that no further attributes of a supervisor are necessary to make an employee the representative of management? The Board found that the instructor and thread girls were the management's representatives. From an analysis of the Board's citations to the record, we shall urge that even by basing its findings on the testimony as to acts in 1935, and on statements by six seriously prejudiced ex-employees, and by picking out of the testimony of other witnesses only those pieces of testimony that it wishes and disregarding testimony of the same witness on other points, still it has not shown that this finding is based on more than a mere scintilla of evidence. Certainly it is contrary to the understanding of the administrative officers and fully 98% of the employees (III, 743-763 at 759, 761). The instructors or thread girls never gave any instructions as to going to meetings nor had any authority to do so and never herded their fellow employees to meetings (X, 3720; 3725, 3714, 3734, 3735, 3738, 3739, 3743, 3762, 3765, 3769, 3778 3774, 3777, 3779).

The Board's brief at page 23 states that "the Board was certainly entitled to base its decision on the role actually played by the supervisory employees rather than upon their titles" and cites the case of *Cupples Company*

v. *NLRB*, 106 Fed. (2d) 100, 114, as explaining this statement. In the Cupples case the court held that the title was unimportant and even though she (Miss Weitzel) was known as a "forelady" or "supervisor" there was nothing in the evidence to show that as far as her activities relating to the union were concerned she represented the Company. The assumption of the employees or her own representations were unimportant. The cease and desist order of the Board was set aside and the order to reinstate employees was vacated. See page 114:

> "The Board contends that, since Irene Weitzel was shown to have been regarded and referred to as a 'forelady' or 'supervisor,' a finding that her interference and domination in connection with the formation of the Association was the interference and domination of the employer was justified. It seems to us that the question of her title is unimportant and that the vital question is whether, under the evidence, she was or could reasonably be found to be the representative of the Company in connection with her activities relating to the two labor unions."

Quoting from page 115:

> "There is no evidence in the record that Miss Weitzel was ever held out by the Company as a person having authority to advise others with respect to joining or not joining labor organizations. What her fellow-employees of the match department may have assumed her authority to be and what she may have represented it to be, we regard as unimportant in so far as the Company is concerned, since there is no proof that her acts which are complained of were done at its direction or with its knowledge or consent. It would be strange if the efforts of the employees of the petitioner to organize and to select

representatives for collective bargaining could be utterly frustrated and destroyed through attributing the acts of one of their number—who, so far as the record shows, was eligible to membership in both the Association and the Matchworkers' Union—to the employer, without any showing that the employer had ever authorized, consented to, or was aware of such acts."

To show that it is empowered to hold the Company responsible for the acts of its supervisory employees, the Board has cited three cases decided by this court.

In the *H. J. Heinz Co.* v. *NLRB* case, 311 U. S. 514, the Company did not seriously dispute or challenge, as we have here, the finding by the Board that the employees who solicited on behalf of the union, were supervisors and were representatives of the management. The Company's contention was that, not knowing of their acts, it was not chargeable with them.

In the International Machinists case (311 U. S. 72) it was also held that the employer had "assisted" the International to enroll a majority of its employees into that union as against the UAW, even though the Company did not expressly authorize those whom the Board found to be management representatives, to assist in this effort. The court also noted that these same employees had been closely connected with the previous plant union. Here the old Company union had been dissolved, after which there was an electioneering campaign between the International and the UAW; and an election. The defeated UAW charged that due to the Company's unfair labor practices, the International was not the uncoerced choice of the majority of the toolroom employees. In that case the Board did not have before it the direct testimony of every

employee who was permitted to testify on the point, and the offer of proof of all the others, that the union to which they belonged was their free will choice, as in the case at bar.

The Link-Belt Co. case, 311 U. S. 584, again deals, as have the other two, with dissolved plant unions and the origin of a new union. The leader of the old Independent union testified that he was dismayed when the Wagner Act was declared by this court to be constitutional. Certainly that is the direct opposite of the case at bar, where the Donnelly employees testify that the announcement that the NLRA was constitutional was hailed with joy, because it preserved to them the right to organize their own union, and has fought throughout the years to maintain that right. In that case it was shown that the foreman had signed for illiterate employees and it was not denied that the night boss also solicited for the Independent. In the case at bar, at an open meeting of all employees the organization of the union was explained to them, and each was given the opportunity to take all the time necessary to give due consideration to the matter before becoming a member of the union. There were no illiterates. Also here it is not the fact that anyone with supervisory powers solicited for the DGWU.

The Board's next subtitle is "2. Rose Todd." The Board's finding is "* * * that Rose Todd occupied a close and confidential position with the respondent and further finds that in such postion she was acting for and on behalf of the respondent" (X 3858). However, in its brief the Board has narrowed down this finding and has restricted it to "her labor relations activities." The full quotation is "It was well within the Board's competence to find, as it did, that in her labor relations activities Todd 'was acting for and on behalf of' the Company

(X 3858)" (Bd's Br., p. 31). Analyzing the citations used by the Board in its brief to support this finding, we discover that it has used 12 citations to its findings (4 without supporting evidence); 9 are used for trivial or uncontradicted statements, such as "Upon returning to the Company's employ she worked for a while as a thread girl"; and 6 to that of ex-employees shown elsewhere to be entirely discredited witnesses; and further that it has relied chiefly upon Rose Todd's own testimony, which it cites 12 times. Nevertheless it rejects all of her testimony as to the chief question in this case, that of the free will choice of the Donnelly employees. The Board also used 10 or more references to exhibits, from which it proceeds to draw inferences and assumptions, and then state them as facts. An illustration of this is at the close of the first paragraph at the top of page 31 of its brief. Here there are 7 references to payroll records in support of—what should be labeled the Board's findings—that the Company thereby recognized "that her activities in connection with the DGWU were performed as a part of her duties for the Company."

The Board again states that "Todd apparently had no well-defined duties * * *." However, in its Findings of Fact, it describes in detail her duties (X 3855-3856).

We have chosen two illustrations of the attempt by the Board to convey to this court the impression that Todd was tied up with the management of the Donnelly Company, by stating as facts, incidents which, trivial in themselves, sound when put into the Board's words, as though they were important facts. First, it is stated that her duties "* * * required her frequently * * * to *interview* the instructors and thread girls," and cites only the testimony Todd herself at I 24-24a, and 29, to support the finding at X 3856. This is an exaggerated premise to

draw from Todd's answers to the questions put to her by the Board's attorney:

"Q. Is it not true, Miss Witness, that in your duties at the plant, at present, that you do go around and talk to practically all of the instructors almost daily? A. Yes, sir.

Q. And you talk to almost all of these girls in addition? A. Yes.

Q. Do you know (do) any employee at the plant whose duties carry them to more places in the plant daily than you? A. Well, that is rather a broad question. Mr. Baty would certainly be through the plant every day, but, of course, you take your basket boys, anybody that is supplying work to that plant, the size it is, would have to be through it. We have errand girls from various floors, have pick-up boys. I could name any number of people that go through that plant all day long. We have a pick-up system that two boys, that is all they do all day long, is go through the plant.

Q. They are messenger boys? A. Take our thread girls there, that work necessarily takes them, going from one department to the other, notion department and pressing department" (I 29).

The connotation of "interviewing" is entirely apart from the "talking" which she indicates, in the above testimony, to have had with the employees of that plant.

Second: is the statement that "* * * she often lunched in the Company's private dining room which was reserved for executives and supervisory personnel" (Bd.'s Br., p. 30). In the first place the "private dining room" referred to, according to May Stevens' whose testimony is the only one cited in support of this fictitious statement, is a "little room built at the end of the cafeteria" and she states "the instructors ate in that little room."

Farther on (X 3675) when Mrs. Stevens is asked "* * * did you ever see Rose Todd eating lunch?" and the further question "Where did she eat?" she testifies that "She (Todd) ate in that little room and at various places up on the floor of the cafeteria."

The record is replete with testimony of the employees themselves, plus the Offer of Proof which was rejected, that Rose Todd spoke for, and was the representative of, the employees; and that it was upon their behalf she worked for the organization of the DGWU and in its interests after its organization. All of this testimony the Board ignored, although it found it necessary to base its findings to the contrary, upon mere shreds of testimony and unusual inferences therefrom. We shall maintain that it is not within the Board's "competence" or authority to base its findings upon such inferences, when there is in the record the positive testimony of all who know the facts that Rose Todd was acting for and on behalf of the *employees.*

In "spot checking" the Board's citations of evidence supporting its findings, we next examine the Board's statements on pages 34 to 37 of its brief, regarding the Company's opposition to the 1934 campaign of the ILGWU. It will be remembered that the DGWU was organized in 1937, three years after the 1934 campaign, and that the original complaint was filed with the NLRB in 1939, or five years after the 1934 campaign. In this portion of its brief, the Board uses 26 citations to its findings and 92 references to the testimony taken in the "NRA" and "JMC" hearings; plus three citations of the testimony of discredited witnesses upon the point that Mrs. Gray was "* * * manager of the Company's retail outlet store, * * *."

A casual reading of this point gives the impression that the Board has testimony to support a great many of its findings, nevertheless an analysis of its citations discloses that it refers sixteen times to one page of its findings, i. e. X 3860.

Solely upon the testimony which the trial examiner did not himself hear, it being made available to him entirely through transcript, the Board states on page 37 of its brief, that he found "on the testimony of some of the employees, that as a result of the sequence of events above related, employees became afraid to join, admit their membership in, or discuss the ILGWU." The direct testimony which the trial examiner did hear of all whom he permitted to testify on the point, plus the rejected Offer of Proof, was that whatever fear which was engendered in the employees was the result of ILGWU'S activities; and definitely that the employees were in fear of the electioneering campaign of violence which the International used in 1937 against workers at other garment factories in Kansas City, and which it said was to be used as a spearhead against the Donnelly employees. The employees' testimony was just as convincing also that no pressure was ever exerted upon them by the Company or anyone whom they considered to be the representative of the Company. (Offer of Proof III 756, 757.)

We think the Board uses an incorrect term in discussion of the "Loyalty Petition." On pp. 41-43 of its brief it has referred ten times to a "pledge" of the employees. At every place where it is mentioned in the record, not only in the citations shown by the Board, but at all other places, it is called, what in fact it is, a Loyalty Petition, and not a pledge. There is one exception to this general statement and that is in the trial examiner's findings, where it is referred to by him interchangeably as a peti-

tion or a pledge. There is nothing in the Loyalty Petition, which is quoted in full on page 41 of the Board's brief, that even by indirection or by inference could be construed to be a "pledge." An expression of satisfaction and a refusal "to acknowledge any labor union organization" in the present tense involves no pledge whatever.

The Board argues in point D-2 on page 58 and 59 of their brief that there was no representative of the DGWU on the piecework committee. The truth is that the president of the DGWU had to approve any piece rate before it could be put into effect (VII, 2399); that there was adequate machinery within the union to protest and adjust any unsatisfactory rates (I, 113, 114; II, 716, 718g); and that many such adjustments were handled by the DGWU (VII, 2159-61; I, 113-114; II, 716, 718g); that some adjustments were made over the heads of this committee (VII, 2158).

Donnelly Garment Workers' Union has had a practice from its origin of reimbursing its members for time spent on union business which might cause them to lose pay, and the Company has deducted for time lost because of such activities (Vol. X 3764-6, 3767, 3770, 3772, 3774, 3778-9).

The examiner for the Board found that there was no meeting about the end of March or the first of April (X 3873, footnote) in the face of the fact that 18 witnesses testified positively that a meeting was held at that time and recited what was done at it, while, on the other hand, one Board witness testified that she did not know of any such meeting, "There never was no such meeting to my knowledge" (I 332). At the second hearing one Board witness did not remember whether the employees raised a fund for the attorney prior to April 27th (IX 3316); two testified they never heard of the attorney before

April 27th (IX-3432; X 3552), and one said she paid 50 cents in May (X 3671). The Board argues that this is a reasonable weighing of the evidence on the ground that it would be inconsistent to hold such a meeting because money had already been borrowed to pay the attorney a retainer (X 3873, footnote). But the money borrowed from the bank was with the specific plan of repayment by collections from the employees and this was in fact done, which surely makes such action highly consistent instead of inconsistent. The Board also urges that it is unlikely that the meeting occurred because there is testimony that Rose Todd explained about the committee at that meeting, whereas the minutes of April 27th show that she explained about the same thing on April 27th and that there are no written minutes on the meeting at the end of March or the first part of April. In other words, the Board is perfectly ready to disbelieve any number of witnesses who have in no way been impeached on the strength of one witness who says she does not know whether the fact occurred or not and on inferences which are, at least, as consistent with the testimony as inconsistent with it. This method of dealing with the evidence is characteristic throughout the findings.

The International, on page ..... of its brief, twice resorts to a remarkable use of inferences. The first is its statement that the court's opinion shows that "beyond all cavil" the "findings of the trial examiner are supported by substantial evidence (XIII 8-25), whereas these comments the court had denominated as "the facts which the Board *contends* are established by the evidence." The court had just as conscientiously set out the facts which the DGWU and the Company contend are established by the evidence. The International evidently infers that the mere inclusion in detail of the Board's findings in the

court's comment is sufficient to show that they "are supported by substantial evidence," and further infers that that court found that the contentions of the DGWU and the Company were not supported. The more logical conclusion is that the court included these two statements to support its own mandate which denied enforcement of the Board's order "* * * for want of due process in the proceeding upon which the order is based" (l. c. 875). Certainly it is fallacious to infer that the detailed recital of the findings and contentions of the Board shows that the court (in its opinion) found "that the findings of the trial examiner are supported by substantial evidence."

The International follows the above inference with a still stronger one after quoting the court's comments on this picture drawn by the International it assumes that this "* * * comes very nearly holding that the findings of the examiner in this case were supported by substantial evidence * * *." Evidently, the Internatoinal believes that if the Board in its competency can look behind what the employees say and decide that the employees are dominated, although all of them say that they were not, then it, the International, can look behind the two pictures which the court draws, one on behalf of the employees and the other on behalf of the Board and the International, and, by inferring that the court disregarded the former, arrive at the statement that the court "very nearly held that there was substantial evidence to support the findings."

In the first hearing the Board opened up its case by putting the chairman of the executive committee of the DGWU on the witness stand, and without anything which could be called direct examination preceding, cross-examined her for five days. The examiner took a vigorous part. This was followed by many days of examination of

the minutes of the DGWU, of its bank account and of an official of the Kansas City Chair Company who testified that chairs for union meetings and for the Donnelly Company had been carried under the same heading for some time. He also testified that the chair company had no system of bookkeeping worthy of the name until about August, 1938, and that the accounts might well have been carried as they were as a matter of the chair company's convenience. They all went to the same building and to an organization the first name of which was "Donnelly." Out of some 20 to 30 meetings a few receipted bills for chair rental had been lost, but the evidence of both employer and the DGWU officers was positive that the company had never paid rental for any chairs to be used at a union meeting and that the union had paid every bill they had received for such rental. Absolutely nobody testified that the company had ever paid chair rental for the union. Thus it soon developed that the Board had no case and that it was proceeding on the theory that if you cross-examine enough people, long enough, on enough different subjects you would finally elicit evidence that some out of many meetings years ago had begun before working hours were over, or at least that some persons would so testify, or that some company facilities had been used by officers of the union, or some similar fact, and that if three or four witnesses could be found whose memory disagreed with that of everyone else the Board would always accept the minority. Their only witness on the merits, Elsa Lou Greenhaw, was so completely discredited that after the examiner's first opinion, which relied on her as being able to outweigh all other witnesses (A 519), she was never mentioned again. This theory of procedure can only be valid if the law is that if some scintilla of evidence favorable to the complainant can be developed

it may be considered alone without any regard to the over-all picture and a result based upon it. But this is not the law. If Mrs. Reed did express an opinion that violence should not decide union affiliation *at a time when the plant was threatened with what the courts have determined was unlawful violence,* it would seem clear such comment was within the right of free speech, (see *Edward G. Budd Mfg. Co.* v. *NLRB,* 142 Fed. (2d) 922), and in any case should not bind the employees where it is clear that their action is the result of their own convictions.

(b) The Board's witnesses.

But in its second hearing the Board had full information as to what was required in order to make a case. It produced witnesses of its own—six of them. Although produced in rebuttal, in spite of the fact that the Board has the burden of proof, we should perhaps consider whether the Board is getting around to making an affirmative case. Let us consider the substance of the testimony of these witnesses for the Board.

Of these six witnesses, Mrs. Keyes was not an employee in the sense the word has been generally used in this litigation. She was office manager handling finances until the spring of 1938 (X p. 3640) and since then operating a clothing factory in Kansas City which produces sportswear and a defense garment (X 3661). She knew "nothing whatsoever of the union activities in the Donnelly Garment Company" (X 3660), and believes the testimony of Mr. Keyes that so far as he knows no official or person with authority ever advised or suggested to any employees that they should join the DGWU or stay out of the International, was true. (X 3660-1). She stated that since the year 1932 no one in the firm of Gossett, Ellis,

Dietrich & Tyler had been employed on legal work by the Donnelly Garment Company (X 3661).

As for the remaining five witnesses, to consider their testimony as evidence which a reasonable mind could accept in the light of all the evidence as establishing that the employees were dominated in their organization of the union is simply absurd. To begin with, all but one of them stated that they don't believe it themselves, although it is the ultimate fact they were put on the stand to prove. In reference to the affidavit that the DGWU was the free voluntary considered wish and choice of the employees who signed and that they did not want to belong to the International or any other union and earnestly urged a secret election to further demonstrate that fact, which affidavit was sworn to by some 1,100 signers (see Vol. VI, p. 1677 to 1749, inclusive). Etta Dorsey, whose signature appears on the second line on page 1689, testifies as follows (Vol. IX, 3383):

> "Q. Was the affidavit at the time you signed and swore to it true or false so far as you are concerned? A. True."

Lola Skeens testified as follows (IX 3462):

> "Q. I'll hand you intervener's Exhibit No. 20 and ask if that is your signature that appears on page 6060 of the Circuit Court record? A. Yes, that is my signature.
>
> . . . . . .
>
> "Mr. Ingraham: Now, it is stated in this affidavit, 'each signer hereby further states that he or she has read or had read to him or her the contents of this affidavit.' Do you recall reading the affidavit, Mrs. Skeens? A. Yes."

And at (3463):

"And were the facts stated therein true? A. Yes."

Geneva Copenhaver avoided answering the question as to whether she was threatened or dominated or believed the employees were not acting of their own free will for many pages but rather reluctantly committed herself as follows (3492 and on 3501):

> "Q. Well, do you consider there are parts of it that are true and parts of it that are false? A. No; but as I read that, the way I understand it, that we signed that as more or less of a petition to prove that (fol. 6209) we had joined the Donnelly Garment Workers' Union under our own free will.
>
> "Q. Well, that part of the affidavit, then, you consider true, is that right? A. To the extent that I wasn't threatened in any way, or forced by any means into signing a card or signing my name into the union—to join the Donnelly Garment Workers' Union.
>
> A. It was my free and voluntary act to the extent that I wasn't threatened in any way to sign that card—forced in any way. They didn't force me or threaten me, or anything, to make me join that union at any time."

She suggested that she did have the feeling that if she didn't sign she might not have a job but the only explanation for that impression she could give was the fact that she knew a closed shop was contemplated as a demand on the employer and that if it was obtained she realized that only union members would be employed (X 3529):

> "Q. Did you ever hear of a closed shop contract between the Donnelly Garment Workers' Union and the Donnelly Company? A. Yes, I have heard that mentioned.
>
> Q. And don't you know that a closed shop agreement is an agreement by which the employees who

are eligible for that union must belong to the union which has the closed shop agreement? A. I don't know that I ever had it explained to me.

Q. Did you hear it discussed in the meeting of May 11, 1937? A. Closed shop agreement?

Q. Yes. A. I don't remember.

Q. Didn't you hear it discussed by the members of the executive committee and by Rose Todd that they contemplated asking the Donnelly Garment Company for a closed shop contract? A. I don't remember.

Q. And wasn't it explained in that meeting, if they got a closed shop contract, everybody in the Company eligible (fol. 6270) for membership in the union would have to belong to the union? A. That's the way I got it."

Mrs. Weilert agreed that when the DGWU was formed she believed it was in response to the voluntary action of the employees (X 3581):

"Q. Now, Mrs. Weilert, you stated that when the union was formed you thought that it was an organization formed by the voluntary action of the employees? A. Yes."

It developed that her husband had written a letter at her dictation repeating the assertion that her action in union matters was voluntary and according to her own wishes (Vol. X, p. 3591 and 3600).

May Stevens flatly stated that she committed perjury when she swore that the DGWU was her own choice. See p. 3690:

"Q. I will ask you to note the last paragraph, which says:

'The undersigned state that they are members of the Donnelly Garment Workers' Union, and joined

said union and have at all times since remained members thereof solely of their own free will, choice and preference, and that they have not been influenced by any threats, coercion or pressure of their employer or any representative of said employer, and that they have no knowledge of any incidents in which the employer or any representative of the employer has exerted pressure, intimidation, coercion or (fol. 6632) any other influence upon the undersigned or any other employees to join the Donnelly Garment Workers' Union, or to stay out of any other labor union.'

Was that true or false at the time you made it? A. It was false.

Q. At the time you made it it was false, is that your answer? A. As to my state of mind about it."

And at p. 3703:

"By Mr. Hogsett:

Q. I think I understood your answer to Mr. Tyler, but I want to be very sure about it. Did you tell him that when you signed this affidavit on the 2nd of June, 1939, which he showed you and which appears on page 6090 of the record, that you knew that you were swearing to a false affidavit? A. I did."

. . . . . .

She gives no evidence or reason for her feeling that there was pressure, but her secret relations with the International hereinafter mentioned explain it completely. She was not permitted by the examiner to answer the question as to whether her husband was an organizer for a labor union (R. 3683; offer of proof 3685).

This is, of course, an astounding sort of evidence upon which to base a request that any fact-finding body find that hundreds of reputable, unimpeached witnesses are not telling the truth. The reason for its existence develops

quickly and unmistakably. Each and every one of these five witnesses at the time of or after their discharge or resignation had various resentments, quarrels or hatreds toward the Company or the DGWU and appreciated an opportunity to express their resentment. Their personal complaint about the nature of their work or their discharge, etc., is what they are on the stand to tell, and not one of them could be claimed to be unbiased. See Vol. IX, 3364, quoting from Mrs. Dorsey:

"A. I quit because I wasn't treated right.

. . . . . .

Q. You weren't treated right, you thought. A. I don't think, I know.

Q. You quit because you were mad? (fol. 5985) A. I wasn't treated right when I quit.

Q. Well, you are mad at the Company? A. I won't say at the Company. I was mad at some of those people down there, they didn't treat me right.

Q. Who are you mad at? A. Well, that Cecile Ealy is a snake in the grass.

. . . . . .

A. Well, I will admit I got a little mad at Mrs. Reed because she wouldn't hear me, and I thought after practically 16 years of service that she should have seen me and talked to me and hear my side of the story."

And at 3365:

"Q. What is Cecile Ealy's position there? A. I don't really know. She is a sort of tattle-tale down there.

Q. You were mad and venomous about this whole matter (fol. 5986), weren't you? Just boiling mad, aren't you? A. Yes, when her name comes up it makes me mad."

Lola Skeens at p. 3447:

"Q. Were you dissatisfied with your work? A. Not with my work exactly.

Q. What were you dissatisfied with? A. With Cecil.

Q. What had Cecil done? A. Well, she didn't like me very well, and I wasn't very happy working under her."

Bessie Weibert at p. 3563:

"And I said, 'Well, I'm just going to sit here, I'm not going to take any part in (fol. 6329) these meetings.' And she said, 'Well, Bessie, aren't you pleased with some of the things that are being done?'

. . . . . .

(Continuing) And I said, 'Yes, with what is being done, but there isn't nearly enough being done, Rose.' And I said, 'From now on don't expect me to do anything about it.' I said, 'I'm through.' And I did —I really sat in from then on."

And again at page 3564:

"I absolutely know that Rose Todd and Mary Copowycz framed two other operators and myself, because I caught her on it right after it was done."

May Stevens secretly joined the International the same day or the day following her joining the DGWU, and thereafter remained a member of the DGWU, but passed names of DGWU members on to Jane Palmer, an attorney for the International (see pp. 3696 and 3708):

"Q. Mrs. Stevens, you stated that when you got away from the Donnelly Garment Company on the evening of (fol. 6640) the 27th of April, 1937, after you had signed the Donnelly Garment Workers' Union card, you called the International Ladies' Gar-

ment Workers' office? A. As soon as I got home, I called.

Q. And did you get someone on the telephone then? A. Yes, I did, someone in the office.

Q. And do you know who it was? A. No, I couldn't say now who it was.

Q. Did you meet a Miss Jane Palmer? A. She is the one that came to my house that night.

Q. And did you tell her that you had just signed the Donnelly Garment Workers' Union card? A. Yes, sir.

Q. And that you wanted to join the ILGWU? A. Yes.

Q. You got this card the next day? A. Yes."

* * * * * * *

And at p. 3708:

"Q. To whom did you report ~~names~~ of members of the ILGWU that you got or thought you could get in the plant? A. Only the one person, Jane Palmer."

No comment is needed as to her bias.

These witnesses recall that the violence of the International at the Gordon and Gernes plants and the threat to extend it to the Donnelly plant was known to, and a frequent subject of conversation among, the employees of the Donnelly plant, and while they generally personally professed that they were never alarmed for themselves, yet they testify that the idea of organizing a union of their own would be a means of protection against a *forcible* attempt to organize them by the International, was a substantial cause throughout the plant generally of the organization of the DGWU. See the testimony of Geneva Copenhaver, p. 3514:

"Q. Now, is it not a fact that the violence at the Gernes, Gordon and Missouri plants caused the Donnelly employees to organize the Donnelly Garment Workers' Union? A. Well, I guess that is what brought it about."

Of Mrs. Weilert at 3581:

"Q. Now, Mrs. Weilert, you stated that when the union was formed you thought that it was an organization formed by the voluntary action of the employees? A. Yes.

Q. Did the violence at the other garment plants in 1937 cause you to feel that a plant union would protect the employees? A. Well, I didn't know if it was the union that would protect us, that was a mystery to me; I didn't know any (fol. 6361) thing about unions, but I did feel like we needed protection if they came down there."

And the testimony of Mrs. Skeens at 3455:

"Q. Were the employees generally frightened about what was going on at these other strikes? A. Why, I think some of them were, most of them were.

Q. Were you? A. Yes."

The bulk of the testimony of these witnesses is a recital of their own individual quarrels with the management or with the DGWU. and a testimony as to details of the hours of holding some out of many meetings about five years previously, and as to why they did or did not at the noon recess or other times remain overtime at a meeting of the executive committee without being docked on their pay sheet by the Company. Although these events were years ago, the witnesses had not considered them for years and their memories colored by bias and partisanship had only been refreshed within the past few days before testifying. See 3369 (Mrs. Dorsey):

"Q. Now, when were you first asked by anyone connected with either the Labor Board or Mr. Langsdale's client about the incidents you have testified to in this hearing? A. When I was first asked about—will you please ask me again?

Q. Yes, I will. A. Thank you.

Q. When were you first asked by anyone connected with the Labor Board or anyone connected with Mr. Langsdale or his client about the incidents you have testified to here in this hearing? A. Well, I can't remember the date.

Q. Well, roughly; I don't care to bind you to the exact date. Was it within the last week, or was it within the last 10 days, or the last month? Fix it as near as you can. A. Well, I'll say within the last 10 days."

And at 3466 (Lola Skeens):

"Q. That was the first person you ever told about that? A. Yes.

Q. And that was when, that you told Miss Weyand? A. About a week ago. I don't remember what day it was."

And at 3520 (Geneva Copenhaver):

"Q. When was the first time you ever talked with anybody about this affidavit that was shown you this morning, this intervener's Exhibit No. 20? A. When? You mean, just recently?

Q. When was any time, other than the time you signed it? A. Other than when I signed it?

Q. Yes. A. I don't know when the first time was.

Q. Well, you have talked with somebody about it before you took the witness stand, haven't you? A. Yes.

Q. Who was that? A. Miss Weyand.

Q. When did you talk with her about it? A. Last night.

Q. Any time prior to last night? A. I don't remember whether I did or not.

Q. When did you talk with Miss Weyand about your testimony in this case prior to last night? A. Let's see. I believe it was in July.

Q. Now, are those the only two times you have talked with Miss Weyand? A. No. I talked with her one other time, about a week ago."

* * * * * * * *

And at 3685 (May Stevens):

"Q. When did you first see those minutes? A. Possibly a couple of weeks ago.

Q. And that was the first time in your life you had ever seen those minutes? A. Yes.

Q. The minutes of the meeting described as about five years ago? A. Yes."

Note carefully that if the Board admits such a thing as primary evidence then these five witnesses are its case. Yet what they actually say is that they personally have grievances against the Company or co-employees which they would be glad to discuss, but that so far as the matter of whether the employees did voluntarily and of their own free will and on their motion organize their own labor union, the employees are telling the truth when they say they did. There is one who never reaches any clear answer to the question through many pages of testimony, and one who probably through some feeling of loyalty to some other organization and duty to carry the fight all the way professes false swearing on this point in the past. It is not necessary to quote authorities to establish that her testimony on the point is without weight. But if the Board's case is not consideration of the direct testimony of the many people who have primary knowledge, including their own witnesses, then it is a case

in which all of the primary evidence of petitioners is unimpeached and the effort to ignore or destroy it by relying on inferences from subsidiary facts is unavailing.

The value of secondary facts and inference from them must vary in every case because they must be considered in the light of contrary evidence and all the material evidence. We have found no case in which the affirmative evidence of the genuine free will persistent choice of a plant union even approaches the strength of such evidence in this case. But there are many cases in which the evidence of domination through insignificant favors of an employer or unauthorized remarks by an employee, or insignificant use of employer's property, or encroachments on time, have been held insufficient to establish invalidity of a union, and in all of these cases the contrary evidence in support of the validity of the union was far weaker than it is in the case at bar.

See:

National Labor Relations Board v. *Lion Shoe Co.*, 97 Fed. (2d) 448.

Balston-Stillwater v. *National Labor Relations Board*, 98 Fed. (2d) 758.

Staley v. *National Labor Relations Board*, 7 Labor Relations Reporter 302.

Midland Steel Products v. *National Labor Relations Board*, 113 Fed. (2d) 800.

National Labor Relations Board v. *Ford Motor Co.*, 114 Fed. (2d) 905.

National Labor Relations Board v. *Draper Corp.*, 145 Fed. (2d) 199 at 205.

National Labor Relations Board v. *International Shoe Co.*, 116 Fed. (2d) 31.

Magnolia Petroleum Co. v. *National Labor Relations Board*, 112 Fed. (2d) 549.

National Labor Relations Board v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292; 83 L. Ed. 660.

Appalachian Electric Power Co. v. *National Labor Relations Board*, 93 Fed. (2d) 985.

National Labor Relations Board v. *Sands Mfg. Co.*, 96 Fed. (2d) 721, 306 U. S. 332; 83 L. Ed. 682.

National Labor Relations Board v. *Asheville Hosiery Co.*, 108 Fed. (2d) 288.

Jeffery-DeWitt Insulator Co. v. *National Labor Relations Board*, 91 Fed. (2d) 134.

Bussman Mfg. Co. v. *National Labor Relations Board*, 111 Fed. (2d) 783.

Martel Mills Corp. v. *National Labor Relations Board*, 114 Fed. (2d) 624.

Consolidated Aircraft Case, 46 National Labor Relations Board 1120.

Magnolia Petroleum v. *NLRB*, 112 Fed. (2d) 545 at 549:

"And, when it is clear as here, that the material evidence is entirely without dispute; that no witness denies a fact to which another testifies; that in short, the findings are based, not upon conflicting but upon nonconflicting evidence, our determination as to whether the Board's findings must stand or fall must not rest upon whether the Board deems that the inferences it drew are supported by substantial evidence. It must rest upon whether measured by the settled rules governing the review of jury verdicts, it is the opinion of this court that the undisputed facts are in law capable of fairly giving rise to the fact inference the Board has drawn.

"It nowhere provides, and there is no warrant in it for the view, that preference by employees for an unaffiliated, as against a nationally affiliated organization, raises a presumption that this preference was coerced or bought by the employer. Indeed, the statute goes on exactly the contrary presumption that em-

ployees have the intelligence and chara ter requisite for self-organization, either by joining an existing labor organization or forming one of their own."

NLRB v. *Thompson Products*, 97 Fed. (2d) 13 at page 15 (italics ours):

"'Substantial evidence' means more than a mere scintilla. It is of substantial and relevant consequence and excludes vague, uncertain, or irrelevant matter. It implies a quality of proof which induces conviction and makes an impression on reason. It means that the one weighing the evidence takes into consideration *all the facts* presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and, considering them in their entirety and relation to each other, arrives at a fixed conviction.

The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power. Testimony is the raw material out of which we construct truth and, *unless all of it is weighed in its totality*, errors will result and great injustices be wrought."

Treating evidence in the case as a whole, each item in the light of other established facts, as it must be treated, the most that the Board's evidence can hope to do is to establish that certain secondary disputed facts may be true and that, if true, certain inferences as to the primary facts to be determined may be drawn from them. But reaching the conclusions from such inferences is allowable only when positive, substantial, unimpeached, established evidence to the contrary does not appear or at least does not appear in substantial quantities. See *Pennsylvania Railroad* v. *Chamberlain*, 288 U. S. 341, 77 L. E. 823.

"And the desired inference is precluded for the further reason that respondent's right of recovery depends upon the existence of a particular fact which must be inferred from proven facts, and this is not permissible in the face of the positive and otherwise uncontradicted testimony of unimpeached witnesses consistent with the facts actually proved, from which testimony it affirmatively appears that the fact sought to be inferred did not exist. This conclusion results from a consideration of many decisions, of which the following are examples: (Citing cases.) A rebuttable inference of fact, as said by the court in Wabash R. Co. case 'must necessarily yield to credible evidence of the actual occurrence.' And as stated by the court in *George* v. *Mississippi P. R. Co.*, 213 Mo. App. 668, 251 S. W. 729, *supra*, 'It is well settled that where plaintiff's case is based upon an inference or inferences, that the case must fail upon proof of undisputed facts inconsistent with such inferences'."

We earnestly and sincerely believe and submit that in the case at bar the secondary and generally disputed incidents and the possible inferences therefrom, cannot be considered substantial evidence on the primary fact to be determined (*i. e.*, the choice of the employees as to labor representation and whether it was free or dominated), in the light of the universal sworn testimony of all the employees who, as witnesses, were unimpeached and who have consistently and repeatedly so testified or offered to testify to the same effect over a period of several years.

Whenever hundreds of people are thrown together during the working day for months and years and in many evening meetings, with a common and vital interest in a subject agitated among them personally and by the press, it is inevitable that there would be hundreds of statements, situations and actions, and that from such limitless num-

ber there could always be selected scores of them from which any desired inference about that subject could be drawn. This would be true of anything, from a Sunday school picnic to a meeting of the United States Congress, if the subject of discussion persisted for a comparative length of time. And this is all that the Board's evidence boils down to. We wind up the evidence where it started with the positive testimony of 1,200 unimpeached witnesses who know the fact, opposed by 5 discredited ex-employees, developed some years after the event. We doubt if we should say "opposed," for although these witnesses complain that they were not properly treated when they worked at the Donnelly plant and express varying degrees of dislike or hatred for the Company or the plant union and testify to being ordered to attend meetings or other incidents shown not to be typical, even if true, yet, if we can understand their evidence, they tacitly admit that the great majority of the employees formed their own union, largely as a means of protection against the threatened violence of International.

IV.

Intervener was denied due process of law and a fair trial and the Board's finding and order under such circumstances cannot stand.

(a) The bias and prejudice of the examiner.

(b) The refusal of the examiner and the Board to either receive or consider as material the important and specific evidence for the taking and consideration of which the case was specifically remanded by the Circuit Court of Appeals.

(a) The bias and prejudice of the examiner.

One of the vital elements of a fair trial is a judge or board or examiner who is unprejudiced as to the particular issue he or it is to try. This is, of course, a different thing than his general philosophy of justice, or his knowledge of the law, or his mistakes as to the law, or even his desire to reach a result which he may believe is right. If his belief as to what the facts are, or what are the correct inferences from them in the case to be tried, has already been reached, or definitely inclined toward a certain conclusion, or his moral support engaged in a general way on one side or the other, then neither litigant is required to rely on a speculative possibility that the judge may make the correct allowance for his own prejudice and by this uncertain further difficult, if not impossible, process, nevertheless give a fair trial. If prejudice exists no judge, board or examiner can tell how much to allow for it or how to correctly discount it even though he might earnestly desire to do so. The litigant is entitled to a different judge. He is entitled to an open and receptive mind in which a decision is to be reached on the evidence presented, unaffected by preconceived or prejudiced ideas. This is just as true of an administrative body, with power to pass on the facts, as it is of a court.

Moreover, it applies when the surrounding circumstances, actions and remarks of the judge or board indicate prejudice without resorting to the impossible attempt to see into the mind of the court itself.

See *Morgan Sheep Com. Co.* v. *U. S.*, 82 L. Ed. 1129, l. c. 1134, 304 U. S. 1; 58 S. Ct. l. c. 999:

"The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance and in no way cripples or embarrasses the exercise of their appropriate authority. On the contrary, it is in their manifest interest. For, as we said at the outset, if these multiplying agencies deemed to be necessary in our complex society are to serve the purposes for which they are created and endowed with vast powers, they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

Inland Steel v. *NLRB*, 109 Fed. (2d) 9, l. c.

"That a trial by a biased judge is not in conformity with due process is sustained by the authorities.

"The recognition of the principle is as essential in proceedings before administrative agencies as it is before courts. As was said in *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, 301 U. S. 292, at page 304, 35 S. Ct. 724, at page 730, 81 L. Ed. 1093:

"* * * Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the "inexorable safeguard" (citing case) of a fair and open hearing be maintained in its integrity (citing case). The right to such a hearing is one of "the rudiments of fair play" (citing case) assured to every litigant by the Fourteenth Amendment as a minimal requirement (citing cases). There can be no compromise on the footing

> of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored.'"

In *Berger* v. *United States*, 255 U. S. 22, 65 L. Ed. 481 (l. c. 486), the Supreme Court of the United States said with reference to the section of the Judicial Code disqualifying a judge for bias or prejudice:

> "* * * but we may say that its solicitude is that the tribunals of the country shall not only be impartial in the controversies submitted to them, but shall give assurance that they are impartial—free, to use the words of the section, from any 'bias or prejudice' that might disturb the normal course of impartial judgment."

Montgomery Ward v. *NLRB*, 103 Fed. (2d) 147, at 156:

> "Obvious bias of examiner. Naturally, it requires reading of this entire evidence to get the full perception of the clearly biased attitude of the examiner. Instead of maintaining the impartial position of one who is to determine—in a preliminary stage—the ultimate facts and action thereon, he assumed the place of attorney supporting the complaint."

That the intervener did not receive such a fair or impartial trial is evident from the facts.

Before the taking of any testimony in the rehearing the company filed an application for the appointment of a different trial examiner. The intervener joined in this application (Vol. A, p. 499). The grounds were set forth in the affidavit supporting the application (Vol. A, p. 475-493). The Board denied the application (Vol. A, p. 498), and the company and the intervener filed objections (Vol. A, 502, A, 504).

It may be urged that the examiner repeated statements in the first hearing that the sworn testimony of any number of employees, though unimpeached and in no way discredited, was worthless (Vol. A, pp. 483, 484, 485, 492), was a mere mistake of law. But when after the Appellate Court's ruling that such testimony was material and must be admitted, weighed and considered, he again ignored it in his second (Vol. X, p. 3837), it can hardly be denied that prejudice existed.

(b) The refusal of the examiner and the Board to either receive or consider as material the important and specific evidence for the taking and consideration of which the case was specifically remanded by the Circuit Court of Appeals.

The International urges in its brief that rejection of evidence is only judicial error and not denial of due process. Probably the degree of importance of the material evidence wrongfully rejected has some bearing on the question of whether such action amounts to denial of due process. Even the International impliedly recognizes that the wrongful exclusion of evidence "essential to a party's case" would amount to denial of due process. Clearly, the rejection of all of the testimony of witnesses who must know the fact concerning which they propose to testify, as the Court of Appeals has pointed out, and where the trier of the fact accepts isolated bits of their testimony about details as to whether meetings were held on certain dates and times with the universal result of treating them as establishing the contrary of what they testify and where this is done in violation of the mandate of the supervisory court, it is more than a mere refusal to admit material evidence and amounts to making a mockery of the trial.

See *Gung You* v. *Nagle*, 34 Fed. (2d) 848 at 851:

"The refusal to hear competent witnesses or competent testimony available is a denial of due process of law, as we held in a recent case refusing to permit the taking of a deposition in such cases. *Young Bark Yau* v. *U. S.*, (CCA No. 5777, filed June 17, 1929) 33 Fed. (2d) 236. The mere hearing of witnesses by an officer is of no avail to a party if the evidence of competent witnesses is to be entirely disregarded and findings made in the teeth of the testimony of one or a dozen such witnesses * * *"

See, also:

Stone v. *Stone*, 136 Fed. (2d) 761, 764.
George v. *Capital Traction Co.*, 295 Fed. 965, 968.
Deposit Guaranty Bank and Trust Co. v. *U. S.*, 48 Fed. Sup. 369, 371.
New York & Cuba Mail SS Co. v. *Continental Ins. Co.*, 32 F. Sup. 251, 265.
American Alliance Ins. Co. v. *Brady Transfer & S. Co.*, 101 Fed. (2d) 144, 149.
Alabama Title and Trust Co. v. *Millsap*, 71 Fed. (2d) 518, 520.
Becher v. *Miller*, 7 Fed. (2d) 293, 295.
Winn v. *Consolidated Coach Corp.*, 65 Fed. (2d) 256, 257.
NLRB v. *Columbian Enameling and Stamping Co.*, 306 U. S. 292, 299, 83 L. Ed. 660, 665, 59 S. Ct. 501.
NLRB v. *Sands Mfg. Co.*, 306 U. S. 332, 339, 83 L. Ed. 682, 687.
Appalachian Electric Power Co. v. *NLRB*, 93 F. (2d) 985, 989.
Magnolia Petroleum Co. v. *NLRB*, 112 F. (2d) 545, 548.
NLRB v. *Bell Oil and Gas Co.*, 98 (F. (2d) 406, 410.
NLRB v. *A. S. Abell Co.*, 97 F. (2d) 951, 958.
Gunning v. *Cooley*, 281 U. S. 90, 94, 74 L. Ed. 720, 724.

The refusal to allow any witnesses for intervener to testify in its case in chief, and receive any substantial number of employees in the company's case, is discussed as affecting the question of whether there was substantial evidence elsewhere. It is also important on the point of whether there was due process. Of course, a case is not really tried at all if a certain amount of material, relevant and important evidence is excluded from admission and from the consideration of the facts from which the verdict springs.

When it comes to the specific evidence involved the question of the absolute necessity of its due consideration answers itself. The primary question before the Board was one of mental fact—of motive—of the state of mind of a certain group of people. The law does not say that because we cannot see into people's minds therefore there is no primary evidence and we will determine it exclusively by inference. The motive and intent of people is determined every day by the courts and their testimony as to such mental fact and their explanations of how they reached it is received as important evidence. The sworn testimony of the large group of people involved who know what the fact is and the reasons and explanations they give are important evidence on the fact to be determined. The first is subject to cross-examination and all of the accepted tests of truthfulness, including impeachment, and the second is subject to the tests as to whether such reasons are probable and persuasive or unlikely and absurd. But to refuse to give them any weight at all, and rely entirely on secondary, disputed, minor facts, from which inference only may be drawn, is to simply fail and refuse to try the issue.

See *Mart Mills Corporation* v. *NLRB*, 114 Fed. (2d) 624, at 631:

> "Obviously our chief guide is the words of the witness under oath who undertook to disclose the workings of his mind. If his explanation is a reasonable one, the onus is upon the Board to establish the falsity of this explanation and the truth of its own interpretation. See *National Labor Relations Board* v. *Remington Rand, Inc.*, 94 Fed. (2d) at page 862."

Magnolia Petroleum Co. v. *NLRB*, 112 Fed. (2d), l. c. 548:

> "In its capacity as accuser, the Board, under the genius of our institutions, is held to the same burdens and obligations of proof as any other litigant who takes the affirmative. It may not by accusing put the accused upon proof. As accuser it must prove its charge.
>
> In its capacity as a trier of facts, the Board stands on the footing of a jury. Like a jury it must be impartial. Like a jury, it may not make findings without evidence to support them and as in the case of a jury, it is for the courts to say whether there is or is not evidence in support."

And again at 549:

> "When then, as here, the Board applies to this court for enforcement of its order, and there is a substantial challenge of the findings and order as unsupported by evidence, it is the duty of this court to examine the evidence for itself, not, of course, to determine what fact inferences it, acting as a trier, would have drawn, what fact findings it would have made, but to determine whether reasonable minds having no interest as accuser or otherwise in the result, but wholly impartial, could upon the evidence have legally and fairly drawn

the fact inferences, made the fact findings. And, when, it is clear as here, that the material evidence is entirely without dispute; that no witness denies a fact to which another testifies; that in short, the findings are based, not upon conflicting but upon nonconflicting evidence, our determination as to whether the Board's findings must stand or fall must not rest upon whether the Board deems that the inferences it drew are supported by substantial evidence. It must rest upon whether measured by the settled rules governing the review of jury verdicts, it is the opinion of this court that the undisputed facts are in law capable of fairly giving rise to the fact inferences the Board has drawn.

This must be so for if it were not, if the Board in the determination of these sometimes bitter and always partisan contests between nationally affiliated locals and those unaffiliated; were given the right at once, to sponsor as accuser the side of the national organization, and to determine conclusively, for itself, unchecked by judicial review not only the effect of conflicting evidence, but whether in law there is any substantial evidence to sustain its accusation it would be nothing short of a miracle if these proceedings either in their course or in their results should be found to afford due process. The American people from their beginnings have been skeptical of the occurrence of such miracles, and they have not been willing to leave the vital matter of a fair and just trial to the hazard of miraculous intervention. It is plain from the careful provisions the Congress has made in the act against the exercise of this unbridled power that it is equally skeptical of such miracles, and that it is equally unwilling to leave to such hazards the rights of self-organization which the statute guarantees to workers, free from compulsion from any source. *For, while a proceeding of this kind takes the form of a charge against the employer, the real substance and design of it is to seat one labor organization over another.*

with the greatly unjust result, if the decision of the labor board is wrong, of depriving employees of the very rights the act guarantees them." (Italics ours.)

See also *NLRB* v. *Bell Oil & Gas Co.*, 98 Fed. (2d) 406, at 410.

That not only a necessary but the controlling issue in the case is whether the employees have been acting in accordance with their own choice or have been dominated or interfered with by the employer, is clearly stated by the Circuit Court of Appeals in previous appeal of this case. This does not mean that the latter class of facts are without value, since there are many situations in various labor cases in which they may, if existent, prove and meet the burden of proof on the Board of establishing the domination of a labor union. But they must do so not in a vacuum and with consideration limited solely to them, but within the framework of *all the evidence* which is material and competent, and if, in the face of the affirmative evidence of the free choice of the employees, such inferences from secondary facts lose all persuasive value, then it cannot be said that there is substantial evidence upon which a judgment in favor of the Board can be based. See *Donnelly Garment Company* v. *NLRB*, 123 Fed. (2d) 215, at 221:

> "The *main* and *controlling* issue in the case was whether the formation or administration of the Donnelly Garment Workers' Union had been supported, dominated or interfered with by the company, or whether that union was a bona fide independent labor organization formed and administered exclusively by the employees of the company and completely free from employer influence, domination and support." (Italics ours.)

The court on the first appeal would not have sent this case back for rehearing if it were not true that the testimony of the employees and the proper consideration of that testimony was necessary in order to reach a decision. If such testimony had been merely an unnecessary but interesting sidelight on the evidence or the attitude of the Board, the court might have commented upon that fact, but would have allowed the decision to stand. See page 224:

> "The truth is that a controversy tried before a court or before an administrative agency is not ripe for decision until all competent and material evidence proffered by the parties has been received and considered."

And by the "testimony of the employees" the court meant their testimony as to their own state of mind, as to whether they acted from their own choice or were dominated. See page 222:

> "The individuals who form an unincorporated association certainly should know what sort of an organization it is, how it happened to be formed, who influenced its formation, and who controls it. We think there can be no doubt of the right of the members of such an organization to testify to such matters, and that their evidence is admissible regardless of its weight."

It must follow that since on the retrial the Board could not secure any favorable evidence on this vital point upon which a reasonable mind could base a finding of domination, then it has failed to carry the burden of proof. If inferences claimed by the Board were enough to establish domination regardless of the testimony of the employees as to mental facts, no matter what it might have been,

then the finding of the Board would simply have been affirmed.

Incidentally, to hold that several hundred employees are either perjurers or so stupid that they do not know whether they did a thing because they desired to or because they are intimidated into doing it, is to unjustifiably attack their integrity or their intelligence or both.

The refusal of the examiner to admit evidence of any facts whatever occurring since the first hearing is a further denial of due process (Vol. VIII, p. 2597; Vol. XI, p. 4000). It is not maintained that it would be proper to try charges on matters not alleged in the complaint and occurring since it was filed, but a flat ruling that nothing occurring since the first hearing in 1939 is admissible is simply a violation of law and logic. A medical examination even during the trial throws light on whether a man was injured in the past. A photograph of streets taken recently, an examination of the books and many other facts after a first trial have evidentiary value. See 32 C. J. S., Sec. 581, p. 437, and Sec. 585, p. 439. As stated by opponent's counsel: "Because it has always been my theory that it has always been proper to prove something before by something which happened after" (Vol. X, p. 3577). The continuous and successful operation of the union down to the present time and for some seven years continuously is such a fact. A recent ruling of the Treasury Department which forbids the expenditure of funds on prosecution of a union which has operated successfully and without complaint for three months is recognition of the fact and policy that the continuous, peaceful operation of a union is persuasive evidence of its acceptability to employees.

In the case at bar the DGWU was formed April 27, 1937. An agreement in which terms were reached with the

company on May 27, 1937, and a supplemental agreement, including wage scales, was signed on June 22, 1937. The first charges by the International were not filed before August, 1938, and the NLRB filed a complaint on April 6, 1939, which was withdrawn and another filed on April 27, 1939. Thus two years elapsed before complaint was filed. This situation was entitled to consideration by the Board in reaching its conclusions, but the evidence was not considered.

The unvarying acceptance of any evidence no matter how inferential and how much discredited when offered by the International or the Board, and the unvarying discrediting of any evidence no matter how primary and free from impeachment which was offered by the company or the intervenor (see *NLRB* v. *Union Pacific Stages*, 99 Fed. (2d) 153, at 177, cited *supra*, and cases cited therein. Also *NLRB* v. *Thompson Products*, 97 Fed. (2d) 13) establishes bias, which makes due process impossible.

Conclusion.

The Board has twice failed to make a case. It has done so the second time after express detailed and authoritative directions as to what is required in order to make a case in this situation. It has admitted in effect that it cannot make a case for if it could have done anything whatever with the testimony of any of the employees it would certainly have done so. It again admits that it cannot make a case when it flatly denies the statement of the Court of Appeals that the evidence of the employees as to their choice and how and why they were influenced is material and relevant, and reasserts that it is immaterial and irrelevant. Yet again it admits that it cannot make a case when it asks this Court to ignore the gaps in the evi-

dence which should have been placed on the scales as pointed out by the Court of Appeals. In such a situation the company and the intervener should not be put to the heavy expense of time and money for a third hearing. The Board's order should be vacated, its complaint ordered dismissed and decision rendered in favor of the intervener.

Respectfully submitted,

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Donnelly Garment Workers' Union.

APPENDIX.

Excerpts from the explanation of the purposes and intents of the Federal Administrative Procedure Act in the Senate.

The Congressional Record, 79th Congress, 2nd Session, Vol. 92, p. 2199, Discussion of Administrative Procedure Act, Senate, March 12, 1946, reports the following discussion on the floor of the Senate relating to the provisions of Section 10 (e):

Mr. Ferguson: "Would the Senator, then, say that the judgment or decision of the agency must be based upon stronger proof than a scintilla of evidence?"

Mr. McCarran: "Very much stronger."

Mr. Ferguson: "The old rule which applied in the courts, particularly on certiorari, was that if there was any evidence to sustain the verdict or judgment, it should be sustained. The courts have many times so held. The Senator would say, would he not, that something more than 'any evidence' is required to sustain a decision?"

Mr. McCarran: "The answer is in the affirmative. We say that the evidence must be substantial probative evidence."

Mr. Ferguson: "So we are changing the rule which has been applied in the past that any evidence, or a scintilla of evidence, as it is sometimes defined, is sufficient to sustain a verdict or judgment?"

Mr. McCarran: "We tried as best we could to establish a guide for administrative groups so that they would apply the rule in such a way that there would be substantial probative evidence behind their findings, and so that they could say, 'We are not afraid to have our findings reviewed by a court.' • • •"

• • • • • • •

Mr. George: "The courts have many times held that if there is any evidence to sustain the findings of an administrative board under the statute, the courts have no power to intervene. If this bill should become a law would that rule, as heretofore construed by the courts, remain in effect?"

Mr. McCarran: "The courts have given various constructions. The courts, in reviewing an order, are governed by the provisions of Section 10 (e), which states the substantial-evidence rule. In other words, in some instances the courts have held that there must be substantial evidence. We are saying that there must be probative evidence of a substantial nature, and that even though the commission or bureau may take hearsay evidence in its hearings, it must have some probative evidence to sustain its finding."

Mr. George: "The point I wish to raise is that some of the Acts of Congress, particularly those enacted in recent years, have led the courts to hold—and they so hold—that if there be any evidence to sustain the finding of a board or agency, the court has no power to interfere with it."

Mr. McCarran: "I would put it in this way—"

Mr. George: "Would the enactment of this bill require some substantial or probative evidence to support such a finding?"

Mr. McCarran: "Yes."

Mr. George: "Take the labor relations cases. Senators are familiar with them. The circuit courts have frequently complained against what the Labor Relations Board did, but have said, 'We are powerless to interfere with it.' Would this bill change that rule, if the court were of the opinion that there was no probative evidence?"

Mr. McCarran: "Yes; it would change that rule."

Mr. George: "I am pleased to hear it."

Congressional Record, 79th Congress, 2nd Session, March 12, 1946, p. 2198:

Mr. Austin: "Did the committee intentionally choose the language 'except as supported by relevant, reliable, and probative evidence' in order to avoid the rule of scintilla of proof? This phrase is very significant, as I see it. On review, for example, the case, in order to carry through as decided by the agency, would have to be supported by relevant, reliable, and probative evidence. That is, in my opinion, a very important forward step in judicial procedure, to say nothing about administrative procedure. For my part I am glad to see it in the bill."

Mr. McCarran: "Let me say to the Senator from Vermont that in the preparation of this bill many obstacles were encountered. Some of us insisted that the testimony must be relevant, material, and competent, and that nothing else should be taken. However, representatives of agencies came before us and presented their views, saying that such a rule would curtail their operations, and that they ought to be given greater latitude. They said to us, 'We are not lawyers. We are acting in a quasi-judicial capacity. We ought to be able to go outside and get hearsay testimony, if you please, we might be able to indulge in theory.' So rather than curtail the agencies, we sought an intermediate ground which we thought would be protective of the rights of individuals, and at the same time would not handicap the agencies. So we said to them, 'You may go outside and get what would be secondary evidence, or hearsay; you may perhaps even go into the realm of conjecture; but when you write your decision it must be based upon probative evidence and nothing else. If in the formation of your decision you consider other than probative evidence, your decision will be subject to being set aside by a court of review.'

"In other words, we did not wish to destroy the administrative agencies or proscribe the methods under which they have been operating. Some of us

know that in committees of the Senate we very frequently hear evidence which we know is hearsay. I doubt very much if any hearing is ever conducted in which, to some extent, hearsay is not admitted. But we believe, and we now believe, that reasonable men can sift the grain from the chaff. Then we laid down the rule that the administrative agencies must not make a finding which impinges upon an individual unless there is behind such finding probative evidence to sustain it. That is what we have worked out in this bill."

Congressional Record, Senate, p. 2200:

"As a matter of language, 'substantial evidence' would seem to be an adequate expression of law. The difficulty, if any, arises from the practice of agencies to rely upon—and, in some cases, the tendency of courts to tacitly approve—something less than adequate evidence; to rely upon suspicion, surmise, implications, or plainly incredible evidence. It will be the duty of the courts to determine, in the final analysis, and in the exercise of their independent judgment, whether on the whole the evidence in a given instance is sufficiently substantial to support a finding, conclusion, or other agency action as a matter of law. In the first instance, however, it will be the function of the agency to determine the sufficiency of the evidence upon which it acts; and the proper performance of its public duties will require the agency to undertake this inquiry in a careful and dispassionate manner. Should these objectives of the bill, as worded, fail to produce the desired result, supplemental legislation will be required."

Congressional Record, Senate, p. 2201:

Mr. McCarran: "Therefore, it will be the duty of reviewing courts to prevent avoidance of the requirements of the bill by any manner or form of indirection * * *"

Additional Applicable Part of National Labor Relations Act (Act of July 5, 1935; c. 372; 49 Stat. 449, 29 USCA, page 240).

Part of Subsection (f): "Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under Subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board."

Subsection (h): "When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by Sections 101-115 of this title."

FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1946.

Nos. 38 and 39.

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

VS.

DONNELLY GARMENT COMPANY, A CORPORATION; DONNELLY GARMENT WORKERS' UNION; AND INTERNATIONAL LADIES' GARMENT WORKERS' UNION, RESPONDENTS.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER,

VS.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD, RESPONDENTS.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR RESPONDENT, DONNELLY GARMENT COMPANY.

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Of Counsel.

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OPINIONS BELOW.

The opinions of the Circuit Court of Appeals (XIII, 7-64) are reported in 151 F. 2d 854. Prior opinions of the

Circuit Court of Appeals in this case are reported in 123 F. 2d 215.

JURISDICTION.

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code as amended by the act of February 13, 1925, and Section 10(e) and (f) of the National Labor Relations Act.

STATEMENT.

The Board's statement contains a myriad of misstatements and assumptions. Some are plain misstatements, others are misstatements in that they assume, *as established*, the findings of the Trial Examiner, which is "begging the question." To point out all these various misstatements, and the evidence in the record disproving them, would require more space and particularly more time than is available.

For example, at page 12 the Board's brief says "through two of its management representatives, Todd and Atherton, the company hired an attorney to advise its employees in opposing the ILGWU (X, 3872)." This is absolutely not supported in the slightest degree by the evidence—the Board cites no reference to the evidence but only to the Trial Examiner's finding and even that reference does not support the statement made. At X, 3872 there is no statement that the company hired an attorney nor that he was employed to advise the employees in opposition to the ILGWU. These are conclusions of counsel, and the findings at (X, 3872) are conclusions of the Trial Examiner which Respondent claims are not supported by the evidence. Todd and Atherton werre not "management representatives." Counsel's statement goes farther

even than the findings of the Trial Examiner and the Board, and is wholly unwarranted by the evidence. Throughout the statement of the case and throughout the argument, the "facts" as stated in the brief are largely based on the assumption that the Board's findings are supported by the evidence. The overwhelming evidence to the contrary is ignored. Everything that is said or done by any employee is claimed to have been done "by Respondent."

We can only ask that the court, in reading the Board's statement and argument, keep in mind these "assumptions.

Also in the "Questions Presented" 1 (a), page 2, the same assumption is made—the petitioner there assumes as a fact that an employer (Respondent) "through its supervisory staff sets up and takes a leading part in the administration of a plant union for the declared purpose of preventing the nationally affiliated labor organization from organizing its employees, * * *." That is far from the true situation here. The court is not entitled to make that assumption unless it first determines the merits and finds that the evidence *does* support the Board's findings, Respondent's contention being that it does not.

History of Proceedings.

This case has been twice before the Labor Board and twice before the Circuit Court of Appeals. The Labor Board each time found against Respondent and the Court of Appeals each time refused to enforce the Board's Order because it had failed to accord Respondent a fair trial. The Circuit Court of Appeals did not in either instance pass upon the question as to whether the Board's Order and decision was supported by the evidence. However it was Judge Riddick's view, in his concurring opinion

in the Court below, that the Court should also hold that there was no substantial evidence to support the Board's Order (XIII, 55-56).

The issue before this court is whether the court below abused its power and discretion in refusing to enforce the Board's order.

The issues made by the pleadings are summarized by the Court below as follows (XIII, 2-3):

"Briefly stated, the charges were that the Company had fostered, dominated and supported the Donnelly Garment Workers' Union an independent union of the Company's employees (which, for convenience will be called the 'plant union'), and its alleged predecessor, the 'Nelly Don Loyalty League'; that the Company had entered into a closed-shop agreement with the plant union for the purpose of assisting it; that the Company, in April, 1937, discriminatorily discharged, and had refused to reinstate, two employees, Sylvia Hull and May Fike, for joining and assisting the International.

"In its answer, the Company denied that it had engaged in any unfair labor practices, and asserted the existence, on the part of the International, of a conspiracy to force the Company, by fraud, violence and secondary boycott, to compel its employees, against their will, to join the International, and that the Board, its agents and representatives were furthering this unlawful conspiracy.

"The Donnelly Garment Workers' Union (the plant union) was permitted to intervene. It admitted in its answer that the Company and the plant union had entered into a closed-shop agreement, but denied all of the other allegations of the complaint.

"The International was also permitted to intervene, in support of the charges against the company."

The "main and controlling issue" in the hearing before the Labor Board (as stated by the Court below, 123 F. 2d, l. c. 221) was whether the Respondent, Donnelly Garment Company, coerced or interfered with its employees in the formation and administration of the DGWU or whether that organization was freely and voluntarily formed by the employees. James C. Batten, Trial Examiner, at the first hearing, refused to receive or consider the testimony of the 1,200 employees on this issue (VI, 1752). The Board affirmed the Trial Examiner's action in excluding this evidence, and in excluding evidence as to the violence, threats and other activities of the ILGWU, and other evidence offered by Respondent (A, 562) and entered its order against the Respondent (A, 620). Respondent appealed to the Circuit Court of Appeals on the grounds: (1) that the Board's order was not supported by the evidence, and (2) that Respondent had been denied a fair trial because of the exclusion of the testimony of the employees, and the exclusion of other material evidence and the bias of the Trial Examiner. The Circuit Court of Appeals upheld Respondent's contention that it had been denied a fair trial because of the exclusion of material evidence and remanded the case to the Board to "receive and consider" the excluded evidence (123 F. 2d l. c. 225). The Court said (l. c. 221, 222, 225):

> "The main and controlling issue in the case was whether the formation or administration of the Donnelly Garment Workers' Union had been supported, dominated or interfered with by the Company or whether that union was a *bona fide* independent labor organization formed and administered exclusively by the employees of the Company and completely free from employer influence, domination and support (l. c. 221). * * *
>
> "At the hearing before the Trial Examiner, the petitioners proffered the evidence of the employees

of the Donnelly Company, some 1,200 in number, to show how and why they formed the Donnelly Garment Workers' Union, to show that no influence was brought to bear upon them by the employer either in the formation or administration of the union, to show what the President of the Company had said to them at the mass meeting in the spring of 1937, to show that their freedom to organize and to choose their own representatives for the purposes of collective bargaining had not been interfered with by their employer, and to show that their union, both in its formation and administration was exclusively controlled and supported by them. The Trial Examiner refused to receive this evidence. He permitted the petitioners to make formal offers of proof (l. c. 222). * * *

"*This was not a case* where domination and support by an employer of an independent union was conceded or where the independent union was conclusively shown to be of a character which could not, in any event, act as the bargaining representative of its members. The evidence of the Board which tended to show domination and support of the independent union by the Company *was circumstantial* (l. c. 222). * * *

"It was not shown that any of the employees of the Donnelly Company whose testimony was offered was under any disqualifying disability. There was no presumption that these employees would commit perjury, and, even if the Trial Examiner believed that they would perjure themselves, that would not have affected the admissibility of their evidence. It is elementary that there is a distinction between the admissibility of evidence and its weight or sufficiency. *National Labor Relations Board v. Bell Oil & Gas Co.*, 5 Cir., 98 F. 2d 870, 871. Surely if the testimony of an employee which tends to prove that an employer interfered with or supported the organization of an independent union is admissible, the testimony of an employee which tends to disprove domination and

support of such a union by an employer is equally admissible. Evidence is relevant if it tends either to prove or disprove any issue in a case. We do not say that the Trial Examiner was required to take the same testimony from 1,200 witnesses. There were available to him well-known expedients for limiting the number of witnesses where their testimony was cumulative.

"We have no doubt that the testimony offered by the petitioners in their efforts to prove that the employees of the Donnelly Company formed the Donnelly Garment Workers Union of their own free will and that the formation and administration of that union was free from employer influence, domination and support, and to explain how and why they came to organize the union, was competent, relevant and material and should have been received. The individuals who form an unincorporated association certainly should know what sort of an organization it is, how it happened to be formed, *who influenced its formation, and who controls it.* We think there can be no doubt of the right of the members of such an organization to testify to such matters, and that their evidence is admissible regardless of its weight (1 c. 222). * * *

"Our conclusion is that the petition of the Board for enforcement of the order under review must be denied. We think that the least that the Board can do, in order to cure the defects in its procedure caused by the failure of the Trial Examiner to receive admissible evidence, is to vacate the order and the findings and conclusions upon which it is based; to accord to the petitioners an opportunity to introduce *all of the competent and material evidence which was rejected* by the Trial Examiner; and to receive *and consider* such evidence together with all other competent and material evidence in the record before making new findings and a new order" (1. c. 225).

Thereafter the Labor Board held a second hearing and again appointed James C. Batten as Trial Examiner (A, 473). Respondent objected to the designation of Batten on the ground that he was biased and prejudiced, had prejudged the employee testimony and that he had emphatically expressed his conviction that the excluded evidence was wholly worthless (A, 474-493), but the Board refused to appoint a new Trial Examiner (A, 498-502), to which ruling respondent noted its exceptions (X, 3786).

On the second hearing, Batten received the testimony of Mrs. Reed and eleven employees and then ruled that further such testimony was cumulative, which was the position taken by the Counsel for the Labor Board and the ILGWU, and refused to receive further employee-testimony (IX, 3253). He also rejected (X, 3783) all other evidence offered by respondent, including all offers of proof made at the former hearing (IX, 3265, 3270). The Trial Examiner again found against Respondent and recommended substantially the same order as in his first intermediate report. The Board adopted (A, 618) the Trial Examiner's report, of 61 pages (X, 3837-3898) verbatim, except for one minor correction (A, 620) and stated with regard to the issue of the materiality of the employees' testimony (A, 619):

> "* * * We are moreover impelled to *adhere* to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature *is immaterial to issues such as those presented in this case.*"

The Respondent again appealed to the Circuit Court of Appeals on the grounds (1) that the Board's second order was not supported by the evidence, and (2) that the Respondent had not received a fair trial because of

the Board's refusal on the second hearing (contrary to the Court's remand) to consider or *accord any materiality* to the employees' testimony, and because it had excluded other material evidence, and had ignored Respondent's evidence, and because of the refusal of the Board to designate a new Trial Examiner for the second hearing (A. 7-15 *et seq.*). The Circuit Court of Appeals held that the Board, at its second hearing, had denied Respondent a fair trial, for each of these reasons. We quote from the Court's holdings on these points, as follows:

1. Failure to consider employee testimony.

"It seems to us that the Company and the plant union are justified in contending that the evidence of the employees tending to show lack of domination and interference by the Company received no different or greater consideration upon the second hearing than it did upon the first, and that it was *disregarded* in both hearings" (XIII, 44).

2. Refusal of evidence of conspiracy on the part of ILGWU.

"The Company and the plant union here have at all times contended that the International, by the use of fraud and violence, was endeavoring to force the Company to herd its employees into the International, and that the charges filed by the International with the Board were not filed in good faith, but for the purpose of influencing the result of an action for an injunction brought by the Company to prevent the International from carrying out its threats. That the charges of misconduct made by the Company and the plant union against the International are not without substance is shown by the record. We think that if a further hearing were to be held, the application of the Company and the plant union to this Court for permission to adduce before the Board additional evi-

dence of the alleged misconduct of the International should be granted" (XIII, 46).

3. Exclusion of evidence as to events in 1934 and 1935.

"The Board based its findings of hostility of the Company to outside unions upon evidence of events which preceded the enactment of the National Labor Relations Act. The Company and the Plant union regarded such evidence as incompetent and immaterial, and objected to its introduction. * * * It is argued that the Company and the plant union were not permitted to introduce evidence relative to these past events which the Board contended showed anti-union sentiment on the part of the Company. This argument appears to be based in part upon the refusal of the Trial Examiner, during both the first and the second hearing, to receive evidence relative to the methods which the International, from the beginning, was using in its efforts to organize the Company's employees, and in part upon the assertion that, during the second hearing, the Examiner, over the objection of the Company, permitted the Board to examine witnesses relative to events that occurred in 1935, but refused the same privilege to the Company. The testimony specifically referred to as having been improperly received, over objection, related to the Loyalty League, which, as already pointed out, the Board contended was an instrumentality of the Company to resist the International; and which the Company and the plant union asserted was a mere social organization. * * * We think, however, that the Trial Examiner, in view of the importance which he ascribed to events preceding the enactment of the National Labor Relations Act, should have received evidence proffered by the Company on the second hearing to show the methods employed by the International to organize the employees of the Company and that the Company was not guilty of the charges of

discriminatory treatment of its employees made by the International under the National Industrial Recovery Act. We should hesitate to rule that the Trial Examiner's failure in this regard amounted, alone, to a denial of due process, but if the Company's attitude toward outside unions prior to the National Labor Relations Act was to be regarded as a matter of controlling consequence, the Company should, we think, have been afforded a full and fair opportunity to prove that its attitude was not what the International asserted it to be" (XIII, 46-48).

4. Exclusion of contracts of ILGWU.

"The Company and the plant union contend that, to refute the evidence relied upon by the Board and the International as indicating that the contracts with the plant union were a sham, evidence that contracts containing similar provisions were made by the International should not have been rejected. We know of no reason why evidence that provisions similar to those in the contracts of the International itself should not have been considered pertinent. It at least bore upon the 'imponderables' which the Board has the power to appraise" (XIII, 48-49).

5. Exclusion of evidence of Wave Tobin concerning violence used by ILGWU in Kansas City strikes and threats to employ the same methods against the Respondent and its employees.

"The Company and the plant union, in support of their claim that the employees formed their own union in order to protect themselves against violence and misrepresentation and to prevent the Company, under threat of the destruction of its business and their jobs, from herding them into the International against their will, had a right to show what methods the International was resorting to in its organizing campaign in Kansas City. Such testimony

would have substantiated the evidence of the employees that that was the reason they organized the plant union. The employees were interested witnesses whose testimony might be discounted. The testimony of those who conducted the strikes for the International could not well be disregarded" (XIII, 50).

6. Exclusion of evidence that employees such as instructors, head cutters, head pattern makers (found by the Board to be "Supervisory" employees) were eligible to membership in the ILGWU and other Labor Unions in the garment industry.

"The other offers of proof referred to, should not, we think, have been rejected. If the issues had been tried before a jury, evidence that employees holding positions similar to those of the employees who were asserted by the Board to be ineligible to union membership, were regarded by the International and other large unions as eligible to union membership, would, in our opinion, have been admissible. We do not mean that the jury would have been bound by such evidence, but that the evidence would tend to indicate that employees holding similar positions were not usually considered by employers and employees in the garment industry to be representatives of the management" (XIII, 50).

The Facts.

At the outset, Respondent calls the Court's attention to five salient facts:

(1) The DGWU was formed and maintained not by a mere majority but by 100% of the working employees of Respondent (X, 3874-5).

(2) The evidence upon which the Trial Examiner's and Board's inferences and findings are based was *circumstantial* and contrary to the direct testimony and offered testimony of all of Respondent's 1,200 employees (123 F. 2d l. c. 222).

(3) Although the Board bases many of its adverse findings on respondent's alleged "hostility to unions," the Board did not find a single instance of the discharge of an employee because of union affiliations, over the entire period of 1934 to 1942, or ever.

(4) It has been established by several decisions of Federal Courts that the complaining Union, ILGWU, its officials and agents, were at all times pertinent herein, engaged in an unlawful conspiracy and campaign of fraud and violence to compel Respondent to force its employees against their will to join the ILGWU (XII, 4187-4200; 21 F. Supp. 807; 119 F. 2d 892, l. c. 898; 55 F. Supp. 587, l. c. 594).

(5) The Respondent offered to prove that its employees were receiving higher wages and had better working conditions than employees in plants in contractual relations with the ILGWU (I, 201-207).

In order that the Court may have a fair picture of all the circumstances involved in the alleged controversy between Respondent and the ILGWU, and of the issues in the Labor Board hearings, we outline as briefly as possible the facts shown by the evidence and offers of proof:

On November 9, 1936, the ILGWU through its president, David Dubinsky, announced through the press (XI, 4185) a nation-wide drive to bring into the ILGWU all of the 90,000 unorganized garment workers in the nation. This announced program was wholly without regard to the status of wages, hours and working conditions in any particular plant. The plan was to make a clean sweep of every plant, regardless of how equitable the wages, hours and working conditions therein might be. President Dubinsky announced that the ILGWU had $4,000,000 in its treasury, and had appropriated $500,000 of it to finance the campaign. He announced that the ILGWU would open a number of new offices over the country, in-

cluding a Kansas City office for the particular purpose of concentrating on the Donnelly Garment Company. Dubinsky asserted the St. Louis office would have sufficed for Missouri except that the Union "wants to give Jim Reed a break." He explained that the wife of James A. Reed former Democratic senator from Missouri who supported Governor Landon in the campaign this year, operates the Donnelly Garment Company in Kansas City.

On February 26, 1937, Meyer Perlstein, Southwest Regional Director of the ILGWU, announced in the Kansas City press that the ILGWU plan was to send a letter to the Donnelly Garment Company within the week, demanding a collective bargaining conference; and that if the company ignored the demand, the ILGWU would send out six traveling representatives over the trade territory of the Company, threatening its customers with a boycott. Perlstein said, "Within a year we will have the plant completely organized, and as soon as we have enough members, *we will call a strike*" (III, 1019).

The public announcement by Perlstein created consternation and fear among the employees of the Donnelly plant (III, 758). On March 2, 1937, three employees, of their own accord and without the knowledge of any officer or supervisory employee of the Donnelly Garment Company (IV, 1290), circulated among the employees, and delivered to Mrs. James A. Reed a statement reading:

> "We, the undersigners, as members of the Donnelly Garment Company, wish to make it known that we are positively happy and contented with the position which we hold with this organization, and refuse to acknowledge any union labor organization. We are thankful for the real humanitarian interest extended to us by our employer, Mrs. Reed."

This statement was signed by 1,183 employees, which embraced all of the workers in the plant except three (V, 1623).

Mrs. Reed, and the officials of the Company testified that they did not know of the circulation of said statement until it was presented to Mrs. Reed at her home on the evening of March 2, 1937 (VII, 2074), and that they did not request anyone to sign such statement or obtain signatures to the same and the publication concerning same in the Kansas City Star was not at their instigation or request (VII, 2076-7, 2434).

On March 6, 1937, David Dubinsky in the course of a speech at Kansas City announced:

> "Reed (meaning the Donnelly Garment Company) will receive a polite letter within a few days inviting him to confer with Kansas City labor leaders about signing a union contract. If he refuses to meet with us we shall start our campaign" (III, 1021).

On March 9, 1937, the "polite letter" was prepared by Southwest Regional Director Perlstein, signed by himself and Wave Tobin (manager of the International's Kansas City office) and mailed to the Donnelly Garment Company. This letter set forth certain alleged "grievances" concerning which Perlstein said he would like to have a "conference" with the Donnelly Garment Company (III, 1022).

The company ignored Perlstein's letter because it was in all material respects a mass of falsehoods (V, 1599). Perlstein and the ILGWU had no authority to represent any of the employees, and the employees were protesting against the company having anything to do with them (V, 1623, 1599).

A few days later the ILGWU circulated among the Donnelly employees as they left the plant a circular containing a copy of the March 9th letter (VII, 2089).

As a build-up to the planned raid on the Donnelly plant and its employees, the ILGWU, on or about March 15, 1937, called strikes against three smaller Kansas City garment manufacturers, the Missouri Garment Company, the Gernes Garment Company and the Gordon Brothers Manufacturing Company ("Justice," April 1, 1937, V, 1523; XI, 4101-4175, incl.; IV, 1241-1275, incl.).

The ILGWU began its raids on these three companies by taking possession of the buildings where the three companies were located. Cots were moved in and mobs of non-employees carried on a program of terrorism and violence. Employees trying to get to their places of work were pulled, hauled, brutally beaten, knocked down, and their clothing stripped off. The plants were closed down (IV, 1220, 1224, 1241-1275; V, 1489; VII, 2084; XI, 4101-4175). Kansas City newspapers practically daily carried articles describing the violence engaged in by the ILGWU (XI, 4101 *et seq.*). These articles and said violence were the chief topic of conversation among the Donnelly employees and caused them great apprehension concerning their own safety (II, 553, 555).

During this period, representatives of the ILGWU made personal contact with numbers of Donnelly employees and openly boasted to these employees that the violence used in these raids was a mere curtain-raiser in preparation for the big drive on the Donnelly plant and the violence against the Donnelly Company and its employees would be even worse (I, 144; IV, 1221, 1225, 1228).

These raids were conducted by Wave Tobin, under the direct supervision of Meyer Peristein (IV, 1215-16).

She, Wave Tobin, admitted that the methods used by the ILGWU in these raids constituted the ILGWU's "normal routine activities used in organization work" (IV, 1215). Wave Tobin (in the Judge Miller injunction suit) testified as follows (IV, 1216):

> "Q. If there are any differences in the plan of campaign used in the unionization of the Gernes, Gordon and Missouri plants and the plan of campaign which you intended and still intend to follow in the attempt to unionize the Donnelly plant, please state what the differences are?
>
> A. Well in the Donnelly campaign, they intended to use more publicity.
>
> Q. That is one difference. Are there any other differences?
>
> A. None that I know of."

Meyer Perlstein testified in the said Judge Miller case injunction suit as follows (V, 1511):

> "Q. Then we may reasonably expect that these same methods used by the International at the Gordon, Gernes and Missouri strikes, whatever they were, will be continued down at the Donnelly plant, unless this Court grants a permanent injunction, is that true?
>
> A. Yes."

Meyer Perlstein, the Southwest Regional Director of the ILGWU, was in charge of the organizational and strike activities of the ILGWU in Kansas City, St. Louis, Dallas, Texas, and Memphis, Tennessee (V, 1457, 1459). Photographs, testimony, and Court records concerning the ILGWU's raids on garment companies in those cities portray the violence used by the ILGWU, including the stripping of women workers naked in the public streets, inflicting bodily injury, and other brutalities (IV, 1302, 1305). Perlstein was tried and convicted in Dallas, Texas, of having conspired to have a woman employee of the Morton-

Davis Company stripped naked in the public street (V, 1477). He served his sentence (V, 1483, 1527).

Perlstein (at this time in Dallas) made a speech, stating:

> "I believe that if the government ever dares to do what the manufacturers are doing, I will tell my sons to take up arms against the government" (V, 1478).

The ILGWU's chief officers and general executive board ratified, approved and *lauded* the tactics used in these raids. The Report of the 1937 Annual Convention of the ILGWU stated:

> "The Dallas dress strike which lasted from March until November, 1935, will occupy *a place of honor* in the annals of our union" (V, 1546).

On March 18, 1937, after the ILGWU strike at the Gordon, Gernes, and Missouri Garment Companies in Kansas City, Missouri, had begun, the employees of the Donnelly Garment Company held a meeting to discuss what they could do to protect themselves (II, 553). The meeting was called by Rose Todd, Hobart Atherton, and other Donnelly employees on their own initiative and without any suggestion or inducement on the part of Respondent or the Loyalty League (II, 555). Said meeting was held after working hours on premises not leased or controlled by Respondent (II, 453; X, 3867, note 34), but in the same building in which Respondent's plant is located. Various individual employees made suggestions with respect to defending themselves against the threatened violence. Near the end of the meeting it was suggested that Mrs. Reed be asked to come to the meeting and tell what she and the Company would do to protect the employees (II, 554, 657-8). She came and made a short talk stating that

she would do everything she could to protect the employees against violence. She further stated that it was their own business whether they should or should not join a union, but that she was not going to be intimidated by Mr. Dubinsky into forcing the employees to join the ILGWU against their will (III, 1029-31). Mrs. Reed left the meeting immediately after she finished her talk (II, 679). The meeting was attended voluntarily and the employees were not instructed to attend same by any officer, executive, or person held out by Respondent to represent, speak, and/or act for it with respect to labor matters or by any person with authority to hire, discipline or discharge employees (Ex. 1-0000, III, 759). When the second employee witness for respondent was called, the Trial Examiner ruled that no further testimony would be received relative to the March 18th meeting (II, 610d). The stenographer's transcript of Mrs. Reed's talk appears in full in Footnote 3 to the opinion of the court below (XII, 31-32).

We quote herewith the last three paragraphs which contain the parts of her speech to which the Labor Board takes exception:

> "I know you are thinking about the threats of violence that the Union is making against you and the company. I want to say that the Company and I intend to do everything possible to protect you in case of any violence. We are now trying to make arrangements with the street car company for its busses to go to certain points and pick you people up and bring you to the plant. We will let you know about this as soon as arrangements can be made.
>
> "Many of you have been here for a number of years and you know that you have never been asked whether or not you belong to a union. The company has not discriminated against anyone on that account

and Mr. Dubinsky is not going to make me discriminate against employees because they would not belong to his Union. If you want to belong that is your own business and it is up to you to decide. I will say that neither Dubinsky or any other buttinsky is going to intimidate me or the Company into forcing you to join the International Union against your will.

"I can't say at this time what will be done to protect you against violence, but the company's attorneys will consider what legal steps might be advisable. In any event, you can understand that the company will not submit to any unlawful attacks lying down."

Several days after this meeting a group of employees called on the Director of Police of Kansas City and appealed for protection (II, 585).

Shortly thereafter Rose Todd, Hobart Atherton and Sally Ormsby, after informal conversations with other employees, consulted the law firm of Gossett, Ellis, Dietrich and Tyler of Kansas City for advice. Mr. Frank E. Tyler of that firm discussed the advisability of an injunction suit and requested a retainer fee of $500 (II, 555-6).

Knowing the view of the other employees the committee decided to borrow sufficient money to pay Mr. Tyler's retainer fee and other expenses which might arise (II, 557). Rose Todd explained the facts to Mr. Ed Swinney, president of the First National Bank of Kansas City, Missouri (II, 718v), whom she had known for a long period of time. The bank loaned her $1,000 which was evidenced by a promissory note executed in the name of the Loyalty League by Rose Todd. The undisputed testimony is that Rose Todd merely used the name of the Loyalty League as a matter of convenience, and was never authorized by the Loyalty League to borrow the money in its behalf (I, 251). The undisputed testi-

mony further shows that after making the loan Rose Todd, Hobart Atherton and other employees, at a meeting of employes on March 30, 1937, requested and received contributions of fifty cents each from substantially all of the employees and turned said monies over to the treasurer of the Loyalty League to apply on the said loan (I, 250; II, 586-8, 599). However, said monies so raised were slightly in excess of Mr. Tyler's fee and the excess amount was later used for the payment of rental on chairs used by the employees at meetings which were wholly distinct from the Loyalty League (I, 282a). There is not a scintilla of evidence that respondent paid or contributed directly or indirectly one cent to the payment of Mr. Tyler's fee; or paid or contributed one cent to the Loyalty League during its entire existence (II, 378bb); or paid or contributed one cent to employees for the purpose of holding any meetings or taking any action with respect to the ILGWU or any other labor organization (II, 489-490). Nor had Respondent or any of its officers had any knowledge concerning the loaning of said $1,000 or of the giving of said note until the same was disclosed in Court.

Meanwhile the Gernes, Gordon, and Missouri Garment Companies strikes were continuing and Meyer Perlstein in an article in the publication styled "Justice," being the official publication of ILGWU, made this statement concerning the three companies:

> "These three firms will soon have union shops. If not, they will never again manufacture dresses" (V, 1492).

On or about April 12, 1937, this Court sustained the National Labor Relations Act. After this decision, Mr. Tyler discussed with employees the advisability of the

employees forming a plant union for their own protection (I, 61, 64-5; II, 558-9).

On or about April 22, 1937, an article appeared in the Kansas City press, to wit:

"Donnelly Worker Will Be Sent To Union Convention.

Garment Organization Seeking Support for Strike at Plant

Sylvia Hull, an employe of the Donnelly Garment company, has been named a delegate from Kansas City to the International Ladies' Garment Workers Union biennial convention, May 3 at Atlantic City, Meyer Perlstein, regional director, announced Thursday.

The Donnelly worker, according to Perlstein, was one of a committee from that garment company who appeared Wednesday night before a joint group representing various Kansas City locals and requested representation at the national convention.

Perlstein said the Donnelly committee desired one of their number to appear at the convention and ask the International body to indorse and support a strike against their employer for failure to negotiate a contract for higher wages, shorter hours and improved conditions. The Kansas City joint committee, Perlstein asserted, agreed to pay all expenses of the Donnelly delegate" (III, 1015).

This notice caused considerable ill-feeling among the employees because Sylvia Hull had not been authorized to represent them. Sylvia Hull, in the Judge Miller Case, testified that she was called to a hotel by Perlstein and asked if she would go to Atlantic City, New Jersey, to attend the ILGWU's convention; that no committee of Donnelly employees had asked her to represent them; that she did not know at the time of any ILGWU member

in the Donnelly plant except one girl. She further testified that nothing was said about calling a strike at the Donnelly plant for failure to negotiate a contract for higher wages, shorter hours, and improved conditions. She further testified that the article was given to the press for publication (V, 1555-1563).

On the morning following the publication of the aforesaid article, there was a spontaneous demonstration by the employees against Sylvia Hull on account of said statements in the paper. She was not harmed or touched and voluntarily went home (II, 536).

Thereafter, within a few days, Sylvia Hull went to Atlantic City, New Jersey, and attended the convention of the ILGWU. The ILGWU paid her expenses (V, 1565). At the convention, she delivered a speech containing false and malicious statements concerning respondent and requested the convention to vote funds to support a strike at respondent's plant, the said speech being written by someone whom Sylvia Hull could not identify (V, 1569-1574).

Mrs. Hyde, employment manager of respondent, attempted repeatedly to reach Sylvia Hull on the telephone on instructions of Mr. Baty but was unable to do so. Sylvia Hull admitted that she never communicated with respondent after her return from Atlantic City, New Jersey, but went to work at once for the ILGWU as a paid organizer (V, 1564-5). She even testified that she did not desire to return to the Donnelly plant except under union conditions, meaning a closed shop under the ILGWU (V, 1580). The Board was compelled to find that under all the circumstances that respondent did not refuse to reinstate her within the meaning of Section 8 (3) of the Act.

On or about April 27, 1937, approximately 100 per cent of respondent's employees, with the exception of

officers, executives and supervisory employees with the authority to hire, discipline or discharge, voluntarily, without pressure, suggestion or inducement, directly or indirectly, on the part of the company, its officers, executives or any persons held out by respondent to represent, speak for, or act in any manner for it with respect to labor matters, or any persons with authority to hire, discipline or discharge (I, 194-196), attended a meeting of employees called by the employees after working hours on premises not leased or controlled by the Donnelly Company, and after discussion by numerous employees of the threatened violence of the ILGWU and of the attempt of Sylvia Hull and the ILGWU to represent them without authority and after a talk by Mr. Tyler, their attorney, regarding their rights under the National Labor Relations Act, freely and voluntarily voted unanimously to organize a labor union and to name it Donnelly Garment Workers' Union. They also unanimously elected officers and a bargaining committee (I, 54-59; II, 558-561).

The employees decided on this action for their own protection and no official, executive, or supervisory employee of Respondent with authority to hire, discipline, or discharge, or any person held out by Respondent to represent, serve, and or act for Respondent with respect to labor matters was present at said meeting or at any other meeting of said DGWU, nor at any time suggested, advised, influenced, or instructed the employees to organize or maintain a union (I, 191, 194-5; KK, 561). The Respondent has never directly or indirectly made contribution to said union, financial or otherwise (I, 230; VII, 2094). All meetings of the DGWU were held outside of working hours (VIII, 2752, 2939, 2987; X, 3605, 3709, 3713, 3720, 3724, 3729, 3734, 3740, 3742, 3745, 3754, 3764, 3767-68-69; 3770).

The Board's witness, Mrs. Weilert, testified (X, 3605): "We got off at the early time, 10 after 4, and the meeting didn't take up until 5, the regular meeting." Up to the latter part of May, 1937, the meetings were held on property not belonging to or controlled by the Company, and after said date, the Union paid rent to the Company for the space in which it held its meetings. (I, 130-131, 227; X, 3867, note 34).

The following day, Rose Todd, who had been unanimously elected chairman of the bargaining committee, took the union's membership cards to Mrs. Reed and advised her of the action of the employees in unanimously organizing a labor union and in unanimously selecting a committee to bargain with respondent concerning the terms and conditions of their employment (I, 196-7). Rose Todd stated that Mrs. Reed said that petitioner would give consideration to proposals of the DGWU (I, 80a-80c). Mr. Tyler, attorney for the DGWU, commenced to draft a contract to present to respondent (I, 89).

The committee asked Mr. Baty, plant manager of Respondent, to furnish it with certain information for use in preparing the proposed contract (I, 197). On May 27, 1937, a proposed draft of contract was presented to Mrs. Reed. She conferred with Mr. Baty, plant manager, Mr. Keyes, sales manager, and with Senator Reed and Mr. Ingraham, attorneys for the Company, and several others, concerning the proposed draft (I, 85). A number of modifications were made in the hand writing of Senator Reed (XI, 4105-4123; VII, 2100-2110) and the modified draft was then taken up with the committee and Mr. Tyler, its attorney; the contract was fully discussed as so changed, and further modifications were made. When finally satisfactory to the parties it was executed (VII, 2108-9). It provided for a minimum wage, 8-hour day and 40-hour week.

promotion and seniority rights, recognition of the union as the sole bargaining agency for the employees, procedure concerning complaints and grievances, meal period, closed shop, lay offs, time spent by general chairman on union matters, arbitration, strikes, stoppage and lock-outs, employer's right to reduce number of employees and discharge employees for business reasons and not for union affiliations, vacations, privilege of continuing sick, accident and group life insurance previously contracted for, maintenance by respondent of two trained nurses and hospital room at plant (Board's Ex. 6, III, 807). After further negotiations, extending for a period of approximately thirty days, a supplemental contract was entered into on June 22, 1937, covering rates of pay and classifying employees into groups and providing absolute minimum wages for the respective groups (Board's Ex. 7, III, 812). These minimums ranged from $16.50 to $42.50 for the various kinds of work. The lowest minimum wage for any employee, even bundle boys or messenger boys, was $16.50 per week. Said contracts provide for more favorable wages, rates of pay, and other conditions of employment than are contained in any contracts entered into between the ILGWU and other garment manufacturers in the house dress and wash frock industry (V, 1429-1456). The terms and conditions of said contracts have at all times been fully complied with and all complaints thereunder have been adjusted by the parties (I, 234-238a).

In the latter part of May, 1937, Perlstein gave out another public statement in the Kansas City papers. This time he announced that the ILGWU's campaign against the Donnelly Garment Company would be opened with advertising through the press and over the radio, urging a boycott of Donnelly by retailers and consumers. He announced that six girls were being specially trained to

visit all retailers selling Donnelly products (of whom there are 1,800); that these six agents would travel from coast to coast, urging a boycott. He announced that if the retailers refused to accede to this boycott demand, their stores would, in turn, be picketed; that is to say he threatened a secondary boycott. He announced that "we are ready to spend $250,000 to accomplish our goal, and that amount is ready" (V, 1525, 1503-1507).

On June 9, 1937, the ILGWU ran full page advertisements in the Kansas City papers addressed to the Donnelly Garment Company. The gist of these advertisements is summarized in these excerpts:

> "As practical business people, you, we take it for granted, realize that, whatever your feelings for the moment may be, you will eventually have to carry on collective dealings with the International Ladies' Garment Workers' Union, which cannot, should not and will not permit one individual employer to segregate himself from the rest of the industry in matters of work conditions and other fundamentals of employment. * * * It still lies within your choice to avoid a conflict which may prove as costly as it appears futile at this stage, to all sides involved in it. Your readiness to meet us in this endeavor in a spirit of industrial statemanship, rather than in that of guerilla warfare, will be applauded by every constructive factor in the entire dress industry, and by the industry, in general, the country over" (V, 1543-4).

By this time the ILGWU's six representatives were traversing the country, urging retailers to boycott Donnelly products, and threatening, if they refused, to conduct a secondary boycott of the retailers themselves, and to picket their stores. These women were traveling over many states, including Florida, Georgia, Alabama, Mississippi, Kentucky, Tennessee, Kansas, Missouri, Ohio and Indiana (V, 1497-1505).

These traveling emissaries distributed many thousand printed circulars (V, 1504). On the cover of the circular in large type was the legend: "WE DO NOT PATRONIZE NELLY DON DRESS." The circular contained a number of false statements, such as these: (1) that the Donnelly Garment Company's "wage scale is far below that prevailing everywhere else in the industry"; (2) that the Donnelly plant uses the "speed-up system"; and (3) that most of the Donnelly workers are constantly in "a state of exhaustion and fatigue," requiring "constant medical attention because of the nervous strain imposed upon them by this system" and that "numerous workers suffer complete nervous breakdowns" (IV, 1183-1189).

The falsity of the above statements appears from the uncontroverted testimony of the employees of the Donnelly plant and by a comparison of the Donnelly contracts with the contracts of every manufacturer in Kansas City with whom the ILGWU has a contract (VI, 1653-1674), findings of Federal Courts (V, 1616d-1616h; 21 F. Supp. 807; 55 F. Supp. 1. c. 594),

The trial examiner received in evidence voluminous portions of testimony taken in an old NRA Case relating to matters alleged to have occurred in 1934, some five years prior to the issuance of the complaint herein. Respondent objected to the introduction of said testimony for the reason that the alleged occurrences were so remote in point of time as to be immaterial and were irrelevant because they occurred prior to the effective date of the National Labor Relations Act (III, 1110a; IV, 1336).

Subject to such objections, the parties stipulated (III, 740) that the testimony taken in said NRA hearing and in the injunction hearing before Federal Judge Andrew Miller, might be introduced in the Labor Board hearing. The Trial Examiner overruled Respondent's objections.

However, the Trial Examiner qualified his ruling (A, 509) to the effect that "acceptance of the evidence is not intended to * * * reverse rulings heretofore made with respect to the introduction of evidence upon certain subjects," thereby depriving respondent of the benefit of such testimony favorable to it. He refused to clarify or change this ruling (A, 463-4, 467).

The undisputed evidence shows that in 1934, the fifteen employees named in the NRA complaint were part of a group of 295 employees laid off by respondent because of a drastic drop in business. Respondent did not know of their union affiliation at the time of such layoff (V, 1600). Eight of these fifteen employees were recalled when business picked up in the fall of 1934 (VII, 2072; IV, 1158-60; V, 1600). Six of the other seven testified in the NRA case. All except one testified that at the time of their layoff they were not members of the ILGWU and the one who was a member kept it secret and the Company did not know it (V, 1600). Three claimed discrimination because they were transferred to an auxiliary plant operated by respondent at 26th and Walnut, which they thought was not nearly so nice as the main plant (IV, 1130d). On cross-examination they admitted they had worked at the auxiliary plant long before they even thought of joining the union (IV, 1134-5, 1127). One of said witnesses claimed that she was discriminated against because she had once or twice had to match shades of material (IV, 1126s).

The NRA case was never decided as the Supreme Court held the National Recovery Act unconstitutional before the trial was finally terminated.

The Examiner in Note 25 to his Intermediate Report states (X, 3860):

> "The undersigned makes no findings with respect to the reasons for these discharges which occurred

prior to the effective date of the Act—and which are not presently in issue."

The sole and only issue involved in the said NRA proceeding was whether or not respondent had discharged the complainants on account of their union affiliation.

The Examiner recognizes the impropriety of passing upon the alleged discharges in 1934 (X, 3860, foot-note 25), but in the next breath holds that respondent was guilty of discrimination in 1934 (X, 3863), and thereon finds respondent "hostile to unions."

The Board finds the Nelly Don Loyalty League, which was organized in 1935, to be the predecessor of the DGWU (X, 3873), and that the Respondent used the Loyalty League in the formation of the plant union (X, 3886). The testimony and offered testimony of all the employees is that the Loyalty League was purely a social organization, that it never performed any of the functions of a labor union nor did it ever seek to do so; that it did not exact dues from its members or hold regular meetings; that it had no connection with the DGWU and continued to exist after the formation of the DGWU; that it did not assist or participate in any way in the formation or maintenance of the DGWU; and there is no evidence that the Respondent or any of its officials, exerted or attempted to exert any force or coercion upon the employees through the Loyalty League to promote the formation of the DGWU; that the Loyalty League and the DGWU have always been wholly distinct and separate, with wholly distinct purposes (I, 187; II, 561, 622, 643, 652, 676, 678-678a; VIII, 2581-2, 2632, 2718, 2727, 2777-8, 2860, 2979; IX, 3011, 3052, 3090, 3129-30, 3196, 3362-3; III, 743, 764).

The Board finds that the instructors, thread girls, Hobart Atherton and certain other employees had supervisory authority (X, 3854, 3858-9). The overwhelming

testimony was to the contrary (VII, 2117-18; VIII, 2584, 2586-7, 2731, 2779, 2861, 2864, 2934-5, 3000; IX, 3019-20, 3046, 3059-60, 3078; 3092-3-4, 3097, 3122, 3136, 3195, 3206-7-8). Respondent offered to prove that employees in ILGWU plants occupying the same or similar positions were members of the ILGWU and that such employees were not regarded as supervisory employees but were eligible to membership in the ILGWU and other garment unions (X, 3787-3792). The Trial Examiner refused to receive this evidence (X, 3782-3). The testimony showed that the instructors had no authority to hire, discipline, discharge, or exercise any supervisory authority over other employees but that their work was merely to show the operators how to perform the various sewing operations, based on complete written instructions prepared in the general office (II, 391-2, 450-1; VII, 2120). The Labor Board found that Respondent had a checkoff agreement with the DGWU (X, 3880). The undisputed evidence was that the DGWU asked the Respondent to agree to a checkoff and that the Respondent refused to do so (I, 226-7, 131-2, 283; VII, 2413, 2387-8). Later, the individual employees requested Respondent to check off their dues and Respondent thereafter did so with respect to those employees who individually requested such action in writing (I, 234-5, 276-7).

The Board finds Respondent agreed to a closed shop. The evidence shows that Mrs. Reed did not want a closed shop at first (VII, 2387), but the DGWU was demanding a closed shop and Mrs. Reed yielded on condition that it should not interfere with her choice of the hiring of employees (VII, 2097).

Finally, the Board finds that typewriters, mimeograph machines, desk, and other minor facilities or equipment belonging to Respondent had been used by officers of the DGWU (I, 59-60, 108). It is the undisputed evidence that

Respondent did not know of the use of any of the aforesaid facilities and equipment, and never at any time consented to the use of the same (I, 62, 62a; II, 406-7, 411, 431, 468-9; VII, 2113, 2115).

The Board in its amended complaint charged that petitioner had discriminatorily discharged two employees, May Fike and Sylvia Hull on account of their union affilations. (In a prior amended complaint, Par. 4A, it had charged that respondent had discriminatorily discharged 18 other named employes (A, 423), but later (on respondent's motion, Ex. 1-TTT, A, 428), dismissed those charges as to all 18 employes (A, 506).) The Board in its original decision dismissed the charge as to Sylvia Hull but found the company guilty of refusing to reinstate May Fike on account of her union affiliations. The Board in its last decision, found that neither Sylvia Hull nor May Fike was entitled to reinstatement (X, 3890, 3892).

The respondent and intervener DGWU repeatedly requested the Labor Board and Trial Examiner to hold a secret election, if there was any question as to the free choice of the employes, but the Board and Trial Examiner refused to do so (A, 395, 409-414, 560).

The circumstances leading up to the filing of the Labor Board Complaint herein are enlightening.

Respondent, on July 5, 1937, had instituted an injunction suit against the ILGWU, its agents and officers, in the United States District Court for the Western Division of the Western District of Missouri, under the Sherman Anti-Trust Act, to enjoin the Defendants from continuing the conspiracy and campaign of fraud, threatened violence, and secondary boycott against Respondent for the purpose of compelling Respondent to force its employes into the ILGWU (A, 390). In this suit respondent alleged that the ILGWU and its agents were engaged in the unlawful acts hereinabove referred to.

A trial was had commencing November 1, 1937, before three United States federal judges. The Honorable Arba S. VanValkenburgh, Circuit Judge, and the Honorable Albert L. Reeves, District Judge, found in favor of respondent and the Honorable Merrill E. Otis found in favor of the defendants on the technical ground that the provisions of the Norris-La Guardia Act had not been complied with. However, Judge Otis stated: "An overwhelming showing, justifying an injunction under the law as it was, certainly has been made." 21 F. Supp. 807, l. c. 831.

The Supreme Court of the United States held that the case was not properly a three-judge case and remanded the same for a new trial. 304 U. S. 243, 82 L. Ed. 1316 (A, 390-1).

A short time prior to the new trial before a single District Judge the Regional Director of the Labor Board requested a conference on the matter (V, 1595).

Conferences between the Labor Board, respondent, the representatives of the DGWU and the ILGWU were held (V, 1385-1409, 1595). Representatives of the Labor Board advised respondent that unless it acceded to the demands of the ILGWU a complaint would be filed, and long and expensive hearings would be held (V, 1406).

The Regional Director of the Labor Board requested the Respondent, the ILGWU, and the DGWU to put their proposals in writing (V, 1409). This was done on February 4, 1938 (V, 1606-1616).

As one of the requirements of the ILGWU for a settlement was that Respondent should agree not to recognize a plant union (V, 1607), the Respondent was unable to accede to the demands of the Labor Board and ILGWU, as compliance therewith would be a violation of the National Labor Relations Act. The ILGWU in its written proposal

demanded the disestablishment of the DGWU and agreed that it would

> First: To cease all activities of every kind and character which tend to keep anyone from purchasing any of the products of the Donnelly Garment Company, *so long as the Donnelly Garment Company does not recognize any plant union* as the bargaining representative of its employees (V, 1607).

Said proposal required respondent to violate the plain terms of the National Labor Relations Act and to deny their employees the right guaranteed by the law to designate their own representatives for the purpose of collective bargaining.

Respondent advised that it could not legally and lawfully accept the proposal of the ILGWU (V, 1615-16).

On March 21, 1939, the trial of the injunction suit was commenced before the Honorable Andrew Miller, United States District Judge (A, 394), and shortly thereafter the Labor Board filed its written complaint against Respondent.

Upon a full hearing of the case, Judge Miller found in favor of the Respondent on all points (V, 1616a-1616j) and on April 27, 1939, granted a permanent injunction against the Defendant (V, 1616k). The Regional Director of the Labor Board was in close touch with the trial and on learning of the result adverse to the ILGWU, the Regional Director *on that same day*, April 27, 1939, filed an amended complaint against Respondent (A, 374) and the Labor Board proceeded to a hearing thereon.

The Injunction Case was appealed by the Defendants to the Circuit Court of Appeals for the Eighth Circuit and while the case was pending on appeal, this Court decided the case of *Apex Hosiery Co. v. Leader*, 301 U. S. 501, dealing with suits under the Sherman Anti-Trust Act. On

the strength of that decision the Circuit Court of Appeals held that Judge Miller did not have jurisdiction to grant an injunction under the Sherman Anti-Trust Act, but remanded the case to the District Court where the petition was amended so as to allege diversity of citizenship and a further trial on the merits was later held before Judge Nordbye in 1944. Judge Nordbye in his opinion severely castigated the Defendants for their unlawful acts but declined to issue an injunction, for the reason that a period of seven years had elapsed since the acts complained of were committed and because he believed a sufficient showing had not been made that the police officers were unable to furnish protection against the threatened violence (55 Fed. Supp. 587, l. c. 594, 596-7). One federal court after another found that the violence, fraud, and boycotts were committed as charged. The three-judge court so found; Judge Miller so found; the Circuit Court of appeals held that Judge Miller's findings of fact were "sustained by substantial evidence" and except for lack of jurisdiction under the holding in the Apex Case, "the decree with some modifications should be affirmed" (*ILGWU* v. *Donnelly Garment Co.*, 119 F. 2d 892, 898). And, finally, Judge Nordbye held (55 F. Supp. l. c. 594):

> "But that the strikers were the instigators of violence on frequent occasions cannot be gainsaid. The employees who wished to work were beaten and their dresses torn. They were disgracefully treated. * * * That Perlstein knew of and condoned the violence is evident * * *. The same observation may be made with reference to Wave Tobin. * * * Much space might be used in reciting the specific acts of violence and other circumstances which occurred in the strikes referred to, and the *severest condemnation* of the tactics approved or condoned by Perlstein and Tobin *is entirely justified.*"

SUMMARY OF ARGUMENT.

Respondent's brief is divided into two parts. Part One deals with the grounds upon which the court below based its decision, to-wit, that the Board denied respondent a fair trial and due process. Part Two deals with the merits, *i. e.*, that the Board's order is not supported by the evidence—a question not passed on by the court below.

PART ONE.

The decision below should be affirmed for the following reasons:

I. The Court below, in refusing to enforce the Board's order, did not abuse the power and discretion vested in it by Congress.

(a) The Court was "not in error" in ruling that the Board should have received and considered the offered evidence.

The Board, at the first hearing, refused to receive or consider the testimony of respondent's employes (some 1,200), as to how and why they formed the plant union (DGWU) and that they did so voluntarily, without any coercion or interference by respondent. The court below, on the first appeal, held this testimony material, and remanded the case to the Board to receive *and consider* it. The Board received some employe evidence at the second hearing, but *refused to accord any materiality to it, thereby flaunting the court's mandate.* The court held on the second appeal that this evidence "received no different or greater consideration upon the second hearing than it did upon the first, and that it was disregarded in

both hearings." Respondent contends that the court was "not in error" in so holding.

The Board, at both the first and second hearings refused to receive or consider several different types of evidence offered by respondent and the DGWU. The Court held that this evidence was material and should have been received and considered by the Board. Respondent contends that the court was "not in error" in so holding.

By reason of all the foregoing, the court held that respondent had been denied a fair trial and due process and refused to enforce the Board's order. Respondent contends that the court was "not in error" in so ruling, and that its decision should not be disturbed by this court, in the absence of an abuse of discretion.

(b) The Court was "not in error" in ruling that the Board should have designated a different Trial Examiner for the second hearing.

(c) In any event, the Court's rulings were not so completely wrong as to constitute an abuse of the Court's judicial power and discretion.

PART TWO.

The decision below should be affirmed because the Board's order is not supported by any substantial evidence:

"A."

The *direct* evidence is *overwhelming* that Respondent's employees formed and operated the DGWU of their own free will and accord without any coercion or interference by Respondent.

"B."

The circumstantial evidence of the Board is contrary to the overwhelming direct testimony and does not support the Board's findings and conclusions.

Under this heading, Respondent discusses the principal findings upon which the Board's order is based, to-wit:

The March 18th meeting was a voluntary employee-activity to consider means for protecting themselves against threatened violence by the ILGWU and was not promoted or participated in by respondent or the management, and that Mrs. Reed's talk at said meeting, at the request of the employes, was not coercive and well within the constitutional right of free speech.

The instructors, "thread" girls, Rose Todd, Hobart Atherton, and others, whom the Board finds to be "supervisory employes" were not such, were not held out as such by respondent nor considered as such by the employes, and their duties were not of a "supervisory" nature, they had no power to hire, fire, promote, or speak for the management in labor union matters, and did not do so, but were eligible to membership in a union and their activities were all on behalf of themselves and other employes as such and not for the management.

The Loyalty League was a social organization, and in no sense a labor organization, and was not used by respondent as a means of coercing the employes in union matters (as the Board finds).

The "March 2d statement" was conceived by two girls in the order filling department, prepared and circulated by them and by one other girl who heard of it, among the employes on March 2, 1937, without the knowledge or consent of respondent or the management, and was a purely voluntary activity on the part of the employes and not chargeable to respond-

ent, and was a legitimate employe-activity, under the terms of the National Labor Relations Act.

The respondent had no part in the organizational meeting of the plant union (DGWU) on April 27th, and did not interfere in any way with the employes in the forming or joining of that union.

The Board cites the occasional use of a company typewriter, ditto machine, etc. by officials of the DGWU in its work. Such use was without the knowledge or consent of respondent or its officials and was inconsequential in nature, and did not constitute any domination or interference by respondent.

The Board finds that respondent dominated the DGWU by promptly recognizing it and dealing with it as bargaining agency for the employes. This was respondent's express duty under the Act, as the union represented not merely a majority but virtually 100% of its employes and was demanding recognition; and the bargaining was not unduly hasty in any event.

Respondent by agreeing with the DGWU to a closed shop did not dominate or interfere with the rights of its employees, as they requested the closed shop through their union, and they all belonged to the union making such request.

The respondent did not violate the Act or interfere with or dominate its employes by virtue of the appointment by the union of Rose Todd, Mrs. Nichols and Miss Spalito on the committee to fix piece-work prices, as the union made such appointments, as they had a right to do, and respondent had no right to dictate whom they should appoint, or to interfere in any way therewith, and did not.

The demonstrations by employes against Sylvia Hull and Fern Sigler, co-employes, on April 23d, 1937, were voluntary demonstrations by the employes, due to misrepresentations that Sylvia was representing the Donnelly employes at the ILGWU convention in Atlantic City; respondent had nothing to do with initiating or encouraging the demonstrations.

but quelled same as quickly as possible and sent the employes back to work; Sylvia Hull volunteered to go home, and she never sought to return, although asked to do so by respondent. Respondent is not chargeable with said demonstrations.

The Board's findings as to respondent's alleged "hostility to unions", are not supported by the evidence.

The Board's order to reimburse employes for dues checked off is not supported by the evidence. The union asked for a check-off arrangement and respondent refused it. Later, at the individual requests of employes, respondent checked off their individual dues. The respondent did not seek the check-off, and under the circumstances here shown, the Board's order is punitive, not remedial, and the check-off is proper in any event, as the DGWU is the *bona-fide* choice of the employes.

The Board's findings are based on conjecture, speculation and far-fetched inferences from tenuous circumstances, contrary to the overwhelming direct evidence, and made in total disregard of respondent's evidence, and hence do not rise to the stature of substantial evidence.

The Board's findings, conclusions and order are contrary to the authorities.

The decision of the court below should be affirmed for the reason that the Board's order is not supported by the evidence.

ARGUMENT.

PART ONE.

I.

The Court Below Did Not Abuse Its Power and Discretion in Refusing Enforcement of the Board's Order.

In *National Labor Relations Board v. Indiana and Michigan Electric Co.*, 318 U. S. 9, this court said (at p. 28):

> "But courts which are required upon a limited review to lend their enforcement powers to the Board's orders *are granted some discretion* to see that the hearings out of which the conclusive findings emanate *do not shut off* a party's right to produce evidence or conduct cross examination material to the issue. * * * Findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, its findings, is heard *and weighed*."

and at p. 16:

> "Thus, in order to decide this case in favor of the Board we would have to hold not merely that the evidence of dynamiting would be a matter of indifference in our view of the case, but that the court designated by statute to exercise discretion in the matter and which desired to know the facts about it before passing on the sufficiency of the evidence and the impartiality of the examiner and which thought the finder of the facts should hear and consider such evidence, must *not only have been in error* but must *also have abused* its judicial discretion."

The foregoing ruling is applicable here.

Here, the court below found that the excluded evidence was *material*, that the "employee" testimony "received no different or greater consideration upon the second hearing than it did upon the first and that *it was disregarded in both hearings*" (XIII, 44), and that a different Trial Examiner should have been designated for the second hearing.

These are findings of "fact" or at least mixed findings of fact and law. Upon these findings and under the *Indiana and Michigan case, supra*, the decision of the court below should not be reversed unless the Court below "not only is in error" but also unless the bases of its decision are so utterly groundless that it has "abused its judicial power and discretion."

Neither of such conditions exists here:

(a)

THE COURT BELOW WAS "NOT IN ERROR" IN RULING THAT THE BOARD SHOULD HAVE RECEIVED AND CONSIDERED THE PROFFERED EVIDENCE.

The Court below bases its decision as to the exclusion of evidence on the Board's refusal to receive and consider evidence as to *six different* matters (XIII, 40-50).

This Court's ruling in the *Indiana and Michigan case, supra* (l. c. 16), would apply if only *one* material class or item of evidence had been excluded by the Board. We submit that the Court below was right as to all six classes. Each of these types of evidence was directly relevant and material to some phase of the case as to which Board made findings adverse to respondent. We briefly discuss the various types of evidence which the Board failed to receive or consider:

(1) Refusal of Board to consider as material the employees' testimony, as directed by the Circuit Court of Appeals in its former decision.

The Court below in its previous opinion (123 F. 2d 215) held that the testimony and offered testimony of the "1,200 employees" of respondent (III, 743-763), as to "how and why" they came to form and join the Donnelly Garment Workers' Union and that they did so freely and without any domination, coercion or interference by the employer, was competent and *material* testimony and should have been received *and considered* by the Board.

In *N. L. R. B.* v. *Indiana & M. E. Co.*, 318 U. S. 9, this Court said (l. c. 28):

> "The statute demands respect for the judgment of the Board as to what the evidence proves. But the court is given discretion to see that before a party's rights are finally foreclosed his case has been fairly heard. Findings cannot be said to have been fairly reached unless material evidence *which might impeach*, as well as that which will support, its findings, is heard and *weighed*."

In *Rait* v. *Federal Land Bank*, (C. C. A. 8) 135 F. 2d 447, the Court said, concerning the obligation resting on a conciliation commissioner to consider evidence (l. c. 451):

> "* * * it does impose upon him the obligation to *consider fairly* and to weigh *all* the competent evidence offered * * * and *not arbitrarily ignore* or to reject such evidence."

The same Trial Examiner, James C. Batten, who conducted the first hearing, was designated by the Board to conduct the second hearing. Respondent objected strenuously to Batten's designation, for the reason that Batten had prejudged this evidence against Respondent and had expressed so emphatically at the first hearing his

conviction that this testimony was entirely worthless, that it was apparent that he could not fairly evaluate it or in fact give it any weight or consideration. The error of the Board in refusing to designate a different Trial Examiner for the second hearing is discussed herein under I(b), *infra*, but attention is called to this fact, here, as it obviously has an important bearing on this question as to whether the Trial Examiner and Board failed to consider the employees' testimony.

Batten, on the second hearing, received the testimony of some 11 employee witnesses, when counsel for the Board objected to further employee testimony. Thereupon this colloquy took place (IX, 3251-2-3):

> "Trial Examiner Batten: * * * Now, Mr. Ingraham, what is the position of respondent, that is, with respect to employee witnesses?
>
> Mr. Ingraham: Well, we are preparing to continue offering testimony of employee witnesses.
>
> Trial Examiner Batten: To what extent?
>
> Mr. Ingraham: Well until your Honor—
>
> Trial Examiner Batten (interrupting): Well, until I stop you, is that it?
>
> Mr. Ingraham: Yes (p. 3251). * * *
>
> Miss Weyand: I quite agree with the Trial Examiner's view that enough witnesses have been heard to get a fair sampling of what is the view of the employee witnesses which the Company has offered, and what they have testified to. I think that further witnesses are unnecessary, especially when considered in connection with the number of witnesses whose testimony appeared in the record before we started the hearing on the remand (p. 3252).
>
> Mr. Langsdale: Well, it occurs to me that nothing could be added to the view of the Respondent, or the Intervener either by witness after witness * * * and the testimony of each one of them is about the

same. Now what can be gained by putting on 11 more or 100 more or 200 more, I don't see. Of course, that is their problem.

Trial Examiner Batten: Is there anything further? Well if not I think I shall rule at this time that as far as the offers of proof are concerned, and the employee witnesses are concerned, with respect to the respondent, that I have heard sufficient; that anything further would be cumulative, and any addition wouldn't enable the Examiner or the Board or the Circuit Court to get any better picture of the entire situation, the light of the entire hearing, the entire record and exhibits" (p. 3253).

Respondent and Intervener DGWU offered to prove by all members of the DGWU that there was no coercion by Respondent (Board's Exh. I-0000, III, 743-758; I-RRRR, III, 764-781; I-XXXXX, X 3829-34; IX, 3290, 3265). Later Respondent made an additional similar offer of proof (Board's Exh. I-VVVVV, X, 3792) of employee testimony, which the Trial Examiner also rejected (X, 3783).

Testimony Not Considered "In Good Faith."

We do not argue that all 1,200 witnesses should have been permitted to take the stand; but that the testimony of those who did testify as to such matters should have been accepted by the Board *as being material* to the issues and should have been fairly weighed and considered by the Board *as material*, in accordance with the previous opinion of the Court below, and that the offered testimony of the remaining 1,200 employees having been rejected as *cumulative*, should have been considered as though the "1,200 witnesses" had actually testified thereto (as Judge Riddick held XIII, 53). But the Trial Examiner and the Board *refused to regard this evidence as having any materiality whatsoever.* The Trial Examiner repeatedly said in the first trial that it was wholly worthless and he would not consider it (A, 484-5-6-7, 492-3).

In the second hearing, although he permitted eleven employee witnesses to testify and it was conceded that the remaining 1,200 employees would testify substantially the same way, this overwhelming proof did not move him one jot or tittle and he blandly finds in his second Intermediate Report, as in his first, that the employees were "coerced" by the employer into forming the Donnelly Garment Workers' Union, thereby necessarily holding that each and all of these 1,200 witnesses either committed perjury or that they were practically morons, who did not know when duress was being applied to them.

That the Trial Examiner completely disregarded and refused to consider the employees' testimony is conclusively shown by the fact that in his Intermediate Report the only mention made by him of this testimony—obviously the most important evidence in the case—is at X, 3848, where he says "the undersigned accorded the respondent and the Donnelly Garment Workers' Union an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing * * *," and then after devoting 40 printed pages to the recitation of other evidence, mostly circumstantial, and without once mentioning that the 1,200 employees testified to the contrary, the Trial Examiner at X, 3888, says: "*On all the evidence* the undersigned finds the respondent dominated and interfered with the formation and administration of the Donnelly Garment Workers' Union * * *"! A more flagrant disregard of important direct evidence and flaunting of the Court's ruling can hardly be conceived, unless it be that of the Board itself to which we now turn.

The Board was more blunt in stating its disregard for the evidence which the Court had ruled was material. The Board adopts the Trial Examiner's intermediate report word for word (A. 618) save for a minor correction

(A, 620) and bluntly says that it "adheres to its opinion," that the employees' testimony has no materiality upon the issue of domination—"* * * we are moreover impelled to adhere to the opinion, derived from our experience in administration of the Act, that *conclusionary* evidence of this nature is *immaterial* to issues such as those presented in this case". (A, 619).

The Board lamely attempts to side step its open avowal that it deems said evidence immaterial by saying that it "carefully considered all such evidence" (A, 619). It seems, obvious, however, that no *bona fide* consideration was given by the Board to evidence which it avowedly treated as immaterial. The respondent gained nothing by the Court's remand of the case to the Board to "receive *and consider*" (XIII, 5) the excluded evidence. It was the same as though the Board had again refused to receive it at all. The Board's refusal to accept the spirit of the Court's decision made the remand a mere farce. As said in *De Bardeleben* v. *National Labor Relations Board*, (C. C. A. 5) 135 F. 2d 13, l. c. 14-15:

> "The finding of the board that the acts of the employees in forming their own association were not their voluntary acts but were the results of domination, interference and support by the company, *in the face of the positive evidence of those who formed the organization* that this was not so, and with no evidence to the contrary, *is a mere fiat.*"

And in *Humble Oil & Refining Co.* v. *National Labor Relations Board*, (C. C. A. 5) 113 F. 2d 85, l. c. 91:

> "*If human testimony can establish anything*, it establishes that Humble did not dominate or interfere with the organization of either Federation."

Nor was this "conclusionary" evidence, as it is referred to by the Board. It is testimony as to *facts*. The

witnesses were asked, not only, "did you join the DGWU of your own free will," but were asked questions such as these: "Did any officer, executive or anyone that you thought was representing the management talk to you about the meeting?" (of April 27th) (VIII, 2565): "Now, prior to that meeting, had anyone, any officer, executive, or anyone representing the management, suggested to you or suggested to anybody else in your presence that the employees form a union?" (VIII, 2566); "Did any official, executive, or representative of the management request you to sign the petition?" (of March 2nd) (p. 2578); "Did you gain the impression from any source, or did you understand that the Loyalty League had anything to do with the formation of the Donnelly Garment Workers' Union?" (p. 2582); "Did you ever hear anybody in the factory say that Ross Todd represents the employers about labor matters?" (p. 2593) etc., etc. The *answers to all these questions were in the negative.* Those and many other similar answers constituted testimony as to *facts*, not conclusions.

But we also submit that the answers that the employees "joined the DGWU of their own free will and without coercion on the part of the petitioner" is testimony as to a *fact—i. e.* the state of mind of the witnesses—and as to the *fact* that such state of mind was not created by duress of petitioner. And who would know that fact better than the employees concerned?

The materiality and well-nigh conclusive character of this testimony seems obvious. This is not a case where a few or several employees testify to direct acts of coercion by officials or high supervisory employees, and several other employees and the officials deny such acts—here *there is not a single employee* (even including the hostile and adverse employees called by the Board) who testified to any direct act of coercion or interference on the part of

any official or supervisory employee of Respondent with respect to the employees joining or not joining the DGWU or any labor organization. On the contrary 100% of the employees concerned testified (or offered to testify) that there was no coercion.

At the first hearing the only witness who even came near to testifying to any coercion was the Board's supposedly "star witness," Elsa Graham Greenhaw (a hostile, former employee brought by the Board from Indiana, I, 353; II, 374-5, 378d), whose testimony was accepted by the Trial Examiner in his first intermediate report as overbalancing the testimony of all other employees and officials because she was "disinterested" and testified in a "straight-forward and unhesitating" manner (A, 519); but when the extremely *evasive* character of her testimony (I, 369-372; II, 373) was pointed out in Respondent's former briefs, and that the only coercion she was able to specify was alleged coercion in the 1936 *general election!* (II, 373), and a reprimand in 1936 by Mr. Keyes of some employees concerning their work! (II, 378g), the Board dropped Mrs. Greenhaw like a hot potato and she is not mentioned in the last 40-page decision except once (X, 3865), and that in a connection which shows no coercion. May Fike, the Board's other principal witness in the first hearing did not testify to any direct coercion as to labor affiliations.

In the second hearing, the Board put on six witnesses. Geneva Copenhaver admitted that there was no act or word of coercion by Respondent to cause her to join the DGWU ("* * * The company never intimidated me one way or the other, they never told me that if I didn't sign I would be fired; * * *"), (X, 3493, 3492), but she testified that she "felt" that if she did not join she might lose her job (X, 3498). Similarly, Mrs. Stevens, testified to no act or word of coercion (X, 3692). Both had previously signed

affidavits that they joined the DGWU freely and voluntarily (X, 3489, 3689-90). Mrs. Weilert testified that there was no coercion at the time of the formation of the DGWU (X, 3581) and for about two years thereafter (X, 3601) but later (when the DGWU did not do what she wanted done, (X, 3559, 3567) she thought something was wrong. She refused to do repair work and quit (X, 3578). Neither Mrs. Dorsey, Mrs. Skeen, nor Mrs. Keyes, testified to any direct coercion on the part of Respondent (See pp. 105-111, Part Two, *infra*, for further discussion of the Board's witnesses).

The foregoing situation differentiates the case at bar from *International Association of Machinists* v. *NLRB*, 311 U. S. 72, *NLRB* v. *Link-Belt Co.*, 311 U. S. 584, and *H. J. Heinz Co.* v. *NLRB*, 311 U. S. 514, and from practically every other Labor Board case in the books based on coercion or interference, where usually, as in *International Machinists* case, a number of employees testify to direct acts of coercion or interference by high supervisory officials.

Here the unanimous testimony of the employees that there was no coercion is corroborated by the testimony of Respondent's officials, Mrs. Reed, Mrs. Reeves, Mr. Baty, Mr. Keyes, that the Respondent and its management did not interfere in any way with the employees in their union activities. (II, 405-6-7, 430-1, 480-1-2, 539-540; VII, 2074, 2094, 2117, 2149, 2157, 2160). It is further corroborated by the fact that in the entire period of several years, covered by the testimony (1934-1942) the Board did not find a single instance of any employee (out of 1,200) being discharged for union affiliation. It is further corroborated by the fact that for a period of five years (now nine), in this era of "independence" of employees, there has been no change in the choice of the employees of the DGWU as their bargaining representatives (XIII, 55). And, lastly,

it is corroborated by the fact that none of the Board's witnesses testified to any direct acts of coercion by respondent.

Opposed to this direct, postive, 100% testimony of all persons concerned, is merely the conjecture, speculation, and inference of the Trial Examiner, based almost wholly on circumstantial evidence, most of which would possess little, if any, probative value, even if it were not opposed by such direct, positive, corroborated evidence.

In this situation we respectfully urge that the Trial Examiner and Board were not justified in disregarding the 100% testimony of the employees and "adhering to the opinion" that it was "immaterial," especially after the Circuit Court of Appeals had ruled that it *was* material and should be considered by the Board as *material*.

As said by the Court below in its prior opinion (123 F. 2d, l. c. 222):

> "The individuals who form an unincorporated association *certainly should know* what sort of an organization it is, *how it happened to be formed, who influenced its formation, and who controls it.*"

The refusal of the Board to put this evidence on the scales constituted a denial of due process to Respondent.

As was said by the Second Circuit in *NLRB* v. *A. Sartorius & Co.*, 140 F. 2d 203, l. c. 205:

> "* * * if an administrative agency ignores all the evidence given by one side in a controversy and *with studied design* gives credence to the testimony of the other side, the findings would be *arbitrary and not in accord with the legal requirement.*"

And by the Fifth Circuit in *NLRB* v. *Tex-O-Kan Flour Mills Co.*, 122 F. 2d 433, 438 (quoted by the 8th Circuit in *American Smelting & Refining Co.* v. *NLRB*, 126 F. 2d 680, 688):

"That the witness was or is *an employee of the party on whose behalf he testifies*, is not in itself a reason to discard his oath, appears from the cited case, and was extensively demonstrated in *Chesapeake & Ohio R. Co.* v. *Martin*, 283 U. S. 209."

In *NLRB* v. *McGough Bakeries Corp.*, (C. C. A. 5) 153 F. 2d 420, the court says (l. c. 425):

"The account given by Bunch, King and Martin, all sworn by the Board as witnesses, of the formation of the Independent and of the contract with it, is consistent and uncontradicted and shows no unlawful domination of, or assistance to, Independent. *This sworn testimony cannot be over-ridden by suspicion or by slight circumstances* that may be given another color. See *Pennsylvania R. Co.* v. *Chamberlain*, 288 U. S. 333, 341, 53 S. Ct. 391, 77 L. Ed. 819; *Chesapeake and Ohio R. R. Co.* v. *Martin*, 283 U. S. 209, 51 S. Ct. 453, 75 L. Ed. 983."

In *NLRB* v. *Sheboygan Chair Co.*, (C. C. A. 7) 125 F. 2d 436, the court says (l. c. 439):

"The Board *should not discard the positive credible testimony of witnesses in favor of an inference drawn from tenuous circumstances* that at best could have supported only an *anemic suspicion*. Such an inference does not meet the test of substantial evidence" (Citing Consolidated Edison Co. case and other cases.)

In *A. E. Staley Mfg. Co.* v. *NLRB*, (C. C. A. 7) 117 F. 2d 868, the court says (l. c. 878):

"While we recognize that the Board is not bound by the findings or conclusions of its Examiner, as is a court by its master or referee, and that its findings are conclusive if substantially supported, yet we think that where its conclusion rests on inferences, such can not prevail *in face of direct evidence to the contrary*."

In *Keystone Steel & Wire Co.* v. *NLRB*, (C. C. A. 7) 155 F. 2d 553, the situation was similar to the case at bar in that a number of employees testified that there was no coercion and an offer was made that the 919 additional employees constituting the balance of the membership of the union would testify to the same effect. The Board refused to consider this testimony as having any probative value, as it refused to do in the case at bar. The court comments on this failure of the Board to accord any materiality to the employees' testimony saying (l. c. 560):

> "From this it seems clear to us that *the only manner in which the Board considered* the testimony of 1,137 witnesses out of the 1,371 employees was, as the Board said, as 'generally unreliable' testimony."

and the court refused to enforce the Board's order based on its finding that the employer dominated the employees.

In *Cupples Co. Manufacturers* v. *NLRB*, (C. C. A. 8) 106 F. 2d 100, the court says (l. c. 105):

> "the Board, like a jury, *may not disregard* the uncontradicted testimony of unimpeached and credible witnesses."

See, also, to the same effect *Chesapeake & Ohio R. Co.* v. *Martin*, 283 U. S. 209, l. c. 214-217; *NLRB* v. *Union Pacific Stages, Inc.*, (9 Cir.) 99 F. 2d 153, 177; *NLRB* v. *Greider Machine Tool & Die Co.*, (6 Cir.) 142 F. 2d 163, 165; *NLRB* v. *Thompson Products, Inc.*, (6 Cir.) 97 F. 2d 13, 15.

Respondent respectfully submits that the Board's refusal to treat as material the unanimous testimony of the employees concerned that they formed and joined the DGWU as their voluntary choice of a bargaining agency, was not only a flagrant abuse of its own power (*Consolidated Edison Co.* v. *National Labor Relations Board*,

305 U. S. 197, l. c. 226; *Indiana and Michigan case, supra,* l. c. 28; and other cases, *supra*), but was also a flagrant disregard of the Court's ruling, and that the Court below was amply justified in refusing to enforce the Board's Order so arrived at.

The Board's Argument.

The Board in its brief does not deny that it refused to accord any materiality or weight to this overwhelming direct testimony of 1,200 unimpeached witnesses, but openly admits that the Board refused to follow the court's mandate in this respect. At page 17 the brief says "the Board properly *refused* to give weight to this conclusionary testimony." It says (pp. 18 and 76) that the Board should not be required *even to receive* it; and at page 75 it says that "the Board's treatment of the testimony in question was *entirely proper* * * *."

In this respect counsel take the same position that the Board, itself, took in its order, "adhering to the opinion" that the testimony is "immaterial" to the issues (A. 619).

The Board thereby puts itself above and beyond the court and refuses to accord to the court the place which Congress provided the court should have in labor board cases and contrary to the ruling of this court in *Ford Motor Co.* v. *NLRB*, 305 U. S. 364 (l. c. 372-3-4-5) where it is said (p. 375) that the Board voluntarily did "what the court could have compelled."

The reasons given (pp. 75-82) for the Board's refusal to obey the letter and spirit of the court's remand are (1) that the organization, structure, and company support of the DGWU were such as to insure company domination; (2) that such testimony is "introspective"; (3) that it is "unreliable"; (4) that employees do not know whether

or not any coercion is being applied to them; (5) that employees may not feel free to testify to coercion; and (6) that it should be excluded in the interests of administrative efficiency (pp. 17-18).

None of these reasons is valid. (1) the structure, organization and alleged company support of the DGWU here is not such as to insure company domination. The court below in its previous opinion pointed this out (123 F. 2d l. c. 222):

> "*This was not a case* where domination and support by an employer of an independent union was conceded or where the independent union *was conclusively shown to be of a character* which could not, in any event, act as the bargaining representative of its members."

Here there was no "prior" union or employer-employee plan in which the employer had participated, as existed in *NLRB* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U. S. 241, and similar cases. Here the nature of the structure, organization and alleged company support of the DGWU *depends on employee testimony.* The Board by its argument attempts to lift itself by its own boot straps—it first finds from the testimony of its own few employee witnesses that the structure, organization and support of the DGWU was such as to insure company domination, and then, having so found, it says that the testimony of the Respondent's 1,200 employee witnesses is rendered "immaterial" because of such finding. Obviously the testimony of the Respondent's 1,200 witnesses should have been received and considered prior to determining the nature of the structure, organization and alleged company support of the DGWU and, if it had been in good faith received and considered, it would have pre-

cluded any finding that the structure, organization or support of the DGWU was such as to insure company domination.

The Board, in ascertaining the nature of the structure, organization, etc., of the DGWU received and considered employee testimony just as introspective and conclusionary as the excluded testimony of the 1,200 witnesses offered by Respondent. The Board asked Mrs. Dorsey and Mrs. Skeens whether they regarded themselves as supervisory employees (IX, 3324, 3434) and asked whether the employees considered the instructors as supervisors (IX, 3325, 3434; X, 3481, 3673); and whether the members of the DGWU felt free to express themselves with instructors present (IX, 3318; X, 3878); and accepted Rose Todd's statement that she was "distressed" at having to use the word "union" (X, 3873). Surely the testimony of the 1,200 witnesses is just as much entitled to consideration as such testimony from the Board's witnesses, yet the Board upon the testimony of its witnesses found that the instructors "regarded themselves as supervisory and are so regarded by the operators" (X, 3852), and now makes no complaint of the reception or conclusionary character of such testimony.

(2) The testimony and offered testimony of the 1,200 witnesses was not wholly introspective but largely consisted of statements of fact as to how and why they formed the DGWU and as to statements of fact showing there was no coercion by Respondent. An employee knows whether an employer has told him that if he joins a union he will be "fired" and likewise he knows whether the employer has not so told him. If no such pressure has been applied, he can say as a fact that no such coercion occurred. (Note the type of questions asked p. 48, *supra*.)

When such testimony is multiplied by 1,200 it removes much if not all of the introspection or unreliability which might inhere in such testimony if given by only one or a few witnesses. The vote of an employee at a labor board election involves just as much introspection yet the Board accepts such vote as representing the free and voluntary choice of the employee. Should employee testimony *under oath* be accorded any less materiality or credence? What could be more introspective than the testimony of the Board's witness, Geneva Copenhaver, who testified (X, 3498) that "it was clear in my own mind that if I did not belong to the union, I wouldn't have a job there very long," or that of the Board's witness, May Stevens, who, when asked if the employes at the DGWU organizational meeting were not told that they "were to do as you pleased," answered: "Perhaps so, but we knew differently" (X, 3692).

The Board received and accepted *and acted on* that testimony notwithstanding its introspective nature. Apparently the Board is willing to receive and accept introspective, conclusionary testimony if it is favorable to the Board but deems that it should not be considered or even received if favorable to the employer.

Concerning the comments of this court in *NLRB* v. *Link Belt Co.*, 311 U. S. 584, that it would be a rare case where the finders of fact "could probe the precise factors of motivation which underlay each employee's choice," we believe the case at bar may fairly constitute the exception that proves the rule, for here there was substantial opportunity to probe those factors, as the testimony of *all* the employees was offered on the question and furthermore the *net result* of their reasons was *physically* presented in the form of affidavits, an acceptable form of evidence in Labor Board hearings.

(3) As to "unreliability," we need say little. If only one or a few employees testified to no coercion there might be just ground to believe that the few might be mistaken or not know of coercion applied to the many other employees not testifying; but where the entire 1,200 testify to the same thing, the likelihood of mistake fades entirely away, considered from any reasonable juridical standpoint. Such evidence then not only becomes reliable but well-nigh conclusive; certainly not to be ignored, as was done here.

(4) It seems ridiculous to say that intelligent employees do not know when pressure is being applied to them to join or not to join a union. As the cour below said (123 F. 2d l. c. 222):

> "The individuals who form an unincorporated association, *certainly should know* what sort of an organization it is, how it happened to be formed, *who influenced its formation, and who controls it.*"

(5) The contention that employees are not free to testify truthfully is likewise fallacious. If the employees had been coerced by Respondent to join the DGWU in 1937 against their will, they would have welcomed the opportunity given by the Labor Board hearings in 1939 and again in 1942, to say so. And certainly this reason even if it would be valid in a small organization of 6 or 8 employees would not apply to 1,200 employees. The cases cited by the Board in footnote 18, page 77, are not applicable—the employer here was not conducting a "pool" or "poll" of its employees—it was presenting testimony in a proceeding conducted by the Labor Board itself, under all the sanctions of oath and conditions designed to insure free testimony by employees.

Nor are the cases cited by the Board (footnote 19, p. 78) applicable here as those cases involve "prior" labor

unions or plans in which the employer had such an integral part that it was deemed to carry over into the successor union. Here there was no prior union.

Nor is *Western Cartridge Co.* v. *NLRB*, 134 F. 2d 240, applicable to the case here for at least three reasons: In that case the board received the testimony of the witnesses "who participated in the organization of the Independent" as to their reasons for joining but refused to receive the testimony of several thousand employees as to their reasons for joining *after* its formation (l. c. 245). Here, on the contrary, the Trial Examiner refused to receive the testimony offered of the employees *who participated in* the formation of the DGWU. Secondly, there is nothing in the *Western Cartridge* case to indicate a pre-judgment on the part of the Trial Examiner or Board against the employee testimony, as here; and thirdly, the factual situation in the Western Cartridge case was wholly different. There the court found that the company "engaged in varied coercive measures to keep the employees from joining the A. F. of L." (l. c. 243), and recites a number of such instances. Here the Respondent engaged in no coercive measures to make the employees join or not join any union, but the employees freely met and formed their own union in such spontaneous unanimity as to leave no doubt that their action was voluntary and not coerced. The cases cited by the Board in footnote 20, page 80, are distinguishable because they involve prior company-dominated unions or because they disclosed coercive activities by the employer, or both (See also discussion in Part Two, *infra*, of "prior union" under B-3, 1.

At page 81, the Board says that it called several of the employees listed in Respondent's offer of proof "who testified that employees were coerced." None of such witnesses testified to any direct acts of coercion by Respondent (See discussion of the testimony of the Board's wit-

nesses, pp. 105-111, *infra*; surely that testimony falls far short of any direct coercion). Nowhere in the record is there any testimony of any economic pressure whatever by the management against any employee to form or join the DGWU. This distinguishes the case at bar from practically all cases where the Board's orders based on "domination" have been upheld.

The Board's argument (p. 81) that if any employee testimony is to be received, the "total number" of employees would be required, is answered by the fact, first, that the testimony of the total number *was* offered and also their affidavits were introduced (VI, 1677-1749), and, secondly, it was conceded by counsel for the Board and ILGWU that the testimony given by Respondent's employee witnesses was a fair sample of what all the rest would say (IX, 3252-3). That the total number of employees were not called here was due to the Trial Examiner's ruling that further testimony would be cumulative. While that is a proper method of controlling the extent of testimony, it is not a proper method if the tribunal may then say that the proof has failed because further such testimony was not given!

The Board's argument (p. 82) that the evidence if admitted would not change the result is not valid. The excluded testimony, instead of being "of the slightest" probative value, was well-nigh conclusive, when considered by a "reasonable," unbiased mind.

(6) Lastly, the Board, "in the interest of administrative efficiency," has no right to exclude evidence of employees as to whether the union they have selected was freely selected. The very purpose of holding a Labor Board hearing is to establish that fact. Of course, it is not necessary to hear the entire 1,200 from the stand if the Board does not wish to do so. It may hear sufficient

to obtain a fair picture and consider that the others would testify to the same effect, as was conceded at the second hearing here (X, 3252-3).

We respectfully submit that the Board has not advanced any valid justification for the Board's repeated refusal to follow the court's mandate, to consider, in good faith, the testimony of Respondent's 1,200 employee witnesses.

(2) Evidence of conspiracy and violence by ILGWU.

In *NLRB* v. *Indiana and Michigan Electric Co., Supra*, this Court in passing upon the materiality of evidence of violence and lawlessness engaged in by the petitioning union held (headnote 1) that—

> "the dynamiting and other acts of violence might have explained the preference expressed by some employees for the latter union, which preference had been wholly disbelieved by the Board, and, on the whole case, it would seem that the Board ought to have considered the dynamiting, along with the other evidence, before reaching any final conclusion in the case."

And the Court also held (l. c. 20) that such evidence would go to the

> "fairness of giving absolute finality to the Board's findings of fact" and also (l. c. 24) would bear on the employees' "good faith in testifying to the reasons for preferring an association of their own to Local B-9."

The excluded evidence here, with reference to the conspiracy, unlawful activities, and threats of the complaining union, ILGWU, against the Donnelly company and its employees, comes within the same general category as that ruled upon by this Court in the *Indiana and Michigan case, supra.*

The trial examiner and the Board refused to receive evidence and rejected offers of proof to show that at all of the times mentioned in the complaint the ILGWU was engaging in unlawful acts and threats of violence and fraud, and to show the illegal methods practiced by the ILGWU in its activities to force petitioner to compel its employees to join the ILGWU against their will. Said acts which petitioner desired to prove are briefly described in Assignment of Error No. 30 (A, 64, 67), which we respectfully ask the court to read.

The excluded evidence would have shown that the ILGWU was threatening to subject the Donnelly employees to physical violence and to the humiliation of having their clothing stripped from them in the public streets, as the ILGWU had been doing in its other strikes (A. 488-491; IV, 1216, 1228, 1273, 1275, 1302, 1305; V, 1412, *et seq.*, 1477, 1483, 1511, 1527, 1546; XII, 4195) as well as endangering their jobs and right to go to and from their work in peace and security. These were vital rights—rights which respondent's employees might be expected to protect and preserve to themselves by every lawful means, without any pushing or "coercion" by respondent. This evidence, therefore, had a direct bearing on the principal issue here of whether there was "domination" by respondent or whether the employes acted of their own volition (*Indiana and Michigan case, supra*).

The Board refused to receive such testimony or to let respondent go into any of the matters relating to such conspiracy (A. 509) which were pleaded as a defense in Part B of respondent's answer (A. 387-394), but struck that part of respondent's answer (A. 508) and rejected respondent's offer of proof (III, 742d; VIII, 2562) on Part B of its answer (See Assignment of Error No. 30, A. 64-67).

The respondent and intervener DGWU also repeatedly offered to prove by witnesses on the stand that the ILGWU and its strikers at nearby garment plants had, *immediately preceding* the formation of the DGWU, committed many acts of violence against the employees of those garment factories and had threatened that the Donnelly employees "would be next" and would be subjected to the same or worse violence (I, 144; IV, 1221, 1225, 1228), and that these threats and activities of the ILGWU were communicated to the Donnelly employees and created great unrest among them and motivated and caused them to take steps for their own protection (A, 488-9), one of which was the formation of the DGWU.

> "Q. Tell me what they said, and who it was?
> A. As this old lady got up and started in the building somebody said, 'Isn't that awful, the way they are treating her?' And Miss Tobin said, 'That's just a sample of what we are going to do down at Donnelly's.'
> Q. (By Mr. Patten) Did you report that at the plant?
> A. I talked it over with the employees.
> * * * * * * *
> Trial Examiner Batten: * * * I am not going to receive that type of testimony on that question" (II. 718z, 718bb).

The main issue in this case is whether the respondent coerced its employees into forming the DGWU or whether the employees formed and joined it voluntarily because of some other reason. The materiality of this and other similar testimony and offered testimony is, therefore, apparent—if they formed and joined the DGWU voluntarily by reason of a desire to protect themselves against the threatened violence and other activities of the ILGWU,

then obviously they did not form and join it because of respondent's coercion.

This evidence, therefore, tended to disprove the principal charge in the complaint. It also tended to corroborate the offered testimony of the employees that the respondent did not dominate or coerce them into forming or joining the DGWU but that they formed and joined the DGWU of their own free will and accord, as it shows a logical reason for such action.

The refusal to receive and consider this evidence was therefore highly prejudicial to respondent.

In *NLRB* v. *Asheville Hosiery Co.*, (C. C. A. 4) 103 F. 2d 288, the Court said (l. c. 291-292):

> "Evidence of the most convincing kind shows that the misrepresentations and threats above referred to had stirred up violent resentment on the part of a majority of the workers against those who favored the Union. * * *
>
> "There is no substantial ground for the rejection of the overwhelming evidence that the hostile attitude of the great majority of the workers toward the Union proceeded from their sincere and spontaneous dislike of outside interference; and *it is not enough to say that the management shared this feeling* and manifested it in the statements of its supervisory officials."

This evidence was not excluded by the Trial Examiner merely on the ground that it was cumulative—the Trial Examiner repeatedly refused to *consider* at all that *type* of evidence. The fact that in isolated instances an occasional answer or statement of a witness to this effect was made and appears in the record, does not cure the error. The Trial Examiner refused to consider this evidence *at all*, and it was not considered either by the Trial Examiner or the Board.

The attitude of the Trial Examiner in refusing to consider this evidence is shown in Respondent's exceptions before the National Labor Relations Board Nos. 52, 58, 59, 87, 154, 155, 156, 161, 165, 166, 167, 178, 179, 184, 219, 220, 241, 259, 266, 300, 301 (A, 86, 93, 94-5, 116-7, 185-6-7-8, 189, 193-4, 196-7-8-9-200, 207-8-9, 215-16-17, 249, 251-2, 255, 257, 276-7, 295-6, 308, 336, 301; X, 3787-3791).

This evidence, had it been admitted and considered, would have been conclusive (to an unbiased mind) that Respondent did not coerce or interfere with its employes in their free choice of a union, but that their choice of the DGWU was motivated and impelled by reason of the unlawful activities and threats of the ILGWU, and their desire not to be represented by such a union.

The court below was "not in error" in ruling that this evidence should have been received by the Board, and that Respondent was denied a fair trial by reason of the Board's refusal to receive and consider it.

The Board's Argument.

The Board argues (pp. 96-104) that the Board was justified in refusing to receive or consider the foregoing offered testimony as to the violence perpetrated by the ILGWU against employees of other garment plants and threats to inflict the same or worse upon Donnelly employees and other unlawful acts of the ILGWU because, it claims, the court below in its first decision ruled that the Board need not receive such testimony. We do not believe the court's opinion is susceptible of that construction. The court did not really discuss or specify what evidence was or was not admissible except the "employee testimony." As to the alleged conspiracy, it merely said 123 F. 2d l. c. 225:

> "We are of the opinion that the Trial Examiner did not err in confining the issues to those which were tendered by the complaint filed by the Board. We are satisfied that the Board was not required to try the International for alleged conspiracy nor to try the charge that the Board had conspired or colluded with the International."

It did not say that acts of violence by the ILGWU against other garment workers or threats to use similar violence against the Donnelly employees was not to be received. It is reasonable to believe that the most the court meant was that the Board did not have to dismiss the complaint, by reason of the International's bad motives in filing the charge, and that it did not intend to rule that evidence bearing on the question of the "free action" of the Donnelly employees in forming a union should be excluded even though it might relate to the ILGWU or its activities.

That the court contemplated that the Board should receive *other* rejected evidence besides the so-called "employee evidence," is shown by the court's comments (p. 224) that a "Trial Examiner should receive all evidence offered by any party in interest except such as is palpably incompetent * * *" and that "we say this in the hope of preventing a repetition of what occurred in the case now before us," and by the court's final language (p. 225) that the Board should "accord to the petitioners (Respondents here) an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner." Had the court been referring only to the rejected "employee testimony" it would undoubtedly have specified "the rejected employee testimony" instead of saying generally "all competent and material evidence." The court did not specifically rule one way or the other upon several

items of evidence which Respondent claimed should have been received. The Board says (p. 94): "there still remain numerous rulings of the examiner on the admissibility of evidence urged by the company as prejudicial error in the court below which have not been expressly passed upon by the court below in either its first or second opinion." We think that the rejected evidence as to violence, threats, etc., comes within this category and that the court in its first opinion did not attempt to limit or delimit with nicety the range of evidence to be received at the second hearing, but intended that the Board should receive all competent and material evidence offered.

This view is substantiated by the language of the court itself in its last opinion in which it indicates that it did not regard its first opinion as ruling that testimony as to the ILGWU conspiracy, violence, threats, etc., was not to be received but merely that the Board could, but was not compelled, to inquire into whether it should drop the complaint because "it was being taken advantage of to further unlawful or unworthy activities of the complaining union" (XIII, 45). But, if it should go ahead with the hearing, there was no intimation by the court that it should not receive all competent and material evidence. Thus there is "no change of position" by the court as the Board assumes (p. 99) and the proffered evidence is well within the terms of the remand. Its relevancy is patent as it bears directly on the most important issue in the case—whether the employees formed the DGWU of their own volition, motivated by the acts and threats of the ILGWU against them, or whether it was because of coercion by Respondent.

As the court says (XIII, 46), "the charges of misconduct made by the company and the plant union against the International *are not without substance* is shown by

the record." (See holdings of federal courts in *Donnelly Garment Co. v. ILGWU et al.*, referred to in the Statement of Facts, *supra.*)

As shown above, the Trial Examiner refused to accept testimony as to threats of dire consequences to be visited by the ILGWU upon the Donnelly employees. Such evidence was, therefore, not before the Board and not considered by the Board or Trial Examiner. The same is virtually true as to the whole ILGWU conspiracy and misconduct. Had this evidence been received and fairly considered, in good faith, it might well have changed the Board's decision, as it would have thrown light on the good faith of the employees' testimony that they were not coerced but formed the DGWU of their own volition for the reasons stated (*Indiana and Michigan case, supra*). It might also have eliminated the Board's conclusion that their testimony was "unreliable."

This evidence was far from being a "collateral" matter as the Board argues (pp. 103-4). It was the very foundation of the employees' action, according to their unanimous testimony.

We respectfully submit that the Board has presented no adequate reason for the rejection of this important and material testimony or for upsetting the decision of the court below.

(3) Failure to receive evidence as to events in 1934-35.

The Board over respondent's objections (III, 1110 a, b, c), received in evidence at the first hearing, hundreds of pages of testimony given in an invalid NRA proceeding back in 1934-35 (prior to the enactment of the National Labor Relations Act). Respondent contends, and the Court below ruled (XIII, 48), that having admitted the Board's and ILGWU's evidence as to the 1934-35 activities, the

Board should not have excluded respondent's countervailing evidence and cross examination relating to the same period and events (VIII, 2784-2808 inclusive, 2823-25, 2887-8, 2896; X, 3757; A, 278-281, 285-286). The Board based its finding (erroneous, we claim) of respondent's "hostility to unions" on such evidence (X, 3859-63, 3885-6). If the so-called "background" was material, certainly respondent was entitled to show all the surrounding circumstances. At the last hearing, counsel for the Board interrogated respondent's employee witnesses concerning said so-called background and particularly with reference to the Loyalty League. Respondent then sought to inquire into the activities of the ILGWU at said times (VIII, 2784). Counsel for the Board and the ILGWU objected and the Trial Examiner ruled that respondent would not be permitted to go back of November, 1936, with regard to such evidence. After extended argument (VIII, 2784-2808) Trial Examiner Batten stated (III, 2808):

> "I think we are ready to proceed and I think the offers of proof contemplate the period in or about March 18, 1937, and as to any strike or matters of that kind which occurred during that period, and I think it is reasonable to go back to—I think the offers contemplated at least a period, I would say, from November on, *and anything prior to that I will now rule are not covered by the offers of proof* and, therefore, should not be presented at this time in line with my ruling directing the order of proof."

In other words, the Board was given the right to go back to 1934 and 1935 but respondent was denied that right.

Nor was this a mere ruling on "order of proof," as the trial examiner *never* permitted respondent to present such evidence (VIII, 2562; IX, 3257, 3265; X, 3783; III, 742b; A, 64-67; 508-509).

Besides, the offers of proof *did* cover the offered testimony as there was no time limitation in them.

A few minutes after the ruling at VIII, 2808, towit at pages 2823-25 (Assignment of Error No. 244, A, 279-281), the trial examiner permitted the Board to examine the witness about incidents that occurred in 1935. Even counsel for the Board evidently felt the trial examiner's failure to sustain respondent's and interveners' objections was contrary to his ruling limiting the evidence to November, 1936 (Miss Weyand's statement, VIII, 2825). But the trial examiner persisted in letting the Board go into these matters prior to November, 1936, and the Board did continue through pages 2825-2831. At VIII, 2887-89, similar testimony by the Board was permitted over objection that it went back prior to November, 1936 (Assignment of Error No. 248, A, 285). Similar ruling was made at page VIII, 2896, again at IX, 3336-7, and again at X, 3757.

Counsel for the Board in their brief (p. 98) say that the six months' period (*i. e.* to November, 1936) back of which no testimony should be received, was fixed "at the suggestion of counsel for the Company (VIII, 2788, 2805-2809)." However, the Court will observe from those references that the suggestion was made only in the event it was observed on *both* sides, *not* that respondent should be so limited and the Board be permitted to go farther back (as the Board permitted the Board to do, while restricting respondent to the six months' period). After much argument, the Trial Examiner conceded that this was the extent of Mr. Ingraham's suggestion, saying (VIII, 2808):

> "Trial Examiner Batten: Well, it is very obvious *I was mistaken*, in your remarks, Mr. Ingraham."

(But the Trial Examiner still continued to permit the Board to go back of six months and continued to refuse to permit respondent to do so.)

The relevance and materiality of respondent's countervailing evidence and cross examination as to these matters, and the unfairness of excluding it, seem too obvious to require further discussion, especially in view of the fact that the Trial Examiner and Board attached great importance to the Board's 1934-1935 testimony and used such testimony as a basis for many adverse findings against Respondent.

Respondent made an additional offer of proof (Board's Ex. I-VVVVV, X, 3792) at the second hearing, which the Trial Examiner also rejected (X, 3783).

The Court below was "not in error" in ruling that this offered evidence should have been received and considered.

The Board's Argument.

At pages 90-91 the Board argues or rather assumes that this evidence was properly excluded because not within the terms of the remand. Such position is wholly fallacious. The court did not in its remand limit the testimony to be taken strictly to the offers of proof. It said (123 F. 2d l. c. 225) that the Board should "accord to the petitioners (respondents) an opportunity to introduce all of the competent, and material evidence *which was rejected* by the Trial Examiner." If this testimony was rejected at the first hearing, it was certainly within the letter of the remand. It was so rejected.

The Trial Examiner at the first hearing overruled Respondent's objections to the introduction of the old NRA record (III, 1110a-1110c), thereby forcing Respondent to introduce portions of the testimony from that record; but instead of receiving such testimony *outright*, the Trial Examiner qualified his ruling so as to deprive Respondent of any beneft from the evidence. In admitting such evidence, the Trial Examiner ruled (A, 509):

"Acceptance of the testimony is not intended to enlarge the issues as defined by the pleadings *or to reverse rulings heretofore made* with respect to the introduction of evidence upon certain subjects."

The Board in its first decision states (A, 560):

"On Part B of the answer the respondent submitted certain parts of the transcripts of testimony taken in an NRA hearing, in which it was also the respondent and the ILGWU the charging union, and in the United States District Court injunction suit between the respondent and the ILGWU. The Trial Examiner *refused the proffered evidence*, granted the motion of the ILGWU to strike, * * * The Board has reviewed these rulings of the Trial Examiner and they are hereby affirmed."

Clearly, therefore, under the foregoing and the "qualified acceptance" of the NRA testimony offered by Respondent, it was rejected at the first hearing and comes strictly within the language of the court's remand quoted above.

The Respondent and intervener sought to have the Trial Examiner clarify his ruling qualifying the reception of said NRA evidence (A, 463-4) which he refused to do (A, 467). That this evidence was clearly excluded and not considered is indubitably shown by the Board's further statement in the first decision (A, 561 and footnote 12) with reference to such ruling:

"After the close of the hearing the respondent and the DGWU filed motions requesting the Trial Examiner to clarify his ruling, alleging that it was unfair, prejudicial, and denied them due process of law. The Trial Examiner denied these motions. We have examined the evidence contained in these partial transcripts in the light of the Trial Examiner's other rulings on the admission and exclusion of evidence and find no prejudicial error in his denial of these

motions. His denial of said motions is hereby affirmed."

"12. It is manifest that the Trial Examiner's ruling *excludes* any evidence in these partial transcripts relating, *inter alia*, (1) to contracts between the ILGWU and other garment manufacturers, (2) to the claim of the respondent that it pays higher wages and maintains better working conditions than do other garment manufacturers, (3) to strikes and violence allegedly fomented by the ILGWU at other garment factories, (4) to the alleged conspiracy of the ILGWU against the respondent, (5) to testimony of the respondent's employees that they were not interfered with, restrained, or coerced by the respondent in their choice of the DGWU or their rejection of the ILGWU, and that the DGWU was formed by the employees because of the strikes and violence occurring at other garment factories which the ILGWU was attempting to organize."

From the above enumeration of the 5 classifications of evidence excluded from consideration in the NRA testimony, it will clearly be seen that the Trial Examiner and Board rejected and refused to consider virtually all of the offered testimony beneficial to respondent. The Board can with little grace now argue that such evidence was not rejected and hence not within the terms of the court's remand. The net result was that the Trial Examiner and Board considered and *accepted as true* all the old NRA evidence deemed favorable to the Board and at the same time ignored all the countervailing evidence therein favorable to respondent. That is lack of due process to the Nth degree and is characteristic of the Trial Examiner's attitude throughout the entire case.

We respectfully submit that the Board has totally failed to show that this offered evidence was outside the

remand, or to give any valid reason for refusing to receive this evidence or why the decision of the court below with reference thereto was not correct.

Board's "Misuse" of 1934-1935 Evidence.

Not only was respondent denied a fair trial by the Board's rejection (by its "qualified" reception) of respondent's testimony from the old NRA hearing, as pointed out above, but the Board also denied respondent a fair trial by its *misuse* of the old NRA testimony, by *basing findings* thereon, although the alleged acts, if they occurred, occurred prior to the passage of the act.

The trial examiner in the first hearing announced that he would permit one witness for a half hour of "background" testimony (I, 7). He ended up with admitting (over respondent's objection, III, 1110a-1110c) whole reams of testimony from the old NRA hearing. The following references, given in the Board's brief, *in support of* the Board's *findings*, are all either references to the old NRA testimony, or to testimony concerning matters prior to the passage of the National Labor Relations Act:

p. 25—III, 1058; IV, 1120i, 1120u, 1120v, 1120z-1120bb, 1120dd-1120ee, 1120jj-1120mm; III, 1059-1061, 1092-1093, 1109.

p. 26—III, 1059; IV, 1120x-1120y.

p. 27—III, 1059, 1092-1094; IV, 1120x-1120y, 1120mm; III, 1092-1093.

p. 34—III, 1033-1034, 1102, 1104, 1058, 1105-1106, 1113, 1120g-1120h, 1107-1108, 1034, 1103-1104, 1106-1107, 1091, 1096-1097, 1033, 1036-1037, 1043, 1047, 1052, 1098; IV, 1120-1120b, 1120mm-1120rr, 1120vv, 1140-1141, 1153, 1156-1157; III, 1099; IV, 1120oo-1120rr, 1152-1156b.

p. 35—III, 1035-1036, 1044-1046, 1052-1055, 1067-1068, 1073-1074, 1076, 1079-1087, 1141, 1153-1154; IV, 1329; III, 1088-1089, 1068; IV, 1331; III, 1100-1101, 1101-1102, 1047-1048, 1063, 1069, 1090; IV, 1150-1151, 1323, 1325-1326, 1331; III, 1070; IV, 1331.

p. 36—III, 1036-1037, 1046-1051, 1098; IV, 1153; III, 1046-1049, 1037-1040, 1042-1044, 1051; IV, 1316-1317; III, 1032-1110a; IV, 1318; III, 1062-1066, 1073-1077; IV, 1120uu-1120vv.

p. 37—IV, 1126v-1129, 1130d-1130e, 1132-1136; 1156b-1157; 1323-1327; 1332-1334; III, 1044-1046, 1047-1048, 1080-1081, 1141-1142, 1078; IV, 1125.

p. 38—III, 1078, 1078-1079, 1071.

p. 39—III, 1091, 1097, 1108, 1113, 1117, 1011.

From that evidence the Board finds, among other things, that respondent had discriminated against certain employees because of their alleged affiliations with the ILGWU (Board's brief, pp. 9-10), and thereon bases its finding of respondent's "hostility" to unions and on that inference bases many other findings.

From such testimony it also makes findings that instructors and other employes were (in 1937) supervisory employes (X, 3854), and other adverse findings.

The board thus goes far beyond the legitimate use of "background" testimony (admissible for the *light* which it may throw on *subsequent* acts, not as substantive evidence of guilt). *First;* it amounts to conviction of respondent for alleged acts which, if true (which we deny), were not unlawful at the time, and takes away from respondent the presumption that, after acts are declared unlawful, the respondent would obey the law.

The *second unfairness* consists in the way the Board admitted this evidence. The Amended Complaint herein contained charges (A, 423) that respondent had discharged

some 18 employees (later reduced to 15) involved in the old NRA charges (IV, 1319). The Board *dismissed* the charges herein as to those 18 employees (II, 388; A, 506, 512), presumably because not deemed relevant or material to the issues here. But after so dismissing and striking out these allegations in the complaint the trial examiner proceeds to determine the issue of union discrimination under the old NRA testimony adversely to respondent, even though the trial examiner, had also *struck the testimony* concerning the discharge of all those employees except three (II, 397), and later dismissed the charge as to those three (A, 512).

The *third unfairness* consists in the fact that the trial examiner here, as on all other matters, *assumes as true* every statement *adverse* to respondent in the old NRA testimony, and completely *ignores* the testimony *favorable* to respondent. A brief review of the circumstances surrounding the layoff of said 15 employees will demonstrate that the Board has ignored respondent's evidence. The NRA testimony clearly shows:

(1) That the 15 employees were laid off along with some 300 other employees, due to business depression (IV, 1158).

(2) That at the time of such layoff of the 15 girls respondent did not know that any of them belonged to the union (IV, 1159) and all except one of them did not then belong.

(3) That before any complaint was made to respondent by the union or by the N. R. A. Labor Board concerning the layoff of those girls, respondent had already reemployed eight of such "union" girls along with the reemployment of approximately 150 of the 300 girls laid off (IV, 1159).

(4) The employees transferred to the branch plant were not known to be union girls and were only a small part of the total employees at the branch factory (IV, 1120vv). The branch plant was a desirable place to work (IV, 1121).

A fair consideration of this evidence compels the conclusion that there was no discrimination against these employees.

Lastly, and highly significant in this connection, is the fact that although petitioner has been in business for 25 years, employing from 1,200 to 1,300 employees during the last several years, with the large turnover incident thereto, *the Board was not able in this trial to establish a single instance during all those years* of the discharge of an employee because of union affiliations. That fact speaks volumes. It renders baseless the findings of petitioner's "hostility" to unions (made by the Board on the old NRA testimony), and renders baseless the many other findings based on the finding of "hostility."

(4) Failure to receive evidence of provisions of ILGWU contracts.

The issue here is not merely the general, abstract question of whether in an unfair labor practice proceeding the contracts of the complaining union with other employers are admissible, as petitioner seems to present it. The relevance of the evidence is based, first, upon the fact that the Board and ILGWU devoted much time and evidence in an effort to show that the contracts between respondent and the DGWU were "sham" contracts (I, 160d, 160g, 161-2, 205-6), in support of their contention that the DGWU was dominated by respondent. They pointed to the provision in the DGWU contract that members of the bargaining committee must have been employed for a year by the respondent (I, 160d, 160g), as

showing company domination. To rebut this and show that the provision was a proper and usual one in union contracts and hence no proof of domination, respondent offered to prove that the ILGWU contracts contained similar provisions (VI, 1656, 1661-2, 1669). Such evidence was clearly competent for that purpose and its materiality is shown by the Board's adverse comment based on the very contention which this rejected testimony would have refuted (X, 3879; Board's brief, p. 60).

In its prior decision the Board held that the insertion of that clause in the contract was "indicative of the Respondent's domination" (A, 603).

The contracts were also offered and were admissible for the purpose of showing that the wages and working conditions which the ILGWU was obtaining for its union members were not so favorable as those existing at the Donnelly plant, to refute the Board's and ILGWU's contention that the DGWU contract was not a good contract for the employes.

The Court was "not in error" in ruling such contracts admissible for the purposes offered.

The Board's Argument.

The Board's arguments (pp. 92-96) with reference to the Trial Examiner's refusal to receive in evidence the ILGWU contracts, are without merit. Counsel say, first, that they were not within the terms of the remand—but the only ground advanced in support thereof is that the Circuit Court of Appeals did not expressly mention them. We think a fair construction of the opinion, therefore, is that they were within the terms of the remand particularly as the case was remanded to receive "*all* competent and material" evidence which had been refused by the Trial Examiner, accompanied by an admonition that ordinarily

a Trial Examiner should receive all evidence offered unless palpably incompetent." The contracts were clearly relevant and admissible to off-set the Board's and ILGWU's contentions as pointed out above.

The Board's argument (p. 95) that the contracts are not admissible because the Board made no *finding* that the DGWU contract was a "sham" contract, is no answer. The Board and the ILGWU were *so contending* at the trial. A defendant litigant is not precluded from introducing competent evidence to rebut the opposition's evidence merely because the tribunal may not make a finding on the other side's testimony; if so no defense evidence would ever be admissible. Besides, as stated above, the Board in its first decision had found that a certain clause in the DGWU contract was "indicative of Respondent's domination" (A, 603). At the second hearing, Respondent was therefore entitled to rebut the evidence on which that finding had been based, the Board having refused to let Respondent rebut it at the first hearing.

The case of the *Bethlehem Steel Co.* v. *NLRB*, (120 F. 2d 641, 651) is not to the contrary. In that case the purpose in introducing the contracts was to make a *general* showing "regarding the dates, scope, duration and terms of the agreements * * *" (l. c. 651). The court held the contracts irrelevant for *such* purpose. The purpose here was not general but to rebut specific contentions made by the Board and ILGWU in the trial.

The Board has presented no logical reason militating against the relevance of these contracts for the purpose for which they were offered.

(5) Refusal to receive evidence that Instructors, Thread Girls and other employees of respondent, held by the Board to be Supervisory Employees, were not so considered in trade unions generally, including the ILGWU itself, but were eligible to union membership.

One of the chief bases of the Board's decision against respondent is that the employees known as Instructors, Thread Girls, Head Pattern Maker (Mrs. Strickland) Head Cutter (Mr. Scoles), Examiners, and certain other employees, participated in the formation of the DGWU and were members of it and that their participation therein rendered that Union a dominated union, on the ground that such employees were "representatives of the management" (X, 3875-3878). To refute this finding or inference by the Board, the respondent sought to show by Wave Tobin, local manager of the ILGWU (X, 3788) and by the records of the ILGWU (X, 3790) and by Erwin Feldman, Counsel for many garment companies (X, 3791-2), that employees holding such or similar positions in garment companies, were regarded in trade unions generally, including the ILGWU, as *not* being Supervisory Employees but as being eligible to membership and participation in such unions. The relevance of this evidence for such purpose is apparent. In *International Assoc. of Machinists* v. *National Labor Relations Board*, 311 U. S. 72 (l. c. 80), this Court held that the test as to domination by alleged Supervisory employees was whether the employees generally "would have just cause to believe" that such alleged supervisory employees "were acting for and on behalf of the management." If employees in the garment industry generally *do not* regard such employees as supervisory employees and *do* regard them as eligible to join and participate in unions, those facts would have a bearing on the true status of such employees in the case at bar. It would also throw light on the credibility and effect to be given to the testimony of the employees and of respond-

ent's officers as to the status of such alleged supervisory employees (*Indiana and Michigan case, supra*, I, c. 24-27).

In fact, the Board itself has used this very type of evidence for this very purpose: In *Reid, Murdock & Company*, 56 NLRB No. 57, The Board said: "The Union has included keymen of similar work status in its bargaining contracts with the company's competitors." (And the Board in that case found such "keymen" *not* supervisors but "ordinary production and maintenance employees.")

Under the Board's own decisions in other cases, the instructors, thread girls, Rose Todd, Hobart Atherton, head pattern maker, Mrs. Strickland, Mrs. Gray, the inspectors, and similar employees, were not supervisory employees but were eligible to membership in the DGWU and their membership and participation therein does not constitute domination, coercion or interference by the management:

Ranco, Inc., 57 NLRB No. 82, decided July 20, 1944, was an *unfair labor practice* case, similar to the case at bar. The question was whether "group leaders" and "set up men" were supervisory employees. The "group leaders" were very much like the instructors in the case at bar—they *instructed* employees, *gave them work*, etc. The Board said:

> "The basic question to be determined in order to resolve the issues concerning interference, restraint, and coercion on the part of the respondent and domination of the Independent by the respondent is the alleged supervisory status of two classes of employees, namely, group leaders and set-up men. * * *
>
> "Group leaders *give work* to employees in the production or inspection line, *instruct* employees in their duties, ascertain whether they are supplied with work, obtain supplies and equipment for employees,

and at times engage in production work alongside ordinary employees.

"The record clearly establishes that neither group leaders nor set-up men have power *to hire, demote, or discharge employees, to grant raises or leaves of absence, or to recommend such action.* Their authority in this regard *is limited to reporting to their superiors;* either foremen or assistant foremen, the inefficiency of employees within their groups. * * * Although some employees testified that they regard set-up men and group leaders as their 'bosses,' the evidence establishes, in our opinion, that group leaders and set-up men perform no supervisory functions, being merely highly skilled employees, *and are not regarded as supervisors by the management, by the other employees, or by themselves.* Set-up men and group leaders were eligible to membership in both the Independent and the Union; several joined either one or the other organization. At the hearing, Lewis Strickland, the Union's International Representative, *admitted that group leaders and job-setters were members of the Union* and stated that their continued eligibility to membership was 'a matter for me to determine later on.' In view of all the evidence, we find that group leaders and set-up men were not supervisory employees. * * * We conclude that the respondent is not liable for their activities and statements."

In *Industrial Rayon Corporation*, 56 NRLB No. 104, decided May 15, 1944, the Board held that section *inspectors* and the *head inspector* in the cone packing department were *not* supervisory employees, saying:

"While they are responsible for the quality of the work produced, they do not supervise production employees *in the sense that they have the power to hire, discharge, lay-off, discipline or otherwise effect changes in their status.* Rejection by them of the work of the production employees does not have any

direct or significant effect upon the earnings of these employees; *they have no voice in determining or shaping the labor policy of the company.* It is clear, therefore, that *in the area of labor relations and policy,* these employees do not constitute management *in the eyes of the rank and file* as do truly supervisory employees."

(And to the same effect, see: *Dortch Stove Works, Inc.*, 58 NLRB No. 82; *Reid, Murdock & Co.*, 56 NLRB No. 57; *Yale & Towne Mfg. Co.*, 56 NLRB No. 193; *Land O'Lakes Creameries, Inc.*, 53 NLRB No. 170; *Castle & Cooke Terminals Ltd.*, 17 L. R. R. 859 (65 NLRB No. 175); *Godchaux Sugars Inc.*, 44 NLRB No. 981; *Western Union Tel. Co.*, 38 NLRB No. 1236; *Berkowitz Envelope Co.*, 38 NLRB No. 914.

Although respondent contends that the "Instructors," "Thread Girls," etc., were in no sense supervisory employees and hence properly participated in the Donnelly Garment Workers' Union under the foregoing decisions of the Board, now the Board has gone further and held that the same union may have affiliated locals of supervisors and of production workers. *Jones & Laughlin Steel Corp.* (United Mine Workers case), 17 L. R. R. 971, decided March 7, 1946 (66 NLRB No. 51).

The Court below was "not in error" in ruling that such offered evidence should have been received, and that respondent was denied a fair trial by reason of its exclusion.

The Board's Argument.

The Board argues at page 87 that such evidence offered by Respondent was not admissible, *first*, because not offered at the first Labor Board hearing and hence not included in the court's remand.

However, at the second hearing, Respondent offered this testimony *before* testimony was offered by the Board at that hearing (VII, 2508, 2520; VIII, 2522-2540). The Trial Examiner refused to receive it (VIII, 2540-2564) and withheld action on Respondent's offer of proof thereon (VIII, 2563). Then when the Board began putting on its testimony at the second hearing, the Board itself went into this very question. One of its main lines of questions was whether the Instructors were regarded as supervisors (IX, 3324-5, 3434, 3318; X, 3481, 3878), and, based on the three or four affirmative answers, it makes the finding (X, 3852) that "they regard themselves as supervisors and are so regarded by the operators." Thereupon it became academic whether the Respondent had offered this testimony at the first hearing—after letting the Board go into the matter, the Respondent was entitled to do so also. But the Trial Examiner still refused to let Respondent do so and rejected (X, 3782-3) its offers of proof (X, 3787-3792). This was palpably erroneous, especially in view of the adverse finding since made.

However, such evidence *was* within the remand of the court. The court in remanding the case did not attempt to set microscopic limits on the testimony to be received. It is well known to any lawyer or court that when a witness is called to the stand, the testimony given leads to further material and competent testimony. Here the Board at the first hearing had refused to permit Respondent to go into the question of whether from the employees' standpoint the DGWU was freely and voluntarily formed and administered. Had Respondent been permitted at the first hearing to pursue this inquiry, it would naturally have led to the disclosure that Instructors, Thread Girls, Head Cutters, etc., were not generally regarded as supervisory employes but were eligible to membership in garment company unions. When

the court remanded the case to permit Respondent to pursue this inquiry, it obviously intended that Respondent should be allowed some latitude in proving the facts which it had sought to prove in the first place, to show that there was no employee domination.

And since the Board in both decisions finds that Instructors, Thread Girls, etc., are supervisory employees, obviously the latitude should have included testimony tending to show that they were not generally regarded as supervisory employees, as that would tend to show no domination from that source. The court (123 F. 2d l. c. 222) says:

> "We have no doubt that the testimony offered * * * to prove * * * that the union was free from employer influence, domination and support * * * should have been received."

That this evidence was well within the contemplation of the court is further evidenced by the court's comments (p. 224) that a Trial Examiner should receive *all evidence offered* unless palpably incompetent and that "we say this in the hope of preventing a repetition of what occurred in the case now before us, and to obviate any misunderstanding as to what the attitude of this court is with respect to the taking of evidence in a hearing before a special master or a trial examiner."

But the Trial Examiner and Board gave no more heed to this admonition than they did to the court's mandate to receive and consider the employee testimony, discussed *supra*.

The excluded evidence in question was competent and material and should have been received and the court below was justified in refusing to enforce the Board's order reached in disregard of the remand and without benefit or consideration of this evidence.

The Board's argument (p. 88) that "parties shall not present their causes of action or their defenses piecemeal" comes with little grace from the Board considering the valiant but unavailing efforts and objections of Respondent, covering some 40-odd pages of the record (IX, 3276-3306, 3330-34, 3427-29, 3471-3, 3476-9; X, 3552, 3574-5, 3662, 3666, 3668-9), to obtain a ruling that the Board should not be permitted at the second hearing to re-present its case in chief.

Also the Board's argument (pp. 88-89) that the evidence was of "remote relevance" is likewise fallacious. The *Ranco* and other cases quoted, *supra*, decided by the Board itself, show beyond question the great relevance of this evidence. The *International Machinists* case and the other cases cited at page 89 are not to the contrary. Of course, the fact that Instructors, etc., are generally regarded as not being supervisory employes but as eligible to membership in unions, does not preclude the Board, in good faith, from finding an employer responsible for the acts of such employes if the circumstances so justify. Under the test in the *International Machinists* case an employer might be liable for the acts of his office boy if it had vested authority in him to speak and act for the management in labor matters. The Board (p. 90) virtually concedes the relevance and materiality of the excluded evidence when it says such evidence is not "controlling." But the fact that it is not controlling does not militate against the correctness of the ruling of the court below that the evidence should have been received and considered. The cases cited by the Board (pp. 89-90) are not to the contrary.

(6) Refusal to permit respondent to examine Wave Tobin as to threats and violence of ILGWU, and concerning eligibility of "Instructors," etc., to participate in unions, and generally.

The Trial Examiner refused to let respondent examine Wave Tobin *at all* (VIII, 2561-2-3; IX, 3257).

She was manager of the Kansas City locals of the ILGWU and was in direct charge of the strikes at the Gernes, Gordon, and Missouri garment plants in Kansas City in March and April of 1937. Her proffered testimony had a bearing on several phases of the case (see Respondent's offers of proof 1-SSSSS and 1-TTTTT, X, 3787-3790).

After first letting her testify for a short while the Trial Examiner stopped her testimony (VIII, 2543), ruling that he would "first" hear the 1,200 employees (VIII, 2556, 2561). But later he refused to let her be recalled to the stand to testify as to anything (X, 3257, X 3783), rejecting respondent's said offers of proof (X, 3782-3783), and struck out entirely the little testimony which she had given (IX, 3257). The Board's refusal to permit respondent to call and examine Wave Tobin therefore became not merely a ruling on the "order of proof," but the *total exclusion* of Wave Tobin as a witness, and hence was arbitrary, unfair, and contrary to all concepts of a fair trial.

The materiality of the offered testimony of Wave Tobin has been discussed under other points, *supra*, and we do not here repeat.

The Court was "not in error" in ruling that such testimony should have been received.

Rulings on Rebuttal Evidence, etc.

Respondent also urges that it was denied a fair trial by reason of the Trial Examiner's rulings on "rebuttal" evidence, at the second hearing.

The Board contends that it complied with the remand because it permitted Mrs. Reed and 11 employee witnesses to testify for respondent. But the Trial Examiner did not stop there, but *permitted the Board to introduce additional evidence which was not "rebuttal" but was additional evidence upon its case in chief.* Respondent objected strenuously to the trial examiner's thus opening up the entire case (see IX, 3276-3306, 3330-34, 3427-29, 3471-73, 3476-79; X, 3552, 3574-5, 3662, 3666, 3668-9), but without avail.

But that was not all. After permitting the Board and ILGWU to put on all the witnesses they had ("Miss Weyand: Well, I can't say until we finish with this witness, whether I will have *another* witness or not. Possibly I will not." X, 3687), to bolster their case in chief, the trial examiner not only held petitioner strictly to rebuttal of the Board's so-called "rebuttal" witnesses (X, 3712-13-14-15-16-17, 3721, 3726) but limited petitioner's rebuttal witnesses to three witnesses from each of two sewing sections (X, 3727-30, 3744-5), rejecting respondent's offers of proof.

It seems obvious that if petitioner was entitled to rebut the Board's rebuttal evidence at all, it was entitled to do so by any competent and material evidence which would tend to rebut it, *including witnesses from other sections* of the plant (III, 757).

The unfairness and prejudicial effect of thus restricting and limiting petitioner's evidence, consists in the fact that the Board's witnesses purported to testify as to *general* conditions in the plant, *e. g.* that union meetings were held during working hours (IX, 3312, 3430, 3551, 3666) and that employes were paid for time spent at union meetings, etc. Respondent was entitled to disprove the Board's rebuttal testimony by such a large number of employees

from *all over the plant* that it would be apparent that the testimony of the Board's witnesses should not be accepted.

Furthermore, after allowing the Board's rebuttal witnesses to cover practically all phases of the Board's case in chief, the trial examiner refused to let petitioner put on *any* evidence except *employee* witnesses (We refer to the proffered testimony of Erwin Feidman, Wave Tobin, the ILGWU contracts, etc.).

The Trial Examiner permitted Mrs. Reed to testify at the second hearing because she was unable to be present at the first hearing. He then struck out all of her testimony relating to events or conditions after the first hearing. The Board seeks to make it appear that this was at the suggestion of counsel for respondent, but respondent's only suggestion was that the evidence should be confined to the charges in the complaint (VII, 2 .2). The question arose because of the fact that during the cross-examination of Mrs. Reed by counsel for the Board counsel handed Mrs. Reed a document, Ex. 32A to 32D (XI, 4061, 4063, 4067, 4069) filed in the Wage and Hour Division, dated October 30, 1940, to which counsel had stapled on the inside (VII, 2283) another, wholly separate, Wage and Hour document, Ex. 32-E (XI, 4065) relating to a different date, making it appear that it was a part of the document dated October 30, 1940. Despite this, Mrs. Reed did not change her testimony, although she could not understand the contents of the second document being a part of the earlier document. Counsel for the ILGWU later continued the examination as to said exhibits (VII, 2454-2520). After the stapling together of the two documents was disclosed, and no evidence favorable to the Board was developed, the Board contended that all testimony relating to a period subsequent to the first trial should be stricken, and this was done.

We respectfully submit that as to each and all of the six items or types of evidence excluded, the Court below was "not in error" in ruling that it should have been received and considered by the Board, and further submit that if the Court was right as to *any one* of the six items or rulings, this Court should not disturb the decision.

(b)

THE COURT WAS NOT IN ERROR IN RULING THAT THE BOARD SHOULD HAVE DESIGNATED A DIFFERENT TRIAL EXAMINER FOR THE SECOND HEARING.

Respondent in its Application for Designation of Another Trial Examiner for the second hearing made a very strong showing that Trial Examiner Batten had prejudged respondent's most important evidence (A. 475, 483, 493). Batten's mind was completely saturated with the view that the testimony of the 1,200 employees concerned (as to "how and why" they formed and joined the DGWU and that they did so freely and voluntarily, without coercion) was completely *worthless* and immaterial. It was, therefore, impossible for him to fairly evaluate that testimony, as respondent was entitled to have it evaluated.

We do not take the space here to set out Batten's repeated assertions in the first hearing that he considered the employees' testimony completely worthless and immaterial. Many of his statements and rulings excluding this and other material evidence offered by Respondent are collected in Respondent's Application to the Board for the Designation of a different Trial Examiner (A. 474-493 inclusive), and show beyond question a state of mind and a fixed unalterable opinion toward Respondent and its evidence that disqualified him to sit as Trial Examiner in the second hearing.

This is not a situation (like mere erroneous rulings on admission or rejection of evidence), that might be corrected on appeal, for Batten's prejudice against Respondent and his prejudgment of Respondent's evidence *permeated every finding* that he made in his 40-page report to the Board and likewise permeated every finding of the Board, because the Board adopted his report *in toto*. Who can say that many or all of these adverse findings, and the conclusions based thereon, would not have been different if the evidence had been considered and evaluated by an impartial, unbiased Trial Examiner?

On appeal from the Board's last decision therefore, we were not (under this point), merely urging error in the rejection of evidence—we were asking the court below to correct an error that *went deeper*—to refuse to enforce findings which were *not fairly arrived at* because of the disqualification of the Trial Examiner who made them.

That Batten had *completely prejudged the case against Respondent* was *known* before the *second* hearing —it was not known before the first hearing. Therefore, when the case was remanded by the court to the Board for a further hearing, a *new* situation was presented. A trial examiner was designated to rehear the case who had *repeatedly and most vociferously* expressed his view that the evidence to be introduced was absolutely worthless and immaterial (II, 658, 614, 704f). He was now to "receive" it (due to the order of the Court) but his view as to its immateriality was not changed. A well-known proverb is apropos here: "You can lead a horse to water, but you can't make him drink." The court could make trial examiner Batten "receive" the evidence but it did not succeed in making him or the Board treat it as *material*, which is equivalent to refusing to receive it altogethe

The importance of the Trial Examiner's functions and the *prejudicial effect on Respondent* of Batten's redesignation are forcefully demonstrated by the fact that the Board adopted *verbatim* all of his intermediate report (save only for very minor correction, A, 620). The decision of the Board which we are opposing *is to all intents and purposes* the findings and decision of Batten, and his prejudgments and prejudices are carried forward in full into the Board's decision and order. When Congress provided for hearings before an agent, designated by the Board (29 U. S. C. A., Sec. 160), it contemplated a hearing by an *impartial* agent or trial examiner. The courts have commented on the fact that since the Board is both prosecutor and judge, special care should be taken to insure an impartial trial (*NLRB* v. *Sands Mfg. Co.*, 96 F. 2d 721, l. c. 726-7; *NLRB* v. *Western Cartridge Co.*, 138 F. 2d 551, l. c. 552-3; *NLRB* v. *Washington Dehydrated Food Co.*, 118 F. 2d 980, 997; *NLRB* v. *Indiana M. & E. Co.*, *supra*; Cf. *Borchard* v. *California Bank*, 310 U. S. 311, 316-17).

The Board did not follow these precepts here, but deliberately redesignated Batten over respondent's strenuous protest (A. 474-493, 502-3), thereby denying to respondent a fair trial.

It is impossible to read this record and the two intermediate reports of the Trial Examiner without being convinced that he, and through him the Labor Board, have closed their eyes to all evidence favorable to Respondent and considered only the evidence favorable to the Board's and ILGWU's position. For example, in both his intermediate reports, the Trial Examiner finds that there was no meeting of employees held on or about March 30, 1937 (A, 520, X, 3873, footnote 42), although all employes permitted to testify

testified that they actually attended such meeting and related what occurred at the meeting, and an offer of proof was made that the remaining employees would testify to the same effect (III, 760). This finding was made despite the fact that *no person testified to the contrary.* The reason for this amazing finding is not hard to find: At this meeting the employees agreed to contribute 50c apiece to finance the employment of Mr. Tyler as attorney for the employees. Such fact *destroyed the Trial Examiner's pet theory* that the Loyalty League furnished this money. So the Trial Examiner, in order to get around this difficulty, adopted the convenient expedient of merely ignoring all such testimony and finding that there was no such meeting!

He even went so far as to find that the March 2nd statement was a part of the Loyalty League's plan (A. 516), although there is no evidence at all that the Loyalty League had anything to do with the March 2nd statement. The Trial Examiner's treatment of Respondent's evidence here is well described by the 5th Circuit in *NLRB* v. *McGough Bakeries Corp.*, 153 F. 2d 420 (l. c. 421-422):

> "The intermediate report of the trial examiner seems to us more like a trial argument than a judicial deliverance. Every issue without exception he found in favor of the Union. He resolved every conflict in testimony, whether serious or trivial, in favor of the Union. With complete consistency he found every witness for the Union reliable and truthful, and every opposing witness whether the Company's president and supervisors, or Independent's adherents, untruthful and unreliable. Even witnesses called by the Board were reliable when they testified favorably to the Union, but otherwise not reliable."

The Court below is entitled to some latitude and discretion in determining whether it shall enforce an order

of the Board upon a hearing so conducted (*Indiana and Michigan case, supra*, l. c. 28). It was not merely a question of Batten's erroneous rulings in the first hearing, which could be reviewed on appeal; it was a question of "preventing his future action in the pending cause" (*Ex Parte American Steel Barrel Co.*, 230 U. S. 35, l. c. 44) when he had pre-judged the case. Here the circumstances amply justify the Court's ruling that the Board should have appointed a different Trial Examiner for the second hearing, and the Court's refusal to enforce the Board's order was proper (*NLRB* v. *Henry K. Phelps, Jr., Trustee*, (5 C. C. A.) 136 F. 2d 562, l. c. 566-7; *NLRB* v. *Washington Dehydrated Food Co., supra*).

The Board's Argument.

The Board in its brief presents no answer to the foregoing. It cites *American Steel Barrel Co., Ex parte*, 230 U. S. 35. That case is authority for Respondent's position rather than for the Board's position, for in that case this court held (l. c. 43-44):

> "The basis of the disqualification * * * was never intended to enable a discontented litigant to oust a judge because of adverse rulings made, for such rulings are reviewable otherwise, *but to prevent his future action in the pending cause.*"

That is precisely what Respondent sought here, in asking for a different Trial Examiner at the second hearing—to prevent Batten's "future action in the pending cause."

Nor does the Board's argument that, in theory, the Board may "accept some or reject all" of the Trial Examiner's findings and recommendations correct the error in redesignating Batten here. Even if it may reject the Trial Examiner's report that does not mean that Congress in-

tended that employers must submit their cases before a Trial Examiner who has prejudged the case against them.

The Board here knew from Respondent's protest that Batten would not and could not give a fair, unbiased hearing to Respondent's evidence. It knew, therefore, that it would be deprived of the benefit of a fair, unbiased report. Assuming, therefore, that the Board (after receipt of the Trial Examiner's report) should try "in good faith" to determine the case fairly, it could not from any *realistic* standpoint do so, for it must and does depend largely on the Trial Examiner's findings and conclusions, as is conclusively shown here by its adoption of Batten's report *in toto*.

The familiarity of Batten with the prior record (p. 84) is small reason for denying a litigant a fair hearing.

(c)

IN ANY EVENT, THE COURT'S RULINGS WERE NOT SO COMPLETELY WRONG AS TO CONSTITUTE AN ABUSE OF ITS JUDICIAL POWER AND DISCRETION.

But even if the Court below was "in error" in its determination as to the materiality of one or more, or even all, of these matters, nevertheless this Court should not disturb the decision unless the Court below in so ruling *was so completely wrong* as to constitute an abuse of its discretion and power.

As said in the *Indiana and Michigan case, supra*, l. c. 16, the Court below must "not only have been in error" but must also "have abused its judicial discretion," to warrant this court in reviewing its decision.

Congress in setting up the procedure under the National Labor Relations Act vested in the Circuit Court of Appeals the power and discretion of determining (under certain limitations) whether the Board's order should be enforced. It was not contemplated by Congress that

every decision by the Circuit Court of Appeals should be reviewed by this court. Congress was familiar with the policy of this court that it would not ordinarily review on certiorari decisions of the Circuit Court of Appeals except those falling within the scope of Rule 38 of this Court, and, with that knowledge, Congress made no further provision for review by this court of Labor Board cases. A wide latitude of discretion must be allowed to the Circuit Court of Appeals in passing upon such matters, and within such wide range the Circuit Court's discretion and determination as to matters such as those involved here, should be accorded finality in enforcement cases and not be disturbed by this court on certiorari, except for abuse of discretion.

The case at bar comes especially within that range for the court below has, in good faith, exercised its power and discretion upon six different types of evidence and upon the qualifications of the Trial Examiner, as well as upon the Board's refusal to obey the spirit or letter of the Court's first remand, and has refused to enforce the Board's order. In so doing it has not abused its discretion, "even though in this court's view such evidence would be a matter of indifference," or this court might have reached a different conclusion (*Indiana and Michigan case, supra*, l. c. 16).

In the review of Labor Board cases, the Circuit Court of Appeals acts in accord with equitable principles.

In *Ford Motor Co.* v. *NLRB*, 305 U. S. 364, 373, the court says:

> "The jurisdiction to review the orders of the Labor Relations Board is vested in a court with equity powers, and while the court must act within the bounds of the statute and without intruding upon the administrative province, *it may adjust its relief to the*

> *exigencies of the case* in accordance with the equitable principles governing judicial action. The purpose of the judicial review is consonant with that of the administrative proceeding itself—to secure a just result with a minimum of technical requirements."

The court below acted in accordance with equity and good conscience in refusing to enforce the Board's order. Here is an employer (Respondent) which has consistently striven to comply with both the spirit and the letter of the National Labor Relations Act; its treatment of employees has always been of the best, and when they organized a union under the National Labor Relations Act and demanded recognition, Respondent dealt with them in full compliance with the Act. It was unjust to subject Respondent to the great expense of a third trial before the Labor Board with no assurance that the Board would, the third time, give any greater consideration to Respondent's evidence than it had done in the first and second hearings. The same applies to the employees (DGWU)—who, instead of being accorded the benefits of the Act by the tribunal designed for that purpose, have been forced by that tribunal to engage in expensive litigation for a period of 9 years to achieve and retain the rights expressly guaranteed to them by the Act. How many times should a court return a cause to a lower tribunal or court which flaunts its mandates? The language of the 5th Circuit in *National Labor Relations Board* v. *McGough Bakeries Co.* (l. c. 421) is applicable here:

> "It is our duty, as well as the Board's, to see that the Act is properly and fairly applied, and not brought into disrepute by unlawful or palpably unjust applications of it."

In *NLRB* v. *Prettyman*, 6 Cir., 117 F. 2d 786, the Court said, l. c. 791:

"The Court is not compelled to enforce an order of the Board which is impregnated with a hearing not comporting with the standards of fairness inherent in procedural due process."

To the same effect see *NLRB* v. *Newberry L. & C. Co.*, 123 F. 2d 831, l. c. 838; *Inland Steel Co.* v. *NLRB*, 7 Cir., 109 F. 2d 9, l. c. 20-21.

In view of all the circumstances here involved—the unanimous choice of the DGWU by respondent's employees; the steadfast adherence of the employees to that choice for 9 years; the meagerness and circumstantial nature of the testimony relied on by the Board as showing coercion, and the overwhelming direct testimony to the contrary; the two long and expensive hearings to which Respondent has been subjected; the twice-repeated failure of the Board to permit Respondent to introduce material evidence; and the refusal of the Board to obey the spirit of the court's remand to consider *as material* the evidence which the court had held to be material—the court was amply justified in the exercise of its equity powers and the power and discretion vested in it by the National Labor Relations Act, in refusing to enforce the Board's order.

We respectfully submit that if the court below was to "adjust its relief to the exigencies of the case" and "secure a just result with a minimum of technical requirements," it chose the right course. Equity demands that the respondent have surcease from this unjustified prosecution. The judgment should be affirmed.

PART TWO.

From the foregoing, we feel that the court is justified in affirming the decision below without going into the merits. But there is an additional and even more potent reason why the decision of the court below should be affirmed; namely, that the Board's order is not supported by the evidence.

The court below did not pass on that phase of the case (XIII, 37). We understand that ordinarily this court does not rule on questions of fact which have not been passed upon by the court below (*Manufacturers' Finance Co.* v. *McKey*, 294 U. S. 442, l. c. 453-4; *Nashville C. & St. L. R. Co.* v. *Walters*, 294 U. S. 405, l. c. 432-3; *Hecht Co.* v. *Bowles*, 321 U. S. 321, l. c. 331), but we assume that the court has power to do so and in some instances has done so (*Ecker* v. *Western Pacific Ry. Co.*, 318 U. S. 448, 489). As the court in granting certiorari herein placed no limitations on the matters to be reviewed, we now present this phase of the case:

I.

The Board's Findings, Conclusions and Order Are Not Supported by the Evidence.

A.

The DIRECT Evidence Is OVERWHELMING That Respondent's Employees Formed and Operated the DGWU of Their Own Free Will and Accord Without Coercion or Interference by Respondent.

This is not a case where the employees of a company are about evenly divided upon the choice of a union or bargaining representative—where slight influence by the employer might tip the scales one way or the other. It is not even a 70-30% or 90-10% division—here *all* of the

1300-odd working employees of respondent (excepting possibly two or three employees) wanted the DGWU as their union and bargaining representative and they unanimously formed and joined that union on or about April 27, 1937 (I, 80b). The organization of the DGWU was so decisive and spontaneous as to leave no doubt that the employees wholeheartedly wanted and chose that union as their bargaining representative. Practically all of the 1300-odd employees of respondent joined the union at a meeting held on April 27th. A few employees, not present at the meeting, joined a few days later (I, 80b, 80c). It may be fairly said, therefore, that the DGWU was the unanimous choice of the working employees of respondent.

That the DGWU was not only the unanimous but was the *voluntary* choice of the employees, without coercion or interference on the part of the respondent, is also shown by *overwhelming* evidence. As practically all of the employees joined the DGWU at the April 27th meeting, and as there is no appreciable conflict in the evidence as to what occurred at that meeting, the court will readily see, from a review of the evidence concerning that meeting, that the evidence is overwhelming that the employees wanted that union and formed and joined it of their own free will. Respondent in the first hearing desired to call as witnesses as many of the employees and members of the DGWU as the Trial Examiner would permit, and let them testify as to whether they formed and joined the DGWU of their own free will and without coercion or interference by respondent. Respondent called the employees as witnesses until stopped by the Trial Examiner and all who were permitted to testify on the subject testified that they joined the DGWU voluntarily as their free choice without any coercion or interference on the part of respondent or its management. However, the

Trial Examiner held that this testimony was immaterial and refused to receive or consider it, and it was because of such refusal that the Court below remanded the case on the first appeal. When the Trial Examiner refused to hear the testimony of further employees, respondent offered to prove by all available employees and members of the DGWU that they joined that union of their own free will without any coercion or interference by petitioner or the management (See Board's exhibit 1-OOOO, R. III, 743.[1] This offer of proof was rejected by the Trial Examiner.

On the second hearing, in pursuance of the court's remand, respondent again called the employees as witnesses (until stopped by the Trial Examiner) to obtain their testimony which the Trial Examiner had refused to receive at the first hearing, and all such employees testified that there was no coercion or interference by respondent or its management regarding their union affiliations, but that they formed and joined the DGWU of their own free will and desire. When the Trial Examiner stopped respondent from calling further employees as witnesses, respondent renewed its offer as contained in

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[1] By said offer of proof, petitioner offered to prove by said witnesses (among other things) the following (III, pp. 755-756-757):

"That he (or she) joined the Donnelly Garment Workers' Union of his own free will and accord, uninfluenced by the Donnelly Garment Company or Donnelly Garment Sales Company or by any officer, executive or supervisory employee thereof, or by anyone representing the management of said companies; that since said time he has continued to belong to and support said Donnelly Garment Workers' Union of his own free will and accord, uninfluenced by the management of said companies or by anyone representing the management of said companies; * * *

"That he does not know of and has never heard of the Donnelly Garment Company or Donnelly Garment Sales Company, or any officer, executive, supervisory employee or anyone representing the management of said companies, doing or saying anything either prior or subsequent to the formation of the Donnelly Garment Workers' Union on April 27, 1937, calculated or tending to encourage, promote or foster membership in the Donnelly Garment Workers' Union or in any 'plant union' or tending to discourage membership in the International Ladies Garment Workers' Union or local thereof. * * *"

Board's Ex. 1-OOOO, to make similar proof by all of the available employees (IX, 3265), and 1-VVVVV (X, 3792-3).

This, we respectfully submit, constitutes *overwhelming direct* proof that there was no coercion or interference by respondent or its management, with respect to the choice of a labor union by its employees, as the proof offered was direct testimony of the *very persons* whom the Board claims were coerced, that they were *not* coerced but acted of their own free will in forming and joining the DGWU. This is the highest and most potent evidence that could be produced on that issue. If any coercion was used upon the employees, they certainly are the ones who would know about it.

Not "Conclusionary" Evidence.

Nor was this "conclusionary" evidence, as it is referred to by the Board (A. 619). It is testimony as to *facts*. The witnesses were asked, not only, "did you join the DGWU of your own free will," but were asked questions such as these: "Did any officer, executive or anyone that you thought was representing the management talk to you about the meeting?" (of April 27th) (VIII, 2565); "Now, prior to that meeting, had anyone, any officer, executive, or anyone representing the management suggested to you or suggested to anybody else in your presence that the employees form a union?" (R. VIII, 2566); "Now, at any of these meetings that you have described, did your instructors request you to attend the meetings?" (p. 2571); "Did any official, executive, or representative of the management request you to sign the petition?" (of March 2nd) (p. 2578); "Did the instructor ask you to sign the petition?" (p. 2579); "Did you gain the impression from any source, or did you understand that the Loyalty League had anything to do with the formation of the Donnelly

Garment Workers' Union?" (p. 2582); "Did you ever hear anybody in the factory say that Rose Todd represents the employers about labor matters?" (p. 2593) etc., etc. *The answers to all these questions were in the negative.* Those and many other similar answers constituted testimony as to *facts,* not conclusions.

But we also submit that the answers that the employees "joined the DGWU of their own free will and without coercion on the part of the respondent" is testimony as to a *fact—i. e.* the state of mind of the witnesses—and as to the *fact* that such state of mind was not created by duress of respondent. Furthermore, this *fact* (whether any pressure was brought to bear on the witness to cause her to join the DGWU) was a fact as to which she was the most qualified person in the world to testify, and her testimony as to such fact ought to be held to be *conclusive* (*i. e.* the purpose of the NLR Act is to permit employees to join any union *they* want to join—when *they* say "this is the union we want," that ordinarily should end the matter—the only exception, of course, being proof of a "prior" company-dominated union, or such direct and positive evidence as to negative the employees' statement, neither of which exists here).

We respectfully submit that the Board is in error in deeming this evidence of the employees to be merely "conclusionary," and has committed even more flagrant error in treating it as "immaterial"—as such action by the Board is equivalent to a refusal to receive the evidence at all.

That the DGWU was the voluntary choice of all the employees is further shown by the affidavits, made in the months of May and June, 1939, and signed by some 1,195 employees and members of the DGWU, which affidavits were offered in evidence as Intervener's Exhibit 20A to 20KK (rejected). This exhibit appears in the record (R

VI, 1677 *et seq.*),[2] where the actual signatures of such employees, sworn to before a notary public, appear.

Also at page 783, Volume III of the Record, the interveners offered to produce and examine, under oath as witnesses, the 1,165 persons who signed the affidavits (Exhibit 20A to 20KK) and to prove by said witnesses "that they joined and have at all times remained members of said Donnelly Garment Workers' Union of their own free will and without coercion, intimidation, or other influence of their employer."

This offer of proof was renewed by intervener in the second hearing when the Trial Examiner refused to let intervener put on any witnesses (IX, 3264).

The various offers of proof of testimony by the employees and members of the DGWU appear at III, 743 to 795, inclusive, and 1-VVVVV, X, 3792-3, and cover many other matters tending to show that there was no coercion or interference by respondent.

In addition to the foregoing *direct* testimony by the persons who would have been influenced or affected by coercion (if there had been any coercion) the testimony as to the circumstances and action taken at the April 27th meeting (at which the DGWU was organized), shows that the formation of the DGWU was the voluntary action of those present—and since practically all of the working employees were present at that meeting, and since all necessary action toward forming the union was

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[2] Said affidavits, Exhibit 20A to 20KK, contained the following language:

> "We, the undersigned employees of the Donnelly Garment Company and the Donnelly Garment Sales Company of Kansas City, Missouri, below the rank of officer or any position carrying with it the right to employ or discharge, *again reassert under oath that it is their free, voluntary, and considered wish and choice* to belong to the Donnelly Garment Workers' Union and not to the International Ladies' Garment Workers' Union or any other union."

taken at said meeting, the circumstances of said meeting, disclosed by the minutes and by the direct testimony, constitutes well-nigh conclusive proof that the DGWU was the free choice of the employees, as there is no appreciable discrepancy in the oral testimony as to what occurred at that meeting. The minutes of the meeting of April 27, 1937, are in evidence at III, 821. There is substantial harmony between the minutes and the testimony of the Board's, respondent's and intervener's witnesses as to the substance of what occurred at said meeting.

In addition to the testimony of the employees that there was no coercion, respondent's officials (Lee Baty, Production Manager, Mrs. James A. Reed, President, Mrs. Reeves, Merchandise Manager, Mr. Keyes, General Sales Manager) testified that there was no coercion or interference by the management with respect to the union affiliations of the employees.

In addition to all the foregoing—and confirmatory thereof—the DGWU had continued for 5 years at the time of the last hearing (now 9 years), as the active and satisfactory choice of the employees as their bargaining agency. Had it not been their voluntary choice, it would have long since been uprooted by the employees, who in these days are not at all timorous, either in Texas or Missouri, in asserting their rights and desires.

(In the case of *Humble Oil & Ref. Co.* v. *NLRB*, 113 F. 2d 85, l. c. 92, the Court, in speaking of the independence of employees said "Texans have never been remarkable for timorousness.")

In opposition to this overwhelming array of witnesses and evidence that the respondent did not coerce or interfere with its employees in the formation of the DGWU, the Board in the first trial was able to produce as witnesses only two former employees, May Fike and Elsa Lou Greenhaw. (Rose Todd, called by the Board, testified that the

employees formed the DGWU of their own free will; Bertha Estes was called by the Board merely for the purpose of inquiring whether the Loyalty League kept minutes; Pauline Hartman, called by the Board, was not asked about the formation of the DGWU but was examined with reference to activities and expenditures of the Loyalty League; and Jack McConaughey, called by the Board, was examined only with respect to the books of account of the DGWU.)

May Fike did not testify to any coercion at the April 27th organizational meeting. Her testimony appears in I, 328c-331. Her testimony shows that cards were passed out and the employees voted to form the DGWU, and the rest of her testimony does not vary substantially from the minutes or other testimony as to what occurred at said meeting. At page 328D, she testifies that the instructor in her section notified the operators of the meeting: "A. She sent everybody to the second floor, she said there was going to be a meeting and everybody should stay in a body so we could get back to work together, or something like that." This is the only intimation in May Fike's testimony that even smacks of coercion. She does not indicate that the instructor or anyone else suggested what action she should take with reference to the formation of a union, and her testimony that the instructor "sent" the operators to the meeting is contrary to the testimony of all of respondent's and intervener's witnesses. Of course, respondent contends not only that May Fike's testimony (that the instructor purported to "send" the employees to the meeting of April 27th) was false but also contends that the instructor did not represent the management in any event. In another part of this brief we have discussed the unreliability, generally, of May Fike's testimony. Even the Trial Examiner deemed her testimony so unreliable that he refused to recommend her reinstatement (X, 3891-2).

Elsa Lou Greenhaw gave no testimony concerning what happened at the April 27th meeting. At p. 354-d, Volume I, she testified that she was notified of the meeting by Miss Alexander: "A. Yes. *Somebody* in the department asked us to go to the second floor for a meeting." Mrs. Greenhaw, however, did attempt to testify that there was coercion on the part of the management, but when asked to tell what the coercion was and to name the persons who engaged in coercion, she was unable to do so except to testify as follows: She testified with respect to Mrs. Reeves (I, 370) that Mrs. Reeves said nothing to her personally and that she did not personally see her engaged in any coercion with other employees; with respect to coercive statements by Mrs. Keyes, she testified p. 373, Volume II: "A. Well, there were a number of statements. One I remember particularly about the employees being careful with their voting. Q. Voting for what? A. During the general election in 1936." As to the alleged coercion of Mr. Keyes, she testified p. 378G, Volume II: "A. The incidents I recall particularly happened during the summer of 1936 when Mr. Keyes called several employees in to reprimand them for their work, and they had been working at such a high rate of speed, top speed, that they were so nervous they didn't know what they were doing and they burst out crying * * *."

Even the Trial Examiner held that the alleged coercion as to voting in the general election of 1936 and the reprimand concerning work in 1936 had nothing to do with the issues in this case (II, 378G).

Although the Trial Examiner in his first Intermediate Report relied greatly on the testimony of Mrs. Greenhaw, as having given her testimony in a "straightforward and unhesitating" manner (A, 519), the Board recognized the weakness and unreliability of her testimony and prac-

tically ignored it, as did the Trial Examiner also in his second Intermediate Report, and the Board in its final order and decision. The respondent will gladly welcome a reading of Mrs. Greenhaw's testimony by the court which will disclose her extreme animus toward respondent, the evasiveness and unreliability of her testimony (I, 369-372, II, 373-375), and that her testimony as given constitutes no proof of any charge in the complaint.

At the second hearing, the Board called six additional former employees of petitioner—Etta Dorsey, Lola Skeens, Geneva Copenhaver, Bessie Weilert, Margaret Keyes and May Stevens.

None of these witnesses testified to any direct coercion or influence brought to bear on them or upon any other employees by respondent with respect to joining the DGWU or as to their union affiliations in any way. Their testimony relates wholly to "circumstances" from which the Board seeks to infer domination. If there had been any actual coercion they would certainly have testified about it. The fact that they didn't is most potent evidence that there was none. The "circumstantial" evidence should be considered in the light of this fact and when so considered it becomes most evident that the Trial Examiner and Board's findings are not justified, but are based wholly on conjecture and desire to convict rather on the evidence.

Etta Dorsey did not testify as to any coercion or interference by respondent either upon her or upon any other employee with respect to joining the DGWU. On the contrary, on cross examination she testified that the statements in her affidavit (Intervener's Exhibit 20A to 20KK), to the effect that the DGWU was her free and voluntary choice, were true (VI, 1675). Her testimony related principally to alleged "circumstances" from which

the Board attempts to "infer" coercion. In appraising Mrs. Dorsey's testimony, it should be noted that she was "mad" at the Donnelly management. She testified (IX, 3364) that she "quit in March of this year because I was not treated right," and that "I was mad at some of the people down there, they didn't treat me right." "Well, that Cecile Ealy is a snake in the grass." "Well, I will admit I got a little mad at Mrs. Reed because she didn't hear me * * *." "Q. You were mad and venomous about this whole matter, weren't you? Just boiling mad, aren't you?" "A. Yes, when her name (Cecile Ealy) comes up it makes me mad."

Lola Skeens likewise, did not testify to any coercion by respondent as to herself or as to any other employees as to forming or joining the DGWU. On the contrary, she testified that the statements in her affidavit (Intervener's Exhibit 20A to 20KK) were true (IX, 3462), that the DGWU was her free and voluntary choice.

Mrs. Skeens' testimony, also, related only to alleged "circumstances" which the Board claims show coercion.

The evidence regarding these alleged "circumstances" is discussed later in this brief.

Attention is also called to the fact that Mrs. Skeens quit her employment at the Donnelly plant because she was peeved over a change in her work which the management asked her to make (IX, 3463).

Geneva Copenhaver testified to no acts or words of coercion by the management but testified (IX, 3471) that she signed the membership card at the April 27th meeting because "I *felt* like I had better, if I wanted my job," but she later testified that the statements in her affidavit (Intervener's Exhibit 20A to 20KK) were true to the effect that she joined the DGWU "under our own free will" and that "the company never intimidated me one way or the other * * *" (pp. 3492-3).

Bessie Weilert testified (X, 3580-81) that at the time the DGWU was organized, she thought it was formed by the employees for their own benefit but that she later changed her mind and formed the opinion that it was company-dominated. However, she testified (pp. 3592, 3601) that she was satisfied with the DGWU and believed it was representing the wishes and interests of the employees, until she was elected on the committee in 1939. So, *for two years* after the formation of the DGWU she evidently saw no signs of domination. She also testified (p. 3614) that in 1939 when she signed intervener's offer of proof (Exhibit 1-RRRR), she was of the opinion that the union was the free will choice of the employees, "as far as I knew about it then." She testified to no acts or words of coercion by petitioner but when asked about her affidavit (Intervener's Exhibit 20A to 20KK), she testified that she "didn't *feel* that way" and when asked if she swore to something that was not true in that affidavit, she answered, "It seems that I did" (pp. 3594-5).

It appears from page 3578 and from Mrs. Weilert's testimony, generally, that she was "peeved" at the management, and that she quit her employment because she was asked to do some repair work.

Margaret Keyes testified to no coercion and, in fact, testified (p. 3660) that "I knew nothing whatsoever of the union activities in the Donnelly Garment Company, * * *"

May Stevens testified to no acts or words of coercion by the respondent but testified (X, 3667) that she signed the membership card at the April 27th meeting because "I *felt* that I had to do it to hold my job." However, she made affidavit in 1939 (Intervener's Exhibit 20A to 20KK) that it was her "free, voluntary and considered wish" to belong to the DGWU. On the stand, she testified that the affidavit was false when she swore to it (pp. 3692-3) and that she knew when she made the affidavit that she was

swearing to a false affidavit (p. 3703). Also, in 1939, she signed intervener's offer of proof (Exhibit 1-RRRR), stating that she joined the DGWU of "her own free will" and had "not been influenced by any threats, coercion or pressure" of the employer, or any representative of the employer. On the stand, she testified that at the time she signed said offer of proof, it was false (p. 3690).

Summing up the Board's direct testimony, attention is called to the fact that at least five of said witnesses for the Board (May Fike, Elsa Lou Greenhaw, Etta Dorsey, Lola Skeens and Bessie Weilert) had a personal grievance against the Donnelly Company and that the sixth, Mrs. Keyes, testified that she "knew nothing whatsoever of the union activities"; and that five of said witnesses (Etta Dorsey, Lola Skeens, Geneva Copenhaver, Bessie Weilert and May Stevens) had previously made affidavits under oath, as to the DGWU "being their free choice";

This constitutes substantial impeachment of the credibility of the Board's chief witness, with no impeachment of the 1,200 employees testifying to the contrary.

The Board offered no other direct testimony of coercion or interference. The rest of the Board's testimony deals with alleged "circumstances" which it claims constituted domination and interference. All this testimony is circumstantial and respondent contends that the alleged inferences drawn by the Board therefrom are based on suspicion; conjecture and surmise and not on any substantial evidence of domination or interference by the respondent, and do not rise to the height of legitimate inferences, especially in view of the contrary overwhelming *direct and positive* testimony on the part of respondent's employees that there was no coercion, and in view of the fact that even the Board's witnesses did not testify to any direct acts or words of coercion upon them.

Also, the minutes (III, 821) and testimony as to just what occurred at the organization meeting on April 27th, show conclusively that there was no coercion or interference by respondent in the formation of the DGWU but that it was voluntary to the *Nth* degree.

The testimony of the Board's witnesses as to the alleged "circumstances" on which the Board relies (such as that the DGWU meetings were held during working hours, etc.), is greatly weakened on cross examination and is contrary to respondent's "1200 witnesses" and we contend does not impinge upon the overwhelming and conclusive *direct* testimony that there was no coercion.

We believe that it may be fairly stated that the *direct* testimony is *overwhelming*—we feel it is *conclusive*—to the effect that the employees formed and joined the DGWU of their own free will and without any coercion or interference by respondent; and unless the Board's "circumstantial" evidence is so strong as to justify the *overriding* of this overwhelming direct evidence, we respectfully submit that the Board's order should be set aside.

We now proceed to a discussion of the "circumstantial" evidence upon which the Board relies.

B.

The "Circumstantial" Evidence of the Board Is Also Contrary to the Overwhelming Direct Testimony and Does Not Support the Board's Findings and Conclusions.

It might not be amiss, here, to state that even as to this "circumstantial" evidence on which the Board relies, the *direct* testimony is *overwhelming*, either that the circumstances were *not* as the Board finds them, or that they were not *attributable* to respondent; and in any event, that they were *not coercive*; and hence, that *even the* "cir-

cumstantial" evidence does not support the Board's findings and order.

In the absence of "direct" coercion (and faced with the universal testimony of the employees themselves that there was no coercion), the Board seeks by evidence of isolated, miscellaneous incidents and circumstances to discover a basis for finding respondent guilty, notwithstanding respondent's clear and complete exculpation by the very persons concerned, namely the employees—whose right to choose their own union the Labor Board should seek to uphold instead of to destroy.

The "circumstances" on which the Board relies wholly fail to measure up to the standard of "substantial" evidence, as enunciated by the Courts, being founded on "a hodge podge of suspicious, farfetched inferences and pure guesses" as the Court described the evidence in *NLRB* v. *International Shoe Co.*, 116 F. 2d l. c. 37, on which the Board made similar findings.

We now discuss the various "circumstances" in detail:

B-1.

The Board's Findings and Conclusions As to the March 18th Meeting and As to Mrs. Reed's Remarks at Said Meeting, Are Not Supported by the Evidence.

On March 18, 1937, the employees, of their own volition, called a meeting of the employees, to see what they could do to protect themselves against threatened violence such as was being visited by the ILGWU upon employees of other garment plants in Kansas City. (II, 553). The meeting was held after working hours, on property not leased or occupied by respondent (II, 553, 559; X, 3867, footnote 34).

The Board finds that the March 18th meeting of employees was held "during working hours" (and makes the

same finding as to the organization meeting of the DGWU held on April 27th, R. X, 3867, note 33).

We take up this finding first because we wish to discuss this finding *in extenso* because similar considerations apply to most of the other findings made by the Trial Examiner and Board throughout the decision.

This finding (and the similar finding as to the April 27th meeting) is contrary to the overwhelming testimony in the case. All of respondent's and intervener's witnesses who testified on the subject, testified that the meeting was held *after working hours*, and respondent and intervener offered to prove, by the testimony of the remaining 1100-odd employees who attended the meeting, that it was held after working hours (Exhibit 1-OOOO, III, 759).

The employees whom the respondent was permitted to call, testified that the meeting of March 18th was held after working hours:

> "A. Well, it was after working hours. I don't remember just what time the working hours were. It was after 4:00 or 5:00, any way, I know, it was after we quit work" (Oma Lee Cooper, VIII, 2569).
>
> "It was after I finished work; and I was working then—got off at 4:30, and it was after I finished work, but I went down before I dressed" (Louise Garrett, VII, 3124).

To the same effect:

Hazel Saucke, VIII, 2627; Edith Dean, 2854, Jessie Mudd, 2920; Ethel Riegel, IX; 3009; Lydia Phillips, 3081; Alice Freed, 3189.

Also, *highly significant* is the fact that in the first Intermediate Report of the Trial Examiner (A, 510 *et seq.*) and in the first decision of the Board (A, 552, *et seq.*), they *did not find* that either of the meetings of March 18th and

April 27th was held during working hours—but the Trial Examiner *affirmatively* found (A, 526): "The April 27th meeting was called immediately *after work* * * *."

Now, the Trial Examiner and Board find that both meetings were held "during working hours"—and this in the face of the testimony and proffered testimony to the contrary of 1200-odd employees who were there.

Opposed to this overwhelming proof, is the testimony of the Board's five or six witnesses that the meeting was held about 2:00 to 3:00 in the afternoon.

We are cognizant of the rule that "the credibility of witnesses and the weight of the evidence" are for the Board, not the courts. But we do not understand that rule to mean that the Board may "arbitrarily" ignore the positive testimony of a thousand witnesses and accept that of a half dozen, when there is no basis for a conclusion that the thousand witnesses are giving perjured testimony. Such a rule would make the entire administration of the Labor Relations Act a mere farce—for there would always be some witness which the complaining union could scrape up, who would testify to *some* fact from which the Board would make a finding of guilt, unless some effect is given to the contrary evidence. The courts have recognized this and have not left the Board entirely unbridled in this respect:

(1) The courts have ruled that the evidence on which the Board bases its findings, must be so "substantial" that "a reasonable mind" might accept it as "adequate" (*NLRB* v. *Columbian E. & S. Co.*, 306 U. S. 292, l. c. 300).

What reasonable mind could believe that a meeting of employees took place during working hours, if 1,200 persons who attended the meeting say that it occurred after working hours and five or six say that they think it was during working hours?

It seems absurd to think that Respondent, if it were secretly promoting the plant union, would have been so bungling as to permit meetings for that purpose to be held during working hours (see quotation from *NLRB* v. *Mathiesen Alkali Works*, 114 F. 2d 796, 803, quoted *infra*).

Courts are entitled to "weigh" the evidence to the extent of determining whether the evidence which the Board relies upon is "substantial" (*Wilson & Co.* v. *NLRB*, 126 F. 2d 114, 116; *NLRB* v. *Reeves Rubber Co.*, 153 F. 2d 340, 342). Otherwise, a court could *never* say the Board's findings were not supported by the evidence. And whether or not the evidence the Board relies upon is substantial, depends on what the countervailing evidence is.

(2) The Board may not completely disregard material evidence in arriving at its findings.

It is conceivable that there might be evidence sufficient to support a finding by the Board, *in the absence of any contrary evidence.* But it is also obvious that the same evidence might not support a finding by the Board where there was countervailing evidence of such a nature as to negative or overwhelm the Board's evidence. Therefore, it necessarily follows that the Board is not entitled to ignore the countervailing evidence in making its findings (*Indiana and Michigan case, supra*).

In *NLRB* v. *Laister-Kauffmann Aircraft Corp.*, (C. C. A. 8) 144 F. 2d 9, the court said:

> "It is undoubtedly true that a Board which with 'studied design' ignores all the evidence adduced by the employer and views as truthful only the testimony of adverse witnesses, acts arbitrarily and not in accord with legal requirements. *NLRB* v. *Sartorious Co.*, 2 Cir., 140 F. 2d 203, 205; *NLRB* v. *Union Pacific Stages, Inc.*, 9 Cir., 99 F. 2d 153, 177; *NLRB* v. *Greider Machine Tool & Die Co.*, 6 Cir., 142 F. 2d

163, 165, 'Testimony is the raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be wrought.' *NLRB* v. *Thompson Products, Inc.*, 6 Cir., 97 F. 2d 13, 15. And Section 10 (e) of the Act, 49 Stat. 453, 29 U. S. C. A., Sec. 160 (e), which provides that 'The findings of the Board as to the facts, if supported by evidence, shall be conclusive,' does not, of course compel the courts to accept findings reached by accepting evidence presented by one side to the controversy with total disregard for other worthy evidence before the Board. *NLRB* v. *Union Pacific Stages, supra.*"

If ever there was a case of "studied design" to ignore a company's evidence and find against it at all events, it is here.

No other conclusion can be reached in the case at bar, except that the Board has simply ignored petitioner's and intervener's testimony. To disregard evidence of a fact which 1,200 persons say is true, is equivalent to refusing to receive that evidence altogether.

Nor can the Board call this an isolated instance in which respondent's evidence has been ignored. It disregards the respondent's evidence throughout the decision. For example, although respondent at the first hearing, proved by all the witnesses which the Trial Examiner would let testify, and offered to make similar proof by its other employee witnesses (III, 760), that they attended a meeting of the employees on March 30th, at which money was collected to take care of Mr. Tyler's fee, *and there was no testimony to the contrary*, yet the Trial Examiner makes the amazing finding (which the Board dittos) that "there was no such meeting" (X, 3873, footnote 42).

Also, although the Board's witness, Rose Todd, and all respondent's and intervener's witnesses testified that

the meeting of March 18th and April 27th were not Loyalty League meetings, and that there was no connection between the Loyalty League and the DGWU, and *even though there was no direct testimony to the contrary,* the Trial Examiner wholly disregarded this evidence and finds that the March 18th and April 27th meetings were "Loyalty League" meetings (X, 3867, 3886).

The same is true concerning the testimony as to the "supervisory status" of Rose Todd and other employees—although all the respondent's witnesses testified to the non-supervisory nature of Miss Todd's duties and that they did not consider her as "representing the management," yet the Trial Examiner totally disregarded this evidence, and the testimony of Mrs. Reed, Mr. Baty and Mrs. Reeves, that Rose Todd had no supervisory position, and finds that her duties were of a supervisory nature, and that she was "acting for" the management (X, 3858). The Board likewise totally disregarded similar overwhelming testimony of respondent's witnesses that they did not regard the instructors and thread girls as supervisory employees (See record citations pp. 158, *infra*).

Likewise, the Board absolutely refused to credit Mrs. Reed's, Mrs. Reeves's and Mr. Baty's testimony (VII, 2121-2124; II, 425, IV, 1173; II, 450), corroborated by the general testimony of the employees (VIII, 2846, 2862, 2864), that in June, 1935, a change was made in the factory whereby all authority over the operators was taken away from the instructors and vested in Mr. Baty—and the Board makes the further extraordinary finding that even if such change was made, the operators had no notice of it although working for two years under Mr. Baty! (X, 3853.)

In fact, there is scarcely an item of testimony of any consequence introduced by respondent or intervenor

which the Trial Examiner and Board accept, irrespective of how meager or unreliable the opposing evidence is.

All of this shows a "studied design," both by the Trial Examiner and by the Board, to ignore respondent's evidence and convict respondent at all events.

Also, it is shown by the additional arbitrary findings made by the Trial Examiner and Board in the first hearing, many of which have been abandoned in the present decision, because of the vigorous attacks made upon them in our brief in the court below on the former appeal.

All of these findings, as well as many other adverse findings, are explainable in only one way—that the Trial Examiner and Board were determined to find respondent guilty at all events and to totally disregard respondent's evidence if necessary to achieve that result, and therefore clearly come within the holding of the court in the *Laister-Kauffmann case, supra*, and should be set aside.

(3) The Board may not "arbitrarily" make findings against a respondent (*Laister-Kauffmann case, supra*).

While the "weight" of the evidence is for the Board, yet the burden of proof is on the Board to prove its case by substantial evidence (*American Smelting & Ref. Co.* v. *NLRB*, (C. C. A. 8) 126 F. 2d 680, 686; *Interlake Iron Co.* v. *NLRB*, (C. C. A. 7) 131 F. 2d 129; *NLRB* v. *West Kentucky Coal Co.*, 152 F. 2d 198, 202); and to *fairly evaluate* the evidence.

If it is obvious that the Board has not proved its case (or a particular fact), by a fair preponderance of the evidence, but the Board, nevertheless, makes findings contrary to the overwhelming evidence, it shows that the Board has not fairly evaluated the evidence, and such findings can only be denominated as "arbitrary and capricious." That occurs so repeatedly in the case at bar as to leave no doubt that the Trial Examiner and Board have

made their findings with the "studied design" of convicting petitioner irrespective of the evidence.

We submit that the Trial Examiner's reasons given in footnote 33 (X, 3867) for his finding that the meeting of March 18th was held during working hours, show the arbitrary and capricious nature of the finding—especially so as he includes in the same category the organization meeting of April 27th, as to which the evidence is even more overwhelming that it was held after working hours.

The alleged reasons given in footnote 33 for the finding, show the utter lack of good faith of the Trial Examiner and Board. The Trial Examiner first says that the respondent's testimony is "contrary to the weight of the evidence"—(But can it be reasonably said that the Board's six witnesses outweigh 1,200?); he then refers to the "indefinite and routine" testimony of respondent's witnesses and to their "lack of knowledge of details"—(But how could their testimony be more "definite" than the positive statements of the witnesses that the meeting was held after working hours and usually specifying the hour as 4:30 or 5:00 o'clock? And how could such testimony be anything but "routine"? And how is testimony of the Board's witnesses that the meeting occurred at 2:00 or 3:00 o'clock, any less "indefinite" or any less "routine"? Also what "lack of knowledge of details" is involved in testifying as to whether a meeting occurred after working hours—it either did or it didn't). The Trial Examiner then says that the Board's witnesses were "mutually corroborative" —(But weren't the respondent's witnesses also mutually corroborative when they all testify that the meeting was after working hours?); then he says that the Board's testimony is supported by the testimony that "the operators attended the meetings in their uniforms"—(But this was

explained by the witnesses who said that some of the employees (who got off work early) would change to their street clothes before going to the meetings and others who got off later would attend in their uniforms and then go to their lockers and change to their street clothes, VIII, 2818, 2873).

And lastly, the Trial Examiner gives as a reason for finding that the meeting was during working hours, that "no definite time was given in the call for the meetings" (But obviously that is a reason for reaching the *opposite* conclusion—if the meeting was to be held during working hours *it would be necessary to fix a time*, otherwise the employees would not know when to leave their work to go to the meeting. but if the meeting was to be held "after work," that was all the designation necessary).

We respectfully submit that none of the reasons given in footnote 33 constitutes a valid reason for disregarding the overwhelming direct testimony of the 1,200 employees, that the March 18th and April 27th meetings were held after working hours, but that the reasons enumerated are so unconvincing as to show the "studied design" of the Trial Examiner and Board to ignore respondent's evidence, and this, and other similar findings, should not be permitted to stand (*Laister-Kauffmann Case, Supra*).

Real Purpcse of March 18th Meeting.

Why was the March 18th meeting called by the employees? It was at this time that the ILGWU and its agents were brutally assaulting with clubs and other deadly weapons girls and women employed at the Gernes, Gordon and Missouri garment plants located within a few blocks of respondent's plant. The ILGWU's agents were threatening to attack the Donnelly employees next, subject them to worse brutality (IV, 1225, 1228). The em-

ployees not only knew that they were liable at any moment to be pounced upon by strong-arm gangs of lawless racketeers but that their jobs would be lost if the plant was closed. They called a meeting to discuss these matters and during the meeting decided to call Mrs. Reed to see what the company would do to afford them protection (I, 144). Was there anything wrong about that? It was an appeal by these decent girls and women to their employer for help. Under the circumstances what was the moral if not the legal duty of the employer? Certainly it was to protect said employees in any way it reasonably could. In addition, an employer would have a direct interest to protect his employees in order to avoid the closing of his plant. Indeed under the old common law the employer had the right to defend his employee even to the point of death. If an employee comes to his employer and asks for protection against criminal assaults, is any court or any tribunal, outside of the Labor Board, ever going to say that the employer is guilty of a coercive act, when in response to such appeal he promises that he will do what he can to protect him?

The undisputed evidence shows that the *employees* asked Mrs. Reed to come to this meeting (I, 45) and tell them what the company would do to afford them protection. She made a few short remarks. We quote verbatim the portions thereof material to the issues herein:

> "I know you are thinking about the threats of violence that the Union is making against you and the company. I want to say that the Company and I intend to do everything possible to protect you in case of any violence. We are now trying to make arrangements with the street car company for its busses to go to certain points and pick you people up and bring you to the plant. We will let you know about this as soon as arrangements can be made.

"Many of you have been here for a number of years and you know that you have never been asked whether or not you belong to a union. The company has not discriminated against anyone on that account and Mr. Dubinsky is not going to make me discriminate against employees because they would not belong to his Union. If you want to belong that is your own business and it is up to you to decide. I will say that neither Dubinsky or any other buttinsky is going to intimidate me or the Company into forcing you to join the International Union against your will.

"I can't say at this time what will be done to protect you against violence, but the company's attorneys will consider what legal steps might be advisable. In any event, you can understand that the company will not submit to any unlawful attacks lying down" (III, 1030).

The Board accepts the stenographic record of Mrs. Reed's talk and holds that it constitutes coercion (X, 3868). But that the Board really recognizes the obvious natural meaning and interpretation of Mrs. Reed's remarks to be that the employees were free to exercise their rights as to union membership is shown by its statement (X, 3869) that "Mrs. Reed *sought to appear* as a disinterested defender of the respondent's employees in the exercise of their right to join or not join a labor organization." If the Trial Examiner and Board deem that Mrs. Reed, by her talk, was seeking to convey to the employees that they were free to join or not join a labor organization, is it not logical to conclude that the employees also got that impression from her talk?

The testimony of the employees shows that they did so understand Mrs. Reed's remarks (II, 554, 611, 640a; III, 758-9).

It will be noted that Mrs. Reed stated the company was trying to make arrangements for busses to bring the

employees to work. Busses were immediately thereafter arranged for and did bring the employees to and from work for a long period of time at the company's expense (VII, 2085). The Board charged in its original complaint that this was an act of unfair labor practice, then it amended its complaint omitting the charge with reference to the said busses, recognizing the absurdity of claiming that it was an unfair labor practice for respondent to give this protection to its employees. The only other protection that these employees have ever had was given by a United States Federal Court which enjoined the ILGWU from committing any acts of violence against respondent or its employees.

The Board from the innocent and commendatory remarks of Mrs. Reed draws the conclusion that they were coercive, demonstrating the complete bias and prejudice on the part of the Board against respondent. The Board attempts to support its conclusion by unwarranted inferences. For example, the Board states:

> "Mrs. Reed painted the ILGWU as the common enemy of both the respondent and its employees."

This is a plain distortion. Mrs. Reed did not say that the ILGWU was the "common enemy of both the respondent and its employees." This is a made up phrase of the Board. If, however, she had referred to them as a "common enemy" she would have said nothing which was not already within the knowledge of every employee. They knew that the ILGWU and Dubinsky proposed to assault their persons and destroy the business of respondent. She did not go into a discussion of what had happened at other plants, but merely said:

> "I want to say that the Company and I intend to do everything possible to protect you in case of any violence."

She simply assured these frightened women that the company would do what it could to protect them. She further said that *she* was not going to be forced by Mr. Dubinsky to force her employees to join a union against their will. She did not say anything even intimating that the employees should not join the ILGWU if they wanted to. Her statement was not an unfair or coercive statement. If the Trial Examiner had permitted respondent to show what was going on at other garment factories, it would have shown that other employers in the garment industry in Kansas City were being forced by the ILGWU to force their employees against their wills to join the ILGWU (*exactly contrary* to the NLR Act) and Mrs. Reed was merely telling her employees that *they* could do as they pleased and *she* was not going to be forced into forcing them to do anything they did not want to do. Instead of constituting "coercion" this was letting them know that they could do as they pleased about a union. She made it plain that "if you want to belong that is your own business and it is up to you to decide." And she also made it plain that the company had never discriminated against anyone because of their union membership and that it would not do so now. What plainer statement could be made of a neutral attitude as to unionism? Mrs. Reed's remarks can only fairly be interpreted to mean that she was going to comply with the letter and spirit of the law and that the ILGWU and Dubinsky were not going to make *her* violate the law. We submit that Mrs. Reed's remarks were not coercive and therefore did not constitute any violation of the Act.

There was no mention made of a "plant" union by Mrs. Reed, or anyone else at the March 18th meeting.

In fact, no thought of a plant union occurred until after April 12th (I, 64; II, 577).

However, the preference of Mrs. Reed—or respondent, for one union or another, or for no union, does not con-

stitute an unfair labor practice, unless such preference is made *coercive* (which was not the case here).

Texas & N. O. R. R. Co. v. *Brotherhood of Ry. and S. S. Clerks*, 281 U. S. 548, 568.

Midland Steel Products Co. v. *NLRB*, (C. C. A. 6) 113 F. 2d 800, l. c. 804:

"The finding of the Board that the comment of the *general superintendent* that the men in petitioner's Detroit plant were 'disgusted with unionism' constituted evidence of interference, restraint and coercion, raises the question whether any and all statements derogatory to unions are prohibited by the Act. It is not claimed that the comment was coupled with any threat of discrimination or loss of employment. It did not interfere with or restrain attempts to organize, nor did it attempt to do so. The comment may have been either a statement of fact or an expression of opinion, or a statement embodying both elements. * * * The use of influence amounting to interference, restraint or coercion plainly is illegal. Cf. *Texas & New Orleans Rd. Co.* v. *Brotherhood of Railway & Steamship Clerks, supra.* But *where no such element exists* the employer is not precluded from conversing with employees about *labor* questions."

L. Greif & Bro. v. *NLRB*, (C. C. A. 4) 108 F. 2d 551 (l .c. 557-8):

"The real query is whether the management has interfered or taken part in the formation of the new body. It is not an answer to point to circumstances indicating that the management *preferred an inside to an outside union*, or that citizens in the community entertained a hostile feeling toward the Amalgamated It goes without saying that the determination of the employees to form their own association and to be free from the outside interference of a national union was influenced by their past experience in the plant, and

by the general opinion in the community of which they are a part; but these contracts did not deprive them of their rights under the Act, or require them to choose bargaining representatives offensive to their employer or to their fellow citizens, so long as their choice was not dominated or interfered with by the employer."

As was said in *Humble Oil & Refining Co. case, supra*, l. c. 88:

"If employer interference has been slight, and *not coercive or oppressive*, suppression of a major organization whose members are not complaining of interference would be an *extreme step*."

Mrs. Reed's talk contained nothing coercive, and was not in a setting of coerciveness, hence it does not support the Board's findings, under either of the Virginia Electric cases by this court (*NLRB* v. *Virginia Elec. & P. Co.*, 314 U. S. 469; *Virginia Elec. & P. Co.* v. *NLRB*, 319 U. S. 533), and her remarks were clearly within the constitutional right of free speech, under the rulings in both of those cases, and in many recent decisions by the Circuit Courts of Appeals (*NLRB* v. *American Tube Bending Co.*, (C. C. A. 2) 134 F. 2d 993; *Budd Mfg. Co.* v. *NLRB*, (C. C. A. 3) 142 F. 2d 922; *Jacksonville Paper Co.* v. *NLRB*, (C. C. A. 5) 137 F. 2d 148; *NLRB* v. *Brandeis & Sons*, (C. C. A. 8) 145 F. 2d 556, l. c. 564, and cases there cited.

Other Findings of the Board Re March 18th Meeting.

The Board finds that the meeting was sponsored by the respondent, and that its instructors notified the operators that "they were to attend" the meeting (X, 3867).

Respondent's witnesses who testified, and the 1100-odd employees whose testimony was refused by the Trial Examiner as cumulative, testify to the contrary.

"Q. State whether or not that meeting, so far as you know, was called by the employees on their own initative.

A. As far as I know, it was.

Q. Do you know of any action, influence or suggestion of the employer or of any representative of the employer in connection with the calling of that meeting?

A. I don't know of any" (Lois Barnes, VIII, 2815).

To the same general effect:

Hazel Saucke, VIII, 2627-8; Lois Barnes, 2774; Edith Dean, 2851; Jessie Mudd, 2921; Ethel Riegel, IX, 3007; Lydia Phillips, 3081; Louise Garrett, 3124-5; Alice Freed, 3189.

"Q. Did any instructor suggest or direct that you attend any of these meetings?

A. No" (Alice Freed, IX, 3195).

To the same effect:

Hazel Saucke, VIII, 2643; Lois Barnes 2779; Edith Dean, 2873; Jessie Mudd, 2917; Oma Lee Cooper, 2571-2; Ruby Clayton, IX, 3046; Lydia Phillips, 3078; Louise Garrett, 3122; Ethel Riegel, 3020.

The Board makes the finding that "most all the supervisory force" were in attendance at the March 18th meeting (X, 3867). By this the Trial Examiner probably refers to the instructors, thread girls, Rose Todd and the other individuals which he finds to be supervisory employees, but which respondent contends were not supervisory employees. The Trial Examiner names only two employees entitled to be classified as supervisory—Mrs. Hyde and Mrs. Reeves. But Mrs. Reeves was in New York at the time of this meeting and obviously was not

present (II, 404), and Mrs. Hyde's testimony shows that she only learned of the meeting by chance and arrived only for the last part of the meeting (II, 535). Obviously, her casual presence under these circumstances cannot characterize the meeting as one "sponsored" by the company.

The Board also finds that the March 18th meeting was sponsored by the Loyalty League (X, 3868). There is not a scintilla of testimony that this was a meeting of the Loyalty League. In fact, one of the Board's principal witnesses, Elsa Graham Greenhaw, testified that she was *not* a member of the Loyalty League, but that she *had* attended this meeting and that it was a meeting of *employees* (I, 354a, 365).

Had it been a Loyalty League meeting or had she thought it was, she certainly would have so testified for her testimony shows that she had a personal grudge against the Donnelly Company.

Nor did the Board's other principal witness at the first trial, May Fike, *nor any of the Board's witnesses at the second hearing*, say that it was a Loyalty League meeting.

On the other hand, all of respondent's and intervener's witnesses testified positively that it was *not* a Loyalty League meeting (see record citations p. 192, *infra*).

But this overwhelming proof means nothing to this Trial Examiner and the Board—they find it to be a Loyalty League meeting anyway.

We respectfully submit that the Board's findings and conclusions with reference to the March 18th meeting and as to Mrs. Reed's remarks, are unsupported by the evidence, are contrary to the law, and should be set aside.

The Board's Argument.

The Board opens its argument on this point (p. 44) with a clear misstatement, to wit, that "Mrs. Reed *had* the letter read to a mass meeting of all the employees on March 18th," and again on page 45 that she "*brought* the letter from the ILGWU with her."

Not one of the record references given supports either of these statements (except, of course, the Trial Examiner's findings). At I, 48-49 the witness Rose Todd says she "thinks that there *was* a letter read" but she says she "don't remember Mrs. Reed reading anything" or that Mrs. Reed had it read. At I, 147-148, although the Board's counsel tries to put the answer into the witness' mouth that Mrs. Reed read the letter, the witness merely says "That is the meeting when the letter was read." At I, 310, the Board's own hostile witness, May Fike, says "Mrs. Reed read the letter," but immediately follows this by saying "She cried over the letter, and was grateful for the loyalty of the girls for standing by her," clearly showing that May Fike was referring to the "March 2d statement," not the March 9th letter. At I, 354b-354c, the Board's other hostile witness, Elsa Graham Greenhaw, does *not* say that Mrs. Reed "had" the letter read, but in fact is very hazy about the whole matter. At II, 588, there is nothing said about the letter; and at VIII, 2620, the witness says "Mrs. Reed *didn't* read the letter" but that "one of the girls read part of one of the pamphlets that the girls had handed her out in front of the building" (meaning pamphlets distributed by the ILGWU).

The Board's attempt to charge Mrs. Reed with introducing this letter into the March 18th meeting is wholly unwarranted. The undisputed evidence is that the ILGWU, just prior to the March 18th meeting, had dis-

tributed to the Donnelly employees in front of the building a pamphlet containing a copy of the March 9th letter (VIII, 2725). Therefore, it was not a matter of Mrs. Reed having the only copy of the letter and being the only one who could bring it to the meeting—the ILGWU wanted the Donnelly company employees to see this letter and the employees had many copies of it (VIII, 2725). A copy of the pamphlet was introduced in evidence (VIII, 2726) and appears at XI, 4181-83. The Board's contention that Mrs. Reed brought the letter to the meeting, or had it read at the meeting, is not only not supported by the evidence but is wholly misleading.

At none of these places is there any statement that Mrs. Reed *brought* the letter to the meeting or that she *had* it read.

The Board does not cite reference to Mrs. Reed's testimony on this subject (VII, 2089) where she says positively that she did not read the letter and that it was not read in her presence and that she heard or knew nothing about it.

We submit that this finding is a typical example of the farfetched findings on which the Board's order is based.

At page 45 the Board says, "The meeting was attended by most of the Company's supervisory force." This is either a complete misstatement or is based on the "assumption" that Rose Todd, Hobart Atherton, the instructors, thread girls, etc., are supervisory employees, Respondent contending that they are *not*. None of the management was at the meeting, except that Mrs. Hyde testified that she only learned of the meeting by chance and arrived only for the last part of it (II, 535). Her presence "on this record was innocuous," as said in *NLRB* v. *Clinton Woolen Mfg. Co.*, 141 F. 2d l. c. 757.

At I, 309-310, May Fike testifies that Mrs. Reeves was there and she *thinks* Mr. Baty was. Mrs. Reeves was

in New York at the time (II, 404) (which shows, incidentally, the looseness with which May Fike testified—even the Trial Examiner finding her testimony not credible as to another matter X, 3891). Mr. Baty testified he was not at the meeting (II, 442a).

The rest of the Board's argument in regard to the March 18th meeting has been fully answered above and we do not here repeat except to call attention again that the Board bases its findings on the testimony of three or four witnesses, against 1,200, which to our minds is not "substantial" evidence "from which the fact in issue can be *reasonably* inferred" (*Washington, Va. & Md. Coach Co.* v. *NLRB*, 301 U. S. 142) or such evidence "as a *reasonable* mind might accept as adequate to support a conclusion" (*Consolidated Edison Co.* v. *NLRB*, 305 U. S. 197, 229).

B-2.

The Board's Findings and Conclusions As to "Supervisory" Employees Are Not Supported by the Evidence.

The Board finds that the following employees were supervisory employees (X, 3850-59):

Rose Todd	Mrs. Gray
Hobart Atherton	Mrs. Strickland
Mrs. Tyhurst	Ortense Root
Marvin Price	Heath Cowan
Ted Scoles	The Instructors
Mrs. Bogart	The Thread Girls

Primarily, it finds Rose Todd, Hobart Atherton, the instructors and thread girls to be supervisory employees (X, 3850-3859). Upon its findings that these were "supervisory" employees, the Board bases many of its findings against respondent. We submit that the Board's

findings and conclusions with respect to these employees are contrary to the evidence and to the law.

Before discussing the status of the individual employees whom the Board finds were "supervisory" employees and were "representing the management," we desire to discuss briefly the general subject of supervisory employees and the rules applicable thereto in cases of this kind.

(1) Re Supervisory Employees Generally.

There is not a scintilla of evidence that any one of the above mentioned employees possessed any authority to hire, discipline or discharge other employees or occupied any position with authority to give orders to other employees. Nor is there any evidence that any of the said employees were held out by petitioner as possessing authority to speak for the management with respect to labor union activities. Nor is there any substantial evidence that the employees thought, or had reason to believe, that any of the aforesaid employees were acting for the management in what they said or did with respect to the formation of the DGWU or other labor union matters, but the evidence is overwhelming to the contrary.

CASE AT BAR IS NOT WITHIN THE HOLDINGS OF THE INTERNATIONAL MACHINISTS AND SIMILAR CASES.

We wish to meet head-on the contention that these employees and their activities bring them within the holdings in the cases of *International Association et al.* v. *NLRB*, 311 U. S. 72; *H. J. Heinz Co.* v. *NLRB*, 311 U. S. 514; *NLRB* v. *Link-Belt Co.*, 311 U. S. 584, which cases appear to be the ones primarily relied upon by the Board.

In the *International Machinists* case, the fact situation is vastly different from that in the case at bar. We

quote rather fully from the Court's opinion in that case, which clearly shows that the court was dealing with a situation wholly different from the fact situation here. The court said (l. c. 76-77):

> "The *general manager* told Shock that he would close the plant rather than deal with UAW. The *superintendent* and Shock reported to toolroom employees that the employer would not recognize the CIO. The superintendent let it be known that the employer would deal with an A. F. of L. union. At the same time the superintendent also stated to one of the employees that some of the 'foremen don't like the CIO' and added, with prophetic vision, that there was going to be quite a layoff around here and these fellows that don't like the CIO are going to lay those fellows off first.' * * *
>
> "Byroad spent considerable time during working hours soliciting employees, threatening loss of employment to those who did not sign up with petitioner and representing that he was acting in line with the desires of the toolroom foreman, McCoy. This active solicitation for petitioner was on company time and was made openly in the shop. Much of it was made in the presence of the toolroom *foreman, McCoy, who clearly knew what was being done.* * * *
>
> "Five UAW officials had been discharged in June, 1937, because of their union activities."

A brief review of these facts will show the great differences existing between the *International Machinists* case and the Donnelly case:

(a) In the International case there was direct coercive acts by high company officials (the general manager, superintendent, foreman) in favor of one union and against another. This evidence amply justified the Court's holding that the employer assisted petitioner in the International case in enrolling a majority of the employees.

But there is no such evidence in the case at bar. Here there is no evidence or finding by the Board of any such participation by Mr. Baty, production manager, or by Mrs. Reeves, merchandise manager, or by Mr. Keyes, sales manager, or by Mrs. Reed, president, who were the principal officials in touch with the employees in the Donnelly plant. (May Fike and Elsa Lou Greenhaw did testify that Mrs. Reed in a talk to the employees on March 18th, stated that she would close her factory before she would permit it to be unionized, but this testimony was contradicted by the stenographic copy of Mrs. Reed's talk and by all of respondent's witnesses, and was evidently so unworthy of belief that the Board states that it "does not consider it necessary to resolve the conflict in this testimony" (X, 3868), and makes no finding that Mrs. Reed made any such statement.) We respectfully submit that there is no showing in the Donnelly case of direct coercion such as is shown in the International case.

(b) In the International case "five UAW officials had been discharged in June, 1937, because of their union activities" (p. 77).

In the Donnelly case the Board found no discharges for union activities, although there were over 1,200 employees. The most that the Board and ILGWU could do in this regard was to charge that the company had discriminated against May Fike and Sylvia Hull and refused to reinstate them because of their affiliations with the ILGWU. However, the testimony of May Fike was so unworthy of belief that the Trial Examiner in his Intermediate Report states, "the undersigned does not credit this testimony of Fike" (X, 3891), and found that she was not discharged because of her affiliations with the ILGWU or denied reinstatement for that reason. The Trial Examiner did find that Sylvia Hull "was temporarily laid

off by the respondent because of her membership in and activities on behalf of the ILGWU" (X, 3890) (which finding we show in Point B-11 was unjustified) but found that she was not entitled to reinstatement or any reimbursement for loss of pay. Out of the large turnover which occurs among 1,200 employees, the Board, assisted by the ILGWU's far-reaching acquaintance among employees in the garment industry, was able to find no discriminatory discharges of employees by respondent over a period of seven years, from 1935, to the date of the second trial in 1942 (The complaint originally charged discrimination against some 18 employees back in 1934-5, but these charges were dismissed or abandoned, A. 423, 506).

Obviously this situation is not comparable to the situation in the International Machinists case.

(c) In the International Machinists case, "on August 10, 1937, the UAW *having a clear majority* of all the employees, presented to the employer a proposed written contract for collective bargaining. *This was refused*" (l. c. 77). On August 11, 1937, *the next day*, the company signed a closed shop contract with petitioner.

How different from the Donnelly situation! Here the DGWU having not merely a "clear majority" but an "Ivory Soap" 99 44/100% majority of the employees, sought a collective bargaining contract with petitioner on April 28th—and partial contract was not made until May 27th, and supplemental contract as to wages was not made until June 22nd (III. 807, 812).

(d) In the Donnelly case there was no "acquiescence in the drive for membership and close surveillance of the competitor" (as in the *Machinists case*, l. c. 78), as the DGWU was formed at one meeting and there was no drive by any competitive union.

In the Donnelly case the DGWU members were not closely identified with a company-dominated union, until "their quick shift" to petitioner, as in the *International case* (l. c. 79), as there was no predecessor union in the Donnelly plant. The Board, faced with the necessity of overcoming that fact, seeks to substitute as a "predecessor union" a social organization among the employees known as the Loyalty League, but all the employees testified that the Loyalty League was purely a social organization and performed none of the functions of a labor union, and that it had no connection whatever with the DGWU, but was wholly distinct and separate therefrom. This is discussed more fully under Point B-3 of this brief.

In the Donnelly case there was no "ready acceptance of the DGWU contract and *contemporaneous rejection* of contract tendered by competitive union" as in the *International case* (l. c. 79), as we have just pointed out under (c) above.

The Board here charges "hostility" by respondent toward the ILGWU, but such hostility, if any, as respondent had toward the ILGWU, *was not manifested in any interference with or opposition to the employees' choice of a labor union*, but was confined to court litigation in which respondent sought to save its business from unlawful attacks by the ILGWU. Surely, a company has a right to defend the very existence of its business in the courts against a labor union, which is conducting an unlawful attack against such company, without such action by the company being held, *ipso facto*, to constitute coercion of its employees under the NLR Act. Yet that is what the Board's findings as to hostility amount to. There is no substantial testimony that the company discriminated against its employees because of their affiliations with the ILGWU. The amended complaint charged such discrimination against 18 named employees (alleged to have occurred

away back in 1934-35, A, 423), but the charges as to all of these persons were either dismissed by the Board or Trial Examiner (A, 506). The sole finding of discrimination is as to Sylvia Hull (and even as to her, the Board finds that after leaving petitioner's employ, she never sought to come back, that respondent in good faith sought to call her back and that she was not entitled to any "loss of pay" or reinstatement, X, 3889-90). Surely, this state of the record falls far short of showing discrimination or any hostility affecting the rights of employees to join the ILGWU or any union they might want to join. In contradistinction, in the *International* case, the hostility of the employer was directly used *in the union drive for membership*—the company, in the words of the Court, "evincing great hostility to the UAW *in a contest to enlist* its production force" (l. c. 75).

In our limited space we shall not attempt to point out further differences between the International Machinist case and the Donnelly case—obviously, the two pictures are entirely different and the holding in the International case is *not authority* for a similar holding here.

In *H. J. Heinz Co. v. NLRB, supra,* the facts and circumstances were also quite different from those in the Donnelly case, as disclosed by the following quotation from the court's opinion (l. c. 517, 518, 519):

> "The Board found that during April and May, 1937, the *two rival* labor organizations, the Association and the Union, sought to organize petitioner's employees at its Pittsburgh plant. * * *
>
> "*Petitioner does not deny* that there is evidence supporting the findings that *petitioner's superintendent,* during the organization campaign, upbraided employees for attending Union meetings, threatened one with discharge if he joined the Union, spoke to them disparagingly of the Union and directed some of peti-

tioner's foremen to enroll the employees in the Association; or that there was evidence supporting the finding that a *general foreman* working throughout petitioner's Pittsburgh plant was active in disparaging the Union and its members to employees, and in urging them to repudiate the Union organization, or that *three other foremen* in charge of particular buildings or departments were *active in dissuading employees from joining the Union.* All three spoke disparagingly of the Union, one at a meeting of employees which he had called; and two were active in questioning employees concerning their labor union sympathies. Two of them threatened employees with discharge or loss of work or privileges if the Union were recognized.

"There was also evidence that *other foremen or forewomen* in charge of large groups of employees engaged in similar activities; * * *

"Petitioner does not seriously dispute this evidence or challenge the findings of the Board summarizing it."

We will not attempt to point out in detail the great differences between the Heinz case and the Donnelly case, as we did in the *International Machinists case, supra*, but such differences are very apparent. For example, in the Heinz case there were two rival labor organizations conducting an active drive for members among the employees; this was not the case in the Donnelly plant. Also, from the quotation it appears beyond question (and was not even questioned by the Heinz Co.) that high officials of the company (the superintendent, general foreman, and other foremen and forewomen) actively participated *in the organization* of the Association, which is far different from the situation in the Donnelly case.

In *NLRB* v. *Link-Belt Co., supra,* the fact situation was also far different from that in the Donnelly case. In describing the conditions, the Court said (l. c. 586-598):

"From 1933 down to that date the employer, Link-Belt Co., had *maintained a company union*, apparently continuing to recognize it even after passage of the Act in 1935 and even though under the Act it was concededly an improper bargaining unit. In any event, that union remained in existence *until Independent's membership drive was successfully concluded.* * * *

"In September, 1936, Salmons, an employee of 14 years' standing, who was an employee representative in the company union and who became dissatisfied with it, initiated the formation of Amalgamated, an 'outside' organization. Amalgamated held its first organizing meeting on September 20, 1936. Salmons was discharged the next day by plant manager Berry for 'spreading union propaganda around here.' * * *

"On September 21, 1936, another employee, Novak, who had been employed by the company for over 11 years, was also discharged without warning by Berry, who believed, mistakenly it would seem, that Novak was a member of and solicitor for Amalgamated. Berry gave him half an hour to get out, after charging him with being 'an organizer and instigator for a union'—a charge which Novak denied. * * *

"Beyond that is the active support of Independent by some of the supervisory staff. There is abundant testimony that Siskauskis, *a foreman, actively solicited* for Independent. * * *

"There was considerable testimony, not denied, that Belov, *a night boss*, also solicited for Independent. According to one employee, Kalamarie, Belov did so *on written instructions left by foreman* McKinney which Kalamarie read. Kalamarie testified as follows respecting this conversation with Belov about those instructions: * * *

"Thomas, an employee, testified that his boss, Big Louie, 'a kind of *assistant foreman*' solicited for Independent getting about ten signatures; that Big Louie told him that 'they were trying to get the CIO out of there.'" * * *

From the foregoing quotation, the differences between the Link-Belt Co. case and the Donnelly case are apparent and we will not take time to point them out in detail. In the first place, there was a "company union" in the Link-Belt case, *maintained by the company down to the time of the organization of the plant union,* whereas, there was no previous union at the Donnelly plant. Also, in the Link-Belt case, employees (Salmons and Novak) were clearly discharged for activities on behalf of the outside union; *foremen* of the company, themselves, actively solicited and signed up members for the independent union; also, Olson, an *assistant superintendent,* told an employee that the employees would be better off if they formed their own union and "kept the outside union out."

This shows a decidedly different situation from that existing in the case at bar.

The court in the *Link-Belt case* held as follows (l. c. 588):

> "It would indeed be a rare case where the finders of fact would probe the precise factors of motivation which underlay each employee's choice. Normally, the conclusion that their choice was restrained by the employer's interference *must of necessity be based* on the existence of conditions or circumstances *which the employer created or for which he was fairly responsible* and *as a result of which it may reasonably be inferred* that the employees did not have that complete and unfettered freedom of choice which the Act contemplates."

We respectfully urge that the conditions and circumstances in the Donnelly case upon which the Board relies, were not conditions which the "employer created or for which he was fairly responsible," nor were they conditions "as a result of which it may be reasonably inferred" that the employees did not have the full freedom of choice

which the act contemplates. In the Donnelly case, as distinguished from the Link-Belt case, there was an opportunity to "probe the precise factors of motivation which underlay the employees' choice." The respondent and intervener DGWU desired and offered to put on the witness stand virtually 100% of the employees concerned and obtain their own sworn testimony as to what factors motivated them in forming the DGWU (Ex. 1-OOOO, III, 743 *et seq.*; 1-RRRR, III, 764; 1-VVVVV, X, 3792-3; X, 3829-34; IX, 3290). All the employees whom the Trial Examiner permitted respondent or intervener DGWU to call as witnesses testified that the employees in forming the DGWU were motivated by their own desires and not by any coercion or interference on the part of respondent; and while the testimony of comparatively few employees was permitted to be given, yet we believe the fair and correct rule is that when a court or Trial Examiner stops the putting on of further witnesses on the ground that their testimony is cumulative, then the court or Trial Examiner, in determining the case, should assume that the testimony of all additional witnesses whose testimony is offered, will be substantially to the same effect as that given by the witnesses who were permitted to testify, concerning the subjects as to which they testified, as Judge Riddick held (XIII, 53). This is especially true here as there were offered in evidence the sworn statements (affidavits) of all the members of the DGWU (some 1,195), to the effect that the DGWU was their free choice (Intervener's Exhibit 20A to 20KK, VI, 1675), and the court does not have to rely on the offers of proof alone in concluding that the employees really felt that way about the matter. This means that, in the case at bar, the court *does have* "the precise factors of motivation which underlay each employee's choice." And those factors were that the employees wanted their own union and not an outside union

(ILGWU), whose methods they knew were violent, whose dues were high, and whose headquarters were far away (II, 657-8; VIII, 2566, 3006).

The testimony of the employees themselves, shows most positively that the employees whom the Board finds to be "supervisory" employees, and to be "representatives of the management," *were not considered as such by the employees* (see record citations, pp. 158, 170-171, 176, *infra*); and that is the best proof that there was no coercion by the alleged supervisory employees, and is proof that under the test laid down in the International Machinist case, the findings of the Board as to domination of the employees through supervisory employees, are not supported by the evidence.

(2) The Instructors and Thread Girls Were Not "Supervisory" Employees.

The Trial Examiner finds the instructors and thread girls to be supervisory employees.

The evidence shows that in the set-up of the Donnelly factory, the work of the instructors and thread girls is as follows:

The factory operates in sections of up to 40 operators, different classes of work being done in different sections. Assigned to each section is an instructor and usually a thread girl. The prime duty of the instructor is to show the operators how to do the various sewing operations and to assist in keeping them supplied with sewing bundles (II, 391, 450-1; VII, 2120-1; 2123-4). Such other duties as she performs are incidental. She has nothing to do with the hiring, firing or disciplining of operators, or with their coming to work or any general control of them —she is not "over" them in any way. The factory has six lines of dresses each year—first spring, second spring,

first summer, mid-summer, first fall and second fall (II, 390h). In each line, there are numerous different styles of dresses requiring many new or different sewing operations. The merchandise office furnishes written instructions on how to make the garments, but obviously operators would often have difficulty in following these instructions. The instructors show the operators how to perform these operations so that the dresses are made according to the plans (II, 391-2). This work requires constant aid and assistance to the operators on the numerous new styles in each of the six lines yearly. It is by that work that the status of an instructor is to be judged and we submit that neither her work nor position is such as puts her into the class of supervisory employees who represent the management in the sense used in labor cases but, on the contrary, shows that the instructors are employees entitled to the benefits of the National Labor Relations Act.

Analogously, there are inspectors in the Donnelly Plant who inspect the completed garments, and if they are not properly made send them back to the operators for correction (II, 392); but that does not mean that the inspector is "over" the operator, or "over" the instructor in the section where the garment was made; it merely means that the inspector has a certain type of work to do *which has a relationship* to the work of other persons in the plant. The management (*not* the instructors) has divided the work of making a dress up among different classes of workmen—designers, cutters, instructors, operators, inspectors, thread girls, etc. (II, 391). Each has a particular task to perform which has a relationship to the work of the others, but neither is a supervisory employee over the other, although one type of work may call for a higher degree of qualification and consequently for higher pay than the others.

The Trial Examiner holds Mr. Baty's testimony "incredible," that Mrs. Reed, in 1935, had taken away all supervisory authority from the instructors and given him complete supervision of the factory employees (X, 3851), although Mrs. Reed and Mrs. Reeves testified to the same effect, and this was corroborated by the testimony and offered testimony of the "1200 employees."

WORK OF OPERATORS IS PLANNED IN THE OFFICE.

The exercise by Mr. Baty of entire authority over the factory is not such an extraordinary or incredible task as the Trial Examiner seems to think. To understand the relationship between Mr. Baty and operators, it is necessary to know how carefully and completely the work of the factory is planned in the office. This is described by Mrs. Reeves (II, 390G-392). Complete patterns and written instructions are prepared showing how to make each style of dress. These instructions are furnished to the operators who work on the various styles; the bundles of dresses to be sewed are brought to the sewing sections by bundle boys and supplied to the operators by the thread girls and instructors, and the completed work is carried away. Except for showing the operators how to perform operations on new styles and handing them bundles of dresses to work on, there is practically no need for contact between the instructors and operators, nor between Mr. Baty and operators. The operators are anxious to do as much work as they can as their pay is on a piece work basis and they are desirous of doing it properly so that it will not come back to them for repair. Such complaints as do arise, such as adjustment of piece work prices, are readily handled by Mr. Baty, as he devotes his entire time to the factory, and he has a full-time assistant, Mrs. Hyde.

The Board's witness, Mrs. Skeens, testified (IX, 3453-4):

"Q. Wasn't work planned in the office upstairs?

A. Well, I think it was planned there, yes, what each section would do.

Q. Do you want to tell the Examiner that you had the authority to give out the work to certain people and refused to give work to other people?

A. Well, I didn't do anything like that.

Q. Well, you never thought that you had any right to do anything like that?

A. *Well, no, I wouldn't think so.* * * *

Q. Well, prior—now, I am speaking of prior to July, 1939—did you transfer operators out of your section without consulting Mr. Baty?

A. Why, I never did transfer any out unless somebody came and told me to transfer them out.

Q. Yes, and wasn't it Mr. Baty that did that?

A. No, it wasn't Mr. Baty.

Q. Wouldn't it come from Mr. Baty, the instructions.

A. Well, I imagine it would come from him but that wouldn't be the way I would receive it."

There you have an instructor (the Board's own witness) testifying that the instructors do not even have authority to give work to some operators and refuse it to others, or to transfer operators—(much less any authority to hire, fire, promote, demote or discipline). Mrs. Skeens also testified she never told an operator to join or not to join the DGWU (IX, 3460).

We respectfully submit that the mere fact that the Trial Examiner doesn't think the Donnelly set-up was a good one, doesn't support a finding that it didn't exist. Mrs. Reed testified (VII, 2122 —"whether it was a wise

thing or the right thing, I did give him the whole authority * * *."

The instructor has no authority to hire, fire, or discipline operators, nor any general control over the operators (Mrs. Reeves, II, 411-12; Mr. Baty, II, 450-1, VII, 2120-2124). All of the employee witnesses whom respondent was permitted to call so testified; and as the Trial Examiner held further testimony would be cumulative, it should be assumed that the remainder of the 1,200 witnesses would have testified likewise. If the operator does not want to come to work, she is not responsible to the instructor or thread girl, nor is the instructor or thread girl responsible to her. That responsibility belongs to the office. If an operators fails to show up for work, it is no concern to the instructor. Her job is to instruct the operators whom the office provides. Mr. Baty testified: "* * * it was none of their concern how the girls performed" (See balance of quotation II, 450-1).

An instructor may tell an operator "how" to sew an operation—but that doesn't make the instructor a supervisor in the sense of being a "foreman" or "overseer." (A traffic clerk may tell other employees how to ship certain goods, but that doesn't make the traffic clerk an overseer over the shipping department or over the vice-president in charge of sales.) The Board makes the following findings as to the duties of instructors and thread girls (X, 3850-1):

> "Among the duties of the instructor and thread girl in each section is the distribution of materials and supplies with which the operators work. Instructors also distribute directions as to how the work is to be done and teach operators how to execute each step of the process. This much is undisputed. * * *

"Among the duties of the instructor is the assignment of bundles containing the materials and supplies upon which the operators work, and the transmission to the operators of the respondent's instructions for the performance of the sewing processes."

This statement of the instructors' duties, instead of showing that the instructors are supervisory employees, shows the contrary.

We have discussed the instructors' duties with regard to showing the operator "how" to perform their sewing operations. Naturally, the operators must have some work to sew. This is brought to the sections, in bundles, by the bundle boys. Most of the operators perform one or two particular operations (thereby becoming more skilled and able to make more money on the piece work basis). When the bundles come in, they are handed to the various operators who are doing the particular types of operations in those bundles (II, 392). The instructor sometimes performs this manual task of handing (the Board calls it "assigning") the bundles to the operators concerned. Or it may be done by the thread girl (I, 299, 300). Or the operator herself may get up and get a bundle if she runs out of work—but the system installed by respondent contemplates making things as easy as possible for the operator, thus enabling her to earn more money, and it is for that reason that the bundle boys bring the bundles to the sections and the instructors and thread girls supply them to the operators as needed. None of this work is supervisory in the sense that the instructor or thread girl is "over" the operator. These duties of the thread girls most obviously do not put them any where near the class of supervisory employees.

In the first Intermediate Report, and in the first decision of the Board, the Trial Examiner and Board *did not*

find the thread girls to be supervisory employees. The finding now that they are is an example of the lengths to which the Trial Examiner and Board are willing to go to make a finding against respondent.

The Board's witness, May Fike, testified regarding thread girls (I, 299):

> "A. They carry your work to you and take it away and bring your thread and your binding, keep you supplied, and answer the telephone when the instructor is busy."

That certainly is not a description of "supervisory" work.

Asked if an instructor does any work, May Fike testified (p. 300): "Only when she is instructing some girl," and when not instructing, "she usually examines work part of the time." That certainly is not "supervisory."

Endeavoring to show that instructors had authority over thread girls, the Board asked Mrs. Fike (p. 300) if instructors told thread girls to bring work to the operators; but May Fike answered:

> "A. She would tell her to bring us a certain number of work, if we should be changing work. If we wasn't changing work, she would just tell her to bring us work, if we didn't tell her. *We sometimes told the thread girl ourselves.*"

According to the Board's method of drawing inferences, that would mean that the operators were supervisors over the thread girls because they sometimes "told" the thread girls to bring them work! But we respectfully insist that the complete answer to this matter is that the respondent, through Mr. Baty in 1935, had set up a certain system, dividing the work among operators, instructors,

thread girls, inspectors, bundle boys, etc., and the mere fact that an operator told a thread girl to bring her work, or an instructor told an operator "this seam should be sewn this way," or a thread girl told an instructor to answer the phone, or an operator told Mr. Baty or the mechanical department that her machine must be fixed, or an inspector sent a garment back to an operator "to be repaired," or Mrs. Tyhurst told the cutters or pattern makers to "put another notch" in the pattern, doesn't mean that the operators are over the thread girls, or the thread girls over the instructors, or the instructors over the operators or thread girls, or the inspectors over the operators, or Mrs. Tyhurst over the cutting or pattern department, or the operators over Mr. Baty or the mechanical department. It merely means that *each employee is carrying out his own part of the work in accordance with the plan laid out by Mr. Baty.* None of them could "enforce" their "orders" or requests except through Mr. Baty, and the testimony of the employees, generally, shows that they did not regard the instructors, thread girls, inspectors, Mrs. Tyhurst, *et al.*, as "over" them, but as working *with* them, all under Mr. Baty.

"Conclusionary" Findings of Board.

The Trial Examiner makes a number of "conclusionary" findings regarding minor and incidental duties of instructors.

For example, the Board finds that the instructors "keep the operators busy" (X, 3852), evidently intending thereby to imply that the instructors had authority to *make* the girls keep busy. Mrs. Reeves testified that instructors "keep the operators in plenty of work" (II, 411). This testimony referred to keeping the operators *supplied with material*; it did not refer to *discipline* of

the operators by the instructors or mean that the instructors have authority to or did *compel* operators to "*get* busy" or "*keep* busy." Obviously this finding is a warping of the testimony, and the testimony does not support the "hidden meaning" which the Board places thereon (*NLRB* v. *International Shoe Co., supra*).

The Board quotes an isolated sentence from an affidavit (the affidavit not being in evidence) by Mrs. Reeves that "competent instructors teach the operators the particular operations to be performed by them, *and constantly supervise the same,*" from which the Board apparently deduces that the instructors are supervisors over the operators. This is a warped construction of the language used in the affidavit. The words "constantly supervise the same" refer to the *work* of the operators, not to *disciplining* the operators. After an instructor has told an operator how to do an operation she doesn't sit idly by and trust to luck that the operator has fully absorbed the instruction and will be able to do the work correctly. Naturally the instructor goes back to the operator's machine to see if she has correctly learned the operation and it is *in this sense* that she "constantly supervises" the *work* of the operators. This is as much for the benefit of the operators as of the respondent because then the operator has less repair work. We submit that the Board's interpretation of Mrs. Reeves's statement and the conclusion drawn therefrom constitute a distortion and warping of the meaning of Mrs. Reeves's statement, and the language above-quoted of the Court in the *International Shoe case, supra*, l. c. 38, as to "hidden meanings" is here again applicable.

The finding that instructors "report to the office weekly" to go over the cards, does not connote any supervisory authority in the instructors—a payroll clerk makes

up the payroll and presents it to his superiors but that does not make him supervisor over all the persons listed on the payroll. The fact that the instructors report to the office may indicate that Mr. Baty is *their* supervisor but it carries no implication that the instructors are supervisors—janitors and all types of non-supervisory employees have to report to their superiors concerning their work.

The Trial Examiner finds that the instructors determine who shall take a day off when work is slack. This finding, presumably, is based on May Fike's testimony (I, 302). Her testimony contains a mass of contradictions and is wholly unreliable, so much so that even the Trial Examiner and Board refused to believe her story regarding the termination of her employment and refused her reinstatement, the Trial Examiner saying: "The undersigned does not credit this testimony of Fike" (X, 3891).

The laying off of operators, whether for a day or a season, is done by the office, and any part the instructor or thread girl may have in designating the rotation of any such day lay-offs among the operators is merely routine and clerical (II, 411-12, 450-51). May Fike's testimony doesn't warrant the Board's findings—but even if the Board's finding is taken literally, it is clearly not such a supervisory duty as to make the instructors "representatives of the management" (*NLRB* v. *Sands Mfg. Co.*, 306 U. S. 332, 341-342).

We submit that these and the various other "conclusionary" and "inferential" findings of the Trial Examiner regarding the instructors and thread girls, do not support the ultimate finding that they are supervisory employees. A detailed discussion of all these subsidiary conclusions of the Trial Examiner would unduly extend this brief—he cites no evidence to support many of them.

and many of them carry no implication of supervisory authority—as for example, the finding that instructors are "carried on a time worker's pay roll, while the operators are paid on a piece rate basis." (X, 3852). The bundle boys and janitors are also on the time worker's pay roll—are they therefore also supervisors? The finding that the instructors "are responsible to Baty for the quality and quantity of work in their respective sections" is not supported by the evidence. The instructors have nothing to do with the "supply" of work reaching the sections—if no work comes, the section does no work; if work does come, the operators are glad to do as much as they can for their pay is on a piece work basis (II, 450-1).

But perhaps the most amazing conclusionary finding of the Trial Examiner is that the operators didn't know of the change in the authority of the instructors made in 1935 by Mrs. Reed and Mr. Baty (X, 3851, note 17).

The Trial Examiner, faced with incontrovertible evidence that in 1935 (*four years before* the complaint herein was filed), Mrs. Reed made a change in her factory set-up, by which Mr. Baty was put in complete charge thereof, and all supervisory authority taken away from the instructors, seeks to avoid the effect of this evidence by finding that the operators didn't know of this change! The fact of, and the reasons for, this change were clearly shown, but the Trial Examiner ignores this evidence because it interferes with his theory for finding that respondent dominated the DGWU through the instructors.

Concerning this change, Mrs. Reed testified (VII, 2121-2-3-4):

> "Mr. Ingraham: Mrs. Reed, when Mr. Baty became production manager, were any changes made in the authority given instructors?
>
> . . . . . .

A. Yes.

Q. (By Mr. Ingraham) What was the reason?

A. I had sat through all of the testimony in the NRA, and it was charged time and again that the instructors had favorites and discriminated, and it occurred to me that if I would put the authority in one person who would not be in such close contact with the operators, it would be better. This was the first time in the history of my business that I had anyone in charge of the plant that didn't have numerous other jobs to do—other responsibilities. Originally, I had been in charge of my plant myself. I had done all of my own buying, designing, and some selling, and a great many other things, and naturally, only had limited time to spend in the plant, then, when Mrs. Reeves assisted me and eventually took over the production management, she was in the same position. She had to manage the plant, but she also had this merchandising to do. So when I thought she had too much to do I gave her the merchandising and gave Mr. Baty the plant to run, with nothing else to do, and I expected him to spend his time in the plant. He had already been in there as Mrs. Reeves's assistant for some time. We had a very good system of cards—of keeping records of the operators, their work, and I felt very sure that he could take that over, and we would relieve the instructors of responsibility they had had of settling differences and acting on their own in anything that came up with the operators that they had had in the past. One reason was, Mrs. Reeves didn't have time to settle them herself. And they had, naturally, taken on a certain amount of authority, both with my running the plant and Mrs. Reeves running the plant.

When I talked with Mr. Baty about running it, we discussed these charges that had been made in the NRA about the instructors not being fair to this one and that one, and I felt he could take it over. And as far as the work was concerned, the instructor

would still sit down and show a girl how to do her operation, if she needed to. She would still know what kind of work she would give to the different operators. As far as putting the work through, it seemed that that would be a very possible thing to do.

So, when I put Mr. Baty in there, whether it was a wise thing or the right thing, I did give him the whole authority and expected him to take care of any differences that came up about the instructors, and to relieve the instructors of the authority that had caused the discussion in the NRA case. • • •

Q. What did an instructor do after Mr. Baty took over the plant?

A. Well, as far as turning her work out, she still did her instructing. She showed a girl how to do the work. She gave the work out to the operator, but when there was any difference of opinion—any operator that wasn't willing to do just what she was told by the instructor, she would wait until Mr. Baty came to settle it, or else she would let the girl pick out what kind of work she did want to do.

Q. Did the instructors under Mr. Baty have anything to do with the hiring, the disciplining, or the discharging of operators?

A. No, nothing whatever.

Q. Did the instructors have any authority to represent or speak for the management in any way?

A. No."

Mr. Baty definitely testified that after he took charge of the Production Department in June, 1935, he had not followed the former practice of discussing matters with instructors, but had taken away all supervisory powers from them. Mr. Baty testified as follows (II, 450-51):

"A. I changed the work of the instructors, I would say, to a very great extent. Prior to the time I took them, they were considered more or less supervisors

and entered into the discussions and recommendations as to the ability of different operators and made different recommendations as to which operators would be recalled after they were laid off, and after I took over the plant, I put instructors strictly on a basis of an instructor, and they were there to assist the operator in the performance of their work, and nothing else. They had no supervision over the girls, and it was none of their concern as to how the girls performed. They were to give them the work, take it away from them when it was finished, show them how to do it, if they didn't know how, and that was the extent that they were held liable for the girls in the section."

Mrs. Reeves testified that she knew of her own knowledge that Mr. Baty made this change in the authority of the instructors and that since that time the system has been that no instructor shall have any authority even to discipline (II, 425).

Lois Barnes (VIII, 2846) and Edith Dean (pp. 2862, 2864) testified that the change in the authority of instructors "was noticeable immediately" after Mr. Baty took over.

The Trial Examiner, in order to sustain his position that there was no change made in the authority of the instructors in June, 1935, makes the extraordinary finding that even if the change was made, the operators during the period from 1935 to 1937, never heard of it! (X, 3851, footnote 17.)

This illustrates the far-fetched nature of the Board's inferences in this case. Is it conceivable that 700 operators could work for over two years (from 1935 to 1937), along with the instructors and not know of the change in their relationship, introduced by Mrs. Reed and Mr. Baty in 1935? On the contrary, it is safe to say that every operator

knew within a few days and probably within one day, of the changes inaugurated by Mr. Baty when he took charge of the factory. There was no obligation on the part of respondent to send out a formal notice to the operators concerning the change.

Instructors and Thread Girls Not Regarded by Employes As Supervisors.

Finally, the Trial Examiner finds that the instructors "regard themselves as supervisors and are so regarded by the operators" (X, 3852). This is contrary to the overwhelming evidence. The eleven employee witnesses which respondent was permitted to place on the stand at the second hearing, testified that they did not regard the instructors as supervisors.

Oma Lee Cooper testified as follows (VIII, 2584, 2586, 2587):

"Q. Did the instructors, any instructor under whom you worked ever exercise any authority of hiring or firing or disciplining girls? * * *

A. No, I never saw them exercise any authority over any girl at any time. * * *

Q. Mrs. Cooper, from the time that you became employed with the Donnelly Company until August of 1939, did you at any time consider an instructor your boss?

A. No, I understood when I went there—I was told that the instructor was not the boss, that their job was to instruct, and that is all I ever saw any of them do.

Q. By 'instruct' what do you mean?

A. They sit down at the machine and show the girl how to work, and if the girl does not understand it, why, she explains to them just how the work is done, and sees that it is done right, and also she brings them work and their samples, and things like that."

To the same general effect:

Alice Freed (IX, 3206-7, 3195); Louise Garrett (IX, 3122, 3136); Lydia Phillips (IX, 3078, 3092, 3093, 3094, 3097); Ruby Clayton (IX, 3046, 3059, 3060); Ethel Riegel (IX, 3019, 3020); Jessie Mudd (VIII, 3000); Edith Dean (VIII, 2861, 2864); Lois Barnes (VIII, 2779); Mary Warth (VIII, 2731).

The Trial Examiner stopped respondent and intervener from showing this by the remainder of the "1200 employees," on the ground that further evidence thereof would be cumulative—but notwithstanding such ruling, the Trial Examiner now makes a finding directly contrary to such overwhelming evidence. We respectfully submit that such finding is not and can not be based on the *evidence* but must be, and is, grounded in the bias and prejudgment of the issues by the Trial Examiner, and likewise by the Board, which merely adopts the Trial Examiner's findings "lock, stock and barrel."

The Board's witness, May Stevens, had this to say of an instructor's work (X, 3688): "The work I did maybe would have been classed as inspector work or instructor's work. * * * Well, that would be maybe showing a girl about a certain class of work or something. I believe that would be an instructor's duty. I have done that at times." (And she was a member of the ILGWU.)

We respectfully submit that the Board's finding that the respondent continued to hold the instructors and thread girls, out to the operators as supervisory employees, after their supervisory powers were taken away from them by Mr. Baty, shortly after June 25th, 1935, and the Board's inference that the operators did not know of this change in 1937, nearly two years later, are a little short of fantastic.

And, so far as the thread girls are concerned, there is no evidence that they ever have exercised any supervisory authority. In the former decision the Trial Examiner and Board did not find the thread girls to be supervisory employes. Now, in the present finding, the Trial Examiner just throws them in with the instructors for good measure. This finding is contrary to the direct testimony of the eleven witnesses whom respondent was permitted to call in the second hearing.

The Trial Examiner refused to permit Respondent to show that instructors in other garment plants were not regarded as supervisory employees and were eligible for membership in the ILGWU. Respondent's offers of proof on this subject (Ex. 1-SSSSS, Ex. 1-TTTTT and Ex. 1-UUUUU, X. 3787-3792) were denied by the Trial Examiner (X, 3782). Then, after refusing to receive this evidence, the Trial Examiner and Board proceeded to convict respondent on the ground that the instructors and thread girls were not proper members of the DGWU! (See Ranco, Inc., and other cases decided by the Board itself, quoted *supra*, pp. 81-83.)

The instructors punch the time clock in the factory (II, 413). Many operators earn more money than the instructors.

We respectfully submit that the evidence does not support the Board's finding that the instructors and thread girls are "supervisory" employees, or any of the findings based thereon.

(3) Rose Todd Was Not a Supervisory Employee.

(a) ROSE TODD'S DUTIES WERE NOT "SUPERVISORY."

The Board finds that Rose Todd's position was one "involving duties of a supervisory nature" (X, 3856).

Rose Todd's work for the respondent was fully described in the evidence and shows conclusively that she was

not a "supervisory" employee. The Board's own description of her duties shows on its face that her work was not of a supervisory character (X, 3854).

Her salary at the time the DGWU was organized in April, 1937, was $130 a month (I, 31)—obviously not the salary of a supervisory employee, considering the length of time (some eleven years) that she had been with the company.

Miss Todd described her own duties as follows: She formerly worked for respondent, left its employ in 1931, and returned in 1933. At that time she was told she would have to take whatever work there was to give her (I, 30); she just filled in one place and another (I, 29); she was thread girl for a time and worked in the modeling department for a time and since about December, 1936 (I, 28), her principal work has been that of "supply girl" for the sewing sections; that is keeping the sections supplied with thread, notions, etc. (I, 27). She testified (I, 28):

> "Q. It is your job then to check up on the delivery of these various notions and supplies and material that should be at the various departments or sections?
> A. That is right. * * *
> Q. Do you have any assistant?
> A. No."

Mrs. Reeves describes Rose Todd's work as follows (II, 410-11):

> "Q. Will you state, if you know, what position Rose Todd holds with the Donnelly Garment Company, or what her duties are?
> A. Well, Rose Todd works in the factory, and she is a—I would say a sort of a go-between between the sections that are actually working on the garments, helping them check up. In an organization of that

kind there are lots of things that get misplaced, like lace, buttons, and things like that, and she assists in getting things to the section that they need to work with, and notifying anyone if the operators do not have what they need to work with, such as if we had a cut of work downstairs and we didn't have the proper kind of thread she would check up on it and notify me. And the same, whether it be lace, buttons, rickrack or whatever it is.

Q. Is Rose Todd in a supervisory position?

A. She is not."

Mr. Baty described her work as follows (II, 467):

"Q. (By Mr. Ingraham) Mr. Baty, does Rose Todd hold any supervisory position at the Donnelly Garment Company?

A. She does not.

Q. What work does she perform? * * *

A. She checks with the sections all over the plant, looking for merchandise that is delayed, dresses and bundles—checks to see what they need in the way of thread, lace, buttons or any other notions. * * *

Q. (By Mr. Ingraham) In 1937 what did she do?

A. She was working on the same work that she is now, checking delivery of notions and supplies to the sections" (II, 468).

Mrs. Reed testified as follows concerning Rose Todd:

"Q. Mrs. Reed, was Rose Todd an employee who had any authority to speak for the management.

A. She did not.

Q. Do you recall what work she was doing when she was last employed by the company?

A. Yes. She went into the different sections to see if they had sufficient thread and findings to complete their bundles, if there had been any errors made in sending down the proper amount of findings, so that the merchandise could go out promptly. That was her

real job. Anything she found they were wanting in the section, she would go back to the notions department or thread department and send it down." * * * (VII, 2116).

"Q. Now, Mrs. Reed, when Rose came back did she have any ability (authority) with respect to hiring or firing or disciplining any employees?

A. Absolutely none whatever.

Q. Was there anybody over whom she was boss in any way?

A. No.

Q. This work you say she did, findings work, did she have assistance in doing that?

A. She did it herself. She went all through the plant, because here and there the work would be held up because the right colored thread didn't come down, or there should have been 100 yards of pleating and maybe only 90 yards came, and the operators and the instructor would be busy, and they would throw it aside, and some times whole cuts of (fol. 3261) work would be held up for some small thing, and it wouldn't always be reported promptly, so her job was to go through and see if there was any work piling up that needed something to put it through, and then she would go back and get that or report it to the girl who sent out the findings. She had no one assisting her. She was in no place of responsibility, except to see that these trimmings and findings would be sent down to the section so that the work could go on through.

Q. Did you ever discuss with Rose Todd the formation of the Donnelly Garment Workers' Union?

A. I did not.

Q. Did you ever have any discussion with Miss Todd with reference to the Loyalty League?

A. I did not" (VII, 2117).

Also see pp. 2157, 2167.

It certainly can not be reasonably contended that the duties of Rose Todd constitute duties of a supervisory

character, and we submit that any inference to that effect is unwarranted by the evidence.

That the Board itself does not really feel that Rose Todd was a supervisory employee, is shown by its statement (X, 3857): "Irrespective of Todd's supervisory status * * *."

(b) Rose Todd As an "All-Around Man."

The Board refers to the testimony of Mr. Swinney, president of the First National Bank, that he had known Rose Todd for ten to twelve years as "a kind of all-around man for the company," and that she had come into the bank for several years as respondent's representative (X, 3856).

However, the context of Mr. Swinney's testimony shows that in referring to her as an "all-around man" he did not refer to her as being a "supervisory" employee, and no such "hidden meaning" should be read into it (*NLRB* v. *International Shoe Co.*, (C. C. A. 8) *infra*, 116 F. 2d 31, l. c. 38). Mr. Swinney testified (II, 718x) that his contact with Rose Todd was: "just coming and going, bringing some stuff up to my office, or something of that kind; just in a general way." This does not indicate in the slightest that by referring to her as an "all-around man" he meant she was a "supervisory" employee, nor support the Trial Examiner's finding that she was a representative of the management in the sense used in labor cases. Of course, an office boy who brings papers to a bank does so "as representative" of his employer—and it is apparent that is what Rose Todd did, and that is the type of work Mr. Swinney referred to.

(c) Rose Todd and the Fern Sigler Incident.

The Board contends that Rose Todd's participation in the Fern Sigler demonstration of April 23, shows that she

occupied a close and confidential relation to the management and "represented the management." The Board seizes on her use of the word "we" in Board's Exhibit 5 (III, 801-7) as showing this (X, 3857). But employees generally use the word "we" when speaking of the companies for which they work. The language must be construed in the light of the surrounding circumstances. Rose Todd used the word "we" when she was referring to herself and to the employees as a group. For example, when she said "It has always been the practice here that if *we* had any complaints to make, *we* made them" (III, 805), she obviously did not refer to the complaints of the management but to complaints of the *employees*, of which she was one. Likewise, when she said, "What do you think you have gained that *we haven't* by joining the union?" (III, 803), and "You expect the majority to rule if they believe like you; *we* expect it to rule when they believe like we do", (p. 803). In such quotations Rose Todd when she used the word "we" was not referring to the management but to the employees having the same views that she had. But the Board attempts to find "hidden meanings" and implications in Miss Todd's spontaneous and natural use of the word "we"—as said by this Court in *NLRB* v. *International Shoe Co.*, *supra*, 1. c. 38:

> "But in the most fantastic fashion the Board and counsel find *hidden meanings* in innocent words and phrases, almost as if the interview had been written in some abstruse code."

At I, 61, the Board's counsel asked Miss Todd: "Q. What do you mean by 'we'?" And she answered: "A. The employees." But the Board now disregards her answer and seeks to distort her later use of the word "we" into meaning that she referred to the management or herself and the management. This is another of the many

unfair and nonjudicial inferences made by the Trial Examiner and Board from "innocent words and phrases" condemned by the Court in *NLRB* v. *International Shoe Co., supra*, and requires us to unduly extend this brief to reply thereto.

We submit that the evidence shows that Rose Todd, in this whole Fern Sigler incident, was merely speaking for *herself*, or *as one of the employees*. She testified with reference to said incident as follows (I, 156-7):

"Q. (Interrupting) Just a moment. I asked you the simple question, in what capacity were you talking?

A. Just as an employee, just as one of them.

Q. Not for the Loyalty League?

A. No, sir.

Q. Nor for any group?

A. No, sir, *not other than as one of the employees.*

Q. Then you said: 'However, they felt so keenly about it we don't think we can do anything about it.' Did you mean just yourself then?

A. I meant the employees.

Q. Were you representing the employees?

A. No, I wasn't. I don't know. Maybe I didn't explain the use of the word 'we' very clearly. I wasn't speaking for anybody. I was just using 'we' without any particular thought about it.

* * * * * * *

Q. Were you just talking for yourself there, or were you talking for the management?

A. Speaking for myself."

Even if she had been a minor supervisory employee, as the Board claims she was, the expression of her individual views would not justify a finding against her employer. As was said by the Court in *NLRB* v. *Mathieson Alkali Works*, (C. C. A. 4) 114 F. 2d 796, 802:

> "But mere isolated expressions of minor supervisory employees, which appear to be nothing more than the utterance of individual views, not authorized by the employer and not of such a character or made under such circumstances as to justify the conclusion that they are an expression of his policy, will not ordinarily justify a finding against him."

The Board finds (X, 3857):

> "After the demonstration in Sigler's section and the conference in the office *it was Todd* who finally sent the employees back to work."

This is not justified by the evidence. In the first place the Board's statement just quoted is a warped presentation of the testimony. Rose Todd in testifying about the statement, said: "I didn't go down and send anybody back to work" (I, 80). The testimony was that the girls refused to go back to work unless Mrs. Sigler left, and that it was Mr. Baty's orders that caused them to return to work. Mr. Baty testified (II, 450):

> "A. I went down to the sixth floor, the machine where Fern Sigler was working, and got Fern Sigler to go to the office, and at the same time I turned and instructed the girls to all get back to their machines and get to work. * * * I heard shouts from amongst the crowd that they wasn't going to work until Fern Sigler left" (To same effect see II, 495-6).

This warped presentation of the testimony of Rose Todd further shows the Board's evident prejudgment of the case against respondent and its willingness to base adverse findings on isolated statements even though disproved by other evidence.

There is nothing to indicate that Mr. Baty and Mrs. Hyde "acquiesced in all that Miss Todd said" as the Board finds (X, 3857). They probably felt that Miss Todd

was entitled to express her opinion the same as Fern Sigler had the right to (and did) express hers.

The fact that Mr. Baty let the two employees, Rose Todd and Fern Sigler, argue their views back and forth does not mean that Rose Todd was "dominating the scene," as the Board finds, or show that she was a supervisory employee, as the Board infers. Mr. Baty was an executive, interested in keeping the plant at work and solving the problem with Mrs. Sigler as best he could; he may have thought the best way to do so was to let the two employees express themselves and thereby relieve their minds. He interposed when he thought proper and said that he could not send 700 girls home and keep one, and that it would be best for Mrs. Sigler to go home for a few days until things quieted down. This was justifiable (*NLRB* v. *Asheville Hosiery Co.*, (C. C. A. 4) 104 F. 2d 288, l. c. 292). It is highly significant that the Board or ILGWU did not produce Mrs. Sigler as a witness, or find that respondent discriminated against her.

There is nothing in the entire Exhibit (Board's Ex. 5, III, 801) indicating any opposition by the management to the ILGWU or to Mrs. Sigler's belonging to it. Mrs. Hyde said "It is perfectly all right. We have no objections." Mr. Baty and Mrs. Hyde both said repeatedly (Board's Ex. 5) that they would call Mrs. Sigler back to work when things quieted down (although they then knew of her affiliation with the ILGWU), and Mr. Baty testified (II, 499) that he instructed Mrs. Hyde to call Mrs. Sigler back to work and that she called but did not get in touch with her (and the Board finds that the respondent tried to call Sylvia Hull back to work even though it was then known that she was a member of the ILGWU).

We submit that the Fern Sigler incident wholly fails to show any basis for the Board's finding that Rose Todd

"represented the management," and that the Board's findings with reference thereto merely exemplify the Board's bias and prejudice against respondent.

(d) Re Rose Todd Having a Desk.

The Board in the trial of this case spent much time inquiring whether Rose Todd had a desk and where it was, and the Board finds (X, 3855) "Todd was assigned a desk in the factory—first on the ninth floor and later on the seventh floor—". We submit that any inference that Rose Todd was a supervisory employee because she had a desk at which to do her work or because the desk was on the ninth or seventh floors, is far fetched and wholly unwarranted by the evidence or the law. It is another case of attempting to give a "hidden meaning" (*NLRB* v. *International Shoe Co., supra*) to one of the most innocent and ordinary of circumstances—having a desk at which to do one's work.

(e). The Employees Did Not Regard Rose Todd As a Supervisory Employee.

All the employees whom respondent was permitted to call as witnesses testified that they did not regard Rose Todd as a supervisory employee, or as a representative of the management, and that they felt no compulsion in joining the DGWU because of her activity on behalf of the DGWU.

Hazel Saucke testified as follows (VIII, 2643, 2644):

"Q. Did you ever get the impression that Rose Todd represented the management in any capacity?

A. No, sir.

Q. Did she ever hold herself out as speaking for the management in connection with the formation of a union, or anything having to do with the union?

A. No, sir."

To the same general effect:

Mrs. Freed (IX, 3207, 3208); Mrs. Garrett (IX, 3122, 3137); Lydia Phillips (IX, 3094); Ruby Clayton (IX, 3058); Ethel Riegel (IX, 3019, 3024); Edith Dean (VIII, 2859); Lois Barnes (VIII, 2830); Mary Warth (VIII, 2723, 2726); Oma Lee Cooper (VIII, 2583, 2584, 2592, 2593); Jessie Mudd (VIII, 2928, 2929); Mary Warth (VIII, 2723-4).

To this should be added the offered testimony to the same effect, of the remaining 1,200 employees proffered by respondent and intervener.

Furthermore, it is significant that the Board's witnesses did not testify that they regarded Rose Todd as a supervisory employee or as representing the management, although the Board placed some *eight* employee witnesses on the stand.

Thus, under the test laid down in the *International Machinists case, Supra,* the respondent is not chargeable with her activities—as the employees had no reason to believe (and, in fact, did not believe) that she was "speaking for the management" in any of her activities referred to by the Board.

Re: Other Alleged Supervisory Employees.

The Board in its decision (paragraphs 3 and 4, X. 3858-9) devotes scant space to Hobart Atherton and the other alleged supervisory employees, and we shall therefore reply very briefly.

Hobart Atherton. The Board's statement of Mr. Atherton's duties shows he was not a supervisory employee. He testified that he was clerk in the maintenance department, that as clerk he "transmitted" orders from Mr. Baty to the persons who were to do the work, and helped them to do it if necessary—"I assist any of the fellows in the maintenance department that need help

on anything. If it is necessary to move a bin, I help them move it * * *" (II, 593).

Mrs. Reed testified (VI, 2117-18) that Mr. Atherton did not hold a supervisory position.

The employees testified that they *did not regard* Mr. Atherton as a supervisory employee (VIII, 2934-5; IX, 3208-9, 3137, 3095-6, 3058, 3024, 2872, 2644, 2593), until the Trial Examiner stopped respondent from calling further witnesses.

None of the Board's witnesses testified that Mr. Atherton was a supervisory employee.

Heath Cowan and Ortense Root. We find no evidence that these employees were supervisors or that they did or said anything that smacks of coercion in the slightest degree.

Mrs. Gray. The employees testified that they did not regard Mrs. Gray as a supervisory employee (VIII, 2944-5; IX, 3218, 3146, 3098, 3065).

Mrs. Reed testified (VII, 2128-9, 2232-3) that Mrs. Gray was one of the clerks who did the selling in the outlet store, and that she had no supervisory authority.

Mrs. Tyhurst. Mrs. Reed testified that Mrs. Tyhurst was not a supervisory employee (VII, 2127, 2216).

The employees did not regard her as a supervisory employee (VIII, 2945; IX, 3065, 3098, 3146, 3218).

Marvin Price. Mrs. Reed testified *re* Mr. Price's duties and that he had no supervisory authority (VII, 2127-8).

The employees did not regard him as a representative of the management (VIII, 2945; IX, 3098-9, 3146, 3158).

Ted Scoles. Mr. Scoles was a cutter. He had no supervisory authority (Mrs. Reed, VII, 2241).

The employees did not regard him as a supervisory employee (VIII, 2946; IX, 3146-7; 3219).

Mrs. Bogart. Mrs. Bogart worked in the dividing department. She had no supervisory authority (Mr. Baty, II, 477).

The employees did not regard her as a supervisory employee (VIII, 2945; IX, 3065-6).

Mrs. Strickland. Mrs. Strickland was a pattern maker. She had no supervisory authority (Mrs. Reed, VII, 2133-4).

The employees did not regard her as a supervisory employee (I, 38; VIII, 2946; IX, 3147).

We respectfully submit that the Board's findings that the foregoing employees were supervisory employees or "representatives of the management" are not supported by the evidence, and are contrary to the authorities.

The Board evidently considers an employee a representative of the management if he is "in charge" of any work, even if it were merely seeing that the waste paper baskets were emptied or if he "transmits" orders from the manager to workers, as Mr. Atherton did. This conception is erroneous under the authorities: *Ballston-Stillwater Knitting Co.* v. *NLRB*, (C. C. A. 2) 98 F. 2d 758, 761-2; *NLRB* v. *Swank Products, Inc.*, (C. C. A. 3) 108 F. 2d 872, 875; *NLRB* v. *Sands Manufacturing Company*, 306 U. S. 332, 341-342; *Humble Oil & Refining Co.* v. *NLRB*, (C. C. A. 5) 113 F. 2d 85, 92; *Martel Mills Corporation* v. *NLRB*, (C. C. A. 4) 114 F. 2d 624; *Magnolia Petroleum Co.* v. *NLRB*, (C. C. A. 5) 112 F. 2d 545; *NLRB* v. *Mathteson Alkali Works, Inc.*, (C. C. A. 4) 114 F. 2d 796; *Cupples Co. Mfrs.* v. *NLRB*, (C. C. A. 8) 106 F. 2d 100; *E. I. Du Pont de Nemours Co.* v. *NLRB*, (C. C. A. 4) 116 F. 2d 388, 399-400; *NLRB* v. *Sparks-Withington Co.*, (C. C. A. 6) 119 F. 2d 78, 81; *NLRB* v. *Sun Shipbuilding & Dry D. Co.*, (C. C. A. 3) 135 F. 2d 15; and *NLRB* v. *Clinton Woolen Mfg. Co.*, (C. C. A. 6) 141 F. 2d 753, 757.

Even the acts of *supervisory* employees may not be condemned unless they are of a *coercive* character (*Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, l. c. 568; *Foote Bros. Gear & Mch. Corp.* v. *NLRB*, (C. C. A. 7) 114 F. 2d 611, l. c. 628; *Humble Oil & Ref. Co.* v. *NLRB, Supra*, l. c. 88.

Re the Activities of Alleged Supervisory Employees, Generally.

Entirely aside from the duties of the above-named employees, we call attention to the following testimony as to supervisory employees, generally, which makes a clean sweep of all the Board's contentions as to the *effect on the employees* of the participation of instructors, thread girls, Rose Todd, and all other alleged supervisory employees, in connection with the DGWU:

Mrs. Freed testified (IX, 3210):

"Q. Was there *anybody* who attended the meeting of April 27, 1937, at which the Donnelly Garment Workers' Union was formed, *that you regarded* as a supervisory employee or a boss or a representative of the management?

A. Not that I saw."

To the same general effect:

Mary Warth (VIII, 2726-7); Oma Lee Cooper (VIII, 2593, 2599); Louise Garrett (IX, 3138, 3139); Lydia Phillips (IX, 3078, 3092, 3093, 3094); Ruby Clayton (IX, 3046); Jessie Mudd (VIII, 2936, 2937); Lois Barnes (VIII, 2817); Mary Warth (VIII, 2730); Hazel Saucke (VIII, 2631, 2632); and all the other employees except for the Trial Examiner's ruling stopping further evidence as cumulative (IX, 3253).

We respectfully submit, *first*, that the persons found by the Board in the case at bar to be supervisors, were

not supervisors but were working employees entitled to the benefits of the NLR Act, and, *secondly*, that none of the acts of such alleged supervisors, *taken in their setting*, were *reasonably likely* to have restrained the employees' choice. Nor can it *fairly be said* that the employees had *just cause to believe* that such alleged supervisors were acting for the *management* (*International Association of Machinists* v. *NLRB*, *supra*).

B-3.

The Board's Findings and Conclusions with Reference to the Loyalty League Are Not Supported by the Evidence.

1. The Loyalty League Was Not a "Prior Labor Union" and the Holding of the Newport News Shipbuilding Case Is Not Applicable.

The Board seizes on the existence of this organization to claim that the DGWU was an outgrowth of or successor to the Loyalty League and that the respondent, through the Loyalty League, dominated and interfered with the free choice of the employees in the formation of the DGWU, evidently hoping to bring the case at bar within the purview of *NLRB* v. *Newport News Shipbuilding Co.*, 308 U. S. 241, and other similar cases in which it has been held that a new plan or union was an outgrowth of an old union.

At the outset we wish to point out that the situation with reference to the Loyalty League here bears no resemblance to the situations existing in the Newport News case and similar cases. The Loyalty League was not a labor union or "representation plan" in any sense of the word. It had never had any dealings with the management relative to working conditions, wages, or other like matters. It performed none of the functions of a labor union or representation plan. It was a purely social organization. It had no dues; it had no regular meetings; it kept no minutes. Its only activities were the

holding of parties or dances of a purely social nature. The organization of the DGWU did not grow out of or affect the Loyalty League. The Loyalty League continued in the same way it always had, engaging only in social activities, while the DGWU from its inception was a labor union and engaged in all the activities of a labor union.

That the activities of the Loyalty League were purely social would seem to be definitely established by the testimony of the Board's own witness, Etta Dorsey, an admittedly hostile witness who would not have hesitated to characterize the Loyalty League differently if there had been the slightest basis for doing so. She testified (IX, 3362-3):

"Q. Do you know whether you had more of the Union meetings than the Loyalty League meetings?

A. I know there were some concerning the Union, the Loyalty League meetings were more or less social affairs, you know.

Q. As a matter of fact, that was all the Loyalty League was, a social group?

A. Yes, a kind of get-together and get acquainted affair, and plan on good times, and things like that.

Q. Yes. You had parties and picnics?

A. Yes, *that was the object of it.*"

Also May Fike, one of the Board's chief witnesses and a witness highly adverse to the petitioner, testified that she joined the Loyalty League at the start (Transc. 1264) and attended *all* its meetings (Transc. 1273); and she says social events were its only activities (Transc. 1411):

"Q. Outside of having dances, and such gatherings, what, if any, did the Loyalty League do?

A. *They just had their entertainments is all I know of.*

Q. That is all you ever knew of, was just entertainments?

A. That is all I remember of."

Also, the Board's witness, Mrs. Keyes, testified (X, IV, 3653):

"Well, there was no activity in the Loyalty League other than little parties they have."

Thus, three of the Board's main witnesses, in addition to Rose Todd, corroborate respondent's position that the Loyalty League *engaged only in social activities.*

The following witnesses testified to the same general effect, namely, that the Loyalty League was purely a social and not a labor organization: Mrs. Lynn Davis (II, 543); Hobart Atherton (II, 561); Mrs. Nellie Stites (II, 622); Mrs. Claris Martin (II, 652); Mrs. Pearl Field (II, 676); Mrs. Ruby Lago (II, 678-9); Oma Lee Cooper (VIII, 2581-2); Hazel Saucke (2632); Mary Warth (2718, 2727); Lois Barnes (2777-8); Edith Dean (2860); Jessie Mudd (2927-8); Ethel Riegel (IX, 3011); Ruby Clayton (3052); Lydia Phillips (3090); Louise Garrett (3129-30); Alice Freed (3196).

In addition to the testimony of the foregoing witnesses, all to the same effect, should be added the testimony of all the 1,200 employees which respondent and intervener would have called in the second hearing if they had not been stopped by the Trial Examiner (IX, 3253, 3254; and see offers of proof, Exhibit 1-OOOO, Exhibit 1-RRRR, III, 762-3, 764), all to the effect that the Loyalty League *was entirely separate* from the DGWU and that they so understood; that the Loyalty League was a purely social organization with no labor union activities and that the Donnelly Garment Workers' Union *was not a continuation or successor to the Loyalty League in any way*

and that they so understood, and that *both continued to function in their respective fields.*

Not a single witness of the Board or ILGWU testified to the contrary!

In *Cupples Co. Manufacturers* v. *National Labor Relations Board,* 106 F. 2d 100, there was an organization known as the "Loyalty and Service Club," admittedly established by the company. 95% to 97% of the employees belonged to the Club (l. c. 106). Yet the fact that its members also belonged to the union, was not held to constitute domination by the management through that Club.

One of the most unfair inferences drawn by the Trial Examiner and Board is that everything done by the employes is done by the Loyalty League—merely because most employes belonged to the Loyalty League.

2. The Loyalty League Was Not Formed, Dominated or Used by Respondent, and Its Alleged Activities Are Not Attributable to Respondent.

(a) THE LOYALTY LEAGUE WAS NOT FORMED BY RESPONDENT.

The persons named by the Board as active in forming the League were Mrs. Gray and Mrs. Strickland. These were not supervisory employees, as we have shown (Point B-2) although the Board finds that they were such. Under the holdings in the *Magnolia* and *Ballston-Stillwater* and other cases, *supra,* Mrs. Gray and Mrs. Strickland were clearly "employees to whom the Act guarantees the right of self organization," and their activities in the Loyalty League cannot be attributed to respondent.

We submit that the Board's finding that the Loyalty League was formed by the respondent because Mrs. Gray and Mrs. Strickland were active in organizing it, is not justified by the evidence.

(b) The Loyalty League After Its Formation Was Not Dominated or Used by Respondent.

We further submit that there is no evidence to support the Board's finding that the respondent "used" the Loyalty League, or "acted through" the Loyalty League to coerce or interfere with the employees in their right of free choice of bargaining agents.

Mrs. Reed testified (VII, 2066-7) most positively that the respondent did not act through the Loyalty League in connection with the formation of the plant union (DGWU) also, Mrs. Reeves (II, 408-9; IV, 1116-17); Mrs. Keyes (II, 431); Mr. Baty was not a member (II, 468).

The employees which respondent and intervener were permitted to call, testified that the Loyalty League brought no pressure to bear upon them in connection with the formation of the DGWU, or interfere in any way with their freedom of choice as to union affiliations.

Oma Lee Cooper (VIII, 2582); Hazel Saucke (2632); Mary Warth (2718, 2723, 2731); Lois Barnes (2778); Edith Dean (2860-61); Jessie Mudd (2927); Ethel Riegel (IX, 3010); Ruby Clayton (3053); Lydia Phillips (3085, 3091); Louise Garrett (3129-30); Alice Freed (3196).

To this should be added the testimony of the "1200 employees" offered by respondent and intervenor (Exhibits 1-OOOO, 1-RRRR, III, 743, 765).

We submit that there is not a scintilla of evidence that the Loyalty League was dominated by respondent nor any basis, save the trial examiner's imagination and conjecture, for the Board's findings and conclusions that the petitioner "used" the Loyalty League to interfere with the employees in their rights under the Act.

B-4.

The Board's Findings and Conclusions As to the "March 2nd Statement" Are Not Supported by the Evidence.

It clearly appears that the March 2nd Statement was conceived and circulated by two non-supervisory employees, without the knowledge of officials of the company, and was signed voluntarily by the employees generally (IV, 1290, 1296-7, 1294).

The Board evidently recognizes this, and attempts to base a finding of coercion upon the testimony of Mrs. Keyes that Mrs. Reed had said to her that "she would like to have the petition 100%," and that she (Mrs. Keyes) the next day suggested to Pauline Shartzer that she take the petition around and have it signed. It will be noted that Mrs. Keyes did not say that Mrs. Reed asked her to procure the additional names. Also it should be noted that this disagrees with Miss Shartzer's testimony (given in the injunction trial *before* the Labor Board complaint was filed, IV, 1293-4):

"Q. How did you come to get those sheets? Did you ask for them, say you wanted to circulate them?

A. In the first place, we had discussed it on the 10th floor, the office of the plant. I went to the 9th, in some of my work, and someone asked me if I had seen this petition. *I asked them what it was*, and I copied it as soon as I could, and compared my copy with Mrs. Sprofera, and in that way I had a copy of what was written up.

Q. What did you do?

A. I took it to the 10th floor and the 9th floor, and anyone we missed on the 9th floor, I asked them to sign them if they cared to.

Q. Were these papers signed voluntarily?

A. They were."

(This was done on March 2d; it was only the last page which was signed on March 5th, V, 1649.)

It should also be noted that Mrs. Reed testified that she did not know how they happened to obtain the further signatures (VII, 2433-4):

> "Q. Did you learn they did get another petition on the 5th of March?
>
> A. I learned that another petition, another page, was gotten up later.
>
> Q. And you don't why that was done?
>
> A. No.
>
> Q. You had nothing to do with it?
>
> A. *I had nothing to do with it, Mr. Langsdale.*"

But if Mrs. Reed did casually say to Mrs. Keyes that she was going to put the March 2nd Statement in the cornerstone of her new building and would like the names of all employees on it, it would not constitute "domination," especially as some 95% of the employes *had already signed the paper voluntarily.*

The Board seeks to imply something sinister from the fact that a picture was taken by the Kansas City Star of the employees who presented the March 2nd statement to Mrs. Reed. But this is dissipated by Mrs. Reed's testimony which shows that *not* she, but Mr. Roberts of the Star, suggested the taking of the picture (VII, 2076-7).

In the case of *NLRB* v. *Brandeis & Sons*, (C. C. A. 8) 145 F. 2d 556, 567-8, an anti-union petition was circulated during working hours *shortly before the election* and was signed by 204 employees including several *assistant buyers* and one *department head.* It was held not coercive and hence permissible. The March 2nd statement in the case at bar had no elements of coercion but was conceived and circulated by the employes.

In other cases the circulation of statements or petitions among employees have been held no violation of the Act. *NLRB* v. *Sun Shipbuilding & Dry Dock Co.*, 135 F. 2d 15; *NLRB* v. *Bradford Machine Tool Co.*, 138 F. 2d 246; *NLRB* v. *Draper Corp.*, 145 F. 2d 199, l. c. 205; *NLRB* v. *Appalachian Elec. Power Co*, 140 F. 2d 217. In the last-cited case, the petition circulated expressed esteem for the manager, as did the March 2nd statement of Mrs. Reed's "humanitarian interest."

The cases cited by the Board at pages 43-44 of their brief are not in point. Most of them dealt with "votes" or "elections," a wholly different situation from the March 2nd statement here.

We respectfully submit that the circumstances regarding the circulation of the March 2nd statement not only do not show any coercion or restraint by respondent upon the employees, but on the contrary, these circumstances show that the overwhelming attitude of the employees against the ILGWU was voluntarily expressed *as early* as March 2, 1937, and *negatives all the findings of the Board that such attitude was produced by any acts of respondent subsequent thereto.*

B-5.

Respondent Did Not Dominate the Organization Meeting of the DGWU on April 27th.

The Board, in its former decision herein, found (A. 600): "The rank and file of the respondent's employees had heard nothing of the formation of a labor union prior to the meeting" (of April 27th). This shows that there was no domination, coercion or interference by the management with reference to the DGWU. Obviously, the employees could not be coerced with reference to something they *knew nothing about;* therefore there was no coercion *prior* to the organization meeting of April 27, 1937. The

evidence, including the minutes, as to what occurred at the April 27th meeting is very complete, and conclusively shows there was no coercion *at* such meeting (I, 54-59; II, 558-561; III, 821-830). And, as practically all of the 1,300 employees joined at *that* meeting, there was no *later* coercion. This covers the whole field.

B-6.

The Board's Findings and Conclusions As to Use by the DGWU of Company Property and Facilities Are Not Supported by the Evidence.

The Board stresses the use by DGWU members and officers of certain ditto and mimeograph machines, files, and other property or facilities of the respondent, as showing assistance by respondent to the DGWU and consequent interference with the employees in their free selection and administration of a labor union (X, 3883). We submit that the inferences drawn are unwarranted by the evidence and demonstrate the Board's bias and prejudice.

In the *first* place, the use of the property and facilities was inconsiderable and in terms of "assistance" to the DGWU it was wholly insignificant (I, 3560, 62, 62a, 107-8); in the *second* place the uses complained of were done after working hours (I, 60, 62a, 107); in the *third* place, it was not authorized by the management, and was unknown to the management (I, 62, 62a; II, 406-7, 411, 431, 468-9; VII, 2113, 2115); in the *fourth* place, if it had been known to the management, it amounted to no more than common courtesy between employer and employee (*Texas & New Orleans R. Co.* v. *Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 568); in the *fifth* place, similar use was not denied to anyone else; in the *sixth* place, the use testified to occurred mostly after the formation of the DGWU and could not have constituted any coercion or interference

with the employees in their selection of that labor union; in the *seventh* place, the evidence shows that the choice of the DGWU by the employees was so unanimous and so unquestionably their free and voluntary desire, that there is not the slightest basis for an inference that their choice of, or adherence to, the DGWU was affected in the remotest degree by any of these matters mentioned by the Board.

All the testimony was that such small use of respondent's facilities as was made—use of mimeograph machine one evening by boy (I, 59-60); use of ditto machine (I, 62); use of typewriter occasionally (I, 107)—was done outside working hours (I, 264, 396); that the company did not know of it (I, 62, 62a); that the bulletin boards are "used by anybody that cares to use them" (I, 129); that officials never authorized such use by the Union (Mrs. Reeves, II, 406-7; Mr. Keyes, II, 431; Mr. Baty, II, 479-480-1).

Mrs. Reed testified (VII, 2118) that the employees "have always used the telephones and still do"; that the Company has "always been generous" in letting the employees use equipment after working hours; that they used the sewing machines after working hours for personal use, until the Wage and Hour restrictions prevented; that the employees have always been permitted to pass notes through the sections; that she didn't know of notices being sent through the sections by the DGWU, but if the DGWU sent notices by bundle boys or by telephone, it was no different from what the employees had been doing for years (p. 2115); that as long "as we have had bulletin boards" (about fifteen years), "the employees have used them."

This is not a case where facilities are granted to one union and denied to another.

Under the foregoing circumstances the inconsequential use of the company's facilities is not "substantial evidence" of domination or support. *NLRB* v. *Mathieson Alkali Works*, 114 F. 2d 796, l. c. 802; *Ballston-Stillwater Knitting Co.* v. *NLRB*, (C. C. A. 2) 98 F. 2d 758, l. c. ....; *Cupples Company Manufacturers* v. *NLRB*, 106 F. 2d 100, l. c. 115; and Judge Riddick in his opinion in the court below (XIII, 54). See, also, *Republic Aviation Corp.* v. *NLRB*, 65 S. Ct. 982; *NLRB* v. *American Pearl Button Co.*, (C. C. A. 8) 149 F. 2d 258, 259; *NLRB* v. *Clinton Woolen Mfg. Co.*, 141 F. 2d 753 (headnote 2); and *Jefferson Electric Co.* v. *NLRB*, 102 F. 2d 949, l. c. 956.

The Board's finding that the employees were paid for time spent in attending union meetings is answered by our discussion of the finding that the March 18th and April 27th meetings were held "during working hours" (Point B-1, *supra*). Obviously, if the meetings were held *after* working hours, there would be no pay allowed—and it was so conceded at the trial (X, 3709): "Mr. Langsdale: It was never contended that any employee was paid for a meeting that started after working hours." All of the Respondent's witnesses who were permitted to testify, testified that they were not paid for attending any union meetings (X, 3711, 3718, 3723-4, 3728-9, 3732-3, 3738, 3742, 3744-5). Mr. Baty and Mrs. Copowicz testified there were no such allowances made (X, 3754, 3761-2). The early quitting hours, normally 3:50 to 4:10 (even with one hour overtime 4:50 to 5:10) shows there was no necessity for a meeting during working hours (II, 453-4). The testimony and offered testimony of the "1200" employees" is that *all* the meetings were held outside of working hours. We respectfully submit that the testimony of the Board's few witnesses to the contrary is inherently unreasonable and does not constitute "substan-

tial" evidence in view of the overwhelming testimony of the employes.

We respectfully submit that for all seven of the reasons mentioned at the beginning of this discussion there is no substantial evidence to support a finding or conclusion that the respondent assisted or dominated the DGWU by virtue of the *incidental, occasional* and *inconsequential* use, without respondent's permission or knowledge, of respondent's "property and facilities" referred to by the Board, or thereby interfered with the employees in the selection or administration of the DGWU.

B-7.

The Board's Findings and Conclusions As to Prompt Recognition of, and Bargaining with, the DGWU Are Not Supported by the Evidence.

The Board stresses the prompt recognition of the DGWU by respondent and the quick negotiation of agreements with the union as showing domination by respondent (X, 3878, footnote 47, 3882).

It is undisputed that nearly thirteen hundred employees joined the DGWU at the organization meeting on April 27, 1937, being practically all of the working employees, and that Rose Todd, chairman of the Executive Committee of the DGWU, presented evidence of this to Mrs. Reed on April 28, 1937 (I, 80a, 80b, 80c). Thereupon, it was respondent's immediate duty to recognize the DGWU, and to enter into bargaining negotiations with its committee. The Board's condemnation of respondent for complying with the law is unwarranted and demonstrates its bias and prejudice. *Cupples Company Mfrs.* v. *NLRB*, 106 F. 2d 100, l. c. 114; *McQuay-Norris Mfg. Co.* v. *NLRB*, (C. C. A. 7) 116 F. 2d 748, l. c. 751; *NLRB* v. *Dahlstrom M. Door Co.*, 2 Cir., 112 F. 2d 756, 757; *NLRB* v. *Piqua Munis-*

ing W. Prod. Co., 6 Cir., 109 F. 2d 552, 556; *NLRB* v. *Clinton Woolen Mfg. Co.*, 6 Cir., 141 F. 2d 753, 756; *NLRB* v. *Arma Corp.*, (C. C. A. 2) 122 F. 2d 153, 156; *Foote Bros. Gear & Machine Corp.* v. *NLRB*, (C. C. A. 7) 114 F. 2d 611, l. c. 618; *L. Greif & Bro.* v. *NLRB*, (C. C. A. 4) 108 F. 2d 551; *NLRB* v. *Bradford Machine Tool Co.*, 138 F. 2d 246, 248.

We submit that the prompt recognition by respondent of the DGWU was eminently justified by the showing made, and that the 2-months' period thereafter taken to negotiate the contracts was not unduly "quick." Mrs. Reed's testimony (VII, 2097-2110) regarding Respondent's exhibit 17-A to 17-J, XI, 4105, shows genuine discussion of the contract submitted by the DGWU, and several members of the DGWU committee and several officials of the company testified to the genuineness of the negotiations (I, 123-24; II, 562-572, 704j-704m, 456-467, 432a-437).

B-8.

The Board's Findings and Conclusions As to the Terms of Working Agreements Between Respondent and the DGWU, Including the "Closed Shop" Provision, Are Not Supported by the Evidence.

The Board finds (X, 3879-80) that the inclusion of certain provisions in the working agreements made between respondent and the DGWU shows domination and support of, and interference with, the DGWU by respondent. The Board apparently limits its criticism to two provisions: (1) the provision for a *closed shop*, and (2) the provision that the members of the executive or bargaining committee of the DGWU must be composed of employees *with at least one year's employment* in petitioner's plant.

The Board, in its previous decision, almost apologizes for its findings that these provisions show domination (A, 603):

The provisions criticised are not unusual or unique provisions in working contracts between unions and employers. Even if they were, there would be no justification for the Board's finding—the Trial Examiner repeatedly said during the hearing that the union could agree to any terms it saw fit—even to a minimum wage of $1.50 a week (I, 207). But, as stated, the provisions are not new or unusual—it so happens that the ILGWU itself puts such provisions in its contracts. To show this, respondent offered in evidence contracts made by the ILGWU with other garment manufacturers in the Kansas City area (Respondent's Exhibit 2—rejected, VI, 1653).

The Trial Examiner rejected these ILGWU contracts and refused to let respondent show such facts (II, 378hh-380; IX, 3270, 3274, 3782). The Board affirms this ruling, and then turns around and finds respondent guilty of violating the National Labor Relations Act because the DGWU agreed with respondent to the *same kind of provisions* that the ILGWU deems legal and proper and puts into its own agreements. This is another outstanding example of the bias of the Trial Examiner and Board against respondent.

The closed shop agreement was demanded by the DGWU (I, 90; II, 565, 704f). Mrs. Reed preferred an open shop (II, 704l; VII, 2095, 2097, 2387) and at first opposed the closed shop (II, 704l); but yielded on condition that it should not interfere with her choice in hiring employees (VII, 2097). That was entirely proper and is sanctioned by the Act itself.

B-9.

The Board's Findings and Conclusions As to the Appointment of Rose Todd, Mrs. Nichols and Miss Spalito on DGWU's Committee for Adjustment of Piece Work Prices Are Not Supported by the Evidence.

The Board makes much of the fact that the DGWU designated Rose Todd, Mrs. Nichols and Miss Spalito as a committee to represent it in the adjustment of piece work prices, claiming that this shows domination of the DGWU by respondent because a part of Mrs. Nichols' and Miss Spalito's work for respondent is the setting of piece work prices.

There is no evidence that the DGWU appointed this committee at respondent's behest and the Board's conclusion is pure conjecture. The committee was appointed at a meeting of the group chairmen on June 3, 1937 (III, 923). There can be no reasonable doubt that these three persons were appointed by the DGWU because they were the *best qualified* members to serve in that capacity. Should a union appoint its least qualified members on its committees or its best qualified members? The answer is obvious. A part of Mrs. Nichols' and Miss Spalito's work for petitioner is the setting of piece work prices (II, 417-8), and Rose Todd having formerly done that work (I, 33), they were undoubtedly the best qualified persons to represent the union on that committee.

That the committee properly functioned *in behalf of the DGWU* and was not dominated by respondent, is conclusively shown by the evidence concerning the adjustment of complaints as to piece work prices. Rose Todd testified (I, 231-2, 234-238, incl., 929, 932, 936, 944) concerning the satisfactory adjustment of complaints of various operators as to piece work prices. At I, 238 Miss

Todd testified concerning the satisfactory adjustment of many written complaints (contained in Intervener's Exhibits Nos. 15 to 15-BB).

The Respondent had no right to interfere with the DGWU in the handling of its internal affairs. If Respondent had interfered with the appointment of the union members which the DGWU wanted on its piece-work committee, the Labor Board would have jumped on it for so doing (Now, it seems to argue that respondent should have interfered).

According to the Board's theory, a union *could never appoint any employee* on any committee that has any dealing with the employer, for all employees "represent the employer" in some capacity, and hence the employer would be "sitting on both sides of the table." Certainly Congress did not contemplate that unions must place all negotiations between the union and the employer in the hands of "outsiders."

The cases cited by the Board at the top of page 69 are not applicable here. Those cases relate to an "entire union" or to the main "bargaining committee," not to a small sub-committee or shop committee, like the piece-work committee.

The Board says (p. 33) that Mrs. Nichols has "final authority" in setting piece work rates. This was not the testimony. She fixed the rates initially but if it was found they were not just, the rates were adjusted on complaints of *operators* or others (VII, 2144-2147; I, 231-238, 929, 936, 944). The Board's witness, Mrs. Skeens, testified that if a price was low on something "I would tell Mr. Baty that we needed more money on them" (IX, 3460) and that she thought "it was up to Mr. Baty to pass on grievances" (IX, 3461).

The evidence wholly fails to support the Board's findings on this matter.

B-10.

The Board's Findings and Conclusions As to Encouragement and Approval by Respondent of the April 23rd "Demonstrations," Are Not Supported by the Evidence.

The complaint charged respondent with having instigated certain demonstrations in its plant against Sylvia Hull and Fern Sigler on April 23rd, 1937 (A, 452).

These demonstrations were caused by resentment of the employees, created by a news item in the press which falsely stated that Sylvia Hull was going to the ILGWU convention at Atlantic City as representative of the Donnelly employees (XI, 4171).

The Board virtually admits that respondent did not "instigate" these demonstrations when it says in its first decision (A, 581):

> "Without deciding whether the respondent was responsible for originating and inciting these anti-ILGWU demonstrations we are convinced that the respondent condoned, approved and encouraged them."

But the Board finds that the respondent "approved and encouraged" the demonstrations. This is in the teeth of the evidence. The Sylvia Hull demonstration occurred early in the morning, about eight o'clock, before Mr. Baty arrived at the plant. Mrs. Hyde, assistant to Mr. Baty, went to the scene, *told the girls to go back to work,* talked to Sylvia Hull and Sylvia volunteered to go home saying: "I will go home. I didn't know the girls felt this way about it, or I wouldn't have done it" (II, 536); and the girls had returned to work before Mr. Baty arrived at the plant (II, 496).

Furthermore, Mr. Baty upon his arrival took all necessary steps immediately. Mr. Baty testified:

"A. I went down to the sixth floor, the machine where Fern Sigler was working and got Fern Sigler to go to the office and at the same time I turned and instructed the girls to *all get back to their machines and get to work*" (II, 450).

This evidence certainly doesn't show "approval and encouragement"; instead, it shows that Mr. Baty and Mrs. Hyde stopped the demonstrations as soon as they reasonably could, *and sent the girls back to work.*

The Board complains that the demonstrators were not disciplined or reprimanded. As said by the Court in *NLRB* v. *Asheville Hosiery Co.*, (C. C. A. 4) 108 F. 2d 288, l. c. 292:

> "No inference unfavorable to the management can reasonably be drawn from the fact that during the excitement then prevalent in the plant, the meeting was proposed until December 7, a few days after the ouster, or from the fact that the management undertook to prevent further violence, and to allay the resentment felt by a large majority of the employees, *by persuasive methods rather than by disciplinary action.*"
>
> See, also, *NLRB* v. *Clinton Woolen Mfg. Co.*, (6 Cir.) 141 F. 2d 753, 756.

The respondent's action must be viewed "in the light of all the surrounding circumstances," as said by the court in the *Mathieson Alkali case, supra*, l. c. 801-2, and when so viewed we submit that Mr. Baty's action was justified in every way and constituted no interference with the employees in their choice of a union.

The cases cited by the Board at page 51, footnote 13, all involved situations wholly different from the situation here, and hence are not applicable.

B-11.

The Board's Findings and Conclusions That Sylvia Hull Was Laid Off by Respondent Because of Her Union Activities and That the Respondent Thereby Interfered with the Rights of Its Employees Are Not Supported by the Evidence.

The Board found that Sylvia Hull was temporarily laid off by respondent because of her union activities but found that respondent did not refuse to reinstate her (X, 3890).

The only point involved with reference to Sylvia Hull therefore is whether the respondent's action constituted an interference with the rights of employees in the free selection of bargaining representatives. We submit that such an inference under the state of facts disclosed is farfetched and unwarranted. In the first place, she *volunteered* to go home after the demonstration of employees. The testimony of Mrs. Hyde was (II, 536) that the girls said they would return to work as soon as they heard Sylvia say she was going to go home, at which time Sylvia did say "I will go home. I didn't know the girls felt this way about it, or I wouldn't have done it."

In the second place, her lay off, if it be deemed a lay off (which we deny), was only for a day and the following day respondent tried to call her back to the plant. That counteracted any adverse inference that might have been drawn because of her leaving (or lay off).

In the next place, the evidence clearly shows that the employees' attitude against Sylvia Hull and the ILGWU was already fixed prior to her leaving.

The article in the paper and Sylvia Hull's conduct at the plant were planned by the ILGWU as a part of its conspiracy. The primary responsibility for the acts of the employees, therefore, rests upon Meyer Perlstein and Sylvia Hull, who caused the false notice to appear. Nothing that Respondent did, or failed to do, added one whit

to the employees' feelings or action with respect to the ILGWU. It is wholly unrealistic and unjust to attempt to pin on Respondent the responsibility for something that rests first on Perlstein and Hull and secondly on the employees themselves.

As was said by the Court in *NLRB* v. *Asheville Hosiery Co.*, (C. C. A. 4) 108 F. 2d 288, l. c. 291-292:

> "Evidence of the most convincing kind shows that the misrepresentations and threats above referred to had stirred up violent resentment on the part of a majority of the workers against those who favored the Union. * * *
>
> "There is no substantial ground for the rejection of the overwhelming evidence that the hostile attitude of the great majority of the workers toward the Union proceeded from their sincere and spontaneous dislike of outside interference; and it is not enough to say that the management shared this feeling and manifested it in the statements of its supervisory officials."

B-12.

The Board's Findings and Conclusions As to Coercion and Interference, Based on Respondent's Alleged Hostility Toward ILGWU Are Not Supported by the Evidence.

The respondent's alleged "hostility" toward the ILGWU has been purely *defensive, directed not against employees' membership in the ILGWU, but* to prevent violence at the plant and the *unlawful secondary boycott* which the ILGWU was conducting—the existence of which has been definitely found by three Federal Judges. See Mrs. Reed's testimony, VII, 2073-4, 2090, 2148-9.

The Board rejected much of Respondent's evidence relating to the alleged 1934-35 activities on which the Board bases its findings of hostilities. This has been

discussed in Part One of our brief, under point I (3). Even so, we submit that the evidence does not support the Board's prejudicial findings that because of respondent's alleged "hostility" toward the ILGWU, the employees have been coerced or interfered with in their free choice of a labor union.

B-13.

The Board's Findings and Order As to Refund of Checked-Off Dues, Are Contrary to the Evidence and the Law.

The Board's finding that "the company agreed, at the request of the DGWU, to a check-off * * *" (X, 3880), is absolutely unsupported by the evidence.

The undisputed testimony shows that Respondent refused the DGWU's request for a check-off (R. I, 226-7, 131-2). Later employees *individually* requested in writing that respondent deduct from their pay their respective union dues. Respondent complied with the said *individual* requests (R. 277). No monies have ever been deducted from an employee's pay without the express authorization of said employee. Respondent has no agreement with the DGWU nor has it ever had with respect to a check-off (I, 132).

The Board's finding is thus in the teeth of the evidence, and is a typical example of the warping and distortion of the evidence in the Board's findings.

The Board's order of reimbursement of checked-off dues, *under the circumstances here shown*, is contrary to law, first, because the DGWU was not a company-dominated union, and secondly, because the employes individually and without any compulsion asked the company to check off their dues.

The present state of the law on this subject appears to be as follows:

In *Virginia Electric and Power Co.* v. *NLRB*, 319 U. S. 533, the court in footnote 1 states that five of the Circuit Courts of Appeal have refused to enforce reimbursement of check-off dues. This Court in the Virginia Electric case enforced the order of reimbursement but in doing so expressly stated that it was deciding "only the case before us," and sustained the order of reimbursement "under the circumstances here disclosed" (l. c. 545).

There was a dissenting opinion by Mr. Justice Roberts in which the Chief Justice and Mr. Justice Jackson joined. Mr. Justice Frankfurter, in concurring with the majority, stated that

> "if the controlling facts in this case were like those in *Western Union Tel. Co.* v. *NLRB*, (C. C. A. 2) 113 F. 2d 992, I too would accept the reasoning of Judge Learned Hand's opinion in that case and join my brother Roberts. But the vital difference between the Western Union and this case is that in the former 'there was no evidence that all those (employees) who asked to have their wages stopped, did so in any part because they were coerced.' *Id.*, 997. Here the employees had no such choice; they could avoid the check-off of union dues only by giving up their jobs" (l. c. 545).

In the majority opinion the Court stated the basis for sustaining the order for reimbursement as follows:

> "The result was that the employees, *under the I. O. E. by-laws had to authorize* wage deductions for dues to remain members of the I. O. E. and they had to remain members to retain their jobs" (l. c. 540).

No such situation exists in the case at bar. If any member did not want his dues checked-off by the company, all he had to do was to say so. He could not be expelled from the union or lose his job for taking such

position. In fact there was no penalty or coercion of *any* kind—it was purely a personal matter with each employee whether he paid his dues direct to the union or had the company deduct it and pay the union. Like any other such authority, the direction to check-off the dues may be revoked by any or all employees at any time, without

As the respondent did not seek the check-off, there is no basis to assume that respondent sought by such means to control the DGWU. For that reason and under all the circumstances existing here, the Board's order for reimbursement of dues is not remedial but is punitive and goes beyond the purpose of the Act or the power of the Board (*NLRB* v. *Express Publishing Co.*, 312 U. S. 426, l. c. 437).

The facts in the case at bar take it out of the holding in the *Virginia Electric Power* case, and bring it within the exception therein referred to by Mr. Justice Frankfurter and within the rulings in the *Western Union* case and other similar cases denying reimbursement.

B-14.

The Board's Findings, Conclusions and Order Are Contrary to the Authorities.

Numerous cases hold that circumstances similar to, but stronger than, those relied on by the Board in the case at bar were insufficient to support the Board's findings and conclusions:

NLRB v. *Clinton Woolen Mfg. Co.*, 141 F. 2d 753; *NLRB* v. *J. L. Brandeis & Sons*, 145 F. 2d 556; *Commonwealth Edison Co.* v. *NLRB*, 135 F. 2d 891; *NLRB* v. *Sun Shipbuilding and Dry Dock Co.*, 135 F. 2d 15; *NLRB* v. *Union Mfg. Co.*, 124 F. 2d 332, 333; *NLRB* v. *Sparks-Withington Co.*, 119 F. 2d 78; *NLRB* v. *Riverside Mfg. Co.*, 119 F. 2d 302; *Diamond-T Motor Co.* v. *NLRB*, 119 F. 2d 978; *Quaker State Oil Ref. Corp.* v. *NLRB*, 119 F. 2d 631; *NLRB*

v. *Appalachian Electric Power Co.*, 140 F. 2d 217; *Boeing Airplane Co.* v. *NLRB*, 140 F. 2d 423; *NLRB* v. *Brown-Brockmeyer Co.*, 143 F. 2d 537; *Schweitzer, Inc.*, v. *NLRB*, (C. C. A., District of Columbia) 144 F. 2d 520.

CONCLUSION.

The employees here had the union of their unanimous choice; the employer had complied with the Act and bargained with the representatives selected by the employees. Harmonious labor relations existed and interstate commerce was not impeded. This court, like the court below, should uphold the rights of employees to have the union of their choice, and should protect the employer who seeks to comply with the provisions of the Act and the holdings of this court, by dealing only with the representatives selected by a majority of its employees.

Respondent respectfully submits that the judgment below should be affirmed or the petitions for certiorari dismissed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 787 39

INTERNATIONAL LADIES' GARMENT WORKERS UNION,

Petitioner,

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CLIF LANGSDALE,
CLYDE TAYLOR,
Counsel for Petitioner.

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Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Petitioner, International Ladies' Garment Workers Union, prays that a writ of certiorari be issued to review the judgment of the United States Circuit Court of Appeals for the 8th Circuit, entered on October 29, 1945, which set aside and for naught held the findings and order of the National Labor Relations Board (50 N. L. R. B. 241) in a review proceeding by said Court of Appeals, under the provisions of National Labor Relations Act.

Opinion Below

The opinion of the Circuit Court of Appeals for the 8th Circuit, sought to be reviewed, is reported in 151 Federal Reporter, 2d Series, 854 (Advance Sheets January 14, 1946).

Jurisdiction

The petition for certiorari has been timely filed. The judgment of the Circuit Court of Appeals, sought to be reviewed, was rendered October 29, 1945. No motion for rehearing was filed. The jurisdiction of this Court is invoked under Section 240 Judicial Code, 43 Stat. 938, Title 28, Section 347 U. S. C. A.

Summary Statement of the Matter Involved

I

Nature of Proceeding Below

The proceeding below was upon the petition of the Donnelly Garment Company, called the Employer, to review and set aside an order of the National Labor Relations Board entered June 9, 1943 (50 N. L. R. B. 241), requiring the dis-establishment of the Donnelly Garment Workers' Union, called the Company Union, and the abrogation of its contracts with the Employer. The Board, in its answer, prayed the Court to enforce said order. The Company Union and the International Ladies' Garment Workers' Union (called the International Union, the Petitioner in this court) intervened.

II

Course of Litigation

There had been a previous hearing before the Board resulting in a similar finding and order, which were set aside by the Court of Appeals in *Donnelly Garment Com-*

pany v. *National Labor Relations Board*, 123 F. (2d) 215. That decision held that the order was void for lack of due process in that the Trial Examiner had excluded testimony of employees, members of the Company Union, in substance and to the effect that such employees had joined the Union of their own free will and without coercion or other unlawful conduct upon the part of the Employer.

(This is called the Employees' Testimony.) That order recited:

> "We think that the least that the Board can do in order to cure the defects in its procedure, caused by the failure of the Trial Examiner to receive admissible evidence, is to vacate the order and the findings and the conclusions upon which it is based; to accord to the petitioners an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner; and to receive and consider such evidence, together with all other competent and material evidence in the record, before making new findings and a new order." 123 Fed. 2d l.c. 225.

Accordingly the Board set aside its order and sent the matter back to the Trial Examiner to receive and consider the excluded evidence. The Trial Examiner received, considered and weighed, and the Board considered and weighed, such evidence formerly excluded. It is beyond question, in fact the Court of Appeals in this case holds, that such employees' evidence, rejected in the first hearing, had in the second hearing been received and that the Trial Examiner committed no error in his rulings as to the admission of such evidence.

III

Ground on Which the Court of Appeals in this Case Set Aside the Board's Order

There is but one ultimate ground on which the order was set aside, which is for want of due process in the proceedings upon which the order was based.

> "On Consideration Whereof, It is now here Ordered, Adjudged and Decreed by this Court That the prayer of the National Labor Relations Board for a decree of this Court enforcing the order under review is hereby denied for want of due process in the proceedings upon which the order is based, and said order is hereby set aside." (Court of Appeals Decree, October 29, 1945.) (Vol. XIII, R. 71.)

IV

Premises on Which the Court Based Its Decision of Lack of Due Process

While the sole ground for setting aside the order was lack of due process, the opinion specifies several premises from which it draws such conclusion. Of these *seriatim*.

A

The opinions hold that due process was denied because, while the employees' testimony was received and there was no error in the receipt or rejection thereof, yet the Board did not give the consideration thereof, or probative value thereto, which the Court of Appeals believed such testimony was entitled to have.

In conclusion of the division of the opinions dealing with this subject these opinions state:

> "It seems to us that the Company and the Plant Union are justified in contending that the evidence of

> the employees tending to show lack of domination and interference by the Company received no difference or greater consideration upon the second hearing than it did upon the first, and that it was disregarded in both hearings."

Again, Judge Reddick, upon this branch of the case, stated:

> "I think it clear beyond question that there was denial of due process in the hearing before the Board, because of the Board's refusal to give any weight to some of the material evidence received, as well as because of its refusal to hear material evidence offered by the Garment Company and the Plant Union" (Vol. XIII, R. 55.)

The Trial Examiner in his report stated (Vol. X, 3848):

> "The undersigned accorded the respondent and the D.G.W.U. an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing. * * * Upon the record thus made and from his observation of the witnesses, the undersigned makes, in addition to the foregoing, the following findings of fact."

Here follow the findings that the Employer had been guilty of unfair labor practices as charged.

The Board in its decision and order of June 9, 1943 (Vol. A, 619), stated:

> "The Board has considered the intermediate reports the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions and recommendations made by the Trial examiner, with the exceptions and qualifications noted below: In remanding the case to the Board for further hearing the Circuit Court directed that the respondent and the D.G.W.U. be permitted to adduce the previously proffered testimony of respondent's employees to show in substance that they were not influenced,

> interfered with, or coerced, by their bargaining representative. In compliance with the Court's mandate and pursuant to the respective offers of proof submitted by the respondent and the D.G.W.U. at the original hearing the Board has permitted the introduction of such testimony. We have carefully considered all such evidence adduced by the respondent and the D.G.W.U. We find, however, that the testimony in question does not overcome more postive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the D.G.W.U., which subjected that organization to the respondent's domination and which removed from the employees' selection of the D.G.W.U. the complete freedom of choice which the Act contemplates. * * * Consideration of all the evidence convinces us and we find that the respondent dominated and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act" ((Vol. XIII, p. 25.)

The court decision in this respect is not based on the rejection of the employees' evidence, but is based squarely upon what the Court conceived the Board did with such evidence after it was received. It was the failure of the Board to give what the Court conceived was the proper weight to the evidence, that constituted denial of due process.

Judge Sanborn states that the employees' evidence "received no different or greater consideration upon the second hearing than it did upon the first and that it was disregarded in both hearings." Judge Reddick says that there was denial of due process because of the Board's "refusal to give any weight to some of the material evidence received." The Court in this respect did weigh the evidence and did set aside the order of the Board because the Court's opinion differed from the Board's opinion on whether such evidence was entitled to any weight when considered in

light of the entire record and more positive evidence therein to the contrary.

B

The Court held that the ruling of the Trial Examiner, excluding several items of evidence tendered by the Employer, denied to the Employer due process of law. These items are as follows:

(1) The International Union contended that certain provisions of the contract between the Employer and the Company Union constituted unfair labor practice. The Examiner excluded certain evidence to the effect that the International Union had entered into contracts with various other employers containing provisions similar to the provisions of the contract between the Company and the Company Union.

(2) It was contended before the Examiner that certain employees were supervisory employees so that their conduct was binding upon the employer. The Examiner excluded evidence tending to show that the International Union admitted to membership at other plants employees holding similar positions.

(3) The Trial Examiner excluded evidence proffered by the Company to show that the International Union had conducted a secondary boycott of the Company's products, conducted violent strikes at other plants and threatened to conduct such a strike at the Company's plant unless the Company signed a closed shop contract with it.

(4) There was evidence to show that in 1935 there had been an uncompleted hearing before the N.R.A. Board and that the Company had discriminated against employees whose discharges were the subject of such hearing before the N.R.A. Board. At the second hearing the Company sought to introduce evidence that it had not discriminated

against employees whose discharges were the subject of inquiry before the N.R.A. In the first hearing the Examiner did, in fact, receive all evidence offered by the Company on this subject. At the second hearing the Examiner refused to receive additional evidence upon that subject. None of the additional evidence was claimed to have been unavailable at the time of the first hearing.

The Court held that the exclusion of the foregoing items constituted a denial of due process to the Company and for that reason the Court set aside the findings and order of the Board.

C

The Court held that the Employer was deprived of due process of law because the Board refused to designate a Trial Examiner for the second hearing other than the one who conducted the first hearing.

It was contended by the Employer in the first case that the Company had been deprived of due process of law because of the prejudice of the Trial Examiner. The Court, in its first decision, 123 Fed. 2d, l.c. 219, decided that there was no such bias and prejudice on the part of the Trial Examiner as to constitute a denial of due process. The Court said:

> "We think that it cannot be said that it appears from the record of the proceedings before the Examiner and before the Board that there was a denial of due process because of bias and prejudice or collusion. If, as petitioners contend, the Trial Examiner and the Board ruled erroneously with respect to the issues to be tried, or in the exclusion of evidence, and drew unwarranted inferences from the evidence adduced, that would not justify a conclusion that either the Examiner or the Board was prejudiced or deliberately unfair. That the Examiner made comments which might better have been omitted, with respect to the attitude of the petitioner's witnesses, or of the character of their testi-

mony, is not enough to show a denial of due process. Compare Cupples Co. vs. National Labor Relations Board, 8th Cir. 106 Fed. 2d 100, 113; Goldstein vs. United States, 8th Cir. 63 Fed. 2d 609, 612, 614." Donnelly Garment Co. vs. National Labor Relations Board, 123 Fed. 2d 215, l.c. 219.

The record on the second hearing is devoid of any action on the part of the Trial Examiner that could conceivably have been evidence of bias or prejudice. The opinion in this case concedes the good faith and honesty of decision both to the Examiner and the Board. The opinion states:

> "We think however, that a ruling by this Court that the proceedings of the Board lack due process because the alleged bias and prejudice against the Company and the Plant Union is not justified" (Vol. XIII, R. 40.)

The sole basis of the decision setting aside the Board's order because of its refusal to appoint another Examiner, is that the Examiner in the first hearing excluded the employees' evidence because he was then convinced, and so ruled, that such evidence was not admissible and was then by him "considered to be of no value or materiality." The record shows that after the Court of Appeals had held that such evidence was admissible the Trial Examiner accepted such ruling and did receive the evidence and did consider it. Nor is there anything in the record nor in the opinion to indicate that the Examiner at the second hearing was swayed as to the admissibility, or value, of such evidence by reason of the fact that prior to the Court's decision in the first case the Examiner had conceived and held that such evidence was not admissible. The opinion means that, solely because an Examiner at a prior hearing believed and ruled that given evidence was inadmissible, such Examiner by reason of such ruling was so disqualified as to further hearings as to render any such further hearing before him devoid of due process.

V

THE FACTUAL ASPECT OF THE CASE. FACTUALLY THE RECORD SUPPORTS THE BOARD'S FINDINGS. THIS IS CONCEDED BY THE OPINIONS.

The opinion makes exceedingly clear that from a factual standpoint there was substantial and sufficient evidence to show that the Company was guilty of the unfair labor practices charged.

The opinion states that there are two factual pictures each supported by substantial evidence in the record. One picture is that the Employer had fostered, dominated and supported a company union and the Employer had entered into a closed shop agreement with such union for the purpose of assisting the Company Union, which is a picture of unfair labor practice. The other picture is that of a group of employees on friendly terms with the employer, satisfied with wages and working conditions, desiring to avoid strikes and labor trouble, formed for their own protection, and completely independent of the employer, which is not a picture of unfair labor practice.

The Board ruled that the picture disclosing unfair labor practice was the true picture, and that the picture as presented by the Employer and the Company Union was not a true picture.

Judge Sanborn's opinion contains the following:

> "The picture drawn by the International and the Board is that of an employer which, solely because of hostility to the International, has influenced and coerced its employees into forming a plant Union and entering into a closed shop agreement, thus depriving them of their freedom of action and choice and making them in effect the bond servants of their employer." (Vol. XIII, R. 37.)

(Manifestly, if this is a true picture the Board was justified from a factual standpoint in making the order in question.)

The opinion continues:

> "The picture which the company and the plant union present is that of a group of employees, on friendly terms with their employer, satisfied with their wage and working conditions, and desirous of avoiding strikes and labor troubles, who, upon the advice of their counsel and for their own protection against an unjustified and unlawful attempt by the International to force them to become, and to force their employer to make them become, members of that union against their will, voluntarily formed and have satisfactorily administered their own completely independent union.
>
> The question as to which is the true picture insofar as that presents a question of fact is not a matter with which this court can concern itself." (Vol. XIII, R. 37.)

It is therefore beyond dispute that the decree of the Circuit Court of Appeals cannot be justified because of failure of proof by substantial and sufficient evidence showing violations of the National Labor Relations Act justifying the order of the Board.

Questions Presented

One

Where, in a review proceeding under the National Labor Relations Act, certain evidence has been received by the Board and the Board, in its findings, declares that it has "permitted the introduction of such testimony", and has "carefully considered all such evidence", whether the Court of Appeals has jurisdiction to set aside the findings and order of the Board because the Court is convinced that, not-

withstanding such declaration by the Board, yet the Board did not give to such testimony so received the consideration and the weight which the Court believes it should have received—all this where admittedly there was substantial and sufficient evidence to support the findings of the Board. Is such ruling beyond the jurisdiction of the Court to review findings of the Board granted and limited by the National Labor Relations Act? Para. (e) and (f) Section 160, Title 29 U. S. C. A.

Two

Whether, in a review proceeding under the National Labor Relations Act, the Court has jurisdiction to set aside the findings and order of the Board because of the rejection of evidence before the Examiner, on the grounds that such action by the Examiner constitutes a denial of due process, except in cases where the rejected evidence is direct, fundamental and vital—not incidental or collateral to the primary issues involved. Is the inherent power of the Court to protect the constitutional right to fair trial, as regards that receipt of evidence by an administrative board, coextensive with the court's authority to grant new trial in an appeal from court to court in a purely judicial proceeding?

Three

Is the Court of Appeals authorized to set aside the findings and order of the Board, on the ground of denial of due process of law, because the Court is of the opinion that the Trial Examiner was disqualified to conduct the hearing, when Congress has imposed in the Board the authority to appoint such examiners and has made the Board judge of their qualifications? (Title 29, Sections 154, 155, U. S. C. A.)

FOUR

If the Court is authorized under any circumstances in setting aside the findings and order of the Board because the Court is of the opinion that the Trial Examiner was disqualified, then is the Court justified in so doing upon the following facts:

When in a previous hearing before the Examiner he excluded certain evidence, called employees evidence, stating that he was convinced that the same was immaterial, inadmissible and entitled to no weight. Where the Court, in a previous review, declared that such evidence was competent and entitled to consideration and remanded the proceeding for the receipt thereof. Where the Trial Examiner in the second hearing did receive all such evidence, formerly excluded, and where, in this case, the Court has held that the Examiner committed no error in his rulings concerning the receipt of such testimony. Where there is nothing in the record nor opinion to indicate that the Examiner at the second hearing was swayed as to the admissibility of such evidence by reason of the fact that prior to the Court's decision in the first case the Examiner conceived and held that such evidence was not admissible. Was the Court, under the foregoing condition of the record, justified in holding that the Examiner was disqualified by reason of his rulings in the first hearing, and in holding, by reason thereof, the findings and order of the Board should be set aside?

FIVE

Whether the evidence excluded by the Examiner, specified in paragraphs (1), (2), (3) and (4), of Division B, of the Summary Statement, was admissible in any event and whether the exclusion thereof would justify a court in reversing the judgment, even in a judicial proceeding upon appeal from court to court.

SIX

Whether the Court of Appeals has not treated its jurisdiction to review findings and order of an administrative Board, as co-extensive with its judicial authority to review legal proceedings as upon appeal from court to court. Whether the Court of Appeals has not far exceeded its jurisdiction to review an action by an administrative Board, as specified and limited by paragraphs (e) and (f), Section 160, Title 29, U. S. C. A. Whether in any event the Court has not confused and confounded judicial power to review actions of an administrative Board, with the jurisdiction on appeal from court to court, to such a degree as to leave the legal situation intolerable.

Reasons Relied On for the Allowance of the Writ

There are special and important reasons for this Court to exercise its sound judicial discretion and grant the writ.

The Circuit Court of Appeals has rendered a decision in conflict with the decisions of other Circuit Courts of Appeal.

The Court of Appeals has decided a federal question in a way probably in conflict with applicable decisions of this court.

The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings concerning the review by the federal courts of actions by administrative boards, as to call for an exercise of this Court's power of supervision.

The Court of Appeals has extended its jurisdiction to review proceedings by administrative boards so as to be practically co-extensive with the jurisdiction of that court to review decisions of lower courts upon appeal in ordinary legal proceedings. The demarcation between the jurisdiction of the Circuit Court of Appeals in the two kinds of

proceedings should again be made clear by the Supreme Court, through certiorari in this case.

The reasons relied upon for the allowance of the writ are specified and amplified and applied to the record in the Brief accompanying this Petition, but which, for the sake of brevity, are not here repeated.

Conclusion

Wherefore and by reason of all which the petitioner respectfully prays that this Court shall issue its writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 787

INTERNATIONAL LADIES' GARMENT WORKERS UNION,

Petitioner,

vs.

DONNELLY GARMENT COMPANY, A CORPORATION, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD,

Respondents.

BRIEF OF PETITIONER INTERNATIONAL LADIES' GARMENT WORKERS UNION, IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

I

The Petition for the writ of certiorari contains, so that there is not here repeated, the following:

A. Reference to the official report of the decision below.

B. Statement of the grounds on which the jurisdiction of this court is invoked.

C. A concise statement of the case containing all that is material to the consideration of the questions presented.

D. Questions presented.

E. Reasons relied on for the issuance of the writ:

II

There is in this brief presented:

(a) A specification of the assigned errors intended to be urged;

(b) further specifications of the grounds and reasons for the court to exercise its discretion for the issuance of the writ, supporting citations and application thereof to the record herein;

(c) argument.

III

Specification of Errors Intended to Be Urged

A

The Court, in conflict with decisions of other Courts of Appeal and of the Supreme Court, and in violation of the National Labor Relations Act, 49 Stat. 449, and particularly paragraphs (e) and (f) Section 160, has weighed the Employees' Testimony and set aside the order of the Board because the Court was of the opinion that the Board did not give to the Employees' Testimony the consideration and weight the Court deemed it entitled to have. What weight, if any, when considered in light of the entire record, the Employees' Testimony was entitled to have, was for the Board alone. The Court may not directly or indirectly enter that field, all the way in, or at all. The Board's power to weigh evidence is the power to reject, because not believed, in part or in toto. Even uncontradicted evidence is not proof until it is accepted as proof by the triers of

fact. (*Gannon v. Laclede Gas Co.*, 145 Mo. 502, 46 S. W. 968.)

In the particular above specified the decision is in conflict with National Labor Relations Act, 49 Stat. 449, and particularly paragraph (e) Section 160. "The findings of the Board as to the facts, if supported by evidence, shall be conclusive," and paragraph (f), "and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive."

Such decision in said particular is also in conflict with the following decisions by the Supreme Court and by the various Circuit Courts of Appeal.

The decision is in conflict with the following decisions by the United States Supreme Court and the various Circuit Courts of Appeal:

National Labor Relations Board v. *Virginia Electric & Power Company*, 314 U. S. 469, 62 S. Ct. 344, l. c. 348;

National Labor Relations Board v. *Link-Belt Company*, 311 U. S. 584, 61 S. Ct. 358;

National Labor Relations Board v. *Hearst Publications, Inc.*, 322 U. S. 111, 64 S. Ct. 851;

National Labor Relations Board v. *Nevada Consolidated Copper Corp.* 316 U. S. 105, 62 S. Ct. 960;

National Labor Relations Board v. *Independent Union of Craftsmen*, 311 U. S. 584, 61 S. Ct. 358;

Boeing Airplane Co. v. *National Labor Relations Board*, 140 Fed. (2d) 423 (10 C. C. A.);

National Labor Relations Board v. *Waterman S. S. Corp.*, 309 U. S. 206, 60 S. Ct. 493;

National Labor Relations Board v. *Southern Bell Telephone Company*, 319 U. S. 50, 63 S. Ct. 905.

Where the Board's finding is based upon reasonable inference, the court cannot interfere upon the ground that the opposite inference could have as reasonably been drawn.

National Labor Relations Board v. *Southern Association Bell Telephone Employees*, 319 U. S. 50, 63 S. Ct. 905;

Montgomery Ward & Co. v. *National Labor Relations Board*, 107 Fed. (2d) 555 (7 C. C. A.);

Wilson & Co. v. *National Labor Relations Board*, 124 Fed. (2d) 845 (7 C. C. A.);

Swift & Co. v. *National Labor Relations Board*, 106 Fed. (2d) 87 (10 C. C. A.);

The credibility of witnesses is exclusively for the Board.

Greenport Basin & Construction Co. v. *National Labor Relations Board*, 132 Fed. (2d) 857 (2 C. C. A.);

Oughton v. *National Labor Relations Board*, 118 Fed. (2d) 486 (3 C. C. A.);

American Enka Corporation v. *National Labor Relations Board*, 119 Fed. (2d) 60 (4 C. C. A.);

Humble Oil & Refining Co. v. *National Labor Relations Board*, 140 Fed. (2d) 777 (5 C. C. A.);

New Idea v. *National Labor Relations Board*, 117 Fed. (2d) 517 (7 C. C. A.);

Cupples Company v. *National Labor Relations Board*, 106 Fed. (2d) 100 (8 C. C. A.);

Swift & Company v. *National Labor Relations Board*, 106 Fed. (2d) 87 (10 C. C. A.).

The finding of the Board may be based upon hearsay testimony where it is the kind on which reasonable men are accustomed to rely.

National Labor Relations Board v. *Remington Rand, Inc.*, 130 Fed. (2d) 919 (2 C. C. A.);

I. A. of M. v. *National Labor Relations Board*, 110 Fed. (2d) 29, (D. C. C. C. A.), l. c. 35, affirmed 311 U. S. 72, 61 S. Ct. 83;

The ordinary rules of evidence are not controlling in proceedings of the Board. "In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling." (N. L. R. B. Sec. 160, Par. B.)

The Board has the authority to fix its own standards of proof. The Board may choose the criteria determinative of an issue of fact, it may reject evidence which has no materiality in view of the criteria adopted, and under those circumstances, the rejection of such evidence is not a denial of due process of law. (*Panhandle Eastern Pipeline Co.* v. *Federal Power Comm.*, 143 Fed. (2d) 488 (8 C. C. A.))

The Court undertook in conflict with *Morgan* v. *United States*, 304 U. S. 1, 58 S. Ct. 773, to go into the mental processes of the Board in arriving at its conclusions.

B

The Lower Court erred in holding that the rejection by the Examiner of four items of evidence described and identified in detail in subdivision B of division IV of the Summary Statement, denied to the Employer due process of law. None of such evidence was vital, controlling or immediately related to the primary issues in the case. It was collateral, secondary and had to do with "imponderables". Such ruling was at most a mere procedural error. Its rejection, even if erroneous, could not constitute denial of fair trial nor due process. Fair trial based upon due process means a trial under law which hears before it condemns, which proceeds on inquiry, and renders judgment only after trial. Mere procedural error in the receipt or rejection of evidence, does not violate the requirements

of fair trial within the meaning of due process of law, *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 60 S. Ct. 918, and particularly is the decision below in conflict with *Federal Communications Commission* v. *Pottsville Broadcasting Company*, 308 U. S. 134, 60 S. Ct. 437 and *Fly* v. *Heitmeyer*, 309 U. S. 146, 60 S. Ct. 146.

C and D

The Lower Court erred in holding that the Employer was deprived of due process of law by reason of the refusal of the Board to appoint an Examiner other than the Examiner who heard the first proceeding. The National Labor Relations Act empowers the Board to appoint the Examiners and makes the Board the judge of their qualifications. Moreover, even if the Court had the judicial authority to review the action of the Board in the appointment of an examiner, the Examiner was not disqualified. The Lower Court held that neither he nor the Board were prejudiced. The fact that in the first hearing the Examiner then ruled that the Employees' Testimony was immaterial and without weight and therefore excluded, did not disqualify the Examiner who obeyed the ruling of the Court and admitted the evidence.

National Labor Relations Act Title 29, Section 154, 155;
Walker v. *United States*, 116 Fed. (2d) 458;
Ryan v. *United States*, 99 Fed. (2d) 864;
Refior v. *Lansing Drop Forge Co.*, 124 Fed. (2d) 440;
O'Malley v. *United States*, 128 Fed. (2d) 676;
Berger v. *United States*, 235 U.S. 22, 41 S. Ct. 230.

E

The Court erred in holding that the evidence specified in paragraphs (1), (2), (3), and (4) of division B of the

Summary Statement was admissible. Such evidence would have been inadmissible even in the trial of a suit at law. The ruling of the Court in this respect is in conflict with the following decisions:

(1) The Board properly excluded evidence which the Company sought to introduce to show that the International Union had entered into contracts with various employers containing provisions similar to those of the contract between the Company and the Company Union. (*Bethlehem Steel Company* v. *National Labor Relations Board*, 120 Fed. (2d) 641, 651, 653. (App. D. C.))

(2) The Board properly excluded the proffered testimony that the International Union admitted to membership at other plants employees holding positions similar to employees of the Company, which were claimed to be supervisory so that their acts bound the employer.

National Labor Relations Board v. *Aintree Corp.*, 132 Fed. (2d) 469, 472 (7 C. C. A.);

National Labor Relations Board v. *Engraving Company*, 123 Fed. (2d) 589, 593 (7 C. C. A.);

New Idea v. *National Labor Relations Board*, 117 Fed. (2d) 517, 524 (7 C. C. A.)

(3) The Board properly excluded certain evidence that the International Union had organized strikes with other employers and had been guilty of alleged conduct with respect thereto. The Court, in the first hearing, held that this evidence was inadmissible. A proper analysis of the facts in the case of *National Labor Relations* v. *Indiana and Michigan Electric Company* so far from supporting the opinion below, demonstrates that such opinion is in conflict with the holding in said case.

(4) The Board properly excluded evidence proffered by the Company to show that prior to 1935 the Company had

not discriminated against employees whose discharges were the subject of hearings before the old N. R. A. board. The Examiner and the Board did, in fact, receive all proffered evidence on that question at the first hearing but rejected additional evidence on that subject, none of which was claimed to have been unavailable at the time of the first hearing.

F

The Lower Court has treated its jurisdiction to review findings and orders of an administrative board as co-extensive with, similar with and analogous to, its judicial authority to review legal proceedings as upon appeal from court to court.

National Labor Relations Board v. *Bradford Dyeing Association*, 310 U. S. 318, 60 S. Ct. 918;

Federal Communications Comm. v. *Pottsville Broadcasting Co.*, 308 U. S. 134, 60 S. Ct. 437;

Fly v. *Heitmeyer*, 309 U. S. 146, 60 S. Ct. 146.

IV

Argument

ONE

The decision below is in fundamental conflict with paragraphs (e) and (f) of Section 160 of the National Labor Relations Act, and is also in conflict with the decisions by the Courts of Appeal and of the Supreme Court cited under division A of the specifications. In review proceedings the Court is confined to questions of law and has nothing to do here, that the findings and order were supported by substantial evidence. Once it is conceded, as here, that the findings and order were supported by substantial evidence, all question of fact goes out of the case. It is fundamental that the Court has no jurisdiction with

respect to the credibility of witnesses or the weight of evidence—that is solely a matter for the Board. Substantial evidence being present the Court cannot concern itself with the mental operations of the Board in arriving at its factual conclusion. (*Morgan* v. *United States*, 304 U. S. 1, 58 S. Ct. 773.) The Board is not required to believe even uncontradicted testimony, it may, if it deems proper in light of the entire record, disregard any testimony as totally without value. Even if the Board is required to receive material evidence, what it does with such evidence so received is not subject to judicial review. Evidence is not proof until accepted by the trier of fact. (*Gannon* v. *The LaClede Gas Co.*, 145 Mo. 502, 46 S. W. 968.)

Here the Examiner received the evidence. The Board declares that is considered it, but in light of the entire record and experience of the Board it considered such conclusionary evidence as immaterial and of no value.

The Court of Appeals sets its own opinion of the value of such evidence against the opinion of the Board. The Board, in its analysis of all of the record, and its experience in fact, held that such evidence was without weight. The Court holds that the Board should have given some weight thereto. There is no escape from the conclusion that the Court did undertake to weigh the evidence and fix the evidenciary value thereof.

The decision below extends the field of judicial review of proceedings of administrative boards clearly beyond that fixed by statute and court decisions. It is without precedent direct or by analogy. It should not stand as the law.

Two

The Court erred and its decision is in conflict with decisions of the Courts of Appeal and of the Supreme Court in holding that the Employer had been denied due process

of law by reason of the Examiner having excluded four items of evidence, which evidence is described and identified in detail in subdivision B of division IV of the Summary Statement. None of such evidence was vital, controlling or immediately related to the primary issues in the case; it was collateral, secondary and had to do with "imponderables". The receipt or rejection of such evidence at most was mere procedural error. Its rejection even if erroneous, could not constitute denial of fair trial nor due process.

The words Fair Trial do not occur in the constitution. The expression fair trial may, and in an appeal from court to court, does mean a trial free from material error. As used in a court's inherent power to prevent a denial of due process of law, fair trial does not mean a trial without error. As applied to the rejection of evidence it means that such rejected evidence must be so direct, controlling and vital that without it the fundamentals of due process of law are denied.

As applied to judicial proceedings fair trial, based upon due process, means a trial under law which hears before it condemns, which proceeds on inquiry, and renders judgment only after trial. (Webster's Argument in *Dartmouth College* v. *Woodward*, 4 Wheaton 517 l. c. 581) and a multitude of other decisions declaring and applying the principle (12 Corp. Jur. 1191).

Any trial which meets these requirements is a fair trial within the meaning of due process of law no matter what procedural errors may have been committed therein.

The law could not be otherwise. A contention that a given trial is not a fair trial because it denies due process of law necessarily raises a constitutional question. If procedural error in the rejection of competent evidence is a denial of due process then every case wherein there was such rejection of evidence would ultimately be for

final decision by the Supreme Court. If a Court of Appeals in a review proceeding under the National Labor Relations Act is to reverse the findings and order of the Board by reason of procedural errors in the receipt of evidence merely by stating that such rejection is a denial of due process of law, then all distinction, at least as far as the receipt of evidence is concerned, between the jurisdiction of the Court of Appeals under the National Labor Relations Act on the one hand, and jurisdiction of the Court in legal proceedings in an appeal from court to court on the other, is destroyed. Such ruling is necessarily in conflict with *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 60 S. Ct. 918, and particularly in conflict with *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 308 U. S. 134, 60 S. Ct. 437, and *Fly* v. *Heitmeyer*, 309 U. S. 146, 60 S. Ct. 146.

Again, and in this respect, the Court of Appeals has exercised a jurisdiction clearly beyond the field fixed for it in such a proceeding as this by the Congressional Act and the decisions of this court and for that reason the decision should not be permitted to stand.

THREE and FOUR

The Court erred in holding that the Employer was deprived of due process of law because the Board refused to designate a Trial Examiner for the second hearing other than the one who conducted the first hearing. The Lower Court has declared and held that neither the Examiner nor the Board was prejudiced or deliberately unfair. The opinion states:

> "We think, however, that a ruling by this court that the proceedings of the Board lack due process because of the alleged bias and prejudice against the Company and the Plant Union is not justified."

The opinion also states:

> "We think that it cannot be said that it appears from the record of the proceedings before the Examiner and before the Board that there was a denial of due process because of bias and prejudice or collusion."

The sole ground for holding lack of due process because the Board refused to appoint another examiner in the further proceedings is that in the first proceeding the Examiner then ruled and declared that the Employee's Testimony was immaterial and without value and accordingly he then excluded such evidence.

It is submitted that Congress has placed the authority to appoint such Examiners in the Board and has made the Board judge of their qualifications. (Title 29, Section 154, 155.) The decision is in violation of the statute because the court has substituted its judgment as to the propriety of reappointing the examiner for that of the Board (*Hill* v. *Florida*, 65 S. Ct. 1273, June 15, 1945). Particularly is this so when it is conceded there was no actual bias or prejudice. It might be that an examiner could be so biased and prejudiced that his conduct of the hearing would constitute denial of due process. But such basis would have to be actual and well proven prejudice. It could not be based upon mere former rulings by the Examiner, especially where he scrupulously obeyed the order of the Court of Appeals in the first case to receive such evidence.

Even in an appeal from court to court the Appellate Court could not lawfully declare that an examiner or a master or a judge was disqualified to hear a given cause for the reason that in some former proceeding or in other proceedings he had made erroneous rulings. If the Examiner were a master or judge and this were an appeal from court to court, the Lower Court's opinion that the master or the

judge was disqualified for the reasons given in this opinion could not be sustained.

Walker v. *United States*, 116 Fed. (2d) 458 (9 C. C. A.);
Ryan v. *United States*, 99 Fed. (2d) 864;
Refior v. *Lansing Drop Forge Co.*, 124 Fed. (2d) 440;
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Berger v. *United States*, 255 U. S. 22, 41 S. Ct. 230.

FIVE

The Lower Court erred in holding that the Trial Examiner improperly excluded four items of evidence specifically described in paragraphs (1), (2), (3) and (4) of division B of the Summary Statement.

SIX

A careful reading of the opinions and consideration of the entire tenor thereof demonstrate, we submit, that the Court of Appeals has treated its jurisdiction to review findings and orders of an administrative board as co-extensive with, similar and analogous to, its judicial authority to review legal proceedings as upon appeal from court to court. These opinions could just as well have been written upon an appeal in a law case wherein a jury had passed upon the facts. There is not a single authority that the Court of Appeals could properly exercise in such a law appeal that it does not either expressly or by necessary assumption employ in this case. With this decision in hand lawyers may logically urge in future review proceedings that the Court of Appeals knows no restriction upon its general appellate jurisdiction and authority by reason of the proceedings being governed by the provisions of the National Labor Relations Act. As to procedural errors in the reception or rejection of evidence the Court, by saying that the receipt or rejection of evidence is a denial of due

process, extends its authority under the National Labor Relations Act to the full scope of general jurisdiction on appeal.

The Circuit Court of Appeals in such a proceeding as this has two sources of jurisdiction. The first is the inherent power of a court, independent of statute, to prevent the denial of due process. That jurisdiction is extremely limited and goes into the very vitals of constitutional fair trial. (Webster's Argument in *Dartmouth College* v. *Woodward*, 4 Wheaton 518.) The only other jurisdiction it has is that granted and limited by the National Labor Relations Act. There was here no denial of due process. The statutory limitations upon the statutory power to review have been disregarded.

This whole question of the jurisdiction of courts to review proceedings by administrative boards has been the subject of discussion by lawyers, bar associations, Congress and the Courts. One school seeks to extend such jurisdiction, and the other to restrict it. Congress has spoken and any further effective discussions must be confined to Congressional halls. That problem cannot be settled by a judicial decision such as the one at hand. For this reason the Supreme Court, upon this very vital question, should take jurisdiction. If nothing more the decision as it stands has confused and confounded the distinction between the two kinds of court review and for that reason the subject should be made clear by the Supreme Court.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 787

INTERNATIONAL LADIES' GARMENT WORKERS UNION,

Petitioner,

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD

PETITIONER'S REPLY BRIEF

CLIF LANGSDALE,
CLYDE TAYLOR,
Counsel for Petitioner.

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INTERNATIONAL LADIES' GARMENT WORKERS UNION,

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DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD.

REPLY BRIEF OF INTERNATIONAL LADIES' GARMENT WORKERS UNION PURSUANT TO PARAGRAPH 4(a), RULE 38.

NOTE: The petitioner International Ladies' Garment Workers Union is called the International Union; Donnelly Garment Company is called the Company; Donnelly Garment Workers' Union is called the Company Union. In this case 787, the International Union is sole petitioner; the Company and the Company Union, being the respondents, have filed separate briefs in opposition to the issuance of the Writ. This brief is intended as a joint reply to both thereof.

Statement

Respondents challenge the petitioner's statement that factually the record supports the Board's finding.

Factually the Record Supports the Board's Finding. Petitioner's Statement to That Effect (Petitioner's Brief 10) Is Not, as Charged, a Misstatement. (Company's Brief 4-5, Company Union's Brief 5.)

Petitioner's statement ("Factually the record supports the Board's findings. This is conceded by the Opinion") is a true statement of the record. The majority opinion states that there are two pictures, one showing unfair labor practice and the other the contrary (XIII-37). Manifestly these pictures came neither from fancy nor shadow, but from the evidence, and necessarily evidence showing the first picture supports the finding. No other conclusion from the Court's language is possible.

Counsel prevert the Court's language ("The question of which is the true picture insofar as that presents a question of fact, is not a matter with which this Court can concern itself") into meaning that the Court, in its opinion, not only did not, but could not concern itself with whether there was sufficient evidence to support the finding of unfair labor practice. Say counsel, "The Court below, in its majority opinion, expressly refused to pass upon the question whether the Board's findings were supported by the evidence" (XIII-37). That is to say, that the Court expressly refused to decide the only question it was authorized to decide under the provisions of the National Labor Relations Act, paragraphs (e) and (f) Section 160. *Reductio ad absurdum.*

What the Court could not do, and was saying it could not do, was that, having decided that there was sufficient evidence to support the picture of unfair labor practice, the Court could not concern itself with countervailing evidence, for the manifest reason that such course would be weighing conflicting evidence.

We therefore submit that all questions in this case must be viewed against the background that factually the record

and for that matter the opinion of the Court below, supports the finding.

Point One.

Petitioner's point one is that: *In a case where admittedly the Board's finding is supported by evidence,* the Court has undertaken to weigh and fix the probative value of given evidence (the Employees' testimony) and to set aside the Board's finding, not because of refusal to admit such evidence, but because the Board did not give the consideration and weight to such evidence that the Court, in its judgment, believed it entitled to have.

The Respondent's answer is twofold:

(a) That this is not a case where, admittedly or otherwise, the finding of the Board is supported by substantial evidence. That the Court did not so find or decide, but expressly refused so to do—"The Court below in its majority opinion expressly refused to pass upon the question whether the Board's findings were supported by the evidence; * * *" (Company brief 2-3).

(b) The Board arbitrarily disregarded the Employees' testimony; refused to consider it; or weigh it or to put it "on the scales" for any purpose (Company brief 4-5, Company Union brief 2-4), hence the Court did not weigh the evidence but merely afforded the parties due process of law.

I

Both the Examiner and the Board Received, Considered and Weighed the Employees' Testimony

A

The Examiner and the Board obeyed the Court's direction and *did receive the employees' testimony.*

The *Trial Examiner* in his report stated:

> "The undersigned accorded the respondent and the D. G. W. U. an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing * * *." (Volume X, 3848)

The *Board's final report* recites:

> "In remanding the case to the Board for further hearing the Circuit Court directed that the respondent and the D. G. W. U. be permitted to adduce the previously proffered testimony of respondent's employees to show, in substance, that they form the union and the D. G. W. U., of their own free will and that they were not influenced, interfered with, or coerced by the respondent in choosing that organization as their bargaining representative. In compliance with the Court's mandate and pursuant to the respective offers of proof, submitted by the respondent and the D. G. W. U. at the original hearing, the Board permitted the introduction of such testimony." (Vol. X, 618-619. See also Vol. XIII, 25.)

The Court below declared and held that such testimony (the testimony of the employees) had been received in accordance with the Court's previous mandate and that there was no error in receiving, rejecting or otherwise ruling in relation thereto (Vol. XIII, 7, 8, 40, 41). That such testimony was received is beyond cavil.

B.

The Trial Examiner and the Board *considered such testimony.*

The *Trial Examiner* considered such evidence. The Trial Examiner reported:

> "The undersigned accorded the respondent and the D. G. W. U. an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing. * * *. Upon the record thus made (manifestly including the Employees' testimony which the Examiner in the second preceding sentence stated that he had received), and from his observation of the witnesses, the undersigned makes, in addition to the foregoing the following findings of fact." (Vol. X, 3848).

The *Board's* finding recites:

> "In compliance with the Court's mandate and pursuant to the respective offers of proof submitted by the respondent and the D. G. W. U. at the original hearing the Board permitted the introduction of such testimony (Employees' testimony), we have carefully considered all such evidence adduced by the respondent and the D. G. W. U." (Vol. A. 618-619).

C

The Board *weighed* the Employees' testimony.

Counsel and the Court assert and reassert, proclaim and proclaim again that the Board did not *weigh* the Employees' testimony, but arbitrarily disregarded it, did not put it "on the scales", treated it as if it were not in the case. This is the basis for the assertion that thus, therein and thereby the Board denied the parties due process of law. We were astounded at the pristine assertion that the Board had not weighed such evidence and at each reassertion we have re-examined the record and can find no sub-

stance in Respondent's assertion or justification therefor. Our conception of weighing is to compare by the balance, to ascertain the weight of, *or lack of weight of*, a substance. To weigh is a transitive verb and it means the ascertainment of lack of weight as much as it means ascertaining its presence. The fact that upon trial by balance a thing is discovered to be without weight does not mean that such process is not a weighing. A thing can be weighed and found wanting.

> "Tekel; Thou art weighed in the balances, and art found wanting." 5 Daniel 27.

Manifestly the Board did weigh the Employees' testimony. While the Board does not expressly use the word weigh, yet it describes what it did and what it did, past all cavil, was weighing.

> "We have carefully considered all such evidence (Employees' testimony) adduced by the respondent and the D. G. W. U. We find, however that the testimony in question (Employees' testimony) does not overcome more positive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the D. G. W. U., which subjected that organization to the respondent's domination and which thus removed from the Employees' selection of the D. G. W. U. in complete freedom of choice which the Act contemplates." (Vol. 13, 25-26).

That is to say, the Board did consider the Employees' testimony and did balance it against other evidence and did find that the Employees' evidence did not, in the opinion of the Board, overcome more positive evidence to the contrary. If that be not weighing, then there has been a strange misconception of the meaning of the word from the days of Daniel, through the King James' version, to the present time.

We *submit* that upon final analysis it becomes exceedingly clear that the complaint by respondent and the decision by the Court are not, and cannot be, based on failure by the Board to weigh evidence, but upon failure by the Board to give to conflicting evidence the weight which respondent and the Court believe it should have. Such contention assumes the Court can itself weigh conflicting evidence. No decision, expressly or by implication, extending such authority to the Court, can or should stand. It is contrary to the express wording of the Act and to many decisions of this Court and the Courts of Appeal.

D

The Board's Declaration That It Did Receive, Consider and Weigh the Employees' Testimony Must Be Taken as Final

Where does the respondent's assertion that the Board did not consider or weigh, but did arbitrarily disregard this evidence, lead? The Board expressly and officially declares that it did consider and by unmistakable implication it did weigh such evidence. These things deal with mental and subjective processes and the Board alone knows what those processes were. (*Morgan* v. *U. S.*, 304 U. S. 1, 58 S. Ct. 773.). There is no room for mistake. Either the Board did, as by it declared, consider and weigh and did not arbitrarily disregard this evidence, or the Board officially states that which it knows not to be true. One who undertakes to prove such a charge against the Board carries a heavy load.

Judge Sanborn's opinion states:

> "It is contended that it appears from the record that the Trial Examiner and the Board had prejudged the case and were determined to convict the company in all events, disregarding its testimony, whenever necessary, to make a finding favorable to

the Board. In order to sustain a ruling to that effect it seems to us that it would be necessary to be able to demonstrate from the record to a moral certainty the existence of such a mental state. The presumption is the other way.'" (Vol. XIII, 40.)

Here the record demonstrates to a moral certainty exactly the opposite of respondent's contention.

E

Calling the Action of the Board, in Weighing Evidence and Discarding Some Thereof as Without Value, Arbitrary, Merely Begs the Question

Counsel criticize our statement: "Even if the Board is compelled to receive material evidence, what it does with such evidence so received, is not subject to judicial review"; counsel saying, petitioner's position means that the Board may "arbitrarily disregard material evidence." (Company brief 4; Company Union brief 2).

Our expression may not be entirely fortunate. The use of the word "arbitrary" is a linguistic trick since no one wants to concede that his position is arbitrary. However, we think our position is fairly clear. Our submission is that *assuming* there is evidence to support the finding, the Board is the *sole* judge of the weight or probative value *or lack thereof* of any given evidence. Always assuming there is evidence to support the finding, sole authority to weigh the evidence is authority to determine after consideration that given evidence in a given case is without weight, and should be disregarded. The Court, under the Act, is without jurisdiction to inquire into the mental processes of the Board, which caused the Board to determine that given evidence was without weight, was not believed, would be disregarded. (Morgan vs. United States, 304 U. S. 1, 58 S. Ct. 773.) The Court may not set aside a finding be-

cause the Court believes that the Board's reason for holding given evidence without weight was not justified. For the Court so to do would be for the Court to do a forbidden thing, which is weigh conflicting evidence. (National Labor Relations Act, paragraphs (e) and (f), Section 160.)

Calling the action of the Board "arbitrary" in refusing to give weight to given material evidence; asserting that the Board "may not arbitrarily disregard material evidence", is only an indirect way of asserting that which is not true, which truth is that the Board is the sole judge of the credibility of the witnesses and the weight, if any, to be attached to their testimony. No matter how it is expressed or what epithet is used, respondent's position means that the Court may substitute its judgment for the Board's in saying whether given evidence is to be given much weight, little weight or no weight.

Who is to determine whether the Board's action in determining the weight of evidence is or is not arbitrary? If the Court is so to determine, then by what standard is the Court to decide the Board's action arbitrary or not arbitrary? Manifestly the standard would have to be the Court's judgment as to whether the given evidence was or was not entitled to *some* weight. But this completes the circle, brings it back to the point of beginning, and is directly in contradiction to admitted law that the Board is the sole judge of the weight, if any, of evidence, and into that field the Court may not enter all the way or any part of the way. He who decides whether the Board's action in weighing evidence is arbitrary or not arbitrary is himself weighing evidence, is exercising an authority the Board alone has and the Court has not under the Act.

The Use of the Word "Immaterial" in the Board's Finding

An inordinate to-do is made by respondents over the use of the word "immaterial" in the Board's finding, as if its

use destroyed all else the Board stated and declared and found. Counsel hang desperately to the word "immaterial" and contend that its use poisons the whole finding and renders the whole proceeding void, because of lack of due process. This contention entirely overlooks the indisputable fact that before, and entirely independent of the sentence in which the word "immaterial" occurs, the Board had received, considered and weighed all of the evidence and found that the employees' testimony did not overcome more positive evidence in the record that the company was guilty of unfair labor practice.

> "We have carefully considered all such evidence (Employees' testimony) adduced by the respondent and the D. G. W. U. We find, however, that the testimony in question does not overcome more positive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the D. G. W. U. which subjected that organization to the respondents' (the company) domination, and which removed from the employees selection of the D. G. W. U., the complete freedom of choice which the Act contemplates". Vol. X, 2526.

It is after such finding, and purely supplemental thereto, in an independent sentence, that the word "immaterial" is found. The Board then states "Since we find the testimony here adduced totally unpersuasive", that is, having already found the testimony unpersuasive, when viewed against the whole record, the Board adds the further and additional consideration that its experience in administration of the Act caused it to conclude the *conclusionary evidence* of this nature was immaterial to *issues such as those presented in this case*. Manifestly the Board did not mean, by the use of this word, to indicate that such testimony should not be received, considered and weighed in light of the entire record, because that is precisely what the Board had already

done. It may well be that this is a loose use of the word immaterial, but it cannot be tortured into meaning that the Board did not and would not receive, consider and weigh such evidence but arbitrarily disregard it. If, instead of using the word immaterial, the Board had said that its experience demonstrated that such evidence, when *viewed in light of an entire record*, was not persuasive, or was of little value, or even of no value, such language would mean nothing more than that used by the Board, and the entire base of respondent's argument would be gone.

The Case of NLRB v. Indiana and Michigan Electric Company, 318 U. S. 9, 63 S. Ct. 394

This case is used by respondents primarily in support of their contention that there was denial of due process because it is alleged the Board excluded four items of evidence (accurately described in the petition of NLRB for certiorari in case 786, pages 3 and 4). The Indiana case is quite accurately analyzed by the NLRB counsel in its petition, pages 44, 45, 46 and 47. The following may be added.

The *Indiana* case was decided upon a petition to the court to remand the case to the Board to hear additional evidence, under the express provision of paragraph (e), Section 160, Title 29 U. S. C. A.—providing that either party may apply to the court for leave to adduce additional evidence. That proceeding, so far as the Supreme Court was concerned, was not to enforce or set aside an order of the Board pursuant to statutory jurisdiction, nor was it to set it aside because it denied to the parties due process of law. The granting or refusing of a petition to take additional evidence resides largely in the discretion of the court (318 U. S. l. c. 27, 63 S. Ct. l. c. 404). This proceeding was not to hear additional evidence, nor was any order made as to adducing further evidence. The proceeding was leveled at the validity of the

Board's order. The Court held the order void (Vol. XIII,71). A proceeding for an order to adduce additional evidence is a far different thing from a proceeding to set aside an order of the Board—questions of jurisdiction and authority are different. The general statements in the Indiana opinion are to be construed and confined, by the character of the facts, and nature of the proceeding in that case, when attempt is made to apply such statements to the case at bar.

Not only were the proceedings distinct and different, but the facts in the two cases are entirely dissimilar, not having even general likeness. In the *Indiana* case the excluded evidence, which the court directed should be received, disclosed dynamiting and other violence, threats, intimidations resulting in witnesses refusing to testify or to commit perjury, and a general condition of lawlessness, all calculated and intended to influence the witnesses, the Examiner and the Board. Nothing comparable to that exists in this record. See NLRB petition in No. 786, page 24 and following. The Supreme Court in the *Indiana* case said:

> "'Dynamiting or display of force by either party has no place in the procedures which lead to reasoned judgments. The influence of lawless force directed toward parties or witnesses to proceedings during their pendency is so sinister and undermining of the process of adjudication itself that no court should regard it with indifference or shelter it from exposure and inquiry.'' 318 U. S. l. c. 29.

The evidence in question here was not offered upon any such theory. The lower court, in the first decision, held that this identical testimony was not admissible. The court there said:

> "We are of the opinion that the Trial Examiner did not err in confining the issues to those which were

tendered by the complaint filed by the Board. We are satisfied that the Board was not required to try the International for alleged conspiracy, nor to try the charge that the Board had conspired or colluded with the International.'' 123 Fed. (2d) l. c. 225.

We contend that the rejected evidence would not have been admissible, even in a jury trial, and certainly such rejection would not require a reversal even under the broad jurisdiction of appeal from court to court. See NLRB petition, case No. 786, p. 24 and following. This question is discussed in the next division of this brief.

The point now is that what was said and done in the *Indiana* case is not applicable, much less controlling, here.

Point Two

A.

Rejection of the Evidence in Question Would Not Have Been Reversible Error Even in an Ordinary Jury Trial. Much Less Could Such Rejection Be a Denial of Constitutional Due Process of Law.

In the first place, since all rulings rejecting evidence in the first hearing were assigned as error in the first case, the Examiner was warranted, in the second hearing, in assuming: (a) that his rulings with respect to the rejection of evidence, except where condemned, *or at least mentioned* in the court's opinion, were not erroneous and should be by him followed; (b) that certainly his rejection, in the first hearing, of evidence of alleged illegal conduct of the International (which rejection was expressly approved by the court (125 Fed. (2d) l. c. 225 (15)) was to be adhered to; (c) that he was not to hear any new or additional evidence not within the scope of the remand.

These considerations alone dispose of nearly all complaint concerning rejection of evidence. Moreover the re-

jection of the evidence in question did not constitute reversible error.

Contracts between the International and other employers said to contain terms less favorable to the employees than the contract between the company and the company union.

Such testimony was non-receivable because it would lead to endless collateral issues, a practice condemned by all trial courts. Who is to say one long complicated contract is more favorable to one party than another contract of like character between other parties? If one side introduces certain terms claimed to be more favorable, the other would introduce other terms said to counterbalance. The court would be deserting and laying aside the main issue to try endless collateral matters.

Aside from this, the only conceivable value of such evidence would be that it could be argued therefrom that the company employees formed the company union because it could obtain a more favorable contract than from the International. But, even here, the existence of such contracts could not bear upon the motive of the employee unless the employee knew thereof, and then it would not be what was in the contract, but what the employee believed was in it. That is precisely the ruling of the Trial Examiner. He excluded the terms of the collateral contracts, but admitted evidence from the employees as to what they understood were in such contracts and whether they joined the company union because of what they believed. Such ruling of the Examiner's runs through pages of the record. We refer to Volume VII, 2514 and following, and Volume VIII, 2521 and following. For instance, note the following:

"Trial Examiner Batten: I think it is important also to know what information they (the employees) had. I say 'what information they had' not what information was available in somebody's office, Mr. Tyler. What in-

formation did these people have upon which they acted"? Vol. VII, 2514.

* * * we should take the testimony of these employees as to what they thought, what motivated them in doing the things they did. I agree with you on that. * * * In other words, it does seem to me that that is the primary purpose for which the court sent it back, to take the testimony of these people, what they thought, why they did thees things", Vol. VII, 2518.

The Trial Examiner did receive testimony of the employees as to what they understood and had heard with respect to such contracts and other activities of the International and what effect such information had upon their joining the company union. Volume VII, 2593, 2594, 2929, 2931; Volume IX, 3080.

Testimony with respect to alleged illegal conduct, fraud and violence on the part of the International.

This evidence was excluded at the first hearing and its exclusion was expressly approved by the Court of Appeals in the first case (125 Fed. (2d) l. c. 225 (15)). Such testimony was non-receivable because it necessarily led to the trial of collateral issues. Moreover in the second hearing the Examiner did admit testimony on this subject for the only purpose for which it could possibly be relevant, and that was a bearing upon the motive of the employees in joining the company union. Here again actual violence, fraud and other misconduct was not admissible *per se*, but what the employees had experienced or heard and believed was admitted, regardless of whether such information was true or false. (VII, 2566-2568, 2624-2626-2711-2713, 2768-2771, 2788 2848-2851, 2915-2917, 3003-3006, 3046-3049, 3078-3081, 3120-3121, 3169-3171, 4101-4102, 5125-4169, 4173-4175.)

Evidence that the International, under other contracts with other employers, received as eligible members employees allegedly having duties similar to those of supervisory employees at the Donnelly plant.

There was testimony that certain employees of the company were supervisory employees, so that their statements and conduct would be binding upon the company. The company claimed these were not supervisory employees, and for the purpose of showing that they were not, the company offered to prove that similar employees in other plants under contracts with the International, were admitted to membership, when they could not have been admitted if they were supervisory employees. Manifestly this was remote and collateral, leading, if it was received, to interminable comparison and inquiry concerning various kinds of employees in other plants; whether the conditions were similar in the various plants, or whether and wherein they differed, and so forth and so on. The rulings of the Examiner are found in Volume VII, 2508-2510; Volume VIII, 2559-2564-2788-2789; Volume IX, 3527; Volume X, 3787-3794.

In addition to this evidence leading to the trial of collateral issues, such evidence was inadmissible because what the International did with respect to other employers and employees could not possibly have material weight with the Board in determining the primary issue of the presence or absence of unfair labor practice by this Company. Respondents treat this case as if it were a suit at law between the International and the Company, wherein the acts and conduct and declaration of the International would be permissible because admissions against interest.

B

Evidence Otherwise Admissible May and Often Should Be Excluded Because It Tends to Introduce Collateral Issues Diverting the Attention of the Triers of Fact from the Precise Issues Involved in the Case and Protract the Trial Beyond Reasonable Limits. The Admission or Exclusion of Such Evidence Rests Very Largely in the Discretion of the Trial Judge, Here the Examiner and the Board.

The foregoing proposition is elementary. The following is a characteristic statement of the law:

> "This general rule (admission of all relevant evidence), however, is subject to the important qualification that testimony which does have some tendency to establish a material fact may be rejected by a trial judge, and should be rejected, when its admission will have a tendency to divert the attention of the jury from the precise issues involved in the case, and protract the trial beyond reasonable limits. This limitation of the general rule requiring all relevant testimony to be admitted to which we have last alluded, is not only reasonable in itself, but it is well supported by the authorities. * * *"
>
> "It is always a question within the discretion of the trial judge as to how far parties may be permitted to go into collateral issues; such discretion being exercised by a fair consideration whether the evidence is relevant to the issue, its probable effect upon the jury, the likelihood of confusing the issues, and the probable time that will be consumed if such collateral issues are followed to their legitimate ends." *New England Trust Co.* v. *Farr*, 57 F. (2d) 103, l. c. 110.

The same principle is announced in 1, *Greenleaf on Evidence*, Section 14 A, 16th Edition, wherein it is called the Doctrine of Collateral Inconvenience; *Schradsky* v. *Stim-*

son, 76 F. 730, l. c. 734; *Lock* v. *C. B. & Q. Railroad Co.*, 281 Mo. 582, 219 S. W. 919, l. c. 922; *Golden Reward Mining Co.* v. *Buxton*, 97 F. 413, l. c. 416; *Wentworth* v. *Smith*, 44 N. H. 419, 82 Am. Dec. 228; *Thompson* v. *Bowie*, 4 Wall. 463, 471, 18 L. Ed. 423.

We submit the action of the Examiner, approved by the Board, with respect to the evidence in question, was not such an abuse of discretion as to constitute reversible error even in a common law trial, much less a denial of due process of law.

C

The Fundamental Question Is Not Whether the Rejected Evidence Was Permissible, Nor Whether Had the Case Been One at Common Law, the Rejection Thereof Would Be Treated as Reversible Error. The Question Here Is Whether the Refusal to Accept Such Rejected Testimony Was a Denial of Due Process of Law.

Counsel for respondents persist, as did the court, in refusing to recognize the distinction between the principles governing the jurisdiction of the court upon appeal from court to court, on the one hand, and those principles that govern statutory jurisdiction to review Administrative Board orders. (*Federal Communications Commission* v. *Pottsville*, 308 U. S. 134, 60 S. Ct. 437.) Even at the expense of brevity we should reply.

Beyond question the court exceeded its statutory jurisdiction granted by the Act. The Court has no statutory jurisdiction to review procedural errors, receipt or rejection of evidence, qualification of Examiner or any other question except whether the finding is supported by substantial evidence. The question then necessarily must be, did the Court exceed its inherent jurisdiction to prevent denial of due process of law? Certain principles of administrative law are to be had in mind.

Distinction between statutory and constitutional jurisdiction in reviewing orders of administrative boards.

The findings and orders of an administrative board are essentially legislative and there is no judicial review of such orders (aside from the question of due process), except that granted by a statute. Many laws creating boards make no provision for court review and it is not necessary to their validity that they should have. In such cases the sole jurisdiction is the constitutional one.

The order of an administrative board, created by valid law, is inherently legislative and the validity of the order as to its constitutionality is to be tested and tried, precisely the same as if it were a specific legislative act. For instance, the legislature has power to regulate rates of common carriers and it may do so by as direct a statute as one providing that passenger rates shall be 3¢ a mile. For reasons well understood and learnedly discussed in the *Pottsville* case, direct legislative regulatory acts become increasingly impractical, if not impossible. Hence Legislative boards were born. These acts have successfully withstood persistent and skillful attack upon their constitutionality. Such laws have been sustained upon the theory that the act of the board is in itself, under a valid law, the act of the legislature. Instead of enacting that passenger rates shall be 3¢ per mile, the legislature provides that passenger rates shall be reasonable, in accordance with certain fundamental principles and standards contained in the legislative act. Then the administrative board, *acting in strict compliance with the standards fixed by the legislature*, makes an order to fit the facts within a given case. When such board, in proper proceedings and hearing, makes an order that, within a given territory passenger rates shall be 3¢ a mile, the situation is precisely as if the

legislature itself had directed such rate. (See authorities hereinafter cited.)

Laws creating administrative boards ordinarily do provide for a limited court review, but the absence of such a provision does not affect the validity of the act, any more than the legislature in enacting a given statute is required to provide for court review of its validity (42 Am. Jur. 665). *The point is*, that no court has any power generally to review a board order, except that granted by statute. Where there is such grant, the review must be strictly confined to the scope of the statute (42 Am. Jur. 669; Annot. 124 A. L. R. 998).

We concede that every American court of general jurisdiction has inherent power to prevent violation of the constitution by common law and equitable process, and this is applicable to orders of administrative boards precisely as it is to legislative acts. But the court, pursuant to such inherent power testing the validity of an order of an administrative board, proceeds precisely as, and with exactly the same limitations, that it would if it were reviewing the constitutionality of a specific legislative act. The principles governing the action of a court in appeal from court to court have no application whatsoever to the inherent jurisdiction of a court to declare either a board order or a legislative act unconstitutional.

The foregoing principles may be taken as established by Court decisions and the law writers. The leading case, of course, is the *Pottsville* case. An extended and learned review and discussion of these principles is found under the title "Public Administrative Law," 42 Am. Jour. 281 and following; a like article by Ralph F. Fuchs in 47 Yale Law Journal 538 (1937); see also the Harriman article, 25 Yale Law Journal 658; Freund, "Cases on Administrative Law," page 3; Professor Frankfurter, now Mr. Justice Frank-

furter, 75 University of Pennsylvania Law Review 615. The scope of court review of administrative orders is dealt with in 42 Am. Jur., page 601 and following.

The canons guiding the courts in determination of the constitutionality of a legislative act are applicable to assaults upon orders of administrative boards upon the ground that they deny due process of law, and such canons are applicable to and controlling in this case, precisely the same as if it were an attack upon the constitutionality of a specific legislative act. Some of these canons here controlling are as follows:

While undoubtedly a court has judicial authority, in a given case, to declare a legislative act unconstitutional and hence void, yet the task is "a delicate one and only to be entered upon with reluctance and hesitation." Every presumption and intendment is to be indulged in favor of validity. The burden is upon him who attacks the law. The invalidity must be clear and certain. Unless the act is clearly unconstitutional, it will be held valid.

> "It is our duty, when required in the regular course of judicial proceedings, to declare an act of Congress void if not within the legislative power of the United States; but this declaration should never be made except in a clear case. Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule." *Union Pacific Railroad Co.* v. *United States*, 99 U. S. 700 (Sinking-Fund Cases).

1 *Cooley's Constitutional Limitations*, 8th edition, page 334; *Champion* v. *Ames*, 188 U. S. 321, 47 L. Ed. 492, 23 S. Ct. 34; *Jackson* v. *Bowden*, 67 Fla. 181, 64 So. 769, L. R. A. 1916D, 931. Any reasonable doubt as to the validity of the act is to be resolved in favor of its validity. *Ogden*

v. *Sanders*, 12 Wheat. 213, 6 L. Ed. 606. It is not sufficient that there be judicial doubt of validity. 1 *Cooley's Constitutional Limitations*, 8th edition, page 371; *Wellington Petitioners*, 16 Pick. 86, opinion by Shaw, Ch. J.; *Heisler* v. *Thomas*, 260 U. S. 243, 43 S. Ct. 83.

These canons, supported by cloud of authority, are applicable in this case. Before the rejection of proffered evidence can be unconstitutional and void, because of a denial of due process, the rejected evidence must be so clearly admissible, so direct and fundamental, that it transcends mere error; that without such evidence manifestly and clearly the parties cannot have a fair trial. It must be such a part of the party's case that without it there was no real trial. If the question of admission or rejection is reasonably debatable, it cannot be denial of due process. The ruling must not only be wrong, but manifestly wrong, and it must be vital to the merits of the case. The law could not be otherwise, else a court, under the guise of due process, could expand its jurisdiction to review findings and orders of administrative boards coextensive with its general authority and jurisdiction upon appeal. We submit that that is what the lower court has done in this case.

None of the foregoing principles and propositions are submitted as mere error. We recognize that error of itself is not ground for certiorari. The erroneous rulings of the court transcend mere error affecting alone the rights of the parties to this suit, but affecting (erroneous and in conflict with other decisions, we submit) the administration of one of the most important and far-reaching statutes on the books. This is a typical case for certiorari.

Points Three and Four

These Points by Petitioner are that the parties were not deprived of due process of law by the action of the Board in

appointing the same examiner for the second hearing who had conducted the first.

Let it be noted that respondents have not countered the following, asserted by the petitioner (Petitioner's brief, 27, 28, 29).

(a) The Court, both in the first and the second cases, found no actual prejudice on the part of either the Examiner or the Board (123 Fed. 2d 215-219, the first case—also Vol. XIII-40, the second case).[1]

(b) In the second hearing the Examiner in good faith accepted the Court's ruling and did, without erroneous ruling, receive the employees' testimony.

(c) There is nothing in the record to show that the consideration given by the Examiner, of the Employees' evidence, was influenced to any degree by the fact that in the first hearing (before the Court had spoken on the question) he, the Examiner, had refused to receive such evidence and expressed his then opinion that such testimony was immaterial.[2] There is nothing to show that after the ruling in the first case the Examiner prejudged the testimony without weight before he received and reconsidered it. That is to say, there is nothing to show that after the Court's mandate and opinion were received the Examiner did not in good faith reconsider and reweigh such testimony. The fact that the Board, on reconsideration, found the testimony, in light of the entire record, to be without weight,

[1] "We think that it cannot be said that it appears from the record of the proceedings before the Examiner and before the Board, that there was a denial of due process because of bias and prejudice or collusion." (123 Fed. 2d 215-219, also Vol. XIII-7, the first case.)

"We think, however, that a ruling by this Court, that the proceedings of the Board lack due process because of the alleged bias and prejudice against the company and the plant union, is not justified." (Vol. XIII-40, the second case.)

does not mean that the Board prejudged that question before giving honest reconsideration.

The decisions as to the disqualification of Judges are applicable.

The decisions of the Supreme Court and of the Courts of Appeal, holding that a judge is not to be disqualified because of his previous rulings in the same or other cases, are applicable here. Respondents say that the ruling as to disqualifications of judges is not applicable because any erroneous rulings by the judge may be corrected on appeal (Company brief 9).

The authority of the Board to correct errors upon the part of the Examiner is far broader than the authority of the Court correcting mistakes upon the part of the judge. The Trial Examiner has no authority to rule finally on anything. The Board may send the case back to the Examiner to take further evidence, to make other and different rulings. So far as the merits of the case are concerned, the report of the Examiner at best is but advisory and may be accepted or rejected or modified by the Board itself. If it be good law that a judge is not to be disqualified because of his previous opinions and rulings, even in the same case, then it is also good law that an examiner is not to be disqualified for such reason.

Respectfully submitted,

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INTERNATIONAL LADIES' GARMENT WORKERS' UNION, *Petitioner*,

vs.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION and NATIONAL LABOR RELATIONS BOARD.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

BRIEF OF INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER.

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Nos. 38 and 39.

SPECIFICATION OF ERRORS AND POINTS RELIED UPON.

I.

There is competent, relevant and substantial evidence to support the findings and order of the Board. This being so it is error for a court to set aside the order because the court believed the Board did not give that weight to given evidence which the court believes it should have. (Point I of the Argument, p. 71.)

II.

It is error for a court to set aside the order of the Board on the ground of denial of due process because of procedural error in the receipt or rejection of evidence. Procedural error is not a denial of due process. (Point II of the Argument, p. 75.)

III.

It is error for a court to set aside the order of the Board on account of the rejection of evidence, when such rejection would not have been reversible error in an ordinary jury trial. (Point III of the Argument, p. 84.)

IV.

It is error for a court to set aside the order of the Board on the ground that the Board did not consider and weigh given evidence, in the face of declarations in the findings by the Board that such evidence was received, considered and weighed, and where the record clearly supports the truth of such Board declaration. (Point IV of the Argument, p. 90.)

V.

It is error and in violation of the provisions of the Act for the court itself to weigh evidence. (Point V of the Argument, p. 94.)

VI.

It is error for a court to treat its jurisdiction in reviewing findings and orders of an administrative board as co-extensive with, similar and analogous to its judicial authority in legal proceedings, as upon appeal from court to court. And it is error for the court in such proceeding not to confine its jurisdiction to that granted by statute or based upon its inherent jurisdiction to afford due process. (Point VI of the Argument, p. 95.)

VII.

It is error for a court to set aside the order of an administrative board because of failure of the board to designate a Trial Examiner for a second hearing, other than the one who conducted a first hearing. (Point VII of the Argument, p. 98.)

BRIEF.

Opinions of the Circuit Court of Appeals.

There are two opinions of the Circuit Court of Appeals dealing with the subject matter of this litigation, which are reported in *151 Fed. (2d) 854* and *123 Fed. (2d) 215*, respectively.

Jurisdiction.

This court has jurisdiction of this cause forasmuch as it, on April 22, 1946 (66 S. Ct. 958, Advance Sheets, May 15, 1946), pursuant to Section 240, Judicial Code, 43 Stat. 938, Title 28, Section 347, U. S. C. A., issued its writ of certiorari to the Circuit Court of Appeals for the Eighth Circuit, bringing to this court, for unrestricted review, the record in an original proceeding in such Court of Appeals, there entitled *Donnelly Garment Company v. National Labor Relations Board*, No. 12641, reported in 151 Federal Reporter, 2nd Series, 854.

Summary Statement of the Matter Involved.

Parties.

Parties to the proceeding are the National Labor Relations Board, herein called the Board; Donnelly Garment Company, herein called the Company; Donnelly Garment Workers Union, herein called the plant union, and International Ladies Garment Workers' Union, herein called the International.

Nature of the Proceedings Before the Court of Appeals.

The proceeding before the Court of Appeals was, under the provisions of the National Labor Relations Act (herein called the Act), upon the petition of the Employer (A-1) to review and set aside an order of the Board entered June 9, 1943 (50 NLRB 241, Rec. Vol. A., p. 618), which Board order required the disestablishment of the plant union, the abrogation of its contract with the Company and discontinuance of certain unfair labor practices. The Board, in its answer, prayed the Court to approve and enforce said order (A-361). The plant union and the International, each by leave of court, intervened (A-368-369), 49 Stat. 926, Title 29, Sec. 160, par. (c) and (f).

Some Detail Concerning Nature of the Proceedings.

The Board, upon charges filed, issued, on April 27, 1939, its complaint against the Company charging it with unfair labor practices as therein specified within the meaning of Section 8 (1, 2 and 3) of the Act and other provisions of the Act. Extended hearings (the record contains more than 5,000 pages) were held. The Board sustained the charges of unfair labor practices, disestablished the plant union, abrogated the contract between that union and the Company, and made incidental provisions for enforcement of the Board's order (A-552). On petition by the Company to review the order of the Board, the Court of Appeals (*Donnelly Garment Company v. National Labor Relations Board*, 123 Fed. (2d) 215) set aside such order because of what the court termed "defects in its procedure caused by the failure of the trial examiner to receive admissible evidence." (123 Fed. (2d), l. c. 225, par. (16).) Accordingly, the proceeding was re-

manded to the Board for the taking of additional testimony.

Pursuant to the court's mandate, the Board vacated its findings and order of March 6, 1940, and proceeded with further hearing, receiving the evidence rejected at the first hearing, for the rejection of which the court had set aside the first order (Vol. 10-3785). The Board made practically the same findings and entered practically the same order as it had found and entered previous to the court's remand (A-618-622).

Preliminary and Herein of Petitioner's Method of Submission.

Petitioner's ultimate submission is that judgment should be entered herein by this Court, denying the petition of the employer to review and set aside the order of the Board (A-552) and granting the request of the Board to enforce said order (A-617) or, the equivalent thereof, sending the case back with specific instructions for the Court of Appeals to enter such judgment. Whether the opinion of the Court of Appeals and its judgment pursuant thereto, contains reversible error, as such term is ordinarily used in appellate practice, is incidental to the subject matter now before the Supreme Court as contrasted with the primary question of what should be the judgment of this Court, whether the order by the Board should be set aside or enforced.

Manifestly, the reasons embraced within the opinion of the Court of Appeals as to why the order should not be enforced should and will be met by petitioner, but met as fallacious arguments against enforcement of the order. This method of submission is justified, if not required, because:

The Supreme Court on certiorari under Judicial Code 240 and pursuant to its general authority to issue writs

(Judicial Code 262) has authority to treat the case in this court practically *de novo* upon the record made below.

Distinctly and clearly, the Act of March 3, 1891, "was intended to vest in this Court a comprehensive and unlimited power" (*Forsyth* v. *City of Hammond*, 166 U. S. 506, 17 S. Ct. 665, l. c. 668); the power is wide, "this power is co-extensive with all possible necessities and sufficient to secure to this Court a final control over the litigation in all courts of appeal" (same citation, l. c. 669). See, also, *The Three Friends*, 166 U. S. 1, 17 S. Ct. 495:

> "We reaffirm in this case the proposition heretofore announced, to-wit, that the power of this court in certiorari extends to every case pending in the Circuit Court of Appeals and may be exercised at any time during such pendency * * *" (Forsyth, 166 U. S. 506, 17 S. Ct., l. c. 669).
>
> "The power thus given is not affected by the condition of the case as it exists in the Court of Appeals. It may be exercised before or after any decision by that court and irrespective of any ruling or determination therein." (Forsyth, l. c. 668.)

In the late case of *Ex Parte Quirin*, 317 U. S. 1, 63 S. Ct. 1, this Court, by certiorari, brought before it for final action, and itself made final disposition of a case pending in the United States Court of Appeals for the District of Columbia.

It is pursuant to such principles governing the scope of judicial authority on certiorari that petitioner treats the subject matter primarily as if it were *de novo*.

STATEMENT OF EVIDENCE SUPPORTING THE BOARD'S FINDINGS.

The Board's findings that the company has engaged in unfair labor practices in contravention of Section 8 (1), (2), and (3) of the Act, are supported by substantial evidence and sustain the Board's order.

The record in this case is such that it should be unnecessary for us to marshal the facts to sustain the conclusion that the Board's findings upon which its order was based are supported by substantial evidence.

The trial examiner's intermediate report (R. X, 3848-3889), as adopted by the Board in its decision, is so clear and well reasoned and so well fortified with record facts, and so well briefed with case law, that it seems presumptuous to argue in its favor before this Court.

In the opinion of the Court of Appeals, written by Judge Sanborn, the facts found by the examiner, as set out in pages 8-25, Volume XIII, beyond all cavil, show that the findings of the trial examiner are supported by substantial evidence. Neither in this case nor in the prior case has it been suggested in the opinion of the court that there has not been substantial evidence in the record to support the findings of the trial examiner. On the contrary, Judge Sanborn in his opinion in this case (R. XIII, p. 37) says:

> "The picture drawn by the International and the Board is that of an employer which, solely because of hostility to the International, has influenced and coerced its employees into forming a plant union and entering into a closed-shop agreement, thus depriving them of their freedom of action and choice and making them, in effect, the bondservants of their employer."

The judge then proceeded to describe the picture presented by the Company and the plant union and thereafter the judge very properly said (R. XIII, p. 37):

> "The question as to which is the true picture, insofar as that presents a question of fact, is not a matter with which this court can concern itself."

That language comes very nearly holding that the findings of the examiner in this case were supported by substantial evidence and that the Board's order would be enforced were it not for certain proceedings which the judge held to be erroneous and to amount to a denial of due process.

Early in 1934 the International opened an office in Kansas City, Missouri, and publicly announced that an effort would be made to organize the workers in the garment industry in that city. Almost immediately the Company became active in opposition to the International and particularly to the effort of the International to organize the workers of the Company, and that opposition continued down through the period of time covered by the hearing before the Board; to-wit, July 15, 1939.

Chronologically the said opposition of the Company falls into three eras, (1) from the advent of the International in Kansas City, in 1934, to July 5, 1935, the effective date of the National Labor Relations Act; (2) the period from July 5, 1935, the effective date of the Act, down to the date of the formation of the plant union, April 27, 1937; (3) the period from the date of the formation of the plant union to the last day encompassed by the evidence in the hearing before the Board.

(1) Company's opposition to the International and unions in general prior to the effective date of the National Labor Relations Act.

In the following statement the references preceding the semicolon are to the pages of the Record where the findings in the Intermediate Report, which were adopted by the Board (A 618), appear; references following the semicolon are to the pages of the Record where the supporting evidence appears.

Prior to 1934 no effort had ever been made to organize the employees of the Donnelly Garment Company. In 1934 the International established an office in Kansas City, Missouri, and announced in the papers that an attempt would be made to organize the garment workers of Kansas City (X 3859; IV 1307-1312). On March 15, 1934, the International held an open meeting at the Musicians' Hall, to which all of the employees of the Company were invited. Another similar meeting was held at Eagles' Hall on December 4, 1934. On both occasions the Company's supervisory force attended the meetings in a group, including the production manager, personnel manager, and many of the instructors whose supervisory capacity in the Company's plant is hereinafter discussed. (X 3859-3860; III 1033-1034, 1102, 1104, 1058, 1105-1106, 1113.)

During 1934 at least a dozen of the Company's employees joined the International (X 3860; III 1033, 1036, 1037, 1043, 1047, 1052, 1098; IV 1120-1120-b, 1120 mm-1120 rr, 1120 vv, 1140-1141, 1153, 1156-1157). Employees who were observed attending meetings and others were called to the office where Production Manager Reeves questioned them about their interest in the union, reprimanded those who had joined, and warned others that joining would do them no good (X 3860; I 306-308; III 1035-1036, 1044-1046, 1052-1055, 1067-1068, 1073-1074, 1076,

1079-1087, 1141, 1153-1154, 329). Mrs. Gray, manager of the Company's retail outlet store (X 3860, IX 3336, X 3572, 3644-3645), told an employee that it was a "shame" that she had joined the ILGWU (X 3860; III 1088-1089). Production Engineer Dewey Atchison asked employees why they did not come to the Company instead of "going down to a bunch of foreigners" (X 3860; III 1068; IV 1331), advised against "getting messed up" with the union (X 3860; III 1100-1101), and warned that they would be fired if they did (X 3860; III 1101-1102). The instructors who at that time unquestionably had power to direct, discipline, and recommend the discharge of employees, also warned employees that those who joined the ILGWU would be discharged and urged employees not to give their money "to those foreigners" (X 3860; III 1047-1048, 1063, 1069, 1090; IV 1150-1151, 1323, 1325-1326, 1331). One instructor referred to the ILGWU members as "scum" (X 3860; III 1070; IV 1331).

A substantial number of the employees who joined the ILGWU were laid off or discharged shortly after joining. In June, 1934, about a dozen employees attended a dinner at the home of Mrs. Yarnell, an employee who had joined the ILGWU, for the purpose of discussing that labor organization (X 3860-3861; III 1036-1037, 1046-1051, 1098; IV 1153). Mrs. Yarnell was discharged in July, 1934, although she had worked for the Company since December, 1924 (X 3861; III 1046-1049). Within a few months thereafter, all except one of the girls who had attended the dinner were either laid off or discharged (X 3861; III 1037-1040, 1042-1044, 1051). As a result of these lay-offs or discharges, the ILGWU filed a charge against the Company under Section 7 (a) of the National Industrial Recovery Act, alleging that eight employees had been laid off because they joined the ILGWU (X 3861; IV

1316-1317). A hearing of these charges was held in the spring of 1935, but, before a decision issued, the National Industrial Recovery Act was declared unconstitutional by this Court (X 3861; III 1032-1110a; IV 1318).

In the latter part of 1934 and the first part of 1935, all the remaining employees who were known to have joined the ILGWU were transferred from the Company's main plant to a temporary branch, and laid off when the branch closed down in June, 1935, despite the fact that most of these girls had several years service with the Company, whereas employees in the main plant with less service were retained (X 3861; III 1062-1066, 1073-1077; IV 1120uu-1120vv, 1126v-1129, 1130d-1130e, 1132-1136, 1156b-1157, 1323-1327, 1332-1334).

The Board expressly refused to make any finding as to whether the discharges and lay-offs were discriminatory (X 3860, note 25); however, it did find on the testimony of some of the employees, that as a result of the sequence of events above related, employees became afraid to join, admit their membership in, or discuss the ILGWU (X 3861; III 1044-1046, 1057-1048, 1080-1081, 1141-1142).

The Loyalty League.

In February, 1935, while the charges before the NIRA were pending, the Company formed what was called the Nelly Don Loyalty League, for the purpose of combatting the efforts of the International to organize the workers of the Company. The League and its officers continued to control and dominate the labor relations of the Company and its employees from its formation down to the formation of the Donnelly Garment Workers' Union in April, 1937, as will be shown as we proceed with this statement.

In February, 1935, a meeting of about fifty employees was held at the home of Mrs. Gray, manager of the Company's retail store (X 3861; IX 3336; X 3572, 3644-3645), at which time and place she and Mrs. Strickland, head of the Company's pattern department (X 3861; IX 3233; X 3850), formed the Loyalty League (X 3861; III 798d-798e; X 78, 3336, 3439). Within the next three days, membership cards were circulated and signed by substantially all of the Company's employees (X 3861-3862; III 798e), including all of the Company's supervisory employees, Sales Manager Keyes, Employment Manager Hyde, Production Manager Reeves and Production Engineer Atchison (X 3859, 3860, 3863; I 407; II 429, 431, 533, 551; III 1091, 1097, 1108, 1113, 1117). Mrs. Strickland, in circulating the cards, stated that Mrs. Reed "would close her doors before she would have a union shop, and we should sign these cards to keep our jobs, and keep us in work, because she would close the doors (X 3862; III 1078). Accompanying the circulation of the membership cards was the following statement (I 42; III 798d):

> "We protest against, and will resist, all attempts of outside interference with the business of said Company, or with our relations to the Company as employees.
>
> We recognize the fact that * * * we have had generous and fair treatment from Nell Don (Mrs. Reed), president of the Company, and we repose our confidence in her rather than in professional agitators who are sent here to create discontent among employees of the Company."

The League was formed and the said statement was circulated with the evident intent of interfering with and influencing testimony to be heard on the charges filed with the Board created under the National Industrial

Recovery Act and to bar the International from the plant (X 3861; IV 1316, 1317, 1318; III 1032-1110A). The said purpose was evidenced by the conduct of Mrs. Strickland in refusing to allow Virginia Stroup, who was president of the International local, organized among the employees of the Company, to become a member of the Loyalty League (X 3862; III 1078-1079). Virginia Stroup testified before the trial examiner at the first hearing with the following colloquy:

> "Well, the day that Mrs. Gray came over with Mrs. Strickland with the Loyalty League cards, * * * And Mrs. Gray was holding the cards in her hand just like that * * * Fan shape. And I asked Mrs. Gray what they were, and Mrs. Strickland took up the conversation then. She said that Mrs. Donnelly would close her doors before she would have a union shop, and we should sign these cards to keep our jobs, and keep us in work because she would close the doors and thus throw all the girls out of employment.
>
> So I started to take one of the cards like this, but she had her thumb holding it until I couldn't get it. She says, 'Virginia, we would like to have you in our organization, but you can't carry water on both shoulders.' She says, 'There are no dues in this Loyalty League, and you can't belong to an organization that you pay dues to and belong to the Loyalty League.'".

Meetings of the League were regularly held on the second floor of the building (X 3862; I 39-40, 309; VIII 2666; IX 3033, 3067). Notices of said meetings were given to the employees by the supervisory personnel of the Company, and over the Company's communication facilities (X 3862; I 308-309; III 1011; IX 3337, 3344, 3435).

Each section of the plant had a representative, elected during working hours by the employees in the section, to

represent them in the League (X 3862-3863, 139; II 378j-378r; III 798e; VIII 2888-2889; IX 3032-3033, 3114). The League had songs of loyalty and sponsored the wearing of pins bearing the initial "L" as a demonstration of loyalty to Mrs. Reed (X 3863; I 319-320; II 542; VIII 2581, 2608-2609, 2694, 2843; X 3572).

That the Loyalty League, organized as aforesaid by the management employees of the Company, and for the purpose of preventing any of the employees from joining an independent labor union, appeared in and dominated many situations involving labor relations of the Company and its employees, down to and through the organization of the Donnelly Garment Workers' Union, will abundantly appear as this statement proceeds.

(2) From the effective date of the Act to the formation of the plant union, July 5th, 1935, to April 27th, 1937.

From the time that the hearing of the charges against the Company, before the National Industrial Recovery Board, was ended by the invalidation of the NIRA, down to the early part of 1937, the International, so far as the Record shows, made no effort to organize the employees of the Company. But the Loyalty League was meeting and was on the job in promoting the objective of its formation, to-wit, to keep the employees out of an independent labor union (X 3864; IX 2607-2608, 3572).

Ross Todd, whom the trial examiner found to be "acting for and on behalf of the" Company (X 3858), early in 1937 was elected president of the Loyalty League. And from that time down through the period covered by the evidence produced at the hearings before the trial examiner, while parading under the disguise of representing the employees in their labor relations, she was in fact,

as will abundantly appear as this statement proceeds, working in the interest of the management.

On February 26, 1937, there appeared in the Kansas City Star an article stating that the ILGWU had announced a campaign to organize the Company's employees (X 3864; III 1019).

The Loyalty Petition.

On March 2, 1937, less than a week after the International had announced, as aforesaid, that it would again take up the business of organizing the Company's employees, two women from the shipping department, Mary Sprofera and Inez Warren on Company time, went through the entire plant, and from machine to machine, and circulated what has become known in this case as the "Loyalty petition" (X 3865); V 1623-1641; I 311-312, 354-354a; II 594, 602; VIII 2578, 4609-2615, 2637-2638; 2725). The Loyalty petition read as follows:

> "We, the undersigned, as members of the Donnelly Garment Company, wish to make it known we are positively happy and contented with the positions which we hold with the organization, and refuse to accept any labor organization. We are thankful for the real humanitarian interest extended by our employer, Mrs. Reed."

Three employees refused to sign; Elsie Greenhaw, for the reasons as stated by her (X 3865; II 377):

> "Q. Now, on March 2, 1937, when this so-called Loyalty petition was sent around, you declined to sign it? A. Yes, sir.
>
> Q. And you declined on the ground that it contained in it the statement 'and refuse to acknowledge any labor organization'? A. That is right. * * *

I felt, as an employee of the Donnelly Garment Company, I had a right to believe in a union, or not, as I pleased."

Sylvia Hull refused to sign the petition when it was first passed around among the sewing girls. She testified (V 1354-1355):

"Well, she (Mary Sprofera) came down through the section and had this petition and she asked us to read it over and then she said it was not compulsory that we sign the petition, and I read it over and it said that we were satisfied with hours and conditions in the factory, and I was not satisfied with the hours, and told her that I did not think that I would sign the petition. So we had talked among the other employees that if we did not sign this petition we would lose our jobs * * * (V 1355). Well, after she came through the first time and we did not sign, this other girl and I, then we decided that if we did not sign that that we— * * * The substance of it was that if we did not sign the petition we would lose our jobs. Then this same girl came back through the section a few days later and she said, 'I think I missed you girls when I came through the other day,' and I told her no, she didn't miss me, but I said that I would sign the petition then; and I told her that the reason I did not sign it was because we were working 53 hours a week and that I thought that was too much, but I signed it at that time. Then she (Mrs. Hyde, employment manager) called us down to the nurse's room."

"Q. How did she call you? A. Well, as near as I remember the instructor—they have a telephone in each section, the instructor told us to go down. Anyway we were called down.

Q Do you recall any further conversation upon this occasion when Mrs Hyde was present? Did anything else happen in this conversation in the nurse's room? A Yes; she called us down there and

told us that she intended to take our names off and we insisted that she leave the names on in order to hold our jobs and she said no, that she would not do that, so she did take our names off, and I told her then that that was too long to work, and she said well, that she didn't have any say as to the hours they worked and she said, well, we would just forget about that" (V 1355-1356).

Mrs. Hull did lose her job on April 23, 1937 (X 3870; V 1356).

Marguerite Keyes, at the time of the circulation of the said Loyalty petition, was the office manager, and handled the finances of the Company (X 3640). A few days after March 2, Mrs. Keyes was in Mrs. Reed's home, who showed her the petition. Mrs. Reed told her that she would like to have the petition one hundred per cent. She testified (X 3641-2):

"Q. Who was not on the petition at that time? A. Well, I know they didn't have the officers and some of the executives of the Company. I don't recall just the people that were not on there; however, I do know they didn't have the tenth floor.

Q. What did you do after that, in that respect? A. Mrs. Reed told me she would like to have that petition one hundred per cent, and whether I went back to the office that day or not, I do not recall; but the next day I did suggest to one of the girls in the office that she take this petition around and have it signed.

Q. Who was that girl? A. Pauline Shartzer.

* * * * * * * * *

Q. Was she in the department of which you were the head? A. Yes, she was.

Q. Do you know whether Pauline Shartzer did circulate the petition then? A. Yes, she did."

As a result, everyone in the plant, including the full supervisory force, watchmen, porters, maids, stenographers, indeed, every employee except the three heretofore mentioned, signed the pledge (X 3866; A 388; IV 1288-1289; V 1643-1649; VII 3432-3433; VIII 2947-2955; IX 3335; X 3642-3644). The examiner found and the Board approved that under all the circumstances the Company, by permitting Mary Sprofera and Inez Warren, and requesting Pauline Shartzer to circulate the pledges in the factory during working hours and by requesting that additional signatures be secured, gave approval and lent assistance and encouragement to the solicitation of the employees to pledge themselves not to join the International, and thereby interfered with, restrained and coerced them in the free exercise of a collective bargaining agent (X 3866).

Every time the International got any publicity with reference to organizing the employees of the Company, the Company's officials and supervisory family got busy in an effort to check the International.

The March 18th, 1937, Meeting.

On March 6, 1937, the Kansas City Journal-Post carried an article stating that David Dubinsky, president of the International, at a meeting of 700 union members in Kansas City, had officially launched a movement to organize employees of the Company (X 3866; III 1021). The International, on March 9, 1937, sent the Company a letter requesting a bargaining conference (X 3866-3867; III 1022-1024). The Company did not reply to that letter, but Mrs. Reed, president of the Company, on March 18, 1937, read the letter to a mass meeting of employees called by the subservient company-organized and dominated Loyalty League (X 3867-3869; I 48-49, 147-148, 310, 354b-354c; II

588; VIII 3620). Rose Todd, president of the League, called the meeting. Rose Todd presided at the meeting. Chairs for the meeting were rented from the Kansas City Chair Rental Company and paid for by the Loyalty League (X 3867; I 44i, I 334w, 345; III 960, 962; V 1621). The meeting was held during working hours in the building in which the plant was located (X 3867; I 308-309; IX 3328-3330, 3438, 3454, 3457-3458; X 3575, 3666). Most of the supervisory force were in attendance at the meeting, including Ella Mae Hyde, employment manager; Martha Gray, outlet store manager, and Elizabeth Reeves, merchandise manager, and the instructors and thread girls. (X 3867; I 309-310; II 534; IX 3328-3329, 3438). The principal business of the meeting was the reading of the letter of March 9 from the International, by Mrs. Reed, and a speech by Mrs. Reed in which she stated that the Company was going to devise ways and means of protecting the employees from the violence which she attempted to lead the employees to believe was about to descend upon them at the hands of the International. She stated that she was not going to permit "Dubinsky or any other buttinsky" to intimidate her or the Company into forcing the employees to join the International against their will." She spoke of the so-called "Loyalty Petition," which had been circulated in the factory on March 2, and which stated, among other things, that the employees "refused to acknowledge any union labor organization," as follows:

> "I have had lots of nice things happen to me in my lifetime, but have never had anything that made me so proud and so happy as the list of names that came to my house" (X 3867-3868; III 1029-1030).

The examiner found and the Board approved (X 3868-9):

"Through the presence of supervisors and the sponsorship of the League, which had for its purpose the exclusion of outside union organization for the factory, the employees must inevitably have been aware of the anti-union character of the meeting and could not have been free to express their independent views. * * * Mrs. Reed's remarks indicated that the ILGWU was the common enemy of both the respondent and its employees. * * * While Mrs. Reed sought to appear as a disinterested defender of the respondent's employees in the exercise of their right to join or not join a labor organization, against the background of the respondent's widely publicized hostility to the ILGWU and the past repeated reminders to the employees that "loyalty" to the respondent demanded repudiation of outside union organizations, the undersigned is convinced that Mrs. Reed's remarks made it plain that the respondent's attitude toward unionization had not changed, and the membership of any of the employees in the ILGWU was not to be tolerated.

The undersigned finds that by the sponsorship and domination of the March 18 meeting and by Mrs. Reed's talk at said meeting, the respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

The April 23rd, 1937, Demonstrations.

On April 22, 1937, a local newspaper carried an announcement by the International that Sylvia Hull, one of the Company operators, had been named as a delegate to the bi-annual convention of the International at Atlantic City (X 3869; III 1015). On the next morning, from the time Mrs. Hull arrived at work until she was removed

from her machine by Mrs. Hyde, employment manager, she was subjected to a continuous anti-union demonstration (X 3869-3870; II 535, 541-542d; IV 2339; V 1350; IX 3013-3015, 3475-3480; X 3517). Although Mrs. Hull sat at her machine sewing and did nothing to provoke any hostility, girls from all over the plant came in groups to her place of work on the 8th floor of the plant (X 3870; IV 1340-1343, 1349-1350; VIII 2656-2657, 2693, 2926-2927, 2991-2993; IX 3013-3015). They told Mrs. Hull that she could not belong to the International and demanded that she surrender her Loyalty League pin (X 3870; IV 1346-1347, 1349; IX 3013-3014, 3036, 3042-3043). Some of the girls stood on nearby tables (X 3870; V 1346-1347). They sang songs and booed (X 3870; V 1346; VIII 2665, 2693; IX 3419-3490). Although Mrs. Allison, instructor of the section in which Mrs. Hull worked, was present throughout the demonstration, she did not order the girls back to work or take any kind of action (X 3870; II 663-664; V 1341-1350; X 3573). After the demonstration had continued for sometime, Employment Manager Hyde appeared. After watching the demonstration for a short time she ordered the girls to return to work; when they refused to do so, she removed Mrs. Hull from the floor and sent her home (X 3870; II 535-536; IV 1340; V 1343, 1356-1357; X 3517, 3573).

On the same day Fern Sigler came to work for the first time displaying her International membership pin and also wearing a Loyalty League pin (X 3870; I 319). She was subjected to a demonstration similar in character to that to which Mrs. Hull had been subjected (X 3870; I 70-72; III 315-316, 321-322; X 3666-3667). Mrs. Sigler attempted, throughout the demonstrations, to continue sewing, and even when Production Manager Batty, accompanied by Rose Todd, ordered Mrs. Sigler to his

office, she expressed the desire to remain at her work (X 3871; II 442-445, 497-499). Beatty, however, commanded her to go to his office and she complied (X 3871; II 444).

The Inquisition of Fern Sigler in the Company's Office Presided Over by Rose Todd (April 23, 1937).

In the office Mrs. Sigler was confronted by Rose Todd, president of the Loyalty League, and as the Board has found, a representative of the management; Lee Batty, production manager, and Ella Mae Hyde, employment manager, all of whom took her to task for joining the International. Miss Todd took charge of the inquisition and in the presence and with the approval of Batty and Hyde, she proceeded to tell Mrs. Sigler what the Company's policy was with reference to labor unions (X 3871; III, 801-807). Rose Todd, at that inquisition, speaking to Mrs. Sigler, said:

"R. Todd (III 803): What do you think you have gained that we haven't by joining the union?

F. Sigler: Shorter working hours.

* * * * * *

R. Todd: Nobody is going to do any violence against you. If you want to go home, all right. You got yourself in it and you can stay in it or get out if you want to get out. As president of the Loyalty League, I am not going to try to sell you on the idea that we are right, but the majority will certainly rule in a case like this. You expect the majority to rule if they believe like you; we expect it to rule when they believe like we do. We have had no violence and we don't intend to have any violence.

R. Todd (III 805): Did you join because you really wanted to join?

F. Sigler: Yes, I certainly did. I have a mind of my own and I don't let anybody control it.

Mr. Baty: Do you think the union will give you better working conditions and better treatment personally?

F. Sigler: I wouldn't say. I don't know.

Mr. Baty: The thing that I am interested in is that if there are any particular conditions here that are not right, I want to correct them.

R. Todd: It has always been the practice here that if we had any complaints to make, we made them. If we don't make them we certainly can't straighten them out.

F. Sigler: You can do things I don't have the authority to do.

R. Todd: I have no authority * * * My advice to you is, if you feel that strongly about the union and have enough people to back you up, be in a union shop. I wouldn't any more think that I could join the union and get by with it than the man in the moon. I'd expect to be put out in the street and left there. You can't expect any organization to revolve around one or two people. There are 1,200 of us. I have no way of knowing how many of you there are but it is very evident that it is not a majority. I talked to some of the girls last night and asked them to be quiet about it and they went away thinking they would. When they all got together they couldn't stand it. What do you think you had better do?

F. Sigler: I don't know.

R. Todd: Didn't you expect this to happen when you told everybody you belonged to the union?

F. Sigler: I didn't see why it should.

R. Todd: Did you think you had enough people here to back you up? What did you expect? I never tried anything in my life the majority didn't rule. We went downstairs and sent those girls back to work and they went back to work.

F. Sigler: Didn't I have a right to join this union? As long as I don't bother anyone, what business is it of theirs if I belong? * * *

R. Todd (III 807): We are going to run an open shop as long as the majority feels that way. The majority is going to rule, as always.

Mr. Baty: I am going to ask you to go home temporarily and Mrs. Hyde will call you back when I think it is safe for you to come back."

Mrs. Sigler never did go back to work for the Company.

Mrs. Hull never did go back to work for the Company.

The examiner found and the Board approved:

> "That the respondent approved of and encouraged the demonstrations and took advantage of them to reveal once more to the employees its hostility to the ILGWU and its support of anti-ILGWU activities. Further, that by such acts the respondent interfered with, restrained and coerced its employees of the rights guaranteed by Section 7 of the Act" (X 3871).

Heretofore in this statement we have marshaled evidence from the record tending to prove that the Company, since the advent of the International into Kansas City in early 1934, has been constantly on the alert to keep the International out of the Company plant.

First, by acts preceding the effective date of the Act, such as the surveillance of meetings held by the International in Kansas City, by discharging and otherwise disciplining employees who joined or favored the International, by supervisory employees disparaging and belittling the International and its officers.

Second, by the formation of the Nelly Don Loyalty League in February, 1935, while the charges of the International against the Company were pending before the National Industrial Recovery Labor Board, for the avowed purpose of keeping the employees of the Company out of the International and out of any labor union.

Third, by the circulation of the so-called "Loyalty Petition" on March 2, 1937, following publicity to the effect that the International was preparing to organize the employees of the Company, which petition stated that "We * * * refuse to accept any labor organization."

Fourth, by holding a mass meeting on March 18, following further publicity to the effect that the International was preparing to organize the employees of the Company, at which mass meeting the president of the Company made a speech disparaging and belittling the International and its officers and attempting to frighten the employees into believing that the International was intent upon doing violence to them, and by praising the employees for signing the Loyalty pledge "refusing to accept any labor organization."

Fifth, by staging and encouraging demonstrations on April 23, 1937, around the machines of two girls who had joined the International and by severing the employment of said girls with the Company.

(3) The Formation of the Plant Union.

We now come to the culmination of all of the events heretofore described to the objective of the Company's anti-union, anti-International policy, the formation of the Donnelly Garment Workers' Union, herein called the plant union.

The plant union was conceived by, organized by, financed by, and it has been controlled and dominated by the Company.

Prior to April 12, 1937, the date upon which the Supreme Court upheld the constitutionality of the National Labor Relations Act, the Company had evidently assumed that the Act would be declared unconstitutional for it conducted its labor relations just as though the Act were

not in existence and as though it were no protection to the employees, against discrimination because of union activities, and no protection to them and their right to join labor organizations of their own choosing (X 3872 3873; III 824).

Three employees, including Miss Todd, employed an attorney, Mr. Frank Tyler. They paid him a retainer fee of $500, as they stated, to bring some sort of an injunction suit against the International. On April 1, 1937, Rose Todd went to the First National Bank in Kansas City, Missouri, and borrowed $1,000 upon the unsecured note of the Nelly Don Loyalty League, and deposited the money to the account of the Loyalty League in said bank. She, as president, and Pauline Hartman, as the treasurer of the Loyalty League, issued a check on said account in the name of the Loyalty League for $500, which they gave to Mr. Tyler (X 3872; II 556-577; III 959; I 179; II 378i-378q; III 949). No such injunction suit was ever filed, but the $500 was kept by Mr. Tyler and applied by him on his fee for his help in organizing the plant union (X 3785, Note 44; III 927-928). At the meeting of the group chairmen of the plant union, on June 15, 1937, as shown by the minutes of said meeting, the following colloquy occurred:

> "Q. I understand people are saying that we paid Mr. Tyler $500 to organize our union?
>
> Rose Todd: As you know, and as we have explained quite thoroughly, we paid Mr. Tyler $500 retainer's fee. He helped us write our By-Laws and Working Agreement, and will advise us and help us when we need it."

The financial records of the plant union show that no other money was paid to Mr. Tyler after the check of April 1, 1937, until November 23, 1937 (X 3875).

On April 27, 1937, a meeting was held on the unoccupied second floor of the building in which the Company maintained its factory, at which meeting the plant union was organized. The employees were ordered to go to the meeting by their instructors and other supervisory employees. The meeting was held during working hours and the employees were paid by the Company for the time which they lost because of attending the meeting. Mrs. Lola Skeens testified at the second hearing in 1942 that at the time of the organization of the plant union, and for a long time prior thereto, she was in the employ of the Company as an instructor; that she was so employed for 15 years prior to leaving the Company on September 19, 1941 (IX 3426). She testified (IX 3420):

> "Q. Did you attend the meeting at which the Donnelly Garment Workers' Union was organized? A. I did.
>
> Q. Did you know before you got to that meeting that a union was going to be formed at the meeting? A. I did.
>
> Q. How did you learn of that? A. Mrs. Wherry told me. (Mrs. Wherry was factory-manager.)
>
> Q. Do you know how the girls working in your section learned of the meeting? A. I told them . . .
>
> Q. At what time of day was the meeting held? A. I am not sure what exact time. It was around 2:30, I think.
>
> Q. Did the girls in your section wear their uniforms to the meeting? A. Yes.
>
> . . . . . .
>
> Q. Did you go to the meetings with the girls in your section? A. Yes, I did.
>
> Q. Did you sit with them at the meetings A. Part of them.
>
> Q. Were the girls in your section paid for the time they spent at that meeting? A. They was.

Q. Was an entry made on the girl's card to show she was to be paid? A. There was.

Q. Did you see that entry? A. Yes."

Mrs. Etta Dorsey, an instructor in the employ of the Company from October, 1927, to March, 1942, gave similar testimony (IX 3329).

Typewritten minutes kept by the plant union of the meetings and typewritten minutes kept by the group chairmen of the plant union, were subpoenaed at the first hearing in 1939, and they appear in Volume III of the Record, on page 821 through 946. Much of the evidence supporting the facts found by the examiner are contained in those written minutes kept by the plant union itself.

The minutes of the meeting of April 27, at which the plant union was organized, appear in Volume III, pages 821 to 830, inclusive. They show that the meeting was presided over by Rose Todd, who was at said time the president of the Loyalty League. The first addressed the meeting in part as follows:

> "I believe everyone is present and it certainly is a very gratifying sight to see this many of us together again.
>
> As chairman of the committee of employees, I have called this meeting this afternoon to discuss a matter of vital importance to us as employees.
>
> Several weeks ago it seemed to me that it was necessary to obtain some legal advice for us. After considering where we could obtain that advice we decided to ask Mr. A. Gossett and Mr. F. E. Tylor to act as attorneys for the employees.
>
> I have known Mr. Gossett and Mr. Tyler personally for years. More and more these past few weeks it has seemed to me that we are approaching a time when it will be necessary to form an organization that will give us the protection that we need,

Your first question no doubt is, 'Won't the Loyalty League do that?' My answer is, 'It will not'—because the Loyalty League is purely a social organization that we want to keep alive and going, and this will be a business organization to take care of our problems and give us representation to definitely confer with the proper representatives of our Company at times when we feel that it is necessary * * * We have been trying to think of a name to call this organization, because as many of the details as we can should be worked out today. I have this suggestion to make (and we have also talked this over with Mr. Tyler), and we have agreed that it is a good one. Our new organization will be called DONNELLY GARMENT WORKERS' UNION * * *

My first personal distress was the use of the word 'union.' You probably do not like it any better than I did but you must see by this time that to meet the demand that can be made by outside unions that our organization will have to be a union.

* * * * * * *

Now, Mr. Tyler is here with us this afternoon, and I am going to ask him to make a little explanation to you and to talk to you for a few minutes. Mr. Tyler.

Mr. Tyler: Ladies and Gentlemen. I am appearing before you in a rather unusual position this afternoon. Some weeks ago several employees came to my office and employed Mr. Gosseft and myself as legal advisors of the employees, so that I am, in fact, at this moment, acting as attorney for you or for many of you, even though you have never seen me before * * *

I am not here to discuss the question of whether a labor union is or is not a good thing. You may believe in unions or you may disbelieve in unions, and still agree with the advice I am now about to offer you."

He then proceeded to advise the employees to form an unaffiliated plant union:

(824) "I do not think this action can or will be considered as any act of unfriendliness to your employer. I believe they recognize your right to take this step, and that it isn't an unfriendly act to them. In fact, it is much better for them and for yourselves, for you to have your own union with your own representatives, rather than have a group here trying to represent outsiders from New York and another group here representing some other outside union, etc. * * *

If your verdict is in favor of the formation of that union, I should then like to present a brief form of by-laws and recommend them to you. They would, of course, be subject to your change when and if you see fit."

The By-Laws were read and unanimously adopted without argument or comment; and have never been changed. Rose Todd then resumed speaking, as follows (826):

"While we are together as an entire group of employees let's form this organization. I want to ask, then, for a motion to be made that we form a union at this meeting."

The minutes show (page 826) a motion made by Ethel Reigel that "We form an independent, unaffiliated plant union at this meeting." Seconded by Arch Lyle.

"All in favor make it known by saying 'I.'" (Unanimous.)

"That was very gratifying to me and I am sure it will be to each one of you. The next thing we should take up, and I should like to ask for a motion to be made that we select or appoint a nominating committee to retire from the room and take enough time,

any amount that is necessary, to bring back to us a group of chairmen to act as officers for our union."

(Motion made by Lena Faulconer that a nominating committee be appointed to select a general chairman and eight group chairmen to represent our independent union to act as officers of our union. Seconded by Eva Lieberman.)

"All in favor make it known by saying 'I.'" (Unanimous.)

Whereupon Rose Todd proceeded to appoint a committee of five. Miss Todd then requested the nominating committee to retire from the room after instructing them how to spread the group chairmen through the various departments of the plant. She stated:

"I am going to ask this committee of five people, with Mrs. Riggs acting as chairman, to leave the room —I think the best place for you would be the Recreation Room on the third floor. (The Recreation Room was a part of the Company's plant.)"

Thereupon Rose Todd caused the membership cards, which had been specially prepared in advance for the meeting, to be passed among the employees present. She said:

"I have a card here that I am going to read to you, and after a while I am going to ask Mr. Tyler to read to you the By-Laws that he has drawn up for us to use for our union organization and it may be that those things will be changed a little, but we could not very well have this meeting today without having our By-Laws read to us. I am going to ask the boys to pass these cards out and they will take them up later during the meeting. (Reading) I here-

by agree to become a charter member of the Donnelly Garment Workers' Union, and to abide by its By-Laws and regulations.

This is not just for fun, it is all business now. Any of the cards that you do not pass out, please bring back to the platform. Do not take any of these up yet. I am going to ask you to be patient as the meeting goes along because we have several things yet to take care of. Remember, you do not have to sign these cards unless you want to."

Miss Todd then requested Mr. Tyler to read the By-Laws.

"Mr. Tyler: I wish you would keep in mind as I read these By-Laws that the last thing I want to do is cram anything down your throats if you don't want it. These are your By-Laws, and your union—not mine. If you want to you can decide that a woman has to wear a striped dress or a polka dot scarf to belong to your union, and because we decided to take prompt action does not mean that we are trying to force you to agree to anything. I do suggest, though, that if we tried to discuss the individual viewpoints of each of you we would be here next Monday morning. If these will do at all temporarily, I hope you will adopt them and later talk them over. I assure you that a majority of you may amend them, whenever you make up your minds to do so. I suggest you adopt them and then leisurely amend them when the majority of you wish them changed."

(The minutes of the meeting of the plant union immediately following on May 11, 1937 (III 836), contain the following:

"Question: If a new employee comes in are you going to set a time before they have to become a member of the union?

Answer: Anybody coming to work for us will join the union immediately. If there is any doubt in their minds about whether or not they want to join our union, then there is some doubt in their minds as to whether or not they want to work here."

(The closed shop contract was not signed until May 27, 1937.)

Mr. Tyler then proceeded to read the prepared By-Laws. He stated (III 829):

> "This union will not finance what some unions finance. You are not financing for the support of some strike in this, or some other city. In that case you don't need any large dues (25c per month in the By-Laws; which can possibly be reduced to 15c).
>
> I suggest that if the By-Laws are satisfactory someone move they are adopted."

(Motion made by Ellen Nokes that we accept the By-Laws as they were read. Seconded by Virginia White. Unanimous acceptance.)

Miss Todd announced the return of the nominating committee. Mrs. Riggs, chairman of that committee, reported the names of the nominees.

> "Miss Rose Todd: You have heard the names of the general chairman (Miss Todd), and the group chairman, which I will not repeat, but I will ask that a motion be made that these chairmen be accepted as a group."

(A motion by Hazel Sauke that we accept these chairmen as a group; seconded by Anna Reese. Unanimous decision.)

Miss Todd then proceeded:

> "I am going to ask at this meeting that each of these new chairmen come to the platform.
>
> Our meetings as an entire group of employees are not so frequent, and I thought it would be a very opportune time for me to present the new chairmen that will act as our representation at any time that is necessary."

The other meetings as an entire group of employees since February, 1935, had been of the Nelly Don Loyalty League.)

(Presentation of committee chairmen.)

"I want to ask everyone to remain seated now until we have taken up these cards, and have no one leave the meeting until we are dismissed. Will the boys please take up the cards now? Has everyone had a card? If not, please stand.

I have just a few words more that I want to say. If at any time you feel that there are little things going on that should be reported to the committee, please feel free to do so. Is there anything else that should come before this meeting? If not, the meeting will stand adjourned."

So was formed the Donnelly Garment Workers' Union.

May Stevens testified at the hearing in 1942 that she had worked for the Company off and on since sometime in 1932 until after the period covered by the evidence in this case (July 15, 1939).

On cross-examination by Mr. Tyler she testified as follows (Vol. X 3691-2):

"Q. When you stated this morning that you went along with the Donnelly Garment Workers' Union at the beginning because you thought it would mean your job, did you mean that you believed that at that time you would be discharged if you had not joined? A. Yes, that is what I believed.

Q. What did you base that belief on? A. The Fern Sigler incident.

Q. Did you believe that the overwhelming majority of the employees wanted this union and would get a closed shop contract, and for that reason you would have to join or lose your job? * * *. A. No, not in that sense of the word, about the overwhelming majority. It was because that we went in that meet-

ing unprepared, and they just as much as forced us to join it.

By Mr. Tyler:

Q. What do you mean by 'just as much as forced you to join it?'? A. We were handed cards and they told them to count them and see that every card was accounted for and handed back.

Q. And the fact that the cards were accounted for, in your mind, means that you were forced to join? A. Yes.

Q. Weren't you told in that meeting that you were to do as you pleased, and nobody was to sign a card that didn't want to, or if anybody wanted to think it over, he was to keep it? A. Perhaps so, but we knew differently."

Miss Stevens was then shown an affidavit which she, with other employees had signed, to the effect that she had joined the plant union of her own free will and accord.

Continued Cross-Examination by Mr. Tyler.

"Q. You have said you signed it? A. Yes.

Q. Was that statement true or false when you signed it? A. It was false, because it wasn't my free wish to join it, or what I chose to do of my free will.

Q. You understood that you swore to it at that time? A. Yes, but it wasn't my wish, because I called the Ladies' Garment Workers' that night and had them come out and signed the other card, the one that was of my own free choice.

Q. When did you again talk with the International Ladies' Garment Workers' Union? A. That night.

Q. You had never been in touch with them before? A. No, I called them immediately upon going home.

Mr. Hoggsett: What date is that? A. I believe I didn't make myself clear. The night the Company

union was formed, that was not my free wish, joining the Donnelly Garment Workers' Union, because upon going home that night, April 27, I called the Ladies' Garment Workers' Union and signed a card that night."

The By-Laws adopted by the meeting (X 4864; III 798F-799, 800) provided that members of the plant union "shall not be members of any other labor union."

On May 27, 1937 (X 3879; III 807-811), the Company and the plant union entered into a contract providing for a closed shop as follows (809):

> "The employer agrees that on and after June 5, 1937, no one of its employees shall be retained in its employ who is not a member of this union. It is further agreed that hereafter no person shall be employed by the employer who does not, at or prior to such employment, sign an application for membership in this union, and no such person shall be retained as an employee who shall not, within two weeks after such employment begins, be accepted by this union as a member.
>
> It is further agreed that no one shall be continued as an employee after such person shall have resigned from or ceased to belong to this union either by voluntary retirement or expulsion."

The door was now completely closed to the International. The By-Laws provided, among other things (X 3874; III 798F), that

> "The purpose of this organization shall be * * * the protection of employees and members of this union from coercion, intimidation, violence or threats of violence in order to force them to join unions organized and dominated by outsiders not employees in this plant."

Everybody in the plant, department managers, instructors, supervisors, with the exception of a half dozen executives, joined the organization at the meeting on April 27, or shortly thereafter (X 3875-3877; I 99, 131, 136, II 421, 424-424b, 428-429, 510, 715-716, 718d-718e, III 743-763, 830, 854, 865-866, 868-870, 875-882, 887, 891-894, 897-900, 909-911, 1003-1005, 1007, 1011, 1032, 1091, V 1349-1350, VII 2175, 2256-2257, VIII 2671-2672, 2676-2677, 2680, 2689, 2733, 2911-2912, 2914, 2949-2953, 2961-2962, IX 3157, 3316, 3426-3427, 3435-3436, 3445-3446, 3450, X 3644, 3649-3650, 3671, 3673, 3675).

Instructors and thread girls were supervisory employees.

The very large majority of the employees in the plant were sewing girls (I 137), or rather machine operators (in 1939 there were 642), divided into sections with forty operators each, and one instructor, and one thread girl, who the Board found, and who the evidence abundantly shows, was an assistant instructor and supervisor. In 1939 there were forty-four instructors (III 138). The instructors and supervisors all joined and remained members of the Union (I 138).

The Company and the Plant Union contended that the instructors and thread girls were not supervisors, that they had no authority to either supervise or discipline any of the machine operators or other employees. The proof that they were supervisors, and as such representatives of the management at all the times covered by the evidence before the Board in this case, was overwhelming (X 3851). It is admitted that they were such until the advent of Baty into the plant in June, 1935, at which time he claimed to have taken away from them all of their supervisory authority (IV 450-451). The Board found that it is plain from all circumstances disclosed by the record

that after June, 1935, the instructors and thread girls continued in their capacity as supervisors in charge of the operators who worked in the various sewing sections of the factory (X 3851).

Elizabeth Reeves, production manager until succeeded by Baty on June 30, 1935, testified in the N.I.R.A. hearing in 1935 (R. III 1060), as follows:

> "Nobody is let out of the Donnelly Garment Company unless four people pass on it. After we decide that we have to lay off a certain group or a number of people, we go over our records with the instructor and she makes the recommendation, because she is in close touch with the operator and knows the type of work the operator does and whether she is efficient, obedient, cooperative and reliable. After the instructor makes that selection it is checked by Mrs. Wherry, who is in charge of our factory, who knows what is going on in every section of the place. * * * I expect certain things of those instructors; they have to get out a certain quantity of work in order to make our factory efficient and I certainly expect to get out quality. Well, I cannot expect them then to keep people in their sections that won't cooperate and won't help them to maintain the quality and standard of our work."

That testimony was given at a hearing when there was no issue as to the supervisory capacity of instructors and thread girls. Of course, if the instructors and thread girls, at the time of and following, the organization of the Plant Union, had the authority described by Mrs. Reeves in her 1935 testimony, there could be no defense to the charge that the Plant Union was Company-dominated and controlled. But, Lee Baty, who became production manager in June, 1935, testified (II 450) as follows:

"By Mr. Ingraham:

Mr. Baty, after you took charge of the production of the factory, did you make any changes in reference to the method of production, or the plan of work? A. I did.

Q. I direct your attention to the work of the instructors. What, if anything, did you change in regard to their duties? A. I changed the work of the instructors, I would say, to a very great extent. Prior to the time I took them, they were considered more or less supervisors, and entered into the discussion and recommendations as to the ability of different operators and made different recommendations as to which operators would be recalled after they were laid off, and after I took over the plant, I put instructors strictly on a basis of an instructor, and they were there to assist the operator in the performance of their work and nothing else. They had no supervision over the girls, and it was none of their concern as to how the girls performed. They were to give them the work, take it away from them when it was finished, show them how to do it, if they didn't know how, and that was the extent that they were held liable for the girls in the section.

Q. Now, Mr. Baty, when did you put that plan into operation? A. That plan was put into operation, as near as I can remember, about the month of July, 1935."

Neither the Company nor the Plant Union put any instructor on the stand at either hearing who testified that her authority had ever been changed or lessened by Baty or anyone else, either in June or July, 1935, or at any other time. The Company called an instructor, Mary Copowycz, as a witness in rebuttal in 1942, after a number of Board witnesses (as hereinafter shown) had testified that no change had been made in the instructor's duties or authority since Mrs. Reeves' above quoted testimony. But they asked her no such question. The Board

put two instructors on the witness stand, who testified that they had been with the Company many years prior to the advent of Baty in 1935, and through the period covered by the testimony in this case, to-wit, July 15, 1939, and that their supervisory authority had never been changed by Baty or anyone else. Lola Skeens, produced as a witness by the Board, testified (IX 3426-3427, 3434) that she started to work for the Donnelly Company September 21, 1922, and that she worked there continuously as an instructor with the exception of the first three or four months, that she was off from work about two years following September 1, 1931. She testified (IX 3434):

"Q. Did you regard yourself as a supervisory employee? A. Yes.

Q. Why? A. Well, because I was in charge of them.

Q. Do you know whether the girls in your section regarded you as their supervisor? A. I think they did.

Q. What were your duties as an instructor? A. To plan the work and to give out work and to instruct them.

. . . . . .

Q. Did you go over the payroll cards weekly with the office? A. Yes.

Q. And you continued doing that the entire time you were an instructor prior to July 15, 1939, is that correct? A. Yes."

She further testified (IX 3435):

"Q. Was the thread girl in charge during periods when you were absent for an hour or two? A. She was.

. . . . . .

Q. Did you consult with your thread girl with respect to assignment of work? A. Yes.

Q. Did the duties of the instructor change at any time prior to July 15, 1939? A. No.

Q. Did the duties of the thread girl change at any time prior to July 15, 1939? A. No."

Etta Dorsey, produced as a witness by the Board, testified (IX 3274, 3324, 3325, 3326) that she was continuously an instructor in the employ of the Company from 1927 to July 15, 1939. She testified:

"Q. Did you regard yourself as a supervisory employee? A. Yes, I did.

Q. (IX 3325) Why? * * * A. Well, because we instructed the girls and we sort of led them right and wrong, and told them what they should do and like that.

Q. Could you state specifically what you were told by any representative of the Company as to your status as a supervisory employee? A. Yes, at one time there was a person told us that we should carry ourselves as their superior, and that they sort of held us on a pedestal, and we could just, well, shouldn't be just one of them, should be up above them, and carry ourselves that way.

Q. Who was that? A. Elizabeth Gates Reeves.

Q. Did you know whether the girls in your section regarded you as a supervisory employee? A. I think they did.

Q. Did you go over the payroll card weekly for the office prior to July 15, 1939? A. Yes, I did."

She testified (IX 3326) that the thread girls were in charge during the absence of the instructor. She testified (IX 3327-3328) that there was no change in her duties as an instructor, or of her responsibilities, from the time she went to work as an instructor in 1927, to July, 1939.

Geneva Copenhaver, produced as a witness by the Board, testified that she worked as a machine operator

for the Company in 1928 and 1929 (IX 3470), when she quit for a number of years, but went back in September of 1935 and worked in the same capacity until sometime in August, 1939. She further testified (X 3481-3482, 3483) that she considered her instructor a supervisor. She testified:

> "Q. Why did you consider your instructor to be a supervisor? A. Well, the instructor—everything that we—like changing a price on a ticket or anything like that, had to be O.K.'d by the instructor. The instructor always gave us our checks or had our checks brought to the section and she would pass the checks around from girl to girl, and more than one time when I was unable to be at work, I would call, and have talked to Mrs. Dorsey myself when I was working for her. I notified her that I wouldn't be able to be at work that day. She was in full charge of the section. The girls looked to her for everything in regard to work or anything that they might be in doubt about; it was always the instructor you went to about the work.
>
> Q. Did the instructors determine whether to divide the work and lay off girls when the work was slack? A. Yes, they did."

Bessie Weilert, produced by the Board as a witness, testified that she worked for the Company as a machine operator from 1934 down through the period covered by the testimony in this case (X 3550, 3554, 3555, 3556, 3557), and that the instructors were supervisors during all of that period and that their authority as such was never lessened.

May Stevens, produced by the Board as a witness, testified that she worked for the Company as a machine operator, intermittently from 1932 down through the period covered by the testimony in this case (X 3662).

She testified (X 3673) that she considered the instructors supervisors "because they had full charge of giving out the work and who they would give it to, and of laying off the girls or saying who would be called back."

She testified (3674):

> "Q. I want to ask: Did that condition with regard to the instructors' duties continue unchanged during the entire time you were working for the Donnelly Garment Company? A. Yes."

She testified (X 3679) about a meeting of the plant union which her instructor, Frances Morrison, thought she had not attended:

> "Q. Did your instructor check up on your attendance at the meeting? A. Yes, two or three days later.
>
> Q. What did she say to you? A. She came to me and asked me if I attended the meeting, that some of the girls in the section said I was on the floor when they came back and that I hadn't attended the meeting.
>
> Q. Who was the instructor who did that? A. Frances Morrison.
>
> Q. State what effect, if any, your instructor's inquiry about your attending the meeting had upon you with reference to your feeling free to attend or not attend subsequent meetings of the Donnelly Garment Workers' Union? A. Each time thereafter I went down with my instructor and always sat in the same row of seats that she did."

Frances Morrison was not introduced to refute that testimony.

From the minutes of a meeting of the group chairmen, on July 15, 1937, it appears that Hobart Atherton (X 3878; JII 927) stated:

"I think department heads, instructors, etc., should have all the privileges of membership except that they shall not be allowed the right to vote."

However, they did vote and did take active parts in the meetings during all of the time of the organization of the plant union through July 15, 1939 (X 3875-3877, III 743-763; Board's Ex. 1-0000, I 138).

Bessie Weilert testified (X 3554):

"Q. Did you ever see an instructor attend a meeting of the Donnelly Garment Workers' Union? A. Yes.

Q. Do you remember whether instructors continued to attend up to July 15, 1939? A. They were still attending the meetings when I quit for that year.

Q. Did you ever complain about instructors attending meetings? A. Many times.

Q. Why? A. Because I didn't think the girls felt free to talk before their instructors and I told Rose Todd many times I didn't think that that should be permitted."

From the foregoing it is apparent that there was abundant testimony to sustain the following finding of the trial examiner, approved by the Board (X 3851, 3852, 3853, 3854):

"It is plain from all the circumstances disclosed by the Record that after June, 1935, the instructors and the thread girls continued in their capacity as supervisors in charge of the operators who work in the various sewing sections of the factory. A number of the respondent's witnesses testified that instructors do not have the power to employ, discharge or discipline operators. There is substantial evidence, however, that they do perform functions which make them part of the supervisory staff.

> The instructors, assisted by the thread girls assume complete charge of and are fully responsible for their respective sections of the factory. Among the duties of the instructor is the assignment of bundles containing the materials and supplies upon which the operators work, and the transmission to the operators of the respondent's instructions for the performance of the sewing processes * * *. In addition to these duties the instructors perform other functions as the representative of the management. When work is slack in the section instructors determine who shall take a day off and in what order the operators will be released from the section. Although Baty denied that the instructors are charged with the duty of disciplining and reporting upon the efficiency of operators who work in their respective section, the evidence is convincing that they do so the same as before the advent of Baty as factory manager, in June, 1935. The instructor constitutes the link through which the operators learn the management's directions, and the management learns whether a girl is a desirable employee, her capacity for work, her attitude toward work, and her performance of the work.
>
> * * * * * * *
>
> (X 3854) On the basis of all the evidence the undersigned finds that instructors and thread girls are supervisory employees and that they act as representatives of the management in the factory.'"

We have gone into considerable detail with reference to the supervisory capacity of instructors and thread girls for the reason that they were, during all the time covered by the testimony, the immediate superiors, and supervisors of the great majority of the employees, to-wit, the machine operators, and for the reason that the evidence shows that the instructors notified the machine operators of the meetings of the Plant Union, and went to the meetings with them, and checked their attendance at said

meetings; and for the further reason that the instructors were at all times very active in the conduct of the affairs of the Union (X 3875, 3877; X° 3554, 3670, 3877, III 881-882, 1003-1005). Many other supervisors, managers, representatives of the management, were active in the formation of the Plant Union, and active from its formation on through July 15, 1939, in the conduct and control of the Plant Union.

Rose Todd Represented the Company.

We believe that from what has already been stated, it is apparent that the findings of the trial examiner, approved by the Board (X 3857-3858) was abundantly established by substantial evidence.

> "Irrespective of Todd's supervisory status, the undersigned is of the view that the evidence, as a whole, clearly identifies her with the management in the minds of the employees. The undersigned finds that Rose Todd occupied a close and confidential position with the respondent and further finds that in such position she was acting for and on behalf of the respondent."

Her control of the Loyalty League as president, at the mass meeting of March 18, 1937; her participaton in the inquisition of Fern Sigler, and her orders and directions to Fern Sigler and Sylvia Hull, on April 23, 1937; her employment of attorneys; and her conduct of the organization meeting of April 27, 1937; her statement as shown by the minutes of the meeting of the Plant Union on May 11, 1937 (III 836), in answer to the question propounded by one of the members:

> "Q. If a new employee comes in are you going to set a time before they have to become a member

of the Union? A. Anybody coming to work for us will join the Union immediately. If there is any doubt in their minds about whether or not they want to join our Union, then there is some doubt in their minds as to whether or not they want to work here."

The closed shop agreement did not take effect (III 809) until June 5, 1937.

Rose Todd went to St. Joseph, Missouri, on May 13, 1937, and organized the employees in the Company's branch plant in that city (III 836-837). She was asked how much time would be allowed before definitely stating whether or not they would join the union. She answered, "I think if you are interested in working for the Company you will be interested enough to join the Plant Union." The employees at St. Joseph at once unanimously agreed to join.

Rose Todd's reputation as a representative of the management spread beyond the walls of the plant. When she went to the First National Bank on April 1, 1937, and borrowed $1,000 upon the unsecured note of the Nelly Don Loyalty League, she went directly to the president of the bank who testified before the Board as follows (II 718W):

"Q. Mr. Swinney, how long you known Rose Todd prior to the time she made application for this loan? A. I would say about 10 or 12 years.

Q. Where did you meet her, Mr. Swinney? A. At my office.

Q. In what connection? A. She was a kind of 'all-around-man' for the Company.

Q. For the Donnelly Garment Company? A. Yes, sir.

Q. And she had come in there before on matters for the Company, had she? A. Oh, yes."

Many representatives of the Company other than Todd and the instructors and thread girls joined the plant union.

In addition to Todd, Hobart Atherton, who the examiner found to be a supervisory employee (X 3858), took a very active part in the Company's activities against the International prior to the formation of the Union, and a very active part in the formation of the Union and its operations thereafter. He, with Todd, called the meeting on March 18, 1937; he went with Todd to employ the attorneys; he was elected a member of the Group Chairmen at the organization meeting, and was very active in the meetings of the Plant Union from then on as is shown by the Plant Union minutes (IPI 821-947).

Dewey Atchison, Production Engineer, joined the union at the organization meeting, as did Heath Cowan, head of the Receiving Department, Marvin Price, in charge of maintenance of factory building and equipment, Ortense Root, head of the Sample Department, Martha Gray, head of the Outlet Store, Florence Strickland, head of the Pattern Department, Ted Scoles, in charge of the Cutting Department, Lena Tyhurst, in charge of the Inspection Department, Mary Bogart, in charge of the Dividing Department, Lulu Nichols, in charge of the Piece-work Price-fixing Department, and all of the other heads of departments, managers, supervisors, instructors and thread girls, except ten named by Rose Todd (X 3859, 3875-3878; I 135-136; X 3644-3652).

The examiner found (X 3875):

> "Under all the circumstances the undersigned concludes and finds, that the concept of an independent union originated with respondent's supervisory employees, and further, respondent, through the activities of its supervisory employees gave approval, lent assistance and encouragement to the DGWU."

And further (X 3878):

> "Inasmuch as the respondent through its supervisory employees' membership and participation in the activities of the D.G.W.U., continued its control and direction of that organization, the undersigned finds that respondent is responsible for their activities and that they were acting for and in behalf of the respondent."

The Company contributed financial support to the organization and maintenance of the plant union.

The Group Chairman met with Mrs. Reed on May 6, 1937, to discuss a contract. What happened is in part shown by the minutes of the Plant Union's Group Chairmen of that date (III 913). Rose Todd said to Mrs. Reed:

> "There is one thing we want to ask you to consider when we submit this plan to you—and that is we would like to have a closed shop."

Mrs. Reed said to Rose Todd:

> "I understand that is very essential to industrial peace."

(The closed shop was contracted for on May 27, 1937, and became effective June 5, 1937.)

> "Rose Todd: Another thing we want to submit for your consideration, is that we feel that the Donnelly Garment Workers' Union should (if it is satisfactory with you and with the Union) pay part of the General Chairman's salary, if the Company is willing to pay their part.
>
> Mrs. Reed: That is satisfactory with me.
>
> Rose Todd: Later it may be necessary for the Union to pay the General Chairman full time.

Mrs. Reed: I do not feel at the present time that you would need to give all of your time to the Union."

On May 27, 1937, the group chairmen and Mr. Tyler met with Mrs. Reed and her executives, and presented to Mrs. Reed a proposed contract (III 920). The contract, as presented, was accepted by Mrs. Reed with one material change (III 922). The minutes of the plant union's group chairman of May 27, 1937, show the following:

"A meeting of the Group Chairman with Mr. Tyler, May 27, 1937.

(After working agreement had been presented to Mrs. Reed and a few modifications made.)

Mr. Tyler: This form has been modified in three or four places. Miss Todd was here every minute of the time when these modifications were made. In my opinion it is a satisfactory form and I suggest to you and advise you to execute it."

Ms. Tyler speaking:

"Also we have added to this agreement that to become a member of this committee you must be employed here for at least one year. This is to eliminate the possibility of someone getting on this committee who is not a true representative of the employees, and who may be working here merely to act as a traitor to the Company."

The clause adopted was as follows (III 808):

"The employer recognizes the election of a committee of the Union to represent it; provided members of such committee shall have been continuously employed by the employer for the period of at least a year immediately preceding the election of such committee, and the employer agrees to further nego-

> tiate and deal with such committee in regard to the working conditions, wages and hours of labor of employees, and all other matters properly within the jurisdiction of such committee."

It will be recalled that at the organization meeting Mr. Tyler (III 824, 825) stated:

> "I do not think this action (the formation of the plant union) can or will be considered as any act of unfriendliness to your employer. I believe they recognize your right to take this step, and that it isn't an unfriendly act to them. In fact, it is much better for them, and for yourselves, for you to have your own union, your own representatives, rather than have a group here trying to represent outsiders from New York, and another group here representing some other outside union, etc."

The job was now complete. The plant union had been formed; the By-Laws prohibited any member from belonging to any other union; that union had been given a closed shop contract; and it was provided that no one could be on the bargaining committee who had not been in the employ of the Company for at least one year, so as to keep out anyone "who may be working here merely to act as a traitor to the Company."

The parties executed a supplementary agreement with reference to wages, hours and working conditions, on the 22nd day of June, 1937 (III 812-821), which provided, among other things, that:

> "'Methods now used by the employer determining piece-work rates, shall be continued.'"

The plant union and the Company did just that, even to the extent of making the Company's executive head of the piece-work price-fixing department, Lulu Nichols, and

her assistant, Josephine Spalitto, and Rose Todd, a committee of three to represent the Union in this, the most vital and important matter about which the Company and the union had to bargain (X 3881; I 114; III 923; II 417-418, 718f; III 1007, 2009; V 1374-1375; VII 2144-2148, 2158, 2234-2293, 2400; III 1109). At the meeting of the group chairman, as shown by their minutes (III 923), Rose Todd said:

> "I would like to have a committee named to set piece work prices. As you know we have never had any trouble with the Company about piece work prices, but I feel we should have a committee to handle this for us."

(Motion made that Rose Todd, Josephine Spalitto and Lulu Nichols form this committee. Motion seconded. Unanimous.)

Ella Mae Hyde testified at the N.I.R.A. hearing, May 6, 1935 (III 1108-1109), that Lulu Nichols was on the piece work price-fixing committee for the Company, and that she was an executive.

Elizabeth Reeves, merchandising head of the Company, testified at the 1939 hearing before the Board (II 417-419), as follows:

> "Q. For many, many years Mrs. Nichols has been also on the price fixing committee of the Donnelly Garment Company? A. That is right.
>
> Q. And still is? A. That is right.
>
> Q. And has Josephine Spalito assisted her at that work, too? A. Yes, sir.
>
> Q. At fixing prices? A. Yes, sir."

The examiner found, and the Board approved (X 3887), that:

> "The completeness of the respondent's domination becomes more clear, as shown by the personnel of the DGWU committee for the adjustment of piece work rates. Two of the three of this committee are persons employed by the respondent to set piece work rates in the first instance and when one of these two, Lulu Nichols, is the respondent's authority on the finality of the rate, the result is that the respondent sits on both sides of the bargaining table and the aggrieved operators are left without any means of independent collective bargaining with regard to piece work rates, ordinarily a matter jealously guarded for the promotion of the employees."

In August or September, 1937, the Company commenced checking off dues of the employees and turning the money over to the plant union (X 3880; I 224, 226-227, 233-234, 259, 262, 274a-274b, 379; VII 2112-2113, 2387-2388). The Company required each individual employee to sign a card prepared by the Company authorizing the Company to check off the employees' dues. The money was turned over to the plant union in a lump sum and no list of employees whose dues had been checked off was furnished by the Company to the plant union. How long an employee had to work during any one month before the employee's dues would be checked off was entirely within the discretion of the Company, and was a matter about which the Union did nothing.

The Company contributed financial support to the organization and maintenance of the plant union.

The attorney who advised with Rose Todd and Hobart Atherton, supervisors, about the formation of the plant

union, and who prepared the by-laws and helped negotiate the contract with the Company, was paid by the Nelly Don Loyalty League, a Company-dominated, financed and controlled organization, admittedly having in its membership everyone in the plant except Mrs. Reed and Baty.

The chairs used at the organization meeting were ordered and paid for by the Loyalty League (X 3884; III 963).

The examiner found, and the Board approved, that piece-work operators who served as group chairmen, or officers, were paid by the respondent for the time lost at work while attending to D.G.W.U. business, the time-workers being allowed to take time from work with no deductions from their pay (X 3884; IX 3427-3429, 3447-3449, 3446-3467, X 3603-3604, 3606-3609, 3618, I 127-128, 166).

Lola Skeens, for many years in the employ of the Company as an instructor, testified (IX 3427, 3429):

> "Q. Do you know Sally Ormsby? A. Yes, I do.
> Q. Did she work in your section in 1937? A. Yes.
> Q. Do you know whether she held any position in the Donnelly Garment Workers' Union? A. She was a representative for the operators.
>
> * * * * * *
>
> Q. Do you know of any occasions on which she went to Mr. Tyler's office, or attended to business of the Donnelly Garment Workers' Union during working hours? A. She did go, because she would come back and give me her time and ask me to make out her time ticket.
> Q. Did you make out her time tickets? A. Yes
> Q. And was she so paid? A. Yes.
> Q. And was that true every time she left work to go to see Mr. Tyler? A. During working hours, yes.

Q. Did the time tickets show what she was doing? A. Yes, they did for a while.

Q. Did you write it on? A. I wrote on it, 'For union meeting.'

Q. Did you do that on all occasions? A. I did at first, and then Miss Todd came to me and asked me not to put that on. And I asked her what I should write, she said just to put it under 'miscellaneous' and they would understand.

Q. And did you follow Miss Todd's directions? A. Yes, I did."

Neither the Company nor the plant union produced Miss Ormby to deny that she had been so paid, nor did they produce her time tickets for that period.

Bessie Weilert gave similar testimony (X 3603-3604, 3606-3609).

Etta Dorsey gave similar testimony (IX 3329-3330).

The plant union held its meetings on the second floor of the building, which up until the 7th day of May, 1937, was not a part of the building leased by the Company. The Company did lease that floor, and the entire building, on the 10th of May, 1937, and occupied it under a lease from then on through July 15, 1939. The plant union continued to use the second floor and later the first floor for its meetings without paying any rent (X 3882; I-130-131, II 380, 381, III 877, 939, 940, 943) until April, 1938 (X 3882; II 387cc-378dd).

At a meeting of the group chairmen, November 16, 1937, as shown by their minutes (III 937-939), the question of paying rent was taken up. Rose Todd said:

"I understand the Company leased this entire building sometime back and we should ask them about paying some rent for the use of the space for our meetings.

Marjory Green: I think $2.50 or $3.00 would be sufficient. We have to furnish the chairs ourselves in addition to that, which makes it rather expensive.

Rose Todd: We will write a letter to the Company regarding this."

At a meeting of the group chairmen on December 15, 1937 (III 940-943), Rose Todd reported:

"Another thing, we have corresponded with Mr. Green (vice-president of the Company, I 354b) and he advises that $3.00 per meeting will be satisfactory rent for us to pay for the space used for our meetings, to be paid at the end of our fiscal year."

At the meeting of the plant union on May 11, 1937, the meeting following the organization meeting (III 830-835) the minutes show the following:

(835) Question: "Can we maintain our standing as a union and meet on premises maintained by the Company?"

Answer (by Rose Todd): "So far we can."

An insight into the character of the testimony given by Lee Baty is found on this rental subject. He testified (II 511) as follows:

Q. When was it that you discussed with the officials of the Donnelly Garment Workers' Union about having their rent for the first floor? A. I think it was sometime in the month of May, 1937.

Q. Did you agree then it would be $3.00 a month rent? A. We did.

Q. Who did you make the agreement with? A. Rose Todd."

But the minutes of the group chairmen on November 16, 1937, above quoted, do not uphold Mr. Baty; nor do the minutes of the group chairmen of December 15. Those minutes show that it wasn't in May that the arrangement to pay rent was made, and it wasn't with Baty at all, but with Mr. Green, the vice-president, that the union made the arrangement.

The group chairmen had frequent meetings prior to May, 1938, and they were always held in the office of Mrs. Spilsbury (X 3882-3883; I 38, 151, 136, II 490, III 924, 928, VII 176, 2198, 2201, 2203-2207, IX 3233) and thereafter in the auditorium on the first floor (Company property) (X 3833; III 946). No rental was ever paid for the use of the Company property for holding group chairmen meetings.

The union maintained no office except a Company desk used by Rose Todd on the ninth floor of the Company's plant, to which place she requested that any member of the plant union come to consult with her about any matter of plant union interest (X 3884-3885; I 133, III 830, 831, 833, 835, 869-870). The only furniture, except the desk used by the plant union, was a filing cabinet belonging to the Company (X 3884; I 35-36).

Rose Todd used the Company's intercommunicating telephone system to call meetings through the aid of instructors of each section; used the Company's typewriter and mimeograph machine, and any other facilities and property of the Company which she found necessary to carry on the affairs of the union (X 3883; I 128a-129, II 387ge, 704g, V 1364e, 1374d, VIII 2897, IX 3152-3153, 3276, 3397-3399, 3434, X 3558, VIII 2621-2622, IX 3342, X 3672).

The examiner found, and the Board approved (X 3888):

> "On all the evidence the undersigned finds the respondent dominated and interfered with the formation and administration of the D.G.W.U. and contributed support thereto, and that the respondent thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act."

Company and plant union evidence as to why the employees joined the plant union.

The Company and the plant union attempted throughout the hearing to show that the employees joined the plant union of their own free will and accord, and because they were fearful of physical violence, which the Company and the plant union insisted the International had threatened. They produced eleven witnesses in 1942 who so testified (VIII 2564-3000, IX 3002-3249).

The Board produced witnesses who testified that they had joined the union to hold their jobs with the Company, and not because of any fear of physical violence from the International, and not of their own free will and accord.

Lola Skeens testified (IX 3455):

> "Q. Were the employees talking about means to protect themselves against any attacks that would be made by the ILGWU? A. Well, I didn't hear that."

And again (IX 3456):

> "Q. Well, did you personally have any fear about being able to get in and out of the building without getting hurt? A. Oh, no, I never thought that."

Geneva Copenhaver testified (X 3532-3533) as follows:

"Q. You stated already that the violence and the newspaper articles and talk of violence had nothing whatever to do with your joining the Donnelly Garment Workers' Union, did you not? A. Yes.

Q. Do you know any person who did join on that account? A. Because of the—

Q. (Interrupting) Violence and the newspaper articles and everything of that sort? A. No, I don't.

* * * * * * *

Q. (Continuing) Because of the violence and newspaper articles shown you, or any fear or threats of violence? A. You mean, is that why I joined?

Q. No. A. Why anyone else joined?

Q. Do you know of anyone else who joined on that account? A. Because they were afraid of that violence?

Q. Yes, do you know of anybody, any single human being? A. No, I don't know of anybody that joined because of that."

The same witness testified (X 3497):

"Q. Why did you sign the card? (The union membership card.) A. Well, I felt like I'd better, if I wanted my job. That was the impression I got from it. I needed my job and I needed it badly, and I got the impression that if I didn't, I wouldn't have a job very long."

She further testified (X 3498):

"Q. Did you join the Donnelly Garment Workers' Union of your own free will? A. Well, I joined it of my own free will to the extent of this: I was never threatened or told if I didn't join the Union I would be fired, or anything of the kind, by the Company or anybody who had any authority down there. But it was just clear in my own mind if I didn't belong to

the Union I wouldn't have a job there very long, and I still feel that way about it."

(X 3504):

"Q. Was there a general discussion among the employees at the Donnelly plant of the violence going on in those strikes? A. Oh, you heard some girls talking about it.

Q. But there wasn't much talk? A. Oh, it was discussed quite a bit, naturally.

Q. Were you of the opinion that there was going to be any violence at the Donnelly plant? A. I never had the slightest bit of fear in going in and out of the Donnelly plant—going back and forth to work, of being bothered by the union in any way. I was never approached—I drove my car back and forth every day and parked it there and I never saw anything in front of the Donnelly plant that might bother us."

Mrs. Copenhaver was cross-examined by counsel for the Company and plant union about an affidavit which she had signed to the effect that she had joined the plant union of her own free will and accord. She testified (X 3519):

"Q. Did you think you understood what that statement was that you were signing? A. I thought I did.

Q. As a matter of fact, when you sign your name, you think you understand what you are signing your name to, don't you? A. I wouldn't say I thoroughly understood everything I signed down at Donnelly's.

Q. Don't you think at the time you sign your name to something you understand what you are signing? A. I think I should. I know now that I should. But at that time we signed so many things down there, you would sign them hurriedly and you didn't have time to stop and read those things thoroughly and

absorb them like you should. * * * I signed my name and didn't think much about it."

Again she testified with reference to signing said affidavit (X 3525):

"A. I don't know as it was my choice. I was told that it was down there to be signed and I knew I was expected to sign it."

She testified further (X 3536-3537):

"Q. Now, do you have any recollection at all as to where you signed this Board's 1-RRRR? (III 764.) A. You mean the one where we swore to it?

Q. No, I mean the other one. A. I don't remember a whole lot about that one.

Q. Was it somewhere in the plant? * * * (3537) A. It was on the premises. I never signed one that was away from the building. Everyone I ever signed was right there in the building, some place in the building.

Q. Were you ever shown any document down there to sign that you didn't sign? A. No.

Q. You signed them all? A. Every one that I was presented with."

Bessie Weilert (X 3594-3597), on being handed an affidavit (Intervener's No. 20, VI 1713) and asked if she signed it, by counsel for the Company, stated that she did.

"Q. I hand you the affidavit and ask you to state what was not true. A. Well, I didn't consider that 'wish' and 'choice' correct. It wasn't our wish and our choice, it was just a matter of duty. I felt it was our duty to belong to that union if that was what they wanted us to do. I can't really say it was my wish and choice, but that it was necessary" (X 3596).

"Q. What was the next item that was untrue at the

time you swore to it? * * * A. Where it says: 'We understand that there is in some quarters a disposition to question the fact that membership in our own union is our own voluntary choice, therefore, for the purpose of establishing that fact to the satisfaction of the Labor Board, the public, the International Ladies' Garment Workers' Union, and any and all others who may be interested'."

May Stevens testified (X 3676):

"Q. Mrs. Stevens, I want to go to the subject of the reason for the formation of the Donnelly Garment Workers' Union. Did fear have anything to do with that? A. Not to me, it didn't."

And again (X 3683):

"Q. You say, do you, that fear, personal fear of personal violence to you, played no part at all in your choice to belong to the Donnelly Garment Workers Union, and help organize it? A. Absolutely not."

And again at (X 3691) on cross-examination by Mr. Tyler:

"Q. When you stated this morning that you went along with the Donnelly Garment Workers' Union, at the beginning because you thought it would mean your job, did you mean that you believed that at that time you would be discharged if you had not joined? A. Yes, that is what I believed.

Q. What did you base that belief on? A. The Fern Sigler incident.

Q. Did you believe that the overwhelming majority of the employees wanted this Union and would get a closed shop contract, and for that reason you would have to join or lose your job?

A. No, not in that sense of the word, about the overwhelming majority. It was because that we went in that meeting unprepared, and they just as much as forced us to join it.

Q. What do you mean by 'just as much as forced you to join it'? A. We were handed cards and they told them to count them and see that every card was accounted for and handed back.

Q. And the fact that cards were accounted for, in your mind, means that you were forced to join? A. Yes.

Q. Weren't you told in that meeting that you were to do as you pleased, and nobody was to sign a card that didn't want to, or if anybody wanted to think it over, he was to keep it? A. Perhaps so, but we knew differently.

Mrs. Stevens was shown Interviewer's Exhibit No. 20 (VI 1741), which she had signed and which stated that it was the free wish and choice of those signing the Exhibit to belong to the Donnelly Garment Workers' Union. She testified with reference thereto as follows (X 3692):

"Q. Was that statement true or false when you signed it? A. It was false, because it wasn't my free wish to join it or what I chose to do of my free will."

At (X 3690) Mrs. May Stevens testified with reference to the Board's Exhibit 1-RRRR (III 764), which she had signed, by Mr. Tyler:

"Q. I will ask you to note the last paragraph which says: 'The undersigned state that they are members of the Donnelly Garment Workers' Union and joined said union and have at all times since remained members thereof, solely of their own free will, choice and preference, that they have not been

influenced by any threats, coercion or pressure of their employer or any representative of said employer, and that they have no knowledge of any incidents in which the employer or any representative of the employer has exerted pressure, intimidation, coercion or any other influence upon the undersigned or any other employees to join the Donnelly Garment Workers' Union, or to stay out of any other labor union.' Was that true or false at the time you made it? A. It was false.

Q. At the time you made it it was false, is that your answer? A. As to my state of mind about it."

The examiner found (X 3885):

"From the foregoing facts, conclusions, and findings, it is clear that, notwithstanding the contenton of the respondent and the DGWU that the DGWU's formation was the result of the employees' own choice of a collective bargaining representative, the respondent has not permitted the employees to freely exercise that right of self-organization free from employer influence and domination."

The Board found (A 618-619):

"In remanding the case to the Board for further hearing, the Circuit Court directed that the respondent and the DGWU be permitted to adduce the previously proffered testimony of respondent's employees to show, in substance, that they formed and joined the DGWU of their own free will and that they were not influenced, interfered with, or coerced by the respondent in choosing that organization as their bargaining representative * * * We have carefully considered all such evidence adduced by the respondent and the DGWU. We find, however, that the testimony in question does not overcome more positive evidence in the record that the respondent permitted acts of interference and assistance in the

formation and administraton of the DGWU, which subjected that organization to the respondent's domination and which removed from the employees' selection of the DGWU the complete freedom of choice which the Act contemplates."

SUMMARY, WITH PAGE CITATION, OF ARGUMENT.

The argument is in seven divisions, under numerical points.

Point One (Page 71).

There is substantial evidence to support the findings and order of the Board. There are three summaries of such evidence: (1) statements of evidence in this brief; (2) summary of evidence by counsel in case No. 786; and, (3) summaries by Judge Sanborn (151 Fed. (2d) 855 to 869) and by Judge Woodrough (151 Fed. (2d) 879). It being established that there is substantial evidence to support the findings, the court may not weigh, but must wholly disregard conflicting evidence no matter how convincing to the court such evidence otherwise might be. Into that field the court may not go, all the way in, or at all. Cases and authorities are cited.

Point Two (Page 75).

Even if rejection of the given evidence by the examiner were a judicial error, it is not a denial of due process. The sole ground upon which the Court of Appeals set aside the Board's order was denial of due process. We take issue, there was no denial of due process. Fundamental principles of due process, as applied to judicial proceedings, and what constitutes a denial thereof, together with supporting authorities, are stated. Judicial error is not denial of due process. Due process does not guarantee against judicial error.

The court, in determining whether an order by an administrative board constitutes a denial of due process, is guided and restricted by the same canons of constitutional law that are applicable to a determination of the

constitutionality of a direct legislative act. The task of holding that either a statute or an order by an administrative board is unconstitutional because a denial of due process is a delicate one and every presumption and intendment is to be indulged in favor of validity. Before rejection of evidence can be a denial of due process, its exclusion must transcend mere judicial error. The rejected evidence must be so direct and vital, so essential to the party's case, that without it there is no real trial. The ruling must not only be wrong, but so manifestly wrong that it is arbitrary.

The rejected evidence in this case is not of that character.

Point Three (Page 84).

So far from the rejection of the evidence in question being a denial of due process, such rejection would not have been reversible error in an ordinary jury trial. The rejected evidence is classified and it is argued that none thereof was admissible in any event because the receipt of such proferred evidence would lead to the trial of collateral issues, detract the mind of the trier of fact from the real issues and unduly prolong the trial. There is a well-known exception to the general rule that all relevant evidence must be received, which is, that the same may and should be rejected by a trial judge when its admission will have a tendency to divert the attention of the jury from the precise issues involved in the case, and protract the trial beyond reasonable limits. This rule is called the Doctrine of Collateral Inconvenience, by Dr. Greenleaf.

Point Four (Page 90).

The examiner did receive, and both the examiner and the Board did consider and weigh the employees' testimony, as ordered by the Court of Appeals.

By the ruling of Judges Sanborn and Riddick the order was set aside because the majority of the court held that while such evidence was received, the Board did not give the weight thereto which the court believed it was entitled to have.

Quotations from the record conclusively show not only that such evidence was received, but that it was considered and weighed.

Point Five (Page 94).

The Court of Appeals, in direct violation of the provisions of the Act, did itself weigh conflicting evidence. The Court of Appeals set its own opinion of the value and weight of given evidence against the opinion of the Board, and because of its opinion of the value of such testimony, the court did set aside the order of the Board.

Point Six (Page 95).

A careful reading of the opinions and consideration of the entire record demonstrate that the Court of Appeals has treated its jurisdiction to review findings and orders of administrative boards as coextensive with, similar and analogous to, its judicial authority in legal proceedings as upon appeal from court to court. The jurisdiction of a court to review and otherwise deal with judicial proceedings, either in the trial court or on appeal, is contrasted with the statutory and constitutional jurisdiction of the court in review of an administrative order. The

court in this case went clearly beyond either statutory or constitutional jurisdiction of the court to review administrative orders and did exercise jurisdiction which it did not have in that field, but which it had only in the field of appeal from court to court. The principles of public administrative law here involved are set forth.

Point Seven (Page 98).

Failure of the Board to designate a trial examiner for the second hearing, other than the one who conducted the first hearing, did not justify the court of appeals in setting aside the order.

ARGUMENT

Point One.

There is substantial evidence in the Record to support the findings and order of the Board.

The evidence supporting the findings is summarized with appropriate references to the record in the division of this brief entitled Statement of Evidence Supporting the Board's Finding. Such evidence is likewise summarized in the brief of petitioner in No. 786. A part, but not all, of such supporting evidence is summarized in the opinion of Judge Sanborn (151 Fed. (2d) 855 to 869), and likewise in the opinion of Judge Woodrough, and particularly at page 879 wherein he states: "My study of the record herein has satisfied me that the findings of the Board herein are sustained by substantial evidence." While in our judgment it is finally for this Court to determine *de novo* from the record whether there is such substantial evidence, yet the recital by Judge Sanborn, fortified and sustained by Judge Woodrough, is relevant and persuasive.

In scrutinizing the record for evidence supporting the finding, we are not concerned with, but disregard, conflicting evidence; "The findings of the Board as to the facts, if supported by evidence, shall be conclusive." (USCA, Title 29, Section 160 (e) and cases hereinafter cited.)

These summaries of favorable evidence (brief of petitioner in 786, this brief and the recitals of such evidence by Judges Sanborn and Woodrough) verified by the record, present a clear picture of unfair labor practice in violation of Sections 7, 8 (2) and other provisions of the

Act. Such evidence shows that the Company dominated and interfered with the formation and administration of the plant union and contributed support thereto, thus interfering with and restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act; that the closed shop agreement with the plant union was an integral part of the Company's plan to discourage and prevent membership of its employees in the International; that the Company dominated and interfered with the administration of the plant union and contributed financial and other support thereto; that the Company discouraged membership in the International Union by laying off employees and discriminating in regard to their hire and tenure of employment; that the Company dominated, controlled and used the plant union to interfere with, restrain and coerce its employees in the exercise of their rights guaranteed in Section 7 of the Act; that the Company, because of hostility to the International, influenced and coerced its employees into forming a plant union, depriving the employees of their freedom of action and choice and making them, in effect, servants dominated by their employer.

Manifestly such evidence, together with all reasonable inferences that the Board was entitled to draw therefrom, supports the finding and order of the Board of the existence of unfair labor practice.

The court may not weigh the evidence.

Once it is established that there is evidence supporting the finding, the court cannot weigh, but must wholly disregard, conflicting evidence no matter how convincing it may seem. Into that field the court may not go, all the way in, or at all. Thus the law is written, USCA, Title 29, Section 160 (e) (f):

"Our most limited power of review has been made crystal clear. *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 208, 209, 226, 60 S. Ct. 493, 84 L. Ed. 704; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 342, 343, 60 S. Ct. 918, 84 L. Ed. 1226." *National Labor Relations Board* v. *Milan Shirt Mfg. Co.*, 125 Fed. (2d) 376.

"As we stated in *National Labor Relations Board* v. *Waterman Steamship Corp.*, *supra*, 309 U. S. at pages 208, 209, 60 S. Ct. at pages 495, 496, 84 L. Ed. 704; '* * *' Congress has left questions of law which arise before the Board—but not more—ultimately to the traditional review of the judiciary. Not by accident, but in line with a general policy, Congress has deemed it wise to entrust the finding of facts to these specialized agencies. It is essential that courts regard this division of responsibility which Congress as a matter of policy has embodied in the very statute from which the Court of Appeals derived its jurisdiction to act.' Congress entrusted the Board, not the courts, with the power to draw inferences from the facts. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 271, 58 S. Ct. 571, 576, 82 L. Ed. 831, 115 A. L. R. 307; *National Labor Relations Board* v. *Falk Corp.*, 308 U. S. 453, 461, 60 S. Ct. 307, 311, 84 L. Ed. 396. The Board, like other expert agencies dealing with specialized fields (see *Rochester Tel. Corp.* v. *United States*, 307 U. S. 125, 146, 59 S. Ct. 754, 764, 83 L. Ed. 1147; *Swayne & Hoyt Ltd.* v. *United States*, 300 U. S. 297, 304, 57 S. Ct. 478, 481, 81 L. Ed. 659) has the function of appraising conflicting and circumstantial evidence, and the weight and credibility of testimony." *National Labor Relations Board* v. *Link-Belt Co.*, 61 S. Ct. [illegible], c. 365, 311 U. S. 584.

Precedents can be multiplied; none modifies nor restricts the foregoing. A few illustrative applications follow:

An *inference* (contrasted with direct evidence) of fact by the Board, "may not be set aside upon judicial review because the courts would have drawn a different inference." (*NLRB* v. *Southern Company*, 319 U. S. 50, 63 S. Ct. l. c. 910.) Inferences drawn by the Board "from evidentiary facts are fact questions to be determined by the Board and a finding of inferential facts made by the Board will not be disturbed by the court, if warranted from the evidence, even though it permits of conflicting inferences." *Swift* v. *NLRB*, 106 Fed. (2d) l. c. 93 (10 CCA). If the evidence picture permits conflicting inferences the order may not be set aside, "inferences to be drawn are for the Board and not the courts." *Montgomery Ward* v. *NLRB*, 107 Fed. (2d) l. c. 560 (7 CCA). See also *NLRB* v. *Pennsylvania Lines*, 303 U. S. 261, 271, 58 S. Ct. 571; *Wilson & Company* v. *NLRB*, 124 Fed. (2d) 845, l. c. 847 (7 CCA).

A Board finding based upon hearsay testimony may not for that reason be set aside where it is the kind of evidence "on which reasonable men are accustomed to rely in serious affairs," for "it is only convincing, not lawyers' evidence, which is required, evidence such as a reasonable mind might accept, though other like minds might not do so." *NLRB* v. *Remington-Rand*, 130 Fed. (2d) l. c. 930. See also *International Lodge* v. *NLRB*, 110 Fed. (2d) 29, affirmed 311 U. S. 72, 61 S. Ct. 83; *Consolidated* v. *NLRB*, 305 U. S. 197, 59 S. Ct. 206, l. c. 217.

The Board may reasonably choose the criteria determinative of an issue of fact and reject evidence which has no materiality in view of the criteria adopted; such rejection is not a denial of due process. 143 Fed. (2d) 488

(8 CCA). See also *FPC* v. *Natural Gas Company*, 315 U. S. 575, 586, 62 S. Ct. 736, 743.

It is our submission under this Point One that, viewed in light of the foregoing principles of law and the application thereof in specific illustrations, there was sufficient credible evidence to support the finding and order of the Board. In fact, there was more than sufficient, there was an abundance of such evidence.

The Board acted within its recognized and approved authority in ordering the Company to reimburse all of its employees for all dues and assessments which it had deducted from their wages on behalf of the plant union. (Vol. A. 622.)

The existence in the Board of such authority has been precisely and clearly approved by the Supreme Court in the case of *Virginia Power Company* v. *NLRB*, 319 U. S. 533, 539, 545, 63 S. Ct. 1214.

POINT TWO.

Even if rejection of the given evidence by the examiner were judicial error, it is not denial of due process.

The sole ground on which the Court of Appeals set aside the Board's order was want of due process. The decree of the Court of Appeals is as follows:

> "On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the prayer of the National Labor Relations Board for a decree of this Court enforcing the order under review is hereby denied for want of due process in the proceedings upon which the order is based, and said order is hereby set aside." (Court of Appeals decree, October 29, 1945.) (Vol. XIII, R. 4376.)

We take issue. There was no denial of due process. This involves consideration of the fundamental principles of due process and what constitutes a denial thereof.

Due process of law as applied to judicial proceedings.

The term "due process of law," or its equivalent, is not defined in the Constitution. Courts have been reluctant to define the term in its broadest application, being rather disposed to ascertain its intent and application by gradual process of judicial inclusion and exclusion, 12 C. J. 1188, and a multitude of decisions of which *Murray v. Hoboken Land Company*, 18 Howard 272, 277, is typical. This, however, is true only in its broadest application of the term. It is not true as applied to judicial proceedings. In that field specific definitions and applications have been by the courts repeatedly made. Whatever difficulty the courts have experienced in giving the term a specific definition as applied to every permissible exertion of government power, the courts have declared, and it is the settled law, that there can be no doubt of the meaning of due process of law when applied to judicial proceedings.

When the term is applied to judicial proceedings, it means a proceeding which hears before it condemns; which proceeds upon notice and upon inquiry and wherein judgment is rendered only after trial. (16 C. J. S. 1143; 12 C. J. 1192); *Pennoyer v. Neff*, 95 U. S. 714, 733; *Southern Bell Telephone Co. v. Louisiana Comm.*, 195 La. 729, 17 So. 548.

> Whatever difficulty may be experienced in giving to the term "due process of law" a definition which will embrace every permissible exertion of power affecting private rights, and excludes such as is forbidden; it has been said that there can be no doubt of its mean-

ing when applied to judicial proceedings, and as so applied due process of law has been variously held to mean a law which hears before it condemns, which proceeds on inquiry, and renders judgment only after trial. 16 C. J. S. 1143; *Parsons* v. *Russell*, 11 Mich. 113, 124, 83 Am. D. 728; *Huber* v. *Reily*, 53 Penn. 112.

The definition in Webster's argument in the Dartmouth College case, 4 Wheaton 518, 581, is classical: "By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial."

> "The words 'due process of law' were undoubtedly intended to convey the same meaning as the words 'by the law of the land' in Magna Charta. Lord Coke, in his commentary on these words (2 Inst. 50), says they mean due process of law. The constitutions which have been adopted in the several states before the formation of the federal constitution, following the language of the great charter more closely, generally contained the words 'but by the judgment of his peers or the law of the land.'" *Murray* v. *Hoboken*, 18 Howard (59 U. S.) 272, l. c. 276.

The Murray case, like many preceding and subsequent decisions, holds that the term "law of the land" means precisely what Webster defined it to mean; the very substance of which is, a law which hears before it condemns, which proceeds upon inquiry after notice, and renders judgment after trial.

Any judicial proceeding that measures up to the requirements of the Webster definition, affords the parties due process, no matter what procedural errors or erroneous reasoning leading to injustice in the given case may be asserted. Such alleged errors may be presented *only* on new trial or on appeal from court to court. *They*

cannot successfully be asserted as a denial of due process.

The definition of due process is exact and clearly expressed, but likewise are its limitations. Webster's definition was not new. He clearly saw and clearly defined three (and only three) prerequisites to due process, which were, (1) a hearing before condemnation, which of course involves notice, (2) judicial inquiry, and (3) judgment only after trial. Precisely the same thing had been said as far back as Coke's Institutes, which pronounced essential elements of law of the land as "*actor, reus, judex*" —some form of complaint by *actor* (plaintiff); opportunity to answer on hearing by *reus* (defendant), and a trial before a judge (*judex*), according to the essentials of some judicial proceeding. *Murray* v. *Hoboken*, 18 Howard 272, l. c. 280.

Due process does not guarantee against judicial error.

Where the parties have been heard in regular course of judicial proceeding, affording the essentials of due process as clearly defined, no error of the court in procedure or in decision is a denial of due process.

Attempts to review decisions on the ground of denial of due process by unsuccessful litigants, have been characterized as the last resort in desperate cases.

> "So numerous, so varied, and in many cases so trifling have been the questions raised as to the protection afforded by the guaranty of due process of law, that objections founded on it have been judicially characterized as 'those last resorts of desperate cases.'" 16 C. J. S. 1150; see also *Commonwealth* v. *Philadelphia Coal Co.*, 145 Pa. 283, 286, 23 Atl. 809, 12 C. J. 1195, Note 85; *Mabee* v. *McDonald*, (Tex.) 175 S. W. 676.

"The due process clause has been much abused and stretched to limits never designed by the constitution makers." *Miami County* v. *Dayton*, 92 Ohio State 215, 115, 110 N. E. 276.

"There is here abundant evidence that there exists some strange misconception of the scope of this provision (the due process provision) as found in the fourteenth amendment. In fact, it would seem, from the character of many of the cases before us, and the arguments made in them, that the clause under consideration is looked upon as a means of bringing to the test of the decisions of this court the abstract opinions of every unsuccessful litigant in a state court, of the justice of the decision against him, and of the merits of the litigation on which such a decision may be founded." *Davidson* v. *New Orleans*, 96 U. S. 97, l. c. 104.

Judicial error is not denial of due process.

Where taxing boards of two states were proceeding to tax the same property, complainant filed a bill in the nature of interpleader. Against the claim of due process, the court said:

"In reaching the conclusion they (the respective taxing boards) did on the evidence, one or the other may have erred in judgment, but such error would not be a lack of due process or in violation of the equal protection clause. It has been settled that that amendment does not assure immunity from judicial error or uniformity of judicial decisions. *Milwaukee Electric Ry. & Light Co.* v. *Wisconsin*, 252 U. S. 100, 106, 40 S. Ct. 306, 309, 64 L. Ed. 476, 10 A. L. R. 892; *Central Land Co.* v. *Laidley*, 159 U. S. 103, 16 S. Ct. 80, 40 L. Ed. 91; *Tracy* v. *Ginzberg*, 205 U. S. 170, 27 S. Ct. 461, 51 L. Ed. 755." *Riley* v. *Worcester County Trust Co.*, 89 Fed. (2d) l. c. 66.

"But, however that may be, the Fourteenth Amendment does not, in guaranteeing equal protection of the laws, assure uniformity of judicial decisions (*Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 569, 18 Sup. Ct. 445, 42 L. Ed. 853), any more than in guaranteeing due process it assures immunity from judicial error (*Central Land Co.* v. *Laidley*, 159 U. S. 103, 16 Sup. Ct. 80, 40 L. Ed. 91; *Tracy* v. *Ginzberg*, 205 U. S. 170, 27 Sup. Ct. 461, 51 L. Ed. 755)." *Milwaukee Electric Ry. & Light Co.* v. *State of Wisconsin*, 40 Sup. Ct. l. c. 309, 252 U. S. 100.

"When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution of the United States. *Walker* v. *Sauvinet*, 92 U. S. 90; *Head* v. *Amoskeag Co.*, 113 U. S. 9, 26, 5 Sup. Ct. 411; *Morley* v. *Railway Co.*, 146 U. S. 162, 171, 13 Sup. Ct. 54; *Bergemann* v. *Backer*, 157 U. S. 655, 15 Sup. Ct. 727." *Central Land Co. of West Virginia* v. *Laidley*, 159 U. S. 103, 16 Sup. Ct. l. c. 83.

"The plaintiff also insists that by the judgment of the supreme judicial court of Massachusetts he has been deprived of his property without the due process of law guaranteed by the 14th Amendment of the Constitution of the United States. This proposition is without merit. Within the meaning of that amendment, the court, by its judgment, did not deprive the plaintiff of property without due process of law. He sought a decree adjudging that he was entitled to the money received by Ginzberg from O'Hearn. The court, proceeding entirely upon principles of general and local law, and giving all parties interested in the question an opportunity to be heard, decided that plaintiff had no right to that money. The decision of a state court, involving nothing more than the ownership of property, with all parties in interest before it, cannot be regarded by the unsuccessful party as a deprivation of property without due

process of law, simply because its effect is to deny his claim to own such property. If we were of opinion, upon this record, that the money received by Ginzberg from O'Hearn really belonged to Tracy—upon which question we express no opinion—still it could not be affirmed that the latter had, within the meaning of the Constitution, and by reason of the judgment below, been deprived of his property without due process of law. Under the opposite view every judgment of a state court involving merely the ownership of property could be brought here for review—a result not to be thought of." *Tracy* v. *Ginzberg*, 159 U. S. 103, 27 Sup. Ct. 1, c. 463.

The law could not be otherwise. A contention that a given trial is not a fair trial because it denies due process is necessarily an attempt to raise a constitutional question. If procedural error in the rejection of competent evidence is a denial of due process, then every case wherein there was rejection of such evidence would ultimately be for decision by the Supreme Court. If a Court of Appeals is to reverse the findings and order of the Board by reason of procedural errors in the receipt of evidence merely by stating that such rejection is a denial of due process of law, then all distinction, at least as far as the receipt of evidence is concerned, between the jurisdiction of the Court of Appeals under the Act on the one hand, and jurisdiction of such in legal proceedings in an appeal from court to court in a proceeding at law on the other, is destroyed. Such ruling is necessarily in conflict with *National Labor Relations Board* v. *Bradford Dyeing Association*, 310 U. S. 318, 60 S. Ct. 918, and particularly in conflict with *Federal Communications Commission* v. *Pottsville Broadcasting Co.*, 308 U. S. 134, 60 S. Ct. 437, and *Fly* v. *Heitmeyer*, 309 U. S. 146, 60 S. Ct. 443.

Again for the Court of Appeals so to do is for the court to exercise jurisdiction far beyond that fixed by the Act of Congress, and far beyond any inherent jurisdiction bottomed upon the due process clause. This is so because rejection of evidence, at least of the character here involved, is at most judicial error and not denial of due process (cases *supra*).

The court in determining whether an order by an administrative board constitutes a denial of due process, is guided and restricted by the same canons of constitutional law applicable to determination of the constitutionality of a direct legislative Act.

The order of an administrative board, created by valid law, is inherently legislative and the validity of the order as to its constitutionality is to be tested and tried, precisely the same as if it were a specific legislative act. For instance, the legislature has power to regulate rates of common carriers and it may do so by as direct a statute as one providing that passenger rates shall be 3c a mile. Such statute is subject to the test of constitutionality against the claim that it is confiscatory and denial of due process.

For reasons well understood and learnedly discussed in the Pottsville case (308 U. S. 134), direct legislative regulatory acts become increasingly impractical, if not impossible. Hence legislative boards were born. These acts have successfully withstood persistent and skillful attack upon their constitutionality. Such laws have been sustained upon the theory that the act of the board is in itself, under a valid law, the act of the legislature. Instead of enacting that passenger rates shall be 3c per mile, the legislature provides that passenger rates shall be reasonable, in accordance with certain fundamental

principles and standards contained in the legislative act. Then the administrative board, acting in strict compliance with the standards fixed by the legislature, makes an order to fit the facts within a given case. When such board, in proper proceedings and hearing, makes an order that within a given territory passenger rates shall be 3c a mile, the situation is precisely as if the legislature itself had directed such rate. (See authorities hereinafter cited.)

Such administrative order is subject to the same constitutional test under the same canons guiding and restricting the courts in determining the constitutionality of the direct legislative act providing the passenger rate. Some of these canons here controlling are as follows:

While undoubtedly a court has judicial authority, in a given case, to declare a legislative act or administrative order unconstitutional and hence void, yet the task is "a delicate one and only to be entered upon with reluctance and hesitation." Every presumption and intendment is to be indulged in favor of validity. The burden is upon him who attacks the law or order. The invalidity must be clear and certain. Unless the act is clearly unconstitutional, it will be held valid.

> "It is our duty, when required in the regular course of judicial proceedings, to declare an act of Congress void if not within the legislative power of the United States; but this declaration should never be made except in a clear case. Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule." *Union Pacific Railroad Co.* v. *United States*, 99 U. S. 700 (Sinking-Fund Cases).

1 Cooley's Constitutional Limitations, 8th edition, page 334; *Champion* v. *Anes*, 188 U. S. 321, 47 L. Ed. 492, 23 S. Ct. 34; *Jackson* v. *Bowden*, 67 Fla. 184, 64 So. 769, L. R. A. 1916D, 931. Any reasonable doubt as to the validity of the act is to be resolved in favor of its validity. *Ogden* v. *Saunders*, 12 Wheat. 213, 6 L. Ed. 606. It is not sufficient that there be judicial doubt of validity. 1 Cooley's Constitutional Limitations, 8th edition, page 371; Wellington Petitioners, 16 Pick. 86, opinion by Shaw, Ch. J.; *Heisler* v. *Thomas*, 260 U. S. 245, 43 S. Ct. 83.

Under the principles variously exemplified in the foregoing authorities, before rejection of evidence can be denial of due process its exclusion must transcend mere judicial error. The rejected evidence must be so direct and vital, so essential to the party's case that without it there was no real trial. The ruling must not only be wrong, but so manifestly wrong that it is arbitrary. If the question of admission is at all debatable, its rejection cannot be denial of due process.

We submit that the rejected evidence in this case is not of that character.

Point Three.

So far from the rejection of the evidence being a denial of due process, such rejection would not have been reversible error in an ordinary jury trial.

In the first place, since all rulings rejecting evidence in the first hearing were assigned as error in the first case before the Court of Appeals, the examiner was warranted, in the second hearing, in assuming: (a) that his rulings with respect to the rejection of evidence, except where condemned, or at least mentioned in the court's opinion, were not erroneous and should be by him

followed; (b) that certainly his rejection, in the first hearing, of evidence of alleged illegal conduct of the International (which rejection was expressly approved by the court) (123 Fed. (2d) l. c. 225 (15)) was to be adhered to; (c) that he was not required to hear any new or additional evidence not within the scope of the remand.

These considerations alone dispose of nearly all complaint concerning rejection of evidence.

Moreover, the rejection of the evidence in question did not constitute reversible error.

Contracts between the International and other employers said to contain terms less favorable to the employees than the contract between the company and the plant union.

Such testimony was non-receivable because it would lead to endless collateral issues, a practice condemned by all trial courts. Who is to say one long complicated contract is more favorable to one party than another contract of like character between other parties? If one side introduces certain terms claimed to be more favorable, the other would introduce other terms and conditions *dehors* the contract said to counterbalance. The court would be deserting and laying aside the main issue to try endless collateral matters.

Aside from this, the only conceivable probative value of such evidence would be that it could be argued therefrom that the company employees formed the plant union because they believed it could obtain a more favorable contract than could the International. But, even here, the existence of such contracts could not bear upon the motive of the employee in joining the plant union unless the employee knew thereof, and then it would not be what was in the International contracts, but what the employee believed was in them. That is precisely the ruling of the

trial examiner. He excluded the terms of the collateral contracts, but admitted evidence from the employees as to what they believed were in such contracts and whether they joined the plant union because of what they so believed. Such ruling of the examiner's runs through pages of the record. We refer to Volume VII, 2514 and following, and Volume VIII, 2521, and following. For instance, note the following:

> "Trial Examiner Batten: I think it is important also to know what information they (the employees) had. I say 'what information they had,' not what information was available in somebody's office, Mr. Tyler. What information did these people have upon which they acted?" Vol. VII, 2514.
>
> "* * * we should take the testimony of these employees as to what they thought, what motivated them in doing the things they did. I agree with you on that. * * * In other words, it does seem to me that that is the primary purpose for which the court sent it back, to take the testimony of these people, what they thought, why they did these things." Vol. VII, 2518.

The trial examiner did receive testimony of the employees as to what they understood and had heard with respect to such contracts and other activities of the International and what effect such information had upon their joining the company union. Volume VII, 2593, 2594, 2929, 2931; Volume IX, 3080.

Testimony with respect to alleged illegal conduct, fraud and violence on the part of the International.

This evidence was excluded at the first hearing and its exclusion was expressly approved by the Court of Appeals in the first case, 123 Fed. (2d) l. c. 215, 225

(15)). Such testimony *was* non-receivable because it necessarily led to the trial of collateral issues. Moreover, in the second hearing the examiner did admit testimony on this subject for the only purpose for which it could possibly be relevant, and that was a bearing upon the motive of the employees in joining the plant union. Here again actual violence, fraud and other misconduct was not admissible per se, but what the employees had experienced, seen or heard and believed was admitted, regardless of whether such information was true or false. (VII, 2566-2568, 2624-2626-2711-2713, 2768-2771, 2788, 2848-2851, 2915-2917, 3003-3006, 3046-3049, 3078-3081, 3120-3121, 3169-3171, 4101-4102, 5125-4169, 4173-4175.)

Evidence that the International, under other contracts with other employers, received as eligible members employees allegedly having duties similar to those employees said to be supervisory employees at the Donnelly plant.

There was testimony that certain employees of the Company were supervisory employees, so that their statements and conduct would be binding upon the Company. The Company claimed these were not supervisory employees, and for the purpose of showing that they were not, the Company offered to prove that similar employees in other plants under contracts with the International, were admitted to membership, when they could not have been admitted if they were supervisory employees. Manifestly this was remote and collateral, leading, if it was received, to interminable comparison and inquiry concerning various kinds of employees in other plants; whether the conditions were similar in the various plants, or whether and wherein they differed, and so forth and so on. The rulings of the examiner are found in Volume

VII, 2508-2510; Volume VIII, 2559-2564-2788-2789; Volume IX, 3527; Volume X, 3787-3794.

In addition to this evidence leading to the trial of collateral issues, such evidence was inadmissible because what the International did with respect to other employers and employees could not possibly have material weight with the Board in determining the primary issue of the presence or absence of unfair labor practice by this Company. Respondents treat this case as if it were a suit at law between the International and the Company, wherein the acts and conduct and declarations of the International would be permissible because admissions against interest.

The case of *NLRB* v. *Indiana & Michigan Electric Company*, 318 U. S. 9, 63 S. Ct. 394, is not in point. The question in that case was the propriety of an order of remand to take additional evidence. It in nowise involved the power of the court to set aside the order of the Board, either statutory or because of denial of due process. The facts in the two cases are so divergent that neither case could stand as a precedent in the other.

In the Indiana case the excluded evidence which the court directed should be admitted, disclosed dynamiting and other violence, threats and intimidations resulting in witnesses refusing to testify or committing perjury, and conduct calculated and intended to influence witnesses, the examiner and the Board. Nothing of that sort is disclosed in this record. The controlling consideration was the effect upon the proceeding itself. The case did not hold that evidence of misconduct in labor matters of a union, even where a party to the proceeding, was admissible. It held exactly to the contrary. The evidence was admissible only upon the narrow ground that it bore

upon the discretion of the Board, not in the trial, but in issuing a complaint.

The marked distinction between the Indiana case and this case and the total absence in this case of the fundamental elements in the Indiana case, are strikingly shown by the findings of Judge Nordbye in *Donnelly Garment Co.* v. *International Union*, 55 Fed. Supp. 572, l. c. 594. That Donnelly case was a suit for injunction by the Company against officers of the International to restrain the International from alleged threats of violence. The denial of injunction was sustained by the Court of Appeals in the case of *Donnelly Company* v. *Dubinsky*, 154 Fed. (2d) 38. Judge Nordbye stated:

> "It must be remembered that no violence has ever been perpetrated on any of the Donnelly employees or officials. No property of the plaintiff's has ever been injured by violence. No strike has ever been called."

Evidence otherwise admissible may and often should be excluded because it tends to introduce collateral issues diverting the attention of the triers of fact from the precise issues involved in the case and protracts the trial beyond reasonable limits. The admission or exclusion of such evidence rests very largely in the discretion of the trial judge, here the examiner, and the Board.

The foregoing proposition is elementary. The following is a characteristic statement of the law:

> "This general rule (admission of all relevant evidence), however, is subject to the important qualification that testimony which does have some tendency to establish a material fact may be rejected by a trial judge; and should be rejected, when its admission will have a tendency to divert the attention of the jury from the precise issues involved in the case, and protract the trial beyond reasonable limits.

This limitation of the general rule requiring all relevant testimony to be admitted to which we have last alluded, is not only reasonable in itself, but it is well supported by the authorities. * * *"

"It is always a question within the discretion of the trial judge as to how far parties may be permitted to go into collateral issues; such discretion being exercised by a fair consideration whether the evidence is relevant to the issue, its probable effect upon the jury, the likelihood of confusing the issues, and the probable time that will be consumed if such collateral issues are followed to their legitimate ends." *New England Trust Co. v. Farr*, 53 F. (2d) 103, l. c. 110.

The same principle is announced in 1, Greenleaf on Evidence, Section 14A, 16th Edition, wherein it is called the Doctrine of Collateral Inconvenience; *Schradsky v. Stimson*, 76 F. 730, l. c. 734; *Lack v. C. B. & Q. Railroad Co.*, 281 Mo. 532, 219 S. W. 919, l. c. 922; *Golden Reward Mining Co. v. Burton*, 97 F. 413, l. c. 416; *Westworth v. Smith*, 44 N. H. 419, 82 Am. Dec. 228; *Thompson v. Boucie*, 4 Wall. 463, 471, 18 L. Ed. 423.

We submit the action of the examiner, approved by the Board, with respect to the evidence in question, was not such an abuse of discretion as to constitute reversible error even in a common law trial, much less a denial of due process of law.

POINT FOUR.

The examiner did receive and both the examiner and the Board did consider and weigh the employees' testimony (151 Fed. (2d) l. c. 871).

By employees' testimony, as used by the court and counsel, means the conclusionary evidence of employees as to their impulses and motives in joining the plant union.

which was excluded in the first hearing, but admitted in the second. The Court of Appeals by Judge Sanborn (l. c. 871) holds that in the second hearing there was no error in the receipt or rejection of such testimony and that this is a correct conclusion is demonstrated by the record.

However, both Judges Sanborn and Riddick declared and held that while such evidence had been properly admitted, yet neither the examiner nor the Board had given proper consideration and weight thereto (151 Fed. (2d) l. c. 871 and 877). The record conclusively shows that both the examiner and the Board not only received such evidence, but considered and weighed the same.

The examiner and the Board obeyed the court's direction and *did receive the employees' testimony.*

The trial examiner in his report stated:

> "The undersigned accorded the respondent and the DGWU an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing * * *." (Volume X 3848.)

The *Board's final report* recites:

> "In remanding the case to the Board for further hearing the Circuit Court directed that the respondent and the DGWU be permitted to adduce the previously proffered testimony of respondent's employees to show, in substance, that they formed and joined the DGWU, of their own free will and that they were not influenced, interfered with, or coerced by the respondent in choosing that organization as their bargaining representative. In compliance with the Court's mandate and pursuant to the respective offers of proof, submitted by the respondent and the DGWU at the original hearing, the Board permitted the introduction of such testimony." (Vol. X 618-619. See also Vol. XIII 25.)

The trial examiner and the Board *considered such testimony.*

The trial examiner considered such evidence. He reported:

> "The undersigned accorded the respondent and the DGWU an opportunity to introduce all of the competent and material evidence which was rejected at the prior hearing. * * * Upon the record thus made (manifestly including the employees' testimony which the examiner in the second preceding sentence stated that he had received), and from his observation of the witnesses, the undersigned makes, in addition to the foregoing the following findings of fact." (Vol. X 3848.)

The Board's finding recites:

> "In compliance with the Court's mandate and pursuant to the respective offers of proof submitted by the respondent and the DGWU at the original hearing the Board permitted the introduction of such testimony (employees' testimony), we have carefully considered all such evidence adduced by the respondent and the DGWU." (Vol. A 618-619.)

The Board *weighed* the employees' testimony.

> "We have carefully considered all such evidence (employees' testimony) adduced by the respondent and the DGWU. We find, however, that the testimony in question (employees' testimony) does not overcome more positive evidence in the record that the respondent committed acts of interference and assistance in the formation and administration of the DGWU, which subjected that organization to the respondent's domination and which thus removed from the employees' selection of the DGWU in complete freedom of choice which the act contemplates." (Vol. 13, 25-26.)

These recitals in the record must be taken as final.

These things deal with mental and subjective processes by the Board and the Board alone knows what those processes were. (*Morgan* v. *U. S.*, 304 U. S. 1, 58 S. Ct. 773.) There is no room for mistake on the part of the Board in these clear and unambiguous statements in the record. Either the Board did, as by it declared, consider and weigh and did not arbitrarily disregard this evidence, or, the Board officially states that which it knows not to be true. The record demonstrates to a moral certainty that the recitals by the examiner and the Board are true.

The whole contention that the Board did not consider and give due weight to the employees' testimony is based upon the word "immaterial" in the Board's finding. (Vol. X 2526.)

An inordinate to-do is made by respondents over the use of the word "immaterial" in the Board's finding, as if its use destroyed all else the Board stated and declared and found. The contention entirely overlooks the indisputable fact that before the use of this word "immaterial" and entirely independent therof the Board had received, considered and weighed all of the evidence and had found that the employees' testimony did not overcome more positive evidence in the record that the Company was guilty of unfair labor practice, a function that Congress has placed exclusively with the Board and by it denied to the court.

Manifestly the Board did not mean, by the use of this word "immaterial," to indicate that such testimony should not be received, considered and weighed in light of the entire record, because *that is precisely what the Board had already done.*

POINT FIVE.

The Court of Appeals, in direct violation of the provisions of the Act, did itself weigh evidence.

The Court of Appeals sets its own opinion of the value and weight of such evidence (employees' evidence) against the opinion of the Board. The Board in its analysis of all the record, and its factual experience, held that such evidence was without weight. The court holds that the Board should have given some weight thereto. There is no escape from the conclusion that the court did undertake to weigh the evidence, fix the evidentiary value thereof, and hold that the Board had not given the weight and value to such testimony that the court thought it entitled to receive. Who is to determine whether given evidence is entitled to great weight, little weight or no weight? If the court is so to determine, then by what standard is the court to decide that the Board did not give proper weight and value to such evidence? Manifestly, the standard would have to be the court's judgment as to whether the given evidence was or was not entitled to weight. But this completes the circle and brings it back to the point of beginning, which is that the court is without power to weigh or to determine the proper weight of evidence, where there is substantial evidence to support the finding of the Board. He who decides whether the Board's action in weighing evidence is arbitrary or not arbitrary is himself weighing evidence and is exercising an authority the Board alone has and the court has not.

Point Six.

A careful reading of the opinions and a consideration of the entire record demonstrates that the Court of Appeals has treated its jurisdiction to review findings and orders of administrative boards as co-extensive with, similar and analogous to its judicial authority in legal proceedings as upon appeal from court to court.

This, in our judgment, is one of the most important questions in this case and constitutes a departure from fundamental and governing principle marking the distinction between judicial authority to review administrative acts on the one hand, and judicial authority upon appeal from court to court, upon the other.

The technical rules governing the interrelationship of judicial tribunals, including scope of authority upon appeal, are partly statutory, but more largely those defined by the courts themselves through long growth of jurisprudence. It is a fundamental error to attempt to apply these rules marking the scope of judicial authority on appeal from court to court to the judicial review of orders of administrative boards. The case of *Federal Communications Commission* v. *Pottsville*, 309 U. S. 134, 60 S. Ct. 437, is illuminating and controlling. As marking the scope of that opinion, the court announced in the beginning that it was called upon to ascertain and enforce the spheres of authority which Congress has given to the Commission and the courts, respectively (309 U. S. 134). The Court said:

> "A much deeper issue, however, is here involved. This was not a mandate from court to court but from a court to an administrative agency. What is in issue is not the relationship of federal courts *inter se*—a relationship defined largely by the courts themselves—but the due observance by courts of the distribution of authority made by Congress as between its

power to regulate commerce and the reviewing power which it has conferred upon the courts under Article III of the Constitution, U. S. C. A. A review by a federal court of the action of a lower court is only one phase of a single unified process. But to the extent that a federal court is authorized to review an administrative act, there is superimposed upon the enforcement of legislative policy through administrative control a different process from that out of which the administrative action under review ensued. The technical rules derived from the interrelationship of judicial tribunals forming a hierarchical system are taken out of their environment when mechanically applied to determine the extent to which Congressional power, exercised through a delegated agency, can be controlled within the limited scope of 'judicial power' conferred by Congress under the Constitution.'' 60 S. Ct. l. c. 440-441.

The court also said:

"But to assimulate the relation of these administrative bodies and the courts to the relationship between lower and upper courts is to disregard the origin and purposes of the movement for administrative regulation and at the same time to disregard the traditional scope, however far-reaching, of the judicial process. Unless these vital differentiations between the functions of judicial and administrative tribunals are observed, courts will stray outside their province and read the laws of Congress through the distorting lenses of inapplicable legal doctrine." 60 S. Ct. l. c. 442.

The opinions of the Court of Appeals could just as well have been written upon appeal in a law case wherein a jury had passed upon the facts. There is no authority that the Court of Appeals could properly exercise in a law appeal that it does not expressly or by necessary

assumption employ in this case. The action of the court in setting aside the order of the Board, on account of procedural errors such as nice questions as to the receipt or rejection of evidence, qualifications of the examiner, weight to be granted to given evidence, and the like, is no whit different from the action of such court on an appeal in setting aside the judgment of the lower court because of similar errors. The court failed to note the "vital differentiations" between the functions of judicial and administrative tribunals and did "stray outside their province and read the laws of Congress through the distorting lenses of inapplicable legal doctrine." (60 S. Ct. l. c. 442.)

No doubt Congress could grant such scope of review of administrative orders to the courts, but on the other hand there is no doubt that it has not done so. The question of the scope of such review has been debated at length between two schools of thought upon what such scope should be. Some advocate that the court should be authorized to review such findings as if the case was on appeal in equity, including determination of the weight of evidence. Others have contended that there should be no statutory review whatever, but that the review should be confined to the constitutional questions, which authority needs no statute. The middle ground is that adopted by Congress, which is in most instances confined to the determination of whether there is substantial evidence to support the findings. Since Congress has acted with respect to the limit of review of orders of the National Labor Relations Board, further discussion, so far as that Act is concerned, must necessarily be confined to the Halls of Congress. The field cannot be expanded by judicial legislation.

Principles of Public Administrative Law Here Involved.

Public administrative law is a comparative newcomer in American Jurisprudence (42 Am. Jur. 287). Professor of Law, now Mr. Justice Frankfurter, describes administrative law by saying that it deals with the field of control exercised by agencies other than courts, and the field of control exercised by courts over such agencies (75 U. of Pa. L. Rev. 615). An extended and learned article upon public administrative law, dealing with its history, the conditions with which it concerns itself, its relation to common law principles and procedure, and the authority and limitation upon authority of the courts, is contained in 42 Am. Jur. 281 and following. The principles herein stated, in our judgment, are firmly established by court decisions and law writers. The leading case, of course, is the Pottsville case, see *Morgan* v. *U. S.*, 304 U. S. 1, 58 S. Ct. 773; address of Elihu Root to the American Bar Association, 41 ABA Rep. 355, and following; Fréund "Cases on Administrative Law," page 3; Ralph F. Fuchs, 47 Yale Law Journal, 538; Professor Frankfurter, 75 U. of Pa. L. Rev. 615.

The subject matter is far too extended to cover in a brief.

It is our submission that the decision of the Court of Appeals is in conflict with the foregoing fundamental principles as announced in these authorities.

POINT SEVEN.

Failure of the Board to designate a trial examiner for the second hearing, other than the one who conducted the first hearing.

It is difficult to determine what, if anything, the Court of Appeals ruled on this question. Judge Sanborn expressly ruled that the proceedings of the Board did not

lack due process because of alleged bias or prejudice against the Company or the plant union. He likewise expressly ruled as follows:

> "We think that it cannot be said that it appears from the record of the proceedings before the examiner and before the Board that there was denial of due process because of bias or prejudice, or collusion."

Judge Woodrough ruled that the examiner was properly qualified:

> "Neither do I find evidence of bias or prejudice to disqualify the examiner in this case. He seems to me to have ruled in accord with the dictates of his conscience and to have endeavored, against great resistance, to keep the trial within the rational relation to the charges to be tried." 151 Fed. (2d) l. c. 880.

Judge Riddick, in his concurring opinion l. c. 877, specifies the grounds upon which he holds that there was a denial of due process, but he does not mention as one of said grounds the failure to appoint a new examiner.

Judge Sanborn (l. c. 870) mildly criticizes the Board, but does not say that its action in this respect constituted a denial of due process.

The examiner was not disqualified because in prior proceeding he had expressed the then opinion that certain evidence was immaterial. *Walker* v. *United States*, 116 Fed. (2d) 458 (9 CCA); *Ryan* v. *United States*, 99 Fed. (2d) 864; *Refior* v. *Lansing Drop Forge Co.*, 124 Fed. (2d) 440; *O'Malley* v. *United States*, 128 Fed. (2d) 676 (8 CCA); *Berger* v. *United States*, 255 U. S. 22, 41 S. Ct. 230.

A continuation in office of the examiner for further proceedings was peculiarly appropriate because of his knowledge of the issues and familiarity with some 5000

pages of testimony. There is nothing in the record to show that the consideration given by the examiner of the employees' evidence was influenced to any degree by his former opinion before the court had spoken. There is nothing to show that after the court's ruling in the first case the examiner prejudged the testimony without weight before he received and reconsidered it. There is nothing to show that the reconsideration of the evidence, both by the examiner and the Board, was not in good faith, a true reconsideration and reweighing.

The authority of the Board to correct errors upon the part of the examiner is far broader than the authority of the court correcting mistakes upon the part of the judge. The trial examiner has no authority to rule finally on anything. The Board may send the case back to the examiner to take further evidence, to make other and different rulings. So far as the merits of the case are concerned, the report of the examiner at best is but advisory and may be accepted or rejected or modified by the Board itself. If it be good law that a judge is not to be disqualified because of his previous opinions and rulings, even in the same case, then it is also good law that an examiner is not to be disqualified for such reason.

The contention that under this record that there was a denial of due process because the Board failed to appoint another examiner after the remand, is, in our judgment, trivial.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 787.

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, PETITIONER,

VS.

DONNELLY GARMENT COMPANY, DONNELLY GARMENT WORKERS' UNION AND NATIONAL LABOR RELATIONS BOARD.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 8TH CIRCUIT.

BRIEF OF RESPONDENT, DONNELLY GARMENT COMPANY, IN OPPOSITION.

ROBERT J. INGRAHAM,
BURR S. STOTTLE,
Attorneys for Respondent, Donnelly Garment Company.

REED, INGRAHAM & MILLIGAN

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OPINIONS BELOW.

The opinions of the Circuit Court of Appeals (XIII, 7-64) are reported in 151 F. 2d 854. Prior opinions of the Circuit Court of Appeals in this case are reported in 123 F. 2d 215.

JURISDICTION.

The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code as amended by the act of February 13, 1925, and Sections 10(e) and (f) of the National Labor Relations Act.

PRELIMINARY STATEMENT.

This is a companion case to Cause No. 786 pending in this Court, and is based upon the same record. Most of the points raised in this proceeding have been answered in our brief in opposition to Cause No. 786, to which we respectfully refer the Court.

Petitioner here is more restrained in its statement of the facts and issues than was the Labor Board in its companion petition in Cause No. 786—but petitioner here has also made some misstatements to which we call the Court's attention:

In the heading at the top of page 10, petitioner says: "Factually the record supports the Board's findings. This is conceded by the opinions." This is followed by the statement: "The opinion makes exceedingly clear that from a factual standpoint there was substantial and sufficient evidence to show that the company was guilty of the unfair labor practices charged." Such statements are completely erroneous. The Court below in its majority opinion expressly refused to pass upon the question whether the Board's findings were supported by the evidence; the Court merely summarized each party's contentions and then said (XIII, 37):

"The question as to which is the true picture, in so far as that presents a question of fact, is not a matter with which this Court can concern itself."

Petitioner makes the same erroneous statement on page 12—"all this where admittedly there was substantial and sufficient evidence to support the findings of the Board." There is no such admission. That was one of the main controverted issues before the Labor Board and before the Court below.

And again at page 24: "Once it is conceded, as here, that the findings and order were supported by substantial evidence, * * *." There is no such concession here.

Under Item "Two," page 12, petitioner "begs the question" in its statement of the question presented—it assumes that the excluded evidence is not "direct, fundamental, and vital," but that it is only "incidental or collateral." Respondent claims (and the Court below held), that the evidence is vital, in fact so vital that its exclusion constituted a denial of due process.

ARGUMENT.

I.

Petitioner's Point "One" (pp. 24-25).

Petitioner here argues that "even if" the Board is required to *receive* material evidence, "what it does with such evidence so received is not subject to judicial review" (p. 25). We disagree. An administrative body may not arbitrarily disregard material evidence.

In *NLRB* v. *Indiana and Michigan Elec. Co.*, 318 U. S. 9, this court held:

> "Findings cannot be said to have been fairly reached unless material evidence which might impeach, as well as that which will support, its findings, is heard *and weighed*" (l. c. 28).

In *NLRB* v. *Laister-Kauffmann Aircraft Corp.*, (8 C. C. A.) 144 F. 2d 9, the Court said (l. c. 16):

> "It is undoubtedly true that a Board which with 'studied design' ignores all the evidence adduced by the employer and views as truthful only the testimony of adverse witnesses, acts arbitrarily and not in accord with legal requirements. *NLRB* v. *Sartorious Co.*, 2 Cir., 140 F. 2d 203, 205; *NLRB* v. *Union Pacific Stages, Inc.*, 9 Cir., 99 F. 2d 153, 177; *NLRB* v. *Greider Machine Tool & Die Co.*, 6 Cir., 142 F. 2d 163, 165. 'Testimony is the raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be wrought.' *NLRB* v. *Thompson Products, Inc.*, 6 Cir., 97 F. 2d 13, 15. And Section 10(e) of the Act, 49 Stat. 453, 29 U. S. C. A., Sec. 160(e), which provides that 'The findings of the Board as

> to the facts, if supported by evidence, shall be conclusive,' does not, of course compel the courts to accept findings reached by accepting evidence presented by one side to the controversy with total disregard for other worthy evidence before the Board. *NLRB* v. *Union Pacific Stages, supra.*"

Here the Board arbitrarily refused to put the employees' testimony on the scales, because it "adhered to its opinion" (A, 619) that said testimony did not possess the quality of "materiality"—a quality which the Court had held that it did possess. By such refusal, the Board vitiated its order.

The Court did not "weigh" such evidence *as against other evidence,* but it had a right to determine whether the rejected evidence was material. The only way it could do that was to consider it in the light of the issues involved. That is the only "weighing" of the evidence by the Court below—and when, by this process, it found and held that the rejected evidence was material and remanded the case to the Board to receive *and consider* it, the Court had a right to expect that the Board would not arbitrarily disregard such evidence as *immaterial.* When the Board refused to accept the spirit or letter of the remand, the Court had the right, in fact the duty, to refuse to lend its enforcement powers to the Board's order, reached in total disregard of material evidence.

II.

Petitioner's Point "Two" (pp. 25-27).

Petitioner here makes a tenuous distinction between "due process" and "procedural due process." It cites *NLRB* v. *Bradford Dyeing Association,* 310 U. S. 318, in support thereof. There is no such distinction. If a litigant is deprived of a material procedural right, it

is just as much a denial of due process as though he were denied a "substantive" right or whatever kind of right petitioner deems to be included in the term "due process." The very words "due process" connote *procedure*. Nor does the *Bradford* case support petitioner's contention—in fact in that very case, this court uses the expression "*procedural* due process," saying l. c. 342:

> "If the Board * * * has, on a charge of unfair labor practice, held a hearing * * * comporting with the standards of fairness inherent in *procedural due process* * * *"

—then the Court of Appeals should enforce the Board's order.

(By implication this means that if the hearing does *not* comport with such standards of procedural due process, the Court should *not* enforce it.)

Counsel for the petitioner seem to think that if an error on the part of the Board is "procedural," the Circuit Court of Appeals has no right because thereof to refuse enforcement of the Board's order. But the error of the Board in the *Michigan and Indiana case, supra,* was of the same general type as the error of the Board here, namely, the rejection of evidence which the Circuit Court of Appeals thought the Board should have received. In other words, the matter turns not on whether the right denied a litigant is procedural or substantive but on whether he is denied a material right. If evidence which is excluded, whether by the Labor Board or by a Court, is competent and material and might reasonably change the course of decision, then its exclusion is denial of a fair trial and of due process.

Who is to pass judgment upon that question? The Board has that right, in the first instance; but Congress has vested in the Circuit Court of Appeals the power and

discretion (subject to certain limitations) of enforcing or not enforcing the Board's orders. One of the grounds on which that Court may refuse to enforce an order of the Board is the Board's refusal to receive and consider competent, material evidence; and the Court's decision thereon should not be disturbed unless its decision is "not only erroneous" but is so far wrong as to constitute an "abuse of its judicial power and discretion" (*Indiana and Michigan case, supra,* l. c. 16).

We have discussed the competency and materiality of the rejected evidence in question, and the correctness of the Court's rulings thereon, in our brief in the companion proceeding No. 786, and to save repetition, we respectfully refer the Court thereto.

Nor is there any conflict between the decision below and this Court's decision in *Federal Communications Commission* v. *Pottsville Broadcasting Company,* 308 U. S. 34, cited by petitioner at page 27. That case involved an application for permission to construct a broadcasting station at Pottsville, Pennsylvania. The Commission had erred in applying the law with respect to the applicant's financial responsibility. The Circuit Court of Appeals pointed out the legal error and remanded the case "for reconsideration in accordance with the views expressed" by the Court. The Commission in the meantime had received similar applications from other companies and set them all down for hearing "on a comparative basis." The Court thereupon issued mandamus directing the Commission to set aside its order for such hearing on a comparative basis and directed it to hear and reconsider the original application on the record originally made. This Court held that in so doing, the Circuit Court of Appeals exceeded its authority.

There is no similarity between that situation and the situation here. There the Commission did not disregard

the Court's remand—it merely did *other* things, within its province, *in addition* to what the Court had directed. Here the Board refused to consider *as material* (A., 619) evidence which the Court had by its previous decision directed should be considered *as material*. If the Commission in the Pottsville case, on the second hearing, *had again misapplied* the law in determining the question of financial responsibility, the Pottsville case would present a situation more analogous to the case at bar, and in such event we respectfully submit that the Circuit Court of Appeals would have been justified in again reversing the Commission. Furthermore, the Circuit Court of Appeals, in the Pottsville case sought to interfere with the *scope* of the Commission's proceeding; here there was no interference with the scope of the Board's procedure. If the Board here on the second hearing had sought to bring in the "John Doe Garment Co." as a co-defendant and the Circuit Court of Appeals by mandamus had ordered the Board not to do so the situation would have been somewhat similar to that in the Pottsville case. We respectfully submit that the Court's rulings here in no wise invade the province of administrative agencies. Here the Court merely refused to lend its enforcement powers to the order of the Board, based upon a proceeding in which the respondent had been denied a fair hearing. That is a proper function of the Circuit Court of Appeals, in Labor Board cases, specifically conferred upon it by Congress. There is no conflict with the Pottsville case.

III.

Petitioner's Points "Three and Four" (pp. 27-29).

This point (refusal of the Board to designate a different Trial Examiner for the second hearing) has been

discussed under point I(b) of our brief in companion case No. 786, to which we respectfully refer the Court.

The case of *Hill* v. *Florida*, 65 S. Ct. 1273, cited by petitioner (p. 28), involves a point so wholly different from the case at bar as to require no discussion.

Nor do any of the cases cited at the top of page 29 conflict with the rulings of the Court below. They hold that a judge's bias must be based on something other than his rulings in the case, which may be corrected on appeal. Two of the cases cited (*Ryan* v. *United States*, 99 F. 2d 864, and *O'Malley* v. *United States*, 128 F. 2d 676) are by the Court below, which Court therefore was quite familiar with those rulings and obviously did not in the case at bar intend to rule contrary thereto. Respondent's objection to Trial Examiner Batten, and the Court's ruling thereon, are not based merely upon Batten's erroneous rulings (of which there were many) but on the fact that *he had pre-judged as worthless* highly important evidence offered by respondent and could not in a later hearing fairly evaluate such testimony, as respondent had a right to have it evaluated by the Trial Examiner. In the *O'Malley* case the court said of the ruling in question "there was *no pre-judgment* of guilt in any remark that the court made * * *"—in the remarks of Batten there *was* pre-judgment and the pre-judgment was equivalent to a pre-judgment of guilt for it deprived respondent of the benefit of perhaps its most important evidence.

In *Ex parte American Steel Barrel Co.*, 230 U. S. 35, this court said, l. c. 44, that the purpose of the Statute was not to disqualify a judge because of his erroneous Rulings, which could be corrected on appeal, but to "prevent his future action in the pending cause."

Here Batten's "future action in the pending cause" could not be fair and unbiased, as he had pre-judged respondent's evidence as worthless.

IV.

Petitioner's Point "Five" (p. 29).

Petitioner does not argue this point. However, we have discussed it under Point I(a) of our brief in cause No. 786.

V.

Petitioner's Point "Six" (pp. 29-30).

Petitioner complains (p. 29) that "There is not a single authority that the Circuit Court of Appeals could properly exercise in such a law appeal that it does not either expressly or by necessary implication employ in this case." Even so, that does not necessarily constitute any impropriety. Most of the rules applicable to one are also applicable to the other. The Court here did not violate any rule applicable to administrative agencies, as was done in the *Pottsville case, supra*. If either a court or an administrative agency deprives a litigant of due process, the Circuit Court of Appeals has authority to reverse the lower court's judgment or refuse to enforce the administrative board's order. That is all the Court has done here. It has not invaded any province of the Labor Board in so doing.

The rules governing the jurisdiction and duties of the Circuit Court of Appeals in Labor Board cases have frequently been enunciated by this Court and are well known to the various Circuit Courts of Appeals. The limitations on invading the powers of administrative bodies have been established by the *Pottsville* and *Fry* cases cited by petitioner, page 27. There is no need for this Court to reiterate them.

Petitioner has not presented any substantial grounds for the granting of certiorari herein and its petition should be denied.

Respectfully submitted,

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Attorneys for Respondent, Donnelly Garment Company.

REED, INGRAHAM & MILLIGAN,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

Nos. 38 and 39.—October Term, 1946.

National Labor Relations Board, Petitioner, 38 v. Donnelly Garment Company, Donnelly Garment Workers' Union, and International Ladies' Garment Workers' Union.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.
International Ladies' Garment Workers' Union, Petitioner, 39 v. Donnelly Garment Company, Donnelly Garment Workers' Union and National Labor Relations Board.	

[March 3, 1947.]

Mr. Justice Frankfurter delivered the opinion of the Court.

On March 6, 1940, the National Labor Relations Board, on finding that the Donnelly Garment Company had engaged in labor practices condemned as "unfair" by the Wagner Act, issued an order against the Company "to effectuate the policies" of the Act. The Circuit Court of Appeals for the Eighth Circuit denied enforcement of the order and remanded the case to the Board. 123 F. 2d 215. After carrying out what it conceived to be the directions of the Court, the Board again found against the Company. The Court below denied enforcement of the Board's second order "for want of due process in the proceedings upon which the order is based." 151 F. 2d 854. The correctness of this ruling is now before us,

for we brought the case here, 327 U. S. 775, to rule on important issues in the administration of the Wagner Act. This protracted litigation has given rise to a swarm of questions. In view of the fact that the case comes to us after it has been twice before the Board and three times before the court below, on a record of thirteen volumes with a total of more than 5000 pages, even an earnest attempt at compactness cannot avoid a somewhat extended opinion.

The case presents limited legal phases of one of those bitter, unedifying conflicts with which American industrial history is unfortunately replete. For other litigation growing out of this strife, see 20 F. Supp. 767; 21 F. Supp. 807; 304 U. S. 243; 23 F. Supp. 998; 99 F. 2d 309; 119 F. 2d 892; 121 F. 2d 561; 47 F. Supp. 61; 47 F. Supp. 65; 47 F. Supp. 67; 55 F. Supp. 572; 55 F. Supp. 587; 147 F. 2d 246; 154 F. 2d 38. It has its roots in a campaign by the International Ladies Garment Workers Union (hereafter designated as International) to unionize the women's garment industry in Kansas City, Missouri. Because of its importance, the Donnelly Garment Company (to be called Company for short) became the particular target of these unionizing efforts. These continued with varying intensity over a period of years but met with little success among the Company's employees.

In 1938, International began proceedings before the Board charging the Company with a series of unfair labor practices in violation of §§ 2 (6), (7) and 8 (1), (2), (3) of the National Labor Relations Act, 49 Stat. 449, 29 U. S. C. §§ 151 *et seq.* The main charge was that the Company, to counteract the efforts of International, had stimulated the formation of a plant union, the Donnelly Garment Workers Union (hereafter called Union) and had dominated it through financial and other aid. Following the usual procedure there was a hearing before a trial examiner. At the hearing, the Exam-

iner rejected an offer by the Company to prove, through the testimony of 1200 employees, that they had not been coerced by the Company to join Union, but that each of them had done so of his own free will, and that they had no knowledge of Company influence in the affairs of Union. The Examiner also excluded evidence to show that the formation of the Union followed strike threats and violence by International, successful against smaller competitors of the Company, to coerce the Company into a closed-shop agreement with International. To these and other less important exclusions the Company duly excepted on the submission of the Trial Examiner's intermediate report. The Board upheld the Examiner's rulings on evidence, accepted his findings of fact, and, with a qualification not here relevant, adopted his recommendations. Thereupon it issued the usual cease-and-desist order, and directed the disestablishment of Union and reimbursement to employees of the amount of the dues which the Company had checked off on behalf of Union (21 N. L. R. B. 164).

Review of this order came before the Circuit Court of Appeals on the Company's petition to set it aside and on the Board's cross-petition for its enforcement. On several contentions, the disposition of which is relevant to the questions now calling for decision, the Court sustained the Board. It found no basis for setting aside the proceedings as unfair on the claim that either the Examiner or the Board was biased. It held that the Board properly limited the evidence to issues raised by the complaint, and since International was not on trial it found no impropriety in the exclusion of evidence offered to prove its misconduct. The Court did however find that the Company had been denied a fair hearing in not being allowed to present the testimony of its employees to the effect that Union was truly independent and that they had joined it voluntarily. The Court remanded the case to the

Board "for further proceedings not inconsistent with the opinion of this Court".

The Board thereupon set the case for a second hearing before the original Examiner. Insisting that he was biased and had prejudged as valueless "the evidence to be adduced at the pending hearing", the Company moved for a new trial examiner. The Board denied the application and the case proceeded to hearing. This time the Examiner heard eleven of the 1200 employees named in the offer of proof rejected in the earlier proceeding, but declined to hear the rest on the ground that their testimony would be merely cumulative. He allowed the President of the Company, whom illness had kept from the earlier hearing, to testify fully. Otherwise, he received no evidence that had been available but was not offered at the earlier proceeding, and excluded all evidence of events subsequent to the termination of the first hearing. The Examiner's findings and recommendations, in respects here material, were substantially the same as those he had previously made, and the Board, acting upon his intermediate report, issued virtually the same order. 50 N. L. R. B. 241. The Company again petitioned the Circuit Court of Appeals to set aside the order, and the Board again requested its enforcement. During the pendency of these proceedings, the Company invoked § 10 (e) of the Wagner Act and asked the Court leave to adduce before the Board evidence which it claimed had been erroneously excluded. This motion was not granted. Instead, as already noted, the Court denied the Board's petition for enforcement "for want of due process in the proceedings upon which the order is based." 151 F. 2d 854, 875. The Court set forth its views in a careful opinion of more than thirty pages in the printed record. There was also a concurring opinion, and a dissent.

The Court canvassed many items of evidence. As to some of the Board's rulings which it disapproved, the Court stated explicitly that by themselves they would not have afforded sufficient ground for reversal. Rulings which individually would not invalidate an order of the Board do not in combination acquire the necessary strength to undo what the Board, acting under authority given it by Congress, has done. We do not find that in their combination these rulings amounted to unfairness. We must therefore consider one by one those objections which the Court deemed sufficient to vitiate the Board's order. For the Court below did not suggest that the Board as a tribunal was so biased as to be incapable of fair judgment in this case. It found that such a finding against the Board was not justified.

First. The controlling basis of the Court's finding of unfairness in the Board proceedings related to testimony proffered by the Company at the second hearing before the Examiner. This second hearing was not a new proceeding. It was a stage in a process consisting of the first proceeding before the Board, the remand resulting from review of the Board's order in the Circuit Court of Appeals, and the second proceeding before the Board in response to this remand. The correctness of the Court's judgment refusing enforcement of the Board's second order must be judged in the light of the interrelation of the two proceedings before the Board, and the Board's justifiable interpretation of the directions which it received upon remand of the first order. Indeed, the disposition of the present case turns decisively on the view that is taken of the Board's interpretation of its duty under the Court's mandate.

It becomes necessary therefore to revert to the precise terms of the Court's mandate. The order was remanded by the Circuit Court of Appeals "to said Labor Board for further proceedings not inconsistent with the opinion

of this Court." The Court's opinion yields this gloss upon its mandate:

> "Our conclusion is that the petition of the Board for enforcement of the order under review must be denied. We think that the least that the Board can do, in order to cure the defects in its procedure caused by the failure of the Trial Examiner to receive admissible evidence, is to vacate the order and the findings and conclusions upon which it is based; to accord to the petitioners [the Company and the plant union] an opportunity to introduce all of the competent and material evidence which was rejected by the Trial Examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order." 123 F. 2d 215, 225.

The Board based its new order upon the record of the first proceeding, reopening the hearing only for the purpose of admitting the erroneously excluded testimony of the employees. In short, the Board did not understand the remand to call for a new trial. The Court, when called upon to construe it four years later, took a different view of the meaning of its decision of November, 1941: "It is, we think, apparent that what this Court, in effect, ruled was that the Company and the plant union were entitled to a new trial upon the evidence already taken and such competent and material evidence as might be proffered upon a further hearing." 151 F. 2d 854, 856. From this point of view, the Court could readily conclude that the record which came to it "presents an incomplete picture."

We have recognized that "the court that issues a mandate is normally the best judge of its content, on the general theory that the author of a document is ordinarily the authoritative interpreter of its purposes." But, we

continued, "it is not even true that a lower court's interpretation of its mandate is controlling here. Compare *United States* v. *Morgan*, 307 U. S. 183. Therefore, we would not be foreclosed by the interpretation which the Court of Appeals gave to its mandate, even if it had been directed to a lower court." *Federal Communications Commission* v. *Pottsville Broadcasting*, 309 U. S. 134, 141. Here, as in that case, a much deeper issue is involved. As we had occasion to point out in the *Pottsville* case, there are significant differences between the relations of an appellate court to a lower court and those of a court to a law-enforcing agency, like the Board, whose order is subject only to restricted judicial review. These differences may be particularly telling upon remand of an order to the agency. Due regard for these differences must guide us through the maze of details in this case.

In the context of the opinion remanding the Board's original order and of the nature of the administrative process with which it is entrusted, the Board was justified in not deeming itself under duty to grant a "new trial" in the sense in which a lower court must start anew when an upper court directs such a new trial. There was no reference to a "new trial", nor was any intimation given that such was the breadth of what the remand required. From the Court's opinion there appears only a very restricted dissatisfaction with the original proceedings before the Board, calling for a correspondingly restricted correction. "The least that the Board can do", wrote the court, "is . . . to accord the petitioners an opportunity to introduce all of the competent and material evidence which was rejected by the trial Examiner; and to receive and consider such evidence together with all other competent and material evidence in the record before making new findings and a new order." 123 F. 2d at 225. "The least that the Board can do" may well imply that the Board is authorized to draw on the wide

scope of its statutory discretion. But to advise the Board of "the least that [it] can do" does not put the Board in default for not doing more. Due process does not afford a party the right to treat as a rehearsal a hearing on the issues for which the hearing was adequate. And the Wagner Act does not require that ground be covered a second time or piecemeal.

Second. Since in our view the remand did not call for a proceeding *de novo*, the Board was not required to reopen any issue as to which its ruling was left unassailed by the Circuit Court of Appeals in its first decision. We shall therefore consider the particular defects which the Circuit Court of Appeals found in the second hearing, by treating that hearing not as a new trial but as the sequel of the first hearing under a remand by the Circuit Court of Appeals for the limited purpose of correcting the prior erroneous exclusion of testimony.

(1) The Board's decision that the Company had engaged in unfair labor practices to a large extent turned on the Company's relation to the plant union. It is fair to infer that the lower court's denial of enforcement of the Board's order was influenced most by its finding that the Trial Examiner and the Board did not comply with the Court's mandate on the first review regarding the proffer of testimony of the Company's employees to the effect that they voluntarily organized and joined the Union and that, to their knowledge, its affairs were uninfluenced by the Company. At the second hearing the Examiner admitted the testimony of eleven such employees, excluding further oral testimony of the same nature as merely cumulative. The court below did not quarrel with confining this line of testimony to eleven witnesses. But it reached the view that neither the Examiner nor the Board took this testimony into account in reaching the findings on which the Board's second order was based. It was principally from this that the Court concluded that

the Company was denied the full hearing to secure which the case was remanded to the Board.

According to an early English judge, "The devil himself knoweth not the mind of man", and a modern reviewing court is not much better equipped to lay bare unexposed mental processes. It is a grave responsibility to conclude that in admitting the testimony of the Company's employees, the Board went through a mere pretense of obedience to the Court's direction, and heard the testimony with a deaf ear and a closed mind. In light of the authority with which Congress has endowed the Board, and with due regard to the conscientiousness which we must attribute to another branch of the Government, we cannot reject its explicit avowal that it did take into account evidence which it should have considered unless an examination of the whole record puts its acceptance beyond reason. Since this matter is crucial, it is appropriate to quote fully the Board's decision on the point:

> "In remanding the case to the Board for further hearing, the Circuit Court directed that the respondent [the Company] and the D. G. W. U. [the plant union] be permitted to adduce the previously proffered testimony of respondent's [the Company's] employees to show, in substance, that they formed and joined the D. G. W. U. of their own free will and that they were not influenced, interfered with, or coerced by the respondent in choosing that organization as their bargaining representative. In compliance with the Court's mandate and pursuant to the respective offers of proof submitted by the respondent and the D. G. W. U. at the original hearing, the Board permitted the introduction of such testimony. We have carefully considered all such evidence adduced by the respondent and the D. G. W. U. We find, however, that the testimony in question does not overcome more positive evidence in the record that the

respondent committed acts of interference and assistance in the formation and administration of the D. G. W. U. which subjected that organization to the respondent's domination and which removed from the employees' selection of the D. G. W. U. the complete freedom of choice which the Act contemplates. Since we find the testimony here adduced totally unpersuasive that the employees voluntarily designated the D. G. W. U., we are moreover impelled to adhere to the opinion, derived from our experience in administration of the Act, that conclusionary evidence of this nature is immaterial to issues such as those presented in this case. A consideration of all the evidence convinces us, and we find, that the respondent dominated and interfered with the formation and administration of the D. G. W. U. and contributed support thereto; and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act." 50 N. L. R. B. 241.

We cannot read this otherwise than as an assurance by the Board that it did not merely go through the motions of allowing the testimony of these witnesses to get into the record as an empty formality, but that it duly heeded the order of the Court and reflected upon the testimony. The Board judged of its worth, as it had a right to, in light of the mass of other testimony in the case, and found it unpersuasive. Had the Board said no more the court below could hardly have found disregard of its mandate. The Board's skeptical expression regarding this kind of testimony hardly disproves obedience to the Court's mandate. Even lower courts sometime indicate disagreement with a ruling they are bound to enforce. Out of repeated instances of hearing the same thing a generalization as to its worth will almost inevitably emerge in the thoughts of a tribunal. As to this sort of testimony, it has been ob-

served that a feeling by employees "that they were under no sense of constraint . . . is a subtle thing, and the recognition of constraint may call for a high degree of introspective perception." Judge Magruder in *Bethlehem Shipbuilding Corp.* v. *National Labor Relations Board*, 114 F. 2d, 930, 937. We are not called upon to lay down a general rule of materiality regarding such testimony. Suffice it to say that the Board obeyed the decision of the Circuit Court of Appeals that the testimony of the Company's employees regarding Union was to be adduced and considered. Its probative value was for the Board. See *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board*, 313 U. S. 146, 163. And the Court did not rule that the rest of the record repelled the Board's assurance that it "carefully considered" the evidence the Court bade it to consider. It expressly withheld consideration of the Board's order on the basis of the whole record.

(2) The new testimony of the Donnelly employees led to rulings on evidence by the Examiner, approved by the Board, which in the view of the Court below, contributed to render the hearing unfair. The testimony related to the offensive aspect of International's unionizing efforts and the bearing of this upon the claim of Company that Union was quite independent and not the Company's instrument. The employees were allowed to testify that they were antagonized by acts of violence on the part of International and that they sought self-protection in a union of their own, voluntarily formed. The Examiner limited this line of testimony to acts of violence within six months preceding the organization of Union. This was based on the notion that a time limit had to be drawn somewhere in ascertaining the effect of known violence in persuading Donnelly employees to form their own union, and that a period longer than six months was too remote, or, in any event, had not sufficient probative value. Surely this was a reasonable ruling by the hearing-

tribunal. At any rate it was not so circumscribing of proof in establishing the issue toward which the evidence was directed as to call for correction. But it is urged that while the Company was so restricted on proof of this issue the Board allowed evidence further back calculated to show a continuous state of mind toward influencing employee association by the Company. By way of rebuttal to the employees' testimony that the plant union of 1937 was a spontaneous effort of the employees wholly uninfluenced by the Company, the Board admitted evidence to show that the Company fostered a company union in 1935. It does not follow that the limitation of time on admissible evidence is the same regardless of the issue for which the evidence is tendered. Certainly we cannot say that it was not admissible to allow this evidence of company coercion in 1935 as bearing on the independence of the new plant union in 1937. And so we cannot find a solid enough ground to establish discriminatory treatment by the Board because on this issue it went back to 1935 whereas on the issue of the influence of International's violence in the formation of the 1937 plant union, it drew the line at events six months prior thereto.

(3) While we think that the Board properly construed the scope of the remand not to require a retrial of issues canvassed at the first hearing, time does not stop still even for the administrative process. Change in circumstances may make relevant at the second hearing what was irrelevant at the first hearing. The Circuit Court of Appeals found such a change in circumstances in a decision of this Court rendered after the first review below. In its decision of November 6, 1941, the Circuit Court of Appeals sustained the exclusion by the Board of testimony to prove misdeeds by International. The tenor of its reasoning was that an inquiry into charges of unfair labor practices by the Company did not make

relevant charges of misconduct against International, the complainant. The Board issued the order now challenged on June 9, 1943. In the meantime, on January 18, 1943, this Court decided *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9. That case, so the court below thought, required the admission at the second hearing of the offer of proof regarding International's acts of violence.

We regard this as a misapplication of the *Indiana & Michigan* case. This case is not that case. They have in common an accusation of grave misconduct against a complainant before the Board. Otherwise, the circumstances of the two cases, and the legal issues they raise, are very different. The *Indiana & Michigan* case involved a proceeding under § 10 (e) of the National Labor Relations Act authorizing the Circuit Court of Appeals to order additional evidence to be taken before the Board when it is shown "to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence" at the hearing. We had previously held that such an application "was addressed to the sound judicial discretion of the court". *Southport Petroleum Co.* v. *Labor Board*, 315 U. S. 100, 104. Section 10 (e) in effect formulates a familiar principle regarding newly discovered evidence. Even without such explicitness this Court has, on occasion, not allowed administrative orders to stand where there has been a drastic change in circumstances. In *Indiana & Michigan* the offer of proof related to events subsequent to the Board's hearing, tending to show acts of serious violence on behalf of a complaining union. The Board had refused to reopen the case and the Circuit Court of Appeals for the Sixth Circuit granted the application under § 10 (e). We held that, in the light of the circumstances before it, the Circuit Court of Appeals did not abuse its discretion in ordering additional evidence to be

taken before the Board. The proffered testimony was held relevant on three grounds: (1) Inasmuch as the Board, by the very nature of its case load, must exercise discretion in entertaining complaints, the newly revealed misconduct on the part of the complainant might affect, not the jurisdiction of the Board, but the exercise of its power to entertain a charge; (2) the new evidence bore materially upon the credibility of some important witnesses before the Board; (3) the Board had attributed to the Company responsibility for the conduct of some of its supervisory employees, and the new evidence might lead the Board to conclude that their conduct was to be attributed to self-interest and not charged against the employer.

Here we have a totally different situation. We are not reviewing an allowable exercise of judicial discretion by the Circuit Court of Appeals in ordering the Board to hear newly discovered evidence. On review of its order, the Board cannot be compelled to admit evidence which it excluded unless such exclusion was clearly insupportable. The power to adduce additional evidence granted to the Circuit Court of Appeals by § 10 (e) cannot be employed to enlarge the statutory scope of judicial review. The short of the matter is that the Court deemed it reversible error on the part of the Board not to entertain testimony on a matter which the court deemed irrelevant to the issues at the first hearing. It did so because it interpreted the *Indiana & Michigan* case to hold that failure by the Board to allow a full-dress inquiry into the misconduct of a complainant, particularly if very serious, renders the proceedings unfair as a matter of law. We were not dealing with such an abstraction in the *Indiana & Michigan* case. Nothing short of such an abstraction will justify invalidation of the order in this case because the Board did not deal with the charges against International as a separate issue, or as though the

International had been on trial. The only consideration affecting the behavior of a complainant that played a part in the decision in *Indiana & Michigan* and which may here be invoked, is the suggestion that the character of a complainant may rightfully influence the Board in entertaining a complaint. But the charges against International had in fact been brought to the attention of the Board even though not in the way in which International would have been tried had it been formally charged with crime. It would be unreal to deny that there was plenty of evidence in the record to apprise the Board of alleged misconduct by International if on that score it chose not to entertain charges of unfair labor practices against the company. In the light of the Board's opinion, it would be doctrinaire to assume that it would have reached any other result if evidence of International's misconduct had been more voluminous. *Pittsburgh Plate Glass Co.* v. *National Labor Relations Board, supra.* The two other respects in which newly discovered evidence as to violence was ordered to be heard in the *Indiana & Michigan* case are completely lacking here. Here we have not new evidence material to the credibility of important witnesses or relevant in assessing the responsibility by an employer for conduct of supervisory employees. The refusal of the Board in effect to try International did not impair the validity of the Board's order.

Even in judicial trials, the whole tendency is to leave rulings as to the illuminating relevance of testimony largely to the discretion of the trial court that hears the evidence. See, *e. g.*, Morgan, Foreword, American Law Institute Code of Evidence, p. 15. Courts of appeal are less and less inclined to base error on such rulings. Administrative tribunals are given even freer scope in the application of the conventional rules of evidence. See *Tagg Bros.* v. *United States*, 280 U. S. 420, 442. It is significant that the Wagner Act specifically provided that

"the rules of evidence prevailing in courts of law or equity shall not be controlling." § 10 (b).

Third. This brings us to the only other objection to a ruling of the Board made after the first hearing. On the first review, the court below rejected the Company's contention that the Examiner was biased. 123 F. 2d at 219. On the second review, the Court was of opinion that the Board improperly denied the Company's application for a new Examiner. It did so, apparently, not because it found actual bias on the part of the Examiner demonstrated at either hearing. The Court seemed to be moved by the generous feeling that a party ought not to be put to trial before an examiner who, by reason of his prior rulings and findings, may not be capable of exercising impartiality. Certainly it is not the rule of judicial administration, that, statutory requirements apart, see Judicial Code § 21, 28 U. S. C. § 25, a judge is disqualified from sitting in a retrial because he was reversed on earlier rulings. We find no warrant for imposing upon administrative agencies a stiffer rule, whereby examiners would be disentitled to sit because they ruled strongly against a party in the first hearing. The Board might have gone beyond the legal compulsions and ordered the new evidence to be heard before a new Examiner who could report with a mind wholly free from prior litigious embroilments. The Board might have been well advised also to allow greater leeway in admitting evidence not strictly relevant. It takes time to avoid even the appearance of grievances. But it is time well spent, even though it is not easy to satisfy interested parties, and defeated litigants, no matter how fairly treated, do not always have the feeling that they have received justice. In any event, we are not the advisers of these agencies. And we have no right to upset their orders unless they fall afoul of legal requirements. *Cf. Inland Empire Council*

v. *Millis*, 325 U. S. 697. We do not find that the Board's order offends them.

Fourth. We have examined all the issues pressed here but we need not enlarge upon our conclusion that they are without merit. There remains the proper disposition of the case. Having found infirmities in the proceedings which led to the order, the Court below did not consider the sufficiency of the evidence to sustain the findings on which the order was based. This controversy has been so long in litigation that, other things being equal, it would be highly desirable finally to dispose of the whole case here. But other things are not equal. It is not the function of this Court to review in the first instance the sufficiency of evidence on which the Board's order is based. Congress placed that function in the Circuit Court of Appeals. And this case is peculiarly not one in which we should do the unusual thing and pass on evidence without its prior consideration by the lower court. It is not for us to make an independent examination of this entire record. The demands of the work of this Court preclude an independent canvass of a record of thirteen volumes, containing more than 5000 pages. Two judges below who had gone over this mass of evidence reached opposite conclusions regarding its sufficiency to support the Board's findings. For the determination of this issue we remand the case to the Circuit Court of Appeals.

Reversed and remanded.